



**WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53, SCHEDULE 14**  
**APPLICATION TO UPGRADE PART OF FOOTPATH CH 7/39 TO A**  
**RESTRICTED BYWAY, AND ADD RESTRICTED BYWAYS**  
**IN THE PARISHS OF COMBE ST.NICHOLAS AND BROADWAY**  
**630M, 632M and 633M**  
**APPLICATION TO VARY THE PARTICULARS OF PART OF CH7/39, 862M**

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## 1. Introduction

1.1 The South Somerset Bridleways Association made two applications on 4 June 2009 (630M and 633M) and one on 12 June 2009 (632M) under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 for Orders to amend the Definitive Map and Statement (DMS) by upgrading part of footpath CH 7/39 to a restricted byway and adding the routes described in paragraph 2 below as restricted byways. A fourth application was made 2 November 2018 (862M) under the same legislation which relates to part of the route over which 632M runs between points A and B on appendix 1. As such, application 862M is only specifically discussed in relation to the width of the application route between A and B.

1.2 A restricted byway can be used by the public on foot, bicycle, horseback, or non-mechanically propelled vehicle (such as a horse and cart).

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

1.4 Private rights may exist, but are not of direct relevance to this investigation.

## 2. The Application

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

Document	630	632	633	862M
Land registry report	•	•	•	•
1813 Property belonging to the Deanery of Wells				•
1814 and 1818 Combe S. Nicholas Inclosure Act and Award	•	•	•	•
1822 Greenwoods Map	•	•	•	•
1839 Combe St. Nicholas tithe map	•	•	•	•
1844 Broadway tithe map	•		•	
1885 Ordnance Survey (OS) boundary records	•		•	
1888 OS 25 inch County Series				•
1898 – 1900 OS Cassini / Timeline reprint	•	•	•	•
1901 Object Name Book		•		•
1902 OS 25 inch County Series				•
1905 Object Name Book	•		•	
1910 Finance Act record plans	•	•	•	•
1911 Bartholomew's Map				
1919 OS Cassini / Timeline reprint	•	•	•	•
1927 Bartholomew's Map		•	•	•

1940 OS war revision	•	•	•	•
1941/2 National Farm Food Survey				•
1964 Bartholomew's Map				•

2.2 No user evidence was submitted with the applications. User evidence submitted during the investigation is discussed at 7.1.

2.3 The application routes are shown coloured blue on Appendix 1 and can be described as follows:

- 630M Charmoor Drove, parish of Combe St. Nicholas, running from point D through C-E-F-I-J-K-L-M to N at the A303 (add a restricted byway).
- 632M Hamway Lane, parish of Combe St. Nicholas, running from the public vehicular road at point A through point B to C at its junction with Charmoor Drove (upgrade public footpath CH 7/39 between points A and B to a restricted byway and add a restricted byway between points B and C).
- 633M Charmoor Lane, in the parishes of Broadway and Combe St. Nicholas, running from point F at its junction with Charmoor Drove through point G to H at the public vehicular road called Silver Street (add a restricted byway).
- 862M Hamway Lane in the parish of Combe St Nicholas from point A running in a generally northerly direction to point B (vary the particulars in relation to the width of the route).

2.4 Photographs of the claimed route taken on 10 January 2018 are at Appendix 2.

2.5 A land registry search was carried out on 7 December 2017. No registered owners for the application routes were identified. However, seventeen landowners (or joint landowners) of adjacent land were either identified by the Land Registry search or by other means. The Common Law presumption is that adjoining landowners own up to the centre line of a public or private road or way, in the absence of any evidence to the contrary. This investigation has not determined the ownership of the unregistered land over which the application routes run. Throughout this report landowners have been given the letters A to Q for identification purposes. The landownership as recorded by the Land Registry or on maps returned by landowners is shown at Appendix 3. Landownership which has been identified from other sources (i.e. not from the Land Registry or shown on maps returned by landowners) is not shown on appendix 3.

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

### 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 53(3)(c)(i), (ii) and (iii) are of particular relevance.

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*”

53 (3)(C)(ii) reads 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 highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description*”.

53 (3)(C)(iii) reads 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 there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification*”.

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

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

3.4 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”.

3.5 Section 32 of the Highways Act 1980 states that “a Court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced”.

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

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

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

The table below shows documentary evidence sources examined as part of this investigation. In some cases it has not been possible to view the original copy of a document and it has instead been necessary to rely entirely on an extract supplied by the applicant. Where this is the case the words ‘extract only’ follow the title of the document. It may sometimes be necessary to give those documents less weight on account of them only being viewed in part. If this is the case, it will be clearly stated in the analysis of the document.

## 4.1 Inclosure Records:

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

**4.1.2 Combe St Nicholas Inclosure Act (1814) and Award (1818). South West Heritage Trust (SWHT) reference : Q\Rde/14 Appendix: 4**

### 4.1.3 Description and interpretation of evidence

The relevant act gave the Commissioner the power to divert, turn and stop up public highways if it appeared to him this could be done without inconvenience to the public, or if so doing would make the same more convenient to the public, or if they could be stopped-up and destroyed as superfluous and unnecessary (page 7). There was no requirement to replace any stopped-up public way with another public way specified in the act, although the commissioner could of course do so if he wished.

The local Act also incorporates the Inclosure Consolidation Act of 1801 (page 2) which set out a number of provisions which could be incorporated into future acts. This included giving the Commissioner the power to set out private roads, public roads, bridleways, footways, quarries, bridges, gates, stiles and a number of other features.

There are 8 numbered maps of the different areas included in the Award. Map 1 (Longlie Common) includes the statement "*N. B. Public Roads colored pink Private Roads colored brown*" (sic).

Map No. 3 is titled "MAP OF Charmoor, Ham Moor, Players Hill, Little Common, and Paddle Moor". It shows all of the routes under consideration here, except from point G to H, which is beyond the area covered by the map, and a short section between N and Niii which is discussed below.

The road running south from approximately<sup>1</sup> point D (not forming part of the application route), is coloured pink and labelled "No. 34". The mapped area extends south to approximately Ham Hill Farm, and a gate is shown across

<sup>1</sup> In fact, approximately 40 metres south of point D. The public vehicular highway today extends as far north as point D.

No.34 at this point. The road which is now the A303 is shown for a short section where the application route joins it at point Ni, coloured pink and labelled No.35. Both No. 34 and No. 35 are identified in the award as “Public carriage Road and Highway”. Both No.34 and 35 are today recorded on the county road records.

Application route 630M is coloured pale brown and labelled at different points No.69, No.73, No.75, No.76 and No.77. No linear route is shown between point N and Niii. Instead a route is shown from Ni, through Nii to Niii. This section is also labelled No.77. No barrier or gate is shown across the route.

Application route 632M is shown coloured pale brown with a gate at point A. Between point A and B it is labelled No.71, and between B and C No.70. No other gates or barriers are shown across the route.

Application route 633M is shown between F and G, coloured pale brown and labelled No.72. No gates are indicated across the route. The route is described in the text of the Award as running from the south to the north finishing with the description “...and from thence by old Inclosures on the North West to the water leading into Broadway Forest”. The route terminates at the River Ding (which is the parish boundary and the boundary of the area covered by this award). On the northern side of the river is Broadway Forest (see map of c.1830 showing sections of Neroche Forest, 4.9.9). A route which terminated at this point would ‘lead into Broadway Forest’ as would a route which carried on from this point. The award does not therefore indicate whether or not there was a physical route continuing into Broadway at this point.

The award identifies No 69 – 77 (i.e. all those section of the application routes which are included in the Award) each individually as ‘private Road or Drove way’ with minimum widths of between sixteen and thirty feet.

The award goes on to describe other private carriage roads or droveways and footpaths and then states “All which several private carriage Roads Drove Ways or Footpaths are for the use of the several Owners and Occupiers for the Time being of the several allotments of land in the aforesaid Moors Commons and waste Lands” and that they are to be kept in repair by the owners and occupiers of the allotments. The award first describes who had the right to use the routes, and then responsibility for maintenance, differentiating between the two. Those who are described as having the use of the routes - the ‘Owners and Occupiers’ - are a limited group of people, and not the general public.

The award does not assign ownership of the soil of the application routes. Ownership of the soil immediately after inclosure is therefore presumed to remain with whoever owned it prior to inclosure, probably the Lord of the Manor. Private rights which could be exercised by those who owned or occupied allotments were therefore established over land with a known owner, even if the owner today is unregistered, or if ownership has reverted to the Crown.

It has been argued that 'private road' in an inclosure award might actually mean a local road, or low road, which could be used by the public with vehicles, or that 'private' referred to maintenance responsibility rather than rights of use. However, this is contrary to the specific wording of the award which limits the right to use the route to the owners and occupiers of nearby allotments.

Furthermore, case law is strongly in favour of 'private road' meaning a route which may have been for the use of one or several people, but not the general public in the absence of evidence to the contrary<sup>2</sup>.

The judgement in *Dunlop v. Secretary of State for the Environment and Cambridgeshire County Council* is not binding in relation to all inclosure awards, but it is persuasive, particularly in relation to any award made under an act incorporating the 1801 Inclosure Consolidation Act (as the Combe St Nicholas Award does). In that case Sedley J said

"No internal evidence suggests that the choice of words in the Award is casual or accidental. ... But throughout the words "public" and "private" are used differentially and with evident care in a context suggestive of the defining of rights to use the road rather than of the characterisation of the road's quality or status. All the indications are that "private carriage road" is deliberately used in the Award as a term of art distinguishing the particular road according to the extent of the particular rights over it from the public carriage roads on which all subjects enjoyed an equal right of vehicular passage. The subsequent history of many such roads, ... which has resulted in such roads becoming public routes maintained at public expense, does not destroy the distinction deliberately made in Awards such as the Glatton with Holme Award..."<sup>3</sup>

Language in the Combe St. Nicholas Award is used in a very similar way, and the same conclusions are drawn. For example, two routes were described in the award as private carriage roads (No.52 and No.81) which also had public footpaths set out over them (No.47 and No.40). It would therefore be expected that if other private carriage roads also had lower public rights running over them the commissioner would have specified this. Furthermore, had 'private carriage road' in this award actually meant a route over which the public had the right to travel in vehicles or otherwise, there would have been no need to specify the lower public rights over these two routes.

Each of the application routes are set out as a 'private carriage road or droveway'. 'Droveway' is not a term with any legal definition but it seems unlikely that the Inclosure Commissioner was using it to mean public bridleway. Both the award and act refer to public and private bridleways. Had

<sup>2</sup> Sedley J. *Dunlop v. Secretary of State for the Environment and Cambridgeshire County Council*, discussed by Willmore, C. (July 1995) 'What is a 'private carriage road'? in *Rights of Way Law Review* Sec.9.3, p.73.

<sup>3</sup> *Dunlop v SSE and Cambridgeshire County Council* [1995] 70 P & CR 307, 94 LGR 427

the commissioner intended to set out bridleway rights it therefore seems likely he would have used the term 'bridleway' when doing so, and not another word not included in the relevant acts or elsewhere in the award. 'Private' in 'private carriage road or droveway' might reasonably be read as qualifying both carriage road and droveway, so whatever rights were considered to be encompassed by the term 'droveway' they were also private. Overall, whilst the term 'droveway' may in some documents be used in relation to a public right of way, the context does not suggest that in this document it equated with public rights.

The only internal evidence that the 'Private Carriage Roads and Droveys' might have carried public rights is public footpath No.46. This path was effectively set out as a cul-de-sac in the award, unless the public footpath rights continued over private carriage road No.61 to join public carriage road No.17. No such continuation is described in the award or shown on the map. Therefore the Commissioner either set out an apparently useless public footpath or failed to fully delineate the public rights he intended to set out on at least one route. However, in light of the arguments set out above, this inconsistency is not enough to conclude that all the private ways set out in the award must have carried some kind of public rights whether or not they were specifically defined.

The application routes were therefore set out in the Award with private, not public, rights over them.

Some routes which were set out as 'private' in the inclosure award have public rights recorded over them today. Of the 33 routes (excluding those shown on map 3) which were set out in the award as 'private carriage roads or droveys' or private footpaths, the majority either have no recorded public rights today, had lower public rights set out over them by the award, or there is some other evidence for more modern acquisition of public rights (for example, dedication). In any case, the fact that some routes set out as private have subsequently become a highway is not evidence that all private roads have become highways, just as a route having been set out as private at inclosure does not prevent subsequent acquisition of public rights.

In addition to the ways set out by the Commissioners, the award records that two roads were to be "stopped up and discontinued as superfluous and unnecessary". Those roads were "a certain Road Way called Little Common Lane and one other certain Road way on Sticklepath Hill on the Forest and both lying within the Parish of Combe Saint Nicholas aforesaid...".

Sticklepath Hill is to the south of the A303 and could not have been in the vicinity of any of the application routes under consideration here. Little Common Lane is not named on any map that has been found and there is therefore some doubt over its location. However, a route is shown on the pre-inclosure mapping (OS first series map, see 4.4.3) which corresponds broadly with application route 630M between about point Ni / N and K before it continues north, joining Silver Street to run east towards Broadway village. Given that Little Common was located to the north east of point K, it is likely

that this route was 'Little Common Lane'. A likely reason for this route being considered suitable for stopping-up is the existence of the new turnpike road (now the A303) which ran generally north-east from point N, connecting with routes which also lead to Broadway village.

If Little Common Lane has been correctly identified and does correspond with Ni / N-K then this part of the application route carried public rights prior to inclosure, but those rights were legally stopped up at inclosure. On the other hand if Little Common Lane and Ni / N-K do not correspond, then the stopping up of the Lane offers no evidence as to the status of any of the application routes.

In summary, the language in the Award is consistent with 'private carriage road or droveway' meaning a way for the use of a limited group of individuals. The award explicitly describes the private carriage roads or droveways as being for the use of a limited group of people, and therefore not the general public.

Public rights are now recorded over some routes set out as private in this award. However, this does not mean that all routes set out as private were in fact public, or that they have all acquired public rights since inclosure. Equally, the routes being set out as private at inclosure does not preclude subsequent acquisition of public rights over them.

Public rights almost certainly did exist over Little Common Lane prior to inclosure. Little Common Lane very probably corresponded with the application route between N and K. However, these rights were legally stopped-up by the inclosure award.

Therefore, these documents provide very strong evidence that public rights were not set out over the application routes by the inclosure award in 1818.

#### **4.2 Neroche Forest Inclosure Award, 1833. South West Heritage Trust (SWHT) reference: Q\Rde/107 Appendix: 5**

4.2.1 Like the Combe St Nicholas Award, this also incorporates the 1801 Inclosure Consolidation Act (see 4.1.3, above) and confirms that the Commissioner had the power to set out public carriage roads and highways and private roads, bridleways, and footpaths.

The map is drawn in black ink with limited details beyond the area being inclosed. The numbered allotments are further outlined in green. The map shows the now public vehicular road which application route 633M joins at point H as uncoloured between solid casing lines and labelled in red 'No. 9'. No.9 is described in a section headed 'Public Carriage Roads' as "One other public Carriage Road of the width of thirty feet".

Application route 633M is shown from point H to G as parallel dashed black lines over green tinted lines, labelled in red ink 'No. 29', and running through a plot numbered 511. At point G the route meets the river Ding, south of which a

gate is shown beyond which is a short section of linear way with solid black casing lines and the label 'Charmoor Gate'. The mapped area does not extend beyond this point. No.29 is described in the award in a section headed 'Private Roads and Footways' as "One other private Road of the width of eighteen feet in the said parish of Broadway numbered 29 in the said map commencing from and out of the said public carriage Road numbered 9 and proceeding through and over an allotment numbered 511 to a gate called Charmoor Gate." This strongly suggests that the land over which the application route between G and H ran formed part of allotment 511 and was therefore in the ownership of the person assigned allotment 511.

Page 197 of the award states that the private roads are to be maintained at the expense of the owners and occupiers of the allotments set out in the award. There is also a schedule of private roads which includes details of who was made responsible for their maintenance. Twenty four numbered plots of land and multiple named 'Owners and Proprietors' are listed as being responsible for the maintenance of private road number 29. In the column headed 'Length of Roads in yards to be made and at all times for ever hereafter to be supported and kept in repair by each Owner and Proprietor for the time being' the schedule gives six lengths braced against different groups of owners of between 1 and 83 yards. In the final column, 'Observations and Explanations' all the plots braced with road 29 are also braced with the comment "Share and share alike from the Public Road numbered 9 to Charmoor Gate".

The Commissioner had the power to set out public carriage roads and highways as well as private roads, bridleways and footpaths. The award clearly differentiates between public and private roads and identifies application route 633M between points G and H as a private road. The route appears to have been set out as part of allotment 511. In addition, the 'Owners and Proprietors' with responsibility for maintenance of private road number 29 are named in the schedule. Whilst the award does not specify who could use the private roads the language and context of the terms 'public' and 'private' are consistent with the differentiation of rights. The act also incorporated the 1801 Inclosure Consolidation Act. In light of the judgment in *Dunlop v. Secretary of State for the Environment and Cambridgeshire County Council* referred to in paragraph 4.1.3 above these documents are therefore very strong evidence that no public rights existed over 633M between G and H in 1833.

#### **4.3 Tithe Records:**

**4.3.1 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 and were not given a tithe number. Some private roads, due to use could be equally not liable to a tithe. However, public and private roads could be subject to a tithe, if for instance, they produced a crop – grazing or hay cut from the verges.

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

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

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

#### **4.3.2 Broadway (New Enclosures) tithe map, 1840.**

**SWHT reference: D\D/Rt/M/453.**

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

The applicant supplied extracts of the Broadway Tithe Map held by The National Archives, reference IR30/30/64. No difference of any significance to this investigation was identified between the extract provided by the applicant and the copy held at the SWHT. It is the SWHT document which is described below.

Linear ways shown on the map are coloured pale brown / sienna. Application route 633M is shown between point G and H only, as the rest of the routes fall outside of the mapped area. There is a solid line separating the application route from the now public vehicular road at point H. None of the linear ways are numbered.

Most of the routes on the plan, and therefore most of the coloured routes, are today public vehicular roads. However, there are routes over which no or lower public rights are recorded which are shown coloured in the same way as the application route;

- the track which now leads to Swaddles Green Farm over which no public rights of way are recorded, but part of which is currently subject to a DMMO application
- a track extending north north-west from Long Drove over which no public rights are today recorded
- bridleway CH 2/20
- part of footpaths CH 2/3
- part of footpath CH 2/19A

There are also at least two uncoloured linear ways - one leading to Venner's Farm over which no public rights are today recorded and another over which part of footpath CH 3/27 is now recorded. Both are separated from the public vehicular road by solid lines.

### **4.3.3 Combe St. Nicholas tithe map, 1840.**

**SWHT reference: D\D/Rt/M/209.**

#### **Appendix: 7**

### **4.3.4 Description**

The applicant supplied extracts of the Combe St. Nicholas Tithe Map held by The National Archives, reference IR30/30/41. No difference of any significance to this investigation was identified between the copy provided by the applicant and the copy held at the SWHT. It is the SWHT document which is described below.

Linear ways are shown on the map coloured pale brown. All the application routes are shown with the exception of 633M between points G and H which falls outside of the mapped area. There are no transverse lines across the application routes except at point G where the edge of the mapped area is delineated by the line of the River Ding. None of the linear ways are numbered.

Most of the routes on the plan, and therefore most of the coloured routes, are today public vehicular roads. However, there are coloured routes over which no public rights are recorded including:

- the route extending west from point B
- a route extending south-west from Raisey Lane
- a route running south-west at Street Ash
- a way leading to Belcome Farmhouse and another way parallel with it but slightly to the south
- a route leading to and beyond Deane Park Farm
- a route leading from Clayhanger Common to what is now Holemoor Farm

There are also coloured linear ways over which lower public rights are recorded including:

- Belcome Drove over which parts of footpath CH 7/46 and CH 7/36 run
- Part of footpath CH 7/26
- Part of footpath CH 7/17
- Part of footpath CH 7/4

### **4.3.5 Interpretation of evidence**

The mere fact that a route is shown on a tithe map is not evidence of its public status. The tithe maps will have needed to depict physical land divisions. This would have included linear ways where they are separated from the surrounding fields in some way, regardless of the rights running over that way. Physical features needed to be recorded, but rights which may or may not correspond with them are often not.

It has been suggested that all private (limited as to user) ways are the equivalent of an easement over land in known ownership which would be included within the plot of land through which they ran. Any reduction in value

as the result of the private right of way would be accounted for by the overall yield of that land over the period used to calculate the tithe remittance. Where a private road was not separated from, and was in the same ownership as, the rest of the plot through which it ran, this may well be the case. However, there is no reason why a private way could not be fenced and / or surfaced. In those circumstances it would only be natural for the feature to be shown to physically exist on the base map.

Therefore the fact that the application routes are shown on the tithe maps is very strong evidence for the physical existence in 1840. However, in itself, this offers no assistance in determining status. Similarly the fact that the routes were un-numbered, and therefore not subject to a tithe, is of no assistance. This is because “*a private right of way can diminish to no less an extent than a highway the productiveness of the land for tithe assessment*”<sup>4</sup>. In other words both public and private roads which were unproductive would have been unnumbered.

It is noted that in this case each of the application routes is coloured. In general, the colouring of a road on a tithe map is not, in itself strong evidence of public vehicular rights. In this specific case, there is no key indicating that colouring was used exclusively for public highways. Furthermore, comparison with the modern recorded status of the coloured linear ways suggests a coloured route was not necessarily a public one. It would therefore be unsafe to conclude that the colouring was used only in relation to public highways.

In light of all of the above, the tithe maps would be consistent with the application routes being either public roads, or private roads with or without lower public rights running over them, and therefore weigh neither for or against public rights over the application route. They are, however, very strong evidence for the physical existence of the routes.

#### **4.4 Ordnance Survey Records:**

**4.4.1 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.

#### **4.4.2 “1811” 2 inch: 1 mile surveyors drawings.**

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

The landscape around the application routes was substantially altered by both the creation of a turnpike road (the A303) and Inclosure ( see 4.1.2 and 4.2) after this plan was drawn. This plan therefore shows the pre-inclosure and pre-turnpike field boundaries and linear ways.

A linear way with broken casing lines is shown between approximately point N

<sup>4</sup> DMO Consistency Guidelines – 2 nd revision July 2013, section 8.5, page 4.

and K on route 630M, but from point K this route continues in a northerly direction. This is probably the route called Little Common Lane which was stopped-up by the inclosure award, although it is not possible to be certain as the route is not named on the drawings.

Another section of linear way with solid casing lines is shown between approximately point C and F. Although this does not connect with any other route depicted on the map it remains possible it connected with a way of such a character that the surveyor did not record it, for example an unmade route through a field. There is also a section which corresponds broadly with the southern part of Hamway Lane (i.e. south of point A) which is now a public vehicular road.

No route in the position of Silver Street (which application route 633M joins at point H) can be seen, although this may be because of the quality of the image. Several other sections of linear way are visible in the area to the south of point A and D but none of these form part of the application route. Apart from the route identified as Little Common Way, no through route is shown between Ham or a road running (very approximately) on a similar alignment to the A303, and Silver Street or any point in the general vicinity of Silver Street.

#### **4.4.3 “1809 – 1811” Cassini reprint of the OS First Series. Appendix: 33**

This map shows the turnpike (now the A303) with a thickened southern casing line. A route (also shown on the Surveyors Drawings discussed at 4.4.2) running from approximately point N / Ni to K and then continuing north and then north-east to join Silver Street is shown with broken casing lines. This is probably the route called Little Common Lane which was stopped-up by the inclosure award, although it is not labelled on the map and it is therefore not possible to be certain. It has been suggested that this route corresponds with D-C-E-F-G-H of the application routes (Charmoor Lane and part of Charmoor Drove connecting the A303 and Silver Street) and is therefore evidence that this part of the application route existed prior to inclosure. However, careful comparison of the maps show that the route is further to the east, as described above, and for the most part does not correspond with the application routes under consideration here.

A route with broken casing lines is shown in the position of the Hamway Lane from the A303 through point A to about point B and then continuing slightly further north of point B to a building within an enclosure in approximately the position of Lower Burnt House Farm. No linear way is shown continuing north and connecting with Silver Street from B.

The turnpike road is shown in a slightly different position to the current A303, and a short section of the turnpike corresponds with the route which now runs north from the A303 to point D (again, not forming part of the application route). Approximately point N to M (probably Little Common Lane) falls on the southern side of the turnpike.

#### **4.4.4**

**“1884” Boundary Remark Book. The National Archive (TNA) reference: OS26/9450**

**“1885” Boundary sketch book map. TNA reference: OS27 4620.**

**Appendix: 9.**

**(Extract Only).**

The 1884 boundary remark book shows application route 633M where it crosses the parish boundary at the river Ding at point G, and for a short distance either side.

The 1885 boundary sketch book plan shows features at the point they cross parish boundaries and only the most minimal detail between. Application route 633M crosses the parish boundary between Combe St. Nicholas and Broadway at point G, and is shown for a very short distance either side of the boundary.

The purpose of these plans was not to record the status of ways, but to define boundaries. Physical features could be / were referred to where helpful or necessary to describe or delineate the boundary. Nothing has been found which suggests surveyors did not or should not have used private roads as one of those features. Any sufficiently permanent or substantial feature would have made a good reference point, and a private road set out at inclosure for the use of multiple adjacent landowners would be such a feature, as would a public road. Neither document has a key showing different statuses of way. It is unknown whether public roads and the application route are shown in the same way because the meresmen and surveyor believed them to have the same status, or whether they were using single thickness black lines for the majority of features on the map and were not attempting to distinguish between public and private ways, or different types of public rights.

Beyond confirming the physical existence of this part of route 633M in 1885, these document do not weigh for or against public rights over the application route as they would be compatible with either a public road, or a private road with or without lower public rights over it.

#### **4.4.5 1<sup>st</sup> Edition 25 inch: 1 mile OS map.**

**Surveyed 1886,**

**Published 1888.**

**Sheets LXXXVII.2, LXXXVII.3, LXXXVII.6 and LXXXVII.7.**

**Appendix: 10**

Application routes 630M and 633M are shown with solid casing lines of equal thickness and uncoloured for their entire length. There is a dashed line across the route at point H and M, solid lines at N and L and a pond taking up about half the width of the route about 167 metres east of point F.

Application route 632M is shown from point A for approximately 92 metres in a northerly direction coloured sienna with a shaded casing line to the east, as is that part of Hamway Lane to the south of point A which is not part of the

application route and is today recorded as a public vehicular highway. The rest of 632M is shown uncoloured between casing lines of equal thickness.

'Hamway Lane' is labelled on the east side of the application route between A and B, and in the margin of the map west of point C.

'Charmoor Lane' is labelled on the west side of the application route between F and G.

'Charmoor Drove' is labelled to the north of the application route between F and K and in the margin of the map in 4 places where it crosses from one map sheet to another.

Different parts of the application route have different parcel numbers.

#### **4.4.6 "1898 – 1900" OS New Revised Edition, Timeline reprint. (Extract only). Appendix: 34**

Application route 630M is shown between casing lines of equal thickness. From C to D and M to N it is uncoloured as is the continuation south from D to the A303 which is today recorded on the county road records. From F to M the route of 630M is shown between narrower spaced casing lines of equal thickness but also uncoloured.

Application route 632M is shown between A and B with slightly wider spaced casing lines of equal thickness, uncoloured, in the same manner as the southern continuation of Hamway Lane to the A303 (currently recorded on county road records). From B to C the route is shown between slightly narrower casing lines, in the same manner as the route running west from point B which has no recorded public rights running over it.

Application route 633M is shown between narrow spaced casing lines of equal thickness, uncoloured.

The key identifies uncoloured routes with the narrowest spaced casing lines as 'Unmetalled Roads', and wider spaced casing lines as 'Metalled Roads Third Class'.

Oliver<sup>5</sup>, in discussing the revised 1 inch to 1 mile maps from 1893 – 1912, quotes from *Instructions to one inch field revisers (1901)* that third class roads were 'all other metalled roads suitable for wheeled traffic' as opposed to second class roads which were fit for fast traffic in all seasons. Cart tracks were not to be shown unless they were the only and main approach to a farm, and private roads were to be classed as ordinary public roads. If these principals, or something similar, applied (as Oliver seems to believe) to 1 inch maps from 1893, then as with most OS maps, the physical condition of the road was more relevant to the way in which it was depicted on the map than the public or private status the surveyor believed the route to have. This map

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<sup>5</sup> Oliver, R. (2005) *Ordnance Survey Maps, a concise guide for historians*, The Charles Close Society, London, p105.

therefore confirms the physical existence of the routes, but would be consistent with either public rights over the routes.

**4.4.7 2<sup>nd</sup> Edition 25 inch: 1 mile OS map.**

**Revised 1901**

**Published 1902.**

**Sheets LXXXVII.2, LXXXVII.3, LXXXVII.6 and LXXXVII.7.**

**Appendix: 11**

The whole of all three application routes are shown with narrow casing lines of equal thickness. There are dashed lines across the routes at point N, M and H and a solid line at point C on route 630M across which is a bracing line.

'Hamway Lane' is labelled on the east side of the application route between A and B, and in the margin of the map west of point C.

'Charmoor Lane' is labelled on the west side of the application route between F and G.

'Charmoor Drove' is labelled to the north of the application route between F and K and in the margin of the map in 4 places where it crosses from one map sheet to another.

Different parts of the application routes have different parcel numbers.

**4.4.8 OS Object Name Book. TNA references: OS 35/6421 and OS 35/6422.**

**Appendix: 12.**

**(Extract only).**

The relevant sections read;

**Sheet LXXXVII N.W.**

**List of Names as written on the Plan:** Charmoor Drove.

**Authority for those modes of Spelling:** as above

**Descriptive Remarks, or other General Observations which may be considered of Interest:** A Crooked[?] occupation road extending from Hamway Lane to the Honiton Ilminster Main Road a few chains S. of Hamway Gate.

The authority for mode of spelling given above is E. J. Symes. Esq. Solicitor Somerset House Chard.

**Sheet LXXXVII N.E.**

**List of Names as written on the Plan:** Charmoor Drove.

**Authority for those modes of Spelling:** as above

**Descriptive Remarks, or other General Observations which may be considered of Interest:** A crooked[?] occupation lane extending from the main Road a few chains S of Ham Gate to Hamway Lane (about 13 chains N of Ham Farm) the property of various owners. The principal being Viscount Portman. Blandford & Mr Bai[...] L[...]ton Cornwell

The authority for mode of spelling given above is Ernest C. Treppin[?] Esq. Estate Office Taunton.

**List of Names as written on the Plan:** Hamway Lane

**Authority for those modes of Spelling:** as above

**Descriptive Remarks, or other General Observations which may be considered of Interest:** An occupation road extending west from Charmoor Drove

The authority for mode of spelling given above is E. J. Symes Esq Solicitor Assist. Overseer Somerset House Chard

**Sheet LXXXVII. N.W.**

**List of Names as written on the Plan:** Charmoor Lane.

**Authority for those modes of Spelling:** R. J. Walton Esq. Solicitor Ilminster Somerset

**Descriptive Remarks, or other General Observations which may be considered of Interest:** An occupation road extending from Charmoor Drove to the junction of roads on the north

**List of Names as written on the Plan:** Hamway Lane

**Authority for those modes of Spelling:** E. J. Symes Esq. Solicitor Somerset Ho. Chard

**Descriptive Remarks, or other General Observations which may be considered of Interest:** A road extending from the Honiton Ilminster Main Road about 10 chains SW of Burnt House Farm to Charmoor Drove joining the latter about 15 chains E from Plyer's Hill.

Form headed "E. C. Treppin Esq Estate Office Taunton

**Name:** Charmoor Drove

**Plan:** 87/3

**Parish and Owner's Name:** from Ham Gate to Hamway Lane.

Written vertically in the column for 'Parish and Owner's Name' against all the entries on the form "Parish of Broadway. The property of Lord Portman".

The form is signed by "[Ernest?] Treppin Agent to Viscount Portman".

Form headed "E. J. Symes Esq. Somerset House Chard (asst. Overseer of Combe St. Nicholas)"

**Name:** Hamway Lane

**Plan:** 87/6

**Corrected Name / Remarks:** Hamway Lane – as – Hamley Lane – it is as one. Sometimes called one + sometimes the other

**Name:** Charmoor Drove

**Plan:** 87/6

The form is signed by E. J. Symes, Chard. No name is given in the column for 'Parish and Owner's Name'. Hole Well Lane and Ten Acre Lane are also named on the same form, and an owner given for both. Hole Well Lane (running from the A303 to Hamway Lane) is coloured yellow on the 1929 handover map (see 4.6.2) and is today recorded on SCCs Road Records. Ten

Acre Lane (a cul-de-sac running south-west from Street Ash) has no current recorded public status.

Raisey Lane and Street Ash Lane are listed with no owner given. Raisey Lane is today recorded on SCCs Road Records, Street Ash Lane is partly recorded as a footpath, partly with no recorded public status, and is subject to an undetermined DMMO application to record the route as a bridleway.

Form headed "E. J. Symes Esq. Somerset House Chard (asst. Overseer of Combe St. Nicholas)"

**Name:** Hamway Lane

**Plan:** 87/7

**Parish and Owner's Name:** Combe St Nicholas Parish Extending west from Charmoor Drove

**Corrected Name:** yes

Form headed "R. J. Walt[on?] Esq. Solicitor Ilminster"

**Name:** Charmoor Lane

**Plan:** 87/2

**Parish and Owner's Name:** From Charmoor Drove to the road between Broadway and Dommett

**Corrected Name:** yes

Two other objects (Dommett Moor and Dommett Moor Plantation) are recorded on this form and both name 'Mr. Walters' as the owner under 'Parish and Owner's Name'. Under 'Remarks', in slightly larger and more widely spaced writing so it appears to apply equally to Dommett Moor Plantation and Charmoor Lane (if not all three entries) 'The property of J. H. Walter' is written.

#### **4.4.9 Timeline / Cassini Ordnance Survey Popular Edition Reprint, 1919.**

##### **Appendix: 14**

**(Extract only).**

The whole of application route 630M, 632M, and 633M between point G and H, are shown uncoloured. From the A303 to point B and from the A303 to point C the routes are shown between slightly wider spaced casing lines. Between point G and F 633M is shown as a single broken line.

The key identifies single broken lines as 'Bridle and Footpaths', narrow uncoloured routes as 'Minor Roads' and wider uncoloured routes as 'roads under 14' wide' in bad condition. It also includes the statement 'Private roads are uncoloured'.

It has been suggested that, as these maps were for sale to the public they would be unlikely to include routes which were not available for the public to use. However, the key explicitly refers to private roads being uncoloured and therefore presumably they were included on the map. It is unknown whether private roads were shown uncoloured but in a different way to minor roads and roads under 14 foot wide in poor condition, or whether these classification

included private roads. It is not therefore possible to tell from the way an uncoloured route is shown on this map whether the surveyor believed the route to carry public rights or not.

The way in which G to F is depicted (as a bridlepath or footpath) suggests that at the time of the survey this part of the route was not physically suitable for wheeled traffic, but does not preclude the existence of vehicular rights, even if they were not being exercised at that time.

#### **4.4.10 War Revision, 1940. Appendix: 15 (Extract only).**

Key taken from War Revision sheet 74.

- The part of the map showing point A to B is damaged and it is not possible to see how the route is shown.
- Between H and G is shown uncoloured between parallel broken casing lines of the narrowest width.
- Between G and F is shown as a single broken line identified in the key as 'Bridle & Footpaths'.
- The rest of the application routes are shown uncoloured with the narrowest spaced casing lines.

Uncoloured roads with narrow spaced casing lines are identified in the key as 'Other Motor Roads narrow Bad'. Dotted casing lines indicate unfenced roads. The other classifications of roads shown in the key are Ministry of Transport "A" roads, Other Motor Roads, Other Motor Roads narrow, and Minor Roads (a single thick black line).

The emphasis of the OS has been on recording the physical characteristics of ways rather than their public or private status. A comparison of 45 ways shown between the narrowest parallel casing lines (broken or solid) on the War Revision map and their current recorded status yielded the following results;

5 routes which could not be identified on modern mapping with certainty  
3 public vehicular roads  
1 restricted byway  
7 bridleways  
7 footpaths  
1 route partly recorded as a footpath and partly with no recorded public rights  
14 routes with no current recorded public rights  
7 routes with a current Definitive Map Modification application pending and therefore their status is in question.

Although it is possible that some of the routes carry rights which are not currently recorded the number of routes with no recorded rights or lower rights does suggest that uncoloured routes with the narrowest casing lines does not equate with any particular public or private rights, or lack of them, on this map.

The way in which G to F is depicted shows it was not considered physically suitable for wheeled traffic by the OS. This does not preclude the existence of vehicular rights over this section, even if they were not being exercised at the time of the survey.

#### **4.4.11 Description and interpretation of evidence**

The 1811 surveyor's drawings show that, although there were sections of linear way which correspond broadly with some parts of the application route, the layout on the ground was very different to that shown on the inclosure award and subsequent maps. Both the surveyor's drawings and the OS first series (reproduced by Cassini, see 4.4.3) show a route in approximately the same position as the application route between N/Ni and K which is probably (but not certainly) Little Common Lane, which was stopped-up by the inclosure award. The first series shows part of this route (Ni / N to M) on the southern side of the turnpike and connecting with it. A linear way is also shown from the A303 through A and B and continuing slightly further north, which may have been public or private. It is not shown continuing north to join Silver Street or any other known public highway, and may be a private road or drive to the building in approximately the position of Lower Burnt House Farm.

The OS was concerned with recording physical features rather than the public or private status of the routes depicted. Where OS maps were primarily intended for sale to the public it has been suggested that they would not show routes which the public were not entitled to use. However, showing any prominent feature which appeared on the ground would assist a traveller in discerning where they were on the map, and omitting features which actually existed on the ground might even cause confusion. There is therefore a good reason for deliberately including private roads (where they existed). At least one OS map even refers to the depiction of private roads in the key (4.4.9) showing that private roads were depicted. Other documents also suggest the OS included private roads. In fact, since 1888 OS maps have carried the statement "The representation on this map of a road, track or footpath is no evidence of the existence of a right of way"<sup>6</sup>.

Whilst the OS maps may show features on linear ways which would be of interest to the public if they were using those ways (such as bridges, fords, gates etc) the depiction of such features is not evidence that the OS believed the public were using those ways. Such feature, where they existed, would be recorded on both public and private routes. This is supported by case law which states that "If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate...".<sup>7</sup> As such the majority of the later OS maps and records confirm the physical existence of the application routes at the time of the survey, but do not directly assist in determining what, if any, public rights exist over them.

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<sup>7</sup> Moser v Ambleside Urban District Council (1925) 89 JP 118 at 119, Pollock MR

The 1:2500 maps show the routes with parcel numbers, separate from the adjacent fields. Different parcel numbers are given for different parts of the routes. The Consistency Guidelines state that many public roads have their own dedicated parcel numbers, and that it has been argued that all parcels which have the shape of a way and are so numbered are therefore highways but “This argument has not been substantiated. Such depiction is far from conclusive for the confirmation of highway status”.<sup>8</sup>

All three routes are named, and those names appear on some of the maps, including the 1:2500 OS maps. The Consistency Guidelines suggest that any argument that a route being named carries some inference that the route is public should be thoroughly tested, and that “Of themselves, they are not persuasive evidence”<sup>9</sup>. Nothing has been found which suggests private roads could not be named, or that the OS would not record the names of private roads if they knew them. This evidence is therefore neither for or against public rights over the application routes.

Many of the physical features shown on, or indicated by, post-inclosure OS maps are broadly as consistent with the existence of private rights as they are with public rights.

The way the routes have been classified would be compatible with either a narrow and poorly maintained public road, or a similar private one (except where G to F is shown as a bridleway or footpath).

The solid lines shown crossing the application routes at various points on the 25 inch maps suggest physical barriers such as gates, and whilst it is possible for public roads to be gated, it is less common. The pond shown on route 630M on the 1888 25 inch map would also be unlikely on a public vehicular road. However, the physical features shown on the maps do not amount to a sufficient barrier to actually prevent use of the routes and as such do not preclude the existence of public rights over the routes.

On the 1888 25 inch map the southern 92 metres of 632M has a shaded casing line to the east and is coloured sienna. In relation to thickened casing lines the Planning Inspectorate’s Consistency Guidelines state that “*From 1884 onwards, on the large scale plans, those metalled public roads for wheeled traffic, kept in proper repair by the local highway authority, were to be shown with shaded or thickened lines on the south and east sides of the road.*”<sup>10</sup>

From 1885 OS surveyors were instructed that all Metalled Carriage Drives will in future be shaded but with shading not quite so prominent as on Public Roads. This would mean that some public and some private roads would be shown on OS maps with a shaded casing line, albeit with those shaded lines being of different thicknesses. In this case, it has not been possible to discern two distinct thicknesses of shading and thus differentiate between the two

<sup>8</sup> DMO Consistency Guidelines, 2016, section 12.31, page 9.

<sup>9</sup> DMO Consistency Guidelines, 2016, 2.32 – 2.33, page 8 – 9.

<sup>10</sup> DMO Consistency Guidelines, 2016 Section 12.26, page 8

reasons for shading. Whilst the vast majority of ways shown with a shaded casing line are today public vehicular roads, there are examples of private routes leading through grounds to large houses being shown both shaded and coloured sienna. Therefore, although the most likely explanation for a thickened casing line is that it was considered public, there is an alternative explanation which, in light of the fact that the route was set out as private in the inclosure award, is very plausible. In any case, there are two important caveats in relation to this piece of evidence. Firstly, even in so far as the thickened casing line relates to status, it is no more than the view of the surveyor at the time. Secondly, any inference that is to be taken from the thickened casing line is only relevant to the short section of A-B. The rest of the application routes have casing lines of the same thickness.

Overall, the OS maps are extremely strong evidence for the physical existence of the application routes at the time of each survey. They suggest that for much of their existence the routes were in a condition which made them traversable for wheeled traffic and that D-C-F-H formed a fairly direct through route between two public vehicular roads, with the rest of 630M and 632M connecting to them. However, while the evidence is typically consistent with public rights, it is also consistent with private rights. The only exception to this is the thickened casing line leading for a short distance north of point A. This is arguably slightly in favour of public vehicular rights but, for the reasons outlined above needs to be treated with some caution.

The object name book entries describe the routes broadly as they appear on the ground today, with the exception that Charmoor Drove appears to be considered to commence at point C (where it joins Hamway lane) rather than commencing further south at point D.

Application routes 630M and 633M are both described as occupation roads. In this context the normal meaning of the term 'occupation' is for the use of those who occupy the adjacent land. While it is not impossible that such a term could have been used in relation to a public road, it is far more likely that the OS considered it to carry private, rather than public, vehicular rights. It has been pointed out that there are undetermined DMMO applications to record higher rights over other routes which are described in ONB as occupation roads. Notwithstanding the fact the those applications have yet to be determined, they do not alter the usual meaning of the term 'occupation' when used in relation to a road.

It has also been suggested that the lack of a named owner in the ONB is evidence in favour of public rights over the routes.

Charmoor Drove (630M) is described in the ONB as being 'the property of various owners' and on the accompanying form as being the property of Lord Portman. No owner is named in the ONB or associated forms for Hamway Lane (632M). Charmoor Lane (633M) appears to be included in the property of J. H. Walter on the form accompanying the ONB.

In the records looked at during this investigation there is some inconsistency between current recorded public status and an owner being named in the

ONB or associated forms. At least one route for which an owner is named appears on the road records, and at least one cul-de-sac route with no recorded rights has no named owner. In any case, whether or not the owner of any particular piece of land over which an application route runs was known to, or recorded by, the person who corroborated the names and spellings in the ONB is not strong evidence for or against public rights. Highways of all kinds can and do run over privately owned land. In this case the inclosure acts did not set out an individual owner for any part of the application routes and therefore ownership of the soil was probably retained by the Lord of the Manor.

Only the entry for route 632M refers to something other than an occupation road. This route, known as Hamway Lane, spans two OS map sheets and is therefore referred to in two object name books. The book for sheet LXXXVII. N.E., which shows only the east end of Hamway Lane, describes it as an occupation road the likely definition of which is discussed above.

The book for sheet LXXXVII. N.W. describes the remainder of Hamway Lane as a 'road'. Taken in isolation this term might be referring to either a public or private road. However, it should be noted that this sheet covers the section of Hamway Lane which is today recorded as a public vehicular road, the section over which footpath CH 7/39 runs, and a section over which no public rights are today recorded. This may explain why the status (occupation, public, private, footpath etc.) of the 'road' was not mentioned. Alternatively it may have been that the OS did not know the status, believed the route to be public, or simply did not think the status of the route needed to be recorded. Hole Well Lane which is today recorded as a public vehicular road is described as a 'road', and Forest Mill Lane, also today recorded as a public vehicular road, is described as a 'public road'. The term 'road' without a qualifying term (public, private, occupation etc) is therefore compatible with a public road, or a private road with or without lower public rights over it. In this context it cannot be assumed that 'road' without a qualifier was intended to mean a route over which public rights of way ran in this Object Name Book.

Kelly's Directory for 1902 records "Edmund Jas. Symes, Somerset ho. Forest. Chard" as "Assistant Overseer & Collector of the Poor Rate for Chard Parish"<sup>11</sup>.

For the sections of application route described as occupation roads (630M and 633M) this is strong evidence that they were considered not to carry public vehicular rights at this time by the OS. The picture in relation to 632M is a little more confused, although the two records for this route might suggest that from C running west was considered to be an occupation road, and from the A303 north might have been considered to be public, the status changing somewhere on map sheet LXXXVII. N.W. This is consistent with the recorded situation today.

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<sup>11</sup> *Kelly's Directory of Somerset* (1902), Kelly's Directory Limited, London. Page 178. Viewed at <http://leicester.contentdm.oclc.org/cdm/ref/collection/p16445coll4/id/278602> 24 April 2018.

Although the Object Name Book only records an opinion regarding the status of the application routes, the term 'occupation road' almost certainly refers to the existence of private vehicular rights and the evidence for reputation is therefore direct rather than inferred. Although a public footpath or bridleway might run over a private road, and these documents need to be considered in light of the other evidence, they are still strong evidence against public vehicular rights over the parts of the application routes referred to as 'occupation road' .

#### **4.5 1910 Finance Act**

**4.5.1 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.

#### **4.5.2 Finance Act Record Plans, Sheet 87.2, 87.3, 87.6, 87.7**

##### **Appendix: 16**

#### **4.5.3 Description and interpretation of evidence**

The Working Plans and Valuation Books for this area were of no assistance as the land had not been divided into hereditaments and only infrequent isolated numbers appear without anything to indicate the extent of the area to which they refer. None are on any part of the application routes.

The record plans show the whole of all three application routes as excluded from the surrounding hereditaments and un-numbered. However, approximately 58 metres north of point C the green line bounding one of the hereditaments crosses the application route. This may simply be a drafting error.

Exclusion of a route from the surrounding hereditaments raises a strong possibility that it was considered to be a public highway. However, there are other possible reasons for the exclusion of a route, one of which is that it was laid out as a private road for multiple users in an inclosure award.<sup>12</sup> In this case, the application routes were laid out in the inclosure awards in just this way (with the exception of Niii – N).

Therefore, although exclusion from valuation on a Finance Act map is usually good evidence for public vehicular rights, in this case there is a very plausible alternative reason. In order to determine why the application routes have been excluded it is therefore important to consider it in the context of all the other documents.

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

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

#### **4.6.2 1929 Handover Map and Schedule Appendix: 17.**

No part of any of the application routes are shown as roads maintainable at public expense on the 1929 Handover map.

#### **4.6.3 1930s Road Records Appendix: 18**

The whole of application route 630M and 633M between approximately 60 metres north of point C and point N are shown as broken purple lines. At a point between I and F the route is labelled 'LC57458', and next to point H 'LC57457'. The map is stamped 'CERTIFIED NON-COUNTY ROADS SHOWN PURPLE BROKEN LINE'.

The first 50 metres north of point D on route 630M is coloured yellow.

No part of route 632M is shown coloured.

#### **4.6.4 1950s Road Records Appendix: 19**

Application route 630M is shown as a broken purple line between approximately points E and N.

No part of route 632M is shown coloured.

<sup>12</sup> DMO Consistency Guidelines – April 2016 Section 11.7, page3 - 4

The whole of application route 633M is shown as a broken purple line.

#### **4.6.5 Interpretation of evidence**

The implication of the reference numbers starting 'LC' and the purple broken lines are discussed at paragraph 4.7.2 with the other relevant documents.

A route being shown on the road records is very strong evidence that it was maintainable at public expense and therefore a public highway of the description indicated by the records at that time. Lower rights (footpaths and bridleways) are typically not shown on these maps and so the routes shown were considered, unless there is evidence to the contrary, to be public vehicular routes. The 1930s records are therefore evidence that the 50 metres north of point D was considered at that time to be a public vehicular road. However, the 1929 and 1950s records do not show this short section as a public vehicular highway suggesting an alternative interpretation, which is that on the 1930s records this very short section, which would have been coloured by hand, was added due to a drafting error. Records relating to the events that caused changes to be made to the early road records do not survive and it is therefore not possible to see if there was a deliberate change to the record relating to the 50 metres north of point D which caused it to be added and then removed. It is therefore important to consider the 1930s records in relation to all the other available evidence (see section 8.6).

With the exception of the 50 metres discussed above these documents are strong evidence that the application routes were not considered to be public vehicular roads maintainable at public expense from 1929 until at least the 1950s. However, these were records of maintenance, not of public rights. Lower rights (bridleway or footpath) were typically not recorded on these maps, nor were public roads which were not maintainable at public expense. The absence of the application routes from these records is therefore no evidence against public rights, or even against public vehicular rights. What can be said with some certainty is that, in this case, these documents are not supportive of a public road maintainable at public expense.

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

##### **Appendix: 20**

##### 4.7.1

Appendix 20a. Letter dated 31<sup>st</sup> May 1956 from the Clerk of the County Council to Messrs. Clarke, Lukin and Newton.

The letter refers to the Land Charges Act, 1925, references L.C. 57457 and L.C. 57458 and states "I find that Charmoor Lane and Charmoor Drove...are not highways repairable by the inhabitants at large" and goes on to refer to the Inclosure Award of 1818.

20b. Undated handwritten note filed between documents dated 1962 and 1964.

“Road passing Ham Farm going N. –Combe St. Nicholas parish.  
OS Map 1811 – Shows South end only  
Enclosure Award (E.14, dated 1818) – Section coloured Brown is scheduled as a public carriage way, the rest is scheduled as a private road.  
Tithe Map. 1840 – Whole length shown – probably part of parish highway system.  
(County Road to Ham Farm only)” and on the reverse;  
“W of map not past Ham Farm” followed by a small sketch presumably of a road with a transverse line labelled 69 to one side and 34 to the other.

20c. Internal letter dated 8<sup>th</sup> April 1974 from the County Planning Office to the County Secretary, regarding an obstruction to Sixteen Acre Lane.

The letter is primarily concerned with Sixteen Acre Lane (also in Combe St. Nicholas, and near, but not connecting directly with the application routes under consideration here). After stating that it is not recorded as a public right of way or on the road records the letter makes it clear that a right of way could exist over the route and be added to the definitive map if evidence supported this. The letter then goes on to say “*It is significant that many parish councils missed off their survey for the definitive map seemingly obvious lanes and droves that they may have assumed did not need to go on a “footpath map”. Other seemingly obvious lanes not included on the definitive map in this area are Charmoor Lane and Charmoor Drove*”.

20d. Letter dated 20<sup>th</sup> February 1981 from Combe St. Nicholas Parish Council to the Clerk of the County Council.

The letter says that the Parish Council in the 1950s did not “avail themselves” of the opportunity to review the footpaths and bridleways recorded on the DMS. It goes on to say that they wish to establish that “the following footpaths are, and have been for many years, public rights of way”. The list includes “Plyer’s Hill – Charmoor Lane to ford and River Ding, incorporating Charmoor Drove back to A.303”.

20e. Letter dated 3<sup>rd</sup> March 1981 from the County Solicitor to the County Planning Officer asking their views on 20d.

20f. Letter dated 5<sup>th</sup> March 1981 from the Public Rights of Way Officer on behalf of the County Planning Officer to the County Solicitor.

The letter refers to the route Plyer’s Hill – Charmoor Lane to ford at River Ding incorporating Charmoor Drove as being shown on the County Surveyor’s map with a broken purple line and to appendix 20a. It goes on to request that the Parish Council send any evidence supporting footpath or bridleway rights to the District Council.

20g. Letter dated 29<sup>th</sup> April 1981

Informing the Parish Council that they should contact Yeovil District Council in relation to unrecorded rights of way.

#### **4.7.2 Interpretation of evidence**

The letter of 1956 confirms that the reference numbers LC57458 and LC57457 found on the 1930s road records refer to a Land Charges search carried out in 1956. This is also probably when the purple broken lines indicating that the routes were 'certified non-county roads' were added to the same maps, and then presumably copied onto the 1950s maps when they were created.

No definition for 'certified non-county road' has been found, although the letters relating to land charges (4.7.1) suggest the conclusion was that the routes were not highways maintained at public expense and that the main evidence relied upon to reach this conclusion were the inclosure documents in which the routes were described as private. One explanation for the broken purple lines is that the routes were thought to be private roads over which there were no public rights. Alternatively, the inclosure documents may have been misinterpreted in 1956 to mean that there were public rights over the routes but that they were privately maintained.

The hand written undated note filed between 1962 and 1964 documents relates to a slightly different area, from point D in a northerly direction for an unspecified distance. Again, the Inclosure Award is considered, this time with the Tithe Map. Although the note includes the statement 'probably part of the parish highway system' in relation to the tithe map, the overall conclusion appears to be that the public vehicular road extends no further than Ham Farm (i.e. point D). The exact date and purpose of this document is unknown and too much weight should not be placed on what may simply be informal notes. However, it indicates that the status of part of application route 630M may have been investigated in the early 1960s.

The April 1974 letter (20c) is consistent with the situation today – the DMS is definitive of what it shows, but not of what it omits, and rights can be added to the DMS if there is sufficient evidence supporting their existence. The author raises the possibility that Charmoor Drove and Charmoor Lane (630M and 633M) may have been omitted from the parish survey in error, although these routes were not the main subject of the letter. However, there is no explanation for why he saw the routes as 'seemingly obvious' candidates for this, and no evidence supporting this possibility is referred to. The word 'seemingly' suggests doubt rather than certainty, but ultimately there isn't enough context to be sure what the author actually believed about the status of the routes, what basis they had for that belief, or how certain they were of it. It is still supportive of public rights, probably higher than a footpath, over Charmoor Drove and Charmoor Lane, but must be treated with caution.

The route described by the parish council in appendix 20d as being a footpath would correspond with route 632M, C-E-F-G, and either C to D or F to N, as

both might be described as 'Charmoor Drove back to the A303'. If the Parish Council sent evidence supporting their claim it has not been found. However, the Parish Council's belief that the route they described was a long standing footpath in 1981 is evidence which is in favour of at least part of the route having the reputation of a public footpath at that time, although, as with 20c, the weight that can be given to this as evidence in support of public rights over the application routes is reduced as it is unknown on what basis the belief was held.

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

**4.8.1 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 found in the District file.
- Draft Modification Map – This stage in the process was non-statutory. SCC produced a map to show any proposed changes as a result of objections to the Draft Map. Any objections received were recorded in a summary of Counter Objections to the Draft Modification map, found in the District file.
- Provisional Map – This map incorporates the information from the Draft Maps and the successful results of objections to the Modification Maps. These were put on deposited in the Parishes and District Council offices at this point only the tenant, occupier or landowner could object,
- Definitive Map and Statement – Any path shown is conclusive evidence of the existence and status of a public right of way until proved otherwise. The Definitive Map is without prejudice to other or higher rights.

#### **4.8.2 Parish Survey and Draft Map**

##### **Appendix: 21**

No part of any of the application routes are shown on the Parish Surveys or Draft Map. However, footpath CH 7/39 is shown on both running north-west from point B.

The Parish Survey Card for path 39 (1950) describes it as starting at "Plyer's Hill, (Hamway Lane) by means of a field gate, proceeds across field...".

**4.8.3 Summary of Objections to the Draft map  
Appendix: 22**

Objection number 52 records that the Ramblers' Association objected to the omission of the south end of 7/39 to Burnt House Lane. The observations of the Clerk were:

“Section from “Ham” in Hamway south to road (opposite Hamley Lane) is a County road. Path 7/39 should continue south to “Ham” in Hamway. This is an error”.

The determination was to:

“Amend line of 7/39 to continue south to “Ham” in Hamway.”

Hamley Lane is on the south side of the A303, opposite Hamway Lane. Hamway Lane is recorded as a public vehicular highway from the A303 to point A. Burnt House Farm is approximately 180 metres south of point A on Hamway Lane, and it is likely that the Ramblers' Association intended to refer to Burnt House Farm rather than Burnt House Lane. The objection therefore refers to the omission from the draft map of the section of footpath CH 7/39 which is now recorded from the end of the vehicular highway on Hamway Lane through point A to point B which forms part of application route 632M between A and B.

**4.8.4 Draft Modification Map  
Appendix: 23**

No part of the application route is shown on the Draft Modification map except between point B and south of point A at Burnt House Farm, which is shown as a public footpath in purple ink, numbered 7/39. An arrow indicates the continuation of footpath 7/39 north-west from point B.

**4.8.5 Provisional Map  
Appendix: 24**

No part of the application routes are shown on the Provisional Map except between A and B where footpath CH 7/39 is indicated by a purple line.

**4.8.6 Definitive Map and Statement  
Appendix: 25**

No part of the application routes are recorded on the DMS except between A and B, which is recorded as part of footpath CH 7/39. The Definitive Statement for CH 7/39 describes it as a footpath starting from “Hamway Lane near Burnthouse Farm, and runs north up lane, past Plyer’s Hill, thence north westerly...”

**4.8.7 Description and interpretation of evidence**

No part of application route 630M or 633M appears to have been considered to be a public right of way at any point in the preparation of the DMS, and neither are recorded on the DMS today.

The only part of application route 632M which appears on the DMS or in the preparation documents is footpath CH 7/39 between points A and B.

The parish survey records footpath CH 7/39 as terminating at point B. However, there does not appear to be anything of public interest at this point and it seems unlikely that it would have been a cul-de-sac. In the circumstances the most likely reason for the Parish Council showing CH7/39 in the way in which they have is that they believed the route joined a county road at point B.

As the result of an objection the recorded route of the footpath was extended to meet the current recorded terminus of the county road at point A. Therefore, irrespective of the views of the Parish Council, it would appear that the County Council were not persuaded that the vehicular highway extended as far north as point B. In the circumstances, the Definitive Map and Statement offer no positive evidence in favour of public rights over any of the application routes, other than between A and B.

Having said this it should be noted that the DMS is definitive of what it shows, not of what it omits, and therefore the non-recording of any public rights therein is not evidence that they do not exist.

## 4.9. Other Maps

**4.9.1 Plan of property belonging to the Deanery of Wells situate in the parish of Combe St. Nicholas Somerset, c. 1813. SWHT reference: DD/CC/T/177**

**Appendix: 26**

4.9.2 The map includes the annotation "*Leasehold property coloured Pink. Copyhold \_\_d<sup>o</sup>. \_\_d<sup>o</sup> Yellow. The letter a denotes allotments under Inclosure award*".

Most linear ways are shown coloured buff between solid casing lines, although some are shown with one or both casing lines dashed. The exception is a section of linear way between Ni, Nii and Niii which is uncoloured, with one solid and one dashed casing line.

All three application routes are shown between solid casing lines and coloured buff with the exception of point G to H which falls outside of the mapped area. Although the application route is shown between point L and J with solid casing lines, dashed casing lines also indicate a slightly different route between these two points. No part of the application routes are numbered. There is a solid line across the route at point M, and parts of the route between F and C are shown as being significantly narrower than other parts of the application routes, but no other barrier is indicated on the mapping. Roads which are today public are also shown in the same way as the application routes, notably the A303, which might suggest that the two had the same status. However, other routes which are not today recorded as having any public rights running over them are also shown in the same way as the application route, including;

- a route continuing west from point B
- a route continuing north from point I
- a route leading south west from Raisey Lane to footpath CH7/41

This suggests that the buff colour does not necessarily indicate ways over which public rights ran. It is therefore not possible to tell from this map whether the surveyor believed the application routes to have any public rights running over them, and if so, what those rights were.

The book of reference for this map gives the state of cultivation of numbered plots in 1813, which would have been prior to inclosure. However, none of the application routes are referred to in the book of reference and, therefore, it is of no assistance to this investigation.

The map is recorded in the SWHT catalogue as dating from c.1813 (perhaps because of the date given for the state of cultivation in the accompanying book of reference as the map itself is undated). However the catalogue entry goes on to suggest that the map may be a little later as it shows the land post inclosure (1818). Furthermore, the annotation referred to above mentions plots awarded under the inclosure award. This shows that, whatever the date given in the book of reference, the map must post-date the inclosure act of 1814 and very probably the award of 1818. The Map confirms the physical

existence of the application routes, as far as they are shown, post-inclosure. It also suggests that, although not included in the inclosure award, N – Niii was laid out by the time of the survey.

There is no key referring to the status of ways, the application route is shown in the same way as routes which are today public vehicular roads, and also linear ways with no recorded public rights. It is not possible to infer what the surveyor considered buff colouring to indicate on this document, other than that it was not leasehold or copyhold property of the Deanery of Wells.

**4.9.3 The Forest Lands situate in Combe St. Nicholas Somerset in trust for the 2<sup>nd</sup> poor of the parish. 1848. SWHT reference: D\P\com.n/17/7/2 Appendix: 27**

**4.9.4** Although the map is dated 1848, there are a large number of annotations which appear to be later additions, one of which is dated 1908. None of the annotations appear to relate to the application routes or any other linear way shown on the map. There is no key, and the purpose of the map was not to show the status of public or private routes.

All the linear routes are shown coloured orange including the A303 and the application routes covered by the mapped area. Application route 630M is shown in its entirety but the mapped area only covers route 633M between point F and G, and only the very end of 632M at point C. Apart from the river Ding at point G no barrier is indicated anywhere on the routes.

The application routes are shown in the same way as the A303. However, the plan offers little other basis for comparison so it is difficult to tell whether this was because the surveyor believed the application routes to be public roads, or was simply not differentiating between public roads and private ways.

Therefore this plan is very strong evidence for the physical existence of the application routes as shown in 1848, but only slight evidence for public vehicular rights over them.

**4.9.5 Sales documents, including Plan 1. Combe St Nicholas, Somerset, 1892. SWHT reference: DD\CC//F/254197 Appendix: 28**

**4.9.6** The plan shows the numbered lots for sale with some detail between and almost all linear ways uncoloured including the entirety of all three application routes. At least one linear way leading from between point B and C on Hamway Lane to what is now Lower Burnt House Farm over which no public rights are recorded, is coloured as part of lot 1.

The majority of the uncoloured linear routes shown are today public vehicular roads, but there are also a number of routes with lower public rights recorded, or none, including;

- part of footpath CH7/36 and a continuation of that route to plot 25
- a short section leading to plot 17
- part of footpath CH7/46, Belmore Drove
- part of footpath CH7/26
- Bridleway CH 7/22
- a route with no recorded status through Paddlemoor Copse
- short sections with no recorded public status including a section running north-west from point M, north from point I, parallel but south of Charmoor Drove between L and J, and south from Silver Street to the river Ding.

The routes with no recorded status are marked with red stars on appendix 28.

Route 630M is labelled Charmoor Drove between points J and F and route 633M is labelled Charmoor Lane between point F and G. Hamway Lane is also labelled, but immediately south of point A.

No part of the application routes are numbered or included in the lots to be sold. No easements are referred to in the particulars, but the conditions of sale include the statement “Each Lot is sold and will be conveyed ... subject...to all rights of road or way, water, light and other easements (if any) affecting such Lot.” Any such rights would be covered by this statement even if not explicitly described in the particulars of each lot.

The plan was not intended, nor does it claim, to show the status of the linear ways it depicts. The application routes are shown in the same way as routes which are today both public vehicular roads, footpaths, and routes with no recorded status. Therefore this document confirms the physical existence of the application routes in 1892, but does not assist in determining their status.

#### **4.9.7 Greenwoods 1822**

##### **Appendix: 29**

#### **4.9.8 Description and interpretation of the evidence.**

Two types of road are shown on the key accompanying Greenwood’s map. Turnpike Roads, which are shown with one thickened or shaded casing line (whether solid or broken) and Cross Roads, which are shown with casing lines of equal thickness (whether solid or broken). The key also suggests that roads through Heaths and Commons are shown with broken casing lines.

All three application routes are shown with solid casing lines of equal thickness (i.e. as cross roads) except for route 633M between point G and H where no route is shown. This is consistent with inclosure award which did not set out G and H until 1833; 11 years after Greenwood’s map.

Route 630M is shown N-Niii-M-L, However, rather than continuing to point J via point K it is shown over a route slightly to the south-west.

The term ‘cross road’ was clearly not being used to refer simply to the point at which two roads cross. In one prominent case the courts defined the same term as meaning ‘a **public** road in respect of which no toll is payable’<sup>13</sup> (my emphasis). This judgment is of some significance. However, it should be noted that, in that case the judge was not referring specifically to Greenwoods map but to a different map and it is of course possible that the term was used for a different purpose on different maps<sup>14</sup>. As such the precise meaning of the term needs to be considered in relation to what the map itself shows.

The majority of routes shown on Greenwood’s map would appear to be public roads. However, it also includes routes depicted in the same way as the

<sup>13</sup> Hollins v Oldham (1995) in *DMO Consistency Guidelines* – April 2016

<sup>14</sup> DMO Consistency Guidelines – April 2016 Section 2.24, page 7

application route over which no public rights are today recorded, lower public rights are recorded, or which are cul-de-sacs and apparently access to land or buildings only, including:

- A through route from Crock Street to Donyatt over which public vehicular rights are recorded at the north-east end, and no public rights at the south-west end
- The short sections leading north-west from point M and north from point I
- A route extending west from point B
- Part of bridleway CH 7/22 and a route extending from it over which no rights are recorded
- Bellmoor Lane leading to Bellmoor Farm
- A route leading south from Lawless Farm
- Both ends of footpath CH 12/6 and a short section over which no rights are recorded opposite each end of this footpath.
- Unrecorded routes leading east and west from Longforward Hill and part of footpath CH 16/4.

The routes with no recorded rights are marked with red stars on appendix 29.

Therefore, 'Cross Road' on Greenwood's map does not appear to equate consistently with 'public right of way' (whether vehicular or otherwise) and it cannot be assumed that roads shown as Cross Roads on this map carried public vehicular rights, or any public rights at all. Whilst it might seem more likely that a map like Greenwood's which was intended for sale to the travelling public would show only routes which the public could use, showing any prominent feature which appeared on the ground would assist a traveller in discerning where they were on the map, and omitting features which actually existed on the ground might even cause confusion. There is therefore a good reason for deliberately including private roads (where they existed).

This conclusion is supported by the fact that this map was produced only three years after most of the three application routes were explicitly set out in the Inclosure Award as private roads. It seems unlikely that their status would have changed in that time.

Overall therefore, Greenwood's map is very strong evidence for the physical existence of the routes as far as they are shown in 1822, but not good evidence for public rights over those routes, and not good evidence for distinguishing different levels of public rights.

**4.9.9 Map, Neroche Forest, perhaps circa 1830. SWHT reference: DD\SAS/C1193/2  
Appendix: 35**

Although the date of this map is uncertain, it is considered to have been surveyed prior to the Neroche Forest Inclosure Award of 1833. The map covers the area of application route 633M between G and H, although no route is shown either between G and H or on the route of Silver Street. The

southern edge of the mapped area is bounded by the River Ding. Very little detail is shown, although some linear ways are shown with solid or broken casing lines.

This map is of no weight in determining whether public rights existed over the application routes, but does suggest that neither the application route between G and H or Silver Street existed on the ground, or did not exist as significant features, at the time it was surveyed. However, given the level of detail shown it cannot be given much weight.

#### **4.9.10 Bartholomew's Map, 1911, 1927 and 1964**

##### **Appendix: 30**

##### **Extract only.**

#### **4.9.11 Description and interpretation of the evidence.**

The 1911 edition shows the whole of all three application routes between the narrowest spaced casing lines, and uncoloured. First Class, Through Routes, Secondary and Indifferent roads are identified in the key, all coloured, followed by the statement 'The uncoloured roads are inferior and not to be recommended to cyclists' and 'NB. The representation of a road or footpath is no evidence of the existence of a right of way'.

On the 1927 edition the whole of all three application routes are shown uncoloured. Uncoloured roads are again identified as inferior, and the map is again stated to be no evidence of the existence of a right of way.

The 1964 edition shows the application routes uncoloured. The key identifies two types of uncoloured route – those between the narrowest casing lines as 'Other Roads & Tracks' and those between slightly wider casing lines as 'Serviceable Roads'. The application routes are shown between narrower casing lines than Silver Street, a route from the A303 to Sticklepath and from Street Ash to Beetham (all now public vehicular roads, marked with red stars on appendix 30). There are, however, a few routes which appear to be shown between even narrower casing lines (including Sixteen Acre Lane over which no rights are currently recorded but is subject to an undetermined application to record restricted byway rights, footpath CH 7/32 and a section of public vehicular road in Buckland St Mary, marked with red triangles on appendix 30). It is therefore not completely clear whether the application routes were intended to be shown as 'Serviceable Roads' or 'Other Roads and Tracks'. The key also identifies footpaths and bridlepaths as a single broken line and includes the statement 'The representation of a road or footpath is no evidence of right of way'.

Some roads which are today public vehicular highways (such as the southern end of Hamway Lane) are shown uncoloured in the same manner as the application routes.

Although these maps were intended for the use of the traveling public, particularly cyclists, many uncoloured routes which are expressly described as being unsuitable for cyclists are included. The consistency guidelines state

that, based on current evidence, Bartholomew did not employ independent surveyors to carry out surveys on the ground and did not check the legal status of the routes they depicted.<sup>15</sup> Furthermore, all three maps include an explicit statement that the map is no evidence of the existence of public rights. Whilst this may have been a prudent legal precaution, the statement cannot be disregarded.

These maps, like the Ordnance Survey maps, confirm the physical existence of the routes at the time of the survey, but are unhelpful in determining what, if any, public rights extended over them.

**4.10 Parish Council Meeting Minutes. SWHT Reference: D/PC/com.n/1/2/2, D/PC/com.n/1/2/3 and D/PC/com.n/1/2/5 Appendix: 31**

**4.10.1 Description and interpretation of the evidence**

The Combe St. Nicholas parish council minutes from 1934 show that a survey of rights of way was carried out at that time, and from 1950 to 1956 show the parish council was aware of, and appear to have actively engaged with, the process of surveying public rights of way in preparation for creating the DMS. However there were no details regarding either survey which were of assistance to this investigation.

The minute of 16 September 1952 indicates the parish council at that time believed the route adjacent to The Bungalow, Ham, was a private road and not a public highway. The building previously on the same site as Coombes Cottage (landowner N on appendix 3) was called Ham Bungalow<sup>16</sup>. The only road or linear way adjacent to this building other than the A303 (which would not have been considered a private road by the parish council) is application route 630M, Charmoor Drove, between N and Niii. This is very strong evidence that in 1952 the parish council considered Charmoor Drove between N and Niii to be a private road without public rights over it. This probably also applies to Niii to F, as otherwise any public rights over that route would have formed a cul-de-sac not apparently leading to a place of public resort. It has no bearing on A – C or D – H, and is only evidence of the parish council's belief, but is still of some weight against Charmoor Drove having the reputation of a public right of way at this time. It also explains why the Parish Council did not record F-I-J-K-L-M-N as a public right of way when they surveyed the network in preparation for the drafting of the Definitive Map (see paragraph 4.8.2).

The minute of 1 April 1957 refers to the piece of road from "Mr Edwards' Farm to the gate" as being a public right of way, although it does not suggest what

<sup>15</sup> DMO Consistency Guidelines – April 2016, section 12.41, page 11.

<sup>16</sup> South Somerset District Council planning application details, application 03/0098/FUL: <https://www.southsomerset.gov.uk/planningdetails/?id=0300988FUL>. Coombe St Nicholas parish council also confirmed that this was the property named in the minutes.

status of rights were believed to exist. There is some evidence to show that a Mr Edwards owned Burnt House Farm<sup>17</sup>. Furthermore, the parish survey (undertaken in 1950) refers to a gate being located at point B. Based on this it might be possible to infer that the route referred to in the 1957 parish minutes includes A-B and, by that time, the Parish Council were of the view that it was a public right of way. This would be entirely consistent with the way the route is currently recorded on the Definitive Map. However, given that it is not possible to be sure that Burnt House Farm is the farm being referred to this evidence needs to be treated with a great deal of caution.

The minutes of January and May 1981 suggest that Combe St. Nicholas parish council felt some 'bridlepaths' had been omitted from the DMS, and accord with the correspondence found in Somerset County Council's rights of way file relating to Combe St. Nicholas (discussed at 4. 7). No more specific information or additional relevant documents were found, and the parish council no longer hold records dating back this far.

#### **4.11 Aerial photograph 1946**

##### **Appendix: 32**

##### **4.11.1 Description and interpretation of evidence**

The 1946 aerial photograph shows all the application routes as defined on the ground, although less clearly at some points. Parts of the route are obscured by vegetation.

Between N and M the route appears to be surfaced, and between A and B may also be surfaced, although this part of the route is less visible. The rest of the routes, where they can be seen, appear to be grassed.

The aerial photograph is very strong evidence for the physical state of the routes in 1946. However, it does not provide evidence for or against public rights.

#### **4.12 Ministry of Food National Farm Survey, 1941 – 2. National Archives reference: MAF73/36/87.**

##### **Extract Only.**

##### **Appendix: 36**

##### **4.12.1 Description and interpretation of the evidence**

The survey was carried out to assist with increasing food production during the Second World War. Different farms are outlined in different colours<sup>18</sup>.

Small sections of Charmoor Drove (630M) are excluded from the surrounding farms between N and M, K – I, and from a short distance east of F through E to C.

<sup>17</sup> Conveyances dated 1927 and 1995 both refer to a Mr Edwards of Burnt House Farm.

<sup>18</sup> The red and pink colouring on this particular extract are both quite dark and it is difficult to distinguish between them. They do, however, appear to be two separate colours.

Hamway Lane (632M) is shown excluded from the surrounding holdings (pink on the west and north, blue on the south and east).

None of Charmoor Lane (633M) is excluded.

It appears that where a holding crosses a linear way (that is, land forming part of the same farm falls on both sides of the linear way) the route is not excluded and the coloured outline of the holding crosses the linear way. It is only where a linear way is between two different farms that it is shown excluded. A brief analysis suggests that the vast majority of the linear ways excluded in this way are today recorded as public vehicular roads, and this accords with the Consistency Guidelines<sup>19</sup>. There are a few exceptions where routes with no recorded status or lower rights are excluded, and other features such as streams are also excluded where they fall between holdings.

Although most excluded linear ways are today recorded as public vehicular routes it is unknown whether the only reason for exclusion of a linear way was that it was considered to be a public vehicular road or whether, for example, routes with no identified owner were also excluded. Where such a feature ran between holdings neither of which claimed ownership of the linear way, the natural thing to do given the purpose for which these records were being produced, would be to exclude the route from both holdings, regardless of any public or private rights running over the route.

The Consistency Guidelines state “It is possible that information regarding rights of way might arise from the Survey, although, from an investigation of the records for several areas of the country, it seems unlikely”<sup>20</sup>. In any event the primary purpose of the records should be borne in mind when determining the weight to be given to any evidence arising.”

Whilst the condition of access to and from holdings does seem to have been of some concern to the survey, it was not concerned with recording public rights of way or public vehicular rights. In a recent case the Planning Inspectorate on behalf of the Secretary of State concluded that “The map provides no evidence as to the status of the roads passing through or adjacent to the landholdings”<sup>21</sup>. Whilst this conclusion is not binding, it is persuasive, and the same conclusion is drawn here.

**4.13** 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.

- Day and Masters 1782

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<sup>19</sup> DMO Consistency Guidelines – April 2016, Section 11.13, page 5

<sup>20</sup> DMO Consistency Guidelines – April 2016, Section 11.14, page 5

<sup>21</sup> The Planning Inspectorate Appeal Decision, 30 April 2018, case FPS/G3300/14A/15, page 6, para.34.

- Map of Combe St Nicholas - lands at Charmoor, Players Hill, Little Common, Ham Moor, 1817 (DD\DP/C1358).
- Chard Rural District Council Highways Committee Minutes 1923 – 1941 (D/R/ch/3/3/1, D/R/ch/3/3/2, D/R/ch/3/3/3 and D/R/ch/3/3/4).
- Map of intended road between the town of Chard and the Honiton/Ilminster Turnpike, 1812 (Q\Rup/39)
- Ilminster to Tiverton, Turnpike, 1814 (Q\Rup/46)
- Plans and sections of new roads and roads to be added to Chard Turnpike in Somerset, Dorset and Devon, 1827 (Q\Rup/89)
- Plan of roads within and roads to be added to Chard Turnpike in Somerset, Devon and Dorset, 1828 (Q\Rup/95)
- New lines of road to be added to Chard Turnpike Trust, 1831 (Q\Rup/114)
- Plan and section of new branch roads for Honiton Ilminster Turnpike Trust, 1835 (Q\Rup/125)
- Section 31 Statutory Declarations

## 5. Landowner Evidence

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

### 5.2 Summary of landowner responses

#### 5.2.1 Landowner A.

Landowner A has a private right of access over part of Charmoor Drove. They sought and received permission from local landowners for considerate leisure access. The only other use landowner A was aware of was with permission, or by farmers accessing land, or delivery vehicles. Adjacent landowners have carried out ad-hoc maintenance. Landowner A believes the track does not lead anywhere and that it is only access for farm traffic.

Landowner A raised concerns regarding access to the track via the A303 being dangerous, and there being nowhere sensible to park.

Landowner A also included two Statutory Declarations both dated November 1981, which were produced as evidence of a private right of access. The first identifies Charmoor Drove as a private road and details the declarants use of it to access land in their ownership from 1967 as of right, without permission, interruption or payment. In the second, the declarant says they have been familiar with a property accessed via the roadway shown on the attached plan (part of Charmoor Drove) since 1935 and that the roadway has been used by the owners of that property “and other persons living in the vicinity for all purposes”. They go on to say that as far as they are aware no-one owns the soil and they are not aware of anyone having been forced to contribute to the upkeep of the roadway.

#### 5.2.2 Landowner B.

Landowner B returned the consultation map annotated “E – F and F – G Not been used for 20 years plus, overgrown”.

### **5.2.3 Landowner C.**

Landowner C has owned land adjacent to the route for over 22 years. They believe the routes are restricted byways. They believed this when they purchased their property because of the knowledge of local people at the time, a map marking tracks / bridleways over Charmoor Lane and a verbal agreement from the owners of the land over which the tracks / bridleways pass. They and their family have and do use the routes on horseback.

Landowner C included a copy of Ordnance Survey map sheet 177, 1960, on which application route 630M between points N and M and 632M are shown as either untarred roads with under 14 feet of metalling, or minor roads in towns, drives and unmetalled roads. Point C to H is shown as 'Footpaths and Tracks'. M to F is not shown at all. Other Ordnance Survey maps are discussed at 4.4, and this map does not add additional information.

Landowner C also filled in a User Evidence Form. They used route A-B-C-E-F-G-H on foot and on horseback every few months from 1995 – 2018. They were given permission to use the route in 1995 by the person they believe to be the owner. They saw other people using the route but gave no details of that use. They reported gates and electric fences on the route they used, but although this made use difficult, it did not prevent them using the route.

### **5.2.4 Landowner D**

Landowner D returned the consultation plan indicating the land they own.

### **5.2.5 Landowner E**

Landowner E does not wish application routes 630M or 633M to be recorded as Restricted Byways.

They state that there is no evidence of use by the public, and they have lived adjacent to 630M for 40 years and have never seen anyone using the route who was not visiting the properties accessed from the route or invited by a resident.

They believe the proposed route does not serve any purpose and goes nowhere. They raise concerns about vehicles and horseboxes being parked on the drove by people coming to access it. They state that the track is soft and muddy and hardly passable beyond Little Common.

Landowner E raises concerns about the natural habitat that would be disturbed. They state that the route has not been shown on any Ordnance Survey map.

### **5.2.6 Landowner F**

The consultation letter for landowner F was returned marked 'addressee gone

away’.

#### **5.2.7 Landowner G**

Landowner G provided a Landowner Evidence Form dated 01/07/2013 in relation to Charmoor Lane in which they said they did not believe the claimed route to be public, they had seen the public using the route but provided no details, they had used the route themselves but only after asking permission from the landowners.

#### **5.2.8 Landowner H**

Landowner H has “always understood that Charmoor Drove was a Drove / Bridle Way & allowed the use of accessing agricultural ground on its route with cattle, horse & cart, & more recently tractors, trailers & machinery”. Talking to local farmers they can recall being able to drive a horse & cart from “H” to “N” in living memory. They have driven along part of 630M to access their own property. They ride horses on the drove, but there are obstructions between H and N and they can no longer ride the whole route.

#### **5.2.9 Landowner I.**

On 13/08/2009 in response to notices appearing on site landowner I contacted SCC in relation to Charmoor Drove. They did not own the route, but owned land abutting it. They were of the opinion that the route was maintained by local farmers, and they had been told that the route formed part of an historic drove that used to lead all the way to Taunton. They said the route was used by local people and their visitors.

#### **5.2.10 Landowner J.**

Landowner J filled in a Landowner Evidence Forms in relation to all three application routes dated 23/06/2013. They had owned the land since approximately 1955.

In relation to Charmoor Lane (route 633M) they believed it to be a public bridleway, although they had never seen or been aware of members of the public using the route. They said the bridleway had not been used since December 2008 and was impassable.

In relation to Charmoor Drove (630M) they believe it to be a public bridleway, and have seen horses weekly.

In relation to Hamway Lane (route 632M) they did not believe it to be a public right of way and gave no further information.

### **5.3 Comments on Landowner Evidence.**

Concerns regarding safety, security, convenience, natural habitat or the desirability of having a right of way are not factors which can be considered as part of this investigation. Under the relevant legislation only evidence which has a bearing on whether the application routes are or are not already rights of way, and what type of right of way they already are, can be considered. In some circumstances, the use of a route can be relevant to the existence of public rights. Use by the adjacent landowners is therefore discussed in more detail in section 7.1 below.

## 6. Consultations and other submissions

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

<b>6.2 Consultee and response</b>
<b>6.2.1 Auto Cycle Union</b> Acknowledged receipt of consultation, but made no comments.
<b>6.2.2 Broadway Parish Council</b> Acknowledged, but made no comments.
<b>6.2.3 Coombe St. Nicholas Parish Council</b> The Parish Council telephoned to say that the routes are used but that they are not familiar with the area. They undertook to ask a specific councillor to have a look. No further comments were received.  In response to a further query about whether the parish council held records dating from 1981 or 1934, they said they did not.  In response to a query about the location of 'The Bungalow, Ham' they were able to confirm that it was on the site of Coombes Cottage between N and Ni.
<b>6.2.4 Councillor Broom, Chard North.</b> Wished to ensure the relevant parish councils were aware of the consultation process, but made no comments.
<b>6.2.5 Somerset County Council Highways Team</b> Hold no relevant information.
<b>6.2.6 Historic England</b> Acknowledge, but made no comments.
<b>6.2.7 South Somerset Ramblers Association, Area West Footpath Secretary</b> Has no relevant knowledge of the routes.

6.2.8 No response was received from the following organisations:

South Somerset District Council  
County Councillor Vjeh, Ilminster  
The Ramblers' Association  
Ramblers' Association Area Secretary  
British Horse Society  
British Horse Society, County Access and Bridleways Officer  
British Driving Society  
Byways and Bridleways Trust  
Trail Riders Fellowship  
All Wheels Drive Club, County Liaison Officer  
Open Spaces Society  
Open Spaces Society, South Somerset Area  
Natural England Consultation Service  
Club Zulu

### **6.3. Responses to the draft report.**

6.3.1 A draft of this report was circulated to interested parties on 01/08/2018. Six responses were received which were either acknowledgements only, made no comment, or made no relevant comment. Three responses contained relevant comments or submissions, and are summarised below.

#### **6.3.2 South Somerset Ramblers Association**

No comment apart from “an application to add more horse routes to and from a major Trunk Road with no continuation on the other side is not a good idea.”

SCC response: Whilst concerns over safety and suitability of routes are perfectly understandable, they are not relevant to the decision. Only evidence which helps determine whether or not public rights exist over the application routes can be considered.

#### **6.3.3 Applicant**

The applicant submitted a separate document for each of the three application routes, including additional evidence. All the points raised and evidence submitted are addressed within the report. The applicant's full comments are available for members to view, with the rest of the investigation file, by appointment. However, some of the most significant points raised are (summarised);

- A 'private road' in an inclosure award can mean a local road over which the public still had the right to travel with vehicles.
- 'Private Road' in an inclosure award may refer to maintenance responsibility rather than rights.
- Rights which existed prior to inclosure will still exist after inclosure if they were not legally stopped-up by inclosure, and the application routes were not stopped-up by the inclosure award.
- The '1813' Deanery Map shows the application routes existed in Combe St Nicholas prior to inclosure.
- The term 'droveway' in the inclosure award may be considered to indicate a bridleway.

- Routes which are set out as private roads in the inclosure award are today recorded as public highways.
- No owner is named in the OS Object Name Book, and the authority for the name was not a private individual, indicating the routes were not in private ownership, and were therefore public. No owner is registered with the Land Registry today.
- Other routes described in the OS Object Name Book as 'occupation road' are subject to DMMO applications to record higher rights over them.
- Various maps which were primarily for sale to the public show the routes, and features on them. These maps would not have shown the routes or features unless they were routes available for the public to use.
- The most likely explanation for the exclusion of the routes from the surrounding hereditaments on the 1910 Finance Act maps is that the routes were public vehicular highways.

### **6.3.4 Respondent 3**

Respondent 3 submitted arguments on specific points and case law in support of their arguments. All the points raised are addressed within the report. Respondent 3's full comments are available for members to view, with the rest of the investigation file, by appointment. However, some of the most significant points raised are (summarised);

#### **Land Ownership**

- The assumption that the ways belong to the adjoining landowners is incorrect.
- Purported 'common ways' available for use by adjoining landowners only do not apply to ways in the countryside. Private, restricted as to user, ways in the countryside are in the nature of easements and will always pass over land the ownership of which can be identified with certainty.

#### **Inclosure**

- The words in the Combe St. Nicholas Inclosure Act make it clear that the stopping-up of a pre-existing road was to be for the convenience of the public because such a road was superfluous and unnecessary because an alternative had been provided.
- The most likely reason for stopping-up Little Common Lane was because the application routes carried the same public rights (they were replacements for the stopped-up route)
- The judgment of Sedley. J. in the Dunlop case is in error, and therefore so is the interpretation of inclosure evidence in accordance with that judgment.
- It is suggested that at least part of the application route was set out at inclosure as a direct substitution for a pre-existing public road.

#### **Tithe**

- 'Restricted as to user' ways are easements and therefore impermanent. Public roads will not change without due process of law and are therefore more stable features in the landscape. Tithe maps

showed public roads (whether repairable at public expense or not) because internal divisions between landholdings might change over time. These public roads were coloured brown.

- Easements will form part of a hereditament. Because the tithe commutation was calculated as a percentage of the yield of the whole hereditament the easement will not be excluded from the hereditament on the map. The calculation will naturally allow for the use of the private way because the yield would be affected to a greater or lesser extent depending on the use made of it.
- It is obvious tithe maps do not show easements, otherwise they would have to show an easement to every land holding, which they do not.
- The ways coloured brown may not be the full extent of the public roads.
- Tithe maps are good evidence that a particular piece of land did not have an owner because the tithe commissioners were required to record the ownership, occupation, and state of cultivation of all messuages, lands, tenements and hereditaments, including barren land.
- The lack of an owner in fee simple is good evidence of a public road .
- Any road shown on a tithe map coloured brown will definitely be a public road. The convention for footpaths on tithe maps was a row of dots (British Parliamentary Paper, 1837 XLI 405, Conventional Signs to be used on the Plans made under the Act for the Commutation of Tithes, reproduced p46, What is a Cross Road, Susan Taylor).

## **7. Analysis of the evidence and conclusions**

### **7.1 User evidence**

7.1.1 Evidence of either their own use or use they had observed was submitted by adjacent landowners C, G, H, I, and J. The majority of that use was to access property and is highly likely to have been by virtue of the private rights set out in the inclosure award. This use was therefore not 'as of right' and cannot be considered evidence for public rights over the routes either at Common Law or under the Highways Act (1980).

7.1.2 Three landowners (C, H and J) believe at least one of the application routes are public rights of way of some kind, and one (I) refers to an 'historic drove'.

7.1.3 However, although there is a small amount of evidence for public use in the form of third hand accounts, there is minimal first hand evidence of 'as of right' use. Taken together, the available user evidence is insufficient to reasonably allege public rights have been dedicated either under Section 31 of the Highways Act 1980 or at Common Law.

### **7.2 Documentary Evidence**

#### **Pre-inclosure**

7.2.1 Little Common Lane is probably the route shown on the OS surveyor's drawings and first series map corresponding with Ni/N – K of application route 630M before continuing north / north-east towards Broadway village. It has been suggested that this pre-inclosure route corresponds with approximately D-C-E-F-G-H, is therefore shown as existing both pre- and post- inclosure, and therefore that pre-inclosure public rights over that route survive today. However, careful examination of the First Series map shows that, although Little Common Lane and D to H both run in a generally northerly direction, D to H is approximately half a mile further west than the route identified as Little Common Lane.

7.2.2 Public rights almost certainly did exist over Little Common Lane prior to inclosure, as those rights were legally stopped-up by the inclosure award. In which case public rights did exist over Ni/N – K where Little Common Lane and the application route broadly correspond, but they were stopped-up at inclosure.

7.2.3 The OS first series map also shows a route running from point A through B and then slightly further north. Unlike Little Common Lane, this was not stopped up by the inclosure award. However, it does form a cul-de-sac terminating adjacent to a building and enclosure in approximately the position of Lower Burnt House Farm. It is not possible to tell from the map whether the OS surveyor believed this route to carry public rights, and if he did, what nature of public rights.

7.2.4 The majority of the application routes are not shown in their current form on the 1809 - 1811 OS first series map (4.4.3). Those parts of the application routes which fall within Combe St Nicholas (that is, all except G to H) were set out by the Inclosure Award of 1818, and are shown on maps from this date onwards.

7.2.5 Maps dating from 1822 (Greenwoods) and c.1830 (map of Neroche Forest) do not show the application route between G and H. This section of the application route was set out in the inclosure award of 1833. G to H is shown on maps from this date onwards. It therefore seems highly likely that no through route existed between D and H from 1818 to 1833.

7.2.6 It seems reasonable to conclude that, except where noted above, the application routes did not exist in their current form until created by the relevant inclosures (if they had previously existed then they were not of a character that was considered significant enough to depict on the relevant maps). With the exception of Little Common Lane which was legally stopped-up, there is insufficient evidence to conclude that public rights existed prior to inclosure and therefore that they survived inclosure and still exist today.

## **Inclosure**

7.2.7 The Combe St. Nicholas Inclosure Award explicitly describes all three routes (with the exception of N to Niii discussed below, and G to H which is in Broadway) as private roads for use by a specific and limited group of people

(and therefore not for the general public) and to be maintained privately. The Broadway inclosure describes G to H as a private road. There is no mention in either inclosure award of public rights of any kind over any of the routes.

7.2.8 It has been argued that the judgment in *Dunlop* (which concluded that ‘private’ in the 1801 Inclosure Consolidation Act and the 1820 Glatton with Holme Inclosure Award, when used in relation to roads and ways, meant a way that was limited as to user, i.e. not for the general public) was in error. However, the Consistency Guidelines state in relation to *Dunlop* “*Despite the criticism of this judgment, Inspectors should follow it unless and until a Court hold otherwise.*”<sup>22</sup> and it is therefore the approach taken by SCC. The judgment of Sedley J.<sup>23</sup>, as well as the wording of the Awards themselves, is strongly supportive of the conclusion that the application routes did not carry public rights when they first came into physical existence. This does not, in itself, prevent public rights from being dedicated after inclosure. However, evidence of such a post-inclosure dedication would be necessary before it could be concluded that public rights exist over the application routes. That evidence would collectively need to positively indicate public rights rather than simply being consistent with those rights known to exist as a result of inclosure.

### **Point N, Ni, Nii and Niii**

7.2.9 The only part of the application route which was not set out in an inclosure award was N to Niii. As the inclosure award does not refer to N-Niii it is given no weight as evidence for the status of this section. However N to Niii is shown on the Deanery of Wells map which was probably surveyed during or after inclosure (see 4.9.1), and on Greenwood’s Map of 1822 (see 4.9.7). This suggests that this part of the route came into physical existence at the same time as, or shortly after, inclosure.

7.2.10 Private access from Niii to the road which is now the A303 was set out Ni-Nii-Niii in the inclosure award. Ni - Nii - Niii does not form part of the application route. The Deanery of Wells map referred to above shows Ni-Nii-Niii with one solid and one dashed casing line and uncoloured, in contrast to the majority of the linear ways and in particular the application routes which are coloured. Without a key or labels it is difficult to be certain what this was intended to convey, but it does suggest this section was a less substantial feature, perhaps unfenced, or not yet made up. No later map or plan which shows Ni-Nii-Niii has been found. It therefore seems likely that Ni-Nii-Niii was either never physically completed, or ceased to exist relatively quickly.

7.2.11 If Ni-Nii-Niii was not available the only access from the A303 to point M was via N and Niii, or a long detour via point A or D. Private access from the A303 through Niii to M was clearly intended in the inclosure award and it would have been inconvenient to allotment holders if they had not been able to access Charmoor Drove at this point. Although the rights would have

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<sup>22</sup> DMO Consistency Guidelines – April 2016, section 7.38, p11.

<sup>23</sup> *Dunlop v SSE and Cambridgeshire County Council* [1995] 70 P & CR 307, 94 LGR 427

to have been dedicated by the landowner either expressly or through deemed dedication (because they were not set out in the inclosure award) it seems highly likely that, over time, N to Niii acquired the same rights over it as the rest of Charmoor Drove. In other words, as the rights from Niii over the rest of Charmoor Drove were set out as private, and N to Niii appears to have become the only access to Niii from the south-east, then it seems likely that N to Niii was a private right of way when first constructed. No other evidence suggesting this short section carries different rights to those over the rest of the application routes has been found.

7.2.12 The inclosure awards do not therefore provide any evidence that N to Niii, or any other part of the application routes, are public highways. This does not preclude public rights having been dedicated after inclosure. However, the majority of later documents, including tithe records, the 1910 Finance Act and OS documents, would either be consistent with, or are supportive of, the routes remaining private.

### **Post-Inclosure**

7.2.13 In fact, with the exception of A-B and the 50 metres north of point D (which are discussed in more detail below), evidence of a post-inclosure dedication is limited.

7.2.14 The 1848 map of Forest Lands (see 4.9.3) depicts the application routes in the same way as the road which is now the A303 which might suggest the surveyor believed them to be of the same status. However, little basis for comparison is offered as the map covers a relatively small area with few linear ways depicted, has no key, and does not claim to show the status of the linear ways it depicts. This means that although it is slightly in favour of public rights over the application route because they are depicted in the same way as the undisputed public road, it can only be given limited weight.

7.2.15 In addition to the 1848 Map, the OS Object Name Book (4.4.8) for sheet LXXXVII. N.W. could also be read as supportive of public rights over A-B-C. It describes Hamway Lane (632M) as a 'road' from the A303 to Charmoor Drove. However, this does not explicitly define its status. Furthermore, even if it were suggestive of public rights, it would be entirely consistent with those rights which are already recorded given that that part of Hamway Lane which is to the south of point A appears on the road records as an unclassified county road. It should also be noted that at most only A-B to circa 15 metres west of point C are referred to as 'road'. All the other sections of the application routes, including another part of Hamway Lane, are referred to as occupation roads in the Object Name Book. For these reasons, and those given in paragraph 4.4.8 above, the Object Name Books are generally considered supportive of private, rather than public, vehicular rights. The only possible exception to this might be in relation to the section marked A – B. However, even here the Object Name Book evidence is more likely to be neutral in terms of status.

7.2.16 While some of the evidence taken from Combe St. Nicholas Parish Council's records might support the existence of public rights it is weak and, at times contradictory.

7.2.17 The minute of 1957 (see 4.10) while supportive of public rights is entirely consistent with those already recorded over Hamway Lane (i.e. footpath CH7/39) and is therefore not given any weight in favour of additional or higher rights. Similarly, the 1952 minute (in which the Parish Council state their belief that F to N was a private road, (see 4.10) are consistent with how the routes were set out at inclosure and referred to in the Object Name Book and are not supportive of public rights over the route, but can be given limited weight against public rights.

7.2.18 Of a little more weight is the letter of 1974 from the County Planning Office (4.7.1, 20c) which refers to 633M and 630M as if the author thought they were likely to be rights of way which had been omitted from the DMS in error. This supposition is supported by the parish council's desire to add the unrecorded routes to the DMS as footpaths in 1981 (see 4.10 and 4.7). The parish council felt that some public bridleways and footpaths had been omitted from the DMS in the 1950s and that 'Plyer's Hill – Charmoor Lane to ford at River Ding, incorporating Charmoor Drove back to the A.303' was a footpath which should be recorded on the DMS. Combe St. Nicholas' Parish Council's belief that the application routes were public footpaths in 1981 is supportive of public footpath rights, and the 1974 letter raises the possibility of higher rights. However, no evidence was provided to substantiate either belief and consequently it is difficult to give them much weight. The 1974 letter itself notes that a route could be added to the DMS "*if evidence supported this*". It is also significant that the Parish Council were not of the opinion that there were public rights over N to F in 1952, although the 1981 minutes may not be referring to this section of the application route.

7.2.19 Although not directly related to either the 1974 letter or 1981 parish council minutes, there is further evidence for Charmoor Lane and Charmoor Drove having the reputation of public rights of way during the same period. Landowner J owned land in the area since about 1955 and believes both routes to be public bridleways. Several other landowners (although not all) believed the routes to carry public rights. Actual evidence of use by the general public is extremely limited, but the belief of long standing landowners is of some weight.

7.2.20 The parish council documents therefore provide evidence both for and against public rights over the application routes. There is further evidence which is supportive of Charmoor Lane and Charmoor Drove appearing to the County Planning Officer as likely candidates for having public rights of way running over them, but, as with the parish council minutes, there is no information about the evidence relied on to draw these conclusions. The evidence of some landowners is supportive of the routes having the reputation of bridleway status, but that evidence is contradicted by other landowners. There is also lack of consistency in terms of the status the routes are thought to have, particularly in the evidence of the views of the parish council.

7.2.21 In some circumstances, the strongest piece of evidence for public vehicular rights over any part of the application routes would have been the 1930s road records (4.6). These show the public vehicular highway continuing about 50 metres further north than point D on route 630M. If this was a public highway in the 1930s and has never been legally stopped-up then it will still be a public highway today. Normally, a route being shown on the road records would be considered very strong evidence that it was maintainable at public expense and therefore a public highway of the description indicated by the records at that time. However, in this particular case the section in question was not shown on either the 1929 or 1950s records and no other evidence has been found explicitly supporting public vehicular rights over this specific 50 metre stretch. It is also a very short section, and given that the records were hand coloured, in this particular case it is considered more likely that this was a drafting error rather than an intentional 50 metre extension (and then deletion) of the record of publicly maintained vehicular road. In any case, it should be stressed that only a very short section of the application routes (leading 50 metres north from point D) is shown on the 1930s road records. None of the rest of the routes are shown in a way which might indicate they were considered maintainable at public expense at this time.

7.2.22 Possible obstructions shown on route 630M and 633M on the OS 25 inch map of 1888 (4.4.5) and at point C on the 1902 map (4.4.7) might be considered slight evidence against public vehicular rights. However, this may simply indicate a little used and poorly maintained route rather than the absence of public rights. The solid lines may indicate a gate but although this would be unusual it is not impossible on a public vehicular road, and such features do not weigh against bridleway or footpath rights. Overall therefore, the potential obstructions shown on the OS maps are of little weight.

7.2.23 The 1888 25 inch OS map shows about 92 metres north from point A with a shaded casing line. This is consistent with the way surveyors were instructed to show metalled public roads for wheeled traffic, kept in proper repair by the local highway authority. However, surveyors were also instructed to show Metalled Carriage Drives in a similar way, albeit with a slightly thinner shaded line. An analysis of a number of likely carriage drives in the area has highlighted the difficulty in discerning the two separate thicknesses of shaded casing line on the maps themselves. Therefore, whilst the OS map might suggest the surveyor believed this part of the route was a public road, it is also possible they intended to show a metalled carriage drive. The latter of those two options would be consistent with the way in which the route was set out at inclosure. In any case, OS maps carry a disclaimer stating that they are not evidence of a public right of way. Overall, therefore, in this case the shaded casing line is neither in favour or against public rights over the application route, although it is strong evidence that this part of the route was metalled at the time of the survey.

7.2.24 The documents relating to road records and land charges ( 4.6 and 4.7) demonstrate that application route 633M and 630M between

approximately point E and N (shown as purple broken lines on the 1930s and 1950s road records) were not considered to be maintainable at public expense. The letter of 31<sup>st</sup> May 1956 which carries the same reference number as the road records states “Charmoor Lane and Charmoor Drove....are not highways repairable by the inhabitants at large” and the map states that routes shown as purple dashed lines are ‘certified non-county roads’. These documents are strong evidence that the sections shown as broken purple lines were not considered to be publicly maintainable, and is not supportive of the existence of public rights.

7.2.25 Exclusion of linear ways from the surrounding hereditaments on 1910 Finance Act record plans is usually considered very good evidence for public rights, usually but not necessarily vehicular, over that route. As these records could not have been considered when the DMS was drawn up they also constitute new evidence. All the routes under consideration here are excluded from the surrounding hereditaments. However, there are other potential explanations for exclusion, one of which is a private road set out at inclosure for use by multiple people. All the application routes (with the exception of N-Niii) were set out in the inclosure awards as private roads. This interpretation is further supported by the Object Name Book entry for sheet LXXXVII N.E. relating to Charmoor Drove which describes it as an occupation road ‘the property of various owners’ only 5 years before the Finance Act. Therefore, although the Finance Act documents raise the strong possibility that the application routes carry public rights, when viewed with the rest of the evidence it seems more likely that the routes were excluded on account of the multiple private rights.

7.2.26 No part of the application route is registered with the land registry (see 2.5 and appendix 3), and no owner is named for parts of the application routes in the OS object name book. It has been suggested that, particularly as parts of the application routes are bounded on both sides by land in the same ownership, this is evidence in favour of public rights over the application routes. The land may be owned but unregistered, or, as no landowner was assigned in the Combe St. Nicholas inclosure award, the owner of the soil may be the lord of the manor, or (in regards to the object name book) the owner may have been unknown. In any case, public highways of all kinds can and do run over privately owned land. Lack of a registered landowner is not good evidence for a public right of way, as a registered owner is not good evidence against one.

7.2.27 Similarly, exclusion from adjacent holdings on the Ministry of Food Farm Survey in 1941/2 is ultimately unhelpful, as although most excluded routes are today public vehicular roads, there are a small number of exceptions, and the maps were produced to show the extent of farms, not public or private rights.

### **Width and limitations of CH7/39 between A and B**

7.2.28 Application 862M seeks to clarify the width of any public right of way over Hamway Lane between A and B. This part of the application route is

currently recorded as footpath CH7/39 and no width is specified in the definitive statement.

7.2.29 The linear way over that part of CH7/39 which runs between A and B was set out at inclosure as a private road or driveway 16 feet wide, proceeding [south] to an ancient gate. A gate is drawn on the map across the route at point A. Two gates are shown very near point B in the north and west casing line of the application route.

7.2.30 Public footpath rights were not set out at inclosure over this section, but they are recorded on the DMS now. Therefore they must have come into existence at some point since inclosure<sup>24</sup>. Assuming dedication was deemed to have taken place as the result of long public user on foot (no evidence for express dedication having been found), then it is reasonable to assume that the public will have used the full available width of the linear way over which they were travelling. The private road and driveway was set out at 16 feet wide (4.87 metres) at inclosure and this is therefore considered to be the width over which footpath rights were acquired between A and B.

7.2.31 If the gates shown on the inclosure map (or any other limitation) were in existence when public rights were dedicated or deemed to have been dedicated, then the public right of way will be subject to those limitations.

7.2.32 At point B, footpath CH7/39 leaves the enclosed linear way known as Hamway Lane and turns north-west. No explicit evidence for a gate across Hamway Lane at point B has been found, but the northern casing line which CH7/39 crosses at B is consistently shown in a way which indicates a solid barrier, such as a fence or gate<sup>25</sup>. The parish survey (see 4.8.2, 1950 ) and parish minutes both refer to a gate in the vicinity of B (see appendix 30, 1 April 1957). It therefore seems likely that there was a limitation in the form of a gate in the northern casing line of Hamway Lane at the point footpath CH7/39 leaves Hamway Lane and turns north west. There is a stile in this position today.

7.2.33 No map post-dating the inclosure award indicates a gate across 632M at or near A. Whilst it is uncertain how long any gate was in place at A following inclosure, or when public footpath rights were acquired over A to B, it seems more likely that any gate at A was relatively short lived post-inclosure, and therefore that footpath rights were established over A to B without the limitation of a gate at A.

## 8. Summary and Conclusions

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<sup>24</sup> It is quite usual, where a public right of way already existed at the time the DMS was first drawn up, for there to be no record of how or when it came into existence as this may well have been before living memory, there may be no surviving documentation, or there may never have been any documentation. This does not alter the existence of the right.

<sup>25</sup> Inclosure Award of 1818, Deanery of Wells Map, Tithe Map 1840, sale documents 1892 and OS maps from the 19<sup>th</sup> and 20<sup>th</sup> century.

8.1 There is insufficient user evidence for a public right of way to be reasonably alleged at Common Law or under Section 31 of the Highways Act (1980).

8.2 Whilst there is strong evidence that routes physically existed between A and B and N/Ni – K prior to inclosure there is either insufficient evidence to reasonably allege these carried public rights, or the pre-existing public rights were legally stopped-up by the inclosure award. With the possible exception of N-Niii, the majority of the application routes came into physical existence as the result of two inclosures (1818 and 1833) and were clearly set out as private roads without public rights over them at that time.

8.3 There is very little pre-DMS evidence for the existence of public rights over the application routes. The 1848 Forest Map and 1941/2 Farm Survey might provide some evidence in favour of public rights, but for the reasons given in 4.9.3 and 4.12, are given little weight. In relation to Hamway Lane between A and B the Object Name Book is either neutral, or consistent with the rights recorded over the southern part of Hamway Lane which forms no part of the application route. The 1930s road records do record a short section north of point D as a highway maintainable at public expense, but in light of the 1929 and 1950s records, this is thought to have been an error.

8.4 There is also post-inclosure evidence which weighs against public rights over the application routes, or parts thereof. The Object Name Book explicitly describes the application routes, with the exception of A to B, as 'occupation' roads, and the 1952 Combe St Nicholas parish council minute whilst of limited weight, shows that the parish council did not believe N to Niii carried public rights at that time.

8.5 Many documents discussed in section 4 (including OS maps, tithe records and the 1910 Finance Act plans) depict the routes in a way which is entirely consistent with them being private roads set out for multiple users by an Inclosure Award. As such they do not weigh in favour of public rights in this case.

8.6 Post-DMS evidence in favour of the application routes having the reputation of public rights of way is a little stronger, but still weak. The 1974 letter from the County Planning Office, and particularly the 1981 letter from Combe St. Nicholas Parish Council to the County Council, are in favour of public rights. However, in neither case is there any explanation for the belief. Although supporting evidence was requested, nothing has been found to suggest any was ever submitted.

8.7 The evidence from adjacent landowners is mixed, and although several support the existence of public rights over the routes (or parts of them), some also mention permission being granted, or obstructions.

8.8 Overall, therefore, there is strong evidence that private vehicular rights exist over the application routes. The routes were set out as private roads at inclosure with no public rights over them. While it is possible for public rights

to be acquired after inclosure, in this case most of the evidence is entirely consistent with the routes being private roads and does not provide evidence of public rights. Where evidence in favour of public rights having been dedicated does exist it is weak, or bears plausible alternative explanation. Based on the available evidence it is therefore not reasonably alleged that a public right of way of any kind exists over the application routes. The only exception to this is A-B which is already recorded as a public footpath. On the balance of probabilities, no higher rights exist over this part of the application route.

8.9 Although there is insufficient evidence to upgrade application route 632M between A and B, evidence has been discovered relating to the width of and limitations on footpath CH 7/39 between A and B. There is little evidence for a limitation in the form of a gate at point A, but strong evidence for a gate in the northern casing line of Hamway Lane at point B where CH7/39 leaves the enclosed linear way and turns north west.

## **9. Recommendation**

9.1 I therefore recommend that the applications to upgrade the record for part of CH 7/39 between A and B to a restricted byway, and to add application route 632M between B and C, application route 633M between F and H and application route 630M between D and N as restricted byways, as shown on Appendix 1 is **refused**.

9.2 I also recommend that

- i. an order be made, the effect of which will be to vary the particulars of the Definitive Statement to record that part of footpath CH 7/39 between A and B as having a width of 4.87 metres and to record a gate at point B where the footpath leaves Hamway Lane.
- ii. if there are no unwithdrawn objections to such an order it be confirmed
- iii. if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs

## List of Appendices

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

1. Plan showing claimed route
2. Photographs of the application route
3. Landownership Plan
4. Combe St. Nicholas Inclosure Award
5. Neroche Forest Inclosure Award
6. Broadway (New Inclosures) tithe map
7. Combe St. Nicholas tithe map
8. Ordnance Survey "1811" surveyors drawing
9. Ordnance Survey "1885" boundary sketch book map
10. Ordnance Survey 1<sup>st</sup> edition 25 inch: 1 mile maps, 1888
11. Ordnance Survey 25 inch: 1 mile maps, 1902
12. Ordnance Survey object name book
13. Duplicate, deleted. There is no appendix 13.
14. Timeline / Cassini Ordnance Survey Reprint, 1919.
15. Ordnance Survey War Revision, 1940.
16. Finance Act 1910 record plans
17. Highways Road Records, 1929 Handover Map
18. Highways Road Records, 1930s
19. Highways Road Records, 1950s
20. Parish Files (held by SCC and relating to PROW issues)
21. Parish Survey and Draft Map
22. Summary of Objections to the Draft map
23. Draft Modification Map
24. Provisional Map
25. Definitive Map and Statement
26. Plan of property belonging to the Deanery of Wells situate in the parish of Combe St. Nicholas Somerset, c. 1813

27. The Forest Lands situate in Combe St. Nicholas Somerset in trust for the 2nd poor of the parish. 1848.
28. Sales documents, including Plan 1. Combe St Nicholas, Somerset, 1892
29. Greenwood's Map, 1822
30. Bartholomew's Map, 1927
31. Coombe St. Nicholas Parish Council Minutes
32. Aerial Photograph, 1946
33. "1809 – 1811" Cassini reprint of the OS First Series
34. "1898 – 1900" OS New Revised Edition, Timeline reprint.
35. Map, Neroche Forest, perhaps circa 1830.
36. Ministry of Food National Farm Survey, 1941/2.