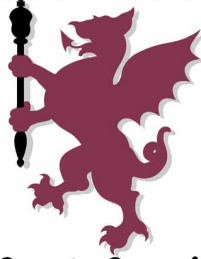


SOMERSET



County Council

WILDLIFE AND COUNTRYSIDE ACT 1981
SECTION 53, SCHEDULE 14 APPLICATION TO UPGRADE PART OF
FOOTPATH Y 9/35 TO A BRIDLEWAY, FROM THE EASTERN END OF
RESTRICTED BYWAY Y 9/49 SOUTHWARDS TO THE JUNCTION WITH
FOOTPATH Y 9/46 IN THE PARISH OF EAST COKER

Application: 812M/874M

Author: Harry Wood

Date: 30 March 2021

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to discuss the details.

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1. Introduction

1.1. In March 2015 Somerset County Council (SCC) identified the need to investigate the route of part of footpath Y 9/35, as described in paragraph 3 below, after being made aware of evidence that suggested a possible error in the Definitive Map and Statement (DMS). The route in question is shown on drawing number H58-2020 (Appendix 1). This was registered under the reference number 812M. Subsequently on the 23 August 2019, South Somerset Bridleways Association (SSBA) made an application under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 for an Order to amend the Definitive Map and Statement by upgrading the same stretch of footpath to a public bridleway. This application was registered under reference number 874M.

1.2. For convenience, the route under consideration is referred to as “the application route” throughout this report. In turn, evidence and interpretation offered by SSBA will be referred to as that of “the applicant”.

1.3. A public bridleway can be used by the public on foot, with bicycles, and riding or leading a horse.

1.4. The purpose of the report is to establish what public rights, if any, exist.

2. The application and supporting evidence

2.1. The application is based on documentary evidence and includes extracts of the following documents:

- Quarter Sessions Records 1899-1900
- Finance Act Records 1910

2.2. Based on these documents the applicant has concluded that:

“The Quarter Sessions Records are evidence of the dedication of a bridleway. This was a legal Act and therefore the dedicated route should be added to the Definitive Map.

“As a result of the common law maxim ‘Once a highway always a highway’, in the absence of a stopping up order, it follows that bridleway rights created in 1899 still exist.”

2.3. No user evidence was submitted with the application. No first-hand evidence that the general public have used application route as a bridleway has been found during the investigation.

3. **Description of route**

3.1. The application route runs due south from the eastern end of restricted byway Y 9/49 (to the west of Naish Priory) to the junction with footpath Y 9/46, at the northwestern corner of North Coker Park.

3.2. The application route is approximately 280 metres in length and is bounded by pedestrian kissing gates at either end. When the path was visited in November 2020 it was lined by mature hedges on its eastern side and a barbed wire fence on the western side. The hedgerow had a bank around one metre in, which ran from point A to between points B and C. The width of the route varied between 2.5 and 2.75 metres, though the hedgerow accounted for a metre of this width for most of the route. The available width (between fence and hedge) was 1.7 metres at point A, 1.7 metres at point B, 1.6 metres at point C, and 1.8 metres at point D. There was a clearly walked earth surface for the full length of the route which varied between 40cm and 50cm. There are fingerposts at either end of the route that identify the route as a footpath, which is consistent with the status currently recorded in the DMS.

3.3. Photographs of the claimed route taken on 26 November 2020 are at Appendix 3.

3.4. A land registry search was carried out on 28 October 2020 which identified three joint owners for the application route and three owners of adjacent land. A plan of the landownership is shown at Appendix 2.

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

4. **Relevant legislation**

4.1. Section 53(2)(b) of the Wildlife and Countryside Act 1981 provides that the County Council must keep the DMS under continuous review and *must* make such modifications as appear to them to be requisite in the light of certain specified events. In this case 53(3)(c)(ii) is of particular relevance.

4.2. 53(3)(c)(ii) states that the Map and Statement should be modified where the County Council discover evidence which, when considered with all the other

available evidence, shows "that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description".

4.3. Later in the same Act, section 53(5) enables any person to apply to the Local Authority (Somerset County Council) for an Order to be made modifying the DMS in respect of a number of "events", including those specified in Section 53(3)(C)(ii) as quoted above. On receipt of such an application the County Council is under a duty to investigate the status of the route. It was under these provisions that SSBA made their application.

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

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

4.6. Any changes to the DMS must reflect public rights that already exist. It follows that changes to the DMS must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an order changing the DMS 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.

5. **Documentary Evidence**

5.1. The section below lists the documentary evidence examined as part of this investigation. In some cases it has not been possible to view the original copy of a document and it has instead been necessary to rely entirely on an extract supplied by the applicant. Where this is the case the words "extract only" follow the title of the document. If it has been necessary to give those

documents less weight on account of them only being viewed in part this has been made clear in the description and interpretation of the evidence.

5.2. Throughout discussion of the evidence, comparison is occasionally drawn to the way in which other routes in the immediate vicinity of the application route have been recorded. Where other rights of way, roads or physical features have been referred to their location has been identified in Appendix 1.

5.3. **Quarter Sessions records**

Explanation of the type of evidence

5.3.1. Many functions now dealt with by local and central government were previously dealt with at the Court of the Quarter Sessions under the jurisdiction of the Justices of the Peace, who were advised by a Clerk of the Peace. Amongst other matters, the Justices were responsible for the maintenance of county bridges, and for ensuring accountability when parishes failed to maintain their roads properly. Diversions and extinguishments of rights of way were dealt with at the Quarter Sessions, and Justices certificates in respect of the completion of the setting out of roads were also issued. These records are capable of providing conclusive evidence of the existence of public rights of way.

Evidence

5.3.2.

- A: **Depositions** (18 August 1899)
Source: South West Heritage Trust (SWHT)
Reference: SHC Q/SR/797/156
Appendix number: 4
- B: **Exhibits** (25 March to 17 August 1899)
Source: SWHT
Reference: SHC Q/SR/797/157-165
Appendix number: 4
- C: **Certificate of the Justices** (18 August 1899)
Source: SWHT
Reference: SHC Q/SR/797/166-167
Appendix number: 4

- D: **Certificate of completion** (20 October 1899)
Source: SWHT
Reference: SHC Q/SR/798/3
Appendix number: 4
- E: **Quarter Sessions order book** (1891-1905)
Source: SWHT
Reference: SHC Q/SO/27
Appendix number: 4

Description and interpretation of evidence

5.3.3. These documents together record the process by which a new bridleway was created on an alignment consistent with the application route. This bridleway was to replace a footpath that ran slightly to the east of the new route. The public right of way on this footpath was extinguished as part of the same process.

5.3.4. Source A contains three depositions "made upon oath" before two Justices of the Peace discussing "the stopping up diverting and turning of a certain footway". The depositions explain that the relevant landowner, George Troyte Chafyn-Grove of North Coker House, sought to stop up, turn and divert the public footpath that crossed his land. In exchange he was offering to create a public bridleway over the application route.

5.3.5. Source B contains numerous documents (labelled B, C, D, E, F, G, H, J, and K) including copies of notices served on East Coker Parish Council, Yeovil Rural District Council, posted on village notice boards and printed in a local newspaper, stating the landowner's desire to stop up, turn and divert the public footpath and to create a public bridleway over the application route. The specifics of these documents are explained by the depositions in Source A and are also summarised in Source E.

5.3.6. The Certificate of the Justices (Source C) records that in March 1899 Chafyn-Grove had informed Yeovil Rural District Council that he was desirous "of stopping up diverting and turning a certain footway" which ran "from a point close to the northwestern corner of North Coker Park" in a "northerly northeasterly and northerly direction" and ended at a point where it joined a highway adjoining Nash House (Naish Priory). The described route is depicted in a map (labelled "Plan A") that accompanies Source C, coloured green and running along points B, C, D and E (Appendix 4).

5.3.7. The same map depicts Chafyn-Grove's "Proposed New Bridleway". Coloured red, it runs due north from point B to A, in an alignment consistent with what is now the northern section of footpath Y 9/35 (i.e. the application route).

5.3.8. Source E (the Quarter Sessions Order Book) confirms that the proposals were discussed and approved at meetings of both Yeovil Rural District Council and East Coker Parish Council and that the necessary public notices were posted.

5.3.9. Source C records that both routes were inspected on the 4 July 1899 by two Justices of the Peace. They agreed that "the proposed said new bridleway is and will be nearer and more commodious to the public", as the old footway was often "wet miry and bad for travelling and is open as a footpath only", whereas the new route would be drier and was to be available "as a public bridleway". The Justices go on to certify that "the said footway may be turned diverted and stopped up". Source E records that the Certificate of the Justices and the accompanying Plan A were lodged with the Clerk of the Peace by 11 September 1899 in advance of the Michaelmas Quarter Sessions beginning at Wells on 18 October.

5.3.10. Quarter Sessions order books "record the decisions made by the justices on administrative and judicial matters".¹ In this case the order book for the Michaelmas Session (Source E) asserts the following:

"This Court doth order [...] that the said old footway mentioned and described in the said certificate [Source C] and particularly delineated in the said plan [Plan A] [...] be diverted and turned as proposed and that the said proposed new bridleway [...] be substituted in lieu thereof and that when the said proposed new bridleway shall be made and put into good condition and repair as so certified by two Justices of the Peace [...] upon view thereof pursuant to the statute in that case made and provided the said old footway so ordered to be diverted and turned as aforesaid be entirely stopped up."

5.3.11. Dated 20 October 1899, Source D records that Robert Aldworth and E. H. Berkley, "two of Her Majesty's Justices of the peace [...] Do hereby certify that we have this day viewed a certain new bridleway in the parish of East Coker [...] recently formed and constructed", and confirms "that upon such view [...] that the aforesaid new bridleway [...] is now completed and put into good condition and repair."

5.3.12. These documents offer a detailed timeline of the legal process by which the application route came into being as a right of way. They highlight that all necessary procedural matters were undertaken; that two Justices of the Peace

¹ J. Pearson, 'Quarter Sessions Records', *Rights of Way Law Review*, 9.3, p. 4 (CD Edition).

inspected both the existing and the proposed routes; and on a further inspection, that the new route had been created and was of the required standard. Source D is of particular importance, as the Certificate of Completion confirms that the process had reached its end, meaning that the new bridleway had been established. It is therefore clear that on its inception in October 1899 the application route was created as a bridleway.

5.3.13. The Justices of the Peace presiding at Quarter Sessions had the power to extinguish and divert public rights of way. As such, Quarter Session records can provide "evidence of the legal changes to route[s]"² and in some instances "conclusive evidence of the stopping up or diversion of highways".³ These documents clearly identify the full length of the application route as a new public bridleway to replace a now-extinguished footpath. The documents demonstrate the legal establishment of public bridleway rights over the application route in 1899. The Quarter Sessions evidence is therefore of significant evidential weight, as it strongly indicates that the application route was created as a bridleway in 1899. If the public bridleway rights have not been legally stopped-up since (and there is no evidence to suggest they have) they will still exist today.⁴

5.3.14. Despite their nineteenth century provenance, these documents can also be considered to meet the "discovery of evidence" test within Section 53 of the Wildlife and Countryside Act 1981. Due to their evidential strength it can be inferred that they were not consulted during the original drafting of the Definitive Map and Statement, as otherwise the route would certainly have been recorded as a bridleway.

5.4. **Ordnance Survey Maps**

Explanation of the type of evidence

5.4.1. The Ordnance Survey (OS) are generally accepted as producing an accurate representation of routes on the ground at the time of the survey.

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

² J. Riddall and J. Trevelyan, *Rights of Way: A Guide to Law and Practice, Fourth edition* (London: Ramblers' Associate and Open Spaces Society, 2007), p. 149.

³ *Definitive Map Orders: Consistency Guidelines, Third revision* (2013), 6.3.

⁴ The author has searched the Quarter Sessions archive at the Somerset Heritage Centre and consulted Somerset County Council's records. No evidence has been found to suggest that the application route was the subject of an extinguishment order. No evidence has been found to suggest that the Court Order was opposed or challenged.

Evidence

5.4.3. **OS County Series First Edition 25 Inch Map**

Sheet No: Somerset XC.5

Survey Date: 1886

Scale: 1:2500

Appendix number: 5

5.4.4. This map represents the original footpath (that is, the route described at paragraph 5.3.6.) as it was prior to its diversion in 1899.

5.4.5. The route is depicted between two parallel lines of equal width for the first third of its length (broadly in line with points D to C on Appendix 1, though on the eastern side of the field boundary). It then turns to the northeast towards Longland's Farm, with the route changing to parallel dashed lines labelled with the letters "F. P.". On reaching Longland's Farm it meets one route heading north west towards Nash House, and a second route heading south east towards Sheepslake. There is no evidence of a physical path existing along the line of the application route.

5.4.6. The County Series First Edition 25 Inch Map helps to corroborate "Plan A" that accompanies the Certificate of the Justices (see Quarter Sessions evidence above, and Appendix 4).

5.4.7. **OS County Series First Edition Six Inch Map**

Sheet No: XC. N.W.

Survey Date: 1886

Scale: 1:10,560

Appendix Number: 5

5.4.8. As with the 25 Inch County Series Map, the Six Inch Map represents the original footpath as it was prior to its diversion in 1899. The footpath is depicted by a single dashed line, rather than the parallel lines of the 25 Inch Map. In other respects the two maps are consistent, and therefore the same inferences can be drawn.

5.4.9. **OS County Series Second Edition 25 Inch Map**

Sheet No: Somerset XC.5

Survey Date: 1886; Revised: 1901

Scale: 1:2500

Appendix number: 5

5.4.10. Published in 1903, this map was based on survey revisions conducted in 1901. It shows a route represented by a single dashed line, labelled with the letters "F. P.", and running in a line consistent with the application route. The route is depicted with solid lines across either end. This may indicate the presence of gates, though other interpretations are possible.

5.4.11. **OS County Series Third Edition 25 Inch Map**

Sheet No: Somerset XC.5

Survey Date: 1885; Revised: 1927

Scale: 1:2500

Appendix number: 5

5.4.12. The 1927 revision records the application route in the same manner as the 1901 County Series map. It shows a route represented by a single dashed line, labelled with the letters "F. P.", and running in a line consistent with the application route. As with the 1901 map, there are solid lines across each end of the route.

5.4.13. **OS Map I**

Source: Extract supplied by Landowner E

Appendix number: 5

5.4.14. This map was submitted to the investigating officer by Landowner E in January 2021, alongside extracts of the 1901 and 1927 25 Inch County Series maps (discussed above) and a more recent OS walking map (discussed below).

5.4.15. The exact OS sheet and series is unclear, but it appears consistent with the Six Inch Second Edition 1901 map (Dorset Sheet XI.NW). As such, no further comment is offered and attention is drawn to the analysis starting at paragraph 5.4.7.

5.4.16. **OS Map II**

Source: Extract supplied by Landowner E

Appendix number: 5

5.4.17. This map was submitted to the investigating officer by Landowner E in January 2021. The exact OS sheet and series is unclear, but it appears consistent

with the modern OS Explorer series (although the date of publication is unknown).

5.4.18. The map appears to be a black and white photocopy. The application route is shown on modern Explorer maps by a single green dashed line, indicating that it is a footpath. The application route has been highlighted by Landowner E on the submitted extract, drawing distinction with the representation of restricted byway Y 9/50.

5.4.19. Modern OS maps provide good evidence of the physical character of the routes they depict. However, given that the application route is currently recorded as a footpath in the Definitive Map and Statement, it is to be expected that this has been carried over into contemporary mapping, particularly as OS take their rights of way information from the various definitive maps produced nationally. The depiction of the application route as a footpath in the OS Explorer series, therefore, has minimal evidential bearing on its current status.

Description and interpretation of evidence

5.4.20. The Ordnance Survey maps consulted offer a useful representation of the evolving physical character of the application route. Between them they record the physical diversion of the path on the ground at the time of the 1899 Quarter Sessions order. They also indicate that the application route has remained in its current position from at least 1901 onwards.

5.4.21. Following the 1899 diversion, OS annotate the application route 'F.P.'. From 1883 onwards OS used this type of lettering to ensure "that the public may not mistake them for roads traversable by horses or wheeled traffic".⁵ They were not directly commenting on the status of the routes in question.

5.4.22. Since 1888 Ordnance Survey maps have carried the following statement: "The representation on this map of a road, track or footpath is no evidence of the existence of a right of way".⁶ This disclaimer is reinforced by case law, which states that OS maps are "not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate".⁷

5.4.23. Despite its representation from 1901 onwards as a route considered unsuitable for horses or wheeled traffic, the application route enjoyed the legal status of bridleway from 1899. Nonetheless, it is curious that the OS surveyor

⁵ 'Footpaths', Ordnance Survey Southampton Circulars (16 February 1883), in R. Oliver, *Ordnance Survey Maps: a concise guide for historians, third edition* (London: Charles Close Society, 2013), p. 109.

⁶ Oliver, *Ordnance Survey Maps*, p. 114.

⁷ *Moser v Ambleside Urban District Council* [1925] KLR p. 537.

determined in 1901 (only two years after the application route was diverted) that it was only suitable for pedestrian traffic. If it is accepted that the surveyor provided an accurate reflection of the physical quality of the route, then it can be inferred that the route had either rapidly declined in condition between 1899 and 1901, or had been in the first instance constructed closer in physical character to a footpath than a bridleway. The latter of these is perhaps unlikely given that the Justices of the Peace certified that the bridleway was in good condition and repair in 1899. It is also possible that limitations had been installed (such as kissing gates) that made the route unsuitable for horses.

5.4.24. From 1901 Ordnance Survey appear to have considered the route unsuitable for horses and horse-drawn carts. Taken in isolation, this may appear to be evidence against the existence of a bridleway at that time. However, this should not be seen as a direct comment on the status of the route and needs to be considered in light of all the other available evidence, and the Quarter Sessions records in particular.

5.5. Local Authority Records

Explanation of the type of evidence

5.5.1. 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, as representatives of the local community they would likely have had an interest in the rights of way network. This would have particularly been the case for parish councils

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

5.5.3. **East Coker Village Map**

Source: Extract supplied by East Coker Parish Council
Appendix number: 6

Description and interpretation of evidence

5.5.4. This map was submitted to the investigating officer by the Clerk of East Coker Parish Council in January 2021. The exact provenance of the map is unclear, but it is thought to have been produced as the result of a Parish rights of way survey conducted during the 1990s. The Clerk suggests that the map

was “signed off” by Somerset County Council, but the exact nature (if any) of local authority involvement in this process remains unconfirmed

5.5.5. The map uses an Ordnance Survey sheet as its base. It appears to be a Six Inch County Series map, though the exact series, sheet, and date is unknown. The application route is labelled on the base map with the letters F.P.. The inference to be drawn from this, and the weight to be attributed to OS maps, is discussed in section 5.4 above.

5.5.6. The Village Map has been annotated to identify the rights of way of East Coker and appears to be consistent with the DMS. The rights of way, including the application route, are all indicated by a single red dashed line. There is no legend or key included with the extract, and by extension, no distinction between different categories of rights of way. It is therefore not possible to ascertain whether the application route is marked as a footpath or bridleway or another classification of right of way.

5.5.7. The Village Map is thought to have been produced after the DMS and with at least some County Council involvement. In the circumstances, it would not have been surprising for this map to have mirrored the information within the DMS. The DMS, which currently records the application route as a public footpath (see paragraph 5.6.), is without prejudice to the existence of higher rights. Therefore, even if the Village Map had clearly indicated that the application route was a footpath (which it does not), it would carry little evidential weight.

5.5.8. The East Coker Village Map offers good evidence of the physical character of the application route. It also supports the conclusion that the application route has the reputation of a public right of way. However, as the map makes no distinction between rights of way classifications, it is not possible to tell whether it is marked as a footpath, bridleway or something else. Furthermore, even if it were clearly marked as a footpath, it is unlikely to have been of much evidential weight. Finally, the lack of information regarding its provenance means that the reliability of the document is reduced. Even with more detailed background information, the document would not be capable of overturning the higher public rights created by the Quarter Sessions.

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

Explanation of the type of evidence

5.6.1. 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:

- 1) Walking Survey Cards and Map - parish councils were required to survey the paths they thought were public paths at that time and mark them on a map. The routes were described on survey cards, on the reverse were details of who walked each route and when. Queries for the whole parish are often noted on a separate card.
- 2) 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.
- 3) Draft Modification Map – This stage in the process was non-statutory. Somerset County Council 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.
- 4) 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.
- 5) 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.

5.6.2. **Survey Map**

Source: Somerset County Council (SCC)

Reference:

Appendix number: 7

5.6.3. The Survey Map was designed to illustrate rights of way claimed by the parish. These routes are shaded grey on the map.

5.6.4. The application route is shaded grey for its full length, meaning that it was claimed as a right of way by East Coker Parish Council. The route is annotated "WG" at either end, presumably standing for "wicket gate".

5.6.5. **Survey Card**

Source: SCC

Reference: East Coker Parish no. 35

Appendix number: 7

5.6.6. The Survey Card describes the full length of what is now Y 9/35, beginning at the junction of paths 29, 30, and 32. The section that constitutes the application route describes a footpath from "wicket gate straight along W. of Longlands to wicket gate onto Naish Priory road." It is signed in triplicate by the person who walked the route, and the clerks of the Parish and District Councils. The card is written partly in pencil and partly in pen, perhaps indicating that it was not all written at the same time (though the text all appears to be in the same hand).

5.6.7. There is no mention of the application route on the Queries card.

5.6.8. **Draft Map**

5.6.9. The Draft Map is missing.

5.6.10. **Summary of Objections to the Draft map**

5.6.11. No objections are recorded relating to the application route.

5.6.12. **Draft Modification Map**

5.6.13. The Draft Modification Map is missing.

5.6.14. **Provisional Map** (1971)

Source: SCC

Reference: Sheet 5

Appendix number: 7

5.6.15. The application route is shaded purple from points A to D, indicating its status as a public footpath. It is labelled in pencil 9/35.

5.6.16. **Definitive Map**

Source: SCC

Relevant Date: 4 June 1956

Appendix number: 7

5.6.17. The application route is labelled Y 9/35 and shaded purple from points A to D, indicating its status as a public footpath. The Definitive Map offers conclusive evidence of public rights of way at its relevant date. However, it is without prejudice to other or higher rights.

5.6.18. **Statement**

Source: SCC

Reference: 35

Appendix number: 7

5.6.19. The application route is recorded as a footpath. The full length of Y 9/35 is described as running "north west and then north through North Coker Park and to Naish Priory".

Description and interpretation of evidence

5.6.20. The Definitive Map and Statement offer conclusive evidence of public rights of way at their relevant date. Together they are the definitive record of the existence of public rights of way. However, the DMS are without prejudice to other or higher rights.

5.6.21. The recording of the application route as a footpath in the DMS may have been consistent with the use that the route was receiving at the relevant date of the Map. However, this does not preclude the possibility that higher rights exist and are currently unrecorded. The fact that the DMS currently records Y 9/35 as a footpath, then, does not impact any higher rights (such as bridleway rights) that may exist.

6. Landowner Evidence

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

Landowner A: Asserted that they are part owner (alongside landowners B and C) of the field through which the application route runs. Expressed opposition to prospective upgrade. Confirmed that the barbed wire fence on western edge of footpath was erected by the current landowners “many years ago”. Expressed concerns about change to current status including the presence of badger setts, safety implications for equestrian and pedestrian users (particularly children *en route* to East Coker School), and the future of the “beautiful and charming” kissing gates. Highlighted the existence of convenient alternative routes for horse riders.

Landowner B: Confirmed that they have part owned the field through which the application route runs since the late 1960s. In that time “there has always been two Victorian kissing gates at either end of the footpath”. Expressed opposition to the proposals citing concerns about the safety of pedestrian users. Questioned whether it is possible to have cul-de-sac bridleway rights, drawing reference to an ongoing investigation concerning footpath Y 9/46. Also questioned whether it is possible for a route on the DMS to have dual status (e.g. part footpath part bridleway). Raised the importance of the East Coker Neighbourhood Plan, suggesting this corroborated the status of local rights of way and “is a legal document set by the government”. Asserted that, as joint landowners, “we would not be willing to give any land to widening any of the paths”.

Landowner C: Echoed the concerns of Landowner A, and confirmed that the application route is narrow and that the western fence was erected “because people were walking over crops and dogs worrying sheep”. Expressed fear that use of application route may reduce due to safety concerns, raising prospect of knock-on influence on local traffic. Pointed to nearby bridleways and restricted byways, suggesting that maintaining status quo would not deny horse riders access to the local area.

Landowner D: No response received.

Landowner E: Confirmed that they own land adjacent to the application route. Pointed to the representation of the application route in OS Maps from 1901 onwards, highlighting that it is depicted as a footpath. Suggest that “the rights to a bridleway must have been extinguished between 1899 and 1901”. Submitted several OS maps as evidence to this effect.

Landowner F: Confirmed that they own land adjacent to the field through which the application runs and over which the original footpath ran. Asserted that “there was also a proposal to turn it into a bridleway around 1899

however there is no proof this was ever implemented.” Drew attention to the “Victorian kissing gates” at either end of the application route, speculating that these were likely installed at a similar time to the diversion, and arguing as such that “the footpath has never been used as a bridleway”. Raised concerns about the removal of the kissing gates, the safety of equestrian and pedestrian users should an upgrade occur, the cul-de-sac status of potential bridleway rights, and reasoned that “common sense, practicalities and most importantly safety concerns [should] prevail”.

Comments on Landowner Evidence

6.2. The landowners who have responded to the consultation have provided a range of evidence to rebut the claim for higher public rights. They have all recorded that they believe the application route to be a footpath.

6.3. The various OS maps submitted as evidence by Landowner E are discussed in the Documentary Evidence section of the report. No evidence has been found to explicitly support the suggestion that the bridleway rights established by the Quarter Sessions in 1899 were subsequently stopped-up.

6.4. Neighbourhood plans are statutory planning documents. The exact nature of the corroboration described by Landowner B is unknown, but the likelihood is that the process involved consulting the Definitive Map and Statement (DMS), which currently records the route as a footpath (see section beginning at paragraph 5.6.). The DMS offers conclusive evidence of the existence and status of a public right of way until proved otherwise. It is without prejudice to other or higher rights. The fact that the DMS currently records Y 9/35 as a footpath, then, does not impact any higher rights (such as bridleway rights) that may exist. By extension, the presence of Y 9/35 as a footpath in the East Coker Neighbourhood Plan is not a legal record of right of way status and, if based on the DMS, is without prejudice to the existence of higher rights in this case.

6.5. Footpath Y 9/46 is the subject of a modification application that seeks to upgrade the route to a bridleway (see Appendix 1). Landowners B and F make the point that, should Y 9/46 remain a footpath but Y 9/35 be upgraded to a bridleway, then the latter would become a cul-de-sac for equestrian users (though not for pedestrians). While this is not typical, “no rule of law has laid down that a way cannot be a right of way unless its termini are such other rights of way”.⁸ Various examples of case law have determined that rights of way can exist on or as culs-de-sac.⁹ Furthermore, investigation of the application in relation to Y 9/46 may well find that higher rights do exist over that route.

⁸ Riddall and Trevelyan, *Rights of Way: A Guide to Law and Practice*, p. 35.

⁹ See, for example, *Robinson Webster (Holdings) Ltd v Agombar*, QBD [2001] EWHC.

6.6. It is possible for a route shown on the DMS to have dual status (i.e. for a route with one reference number to turn from a footpath into a bridleway part way along). One example is Bitham Lane near Woolavington (BW 2/44), which is currently recorded as part bridleway and part footpath.

6.7. The kissing gates are discussed at paragraph 7.9., below.

6.8. Landowner F suggests that there was “a proposal to turn it [the application route] into a bridleway around 1899 however there is no proof this was ever implemented.” However, this is incorrect. The Quarter Sessions evidence discussed above indicates that the original footpath *was* diverted as a bridleway in 1899. The Certificate of Completion (discussed at paragraph 5.3.11., above) confirms that, upon inspection by two Justices of the Peace, “that the aforesaid new bridleway [...] is now completed and put into good condition and repair.”

6.9. Whilst the concerns raised regarding safety, amenity and desirability are perfectly understandable, they cannot be considered as part of this investigation. The purpose of this investigation is to determine what, if any, public rights already exist over the application route and therefore whether or not the DMS needs to be changed to accurately record those rights. Only relevant evidence can be considered.

7.0. Consultations and other submissions

7.1. Consultations regarding the application route were sent out to all landowners and relevant local and national user group organisations in November 2020. The table below shows who was consulted and gives brief details of replies that were received.

Parish Council: The Clerk of the Parish Council submitted a copy of ‘East Coker Village Map’, a map which was “produced and signed off by Somerset County Council in the 1990s” which depicts the application route as a footpath. The Clerk also submitted ‘References on Old O.S. Maps to Footpath Y9/35 in Vicinity of Naish Priory’, a piece of research conducted by Martin Salzer on behalf of East Coker Parish Council. The Clerk also noted that the application route “was labelled as a footpath within the East Coker Neighbourhood Plan, formally adopted by SSDC [South Somerset District Council] in 2018.” The Parish Council determined that “retention of this route as a footpath would appear to be the most suitable outcome.” Finally, the Clerk asserted that an application has been lodged with Historic England “to list the Victorian kissing gates at either end of this path.”

South Somerset Area Highways Office: Assistant Highway Service Manager

responded by recording the service has no information or records of maintenance for the application route.

No response was received from the following organisations:

- District Council
- Local Member of County Council
- Ramblers' Association – Somerset Office
- British Horse Society – Somerset Office
- Trail Riders Fellowship – Somerset Office
- All Wheels Drive Club
- Open Spaces Society – National Office
- Somerset Environmental Records Centre
- Natural England – Somerset Office
- Ramblers' Association – National Office
- British Horse Society – National Office
- British Driving Society – National Office
- Ramblers' Association – Local Area Representative
- British Horse Society – Local Area Representative
- CPRE – Somerset Office

7.2. The East Coker Village Map, submitted as evidence by the Clerk of East Coker Parish Council, is discussed in the Documentary Evidence section beginning at paragraph 5.5.1., above.

7.3. 'References on Old O. S. Maps' (Appendix 8) is a thorough analysis of a broad range of OS maps "covering the period 1888-2004", conducted by Martin Salzer on behalf of East Coker Parish Council. The document refers to extracts of four of the OS maps discussed above (1886 County Series First Edition 25 Inch Map, 1886 County Series First Edition Six Inch Map, 1901 County Series Second Edition 25 Inch Map, and 1927 County Series Third Edition 25 Inch Map). The analysis of these OS materials is broadly similar to that offered in this report, and so attention is drawn to the analysis beginning at paragraph 5.4.. However, it is important to highlight that Salzer reaches a different conclusion to the investigating officer. He offers an early summary that argues the following, "From the maps examined [...] there is no evidence that this route was ever designated as anything other than a footpath".

7.4. One point of interest raised by this document concerns late-Victorian development at Naish Priory. The author refers to *Buildings of England: Somerset – South & West* (2014) by Nikolaus Pevsner and Julian Orbach. The book suggests that 1899 was the date of a change to the structure of the central portion of Naish Priory. Salzer offers the inference that "differences to the plot

and field boundaries between the 1887 [sic, 1886] and 1901 [OS] surveys might indicate that these changes were made at a broadly similar time." This may well have been linked with George Troyte Chafyn-Grove's plans for diverting the application route, and later maps do suggest changes had occurred on Naish Priory lands. However, though providing some interesting context, this information has limited bearing on the focus of this investigation.

7.5. At paragraph 2.2. of 'References on Old OS Maps' the author discusses three "Post War 2½ inch OS Maps" and suggests that "the latter two" specifically designate the application route "as a right of way". No extracts of these maps have been supplied, so it is difficult to comment further in detail. However, OS maps have since 1888 included a disclaimer that the representation on a map "of a road, track or footpath is no evidence of the existence of a right of way". Though certain 1:25,000 and 1:50,000 OS maps have recorded right of way status since 1960, "these have been derived from definitive maps prepared by local authorities rather than from OS fieldwork".¹⁰ Such maps naturally echo the rights of way status details of the DMS (which as discussed above, currently records the application as a footpath).

7.6. This document also refers to a 2003 inquiry relating to the status of two routes in East Coker, and suggests that the 1886 County Series First Edition 25 Inch Map may have offered importance evidence concerning the eventual upgrade of Y 9/41 to a restricted byway. However, it is unlikely that OS maps provided any more than supporting evidence during the inquiry process. Furthermore, each application investigation must be taken on its own merits. A description of what the 1886 map shows and the inferences which can be taken from it begins at paragraph 5.4.3..

7.7. The 'References on Old O.S. Maps' document provides detailed analysis of the representation of the application route across a range of OS maps and surveys. On its own terms, the document is correct in saying these maps provide "no evidence that this route was ever designated as anything other than a footpath". However, the document does not take into account the compelling evidence of the Quarter Sessions records, despite referring to the fact that the route "was altered sometime between 1886 and 1901".

7.8. The East Coker Neighbourhood Plan is discussed at paragraph 6.4., above.

7.9. The East Coker Parish Clerk makes reference to an application "to list the Victorian kissing gates at either end of this path." While this application remains unresolved it is inappropriate to pre-empt the outcome. However, it is unlikely that any determination by Historic England will have a legal bearing on this

¹⁰ Oliver, *Ordnance Survey Maps*, pp.114-115.

investigative process. It is worth stressing that it has not been confirmed that the gates in question are Victorian. The gates are not referred to in the Quarter Sessions records and, as kissing gates, would be incompatible with equestrian use. This suggests that they were not installed as part of the diversion process and were built after the statutory diversion was completed in 1899. A public right of way may be dedicated or created subject to the right of the landowner to place stiles or gates across it, "but once the public right of way has come into being no further features such as gates may be placed on the way." If the gates were erected after the dedication of the route "without such a condition upon dedication" then they will amount to "a nuisance at common law, and an offence for obstructing the highway under s.137 of the Highways Act 1980."¹¹

7.10. In addition to consulting specific individuals and groups, notices were also posted on site in November 2020 seeking comments on the application. This triggered a large number of responses from members of the public, the vast majority of which expressed opposition to the application. These respondents raised a range of concerns, mostly relating to the width of the current footpath and the lack of passing places, the safety implications for pedestrian, equestrian, and canine users, and the status of the kissing gates at either end of the application route. Most respondents also questioned why the application was necessary given the large number of bridleways and restricted byways in the immediate vicinity. Other concerns included the presence of badger setts on or near the application route, the implications of an upgrade for nesting birds in the hedgerow, the likely cost of an upgrade for the public purse, concerns over liability for any injuries suffered, the impact of horses on the surface of the path, the fear of further development in the East Coker area, and the possibility of cul-de-sac bridleway status discussed above.

7.11. This investigation is concerned with correctly recording public rights, which may be higher than those currently recorded. Concerns about suitability and desirability of the application route, while understandable, cannot be taken into account under the current legislation. Though it is important to acknowledge the various concerns that have been raised, they do not have a bearing on the outcome of this investigation.

8.0. Discussion of the evidence

¹¹ B. Monnington, 'Gates: private and public rights of way', *Rights of Way Law Review*, 4.1, p. 11 (CD edition). See also Riddall and Trevelyan, *Rights of Way: A Guide to Law and Practice*, 261.

8.1. The County Council is under a duty to modify the Definitive Map and Statement where evidence comes to light that it is in error. The standard of proof to be applied in all cases such as this is the “balance of probabilities”, i.e. based on all of the available evidence, are higher public rights more likely to exist than not.

8.2. Public bridleway rights were legally established over the application route by the Quarter Sessions in 1899, following the diversion and extinguishment of the original footpath depicted in Plan A (Appendix 4). Given the conclusive nature of these documents, it can be assumed that this material was not consulted during the drafting of the DMS, and therefore can be approached as new evidence.

8.3. A search of the County Council’s archival records and those held by the South West Heritage Trust have yielded no evidence of a legal stopping-up order relating to the application route. Therefore, the public bridleway rights which were legally established by the Quarter Sessions still exist today.

8.4. A range of evidence has been submitted by landowners and other consultees to rebut the claim for higher public rights on the application route, including the East Coker Village Map and various Ordnance Survey maps. However, none of this material questions the conclusive evidential strength of the Quarter Sessions records. Based on the available evidence it is clear that, on the balance of probabilities, higher public rights are more likely to exist than not.

8.5. Significant weight has been placed on OS evidence by several landowners and East Coker Parish Council. However, OS maps cannot generally be regarded as direct evidence of status. While it is accurate to highlight that from 1901 the application route is consistently annotated F.P. on OS maps, this evidence is best understood as a record of the physical character of the route, and of the fact that the OS did not consider the route suitable for horses or those driving a horse and cart. It is certainly significant that the application route was annotated F.P. by the County Series Second Edition 25 Inch Map, as this was the product of a survey that took place only two years after the 1899 diversion. There are various inferences that may be drawn from this, some of which are speculated on at paragraph 5.4.23., above. Crucially, two Justices of the Peace specifically tasked with assessing the new bridleway confirmed that it was in “good condition and repair” in October 1899. Given that this is a court document it would strongly suggest that the bridleway was open and available to equestrian users at the time. Furthermore, no evidence has been found to suggest that bridleway rights were extinguished between 1899 and 1901. Though numerous OS maps may indicate that the route was only deemed

suitable for foot traffic, and though the installation of kissing gates at some stage after the diversion may have made the application route physically unavailable for equestrian users, such users would nonetheless have remained legally entitled to pass and repass over the route.

8.6. The recording of the application route as a footpath in the Definitive Map and Statement is likely to have been consistent with the use that it was receiving at the relevant date of the Map (4 June 1956). This does not alter the fact that if public bridleway rights were created by the Quarter Sessions in 1899, in the absence of evidence of formal legal closure, those rights will still exist today, even if they have not been exercised for a number of decades.

8.7. Public bridleway rights were legally established over the application route in 1899, and no evidence that they have since been stopped-up has been found. Therefore, those rights will still exist today and must be recorded on the DMS.

8.8. The question of the width of the application route has been raised by Landowner B. The Quarter Sessions records did not stipulate a specific width for the new bridleway, nor has any of the other documentary evidence assisted in this respect. Though the physical route is currently limited to a width of around 1.7 metres by virtue of the barbed wire fence, evidence suggests that it was historically a field edge route running alongside open land. This is supported by the evidence of landowners A and C who refer to the installation of the fence. In such instances “there is no presumption that the way has any defined lateral limits on the ground”.¹² There is nothing obvious in the surface of the route that might dictate the width (such as boggy or impassable ground). The Planning Inspectorate advise that in cases where there is no clear evidence, width should be determined by “the type of user and what is reasonable”, and that the width should be “sufficient to enable two users to pass comfortably, occasional pinch points excepted”.¹³ It is suggested that in this instance four metres would be a suitable width, as it would allow two horse riders to comfortably pass one another.

9. Recommendation

¹² Riddall and Trevelyan, *Rights of Way: A Guide to Law and Practice*, p. 37.

¹³ ‘Advice Note 16: Width on Orders’, Planning Inspectorate, 6th revision (2016), [9].

It is therefore recommended that:

- i. an Order be made, the effect of which would be to add to the Definitive Map and Statement a public bridleway between points A-B-C-D as shown on Appendix 1
- ii. if there are no unwithdrawn objections to such an order it be confirmed
- iii. if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs.

List of Appendices

Please note that the document reproductions in the appendices are not to scale. The investigating officer has added the red letters A, B, C, and D present on Appendix 1 to various maps to help the reader identify the sections of the route the document is depicting.

1. Plan showing application route
2. Landownership plan
3. Photographs of application route
4. Quarter Sessions records
5. Ordnance Survey maps
6. Local Authority records
7. Definitive Map and Statement preparation records
8. Consultation submissions