

Public Document Pack

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Date: Monday, 14 November 2022

Dear Sir or Madam

The Public Rights of Way Sub-Committee – Tuesday, 22 November 2022, 3.00 pm – Kenn Room

A meeting of the Public Rights of Way Sub-Committee will take place as indicated above.

The agenda is set out overleaf.

Yours faithfully

Assistant Director Legal & Governance and Monitoring Officer

To: Members of the Public Rights of Way Sub-Committee

Councillors:

Ann Harley (Chairman), Robert Payne, Timothy Snaden, James Tonkin and Richard Westwood.

This document and associated papers can be made available in a different format on request.

Agenda

1. **Election of Vice-Chairperson for the Municipal Year 2022-23 (Agenda item 1)**
2. **Public Participation (Standing Order No 17) Agenda item 2)**

To receive and hear any person who wishes to address the Sub-Committee on matters within its remit. The Chairperson will select the order of the matters to be heard. Each speaker will be limited to a period of five minutes for public participation up to a maximum of 30 minutes.

Requests to speak must be submitted in writing to the Assistant Director Legal & Governance and Monitoring Officer, or to the officer mentioned at the top of this agenda letter, by noon on the day before the meeting and the request must detail the subject matter of the address.

3. **Apologies for absence and notification of substitutes (Agenda item 3)**
4. **Declaration of Disclosable Pecuniary Interest (Standing Order 37) (Agenda item 4)**

A Member must declare any disclosable pecuniary interest where it relates to any matter being considered at the meeting. A declaration of a disclosable pecuniary interest should indicate the interest and the agenda item to which it relates. A Member is not permitted to participate in this agenda item by law and should immediately leave the meeting before the start of any debate.

If the Member leaves the meeting in respect of a declaration, he or she should ensure that the Chairperson is aware of this before he or she leaves to enable their exit from the meeting to be recorded in the minutes in accordance with Standing Order 37.

5. **Minutes 29 March 2022 (Agenda item 5) (Pages 5 - 6)**

29 March 2022, to approve as a correct record (attached)

6. **Matters referred by Council, the Executive, other committees etc (if any) (Agenda item 6)**
7. **North Somerset Council (NSC) Rights of Way Improvement Plan - Final Plan and Consultation Response - Verbal Summary (Agenda item 7)**
8. **Mod 41 - Footpath Addition at Hawthorn Gardens, Weston-super-Mare (Agenda item 8) (Pages 7 - 12)**

Report of the Director of Development and Environment (attached)

9. **PPO 200 - Public Path Extinguishment Order and Definitive Map Modification Order for Public Footpath AX20/2, Old Banwell Road Locking (Agenda item 9) (Pages 13 - 36)**

Report of Director of Development and Environment (attached)

10. Report on Incomplete Definitive Map Modification Order Applications (Agenda item 10) (Pages 37 - 42)

Report of Director of Development and Environment (attached)

11. Urgent business permitted by the Local Government Act 1972 (if any) (Agenda item 11)

For a matter to be considered as an urgent item, the following question must be addressed: "What harm to the public interest would flow from leaving it until the next meeting?" If harm can be demonstrated, then it is open to the Chairperson to rule that it be considered as urgent. Otherwise the matter cannot be considered urgent within the statutory provisions.

Exempt Items

Should the Public Rights of Way Sub-Committee wish to consider a matter as an Exempt Item, the following resolution should be passed -

"(1) That the press, public, and officers not required by the Members, the Chief Executive or the Director, to remain during the exempt session, be excluded from the meeting during consideration of the following item of business on the ground that its consideration will involve the disclosure of exempt information as defined in Section 100I of the Local Government Act 1972."

Also, if appropriate, the following resolution should be passed –

"(2) That members of the Council who are not members of the Public Rights of Way Sub-Committee be invited to remain."

Mobile phones and other mobile devices

All persons attending the meeting are requested to ensure that these devices are switched to silent mode. The chairman may approve an exception to this request in special circumstances.

Filming and recording of meetings

The proceedings of this meeting may be recorded for broadcasting purposes.

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting, focusing only on those actively participating in the meeting and having regard to the wishes of any members of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Assistant Director Legal & Governance and Monitoring Officer's representative before the start of the meeting so that all those present may be

made aware that it is happening.

Members of the public may also use Facebook and Twitter or other forms of social media to report on proceedings at this meeting.

Emergency Evacuation Procedure

On hearing the alarm – (a continuous two tone siren)

Leave the room by the nearest exit door. Ensure that windows are closed.

Last person out to close the door.

Do not stop to collect personal belongings.

Do not use the lifts.

Follow the green and white exit signs and make your way to the assembly point.

Do not re-enter the building until authorised to do so by the Fire Authority.

Go to Assembly Point C – Outside the offices formerly occupied by Stephen & Co

Minutes

of the Meeting of

The Public Rights of Way Sub-Committee

Tuesday, 29 March 2022

New Council Chamber - Town Hall

Meeting Commenced: 15.00

Meeting Concluded: 15.35

Councillors:

Ann Harley (Chairman)
James Tonkin (Vice-Chairman)
Robert Payne
Timothy Snaden
Richard Westwood

Also in attendance: Councillor Mike Bird

Officers in attendance: Elaine Bowman (Development & Environment), Roz Hime (Corporate Services)

PRW Election of Vice-Chairman for the Municipal Year 2021-22 (Agenda Item 1) **8**

Resolved: that Councillor James Tonkin be elected as Vice-Chairman of the Sub-Committee for the Municipal Year 2021-22.

PRW Public Participation (Standing Order 17) (Agenda Item 2) **9**

None.

PRW Declaration of Disclosable Pecuniary Interest (Standing Order 37) (Agenda Item 4) **10**

None.

PRW Minutes of the Meeting held on 24 November 2020 (Agenda Item 5) **11**

Resolved: that the minutes of the meeting be approved as a correct record.

PRW MOD 34 - Blackberry Lane, Weston-in-Gordano (Secretary of State Order Decision) (Agenda Item 7) **12**

The Director of Development & Environment reported that, following a Virtual Inquiry on 22 June 2021, North Somerset Council ("the Council") received the Planning Inspectorate's decision on 26 August 2021 to confirm the Order. The Committee was reminded that, at its meeting on 15 November 2017, it was

determined that the Committee support the confirmation of the Order when forwarded to the Secretary of State for determination.

Resolved: to note the Report

PRW 13 MOD 41 - Hawthorn Gardens, Weston-super-Mare (Agenda Item 8)

The Director of Development and Environment reported on an application made on the 20 April 2000 to request that a route, in the ward of Weston-Super-Mare, should be recorded as a Footpath. The original application was submitted supported by 12 user evidence forms, however, following pre-order consultation further user evidence forms had been received. Such application for a Definitive Map Modification Order was 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.

The Director of Development and Environment reported to the Sub-Committee that the Landowner had been advised to submit a S31(6) application to North Somerset Council.

Resolved:

(i) that the Public Rights of Way Sub Committee authorised the making of a Definitive Map Modification Order adding the route A-B as shown on the attached Location Plan as a Footpath to the Definitive Map on the grounds that there is sufficient evidence to show that a public Footpath has been established under Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981.

(ii) that consideration of Recommendations (ii) and (iii) in the Report be deferred until the outcome of the making of the Definitive Map Modification Order was known.

The Chairman asked for a Report at the next Sub-Committee on progress on outstanding Modification Orders.

Chairman

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 22 NOVEMBER 2022

SUBJECT OF REPORT: MOD 41 – FOOTPATH ADDITION AT HAWTHORN GARDENS

TOWN OR PARISH: WESTON-SUPER-MARE

OFFICER/MEMBER PRESENTING: ELAINE BOWMAN

KEY DECISION: NO

REASON: THIS PROPOSAL IS OUTSIDE OF THE COUNCIL'S KEY DECISION CRITERIA

RECOMMENDATION

It is recommended that the Public Rights of Way Sub Committee authorise the confirmation of the order made on 28th May 2022, namely North Somerset District Council (Addition of Footpath AX31/105 Hawthorn Gardens, Weston super Mare) Definitive Map Modification Order No 2 2022 as no objections have been received to the making of this order.

1. SUMMARY OF REPORT

A report was brought to this Committee on the 29th March 2022 which considered a Definitive Map Modification Order application which had been submitted on the 20th April 2000. That application requested that a route, in the ward of Weston-Super-Mare, should be recorded as a Footpath. The original application was submitted supported by 12 user evidence forms and supporting letters, however, following pre-order consultation further user evidence forms were received. That application for a Definitive Map Modification Order was submitted under Section 53(5) of the Wildlife and Countryside Act 1981. The effect of that request would be to amend the Definitive Map and Statement for the area. The report was based on user documentary evidence.

Appendix 1 Location Plan EB/MOD 41, showing the claimed route A-B is attached.

At that meeting members considered the evidence relating to that application and authorised the making of an Order, the effect of which will, if confirmed, add a public footpath to the Definitive Map.

Following the authorisation of that Order the preparation for the Order commenced where it was discovered that the alignment shown on the previous report was inaccurate and did not reflect the route being used on the ground. This alignment adjustment did not affect the start and finish of the route, therefore was not considered to be detrimental to the making of that order.

The Order was made on the 28th May 2022, advertised on the 9th June 2022 where comments were invited by 22nd July 2022. All relevant parties were consulted including the owner of the land. At the end of this period no objections had been received to the making of the Order. **Appendix 2** shows the Order Plan illustrating the actual route being used.

As no objections have been received to this Order, it is within the powers of the Council to confirm this Order as an unopposed Order.

Appendix 1 - Location Map EB/MOD 41

Appendix 2 – Order Plan North Somerset District Council (Addition of Footpath AX31/105 Hawthorn Gardens, Weston super Mare) Definitive Map Modification Order No 2 2022

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 “A Thriving and Sustainable Place” (a great place for people to live, work and visit) and “An Open and Enabling Organisation” (collaborate with partners to deliver the best outcomes).

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. Having determined on the 29th March 2022 that an Order should be made and advertised,

as no objections have been received to the making of that Order it now falls for the committee to authorise the confirmation of that order.

4. 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.

5. CORPORATE IMPLICATIONS

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

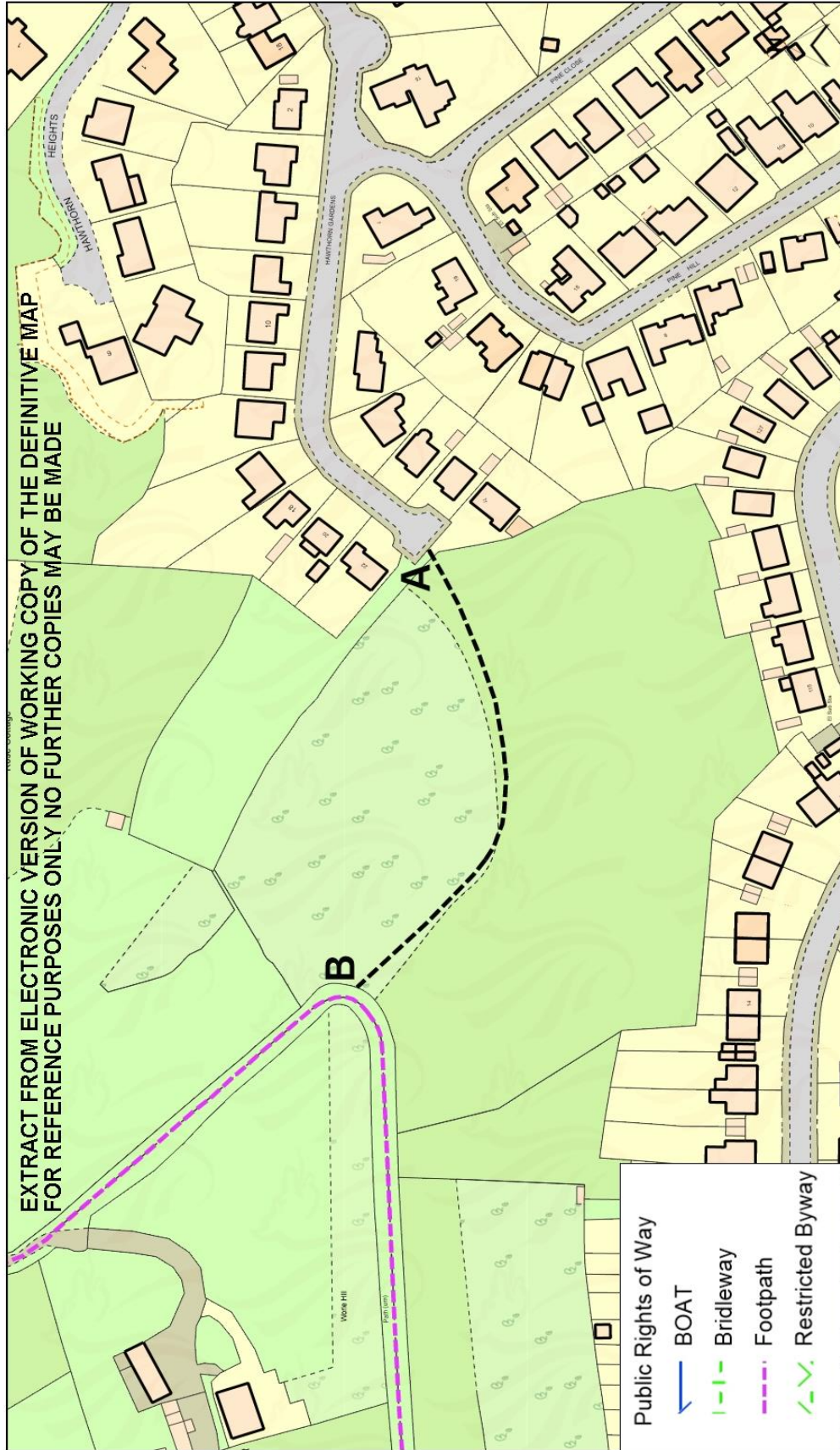
6. OPTIONS CONSIDERED

The only option to be considered is that which has been recommended.

AUTHOR

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

BACKGROUND PAPERS: - Public Rights of Way File Mod 41



The Definitive Map has a relevant date of 26th November 1956 and has not been formally re-published since then. This map shows an electronic working copy of the Definitive Map which attempts to show the information on the Definitive Map and any subsequent legal changes. The Council can accept no responsibility for any error or inaccuracy which may arise from use of the electronic Working Copy map.

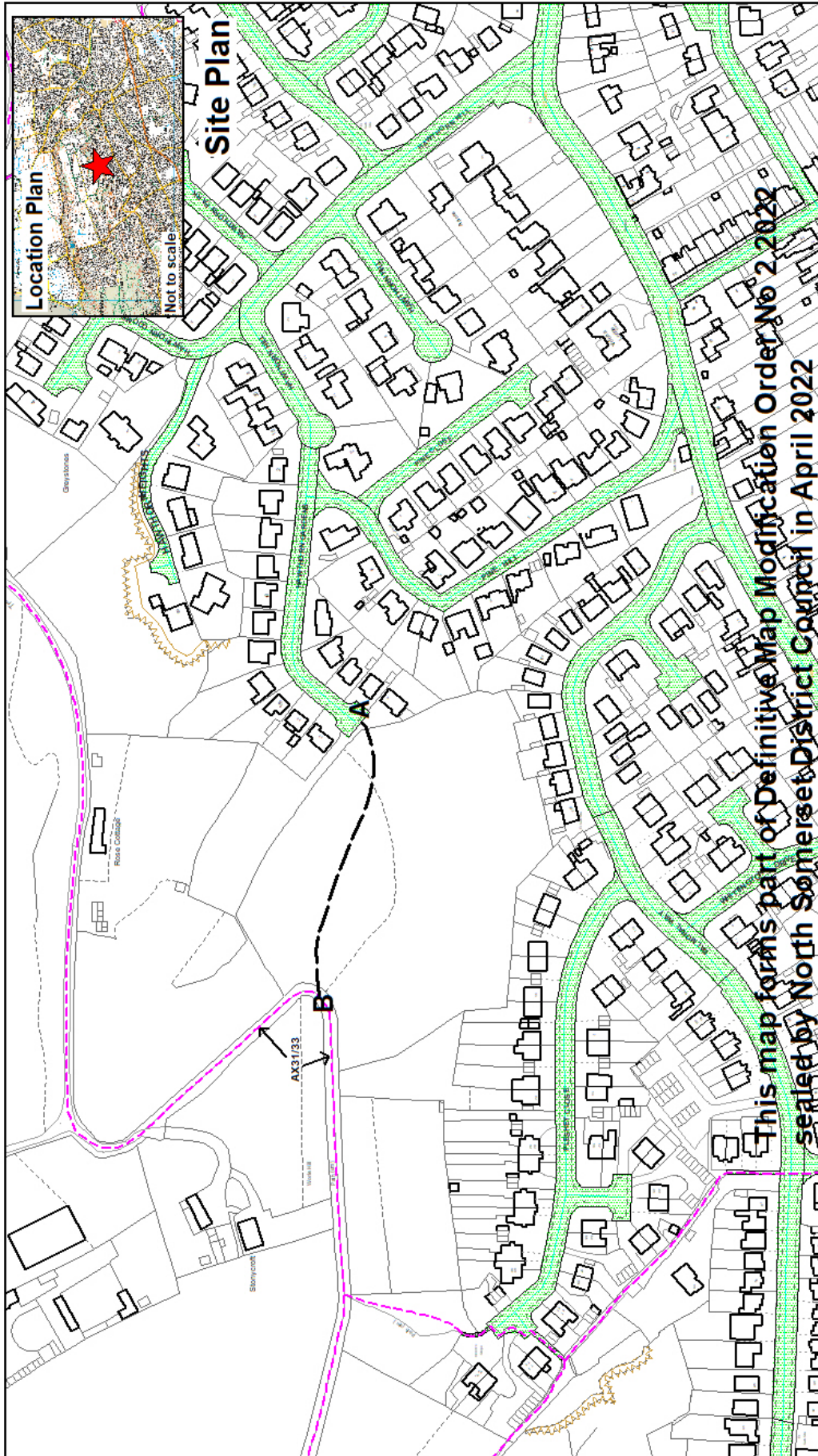
North Somerset COUNCIL

Location Plan - MOD 41
 Hawthorn Gardens, Weston-super-Mare

Public Rights of Way
 Town Hall, Walliscope Grove
 Road, Weston-super-Mare,
 BS23 1UJ

Scale: 1:1500
 Drawn by: Lucy Roca
 Date: 20 August 2019
 Drawing No: EB/MOD41

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Place Directorate
Public Rights of Way
Streets and Open Spaces
North Somerset Council
Town Hall
Wallscote Grove Road
Weston-super-Mare
BS23 1UJ
Tel: 01934 888 802

Map No.
EB/Mod 41
Grid Reference
ST3462
Footpath AX31/105

Scale 1:2500
Date
26 April 2022

North

Wildlife & Countryside Act 1981 - Sec 53 North Somerset District Council
Footpath AX 31/105 Hawthorn Gardens Weston super Mare
Definitive Map Modification Order No.2 2022



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North Somerset Council

Report to the Public Rights of Way Sub-Committee

Date of Meeting: 22 November 2022

Subject of Report: PPO 200 - Public Path Extinguishment Order and Definitive Map Modification Order, for Public Footpath AX 20/2, Old Banwell Road

Town or Parish: Locking

Officer/Member Presenting: Penny Price

Key Decision: NO

Reason:

This proposal is outside the council's key decision criteria

Recommendations:

It is recommended that the Public Rights of Way Sub-Committee authorise the following:

- (1) (i) the making of a Definitive Map Modification Order (DMMO) adding a Public Footpath along the route shown between points C-D-B on the proposal map (Appendix 2); on the grounds that there is sufficient evidence to show a Public Footpath has been established under section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981;
 - (ii) if no objections are made and sustained that authorisation be given for the confirmation of the DMMO;
 - (iii) if objections are made and sustained, that the DMMO mentioned at (1) above be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination and the council support the Order through any subsequent procedure;
- (2) (i) if the DMMO authorised above is made and confirmed, that a subsequent Public Path Extinguishment Order (PPEO) be made, to extinguish that part of Public Footpath AX 20/2 between points A-B on the proposal map (Appendix 2), which will no longer be needed for public use;
 - (ii) if no objections are made and sustained that authorisation be given for the confirmation of the PPEO;
 - (iii) if objections are made and sustained, that the PPEO mentioned at (2) above be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination and the council support the Order through any subsequent procedure;

1. Summary of Report

This report recommends measures to address an anomaly between the council's Definitive Map records of Public Rights of Way and a route being used by the public; where part of Public Footpath AX 20/2 at the western end of 'Old Banwell Road'/the northern end of 'The Bury' in Locking is obstructed by a dwelling and the curtilages of two dwellings.

Appendix 1 states the legal basis for determining this Public Footpath anomaly.

Appendix 2 shows the existing Definitive route at the properties 'Athelstan' and No. 2 Old Banwell Road (A-B), which is not available to walk and the route the public have been using (C-D-B), which instead runs along an alleyway between the two properties. The route used has Public Footpath signage and path furniture.

Appendix 3 shows the research undertaken by officers, which concluded that a Public Path Diversion Order application should be submitted under the Highways Act 1980, if the affected landowners wish to seek amendment of the Definitive Public Footpath line, diverting the route from their properties to the route already being used by the public.

Appendix 4 gives the steps taken to address this Public Footpath anomaly.

and **Appendix 5** contains further photographic and aerial photographic evidence of the 'used' route.

Despite efforts to seek all affected landowners approval for the formal diversion of this route, this has not been possible so, following legal opinion on how this matter should proceed it is believed that the best course is to 'claim' the route which is being used by the public by way of a DMMO and once that process is completed to seek the extinguishment of the currently obstructed recorded line.

2. Policy

The maintenance of the Definitive Map should be considered as part of the management of the Public Rights of Way network and so contributes to the corporate plan "A Thriving and Sustainable Place" (a great place for people to live, work and visit) and "An Open and Enabling Organisation" (collaborate with partners to deliver the best outcomes).

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.

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.

4. Consultation

Submission of the original Public Path Diversion Order application required contacting all parties who have a landowning interest in the existing/proposed routes. As the consent of one landowning party has not been forthcoming, the council has not been able to progress the Diversion Order application, so no further consultations have taken place. If authority is given for the making of a DMMO then a full consultation process will be undertaken.

5. Financial Implications

The making, advertising and confirmation of a Definitive Map Modification Order application does not incur a fee for an applicant. The council covers the costs of advertising the making and confirmation of such an Order.

A Public Path Extinguishment Order is subject to set charges and actual advertisement costs (for two press notices). Funds had already been set-aside for payment of the applicants' costs and these have now been received by the council.

If any Order is submitted to the Secretary of State for Environment, Food and Rural Affairs for determination, the council are liable for any further costs involved in any subsequent Planning Inspectorate procedures.

Compensation for depreciation or damage for disturbance and arising as a result of the coming into force of a Public Path Extinguishment Order is payable under section 28 [as applied by section 121(2)] of the Highways Act 1980 (as amended by the Transport and Works Act 1992).

However, 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

1. Section 53 of the Wildlife and Countryside Act 1981. This section requires that, as regards every Definitive Map and Statement, the surveying authority shall as soon as reasonably practicable, after the commencement date, by order make such modifications to

the Map and Statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3).

2. Section 118 Highways Act 1980. This section requires that it is necessary to show that the relevant test has been met before an Order can be made. That test being that the route in question is no longer necessary for use by the public.

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


Without an applicant agreeing to pay the council's application and advertisement costs, the matter of the obstructed Public Footpath will remain recorded on the council's records as an anomaly until such time as staff capacity allows and, with current workload, it will be a good number of years before such anomalies can be looked at.

Further risks are the costs incurred by the council however, as already stated, such implications **must not** form part of the Committee's decision.

9. Equality Implications

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 the 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

If the submitted proposal to rectify the matter of the obstructed Public Footpath is abandoned, with no further progress made, two properties will continue to have a Public Footpath recorded on the Definitive Map, as going through their curtilage and the matter will arise once again, if either property is sold.

In attempting to resolve the matter now for all parties, the council are able to recoup some costs, in the charges and advertising for a Public Path Extinguishment Order.

The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order for a Footpath over the route C-D-B;
2. Whether the application should be denied as there is insufficient evidence to support the making of an Order for a Footpath over the route C-D-B;
3. 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;

4. That following the confirmation of the DMMO it is understood that it is necessary to process a PPEO to remove the obstructed footpath;
5. Whether, following the confirmation of a DMMO, the Committee require a further report to be brought back to this committee to authorise the making of a PPEO;
6. That the Committee are prepared to give authorisation for the making and confirmation (subject to no objections being received) of a PPEO for the route A-B shown on Appendix 1.

Author:

Penny Price, Access Support Officer, Access Team, Natural Environment Team
Telephone 01934 427467

Appendices:

Appendix 1 – Legal basis for determining this anomaly

Appendix 2 – Proposed map

Appendix 3 – Historical evidence

Appendix 4 – Steps taken to address anomaly

Appendix 5 – Photographic route evidence and aerial photograph extract

Background Papers:

Public Rights of Way File PPO 200

The Legal Basis for Determining this anomaly

Definitive Map Modification Order

1. This Order would be 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 Footpath is that the requirement of Section 53(3)(c)(i) 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.

Extinguishment Order

1. This Order would be made under Section 118 of the Highways Act 1980, where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the grounds that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.
2. The Secretary of State shall not confirm a public path extinguishment order and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

HIGHWAYS ACT 1980

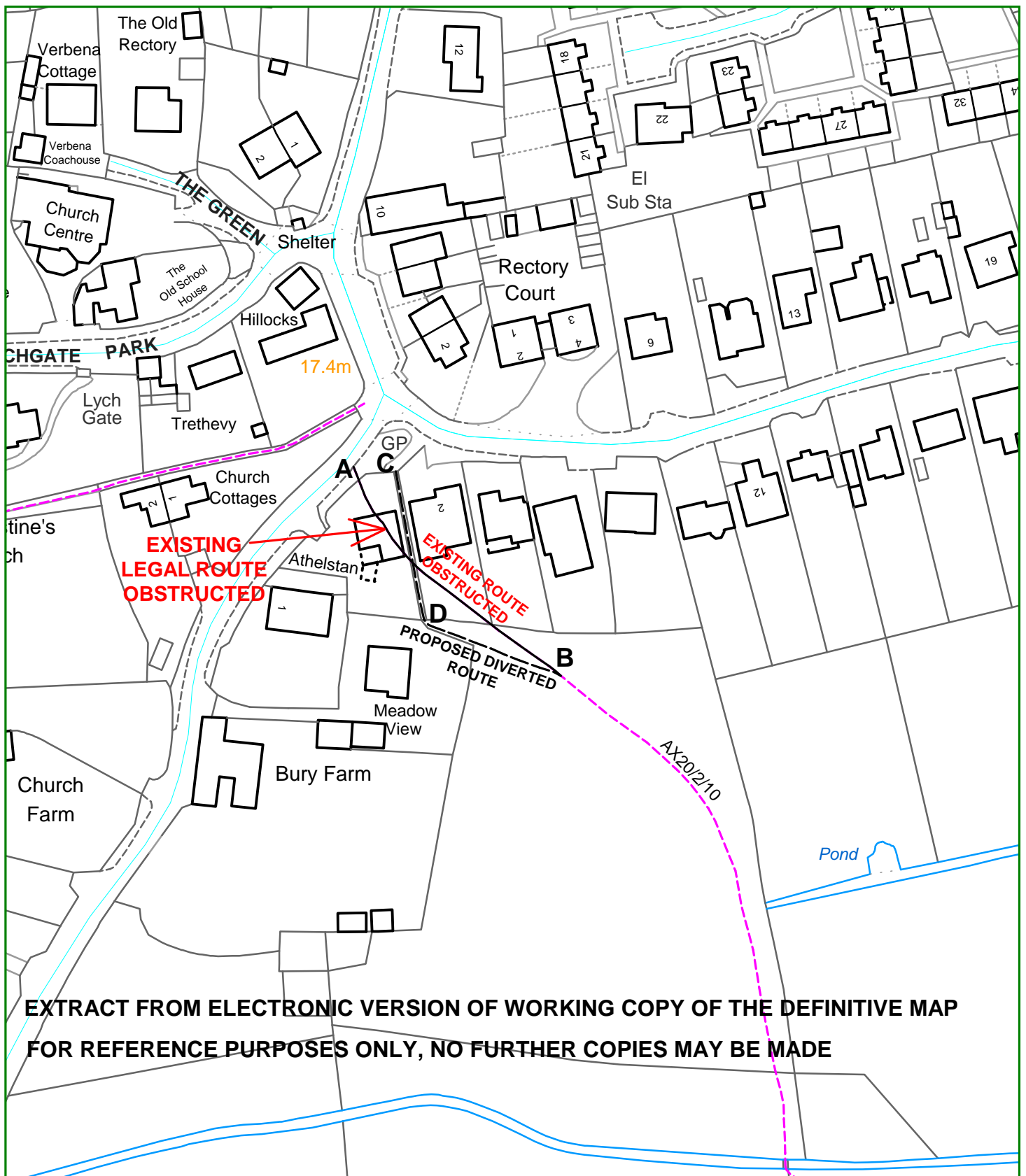
Section 28 - Compensation for loss caused by public path creation order

28. (1) Subject to the following provisions of this section, if, on a claim made in accordance with this section, it is shown the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.
- (2) A claim for compensation under this section shall be made within such time and in such manner as may be prescribed by regulations made by the Secretary of State, and shall be made to the authority by whom the order was made.
- (3) For the purposes of the application of this section to an order made by the Secretary of State under section 26(2), references in this section to the authority by whom the order was made are to be construed as references to such one of the authorities referred to in that subsection as may be nominated by the Secretary of State for the purposes of this subsection.
- (4) Nothing in this section confers on any person, in respect of a footpath or bridleway created by a public path creation order, a right to compensation for depreciation of the value of an interest in the land, or for disturbance in his enjoyment of land, not being in either case land over which the path or way was created or land held therewith, unless the creation of the path or way would have been actionable at his suit if it had been effected otherwise than in the exercise of statutory powers.
- (5) In this section "interest", in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

* * * * *

Section 121 – Supplementary provisions as to public path extinguishment and diversion orders (as amended by the Transport and Works Act 1992)

- 121 (2) Section 28 above (compensation for loss caused by public path creation order) applies in relation to public path extinguishment orders, rail crossing extinguishment orders, public path diversion orders and rail crossing diversion orders as it applies in relation to public path creation orders but as if the references in it to Section 26 (2) were references to section 120 (3).



**EXTRACT FROM ELECTRONIC VERSION OF WORKING COPY OF THE DEFINITIVE MAP
FOR REFERENCE PURPOSES ONLY, NO FURTHER COPIES MAY BE MADE**

The Definitive Map has a relevant date of 26th November 1956 and has not been formally re-published since then. This map shows an electronic working copy of the Definitive Map which attempts to show the information on the Definitive Map and any subsequent legal changes. The Council can accept no responsibility for any error or inaccuracy which may arise from use of the electronic Working Copy map.



Place Directorate
Public Rights of Way
Streets and Open Spaces
North Somerset Council
Town Hall
Walliscote Grove Road
Weston-super-Mare
BS23 1UJ

Tel: 01934 888 802

Existing legal route (A-B)
Proposed diversion (C-D-B)

**Location Part of Public Footpath AX 20/2,
The Bury/Old Banwell Road, Locking**

FOR PROW SUB-COMMITTEE REPORT
OS Licence No.100023397

Page 21

Scale 1:1250

**Drawn by
Penny Price**

**Drawing No.
PAP/Map No. PPO 200**

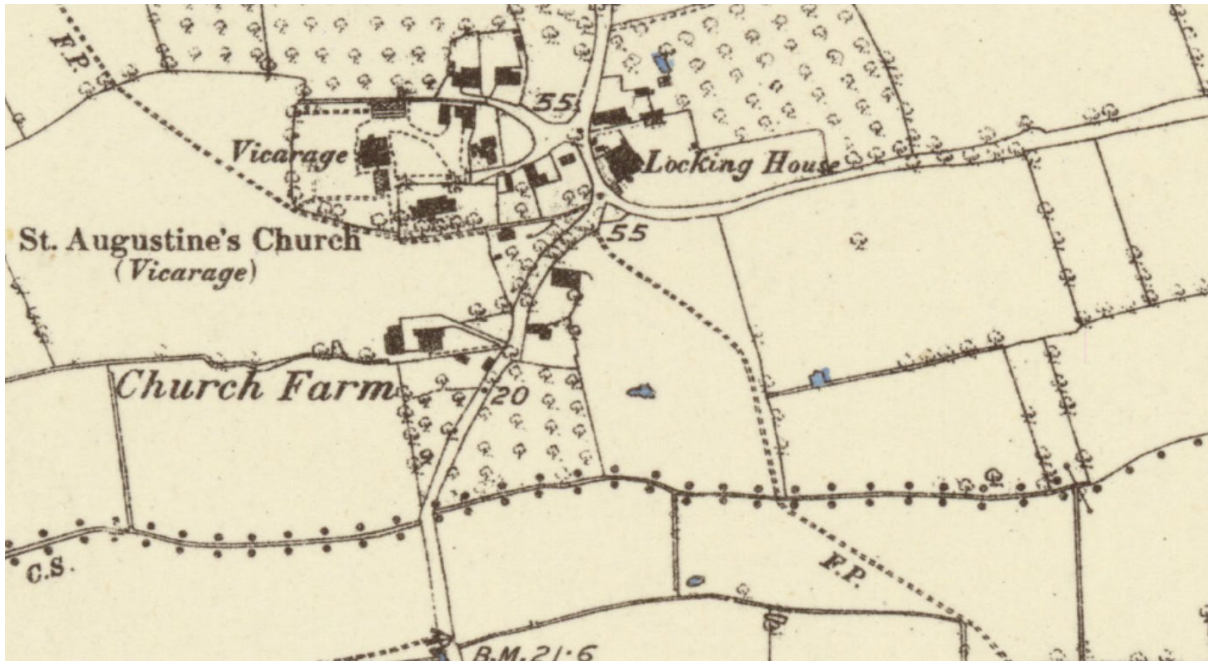
**Date
09 November 2022**

Footpath AX20/2 Locking – Old Banwell Road

Historical research into the existence of Footpath AX20/2 in respect of the buildings Athelstan and No 2 Old Banwell Rd.

1811 OS Map

This map produced in 1811 by OS surveyors has depicted the alignment of a footpath (FP) commencing south of the junction of roads. This is a similar alignment to the route which is shown on the Definitive Map



1903 OS Map

Shows Footpath AX20/2 as above



1930 Road Records

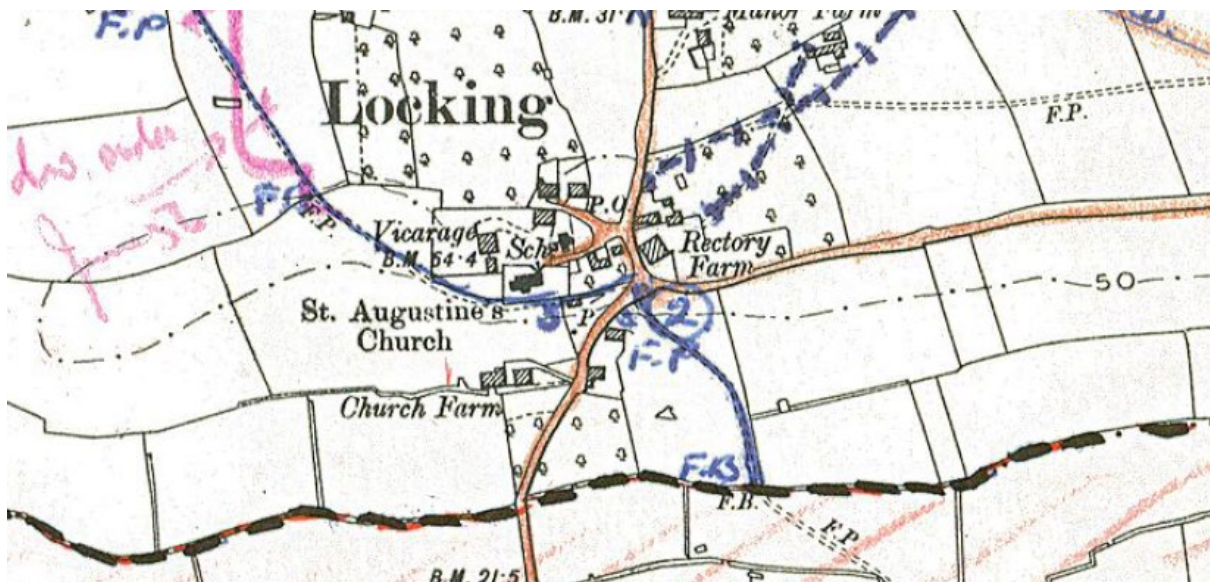
This plan primarily using OS 1903 or 1931 plans depicts routes which are maintained by the Council as adopted roads. As above the FP is shown



Definitive Map process

Parish Survey Plan

This plan produced by the Parish Council in 1950 having walked the routes shows the similar alignment to that shown on our maps today. The date of the base map is not known but believed to be around 1930.



This plan was supported by a walking card which reads:

Kind of Path – FP. The path starts at Top of Bury Hill, Public Footpath N.B., via stile. Proceed in S.E. direction across grass field to Foot Bridge over Rhine. Foot Bridge and Stile in fair condition, used by parties for at least 80 years. Not well defined.

This information was passed from the Parish Council to Axbridge Rural District Council in 1951 who collated all responses relevant to their area and the past to Somerset County Council who produced the Draft Map.

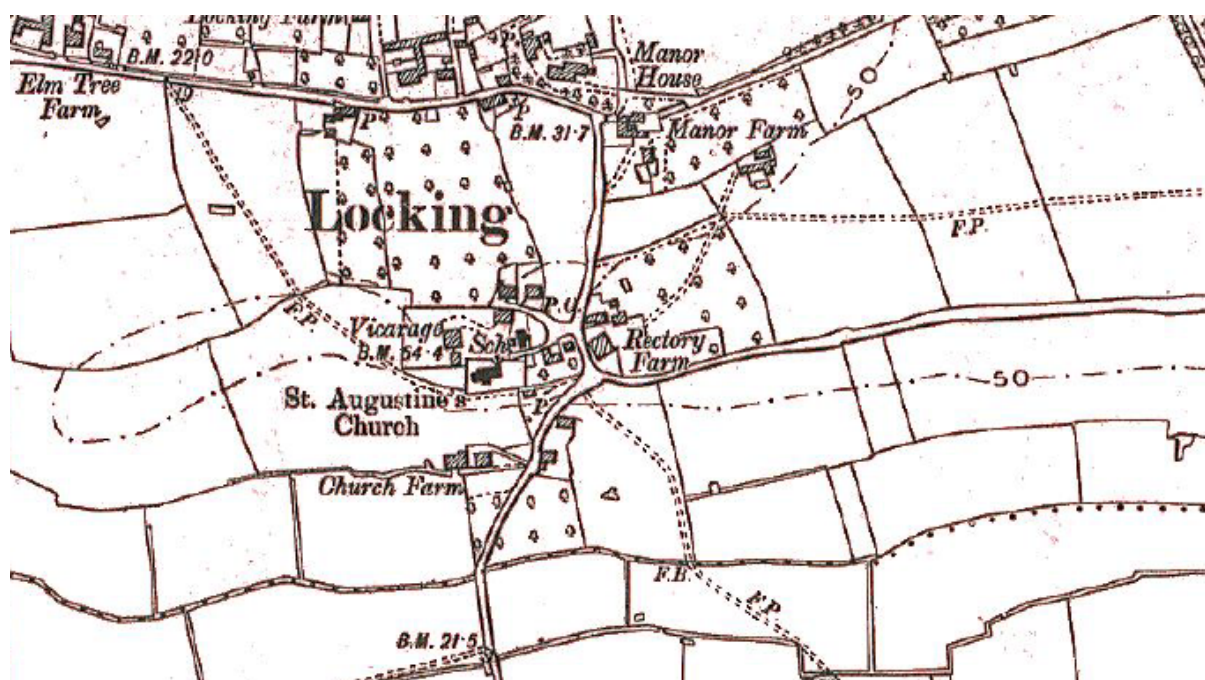
Draft Map

The Draft Map was advertised in the locality, placed on deposit in the local church and in the press. Any correspondence received was listed on a summary list, no comments were received in regard to this route.



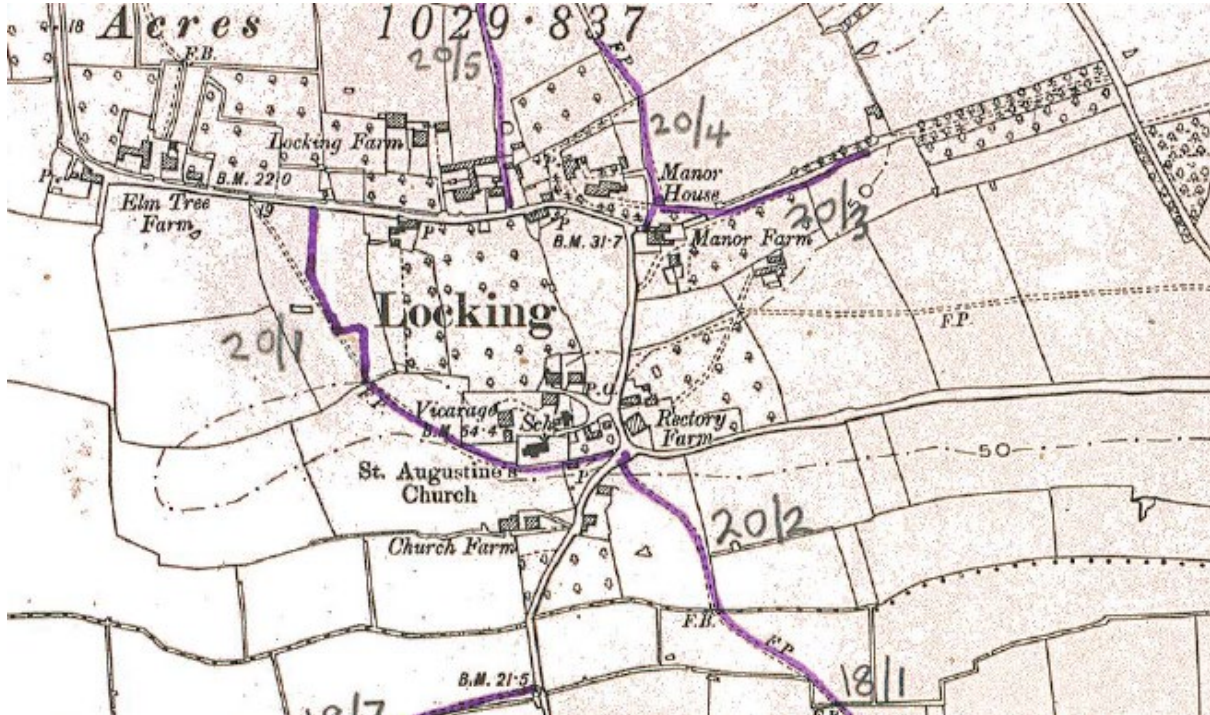
Draft Map Modifications

As no comments were made at the draft stage, I would not expect anything to be shown on the Draft Map (this only showed amendments to the draft map)



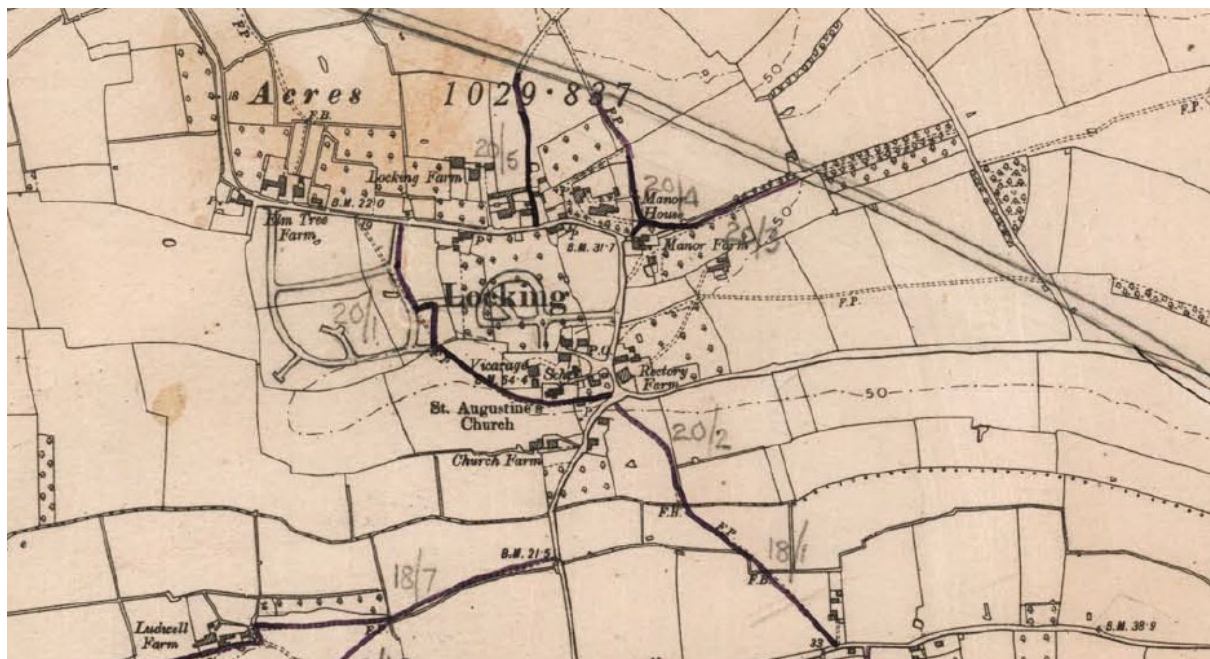
Provisional Map

When all objections or comments had been considered by Somerset County Council a Provisional map was produced and advertised once again and placing on deposit for public view, this time allowing landowners to object to routes being incorrectly shown on their land, once again no comments were received



Somerset copy of Definitive Map

The Definitive Map process was finalised around 1967 and carries a relevant date of the 26th November 1956. The depiction of Footpath AX20/2 has been consistent through all its stages of this process.

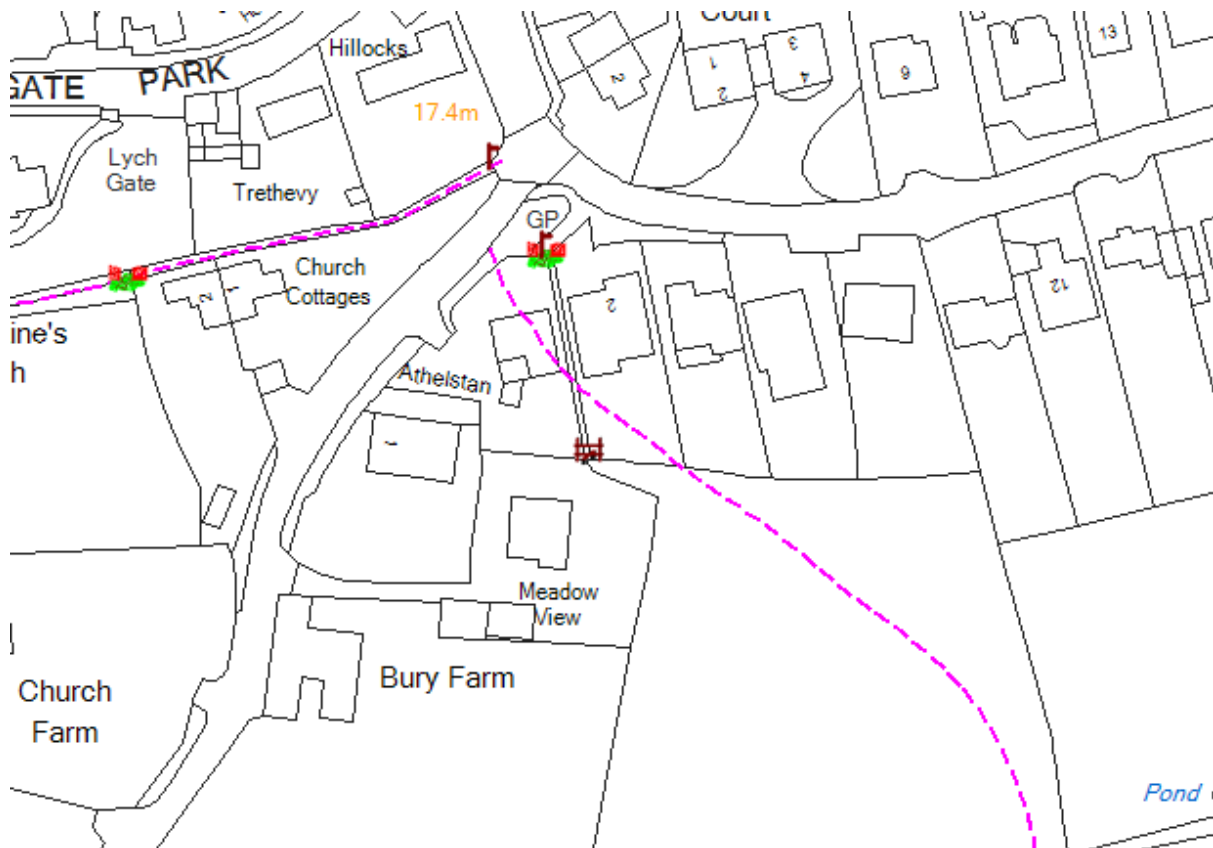


Definitive Statement

This reads "The path is a FP. It starts at the top of Bury Hill on the east side and proceeds south east across field to footbridge over rhine at the parish boundary where it continues as Footpath 18/1 to Elborough".

Working copy of the Definitive Map relevant date 26th November 1956

This is our working copy of the Definitive Map which would reflect any changes which have legally been made since the production of the document above. I have looked at our legal orders and can find nothing to suggest that this footpath has been legally moved to the alignment used by the public today.



PROVISO FOR ABOVE MAP EXTRACT: The Definitive Map has a relevant date of 26th November 1956 and has not been formally re published since then. This map shows an electronic working copy of the Definitive Map which attempts to show the information on the Definitive Map and any subsequent legal changes. The Council can accept no responsibility for any error or inaccuracy which may arise from use of the electronic Working Copy map.

I have also looked at a file held which holds correspondence relating to this footpath. This correspondence revealed that the property Athelstan was built around 1972/73. Enquiries from solicitors acting for Athelstan, the Parish Council and the owners for No 2 have all been told that the legal line of Footpath AX20/2 has been obstructed by the properties and that whilst no formal enforcement would be taken due to the convenience of the used route provided that it was maintained, that the legal line would present a problem when a property was to be sold. The council advised that the most practical solution would be for those affected to submit an application to the council, requesting that the legally recorded line be formally diverted.

Following this correspondence, I can confirm that no application was submitted.

Elaine Bowman

Principal Access Officer, Public Rights of Way, North Somerset Council

Research undertaken on 12th and 13th May 2021

STEPS TAKEN TO ADDRESS ANOMALY, RESULTING IN THIS REPORT

The council's Definitive Map at 1:10560 scale carries a relevant date of 26th November 1956 and is North Somerset's legal record of Public Rights of Way. Our electronic 'Working Copy' map, produced by transposing the Definitive Map onto a different scale and on an up-to-date map base aims to reflect Public Rights of Way shown on the Definitive Map and any route changes made since the Definitive Map's 'relevant date'.

Enquiries were made to the council's Public Rights of Way Team in 2021, during the sale of No. 2 Old Banwell Road, as to the correct legal line of the northern end of Public Footpath AX 20/2. As there appeared a disparity between the Definitive Map's legal line and that which the public use, officers carried-out research of historical documents, the findings of which are given at Appendix 3.

It was apparent that, with the legal line of AX 20/2 (shown going through the property and curtilage of the property 'Athelstan' and the curtilage of No. 2 Old Banwell Road) being rendered unavailable for use, the public had been using a different route since the formation of an alleyway between the two properties, which then ran near to the southern boundary of No. 2 and connected with the remainder of the Public Footpath in the continuing field. However, there had been no apparent legal diversion to amend the Public Footpath route on the Definitive Map.

As officers' research at Appendix 3 concluded that a Public Path Diversion Order (PPDO) application would need to be submitted if the landowners wished to rectify the situation and there appeared a suitable formal diversion route which the public were already using, the legal representatives (acting as agents for) for the new owners of no. 2 Old Banwell Road submitted such an application in September 2021.

For a PPDO application to be processed, the agreement of all directly affected landowners is required. As the agents were not able to secure authority from one outstanding party to the formal diversion of part of the Public Footpath onto their land, officers wrote to this party via the applicants' agents in November 2021. Our aim was to clarify that the proposed diversion was merely to formally divert the Public Footpath onto the route which was already being used by the public.

The landowning party contacted the council in December 2021, advising they did not wish to make any decision without face to face contact with their solicitor and, due to Covid at that time and the fact they were abroad, this was not possible. The council responded to the party's questions raised in February 2022 but unfortunately have had no further contact from the landowning party so, without their agreement to formally divert the Public Footpath onto the route already being used, the council is unable to proceed with the PPDO application.


The council are charged with keeping Public Rights of Way open and available and, as the new owners of No. 2 Old Banwell Road were still keen to go through the application process, seeking to resolve this anomaly, the council obtained legal opinion on the way forward. This legal opinion recommended that officers should proceed by making a DMMO under section 53(B) of the Wildlife and Countryside Act 1981, due to the evidence of public use (see **Appendix 5** for additional evidence of public use) and then followed by an extinguishment order under section 118 of the Highways Act 1980. Such an Order would acknowledge the evidence that the route between points C-D-B has become public.

The history shows that the route between C-D-B has been in existence since the property Athelstan was built around 1972, allowing the public 50 years of use and access to the wider Public Rights of Way network. The making of the DMMO would acknowledge the evidence that the route between points C-D-B has become public.

As the making and confirming of the above Order would formally record the route the public are using, the existing legal route (through 'Athelstan' and No. 2 Old Banwell Road) on the Definitive Map would no longer be needed for public use, so a Public Path Extinguishment Order would be made to officially remove this line from the Map.

Conclusion

With regards to the route C-D-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.

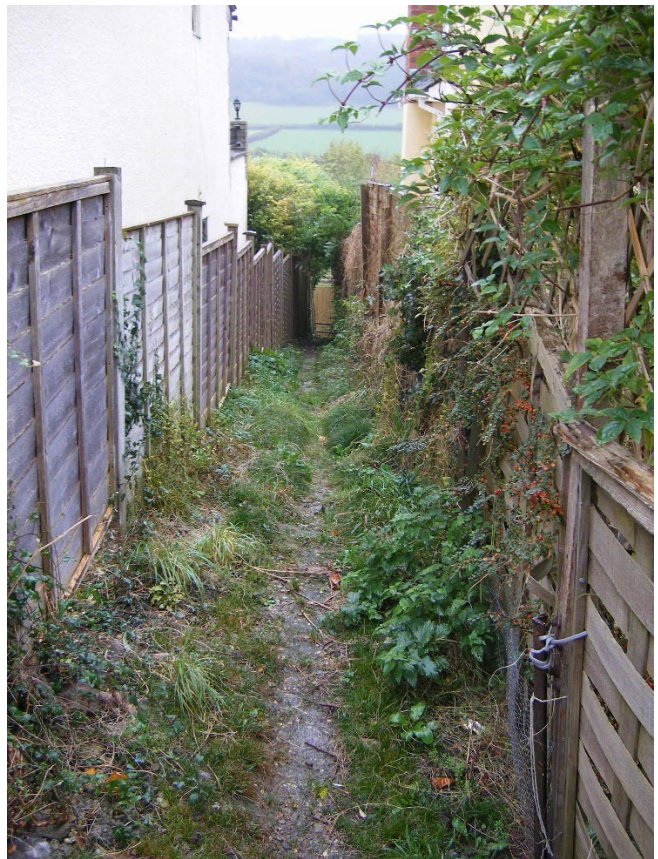
If the Committee believes in respect of the claimed section that the relevant test has been adequately met, it should determine that a DMMO should be made. If not, the determination should be that no order should be made. 

If a DMMO is made and confirmed, it will be necessary to extinguish the route A-B from the Definitive Map by way of a PPEO, as this will no longer be required for public use.

1. SELECTION OF PHOTOGRAPHS FROM PUBLIC RIGHTS OF WAY TEAM ELECTRONIC RECORDS

a. PHOTOGRAPHS UNDERSTOOD TO BE FROM NOVEMBER 2006

Public Footpath fingerpost signage and stile at northern end of 'used' route; and looking southerly along 'alleyway' of used route, between 'Athelstan' and No. 2 Old Banwell Road.





At end of initial 'alleyway' stretch of 'used' route, where route then runs along northern side of fence (before coming out into field).



Where route runs along northern side of fence (before coming out into field) and then looking back up to where the used route has come from (right-hand side of second photo).



Looking back up 'used' route (up through field) and then looking back up through alleyway of used route, towards northern end.



Looking back up northerly, towards stile and signage.

B. PHOTOGRAPHS OF UPGRADED PATH FURNITURE

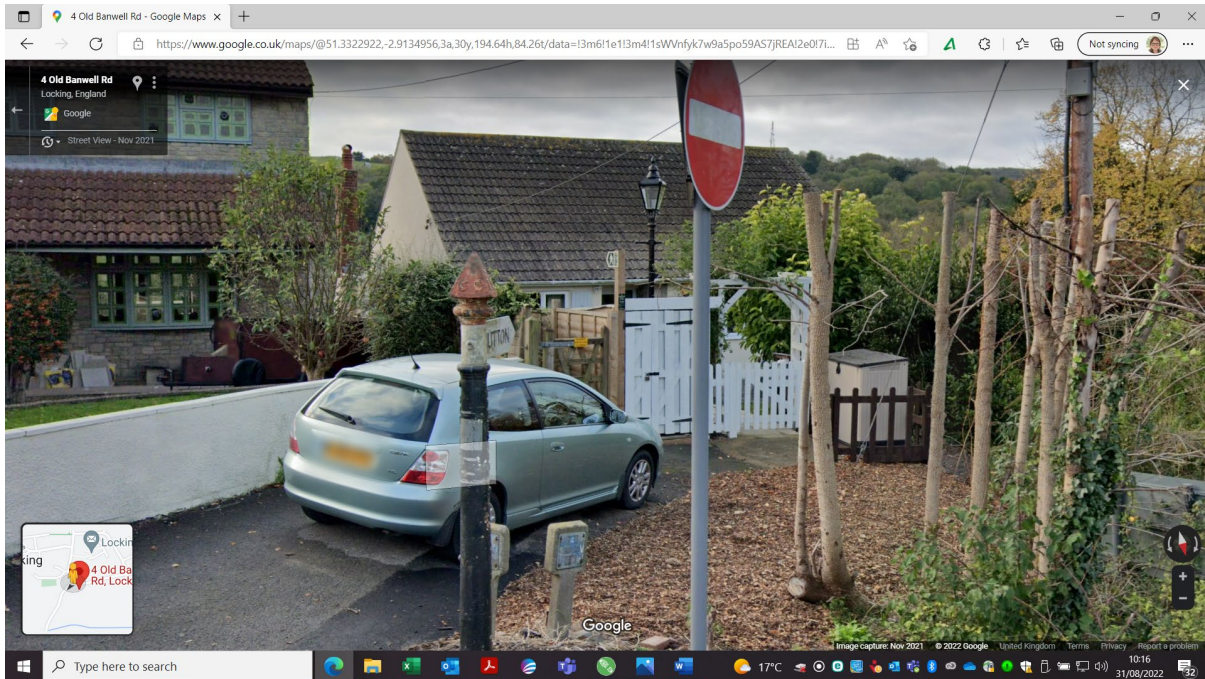
At the end of the initial stretch of used-path, between the two properties, a metal pedestrian gate has replaced the previous step-over metal bars, as shown in following photos (from July 2021):



Public Rights of Way Team records include a number of photographs, when the Team looked at the condition of fencing (the responsibility of adjoining landowner) adjoining the alleyway of the 'used' route (dates shown on actual photos, below). The Team also have photos of checks on vegetation, alongside the fence further along. These photos show the route was being used, matters were being reported to the council and the Team were active in looking at any issues on the 'used' route.



C. 'GOOGLE MAPS' EXTRACT (PRINTED AUGUST 2022, IMAGE CAPTURE NOVEMBER 2021), SHOWING NORTHERN END OF 'USED' ROUTE



Former stile location now has wooden pedestrian gate, with wooden post/'Public Footpath' fingerpost signage (upgraded from previous Public Footpath signage on metal pole), pointing walkers southerly between 'Athelstan' and No. 2 Old Banwell Road.

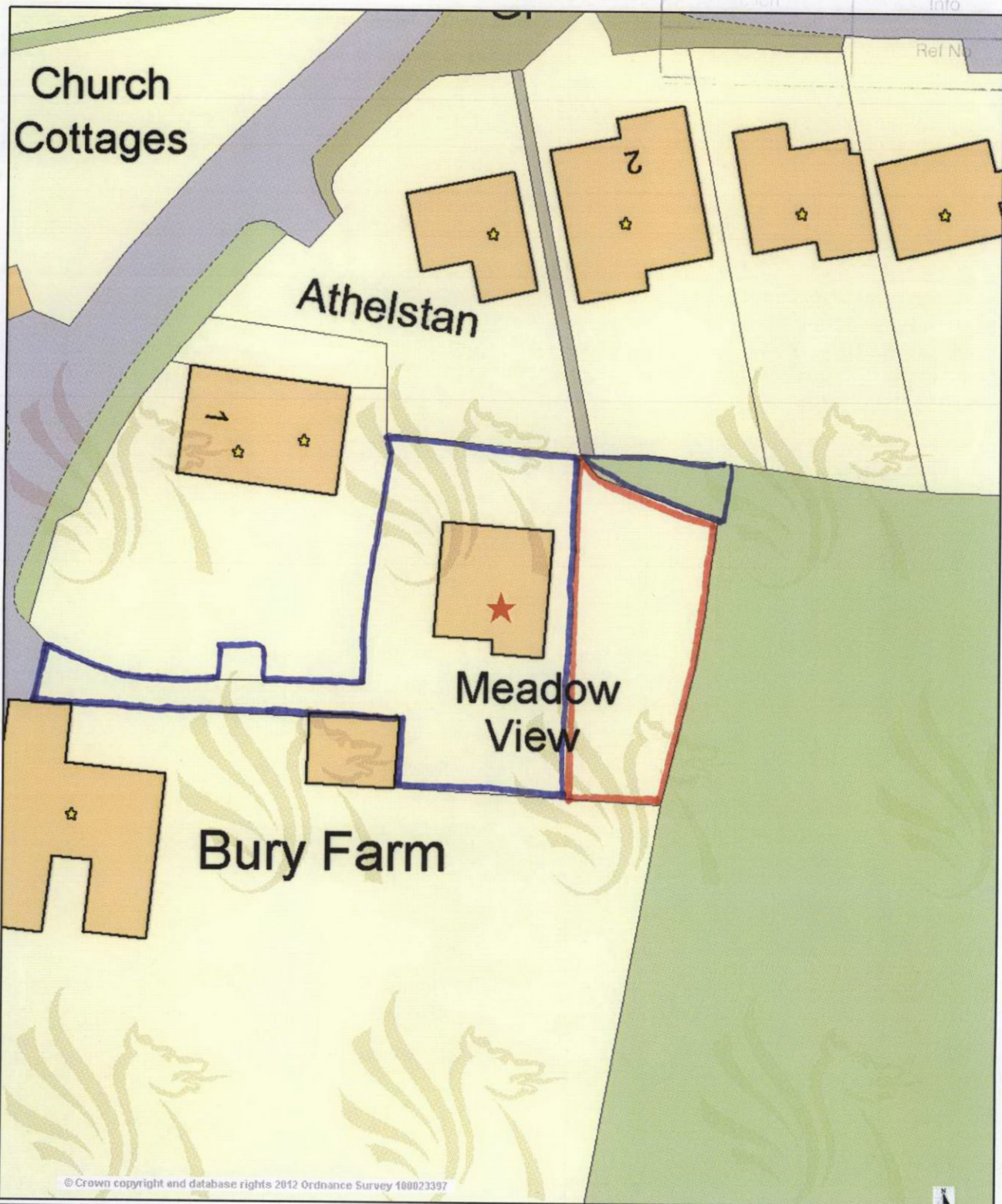
2. PLANNING APPLICATION 12/P/0301/F – THE 'RED LINE' ON THE SITE LOCATION PLAN KEPT THE USED PUBLIC FOOTPATH OUT OF THE APPLICATION AREA

This planning permission was for "Change of use from agricultural/equestrian land to residential to extend curtilage (retrospective)" at Land to the east of Meadow View, The Bury.

However, the site locations plans on the online planning application record reveal that part of the 'Meadow View' curtilage was shown as the 'red edged' application site and the land which it appears the public have used as the Public Footpath is *outside* the red edging, in land edged blue on the site location map (this normally means it's *not* within the application site but is owned by the applicant(s) to the Planning Application).

1:500 scale 'Site location plan 2' attached below.

Referred To	
Recd	17 FEB 2012
Location	Info
	Ref No



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Project	Scale 1/500
Location	Drawn by
Client	Drawing No. MCS1

OS Licence No. 00023397 / 2012 Centre = 336450 E 159578 N
Date 13/2/2012

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Historic Mapping © and database right Crown copyright and Landmark Information Group Ltd (All rights reserved 2009)
Scale is approximate to be used as a guide only
SourceMap is for general guidance only and cannot be relied on for the existence or details of any PROW. The Council accepts no responsibility for any omission or error thereon
A formal reply will be provided by the Council in reply to relevant enquiry in a Local Search
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Aerial Photography by Imagery copyright Getmapping PLC. www.getmapping.com



Development & Environment

Town Hall
Weston-super-Mare
BS23 1UJ

Tel: 01934 888 888

Project

Aerial Photo extract, with Definitive route indicated

Location

Part of Public Footpath AX 20/2, Locking

**For NSC PROW Sub-Committee Report,
to show route used.**

OS Licence No.

100023397



Scale 1:500

Drawn by

Penny Price

Drawing No.

PAPPP0 200/AP1

Date

10 November 2022

North Somerset Council

Report to the Public Rights of Way Sub-Committee

Date of Meeting: 22 November 2022

Subject of Report: Incomplete Definitive Map Modification Order Applications

Town or parish: District Wide

Officer/Member presenting: Elaine Bowman

Key Decision: No

Recommendations

It is recommended that the Public Rights of Way Sub Committee authorises the relevant officer to formally close the files on the 24 Definitive Map Modification Order Applications listed in Appendix 1 from the Section 53b Register.

1. Summary of Report

This report is to advise the Committee that North Somerset Council (“the Council”) has 24 Definitive Map Modification Order Applications on the Section 53b Register (see Appendix 1) which have not been completed in accordance with the legislation laid down in Schedule 14 of the Wildlife and Countryside Act 1981.

North Somerset Council would be ill advised to determine these applications when the correct procedures have not been undertaken by the applicant, this could lead to legal challenge by owners of the land and interested parties. Attempts have been made to contact the applicant to address this lack of process and missing information, to date no response has been received from the applicant.

It is therefore proposed to no longer pursue these applications and to close them down on the Section 53b Register.

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 “A Thriving and Sustainable Place” (a great place for people to live, work and visit) and “An Open and Enabling Organisation” (collaborate with partners to deliver the best outcomes).

3. Details

On 28th March 2006, a total of 24 Definitive Map Modification Order Applications were submitted by Mr R Stephens claiming that several Roads Used as Public Paths (which

under the Natural Environment and Rural Communities Bill 2006 (relevant date 20th January 2005) became Restricted Byways) should be reclassified as Byways Open to All Traffic.

Each of the applications consisted of an Application Form for a Modification to the Definitive Map and Statement, Form of Certificate of service of notice of Application for Modification Order, and Documentary Evidence Checklist stating a Pre 1835 Victorian 1st Ed Ordnance Survey. These applications were then placed on the Council's Section 53 Definitive Map Register. A list of the 24 applications is attached as **Appendix 1** of this report.

Following the outcome of 'The Winchester Case' 28 November 2007 (**Appendix 2**) all local authorities should, when looking at an application, ensure that the application has been submitted to the detail required in Schedule 14 of the Wildlife and Countryside Act 1981. North Somerset Council have undertaken this exercise and found that the 24 applications submitted by Mr Stephens do not meet those requirements.

All 24 applications are deficient on two counts.

Firstly, notices have not been served upon the relevant landowners, nor have there been attempts to locate any landowners; the only information that is held is that notices were placed at each end of the routes.

Secondly, the applications state the only documentation referred to is an OS map pre 1835 Victorian first Edition, however copies of this were not supplied.

In order to attempt to process these applications, on 23rd March 2015, North Somerset Council Officers sent a letter, Recorded Delivery to Mr Stephens outlining the deficiencies in his 24 applications. The applicant was informed that no further action would be taken upon these files until the relevant information was received and that if no response was received by 1st May 2015, then the Council would arrange for them to be closed on the Section 53 Register.

This is a significant outstanding number of applications on our Section 53 Register and now having addressed the 21 Secretary of State Directions which were issued in March 2017 we are trying to continue progress on the 53b Register.

Due to the time lapse since the last letter and taking any action on this matter a further letter was sent on 23 February 2022 to follow up on this matter advising that this report was being written requesting that authority is given for these files to be closed

Following these letters, the Council have not received any further correspondence from Mr Stephens and are therefore recommending the closure of all 24 applications from the Section 53b Register of Definitive Map Modification Order Applications.

4. Consultation

The applicant was consulted on 23rd March 2015 requesting the additional documentation to validate all 24 applications and 23 February 2022. There is no requirement for any further consultation.

5. Financial Implications

There will be no financial implications on this matter.

Costs

There are no costs relating to this project.

Funding

There are no funding requirements for this project.

6. Legal Powers and Implications

Schedule 14 of the Wildlife and Countryside Act 1981 Extract included within this report as **Appendix 3**. Failure to adhere to the legal requirements of the legislation could lead to applications being legally challenged as defective applications further along the process.

7. Climate Change and Environmental Implications

Improvements or additional routes added to the Public Rights of Way Network aim to encourage sustainable travel by enabling the public to walk, cycle or ride a horse across our District reducing carbon emissions, encouraging access to the natural environment, and improving health and wellbeing.

8. Risk Management

There will be no further risk to the Council. The applicant has the right to resubmit any applications with relevant information which will be added to the current Section 53 register.

9. Equality Implications

No - All 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

No other option has been considered.

Author

Elaine Bowman
Principal Access Officer – Ext 7406

Background Papers

File Ref Mod 68-91

APPENDIX 1
Section 53 Register of 24 deficient applications

Reference	Location	Geographical Location (Grid Ref.)	Effect	From	To	Date of Registration
Mod 68	Summer Lane, West Wick, Puxton.	ST 371617 - ST 375614	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 69	Balls Barn Lane, East Rolstone, Puxton.	ST 390626 - ST 398627	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 70	Hatchers Lane, East Rolstone, Puxton.	ST 388630 - ST 395622	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 71	Blackmoor Langford College, Wrington.	ST 455610 - ST 461609	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 72	Brockley Coombe to Backwell Hill, Cleeve.	ST 485664 - ST 489669	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 73	Rhodyate to Claverham, Claverham.	ST 447656, ST 445648, ST 450653	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 74	Ilex Lane, Winscombe	ST 411592 - ST 418584	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 75	Lime Breach Wood, Nailsea	ST 462720 - ST 476729	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 76	Windmill Hill, Easton-in-Gordano	ST 513752 - ST 512747	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 77	Failand Farm, Easton-in-Gordano	ST 523732 - ST 534726	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 78	Gable Farm, Wraxall	ST 502708 - ST 501693	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 79	Myrtle House Farm, Winford	ST 534639 - ST 536631	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 80	Pinchay Lane, Winford	ST 541643 - ST 545636	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 81	Greatstone Lane, Winford	ST 534639 - ST 541640	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 82	Sutton Lane, Butcombe	ST 511621 - ST 508610	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 83	Row of Ashes Cottage, Redhill	ST 513632 - ST 515628	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 84	Long Thorn Lane, Butcombe	ST 528618 - ST 532612	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 85	Littleton Lane, Dundry	ST 553664 - ST 551647	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 86	B3130, Hanging Grove Farm, Dundry	ST 541663 - ST 551664	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 87	B3130, Rocks Lane, Dundry	ST 524665 - ST 537662	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 88	Tinkers Lane, Backwell	ST 508674 - ST 506664	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 89	Barrow Hill, Backwell	ST 503673 - ST 516610	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 90	Backwell Hill, Backwell	ST 485664, ST 499677, ST 500666	Upgrade	Restricted Byway	BOAT	28/03/2006
Mod 91	Freemans Farm, Backwell	ST 56677 - ST 516670	Upgrade	Restricted Byway	BOAT	28/03/2006

The Winchester Case

The Winchester Case **Neutral Citation Number [2008] EWCA Civ 431** (The Queen on the Application of Warden and Fellows of Winchester College and Humphrey Feeds Ltd and Hampshire County Council and The Secretary of State for Environment, Food and Rural Affairs – Court of Appeal 29 April 2008).

This case clarified the effect of the burden on the applicant to make application in the prescribed form. Section 46 and 47 of the Winchester case read:

46. In my judgment, as a matter of ordinary language an application is not made in accordance with paragraph 1 unless it satisfies all three requirements of the paragraph. Moreover, there are two particular indications that an application is only made in accordance with paragraph 1 of Schedule 14 if it is made in accordance with all the requirements of the paragraph. First, paragraph 1 is headed "Form of applications". The word "form" in the heading is clearly not a reference only to the prescribed form. It is a summary of the content of the whole paragraph. It is a reference to how an application should be made. It must be made in a certain form (or a form substantially to the like effect with such insertions or omissions as are necessary in any particular case). It must also be accompanied by certain documents. The requirement to accompany is one of the rules as to how an application is to be made.
47. Secondly, Schedule 7 to the 1993 Regulations shows that the prescribed form itself requires the route to be shown on the map "accompanying this application" and the applicant to "attach" copies of the following documentary evidence (including statements of witnesses) in support of the application. This language reflects the content of subparagraphs (a) and (b) of paragraph 1. It is artificial to say that, in order to be made in accordance with paragraph 1, an application must be made in the prescribed form or a form to substantially like effect; but that it need not be accompanied by a map or have attached to it the documentary evidence and witness statements to be adduced even though these are referred to in the body of the prescribed form itself. The language of the form shows that an application is only made in accordance with paragraph 1 if it is made in the prescribed form and is accompanied by a map and the documentary evidence and witness statements to be adduced.

Wildlife and Countryside Act 1981
Schedule 14: Applications for certain orders under Part III

Form of Applications

1. An application shall be made in the prescribed form and shall be accompanied by:
 - a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
 - b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

Notice of applications

2. (1) Subject to sub paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.

(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description 'owner' or 'occupier' of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

(4) Every notice or certificate under this paragraph shall be in the prescribed form.

Wildlife and Countryside Regulations 1993 SI 1993 No 12 Section 8

- (1) An application for a modification order shall be in the form set out in Schedule 7 to these regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.
- (2) Regulation 2 above shall apply to the map which accompanies such an application as it applies to the map contained in a modification or reclassification order.
- (3) A notice required by paragraph 2 of Schedule 14 to the Act (applications for certain orders under Part III) shall be in the form set out in Schedule 8 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.
- (4) A certificate required by paragraph 2 of Schedule 14 to the Act shall be in the form set out in Schedule 9 to these Regulations or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case.