

Regulation Committee
Thursday 11 January 2018
2.00 pm Luttrell Room - County Hall,
Taunton



To: The Members of the Regulation Committee

Cllr J Parham (Chair), Cllr N Hewitt-Cooper (Vice-Chair), 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 - 3 January 2018

For further information about the meeting, please contact Michael Bryant on 01823 359048 or 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



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AGENDA

Item Regulation Committee - 2.00 pm Thursday 11 January 2018

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

1 **Apologies for Absence**

2 **Declarations of Interest**

3 **Accuracy of the Minutes of the meeting held on 2 November 2017** (Pages 7 - 14)

The Committee will consider the accuracy of the attached minutes.

4 **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.

5 **Application to add a bridleway at Westholme Lane, in the Parish of Pilton** (Pages 15 - 230)

6 **Alterations to rear extension of Highfield House, Cannards Grave Road, Shepton Mallet, BA4 5BT** (Pages 231 - 244)

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 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 2 November 2017 at 14:00 in the Luttrell Room, County Hall.

Present

Cllr J Parham (Chairman)

Cllr John Clarke	Cllr Mark Keating
Cllr Simon Coles (substituting for Cllr T Lock)	Cllr Andy Kendall
Cllr Nigel Hewitt-Cooper	Cllr Mike Pullin
	Cllr Nigel Taylor

Other Members Present: Cllr Jane Lock, Cllr Dave Loveridge, Cllr Tessa Munt, Cllr Leigh Redman and Cllr William Wallace

The Chair 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 Tony Lock and Cllr D Ruddle

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 Simon Coles	Member of Taunton Deane Borough Council Member of Devon and Somerset Fire and Rescue Authority
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 John Parham	Member of Mendip District Council Shepton Mallet Town Council
Cllr Mike Pullin	Member of Mendip District Council

Cllr Nigel Taylor

Member of Mendip District Council
Member of Cheddar Parish Council

Cllr Mike Pullin declared a personal interest in respect of agenda item 6 as a company in which he is a shareholder has been in discussions with the applicant regarding a possible contract between them.

3 Accuracy of the Minutes of the meeting held on 5 October 2017 – agenda item 3

The Chairman signed the Minutes of the Regulation Committee held on 5 October 2017 as a correct record.

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.

All other questions or statements received about matters on the agenda were taken at the time the relevant item was considered during the meeting.

5 Wood recycling and processing waste management site at Longman Wood Recycling, BA8 0TH - 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 a wood recycling and processing waste management site at Longman Wood Recycling, Camp Road, Henstridge Airfield, Henstridge, Templecombe, BA8 0TN.

The Committee were informed: this was a retrospective application; the site was expected to process 15,000 tonnes of material per year; the site was bounded by screening bunds, but these did not form part of the application site; waste wood was stored in a small area in the north of the site; access to the site was via a private road; and the development included both a boiler house and drying bays.

The Case Officer further highlighted the key issues for consideration, including: the principle of development, noting this was a non-strategic development; the waste hierarchy and reduced landfill; landscape and visual amenity noting that the site was well screened; impact on the highway network; residential amenity; and biodiversity and flood risk impacts noting the other industrial development in the area. Members were further informed of the requirement to reduce the height of the waste wood storage pile; that the applicant has submitted a dust management plan; and that Environment Agency's permission regime includes fire prevention measures.

(2) The Chair read a statement from Mr Geoff Jarvis, speaking on behalf of neighbouring business operators, who requested that a number of additional conditions be added to the application regarding pollution control, fire safety, and dust mitigation.

(3) The Committee heard from Mr Stephen Graeser, that applicant's agent, who informed the Committee that when the applicant purchased the site in 2016 they were advised by South Somerset District Council that planning permission was not needed, however they were subsequently advised in January 2017 that planning permission was required. Mr Graeser further informed the Committee that his applicant: works with the Environment Agency; appreciates that the existing stock pile is too large; is looking to rearrange the site layout to meet the proposed conditions and Environment Agency requirements; has 10,000 litres of water available on site for use in the event of a fire and is looking to increase storage; hopes to install surface water drainage; and would suspend dust creating activities dependant on wind direction.

The Service Manager – Planning Control, Enforcement and Compliance noted that future developments could not be taken into consideration when determining today's application and that in his opinion the existing mitigations were acceptable.

(4) The Committee proceeded to debate during which a number of questions were asked by Members including: the importance of the recent site visit; timescales for reducing the wood stockpile; the importance of dust mitigation measures; and on-site water storage and Fire Authority guidance.

(5) Cllr Nigel Taylor proposed the recommendations detailed in the officer report and this was seconded by Cllr Nigel Hewitt-Cooper.

(6) The Committee resolved in respect of planning application no. 17/02965/CPO that planning permission be GRANTED subject to the conditions set out in section 8 of the officer's report and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Service Manager, Planning Control Enforcement & Compliance.

6 Demolition of existing agricultural buildings and erection of a farm anaerobic digester plant, change of use of building, landscaping and new site access at Brains Farm, BA9 9RA – agenda item 6

(1) The Case Officer with reference to the report supporting papers, and the use of maps, plans and photographs outlined the application for the demolition of existing agricultural buildings and the erection of a farm Anaerobic Digester (AD) plant, along with the change of use of a building, landscaping and new site access.

(2) The Committee were informed that: it was proposed that the plant would have a through-put of up to 50,000 tonnes per annum; the late papers included additional representations from the Highways Authority, along with other representations regarding odour, property values and the effect on local businesses; in total 103 representations had been received, 43 in support of the application, 56 objecting to the application and 4 raising concerns; the screening opinion was in accordance with central government guidelines; the application was to the north of Wincanton, and the west of the existing sewage works; the proposed access was off Moor Lane; Environment Agency flood compensation included the requirement for an attenuation pond; the development was in accordance with planning policy; there was sufficient capacity on the local and strategic highway network; the air quality expert had not raised any odour concerns; the application would include the betterment of a stream; the conditions included protection for nesting birds and hedgehogs; and a number of the existing farm buildings would be demolished. The Case Officer further highlighted the unauthorised development of a barn in the immediate vicinity of the site.

(3) The Committee heard from Mr Bob Farrand, who spoke against the officer recommendations and raised a number of points including: he had lived locally for 22 years; he was a lecturer in food and drink; his involvement with ADAS; the traffic impact had not been considered; 3,750 vehicles deliveries were expected per year which was the equivalent of 60 vehicles movements per day; 42,000 tonnes of digestate would need to be taken away from the site each year; many of the extra vehicle movements would be during the harvesting season; there was insufficient room for vehicles to pass on the access road; and the importance of talking to Dorset County Council regarding roads.

(4) The Committee heard from Mr Colin Winder, who made observations regarding the need for an additional slip road off the A303 to help alleviate traffic concerns.

(5) The Service Manager – Planning Control, Enforcement and Compliance noted that an additional slip road was unrelated to this application.

(6) The Committee heard from Mr Roger Gosney, who spoke against the officer recommendations and raised a number of points including: he is a retired highways engineer with over 40 years experience; the Parish Council objected to the application; a specialist consultant believes the application should be deferred or refused; the existing roads around Buckhorn Western are little more than lanes and are unsuitable for large vehicles; the impact on cyclists; and that the application should be deferred until such a time as a full transport assessment has been completed.

(7) The Committee heard from Sir John Grant, who spoke against the officer recommendations and raised a number of points including: he had recently moved to the area; the mistrust and suspicion from local people; and Department for Transport guidance and the requirement for a transport

statement. Sir John Grant further made two proposals for variations to the recommended conditions: firstly that any increase in the plants throughput would trigger the requirement for an EIA; and secondly the requirement for a traffic consultation with the Parish Council's most likely to be impacted upon by increased traffic volumes.

(8) The Committee heard from Mr Andy Smith, who spoke against the officer recommendations and raised a number of points including: that he is a local farmer; support AD plants as they take advantage of waste; the applicant had identified the need for waste disposal, but had not provided any evidence; the throughput of the plant had been reduced from 69,000 to 50,000 tonnes per annum but it was not clear if this was achievable; and that whilst the proposed through-put of the plant had been reduced, the digester tank size had not been reduced accordingly.

(9) The Committee heard from Mr Christopher Maltin, who spoke in support of the officer recommendations and raised a number of points including: he was born in Somerset and lived in the County; he runs an AD business near to the application site; that no complaints had ever been received regarding his plant; the importance of putting organic material back into the soil; that he represented the United Kingdom on the International Energy Agency and was the Chair of the International Bio Gas Congress; that the plant would produce 40 jobs; and that the plant would reduce pollution from farming.

(10) The Committee heard from Mr James Hobbs, who spoke in support of the officer recommendations and raised a number of points including: he was a farm renewable energy specialist; that the proposed site was located within a traditionally dairy area; the plant would process organic matter from other businesses; the importance of adding organic matter to the land; the applicant has green ambitions and has planted nearly 500'000 trees and operates a solar park; and the proposed development would have both farming and environmental benefits.

(11) The Committee heard from Mr Howard Duffy, who spoke in support of the officer recommendations and raised a number of points including: he is a clinical pharmacist and in medicine all decisions are evidence based; many of the comments regarding this proposed development are based on speculation and not what will actually happen; there is a local need for gas given housing developments in the area; there is traffic capacity on local roads; many of the objections are not from local people; the development would create jobs; and the development would use material from local farms.

(12) The Committee heard from Mr Daniel Scheven, who spoke on behalf of the applicant, in support of the recommendations and raised a number of points including: there was support for AD plants; that he could not foresee any traffic movements from the direction of Buckhorn Weston; that he had met with Buckhorn Weston Parish Council and was in agreement that the route through the village was unsuitable due to a low bridge; a Dorset Councillor has visited the site and was positive; and that the applicant planned to run the

plant for a minimum of 20 years.

(13) The Committee heard from Cllr William Wallace, a County Councillor for an adjoining division, who noted that the rural community support this development and that there was already rural traffic present in the area.

(14) At the Chair's invitation and in response to the points raised the Committee heard from Ben Sunderland representing the Highways Authority who informed Members: vehicle routing and signage had been considered; that sufficient information had been included in the Transport Statement; that the conditions would help ensure there was no severe impact on the highway; and that the current farm usage would generate similar vehicle movements.

(15) The Committee proceeded to debate during which a number of questions were asked by Members including: the difference between a Transport Statement and a Transport Assessment; keeping the road clean of mud and debris; enforcement of the digestors throughput volume; the requirement for an Environmental Impact Assessment if the plants throughput were to be increased; the potential to enforce the number of vehicle movements; the enforcement of all conditions; the potential to add an additional condition regarding odour; waste transfer note requirements; the duration of the condition regarding landscape planting; and consultation with Dorset County Council.

(15) Cllr Mike Pullin proposed the determination of the application be deferred until such a time as officers can provide additional information and reassurance regarding vehicle movements, and this was seconded by Cllr John Clarke.

(16) The Service Manager, Planning Control, Enforcement and Compliance informed Members that any deferral would have to be accompanied by clear reasons, and that in his opinion the existing Condition No. 13 regarding the Vehicle Routing and Signage Strategy would address Members concerns.

(17) At the Chair's invitation, Helen Vittery, representing the Highway Authority informed the Committee that a full Transport Assessment would only detail peak hour impacts, where as a Transport Statement details all movement throughout the day.

(16) The Service Manager, Planning Control, Enforcement and Compliance informed Members that Condition No. 13 could be amended to include consultation with Dorset County Council.

(17) Cllr Mike Pullin withdrew his proposal that the application be deferred subject to the amendment to Condition No. 13.

(18) The Committee proceeded to vote and agreed unanimously that Condition No. 13 Vehicle Routing and Signage Strategy should be amended to include consultation with Dorset County Council.

(19) Cllr Mark Keating proposed the recommendations detailed in the officer report, and as amended verbally at the meeting, and this was seconded by Cllr Nigel Hewitt-Cooper.

(20) The Committee resolved in respect of planning application no. 17/03257/CPO that planning permission be GRANTED subject to the conditions set out in section 8 of the officer's report, together with an amendment to condition No. 13 to include the requirement to consult with Dorset County Council.

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 Service Manager, Planning Control Enforcement & Compliance

7 Construction of a footway and cycleway between Cranleigh Gardens and Liberty Place, through Eastover Park, Bridgwater, Somerset – agenda item 7

(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 a cycleway between Cranleigh Gardens and Liberty Place, through Eastover Park, Bridgwater. The Case Officer further highlighted the late papers.

The Committee were informed: the route would be a shared footway and cycle path including appropriate signage and surfacing; there would be 14 extra lighting columns placed at 23 meter intervals; and there was an existing permission in place but this was for a wider segregated route.

The key issues for consideration were highlighted to Members, including: accordance with the development plan and NPPF; accordance with the Transport Plan; improving sustainable transport networks; residential amenity; development within a playing field; development in a flood zone; and the protection of existing trees. Finally the case officer highlighted that the application was recommended for approval.

(2) The Committee heard from Mr Alan Stathers, who spoke on behalf of a number of local residents, against the officer recommendations, and raised a number of points including: a secondary objection had been submitted; there was already an existing path which was well lit; concern at the additional lighting; and that the path would not provide a direct route from the town to the railway station.

(3) The Committee heard from Mr Samuel Harper speaking on behalf of the applicant, who spoke in support of the officer recommendations and raised a number of points including: the HPC Mitigation Fund and the Town Council

would be making a financial contribution; there were various letters of support from Schools and other Councillors; the development included a drop kerb to allow access to the bowling club parking area; and the Parks and Open Spaces Officer supports the development.

(4) The Committee heard from Cllr Dave Loveridge, the Local County Councillor who highlighted to the committee that the removal of the access gate may mean that motorcycles and mopeds use the route and park. Cllr Loveridge further noted that he had no objection to the development in principle, but questioned why the path could not follow the existing route around the park.

(5) The Committee proceeded to debate during which a number of questions were asked by Members including: details of the previously approved permission; and why the new proposal was for a narrower route. Members further noted concern at a shared pedestrian and cycle space; and questioned of there was demand for the route.

(6) Cllr Nigel Hewitt-Cooper proposed the recommendations detailed in the officer report, and this was seconded by Cllr Mike Pullin.

(7) The Committee resolved in respect of planning application no. 1/08/17/00062 that planning permission be GRANTED subject to the conditions set out in section 8 of the officer's report and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Service Manager, Planning Control Enforcement & Compliance.

8 Any other business of urgency – agenda item 8

There was no other business.

(The meeting closed at 16:44)

Chair, Regulation Committee

Somerset County Council

Regulation Committee – 11 January 2018
Report by Andrew Saint, Senior Rights of Way Officer, Economic &
Community Infrastructure - Rights of Way Definitive Map Team

Application Number: **705M**
Date Registered: **25 March 2011**
Parish: **Pilton**
District: **Mendip**
Member Division: **Mendip South**
Local Member: **Councillor Hewitt-Cooper**
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 bridleway at
Westholme Lane, in the Parish of Pilton**

Grid Reference: **ST 5631 4040**
Applicant: **Mendip Bridleways and Byways Association**
Location: **Lower Westholme**

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 bridleway between WS7/54 and Lower Westholme Road, in the parish of Pilton (shown A-B on plan H063-2017).
- 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.

1. Introduction

1.1. On 25 March 2011, Mendip Bridleways and Byways Association 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 bridleway over part of Westholme Lane in the parish of Pilton.

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 the Mendip Bridleway and Byways Association 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 Mendip Bridleways and Byways Association made representations to the Secretary of State seeking such a direction in relation to their application. Their request was successful and the County Council were directed to determine the application by 31 January 2018.

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 34 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. Robin Carr Associates (RCA) have investigated the Mendip Bridleways and Byways Association'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 RCA's investigation report, which includes details of the relevant legislation, is attached. Where appropriate, personal information (e.g. names and addresses) has been redacted from the report. This includes removing the whole of appendix 2 which lists those who were consulted on the application during RCA's investigation.

3.3. As is explained in section 2.4, having drafted the report, it was circulated to various interested parties for comment. Two responses were received, both of which disagreed with the recommendation. The representations, together with RCA's response to them, are included in the report (see appendices 25 and 26).

4. Conclusions

4.1. As can be seen from their report, RCA conclude that the evidence in its totality is sufficient to reasonably allege that bridleway rights subsist.

4.2. RCA go on to suggest that, even if it were to be concluded that the application route had not historically been a bridleway, a right of way on foot could be reasonably alleged based on evidence of use between 1960 and 1980.

4.3. Most (although not all) of the objections raised in response to RCAs recommendation relate to the quality of the user evidence provided. However, as RCA make clear in their response 'our conclusions in respect of bridleway status are based on the historical reputation of the way as a bridleway, and [RCA] can confirm that if such rights do subsist, then they were established prior to 1910'.

4.4. The importance of this is that if bridleway rights were established prior to 1910, and if they have not subsequently been diverted or extinguished (and there is no evidence of them having been so), then they will still exist today irrespective of the level of public use that they have received in more recent times.

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 bridleway between WS7/54 and Lower Westholme Road, in the parish of Pilton (shown A-B on plan H063-2017).
- 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.

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ROBIN CARR ASSOCIATES

Public Rights of Way Management & Consultancy Services

Wildlife & Countryside Act 1981 Application for Definitive Map Modification Order Claimed Public Bridleway – Westholme Lane, Pilton

Somerset County Council Case Reference: 705

1.0 Introduction

1.1 My name is Robin Carr. I am an independent consultant, specialising in Public Rights of Way and Highway matters. I am a Fellow of the Institute of Public Rights of Way & Access Management (IPROW) and a Registered Expert Witness.

1.2 My experience is based, most generally, on an expertise that has been developed over a twenty-five year period as a Public Rights of Way practitioner.

2.0 Purpose of Report

2.1 The purpose of this report is to assist Somerset County Council in their determination of an application for a Definitive Map Modification Order to record public bridleway rights over the route shown A-B on Plan 1 (Appendix 1) in the Document Bundle which accompanies this report.

Description of the Route under Investigation

2.2 The Application Route is a predominantly hedged lane, known as Westholme Lane, and commences at the southern terminus of the existing bridleway (WS 7/54) which is also part of Westholme Lane, at Point A (Plan 1), and then runs in a generally easterly direction to its junction with the road at Lower Westholme (Point B on Plan 1).

Consultations

2.3 Consultations have been undertaken in accordance with the principles set out in national guidance and the usual practices of Somerset County Council. This includes consultation with

land owners/occupiers, the Parish and District Council and local/national user interest groups. Any relevant evidence arising from this consultation exercise is included within the report. A list of consultees is included in the Document Bundle under Appendix 2.

- 2.4 Further consultations, involving the circulation of a full copy of a draft of this report to all known landowners/occupiers, the applicant, the parish council, local County Councillor and Chairman of the County Council’s Regulation Committee has also been undertaken prior to finalising the report. Representations made on behalf of two land owners have been received, copies of which are included in the document bundle at Appendices 25 and 26. A copy of the Consultant’s responses to the representations is also included in the corresponding appendices.

Documents Consulted and Site Visits

- 2.5 As part of my investigations I have visited the archives held at the Somerset Heritage Centre in Taunton to view a range of relevant historical documentation. A list of all documents consulted as part of the investigation is included in the Document Bundle at Appendix 3.
- 2.6 I have also visited the site to look at the Application Route, and met with any land owners/occupiers who requested a meeting to discuss the case.

3.0 Background

- 3.1 A short section of Westholme Lane within North Wootton, running northwards from Point A on Plan 1 (Appendix 1) is currently recorded on the Definitive Map as a Public Bridleway under reference WS7/54. The remainder of Westholme Lane (the Application Route), which is within Pilton (and shown A-B on Plan 1) is not recorded on the Definitive Map. Whilst the Definitive Map provides conclusive evidence of the existence of the rights recorded upon it, its conclusive status is without prejudice to the possible existence of additional or higher rights. A copy of the Definitive Map and Statement for this footpath is included in the Document Bundle at Appendix 4.
- 3.2 On 25th March 2011 the Mendip Bridleways & Byways Association submitted an application for a Definitive Map Modification Order to Somerset County Council. The application sought to add the Application Route (A-B) to the Definitive Map as a Public Bridleway. The application
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was accompanied by copies of historical documentary evidence and user evidence which the applicant's claim supports their application. A copy of the application (less copies of the documentary evidence) is included in the Document Bundle at Appendix 5. Copies of the documentary evidence and user evidence are included in the Document Bundle under Appendices 8 – 23 and are discussed further below.

3.3 If an application for a Definitive Map Modification Order is not determined within 12 months of its submission the applicants have a right to request that the Secretary of State issues a direction to the County Council requiring them to make a decision whether or not to make a Definitive Map Modification Order within a defined timescale. On 18th February 2017 the Mendip Bridleways & Byways Association made such a request, and having considered all of the material factors the Secretary of State directed Somerset County Council to determine the application by 31st January 2018. A copy of the Secretary of State's direction is included within the Document Bundle at Appendix 6.

3.4 In order to meet this deadline Somerset County Council has appointed external specialist consultants (in this case Robin Carr Associates) to undertake the necessary work to investigate the claims made within the application, and provide an advisory report to assist them in deciding whether or not to make the requested modifications to the Definitive Map and Statement for the area.

4.0 Legal Context

The Definitive Map and the Surveying Authority

4.1 Somerset County Council are the Surveying Authority for the purposes of Section 53 of the Wildlife and Countryside Act 1981 and the continuous review of the Definitive Map and Statement of Public Rights of Way. By virtue of Section 56 of the Wildlife and Countryside Act 1981 the Definitive Map and Statement provide conclusive evidence of the rights recorded within them, but this is without prejudice to the existence of any other unrecorded rights.

4.2 Section 53(5) and Schedule 14 of the Wildlife and Countryside Act 1981 allow any person to submit an application to modify the Definitive Map and Statement by adding routes not previously recorded, deleting routes that have been shown in error and amending the status of routes already shown. Such modifications do not create any new rights, nor do they

extinguish any, they simply seek to ensure that the Definitive Map and Statement accurately records those that's that already exist.

- 4.3 53(3)(c)(i) of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to make a Definitive Map Modification Order upon the discovery of evidence that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist. The duty to make the Order is triggered if there is a reasonable allegation that the claimed rights subsist, however such an Order can only be confirmed if the rights are shown, on balance of probability, to subsist.
- 4.4 The decision whether to make a Definitive Map Modification Order is “quasi-judicial” in nature, and as such the decision must be made having had due regard to all of the available and relevant evidence (i.e. evidence relating to the existence or otherwise of the public rights in question). Matters such a desirability, suitability, need, security and even public safety, whilst all genuine concerns, are not matters that can lawfully be taken into account as part of the decision-making process.
- 4.5 When considering the available and relevant evidence the Authority should take into account the provisions of Section 32 of the Highways Act 1980, which states: “a Court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced”.
- 4.6 The burden of proof rests initially with those making the claim to prove their case.

Public Rights of Way - General

- 4.7 Footpaths, bridleways, restricted byways and byways open to all traffic, often referred to as public rights of way, are public highways. A highway is a way over which the public have a

right to pass and re-pass. Not all highways are maintainable at public expense, nor is there any need for a way to have been “adopted” before it is either a highway or a highway maintainable at public expense.

4.8 Whilst topographical features may be attributed to, or provide evidence of, the existence of a public highway, the public right itself is not a physical entity, it is the right to pass and re-pass over (usually) private land.

4.9 Once a highway has come into being, no amount of non-user can result in the right ceasing to exist. The legal principle of “Once a Highway, Always a Highway”¹ applies. Such rights, except in very limited circumstances, can only be changed by way of certain legal proceedings either by way of local authority administrative order or a Court Order.

Types of Highway

4.10 As mentioned above, a highway is a way over which the public have a right to pass and re-pass. The nature and extent of the right (i.e. who may use it) is dependent upon the specific type of highway status possessed by a given route.

Common Law

4.11 Under the common law there were, and indeed still are, only three types of highway. These are:

- Footpaths,
- Bridleways; and,
- Carriageways

4.12 The right to pass and re-pass on a public footpath is restricted to pedestrians with usual accompaniments (e.g. a pushchair).

4.13 The right to pass and re-pass on a public bridleway is restricted to pedestrians, horse riders (including people leading horses) and possibly the right to drive cattle.

¹ *Harvey v Truro Rural District Council* (1903) 2 Ch 638, 644 and *Dawes v Hawkins* (1860) 8 CB (NS) 848, 858; 141 ER 1399, 1403

- 4.14 The right to pass and re-pass on a public carriageway is open to all traffic, namely pedestrians, horse riders (including people leading horses), non-mechanically propelled and mechanically propelled vehicles.

Statute

- 4.15 Over time the legislature has brought into effect various statutes which restrict or extend the extent of use on certain types of highway. For instance, under the provisions of the Countryside Act 1968 cyclists are granted a right to use bridleways. Other legislation provides for public carriageways to be subdivided into various categories which include motorways, cycle tracks, restricted byways and byways open to all traffic.
- 4.16 When determining the status of a specific route one must first consider the common law situation, and then apply any necessary restrictions to status imposed by statute in respect of restricted byways and byways open to all traffic. Motorways and cycle tracks can only be created by statutory order and are therefore not under consideration in this case.

How Highways Come into Being – Basic Principles

Dedication and Acceptance

- 4.17 Subject to a small number of exceptions, before any highway over land can come into being there must be an act of dedication by the landowner followed by the acceptance of the strip of land as a highway by the public, usually (but not always) demonstrated by the public using the way.
- 4.18 The act of dedication may be express or implied depending upon the actions or inactions of the land owner. Acceptance is usually demonstrated by public user, however acceptance of a way as a highway by the Highway Authority may also suffice. The principles of how rights can come into being are further discussed in more detail below.

Statute

- 4.19 It is possible for highways to be created as a result of statutory processes such as enclosure awards, or in more modern times various types of statutory creation order.

4.20 The Highways Act 1980, Section 31 has also, to a certain extent, codified the common law (discussed below) by identifying a specific set of circumstance whereby a presumption of dedication may arise. Section 31 provides that:

(1) Where a way over land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of twenty years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by notice, such as is mentioned in subsection (3) below or otherwise.

(3) Where the owner of the land, which any such way as aforesaid passes-

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway, and*
- (b) has maintained the notice after the first January 1934, or any later date on which it was erected,*

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

4.21 Section 31(1) has two ‘limbs’: the first provides that proof of twenty-years continuous user “as of right” endorses a claim that a highway exists; the second (sometimes referred to as ‘the proviso’) provides that proof of a lack of intention to dedicate the way as a highway defeats the claim. It is for those claiming the existence of rights to first discharge their burden of proof, before an objector is obliged to provide any evidence of lack of intention to dedicate.

Common Law

- 4.22 The establishment of highway rights under the common law is not bound by the “20 year rule” referred to above, with the courts having ruled² that rights can be established in a very short period of time. It may therefore be helpful to look at this area in more detail.
- 4.23 The common law position was described by Farwell J, and Slessor and Scott LJ in *Jones v Bates* [1938] 2 All ER 237, both quoted with approval by Laws J in *Jaques v SSE* [1995] J.P.L. 1031, who described Scott LJ’s summary as “*a full and convenient description of the common law*”. Other leading cases that speak to dedication at common law are *Fairey v Southampton CC* [1956] 2 Q.B. 439, *Mann v Brodie* (1885) 10 App. Cas. 378 and *Poole v Huskinson* (1843) 11 M & W 827. *Jaques* is a particularly helpful exposition on the differences between dedication at common law and under statute. Dyson J’s judgment in *Nicholson v Secretary of State for the Environment* [1996] EWHC Admin 393 comments further on aspects of these differences.
- 4.24 Halsbury³ states – “*Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute. User by the public is a sufficient acceptance. And - An intention to dedicate land as a highway may only be inferred against a person who was at the material time in a position to make an effective dedication, that is, as a rule, a person who is absolute owner in fee simple; and At common law, the question of dedication is one of fact to be determined from the evidence. User by the public is no more than evidence, and is not conclusive evidence ... any presumption raised by that user may be rebutted. Where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that he had the capacity to dedicate. The onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication*”.
- 4.25 The inference of dedication may arise in three ways:
- i) First, the inference may arise from the fact that the owner has done exactly what one would expect from any owner who intended to dedicate a new highway (e.g. express dedication). For example, in *North London Railway Co v Vestry of St Mary, Islington*⁴

² *North London Railway Co v Vestry of St Mary, Islington* (1872) 27 L.T. 672 – Dedication was found to have occurred within an 18 month period

³ Halsbury’s Laws of England (Volume 55 ‘Highways’)

⁴ (1872) 27 L.T. 672

the issue concerned a new bridge which the railway company had constructed alongside its newly opened Canonbury Station in Islington. The bridge was 50 feet wide and connected two existing streets on either side of the railway lines. Carriages used the bridge freely from the time it was completed, and a public cab rank had been established on part of the bridge. The Justices' conclusion that the way had been dedicated as a carriageway occasioned no surprise on the appeal to the Divisional Court, although the Justices had to decide the point when the bridge had been in use for only 18 months. In those circumstances, the fact that the company had put up barriers to prevent further use by carriages sometime after receiving notice of the proceedings before the Justices merely evoked the comment from Blackburn J. that *"As to the erection of the barriers by the appellants, that was done too late to do away with the dedication"*.

- ii) Second, the inference has been drawn mainly from evidence that the way was already recognised as being a highway by the start of the period covered by living memory, coupled with the absence of anything to show that the public recognition was misplaced. In this class of case the common law approach simply recognises that the facts all point one way, and that it is immaterial that the claimant cannot identify the early owners or show the actual date when dedication was likely to have occurred⁵.
- iii) Third, a dedication may be inferred from use and enjoyment by the public as of right, known by the owner and acquiesced in by him. The owner's recognition of the fact that the public is using the way as a highway may itself be a matter for inference, rather than clearly proven fact⁶.

4.26 A summary of the generic guidance on the legislation etc that is usually found within Somerset County Council Decision Reports may be found at Appendix 7 in the document bundle which accompanies this report.

⁵ See e.g. *Williams Ellis v Cobb* [1935] 1 KB 310 (CA), 318-9, 325, 327-8, 331

⁶ See e.g. Parker J in *Webb v Baldwin and others* (1911) 75 JP 564 at p565

5.0 Summary Description of Available Relevant Documentary Evidence

Inclosure Awards

- 5.1 The Inclosure Awards for the surrounding areas do not include the land surrounding the Application Route.

Maps of Pilton 1809 & 1810 (Appendix 8 & 9)

- 5.2 The “Plan of the Parishes of Pilton and North Wotton” (1809) (Appendix 8) shows the Application Route, naming it as South Mead Lane. The lane appears to be excluded from the adjoining land holdings, the boundaries of which are coloured and identified by reference to the parish within which they are situated.

- 5.3 The Map of Westholme Farm (1810) (Appendix 9) shows the Application Route coloured brown/sepia.

Map of Westholme (1826) (Appendix 10)

- 5.4 The 1826 Map of Westholme shows the Application Route. It is uncoloured, as are other roads shown on the plan. Various parcels of land adjoin the lane are colour washed.

Commercial Maps (Appendix 11)

- 5.5 Day & Masters Map (1782) shows the start of the Application Route in the vicinity of Paint B but not its full continuation westwards. Greenwood’s Map (1822) shows the Application Route depicted as a “Cross-Roads”. The Timeline Cassini Reprints of OS Maps (1811-17 & 1899) both show the Application Route.

Tithe Map (Appendix 12)

- 5.6 The section of Westholme Lane which is already shown on the Definitive Map as a bridleway is shown on the North Wooton Tithe Map (1838) and named as Narrow Meade Lane. The Application Route is shown on the Pilton Tithe Map (1839) and coloured brown/sepia (as is much of the surrounding land). The lane is numbered although the numbering is unclear it is understood to relate to a reference in the Apportionment in the listings for “Roads, Rivers Wastes etc”

Ordnance Survey Maps (Appendix 13 & 14)

- 5.7 Various editions of the Ordnance Survey maps (Appendix 13) show the Application Route as a track or roadway, naming it as Westholme Lane. The Application Route is also shown on the 1811 Ordnance Survey Surveyors Drawings (Appendix 14).

Ordnance Survey Object Names Book (1902) (Appendix 15) & Boundary Remarks Book & Sketch Plan (circa 1885) (Appendix 16)

- 5.8 The Object Names Book (Appendix 15) lists Westholme Lane, naming authority for its spelling to a local landowner and noting that it is an “occupation lane”. This reference has later been amended to “public”. A further memorandum seeks confirmation of Westholme Lane from the District Surveyor (of Highways).
- 5.9 The Boundary Remarks Book & Sketch Plan (Appendix 16) show parts of the Application Route but make no reference to its status.

1910 Finance Act Records (Appendix 17)

- 5.10 The 1910 Finance Act Index maps show that the Application Route were excluded from valuation.

Definitive Map Records (Appendix 18)

- 5.11 These records show that the Application Route was not originally claimed by the respective Parish/Town Councils at the initiation of the Definitive Map preparation process. The currently recorded bridleway (WS 7/54) running northwards from Point A (Plan 1) along Westholme Lane is shown on the Draft Modification Map for Wells. The Application Route (which would have fallen within Shepton Mallet is not shown on the Draft Modification Map for that area. This situation remained unchanged through to the publication of the Definitive Map.

Highway Authority Records (Appendix 19)

- 5.12 These documents use an Ordnance Survey map as their base and therefore show the Application Route. The route is not coloured on the 1929 Handover maps or the 1950 Highways Record. It is however marked by a broken purple line on the 1930 Highways map with a reference to it being “BR on the review map”. Bridleway WS 7/46 (Mead Lane) is
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shown in a similar fashion. A legend marked in the border of this map identifies the annotations to mean that the route is a “Certified Non-County Road”

County Council Rights of Way Files (Appendix 20)

- 5.13 The County Council’s Rights of Way Files contain a range of correspondence relating to the Application Route from 1954 - 2005. This correspondence suggests that there was, at different times, varying opinions over the status of the Application Route ranging from it being an ancient public carriageway, to a bridleway ton not being a highway maintainable at public expense.

Aerial Photographs (Appendix 21)

- 5.14 The Application Route is visible on the 1946 Aerial photographs

User Evidence Forms (Appendix 22)

- 5.15 A selection of user evidence forms have also been submitted in respect of use of the Application Route. It would appear that 25 forms were submitted to the County Council in 1980 and provide evidence of use (by 33 people) between 1925 and 1980, of which 19 appear to give evidence of use that may be considered to be “as of right” The remainder give evidence which may be attributed to the exercise of private rights (e.g. access to land etc). A further three forms were submitted in 2011 providing evidence of use between 1992 and 2011 and which may be considered evidence of use that is “as of right”
- 5.16 Of those witnesses whose use may be considered to be “as of right”:
- 6 forms provide evidence of occasional use
 - 9 forms provide evidence of usage on a monthly basis
 - 3 forms provide evidence of usage on a weekly basis
 - 1 form provides evidence of usage on a daily basis
 - 1 form provides evidence of no clear indication of frequency of use
- 5.17 With regard to the nature/type of use, twenty-four users provide evidence of use on foot, eight give evidence of use on horseback (including all three who submitted forms in 2011)
-

and fifteen gave evidence of use with vehicles (all of which were attributable to private use). Of those users claiming bridleway use, three refer to use entirely outside of the relevant 20-year period, one user claims use throughout the twenty-year period and the remainder give evidence of use spanning only a few years.

6.0 Submissions made by (or on behalf of) the Landowners/Occupiers

6.1 Only limited submission were made by the owners of the land adjacent to the Application Route prior to circulation of the draft report and evidence bundle. These earlier submissions were predominantly verbal during meetings with the Consultant. The main concerns expressed related to security of adjoining premises and the availability of their own continued access with vehicles to adjoining land. Copies of landowner evidence forms that were completed in 2011 are included in the document bundle at Appendix 23.

6.2 The landowners also expressed the view that the Application Route had not been subject to public use (if at all) for some considerable time, and that this was evidenced by the overgrown state of sections of the lane.

6.3 Two sets of representations were received from firms of solicitors representing landowners following circulation of the draft report and document bundle. Copies of these representations and the Consultant's responses are included in the document bundle under Appendices 25 and 26. No information or evidence was forthcoming that resulted in any change to the conclusions previously reached.

7.0 General Interpretation of Evidence

7.1 A summary of the generic guidance on the interpretation of evidence etc that is usually found within Somerset County Council Decision Reports may be found at Appendix 7 in the document bundle which accompanies this report.

7.2 Further general guidance on the interpretation of evidence etc may be found within the Planning Inspectorate's Definitive Map Consistency Guidelines, relevant extracts from which may be found at Appendix 24 of the document bundle.

8.0 Discussion

8.1 It must be stressed that the decision to be made, over what public rights exist, is quasi-judicial in nature, and as such the decision makers must base their decision upon all of the available and relevant evidence. Issues such as desirability, security, need, future maintenance liabilities, and even public safety, whilst undoubtedly genuine concerns, are not matters that can lawfully be taken into consideration as part of the decision-making process.

8.2 It must also be understood that a decision to make a Definitive Map Modification Order to add a Public Bridleway to the Definitive Map will not result in the creation of any new rights. It will simply seek to record those rights that, albeit currently unrecorded, already exist.

8.3 In this case the duty to make an Order is triggered if there is a reasonable allegation over the existence of public bridleway rights. This is a lower test than the balance of probability test, which would have to be met, at confirmation stage.

8.4 Before the duty to make an Order is triggered there must also be the discovery of evidence which warrants the making of an Order. Such evidence must not have been taken into consideration as part of any previous legal proceedings to clarify the status of the route, and also positively support the existence of the alleged bridleway rights.

8.5 In many instances documents relating the 1910 Finance Act (Appendix 17) can be considered new evidence because they were not publicly available at the time of the production of the Definitive Map in the 1950's. The Application Route was excluded from the valuation survey and this is often considered to be strongly supportive of the proposition that a route was a public highway of some description. Taking this into account they may be relied upon to constitute the required "discovery".

Maps of Pilton 1809 & 1810 (Appendix 8 & 9), the 1811 Ordnance Survey Surveyors Drawings (Appendix 14) and the Map of Westholme (1826) (Appendix 10)

8.6 These maps provide the earliest evidence of the physical existence of the Application Route. Whilst they are silent on the matter of status, they may still be considered to be supportive of the existence of public rights when considered in the context of the other documentary evidence.

8.7 The fact that the Application Route is named (South Mead Lane) on the 1809 map (Appendix 8) may also be considered supportive of the existence of public highway rights due to the requirements of late eighteenth-century highway legislation requiring that public highways be named for the purposes of indictment. (i.e. given the lack of accurate mapping at that time, routes could be identified and recorded by name instead)

Commercial Maps (Appendix 11)

8.8 Day & Masters Map (1782) only shows the start of the Application Route and therefore is of little assistance in this case. Whilst Greenwood’s Map (1822) shows the Application Route depicted as a “Cross-Roads” this must be treated with caution because he is known to have included both public and private ways on his maps and shown both as “Cross-Roads”.

8.9 The Timeline Cassini maps are reprints from the Ordnance Survey and therefore should be afforded no more weight than their original source information.

Tithe Map (Appendix 12)

8.10 The tithe maps indicate that the Application Route physically existed at the time of survey. They do not, however, provide any commentary on the status of the route, and any brown colouring is not indicative of highway status, it simply indicates that it was not subject to tithe (i.e. it was non-productive land). The entry in the Apportionment under “Roads, Rivers and Wastes etc” does not clarify whether the roads referred to are public and must therefore be treated with caution.

8.11 Notwithstanding the above, these documents may be considered supportive of the existence of highway rights when considered alongside other evidence.

Ordnance Survey Maps (Appendix 13)

8.12 Ordnance Survey maps provide excellent and accurate evidence of the existence of the physical features that existed at the time of their survey. They are, however, generally silent on the issue of the status of any path, track or way, and carry a disclaimer to that effect.

8.13 In this particular case the Application Route is shown on all of the Ordnance Survey maps that have been consulted. They are entirely consistent with other documents that refer to and/or show the Application Route (e.g. the Tithe Map, other early maps and plans and aerial photos etc).

Ordnance Survey Object Names Book (1903) (Appendix 15) & Boundary Remarks Book & Sketch Plan (Appendix 16)

8.14 The Ordnance Survey Object Names Book (Appendix 15) provides the provenance for the inclusion of the naming of Westholme Lane on the Ordnance Survey maps and initially suggests that it may have been considered to be private. The entries do however appear to have been amended following consultation with the District Surveyor (Highway Authority) with amendments being made which suggest public status.

8.15 The Boundary Remarks Book & Sketch Plan (Appendix 16) are of little assistance because whilst they show parts of the Application Route, they make no reference to its status.

1910 Finance Act Records (Appendix 17)

8.16 Documents produced as part of the 1910 Finance Act valuation process can provide very good evidence in support of the existence of public rights of way. It is generally accepted that the exclusion of a route from valuation can provide strong evidence in support of the proposition that it is a public highway of some description. However, as indicated in the Planning Inspectorate's consistency guidelines on the subject (Appendix 24) there are alternative interpretations. For instance, where a route is used by multiple land owners/occupiers for access to land and property (as in this case), and it is set out in the Inclosure Award as a private road, such exclusion has been interpreted, albeit not consistently, as not being supportive of the existence of public highway rights. The documents must be considered in the context of the other evidence.

Definitive Map Records (Appendix 18)

8.17 This document set initially suggests that at the time of the compilation of the Definitive Map the Application Route may have been considered by some to enjoy rights higher than those to be recorded on the Definitive Map (i.e. public carriageway). Contemporaneous

correspondence in the Council's files (Appendix 20) certainly suggest that the Rambler's Association were of this view.

- 8.18 The fact that only part of Westholme Lane was added into the process following the publication of the Draft Map may be because the lane crossed between two Rural District Council areas. An objection to the omission of the route in Wells RDC certainly appears to have been made by virtue of its subsequent inclusion in the Draft Modification Map and being subsequently shown on the Definitive Map. It is possible that original objection was intended to relate to the whole lane and not just the section within Wells RDC. Again, correspondence in the Council's files (Appendix 20) would appear to be supportive of such a proposition, with the Authority stating the view that the whole of Westholme Lane is, or should have been, recorded as a bridleway.

Highway Authority Records (Appendix 19)

- 8.19 The 1929 Handover Maps and the 1950's Highway Records provide no evidence in support of the application. The 1930's maps do however, by reference to the hand-written note, indicate the bridleway status of the Application Route. The reference to the Application Route being "Certified" as a "Non-County Road" may be indicative that some form of investigation into the route's status may have been undertaken, and that it had been concluded that the lane was not considered either to be a) a public carriageway or b), if such rights did exist, it was not a highway maintainable at public expense. In the absence of further evidence on this matter it may not be possible to conclude which of these propositions is most likely, however it should be noted that the records in question relate primarily to maintenance responsibility rather than status.

County Council Rights of Way Files (Appendix 20)

- 8.20 The correspondence on these files is somewhat contradictory at times, but taken in the whole it does appear to be supportive of the Application Route having the reputation of being a public highway of some sort, and probably being at least a bridleway.

Aerial Photographs (Appendix 21)

8.21 Aerial photographs, like the Ordnance Survey maps, provide excellent evidence of the existence of physical features on the ground on the day they were taken. They are, however, completely silent on the matter of status.

User Evidence Forms (Appendix 22)

8.22 The correspondence on the Council's files and the user evidence forms do refer to the locking of a gate across the Application Route circa 1980. This would explain why the forms were completed and submitted at that time. Given the time periods covered by the alleged use, it may be possible to consider a user based case pursuant to Section 31 of the Highways Act 1980 during the period 1960 – 1980.

8.23 The three user evidence forms submitted in 2011 appear to correspond with the submission of the application for the definitive map modification order. Whilst the submission of the application in 2011 would allow for consideration of a twenty-year period spanning 1991-2011, there is insufficient user evidence relating to this time period.

8.24 The user evidence forms submitted in 1980 provide evidence of use which is of a nature that may be considered to be "by the public", "as of right" and "without interruption" thus satisfying the initial tests set out within Section 31 of the 1980 Act, in respect of footpath status, however there is insufficient evidence of use to qualify bridleway status. There is no evidence of any lack of intention to dedicate public rights over the route during the 20-year period. This would suggest that there is potentially a presumption of dedication of footpath rights arising from public use between 1960 and 1980.

8.25 In the alternative, when considered alongside the historical documentary evidence, the user evidence may be considered to be further supportive of the historic reputation of the route as a public right of way.

8.26 Notwithstanding the above, the user evidence forms are brief and contain little detail. Whilst the above assumptions have been made based upon an analysis of the user evidence forms they must be treated with a degree of caution.

Landowner Submissions

- 8.27 The principal issues raised by the land owners during site meetings, whilst undoubtedly genuine concerns, are not matters that can lawfully be taken into account as part of the decision-making process. Notwithstanding this, if the alleged bridleway rights are determined to subsist the Authority may wish to engage with the land-owners to see if their concerns can be address. Such consideration may assist in the withdrawal or avoidance of objections to any Order that may be made.
- 8.28 With regard to their access to adjoining land (via the Application Route), any private rights that they currently use and enjoy, will not be affected by the addition of the route to the Definitive Map as a bridleway.
- 8.29 The land owners’ assertions that the Application Route has not been subject to public use in recent times is accepted and acknowledged. Some sections of the lane are significantly overgrown and impassable. The current state of the lane is not however an indicator of its condition in the past.

9.0 Conclusions

- 9.1 In conclusion, there is a consistent body of evidence dating from 1809 onwards which confirms the physical existence of the Application Route since that time. Whilst none of this evidence is conclusive as to the status of the route, when documents such as the 1910 Finance Act records are thrown into the balance, along with the user evidence and correspondence on the Council’s files there is, in the Consultant’s view, certainly a reasonable allegation that the alleged bridleway rights subsist. This is sufficient to trigger the Authority’s duty to make an Order.
- 9.2 With regard to the user evidence, when considered against the tests set out within Section 31 of the Highways Act 1980, there would appear to be a reasonable allegation in favour of a presumption of dedication of public footpath rights during the period 1960-1980.

10.0 Decision Required

- 10.1 If the County Council is satisfied that the claimed public bridleway rights are reasonably alleged to subsist over the Application Route they should resolve to:
-

- a) Make a Definitive Map Modification Order to add the route shown A – B Plan 1 (Appendix 1) to the Definitive Map as a Public Bridleway;
- b) and if no objections are received, confirm the Order;
- c) If objections are received, which are not subsequently withdrawn, that the Order be referred to the Secretary of State for Confirmation.

10.2 If the County Council are not satisfied that the claimed public bridleway rights are reasonably alleged to subsist over the Application Route they should refuse the application and advise the applicants of their rights of appeal.

11.0 Recommendation

11.1 Whilst it is the Consultant’s opinion that there is a reasonable allegation in favour of the registration of Public Bridleway rights over the Application Route, it is for the County Council to make its own decision based upon all the available and relevant evidence.

Robin Carr

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Robin Carr

FIPROW, MILAM (Cert)

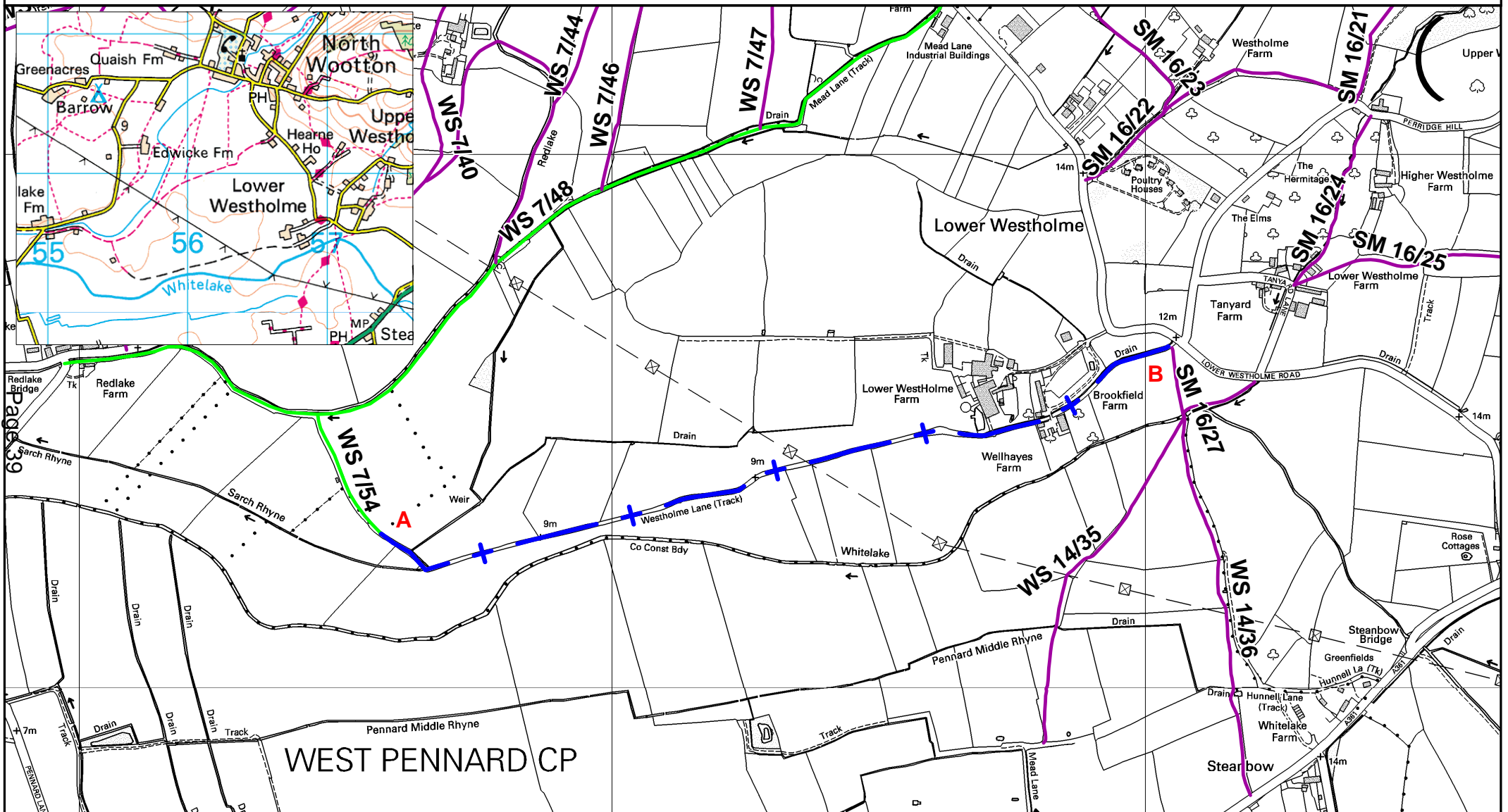
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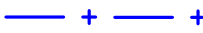
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Date: 20th November 2017



Parish: West Pennard
 District: Mendip
 Date: 07/08/2017
 Drawing No: H063-2017
 Drawn By: MHardwill
 Centre Grid Ref: 356315 140469
 Scale: 1:7,000

Section 53 Wildlife and Countryside Act 1981
 Claimed Bridleway at Westholme Lane

Claimed Bridleway (shown A - B) 

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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.

Definitive Footpath
 Definitive Bridleway



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Applicant							
Mendip Bridleways and Byways Assoc P.O. Box 3573				Shepton Mallet		Somerset, BA4 4XN	
Mendip Bridleways and Byways Assoc 3 Avenue Road				Frome		Somerset, BA11 1RP	
Landowners							
Mr		Hoddinott	O.P. Hoddinott and Sons	Launcherley Farm	Launcherley	Wells	Somerset, BA5 1QJ
Mr	D.	Snook	Mobile Home	Lower West Holme Road	Pilton	Shepton Mallet	Somerset
Mr & Mrs	J.	Dickson	Wellhayes Farm	Lower Westholme Road	Pilton	Shepton Mallet	Somerset, BA4 4HW
Mr & Mrs	E.W.	Masters	Redlake Farm	North Wootton	Wells	Somerset, BA4 4HQ	
Mr & Mrs		Salmon	Lower Westholme Farm	Lower Westholme Road	Pilton	Shepton Mallet	Somerset, BA4 4HW
Mr & Mrs	A.	Roberts	Brookfield Farm	Lower Westholme Road	Pilton	Shepton Mallet	Somerset, BA4 4HW
			A.R. Gane & Sons	Whitelake Farm	Steanbow	West Pennard	Somerset, BA6 8NB
User Groups							
Mr	C	Earl	Ramblers Area Secretary	Fulwood House	Winsham	Chard	Somerset, TA20 4EE
Mr	B	Underwood	The Ramblers' Association	Cherry Orchard	Wookey Road	WELLS	Somerset, BA5 1NA
Mrs	A.	Kent	British Horse Society	Parks Farm	Fitzhead	Taunton	Somerset, TA4 3JP
			Auto Cycle Union	ACU House	Wood Street	Rugby	CV21 2YX
			Cyclist Touring Club	Parklands	Railton Road	Guildford	Surrey, GU2 9JX
Mr	S	Addicott	All Wheels Drive Club	County Liaison Officer	35 Burcott Road	Wells	Somerset, BA5 2EF
Ms	K	Ashbrook	General Secretary	Open Spaces Society	25A Bell Street	Henley-on-Thames	RG9 2BA
			Consultation Service	Natural England	Hornbeam House	Crewe Business Park	Crewe, CW1 6GJ
			The Ramblers' Association	2nd Floor, Camelford Hse	87-90 Albert Embankment	London	SE1 7TW
			British Horse Society	Abbey Park	Stareton	Kenilworth	CV8 2XZ
			British Driving Society	Endersley	Church Road	Wingfield, Eye	Suffolk, IP21 5QZ
			Byways and Bridleways Trust	c/o 57 Bowers Mill	Branch Road	Barkisland	HX4 0AD
Mr	A.	Mallender	AONB Project Officer	Mendip Hills AONB	Charterhouse Centre	Nr Blagdon,	Somerset, BS40 7XR
Mrs	R.	Thompson	Mendip Cross Trails Trust	The Barn, Townsend	Priddy	WELLS	Somerset, BA5 3PB
Mr	M.	Keswick	Trail Riders Fellowship	Woodhouse Farm	Stoke St Gregory	Taunton	Somerset, TA3 6JA
			Parish Council				
Miss	H.	Brinton	North Wootton Parish Council	60 Worle Moor Road	Weston Village	Weston super Mare	BS24 7EG
Ms	K.	Buckley	Pilton Parish Council	77 Cedar Grove	Yeovil	Somerset, BA21 3JS	
			District Council				
Mr	I	Bowen	Mendip District Council	Cannards Grave Road	Shepton Mallet	Somerset	BA4 5BT
			Local Councillors				
CIlr	N.	Hewitt-Cooper	The Homestead	Glastonbury Road	West Pennard	Somerset, BA6 8NN	
CIlr	G.	Noel	Riverside Farmhouse	5 Main Road	Westhay	Glastonbury	Somerset, BA6 9TN

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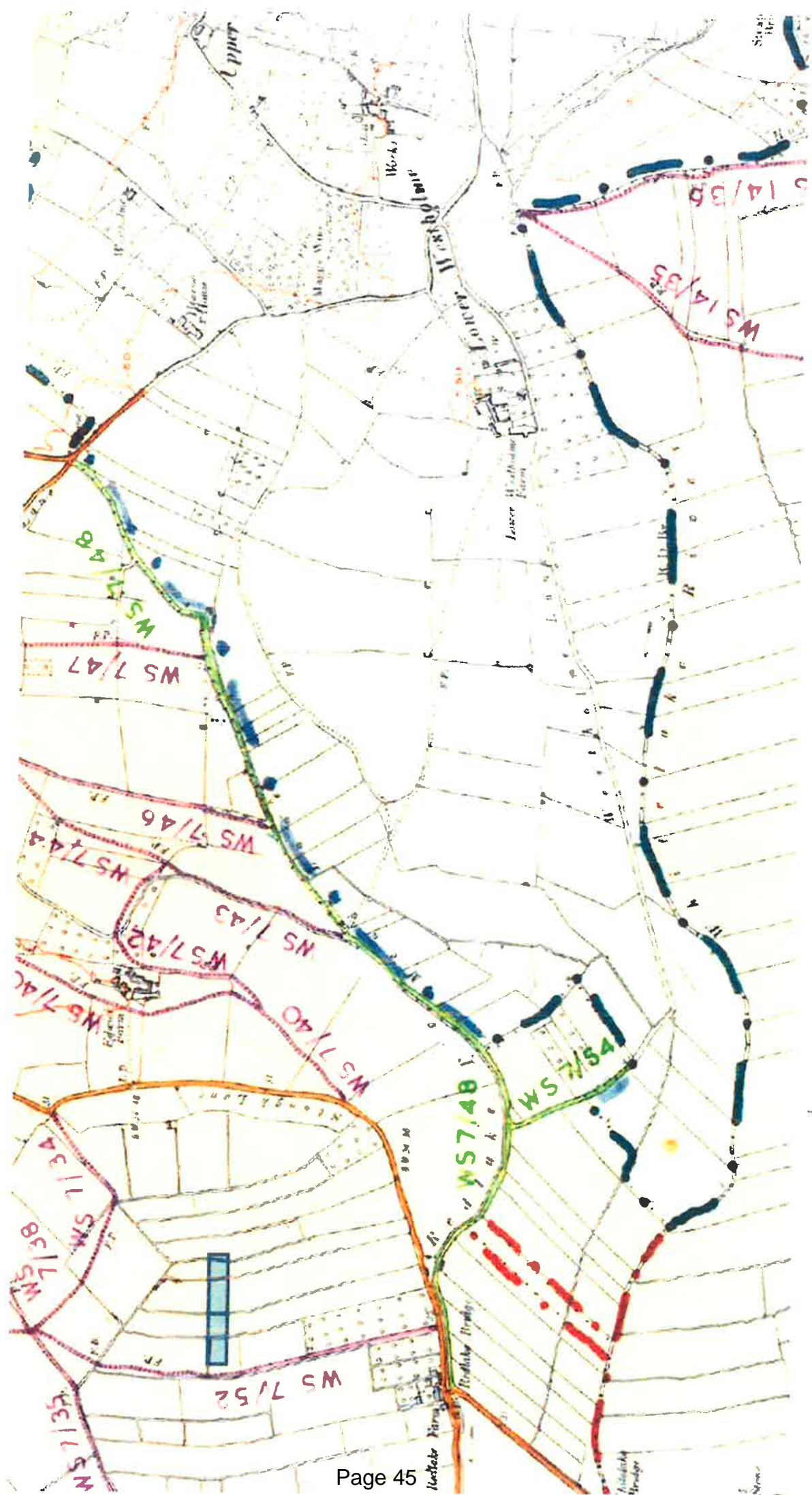
ROBIN CARR ASSOCIATES

Public Rights of Way Management & Consultancy Services

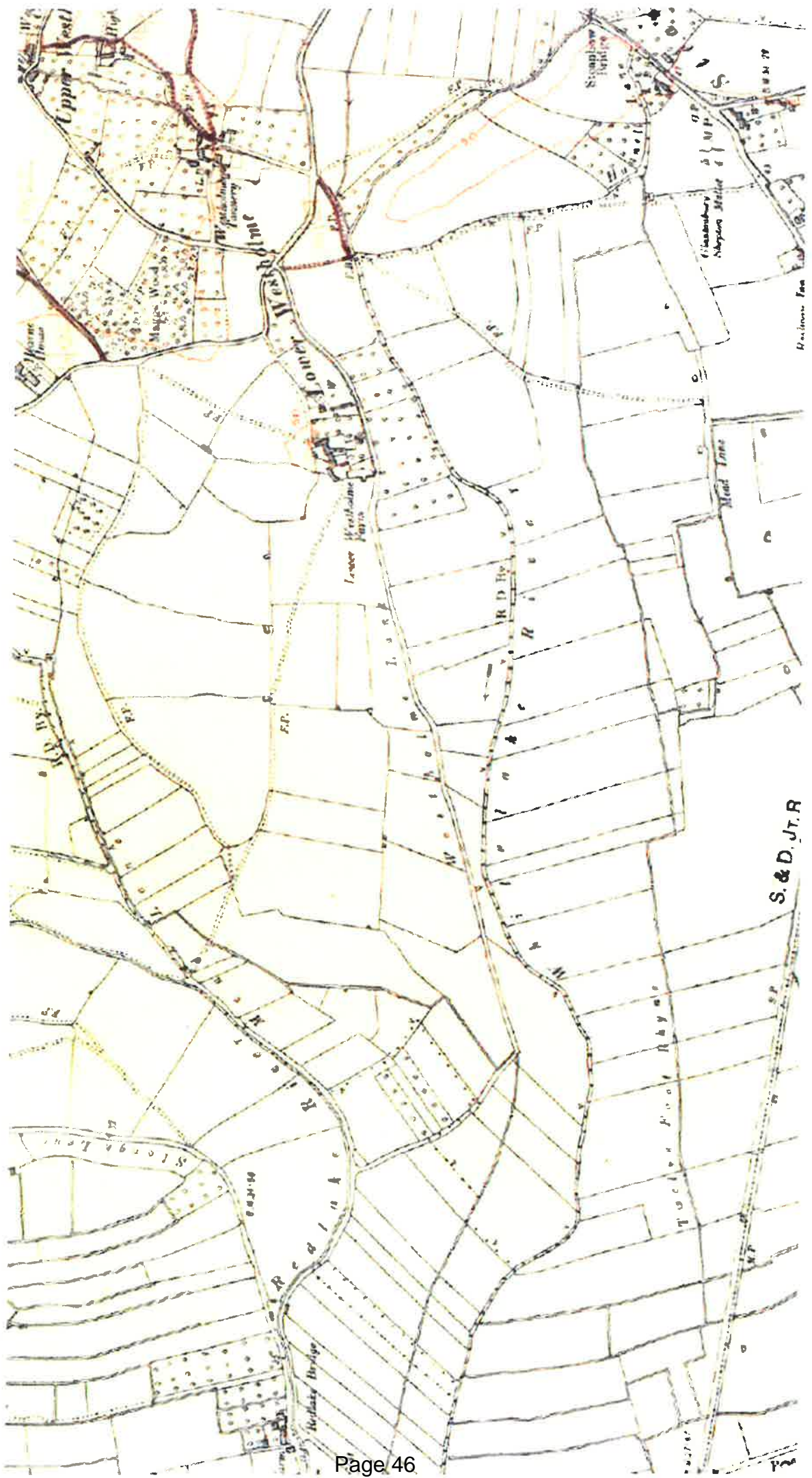
Somerset County Council DMMO Research Summary

Inclosure Awards	OS Maps 1 st Edition
Quarter Sessions Records	OS Maps 2 nd Edition
Tithe Maps and Apportionments	SCC Path/Parish Files
Deposited Plans	SCC General Files
1910 Finance Act Records	SC HA80 s31(6) File
1929 Handover Map	Parish Council Records
1930's H/A Records	Aerial Photos
1950s H/A Records	Old County Maps
Current H/A Records	
Definitive Map	
Parish Survey Map	
Parish Survey Card	
Draft Map	
Draft Modification Map	
Provisional Map	

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NORTH WOOTTON
DEFINITIVE MAP EXTRACT



ALTON
DEFENSIVE MAP EXTRA

S. & D. J. R.

(THIS SIDE ONLY TO BE COMPLETED BY PARISH COUNCIL
AT TIME OF FIRST SURVEY)

(1) PARISH NO. OF PATH - 54

(2) CONCISE DESCRIPTION OF PATH (TO INCLUDE WIDTH, NATURE OF SURFACE, MEANS OF ACCESS, OBSTRUCTIONS, ETC.)

FROM: Mead Lane
TO: R.D. Boundary

DESCRIPTION: THE PATH IS A B.R. IT STARTS AT Mead Lane (FR 7/43)
and runs south down Westholms Lane to parish and R.D. Boundary.

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APPLICATION FORM FOR A MODIFICATION TO THE DEFINITIVE MAP AND STATEMENT

I/We (Name) Lower Westholme Road, Westholme Lane, Westholme
of

(Address) PO Box 8775, Westholme, Mallet, Somerset
Postcode BA4 4XA

hereby apply for an order under Section 53 (2) of the Wildlife and Countryside Act 1981
modifying the Definitive Map and Statement for the area by:-

(Please select as appropriate.)

(a) Deleting the footpath / bridleway / restricted byway / byway open to all traffic which runs
from:

/
/
/
to:

(b) Adding the footpath / bridleway / restricted byway / byway open to all traffic which runs
from:

Lower Westholme Road along Westholme Lane track
to:
North Wootton Parish boundary to join Mead Lane (track)
bridlepath

(c) Up-grading / down-grading to a footpath / bridleway / restricted byway / byway open to all
traffic the footpath / bridleway / restricted byway / byway open to all traffic which runs from:

/
/
/
to:

(d) Varying / adding to the particulars relating to the footpath / bridleway / restricted byway /
byway open to all traffic which runs from

/
/
/

to:
by providing that:
..... and shown on the signed map annexed hereto.

2. SERVICE OF NOTICE OF APPLICATION FOR A MODIFICATION ORDER

It is a requirement of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 that an applicant for a Modification Order shall serve a Notice stating that the application has been made, on every owner and occupier of any land to which the application relates.

The form of Notice, defined by the regulations, is set out in the Council's "notice of application" form, which should be addressed and sent to every owner and occupier of land over which the alleged way runs. Please find this enclosed with this application pack. Please copy this form as many times as required.

It is the duty of the applicant to investigate the ownership and occupation of the land so that the necessary Notice may be served.

2a. Please confirm that you have carried out an investigation in an attempt to discover the owners and occupiers of the land over which the alleged way runs by signing the below declaration.

I have made enquiries from (please delete those that are not applicable)

- ✓ • Adjoining landowners
- ✓ • Local inhabitants
- Post office
- ✓ • Parish Council
- Register of Electors

Electoral Roll for Pilton Parish

Signed

Date 25th March 2011

2b. Should you not be able to identify the owners and occupiers of the land over which the alleged way runs please contact the Land Registry for details as to how to make a search.

Please attach any search results with this application pack.

For applications in Sedgemoor,
Mendip, Taunton Deane, and
West Somerset please contact the
Plymouth office:

Land Registry, Plymouth Office
Plumer House
Taitour Road
Crownhill
Plymouth PL6 5HY

TEL: 01752 636000
FAX: 01752 636161

For applications in South Somerset please contact the Weymouth Office:

Land Registry, Weymouth Office
Melcombe Court
1 Cumberland Drive
Weymouth

Dorset
DT4 9TT

TEL: 01305 363636
FAX: 01305 363646

Or go to the Land Registry website www.landregistry.gov.uk

Ec. Should you not be able to identify all the owners and occupiers of the land affected by the application after the above inquiries please complete the following:

I have been unable to discover ownership of the land, and I request the County Council to direct that Notice may be served by posting said Notices at either end of the way claimed.

Signed:.....

Dated:.....

26th March 2011

Should you discover the identities of any landowners or occupiers of the land affected by the application please complete the form overleaf.

- All Wheel Drive Club
Mr S Addicott
County Liaison Officer
35 Burcott Road
Wells
BA5 2EF

- Open Spaces Society
25A Bell Street
Henley-on-Thames
Oxon RG9 2BA

- English Heritage
Mr N Russell
Field Monument Warden
29 Queen's Square
Bristol
BS1 4ND

- Police Architectural Liaison Officer
Police Station
Shuttern
Taunton
Somerset

- English Nature
Dr A King
Area Team Manager
Natural England
Riverside Chambers
Castle Street
Taunton
TA1 4AP

- The Rambler's Association
2nd Floor
Carnelford House
87-90 Albert Embankment
LONDON
SE1 7TW

Please attach a list showing who you have consulted and copies of any replies to your enquiries to this application form.

7. SIGNATURE OF THE APPLICANT

Please sign and date the form below.

Signature of applicant

SIGNED: 

DATED: March 8th 2011

Witness signature: 

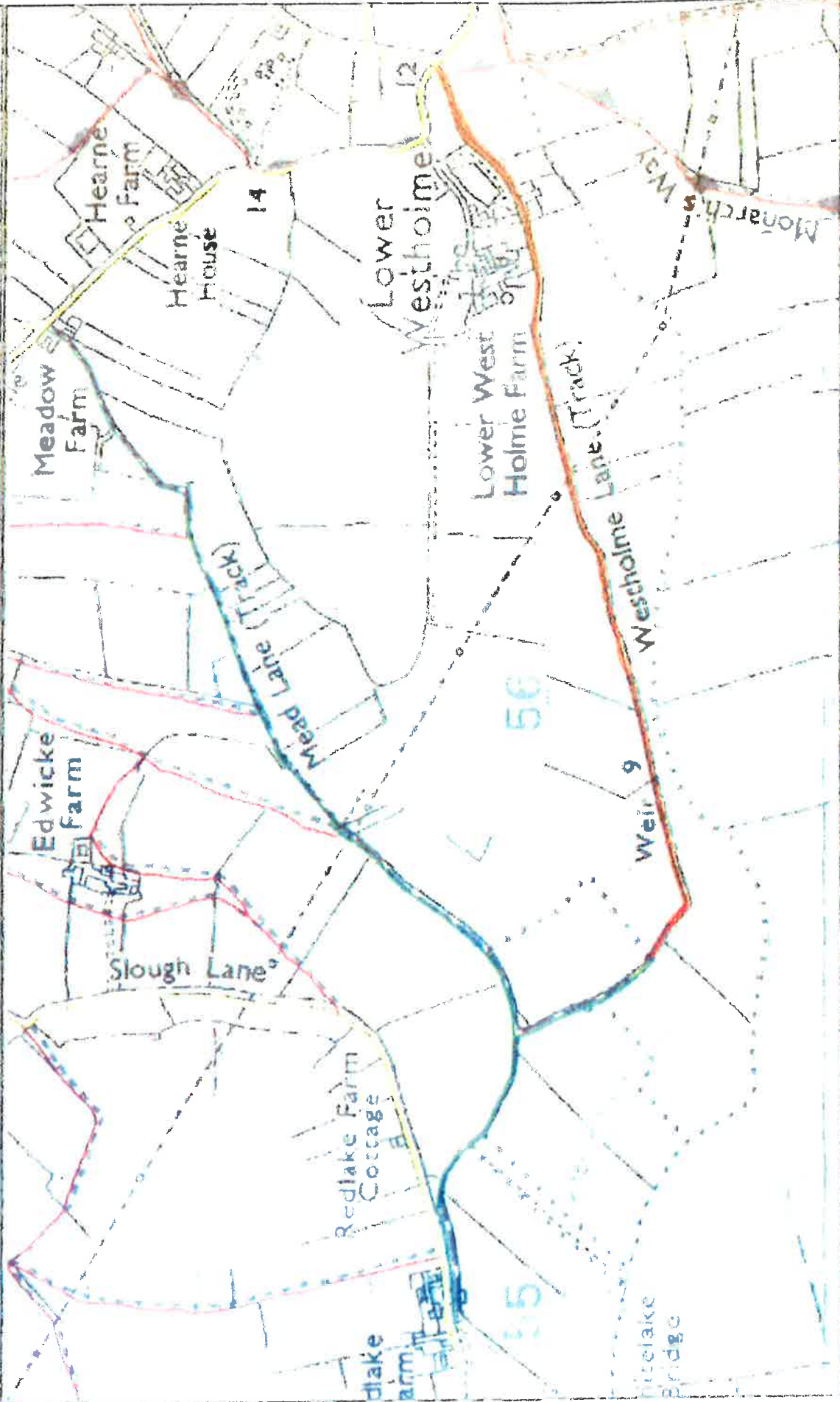
Dated: 8 Mar

Witness name and address in block capitals:

LT COLONEL J B RAY
THE MANOR HOUSE WEST COMPTON
SOMERSET BA4 4PB

A signed map with the claimed route marked clearly must be attached to this form.

Westholme Lane, Pilton



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 © SERC (2009) © GeoPerspectives

Date 09/02/2009
 Scale 1/6690
 Centre = 368014 E 140081 N



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Direction Decision

by Sue Arnott FIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 13 July 2017

Ref: FPS/G3300/14D/21

**Representation on behalf of Mendip Bridleways and Byways Association
SOMERSET COUNTY COUNCIL**

**Application to add to the definitive map and statement a bridleway in the
Parish of Pilton, known as 'Westholme Lane Track' (ref. 705M)**

- The representation is made under Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981 seeking a direction to be given to Somerset County Council to determine an application for an order made under Section 53(5) of that Act.
- The representation, dated 18 February 2017, is made by Mendip Bridleways and Byways Association.
- The certificate required by Paragraph 2(3) of Schedule 14 is dated 25 March 2011.
- The Council was invited to respond to the representation on 27 March 2017 and submitted its response on 5 May 2017.

Summary of Decision: The Council is directed to determine the above-mentioned application.

Reasons

1. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, to decide whether to make an order on the basis of the evidence discovered. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on an application if no decision has been reached within twelve months of the authority's receipt of certification that the applicant has served notice of the application on affected landowners and occupiers. The Secretary of State, in considering whether, in response to such a request, to direct an authority to determine an application for an order within a specified period, will take into account any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date, the reasonableness of such priorities, any actions already taken by the authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant¹.
2. In this case the application was submitted some six years ago although the status of the way in question has been at issue since the 1950s with the promise of review in the 1980s. Mendip Bridleways and Byways Association (MBBA) has set out the lengthy background to its application and notes that Somerset County Council (SCC) has, in the past, acknowledged the existence of a public highway along the claimed route in the past. MBBA has put forward six key reasons why it considers this case should be dealt with as a priority and without further delay.

¹ Rights of Way Circular 1/09 Version 2, October 2009: Department for Environment, Food and Rural Affairs.

3. Firstly it points to the quantity of historical evidence submitted to show that the claimed way is an ancient carriageway. Secondly, the route was used by local horse riders until 2005 when a new landowner padlocked gates across the route so access is now denied. Thirdly, the Council prioritised this application on the basis that a new bridge would be needed which (MBBA argues) it would not. Fourthly, it is submitted that the Council's priority scoring system has failed to take into account the highway authority's agreement, in writing, in 1980 that the track is a public right of way which should have been included on the definitive map. Fifthly, the Council's obfuscation over the last 60 years has caused an immense waste of time and money and fostered a feeling of frustration and anger by local people. Sixthly, at the current rate of progress in dealing with applications and the priority afforded to this case, horse riders are unlikely to be able to use the route again for a further decade at least.
4. In response, Somerset County Council confirmed that a system for prioritising applications was introduced in 2008 in order to rank casework². The intention of the scoring process was to give priority to those applications which, if successful, would be of most benefit to people wishing to use the wider rights of way network.
5. Application 705M (Westholme Lane Track) is ranked 113³ in the list of cases awaiting determination. SCC cannot put a firm timescale on investigation of this application but estimates it will be at least 11 years before it receives attention.
6. In reply to the Association's 6 points, the Council points out that its scoring system does not take account of the quality or quantity of evidence supporting an application. It cannot take action to re-open a claimed route unless a public right of way is shown to subsist. If there is no need for a bridge on Westholme Lane Track, the scoring system can be adjusted. Until the case is determined, no assumption can be made about the rights the route may carry.
7. The Council's resources are currently focused on the 18 applications it has been directed to determine by the Secretary of State and, with limited resources, it is unlikely to return to its list of priorities until these cases have been completed. SCC aims to process 10 cases per year but an increased number of applications in recent years has brought additional pressure on the system.
8. The Council draws attention to the cumulative effect of directing it (SCC) to determine multiple applications. Should directions continue to be issued at this rate there will inevitably come a point at which the Council is unable to comply with them. While it acknowledges that the Secretary of State will consider each case on its own merits, SCC requests that consideration be given to the reasonableness of directing a single authority to determine a large number of applications.
9. However, an applicant's right to seek a direction from the Secretary of State gives rise to the expectation of a determination of that application within 12 months under normal circumstances. In this case, 4 years have already passed since the application was submitted although the issue had been listed for review by SCC many years before that. More importantly, it is not anticipated that this case will be dealt with for a further 11 years; that cannot be considered reasonable by any standard.

² However this was suspended in 2011.

³ It is listed as 122 but, accounting for group applications, is 113th in line for investigation.

10. In the circumstances I have concluded that there is a case for setting a date by which time the application should be determined and consider it appropriate to allow a further 6 months for a decision to be reached.

Direction

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, **I HEREBY DIRECT** Somerset County Council to determine the above-mentioned application not later than 31 January 2018.

Sue Arnott

Inspector

SOMERSET COUNTY COUNCIL
ENVIRONMENTAL SERVICES

14 JUL 2017

RECEIVED

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Somerset County Council

Generic Guidance on issues relating to Applications for Definitive Map Modification Orders contained within the Council's standard report template.

Relevant Legislation

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.

Section 53 of the Wildlife and Countryside Act 1981 requires the County Council to make a Definitive Map Modification Order upon the discovery of evidence which demonstrates:

- 53 (3) (b) *“the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path”.*
- 53 (3) (c) (i) *“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to Section 54A, a byway open to all traffic”.*
- 53 (3) (c) (ii) *“that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description”, or*
- 53 (3) (c) (iii) *“that there is no public right of way over the land shown in the map and statement as a highway of any description, or any other particulars in the map and statement require modification”.*

Later in the same Act section 53(5) enables any person to apply to the Authority (Somerset County Council) for an Order to be made modifying the Definitive Map and Statement in respect of a number of 'events' including those specified in Section 53(3)(c)(ii) 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 Mrs Wheeler made her application.

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.

With reference to Section 53(3) (b) 20 years use by the general public can give rise to the presumption of dedication of a way under Section 31 of the Highways Act 1980. The period of 20 years is measured backwards from the date of challenge by some means sufficient to bring it home to the public that their right to use the way is being challenged. The Highways Act 1980 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”.

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

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”*.

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.

Documentary Evidence

Enclosure Records

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.

Quarter Session records

From early times many functions now dealt with by local and central government were dealt with at the Court of the Quarter Sessions under the jurisdiction of the Justices of the Peace, who were advised by a Clerk of the Peace. Amongst other matters the justices were

responsible for the maintenance of county bridges and for the failure of parishes to maintain their roads properly. Diversion and extinguishments of rights of way were dealt with at the Quarter Sessions and Justices certificates in respect of the completion of the setting out of roads were also issued. These records are capable of providing conclusive evidence of what the Court actually decided was the status of the route and can still be valid today.

Tithe Records

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

A map was produced by the Tithe Commissioners which showed parcels of land with unique reference numbers, and these were referred to in the apportionment document, which contained details of the land including its ownership, occupation and use.

Public roads which generated no titheable produce and were not given a tithe number. Some private roads, due to use could be equally not liable to a tithe. However, public and private roads could be subject to a tithe, if for instance, they produced a crop – grazing or hay cut from the verges.

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

Tithe maps and apportionments were not prepared for the purpose of distinguishing between public and private rights; they were intended to apportion a monetary rent in lieu of tithe payments in kind.

Tithe maps provide good topographical evidence that a route physically existed and can be used to interpret other contemporary documents.

Ordnance Survey Records

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.

1910 Finance Act

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 1980's. It cannot therefore have been considered during the Definitive map making process and can be considered "new evidence", if it is relevant.

Highway Road Records held by the County Council

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.

Definitive Map and Statement preparation records

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 found in the District file.
- Draft Modification Map – This stage in the process was non statutory. SCC produced a map to show any proposed changes as a result of objections to the Draft Map. Any objections received were recorded in a summary of Counter Objections to the Draft Modification map, found in the District file.
- Provisional Map – This map incorporates the information from the Draft Maps and the successful results of objections to the Modification Maps. These were put on deposited in the Parishes and District Council offices at this point only the tenant, occupier or landowner could object,
-

Definitive Map and Statement – Any path shown is conclusive evidence of the existence and status of a public right of way until proved otherwise. The Definitive Map is without prejudice to other or higher rights.

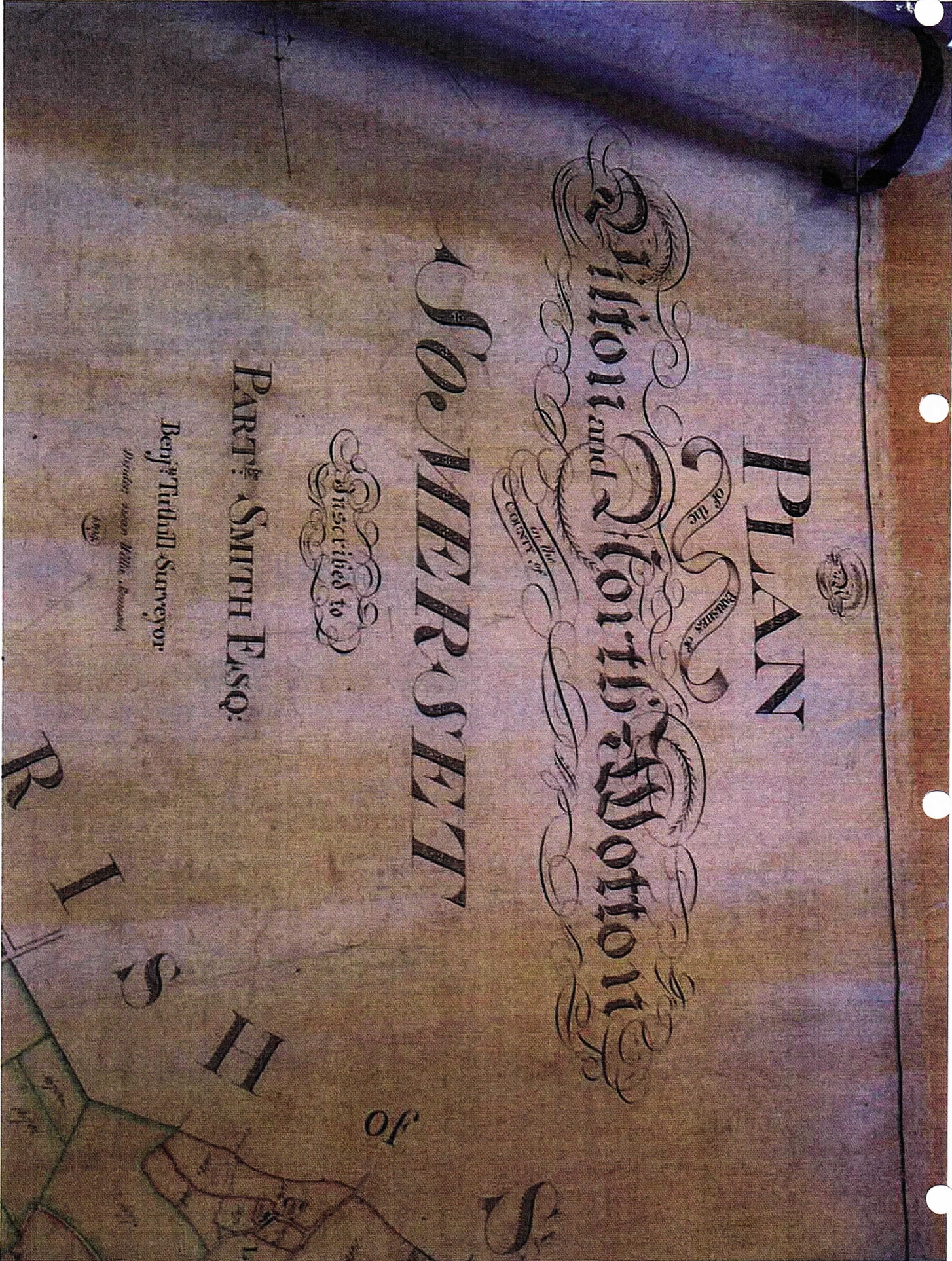
Deposited Plans

Railways, canals and turnpike roads all required an Act of Parliament to authorise construction. Detailed plans had to be submitted that showed the effect on the land,

highways and private accesses crossed by the proposed routes. Plans were accompanied by a Book of Reference, which itemised properties (fields, houses, roads etc) on the line of the utility and identified owners and occupiers. Where there is a reference to a highway or right of way these documents can generally be regarded as good supporting evidence of its perceived status at that date.

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Somerset Heritage Centre ref DD/S/15 C/177 00/00/18209



PLAN
of the
PARISHES of
Milton and Norton
in the
County of
SOMERSET

ascribed to

PART of SMITH ESQ.

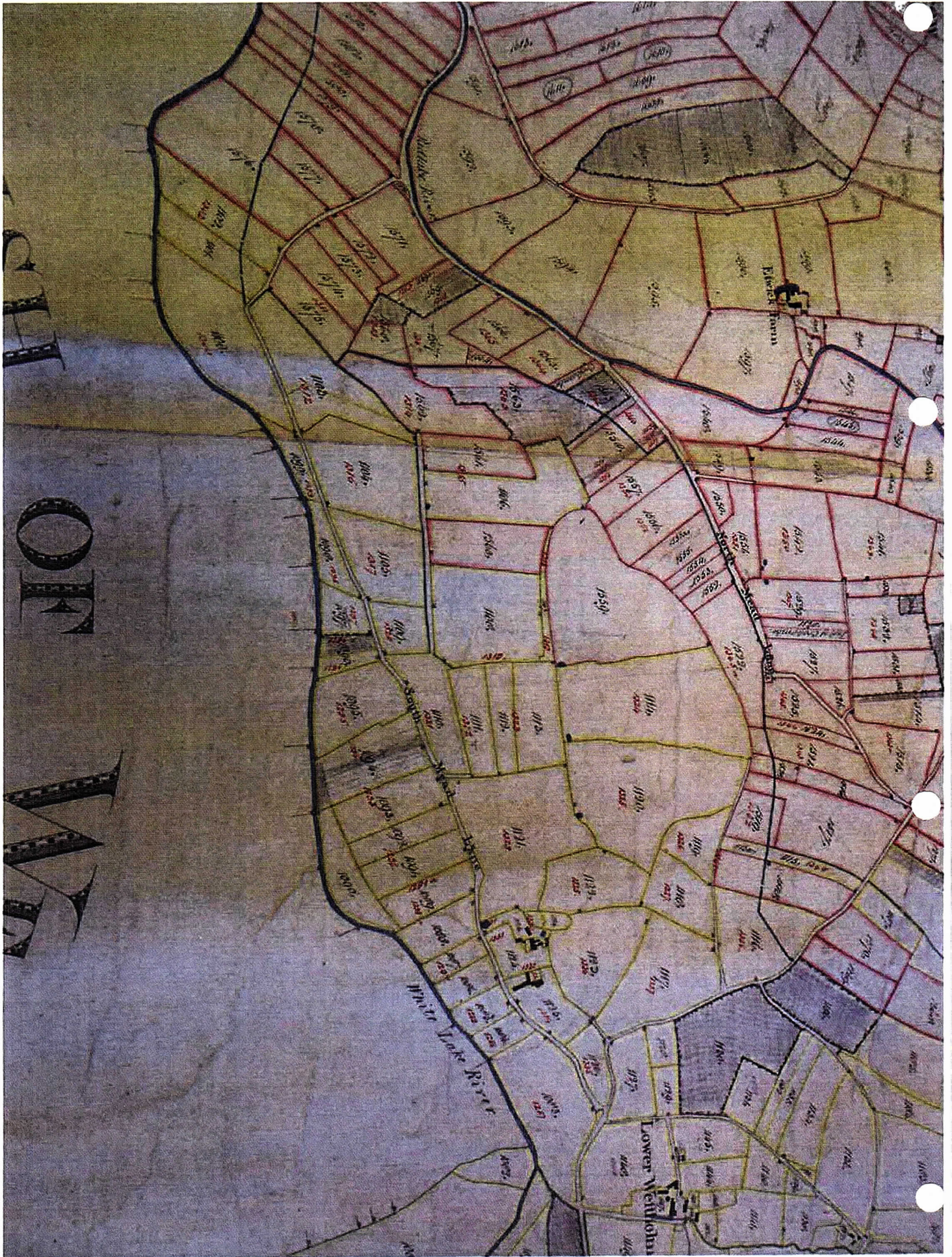
Benjamin Smith Surveyor

General of the County of Somerset

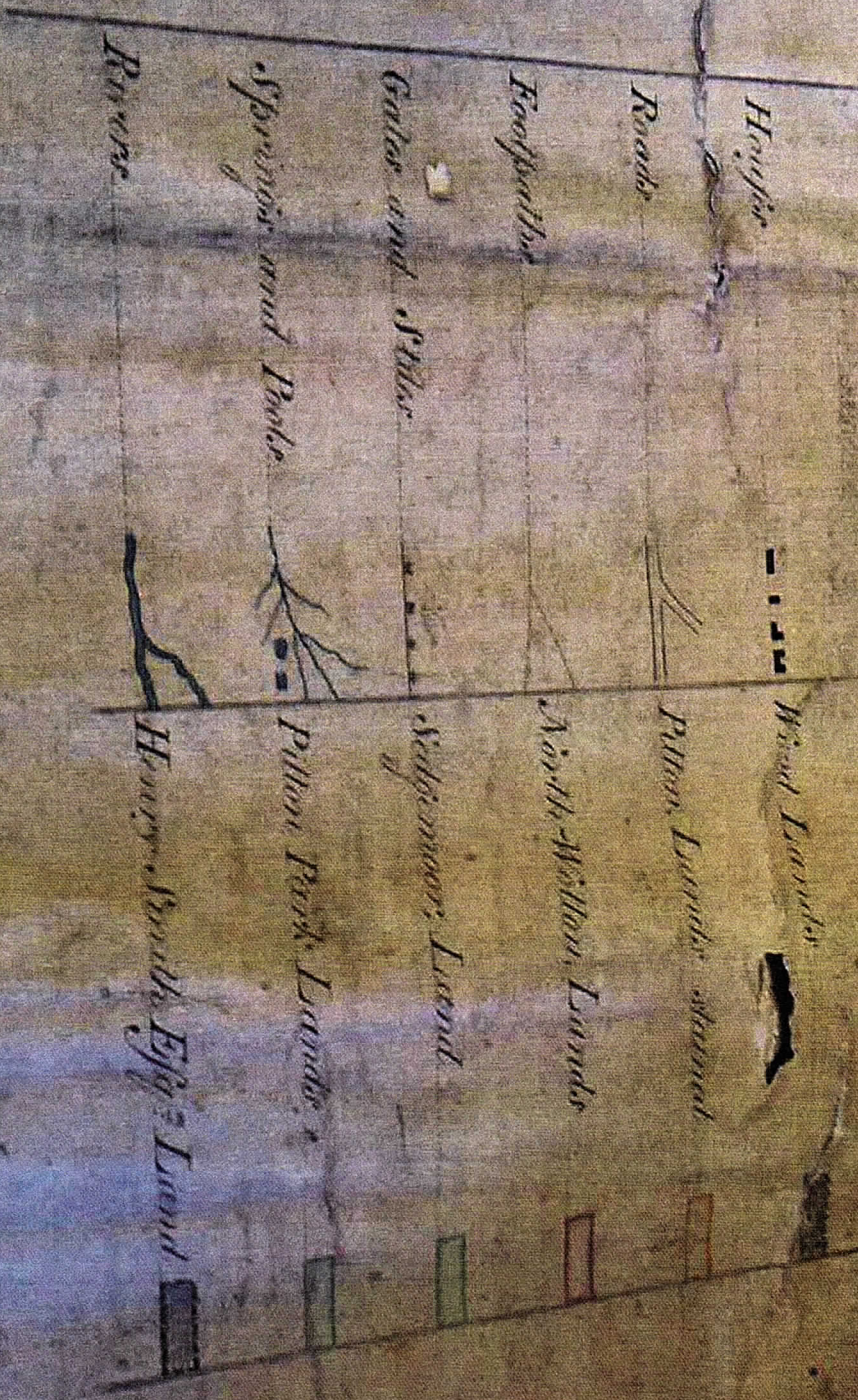
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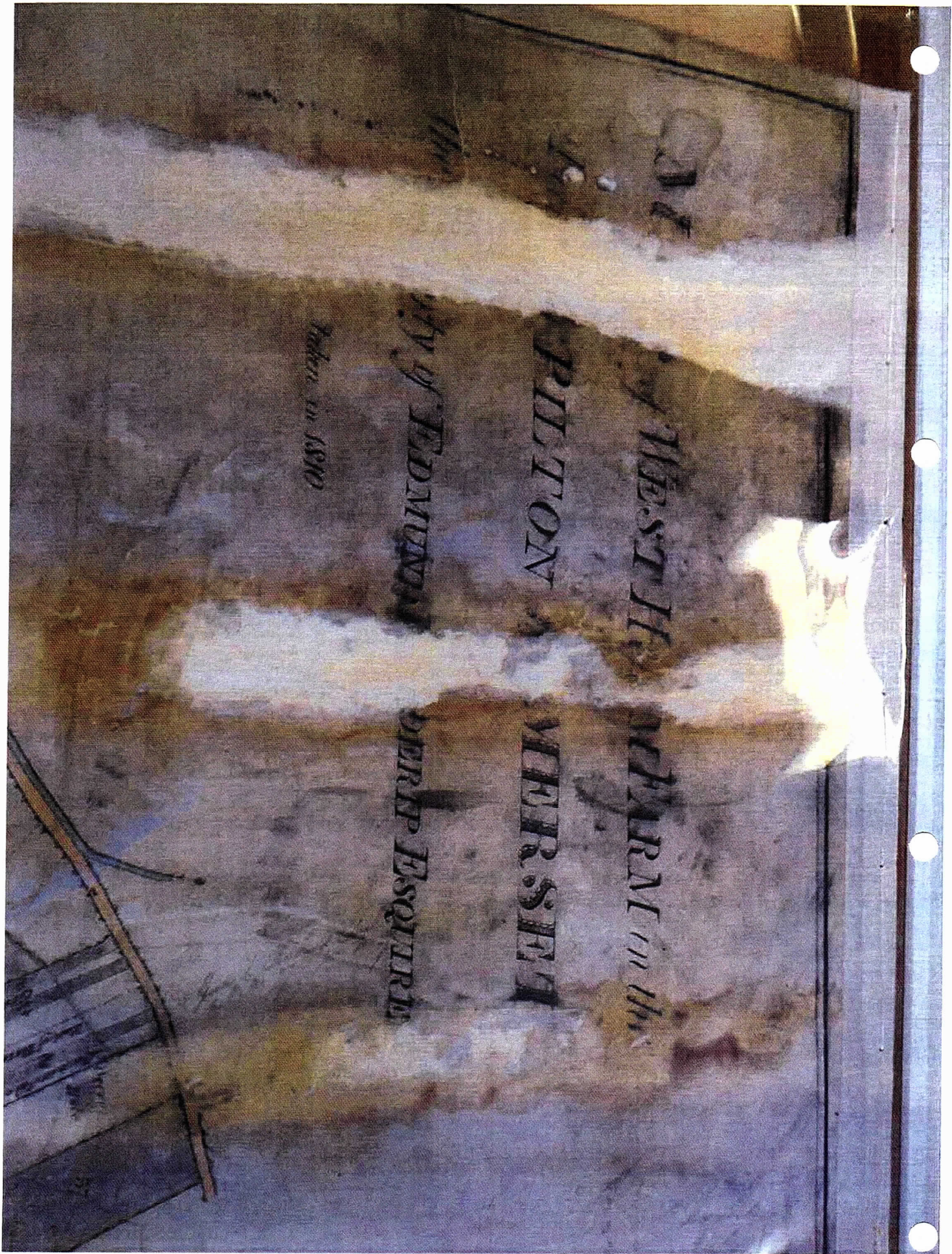
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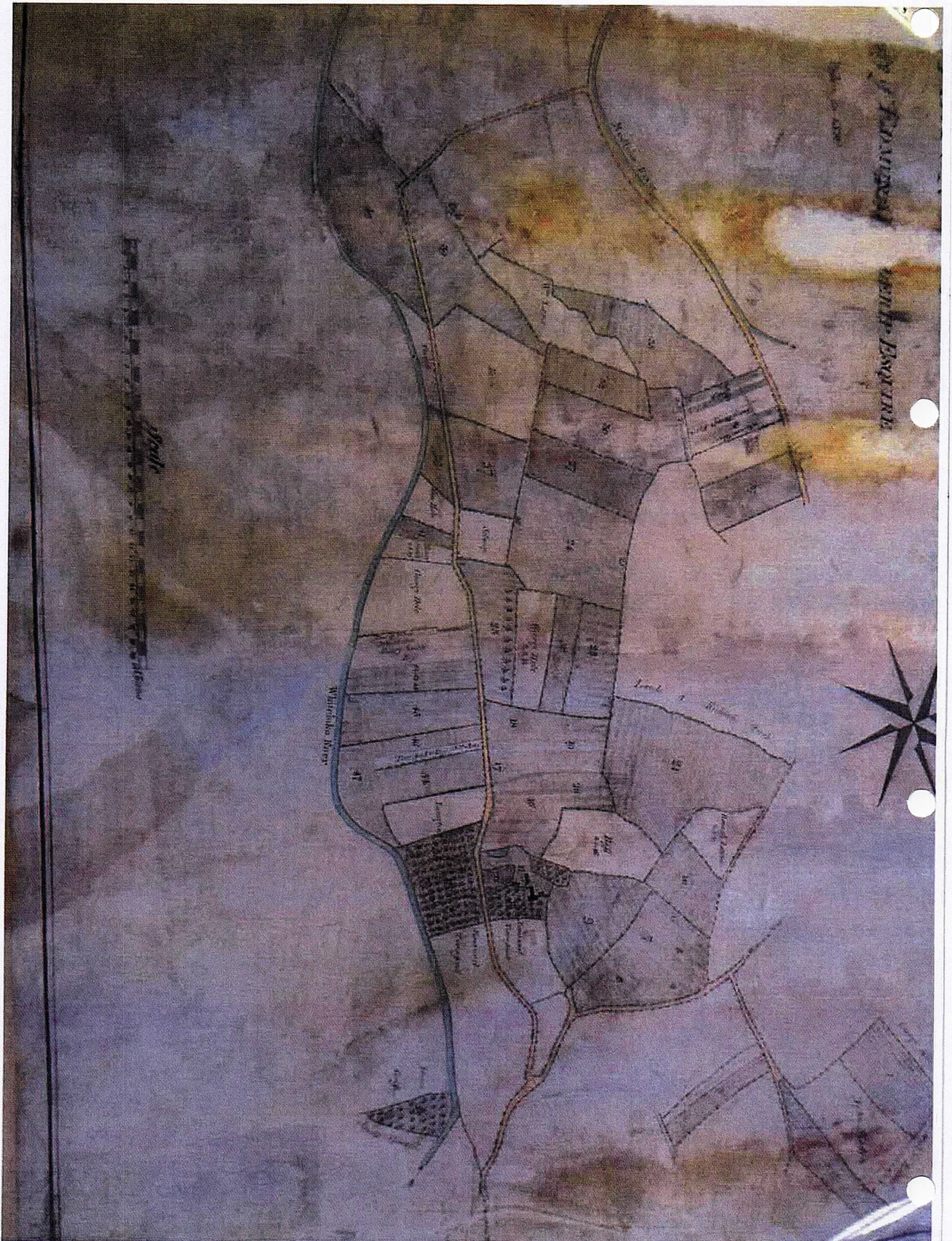


EXPLANATION



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E. Broderick Esq.

Westholm & Sugar Loaf
1829-30

(16)

OF ST. CUMBERT,
A PILTON

1 / 15 a.

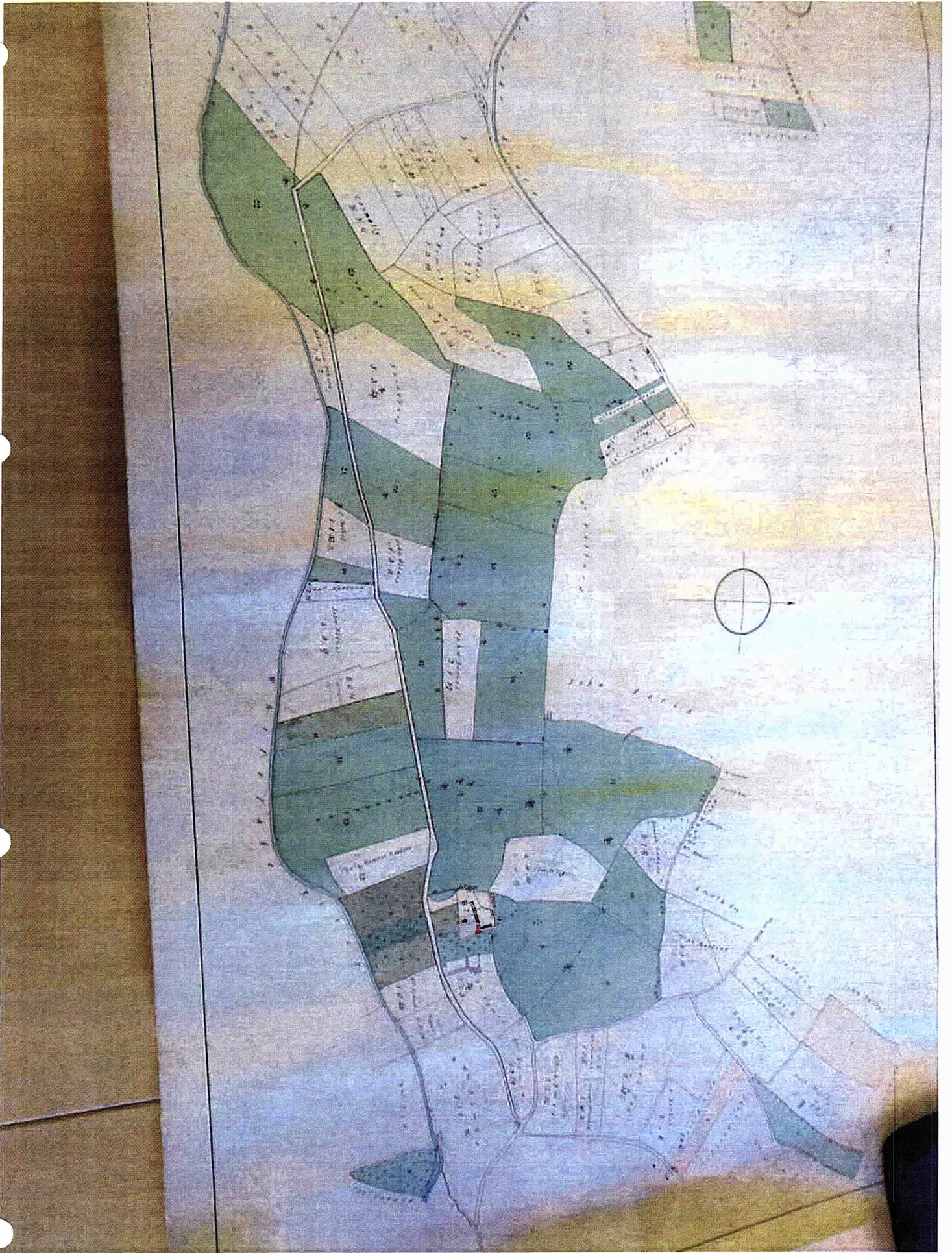
Piltron, N Wootton

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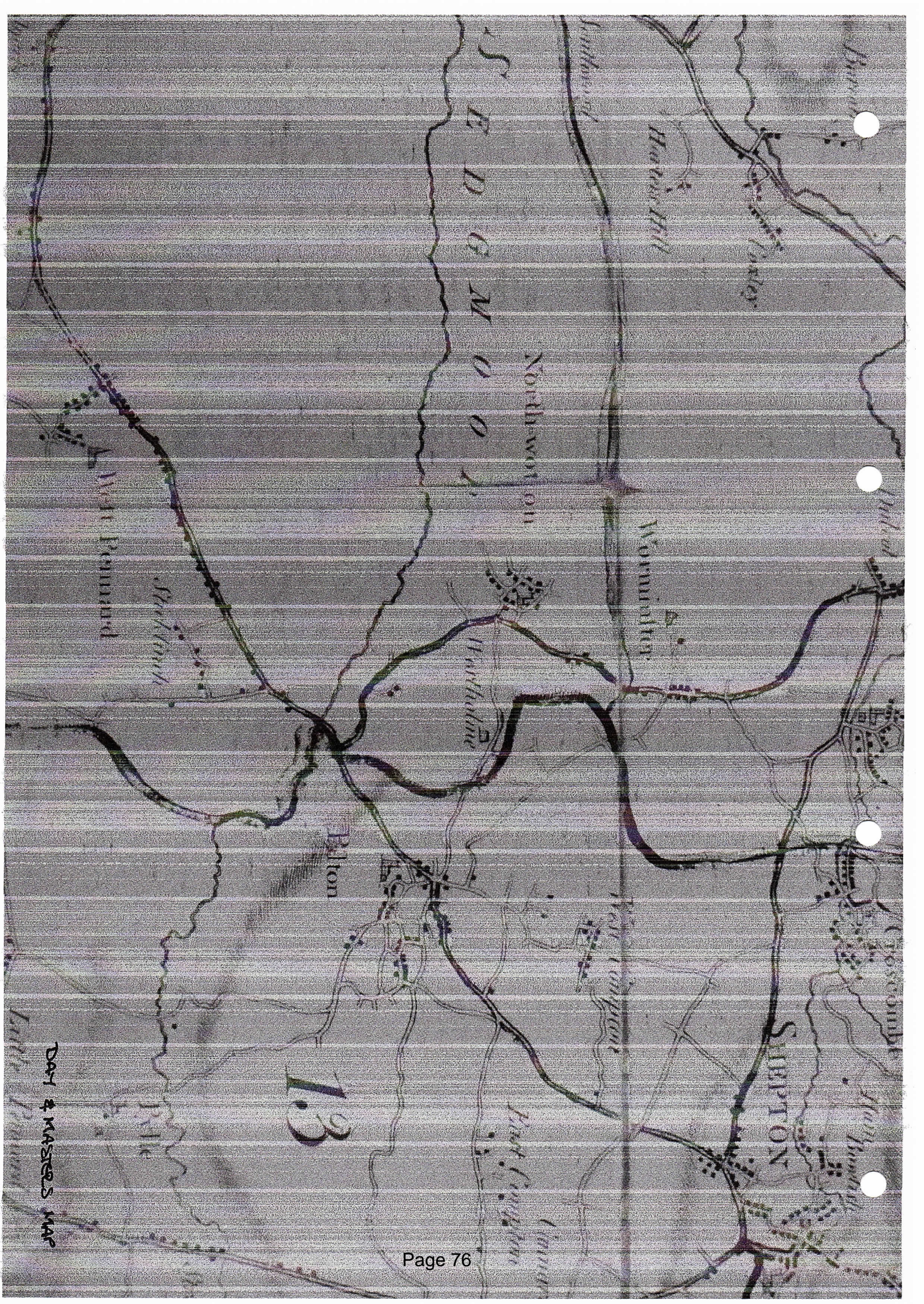
71829



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Greenwood's Map.



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Wormington

Wormington

Patton

SEPTON

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DAY & MASTERS MAP





1949
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REPRINT



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A
 MAP
 of the
 PARISH of NORTH WOOLTON
 in the
 COUNTY of SOMERSET
 DRAWN on a SCALE of THREE CHAINS to an INCH
 by
 BENJ. S. W. COTTON, LAND SURVEYOR
 WEST PENNARD
 DEC^R 10^H 1838

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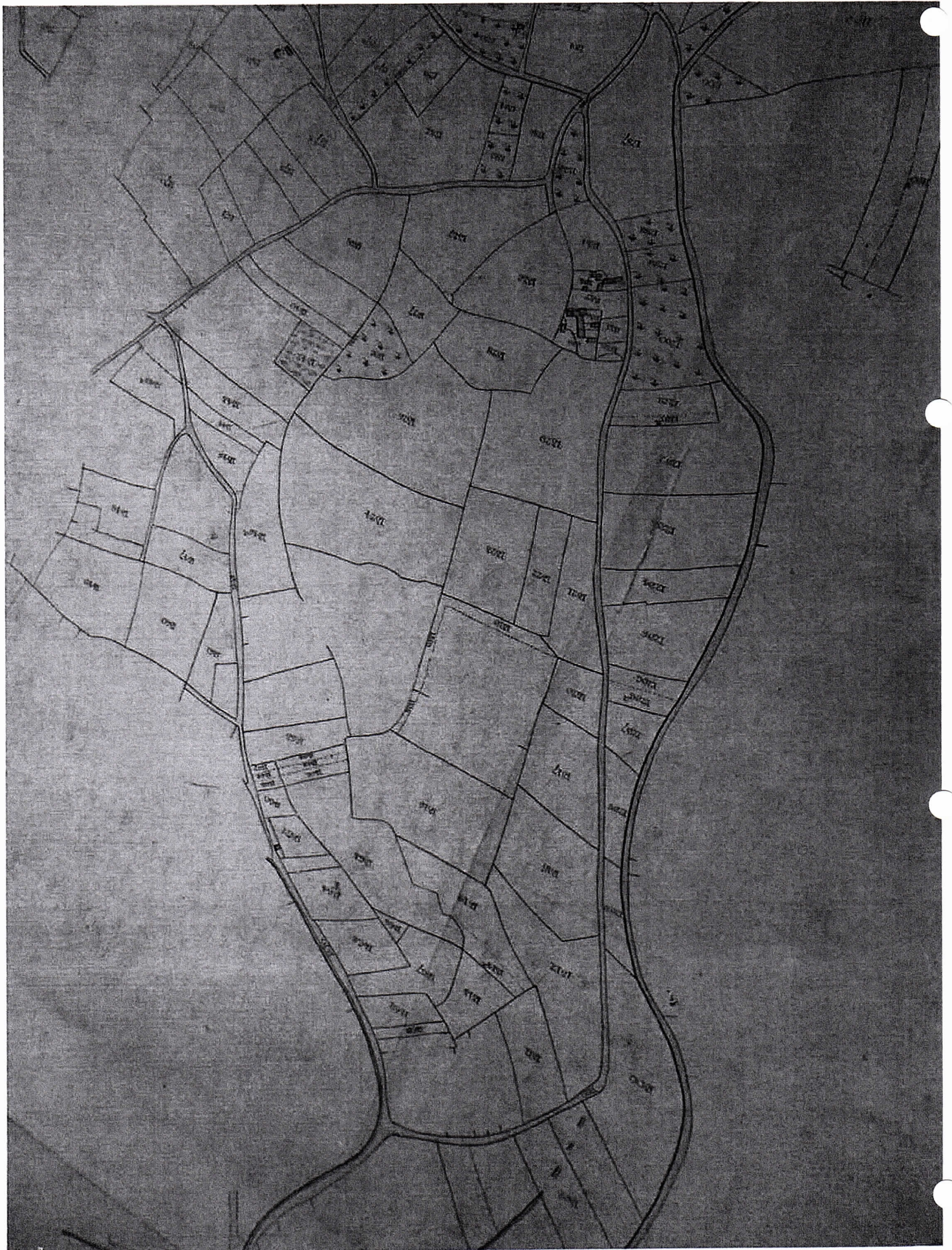
PARISH

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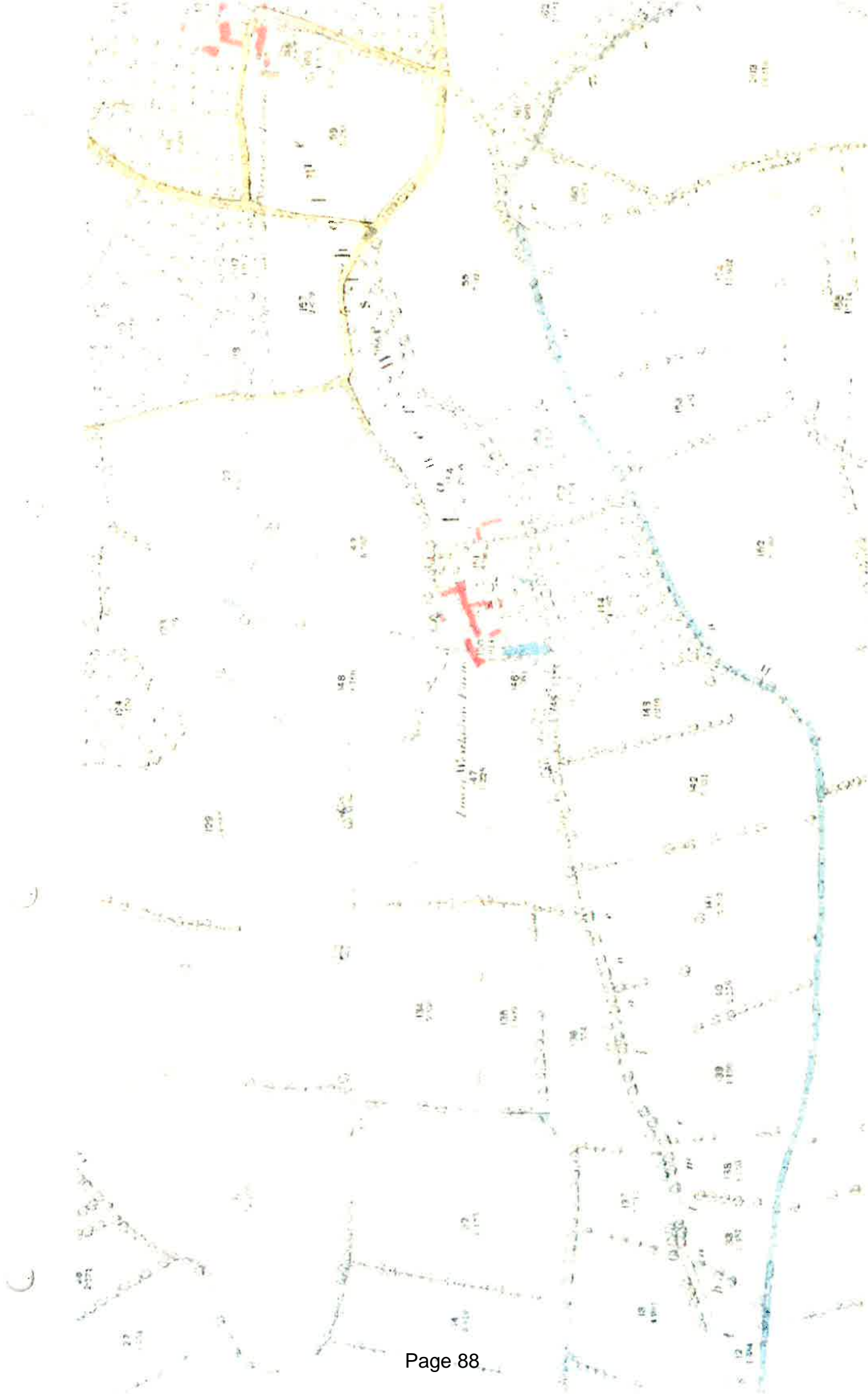
1859.



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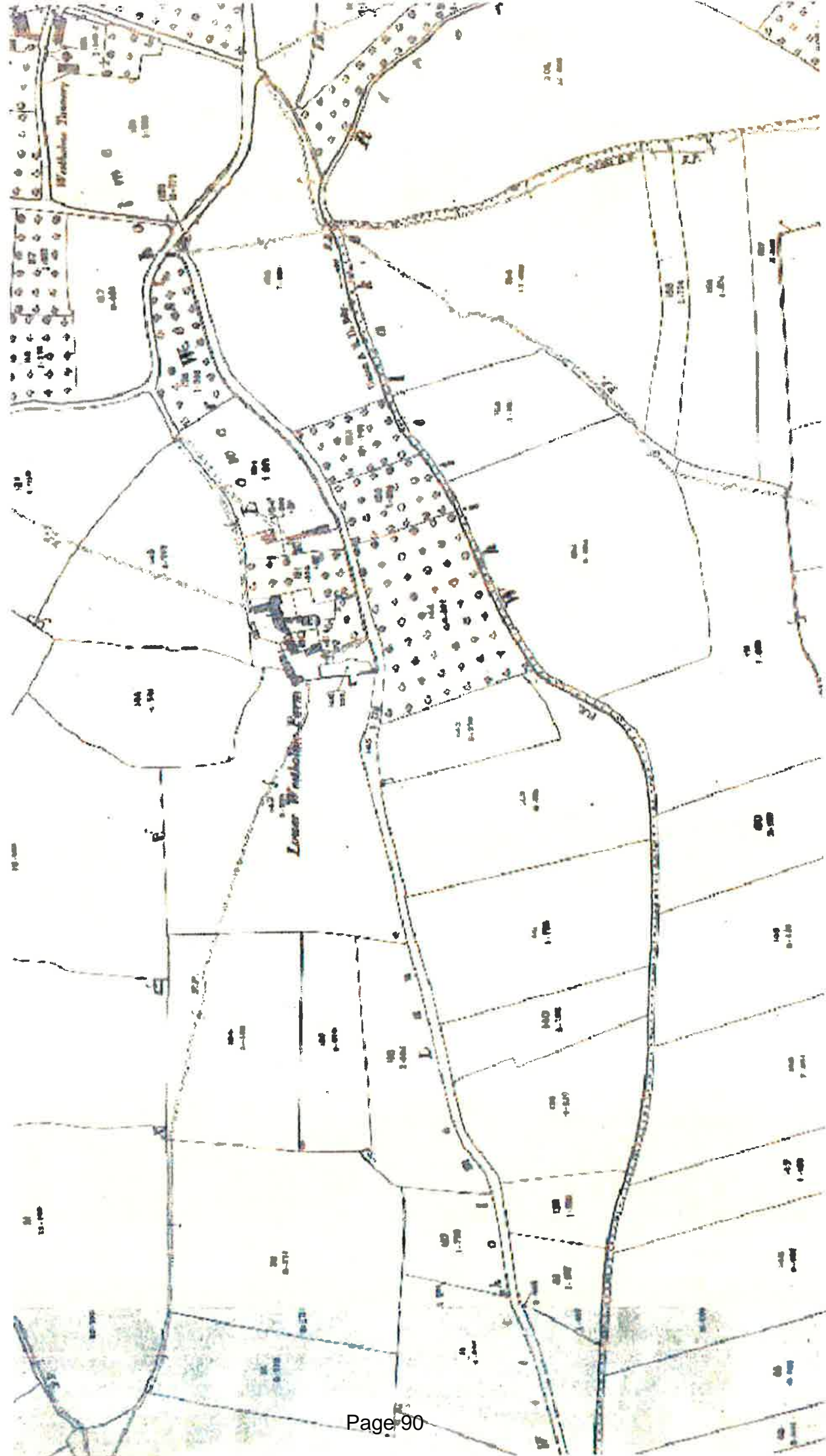
OS 1st Edition
25 Inch



OS 1st Edition
25 feet



OS 2nd Edition
Jan 97
25 1404



08 200 601101
25 hect



Moor

Squish Ho.

Barrow

M O O R

Herdick E.

Redlake M.

Herdygate

Lake

White Lake Bridge

L. Washholme

M o o r

Little Moor E.

Wickham

Street

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Names recorded & entered by Ferguson in March 1902
 from a notebook containing a list of the names of the
 various modes of spelling the same names
 Sheet LIII. NW.

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for these modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
Hansen's House	Hansen Hansen Hansen	Prof. J. Stueckert's notes No. 1-201 202 No. 100 1000 1000 P. 2	101	2	1	Applies to a farm house west of the bridge and about 10 miles north of West-Burnside Railway station. The property of the manufacturing firm.
Chassell Lane	Chassell Lane	R. M. Hardy, lawyer Highland Mills No. 1-230 230 No. 100 1000 1000 P. 2	101	2	1	Applies to a public house & location above one of the main roads leading from the junction of main road to West-Burnside.
Lower Methobone Farm	Lower Methobone Farm Methobone Farm	Mr. Paul Board No. 1-201 202 No. 100 1000 1000 P. 2 C. Mansley, Fire-insurance Company, High-land Mills, No. 1-230 230 E. Leonard, Farming, No. 1-201 202 See also West-Burnside P. 2	101	2	4	Applies to a farm house west of the bridge and about 10 miles north of West-Burnside. The property of the manufacturing firm.
Methobone Lane	Methobone Lane	See also West-Burnside P. 2	101	2	4	Applies to a farm house west of the bridge and about 10 miles north of West-Burnside. The property of the manufacturing firm.
Ferridge Farm	Ferridge Farm	No. 1-201 202 No. 100 1000 1000 P. 2	101	2	3	Applies to a farm house west of the bridge and about 10 miles north of West-Burnside. The property of the manufacturing firm.

2 Apples to a farm house with out
4 buildings at the site in London West
London district. the property of W. Lane.
4 Higham Market.

2 Apples to ~~an~~ ^{public} ~~see position~~ ^{see} lane back
4 from "Mead Lane" & joining public road
a little east of London Wholesale farms.

3 Apples to a farm house with out buildings
-ing all the site to 20 chains north of
"Periwinkle Stone", the property of G. Lane
near Peter

I am directed by the Director General of the Ordnance Survey to send you the following list of Names which are proposed to be written on the revised Ordnance Survey plans of *the manor and Street 33rd* now being prepared.

It will be esteemed a favour if you will kindly examine these names, and enter in the two last columns any corrections or remarks that appear necessary.

Please sign and return the list to me.

Yours faithfully,

Wm. Moody Esq
 District Inspector

A. G. Oakley Esq
 P. O. R. O.

NAME	Plan and Parcel No.	Parish, Situation, and Owner's Name.	Corrected Name.	Remarks.
<i>Westholme Lane</i> ✓	<i>27</i>	<i>West Command</i> <i>etc</i> <i>Site do E. from</i> <i>West Lane to Lane in Westholme</i>		
<i>Coburnell Lane</i> ✓	<i>53</i> <i>2</i>	<i>Iron Stalls Lane</i> <i>to West Lane</i>		
<i>Stanton Bridge</i>		<i>In Stanton, over</i> <i>Whitehall River</i>		
<i>Gory Lane</i> ✓	<i>3</i>	<i>West Command to</i> <i>dearly Moor</i>		
<i>Littlemoor Lane</i> ✓		<i>Littlemoor Farm</i> <i>to Littlemoor House</i>		
<i>Cottles Lane</i> ✓		<i>Extends E. from West</i> <i>Command by Millington Lane</i>		
<i>East Street Lane</i> ✓		<i>West Command to</i> <i>East Street</i>		
<i>Church Lane</i> ✓		<i>Extends S. E. from</i> <i>West Command Church</i>		
<i>Stockbridge Lane</i> ✓		<i>Extends from S. End of</i> <i>Littlemoor House to Lane</i>		
<i>Littlemoor Wood</i> ✓		<i>Extends S. from</i> <i>Command Lane crossing</i>		

Signature *Rich^d Moody*
 Occupation *Surveyor*
 Address *Phypton Mattot*

Names collected - owner
 from initials in plan of


Wm
Moody
Phypton
Mattot

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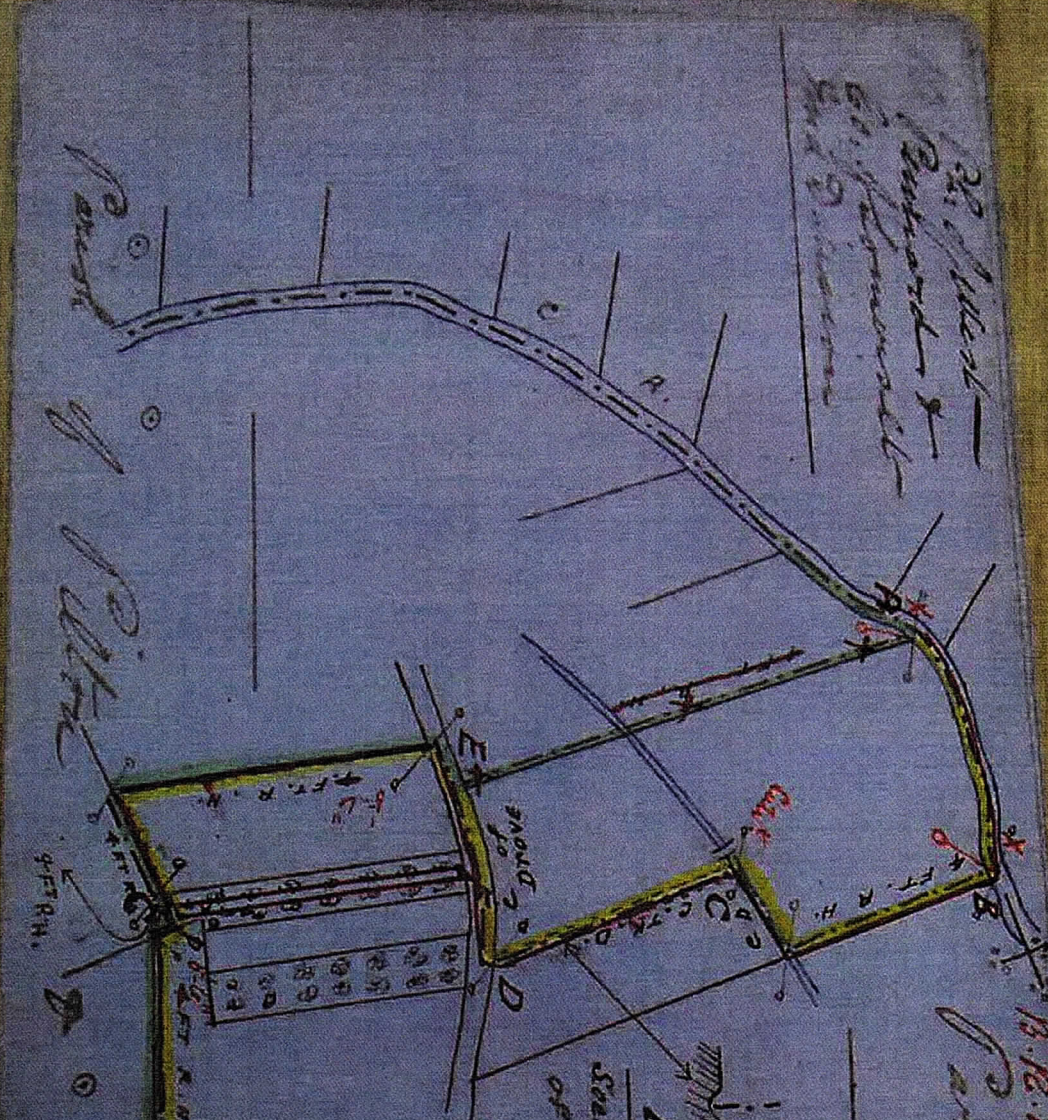
O. S. 351.

County of **SOMERSET**
No. **9230**

Perambulation of the Boundaries
between.

Parishes or Townships	Parishes or Townships
<p style="text-align: center;">FINISHED</p> <p style="text-align: center;">Pilton</p> <p style="text-align: center;">  </p>	<p style="text-align: right; vertical-align: top;">OS 26/9308</p> <p>West Pennard</p> <p>North Wootton</p> <p>St Cuthbert 7854</p> <p>Crocombe 9189</p> <p>Shepton Mallet 7988 <i>(Pl. + L. B. Dist.)</i></p> <p>Doulting 9411</p> <p>Pylle 9237</p> <p>East Pennard 8382</p>

F & T 3000 11-81



Mr. West
 Richard
 Esq. of
 and

Part of
 of

B. R. 9099. K. 19.
 Part of

DIFFERENCE N^o 2.
 See 8th Report of
 of

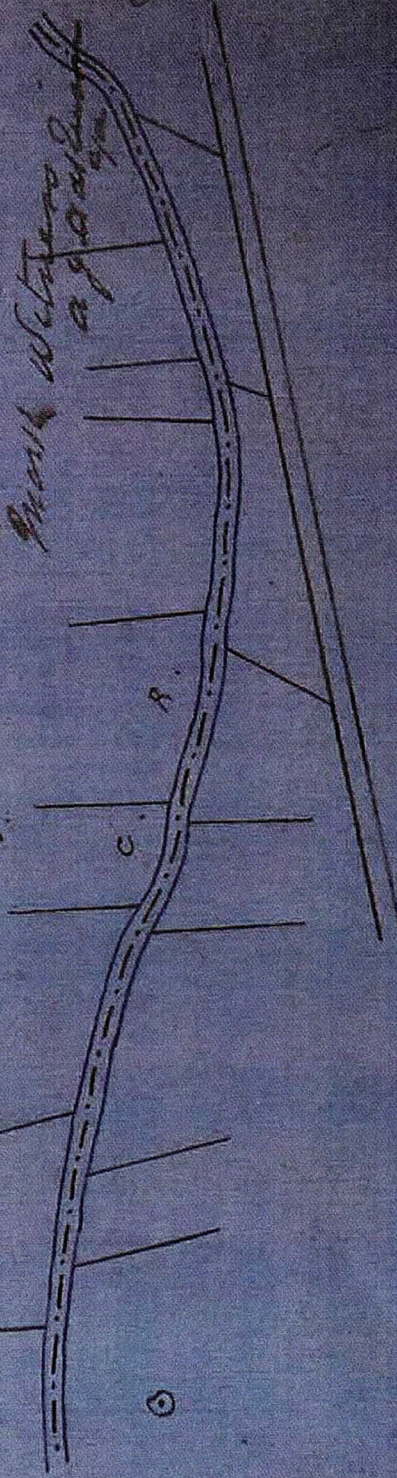
Part

Parish of West Fenwood

9

The City of West Fenwood from 10. 4 to 10 of 1845

Book verified by
H. X Hill
Mark Waters
a 100 ft



Parish of West Fenwood

PILTON

NORTH FOOTING

Richard Porch, Meresman

By this means the other side of the ditch is secured by the ditch being filled with stones & the ditch is made 10 feet wide.

By this means the ditch is secured by the ditch being filled with stones & the ditch is made 10 feet wide.

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By this means the ditch is secured by the ditch being filled with stones & the ditch is made 10 feet wide.



CHOSCOBIE

(Dutch)

By this means the ditch is secured by the ditch being filled with stones & the ditch is made 10 feet wide.

John Allen, Meresman

PILTON

See Report of the Board of P6
of Pilton, 21
Central Square, Fortway

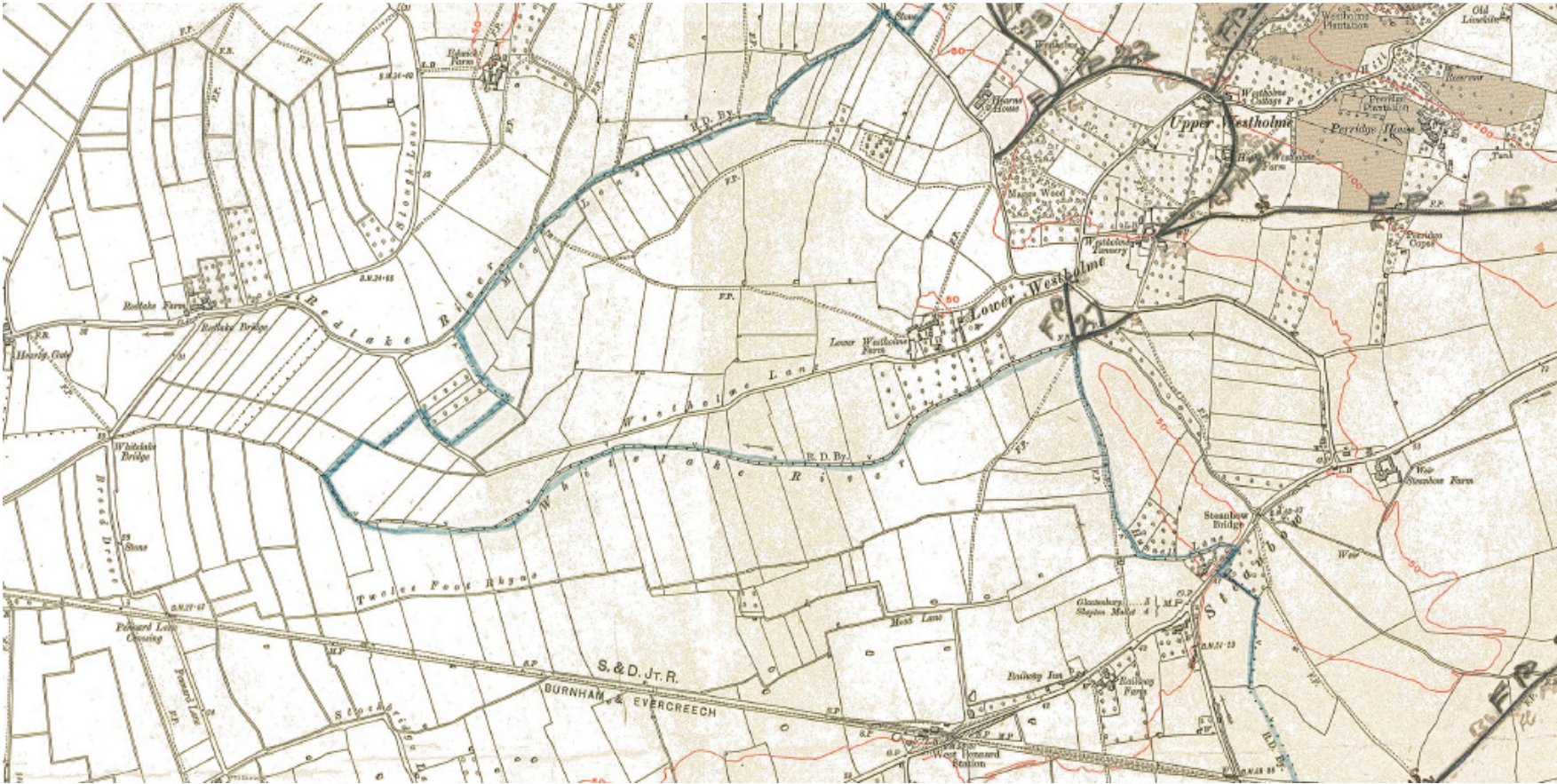


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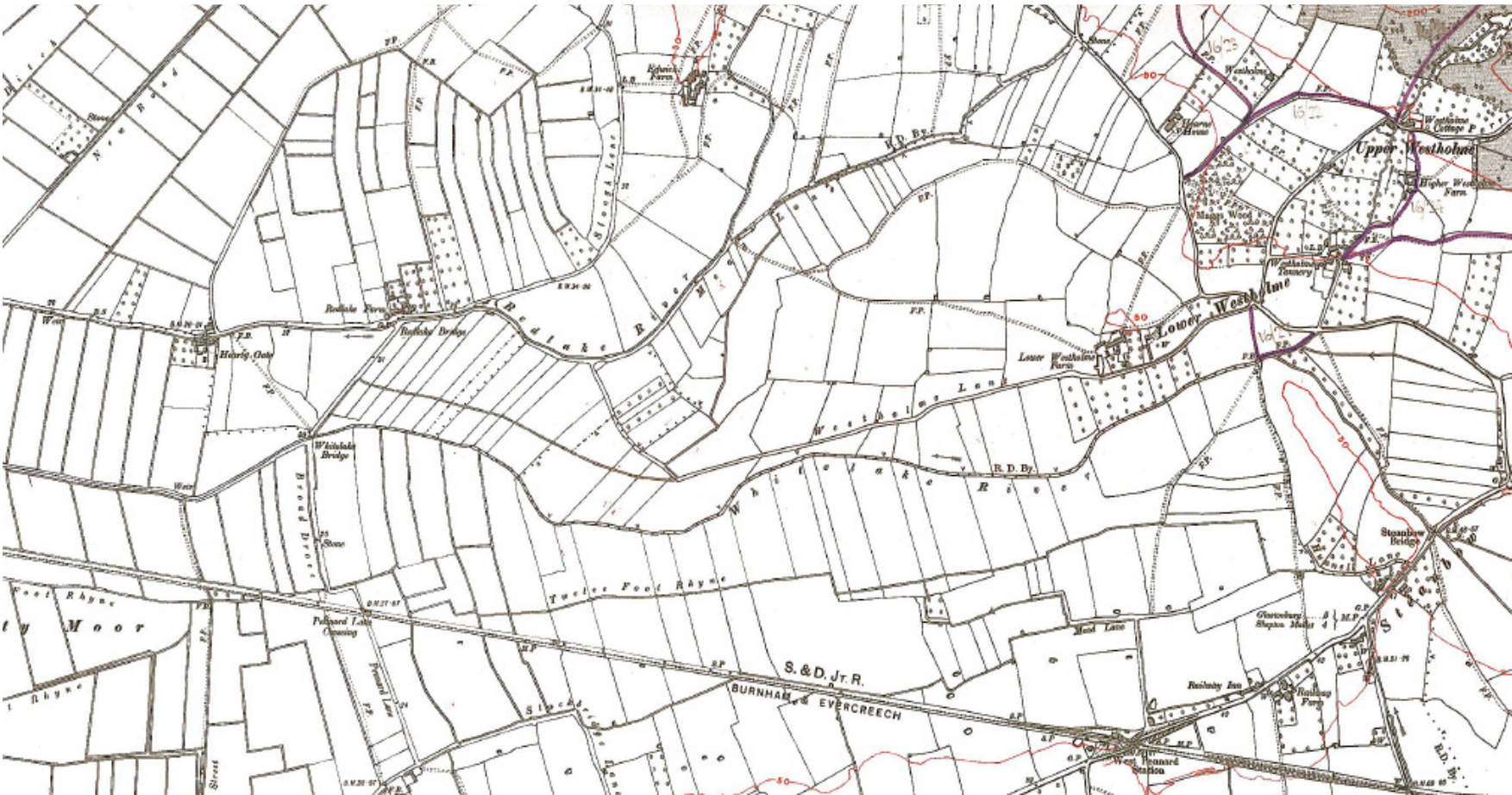
North Wootton Parish Survey Map



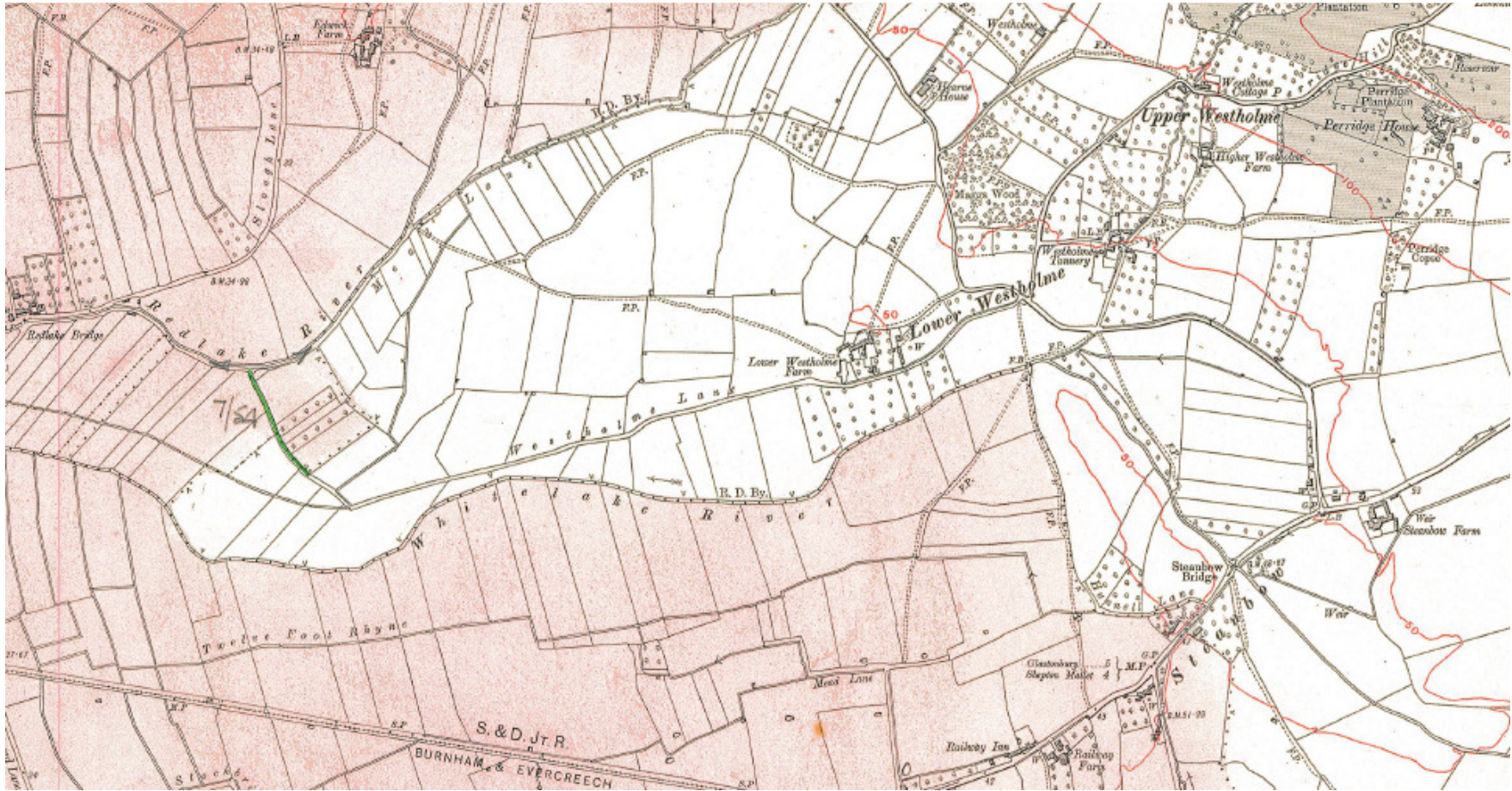
Pilton Parish Survey Map



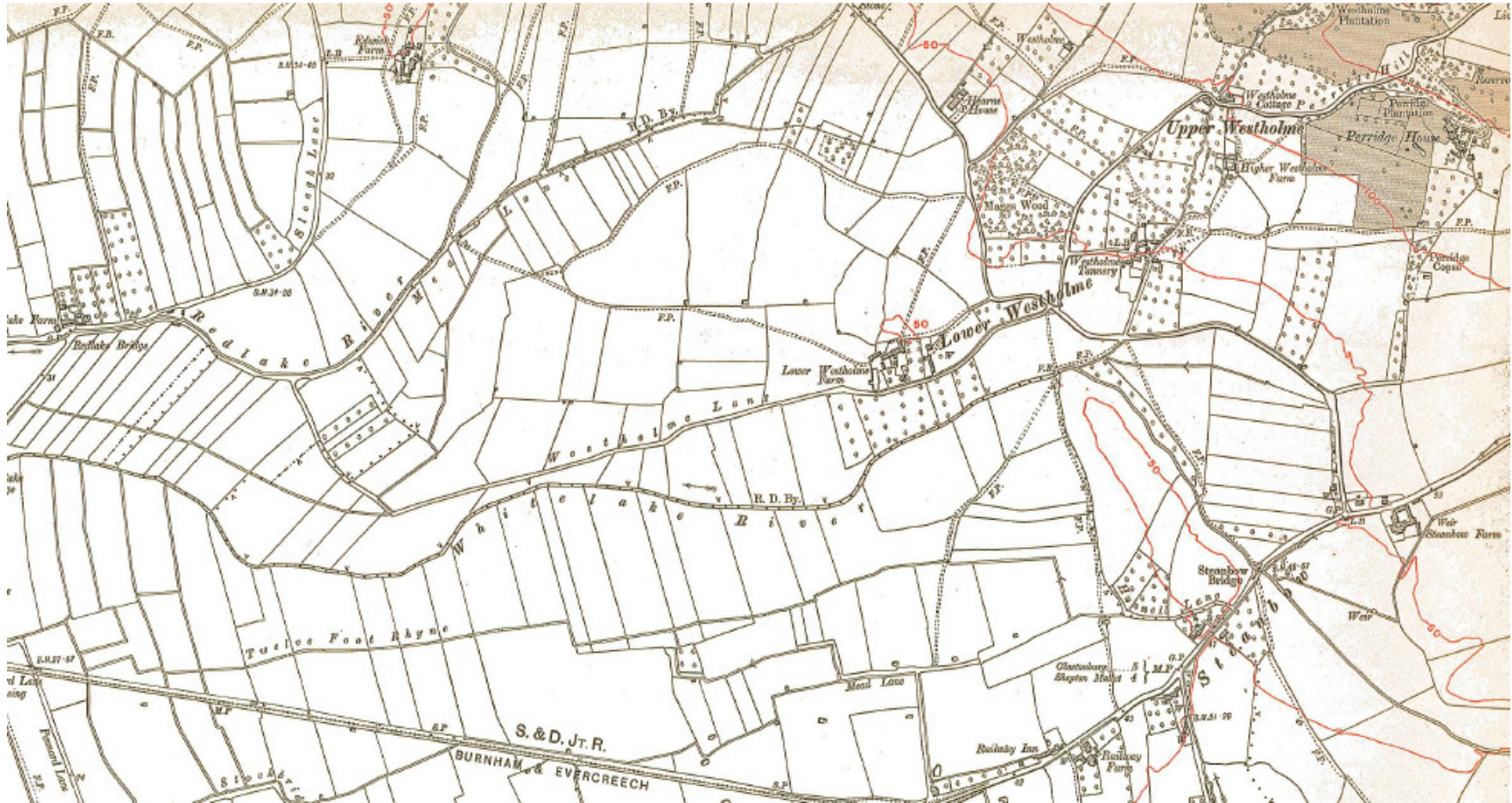
Shepton Mallet Draft Map



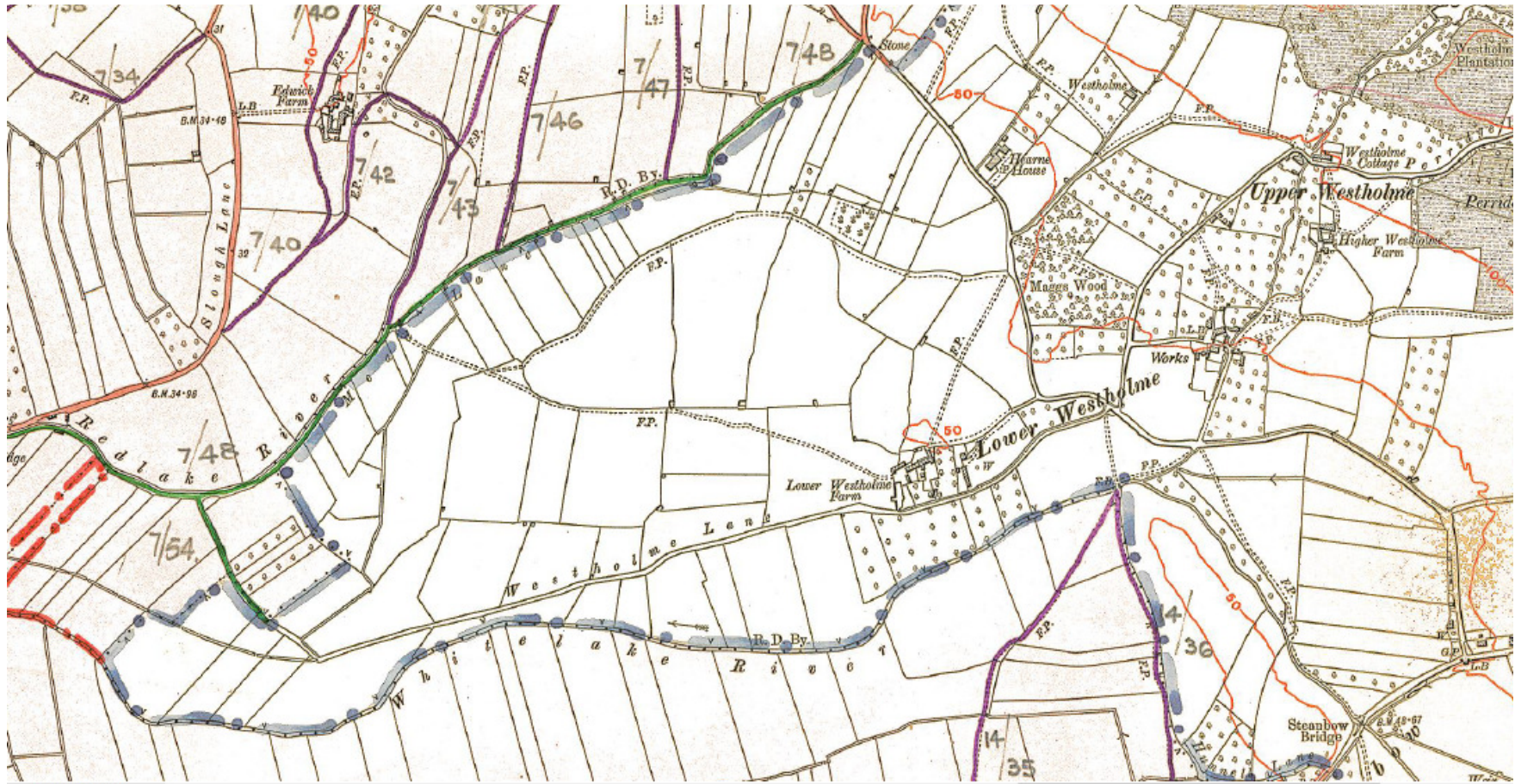
Wells Draft Modification Map



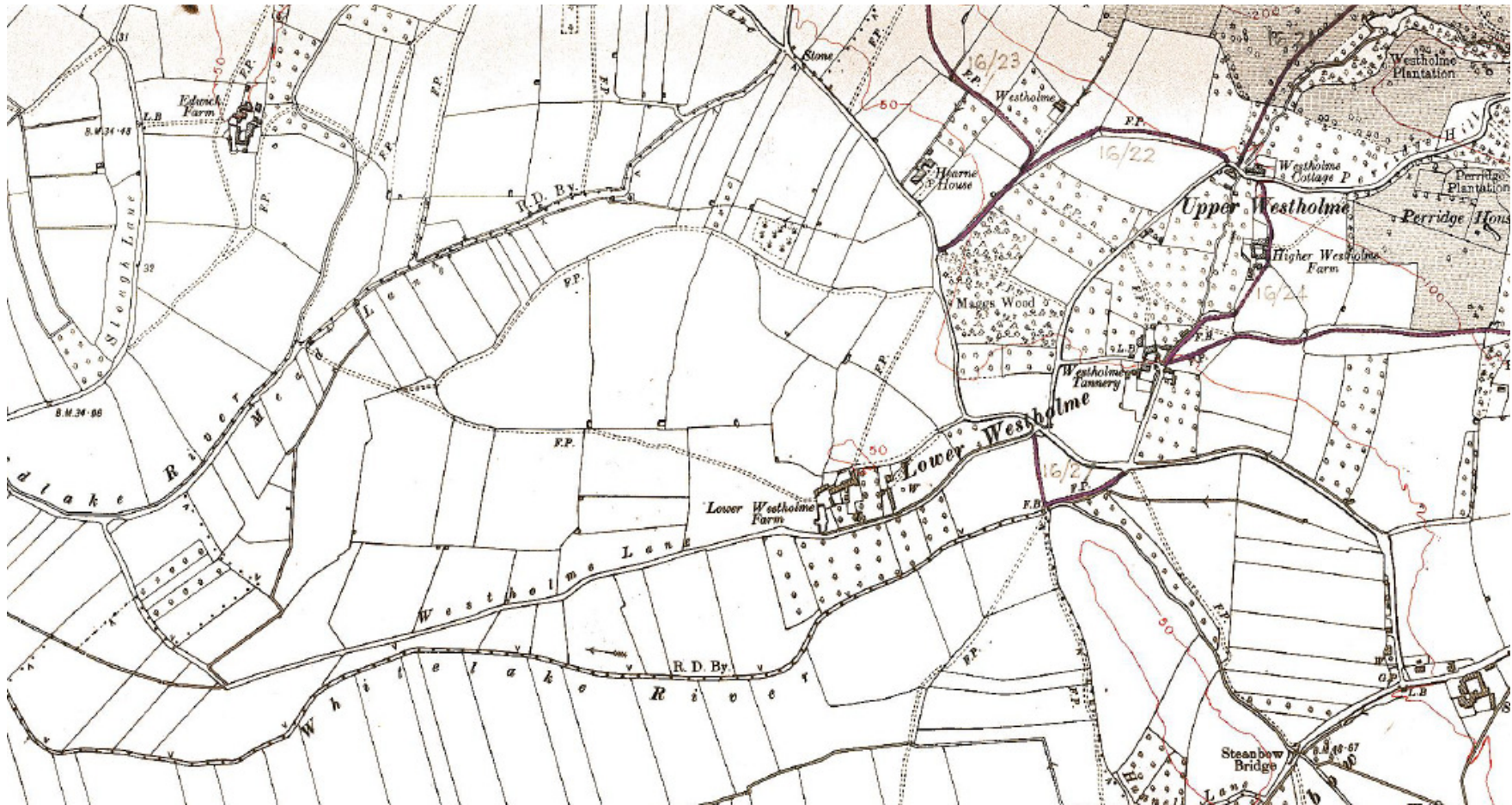
Shepton Mallet Draft Modifications Map

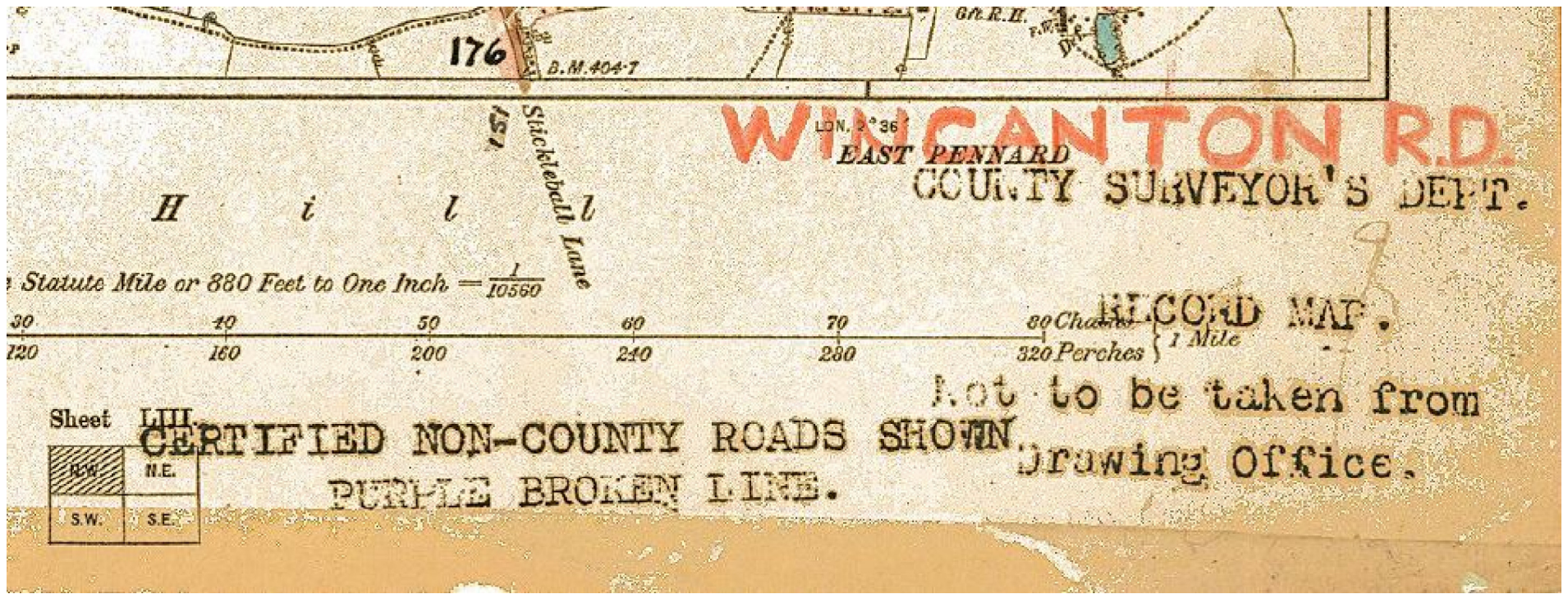


Wells Provisional Map



Shepton Mallet Provisional Map





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COPY/

THE RAMBLERS' ASSOCIATION



Footpath Committee:
Honorary Secretary:

From

1st April, 1954.

National Parks and Access to the Countryside Act, 1949.
Shepton Mallet Urban and Rural Districts.

Dear Sir,

The Ramblers' Association claims that the following County roads should be marked on the Footpath map as "roads used as public paths" as, on inspection, they have been found to be either unmetalled or grassgrown.

<u>Map.</u>	<u>Description.</u>
XLI S.W.	Stoodley Bridge to Stoodley Hill.
XLI S.E.	Dungeon Farm to road near Stump Cross.
XLI S.E.	Mill Lane (north west of West Crompton.)
LIII N.W.	<u>Westholme Lane, Pilton.</u>
LIII N.W.	Mead Lane, Pilton.
XLI N.E.	West Lane, Groscombe (from the 500' contour northwards)
XLI N.E.	Rubble Lane, Shepton Mallet.
XLII N.W.	Fosse Way; Roman road to the Fosse Farm.
LIV N.E.	Walters Hill, Batcombe.
LIV N.W.	Home Farm, Westcombe to Lower Alham Farm.
XXIX S.W.	Barlake to "Duke of Cumberland"
XLI S.E.	Compton Lane to north end of 16.13.
XLI S.E.	South end of Compton Lane to East Compton Lane.

The following additional track appears to be a County road and a formal claim is made that it should be shown as "road used as public paths" :-

XLII S.W.) as the point the farm road from Holcombe Farm joins 1.	Holcombe Lane, from the crossroads southwards as far
LIV N.W.		

Will you please confirm that the following are County roads :

<u>NO</u> LIII S.E.	road linking paths 17/18, 17/17 etc. with the main road
<u>UNABLE TO TRACE</u> LIII S.E.	from the junction of four paths (numbers not recorded) by Wests Farm north-west to the road near "Tother side of the Hill".
XXVIII S.E.	Main road to path 3/5 near Cockhill Farm.

If they are not county roads, please regard this as a formal claim that they are public ways of the same status as the tracks that they join.

Yours faithfully,

Hon. Footpath Secretary.

COPY SENT TO

Mr. Alves & D.S.

DATE 25

262

25th February, 1955.

SM/GEN (JBW)

W.

Dear Sir,

The National Parks and Access to the Countryside Act, 1949.
Shepton Mallet Rural District.

In reply to your letter dated 14th February and enclosures, I have the following observations to make:-

1. The road from Stoodley Bridge to Stoodley Hill shown on O.S. XLI S.W. is a county unclassified road which should not be classed as a C.R.F.
2. The lane from Dungeon Farm to the road near Stump Cross as shown on O.S. XLI S.E. is an unclassified county road which it is recommended should be now classed as a C.R.F.
3. Kill Lane (north west of West Compton) O.S. XLI S.E. is an unclassified county road which it is recommended should now be classed as a C.R.F.
4. Westholme Lane (Pilton) O.S. LIII N.W. is not accepted as a county road.
5. Mead Lane (Pilton) O.S. LIII N.W. is not accepted as a county road.
6. West Lane (Croscombe) O.S. XLI N.E. is accepted as an unclassified county road which it is recommended should now be classed as a C.R.F.
7. Rubble Lane (Shepton Mallet) O.S. XLI N.E. is accepted by the Shepton Mallet Urban District Council as an unmade district road of sorts. It is recommended that it should be included as a C.R.F.
8. Fosse Way, Roman Road to Fosse Farm, O.S. XLII N.W. is an ancient way which it is recommended should be included as a C.R.F.
9. Walters Hill (Batcombe) O.S. LIV N.E. is an unclassified county road which it is recommended should be included as a C.R.F.
10. Home Farm (Westcombe) to Lower Alham Farm, O.S. LIV N.W., is an unclassified county road which it is recommended should be included as a C.R.F.
11. Barlake to the "Duke of Cumberland" P.H., O.S. XXIX S.W., is an unclassified county road which it is recommended should be included as a C.R.F.
12. Compton Lane to north end of F.P. 16/13, O.S. XLI S.E., is an unclassified county road which it is recommended should be included as a C.R.F.
13. South end of Compton Lane to East Compton Lane is not accepted as a county road. O.S. XLI S.E.
14. Holcombe Lane, from the crossroads southwards as far as the farm road from Holcombe Farm, O.S. XLII S.W. and LIV N.W., is accepted as an unclassified county road which it is recommended should be included as a C.R.F.

Copy sent to:
THE COUNTY PLANNING OFFICER,
(RIGHTS OF WAY SECTION).

1sa Sears

237

TFB/CRA/M

A/2/36/7/
HS/TGG

5th March, 1980

Dear Sirs,

Land at North Wootton - Westholme Lane

I refer to my letter of 17th January.

Since writing this letter, further evidence has indicated that Westholme Lane is considered to be a bridleway and will be included as such at the next Review of the Definitive Map.

This does not affect the information given in my previous letter regarding the fences, which are matters for the owners.

Yours faithfully,


County Solicitor

Messrs. Harris & Harris,
Solicitors,
Diocesan Registry,
14 Market Place,
WELLS,
Somerset,
BA5 2RE.



COUNTY PLANNING OFFICER
(Countryside Section)

763

RND/DEL/M/CR/SM/PIL

30 April 1980

COUNTY DIVISIONAL
SURVEYOR -
North East Division

WESTHOLME LANE, PILTON - NORTH WOOTTON, MENDIP DISTRICT



I enclose a copy of a letter from the County Solicitor
saying that it is considered to be a bridleway.

Will you please:

- (i) investigate any damage and ensure that the owner knows he has to apply for any consent to erect a gate on a bridleway;
- (ii) call and see [redacted] and deal with his assertion that it is a public carriageway, and any evidence [redacted] may provide which will have to be dealt with between you and the County Solicitor.

Please keep me informed, as my review card index will continue to indicate it as a bridleway, until informed otherwise.

PND

Public Rights of Way Officer
for County Planning Officer

NOTE FOR FILE

Westholme Lane and Mead Lane, North Wootton/Pilton

[REDACTED] called to see Mr. Harwood on 19th June, and Mr. Harwood being engaged at the time, spoke to Mr. Whiting and Miss Sears.

[REDACTED] because farmers with land adjoining Westhome Lane had removed the fences and narrowed the lane, and other farmers had placed gates across both Westhome Lane and Mead Lane. [REDACTED] claimed that Westholme Lane was a public carriageway and the presence of straying cattle and gates across it interfered with access to [REDACTED] fields. [REDACTED] demanded that the County Council should take action against the farmers concerned. She submitted 18 Rights of Way Evidence Forms in support of her claim.

Earlier this year, [REDACTED] had approached the County Council about this problem and had been advised through his solicitors at that time (Messrs. Harris and Harris of Shepton Mallet) that Mead Lane was shown on the County Definitive Map as a Bridleway, but there was no indication of any public rights of way on Westholme Lane, although there was a mention on the file that it would be considered for inclusion as a Bridleway at the Review of the Definitive Map. The County Surveyor stated at that time that Westhome Lane was not shown as a County maintained road on his records.

[REDACTED] was informed that the County Council could take no action to prevent farmers from removing hedges nor, on the assumption that Westholme Lane was a private road, could they force the owner to reinstate the carriageway where it had apparently been eroded.

It was therefore agreed :

1. that the evidence forms would be considered and an opinion on the status of Westholme Lane would be given in due course;
2. that in the meantime, further searches would be made of old maps in the Records Office to see whether Westholme Lane is shown as an ancient highway;
3. that a site meeting would be arranged as soon as the action at 1 and 2 above had been completed.

19th June, 1980

Mead Lane and Westholme Lane, North Wootton

Judge Swayne, County Councillor, came to see me this morning to discuss the proposed meeting with [REDACTED] to which he has been invited.

He discussed with me the criteria we apply to decide whether or not a lane is a public or private highway. I explained that, in the first instance, we looked at the history of the lane to see if at any time in the past it had been declared to be a public highway. I said we did this by looking at the Tithe Map and the Inclosure Awards for the area, together with the original editions of the O.S. Map. I said that, so far, none of these lines of enquiry had assisted us in establishing the status of these lanes.

I also said that we always look at the maps held in the County Surveyor's Department which were handed to the County Council in 1930 by the old Rural District Councils, when responsibility for highways was passed to the County Council. I said these maps indicated whether or not a particular highway had been maintained by the Rural District Councils. According to the records, neither of these lanes had been maintained at the public expense.

I said we, therefore, had to rely on recent history and I pointed out that the Evidence Forms did not appear to be conclusive one way or the other. Judge Swayne agreed that it appeared this was really a private dispute between [REDACTED] although he did make one or two interesting points about the status of these lanes.

He agreed that they were certainly bridleways but also said that there was some evidence to indicate they were public carriageways. He said that it would appear from their shape that they were constructed prior to the Inclosure Awards which was an indication they were public highways, particularly if no mention was made of them in the Inclosure Awards. He also said that at the time a farm adjoining the lanes was sold in 1958, the lanes were not included in the sale. On the first point, I said that I would look again at the Inclosure Awards to see if it was possible to ascertain when these lanes were constructed and, as to the fact that they were not included in the sale to the farmer, I said that this did not necessarily show that they were public rights of way since the persons who were liable to maintain them were always anxious to try and divest themselves of that liability.

R. J. Whiting

(Sgd) R. J. WHITING.

RJW/JF
16th July, 1980.

Mead Lane and Westholme Lane, North Wootton

Following my discussion with Judge Swayne this morning, Mr. Driver and myself visited the Records Office in the afternoon to take a further look at the evidence relating to these highways.

We examined the Pilton and North Wootton Inclosure Award 1796 and we were able to establish that it did not relate in any way to either Mead Lane or Westholme Lane. The reference in the Award to Lower Westholme Way and Westholme Lane refers to a parcel of land some way to the north east of the above lanes. We also examined the Brue Valley Drainage Award 1806 and, although this showed the two lanes as being in existence at the time, it made no reference to them. Our conclusion was that these two lanes were in existence during the 18th Century. Finally, we examined Greenwoods Map (1822 Edition) and this clearly showed both lanes as "crossroads" as opposed to "turnpike roads". There was no indication as to what status a crossroad had.

R. J. Whiting

.....
R. J. Whiting

A/2/36/7/RJW/CP

16th July, 1980

MAP

D.M.M. SHORROCKS
COUNTY ARCHIVIST

SOMERSET RECORD OFFICE,
OBRIDGE ROAD,
TAUNTON,
SOMERSET.

TA2 7PU.

MEMORANDUM

TEL.: 87600

DATE 28th July, 1980

FROM: CountyArchivist.	TO: County Solicitor.
REF. RJEB/EP/7	REF. A/2/36/7/RJW/CP

Mead Lane and Westholme, North Wootton.

The above lanes are clearly marked on a parish map of Pilton and North Wootton of 1809, an estate map of 1810 (ref: DD/SRB), and as public roads on the Pilton tithe map and award, as well as on the maps you mention.

The very fact that these lanes are marked on Greenwood's map of 1822 makes it most unlikely that they were private roads at that date. There is no legal significance in the term 'crossroads' which was merely a word coined to indicate principal thoroughfares other than turnpike roads. As the lanes in question appear to have been public roads at the time of the tithe award it is also highly unlikely that their status had changed in the years since 1806 (Brue drainage map) without some record being made of the fact.

There is no particular significance in the status of individual lanes not being recorded in a specific inclosure award. Such awards generally established only the status of such thoroughfares which passed over lands enclosed under the Acts. There were many parishes unaffected by Parliamentary Enclosure, but all these would have had and continue to have public highways running through them.

D.M.M. Shorrocks

County Archivist.

MPK

5th August, 1980

THE COUNTY SOLICITOR

THE COUNTY ARCHIVIST

RJ/2/200/1-13/2/11

RJRB/EP/T

Head Lane and Westholme Lane, North Wootton

I refer to your memorandum of the 28th July, and I am grateful for the information contained therein.

The only point on which I should like your further comments is the question of the tithe map and award.

As I understand the position, the tithe map does not normally distinguish between public and private rights of way. I note that in the case of the tithe map and award for the parish of Pilton, some lanes are numbered and some are not. Those that are numbered appear in the award, under the summary, as a general heading of "Roads, Rivers, Wastes, Etc." with no details as to ownership. Those that are not numbered on the map do not appear anywhere in the award. I do not believe that those roads are automatically public rights of way since the map and award make no mention of any private rights of way. This argument is further reinforced if one looks at the tithe map and award for the parish of North Wootton, where none of the roads are numbered on the map. However, there is a general heading in the award of "Roads, Rivers, Wastes, Etc."

The practice of numbering roads appears to vary from parish to parish and I should be grateful if you could advise me of its significance. My own view is that no great reliance can be placed on the tithe map and award for establishing whether or not a particular road is a public or private right of way.

.....
County Solicitor

* that are numbered

D.M.M. SHORROCKS
COUNTY ARCHIVIST



SOMERSET RECORD OFFICE,
OBRIDGE ROAD,
TAUNTON,
SOMERSET.

TA2 7PU.

MEMORANDUM

TEL.: 87600

DATE 11th August, 1980

FROM: County Archivist	TO: County Solicitor
REF. RJEB/EP/7	REF. A/2/36/7 RJW/TJH

Mead Lane and Westholme Lane, North Wootton.

With reference to your memorandum of 5th August, 1980, you are correct in thinking that tithe map numeration does not usually extend to roads. That is precisely why the numbering of roads in the Pilton map and award is of greater significance since not all the roads carry numbers. There must, therefore, be some distinction between thoroughfares numbered and not numbered and the section in the award summary suggests that those numbered are public roads.

I agree with you that tithe maps usually only indicate whether a highway existed at the date of compilation without determining its status. That is why the partial numeration of roads in the Pilton map is of particular interest in this case. My own view is that the marking of both lanes on the Greenwood map of 1822 is the most telling evidence, as I think it highly unlikely that private roads would be so illustrated.

D.M.M. Shorrocks

County Archivist.

r. Whiting

485

A/2/36/7
EJW/ANS

11th July, 1980

Mead Lane and Westholme Lane, North Wootton

I understand from Miss Sears of my Department that you telephoned her the other day concerning the above lanes. I believe that you told Miss Sears that you understood the lanes were shown on the Tithe Map for the area as public carriageways.

Mr. Whiting of my Department has inspected the Tithe Map together with Mr. Dixon, the Public Rights of Way Officer, and the above lanes are shown on the map but are not classified as either public or private rights of way. In fact, Tithe Maps do not normally distinguish between public and private rights of way as, of course, they were not concerned with this question. Mr. Whiting and Mr. Dixon also took the opportunity of examining the inclosure awards for the area made under the Inclosure Acts and it seems clear that neither of these above lanes was classified as a public right of way at the time of the awards, which were made in 1794. Therefore, there is no evidence to show that these lanes were public highways in the 19th century. This does not mean that they did not become public highways at a later date and, of course, there is no doubt that they are at least bridleways, over which the public have a right of way on horseback and on foot.

However, in deciding whether or not they are also carriageways, over which the public have a right of way in vehicles, it is necessary to examine the history of the use of the lanes including, particularly, the type of traffic which has been using the lanes. This is where the evidence of the local population is important.

I should be grateful if you would kindly let Mr. Whiting know one or two dates when it would be convenient for him to meet you on site to discuss the matter further.

Yours sincerely,

County Solicitor

r. Whiting

485

A/2/36/7
RJV/AMS

11th July, 1980

Dear Sir,

Mead Lane and Westholme Lane, North Wootton

I have been consulted by [REDACTED] concerning the status of the above lanes. [REDACTED] is of the opinion that these lanes are public carriageways, over which the public have a right of way for vehicles.

Mead Lane and part of Westholme Lane are shown on the Definitive Map as bridleways over which the public have a right of way on horseback and foot. The part of Westholme Lane which is not shown on the Definitive Map as a bridleway is considered to be a bridleway and it is assumed that it was omitted from the Definitive Map by mistake.

I should be grateful for your views as landowner adjoining these lanes, as to whether or not you consider they are public bridleways or public carriageways. It is important to establish the correct status of these public rights of way and any assistance you are able to give me would be appreciated.

I would add that I have received a number of public rights of way evidence forms indicating that these lanes have been used for vehicular traffic as well as by members of the public on foot and horseback. It is not clear whether the vehicular traffic using these lanes has been using them as public rights of way or as private rights of way to obtain access to adjoining land.

Yours faithfully,

County Solicitor

SOMERSET COUNTY COUNCIL

S. E. HARWOOD, Solicitor
County Solicitor
Deputy Chief Executive



COUNTY HALL,
TAUNTON,
SOMERSET,
TA1 4DY.

When calling or phoning please ask for:

Taunton (STD 0823) 73451


Mr. Whiting

Extn: 485

Your ref:

My Ref A/2/36/7
RJW/IS

Date 22nd August 1980

Dear Mrs. 

Mead Lane and Westholme Lane, North Wootton and Pilton

I have now had a reply from the County Archivist on the historical points which you raised regarding the tithe map and award for the parish of Pilton.

The County Archivist is of the opinion that Mead Land and Westholme Lane were public highways at the time of the tithe map and award and that it is unlikely their status has been changed since then without some record being made of the fact. In the circumstances, it would appear that there is some evidence to indicate that these lanes are old public carriageways.

As you know, at present, Mead Lane and part of Westholme Lane are shown on the definitive map prepared under the National Parks and Access to the Countryside Act 1949 as bridleways. It has always been accepted that the rest of Westholme Lane should have been shown as a bridleway as well. Under the 1949 Act a bridleway is defined as "a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway". You will see that included in that definition is a right to drive animals along the highway.

I note that you complain that the farmers whose land joins these lanes have removed the hedges, ploughed up the surface, reduced the width of the highway in two places and placed gates across it. I have written to both farmers pointing out that, if they wish to plough up the surface of the land, they must first give notice of their intention to do so and, if they wish to erect gates where none have been erected before, they must apply for permission. I have made it clear that the full width of the highway should be retained for use by members of the public. There is nothing that can be done about the removal of the hedges as they do not form part of the highway. I trust this will enable you to continue to use the land to obtain access to your fields without any further problems.

I do not consider that there are sufficient grounds for saying that the lanes should be treated as public carriageways open to all traffic. I reach that conclusion for a number of reasons. Firstly, although there is some historical evidence to indicate that these lanes are old carriageways, there is a presumption against dedication of land as a highway and the evidence is not conclusive. In any event, I have to consider what public rights have been interfered with. I have only received a complaint from your husband and yourself. No other members of the public have complained. Moreover, both Mr. Masters and Mr. Stevens, the farmers whose land adjoins the lanes, have confirmed that they are quite happy for persons like yourselves, who also own land adjoining these lanes, to drive vehicles to and from their own land.

r. Whiting

485

A/2/36/7
BJW/IS

22nd August 1980

Dear Sir

Mead Lane and Westholme Lane, North Wootton and Filton

Thank you for your letter of 21st July.

Although only part of Westholme Lane is shown on the definitive map prepared under the National Parks and Access to the Countryside Act 1949 as a bridleway, it has always been considered by the County Council that the whole of Westholme Lane is a bridleway. Therefore, it is considered that members of the public have a right of way on foot and on horseback with or without a right to drive animals of any description.

As you know, I have received a complaint that the hedges along Westholme Lane have been removed, gates have been placed across it and the surface of the lane has been narrowed in one place. I note that you say that the width of the lane has always been narrow at the point outside [redacted] but I should like to make it clear that nothing must be done to reduce the width of the highway available for members of the public to use. In addition, if you wish to erect gates across the lane, it is necessary to apply for permission to the County Council under Section 126 of the Highways Act 1959.

I confirm that you are entitled to remove the hedges adjoining the lane as they do not form part of the bridleway. However, if you wish to plough up the surface of the lane it will be necessary to give prior notice of your intention to do so to the County Council under Section 119 of the 1959 Act.

It is likely that the complaints by [redacted] will be reported to the Planning Sub-Committee of the County Council. In deciding whether or not to take any action I am sure that the Sub-Committee will wish to know that you are quite happy for other persons owning land adjoining Westholme Lane, such as [redacted] to drive vehicles to and from their land along the lane. Therefore, I should be grateful if you would confirm that this is the position. If you are uncertain about anything or wish to take independent advice, I suggest you consult your own solicitor before replying.

I enclose a stamped addressed envelope.

Yours faithfully

[redacted]
County Solicitor

r. Whiting

485

TFB/ISR

A/2/36/7

22nd August 1980

RJW/IS

Dear Sirs

Mead Lane and Westholme Lane, North Wootton and Pilton

I refer to your letter of 22nd July.

I note your comments concerning Mead Lane, and Westholme Lane, but would inform you that research has indicated that there is some historical evidence to show that these lanes are old public carriageways. However, at the present time, it is not proposed to take any action as I do not consider that the rights of the public to use these lanes are being interfered with.

I should be grateful, therefore, if you would make it clear to your client that these lanes are bridleways over which the public have certain rights of way. There have been complaints that the surface of Mead Lane was ploughed up, the hedges have been removed and gates have been placed across both lanes at various places. Also, it is alleged that the width of Westholme Lane has been narrowed in two places.

I must make it clear that, if your client proposes to plough up the surface of the bridleways he should first give notice of his intention to do so under Section 119 of the Highways Act 1959. If he does not give such notice, he is guilty of an offence under that Section. In addition, the surface of the bridleways should be made good within six weeks under Section 29 of the Countryside Act 1968. As to the erection of gates, it is necessary to apply for permission for their erection, under Section 126 of the 1959 Act. It is, of course, a matter for your client as to whether or not he removes the hedges adjoining the lanes but, whatever he does, nothing must be done which reduces the width of the highway available for members of the public to use.

In deciding that it was not necessary to take any further action in this matter, I particularly had in mind the assurance given to the writer by your client that he was quite happy for other people whose land adjoins these lanes to drive vehicles along the lanes to and from their land. I should be grateful if you would confirm, in writing, that this is the case.

Finally, I should like to add that it is likely that this matter will be reported to the Planning Sub-Committee of the County Council for a final decision.

Yours faithfully

Messrs Harris and Harris,
Solicitors,
Diocesan Registry,
14 Market Place,
Walls BA5 2RE

County Solicitor

3 October 1980

Dear Sir,

Mead Lane and Westholme Lane, North Wootton & Pilton

Reference: A/2/36/7 RJW/15

Referring once more to your letter of 22 August 1980, there is a considerable amount of historical evidence and local opinion, which supports the County Archivist's opinion, that both lanes were public highways 139 years ago and that their status, in the absence of any positive record has not changed since.

You yourself appear to agree that there is evidence that these lanes are old public highways. Is it not correct that in law once the existence of a highway has been proved it must be presumed to remain a highway unless there is clear evidence to the contrary.

The fact that Mead Lane and part of Westholme Lane are shown on the definitive map as 'bridleways' is a comparatively modern term - unnecessary for green lanes which have always from time immemorial been open to all traffic.

It is stated that permission should be applied for if the farmers wish to erect gates- gates which have already been erected across the lanes- hence causing an obstruction and encroachment. All these gates should be removed by the offending farmers as would apply in the erecting of a building without planning permission.

It has also been stated that the full width of the highway should be retained. Considering Mead Lane, where a hedge covering about $\frac{1}{3}$ mile has been removed, there is of course no boundary to the lane. If the full width is to be retained, a fence should be erected by the farmer concerned- for the lane to be put back to its original width. Westholme Lane, to which the same applies, as part of the lane lies open each side to ditches which will subside- also part of the said lane being narrowed so as to prevent a wheeled vehicle from passing through.

Also although historically the evidence is there to support the old carriageways, it is stated that there is a presumption against dedication of land as a highway - when it should be known by County Hall that under Section 34 of the Highways Act 1959, that dedication is presumed when a right of way has been used by the public for 20 years without interruption- of which applies to both the said lanes.

It has also been stated that there are insufficient grounds for saying that the lanes should be treated as public carriageways is incorrect. Twenty nine parishioners of North Wootton filled in Rights of Way evidence forms as a protest against the damage done. The majority of which of course do not own a horse and cart or tractor. This does not take away the rights of the lanes as carriageways.

Also because they are open lanes the right to drive vehicles in these lanes has never been opposed- so for you to seek permission from the farmers concerned was irrelevant.

It should also be brought to notice, points put forward at a Somerset County

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SOMERSET COUNTY COUNCIL
PLANNING AND TRANSPORTATION COMMITTEE
PLANNING SUB-COMMITTEE

Wednesday, 3rd December 1980
Agenda Item No. 5

Green Lanes in North Wootton and Pilton

Mead Lane and Westholme Lane are public rights of way in the parishes of North Wootton and Pilton. Mead Lane and part of Westholme Lane are shown as bridleways on the definitive map. The remainder of Westholme Lane is not shown on the definitive map although it is considered to be a public right of way and should have been included on the map.

In June of this year, Mrs. E. A. Curtis of Church Cottage, North Wootton complained to the County Solicitor that farmers with land adjoining the lanes had removed the hedges, reduced the width of the lanes at certain points and placed gates across them. Mrs. Curtis explained that her husband and herself owned a field adjoining Westholme Lane and it was now difficult to obtain satisfactory access to their field. She claimed that the lanes were public carriageways, i.e. with vehicular rights over them, and requested that the County Council took action against the farmers concerned. Mrs. Curtis referred to the County Council's policy of preserving green lanes. In support of her claim that these lanes were public carriageways, Mrs. Curtis handed in a number of rights of way evidence forms completed by local residents.

We made an inspection last July in company with Mr. J. H. L. Davies and Honour Judge R. C. Swayne, County Councillors, and Mr. and Mrs. Curtis. Both farmers were also present during part of the inspection. The hedges adjoining part of Mead Lane had been removed and the lane had been incorporated into the adjoining field. The farmer said that the gates erected across Mead Lane were not new but had previously been left open. The width of the lane had not been interfered with. The same farmer had cleared an existing ditch alongside part of Westholme Lane which was said to have reduced the width of the lane. He said that previously that part of Westholme Lane had been passable and that he had now effectively cleared it. The other farmer who owned land adjoining the other part of Westholme Lane had also removed the hedges but had not, at that time, incorporated the lane into the field. He claimed having reduced the width of the lane near to the entrance to Mr. and Mrs. Curtis' field and said that the lane had always been narrow at that point. The farmer had gated Westholme Lane at a point where it appeared it had not been gated before. Both farmers agreed that these lanes were public rights of way. They said that they had no objection to members of the public using the lanes on foot or on horseback. They also said that they were quite happy for other landowners, like Mr. and Mrs. Curtis, to drive vehicles along the lanes and from their own land.

Following the meeting, the County Solicitor wrote to the farmers pointing out their responsibilities in respect of these lanes. He pointed out that, although they could not be prevented from removing the hedges, they should have applied for permission to erect any new gates and given notice of their intention to plough the surface of the lanes, which had to be made good within two weeks thereafter. It was also made clear that no action should be taken which reduced the width of the lanes. The County Solicitor also wrote to Mr. and Mrs. Curtis informing them that there was nothing that could be done about the removal of the hedges and that the farmers concerned denied reducing the width of the lanes. Subsequently, Mrs. Curtis requested that this matter be

reported to the Planning Sub-Committee for their decision and ask that the attached letter be brought to their attention. In that letter, the signatories request that action is taken to remove the gates erected across the lanes as this would compel the farmers to fence the boundaries of the lanes to prevent their animals from straying.

5. The letter from Mrs. Curtis and others also makes a number of points to show that these lanes are public carriageways and not bridleways. We accept that she is right. Research has shown that both these lanes are ancient highways. They appear on a number of early 19th century maps and the County Archivist is of the opinion that they are public highways with vehicular rights over them. At first, the County Solicitor was of the opinion that the status of these lanes was not clear. However, in the light of evidence collected not only by the County Archivist but also by Mrs. Curtis, he now accepts that these lanes are public carriageways. They should have been shown on the definitive map as roads used as public paths and not bridleways. In practice, a green lane can only be protected where it is shown on the definitive map as a road used as a public path or where it is a derelict road, formerly maintained by the County Surveyor as a vehicular right of way. There is no point in a landowner removing the hedges adjoining a road used as a public path since it is not possible to plough the surface of the road or to gate it, unless it has been gated since before it was dedicated as a public right of way. However, Mead Lane and Westholme Lane (in part) are shown on the definitive map as bridleways. Bridleways can be ploughed, if notice is given, and gated, provided permission is obtained either from the highway authority or, in the event of their refusal, from the Minister. Therefore, until the definitive map is amended, it will not be easy to take any action to remove the gates across these lanes. Some have been there for many years. Where they are new, the landowner could obtain permission for their erection. The definitive map can only be amended, at present, by means of a review of all rights of way. There is unlikely to be a review of the definitive map in the near future. As the Sub-Committee are aware, there are proposals to amend the law relating to reviews. If the proposals come into force, it will be possible to clarify the status of Mead Lane and Westholme Lane, if the Sub-Committee thought fit.

6. It is the duty of the highway authority under Section 116 of the Highways Act 1959 to assert and protect the rights of the public to use and enjoy any highway. Where a bridleway is shown on the definitive map, it is still possible for the public to have public vehicular rights over it. In this case, those vehicular rights have been established by careful research, particularly by Mrs. Curtis. If an attempt was made to prevent the public walking, riding or driving along these lanes, action could be taken to enforce their rights. This has not happened. The question arises as to whether or not the rights of the public to use and enjoy these lanes have been interfered with.

The Sub-Committee's instructions are requested.

D. J. R. CLARK
County Solicitor

E. W. BARNETT
County Planning Officer

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1229. Use of Land and Buildings to the rear of "Eype", Mosterton Road, Misterton. The County Planning Officer reported that this site was being used for the unauthorised repair of motor vehicles. He reminded members that they had refused permission for the use in 1977 and also in that year the Yeovil District Council had also refused to grant an Established Use Certificate. A further application for an Established Use Certificate was refused by the District Council in February, 1980. An appeal against this latter decision had been lodged with the Secretary of State. The Yeovil District Council, whilst not conceding established use rights, considered it was a case where a planning permission should be granted. In considering the appeal, the Secretary of State had to consider a deemed application for planning permission and it would be desirable for the Secretary of State also to consider the question of enforcement action at the same time. The existing use was contrary to Council policy.

RESOLVED: that an Enforcement Notice be served pursuant to Section 87 of the Town and Country Planning Act, 1971 requiring the cessation of the unauthorised use.

1230. Safeguarding Zone, Merryfield Aerodrome, Ilton. The decision of the Secretary of State to make a safeguarding direction under Article 15(4) of the Town and Country Planning General Development Order, 1977 in respect of Merryfield Aerodrome was noted.

1231. The Local Government Planning and Land Act, 1980. The County Planning Officer presented a report on the implications of the Local Government Planning and Land Act, 1980 in so far as it affected the functions of the Planning Sub-Committee. Although the Act received the Royal Assent on 13th November, certain provisions relating to County and District responsibilities on development control would not become operative until the 13th January, 1981.

1232. Green Lane in North Wootton and Pilton. The Sub-Committee considered a joint report by the County Solicitor and County Planning Officer on a claim by a local resident that Mead Lane and Westholme Lane in the Parishes of North Wootton and Pilton were public carriageways. Mead Lane and part of Westholme Lane were shown as bridleways on the Definitive Map. The remainder of Westholme Lane was considered to be a public right of way and should have been included on the map.

RESOLVED: that no action be taken at present and a further report be submitted for consideration when the proposed Wildlife and Countryside Bill had received the Royal Assent.

1233. RESOLVED: that the public be excluded from the meeting during consideration of the following matter on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted.

RJM/CP

483

Mr. Whiting

4th February 1981

Dear Sir,

Green Lanes in North Nootton and Pilton

Thank you for your letter of 29th January.

This problem was reported to the Planning Sub-Committee on Wednesday, 3rd December last when it was decided to defer dealing with this matter until after the proposed Wildlife and Countryside Bill is enacted. Thereafter, a further report will be made to the Sub-Committee and, if they decide it is appropriate to take action to protect the rights of the public to use these lanes, action can then be taken under the new legislation to clarify the status of the lanes. If that is done, it should be possible to have any gates across the lanes removed, unless the landowners concerned are able to show that the gates have been there for many years.

Unfortunately, there is nothing that can be done about the removal of the hedges adjoining these lanes as the hedges did not form part of the public highway. It is not an offence to allow animals to stray on to the highway where the highway passes over unenclosed ground.

I confirm that your letter will be brought to the attention of the Planning Sub-Committee when a further report is made on this matter.

Yours faithfully,

County Solicitor

B. W. Bartlett, Esq.,
Secretary,
North Nootton Parish Council,
[redacted],
[redacted],
Shafton Nallet, Somerset.

CHRISTOPHER GOWERS
SOLICITORS

TELEPHONE: OXFORD (0865) 43487
TELEX: .83147 LPS VIA OR

FIRST CLASS

The County Solicitor,
Somerset County Council,
County Hall,
TAUNTON,
TA1 4DY

ALLIANCE HOUSE
3 GEORGE STREET
OXFORD
OX1 2AP

OUR REFERENCE:

CG/gjm/ C23

YOUR REFERENCE:

A/2/36/RJW/LJ



THIS MATTER IS BEING DEALT WITH BY: Mr. Gowers

18th March 1981

Dear Sir,

Our Client [REDACTED]

Re: Green Lanes in North Wootton and Pilton

We have been instructed by [REDACTED] to advise her on various complaints she has about the state of the green lanes in North Wootton and Pilton. Our client has passed to us copy correspondence she has had with you together with a copy of a report by yourself and the County Planning Officer to the Planning Sub Committee of the Planning and Transportation Committee which met on 3 December 1980.

We understand that you are familiar with the lanes in question but for ease of reference we enclose a copy of an extract from an 1809 map prepared by the County and Diocesan Archivist with coloured markings prepared by our client. Basically our client's complaint is that:

- a) Both Mead Lane and Westholme Lane have been vehicular highways for many years and are maintainable at the public expense, but that
- b) Certain landowners have removed hedges where indicated on the plan and
- c) Landowners have erected gates where no gates existed before. These are marked red on the plan. Furthermore,
- d) Despite the fact that our client first complained of these matters to you in January 1980 it appears that no action has been taken by the County Council to assert and protect these highways.

According to our client the condition of the lanes is deteriorating rapidly; further complaints are that:

- a) Part of the lane has been concreted over by one of the farmers and is used for offloading tankers etc, and
- b) On another part of the lane the surface is deteriorating so rapidly that vehicles are getting bogged down.
- c) The highways themselves are being eroded because the hedge boundaries have been removed.

We now refer to your report to the Planning Sub Committee of 3 December 1980. We note from paragraph 5 that you accept on behalf of the County Council that these roads are public carriageways. Can you, therefore:

/contd.....

- a) Confirm you accept that the highways are maintainable at the public expense?
- b) Confirm whether or not you have authority to accept service of a notice under section 56 Highways Act 1980?
- c) Confirm whether or not any permission was given to the landowners in question to erect any of the gates?
- d) If such permission was given can you state what authority it was given?
- e) State by what authority public carriageways can be ploughed? We do not accept that a public carriageway can be ploughed even if it is shown on the definitive map with bridleway rights. We also do not accept that your authority is barred from taking action until the definitive map is amended.
- f) State what relevance the Wild Life and Countryside Bill has? If your authority accepts these lanes are highways then they are under a statutory duty to assert and protect highway rates now and in our opinion are not entitled to wait until the law might be changed.
- g) Confirm whether or not any other committee of the County Council has considered these problems, and if so, may we have a copy of any report and minutes of such meetings? We will, of course, pay your proper charges for producing such copies.

Yours faithfully,



CG/sjm/C 23

N/2/36/T/RSW/CP

Mr. Hitting

31st March, 1981

Dear Sirs,

Your Client: [REDACTED]

re: Green Lanes in North Wootton and Pilton

Thank you for your letters of the 18th and 25th March.

I have the following comments to make on your client's complaints:-

- (a) Head Lane and part of Westholme Lane are shown as bridleways on the definitive map. The remainder of Westholme Lane is not shown on the definitive map although it was always thought that it should have been included as a bridleway. It is now accepted that, in fact, there are public rights over these lanes and they have always been public carriageways.
- (b) It is agreed that certain landowners have removed hedges although, as you will know, since the hedges are not part of the highway, they are entitled to do this.
- (c) At the site inspection last July, one of the landowners concerned said that the gates erected across Head Lane were not new but had previously been left open or fallen into disrepair. As you will know, if a landowner can show that gates have been in existence for many years, he is entitled to gate the highway notwithstanding that it is a carriageway. A number of the gates marked on your plan have not been the subject of complaints before. In the circumstances, I have asked the Rights of Way Officer to look into the question again to ascertain what action can be taken to remove any unauthorised gates.
- (d) No member of the public has been prevented from walking, riding or driving along these lanes, but, if they had, action would be taken to enforce their rights. As I have said, no direct action can be taken to prevent farmers from removing hedges. As your client has now complained about a number of gates which were not brought to my attention before, as I have said, I have asked the Rights of Way Officer to look into this question.

As to your client's fresh complaint that the condition of the lanes is deteriorating rapidly, I have asked the Rights of Way Officer to look into this as well as possible. If there is anything that should be done by the Highway Authority, suitable action will be taken.

Finally with reference to the points that you ask me to confirm, I have the following comments to make:-

- (a) Yes, although the extent of maintenance is that which is necessary to keep the way, as dedicated to the public, in such a state as to be safe and fit for ordinary traffic; having regard to the nature of the user, the character of the way and the extent of dedication. These rights of way are green lanes used by the public mainly as footpaths or bridleways.
- (b) Yes.
- (c) No, for the reasons which I have already given.
- (d) Not applicable.
- (e) I do not agree. If a right of way is shown on the definitive map as a bridleway, it can be ploughed under the provisions of Section 134 of the Highways Act 1980, whether or not there are vehicular rights over it.
- (f) If the Wildlife and Countryside Bill is enacted then, subject to the approval of the appropriate committee of the County Council, an amendment order can be made under Section 39 to show these lanes as byways open to all traffic. Once they are shown as byways, it will not be possible for the landowner to plough them nor to apply for permission to erect new gates across them. It will also have the effect of making it clear to all concerned that these lanes are ancient public carriageways. A copy of the proposed legislation is enclosed for your information.
- (g) No.

Perhaps you would be kind enough to confirm whether or not these proposals meet with the approval of your client. If not, would you please let me know what other action she would like the County Council to take.

Yours faithfully,

County Solicitor

Messrs. Christopher Gowers,
Solicitors,
Alliance House,
3 George Street,
Oxford.
OX1 2AP

Enc.

CS/gjm/C23.2

N/2/36/7/RJW/DS

485

27th May, 1981

Mr. Whiting

Dear Sirs,

Head Lane, North Nottson and Westholme Lane, Pilton

Thank you for your letter of 19th May.

I have now received a report from the County Surveyor and he tells me that the lanes have been inspected and it has been found that there are gates at points A, B, C, D and E on the attached plan. Gates A and B appear to be old gates on an old site and, as I have said before, it is thought they have been there for many years and action will not be taken to remove them.

Gates C, D and E are new steel gates which have recently been erected. I have asked the County Surveyor to arrange for their removal and, if he is unable to do so, the matter will be referred to me for action. If necessary, I shall serve a notice under Section 143 of the Highways Act 1980. The County Surveyor asks me to say that there are only two gates at points D and E and not four as shown on your plan.

The surface of these lanes appears to have deteriorated no more than one would expect by the passage of tractors, cattle etc. In fact, surface holes have been filled with rubble to ease the passage of vehicles.

Yours faithfully,

County Solicitor

Christopher Gowers,
Solicitors,
Alliance House,
3 George Street,
Oxford
OX1 2AP

CC/GJM/L23.2

A/12/36/7/MJB/AB

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Mr. Boon

14th December, 1981

Dear Sir,

Road Lane, North Wootton and Westholme Lane, Pilton

I refer to your letter of 26th October, on which I now have the County Surveyor's comments. I am afraid that the Rights of Way Officer previously dealing with the matter has left the service of the Authority, and his replacement has only recently been appointed. He has informed me that a further inspection has indicated that gates C, D and E are still in position.

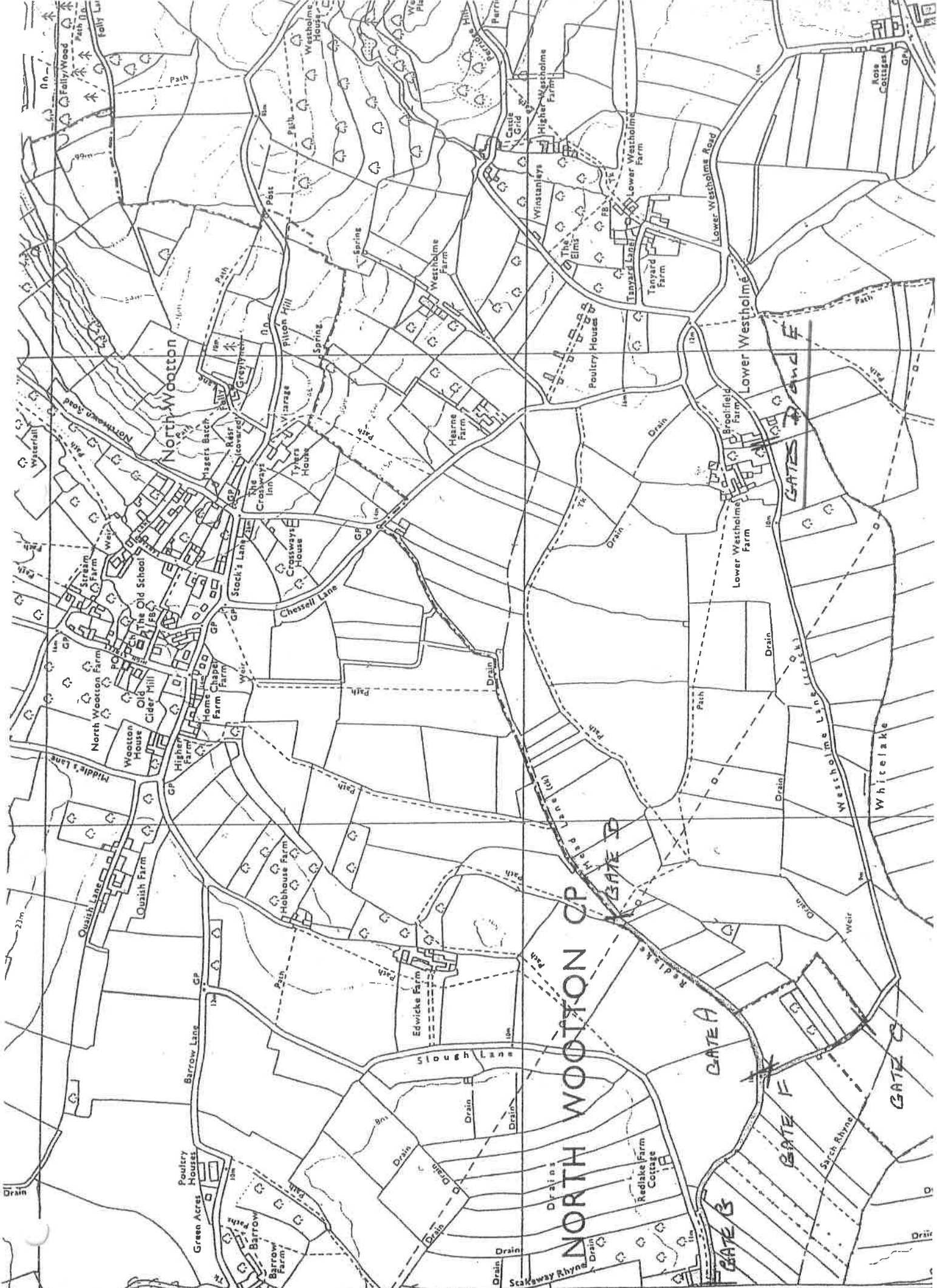
He has asked his Divisional Surveyors to speak to the farmers direct, and will inform me if the farmers are not prepared to co-operate in removing them.

I have asked to be informed as to the outcome of the Divisional Surveyor's visit, and will let you know accordingly.

Yours faithfully,

County Solicitor

Christopher Gavers, Solicitor,
Alliance House,
3 George Street,
Oxford.



FW

MEMORANDUM

From:- THE DIVISIONAL SURVEYOR
NORTH EAST DIVISION

To:- THE COUNTY SURVEYOR

My reference:- RGS/DF/F.200

Your reference:- R/F/2/36/RS

Date:- 15 December 1981

Meade Lane / Westholme Lane, Pilton

Reference your memo of the 10 December 1981, the gates were erected by
Mr. of

At a meeting this morning, Mr. stated he was not intending to remove the gates as they caused no obstruction, not being locked at any time and easily operable. He maintains that in a telephone conversation with the County Solicitor's office - about five months ago - he was told it would not be necessary to remove them, nor would he be made to do so. He cannot say whether this was confirmed in writing.



County Divisional Surveyor

NORTH WOOTTON PARISH COUNCIL

[REDACTED]
[REDACTED]
Shepton Mallet



Tel. No. Shepton Mallet
248.

29th January 1981

Dear Sir,

Re: Green Lanes in North Wootton Parish

I am instructed by my Council to write to you regarding Mead Lane and Westholme Lane and certain complaints which have been made to you by [REDACTED]

[REDACTED] These relate to the gating of these lanes by adjoining owners, removal of hedges and ploughing.

We understand that you have referred to and queried the description of these lanes on the definitive map and have suggested that you are not prepared to give the matter positive attention until a review of the definitive map.

The lanes in question are public highways and have been for generations. This has always been recognised by the Parish Council and by local knowledge. As such they should be kept clear and open for access by the public and your Council has a duty to ensure that this is done. This is a duty which it seems is not being fulfilled at the present time.

May I please have your assurance that your Council will now take positive action to make sure that these lanes remain open and unobstructed in any way and that nuisance from stock straying on to the highways is prevented.

Yours faithfully,

The County Solicitor
Somerset County Council,
County Hall,
TAUNTON.

[Handwritten signature]

~~Her~~. Secretary

255624

Mrs J H Baker
Clerk to Pilton Parish Council
"Sharphayn"
Westholme Road
Pilton
SHEPTON MALLET
Somerset
BA4 4ED

Mrs Smith
R/17/2/33/AS

3 January 1988

Dear Mrs Baker

WESTHOLME LANE KNOWLE WESTHOLME PILTON

Thank you for your letter dated 2 January 1988.

Mead Lane and part of Westholme Lane are shown on the Definitive Map as
bridleways. The remainder of Westholme Lane, in Pilton Parish, is not shown on
the Definitive Map although it was always thought that it should have been
included as a bridleway. However, it is accepted that Westholme Lane is a
non-definitive public right of way open to pedestrians and horses.

Unfortunately, no plans exist to review the Definitive Map so I am unable to say
when the status of Westholme Lane is likely to be confirmed. If your Parish
Council feels this is a matter of urgency, they can apply to have the Definitive
Map amended to include this lane under the Wildlife and Countryside Act 1981.
Since it is not shown on the map, it does not have a number.

The maintenance of stiles on public rights of way are the responsibility of the
landowner although 25% of the cost of replacement or repair can be reclaimed
from the County Council.

Yours sincerely



For County Surveyor

SJ

PILTON PARISH COUNCIL

R/F/2/39

"Sharomayn",
Westholme Road,
PILTON,
Shepton Mallet,
Somerset,
BA4 4EB

^{22nd}
~~15th~~ November, 1988

Dear Mr. Bott,

Westholme Lane

It has been suggested by our Footpaths Committee that the track known as Westholme Lane, highlighted on the attached map, should become a public right of way as a bridleway and we believe that the land owners concerned would be willing to enter into a dedication agreement to achieve this. We understand that Section 30 of the Highways Act 1980 provides for such dedication agreements to be entered into by the Parish Council and it could be that this would be the quickest and most cost efficient way of going about it.

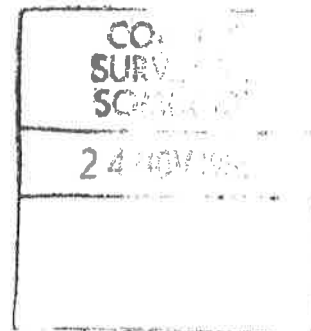
However, before we pursue this idea we would like your opinion, particularly on the suitability of the track as a bridleway and your confirmation that once the dedication agreement was entered into, the right of way would immediately be entered on the Definitive Map and that you would ensure its future maintenance. We would point out that where this track crosses the Parish boundary into North Wootton it becomes a public right of way as a bridleway.

Yours sincerely,

J.M. Baker

Mrs. J.M. Baker,
Clerk

D. Bott, Esq.,
County Surveyor, *S. Dept.*,
Somerset County Council,
County Hall,
Taunton, TA1 4DY



is into

7

W/2/39

PILTON PARISH COUNCIL

Grey Gables,
PILTON
Shepton Mallet,
Somerset,
BA4 4DB

For the attention of Mr. Bott

12th November, 1990

Dear Sir,

Westholme Lane, Pilton, Somerset

Further to the previous correspondence between Pilton Parish Council and yourself, I am enclosing a copy letter from the County Solicitor dated 31st March, 1981, confirming that Westholme Lane is a public carriageway. As you know, this Council had been seeking to establish that the public had the right to walk and ride along Westholme Lane, by means of dedication by the land owners involved, but it appears from the enclosed that this fact was already established in 1981.

I would accordingly be grateful if you would now confirm that Westholme Lane will be added to the Definitive Map as a public bridleway.

I would also be grateful if you could supply a plan of the non-maintained County roads in the Parish of Pilton.

Yours faithfully,

M.A.H. Fraser
Chairman

COUNTY SURVEYOR SOMERSET
19 NOV 1990

County Surveyor,
Somerset County Council,
County Hall,
TAUNTON,

12/11/90

Grey Gables,
PILTON?
Shepton Mallet,
Somerset,
BA4 4DB

For the attention of Mr. Bott

Dear Sir,

Westholme Lane, Pilton, Somerset

Further to the previous correspondence between Pilton Parish Council and yourself, I am enclosing a copy letter from the County Solicitor dated 31st March, 1981, confirming that Westholme Lane is a public carriageway. As you know, this Council had been seeking to establish that the public had the right to walk and ride along Westholme Lane, by means of dedication by the land owners involved, but it appears from the enclosed that this fact was already established in 1981.

I would accordingly be grateful if you would now confirm that Westholme Lane will be added to the Definitive Map as a public bridleway.

I would also be grateful if you could supply a plan of the non-maintained County roads in the Parish of Pilton.

Yours faithfully,

M.A.H. Fraser
Chairman

County Surveyor,
Somerset County Council,
County Hall,
TAUNTON,
Somerset.

Surveyor's Department
County Hall
Taunton TA1 4DY

R J Chapman CEng MICE MIHT MBIM
County Surveyor

Telephone Taunton (0823) 333451

Telex 46682

Fax (0823) 332773

Direct line Taunton 255657

please ask for
Mrs Burger

extension

Mr M A Fraser
Chairman
Pilton Parish Council
Grey Gables
Pilton
Shepton Mallet

my reference
RW/2/39/SWB

your reference

26th November 1990

Dear Mr Fraser

WESTHOLME LANE -- PARISHES OF NORTH WOOTTON AND PILTON

Thank you for your letter of 2 October 1990.

I am sorry for the delay in replying but I have been looking into the history of this lane as shown on my records.

In December 1980, in a report to the Planning Sub-Committee, the County Solicitor stated that research had shown that Westholme Lane was an ancient highway.

At first the County Solicitor had been of the opinion that the status of the lane was not clear but in the light of evidence from the County Archivist and others he then accepted that it was a public carriageway and should have been shown on the Definitive Map as a RUPP.

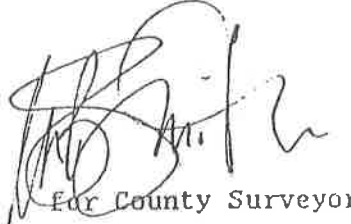
At the time of the survey Westholme Lane was not recorded on either of the two Parish maps which it crossed - ie North Wootton and Pilton. In a reply to an inquiry in 1957 the Clerk of the County Council said that a note was being made to add the Pilton Section of Westholme Lane to the Definitive Map at the Review Stage and that the North Wootton section would be added at the Modification stage. The North Wootton section was subsequently added as a bridleway but the longer Pilton section remained to be included during a Review, which is unlikely to occur in the near future. Therefore according to my records Westholme Lane still remains as a public right of way (of bridleway status) for only that section within the parish of North Wootton.

I enclose copies of extracts showing the results of research carried out outside my department into an earlier history of the lane.

In view of this information there are two possibilities of trying to get the remainder of Westholme Lane put onto the Definitive Map. One is to pursue the dedication of public bridleway rights. Although some time has elapsed since I heard from your Council, I had hoped dedication of the last section would have been obtained.

Alternatively your Council could apply, with supporting evidence, to modify the Definitive Map by the addition of a bridleway or a byway open to all traffic if the user or documentary evidence is available. If you wish to pursue this last course of action I will send you the necessary forms for completion.

Yours sincerely



for County Surveyor

Enc

MJM

Hamlet for your records.
I will pass on any info as I get it! Pano.
10

To: County Solicitor,
Somerset County Council, County Hall, Taunton, Somerset

TAKE NOTICE that I [REDACTED], claim that the way described in the Schedule hereto is a highway maintainable at public expense.

AND TAKE NOTICE that the said way at grid reference 556403 to the hamlet of Lower Westholme and being a distance of approximately 1250 metres or thereabouts is out of repair.

AND TAKE NOTICE that I hereby require you pursuant to sub-section (1) of Section 56 of the Highways Act 1980 to state:

- a) whether you admit that the said way is a highway maintainable at the public expense, and
- b) whether you admit that you are the authority liable to maintain the said portion of way.

Dated the 18th day of February 2005.

[REDACTED]

SCHEDULE

The public carriageway known as Westholme Lane in the parish of Pilton as described in a letter from the County Surveyor to Mr M A Fraser, Chairman, Pilton Parish Council (reference RW/2/39/SWB).

(1)

To: [REDACTED]
Of: [REDACTED]

On 25th February you served on the Somerset County Council as Highway Authority a notice under the Highways Act 1980 section 56(1) requiring the Council to state whether the Council admits that the way described in the schedule is a highway and that the Council is liable to maintain it.

PLEASE TAKE NOTICE that the Council does not admit that the way shown on the enclosed plan is a highway and that it is liable as Highway Authority to maintain it.

Dated 14 March 2005

SCHEDULE

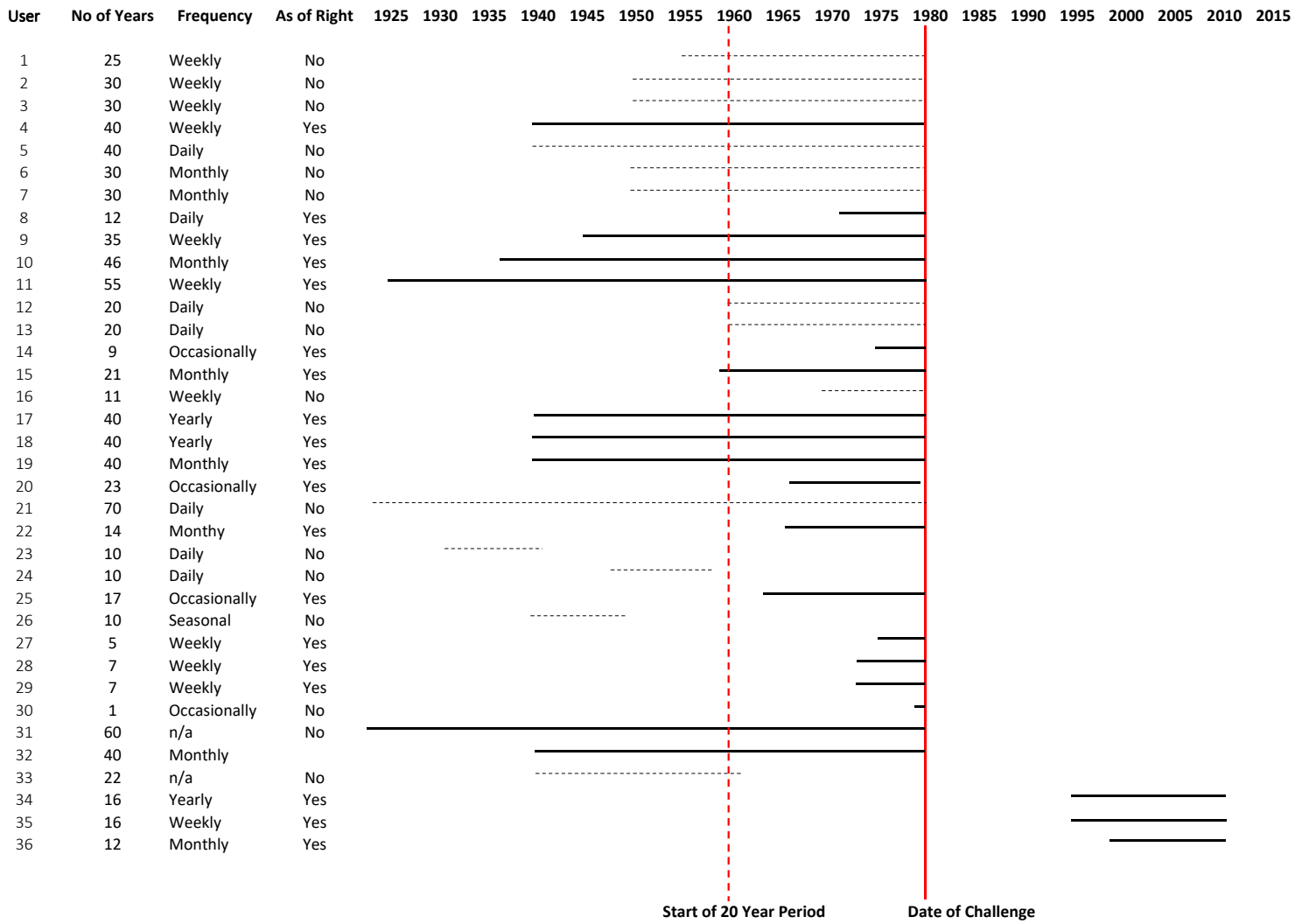
Part of Westholme Lane, Pilton as shown on the enclosed plan.

Signed [Signature]
County Solicitor
Somerset County Council



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Summary of User Evidence



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WILDLIFE AND COUNTRYSIDE ACT 1981
PUBLIC RIGHTS OF WAY LANDOWNER EVIDENCE FORM
(Please see accompanying notes and attached plan.)

- 1 JUN 2011

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

Description of path (to be filled in by the applicant).

From: WESTHOLME LANE TRACK FROM LOWER WESTHOLME ROAD

To: THE PILTON AND NORTH WOOTTON PARISH BOUNDARY WHERE WESTHOLME LANE TRACK BECOMES HEAD LANE BRIDLEWAY.
District / Parish: PILTON

(To be filled in by landowner)

*Please delete as appropriate.

Full Name: [REDACTED]
Address: [REDACTED]

Tel: (day) [REDACTED] Tel: (eve) [REDACTED]

Mobile: [REDACTED]

1. The route of the way is shown on the accompanying plan. Does this route cross your land? YES / NO
(If not, no further questions need be answered)

If yes, please indicate on the plan the position of your land.

2. Do you own this land or do you tenant this land? OWNER

3. During what years have you owned or occupied this land? Since April 2000

4. Do you believe the claimed way to be public? YES / NO
a. If yes, do you believe it to be a footpath / bridleway / restricted byway / byway open to all traffic?

NB. When buying the farm we visited the Rights of Way department at County Hall in Taunton. We were informed that this was an "Accommodation lane". I.e. owners of land along the lane could use the lane, it is not a Public Right of Way.

For how long have you held this belief? Since 2000

5. Have you seen, or been aware of, members of the public using this way? YES NO

If yes please state the period, regularity and nature of such use:

6. Have you ever required people to ask your permission before using the way? ~~YES~~ NO

If yes, please state the period, regularity and nature of such use:

If yes, please state who you gave permission to:

7. Section 31 of the Highways Act 1980 assists landowners in the management of their land by allowing them to deposit a statement with the Highway Authority to the effect that apart from recorded rights of way they do not intend to dedicate others. Have you deposited a section 31 (Highways Act 1980) plan and statement? YES NO

If so please give the date of the declaration:

8. Have you, or has someone on your behalf, ever stopped anyone from using the way? YES NO

If so, please give details and approximate dates:

9. Have you, or someone on your behalf, ever told anyone using the way that it was not a public right of way? YES NO because not seen anybody

If yes, please give details and approximate dates:

10. Have you ever erected notices or signs stating that the way was not public? YES NO

a. If yes, please give details and approximate dates: Neighbours has done so during Glastonbury Festival last year, put up by the festival team

b. State whether the notices or signs were ever defaced or destroyed:

c. Mark their position on the accompanying plan: ✓

*Please delete as appropriate.

11. Do you have any documents (e.g. title deeds etc) or other evidence that would help to clarify the status of the way? YES / NO*

Our solicitor has the deeds to the farm.

If yes, can this evidence be made available for inspection by the County Council? YES / NO*

Yes - at the Councils expense - if you wish to contact the solicitor.

12. Is there any further information that would help to clarify the status of the way?

When we moved here our neighbour (at Wellhays Farm) was Councillor [redacted]. He has been contacted on this matter (by the people to whom he sold the house - [redacted]) & is adamant that there is no public right of way along this track. He has offered to speak for us all at any public meeting.

13. DECLARATION

I am / ~~was~~ willing to attend a public inquiry to give evidence on this matter, should this prove to be necessary.

I hereby certify that, to the best of my knowledge and belief, the facts that I have stated are true.

Signed:.....

Dated: 29-5-11.....

Witness Signature:.....

Date: 29.5.11.....

Name and address of witness (block capitals): [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted]

All the completed forms and appropriate documentation should be attached to this form and returned to

Rights of Way Definitive Map Team
Somerset County Council
County Hall
Taunton
Somerset
TA1 4DY



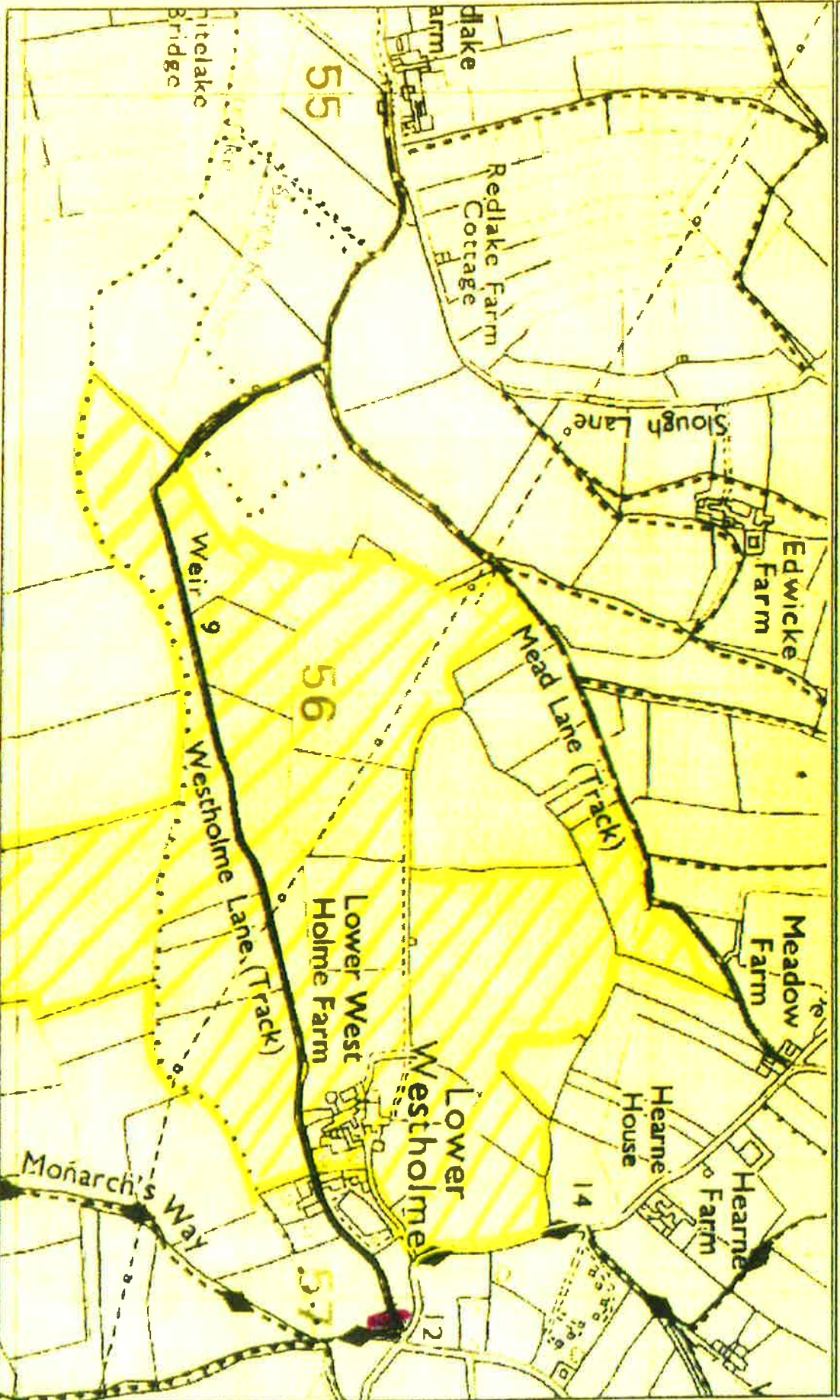
*Please delete as appropriate.

If you require assistance in completing this form please phone a member of the Rights of Way Definitive Map Team on (01823) 355417 or email to RightsofWay@somerset.gov.uk

Westholme Lane, Pilton

Land owned by [redacted]

position of festival 'no entry' signs last year



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Date 9/9/2009
Scale 1/8880
Centre = 356014 E 140861 N



**WILDLIFE AND COUNTRYSIDE ACT 2001
 PUBLIC RIGHTS OF WAY LANDOWNER EVIDENCE FORM**
 (Please see accompanying notes and attached plan.)

ENVIRONMENT
 18 MAY 2011
PLANNING
CONTROL

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

Description of path (to be filled in by the applicant). WEST HOLME LANE TRACK
 From: LOWER WEST HOLME ROAD (see Map. W.H.T. marked in red)

To: PARISH BOUNDARY BETWEEN PILTON and NORTH WOOTTON
 PARISH WHERE TRACK BECOMES HEAD LANE BRIDLE PATH
 District / Parish: PILTON

(To be filled in by landowner)

*Please delete as appropriate.

Full Name: [REDACTED]

Address: [REDACTED]

Tel: (day) [REDACTED] Tel: (eve) [REDACTED]

Mobile: [REDACTED]

1. The route of the way is shown on the accompanying plan. Does this route cross your land? **YES** NO*
 (If not, no further questions need be answered)

If yes, please indicate on the plan the position of your land.

2. Do you own this land or do you tenant this land?.....
 Owner:

3. During what years have you owned or occupied this land? 4 1/2 years

4. Do you believe the claimed way to be public? YES **NO**
 a. If yes, do you believe it to be a footpath / bridleway / restricted byway / byway open to all traffic*
 W

For how long have you held this belief?

Since we started the purchase of the property

5. Have you seen, or been aware of, members of the public using this way?

YES NO*

If yes, please state the period, regularity and nature of such use:

Only very few (as little as 5) in the last few years. Usually trying to find the footpath (Maraich's way).

It now however has been signposted.

6. Have you ever required people to ask your permission before using the way?

YES NO*

If yes, please state the period, regularity and nature of such use:

If yes, please state who you gave permission to:

7. Section 31 of the Highways Act 1980 assists landowners in the management of their land by allowing them to deposit a statement with the Highway Authority to the effect that apart from recorded rights of way they do not intend to dedicate others. Have you deposited a section 31 (Highways Act 1980) plan and statement?

YES NO*

If so please give the date of the declaration:

8. Have you, or has someone on your behalf, ever stopped anyone from using the way?

YES NO*

If so, please give details and approximate dates:

9. Have you, or someone on your behalf, ever told anyone using the way that it was not a public right of way?

YES NO*

If yes, please give details and approximate dates:

July 2010 - looked for Maraich's way footpath - could not see old signage.

10. Have you ever erected notices or signs stating that the way was not public?

YES NO*

a. If yes, please give details and approximate dates:

During Glodougou festival - signs (temporary) to stop unwanted traffic and park across the track.

b. State whether the notices or signs were ever defaced or destroyed:

N/A

c. Mark their position on the accompanying plan:

*Please delete as appropriate.

11. Do you have any documents (e.g. title deeds etc) or other evidence that would help to clarify the status of the way? YES / NO*

If yes, can this evidence be made available for inspection by the County Council? YES / NO*

12. Is there any further information that would help to clarify the status of the way?

All appropriate searches were undertaken at the time of the purchase of our property. No public access was shown.

Evidence from the previous owner (Councillor ~~Bob Williams~~) was submitted to declare it was used by himself and neighbouring farmers - ~~William and Ann~~ as ~~observed~~ a customary way to get to their land for management purposes i.e. hedge cutting

13. DECLARATION

I am ~~am not~~ willing to attend a public inquiry to give evidence on this matter, should this prove to be necessary.

I hereby certify that, to the best of my knowledge and belief, the facts that I have stated are true

Signed: [Redacted]

Dated: 16.5.11

Witness Signature: [Redacted]

Date: 16.5.11

Name and address of witness (block capitals):
[Redacted]
[Redacted]
[Redacted]
[Redacted]

All the completed forms and appropriate documentation should be attached to this form and returned to

Rights of Way Definitive Map Team
Somerset County Council
County Hall
Taunton
Somerset
TA1 4DY



*Please delete as appropriate.

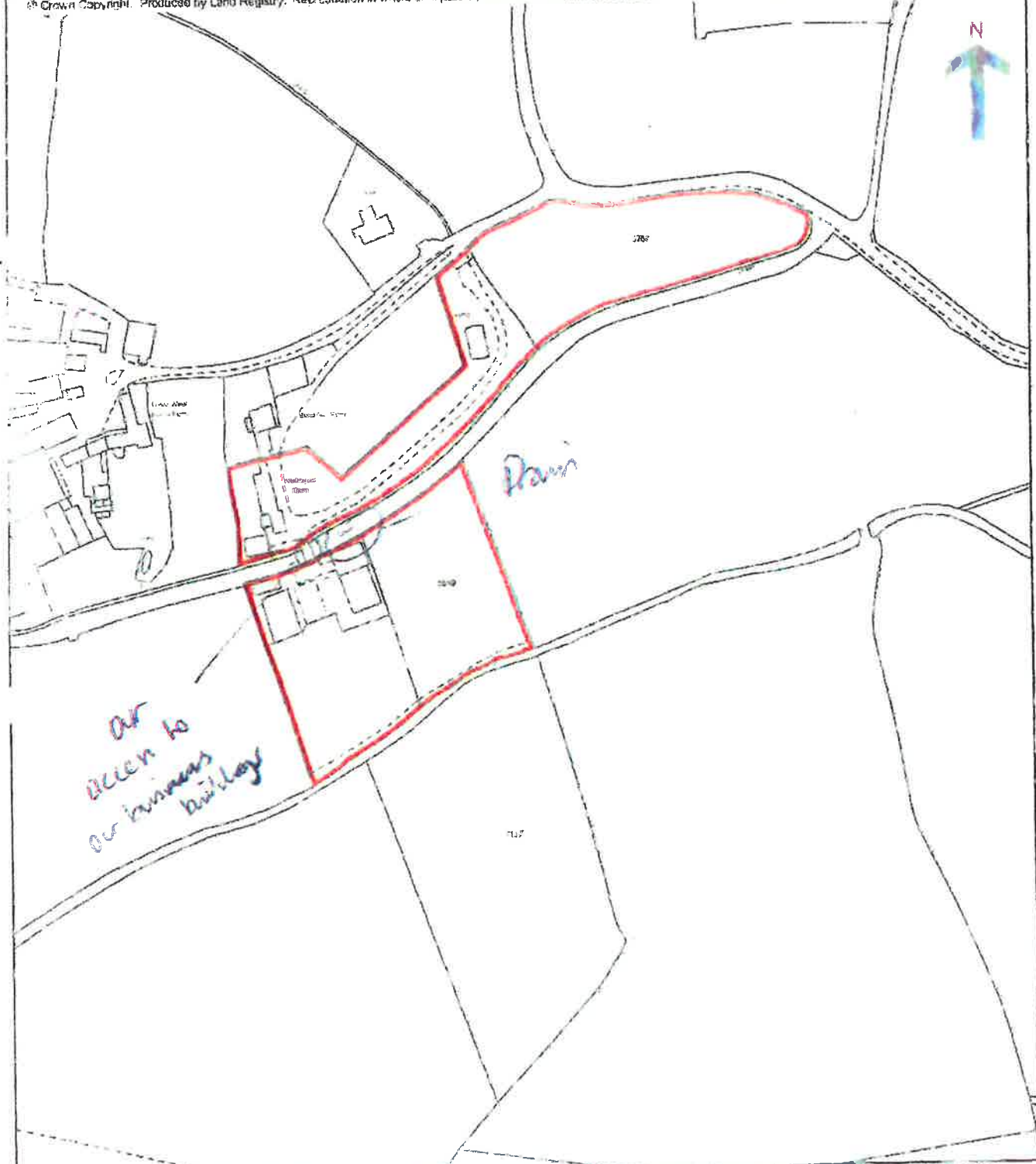
If you require assistance in completing this form please phone a member of the Rights of Way Definitive Map Team on (01823) 355417 or email to RightsofWay@somerset.gov.uk

Land Registry
Official copy of
title plan

Title number **WS40671**
Ordnance Survey map reference **ST5640NE**
Scale **1:2500**
Administrative area **Somerset: Mendip**

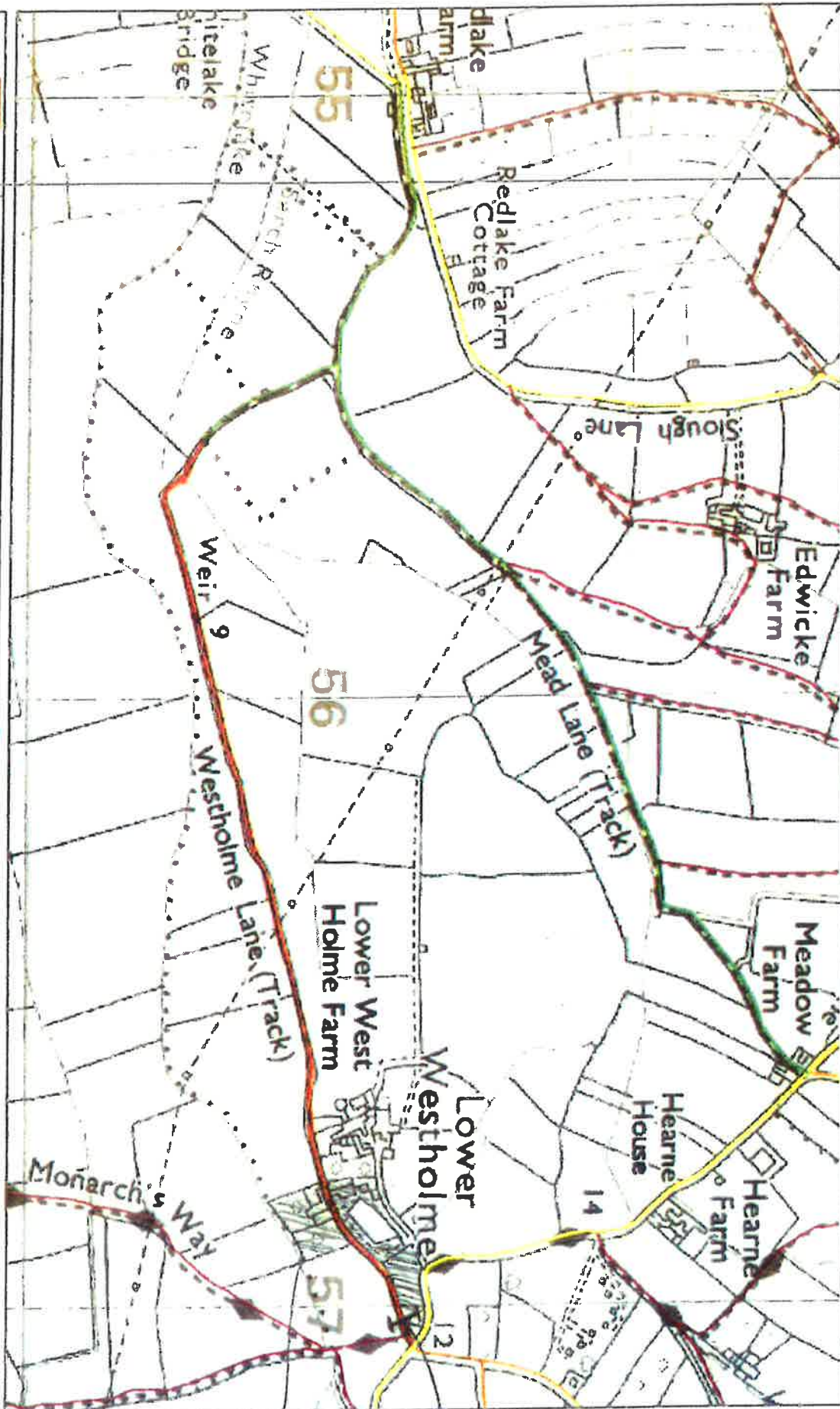


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This official copy issued on 9 May 2007 shows the state of this title plan on 9 May 2007 at 11:53:04. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans. This title is dealt with by Land Registry, Weymouth Office.

Westholme Lane, Pilton



*Fishpond signs
Our land
Suckled*



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Date 9/9/2009
Scale 1/8690
Centre = 356014 E 140661 N



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PART 2 – GENERAL CONSIDERATIONS

Consideration of Evidence

- 2.12 An analysis of hearing or inquiry evidence usually comprises three stages: the identification of fact, the derivation of an inference from that fact, and an assessment of the evidential weight of the inference.

Identification of Fact

- 2.13 When a document is introduced at a hearing or inquiry, the facts it contains become [inquiry] evidence, whether relied upon by the witness or not. Consequently, it is necessary to consider the portion of the document on which the witness relies, not by itself, but in context. Similarly, it is necessary to study maps carefully to see whether the feature relied upon is supported by other information on the map. As Mummery L J said in *O'Keefe*¹ ... *it is important to read all the documents ... as a whole and not to examine passages taken out of context.* If appropriate, Inspectors should attempt to resolve any apparent inconsistency by questioning the witness who introduced the document. Such additional evidence can often be of value to the Inspector later, when considering the issues. Section 32 of Highways Act 1980 (HA 80) indicates how the Inspector should evaluate a document as a whole and determine the weight to give to the facts derived from it.

Inference

- 2.14 More often than not documentary evidence will not supply a seamless array of facts leading to a confident conclusion. In such cases, gaps in evidence may be bridged by the use of one or more of a number of legal presumptions. One of them is contained in the maxim: *Once a highway, always a highway*². This presumption must prevail unless some legal event causing the highway to cease can actually positively be shown to have occurred. Another – what is termed the 'presumption of regularity' – can be invoked where there is a lack of evidence on whether proper legal procedures were followed.
- 2.15 An approach to the application of an inference derived from evidence was suggested by McCullough J in *West Yorkshire MCC v Harry Brown* (1983). The decision-maker should give ... *careful consideration of what should prima facie be drawn from a fact and then see whether, upon consideration, this should be rebutted or whether it should ripen into an inference upon which further conclusions may in turn be based.* However any inference must be tested against other hearing or inquiry evidence. No matter how reasonable the inference drawn, it is generally no more than a rebuttable presumption.

¹ *O'Keefe v SSE and Isle of Wight Council* [1997]

² *Dawes and Hawkins* [1860]

Evidential Weight

- 2.16 When all the material considerations have been identified, the weight attaching to the evidence as a whole must be assessed. Most recent case law guidance is to be found in the *Hollins v Oldham* 1995 (C94/0206, *unreported*) judgment.
- 2.17 There is a distinct and important difference between the 'cumulative' and 'synergistic' approach to the weighing of evidence. Under the cumulative approach a number of relatively lightweight pieces of evidence (e.g. three commercial maps by different cartographers, all produced within the same decade or so) could be regarded as mere repetition. Thus, their cumulative evidential weight may not be significantly more than that accorded to a single map. If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.
- 2.18 Section 32 of the Highways Act 1980 requires any court or tribunal to which documentary evidence is adduced to take such evidence into consideration "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". It is also required by that section to give such weight to the document it considers is "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 was produced."
- 2.19 Section 32 is declaratory of the common law. Inspectors should follow it in how they treat documentary evidence. In assessing the value of a document, Inspectors should, for example, take into account evidence of the facts surrounding its creation and its provenance such as, in the case of a private map, the reputation of the person who produced it. The surrounding circumstances may point to a document being of some weight.
- 2.20 For example, the document may have been prepared by someone acting in a public capacity, the procedures for producing it may have involved external checks or public participation, or what was recorded may be the result of a person acting against his interest. A document may not on its own be conclusive of the status of a way. This may, for example, be because it was prepared merely to record the physical existence of the way or who was responsible for maintaining it. Documentary evidence will often support other such evidence or user evidence and so ought not to be considered in isolation.
- 2.21 In general, the weight to be attached to documentary evidence is for the Inspector, subject to the administrative law test of reasonableness.

Balance of Probability

- 2.22 Once all of the evidence has been individually assessed, the 'balance of probability' test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act, involving careful assessment of the relative values of the individual pieces of evidence and the evidence taken together. It is the infinitely variable nature of this assessment which makes WCA 81 case decisions unique.

Written Evidence

- 2.23 It is unusual for all statutory and other contributors of evidence to be able to appear at a hearing or inquiry. They may present written representations in the form of Statutory Declarations, Witness Statements made to a solicitor, User Evidence Forms, statements which would serve as a proof of evidence had the author appeared (often supported by the documents relied on) or simply letters to The Planning Inspectorate or the Inspector. Provided that these documents pass the test of relevance they must be examined for material considerations. The latter then form part of an Inspector's post-hearing or inquiry deliberations. The evidential weight attaching to the various types of evidence can vary. Legally attested documents will carry more weight than other statements. The need for critical scrutiny of User Evidence Forms is addressed in 'Dedication.' Other written representations should be subjected to similarly disciplined scrutiny. However, evidence tested in cross-examination is best evidence. Untested post-hearing or inquiry submissions should normally be accorded less weight.

SECTION 6 HIGHWAY RECORDS AND RELATED DOCUMENTS

REFERENCE MATERIAL

Statutes

Highway Act 1835 – sections 5 & 23

Highways Act 1862

Public Health Act 1872

Highways and Locomotives Act 1878 (see 'Turnpikes')

Local Government Act 1894

Local Government Acts 1924, 1929

Rights of Way Act 1932

National Parks and Access to the Countryside Act 1949

Highways Act 1980

Note: The above list is not exhaustive. They are some of the acts from which Highway Records may emanate.

Case Law

R v SSE & Somerset CC ex parte Masters [1999] CO3453/97 – amongst other things, evidential status of 1929 Handover Maps

Fortune and others and Wiltshire County Council [2010]EWHC 2683 (Ch) and [2012] EWCA Civ 334 – thorough examination of relevant highway documents and their evidential value

Other Publications

Articles in Sections 1 (History) and 9 (Evidence of the Existence of Highways) of the RWLR.

GUIDANCE

Introduction

- 6.1 All highway records have to be interpreted carefully, with particular attention paid to the meanings of words within the given context. Usually they will provide suggestive, rather than conclusive, evidence on the case as a whole, but they may be conclusive evidence of what they purport to show. Below are listed some of the types of highway records that may be presented at inquiries, with some general commentary. It is helpful, in understanding 19th century evidence, to know something of the development of the highway network in England and the legal framework within which the development took place. The RWLR article on 'Highway Use and Control up to 1895' provides a useful outline.

Manorial Records

- 6.2 Manorial records may include Court Rolls (which carry the same weight as their successors in Quarter Sessions); and books and papers relating to a variety of matters, including references to issues connected with highways and bridges.

Quarter Sessions and Petty Sessions

- 6.3 Quarter Sessions records go back a long way. They may provide conclusive evidence of the stopping up or diversion of highways. Presentments or indictments for the non-repair of highways may also be found here and may provide strong evidence of status where they are confidently identifiable. It should be borne in mind that Quarter Session records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters. Reliance on orders alone can be misleading and evidence of completion may be required. Petty Sessional records may also be a source of evidence.

Deposited Plans of Public Undertakings

- 6.4 The legal deposit of plans or public undertakings was first provided for in the 1793 Standing Orders of the House of Lords. The need for such deposits was recognised following the canal mania of the early 1790s when it became evident that canal bills were being hurried through Parliament without proper scrutiny. Thereafter, promoters of canal or waterworks bills (and later bills for other public undertakings) were required to submit to the Lords plans of works, books of reference, and other papers before a bill was brought up from the Commons to the Lords. In 1837 an Act compelled the local deposit of plans of public undertakings with the Clerk of the Peace, although in practice local deposit had been taking place from a much earlier date.
- 6.5 Plans of canals, river navigations and highway diversions are common from 1793 onwards. By the early 19th century, records of harbour works and turnpike improvements are also found. From 1829 until the late 19th century railway undertakings predominate. (Canal, Railway and Turnpike

documentary evidence is covered in more detail in later sections of these guidelines). Papers relating to schemes for street lighting, tramways, gas, electricity and water undertakings become numerous in the late 19th century.

- 6.6 Any of these various types of document may provide evidence on adjacent paths, roads or tracks and therefore could be relevant as evidence in relation to the existence of Highways.

County Records

- 6.7 County records go back into the 19th century and may consist of any of the following, in addition to those items already mentioned:

County Surveyor's Annual/Quarterly Reports

Report of County Works Committee

Special Reports on Main Roads

Various minutes, estimates, tenders and grants

Rights of Way Reports

1929 Handover Maps and Records

County List of Streets

County Surveyor's Map and other records of Roads and Bridges

Aerial Photographs

Definitive Maps and Statements

Often these records bear notes relating to rights of way. Some of the annotations may have been for internal administrative purposes and may sometimes reflect only the views of the surveyor or engineer of the day. The evidence they provide therefore needs to be viewed in context. An article in Section 9 of the RWLR called 'Highway Authority Records' provides helpful background, particularly on those relating to County Roads and the Definitive Map.

1929 Handover Maps

- 6.8 The following comments apply to the 1929 and all other formal handover/takeover documents and to today's List of Streets⁸. The view that this form of documentary evidence may be relevant appears to have been endorsed by Hooper J in *R v SSE and Somerset County Council ex parte Masters 1999*. The Secretary of State for the Environment (SSE) had argued that such documents were a positive indication of what the Highway Authority then believed to be the status of the roads listed.

⁸ Section 36(6) of the Highways Act 1980 requires every highway authority to make and keep up to date, a list of streets within its area which are highways maintainable at the public expense.

Hooper J rejected as irrelevant a counter argument that SSE's conclusion was one which could not lawfully be reached in the light of *Stevens v SSE 1998*. He found that SSE's decision to treat the handover documentary evidence as a relevant consideration had not been one that no reasonable tribunal could have taken on the evidence available, i.e. it was not 'Wednesbury unreasonable'⁹. It should be noted that it is unsafe to hold that the fact that a road does not appear to have been accepted by the new highway authority at the time of handover necessarily suggests that it can not have been a highway.

- 6.9 The evidential strength of handover and similar documents is that they are conclusive evidence of the highway authority's acceptance of maintenance responsibility, a commitment that would not normally have been undertaken lightly. However, Inspectors should be mindful that these documents were principally for internal administrative use, were not readily available to the public and did not purport to be a record of rights. Consequently, while such evidence may weigh in favour of the existence of public rights, their evidential weight will be for the Inspector to decide in the context of other evidence.

Highways Act 1980 Section 56

- 6.10 It is sometimes argued that a successful claim against a highway authority under HA80, s56, at the Magistrates' Court and is a legal event which establishes a public right. The Court's decision may be legal evidence of a maintenance responsibility, and may be evidence in support of public rights; but it is not, in itself, conclusive in that respect.

Deposited Maps of Admitted Rights of Way

- 6.11 Under s31(6) of the Highways Act 1980 a landowner can deposit with the appropriate Council a map of their land on a scale of not less than 6 inches to the mile with a statement indicating what ways (if any) over the land they admit to have been dedicated as highways. If this is done, a statutory declaration by the owner or his successors in title should be lodged within 10 years to the effect that no additional way (other than specifically indicated in the declaration) has been dedicated. Similar statutory declarations should be made every subsequent 10 years.¹⁰ As this procedure was first introduced in the Rights of Way Act 1932, records of any statutory declarations made can go back many years. In the absence of proof to the contrary, a properly made statutory declaration of this type is sufficient evidence to rebut the intention of the owner or his successors in title to dedicate any additional highway during the associated relevant period. Councils are required to keep a register of these deposits and declarations for public inspection.¹¹

⁹ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1KB223

¹⁰ This figure was amended from six years to 10 years by the Countryside and ROW Act 2000 and came into force in England on 13 February 2004 and in Wales on 31 May 2005. Transitional provisions apply to deposits and declarations made prior to the change.

¹¹ Brought into force in England on 1 October 2007 (Statutory Instrument 2007/2334) and in Wales on 15 January 2006

- 6.12 Following the 1932 Act, many local authorities began to produce lists and maps usually only of non-vehicular rights of way, which may survive in more or less detail. Such documents may reflect the view of the authority, and may provide supporting evidence of the status of a way, but are not conclusive.

Parish Records

- 6.13 Prior to 1894 when the Local Government Act transferred responsibility for the maintenance of public highways to Rural District Councils, such responsibility generally belonged to the parish. Relevant Acts often included provision for the use of locally available materials and there was a statutory requirement upon parishioners to fulfil a fixed annual labour commitment. The final responsibility for maintenance lay with the local Surveyor of Highways who was obliged to keep a detailed account of public monies expended. Some of these records survive, usually in county archives. Under the 1862 Act parishes could combine to form Highway Boards, and their records are also found in county archives.
- 6.14 It is generally accepted that longer distance use of horse drawn vehicles increased significantly during the late 18th and early 19th century. Some highways which had been adequate for hooped traffic were unsuitable for wheeled traffic and consequently fell into disuse. Parishes were often reluctant to expend time, money and effort for the benefit of travellers who merely passed through. It was frequently the maintenance of highways, which was the main point of contention in legal wrangles concerning the highway network, not the rights to use a particular highway.
- 6.15 Because of the reluctance of some parishes to spend money on highway maintenance, a rebuttable presumption can arise from an entry in a local Highway Surveyor's Account Book. However, it is necessary to check that the highway can be identified accurately from the records. Some of the names used may since have been changed, corrupted or, like some highways, have fallen into disuse.
- 6.16 More recent parish records are also of great importance, particularly those relating to the Parish Survey from which the Definitive Map followed. These usually include a statement which accompanied the Draft Map, a survey card and also the relevant contemporary parish council minutes.

Deeds of Sale (Conveyance or Transfer)

- 6.17 The inclusion of a specific reference to a public right of way within (or adjacent to) land being conveyed is of some evidential value. However, it should be borne in mind that the conveyance or transfer was essentially dealing with private rights of property and was not prepared with a view to defining public rights. Similarly, the inclusion in a conveyance or transfer of mutual private rights for the purchaser and others over the land is not conclusive evidence that there is no public right over it. Mutual private rights might have been included by the conveyancer out of

abundant caution. The evidence provided by a conveyance or transfer needs to be considered along with all other relevant evidence.

- 6.18 Sales particulars, as opposed to the actual conveyance document, should be treated with special caution. The art of embellishment in advertising is not a newly acquired skill. Nevertheless, if a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.

SECTION 7 INCLOSURE AWARDS

REFERENCE MATERIAL

Statute

Pre-1801 Private Inclosure Acts

Inclosure Consolidation Act 1801

Post-1801 Local Acts (see Note below)

General Inclosure Act 1836

Inclosure Act 1845

Note The evidential significance of Private and Local Acts can be established only by careful study. Inspectors should therefore request extracts that are long enough for them to interpret quoted extracts within their context. In particular, a copy of any 'definitions' section contained in the Act concerned should be obtained.

Case Law

Roberts v Webster [1967] 66 LGR 298, 205 EG 103 – evidential weight of Inclosure documents

R v SSE ex parte Andrews [1993] JPL 52 [1993] – interpretation of sections 8, and 11 of the 1801 Act (*Andrews 1993*)

Dunlop v SSE and Cambridgeshire County Council [1995] 70 P & CR 307, 94 LGR 427 – definition of a 'private carriage road'

Buckland and Capel v SETR [2000] 1 WLR 1949, [2000] 3 All ER 205 – procedure when an award is 'ultra vires'

Cubitt v Maxse [1873] LR 8 CP 704 – 'setting out', public acceptance

Hall v Howlett (1976) EGD 247 – setting out a new private road almost conclusive that there was no pre-existing public road in the same position

Logan v Burton [1826] 5 B & C 513 – 'stopping-up' in old enclosures

Micklethwaite v Vincent [1893] 69 LT 57 – propriety of an award not at issue after so many years

Fisons Horticulture Ltd v Bunting and others [1976] 240 EG 625 – unchallenged long-standing awards upheld

Commission for New Towns v J J Gallagher Ltd [2003] 2 P & CR – definition of a private carriage road in an inclosure award (incorporating the 1801 Act provisions) in relation to evidence of a pre-existing public carriageway

Meldale Ltd v Ludgershall Parish Council (2007) – an interesting exercise in construing a pre-1801 inclosure act and award by the Adjudicator to HM Land Registry (available on www.bailii.org)

Parker v Notts CC and SSEFRA (2009) – another judicial view of the construction of a pre-1801 inclosure act and the inference that the proper procedures were carried out.

R (oao Andrews) and Secretary of State for Environment, Food and Rural Affairs [2015] EWCA Civ 699 (Andrews 2015) – places a purposive interpretation upon the terminology used in section 10 of the 1801 Act

Planning Inspectorate Guidance

Rights of Way Advice Note No.11 – Guidance on *Dunlop* etc

Other Publications

Articles in Section 9 (Evidence of the Existence of Highways) of the Rights of Way Law Review.

GUIDANCE

Introduction

- 7.1 Between 1545 and 1880 the old system in parts of England and Wales of farming scattered arable strips of land and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of their land. The process of inclosure began by agreement between the parties concerned, although locally powerful landowners may have had significant influence on the outcome. By the early eighteenth century, a process developed by which a Private Act of Parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined in the nineteenth century with the passing of two main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.
- 7.2 The four articles noted above (*) offer detailed insights into the inclosure process and highlight the difficulties faced today in interpreting these late 18th century and early 19th century documents.
- 7.3 The significance to rights of way casework arises from the evidential value of inclosure awards as legal documents giving effect to the creation or extinguishment of public highways¹², depending on the powers given to the Inclosure Commissioners. Awards and maps may also provide supporting evidence of other matters, such as the existence or status of public rights of way over land adjacent to but outside the awarded area.
- 7.4 By the time Parliament brought the inclosure process to a close in 1876, it was estimated that over 5200 Private Inclosure Acts had been passed covering almost seven million acres with even more covered by agreements. In assessing inclosure evidence, it should be remembered that the process evolved over several centuries, that different Inclosure Commissioners and surveyors were involved with different levels of expertise, operating in different parts of the country at different times with different local practices and traditions. It therefore cannot be assumed that the interpretation of one map and award can be unequivocally applied to another, even in an adjacent parish.

The Inclosure Process

- 7.5 Inclosure was achieved by different means during different periods, broadly (but not exclusively) in the following phases:

1500s onwards Inclosure by agreement

1600s onwards Local inclosure acts

¹² Note that pre-1835 the term "highway" did not usually include footpaths or bridleways.

After 1801	Local inclosure acts operating together with the provisions of the Inclosure Consolidation Act 1801 (unless expressly stated not to apply)
After 1836	Local inclosure acts operating together with the provisions of the General Inclosure Act 1836 (unless expressly stated not to apply)
After 1845	Few local acts, mostly inclosure under the Inclosure Act 1845

7.6 In general, the process involved a number of distinct stages (although each individual Act should be checked since procedural variations do occur, especially in earlier inclosures); these were:

1. The Act
2. Appointment of the Inclosure Commissioners
3. Survey (in fact this may have pre-dated the Act)
4. Advertisement
5. Division, including setting out highways (marking on the ground)
6. Hearing objections to the above
7. Allotment of lands to individuals
8. Hearing objections to the above
9. Final Award
10. Enrolment of the Award
11. Making up of highways under the supervision of a surveyor
12. Justices' declaration that the highway was satisfactorily made up and thereafter publicly maintainable

7.7 The point at which the public acquired the right to use the highway may have arisen at the enrolment stage or, as in the case of *Cubitt v Maxse 1873*, upon the Justices' declaration (which was never made in that particular case); each individual Act should be checked.

Evaluating inclosure evidence

7.8 It is impossible to fully evaluate inclosure evidence on the basis of extracts from a map and award alone. Where the process was carried out under statute, the relevant inclosure act must be examined to establish the extent of the powers available to the Inclosure Commissioners.

7.9 The facts set out in an inclosure award carry significant evidential weight (*Roberts v Webster [1967]*), but they are not always easy to determine.

The problem often relates to the exact meaning of the words used and these matters have been the subject of prolonged debate. For example, the meaning of the word 'private' continues to be a much debated issue. Also of fundamental importance has been the correct interpretation of the language of Sections 8 and 10 of the 1801 Act and the applicability of Section 11.

7.10 The following approach to dealing with inclosure awards is recommended:

1. The land to be inclosed

- i) Is the land in question that described in the Act?
- ii) Is the route across old inclosures or across land being newly inclosed?

2. The route in question

- i) How does the award describe the route? Check the width awarded, the description of the right, the route description and whether the route is said to be for the benefit of any particular persons.
- ii) How is it depicted on the inclosure map? Was it a pre-existing way?
- iii) How are other routes described in the award and depicted on the map?

3. The extent of the Commissioners' powers

- i) Consider the terms of the relevant act and establish the extent of the Commissioners' powers in relation to highways and other roads. If the awarded highway in question does not fall within the scope of those powers it should be regarded as *ultra vires*¹³ unless there is good evidence to show it was a pre-inclosure public highway. If it was a pre-existing way, what did the act say was to happen to these?
- ii) If the setting out of the way in question was *ultra vires*, consider whether the way was 'made' (in the sense of being physically constructed), and whether there is evidence that it was subsequently used by the public. If it was, then this may be evidence from which it could be concluded that a public right of way has been dedicated and accepted.
- iii) If the setting out was *intra vires*¹⁴, consider whether any other event was required by the act or award before the way became a highway (as distinct from before becoming maintainable at public expense), for example, a declaration by the Justices of the Peace that a carriageway had been "*fully and sufficiently formed, completed, and repaired*" (see 7.17 below). In the case of *Cubitt v Maxse 1873* not all the required events had occurred and therefore

¹³ *'ultra vires'* – beyond the authority conferred by law

¹⁴ *'intra vires'* – within the relevant powers

no public rights accrued. Note that the requirement in Section 9 for a way to be "made up" applied only to public carriage roads.

- iv) What is the quality of the map showing the route? Is it at a large scale? can its accuracy be ascertained?

- 7.11 Inspectors should normally accept that an award based on the 1801 Act and not shown to be *ultra vires* is very strong evidence of the legal status of the highways described, although in *Jacombe v Turner (1892) 1QB 47* and *Collis v Amphlett (1918) 1Ch 232* an inclosure award was found to be only conclusive as to matters within the Commissioners' jurisdiction. In the 1893 case of *Micklethwaite v Vincent* where an inclosure award dated 1808 was at issue, the Court of Appeal held that "*Even if the Commissioners in this case have acted ultra vires, it would be impossible to hold that the award at this distance of time could be impeached.*"
- 7.12 A highway may have originated as a private road or path but later became public through express dedication or use by the public leading to presumed dedication. The case of *Reynolds v Barnes (1909) 2Ch 361* is one such example. However further evidence would be required to demonstrate subsequent dedication to the public.

Inclosure by agreement

- 7.13 Agreements to enclose land could be informal or formal, the latter often being confirmed by a legal court and the former, by their very nature, being unlikely to be evidenced by records still existing today.
- 7.14 Formal inclosure agreements were usually made between the lord of the manor and the principal farmers and landowners, and were normally drawn up by a local solicitor. Without the powers to do so under an Act of Parliament, the parties concerned would have had no authority to alter existing public rights of way. However agreements may provide evidence of pre-existing highways or of dedication by the landowner (if there is corresponding evidence to show acceptance by the public).

Local inclosure acts

- 7.15 A Private Act of Parliament to inclose land authorised the process, defined (in broad terms) the land to be inclosed and set out the procedures to be followed by, and the powers available to, the Commissioners.
- 7.16 These Acts were many and varied and each must be studied to ascertain its precise terms.

Inclosure Consolidation Act 1801

- 7.17 In 1801 Parliament determined to simplify the process of Private Bills by standardising the clauses most frequently used so that these would be automatically incorporated into Local Acts, thus making them shorter and allowing for more efficient passage through the Parliamentary process.

- 7.18 Sections 8 and 9 of the 1801 Act included a set of provisions relating to public carriage roads including a minimum width requirement (30 feet) and the appointment of a surveyor to oversee the making up of the roads to a satisfactory standard followed by a declaration to that effect by the Justices. Commissioners were also empowered to stop up roads running through old enclosures but were required to obtain an order from the Justices to do so. Where a local inclosure act imported section 11 of the 1801 Act, any pre-existing roads on the lands being inclosed would be extinguished unless these had been 'set out' in the award by the Commissioners.
- 7.19 Section 10 dealt with "private roads, bridleways, footways, ditches, drains, (etc.)". The Court of Appeal has held that the term 'private' in section 10 qualified only 'roads' and was not used to qualify all other items listed in the section. The items listed after '*private roads*' which Commissioners were empowered to set out and appoint could therefore be either public or private.
- 7.20 Section 44 of the 1801 Act applied its powers and provisions to all local Acts (passed after 2 July 1801) unless the latter specified otherwise. In such cases, the provisions of both the local Act and the 1801 Act should be examined.

The General Inclosure Act 1836

- 7.21 Even after the 1801 Act, the passage of Private Acts continued to be difficult and expensive. Pressure to provide a more efficient system resulted in the 1836 Act which authorised inclosure without an Act of Parliament, on standard terms contained in the 1836 Act, if two thirds of the landowners agreed.

The Inclosure Act 1845

- 7.22 The 1845 Act enabled landowners to dispense with the need for an Act of Parliament to authorise inclosure. They could proceed by agreement under the 1836 Act under the direction of an independent national body of Commissioners operating a code agreed by Parliament. Sections 62–68 of the 1845 Act set out similar provisions to the 1801 Act although the minimum width requirements accorded with the Highways Act 1835: 20 feet wide for a new public cartway, 8 feet for a public horseway and 3 feet for a public footway beside a carriageway or cartway.
- 7.23 The Act required the Inclosure Commissioners to produce an Annual General Report for the approval of the Principal Secretary of State and both Houses of Parliament. The schedules published at the end of these Annual Reports itemised the progress of each inclosure, giving the date when each key stage was confirmed by the Commissioners.
- 7.24 Between 1845 and 1852 the Inclosure Commissioners could authorise the inclosure of certain lands without first obtaining the prior consent of Parliament; such inclosures are not included in the same Schedules attached to the Annual Reports but are listed separately as 'Cases Authorised by the Inclosure Commissioners not requiring the previous

Authority of Parliament'. However this practice ceased with the passing of an "Act to amend and further extend Acts of Inclosure, Exchange and Improvement of Land" in 1852.

Presumption of Regularity (paragraph 2.20 refers)

7.25 One consequence of the complexity of the inclosure process is that there may not be evidence to confirm that each stage in the process was completed in its entirety. It is, for example, frequently the case that records of declarations by Justices of the Peace are not available. Although an Inspector may usually rely on a presumption that the correct procedures were followed at the time unless there is evidence to the contrary, this cannot provide a remedy where it is reasonably certain that the legal requirements were not complied with. However an omission may not always be fatal to the case and it might be appropriate to consider the possibility that public acceptance of an awarded highway, if supported by the evidence, occurred nevertheless.

7.26 The cases of *Micklethwaite v Vincent* 1893 and *Fisons Horticulture Ltd v Bunting and others* 1976 show that the Courts generally uphold long-standing awards that were not challenged at the time.

Recent case law

7.27 Inclosure awards can be evidence of the existence, or repute, of highways at the time they were made. Two relatively modern judgments are useful though previous authority establishes the point (for example, *R v Berger* [1894] 1 QB 82).

7.28 First, in *Roberts v Webster* (1967) 66 LGR 298, Widgery J (as he then was) considered an 1859 inclosure award made under the Inclosure Act 1845. The case concerned an appeal against a decision of the justices at the quarter sessions which had involved them deciding whether a highway existed before 1835 so as to decide whether the highway was publicly maintainable. The justices' decision was based on the award as evidence that the highway existed in 1859. Widgery J stated:

"It seems to me that the inclosure award of 1859 is very powerful evidence indeed to support the view that Pipers Lane at that time was reputed to be a public highway....If they (the justices) concluded, as they did, that the inclosure award was such a powerful piece of evidence that they should infer from it that a highway existed over this road in 1859, I can see no fault in their doing so. Indeed, speaking for myself, I am prepared to say that had I been sitting with the justices at quarter sessions, I feel sure that I should have adopted the same view."

7.29 Second, *Hall v Howlett* (1976) EGD 247, the question was whether an overgrown lane was an obstructed public highway. Evidence was given that under an inclosure award a "private carriage road and driftway" was created over the line of the lane in question. Widgery CJ said:

"Then we were shown what on any view must be an important matter, namely an inclosure award.... I should have thought that if the Commissioners set out a new private road in an inclosure award it is

almost conclusive that the Commissioners did not think that there was already a public highway there, because there is no basis to establish and lay out a new private road over existing public highway. I think this is a point of considerable weight to go into the scales when those scales are operated by the tribunal of fact concerned with this matter.”

However, see the more recent case of *Gallagher 2002* below.

7.30 There were two judgments in the 1990s (*Andrews 1993* and *Dunlop 1995*) which had a major impact on the controversy concerning interpretation of inclosure evidence. The judgement in *Andrews 1993* in relation to section 10 of the 1801 Act was overturned by the Court of Appeal in *Andrews 2015*.

7.31 In *Andrews 1993*, Schiemann J decided that:

- the power in Section 8 ‘to divert, turn and stop up’ was an ancillary power to be exercised if existing highways interfered with the proper functioning of the new highway system
- existing public footpaths across newly enclosed land (which are not specifically mentioned in Sections 8 and 10), being in the category “old and accustomed roads” (within the meaning of the proviso to Section 8) are not stopped up by the award. (Schiemann J also set the *Logan v Burton [1826]* judgment in context)
- it was inappropriate to rule on the ‘setting out’ issue.

[Note: although not specifically mentioned, it may be reasonable to assume Schiemann J’s references to footpaths also apply to bridleways.]

In *Andrews 2015* the Court of Appeal held that, in construing the 1801 Act as a whole and setting the Act in the context of events prior to its enactment, a purposive approach was to be taken to the language used in section 10 and that the powers conferred by that section included the setting out of public bridleways and footpaths.

7.32 The Court of Appeal considered it unnecessary to address the question of whether Commissioners could set out bridleways and footpaths at widths of less than the 30 feet minimum specified in section 8 of the 1801 Act. Given that there is no minimum width requirement specified in Section 10 and that the bridleways at issue in *Andrews 2015* were set out at widths of 15 feet and 10 feet respectively, it is implicit in the judgement in *Andrews 2015* that Commissioners were empowered to set out public bridleways and footpaths at widths of less than 30 feet.

7.33 In *Dunlop* in 1995 Sedley J decided that the words ‘private carriage road’ were deliberately used in the [Glatton with Holme] inclosure award as a term of art distinguishing the particular road according to the extent of the particular rights over it from the public carriage roads on which all subjects enjoyed right of vehicular passage. Earlier in the judgment, as a conclusion arising from his study of 18th and 19th century publications,

Sedley J had concluded "*This history furnished compelling evidence for the construction advanced on the applicants behalf, namely, that both in the Act of 1801 and the Glatton with Holme Inclosure Award of 1820 public and private carriageway roads were deliberately distinguished, and that the distinction signified differential rights of user, embracing all the monarch's subjects in the former case and a limited if unspecified class in the latter.*"

7.34 This judgment has been strongly criticised (see below) and some seek to limit its application. In the latter context it has been argued that ... [the judgment] *does not, and indeed could not, offer a conclusive interpretation to be used on all occasions. Other documents, or even the same document given different evidence, may give rise to a different meaning for the same phrase [private carriage road]. In any event such investigations at best can only decide the legal status of the actual award subject to the decision.* This is an expert opinion, but nevertheless it may do less than full justice to Sedley J's reasoning (see Section 3 'Case Law' for the argument in principle). The language of the judgment permits only one interpretation of the words 'public' and 'private' when used to describe the status of a carriage road. The terms refer to the lawful class of user. This interpretation applies equally to both the 1801 General Act and the Glatton with Holme Award 1820. Two rebuttable inferences appear to arise:

- The terms 'public' and 'private', when used in the 1801 General Act, have the same distinction in respect of any other highway so described in it e.g. private road, public bridleway etc. It would be perverse to argue otherwise.
- The terms when used in any other local acts which derive from the 1801 General Act probably have the same meaning as that in the Glatton with Holme Award.

7.35 There is a strongly held opinion that these inferences are wrong because the judgment itself is wrong. It is argued by some that the terms 'public' and 'private' refer to maintenance responsibilities, since maintenance rather than rights dominated highway disputes during the inclosure period. However, this has not been tested in the Courts and Inspectors should look very carefully at arguments concerning the meaning of the words 'public' and 'private', particularly in the context of the inclosure award in question.

7.36 There is also an assertion that the absence of definition in an award of the class of user entitled to use a private carriage road is evidence of a public right. For the reasons given by Sedley J in his judgment, this is a self-defeating argument.

7.37 Use of the term 'private' in a local act does not exclude the possibility that some form of public right existed. That may be obvious from the language of the award itself, e.g. the description of a highway as a 'public bridleway and driftway and private carriage road.' In some instances it is explicit in the award that the public have full rights of use over the 'private' road. In other cases it may be that the class of authorised vehicular user has, in subsequent case law, been held to constitute 'the public' (see guidance on

'Dedication'). In yet further cases, there may possibly be evidence of subsequent user unrelated to the language of the award. Nonetheless, despite all these possibilities, when the term 'private carriage road' is used in the 1801 Act or in a local act, the term of itself does not confer or infer a public right of passage by vehicle.

7.38 Despite the criticism of this judgment, Inspectors should follow it unless and until a Court holds otherwise.

7.39 In *Gallagher* in 2002 the case concerned the status of a lane claimed to be a public vehicular highway but which was shown in an inclosure award of 1824 as a "private carriage road". Neuberger J accepted other evidence was sufficient to show that the route was a public carriageway prior to (and since) the date of the award and "*in the light of the provisions of the Inclosure Act 1801, that, if (the) lane was a public carriageway at that time, the Inclosure Award cannot have deprived it of that status.*" However he did not dissent from the interpretation of "private carriage road" adopted by Sedley J in the Dunlop case, that it meant and still means "a private road (as opposed to a public highway) for carriages."

Concluding Comment

7.40 Inclosure documents can provide conclusive evidence of public rights of way. However, the lack of consistency between different maps and awards with their corresponding Act(s) of Parliament, means that every case must be examined individually in the context of all the local circumstances and the prescribed details of the process, all of which may vary.

SECTION 8 TITHE COMMUTATION DOCUMENTATION

REFERENCE MATERIAL

Statute

Tithe Commutation Act 1836 ((as amended by the Tithe Act Amendment Act, 1837)

Case Law

Robinson Webster (Holdings) Ltd v Agombar (2001)(9 April 2001 HC 000095): weight attached to evidence of occupation of land by the parish officers

Attorney – General v Antrobus [1905] 2 Ch 188: Whether or not a piece of land is a road *is one of the matters material to the preparation of the award and plans*. This is subsequently qualified by... *I must not be understood as deciding that, in my opinion, the tithe map would be evidence on any matter (although it is a public document) which is not within the scope and purview of the authority of the Commissioners who made it*

Copestake v West Sussex County Council [1911] 75 JP 465: The tithe map is not admissible as evidence of the extent of a public right ... *It was the business of the person responsible for making this map to ascertain what land in the parish was, and was not, titheable. It was not their business to define the extent of public rights of way*. However, this would not be regarded as correct today. (See *Maltbridge Island Management Co v SSE* below)

Maltbridge Island Management Co v SSE and Hertfordshire County Council [1998] EWHC Admin 820: Sullivan J held that evidence based on an analysis of Tithe Maps and Apportionments may be admissible as to the existence or non-existence of a public right of way. The weight to be attached is a matter for the Inspector. It cannot be conclusive. He also approved the passage in Sauvain, 2nd Ed, p47, paragraphs 2-72

Kent County Council v Loughlin [1975] JPEL 348, 235 EG 681: The judgment asserts that *on the question of whether there was a road at the specific place the tithe map was of much importance*. The judgment continues that the absence of a lane from the tithe map is sufficient to show that the lane did not exist as a road at the time, but Lord Denning MR acknowledged that it could have existed as a footpath. (But see also *Gallagher*)

Giffard v Williams (1869) 38 LJ Ch 597: It is impossible to treat the tithe map otherwise than as a public document

Smith v Lister (1895) 64 LJ QB 709: Accepts both first and second-class maps as evidence

Stoney v Eastbourne Rural District Council [1927] 1 Ch 367: The judgment maintains that ..to say that an ordinary pasture or arable field, over which a right of public footpath exists, has its titheability confined to other parts of the field, not including the small strip of land covered by the footpath, seems to me quite contrary to common sense and to the documents which we have before us

Attorney – General v Stokesley Rural District Council [1928] 26 LGR 440: If produced from proper custody, tithe maps may, in cases where the question is whether a highway was dedicated to the public before or after 1836, be used in conjunction with evidence of uninterrupted user within living memory as evidence that the way was dedicated to the public

Webb v Eastleigh Borough Council 1957: Although maps may be evidence of the existence of a highway, they are not evidence of the legal boundaries of the highway

Merstham Manor Ltd v Coulsdon and Purley Urban District Council [1937] 2 KB 77: Tithe maps make no distinction between a public and a private road, their object is to show what is titheable and the roadways are marked upon them as untitheable parts of land whether they are public or private

Attorney-General v Beynon [1970] 1 Ch 1, a tithe map was stated to be admissible evidence for determining the physical boundary of a road

Commission for New Towns v J J Gallagher Ltd [2002] 2 P & CR 24: A lane, owned by two people, farmed as pastureland with tithe rent-charge apportioned to it is not inconsistent with it being a public carriageway

Other Publications

'Rights of Way: A guide to law and practice' by John Riddall and John Trevelyan (published by the Open Spaces Society and the Ramblers' Association), pages 139 and 140

The Tithe Surveys of England and Wales, by Roger Kain and Hugh Prince, CUP 1985

The Tithe Maps of England and Wales, by Roger Kain and Richard Oliver, CUP 1995

The Planimetric Accuracy of Tithe Maps, *The Cartographic Journal* vol 13 part 2 (Dec 1976) pages 177-183

Tithe Surveys for Historians' by Roger J P Kain and Hugh C Prince (published by Phillimore & Co. Ltd) 2000

Instructions issued by the Tithe Commissioners to the tithe map surveyors for the purpose of the Tithe Commutation Act 1836 (PRO IR18 14586)

'Conventional Signs to be used in the Plans made under the Act for the Commutation of Tithes in England and Wales (British Parliamentary Paper 1837 XLI 405)

Relevant articles may be found in the Rights of Way Law Review

GUIDANCE

Introduction

- 8.1 The 1836 Act converted tithes (the tenth part of the annual produce of agriculture), provided for the support of the priesthood and religious establishments, into a tithe rent-charge, a monetary payment based on the seven year average price of wheat, oats and barley. This was normally done parish by parish and resulted in some 12,000 documents which apportioned the payment fairly over the different lands in the tithe district. The apportionment of tithes was recorded in a schedule and on a map. Files containing correspondence pertaining to the production of the documents occasionally survive in local record offices.
- 8.2 Tithe documents are solely concerned with identifying titheable land. Apportionments are statutory documents which were in the public domain and tithe maps have been treated by the courts as good evidence as to whether land was titheable or not titheable. However, tithe maps were not intended to establish or record rights of way. There are a number of reasons why land might not have been subject to tithe in addition to the possibility of it being highway land. One of these was that the land was barren, but other examples include land held either by the church or some other religious community, or land which had only recently been converted to productive land from previous barren heath or waste land. It is dangerous to assume the maps to be proof of something that it was not the business of the Commissioners to ascertain, or to lay down rigid rules for their interpretation. Tithe commutation documents vary considerably from one to another in quality and detail.
- 8.3 The referenced article 'Interpreting Tithe Map Evidence', includes a useful extract from the instructions issued to the tithe map surveyors, and provides a helpful insight into the subject. The remaining 'other publications' provide additional insight into the tithe commutation process. However, the importance and interpretation they place on the depiction of a route as a separate parcel of land is not altogether agreed.

Case Law

- 8.4 While there appears to be some divergence of opinion between some of the judgments, this is not necessarily the case. Both *A – G v Antrobus* and *Kent County Council v Loughlin* relate to roads which would have crossed someone's titheable landholding and which were not shown on

the tithe map (negative evidence). In *Copestake v West Sussex County Council* the road was shown bounded on either side by the fences of old enclosures (positive evidence). In the former cases, but not the latter, the presence, or not, of a road was clearly a material matter, as it would have affected the productivity of the landholding and hence the rent payable. (See also *Gallagher*.)

Evidential Value

- 8.5 Tithe documents can generally give no more than an indication as to whether any way is public or private. This is because a private right of way can diminish to no less an extent than a highway the productiveness of the land for tithe assessment. Nevertheless, the absence of a route from a Tithe Map does not necessarily mean that no highway existed. It may simply mean that its existence had no effect on the tithable value of the land (see also 'Status' below). Where tithe maps are shown to have been based on earlier parish or estate maps (see below at 8.10, they may have evidential value relating to the purpose for which they were originally produced.

First and Second Class Maps

- 8.6 The Tithe Commissioners appointed Lieutenant R K Dawson as the Assistant Tithe Commissioner and Superintendent of the surveys. He produced advice and instructions on the technical specifications for the maps which, in part, led to the amendment of the Tithe Commutation Act.
- 8.7 The amending Act of 1837 established two classes of tithe map. First class maps had the Commissioners' seal attached, showing them to be reliable as a true record of matters relating to the purposes for which the map was designed. However, second class maps, which failed in some, often minor, way to meet the stringent test for first class status, are not necessarily inferior from a cartographic point of view. Both first and second class maps have been accepted by the courts as evidence.
- 8.8 Following the amendment to the 1836 Act, the Tithe Commissioners revised their instructions on the form of maps, setting out that the most acceptable plans would be the plain working plans containing little ornamentation and colour. (See below with regard to copies.) Whilst First Class Maps still had to conform to the prescribed technical specifications in terms of surveying techniques, the Commissioners no longer considered it essential for a system of conventional signs to be used.
- 8.9 Maps may have been newly prepared for the tithe survey, but existing maps could also be used as a base. These varied from estate maps to Township and Parish Maps, some of which may have dated from many years prior to the tithe commutation process. The decision on whether or not to commission a new survey was entirely a matter for the landowners concerned.

Statutory Copies

8.10 The 1836 Act required three maps to be produced: an original and two statutory copies. The original was retained by the Tithe Commissioners; one copy was for the relevant diocesan office and the second copy was for local deposit in the tithe district. The original map may be less colourful than the copies produced for local use and there may be variations between the maps. Some of the variations may be due to copying error and some may be deliberate (for example the use of extra colour or adornment). It is therefore important to identify which copy of the map is being examined. The original maps are generally the ones to be found in the Public Record Office.

Other Related Documents

8.11 Each Tithe Map will have been accompanied by an Apportionment giving the details of the way in which payment of the commuted tithes had been divided up or 'apportioned'. In addition there may be a file of incidental notes and documentation containing information on a variety of related matters and in varying detail. Either of these documents may provide information which can assist in the interpretation of the map in relation to the existence of highway rights. Without reference to these documents, the value of the evidence of the map alone may be affected.

Colouring of Roads

8.11 The colouring of a road (usually sienna) on a tithe map is not, in itself good evidence of public vehicular rights. There is general agreement among the RWLR authors that the colouring on maps varies. It is therefore important to establish whether there is a key or other information in the tithe documents which provides an explanation. In the absence of such an explanation or other corroborative evidence the colouring is arguably of little evidential value in itself.

Status

8.12 Both public and private roads had the capacity to diminish the productiveness of land for the assessment of tithe. It follows therefore that the inclusion of a road under the heading 'roads and waste' is not, in itself, good evidence that it was public. However, the annotation of a road 'to' or 'from' a named settlement is suggestive of public rights. Where a road is shown braced to adjacent titheable land, this indicates that the parcels have been measured together and tithe apportioned accordingly. It is not inconsistent with the existence of highway rights (see *Gallagher*). The Award will sometimes establish the ownership of the way depicted, but again, this does not preclude the existence of highway rights. It is unlikely that a tithe map will show public footpaths and bridleways as their effect on the tithe payable was likely to be negligible.

Concluding Comment

8.13 Tithe maps are generally good evidence of the topography of the roads they portray, especially those which form boundaries of titheable land.

They may not necessarily be good evidence either of public rights or the nature of any public right that may exist. The full value of a particular map can only be determined by careful consideration of all the available tithe documents, including any relevant contemporaneous instructions or keys, and by comparing it with other reputable maps of the time to establish the relevance of the way to the overall road network. However, as statutory documents, where they do provide evidence it should be given the appropriate weight bearing in mind the original purpose of the documents concerned and the issues identified above.

SECTION 10 RAILWAY AND CANAL DEPOSITED PLANS

REFERENCE MATERIAL

Statute

Special Acts of Parliament

Railways Clauses Consolidation Act 1845: Inspectors should be familiar with the following clauses:

Clause 10: Certified true copies of the plans and books of reference, and alterations of, to be received as evidence of the contents thereof

Clauses 46-51: Crossing of Roads and construction of bridges

Case Law

Monmouthshire Canal Company v Hill (1859) 4 H & N 421: A towpath is legally part of a canal

Grand Junction Canal Company v Petty (1881) 21 QBD 273: Any dedication to the public along a towpath is a limited dedication and cannot set up a right to prevent or limit the use of the towpath

Dartford Rural District Council v Bexley Heath Railway Co. [1898] AC 210: The 1845 Act does not impose a duty upon a railway company to carry a footpath over the railway or the railway over the footpath by means of a bridge

Other Publications

'Rights of Way: A guide to law and practice' by John Riddall and John Trevelyan Fourth Edition (published by the Open Spaces Society and the Ramblers' Association) page 33 - towpaths

Woolrych – A treatise of the law of ways: including highways, turnpike roads and tolls, private rights of way, bridges, ferries and railways in relation to highways and turnpike roads 1847(2nd Edn.): Chapter X (concerns the 1845 Act)

Article in Section 9 (Evidence of the Existence of Highways) of the Rights of Way Law Review.

GUIDANCE

Introduction

- 10.1 Individual railway and canal schemes were promoted by Special Acts. The process for Canal Schemes was codified in 1792 by a Parliamentary Standing Order and these arrangements were extended to cover Railway Schemes in 1810. The requirements for railways were expanded in the 1845 Act, with public rights of way which cross the route of a railway to be retained unless their closure has been duly authorised. Therefore, although it was not the primary purpose of the deposited plans to record rights of way, they can provide good evidence in this context.

Evidential Value

- 10.2 Both canal and railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes, and to a lesser extent canal schemes, was exacting and the book of reference and deposited plans made in the course of the process needed to be of a high standard. In particular, railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully. They have been admitted by the courts as evidence of public rights of way. Where available, surveyor's notes can provide useful information regarding the then function of a particular way.
- 10.3 The process for the authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities, and Parish Councils would not have wished their parishioners to lose rights. Therefore an entry in the book of reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a public right of some description. However, the weight to be given to this can only be determined when it is considered alongside all the other evidence. There may be reputable evidence to rebut it such as a deed, conveyance or local map. The material available relating to canal schemes is generally more limited, both in quality and scope, than that for railway schemes.
- 10.4 Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process. As above, the weight to be attached will need to be determined alongside all the other available evidence.

Status

- 10.5 Railway plans and cross-sections usually differentiate between public and private roads. Where this is not the case and the route is described as 'road' in the book of reference, it is sometimes possible to establish the nature of the way by reference to the description of other roads. Unless

the existing roadway was less than 25 feet (in which case section 51 of the 1845 Act set the minimum by reference to the average available width for the passage of carriages within 50 yards of the point of crossing), the minimum width for bridges carrying roads over the railway in the 1845 Act (section 50) is 25 feet (7.62 metres) for public roads and 12 feet (3.66 metres) for private roads. However, caution needs to be exercised regarding the latter as some high status estate roads had wider bridges. The minimum dimensions of bridges carrying the railway over roads are set out in section 49 of the 1845 Act. There were no specified widths for bridleways or footpaths. Section 47 of the 1845 Act set out the requirements for the gating of crossings on the level. If a manned level crossing is shown, the associated route is likely to be a public vehicular road. Canal maps and their associated books of reference do not always differentiate between public and private roads. A towpath is legally part of a canal but may also be a highway.

- 10.6 The status of a way had an impact on the cost of the scheme and it is unlikely that railway plans would show a route at a higher status than was actually the case. There was no obligation to bridge footpaths under the 1845 Act and, as a general rule, unless there is specific provision in the Special Act, any public route requiring a bridge is of at least bridleway status. Bridleways and footpaths which are not shown on the plan are sometimes described in the associated book of reference. Canal plans and their associated books of reference record roads, but do not normally record bridleways and footpaths. Any public rights along a towpath are generally limited to footpath.

Concluding Comment

- 10.7 For the above reasons deposited plans can be good evidence to support a claim that a highway existed at the time they were made. Where this is not the case, they are still useful in establishing that a particular route existed.

SECTION 11 PART 1 - FINANCE ACT 1910

REFERENCE MATERIAL

Statute

Finance (1909 – 1910) Act 1910

Inspectors should be familiar with the following sections:

Sections 7 –10; 35, 37 & 38:	Exceptions
Section 25:	Allowable deductions
Sections 26 & 27:	Valuation of land for the purposes of the Act
Section 30:	Duties of Commissioners to keep records

Case Law

Robinson Webster (Holdings) Ltd v Agombar [2001] EWHC 510 (ch) (9 April 2001) – weight attached to evidence of non-inclusion of a route in the taxable land of a hereditament

Maltbridge Island Management Co v SSE (31/7/98) – whether weight may be attached to Finance Act evidence

Fortune v Wiltshire CC [2012] EWCA Civ 334 – significance of the exclusion of a route from adjacent hereditaments when weighed with all other relevant evidence

Other Publications

'Valuation Office Records Created under the Finance (1909-10) Act 1910', National Archives Information Leaflet no. 68

'Land and Society in Edwardian Britain', Brian Short, Cambridge University Press, 1997

Maps for Family and Local History, The records of the Tithe, Valuation Office and National Farm Surveys of England and Wales, 1836 – 1943, Geraldine Beech and Rose Mitchell, published by The National Archives, second edition, 2004

The National Archives Research Guide, National Farm Surveys of England & Wales, 1940 – 1943

The National Farm Survey 1941 – 1943; State Surveillance and the Countryside in England and Wales in the Second World War, Brian Short,

The following articles, which are of interest, have appeared in the RWLR

'Rights of Way and the 1910 Finance Act,' - Zara Bowles, RWLR Sept 1990 (see below at 11.2);

'Uncoloured roads on 1910 Finance Act maps,' David Braham Q.C. May 2002

GUIDANCE

Introduction

- 11.1 The 1910 Act provided for the levying of tax ('Increment Value Duty') on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. There was a complex system for calculating the 'assessable site value' of land, which allowed for deductions for, among other things, *the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user and to the right of common and to any easements affecting the land* (Section 25(3)).
- 11.2 Whilst numerous articles of relevance have appeared in the RWLR, 'Rights of Way and the 1910 Finance Act' by Zara Bowles (RWLR Sept 1990) provides a short overview of the Act in relation to public rights of way. However, some of the views and conclusions expressed should now be seen as questionable as subsequent research has informed general understanding of these records. Professor Short's book and the National Archives leaflet set the historical context.

Evidential Value

- 11.3 Evidence of the possible existence of a public right of way in Finance Act documentation usually arises in one of two ways-
- reference to it in one or more of the various documents forming part of the valuation process, or
 - exclusion of a route from the assessable parcels of land shown on the map record.

Reference to a possible route in the documentation

- 11.4 An early part of the valuation process was the completion of a 'Form 4' by the landowner. This form asked whether the relevant unit of land ownership (these were known as 'hereditaments') was subject to any public rights of way or any public rights of user. Information from Forms 4 was copied into Field Books in the District Valuation Office before the valuers went into the field to inspect and assess the hereditaments. In these books, and in other forms such as Form 36, sent back to landowners with the provisional valuation, and Form 37, the office copy

of Form 36, the distinct categories were run together into 'public rights of way or user'. Information from the Field Books (which are kept in the National Archive at Kew), including deductions in value for 'public rights of way or user', was copied into the relevant columns in the Valuation Books, which are normally now found in Local Record Offices. Working plans (see below at 11.7), sometimes with detailed annotations, were completed in the field and the final record plans, which normally show only hereditament boundaries, were compiled from them.

- 11.5 Although direct evidence of the acknowledgment by a landowner of a public right of way from an entry on a Form 4 may be considered to be very strong, the vast majority of them were destroyed after the transcription of their information into the Field Books. However, evidence of the existence of a public way across a hereditament may be deduced from, for example, a Field Book entry showing a deduction under 'public rights of way or user', with further clear hand-written details, such as use of the words 'public footpath'. The position of such a way may be shown by annotations on the working plans or written information in the Field Book. But where hereditaments were large and crossed by numerous paths it may not be possible to conclude from written information that a particular route was referred to. Even where field plans are annotated, and paths marked as 'public', it may be unclear when and by whom annotations were made. Evidence from Field Books and plans may provide good evidence of the reputation of a way as public, but care should be exercised when drawing conclusions from material not known to be provided directly by or on the authority of the landowner.
- 11.6 It has been asserted that the term 'public right of user' refers to private rights of way, but, apart from some apparently anomalous entries on a few surviving Forms 4, there is no evidence of this use of the term. It would normally refer, when distinguished from a public right of way, to a non-linear public right, such as a right of recreation. A private right of way is normally a form of easement, and a deduction for such a way would be expected to be found under the heading of easements.

Exclusion of a route on the map record

- 11.7 Working copies of the plans are normally found in Local Record Offices. Most final record plans are in the National Archive. They are based on large-scale Ordnance Survey plans. The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e. they will be shown uncoloured and unnumbered. It is possible, but by no means certain, that this is related to s.35(1) of the Act: *No duty under this part of the Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority.* The practice would also be compatible with s.25(3) which states that *The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to... any public rights of way.* So if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was

considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however, there may be other reasons to explain its exclusion. It has been noted, for example, that there are some cases of a private road set out in an inclosure award (see section 7) for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; however this has not been a consistent approach. Instructions issued by the Inland Revenue to valuers in the field deal with the exclusion of 'roadways' from plans, but do not explicitly spell out all the circumstances in which such an exclusion would apply.

- 11.8 In his article 'Uncoloured roads on 1910 Finance Act maps' (RWLR May 2002) David Braham Q.C. considers the significance of exclusion of a route from assessable land. This approach received judicial endorsement in the case of *Fortune v Wiltshire CC [2012]* in which Lewison J gave careful consideration to the interpretation of routes excluded from adjacent hereditaments. In essence he concluded that the Finance Act records are not definitive; they are "simply one part of the jigsaw puzzle" to be considered along with other relevant material particular to each case.

Concluding Comment

- 11.9 Documents and plans produced under the Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value; this is particularly important where a deduction for a public right of way is shown in the Finance Act records but its line is not apparent. It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending on the circumstances. It must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation.

SECTION 12 MAPS (COMMERCIAL, ORDNANCE SURVEY, ESTATE ETC) AND AERIAL PHOTOGRAPHS

REFERENCE MATERIAL

Statutes

Survey Act 1841

Case Law

Hollins v Oldham 1995 C94/0206, unreported. Judicial view on cross roads: 'Burdett's map of 1777 identifies two types of roads on its key: firstly turnpike roads, that is to say roads which could only be used on payment of a toll and, secondly, other types of roads which are called cross roads ... This latter category, it seems to me, must mean a public road in respect of which no toll was payable'.

Kent County Council v Loughlin 1975 (see also Section 8) Denning LJ stated 'The county council archivist produced maps between 1769 and 1819. None showed Fairly Lane at all, but they were to so small a scale that they showed only public carriageway roads'. This remark is taken by some to mean that Lord Denning considered that all highways on pre-1820 maps are public highways. However, it is unlikely that he was generalising on all highways on such maps.

Attorney General v Antrobus (1905) – Judicial view on whether OS maps are evidence of a way being public or private: "Such maps are not evidence on questions of title, or questions whether a road is public or private.....in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey".

Clode and Others v LCC 1913 - Judicial views on some commercial maps 'I do not think that the Horwood maps were admissible in evidence ... they were apparently but the speculations of a publisher, not official productions, put forth as topographical guides to parts of London. In my opinion these maps are not admissible for that purpose, the maps were just a private adventure for the purpose of profit on the sale of them'.

Attorney General v Horner, 1913 – Some judicial views on the Ordnance Survey map of 1874. 'Such maps are not evidence on questions of title, or questions whether a road is public or private, but...set out every track visible on the face of the ground and are in my opinion admissible on the question of whether or not there was in fact a visible track at the time of the survey'.

Merstham Manor Ltd v Coulsdon UDC 1936 Some judicial views on various maps 'The road is again shown on the map of 1802 by Faden and again in Greenwood's map of 1822 and 1823; but, of course, these maps only show it as a road. There is nothing in the maps to show whether or not the

topographer-author was intending to represent the road on his map as a public highway. All the Ordnance Survey maps show the road, but it was admitted by Mr Godley, a witness from the Ordnance Survey Department, that they show any road which is there on the surface whether it is a public highway or not'.

Masters v SSE [1999] WL 809077: the inferences that can be drawn from thickened casing lines or 'shading' on the south and east sides of roads shown on OS maps. Where evidence is presented which shows that, on the basis of detailed comparison with other public roads in the locality, the shading of the route in question resembles the way other known public carriageways were depicted by OS, the inference may be drawn that the status is similar.

Commission for New Towns v J J Gallagher Ltd [2003] 2 P & CR: Contains a useful discussion on the value of a wide range of mapping evidence in a case where the expert witnesses were Dr Hodson and Professor R Kain

Norfolk County Council v Mason [2004]: Contains a discussion on the value of a number of different map sources as evidence.

Planning Inspectorate Guidance

Rights of Way Advice Note No.4 – meaning of 'cross road' See paragraph 2.24 et seq.

Other Publications

'Rights of Way: A guide to law and practice' by John Riddall and John Trevelyan (published by the Open Spaces Society and the Ramblers' Association Chapter 6.4).

'OS Maps – a concise guide for historians' - R Oliver 1993. As well as providing a concise history of the OS, it includes a lengthy chapter on the depiction of detail on OS maps, comprising a comprehensive dictionary from 'Accuracy' through to 'Zincography.' This is a very useful book for detailed information on OS maps.

'Ordnance Survey instructions to field examiners and revisers and internal Circulars (various dates 1884 – 1961) list in detail the tasks of field examiners engaged in the revision of Ordnance Survey maps at various scales in relation to roads, bridle roads and footpaths.

'Ordnance Survey Maps – a descriptive manual' - J B Harley, 1975 - A comprehensive study of the development of OS maps.

'Maps and Air Photographs,' - G C Dickinson - The first chapter is particularly good on the different mathematical projections developed for maps.

'The Early Years of the Ordnance Survey,' - C Close (published in 1926 and reprinted in 1969), - The early history of the OS, by the Director of the OS from 1911 – 1920.

'Map of a Nation – A biography of the Ordnance Survey' – Rachel Hewitt 2010

'The Ordnance Survey of the United Kingdom' – T. Pilkington White, 1886 – A history of the OS by its serving Executive Officer. Available as a reprint on demand.

'Maps and Map-Makers' - R V Tooley 1952 – Chapter viii covers the County maps in detail.

GUIDANCE

Introduction

- 12.1 The fundamental problem with all maps is that they incorporate compromises in their efforts to represent a spherical surface onto a flat surface. Thus, no one map is capable of simultaneously representing accurately the four factors involved of distance, direction, area and shape. That said, the 17th and 18th centuries saw a tremendous surge in the development of the mathematical requirements of maps, and in the manufacture of the precision instruments required for the accurate assessment of bearing and level.
- 12.2 In many instances, the purpose of the presentation of a map at an inquiry is to support arguments regarding the status of a route. Any route on such a map needs to be assessed carefully against the route shown on the Order Map, to ensure that the routes substantially agree. The age of the map may also be significant in relation to its accuracy, as will the key attached labelling the types or status of the routes inscribed on the map.
- 12.3 Prior to the Rights of Way Act 1932 only those maps and records produced under express statutory authority, such as Inclosure and Tithe Awards, or deposited plans, were admissible as evidence in determining the existence or otherwise of rights of way. The 1932 Act first provided that *any* map, plan, history or other relevant document shall be taken into account, meaning that documents such as early surveys and Ordnance Survey maps became admissible evidence. Accordingly, the views expressed on such documents in some of the earlier case law should be read with this in mind.

Pre-1800 Maps and Atlases

- 12.4 The value of pre-1800 maps and atlases is variable, as they are generally compromised by a lack of sophistication. Colonel Close, a former Director General of the OS, considered that *picturesque and interesting as old county maps are, they leave a great deal to be desired on the score of accuracy errors of up to 10% can be found in Elizabethan maps*'. Only a few were based on trigonometric surveys, or on a recognised mathematical projection.
- 12.5 The original six 'Great Post Roads' are shown on Thomas Gardiner's maps of 1677. Secondary roads are also shown on these maps branching off at the main Post Towns. The key attached to some of the maps shows several of these branch routes as 'By posts (foot and horse)'. However, if the key does not accompany the maps, they are unlikely to be good evidence regarding the status of these secondary routes.
- 12.6 Most of the county maps produced in considerable numbers in the second half of the 18th century were in response to an offer by the Royal Society of Arts of a prize of £100 for a map of any county on a scale of 1 inch to the mile. In 1765, Benjamin Donn won the £100 award offered by the Royal Society for his map of Derbyshire.

- 12.7 Many of these early map makers made use of trigonometric surveys in the production of their County maps, including Burdett for Cheshire and Derbyshire, Yates for Lincolnshire, Staffordshire and Warwickshire, Armstrong for Durham, Prior for Leicestershire, Hodkinson for Suffolk and Strachey for Somerset. Cary maintained a high standard with his maps, and in 1794 was employed by the Postmaster General to supervise the survey of 9000 miles of turnpike roads. Cary also employed Aaron Arrowsmith to be the land surveyor for his 'Map of the Great Post Roads between London and Falmouth,' produced in 1784. It was as a result of Cary's belief that he could copy OS maps without restriction that, in 1817, the OS took steps to copyright the maps it produced.
- 12.8 Although the second half of the 18th century saw considerable progress, both in the number of maps produced and in their technical accuracy, they were not always reliable for their topographical details. Dr Hodson maintains that *the greatest scope for error ... lies with the county map, few of which were surveyed entirely de novo.*¹⁹ Nevertheless, in *Gallagher* Neuberger J was satisfied that the historical maps he was considering demonstrated that Beoley Lane had existed as an identified way since about 1722, accepting that old maps contained inevitable inaccuracies. He was less able to draw confident conclusions from any of the historical maps as to whether or not it was a public carriageway. The map on which he placed most reliance was that of Cary (dated post-1800).
- 12.9 However the evidential value of the older maps can be significant in helping to determine the location of a way, and may be helpful in determining the status of a route, especially in conjunction with other maps. Although the level of accuracy of sketch maps may be difficult to determine, they too can be of value in some circumstances.

Ordnance Survey Maps

- 12.10 The formation of the Ordnance Survey in 1791 reflected the experience gained in the military survey of Scotland by William Roy, the intellectual founder of OS, and was in response to a military need for accurate maps of southern England in preparation for a possible Napoleonic War. Whilst the earliest one-inch maps were produced in response to these military concerns, there was a shortage of trained military surveyors and many of the early maps were produced by local civilian surveyors. The suggestion that all road or ways shown on the first edition of the one inch maps are of roads or ways suitable for wheeled artillery is likely to be no more than a generalisation. However, the Old Series 1 inch maps did label turnpike roads and distinguished them from other roads by a thickening of the casing lines on the south and east side of the road.
- 12.11 Over the years, OS developed a variety of maps to meet the growing need for accurate and up-to-date maps of the UK and the production of maps for sale to the public became an activity of increasing importance to OS from the early twentieth century, although the sale of maps to the public had occurred throughout its existence.

¹⁹ RWLR article 'The evaluation of older maps' July 1999, section 9.3, page 31

- 12.12 The first one-inch maps (1:63,360) were produced in 1801 and covered Kent, part of Essex and London. It was not until 1873 that the whole of the UK was covered. They were relatively unsophisticated monochrome maps, with relief indicated solely by hachures. Inspectors may also be presented with copies of the Ordnance Drawings, which were carried out for southern England over the period 1789 – 1840. They were drawn to a variety of scales, 2 inches, 3 inches and 6 inches to the mile. Some of the drawings were made 20 years before the relevant one-inch map was published. Some larger scale drawings show footpaths which did not appear on the printed map.
- 12.13 A demand for maps showing the countryside on a larger scale led to a six inch to the mile map of Ireland, (1:10,560). This was then extended to the rest of the UK. From 1840, the one inch maps of northern England and Scotland were reductions of the six-inch survey.
- 12.14 The industrial development of the Victorian era, followed by the rapid expansion of towns and communications, led to a demand for even larger scale plans. In 1858, it was decided to publish the whole of the UK on a scale of 1:2500 (approximately 25 inches to the mile).
- 12.15 The first edition OS maps, in the eyes of Colby, the Superintendent of the Survey, were *prodigies of excellence in comparison with earlier maps*, but it became apparent that some of the early one-inch maps suffered from errors as they *had been made in a hasty manner during the war*. This was particularly true regarding the maps for Lincolnshire, Hampshire and Lundy Island, although Colby had sought to identify, correct and eliminate inaccuracies found during the surveying process. In addition, the maps had been constructed using a mathematical projection which had some inherent inaccuracies at the extremes of the map to the north and south. To overcome this problem, the OS utilised a series of meridians for differing parts of England and Wales. As a result, roads and paths on adjacent maps at county boundaries do not always match precisely, and reflect the north/south errors in the projection. However, since this mismatch is created by the projection process used for the making of the map, the positional accuracy is not significant.
- 12.16 The process of refashioning the old County Series scale maps to National Grid standards was undertaken between 1948 and 1980. The process, referred to by the OS as 'Overhaul' or the 'Cotswold Adjustment', attempted to eliminate errors, particularly those of distortion and mismatching. The methodology used involved a degree of 'cut and paste' technique to align the former projection with the National Grid. Recent advances in global positioning systems and their ready availability have revealed positional discrepancies on the ground. These differences, where they occur, are normally of 3 – 5 metres, but can be up to 10 metres in places. However, the fact that satellite technology may demonstrate that all the objects in a given area are a few metres out in relation to their current depiction on a two-dimensional plan will have little impact upon the relative position of one feature to another on the ground. Any positional inaccuracy revealed by GPS technology does not detract from the usefulness of pre-GPS Ordnance Survey maps as a

record of what was observable on the ground at the time of the maps were surveyed.

- 12.17 The status of routes on early OS maps is still a matter of debate at inquiries. The following points may assist in reaching a decision on the evidence provided by a particular map.
- 12.18 Bench marks were located along a line of levelling, and often followed lines of communication. However, they can also be found on rocks in the middle of private land. Consequently it cannot be assumed that a bench mark is indicative of a public right of way.
- 12.19 Access for surveyors was governed by the Survey Act of 1841, which gave surveyors virtually unlimited access. Thus, the indication of spot heights along a route would not necessarily be proof of a public right of way.
- 12.20 The practice of annotating paths 'F.P.' on large scale maps from 1883 arose from an instruction to surveyors issued in February of that year (quoted by Dr R Oliver in *'OS Maps – a Concise Guide for Historians'*) that *'the object of... 'F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic'*. The inclusion of "F.P." gave rise in 1885 to letters being written to *The Times* complaining that the public were likely to view such annotations as indicating the existence of a public footpath. On behalf of the OS, Col. Pilkington-White responded that it was the practice to show paths on the ground, irrespective of whether they were public or private. From 1888, Ordnance Survey maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way²⁰.
- 12.21 An 1893 OS circular instructed that *"all footpaths over which there is a well-known and undisputed public right of way should be shown"*. This instruction appears to be at odds with the disclaimer that the post-1888 maps carried and with the 1885 response of Col. Pilkington-White in *The Times*. The 1893 Circular was also issued after the 1893 Dorrington Committee had concluded that no inquiry by the surveyor could determine whether a path was a public or private one.
- 12.22 The Instructions to Surveyors (see 'Other Publications' above) set out the parameters under which the surveyors were to undertake their task. It was not until 1905 that surveyors were instructed that 'OS does not concern itself with rights of way, and survey employees are not to inquire into them.' However in the same paragraph of these Instructions, there is a note stating that *'A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public'*. The 1905 instructions appear therefore to be somewhat ambiguous; subsequent instructions to surveyors contain equally ambiguous instructions as surveyors were given directions as to the

²⁰ On late 20th century OS maps which show those ways which are recorded in definitive maps and statements, the disclaimer is modified to acknowledge that some routes shown are public rights of way.

nature of paths that should and should not be recorded whilst maintaining that public rights of way were not the concern of OS.

- 12.23 The Dorrington Committee also recommended the adoption of a fourfold classification scheme for roads being shown on OS maps, with each classification being dependant on the width of the road at issue and the type of traffic each road could carry. In relation to what were to be shown as first and second class roads, the committee considered that it was *'desirable that the roads thus classified as first and second class should be of such a nature that the public are certain of having free access over them, not disturbed either by their physical condition or by their being private'* and that *'any of the roads in these two classes which are not repaired by an authority under legal obligation to maintain them, and are in consequence not highways, should be indicated by a slight modification of the characteristic adopted, such as dotted lines. This paragraph would apply principally to roads in public and private parks, private roads of good character, but not necessarily open to the public.'*
- 12.24 A number of other documents were produced in connection with the production of OS maps which can be of assistance in providing supporting evidence of the existence and status of some routes. Information on named routes may be found in the relevant Object Name Books, which provided details of the authorities for named features. Some of the County Series maps were accompanied by Books of Reference, which contain details of the numbered land parcels. Other sources of information include Boundary Remark Books and the subsequent Boundary Record Maps.
- 12.25 In *'OS Maps – a concise guide for historians,'* Oliver states that *Footpaths and bridleways were not normally identified as such on 1:10,560 and larger scale mapping prepared before c1883, although occasional exceptions are encountered, e.g. on several 1:10,560 or 1:2500 first edition sheets in Yorkshire, North Riding and southern Durham. Otherwise, particularly on 1:10,560 maps, foot and bridleways, tracks and very minor roads look much the same.* Oliver also states that pecked lines were used for features which were not obstructions to pedestrians, which were indefinite, or surveyed to a lower standard than usual. They could also be used to indicate overhead details such as electricity transmission lines.
- 12.26 From 1884 onwards, on the large scale plans, those metalled public roads for wheeled traffic, kept in proper repair by the local highway authority, were to be shown with shaded or thickened lines on the south and east sides of the road. In a paper by Yolande Hodson *'Roads on OS 1:2500 Plans 1884-1914'* (RWLR July 1999) explains the background to this practice and Dr Hodson remarks that the primary purpose of the shading of roads on the large-scale maps was to guide the draftsman in the preparation of revisions to the 1" maps. Although Dr Hodson concludes that shaded lines are not necessarily an indication that such roads shown in such a manner were public, the judgment of Hooper J in the case of *Masters* at first instance suggests that, in some circumstances, this may have been the case.

- 12.27 The 1" series of maps produced from the 1890s onwards (including the 'Popular' series) were marketed at the touring and walking public and paved the way for the current small-scale Explorer and Landranger series. These maps were produced to compete with the product of the commercial map makers in business at the time (primarily Bartholemew, whose ½" series had been extensively used by the military in the Great War as it contained a coloured road classification system). In 1912 a War Office Committee had recommended the introduction of a coloured system of road classification for OS maps which was used in the preparation of the Popular Edition (1919 – 1926). The Committee recommended that "*Carriage Drives, private roads and minor roads are never coloured*"; whereas on the popular edition the key stated "*private roads are uncoloured*".
- 12.28 Until 1931, the OS and highway authorities used different systems to classify roads. Although the numbers used in the Ministry/Department of Transport's national classification began to appear on 1:2500 maps from 1938 and on 1:10,560 maps from 1945, OS had begun publishing the half inch Ministry of Transport Roads Map series showing the national classification in 1922.
- 12.29 Most roads on OS current 1:25,000 and 1:50000 maps are coloured according to their category, as identified in the key/legend. However, some minor ways may be left uncoloured. These are known informally as "White Roads." The OS has consistently felt unable to identify the status of these minor ways which are described as "other road, drive or track."
- 12.30 The areas of each field were published on 1:2500 maps, with a parcel number to identify the particular field. Bracing indicates parcels that were measured together. A road braced with a private field may be suggestive of private status. But this would be no more than the surveyor's perception and would carry little evidential weight.
- 12.31 Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage. It has been argued that all parcels which have the shape of a way and are so numbered and measured are therefore highways. This argument has not been substantiated. Such depiction is far from conclusive for the confirmation of highway status.
- 12.32 Later OS surveys and maps, especially the larger scale plans, provide an accurate representation of routes on the ground at the time of the survey. The inaccuracies of the earlier projection were virtually eliminated by the development of an alternative form of map projection. However, it should be emphasised that the depiction of a way on an OS map is not, of itself, evidence of a highway. The courts have treated Ordnance Survey maps as not being evidence of the status of a way. For example, in the case of *Attorney-General v Antrobus* [1905] 2 Ch 188 at 203, Farwell J stated in relation to an Ordnance map of 1874:
- "Such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible*

on the question whether or not there was in fact a visible track at the time of the survey”.

12.33 Similarly, in *Moser v Ambleside Urban District Council* (1925) 89 JP 118 at 119, Pollock MR stated:

“If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate.....”

12.34 In *Norfolk CC v Mason* [2004] NR205111, Cooke J observed *“Throughout its long history the OS has had a reputation of accuracy and excellence..... It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion on public or private rights—though no doubt it is obvious what a blue line labelled “M1” must mean.”*

12.35 Nevertheless, the inclusion of a route on a series of OS maps can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence (Section 2.16 to 2.21, ‘Evidential Weight’ refers).

Other post-1800 Maps

12.36 The 19th century saw a considerable increase in the production of maps in the UK. Estate Maps were normally compiled by professional surveyors and are therefore likely to be reasonably accurate. However, they would not necessarily include any public rights of way which crossed the estate. They usually form part of a collection of estate papers, which may be deposited in county record offices.

12.37 Bryant and Greenwood produced well-made maps, using surveyors and a triangulation system. Greenwood published surveys of 38 counties between 1817 and 1834, while Bryant covered 11 English counties between 1822 and 1835. There was considerable competition between them, with both publishing maps virtually simultaneously for Surrey (1822/1823) and Gloucestershire (1824). The competition between Bryant and Greenwood, and the other map makers, may explain why the standards of accuracy of some of the maps produced differ from county to county. Though Greenwood employed his own surveyor for his triangulation work, there was criticism by Thomas Hodgson, also a surveyor, that Greenwood’s system of measuring distances for his maps was based on ‘pacing’ not ‘chaining.’ Hodgson suggests that *the high costs of Greenwood’s surveys and the speed with which they were done, reinforces the view that his topographical mapping was imperfectly executed*²¹.

12.38 Other map makers producing County maps at the time included Baker, Campbell, Donald, Drinkwater, Ellis, Fryer, Green, Hennes, Hutchings, Jeffreys, Lindley and Crossley, Phillips, Price, Ruff, Swine and Teesdale.

²¹ RWLR article ‘The evaluation of older maps’ July 1999, section 9.3, page 31

Most of these businesses collapsed due to the increasing competition from the OS.

- 12.39 Maps produced to record specific activities, such as mining and encroachment, are generally good evidence of what they portray.
- 12.40 In 1901, the War Office was using large numbers of the half-inch series maps produced by Bartholomew. These had been reduced from OS maps, but Bartholomew's maps included a new method of layer relief colouring, which was particularly popular with the War Office.
- 12.41 Some Motorists' or Cyclists' maps are occasionally quoted as evidence that routes had been used by vehicles prior to the date when the Road Traffic Act 1930 made the use of motor vehicles on bridleways and footpaths an offence without lawful authority. Certainly there is some evidence that the CTC (Cyclists Touring Club) corresponded with Bartholomew regarding routes used by their members. However, current evidence indicates that, although Bartholomew were highly regarded as map producers, they did not employ independent surveyors to carry out any surveys on the ground nor to determine the nature and status of the roads on their maps. Moreover, they do not appear to have examined the legal status of the routes on their Cyclists' Maps before colouring them for use as suitable for cyclists. Neither do they appear to have assessed the legal status of the roads on their Motorists' Maps prior to publication.
- 12.42 As a result of the OS taking HG Rowe and Co to the High Court in 1913 for infringement of its copyright, it was legally established that Rowe's New Road Map for Cyclists and Motorists was no more than a direct photographic reduction from the OS map.
- 12.43 Commercial maps are rarely sufficient in their own right to permit the inference to be drawn that a route is a highway. However, combined with evidence from other sources, they can tip the balance of probability in favour of such status.

Aerial Photography

- 12.44 Aerial photographs may be presented at an inquiry in order to confirm the existence of a route at the time the photographs were taken. Confirmation is often difficult, especially if confirmation of a footpath is sought from a single photograph. It must be borne in mind that it is hard to determine the correct orientation of the photograph unless the direction of the flight has been indicated on the back of the photograph. It is essential to try and find 3 points on the photograph which are shown on the map. The orientation of the photograph should be checked with a map and it must be remembered that the scale of the map and the photograph is likely to differ. The time of day a photograph was taken can be significant, as shadows can hide or distort the line of a narrow path. An oblique photograph may also hide a number of features which exist on the map.

12.45 An aerial photograph cannot be taken as evidence of what rights might exist over a route, only that a route might be discernible on the ground at the date when the photograph was taken.

Concluding Comment

12.46 Most maps are potentially helpful evidence of the physical existence of routes, especially if consistently shown. However, they are less helpful in terms of determining the status of the routes shown, and all mapping evidence is more helpful in conjunction with other evidence.

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Robin Carr
Robin Carr Associates
2 Friarage Avenue
Northallerton
North Yorkshire
DL6 1DZ

Your ref: MCG/FBD/S1572-6

Your ref: RCA/SCC/705

17 November 2017

By email: robin.carr1@btinternet.com
Cc: consultancy@prow.biz

Dear Robin,

**Re: Wildlife and Countryside Act 1981 – Section 53
Application to add a bridleway to the Definitive Map – Westholme Lane, Lower
Westholme - (SCC Case Ref: 705)**

As you know, we act for [REDACTED], who wish to object to the registration of the part of Westholme Lane that crosses their property as a bridleway.

We have seen a copy of your report dated 16 October 2017. We note this report has been produced based on an initial application by Mendip Bridleways and Byways Association for a Definitive Map Modification Order to Somerset County Council to add the part of Westholme Lane marked A-B on your plan referred to at Appendix 1 of your report in 2011. Our clients' property is affected by part of this lane.

We would object to the registration based on the insufficient, non-conclusive and poor Documentary Evidence and User Evidence graphs put forward as proof of the existence of a right of way.

1. Documentary Evidence

We note several plans have been provided which are of very poor quality either because the quality has been reduced in the copying process or because the originals themselves are unclear. It is clear however that there is a large amount of uncertainty as to what the colorings represent, over the names of the right of way as well as a general confusion at the heart of the County Council as to the status of Westholme Lane. This uncertainty

should not be interpreted in favour of the applicants and proper plans need to be provided.

There appears to have been certain assumptions made as to the status of the land based on one colored line meaning a bridleway on one plan or that simply because an area was excluded from adjoining land holdings due to the colouring it means it is not part of someone's own property. Equally several other assumptions have been made based on colorings to which there are no keys. The plans are simply of too poor a quality to be used and the evidence submitted is inconclusive as to the status of the lane.

2. User Evidence

We note this consists of user evidence forms and submissions made by landowners.

2.1 User Evidence Forms

Our clients are very concerned by the creditability of the user evidence forms and we are concerned by the lack of clarification contained within the user evidence. You have not stated if each of these Users used the whole of Westholme Lane or just part or simply a few feet of it. Nor have you provided further information as to the identity of these Users.

Similarly it is rather odd how between 1960 and 1980 apparently several people used Westholme Lane (although again you have not specified what part of the lane) but then from 1980 onwards it all stopped save for three user forms submitted at the same time as the original application by Mendip Bridleways and Byways Association in 2011. This does pose some questions as to credibility of these submissions.

We note at appendix 22 that alleged User 34, 35 and 36 used Westholme Lane between 2000 – 2011. This does not sit with our clients' account of the situation on the ground. They have stated that in the last 17 years that they have been living at their property they have not seen anyone use the section of Westholme Lane that crosses their property.

It would appear that in fact in the last twenty years, there is very little credible user evidence that can be taken from the graph. This coupled with our clients recollection of the situation on the ground does rather indicate that the alleged right of way which crosses our client's property has not been used as of right and without interruption.

Due to the lack of clarity, information and the out of date nature this user graph should not be used as part of the application. As you have stated at paragraph 8.26 of your report, this evidence should be treated with a degree of caution.

2.2 Land Owner Submissions

We note you have included both our clients' evidence form and that of [REDACTED]

2.2.1 Our clients' submission

As you will have seen our clients have stated that on purchase of the property they were told by the rights of way department at Taunton County Hall that Westholme Lane was an "accommodation" lane and not a public right of way. None of the searches carried out on the purchase at the time revealed a public footpath crossing the land.

As our clients have stated on the form, they have not seen anyone use the part of the lane that crosses their land during their ownership. This is supported by the fact that we understand the lane is very overgrown and does not contain signs of regular use which would have been present if the lane had been used as alleged by Users 34, 35 and 36.

It is clear that there has been no action from our clients during the last 17 years to dedicate the part of Westholme Lane that crosses their property as a public right of way.

2.2.2 [REDACTED] submission

We note [REDACTED] has stated that her searches at the time of purchase did not reveal the existence of any public access.

We also note that [REDACTED] has stated that the few people she has seen were looking for a completely different footpath. This again does rather bring into question the evidence of Users 33, 34 and 35.

3. Conclusion

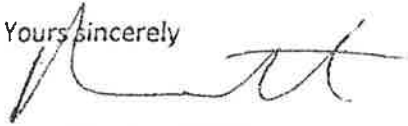
The documentary evidence is very confused and the plans are of very poor quality which makes it is very difficult to properly analyse them and consider the situation of the lane.

The user evidence submitted is in reality out of date, and it is difficult to understand how of the three user forms submitted in 2011, two have alleged frequent use of the lane. This, as we have touched upon above, does not sit with the landowners accounts.

It would appear that there is insufficient evidence to prove the existence of a bridleway and continued use of the same along Westholme Lane, and in particular the part that crosses our client's property. We do not agree with your conclusion at paragraph 9.1 that there is a reasonable allegation that the alleged bridleway exists. It is difficult to understand how this conclusion could be drawn based on the insufficient evidence presented in the report.

Once again our clients object to the registration on the Definitive Map for these reasons.

Yours sincerely



Matt Chalfont-Griffin

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Your Ref: MCG/FBD/S1572-6
My Ref: RCA/SCC/705
Date: 20th November 2017

Chubb Bulleid Solicitors
Strode House
10 Leigh Road
Street
Somerset BA16 0HA

BY EMAIL

FAO Matt Chalfont-Griffin

Dear Mr Chalfont-Griffin

Wildlife & Countryside Act 1981, Section 53
Application for Definitive Map Modification Order – Claimed Public Bridleway: Westholme Lane
My Clients: Somerset County Council (the Surveying Authority)
Somerset County Council Case Ref: 705

I note that your Clients, [REDACTED] propose to Object to any Definitive Map Modification Order that Somerset County Council may decide to make in respect of recording public highway rights along Westholme Lane (the Application Route). Please note that in the event of the Surveying Authority deciding to make such an Order, if your clients wish to pursue an objection, they will need to submit formal objections within the statutory timescales that will be stated in the notice that will accompany the Order. Unless objections are duly lodged during this period the Surveying Authority would be entitled to confirm the Order as unopposed.

With regard to the stated basis of your Client's objections, I should advise that the Wildlife and Countryside Act 1981 does not require the discovery of conclusive evidence of the existence of public highway rights before the Surveying Authority's Statutory Duty to make a Definitive Map Modification Order is triggered. The legislation states that said duty is triggered upon the discovery of evidence that there is a "reasonable allegation" of the existence of public rights and this is a somewhat low evidential threshold. A higher standard of proof is however required if such an Order is to be subsequently confirmed, however this again falls short of conclusive, it being the civil standard of proof of "on the balance of probability".

The conclusions in the report have been reached having checked the original documentary sources and consideration of the user evidence forms that have been submitted. If you wish to view the original source documents, they are generally available at the Somerset Heritage Centre, with other documents such as the 1910 Finance Act records being held by the National Archives in Kew.

With regard to the quality of the document copies provided, I apologise if some documents were a little unclear. This is possibly due, in part, to the condition or format of the originals, and how easy they may have been to reproduce. Notwithstanding this I have, earlier today, emailed your colleague a number of digital images of various documents that appear to have not reproduced well during the printing process. Had you contacted me prior to the deadline for comments I would have been able to provide such copies to you earlier.



I can confirm that all documents were interpreted in an impartial manner and no documents were interpreted in favour of the application unless that was their appropriate to their evidential value. Our remit in this matter was clear and unequivocal. We were to investigate the application and associated evidence with a view to providing a report to assist the Surveying Authority in determining whether or not the alleged rights are reasonably alleged to subsist.

I do, of course, appreciate that the interpretation of documents in respect of public rights of way is a specialist field and it may be difficult for a layperson (or their legal representatives) to fully appreciate such matters without themselves seeking specialist advice. Appropriate extracts of the Planning Inspectorate's consistency guidelines on the interpretation of evidence were also included in the Appendices to my report to assist you, your Clients and the decision makers.

With regard to the user evidence, I appreciate that, at this stage, you have only had sight of summary documents and not the actual evidence itself. Our assessment and conclusions are however based upon a review of the actual evidence. Such evidence has been taken "as read" which is one reason why we have stated that it should be treated with caution. I should further clarify that whilst the user evidence may be supportive of the establishment of pedestrian rights pursuant to the provisions of Section 31 of the Highways Act 1980, our conclusions in respect of bridleway status are based upon the historical reputation of the way as a bridleway, and I can confirm that if such rights do subsist, then they were established prior to 1910 (i.e. 1910 Finance Act).

Contrary to your assertion, there is no suggestion that any alleged use actually ceased in 1980. It is simply a matter of fact that the bulk of the user evidence forms were completed and submitted at that time, and therefore were not capable of providing any evidence of use after their submission. Whether any use took place after that time would be speculative and therefore it would be inappropriate to comment.

Furthermore, whilst I appreciate, and accept, that your Clients state that during the 17 years that they have lived at their property they have never seen anyone use Westholme Lane, this does not mean that such use has not taken place. After all I doubt your clients conduct a 24/7 vigil on the lane 365 days of the year. The fact that they have not seen anyone is indicative that, if such use has taken place, it is relatively light. However, one must also consider that the bulk of the alleged use took place prior to 1980, and therefore before your Clients purchased the property.

I do think that there is the danger that you are attributing far too much weight to any reliance that may be placed on the user evidence. Whilst such evidence must be taken into consideration, as previously stated, our conclusions in respect of bridleway status are based upon the historical reputation of the way as a bridleway, and I can confirm that if such rights do subsist, then they were established prior to 1910 (i.e. 1910 Finance Act).

I would certainly agree with your assertion that there has been very little use of the Application Route by the public over the past 20 years and that this is entirely consistent with your Client's observations and recollections. This will not however have any impact on the outcome of the case if, as I believe to be the case, the alleged rights were established prior to 1910. If this is correct then the legal principle "Once a Highway, Always a Highway" will apply unless evidence of lawful extinguishment is forthcoming. No amount of lack of use would result in the loss of the public highway rights.

With regard to your Client's submissions that have been included within the report, and that of their neighbours, as I am sure you will be aware, the search questions that were asked at time of purchase (if they were asked at all as they were at that time optional) did not ask whether public rights of way cross or abut the land, they asked whether any rights were recorded on the Definitive Map as crossing

or abutting the land. This is a subtle but important difference, which is often misinterpreted and misunderstood by conveyancers and solicitors during the purchase process. The only way in which it may have been possible to confirm that no public rights subsisted would have been to conduct the level of research that has been undertaken in the consideration of the application. I consider this to be improbable but should be happy to consider such research if, indeed, it was undertaken.

When I walked the route with your Clients I did note that some sections of the lane were overgrown and others were open and available, primarily because they were used for (private) access to the adjoining land. Such private use may well obliterate any physical evidence of light use, if indeed it has taken place at all. The state of the lane over the past twenty years or so is however likely to be of little or no consequence in the determination of this application. As stated previously, the matter is more likely to be determined based upon historical documentary evidence.

With regard to your conclusion that there is insufficient evidence to support a reasonable allegation in favour of the alleged bridleway rights, I might respectfully suggest that you seek some independent specialist advice from someone with the necessary experience and understanding of such matters. This has, in fact, turned out to be a quite well documented case, and I consider that there is a very good chance that it will be shown, in due course, that the evidence shows, on balance of probability that the alleged bridleway rights subsist. In fact, I should advise that in a case of this nature, taking into account the evidence that is available, it may even be possible (albeit only slim) that it is concluded that the lane is an historic public carriageway and therefore Restricted Byway status would be appropriate.

Finally, I should confirm that a copy of your letter and enclosures, along with a copy of this response will be appended to my final report. This will ensure that the decision-making body have full access to the representations made on behalf of your Clients at this stage of the process.

I trust that the above information is of assistance

Yours sincerely



Robin Carr FIPROW
Principal

Please note that we are in the process of moving premises. Whilst mail is being redirected from the address on our stationary, and whilst new stationary is being printed, please send all correspondence to:

Robin Carr Associates
Meadow Barn, Main Street, Kneesall, Newark, Nottinghamshire NG22 0AD

Tel: 01623 835 798

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www.harris-harris.co.uk

Diocesan Registry
14 Market Place
Wells
Somerset
BA5 2RE

T: 01749 674747
F: 01749 834060
DX: 44900 WELLS

Robin Carr Associates

Date: 20 November 2017
Our Ref: [REDACTED]
Your Ref:

Email: robin.carr1@btinternet.com - ONLY
Email: consultancy@prow.biz - ONLY

Dear Sirs

Re: **Our clients:** [REDACTED] of [REDACTED]
[REDACTED]
Application for Definitive Map Modification Order: SCC Case Reference 705

We act for [REDACTED] of [REDACTED] and have seen your letter dated 20 October and the report enclosed therewith. We wish to detail our clients objection to the application to modify the Definitive Map by adding a bridleway as detailed in the report.

Our clients are the owners of [REDACTED] and we enclose at document 1 in the bundle a copy of the title plan for title number WS40671 showing the extent of land in our clients ownership.

The concluding paragraphs of your report suggest on page 18 that there is in your view a reasonable allegation that the alleged bridleway rights subsist in the light of the body of evidence confirming the physical existence of the Application Route along with user evidence and correspondence.

With regard to the body of evidence confirming the physical existence of the Application Route our clients take the view that the copies of the maps provided with the report are of very poor quality and hard to decipher and so our clients are unable to comment on the conclusions you have reached regarding the physical existence of the Application Route. However our clients purchased [REDACTED] on 26 March 2007 and throughout their period of ownership the Application Route (as defined in your Report) has been overgrown and impassable.

Our clients have not been provided with copies of the statements of user evidence but we note from Appendix 22 of the report that some statements were made covering the period

Partners:
Associates:
Consultant:



From Office: [REDACTED]

[REDACTED]

from 1960 to 1980 and that a further three statements were made in 2011. We would like to have sight of those statements but it appears that the statements contradict evidence provided to our clients before and since their purchase of [REDACTED]. Document 2 in the attached bundle is a Statutory Declaration made by the previous owner of Wellhayes Farm [REDACTED] dated 29 January 2007 in which the use of the Application Route is detailed. Document 3 in the bundle is a more recent Statement from [REDACTED] dated 11 September 2017 in which he states that the Application Route was only used by local farmers for access to fields adjacent to it when he purchased [REDACTED] Farm then known as [REDACTED] Farm in 1971. We are unable to express an opinion about the statements made in 1980 because we have not had sight of them but in our view the evidence provided by [REDACTED] is clear and unequivocal and as owner of the land either side of the Application Route at the relevant time his evidence is surely compelling.

Throughout our clients' ownership, 2007 to date our clients have only encountered 2 or 3 horse riders attempting to access the Application Route. When they discovered how overgrown and impassable the Application Route has become they have chosen to find another route. The only walkers our clients have encountered have been looking for the nearby footpath known as The Monarchs Way rather than seeking to access the Application Route.

In paragraph 8.26 of the Report it is stated that the user evidence forms are brief and contained little evidence and must be treated with a degree of caution. Our clients are puzzled as to why in the light of that the user evidence adds to the view that there is a reasonable allegation that the alleged bridleway rights subsist. This does not appear to be a logical conclusion.

Our clients would also point out that [REDACTED] evidence as at document 3 of the bundle states that in the early 1970's the access to the Drove was obstructed by way of a barrier which would be removed for access to visitors. The barriers were replaced with gates during [REDACTED] ownership. The gates were installed in 1975 by [REDACTED] across the Application Route to protect livestock from gaining access to the Application Route. During our clients ownership the gates have remained in situ and are opened across the Application Route during the day and closed at night in order to secure our clients land. It is therefore the case that the Application Route has been obstructed by way of the barrier and then the existing gates for much of the time since 1970 to date and this is surely inconsistent with the access 'as of right' required to presume dedication of the Application Route as a bridleway.

Our clients would like to make it clear however that during their ownership the gates have not been locked across the Application Route as stated in the report, the gates are only closed and locked at night to prevent access to our client's land from the Application Route.

In conclusion our clients do not consider that the evidence supplied should lead the County Council to consider that there is a reasonable allegation in favour of the registration of public

bridleway rights over the Application Route in the light of the information and documents we have supplied.

We would be most grateful if you would acknowledge receipt of this letter.

Yours faithfully
HARRIS & HARRIS

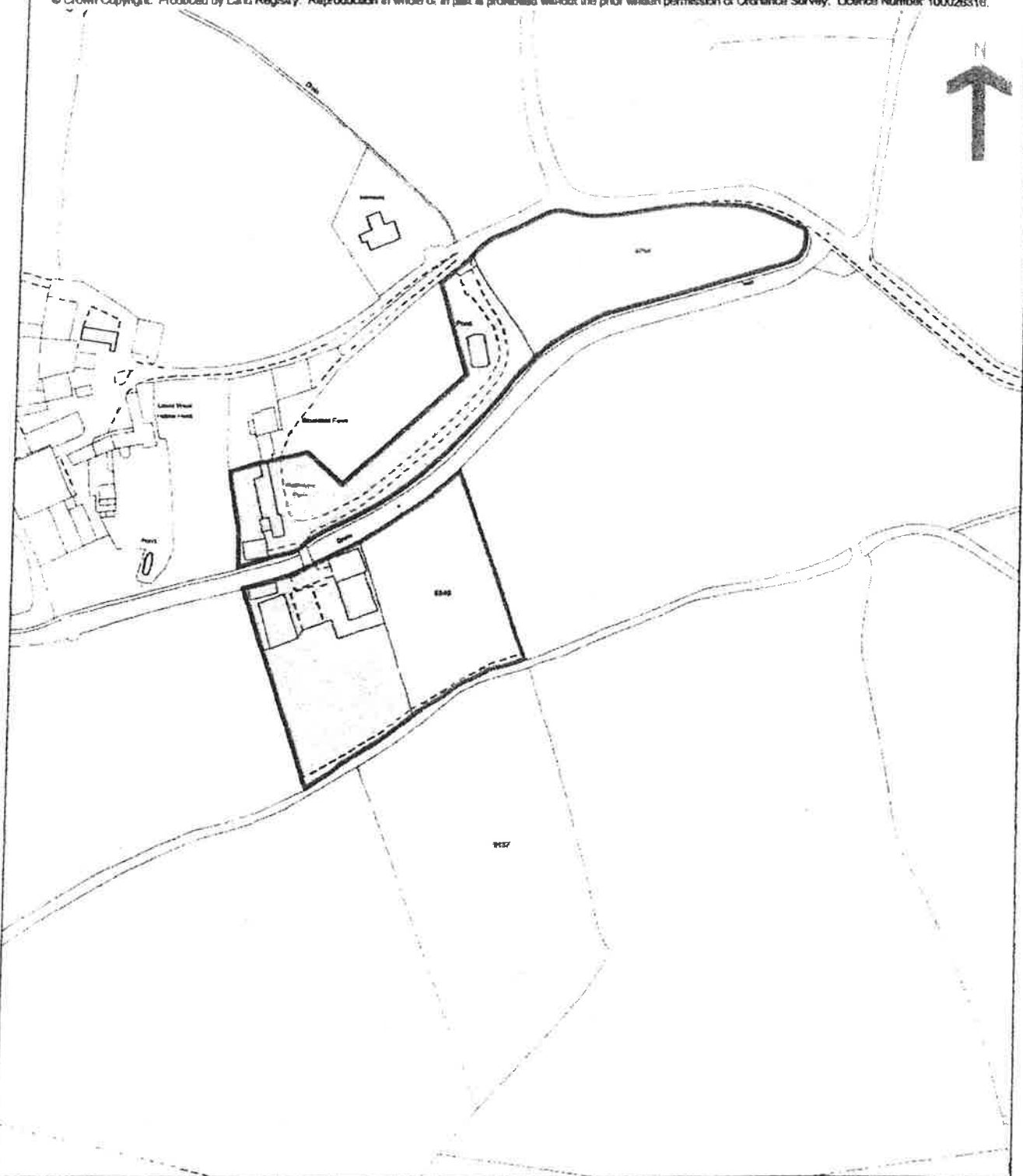
Email: kathryn.lander@harris-harris.co.uk

Land Registry
Official copy of
title plan

Title number **WS40671**
Ordnance Survey map reference **ST5640NE**
Scale **1:2500**
Administrative area **Somerset: Mendip**



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This official copy issued on 9 May 2007 shows the state of this title plan on 9 May 2007 at 11:53:04. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

This title is dealt with by Land Registry, Weymouth Office.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11th September 2017

Dear [REDACTED]

Regarding your enquiry re the drove which runs adjacent to [REDACTED] we moved into, as it was called then, [REDACTED] Farm in 1971 and this track was always known as a drove used by local farmers for access to fields adjacent to it. There were only two users in those days, both were for the movement of livestock. The access across the drove always had a barrier of some description to stop stock from straying back to the road. Some local riders used to come up through to us on a Saturday so I would remove the barrier to allow them to go further down the drove and back again but there was no easy access to get through to Redlake. We used to get drainage problems so I took out the existing old stone culverts and replaced them with concrete rings and at the same time concreted and put the two existing gates in which were far easier to handle than the old tin and made up barriers. To my knowledge there were never any local complaints and the gates were much easier to open and shut. This track was always known as a drove and not a bridleway and never defined as a bridleway on any of our paperwork.

Regards

[REDACTED]
[REDACTED]
[REDACTED]

I [REDACTED] of [REDACTED]
[REDACTED] solemnly and sincerely declare as follows:-

1. I bought [REDACTED] with my wife on the 7th June 1971 and we have lived on the site ever since.
2. In 1994 the land was split, we sold off the original Farmhouse and some land and retained a barn conversion property which is now known as [REDACTED]. I produce marked DS1 s plan ("the plan") showing the present extent of [REDACTED] edged red.
3. The land we bought with [REDACTED] Farm (including the land now known as [REDACTED] Farm) and a further paddock we bought from the estate of [REDACTED] on the 17th February 1982 are served by an access track ("the Track") shown coloured brown on the Plan.
4. Throughout our ownership of [REDACTED] and the land purchased from [REDACTED] we have enjoyed unrestricted access at all times and for all purposes with and without vehicles over the Track as of right without payment to, acknowledgement to, consent from or objection from any person.
5. As well as serving [REDACTED] and [REDACTED] the Track also leads to a bungalow and another Farm. Over the years, we have carried out maintenance work to the Track for the benefit of all four properties but without request for or payment of any financial contribution from any of the other owners.
6. Coloured green and blue on the Plan is a drove road or "green lane" ("the Drove") which serves land further to the East. Since 1971 we have used the strip of Drove shown coloured blue for access between our two areas of land on either side of the Drove save for the area bought from the estate of the late [REDACTED] to which we have only had access via that route since 1982 when we bought her land. Regularly but less frequently we have used the area of Drove shown coloured green on the plan for access from the public highway to our property and it was always used as the route to the former [REDACTED] land before we purchased it. Our access

over both the blue land and the green land has been with and without vehicles as of right at all time and for all purposes without payment or acknowledgement to, consent from or objection from any person.

7. Since 1992 [REDACTED] has been served by a drainage unit which was adapted from a previous one at that time. The unit is served by an outlet pipe which crosses the Drove in approximately the position shown by the dashed line on the plan. It has been in that position since at least 1992 without payment or acknowledgement to, consent from or objection from any person.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835

DECLARED by:

[REDACTED]

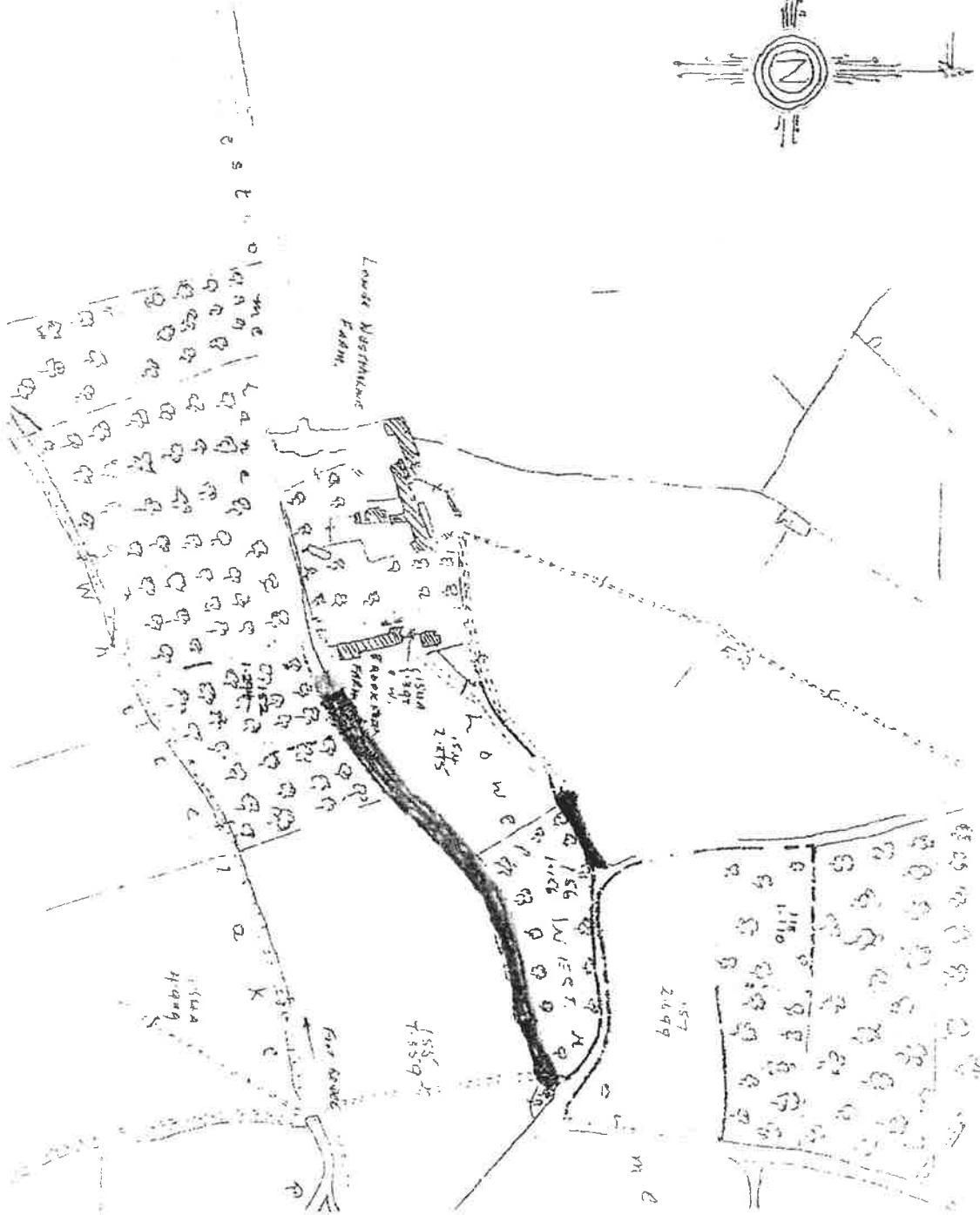
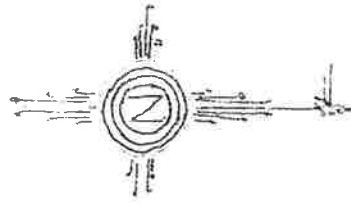
at

in the county of Somerset
this 29 day of JANUARY 2007

Before me:

THOMAS JONES JAMES SMITH

DYNE DREWETT
SOLICITORS
65 HIGH STREET
SHEPTON MALLETT
SOMERSET BA4 5AH





Your Ref: KJL DB Dickson
My Ref: RCA/SCC/705
Date: 20th November 2017

Harris & Harris Solicitors
Diocesan Registry
14 Market Place
Wells
Somerset BA5 2RE

BY EMAIL

FAO Kathryn Lander

Dear Ms Lander

Wildlife & Countryside Act 1981, Section 53
Application for Definitive Map Modification Order – Claimed Public Bridleway: Westholme Lane
My Clients: Somerset County Council (the Surveying Authority)
Somerset County Council Case Ref: 705

Thank you for your emailed letter and enclosure dated 20th November 2017, for which I acknowledge receipt.

I note that your Clients, [REDACTED], propose to Object to any Definitive Map Modification Order that Somerset County Council may decide to make in respect of recording public highway rights along Westholme Lane (the Application Route). Please note that in the event of the Surveying Authority deciding to make such an Order, if your clients wish to pursue an objection, they will need to submit formal objections within the statutory timescales that will be stated in the notice that will accompany the Order. Unless objections are duly lodged during this period the Surveying Authority would be entitled to confirm the Order as unopposed.

I can confirm that my report does indeed conclude that the historical documentary evidence, when taken in the whole, does raise a reasonable allegation in favour of the existence of public bridleway rights. My report further confirms that the user evidence that has been submitted in the support of the application is also supportive of the existence of public rights, but if taken in isolation, it would only be supportive of the existence of pedestrian rights, and even then, should be treated with some caution.

With regard to the quality of the document copies provided, I apologise if some documents were a little unclear. This is possibly due, in part, to the condition or format of the originals, and how easy they may have been to reproduce. Notwithstanding this I have, earlier today, emailed you a number of digital images of various documents that appear to have not reproduced well during the printing process. Had you contacted me prior to the deadline for comments I would have been able to provide such copies to you earlier.

I acknowledge that throughout your Client's ownership of the adjoining land they state that the lane has been overgrown and impassable, indeed when I visited the route, and walked along sections of it with your Clients, there were indeed sections which were significantly overgrown and other sections which were clear and passable. I must however stress that my findings of a reasonable allegation in support of bridleway rights relies upon historical documentary evidence. Indeed, if such rights do exist they will have already have come into being prior to 1910 (1910 Finance Act evidence), and in the



absence of any evidence of legal closure will still exist today. The legal principal "Once a Highway, Always a Highway" will apply. A consequence of this is that the current state of the lane will not be a material consideration in the determination of the case.

With regard to the user evidence, your Clients were advised by the County Council that the user evidence forms could not be provided at this stage for data protection reasons (i.e. they contain personal data). Whilst I appreciate that this is not ideal, in my opinion, it will not have any significant bearing on the eventual outcome of the Application or any subsequent Order, not least because the user evidence is not wholly supportive of bridleway status (i.e. the evidence of actual use contained within the forms is more supportive of pedestrian rights). Notwithstanding the above, in the event of an Order being made, and the matter being referred to the Secretary of State for determination, you will be entitled to have sight of full and unredacted copies of the user evidence forms.

I have read the Statutory Declaration made by [REDACTED] dated 29th January 2007, in my opinion this provides little or no evidence that is of assistance in the determination of the Application. It was clearly prepared for the purposes of confirming the extent of private use for access to land, presumably in connection with its sale/purchase. Furthermore, the document does not provide any commentary on the extent or otherwise of any public use, or indeed of any actions that may have been taken by a qualifying land owner to prevent such use. Even if it did, such actions would be of little consequence if the alleged bridleway rights had already been established prior to 1910.

[REDACTED] more recent letter, dated 11th September 2017, appears to a certain extent, to be consistent with the route enjoying bridleway status insomuch that he acknowledges equestrian use of the route by the public. I note also that he provides no evidence of any acts by a qualifying land owner that might be interpreted as a lack of intention to dedicate. The issue of the movable barriers (later replaced by much easier gates) does appear to be in conflict with the user evidence, however this would again be of little consequence if the alleged bridleway rights had already been established prior to 1910.

With regard to the quality of the user evidence forms, if taken on face value, they provide evidence of public use that is, as of right and without interruption over a period of at least twenty years dating back from an event which called into question the existence of said rights. These factors, coupled with a lack of any evidence of any lack of intention to dedicate the alleged rights by a qualifying land owner, means that on face value the tests set out within Section 31 of the Highways Act 1980 have, prima facie, been met. The "reasonable allegation" test has a relatively low evidential threshold, it is less than the civil test of "on the balance of probabilities" which would have to be met if any Order was to be confirmed. If the evidence is taken "as read" the former test (in respect of public pedestrian rights) may be considered to be met. It should, of course be noted that my report does advise caution over placing too much reliance upon the user evidence in this case. I should again reiterate that the historical documentary evidence, when taken in the whole, does raise a reasonable allegation in favour of the existence of public bridleway rights. I should further add that, if an Order is made, any case in its support is likely to primarily rely upon the historical documentary evidence. The fact that my report concludes that the evidence gives rise to a "reasonable allegation" should not be interpreted as meaning that the "balance of probability" test cannot also be met. There is simply no need to consider the latter standard of proof at this stage of the proceedings.

I note that [REDACTED] erected gates in 1975, but there is not mention of them ever being locked. Indeed, you confirm that during the period of your Clients ownership said gates have never been locked. Contrary to the assertion made in your letter, I am sure you would agree that an unlocked gate may be entirely consistent with public use that is of a nature that may be considered to be "as of right" (i.e. without force, without secrecy and without permis this stage. sion).

Finally, I should confirm that a copy of your letter and enclosures, along with a copy of this response will be appended to my final report. This will ensure that the decision-making body have full access to the representations made on behalf of your Clients at this stage of the process.

I trust that the above information is of assistance

Yours sincerely



Robin Carr FIPROW
Principal

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Meadow Barn, Main Street, Kneesall, Newark, Nottinghamshire NG22 0AD

Tel: 01623 835 798

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Somerset County Council
Regulation Committee –11th January 2018
Report by Service Manager - Planning Control, Enforcement &
Compliance: Philip Higginbottom

Application Number: 2017/1821/CNT
Date Registered: 6th July 2017
Parish: Shepton Mallet Town
District: Mendip
Member Division: Shepton Mallet
Local Member: Cllr John Parham
Case Officer: Frances Gully
Contact Details: fcgully@somerset.gov.uk
(01823) 359168

Description of Application: **ALTERATIONS TO REAR EXTENSION OF HIGHFIELD HOUSE. CHANGE OF USE FROM B1 (BUSINESS) TO D1(NON-RESIDENTIAL INSTITUTIONS)**
Grid Reference: 361844 143234
Applicant: Somerset County Council – Operations
Location: Highfield House, Cannards Grave Road, Shepton Mallet, BA4 5BT

1. Summary of Key Issues and Recommendation

1.1 The key issues for Members to consider are:

- Conformity with the Development Plan and other material considerations
- Residential and Business Amenity;
- Impact on setting of a Listed Building

1.2

It is recommended that planning permission be GRANTED subject to the imposition of the conditions in section 9 of this report and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Service Manager - Planning Control, Enforcement & Compliance.

2. Description of Site

2.1 The site comprises of an extension to the rear of the Grade 2 Listed Building named Highfield House which is part of the Mendip District Council Offices, and the outside yard to the rear of the building.

3. Site History

3.1 The extension on the back of Highfield House has been used for several years as an office with 3 rooms by the social services team with seven full time equivalent (FTE) staff. The yard at the back can be accessed through a small kitchen, directly within

Highfield House, by other office users. However, it is apparent that the yard has hardly ever been used in the last few years.

4. Details of Proposal

- 4.1 The relevant part of the building is leased to and currently occupied by Somerset County Council's Social Services Department, part of the SHAPE Mendip Hub. The application proposes to alter the rear extension of Highfield House with a change of use from 3 rooms and a corridor (B1) to a 'Getset' Facility (D1), which will have 1 kitchen, 1 room and an open plan area with a new door to the outside yard, where there is currently a window.
- 4.2 There are no additional parking spaces proposed as part of this scheme, as the current FTE staff use the parking in the Mendip Hub car park, it is viewed as a reallocation of spaces within the existing site for the proposed development, and the new staff and visitors will be able to use parking in the Mendip Hub car park.
- 4.3 The element of the proposal that requires planning permission is:
- Change of use from B1 **Business - Offices** to D1 **Non-residential institutions - day centres, schools, and education and training centres.**
- 4.4 The elements that do not require planning permission are:
- Development affecting the setting of a listed building. This requires a Listed Building Consent which Mendip District Council are required to consider. The application was approved subject to conditions on the 6th October 2017 application no. 2017/1822/LBC. See Appendix 1 for full decision notice.
 - Removal of existing partitions.
 - Creation of a new kitchen.
 - Creation of storage for IT and fold up furniture.
 - Widening an existing window opening to receive an accessible door to a play surfaced area in the rear yard.
 - The yard is to be enclosed with a 1.8 m high close boarded fence and an existing 1.2m stone wall with new close boarded fence 2.1 m high inside the wall.
 - Elevation changes solely to extract grilles and new glazed door.
- 4.5 Getset have set out their intentions for Highfield House. The numbers of clients are estimated but they will tailor the sessions accordingly if the proposal is granted permission and they begin to use the building. The activities would be supervised at all times.

Highfield House extension and yard are proposed to be used for the following services:

- **Targeted PEEP (Peers Early Education Partnership) group** – delivered by Getset, Peep groups are for parents/carers and their children together, and aim to support families with their children's early learning in an enjoyable way. Groups can be for babies, toddlers, pre-schoolers or mixed age;
- **Targeted Antenatal and Post-natal Young Parents Group** – this will be delivered on Tuesdays by Health, Leaving Care and Getset; with use of the kitchen for cooking purposes;
- **Targeted Speech and Language sessions** - delivered in partnership with Somerset Skills and Learning/ External agency and Getset;

- **Targeted Cooking courses / Messy play** - delivered in partnership with Somerset Skills and Learning/ External agency and Getset;
- **Health** – developmental checks – delivered by Health;
- **Health** – Post natal groups – delivered by Health;
- **Childminders** - childminders only;
- **Breast Feeding Support** – delivered by Health and Getset and peers supporters.

Highfield House hours of use:

Monday to Friday 08:00 – 12:30 and Tuesdays 08.30 – 16:00

The outdoor area will be used for small groups of supervised children. The number of parents/carers will be approximately 6-10, with their children.

- 4.6 The following documents have been submitted with the application submitted with the application.

SOM002 – PE- XX – GF – DR – A – 1000_Plan-Extg – L0 (Ground)

SOM002 – PE- XX – GF – DR – A – 1100_Plan-Demo-L0 – SCC Edit (Ground)

SOM002 – PE- XX – GF – DR – A – 1200_Proposed Plan

SOM002 – PE- XX – GF – DR – A – 9000_Site Plan

5 Consultation Responses Received

The application was publicised by way of site notice, press notice and neighbour notification.

- 5.1 **Mendip District Council** – No objection.
- 5.2 **Shepton Mallet Parish Council** – Unanimously support the application.
- 5.3 **Councillor J Parham** – No response received.
- 5.4 **Somerset Access & Inclusion Network Mendip** – No response received.
- 5.5 **Historic England** – No objection on heritage grounds.

Internal consultees: Somerset County Council

- 5.6 **Transport development group** – No response received.
- 5.7 **Community Protection (Noise)** - The view of the acoustics advisor is that the revised development incorporates reasonable noise mitigation measures, such as the rubber crumb surface to reduce the risk of noise disturbance. Therefore, there are no objections to the development subject to a condition to maintain a record of any instances of noise disturbance that have been reported to the users (Getset staff); to provide a measure of the effectiveness of any noise control policy they wish to carry out.
- 5.8 **South West Heritage Trust** - Following some discussion regarding the fencing and the setting of the Listed Building, the SW heritage group are satisfied that the listed building consent conditions cover all impacts on the setting of the listed building and do not advise any conditions or informatives for this permission.

Public Representations

5.9 The application has been publicised by erecting a site notice and neighbour notifications have been carried out. As a result one objection has been received covering the following:

5.10 **Objection** to the use of the courtyard due to the disruption to the charity facility regarding:

- i. Noise levels; which would be greatly increased if the yard is accessed by the clients using Highfield House Getset centre,
- ii. Mental wellbeing of clients and discomfort; due to noise levels, and
- iii. Their rights (as a charity and clients) to peaceful enjoyment of the property.

6. Comments of the Service Manager - Planning Control, Enforcement & Compliance

6.1 The Key issues for members to consider when determining this application are:

- Conformity with the Development Plan and other material considerations.
- Impact on residential and business amenity.
- Impact on setting of a Listed Building.

6.2 Regard is to be had to the Development Plan for the purpose of the determination of this planning application, which must be made in accordance with the Plan unless material considerations indicate otherwise. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 this decision has been taken with due regard to the Development Plan unless material considerations indicate otherwise. The decision has been taken having regard to the policies and proposals in:

6.2.1 The Development Plan for the area. Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies adopted December 2014

6.2.2 As discussed below, the proposed development accords with all relevant planning policies within the Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies. As such, it is considered that the proposal is in accordance with the Development Plan.

6.2.3 The application is in accordance with policy DP1; Local Identity and Distinctiveness. The Policy requires that 'the application has an appreciation of the built and natural context of their locality recognising that distinctive ... boundary walls ... and other features collectively generate a distinct sense of place and local identity (partial text from point 2 of policy). The policy also requires that there have been appropriate efforts made by the applicant to mitigate impacts associated with the new use (noise) and they have made a clear indication of the need for the proposal to take place in this location' (partial text from point 3 of policy), due to the current premises being inappropriate.

6.2.4 The application is in accordance with DP3: Heritage Conservation. This Policy requires proposals which affect a heritage asset or its setting (in this case the Grade 2 listed Highfield house) to demonstrate an understanding of the significance of the asset or setting. This has been established by the

approval of the listed building application (application no. 2017/1822/LBC) which indicates that the proposal has been supported in terms of its affect on the heritage asset of Highfield House as a listed building and its setting.

6.2.5 The application is in accordance with DP7: Design and Amenity of New Development; the Local Authority will support high-quality design which results in usable, durable, adaptable, sustainable and attractive places. The proposal is particularly in accordance with points a)-c) and g)-h) of part 1 of the Policy; as follows: 'Proposals for new development should demonstrate that they:

- a) Are of a scale, mass, form and layout appropriate to the local context;
- b) Protect the amenity of users of neighbouring buildings and land uses and provide a satisfactory environment for current and future occupants;
- c) Optimise the potential of the site in a manner consistent with other requirements of this policy;

- g) Meet the access needs of a wide range of users;
- h) Incorporate appropriate crime prevention measures;
- i) Undertake construction in a manner that makes efficient use of materials and minimises waste.'

6.2.6 Other material considerations for the area comprise: National Planning Policy Framework March 2012 (NPPF) and the Planning Practice Guidance. The application is in accordance with the NPPF and the Guidance in terms of ensuring the vitality of town centres and particularly in regard to protecting the historic environment due to this site being attached to Highfield House, a Grade 2 listed building.

6.3 Impact on residential and business amenity.

The change of use is located in an extension to Highfield House which is part of the Mendip District Council Offices. There are no objections to the internal changes to the buildings; it is the use of the outside space which is of a major concern to a neighbouring charity business. It is considered that there could be disturbance at times from people using the outside area. These may be staff, parents or carers and children from 0-18-years old depending on the sessions which are taking place in the centre.

Taking account of the above, it is considered that the proposal could compromise the occupiers of the neighbouring charity from the existing situation.

However, in planning terms with regard to what the outside area could currently be used for (general use of outside space by office workers), and taking account of the mitigating measure of placing a fence across the yard preventing people walking in front of the neighbouring property's windows, and the soft surface to be installed, the change of use would not create a significant change in noise and disturbance from the potential levels expected from the existing permitted use of the outside area.

There are no other objections to the proposal from other residents or businesses.

6.4 Impact on setting of a Listed Building.

The impact of this proposal has been discussed with English Heritage who had no concerns with the proposal, and stated that they consider the application meets the requirements of the NPPF. More detail was discussed with the South West Heritage Trust who had concerns regarding the fencing in the yard. All concerns have been overcome and the SW Heritage Trust are satisfied that the appropriate colour of fencing will be addressed through the Listed Building Consent in compliance with Mendip District Council consent 2017/1822/LBC, and therefore no further advice or conditions are required with this application in that respect.

7. Conclusion

It is considered that this report demonstrates that the effects associated with the proposal would be acceptable from a planning perspective, by virtue of the proposal's appropriate design and the use of conditions that would ensure that the effects are appropriately mitigated where needed. It is noted that a proportion of the proposal can be undertaken using permitted development rights and so is beyond the control of Somerset County Council; however, in terms of the matters requiring planning permission (the change of use) this assessment demonstrates that impacts in planning terms are negligible, as any adverse impacts of this decision would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

It is concluded that the proposed development accords with the Development Plan (Mendip Local Plan) for the area and represents sustainable development.

8. Recommendation

Taking into account the issues noted above and all other relevant material considerations it is concluded that the proposal is in accordance with the development plan.

It is recommended that planning permission be GRANTED subject to the imposition of the conditions in section 9 of this report and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Service Manager - Planning Control, Enforcement & Compliance.

9. Conditions

1. The development hereby permitted shall be commenced within three years of the date of this permission.

Reason: Pursuant to Section 91 of The Town and Country Planning Act 1990 (as amended).

2. The development hereby permitted shall be carried out in strict accordance with the following approved plans:

SOM002 – PE- XX – GF – DR – A – 1000_Plan-Extg – L0 (Ground)
SOM002 – PE- XX – GF – DR – A – 1100_Plan-Demo-L0 – SCC Edit (Ground)
SOM002 – PE- XX – GF – DR – A – 1200_Proposed Plan
SOM002 – PE- XX – GF – DR – A – 9000_Site Plan

and with any scheme, working programme or other details submitted to and approved by the Waste Planning Authority in pursuance of any condition attached to this permission.

Reason: To enable the Waste Planning Authority to deal promptly with any development not in accordance with the approved plans.

Informative

1. It is advised that the managers of the new facility/centre adopt a policy designed to limit the occurrence of excessive noise from children by active intervention. The managers of the development hereby permitted shall maintain a record of any instances of noise disturbance that have been reported to the users (managers) by neighbouring residents or businesses.

Reason: To monitor the impact on noise amenity for neighbouring residents and businesses. Therefore providing a measure of the effectiveness of the active intervention policy.

10 Policy Analysis

10.1 The following is a summary of the reasons for the County Council's decision to grant planning permission.

10.2 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 this decision has been taken with due regard to the development plan unless material considerations indicate otherwise. The decision has been taken having regard to the policies and proposals in:

Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies adopted December 2014

- DP1: Local Identity and Distinctiveness
- DP3: Heritage Conservation
- DP7: Design and Amenity of New Development

The proposal is in accordance with the Development Plan and in particular the following policies:

Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies adopted December 2014

Policy DP1	Local Identity and Distinctiveness	In accordance as the proposal will not adversely affect the local identity or distinctiveness of the Town of Shepton Mallet or the wider area.
Policy DP3	Heritage Conservation	In accordance due to the approved listed building consent no. 2017/1822/LBC
Policy DP7	Design and Amenity of New Development	In accordance as the proposal is of appropriate design in this sensitive area and will not result in significant adverse effects on the amenities of the occupiers of nearby premises.

Appendix 1



Customer Services
Cannards Grave Road, Shepton Mallet, Somerset BA4 5BT
Telephone: 0300 303 8588 Fax: 01749 344050
Email: customerservices@mendip.gov.uk
www.mendip.gov.uk

Shane Jolly
Somerset County Council
County Hall - PP B2S 4
TA1 4DY

Application Number: 2017/1822/LBC
Date of Application: 3rd July 2017
Application Type: Listed Building Consent

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)
ACT 1990 (AS AMENDED)
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)
REGULATIONS 1990 (AS AMENDED)

THE MENDIP DISTRICT COUNCIL, being the LOCAL PLANNING AUTHORITY for the said District, hereby **GRANT LISTED BUILDING CONSENT** for the works described in the application validated on 3rd July 2017 subject to conditions hereunder stated.

Proposal: Alterations to rear extension of Highfield House, change of use from B1 to D1
Location: Highfield House Mendip District Council Offices Cannards Grave Road
Shepton Mallet Somerset
Parish: Shepton Mallet Town Council

DECISION: Approval with Conditions

REASON FOR APPROVAL

1. The proposals would preserve the significance of the designated heritage asset. The proposal has been tested against the following Development Plan policies. In the opinion of the Local Planning Authority, and subject to the conditions below, the proposal is acceptable:-

DP3 (Heritage Conservation) of the Mendip District Local Plan 2006-2029 (Part 1 Strategies and Policies - adopted 15th December 2014) National Planning Policy Framework Planning Practice Guidance

CONDITIONS

1. The works hereby approved shall be begun before the expiration of three years from the date of this consent.
Reason: As required by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. The works hereby approved shall be carried out in accordance with drawing numbers 1000, 1100, 1200, 3300 and 9000 validated 03 July 2017 only.
Reason: For the avoidance of doubt and in the interest of proper planning.
3. Notwithstanding the details provided on the approved plans and supporting documents, no finish shall be applied to any of the external fencing within the site until a sample panel has first been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be retained and maintained in accordance with the approved details.
Reason: This condition must be a pre-commencement condition to safeguard the setting of the listed building.
4. No external walling shall be constructed or installed in respect of the works hereby approved until a sample panel of all external walling materials has been erected on site and approved in writing by the Local Planning Authority. It shall thereafter be kept on site for reference until the work is completed.
Reason: In the interests of the preservation of the significance of the designated heritage asset.
5. No external walling shall be demolished as shown within drawing 1100 hereby approved until a specification of works for the demolition of the walling has been submitted to and approved in writing by the Local Planning Authority. The approved works shall thereafter be carried out in accordance with the approved details.
Reason: In the interests of the preservation of the significance of the designated heritage asset.

NOTES

1. In order to discharge conditions relating to the approval of external walling and roofing materials, please ensure that materials are left on site for approval and NOT brought to the Council Offices. When applying for the approval of materials, you must state precisely where on site any samples have been made available for viewing.
2. Your attention is drawn to the condition/s in the above permission, some of which require(s) the submission and approval of certain information PRIOR to the commencement of certain activities (e.g. development, use or occupation). Failure to comply with these conditions may render the development unauthorised and liable to enforcement action. Please note that there is a fee for the council's consideration of details submitted pursuant to a condition on a planning permission. The fee is £97 per request (or £28 where it relates to a householder application) and made payable to Mendip District Council. The request must be made in writing or using the Standard Application form (available on the council's website www.mendip.gov.uk). For clarification, the fee relates to each request for the discharge of condition/s and not to each condition itself. There is a no fee for the discharge of conditions on a Listed Building Consent, Conservation Area Consent or Advertisement Consent although if the request concerns condition/s relating to both a planning permission

and Listed Building Consent then a fee will be required. You should allow up to eight weeks for these condition/s to be discharged, following the submission of details to the Local Planning Authority. If the Local Planning Authority fails to give a decision within this time or should it refuse approval of the submitted details then the applicant is entitled to lodge an appeal to the Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN, tel. 0117 372 6372, www.planninginspectorate.gov.uk

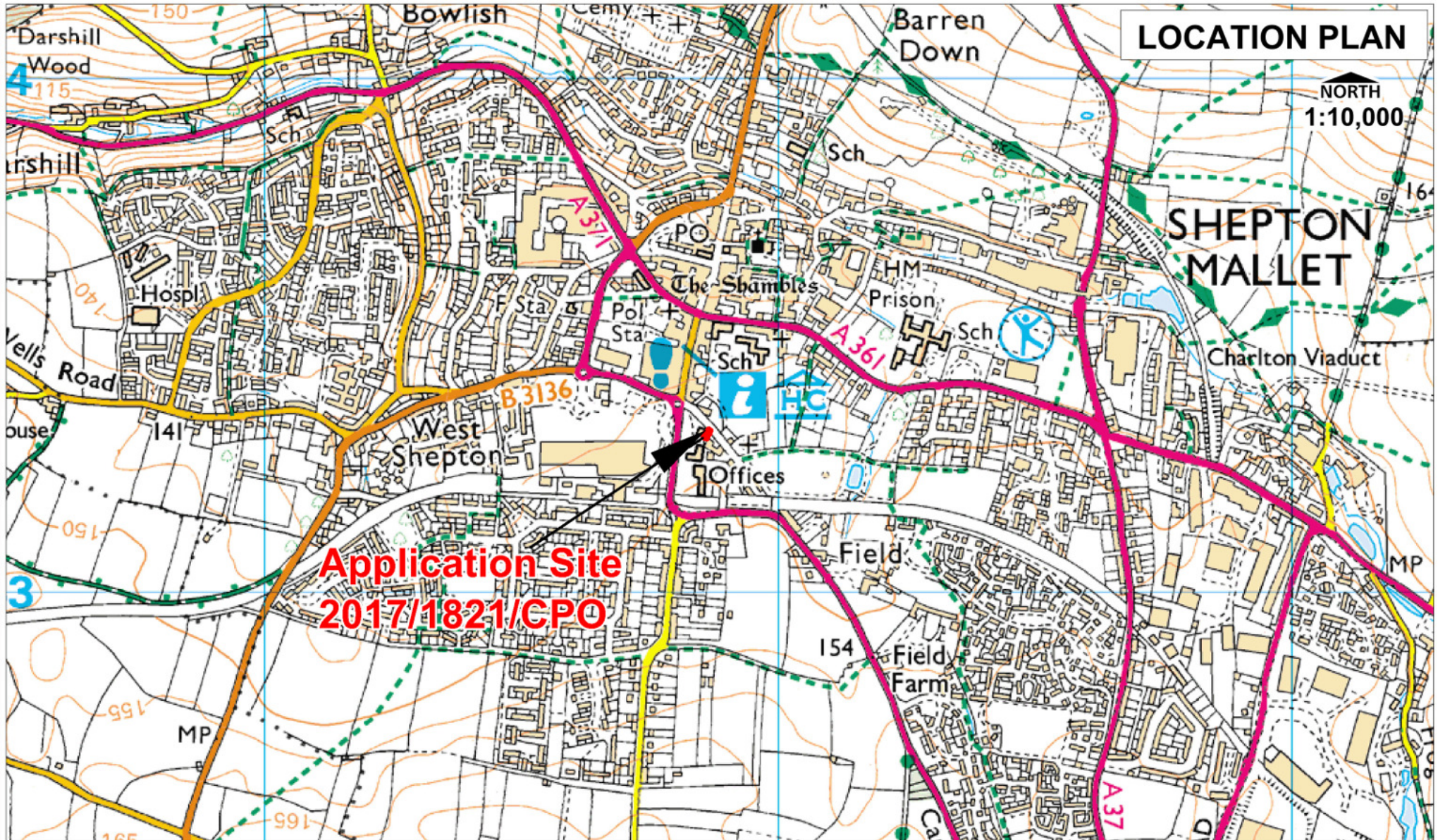
3. The Planning Authority is required to erect a Site Notice on or near the site to advertise development proposals which are submitted. Could you please ensure that any remaining Notice(s) in respect of this decision are immediately removed from the site and suitably disposed of. Your co operation in this matter is greatly appreciated.
4. In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of listed building consent.
5. Where a Planning Permission, Listed Building Consent, Certificate of Lawful Development or Prior Approval has been issued, approval may also be required under the Building Regulation Legislation before any work is commenced, and throughout the building process. Somerset Building Control Partnership works in tandem with our Development Management team to offer a number of helpful and efficient services that can be accessed via their website www.somersetBCP@sedgemoor.gov.uk by email at somersetBCP@sedgemoor.gov.uk, or by telephoning 0300 303 7790. Our Building Control team includes chartered surveyors, fire and building engineers and support staff that are available for free pre-application discussions and/or site meetings, to plan and facilitate a streamlined pathway to the completion and final sign-off of all projects.

I.Bowen BA(Hons) BTP(Dist) MRTPI
Group Manager for Planning and Growth Services

If you have any queries regarding this notice please contact our Customer Services Team on 0300 303 8588

Dated 6th October 2017

DM No. - ETE-#829942-v1-Highfield_House_Shepton_Mallet_2017_1821_CNT



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Philip Higginbottom
 Service Manager
 Planning Control, Enforcement and Compliance
 Community & Environmental Services
 Somerset County Council
 County Hall TAUNTON TA1 4DY

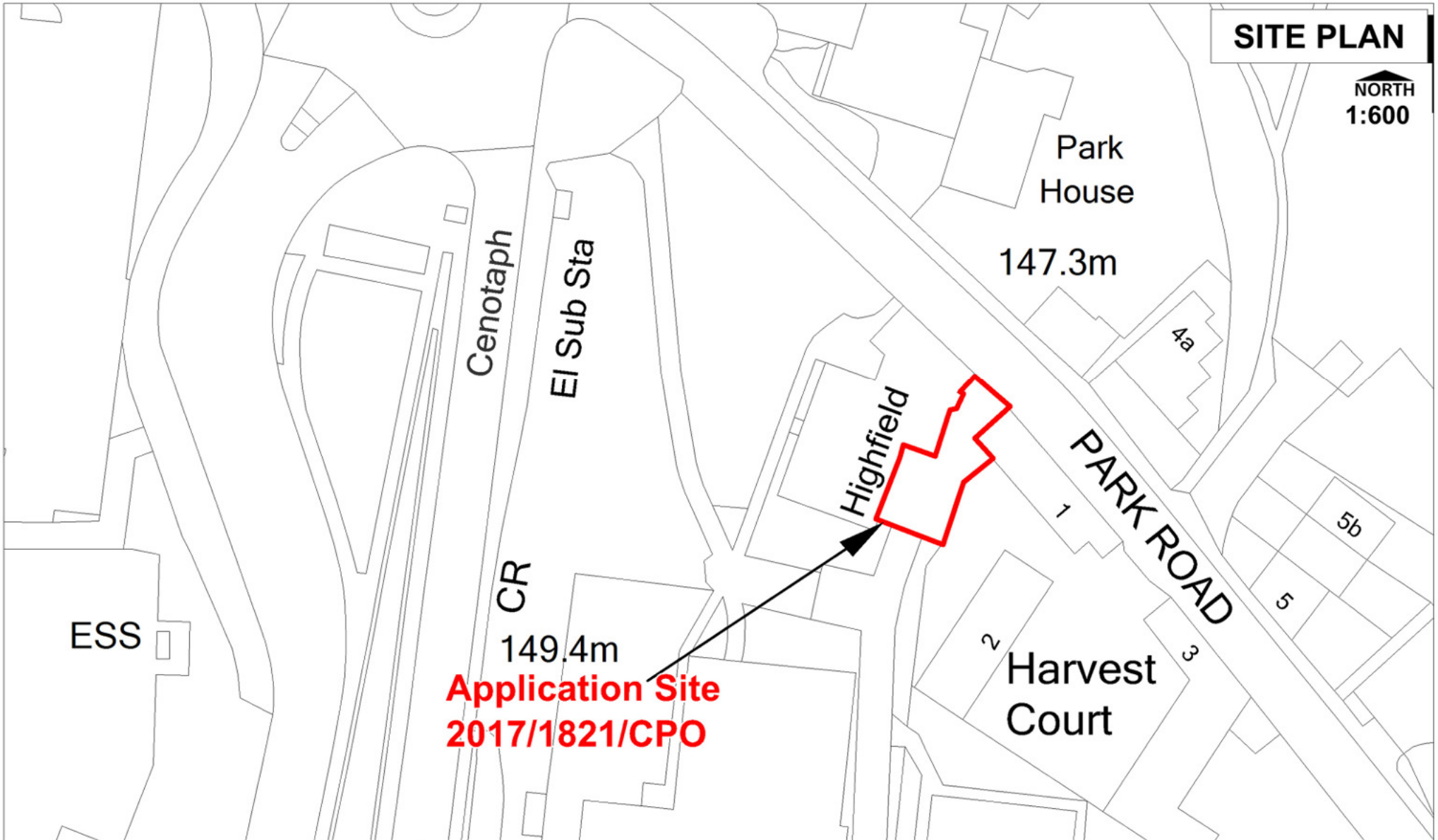
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Site Name:
 Highfield House

Planning Control
 Drawn by: P Silvers

Dated: 19th December 2017

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Philip Higginbottom
 Service Manager
 Planning Control, Enforcement and Compliance
 Community & Environmental Services
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