



WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53, SCHEDULE 14
APPLICATION TO MODIFY THE DEFINITIVE MAP AND STATEMENT BY
ADDING A RESTRICTED BYWAY AT COPSE LANE, ASHILL AND
UPGRADING FOOTPATH CH 1/23 TO RESTRICTED BYWAY
510 & 511m

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CONTENTS

1. Introduction
2. The Application
3. Description of Routes
4. Relevant Legislation
5. Documentary Evidence
6. User Evidence
7. Landowner Evidence and Evidence from those against the application
8. Consultation and other submissions
9. Summary and Conclusion
10. Recommendation
11. List of Appendices

1. Introduction

1.1 On 30 May 2008 and 13 October 2009 the late Mrs Stephanie Wheeler made applications under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 for an Order to amend the Definitive Map and Statement by:

- i) upgrading footpath CH 1/23 to restricted byway; and
- ii) adding a restricted byway over a route known as Copse Lane.

Both routes are described in more detail in paragraph 2 below.

1.2 The applications were made on behalf of the South Somerset Bridleways Association.

1.3 A restricted byway is a right which can be used by any member of the public on foot, horseback, bicycle or any other non-mechanically propelled vehicles such as a horse and cart.

1.4 The purpose of this report is to establish whether or not these public rights exist, even though only a right on foot is currently recorded on the Definitive Map in respect of the route CH 1/23 and no public rights are recorded in respect of the claimed route along Copse Lane to the north.

1.5 Private rights may exist, but have no place in this investigation and do not form part of the decision making process.

2. The Application

2.1 The application for adding a restricted byway over Copse Lane (application 510M) is based on documentary evidence. Five user evidence forms were also submitted in respect of the application route.

2.2 The application for upgrading footpath CH 1/23 to restricted byway (application 511M) is based solely on documentary evidence.

2.3 This report examines the evidence and draws conclusions for both application route 510M and 511M.

2.4 The applicant supplied a number of documents, either with each application or later, as follows;

Document	Date	510M	511M
Plan the Second Rapps Farm in Ashill & Broadway	1808	•	•
Ordnance Survey (OS) Map	1808	•	
1 st Edition OS map Cassini reprint	1809 - 1811	•	•
Greenwood's Map	1822	•	•
Ilton Tithe Records	1839	•	•
Broadway Tithe Records	1840 - 45	•	•
Sale documents for farm and lands in Ashill and Broadway	1858	•	•
OS map	1888	•	•
OS map Timeline / Cassini reprint	1898 - 1900	•	•
OS Object Name Book	1901/2	•	
OS map	1903	•	•
Finance Act map	1910	•	•
Bartholomew's Map	1911	•	•
RAC Touring Map	1913	•	•
OS map Timeline / Cassini reprint	1919	•	•
OS map	1919	•	•
Bartholomew's Map	1927	•	•
OS map	1928	•	•
OS map	1937	•	•
OS Map	1946	•	•
Summary of Objections to the (Definitive Map) Draft Map and Statement	Circa early 1950's	•	
User evidence forms	2011/12	•	
The Land Registry INSPIRE	2016	•	•

Each of these documents are appended and referred to in Section 4, 'Documentary Evidence', below, except for The Land Registry records which are discussed in paragraph 3.3, below.

2.5 Based on the above the applicant has concluded in relation to 510M that;

“30. All the evidence produced for the application route suggests that vehicular rights existed at the times the various pieces of evidence were created.

31. There are examples, with the OS maps and the Bartholomews maps, where these maps were revised and the application route continues to be shown on every revision.

32. The Inland Revenue records from the 1910 Finance act valuation maps show that the land was not in private ownership.

33. *The Ordnance Survey records, signed by Mr. Speke, the local JP, state that the application routes was a public lane.*

34. *While no single piece is conclusive of highway status, the fact that every standard piece of evidence leans towards vehicular rights means that, on the balance of probabilities, such rights existed prior to the commencement of the Natural Environment and Rural Communities Act 2006.*

35. *The antiquity of the route shows that the highway existed prior to 1835. It will therefore be a highway maintainable at the public expense, and so should be added to the List of Streets maintained by the Council under s.36(6) Highways Act 1980.*

36. *The applicant requests the surveying authority to add the route to the definitive map as a byway. The type of byway – restricted or open to all traffic – will depend on the application of the Natural Environment and Rural Communities Act 2006.*

37. *In the event that motor vehicle rights have not been extinguished, the applicant notes that the route is clearly more used by the public for walking and riding than by motor vehicle, and so would meet the criterion for being recorded on the definitive map and statement.”*

In relation to 511M the applicant concludes that;

“29. All the evidence produced for the application route suggests that vehicular rights existed at the times the various pieces of evidence were created. While no single piece is conclusive of highway status, the fact that every standard piece of evidence leans towards vehicular rights.

30. There are examples, with the OS maps and the Bartholomew’s maps, where these maps were revised and the application route continues to be shown on every revision.

31. The applicant requests the Surveying Authority to add the route to the Definitive Map and statement as a byway. The type of byway, restricted or open to all traffic, will depend on the application of the Natural environment and Rural Communities Act 2006. The antiquity of the route shows that the highway existed prior to 1835. It will therefore be a highway maintainable at the public expense, and so should be added to the List of Streets maintained by the Council under s.36(6) Highways Act 1980.”

3. Description of Routes

3.1 Both application routes are shown coloured blue on the plan at Appendix 1. Copse Lane (reference 510M) over which there are currently no recorded public rights, runs south for approximately 505 metres from point A

to point B. The surface is gravel / stones and earth, with grass verges and grass growing down the centre of at least some of the route. There are ditches to either side. On 10 November 2016 there was a metal gate and pile of earth at either end of the route, although pedestrian and equestrian access to the side of the gates was clearly possible. At point A immediately in front of the gate the width between the ditches was circa 6 metres 80cm and the width of the gravelled surface was circa 2 metres 90cm. At point B the remains of a probable wall, now at ground level, could be seen to the west side of the route. The width of the gravelled surface to the wall was circa 2 metres 60cm.

The route currently recorded as footpath CH 1/23 (reference 511M) runs south for approximately 310 metres from point C through points D and E to point F. From point C to D the surface is mud and gravel, with grass growing down the centre of the route, grass verges and ditches to either side. From point D to F the surface is in better repair and gravelled / stoned. The width of the gravelled surface is circa 2 metres 50cm, and between the edges of the ditches (measured approximately due to the vegetation) 4 metres 90cm. From point E to F the gravelled surface remains circa 3 metres 20cm wide, but the verge width varies with up to 11 metres 80cm between the inner edges of the ditches. The route widens at the junction with the public road at point F to circa 16 metres 80cm.

3.2 Photographs of the claimed route taken on 10 November 2016 are at Appendix 2 (510M) and 3 (511M).

3.3 Land Registry searches were carried out on 11 October 2016 and 4 April 2017. Both application routes have been registered as belonging to the same joint landowners (landowners A, B and C). The evidence and comments of those landowners can be found in paragraph 7, below. In addition, two adjacent landowners were identified (landowner A and D). The owners of some of the land adjacent to the application routes have not been identified.

3.4 Part of the application route (between point D and F on Appendix 1) is registered as leasehold for 4000 years beginning 2 February 1719 (title number WS78642). In some cases leases can affect the capacity of the landowner to dedicate a right of way. However, in this case a copy of the lease has not been seen and the terms are unknown.

4. Relevant Legislation

4.1 The Wildlife and Countryside Act 1981 specifies in Section 53(2)(b), that the County Council must keep the Definitive Map and Statement under continuous review and must make such modifications as appear to them to be requisite in the light of certain specified events. In this case 53(3)(b), (c)(i) and (c)(ii) are of particular relevance. They require the Map and Statement to be modified where the County Council discover evidence which has not previously been considered when the DMS was first drafted or last reviewed¹

¹ See *Burrows v Secretary of State for Environment, Food and Rural Affairs* (2004).

and which, when considered with all the other available evidence, shows the applicability of one of the following:

- 53 (3) (b) reads “*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*”.
- 53 (3) (c)(i) reads “*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*”.
- 53 (3) (c)(ii) reads “*that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description*”.

4.2 Section 53 (c)(i) applies to the application to add a restricted byway along Copse Lane, since that route is currently not recorded as a public right of way. In order to make an order the County Council would therefore need to be of the view that a right either subsists or can be reasonably alleged to subsist along Copse Lane. If the user evidence submitted with this application is sufficient to show that rights have been dedicated over the route under section 31 of the Highways Act 1980 (see paragraph 6 below) then section 53(3)(b) of the 1981 Act may also be relevant.

4.3 Section 53(3) (c)(ii) relates to the application to upgrade footpath CH 1/23 to a restricted byway. In the case of such upgrades a balance of probabilities must be applied before concluding whether the route should be shown as having a higher status.

4.4 Later in the same Act section 53(5) enables any person to apply to the Authority (Somerset County Council) for an Order to be made modifying the Definitive Map and Statement in respect of a number of ‘events’ including those specified in Section 53(3)(b) and (c) of the Act as quoted above. On receipt of such an application the County Council is under a duty to investigate the status of the route. It was under these provisions that the South Somerset Bridleway Association made their application.

4.5 The purpose of Section 53 of the Wildlife and Countryside Act 1981 is to record or delete rights from the Definitive Map and Statement rather than create or extinguish the rights themselves. Practical considerations such as suitability, the security and wishes of adjacent landowners cannot be considered under the legislation.

4.6 With reference to application 510M, which is supported by evidence of public use, it should be noted that, 20 years’ use by the general public can give rise to the presumption of dedication of a way under Section 31 of the

Highways Act 1980. The period of 20 years is measured backwards from the date of challenge by some means sufficient to bring it home to the public that their right to use the way is being challenged. The full text of Section 31(1) states *“where a way over any 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 20 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”*.

4.7 Applications based on documentary evidence, as opposed to evidence of use, rely in part upon Section 32 of the Highways Act 1980 which states that *“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 weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, 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”*.

4.8 The Natural England and Rural Communities (NERC) Act 2006, Section 66 and 67, extinguished rights for mechanically propelled vehicles (MPV's) over any routes that were recorded on the Definitive Map as footpath, bridleway or restricted byway and over any routes that were not recorded on the Definitive Map or the list of highways maintained at public expense. There are a few exceptions to the general rule outlined above, none of which appear to apply in this case. There is therefore no question of rights for MPV's existing over the claimed route.

4.9 Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an order changing the Definitive Map is made, Members must be satisfied that public rights have come into being at some time in the past. This might be in the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence). The decision is a quasi-judicial one in which the decision maker must make an objective assessment of the available evidence and then conclude whether or not the relevant tests set out above have been met.

5. Documentary Evidence

5.1 The table below shows documentary evidence sources examined as part of this investigation. Unless otherwise stated, the description and interpretation of the evidence relates to both application route 510M and 511M, or parts of both routes.

5.2 In some cases it has not been possible to view the original copy of a document and it has instead been necessary to rely entirely on an extract supplied by the applicant. Where this is the case the words 'extract only'

follow the title of the document. In some cases it has been necessary to give those documents less weight on account of them only being viewed in part.

5.3 Sources of evidence which were examined but were not of assistance in determining whether or not public rights exist over the application routes are listed in section 5.12.

5.4 Enclosure Records

5.4.1 Explanation of the type of evidence

Enclosure Awards are legal documents that can still be valid today. They usually consist of a written description of an area with a map attached. Awards resulted from a need by the landowners to gather together their lands and fence in their common lands. A local Act of Parliament was often needed to authorise the procedure and an Enclosure Commissioner was appointed as a result to oversee the compilation of the award and map. Land was divided into individual plots and fields and redistributed amongst the existing owners. Enclosure Awards provide statutory evidence of the existence of certain types of highway. They enabled public rights of way to be created, confirmed and endorsed and sometimes stopped up as necessary. Enclosure Commissioners surveyed land that was to be enclosed and had the power to 'set out and appoint public and private roads and paths' that were often situated over existing ancient ways.

5.4.2 Map of Neroche Forest and West Sedgemoor Enclosures, c. 1830. South West Heritage Trust (SWHT)

Reference: DD\DP\C1358\20.

Appendix: 4

5.4.3 Description and interpretation of the evidence

There is no key for the map, very few labels, and no feature (fields, roads, houses etc.) are numbered. The features are drawn in black ink with some areas tinted green. Without a key, labels or numbered features it is not possible to relate the map to an award and only limited conclusions can be drawn from this source.

Although the area of the application routes are covered by the map, they are not depicted in full. The north and south junctions of Copse Lane at points A and B on Appendix 1 are shown, but not the route of the Lane between them. 511M is shown from just north of point D to point F on Appendix 1. Where shown the routes are depicted uncoloured between solid casing lines of equal thickness, except between points E and F where the route forms part of a triangle of land tinted green. This green area is now bounded by three ways, including one public road and the application route between E and F, but none of these ways are depicted on this map. There are no lines across the route and the routes are not labelled or numbered.

The map is good evidence that the application routes, as far as they are shown, existed on the ground in 1830. The depiction of the way between E and F at the south end of 511M suggests it was of a different character to

most of the roads depicted but there is nothing to indicate whether this was because of its public or private status and may be related to the surface, or whether it was fenced or some other unknown factor. Therefore, no weight is given to this evidence as it would be equally consistent with either public or private rights over the application routes.

5.5 Tithe Records

5.5.1 Explanation of the type of evidence

Tithe maps and the written document which accompanied them, (the apportionment) were produced between 1837 and the early 1850's in response to the Tithe Commutation Act 1836, to show which landowner owned which pieces of land and as a result how much they owed in monetary terms. The tax replaced the previous 'payment in kind' system where one tenth of the produce of the land was given over to the Church.

A map was produced by the Tithe Commissioners which showed parcels of land with unique reference numbers, and these were referred to in the apportionment document, which contained details of the land including its ownership, occupation and use. The base map used by the Tithe Commissioners for this purpose could have been a pre-existing map or a new survey, and the quality of the maps therefore varied.

Public roads which generated no titheable produce were not given a tithe number. For the same reason some private roads were also not liable to a tithe. However, both public and private roads could be subject to a tithe, if for instance, they produced a crop e.g. for grazing or hay cut from the verges.

The Map and Apportionment must be considered together. Roads were sometimes listed at the end of the apportionment and there was often a separate list for private roads.

Tithe maps provide good topographical evidence that a route physically existed and can be used to interpret other contemporary documents but were not prepared for the purpose of distinguishing between public and private rights and so tend to be of limited weight.

5.5.2 Broadway (old enclosures) Tithe Map and Apportionment c.1840.

SWHT Reference: D\D/Rt/ M/454 and D\D/Rt/A/454. Appendix: 5

Ilton Tithe Map c.1839 and Apportionment 1837 - 1840. SWHT Reference: D\D/Rt/M/131 and D\D/Rt/A/131 Appendix: 6

5.5.3 Description and interpretation of evidence

There are two classes of Tithe Map. First class maps which had the Commissioners' seal attached, were deemed to be a reliable record of all matters which they portray. Second class maps did not have the Commissioners seal attached, and although still very useful, were only officially considered reliable in respect of the information they contained relating to tithes. Both the Tithe maps for Broadway Old Enclosures and Ilton

are second class maps.

Both application routes appear on the Broadway Old Enclosures tithe map depicted in the same way, that is, coloured yellow between solid lines. Neither is numbered nor specifically referred to in the apportionment. All linear routes shown on the map are depicted in the same way, including Stoford Lane which is not now a public right of way (labelled SL on Appendix 5), the track over which footpath CH 2/7 now runs and ways which are now public roads including the road which runs from the A358 to Rapps, which the application routes meet at points B and C.

Apportionment 269 (bounded on the west by 511M between points E and F and which is not shown as clearly separated from the surrounding roads on some other sources) is described as 'Part of Rapps Green' and 'arable'.

'Roads and Streams' are listed at the end of the apportionment as 29 Acres, 2 roods and 0 perches with no apportionment number, owner or occupier.

This indicates that the land covered by the application routes was not used to generate any titheable produce, and also that the Tithe Commissioner did not distinguish between different types of road, whether public or private.

The Ilton Tithe Map shows the southernmost end of Copse Lane labelled 'To Clayhanger' and the whole of application route 511M. All linear routes on the map are shown in the same way within solid casing lines of the same thickness, and uncoloured. The area of the application routes is on the edge of the mapped area and the fields to the east and west of 511M are not numbered. It therefore seems this area was not part of the tithe apportionment for Ilton and was only depicted on the map to provide context for the fields which were included. At the end of the apportionment 'Roads rivers and streams' are listed as 31 acres 2 roods 30 perches with no owner, occupier or apportionment number.

The Tithe Maps provide excellent evidence of the physical existence of the application routes. However, Tithe Maps and Apportionments were not intended as a record of public rights and either public or private roads could be included or excluded from the titheable area depending on whether or not they were productive. This means these tithe records are consistent with both public and private rights and therefore these documents are not helpful in determining the status of the application routes, and are given no weight either way in this investigation.

5.6 Ordnance Survey Records

5.6.1 Explanation of the type of evidence

The Ordnance Survey (OS) are generally accepted as producing an accurate map depiction of what was on the ground at the time of a survey.

Although OS Maps cannot generally be regarded as evidence of status, they

do indicate the physical existence of a route at the date of survey.

**5.6.2 OS 1808 'Old Series' 1:63,360 / 1 inch to 1 mile
Appendix: 7**

The whole of both application routes are shown bounded by solid, parallel lines of equal thickness. Although many of the routes depicted in this way on the map are now public roads (for example, the now unclassified road from Thickthorn Cross to Hastings and from Three Oaks Cross to Cad Green), others are not public rights of way of any kind and appear to be access to land or buildings only. For example, a route leading north and south from public roads to Rowland's Farm (labelled RF on Appendix 7), another leading to a moated property which no longer exists (labelled M on Appendix 7) and a track or drive leading to Parshalls Farm (labelled PF on Appendix 7). Another route depicted in the same way as the application routes is recorded as a footpath, CH 11/4, also labelled on appendix 7.

5.6.3 OS Surveyors' Drawings 1811. Appendix: 8

From point A to D the application routes are shown between solid parallel lines of equal thickness. Between points E and F a triangle of land shaded with dots or dashes forms the eastern boundary of the application route, the south-east boundary of the now public road and the southern boundary of the linear route which runs east from point E.

Although most of the routes depicted in the same way as the application route from point A to D are now public vehicular roads, the way leading to Rowland's Farm (labelled RF on appendix 8) and the way leading to a moated property which no longer exists (labelled M on Appendix 8) are depicted in the same way but are not now recorded as a public right of way. There is, however, a line across the junction between the public road and the route leading to Rowlands Farm and lines enclosing the way to the moated property, but no similar lines across the application routes.

**5.6.4 OS County Series 1st Edition Map 25 inch : 1 mile
Sheet Nos: LXXX.12, LXXX.16 Surveyed 1886, Published 1888
Sheet No: LXXXI.13, Surveyed 1886, Published 1887. Appendix: 9.
Second Edition, Revised 1902, Published 1903. Appendix: 10.**

On the 1888 map the northern part of Copse Lane (application route 510M) is depicted on map sheet LXXX.12 with a dashed line across the junction with Park Barn Lane (point A on Appendix 1), casing lines of equal thickness and parallel dashed lines within the casing lines. A way leading from the public road to Burleaze Farm on map sheet LXXXI.13 (see appendix 9) is depicted in a similar way and is not now recorded as a public right of way or road. Park Barn Lane is depicted with a thickened casing line to the south and east and either coloured sienna between the casing lines, or coloured sienna between dashed lines within the casing lines.

The southern part of Copse Lane depicted on map sheet LXXX.16 is shown for a very short section with parallel casing lines of equal thickness within

which is a dashed line on the west side, then with casing lines of equal thickness. This is similar to the way in which the route shown running east and west of points D and E which is not recorded as a public right of way, is shown (although an application to record this route as a restricted byway has been received but not yet determined).

There is a solid transverse line at the junction between the southern end of Copse Lane and the public road (point B). None of Copse Lane is coloured sienna.

The northern part of application route 511M between C and D is shown with a dashed line across the junction with the public road (point C), uncoloured, with casing lines of equal thickness. At the 'crossroad' at White House (point D and E on Appendix 9) there are dashed lines across the route.

To the south of point E there is a thickened casing line to the east from point E to Rapps Cottage, and part of the route between the casing lines is coloured sienna, defined by a dashed line or lines until it meets the public road which is depicted in the same way.

The 1903 maps (Appendix 10) are uncoloured but otherwise depict the application routes in a similar way to the 1888 maps. There are now no parallel dashed lines on Copse Lane, and the casing lines over the whole of both routes are the same thickness. At the southern end of Copse Lane (point B) a sub-oval feature, probably a pond, is shown at the junction between Copse Lane and the public road with the solid transverse line seen on the earlier map going through it.

In addition, parallel dashed lines labelled F,P, are shown along the route of footpath CH 1/21 (which extends south-west from point D and does not form part of the application route) as well as parallel with application route 511M on the west side of the field boundary between points C and D.

5.6.5 OS Revised New Series Map

Sheet 311

Revised 1896, published 1898

Scale: 1:63,360 / 1 inch to 1 mile

Appendix: 11.

The entire length of both application routes is depicted in the same way with narrow casing lines of equal thickness. The key identifies this as a fenced, unmetalled road. At the northern end of route 511M (point C) a solid transverse line separates the application route from the public road. All other junctions are depicted without transverse lines.

5.6.6 OS Object Name Book, 1902. Extract only.

Appendix: 12

In preparing the second edition County Series map, the Ordnance Survey produced an 'object names book' (ONB) the primary purpose of which was to

ensure that the various names recorded on the maps (e.g. names of farms, roads, places etc) were accurate and correctly spelt. To this end each book contained a list of those names and a description of the feature to which they related. Each of the names in those books was later corroborated by a prominent member of the local community (e.g. a landowner or clergyman).

This document describes Copse Lane as “A public lane running N.E. from its junction 20 chains S.E. of Three Oaks Cross on the W. of Every’s Copse to its junction at the at the N.W. corner of Every’s Coppice”. The ‘Authority for the modes of spelling’ is given as ‘W.Speke Esq J.P’.

Below the entry for Copse Lane is an entry for Every’s Copse, most of which has been crossed through in red except for “The property of W. Speke Esq. Jordans, Ilminster” The entry for Rapps Farm on the same page is described as “A farm in the W. of Rapps occupied by W. F. [.]eitch, the property of the above”. The only name above on that page is that of W. Speke. No indication of ownership is given for Copse Lane.

The OS Instructions to field examiners gave a list of the best individual authorities for corroborating entries in the ONB in the order in which they should be taken; “Owners of property; estate agents; clergymen, postmasters, and schoolmasters, if they have been some time in the district; rate collectors; road surveyors; borough and county surveyors; gentlemen residing in the district; Local Government Board Orders; local histories; good directories”². This would suggest W. Speke would have been considered an excellent authority by the OS.

Although the purpose of the ONB was to ensure the correct spelling of features and not to record the public or private status of ways, because W. Speke was a local landowner who owned land adjacent to the application route 510M (Copse Lane) this evidence has been given a little more weight than it might otherwise have been.

5.6.7 OS Contoured Road Map, 1 inch, Chard and Axminster, 1919.

Extract only.

Appendix: 13

The full length of both application routes is show uncoloured between narrow solid black casing lines of equal thickness (although green tinting from neighbouring wooded areas overlaps parts of the route). The key identifies two types of uncoloured road, one with wider spaced casing lines (roads under 14” wide with a bad surface) and one with narrow spaced casing lines. From comparison with the other uncoloured routes on the map the application routes are shown using the narrow spaced casing lines which the key identifies as ‘minor roads’. Most uncoloured roads (between either narrow or wider casing lines) shown on the extract are now public roads. However, the way extending roughly east north-east from point E, and the route providing

² Quoted in Oliver, R. (2005) *Ordnance Survey Maps. A concise guide for historians* Charles Close Society for the Study of Ordnance Survey Maps, London, page 92.

access to Rowland's Farm (labelled RF at appendix 13) are both shown as uncoloured roads and neither are now recorded as public rights of way of any kind.

5.6.8 OS Popular Edition Cassini reprint, 1919. Extract only.
Appendix: 14

This extract depicts the application routes in the same way as the OS Contoured Road Map for Chard and Axminster, 1919 (see 5.6.7 above), but no key was provided.

5.6.9 Ordnance Survey Road Map, half inch, Taunton and Weymouth, 1928. Extract only.
Appendix: 15

Both application routes are shown uncoloured with casing lines of equal thickness. The key identifies Ministry of Transport "A" roads (red), Other Motor Roads (yellow with a shaded casing line), and Other Motor Roads narrow Good (yellow, casing lines of equal thickness) and Bad (uncoloured, casing lines of equal thickness) and Minor Roads as slightly narrower, uncoloured, with casing lines of equal thickness. The difference between the thickness of the two uncoloured roads is slight, but from comparison with the other uncoloured roads on the extract of the map provided the application routes appear to be classed as Minor Roads.

5.6.10 Ordnance Survey Map
1 inch: 1 mile 1937 Sheet 129, fifth edition. Extract only.
Appendix: 16
1 inch: 1 mile 1946 New Popular Edition, sheet 177 (revised 1930 with later corrections). Extract only.
Appendix: 17

Both maps show both application routes as narrow, uncoloured, with casing lines of equal thickness. Both keys identify them as 'Minor Road in towns. Drives and Unmetalled Roads'.

5.6.11 Interpretation of Ordnance Survey evidence

The 1808 'Old Series' map and 1811 Surveyors Drawing both show the application routes in the same way as other both public and private routes are shown.

The 1888 25 inch to 1 mile map shows a solid line across the application route at point B possibly indicating a barrier. A further feature, possibly a pond is shown in the same position on the 1903 map. A transverse line is also shown at point C on the 1898 1 inch to 1 mile map. A solid line across the application route may indicate a physical barrier most likely a gate. While it is rare, it is possible for a public road to have been gated. Ponds were also sometimes deliberately used to wet the wheels of carts to avoid shrinkage as the wood dried out, but without further evidence it is not possible to tell

whether the possible pond was used for this purpose, although the shape (not rectangular and not apparently wide enough) would suggest it wasn't constructed for use as a cart pond. Overall however, this map weighs slightly in favour of the route being a private, rather than a public vehicular way.

In relation to thickened casing lines the Planning Inspectorate's Consistency Guidelines state that "*From 1884 onwards, on the large scale plans, those metalled public roads for wheeled traffic, kept in proper repair by the local highway authority, were to be shown with shaded or thickened lines on the south and east sides of the road.*"³ On the 1888 25 inch map the southern part of 511M has a shaded casing line to the east between point E and Rapps Cottage, and is partly coloured sienna. This suggests the surveyor believed this portion of application route 511M was a public, metalled, vehicular route kept in good repair by the highway authority. However the weight attributed to the surveyor's view is lessened by the fact that routes which do not carry public vehicular rights, such as the road leading to Rowlands Farm, are depicted in the same way⁴.

The 1898 1 inch to 1 mile and 1903 25 inch to 1 mile map both show the application routes with casing lines of equal thickness, which could be either public or private. Use of a pecked line annotated with 'FP' on the 1903 map indicates the physical existence of a route to the west of B-C, but not whether or not it carried public rights. In any case it is noted that the footpath is shown on the field side of the boundary and not over the current application route.

Both 1919 maps show routes which are now both public and private in the same way as the application route.

The 1928 map identifies the application routes as 'Minor Roads' but does not indicate whether or not they were considered to be public or private roads.

The classification of the application route on the 1937 and 1946 one inch maps as 'Drives and Unmetalled Roads' (as they are clearly not minor roads in a town) does not indicate public or private status. A 'drive' is usually a private access to a property, but an unmetalled road could be either public or private.

The way in which roads were depicted on OS maps was more concerned with the physical characteristics (whether metalled, whether in good repair etc) than their public or private status. The OS maps are therefore excellent evidence for the existence of the route on the ground, but would be consistent with either public or private rights and they do not help determine whether the general public had a right of way over the application route, or if they did, what

³ DMO Consistency Guidelines, 6th revision May 2015 Section 12.26, page 8

⁴ This accords with Dr Hodson's analysis in her article 'Roads on OS 1:2500 plans 1884-1912' in which she concludes that shaded casing lines were used to depict well maintained private, as well as public, roads.

type of right of way they had. OS maps themselves have carried a statement to this effect since 1888 and case law confirms this view.⁵

The description of Copse Lane as 'a public lane' in the Object Name Book by itself is fairly good evidence in favour of public rights. However, the term 'lane' is less helpful in determining what type of public rights might exist. 'Lane' is defined in The Concise Oxford Dictionary of Current English (1911)⁶ as 'Narrow road usu. between hedges' and there is no indication of whether public use was on foot, horseback or in vehicles.

It has not been possible to identify W. Speke who corroborated the spelling of Copse lane. However, he was clearly a Justice of the Peace and is identified in the object name book as the owner of Rapps Farm. Contemporary records give the surname of landowners in the area as Speke, including fields bordering the majority of the application routes in the 1910 Finance Act records (hereditaments 2 and 71 owned by Major Speke). W. Speke is therefore likely to be a reliable source, although he does describe Copse Lane as running N. E. when in fact, it runs North from the point he described. As W. Speke is described as the owner of Rapps Farm it is perhaps of some significance that no landowner is given for Copse Lane. If it was owned by W. Speke who was providing the authority for the names in these entries it would be expected that he would be named as the landowner as he was for Rapps Farm. Copse Lane may have been in other private ownership, but this document suggests W. Speke of Jordans, Ilminster, did not consider that he owned Copse Lane.

The primary purpose of the Object Name Book was, however, to check the spelling of names, not the status or ownership of roads, and it is therefore not conclusive and needs to be considered in the context of the rest of the evidence.

5.7 1910 Finance Act

5.7.1 Explanation of the type of evidence The Finance Act of 1910 provided, among other things, for the levy and collection of a duty on the incremental value of all land in the United Kingdom.

Land was broken into land ownership units known as hereditaments and given a number. Land could be excluded from payment of taxes on the grounds that it was a public highway and reductions in value were sometimes made if land was crossed by a public right of way. Finance Act records consist of two sets of documents which are:-

- Working Plans and Valuation Books. Surviving copies of both records may be held at the Local Records Office. Working maps may vary in details of annotation and shading. The Valuation Books generally

⁵ Attorney General v Antrobus (1905), quoted in *DMO Consistency Guidelines – 5th revision July 2013*, Section 12, page 1

⁶ P.455, H. W. Fowler and F. G. Fowler.

show records at a preparatory stage of the survey.

- The record plans and Field Books (small bound books) are the final record of assessment and contain more detail than the working records. The Record Plans and Field Books are deposited at The National Archives, Kew.

While the Valuation and Field Books were generally kept untouched after 1920, many of the working and record maps remained in use by the Valuation Offices and sometimes information was added after the initial Valuation process.

The 1910 Finance Act material did not become widely available until the mid 1980s. It cannot therefore have been considered during the Definitive map making process and can be considered “new evidence”, if it is relevant.

**5.7.2 Finance Act Working Copy Map. SWHT reference number: DD/IR/OS 80/12 and 80/16. Finance Act Valuation Book. SWHT reference number: DD/IR/T/2/3. Appendix number: 18
Finance Act Record Plan map sheet LXXX.12 and LXXX.16.
Appendix number: 19**

5.7.3 Description and interpretation of evidence

The working copy of the Finance Act Map sheet LXXX.16 shows both the southern part of Copse lane and 511M excluded from the surrounding hereditaments. A footpath (parallel dashed lines labelled F.P.) is shown on the base mapping in the field immediately to the west of the application route along the route of footpath CH 1/21 and parallel with application route 511M. This hereditament is numbered ‘2’ and a deduction of 10 is shown for ‘Public rights of way or user’ in the Valuation Book, but it is uncertain whether this relates to one, or both foot paths indicated on the base mapping. In any case neither runs over the application route.

Sheet LXXX.12 does not show valuation information for the relevant area and therefore the northern part of Copse Lane which is shown on the base mapping is neither included nor excluded.

The Record Plans also show both application routes excluded from the surrounding hereditaments, although the red line outlining the hereditaments crosses 511M at point E (see appendix 19). This is probably a drafting error as there is no corresponding line at the other end of the way, and no hereditament number is given for the way.

If a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular. However, there may be other reasons to explain its exclusion⁷. Most excluded routes on the record plan are public vehicular roads, but there are exceptions particularly where a right of way travels over a

⁷ *DMO Consistency Guidelines – 5th revision July 2013 Section 11 page 4*

fenced route. For example (all labelled on Appendix 19);

- on map sheet LXXX.11 footpath CH 1/12 and CH 1/1,
- on map sheet LXXX.15 footpath CH 1/14.

The route of bridleway CH 1/7 is partly excluded from the surrounding hereditaments where it travels over Parsonage Lane (not a vehicular route), which appears from the base mapping to be fenced as far as Parsonage Farm. Although the southern end of the current bridleway CH 1/7 runs over an apparently fenced route, this section was diverted onto this route under Section 108 of the Highways Act 1959, in 1966, and originally ran over the unfenced section indicated on appendix 19, and this section is included in hereditament 139.

There are also some ways which carry no recorded public rights at all which are excluded from surrounding hereditaments, although most of these are cul-de-sacs;

On map sheet LXXX.16;

- the ways which extend approximately north-east and south-west from point D on Appendix 1.

On map sheet LXXX.11;

- the route at Kenny (labelled K on Appendix 19)
- an un-named way (labelled LP on Appendix 19)

On map sheet LXXX.15;

- a route leading to Venner's Farm (labelled VF on Appendix 19)
- a route south of Barrington Hill Farm (labelled BH on Appendix 19)

In addition some apparently fenced routes over which no public rights are recorded are included in hereditaments, including on map sheet LXXX.15 the route leading from Comers Barn to Every's Copse (labelled EC on Appendix 19) and the way leading to Rowland's Farm (RF on Appendix 19).

It therefore seems that where a public footpath or bridleway was fenced (shown on the base mapping as solid rather than dashed casing lines) in this area at least it was not uncommon for it to be excluded from the surrounding hereditaments even though no public vehicular rights existed over that route. Application route 511M is recorded on the DMS as a footpath and is therefore a public highway, and although public highways excluded from hereditament in Finance Act records are "normally" vehicular, they are not "necessarily" so. In isolation, the exclusion of route 511M from the surrounding hereditaments would therefore be entirely compatible with public rights no higher than a footpath. This accords with the approach taken by Mr Beckett to the Finance Act 1910 evidence in relation to an order to upgrade a footpath to a bridleway in the Lake District. While evidence of this nature clearly needs to be considered on a case by case basis, in that case Mr Beckett took the view that "the exclusion from the assessment is that the surface of the Order route carried a public highway; where such highways followed enclosed lanes they were generally not subject to the valuation process. As the route is currently recorded as a public footpath in the DM&S, I cannot place significant weight upon the Finance Act map as showing the existence of a public highway of a higher status than that which is known to subsist; it is not improbable for the only public rights in existence in 1910 to have been those pedestrian rights

currently recorded”.⁸

Application route 510M (Copse Lane) is also excluded from the surrounding hereditaments which would normally be good evidence of public rights, but as it is also shown as fenced, and there are some fenced routes nearby over which there are no recorded public rights which have also been excluded from the surrounding hereditaments, this evidence is weakened.

5.8 Highway Road Records held by the County Council

5.8.1 Explanation of the type of evidence The Local Government Act 1929 transferred the responsibility for maintenance of certain highways from Rural and Urban District Councils to County Councils. At that time ‘Handover Maps’ and schedules were prepared showing all roads to be maintained by the County Council at this point. Subsequent maps showing roads for which the County Council was liable to maintain were produced in the 1930s, 1950s and in the 1970s.

5.8.2 Handover Map and Schedule (November 1929) Appendix number: 20

Both application routes are shown on OS base mapping, but are uncoloured indicating they were not considered to be roads maintainable at public expense.

5.8.3 1930’s Road Records Appendix number: 21

Both application routes are shown on OS base mapping, but are uncoloured indicating they were not considered to be roads maintainable at public expense.

5.8.4 1950’s Road Records Appendix number: 22

Both application routes are shown on OS base mapping, but are uncoloured indicating they were not considered to be roads maintainable at public expense.

5.8.5 Interpretation of evidence

These records show that from 1929 the highway authority did not believe the application routes were maintainable at public expense. However, it does not necessarily follow that excluded routes could not have been highways at the time. These records are therefore considered to offer little assistance in determining the status of the routes.

⁸ Alan Beckett BA, MSC, MIPROW, Inspector, The Planning Inspectorate, reference FPS/Q9495/7/27

5.9 Definitive Map and Statement preparation records

5.9.1 Explanation of the type of evidence The Definitive Map and Statement were produced after the National Parks and Access to the Countryside Act 1949 placed a duty on County Councils to survey and map all public rights of way in their area. The process was undertaken in four stages:

- Walking Survey Cards and maps - Parish Councils were required to survey the paths they thought were public paths at that time and mark them on a map. The route was described on a survey card, on the reverse were details of who walked the route and when. Queries for the whole parish are often noted on a separate card.
- Draft Map – Somerset County Council produced the Draft Map from the details shown on the Survey Map. These Maps were agreed by the County Works Committee and the date of this Committee became the 'relevant date' for the area. The map was then published for public consultation. Any objections received were recorded in a Summary of Objections found in the District file.
- Draft Modification Map – This stage in the process was non-statutory. SCC produced a map to show any proposed changes as a result of objections to the Draft Map. Any objections received were recorded in a summary of Counter Objections to the Draft Modification map, found in the District file.
- Provisional Map – This map incorporates the information from the Draft Maps and the successful results of objections to the Draft Modification Maps. These were put on deposited in the Parishes and District Council offices at this point only the tenant, occupier or landowner could object,
- Definitive Map and Statement – Any path shown is conclusive evidence of the existence and status of a public right of way until proved otherwise. The Definitive Map is without prejudice to other or higher rights.

5.9.2 Survey Card

No survey card was found in respect of either of the two application routes and there is no reference to it on the parish 'query' card.

5.9.3 Survey Map

The Parish Survey map of Ashill was not available.

5.9.4 Draft Map, November 1954

Appendix: 23

The whole of both application routes is shown in a light brown colour and labelled CH 12. CH 12 continues (coloured light brown and labelled) along Merryfield Lane at least as far as Merryfield Cottage, although not along the whole length of Merryfield Lane to Podger's Lane in Ilton.

5.9.5 Objections to the Draft map

Appendix: 24

The Ramblers' Association (Objection No. 3231D60) objected to the omission of "(a) Copse Lane (b) From north end of Copse Lane eastwards across path 1/20 to Pound Corner." Part b of this objection refers to Merryfield Lane and not to any part of the application route under consideration here.

The observations of the County Surveyor were "if Copse Lane is included it should continue south past White House to county road at Rapps. It is quite possible that the public have acquired a right of passage by usage over both these lanes which are unmade and grass grown. Not claimed by the Parish Council." The County Archivist looked at the Tithe Maps of Broadway (1845) and Ashill (1839) and the deposited plans of the Chard and Taunton Railway (1860) but found no relevant enclosure award. The Chard and Taunton Railway documents would only have been relevant to part b of the objection, as the railway crossed Merryfield Lane, not Copse Lane.

On the summary of objections the Clerk observed that "These appear to be ancient highways" and it was resolved to "Add footpaths along whole lengths up to Podger's Lane."

A letter of 27/08/1958 from the Clerk of the County Council to the Footpath Secretary of the Ramblers Association informs them that "I propose to advise the Surveying Authority to add the undermentioned paths to the Draft Map:-

- (a) Copse Lane; and
- (b) From the north end of Copse Lane eastwards across path 1/20 to Pound Corner. "

The lane running east from the north end of Copse Lane is Merryfield Lane. Podger's Lane runs south-east from the south-east end of Merryfield Lane before turning south to a junction with Cad Road in Pound Corner, Ilton, and is now a public road. The 1950's road records show Merryfield Lane south-west of Merryfield Cottage as a public road, meaning this resolution would have recorded a footpath over a public vehicular road.

It should be noted that an extract from the minutes of a meeting of the Public Rights of Way Sub-Committee dated 24th November 1958 (not included in the appendix) refer to reopening public rights of way after Merryfield Airfield was closed. Specifically, the minutes refer to adding "89a From Wood House Farm to and along Copse Lane". This does not refer to the application route under consideration here, but to Copse Lane in Ilton, and the route of definitive footpath CH 15/26.

5.9.6 Draft Modification Map, February 1959

Appendix: 25

Both application routes are shown in purple (for a footpath) labelled 1/23 and continuing along Merryfield Lane as far as Merryfield Cottage, where Merryfield Lane becomes a public road.

5.9.7 Objections to the Draft Modification Map

Appendix: 26

The summary of objections to the Draft Modification Map and Statement record an objection by the British Transport Commission to the decision to add Copse Lane (510M) and the route from the north of Copse Lane to Pound Corner. The observations of the Clerk were 'No evidence of public user' and the determination was to "Delete 1/23 etc., from Draft Map." Which was then annotated in pencil with "pt" after '1/23' (presumably an abbreviation of 'part') and "WARS [...] leave S. Section in."⁹

A letter dated 6th October 1960 from the Clerk of the County Council informs the County Surveyor that he proposes to advise the Committee to reinstate Copse Lane "from the Ilminster Road to the south eastern corner of Ashill Wood as a CRF."¹⁰ This would cover both application route 510M and 511M.

An extract from the minutes of the Public Rights of Way Sub-Committee, 21 November 1960 resolved to "formally reinstate Copse Lane to the Draft Map as a CRF."

5.9.8 Provisional Map, September 1962

Appendix: 27

'Definitive Maps Chard RD working notes etc and queries arising', undated.

Appendix 28

Footpath 1/23 (application route 511M) is shown coloured purple and labelled as currently recorded between points C and F on Appendix 1. From point B to A (510M, Copse Lane) as well as the full length of Merryfield Lane, is coloured pale brown¹¹, but not labelled.

Handwritten undated notes titled 'Definitive Maps Chard RD working notes etc and queries arising' held at County Hall contain several references to footpath CH 1/23. One on a sheet headed 'Chard RD. Definitive Map. Chard alterations + corrections' gives the path number and parish, with 're-type' next to it, with columns for HO, RDC and P¹² all of which are ticked, and F and M(2)¹³ which are labelled in red 'at Prov. Stage'. Another list in the same document contains the entry in the column 'Queries at Definitive Stage', "Should not all be deleted as on schedule. Leave south section at White House, joining 1/21." And under 'Decision' "Mr Strickland aprs" and "at Prov. stage" added in red pencil and ticked. White House Farm is at point E on Appendix 1.

5.9.9 Definitive Map and Statement

Appendix: 29

⁹ WARS are the initials of Mr Strickland, who was an employee of Somerset County Council.

¹⁰ CRF stands for 'Carriage or Cart Road used as a Footpath', a term with no legal definition, but roughly equating with a RUPP (Road Used mainly as a Public Path).

¹¹ The pale brown colour may be the residue of the deletion of a line rather than a deliberate mark on the map.

¹² It is uncertain what these initials refer to.

¹³ It is uncertain what these initials refer to.

The definitive statement describes footpath CH 1/23 (application route 511M) as starting at “county road east of Three Oaks Cross and runs south past White House and junction with path no.21 to the county road north of Bow Bridge”. The definitive map shows footpath CH 1/23 in purple ink running between points C and F.

Application route 510M is not currently recorded as a public right of way and therefore does not appear on the Definitive Map or Statement.

5.9.10 Interpretation of evidence

Although the exact meaning of some of the references to CH 1/23 is uncertain, the records show that both application routes 510M and 511M were considered in detail during the preparation of the DMS and that those compiling the DMS were persuaded to change the way in which the routes were recorded at several stages as the result of additional evidence and objections. The description by the County Surveyor of both application routes as “unmade and grass grown” at the Draft Map stage suggests that neither were well used as public vehicular routes in the 1950’s, but his comment that the public may have acquired rights suggests he thought there was or had been some public use of the routes. Against this must be considered objections to the Draft Modification Map which suggest that no evidence of public use was found at that stage.

Ultimately, having considered all the evidence that was available to them, the County Council at the time concluded there was insufficient evidence to record application route 510M as a public right of way, or application route 511M as having higher rights over it than that of a footpath. However, the DMS is only conclusive of what it contains and not of what it omits and the discovery of new evidence in this case requires re-examination of all the evidence.

5.10 Other Commercial Maps

5.10.1 Day and Masters 1782.

Appendix: 30

Description and interpretation of evidence

Although the map covers the whole area of the application routes, only the southern end of route 510M is shown, identified by the key as an ‘Inclosed Road’ (unbroken narrow casing lines of equal thickness). There are many possible explanations for the way in which the route is depicted, from it being a public road not considered by the surveyor to be significant enough to include on the map in full to a well maintained private road partially included to assist those using the public roads in ascertaining their progress. The lack of depiction of the majority of the application route strongly suggests it was not a significant public road in 1782, but beyond this, the scale and detail of the map mean it is given no weight in this investigation either way.

5.10.2 Greenwoods Map1822

Appendix: 31

Description and interpretation of evidence:

The application route is shown from point A to point D with casing lines of equal thickness. The public roads between points B and C and running south from point F are shown with thickened casing lines to the south and east. Between points E and F no route is shown, and (as on the Enclosure Map and 1811 OS Surveyor's Drawing) the triangle of land to the east is shown shaded, in this case with irregular transverse dotted lines. A dashed line running along the centre of part of the route appears to be defining an area of land (perhaps parish, tything etc) and to be unrelated to the status of the roads.

The map includes a key which identifies the application routes as a Cross Road, and those roads with thickened casing lines as Turnpike Roads. The dotted line shading used on the triangle of land at the southern end of 511M is not identified on the key, but is used extensively nearby over the areas labelled 'Neroche Forest' which appear from the key to Greenwoods map to be 'Heaths and Commons' because of the way in which the roads running through these areas are depicted.

The term 'cross road' was clearly not being used to refer simply to the point at which two roads cross. While the precise meaning of the term therefore needs to be considered in relation to what the map itself shows, it is worth noting that in one prominent case the courts defined the same term as meaning 'a **public** road in respect of which no toll is payable'¹⁴ (my emphasis). In that case the judge was not referring specifically to Greenwoods map but to a different map and it is of course possible that the term was used for a different purpose on different maps¹⁵.

As the map was produced for use by members of the public it is very likely that the surveyor would have placed more importance on depicting those roads that he believed to be publically accessible. However, at a time when travel could only be on foot, horseback or by horse drawn vehicle, it is entirely plausible that footpaths and bridleways could have been included as important routes. Furthermore, several routes which were unlikely to have carried public vehicular rights are also shown as cross roads. For example, the way leading to Rowland's Farm (labelled RF on appendix 31) is depicted in the same way as the application routes, but is a cul-de-sac and has no public rights recorded over it.

It seems likely that Greenwood either did not consider all 'cross roads' to be public vehicular routes, or that he did not make very careful checks about the public status of the routes he recorded. It also seems possible he considered the southern part of the route shaded with dotted lines to be heath or common.

¹⁴ Hollins v Oldham (1995) in *DMO Consistency Guidelines – 5th revision July 2013*

¹⁵ Section 2.24, page 7, *DMO Consistency Guidelines – 5th revision July 2013*

Overall therefore, Greenwood's map is not strong evidence for public rights over the route, and not good evidence for distinguishing different levels of public rights.

5.10.3 Bartholomew's Map. Reference: Sheet 34. 1902, 1911, 1923 and 1927. Extract only - 1911 and 1927 edition.
Appendix: 32

Description and interpretation of evidence

Bartholomew's map was produced for use by members of the public, particularly cyclists, at a scale of two inches to a mile.

The 1902, 1911, 1923 and 1927 editions all show the whole of both application routes uncoloured with narrow casing lines of equal thickness. All four editions also show a route in the same way parallel with Copse Lane (510M) on the east side of Every's Copse (labelled EC on Appendix 32), over which there are no recorded public rights today. This suggests either that public and private routes were depicted in the same way on these maps, or that the surveyor did not make very careful checks as to the status of at least the minor routes that were being depicted. The 1902 and 1923 key describes the uncoloured roads as inferior and not to be recommended, the 1911 key describes uncoloured roads as inferior and not to be recommended to cyclists. They also carry the statement "The representation of a road or footpath is no evidence of the existence of a right of way."

These maps are therefore good evidence that the routes existed on the ground, and that they were in a physical state that meant the surveyor thought they were unsuitable for cyclists. However they cannot be given any weight either way in the investigation as the way in which the routes are depicted would be compatible with either public or private rights.

5.10.4 Royal Automobile Club (RAC) Official Touring Map, 1913. Extract only.

Appendix: 33

Description and interpretation of evidence

Copse Lane is clearly shown as uncoloured with black casing lines of equal thickness. Application route 511M is less clear on the extract, partly obscured by red ink which may relate to an adjoining road. The key identifies first and second class roads coloured red, and uncoloured routes as 'Other Roads'. Although a map produced by the RAC might be expected to concentrate on showing roads which its members could drive along, other topographical features which would assist a driver in determining where they were are also shown, such as rivers and railways. Without knowing more about the principals used when surveying this map it is difficult to give it much weight either way in this investigation.

5.11 Other documentary sources

5.11.1 Will of Mary Woodland, 31st May 1808 and associated plan 'Plan the Second Rapps Farm in Ashill & Broadway in the County of Somerset belonging to Mrs M. Woodland 1808'.

SWHT Ref. DD\SPK/2/1/38

Appendix: 34 (plan) and 35 (will).

5.11.2 Description and interpretation of evidence

The plan is referred to by the applicant as 'Sales documents for Rapps Farm'.

The will lists the property Mary Woodland intended to leave to each of her children, referring to plans surveyed by Charles Chilcott, giving the names of the properties, the area in acres and describing the position of the different parcels of land in relation to each other. It does not refer to the application routes.

The plan, which is specifically referred to in the will and is signed by Mary Woodland and witnesses, shows the plots of land referred to in the will outlined by vegetation tinted green, numbered, and listed with the properties name, area and land use in a reference table. The roads connecting the various pieces of land are shown uncoloured with casing lines of equal thickness. Between the plots of land referred to in the will little detail is shown, although some fields are outlined in black and the names of (presumably) neighbouring landowners are given.

The whole of Copse Lane is shown, unnumbered and unlabelled, with plots of land 4, 5, 6, 7 and 8 to the west, and 'Speke Esqr.' to the east. Application route 511M is shown between points C and D with 'Cuff' to the west and plots of land 2 and 3 to the east. Between points E and F the application route is included in a triangle of land labelled 'Rapps Heathfield'. This triangle of land is now bordered by three routes - a public road to the south-east, the application route to the west, and a linear way with no currently recorded public rights¹⁶ to the north – none of which are defined on the 1808 plan. This is similar to the way in which the area is depicted on the 1811 OS Surveyor's Drawing, Greenwood's 1822 map and the Neroche Forset Enclosure map of c. 1830.

The plots of land numbered 5, 6 and 7 do not adjoin public roads, although they adjoin each other and plots in the ownership of Mary Woodland which do adjoin public roads all of which were bequeathed to Richard Woodland. Therefore, although access to these plots of land could have been gained from Copse Lane, and it may well have been more convenient to access them from Copse Lane, they could also have been accessed through adjoining plots in the same ownership without using Copse Lane.

The will and plan do not include any part of the application route as belonging to Mary Woodland or another named landowner. However, the purpose of the will and plan was to show the land belonging to Mary Woodland and to whom

¹⁶ An application to record this route on the DMS as a Restricted Byway has been received.

she intended to bequeath it. Therefore, these documents only indicate the routes were not owned by Mary Woodland and do not help determine whether the ways were public or private.

The inclusion of the southern part of 511M together with the area over which a public road now runs in the piece of land labelled 'Rapps Heathfield' indicates there was something different about the ways at this point, possibly that they were not fenced or well defined. However, without further information it is not possible to tell if this is evidence in favour or against public rights. Therefore, beyond confirming the existence of the routes on the ground in 1808 (with the possible exception of the southern end of 511M) this document is given no weight either way in determining what public rights existed.

5.11.3 Draft – Plan of lands in the parishes of – Beer Crocombe Ashill, White-Lackington, Isle Abbots South Bradon, Ilton Buckland St. Mary and Broadway, belonging to the trustees of the late Earl of Egremont Compiled from Maps of the several Parishes September 1852
SWHT Ref. DD/WY/C306/SOM/1
Appendix: 36

5.11.4 Description and Interpretation of the Evidence

A plan at the scale of 8 chains to the inch, with a coloured key identifying named individuals, presumably lessees. Little detail is shown beyond the coloured parts of the map, with blank spaces where there was no interest in the land. The northern end of Copse Lane is shown at point A only, and 511M is shown from point D to F. The triangle of land to the east of 511M between E and F is separated from the surrounding three ways, including the application route, by a dashed line and labelled Rapps Green. Other ways on the map are shown with two solid casing lines of equal thickness. None of the application route or Rapps Green are coloured and appear on the edge of the depicted detail. They are therefore presumably included to provide context for the areas of the map which depict lands in the ownership of the trustees. This is particularly likely, as the plan continues on another sheet and the Catherine Wheel Gate (less than 500 metres south of the application route) is the point at which the viewer is instructed to join the two plans.

As the application route is only partially depicted, and falls outside of the areas which the plan was created to show, this source is of little value in this investigation. It does, however, again show Rapps Green as being separated from the application route in a different way from the other roads in the area, perhaps suggesting a different physical characteristic. It does not help determine whether public or private rights existed over the application routes.

5.11.5 Sales particulars for land in Ashill and Broadway, 1858.
SWHT Ref. DD\SAS/C795/PR/463
Appendix: 37

5.11.6 Description and Interpretation of the Evidence

The sales documents include a plan showing the plots of land which make up Lot 1 and lists them in the particulars as “being for the most part an extract

from the Book of Reference to the Tithe Commutation Map of the Parish of Broadway aforesaid". The numbered plots shown on the map and listed match those on the Broadway Old Enclosures tithe map discussed in paragraph 5.5.2, above. Lot 1 is made up of plot 247, 248, 249 and 250 to the west of Copse Lane (application route 510M), and plot 270, 271 and 272 to the east of application route 511M between point C and D. The plan only shows the route up to slightly south of point E. All routes shown on the extract are depicted in the same way, uncoloured with casing lines of equal thickness. Some of the roads which continue beyond the limit of the plan are labelled with a destination, although not the application routes. Field divisions beyond the plots for sale are not given although the names of (presumably) neighbouring landowners are given across broad areas. None of the ways shown on the plan are numbered or listed. The particulars also include the statement "The whole of the above mentioned Properties are situate about 8 miles from Taunton and 4 from Ilminster, and adjoin good Roads." And in the Condition of Sale 11th "That the several Lots will be sold, subject to all existing Leases and Agreements under which the present Tenants occupy the same, to the Land-Tax, Tithe Rent Charge, and other usual Out-goings, and to all existing Rights of Way, and other easements affecting the same".

The plan and sales particulars clearly do not include any part of the application route in the land for sale. However, the purpose of the documents was to show prospective purchasers what land was for sale, where it was located and what its use was (garden, orchard etc). These details seem to have been largely derived from tithe records rather than produced expressly for the purpose of the sale. Although all the plots of land included in lot 1 could be accessed through other plots of land included in the same lot, it is likely that vehicular rights of some sort existed over Copse Lane as this would have been a more convenient way of accessing these plots. The statement that all the properties adjoin good roads may refer either to the public roads, or to private ones, and although it does not give details, the conditions of sale make it clear that any public rights of way and easements affecting the lots will remain. Therefore, beyond confirming that the routes existed on the ground in 1858 and that vehicular rights of some kind may have existed over Copse Lane these documents only indicate the routes were not included in the property to be sold and do not help determine whether the ways were public or private.

5.12 Other sources of Primary Documentary Evidence which either did not cover the relevant area or did show the claimed routes but do not assist in determining the status.

Lord Egremont's Somerset Estates B 1801(DD/WY/225)

Report on roads in West Sedgemoor set out by the Commissioners following enclosure, 1822.

An Act for inclosing the Forest of Roach otherwise Roche otherwise Neroach otherwise Neroche, in the Parishes of Broadway, Bickenhall, Beercrocombe, Ilton, Barrington, Ashill, Ilminster, Whitelackington, Curland, Donyatt, Isle Abbotts, Hatch Beauchamp, and the Tything of Domett in the Parish of

Buckland Saint Mary, or some or one of them, in the County of Somerset.
1830. (DD/WY/174)
Plan of parish commons in Neroche Forest, Broadway, circa 1830
(DD\SAS/C1193/2)
Sales documents, 1861 and 1862 (DD/SAS/C/1193/2 and
DD/SAS/C/795/PR/463/2)
Chard Rural District Council Highway Board Minutes 1882 – 1896
(D/R/ch/32/2/1)
Enclosure Award for Curland and Neroche Forest 1833 (Q/RDE/107)
Particulars and valuations of allotments in the forest of Neroche, within the
parish of Broadway, and the tithing of Capland. 1833 (A\ALU/3)
Agreements for maintenance of roads etc.(D\R\ch/32/2/13)
Quarter Session records for Ashill

5.13 Documentary Evidence Conclusions

5.13.1 The majority of the evidence, including commercial maps, OS maps, sales documents and the will of 1808, confirm the physical existence of the application routes or parts thereof, and are suggestive of vehicular rights. However, they give little indication of whether those rights were public or private.

5.13.2 Both application routes have existed on the ground since at least 1808. A number of sources dating from the early to mid 19th century depict the southern part of 511M (between points E and F) differently to the rest of the route, perhaps as unfenced. In any case none of the sources include a key which shows this depiction to be related to the public or private status of the routes. No enclosure documents have been found which assist in determining the status of either application route, and the tithe records of 1840 would be compatible with either a public or private way which produced no titheable income.

5.13.3 Preparation documents for the Definitive Map show the status of both application routes were considered in some detail although the full extent of the evidence that was relied upon at each stage remains unclear. The County Surveyor describes both routes as 'grass grown', and the County Archivist looked at the Tithe Maps of Broadway (1845) and Ashill (1839) (and the deposited plans of the Chard and Taunton Railway 1860 in relation to Merryfield Lane which is not under consideration here) but found no relevant enclosure award. On the basis of the evidence available at the time the routes were recorded on the DMS as footpath CH 1/23 (511M) and as having no public right of way over it (510M, Copse Lane). However, the DMS is only conclusive evidence of the information it contains, and not of what it omits. Additional evidence not considered during the preparation of the DMS in the 1950s, including the 1910 Finance Act documents, are now available and form part of the evidence considered in this report. Therefore the fact that neither application route is currently shown on the DMS as a restricted byway does not necessarily indicate that the route did not carry public vehicular rights in the past.

5.13.4 OS maps published in 1888 and 1903 both depict a solid line across Copse Lane at point B, and an OS map published in 1898 depicts a solid line across 511M at point C. A possible pond is also shown at point B on the 1903 map. A solid line may indicate a physical barrier most likely a gate. While it is rare, it is possible for a public road to have been gated. Ponds were also sometimes used or even deliberately created for wetting the wheels of carts, but the size and shape of this feature suggests it was not deliberately made for this purpose and ponds without firm constructed bases were more likely to be a hazard or barrier to vehicles.

5.13.5 One OS map (1888 25inch) depicts the southern part of application route 511M in a way that is consistent with the surveyor believing it to be a route for public wheeled vehicles (with a thickened casing line to the east) and in a similar manner to many undisputed public vehicular roads. While this certainly provides some evidence of public vehicular rights the weight to be given to it is lessened by that fact that at least one nearby route over which no public rights are recorded is also depicted in the same way. Furthermore the OS are known to have been primarily concerned with topographical features and their maps do not provide good evidence as to the status of a route.

5.13.6 Overall therefore, these maps show physical characteristics which weigh very slightly against use as a public vehicular way over the majority of the application routes. Shaded casing lines between E and F may weigh slightly in favour of public vehicular rights. However, for the reasons given above this is given very little weight.

5.13.7 Against this must be balanced the good evidence which supports the existence of public rights. The OS Object Name Book of 1903 describes Copse Lane (510M, between point A and B) as a public lane, corroborated by 'W. Speke Esq J.P'. 'W. Speke Esq. Jordans, Ilminster' is named in the same document as the owner of Rapp's Farm and Every's Copse (but no landowner is given for Copse Lane) and was also a Justice of the Peace. He is therefore considered to be a very good authority. The use of the term 'lane' rather than 'road' is ambiguous as to what rights W. Speke believed the public had over Copse Lane, but is still in favour of public rights of some kind.

5.13.8 In addition both application routes are excluded from the surrounding hereditaments in the 1910 Finance Act documents. If a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular¹⁷. However, there are other possible reasons why a route might be excluded and it is therefore important to compare the claimed routes depiction with that of other routes in the area.

5.13.9 The way other routes in the area have been depicted suggests that where a public footpath or bridleway existed and ran over a fenced way, it was not uncommon for the fenced part of those routes to be excluded from

¹⁷ DMO Consistency Guidelines, 5th revision July 2013 Section 11 page 3 and 4

the surrounding hereditaments and where the route ceased to be fenced the route was not excluded. Furthermore, some routes over which no public rights are known to exist have also been excluded.

5.13.10 Application route 511M was fenced and carries public rights as a footpath. In light of the above analysis, this provides a very plausible alternative explanation for its exclusion from the surrounding hereditaments on the Finance Act (1910) documents.

5.13.11 For route 510M (Copse Lane) the Finance Act documents are weakened by the exclusion from surrounding hereditaments of some routes over which no public rights are recorded. That said, taken together with the description in the Object Name Book of Copse Lane as a 'public' lane, the Finance Act still weighs strongly in favour of public rights over Copse Lane. However, as mentioned above, it seems to have been common (at least in this area) for public footpaths and at least one bridleway to have been excluded from surrounding hereditaments where they were fenced. Copse Lane was fenced and so it is difficult to draw any conclusion from the Finance Act documents as to what status it was considered to be. There are other reasons why a way might be excluded from the surrounding hereditaments on Finance Act documents without being a public right of way, but no evidence for or against another alternative explanation has been found.

5.13.12 In conclusion Copse Lane (application route 510M, between points A and B) has two good pieces of evidence suggesting public rights - the OS Object Name Book which refers to Copse Lane explicitly as a public lane, and the 1910 Finance Act documents which exclude it from the surrounding hereditaments. There is slight evidence that those public rights were vehicular, including reference in the 1858 sales particulars for land in Ashill and Broadway which describe the lots for sale as adjoining good roads. However, this is not considered sufficient to tip the balance of probabilities in favour of the route having been a public road. This conclusion is only strengthened by the likely existence of a pond and gates on the route (as shown on OS maps). While open to more than one interpretation, and certainly not strong evidence, this does weigh slightly against the existence of public vehicular rights.

5.13.13 The minimum public rights which would account for the available evidence are those of a footpath and there is no persuasive evidence that higher rights than this existed. Therefore, on the basis of the available evidence, it is reasonably alleged that Copse Lane (510M) is a public footpath, but not that it carries higher rights. This accords with the view expressed by Lord Justice Carnwath in the Court of Appeal when considering whether use on bicycles was to be taken as evidence of a bridleway or of a restricted byway that "it is appropriate in my view, other things being equal, to infer the form of dedication by the owner which is least burdensome to him".¹⁸

¹⁸ Whitworth & Ors v Secretary of State for Environment, Food & Rural Affairs [2010] EWCA Civ 1468, Paragraph 42.

5.13.14 Unlike the claim for Copse Lane (510M), the Object Name Book does not refer to application route 511M. Although the route is excluded from the surrounding hereditaments in the 1910 Finance Act documents it appears that footpaths in the area were excluded where fenced. The claimed route is shown fenced on the base mapping and therefore the Finance Act evidence is as consistent with the routes current recorded status of a footpath as it is with public vehicular rights. In such circumstances it is all the more important to look at this evidence in light of all the other documents available. In this case a thickened casing line to the east of part of the route on the 1888 25 inch map is suggestive of public vehicular rights. However, OS maps are not good evidence of status and, even if it were shown as a public road this would only have been the view of the surveyor. Furthermore the same thickened casing lines were also used to depict well maintained private roads. As such this document can be given very little weight in this investigation. Therefore, on the balance of probabilities, the documentary evidence summarised above suggests that application route 511M is currently correctly recorded as a public footpath.

6. User Evidence

6.1 The user evidence is summarised at Appendix 38.

6.2 Section 31(1) of the Highways Act 1980 provides that a public right of way can be presumed to have been dedicated if it is shown that there has been at least 20 years uninterrupted use of a way by the public 'as of right' (without force, secrecy or permission). The relevant 20 year period must be calculated retrospectively from a point at which the public's use of the route is challenged. This is known as 'presumed' or 'deemed' dedication.

6.3 The presumption of dedication can be rebutted by a landowner if they can show that, during the relevant 20 year period, they undertook 'overt' actions to make it clear to the public that they have no 'right' to cross or be on his/her land.

An overt action may be:

- The erection of carefully worded notices sited in relevant locations
- The locking of a gate
- Challenges to users of the way
- The depositing of a statement and map followed by a subsequent declaration under section 31(6) of the 1980 Highways Act for public rights of way.

6.4 In this case, five user evidence forms were submitted relating to application route 510M (Copse Lane). These provide evidence of use spanning a total of 33 years from 1979 - 2012. No user evidence forms were submitted in respect of the application to upgrade footpath CH 1/23 to a restricted byway (511M).

6.5 Four of the five respondents had used the route on foot, three on horseback and two in a 4x4 vehicle. All believed the way was public, three believed that the way should be a bridleway and two a Byway Open to all Traffic. None had asked for permission.

6.6 Two respondents remembered gates being locked between 2006 and 2008 but keys being given to some local people, a third remembered gates being locked in 2004. Three respondents refer to the route being obstructed by other means. Two were told the way was not public in 2009. One person remembers seeing a notice discouraging access in 2012 but did not give details.

6.7 A plan and statement were deposited with Somerset County Council under section 31(6) of the 1980 Highways Act in 1998 on which CH 1/23 (511M, between point C and F) is shown as a footpath. No public right of way is shown over application route 510M (point A to B). A Statutory Declaration was deposited in 2008.

6.8 Ashill Parish Council (see 8.1.1, below) refer to Ashill residents using the route as a bridleway. However no supporting documents or additional information was provided. The use that they were aware of may have simply been that referred to above, alternatively it may have been with permission, not within the relevant 20 year period or insufficient to demonstrate use by the public. Therefore, while the Parish Council's comments may be suggestive of the route having a reputation as a bridleway in more recent times, it can be given little weight.

6.9 Conclusions based on User Evidence

6.9.1 The plan and declaration deposited with Somerset County Council under section 31(6) of the 1980 Highways Act in 1998 and 2008 constitutes a calling into question of the public use of the route. Had no such deposit been made, the locking of the gates and issuing keys to selected people in 2006 would constitute such a calling into question. Therefore, it is the use in the 20 years preceding this (1979 to 1998) that is of most importance. Although 5 user evidence forms were returned demonstrating use between 1979 and 2012 each respondents use was either not continuous or not for the whole period. No more than three people were using the route at any one time, from 1979 to 1982 only one person was using the route (on foot) and between 1989 and 1999 only two people had used the route, one daily until 1994 and then twice a week, the other 5 or 6 times a year. The statement from the Parish Council also provides evidence for reputation as a bridleway or byway but has been given limited weight due to lack of supporting evidence or detail. Overall this is considered to be insufficient to demonstrate use by the public at large and therefore does not raise the statutory presumption that rights have been acquired.

7. Landowner Evidence & Evidence from those against the application.

7.1 This section of the report includes information provided by the landowners.

Both application routes are in the joint ownership of several individuals, including landowner A, B and C.

7.1.1 Landowner A

Summary of evidence submitted by landowner A.

The application routes are owned by the respondent. They are farm tracks, made up by the landowner and paid for by the landowner to access their fields and for farming purposes.

They made a Section 31 [Section 31(6) Highways Act 1980] in October 2008.

They allowed the footpath (CH 1/23 511M) between C and F “to be changed from running in the field, as it was originally, to go up the lane, at Whitehouse Farm, which was sensible”. Application route 511M has only ever had a footpath on it and does not lead anywhere useful.

They own application route 510M Copse Lane A to B on Appendix 1. It has been owned by the estate for hundreds of years.

It was an overgrown and impassable until the mid 1960’s when it was cleared by farm workers and made up with hard core in order to access some fields on Rapps Farm. The gravel was used from the old railway line, which the respondent owned and still does.

Copse Lane is gated, and padlocked,. The respondent also claims to have erected signs stating “PRIVATE, NO ACCESS”. All of this was intended to stop gypsies setting up camp on the lane, and stop ad lib wanderers. The signs have been repeatedly torn down and the locks cropped off.

In August 2011 the respondent was advised by the MOD, the Police and Somerset County Council to prevent travellers from taking up residence on Copse Lane. They are of the view that, if gypsies camp on Copse Lane, it is their responsibility to move them off and pay the associated costs.

The two application routes lead nowhere, and would only increase vehicle access to the aerodrome road if upgraded.

The respondent has always allowed local people at Rapps to walk the lane with verbal permission, and local riders have had verbal permission as well, and been given keys to the locks.

Some years ago there was an application to add a footpath over Copse Lane which failed on lack of evidence.

The two application routes should not be upgraded because that would attract more traffic to the area.

If the respondent saw people on Copse Lane who should not be there, they challenged them.

Landowner A provided a letter from a third party (see paragraph 7.1.5 below). They also provided black and white photocopies of three maps;

- Jordans Estate, 1957, Rawlence and Squarey Chartered Surveyors.

Appendix 39.

- OS map sheet ST 31NW Somerset 1969. **Appendix 40.**

- OS Map second edition 1903, sheet LXXX.12, 1:2500, with annotations.

Appendix 41.

7.1.2 Landowner B

Summary of evidence contained in two Landowner Evidence Forms dated 29/11/16.

510M Copse Lane, from A to B. The application route crosses land owned by the respondent. They have owned the land from 1958 to present. They do not believe the way is, or ever has been, a public right of way.

They have not seen or been aware of members of the public using the way.

They have required people to ask permission to use the route and that use has been occasional.

They allowed local Rapps people to walk the lane with verbal permission and two local people with horses to ride the lane, with verbal permission.

They made a declaration under section 31 of the Highways Act 1980 on 6/10/08.

If they or their farm workers ever see anyone on the lane who should not be, they are politely told that it is private.

Several times over the years the gates on Copse Lane have been padlocked and signs PRIVATE NO ACCESS erected. These have been defaced and destroyed by cropping off the padlocks and tearing down signs. See the letter included with landowner A's response (see paragraph 7.1.5).

511M, C to F. The application route crosses land owned by the respondent. They have owned the land from 1958 to present. They believe the way to be a public footpath. The only footpath is up the lane by Whitehouse Farm (this they allowed, as it was across the field). They have always held this belief. They have not seen or been aware of members of the public using the way. They have not required people to ask permission to use the way. This footpath is very little used by anyone and it would affect their tenants at Whitehouse Farm if the Lane is upgraded – they have lived there for 3 generations and it is all part of the respondents farm. It would also adversely affect their holiday cottage up that lane.

They made a declaration under section 31 of the Highways Act 1980 on 6/10/08.

Neither the respondent nor anyone on the respondents behalf has ever stopped anyone using the route or told anyone the way is not public. They have not erected signs stating that it was not public.

7.1.3 Landowner C

Summary of evidence submitted by landowner C.

The respondent has both run and worked on the Estate for the last 25 years and is a part owner of the estate.

The respondent regularly walks Copse Lane and has seldom come across anybody either walking or riding. The few people that the respondent has met, they have politely challenged and pointed out that it is privately owned and maintained, but have always allowed people to continue their journey.

During the last 10 years, the estate has had trouble with new age travellers and gypsies. They have been advised by the County Council and Police to put gates with padlocks, chains and signs on both ends of the track. Both the chains, padlocks and signs have been cut off and thrown away. The respondent is of the view that, the track is privately owned, the estate would have to fund any legal costs incurred in evicting anybody camped on the track.

At the northern end of Copse Lane lies Ashill Wood. The landowners run a small shoot in these woods, which takes place every Saturday from 20 October – 1 February. There has been a shoot on the Estate for the last 100 years.

The application route between C and F on Appendix 1 is seldom used by walkers and only leads to the A358. It would be a total nuisance and inconvenience to both the tenant at Whitehouse Farm and the landowner's nearby holiday cottage.

The respondent has already given verbal permission to the residents of Rapps to use the route.

7.1.4 Landowner D

Summary of evidence submitted by landowner D.

The respondent confirmed they owned some of the land adjacent to application route 510M.

They reported that they had used 510M on foot, bike, horse and in vehicles. It is also used frequently by members of the public in the same modes of transport. The previous occupier has used the route in excess of 25 years.

In 2011/12, multiple User Evidence Forms were sent to the council from members of the public that use the lane.

Other evidence that the respondent holds has already been submitted to the County Council by the South Somerset Bridleways Association.

7.1.5 Summary of letter submitted with Landowner A's response dated 24/01/2010 with handwritten note "given to [landowner] in 2010 and again on 24th November 2016"

The respondent was employed by the tenant of Rapps Farm (a tenant of the current landowners) from 1961.

Copse Lane was a lane which was simply part of the farm. At the time it was completely overgrown and inaccessible and it was not possible to travel on it even by foot from the cover to copse corner.

In 1965 the respondent was given the job of clearing the lane to improve access for farm vehicles and farm machinery. They cleared the lane so that it was possible to walk through and then hauled 600 ton of stone from the disused Speke's Hill railway line crossing to put on the lane so that the farm vehicles and machinery could be moved on it.

In 1980 the respondent moved to [current address]. From 1961 to this time the lane has never been a right of way. It has always simply been part of the farm. When the tenant retired the farm returned to the current landowner. The respondent continued to have the job of maintaining the lane for the current landowner to enable access for farm vehicles until they retired. During this time if the respondent saw a person trying to make their way over the lane they told them it was part of the farm and that they should not travel on it.

7.1.6 Letter submitted with Landowner A's response dated 20/11/16.

"I have lived at the above address [a property in the vicinity of 511M] all my life and my family for 3 generations. The footpath CH 1/23 passes right beside the farmhouse and is used very little by about 3 different people with dogs. To turn the footpath CH 1/23 and 510M (Copse Lane) into a bridleway would be very disruptive to us. They both only lead to a dead end at Merryfield aerodrome and a back way to the A 358 and no one would want to take a horse or horse and cart on to that busy road.

The two lanes have only ever been used for access to the woods and adjacent farmland by the estate owners and their employees and tenant farmers for agricultural and forestry work or gamekeepers to tend their pheasants during shooting season."

7.2 Comments on Landowner Evidence.

7.2.1 Matters relating to recent use of the application routes (Section 31(6) deposit of the Highways Act 1980, gates, locks, signs, permission, verbal challenge etc) are addressed at section 6, above.

7.2.2 Concerns raised relating to the desirability, utility, security or safety of the route, whilst perfectly understandable, are not factors which can be considered in relation to this application.

7.2.3 The 1903 second edition OS map (see 5.6.4), and the 1969 OS map submitted by landowner A (see Appendix 39) show a footpath of unknown public or private status running parallel with application route 511M on the western side of the field boundary. Landowners A and B refer to allowing a footpath to be moved from the field to the track (the current definitive line), but no evidence of how or when this happened has been submitted or found and consequently this information does not assist in determining what public or private rights exist over application route 511M.

7.2.4 The previous application referred to by landowner A to add a footpath to Copse Lane was found on investigation to be application 159M relating to Merryfield Lane, and not either of the application routes under consideration here.

7.2.5 The 1957 map submitted by Landowner A (Appendix 38), which was reproduced from OS map sheets, includes the annotation "*area coloured pink denotes Whitehouse Farm, Ashill, Ilminster*". Although the copy provided is black and white, an additional line not included in the base mapping can be seen around land adjacent to Whitehouse Farm within which the whole of application route 511M is included. Public rights of way can and do exist over land in private ownership and public footpath CH 1/23 is already recorded over this route, and therefore this map does not assist in determining whether or not higher public rights exist over the same route. It includes no additional information regarding application route 510M.

7.2.6 The 1969 OS map submitted by the landowner includes a key which identifies the application routes from A to D as a fenced track, and from E to F as a fenced road. The key does not differentiate between different classes or types of road, and the map includes the usual disclaimer found on OS maps that the representation of a road, track or path on the map is no evidence of the existence of a public right of way. This map is therefore consistent with either public or private rights, and is of no assistance in this investigation.

7.2.7 The information included in the two letters from third parties submitted by Landowner A are relevant to more recent use of the routes, which is discussed in section 6. The County Surveyor described Copse Lane and possibly application route 511M as "unmade and grass grown" when responding to objections to the Draft Definitive Map (see 5.9.5, above) which suggests the route was relatively clear in the mid 1950's, and the information contained in one of the letters that Copse Lane was very overgrown by 1965 shows it became overgrown between the mid 1950's and being cleared in 1965. This would suggest it was not well used by vehicles (whether exercising private or public rights) during that period.

8. Consultations and other submissions

8.1 Consultations regarding the claimed route were sent out to relevant local and national user group organisations in October and November 2016. The table below shows who was consulted and gives brief details of replies that were received.

8.1.1 Ashill Parish Council

“The Byway used to be used as a bridleway by Ashill residents until someone decided to shut it off and at the time one of the residents concerned telephoned SSDC regarding this. They were advised by SSDC that this should not have happened but no further action was ever taken. It is understood that maps show the lane as being a Byway and it is felt it should be left as such.”

An explanation of the current recorded status of the application routes was sent, but no further comments or information were received.

8.1.2 South Somerset Ramblers' Association (Western area)

“I have no useful or historical info, that I can give you
I have comments though!”

No further comments were received.

8.2 No response was received from the following organisations;

South Somerset District Council
Councillor Vjeh, Neroche Ward
British Horse Society – Somerset Office
British Horse Society – National Office
Trail Riders Fellowship – Somerset Office
Auto Cycle Union
Cycling UK
All Wheels Drive Club
Open Spaces Society – National Office
Open Spaces Society - South Somerset Area
Natural England
Ramblers' Association – National Office
South Somerset Ramblers' Association (Eastern area)
South Somerset Ramblers' Association (Southern area)
South Somerset Ramblers' Association (Northern Area)
British Driving Society – National Office

8.3 Draft Report Consultation

8.3.1 Having undertaken the research and consultation exercises referred to above a draft version of this report was produced. On 21 April 2017 comments were invited on that draft from;

- the applicant
- all known landowners and adjacent landowners
- Ashill Parish Council
- the Chairman of Somerset County Council’s Regulation Committee, and;
- the County Councillor for the Ilminster division.

8.3.2 No response was received from the Parish Council, the Local Member for Ilminster, or the landowners. The Chairman of the Regulation Committee at that time commented on various procedural matters but, while generally complimentary of the report, made no substantive comments on its content.

8.3.3 The comments of the applicant and the adjacent landowner are summarised below, together with SCC’s response or the section of the report which is considered to cover the point.

Comment from respondent	SCC response
Two weeks to respond to the draft report was insufficient.	An additional week was allowed for responses. No further responses were received.
There were comments on the format and layout of the report.	While these comments have been noted they do not affect the conclusions reached in the report.
More weight was given to verbal evidence than to documentary evidence.	In addition to the direct evidence of public use, over 30 historic documents (some consisting of several editions) are considered in the report. Each piece or type of evidence has been considered on its merits before being considered as part of the evidence as a whole in section 5.13.
The report does not evaluate the evidence on the balance of probabilities.	The standard of proof required under the relevant legislation has been applied. See section 4, paragraph 4.2 and 4.3 and section 5, paragraphs 5.13.12 and 5.13.14.
The report does not evaluate the evidence as a whole.	Each piece of evidence has been considered individually and then together with all the other evidence as a whole (see section 5.13).

Questions were raised regarding the ownership of the land over which the route passes and how this information had been obtained.	In determining landownership the County Council have relied on information provided by the Land Registry. See paragraph 3.3.
The application routes have the potential to provide a safer route for vulnerable users and access to safer routes.	Whilst perfectly understandable such concerns cannot be considered as part of this investigation. See paragraphs 4.9 and 7.2.2.
The number of users is relative to the local population.	See section 6.9. During ten of the relevant 20 years there is only evidence of the application route being used by one walker and one equestrian, the equestrian having only used it 5 to 6 times per year. From 1979 to 1982 only one person had used the route, on foot. Even in an area of low population, it is difficult to see how this could be sensibly taken to represent the public.
More evidence will be submitted at any public inquiry into the case.	Should an order to modify the definitive map be made and should that order receive objections, then there may need to be a public inquiry. However, this report can only draw conclusions based on evidence which has been discovered or submitted and cannot give weight to evidence which has not been seen.
The comparisons made in the report between linear ways shown on historic documents and their current recorded status in order to determine whether documents distinguished between public and private ways or whether those documents were reliable records of what they show is flawed. More applications to modify the DMS will be submitted in the future and therefore the status of the ways to which the application route is being compared will change.	The outcome of any future applications is not a foregone conclusion and there may or may not be additional rights over undetermined application routes. Comparison of historic documents with modern records of both public rights of way and private routes are a necessary part of any investigation.
The respondent disagrees with the way in which individual historic documents have been assessed and the weight they have been given.	The interpretation of the documentary evidence has been carried out in accordance with the Planning Inspectorate's 'Definitive Map Orders: Consistency Guidelines' and, where appropriate, with reference to other reputable sources.
No weight was given to the Parish Council's statement.	As a result of this comment, paragraphs 6.8 and 6.9.1 have been

	updated in order to make the analysis of this piece of evidence clearer.
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9. Summary and Conclusions

9.1 Insufficient user evidence was found or submitted to show public rights had been acquired over either application route.

9.2 Although a large number of historical documents were examined as part of this investigation there were relatively few which provided evidence which pointed towards or against public rights over either application route.

9.3 The OS Object Name Book and the 1910 Finance Act documents are good evidence for public rights over 510M Copse Lane, although neither directly indicate what type of public rights exist. On balance it is considered that a public footpath would be consistent with this evidence. Insufficient evidence has been discovered to indicate higher public rights exist over this route.

9.4 Similarly, the public footpath rights currently recorded over application route 511M are consistent with the evidence and, on balance, that evidence is considered insufficient to indicate that higher public rights exist.

10. I therefore recommend that;

- i. an Order be made, the effect of which would be to add to the Definitive Map and Statement of Somerset a public footpath between points A and B (510M) shown on Appendix 1.
- ii. if there are no unwithdrawn objections to such an order it be confirmed
- iii. if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation
- iv. the application to upgrade footpath CH 1/23 (application route 511M) between points C and F shown on Appendix 1 is **refused**.

11. List of Appendices

Please note that the document reproductions in the appendices are not to scale. The report writer has added the red letters A, B, C, D, E and F present on Appendix 1 to maps to help the reader identify the sections of the route the document is depicting. Other red letters and lines have also been added to some appendices to indicate the area of importance in that document.

1. Plan showing the claimed route
2. Photographs of application route 510M (Copse Lane)
3. Photographs of application route 511M
4. Map of Neroche Forest and West Sedgemoor Enclosures, c. 1830

5. Broadway (old enclosures) Tithe Map c.1840
6. Ilton Tithe Map c.1839 and Apportionment 1837 - 1840
7. Ordnance Survey 1808 'Old Series' 1:63,360 / 1 inch to 1 mile
8. Ordnance Survey Surveyors' Drawings 1811
9. Ordnance Survey County Series 1st Edition Map 25 inch : 1 mile
10. Ordnance Survey County Series 1st Edition Map 25 inch : 1 mile
11. Ordnance Survey Revised New Series Map, Sheet 311
Revised 1896, published 1898, Scale: 1:63,360 / 1 inch to 1 mile
12. Ordnance Survey Object Name Book, 1902
13. Ordnance Survey Contoured Road Map, 1 inch, Chard and Axminster, 1919
14. Ordnance Survey Popular Edition Cassini reprint, 1919
15. Ordnance Survey Road Map, half inch, Taunton and Weymouth, 1928
16. Ordnance Survey Map 1 inch: 1 mile, 1937 Sheet 129, fifth edition.
17. 1946 New Popular Edition, 1 inch : 1 mile. Sheet 177 (revised 1930 with later corrections)
18. Finance Act Working Copy Maps and Valuation Book
19. Finance Act Record Plan
20. 1929 Handover map
21. 1930's Road Records
22. 1950's Road Records
23. Draft Map
24. Objections to the Draft Map
25. Draft Modification Map
26. Objections to the Draft Modification Map
27. Provisional Map
28. Definitive Maps Chard RD working notes etc. and queries arising, undated
29. Definitive Map and Statement
30. Day and Master's Map, 1782
31. Greenwood's Map, 1822
32. Bartholomew's Map. Reference: Sheet 34
33. Royal Automobile Club (RAC) Official Touring Map, 1913
34. 'Plan the Second Rapps Farm in Ashill & Broadway in the County of Somerset belonging to Mrs M. Woodland 1808' referred to in the Will of Mary Woodland, 31st May 1808 (see appendix 35).
35. Will of Mary Woodland, 31st May 1808
36. Draft – Plan of lands in the parishes of – Beer Crocombe Ashill, White-Lackington, Isle Abbots South Bradon, Ilton Buckland St. Mary and Broadway, belonging to the trustees of the late Early of Egremont Compiled from Maps of the several Parishes September 1852.
37. Sales particulars for land in Ashill and Broadway, 1858.
38. User Evidence
39. Relevant extracts of map provided by Landowner A. Jordans Estate, 1957, Rawlence and Squarey Chartered Surveyors.
40. Relevant extracts of map provided by Landowner A. OS map sheet ST 31NW Somerset 1969
41. Relevant extracts of map provided by Landowner A. OS Map second edition 1903, 1:2500

