

# Regulation Committee

Thursday 5 October 2017  
2.00 pm Luttrell Room - County Hall,  
Taunton



To: The Members of the Regulation Committee

Cllr J Parham (Chairman), Cllr N Hewitt-Cooper (Vice-Chairman), Cllr J Clarke, Cllr M Keating, Cllr A Kendall, Cllr T Lock, Cllr M Pullin, Cllr D Ruddle and Cllr N Taylor

Issued By Julian Gale, Strategic Manager - Governance and Risk - 27 September 2017

For further information about the meeting, please contact Michael Bryant on 01823 359048 or [mbryant@somerset.gov.uk](mailto:mbryant@somerset.gov.uk)

Guidance about procedures at the meeting follows the printed agenda **including public speaking at the meeting.**

This meeting will be open to the public and press, subject to the passing of any resolution under Section 100A (4) of the Local Government Act 1972.

This agenda and the attached reports and background papers are available on request prior to the meeting in large print, Braille, audio tape & disc and can be translated into different languages. They can also be accessed via the council's website on [www.somerset.gov.uk/agendasandpapers](http://www.somerset.gov.uk/agendasandpapers)



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## AGENDA

Item Regulation Committee - 2.00 pm Thursday 5 October 2017

**\*\* Public Guidance notes contained in agenda annexe \*\***

1 **Apologies for Absence**

2 **Declarations of Interest**

3 **Public Question Time**

The Chairman will allow members of the public to present a petition on any matter within the Committee's remit. Questions or statements about the matters on the agenda for this meeting will be taken at the time when the matter is considered and after the Case Officers have made their presentations. Each speaker will be allocated 3 minutes. The length of public question time will be no more than 30 minutes.

4 **Accuracy of the Minutes of the meeting held on 20 July 2017 (Pages 7 - 10)**

The Committee will consider the accuracy of the attached minutes.

5 **Wildlife and Countryside Act 1981 - Section 53 Schedule 14 - Application to add a footpath from Upper Breach to Bath Road, in the Parish of St Cuthbert Out (Pages 11 - 62)**

6 **Request to take an application for a definitive map modification order out of turn: Claimed public footpath to the north of Blue Anchor Chalets (Pages 63 - 80)**

7 **Any Other Business of Urgency**

The Chairman may raise any items of urgent business.

## Regulation Committee – Guidance notes

### 1. Inspection of Papers

Any person wishing to inspect Minutes, reports, or the background papers for any item on the agenda should contact Michael Bryant, Tel: (01823) 359048 or 357628, Fax (01823) 355529 or Email: mbryant@somerset.gov.uk

### 2. Members' Code of Conduct requirements

When considering the declaration of interests and their actions as a councillor, Members are reminded of the requirements of the Members' Code of Conduct and the underpinning Principles of Public Life: Honesty; Integrity; Selflessness; Objectivity; Accountability; Openness; Leadership. The Code of Conduct can be viewed at: <http://www.somerset.gov.uk/organisation/key-documents/the-councils-constitution/>

### 3. Notes of the Meeting

Details of the issues discussed and decisions taken at the meeting will be set out in the Minutes, which the Committee will be asked to approve as a correct record at its next meeting. In the meantime, details of the decisions taken can be obtained from Michael Bryant, Tel: (01823) 359048, Fax (01823) 355529 or Email: mbryant@somerset.gov.uk

### 4. Public Question Time

At the Chairman's invitation you may ask questions and/or make statements or comments about **any matter on the Committee's agenda**. You may also present a petition on any matter within the Committee's remit. **The length of public question time will be no more than 30 minutes in total.**

A slot for Public Question Time is set aside near the beginning of the meeting, after the minutes of the previous meeting have been signed. However, questions or statements about the matters on the agenda for this meeting will be taken at the time when that matter is considered.

The Chairman will usually invite speakers in the following order and each speaker will have a maximum of 3 minutes:

1. Objectors to the application (including all public, parish council and District Council representatives)
2. Supporters of the application (including all public, parish council and District Council representatives)
3. Agent / Applicant

Where a large number of people are expected to attend the meeting, a representative should be nominated to present the views of a group. If there are a lot of speakers for one item than the public speaking time allocation would usually allow, then the Chairman may select a balanced number of speakers reflecting those in support and those objecting to the proposals before the Committee.

Following public question time, the Chairman will then invite local County Councillors to

address the Committee on matters that relate to their electoral division.

If you wish to speak either in respect of Public Question Time business or another agenda item you must inform Michael Bryant, the Committee Administrator **by 12 noon on the last working day prior to the meeting (i.e. by 12 noon on the Wednesday before the meeting)**. When registering to speak, you will need to provide your name, whether you are making supporting comments or objections and if you are representing a group / organisation e.g. Parish Council. Requests to speak after this deadline will only be accepted at the discretion of the Chairman.

You must direct your questions and comments through the Chairman. You may not take direct part in the debate.

Comments made to the Committee should focus on setting out the key issues and we would respectfully request that the same points are not repeated.

The use of presentational aids (e.g. PowerPoint) by the applicant/agent or anyone else wishing to make representations to the Committee will not be permitted at the meeting.

An issue will not be deferred just because you cannot be present for the meeting.

The Chairman will decide when public participation is to finish. The Chairman also has discretion to vary the public speaking procedures.

**Remember that the amount of time you speak will be restricted, normally to three minutes only.**

## **5. Substitutions**

Committee members are able to appoint substitutes from the list of trained members if they are unable to attend the meeting.

## **6. Hearing Aid Loop System**

To assist hearing aid users, the Luttrell Room has an infra-red audio transmission system. This works in conjunction with a hearing aid in the T position, but we need to provide you with a small personal receiver. Please request one from the Committee Administrator and return it at the end of the meeting.

## **7. Late Papers**

It is important that members and officers have an adequate opportunity to consider all submissions and documents relating to the matters to be considered at the meeting, and for these not to be tabled on the day of the meeting. Therefore any late papers that are to be submitted for the consideration of the Regulation Committee, following the publication of the agenda/reports, should be sent to the Service Manager – Planning Control, Enforcement and Compliance (Philip Higginbottom) via [planning@somerset.gov.uk](mailto:planning@somerset.gov.uk) in respect of Planning and Town and Village Green items, and to the Senior Rights of Way Officer (Richard Phillips) in respect of Rights of Way items, and should be received no less than 48 Hours before the meeting.

## **8. Recording of meetings**

The Council supports the principles of openness and transparency, it allows filming, recording and taking photographs at its meetings that are open to the public providing it is done in a non-disruptive manner. Members of the public may use Facebook and Twitter or other forms of social media to report on proceedings and a designated area will be provided for anyone who wishing to film part or all of the proceedings. No filming or recording will take place when the press and public are excluded for that part of the meeting. As a matter of courtesy to the public, anyone wishing to film or record proceedings is asked to provide reasonable notice to the Committee Administrator so that the relevant Chairman can inform those present at the start of the meeting.

We would ask that, as far as possible, members of the public aren't filmed unless they are playing an active role such as speaking within a meeting and there may be occasions when speaking members of the public request not to be filmed.

The Council will be undertaking audio recording of some of its meetings in County Hall as part of its investigation into a business case for the recording and potential webcasting of meetings in the future.

A copy of the Council's Recording of Meetings Protocol should be on display at the meeting for inspection, alternatively contact the Committee Administrator for the meeting in advance.

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## The Regulation Committee

Minutes of a meeting of the Regulation Committee held on Thursday 20 July 2017 at 14:00 in the Luttrell Room, County Hall.

### Present

Cllr J Parham (Chairman)

Cllr John Clarke

Cllr Nigel Hewitt-Cooper

Cllr Mark Keating

Cllr Andy Kendall

Cllr Tony Lock

Cllr Dean Ruddle

Cllr Nigel Taylor

**Other Members Present:** None

The Chairman welcomed everyone to the meeting, outlined the meeting procedures, made reference to the agendas and papers that were available and highlighted the rules relating to public question time.

**1 Apologies for Absence** – agenda item 1

Cllr Mike Pullin

**2 Declarations of interest** – agenda item 2

Reference was made to the following personal interests of the Members of the Regulation Committee which were published in the register of members' interests which were available for public inspection in the meeting room:

Cllr Nigel Hewitt-Cooper

Member of Mendip District Council

Cllr Mark Keating

Member of Haselbury Plucknett Parish Council

Cllr Andy Kendall

Member of South Somerset District Council  
Member of Yeovil Town Council

Cllr Tony Lock

Member of South Somerset District Council  
Member of Yeovil Town Council

Cllr John Parham

Member of Mendip District Council  
Shepton Mallet Town Council

Cllr Nigel Taylor

Member of Mendip District Council  
Member of Cheddar Parish Council

**3 Accuracy of the Minutes of the meeting held on 22 June 2017 – agenda item 3**

The Chairman signed the Minutes of the Regulation Committee held on 22 June 2017 as a correct record subject to an amendment to agenda item 5 (9) to show the item was seconded by Cllr Mark Keating.

**4 Public Question Time – agenda item 4**

(1) There were no public questions on matters falling within the remit of the Committee that were not on the agenda. Questions or statements received about matters on the agenda were taken at the time the relevant item was considered during the meeting.

**5 Heathfield Community School, Monkton Heathfield – construction of two new buildings and demolition of three single storey temporary buildings - agenda item 5**

(1) The Case Officer with reference to the report supporting papers, and the use of maps, plans and photographs outlined the application for the construction of two new buildings and demolition of three single storey temporary buildings.

The Committee were informed: Heathfield is a specialist school for the performing arts; that an oak tree in the South Western area of the application site would need to be removed to allow construction traffic to enter and exit the site; and the Case Officer highlighted the consultation responses as detailed in the officer report. Members were also advised of a number of amendments to the published papers and plans including: the location of the area identified for the deposition of soils; and the removal of the temporary site access upon completion of the development as detailed in the late paper. In addition the Case Officer further highlighted additional amendments to the published papers to edit Condition No 5. to include reference to plans; Site Entrance Arrangements Sheet 1 of 2 16087-E01 Rev. P3, dated 12<sup>th</sup> July 2017, and Site Entrance Arrangements Sheet 2 of 2 16087-E01 Rev. P3, dated 12<sup>th</sup> July 2017, and Condition No 6. to read ‘...between the hours of 0815 and 0915, and 1530 and 1630 on any school day’.

(2) The Committee heard from Carol Bond, the applicants agent, who spoke in support of the application and raised a number of points including: increasing capacity at the school; demographic growth and housing development in the local area; the requirement for drama and dance spaces at the school; the materials to be used for the external finishing of the buildings; the schools travel plan; and that the development had been designed to comply with Building Control and fire safety standards.

(3) The Committee proceeded to debate during which a number questions were asked by Members to which the Case Officer replied. This included: the removal of the oak tree for site access; the potential to remove immature hedgerow as opposed to the oak tree; the location of the site access; the



visibility splay requirements for the access track; the addition of solar panels; monitoring traffic movements; land ownership; and the County Council's duty to provide school places.

(4) The Case Officer further noted that the Parish Council had requested that the oak tree be retained as a sculpture and that the applicant had agreed to save as much of the tree as possible, and that the tree was not shown on aerial photography from 1946 and so was not thought to be a veteran tree.

(5) With the Chairman's permission the applicant highlighted that the application would be managed by Futures for Somerset.

(6) Cllr Dean Ruddle proposed the recommendations detailed in the officer report, and as amended in the late paper and verbally at the meeting, and this was seconded by Cllr Tony Lock.

(7) The Committee resolved in respect of planning application no 4/48/17/0021 that planning permission be **GRANTED** subject to the conditions set out in section 8 of the officer's report, together with the amended Condition No. 2 as detailed in the late paper and the further amendments proposed at the meeting:

- Condition No 5. – to include reference to plans; Site Entrance Arrangements Sheet 1 of 2 16087-E01 Rev. P3, dated 12<sup>th</sup> July 2017; and Site Entrance Arrangements Sheet 2 of 2 16087-E01 Rev. P3, dated 12<sup>th</sup> July 2017.
- Condition No 6. – late paper further amended to read '...between the hours of 0815 and 0915, and 1530 and 1630 on any school day.'

The Committee further resolved that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Strategic Commissioning Manager and the Service Manager, Planning Control Enforcement & Compliance

## 6 **Any other business of urgency** – agenda item 6

There was no other business.

(The meeting closed at 14:33)

**Chairman, Regulation Committee**

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Somerset County Council

Regulation Committee – 5 October 2017

Report by Andrew Saint, Senior Rights of Way Officer, Economic & Community Infrastructure - Rights of Way Definitive Map Team

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*Application Number:* **704M**  
*Date Registered:* **20 October 2010**  
*Parish:* **St Cuthbert Out**  
*pDistrict:* **Mendip**  
*Member Division:* **Mendip Hills**  
*Local Member:* **Councillor Pullin**  
*Case Officer:* **Andrew Saint**  
*Contact Details:* **01823 359796**  
**asaint@somerset.gov.uk**

*Description of Application:* **Wildlife and Countryside Act 1981 – Section 53  
Schedule 14 - Application to add a footpath from Upper Breach to Bath Road, in the Parish of St Cuthbert Out**

*Grid Reference:* **ST 5727 4671**  
*Applicant:* **West Horrington Ladies Circle**  
*Location:* **South Horrington**

**Recommendation:**

It is recommended that:

- i. An Order be made, the effect of which would be to add to the Definitive Map and Statement of Public Rights of Way a public footpath between Upper Breach and Bath Road, in the parish of St Cuthbert Out (shown A-B on plan H003-2017).
- ii. If there are no objections to such an order, or if any objections which are made are subsequently withdrawn, 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

## **1. Introduction**

1.1. On 20<sup>th</sup> October 2010, West Horrington Ladies Circle made an application under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 for an Order to amend the Definitive Map and Statement by adding a public footpath between Upper Breach and Bath Road in South Horrington.

1.2. On receipt of such an application, the County Council is under a duty to investigate and determine what, if any, public rights of way already subsist over the application route. Where the investigation shows the Definitive Map and Statement to be in error an order must be made to correct it.

## **2. Direction from the Secretary of State**

2.1. Where applications such as the one made by West Horrington Ladies Circle remain undetermined after 12 months, the applicant is entitled to ask the Secretary of State to issue a direction requiring the County Council to determine it within a given timescale.

2.2. Last year the West Horrington Ladies Circle made representations to the Secretary of State seeking a direction in relation to their application. Their request was successful and the County Council were directed to determine the application by 4 October 2017.

2.3. In recent months there has been a significant increase in the number of directions issued by the Secretary of State nationally. In Somerset alone we have received 21 directions in the last 18 months. This has inevitably put greater strain on our already stretched resources. In order to meet the deadlines set by the Secretary of State, consultants have been instructed to investigate and report upon a number of applications, including this one.

## **3. Consultant's Report**

3.1. Birchill Access Consultancy (BAC) have investigated the West Horrington Ladies Group's application on the County Council's behalf. In doing so they have followed the same procedures as those followed by officers of the County Council when investigating similar cases.

3.2. A copy of BAC's investigation report, which includes details of the relevant legislation, is attached.

3.3. As is explained in section 7.1.3, having drafted the report, it was circulated to various interested parties for comment. Four responses were received, two of which disagreed with to the recommendation. A summary of all the responses is included in BAC's report.

3.4. The case file, including the application, accompanying evidence and consultation responses can be viewed by Members by appointment.

#### **4. Conclusions**

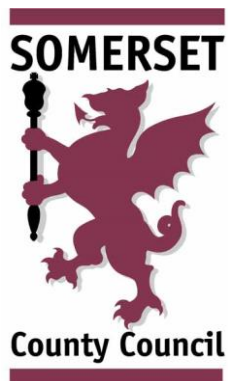
4.1. As can be seen from their report, having considered all of the evidence and consultation responses, BAC conclude there is insufficient historic documentary evidence to demonstrate that public rights existed over the application route. Furthermore, any rights which had existed appear to have been extinguished by legal order in 1907.

4.2. However, the report correctly goes on to consider the evidence of public use stretching back as far as the 1930s. Having analysed that evidence, together with documentation showing that previous landowners had begun the process of dedicating the application route as a public right of way, BAC conclude that the tests of section 31 of the Highways Act 1980 were met over the 20 year period 1971-1991.

#### **5. I therefore recommend that:**

- i. An Order be made, the effect of which would be to add to the Definitive Map and Statement of Public Rights of Way a public footpath between Upper Breach and Bath Road, in the parish of St Cuthbert Out (shown A-B on plan H003-2017).
- ii. If there are no objections to such an order, or if any objections which are made are subsequently withdrawn, 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.

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**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53, SCHEDULE 14**  
**APPLICATION TO ADD A PUBLIC FOOTPATH FROM UPPER BREACH**  
**TO BATH ROAD**  
**IN THE PARISH OF ST CUTHBERT OUT**  
**704m**

**Author: Claire Goodman-Jones (Birchill Access Consultancy Ltd)**

**Date: 6 September 2017**

This document is also available in Braille, large print, on tape and on disc and we can translate it into different languages. We can provide a member of staff to discuss the details.



**RNID typetalk**

## **CONTENTS**

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3. Relevant Legislation
4. Documentary Evidence
5. Landowner Evidence and Evidence from those against the application
6. User Evidence
7. Consultation and other submissions
8. Summary and Conclusion
9. Recommendation



## **1. Introduction**

1.1 On 20<sup>th</sup> October 2010, West Horrington Ladies Circle made an application under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 for an Order to amend the Definitive Map and Statement by adding a Public Footpath as described in paragraph 2 below.

1.2 A public footpath can be used by the public on foot with a usual accompaniment eg pram, dog.

1.3 The purpose of this report is to establish what public rights, if any, exist.

1.4 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 is supported by evidence from 36 people who attest to use of the route. 33 people completed user evidence forms submitted with the application. In addition, 1 person submitted a letter outlining evidence of family usage and 2 additional people came forward with user evidence at a later date to the application.

2.2 The application is also based on documentary evidence. The applicant supplied a number of documents with the application, as follows:

- Timeline of events 1991-2009 & photographs of route.
- Letter from Rights of Way Manager to Planning 28/6/91
- Newspaper articles regarding desire to open claimed route 28/6/91
- Agreement between Mendip District Council, Somerset Council and Orton Properties Ltd re: Land at Mendip Hospital
- 2001 Book of West Horrington Walks by West Horrington Ladies Circle
- Various correspondence regarding Section 106 agreement and safe routes to school proposal.
- Letter to Mendip District Councillors asking for route to be reopened
- Letter from Rights of Way Officer in 2009
- Letter from Parish Council 15/4/2009
- Letter from W. Horrington Ladies Circle to Mendip District Council Solicitor 22/4/09
- Old parish map 1788
- Tithe map 1832
- Days and Masters map 1782
- Parish minutes referring to claimed route
- West Horrington Walks promotion.

The application and supporting documents are held by Somerset CC.

2.3 The claimed route number 704 is shown coloured blue on Appendix 1. The route starts at Point A off the northern end of Public Footpath WS 10/109 (created by a Section 25 agreement in 2003) and eastern end of the Upper Breach road. The claimed route heads in a generally northerly direction for approx. 348 metres along a partly surfaced route and is approx. 8ft wide where it terminates on the Old Bath Road (B3139) at Point B. From investigations, the claimed route appears to be known locally by many by the term 'Back Lane'.

2.4 Photographs of the claimed route taken in 2010 are at Appendix 2.

2.5 A land registry search was carried out on 9<sup>th</sup> January 2017 which identified one affected landowner.

### 3. Relevant Legislation

3.1 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 sections 53(3)(b) and 53(3)(c)(i) are of particular relevance. They require the Map and Statement to be modified where the County Council discover evidence which, when considered with all the other available evidence, shows either-

- *“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” (Section 53(3)(b)); or*
- *“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)(i)).*

3.2 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 Sections 53(3)(b) and 53(3)(c)(i) 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 West Horrington Ladies Circle made their application.

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

3.4 Under Section 31 of the Highways Act 1980, 20 years use by the general public can give rise to the presumption of dedication of a way. 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. 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”.

3.5 Section 32 of the Highways Act 1980 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”.

3.6 Section 66 and 67 of the Natural England and Rural Communities (NERC) Act 2006, 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.

3.7 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.

#### **4. Documentary Evidence**

The table below shows documentary evidence sources examined as part of this investigation.

<b>Type of Documentary Evidence</b>
<b>Explanation of the type of evidence</b>
<b>Evidence source, reference &amp; appendix number</b>
<b>Description and interpretation of evidence</b>

#### **4.1 Enclosure Records:**

**4.1.1 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 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 as necessary, confirmed and endorsed and sometimes stopped up. 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.

#### **4.1.2 Evidence source, reference & appendix number**

**'A Plan of Lands Exchanged by Virtue of the Wells Inclosure Act' 1795**  
**SHC ref: Q/RDE/81**  
**Appendix 3**

#### **4.1.3 Description and interpretation of evidence**

This plan does not show the claimed route as such although there is some indication at the northern end of the claimed route on the map of a route running south shown by two short solid lines appearing to run in a southerly direction. From the far south, just south of the claimed route there is also an indication of a route heading north again shown by two short solid lines. In this instance, nothing conclusive can be deduced from the Enclosure Map.

#### **4.2 Tithe Records:**

**4.2.1 Explanation of the type of evidence** Tithe maps and the written document which accompanied them, (the apportionment) were produced between 1837 and the early 1850s 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.

#### **4.2.2 Evidence source reference number and appendix number**

**Tithe Map and Apportionment for the Parish of Wells, 1837/38**  
**Diocesan Copy - SHC Ref: D/D/Rt/M/41& D/D/Rt/A/41**  
**Parish Copy – no Parish Copy for St Cuthbert Out**  
**Appendix 4 &5**

#### **4.2.3 Description and interpretation of evidence**

The Map and Apportionment for Wells, St Cuthbert Out is dated 1837/1838. Three maps were produced; one for the Parish Council, one for the Diocese and a further copy for the Tithe Commissioners themselves. In this case only the Diocesan copies are available at the Heritage Centre.

The Tithe map for Wells was not sealed by the Commissioner confirming that it is only a second-class map. It is therefore only conclusive evidence in respect of the information it contains relating to tithes.

The Diocesan copy shows the claimed route very clearly as a through route from the south to north bounded by solid lines and is shaded beige/brown, which by cartographic convention, was often used to identify roads.

The claimed route is not numbered or referred to in the apportionment indicating that the land was not considered to generate any titheable produce. This could be because it was considered to be a public road however it could equally have been unproductive land for another reason, and therefore unnumbered.

Taken on its own the Tithe documents provide excellent evidence that the claimed route was a physical through route since at least the 1800's. However, they were never intended as a record of public rights and as such are less helpful in determining the status of any given route. In this case, even when read together, the map and apportionment give little indication as to why the claimed route was considered unproductive i.e. did they carry public or just private rights?

<p><b>4.3 Ordnance Survey Records:</b></p>
<p><b>4.3.1 Explanation of the type of evidence</b> 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. OS Maps cannot generally be regarded as evidence of status; however, they indicate the physical existence of a route at the date of survey.</p>
<p><b>4.3.2 OS Surveyor Drawing</b>  <b>OSD No 49, (SHC)</b>  <b>Surveyed 1811</b>  <b>2inch: 1 mile</b>  <b>Appendix 6</b></p> <p>The entire length of the claimed route is clearly shown between two solid parallel lines and is also shown as part of a clear north to south route. It is difficult to pick up any other detail due to the very heavy black shading used on the plan.</p>
<p><b>4.3.3 1809-1833 OS ‘old series’ map</b>  <b>Cassini Timeline reprint (extract only)</b>  <b>Original scale: one inch: mile</b>  <b>Appendix 7</b></p> <p>The entire length of the claimed route is clearly shown mostly between two solid parallel lines and is also shown as part of a clear north to south route. At the northern end of the claimed route on the eastern side the route it is bounded by a broken line for a short section where it is adjacent to an old quarry.</p>
<p><b>4.3.4 “1887” 1<sup>st</sup> edition</b>  <b>25”: 1 mile (microfiche copy) OS map, reprint 1970, second impression 1982,</b>  <b>Ref: XL1 NW</b>  <b>Appendix 8</b></p> <p>The entire length of the claimed route is clearly shown mostly between two solid parallel lines and is also shown as part of a clear north to south route. At the northern end of the claimed route on the eastern side the route it is bounded by a broken line for a short section where it is adjacent to an old quarry.</p>
<p><b>4.3.5 1887, 1<sup>st</sup> Edition</b>  <b>6 inch:mile OS map</b>  <b>Ref: XL1 NW</b>  <b>Appendix 9</b></p> <p>The entire length of the claimed route is clearly shown mostly between two solid parallel lines and is also shown as part of a clear north to south route. At the northern end of the claimed route on the eastern side the route it is bounded by a broken line for a short section where it is adjacent to an old quarry.</p>

**4.3.6 1901 2<sup>nd</sup> Edition**  
**25 inch: mile OS map**  
**Ref: XL1 NW**  
**Appendix 10**

The entire length of the claimed route is clearly shown mostly between two solid parallel lines and is also shown as part of a clear north to south route. At the northern end of the claimed route on the eastern side the route is bounded by a broken line for a short section where it is adjacent to an old quarry.

**4.3.7 c1930 3<sup>rd</sup> Edition**  
**25":1mile OS map**  
**Ref XL1 NW**  
**Appendix 11**

The entire length of the claimed route is clearly shown mostly between two solid parallel lines and is also shown as part of a clear north to south route. At the northern end of the claimed route on the eastern side the route is bounded by a broken line for a short section where it is adjacent to an old quarry.

**4.3.8 Description and interpretation of evidence**

From examination of various editions and dates of Ordnance Survey mapping it is clearly evidenced that the claimed route existed from the early 1800's as part of a through route north to south and continued to do so into the 1900's. Little more can be concluded from the Ordnance Survey maps other than the claimed route has had a long standing physical presence over time. The maps do not give any indication as to whether routes are public or private as the purpose of OS mapping is merely to record the physical representation of features on the ground at the time of survey.

**4.4 1910 Finance Act**

**4.4.1 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 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.

**4.4.2 Finance Act Working Plan - SHC - DD/IR/OS/41/2)  
Finance Act Valuation Book - SHC DD/IR/W/50/3  
Finance Act Map – Kew Record  
Appendix 12,13, 13b &14**

**4.4.3 Description and interpretation of evidence**

Two of the working copies of the Finance Act Map have been examined at the Somerset Heritage Centre. One black and white map and one coloured. Both maps show the claimed route forming part of a north to south route bounded by solid parallel lines. The coloured map includes the claimed route within a wider coloured field parcel and does not exclude it from the parcel in the vicinity of the Old Mendip Hospital. No field or hereditament number is shown on either of these maps for the claimed route although just to the south of the claimed route the lane passes through hereditament no 28 but there is no deduction for any public right of way recorded in the valuation book kept at Somerset Heritage Centre.

In addition, the applicant has also supplied a copy of the Finance Act map from the National Archives at Kew and it can be seen much clearer in a wider area context that the claimed route is not excluded from the surrounding field parcels near the Old Hospital and forms part of hereditament no: 796. Unfortunately, no copy of the accompanying field book has been provided by the applicant in order to see if there is any reference to this in the field book.

Consequently, the Finance Act maps and valuation books themselves shed little light on the status of the route as there is limited information provided in these cases to draw any clear conclusions. Whilst there is no clear evidence from these maps this does not necessarily mean that no public right of way existed at this time and the evidence would therefore appear of neutral value. However, the Finance Act map as with other maps examined highlights again that the physical presence of a route continued to exist in the early 1900s.



#### **4.4 Highway Road Records held by the County Council**

**4.4.1 Explanation of the type of evidence** The Local Government Act 1929 transferred the responsibility for maintenance of 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.

#### **4.4.2 1929 Handover Map and Schedule Appendix 15**

The claimed route is not marked on the 1929 Handover map and only nearby roads to the south and west of the claimed route are clearly visible including the Old Bath Rd which the claimed route joins at its northern end. Various schedules exist listing roads but no reference to anything that is certain or likely to refer to the claimed route has been referenced.

#### **4.4.3 1930 Road Records Appendix 16**

The claimed route is not marked as a road but the nearby roads to the south and west of the claimed route are clearly visible as is the Old Bath Road which the claimed route joins at its northern end.

#### **4.4.4 1950 Road Records Appendix 17**

The claimed route is not marked as a road but the nearby roads to the south and west of the claimed route are clearly visible as is the Old Bath Road (B3139) which the claimed route joins at its northern end.

#### **4.4.5 Description and interpretation of evidence**

The Council Highway Road Records do not show any evidence of the claimed route having any vehicular status at the time of carrying out their various surveys. They clearly show surrounding routes which the claimed route joins as having public vehicular rights.

Overall little weight can still be given to these maps in terms of whether the claimed route has any public rights of low or higher status.

#### **4.6 Definitive Map and Statement preparation records**

**4.6.1 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 statutory 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.
- 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.
- Provisional Map – This map incorporates the information from the Draft Maps and the successful results of objections to the Modification Maps. These were put on deposit in the Parish 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.

#### **4.6.2 Survey Map Appendix 18**

No reference to the claimed route is made on the Survey Map and consequently there is no survey card referring to route.

#### **4.6.3 Draft Modification Map Appendix 19**

The claimed route does not appear as an additional modification to the Draft Map. A few other routes are marked as additions but none in the vicinity of the claimed route.

#### **4.6.4 Provisional Map Appendix 20**

Two sets of provisional maps are present for this area. On the first the claimed route is not marked but on the other nearby roads and public rights of way are clearly marked. On the second map the entire claimed route plus the lane running south which is now Public Footpath WS 10/109 is shaded in a light brown colour. Whilst there is no key is with this map, it is reasonable to assume that due to the inclusion of what became Public Footpath WS10/109 on the second map, the light brown shading was an indication of the existence of a public right of over the claimed route.

#### **4.6.5 Definitive Map Appendix 21**

The claimed route is not marked on the Definitive map but other nearby roads and public rights of way are clearly marked. Given the route is not on the Definitive Map there is no reference to it in the accompanying Definitive Statement for Wells area.

#### **4.6.6 Description and interpretation of evidence**

The claimed route does not appear on many of the maps/survey cards during the various stages leading up to the formation of the Definitive Map or the Definitive Map itself. The only map that gives some indication that the route may have been considered to have some public status is the second provisional map although the shading is ambiguous as to what status this was meant to represent. This does not however prove positive or negative in terms of the claimed route as obviously the applicant believes evidence of usage not only before the formation of the Definitive Map but also for a considerable time after the formation of the Definitive Map has brought about a Public Rights of Way into being. Therefore, consideration and reference should be made to the evidence outlined in Section 6 of this report.

#### **4.7 Other Sources**

##### **4.7.1 1788 Parish Map**

This map provided by the applicant clearly shows the claimed route bounded by double solid lines and shaded a similar colour to that of the Old Bath Rd which it joins at the northern end. Near the northern end of the claimed route there is also a handwritten note in a small field parcel adjacent to the far northern end of the claimed route which says, 'Trustees of Turnpike Trust' which may give an indication the route was believed historically to have high public status.

##### **4.7.2 Section 31 Statutory Declaration**

No Section 31 Statutory Declarations are held by Somerset County Council which cover the area in which the claimed route is located and therefore there is no declaration which would negate any or all of user evidence in this particular case.

##### **4.7.3 Parish Files (held by Somerset County Council (SCC) and relating to PROW issues)**

**Ref: St Cuthbert Out 2/44 195-75**

Nothing of relevance was found referring to the claimed route only other nearby disputes.

#### **4.7.4 Parish Council/Meeting Minutes**

**Ref: SHC D/P/st cu & D/PC/st cu/4/1/1  
Appendix 22**

Nothing was available at Somerset Heritage Centre in terms of Parochial Church Council minutes relating to this route but the applicant did supply a copy of the parish minutes from 1958 which refers briefly to the claimed route as a footpath from Bath Road to Old Frome Road. Within these minutes it states the surveyor was in agreement with observations on this subject (what subject they refer to is unclear) but they state they hope to be able to give attention to this path in the not too distant future. What was meant by 'attention' is unclear but they do appear to be referring to the claimed route and give an indication that they believed it to be public.

#### **4.7.5 General District File (held by SCC)**

**Ref: 5/GEN/JUN 47-80, 5/GEN/72-95 & 5/GEN/1996 on**

The earlier files focus on a general discussion of the stages and processes leading up to the formation of the Definitive Map and later on there is some discussion of anomalies to be resolved from the 1970s on but no particular reference to the claimed route.

#### **4.7.6 Mendip Rural District Council Minutes**

Files held by Somerset County Council have been examined from 1930 – 2002 and whilst there is more focus on specific routes in terms of issues around obstructions and maintenance there is no particular reference to the claimed route

#### **4.7.7 Section 106 Agreement**

To the west of the claimed route there is a triangle of land that was for many years the site of the old Mendip Hospital until it was closed and demolished after 1991 as part of a new development.

As part of the development on site a section 106 condition resulted in three dedication agreements being drawn up between different parties at different dates in 1994, June 2003 and April 2003. The dedication agreements drawn up in 2003 did not focus on the claimed route forming part of this application but on the now public footpath WS10/109 to the south of the claimed route from the Upper Breach Road to the Old Frome Road.

However, in 1994 a dedication agreement was drawn up along the claimed route but it appears to have never been legally completed. The whole matter around the signing of the dedication agreement dated 1994 was very protracted and it appears that an agreement with all the correct parties signing was never actually completed. Correspondence submitted by the applicant shows that over time various parties were upset that the dedication has never been seen through and the claimed route actually properly dedicated.

What is clear is that whilst the dedication agreement in 1994 was never actually complete it does show that there has been some historical intention and acknowledgement on the part of the landowner/s at least of the usefulness and desire for the claimed route be a public right of way and an indication on behalf of the landowner/s to at least dedicate a route at common law. (See more on Common Law in the penultimate paragraph of section 6.1)

**4.7.8 Day and Masters 1782  
Appendix 23**

Published in 1782, this commercial map included very little detail typically only depicting settlements, major roads (particularly those in and between settlements), and rivers. It is therefore unsurprising that most of the claimed route is not shown on the map apart from a small short section of solid parallel lines at the northern end of the claimed route which neither confirms nor removes the possibility that the route existed in the late 18th century.

**4.7.9 Greenwoods 1822  
Appendix 24**

Greenwoods map of 1822 is far more detailed than Day and Masters showing the claimed route as part of a clear through route from north to south.

Despite some criticism relating to the accuracy of Greenwoods maps, it provides good evidence that the route physically existed at the time of the survey and, possibly, that the surveyor considered the route to be of some importance. Whether it was marked to depict a public or private route is difficult to deduce however it is very likely the surveyor would have placed more importance on depicting those routes they believed to be publicly accessible or useful for the public in some other way. Consequently, no definitive conclusions can be drawn from this map other than the claimed route formed part of a clearly physical defined route as far back as the early 1800s with a possibility of carrying public rights.

**4.7.10 Aerial photograph 1946  
Appendix 25**

Most of the claimed route is clearly visible as a track /lane feature, the southern end is a little less visible due to surrounding tree cover but still a route is identifiable. The adjoining Upper Breach road, the lane to the south and Old Bath Rd to the north are also visible.

**4.7.11 Quarter session rolls  
SHC: Q/SR/821 & Q/SR/827/1  
(Appendix 25b)**

A stopping up Order was made on 4<sup>th</sup> March 1907 which appears to relate to the claimed route. A subsequent certificate of two justices also refers to the stopping up of a highway situate on the north-east side of Somerset & Bath

Asylum (what was Mendip Hospital) in the Parish of Cuthbert Wells, Somerset. There is reference to the stopping up of the route as a useless and unnecessary public highway.

#### **4.7.11b Description and interpretation of evidence**

Greenwood's Map of 1822 and aerial photography dating back to 1946 both confirm with previous maps examined that the claimed route has been a clear physical feature and through route for a considerable period of time. No Section 31 Declaration has been lodged with the Council as evidence of no intention to dedicate.

The Parish minutes and other general files held by Somerset County Council do not make much reference to the route but this is perhaps not surprising given it is only in more recent years (since approximately 1991) that the users claim they have had issues using the route and are consequently surprised it is not already a legal Public Right of Way. However, there is some reference in 1958 to a footpath from Old Frome Rd to Bath Rd that would seem to refer to the claimed route possibly needing attention in some way and therefore providing some possible indication that the claimed route has public status.

The Section 25 dedication agreements drawn up during the development of the nearby Old Mendip hospital site indicated a promise to dedicate the claimed route as a public footpath. However, whilst the process of drawing up of various agreements was protracted, there does not appear to be any legal agreement currently standing signed by all the correct parties. Nevertheless, the process does at least highlight that there has over time been the desire and initial willingness of the part of the affected landowner/s for the route to be a public right of way.

The stopping up Order of 1907 clearly refers to the claimed route as a public highway to be stopped up and had the effect of stopping up any public rights to use the route which existed prior to the making of the order. However, it is clear that since 1907 use of the route by the public has continued (see Section 6 for detail on usage) and this evidence still has to be examined as it may be sufficient to support the claim that a public right of way has come into existence after 1907.

#### **4.7.12 Summary of all Documentary Evidence**

Overall it is very clear that the claimed route has been presented consistently on Ordnance Survey mapping from the early 1800's and on other commercial mapping as part of a clear through route and a significant map feature (shown by double solid lines). In addition, the Tithe map, Finance map, old road records and maps leading up to the preparation of the definitive map in the 1950's again all show the route as a clear through route. As stand-alone documents, they do not shed any light on any potential public status of the

claimed route but do confirm the long standing physical presence of a route of significance.

The 1788 Old parish map indicates a possibility that the claimed route was considered to have some public status being shaded similar to surrounding roads and the 2<sup>nd</sup> provisional map in preparing the Definitive Map also shades the route similar to the Bath Road. The dedication agreements drawn up from 1994 onwards although never appearing to have been correctly/fully signed appear to at least acknowledge some agreement at the time to dedicate a public right of way along the claimed route.

Overall correspondence discussing the dedication agreements at the very least indicates an understanding on the part of various bodies that the route should be a public right of way and is good evidence supporting common law dedication when viewed alongside the other evidence.

The Stopping Up Order of 1907 clearly demonstrates that the claimed route at least had historical public highway status given that it was stopped up at some point in history.

Overall the historical evidence is strong in evidencing a clearly defined physical route on the ground since the 1800s with no alteration over time. However, even if the right had historically existed it would appear that they were stopped up in 1907. While this does not prevent rights from coming into existence after that time, the post-1907 documentary evidence (as opposed to the user evidence discussed below) is insufficient to support such a conclusion. Having said this, it is important to consider the user evidence in light of several of the above documents and in particular the 1958 minutes and the incomplete dedication agreements.

Other sources of Primary Documentary Evidence which either did not cover the relevant area or did show the claimed route but do not assist in determining the status: -

- Quarter Session Records – SHC ref; Q/SR/613/228, 615/5, 645/2-11
- Session roll for Michaelmas 1905 – SHC ref: Q/SR/821
- Second copy of session roll -SHC ref: Q/SR/827/1

## **5. Landowner Evidence & Evidence from those against the application.**

**5.1** This section of the report includes information provided by the landowner. Factual first-hand evidence carries more weight than personal opinion, hearsay or third-party evidence.

<b>Landowner and response</b>
<b>Landowner A</b> – the current and only affected landowner has responded to the Council and whilst they do not use the word objection to the application to add a Public Footpath on their land they do make several comments and

submissions of evidence for consideration. The landowner states that the gate at Point B has been locked for significant periods since 1991 along with vegetation overgrowth making it impossible to use. This is backed up by copy of Council committee minutes provided confirming this (see appendix 26). The landowner also states a private property sign has been in place near Point A since mid 1990s and has provided photographic evidence of the sign near Point A (see appendix 27) and gate referred to at Point B. A letter from another member of the public who lived in Mendip House from 1993-2007 has also been submitted. That letter confirms there was a clear 'Private Property' sign at the entrance to the lane.

There is also mention and copies of correspondence relating to attempts by the landowner to offer the applicant some sort of permissive access after 2000 to use the route in order to minimise impact of his property. That offer has not been taken up. Concerns regarding health & safety of the route at Point B onto highway have also been expressed.

## **5.2 Comments on Landowner Evidence.**

The landowner's comments focus on what they believe to be an interruption in usage via a locked gate at the northern end of the claimed route and private property signage at the southern end of the claimed route from the 1990s. The locked gate would have certainly made the route difficult to use in more recent years and may be sufficient to negative an intention to dedicate. However, this does not necessarily mean that public rights were not acquired prior to the 1990s before the gate was locked.

On the other hand and in the absence of any evidence to the contrary the intention of the person who erected the signage is to be drawn from how the notice would be likely understood by members of the public who saw it in its context. A notice saying "Private Property" only may not be sufficient to interrupt the use of the route.

From examining the user evidence, which dates back much further to the late 1930s and with considerable claimed usage from 1960s to 1990s, it is clear that prior to the locked gate and signage the test of 20 years uninterrupted usage has been met (see Section 6). Efforts by the landowner more recently to grant some sort of permissive access has not been accepted by the applicant hence their application and whilst this is a recognised gesture of goodwill the merits of this application have to be considered and determined under the legal tests laid out at the beginning of this report. In any case, the offer of permissive access occurred in 2000; i.e. after the relevant 20 year period discussed below. Also, the health and safety concerns raised by the landowner, whilst an understandable concern, are not relevant considerations in the determination of this application.

## **6. User Evidence**

### **6.1 Analysis of the User Evidence**



A summary of user evidence can be found at Appendix 28 which shows the frequency, duration and type of user evidence including dates of challenge.

There must have been sufficient use of the way for the required period. In this case use of the application route has been enjoyed for over 50 years from the 1930s to 20<sup>th</sup> October 2010 so well above the required 20 years needed to meet the statutory test. According to the Planning Inspectorate Consistency Guidelines, 8<sup>th</sup> revision, July 2013, there is no statutory minimum level of user required, however it is clear that there must be a sufficient level of use for the landowner to have been aware of it and have had the opportunity to resist if he chose. In this case, it appears that there has been sufficient use of the route to afford the landowners the opportunity of challenging use.

A significant number of people (36) have either completed user evidence forms or submitted written evidence claiming they have used the claimed route. 18 of those who completed user evidence forms also took part in a telephone interview where their written evidence was clarified and additional information obtained (this included the applicant). On examining the summary of user evidence form and graph of the type of usage in Appendix 28 it is clear to see that a substantial number of people (all 36) have used the route at least on foot; collectively that use spans a period of well in excess of 20 years - in fact usage goes as far back at the 1930s but the bulk of usage appears to be from the 1970s to 1990s.

In terms of continued and uninterrupted usage it appears that up until the late 1990s that all users claim to have never been unable to use the route, nor had they seen or encountered any obstacles preventing them using the route and there appears to be a general belief that the route is public and surprise it is not already on the Definitive Map and Statement. The only overt action on part of the landowner to rebut any of the usage appears to be the mention by 7 people of a padlocked gate at Point B around the late 1990s along with barbed wire on the top of the gate by 4 people and some signage mentioned by 5 people. On further investigation during phone interviews some mentioned that the barbed wire didn't make it impossible to use the route and they didn't view that the wire was there to discourage use. Evidence shows that despite the locked gate and barbed wire some usage clearly continued as evidenced by the fact that walks continued along the route in the early 2000's by the West Horrington Ladies Circle. The 5 people that mentioned seeing notices near the claimed route both at the northern and southern end stated that the wording was along the lines of '*Private Drive, Beware of Dogs*'. From interviewing the users, they were unclear whether this referred to their usage of the claimed route or was merely stating the land and/or surrounding land was in private ownership. The notices therefore do not appear to have demonstrated a lack of intention to dedicate the claimed route.

Fourteen people mention that prior to the 1990s the gate at the northern end of the claimed route was often left open and upon interviewing stated that it would have been difficult to close due to vegetation overgrowth pinning it open as it had been left open for so many years. One person mentioned the

gate being locked at night but they were not clear when. Many mention 1991 as the date when accessing the route became more difficult to use and say the route actually appeared to be closed with a locked gate at northern end of the route and notices as site works began to develop the area once the Mendip Hospital had closed and site was sold in 1991.

In terms of exactly when the gate was locked at the northern end of the claimed route there does seem to be some discrepancy between what the landowner states as being 1991 and what users say with most saying late 1990's with some users being vague and unclear as to exactly which year. Consequently, both potential dates of challenge mentioned (i.e. 1991 and 1999) are indicated by the red lines shown on the summary chart in Appendix 28. The relevant 20-year period for this case is being presented as 1971-1991.

During the relevant period of 1971-1991 27 people claim to have used the route on foot, 1 on bike, 2 on horseback and 2 in motor vehicles plus one scooter. In terms of type and frequency of usage the majority of people believe the route to be a public footpath having used the route on foot. However interestingly 15 people believe the route is of higher status than a public footpath despite many only using it on foot themselves. The evidence shows that at least 7 people witnessed others using the route on pedal cycle or horse or other members of their family even if they only used on foot themselves. Frequency of usage for all different types of usage varies a lot between users from several times a week to a few times a year with variances according to weather and personal circumstances. 24 users used the claimed route at least once a month with 8 using the route at least once a week.

A wide range of reasons were given for why claimants used the route and where they were going from/to. Many stated they used it for going to school, visiting friends in villages, walking dog, blackberry picking, going to work or visiting Mendip Hospital. Many claimed to have also used the route as a short cut to keep off the main road or as part of a larger circular or longer walks in the area. All believed the landowner must have been aware of the usage given the number of people using the route and also many were aware that a previous Section 106 agreement had been drawn up but never completed in relation to the development to create a public footpath.

No one states they were informed they couldn't use the route by anyone, nor were they turned back and most stated that they never saw any prohibition signs. A few said they had heard via hearsay of someone being turned back in recent years but had no first-hand evidence of this. Just a few mentioned a 'Private Drive, Beware of Dog Sign' sometime in late 90s but they tended to be a bit vague when questioned as to where the sign was located and it is unclear as to whether any signage was actually referring to the claimed route or the surrounding land.

In addition, 6 people had some connection with the hospital on site at the time and used the route during the relevant period whilst working at the hospital. 5 of the 6 stated they were given no instructions, permission or indication that

usage of the claimed route was just for them. However, there was clearly some implied permission from the landowner. One also stated they actually had direct permission to use the route from the surrounding landowner they rented a field off. Therefore these 6-people's evidence should be discounted from the overall number claiming use of the route. These 6 people's usage has been highlighted in yellow on the graph in Appendix 28. From interviewing users, they stated that there seemed to be a general common knowledge that usage was for the wider public including visitors and workers at the hospital but others as well. Further investigation of the user evidence indicates there were also at least half a dozen extra people who appear to have used the route to access the hospital too but this was not their sole or even main reason for using the claimed route. There appears to be a host of other reasons these people used the route in addition to hospital access from visiting friends in the area along the route or en-route, to Sunday walks, going to school, taking a short-cut from villages, playing there as child and a host of other reasons too. It is clear therefore that the usage of the route was based on a multitude of reasons other than just accessing the hospital.

Overall it is clear that there has been significant use of the claimed route for well over 20 years on foot by (36) people. Whilst there is some evidence of use on pedal cycle, horseback and vehicular use this does not appear sufficient to prove any higher status of the route. The locking of the gate and barbed wire in the 1990s may be taken as interruption in use and some expression at least of a lack of intention to dedicate although it is clear from the evidence that some usage clearly continued after the late 1990s.

In addition to the legal evidential tests laid out in Section 3 of this report referring to Section 31 of the Highways Act and the 20 year tests it is also possible that under Common Law any period of public use might give rise to an inference of dedication to the public and even relatively short periods of intensive use can be sufficient evidence of dedication to the public. It also appears that whilst a dedication agreement to legally create a public right of way on the line of the claimed route was never fully completed in 1994, the fact this was drawn up and discussed does provide some good evidence to support at least an intention to dedicate a public footpath at Common Law and therefore this also needs to be considered in addition to the merits of the application meeting the tests laid out in Section 31 Highways Act 1980 (20 years usage etc).

In this case although there is well in excess of 20 years usage the main relevant period 20-year period of clear uninterrupted usage appears to be 1971 – 1991. If the evidence of the 6 users who appear to have been using the route 'by right' rather than 'as of right' is discounted, then there remain 19 individuals who claim to have used the route during this key period. Consequently, there has been well in excess of 20 years' usage by a significant number of users which appears to have been uninterrupted at least up to the 1990s and a genuine belief by claimants that the route is public. The test laid out in Sec 31(1) clearly seems to have been satisfied.

## 7. Consultations and other submissions

7.1 Consultations regarding the claimed route were sent out to all landowners and relevant local and national user group organisations in January 2017. The table below shows who was consulted and gives brief details of the replies that were received.

<b>Consultee and response</b>
<b>St Cuthbert Out Parish Council</b> – in a recent meeting in 2017 the parish council stated that they support the application if there is evidence of 20 years usage and state their belief that the claimed route has been highway with right of way for over 100 yrs. They also sent in copy of Definitive Map and a copy of Council minutes from 2009 which state that the path should be re-instated and adopted by the Council and that it is an existing public right of way.
<b>Mendip District Council</b> – state no comments to add other than making brief reference to being aware of the Section 106 agreement made in mid 90s.
<b>Ramblers Association</b> – Somerset Office – Commented that they don't recall the Ramblers using the claimed route but are very brief and make no further comments.
<b>Natural England</b> – confirm the claimed footpath does not impact on protected land and comment that lesser horseshoe bats in vicinity but no issue as long as no street lights erected on any successful rights of way claim.
<b>Somerset Environmental Records Centre</b> – mention lesser horseshoe bats too and the fact nearby hospital ground is a Local Wildlife site but no real concern regarding claimed footpath.
<b>English Heritage</b> – state no concerns

No response was received from the following organisations: -

- Local member
- British Horse Society (Somerset Office)
- Trail Riders Fellowship – Somerset Office
- All Wheels Drive Club
- Open Spaces Society – National Office
- Somerset and Avon Constabulary
- Ramblers' Association – National Office
- British Horse Society – National Office
- British Driving Society – National Office
- British Horse Society – Local Area Representative
- CPRE – Somerset Office

In addition to the formal consultation responses a number of other interested parties have recently come forward in support of the application: -

**Extra response 1** – One person has recently written to the Council in strong support of the application. An article titled ‘Memories of Horrington School’ 1961-67 has been provided which gives a detailed description of memories of using the route as a child to school which is just before the relevant 20-year user period of 1970s to 1990 but adds to user evidence prior to the 1970s. Indeed, there is reference to the claimed route being named the ‘Warren Way’. Also submitted is a letter dated 2007 to the council asking why the route is not a Public Right of Way and stating that it was his belief that it was.

### **Extra responses 2&3**

Two individuals have come forward more recently in support of the application. One states their belief the route has higher rights than just footpath status and one recalls their usage of the route believing it to be a public footpath. Their evidence has been incorporated into the user evidence analysis.

### **7.2 Other matters**

The applicants submitted a number of documents to support their application some of which have been referred to and analysed above but in addition there is some reference to the route in the 2001 West Horrington Walks guide. This states under ‘Kings Castle Walk’ that the claimed route is in the process of being dedicated as a public right of way.

There is also correspondence referring to the claimed route becoming a safe route to school but this never came to fruition due to safety concerns the council had which relating to issues with exiting on bend, speed limits and lack of pavement matters, along with correspondence relating to the Section 106 and the incomplete Section 25 agreements.

### **7.3 Comments on Draft report**

A draft version of this report was sent out to key stakeholders on 27<sup>th</sup> July 2017 to enable them to view the findings of research and analysis into this case and give them the opportunity to comment. The consultation was sent to the applicant, landowner and their agent, county councillors, parish councils, user groups etc. Comments were received back by 20<sup>th</sup> August from the following: -

- Cuthbert St Out, Parish Council
- Supporter of Application
- Mendip Bridleways & Bridleways Group
- Landowners agent

Where there is disagreement from consultees with the report we have highlighted our comments (below) in italics but ultimately if this case is

objected to moving forward this will be a matter for the Planning Inspectorate to determine via formal Statements of Case etc.

St Cuthbert Out, Parish Council stated they had no comments to make and a supporter of the applicant stated they were generally very happy with the report but highlighted a few grammatical errors which have since been corrected.

The Mendip Bridleway & Byways Group commented that they felt the report is too weighted towards user evidence and felt more consideration should have been given to the historical map evidence. They also implied that there were more historical users on horseback that would have provided evidence but who have since died in the time taken to process this application and therefore there may have been additional user evidence which cannot be substantiated. They believe the historical maps accompanying the application show the route in question would have been used by horse & cart for over 200 years and therefore believe the route should be a public bridleway or restricted byway. **(As discussed above, we consider that insufficient evidence of equestrian use has been provided to demonstrate the existence of a bridleway. The Mendip Bridleway and Byways Group do not appear to disagree with that conclusion. While there may be various reasons why more evidence of equestrian use has not been forthcoming we can only make a recommendation based on the evidence that has been provided. A considerable amount of this report is dedicated to documentary evidence which shows that all public rights over the route were extinguished in 1907. No post 1907 document (or combination of documents) has been identified by the Mendip Bridleway and Byways Group to substantiate their claim that higher rights exist. For the reasons set out above we disagree that the historical evidence alone indicates that there are clear higher rights on the route other than on foot)**

The landowner's agent raised several points during consultation as follows:-

- a) State they don't believe 20-year user evidence period can be any period and believe it must be 20 years back from date of application in 2010 and not the 1971-1991 period. **(We disagree and believe the law allows for any 20-year period ending in the right being brought into question<sup>1</sup>; in this case 20 years prior to a potential challenge via a notice in 1991)**
- b) State the private signage notice has been in place for 25 years and has sought to discourage public use. They submit that the period prior to 1991 cannot be selected and argued for valid use. **(1991 has been taken as the year in which use of the path was bought into question. However, we do not agree that the period prior to 1991**

---

<sup>1</sup> This point is supported Paterson v Secretary of State for Environment, Food and Rural Affairs [2010] EWHC 658 (Admin)

**cannot constitute a qualifying 20 years; we believe the period prior to 1991 is relevant (see (a) above).**

- c) State they believe all the usage of the claimed route should be viewed as permitted (permissive use). Mention landowner is community spirited, has invested a lot in community assets and would be minded to allow local residents to use the path in most situations. (***The fact that the landowner might be minded to grant permission does not, in itself, make use permissive. Users must be made aware that they are being granted permission. We have not seen any evidence that proves all users used route via permission and whilst we understand the point about goodwill this is an evidential case.***)
  
- d) State they believe the photos in the appendix to be misleading, stating there were no photos of the middle of the route which is not so easy to use. There were also no photographs of a badger set near the route that should be considered. (***Our remit did not extend to taking additional photos to those provided and in any case the point on this and the badger set issue does not appear to make any evidential points other than to clarify difficulty using the route at a point in time. The middle section of the route may well have been impassable for a number of years. However, this case is concerned with use of the route, and the landowners actions, prior to 1991.***)
  
- e) State that none of the historical maps depict a public right of way and believe the historical context should have been better considered given the small number of users during the 1900s. (***It is accepted that the documentary evidence shows that, by 1907, no public rights existed over the application route. However, this does not prevent such rights being subsequently acquired. We have already noted in the report that maps served different purposes not always solely relating to public rights of way. We don't consider the number of users to be small.***)
  
- f) They state that from the 1890s to the 1980s the site was very different to now. The area would have been used by workers/visitors to Mendip hospital, the quarry and water reservoir as well as a link to West Horrington. They believe that most of the usage would have been associated with the hospital. If this were the case then there is a strong possibility that more than just 6 of the users were using the route with permission. The landowner's agent acknowledges that they cannot provide evidence to support this. (***We accept that some use was associated with the hospital and we have discounted the evidence of users where our investigations have identified that their use of the route was permissive (including where it was access to the hospital). We cannot conclude that other users enjoyed permissive rights without evidence. A high proportion of those who submitted user evidence forms were also interviewed and it was found that a large number claimed they had not been granted***)

**any permissive access associated with access to the hospital and also used the claimed route for other reasons not just associated with the hospital).**

- g) State that the report does not appear to refer to meetings held between the current landowner and Mendip DC footpath officers as well as county council officers where a permitted route was discussed and provisionally agreed only to be declared as unsafe by Somerset County Highways. State there is no pavement whatsoever on the side where the way in question exits onto the highway and the exit is on a bend in the main road where only limited speed restriction applies (40mph). Crossing the road could be considered extremely dangerous. The highways authorities have already said so. Ask that whilst they understand that the report is only considering evidence on historic rights of way we ask that it should refer in more detail to the permitted route discussed and the highways safety views if only to accurately document all rights of way discussions. **(We note these comments and there is brief mention of the safe route to school option in paragraph 7.1.2 of the report but unfortunately safety matters do not have any relevance to evidential cases. The safe routes to school matter was a separate matter to this evidential case but does show the landowner was at some point prepared to offer a permitted route).**
- h) A request that safety matters should be highlighted more in this report was also mentioned. **(This is covered by Point G above and information added to 7.1.2 but safety matters have no relevance to an evidential case)**
- i) A request is made on behalf of the landowner as to whether consideration would be given to providing a permissive route with a slight change similar to the claimed route albeit with the council taking safety responsibility for the route and ensuring the route alignment is safe. **(The purpose of this report is to establish what, if any, public rights already exist over the application route. The landowner is at liberty to grant permission over other routes on their land but this would not, in itself, extinguish any public rights which already exist (even if those public rights are not yet recorded on the Definitive Map and Statement)).**

## **8. Summary and Conclusions**

8.1 Examination of historical map evidence and other historical documentation shows that the claimed route has existed as a clear physical feature on the ground, unaltered in course since the early 1800s. The route has existed as a significant north to south through track like feature for a significant historical time period. However, irrespective of whether or not the route had previously been a public footpath, the 1907 stopping up order had the effect of extinguishing it. That order, whilst stopping up rights, does



demonstrate a clear legal fact that the claimed route was believed to have historical legal public rights.

There is some post-1907 documentary evidence in favour of public rights having been established following the stopping up order. Some evidence in old parish minutes indicates some belief of public status. Historical newspaper articles refer to the claimed route even being given the title 'Warren Way' again indicating that there is clearly some long held historical public belief that the route has public status.

8.2 In order for the right of the public to have been brought into question the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged. It has been brought to light that in the 1990s when the Mendip Hospital site changed hands for development purposes, and then in the late 1990s, users claim changes on the ground with locked gates and barbed wire that there was some sort of interruption to use at least even though usage continued. Consequently, the relevant period that falls before this and which is uninterrupted and where the claimed route is used by many, is the period 1971 -1991. 19 people have been found to have used the route 'as of right' during this period. There is also user evidence prior to the 1960s and indeed back to the 1930s but this appears to be the main period when usage has been high and users recall free passage with no interruptions.

8.2 It is evident from the user evidence alone that well over 20 years usage of the route has taken place and no clear overt actions have come to light certainly before 1991 that would indicate a clear intention not to dedicate. The historical map evidence and aerial photography confirms that a clear physical feature has existed on the location of the claimed route since the early 1800s if not before. Indeed, it formed part of a wider through route from the Old Frome road in the South linking north to the Old Bath Rd B3139 and has been used as part of the wider network of public rights of way in the area. In addition, the drawing up of the creation agreement in 1994 although never legally completed does at least show there was at some point in time an intention to dedicate the route.

8.3 It is clear from not just the substantial amount of user evidence but also the additional records supplied by the applicant and other supporters of the application that this route is held in strong belief that it is public. There have been many years of history of various members of the public trying to get this route opened as an official public footpath. The legal tests seem to have all been met and evidence points to the fact that there has been substantial uninterrupted use of the claimed route on foot during the relevant period 1971 -1991. At this point in time it does not appear that there is enough user evidence to support any higher public rights than public footpath status. The claimed route has a long history and a fair amount of interest in the route over the years and has clearly been used uninterrupted for well over 20 years prior to 1991.

## **9. Recommendation**

### **9.1 I therefore recommend that:**

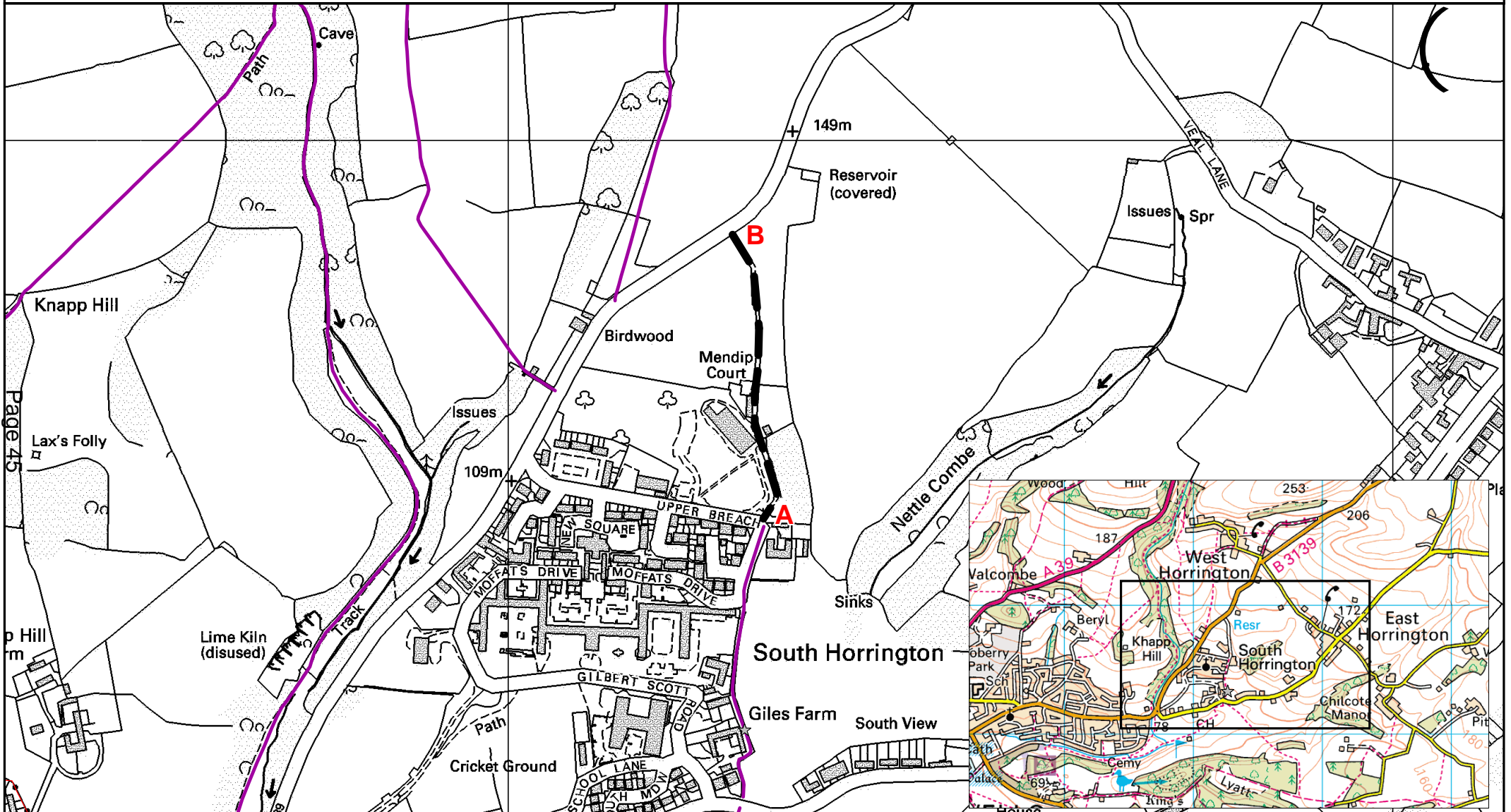
- i. An Order be made, the effect of which would be to add to the Definitive Map and Statement of public rights of way a Public Footpath between points A and B.
- ii. If there are no objections to such an order, or if any objections which are made are subsequently withdrawn, it be confirmed
- iii. if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation

## **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 and B present on Appendix 1 to maps to help the reader identify the sections of the route the document is depicting. Red circles have also been added to some appendices to indicate the area of the claim where lettering is not appropriate.

1. Map of claimed route
2. Photographs of claimed route
3. Inclosure Act 1795
4. Tithe Map
5. Tithe Apportionment
6. OS Surveyors Drawing 1811
7. 1809-1833 Cassini Map extract
8. 1<sup>st</sup> edition OS map 25"
9. 1<sup>st</sup> edition OS map 6"
10. 2<sup>nd</sup> edition OS map 25"
11. 3<sup>rd</sup> edition OS map 25"
- 12,13,13b 14 - Finance Act Map & Valuation book
- 15 1929 Roads Handover Map
16. 1930 Road records
- 17.. 1950 Road records
18. Survey Map (Definitive Map records)
19. Draft Modification map
20. Provisional Map
21. Definitive Map
22. Parish Council minutes 1958 extract
23. Days & Masters 1782 Map
24. Greenwoods 1822 Map
25. 1946 Aerial photos
- 25b. Stopping up order 1907
26. Council committee minutes 1991
27. Photographs of locked gate & signage
28. Summary Graph of User Evidence



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Parish: St Cuthbert Out  
 District: Mendip  
 Date: 05/01/2017  
 Drawing No: H003-2017/704m  
 Drawn By: MHardwill  
 Grid Ref: 357140 146740  
 Scale: 1:5000

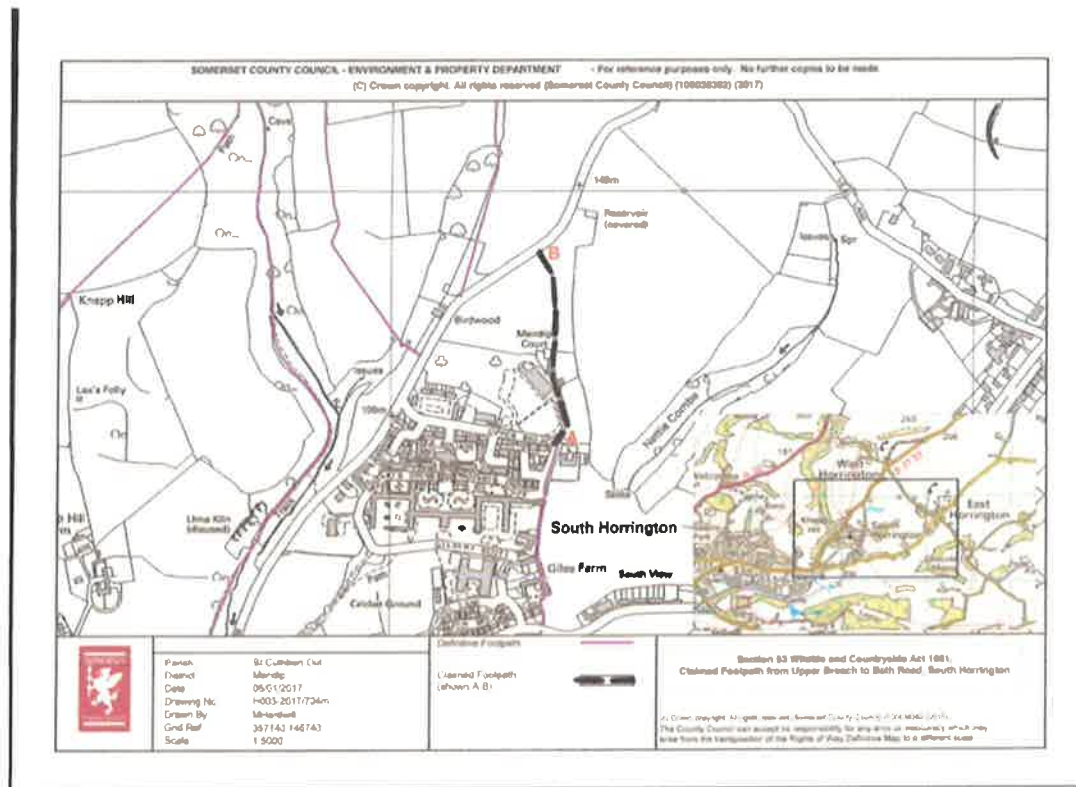
Definitive Footpath   
 Claimed Footpath (shown A-B) 

**Section 53 Wildlife and Countryside Act 1981.**  
**Claimed Footpath from Upper Breach to Bath Road, South Horrington**

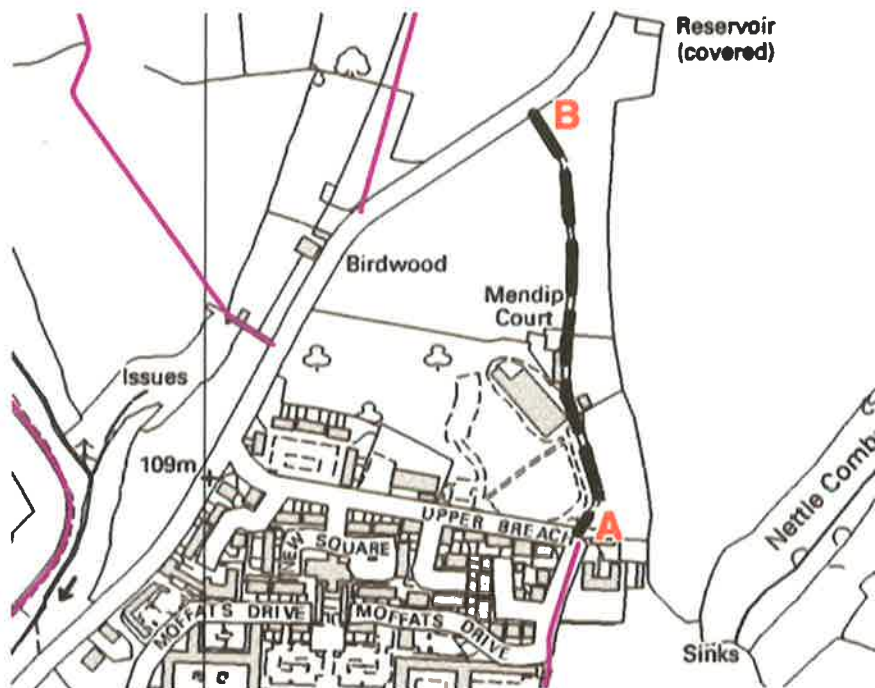
(c) Crown copyright. All rights reserved (Somerset County Council) (100038382) (2017)  
 The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.

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**Appendices – Case: 704 West Horrington, Somerset**



Appendix 1 - Map of claimed route and detailed view below.





**Appendicies – Case: 704 West Horrington, Somerset**

**THE PATH NARROWS**



**END OF PATH  
EXIT THROUGH BARBED WIRE GATE ONTO B3139**



**SOUTHERN END OF PATH / TRACK**



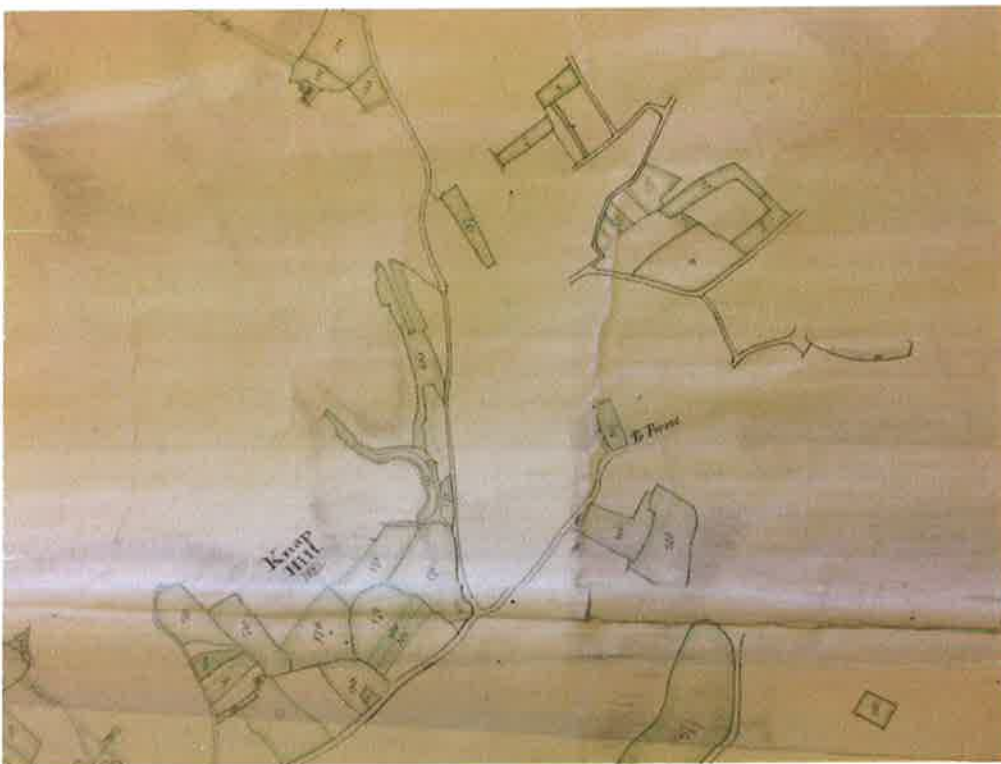
**WIDE PATH / TRACK GOING NORTH**



**Appendix 2 – photographs of claimed route**



**Appendices – Case: 704 West Horrington, Somerset**



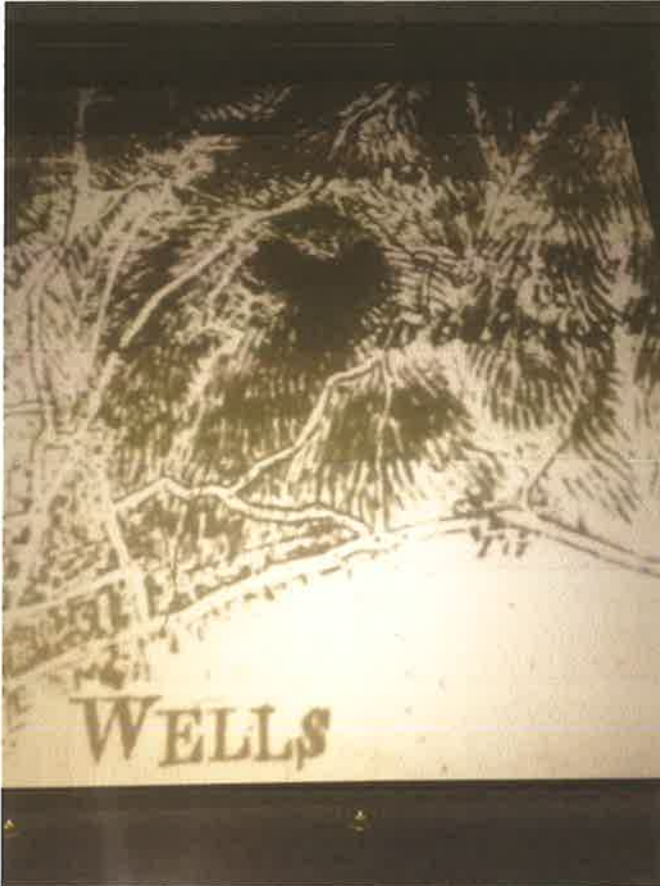
Appendix 3 - Inclosure Map 1795

**Appendicies – Case: 704 West Horrington, Somerset**

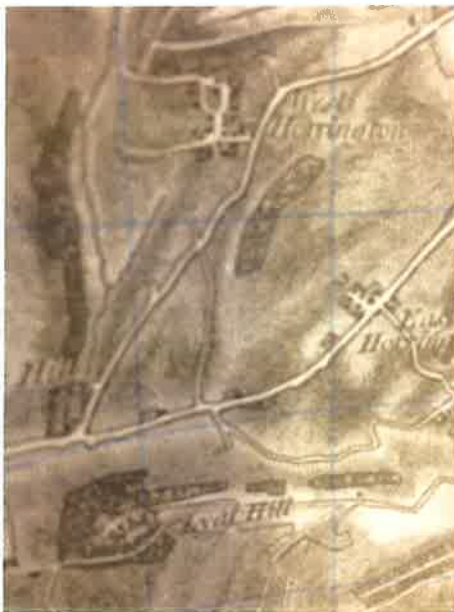


Appendix 4 - Tithe map (Dioscese copy, 1876),  
Appendix 5 – apportionment (not shown as no apportionment referred to on map)

Appendicies – Case: 704 West Horrington, Somerset



Appendix 6 -OS Surveyors Drawing 1811 ( on microfiche)



Appendix 7 – Cassini Map 1809 - 1833

Appendicies – Case: 704 West Horrington, Somerset



Appendix 8 - 1<sup>st</sup> edition OS Map 25" (microfiche copy)



Appendix 8 - OS 1<sup>st</sup> edition 25" (paper copy)

**Appendicies – Case: 704 West Horrington, Somerset**



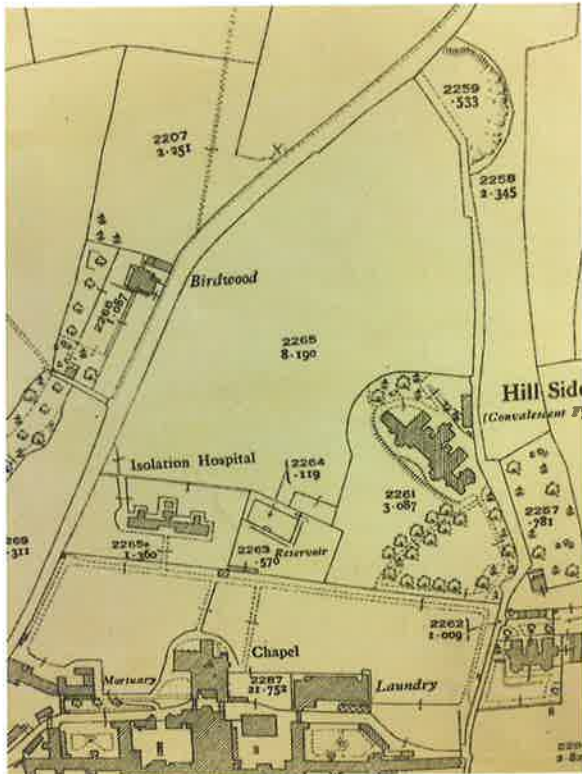
Appendix 9 - OS 1<sup>st</sup> edition 6" map



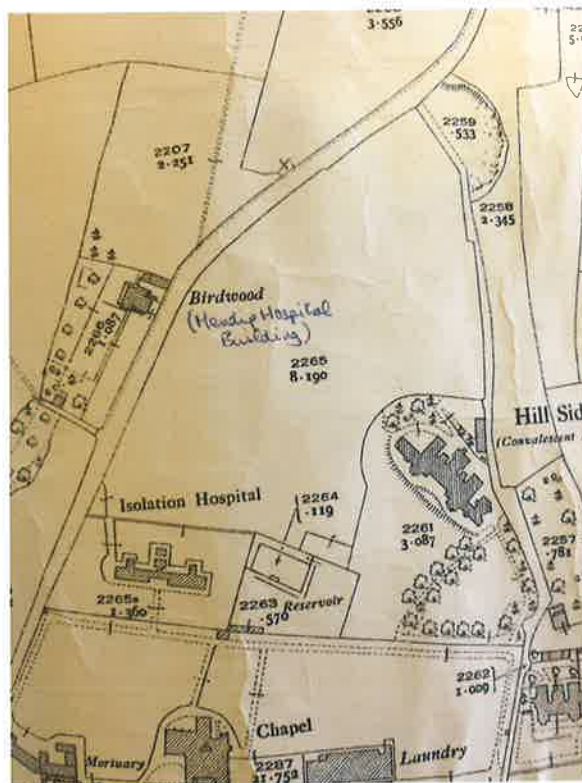
Appendix 10 - 2<sup>nd</sup> Edition OS Map 25"



**Appendices – Case: 704 West Horrington, Somerset**

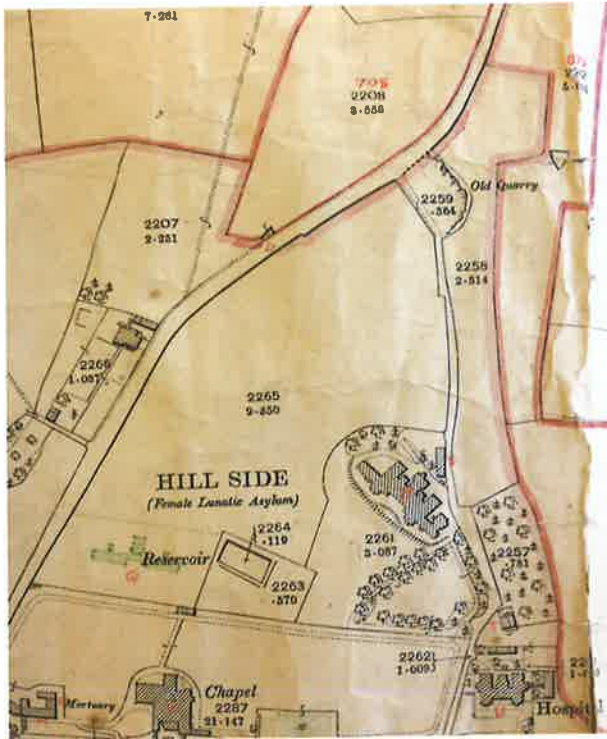


Appendix 11 - 3<sup>rd</sup> Edition OS Map 25



Appendix 12 -Finance Act (working copy B&W version, SHC)

**Appendices – Case: 704 West Horrington, Somerset**



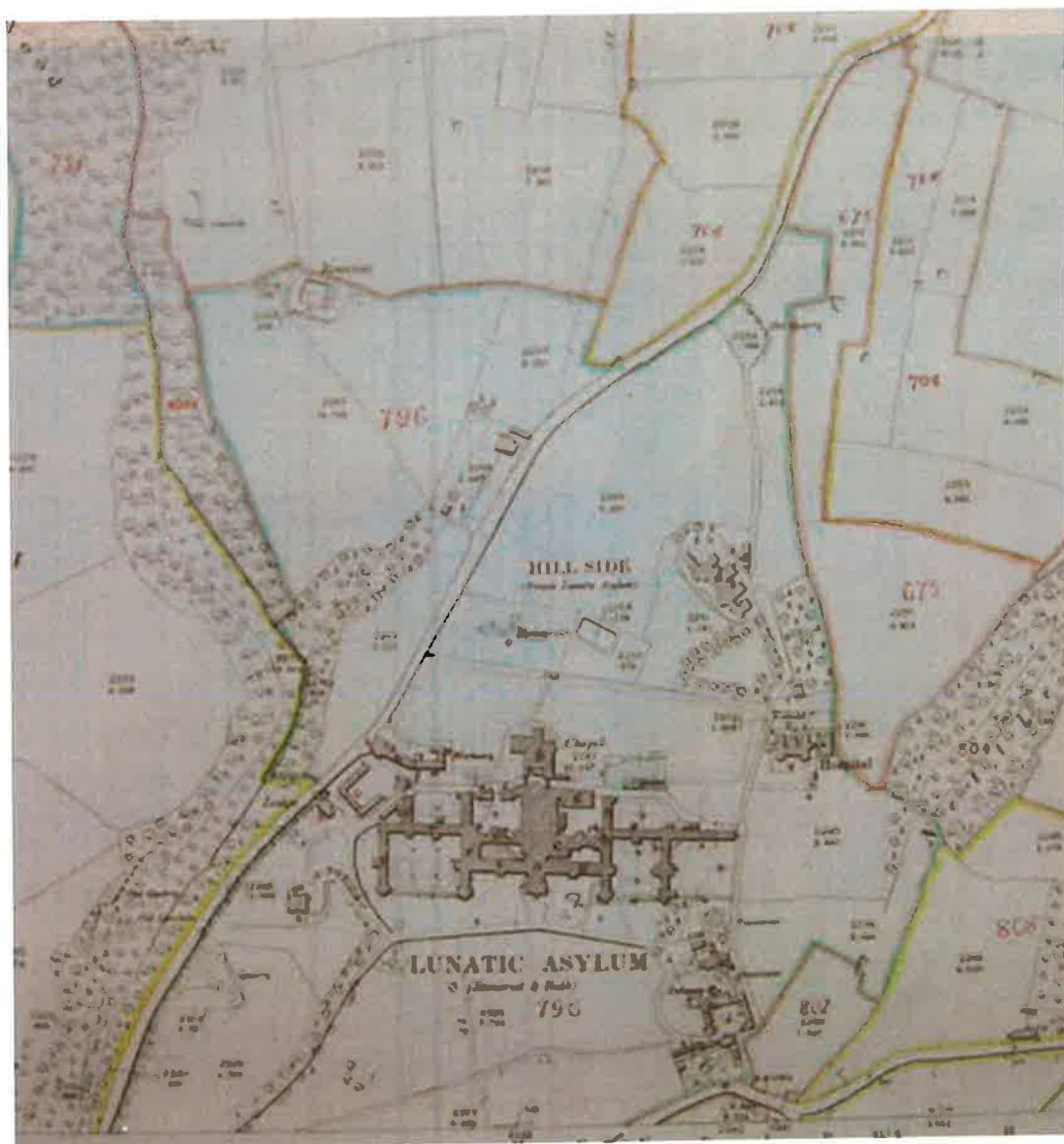
Appendix 13 -Finance Act (working colour copy, SHC)

Parish of WEST HORRINGTON						Rate				Estimated Value				Actual Value			
No. of House	No. of Part	Chattel House and Situation of Occupation	Chattel House and Particulars of Occupation with Rate Burden	Description of Property - H. Ac. Em. An. or other or any by which known	Street, Place, Name, and Position of Property	Estimated Value	Actual Value	Estimated Value	Actual Value	Estimated Value	Actual Value	Estimated Value	Actual Value	Estimated Value	Actual Value		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16		
25	7	Long Lane	R. Bouring	Open Garden	Cooley	5	4										
26	8	Common Lane				4	3.5										
27	9	Road House			Stokand	8/10	7.5										
28	10	House Lane				8/10	7.5										
29	21	Open Lane			Cooley	6	4.15										

Original Full Site Value	Fixed Charges				If Copyhold, Cost of Enfranchisement	Public Rights of Way or User	Rights of Common	Easements	Restrictions under Covenant or Agreement
	For Drainage, Water, Light, Heat, or Power	Other perpetual Rent or Annuity	Tithe or Tithes Rent Charge	Rent or other charge of land established by Act of Parliament					
19	20	21	22	23	24	25	26	27	28
£	£	£	£	£	£	£	£	£	£
15									
21									
21									

Appendix 13b – Finance Act Valuation book (SHC)

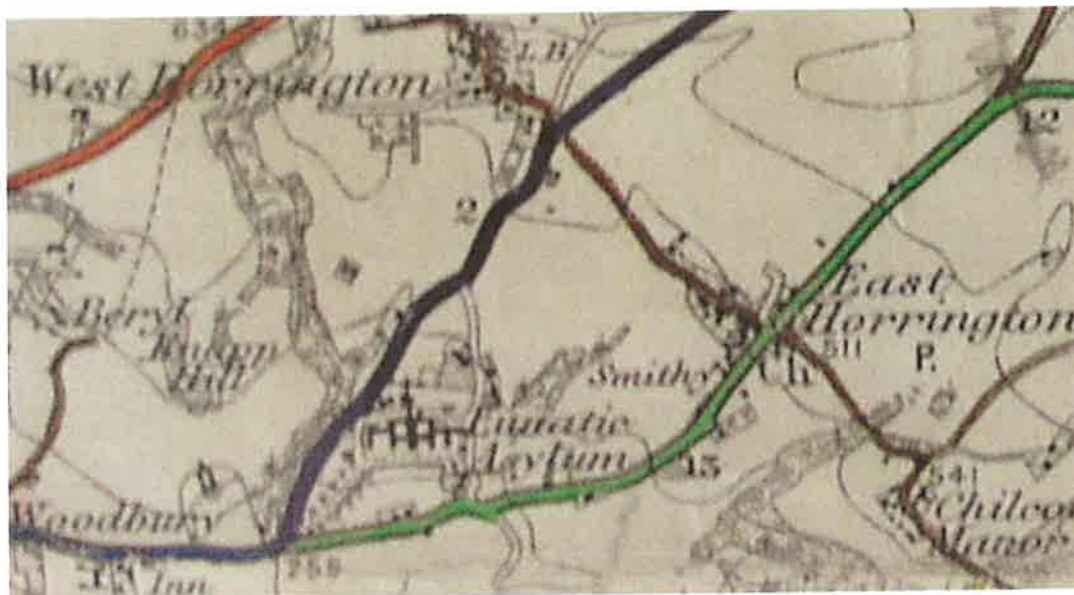
**Appendices – Case: 704 West Horrington, Somerset**



Appendix 14 – Copy of Finance Act Map from Kew National Archives



**Appendices – Case: 704 West Horrington, Somerset**



**Appendix 15 -1929 Roads Handover Map**



**Appendix 16 – 1930's Road Map**

**Appendices – Case: 704 West Horrington, Somerset**

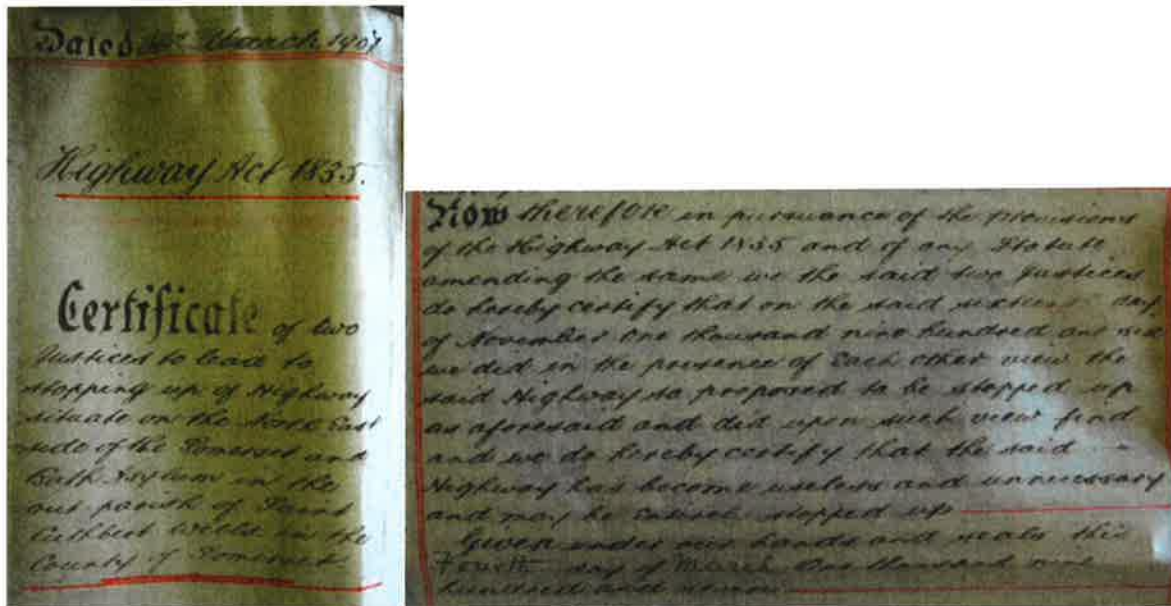


Appendix 17 – 1950's Road Map



Appendix 18 - Survey Map

1907 Stopping Up  
Quarter session rolls  
SHC: Q/SR/821 & Q/SR/827/1



Transcript:

'Whereas the Committee of the Somerset and Bath Asylum...being desirous of stopping up a certain highway...namely a public lane or footway which commences at a point near the said Asylum Farm Yard on the North side of the Highway leading from Wells to Frome and leads thence in a Northerly direction for a distance of about seven hundred yards alongside and on the East side of the Highway leading from Wells to Bath near to but opposite to the residence of the Chaplain of the said Asylum'

'Now therefore in pursuance of the provisions of the Highways Act 1835 and of any statute amending the same we the said two justices do hereby certify that on the said sixteenth day of November one thousand nine hundred and six we did in the presence of each other view the said Highway so proposed to be stopped up as aforesaid and did upon such view find and we do hereby certify that the said Highway has become useless and unnecessary and may be entirely stopped up'.



## Appendicies – Case: 704 West Horrington, Somerset

### Appendix 26 – Council committee minutes 1971

Somerset County Council  
Regulation Committee – 9 December 2012  
Author: Eddy James Group Manager (Environmental Management)

**D**

Application Number: 704M  
Date Registered: 19 November 2010  
Parish: St Cuthbert Out  
District: Mendip  
Member Division: Mendip North West  
Local Member: Harvey Sligs  
Case Officer: Laurence Smith, Senior Rights of Way Officer (Definitive Map)  
Contact Details: 01823 356241  
lsmith3@somerset.gov.uk  
Description of Application: REQUEST TO TAKE AN APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER OUT OF TURN: ADDITION OF FOOTPATH FROM UPPER BREACH TO BATH ROAD (B3139) AT SOUTH HORRINGTON  
Grid References: ST 572, 407  
Applicant: Liz Parley, Sally Ball and Joan Priestly on behalf of West Horrington Ladies Circle  
Location: Upper Breach to Bath Road, South Horrington

1. Summary of Key Issues and Recommendation(s)
  - 1.1 A request has been received for the Council to prioritise an application to modify the Definitive Map. The request has been made by the applicants on behalf of West Horrington Ladies Circle who are affected by the closure of the route that was previously available for public use, although not recorded as a public right of way.
  - 1.2 The application is for the addition of a footpath running for a distance of approximately 340 metres from Upper Breach to the B3139 Bath Road at South Horrington.
  - 1.3 The request for the application to be considered out of turn is due to the route, being closed to enable the construction of housing, when the adjacent Mendip Hospital closed in 1991. A locked metal gate with barbed wire is present at the northern end of the route (point A on appendix 1) which currently prevents use of the route.

### Appendix 27 – Photograph of locked gate at Point B & other signage on route

Image of Private Drive Notice – Point A on plan dated 05/01/2017



Images of Closed Gate - Point B on plan dated 05/01/2017



### Appendix 28 – see attached spreadsheet of user evidence.

Summary Graph of User Evidence

User Ref:	1930-1934	1935-39	1940-1944	1945-49	1950-54	1955-59	1960-64	1965-69	1970-74	1975-79	1980-84	1985-89	1990-1994	1995-1999	2000-2004	2005-2009	2010 on	NO OF YEARS USED	MODE USED	OTHERS SEEN USING ROUTE ON:	FREQUENCY:
1																		45	F		Unkown
2																		30	F & B		varied
3																		40+	F	F	frequent
4																		20	F	F	monthly
5																		1	F		one or twice in 1979
6																		27	F & V	F	monthly
7																		23	F	F	10-15 times /yr
8																		15	F	F & B & H	once week or more
9																		44	F	F	once month
10																		50+	F	F & H	approx 12 x yr
11																		23	F	F	1 -2 times a week
12																		10	F & V	F	4 days weekly to work
13																		20+	F	F	varied daily - monthly
14																		40+	F	F & B & H	weekly
15																		50+	F,B,V	F	weekly diff freq's
16																		40+	F & H	F & H	varied when lived home
17																		40+	F & H	F & H	varies
18																		15+	F		not known
19																		30+	F		not known
20																		16	F & V	F	several times a week
21																		30+	F	F	1-2 times/month
22																		30+	F	F	1 month approx
23																		30+	F	F	av 1 x month
24																		30+	F	F	not known
25																		20+	F	F	fortnightly 70-74, 74-91 occasional
26																		20+	F	F	1-2 times/month
27																		12	F & B	F	varied from 20-100 x yr
28																		16	F	F	once a year
29																		12	F	F	daily until 1958 then periodically
30																		9	F	F	once fortnight on average
31																		20+	F	F	2-3?
32																		27	F		1-2 times every couple of yrs?
33																		10+	F	F	once fortnight on average
34																		?	?		not known
35																		17	F	F	once week at least
36																		10	F & B & H	F	daily-weekly

KEYS:-  
 MODE: F= FOOT B= BIKE H= HORSE V= VEHICLE  
 SEEN OTHERS ON F=FOOT B=BIKE H=HORSE V= VEHICLE  
 RED VERTICAL LINES = DATES OF CHALLENGE 1991 & 1999

years of usage discounted on account of hosiptal or landowner connection /permission  
 years of usage claimed

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Somerset County Council  
Regulation Committee – 5 October 2017  
Author: Andrew Saint, Rights of Way Definitive Map Team

---

*Application Number:* **848M**  
*Date Registered:* **2 May 2017**  
*Parish:* **Carhampton**  
*District:* **West Somerset**  
*Member Division:* **Dunster**  
*Local Member:* **Councillor Lawrence**  
*Case Officer:* **Andrew Saint**  
*Contact Details:* **01823 359796, asaint@somerset.gov.uk**  
*Description of Application:* **Request to take an application for a definitive map modification order out of turn:  
Claimed public footpath to the north of Blue Anchor Chalets**  
*Grid References:* **ST 0203 4349**  
*Applicant:* **The Ramblers**  
*Location:* **To the north of Blue Anchor Chalets**

## **1. Summary of Key Issues and Recommendation(s)**

1.1. In May 2017 the Ramblers submitted an application for an order to modify the definitive map and statement by adding a footpath to the north of Blue Anchor Chalets. A plan of the route is attached at appendix 1.

1.2. The County Council has a significant backlog of applications of this type and these are dealt with in priority order. It would ordinarily be many years before the Ramblers' application reaches the top of the queue. This has led them to request their application be 'taken out of turn'; i.e. dealt with ahead of those which would ordinarily be determined ahead of it.

1.3. This report discusses the County Council's policy for dealing with such requests and whether the reasons put forward by the Ramblers, and others, for taking the application out of turn meet with that policy.

1.4. The report recommends that the request for this application to be taken out of turn is refused.

## **2. The Application Route**

2.1. The application route begins at Blue Anchor Bay Road just north of the train station and runs in a westerly direction initially along a grass bank raised slightly higher than the adjacent beach.

2.2. The route passes to the south of a military installation understood to date from the second world war and then to the north of the Blue Anchor Chalets. Having passed the chalets it travels along a shingle ridge at the back of the beach running parallel with the railway line to reach footpath WL3/3 just north of a footpath level crossing.

2.3. There are three other routes in the immediate vicinity of the application route which are also of particular relevance to this case.

2.4. Firstly, Footpath WL3/19 leaves Blue Anchor Bay Road at approximately the same point as the application route. However, rather than running along the grass bank in front of the chalets it heads in a north westerly direction onto the beach and then west parallel with, and just above, the mean high water mark.

2.5. Secondly, the England Coast Path. While not strictly speaking a public right of way, there is a statutory right to walk the Coast Path. As with WL3/19, it leaves Blue Anchor Bay Road at the same point as the application route and leads down onto the beach. However, from here it takes a higher line closer to the chalets than WL3/19 passing immediately to the north of the military installation along the top of the beach to join the application route on the shingle ridge just to the west of the Chalets. It then continues west along the ridge. For all but its easternmost 165 metres, the application route follows the Coast Path and is therefore already subject to a statutory right.

2.6. Thirdly, the Steam Coast Trail is a surfaced cycle path with no formal cycling status. It currently terminates at the very western end of the application route. The Trail is promoted by a charity.

2.7. The application route, WL3/19, and the England Coast Path are all shown the plan at appendix 1.

### **3. Statement of Priorities**

3.1. The County Council has a duty to maintain a Definitive Map and Statement of public rights of way (DMS). The DMS is a legal record and is conclusive of what it shows. However, it is not conclusive of what it omits. Therefore the fact that a right of way is not shown on the DMS does not necessarily mean that it does not exist. Applications can, and frequently are, made to modify it where the applicant believes the DMS to be in error.

3.2. The County Council receives a large number of applications of this type and so it is not always possible to process them as quickly as we would like. In the interests of fairness a 'Statement of Priorities' has therefore been adopted setting out the order in which applications will be determined (see appendix 2).



3.3. The Statement of Priorities provides for each application to be scored against a number of criteria including road safety implications, network connectivity and usefulness of the route<sup>1</sup>. The resulting score, together with the order in which applications are received, is then used to establish the order in which they are determined with the highest ranked application being investigated first.

3.4. However, the Statement of Priorities also makes provision for applications to be 'taken out of turn' and dealt with ahead of those applications which would normally be ranked above it in the queue. The policy provides that applications may be taken out of turn in the following circumstances:

- i) The path concerned has been identified as an important link in the Local Transport Plan (LTP);
- ii) the path concerned is likely to disappear as a result of development;
- iii) an affected party can demonstrate that they are experiencing exceptional significant problems due to an application that impacts on their property;
- iv) the path concerned is subject to a Section 130 notice<sup>2</sup> and the County Council is satisfied that there is cogent evidence that the status or route of the path is in dispute.

3.5. In reaching a judgment regard must also be given to paragraph 8.8 of the County Council's 'Code of Planning Practice - Commons Registration, Planning Control and Rights of Way' which states that 'Applications will only be taken out of turn in exceptional circumstances'.

3.6. The purpose of the Statement of Priorities is to achieve equity and consistency in the treatment of applicants, given the significant backlog of applications. While there is an inherent discretion to consider applications other than in accordance with the Statement of Priorities, such discretion should only be exercised in exceptional circumstances. Any decision to prioritise a case other than in exceptional circumstances risks requests from other applicants for their applications to be prioritised, and this could undermine the purpose of the Statement.

#### **4. The Ramblers 'out of turn' request**

4.1. The Ramblers application in relation to the claimed footpath at Blue Anchor was received on 2 May 2017. Ordinarily it would be many years before it reaches the top of the queue and is investigated. It is in light of this that the Ramblers have requested their application be taken out of turn.

4.2. It is important to bear in mind that, at this stage, the decision before Committee is not whether or not a public footpath does or does not exist. In

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<sup>1</sup> It should be noted that these criteria are used solely for determining the order in which applications are investigated. They are not necessarily of any relevance when it comes to determining whether or not that application will ultimately be successful.

<sup>2</sup> Section 130a of the Highways Act 1980 allows members of the public to serve notice on the County Council requesting that they remove an obstruction from a highway (including rights of way).

responding to the Ramblers request the County Council is simply considering whether or not to prioritise investigation of the case.

4.3. In support of their request the Ramblers have made the following statement:

“I made [the] application to add a footpath....following the obstruction to its use recently. This path has been used for many years and I have submitted over 100 user statement forms setting out its unobstructed use over the required 20 year period. My request is that the matter be brought forward for consideration and that this application be taken out of turn for consideration and determination.

I appreciate that there is a substantial backlog of claims but believe that there are compelling and urgent reasons why this claim should be treated as a special case.

The path is in a popular holiday area and was well used by both local people and visitors to the area. This route is no longer available. The alternative, the definitive footpath west from Blue Anchor [WL3/19] takes a route below the high tide line. Anyone using this route is at potential serious risk from rising tides in stormy conditions. There is no alternative route now available. The claimed route was the safe route regularly used by locals and holiday makers. I would suggest that visitors to Blue Anchor are at particular risk if they are unaware that the definitive path is subject to being covered by the tide. Photographs have been submitted, as part of the claim, showing the definitive route at high tide, as well as photographs showing the claimed route clearly existing on the ground.

I trust that [the] committee will discuss the urgent need to determine this particular Modification claim on safety grounds. This request has the support of both the local County Councillor and District Councillor, as well as the Parish Council.”

4.4. As the applicant states the local member, Councillor Lawrence, has given her support to the request. In a letter of 3 July, she made the following comments:

- i) 120 people have submitted evidence in support of the application.
- ii) The route along the beach is unmanageable and unsafe for a number of users including those in wheelchairs, with pushchairs and with mobility issues. It is only suitable at low tide and in good weather and has never been signposted.
- iii) The route over the beach may not be compliant with the Equalities Act 2010.
- iv) Users of the route over the beach are in a danger at high tide particularly at the end of the day when light is dimming.
- v) The application route, was more accessible and had been used for many years but is now gated and fenced off.

## 5. Analysis

5.1. As mentioned in section 3 above, out of turn requests must be considered against the four criteria set out in the Statement of Priorities. Each of those criteria are considered in turn below:

The path concerned has been identified as an important link in the Local Transport Plan (LTP)

5.2. The LTP is now known in Somerset as the Future Transport Plan. The application route is not identified as an important link in the Future Transport Plan.

The path concerned is likely to disappear as a result of development

5.3. While it is possible that, overtime, the grass bank in front of the Chalets and on which the application route sits will be eroded by the sea, there is no evidence at present that the application route is threatened by development.

An affected party can demonstrate that they are experiencing exceptional significant problems due to an application that impacts on their property

5.4. Based on the submissions by the applicant and local member it might be argued that exceptional and significant problems are being experienced. However this part of the Statement of Priorities specifically refers to problems that are impacting on property. None of the nearby landowners have put forward any evidence or arguments as to how the application is negatively impacting their property. In fact the owners of the adjacent chalets have collectively made representations against the application being taken out of turn.

The path concerned is subject to a Section 130 notice and the County Council is satisfied that there is cogent evidence that the status or route of the path is in dispute

5.5. The application route is not currently subject to a section 130 notice.

5.6. Whilst the application does not meet any of the criteria specified in the Statement of Priorities for it to be investigated out of turn, the applicant raises other points in support of the out of turn request. It is appropriate to consider whether these could amount to exceptional circumstances justifying the prioritisation of the application. Those points appear to fall into the following general categories:

- i) the strength of evidence relating to the claimed path;
- ii) accessibility; and
- iii) public safety.

### Strength of Evidence

5.7. It is acknowledged that the evidence does demonstrate considerable local interest in the application. However, even if this had been relevant to one of the four

'out of turn' criteria (which it does not appear to be), the strength of the evidence in support of the application is unlikely to satisfy the exceptional circumstances test set out in the Code of Conduct (see paragraph 3.5). Most applicants will believe their evidence to be strong; if they did not then they would presumably not have made an application. It would therefore be counter-productive to prioritise every application which was considered by the applicant to be well supported. In any case, until the evidence has been assessed it is not possible to establish exactly how strong it is. For example, while lots of people may have given evidence of use, one act by the landowner demonstrating a lack of intention to dedicate public rights may be sufficient to rebut a claim.

### Accessibility

5.8. Turning to the applicant's case in relation to accessibility, it has been suggested that the only alternatives to the claimed path run across the beach and are particularly difficult to use for those with mobility difficulties and pushchairs. This overlooks the fact that the majority of the application route is already available for the public to use by virtue of the fact that it follows the England Coast Path. Therefore, an alternative to this section is unnecessary.

5.9. Having said this, it is undeniably the case that the eastern end of the claimed route is obstructed by fencing and the alternative available routes are over the beach. However, as with the strength of evidence argument, it is difficult to see how this makes the case exceptional. Many of the applications that are received are triggered by the route in question becoming unavailable, often there is no suitable alternative. Therefore, taking applications out of turn simply because the claimed route is unavailable, would lead to a situation whereby a high proportion of cases qualify to be taken out of turn. Furthermore, the public in this case are in a better position than many in that there is an alternative route available (albeit one which may not be accessible during certain times of the year or to some sections of society).

5.10. In her submissions, Councillor Lawrence, suggests that the routes over the beach may not be compliant with the Equalities Act 2010. Amongst other things, this Act requires public bodies to consider the needs of all individuals when delivering services. As the Secretary of State forms part of a public body he will have had regard to the Equalities Act 2010 when defining the England Coast Path and must have been satisfied that it was compliant.

5.11. If, in due course, rights are found to exist over the application route then it would offer a more accessible route for some sections of society. However, there is no question of the application not being investigated; the question before the Committee is 'should that investigation be given greater priority'? To prioritise this case would result in the investigation of other claimed routes, for which there are no alternative, being delayed.

## Safety

5.12. Finally, the matter of public safety is one that the applicant quite rightly considers of great importance. It has been suggested that anyone using the definitive footpath (i.e. WL3/19) is at serious risk of being caught out by a rising tide and that, without the application route, there is no alternative available. However, once again, this ignores the England Coast Path.

5.13. As mentioned above, all but the easternmost 165 metres of the application route coincides with the Coast Path. As such it already has a public right of access over it and any public safety benefits that it offers are already available. In light of this it is assumed that the applicant's comments regarding safety must relate to the eastern end of the application route. Here the Coast Path takes a slightly more northerly line passing along the back of the beach and running approximately 12 to 28 metres south of the mean high water mark.

5.14. One would generally expect the public not to use the relatively short section of the Coast Path (approximately 165 metres) that does not correspond with the application route on those rare occasions when the tide is high enough to endanger them. This is particularly the case given that there are clear warning signs at either end of the path in order to mitigate the risks associated with an incoming tide. However, were anyone to find themselves becoming cut off by the tide they would either need to retrace their steps or move off of the Coast Path and higher up the beach.

5.15. In terms of retracing ones steps, an individual would never be more than 85 metres from either the steps up to the road at Blue Anchor or from the point at which the Coast Path and application route converge (and therefore the point at which the application route would offer no additional safety benefits even if it were found to be a public footpath). Even at a very slow pace it would take very little time to get travel the 85 metres from the Coast Path to the application route<sup>3</sup>.

5.16. If retracing ones steps was not possible, it should still be possible to access higher ground. For much (88 metres) of the easternmost end of the application route there is no barrier between the coast path and the application route. Where barriers do exist they are formed of:

- i) the military installation (approximately 16 metres);
- ii) two sections of fencing (approximately 8 and 22 metres in length); and
- iii) a one metre high bank on which the application route runs (approximately 38 metres in length)

The bank referred to in (iii) has scrub growing on its sloped sides. However, there are three points at which there is no scrub making it easier to walk up.

5.17. It would be disingenuous to say that walking on any section of coast is without risk. Indeed, it has been known for waves to overtop the grass bank thus making the

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<sup>3</sup> At one mile per hour it would take a little over three minutes to walk 85 metres.

application route unavailable. However, that risk needs to be seen in context. The section of Coast Path that the applicant is concerned about (i.e. the 165 metres which does not correspond with the application route) is relatively short, at the back of the beach, and is only one metre lower than the ridge on which the application route sits. In addition, while there are some barriers between the coast path and last 165 metres of application route, there are also a number of places where one can pass between the two if trapped by the tide. Maybe the greatest risk to the public comes from individuals finding their way blocked by a particularly high tide and knowingly walking through the sea in order to continue their walk and reach their intended destination (as opposed to finding themselves unwittingly being trapped by the tide). It is not known whether, or to what extent, the Secretary of State considered all of these factors when defining this section of the England Coast Path. However, he was required to have regard to the safety of those members of the public using it and concluded the route along the top of Blue Anchor beach was acceptable.

5.18. Many of the applications within the backlog address safety concerns, often allowing vulnerable users to avoid travelling on busy roads. In light of this, and the points made above, it is suggested that the safety concerns in relation to this application do not make it 'exceptional'.

5.19. The applicant raises several reasons why they feel that the importance of the application route means that their application should be prioritised. However, none of those reasons address the policy criteria for being taken out of turn. Furthermore, the same or similar arguments as put forward by the applicant could be made in relation to many of the other applications in the County Council's backlog and so it is difficult to see how they make this particular case exceptional.

## **6. What happens next?**

6.1. If Members resolve to take the application out of turn it will be moved to the top of the queue and processed once all other open cases, and some of those which are the subject of a direction from the Secretary of State, have been determined. At that stage a report will be produced that contains a recommendation as to whether the application route should be added to the Definitive Map.

6.2. If Members resolve not to take the application out of turn, the investigation will still take place in due course. However, it will be prioritised in the same way as all other applications received and wait its turn in the queue.

## **7. Recommendation**

7.1. It is recommended that the out of turn request in relation to the application to modify the definitive map by adding a footpath at Blue Anchor (848M):

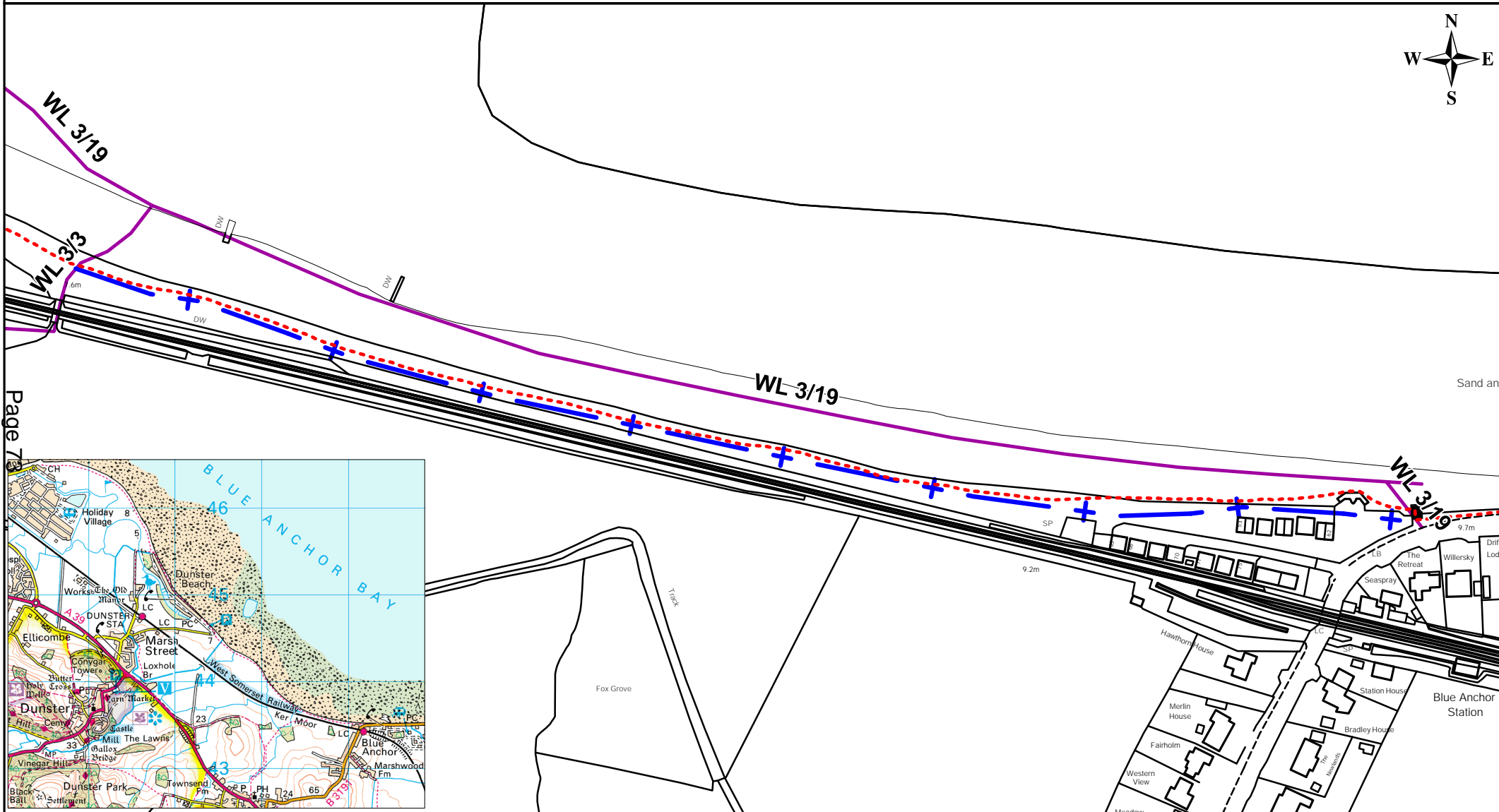
- i) fails to meet the 'out of turn' criteria set out in the County Council's Statement of Priorities;

- ii) does not demonstrate exceptional circumstances which justify the application being taken out of turn; and
- iii) should therefore be refused.

## **Appendices**

1. Plan showing the claimed route, England Coast Path and definitive rights of way network.
2. Somerset County Council's Rights of Way Statement of Priorities
3. Photographs of the route





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Parish: Carhampton  
 District: West Somerset  
 Date: 11/09/2017  
 Drawing No: H70-2017  
 Drawn By: MHardwill  
 Grid Ref: 301854 143506  
 Scale: 1:2500

Definitive Footpath  
 England Coast Path  
 Modification  
 Claimed public footpath to the north of Blue Anchor Chalets  
 OUT OF TURN REQUEST

(c) Crown copyright. All rights reserved (Somerset County Council) (100038382) (2017)  
 The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.

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**REVISED “STATEMENT OF PRIORITIES”  
WILDLIFE AND COUNTRYSIDE ACT 1981 - Section 53 Applications**

The new statement to consist of the following priorities: -

Applications for Definitive Map Modification Orders

1. To investigate all applications by using the Rights of Way Improvement Plan (RoWIP) Scorecard to determine their order of investigation unless\*:-
  - The path concerned has been identified as an important link in the Local Transport Plan (LTP);
  - the path concerned is likely to disappear as a result of development;
  - an affected party can demonstrate that they are experiencing exceptional significant problems due to an application that impacts on their property\*\*;
  - The path concerned is subject to a Section 130 notice and the County Council is satisfied that there is cogent evidence that the status or route of the path is in dispute.
2. To give priority to first applications for modifications of the Definitive Map and Statement over second and subsequent applications on paths where a decision has already been reached by the Authority.
3. To continue to accept applications for modifications to the Definitive Map and Statement up to the cut off date of 2026.

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\* *Applications submitted during the term of a Rights of Way Improvement Plan will only be Scorecarded following a RoWIP review.*

\*\* *Any request to take an application out of turn will be considered by the Regulation Committee. Parties must make an initial request to the Local County Councillor or Chairman of the Regulation Committee for the matter to be considered. It is expected that this clause will apply in exceptional circumstances only, in accordance with Section 8.9 of Appendix C to the Constitution of the County Council.*

Date: October 2011

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**Request to take an application for a definitive map modification order out of turn: Claimed public footpath to the north of Blue Anchor Chalets  
Photographs**

(All photographs taken on 7 September 2017 between 9.00 a.m. and 9.40 a.m. High tide had been at 7.57 a.m. and had been height of 10.42 metres)

1. Looking south west from beach

Point at which application route, WL3/19  
and the England Cost Path meet





2. Looking east along application route from the western end of the front row of chalets



Military installation

Grass bank

Coast path

Application route

3. Looking south at the western end of the front row of chalets



Grass bank

Application route

Coast path

Access through scrub

4. Looking east from near to the point that the application route and Coast Path diverge.



High water mark for 7  
September 2017

Coast Path

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