

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB COMMITTEE

DATE OF MEETING: 29TH MARCH 2022

SUBJECT OF REPORT: MOD 41 – 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

RECOMMENDATIONS

It is recommended that

- (i) the Public Rights of Way Sub Committee authorise 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; and
- (ii) if no objections are made and sustained, that authorisation be given for the confirmation of the Order; and
- (iii) 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 through any subsequent procedure.

1. SUMMARY OF REPORT

This report considers an application which was made 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 have been received. 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 user documentary evidence. A Location Plan EB/MOD 41, 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 additional documents which have been looked at when assessing this application and 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 41

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 – Analysis of User Evidence Forms

Appendix 5 – Consultation and Landowner Responses

Appendix 6 – Summary of Evidence and Conclusion

Document 1 – Definitive Map Process – Draft Map

Document 2 – Definitive Map Process – Draft Modifications Map

Document 3 – Definitive Map

Document 4 – 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 “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. 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 Weston-Super-Mare Town Council, 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 have been no financial implications during this process. 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

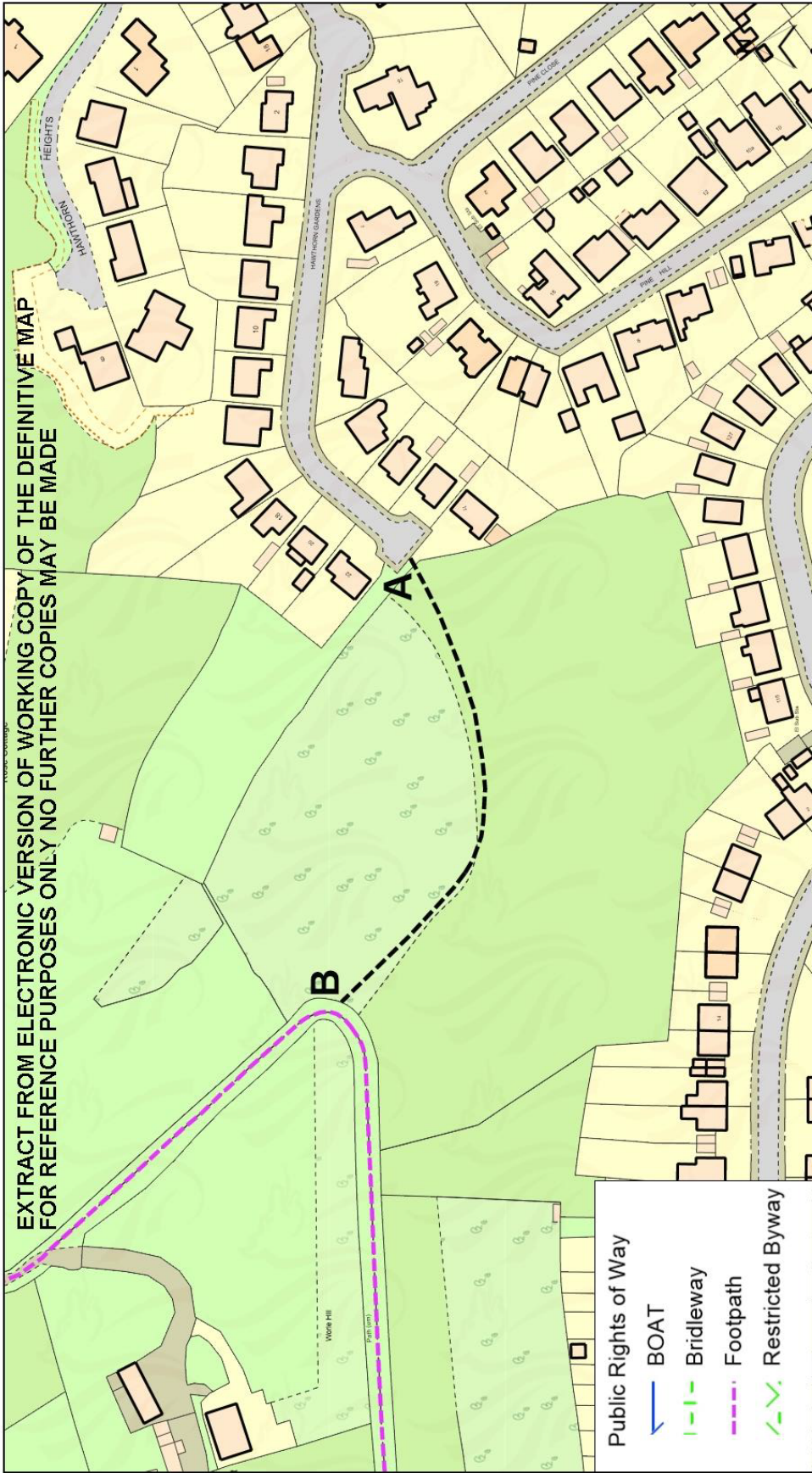
The options that need to be considered are:

1. Whether the evidence supports the making of a Definitive Map Modification Order for a Footpath 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 Footpath over the route A-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.

AUTHOR

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BACKGROUND PAPERS: - Public Rights of Way File Mod 41



Public Rights of Way

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

Town Hall, Walliscote Grove
 Road, Weston-super-Mare,
 BS23 1UJ

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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 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.

History and Description of the Claim

1. An application for a Modification to the Definitive Map and Statement was received dated 20th April 2000 from Mr E Sage. The basis of this application was that a route which runs from Hawthorn Gardens to its junction with Footpath AX 31/33 should be recorded as a Footpath. Submitted with the application were 12 User Evidence Forms and 10 letters of support 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. Following pre-order consultations, a further 15 User Evidence forms have been received. A full analysis of this information is included in **Appendix 4** of this report.

This matter is currently recorded on the Definitive Map Register as Mod 41.

It should be noted that the Council has undertaken additional research into records that are held within the Council. These are detailed in **Appendix 3** of this report.

2. The 2000 application claims that a Footpath should be recorded over one route that is not currently recorded on the Definitive Map. The claimed route falls within the ward of Weston-super-Mare.
3. The route being claimed commences from the end of an adopted highway known as Hawthorn Gardens (Point A) and proceeds in a west, north-westerly direction to its junction with Footpath AX 31/33 (Point B) being a distance of approximately 143 metres.
4. This claimed Footpath is illustrated as a bold black dashed line on the attached Location Map (scale 1:1500).

Analysis of the Historical Documentary Evidence

The claim is based on 27 User Evidence Forms however, North Somerset Officers have also looked at the Definitive Map Process undertaken in the 1950s to assist this determination.

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.

Draft Map

On this Draft Map, the location of the route can be identified but is not depicted or coloured in any way. This would suggest 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 1**.

Draft Map Modification Plan

Following the publication of the draft map, comments were invited from interested parties regarding the recorded public rights of way. This map does not suggest that at this time, anyone challenged the omission of this claimed route A-B. An extract of this plan is attached in the report as **Document 2**.

Provisional Map

Following the Draft Map Modification stage landowners were then invited to view the Provisional Map to comment against should they so wish. Unfortunately, we do not hold a copy of this plan, so we are unable to produce an analysis of the claimed route.

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

The 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 3**.

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. It should be remembered that the Definitive Map process commenced in 1950. However, was not finalised until around 1968. It is believed that no further surveys were undertaken during this process which would have recorded additional routes which may have come into existence.

Analysis of User Evidence Forms and correspondence

Submitted with the initial application were 12 User Evidence Forms which the applicant believed supported the use that had and is still being made of this route. In addition to these 10 letters were submitted supporting the application. Following the letters sent for Pre-consultation on 29th August 2019, a further 15 forms were submitted in support of the claim that the route A-B should be recorded as a Footpath.

A detailed analysis of these forms has been undertaken, together with detail of the content of the letters of support and are attached as **Document 4**.

It should be noted that two of the 27 User Evidence forms illustrated a different route on the map to that which is being claimed, and one omitted sending a location map. These have been disregarded from this analysis. It should also be noted that two of the additional forms are duplicates of ones submitted earlier.

The earliest claimed use of the route dates back to 1960, with the latest use being to date. All these users claim to have used this route on foot.

No recollection was made on these forms of the route being obstructed or unusable. However, there is evidence that a notice was erected stating 'private property/no trespassers' in February 2000, prior to the submission of the application in April 2000.

Accepting that the date of challenge for the route A-B was February 2000, it is necessary to look at the period 1980-2000. 18 out of the 22 User Forms submitted suggest use for 20 years or more.

As can be seen in Document 4, the usage made of this route varied between daily use, a couple of times a week and a few times a year. 6 users claimed to have used this route daily; 8 users claimed to have used this route a couple of times a week; the remaining 8 users claimed to have used this route on a monthly/yearly basis.

Only one person has noted upon their form that they were stopped when using this route and advised it was not a Footpath, but the owner allowed them to continue.

In Evidence Form 7, the user has stated that in 1975 they grazed a pony, permission given by the landowner. This is also supported by another user (Evidence Form 25) who stated that horses used to graze the whole area when they were younger.

This same user in Evidence Form 25 was also the only other user to have been given permission to use the route in 2018.

The 10 letters of support provide clear information as to the use which has been enjoyed over this route. These letters were clearly written following the erection of notices in 2000. The use stated upon them ranges back to 1970, recalls the existence of stiles being erected by the council and that Hawthorn Gardens was built around 1972. These letters provide information around the use that has been enjoyed, but also the status which the user believed existed.

Submission	Objection or Supporter	Extracts of comment
SL1	Supporter	Used since 1970 – For Exercise and pleasure – Pony grazing kept vegetation under control – Permission given to volunteers to clear intrusive undergrowth – stiles placed top and bottom, footrest later removed
SL2	Supporter	Used infrequently since 1988, until 1997 then daily with dog – January 2000 yellow plastic notice posted top and bottom.
SL3	Supporter	Resided here for 20 years – used footpath for all that period
SL4	Supporter	Sign appeared denying access up the hill to Worlebury Golf Course – moved to Hawthorn in 1986 – used prior to that from the mid 1970's onwards
SL5	Supporter	Moved to Hawthorn in 1991 – noted signs denying access – led to believe that the stiles erected previously were placed by the council together with the conservation notice – wish to continue use of the countryside
SL6	Supporter	Walked this path for 30 years – aware that this is private land and not a public footpath – but has walked it with others
SL7	Supporter	Sudden appearance of notices – path existed for 40/50 years (confirmed by others) – existed since Hawthorn Gardens built 28 years ago – Stiles erected by council – Conservation notice erected – work undertaken by work parties – path used every day all year round – may be private property but Right of Way always been there
SL8	Supporter	Made application to NSC to establish Right of Way – Been a resident of Hawthorn for 28 years – daily use – no hinderance – believe it to be a public right of way- stiles either end established by local authority many years ago – met previous owners.
SL9	Supporter	Attended auction where land was sold and bought by Mr Wells, believed to be 2004). Confirmed that the existence of the path was brought to the auctioneers attention – lives adjacent to the path since 1973 – confirms that path has been used frequently by others but not themselves
SL10	Supporter	Recalls a petition signed in 2000 by the residents confirming use of the path on a regular basis – feels that owners dogs and gun fire at that time was intimidating – would like to see this shown on the Definitive Map

The full content of these letters submitted has been included in Document 4.

Therefore taking 2000 as the date of challenge it would appear from the User Evidence Forms and the letters of support that the test under Section 31 of the Highways Act has

been met. From the evidence submitted by the users, there is correspondence held on file, that a notice was erected at the top and bottom of the claimed route in early 2000, which seems to follow an act of placing 'yellow plastic notices' at either end of the route in question. Who placed those yellow notices is unknown? It is unclear exactly what these notices said however the presumption being that they challenged public use.

These users also make recollection of the existence of stiles at each end of the route, presuming that these had been installed by the Council, no confirmation has been found to confirm this. However, it is known that for a period of time this area was known as a Conservation Area, therefore those managing the site may well have been instrumental in the installation of the stiles. Those stiles are not in situ today, just the gap where they use to once be.

It is further known that this land was sold at auction in 2004 and has remained in the ownership of the current holder since then. Information given by one of the supporters confirms that the existence of the footpath was discussed at the auction, therefore the belief that this route was a route used by the public was made known to the owners when they purchased the land.

Upon initial ownership by the new owners, gates and signs were placed on site to deter public use. However, these have not been maintained and the public have continued to use the claimed route. Whilst the owners do not accept that this route has become a public right of way, they have been inactive in denying access and it is still being used by the public today.

Consultation and Landowner Responses

Pre- Order Consultation letters were sent on the 29th August 2019 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
Mrs V Craggs	No Objection	No Problem
Wales & West Utilities	Comment	<p>We enclose an extract from our mains records of the area covered by your proposals together with a comprehensive list of General Conditions for your guidance. This plan shows only those pipes owned by Wales & West Utilities in its role as a Licensed Gas Transporter (GT). 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. The information shown on this plan is given without obligation, or warranty, the accuracy thereof cannot be guaranteed, service pipes, valves, syphons, stub connections, etc., are not shown but their presence should be anticipated. No liability of any kind whatsoever is accepted by Wales and West Utilities, its agents or servants for any error or omission.</p> <p>Safe digging practices, in accordance with HS(G)47, must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus.</p>
Virgin Media	No Objection	Virgin Media and Viatel plant should not be affected by your proposed work and no strategic additions to our existing network are envisaged in the immediate future.
Bristol Water	No Objection	We confirm that we have no objection to the proposed order at Hawthorn Gardens, Weston-Super-Mare.
Atkins Telecoms	No Objection	Please accept this email as confirmation that Vodafone: Fixed does not have apparatus within the vicinity of your proposed works detailed below.
National Grid	No Objection	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.
Mr E Sage	Support	<p>Confirmation of this footpath has been long awaited with various correspondence going back to April 2000. The Footpath concerned has been used by me and my family for 47 years as a resident of 12 Hawthorn Gardens.</p> <p>I previously used the same footpath as a young boy and early teenager, being a local person, for access to Worlebury Hill – there were official stiles and footpath signs at both ends – these were in situ for many years. The stile and sign adjoining footpath</p>

AX 31/33 was in existence until the day before auction of the 5-acre area that was purchased at that time.
The footpath is currently being used more than ever by school students using it as somewhat of a shortcut to their homes in Worlebury and by numerous dog walkers and others as a nature and exercise varied walk/climb.
Location Plan – MOD 41 or OS Licence No. LA 09063L dated 15th February 2000, I believe shows the footpath at that time.
As further confirmation I enclose 2 photographs of the stiles that I took in possibly 2004 – A being the one situated at the head of the cul-de-sac in Hawthorn Gardens and B the one that stood adjoining Pathway AX 31/33 – Both these stiles had official signs attached, the top one only being smashed at the time previously indicated.
As a continued resident of Hawthorn Gardens, now in my 80s, I would be delighted to see this footpath officially designated once again.

Mr E Sage
(20.11.20)

Support

With reference to the above I would just add just a few points before Council Sub-Committee on Tuesday 24th November 2020.

The 17th November 2020 marked the date of my using this footpath for 48 years as a resident of 12 Hawthorn Gardens.

Since the start of the Covid 19 Epidemic the path has been used by numerous people-- Walkers, Runners and, of course, Dog Walkers. the numbers must be in the hundreds over that period. My wife and I have been amazed at the fact that the numbers included people we hadn't seen before, obviously being given knowledge of the path by regular users.

With the government concerned about the mental and physical state of the British people I would suggest that paths and spaces are very beneficial, particularly at a time we are facing at this present moment.

Mr & Mrs Linham

Support

This footpath is a joy to walkers from this area and would be sorely missed should access be denied.

Current Landowners

Discussion has taken place with the owners of the land to try to establish whether they were willing to dedicate this route which is being used by the public. Through those discussions, the landowners have expressed their concerns about a legal public right of way being recorded. Those concerns relate to;

- Users leaving the defined line and wandering over other parts of their land, which do not have public access.
- The area being designated as a SSSI (Special Site of Scientific Interest) and the impact that users would have on the flora and fauna. However, no evidence has been found to support this.
- Concerns around health and safety issues on a part of the route with an exposed bedrock surface and what their public liability would be if this route is recorded as a public right of way.
- This area is also subject to Tree Preservation Order (TPO No. 865, W1).

Through those discussion with the landowners, requests were made as to whether signage could be erected, asking users to keep to the path; whether post and wired fencing could be erected bordering the claimed route; pedestrian gates could be installed at both ends and a

handrail installed at the Hawthorn Gardens end (point A) where the exposed bedrock is located.

To address these concerns, Officers visited the site to assess whether these requests could be met. It was felt that all of these could be achieved other than the post and wired fencing. Such fencing could restrict and could hinder the animals (badgers, deer etc.) which currently roam freely over this land. This was relayed back to the landowners.

Despite these efforts, the landowners cannot agree to dedicating this route as a public footpath, therefore, this matter needs to proceed as a Definitive Map Modification Order.

Further communication has been received from the owners of the land.

Wells
Family

To whom it may concern,

I am writing to you on behalf of my family; the owners of the land on which the council propose to open up a public footpath. After my family spent a large sum of money securing the land for our family and friends to benefit from, we have enjoyed giving numerous friends and individuals permission to not only walk the paths but also enjoy the woodland. We have also just given permission to a local charity project to allow adults with learning difficulties to use the area, as a safe and private area to support their outdoor recreation.

As we already own a foot path a very short distance from the proposed one which brings access to the same lane from the lower houses, there is absolutely no need for an additional footpath or to have our privacy interrupted by the public.

We had previously suggested we would consider the foot path if it was to be fenced. We have paths that we all use regularly that cross the proposed path and it will be virtually impossible to stop people entering the adjacent privately owned land. We have big concerns that if the private path is made open to the public, then they will branch off it. This would then I would imagine lead to more similar statements of historic use. Which would put us in this situation again.

During a conversation with yourselves, I was told that there was no chance of this fence being put up. Maybe, if you had spent that sum securing the land in the first place then you would have had a different view on this-to give the excuse of wildlife not roaming freely through or over stock-fencing amazes me and shows what a lack of wildlife management they have. The council also said they wouldn't be willing to spend that amount of money on fencing which I believe to be the real reason.

We have had to clear bags of dog faeces from our woods where the people who abuse this route just throw it in our vegetation and we regularly clear rubbish that gets dumped. Only last year, we had to remove a homeless person from the woods and experience finding needles in the woods while my children were there. The police were great and very helpful. I don't feel we would have received the same level of support had we approached the council based on the lack of support with this.

Another issue that concerns me greatly is the animal management that is carried out by myself and other individuals, we carry out legal vermin control and conservation which requires shooting, this could be upsetting for members of the public to witness and hinder our activities.

With reference to the historically dated statements requiring access of the path, I have no idea exactly what more we were supposed to have done to stop them trespassing when signs were put up and illegally removed. People were told repeatedly that it was private land but obviously showed no respect for this and carried on of their own free will. On one occasion, my mother was assaulted by a member of the public and physically pushed to the floor when she asked them to leave the private land. The police were involved.

We had to give up keeping animals that were on our hillside field opposite after numerous dog attacks to livestock, we had no choice. Now we are being asked to give our agreement to a full access unfenced footpath through our privately owned woodland. With plans to graze Pinehill in the future this will not be possible with the path and free roaming dogs.

Recently, I have been speaking to many other landowners who have this awful situation of people accessing privately owned land and then the council wanting to open these foot paths. It seems a completely unfair situation when land is purchased privately.

The bottom of the suggested path is a solid bedrock and very precarious. We would not think it fit to walk without danger of injury. When wet, the stone is very slippery with nothing to hold onto. I would assume the council would be liable for any injuries that occur here, but apparently not even though it is they that want to give public access to an unsafe route.

With all these points raised, our concluding opinion is that we strongly object such plans of a path.

I look forward to hearing from you and discussing this further at any future meetings

Summary of Evidence and Conclusion

This application submitted by Mr E Sage claiming that this route should be recorded on the Definitive Map as a Footpath was initially supported by 12 User Evidence Forms, letters of support and later in 2019, a further support of 15 User Evidence Forms. As previously mentioned, five of those user evidence forms have been discarded. The remaining 22 are claiming Footpath status.

Summary of Documentary Evidence

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. The user evidence forms show that claimed use began during the Definitive Map process, the earliest use being recorded as 1960. There is obvious conflict between the Definitive Map evidence and that of the user evidence forms. However, as previously mentioned, it is believed that no further survey was undertaken after 1950.

Therefore, the Definitive Map process does not assist in establishing whether there was an existing route.

Summary of User Evidence

It is known that this route provides an important link to the residents connecting to other public rights of way in the area. 18 of the 22 user evidence forms show 20 years use or more before the year 2000. Such use whether made daily, weekly, monthly or yearly, presents a picture of a route which has been used unobstructed. The tabular form (Document 4) detailing the content of those user evidence forms, provide information relating to the existence of stiles, erection of notices, acts which stopped use, as well as permissions given. Only two of these users refer to permission. The initial 12 user evidence forms submitted, refer to the existence of a 5-bar gate at the Hawthorn Gardens end, which could be opened for access. No one claims that this was locked at any time. Photographs submitted with the application in April 2000, show the 5-bar gate at one end and a stile at the other. Those photographs show the yellow sign headed 'private property'.

Summary of Consultation and Landowner responses

The correspondence which was submitted with the application and attached to this report clearly illustrates that this route has been used. Whether that use was in the belief that this was a route which was already recorded as a Public Right of Way or by permission of the owner of the land has been enjoyed as far back as 1970.

The current owners of the land, who acquired this in 2004, although having initially attempted to dissuade use, have not maintained that stance and are aware that use is being made of it. The basis of their objection is around land management, maintenance, and liability.

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.

The user evidence forms seem to verify that the provisions of Section 31 have been met. The erection of the yellow sign in 2000 being the action which brought the use of this route into question is deemed to be the date of challenge.

The evidence submitted confirms that in 2000 notices were displayed on site which would have satisfied Section 31(3) however, those notices were not maintained. Similarly, attempts from the present owners have been intermittent, their efforts being since 2004 outside of the period 1980 - 2000.

Taking into consideration all the information detailed within this report, this route has clearly been used for 20 years or more and should be recorded as a Public Footpath.

Conclusion

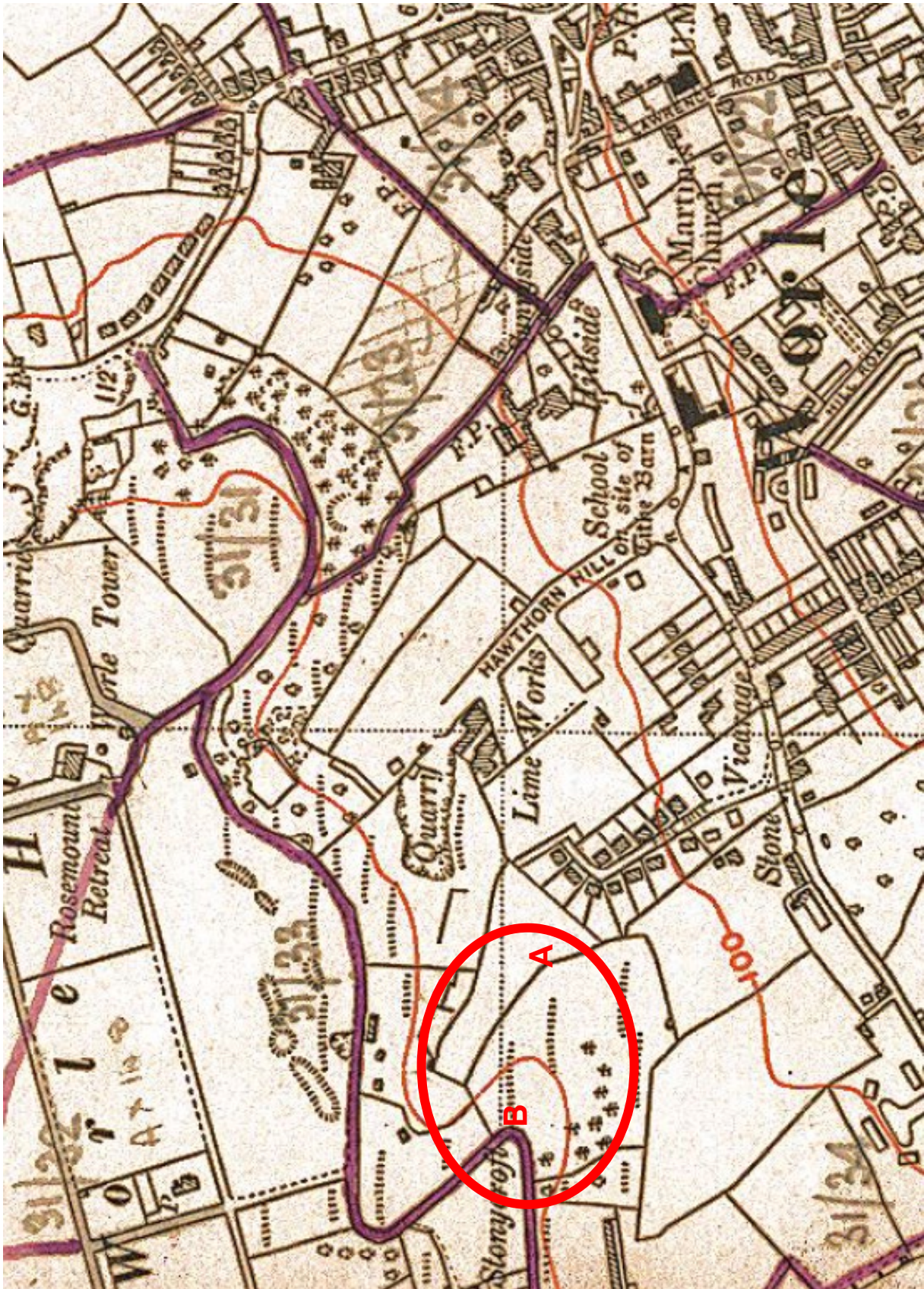
Having regard for the legal test that should be applied in respect of the route A-B “does a route subsist or is reasonably alleged to subsist”. Whilst there is no historical evidence to show that a route was evident on the ground, the user evidence which has been submitted supports public rights having been established over it.

Taking 2000 as the date of challenge it is necessary to look at the period 1980-2000. The user evidence claims use from 1960, some of which covers the period to date. However, as notices were placed in 2000, that is the period which must be assessed. 13 of these users claim to have used this route during the period of 1980-2000. Those 13 represent over 50% of the claimed use. 11 of these 13 make reference to the erection of the yellow signs.

Similarly, the letters of support which have been detailed illustrate that this route has been open and available to anyone who would wish to use it within the defined period of 1980 – 2000.

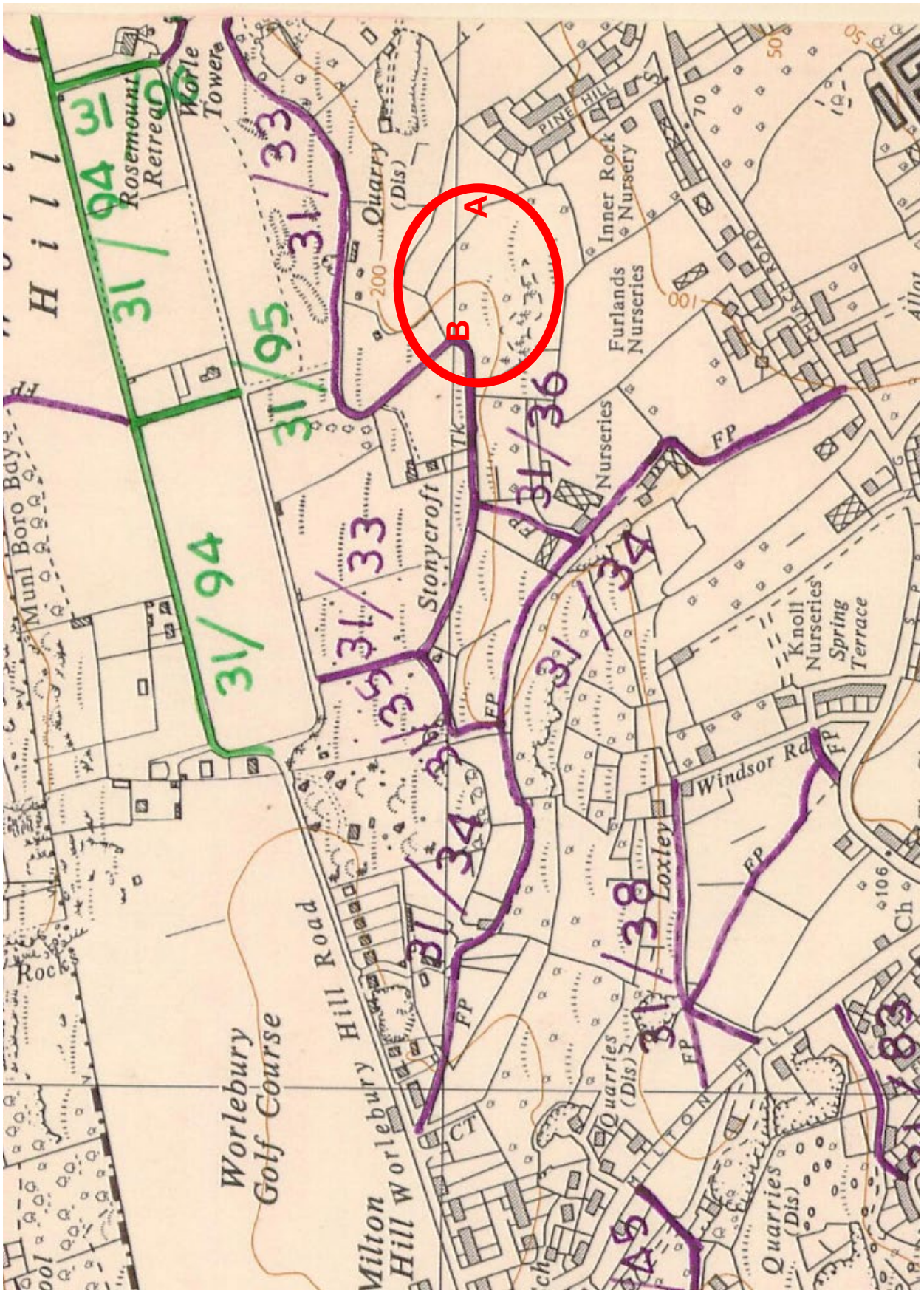
Until the action of the owners of the land in 2000 erecting the private property notice, this route was open and available for users. The erection of such notices has the effect of calling the route into question but can only nullify the route if 20 years use has not been established. In this case, the user evidence suggests use going back to 1960.

Having evaluated this evidence it is felt that there is sufficient evidence to raise the presumption of dedication of Footpath status.



DOCUMENT 2
DEFINITIVE MAP PROCESS – DRAFT MODIFICATIONS MAP





**DOCUMENT 4
USER EVIDENCE TABLE**

(Columns that are shaded grey are User Evidence Forms that have been disregarded)

User Evidence Form	E1	E2	E3	E4	E5	E6 DUPLICATE OF E14
Believed status of route	Footpath	Footpath	Footpath	Footpath	Footpath	Footpath
Used the routes	1982 - 2000	1971 - 2000	1972 - 2000	1971 - 2000	1971 - 2000	1979 -2000
Reason	Pleasure	Pleasure	Pleasure	Pleasure	Pleasure	Pleasure
Frequency Per Year Weekly Daily	7 days a week	12 x 86 -2000 1971-1986	3 x a week	18 x per year	15 – 20 x per year	Most days
Method	On Foot	On Foot	On Foot	On Foot	On Foot	On Foot
Obstructions? Stiles Gates	Yes, both ends 5 bar gate	Yes, both ends Yes, each end	Yes, both ends 5 bar gate	Yes, both ends Yes Hawthorn	Yes, both ends Yes, Hawthorn	Yes, both ends No
Working for landowner?	No	N/A	No	No	No	No
Ever stopped or turned back	No	No	No – free use for 28 years	No	No	No
Told by anyone that it was not public	No	No	No	No	No	No
Locked gates?	No	No	No	No	No	No
Notices?	Yes, but not until fairly recently, I believe Feb 2000	Yes, Part of Conservation Area. This is not a right of way Feb 2000	Approx 2 yrs ago at both ends of path – Part of Area of Conservation. This is not a right of way Feb 2000	A conservation notice about 2 yrs ago and a notice No public right of way 1 month ago.	Only very recently	Only current
Given permission	No	No	No	No	No	No
Private right to use	No	No	No	No	No	No
Other Information	If landowner visited the site, it would have been obvious it was well used footpath. Always believed it to be a public right of way.	I have been informed by long standing local residents that prior to the houses in Hawthorn Gardens being built, the path continued to Pine Hill and has been in constant use since 1950	I have used this right of way with my family and numerous other local people for a period of 28 years. However, I have also known this pathway via Pine Close (now Pine Hill) for approx. 50 years.	We used the footpath about 8 times a year when we lived in Hawthorn Gardens 1971 -1998 and we continue to use it as a walk from our present house.	I have lived at this address for 29 years & have seen this path used by many people exercising their dogs etc. on a regular basis.	Popular walkway in fairly constant use.

User Evidence Form	E7	E8	E9 DUPLICATE OF E13	E10	E11	E12
Believed status of route	Footpath	Footpath	Footpath	Footpath	Footpath	Footpath
Used the routes	1960 - 2000	1976 - 2000	1984 - 2000	1973 - 2000	1980 - 2000	1970 - 2000
Reason	Visiting, pleasure, natural history	Pleasure & Work	Pleasure	Pleasure	Pleasure	Pleasure
Frequency Per Year Weekly Daily	3 – 4 x a week	Up to 30 x per year	10 – 20 x per year	5 x a week	Weekends	20 – 50 x per year
Method	On Foot	On Foot	On Foot	On Foot	On Foot	On Foot
Obstructions? Stiles Gates	Yes, both ends Yes, Hawthorn	Yes, both ends No	Yes, both ends Yes, Hawthorn	Yes, Hawthorn 5 Bar gate	Yes, both ends Yes Hawthorn	Yes, both ends Yes Hawthorn
Working for landowner?	N/A	No	No	No	No	No
Ever stopped or turned back	No	No	No	No	No	No
Told by anyone that it was not public	No	No	No	No	No	No
Locked gates?	No	No	No	No	No	No
Notices?	Not until Feb 2000	Not until Jan 2000	Yes put up in Feb 2000	First notice seen Feb 2000 (previously for 28 years nothing)	Only since Feb 2000	Not for 30 years or so until early 2000 when notices said Private property no public right of way no liability accepted to trespassers.
Given permission	For a month 1975 grazed a pony.	No	No	No	No	No
Private right to use	No	No	No	No	No	No
Other Information	I have used this private right of way over 40 yrs even before the Hawthorn Gardens houses were built. People should be allowed to walk it to observe wild flowers and there are so few places left for us to walk	I have used the path regularly since 1987. Before that I occasionally used it with groups of pupils from St Martins school where I have worked as a teacher since 1974. I see others use it regularly	Because of the stile at the top end of the path presumably fitted by the Council, I had always assumed that the path was a public right of way	My husband used this way nearly daily for 28 yrs. My children used it for the duration they lived here since with their children.	My family have been using this path/route for more than 20 yrs.	I have lived at my present address for thirty years and have seen many walkers use the path on a regular basis.

User Evidence Form	E13	E14	E15	E16	E17 INCORRECT ROUTE DEPICTED ON PLAN	E18 DUPLICATE OF E3
Believed status of route	Footpath	Footpath	Footpath	Footpath	Footpath	Footpath
Used the routes	1984 - 2019	1981 - present	Late 1970s - present	1999 - present	2005 - 2019	1922 - present
Reason	N/A	N/A	N/A	N/A	N/A	N/A
Frequency Per Year	Monthly		Weekly			
Weekly Daily		Daily		Prior to 2011 From 2011	Daily	Daily
Method	On Foot	On Foot	On Foot	On Foot	On Foot	On Foot
Obstructions? Stiles Gates	Yes, at the top No	Yes, both ends, now deteriorated No	No No	Maybe between 70- 75	Yes, first seen about 25 yrs ago	Yes, both ends No
Working for landowner?	No	No	No	No	No	No
Ever stopped or turned back	No	No	No	No	No	Yes – only when pathway at point A was blocked by trees/branches
Told by anyone that it was not public	No	No – attended auction when current owners purchased the land. They were made fully aware of the established use and access.	No	Yes – I have in the past been warned by the landowner not to touch any twigs or branches on the route.	No	Yes – By current owner in aggressive manner, when challenged about blocking the pathway and breaking down of stile and signs.
Locked gates?	No	No	No	No	No	No
Notices?	When fence was erected, sign saying 'private' but we carried on using the path	None	No	Yes – over the course of the period there were signs erected aimed at preventing use of route.	No	Yes, there were official council signage plus proper access stiles at Point A and B. Was in situ before land was auctioned.
Given permission	No	No	No	No	No	No
Private right to use	No	No	No	No	No	No
Other Information	A fence erected 10-20 yrs ago was easily climbable that eventually fell apart. Used regularly for 35 yrs. It is always well worn which is evidence of use. For a time there was a fence with a sign but no real attempt has ever been made to prevent its use.	Since moving to Hawthorn Gardens in 1981. I have used path daily and knew of its existence and used it on occasions previously. I have always considered this as an established right of way.		As a keen walker and dog owner I was ask the OMA to consider the numerous people living nearby the route. It has been used for over 50 years and is a still very much valued route from our houses to much used footpaths around the hill.	Have used this path for the last 14 years on a daily basis.	As per letter and items previously sent. Refers to evidence of use forms etc. Sent to council in 2003/04.

User Evidence Form	E19	E20	E21	E22	E23 INCORRECT ROUTE DEPICTED ON PLAN	E24
Believed status of route	Footpath	Footpath	Footpath	Footpath	Footpath	Footpath
Used the routes	2001 - present	1996 - present	2018 - 2019	1993 - 2019	2011 - 2019	2016 - present
Reason						
Frequency Per Year Weekly Daily	Monthly Weekly Daily – Depends on training	Daily	2 – 3 x a week	2 -3 x a week	Monthly	Daily
Method	On Foot	On Foot	On Foot	On Foot	On Foot	On Foot
Obstructions? Stiles Gates	Used to be at either end	Yes No	No No	Yes – both ends	No No	Unsure No
Working for landowner?	No	No	No	No	No	No
Ever stopped or turned back	No	No	No	No	No	No
Told by anyone that it was not public	No	No	No	No	No	No
Locked gates?	No	No	No	N/A	No	No
Notices?	No	No	Yes – Part of a sign (ends broken off) where the application route meets Worlebury Hill. Only visible if walking downhill.	Sign was in place about 15yrs ago which has fallen into disrepair at the top of route ST347630	No	Don't know
Given permission	No	No	No	No	No	No
Private right to use	No	No	No	No	No	No
Other Information	My family have used this FP for 18 yrs. When my husband is training, he runs up there as a shortcut to sand bay most days. We see several people walking up there. Last week my husband witnessed a school minibus park in our road and the children headed up there for an hour. Also see dog walkers even cyclists carrying their bikes. As far as we are aware the path has been used for many years.	Until now I was not aware that it wasn't a public right of way. I remember a stile at the top when I was younger and I think there might have been a stile at the bottom too but I'm not sure.	We can see the entrance to the application route from our house, so we can see the route is in very regular use by walkers, dog walkers, families and children. We see people using the route daily to get up Worlebury Hill through the woods.	When I started using it in 1992 I believed it to be a public right of way which was well maintained over the last 15 years it has been maintained to the same standard but it is still a serviceable pathway.	We have used this route as access/egress to the circular route around Worlebury Golf course for over 7 years as part of our regular dog walking route.	N/A

User Evidence Form	E25	E26	E27
Believed status of route	Footpath	Footpath	Footpath
Used the routes	1966 - present	1966 - present	1976 - present
Reason			
Frequency Per Year Weekly Daily	Monthly	Monthly	Daily
Method	On Foot	On Foot	On Foot
Obstructions? Stiles Gates	Yes – either end No	Yes – either end No	No No
Working for landowner?	No	No	No
Ever stopped or turned back	Yes – once told by the owner we were not entitled to use the route but said they would allow them to continue	No	No
Told by anyone that it was not public	Yes – the owner	No	No
Locked gates?	No	No	No
Notices?	Yes – when the land was bought by the current owners	Yes – a notice saying 'private' and 'Trespassers will be prosecuted' when the present owner bought the land	No
Given permission	Yes – By owner in 2018	No	No
Private right to use	No	No	No
Other Information	I have lived in my property for 53 years and never had a problem using the path before it was bought. In the past when we were younger my husband and I used it frequently, horses grazed the whole area and the hill was in good condition and provided a lovely area to sit and admire the view across the mendips.	Having spoken to a number of long-time residents this footpath has been used for a lot longer than the 53 years that I have used it. I think it is important for future generations that it is designated as a public right of way.	One of the reasons I moved to Hawthorn Gardens was due to access (using proposed pathway) to Worlebury woods, I use this footpath regularly to walk my dogs, visit my father in Pleshey Close and my daughter in Worlebury they also use the pathway to visit me. If it was closed, we would all have to use our cars.

Content of Supporting Letters

Submission Letters	Objection or Supporter	Comment
SL 1 Dated 7 th Feb 2000	Supporter	<p>I was surprised and dismayed to read the above notice refusing access to the footpath. I have lived at this address for thirty years since 1970. We, that is my wife and family, have frequently used the footpath for exercise and pleasure. We have walked to view the various wildflowers that grow on the hill throughout the year, to gain access to other footpaths on the hill, around the observatory to Weston Woods and Sandbay. At one-time ponies grazed on the hill and so stopped the brambles and saplings from encroaching on the grassed area. Unfortunately, in recent years this has not happened, and the grassy area have become somewhat overgrown. Several years ago, I was one of a group of conservation volunteers who, with permission from the landowner cut back some of the intrusive undergrowth. Some years ago, new stiles were placed at the top and bottom of the footpath but shortly afterwards the footrest of the lower stile was removed as it to discourage access. Many other walkers in the area use this footpath and I feel strongly that the public should be allowed to continue to do so.</p>
SL 2 Dated 7 February 2000	Supporter	<p>It has recently been brought to my attention that the footpath that starts in Hawthorn Gardens is not a public right of way and there is no longer access through to the Bridleways that lead to the Observatory. This short stretch of footpath I have used on an infrequent basis since 1988 when I became a resident of Weston super Mare, and almost daily to walk our dogs from 1997 when we purchased the property we now reside at. On or around the 11 January yellow plastic notices were posted at the start of the path in Hawthorn Gardens and at the top, where the path joins the Bridleway. (For your information the notice at the top has been smashed to pieces.) I will be interest in your comments on this issue and fir the path is a public right of way.</p>
SL 3 Dated 12 February 2000	Supporter	<p>I have resided at the above address for some 20 years and I write with concern at the notice recently posted at the entrance to the hillside at the end of our road. We have enjoyed the above access for the whole period of our residence and indeed before, and therefore wish to register in the strongest terms our concern that this facility may be denied.</p>
SL 4 Dated 14 February 2000	Supporter	<p>I was disturbed recently to see a sign appear at the end of Hawthorn Gardens. The sign seems to attempt to deny public access to the footpath which leads from Hawthorn Gardens up the hill to the Worlebury Golf Course. I have used the footpath regularly since moving to Hawthorn Gardens in 1986. Prior to that I recall using it to walk with groups of school children from St Martins School, Spring Hill, Worle, to Worlebury Woods from the mid 1970's onwards.</p>
SL 5 Dated 12 February 2000	Supporter	<p>My partner and myself have lived in Hawthorn Gardens for nine years and in that time have enjoyed many a walk along the footpath surrounding Worlebury Golf Course dropping down to the cul-de-sac. I was therefore most distressed to discover the signs stating that the area was private property and that the public had no 'right of way'. I was also confused, as I have been led to believe that the stiles erected a few years ago were placed there by the council as was the conservation notice. I understand that disputes over rights of access and rights of ownership can be difficult to solve, but surely as long as damage is not done to the path or wildlife, which I have never witnessed any personally, could us careful folk of Hawthorn Gardens not be permitted to enjoy our countryside?</p>
SL 6 Dated 7 March 2000	Supporter	<p>With regard to the footpath that starts at Hawthorn Gardens and goes up over Pine Hill to the top lane, am I right in the rumour I have heard that some greedy person has tried to make money out of the owner, something about damage from a fallen tree. How Ignorant. I would like to say that I have walked this path for over 30 years and also studied the wild flowers growing on the hill. I am aware that it is private land and not a public footpath but myself and many others have walked it for the allotted time to be recognised as a path for use, and we consider ourselves sensible people</p>

		and because the land is unattended see no harm in this. I would like the owner to be understanding in this matter.
SL 7 Dated 4 February 2000	Supporter	<p>Further to our telephone conversations. I confirm details regarding the “access” from Hawthorn Gardens – to the Public Footpath surrounding Worlebury Golf Course at top of Hill. This follows the sudden appearance of a sign stating, “private property – No Public Right of Way – No liability for Trespass”.</p> <ul style="list-style-type: none"> • The Right of Way has existed for 40/50 yrs at least (confirmed by local individuals) • Confirmed existence since Hawthorn Gardens built 28 yrs ago. • A few years ago, stiles were erected by the council (the stile at the top of path still there) • Approx 3 yrs ago a conservation notice appeared, regarding flora & fauna on this land, and work parties kept path clear & prevented grass being cut etc • The path is used every day, all year, by many people – walking (with/without dogs), also for access in both directions. <p>This may be private property, but the Right of Way has always been there, although there are vagaries as far as council information is concerned.</p>
SL 8 Dated 25 April 2000	Supporter	<p>As representative for local residents and numerous others who have made use of this pathway over a long period of time we have made application to the North Somerset Council that this pathway is established as a “Right of Way”. Having been a resident of Hawthorn Gardens, Worle for 28 years I like many others have made almost daily use of this path without hindrance over this period believing it to be a public right of way particularly as stiles were established at either end of the pathway, I gather by the local authority, many years ago. I understand from the Public Rights of Way Dept at North Somerset Council that more informal discussions could take place to clarify the situation rather than go through the more formal procedure. If you would wish to do this the contact at the above department is Mr R Broadhead. It was nice to meet Miss Lock and speak to Mr Danby on the telephone some few weeks ago and trust all can be resolved in a satisfaction and friendly manner.</p>
SL 9 Dated 10 September 2004	Supporter	<p>My Wife and I attended the auction for this piece of land on Wednesday evening, when it was acquired by a Mr Wells. At the auction, the auctioneer announced that Christine Sage had written to the Council pointing out that an unofficial footpath had been used over this land for many years. My house is adjacent to the entrance to this footpath, and we have lived at this property since October 1973. During this time, the footpath has been used frequently by people walking and/or exercising their dogs. I would estimate that at least twenty people a day use this path, with more than this in the summer months. I hope that this information helps to establish a right of way over the land. Incidentally, my wife and myself do not now use this pathway, nor do we have a dog! I am not sure if I am writing to the correct department. But, if not, perhaps you will be kind enough to pass it on.</p>
SL 10 14 December 2004	Supporter	<p>I ask for urgent consideration to be given to the issue of a footpath on Worlebury Hill from Hawthorn Gardens in Worle. This is a prime site, seen from the whole of the valley floor and affecting the whole of Weston super Mare. In April 2000 a petition was signed by a considerable number of residents confirming their use of the path on a regular basis over many years. I also confirm my use of the path over a considerable time. It has been brought to my attention that the current owner closed the path and prevented access. At present the owner has reopened the access but users continue to feel intimidated by his dogs and the firing of a gun during the summer months. Having the path shown on the North Somerset Maps as a public footpath, because of public use, would give the right message to the land owner.</p>