Regulation Committee
Thursday 1 September 2022
2.00 pm Luttrell Room - County Hall, Taunton

SUPPLEMENT TO THE AGENDA

To: The Members of the Regulation Committee

We are now able to enclose the following information which was unavailable when the agenda was published:

Item 4	Wildlife and Countryside Act 1981 Section 53, Schedule 14 - Applications 681M (Huish Drove), 682M (Frog Lane) and 683M (Park Lane), in the Parish of Huish Episcopi, South Somerset Case Officer Presentation (Pages 3 – 17)

Published on 23 August 2022

Democratic Services, County Hall, Taunton, TA1 4DY

This page is intentionally left blank

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

SCHEDULE 14 APPLICATION

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

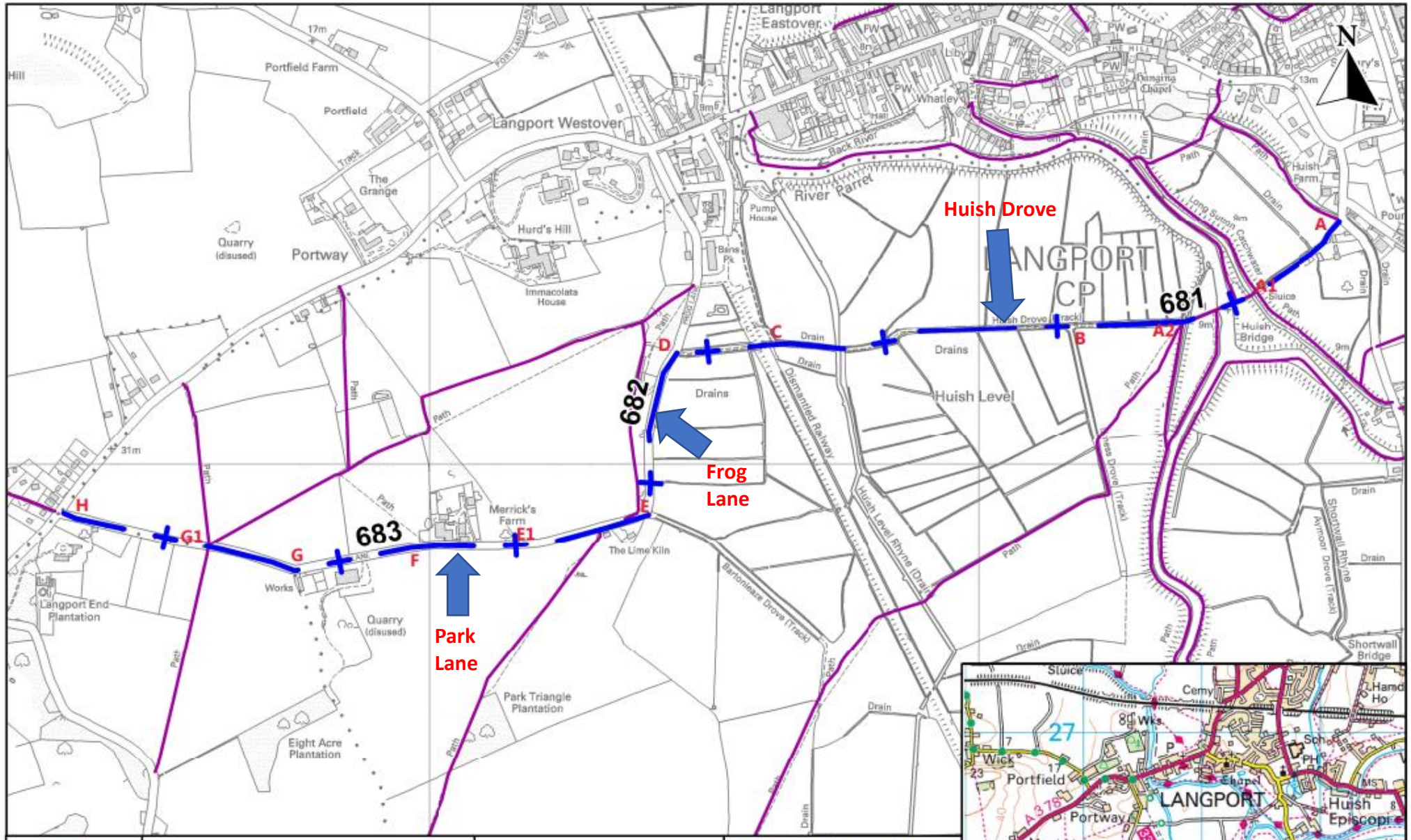
Application:	681M (Huish Drove), 682M (Frog Lane), 683M (Park Lane)
Author:	Harry Wood
Dates:	Report: July 2022
	Presentation: September 2022

Details of the application

• Somerset County Council received three applications in May 2010 from South Somerset Bridleways Associations.

• The applicant claims that Huish Drove, Frog Lane, and Park Lane should all be recorded as restricted byways. These routes are currently unrecorded, excluding footpaths L 13/42 and L 13/43 on Huish Drove.

• 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.



Parish:	Huish Episcopi & Drayton
District:	South Somerset
Date:	03/09/2021
Drawing No:	H43-2021
Drawn By:	MHardwill
Centre Grid Ref:	341330, 125880
Scale	1:9,000

Modification Route

Definitive Footpath

Application routes

Huish Drove (A2 facing west)

Frog Lane (D facing south south west)

Park Lane (F facing east)

Potential outcomes for this matter 1

- Refuse to make orders, in which case the routes will remain unrecorded (or, in the case of footpaths L 13/42 and L 13/43 on Huish Drove, will remain footpaths)

- Resolve that public rights exist over the application routes in the form of one of the following;

  -Footpath

  -Bridleway

  -Restricted byway

  -Byway open to all traffic (commonly referred to as a BOAT)

- Resolve that public rights exist over one or more, but not all, of the application routes

- Resolve that no rights exist.

Potential outcomes for this matter 2

- The conclusion of the investigation report is that it is **reasonable to allege**, and that in the case of footpaths L 13/42 and L 13/43 on the **balance of probabilities**, the application routes have historically carried public vehicular rights. The Definitive Map should be amended so that the routes are recorded as restricted byways.

- Committee members must make their own assessment of the evidence, rather than accept the report's recommendation without question.

- If the Committee reach an alternative conclusion, the grounds for that conclusion must be clearly stated and consistent with the relevant legislation.

Test to be applied

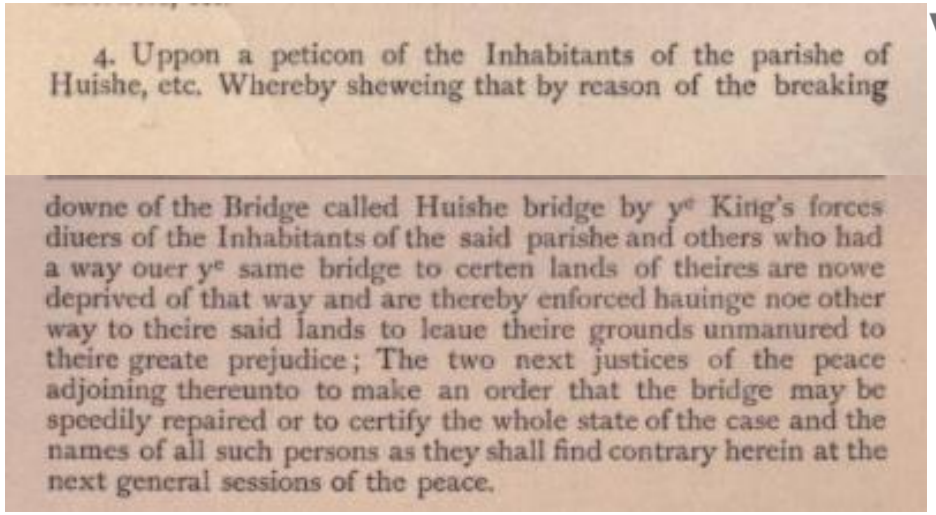
- Before an order can be made to modify the Definitive Map, there must first have been a discovery of new evidence (i.e. evidence that was not consulted when the Definitive Map was last reviewed).Having discovered that evidence, the standard of proof to be applied in this case is twofold:

1. Balance of probabilities: determining, based on all of the available relevant evidence, whether higher public rights are more likely to exist than not. Applicable to footpaths L 13/42 and L 13/43 (A1-A2)

2. Reasonably alleged: determining whether the evidence shows that a right of way is reasonably alleged to subsist. Applicable to remainder of routes (A-A1, A2-H). This is a lower evidential threshold that the balance of probabilities test.

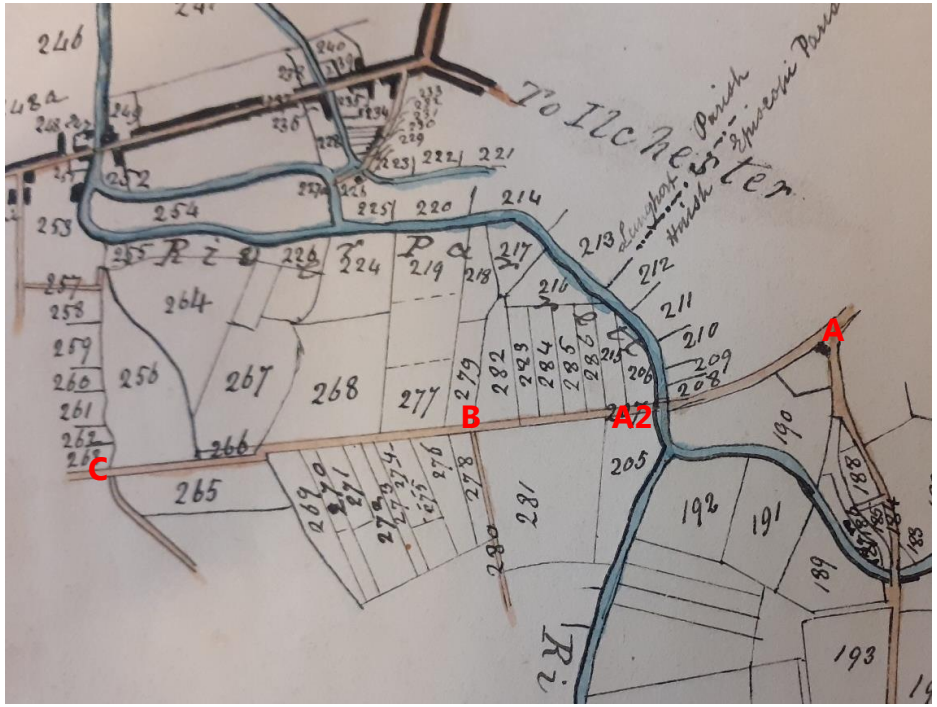
Huish Drove

- 1646 Quarter Sessions records appear to distinguish between two groups of users: those with private rights and the broader “Inhabitants of the said parishe”.
- 1836 Parrett and Yeo Navigation Plan identifies Huish Drove as a “Public Drove”.
- Huish Drove is excluded from surrounding hereditaments in the 1910 Finance Act Record Plan.
- Together with supporting evidence, these documents strongly suggest that Huish Drove was historically a public vehicular highway



4. Uppon a peticon of the Inhabitants of the parishe of Huishe, etc. Whereby sheweing that by reason of the breaking downe of the Bridge called Huishe bridge by ye King's forces diuers of the Inhabitants of the said parishe and others who had a way ouer ye same bridge to certen lands of theires are nowe deprived of that way and are thereby enforced hauinge noe other way to theire said lands to leaue theire grounds unmanured to theire greate prejudice; The two next justices of the peace adjoining thereunto to make an order that the bridge may be speedily repaired or to certify the whole state of the case and the names of all such persons as they shall find contrary herein at the next general sessions of the peace.

Quarter Sessions Records for the County of Somerset, Vol. III, Commonwealth 1646-1660 (London: Harrison and Sons, 1912), 3.



Plan and section of the Parrett and Yeo River navigation between Ilchester and Langport 1836, Source: South West Heritage Trust, Reference: SHC Q/RUP/132

Frog Lane

- Frog Lane is excluded from surrounding hereditaments in the 1910 Finance Act Record Plan.
- 1795 Ivel and Parrett Navigation Plan labels Huish Drove ““Road from Drayton &cc” – suggests public vehicular rights over all three application routes.
- Commercial maps (Day & Masters, Bartholomew’s) provide supporting evidence of public vehicular rights.
- Documentary evidence suggests it is **reasonable to allege** that Frog Lane was historically a public vehicular highway.

1910 Finance Act Record Plan, National Archives, IR 128/9/873

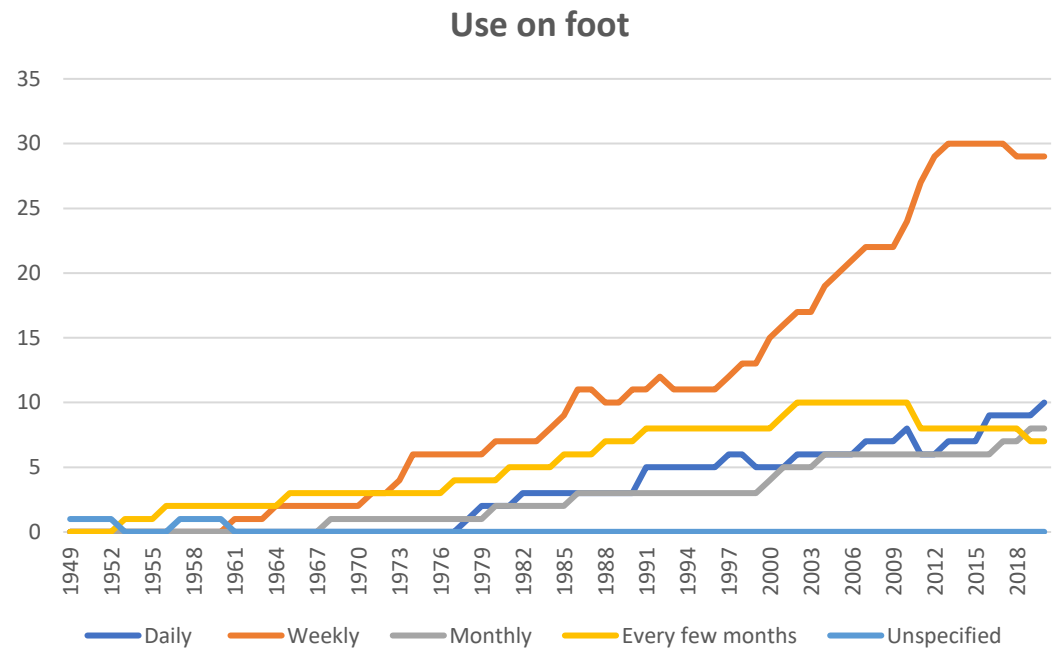
Park Lane

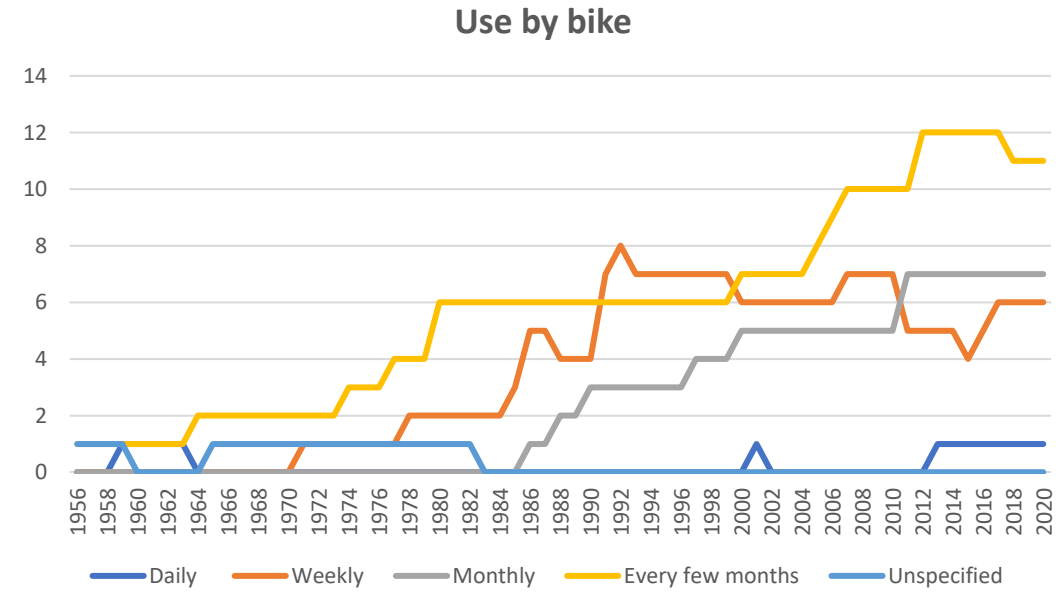
- Park is excluded from surrounding hereditaments in the 1910 Finance Act Record Plan.
- 1795 Ivel and Parrett Navigation Plan labels Huish Drove ““Road from Drayton &cc” – suggests public vehicular rights over all three application routes.
- Commercial maps (Day & Masters, Bartholomew’s) provide supporting evidence of public vehicular rights.
- Documentary evidence suggests it is *reasonable to allege* that Park Lane was historically a public vehicular highway.

1910 Finance Act Record Plan, National Archives, IR 128/9/873

User Evidence

- 61 members of the public submitted user evidence forms (UEFs); 18 were interviewed by investigating officer.
- Relevant period of use was 2000-2020. Considered **reasonable to allege** that applications routes were used by the public on foot and by bicycle during this period, **as of right** and without interruption.
- Presumption arises that application routes have become public bridleways.
- No evidence to indicate a lack of intention to dedicate public bridleway rights on the part of relevant landowners.





Appendix 25A: User Evidence Graphs

Reason for the recommendation

- The documentary evidence for all three application routes indicates that it is **reasonable to allege** (and in the case of footpaths L 13/42 and L 13/43, on the **balance of probabilities**) that the application routes have historically carried public vehicular rights. Key evidence includes Quarter Sessions records, Finance Act records, and several deposited plans.

- Various pieces of supporting evidence (including several commercial maps) are supportive of this conclusion.

- The majority of the remaining evidence examined was not inconsistent with the existence of public vehicular rights over the application routes, and there is no incontrovertible evidence that public rights cannot have existed over Huish Drove, Frog Lane, and Park Lane.

- The Natural Environment and Rural Communities Act 2006 (NERC) extinguished mechanical vehicular rights over the routes. This excludes the eastern section of Huish Drove (between points A-A1), which is recorded on SCC's List of Streets as a vehicular carriageway.

Evidence of private rights over Park Lane

- There is evidence of private vehicular rights existing over Park Lane (including Dream Cottage Sales Particulars and 1907 Auction Particulars).

- These records can be taken as evidence against the existence of public vehicular rights, as private rights would arguably be unnecessary if Park Lane was a public vehicular highway.

- However, there is no incontrovertible evidence that public rights cannot have existed over Park Lane.

- The documentary evidence as a whole suggests it is **reasonable to allege** that public vehicular rights exist over Park Lane.

Auction Particulars (1907)

Relationship between user and documentary evidence

- User evidence indicates that bridleway rights came into being over the application routes between 2000-2020.

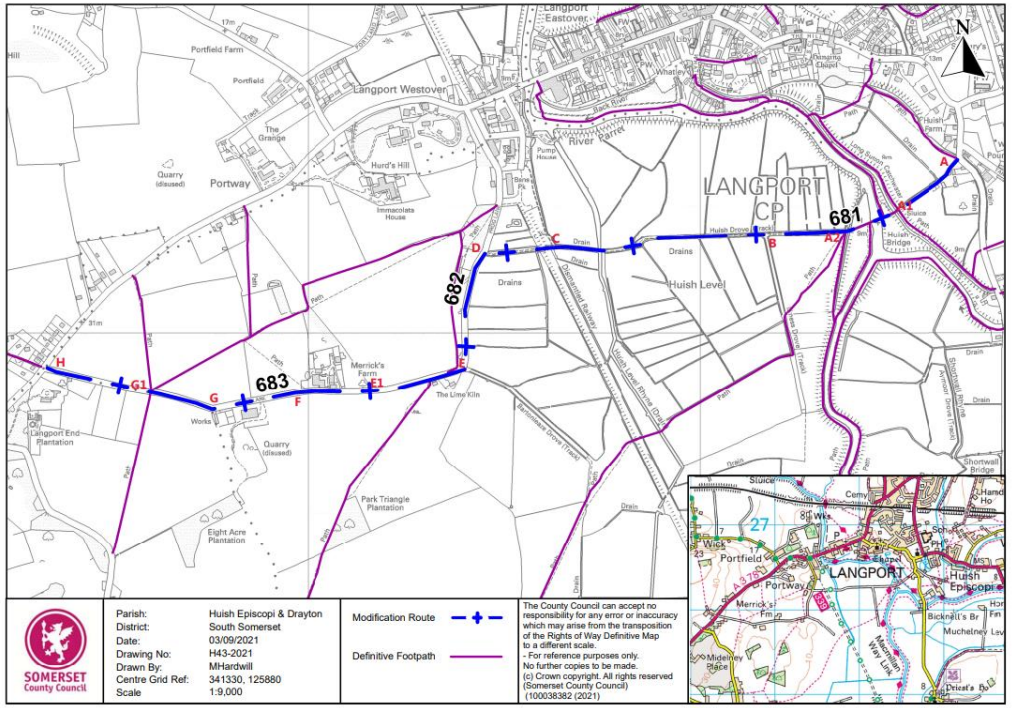
- Landowners have argued the gate at point E1 represents lack of intention to dedicate rights, but side gate appears to have allowed access for people on foot and bicycle.

- Documentary evidence suggests that public vehicular rights **already existed** over Huish Drove, Frog Lane, and Park Lane.

- On the basis of 'once a highway, always a highway', public vehicular rights continue to exist regardless of recent patterns of use.

Park Lane (point E1 facing east)

Summary



- An order should be made to modify the Definitive Map and Statement where the surveying authority discover evidence which, when considered alongside all other available evidence, indicates “that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist”, and “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”.

Wildlife and Countryside Act 1981, Section 53(3)(c)(i & ii)

This page is intentionally left blank