



WILDLIFE AND COUNTRYSIDE ACT 1981
INVESTIGATION INTO THE STATUS AND ALIGNMENT OF BRIDLEWAY
DU1/25 (BROMPTON REGIS)

Application: 733M
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1. Introduction

1.1. In 2011 the County Council received notices under sections 56 and 130 of the Highways Act 1980. These alleged that bridleway DU1/25 was both obstructed and out of repair. In investigating whether there were grounds to support those notices, evidence came to light which cast some doubt on the recorded status of the route. The decision was therefore taken that the matter warranted further investigation. Since that decision further doubts have been cast on the precise alignment of the application route.

1.2. The approximate route of bridleway DU1/25 as recorded on the Definitive Map and Statement is shown A-B-C on drawing number H18-2019 (see appendix 1).

1.3. Ordinarily an investigation of this type would have been prioritised in accordance with our statement of priorities and it may have been many years before it reached the top of the queue. However, in this case, the owner of the land crossed by the application route sought to have the matter taken 'out of turn'. His request received the support of the local member and so was considered by the Regulation Committee on 1 March 2012.

1.4. Having fully considered the matter the Committee agreed to take the application out of turn and consider it before others which might otherwise have been ahead of it in the queue. The report considered by the Regulation Committee, together with a minute of the meeting can be found at appendix 2. It is important to note that the Committee's decision related solely to the priority to be given to investigation of the application route. The strength of the evidence in support of modifying the Definitive Map was not a matter that the Committee were being asked to consider at that time.

1.5. Since the decision to take this investigation out of turn a number of factors, including a high level of staff turnover, has meant that the matter has only recently received the attention that it required

1.6. The purpose of the report is therefore to establish whether the Definitive Map correctly shows the status and alignment of DU1/25. If it does not then a Definitive Map Modification Order will be needed to correct any error. If an order is made it will not create, extinguish or move the public right of way, it would simply allow the Definitive Map to be updated to reflect the true status/position of the right of way as it already exists.

2. Description of Route

2.1. Bridleway DU1/25 is shown A-B-C on plan H18-2019 (appendix 1). It begins in the west at the junction of Restricted Byway DU1/33 and Bridleway DU1/27. From here the route proceeds in an easterly direction for approximately 330 metres. It meets a classified highway at point C. Between points A-B the route shown on the definitive map appears to span the field boundary although it is probably a little more to the north of that boundary than it is to the south. The Definitive Map and the documents produced as part of its preparation are dealt with in more detail in section 4.7.

2.2. On the ground the field boundary between A and B is formed of a high bank with a hedge on top. On each side of the bank is a wire fence. There is a gated gap in the boundary approximately 50 metres east of point A. The bank and hedge appear to be of some antiquity.

2.3. There is currently a pedestrian gate on both the northern and southern side of the field boundary at point A. There is a further field gate at point B. From this point the field boundary to the south of the application route becomes a wire fence.

2.4. At point C there is a pedestrian gate leading onto the classified road. The gate is approximately 27 metres from the south east corner of the field. At this point the road has a wide wooded verge (approximately 8 metres) which slopes very steeply down to the metalled carriageway. It would not be possible to walk, let alone take a horse, straight down the slope. However, a trodden pathway ('the trodden route') leads north east from the pedestrian gate cutting across the slope and thus reducing the gradient. The steepest section of this trodden route is where it meets the metalled carriageway and here a flight of nine stone steps have been installed.

2.5. There has been a suggestion that the definitive route has been marked on the wrong alignment and that it should in fact join the classified road nearer the corner of the field. This alternative route is shown B-D on plan H18-2019. At point D there is a gully in the slope leading down to the metalled carriageway. Anyone proceeding down the gully would not have the option of traversing the gradient as they can on the trodden route. As a result it remains so steep that it is very challenging to walk and would be impossible on horseback.

2.6. As mentioned above, the purpose of this investigation is to consider the status and alignment of DU1/25. In terms of the alignment there are two distinct questions. Firstly, is the Definitive Map correct in showing DU1/25 straddling

the field boundary between points A and B. If not which side of the boundary should it be shown on. Secondly, does the right of way run B to C or B to D.

2.7. For ease of reference the term 'application route' is used in this report as an overarching term to describe a route which broadly runs from DU1/27 to the unclassified highway at Bryant's Bridge. It therefore incorporates all variations of the alignment of the route between A and B and between B and the unclassified highway.

2.8. Photographs of the claimed route taken on 22 March 2019 are at Appendix 3.

2.9. The case file including consultation responses can be viewed by Members by appointment.

3. **Relevant Legislation**

3.1. Section 53(2)(b) of the Wildlife and Countryside Act 1981 provides that the County Council must keep the Definitive Map and Statement under continuous review and must make such modifications as appear to them to be requisite in the light of certain specified events. In this case sections 53(3)(c)(i), (ii) and (iii) could all potentially be of relevance. These provide that the following are events which require the Definitive Map to be modified:

The discovery of evidence which (when considered with all other relevant evidence available to them) shows—

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;
- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
- (iii) 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. Therefore, if it were found that the status of DU1/25 was incorrectly recorded and that it carried higher or lower rights it would be necessary to make an order under subsection (ii). If, on the other hand, the right of way was found to be depicted on the wrong route then it would be necessary to make an order under both sub sections (i) and (iii). Finally, if the particulars of the DU1/25 as

recorded in the Definitive Statement required clarification then this could be achieved using an order made under subsection (iii).

3.3. The standard of proof to be applied in cases where the route of a claimed right of way is not already shown on the Definitive Map and Statement (i.e. orders made under subsection (i)) consists of two limbs. In such cases an order should be made to modify the Definitive Map if the evidence shows that a right of way;

- a) subsists; or
- b) is reasonable to allege to subsist.

3.4. Importantly, the above paragraph describes the test for making an order under subsection (i). Such an order can only be confirmed (and therefore the Definitive Map can only be modified) if the evidence meets the higher 'balance of probabilities' test.

3.5. The standard of proof to be applied in relation to all other types of order made under section 53(3)(c) (e.g. applications to upgrade, downgrade or delete a right of way) is the balance of probabilities.

3.6. However, in determining whether a right of way already marked on the Definitive Map exists the decision maker must start with an initial presumption that it does. In other words, when it comes to downgrades and deletions, a way's inclusion on the definitive map weighs heavily in favour of the existence of the public rights which are depicted. The approach to take in such situations is set out in Government Circular 1/09:

'The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with "higher" rights to a way with "lower" rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:

- the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.
- the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;
- the evidence must be cogent.

While all three conditions must be met they will be assessed in the order listed. Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified'¹.

3.7. The leading case in relation to deletions is *Trevelyan*². At paragraph 38 Lord Phillip says:

'Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.'

3.8. The principles identified by Lord Philips in relation to deletions are understood to also apply to the downgrading of a route.

3.9. The purpose of Section 53 of the Wildlife and Countryside Act 1981 is to record on the Definitive Map rights which already exist or to delete those which do not exist. The purpose is not to create or extinguish them; other legislation is available where this is deemed an appropriate course of action. Practical considerations such as current desirability, the security and wishes of adjacent landowners cannot be considered under the legislation.

3.10. 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*

¹ Paragraph 4.33 of Rights of Way Circular (1/09).

² *Trevelyan v SSETR* [2000] NPC 6, (CA) [2001] EWCA Civ 266, [2001] 1 WLR 1264.

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”.

3.11. 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 decision maker must be satisfied that public rights have come into being at some time in the past. This might be in the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence). The decision is a quasi-judicial one in which the decision maker must make an objective assessment of the available evidence and then conclude whether or not the relevant tests set out above have been met.

4. **Documentary Evidence**

4.1. The following section discusses the documentary evidence sources examined as part of this investigation.

4.2. **Inclosure Records**

Explanation of the type of evidence

4.2.1. 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.

Evidence

4.2.2. King’s Brompton, Upton and Skilgate Inclosure Act 1801 & Brompton Regis Inclosure Award 1804

Source: Somerset Heritage Centre
Reference: Q/RDE/2
Appendix number: 4

Description and interpretation of evidence

4.2.3. Amongst other things the local Act of 1801 gave the Commissioners powers to set out such public bridle roads and footways, and private roads and ways as they thought requisite. It also provided (on page 14) that:

‘...after the said and several public and private Roads and Ways shall have been set out and appointed as aforesaid, it shall not be lawful for any Person or Persons to use any other Roads or Ways either public or private over or upon the said Commons and Waste Land; and that all former Roads and Ways, or so much of them as shall not be set out and appointed by the said Commissioners as aforesaid, shall be deemed part of the Commons and Waste lands to be divided and inclosed by virtue of this Act’.

4.2.4. As such any public or private rights which had existed over the land to be enclosed and which were not set out by the Award were to be extinguished.

4.2.5. The application route was not set out by the Award and no rights were created over it. Furthermore, the course of the application route would have been through allotment number 95. Therefore, any rights which may have existed prior to 1804 will have been extinguished by the Award³. The Inclosure documents are therefore excellent evidence that no public right existed over the application route in 1804 (although not necessarily evidence that such rights were not dedicated at some point after inclosure).

4.2.6. On the other hand a bridleway was set out to the south of the application route. It is marked X-Z-A-B on the Award map. Point X appears to broadly correspond with the eastern end of bridleway DU1/27. From here it travels north and then north west to meet the route of DU1/33. At no point does it correspond with the application route.

4.3. **Tithe Records**

³ It has been suggested that the application route might have run through allotments 294 and 295 as well as 95. As ‘old allotments’ any rights which may have existed through 294 and 295 would not automatically have been extinguished by the Award. However, that would have left a cul-de-sac route leading through 295 and terminating at the western boundary of 294. It is therefore more likely that the entire length of the application route fell within allotment 95.

Explanation of the type of evidence

4.3.1. 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.

4.3.2. The tax replaced the previous 'payment in kind' system where one tenth of the produce of the land was given over to the Church.

4.3.3. 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.

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

4.3.5. The Map and Apportionment must be considered together. Roads are sometimes listed at the end of the apportionment; there is also sometimes a separate list for private roads.

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

Evidence

4.3.7. Kings Brompton Tithe Map and Apportionment 1843
Source: Somerset Heritage Centre
Reference: D/D/Rt/A/387 and D/D/Rt/M/387
Appendix number: 5

Description and interpretation of evidence

4.3.8. The Tithe Map does not depict the application route. It is therefore not positive evidence in favour of public rights over the application route. However, this does not necessarily mean that no right existed at the time of the survey.

4.3.9. The fields to the north of A-B are numbered 477 and 478. To the south are fields 538 and 539. Both B-C and B-D run through field number 479. With the exception of field number 477 at the very far western end of the application route, all other fields are described as 'arable' within the state of cultivation column.

4.3.10. These documents offer no direct assistance in determining the status or alignment of DU1/25.

4.4. **Ordnance Survey Maps**

Explanation of the type of evidence

4.4.1. 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.

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

Evidence

4.4.3. 1802 Surveyors Drawings
Original scale: 2 inch:1 mile
Source: British Library website
Appendix 6(i)

4.4.4. The application route is clearly shown. It appears enclosed by a solid boundary on the southern side and by a less well defined boundary on its northern side. This might suggest that there was a physical boundary to the south of the route but not the north.

4.4.5. Due to the scale it is not possible to ascertain with any precision the point at which the route joins the classified road to the east.

4.4.6. 1809 OS 'old series' map
Original scale: 1:63,360/one inch to the mile
Source: Somerset Heritage Centre
Appendix 6(ii)

4.4.7. The application route is shown bordered by a solid line to south and dotted line for most, if not all, of its northern side. This might suggest that there was a physical boundary to the south of the route but not the north.

4.4.8. 1889 OS County Series 1st Edition Map
Sheet No: LVII:12
Survey Date: 1888
Scale: 1:2500
Appendix 6(iii)

4.4.9. Only the far western end of the application route is shown on this map sheet. Parallel pecked lines corresponding with the route of DU1/27 lead south to point A where they turn 90 degrees along the application route but to the north of the field boundary. To the south of that boundary is a single pecked line suggesting a change of surface of some sort and, quite possibly, a track at the edge of the field. If such a track did exist it would appear to have been a continuation of what is now recorded as DU1/33.

4.4.10. 1889 OS County Series 1st Edition Map
Sheet No: LVIII:9
Survey Date: 1887
Scale: 1:2500
Appendix 6(iv)

4.4.11. With the exception of the far western end which appears on sheet LVII:12 (described above), the full length of the application route appears on this map sheet. The parallel pecked lines on sheet LVII:12 continue to the north of the field boundary to point B. However, rather than proceeding onto point C they instead lead to point D in the corner of the field and extend down the gully to the carriageway. The Ordnance Survey have marked this route F.P.

4.4.12. The single pecked line shown on to the south of the field boundary on map sheet LVII:12 continues onto point A1 on this map sheet. At point A1 it turns south away from the application route.

4.4.13. 1904 OS County Series 2st Edition Map
Sheet No: LVII:12
Survey Date: 1888
Revised: 1902
Scale: 1:2500
Appendix 6(v)

4.4.14. The application route is largely shown in the same way as on the first edition of this map sheet. The key difference is that, although parallel pecked lines lead north from point A, only a single pecked line leads east along the northern side of the hedge between point A and point B.

4.4.15. 1904 OS County Series 2nd Edition Map
Sheet No: LVIII:9
Survey Date: 1887
Revised: 1902
Scale: 1:2500
Appendix 6(vi)

4.4.16. As with the second edition for map sheet LVII:12, the route between A-B to the north of the field boundary is shown with a single pecked line only becoming a parallel pecked line as it moves away from the boundary towards point B. The route also continues to be annotated F.P.

4.4.17. Unlike the first edition map, the parallel pecked lines lead from point B to point C (rather than point D). The line is also marked F.P.

4.4.18. The single pecked line to the south of the A-B field boundary is shown in the same way as on the first edition map.

4.4.19. 1898 OS Revised New Series Map
Sheet 294
Survey Date: 1886-88; Revised: 1896
Scale: 1:63,360 (one inch to the mile)
Appendix 6(vii)

4.4.20. Between A and A1 the application route is shown by a solid casing line to the north and a dotted line to the south. Reference to the key suggests that this indicates an unmetalled road which is fenced to the north but open to the south. The OS used this symbol to record both public and private roads⁴.

4.4.21. From point A1 the road turns south leaving a single pecked line continuing on to points B and C or D (it is not possible to ascertain which due to the scale of the map). The key shows pecked lines to be 'footpaths'. The key does not give a symbol for bridleways.

Description and interpretation of evidence

4.4.22. Case law⁵ has confirmed that OS maps are only indicative of the physical qualities of a way and should not be treated as direct evidence of status. This is particularly the case for maps produced after 1888 which contained a rights of

⁴ Hodson, Y. (1999) *Popular Maps: The Ordnance Survey Popular Edition One-Inch Map of England and Wales 1919-1926* Charles Close Society for the Study of Ordnance Survey Maps, London, page 132.

⁵ Moser v Ambleside Urban District Council (1925) & Attorney General v Antrobus (1905).

way disclaimer stating that the representation of a route on their maps is not evidence of the existence of rights of way.

4.4.23. Nevertheless, OS maps can still be of a great deal of assistance. Evidence of the historic existence and character of a route can, in some cases, help in determining the alignment and status of a route.

4.4.24. In this case, the surveyor's drawing and old series map show that a physical track of some significance broadly followed the application route in the early 19th century. Both maps indicate that that route was to the north of a field boundary. However, without a key, any interpretation of the line styles used should be treated with some caution.

4.4.25. By the time of the 1898 New Revised Series map the route appears to be shown to the south, rather than the north, of the field boundary between A and A1.

4.4.26. Taking these three maps (i.e. the surveyor's drawing, old series and new revised series) in isolation, one might conclude that the physical route moved from the northern side of the boundary to the south. However, when seen in light of the County Series maps it becomes apparent that two routes have historically existed between point A and A1. One to the north of the boundary and one to the south.

4.4.27. Only the 1:2500 County Series maps are of assistance in determining whether the physical route accessed the classified road at point C or point D. The scale of the other OS maps is too small to be of much assistance in that respect.

4.4.28. The 1889 First Edition 1:2500 map shows a route leading to point D. However, by the time of the 1904 second edition the route has been amended so that it joins the road at point C.

4.4.29. The reasons for the change are unknown. However, the Ordnance Survey have a well deserved reputation for accuracy. Furthermore, to make a change of this type would have taken a positive act and is therefore unlikely to have occurred as a result of an oversight. While it is always possible for drafting errors to have occurred it seems more likely in this case that the alignment of the route was changed intentionally either because the first edition map had been discovered to be in error or because the route on the ground had moved in the intervening years.

4.4.30. Finally, it is noted that the surveyor marked the route 'F.P.' on both editions of the County Series maps and showed it as a 'Footpath' on the Revised New Series Map.

4.4.31. The annotation of a route 'F.P.' is not necessarily an indication of public rights but was instead intended to ensure that members of the public did not mistake a route for one which was 'traversable by horses or wheeled traffic'⁶. The steep gradient where the application route meets the road at point C or D might well explain why it was considered unsuitable for equestrian traffic. This weighs against the route being a bridleway but it is far from conclusive. The route may have been difficult to use but that is not to say that it was not used or that it was not a bridleway. It is therefore important to consider this evidence alongside all of the other documents available.

4.4.32. From 1896 onwards one inch maps (including the Revised New Series) only showed the more 'important' paths⁷. The depiction of A1-B-C or D as a footpath suggests that it was of some importance. However, it would be unsafe to rely on it as direct evidence that the route was a footpath for the reasons given in paragraph 4.4.22 above. Furthermore, the key gives no symbol for bridleways and so it is at least possible that, where they ran over physical features which could not be categorised as 'unmetalled roads' they would also have been depicted by dashed lines in the same way as footpaths

4.5. **1910 Finance Act**

Explanation of the type of evidence

4.5.1. 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.

4.5.2. Land was broken into 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;

⁶ Paragraph 12.20 of the Planning Inspectorate's 'Definitive Map Orders: Consistency Guidelines'.

⁷ Hodson, Y. (1999) *Popular Maps: The Ordnance Survey Popular Edition One-Inch Map of England and Wales 1919-1926* Charles Close Society for the Study of Ordnance Survey Maps, London, page 144.

- i) 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.
- ii) The record plans and Field Books: The final record of assessment which contain more detail than the working records. The Record Plans and Field Books are deposited at The National Archives, Kew.

4.5.3. 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.

4.5.4. 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". This is of particular importance for meeting the requirements of section 53(3) of the Wildlife and Countryside Act 1981 which requires the 'discovery' of new evidence (i.e. evidence not considered when the Definitive Map was originally drawn up or last reviewed) before an order to amend the definitive map can be made.

Evidence

- 4.5.5. Finance Act 1910; Record Plan
Source: National Archives
Reference: IR128/1/1113 & IR128/1/1126
Appendix number: 7(i)
- 4.5.6. Finance Act 1910; Valuation Book
Source: Somerset Heritage Centre
Reference: DD/IR/T/6/4
Appendix number: 7(ii)
- 4.5.7. Finance Act 1910; Field Book
Source: National Archives
Reference: IR58/82194
Appendix number: 7(iii)

Description and interpretation of evidence

4.5.8. The record plan shows the application route wholly within hereditament number 53 which occupies a considerable stretch of land owned by Kings

Brompton Farm shown on the Ordnance Survey base mapping to the west of the stream that runs north-south to Bryant's Bridge.

4.5.9. Hereditament 53 extends north some 2.3 kilometres to the boundary of Leigh Farm. A number of public rights of way are currently recorded on the Definitive Map within this parcel of land.

4.5.10. The valuation book records a deduction of £48 for 'public rights of way or user' for hereditament 53. As noted above, this hereditament covers a considerable area in which numerous public rights of way are currently recorded. Based on this document alone there is no way of knowing whether the deduction made relates to the application route and if so what class of public right it was in respect of.

4.5.11. Like the Valuation Book, the Field Book records the same £48 deduction for hereditament 53. However, in two separate places within the record (highlighted in the appendix) it refers to the deduction being for footpaths. This would suggest that the deductions sought by the landowner were for a footpath or footpaths rather than a bridleway or bridleways. It would therefore appear that the landowner at the time sought to declare the public rights which existed over her land but only acknowledged the existence of footpaths and not any bridleways. Maybe the most likely inference to be drawn is that the landowner either considered the application route to be a footpath or to carry no public rights at all.

4.5.12. However, without more of the original documentation (which is understood to no longer exist) some doubt remains over the landowner's intention. For example, the declared footpaths may have been elsewhere within the hereditament and the landowner may have had good reason for not seeking a deduction in relation to the application route or for not acknowledging equestrian rights over it. For this reason, the Finance Act evidence is supportive of the application route being a footpath rather than a bridleway, but the weight to be given to it is reduced.

4.5.13. Beyond what is shown on the Ordnance Survey base map (discussed above), none of the Finance Act documents indicate the alignment of the application route.

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

Explanation of the type of evidence

4.6.1. Over time responsibility for maintenance of highways has passed between various different authorities. On each occasion a map was typically produced showing those highways which were considered publicly maintainable.

Evidence

1929 Handover Map, 1930s and 1950s Road Records
(Appendix 8 (i)-(iii))

4.6.2. Although shown on the OS base mapping, the application route is not marked as a highway maintainable at public expense on the 1929 Handover Map, the 1930s or the 1950s Road Records. These maps are records of maintenance liability, not of public rights, and did not usually indicate non-vehicular public rights of way even if they were known to exist. As such, the original records are of little assistance in determining the status of the application route or its precise alignment.

4.6.3. Having said this it should be noted that the 1930s record has 'F.P. (ROW)' written in pencil to the north of the application route. While there are a few other pencil annotations, the vast majority of rights of way on the map are not annotated.

4.6.4. This would appear to suggest that someone considered the route to be a footpath. While it is unknown when and by whom the annotation was made it would be consistent with the County Council's initial recommendation during the preparation of the Definitive Map (i.e. that the route be recorded as a footpath). That recommendation was later altered (see section 4.7 below).

4.6.5. As would be expected the unclassified road at the eastern end of the application route is shown on all three records (the 1929 handover map, the 1930s and 1950s road records). The 1929 handover map does not appear to be indicative of the width of the highway. However the 1930s and 1950s road records do give an indication of width. In the case of the former, the highway does not appear to extend all the way to the field boundary in which points C and D are located. However, by the 1950s record a wider area is shaded indicating that the full width of the verge up to the field boundary is highway maintainable at public expense. Modern road records show a similar extent as those from the 1950s. This explains why the application route terminates at the top of the bank rather than descending to the metalled carriageway.

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

Explanation of the type of evidence

4.7.1. 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 a number of stages:

- i) 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.
- ii) 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; amongst other things this included parish and district councils being contacted directly and notices appearing in local newspapers. Any objections received were recorded in a Summary of Objections found in the District file.
- iii) 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.
- iv) Provisional Map – This map incorporates the information from the Draft Maps and the successful results of objections to the Modification Maps. These were put on deposit in the parish and district council offices. At this point only the tenant, occupier or landowner could object.
- v) 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.

Evidence

Survey Map
Appendix: 9(i)

4.7.2. Routes that were surveyed by Brompton Regis Parish Council are depicted in red on this map and annotated to show the presence of limitations (stiles or field gates). DU 1/25 is not annotated with a line, however "DU/15" is written in green pencil above the route.

Survey Card
Appendix: 9(ii)

4.7.3. The survey card for DU1/25 shows that all the possible types of right of way have been crossed out, that is F.P. (footpath), B.R. (bridleway), C.R.F. (Cart Road Footpath) and B.R.F (Bridle Road Footpath). Above the crossed out text is written B.R. This would appear to have replaced some earlier text which has been erased. It is difficult to state with any confidence exactly what the earlier text would have said. However, from the very faint markings left on the paper it would appear to have included both 'BR' and FP'.

4.7.4. The hand written description of the route reads: *"The path starts at the end of C.R.F 1/33 at Lower Rock runs E. to County Road at Bryants Bridge."* The card also has a tick on it written in green pencil.

4.7.5. DU1/27 has a junction with the application route and as such makes reference to it as a bridle road. The written description of DU1/27 reads *'The path starts at FP1/26 just north of Youngs Linhay thence SE and then S to **BR1/25 which it follows for a short distance** and thence SE to County Road NE of Lancombe Barn at BM 786.2'* (emphasis added).

Draft Map
Appendix: 9(iii)

4.7.6. The application route spans two sheets of the draft map. Only the area in the immediate vicinity of point A is shown on the first map. No right of way is recorded over the application route at this point.

4.7.7. If it appeared at all, the majority of the application route would have been on the second of the two map sheets. However, the map sheet in question is damaged and the part which would have shown the area of the application route is missing.

Summary of Objections to the Draft map
Appendix: 9(iv)

4.7.8. Objections which were received to the draft map were summarised in tabular form for consideration by the County Works Committee. The table for the Dulverton Rural District area records that the Ramblers' Association

objected to the *“Omission of path at Lower Rock east to Bryants Bridge”*. While no map accompanied the table this description is consistent with the application route.

4.7.9. The section of the table that records the observations of the Clerk of the County Council records that *“Western section is a County road. Eastern section appears to be a public footpath.”* This has been annotated in pencil; the letters “CRF”⁸ are written with a line leading to reference to the western end of the route being a County road. The word footpath is crossed out and the letters “BR” are written alongside to indicate bridleway.

4.7.10. The Determination column of the table records that the decision on the objection was to *“Add eastern section as public footpath in Draft Map.”* This is again annotated in pencil, with the word footpath crossed out and B.R. written in its place to show bridleway. This section of text is also encircled and annotated 1/25 (the current number of the path) with blue pencil, which would appear to be an indication that the work of adding the route to the Draft Modification Map had been completed.

London Gazette Notice – 5 February 1957
Appendix: 9(v)

4.7.11. Having considered each of the objections to the draft map the County Council were required to publish notice of those amendments it proposed to make to the map⁹. Interested parties then had the opportunity to raise a counter objection. Notices of this type were to appear in a local newspaper and the London Gazette.

4.7.12. Notice for the Dulverton area appeared in the London Gazette on 5 February 1957. It contained three schedules. The first listed ways to be deleted from the draft map, the second ways to be added and the third ways whose status was to be amended.

4.7.13. Schedule two, ways to be added, included the following entry:

Parish	Status	Description
Parish of Brompton Regis	B.R.	Lower Road easterly to Bryants Bridge

⁸ The classification of CRF was given to those routes considered to be public carriage or cart roads or green un-metalled lanes which were used mainly as footpaths. The term originates from an advisory booklet produced by the Commons & Open Spaces Society which was sent to Parish Councils to assist them in preparing the Survey material. Despite the booklet being approved by the Government the term CRF has never carried any legal significance and, consequently, is no longer used.

⁹ Section 29 of the National Parks and Access to the Countryside Act 1949.

4.7.14. This is consistent with the amended summary of objection which records the decision to add the application route as a bridleway.

Draft Modification Map
Appendix: 9(vi)

4.7.15. DU25/1 is shown by a green pencil line indicating that it was recorded as a bridleway. Leading east from point A the line initially straddles the field boundary. However, by the time that it reaches point A1 the green line is entirely to the north of the boundary. From point B it follows the parallel pecked lines on the base map to point C.

Provisional Map
Appendix: 9(vii)

4.7.16. Much like the draft modification map the application route is shown as a bridleway leading from A-B-C and annotated 1/25. While the green line still straddles the field boundary between A and A1 it is predominantly on the northern side.

Definitive Map
Appendix: 9(viii)

4.7.17. Once again the application route is shown as a bridleway leading from A-B-C and is annotated 1/25. Between point A and A1 the route straddles the field boundary. While the majority of the width of the line is to the north of the boundary, it does dip to the south just east of point A1, before returning to the north.

Definitive Statement
Appendix: 9(ix)

4.7.18. The Statement for DU1/25 describes the application route as a bridleway which starts at 'the eastern end of C.R.F 1/33 and runs from Lower Rock in an easterly direction to the county road at Bryants Bridge'.

4.7.19. The Statement for DU1/27 describes that route as a bridleway which starts at 'F.P and B.R. 1/26 just north of Young's Linhay and runs in a south easterly direction and then south to path 1/25 which it follows for a short distance and thence south east to the county road north east of Lancombe Barn at B.M.786.2'.

Description and interpretation of evidence

4.7.20. The survey map annotates part of the application route 'DU1/15'. However, this is in a different hand to the majority of annotations and the route is not marked in red like others claimed by the Parish. Unlike many of the other survey cards for Brompton Regis, the card for DU1/25 is unsigned. Given that the application route does not seem to have appeared on the Draft Map and the Parish Council's reaction to the objection of its omission (see section 4.8), it seems likely that they did not claim the route and that the survey card and the annotation on the survey map were later additions, probably by the County Council (it was not at all unusual for the County Council to produce additional cards for routes which were potentially to be included on the draft map but which were not included in the initial parish survey). The original author of the card appears to have been uncertain as to the route's status having initially referred to it as both 'BR' and 'FP'. However, this was later amended to BR only. This would appear to be consistent with the Summary of Objections which initially recommended the route be recorded as a footpath but was later amended to refer to it as a bridleway.

4.7.21. The Draft Map was in part based on the parish survey information and was made available for public scrutiny during a statutory consultation period. Although much of the relevant area of the draft map has been lost to damage, it seems highly unlikely that the application route would have been shown (it is not shown on the part that survives and, had it been recorded as a right of way, there would have been no reason for the Ramblers' Association to raise an objection).

4.7.22. The summary of objections shows that an objection was made to the omission from the draft map of a route which ran from 'Lower Rock east to Bryants Bridge'. No map showing the precise alignment of the route which the Ramblers' were referring to has survived. However, there is no evidence of the physical existence of any route, other than the application route, which would match the description given in the summary of objections. From the description and the fact that it was to be added to the Draft Modification route as 1/25, it is reasonable to conclude that the Ramblers' Association's objection must have broadly followed the application route.

4.7.23. In response to the objection the Clerk of the County Council observed in the summary of objection table that the route appeared to be a public footpath. This was reflected in the 'determination' column of the same table. However, in both cases, the word footpath was replaced by B.R. at some point after the initial production of the document. As with the annotations on the survey card, there is no indication as to when, or on the basis of what evidence, the summary of objections was updated. However, what is clear is that the application route came to be recorded as a bridleway on the draft modification map, the provisional map and the definitive map.

4.7.24. Any document can contain errors and it is of course possible that the application route was included on the draft modification map as a bridleway by mistake and that that mistake was copied onto the provisional and definitive maps. However, reference to a footpath was replaced by reference to a bridleway on both the survey card and the summary of objections. Irrespective of whether this occurred before or after the draft modification map was produced this shows that consideration was given to the status of the route and a positive decision was made to change the status rather than it being a simple drafting error.

4.7.25. It is accepted that no record of the reasons why the decision was taken to amend the status of the route has survived. However, in the absence of evidence to the contrary, it must be assumed that evidence of the existence of a bridleway did exist. Had there been no such evidence the County Council would not have made the decision to record it as such¹⁰.

4.7.26. The conclusion that the status was amended on the basis of sound evidence is supported by the fact that no formal objection appears to have been being raised in relation to the inclusion of the application route on the draft modification or any subsequent Map.

4.7.27. In terms of alignment, there appears to be some inconsistency in the way in which A-A1 is depicted. On the draft modification and definitive maps it is shown slightly straddling the field boundary albeit with the majority of the line on the latter map being to the north. Whereas on the provisional map it is almost exclusively on the northern side of the boundary. The definitive statement gives no indication of the precise alignment of the route in relation to the boundary.

4.7.28. The definitive map and statement provide conclusive evidence of the existence of a bridleway over A-A1-B-C. That said, there is some ambiguity as to the precise line taken between A and A1. While it seems more likely that the definitive route is shown to the north of the field boundary it could be read as straddling it. It may therefore be helpful to make an order to amend the Definitive Statement in order to clarify the precise route of the right of way at this point. In doing so the fact that the field boundary appears to be a long standing feature and the evidence of the Definitive Map preparation documents will carry considerable weight.

4.7.29. Finally, it should be noted that while the Definitive Map and Statement are conclusive of what they show but they are not conclusive of what they omit.

¹⁰ See *Trevelyan* as quoted in paragraph 3.7.

Therefore, the fact that B-D is not shown does not necessarily mean that no rights exist over it.

4.8. **Local Authority Records/Minutes**

Explanation of the type of evidence

4.8.1. As mentioned above, over the course of the past two hundred years, responsibility for the maintenance of highways has passed between various different authorities. Furthermore, even where a local authority was not directly responsible for rights of way then, as representatives of the local community, they would have an interest in the rights of way network. This could have particularly been the case for parish councils.

4.8.2. In light of the above, evidence as to a route's status can sometimes be found in local authority records and minute books.

Evidence

- 4.8.3. Minutes of Brompton Regis Parish Council 1954-1959
Source: Somerset Heritage Centre
Appendix number: 10

Description and interpretation of evidence

4.8.4. Transcripts of the relevant extracts from the minutes can be found within the appendix.

4.8.5. The minutes of Brompton Regis Parish Council ('the PC') between 1954 and 1959 show that the PC received a letter from the Ramblers' Association asking that 21 paths that were not surveyed as part of the parish survey be added to the Draft Map. It is clear that each suggested route was discussed in turn by the Council who decided to recommend that no further routes be added to the Draft Map. The Draft Map was then examined by the PC in September 1954 when SCC sent a copy of the Ramblers' objection to the omission of these routes along with the map. The PC carefully viewed the claimed routes and discussed them at length and resolved to send the same reply to SCC as had previously been sent to the Ramblers. It is also recorded that the Chairman and the Clerk of the PC had attended a meeting with SCC officers at the Dulverton RDC offices concerning the Draft Map and that it was made clear to them that it was very desirable not to include unnecessary paths.

4.8.6. The objection from the Ramblers to SCC concerning the omission of 21 routes was again discussed in April 1955, and it was recorded that the PC only wanted one route added to the Draft Map. It records that in spite of this, SCC proposed to add the paths following the objection from the RA. The Clerk read details of the additions and after discussion the PC unanimously agreed that scheduling further paths would be a waste of public money. The PC resolved to write to the Council and strongly object to any further additions to the Draft Map, excepting the path that the PC had requested be added.

4.8.7. There is then no record of a response from SCC. A revised schedule of paths was deposited at Perrys Stores for public viewing in February 1957 (presumably this would have been the same schedule which appeared in the London Gazette in the same month and informed interested parties of proposed changes to the draft map).

4.8.8. The PC scrutinised this and decided they did not wish to raise objections to it as a body. It is not known why no objection was raised at this point, when previously they had strongly objected¹¹. The Members of the PC at that time were the same as in 1955 apart from the absence of Mr Phipps, who appears to have been replaced by Mr Vaulter.

4.8.9. In April 1959, reference is made to the final Draft Map being drawn to the attention of the PC by the Clerk. This appears to be in reference to the finalised Definitive Map, a copy of which was sent to all PC's by the County Council. No comments on what was shown on this map were recorded at this time.

4.8.10. It has not been possible to locate a copy of the Ramblers' Association's letter considered in July 1954. However, the summary of objections to the draft definitive map (referred to in paragraph 4.7.8 above) records 21 objections made by the Ramblers and relating to paths in Brompton Regis. It therefore seems likely that the routes referred to in the letter to the Parish Council were the same as those which came to be recorded on the summary of objections. That being the case, the Parish Council would have 'carefully considered' the existence of public rights over the application route on three occasions; 22 July 1954, 18 September 1954 and 6 April 1955. The Parish Council would have been well positioned to know the extent to which the paths in question were being used and may also have had knowledge of the level of use in the recent past.

¹¹ It has been suggested that they may have become disillusioned by the fact that their previous objections had not had the desired effect. While this is plausible, it is one of a number of possibilities including that they had been persuaded that there were no valid grounds for objection. No evidence has been found which indicated the reasons for the Parish Council's decision.

The minutes are therefore undoubtedly some evidence against the existence of public rights over the application route. However, before attributing that evidence weight, it is necessary to consider how the Parish Council reached their conclusion.

4.8.11. In the minute of 18 September 1954, the Chairman reports that he and the Clerk had been to a meeting at which it had been made clear that it 'was very desirable not to schedule unnecessary paths'. This comment was made in the context of a discussion regarding what, if any, amendments to the draft map should be supported.

4.8.12. Similarly at the meeting of 6 April 1955 it was agreed that the 'scheduling of further public footpaths within the Parish would be a waste of public money'. It was on this basis that it was resolved to write to the County Council strongly objecting to any further additions to the Draft Map.

4.8.13. This would suggest that the Parish Council were, at least in part, directing themselves to the wrong question. In opposing the addition of further routes (including DU1/25) to the draft map they were giving at least some consideration to the financial consequences and need for those paths. Neither of these are relevant to whether or not public rights did or did not exist and therefore whether or not they should be shown on the draft map.

4.8.14. This conclusion is supported by an analysis of the other routes which the Ramblers put forward for addition to the draft map but which the Parish Council opposed. The summary of objections shows that the Ramblers withdrew their request in relation to many of the 21 routes. However, it also states that some of them were supported by enclosure award evidence or even that the landowner had acknowledged them to be public rights of way. If the landowner agreed that a route was public one wonders on what basis the Parish Council would reasonably have argued that it was not.

4.8.15. In conclusion the Parish Council minutes make it clear that they were opposed to the recording of 21 additional routes, including DU1/25, on the draft map. However, in reaching their conclusion they appear to have been considering not just whether or not rights existed but also whether they were needed and their value for money. It would therefore be unsafe to conclude with any certainty that the Parish Council did not believe the application route to be a right of way. They may have opposed its inclusion on the draft map because they felt that it was not very useful or because it would be costly to keep in repair. As such the weight to be given to this evidence is significantly reduced

4.9. **Commercial Maps**

Explanation of the type of evidence

4.9.1. 'Commercial maps' are those produced for sale to the public¹². They vary widely in terms of their quality and were not all produced for the same purpose. As such the weight to be given to them also varies.

Evidence

4.9.2. **Day and Masters 1782**

Appendix number: 11

4.9.3. Published in 1782, this commercial map included very little detail, typically only depicting settlements, major roads (particularly those in and between settlements), and rivers.

4.9.4. An 'inclosed road' is shown leading from Brompton Regis to Bryant's Bridge. While the scale of the map makes it difficult to determine the exact alignment of the route shown it broadly corresponds with the application route.

4.9.5. Given the lack of detail on the map, the inclusion of the application route suggests that it must have been either a very prominent physical feature or a route of some importance (or both). Had the route only been used on foot it is unlikely to have been prominent/important enough to be depicted. The fact that it is shown is therefore evidence that the route was being used at least by horses if not vehicles. However, little is known about the basis upon which Day and Masters selected the features which were to be shown on their maps. It is therefore difficult to determine whether the surveyor considered the route to be public or private. Furthermore, even if they did consider it to be public, this can only be taken as the view of the individual surveyor rather than the wider public. In the circumstances, while the map is helpful in terms of demonstrating the likely use that the application route received, it can be given little weight in terms of determining public or private status.

4.9.6. **Greenwoods 1822**

Appendix number: 12

4.9.7. Despite some criticism relating to the positional accuracy of Greenwood's maps they can provide good evidence of a route's physical

¹² Some OS maps were also made for sale to the public but these are dealt with elsewhere in this report.

existence at the time of the survey and also that the surveyor considered it to be of some importance.

4.9.8. In this case the map shows the route which was set out at inclosure (see section 4.2) but not the application route. This is consistent with the route having been stopped up by the Award.

4.10. **Other Sources**

4.10.1. Rights of Way Parish File
Source: Somerset County Council
Appendix number: 13

4.10.2. The County Council's files contain a letter dated 17 February 1955 to Ramblers' Association from SCC concerning the route of DU 1/25. It reads as follows:

"Your claim for a public footpath from Lower Rock east to Bryants Bridge has been considered. The western section is an unclassified County road and, therefore, there is no need for action to be taken in so far as that portion is concerned. The eastern section of your claim appears to be a public footpath and I shall be advising the surveying authority accordingly."

4.10.3. This is consistent with other documentation relating to the preparation of the Definitive Map although, as referred to in paragraph 4.7.23, the recommendation that the route was a footpath was later amended to record it as a bridleway.

4.10.4. No further references to the route are contained in the files until the recent Section 56 and Section 130 Notices were served on SCC in relation to DU 1/25. These are summarised below.

4.10.5. In September 2009 a Section 56 Notice was served on SCC alleging that the surface of nearby bridleway DU 1/27 was slippery and therefore out of repair. As a result a report on the state of the surface of this route was commissioned by SCC in February 2010. Negotiations with the complainants and Exmoor National Park Authority (ENPA) also took place. Shortly after this, Section 130A notices were then served on SCC in respect of routes DU 1/25 and DU 1/27 on 11 June 2010. These concerned the alleged obstructions of both routes. On 28 June 2011 a further Section 56 Notice was served on SCC alleging slippery surface on DU 1/27. On 7 Sept 2011, ENPA undertook works to remove

obstructions to DU 1/25. Those works included replacing the stiles at points A and C with gates.

4.10.6. The existence of stiles on the application route would certainly be incompatible with the route being a bridleway but, from the information on file, it is not possible to determine how long those stiles had been in place.

4.10.7. **A Plan of Higher Woolcotts Farm and Blagdon Hill in Kings Brompton 1780**

Source: Somerset Heritage Centre

Reference: DD/KIT/12/5

Appendix number: 14

4.10.8. The purpose of this plan is unknown although it appears to have been produced for private purposes and forms part of a collection of deeds relating to the Woolcott estate.

4.10.9. Only the very eastern end of the application route is shown where it meets with the unclassified road. It is depicted by parallel dotted lines and annotated 'to Kingsbrompton' suggesting that it physically continues to the west. It can sometimes be inferred that this type of annotation meant that the route was considered to be public. However, as so little is known about the origins and purpose of this map any such conclusion needs to be treated with a great deal of caution.

4.10.10. Little is known about the surveying techniques used to produce the map or the level of accuracy to which it was drawn. However, the point at which the application route joins the classified road corresponds more closely with point C than it does point D.

4.10.11. **A Plan of Woolcotts Farm at Kingsbrompton 1919**

Source: Somerset Heritage Centre

Reference: A/BZG/1/1

Appendix number: 15

4.10.12. These documents relate to the sale of Woolcotts Farm and accommodation land in 1919. The plan appears to have been based on an OS survey but with further information added. The mapped area only covers the eastern end of the application route. Despite showing other unfenced cross field routes, the application route is not depicted. It therefore offers little assistance in determining the alignment of DU1/25 and is certainly not in support of the existence of public rights.

4.10.13. **Other landownership documents**

Source: Landowner A

Appendix number: 16

4.10.14. A number of conveyances, deeds and abstracts of title were submitted as evidence. These date from between 1911 and 1960. The majority are based on Ordnance Survey base maps. This is evident from various aspects of the maps but most importantly from the fact that they include the field numbers and acreages from the Ordnance Survey County Series maps.

4.10.15. While additional information is added to each of the maps this is typically little more than an outline of the land to be sold, transferred or the subject of the deed. In no cases is the additional information relevant to the status or alignment of DU1/25. As such the base map adds nothing to the Ordnance Survey evidence discussed in section 4.4 above.

4.10.16. The only exception to the above is a 1959 Abstract of Title relating to Kingsbrompton Farm. One of the maps which accompanies that document has the appearance of an Ordnance Survey map but the field numbers differ. While enclosed tracks/lanes appear to be shown on the map, rights of way across open country (including the application route) do not seem to be shown. As such one would not expect the application route to have been shown irrespective of whether or not rights existed over it. In the circumstances this map is of little assistance for the current purposes.

4.10.17. **Aerial photograph 1946**

Appendix number: 17

4.10.18. Although there appears to be a gap in the hedge at point D, it is not possible to discern any worn track to indicate where the route ran on the ground. This may be because there was no such track. However, it could equally be that a track existed but is simply not discernible from the photograph, perhaps because it is in the shade of the field boundary.

4.10.19. **Ramblers Association letter to Exmoor National Park Authority**

Source: Exmoor National Park Authority

Appendix number: 18

4.10.20. The letter is dated 23 August 1984 and is titled 'Footpath DU1/25 Bryants Bridge to Brompton Regis'. This would suggest that the author was of the view that the application route was recorded as a footpath rather than a bridleway. The letter gives no reason for this belief but it is nevertheless evidence that, at the time, the route had the reputation of a footpath. Whether that reputation extended beyond the author is unclear from this letter.

4.10.21. The letter goes on to state that *'I have been asked by Mr R B Perrett to bring to your attention an obstruction and seek a remedy. Near Bryants Bridge (GR 960, 314) the path leaves the road and ascends a steep bank. At the top, a new field fence, topped with barbed wire, has been erected and to quote Mr Perrett 'it is not reasonably practical to get over it'. If it would assist Mr Perrett would be willing to meet the Warden...to point out this obstruction. Mr. Perrett is due to lead a Group walk along the path in the Autumn so that it is hoped that something can be done without too much delay'*

4.10.22. Based on this letter it would appear that point C became obstructed in 1984. The obstruction is described as a new fence, no indication is given as to whether or not the route had previously been obstructed.

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

5.1. A land registry search was carried out on 25 March 2019 which identified that all of the affected land falls within the ownership of one party. This section of the report includes information provided by the landowner. Factual first hand evidence carries more weight than personal opinion, hearsay or third party evidence.

Landowner and response
<p>Landowner A owns all of the land crossed by the application route. He was interviewed on 1 November 2012. He stated that he has known the local area since he moved to Kings Brompton Farm in 2000 and has always known the route to pass to the northern side of the hedge. He also stated that he has only ever seen people using it on foot, often with dogs. He states that there is no clear path being used by horse riders.</p> <p>He recalled a stile being present at the eastern end of the route, which he understands to have been installed by the Exmoor National Park Authority (ENPA) some years before he bought the land. He understands that there was not a way for the public to use the route prior to this, as it was obstructed by a fence. Installation of stiles suggests that the National Park Authority considered the route to be a footpath. Similarly, the route was obstructed by a fence at point A when Landowner A moved to the property in 2000.</p> <p>More recently gates at the eastern and western ends of the route were installed in 2011 by ENPA following complaints about the route not being</p>

available for use on horseback. While the route is now capable of being used by equestrians there is no evidence of them doing so.

Landowner A stated that he believes the route is a public right of way for use on foot only. It has never been a bridleway as the steepness of the bank where the route leaves the road at Bryants Bridge means it has been impossible for the route to be used on horseback. Problems associated with the gradient would be accentuated by the presence of any gate at point C. In Landowner A's opinion a rider would need to be able to turn around to close the gate and, due to a number of trees, there is insufficient room to do so on the eastern side of the gate.

There is no clear path to the metalled carriageway from either point C or point D.

Landowner A also believes that the route forms part of a longer route that came from Woolcotts Farm to the east, which only had stiles on it in the past and so was also only a footpath.

Landowner A refers to the works necessary to physically create a suitable route (and more particularly the trodden route from point C to the carriageway) and the financial, aesthetic and environmental impact of those works.

Finally, having been consulted on a draft version of this report, Landowner A made submissions on the conclusions which it reaches. Given the scale of those submissions the points raised have been listed in full in appendix 19. However, in summary they focus on the lack of evidence supporting the existence of a bridleway, the lack of an 'audit trail' showing how the route came to be shown on the Definitive Map, the safety implications of horse riders using the route and the gradient from point C to the road.

6. **Comments on Landowner Evidence.**

6.1. Landowners A's personal knowledge of the application route dates back to 2000. His evidence is that the application route has been on the north side of the boundary and, to his knowledge, has only been used by walkers.

6.2. Landowner A suggests that stiles were erected on the route by Exmoor National Park Authority. Unfortunately, no documentary record of the installation of the stile has been found. However, the current National Park Authority was formed in 1997. Therefore, if they did install the stile, they must have done so after that date and before 2000 (when Landowner A moved to

Kings Brompton Farm). This is evidence that the National Park Authority believed the application route to be a footpath. Furthermore, the existence of stiles on the route until 2011 would have made it impassable by anyone other than those on foot. While this is evidence that the route has not been dedicated as a bridleway since 2000, it does not necessarily mean that such rights had not come into existence prior to the installation of stiles. Had they done so those rights would still exist today unless they had been stopped up by legal order or under an act of Parliament.

6.3. Landowner A does refer to older obstructions of the route prior to a stile being installed. This would be consistent with the Ramblers Association's letter of 1984 (see paragraph 4.10.19) which states that the route was obstructed by a new fence. There is no suggestion from Landowner A that the obstruction pre-dates that fence. Maybe of more importance are comments regarding the gradient of the bank which leads from point C to the carriageway. Whether or not it is capable of use by horses is dealt with more fully in section 8.26 - 8.29 below.

6.4. It has been further suggested that to the east of point C or D the route continues across fields onto Woolcotts. This cross field route to the east of the application route is not currently shown as a right of way on the Definitive Map. As with any case if an application, supported by evidence, were to be made in relation to this route it would be investigated and, if appropriate, an order made. To date no such application has been made.

6.5. In any case, the existence or otherwise of a right of way to Woolcotts does not appear to have a direct bearing on the status of the application route. Users of the application route could continue their journey on the unclassified road; they would not have been reliant on the additional route to Woolcotts. Therefore, whatever the status of the route to Woolcotts, the application route could have been a through route for equestrian users.

6.6. Concerns regarding the effect on current land use, cost, desirability and flora and fauna are understandable but are not factors which can influence the County Council's decision in cases such as this (see paragraph 3.9 above).

6.7. Each of Landowners A's submissions in relation to the draft report are addressed in the relevant section of this report.

7. Consultations and other submissions

7.1. Consultations regarding the claimed route were sent out to all landowners and relevant local and national user group organisations in September 2012. Further consultations were undertaken on draft reports in

2013 and 2019. The table below shows who was consulted and gives brief details of replies that were received. Where responses were received from individual members of the public, as opposed to organisations, they have been referred to as respondent A, respondent B etc.

Consultee and response
District Council: Responded to say that from a planning point of view the Planning Authority do not have any evidence concerning the bridleways.
Exmoor National Park: Submitted the Ramblers Association letter of 23 August 1984 (see paragraph 4.10.19).
Trail Riders Fellowship – Somerset Office: Responded to say that they have no factual evidence to support or object to the proposal
<p>Exmoor Uprising: This group of local people was initially formed to oppose the demolition of Black Pits but have since taken an interest in other matters within the National Park. They claim that the recording of A-B-C as a bridleway was a clerical error. The bridleway should have been shown on the south side of the hedge from A – A1 where it turned to follow the hedge south. This was the 'farm cart track which went down to the road and which all HORSE traffic would have used'.</p> <p>Exmoor Uprising are of the view that no one would have used a route to the north of the hedge as it has three gates on it and the slope down to the road is dangerous and has steps which are too small for horses to use. Furthermore, DU1/27 provides a suitable alternative for all users.</p>
<p>Open Spaces Society (OSS): The OSS's representative responded to say that the Parish Council omitted DU 1/25 and other routes when the Definitive Map was prepared. He stated that the route was added to the Draft Modification Map in 1957 following an objection from the Ramblers' Association. As the OS base map shows the route as a footpath, it must have been a 'deliberate act' to record it as a bridleway.</p> <p>He also states that there were no objections received at the time to the inclusion of the route as a bridleway and that the survey cards show 'public footpath' crossed out and 'BR' (indicating bridleway) instead. The OSS also say that we have no idea what the conditions were with relation to the route of DU 1/25 in the 1950's. For example, the track into Kings Brompton Wood, which may not have been in existence when the Definitive Map was first being produced, would have resulted in major changes to the verges of the road at Bryants Bridge. The OSS suggest that those changes could have removed land on which the trodden route from point C down to the carriageway had once existed. They go onto suggest that following the 1984 letter from the Ramblers' (see paragraph 4.10.19 above) the National Park</p>

Authority cut steps into the bank. Both of these events have resulted in the trodden route taking a steeper route that it previously would have done.

The OSS also states that:

- i) the route is shown as a public road on the Day & Masters map and as an inclosed through road on the 1804 Ordnance Survey map;
- ii) the junction of the application route with a path to Woolcott still exists and it is off the definitive line and may have been partially filled in; and
- iii) 'many ancient roads fell into disuse when more goods were carried on wheeled vehicles where gradient is of considerable importance. This route is most probably a victim on this in spite of it being shorter and more direct route going East West or visa versa. However it goes without saying that in the past it was completely suitable'.

Respondent A: A local resident who worked for the former owner of Kings Brompton Farm from 1959 to 1974. He was interviewed on site on 1st November 2012. He stated that he had known the route since 1959 and that during the time that he worked there he never saw anyone using the route, either on horseback or on foot.

He also recalled speaking to a resident of Woolcotts Farm in 1959 who mentioned the rights of way survey that was going on at the time and that he had shown Respondent A a map that depicted the route concerned as "Church Path" and he described it as the path to the Church.

Respondent A also recalled residents of Lower Woolcotts and Higher Woolcotts walking to the church on the route. He recalled there never being any steps present where the road left Bryants Bridge and no gate, just a fence, being present at the western end of the route. He stated that a field gate had always been present at the hedge boundary shown at point B on appendix 1, as far as he can remember. He has always understood the route to run on the northern side of the hedge.

Respondent B: A local resident and landowner who has been familiar with the area concerned since 1958 was also interviewed on site on 1st November 2012. He stated he had never known the route to be used on horseback.

Respondent B had always known the path to run on the northern side of the hedge but could not recall what features were present at the eastern end of the route at Bryants Bridge (i.e. whether access was possible at that point or

not). Respondent B did not recall a gate at the western end of the route and did not recall any stiles ever being present on the route.

7.2. No response was received from the following organisations:

- Police;
- Ramblers' Association;
- British Horse Society;
- British Driving Society;
- English Nature;
- CPRE;
- West Somerset Bridleways Association;
- Local County Councillor; and
- Brompton Regis Parish Council.

7.3. With the exception of comments regarding the condition of the route, all of the evidence provided by the OSS, Exmoor Uprising and Exmoor National Park Authority are discussed in section 4 above.

7.4. It is true that, to some extent, the topography of the area has changed over the last 70 years. In particular it is clear from a comparison of the 1946 and current aerial photographs that the roadway into Kings Brompton Forest is now a far bigger feature than it was (if it existed at all in 1946). Construction of the road may very well have altered the gradient of the trodden route at the point that it meets the carriageway. Having said this, the steep banks form part of the Putham River Valley and so the overall character of the highway verge over which the trodden route passes is likely to have remained much the same.

7.5. Both respondents A and B were familiar with the area in which the application route is situated at the time that the Definitive Map was being prepared. They claim that the route ran to the north of the field boundary and, to their knowledge, was not used on horseback. Furthermore, they are both in agreement that there was a fence with no gate at point A.

7.6. Although Respondent B, has no recollection of the eastern end, Respondent A states that there were no steps at point C (which presumably means that there were none leading down the bank to the carriageway).

7.7. Respondent A does not recall any use of the route while he worked for the landowner between 1959 and 1974. He does however state that several residents used the route to get to Church. Even if this was only after he finished

working for the landowner in 1974 this would appear to contradict his evidence that no gate was situated at point A 'just a fence'.

7.8. Respondent A also refers to the route being known as 'Church Path'. It seems very plausible that the application route would have been used by some (e.g. those from Woolcotts) to access the local church. However, there does not seem to be a suggestion that this was the sole use of the route and therefore it is unlikely that it carried a customary right for the use of parishioners only (as opposed to a public right for the use of the wider public).

8. Discussion of the evidence

8.1. As mentioned in paragraph 1.6 the purpose of this investigation has been to establish whether the Definitive Map and Statement correctly depicts the status and alignment of the application route. The evidence discussed above raises three distinct questions in this respect;

- i) is the route from point A to Bryants Bridge which broadly follows the application route correctly recorded as a bridleway or does it require deleting or down grading;
- ii) if that route is a public right of way does it run B-C or B-D; and
- iii) if that route is a public right of way does straddle the field boundary between A and A1 or does it run to the north or south of that boundary.

The evidence in relation to each of these questions is discussed in turn below.

Status

8.2. The approach to be taken when considering deleting a right of way or downgrading its status is set out in paragraph 3.6 above. In summary, before an order can be made, the decision maker must be satisfied that:

- i) there is new evidence;
- ii) the evidence as a whole is of sufficient substance to displace the presumption that the definitive map is correct; and
- iii) the evidence is cogent.

8.3. Both the Finance Act 1910 valuation and the respondents' evidence is considered to satisfy the first of these tests. The Finance Act documentation is open to interpretation but is material to the question of the application routes status in that the owner of the land at the time claimed a deduction for footpaths but not any bridleways. Furthermore, these documents were not released into the public domain until the early 1980s and were highly unlikely

to have been available when the Definitive Map and Statement were being prepared. As such the Finance Act satisfies the requirement for 'new evidence'.

8.4. Notwithstanding conclusions in relation to the Finance Act, respondents A and B give evidence of the use and physical nature of the application route dating back to the time that the Definitive Map and Statement were being prepared. While the Parish Council may not have been aware of the views of either respondent, it is reasonable to conclude that they would have been aware of what they describe (e.g. the level of use). Therefore, had the route been included on the Definitive Map as a result of the Parish Council's survey, one might conclude that the evidence of Respondents A and B would have been taken into account during the preparation of the Map. In such circumstances their evidence would not be 'new'. However, in this case, the Parish Council did not include the application route in their survey. The decision to include it on the Draft Modification, and subsequent, maps as a bridleway appears to have been taken by the County Council with little or no input from the Parish Council. It is less likely that the County Council would have been aware of the local context of the path or the views of Respondents A and B. As such their evidence can be considered 'new'.

8.5. Having concluded that there is new evidence, the decision maker must then consider whether the evidence as a whole is sufficient to displace the presumption that the Map and Statement are correct and then whether that evidence is cogent.

8.6. One must start from the presumption that the Definitive Map and Statement are correct. If there had been no evidence which made it reasonably arguable that the recorded rights existed, they should not have been marked on the Definitive Maps in the first place. Having said this, if there is sufficient evidence to displace that presumption and if that evidence is cogent, then an order should be made.

8.7. In addressing these questions it is helpful to start with consideration of the process which led to the application route being added to the Definitive Map in the first place.

8.8. The application route was not claimed by the Brompton Regis Parish Council and was almost certainly not included on the draft map. Instead it appears to have first come to the attention of those producing the Definitive Map when it was the subject of an objection by the Ramblers' Association. They claimed that the application route should be shown on the Map as a footpath and this appears to have been the initial recommendation of the County Council when determining what amendments to make to the Draft Map (i.e. when

preparing the Draft Modification Map)¹³. That recommendation was consistent with the undated 'F.P. (ROW)' note made on the 1930s Road Records which was presumably made by an officer of the County Council,

8.9. The Parish Council objected strongly to the application routes inclusion on the draft modification map. However, in doing so they appear to have misdirected themselves at least in part.

8.10. At some stage prior to the publication of the Draft Modification Map the County Council altered its stance and determined to record the application route as a bridleway rather than a footpath. It is uncertain exactly when, or on the basis of what evidence, the change in recommendation occurred. While the possibility that an error was made cannot be discounted, the fact that the status was amended on both the survey card and the summary objections seems to suggest that a conscious decision was taken to update the status. Unless it can be shown otherwise, it must be assumed that that decision was supported by evidence of the existence of equestrian rights¹⁴. In this case the assumption is supported by evidence that no counter objections were received to the route being added to the draft map.

8.11. Unfortunately, no record of exactly what evidence the County Council considered is now available. However, it seems highly unlikely that evidence of first hand public equestrian use was being relied upon. The Parish Council did not claim the application route and later stated that to record as a right of way would be a 'waste of public money'¹⁵. They therefore presumably did not consider the route to be well used or, given the evidence that they misdirected themselves, that other alternative or more suitable routes were available. In either case, evidence of use was unlikely to have been presented to the County Council by the Parish Council.

8.12. Similarly, the Ramblers' Association are unlikely to have submitted evidence of equestrian use. While we do not know exactly what evidence their objection was based upon, had they had evidence of equestrian use one would have expected their objection to have called for a bridleway rather than a footpath.

¹³ This is confirmed both by the Summary of Objections (para.4.7.8) and the County Council's 1955 letter to the Ramblers' Association (para.4.10.1).

¹⁴ See *Trevelyn* quote in paragraph 3.7 and in particular 'If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed'.

¹⁵ See minute of 6 April 1955 (paragraph 4.8.6).

8.13. In light of this it seems more likely that, if properly made, the County Council's decision to include the application route as a bridleway rather than a footpath was based on documentary or landowner evidence.

8.14. In this respect there is clear evidence that the application route was a feature of some importance and/or physical significance prior to inclosure in 1804. This is demonstrated by the 1780 Plan of Higher Woolcott, Day and Masters map of 1782 and the OS surveyors Drawing of 1802. Given the scale and purpose of these maps it is unlikely that they would have shown a simple trodden route across a field. It can therefore be inferred that the application route was a significant feature on the landscape, and more than likely a wide track of some sort, in the late 18th and early 19th century.

8.15. It is unlikely that a route of that nature would have been created for, or by, walkers only. Instead the route must have been used by equestrians and possibly even vehicles. Whether or not that use was by virtue of a public or private right is, to a large extent, irrelevant given that any public rights over the route would have been extinguished by the 1804 Inclosure Award. However, what is noteworthy is that a route from point A to point C or D was capable of being used by horses and that there was a desire amongst some parties to use it.

8.16. As was typical of the inclosure process, the 1804 Award redrew the local landscape. Not only did it extinguish any pre-existing private and public rights which may have existed over the application route, but it also set out a new public bridleway leading south from point A. The new route avoids the steep gradient at Bryants Bridge (east of points C and D) and so would have been far more convenient to users.

8.17. The 1809 OS Old Series was published only four years after the Award. As one might expect it shows the new inclosure route running south from point A. However, somewhat surprisingly, it also shows the application route. Taken at face value one might conclude that this demonstrates that, despite being stopped up by the Award, the application route continued to be well used by horse riders and/or vehicles. However, while the publication of the Old Series map post-dates inclosure, the survey on which it was partially based (i.e. the 1802 Surveyors Drawing) was undertaken before the Award. Furthermore, the application route does not appear on either Greenwoods Map of 1822 or the Tithe Map of 1843. While this is not necessarily evidence that the route was not used, it certainly is not evidence in the favour of such use.

8.18. Therefore, despite it appearing on the Old Series Map, there is very little evidence that the application route came back into use in the period immediately following the extinguishment of rights by the 1804 Award.

8.19. However, there is evidence of the application route physically existing again later in the century. It is shown on the 1889 OS First Edition County Series maps, the OS Revised New Series of 1898, and the OS Second Edition County Series of 1904. While none of these maps should be taken as direct evidence of status, they are nonetheless helpful in three respects.

8.20. Firstly, they demonstrate that a route of some sort physically existed at the date of the survey (whether that route ran from B-C or B-D is a matter which will be considered in more detail later in this report).

8.21. Secondly, the route is marked 'F.P.' on the County Series maps. While this does not necessarily denote that the route was believed to be a public footpath¹⁶, it does suggest that it was considered far from suitable for horses or wheeled traffic. This is entirely consistent with current topography of the route and, in particular, the gradient to the east of points C and D. However, it should be noted that the purpose of the annotation was to ensure that members of the public did not mistake the route for one which was 'traversable by horses or wheeled traffic'. That does not necessarily mean that the route was unusable by such forms of traffic, only that it might be inadvisable to do so or that it was not to be encouraged.

8.22. While it would undoubtedly be very difficult, and probably dangerous, to ride a horse from the application route down the gradient to the carriageway it might well have been possible to use the trodden route across the gradient of the slope from point C (as described in paragraph 2.4) particularly if one were leading, rather than riding, a horse. This is supported by the pre-inclosure evidence which implies that the route was being used by horse riders.

8.23. The third respect in which late 19th and early 20th century OS maps are of assistance in terms of the status of the application route is that it is shown on the Revised New Series map initially as an unmetalled road and then, east from point A1, as a footpath. However, given that it is not known how bridleways would have been shown, this evidence needs to be treated with some caution.

8.24. While it is clear that the application route had come back into existence by the latter half of the 19th century (if not before), it is harder to verify its continued existence. The route is not depicted on the 1919 Woolcotts Farm Plan or visible on the 1946 aerial photograph. Neither of these two documents offer support for the existence of a physical route although they do not necessarily disprove such existence either.

¹⁶ As mentioned above, case law has shown that OS mapping is not direct evidence of status.

8.25. Having established that the route did come back into existence at some point after inclosure, it remains necessary to consider what, if any, public rights were dedicated over that post inclosure route. In this respect, the Finance Act 1910 is of some assistance. As explained above, the Valuation Book shows that the rights of way deductions for the relevant hereditament were made for footpaths. While it is possible that the landowner would have acknowledged the application route as a bridleway but not sought a deduction, a more persuasive explanation is either that the landowner did not consider the route to be a right of way or that she believed it to be a footpath.

8.26. Maybe the strongest piece of evidence against the route having been dedicated as a bridleway post-inclosure comes from the gradient of the eastern end of the application route down to the carriageway. It is undeniably true that the trodden route would be difficult to use on horseback. Indeed it would be impossible for some (but not all) horses/horse riders. This is no doubt why the OS marked the route F.P on their maps. Any gate located at the top of the bank would only have made negotiating the gradient harder. Furthermore, since 1804 an alternative route has existed leading south from point A and avoiding the steep gradient.

8.27. However, this does not mean that the route was historically incapable of use. The evidence of Respondent A suggests that the steps in the highway verge are a relatively recent addition. Furthermore, the roadway into Kings Brompton Forest (which meets Bryants Bridge at the point where the trodden route meets the carriageway) has been created since 1946 (it does not appear on the aerial photograph of that year). As such the trodden route and, in particular, the bottom section of it is likely to have been of a different topography in the past.

8.28. Furthermore, while in recent years there has been a gate or stile at point C, that does not mean that this has always been the case. The tithe apportionment shows that in the 1840s the land was used for arable purposes rather than for grazing livestock. There may therefore have been no need for a gate. In any case, any gate which was present would have been on the flattest part of the slope and could easily have been made to gently 'self close' by off setting the hinges. Some smaller horses and ponies would be able to turn in the space available while those leading or riding horses that could not turn would be able to push the gate open, walk through and allow it to swing close behind them. It is accepted that this is not considered 'best practice' among horse riders today as it risks the gate closing on back of the horse, but it is nevertheless a method of negotiating gates which is used and was no doubt more common in centuries past.

8.29. None of the above is intended to suggest that it would have been easy to take a horse from point C to the metalled carriageway. In fact, OS County Series mapping makes it clear that such use would have been difficult. However, use, even if that was leading rather than riding a horse¹⁷, must have been possible otherwise it would not have existed as a route of such significance prior to inclosure.

8.30. In summary there is good evidence that the application route physically existed as a significant feature on the landscape, and that it was probably used by equestrians and/or vehicles, prior to inclosure. The inclosure award itself stopped up any pre-existing rights and there is little evidence that use continued in the period immediately after inclosure. The route did however reappear by or before the late 19th century. By this time it was considered unsuitable for horse riders and wheeled traffic, probably on account of the gradient where the route joins the vehicular carriageway in the east. Furthermore, while the landowner at the time appears to have accepted footpaths over her land, she did not explicitly acknowledge the application route as a bridleway. It is uncertain what, if any, use continued in the early part of the 20th century but, any rights which may have existed were no longer being exercised by the time that the Definitive Map was being produced. Had there been any such use one would have expected the route to have been claimed by the Parish Council or at least for the Ramblers' Association's objection to have not received such strong opposition. There is also little evidence of equestrian use since the route was added to the Definitive Map. In fact at times the route appears to have been obstructed by fences and stiles making it impossible to use by horses¹⁸. This conclusion is consistent with the recollection of the two respondents neither of whom recall any equestrian use. Furthermore, since the production of the Definitive Map the route appears to have had the reputation of a footpath¹⁹. It should however be noted that, no amount of lack of use can lead to a pre-existing right of way being extinguished. Therefore, if a bridleway had come into existence prior to the drafting of the Definitive Map, a lack of use in more recent times will not have extinguished those rights.

8.31. It is suggested that the evidence summarised in the above paragraph would be insufficient to demonstrate the existence of a public bridleway. This is particularly the case given the proximity of bridleway DU1/27 which offers a convenient alternative route for equestrians. However, this would be to ignore

¹⁷ A bridleway is a route over which there is a right, amongst other things, to lead, as well as ride a horse.

¹⁸ The evidence from SCC files (see paragraph 4.10.5), the 1984 Ramblers Association letter (paragraph 4.10.19), and Landowner A (paragraph 5.1) all point to the route having been obstructed by fences and stiles in the later half of the 20th century.

¹⁹ Exmoor National Park Authority installed stiles on the route (which they would not have done had they believed it to be a bridleway) and the Ramblers' Association refer to it as a footpath in their 1984 letter (see paragraph 4.10.19).

the evidence of the Definitive Map and associated documents. These weigh strongly in favour of the route being a bridleway. As previously mentioned, unless there is evidence to the contrary, it must be assumed that the County Council followed the correct procedures when initially preparing the Definitive Map and that they would not have recorded the application route as a bridleway unless they had evidence of sufficient weight before them. If they did not have such evidence they would not have recorded rights.

8.32. In this case there is strong evidence that any rights which had existed were stopped up by the Inclosure Award in 1804. There is also evidence showing that the route was unlikely to have been in use at the time the Definitive Map was being prepared. However, there is no evidence which positively precludes equestrian rights having been dedicated after the Inclosure Award.

8.33. No record has been found of what evidence the County Council considered in reaching its decision to record a bridleway. However, it is clear that the matter of status was considered as the County Council's initial recommendation that the route was a footpath was later amended to a bridleway. This adds weight to the conclusion that the County Council must have had some evidence of bridleway status available to it. At this distance in time, it is maybe not unsurprising that we no longer have a record of what that evidence might have been. Situations such as this were envisaged by Lord Phillip in the Trevelyn case when he stated:

'Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake'²⁰.

8.34. While, in the absence of the Definitive Map and supporting documents, the evidence available today does not necessarily demonstrate the existence of a bridleway, it does not disprove it or displace the presumption that the Definitive Map is correct.

B-C or B-D

8.35. Having reached the conclusion that the application route is correctly recorded as a bridleway, the question of its alignment at the eastern end becomes relatively straightforward. The only route that a horse could potentially take to reach the carriageway would have been across the gradient from point C; i.e. the trodden route.

²⁰ Paragraph 38 of *Trevelyan v Secretary of State for Environment, Transport & Regions* [2001] EWCA Civ 266

8.36. It is accepted that the OS 1st Edition County Series map shows a route leading B-D. However, by the second edition this had been amended to B-C. The reason for the change is uncertain and it is of course possible that the route physically moved in the years between each edition. However, given the gradient is even steeper at point D it is entirely plausible that the 1st edition was in error and that this was corrected for the publication of the second edition.

8.37. Based on the conclusion that the application route is a bridleway, the only route that it could possibly have taken is B-C as recorded on the Definitive Map and Statement.

North or south of the field boundary between A and A1

8.38. The green line denoting DU1/25 on the Definitive Map between point A and A1 is ambiguous. Although it is predominantly to the north of the field boundary, it partially dips to the south. In the circumstances, it would be useful for the correct line to be clarified.

8.39. The field boundary itself was not set out as part of the inclosure process but nevertheless appears to be of some antiquity. It therefore seems likely that the application route runs either to the north or the south of the boundary rather than along the centre of it. The Definitive Statement currently offers little assistance in determining which, simply referring to a bridleway running 'in an easterly direction' from its junction with DU1/33.

8.40. The Definitive Map and Statement preparation documents are of more assistance. The draft modification map shows the bridleway in much the same way as the Definitive Map itself; i.e. spanning the boundary line. However, the green line moves entirely to the north of the boundary before it reaches A1. This is noteworthy as, when the map and statement were first produced bridleways DU1/25 and DU1/27 ran over the same route between A and A1 (DU1/27 has since been diverted). The drafting of the Draft Modification map suggests that anyone travelling north on DU1/27 would have had to cross to the northern side of the field boundary before continuing their journey east or west. There is currently a gate in the field boundary which would allow the user to cross it at this point.

8.41. The Provisional Map is even more clear as to the location of the bridleway. While part of the green line does occasionally stray to the south, the majority is to the north of the boundary.

8.42. The conclusion that the Definitive Map and Statement show DU1/25 to the north of the field boundary is also supported by the recollections of both Respondent A and B.

8.43. This is not to say that, at certain times there has not been a physical route to the south of the boundary. A southern route is shown on both the OS 1st and 2nd Edition County Series maps. However this is as well as, rather than instead of, the route to the north of the boundary.

8.44. It is accepted that there is some ambiguity in the line of DU1/25 as shown on the Definitive Map and Statement. However, when looked at as a whole the evidence shows that the intention of the draftsmen was to show the right of way running to the north of the boundary. It is therefore recommended that the Definitive Statement be amended to resolve the ambiguity and make it clear that the footpath as recorded is to the north of the field boundary.

9. **Summary and Conclusions**

9.1. This investigation focuses on the status and alignment of the route shown as DU1/25 on the Definitive Map and Statement.

9.2. The Map and Statement provide conclusive evidence of a bridleway over the application route. However, an order to delete or downgrade the route can, and should, be made if it is shown on the balance of probabilities that the route carries lesser rights or no rights at all.

9.3. In determining whether or not an order to delete or downgrade should be made the decision maker must consider three questions:

- i) is there new evidence;
- ii) is the evidence as a whole of sufficient substance to displace the presumption that the Definitive Map is correct; and
- iii) is the evidence as a whole cogent.

9.4. In this case the Finance Act and respondents' statements are new evidence material to the status of the application route. Furthermore, with the exception of the Definitive Map and associated preparation documents, there is little evidence in favour of a public bridleway. However, there is no evidence which precludes the route from having become bridleway at some point since the 1804 Inclosure Award. In the circumstances, one must presume that in adding the route to the Definitive Map the County Council had evidence of its status. While it is true that we no longer have a record of what that evidence was, it is all the more likely to have existed given that a conscious decision was made to record a bridleway despite initial suggestions that it was a footpath. The County Council would not have amended the status without good reason and there is no evidence to suggest that they misguided themselves in reaching the decision that they did.

9.5. If the route had been a bridleway, those rights will continue to exist today even if the route in question has not been used in recent times.

9.6. In cases such as this it is not for the County Council, or anyone else, to demonstrate that the route is correctly shown on the Definitive Map. The burden of proof rests with the party who is alleging that the Map is incorrect. In this case that burden has not been discharged.

9.7. On the basis that the route is a bridleway, the most likely alignment must be B-C, rather than B-D. This offers the most suitable route down the steep slope to the metalled carriageway. It is accepted that this is not the route shown on the OS 1st Edition County Series map, but that map was updated for the 2nd edition demonstrating that a route from B-C did exist.

9.8. There have been further questions with regard the alignment of the application route between A and B. Here the Definitive Map shows the bridleway straddling the historic boundary feature. It is implausible that the draftsmen intended this but the Definitive Statement offers no assistance in determining whether the right was to the north or the south of the boundary.

9.9. When viewed as a whole the evidence suggests that routes have existed to both the north and the south of the boundary between points A and A1 (although the route to the north appears to be older). However, the draft modification map and the provisional map indicate that the draftsman intended to show the bridleway as following the northern route. This is supported by the recollection of two respondents. It is therefore recommended that the particulars contained in the Definitive Statement be modified so as to avoid any ambiguity.

10. **Recommendation**

It is therefore recommended that:

- i. No order should be made to modify the status of Bridleway DU1/25 as shown on the Definitive Map and Statement.
- ii. No order should be made to modify the alignment of that part of Bridleway DU1/25 as shown B-C on plan H18-2019.
- iii. An Order be made, the effect of which would be to amend the Definitive Statement for Bridleway DU1/25 so as to clarify that it runs to the north of the field boundary between points A and B as shown on plan H18-2019.
- iv. if there are no unwithdrawn objections to such an order it be confirmed

- v. 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 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 (H18-2019)
2. Regulation Committee report and minute – 1 March 2012.
3. Photographs of the claimed route
4. Inclosure documents
5. Tithe Map and Apportionment
6. Ordnance Survey records
7. Finance Act documents
8. Highway Road Records
9. Definitive Map and Statement records
10. Minutes of Brompton Regis Parish Council 1954-1959
11. Day and Masters Map
12. Greenwoods Map
13. Letter from SCC to the Ramblers Association dated 17 February 1955
14. A Plan of Higher Woolcotts Farm and Blagdon Hill in Kings Brompton 1780
15. A Plan of Woolcotts Farm at Kingsbrompton 1919
16. 1959 Abstract of Title relating to Kingsbrompton Farm
17. Aerial photograph 1946
18. Ramblers Association letter to Exmoor National Park Authority dated 23 August 1984
19. Landowner A's submissions on the draft report