



**WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53, SCHEDULE 14**  
**APPLICATION TO UPGRADE PUBLIC FOOTPATH Y 9/46 IN THE PARISH**  
**OF EAST COKER TO A PUBLIC BRIDLEWAY**

**Application:** 671M

**Author:** Harry Wood

**Date:** 29 October 2021

This document is also available in Braille, large print, on tape and on disc and we can translate it into different languages. We can provide a member of staff to discuss the details.



**RNID typetalk**

## **CONTENTS**

	Page
1. Introduction	1
2. The application and supporting evidence	1
3. Description of route	2
4. Relevant legislation	3
5. Documentary evidence	4
6. Landowner evidence	40
7. Consultation and other submissions	42
8. Discussion of the evidence	45
9. Summary and conclusion	47
10. Recommendation	49
11. List of appendices	50

## 1. **Introduction**

1.1. On 26 November 2009, 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 (DMS) by upgrading public footpath Y 9/46, as described in paragraph 3, below, to a public bridleway. The route in question is shown in Appendix 1.

1.2. A public bridleway can be used by the public on foot, with bicycles, or riding or leading a horse (or other 'beast of burden'). There is also sometimes the right to drive livestock along a bridleway.

1.3. 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:

- 1782 Day & Master's Map
- 1811 OS Old Series Reprint (Cassini)
- 1822 Greenwood's Map
- 1839 East Coker Tithe Map
- 1863 Yeovil Highways Board Records
- 1899 OS Revised New Series Reprint (Cassini)
- 1910 Finance Act Valuation Map
- 1911 Bartholomew's Map
- 1919 OS Popular Series Map Reprint (Cassini)
- 1920 Sale Particulars Mr Troyte-Bullock's North Coker Estate
- 1926 Sale Catalogue from Mrs Heneage's North Coker Estate
- 1927 Bartholomew's Map
- 1928 OS Road Map
- Current OS Explorer Map
- Photographs of each end of the route

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

"Whilst no single piece of evidence is conclusive, taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status, and that prior to the Natural Environment and Rural Communities Act 2006, there were full vehicular rights.

"There are examples, with the OS maps and the Bartholomew Maps, where these maps were revised and the application route continues to be shown on every revision. The Ordnance Survey records all depict the application route in the same way as public roads.

"All the evidence produced for the application route suggests that vehicular rights existed at the times of the various pieces of evidence were created. While no single piece of evidence is conclusive of highway status, the fact that every standard piece of evidence leans towards vehicular rights means that, on the balance of probabilities, such rights existed prior to the commencement of the Natural England and Rural Communities Act 2006.

"The antiquity of the route shows that the highway existed prior to 1835. It will therefore be a highway maintainable at the public expense and so should be added to the List of Streets maintained by the Council under Section 36 (6) of the Highways Act 1980.

"The applicant requests the Surveying Authority to add the route to the Definitive Map and Statement as a bridleway. The Surveying Authority may, on the evidence provided, decide to add the application route on as a byway, the type of byway, restricted or open to all traffic, will depend on the application of the Natural Environment and Rural Communities Act 2006".

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

### 3. **Description of Route**

3.1. The application route runs from point A at the north-eastern end of Burton Lane in an east south-easterly direction through point A1 to point B, where it is crossed by public footpath Y 9/35.<sup>1</sup> The path then turns slightly northwards towards point C, running adjacent to North Coker Park, before passing under a pedestrian bridge and finishing at point D at the junction with Longlands Lane. The section between points A and B is referred to in some of the documentary evidence as a continuation of Burton Lane, while the section between points C and D is referred to as Sheepsleight, Sheepslake Lane, and North Coker Park Lane.

3.2. The application route links two vehicular roads and is approximately 460 metres in length. The route has an earth surface between points A and C that becomes increasingly muddy at point C. Between points A and C the route is

---

<sup>1</sup> A Definitive Map Modification Order concerning Y 9/35 was made in May 2021. It was objected to and has therefore not been confirmed. The case will be referred to the Planning Inspectorate in due course.

around three metres wide, while the available walked route is just over one metre. The section between points A and A1 has clear tyre tracks and appears to provide access to the fields on the northern and southern sides of the route. Mature hedges line the route between points A1 and B, which has the character of a sunken lane. Between points B and C there are metal railings on the southern border with North Coker Park. The final section, from points C to D, is recorded in Somerset County Council's List of Streets as an unclassified road.<sup>2</sup> Though this section is wider, the walked width remains close to one metre. It is bounded to the north by hedges and by a stone wall to the south. The surface between points C and D shows evidence of historical metalling.

3.3. Photographs of the claimed route taken on 26 November 2020 are at Appendix 2.

3.4. A Land Registry search in 2020 identified that there were no registered owners for the application route. The Common Law presumption is that, in the absence of any evidence to the contrary, adjoining landowners own up to the centre point of a highway. However, determining the current ownership of the soil is not a question this report attempts or needs to answer. The landownership is shown at Appendix 4. There are seven adjoining landowners (one holding is in multiple ownership). There is a further area of land that is not registered.

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. It states that the DMS should be modified where the local authority 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".

4.2. Later in the same Act Section 53(5) enables any person to apply to the local authority (in this instance Somerset County Council) for an Order to be made modifying the DMS in respect of a number of legal "events" including those specified in Section 53(3)(c)(ii), as quoted above. On receipt of such an

---

<sup>2</sup> See paragraph 5.5.17. for more information about the List of Streets.

application the local authority is under a duty to investigate the status of the route. It was under these provisions that SSBA made their application.

4.3. The purpose of Section 53 of the Wildlife and Countryside Act 1981 is to record or delete rights which already exist 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.

4.4. 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".

4.5. Sections 66 and 67 of the Natural Environment and Rural Communities Act 2006 (NERC) extinguished rights for mechanically propelled vehicles (MPVs) over any routes that were recorded on the Definitive Map as footpaths, bridleways or restricted byways and over any routes that were not recorded on the Definitive Map or the list of highways maintained at public expense. There are several exceptions to the general rule outlined above, none of which appear to apply in this case. There is therefore no question of rights for MPVs existing over the claimed route.

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 historical 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 the relevant tests set out above have been met.

## 5. **Documentary Evidence**

5.1.1. The analysis below focuses on the documentary evidence examined as part of this investigation. In some instances 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.

5.1.2. Throughout discussion of the evidence comparison is frequently made 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 with reference to Appendix 1 or Appendix 3.

---

## 5.2. **Tithe Records**

### Explanation of the type of evidence

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

5.2.2. 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.

5.2.3. 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 such as for grazing or hay cut from the verges.

5.2.4. 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.

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

## Evidence

### 5.2.6. **1839 East Coker Tithe Map**

Source: The National Archives (TNA) (Commissioner's copy supplied by the applicant) (extract only)

Reference: IR/30/30/131

Appendix: 5A

### **Diocesan Copy**

Source: South West Heritage Trust (SWHT)

References: SHC D/D/RT/M/170

Appendix: 5B

### **Parish Copy**

Source: SWHT

Reference: SHC A/AOW/83

Appendix: 5C

### **East Coker Tithe Apportionment**

Source: SWHT

Reference: SHC D/D/RT/A/170

Appendix: 5D

## Description and interpretation of evidence

5.2.7. Three tithe maps were produced for each area, for the Diocese, Parish, and Commissioners respectively. All three versions have been examined in relation to this case.

5.2.8. The amending Act of 1837 established two classes of tithe map. First class maps had the Commissioners' seal attached, showing them to be reliable as a true record of matters relating to the purposes for which the map was designed. The map in question does not bear the Commissioner's seal, meaning that it is a second class map, and thus only conclusive evidence in respect of information relating to tithes.

5.2.9. There are no major cartographical differences between the three maps. The Parish copy is distinguished by its naming of some roads and fields. The application route is consistently depicted on all three maps as two solid parallel lines. It is shaded brown, in a manner that the map legend describes as representing a road or lane. These terms appear to describe the physical features of the route rather than the rights over it. There are several routes shown on the tithe maps that are likely to have been private roads, and there does not seem to be consistency in their depiction. While the route providing



access from the north into field 591 (named New Clops on the Parish Copy) is uncoloured, the route heading north from point B (between fields 586 and 540) is coloured.

5.2.10. The alignment of part of the application route differs from that of contemporary mapping. The tithe maps show a distinct dog leg between points C and D, whereas on modern mapping this deviation has been straightened out. Several buildings are shown around the dog leg in the Commissioner and Diocesan copies of the map (described in the legend as "Dwelling Houses"). The Apportionment names two fields around this dog leg as "Sheeps Lake" and records nine tenements and one cottage. This suggests there may have been a small settlement between points C and D.

5.2.11. The application route is not named in either the Commissioner or Diocesan copies of the map, nor does it have an apportionment number. The Parish Tithe Map names the application route Burton Lane between points A and B, and Sheepsleight between points C and D. Neither of these named routes are referred to in the Apportionment.

5.2.12. These maps indicate that the application route was not subject to a tithe. This may have been because the route was a public road. Equally, the route could have been an unproductive (i.e. not used to produce a crop) and therefore unnumbered private road.

5.2.13. Several recognised public roads, including Burton Lane, Longlands Lane, Gunville Lane, Yeovil Road, and Higher Burton, are depicted in the same manner as the application route, shaded brown between solid parallel lines with no tithe number. Other nearby routes depicted in this way include Y 9/49 and Y 9/50, which are now recorded as restricted byways. The southern section of footpath Y 9/35 is also depicted in this manner (see Appendix 1).

5.2.14. The tithe maps are good evidence, despite their second class status, that the application route physically existed in 1839. They are less helpful in determining the reputation or status of the route as regards public rights of way, whether the route enjoyed public or private rights, or indeed, if rights that did exist were higher than those currently recorded. The primary purpose of these documents was to record the payment of tithes, not to ascertain or survey the nature of public or private rights that may have existed. The fact that the application route is depicted as a "road or lane" on the map legend could be read as in favour of public rights, but it seems more likely that these terms were employed to describe the physical features of the route. The presence of a possible settlement named Sheepsleight is suggestive of public rights. The application route would have provided the only means of vehicular access to that settlement and, while it is possible that such access was by virtue of a

private right, it seems more likely that a public right would have been established. On balance, the tithe records should be considered as marginally supportive of higher public rights than currently recorded, but the evidential weight that can be given to them is limited.

---

### 5.3. **Ordnance Survey Maps**

5.3.1. The Ordnance Survey (OS) is generally accepted as producing an accurate depiction of what was on the ground at the time of a survey. OS Maps cannot generally be regarded as direct evidence of status. However, the presence of a route on a series of OS maps “can be useful evidence in helping to determine the status of a route, particularly when used in conjunction with other evidence”.<sup>3</sup>

#### Evidence

#### 5.3.2. **1808 Surveyor’s Drawing**

Source: SWHT

Reference: SHC 53

Scale: 1:31,680

Appendix: 6A

5.3.3. The application route is shown as an enclosed through route, depicted by solid parallel lines. The map appears to record Burton and Sheepsleight as settlements.

5.3.4. Little is known of OS surveying instructions prior to 1884. OS drawings “were originally prepared for military purposes with no apparent thought of publication”, but from 1801 they were used as the basis for the OS Old Series.<sup>4</sup> These maps made no differentiation between footpaths, bridleways, and vehicular routes. As their primary purpose was strategic, it can be inferred that depicted routes were thought to be capable of being used for military transportation and troop movement. It therefore seems likely that the route was a prominent physical feature at the time it was surveyed. It is not possible, however, to determine whether the route was thought to be public or private in nature.

---

<sup>3</sup> *Definitive Map Orders: Consistency Guidelines*, (2016), 14.2.35., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>.

<sup>4</sup> R. Oliver, *Ordnance Survey Maps: a concise guide for historians, third edition* (London: Charles Close Society, 2013), 62.

5.3.5. The OS Surveyors Drawing is good evidence that the application route existed in 1808, but it records little about its status.

5.3.6. **1811 OS Old Series Map** Cassini Timeline Reprint

Source: Supplied by applicant (extract only)

Reference: Map 194

Scale: 1:50,000

Appendix: 6B

5.3.7. The Cassini maps are reproductions of the OS One Inch maps enlarged and rescaled to 1:50,000. The OS One Inch maps, as discussed above, were designed with military utility in mind. No key existed on the original Old Series maps, but some symbols were consistently used. Though the Old Series maps differentiated between turnpike roads (or main roads) and minor roads, there was no distinction drawn between footpaths, bridleways, and vehicular roads.

5.3.8. The application route is shown as a through route depicted by two solid parallel lines, meaning that it had the status of "other road".<sup>5</sup> As with the tithe maps, numerous routes nearby now recognised as public roads (including Burton Lane and Longlands Lane) are recorded in the same manner as the application route.

5.3.9. The OS Old Series Map is good evidence of the physical existence of the application route.

5.3.10. **OS County Series First Edition Map**

Reference: XC.5 (90.5)

Survey Date: 1886

Scale: 1:2500

Appendix: 6C

5.3.11. The full route is depicted in sienna as an enclosed through route of consistent width between solid parallel lines. The southern line is shaded so as to be more prominent than the northern one. As with the tithe maps, the alignment of the application route between points C and D is shown as a dog leg. The collection of buildings around the dog leg is named as Sheepslake.

5.3.12. In relation to shaded casing lines the Planning Inspectorate's *Consistency Guidelines* state that "From 1884 onwards, on the large scale plans, those metalled public roads for wheeled traffic, kept in proper repair by the local highway authority, were to be shown with shaded or thickened lines on

---

<sup>5</sup> 'Keys and Legends', Cassini Historical Maps, <http://www.cassinimaps.co.uk/shop/pagelegend.asp>, accessed 15 March 2021.

the south and east sides of the road”.<sup>6</sup> However, this is not to say that all routes with a shaded line were considered public roads.

5.3.13. From 1885 OS surveyors were instructed that all metalled carriage drives will in future be shaded, but with shading not quite so prominent as on public roads. In the late nineteenth century “carriage drive” appears to have been used by OS to mean private vehicular routes.<sup>7</sup> This would mean that some public and some private roads would be shown on OS maps with a shaded casing line.

5.3.14. In theory, it should be possible to discern between the depiction of a well-maintained public road and a private carriage road by the prominence of the shaded line, it being less prominent in the latter case. However, in practice it is not always possible to tell whether a shaded line is more or less prominent simply by viewing it in isolation. Instead it is necessary to look firstly at how the route came to be shown on future OS maps and then to compare it to the way in which other routes have been depicted on the same map.

5.3.15. The primary purpose of shading the casing lines was to assist in the production of the One Inch Series maps which, at the time, showed roads in one of four categories.<sup>8</sup> The route in question is shown on the One Inch Revised New Series Map as a third class road. As this category was used for both public and private roads it does not assist in determining why the application route had a shaded casing line on the First Edition 25 Inch Map.

5.3.16. All shaded lines on the First Edition 25 Inch Map sheet in this case appear to the naked eye to be of a similar thickness. As a result it is not possible to be sure whether the surveyor was giving the application route a more or less prominent shaded casing line. Having said this, each of the other routes with a shaded casing line on this map sheet are either already recorded as restricted byways or are shown as public highways on modern road records. This would suggest that they were given a shaded casing line on account of them being considered well-maintained public roads as opposed to metalled carriage drives. There is no reason to believe that the application route is not shown with a shaded casing line for similar reasons.

5.3.17. Based on this analysis, it seems more likely that the application route was given a shaded casing line on account of it being considered a well-maintained public road. However, in reaching this conclusion it is acknowledged that, while

---

<sup>6</sup> *Definitive Map Orders: Consistency Guidelines*, (2016), 14.2.10., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>.

<sup>7</sup> Y. Hodson, ‘Roads in OS 1:2500 plans 1884-1912’, *Rights of Way Law Review*, 9.3 (1999), p. 109.

<sup>8</sup> First class, second class, third class and unmetalled. There was a further category for footpaths.

the most common reason for a thickened casing line will be that the route was considered public, there are alternative explanations.

5.3.18. **OS Revised New Series Map** Cassini Timeline Reprint

Source: Supplied by applicant (extract only)

Reference: Sheet 194

Published: 1899

Scale: 1:63,360

Appendix 6D

5.3.19. Although based on the same survey and published at a smaller scale than the First Edition County Series map, the Revised New Series map does include additional detail regarding the character of the ways shown on it. One of the changes to the map was the partial use of colour, principally to meet demand for a clearer map for military purposes and the grading of roads.

5.3.20. The claimed route is shown as an enclosed uncoloured through route, between solid parallel lines. The Revised New Series map legend confirms that this indicates a third class road. This category covered "all other metalled roads suitable for wheel traffic", distinct from first class roads ("main roads generally leading from town to town") and second class roads ("metalled roads in good repair and fit for fast traffic at all seasons").<sup>9</sup> Private roads could also be included in the third class road category.<sup>10</sup> The fact that the application route is depicted as a third class road, therefore, does not determine whether its status was public or private.

5.3.21. **OS County Series Second Edition Map (Revised)**

Reference: XC.5 (90.5)

Survey Date: 1885; revised 1901

Scale: 1:2500

Appendix 6E

5.3.22. There are three key differences between this map and the First Edition. Both casing lines are the same thickness. This may indicate that by 1901 the route was not thought to be kept in good repair. Equally, the change in casing may relate to a change in approach by OS. The fact that surrounding roads including Gunville Lane and Longlands Lane have experienced the same change in representation suggests this may be the most likely explanation. The dog leg between points C and D has also been straightened out, and the properties shown within this section on earlier maps are no longer depicted. The third difference of note is the presence of a footbridge over the route between points

---

<sup>9</sup> 'Instructions to one inch field revisers' (1901), quoted in Oliver, *Ordnance Survey Maps*, 119.

<sup>10</sup> Oliver, *Ordnance Survey Maps*, p. 119.

C and D. A bridge remained in this location as of November 2020 (see Photograph 9, Appendix 2) providing private access from North Coker Park to a field on the northern side of the application route.

5.3.23. **1919 OS Popular Edition Map** Cassini Timeline reprint

Source: Supplied by applicant (extract only)

Reference: Sheet 194

Scale: 1:63,360

Appendix 6F

5.3.24. The Popular Edition was published just after the First World War. It was the first OS Map to be published in full colour for sale to the general public. It also graded both roads and tracks according to their suitability for motor traffic. The complex system attempted to give information about the road surface and how fast it was for motorists.

5.3.25. The Popular Edition contained the instruction "Private Roads are uncoloured". OS maps carried this statement until 1934, the inference being that all private roads were uncoloured, but not all uncoloured roads were private.

5.3.26. The application route is shown as a through route between solid parallel lines. It is uncoloured which according to the key means it was a minor road, but in view of the disclaimer this does not assist in determining whether or not it was considered to carry public or private rights.<sup>11</sup>

5.3.27. **1928 OS Road Map of Weymouth, Yeovil and Taunton**

Source: Supplied by applicant (extract only)

Reference: Sheet 37

Scale: 1:31,680

Appendix: 6G

5.3.28. The early half inch OS maps were derived from the One Inch maps and used the same four-fold classification system for roads.

5.3.29. The application route is shown as an enclosed, uncoloured through route. According to the key it was a minor road, meaning that it was not easily passable by wheeled traffic. Two recognised public roads, Longlands Lane and Burton Lane (see Appendix 3) are depicted in the same manner as the application route. Other ways depicted as enclosed uncoloured routes are currently recorded as restricted byways, namely Y 9/50 and Y 9/49. Only a small

---

<sup>11</sup> 'Keys and Legends', Cassini Historical Maps, <http://www.cassinimaps.co.uk/shop/pagelegend.asp>, accessed 15 March 2021.

extract of this map has been viewed, so an extended comparative exercise is not possible.

5.3.30. It is unclear what public rights Ordinance Survey considered minor roads to enjoy. This means that the evidential weight of this document is minimal.

5.3.31. **1927 OS County Series Third Edition Map**

Reference: Sheet XC.5 (90.5)

Survey Date: 1885; levelling revised 1901; revised 1927

Scale: 1:2500

Appendix 6H

5.3.32. The application route is depicted in an identical way to that of the County Series Second Edition map.

5.3.33. **1927 OS County Series Third Edition Map**

Reference: Sheet XC.5

Survey Date: 1885; levelling revised 1901; revised 1927

Scale: 1:2500

Appendix 6J

5.3.34. This additional copy of the Third Edition Map was found in the SCC archives. It has numerous annotations in pen of various colours and pencil. This includes markings that show the claimed route coloured purple and numbered 9/46. The date of these annotations is unknown, but is likely to have been since the publication of the Definitive Map. The pencil annotations make reference to a "Section 34 Agreement" with the date "18/2/38". It is unclear what these pencil annotations refer to, but they do not appear to have a bearing on this investigation.<sup>12</sup>

### Description and interpretation of evidence

5.3.35. This broad range of Ordinance Survey maps offers a useful representation of the evolving physical character of the application route.

5.3.36. The Surveyor's Drawings indicate that the route physically existed from at least 1808. The County Series Second Edition Map highlights that, by 1901, the route had been realigned between points C and D, and that the buildings labelled Sheepsleight (or Sheepslake) were no longer recorded.

---

<sup>12</sup> Section 34 of the Highways Act 1980 provides for the conversion of a private street into a highway. No evidence has been found to suggest that this is the nature of the agreement referred to by the above annotations, and given the accompanying date of "18/2/38", it seems unlikely that this section of the Act is of relevance.

5.3.37. The application route has a shaded casing line and is coloured sienna on the County Series First Edition Map. It is significant that all the other routes depicted in this way on the same map sheet are now recorded as restricted byways or are on the modern road records. Such commonality is suggestive of the existence of vehicular rights on the application route. However, this comparative mode of analysis is based on inference rather than certainty, and this inevitably impacts on the evidential value of the source material.

5.3.38. In the County Series Second Edition Map and subsequent mapping the application route is no longer represented with a thickened casing line or sienna tinting, but rather between parallel lines of equal width. This may be because by the point of survey in 1901 the application route was no longer thought to be kept in good repair, though a change in mapping style and approach is a more likely explanation.

5.3.39. The smaller scale maps, such as the 1919 Popular Edition and the 1928 Road Map, provide useful contextual information concerning route classification and the increasingly mobile travelling public, but are naturally less detailed.

5.3.40. The presence of a possible settlement at Sheepsleight (or Sheepslake) raises questions about access, as if there was a settlement between points C and D then the application route would represent the only method of vehicular access. It seems likely that Sheepsleight was a settlement to which the application route provided vehicular access.

5.3.41. Ordnance Survey maps have since 1888 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".<sup>13</sup> This disclaimer is further confirmed 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".<sup>14</sup> Yet while not conclusive of status, OS Maps can provide reliable evidence of the physical existence and evolving character of a route.

5.3.42. While the OS maps in this case provide excellent evidence as to the physical characteristics of the application route and the fact that it was almost certainly used by vehicles, they tend not to provide direct evidence of status. The exception to this is the first edition County Series map which, for the reasons described above, is of limited weight in favour of public vehicular rights.

-----

---

<sup>13</sup> Oliver, *Ordnance Survey Maps*, 114.

<sup>14</sup> *Moser v Ambleside Urban District Council* [1925] KLR p. 537.



## 5.4. **1910 Finance Act**

### Explanation of the type of evidence

5.4.1. The 1910 Finance Act provided for the levy and collection of a duty on the incremental value of all land in the United Kingdom.

5.4.2. 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:

- 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.

5.4.3. 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.

5.4.4. The 1910 Finance Act material did not become widely available until the 1980s. 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

#### 5.4.5. **Record Plan**

Source: TNA

Reference: IR/128/9/1102

Appendix: 7

## Description and interpretation of evidence

5.4.6. The application route is neither numbered nor coloured in the Record Plan, meaning that it has been excluded from the adjacent hereditaments. The brace across the eastern end of the claimed route is an indication that the parcels of land on either side have been valued together.

5.4.7. As the application route does not have a hereditament number the Field and Valuation Books do not assist in determining its status.

5.4.8. The Finance Act contained specific provision for reducing the gross value of land to take account of any public rights of way. The Planning Inspectorate *Consistency Guidelines* state that "if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books".<sup>15</sup> This is supported by case law which suggests that "the fact a road is uncoloured on a Finance Act map raises a strong possibility or points strongly towards the conclusion that the road in question was viewed as a public highway".<sup>16</sup>

5.4.9. While the most likely reason for a route to be excluded is because it was considered to be a highway, there are other potential reasons (such as where routes were set out as private roads in an inclosure award). Furthermore, these documents are often not explicit records of rights of way, largely because this was not their primary purpose. The value and evidential weight of these documents, therefore, is contingent on their relationship with the other evidence contained in this report.

---

## **5.5. Highway Road Records**

### Explanation of the type of evidence

5.5.1. 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.

---

<sup>15</sup> *Definitive Map Orders: Consistency Guidelines*, (2016), 11.2.7., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>.

<sup>16</sup> *Fortune & ORS v Wiltshire Council & ANR* [2012] EWCA CIV 334 [71].

## Evidence

### 5.5.2. **1863 Yeovil Highway Board Map**

Source: SWHT (South Somerset Heritage Collection)

Reference: SHC D/R/yeo/32/4/1

Appendix: 8A

5.5.3. The Highways Act 1862 allowed for the transfer of surveying duties from parishes to highway boards who were answerable to and appointed by the Quarter Sessions.<sup>17</sup> Parish waywardens or surveyors were appointed and parishes contributed a regular amount for maintenance of roads (proportionate to the network).

5.5.4. In 1863 the newly formed Yeovil Highway Board minuted the following instruction to its District Surveyor: "make a return in writing of the state of all the roads within the District as well as the extent of the different Highways within each Parish [...] and in such return classify such roads distinguishing the principal roads from those less frequented by the public".<sup>18</sup> It seems likely that the map at Appendix 8A formed part of the process referred to in this minute.

5.5.5. The map legend indicates that highways are coloured yellow, halter-paths (a term roughly synonymous with bridleway) green, and turnpike roads red. The application route is shown in yellow. It is within the route numbered 11 that runs between reference points L and M. This route also incorporates what is now Burton Lane and part of Longlands Lane. The "Description of Highway" section on the map records its length as 166 perches (834 metres). The majority of routes shown by the Map are categorised as highways. The one route depicted as a halter-path is Isles Lane, recorded in the DMS as bridleway Y 9/44. In turn, what are now the A30 and A37 are depicted in the Highway Board Map as turnpike roads.

5.5.6. The Planning Inspectorate's *Consistency Guidelines* advise that highway records need to be interpreted "with particular attention paid to the meanings of words within the given context."<sup>19</sup> It is important to stress in this regard that the Yeovil Highway Board Map legend does not have a specific footpath category.<sup>20</sup> This is relevant because several routes now recorded as footpaths

---

<sup>17</sup> A. Sydenham, *Public rights of way and access to land*, 2nd edition (Bristol: Jordans, 2003), p. 120

<sup>18</sup> Somerset Heritage Centre, Yeovil Rural District Council Records, Yeovil Highway Board minutes 1863-1881 (D/R/yeo/32/1/1), 4.

<sup>19</sup> *Definitive Map Orders: Consistency Guidelines*, (2016), 6.2.1., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>.

<sup>20</sup> The "Description of Highways" section does include the term "Path", as well as "Lane", but these are not specified as categories in their own right.

in the DMS (e.g. the southern section of Y 9/35 and the north-eastern section of Y 9/48) are shown in yellow and therefore depicted as highways by this document. In its most literal sense, the word "highway" includes all forms of public right of way, and refers to "a way over which the public have a right to pass and repass".<sup>21</sup> By this definition a footpath can be considered a type of highway. However, the Highway Board minutes also emphasise the importance of distinguishing different types of right of way, instructing surveyors to record "the extent of the different Highways within each Parish".

5.5.7. Based on the above it can be concluded that routes which were coloured yellow, such as the application route, were considered to be "highways". Public vehicular highways definitely fell within this category. Footpaths might also have been shown in this way, but bridleways were probably not as these would have been coloured green.

5.5.8. The depiction of the application route as a highway might therefore be seen as consistent with the way in which it is currently recorded in the DMS, i.e. as a footpath. However, it is clear from the 1863 Map that the surveyor saw the application route as part of a longer highway that includes two public vehicular roads (Burton Lane and Longlands Lane). This suggests that the application route was of the same status as these two other roads; had it not been the surveyor would have presumably reflected this difference. This is therefore evidence that the application route was shown as a highway, not because it was considered a footpath, but because the Highway Board considered it to carry public vehicular rights.

5.5.9. It seems reasonable that the Board would have objected to spending money on a way for which it was not responsible, therefore its presence on the Map indicates that the Highway Board had accepted liability for the route in its entirety, and that it was considered a road.

5.5.10. The Highway Board Map provides evidence that the application route was considered a public vehicular road in 1863. Though there is a degree of ambiguity concerning the lack of a footpath category, it remains highly probable that the application route was represented as a highway because it was thought to form the central section of a continuous vehicular road.

5.5.11. **1929 Handover Map and Schedule**

Source: Somerset County Council (SCC)

Reference: Sheet 296

Appendix: 8B

---

<sup>21</sup> 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. 7.

5.5.12. Responsibility for maintaining many classifications of highway was transferred from rural district councils to county councils by the Local Government Act 1929. In order to assist in the transfer of responsibilities, documents were prepared listing all roads that were maintained at public expense at that time. These road lists were drafted as a record of those highways which were considered maintainable in the view of the various rural district councils.

5.5.13. The application route is depicted with solid parallel lines. The sections between points A and C are not shaded, meaning that it was not recorded as a highway maintainable at public expense in 1929. The eastern section between points C and D is shaded yellow. According to the Wincanton Handover Map legend this colouring indicates a group C road.<sup>22</sup>

5.5.14. The schedule of maintained roads that accompanies the map does not list either Burton Lane or Sheepslake Lane. However, it does record Burton House Lane, possibly the lane south of point A (now known as Burton Lane), and "Longlands Lane towards Burton", which may refer to the eastern section between points C and D. There is no specific reference that clearly links the map with the schedule, so it is difficult to conclusively tie the two records together.

#### 5.5.15. **1930 Road Records**

Source: SCC

Reference: 5/45

Scale: 1:10560

Appendix: 8C

#### **1950 Road Records**

Source: SCC

Reference: 5/45

Scale: 1:10560

Appendix: 8D

#### **Modern Road Records**

Source: SCC

Scale: 1:2500

Appendix: 8E

---

<sup>22</sup> SCC's copy of the Yeovil Rural District Handover Map does not include a legend. Three of the rural districts included legends on their maps: Dulverton, Wincanton, and Wells. The legend included in Appendix 8 and referred to here is taken from the Wincanton Rural District Map. The colouration appears consistent on all of the district handover: First Class Roads in red, Second Class Roads in blue, Group A Roads in Green, Group B Roads in Brown, and Group C Roads in Yellow.

5.5.16. Each of these records depict the application route in a similar manner to the 1929 Handover Map, with the sections between points A and C unshaded and shading between points C and D. This means that the latter is considered on all three maps to be within the publicly maintainable highway system. SCC's current Road Records name the section between C and D as North Coker Park Lane. The provenance of this name is unclear, and it does not appear in any of the other documentary evidence considered during this investigation.

5.5.17. The Highways Act 1980 Section 36(6) requires every highway authority to compile and keep up to date a List of Streets of highways maintainable at public expense. There is no requirement for maps to accompany the list or for any information regarding length, width or status to be included. Burton Lane, Sheepslake Lane, and North Coker Park Lane are on the 2020 list, which can be found on the Somerset County Council website.

#### Description and interpretation of evidence

5.5.18. The 1863 Highway Board Map shows the whole of the application route as part of a continuous public highway. Whilst it is acknowledged that the map is unlikely to have been subject to public consultation, it was drafted by independent officers with a knowledge of highway law and the Highway Board are unlikely to have accepted liability for a route lightly. This is evidence of the existence of vehicular rights. The later road records highlight that the majority of the application route (that is from points A to C) has not been recorded as a highway maintainable at public expense since at least 1929.

5.5.19. According to the Planning Inspectorate's *Consistency Guidelines*, "[t]he evidential strength of handover maps is they are conclusive evidence of the highway authority's acceptance of maintenance responsibility, a commitment which would not normally have been undertaken lightly".<sup>23</sup> However, it should be recognised that "the maps were purely internal documents and the public had no mechanism of challenging what was shown on them." As a result, "they cannot be regarded as conclusive" as to the status of a highway.<sup>24</sup>

5.5.20. A route being shown on the road records is, nonetheless, very strong evidence that it was maintainable at public expense and therefore a public highway of the description indicated by the records at that time. Lower rights (footpaths and bridleways) are typically not shown on these maps and so, unless there is evidence to the contrary, the routes shown are likely to have been considered public vehicular routes. The eastern section of the application route,

---

<sup>23</sup> *Definitive Map Orders: Consistency Guidelines*, (2016), 6.2.9., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>.

<sup>24</sup> J. Sugden, 'Highway authority records', *Rights of Way Law Review*, 9.1, p. 14 (CD edition).

between points C and D, has been shown on various road record documents from at least 1929 to the present day. This is strong evidence of this section having carried public vehicular rights.

5.5.21. Despite these documents being good evidence of the status of routes which are actively shown on them, it would be unsafe to hold that where a road has not been recorded it is evidence that said route was not a highway. The authority may simply have been unaware of the existence of highway rights. Alternatively, they may have considered a route to carry public rights but not be maintainable at the public expense. Furthermore, the road record documents did not typically record public bridleways or footpaths, thus the omission of a route does not necessarily indicate the route was not regarded as public.

5.5.22. There is no clear evidence to suggest when or why the section between points A and C of the application route ceased to be recorded as being publicly maintainable. There is no explicit reference in the 1929 Handover Map and accompanying schedule to the 1863 Highway Board Map, nor is there any record of a statutory change in status between 1863 and 1929. The road records offer evidence that the reputation of the application route had changed during this period, and by 1929 was no longer considered a vehicular highway. However, the records do not directly refute or undermine the Highway Board evidence.

---

## 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:

- 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. 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.
- 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

### 5.6.2. **Survey Card**

Source: SCC

Reference: East Coker Parish No. 46

Appendix: 9A

5.6.3. The Survey Card describes a footpath from the “end of county road at Sewage tanks and runs west along lane to county road by Chapel”.

5.6.4. It is one of thirteen unsigned, undated cards. The majority of the East Coker parish cards are signed and dated in triplicate - by the person who walked the route, the parish council and the rural district council. This suggests that the application route may not originally have been included in the East Coker Parish Council survey but was instead added at a later date.

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

### 5.6.6. **Survey Map**

Source: SCC

Reference: Sheet XC. NW.

Appendix: 9B



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

5.6.8. The application route is unshaded between points A and C, indicating that it was not claimed by the Parish Council. The section between points C and D is shaded brown, indicating that the Parish Council considered it to be a vehicular highway.

5.6.7. **Draft Map (June 1956)**

5.6.8. The Draft Map is missing.

5.6.9. **Ramblers' Association Objection to the Draft Map (January 1960)**

Source: SCC

Reference: YL 36 – 3151/D13

Appendix: 9C

5.6.10. The Ramblers' Association objected to the "omission of a path from the County road just east of the Sewage Tanks westerly to County road". This matches the description of the application route.

5.6.11. Although the original objection letter has not been discovered, the County Council's summary of it and their comments does still exist. Responding to the objection, the County Surveyor stated the following: "not claimed by PC [Parish Council]. Appears reasonable to include".

5.6.12. The County Archivist additionally noted that the route had been shown as a road on 1811 OS Map and was part of the Parish highway system on the 1839 Tithe Map, while it was not covered by inclosure award and did not appear in any Quarter Sessions records.

5.6.13. **Summary of Objections to the Draft Map & Statement**

Source: SCC

Reference: 3151/D13

Appendix: 9D

5.6.14. This document summarised objections received following consultation on the Draft Map. It was used by the County Council's Works Committee when deciding what changes should be made to the Draft Map. The summary includes the Ramblers' Association objection discussed above.

5.6.15. In the column entitled "Observations by Clerk", it is recorded that "evidence of public user [is] available". The determination of the County Council was to "add footpath 9/46".

#### **5.6.16. Draft Modification Map (October 1968)**

5.6.17. The Draft Modification Map is missing.

#### **5.6.18. Draft Modification Map Second Schedule**

Source: SCC

Reference: 9/46

Appendix: 9E

5.6.19. Having considered each of the objections relating to the Draft Map, SCC decided it was necessary to make a number of updates to it. Those updates needed to be publicised. This stage of the Definitive Map process saw three schedules collated, recording plans to delete, add, or reclassify ways recorded on the Draft Map.

5.6.20. The Second Schedule (concerning ways to be added) includes the application route listed as 9/46. The route is described as starting "at end of County road at sewage tanks and runs west along lane to County road by chapel". The status of the route is listed as bridleway (B.R.).

#### **5.6.21. Provisional Map (1971)**

Source: SCC

Reference: Sheet 5

Appendix: 9F

5.6.22. The application route is shaded purple from points A to D, indicating its status as a public footpath. This includes the section between points C and D of the route, which as discussed above, was also included on the road records at that time.

#### **5.6.23. Definitive Map (1972)**

Source: SCC

Relevant Date: 4<sup>th</sup> June 1956

Appendix: 9G

5.6.24. The application route is shaded purple from points A to D, indicating its status as a public footpath.

5.6.25. At point B, the application route is shown as being crossed by footpath Y 9/35. The part of Y 9/35 which runs north from point B is currently the subject

of a Definitive Map Modification Order. The Order (which has been objected to) is supported amongst other things by court records which appear to have created a bridleway in 1899.

**5.6.26. Statement**

Source: SCC

Reference

Appendix: 9G

5.6.27. The application route is recorded as a footpath. It is described as starting "at end of county road at sewage tanks and runs west along lane to county road by Chapel".

5.6.28. A handwritten note has been added to the statement. Dated 1 March 1983, it reads "NOT SHOWN ON THE DEFINITIVE MAP". No further details are provided.

Description and interpretation of evidence

5.6.29. 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 Definitive Map and Statement are without prejudice to other or higher rights.

5.6.30. This context is important for framing the evidence of the Definitive Map and Statement preparation records, as they appear to indicate a degree of confusion surrounding the status of the application route.

5.6.31. East Coker Parish Council did not claim the route during the initial survey. This triggered an objection by the Ramblers' Association, which ultimately led to the route being included on the Provisional Map. During this process the County Archivist expressed their view that at least part of the route (from points C to D) was within the Parish highway system.

5.6.32. Following the above objection, the application route was included on the Provisional Map as a footpath, labelled 9/46. Yet the Second Schedule document, produced to record planned modifications, lists the route as a bridleway. No evidence has been discovered to shed light on this apparent disagreement.

5.6.34. The handwritten note added to the Statement is too ambiguous to be attributed any weight either for or against additional rights. The route was clearly included on the Definitive Map.

5.6.35. There appears to be strong evidence that part of Y 9/35 was created as a bridleway in 1899. This is evidence that the application route is of a similar or higher status. If that were not the case the southern end of Y 9/35 would be a cul-de-sac for horse riders. While cul de-sac rights of way do exist, one would normally expect them to terminate at a point of public interest. There appears to be no particular point of interest at point B of the application route. This being the case, equestrian users of Y 9/35 would presumably have continued their journey over the application route. While far from conclusive (particularly as the Order in relation to Y 9/35 has been objected to) this is in favour of higher public rights.

5.6.35. These documents provide conclusive evidence of the application route being a footpath. However, that is without prejudice to the existence of higher rights. They are indicative of a degree of confusion surrounding the status of what became Y 9/46. Furthermore, the strong evidence in favour of part of Y 9/35 being a bridleway might be seen as supportive of similar or higher rights existing over the application route.

---

## 5.7. Local Authority Records

### Explanation of the type of evidence

5.7.1. 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.

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

### Evidence

5.7.3. **East Coker Parish Council Minutes (1896-1971)**

Source: SWHT

Reference: SHC D/PC/Cok.e/1/2/1 - 10

Appendix number: 10A

5.7.4. The application route was discussed numerous times over a 75-year period. The key entries are recorded below.

5.7.5. A number of the entries refer to Herne Lane. This would appear to refer to the southern section of what is now footpath Y 9/35 which begins at the junction with the application route (see appendices 1 and 3) and ends at the junction with Yeovil Road. The Parish copy of the 1839 Tithe Map names numerous fields (in what is now North Coker Park) bordered to the north by the application route and to the west by Y 9/35 which include Herne Orchard, in addition to naming a collection of buildings as Herne Farm. On modern mapping there is a building in the southwestern corner of North Coker Park named Herne Cottage.

7 July 1896 - The clerk was directed to write to Mr Rumsby asking him to cut back a hedge leading from "Sheepslake towards Burton".

4 November 1899 - Mr Chafyn-Grove requested the Council's permission to alter and divert the road through Sheepsleight, which was unanimously agreed to.

20 May 1925 – Headed "Sheepslake Lane". Mr Crumper informed the meeting that a tracing of the old roadway was being prepared for the County Council.

19 December 1950 – Headed "Survey of Public Rights of Way". Mr Board proposed that all paths remain as on original Parish map, seconded by Mr Cornelius and carried.

2 June 1965 – Headed "The lane at the junction of Burton Chapel with Herne Lane". This lane was not publicly repairable according to the Divisional Surveyor and was not on the list of claimed footpaths. Clerk to ask Surveyor to add to the list of claimed footpaths.

14 July 1965 – Headed "The Lane from Burton Chapel to Herne Lane". County Council Works Committee accepted this lane as footpath, and arrangements are being made to clear overgrowth.

11 August 1971 – Headed "Name plate by North Lodge". Debate concerning Yeovil Rural District Council's desire to erect a street sign at North Lodge. "Mrs Mandsley" (presumably the owner of North Lodge, at the corner of what is now Yeovil Road and Longlands Lane) suggests the lane is known as Sheepslake Lane. Parish Council believe Sheepslake Lane refers only to the lane from Sheepslake House to the footpath leading to Herne Lane, and that the lane in question is Longlands Lane.

10 October 1971 – Headed “Lane by North Lodge”. Letter sent to P. Mitchell enclosing two maps. One is dated 1888 and depicts Sheepslake Lane as the path which runs from Longlands Lane to Burton Chapel.

8 November 1978 - Headed “Footpaths”. Agreed that the Council will contact Yeovil District Council’s Technical Department “about the complaint received regarding the general state of the footpaths in the village particularly Sheepslake Lane and Herne Lane.”

5.7.6. **East Coker Parish Council Correspondence**

Letter to Clerk, 3 March 1925

Source: SWHT

Reference: SHC D/PC/Cok.e/4/2/1

Appendix: 10B

5.7.7. This letter is addressed to H. R. Headford, Esq., Clerk to the East Coker Parish Council. Written by Batten and Co. Solicitors of Yeovil, it appears to respond to an initial letter sent by the Clerk. This letter has not been located, therefore the context of the exchange is unknown.

5.7.8. Batten and Co.’s letter reads, “In reply to your letter of the 28<sup>th</sup> ult., no part of Sheepstake [sic] Lane, East Coker was conveyed to either of the persons mentioned by you.”

5.7.9. Given the lack of detail and contextual information, this source has minimal evidential value as regards the status of the application route.

5.7.10. **East Coker Parish Council Footpath Map**

Source: SWHT

Reference: SHC D/PC/Cok.e/6/4/1

Appendix: 10C

5.7.11. It is likely that this is the map referred to in the Parish Council minutes above dated 19 December 1950, when it was proposed “that all paths should remain as on original map”. Reference is also made to a Parish Council footpath map in the Yeovil Rural District Council Works Committee Minutes, below.

5.7.12. The Rights of Way Act 1932 introduced the procedure that enabled landowners to deposit a map with the highway authority of the recognised rights of way on their land, with an accompanying declaration. The map would be sufficient evidence to rebut any presumption of ways not included during the respective periods. The Footpaths, Commons and Open Spaces Society promoted the Act and suggested that county and district councils might wish

to arrange to list and mark on OS maps all public rights of way in their district, with the assistance of Parish Councils.

5.7.13. It appears that East Coker Parish Council marked public rights of way on a map in accordance with the guidance following the 1932 Rights of Way Act. The declaration that accompanied the map has not been found. The application route is shaded brown. There is no key to the map, which is unfortunate as two colours have been used to annotate routes – blue and brown. All of the blue routes are annotated in red with W.G. (wicket gate), F.G. (field gate) and/or S (stile), and therefore appear to refer to footpaths.

5.7.14. A comparison against the Definitive Map shows that without exception the routes coloured blue are currently recorded as public footpaths. Of the ten routes shaded brown, three are currently recognised public footpaths, three are recognised bridleways, three are mixed status part bridleway/footpath and part no status, and one has no recorded public rights.

5.7.15. While the 1932 Act referred to public rights of way, it did not differentiate between different types of right of way, such as footpaths or bridleways. Brown routes are likely to have indicated higher public rights than blue routes, which appear to have represented footpaths. Given that public carriageways are not recorded on the map, it seems a safe assumption that brown routes were intended to represent bridleways. The lack of corroborating evidence, however, reduces the evidential weight of this document.

**5.7.16. Definitive Map and Statement Preparation Records**

Source: SWHT

Reference: SHC D/PC/cok.e/4/1/17

Appendix: 10D

5.7.17. These records are documents originally held by East Coker Parish Council relating to the preparation of the DMS and subsequently deposited with SWHT. They are consistent with those held by Somerset County Council and examined above, with one exception. On the Parish copy of the Second Schedule, in which the application route is referred to as a bridleway, there is a handwritten note which reads “f.p. on map”.

**5.7.18. Yeovil Rural District Council Minutes 1899-1900**

Source: SWHT (South Somerset Heritage Collection)

Reference: SHC D/R/yeo/2/2/3

Appendix: 10E

5.7.19. As with the Parish records, the application route was discussed several times, albeit over a much shorter period. The key entries are recorded below:

6 November 1899 - Headed "East Coker repair of Sheepslake Lane". An offer by G T Chafyn-Grove Esq to "improve and repair Sheepslake Lane, East Coker by straightening it out and raising the road and putting a culvert under it, was, (upon the motion of Mrs S G Bartlett, seconded by Mr N L W Pearse) accepted with thanks".

8 October 1900 – Headed "Surveyor's Report". Records completion of above repair works. "The lane is now open to the public and gives great satisfaction, as the distance has been shortened by the lane being made straight, the hill lowered and the roadway widened. The entire expense being borne by G T Chafyn-Grove Esq".

5.7.20. **Yeovil Rural District Council Works Committee Minutes 1924-1928**

Source: SWHT (South Somerset Heritage Collection)

References: SHC D/R/yeo/3/1/7 1922-1925 and SHC D/R/yeo/3/1/8, 1925-1928

Appendix: 10F

5.7.21. The Application route was discussed on three occasions, all concerning liability for its upkeep.

19 December 1924 – Headed "East Coker Road from Hunters Lodge to Burton". Records complaint by the East Coker Parochial Committee concerning the condition of the route. The Clerk was "directed to communicate with the Clerk of the Peace for the County of Somerset and endeavour to ascertain the condition upon which the Quarter Sessions some 25 years ago consented to the diversion of this road and possibly the same might throw some light upon the question of who was liable for repair of this road."

16 January 1925 – Headed "East Coker Road from Hunters Lodge to Burton". Letter is read from the Clerk of the Peace for the County of Somerset which confirms that the diversion referred to above did not relate to the application route. It instead concerned what is now the northern section of footpath Y 9/35 (Appendix 1). The District Surveyor "was instructed to prepare a plan showing the road in question to enable the Clerk to communicate with the Clerk of the Peace again".

12 February 1926 – Headed "East Coker Road from Hunters Lodge to Burton". Clerk of the Peace for the County of Somerset responds stating that he was "he was unable to find any order of the Quarter Sessions dealing with the lane referred to but that it was very unlikely that any



order would contain a direction as to the liability for maintenance of a substituted highway.”

15 May 1934 – Headed “East Coker”. Records and notes that a letter was received from East Coker Parish Council “forwarding a map of East Coker Parish with the footpaths claimed as public Rights of Way marked thereon.” This is likely to be the “original map” referred to in the Parish Council minutes, above.

5.7.22. **Yeovil General File: Survey of Rights of Way 1956**

Source: SCC

Reference: RW/Gen 5

Appendix: 10G

5.7.23. The Yeovil General File, held in the SCC archive, is formed of any rights of way correspondence received by the County Council relating to the Yeovil Rural District

5.7.24. This document is a page of notes relating to rights of way across Yeovil Rural District. Point 8 refers to East Coker (sheet 5) and reads:

“the western end of road referred to from Burton to the corner by Chapel and thence north, is a county road; also the eastern end from a point near sewage tanks eastward to join Gunville Lane. The middle section is not recorded as a county Road. This agrees with the plan deposited under 1929 Act. Should Archives report on this?”

There is a pencil note which responds: “let it go on deposit”.

5.7.25. It is likely that this exchange refers to vehicular roads shown on the 1929 Handover map (see above). The last comment possibly refers to adding a footpath to link the two sections of highway on the deposit of the Draft Modification Map.

5.7.26. **East Coker Parish File 1965**

Source: SCC

Reference: RW/5/45

Appendix: 10H

5.7.27. Similar to the Yeovil General File, this collection is formed of rights of way correspondence relating specifically to East Coker Parish. There are several entries concerning the application route, recorded below:

5 June 1965 - The Parish Council wrote to the Divisional Surveyor regarding the lane from Burton Chapel to Herne Lane, confirming that the lane is shown on the 1933 map owned by the Parish Council and

requests that it is added to the map of claimed footpaths so that work can be carried out on it.

9 June 1965 - The internal memo as a result of the above letter is from the Divisional Surveyor to the County Surveyor suggesting that the footpath is not continuous and the Parish request seems reasonable.

21 June 1965 - Confirmation of the route referred to by the Parish Council is given as "leading due east from Burton Chapel, crosses 9/35 and continues eastward to join the County unclassified road near the sewage tanks".

29 June 1965 - The County surveyor responds by saying that an objection has been received to the omission of the claimed route as a footpath and states that the Committee (works committee) will be advised to accept the footpath. The Divisional surveyor is advised to treat the path as public and go ahead with clearance of surface growth.

30 June 1965 - The clerk of the Council confirmed to the Ramblers' Association that the surveying authority will be advised to add the footpath to the draft map. The undated plan shows the claimed route coloured blue annotated Y 36. The handwritten note reads "This will be included at mod stage, WARS 26/06/65".

#### Description and interpretation of evidence

5.7.28. The Parish Council minutes confirm much of what has been highlighted by earlier evidence in the report, such as the names Burton Lane, Sheepsleight, and Sheepslake Lane, and the lack of clarity regarding the name and status of the application route. The 10 October 1971 entry is of particular interest, as it suggests that the entirety of the application route was known as Sheepslake Lane.

5.7.29. The application route is at different times referred to as road, roadway, and footpath, but little else is provided regarding rights of way.

5.7.30. The Parish Council and Rural District Council both make reference to realignment of Sheepslake Lane. The route is also described as running "through Sheepsleight". This could mean that the buildings depicted on the tithe maps and earlier OS maps between points C and D constituted a settlement known as Sheepsleight, though no further evidence has been found to confirm this. If Sheepsleight was a settlement, then the application route would represent the only method of vehicular access to it.

5.7.31. The Rural District Council surveyor reported in 1900 that the realignment had been completed and was open to the public. This is likely to have occurred by virtue of a diversion sanctioned by the Court of Quarter Sessions, though no record of an order to this effect has been found. The Yeovil Rural District Council Works Committee Minutes also record that a search for said records in 1926 by the Clerk of the Peace of Somerset yielded no results. This refers to the section between points C and D, which is consistently recorded as public vehicular highway. It is possible that this diversion related to access requirements for the sewage tanks referred to in the Definitive Map documents.

5.7.32. In seeking to determine who was liable for the application route, the Yeovil Rural District Council Works Committee Minutes suggest that the Works Committee believed that the route may have been a highway maintainable at public expense. This offers an important evidential link between the 1863 Highway Board Map and the 1929 Handover Map (see section 5.5.). It is noteworthy that in trying to ascertain the status of the application route, no reference was made by the District or County Councils to the 1863 Map, which would have been of great importance in the matter under discussion. This supports the supposition that the 1863 Map was not consulted by the District Council in their exchanges with East Coker Parish Council between 1924-1926, and by extension, that the 1863 Map was not considered during the drafting of the 1929 Handover Map.

5.7.33. The East Coker Parish Council Footpath Map provides useful contextual evidence regarding the status of the application route, but without the accompanying declaration its evidential value is limited. It appears that the Parish Council considered the application route to be a right of way, but it is less apparent what they considered the extent of this right to be. The comparative analysis of blue and brown-shaded routes suggests that the brown routes were intended to represent bridleways, but a lack of context impacts on the evidential weight of this source.

5.7.34. As a collection the Parish Council archival material is good evidence that public rights were believed to exist on the application route from at least 1896.

5.7.35. In agreeing to the realignment of Sheepslake Lane, the Parish Council referred to this section of the route as a road. In their exchanges with the Clerk of the Peace of the County of Somerset, the Rural District Council also refer to the route as a road. This could be construed as an acknowledgment of vehicular rights across the full length of the application route, rather than the eastern section alone. Equally, the term road could have been employed simply as a reference to the physical character of the route. Later documents would appear to suggest that both councils considered the application route to be a footpath.

5.7.36. The annotations on the SWHT copy of the Second Schedule again suggests a degree of confusion or disagreement surrounding the status of the application route. The hand-written note asserts that the application route, which is recorded as a bridleway by the Second Schedule, appears as a footpath on "the map". However, it is unclear which map this refers to (e.g. the Draft Map, the Provisional Map, or the Definitive Map). The route was ultimately included in the DMS as a footpath, so it can be assumed this debate was resolved.

5.7.37. The Yeovil General and East Coker Parish Files help to corroborate evidence seen elsewhere in the report, notably the Definitive Map and Statement Preparation Records. They add further detail to the process by which the application route was included as a footpath on the Definitive Map. The body of documents highlights a degree of ambiguity surrounding the reputation of the application route, but this debate appears to resolve itself during the DMS process. As such, the material is of minimal evidential value as regards higher public rights than currently recorded.

-----

## 5.8. Commercial and Other Maps

### Explanation of the type of evidence

5.8.1. Commercial maps are those produced primarily for sale to the public.<sup>25</sup> 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

#### 5.8.2. **Day & Masters 1782**

Source: SCC

Reference: Map 9

Appendix number: 11

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

5.8.4. The full length of the application route is shown on the map, depicted by two solid lines in a manner that the map legend describes as an "Inclosed Road". This suggests that it must have been a prominent physical feature or a route of some importance (or both). Based on this assumption it is perhaps more likely

---

<sup>25</sup> It is accepted that some OS maps were also made for sale to the public, but these are dealt with elsewhere in this report.

that it would have carried public rights higher than those of footpath. However, little is known about the basis upon which Day & Master's selected the features which were to be shown on their maps. Furthermore, if they did consider the route to be a public right of way, this can only be taken as the view of the individual surveyor.

5.8.5. The map is nonetheless of evidential importance. It shows that the application route physically existed in 1782 and can be given some (but not a great deal of) weight in favour of public vehicular rights.

5.8.6. **Map of East Coker 1819**

Source: SWHT (Somerset Archaeological Natural History Society Collection)

Reference: SHC DD/SAS/C212/MAP/41

Appendix: 12

5.8.7. The provenance of this map is uncertain. There are no details about the cartographer or their purpose, and the accompanying book of reference (DD/SAS/C212/C/10) does not help in determining the document's status.

5.8.8. The map records parcel numbers that appear consistent with the later 1839 Tithe Map, though the base maps are not the same. The application route is depicted by two solid parallel lines. The dog leg between points C and D is recorded. In common with the other linear routes in the vicinity, the application route is not coloured, named or numbered.

5.8.9. The map does not appear to distinguish between types of highway. Routes that are of varied status and character in historical and modern records are represented in broadly the same manner, with some minor changes in width and shading.

5.8.10. The map is good evidence of the physical existence of the route, but it does not assist with status. The lack of information surrounding its production and purpose naturally reduces its evidential weight.

5.8.11. **Greenwood's 1822**

Source: SCC

Appendix: 13

5.8.12. Despite some criticism relating to the positional accuracy of Greenwood's maps, they can provide good evidence of a route's physical existence at the time of the survey and also that the surveyor considered it to be of some importance. As the map was produced for use by members of the public, it is likely that the surveyor would have focused on those roads that they

believed to be publicly accessible, or that were useful for the public in some other way.

5.8.13. Greenwood's maps used two classifications for roads, namely turnpike and crossroads. The application route is shown as a "Cross Road". Although not specifically defined on the map, this term was being used to refer to more than just the point at which two roads cross. In one prominent case the courts defined a cross road as "a public road in respect of which no toll is payable".<sup>26</sup> However, in that case the judge was considering a map produced 55 years earlier than Greenwood's and by a different cartographer. Therefore, while consideration should be given to this legal precedent, it is important to consider the term cross road in the context of any individual map before drawing any inferences.<sup>27</sup>

5.8.14. While the majority of cross roads shown on Greenwood's maps are now recognised as public vehicular roads, there are many which are not. Most of those which are not now public vehicular roads are shown on Greenwood's Map as culs-de-sac which are unlikely to have carried public vehicular rights. One example of this is the right-angled cul-de-sac to the northeast of the application route. This route is recorded on the DMS as footpath Y 9/20.

5.8.15. A similar picture emerges when analysing other extracts of the same map. In fact, in some cases Greenwood's shows as cross roads routes which only a few years earlier had been set out as private roads by an inclosure award.

5.8.16. Furthermore, any inference to be drawn from Greenwood's maps needs to be viewed in light of case law. In *Merstham Manor Ltd v Coulsdon UDC* the judge concluded that "there is nothing in the map(s) to show whether or not the topographer-author was intending to represent the road on his map as a public highway".<sup>28</sup> However other case law suggests that, if a route is shown as a "cross road" on Greenwood's map, this evidence should be given limited weight in support of public rights over the application route.<sup>29</sup>

5.8.17. This map therefore confirms the physical existence of the application route in 1822 and supports the view that the route was a thoroughfare. However, it seems as though Greenwood's either did not consider all cross roads to be public vehicular routes, or that he did not make very careful checks about the public status of the routes they recorded. In the circumstances this

---

<sup>26</sup> *Hollins v Oldham* (unreported, 27 October 1995).

<sup>27</sup> *Definitive Map Orders: Consistency Guidelines*, (2016), 2.4., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>.

<sup>28</sup> *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77.

<sup>29</sup> *Fortune & Ors v Wiltshire Council & ANR* [2012] EWCA Civ 334.

map is only of very limited weight in support of public rights higher than that of footpath over the application route.

#### 5.8.18. **1911 Bartholomew's Map**

Source: Supplied by Applicant

Reference: Sheet 34

Scale: 1:126,700

Appendix: 14A

5.8.19. Bartholomew's maps, which were initially aimed at tourists and cyclists, used OS maps as source documents. They included information on roads and other features provided by engineers, surveyors and local authorities. This additional information is thought to have made Bartholomew's maps more accurate than comparable commercial maps. However, they still contained no explicit distinction between public and private routes. Later editions included the caveat that "the representation of a road or footpath is no evidence of a right of way".

5.8.20. Bartholomew's 1901 map included three classes of roads, First, Secondary (good), and Indifferent (passable). It also recorded footpaths, bridleways, and uncoloured roads. The maps included the advice that "uncoloured roads are inferior and not to be recommended for cyclists." By 1911 a Through Route classification had been added. The first three classes were distinguished by the use of red infill between either solid, pecked or dotted lines.

5.8.21. Bartholomew's map was considered in *The Commission for New Towns and Worcestershire County Council v J.J. Gallagher Limited*.<sup>30</sup> In that case it was considered that uncoloured roads on Bartholomew's map were thought to be public carriageways. After referring to the disclaimer (see above) Neuberger J. went on to say at paragraph 108 "I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways." Later in the same judgement (at paragraph 121) Bartholomew's map is referred to as being "actually of assistance to the argument that it [Beoley Lane] was a public carriageway".

5.8.22. The claimed route is shown by solid parallel lines with red dashed infill. This means it was an indifferent route, passable by cyclists. At the time the map was produced cyclists would have been restricted to carriageways, whereas

---

<sup>30</sup> *Commission for New Towns and WCC v J.J. Gallagher Limited* [2002] EWHC 2668 (Ch) [108].

today they can use rights of way from bridleway status and above. This suggests that the author of these maps believed the route to be a carriageway (i.e. to carry full vehicular rights).<sup>31</sup> The depiction of the application route in this way suggests that it had the appearance and possibly the reputation of a public vehicular road at the time the map was drafted. While this certainly weighs in favour of such rights, it must be remembered that this may only have been the view of the surveyor (the document is unlikely to have been subject to public consultation) and the document explicitly states that it is not evidence of the existence of rights. In light of this, and case law quoted above, the map is found to be in favour of public vehicular rights but can be given little weight.

#### 5.8.23. **1920 North Coker Estate Sales Catalogue**

Source: SWHT

Reference: SHC DD/EDN/42

Appendix: 15A

5.8.24. This sales catalogue and accompanying plan advertises a “Freehold agricultural property being the remaining and greater portion of North Coker Estate”. The plan is a copy of a 1903 Ordinance Survey Map.

5.7.25. The application route is shaded brown, as are all other routes, including those that are currently recorded as vehicular roads, restricted byways and footpaths.

5.8.26. Two of the lots for sale, 4 and 11, abut the claimed route. Lot 4 has landholdings on the northern side of the application route. Lot 11 has holdings to the north and south of the application route, the latter of which would likely require the route for access. The sales catalogue advises that the property is “freehold [...] much of the estate is bordered by and intersected by good hard roads”. It can be assumed that the application route was used for access and thus carried vehicular rights, either public or private.

5.8.27. Clause 7 of the sale document states that “the sale is subject to all outgoing, rights of way, easements, water rights and burdens affecting the estate and any rights, easements and other things”. This means that the document was not conclusive of all easements attached to the land. Each lot is

---

<sup>31</sup> Writing in 1902, Robert Hunter outlines contemporary debates over the legal status of bicycles, which were at that time relatively new as a means of mass transportation. He records that the fact “that a rider propels himself has suggested doubts whether a cycle can be properly classed as a carriage; but a series of cases may now be said to have settled this question in the affirmative”, R. Hunter, *Open Spaces. Foot-paths, and Rights of Way* (London: Eyre and Spottiswoode, 1902), pp. 381-386. Such cases include *Cannon v. Earl of Abingdon* [1900] 2 QB 66-72. See also *Commission for New Towns and WCC v J.J. Gallagher Limited* [2002] EWHC 2668 (Ch) [108].



described but this is a general description of facilities, tenants, etc., rather than specific rights or easements relating to the sale.

5.8.28. The sale documents confirm the physical existence of the route. Though they could conceivably be taken as further evidence of vehicular rights, the nature of their production means that little weight can be attributed to them in terms of determining whether those rights were public or private.

**5.8.29. 1926 Coker Court Estate Sales Catalogue**

Source: SWHT

References: SHC DD/NNE/4, SHC DD/SAS/C/2272/1/1/C11 (Somerset Archaeological Natural History Society Collection)

Appendix: 15B

5.8.30. This sale did not involve any land abutting the application route.

5.8.31. The application route is not shaded, nor are any of the currently recognised vehicular roads.

5.8.32. The purpose of sale documents was not to record status of routes and no weight is given to this map other than confirming its continued physical existence.

**5.8.33. 1927 Bartholomew's Map**

Source: Supplied by Applicant

Reference: Sheet 34

Scale: 1:126,700

Appendix: 14B

5.8.34. The map depicts the application route in the same manner as the 1911 Bartholomew's map. As such, there is nothing to add to the comments made above.

Discussion and Interpretation of Evidence

5.8.35. The depiction of the application route on the Day & Master's Map (1782) provides the earliest evidence of the route's existence on the ground.

5.8.36. The four commercial maps (Day & Master's, Greenwood's, and Bartholomew's 1911 and 1927) are all supportive of public vehicular rights although, for the reasons given above, they do not carry a great deal of evidential weight

5.8.37. While the two sales plans (1920 and 1926) raise interesting questions about access, they are of limited use in determining the status of the application route.

---

## 5.9. Documentary Evidence Sources not used

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

- **Inclosure** – there is no Award covering East Coker.
- **Quarter Sessions Records** – There are no records covering the application route.
- **Deposited Plans** – there are no records in the vicinity of the application route.
- **Section 31(6) Statutory Declaration** – there is no Section 31 Declaration for East Coker.

## 6. Landowner Evidence

6.1. Consultations regarding the application route were sent out to all landowners and relevant local and national user group organisations in July 2015. Landowners were consulted for a second time in November 2020. 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.

<b>Landowner and response</b>
<b>Landowner A:</b> Has owned adjoining land on the north side of the claimed route between points B and D since 2012. When consulted in 2015 they recorded that they believed the way to be a footpath, as confirmed by the solicitor on purchase. Suggested that the route is regularly used by walkers. On occasion motorbikes and their young, unhelmeted users have been stopped. In 2020 they reiterated their belief that the application route is a footpath, arguing that there is "no evidence whatsoever that this has ever been a bridleway" and referring to several maps as labelling it as a footpath. Asserted that they have seen horse riders occasionally using the route "resulting in very muddy sometimes impassable spots".
<b>Landowner B</b> No response received.

<p><b>Landowner C</b> The land on both sides of the claimed route between points A and B is in multiple ownership. Two of the owners responded in 2015, both confirming they have owned the land for over 40 years. They both believe the claimed route to be a public footpath and have seen walkers using it. They have never prevented use, erected notices, given permission or requested users to seek permission. In 2020 the joint landowners reiterated the above position, adding that they “have not seen any historic evidence to upgrade Y9/46 to a bridleway”. They drew attention to the East Coker Parish Council Neighbourhood Plan, “checked as a true and correct record by SSDC [South Somerset District Council]”, which records the application route as a footpath. State opposition to proposed upgrade, arguing that it is well used by walkers (including children on their way to school); making the route into a bridleway “would be extremely dangerous”.</p>
<p><b>Landowner D</b> The owner confirmed the extent of their holdings. They echoed Landowners A and C in their belief that the application route is a footpath.</p>
<p><b>Landowner E</b> The owner asserted that the route does not cross their land and expressed support for the upgrade plans. They have seen motorcyclists using the route in the summer time, and suggest it is regularly used all year by dog walkers.</p>
<p><b>Landowner F</b> Suggested that the application route does not run adjacent to their land. Recorded that they had used the application route on horseback during the 1970s and 1980s.</p>
<p><b>Landowner G</b> No response received.</p>

6.2. None of the landowners who responded to the consultation claim ownership of the route, which they all believe to be a public footpath. One of the landowners claims to have seen equestrian use of the route and has challenged use by motorcyclists. Landowner F records that they used the route on horseback in the 1970s and 1980s, though provide no further details as to the nature of this use.

6.3. Neighbourhood plans (as referred to by Landowner C) are statutory planning documents. The exact nature of the corroboration described by Landowner C 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. 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 9/46 as a footpath, then, does not impact any higher rights (such as bridleway rights) that may exist. By extension, the presence of Y 9/46 as a footpath in the East Coker Neighbourhood Plan should not be taken as evidence that higher rights do not exist.

6.4. 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. Consultation and other submissions

7.1. The table summarises the consultation responses received from parties other than the affected landowners.

<p><b>Consultee and response</b></p>
<p><b>East Coker Parish Council</b></p> <p>The Parish discussed the proposal at a meeting in August 2015. The approved minutes raised the following concern: "it was felt that the footpath has serious safety implications if also used as a bridleway. Resolution: It was agreed by all council that it would be unsafe and unsuitable to use footpath Y 9/46 as a bridleway. All Council objected to this proposal". Photographs demonstrating the unsuitability were taken by one of the councillors and were offered to SCC. Consulted again in 2021, the Parish Council reiterated their concerns about safety pointing out that the route is currently heavily used by pedestrians including children. They additionally raised objections to the prospect of the route being widened, asserting that such works "will have a huge impact on wildlife habitat with the need to grub up very low hanging hedges and excavate banks." The East Coker Neighbourhood Plan was also raised, with the Parish Council arguing that the application route was recorded as a footpath in this plan without objection.</p>
<p><b>Area Highways Manager</b></p> <p>There is no record of maintenance being carried out on this footpath.</p>
<p><b>Respondent 1</b></p> <p>Responded to consultation report in 2021. Indicated intention "to challenge the legality of the evidence presented". Questioned the fairness of the application process, arguing that "the whole process of these modification applications weights extremely unfairly on the side of the applicant". Asserted that "there is no evidence of this modification ever being accepted by the Parish".</p>
<p><b>Respondent 2</b></p> <p>Responded to consultation in 2015. Asserted that the footpath is regularly used by walkers. Considered the application route too narrow for two thirds of its length (between points A1 to B and B to C) to allow horses and walkers to pass, and believed it could be hazardous for horse riders if they met a dog off the lead on these sections.</p>
<p><b>Respondent 3</b></p>

Responded to consultation for modification investigation 812M 874M (footpath Y 9/35). Raised concerns about the width of the application route, suggestion that cyclists and horse riders would struggle to pass one another. Questioned who would have to pay for maintenance, "the tax payer or land owner".

**Respondent 4**

Responded to 812M 874M consultation. Highlighted that the application route is used regularly by dog walkers and raised safety concerns about sharing route with horse riders.

**Respondent 5**

Responded to 812M 874M consultation. Referred to "badger activity" on the application route "which could be dangerous to horses" and pointed out that there are "several other bridleways in the area" that horse riders could use.

**Respondent 6**

Responded to 812M 874M consultation. Asserted that there is "already adequate access for riders via Y 9/49 and Y 9/50" and that "the existing footpath classification should remain to allow pedestrian transit without fear of imposing horse traffic."

**Respondent 7**

Responded to the consultation report in 2021. Objected strongly to the report's recommendation. Question the legitimacy of using the 1929 Wincanton District Handover Map legend to interpret the Yeovil District Handover Map. Argued that the yellow colouration on the Yeovil Map "did not – and does not – mean a class 'C' road." Questioned what the circles on the Yeovil Handover Map represented. Suggested that the term "Sheepsleight" was used to describe pasture rather than a settlement. Raised concerns about the unsigned and undated Survey Cards. Argued that the reverse side of the Statement should include information as to the evidential basis of the right of way in question.

7.2. No response was received from the following organisations:

- Councillor Yeomans (Chair of Regulation Committee in 2015)
- South Somerset District Council
- Area Rights of Way Warden
- Ramblers' Association (National, Local and Somerset Offices)
- British Horse Society (National, Local and Somerset Offices)
- Trail Riders Fellowship
- All Wheels Drive Club
- Open Spaces Society
- Avon & Somerset Constabulary
- Natural England
- CPRE Somerset Office

7.3. The concerns raised about width relate primarily to the safety of users, which as discussed at paragraph 6.4., cannot be taken into account under the current legislation. Having said this, if the historical width of the route was such that it could not have physically accommodated users (other than those on foot) then it would potentially be evidence that the route would not have been dedicated by the landowner and/or accepted by the public. Such evidence would be very relevant in determining the application.

7.4. This investigation has found no explicit evidence regarding the physical extent of any rights which may exist over the application route. The OS County Series 25 Inch maps (appendices 6C, 6E, and 6H) are suggestive of a wider route than that of the present day, though the 1:2500 scale makes precise extrapolation difficult. The Yeovil Rural District Council Surveyor's Report (Appendix 10E) refers to having the "roadway widened" during the realignment of points C to D, but no reference is made to either the original width or the new width. Nevertheless, it seems reasonable to speculate that the application route was historically capable of taking vehicular traffic. While there might be some debate about whether those vehicles were accessing the route by virtue of a public or a private right, the evidence strongly supports the conclusion that the route was wide enough to take vehicles.

7.5. The East Coker Neighbourhood Plan is discussed at paragraph 6.3., above.

7.6. The evidence considered by this report has, in following section 32 of the Highways Act 1980, been deemed appropriate and relevant by the investigating officer. This section is discussed at paragraph 4.4., above.

7.7. This investigation is concerned with recording correct public rights, which may be higher than those currently recorded. The concerns about environmental implications, suitability and desirability, while understandable, cannot be taken into account under the current legislation. This investigation has also involved a significant degree of consultation. Members of the public, user groups and adjacent landowners were initially consulted in 2015. Adjacent landowners were consulted again in November 2020, and a draft report was circulated for comment in July 2021.

7.8. The rationale behind using the Wincanton Handover Map legend to interpret the Yeovil Handover Map, and the relevance of the yellow colouration, is outlined in footnote 22.

7.9. The circles on the Yeovil Handover Map are understood to represent bridges. No bridges are shown on the application route.

7.10. Very few entries in Somerset's Definitive Statement include evidential information on the reverse side, and this does not undermine their status as records of rights of way.

7.11. Respondent 7 is correct to point out that one meaning of the term "sleight" is sheep pasture.<sup>32</sup> However, given the agricultural setting of the application route, it seems highly unlikely that the various representations of the possible settlement Sheepsleight/Sheepslake were intending to highlight a single area of pasture land. Had the intention of the annotation been to identify the land use one would have expected other parcels of land to have been similarly annotated, and this is not the case. However, it should be reiterated (as discussed at paragraph 5.7.30., above) that the existence of this settlement has not been confirmed.

## 8. Discussion of the evidence

8.1. This investigation has considered a broad range of documentary and consultation evidence. It is important to assess to what extent this evidence has established fact, the degree to which interpretation has relied on inference, and the varying evidential weight of the source material.

8.2. Having assessed these materials, the purpose of this investigation has been to determine whether the evidence supports the contention that higher rights of way subsist on the application route than currently recorded. In doing so the standard of proof to be applied is the *balance of probabilities*. In other words, is it more likely than not that the route carries higher public rights.

8.3. A route which broadly follows that which has been applied for has been present on the ground since at least 1782, as indicated by its depiction on the Day & Master's Map. Subsequent mapping shows the route on the same alignment until 1901, at which point the section between points C and D is depicted as straightened. This change would appear to be the result of a diversion as referenced in Parish and District Council records, though there is no record of this in the Quarter Sessions archive. This lack of evidence could be seen to raise questions concerning the legal validity of the realignment, and by extension, the status of the eastern end of the application route. However, it seems more likely than not that due process was followed in this matter, particularly given that the realignment is well-documented in Parish and District Council records.

8.4. The section between points C and D is recorded as a vehicular highway in the 1863 Highways Board Map, the 1929 Handover Map and subsequent road

---

<sup>32</sup> See *The Oxford English Dictionary*, Vol. IX (Oxford: Clarendon Press, 1933), p, 199, which defines sleight as "A pasture, esp. one for sheep".

records. It is also included on Somerset County Council's List of Streets as of April 2020. This is very strong evidence that this part of the application route carried public vehicular rights.

8.5. The 1863 Highways Board map depicts the full length of the application route (not just C to D) as the central section of a continuous highway. The map is strong evidence that the full route enjoys higher public rights than currently recorded. In turn, no stopping up order has been discovered that would indicate the extinguishment of vehicular rights.

8.6. The East Coker tithe maps depict the application route in the same manner as several recognised public roads. Several "Dwelling Houses" are shown in the Diocesan copy on the section between points C and D, which is named as Sheepsleight in the Parish copy. The Tithe Apportionment names two fields as "Sheeps Lake" and includes details about nine tenements, a cottage, and their occupiers. Sheepsleight is depicted as a settlement by the 1808 OS Surveyor's Drawing and is referred to as both Sheepsleight and Sheepslake in the East Coker Parish Council minutes. The area is named as Sheepslake by the 1885 OS County Series First Edition Map. Though Sheepsleight/Sheepslake may have been a farm to which the application route provided private vehicular access, it seems more likely that it was a small settlement, and that by extension the road to it is likely to have carried public rights.

8.7. The Finance Act Record Plan has excluded the route from adjacent hereditaments. This raises a strong possibility that the application route was considered a public vehicular highway in 1910, particularly as it is corroborated by a large body of supporting evidence. The Finance Act evidence is doubly important because, as outlined above, it can be determined as "new evidence".

8.8. The records of East Coker Parish Council and Yeovil Rural District Council highlight the lack of certainty surrounding the status of the application route, particularly regarding liability for maintenance. This confusion carried over into the Definitive Map consultation and drafting process, where the application route was originally excluded prior to an appeal from the Ramblers' Association. It was eventually recorded as a footpath on the Definitive Map and Statement, despite the Second Schedule document suggesting bridleway status. Ultimately the Parish, District and County Councils appear to have concluded that the route was a footpath. This certainly suggests that they were not aware of the existence of higher rights at the time. However, it will not have extinguished any such rights which might have existed but which they were not aware of.

8.9. The East Coker Parish Council Footpath Map could be seen to suggest that the application route was considered a bridleway in 1933. Yet as there is no map legend, and therefore no clear indication as to what the brown shading of the



route was intended to show, this conclusion needs to be treated with some caution.

8.10. The Ordnance Survey maps provide good evidence of the existence and changing character of the route. The shaded casing used by the County Series First Edition Map can be considered slightly in favour of the existence of higher public rights.

8.11. Day & Masters, Greenwood's, and Bartholmew's maps carry some, if limited, weight in favour of public vehicular rights, particularly when viewed alongside other documents which clearly support the existence of such rights.

8.12. The sales documents (1920 and 1926) are useful in terms of the character of the application route and suggest that the route may have been needed for access to certain parcels of land. However, they give little indication as to whether that was by virtue of a public or private right.

8.13. In summary, the 1863 Highways Board Map and Finance Act Record Plan offer strong evidence that the full length of the application route enjoys higher rights than those currently recorded. The East Coker tithe maps, the East Coker Parish Council Footpath Map, commercial mapping, and Ordnance Survey maps offer supporting evidence that, on the balance of probabilities, higher rights exist on the application route. In relation to C-D this conclusion is further supported by the 1929 Handover Map and subsequent road records.

## 9. **Summary and conclusion**

9.1. 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 public rights more likely to exist than not.

9.2. Though the application route is currently recorded as a continuous footpath, a distinction has emerged during this investigation between the section at points A to C, sometimes named as Burton Lane, and the section from points C to D, most commonly named Sheepslake Lane.

9.3. There is no evidence that the application route between points A and C was legally created as a bridleway by statute, nor is there evidence of enclosure, or of orders creating or diverting the route. By contrast, it is clear that C to D (Sheepslake Lane, also known as Sheepsleight) was realigned in 1900. This section of the application route, furthermore, has been recorded as a highway maintainable at public expense since at least 1863.

9.4. There is no single document which definitively proves that higher public rights should be recorded along the whole of the application route. However, when all the evidence is taken together it suggests that, on balance, the route has historically been considered to carry public vehicular rights. Two documents in particular are strongly supportive of the existence of higher rights, namely the Highway Board Map and the Finance Act Record Plan.

9.5. The Highway Board Map shows the application route as a highway. The Highway Board would not have agreed to spend public money on a route that was not maintainable. This is therefore strong evidence that the application route was a highway maintainable at public expense. In itself this might leave open the question of what status the highway was considered to be. However, the map draws an important distinction between halterpaths and highways, identifying the application route as the latter. Furthermore, the map depicts the application route as part of a continuous highway of which several sections are currently recognised as public roads, and have been continuously recognised as such across various highway maintenance documents (e.g. the 1929 Handover Map and subsequent road records). This would suggest that the Highway Board considered the application route to be part of a longer route and, presumably, that it was all of the same status (i.e. it carried public vehicular rights).

9.6. It is significant that the 1863 Highway Board Map and the 1929 Handover Map offer contradictory evidence as to the status of the application route, as it suggests that the reputation of the route changed during this period. There is, however, no evidence of a statutory change in status, nor does the latter document refer to the former. Furthermore, in showing the route as a public vehicular route, the 1863 document is consistent with other evidence which was produced both before and after that date. The information contained in the 1863 Map is therefore supportive of the existence of public rights and remains of evidential importance.

9.7. The exclusion of the application route from surrounding hereditaments in the 1910 Finance Act Record Plan raises a strong possibility that it was considered to carry public rights. Given that the application route was represented as a highway in the 1863 Highway Board Map, it seems highly likely that in 1910 the route was excluded from surrounding hereditaments because it was considered to carry public vehicular rights. When assessed alongside all other available evidence, these documents point to the conclusion that, on the balance of probabilities, public vehicular rights were considered to exist in 1910.

9.8. The Highway Board map, Finance Act materials and road records (in relation to C-D) are supported by a range of evidence that, while of less evidential

weight, remain valuable sources and are supportive of the conclusion that the application route carried public vehicular rights. This includes the tithe maps, the shaded casing line on the OS County Series First Edition Map, and the Day and Masters, Greenwood's and Bartholomew's maps. Most of the other evidence, while not necessarily explicitly in favour of public vehicular rights, is certainly not inconsistent with them. The only possible exception to this are the Definitive Map preparation documents (including the relevant Parish Council minutes). Based on the evidence before them those authorities were not persuaded of the existence of higher rights. However, we now have the benefit of evidence which they did not consider at the time. Furthermore, the Definitive Map itself is without prejudice to the existence of higher rights.

9.9. In light of the above it is considered that the application route has historically carried public vehicular rights. Having reached that conclusion it becomes necessary to consider the implications of the Natural Environment and Rural Communities Act 2006 (NERC). As mentioned above, NERC had the effect of extinguishing all unrecorded public rights for mechanically propelled vehicles (MPVs), except in certain specific circumstances. Section 67(1)(b) of the Act extinguishes MPV rights over routes that are shown in the DMS "only as a footpath, bridleway or restricted byway". Section 67(2)(b) exempts routes from this extinguishment that "immediately before commencement" of the Act were "not shown in a definitive map and statement" but were recorded "in a list required to be kept under section 36(6) of the Highways Act 1980" (i.e. a List of Streets). The section of the application route between points C and D is recorded in the List of Streets, but it is also recorded on the DMS as a footpath. This indicates that NERC has extinguished MPV rights over this section. Similarly, none of the NERC exemptions are considered to apply to the section of the application route between points A and C. This being the case, only lower rights on foot, horseback, bicycle and non-mechanically propelled vehicles now exist over the full length of the application route.

## **10. Recommendation**

It is therefore recommended that:

- i. An Order be made, the effect of which would be to amend the Definitive Map and Statement by upgrading public footpath Y 9/46 to a restricted byway between points A – A1 – 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 report writer has added annotations to various documents to help the reader identify the sections of the route the document is depicting.

1. Plan showing application route
2. Photographs of application route
3. Wider Area Route Plan
4. Land ownership plan
5. Tithe maps, 1839
6. Ordnance Survey Maps
7. Finance Act Record Plan
8. Highway records
9. Definitive Map and Statement preparation records
10. Local Authority records
11. Day & Master's Map, 1782
12. Map of East Coker, 1819
13. Greenwood's Map, 1822
14. Bartholomew's maps
15. Sales catalogues