

Appendix 5: Documentary evidence details

<u>Documentary evidence</u> ¹	<u>Evidence used in current investigation</u>	<u>Evidence consulted but not used</u> ²	<u>Evidence submitted with application</u> ³	<u>Appendix</u>
Quarter session records	✓			7
Tithe records	✓		✓	8
OS County Series First Edition 25 Inch map	✓		✓	9
OS revised new series 1 inch map / timeline reprint	✓		✓	9
OS County Series Second Edition 25 Inch map	✓		✓	9
OS Object Name Book	✓			10
Turnpike records	✓			11
Finance Act 1910	✓		✓	12
Handover map 1929	✓			N/A
Road records 1930	✓			N/A
Road records 1950	✓			N/A
Definitive Map and Statement Preparation (DMSP) Survey Map	✓			13
DMSP Survey Card	✓			13

¹ A broad range of documentary evidence can be helpful in determining the status of an application route. This list is by no means exhaustive, but it is representative of sources that Somerset County Council typically consult when investigating an application.

² This column relates to instances where documents were consulted that did not assist in determining the status of the application route. One common reason for this, to take the example of a parish inclosure award, is that documents may not cover the exact area in question.

³ During the application process, the applicant may submit documentary evidence that supports their case. When the local authority begins an investigation into an application route, they conduct their own process of research. While this research usually incorporates the documents provided by the applicant, it will often include additional material, or may involve distinct copies of a particular document (a parish copy of a tithe map rather than a diocesan copy, for example). This is why separate columns are used above for investigation evidence and application evidence. Only those documents submitted in support of section C to D as marked on appendix 1 have been listed.

Appendix 5 – Documentary evidence details

DMSP Draft Map	✓			13
DMSP Draft Modification Map	✓			13
DMSP Provisional Map	✓			13
Definitive Map and Statement	✓			13
Local Authority records	✓			13
Aerial photography		✓		N/A
Land registry title deeds	✓			N/A
Present day and historical photographs from landowner	✓			14

Documentary evidence categories

Inclosure records

Inclosure awards are legal documents that can still be valid today. They usually consist of a written description of an area with a map attached. Awards resulted from a desire by landowners to gather together their lands and fence in common lands. A local Act of Parliament was often needed to authorise the procedure and an inclosure commissioner was appointed as a result to oversee the compilation of the award and map. Land was divided into individual plots and fields and redistributed amongst the existing owners. Inclosure awards provide statutory evidence of the existence of certain types of highway. They enabled public rights of way to be created, confirmed and endorsed and sometimes stopped-up as necessary. Inclosure commissioners surveyed land that was to be enclosed and had the power to set out and appoint public and private roads and paths that were often situated over existing ancient ways.

Quarter Session records

Many functions now managed by local and central government were historically dealt with at the Court of the Quarter Sessions under the jurisdiction of the Justices of the Peace, who were advised by a Clerk of the Peace. Amongst other matters the Justices were responsible for the maintenance of county bridges and for the failure of parishes to maintain their roads properly. Diversion and extinguishments of rights of way were dealt with at the Quarter Sessions and Justices' certificates in respect of the completion of the setting out of roads were also issued. These records are capable of providing

conclusive evidence of what the Court actually decided was the status of the route and can still be valid today.

Tithe records

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

A map was produced by the Tithe Commissioners which showed parcels of land with unique reference numbers, and these were referred to in the apportionment document, which contained details of the land including its ownership, occupation and use.

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

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

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

Ordnance Survey maps

The Ordnance Survey (OS) emerged from the Board of Ordnance, a government ministry tasked in the late eighteenth century with surveying the south coast of England for reasons of military and strategic necessity. They are generally accepted as producing an accurate map depiction of what was on the ground at the time of the survey.

OS Maps cannot generally be regarded as evidence of status, but they can usually be relied on to indicate the physical existence of a route at the date of survey.

OS surveyor's drawings

Little is known of OS surveying instructions prior to 1884. OS drawings “were originally prepared for military purposes with no apparent thought of publication”, but from 1801 they were used as the basis for the OS Old Series.⁴ These drawings made no differentiation between footpaths, bridleways, and vehicular routes. As their primary purpose was strategic, it can be inferred that depicted routes were thought to be capable of being used for military transportation and troop movement. It is not possible, however, to determine from the symbology alone whether such routes were public or private in nature.

OS Object Name Book

In preparing the Second Edition County Series map, the Ordnance Survey produced the Object Name Book. The primary purpose of this document was to ensure that the various names recorded on maps (e.g. names of farms, roads, and places) were accurate and correctly spelt. To this end each book contained a list of those names and a description of the feature to which they related. Each of the names in those books was later corroborated by a prominent member of the local community (e.g. a landowner or clergyman).

Finance Act 1910

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

Land was broken into ownership units known as hereditaments and given a number. Land could be excluded from payment of taxes on the grounds that it was a public highway and reductions in value were sometimes made if land was crossed by a public right of way. Finance Act records consist of two sets of documents:

i) Working Plans and Valuation Books: Surviving copies of both records may be held at the Local Records Office. Working maps may vary in details of annotation and shading. The Valuation Books generally show records at a preparatory stage of the survey.

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

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

While the Valuation and Field Books were generally kept untouched after 1920, many of the working and record maps remained in use by the Valuation Offices and sometimes information was added after the initial Valuation process.

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.

Highway authority records

Over time responsibility for maintenance of highways has passed between various different authorities. On each occasion a map was typically produced showing those highways which were considered publicly maintainable. The evidential strength of these handover documents “is that they are conclusive evidence of the highway authority’s acceptance of maintenance responsibility, a commitment that would not normally have been undertaken lightly.”⁵ However, it should be recognised that such handover 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.⁶

Definitive Map and Statement Preparation records

The Definitive Map and Statement were produced after the National Parks and Access to the Countryside Act 1949 placed a duty on County Councils to survey and map all public rights of way in their area. The process was undertaken in a number of stages:

i) Walking Survey Cards and Maps - Parish Councils were required to survey the paths they thought were public paths at that time and mark them on a map.

⁵ *Definitive Map Orders: Consistency Guidelines, third revision* (2013), 6.9.

⁶ J. Sugden, ‘Highway authority records’, *Rights of Way Law Review*, 9.1, p. 14 (CD edition).

The route was described on a survey card, on the reverse were details of who walked the route and when. Queries for the whole parish are often noted on a separate card.

ii) Draft Map – Somerset County Council produced the Draft Map based, in part, on details shown on the Survey Map. These Maps were agreed by the County Works Committee and the date of this Committee became the 'relevant date' for the area. The map was then published for public consultation; amongst other things this included parish and district councils being contacted directly and notices appearing in local newspapers. Any objections received were recorded in a Summary of Objections found in SCC's Right of Way District File.

iii) Draft Modification Map – This stage in the process was non-statutory. Somerset County Council produced a map to show any proposed changes as a result of objections to the Draft Map. Any objections received were recorded in a summary of Counter Objections to the Draft Modification map, found in the District File.

iv) Provisional Map – This map incorporates the information from the Draft Maps and the successful results of objections to the Modification Maps. These were put on deposit in the parish and district council offices. At this point only the tenant, occupier or landowner could object.

v) Definitive Map and Statement – Any path shown is conclusive evidence of the existence and status of a public right of way until proved otherwise. The Definitive Map is without prejudice to other or higher rights.

Local Authority records

The responsibility for maintaining highways has passed between various local authorities (in Somerset it currently sits with the County Council). Even where a local authority has never been directly responsible for rights of way, as representatives of the local community they would likely have had an active interest the rights of way network. This is particularly common in the case of parish councils. As a result, evidence as to a route's status can sometimes be found in local authority records and minute books.

Deposited plans

Railways, canals and turnpike roads all required an Act of Parliament to authorise construction. Detailed plans had to be submitted that showed the effect on the land, highways and private accesses crossed by the proposed routes. Plans were accompanied by a Book of Reference, which itemised properties (fields, houses, roads etc) on the line of the utility and identified owners and occupiers. Where there is a

reference to a highway or right of way these documents can generally be regarded as good supporting evidence of its status at that date.

Commercial maps

This is a general term for maps produced for sale to the public. They vary widely in terms of their quality and were not all produced for the same purpose. As such the weight to be given to them also varies.