

# North Somerset Council

## Report to the Public Rights of Way Sub-Committee

**Date of Meeting:** 24 November 2020

**Subject of Report:** Mod 60 – Frys Lane to Rickford Farm  
Burrington - Secretary of State Appeal  
Decision

**Town or Parish:** Burrington

**Officer/Member Presenting:** Director of Development and Environment

**Key Decision:** No

### Recommendations

That the Report be noted.

#### 1. Summary of Report

This report is to inform the Committee of an appeal decision from the Planning Inspectorate that was received by North Somerset Council (“the Council”) on 27<sup>th</sup> August 2019. The decision is based on an appeal made by Woodspring Bridleways Association (now known as Axbridge Bridleways Association) on 7<sup>th</sup> December 2018 under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of North Somerset Council not to make an Order under Section 53(2) of that Act. The decision of the Planning Inspectorate is that the appeal is **dismissed**.

#### 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

The subject of this report is an application submitted by Woodspring Bridleways Association on the 13<sup>th</sup> January 2005. That application requested that a Footpath connecting two Restricted Byways, all shown on the Definitive Map and Statement should be modified by upgrading the full route to a Byway Open to All Traffic.

The applicants claimed that a route which is recorded on the Definitive Map as AX10/30 which connects Frys Lane Burrington to the A368 in Rickford should be recorded as a Byway Open to All Traffic instead of its current recording of a Restricted Byway, Footpath

and Restricted Byway. Their belief being that an error was made when the Definitive Map was drawn up. The location of this route can be seen on the Location Map EB/MOD 60 attached in **Appendix 1**.

North Somerset Council's Public Rights of Way Sub-Committee considered this application on 21<sup>st</sup> November 2018 and it was formally resolved **“that the relevant officer be authorised to reject the application relating to Mod 60 Fry's Lane to Rickford Farm, Burrington as there is insufficient evidence to support the claim that route AX10/30 (A-B-C-D) should be recorded as a Byway Open to all Traffic”**.

Following the Council's decision, Mrs Craggs on behalf of Woodspring Bridleways Association (WBA) advised North Somerset Council that they would be submitting an appeal to the Secretary of State on 7<sup>th</sup> December 2018. The grounds of the submitted appeal relied upon documentary evidence.

An Inspector was appointed by the Secretary of State to determine this appeal who, in considering the evidence, considered the relevant parts of the Wildlife and Countryside Act 1981 and the Natural Environment and Rural Communities Act 2006.

The application was made under Section 53(2) of the 1981 Act which requires the surveying authority to keep their Definitive Map and Statement under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3). Section 53(3)(c)(ii) of the 1981 Act specifies that an Order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a highway shown in the map and statement as a highway of a particular description ought to be shown as a highway of a different description.

The Inspector having considered all the evidence presented to them concluded that the appeal should be **dismissed**. Details of the Inspector's Decision can be found in **Appendix 2** of this report.

#### **4. Consultation**

Although North Somerset Council is not required to carry out consultations, affected landowners have been contacted and have been provided with a copy of the Planning Inspectorate's decision.

#### **5. Financial Implications**

This report is for informative purposes only. There will be no further financial implications on this matter.

##### **Costs**

There are no further costs relating to this project.

##### **Funding**

There are no funding requirements for this project.

#### **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**

There will be no further risk to the Council. The applicant has the right to challenge the Inspector's decision in the High Court. No further action is required for the Committee.

## **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**

As this report is for information only, there are no further options for the Committee to consider.

## **Author**

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Access Officer DMMO – Ext 7539

## **Appendices**

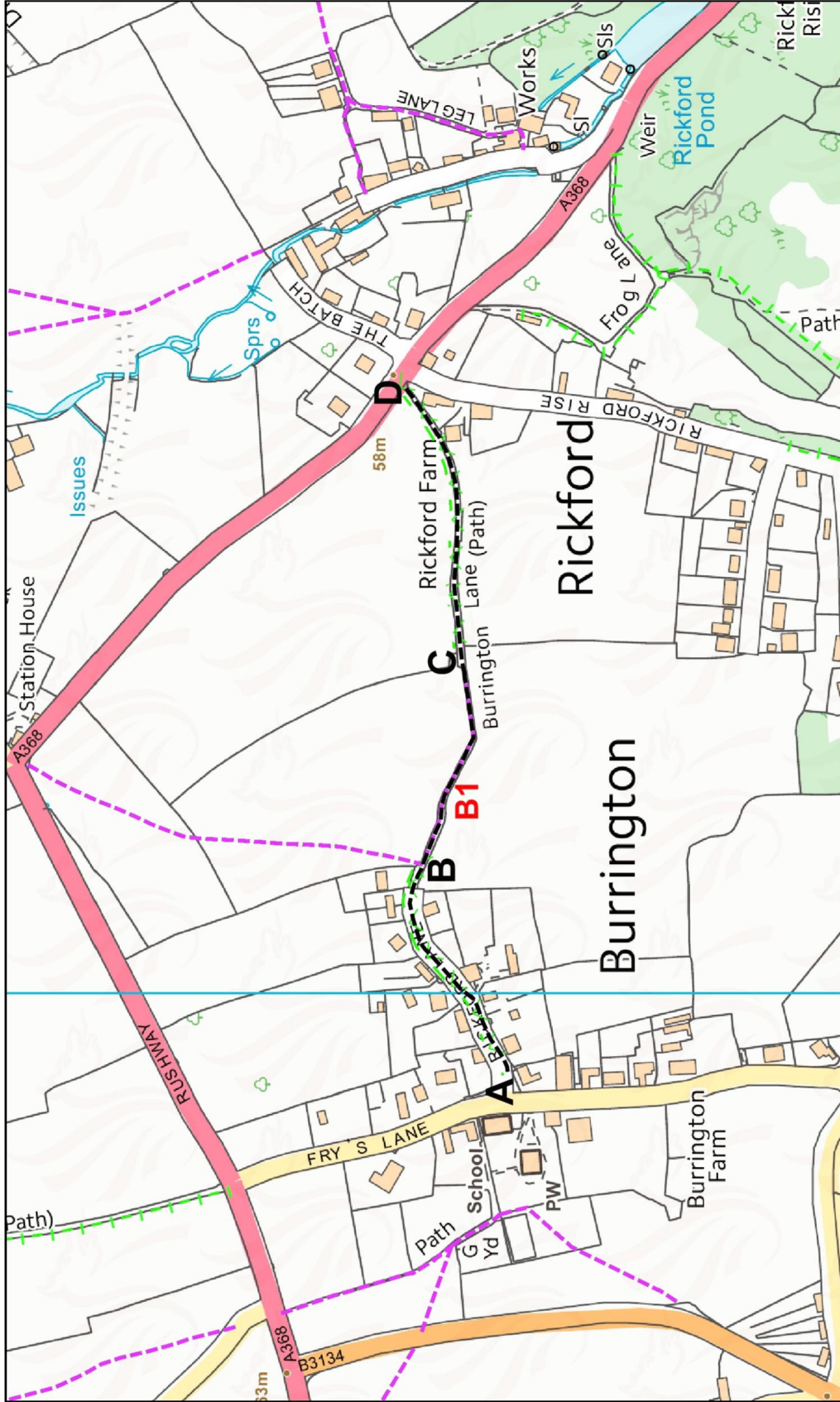
**Appendix 1** – Location Plan EB/Mod 60

**Appendix 2** – Inspector's Decision dated 27 August 2019

## **Background Papers**

Public Right of Way File Ref Mod 64

# Appendix 1 Location Plan EB/Mod 60



**North Somerset**  
COUNCIL

**Location Map EB/Mod 60**  
Frys Lane to A368 Bath Road Rickford

**PROW**  
Castlewood, Tickenham  
Road, Clevedon, BS21  
6FW

Scale: 1:4000  
Drawn by: Lucy Roca  
Date: 29 August 2018  
Time: 10:37:55

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## Appeal Decision

**by Susan Doran BA Hons MIPROW**

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

Decision date: 27 August 2019

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### Appeal Ref: FPS/D0121/14A/8

- This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of North Somerset Council not to make an Order under Section 53(2) of that Act.
- The Application dated 13 January 2005 was refused by North Somerset Council on 7 December 2018.
- The Appellant claims that the appeal route, a public Footpath and Restricted Byway, should be upgraded to a Byway Open to All Traffic.

### Summary of Decision: The appeal is dismissed

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#### Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 ('the 1981 Act').
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.
3. The appeal concerns an application made by Mrs V Craggs on behalf of the Sedgemoor Byways and Bridleways Association. Submissions have also been made on her behalf by Ms J Roseff of the Axbridge Bridleways Association. In reaching this decision, I take account of the submissions from and on behalf of the appellant, North Somerset Council ('the Council') and interested parties, where relevant.
4. The appeal describes upgrading a footpath to a byway open to all traffic ('BOAT'). However, the application was made to upgrade the 'Footpath and Road Used as a Public Path ('RUPP')<sup>1</sup> from the County Road, Rickford Lane, Burrington to Rickford Farm, Burrington and the County Road, to a BOAT. These are recorded in the Council's Definitive Map and Statement ('DMS') as Restricted Byway AX10/30, Footpath AX10/30, and Restricted Byway AX10/30, from Fry's Lane to Rickford Farm, Burrington (at the A368)<sup>2</sup>. For the purposes of this decision I shall refer to them as the 'appeal route'.
5. Since the application was made, public rights to use mechanically propelled vehicles over a way shown in the DMS as a footpath, bridleway or restricted byway have been extinguished by the Natural Environment and Rural Communities Act 2006 ('the 2006 Act'), subject to certain exceptions. Where

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<sup>1</sup> Now a Restricted Byway

<sup>2</sup> Also known as Rickford Lane and Burrington Lane



an application was made prior to 20 January 2005, as here, then those rights may be saved<sup>3</sup>. However, for this to be the case, the application must comply strictly with the requirements of paragraph 1 of Schedule 14 to the 1981 Act.

6. One of those requirements is that it must be accompanied by copies of any documentary evidence, including witness statements, which the applicant wished to adduce in support of their application. In this case, the applicant provided none but relied on the documentary evidence in the Council's own archives, although they did not identify what this was. It was not until 2018 that some documents were submitted by the appellant to the Council. Consequently, the application does not meet the requirement and this exception does not engage; and none of the other exceptions in Section 67 of the 2006 Act are claimed to apply. Therefore, the appeal route cannot be recorded as a BOAT in the event the available evidence demonstrates that public vehicular rights subsist over it. However, it could be recorded as a restricted byway, but only in so far as that part currently recorded as a footpath.

### **Main Issues**

7. The application was made under Section 53(2) of the 1981 Act which requires the surveying authority to keep their Definitive Map and Statement under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
8. Section 53(3)(c)(ii) of the 1981 Act specifies that an Order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a highway shown in the map and statement as a highway of a particular description ought to be shown as a highway of a different description.
9. The appeal relies on documentary evidence. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
10. The test to be satisfied is on the balance of probability.

### **Reasons**

#### *Wrington Inclosure Award 1814*

11. Although not set out under the Award, the eastern part of the appeal route<sup>4</sup> is depicted on a plan showing land exchange, bounded on both sides and ungated, indicating this section at least existed at this date. But it does not assist in determining its status.

#### *Burrington Tithe records 1840*

12. Roughly half way along its length from Rickford Farm the Tithe Map shows the appeal route gated<sup>5</sup> at a field. No continuation is shown across the field, but the appeal route is shown open-ended on the western side of the field where it

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<sup>3</sup> Section 67(3) of the 2006 Act

<sup>4</sup> Approximately two thirds of the route

<sup>5</sup> A solid line extending across the way

continues as an enclosed track west to Burrington. The field is numbered and recorded as 'arable' land with no reference to a 'road'. The remainder of the appeal route is un-numbered. It was not the purpose of the Tithe process to record public rights of way. However, the map shows that much of the route had the appearance of a road, the status of which cannot be determined, and that it accessed land.

#### *Finance Act 1910 records*

13. The Burrington end of the appeal route is excluded from adjacent land parcels which suggests this part was considered to be a public highway, possibly vehicular. However, the central and eastern sections form part of two separate land parcels which are braced across the appeal route. No deductions for public rights of way were claimed for either of these hereditaments.

#### *Ordnance Survey ('OS') Mapping*

14. The 1884 6-inch map names the route. It is open at Burrington where a short way along its length a 'Post Office' is marked. Roughly two thirds further along to the east and at its eastern end it appears to be gated<sup>6</sup>. The route is shown open along its length on the 1898 Map and appears as a 'third class' road. The 1904 6-inch map again names it and shows it as a through route. It appears in the same manner on the 1931 edition. It is uncoloured on the 1959 map (which colours known public highways) and annotated 'FP'. Unlike the usual abbreviation for a footpath, there is no full stop between the letters 'F' and 'P'. Whether this is an error on behalf of the OS is not clear, but no explanation of any alternative meaning for the lettering is given by or on behalf of the appellants.
15. The 1884, 1904, 1931 and 1959 maps show a double or single pecked line meeting the appeal route from the north roughly a third of the way along its length from its western end, which is annotated as a footpath.
16. These maps provide good evidence of the physical features in existence at the time of the surveys, and here suggest it had the characteristics at least of a footpath. But OS maps have long carried a disclaimer as regards status<sup>7</sup>. Accordingly, this evidence does not establish whether the route depicted was public or private.

#### *Bartholomew's Maps*

17. Similarly, the 1904 half-inch to the mile map shows it as a through route identified in the key as a 'Secondary Class Road (Good)'. Like the OS maps, this map carries a disclaimer as regards the status of roads and footpaths represented. However, there is no disclaimer on the 1922 version. Its key states that "Through Roads, First Class Roads, and Secondary Roads were motoring roads", the appeal route being an example of the third category.

#### *Handover Map 1930*

18. The Map showing routes maintainable at public expense colours the appeal route brown in like manner to other 'all-purpose roads' in the area. It is numbered 78 and recorded in the accompanying list as Burrington Lane, an

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<sup>6</sup> A solid line extending across the way

<sup>7</sup> Since 1888 to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way

'Unclassified Road', although the Council says it is unclear what this term meant. They describe this now as a 'Class 4 Unclassified Road'. This adds some weight in favour of rights higher than those on foot existing over the appeal route but is not conclusive of vehicular rights.

19. Annotations alongside the appeal route split it into three parts with either end marked as 'CRF' and the central section as 'FP'. These are the terms used in connection with the Definitive Map process (see below), with 'CRF' first used at this time. It is not clear when these annotations were added to the Map, but it must have been around the period the DMS was being drawn up, or later.

#### *Burrington Parish Council Minutes*

20. An entry dated 26 February 1898 records an alteration to the 'turnstile' on the appeal route<sup>8</sup> so that '*...horses cannot be taken by that way as is at present the custom*'. This implies it had been the practice for horses to use the route, though whether in a public or private capacity is not clear. Neither is it clear what status the route was considered to enjoy at the time.
21. A later entry of 15 October 1898 refers to '*...the difficulty arising from horses and machines being taken through...*' the appeal route, although it does not explain whether this was an issue of suitability, of public rights, or private rights in connection with accessing the land. Subsequent entries between 1898 and 1904 refer to the repair and maintenance of the stile<sup>9</sup> erected to prevent the use described. Further entries concerning its maintenance are recorded in 1945 and 1946.
22. On 25<sup>th</sup> January 1949 the Parish Council agreed that Rickford Lane be subject to a County Council byelaw to prevent cycling on footpaths. The reasons for the byelaw were clarified in 1959, although they were not explained in the Minute reported. The Council has been unable to locate the byelaw but believes 'No Cycling' signs were in place on the appeal route until recently.
23. In 1952 the gate was removed for a trial period to make it easier for parents with small children to use the way. However, it was reinstated following use of the lane by motorcycles; although in 1955 the Minutes reported use by cycles and motorcycles, as well as cattle being driven through the lane.

#### *Definitive Map 1956*

24. The 'Walking Card' prepared by the Parish Council in 1951 records the appeal route as a metalled and hedged path, 9 feet wide, along which there was a kissing gate. It was claimed as a 'CRB'<sup>10</sup> known as Burrington Lane. However, whilst the Parish Council regarded the route as one mainly used as a bridleway, this was amended to 'CRF'<sup>11</sup>, presumably by the County Council some time later in the Definitive Map process.
25. An extract of the Parish Survey Plan provided is of poor quality. However, the Council says it shows only two thirds of the appeal route was claimed, the eastern end.

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<sup>8</sup> Referred to as the 'Dring', a description the Council understands is a local term to describe a narrow green lane

<sup>9</sup> Also referred to as a gate, or 'Tram hatch'

<sup>10</sup> Public Carriage or Cart Road or Green (unmetalled) Lane mainly used as a Bridleway

<sup>11</sup> Public Carriage or Cart Road or Green (unmetalled) Lane mainly used as a Footpath



26. When the Draft Map was prepared the whole of the appeal route was marked by a dashed green line numbered 10/30. However, what may be a later annotation beneath the central section reads, 'FP only No Cycling'. An objection concerning the route records the central section subject to a 'Cycling Order' and therefore a footpath. A modification to record this amendment to the Draft Map was advertised in July 1964 with this part of the appeal route represented by a purple line. The Provisional and Definitive Maps subsequently record the appeal route by a dashed green line, purple line, then dashed green line.

#### *Council Adoption records*

27. Around 2007 the western third of the appeal route (currently recorded in the DMS as a Restricted Byway) was adopted by the Council as having been maintained at public expense.

#### *Conclusions on the evidence*

28. Whilst there is evidence of the longstanding existence of a way at this location, the first indication of the appeal route as a continuous route is found in the 1884 OS map. Earlier documentary evidence shows only part of the route (1814), or that it met with or entered a field along its length (1840). It is possible it continued across the field, but there is no contemporary evidence to support this. Its status cannot be determined from these sources.
29. The Finance Act 1910 Map shows part of the appeal route, at the western end, was excluded from landownership, lending some support to the appellant's case. The 1922 Bartholomew Map provides further support for the existence of public vehicular rights over the whole route, as these maps were produced with the motorist and cyclist in mind. However, although highly regarded as map makers, Bartholomew did not employ independent surveyors to carry out on the ground surveys, or to determine the status of roads depicted on their maps. The appeal route's inclusion in the 1930 Handover Map is conclusive evidence that it was maintained at public expense, a commitment that would not have been undertaken lightly. It is suggestive of an inferior class of road, but not of what rights existed over it.
30. However, by 1910 the appeal route had been subject to a limitation in the form of a gate roughly mid-way along its length already in existence in 1898/9 when it was altered to prevent through-use by horses and 'machines'. There is no evidence of complaints when use was restricted in this way, despite the Minutes referring to use by 'custom', which implies an established use. The records do not clarify whether use was public or private and there is no evidence that any existing public rights were legally stopped up; although there would be none if higher public rights did not exist. Alleged vehicular use to access land either side of the appeal route would not necessarily be public use.
31. Nevertheless, the Parish claimed the appeal route as a CRB in the 1950s, a route used mainly as a bridleway, although this was later amended to a CRF (now restricted byway) with the central section limited to use on foot. This was presumably due to the existence of the gate and the 'No Cycling Order' established in the late 1940s.
32. The appellant refers to the case of *Eyre v New Forest Highways Board* [1892] in that where a short section of uncertain status exists between cul-de-sac ways, it can be presumed that its status is that of the two highways linked by

it. That case was based on user evidence over a long period and evidence of maintenance by the highway authority. In the present circumstances whilst some of the documentary evidence points to a way that was available for use, this is not evidence that the appeal route was used by the public in vehicles; although there is some evidence of its maintenance at public expense.

However, the evidence strongly indicates that use as a through route was restricted to prevent horses, 'machines', and the driving of cattle in the late 19<sup>th</sup> Century, and cycles (through a byelaw) in the mid-20<sup>th</sup> Century.

33. For the appeal to succeed it is necessary to show that a highway of one description *ought* to be shown as a highway of another description. The evidence above when considered as a whole, and on the balance of probability, does not support a conclusion that the appeal route was used by the public with vehicles such that an order should be made to record higher rights than those presently recorded. Accordingly, and further to paragraph 6 above, the appeal as regards the application for BOAT status, and the upgrading of the section presently shown in the DMS as a footpath, fails.

### **Conclusion**

34. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be dismissed.

### **Formal Decision**

35. The appeal is dismissed.

*S Doran*

**Inspector**