

North Somerset Council

Report to The Public Rights of Way Sub Committee

Date of Meeting: 24 November 2020

Subject of Report: Mod 57 Ruggs Lane, Cleeve, Secretary of State Direction

Town or Parish: Cleeve

Officer/Member Presenting: Director of Development and Environment

Key Decision: No

Recommendations

It is recommended that the Committee

1. Authorise the relevant Officer to place on record at the time of the making of the Order, that North Somerset Council wish to retain the right to oppose any proposal to change the made Order following receipt of representations or objections.
2. Authorise the relevant Officer to bring a further report back to Committee detailing the responses received to the making of the Order. At that time the Committee will confirm the stance that North Somerset Council will take in any forthcoming procedures.
3. Authorise the relevant Officer to confirm the made Footpath Order if no objections are received.

1. Summary of Report

- 1.1 This report is to advise the Committee that North Somerset Council (“the Council”) has been directed to make an Order, the effect of which will be to add a Footpath onto the Definitive Map and Statement and to establish whether the Committee wish to object, support, or remain neutral to the making of this Order.

2. Policy

- 2.1 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

- 3.1 A report was presented to the Public Rights of Way Sub Committee on 26 September 2018. That report detailed the application which had been submitted claiming that a couple of routes, in the Parish of Cleeve, should be recorded on the

Definitive Map as Bridleways. The application, submitted by Woodspring Bridleways Association, provided reference to limited documents and three user evidence forms which they wished to rely upon.

- 3.2 North Somerset Council's Rights of Way Sub Committee considered this application on 26 September 2018 and formally resolved **“that the relevant officer be authorised to reject the application relating to Mod 57 on the grounds that there is insufficient evidence to suggest that the routes A-B-D-E-F or B-C-D should be recorded as Bridleways”**
- 3.3 On 2nd November 2018 an appeal was submitted by Mrs V Craggs on behalf of “Woodspring Bridleways Association”, now known as “Axbridge Bridleways Association” against the decision reached by the Public Rights of Way Sub Committee.
- 3.4 An Inspector was appointed by the Secretary of State to determine the appeal who in considering the evidence against the relevant parts of the 1981 Act namely Section 53 (3). This relates to the discovery of evidence which, when considered with all other relevant evidence available, shows that (i) a right of way which is not shown in the map and statement subsists or is reasonable alleged to subsist over land in the area to which the map relates; or (ii) a highway shown in the map and statement as a highway of a particular description ought to be shown there as a highway of a different description.
- 3.5 An exchange of correspondence between the Council, the applicant and The Planning Inspectorate has taken place ensuring that all previously considered information and newly submitted evidence was available to the Inspector.
- 3.6 That appeal has been considered by the Planning Inspectorate, who acts on behalf of the Secretary of State, and a decision issued on 30 December 2019. The decision which has been made and issued to North Somerset Council is that the appeal is allowed in part. The Inspector's formal decision directs North Somerset Council to make an order under section 53(2) and Schedule 15 of the 1981 Act to modify the definitive map and statement to add a footpath between points L-M-N-O as set out in the application dated 1 August 2004 (as shown on the attached Location Plan)
- 3.7 A copy of the Secretary of State's decision and instructions to the Council are attached to this report, **Appendix 2**. I would draw to the attention of the Public Rights of Way Sub Committee the Inspector's conclusion and paragraph 22. The owner of the land has already indicated that an objection will be submitted to any Order made, therefore it is essential that this Committee decides on the stance that North Somerset Council should take in any future proceedings. At this time, it is unclear what stance Axbridge Bridleways intend to take.
- 3.8 As previously mentioned, when this application was determined at the meeting on the 26th September 2018, the decision was made that the officer be authorised to reject the application on the grounds that there was insufficient evidence to support the making of an Order. It would be consistent with that decision if the Committee were to decide to object to the Order which the Secretary of State has directed the Council to make.

- 3.9 The Committee is being asked whether it wishes to object to the making of this Footpath Order, support the making of a Footpath Order or act in a neutral stance, neither supporting nor objecting to the Order.
- 3.10 Based upon the information that has already been researched the Officer can see no reason to disagree with the decision of the Inspector, therefore would propose that North Somerset Council do not object to the making of a Footpath Order. However, as the original application was for a Bridleway and the applicants will have the opportunity of challenging this Order, the Officer would suggest that North Somerset Council retain the right to oppose any proposal to change the made Order. Therefore, it will be necessary to record this during the Order making process.
- 3.11 Once the Order is made if no objections are received the Council will confirm the Order. The Committee is therefore asked to give authority for the confirmation of the Order.
- 3.12 If there is objection to the Order, it will be forwarded to the Secretary of State, who will decide how this matter will be determined, the options being written representations, a Hearing or a Public Inquiry. As there may be objection to this Order suggesting that a higher status should be recorded, it is suggested that a further report is brought back to Committee detailing their content. At that time the Committee will be asked to consider the stance the Council are to take in all future proceedings.

4. Consultation

- 4.1 There is no requirement to consult at this stage as the statutory consultees, together with Parish Councils, Ward Members and affected landowners will be consulted when the Order is made and then given an opportunity to object or make representations. Informal consultations with statutory consultees and user groups were carried out prior to the Council's Committee Report of 26th September 2018.

5. Financial Implications

- 5.1 Financial costs will be incurred associated with the making and advertising of the Footpath Order. If objections are made and the Order is sent to the Secretary of State further costs will be incurred, the levels being different depending on whether this is by Written representations, a Hearing or Public Inquiry.

Costs

To be met from existing Revenue Budget.

Funding

To be met from existing Revenue Budget.

6. Legal Powers and Implications

- 6.1 Section 53 of the Wildlife and Countryside Act 1981. The Wildlife and Countryside Act 1981 requires that Local Authorities comply with decisions issued by the Planning Inspectorate on behalf of the Secretary of State.

7. Climate Change and Environmental Implications

- 7.1 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

- 8.1 At this time the Committee has no alternative other than to follow the direction that has been issued. The Committee does however have the authority to decide what stance the Council takes regarding the made Order.

9. Equality Implications

- 9.1 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

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

11. Options Considered

- 11.1 The Council must now proceed to make the Order, as directed by the Secretary of State. It is therefore necessary:
- (i) To establish whether the Committee wish to support the Order and if objections are received and forwarded to the Secretary of State that the Council will support the Order through its determination; or
 - (ii) To establish whether the Committee wish to object to the Order. If so to oppose the confirmation of the Order when forwarded to the Secretary of State through its determination; or
 - (iii) To establish whether the Committee wish the Council to be a neutral party, neither opposing or supporting the making of this Order and thereby continue to be a neutral party through its determination; or
 - (iv) To establish whether the Committee accept the Officer opinion in paragraph 3.10 that an option be retained to challenge objections made to the Footpath Order, if those objections propose a higher right; or
 - (v) To bring a further report back to this Committee detailing the responses received to the making of the Order. At that time the Committee will be asked to confirm the stance that North Somerset Council will take in any forthcoming procedures.
 - (vi) To seek the Committee's authority to confirm the Order if no representations or objections are received.

Author

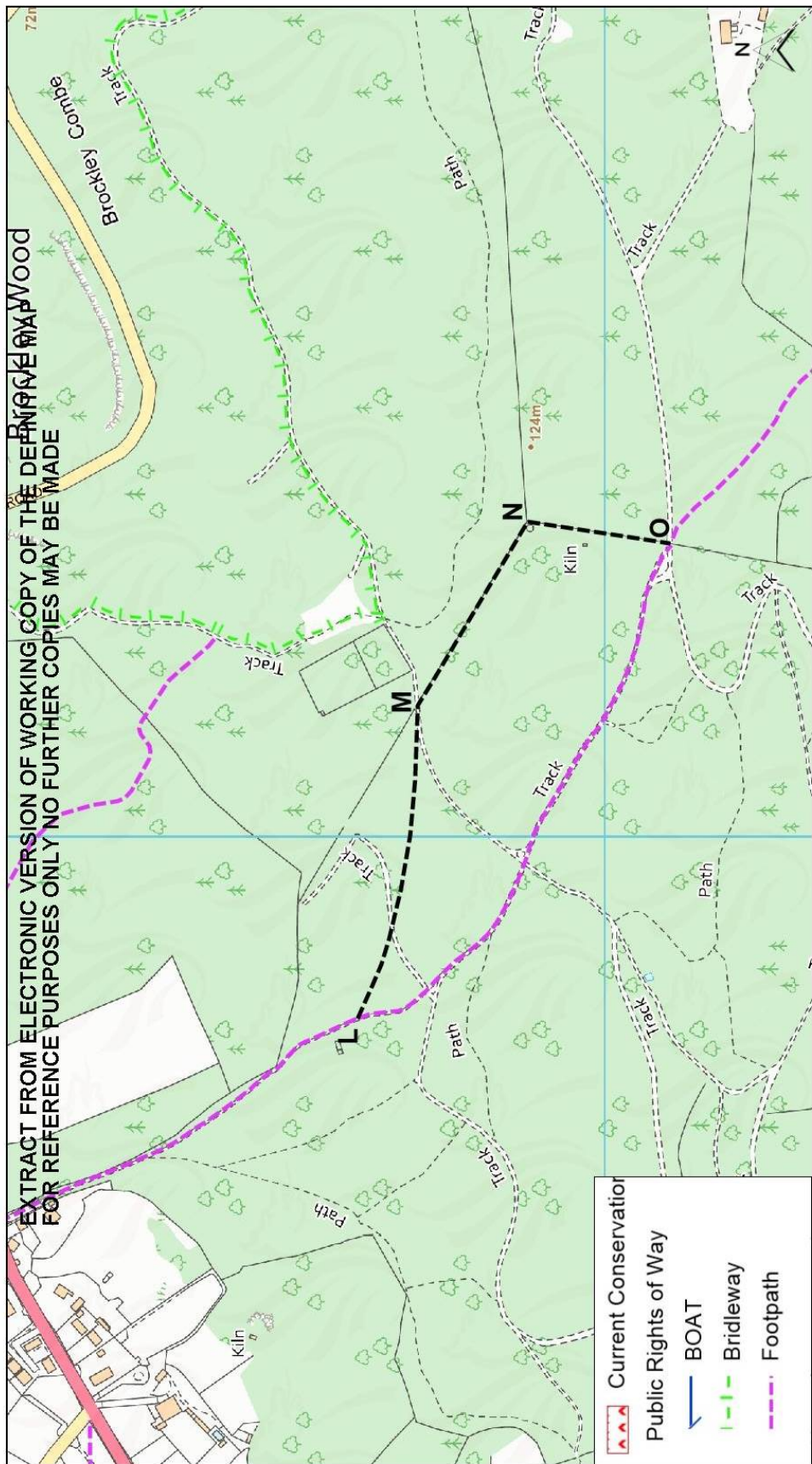
Elaine Bowman, Principal Access Officer Modifications – Ext 7406

Appendices:

Appendix 1 – Location Plan

Appendix 2 – Secretary of State Direction


Background Papers – Public Right of Way File Ref Mod 57



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.

MOD 57 - Appeal Decision Location Plan
Ruggs Lane, Clevee

Public Rights of Way
Scale: 1:5000
Drawn by: Lucy Roca
Date: 07 January 2020
Drawing No: EB/MOD 57



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The Planning Inspectorate

Appeal Decision

by Rory Cridland LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 30 December 2019

Appeal Ref: FPS/D0121/14A/6

- This appeal is made by Ms Venetia Craggs on behalf of the Woodspring Bridleways Association ("the Appellant") under section 53(5) and Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 ("the 1981 Act") against the decision of North Somerset Council ("the Council") not to make an Order under section 53(2) of the Act.
- The application is dated 1 August 2004 and was refused by the Council by letter dated 1 November 2018.
- The Appellant claims that the definitive map and statement of public rights of way should be modified by upgrading a section of footpath LA6/16 to a bridleway and adding a further section of bridleway to at Ruggs Lane, Cleve.

Summary of decision: The appeal is allowed in part.

Preliminary Matters

1. This appeal has been determined on the basis of the papers submitted. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
2. Unless otherwise stated, the lettering referred to in this decision has been taken from the plan which accompanied the application form.

The Appeal Route

3. The appeal route commences on the A340 (point K) and proceeds along public footpath LA6/16 to point L. Here it leaves the footpath to proceed in an east north easterly direction to point P. At this point it continues in a south easterly direction via point M to the disused windmill located at point N after which it continues south to point O where it re-joins footpath LA6/16 at the parish boundary.
4. A second section is identified as being between points L-M and described as 'used by users'.

Main Issues

5. Section 53 of the 1981 Act requires the Council to keep the Definitive Map and Statement (DMS) under continuous review and make such orders as appear requisite in consequence of the occurrence of one of the events set out in section 53(3) of the 1981 Act. This includes the discovery of evidence which, when considered with all other relevant evidence available, shows that (i) 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; or

- (ii) a highway shown in the map and statement as a highway of a particular description ought to be shown there as a highway of a different description.
6. With regard to sections L-P-M-N-O and L-M, these sections are not shown in the DMS. Accordingly, the main issue is whether the evidence discovered, when considered with all other relevant evidence available, shows that a right of way subsists or is reasonably alleged to subsist.
 7. With regard to section K-L, this route is already shown in the DMS as public footpath LA6/16. As such, the main issue for this section of the appeal route is whether the evidence discovered, when considered with all other relevant evidence available, shows that footpath LA6/16 ought to be shown as a bridleway.

Reasons

Sections L-P-M-N-O and L-M

8. There is no direct evidence before me, either user or documentary, which would indicate that it is reasonable to allege that rights of way on foot or horseback subsist over that part of the route shown between points L-P-M. They do not feature in the Yatton and Kenn Inclosure Award 1815 ("the Inclosure Award")¹ and there is no other direct evidence of a public route between these points.
9. However, the Inclosure Award does set out a route which the main parties agree generally corresponds to the points L-M-N-O of the appeal route. It is identified in the Inclosure Award itself as forming part of Cleeve Hill Bridleway and Footway and is described as proceeding along Ruggs Road and then (via points L and M) to the windmill (point N) before continuing on to a footpath set out over Wrington Hill (Point O).
10. Although the Inclosure Consolidation Act 1801 ("the 1801 Act") granted power to set out both public and private bridleways, the award itself is silent on which of these categories Cleeve Hill Bridleway and Footway falls into. Nevertheless, in describing the route, two of the destination points noted by the commissioner are the windmill and the connecting footpath over Wrington Hill at point O. Although there is some evidence to indicate that the windmill had by that time already fallen into disuse (a matter to which I shall return below) the termination of the route at the footpath at point O does indicate that its purpose may have been to provide public access on foot between the two parishes.
11. Furthermore, even though the Inclosure Award provides for the erection of a wall to separate Cleeve Hill from the neighbouring parish of Wrington, there is evidence that, following the erection of this wall, a ladder stile existed at point O which was used to provide access to neighbouring Wrington. This provides a further indication that the route shown on the Inclosure Plan was used for access on foot between these locations.
12. Accordingly, while I accept that the evidence itself is limited and may not be sufficient to demonstrate that a public right of way subsists, in the absence of

¹ which the appellant acknowledges is the main piece of evidence in support of their claim.

any incontrovertible evidence to the contrary, I consider that it is reasonable to allege that one does.

13. However, the same cannot be said of public rights on horseback. Although there is little direct evidence which would shed light on the intention of the commissioner, there seems little purpose in setting out a public bridleway beyond the windmill. Any such route would have terminated at the parish boundary and resulted in a 'cul-de-sac' path with no apparent purpose. While I acknowledge that cul-de-sac routes are not unheard of, there is no evidence which would explain why the commissioner would set out such a route in this case.
14. Furthermore, although I accept that it is possible that the commissioner intended to preserve a public right on horseback to the windmill itself, the evidence indicates that the windmill was, at the time of Inclosure, already disused, in a poor condition and that previous attempts to bring it back into use had already proved unsuccessful. In such circumstances there would have been little point in continued public access to the windmill.
15. Consequently, I find that even though the evidence before me is just sufficient to show that a footpath is reasonably alleged to subsist over the route L-M-N-O, I am not persuaded that, on the evidence before me, that the same can be said of a public right of way on horseback.

Section K-L

16. Turning then to section K-L, the Council contends that the route depicted on the Inclosure Award map commences some distance to the south along Ruggs Lane². This is not disputed by the appellant and having considered the evidence before me, I agree that this provides a more accurate indication of the start of the route described in the Inclosure Award. However, while I note the various suggestions put forward by the appellant as to the reasons for this³, for similar reasons to those set out above in respect of section L-M-N-O, I am not persuaded the Inclosure Award itself provides any direct support for the contention that the section of footpath LA6/16 between points K-L should be shown as a public bridleway. Such a route would have connected with a route of lower status and resulted in a cul-de-sac path with no apparent public purpose.
17. Accordingly, I do not consider that the evidence available is sufficient to show, on the balance of probabilities, that the route K-L over the existing public footpath LA6/16 ought to be shown as a public bridleway.

Other Matters

18. In addition to the Inclosure Award, the appellant has drawn my attention to the Day and Masters map dated 1782. I acknowledge that it depicts a route in the vicinity of the appeal route, however, note that this does not correspond with the appeal route alignment and provides little evidence of status. Furthermore, while I accept that the idea of a pre-existing route being diverted as land was enclosed is not improbable, in the present case there is no robust evidence which would indicate that such a diversion did in fact occur. I do not therefore

² shown with the letter X on plan ref EB/MOD 57 (date 16 August 2017).

³ and accept that there would clearly have been a need for access along this section for those using both Ruggs Road and Cleeve Hill Bridleway and Footway.

consider it adds materially to the case in favour of public rights on horseback over the appeal route.

19. The landowner has drawn my attention to the wording of various notices which were published by the commissioner in relation to the routes awarded. However, while I acknowledge that these may be taken to indicate that a distinction was being made between those which were public and those which were private, the commissioner was merely utilising similar wording to that contained in sections 8 and 10 of the 1801 Act - both of which provide the power to set out public routes. As such, I do not consider any such distinction was being made.
20. In reaching my conclusions I have had regard to the various other matters raised in the written representations. They do not, however, alter my reasoning above.

Conclusion

21. I do not consider that the evidence before me is sufficient to show that a bridleway is reasonably alleged to subsist over section L-M-N-O of the appeal route. Nor do I consider there to be any robust evidence in support of a route between points L-P-M. Furthermore, I have found that the evidence available is not sufficient to show, on the balance of probabilities, that section K-L over the existing footpath LA6/16 ought to be shown as a public bridleway.
22. However, I have also found that, in the absence of incontrovertible evidence to the contrary, it is reasonable to allege that a right of way on foot subsists over the route L-M-N-O. While I am mindful that this is not the status claimed by the appellant and any Order may attract objections from the landowner, in the determination of any order made as a result of this appeal, further evidence may be brought forward that may resolve the status of the appeal route more fully.
23. Consequently, having regard to these, and to all other relevant matters raised in the written representations, I conclude that the evidence available shows that it is reasonable to allege that a right of way on foot subsists over the route L-M-N-O and that the Council should be directed to make an order to that effect.

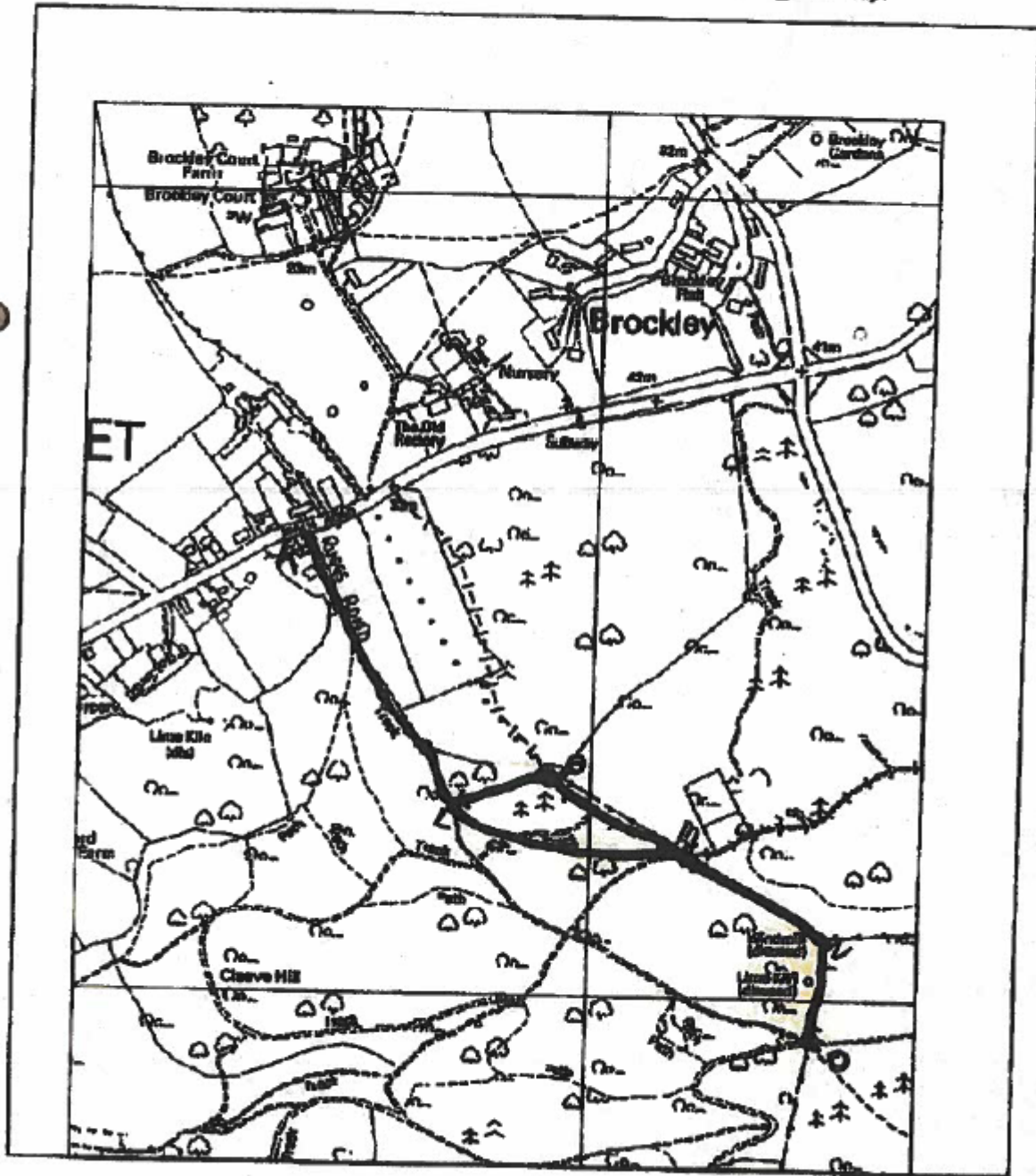
Formal Decision

24. I allow the appeal in part. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, North Somerset Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act to modify the definitive map and statement to add a footpath between points L-M-N-O as set out in the application dated 1 August 2004. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with powers under Schedule 15 of the 1981 Act.

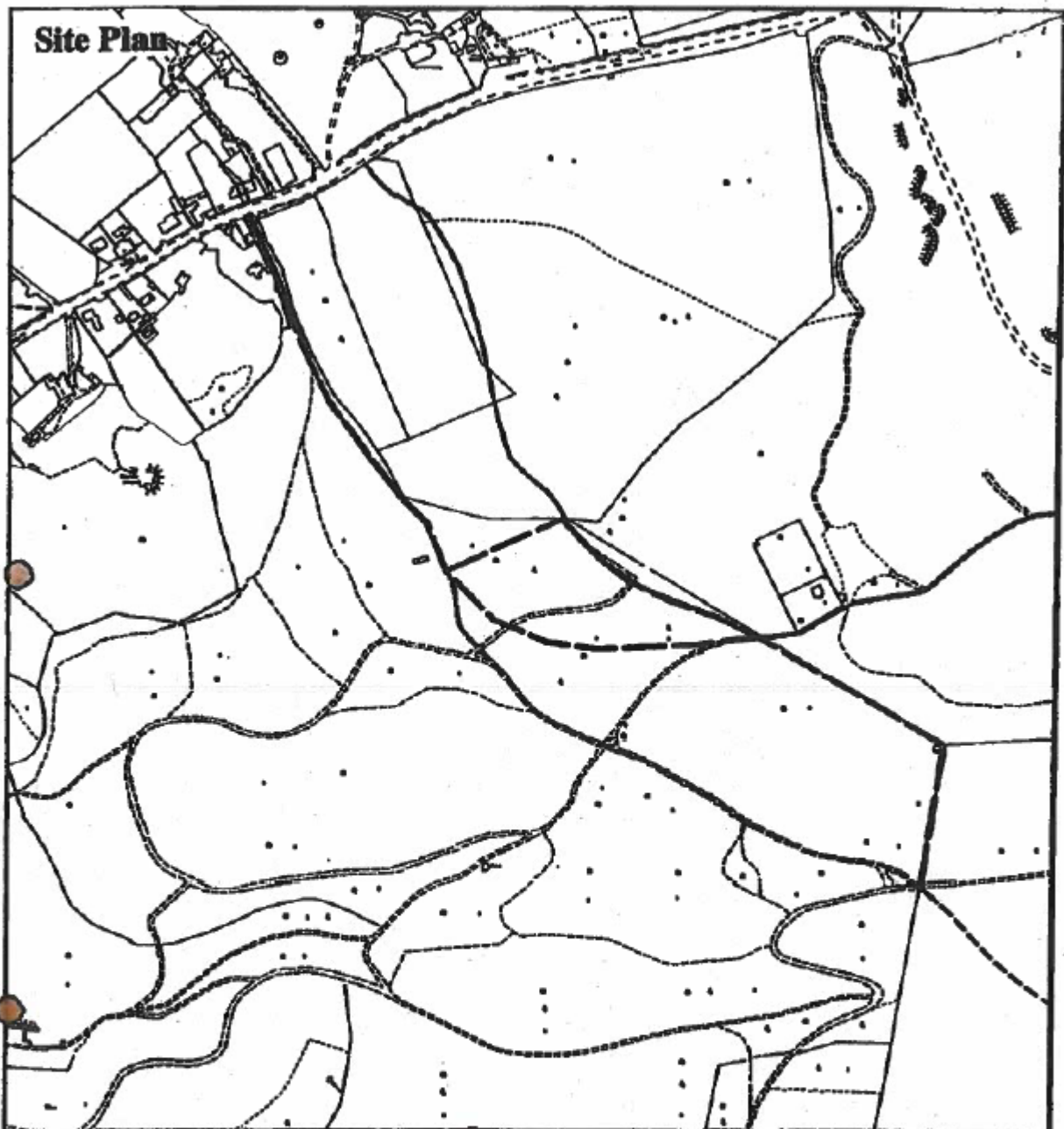
Rory Cridland

INSPECTOR

Plan of Route Used. Please mark the route you have used and sign the map.



As per Inclusion Award



Claimed Bridlepath at Ruggs Road, Cleeve

Poss Mod 57

Wildlife & Countryside Act 1981-Sec 53



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Scale	1:5158
Date	1 November 2005
Map No.	
Grid Reference	
Claimed Bridlepath	