



WILDLIFE AND COUNTRYSIDE ACT 1981
SECTION 53 SCHEDULE 14 APPLICATION TO ADD A RESTRICTED BYWAY
OVER HUISH DROVE, FROG LANE, AND PARK LANE, AND TO UPGRADE
PARTS OF FOOTPATHS L 13/42 AND L 13/43 TO A RESTRICTED BYWAY,
FROM THE JUNCTION WITH FOOTPATH L 13/45 WESTWARDS TO THE
A378 IN THE PARISH OF HUISH EPISCOPI

Application: 681M, 682M, 683M

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Date: 18 July 2022

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1. **Executive summary**

1.1. The Definitive Map and Statement (DMS) are the legal records of public rights of way in Somerset. They are conclusive evidence of what they show, but not of what they omit. Section 53 of the Wildlife and Countryside Act 1981 provides for applications to be made to modify the DMS where it is believed to be in error. On receipt of such an application Somerset County Council (SCC) has a duty to investigate and determine the application.

1.2. In this case, SCC received three applications to modify the DMS by adding restricted byways over routes in Huish Episcopi known as Huish Drove, Frog Lane, and Park Lane. These applications also involve upgrading parts of footpaths L 13/42 and L 13/43 to a restricted byway. The purpose of the report is to establish what public rights, if any, exist over the routes in question.

1.3. A restricted byway can be used by the public on foot, on horseback or leading a horse, and in or on vehicles other than those that are mechanically propelled.

1.4. In determining these applications the investigating officer has examined a broad range of documentary, consultation, and user evidence. Analysis of this evidence has indicated that the legal tests for making orders to record the application routes as restricted byways have been met. This determination excludes Huish Drove between points A and A1, as this section is recorded as a public vehicular highway.

1.5. The report therefore recommends that Orders be made, the effect of which would be to add to the Definitive Map and Statement restricted byways between points A1-A2-B-C-D, D-E, and E-E1-F-G-G1-H as shown on Appendix 1.

1.6. This report begins by summarising the applications. This includes a description of the application routes and a summary of the case put forward by the applicant. It then outlines the relevant legislation, before examining the documentary, consultation, and user evidence. The report then provides a conclusion explaining what can be elucidated from the documentary, consultation, and user evidence and offers a recommendation on this basis.

2. **The Applications**

2.1. On the 24 May 2010 Stephanie Wheeler, on behalf of the South Somerset Bridleways Association, made three applications under Section 53(5) and Schedule 14 of the Wildlife & Countryside Act 1981 for orders to amend the Definitive Map and Statement by adding restricted byways over Huish Drove, Frog Lane, and Park Lane. The routes in question are shown on drawing number H43-2021 (Appendix 1).

2.2. The applicant believes that the application routes should be recorded as restricted byways. Their case is supported by user evidence forms from 61 people who attest to use of the routes, and by a range of documentary evidence which is discussed below and recorded in Appendix 5. The applicant argues that each piece of documentary evidence

is either evidence of reputation of vehicular highway rights, or consistent with there being vehicular highway rights, or indicates that a civil servant thought that there were vehicular highway rights [...] As a result of the common law maxim 'Once a highway always a highway', in the absence of a stopping up order, it follows that vehicular highway rights existed immediately before the operation of the Natural Environment and Rural Communities Act 2006.

2.3. The application routes are approximately 2.7km in length. When the routes were visited in October 2021 the section of Huish Drove between points A and A1 had the character of a metalled road (Appendix 3, Photographs 1 and 2). Crossing the Long Sutton Catchwater (Photograph 3), the route led to a car park on the eastern side of Huish Bridge (Photograph 4) with a slipway providing access to the River Parrett. Crossing to the western side of the river (Photograph 7), the remainder of Huish Drove was a roughly stoned track with deep ruts and sections of standing water (e.g. Photograph 12). Meeting Frog Lane at point D, the route turned to the south (Photograph 21). This section was lightly gravelled and in better condition than Huish Drove. Meeting Park Lane at point E, the route turned to the west along a similarly gravelled track (Photograph 23) passing a lime kiln building (Photograph 24). A locked farm gate blocked the route at point E1, though pedestrians could physically continue around the side of the gate (Photographs 26 and 27). Passing Merricks Farm at point F (photograph 29), the route turned slightly to the north at point G (Photograph 31) and terminated on the A378 at point H (Photograph 33).

2.4. The available width of the application routes at the time of the site visit was quite variable: 10 metres at point A, 4.5 metres at Huish Bridge, 4 metres at point B, 4 metres at point C, 10 metres at point D, 8 metres at point E, 5 metres at point F, 3.5 metres at point G, and 8 metres at point H.

2.5. Footpath L 13/43 runs along Huish Drove from point A1 at the bridge over Long Sutton Catchwater to the western side of Huish Bridge (photograph 8). Footpath L 13/42 continues from this point westwards to point A2 at the junction with footpath L 13/44 (photograph 10).

2.6. The Parrett Cycleway crosses Huish Drove at point C (photographs 15 and 16). This cycleway (which is part of route 339 on the National Cycle Network) runs over the former line of the Yeovil and Durston Railway. There is a waymarker at point C (photograph 18) with three directional signposts, "Huish Drove Curry Rivel 1 ½m" pointing west, "Huish Drove Huish Episcopi 1m" pointing east, and "Parrett Cycleway Langport" pointing north west.

2.7. Footpath L 13/46 crosses Park Lane at point G1. In turn, footpaths L 13/49 and L 13/51 both terminate to the west of point E on Park Lane. There is a short stretch of the lane connecting the two footpaths. When the route was visited in October 2021 several people were observed walking from L 13/49 to L 13/51 over Park Lane, though it is not currently recorded as a public right of way (photograph 25).

2.8. A land registry search was carried out in July 2021 and identified that there were no registered owners for Huish Drove or Frog Lane. Two registered owners were identified for Park Lane, with a short section to the west of point E being unregistered. 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 2.

2.9. Curry Rivel Parish Council commissioned a report into active travel infrastructure in and around their parish. This was published in November 2021 as 'Curry Rivel Parish Council Active Travel Links Feasibility Study'. The report proposes establishing "a safe, traffic free path for pedestrians, cyclists and horse riders between Curry Rivel and Langport".¹ Numerous route options are referred to by the report, including one that takes in the full length of the application routes "subject to confirmation of right of way".² While there is a clear link between the subject of the Feasibility Study and the focus of this investigation, the two reports are entirely separate. Furthermore, the utility-based arguments that shape the Feasibility Study (i.e. the potential benefits of improved active travel infrastructure in the area) have no bearing on the existence (or otherwise) of rights of way over Huish Drove, Frog Lane, and Park Lane.

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

3. **Legislative framework**

3.1. An overview of the legislation relating to the circumstances in which a Definitive Map Modification Order can be made can be found in Appendix 4. Paragraph 1.6. of that appendix sets out the circumstances in which SCC must make an order to modify the DMS. In this case subsections 53(3)(c)(i) and 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 are of particular relevance. Subsection 53(3)(c)(i) states that the DMS should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows "that a right of way which is

¹ 'Curry Rivel Parish Council Active Travel Links Feasibility Study' (2021), Phil Jones Associates Ltd, 2, <https://www.curryrivel.org.uk/latest-news/cycle-footpath-latest-report-now-available.html>, accessed 19 November 2021.

² Ibid., 30.

not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates". Subsection 53(3)(c)(ii) states that the DMS should be modified where the surveying authority discover evidence which, when considered alongside all 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".

3.2. Where the route of a claimed right of way is not already shown on the DMS, the Council is required to consider two questions in determining whether an order should be made to modify the Definitive Map. Firstly, does the evidence produced by the claimant together with all the other evidence available show that the right of way subsists. Alternatively, does that evidence show that the right of way is reasonably alleged to subsist. The evidence required to satisfy the second question is less than that required to satisfy the first. In *R. v Secretary of State for the Environment Ex p. Bagshaw and Norton*, Owen J. explained the difference between the two questions as follows:

To answer either question must involve some evaluation of the evidence and a judgment upon that evidence. For the first of those possibilities to be answered in the affirmative, it will be necessary to show that on a balance of probabilities the right does exist. For the second possibility to be shown it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist.³

Owen J. provided an example of how this might work in relation to a user evidence-based claim where there is conflicting evidence as to the existence of a right of way:

Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances [...] However, if the evidence from witnesses as to user is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist, then it would seem to me to be reasonable to allege such a right. I say this because it may be reasonable to reject the evidence on the one side when it is only on paper, and the reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.⁴

3.3. The standard of proof to be applied in cases where the route is claimed to be of a higher status to that already shown on the DMS is whether, on the *balance of probabilities*, the higher rights subsist. In other words, is it more likely than not that those rights subsist. This test is applied to the section between points A1 and A2 on account of this section already being shown in the DMS as two footpaths.

3.4. An order can only be confirmed (and therefore the Definitive Map modified) if the evidence meets the higher balance of probabilities test.

³ *R v. SSE ex p. Bagshaw and Norton* [1994] 402 QBD 68 P & CR 402.

⁴ *Ibid.*

3.5. This investigation is seeking to discover whether rights of way *already* exist over the application route. The recommendation offered below is a quasi-judicial one based on evidence rather than policy. This is important to emphasise. While applicants and consultees may be influenced by practical considerations (e.g. the suitability, security, or desirability of a particular route), such factors do not have a bearing on this investigative process unless it can be shown that they affected the coming into existence, or otherwise, of public rights.

4. **Documentary Evidence**

4.1. This section of the report discusses the documentary evidence examined as part of this investigation. Background information relating to some of the documents (such as how and why they were produced, and their relevance to rights of way research) can be found in Appendix 5. Further general guidance on the interpretation of evidence may be found within the Planning Inspectorate's [Definitive Map Orders Consistency Guidelines](#).⁵

4.2. In some cases it has not been possible to view the original copy of a document and it has instead been necessary to rely entirely on an extract supplied by the applicant or a third party. 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.

4.3. Throughout discussion of the evidence comparison is frequently made to the way in which other routes in the immediate vicinity of the application routes have been recorded. Where other rights of way, roads or physical features have been referred to their location has been identified on the relevant appendices.

4.4. **Inclosure records**

Huish Episcopi Inclosure Act 1797

Source: South West Heritage Trust (SWHT)

Reference: SHC Q/RUO/37

Appendix number: 7

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805945/Full_version_February_2016_consistency_guides_revised_note_may_19.pdf. The *Consistency Guidelines* provide information and references to resources and relevant case law to assist in the interpretation and weighing of evidence on Definitive Map orders. These guidelines were last updated in April 2016 and consequently care should be taken when using them, as they may not necessarily reflect current guidance.

Huish Episcopi and Walton Inclosure Award 1799

Source: SWHT

Reference: SHC Q/RDE/131

Appendix number: 7

Order of Partition of Lands 1879

Source: The National Archives (TNA) (extract only)

Reference: MAF 21/5 172

Appendix number: 7

Description and interpretation of evidence

4.4.1. The Huish Episcopi Inclosure Act provided parliamentary authorisation “for Dividing, Allotting, and Inclosing the Open and Commonable Lands and Fields within the Parish”. The preamble to the Act highlights the complex land distribution within Huish Episcopi, which was characterised by “small, detached, and intermixed Lands, which are very inconveniently situated for the Occupation thereof”.

4.4.2. The Act draws distinction between the land to be inclosed and the wider Parish. Aiming to ensure “the more regular and just Division of the said Open or Commonable Lands and Fields”, it was enacted that “the said Commissioners shall cause a Survey, Admeasurement, and Plan, as well as of all the other Lands or Grounds within the said Parish of Huish Episcopi, as of the said Open or Commonable Lands hereby intended to be divided, allotted, and inclosed”. This accounts for the Parish Survey Plan included in the Inclosure Award (paragraph 4.4.6., below).

4.4.3. The Act additionally enacted that the Commissioners were “authorized and required to set out and appoint such public Carriage Roads in, over, and upon the said Open or Commonable Lands”, as well as “public Bridle Roads and Foot Ways, and private Roads and Ways”. In turn, the Act asserted that “all former Roads and Ways, which shall not be set out and appointed [...] shall be deemed Part of the said Open and Commonable Lands and Fields”. Any routes not explicitly set out in the enclosed area, therefore, were stopped up by this Act.

4.4.4. The Inclosure Act also includes provisions for the commutation of tithes. This was typically done as a separate process and appears to have been revisited in 1845 (paragraph 4.6., below).

4.4.5. The Huish Episcopi and Walton Inclosure Award includes a series of plans covering the areas of the Parish that were to be enclosed. One of these plans relates to a small section of “Huish Moor” and “Pilsbury Mead”, surrounding the junction of Huish Drove and Litness Drove (point B on Appendix 1). A short section of the application route is depicted between solid parallel lines. The route is not otherwise

annotated. Seven small parcels of land are identified to the south of the application route. One example is parcel 152, allotted to James Bartlett. The Award describes the parcel as “part of Huish Moor” but makes no reference to the application route.

4.4.6. The Parish Survey Plan covers the whole area over which the application routes run. Huish Drove is shown in full between solid parallel lines. Huish Bridge is represented as considerably narrower than the route on either side of the river. Frog Lane is depicted in a similar manner to Huish Drove. By contrast, the majority of Park Lane is not recorded. The section of the lane between points E and E1 is shown between solid parallel lines, as is the section between points G1 and H. This latter section is shown as narrower than much of Frog Lane and Huish Drove, and terminates in the land parcel annotated 633. This parcel is named “The Eight Acres” and is recorded as being owned by L. H. Luxton.

4.4.7. Huish Drove is not directly referred to in the text of the Inclosure Award. Though part of it appears in one of the inclosure plans, it is not annotated or otherwise described. Similarly, Park Lane is not referred to in the Inclosure Award. Frog Lane is referred to numerous times in the Inclosure Award in the descriptions of parcels of land. Parcel 666, for example, is described as “Froglane Meadow”. However, no reference is made to the status of Frog Lane.

4.4.8. There is no evidence to suggest that the application route was either set out, diverted, or stopped-up as part of the inclosure process. It seems likely, therefore, that the Award had no effect on the route’s status. If it was a private route prior to inclosure then it remained so. Equally, if Huish Drove, Frog Lane, and Park Lane carried public rights before inclosure then these rights would have remained.

4.4.9. Orders of partition of lands were legal events that occurred under the Inclosure Acts when parties wished to exchange parcels of land. The extract from the 1879 Order submitted by the applicant includes a map of the section of Huish Drove between Huish Bridge and Litness Drove. Huish Drove is named and is depicted between solid parallel lines and coloured sienna. Litness Drove is depicted in the same manner, though it is not named on this extract. The western end of the mapped section is annotated “From Curry Rivell”, while the eastern end is annotated “to Huish Episcopi”.

4.4.10. The applicant argues that the “only logical route following that annotation” is to traverse Huish Drove, Frog Lane, and ultimately Park Lane. This suggests that the landowners and relevant officials “understood there was a public road along the route”. Case Law suggests that such directional annotations can be supportive of public carriageway status.⁶ The Planning Inspectorate’s Consistency Guidelines suggest of tithe maps that “the annotation of a road ‘to’ or ‘from’ a named settlement

⁶ *Commission for New Towns and WCC v J.J. Gallagher Limited* [2002] EWHC 2668 (Ch) [90].

is suggestive of public rights".⁷ It seems reasonable to apply the same argument to this Order.

4.4.11. The inclosure records offer strong evidence that Huish Drove and Frog Lane existed in 1799. The representation of the two routes on the Parish Survey Map is not inconsistent with the existence of public vehicular rights, or indeed, lower public rights. However, there is no direct mention in these records of the status of Huish Drove or Frog Lane. Though it is highly likely that the two routes provided access to numerous plots of land, it remains unclear whether this access was by virtue of public or private rights. Given a lack of explicit reference to the status of Huish Drove and Frog Lane, the Inclosure records should be considered as neutral as regards the existence of public rights. In the case of Park Lane, the fact that the route does not appear in full does not necessarily mean it was not present on the ground. Nonetheless, the Parish Survey Map suggests that this section of the application route was not as prominent a physical feature as Huish Drove and Frog Lane at the time the Award was made. The 1879 Order of Partition of Lands is, due to the inclusion of directional annotations, marginally in favour of public vehicular rights over Huish Drove.

4.5. **Quarter Session records**

Minute Book No. IV 1646-1656

Source: E. H. Bates Harbin, *Quarter Sessions Records for the County of Somerset*, Vol. III, Commonwealth 1646-1660 (London: Harrison and Sons, 1912), p. 3.

Appendix number: 8

Description and interpretation of evidence

4.5.1. This record is taken from one of several transcription volumes produced by the Somerset Record Society in the early twentieth century. These volumes are composite works largely based on the Quarter Sessions order books but also drawing on the sessions rolls.⁸ The original source is held by the South West Heritage Trust (SHC Q/SO/5).

4.5.2. The entry of relevance to this investigation was made at the General Sessions of the Peace held at Bridgwater in October 1646, in the midst of the English Civil War. The entry refers to "a peticon [petition] of the Inhabitants of the parishe of Huishe":

⁷ *Definitive Map Orders: Consistency Guidelines* (2016), 8.2.13., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 28 October 2021.

⁸ 'Sessions rolls', Quarter Sessions records for the county of Somerset, South West Heritage Trust, <https://somerset-cat.swheritage.org.uk/records/Q/SR>, accessed 28 October 2021.

Whereby sheweing [showing] that by reason of the breaking downe of the Bridge called Huishe bridge by ye King's forces diuers [divers – several or various] of the Inhabitants of the said parishe and others who had a way ouer ye same bridge to certen lands of theirs are nowe deprived of that way and are thereby enforced hauinge [having] noe other way to theire said lands to leaue their grounds unmanured to their greate prejudice[.]

The Order Book records that the "two next justices of the peace [...] at the next general sessions of the peace" were instructed to "make an order that the bridge may be speedily repaired", or alternatively, "to certify the whole state of the case and the names of all such persons as they shall find contrary".

4.5.3. It is probable that Huish Bridge was destroyed in the summer of 1645 during or after the Battle of Langport. Though the Order Book suggests that the bridge was an important piece of parish infrastructure and as such needed to be repaired quickly, it is unclear exactly when these works took place. John Collinson's *The History of Somersetshire* (1791) refers to the confluence of the Rivers Ivel (Yeo) and Parrett "near a wooden bridge supported by four stone piers".⁹ However, it seems likely that the bridge was repaired at an earlier date.

4.5.4. The Planning Inspectorate's Consistency Guidelines assert that Quarter Sessions records can include "presentments or indictments for the non-repair of highways", and that these "may provide strong evidence of status where they are confidently identifiable".¹⁰ Yet it is not clear whether the above petition can be considered a presentment. Presentment was a procedure whereby a Justice of the Peace or Grand Jury could originate proceedings concerning "any highway not well and sufficiently repaired".¹¹

4.5.5. While the status of Huish Bridge (and by extension, Huish Drove) is not explicitly clarified by this source, the petition referred to by the Minute Book speaks of "diuers of the Inhabitants of the said parishe and others who had a way ouer ye same bridge to certen lands of theirs". This appears to distinguish between two groups of users: tenants or landowners seeking to access their land, and the broader inhabitants of the parish. By making this distinction, the source could be seen to suggest that the inhabitants of the parish were using Huish Bridge as of right, indicating that the route on either side of the river was a public highway.

4.5.6. The Order Book entry provides strong evidence that Huish Drove existed in 1646, and furthermore, that Huish Bridge was out of repair. The source is also suggestive of public rights existing over Huish Drove, firstly, because it may amount to

⁹ J. Collinson, *The History of Somersetshire*, vol. II (Bath: R. Cruttwell, 1791), p. 470.

¹⁰ *Definitive Map Orders: Consistency Guidelines* (2016), 6.2.3., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 28 October 2021.

¹¹ S. and B. Webb, *The Story of the King's Highway* (London: Longmans, Green and Co., 1913), p. 51.

a presentment concerning the non-repair of a highway, and secondly, because in referring to "diuers of the Inhabitants of the said parishe", the source appears to identify the presence of public rights.

4.6. **Tithe records**

Huish Episcopi Tithe Map 1845

Source: SWHT

Reference: SHC D/D/rt/M/458

Appendix number: 9A

Huish Episcopi Tithe Apportionment 1845

Source: SWHT

Reference: SHC D/D/rt/A/458

Appendix number: 9D

Drayton Tithe Map 1822 (revised 1840)

Source: TNA (extract only)

Reference: IR 30/30/172

Appendix number: 9B

Drayton Tithe Apportionment 1840

Source: SWHT

Reference: SHC D/D/rt/A/231

Appendix number: 9E

Curry Rivel Tithe Map 1841

Source: TNA (extract only)

Reference: IR 30/30/161

Appendix number: 9C

Corn-rent Conversion Map of Huish Episcopi 1914

Source: TNA (extract only)

Reference: IR 30/30/228

Appendix number: 9F

Huish Episcopi Tithe Schedule 1843

Source: Extract supplied by Landowner K

Appendix number: 9G

Description and interpretation of evidence

4.6.1. The 1845 Huish Episcopi Tithe Map and Apportionment concern the parts of the parish that were not covered by the Inclosure Award. The Tithe Map includes a note to this effect, describing its focus as “the tithes of which were not commuted by the Award of the Commissioner enclosing the Common fields of the said Parish”.

4.6.2. The Huish Episcopi Tithe Map shows Huish Drove and Frog Lane between points A1 and E, depicting the route between solid parallel lines. A short section of Park Lane west of point E is also shown in this manner, as are Litness Drove (south of point B) and Bartonleaze Drove (south east of point E). None of these routes are numbered.

4.6.3. Huish Drove and Frog Lane are both named on the Huish Episcopi Tithe Map. The Apportionment also refers to the two routes regularly. Numerous parcels of land include Frog Lane in their description, such as parcel 665, which is recorded as being owned by John Barnard and described as “Froglane [...] Meadow”. The following extract concerning modus land also refers directly to the two routes:

The undermentioned moduses are payable in lieu of all the Tithes accruing upon the undermentioned lands that is to say [...] Two pence for every computed Acre of the lands lying within the circle or boundary of Huish Drove Froglane and the River Parrett[.]¹²

The Apportionment also identifies two areas of land, the first “lying together and abutting upon the Eastern side of Froglane”, and the second “lying together and abutting upon the southern side of Huish Drove”. Parcel 424, to the north of point B, is described as “over Huish Bridge”.

4.6.4. The Drayton Tithe Map shows the application route from point G to point H. The route is represented by solid parallel lines between points G1 and H, in the same manner as several nearby routes including what is now the A378. Between points G and G1 the route is depicted by a single solid line and a dashed line. Several other routes are shown in this style, including a route heading south from point G along the parish boundary, and what is now footpath L 9/26 (labelled “Footpath to Langport”).

4.6.5. Park Lane is not named on the Drayton Tithe Map, nor is it referred to in the Drayton Apportionment. The route forms the northern boundary of several parcels of land. Parcel 168 is recorded as “Batsgrave [...] Arable”, owned by John Freeman. Parcel 169 is recorded as “Wood Twelve Acres [...] Arable”, owned by Samuel Wallis. Parcel 171, also owned by Samuel Wallis, is recorded as “Grass Homes [...] Meadow”.

4.6.6. The Curry Rivel Tithe Map (1841) depicts the western extremity of Park Lane. It is shown by solid parallel lines and is uncoloured. It is represented as a cul de sac,

¹² Modus is a feature of ecclesiastical law that signifies an exemption, or partial exemption, from the payment of tithes. See J. McClintock, *Cyclopaedia of Biblical, theological, and ecclesiastical literature: vol VI* (New York: Harper, 1867), p. 401-402.a

though this is likely highlighting the parish boundary rather than providing a comment on the physical character or status of the route.

4.6.7. Corn-rent conversion maps record the conversion of existing corn rents generated by the enclosure process into tithe rentcharge. The 1914 Huish Episcopi Map (which uses the 1902 OS County Series Second Edition 25 Inch Map as its base) shows the full length of Park Lane (points E to H). The western and eastern sections of the route are labelled 542 and 549 respectively. The accompanying schedule describes both sections as "Road" in the ownership of "Trevilian Edwin Brooke", measuring 4 roods and 40 perches in total (approximately 4500 square metres). No rent charge is apportioned to the two sections of Park Lane.

4.6.8. The extracts of the 1843 Huish Episcopi Tithe Schedule submitted by Landowner K cover the western edge of the parish, including land surrounding Park Lane. It is unclear where these records are held, and there does not appear to be an accompanying map.¹³ The Schedule records Merricks Farm and a nearby quarry (numbered 544 and 545) as in the ownership of the Trustees of Kate Trevilian. Park Farm is recorded as in the ownership of Cely Trevilian. As with the Corn-rent Conversion Map, Park Lane is labelled 542 and 549, and both sections are described as "Roads".

4.6.9. The terms "Road" and "Roads" are not elaborated upon in either the Corn-rent Conversion records or the Tithe Schedule. It is therefore unclear whether the respective surveyors considered the route to be public or private in nature, partly because the extracts submitted offer little basis for comparative analysis.

4.6.10. The tithe records are good evidence that the majority of the application route (that is, those sections depicted on the tithe maps) existed in the early to mid-nineteenth century, and that much of Park Lane was in private ownership. They are less helpful in determining the reputation or status of the route as regards public rights of way. 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.

4.6.11. The fact that Huish Drove and Frog Lane are used as points of reference in the Huish Episcopi tithe records suggests that both routes were prominent physical features. By extension, the lack of reference to Park Lane in the Drayton tithe records may indicate that this section of the application route was less physically prominent. The 1843 Tithe Schedule describes the two sections of Park Lane as "Roads", and records that they were both in private ownership. These sections of the application route were also depicted in detail in the Corn-rate Conversion Map, which may indicate that Park Lane had become more prominent by 1914. However, these inferences have

¹³ No tithe map has been located in the South West Heritage Trust collection that covers the relevant area of Huish Episcopi. In turn, the Somerset Historic Environment Record, which has digitised tithe records for the county, does not cover this part of the parish.

no immediate bearing on the status of Huish Drove, Frog Lane, and Park Lane. While the tithe records are not inconsistent with the presence of public rights over the application route, they equally do not offer direct evidence that such rights existed.

4.7. **Ordnance Survey maps**

OS Old Series 1811

Sheet: 18

Scale: 1:63,360

Appendix number: 10A

4.7.1. There is no key 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.

4.7.2. The application route is shown as part of a network of routes connecting Langport and Huish Episcopi with villages to the south and west. It is depicted by two solid parallel lines, indicating that it had the status of "other road".¹⁴ Numerous nearby routes now recognised as public roads (including the northern section of Frog Lane, Bow Street, and Tanyard Lane) are recorded in the same way as the application route. In turn, several routes with no recorded public rights (including the cul-de-sac heading west off Frog Lane) are also depicted in the same manner.

OS Old Series David & Charles reprint

Source: Extract supplied by Respondent 8

Sheet: Sherborne 84

Appendix number: 10B

4.7.3. The David and Charles reprints of the OS Old Series maps include various mid-nineteenth century updates on the 1811 engraving, such as the addition of turnpike roads and railways. The Yeovil to Durston Railway (which was completed in 1853) is shown crossing the western end of Huish Drove. The application route is otherwise shown in a manner consistent with the original Old Series Map. Annotations in red pen have been made by Respondent 8, intending to highlight the location of Park Lane.

¹⁴ 'Keys and Legends', Cassini Historical Maps, <http://www.cassinimaps.co.uk/shop/pagelegend.asp>, accessed 13 September 2021.

OS Boundary Remark Book 1883

Source: The National Archive (extract supplied by applicant)

Reference: OS 26/9279

Appendix number: 10C

4.7.4. The Boundary Remark Books are small booklets containing hand-drawn strip maps. They were produced to record information on boundaries following the Ordnance Survey Act 1841. The maps show boundary and related ground features for the parishes on each side of the boundary. They were produced in conjunction with meresmen; local people with knowledge of parish boundaries.¹⁵

4.7.5. The strip map predominantly shows the section of Park Lane that follows the parish boundary between Huish Episcopi and Drayton, marked A to B (points H to G in Appendix 1). The boundary is marked along the southern casing line of the route by a dot-dash line. Several footpaths are recorded meeting one another between A and B (point G1 in Appendix 1). The boundary turns to the south at B, where a building is depicted.

4.7.6. Annexed to this Boundary Remark Book is a statement from Mr Mead of Park Farm (located at B, or G in Appendix 1) "respecting Road from A to B". The statement reads as follows:

With reference to the Road shown on Page 7 I beg to say this is a private road to my farm and that I have paid for the repair of this Road for upwards of 20 years and that I consider this Road to be in Huish Episcopi Parish. Road from point marked A to point marked B.

The statement is signed "Thomas Mead Drayton Langport 22/5/83".

4.7.7. The fact that Thomas Mead had been maintaining the western section of Park Lane does not preclude a public right of way from existing over the route. It may be that the route carried public vehicular rights but was not maintainable at the public expense. Alternatively, the route may have been a private vehicular road with lower public rights, such as those of a bridleway. Nonetheless, the inclusion of Mr Mead's statement in the Boundary Remark Book suggests that the meresmen involved in this survey accepted that the landowner considered the western section of Park Lane to be a private access route rather than a public vehicular highway.

¹⁵ 'Ordnance Survey: Boundaries Branch: Boundary Remark Books', The National Archives, <http://discovery.nationalarchives.gov.uk/details/r/C11444>, accessed 11 May 2021.

OS Boundary Sketch Map 1885

Source: TNA (extract supplied by applicant)

Reference: OS 27/4600

Appendix number: 10D

4.7.8. Boundary sketch maps show boundaries (usually parish) and related ground features as originally recorded in boundary remarks books.

4.7.9. The map covers the majority of the application route, excluding only the eastern end of Huish Drove. The Huish Episcopi-Drayton boundary runs along Park Lane between points H and G, before turning sharply to the south.

4.7.10. The application route is depicted between solid parallel lines, in a similar manner to recognised public roads (such as Bow Street and what is now the A378). The applicant argues that the fact the route appears in the Boundary Sketch Map suggests that "it must have been a route of more than purely private significance". However, the purpose of these plans was not to record the status of ways, but to define boundaries. Physical features could be and were referred to where helpful or necessary to describe or delineate a boundary. Nothing has been found which suggests surveyors did not or should not have used private roads as one of those features. Any sufficiently permanent or substantial feature would have made a good reference point.

OS County Series First Edition 25 Inch Map

Sheet numbers: LXXII.7 and LXXII.8

Survey Date: 1886

Scale: 1:2500

Appendix number: 10E

4.7.11. Huish Drove is largely depicted as an uncoloured enclosed route between solid parallel lines. It is bordered for the majority of its length by rhyndes (drainage ditches). One change of note between this Map and earlier OS material (excluding the Old Series reprint) is the presence of the Yeovil and Durston Railway Line, which crosses the Huish Drove at point C. The eastern section of the route from point A to Huish Bridge is shaded sienna and has a thickened casing line on its southern side.

4.7.12. The southern section of Frog Lane (between points D and E) is shown as an enclosed route, with sienna colouring and shaded casing on its eastern side. There is a solid line separating Frog Lane from Park Lane. This may be intended to indicate the presence of a gate.

4.7.13. The representation of Park Lane can be divided into several sections. The section from points E to E1 is shown as an uncoloured route between solid parallel lines. This changes near point E1 to parallel dashed lines. The route is not shown running through Merricks Farm. A small body of water is shown on the northern boundary of the route

at point F. Two solid lines are shown crossing the route at point F, one of which appears consistent with the field boundary to the north. From the western side of Merricks Farm at point F to point H, the route is shown as an enclosed route with sienna colouring and a thickened southern casing line. The section between points G and H also includes a dash and dot line, indicating the Huish Episcopi-Drayton parish boundary.

4.7.14. 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 the south and east sides of the road".¹⁶ However, this is not to say that all routes with a shaded line were considered public roads.

4.7.15. 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. The OS appear to have used the phrase "carriage drive" to refer to private vehicular routes.¹⁷ This would mean that some public and some private roads would be shown on OS maps with a shaded casing line.

4.7.16. 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. 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.¹⁸ The route in question is shown on the One Inch Revised New Series Map as part third class road, part unmetalled road.¹⁹ As these categories were used for both public and private roads, it does not assist in determining why the application route had a shaded casing line on the 1886 County Series 25 Inch Map.

4.7.17. All shaded lines on the 25 Inch Map sheets 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 relevant sections of the application routes a more or less prominent shaded casing line. Each of the other routes with a shaded casing line on these map sheets are shown as public highways on modern road records. This would suggest that

¹⁶ *Definitive Map Orders: Consistency Guidelines* (2016), 14.2.26, <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 10 September 2021.

¹⁷ Y. Hodson, 'Roads in OS 1:2500 plans 1884-1912', *Rights of Way Law Review*, 9.3 (1999), p. 109.

¹⁸ First class, second class, third class and unmetalled. There was a further category for footpaths.

¹⁹ Huish Drove is recorded as a third class road between points A and A2, and as an unmetalled road between points A2 and D. Frog Lane is recorded as a third class road. Park Lane is recorded as a third class road between points F and H, and as an unmetalled road between points E and F.

they were given a shaded casing line on account of them being considered well-maintained public roads as opposed to metalled carriage drives. It seems plausible, therefore, that the sections of the application route that are depicted in a similar manner were thought to be vehicular highways. However, the fact that the shaded casing on Park Lane appears to terminate at Merricks Farm would suggest that it may have been considered a metalled carriage drive. Given this ambiguity, the investigating officer considers the evidence to be in conflict. It is entirely plausible that a thickened casing line was being used to indicate a well-maintained public highway. However, this is not the only possible inference that can be drawn and it would not be unreasonable to conclude that, in this instance, the thickened line was used because the route was considered to be a well-maintained private road.

OS Revised New Series Map Timeline reprint

Source: Extract supplied by applicant

Sheet: 193

Survey date: 1898-1900

Scale: 1:63,360

Appendix number: 10F

4.7.18. Timeline maps have produced reprints of the OS one inch series on the same scale as the modern Landranger maps. Although based on the same survey and published at a smaller scale than the first edition county series map, the revised new series maps do include more detail regarding the character of the ways shown on it.

4.7.19. As discussed at paragraph 4.7.16., the application route is depicted partly as a "third class road" and partly as an "unmetalled road". The OS used these categories to record both public and private roads. The section between points C and D is not depicted in full. It is unclear whether this appeared on the original map or, perhaps more likely, the lines have faded on this extract. The route is depicted by parallel dotted lines to the east of what is now Merricks Farm, indicating that this section was unfenced. A prominent dotted line between points G and H marks the Huish Episcopi-Drayton parish boundary.

OS County Series Second Edition 25 Inch Map

Sheet numbers: Somerset LXXII.8 and LXXII.7

Survey date: 1886; Revised: 1901

Scale: 1:2500

Appendix number: 10G

4.7.20. This Map depicts the application route in a manner largely consistent with the First Edition County Series Map. The major difference is that none of the route is coloured, nor are any of the casing lines shaded. The route also appears to run through Merricks Farm, though the northern casing line is not marked as it runs past the farm buildings. One difference of note is the significant expansion of the quarry between

points E and F (named as Park Quarry), including a short tramway. The map suggests that either Frog Lane or Park Lane provided access to the quarry. The brace marks at point E indicate that "the spaces so connected are included in the same reference number and area."²⁰

OS Popular Edition Map

Sheet number: 193

Survey date: 1919

Scale: 1:63,360

Appendix number: 10H

4.7.21. 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.

4.7.22. 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.

4.7.23. The application route is shown 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.

OS County Series Third Edition 25 Inch Map

Sheet numbers: Somerset LXXII.8 and LXXII.7

Survey date: 1886; Revised: 1928

Scale: 1:2500

Appendix number: 10I

4.7.24. This Map depicts the application route in a manner largely consistent with the Second Edition County Series Map.

Interpretation of evidence

4.7.25. This range of Ordnance Survey maps offers a useful representation of the evolving physical character of the application route.

4.7.26. The Old Series Map indicates that the route physically existed from at least 1811. The route of Huish Drove, the southern section of Frog Lane, and Park Lane appears consistent across all of the consulted maps. The major change during this period was

²⁰ 'Conventional Signs and Writing Used on the 1/2500 Plans of the Ordnance Survey. Plate I.', National Library of Scotland, <https://maps.nls.uk/view/128076891>, accessed 15 November 2021.

the construction of the Yeovil and Durston Railway Line, as recorded by the County Series 25 Inch First Edition Map.

4.7.27. The 1883 Boundary Remark Book includes a landowner statement asserting that the western section of Park Lane (from points H to G) was a private road. This suggests that the meresmen accepted that the relevant landowner believed Park Lane (or at least, its western extremity) to be a private road carry public vehicular rights. However, given that these surveys primarily concerned boundaries rather than public rights of way, this evidence is of limited evidential weight.

4.7.28. The 1885 Boundary Sketch Map depicts the majority of the application route, excluding only the eastern end of Huish Drove. This suggests that the route was a prominent physical feature and point of reference in 1885. That said, there is no evidence to bear out the applicant's argument that only public routes would have been depicted in this manner. The Sketch Map is ultimately silent on the status of the application route.

4.7.29. Parts of the application route have a shaded casing line and are coloured sienna on the 1886 County Series First Edition Map. This includes the eastern end of Huish Drove, which is now recorded as a public vehicular highway. The full length of Frog Lane is also depicted in the same manner. Currently the northern section of Frog Lane (north of point D and not part of the application route) is recorded as a public vehicular highway. The western section of Park Lane as far as Merricks Farm (from points H to F) is also coloured and shaded. It is significant that all the other routes depicted in this way on the same map sheets are now recorded as public vehicular highways on the modern road records. However, the fact that the coloured and shaded section of Park Lane terminates at Merricks Farm and does not continue east would suggest that the surveyor considered this section a private carriage drive. It appears reasonable to conclude that the shaded casing was intended to represent a public vehicular highway, but it is recognised that it is equally possible that the shaded casing was meant to indicate a well-maintained private carriage road.

4.7.30. In the 1901 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.

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

4.7.32. Since 1888 Ordinance Survey maps have carried the following statement: "The representation on this map of a road, track or footpath is no evidence of the existence

of a right of way".²¹ This disclaimer is reinforced by case law, which states that OS maps are "not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate".²²

4.7.33. The OS maps provide excellent evidence as to the changing physical characteristics of Huish Drove, Frog Lane, and Park Lane. While they are not inconsistent with the existence of public rights, and together suggest that the route has historically been physically capable of taking vehicular traffic, these materials are generally neutral on the status of the application route. The exception to this is the Boundary Remark Book, which in describing the western end of Park Lane route as a private road, could be considered marginally in favour of private vehicular rights over Park Lane.

4.8. **OS Object Name Book**

Object Name Book for Ordnance Survey sheet Somerset 72 NE

Source: The National Archives (extracts only)

Reference number: OS 35/6392

Appendix number: 11

Description and interpretation of evidence

4.8.1. These extracts of the Object Name Book cover various roads and features in the vicinity of the application route. The names are recorded as having been collected and entered in 1901 and are made in black ink. Revisions made in 1928 appear in green ink. Information concerning the relevant OS map sheet and accompanying plan has been added in red ink.

4.8.2. Several of the extracts considered below have had the parish details crossed out as part of the 1928 revisions. It is unclear why this has been done.

4.8.3. Huish Drove is described in the Object Name Book as "an occupation road extending from Huish Bridge to Frog Lane". The term "occupation road" (which is considered broadly synonymous with private road) is also used to describe Litness Drove (heading south from point B on Appendix 1), Bartonleaze Drove (heading south-east from point E), and Haymoor Drove.²³ Part of Litness Drove is recorded in the DMS

²¹ Oliver, *Ordnance Survey Maps*, p. 114.

²² *Moser v Ambleside Urban District Council* [1925] KLGR p. 537.

²³ *Halsbury's Laws of England* offers the following: "a road or path over which only individuals, or a limited class of the public (e.g., the inhabitants or occupiers of a particular house, field, or village) have a right of passage (g), is not a highway." The footnote (g) adds, "Such a road or path is a 'private' or 'occupation' way." H. S. G. Halsbury, *The Laws of England*, vol. 16 (London: Butterworth and Co., 1911), p. 8.

as footpath L 13/42. Bartonleaze Drove and Haymoor Drove have no recorded public rights of way.

4.8.4. Huish Bridge is described as “an iron bridge spanning the River Parrett a few chains below the junction of the River Yeo”. The owner of the bridge is given as the “Drainage Commissioners Bridgewater”.

4.8.5. Frog Lane is described as “an occupation road extending from the junction of roads 17 chains east of Merricks Farm to the main road north-west of Langport”. This description would appear to include the full length of Frog Lane, the northern section of which (north of point D on Appendix 1) is now recorded as a public vehicular highway.

4.8.6. Park Lane is described as “an occupation road extending from near the N. end of the Langport End Plantation to the south end of Frog Lane”. Langport End Plantation is described as “a small wood situate at the junction of the Drayton Road with the main road from Taunton to Langport”.

4.8.7. The purpose of Object Name Books was to provide “details of the authorities for named features” recorded on OS maps.²⁴ Such descriptions carry “no legal authority with regard to the status of the way, but could constitute evidence of the reputation of the way as a highway.”²⁵

4.8.8. In this instance the Object Name Book clearly identifies the majority of the application route (from Huish Bridge to what is now the A378) as an “occupation road”. The fact that the northern section of Frog Lane (now a public vehicular highway) is also described in such terms, and that the section of Huish Drove east of Huish Bridge is not referred to, highlights that the Object Name Book is not without evidential ambiguity. Nevertheless, given that this record was corroborated through a process that aimed to ensure OS maps were authoritative by engaging with local communities, the Object Name Book offers fair evidence that the three main sections of the application route had the reputation of private roads between 1901 and the 1928 revisions.

²⁴ *Definitive Map Orders: Consistency Guidelines*, 14.2.24., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines#part-1---finance-act-1910>, accessed 18 October 2021.

²⁵ J. Riddall and J. Trevelyan, *Rights of Way: A Guide to Law and Practice*, fourth edition (London: Ramblers’ Associate and Open Spaces Society, 2007), 154.

4.9. **1910 Finance Act records**

Huish Episcopi Record Plan

Source: TNA (extract only)

Reference: IR 128/9/873

Appendix number: 12

1910 Domesday Valuation Books and Maps: Huish Episcopi

Source: SWHT

Reference: SHC DD/IR/T/17/2

Appendix number: 12

1910 Domesday Valuation Books and Maps: Drayton

Source: SWHT

Reference: SHC DD/IR/T/14/3

Appendix number: 12

Description and interpretation of evidence

4.9.1. The Record Plan extracts examined are in varying condition, with faded hereditament markings and damage across the map fold. Nonetheless, excluding the damaged section to the east and west of point C, it appears clear that Huish Drove, Frog Lane, and Park Lane are neither numbered nor coloured in the Record Plan. This means they have been excluded from the adjacent hereditaments. The brace across Park Lane to the west of point E is an indication that the parcels of land on either side have been valued together.

4.9.2. The Huish Episcopi and Drayton valuation books both contain numerous entries for the land surrounding the application route. This includes several entries referring to Merricks Farm, some of which record deductions for rights of way. Hereditament 363, which is named "Merricks" and described as "House Buildings Land" includes a deduction of "£100" for "Public Rights of Way or User". However, as Park Lane has been excluded from the hereditament, this deduction likely refers to the various footpaths that cross this section of the application route (including what is now footpath L 13/46).

4.9.3. 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”.²⁶ 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”.²⁷

4.9.4. 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.

4.9.5. 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). The value and evidential weight of these documents, therefore, is contingent on their relationship with the other evidence contained in this report.

4.10. Highway authority records

1929 Handover Map and Schedule

Source: SCC

Appendix number: 13

4.10.1. 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.

4.10.2. The application route is depicted on the base mapping by solid parallel lines. The majority of the route is not coloured or otherwise annotated, meaning that it was not recorded as a highway maintainable at public expense in 1929. The exception is the eastern section of Huish Drove, between points A and A1, which is shaded yellow. According to the Wincanton Handover Map legend this colouring indicates a group C

²⁶ *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#part-1---finance-act-1910>, accessed 2 November 2021.

²⁷ *Fortune & ORS v Wiltshire Council & ANR* [2012] EWCA CIV 334 [71].

road.²⁸ The northern section of Frog Lane (that is, the section not included within this application) is shaded brown, identifying it as a Group B Road.

4.10.3. The list of maintained roads that accompanies the Map describes Huish Drove as "Crewkerne Mn Rd to E. side of the Catchwater Bridge" and records its length as 0.152 miles. Frog Lane is described as "Taunton Mn Rd at W. side of Railway Bridge to Calders field gateway". Its length is recorded as 0.303 miles.

1930 Road Records

Source: SCC

Appendix number: 13

4.10.4. The application route is depicted in a manner consistent with the 1929 Handover Map. A handwritten annotation has been added the county road section of Huish Drove (between points A and A1) which reads "Road Diverted see file CR/LANG/GEN". The shading suggests that the route was moved marginally to the south.

1950 Road Records

Source: SCC

Appendix number: 13

4.10.5. The application route is depicted in a manner consistent with the 1930 Road Records. The handwritten annotation concerning Huish Drove is also included.

Modern Road Records

Source: SCC

Appendix number: 13

4.10.6. The application route is shaded between points A and A1, indicating the presence of an unclassified public highway. Several purple lines are also shown running along and across sections of the application route, indicating the presence of public footpaths.

²⁸ SCC's copy of the Langport 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 13 and referred to here is taken from the Wincanton Rural District Map. The colouration is consistent on all of the district handover maps: 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.

Diversion Order Huish Drove 1962-63

Source: SWHT

Reference: SHC C/GP/HF/742

Appendix number: 13

4.10.7. These documents together record the diversion of part of the eastern section of Huish Drove, between points A and A1 as shown on Appendix 1. The application initially included plans to stop up footpath Y 13/37, but this was withdrawn following an objection.

4.10.8. The route was diverted by Somerset County Council under powers granted in Schedule 12 of the Highways Act 1959. The April 1962 Order specifically concerned “the **public highway** leading from **Huish Bridge for a length of 160 yards** [...] and more particularly delineated on the plan attached hereto and thereon coloured **red** between the points marked **A-B** to the new line coloured **blue**”. The plan referred to by the Order is included in Appendix 13. It shows the Order proposed to divert the course of Huish Drove slightly to the south.

4.10.9. An accompanying certificate dated 3 October 1963 confirms that two magistrates “have this day viewed a certain public highway [...] and WE HEREBY CERTIFY that the said new highway has been completed to our satisfaction”.

Interpretation of evidence

4.10.10. 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”.²⁹ 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.³⁰

4.10.11. 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, between points A and A1, has

²⁹ 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#railway-and-canal-deposited-plans>, accessed 10 September 2021.

³⁰ J. Sugden, ‘Highway authority records’, *Rights of Way Law Review*, 9.1, p. 14 (CD edition).

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.

4.10.12. The 1962-63 Diversion Order records that the course of the county road section of Huish Drove (between points A and A1) was diverted slightly to the south. This provides corroborating evidence that the eastern section of Huish Drove is a public vehicular highway maintainable at public expense.

4.10.13. 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 indicate the route was not regarded as public. The absence of Park Lane, the southern section of Frog Lane, and the majority of Huish Drove from these records is therefore not evidence against public rights, or even against public vehicular rights. What can be said with some certainty is that, in this case, the road record documents are not supportive of a public road maintainable at public expense existing between points A1 and H.

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

Huish Episcopi Survey Map

Source: SCC

Reference: Huish Episcopi Sheet 2

Appendix number: 14A

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

4.11.2. Huish Drove is coloured red from Huish Bridge to point A2 and labelled with the number 43.

4.11.3. Routes 49 and 51 are shown terminating on Park Lane a short distance apart. Routes 46 and 47 are shown meeting on the northern boundary of Park Lane, and an unlabelled route is shown crossing the lane into Drayton Parish.

Huish Episcopi Survey Cards

Source: SCC

Reference: 42, 43, 44, 49, 51, 46, 47, Queries

Appendix number: 14B

4.11.4. The Huish Episcopi survey cards are largely typed rather than hand-written. Card 42 describes a footpath that begins at "Rhine Bridge near Huish Bridge" and continues "over Rails South West to Litness Drove, turn left in Drove then over Rails to Railway (Gate) then to South eastern end of Barton Lease Drove." The card adds that there is "No sign that the path is used after this" beyond the Parish boundary.

4.11.5. Card 43 describes a footpath or "Tow Path" running from "Huish Bridge to Muchelney Boundary following River Bank". It adds that the entrance is in "bad condition" and the path is in "fair condition".

4.11.6. Card 44 describes a footpath running from "Rhine Bridge near Huish Bridge", then south to "FP 43". This last section has been added in pencil, replacing "Perrymoor Rhine – Drayton Parish" which has been crossed out. The card finishes by adding "Rails as Stiles", and suggesting the path was in a "fair condition".

4.11.7. Card 49 begins with a pencil note which describes a footpath starting at the "junc with FP48 near [...]". The typed text continues as follows: "[...] Frog Lane running South but North West of Mr. R. Andrews' House, the to Park Lane". It is unconfirmed which house this refers to, but it is likely to be Tucker's Hill.

4.11.8. Card 51 describes a footpath starting at "Park Lime Kilns to West of Park Triangle Plantation, then to Drayton Boundary".

4.11.9. Card 46 describes a footpath which starts at Portway Cottages on what is now the A378. The footpath "crosses meadow – following hedge to three wooden barred fence. Path continues across ploughed field to Park Lane where there is a broken stile (3Bar) Iron Field gate at side. Across Lane, path picks up Drayton Path through Kissing Gate."

4.11.10. Card 47 describes a footpath which starts "half way up Sandpits Hill" and runs "across ploughed field where it leads to Park Lane through same entrance as Path No 46". The 46 is added in pencil.

4.11.11. The Huish Episcopi Queries Card includes several entries relating to routes along or adjacent to the application route.

4.11.12. Footpaths 43 and 51 terminate respectively at the Muchelney and Drayton parish boundaries. The Queries Card records the need to check that the other parishes intended to include the continuation of these footpaths.

4.11.13. A query was raised concerning footpath 44, asking "is this not coincident with 43?"

4.11.14. A further query was raised concerning footpaths 42 and 44. It asserted that the "County Road ends at Huish Bridge" and added "Pse [please] show access beyond".

Drayton Survey Card

Source: SCC

Reference: 1

Appendix number: 14C

4.11.15. This card refers to the continuation of routes 46 and 47 on the other side of the parish boundary. It describes a footpath that starts at "the south gate of Twelve Acres and goes North to meet two paths leading to Langport". The route is "entered by KG [kissing gate] and outlet by KG", and the condition of the route is "bad". The card concludes by asserting that the path is "much used."

Draft Map

Source: SCC

Reference: Langport Draft Map Sheet 5

Appendix number: 14D

4.11.16. The Draft Map shows the application route shaded purple between Huish Bridge and point A2, indicating a claimed footpath. The route is not clearly labelled. Unlike in the Survey Map, where the two routes terminate on Park Lane a short distance apart, footpaths 49 and 51 (recorded on this map in pencil as 13/49 and 13/51) are represented as continuous. Footpath 13/49 is shown heading west on the northern side of Park Lane, before crossing the lane to the west of the lime kilns. Footpaths 47, 46, and Drayton footpath 1 (13/47, 13/46, and 10/1) are shown meeting one another on Park Lane to the west of Park Farm.

Summary of Objections to the Draft map

4.11.17. The application route does not feature in the Summary of Objections.

Draft Modification Map

Source: SCC

Reference: Langport Draft Map Mods Sheet 5

Appendix number: 14E

4.11.18. There are no modifications relating to the application route.

Provisional Map

Source: SCC

Reference: Langport Prov Map Sheet 5

Appendix number: 14F

4.11.19. The Provisional Map shows the application route in a manner consistent with the Draft Map; shaded purple between Huish Bridge and point A2. As with the Draft Map, footpaths 13/49 and 13/51 are shown as continuous.

Definitive Map

Source: SCC

Reference: L-14

Appendix number: 14G

4.11.20. The application route is shaded purple between points A1 and A2, indicating that this section of Huish Drove is a public footpath. Footpaths 13/49 and 13/51 are shown as continuous, following the northern boundary of Park Lane (rather than along the lane itself) before crossing to the west of the lime kiln buildings.

Definitive Statement

Source: SCC

Reference: L 13/42, L 13/43, L 13/44, L 13/49, L 13/51, L 13/47, L 13/46, L 10/1

Appendix number: 14H

4.11.21. Footpath L 13/42 is described as beginning at "Rhyne Bridge near Huish Bridge" and running in a south westerly direction across one field, then along Litness Drove for a short distance and across further fields to the railway line".

4.11.22. Footpath L 13/43 is described as beginning at Huish Bridge and running "in a south easterly direction along the bank of the River Parrett to the parish boundary at Perrymoor Bank".

4.11.23. Footpath L 13/44 is described as starting at "Rhyne Bridge near Huish Bridge" and travelling "south to the junction of footpath 43".

4.11.24. Footpath L 13/49 is described as beginning at "Footpath 48 just west of Frog Lane" and running "south across one field to Park Lane".

4.11.25. Footpath L 13/51 is described as starting at "Park Lane near Lime Kilns" and running "south west to Park Triangle Plantation and thence to Drayton parish boundary".

4.11.26. Footpath L 13/47 is described as starting at Park Lane and running "north across one field to the Taunton-Langport road".

4.11.27. Footpath L 13/46 is described as starting at "Taunton road by Portway Cottages" and running "south to path 48 then south west to the parish boundary at Park Lane".

4.11.28. Footpath L 10/1 is described as starting at "the south gate of Twelve Acres" and running "north across the field to Park Lane at the Parish Boundary".

Interpretation of evidence

4.11.29. 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.

4.11.30. Part of Huish Drove (between the western side of Huish Bridge and point A2) was claimed as a footpath by Huish Episcopi Parish. This was recorded in the DMS as two separate footpaths, L 13/43 (from A1 to the western side of Huish Bridge) and L 13/42 (from the western side of Huish Bridge to A2). It is unclear why the Parish's claimed footpath was extended to include the section between point A1 and Huish Bridge.

4.11.31. Footpaths L 13/49 and L 13/51 are shown by the DMS as a continuous route that crosses Park Lane. This is distinct from the situation on the ground, where both physical routes terminate on Park Lane on either side of the lime kiln buildings near point D. The situation on the ground is consistent with the representation of the two footpaths in the Survey Map. It seems highly likely that, if the two recorded footpaths are being used by the public, they have been travelling between the two via Park Lane rather than continuing to the north of the Lane and crossing to the west of the limekiln.

4.11.32. These documents provide conclusive evidence that part of Huish Drove (points A1 to A2) is a public footpath. However, that is without prejudice to the existence of higher rights.

4.12. **Deposited Plans**

River Ivel (Yeo) and Parrett Navigation Plan 1795

Source: The National Archives (extract supplied by applicant)

Reference: HL/PO/PU/1/1795/35G3n233

Appendix number: 15

Description and interpretation of evidence

4.12.1. This plan relates to an Act secured in 1795 which authorised a new cut on the River Parrett, using Portlake Rhine (now known as Long Sutton Catchwater) to bypass the obstructive Langport Bridge. Though work was begun on this project, it was never completed due to spiralling costs.³¹

4.12.2. The plan that accompanies the Act depicts the eastern section of Huish Drove from point A to roughly point A2. Huish Bridge is clearly labelled. The route to the east of Huish Bridge is depicted by solid parallel lines and is uncoloured, in a manner consistent with routes now known to be public highways (such as Bow Street, North Street, and The Hill). The route to the west of Huish Bridge is not clearly depicted, but is labelled "Road from Drayton &c".

4.12.3. The accompanying book of reference for the Act has not been seen. Neither Huish Bridge nor Huish Drove appear to have been numbered.

4.12.4. The applicant has argued that "the obvious and only possible route from Drayton" would have been the combined through route of Huish Drove, Frog Lane, and Park Lane. Directional labels, as discussed above (paragraph 4.1.10.), can be interpreted as evidence of public carriageway status. However, the fact that the vast majority of the application route is not shown by this plan means that there is a significant degree of ambiguity attached to this evidence. Furthermore, on its current alignment Park Lane terminates on the A378, around 1 mile to the north-west of Drayton.

4.12.5. The applicant has further asserted that "since the surveyors would be very unlikely to record a private route, the conclusion is that the route was a public road." However, there is nothing explicit in the plan to suggest that surveyors would only have recorded public highways.

³¹ C. Hadfield, *The Canals of South West England* (London: David & Charles, 1985), pp. 83-84.

Plan and section of the Parrett and Yeo River navigation between Ilchester and Langport 1836

Source: SWHT

Reference: SHC Q/RUP/132

Appendix number: 15

4.12.6. This plan and an accompanying strip map formed part of a proposal that sought to improve navigation along the Parrett and Yeo rivers, with the aim of saving "from the Chard Canal [which was then under construction] a good deal of the Parrett's traffic arising round Ilminster".³² The resulting Act established the Parrett Navigation Company. Though the project was completed in 1840, the route was superseded by the opening of the Yeovil and Durston railway line in 1853.

4.12.7. The north-western section of the plan depicts Langport and parts of Huish Episcopi Parish. Huish Drove is shown from point A to point C. The route is coloured sienna and is depicted by solid parallel lines. Huish Bridge is recorded, but appears to be significantly narrower than the application route on either side of the river.

4.12.8. Huish Drove (numbered 207) is one of several nearby routes that are mentioned in the accompanying book of reference. The others include Muchelney Road (197), and Litness Drove (280). Huish Drove is described as a "Public Drove" and is listed as being owned or occupied by the "Waywardens of the Parish". Muchelney Road is identified as a "Turnpike Road" in the ownership of the "Commissioners of the Langport, Somerton & Castle Cary Turnpike Trust". Litness Drove is described as "a drove" in the ownership of the "Proprietors of the several lands adjoining".

Bristol and Exeter Railway 1844

Source: South West Heritage Trust

Reference: SHC Q/RUP/173

Appendix number: 15

4.12.9. This plan relates to four proposed branch lines of the Bristol and Exeter Railway, including the Yeovil and Durston line, which was completed in 1853. The accompanying book of reference refers to this line as the "Yeovil Branch".

4.12.10. Railway plans included strip maps for each section of a proposed route. The map of relevance to this investigation covers the section of the railway at Langport heading southwards. The map depicts the application route between points C and E, and shows the proposed railway crossing Huish Drove at point C. Both Huish Drove and Frog Lane are represented by solid parallel lines and are unshaded.

³² Hadfield, *The Canals of South West England*, p. 85.

4.12.11. Huish Drove is labelled "25" on the plan. The book of reference lists number 25 as a "Drove" and records its owners as "Elizabeth Simmons, Henry Lovibond, [and the] Bishop of Bath and Wells". It is unclear what the term Drove was intended to mean in this context. A nearby route labelled "27", which currently has no recorded public rights, is also recorded as a "Drove". The reference book uses a series of other terms to refer to routes and ways, including "Parish Road", "Road", "Footpath", "Droeway", and "Roadway", none of which are defined. Unlike the 1836 Parrett Navigation Plan, there is no distinction drawn between droves and public droves.

4.12.12. The northern section of Frog Lane (which is not part of the application route) is bisected by the proposed railway line. It seems likely that this part of Frog Lane was diverted during the construction process. Frog Lane Close, the plot of land marked 17 on the plan, was sold to the Bristol and Exeter Railway Company in 1854 (see Appendix 15E).

Great Western Railway, Bristol and Exeter Railway Yeovil Branch Survey 1890-1893

Source: The National Archives (extract supplied by applicant)

Reference: RAIL 274/77

Appendix number: 15

4.12.13. Post-construction surveys were regularly undertaken by railway companies. Such surveys produced detailed land plans intended "to record ownership, title deeds and other relevant property information and transactions".³³

4.12.14. This section of the survey focuses on the area to the south of Langport Station (later Langport West Station). The section of Huish Drove between points C and D is depicted by solid parallel lines and shaded sienna. The majority of the route is bordered by drainage ditches, excluding a small section at point C. This is labelled "Level Crossing" and shows a blue line within parallel dashed lines crossing the route.

4.12.15. Huish Drove is labelled on the survey map as "25". The book of reference submitted by the applicant, which described 25 as a "Drove", appears to be the same document as that accompanying the 1844 plan. It is unclear whether an updated book of reference was produced for the 1890-1893 Survey.

Interpretation of evidence

4.12.16. The *Rights of Way Law Review* argues that while canal plans "are useful as an independent survey to show whether or not a particular road existed at a certain date, the status of the road is unlikely to be revealed with any degree of certainty."³⁴

³³ G. Johns, 'The use by the Great Western Railways of Ordnance Survey maps in preparing land plans', *Sheetlines: the journal of the Charles Close Society*, 105 (April 2016), p. 44.

³⁴ B. Riley, 'Railway and canal deposited plans', *Rights of Way Law Review*, 9.3 (CD edition), p. 3.

The Planning Inspectorate's Definitive Map Orders Consistency Guidelines echo this, advising that "canal maps and their associated books of reference do not always differentiate between public and private roads."³⁵

4.12.17. The River Ivel (Yeo) and Parrett Navigation Plan provides strong evidence that Huish Drove existed on the ground in 1795. The annotation that describes the route as the "Road from Drayton" is also suggestive of public vehicular rights over the whole of the application route. However, given that the plan does not explicitly distinguish between public and private roads, this source is of limited evidential weight, particularly in relation to Frog Lane and Park Lane, as they do not appear on the map.

4.12.18. The 1836 Parrett and Yeo Navigation Plan does appear to differentiate between public and private roads, identifying Huish Drove as a "Public Drove". This categorisation does not offer detail regarding the extent of the route's public status. Nonetheless, given the detailed nature of the surveying process for such schemes, the Plan offers evidence that Huish Drove was some form of public right of way in 1836.

4.12.19. The Consistency Guidelines assert that "the statutory process required for the authorisation of railway schemes [...] was exacting".³⁶ The *Rights of Way Law Review* goes further, arguing that "the legal process developed to identify public highways on railway plans was at least as thorough as any other system in use to record highways at that time".³⁷ This means that such documents can provide evidence of the existence of rights of way.

4.12.20. Both the 1844 Plan and the 1890-1893 Survey clearly depict the section of Huish Drove between points C and D. This offers strong evidence that the route was a prominent physical feature between 1844 and 1893. The route is described as a "Drove" in the 1844 book of reference – a term that is not defined or elaborated on. Given this lack of detail, the railway records are ultimately neutral as regards the status of Huish Drove, and by extension, the rest of the application route.

4.13. **Commercial and other maps**

Day & Masters 1782

Source: SCC

³⁵ *Definitive Map Orders: Consistency Guidelines* (2016), 10.2.5, <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines#railway-and-canal-deposited-plans>, accessed 10 September 2021.

³⁶ *Definitive Map Orders: Consistency Guidelines* (2016), 10.2.2, <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines#railway-and-canal-deposited-plans>, accessed 10 September 2021.

³⁷ Riley, 'Railway and canal deposited plans', *Rights of Way Law Review*, 1.

Appendix number: 16A

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

4.13.2. The map shows a route to the south of the River Parrett, heading north-west before crossing what is now the A378. This route is depicted in heavy black ink. This does not correspond directly to the Map "Explanation", but it would appear to indicate either a "Turnpike Road" or an "Inclosed Road".

4.13.3. The application route is the only route that crosses Huish Moor (that is the fields to the south of the River Parrett) from east to west. On this basis, it seems likely that the route depicted by Day & Masters represents some combination of Huish Drove, Frog Lane, and Park Lane. However, the route as depicted – heading north-west from the confluence of the rivers Parrett and Yeo – bears little relation to the way in which the application route is recorded on the other maps consulted, or indeed, to the route as it currently exists on the ground.

4.13.4. When the full length of a route is shown by Day & Masters, it suggests that it must have been either a very prominent physical feature or a route of some importance (or both). Based on this assumption it is arguably more likely than not that it would have carried public rights. However, little is known about the basis upon which Day & Masters selected the features which were to be shown on their maps. Furthermore, even if they did consider it to be public, this can only be taken as the view of the individual surveyor rather than the wider public. In this case, moreover, there are clear cartographic inaccuracies. In the circumstances, this map can be considered in favour of public vehicular rights over the application route, but it can be awarded very little evidential weight.

Greenwoods 1822

Source: SCC

Appendix number: 16B

4.13.5. 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.

4.13.6. In this case the map does not show the full length of the application route. The eastern end of Huish Drove (from point A to Huish Bridge) is recorded, as is the western

end of Park Lane (point H). The northern section of Frog Lane (which is not part of the application route) is also shown.

4.13.7. These sections are all depicted as “Cross Roads”. 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”.³⁸ 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 an individual map before drawing any inferences.³⁹

4.13.8. 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 route leading to the parish boundary near Horsey, which was likely an access route for what is now Horsey Farm.

4.13.9. 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.

4.13.10. 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”.⁴⁰ 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.⁴¹

4.13.11. This map therefore confirms the physical existence of some sections of the application route in 1822. The fact that earlier maps (such as the 1811 OS Old Series Map) and later maps (such as the 1886 OS County Series First Edition 25 Inch Map) show the route in full suggests that it is likely that the route still existed on the ground in 1822. It is unclear why Greenwood’s chose not to depict the full route as a cross road. While the fact that the full application route was not recorded does not necessarily mean that public rights did not exist over it, and notwithstanding that the eastern and western ends of the route are recorded as cross roads, in this instance the

³⁸ *Hollins v Oldham* (1995), CD 19.

³⁹ *Definitive Map Orders: Consistency Guidelines* (2016), 2.4.3
<https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 8 June 2020.

⁴⁰ *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77.

⁴¹ *Fortune & Ors v Wiltshire Council & ANR* [2012] EWCA Civ 334.

Greenwood's Map cannot be taken as evidence of the existence of public vehicular rights.

Bartholomew's 1902

Reference: Sheet 34

Scale: 1:126,720 (half inch to the mile)

Appendix number: 16C

Bartholomew's 1923

Reference: Sheet 34

Scale: 1:126,720 (half inch to the mile)

Appendix number: 16D

Bartholomew's 1943

Reference: Sheet 34

Scale: 1:126,720 (half inch to the mile)

Appendix number: 16E

4.13.12. 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".

4.13.13. Bartholomew's 1902 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." The first three classes were distinguished by the use of red infill between either solid, pecked or dotted lines. The application route is depicted by solid parallel lines and is uncoloured, meaning that it was considered an "inferior road".

4.13.14. Bartholomew's 1923 Map shows the application route in a manner consistent with the 1902 Map, as an uncoloured "inferior road".

4.13.15. The 1943 Map shows Park Lane and Frog Lane in a manner consistent with the 1923 Map, as an uncoloured "inferior road". Huish Drove is not recorded between Huish Bridge and the junction with Frog Lane at point D.

4.13.16. Bartholomew's maps were considered in *The Commission for New Towns and Worcestershire County Council v J.J. Gallagher Limited*. In that case the implication that uncoloured roads on Bartholomew's map were public carriageways was

considered. After referring to the map's disclaimer (see paragraph 4.13.12., above), Neuberger J. went on to say the following: "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 Bartholomew's map is referred to as being "actually of assistance to the argument that it [the application route in that instance] was a public carriageway".⁴²

4.13.17. Following the same reasoning, the 1902 and 1923 Bartholomew's maps are considered to be in favour of the full length of the application route carrying public rights. The 1943 Map is in favour of Park Lane and Frog Lane carrying public rights. However, all three maps can be awarded very little evidential weight.

Survey of the Manors of Drayton and Middledney 1820

Source: SWHT

Reference: SHC DD/CTV/57

Appendix number: 16G

4.13.18. This survey concerns lands in the ownership of the Trevillian family, "tenants and owners of Middelney Manor, Drayton since the 16th century".⁴³ The accompanying Map is described as a "Map of the Manors of Drayton and Middledney in the County of Somerset the property of William Ceeley Trevillian Esq." (note alternate spellings of Middledney/Middelney). The records also include "Particulars of the Manors", which record information about land usage and acreage.

4.13.19. The Map depicts the western entrance to Park Lane (point H). It is represented by solid parallel lines, in a manner consistent with several public roads (including what is now the A378) and routes with no recorded public rights (such as the track opposite the county road to Drayton). The fact that the rest of Park Lane is not recorded does not appear to be a comment on its status, but rather suggests that the route and surrounding land was not part of the Trevillian Estate.

4.13.20. The Map includes an "Explanation", which provides details as to how the map should be interpreted. While this legend does highlight how footpaths are represented (a single pecked line), there is no information concerning the depiction of vehicular highways or other rights of way. It seems likely that the routes shown between solid parallel lines on the Map were included because of their physical character rather than their status, and as such, that both public vehicular highways and private access routes are shown in this manner.

⁴² *Commission for New Towns and WCC v J.J. Gallagher Limited* [2002] EWHC 2668 (Ch) [108 and 121].

⁴³ A short history of the 'Trevillian Family Muniments' collection can be found on the South West Heritage Trust website: <https://somerset-cat.swheritage.org.uk/records/DD/CTV>.

4.13.21. The Survey Map provides strong evidence that the western extremity of Park Lane existed in 1820. Given the ambiguity of the Map "Explanation", it has limited evidential value as regards the status of Park Lane.

Map of Drayton Estate 1852

Source: SWHT (extract also submitted by applicant)

Reference SHC DD/BT/1/20

Appendix number: 16H

4.13.22. This Map is described as "The Drayton Estate belonging to Francis Meade Eastment Esq.". It includes land surrounding the village of Drayton, in addition to the hamlets of Portway and Wick. The fields include parcel numbers that appear to be consistent with the Drayton Tithe Map. Some of the fields are shaded blue or red, though it is unclear what this represents.

4.13.23. The Map depicts the western section of Park Lane between points H and G. It is shown by solid parallel lines between points H and G1, in a manner comparable with several public vehicular highways (including what is now the A378) and routes with no recorded public rights (such as the track opposite the county road towards Drayton). Between points G1 and G the route is depicted by one solid line and one pecked line. This is consistent with the representation of several other routes on the map, including the southern section of what is now footpath L 9/26. The route now recorded as L 13/46 is annotated on the Map heading north from point G1 as "Footpath to Langport". It is unclear whether the footpath terminates on Park Lane, or whether the pecked line heading south towards Drayton represents a continuation of the footpath.

4.13.24. The entrance to Park Lane is crossed by the eastern casing line of what is now the A378. This distinguishes the application route from several others that branch off from the A378, including the county road towards Drayton. The solid line across the entrance could be seen to indicate that the route was not publicly accessible, or that it was gated. There is no legend accompanying the Drayton Estate Map, so it remains unclear exactly what the mapmaker was intending to indicate by this representation.

4.13.25. The Drayton Estate Map provides strong evidence that the western section of Park Lane existed in 1852. In blocking off the entrance to the application route, the Map could be seen as evidence that Park Lane was not accessible to the public at the time the Map was drafted. Equally, the solid line could be intended to represent a gate. Given that the Map has no legend, and that relatively little is known about its provenance, there is ultimately little that can be drawn regarding the status of Park Lane.

Map of Huish Episcopi in 1799 (1974)

Source: SWHT

Reference: R. W. Dunning, *A History of the County of Somerset: Volume III* (London: Victoria County History, 1974), 2.

Appendix number: 16F

4.13.26. This Map is taken from Volume III of *A History of the County of Somerset* (1974), which is subtitled *The histories of the parishes of Kingsbury (east), Pitney, Somerton, and Tintinhull hundreds*. Founded in 1899, the Victoria County History aimed to produce a history of every parish in England. Much of the project's extensive work is available open access via British History Online.⁴⁴

4.13.27. The Map depicts the majority of the application route. Huish Drove and Frog Lane are shown by solid parallel lines, as are short sections of Park Lane west of point E and east of point H. Given the date corresponds with the Huish Episcopi and Walton Inclosure Award (1799), and that the Map legend includes information about land usage, it seems highly likely that this is a copy or approximation of the Parish Survey Map discussed above (from paragraph 4.4.6.).

4.13.28. The *County History* chapter on Huish Episcopi includes some valuable information concerning the application route. Useful background is provided regarding the use and ownership of the land abutting Park Lane.⁴⁵ The volume also offers 1581 as the first recorded description of Huish Bridge.⁴⁶ It is described as one of two "important bridges in the south of the parish", carrying "a road from Huish village to Huish Level and Frog Lane".⁴⁷ No information is provided regarding the status of the "road". The fact that Huish Bridge was considered "important" suggests that the road it carried was thought to hold public rather than private rights. The *County History* also records that Huish Bridge was rebuilt on several occasions, including by the Parrett Navigation Company in 1840 (whose plans are analysed at paragraph 4.12.1., above). The Company are thought to have deepened the bed of the river and in so doing destroyed a ford. They then replaced what had been a footbridge with a "wooden carriage bridge".⁴⁸ It is worth stressing that the Parish history is a broad study that was not primarily concerned with rights of way.

4.13.29. The Map of Huish Episcopi has likely been drafted on the basis of information drawn from the Inclosure Award Parish Survey. As such, no further conclusions are drawn from this document. In highlighting the importance of Huish

⁴⁴ <https://www.british-history.ac.uk/search/series/vch--som>.

⁴⁵ R. W. Dunning, *A History of the County of Somerset: Volume III* (London: Victoria County History, 1974), 1-13.

⁴⁶ *Ibid.*, 3.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* See also 'The Huish Episcopi Bridge Land Charity', *Langport and Somerset Herald* (21 April 1894), 4.

Bridge, the Huish Episcopi *County History* chapter can be seen as suggestive of some form of public right existing over Huish Drove.

Quarries Map (unknown date)

Source: Extract submitted by Landowner K

Reference: 'Land & Quarries at Park re. Trevilian Estate'

Scale: 1:2500

Appendix number: 16I

4.13.30. This sketched Map covers the industrial area to the south of Merricks Farm. It depicts the eastern section of Park Lane (points E to G) between solid parallel lines, excluding the section through Merricks Farm, where the northern boundary of the lane is not included. Several lime kilns are identified, as is the tramway between Park Quarry and the southern kiln. There is a line marked across the route at point F, which may indicate the presence of a gate. Footpath L 13/51 is shown crossing the Map from north-east to south-west.

4.13.31. There is no map legend included in the Quarries Map, which means it is difficult to draw any firm conclusions concerning the representation of Park Lane. Nonetheless, the Map provides further evidence of the extent of historical industrial activity in this area.

Deeds Map

Source: Extract submitted by Landowner K

Appendix number: 16J

4.13.32. The exact provenance of this map (which appears to be hand drawn) is unclear, but it is assumed that it is included within the property deeds of Landowner K.

4.13.33. The Map depicts Park Lane, Frog Lane, and the western section of Huish Drove between solid parallel lines, in the same manner as several public roads (including what is now the A378) and various routes with no recorded rights (such as Bartonleaze Drove). The route is unshaded, distinguishing it from land parcels to the north and south-east of Park Lane. Several handwritten annotations appear on the map, including the word "barrier" at points F and E. The letters A, B, and C have been used to mark points on the map that correspond with point H, G, and E1 in Appendix 1.

4.13.34. The Deeds Map does not offer any evidence as to the status of the application route. The fact that Park Lane is excluded from land parcels to the north is of note, as this contrasts with several other pieces of evidence (such as the 1907 and 1991 Auction particulars).

4.14. Other Sources

Langport and Frog Lane archaeological report (2003)

Source: SWHT

Reference: M. Richardson, 'An archaeological assessment of Langport and Frog Lane', Somerset Extensive Urban Survey (2003), https://www.somersetheritage.org.uk/downloads/eus/Somerset_EUS_Langport.pdf, accessed 8 November 2021.

Appendix number: 17A

4.14.1. This report forms one of a series commissioned by English Heritage and prepared by Somerset County Council "with the aim of assessing urban archaeology as part of the Monuments Protection Programme." The research was conducted between 1994 and 1998, with some updates in 2003.

4.14.2. The report contains various references to Frog Lane, first indicating that there is "good evidence of Roman settlement on the west bank of the river at Frog Lane". It is also suggested that Frog Lane (also referred to as Southwick) was a distinct medieval settlement, "one of six completely new towns set up in the 12th and 13th centuries on greenfield sites, from an existing settlement or borough".⁴⁹ The report further speculates that the borough's later abandonment "may have been due, in part, to flooding of at least the eastern side of the settlement".⁵⁰

4.14.3. Map C marks the extent of the medieval Frog Lane settlement on a modern map of Langport and parts of Huish Episcopi. Labelled LAN/407, the settlement is confined to the northern section of Frog Lane (i.e. the section which is not part of the application route).

4.14.4. Map D records the lost village of Littleney. This is described in the report as a small island on the levels, which was "part of the bishop's estate in Huish parish at Domesday" but was "deserted by the 14th century in favour of Huish Episcopi". It is possible that the application route, by way of Bartonleaze Drove and Litness Drove, provided land access to this settlement. However, this presupposes that the various relevant routes are of sufficient antiquity, a supposition that cannot be confirmed.

4.14.5. This report does not offer any explicit information as to the right of way status of Frog Lane, or indeed, the application route more broadly. Nonetheless, the antiquity of the settlement in this area, and the fact that the settlement gave its name to the modern-day route, is clearly of significance.

⁴⁹ M. Richardson, 'An archaeological assessment of Langport and Frog Lane', Somerset Extensive Urban Survey (2003), https://www.somersetheritage.org.uk/downloads/eus/Somerset_EUS_Langport.pdf, accessed 8 November 2021, p. 3 and 9.

⁵⁰ *Ibid.*, 11.

Somerset Historic Environment Record

Source: SWHT (<https://www.somersetheritage.org.uk/#>) (extracts also supplied by Respondent 7)

Reference: SMR 54051, SMR 54048, SMR 54050, SMR 54049, SMR 15846

Appendix number: 17B

4.14.6. The Historic Environment Record “records the archaeological sites and heritage buildings of Somerset”. The online repository is used “to inform planning and development decisions as well as by all types of researchers interested in the physical evidence of the past”.⁵¹

4.14.7. SMR 54051 relates to the deserted village of Littleney. Thought to mean “little island”, the area provided “a limited amount of arable land a few feet above the surrounding marsh”. Much of the information is consistent with that recorded in the Langport and Frog Lane archaeological report. The record additionally highlights that “Earthworks forming an embanked trackway and possibly building or enclosure remains at the SE end of Bartonleaze Drove”.

4.14.8. SMR 54048 concerns the deerpark belonging to the Bishop of Wells, granted in 1257 and confirmed in 1280. It seems likely that this park, in addition to the nearby Abbot’s Park in Drayton, gave their name to Park Lane. It is unclear whether the lane provided access to the deerpark or formed its boundary.

4.14.9. SMRs 54050, 54049, and 15846 cover the lime burning and quarrying works to the south of Park Lane.

4.14.10. None of the records provide direct evidence concerning the right of way status of the application route. SMR 54051’s reference to earthworks on Bartonleaze Drove is of interest, as this adds further support to the idea that the village of Littleney may have been accessed via Frog Lane or Park Lane. However, this evidence is naturally ambiguous, and can be given very little weight as a result.

‘Limekilns & Limeburning in Huish Episcopi & Long Sutton’

Source: Extract supplied by Landowner K

Reference: *SIAS Bulletin* (unknown issue)

Appendix number: 18

⁵¹ <https://swheritage.org.uk/historic-environment-service/historic-environment-record/>.

4.14.11. These extracts are taken from an article published in the *Somerset Industrial Archaeological Society Bulletin*. They contain several sketched plans of the lime-burning works on Park Lane, in addition to a map of similar sites in the wider area.

4.14.12. Two sites are identified on Park Lane, labelled A and B. Site A was the location of three kilns established "by 1902" and thought to have survived "until at least 1931". Site B appears to have been established earlier (by 1886), though the number of kilns seems to have fluctuated. The article additionally suggests that site B "can be linked to a nearby quarry [...] in 1886 and another contemporary quarry functioned on the north side of Park Lane". Quarries also existed to the east and south of Park Lane, including Park Quarry, which was linked to Site A by "a narrow-gauge tramway". This tramway is marked on the 1901 OS County Series Second Edition 25 Inch Map (see Appendix 10H). The article also suggests that the surviving structure on between points E and E1 was a "single storey office building".

4.14.13. The article also includes a document from "Mead & Sons Lime & Stone Co. LTD.", who had control of both sites by 1935. Prior to this, the author speculates that the sites were operated by Tom Towning, who was "listed in trade directories as a quarry owner, limeburner and farmer at Merricks Farm, Park Lane."

4.14.14. The article does not provide any direct evidence as to the status of Park Lane. However, it does offer some valuable information concerning the historical use of the lane, as it is clear that there was a significant degree of industrial activity in the area during the late-nineteenth and early-twentieth centuries. It is highly likely that Park Lane was used to access the numerous quarries and lime kilns, meaning that there was probably a significant level of vehicular traffic on the route during this period. The article does not provide evidence as to whether this vehicular use was by virtue of a public or private right of way.

Auction particulars (1907)

Source: SWHT

Reference: SHC D/P/dton/23/3

Appendix number: 19A

4.14.15. This document advertises an auction, taking place at the Langport Hotel in April 1907, of Merricks Farm. The farm is described as an "attractive Dairy and Grazing Farm" and the majority of the lots "are and have been for many years past in the occupation of Mr T. Towning".

4.14.16. Park Lane is shown on the Plan between solid parallel lines. The majority of the lane (between points H and E1) is coloured green, indicating it is part of Lot 1. The section between points E1 and E is coloured sienna, in the same manner as Frog Lane and what is now the A378. The entrance to Huish Drove is shown at point D.

4.14.17. The plan includes the following caveat: "This Plan has been carefully prepared from the Ordnance Survey and other Maps but is for the purpose of identification only, and its accuracy is not guaranteed."

4.14.18. In the Remarks section of the Lot 1 Particulars, the Lot is described as "sold subject to the Owner and Occupier of Park Farm having a right-of-way for animals and vehicles over Park Lane as shown from A to B on Plan". These annotations correspond with points H and G on Appendix 1.

4.14.19. Private and public rights of way are distinct legal rights. The former is a right of way "for an individual or group other than the public at large".⁵² Public rights of way, by contrast, exist for all members of the public. It is important to stress that this difference "is legal, not physical, and is not necessarily apparent to anyone actually using the road or path in question."⁵³ An easement is "a private right of way annexed to, and for the benefit of, a particular piece of land."⁵⁴ The fact that part of Park Lane was subject to an easement for a specific landowner and occupier suggests that others were not considered to have the same rights. This indicates that the rights in question were private rather than public.

4.14.20. The 1907 Auction particulars provide evidence that the owners and occupiers of Park Farm enjoyed a private right of way for animals and vehicles over Park Lane between points A and B on the Auction Plan (points H to G on Appendix 1). The particulars also suggest that Park Lane did not have the reputation of a public vehicular highway in 1907, as if the route were such a highway, then the easement described above would have been unnecessary. However, this is not evidence against public footpath or bridleway rights.

Auction particulars (1991)

Source: Extract supplied by Landowner K

Reference: 'Merricks Farm, Langport, Somerset', Hunts Chartered Surveyors, Auctioneers, and Estate Agents

Appendix number: 19B

4.14.21. This document advertises an auction, taking place at the Langport Hotel in October 1991, of Merricks Farm. The farm is described as a "desirable and productive freehold mixed farm" and appears to be in the ownership of Somerset County Council.

4.14.22. Much of Park Lane is obscured on the accompanying landownership plan by a thick black line indicating the boundary of the land set for auction. Those sections that can be seen are depicted between solid parallel lines and are unshaded.

⁵² Riddall and Trevelyan, *Rights of Way: A Guide to Law and Practice*, fourth edition, 11.

⁵³ A. Sydenham, 'Private right of way', *Rights of Way Law Review*, 14.2, 1 (CD edition).

⁵⁴ Riddall and Trevelyan, *Rights of Way: A Guide to Law and Practice*, fourth edition, 11.

4.14.23. In the description of "The Land", it is confirmed that "There is a right of way along the strip of land coloured brown on the Particulars Plan for both vehicles and animals to gain direct access to the main Langport/Taunton Road". The accompanying table refers to this "Lane", the size of which is estimated as 1.38 acres. The described lane seems to equate to the section of the application route between points E1 and H. Though not specified at this point, the right of way in this instance is likely to refer to private rather than public rights, as no public right of way is marked over Park Lane on the Definitive Map reproduction included as part of the particulars.

4.14.24. The First Schedule includes a section on "Additional Rights of Way". It refers to "the piece of land forming the access way to the Property such access way being an area of land adjoining the A378 road and connecting to Park Lane". This entrance way is described as "subject to all rights of way thereover", with particular reference drawn to National Grid Number 6100.

4.14.25. The Second Schedule concerns "Incumbrances", meaning any interests or rights which adversely affect the use of property. These include "All rights, easements or quasi easements affecting the property without any obligation on the part of the Vendors to define the same", and "Rights of way over Park Lane as now subsisting and public footpaths affecting the property". An accompanying map identifies the several public footpaths in the vicinity of the property as recorded in the DMS at the time of the auction.

4.14.26. The landownership plan covers the area of the application route between points E and H and indicates the parcels of land included with the property. Further annotations have been added by Landowner K, highlighting land "brought from S.C.C. [Somerset County Council] in 1992", land now owned, and sections of Park Lane thought to be in the ownership of others. This record differs slightly from the landownership plan at Appendix 2C. While Landowner K's holdings are shown in the same manner, Landowner O's holdings extend further to the east. In turn, the section of the route between point E and the lime kiln, which is currently unregistered, is shown as in the ownership of Landowner L. The plan also highlights the presence of a gate at the eastern boundary of Merricks Farm (point E1 on Appendix 1). This is annotated "Gate erected Jan 2001".

4.14.27. The 1991 Auction particulars provide evidence that various private rights of way exist over Park Lane. However, the Second Schedule draws attention to "All rights, easements or quasi easements affecting the property", and further emphasises that there is no obligation for the vendors to set out these rights in full. The fact that the Auction particulars do not refer to public rights existing over Park Lane, therefore, does not necessarily mean that such rights did not exist. However, it is worth stressing that if public vehicular rights existed over Park Lane at the time of the auction then there would be no obvious need for a private right of way or easement.

Lease agreement (1938)

Source: Extract supplied by Landowner K

Appendix number: 19C

4.14.28. This document (the provenance of which is unclear) concerns a lease agreement relating to land to the south of the application route between points E and E1.

4.14.29. Dated 15 July 1938, the agreement was made between Eric Leslie Mead (the lessor) and Mead & Sons (Quarries) Ltd (the lessees). It refers to the "close of land with the four limekilns thereon erected and sheds and other buildings used in the process of lime burning situate adjoining Merricks Lane and being Ord. No. 685 and which plot of land and buildings are coloured green on the annezed [sic] plan". The agreement additionally suggests that the lease includes the "full right and liberty to lay and use railtracks or roadways across the field numbered 689 on the sd [said] Ord Map".

4.14.30. The accompanying hand-drawn plan appears to be based on the OS County Series Second Edition 25 Inch Map (see paragraph 10H). It does not include a map legend. Two routes marked by parallel dashed lines are shown terminating on the application route from the north. Another route marked in the same manner heads south towards the lime kilns, with a route branching off to the south-west that is consistent with what is now footpath L 13/51. As is indicated in the text of the agreement, parcel number 685 is shaded green, as is the smaller parcel 686, the western side of which is marked "Petrol Pump". A single dashed line is depicted crossing the field labelled 689 towards the lime kilns and is annotated "Proposed Dram Track". It is unclear what the term "Dram" refers to. It is also unclear whether any light rail or road infrastructure was constructed over this route.

4.14.31. The Lease agreement refers to this section of the application route as Merricks Lane. This is the only evidence seen by this investigation that employs this name.

4.14.32. The Lease agreement provides evidence that the lime kilns remained a going concern in 1938, and that the application route was likely used for access. Given the lack of map legend, the records are neutral as regards the status of the application route, neither suggesting the existence of public rights nor confirming the sole presence of private rights.

Sales particulars

Source: Extract supplied by Landowner K

Appendix number: 19D

4.14.33. These particulars appear closely associated with the 1938 Lease agreement. The exact date is not specified, but the 1934 edition of the Somerset Law Society Particulars and Conditions of Sale template is used. The sale concerns the “shed or building situate adjoining Park Lane & Kilns at Merricks Farm [...] numbered Part 686 on the Ordnance Survey 2nd Edition 1903 and which shed or building has recently been converted into offices.”

4.14.34. As with the 1938 Lease agreement, the relevant parties are listed as Eric Leslie Mead and Mead & Sons (Quarries) Ltd. The sales agreement records the purchase price as £25.

4.14.35. The “Special Conditions of Sale” section confirms that the vendor is selling as “absolute owner”. It additionally asserts that “a right of way to the property sold over Park Lane shall be reserved to the Purchasers”.

4.14.36. The Sales particulars provide evidence that a private right of way existed over Park Lane for the purchases of the property in question. It seems likely that the estate agents considered the route not to carry public vehicular rights. It is not clear whether Park Lane was thought to carry lower public rights.

Land Registry Charges Register

Source: Extract supplied by Landowner K

Reference: ST94222

Appendix number: 20

4.14.37. This copy of the Charges Register for title number ST94222 was submitted by Landowner K. The record was also considered by the investigating officer during Land Registry searches carried out in July 2021 (see paragraph 2.8., above). The sections that are shaded in yellow have been highlighted by Landowner K.

4.14.38. The document records several rights of way that exist for owners of land and property in the vicinity of Park Lane. This includes “a right of way as at present existing for the owner or owners [...] [of] Park Farm”, which allows “his and their tenants and all persons authorised by him or them respectively with or without horses or other animals and carts carriages or other vehicles or machinery [...] to go pass and repass over the road known as Park Lane”. A similar right is also granted to “the owners or occupiers [...] of the Quarries and lands occupied both on the south and north sides of the said road” and several other owners of unspecified properties.

4.14.39. Point 6 on the Charges Register provides important information concerning the status of these private rights. It records that “the Purchasers and their successors in title and all persons authorised by them together with others having a like right at all times hereafter and for all purposes connected with the use of the said cottage to go pass and repass [...] along Park Lane”. The wording of this sections appears to indicate that

the right in question is an easement (that is a right linked to a property) rather than a licence (which is a personal right).⁵⁵

4.14.40. The Charges Register provides strong evidence that various private rights of way and easements exist over Park Lane. However, these private rights of way do not preclude the potential existence of lower public rights of way over the same route.

4.14.41. Section C of point 3 on the Charges Register refers to “the offices situate in Frog Lane adjoining the field numbered 689 on the said plan”. It has not been possible to identify field 689, but “the offices” likely correspond with the lime kiln buildings between points E and E1. This is of significance, as it suggests that those who produced the plan considered that Frog Lane did not terminate at point E, but rather continued as far as point E1, at which point Park Lane presumably begins.

Dream Cottage Sales Particulars

Source: extract supplied by Landowner H

Appendix number: 19E

4.14.42. This document advertises the sale of “Dream Cottage, Park Lane, Curry Rivel” by F. L. Hunt & Sons estate agents. The property, which is now known as Park Lane Cottage, sits on the eastern side of the Merricks Farm site between points E1 and F on Appendix 1. The document is undated, but is estimated by Landowner H to be over 40 years old.

4.14.43. Park Lane is described in the Sales Particulars as “a private road”. It seems likely that the estate agents considered the route not to carry public vehicular rights. It is not clear whether Park Lane was thought to carry lower public rights.

4.14.44. The Sales Particulars can be taken as evidence that Park Lane had the reputation of a private road at the time of sale. The fact that the date of the sale is unknown, and that there is no detail concerning the exact nature of this private road status, does affect the weight to be given to this document. However, on the whole it appears to be consistent with some of the other sale and conveyancing evidence discussed above.

RAF Aerial Photographs 1947

Source: SWHT (Extracts supplied by Landowner K)

Reference: Shot 3398 (23 January 1947) (A/DXC/1/10/309), Shot 3400 (23 January 1947) (A/DXC/1/10/310)

Appendix number: 21

⁵⁵ A. Sydenham, ‘Private right of way’, *Rights of Way Law Review*, 14.2, p. 1 (CD edition).

Aerial Photographs 2018

Source: SCC

Appendix number: 21

4.14.45. The 1947 images appear to indicate a clear route on the ground for the full length of Huish Drove, Frog Lane, and Park Lane. However, they do highlight that the area of the route around Merricks Farm (between points E1 and F) was of a distinct character, unenclosed and in close proximity to the farm buildings.

4.14.46. A small body of water can be seen to the west of the farm. Landowner K draws attention to this, highlighting that it is depicted on historical OS maps. These maps also show "a line across the lane close to the bottom of the pond". They suggest that these photos "also suggest a line across Park Lane close to the southern end of the pond". The quality of the photograph, however, makes this assertion difficult to verify.

4.14.47. The 2018 images also show a clear route on the ground of largely consistent width for the full length of Huish Drove, Frog Lane, and Park Lane. One distinction of note from the 1947 photographs is the development of the car park at point A1. A second difference is that the railway line (which passes through point C) is lined by trees and dense vegetation, reflecting the closure of the Yeovil to Durston branch line in 1964.

4.14.48. Aerial photographs can offer evidence that a route existed on the ground at the time the photographs were taken. However, such photographs "cannot be taken as evidence of what rights might exist over a route".⁵⁶

4.14.49. Comparing the two sets of aerial photographs highlights that the physical condition of the application routes underwent relatively few changes during this period. Both sets of photographs suggest that the route was physically available for use and was probably capable of taking vehicular traffic. Yet as stressed above, the photographs cannot be taken as evidence of status.

5. Consultation and other submissions

5.1. Consultations regarding the application route were sent out to all landowners and relevant local and national user group organisations in September 2021. The full

⁵⁶ *Definitive Map Orders: Consistency Guidelines* (2016), <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, 14.2.44, accessed 7 December 2021.

list of consulted parties can be found at Appendix 6. At the same time, notice of the application was posted on site inviting comments and the submission of evidence.

5.2. This section of the report summarises the responses received to that consultation. The majority of landowners are identified by letter (Landowner A, Landowner B, etc). These letters correspond with the references on the landownership plans at Appendices 2A, 2B, and 2C. Where responses were received from individual members of the public (as opposed to organisations) who are not landowners, they have been referred to as respondents (Respondent 1, Respondent 2, etc).

5.3. In all cases factual first hand evidence carries more weight than personal opinion, hearsay or third party evidence.

| Consultee | Details |
|------------------|---|
| Landowner A | No response received. |
| Landowner B | No response received. |
| Landowner C | Confirmed ownership of property adjacent to Park Lane. Moved into property in 2018. Made aware on purchase that the lane was "owned and maintained by Merricks Farm". Asserted that they "have a right of access to our property" using Park Lane. Sought permission from Landowner K to block lane with removal vehicles when moving in, which was granted. Recorded that since 2018 "we know the landowner [Landowner K] has maintained the lane and also challenged people using the lane". Raised safety concerns about public use of the lane (including the narrow width and lack of passing places), submitting several photos to illustrate this. |
| Landowner D | No response received. |
| Landowner E | Confirmed ownership of property on Park Lane. Raised concerns about communication, including that they were not contacted in the initial consultation. Highlighted several social media posts and unofficial notices relating to the application that have caused confusion. Asserted that when purchasing their property diligent research provided "legally indisputable" evidence that Park Lane was "a private lane" or "occupation road". Confirmed that they contribute financially to the maintenance of Park Lane. Argued that "there is no presumed, given or inferred dedication" of Park Lane and that users are routinely challenged. Asserted that they have witnessed countless cases of trespass and criminal damage, providing several detailed examples. Recorded that they have been encouraged to use Park Lane by members of the public "who did not know we lived here" and have been "direct and indirect victims of blame, threat, and misinformation" which |

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| | has hampered their ability to integrate into the local community. Stressed that their purchase of Park Lane Farmhouse was largely driven by the need for privacy and security due to the medical needs of a family member, and that the application process has had a deeply detrimental impact on the family. |
| Landowner F | No response received. |
| Landowner G | No response received. |
| Landowner H | Confirmed ownership of small parcel of land to the east of point G. Previously owners of Park Lane Cottage (also known as Dream Cottage), now living in New Zealand. When cottage was purchased in 1998 it was advertised "as being located on a private road". Their understanding was "that the extent of the private road was from the junction of Park Lane and the A378, past our cottage, and to the site of the old lime kilns on the bend where it then became Frog Lane". Recorded that their Land Registry documents indicated "that our cottage was specifically granted a right of way for access over Park Lane". Suggested that the owners of Merricks Farm (Landowner K) "were the only ones to ever maintain the lane" in the twelve years they were resident in the cottage. |
| Landowner I | No response received. |
| Landowner J | Confirmed ownership of Tuckers Hill and of land to the west of Frog Lane and north of Huish Drove near point D. Asserted that they have lived at Tuckers Hill for 21 years "and have assumed right of access to my house during that time". Recorded that they received planning permission in 2014 (reference 14/04013/FUL) "to raise parts of Frog Lane and Huish Drove to alleviate flooding". Asserted that they have also repaired sections of Frog Lane, and that no public rights of way appeared in legal searches at time of purchase. Suggested that they have used Park Lane "with the permission of the owners" when Frog Lane has been closed. Expressed concern about the ability to restrict motorised traffic if the application route was recorded as a restricted byway, and questions how the route would be maintained to cope with equestrian use. |
| Landowner K | Confirmed ownership of Merricks Farm and surrounding land, including the section of Park Lane between points H and E1. Asserted that no public rights exist over Park Lane and submitted a large number of documents as evidence that are included in Appendix 5. Purchased farm from Somerset County Council in 1992, where sales details referred to private right of way over Park Lane "subject to payment of a |

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|-------------|---|
| | <p>proportion of maintenance". Identified various neighbours with private rights over Park Lane, with whom agreement was reached in 2001 to erect a gate at point E1 "to stop unauthorised vehicles and people using the lane". Listed numerous people who have been given permission to walk over Park Lane (including the Church Warden at St Catherine's Drayton), as well as those who have been stopped from using the route (including Taunton Vale Hunt and Langport Walking Festival). Asserted that a section 31(6) (Highway Act 1980) plan and statement had been deposited in 1998 and 2020, and that numerous signs had been erected advising the public that the route was private (most recently in April 2020). Suggested that Somerset County Council have advised that the route is a "White Lane", meaning that it was "private unless annotated on OS maps otherwise", and that Huish Episcopi, Drayton, and Curry Rivel parish councils have provided verbal or written acknowledgement that Park Lane is private". Informed by previous longstanding resident of Merricks Farm Cottage (from mid-1930s) that there was a gate "near to where the farm pond used to end" which was "closed once a year for 24 hours". Recorded that they have maintained Park Lane since 1992 (latterly with help from neighbours) and that they have regularly informed members of the public that there are no public rights over the route. Referred to various incidents of criminal damage involving signs and gates, providing incident reference numbers. Submitted photograph of 'No public right of way' notices erected at points H and E1 on Park Lane. Submitted photograph of 'Cycleway' signs affixed to above signs without permission. Submitted photograph of signs encouraging submission of user evidence with Drayton Parish Council contact details. Submitted exchange of correspondence with Drayton Parish Council in which the conduct of councillors and meeting attendees is questioned. Submitted copy of Planning Inspectorate Appeal Decision FPS/AO665/14A/2 as evidence of the meaning of "occupation road". Submitted transcript of <i>Western Gazette</i> article (1865) regarding an industrial accident at "Sand-pit Hill". Submitted postcard from previous resident of Tuckers Hill on Frog Lane (1979-2001).</p> |
| Landowner L | No response received. |
| Landowner M | No response received. |
| Landowner N | No response received. |

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| Landowner O | Confirmed themselves as landowner in the vicinity of the application route, and "partial owner" of Park Lane. Requested to be included in all future communications. |
| Landowner P | No response received. |
| Landowner Q | Confirmed ownership of various plots of land primarily on the northern side of Huish Drove. Asserted that the proposals do not impact their land. |
| Landowner R | No response received. |
| Landowner S | No response received. |
| Landowner T | No response received. |
| Landowner U | Submitted copy of Appendix 1 with land holdings highlighted, primarily to the south of Huish Drove. |
| Landowner V | Raised concerns about access to land via Huish Drove, stressing that they require "continuing vehicular access to my field for both agricultural and leisure pursuits and do not want them to be restricted". |
| Landowner W | No response received |
| Landowner X | No response received. |
| Landowner Y | No response received. |
| Landowner Z | Confirmed ownership of Pound Green, near point A. Registered their support for the application but raised concern about increased vehicular traffic owing to the popularity of the Huish Bridge Amenity Area. |
| Landowner 1 | No response received. |
| Huish Episcopi Parish Council | Confirmed that consultation letter was received and offered "no further comments". |
| Drayton Parish Council | Expressed "strong support" for the application, on the grounds that it would provide a "much safer circular route to walk (or cycle) to Langport", and in so doing would promote physical and mental well-being and reduce carbon emissions in line with SCC priorities. Pointed out that Park Lane has been identified by the Curry Rivel Parish Council Active Travel Links Feasibility Study as a possible route for new cycleway. Referred to use of Park Lane by Langport Running Club, and highlighted corroborating data on the exercise app Strava. |
| Curry Rivel Parish Council | No response received. |
| Langport Town Council | Asserted that "they are supportive of whatever decision the County Council make" regarding the status of Huish Drove, Frog Lane, and Park Lane. |
| Respondent 1 | Submitted a letter accompanying their user evidence form. Suggested there is "significant evidence that Park Lane has |

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| | been used as a public right of way over very many decades". Asserted that their father and grandfather had used Park Lane and Frog Lane to get to Langport. |
| Respondent 2 | Recorded that they were resident at Little Orchard from 1987 to 2012 "and were fully aware that the lane was privately owned by Merricks Farm, and was subsequently wholly maintained by the successive owners". Stated that their private right of way "only extended to the length of the boundary directly adjacent to Park Lane". Asserted that they were unaware of any equestrian use of the route during their 25 years at Little Orchard. |
| Respondent 3 | Confirmed residency at a property on Park Lane. Asserted that they have worked part time at Merricks Farm for ten years and have witnessed pedestrians and horse riders told by Landowner K "that it [Park Lane] is a private track and not a right of way". |
| Respondent 4 | Expressed confusion concerning the status of Park Lane and surrounding footpaths. Drew particular attention to footpaths L 13/49 and L 13/51, which both terminate a short space apart on Park Lane. |
| Respondent 5 | Expressed concern over the prospect of the application route being unavailable of public use. Asserted that they had led numerous walks over Frog Lane (which they use with reference to Frog Lane and Park Lane) as part of the Somerset Health Walks scheme. They use the route less regularly since being challenged by someone at Merricks Farm "about 3 years ago" [letter received in late 2021]. Noted that Merricks Farm used to sell produce and that "it was signposted off the main Curry Rivel to Langport Rivel". Asserted that the application route "is a wonderful path offering easy access to both Curry Rivel and Drayton". |
| Respondent 6 | Drew attention to the importance of promoting walking and cycling "on health and environmental grounds", and registered concern about public access being denied. |
| Respondent 7 | Included documentary evidence as part of user evidence form. Drew attention to representation of Littleney village and the various bishops' parks in the Somerset Historic Environment Record. Argued that the application route would have provided public access to both the village and through the parks. Suggested that people working at the lime kilns on Park Lane would have to use the route. Argued that footpath L 9/26, which terminates on the A 378 opposite Park Lane, "strongly suggests a continuous route". |

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| Respondent 8 | Included documentary evidence as part of user evidence form. Submitted Sheet 84 Sherborne of the David & Charles OS Old Series reprints, highlighting that "Park Lane [is] shown between points A-B and looks to be a public roadway". |
| Respondent 9 | Expressed concern that public access was now restricted along Park Lane. Provided anecdotal evidence of people being challenged when using the route, adding that "I have been frightened to take the route in case I become the subject of this hostility". |
| Respondent 10 | Expressed support for continuing public access along the application route. Asserted belief that Huish Drove, Frog Lane, and Park Lane "will have been used as drovers routes and the like for centuries". Recorded that the route "is greatly use by pupils from Huish Academy who are not eligible for free school transport so are obliged to walk". |

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

5.5. Much of the consultation evidence concerns the modern and historical use of the application route. Such evidence is considered in the User Evidence section of the report (starting at paragraph 6.1., below).

5.6. The documents submitted by Landowner K and other consultees are set out in Appendix 5 and discussed throughout the Documentary Evidence section of the report.

5.7. Landowner K refers to being told by the County Council that the application route was a "white road". No record has been found of communication between SCC and Landowner K regarding the interpretation of OS maps. The OS material considered by this report is discussed from paragraph 4.7., above.

5.8. The Planning Inspectorate decision submitted by Landowner K (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/660362/fps_a0665_14a_2_decision.pdf) discusses the meaning of the phrase "occupation road". The inspector's view is consistent with the conclusions reached in relation to the Object Name Book evidence discussed at paragraph 4.8.3., above.

5.9. Several landowners raise the question of ownership and maintenance with reference to Park Lane. It is important to stress that while such factors can have a bearing on the status of the route, they do not preclude the existence of public rights of way. The fact that parts of the route are (or may be) privately owned does not mean that public rights cannot exist over it (indeed, the vast majority of public rights of way run over privately-owned land). By extension, the presence of private vehicular rights over Park Lane does not necessarily mean that the route has no public rights, although it can be evidence against the existence of public vehicular rights. This is considered in more detail from paragraph 4.14.11., above.

5.10. Recent maintenance of Park Lane and Frog Lane by adjacent landowners might support the argument that they did not consider the route to be a vehicular highway maintainable at public expense. However, this would not in itself extinguish any public rights which can be shown to exist, nor would it necessarily prevent such rights from being deemed to have been dedicated by virtue of more recent public use.

5.11. Landowner J refers to planning permission granted for the maintenance of Frog Lane. The planning application in question (14/04013/FUL, made in 2014) proposed to raise "a section of private road to act as flood alleviation measure". The address was given as "Private Road off Frog Lane Langport Somerset". This description corresponds with the recorded status of the southern section of Frog Lane at the time the application was made, namely that the route had no recorded public rights. While the granting of planning permission can be seen as evidence of reputation (i.e. that the route was considered by some to be a private road in 2014), it is not inconsistent with the presence of lower public rights over the southern section of Frog Lane.

5.12. Landowner V raised concerns about continuing private vehicular access should the application route be recorded as a restricted byway. A private right of way is a way over which an individual or group other than the public at large has a right of passage. A private right of way annexed to, and for the benefit of, a particular piece of land is termed an easement. Any private vehicular rights which Landowner V enjoys over Huish Drove will be unaffected by changes to its recorded public right of way status.

5.13. The Curry Rivel Parish Council Active Travel Links Feasibility Study is discussed at paragraph 2.9., above.

5.14. The relationship between Park Lane and footpaths L 13/49 and L 13/51, as queried by Respondent 4, is discussed in the Definitive Map preparation records section (from paragraph 4.11. above).

5.15. The Somerset Historic Environment Record materials referred to by Respondent 7 are considered at paragraph 4.14.6., above.

5.16. The David & Charles OS Old Series reprint (Appendix 10B) is considered at paragraph 4.7.3., above.

6. **User evidence**

6.1. Section 31 of the Highways Act 1980 asserts that a route which has “been actually enjoyed by the public as of right and without interruption for a full period of 20 years [...] is to be deemed to have been dedicated as a highway”. The phrase *as of right* refers to use *without force* (e.g. use cannot have been via the breaking of fences or locks to gain entry), *without secrecy* (use must be of such a nature that a typical landowner would have had an opportunity to be aware of it), and *without permission* (use must be without the permission of the landowner).

6.2. The presumption raised under section 31 can be rebutted where there is sufficient evidence that there was no intention during the 20-year period to dedicate a route. This 20-year period is calculated retrospectively “from the date when the right of the public to use the way is brought into question”.

6.3. Dedication of a highway can also be inferred through Common Law. This process requires evidence that a landowner intended to dedicate a route as public and evidence that the public accepted said route. There is no minimum qualifying period of use at Common Law. The burden of proof lies with those attempting to show that dedication took place, and this necessitates a significant and compelling body of evidence.⁵⁷

Number of users

6.4. In this case user evidence forms (UEFs) have been received from 61 users. 22 of these users were invited to be interviewed in order to clarify aspects of their evidence and to gather greater detail. 18 of these selected users agreed to be interviewed, approximately 30% of those who submitted UEFs.

6.5. The evidence of use submitted covers the period 1949 to 2021. Visual representations of this evidence can be seen at Appendix 25.

6.6. Between 1949 and 1955 only one person used the application routes. This gradually rises from 1956 onwards, with four people using the route in 1960, six in 1970, 15 in 1980, 24 in 1990, 32 in 2000, and 48 in 2010. The number of users peaks in 2017 and 2020, with 54 people providing evidence for these two years.

⁵⁷ *Definitive Map Orders: Consistency Guidelines* (2016), 5.2.48., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 4 January 2022.

Type and nature of use

6.7. The vast majority of users provided evidence of traversing the routes on foot (only one of 61 users did not). 34 people provided evidence of also using a bicycle on the routes, and three people offered evidence of using the routes on horseback or while leading a horse (users 3, 14, and 33).

6.8. One user (34) submitted evidence of traversing the routes with a horse-drawn cart. Though this use occurred consistently over a 40-year period (“every few months” between 1980 to 2021), this low volume of use is not considered sufficient for the appropriate public rights to have been dedicated.

6.9. A pedal cycle can be considered a non-mechanically propelled vehicle. As the Countryside Act 1968 allowed for bicycle use by the public on bridleways, bicycle use is consistent with dedication as both a restricted byway and a bridleway. Case Law suggests that in such instances “of statutory interference with private property rights [...] [it is] reasonable to infer the dedication least burdensome to the owner.”⁵⁸ The investigating officer concludes that, if use by pedal cycles has been sufficient to raise the presumption that public rights have been dedicated, then those rights would amount to a bridleway rather than a restricted byway. Whether that use has been sufficient is considered further below.

6.10. Seven users have offered evidence of driving a car or other mechanically propelled vehicle over the application route. This use occurred consistently over a lengthy period (with at least some weekly use from 1968 to the present day). However, there was never more than three people claiming to use the route in a given year. Furthermore, some of this use appears to have been with permission (such as users 2 and 59, who used cars to visit Merricks Farm when it traded as a farm shop), or by virtue of another form of access right (such as User 21, who drove the route in a car while working as a police officer).⁵⁹ It is therefore concluded that the right to drive a mechanically-propelled vehicle over the application route has not come into being through recent use (i.e. that use evidenced by the UEFs).

⁵⁸ *Definitive Map Orders: Consistency Guidelines* (2016), 5.2.44., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 17 February 2022. See also *Whitworth v SSEFR* [2010] EWCA Civ 1468, 42.

⁵⁹ It is not clear whether use of the route by the police, or the emergency services more broadly, can be considered *as of right*. Clearly the exact circumstances are important: responding to an emergency is not directly comparable to patrolling one’s local area. Moreover, while on-duty police officers might be interpreted as distinct from the public at large, it could be argued that any use of an unrecorded route that was without force, secrecy, or permission can be considered appropriate user evidence. The specific powers of the police are also relevant: a local police officer on the beat could be travelling a route via a “power of entry” (see <https://www.gov.uk/guidance/powers-of-entry>, accessed 6 January 2022). Case law is not conclusive on the subject: see *Merstham Manor Limited v Coulsdon and Purley Urban District Council* [1936] 2 All ER 422 and *Kreft v Rawcliffe* [1984] (*The Times*, 24 May 1984).

6.11. The nature of the use described by the various UEFs is wide-ranging. While the majority of users traversed the route recreationally (with dog walking regularly cited), numerous users described utilising the route for more practical purposes. Several users (including users 16, 30, and 44) identified Park Lane and Frog Lane as a safe cycling route from Curry Rivel to Langport. Other users (37 and 38) cycled the application route as part of their commute or used the route to get to school (57). Various users walked the application route in order to go shopping in Langport (40, 41, and 43), while others ran the route as part of Langport Runners club (22 and 42). One user (50) recalls utilising the full length of the application routes by tractor in order to harvest withies.

6.12. This investigation has focused on three named routes: Huish Drove, Frog Lane, and Park Lane. The majority of the submitted UEFs offer evidence that focuses on Park Lane. It is highly likely that some of the users who provided evidence concerning Park Lane continued their journey on Frog Lane. This is borne out by those users who were interviewed, as the vast majority recorded using all three application routes or Park Lane and Frog Lane, despite only referring to Park Lane in their UEFs.

6.13. The recreational use described by the various users typically involved utilising some or all of the application routes as part of a circular walk or cycle. These walks would often vary on the basis of where individual users lived. A large proportion of users live in Drayton, such as User 1:

My typical route involves following the footpath from Drayton that runs north east past Park Triangle Plantation and joins Park Lane to the west of the lime kiln buildings [footpath L 13/51]. I then often turn left and follow Park Lane westwards before taking the southerly footpath at point G1 [footpath L 10/1]. Alternatively, I sometimes turn east at the lime kiln, follow Frog Lane north and Huish Drove east before heading south east on the old railway line towards Muchelney. I also occasionally follow Huish Drove east to Huish Bridge (Black Bridge), before taking the footpath heading south west towards Litness Drove and the old railway line [footpaths L13/42 and L 13/50].

User 54, by contrast, is one of several who lives in Langport:

A typical walk of ours involves joining Huish Drove at Black Bridge (Huish Bridge) from the riverside path to the north [footpath L 13/37]. We would then usually follow Huish Drove westwards as far as the old railway line cycleway at point C, though occasionally we would take the footpath south west at point A2 [footpath L 13/42]. Having reached the railway line we would either turn south east towards Muchelney, or else turn north west back towards Langport. Alternatively we sometimes continue west as far as point D, turn south along Frog Lane and then west along Park Lane. We have friends who used to live in a cottage at Merricks Farm, so this was the way we would walk to visit them. We have also regularly walked the full length of Park Lane, crossed the road and followed the lane opposite towards Wick, which makes for a lovely circular walk.

6.14. The information collected from both UEFs and interviewed users strongly suggests that Park Lane and Frog Lane were generally used together, either as part of

a circular walk or as a linear route between Langport and Curry Rivel. It is less clear that Huish Drove was typically used in conjunction with Park Lane and Frog Lane. Of the 61 respondents who provided user evidence, 27 refer to using Huish Drove. Though the vast majority of evidence of use for Huish Drove suggests that users were also traversing Frog Lane and Park Lane, there is a clear disparity in volume of evidence. For this reason, the user evidence for Huish Drove is considered in detail from paragraph 6.41., below.

Landowner evidence

6.15. Though there are numerous adjoining landowners over the full length of the application routes, there are only two who have claimed to own parts of the routes (it remains entirely possible that other adjoining landowners own up to the centre line). Landowner K confirmed ownership of the section of Park Lane between points H and E1, while Landowner O described themselves as the “partial owner” of Park Lane. Land Registry documents suggest this relates to a small section of the lane to the east of point E1. Landowners C and E have also provided evidence directly relating to public use of the application route. Several former landowners and tenants have provided relevant evidence. Landowner submissions are also considered at section 5 of the report.

6.16. Landowner C confirmed they live adjacent to Park Lane. Having moved to the property in 2018, they assert that they “know the landowner [Landowner K] has [...] challenged people using the lane”. No further detail is provided, so it is unclear when and in what circumstances these challenges are thought to have occurred.

6.17. Landowner E confirmed that their family have lived on Park Lane since April 2020. They assert that they have never “seen a horse being ridden on or close to Park Lane nor any evidence that a horse has been led or ridden through it”. They do record witnessing a large amount of use on foot, as well as “cyclists and motorised ‘dirt bikes’ speed down Park Lane”. They also highlight that they have seen several “polite notices” vandalised, notices which informed “the public of Park Lane’s status as private land and of the many alternative routes with public right of way that are available across their land”. Landowner E suggests that these notices were erected “as a last resort” in an effort to “reduce the high footfall of public who had begun using the lane during the national lockdown.” They provide numerous examples of what they describe as people “trespassing onto clearly private property”. They also record facing hostility from users “suggesting, claiming, or insisting they have right of way over the lane.”

6.18. Landowner K purchased Merricks Farm in 1992. They deposited a section 31(6) (Highway Act 1980) plan and statement in 1998 and 2020, recognising the presence of recorded rights of way (but not the application routes) and indicating a lack of intention to dedicate any further routes to the public. They assert that “in agreement with neighbours a gate was erected across Park Lane [at point E1] in 2001 to stop

unauthorised vehicles and people using the lane". The gate, which was locked "shortly after erection", included a sign which read "No through road access only to Merricks Farm & cottages". It was replaced in 2010 after a Land Rover "drove through the boundary gate on Park Lane taking the gate, gate post and fence with it". A sign was posted at the western end of Park Lane (point H) in April 2020, at the beginning of national pandemic restrictions, "in response to an unprecedented increase in people understandably using Park Lane". This sign (a copy of which is included at Appendix 23) read "POLITE NOTICE WE APPRECIATE THE NEED FOR EXERCISE IN THESE DIFFICULT TIMES BUT PLEASE NOTE THAT THIS LANE IS NOT A PUBLIC RIGHT OF WAY. PLEASE USE THE MANY FOOTPATHS WHICH CROSS AND RUN THROUGH THIS LAND." The same sign was also posted on the gate at point E1. Both signs were regularly vandalised from May 2020 onwards, leading to police involvement. Signs remained in place at both points as of October 2021. Landowner K also submitted a copy of a sign erected anonymously on Park Lane in June 2021 which read (erroneously in their view) "CYCLE/FOOTWAY TO CURRY RIVEL" (see Appendix 24). They also recorded that they have "since 1992" regularly challenged users on Park Lane "when judged safe", emphasising "that there is no public right of way over the lane". Landowner K additionally asserted that one local resident who had lived in one of the farm cottages "since the mid 1930s", recalled that there "had been a gate across Park Lane near to where the farm pond used to end" [point F], and that this gate "was closed once a year for 24 hours".

6.19. Landowner K submitted a large body of supporting documentary evidence, much of which is considered in section 4 of the report. These submissions include two copies of a "Statement of Truth" signed by Graham Walter Lock and Margaret Anne Lock. The Locks assert that they owned Merricks Farm between 1984 and 1989, and that throughout their ownership "a gate at the approximate point marked X on the plan was closed and locked on Christmas Day/Boxing Day (depending on bulk milk collection times) every year." The accompanying plan (which can be found at Appendix 22) suggests that the gate corresponds with that described by the local resident (paragraph 6.18., above) at point F immediately to the west of Merricks Farm. Landowner K additionally submitted a letter from a current occupier of a workshop and yard on Frog Lane. The letter asserts that they have rented the premises "for the past 30-35 years" and have "always known that Park Lane was private", only using it with permission when Frog Lane was flooded.

6.20. Two further respondents provided information concerning public use of Park Lane. Respondent 3, the current resident of a property adjacent to Park Lane, recorded that they have worked part time at Merricks Farm for ten years and have witnessed pedestrians and horse riders told by Landowner K "that it [Park Lane] is a private track and not a right of way". Respondent 2, also resident of a property adjacent to Park Lane from 1987 to 2012, asserted that they were unaware of "any horse riders using the lane", pointing out that "given the proximity of our property to the lane, we should surely have noticed".

Calling public rights into question

6.21. In order to determine the relevant 20-year period of use, it is necessary to identify the point at which public rights over the application route were first called into question. There are many events which might constitute a calling into question, such as an application to modify the definitive map, the locking of a gate across a route, or an appropriately worded sign at an entrance to the route.

6.22. Signs were erected by Landowner K in April 2020 at the western end of Park Lane (point H) and on the gate at point E1. These signs asserted that the route was not a public right of way (see paragraph 6.18., above, and Appendix 23). The vast majority of the user evidence refers to one or both of these signs. Others also refer to a similar sign at point G1. The erection of these signs seems to have broadly coincided with efforts to close the side gate at point E1 (see paragraph 6.60., below). Taken together, these two acts provide strong evidence of the public's rights being brought into question. Furthermore, the user evidence suggests that these acts made it clear to the public that access to Park Lane was being challenged. Given the intertwined nature of public use over the three application routes, this act is considered to have also called into question public rights over Huish Drove and Frog Lane. April 2020 is therefore identified as the point at which public rights on foot and by bicycle were first brought into question. This means that the relevant retrospective period of use in this case is 2000 to 2020.

As of right use

6.23. Having established the relevant 20-year period of use, it is necessary to determine whether public use within this period has been *as of right*. As outlined above (see paragraph 6.1.), as of right use must be *without force, without secrecy, and without permission*.

6.24. Use by force would include "the breaking of locks, cutting of wire or passing over, through or around an intentional blockage, such as a locked gate."⁶⁰

6.25. Some of the user evidence submitted covers use of Park Lane that could be considered by force. User 50 asserts that they "have often climbed over the gate [at point E1], believing that it was an unlawfully erected barrier". User 18 suggests that the gate never prevented them from using Park Lane, "as I was either able to climb over the gate or, in later years, go through the gap at the side". It is not made clear when or how often the two users climbed over the gate, and both also refer to using the side gate. User 14 describes riding their horse on Park Lane, and recalls that "If the gate

⁶⁰ *Definitive Map Orders: Consistency Guidelines* (2016), 5.2.22., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 17 February 2022.

was locked we rode across fields where we shouldn't." The gate constructed in 2001 also appears to have been damaged by a motor vehicle leading to its replacement in 2010, which certainly points to use by force (see paragraph 6.18., above.). There is also conflicting evidence as to whether the gate was always locked. Yet the vast majority of users stress that the gate did not prevent them from accessing Park Lane, as they were able to take advantage of the gap or side gate described by User 18. This suggests that most of the use by the public of Park Lane has not involved force. The gate at point E1 is considered in more detail from paragraph 6.60., below.

6.26. The concept of secretive use concerns "how the public using the way would have appeared to the landowner". To be *as of right*, public use "must have been open and in a manner that a person rightfully entitled would have used it, that is not with secrecy. This would allow the landowner the opportunity to challenge the use, should he wish."⁶¹ There is no evidence in this case to suggest that use did not take place openly.

6.27. If a landowner gives "express permission" for someone to use a route, then this use is not *as of right*.⁶² Landowner K has recorded granting several people permission to use Park Lane since they purchased Merricks Farm in 1992, including allowing in 1993 and 1994 the then warden of St Catherine's Church Drayton to walk the parish boundary on Rogation Sunday, as well as "ferreters and rabbiters over the years". However, these permissions appear to be specific to the groups or individuals involved. There is nothing in the evidence which shows that the permissions extended to any of those who completed UEFs. User 54 appears to have sometimes used Park Lane by invitation (see paragraph 6.13., above). It has not been possible to isolate their permissive and as of right use, and so their evidence of use relating to Park Lane has been discounted.

6.28. Merricks Farm used to run an organic vegetable shop between 2004 and 2018. Numerous users recall walking, cycling, and driving cars over Park Lane to Merricks Farm in order to buy produce from the shop during this period.

6.29. It is likely that users who patronised this shop were using Park Lane permissively (i.e. with the landowner's implied permission in order to visit their premises). However, it is not always straightforward to distinguish permissive and as of right use in this context. Of the 56 users during the 2000-2020 period, 47 make no reference to the shop. There is no reason to believe that their use was anything other than *without permission*. The remaining nine users referred to the shop in their UEFs or during interview.⁶³ However, they all also provided other reasons for using the application

⁶¹ *Definitive Map Orders: Consistency Guidelines* (2016), 5.2.23., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 17 February 2022.

⁶² *Definitive Map Orders: Consistency Guidelines* (2016), 5.2.24., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 17 February 2022.

⁶³ Users 2, 5, 27, 31, 33, 45, 52, 53, and 55.

route (such as recreation and dog-walking). While some of this use may have been permissive, there is no reason to believe that this accounted for more than a small proportion of the overall use.

Interruption and deviation

6.30. In addition to the requirement for use to have been as of right, it must also collectively span the full 20-year period without interruption. For an interruption to be effective in preventing a right from being dedicated it must lead to a physical and actual stopping of the enjoyment of the public's use of the way. Furthermore, while it is not necessary for the interruption to be intended to prevent use, the intention is certainly a factor to be taken in to account when determining whether or not a sufficient act of interruption has occurred.⁶⁴

6.31. A gate was erected in 2001 on Park Lane at point E1 (discussed from paragraph 6.57., below). Landowner K makes no mention of a gap or gate to the side of the northern gatepost. Users 18 and 50 refer to climbing over the main gate, which suggests that the side gate may at times have been blocked or somehow unavailable. However, the vast majority of user evidence indicates that a side gate existed and was always available. While several users recall the gap appearing a short time after the gate was installed (see paragraph 6.62., below), the vast majority of those referring to the gap or side gate make no reference to their enjoyment of the route being interrupted. This suggests that the gap may have been present since the gate was erected. In the circumstances, there is a conflict in the credible evidence but it can be reasonably alleged that there was no interruption.

6.32. There is some evidence of users who travelled through the main gate, either because it was not closed or because it was unlocked (see paragraph 6.68., below). Yet the majority of users suggest that the gate was usually locked. If a right of way has been brought into being through use over Park Lane, therefore, it likely runs through the gap or side gate at point E1 rather than along the centre of the track.

Sufficiency

6.33. There is no statutory minimum level of use required in order to raise a presumption that rights have been dedicated under section 31 of the Highways Act 1980. According to the Planning Inspectorate's Consistency Guidelines, use "should have been by a sufficient number of people to show that it was use by 'the public' and this may vary from case to case."⁶⁵

⁶⁴ *R v Oxfordshire CC ex parte Sunningwell PC* [1999] 3 All ER 385.

⁶⁵ *Definitive Map Orders: Consistency Guidelines* (2016), 5.2.15., <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 21 February 2022.

6.34. Use additionally needs to be of a sufficient level for the landowner to have been made aware of said use, and therefore had the opportunity to indicate a lack of intention to dedicate a public right of way.

6.35. The evidence of use over the application route spans the period 1949-2021. The relevant 20-year period for this case, as discussed above, is 2000-2020. It is not essential for each individual to have used the route for the entire period, provided the cumulative public use extends over the relevant 20 years.

6.36. An estimate of the annual total of *as of right* use between 2000-2020 is shown in the tables below.⁶⁶

| <u>As of right use by foot 2000-2020</u> | | |
|---|------------------------|---|
| Year | Number of users | Estimate of collective uses per year |
| 2000 | 29 | 2046 |
| 2001 | 32 | 2113 |
| 2002 | 35 | 2168 |
| 2003 | 35 | 2168 |
| 2004 | 38 | 2584 |
| 2005 | 39 | 2636 |
| 2006 | 40 | 1988 |
| 2007 | 42 | 3040 |
| 2008 | 42 | 3040 |
| 2009 | 42 | 3040 |
| 2010 | 45 | 3444 |
| 2011 | 44 | 3242 |
| 2012 | 46 | 3346 |
| 2013 | 48 | 3698 |
| 2014 | 48 | 3698 |
| 2015 | 48 | 3698 |
| 2016 | 50 | 4298 |
| 2017 | 51 | 4258 |
| 2018 | 50 | 4206 |
| 2019 | 50 | 4215 |
| 2020 | 51 | 4515 |

⁶⁶ The Somerset County Council User Evidence Form asks respondents to complete a table with the following categories of use: daily, weekly, monthly, every few months, once a year, and other. In producing an estimated frequency, daily use has been approximated as 300 uses per year (allowing for periods away from home, inclement weather, etc), weekly as 52 uses per year, monthly as 12 uses per year, and every few months as 3 uses per year. These figures should not be taken literally, but they are considered an accurate estimate of the likely level of use over the application routes.

| <u>As of right use by bicycle 2000-2020</u> | | |
|--|------------------------|---|
| Year | Number of users | Estimate of collective uses per year |
| 2000 | 17 | 341 |
| 2001 | 18 | 641 |
| 2002 | 17 | 341 |
| 2003 | 17 | 341 |
| 2004 | 17 | 341 |
| 2005 | 18 | 344 |
| 2006 | 19 | 347 |
| 2007 | 21 | 402 |
| 2008 | 21 | 402 |
| 2009 | 21 | 402 |
| 2010 | 21 | 402 |
| 2011 | 21 | 362 |
| 2012 | 23 | 368 |
| 2013 | 24 | 668 |
| 2014 | 24 | 668 |
| 2015 | 23 | 616 |
| 2016 | 24 | 668 |
| 2017 | 25 | 720 |
| 2018 | 24 | 717 |
| 2019 | 24 | 717 |
| 2020 | 24 | 717 |

| <u>As of right use riding or leading a horse 2000-2020</u> | | |
|---|------------------------|---|
| Year | Number of users | Estimate of collective uses per year |
| 2000 | 2 | 6 |
| 2001 | 2 | 6 |
| 2002 | 2 | 6 |
| 2003 | 2 | 6 |
| 2004 | 2 | 6 |
| 2005 | 2 | 6 |
| 2006 | 2 | 6 |
| 2007 | 2 | 6 |
| 2008 | 2 | 6 |
| 2009 | 2 | 6 |
| 2010 | 2 | 6 |
| 2011 | 1 | 3 |
| 2012 | 1 | 3 |
| 2013 | 1 | 3 |
| 2014 | 1 | 3 |
| 2015 | 1 | 3 |
| 2016 | 0 | 0 |

| | | |
|------|---|---|
| 2017 | 1 | 3 |
| 2018 | 1 | 3 |
| 2019 | 0 | 0 |
| 2020 | 0 | 0 |

6.37. The estimated figure for average annual uses on foot between 2000 and 2020 is 3211. This equates to an estimated 62 uses per week, or 8.7 uses per day. The equivalent figures for bicycle are average annual uses of an estimated 501, 9.6 uses per week, or 1.4 uses per day. The figures for riding or leading a horse, as the table above demonstrates, are negligible. Nonetheless, these estimates suggest that the application route received a considerable degree of pedestrian and cyclist use through the relevant 20-year period.

6.38. The year with the lowest recorded use on foot is 2000. 29 people provided evidence of using the application route, consisting of four daily users, 15 weekly users, four monthly users, and six who used the route every few months. This adds up to an estimated 2046 uses in total, an average of 39 uses per week, or 5.6 uses per day.

6.39. The years with the lowest recorded use by bicycle are 2000, 2002, 2003, and 2004. 17 people provided evidence of using the application route, including four weekly users, seven monthly users, and ten who used the route every few months. This adds up to an estimated 322 uses in total, an average of 6.2 per week, or 0.9 uses per day.

6.40. A proportion of the use recorded in the table above is likely to have been permissive, due to people visiting the vegetable shop at Merricks Farm (discussed from paragraph 6.28., above). It has not been possible to distinguish this permissive use from that which was as of right. However, the information gathered via UEFs and interview suggests that this permissive use is unlikely to have been more than a small proportion of the overall use.

6.41. The user evidence contained in the UEFs, as discussed above (paragraph 6.12.), primarily focuses on Park Lane and Frog Lane. The tables below consider the user evidence for Huish Drove in isolation.

| <u>Huish Drove As of right use by foot 2000-2020</u> | | |
|---|------------------------|---|
| Year | Number of users | Estimate of collective uses per year |
| 2000 | 18 | 1355 |
| 2001 | 17 | 1303 |
| 2002 | 19 | 1655 |
| 2003 | 20 | 1707 |

| | | |
|------|----|------|
| 2004 | 20 | 1707 |
| 2005 | 21 | 1759 |
| 2006 | 21 | 1759 |
| 2007 | 22 | 2059 |
| 2008 | 22 | 2059 |
| 2009 | 22 | 2059 |
| 2010 | 22 | 2059 |
| 2011 | 22 | 2059 |
| 2012 | 22 | 2059 |
| 2013 | 22 | 2059 |
| 2014 | 22 | 2059 |
| 2015 | 22 | 2059 |
| 2016 | 22 | 2059 |
| 2017 | 22 | 2059 |
| 2018 | 20 | 1955 |
| 2019 | 20 | 1955 |
| 2020 | 20 | 1955 |

| <u>Huish Drove As of right use by bicycle 2000-2020</u> | | |
|--|------------------------|---|
| Year | Number of users | Estimate of collective uses per year |
| 2000 | 13 | 320 |
| 2001 | 13 | 311 |
| 2002 | 14 | 314 |
| 2003 | 15 | 326 |
| 2004 | 15 | 326 |
| 2005 | 16 | 329 |
| 2006 | 16 | 329 |
| 2007 | 16 | 329 |
| 2008 | 16 | 329 |
| 2009 | 16 | 329 |
| 2010 | 16 | 329 |
| 2011 | 16 | 329 |
| 2012 | 17 | 332 |
| 2013 | 17 | 332 |
| 2014 | 17 | 332 |
| 2015 | 17 | 332 |
| 2016 | 19 | 436 |
| 2017 | 19 | 436 |
| 2018 | 17 | 381 |
| 2019 | 16 | 378 |
| 2020 | 16 | 378 |

6.42. The average annual uses on foot over Huish Drove between 2000 and 2020 was 1988. This equates to an estimated 38 uses per week, or 5.5 uses per day. The equivalent figures for bicycle are average annual uses of an estimated 362, 6.9 uses per week, or just under 1 use per day.

6.43. The year with the lowest recorded use on foot is 2001. 17 people provided evidence of using Huish Drove, consisting of three daily users, seven weekly users, two monthly users, and five who used the route every few months. This adds up to an estimated 1303 uses in total, an average of 25 uses per week, or 3.5 uses per day.

6.44. The year with the lowest recorded use by bicycle is 2001. 13 people provided evidence of using Huish Drove, including five weekly users, three monthly users, and five who used the route every few months. This adds up to an estimated 311 uses in total, an average of six per week, or 0.8 uses per day.

6.45. While the evidence of use by bike in 2001 is lower than that for Park Lane and Frog Lane, there are some detailed accounts of this use, such as that of User 11:

I have used the routes weekly since 1992, usually more than once a week. Typically I used the routes for recreation, such as dog walking, but I have also used the routes by bike as a thoroughfare to avoid traffic in Langport town centre. Huish Drove is also a popular location for teaching children to ride bikes, which is something I remember doing with my children.

6.46. User 11's recollection points to an important dynamic, which is that despite having the lowest level of recorded use, there is evidence to suggest that Huish Drove has been and remains the busiest section of the application route. Several users offer evidence to this effect. Responding to the question "Have you seen other people using the application route whilst you have been using it?", User 50 answered "Huish Drove – high usage, Frog Lane (southern end – a few, Park Lane – fewer still". User 50 added in an accompanying letter that they had seen "dozens of persons walking and cycling along [Huish Drove] in either direction at any one time whilst I have been walking that stretch myself". User 51 offers very similar comments: "I see lots of people on the Huish Drove part and less on Park Lane & Frog Lane".

6.47. The waymarker at point C (see paragraph 2.6., above) is suggestive of Huish Drove being well-used by the public. The provenance of this waymarker is not clear, but it seems likely that it was erected after the construction of the Langport section of the Parrett Cycleway sometime after 1998.⁶⁷ The waymarker does not describe Huish Drove or the Parrett Cycleway as public rights of way. Nonetheless, the fact that this

⁶⁷ The Langport section of the Parrett Cycleway runs from Westover southwards to Muchelney over the old railway line. The route is not a public right of way, but rather a permissive route running over two parcels of privately owned land. Access agreements were originally set up in 1998 "with the land owners to allow for public access on foot, bicycle and horseback". It is not clear when the Cycleway was first opened for use. See 'Langport Cycleway Report', South Somerset District Council, <https://modgov.southsomerset.gov.uk/documents/s21507/Langport%20Cycleway%20Report%20Area%20North%20April%202018.pdf>, accessed 5 April 2022.

signage has not been challenged or objected to since its construction is significant. Huish Drove is clearly advertised for use by the waymarker, and it does not appear that any interested party has objected to this arrangement.

6.48. Langport Town Council provided data from a monitoring post installed in 2020 on footpath L 13/37 to the north of the Huish Bridge Amenity Area. Between January and April 2020 (the point at which public rights were called into question, the monitoring post was triggered on 8502 occasions, equating to roughly 530 per week, or 76 per day. This data comes with numerous caveats, such as the fact that the monitoring post likely recorded multiple uses of a route by individuals, and that use significantly increased when pandemic restrictions were introduced in late March 2020. The monitoring post may also have been triggered by wildlife or dogs. Furthermore, it is not possible to determine to what extent (if any) these recorded uses involved traversing Huish Drove. The data nonetheless suggests that the Huish Drove Amenity Area is regularly visited and offers supporting evidence that Huish Drove was a well-used route in the early months of 2020.

6.49. While the use of the application route varied over the 20-year period, and varied between Park Lane, Frog Lane, and Huish Drove, it is considered that the level of use was sufficient to have come to the attention of a landowner. It seems highly likely that landowners were aware of public use on foot and by bicycle during the years 2000 to 2020. As is discussed from paragraph 6.37., above, this use was considerable, with an estimated daily average of 8.7 uses on foot and 1.4 uses by bicycle. Furthermore, the level of use appears consistent with the nature and location of the route, namely a rural track or drove road connecting three villages and parishes (Drayton, Curry Rivel, and Huish Episcopi) with a small town (Langport).

6.50. It can therefore be reasonably alleged that the application routes were used by the public on foot and by bicycle between 2000 and 2020, as of right and without interruption. The presumption arises, as such, that the application route has become a public bridleway. This presumption refers to the full width of the application routes, with the exception of point E1 on Park Lane, where the presumed right of way runs through a gap between the northern gatepost and the hedgerow.

Lack of intention to dedicate

6.51. Although a presumption of dedication can arise after 20 years as of right public use, that presumption will be rebutted where the landowner has demonstrated a lack of intention to dedicate during the relevant period. This needs to be demonstrated in such a manner that the users of the route were made aware of the landowner's intentions.

6.52. There are no recorded landowners for Huish Drove and Frog Lane. Furthermore, there is no evidence that adjacent landowners have acted in such a way as to demonstrate a lack of intention to dedicate public rights over these two routes.

6.53. The majority of Park Lane is owned by Landowner K (see paragraph 6.18. for more detail). In order to rebut a presumption of dedication, a landowner must take action that successfully communicates to the public at large that they had no intention of dedicating a public right of way. There are several actions undertaken by Landowner K and other landowners between 1984 and 2020 which it has been suggested are sufficient to demonstrate a lack of intention to dedicate, including the alleged annual locking of a gate at point F between 1984 and 1989, the submission of a section 31(6) plan, statement, and declaration in 1998 and 2020, and the construction of gates at point E1 in 2001 and 2010.

6.54. It is unclear when the gate at point F was removed. The statements provided by Mr and Mrs Lock (see paragraph 6.19.) suggest that this gate was closed and locked "on Christmas Day/Boxing Day" every year between 1984 and 1989. User 18 also recalled a gate at this position, asserting that "a previous owner of the farm [Merricks Farm] (who left in about 1970) used to shut this gate once a year." It seems likely that successive owners of Merricks Farm used to close and lock this gate annually as far back as the 1960s, and possibly earlier.

6.55. Preventing access to a way for one or more days of the year has long been understood as a method of preventing public rights coming into being over a private route. However, case law suggests that this method hinges on whether such action is considered sufficient to bring it to the attention of the public. In order to demonstrate a lack of intention to dedicate, a landowner "must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it."⁶⁸ A locked gate would represent a lack of intention to dedicate if it came to the attention of users. As these events occurred nearly 40 years ago, it is difficult to determine whether this was the case. Moreover, as the alleged locking of the gate falls outside of the relevant 20 year period of 2000-2020, it cannot rebut the presumption of dedication in this instance..

6.56. Section 31(6) of the Highways Act 1980 provides landowners with a method of rebutting claims that a public highway has been dedicated over their land. Landowners may deposit "a map of the land" and "a statement indicating what ways (if any) over the land he admits to have been dedicated as highways". Those documents must then be followed by a statutory declaration stating that no additional rights of way have been dedicated since the initial statement was made. Together these documents provide evidence that "no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit".

⁶⁸ *Fairey v Southampton County Council* [1956] EWCA Civ J0619-2, 3.

6.57. The *Rights of Way Law Review* explains this process further. Once the statement and map have been deposited, “statutory declarations can be made at not more than ten yearly intervals, each subsequent declaration providing evidence of intent during the period between it and the previous declaration”. “If more than ten years have elapsed since the statement and map, or the last statutory declaration were lodged”, they add, “a new statement and map needs to be deposited, before being updated with a statutory declaration.”⁶⁹ This timeframe was originally six years, but was increased to ten by the Countryside and Rights of Way Act 2000. Subsequently, the Growth and Infrastructure Act 2013 increased the interval to 20 years.

6.58. Landowner K submitted a statement and plan to Somerset County Council on 23 March 1998 (see Appendix 26). The plan identified the extent of their landholdings and the various rights of way that ran over their land. The statement denied “that there are any other such public rights of way over the land I own and shown in the map”. A statutory declaration was submitted on 27 March 1998, which asserted that “No additional ways have been dedicated over land edged red on the plan accompanying this declaration since the statement”. A further statement and plan were submitted on 26 June 2020, followed by a statutory declaration on 22 July 2020.

6.59. The 1998 section 31(6) deposit can be considered to have demonstrated a lack of intention to dedicate public rights over Park Lane. However, the period between the submission of the plan and statement and the statutory declaration was only five days, and there was not a subsequent declaration within the ten-year timeframe then applicable. As such, any lack of intention to dedicate public rights over Park Lane relates to the five days between 23 and 28 March 1998, which is not within the relevant 20-year period of 2000-2020. The 2020 deposit can also be interpreted as demonstrating a lack of intention to dedicate public rights over Park Lane, though this will depend on a further declaration being submitted by June 2040. In any case, it does not have a retrospective affect and so does not amount to a lack of intention to dedicate during the period April 2000 – April 2020 (i.e. the relevant period in this case).

6.60. Landowner K asserts that a gate was erected at point E1 on Park Lane in 2001 and replaced in 2010 (a photograph of the gate taken in October 2021 can be found at Appendix 3 (Photograph 27)). These gates were intended “to stop unauthorised vehicles and people using the lane”. While the user evidence almost unanimously confirms the presence of a gate at point E1, there is less clarity regarding when the gate first appeared and to what extent it formed an obstruction.

6.61. Several users recall a gate existing on Park Lane prior to 2001. User 6 suggests that the gate first appeared “in the early 1990s”. User 36 refers to a discussion with a previous owner of Merricks Farm, who informed him that “the gate was moved from just before the farm [point F] to its present position [point E1] in the 70s or 80s when

⁶⁹ A. Lewis, ‘S.31(6) of the Highways Act 1980’, *Rights of Way Law Review*, 6.3 (2007), 120.

they left the farm". This account would appear to contradict that of Mr and Mrs Lock (paragraph 6.18.), who assert that the gate at point F remained in position as late as 1989. Others estimate a construction date of 2000 (users 2, 21, and 22) and 2015 (users 4, 10, 12, 16, 29, 30 and 47).

6.62. Landowner K asserts that the 2001 gate "was erected across Park Lane" and that "pig wire field fence continued to the gate post with horizontal rails between the fence and gate posts on one side." "On the other side", they add, "the gate post was in the hedge". Landowner K further suggests that the gate "was locked shortly after erection". This would appear to suggest that Park Lane was inaccessible for the public from 2001 onwards. Yet this contradicts the vast majority of the user evidence. User 18 recollects that

the gate initially covered the whole lane, though I am unsure how long this lasted. This caused consternation locally and led to the landowner creating a gap between the northern gatepost and the hedge so that pedestrians and cyclists could get through.

User 24 echoes this account, recollecting that "the side gate was created after locals had made their frustration at lack of access clear to the landowners". The gap that users 18 and 24 describe is regularly referred to by other users. User 43 describes the gate as "a metal farm gate hinged on the right-hand side (if approaching from the west) [...] [with] a pedestrian side gate or opening on the left of the main gate which is suitable for walking or pushing a bike through". User 7 offers a similar description:

It is a metal five-bar gate, about eight feet wide, with room between the northern gate post and hedgerow for pedestrian access. This side gate has always been present ever since the gate was erected [...] The side gate is now crossed by barbed wire and chained shut, making it difficult to get through. This obstruction has only occurred within the last year [statement made in January 2022].

Several users refer to the side gate having some form of hinged bar. User 38 describes "A gap [...] present to the side of the northern gatepost, which had a wooden bar that can be moved up to allow for access". User 1 recalls a similar structure in more detail:

This is an unusual arrangement consisting of a vertical wooden bar attached to the main gate with a chain. This bar can be pushed to one side to allow pedestrians through, and it is easy for dogs to get through. I think you could also get a bicycle through, but perhaps not a horse.

User 33 describes the gate as "a farm gate with side pedestrian access", adding that "[a] bicycle and small pony can squeeze through".

6.63. The user evidence suggests that the gate on Park Lane did not curtail access on the route until around 2020, at which point the "side gate" discussed above was chained shut. Numerous users located the gate at point E1 but affirmed that it had not prevented them using the route on foot or by bicycle (including users 9, 16, 17, 27, and 30). User 44 commuted by bicycle from Drayton to Langport via Park Lane and Frog Lane three days a week for five months in 2001 (the year Landowner K suggests the gate at point E1 was first erected). They recollect the gate being installed on Park Lane, but were unsure exactly when this occurred:

The gate spanned the majority of the width of the track, with a small gap on the northern side of the route between the gatepost and the hedge. I imagined that this was a stock gate (i.e. intended to stop animals escaping) or else a way of preventing cars driving down Park Lane. I am unsure as to whether this gate was locked. I was always able to go through the gap at the side of this gate. This gate may have been in position when I was regularly using the route in 2001, but I cannot say for sure. I certainly do not remember a gate ever preventing me from using the route on foot or by bicycle during this period.

This account is echoed by User 20:

I remember this gate being constructed but I would struggle to provide an accurate date, largely because it didn't affect my use of Park Lane [...] My understanding is that this gate was built to stop 4x4 drivers and motorcyclists using the route. This was confirmed to me by the landowner at Merricks Farm at the time the gate was constructed, who told me that he was concerned about damage to the surface of the route by motorised vehicles but didn't object to people walking the route. The gate is a typical farm gate that spans the majority of the track between two gateposts, and includes a section at the side that provides access for pedestrians and cyclists. There is a wooden bar on a hinge across this pedestrian gate that can be pushed to one side.

35 respondents provided evidence of use over Park Lane in 2001, and only two (users 18 and 24 discussed above) refer to the gate affecting access.

6.64. It is unclear whether the main section of the gate was always locked, but the user evidence as a whole suggest that it was usually locked. User 3, who estimated that the gate was constructed in the mid-1990s, recalls that "[the] gate was sometimes locked, but I remember occasions where I dismounted from my horse to open the gate". User 24, who estimates that the gate was erected in 2000, suggests that the main section of the gate "has always been locked".

6.65. Landowner K records that the gate at E1 originally included a sign that read "No through road access only to Merricks Farm & cottages". However, none of the users recall a sign of this description. User 18 suggests that a sign reading "No through road" was erected at the western end of Park Lane (point H) "around ten years ago", adding that it was "a homemade sign [...] [that was] made to look official".

6.66. The presence of a gate at point E1 could be interpreted as indicating a lack of intention to dedicate public rights of way over the full width of Park Lane, and in so doing preventing use by motorised traffic. However, a side gate appears to have been created that allowed for pedestrian and cyclist access, either at the time of construction or shortly afterwards. This seems to suggest it is *reasonable to allege* that the landowner was not attempting to obstruct the public from using the route via the side gate on foot or by bicycle. The fact that large numbers of people continued to use the route from 2001 onwards would certainly suggest that they did not view the gate and gap/side gate arrangement as a demonstration of the landowner's lack of intention to dedicate.

6.67. It has not been possible to corroborate the alleged presence of a 'No through road' sign on the gate from 2001. Unlike the signs erected at points E1 and H in 2020, which were almost universally commented upon in the submitted UEFs, none of the users recall a sign at point E1 in 2001. If the sign did exist, furthermore, both its wording and location (on the main gate) could easily be interpreted as referring specifically to motorised vehicles. The sign is therefore not considered to indicate a lack of intention to dedicate lower public rights over Park Lane.

6.68. The evidence submitted of use on horseback or leading a horse is minimal, but such evidence appears to indicate that the side gate was not large enough to easily accommodate many equestrian users. Users 3, 14, and 33 submitted evidence of use on horseback or leading a horse. User 3 referred when interviewed to using the main gate when on horseback: "The gate was sometimes locked, but I remember occasions where I dismounted from my horse to open the gate." User 14 refers to the main gate, saying that when it was locked "we rode across fields where we shouldn't". User 33 claims that they used the route while leading a pony "every few months" between 2017-2018, and that the side gate was large enough to accommodate a "small pony".

6.69. This evidence suggests that the locked main gate prevented some, but not all, use on horseback or leading a horse. The gate could, therefore, be taken as evidence of a lack of intention on the part of Landowner K to dedicate a right of way on horseback over Park Lane. This in turn raises the question as to whether a bridleway can be dedicated in such circumstances, i.e. where some use on horseback may have been prevented but use by bicycle has not. Case Law suggests that a highway can still be dedicated on a route where it is difficult for certain classes of user to traverse the way.⁷⁰ On this basis, the fact that the gate at point E1 may have prevented some use on horseback is not thought to have stopped a bridleway from coming into being through use by bicycle.

6.70. Landowner K asserts that they have, since 1992, regularly challenged various organisations and members of the public found using Park Lane. This includes the Taunton Vale Hunt (1993-1994), Ilminster Beagles, Langport Walking Festival, Langport Runners and a bicycle shop in Langport. However, although the user evidence provides numerous examples of people being challenged while using the route (including users 2, 4, 25, 26, 33, 38, 39, and 49), these incidents all occurred since the signs were erected in 2020. User 18 suggests that "the landowners at Merricks Farm have been known to challenge people using Park Lane prior to 2020", but adds that they "do not have any firm details". None of the other interviewed users were challenged prior to 2020, nor

⁷⁰ See *Rex v Lyon* (1824) KB 5 Geo RY & Mood 975-976, where in refusing an objection against an indictment for obstructing a highway, the Court ruled that "such coaches, carts, and carriages should pass along it as the width of the road, or as in this case the archway would permit, it was not laid as a way for all carts, carriages, &c.". See also *Garland & Salaman v SSEFR* [2020] EWHC 1814 (Admin), where the Court considered it "relevant to recall that the most substantial body of evidence of use as a bridleway was that of cyclists passing along the Order Route. By contrast, the actual evidence of use of the Order Route by horse riders was limited".

could they recall ever hearing of people being challenged before the erection of the signs.

6.71. There is clearly a conflict of credible evidence concerning challenges to members of the public. Landowner K asserts that they made it clear to the various organisations listed, in addition to numerous unnamed individuals since 1992, that they were challenging their right to use Park Lane. To some extent this is supported by the evidence of User 18. Yet the rest of the user evidence indicates that many people have regularly used the route since 1992 without being stopped, turned back, or made aware of others being challenged. It is therefore considered *reasonable to allege* that these incidents did not demonstrate a lack of intention to dedicate public rights over Park Lane.⁷¹

7. Summary and conclusion

7.1. 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 this case is twofold. For the sections of the routes between points A and A1 and points A2 and H, the recommendation is shaped by whether it is *reasonable to allege* that a right of way exists over the application route. For the section between points A1 and A2, a judgement is made on the *balance of probabilities*, i.e. based on all of the available evidence, are higher public rights more likely to exist than not.

7.2. A broad range of documentary, user, and consultation evidence has been examined in this report. The relevance and strength of this evidence has varied over the three application routes.

7.3. A route which follows the full length of the application routes has been present on the ground since at least 1811, as indicated by its depiction on the Ordnance Survey Old Series Map. Huish Drove and Frog Lane are also both shown in the Parish Plan contained within the 1799 Inclosure Award records. Quarter Sessions evidence suggests that Huish Bridge and Huish Drove existed in the 1640s, while human settlement at Frog Lane can be traced back to at least the medieval period.

7.4. There is no single document which definitively proves that public vehicular rights have existed over the three application routes. However, when all the evidence

⁷¹ In *Godmanchester*, Lord Scott suggests that regular challenges to users of a route “might suffice” to demonstrate a lack of intention to dedicate. However, he goes on to emphasise that a successful rebuttal needs to “curb the public user of the path [...] [and] disabuse users of the path of any belief that they had the right to use it, or to make clear to those users who did not care or give a thought to whether or not they had a right to use the path that they were trespassers”. See *Godmanchester Town Council, R (on the application of) v Secretary of State for the Environment, Food and Rural Affairs* [2007] UKHL 28 (20 June 2007), 69.

is taken together it suggests that it is reasonable to allege that the routes have historically been considered to carry such rights.

7.5. Three sources in particular are supportive of public rights existing over Huish Drove: the 1646 Quarter Sessions Minute Book, the 1836 Parrett and Yeo Navigation Plan and the 1910 Finance Act Record Plan.

7.6. The Quarter Sessions Minute Book concerns the status of Huish Bridge, which was out of repair following damage during the English Civil War. The petition brought to the Court distinguishes between two groups of users; tenants or landowners seeking to access their land, and the broader inhabitants of the parish. This distinction suggests that both private and public rights existed over Huish Bridge. Furthermore, the petition could be interpreted as a presentment concerning the non-repair of a highway. The records therefore provide evidence that some form of public rights existed over Huish Bridge. It seems highly probable that the same rights also existed over Huish Drove.

7.7. The Parrett and Yeo Navigation Plan describe Huish Drove as a "Public Drove". This distinguishes it from surrounding routes such as Litness Drove (described only as a "Drove") and Muchelney Road (identified as a "Turnpike Road"). In drawing these distinctions the Plan clearly differentiates between public and private routes. Though the exact status of the phrase "Public Drove" is unclear, the term drove is typically defined as a route along which livestock can be driven.⁷² It seems likely, therefore, that the public rights identified by the Parrett Navigation Company over Huish Drove were no lower than that of a bridleway.

7.8. The apparent exclusion of the full length of the application routes from surrounding hereditaments in the 1910 Finance Act Record Plan raises a strong possibility that it was considered to carry public rights (though it is recognised that the damage around point C of the Record Plan means that it cannot be confirmed that this section of Huish Drove was excluded from surrounding hereditaments). Given that the 1646 Quarter Sessions records are suggestive of public rights over Huish Drove, and that the 1836 Navigation Plan names the route as a "Public Drove", it is considered very likely that in 1910 the route was excluded from surrounding hereditaments because it was considered to carry public vehicular rights.

7.9. The 1929 Handover map, subsequent road records, and the 1962-1963 Diversion Order offer strong evidence that the eastern section of Huish Drove between points A and A1 is part of the publicly-maintained vehicular highway network. In turn, the Definitive Map and Statement preparation records provide conclusive evidence that the section of Huish Drove between points A1 and A2 is a public footpath. While

⁷² See for example J. A. H. Murray (ed.), *A New English Dictionary on Historical Principles, vol. III* (Oxford: Clarendon Press, 1897), 684, which defines Drove as "A road along which horses or cattle are driven." It also defines "drove-road", which is described as "an ancient road or track along which there is a free right of way for cattle, but which is not 'made' or kept in repair by any authority".

these records indicate that various authorities were not persuaded of the existence of public vehicular rights over the full length of Huish Drove, we now have the benefit of evidence which it is likely they did not consider at the time. Furthermore, the Definitive Map itself is without prejudice to the existence of higher rights.

7.10. The sources outlined above are accompanied by a range of evidence that, while of less evidential weight, remain valuable documents and are supportive of the conclusion that Huish Drove carries public vehicular rights. This includes the 1795 Ivel and Parrett Navigation Plan, the 1782 Day & Masters Map, two of the Bartholomew's maps (1902 and 1923), and the 1879 Order of Partition of Lands. Most of the other relevant evidence, while not necessarily explicitly in favour of public vehicular rights, are certainly not inconsistent with them. This includes the remaining inclosure records, the tithe records, the OS maps, the 1884 Railway Plan and 1890-1893 Survey, the 1822 Greenwoods Map, the Somerset Historic Environment Record resources, and the Huish Episcopi *County History*.

7.11. The 1901 Object Name Book describes Huish Drove as "an occupation road extending from Huish Bridge to Frog Lane". While these records can be considered as fair evidence that Huish Drove had the reputation of a private or occupation road at the date of survey, it is worth stressing that the Object Name Book has no legal authority concerning right of way status. Furthermore, the weight attached to this document is not considered to outweigh the cumulative weight of the documents in favour of public vehicular rights as referred to above.

7.12. Having assessed all of the available evidence, the investigating officer considers it reasonable to allege, and that on the balance of probabilities, public vehicular rights exist over the full length of Huish Drove.

7.13. The evidence relating to the status of Frog Lane and Park Lane is more ambiguous. Both routes, as discussed above, are excluded from the surrounding hereditaments on the Finance Act Record Plan. Some of the supporting evidence (including the Day & Masters Map and the Bartholomew's maps) is also suggestive of public rights over the full length of the application route. In turn, the 1795 Ivel and Parrett Navigation Plan can be considered as evidence of public rights over Frog Lane and Park Lane. In annotating Huish Drove as "Road from Drayton &cc", it can be argued that the plan was referring to a public vehicular highway over the full length of the application route. However, given that Frog Lane and Park Lane are not recorded on this Plan, and that the status of the term "Road" is not elaborated on, this document can be awarded very little evidential weight.

7.14. As with Huish Drove, Frog Lane and Park Lane are both described by the OS Object Name Book as occupation roads. In turn, the annex included as part of the 1883 Boundary Remark Book asserts that the section of Park Lane between points H and G was a "private road". The inclusion of this annex in the Boundary Remark Book suggests

that the meresmen involved in this survey accepted that the relevant landowner considered the western section of Park Lane to be a private access route rather than a public vehicular highway. This is only the view of two individuals (the author and the relevant meresman) and it does not prove that public vehicular rights did not exist. However, it certainly weighs against the existence of them.

7.15. Park Lane is not shown in full on the 1799 Inclosure Award Parish Plan. This does not necessarily mean that it was not present on the ground. It does however suggest that the central section of Park Lane was not as prominent a physical feature as Huish Drove or Frog Lane at the time the Award was made. The various OS maps depict Park Lane in more detail, but they too are suggestive of a varied route that changes in character as it passes Merricks Farm (point F).

7.16. The shaded casing lines on the 1886 OS County Series First Edition 25 Inch Map could be interpreted to indicate the presence of either public or private rights on Frog Lane and Park Lane. The fact that shading casing and sienna colouring on Park Lane appears to terminate at Merricks Farm would suggest that it may have been considered a metalled carriage drive (i.e. a private access route). However, each of the other routes with a shaded casing line on these map sheets are shown as public highways on modern road records. Taking into account this uncertainty, the investigating officer considers it unsafe to draw any evidential inferences as to the status of the application routes from the shading casing lines.

7.17. The Definitive Map and Statement are conclusive of what they show, but not of what they omit. The fact that Frog Lane and Park Lane are not recorded in the DMS does not necessarily mean that no public rights exist over them. Nevertheless, the DMS preparations records suggest that the routes did not have the reputation of public highways during this preparatory period. Frog Lane and Park Lane are also not recorded in the 1929 Handover Map and subsequent road records, suggesting that they were not known to be publicly maintainable vehicular highways at the time.

7.18. The 1852 Drayton Estate Map shows the entrance of Park Lane as crossed, or blocked, by a solid casing line. This could be seen as evidence that Park Lane was not accessible to the public at the time the Map was drafted. Equally, the line could indicate the presence of a gate, which would not be inconsistent with a public road. The Map has no key, and relatively little is known about its provenance. The document is therefore considered to be neutral as regards the status of Park Lane.

7.19. The evidence concerning the status of Frog Lane and Park Lane is, therefore, conflicting. In the case of the former, given the route is excluded from surrounding hereditaments in the Finance Act Record Plan, and that there are several sources that provide supporting evidence of public vehicular rights (including the Day & Masters Map, the Bartholomew's maps and the 1795 Ivel and Parrett Navigation Plan), it is considered *reasonable to allege* that public vehicular rights exist over Frog Lane.

7.20. Numerous sources considered by this investigation have indicated the presence of private rights over Park Lane (including the 1907 and 1991 Auction Particulars, the 1938 Lease Agreement, and the 1938 Sales Particulars). Other records also suggest that the majority of Park Lane has been, and remains, privately owned (this includes the tithe records and the Land Registry documents). These records can be taken as evidence against the existence of public vehicular rights, as the private rights they outline would be unnecessary if Park Lane was a public vehicular highway. However, the presence of private rights does not necessarily preclude the possibility that public vehicular rights exist over Park Lane. The fact that much of Park Lane is privately owned, moreover, does not mean that public rights cannot exist. There is, therefore, a conflict in the evidence. However, there is no incontrovertible evidence that public rights cannot have existed over Park Lane. Given that Park Lane is excluded from adjacent hereditaments in the Finance Act Record Plan, and that there are several sources that provide supporting evidence of public vehicular rights (namely the Day & Masters Map, the Bartholomew's maps and the 1795 Ivel and Parrett Navigation Plan), it is considered *reasonable to allege* that public vehicular rights exist over Park Lane.

7.21. 61 members of the public submitted user evidence forms during this investigation. Of these respondents, 18 users were interviewed. Several landowners, notably Landowner K, also submitted a range of evidential material. The evidence gathered during this process identified 2000-2020 as the relevant retrospective period of use for the purposes of section 31 of the Highways Act 1980. Having assessed the various submissions, the investigating officer considers it *reasonable to allege* that Huish Drove, Frog Lane, and Park Lane were used by the public on foot and by bicycle during this period, *as of right* and without interruption. This means that a presumption arises that, if the above conclusions in relation to the historical existence of public vehicular rights are found to be incorrect, the application routes have become public bridleways. In the case of Park Lane, at point E1 the bridleway runs through the gap to the side of the northern gatepost. There are various events and actions that could be considered to demonstrate a lack of intention to dedicate public rights of way over the application routes. Most of these fall outside of the relevant 20-year period. The construction of a gate at point E1 in 2001 is not considered to demonstrate a lack of intention, as there is strong evidence that the presence of the side gate allowed non-vehicular users to pass. The presumption of dedication is therefore not rebutted.

7.22. It is important to consider the relationship between the documentary evidence and user evidence sections of this report. If analysis of the former had determined that no public rights existed over the application route, then the evidence of use between 2000-2020 would lead to the conclusion that bridleway rights had come into being over Huish Drove, Frog Lane, and Park Lane. Yet the documentary evidence indicates that public vehicular rights already existed over the full length of the application route. On the basis of the legal maxim 'once a highway, always a highway', public vehicular rights continue to exist regardless of recent patterns of use.

7.23. 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). NERC had the effect of extinguishing all “unrecorded” public rights for mechanically propelled vehicles, except in certain specific circumstances. The majority of the application route is not considered to meet any of these exceptions. This being the case only lower rights, on foot, horseback, bicycle and non-mechanically propelled vehicles now exist between points A1 and H.

7.24. The Highways Act 1980 section 36(6) requires every highway authority to compile and keep up to date a list of streets, recording highways maintainable at public expense. Subsection 62(2)(b) of NERC excepts ways that are recorded on the list of streets and are not recorded in the DMS. This is to exempt roads “that do not have clear motor vehicular rights by virtue of official classification but are generally regarded as being part of the ‘ordinary roads network’.”⁷³ One of the Huish Episcopi entries on the Somerset County Council List of Streets is Huish Bridge Road, a route that corresponds with the eastern section of the application route between points A and A1.⁷⁴ This section of the application route is therefore considered to be exempt from the provisions of NERC. As such this section remains a vehicular carriageway forming part of the ordinary road network, as opposed to a public right of way capable of being shown on the DMS.

⁷³ ‘Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways, Version 5’ (2008), DEFRA, https://laragb.org/pdf/DEFRA_200805_NERCPart6Guide.pdf, 8, accessed 8 April 2022.

⁷⁴ The SCC List of Streets can be accessed online: <https://www.somerset.gov.uk/roads-and-transport/road-records/>.

8. Recommendation

It is therefore recommended that:

- i. an Order be made, the effect of which would be to add to the Definitive Map and Statement a restricted byway between points A1-A2-B-C-D as shown on Appendix 1
- ii. an Order be made, the effect of which would be to add to the Definitive Map and Statement a restricted byway between points D and E as shown on Appendix 1
- iii. an Order be made, the effect of which would be to add to the Definitive Map and Statement a restricted byway between points E-E1-F-G-G1-H as shown on Appendix 1
- iv. that the application 681M be refused as regards the section of Huish Drove between points A and A1
- v. if there are no objections to such orders, or if all objections are withdrawn, the orders will be confirmed
- vi. if objections are maintained to any of the orders, the Order or orders in question will be submitted to the Secretary of State for Environment, Food and Rural Affairs.

9. List of Appendices

Please note that the document reproductions in the appendices are not to a standard scale. The report writer has added the red letters which broadly correspond with the present on Appendix 1. This is to assist the reader in identifying those sections of the route the document is depicting. Red circles have also been added to some appendices to indicate the area of the claim where lettering is not appropriate.

1. Plan showing claimed route
2. Photographs of the application route
3. Landownership plan
4. Legal framework
5. Documentary evidence
6. Consultation list
7. Inclosure records
8. Quarter Sessions records
9. Tithe records
10. OS maps
11. Object Name Book
12. Finance Act records
13. Highway records
14. Definitive Map records
15. Deposited plans
16. Commercial and other maps
17. Archaeological report and SHER
18. SIAS records
19. Auctions, sales, and leases particulars
20. Land Registry records
21. Aerial photographs
22. Statements of Truth
23. 'Polite Notice' sign
24. 'Cycleway Footway' sign
25. User evidence graphs
26. Section 31(6) deposits