



**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53, SCHEDULE 14**  
**APPLICATION TO ADD A PUBLIC FOOTPATH FROM AX15/14 PARALLEL**  
**TO THE A371 WEST TOWARDS CROSS**  
**IN THE PARISH OF**  
**COMPTON BISHOP 810M**

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# CONTENTS

1. Introduction
2. The Application and supporting evidence
3. Relevant Legislation
4. Documentary Evidence
5. User Evidence
6. Landowner Evidence & Evidence from those against the application
7. Consultation and other submissions
8. Analysis of evidence relating to use of the route
9. Summary and Conclusions
10. Recommendation
11. List of Appendices

## **1. Introduction**

1.1 On 5 August 2014 Tess Gill on behalf of the Coffin Lane Campaign made an application under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 for an Order to amend the Definitive Map and Statement by adding a public footpath described in paragraph 2 below.

1.2 A public footpath can be used by the public on foot only.

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

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

## **2. The Application**

2.1 The application is supported by evidence from 21 people who attest to use of the route, photographs of the site, an accompanying statement, and a legal opinion. Evidence from two additional users was submitted during the investigation.

2.2 The application route is shown coloured blue on Appendix 1. It runs from the western end of footpath AX 15/14 (point A on appendix 1) parallel with the A371 in a west/north-westerly direction towards Cross for approximately 127 meters before re-joining the A371 (point B on the appendix 1). The route has a grassed surface.

2.3 Photographs of the claimed route taken on 2 December 2016 are at Appendix 2.

2.4 A land registry search was carried out on 28 October 2016 which identified two joint landowners for the whole of the land over which the application route runs (referred to as 'the landowner' throughout this report).

2.5 A case file, including the application and consultation responses will be available to Members in the Member's Room at County Hall from the date of publication of the committee report, one week in advance of the relevant meeting of the Regulation Committee.

2.6 A draft version of this report dated 25/10/2017 was circulated to interested parties and comments invited. The report has been updated in response to the resulting comments and additional evidence received, as and where appropriate. The full submissions made in response to the draft report and the officer's response will be available to Members in the Member's Room at County Hall from the date of publication of the committee report, one week in advance of the relevant meeting of the Regulation Committee.

### 3. Relevant Legislation

3.1 The Wildlife and Countryside Act 1981 specifies in Section 53(2)(b), that the County Council must keep the Definitive Map and Statement under continuous review and must make such modifications as appear to them to be requisite in the light of certain specified events. In this case sections 53(3)(b) and 53(3)(c)(i) are of particular relevance.

3.2 Section 53(3)(b) requires the Map and Statement to be modified on *“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”*.

3.3 Section 53(3)(C)(i) states that the Map and Statement should be modified where the County Council discover evidence which, when considered with all the other available evidence, shows *“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”*

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

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

3.6 Twenty 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. Section 31 (1) states *“where a way over any land, other than a way of such character that use of it by the public could not give rise at Common Law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”*.

3.7 Section 32 of the Highways Act 1980 states that *“a Court or other tribunal, before determining whether a way has or has not been dedicated as a*

*highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced”.*

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

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

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

<b>4.2 Enclosure Records:</b>
<b>4.2.1 Explanation of the type of evidence</b> 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.
<b>4.2.2 Compton Bishop New Inclosures Map and Award 1778 – 1779. Somerset Heritage Trust (SHT) reference: Q/RDE/117. Appendix: 3</b>

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

The map includes a key which identifies 'Horse Road or Drove' and 'Foot Path'. However, although part of the current field through which the application route runs is shown, the northern edge of the mapped area lies further south than the application route and follows a field boundary which is no longer present on the ground. This boundary can be seen as an earthwork on the 1946 aerial photographs (see paragraph 4.10, below).

As the area over which the application route runs is not covered by the map or award it is given no weight in this investigation.

#### **4.3 Quarter Session records:**

**4.3.1 Explanation of the type of evidence** 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.

**4.3.2 Sessions roll for Epiphany 1928: Papers relating to the stopping up and diversion of the A38 at Compton Bishop 26 October 1927. SHT reference number: Q\SR\910/12 – 33. Appendix: 4.**

#### **4.3.3 Description and interpretation of evidence**

The plan, which includes an enlarged inset, shows the old road and the route of the new road and includes the western end of Cross Lane which is labelled 'to Axbridge'. No feature which might be a footpath is shown. A symbol which may represent a gate is shown in the field boundary opposite Manor Farm on the southern side of Cross Lane at point B. However, there is no key and nothing to indicate whether this was simply a field gate or access to a public footpath or something else.

No mention of a footpath is made in the various documents relating to this stopping up.

Neither the application route nor the footpath AX15/14 were directly affected by the new road, and so may not have been shown even if they had been present. The plan also only extends as far as the western end of the application route. Therefore this document can only be given little weight in this investigation.

#### **4.4 Tithe Records:**

**4.4.1 Explanation of the type of evidence** Tithe maps and the written document which accompanied them, (the apportionment) were produced

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

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

Public roads which generated no titheable produce 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 sometimes 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.

**4.4.2 Compton Bishop Tithe Map and Apportionment 1838 – 9. SWHT reference: D\D/Rt/M/68 (map) and D\D/Rt/A/68 (apportionment). Appendix: 5.**

**4.4.3 Description and interpretation of evidence**

Cross Lane is shown on the map un-numbered. The field to the south of Cross Lane through which the application route runs is given the apportionment number 111. No feature which might be a footpath or other way is shown either along the route of footpath AX 15/14 or the application route.

The Tithe Apportionment records 111 as belonging to Sir John Mordaunt, occupied by Thomas Tozer, described as 'Part of the fifteen acres', and as 'Pasture' with no remarks recorded against it.

Tithe records were concerned with assessing and recording land to facilitate the payment of tithes and not with recording public rights of way. Unproductive land, such as some roads, was exempt from payment of tithes. Land over which a footpath ran would have been unlikely to have been deemed unproductive and so the non-recording of a footpath on the tithe map is not good evidence that the footpath did not exist. Therefore, the tithe map is of no assistance in this case.

#### **4.5 Ordnance Survey Records:**

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

OS Maps cannot generally be regarded as evidence of status, however they indicate the physical existence of a route at the date of survey.

#### **4.5.2 Ordnance Survey 1:2500 Sheet XV11.16. 1886 (Surveyed 1884), 1903 (revised 1902) and 1930 (revised 1929).**

##### **Appendix: 6**

On the 1886 map Cross Lane is shown coloured sienna with a thickened casing line to the south. At the western end a dashed line and uncoloured strip separate the sienna coloured road from the southern bracing line, probably indicating a verge. A route is shown in the same position as the current footpath AX 15/14 as parallel dashed lines, braced with the rest of the field, and annotated FP. No foot path or other way is shown approximating the application route.

The 1903 and 1930 maps are uncoloured but otherwise show the area in the same way as the 1886 map except for very minor changes of no significance to the application route.

#### **4.5.3 Ordnance Survey 1 inch: 1 mile Sheet 280, 1898.**

##### **Appendix: 7.**

Cross Lane is shown as a first class road (thickened casing lines on both sides). No footpath is shown to the south on either the application route or the current path of footpath AX 15/14.

#### **4.5.4 Ordnance Survey 1:25000 Sheet ST45, 1959.**

##### **Appendix: 8.**

Cross Lane is shown coloured orange with casing lines of equal thickness. A route is shown as a single dashed line labelled F.P. along the route of the current footpath AX15/14. No way of any kind is shown along the application route.

#### **4.5.5 Description and interpretation of evidence.**

OS maps are excellent evidence for the physical existence of a route on the ground, but not whether or not there were public rights over it. Therefore, the fact that the route of footpath AX 15/14 (where shown) corresponds with the route recorded on the DMS is good evidence that footpath AX 15/14 followed its current path when these maps were surveyed. Similarly, the fact that the application route is not shown at all is good evidence that there was no physical feature forming a path over the application route.

#### **4.6 1910 Finance Act**



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

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

- Working Plans and Valuation Books. Surviving copies of both records may be held at the Local Records Office. Working maps may vary in details of annotation and shading. The Valuation Books generally show records at a preparatory stage of the survey.
- The Record Plans and Field Books (small bound books) are the final record of assessment and contain more detail than the working records. The Record Plans and Field Books are deposited at The National Archives, Kew.

While the Valuation and Field Books were generally kept untouched after 1920, many of the working and record maps remained in use by the Valuation Offices and sometimes information was added after the initial Valuation process. The 1910 Finance Act material did not become widely available until the mid 1980's. It cannot therefore have been considered during the Definitive map making process and can be considered "new evidence", if it is relevant.

**4.6.2 Working Plan and Valuation Book. SHC reference DD/IR/OS/17/16 (plan) and DD/IR/W/43/4 (book). Appendix: 9.**

**4.6.3 Description and interpretation of evidence**

The Record Plan and Field Book have not been viewed in this case. The Working Plan shows Cross Lane as a white road excluded from the hereditaments. The footpath now recorded as AX 15/14 is shown on the OS base mapping as a footpath, but nothing is shown over the area of the application route. The application route is within hereditament 89.

The Valuation book describes hereditament 89 as being occupied by Herbert Tilley, describes the property as a 'Farm' and the name or location as 'Cross Manor Farm'. There are no deductions recorded for public rights of way, easements etc.

Where deductions are made it is normally considered fairly good evidence for public rights of way as the landowner is admitting their existence. Although it would have been to a landowners advantage to acknowledge a public right of way if it existed and therefore claim the corresponding deduction, they were not required to do so. Therefore, if there was a footpath through a hereditament it would probably be shown in the Valuation Book, but its absence does not prove it did not exist. In this case even the footpath shown on the base mapping is not acknowledged, and these records are therefore not helpful in this instance.

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

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

- Walking Survey Cards and maps - Parish Councils were required to survey the paths they thought were public paths at that time and mark them on a map. The route was described on a survey card, on the reverse were details of who walked the route and when. Queries for the whole parish are often noted on a separate card.
- Draft Map – Somerset County Council produced the Draft Map from the details shown on the Survey Map. These Maps were agreed by the County Works Committee and the date of this Committee became the 'relevant date' for the area. The map was then published for public consultation. Any objections received were recorded in a Summary of Objections.
- Draft Modification Map – This stage in the process was non statutory. SCC produced a map to show any proposed changes as a result of objections to the Draft Map. Any objections received were recorded in a summary of Counter Objections to the Draft Modification map.
- Provisional Map – This map incorporates the information from the Draft Maps updated to reflect any successful objections. These were put on deposit 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.

### **4.7.2 Survey Card**

The survey card records AX 15/14 as a foot path and reads;  
Description:- The path starts at Manor Farm, Cross to Town's End Farm Axbridge, F.P. starting from top gate of Manor Farm home ground Ord No 89 over stile to Ord No 87 crossing boundary of Parish to Axbridge. This stile is [disused?] and No Step.

The application route was not recorded in the parish survey.

### **4.7.3 Survey Map**

Shows the route of footpath AX 15/14 in grey / green. No route of any kind is shown on the application route.

### **4.7.4 Draft Map**

Shows the route of AX 15/14 in pink. No route of any kind is shown on the application route.

### **4.7.5 Draft Modification Map**

The route of footpath AX 15/14 is shown on the base mapping but without additional annotations or labels. No route of any kind is shown on the application route.

#### **4.7.6 Provisional Map**

Footpath AX 15/14 is shown in purple, labelled 15/14 in pencil. No route of any kind is shown on the application route.

#### **4.7.7 Definitive Map Appendix: 10.**

Foot path AX 15/14 is shown in purple. No right of way of any description is recorded along the application route.

#### **4.7.8 Definitive Map Statement**

Footpath AX 15/14 Statement reads;

From:- Manor Farm, Cross

To:- Parish boundary near Townsend Farm, Axbridge

Description:- The path is a F.P. It starts at the top gate of Manor Farm home ground, on the south side of the Cross – Axbridge county road, and it runs easterly parallel with the road to the parish boundary where it continues as footpath 1/22 to Townsend Farm, Axbridge.

#### **4.7.9 Interpretation of evidence**

None of the preparation documents for the Definitive Map, or the Definitive Map itself show the application route, although the route of footpath AX 15/14 is shown consistently along its currently recorded line.

The Survey Card and Definitive Statement both describe the route as starting at the top gate of Manor Farm home ground. Taken alone the written descriptions could refer to one of two gates (point A or point B). However, when considered alongside the map it is clearly referring to a gate near point A. The map and statement are not in conflict, and the application route is not recorded either on the Definitive Map or in the Definitive Statement.

The DMS is considered definitive evidence of what it contains, but not of what it omits, and therefore the omission of the application route from the DMS is not evidence against its existence.

#### **4.8 Highways records (SCC). Appendix: 11 A – P.**

##### **4.8.1 Description and interpretation of evidence**

In 2002 road works caused the A371 Axbridge bypass to be closed and traffic diverted onto Cross Lane. In anticipation of the increased traffic which would be travelling on Cross Lane as a result, WS Atkins Consultants Limited (working on behalf of SCC) contacted the then landowner, the Compton [Bishop] Estate,

to request permission to create a footpath on the current application route. Letters and notes in the file suggest Mr Ian Crawford referred WS Atkins to the current landowners as the land was being sold to them and it was anticipated they would own the land by the time the diversion was due to be in force.

Some documents refer to a 'swing gate' to be added to the existing gate at point B rather than a stile. These documents have not been included in the appendices or discussed further as a stile appears to have been the option which was eventually implemented, and the documents provide no additional relevant information.

The file contains the following relevant documents:

A. Extracts from minutes of meeting WS Atkins 23/08/2001. Because of the increase in traffic caused by a diversion onto Cross Lane, the footpath will be looked into. The importance of consulting with the Parish and County Council was raised.

B. Plan dated 09 2001 showing the route of footpath AX 15/14, and hand written in red ink a dashed line over approximately the line of the application route under consideration here, labelled "Temporary extension to footpath" and marked by an X at approximately point B, "STILE REQUESTED HERE".

C. A plan dated September 2001, showing the route of footpath AX 15/14 as a dashed line labelled "Current dedicated footpath" and a double-ended arrow in approximately the position of the application route under consideration here labelled "Temporary extension to footpath".

D- Extract from minutes of meeting SCC / WS Atkins 17/09/2001. Confirming the extent of 'the right of access' approximately  $\frac{3}{4}$  of the length of Cross Lane.

E. Letter from WS Atkins to Compton Estates 25/09/2001 requesting permission to install a hard surface and fence, and to extend the footpath to the end of Cross Lane.

F. Record of telephone conversation in reply to E, 27/09/01, from Mr Ian Crawford of Compton Bishop Estates informing WS Atkins that the land is soon to be sold, and that he will speak to the perspective landowner regarding the footpath issue.

G. Extract of email from WS Atkins to DEFRA 27 September 2001, discussing the intended temporary surface and possible footpath extension. The land is said to be owned by the Compton Bishop Estate but is soon to be sold and Ian Crawford will discuss the potential footpath extension with the perspective owners.

H. Memo from SCC Environment and Property to WS Atkins, 26 October 2001. Discussing the current landowners request for a stile at point B and desire to keep the gate at point B locked. Possibly referring to the plan (B) where the position of a stile is shown at point B in red ink. The memo states that SCC are

dealing with the perspective landowner rather than Ian Crawford, as the perspective landowner anticipates the sale will be completed shortly.

I. Photographs dated October 2001. Although a number of photographs were taken near the application route, none show the means of access to the field at point B. Two are reproduced in appendix 11 I.

The first, taken from approximately point A looking west along the application route towards point B, shows the route grassed, with no visible obstructions, and no visibly worn track. The second photograph taken from the field and looking north towards the road shows point A with a wooden field gate secured by a chain with a wooden stile adjacent to it. The stile at point A on the definitive line of AX15/14 appears to be newer than the gate, but not newly installed at the time the photograph was taken. There are five horizontal rails, and one V-shaped rail, and a single cross step supported by a round post. Although it is unknown who installed the stile at point A, it does not appear to conform to the types of stile installed by SCC on public rights of way. Efforts to discover whether it might have been installed by Sedgemoor District Council have been unsuccessful.

J. Extract from a Works Order, dated 17/10/01 but accompanying minutes of a WS Atkins meeting dated 01/12/2001, describing the installation of a “temporary stile to the A38 end of the footpath next to an existing gate” and repairs to the existing stile halfway along the footpath.

K. Extract of email from WS Atkins to landowners 10/12/2001 informing them of the signs that will be installed along the temporary extension of the footpath, including an A4 sign which will read “THIS SECTION OF FOOTPATH IS TEMPORARY AND HAS BEEN AGREED WITH KIND PERMISSION OF THE LAND OWNER FOR THE DURATION OF THE BRIDGE STRENGTHENING WORKS. THIS TEMPORARY FOOTPATH WILL BE AVAILABLE FROM THE BEGINNING OF JANUARY 2002 UNTIL THE END OF MARCH 2002”

L. Agreement between landowners and WS Atkins / Somerset County Council, 10 December 2001, signed and dated 10/12/2001. The agreement is for a temporary footpath for a period of 5 months from 1 January 2001 during bridge strengthening works indicated on a plan in pink (see M, below), including the installation of a temporary stile at the western end of the temporary footpath and signs, and that the signs and temporary stile will be removed within two weeks of the end of the works.

M. Plan forming part of the agreement between landowners and WS Atkins / Somerset County Council, 10 December 2001 (L, above). A pink line indicates the temporary extension to the footpath to which the agreement refers, which corresponds with the application route under consideration in this report.

N. Extract from letter from landowner to WS Atkins / SCC 10/02/2002, pointing out that although footpath signs have been erected, the temporary stile at the “A38 end of the field opposite Manor Farm” has not been installed, and that the chain used to secure the gate at this point has been ripped off.

O - Extract from a memo from SCC to WS Atkins regarding the above letter (N) requiring the stile to be installed.

P - Extract from email from Compton Bishop Parish Council to WS Atkins. 14/02/2002 referring to the "temporary extension" of the footpath.

#### **4.9 Parish File for Compton Bishop (held by SCC) and relating to PROW issues) reference RW1/21 file 2. Appendix: 12 A – E.**

##### **4.9.1 Description and interpretation of evidence**

The file contains the following relevant documents:

A. An SCC internal memorandum dated 20/05/1996 from Ian Connell (Environment Department, SCC) to B. Twist, Rights of Way (reference HD/ES/0346/2/IDC).

The memorandum describes the concerns of the agent for Compton Bishop Estates, who owned the land over which the application route runs, regarding 'ramblers' using the gate opposite Manor Farm (point B). The memorandum records that the landowner's agent objected to this and that he suggests a stile is installed further east at the start of the public right of way.

The plan accompanying the memorandum shows the current route of footpath AX 15/14 in red and labelled 'EXISTING PUBLIC FOOTPATH'.

The memo also refers to a proposed cycleway and footpath discussed in 1994. Documents relating to this proposal are also present in the file and show that it included the current application route, but as the proposed creation never took place, have not been included in the appendices. From the documents found, it is uncertain what stage this proposal reached, or why it never took place.

The contents of this memo suggest there was no stile at point B in 1996 (had a stile been present, the walkers would have been likely to use this rather than the gate) and shows that the landowner's agent did not recognise the application route as a public right of way in 1996 and wished to prevent the public using it. If walkers were able to leave the gate open it also shows that the gate was unlocked at least some of the time in the period leading up to the land agent contacting the council, and that the landowner was aware of at least some public use at this time.

In a different coloured pen at the end of this memorandum are notes of a phone call from the agent for the Compton Bishop Estate which took place during the week beginning 20/05/1996.

For a transcript of the handwritten memorandum see appendix 12 A. The notes record that the enquiry was passed to J. Searle (Sedgemoor District Council) with the recommendation that:

- a stile is installed;
- a notice is installed saying no public right of way with an arrow to the

- start of the footpath; and
- a notice at the second gate where the footpath ends instructing walkers to re-join the road.

The stile referred to would have been at point A. A photograph taken in 2001 (paragraph 4.9.1 I, appendix 11) shows a stile was installed at point A, but no notices or signs are visible. It is unknown whether any of the signs referred to were actually installed. If they had been, they may have acted as a challenge to the public's use of the application route, but no evidence has been found that they were installed and no users recall seeing them (see paragraph 5.9 below).

Bi, Bii and Biii were sent to SCC together as one fax.

Bi. Letter from the then Chairman of Compton Bishop Parish Council to the current landowners, dated 21 April 2002.

The letter states that residents benefited recently when "you kindly allowed them to use of your land to effectively extend the footpath while road works were being carried out" and goes on to request discussion of a possible permanent extension.

Bii. Text of email sent to SCC as a fax from the Vice Chairman of Compton Bishop Parish Council to the landowners, hand dated '23/06/02'.

The email expresses gratitude for the "temporary permissive extension to opposite Manor Farm during the congestion caused by the Axbridge bypass bridge strengthening work, and we know how much it was appreciated by the residents of Cross". The letter goes on to raise concerns regarding the safety of walkers on Cross Lane, refers to complaints the Parish Council has received since the temporary stile was taken out of use "last week" and asks whether the landowner would consider "allowing the temporary permissive extension of the footpath to become a permanent permissive path".

Biii. 25 June 2002. Text of email from Landowners to Compton Bishop Parish Council. The email is apparently a reply to Bii, and declines to consider any changes.

C. An internal memorandum dated 28/06/2002 from Audrey Westall, Somerset Property Services to Rowena Smith [SCC Rights of Way].

The memorandum concerns a telephone call from the Vice Chairman and Footpaths Officer of Compton Bishop Parish Council raising concerns about the safety of walkers exiting onto Cross Lane from footpath AX 15/14 after a temporary extension to this footpath allowing walkers to exit opposite Manor Farm was brought to an end (see paragraph 4.8.1). As the bridge work was finished, the temporary extension was ended and the "temporary gate at the cross roads" was no longer available for walkers to use. The memorandum refers to and includes copies of the Parish Council's letters to the landowners asking them to consider a permanent extension to the footpath (Bi and Bii) and the landowner's reply declining (Biii).

D. Fax from SCC to Compton Bishop Parish Council dated 09/07/2002

The fax is a reply to an enquiry regarding the creation of a permanent footpath link to Cross. Several options are suggested including by agreement with the landowner, a Creation Order, and the parish council buying the land and dedicating the path themselves.

E. Letter dated 17/07/2002 from Compton Bishop Parish Council to SCC Group Manager Rights of Way

This is a reply to a letter sent 12/07/02 (a copy of which has not been found), and the fax sent 09/07/02 (D). The letter confirms Compton Bishop Parish Council's gratitude to the landowners for "allowing the temporary extension to the Cross Lane footpath for the duration of the Axbridge bypass bridge strengthening." It goes on to say that the closure of this temporary extension led to "a number" of people expressing their concerns at a parish council meeting.

**4.10 Aerial photograph 1946**

**Appendix: 13.**

**4.10.1 Description and interpretation of evidence**

The area of the application route is covered. A gate or a gap in the hedge that separates Cross Lane from the field containing the application route can be seen at the point where the application route and the western end of footpath AX 15/14 meet (point A). No similar gateway or gap can be seen at the western end of the application route (point B), but the quality and scale of the photograph combined with presence of long shadows make it difficult to see the area clearly. Therefore, these photographs are of very little use in this investigation.

Earthworks which match earlier field boundaries shown on the 1778 – 9 Inclosure Map can be seen in this photograph. A similar possible field boundary in the form of a shallow earthwork can be seen running from the immediate west of the gap in the hedge at point A in a southerly direction to join with the field boundaries which match the Inclosure Map. There is no field boundary in this position now, but the earthwork suggests there may have been at some point in the past, perhaps in the 18<sup>th</sup> century or earlier.

**4.11 Google Earth Images 1999 – 2001, 2006 and 2009**

**Appendix: 14.**

**4.11.1 Description and interpretation of evidence**

A photograph available on Google Earth dated between 1999 and 2001 shows a large group of probably round hay bales immediately to the east of the gate at point B. There is a gap between the hedge and the bales of approximately 2 metres which would be sufficient width for a walker to pass through. The area around the bales is bare earth on three sides, with the fourth side (between the hedge and the bales over the application route) mostly in deep shadow which



obscures the ground surface. The area not in shadow appears to be bare earth. If the bales were fenced to prevent livestock from accessing them then that fence can't be seen in this image. However, the scale of the image is such that a wire fence would be unlikely to be visible. It is therefore not possible to tell from this image whether the bales were fenced at the time the photograph was taken and therefore whether there was a fence across the application route. Apart from point B just to the east of the bales and the gateway at point A, both of which are bare earth, the application route is grassed. No other obstructions can be seen on the rest of the application route in these images.

On an image dated 2006 the bales are no longer present, and strong shadows indicate the field gates at point A and B are shut.

An image dated 2009 shows the livestock building and surrounding hard standing / stoned area between points A and B, and a barrier (either gates or a fence) across the application route at the western end of the hard standing extending from the hard standing to the hedge, and possibly at the eastern edge of the barn as well.

It is not possible to see on the 1999 / 2001 or 2009 images whether the gates at point A and B are open or shut. Neither is it possible to see whether there is a stile or fence next to the gate on any of the images.

#### **4.12 Planning Application**

**This application and the associated documents can be viewed at [http://www.sedgemoor.gov.uk/planning\\_online/\(S\(a1oy5o2sxqfcnahrqtvb2nxv\)\)/Search.aspx](http://www.sedgemoor.gov.uk/planning_online/(S(a1oy5o2sxqfcnahrqtvb2nxv))/Search.aspx)**

**Appendix: 18**

#### **4.12.1 Application 21\03\00016. Registered date 11/09/2003.**

A photograph, digitally date stamped 1 10 '03, and submitted as part of this planning application, shows a wooden field gate at point B clearly secured to the gatepost. The method of securing the gate appears to be a chain and padlock. However, it is not possible to be certain as the resolution of the image is too low when viewed at sufficient scale. To the immediate west of the gate is a partially overgrown wooden structure consisting of three transverse bars and a post extending above the height of the gate. This structure is consistent with the structure visible in later photographs and on the ground now, but without the fourth top bar. No cross-step is visible in the photograph and although any cross step which was present would probably be visible, the partial overgrowth makes it difficult to be completely certain.

**4.13 Compton Bishop Parish Council Minutes, Annual Assembly Minutes and Chairman's notes. SWHT reference: D\PC\com.b/4/8/4 and D\PC\com.b/4/8/5.**

**Appendix: 16. (including transcript of relevant sections).**

#### **4.13.1 Description and interpretation of evidence**

A scanned copy of extracts from Compton Bishop Parish Council / Annual Assembly Minutes for 12/07/1979, 10/10/1979, 01/11/1979, 03/04/1980 and

01/05/1980 were provided by a respondent to the consultation.

A scanned copy of extracts from Compton Bishop Parish Council / Annual Assembly Minutes for 07/02/1980 and 21/03/1980 were provided by the clerk of the parish council.

Unsigned minutes of 06/09/1979, 06/12/1979, 03/01/1980 and Chairman's notes were viewed at the South West Heritage Trust.

The minutes for July 1979 refer to the Definitive Map at minute 95(a). Minute 95(c) states that "The Council considered that a sign should be erected to indicate the Cross Lane footpath leading to Axbridge. Mr Brinson agreed to discuss the matter with Mr Crawford".

In September 1979 the minutes record that Mr Brinson was still waiting for an opportunity to speak to Mr Crawford.

In October 1979 "It was agreed that Mr Brinson should proceed to put up a direction post at the end of the Cross Lane path."

In November 1979 "It was agreed that the installation of a direction post should be postponed until the hard standings for bus passengers were laid."

In December 1979 "it was agreed that the direction post should be put up at once and Mr. Brinson agreed to attend to it."

In January 1980 it was reported that Mr Brinson had been unable to erect the direction post.

In February 1980 it was reported that Mr Brinson had been unable to obtain a metal post and it was agreed a wooden one would be used.

The minutes of the parish assembly of March 1980 recording the Chairman's address refer to the path alongside Cross Lane and state "A sign would however, be put up at the Cross end". A handwritten document, apparently the Chairman's notes in preparation for his address at the March 1980 meeting, state "I would like to mention that your P.C. intends to erect a footpath sign for "Coffin Lane", which is the footpath which runs parallel to Cross Lane to Axbridge. Negotiations with the relevant interested parties have been successful & we now have a post and a sign & hope to put it up soon, probably in conjunction with building the bus shelter. We also intend to ask if Axbridge T.C. will deal similarly with their end."

The April and May 1980 minutes refer to the progress of work relating to bus stops.

In July 1979 the Parish Council clearly had the Definitive Map in mind as it was discussed in the minutes (95(a)), and were therefore presumably aware that the recorded definitive line of footpath AX15/14 stops at point A and that no public right of way was recorded on the application route. However, no comment is made in the minutes suggesting the parish council was aware of an inaccuracy in the DMS (i.e. that the recorded route should continue west to point B) either in relation to this minute, or in relation to the sighting of the direction post at minute 95(c).

The various references to the installation of a direction post would be

consistent with a post to be located at point A or situated on the roadside verge directing walkers to point A and on to the definitive line of AX15/14, but would also be compatible with a sign directing people onto the application route under consideration here.

The fact that the installation of the direction post was delayed until the hard standing at the bus stops had been laid suggests that the post was to be installed in the same area as one of the bus stops. The bus stop on the north side of the road is described as being relocated to the entrance to the telephone exchange. The stop on the south side is not described in detail, but Witness W (see 6.2.4) refers to people waiting for the bus in the gateway at point B, User 2 refers to the hard standing created by the bus company being in the vicinity of point B, and User 12 refers to people leaving bikes at point B when they caught the bus. Therefore, although open to interpretation, it seems more likely that the bus stop in question, and therefore the sign, was intended to be placed in the vicinity of point B.

If the intention had been to place the signpost on the roadside verge it would have been unlikely that the Parish Council would have needed to consult the landowner, unless the route it was directing people onto was to be permissive. It is therefore considered that the most likely scenario is that the Parish Council were discussing installing a sign to be located at point B to direct the public onto the application route.

Mr Crawford was presumably being consulted either because the Parish Council believed he was the landowner or a representative of the landowner.

Although there is no explicit record of Mr Crawford's or the landowners response, the parish council decided to go ahead and install the direction post and even went as far as buying the materials. Furthermore, the chairman reported or intended to report in reference to the direction post that "negotiations with the relevant interested parties have been successful" to the parish assembly in March 1980. This suggests the parish council received a response which led them to believe the landowner was in agreement with the erection of the direction post.

It is understood from user evidence that ultimately, this direction post was never installed.

**4.14 Declaration made by Somerset County Council 1 March 2001 by virtue of Article 35B of the Foot and Mouth Disease Order 1983 as amended by the Foot and Mouth Disease (Amendment) (England) Order 2001. From SCC Files.  
Appendix: 20.**

SCC made a declaration on 1 March 2001 the effect of which was to close all public footpaths, bridleways and cycleways in the county, except those which were wholly within urban areas. The application route, recorded footpath

AX15/14 or AX1/22 are not wholly or partially within urban areas.

It is highly unlikely that the order would have had any legal effect on the application route as it was not recorded as a public right of way on the DMS<sup>1</sup>, but the order would have closed AX15/14 and AX1/22 with which the application routes joins and then continue to Axbridge.

**4.15 Somerset County Council (Foot-and-Mouth Disease) Declaration No. 14 2002. From SCC files. Appendix 21.**

This declaration, dated 1 June 2001, reopened rights of way which had previously been closed due to foot and mouth. The schedule included a list of rights of way which would continue to remain closed in parishes where the rest of the paths were open. Under Compton Bishop, footpath AX 15/14 is listed. Under Axbridge, footpath AX26/22 is listed. However, '26' is not the correct prefix for rights of way in Axbridge parish, and has been crossed through on the declaration. The correct prefix is '1', meaning the declaration also shows footpath AX1/22 remained closed. The declaration does not apply to the application route as it was not recorded on the DMS in 2001.

**14.16 Press release 19 July 2001. From SCC files. Appendix 22.**

The press release summarises the reopening of many rights of way in Somerset between 14 and 21 July 2001. Only a specified area (not including the application route) and rights of way through premises subject to 'Form A' notices remained closed.

**14.17 SCC map showing 'Buffer Zone' and 'A Notice Farms' from 16 July 2001. Appendix 23.**

The key identifies "A" Notice Farms with a blue outline around blue stipples. The application route is approximately 1.5 miles from the nearest "A" form farm shown, and over 25 miles from the buffer zone and would therefore not be affected by foot and mouth control measures applied to A notice premises.

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

Parish Magazine for Weare, Cross, Compton Bishop, Biddisham and Loxton. Issues November and December 2001, February and March 2002.

(A\DBL/87/6)

Section 31 Statutory Declarations

Sedgemoor District File (held by SCC)

Road Records (1929, 1930's and 1950's). No evidence has been found that suggests the application route was a road maintainable at public expense in the highway records since 1929

<sup>1</sup> Mr Justice Kerr, Roxlena Ltd v Cumbria CC, paragraph 25, [2017] EWHC 2651 (Admin)

## **4.19. Documentary Evidence conclusions**

4.19.1 The documents found in the highways files and parish file for Compton Bishop (held by Somerset County Council (SCC) and relating to PROW issues) described in paragraphs 4.8 and 4.9, the aerial photographs from Google Earth (paragraph 4.11), the Planning Application (paragraph 4.12) Parish Council Minutes (4.13) and documents relating to foot and mouth (4.14 – 4.17) will be considered with the user evidence in section 5, as they relate to more recent use and physical condition of the application route. The conclusions below are based on the older, historic documentary evidence.

4.19.2 Although many of the documentary sources depict the definitive footpath AX 15/14, none show the application route either as a physical feature on the ground or a public right of way of any kind. Some users (see section 5 for user evidence) have referred to the application route as the 'Coffin Path' or similar names, and described it as the route used to transport coffins from Axbridge Workhouse to Compton Bishop church. However, no documentary evidence has been submitted or found that supports this reputation for the historic use of the application route.

4.19.3 Some users have also referred to the apparent anomaly of the recorded route of footpath AX 15/14 terminating at point A for no discernible reason. The probable ancient field boundaries visible on the 1946 aerial photographs as earthworks and which partly match the boundaries on the 1779 Inclosure Award offers a possible explanation for this, as there appears to have been a field boundary running south from point A at some point.

4.19.4 The application route does not appear on any of the historic documents. The documentary evidence therefore does not support the existence of the application route as a footpath in existence prior to the 1950's.

## **5. User Evidence**

5.1 The applicant submitted a legal opinion (appendix 15) with the application. This document reached the conclusion that there is sufficient credible evidence to justify the making of an order to record a footpath on the application route under Section 31 of the Highways Act 1980.

5.2 Since the legal opinion was written additional information (including interviews with some users, the statements of witness R to Z<sup>2</sup> and evidence submitted by the landowner) has been submitted or discovered, and was therefore not available for consideration when the opinion was written. Therefore, as all the evidence discussed in the legal opinion is discussed elsewhere in this report, I have not analysed this document further as part of this report.

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<sup>2</sup> Users who submitted evidence have been assigned a number. People who had knowledge of the route other than as users have been called 'Witnesses' and assigned a letter.

5.3 A graphic summary of the user evidence as submitted can be found at Appendix 17<sup>3</sup>.

5.4 Twenty three people submitted evidence of their use of the application route. Each user has been given a number between 1 and 23 which will be used here for identification purposes.

5.5 Twenty one user evidence forms (UEF's) were submitted with the application, a further form was submitted after the application was received and one additional user gave evidence in an interview only<sup>4</sup>. Thirteen users were interviewed in person on 2 December 2016 and 12 December 2016, and one was interviewed by telephone on 15 May 2017.

5.6 User evidence covered the period between the 1960s and 2016.

5.7 The table below shows the estimated minimum and maximum average use per day over the application route in different years. Users 1, 3 and 21 have been excluded from the calculations as their use was permissive (see paragraph 5.8)<sup>5</sup>. The number in brackets is the average use per day including user 1, 3 and 21<sup>6</sup>. User 1, 3 and 21 probably could not be considered to be using the route with permission from 1997 because the tenant who gave them permission or for whom they worked was no longer in possession of the land.

<b>Year</b>	<b>Minimum average use per day</b>	<b>Maximum average use per day</b>
2001	1.06 (1.64)	1.67 (2.54)
1996	0.85 (1.43)	1.46 (2.33)
1982	0.40 (0.99)	0.45 (1.32)

<sup>3</sup> Appendix 17. The smallest division of time represented in appendix 17 is 1 year. Therefore, where use took place for part of a calendar year, the box representing that year is wholly coloured in the chart.

Where a user gave a range of years for the start or end date of their use it is the maximum period of use which is represented.

Where a user referred imprecisely to a decade or part of a decade (for example, 'the 1980's, or 'early 90's') it is the maximum period which is represented in appendix 17, i.e. 1980 – 1989 or 1990 – 1995.

<sup>4</sup> User 7 did not sign or date their User Evidence Form. They did, however, sign and date the map accompanying it.

<sup>5</sup> As many respondents gave a range when asked how frequently they used a route, the minimum use given per year were added up and divided by 365, and the maximum use given per year were added up and divided by 365. Where a number was given per week or month this was extrapolated to the number per year. The evidence of all users who claimed to have used the application route in 1982, 1996 or 2001 was included except user 22, for whom the use per year is unknown, and user 12 who used the route "occasionally" in 1982. The evidence of witness R to Z has not been incorporated. Results are shown to two decimal place, not rounded.

<sup>6</sup> The average use per day does not represent actual patterns of use. It is used throughout this report to allow the level of use to be compared easily, but it should be born in mind that actual use is likely to have followed a different pattern, which may have related to (for example) school term time, weekdays / weekends, and seasonal variation. Where a user claimed use for only part of a year, they have been treated as if they used the route for the whole of that year for the purposes of calculating average use.

5.7.1 All but one user (user 12) said they saw other people using the route. However, it is not possible to tell from the evidence whether these were additional users, other users who have also filled in user evidence forms, or people with permission or implied permission to use the route. This evidence can only therefore be given little weight.

## **5.8 Permission.**

5.8.1 Users 1 and 3 were given permission to use the route by the tenant in the early 1970's, having started to use the route in about 1972. That tenant was no longer in possession of the land from 1997<sup>7</sup> and therefore user 1 and 3 may no longer be considered to have permission from that date. User 20 claimed to have used the route in the "EARLY 60s", but states at question 14 of their UEF that they had worked on the relevant land for about 30 years. As user 20 worked for a previous landowner and tenant throughout the period in which they were using the route, they would usually be considered to have implied permission to use the route. In any case, as they only claimed to have used the route in the 1960s, their use has not been included in the table at 5.7 above. User 21 on their UEF claimed to have used the route from the 1960s to 2014 (when they filled in their form), but at interview said they only used the route themselves as a small child. They also described working for the tenant, Mr Dimmock, from about 1967 until his death<sup>8</sup>. Someone working for the tenant or landowner is normally considered to have implied permission, so user 21 was using the route with permission from at least 1967 – 1997 and may not have used the route after that (although their use post-1997 is still shown on appendix 17 to reflect the evidence of their UEF).

5.8.2 User 4 referred to the route as 'permissive' on their user evidence form, and clarified this at interview by saying "When I said 'permissive' on the user evidence form I meant we were allowed to use it. I thought it was part of the footpath. I thought Mr Crawford was happy for the general public to use it."

5.8.3 User 5 referred to the route as "being declared a "privilege" (sic) path on their user evidence form, and clarified this at interview by saying "On the user evidence form I filled in I used the term 'privilege path'. As far as I'm concerned, the owner of the field, Mr Ian Crawford, had installed the means of getting on the route. If you were in social contact with him he made it perfectly clear he was happy for people to use it. I thought he was referring to people in the village and the whole borough because they had access whereas the people in Compton Bishop had a longer walk."

5.8.4 Nineteen users answered 'no' to the question 'Have you ever asked permission to use the route?'. User 4 and 8 did not answer this question.

## **5.9 Notices.**

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<sup>7</sup> It is understood from evidence submitted that the tenant, Mr Dimmock, died in 1997.

<sup>8</sup> Ibid.

5.9.1 User 1 remembered a sign at point B “on the stile” in 2004 prohibiting access, although they could not remember the exact wording.

5.9.2 At interview User 2 recalled seeing a white notice on the gate at point B prohibiting use of the route but could not recall whether or not this was related to the foot and mouth outbreak of 2001.

5.9.3 User 3 remembered a sign at point B prohibiting use of the stile and application route two years after the stile was installed in response to the roadworks (see paragraph 5.10) [2004].

5.9.4 On their UEF user 9 refers to a possible notice being displayed in 2003, although they did not recollect seeing it personally. At interview they could not remember whether or not they had seen notices relating to the application route.

5.9.5 Nine other users answered that they had not seen notices relating to the application route.

5.9.6 Ten users did not answer the question relating to notices.

## 5.10 Stiles.

5.10.1 Seventeen users referred to the presence of a stile on the application route at point B. Comments relating to a stile at this point are summarised in the table below<sup>9</sup>.

User	Year stile installed or first observed	Year stile removed or ceased to be observed	Comments
1			Not present in 1972. Installed at point B by the owner, the late Mr Ian Crawford, to facilitate use of application route for pedestrians because he was concerned about their safety using Cross Lane. Use of A to B prohibited by the current landowners when they purchased the land “(in the late 1990s?)”.
2	Circa 1996	2003	UEF: “There was no stile at point ‘D’” [point D on the map referred to by User 2 is point B on appendix 1] “until around 1996 (not sure of the exact date) when the Compton Bishop

<sup>9</sup> Third hand references to a stile rather than first hand recollections have not been included. Only references to a stile which may be relevant to the investigation have been included. Stiles are known to have existed at point A and at other locations on the recorded footpaths AX15/14 and AX1/22. Therefore where a user only indicated stiles at some point other than B, or did not indicate the location of the stile they referred to at all, they have been omitted.



			<p>Estate Manager, Ian Crawford, had a small stile installed to the west of the existing gate.”</p> <p>Interview: “After Les Dimock died, the manager of the Compton Bishop Estate, Ian Crawford, arranged for a stile to be installed at point B, probably in the late 1990’s, but certainly before 2000. The stile was a cut-off round post on either side of the fence supporting a plank as a cross step.”</p> <p>Stile removed in 2003.</p>
3	2002 <sup>10</sup>	Before 2004	<p>UEF: “...landowner the late Ian Crawford. He agreed that in view of the danger to pedestrians he would install a stile at point A” [point A on the map referred to by User 3 is point B on appendix 1]. This arrangement ceased after his death and the sale of the land.</p> <p>Interview: Ian Crawford agreed to install a stile at point B in view of the danger to pedestrians caused by the additional traffic on Cross Lane during roadworks. It was removed when Mr Crawford died and the land was sold, before 2004.</p>
4	1982		<p>“I first started using the route in 1982. I always remember the stile beside the gate at point B”. “The stile was a basic wooden stile. The fence is still there now. There was a cross step on the stile but I can’t remember if this was there when I first started using the route”.</p>
5	Circa 1993 (UEF) 1982 (Interview)	Circa 2001 – 2003 (UEF) 2016 (interview)	<p>UEF: “During my early years of usage a stile had been installed by the then owner of the land, a Mr Ian Crawford.” “After the sale of the land the stile was decommissioned and the gates locked. This was around 2001 to 2003.”</p> <p>Interview: “The stile at point B was placed in line with the hedge. When it became overgrown we used the gate, which wasn’t locked. It was a known fact that Ian Crawford had fitted the stile. The stile was already there in 1982. Over the years the cross-paddles have been removed but it’s still there. You can see it’s different from the fence.”</p>

<sup>10</sup> User 3 said the stile was installed at the time of the Axbridge bypass bridge strengthening roadworks which led to additional traffic on Cross Lane. Although they could not remember the date, we know from documentary evidence that this was in early 2002.

			Clarification sought by email 19/09/2017: User 5 was more likely to undertake walks from 1993. In 1982 they observed "stile like fence" and discovered who had fitted it and owned the field.
7	1970's (first used the route 1976) (UEF) Before the late 1990s (Interview)	1970's (UEF) 2003 (Interview)	Interview: Referring to point B, "Later there was a stile with a wooden step. It was installed well before 2000. I would have thought before the late 1990's. The stile was removed in 2003."
8	Circa 1997	2003	The user indicated a wooden stile was at right angles to Cross Lane, within the field and to the east of point B and the field gate opposite Manor farm.
9	1979 (UEF) 1990s	2003	UEF: "...in 1979 the route was already a public right of way. I understood that the land was owned by the Compton Bishop Estate and that it had installed the stile." "In 2003 the stile was removed and the gate was locked." Interview: "In 1979 there was a farm gate and a stile next to it at point B. The stile was the old fashioned type with two horizontal bars, the top one low enough to allow access". "Sometime later, in the 90's, a platform or crossbar was added to the stile so you could step over. The field was owned by the Compton Bishop Estate (Ian Crawford) and they had no problem with people using the route. I understand that the stile was modified on the instructions of the Compton Bishop Estate." In or about 2003 a third bar was added to the top of the stile and the cross-step removed.
10	1970 (UEF)	2013 (UEF)	UEF: Stiles indicated at point B and on footpath AX 15/14. Interview: "I don't remember a stile at point B."
11	1970 (UEF)	2013 (UEF)	UEF: Stiles indicated at point B and on footpath AX 15/14. Interview: "There was a stile at point B next to the gate. I don't remember what it looked like."
13	1999	Approx.2002	Stile installed at the same time as new gates further along the right of way. Cross bar removed very shortly afterwards, when the council put in new gates and the road was closed.

14	1984	2003	Stile had two wooden bars. Top bar added preventing access after the gate was replaced in 2003.
17	1983	1995?	Uncertain if it was a stile or gate at point B.
19	1970s	1970s	Stile indicated at point B and further east on plan.
21			UEF: Stile indicated at point B and at other locations on AX 15/14 and AX 1/22 but no dates given. The user claimed use of the route from 1960s – 2014. Interview: “There was a stile to the right [west] of the gate (standing with back to Manor Farm looking into field) consisting of rails with a cross step. I think it was always there. It is probably still there now overgrown with brambles.” [2017] The user was familiar with the route between 1967 and 1997 <sup>11</sup> but does not give specific dates for the presence of the stile described.
22	2001	Several years after 2001	In 2001 the stile was clear of brambles. Several years after 2001 an extra bar was added to the stile and the brambles were no longer cut back.

5.10.2 User 6, 12, 15, 16 and 18 did not recall a stile at point B. These users had used the route between 1972 and 2013. User 23 said a stile or stiles were present but did not indicate their location. User 12 believed a stile had been installed at some point but had not personally seen it.

5.10.3 The wooden structure to the west of the field gate at point B present in December 2016 consisted of three transverse wooden rails set narrow side up between rectangular wooden posts of about the same height as the adjacent field gate. The angles on the top long edges of the three rails are bevelled. The uppermost of these three rails is set slightly higher than the middle of the adjacent field gate. At the top of the posts is a fourth rail in the form of two half-round rails, one attached to each outer face of the posts (see appendix 2 for photographs taken in 2016). Photographs submitted as part of planning application 21\03\00016 (see section 4.12 and appendix 18) show the same structure was present in 2003 but without the half round rails forming a fourth uppermost bar. Google Earth images dated 2009 (not included in the appendices) show the same structure including the half round rails. This structure could be the temporary stile installed by WS Atkins in 2002 referred to in section 4.8 and 4.9, from which the cross step/s have been removed and to which (at some point after 2003) the half round rails were added, thereby converting the remains of the stile to a fence.

<sup>11</sup> User 21 said they worked for the tenant, Mr Dimmock, until his death which it is understood was in 1997, although user 21 could not remember the date and said it was in the late 1990s or early 2000s.

## 5.11 Locked Gate and other obstructions.

5.11.1 User evidence referring to the gate into the field opposite Manor Farm at point B being locked, or to other obstructions to the application route, is summarised in the table below.

User	Gate at B locked?	Other obstruction	Years of use
2	When livestock is grazing	Mud sometimes, barns	1976 – 2001
3	No	Manure heap at point B	1972 - 2004
4	2002/3 approx.	Barns	1982 - 2003
5	2001 to 2003 after the sale of the land <sup>12</sup> (stile decommissioned at the same time).	Barns	1993 – 2003
7	Gate sometimes padlocked		1976 - 2003
8	No	Mud	1998 - 2013
9	Can't remember whether locked or tied up, maybe when cattle were in the field. Locked from 2003.	Deviated from part of route if wet and boggy or grass too long.	1979 - 2003
10	Never locked in early days, possibly locked later, locked when land was sold ten years ago [this statement was made in 2016 <sup>13</sup> ].	Barns	1970 - 2013
11	Locked after land was sold <sup>14</sup>		1970 - 2013
12	I accessed the route at B using the five bar gate. It was never locked.	Barns (1995) <sup>15</sup>	1968 – 1972/4 regularly, then occasionally until circa 1987/1990. Attempted use once in 1995.
14	Always padlocked	Large manure heap, uncertain dates but present 2001/2.	1984 – 2001/2
15	No. Until approx. 2010.	Fences from 2009	1972 - 2009
16	No. Chained shut 2007/8/9 onwards.	Fences around barns about 2007/8/9	1975 – 2008/9
18	1979 - 1992		1979 - 1992

<sup>12</sup> The current landowners state they purchased the land on 23 November 2001

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> The farm buildings next to the application route were not built until 2007.

21	UEF: Yes, when farmer was grazing. Interview: Always shut but don't ever remember it being locked.	Maybe in the 1980s, dung heap and round bales stacked along the application route for a few months. Mud. Mr Dimmock tried to stop people using the route but can't remember how.	1967 – 1997 / 2014.
22	Gate may have been locked sometimes from 2001. Gate locked several years after 2001.	Manure heap near B sometimes.	2001 – circa 2003.

5.11.2 Eight users<sup>16</sup> did not recall gates on the route, including the gate at B, being locked prior to 2001. These users had used the route between the 1960s and 2014.

5.11.3 Thirteen users remembered the gate at B, or gates including B, being locked. Most remembered the gate being first locked or becoming permanently locked on or after 2001. Five users positively remembered the gate at B being locked at least some of the time prior to 2001<sup>17</sup> while two were uncertain but thought the gate may have been locked sometimes before 2001<sup>18</sup>. These 7 users had used the route between the 1960s and 2014. User 22, who was familiar with the route from September 2001, was uncertain about how the gate was secured but their evidence may indicate it was locked in 2001.

5.11.4 Below (see section 8.9), the relevant 20 year period is determined to be 1982 – 2001 inclusive. User 2 and 7 referred to climbing the locked gate during the relevant 20 years, user 5 to climbing the locked gate but after the calling into question and therefore outside of the relevant 20 years, and user 3 and 8 to climbing the gate out of preference even though it was not locked. User 18, who used the route from 1979 to 1992, recalled a gate (and not a stile) at point B, and recorded on their UEF that the gate was locked 1979 – 1992. They do not say whether this was intermittently or all the time, but if they encountered a locked gate they must either have climbed it to access the route, or been prevented from using the route by the locked gate. User 21 was familiar with the route from the 1960s to 1997 or 2014 and also recalled gates being locked on their UEF. At interview they described a stile at point B consisting of rails and a cross step which they thought had always been there.

5.11.5 One person (user 20), who did not recall the gate being locked, was not using the application route between 1982 and 2001, leaving 22 users. This means between 22.72 and 31.81%<sup>19</sup> of people using the route during that

<sup>16</sup> 3, 4, 5, 8, 12, 15, 16 and 20

<sup>17</sup> 2, 7, 14, 18 and 21, although at interview user 21 did not recall the gate ever being locked..

<sup>18</sup> 9 and 10.

<sup>19</sup> To 2 decimal places, not rounded.

time (between 5 and 7 out of 22) encountered the gate at B locked at least some of the time prior to 2001. One additional user (22) might also have encountered the gate at B locked from September 2001 but they are uncertain.

5.11.6 One user could not remember whether or not gates were locked, and one user said the gates were not locked but indicated the position of the gate was not at point B. One user stated the gates on the route were not locked but did not indicate the position of any gates on their map.

5.11.7 Other obstructions recalled during their years of use of the route were mud or wet ground (4 users), the barns (5 users), fences or fences around the barns (2 users), a manure heap (4 users), long grass (1 user) and bales stacked along the application route (1 user). User 21 who had done work for the tenant, stated “Mr Dimmock tried to stop people using the route but I can’t remember how. He may have tried to block the stile or he may have spoken to people but I can’t remember. He always complained about people using the route, he thought it was dangerous, particularly when the horses were in the field.”

5.11.8 All users answered ‘yes’ to the question ‘Has the way always run over the same route?’ but one user identified a short alternative route around point B “when wet or grass too long” and another referred to having “skirted around large manure heap.” which, from their description, must have been near point B.

5.11.9 In 2001 there was an outbreak of foot and mouth disease. The first case was confirmed in Somerset on 8 March 2001, the last on 17 June 2001<sup>20</sup>. Nineteen users claimed to be using the route in 2001 (although user 22 did not start using the route until September) but only two mentioned foot and mouth on their UEF or at interview;

User 2 UEF: “Prior to the 2001 foot and mouth outbreak the route was available...but access was stopped in 2001 because of foot and mouth and was closed to the public”

User 2 Interview: “I think I saw a white notice prohibiting use of the route on the gate at point B but because the route was also closed during the foot and mouth outbreak in 2001 I’m not certain. This route was opened again quite quickly after the foot and mouth outbreak.”

User 10 UEF: The current landowner “closed the first section during the foot and mouth epidemic about 2001. Since then we have been unable to walk off the A371 until halfway up – past the barn.”

User 10 Interview: Did not mention foot and mouth.

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

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<sup>20</sup> *The 2001 Outbreak of Foot and Mouth Disease, REPORT BY THE COMPTROLLER AND AUDITOR GENERAL HC 939 Session 2001-2002: 21 June 2002*, The National Audit Office, London

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

## **6.2 Landowner response**

### **Appendix 19.**

6.2.1 The landowners provided a substantial document dated 29<sup>th</sup> December 2016 split into 12 sections. The content of this document and other submissions by the landowner is summarised below.

6.2.2 The landowners believe the application was made in an attempt to persuade them to make land available for a footpath and cycleway and to upgrade and fence footpath AX15/14 to create a cycleway.

The landowners do not believe that the 21 users have followed the same route regularly because the route has been blocked by;

- a fence since 2007
- round bale silage and stock proof fencing in 2003 and 2004 from mid-summer to early spring, and in earlier years when bales were stacked along the route by a previous occupier and fenced off.
- manure and farm waste, which was removed in 2002 but must have been there for some years.
- muddy, wet ground in winter.
- spoil from the construction of the Axbridge bypass (completed 1966) which would have taken time to consolidate before it could be walked on.

Therefore, users would only have been able to use the claimed route intermittently and must have at least deviated from the application route.

The landowners also claim that the gate opposite Manor Farm was locked from 1999, and for some or most of the time between 1967 and 1997. Therefore users would have had to climb the gate or side rails.

The landowner notes that users refer to a stile like structure installed in 1996 but that this structure seems to have been there for only a few years. "We do not doubt that Mr Crawford would have been concerned about the safety of walkers using Cross Lane and that in about 1996 when asked he may have agreed to erect a small structure to assist walkers to enter the field opposite Manor Farm because of the locked gate. We believe that this action by Mr Crawford and the comments by the users confirm that he was giving permission for walkers to enter the field."

The landowner notes that permission seems to have been given to some users and that some users refer to the route being permissive or privileged and therefore raise the possibility that the route may have been a permissive one.

"There has never been a proper stile at the field entrance opposite Manor Farm although it is said that the late Mr Ian Crawford installed a small stile around 1996 but that it was only there briefly". The landowner suggests that the timber side rails next to the gate may have been mistaken for a stile as some users refer to the stile still being visible, but only the side rails are there.

The landowner suggests that the removal of the 'stile' in 2002 – 2003 referred to by some users probably refers to repairs to the fence and gate after thieves smashed it to steal a water bowser which was in the field.

The landowners state they have seen walkers climb the gate opposite Manor Farm, although once in the field they rarely followed the application route. The landowners claim they have always informed the walkers that the route is not a public footpath and have redirected them. They claim to have only seen walkers rarely, perhaps once every 1 – 2 months.

The landowner states that, when they offered a hard surface footpath in 2003 extending in the field from the existing footpath to the A38, Somerset County Council expressed their concerns as to the safety of pedestrians because the hedge would obscure views of the footpath from the A371.

The landowner states that all tenancy agreements with the Compton Bishop Estate "included amongst the tenant's obligations the following clause [...] *Not to permit any trespass on the land*" and that they and Mr Dimmock complied with this obligation.

The landowner states that between the late 1980's and 2006 they travelled past the gate opposite Manor Farm daily, and say that "without any doubt" the gate opposite Manor Farm was always kept shut and there was never a proper stile at this entrance to the field.

The landowners report that they purchased the land on 23 November 2001.

The landowner states that in 2016 timber boarding was added to the gate opposite Manor Farm due to security concerns.

The landowner claims that the "easiest and traditional" route from the end of footpath AX15/14 to the A38 is on the grass verge alongside Cross Lane and that it would be reasonably straightforward to turn the grass verge into a hard surfaced footpath. The landowner provided a copy on 1 March 2017 of *Feasibility Technical Note A38 Cross to Axbridge – Pedestrian Safety Improvements (Ref No: 70023647/TN01 Rev-)*. They believe a footpath in the field would be superfluous if a hard surface footpath were created on what is currently the roadside verge.

The landowner raises concerns about the safety of both livestock and the public, the need for gates to control livestock, security and bio-security.

The landowner included their own analysis of the evidence contained within the user evidence forms.

The landowner included their own analysis of the legal opinion which was submitted by the applicant as part of the evidence supporting the application. They conclude that the opinion is flawed and should be dismissed.

6.2.3 The landowner also provided a number of documents with the report as attachments, extracts of some of which are produced at appendix 19;



- Tenancy agreement running from 31/03/2000 to 30/11/2000 and relating to land through which the application route passes. The agreement is made between the current landowner (then a tenant) and the then landowner (now previous landowner (PL1) and includes at paragraph 3 "The Grazier hereby covenants: (i) not to permit any trespass on the said land". No other mention of public rights of way is made. Appendix 19A.

- Letters from the Applicant to the landowners dated 19/03/14, 11/07/14 and 07/2016 requesting discussion between the Coffin Lane Campaign and the landowners, outlining the Campaign's proposals, and informing the landowner of the intention to submit, and then the progress of, the application to modify the definitive map.

- A plan showing the current layout of agricultural buildings, gates, hard standing etc to the south of Cross Lane between A and B.

- Email dated 08/06/2016 from SCC to the landowner regarding a meeting with the PC and a feasibility study relating to the A38 and a Cross Lane footpath.

- A copy of the legal opinion which was submitted by the applicant and is discussed at 5.1 and 5.2.

The landowner's response included signed statements from 8 individuals (and one unsigned summary of an interview with a ninth) with knowledge of the application route. Six were later interviewed by the County Council via telephone and a second statement produced. These statements are summarised at 6.2.4, below.

In response to a draft of this report (dated 25/10/17) the landowners provided further information including the following documents;

- Letter dated 21/11/17 from agents who have acted for the Compton Bishop Estate since the 1990s, confirming that all grazier's covenants which they have prepared in that time included the clause 'not to permit any trespass on the said land'. Appendix 19B.

- Extract from a tenancy agreement dated 22 May 2001 and made between the Compton Bishop Estate and the current landowners of the application route. The agreement relates to a piece of land unaffected by the application route but includes the clause 'not to permit any trespass on the said land'.

- Copies of a photograph of the gate at point B (discussed in section 4.12, shown at appendix 18).

- A Pro-Forma of Sale dated 26/09/2001 for the land through which the application route runs which includes the statement "There is an existing grazing arrangement with the buyers which expires on 31<sup>st</sup> November 2001". The land was being sold by PL1 to the current landowners.

- An extract from the contract of sale for the land over which the application route runs, dated 9/11/2001. This document shows the land was purchased by the current

landowners from Previous Landowner PL1 and PL2, neither of whom were Ian Crawford. It also refers to a conveyance of the property dated 29/08/1985 when the land was transferred from PL3 and PL4, neither of whom were Ian Crawford, to PL1. Appendix 19C.

- A copy of a letter and map indicating the application route sent to PL1 by the current landowners dated 20/11/2017. Appendix 19D.

- Reply from PL1 dated 04/01/2018. PL1 states: "I can confirm that I did not dedicate nor intend to dedicate any part of Manor Farm, Cross including the area shown in red, or intend to dedicate it as a footpath." Appendix 19E.

#### **6.2.4 Summary of statements of witnesses provided by the landowner.**

Where a witness was subsequently interviewed by SCC it is the interview statement which is summarised. To clearly differentiate these witnesses from those who filled in a UEF, they have each been assigned a letter and are referred to as witness R to Z. Apart from the headings in bold which give the identifying letter and type of statement being summarised, any comments by the author of this report appear in square brackets only.

#### **Witness R. Summary of an abstract of a conversation, not a signed statement.**

Witness R farmed the field opposite Manor Farm from 1948 to 1954. He said there was never a stile at the gated entrance to the land opposite Manor Farm.

Walkers used the grass verge between the gate opposite Manor Farm and the entrance to what is now Springs Farm.

The land alongside Cross Lane was often very boggy.

#### **Witness S.**

Witness S lived at Manor Farm between 1969 and 1973.

There was never a stile at the field entrance opposite Manor Farm.

The ground was boggy after rain and often muddy, particularly in the gateway.

From time to time Mr Dimmock [the tenant farmer] would park farm machinery and dump farm waste and manure inside the field along the hedge.

Witness S never saw anyone walking the route.

There was no gap in the hedge between the field opposite Manor Farm and the field to the east that would allow walker to follow the footpath.

#### **Witness T.**

From 1969 to 1972 Witness T occasionally helped Mr Dimmock with his horses which were kept in the field opposite Manor Farm. There was never a stile at the entrance to

the field opposite Manor Farm.

After rain and in winter the ground in the field opposite Manor Farm lies wet and would get very muddy and difficult to walk through.

Witness T never saw anyone walking in the field between the gate opposite Manor Farm and what is now the entrance to Springs Farm.

Mr Dimmock would not tolerate anyone walking on his land or going near his horses without permission.

**Witness U (from interview statement).**

Between 1967 and 1970 Witness U walked from Axbridge to Cross on footpath AX 15/14 and the application route before leaving the field at point B by climbing the gate, about once a month. They did not ask permission and nobody tried to stop them, but they feel they did not need permission as family members were friends with the farmer.

Witness U described the gate opposite Manor Farm at point B as being a wooden gate with rails forming a fence to either side, always closed and usually locked. They do not remember there ever being a stile, or the gate or fence changing over time.

They do not remember seeing anyone else using the route although they were sometimes accompanied by siblings or friends.

**Witness V (from interview statement).**

Witness V was a member of Axbridge Parish Council and then Axbridge Town Council with particular responsibility for footpaths, for up to 53 years. The application route was outside of their area of responsibility.

Witness V used to drive past the gate opposite Manor Farm, sometimes every day for a week at a time and does not recall seeing a stile there.

Witness V often observed the gate opposite Manor Farm open when Mr Dimmock was the farmer. If it was shut they could not see whether or not it was locked from their car.

They have never used the application route. They never saw anyone using the application route, but would not have been able to see anyone from the road behind the hedge. If it was raining people tended to walk in the lane.

Witness V recalled the gate opposite Manor Farm being wooden, a bit dilapidated and with rail fencing to the east, but could not recall the boundary to the west. They never saw anyone using the gate.

**Witness W (from interview statement).**

From 1974 to 1978 Witness W spent weekends and summer holidays helping at the

Circle D Trekking Centre which was based at Manor Farm. This involved spending a lot of time in the field opposite Manor Farm through which the application route runs, and included taking wheelbarrows of manure from the stable yard and dumping it on the manure heap alongside the hedge to the east of the field gate in the field through which the application route runs. Witness W recalls there was no gap between the hedge and the manure heap. At some point the manure heap was moved elsewhere.

From about 1981 to 1988 Witness W was a regular visitor as they kept a horse at the farm. This meant being there every morning and every evening and at weekends. In the summer horses had to be taken through the gate opposite Manor Farm twice a day.

From 1988 Witness W no longer kept a horse at Manor Farm, but continued to visit about twice a week. In 1992 Witness W lived very near to the application route for about a year.

Witness W recalled that in the late 1970's and early 1980's the gate opposite Manor Farm was difficult to open and may have been chained or roped shut. They cannot remember what was to either side of the gate, expect that in the 1970's there was a ditch to the west of the gate into which sewage would run.

Witness W never saw the general public using the gate opposite Manor Farm, except to stand in the gateway when they were waiting for the bus.

Witness W didn't give anyone permission to use the application route and does not recall the tenant, Mr Dimmock, saying he had given anyone permission.

Witness W did not think about the status of the application route. They did not think there was access opposite Manor Farm. They were not aware of people using AX 15/14 either, but it was less visible from the parts of the field witness W was usually in.

The tenant, Mr Dimmock, never mentioned the application route to Witness W, but did mention other incidents with walkers and dogs, giving witness W the impression that he did not like them very much.

Witness W does not remember a stile on the application route.

**Witness X (from interview statement).**

Witness X knew Mr Dimmock well from 1978 until his death<sup>21</sup> and did machine repairs and agricultural contracting work for him. They visited the farm once a week for part or all of a day, and when making hay or silage would be at the farm all day for a week at a time. This included making hay and silage in the field opposite Manor Farm.

When witness X arrived to do work in the field opposite Manor Farm they found the gate locked 2 or 3 times even though they were expected. The gate was locked with a padlock and chain.

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<sup>21</sup> It is understood from evidence supplied in the course of this investigation that this was in 1997.

Witness X described the gate as a wooden gate with posts to either side overgrown with brambles. There was no stile.

There was a manure heap which varied in size over time along the hedge. There was no gap between the hedge and the manure heap.

Witness X stacked silage bales in the field besides the hedge parallel with Cross Lane every year. The bales were stacked about 75 to 100 metres along the hedge, 2 to 3 bales high and 4 deep. They were present for around 9 months of the year. A wooden fence with pig netting went all the way to the hedge around the bales.

Witness X never saw anyone walking on the application route. They occasionally saw someone on footpath AX 15/14 but observed that the grass was never squashed down much which meant there couldn't have been many walkers.

Mr Dimmock's office desk was in the window of Manor Farm overlooking point B.

Witness X has worked for the current landowner. They observed that the field was tidier than when Mr Dimmock was the farmer, with plastic and the manure heap removed.

**Witness Y (from interview statement).**

Between 1990 and 1996 witness Y worked at Manor Farm for about a week at a time, spending three days of that week either in the field opposite Manor Farm or constantly going backwards and forwards through it.

Nearly every year there were round bales left over from the year before stacked along the hedge that separated the field from Cross Lane. There was no gap between the hedge and the bales. There were also heaps of soil close to the hedge which were eventually levelled out.

Witness Y entered the field through the gate at B, the gate was always open first thing in the morning, Mr Dimmock wanted the gate shut if it was going to be left for any length of time, and padlocked at the end of each day. Witness Y recalled Mr Dimmock wanting the gate kept shut because people had been walking through the field and he wanted to keep them out.

Witness Y described the gate opposite Manor Farm as a wooden gate with stock proof fencing with barbed wire on top and to the side, without much of a fence to the west where it was mostly an overgrown hedge. They did not recall any changes being made. They said there was never a stile at the gateway opposite Manor Farm.

Witness Y never saw anyone using the application route and never used it themselves. They did see one or two people on footpath AX 15/14.

Since 2000 some time between September and February each year, witness Y has been cutting the hedge in the field opposite Manor farm and to the west of the gate at B to improve visibility. They did not see any signs or notices and feel they would have

seen a stile if it had been there.

#### **Witness Z**

Witness Z stated they were employed by the landowners to remove heaps of manure, unused silage bales, pallets, netting, baler twine and other materials from alongside the hedge in the field to the south of Cross Lane between the gate opposite Manor Farm and what is now the entrance to Springs Farm. They believed this material had been placed there by the previous occupier. Witness Z stated that these heaps would have acted as an obstruction preventing anyone trying to walk alongside the hedge on the application route.

### **6.3 Comments on Landowner Evidence.**

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

6.3.2 Whether or not improvements are made to provide a safer route for pedestrians or cyclists on the roadside verge in Cross Lane is also irrelevant. The current investigation is into whether or not a right of way already exists along the application route. If those rights exist they will need to be recorded on the DMS, regardless of whether a similar or more convenient route is created nearby. If they do not exist, they will not be recorded on the DMS, regardless of how useful or desirable the route would be.

6.3.3 The letters from the applicant to the landowner do not assist with this investigation as they do not show the existence or otherwise of public rights on the application route.

6.3.4 Other comments and points raised by the landowner are dealt with in the analysis of the evidence and conclusion below.

### **7. Consultations and other submissions**

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

#### **7.2 Consultee and summary of response**

##### **7.3 Landowner**

See section 6, above.

##### **7.4 Sedgemoor Area Highways Office**

As the application route is not on a highway, they had nothing to add.

The roadside verge on Cross Lane is simply a roadside verge and not a footway / footpath, although it has been used as a refuge by pedestrians.

A feasibility study is being carried out, at the request of Compton Bishop PC, to determine whether it is feasible to construct a footway at this location and crossing point across the A38.

### **7.5 Sedgemoor District Council**

No evidence to offer, but forwarded to District Councillors. No further response was received.

7.6 No response to the initial consultation was received from the following organisations:

Compton Bishop Parish Council<sup>22</sup>

Councillor J. Denbee

Ramblers' Association, Area Secretary

The Ramblers Association

Sedgemoor Ramblers

Sedgemoor South Bridleways Association

Sedgemoor Bridleways Association

County Access and Bridleways Officer, British Horse Society

British Horse Society

Trail Riders Fellowship

All Wheels Drive Club, County Liaison Officer

Open Spaces Society, General Secretary

Auto Cycle Union

Cycling UK

Natural England

British Driving Society

Club Zulu

7.7 A draft of this report, which included the recommendation that a right of way on foot was reasonably alleged to subsist, was circulated to interested parties and, where appropriate, the report has been updated in light of the comments and new evidence received. As a result of new evidence submitted, this report reaches a different conclusion to that in the draft report (see section 10).

## **8. Analysis of evidence relating to use of the route (including evidence submitted by the landowner, user evidence, and the relevant documentary evidence).**

8.1 Twenty years use of a way by the general public, as of right and without interruption, can give rise to the presumption of dedication of a way under Section 31 of the Highways Act 1980. That presumption can be rebutted

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<sup>22</sup> Although Compton Bishop Parish Council did not respond directly to the consultation, a copy of extracts from Compton Bishop Parish Council minutes was provided by a respondent to the consultation. See section 4.13.

if there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is measured backwards from a date of challenge. If there has been no other challenge, the receipt of an application to modify the DMS is deemed a challenge in relation to the route to which the application applies.

8.2 For use to be ‘as of right’ it must have been without force, without secrecy and without permission.

8.3 There is no statutory minimum number of users required to show sufficient use to raise a presumption of dedication. Instead use should have been by a sufficient number of people to show that it was used by ‘the public’ and this may vary from case to case<sup>23</sup>.

8.4 At Common Law, evidence that the owner intended to dedicate the way as a public right of way combined with evidence of acceptance of that way by the public (usually in the form of use of the way), can result in dedication being implied. There is no minimum qualifying period of use at Common Law. However, the burden of proof lies with those trying to show that the landowner had intended to dedicate. That burden is a heavy one and even a formidable body of evidence may not suffice<sup>24</sup>.

8.5 The legal test for making an order to add a right to the DMS where no public right of way is currently recorded is that the right “subsists or is reasonably alleged to subsist”. The legal test to confirm the order (i.e. to bring it into effect) is the balance of probabilities.

8.6 If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.<sup>25</sup>

8.7 In the following sections of the report the word ‘stile’ has been used in relation to an alleged structure to the immediate west of the field gate at point B. Whether or not this structure was used as a means of pedestrian access to the application route is fundamental to this investigation, but for ease of reading ‘stile’ is used in a broad sense to encompass any structure, with or without cross steps, which was constructed or modified with the intention of facilitating pedestrian access, but which may not fall strictly within the definition of a ‘stile’. For example, rails deliberately set low enough to allow walkers to climb or step over but which have no cross step are a recognised means of pedestrian access on public rights of way. Where the specific

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<sup>23</sup> The Planning Inspectorate (February 2016) *DMO: Consistency Guidelines 9th revision*, paragraph 5.15.

<sup>24</sup> The Planning Inspectorate (February 2016) *DMO: Consistency Guidelines 9th revision*, paragraph 5.48.

<sup>25</sup> *R. v. Secretary of State for the Environment. Ex. P. Bagshaw* discussed by Laurence, G Q.C. (June 1994) ‘Ex p. Bagshaw and ex. P. Norton’ in *Rights of Way Law Review*, Sec. 8.2, p 57 – 58 and by Stephens, J. (September 1997) ‘Ex parte Emery in the Court of Appeal’ in *Rights of Way Law Review*, Sec. 8.2, p. 73 – 75.



construction of the structure is relevant to the investigation it has been discussed.

## **8.8 Land ownership**

8.8.1 Ian Crawford<sup>26</sup> has been referred to as having owned the land in question prior to the current landowners by a number of users. In the documents relating to the preparation for permissive use of the route in 2001 (see 4.8), the way in which Ian Crawford is referred to shows he was either considered to be the landowner, or to represent the landowner, by SCC and / or WS Atkins. The parish council minutes of 1979/80 (see 4.13.1) suggest the parish council believed Mr Crawford (presumably Ian Crawford) was either the landowner or represented the landowner at that time.

8.8.2 The current landowners have submitted the first page of a contract of sale (appendix 19C) showing that they purchased the land on 23/11/2001 from two parties (Previous Landowner (PL) 1 and PL2), neither of whom were Ian Crawford. The same document refers to a conveyance of land (which may or may not have included the application route) to one of these parties, PL1, on 29/08/1985, from two further parties (PL3 and PL4), neither of whom were Ian Crawford. The full contract for sale has not been provided nor any other title documents and consequently no firm conclusions can be drawn from this extract alone other than the ownership of the land in 2001.

8.8.3 The current landowners also provided a copy of a tenancy agreement for the land over which the application route runs from 31/03/2000 to 30/11/2000 between themselves (then tenants) and PL1 as the owner (see 6.2.3).

8.8.4 The register of title for title number ST201760, through which the application route runs, refers to PL3 as a sub-purchaser of the land tinted pink on the file plan and other land in a conveyance of 9/10/1967. The land tinted pink on the title plan includes the land over which the application route runs. Ian Crawford is not mentioned in the register of title for this piece of land.

8.8.5 It is understood that Ian Crawford died on 10/12/2002<sup>27</sup>, after the land over which the application route runs was sold to the current landowners.

8.8.6 Although alternative explanations of the evidence are possible, none of the documents which show landownership mention Ian Crawford as a landowner. PL3 is mentioned as a landowner in 1967 and is one of the parties from whom the land is conveyed to PL1 in 1985, and PL1 is 'the owner' on the tenancy agreement of 2000 and one of the parties from whom the current owners purchased the land in 2001. Ian Crawford may have been the owner of the land at any time between these dates, but no evidence for this has been found.

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<sup>26</sup> Kenneth Ian Crawford appears to have been known as Ian Crawford and is referred to as Ian Crawford throughout this report.

<sup>27</sup> <https://www.thegazette.co.uk/notice/L-56944-002>

8.8.7 Therefore, although Ian Crawford was reputed to be the landowner amongst some people locally it seems more likely than not that he was not the freeholder of the land over which the application route runs. It also seems clear that he acted on behalf of the landowner or with the landowner's authority, although in what capacity at what time is uncertain as another individual is named as the agent for the Compton Bishop Estate in 1963, 1978<sup>28</sup> and 1996<sup>29</sup>.

## 8.9 Calling into question

8.9.1 In 2002 road works caused traffic to be diverted onto Cross Lane which is parallel to the application route. There is documentary evidence of a calling into question of the public right to use the application route in the form of an agreement between the landowner and Somerset County Council allowing permissive use of the application route for the duration of the roadworks. The public were notified of this permission by the erection of notices on site. An email from WS Atkins to the landowner (appendix 11K, 10/12/2001) state that an A4 sized sign reading "THIS SECTION OF FOOTPATH IS TEMPORARY AND HAS BEEN AGREED WITH KIND PERMISSION OF THE LAND OWNER FOR THE DURATION OF THE BRIDGE STRENGTHENING WORKS. THIS TEMPORARY FOOTPATH WILL BE AVAILABLE FROM THE BEGINNING OF JANUARY 2002 UNTIL THE END OF MARCH 2002" was to be displayed on the application route. This is consistent with the agreement between WS Atkins (who were acting on behalf of SCC) and the landowners dated 10/12/2001 for the temporary use of the application route which states at clause 7 that "The footpath will be identified by signs specifically explaining that such footpath is temporary and only for the duration of the works." A letter from the landowner to WS Atkins dated 10/02/2002 confirms that the temporary footpath signs were erected (see 11N).

8.9.2 Letters, e-mails and faxes dated 14/02/2002, 21/04/2002, 23/06/2002 and 17/07/2002 (see paragraph 4.8 and 4.9, appendix 11P, 12Bi, 12Bii and 12E ) from the Chairman and Vice-Chairman of Compton Bishop Parish Council refer clearly to a temporary, permissive route and temporary stile, thank the landowner for allowing a temporary extension of the footpath, and request discussion with the landowner regarding a permanent permissive path. Further documents in SCC's files show Compton Bishop Parish Council making enquiries to explore other possible options to establish a footpath on or adjacent to the application route under consideration here after permission was withdrawn. This seems to show that the Parish Council did not consider the application route to be a public right of way in 2002.

8.9.3 Although only three users recalled notices relating to the application route, documentary evidence suggests that it should have been clear to anyone using it between January 2002 and 28 March 2002 (when the works were completed) that their use of the route was with permission. Use

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<sup>28</sup> See 1978 decision of the Commons Commissioner under Commons Registration Act 1985 for CL63. <http://www.acraew.org.uk/commissioners-decisions/somerset>

<sup>29</sup> The 1996 memo discussed at 4.6.1.

with permission is not 'as of right'. As such the period during which permission was granted cannot form part of a 20 year period of public use required by section 31 of the 1980 Act. As 20 years has not yet passed since 2002 any successful claim based on section 31 of the 1980 Act must rely on use prior to 2002, or alternatively, evidence for dedication at Common Law must be found. The 2002 notices can also be taken as a challenge to the public's 'as of right' use of the route and as such is a calling into question for the purposes of section 31 of the 1980 Act. The first 20 year period to consider is therefore 1982 to 2001 inclusive.

8.9.4 Several earlier events have been put forward as an alternative calling in to question including the gate at B being locked from 1999 or earlier, the closure of footpaths relating to the foot and mouth outbreak in 2001 and the 1996 memo and any measure taken in response to it (see paragraph 4.8.1). The effect of an alternative 20 year period is briefly addressed following discussion of whether or not there has been sufficient public use during the period 1982-2001 (see paragraph 8.15.4).

## **8.10 Permission**

8.10.1 A total of twenty three people claimed to have used the application route. Of those, 14 claimed to be using the route in 1982 (the first year of the relevant 20 year period) with an average use per day of between 0.99 and 1.32<sup>30</sup>.

8.10.2 However, the two most frequent users (1 and 3) had permission to use the route from the tenant, and user 21 had implied permission as they worked for the tenant and their use was therefore not 'as of right'. After their use has been deducted the average use per day in 1982 is between 0.40 and 0.45 (2.8 – 3.15 per week) which equates to slightly less than one use every other day. In 1983 this rose to between 0.47 and 1.08 and from 1984 to 1989 this becomes 0.9 to 1.51 uses per day (6.3 – 10.57 per week). In 1990 the frequency of use actually decreases very slightly, before increasing again in 1991.

8.10.3 It is important to remember that, while a helpful way of understanding the changing levels of use over time, the average use per day does not represent actual patterns of use. For example, use may have been concentrated at certain time of the day, week and/or year.

## **8.11 Force**

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<sup>30</sup> These figures do not include user 12 who was using the route in 1982 – 1987 as their frequency of use was unknown. User 12 claimed only occasional use by 1982 in contrast with use of 6 to 12 times a year when using the route more frequently between 1968 – 1972/4. It therefore seems likely they were using the route rather less than 6 times per year by 1982, and their use would only lead to a slight increase in the average use per day.

8.11.1 Passing over, through or around a barrier intended to prevent public access, such as a locked gate, constitutes use 'with force' and therefore that use is not 'as of right'<sup>31</sup>.

8.11.2 Some users, witnesses and the current landowner have given evidence that the gate at B was locked at least some of the time during the relevant 20 year period (see section 5.11, paragraph 6.2.2 and 6.2.4). The tenancy agreement dated 3 April 2000 and supplied by the current landowners (who were tenants at the time) includes at paragraph 3 "The Grazier hereby covenants: (i) not to permit any trespass on the said land". It is therefore not unreasonable to conclude that the gate at B could have been locked by the tenant as a means of following the instructions of the landowner and preventing trespass from at least the 3 April 2000. A letter dated 21 November 2017 from the agents of the Compton Bishop Estate ( see appendix 19) confirms that since at least the 1990s all grazier's covenants included the clause 'not to permit any trespass on the said land'.

8.11.3 It would not be necessary to padlock a gate to prevent cattle escaping (a latched or tied gate would be sufficient barrier) and a padlock on a gate in frequent use would be an inconvenience to a landholder and would therefore only be installed if it was thought necessary. Therefore, it is more likely that for much of the relevant 20 year period, when the gate was locked it was with the intention of preventing public use. The current landowners, who occupied the land as tenants from 1999 before purchasing the land in November 2001, have made it clear that they locked the gate at point B to secure livestock as well as to prevent unauthorised public access (see appendix 19).

8.11.4 Third hand accounts of the motivation for the locking of the gate differ (some users imply the tenant for the majority of the relevant 20 years was happy to allow access, some witnesses refer to the same tenant attempting to prevent public access). Documentary evidence (section 4.9, appendix 12A) suggests that in 1996 the gate was not locked (or at least, not locked all the time), but that the landowner wished to prevent public access at point B at that time.

8.11.5. User 2 and 7 recalled the gate at B sometimes being locked, and climbing it when this was the case. User 2 does not recall a stile at B until 1996, and although user 7 indicated a stile was present at B from the 1970s on their UEF, at interview they clarified this by saying the stile was installed before the late 1990s. User 18 also recalled the gate at B being locked throughout their use of the route (1979 – 1992) and did not recall a stile at B, and must therefore have accessed the route by climbing the locked gate (unless they were prevented from using the route when the gate was locked). It must therefore be assumed that the gate was locked frequently enough for users 2, 7 and 18 to have remembered it 35 years later and that, when it was

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<sup>31</sup> The Planning Inspectorate (February 2016) *DMO: Consistency Guidelines 9th revision*, paragraph 5.22.

found locked these three users would climb over it (at least until they acknowledge the existence of a stile in the 1990s).

8.11.6 As mentioned above, it seems likely that the gate was locked at least in part to prevent access. Therefore, climbing over it would constitute use by force, and therefore that use is not 'as of right'. If user 2, 7 and 18 (as well as the permissive use of users 1, 3 and 21) are deducted from the average use, the following average use per day results.

Year	1982	1983	1984 - 9
<b>Average daily use</b>	0.32 – 0.36	0.39 – 0.99	0.82 – 1.41

8.11.7 The current landowner has stated that they have kept the gate at B locked since 1999 and therefore that anyone making use of the route (as opposed to just users 2, 8 and 18) from 1999 must have climbed the gate and therefore been using the route by force. Documentary evidence dated 26/10/2001, 10/02/2002 and 01/10/2003 refers to or shows the gate at B locked (paragraph 4.8.1, H and N, paragraph 4.12.1), demonstrating that it was locked at least some of the time. However, only those users mentioned above recall climbing the locked gate during the relevant 20 year period. There is therefore a conflict of credible evidence on this point.

## 8.12 Stile

8.12.1 Five users did not recall a stile at B at all (6, 12, 15, 16 and 18).

8.12.2 A stile intended to facilitate permissive use of the route was installed at point B in 2002. It is entirely plausible that the structure present to the west of the field gate at point B in December 2016 (see photographs at appendix 2) is the remains of the temporary stile installed by WS Atkins in 2002 and then, in accordance with the agreement between the landowner and WS Atkins, decommissioned by removing the cross step, placing a fourth bar across the top and allowing the structure to become overgrown. It would not be surprising if users continued to refer to this structure as a stile even after it had been put out of use.

8.12.3 Although user 3 could not recall the date and user 13 recalled an earlier date (1999) both referred to the road closure (January to March 2002) as the time at which the stile they recalled was installed. It is therefore concluded that they are remembering the stile which was installed in 2002. User 1 referred to the stile being installed by Ian Crawford because he was concerned about pedestrian safety on Cross Lane, but not specifically to the roadworks. Again, although an earlier date was given<sup>32</sup>, this might also be referring to the 2002 stile.

<sup>32</sup> User 1 recalled use of the route being stopped when the land was sold to the current owners "in the late 1990s?" and therefore any stile they recalled being installed by Mr Ian Crawford would have been prior to this date. The land was actually sold in November 2001, although the current owners were tenants in 1999. Allowing for user 1 not having a completely accurate knowledge of the date of sale or nature of occupation of the land, they might

8.12.4 Six users (8, 10, 11, 17, 19, 20 and 23) recalled stiles but their evidence is ambiguous. User 8 indicated a stile between point A and B at right angles to the road in a position where there is no barrier to cross. User 17 indicated a stile or gate was present at point B and to other stiles east of the application route. Users 10, 11, and 19 indicated stiles at B and other locations and do not specify which stile was present at which times, and at interview user 10 did not recall a stile at point B at all. It is therefore not possible to tell from user 10, 11, 17 and 19's evidence whether they are referring to the temporary stile installed in 2002 at point B or an earlier structure at point B, and if to an earlier structure, when they recall it being installed. Finally user 20 and 23 did not indicate the location of the stile to which they referred and it is not therefore possible to know if they are referring to a stile at B or at another location. The evidence of these users is therefore unhelpful in determining whether or not there was a stile at point B prior to 2002.

8.12.5 User 1, 2, 5 and 7 refer to a stile being installed at B in the 1990s (see 8.12.3 for possible alternative interpretation of User 1's evidence). On their UEF user 5 recalled the stile from 1993 but when interviewed recalled observing a stile at B from 1982 and when clarification was sought later referred to the pre-1990s structure as a "stile like fence". User 1, 2 and 5 attribute the installation of this stile to Ian Crawford. User 2 describes the stile as being installed in circa 1996 and consisting of a round post on either side of a fence supporting a cross step. User 22 recalls a stile was in place in 2001 when they first started using the route.

8.12.6 Five users refer to a stile at point B earlier than the 1990s (4, 5, 9, 14 and 21). User 4 first started using the route in 1982 and always remembered the stile beside the gate at point B and described it as "The stile was a basic wooden stile. The fence is still there now. There was a cross step on the stile but I can't remember if this was there when I first started using the route." User 5 recalled observing a "stile like fence" from 1982. User 9 referred to a stile being present since their first use of the route in 1979, but to the cross step being installed in the 1990s on the instruction of the then landowners. Prior to the 1990s user 9 refers to the stile at B as having no cross step, but rails set low enough to climb over. This is consistent with user 2's description of the stile installed in circa 1996, and with user 5's less detailed description of a "stile like fence" from 1982. User 14 first started using the application route in 1984 via the stile at point B. User 21 worked for the tenant from 1967 to 1997, and said there was a stile to the west of the gate at B consisting of rails with a cross step. He thought it was always there and at the time of interview ( May 2017) that it was probably still there overgrown with brambles.

8.12.7 Of the five people who did positively interpret the pre-1990s structure as a stile, one recalled that a cross step was not installed until the 1990s, another could not recall if the cross step was present when they first

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therefore be referring to either the temporary stile installed in 2002, or to a stile installed before 1999.

started using the route or whether it was installed later, and a third described the stile as having two wooden bars but does not mention a cross step.

8.12.8 Documentary evidence strongly suggests there was no stile in place at B in May 1996 or in 2001 (see paragraphs 4.8.1 and 4.9.1). Witness R, S, T, U, V, W, X and Y either did not recall a stile at point B, or positively recalled that there was not a stile at point B. Witness Z did not mention stiles. Witness R, S, T and U were familiar with the application route in 1973 or earlier and would therefore not be in a position to recall any structure installed after this date. Witness V only drove past the route and could not recall what the fence was like to the west of the gate at B. Witness W and X were familiar with the route until 1997, and witness Y from 1990 to at least June 2017 when they were interviewed. Witness Y did not recall the temporary stile which was installed in 2002, although this may have been because they worked at the site seasonally and it was installed and removed while they were absent. Apart from witness V, all these witnesses either lived at Manor Farm and / or worked in the field through which the application route runs. Although some users do not recall a stile at B, others do and there is therefore a conflict between the different sources of evidence on this point.

8.12.9 Although the evidence is not completely consistent and the dates given vary, it seems likely that prior to the 1990s there was a fence to the immediate west of the gate at B which appears to have used as a means of access by at least some of the users. At some point during the 1990s a cross step was added to this structure. It would appear from negotiations between the landowner and Somerset County Council relating to the permissive path of 2002 that any stile which had existed had been removed by 2001. Although climbing a fence can be use 'with force', sufficient ongoing unchallenged access by climbing a fence can lead to a presumption of dedication over that route.

8.12.10 The installation of a means of pedestrian access (such as a cross step or stile) by itself is not evidence of implied permission from the landowner for people to use the route.

### **8.13 Use with secrecy**

8.13.1 No evidence has been found which shows use of the application route was with secrecy. Use which happened to take place when a landowner or tenant was not there to see it (as opposed to use which deliberately took place only when a landowner or tenant were known not to be there to see it) is not use with secrecy.

### **8.14 Interruption and Deviation**

8.14.1 An interruption must be an actual and physical stopping of the enjoyment of the public's use of the way, by the landowner or someone acting on his behalf, and with the intent of preventing public use of the way. Acts

which were not carried out to prevent public use (for example, fencing to contain livestock) will not act as an interruption to defeat a claim<sup>33</sup>.

8.14.2 All users answered 'yes' to the question 'Has the way always run over the same route?'. The landowner has submitted that the users could not have used the same route regularly as the obstructions were such that users simply could not have used the claimed route when those obstructions were in place. Only two users reported deviating from the application route to avoid obstructions. However, a number of obstructions were referred to (excluding the barns and associated structures which were built after the relevant 20 year period). These included a manure heap (4 users<sup>34</sup>), mud or wet ground (4 users<sup>35</sup>) and bales (1 user<sup>36</sup>).

8.14.3 The landowner reported that they removed a manure heap and other farm waste from alongside the hedge in 2002, which had been present since before 1999. Witness W, X, Y and Z also refer to the application route being obstructed by a manure heap and / or bales and other material. Witness X, Y and Z refer to these obstructions being present at various times during the relevant 20 years. However, had this material been sufficient to prevent use of the route, the permissive use of January to March 2002 (see paragraph 4.8) would not have been able to take place unless the material was removed first. The documents which discuss the work which was needed in preparation for the permissive use of the path do not refer to the need to remove such waste (see appendix 11). This suggests that whatever material was present in late 2001 – early 2002, it was not sufficient to prevent use of the route or raise safety concerns.

8.14.4 Images from Google Earth dated 1999 / 2001 show bales in the field to the east of point B, but with a gap between the hedge and the bales which leaves the application route clear. The bales may have been fenced off to prevent livestock accessing the bales, but this would not be visible in the image due to the scale and resolution. A photograph dated October 2001 also shows the route apparently clear of obstructions (see paragraph 4.8 and appendix 11).

8.14.5 A right of way must be clearly defined, but a route which varies between a clearly defined start and end point (such as gates) may be sufficiently defined, even if there was a certain amount of variation in the actual route used to get between those two points<sup>37</sup>. In *Fernlee Estates Ltd v City & County Of Swansea & Anor*, the route was considered sufficiently

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<sup>33</sup> Riddall, J and Trevelyan, J.(2007), *Rights of Way. A Guide to Law and Practice. Fourth Edition*, Ramblers' Association and Open Spaces Society, 46).

<sup>34</sup> User 3, 14, 20 and 22.

<sup>35</sup> User 2, 8 9 and 20.

<sup>36</sup> User 21.

<sup>37</sup> *Wimbledon & Putney Commons Conservators v Dixon*, discussed by Willmore, C. (May 1990), 'Dyfed CC v SoS for Wales: comment' in *Rights of Way Law Review*, Sec.6.3, p2.



defined on the ground even though it may have varied slightly from time to time<sup>38</sup>.

8.14.6 As users do not seem to have felt they were deviating from the route and the extent of any deviation is therefore uncertain, there is a conflict of evidence as to whether or not the actual line of the application route could have been walked as regularly as users recall. However, even if the evidence for all the obstructions during the relevant 20 years is accepted, users seem to have continued their journey by deviating around them, and case law suggests that the degree of deviation from the claimed route would not be sufficient to defeat the claim, particularly as the start and end points remained defined. The manure heap, bales, farm debris etc. do not therefore constitute an interruption to use as they were neither intended to prevent public use nor did they actually prevent use between the start and end of the application route. A similar conclusion applies to wet or muddy ground and long grass – users may have picked the exact line over which they walked with more care or simply continued through the mud or grass and dealt with the consequences, but such environmental conditions do not constitute an interruption, nor do they make the route insufficiently defined and therefore do not defeat the claim.

8.14.7 A gate locked with the intention of preventing public use of a route may also constitute an interruption if it actually interferes with the public use of the route. As discussed in paragraph 5.11.5, between 5 and 7 users remember the gate at B being locked at least some of the time during the relevant 20 years (and this is supported by the recollections of the current landowner who claims to have locked the gate at B since 1999, witness X and Y who also remembered the gate being locked during the relevant 20 years, witness W who was unsure but thought it may have been locked, and user 22 who could not remember with certainty but thought the gate may have been locked from September 2001 when they first used the route). Of those users who remember a locked gate, user 9, 14 and 21 recalled a stile at point B. User 10 and 18 did not recall a stile, and did not state whether they were prevented from using the route by the locked gate or whether they climbed the locked gate or adjacent fence.

8.14.8 If users were prevented from using the route when the gate was locked then it was an effective interruption. However, even if users were able to continue to use the route by climbing the locked gate or an adjacent fence, then the locking of the gate would still be deemed to have interfered with their use. In those circumstances, even if the locked gate did not actually physically prevent use, it may still be considered an effective interruption. The evidence on this point is not clear, but it seems likely that the locked gate acted as an interruption at least on occasions.

8.14.9 Only two users mentioned foot and mouth preventing them from using the route and so foot and mouth does not seem to have acted as an effective interruption to use overall.

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<sup>38</sup> Paragraph 14, [2001] EWHC Admin 360, <http://www.bailii.org/ew/cases/EWHC/Admin/2001/360.html>

## 8.15 Sufficiency

8.15.1 A total of 22 individuals claim to have used the application route during the relevant 20 year period and their use collectively covers the whole 20 years. The number of users at any one time, and therefore frequency of use, increases slightly during that time from 14 in 1982 to 19 in 2001. Of those 14 people using the route in 1982, user 1, 3 and 21 were using it with permission and 2, 7 and 18 were using it by force. This use is not as of right which leaves 8 qualifying users in 1982.<sup>39</sup>

8.15.2 Those 8 qualifying users in 1982 were collectively using the route on average about once every 3 days (see 8.11.5). By 1983 this had risen to a maximum average of one use per day. From 1984 – 1989 the maximum average use is a little higher again at just under one and a half per day (a maximum average of 9.87 per week).<sup>40</sup>

8.15.3 The application route is in a rural location, but forms part of a route of about 1¼ miles between the centre of the village of Cross and the centre of the small town of Axbridge. An average use of about once every three days seems much less than would be expected on a public footpath connecting a village and a small town, and not enough to alert an observant landowner who was on the spot<sup>41</sup> to a right of way being asserted by the public. Therefore, in the first year of the relevant 20 years at least, there is insufficient use by the public to give rise to a presumption of dedication. Without a full 20 years sufficient use the presumption that rights have been dedicated does not arise; 19 years public use is not sufficient.

8.15.4 If an earlier date of challenge constituting a calling into question of the public's use of the route were found, this would lead to a relevant 20 year period with an earlier start date. However, although evidence has been submitted of use of the route from the 1960's, the number of users and frequency of use is significantly lower from 1960 to 1981 and would therefore still be insufficient to give rise to a presumption of dedication.

8.15.5 Although two users claim to have used the application route on bicycle as well as on foot, all the rest of the user evidence is of use on foot only. Sufficient evidence to give rise to a presumption of higher rights (bridleway, restricted byway or byway open to all traffic) was not submitted or discovered.

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<sup>39</sup> User 1, 3 and 21 might no longer be considered to have permission to use the route from 1997 when the land was no longer in the possession of the tenant who gave them permission, and user 2 and 7 both indicate a stile was present from some time in the 1990s and may therefore no longer have been using the route 'with force' if they accessed it via the stile.

<sup>40</sup> It is important to remember that the average use was extrapolated from user evidence of their frequency of use and does not represent actual patterns of use, but is used to illustrate the changing level of use over time.

<sup>41</sup> DMO Consistency Guidelines – 9th revision February 2016, page 7, 5.20.

8.15.6 For the reasons given above it is suggested that there is insufficient evidence of public use in 1981 to lead to presumed dedication during the period 1982 to 2001. However, for completeness it is worth briefly touching on the effects of the 2001 foot and mouth outbreak.

8.15.7 From 2 March 2001 all footpaths in Somerset, including footpath AX15/14 and AX 1/22 were closed to the public due to foot and mouth restrictions. Although many paths were reopened earlier, AX15/14 and AX1/22 remained closed on 1 July. Although records stating exactly when these specific paths were reopened have not been found, as they do not run through land subject to Form A notices as of 16 July 2001, they were probably reopened between 14 and 21 July 2001, or shortly afterwards.

8.15.8 While this does not directly affect the application route, it is possible to conclude that no user should have continued their journey on the recorded footpaths AX15/14 and AX1/22 between 2 March to sometime in the second half of July 2001. It might therefore be expected that the unavailability of these paths would have affected the use of the application route as well. However, only two (2 and 10) of the 19 users who claim to have been using the route in 2001 recall the foot and mouth outbreak. These two users claimed to be using the route collectively between 11 and 16 times a year meaning that there would have been marginally less use during the foot and mouth outbreak. However there is no evidence to suggest that the remaining users stopped using the route due to foot and mouth and their level of use is considered to be sufficient to demonstrate public use in that year (i.e. 2001). It should however be stressed that without evidence of sufficient use in 1982 the full 20 year period required for presumed dedication cannot be demonstrated.

## **8.16 Quality of User Evidence**

8.16.1 The Planning Inspectorate take the view that “Often the quantity of user evidence is less important in meeting these sufficiency tests than the quality (i.e., its cogency, honesty, accuracy, credibility and consistency with other evidence, etc.)”<sup>[1]</sup>

8.16.2 It is hardly surprising if, after some years or even decades, those submitting evidence are not able to accurately recall dates or events which they did not know at the time would be important or that they would be questioned about later. This does not in any way imply a lack of honesty by those submitting evidence, but the possibility that their recollections may not be completely accurate or complete does need to be considered when interpreting the evidence and placing weight on it. This is true of all recollection based evidence, whether submitted by users, witnesses, landowners or others.

8.16.3 In this case, conflicting evidence has been supplied on almost all points of significance. Whilst some can be reconciled (for example,

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<sup>[1]</sup> DMO Consistency Guidelines – 9th revision February 2016 Section 5.15 page 6

differing accounts of when the gate was locked can largely be explained by a gate which was locked intermittently) others are less easy to resolve.

8.16.4 It might be expected that those supporting the application and those against it will have a different perspective on the same events. Amongst the user evidence, although individuals have provided detailed evidence and some accounts are supportive of each other, there are differences of recollection on important points. Of particular note in this respect is the lack of consistency in terms of the installation, nature, use and removal of the stile at point B.

8.16.5 Whilst no individual user's evidence has been given less weight because it can be shown their recollection of a particular event is in some way inaccurate, the level of consistency amongst the user evidence overall does not give a very clear timeline of the most critical events. Therefore, although the user evidence has been interpreted as supporting a fence and gate at point B until the 1990s and a cross step being installed in the 1990s to create a stile at point B, the weight given to the evidence supporting this is not overwhelming.

## **8.17 Lack of intention to dedicate**

8.17.1 It is concluded above that there has been insufficient use to raise the presumption that public rights have been acquired under the provisions of section 31 of the 1980 Act. However, even if the use described above was considered sufficient to give rise to a presumption of dedication, this presumption can be rebutted if there is evidence of a lack of intention to dedicate.

8.17.2 The Planning Inspectorate's Consistency Guidelines state that, in relation to a lack of intention to dedicate, case law shows that "in the absence of evidence to the contrary, there is no automatic distinction to be drawn between the actions of a tenant acting in accordance with their rights over the property and that of the landowner in determining matters under s31 of the Highways Act 1980".<sup>42</sup> Five users refer to the gate having been locked at times during the relevant 20 year period. It therefore seems likely that the gate at B was locked at least intermittently during the relevant 20 years with the intention of preventing public pedestrian access. The apparent inconsistency between different users recollection and witnesses recollections of the gate at B being locked would be simply explained by a gate which was intermittently locked. An individual's recollection would depend on whether their use coincided with times when the gate was locked, or when it was unlocked.

8.17.3 A gate across a way which was locked to prevent public access could constitute an action which demonstrates the landowner's lack of intention to dedicate the way to the public. It is not necessary for every user to have encountered a locked gate for the action to be sufficient to demonstrate

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<sup>42</sup> The Planning Inspectorate (February 2016) *DMO: Consistency Guidelines 9th revision*, paragraph 5.35.

to the public that the landowner did not intend to dedicate the route as a public right of way, but the action must be sufficient to bring it to the attention of the people likely to use the path (the general public).

8.17.4 During the relevant 20 year period between 23 and 33% of those who submitted user evidence recalled the gate opposite Manor Farm at point B locked at least some of the time. It is submitted that a gate locked often enough for between 23 and 33% of the people using the route to be aware of it being locked is sufficient to bring it home to users that the landowner was demonstrating a lack of intention to dedicate the route as a public right of way.

8.17.5 A letter from PL1 ( see paragraph 6.2.3) has been supplied in which they clearly state that they did not, and had no intention of dedicating the application route as a public footpath. However, whilst this demonstrates the landowner's privately held view, it does not provide evidence of an action which would have been sufficient to bring the landowners lack of intention to dedicate the route to the attention of the people likely to use the path and therefore does not demonstrate a lack of intention to dedicate for the purposes of this investigation.

8.17.6 Similarly, the clause in the tenancy agreement of 2000 (paragraph 6.2.3) and any earlier agreement covering the land and containing the same clause, would not have come to the attention of the public and therefore does not amount to evidence of a lack of intention to dedicate.

8.17.7 Overall, there is sufficient evidence of a lack of intention to dedicate during the relevant 20 years.

## **8.18 Common Law**

8.18.1 Use by the public can be evidence of an implied dedication by the landowner at Common Law as well as presumed dedication under section 31 of the Highways Act 1980.

8.18.2 There is no minimum qualifying period at Common Law, although use still has to be without force, without secrecy and without permission. The actions of the landowner also need to be taken into account when considering whether it can be inferred that a right of way has been dedicated.

8.18.3 In support of the intention to dedicate is the evidence of use by 23 individuals over 56 years. However, there were only two users at any one time (three users in total) until 1970, and two of these users worked for the owner or tenant and would therefore be considered to have implied permission. From 1970 the number of users begins to increase (see appendix 17 for summary of user evidence) but 'as of right' use remains low into the early to mid-1980s. Use then continues to increase until 2001. However, even by this time the frequency of use does not get very high at a maximum average of 2.54 uses per day.

8.18.4 In any case it is important that the evidence of use is viewed in light of the landowner's actions. In this case various landowners have responded in a number of ways either to actual public use or the suggestion of it.

8.18.5 The Parish Council minutes from 1979/1980, whilst open to interpretation, suggest the landowner or the landowner's representative did not oppose the installation of a sign at point B directing people onto the application route. While this appears to be supportive of a Common Law dedication, the weight to be given to the minutes is reduced because the Parish Council consulted Mr Crawford (probably Ian Crawford), who was not the landowner and although Ian Crawford was probably acting on behalf of the landowner or with the landowners authority, in what capacity is uncertain. The evidence is further weakened due to uncertainty as to exactly what the landowner was asked to agree to and the fact that the direction post was never installed. Also, although it is more likely that the direction post was to point people onto the application route, the minutes do not explicitly describe the location and the possibility remains that it was not directing people onto the application route under consideration here.

8.18.6 PL1, who owned the land in 2001 and is named on the tenancy agreement as the landowner in 2000, was a minor in 1979/80 and would therefore be unlikely to be the landowner, or have control over the land when the Parish Council were discussing the installation of a sign. Evidence has been submitted which shows there was a conveyance of land to PL1 in 1985, and although this may have included the land over which the application route runs it is not possible to tell from the evidence submitted (see section 8.8). If the land conveyed to PL1 in 1985 did include the land over which the application route runs then the land was transferred within a few years of the level of use increasing- i.e. while the use remained relatively low. It would also mean the landowner who may have agreed to a direction post was different to the landowner who installed any cross step in the 1990s. Although this is only one possible interpretation of the documents, the evidence is compatible with it and it raises the possibility that the landowner who may have been informed of the Parish Council's desire to erect a direction post would not have been aware of public use of the application route at any point during their ownership of the land.

8.18.7 There is strong evidence that the gate at B was locked at least often enough for a significant proportion of users to be aware of it and recall it decades later. This is good evidence of the landowners lack of intention to dedicate a right of way through the gate being brought to the attention of the people likely to use the route.

8.18.8 This does not necessarily mean that they did not intend to dedicate a route leading from point A to point B and exiting onto the road adjacent to the locked gate. There was certainly some use over the structure to the west of the gate, referred to as a stile by some users. However, the evidence for use of this structure is far lower than of the application route overall.

8.18.9 User evidence shows that at some point in the 1990s a cross step was installed to the west of the field gate at B creating a stile. The installation of a cross step by a landowner might be considered good evidence that, having become aware of the increasing level of public use, they sought to aid/encourage it. Furthermore, until at least 2002, no landowner appears to have taken any action to prevent or discourage that use, for example, by placing barbed wire, boarding, a sign prohibiting public access, raising the height of the fence etc. This is consistent with an intention to dedicate public rights over the structure to the west of the gate at B. However, there is little evidence which indicates whether the cross-step was intended to facilitate public or purely private access.

8.18.10 It would also appear that the stile or cross-step which some users recall being installed in the 1990s was very short lived. Documentary evidence suggests that no stile was present in May 1996 or 2001. Therefore, any cross step installed by the landowner at point B was either installed in the early 1990s and removed or not kept in repair by 1996, or installed after May 1996 and removed or not kept in repair by 2001. In either case, it was in place for no more than 6 years and was therefore not maintained by the landowner. The fact that the landowner who installed the stile chose not to keep it there might be seen as evidence that its installation wasn't for the ongoing use by the public thus reducing the weight that can be given to it as evidence of dedication.

8.18.11 There is also evidence from May 1996 that the landowner's agent was aware of at least some public use of the route via the gate but did not recognise the application route as a public right of way and discussed steps which would have discouraged use of the whole application route (whether via the gate or structure to the west of the gate) with SCC (see paragraph 4.9, appendix 12A). It is unknown if the signs referred to in the memo were erected (no users appear to remember them) and therefore whether the landowners concerns were made known to the public. The 1996 memo therefore does not, in itself, demonstrate that the landowner was not intending to dedicate public rights. However, it does give an insight into the landowner's thoughts in relation to public use. Given the content of the memo it seems less likely that the cross step was installed in the fence at point B with a view to aiding public use.

8.18.12 The installation of a stile at point B in 2002 cannot be taken as evidence of the landowner's intention to dedicate the application route as a public right of way, as it's installation was part of the granting of permissive access. The stile was intended to be a temporary structure, the public were informed of this by notices on site and efforts appear to have been made to decommission the stile after permission was withdrawn which were recognised by the parish council and at least some users. The current landowners have made it very clear they have had no intention to dedicate the route as a public right of way since the permissive use of 2002.

8.18.13 In conclusion, there are specific acts by, or on behalf of, the landowner which could imply the intention to dedicate the application route at Common Law. However, those acts are of limited weight and/or are open to more than one interpretation. There is no confirmation of exactly what the sign discussed in the Parish Council minutes of 1979/80 proposed or that it was agreed to by the landowner (particularly given the fact that the sign does not seem to have been erected). Furthermore, the installation of a cross step to create a stile in the 1990s was short lived and may have been intended to aid private rather than public access. Against this must be balanced the regular locking of the gate; contemporaneous evidence that the landowner in 1996 was seeking ways of preventing public use; and the giving (and subsequent removing) of permission to use the route in 2001. Against this background the relatively low level of public use is not considered sufficient to meet the heavy burden of proof needed to show that a right of way can be reasonably alleged to have been dedicated at Common Law.

## **9. Summary and Conclusions**

9.1 Historic documentary evidence does not support the existence of a footpath over the application route.

9.3 In order for the application to be successful it must therefore rely either on section 31 of the Highways Act 1980 or a more recent implied dedication at Common Law.

9.4 The 20 year period of public use required by Section 31 of the Highways Act 1980 must date back from a calling into question. The 20 year period with the greatest chance of success in this case is 1982 – 2001 inclusive.

9.5 There was insufficient as of right use of the route to demonstrate that it was being used 'by the public' for at least the first year of the relevant period. Therefore the (rebuttable) presumption of dedication does not arise.

9.6 Even if there was considered to be sufficient as of right use during the relevant 20 years, there is evidence to show that the gate at point B was locked often enough to come to the attention of between 23 and 33% of users. This was very probably done with the intention of preventing the public use of the route. In the circumstances the locking of the gate is considered to constitute a lack of intention to dedicate a right of way through the gateway. Therefore, any presumption that public rights have been dedicated over that route is rebutted.

9.7 It is accepted that the locking of the gate does not constitute a lack of intention to dedicate rights over the structure to the west of the gate. However, as mentioned above there is insufficient evidence to show that the public at large were using the claimed route in the first year of the relevant 20 years.



9.8 Having considered the evidence in relation to the statutory provisions of section 31, it is also important to consider the possibility of implied dedication at Common Law. It is clear that the current landowners have had no intention to dedicate. However, prior to 2001 the land over which the claimed route runs was in different ownership and there is some evidence that those landowners had a different attitude. In 1979 the representative of one landowner may not have objected to the idea of installing a signpost possibly encouraging public use of the claimed route. However, exactly what was agreed to and by whom is uncertain. It is also worthy of note that there is very little evidence of actual public use at that time or indeed while that owner held title to the land.

9.9 It is acknowledged that, even when the land was in different ownership and the level of evidenced use increased, little was done to prevent use via the structure next to the gate at B. In fact such use was aided by the installation of a cross step in the 1990s. However, that cross step was short lived and there is no evidence to suggest whether it was installed for public or private use.

9.10 Balanced against this weakened evidence of an intention to dedicate is the regular locking of a gate at point B and SCC's internal memo of 1996 (see appendix 12A). This shows that the landowners at the time did not consider the route to be a public right of way. In light of this it is difficult to see how the landowners can be said to have acquiesced to the low level of public use that the application route received. For this reason the high burden of proof for Common Law dedication to be reasonably alleged is not met by the evidence in this case.

9.10 Therefore, it is not reasonably alleged that a right of way on foot exists over the application route.

## **10. Recommendation**

I therefore recommend that the application to add a public footpath from AX15/14 parallel to the A371 west towards Cross in the parish of Compton Bishop and shown on Appendix 1 is **refused**.

## 11. **List of Appendices**

Please note that the document reproductions in the appendices are not to scale. The report writer has added the red letters A and B present on Appendix 1 to maps to help the reader identify the sections of the route the document is depicting. Red circles, arrows or lines have also been added to some appendices to indicate the area of the claim or feature of relevance where lettering is not appropriate.

1. Plan showing claimed route
2. Photographs of the application route
3. Compton Bishop New Inclosures Map and Award 1778 – 1779
4. Sessions roll for Epiphany 1928: Papers relating to the stopping up and diversion of the A38 at Compton Bishop 26 October 1927
5. Compton Bishop Tithe Map and Apportionment 1838 – 9
6. Ordnance Survey 1:2500 Sheet XV11.16
7. Ordnance Survey 1 inch: 1 mile Sheet 280, 1898
8. Ordnance Survey 1:25000 Sheet ST45, 1959
9. 1910 Finance Act Working Plan and Valuation Book.
10. Definitive Map
11. Highways records (SCC).
  - A. Extracts from minutes of meeting WS Atkins 23/08/2001
  - B. Plan. 09. 2001
  - C. Plan 09. 2001
  - D. Extract from minutes of meeting SCC / WS Atkins 17/09/2001
  - E. Letter from WS Atkins to landowner 25/09/2001
  - F. Record of telephone conversation in reply to 11E
  - G. Extract of email from WS Atkins to DEFRA 27 September 2001
  - H. Memo from SCC Environment and Property to WS Atkins, 26 October 2001
  - I. Photographs dated October 2001
  - J. Extract from a Works Order, dated 17/10/01 but accompanying minutes of a WS Atkins meeting dated 01/12/2001
  - K. Extract of email from WS Atkins to landowners 10/12/2001
  - L. Agreement between landowners and WS Atkins / Somerset County Council, 10 December 2001

- M. Agreement between landowners and WS Atkins / Somerset County Council, 10 December 2001
  - N. Extract from letter from landowner to WS Atkins / SCC 10/02/2002
  - O. Extract from a memo from SCC to WS Atkins regarding the above letter
  - P. Extract from email from Compton Bishop Parish Council to WS Atkins. 14/02/2002
12. Parish File for Compton Bishop (held by SCC) and relating to PROW issues) reference RW1/21 file 2
    - A. 20 May 1996 SCC internal memorandum, attached plan and transcript of memorandum
    - B. Documents faxed to SCC together
    - Bi. 21 April 2002. Letter from Compton Bishop Parish Council to landowners, sent to SCC as a fax
    - Bii. 23 June 2002. Text of email sent to SCC as a fax, hand dated '23/06/02'
    - Biii. 25 June 2002. Text of email from Landowners to Compton Bishop Parish Council, sent to SCC as a fax
    - C. 28 June 2002. Memorandum referring to the documents included in appendix 12B
    - D. 9 July 2002. Fax from SCC to Compton Bishop Parish Council
    - E. 17 July 2002. Letter from Compton Bishop Parish Council to SCC
  13. Aerial photograph 1946
  14. Google Earth Images 1999 – 2001, 2006 and 2009
  15. Opinion, submitted by the applicant
  16. Compton Bishop Parish Council Minutes
  17. Summary of User Evidence
  18. Photograph forming part of planning application 21/03/00016
  19. Evidence submitted by the landowner
    - A. Tenancy agreement, 03/04/2001
    - B. Letter from David James and Partners, 21/11/2017
    - C. Contract of sale, 09/11/2001.
    - D. Letter from current landowner to Previous Landowner 1, including map.

- E. Letter from PL1 to current landowners, 04/01/2018
20. Declaration made by Somerset County Council 1 March 2001
  21. Somerset County Council (Foot-and-Mouth Disease) Declaration No. 14 2002
  22. Press release, 19 July 2001
  23. SCC map showing 'Buffer Zone and 'A Notice Farms'