

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 26 NOVEMBER 2019

SUBJECT OF REPORT: UPPER CANADA COOMBE

TOWN OR PARISH: HUTTON, BLEADON, AND LOXTON

OFFICER/MEMBER PRESENTING: ELAINE BOWMAN

KEY DECISION: NO

RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee authorise the making of a Definitive Map Modification Order adding a route A-B as shown on the attached Location Plan as a Bridleway to the Definitive Map on the grounds that there is sufficient evidence to show that a public Bridleway has been established under Section 53 (3) (b) and (c) of the Wildlife and Countryside Act 1981; and
- (ii) if no objections are made and sustained, that authorisation be given for the confirmation of the Order; and
- (iii) that if objections are made, that the Order will be forwarded to the Secretary of State for determination. If this happens, subject to officers being content that there was no significant change to the balance of evidence, the Council will support the Order at any subsequent Public Inquiry.

1. SUMMARY OF REPORT

This report considers an application which was made on the 6 September 1999. That application requested that a route, in the Parishes of Hutton, Bleadon, and Loxton, should be recorded as a Byway Open to all Traffic. Such application for a Definitive Map Modification Order is submitted under Section 53(5) of the Wildlife and Countryside Act 1981. The effect of this request, should an Order be made and confirmed, would be to amend the Definitive Map and Statement for the area.

This report is based on limited historical and user documentary evidence. A location Plan EB/MOD38, showing the claimed route A-B is attached.

In order that members may consider the evidence relating to this application, further details about the claim itself, the basis of the application, and an analysis of the evidence are included in the Appendices to this report, listed below. Also listed below are the Documents that are attached to this report. Members are welcome to inspect the files containing the information relating to this application, by arrangement with the Public Rights of Way Section.

Location Map EB/MOD 38

Appendix 1 – The Legal basis for deciding the claim

Appendix 2 – History and Description of the Claim

Appendix 3 – Analysis of the Historical Documentary Evidence

Appendix 4 – User Evidence provided by Hutton Parish Council

Appendix 5 – Consultation and Landowner Responses

Appendix 6 – Summary of Evidence and Conclusion

Document 1 – Christon Tithe Map 1810

Document 2 – Finance Act 1910

Document 3 – Handover Map 1930

Document 4 – Definitive Map Process – Parish Survey Map

Document 5 – Definitive Map Process – Draft Map

Document 6 – Definitive Map Process – Draft Map Modification Plan

Document 7 – Definitive Map Process – Provisional Map

Document 8 – Definitive Map relevant date 26th November 1956

Document 9a & 9b – User Evidence Table

2. POLICY

The maintenance of the Definitive Map should be considered as part of the management of the public right of way network and so contributes to the corporate plan “Health and Wellbeing” and “Quality Places”.

3. DETAILS

Background

i) The Legal Situation

North Somerset Council, as Surveying Authority, is under a duty imposed by the Wildlife and Countryside Act 1981, Section 53(2) to keep the Definitive Map and Statement under continuous review. This includes determining duly made applications for Definitive Map Modification Orders.

The statutory provisions are quoted in **Appendix 1**.

ii) The Role of the Committee

The Committee is required to determine whether or not a Definitive Map Modification Order should be made. **This is a quasi-judicial decision and it is therefore essential that members are fully familiar with all the available evidence. Applications must be decided on the facts of the case, there being no provision within the legislation for factors such as desirability or suitability to be taken into account.** It is also important to recognise that in many cases the evidence is not fully conclusive, so that it is often necessary to make a judgement based on the balance of probabilities.

The Committee should be aware that its decision is not the final stage of the procedure. Where it is decided that an Order should be made, the Order must be advertised. If objections are received, the Order must be referred, with the objections and any representations, to the Planning Inspectorate who act for the Secretary of State for Food

and Rural Affairs for determination. Where the Committee decides that an order should not be made, the applicant may appeal to the Planning Inspectorate.

Conclusion

This report relates to the route A-B, which is not currently recorded on the Definitive Map. It is necessary for the Committee to consider whether, given the evidence available, that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

If the Committee believes in respect of the claimed section that the relevant test has been adequately met, it should determine that a Definitive Map Modification Order should be made. If not, the determination should be that no order should be made. See **Appendix 1**.

4. CONSULTATION

Although North Somerset Council is not required to carry out consultations at this stage affected landowners have been contacted. In addition to this Hutton, Bleadon, and Loxton Parish Councils, Local members, interested parties and relevant user groups have also been included. Detail of the correspondence that has been received following these consultations is detailed in **Appendix 5**.

5. FINANCIAL IMPLICATIONS

At present the council is required to assess the information available to it to determine whether there is sufficient evidence to support the application. There will be no financial implications during this process. Once that investigation has been undertaken, if authority is given for an Order to be made then the Council will incur financial expenditure in line with the advertisement of the Order. Further cost will be incurred if this matter needs to be determined by a Public Inquiry. These financial considerations **must** not form part of the Committee's decision.

Costs

To be met from existing Revenue Budget.

Funding

To be met from existing Revenue Budget.

6. LEGAL POWERS AND IMPLICATIONS

Section 53 of the Wildlife and Countryside Act 1981. The Wildlife and Countryside Act 1981 requires that applications which are submitted for changes to the Definitive Map and Statement are determined by the authority as soon as is reasonably possible, within 12 months of receipt. Failure will result in appeals being lodged and possible directions being issued by the Secretary of State.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Improvements or additional routes added to the Public Rights of Way Network encourage sustainable travel by enabling the public to walk, cycle or ride a horse across our District reducing carbon emissions and improving our Environmental footprint.

8. RISK MANAGEMENT

Due to the number of outstanding applications awaiting determination officers of North Somerset Council, in conjunction with the PROW Rights of Way Sub Committee have agreed a three-tier approach when determining the directed applications. A report was presented to the Committee in November 2016 which outlined a more streamline approach. This could result in challenges being made against the Council for not considering all evidence.

The applicant has the right to appeal to the Secretary of State who may change the decision of the Council (if the Council decided not to make an Order) and issue a direction that an Order should be made. Alternatively, if an Order is made objections can lead to a Public Inquiry.

9. EQUALITY IMPLICATIONS

No - Public rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

10. CORPORATE IMPLICATIONS

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

11. OPTIONS CONSIDERED

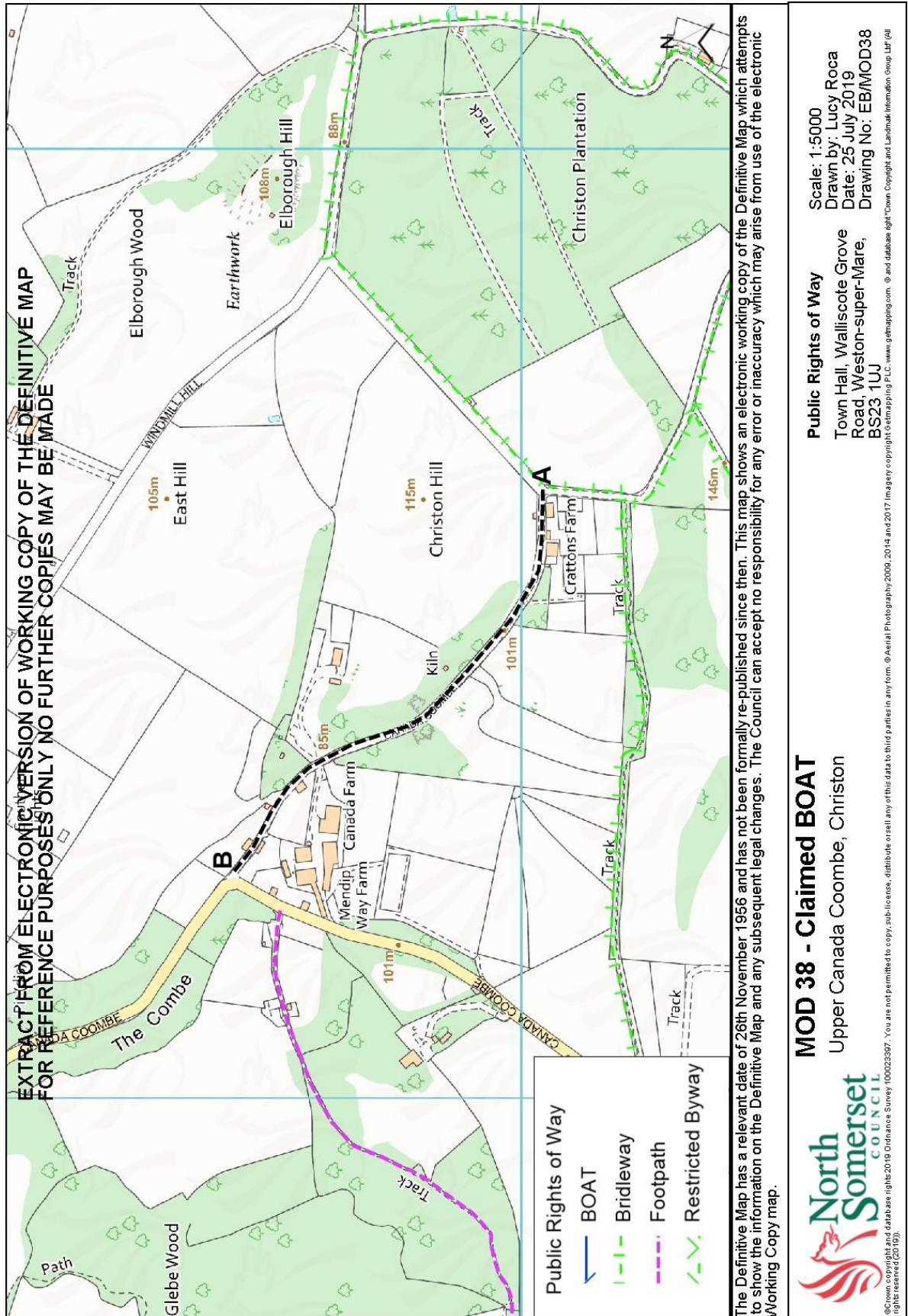
The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order for a Byway Open to All Traffic over the route A - B.
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order for a Byway Open to All Traffic over the route A - B.
3. Whether the evidence supports the making of a Definitive Map Modification Order for a Restricted Byway or Bridleway over the route A-B.
4. That it is understood that if an Order is made and receives objections, the Order will be forwarded to the Secretary of State for determination. If this happens, subject to the Officers being content that there was no significant change to the balance of evidence; that authority is given for the Council to support the Order at any subsequent Public Inquiry.

AUTHOR

Elaine Bowman, Principal Access Officer, Access Team, Natural Environment
Telephone 01934 888802

BACKGROUND PAPERS: - Public Rights of Way File Mod 38



The Legal Basis for Deciding the Claim

1. The application has been made under Section 53 of the Wildlife and Countryside Act 1981, which requires the Council as Surveying Authority to bring and then keep the Definitive Map and Statement up to date, then making by Order such modifications to them as appear to be required as a result of the occurrence of certain specified events.
2. Section 53(3)(b) describes one event as, "the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway". See paragraph 4.

Subsection 53(3) (c) describes another event as, "the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (i) "that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic"

The basis of the application in respect of the Byway Open to all Traffic is that the requirement of Section 53(3)(c)(i) and (ii) has been fulfilled.

3. Section 32 of the Highways Act 1980 relating to evidence of dedication of way as highway states " A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered documents, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced".
4. Section 31 (1) of the Highways Act 1980 provides that, "Where a way over land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it".

Section 31 (2) states, "the period of twenty years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by a notice or otherwise".

Section 31 (3) states, "Where the owner of the land over which any such way as aforesaid passes-

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and

(b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,
the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

For a public highway to become established at common law there must have been dedication by the landowner and acceptance by the public. It is necessary to show either that the landowner accepted the use that was being made of the route or for the use to be so great that the landowners must have known and taken no action. A deemed dedication may be inferred from a landowners' inaction. In prescribing the nature of the use required for an inference of dedication to be drawn, the same principles were applied as in the case of a claim that a private right of way had been dedicated; namely the use had been without force, without secrecy and without permission.

The Committee is reminded that in assessing whether the paths can be shown to be public rights of way, it is acting in a quasi-judicial role. It must look only at the relevant evidence and apply the relevant legal test.

5. Modification orders are not concerned with the suitability for use of the alleged rights. If there is a question of whether a path or way is suitable for its legal status or that a particular way is desirable for any reason, then other procedures exist to create, extinguish, divert or regulate use, but such procedures are under different powers and should be considered separately.

History and Description of the Claim

1. An application for a modification to the Definitive Map and Statement was received dated 6 September 1999 from Hutton Parish Council. The basis of this application was that a route which runs from Upper Canada Combe to Grattons Farm should be recorded as a Byway Open to all Traffic. Submitted with the application were 10 User Evidence Forms which the applicant felt illustrated the use that had been made of this route together with the details of the landowners notified of the claim. The applicant did not submit any historical documentary evidence with their application.

This matter is currently recorded on the Definitive Map Register as Mod 38.

It should be noted that the Council has undertaken additional research into records that are held within the Council as well as those obtained from external sources. These are detailed in **Appendix 3** of this report.

2. The 1999 application claims that a Byway Open to all Traffic should be recorded over one route that is not currently recorded on the Definitive Map. The claimed route falls within the Parishes of Hutton, Bleadon, and Loxton.
3. The route being claimed commences from the junction of existing Bridleway AX21/10 (Point A) and proceeds in a north-westerly direction along a track to the junction of adopted highway known as Canada Coombe (Point B) being a distance of approximately 558.78 metres.
4. This claimed Byway Open to all Traffic is illustrated as a bold black dashed line on the attached Location Map (scale 1:5000).

Analysis of the Historical Documentary Evidence

The claim is based on 10 User Evidence Forms however, North Somerset Officers have also looked at historical documents. The documentary evidence is listed in chronological order.

Christon Tithe Map (1810) Somerset Record Office Ref: DD/CTN/32

The Tithe Commutation Act was passed in 1836 under which all tithes were to be converted into a fixed money rent by an award made by the Commissioners appointed under the Act. It was an enormous task as it required all the land to be assessed for the value of its average produce and each field to be accurately measured and located for the permanent record.

This document covers the area over which the claimed route A-B passes. Although the scale of this plan is rather small it is very clear to see that the claimed route was considered to be in existence at the time of the production of this plan.

The map illustrates the claimed route as parallel dashed lines normally believed to be a route crossing open land, not considered to be a more senior class of route that lead to Hutton. The purpose of the Tithe Map was not to record public routes, only land which was capable of producing a crop for which tax could be applied.

An extract of this plan is attached as **Document 1**.

Finance Act (1910) North Somerset Council

The Finance Act allowed for the levying of a tax on the increase in value of land. All holdings or hereditaments were surveyed and recorded with an individual number on a special edition of the Second Edition OS County Series Maps at 1:2500 scales. The Finance Act process was to ascertain tax liability not the status of highways. The documents are relevant where a deduction in value of land is claimed on the grounds of the existence of a highway. It should be noted that these plans are the working documents rather than the final versions which would normally be held at the Record Office at Kew. It has not been possible to obtain either the plans or the hereditaments relating to this area from the offices at Kew at this time.

This plan shows the route A-B as a through route which is enclosed on either side for its full length. Although the majority of the route is coloured yellow this is believed to be indicating the change in Parish, not depicting the associated hereditament. In regard to the claimed route it can be seen that there is colouring either side of the solid yellow which indicates the ownership boundary of the fields within these being numbered 579, 580 and 584. At this time North Somerset Council do not hold the information relating to the ownership of these parcels of land. This plan illustrates that in 1910 there was a route which was open and capable of being used but does not assist with status.

An extract which has been looked at and relevant to this area is attached as **Document 2**.

Handover Map (1930) North Somerset Council

The Handover Map, which was drawn up in 1930 upon a map base dated 1888. The purpose of these documents was to illustrate routes which were considered to be public highways maintained by the local authority. As can be seen routes are coloured according to their differing category, Red being main routes, blue being secondary routes and yellow minor highways.

For the claimed route, there is no colouring along the track between points A to B. There is no indication that there was any public access along this route, the blue colouring of Canada Combe shown rounding the corner at its junction with Point B.

An extract which has been looked at and relevant to this area is attached as **Document 3**.

Axbridge Rural District Council **Definitive Map Process (1956) North Somerset Council**

The Definitive Map process was carried out over many years going through various phases which involved the area being surveyed by local people (Parish Survey) and advertisements being placed detailing that maps were being held on deposit for public viewing. This process was carried out through a Draft, Draft Modifications and Provisional stage before the Definitive Map was published with a relevant date of 26 November 1956. Any objections about routes that were included or routes that had been omitted were considered by Somerset County Council and amended if considered relevant.

Parish Survey Plan

The only Parish Survey Plan which is held by North Somerset Council covers the area where Point B of the claimed route is located in the Parish of Hutton. It can be seen that this section of the route is not coloured or labelled in any way. An extract of this plan is attached to this report as **Document 4**.

Draft Map

On this Draft Map, the route in question is displayed for its full length, however it is not depicted or coloured in any way, therefore indicating that at this time this route was not considered to be a public right of way. An extract of this map is attached as **Document 5**.

Draft Map Modification Plan

Following the publication of the draft map, comments were invited from interested parties to amend the recorded public rights of way. Based on the plan, no additional changes have been included to the route A-B. It should be noted that there is recorded the addition of 21/10 which connects to Point A. This route is recorded as a Bridleway. An extract of this plan is attached in the report as **Document 6**.

Provisional Map

Following the Draft Map Modification stage landowners were then invited to view the Provisional Map to comment against should they so wish. There is no record that any comment was made against the route A-B, so therefore remained unrecorded. An extract of this map is attached as **Document 7**.

Axbridge Rural District Council Definitive Map – Relevant Date 26 November 1956

Th conclusion of this process was the production of the Definitive Map. This document legally records routes believed to be Public Rights of Way and their status. It can be seen that the claimed route A-B is unrecorded. The extract of this map is shown as **Document 8**.

As the Definitive Map Process was to record routes believed to be Public Footpaths, Public Bridleways, Roads Used as Public Paths or Byways Open to all Traffic the fact that this route is not recorded does not mean that it did not carry public rights if later proven to exist or having become established since the production of the Definitive Map.

User Evidence provided by Hutton Parish Council

User Evidence Forms

The User Evidence Forms are all dated in 1999, the same year as the application was put forward. There are 10 forms in total which claim that the route A-B should be recorded as a Byway Open to All Traffic

The earliest claimed use of the route dates back to 1932, the latest use being 1999. These users claim to have used these routes on foot, horseback and by motor vehicles.

A detailed analysis of these forms has been undertaken and attached as **Document 9a & 9b.**

The submission of ten user evidence forms may make it difficult to determine whether this route has been used by the public at large. With such limited numbers it is necessary to assess the quality of their evidence and comments received when this matter was consulted upon.

The earliest date of claimed use is 1932. No recollection was made on these forms of the route being obstructed or unusable. However there is evidence that a few month before the application was made a gate had been erected at Point A also known as Grattons Farm, but the majority of users stated that it was unlocked.

Accepting that the date of challenge for the route A-B was 1999 it is necessary to look at the period 1979 – 1999. 5 out of the 10 User Forms submitted suggest use for 20 years or more. It should be noted that two forms only describe their use as 'many years'.

With regard to the usage of the route, the evidence forms suggest that it is either minimal or to a large extent. For example, some usages range from 5-10 times a year and occasionally once a week, whereas some people use/have used it every day or from a 100 times a year.

Only one person has noted upon their form that they were stopped when using this route and advised it was not a Bridleway.

Therefore taking 1999 as the date of challenge it would appear from the User Evidence Forms that the test under Section 31 of the Highways Act of 20 years usage has been enjoyed by these users, even though they are very limited in their numbers.

A particular section to note on these User Evidence Forms is the claimed status of the route. 5 of these forms clearly state that they believe the status of the route is a Byway Open to All Traffic. However, the other half have mixed views suggesting that it has always been a Footpath and/or a Bridleway. For example, Miss G Lloyd believes that the status of the route is a Footpath/Bridleway to which she used once a week. Additionally she stated in her form that the route is no different from the track that it meets so there isn't any reason to prevent it from being a bridleway. However, the owner of Chestnut Cottage, which is located near Point B, told her once that the route was not a Bridleway.

In Evidence Form 6, it is stated that Mrs Jinnings' father was the owner of Grattons Farm from 1930 to 1975. She believed the claimed route has been used as a Byway Open to All Traffic by the public as well as the landowners along the route. It is known that it wasn't until 1999 that the present owners of Grattons Farm erected a gate.

Similarly taking 1999 as the date of challenge it would appear that this route was established and capable of being used. Until the action of Gratton Farm to erect a gate at point A it would appear that this route was open and available for users. Having evaluated this evidence it is felt that there is sufficient evidence to raise the presumption of dedication, however is unclear as to what classification of status such dedication would be..

It should be noted that the route A-B is being used by horseriders and private vehicles today in an open unhindered way without force, without secrecy and without permission. The major use of this route by pedestrians and horse riders, would seem to have been accepted by adjoining landowners, it being capable of establishing a bridleway under common law. Such classification would be consistent with the adjoining routes around Christon Plantation.

Consultation and Landowner Responses

Pre- Order Consultation letters were sent on the 6th July 2018 to neighbouring land owners, local user groups and utility companies.

The following parties responded to this consultation, the content of their response also being recorded.

Name	Objection or Supporter	Comments
Bristol Water	No objection	<p>We wish to inform you that part of your proposed byway, from A to B, will be in our easement strip which extends 1.5 metres either side of our 63mm diameter main within which any proposed construction works would be strictly regulated. We shall also require vehicular access along the length of the pipeline at all times and therefore your proposals should take this into account. You should ensure that no reduction in cover or increases in ground levels, more than 200mm over our pipeline, take place.</p> <p>We confirm that we have no objection to the proposed stopping up order of byway A and B so long as the above requirements are adhered to.</p>
Mr G Plumbe – Green Lanes Protection Group	Objection	<p>I object to this application. It is very clear that the Parish Council made a mistake in applying for BOAT status in 1999 as all the evidence relied on (10 UEFs) supports the proposition that this track, if indeed public, was no more than a footpath or at best a bridleway.</p> <p>I attach a summary of the evidence as supplied, notably the contents of the UEFs. The Completed application form was not in fact attached to the NSC email supplying details of the UEFs, but I believe that to be irrelevant.</p> <p>Evidence relied on:</p> <p>Statement by Parish Council - purely to procure removal of gate. (Completed application form not attached to NSC email)</p> <p>UEF 1 - Footpath only UEF 2 - Horseback UEF 3 - Pedestrians, horseriders, vehicles owned by landowners & gamekeepers (not public) UEF 4 - Use 'on foot, cart and vehicle' -no evidence of what type of vehicle or whether as visitor, landowner etc, but 'my Dad was tenant' therefore presumably use for private access only UEF 5 - Pedestrian use only UEF 6 - On foot only (and only for 19 years) UEF 7 - On foot only UEF 8 - On foot (and recently 'on mountain bike') UEF 9 - 'Horse riding and dog walking - on foot and horseback' UEF 10 - 'Exercising horses (pleasure) - on horseback'; also occasionally in motor vehicle "for pleasure or in the course of business if animals had strayed from land we farm abutting Bridewell Lane" - ie as owner.</p>

Wales & West Utilities	No Objection	<p>According to our mains records Wales & West Utilities has no apparatus in the area of your enquiry. However Gas pipes owned by other GT's and also privately owned may be present in this area. Information with regard to such pipes should be obtained from the owners.</p>
Cadent Gas and National Grid	No Objection	<p>Searches based on your enquiry have identified that there is no record of apparatus in the immediate vicinity of your enquiry. Cadent and National Grid therefore have no objection to these proposed activities.</p>
Mr J Atherton	Objection	<p>Further to our recent telephone conversation my wife and I would like to make the following comments on the proposals you outlined.</p> <p>We feel strongly that if changes are to be made, they should preserve the AONB for future generations to enjoy, but prevent the damage and dangers caused by off-road driving, and fly tipping. The changes should also benefit and protect the residents of the AONB and its surroundings.</p> <p>Your letter of 3rd July proposes that a number of routes, shown on your enclosed plan, should in the future be recorded as restricted byways. We are very strongly in favour of this proposal as it will greatly help the ideals stated in red above. It will prevent access to off-road 4x4s, motorcycles and fly tippers and will make life much better and safer for local residents whilst allowing legitimate members of the public to freely access the area.</p> <p>In your letter of 6th July you refer to an application made by Hutton Parish Council in 1999 that the road from Canada Coombe to Grattons Farm be recorded as A BYWAY OPEN TO ALL TRAFFIC. The application to Hutton Parish Council for this change, was made by the former owners of Grattons Farm who subsequently sold the property to me and my wife 12 years ago. My wife and I are very strongly against this change as this will work against the ideals stated in red above. The road is signposted as a private road but access has always been given and never denied to walkers, horse riders, cyclists, in fact to anyone other than those not permitted on a restricted byway. Were this road to be opened to all traffic, it would allow vehicles to reach the bridleways around Criston Plantation but no further since these bridleways are proposed to become restricted byways. Making this road open to all traffic would allow access into the AONB to just those vehicles which are being restricted. Also any increase in traffic on this road would be detrimental to the residents through noise, and loss of privacy and would be dangerous to walkers and riders.</p> <p>As the current owners of Grattons Farm we would like to withdraw the request put to the Parish Council in 1999 by the previous owners.</p> <p>We also believe that the signposting of the road as PRIVATE deters access to non-legitimate users and gives the residents along this road a reason to approach and deter these non-legitimate users, thereby helping to support the ideals shown in red. We believe that by far the best option is to keep this road signposted as it is and used as it has been.</p>
Mr & Mrs Cooksley	Objection	<p>Regarding the above we as owners of a property on the lane for which this is applied for wish to ask that the lane remains as it is, an estate 'road' for access to properties and fields that are located on either side of it and the above request By Hutton Parish Council is turned down.</p> <p>Upper Canada Coombe as indicated on the map enclosed with the letter Ref: EB/Mod 38 is at present used by owners accessing their properties and landowners accessing their fields. Riders and</p>

walkers also use it to get onto the West Mendip Way. There are also two other access points from this side of the hill onto the West Mendip Way one via Windmill Hill and the other Grattons Lane, both of which are classed as footpath/bridleways. None of these lanes are classed for use by the public using "mechanically propelled vehicles". Would it be the Council/Parish Council's intention to change their use as well?

We see little point in making this section of lane a B.O.A.T. as once at the top of the lane there is nowhere for motorised vehicles to go, they would have to turn around and go back down onto Canada Coombe, unless it is the Parish Council's intention to apply for change of use for these lanes to allow access by mechanically propelled vehicles on to the West Mendip Way. The lane indicated on the attached map EB/MOD38 is extremely narrow and not maintained to a standard suitable for use by cars and vehicles and we understand that the Council would not maintain the lane to a suitable standard for road vehicles. There is also a well on the side of the lane which if hit could cause damage to mechanically controlled vehicles. Who is liable for any damage or personal injury caused if an accident happens - I would assume the local authority if this lane has a change of use. There is not a problem with horses and riders or walkers using this lane but we can see no reason for cars / vehicles other than those belonging or related to property/land owners to have access.

The access along Canada Coombe is fairly restricted by width and dangerous bends along its entire length and we had been informed many years ago by Woodspring District Council that further development would not be approved because the surrounding highway network is unsuitable to serve any additional traffic. This change of use may well increase the number of vehicles looking for access onto the area classed as an Area of Outstanding Natural Beauty.

There is already problems at night caused by motorbikes, quads and 4 wheel drive vehicles driving up Grattons Lane above Grattons Farm and using the woods and lanes to either race around or shoot wildlife.

There has also been theft from cars and damage to vehicles as well as stolen trailers and diesel/oil theft from properties in Upper Canada, legitimate access by motorised vehicles could well cause an increase in these crimes.

Until receipt of this letter we have at no time been informed that this application had been made and by whom. We understand that we should have been notified by the applicant that they were putting in an application for change of use.

We would request that the Modification of the Definitive Map for this section to be recorded as Byway Open to All Traffic made by Hutton Parish Council is turned down and for the lane to remain recorded as it is and as it always has been.

Ms D Mallinson –
Green Lanes
Protection Group

Comments

I'm a bit confused about which parishes this application affects. Your letter gives the parish affected as Hutton (the parish council of which is the applicant), but according to North Somerset's online mapping of town and parish council boundaries (a layer on <http://map.n-somerset.gov.uk/dande.html>) only the western end of the route applied for is in the parish of Hutton. Most of the route applied for appears to be partly in Loxton and partly in Bleadon parishes, with the boundary being along the route.

I agree with Mr Plumbe that the evidence provided by Hutton Parish Council does not support public vehicular rights. The evidence of motor vehicle or cart use is use by the tenant of Grattons Farm (UEF 4 describing his/her father's use), use by invitees (tradesmen) of local landholders (UEF 4), use by Handley "to test their jeeps during the war" (UEF 4) and occasional use by another local landholder (UEF 10). It seems to me that this vehicular use is by those with a private right or by their permission; if some of it was not permissive, it was too infrequent both in duration and in volume to be sufficient for a presumption of dedication of public vehicular rights.

Mr P Deane

Comments

I hope you are well, I understand today is the cut off day for residents of Canada Coombe (upper Canada) to express their views regarding N Somerset councils proposal to re classify the "Private Road" which runs through our small hamlet.

Having spoken to each of the residents I know I can safely say there is no support for this road to be re classified by N Somerset Council.

On a private level it serves no purpose to re classify it, it will de-value our properties undoubtedly and one of the major plus points when my partner Nen and I moved here was the Private Road status, we paid our solicitor quite a sum of money to take out an indemnity policy as the road was not listed as belonging to the council.

Historically over the last 30 years that I have used this road and area in general I have always known it to be a "private road" looked after by the residents of Upper Canada and one that no residents ever objected to anyone using.

I and all residents of Upper Canada love to welcome the many walkers and tourists and horse riders who use the road to access onto the Mendips and enjoy the many compliments on what a beautiful area we live in, hence it is classed as an Area of Outstanding Natural Beauty.

Should the road be re classified there would, I believe be many more vehicles, especially if following Satellite Navigation systems using the road and finding it doesn't actually support huge volumes of traffic and with limited parking and passing spaces, and a very rough road surface which can seriously damage vehicles if not driven very carefully (possibly leading to claims against N Somerset Council).

Likewise some of these vehicles could be "Quad Bikes/ATV/Motor bikes" and the resulting noise and movement of these onto the Mendips area is forbidden upon reaching the bridleway.

I believe the disadvantages to us as residents in our very beautiful hamlet, which we are all very proud to live in and call home and to N Somerset council far, far outweigh any possible advantage.

I welcome the chance to air these views in a council or open forum.

Ms M Barber – Clerk
to Bleadon Parish
Council

Objection

Bleadon Parish Council considered this at their meeting last night and resolved to OBJECT to the proposal, citing the need to keep public footpaths and bridleways vehicle-free where possible.

Summary of Evidence and Conclusion

This application submitted by Hutton Parish Council claiming that this route should be recorded on the Definitive Map as a Byway Open to all Traffic was supported by 10 User Evidence Forms, five of which claim Byway Open to all Traffic, the remainder for Footpath/Bridleway.

Summary of Documentary Evidence

Although the application was not supported by any historical evidence, it is North Somerset Council's practice to look at major documents such as the Tithe, Enclosure Award, Finance Act 1910, Handover Map 1930 and the Definitive Map Process to ascertain whether any of these documents would assist the submitted application.

The claimed route is shown on the Tithe Map and Finance Act 1888 base maps confirming its existence at these times, however does not assist with establishing status.

The Handover Map, which recorded highways maintainable at public expense, clearly shows that in 1930 this route was not, and is still not, maintained by the Local Authority.

Similarly, the Definitive Map Process which commenced in 1950, which was undertaken by Parish Council members, did not record this route with any status. Therefore, around this time it would appear that any use by the public was so limited that those officers did not know of its existence. During the definitive map process period there is only one user form which claims use within that period, followed by two others who claim use from 1957. Once again, these users claim use on foot or horseback.

Therefore, based on this documentary evidence, the Officer does not feel that the evidence supports the claim that this route should be a Byway open to all Traffic.

Summary of User Evidence

It is known that this route provides a very important link to horse riders for gaining access to various bridleways in the Christon Plantation area.

Looking at the 5 forms which claim use as a Byway Open to All Traffic, whilst three of these users have given dates when they claim usage the other two have not. Of those five users who claim to have used the route for this period, only one mentions a vehicle. The other four users claim to have used the route either on foot or as a bridleway.

Assessing all the User Evidence Forms together (**Documents 9a and 9b**), nine out of the 10 forms state that use was on foot or horseback, which is consistent today.

Taking into consideration the information that has been collated from the User Evidence Forms, this is very minimal and does not provide enough support for the claim that this route should be recorded as a Byway Open to all Traffic. Such limited claimed use for a Byway Open to all Traffic is insufficient to raise a use under common law.

Conclusion

Looking at the route A-B, the 1810 map illustrates a track on a similar alignment as the route that exists today. This route would seem to connect to routes in Upper Canada and Hutton.

Today the route A-B is used by pedestrians and horse riders to connect to the existing Bridleway AX21/10 near Christon Planation.

In comparison to the User Evidence, in more recent years many of the forms state that a gate was erected in 1999 at Point A, also known as Grattons Farm. However, there is no evidence to suggest this within the historical documentation, even in the more recent maps described.

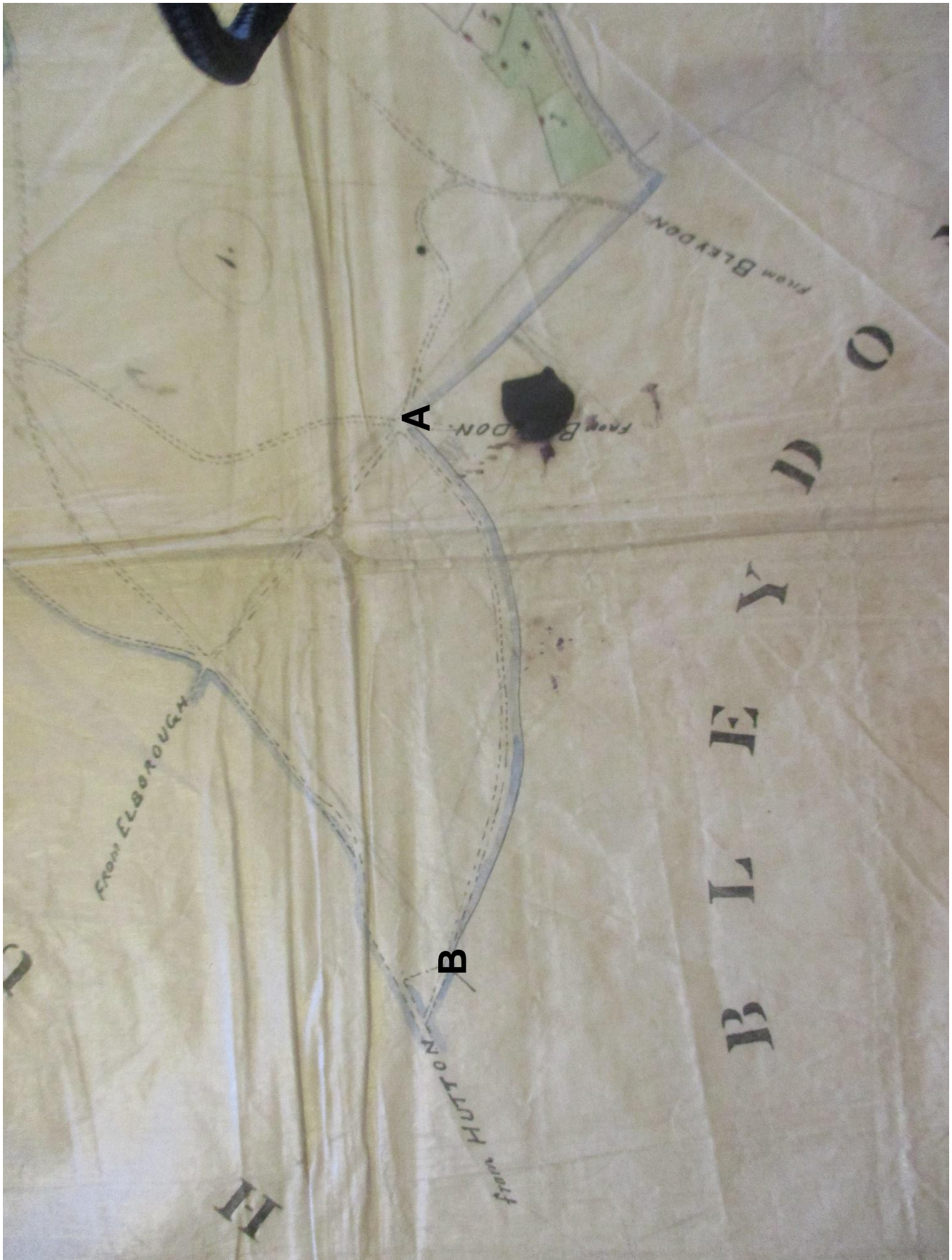
Furthermore, during the Definitive Map process, the route A-B was not illustrated with public rights.

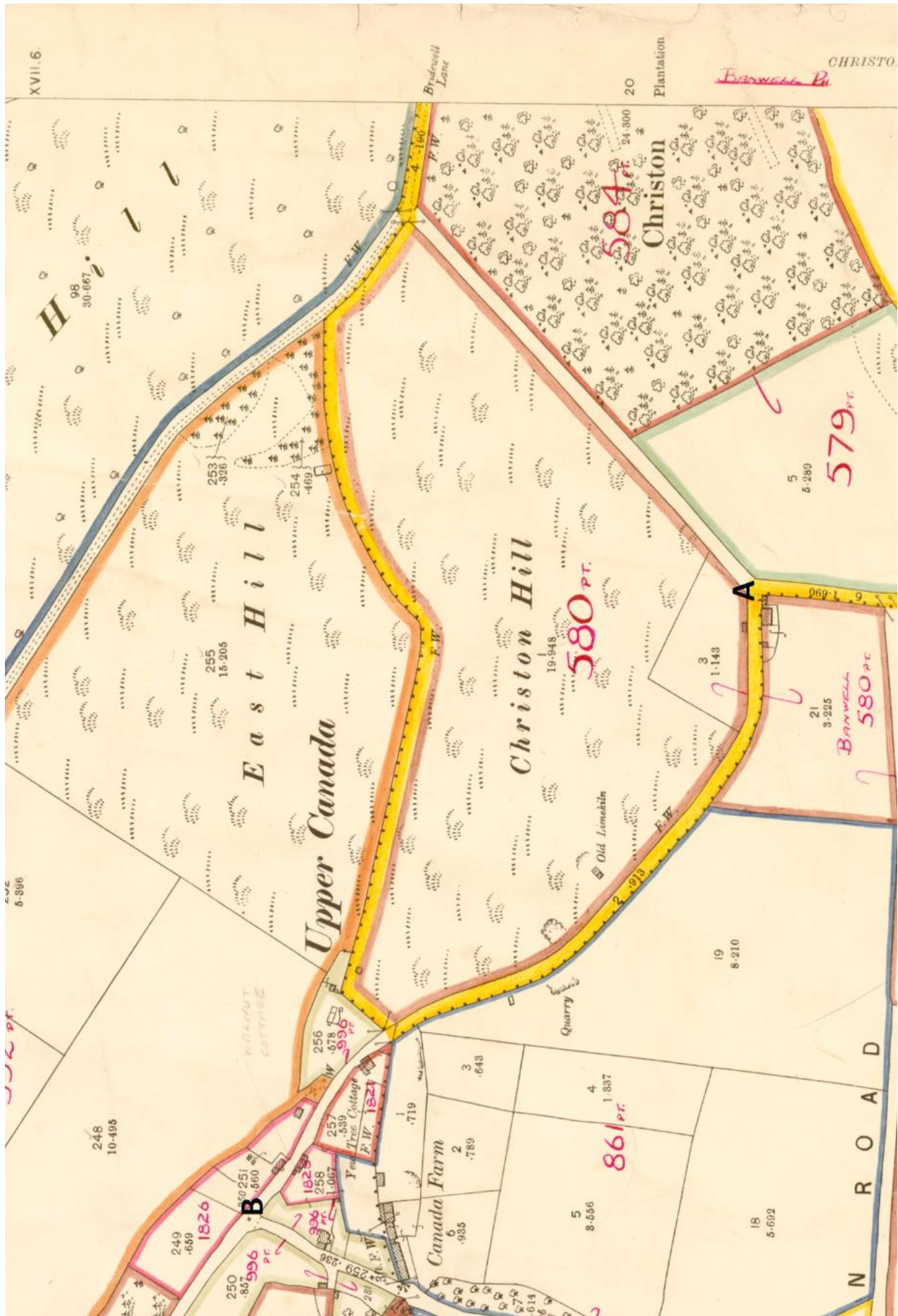
Having regard for the legal test that should be applied in respect of the route A-B “does a route subsist or is reasonably alleged to subsist”. The historical evidence shows that a route has been evident on the ground since 1810 to which the user evidence has been produced to support public rights having been established over it.

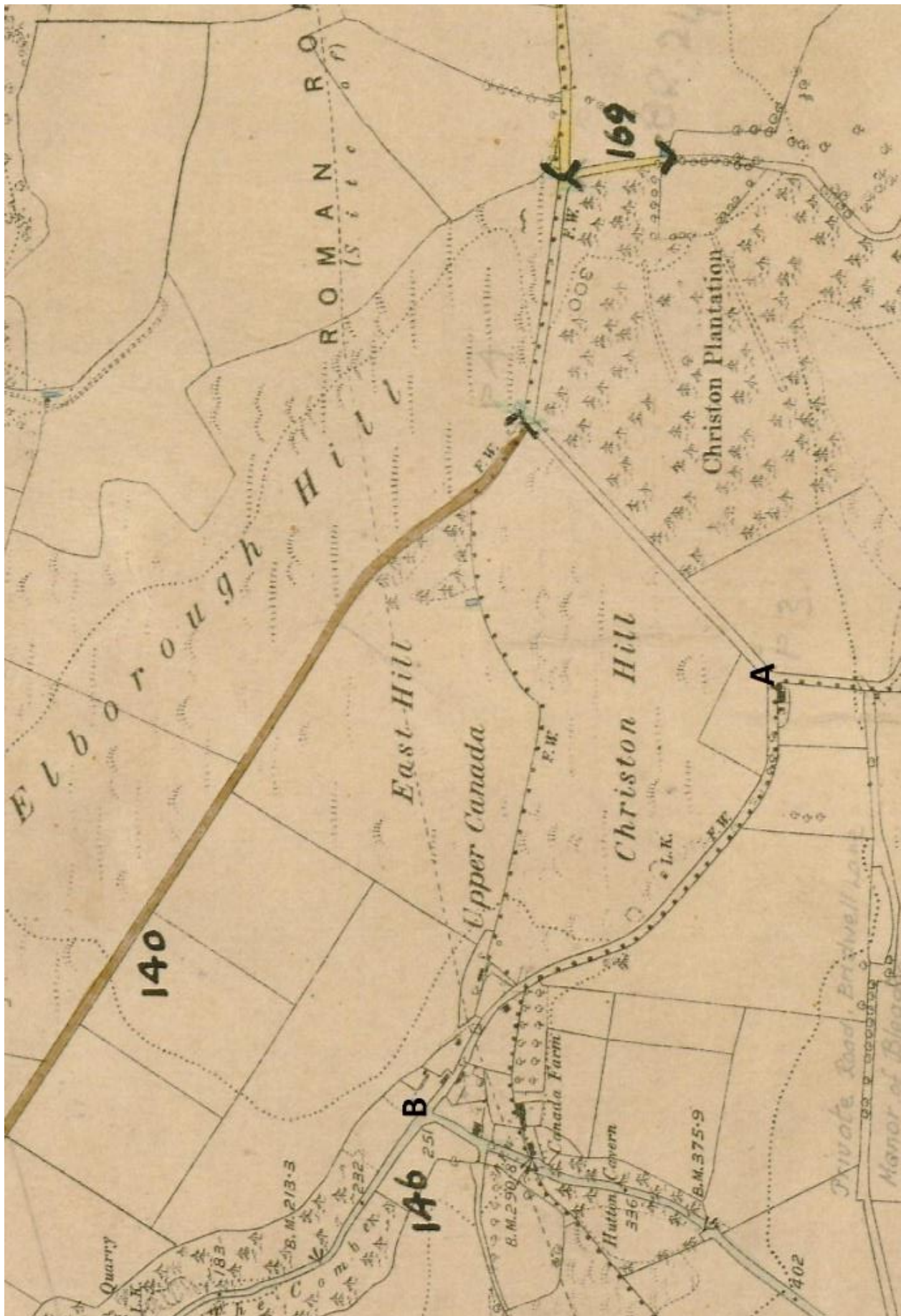
Looking first at the Documentary evidence, although this route is depicted as a through route capable of being used, there is no evidence to support the suggestion that this should be a Byway Open to All Traffic.

Similarly, of the 10 User Evidence Forms submitted only one of these suggested for vehicular use. Such limited use cannot be regarded as sufficient evidence. The information which has been gained from the User Evidence Forms together with the Documentary Evidence testament given within the objection received clearly show that this route has been used as a Bridleway, such use being accepted by the adjacent landowners. Therefore, it is reasonable to allege that the route A-B should be recorded as a Bridleway.

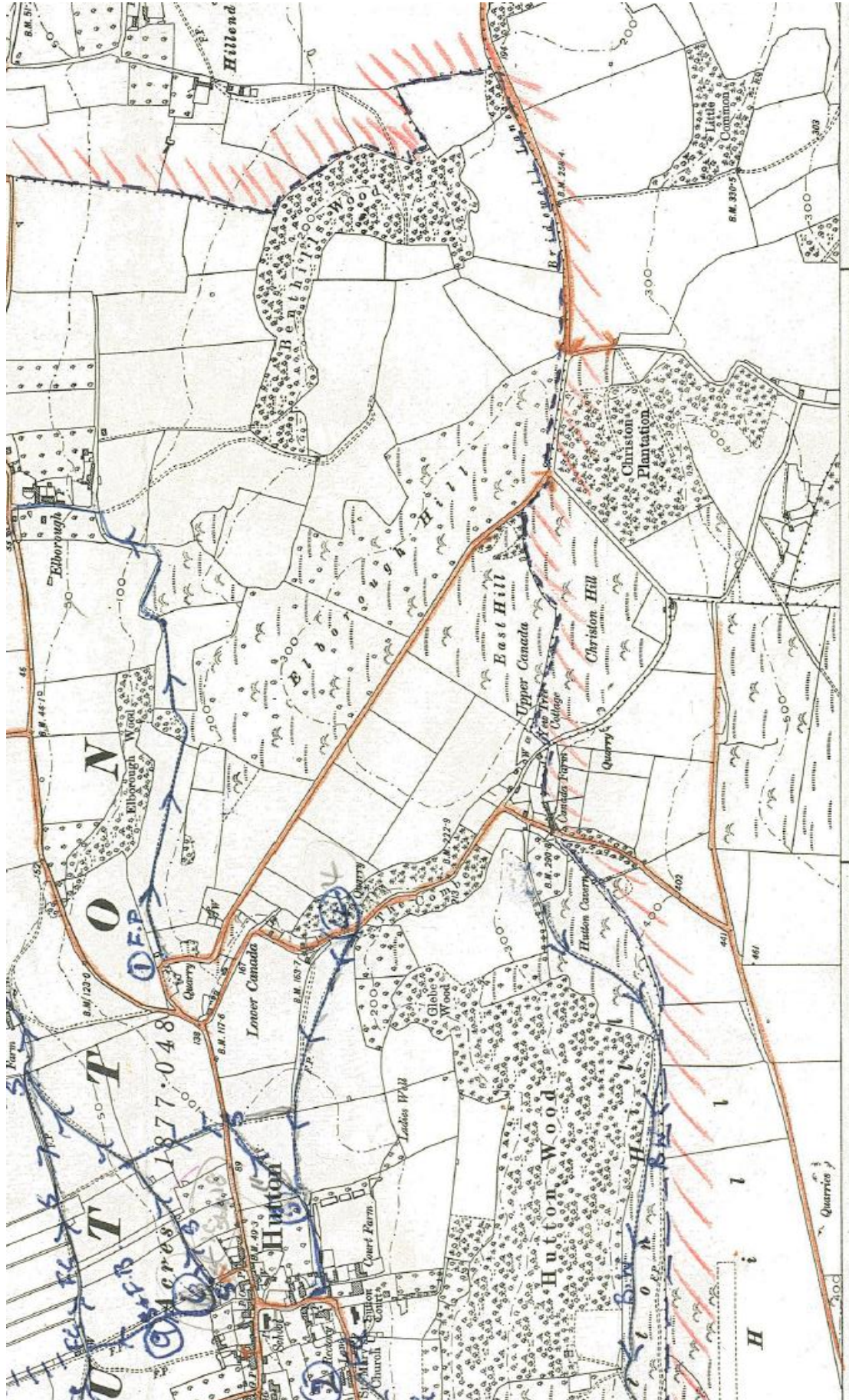
It is recommended that a Definitive Map Modification Order should be made recording the route A-B, shown on the attached Location Plan, as a Bridleway.





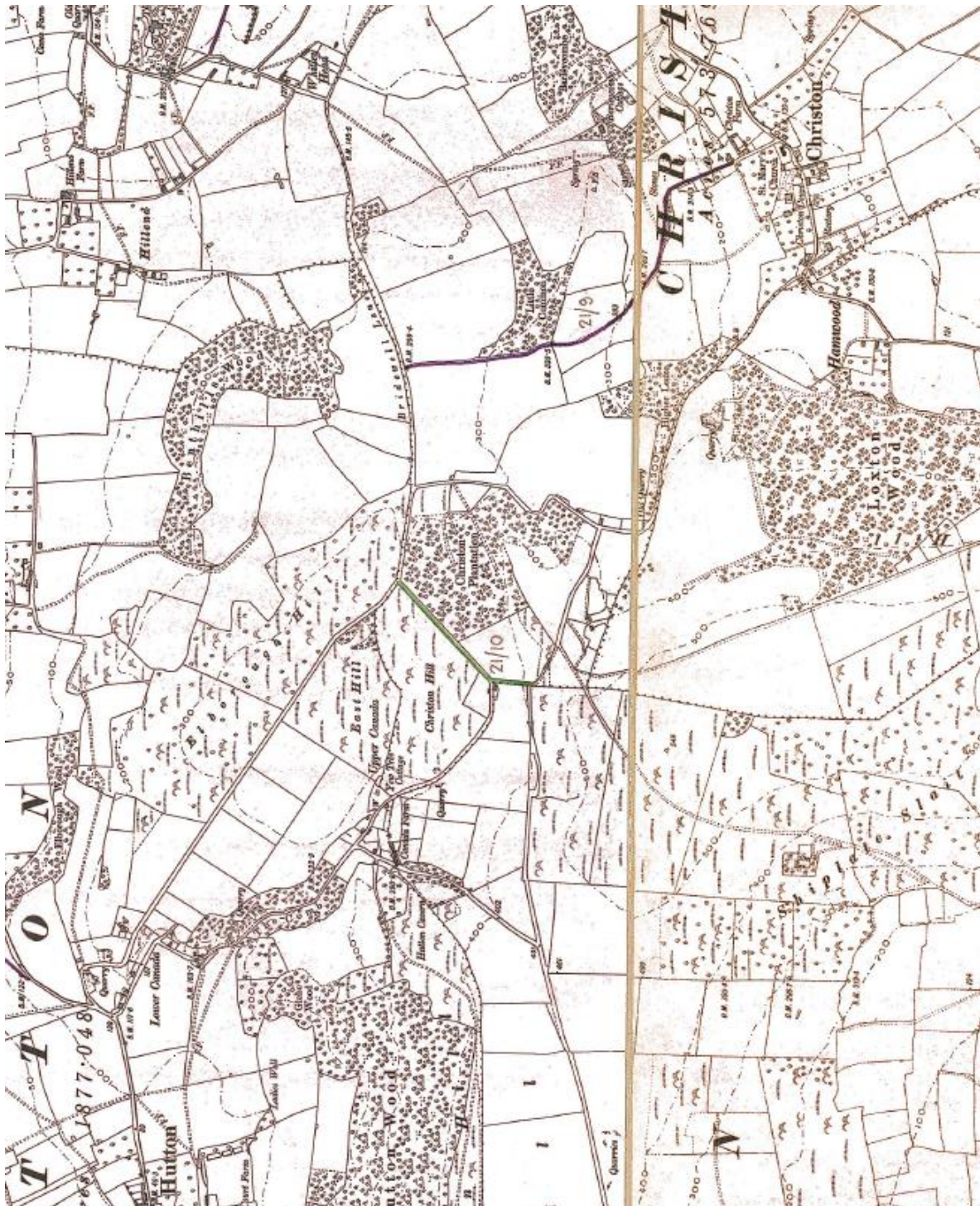


DOCUMENT 4
DEFINITIVE MAP PROCESS - PARISH SURVEY MAP



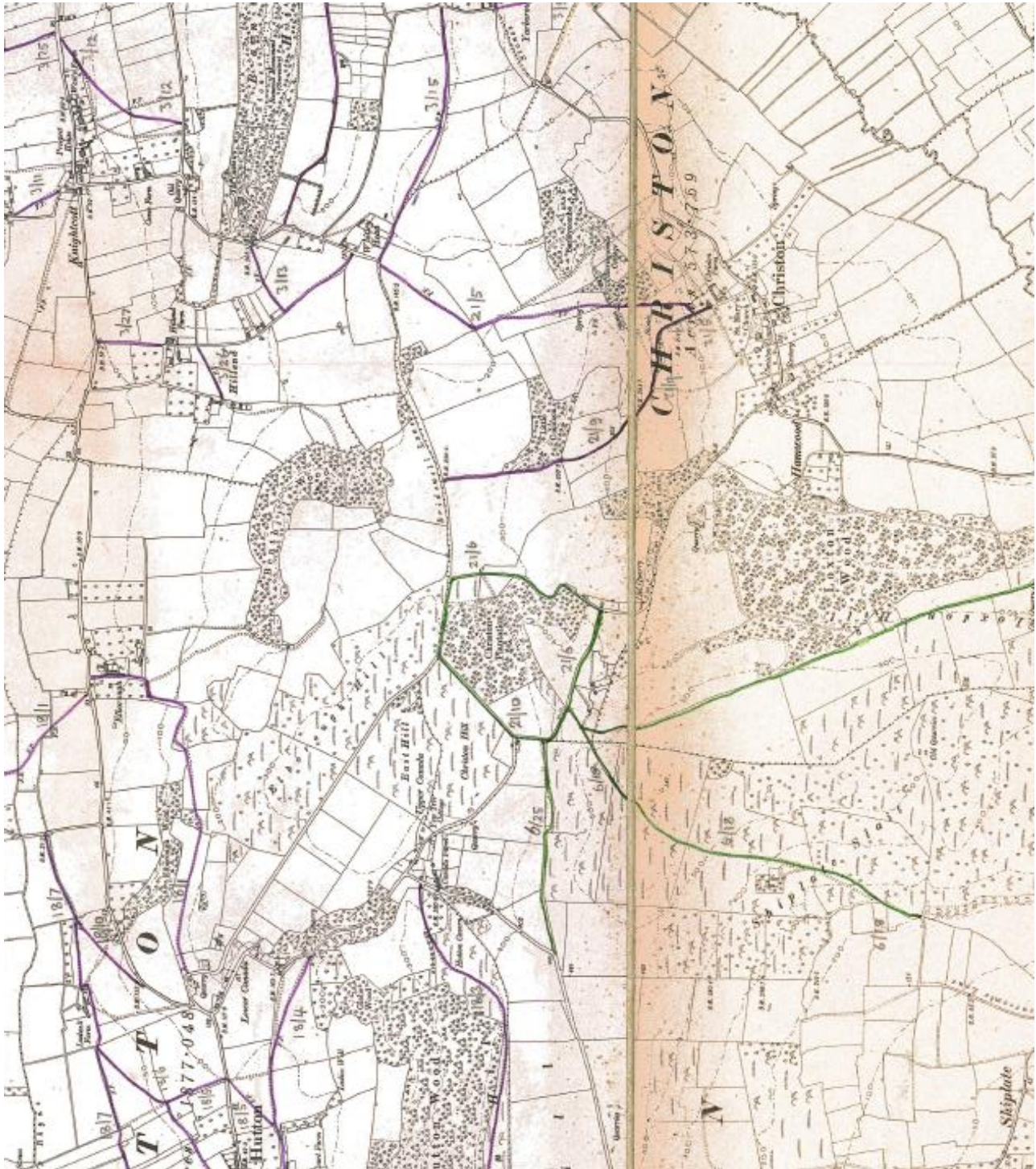


DOCUMENT 6
DEFINITIVE MAP PROCESS - DRAFT MAP MODIFICATION PLAN

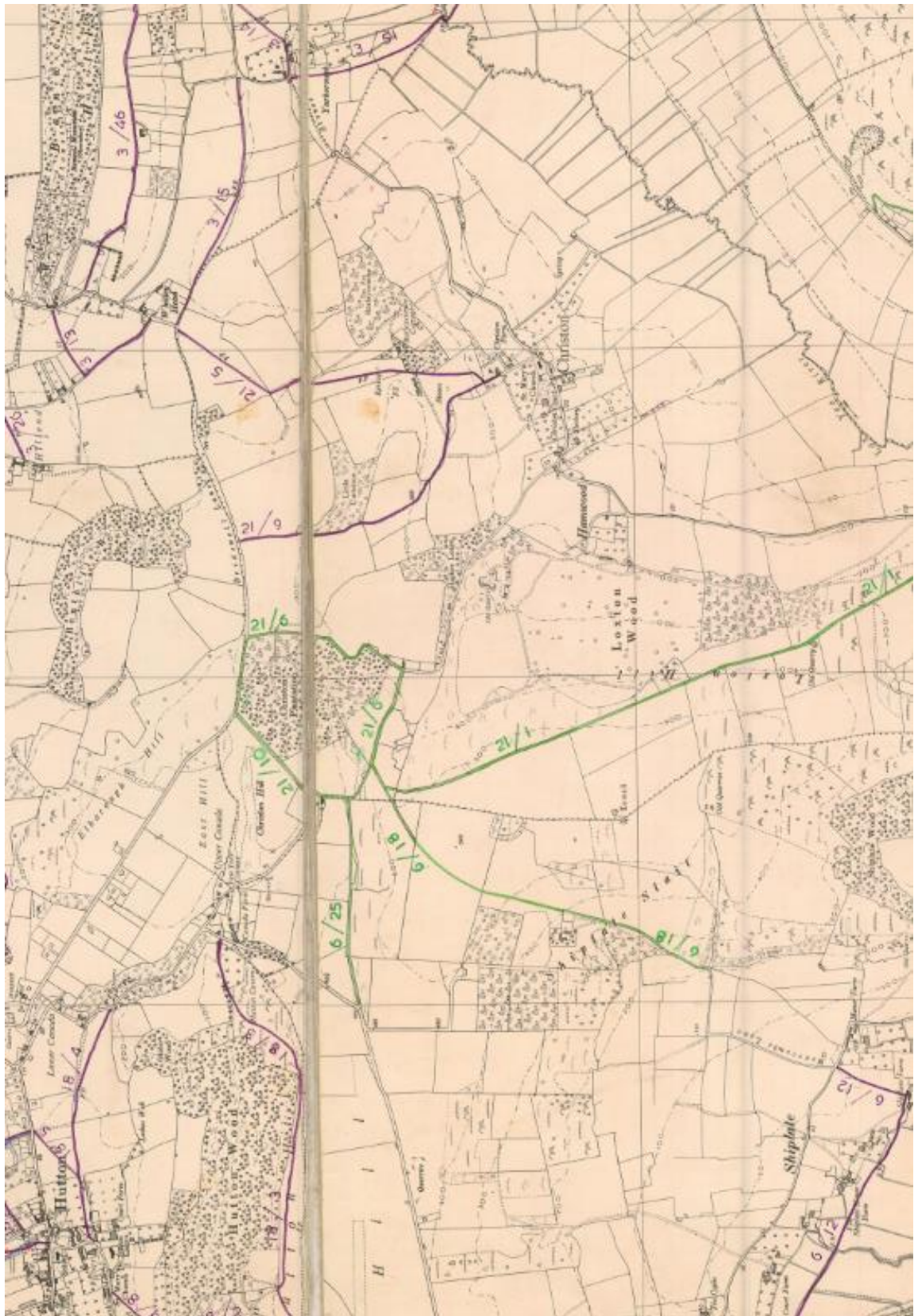


DOCUMENT 7

DEFINITIVE MAP PROCESS - PROVISIONAL MAP



DOCUMENT 8
DEFINTIVE MAP RELEVANT DATE 26 NOVEMBER 1956



PUBLIC RIGHT OF WAY EVIDENCE FORM
SUMMARY OF DETAILED CONTAINED
MODIFICATION CLAIM 38 – UPPER CANADA COOMBE

Name on User Evidence Form	E1	E2	E3	E4	E5	E6	E7	E8
Believed status of routes	Mrs J L M Stephens Byway Open to All Traffic	Miss G Lloyd Footpath/Bridleway	Mr N J Jiggins Footpath	Mr D J Jeffries Footpath	Mr P J Newman Footpath	Mrs N J Jiggins Byway Open to All Traffic	Mrs P G F Stephens Byway Open to All Traffic	Mrs P A Sandford Bridleway/BOAT
Used the routes	1953-1968 & 1976 to Present Day	1972 - 1977	1978 - 1992	1980 to present	1971 - 1999	1932 - 1999	1976-1999	1957-1999
Reason	Pleasure	Pleasure	Pleasure	Pleasure	Pleasure	Pleasure	Pleasure	Pleasure
Frequency Per Year	60 + times a year	At least once a week	5-10 times a year	100 times a year	Once every week	Everyday	40 to 120 times a year	50 to 100 times a year
Method of travel	Horseback	Foot and Horseback	Foot	Foot	Foot	Foot and Vehicle	Horseback	Horseback
Any obstructions	No	No	No	No	No	No	No	No
Stiles	No	No	No	No	No	No	No	No
Gates	No	No	No	No	No	No	No	No
Working for landowner	No	No	No	No	No	No	No	No
Ever stopped or turned back	No	No	No	No	No	No	No	No
Ever told by anyone that way was not public	No	Yes was told once by the owner of Chestnut Cottage that it was not a Bridlepath	No	No	No	No	No	No
Ever known any locked gates	No	No	No	Not locked	No	No	No	No
Any Notices	No	No	No	No	No	No	No	No
Given permission	No	No	No	No	No	No	No	No
Private right to use	Has been seen using the route and have spoken to previous owners	No	No	No	No	Yes	No	No
Other information	On Occasions have used a motor vehicle on the road for pleasure or in the course of business if animals have strayed from land farmed abutting Bridewell Lane.	Always believed to be a bridle path as it is no different to the track that it meets up with at the end of the lane.	Part of Hutton cubs to which route formed part of 'standard' route to Crooks Peak.	None	None	Father was Tenant of Gratton Farm from 1930-75, used as a route of access.	Route has always been used by Pedestrians, many different horse riders and vehicles e.g. Landowners and Gamekeepers.	Know of friends that use route in the 60s. Object to the presence of the fence at Grattens Farm.
Routes used	A-B	A-B	A-B	A-B	A-B	A-B	A-B	A-B

PUBLIC RIGHT OF WAY EVIDENCE FORM
SUMMARY OF DETAILED CONTAINED
MODIFICATION CLAIM 38 – UPPER CANADA COOMBE

Name on User Evidence Form	E9 Hutton Parish Council	E10 Mr G F L Cox
Believed status of routes	BOAT	BOAT
Used the routes	Many Years	N/A
Reason	Pleasure	Pleasure
Frequency Per Year Weekly Daily	Varies	200+ years
Method of travel	On Foot	On Foot
Any obstructions		
Stiles Gates	No Yes at Grattons Farm	No No
Working for landowner	No	No
Ever stopped or turned back	No	No
Ever told by anyone that way was not public	No	No
Ever known any locked gates	No	No
Any Notices	No	No
Given permission	No	No
Private right to use	No	No
Other information	Occupier of Grattons Farm has said that the route is not public.	None
Routes used	A-B	A-B