



WILDLIFE AND COUNTRYSIDE ACT 1981
SECTION 53 SCHEDULE 14 APPLICATIONS TO UPGRADE PARTS OF
FOOTPATHS WN 23/40, WN 23/38 AND WN 23/12 TO BRIDLEWAYS AND
ADD SECTIONS OF BRIDLEWAY, FROM BABCARY ROAD TO THE A303,
QUEEN CAMEL

Applications: 858M (northern section, A-C) and 859M

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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 has received applications to modify the DMS by upgrading parts of footpaths WN 23/38, WN 23/40 and WN 23/12 to bridleways and adding sections of bridleway, from Babcary Road to the A303, Queen Camel. The purpose of the report is to establish what public rights, if any, exist over the route in question.

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

1.4. In determining this application, the investigating officer has examined a range of documentary evidence. The report draws particular attention to the Quarter Session records, these provide conclusive evidence that all rights, except those on foot, were stopped up from CE2 to CE4. It also provides strong evidence of the existence of higher rights than those on foot from CE2 to B.

1.5. Analysis of this evidence and all the other available evidence has indicated on the balance of probabilities that:

- section A to A3 of application route 858 (part of WN23/40) is a restricted byway.
- section A3 to X, part of the recorded footpath WN 23/40, is a restricted byway
- section X to B, part of the recorded footpath WN 23/38, is a restricted byway
- section B to C of application route 858 (part of WN 23/38) is a restricted byway
- section C to CE2 of application route 859 (part of WN 23/38) is a restricted byway
- section CE2 to CE4 of application route 859 (part of WN 23/12) is correctly recorded on the DMS as a footpath
- section CE4 to CE5 of application route 859 (part of WN 23/12) is a restricted byway

1.6. Analysis of this evidence and all the other available evidence has indicated that:

- a *no public right of way* subsists or is reasonably alleged to subsist from point A3 to B.
- a *footpath* subsists or is reasonably alleged to subsist from point CE4 to E2.
- a *restricted byway* subsists or is reasonably alleged to subsist from point CE5 to E.

1.7. The report therefore recommends that

- an Order be made, the effect of which would be to upgrade WN 23/40 and WN 23/38 to restricted byways.
- an Order be made, the effect of which would be to add a footpath from point CE4 to E2.
- an Order be made, the effect of which would be to upgrade section CE4 to CE5 to a restricted byway and to add a restricted byway from point CE5 to E.
- that section A3 to B of application 858M and section CE2 to CE4 of application 859M be refused and no Order is made.

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

2. **The Application**

2.1. On 6 April 2018 Sarah Bucks made applications under Section 53(5) and Schedule 14 of the Wildlife & Countryside Act 1981, for orders to amend the DMS by upgrading parts of footpaths WN23/12, WN 23/38 and WN 23/40 to bridleways and adding sections of bridleway, from Babcary Road to the A303, Queen Camel. The routes in question are shown on drawings number H39-2021 (Appendix 1) labelled 858 and 859. This report considers the full length of application 859 and the northern section of application 858, marked A to B to C on drawing H39-2021. The southern section of application 858, marked C to D has been dealt with in a separate report.

2.2. Their case is based on a range of documentary evidence which is discussed below and recorded in Appendix 5.

For application 859 the applicant argues that

“All the evidence produced for the application route suggests that bridleway or vehicular rights existed at the times the various pieces of evidence were created.

For many years the adjoining land was in the ownership of the Mildmay family. Many maps were produced during this period and they all showed the route in the same manner as public roads.

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

This route continues onward to South Barrow and this other application is for a bridleway. There is also there is a spur to Sparkford in that application. The evidence for these is bridleway status. Therefore the applicant requests the surveying authority to add this application route, Hazelgrove Lane, to the definitive map as a bridleway.”

For application 858 the applicant argues that “All the evidence produced for the application route suggests that bridleway rights existed at the times the various pieces of evidence were created.”

2.3. Photographs of the claimed route taken on 24 and 30 June 2021 are at Appendix 2. The route starts at point A heading south-east from the corner of Babcary Road, South Barrow (photographs 1 & 2) through three modern farm gates with integral pedestrian gates (photographs 2 & 3). The route is then bounded by a hedge, ditch and modern fence on the east side and modern fencing on the west side (photograph 4). The width measured between the two fences was 6.3 metres. As the route approaches point A2 the fenced track turns off in a westerly direction (photograph 5). The length of the route from A to A2 is approximately 340 metres.

2.4. At A2 running across the route from north-east to south-west there is a modern wooden pedestrian gate, old gate post, old metal gate with modern fencing behind and the stump of a mature tree (photographs 6 & 7). At this point the route is bounded by modern fencing on both sides and the distance between the fences was measured as 5.2 metres. The route on the ground then deviates from the claimed route and footpath WN 23/40 by taking a slightly more easterly line through the kissing gate from there it is bounded by a ditch and hedge on the east side and modern wooden fencing on the west side with a measured width of 1.5 metres between the two boundaries (photograph 8).

2.5. The line of the claimed route and footpath WN 23/40 runs through the garden of Two Oaks to the boundary with Hazlegrove School sports grounds (photograph 8). At point A3 the claimed route deviates from footpath WN 23/40

by heading diagonally across the school sport grounds to meet footpath WN 23/38 at point B (photographs 9, 10 & 12).

2.6. The claimed route continues along footpath WN 23/38 in a south-westerly direction to point C (photograph 13). At this point application 858 branches off to the south-east and that section of application 858 is dealt with in a separate report. Application 859 continues the route from point C along footpath WN 23/38 to point CE1.

2.7. From point B to point CE1 the route is bounded by trees and some fencing on the easterly side and less clearly on the westerly side with mature trees. The distance measured between fencing and mature trees varied from 9 to 14 metres. Between the two boundaries there was dense overgrowth in some sections (photographs 11, 14 & 15).

2.8. At point CE1 there is a modern wooden pedestrian gate set within a wider gap between boundaries (photograph 16). The route continues along footpath WN 23/38 in a south-westerly direction. The route is bounded by a clear tree line on the easterly side and individual mature trees on the westerly side (photographs 17, 18 & 19). The widths measured between the tree line and individual mature trees was 4.1 and 5.6 metres. Further towards point CE2 there is no visible boundary on the western side (photographs 20 & 21).

2.9. At point CE2 the route comes to the junction of footpaths WN 23/38 and WN 23/12 and application 869 and associated modification order to add a restricted byway (not confirmed). The route continues in a south-westerly direction along footpath WN 23/12 with no discernible boundary on either side, crossing the drive of Hazlegrove School and heading to a small wood (photographs 22 & 23).

2.10. At point CE3 the route enters a small wood. Across the entrance to the wood is a metal field gate and wooden stile (photograph 24). The route continues in a south-westerly direction through the wood (photograph 25). The width measured between the trees varied from 3.6 to 4.3 metres.

2.11. At point CE5 the claimed route turns south leaving the route of footpath WN 23/12 and continues through the wood to point E (photograph 26). In this section the width between the trees measured 4.8 metres. Near point E there is modern wooden fencing running across the route (photograph 27).

2.12. A land registry search was carried out in May 2021 and identified three owners of the application routes being considered in this report and one adjoining landowner. The landownership is shown at Appendix 3.

2.13. 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 1.3 of that appendix sets out the circumstances in which SCC must make an order to modify the DMS. In this case sections 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 are of particular relevance. These subsections state that the DMS should be modified where a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist and where 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. The standard of proof to be applied in cases where the route of a claimed right of way is not already shown on the Definitive Map and Statement consists of two limbs. An order should be made to modify the Definitive Map if the evidence shows that a right of way;

- a) subsists; or
- b) is reasonable to allege to subsist.

3.3. Importantly, the above paragraph describes the test for making an order. Such an order can only be confirmed (and therefore the Definitive Map modified) if the evidence meets the higher “balance of probabilities” test. This test is based on the premise that, having carefully considered the available evidence, the existence of a particular right of way is determined to be more likely than not.

3.4. 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 Definitive Map and Statement is whether, on the balance of probabilities, the higher rights subsist. In other words, is it more likely than not that those rights subsist.

3.5. This investigation is seeking to discover whether rights of way *already* exist over the application route. The recommendation offered above 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 sources examined as part of this investigation. Background information relating to each 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](#).¹

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 route have been recorded. Where other rights of way, roads or physical features have been referred to their location has been identified on the relevant appendix.

4.4. **Inclosure records**

Queen Camel Inclosure Award (1798) and Plan (1795)
Source: South West Heritage Trust
Reference: SHC Q/RDE/35
Appendix number: 7 (i)

Description and interpretation of evidence

4.4.1. Applications 858M north (A - C) and 859M (C - E) lie wholly within the Parish of Queen Camel and therefore fall within the area of the plan. The plan shows plots of land with individual reference numbers and a number of linear features. One of these linear features consists of solid parallel lines and runs

¹https://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.

from another feature labelled "to Wincanton" and follows a line broadly similar to the full length of application 859 (E-C). It then continues along a line broadly similar to section C to B of application 858. At point B there appears to be a line across the route and the solid lines change to pecked lines and curve round to Hazelgrove House.

4.4.2. Another linear feature consisting of two solid parallel lines runs from Babcary Road at point A alongside plot Tb 429 Hither Cowleaze to plot Pj 428 Barrow Corner (A1). At this point there is a line across the route and the linear feature ends. There is no linear feature shown on the plan running from A1 to B.

4.4.3. The plan key indicates that it is the coloured parcels of land that are to be exchanged. This is consistent with the award document that records the details of the arrangements only for the coloured plots. There is one coloured plot adjacent to the application route: M 415 Woolverton Hill.

4.4.4. M 415 Woolverton Hill is situated next to part of section CE2 to CE3 of application 859. The award document records "[...] M. 415 bounded on the East by Hazlegrove Lane and on the West North and South by lands of Sir Henry Mildmay". The application route, being located on the eastern side of this plot, is therefore identified in the award as Hazlegrove Lane as opposed to lands of Sir Henry Mildmay.

4.4.5. A section of the award deals with the setting out and allotting of highways and also includes the stopping up of some existing roads or footpaths. None of the routes dealt with in this award are in the vicinity of either of the application routes.

4.4.6. As the award does not directly address the routes concerned it has limited evidential weight. However, it does provide some evidence of the physical existence of routes from A to A1 and B to C to E, at that time. The lack of any linear feature from A1 to B does not necessarily mean that no route existed. It may have been a physically less significant feature or not of particular relevance to the Commissioners.

Map of manor of Queen Camel (1795) (extract)

Source: South West Heritage Trust

Reference: SHC DD/MI/20/6

Appendix number: 7 (ii)

4.4.7. The applicant has submitted an extract of this map in addition to the inclosure award map of the same date. The South West Heritage Trust have

described it as “probably the original of the inclosure map”.² There is no discernible difference between how the application route is shown on this map and how it is shown on the inclosure award map so the document does not add any additional weight to the case.

4.5. **Tithe records**

Sparkford Tithe Map (1839)
Source: South West Heritage Trust
Reference: SHC D/D/rt/M/75
Appendix number: 8(i)

Description and interpretation of evidence

4.5.1. The Tithe Map for Sparkford was not sealed by the Commissioner meaning that it is only a second-class map. It is therefore only conclusive evidence in respect of the information it contains relating to tithes.

4.5.2. The map includes unnumbered linear features coloured sienna. Some of these are labelled with the place name of where they are from or lead to. All the labelled routes and some of the other routes are modern day public roads. There are also routes coloured sienna on the map that today have no recorded public rights over them. Therefore, the sienna colouring on this map does not necessarily indicate public rights of way.

4.5.3. Neither of the application routes lie within the Parish of Sparkford but from point B to E they run adjacent to the Sparkford Parish boundary. A linear feature is shown on the map running along a line broadly similar to section B to E.

4.5.4. This document provides evidence of a possible route existing, at that time, along the line of section B to E. The map gives no explicit indication as to whether it was a public or private route. The land is outside the Sparkford Parish boundary so the route would not have affected the Sparkford tithe and could have simply been included as a reference point.

Queen Camel Tithe Map (1842) and Apportionment (1842)
Source: South West Heritage Trust
Reference: SHC D/D/rt/M/377 and SHC D/D/rt/A/377
Appendix number: 8(ii)

² [Map of Queen Camel. \(swheritage.org.uk\)](http://swheritage.org.uk)

4.5.5. The Tithe Map for Queen Camel was not sealed by the Commissioner meaning that it is only a second-class map. It is therefore only conclusive evidence in respect of the information it contains relating to tithes.

4.5.6. The map includes unnumbered linear features coloured sienna. There is no key to indicate the significance of the colouring. Whilst some of the routes coloured sienna are modern day public roads, there are also routes coloured sienna on the map that today have no recorded public rights over them. Therefore, the sienna colouring on this map does not necessarily indicate public rights of way.

4.5.7. There is a linear feature on the map, coloured sienna, that corresponds with section A to A1. At point A1 the linear feature ends with a line across. There is no linear feature shown running from point A1 to B. At point B there is a line, after which a linear feature is shown running from point B to E.

4.5.8. As there is no obvious link between the two sections, they could in fact be two separate routes connecting the Hazelgrove estate to surrounding villages. A situation that would be more in favour of private rights.

4.5.9. However, the absence of any linear feature between points A1 and B does not necessarily mean that a right of way could not have existed. The Planning Inspectorate's Consistency Guidelines advise "It is unlikely that a tithe map will show public footpaths and bridleways as their effect on the tithe payable was likely to be negligible".³ Although this does raise a question, if this was one continuous route, as to why sections A to A1 and B to E were considered to affect the tithe but A1 to B was not. One possibility is that section A1 to B differed in a way that made that part of the route productive so subject to a tithe, for example by being unfenced thereby allowing use by grazing animals.

4.5.10. The application routes run through a single apportionment, plot number 1. Plot number 1 is a considerable plot covering Hazelgrove House and a large amount of surrounding land. The whole plot is recorded in the Apportionment book simply as "houses and lands" so provides little assistance.

4.5.11. In conclusion, this document set provides evidence of possible routes existing, at that time, along sections A to A1 and B to E. The map gives no explicit indication as to whether they were public or private routes.

Queen Camel Tithe Map (1924)

³ DMO Consistency Guidelines – 2nd revision July 2013, Section 8, page 5, 8.12

Source: South West Heritage Trust
Reference: SHC D/D/rt/M/377A
Appendix number: 8(iii)

4.5.12. This tithe map is based on Ordnance Survey sheets LXXIV.2, 3, 6, 7, 11 and 15. The key indicates that "The limits of the Plan of this Altered Apportionment are defined by a GREEN edging and the numbers of the lands referred to and any necessary braces are shown in RED." Other colours that have been used on the plan but are not detailed in the key include pink shading surrounding a section of railway line and orange shading for a section of the Ilchester Road that was not shown on the earlier tithe map, and another section that appears to relate to a road alteration in the vicinity of the railway line.

4.5.13. For sections A to A1 and B to E there is a gap between the green edging and the outer field boundaries. This does imply that the routes were not included within the relevant apportionments. In contrast, from point A1 to B the green edging runs outside the outer field boundaries and all the paths shown on the OS map in this area have been marked with red bracing indicating they fall within the altered apportionment..

4.5.14. In conclusion, this document set provides evidence that routes existed between points A to A1 and B to E which were physically significant enough to be excluded from the tithe. Whilst a route may have existed between point A1 to B, it appears that it was not considered to be of a nature that would impact on the tithe payable. The map gives no explicit indication as to whether any of the routes were public or private.

South Barrow Tithe Map (1843)
Source: South West Heritage Trust
Reference: SHC D/D/rt/M/422
Appendix number: 8(iv)

4.5.15. The Tithe Map for South Barrow was not sealed by the Commissioner meaning that it is only a second-class map. It is therefore only conclusive evidence in respect of the information it contains relating to tithes.

4.5.16. The map includes numbered plots and unnumbered linear features. No colouring has been applied.

4.5.17. Whilst neither of the application routes lie within the Parish of South Barrow, section A to A2 runs adjacent to the South Barrow Parish boundary.

4.5.18. Plots within South Barrow lying adjacent to the Parish boundary from point A down to the Sparkford Parish boundary are numbered from 79 through

to 75. The map shows a linear feature running adjacent to the parish boundary from plot 79 to 78 this equates to A to A1 of application 858. At A1 a solid line is shown across the end of the linear feature and there is no linear feature shown on the Queen Camel side of plots 77 to 75. This is consistent with the Queen Camel tithe maps.

4.5.19. In conclusion, this document provides further evidence of the physical existence of a route from A to A1 in the 19th Century.

Map of the Parish of South Barrow (extract) (1843)

Source: South West Heritage Trust

Reference: SHC DD/MI C/186

Appendix number: 8(v)

4.5.20. This map is contemporary with the South Barrow tithe map. The only discernible difference between the two is that the linear features shown on this extract, including section A to A1, are coloured sienna. However, there is no key to indicate the significance of the sienna colouring. Therefore, no conclusion can be drawn on the status of the way shown solely based on the sienna colouring and the extract adds little additional weight to the case.

4.6. **Quarter Session records**

Quarter Sessions Roll 1873

Source: South West Heritage Trust

Reference: SHC Q/SR/694/ 70-88

Quarter Sessions Order Book 1874

Source: South West Heritage Trust

Reference: SHC Q/SO/25

Quarter Sessions Roll 1874

Source: South West Heritage Trust

Reference: SHC Q/SR/695/56

Appendix number: 9

Description and interpretation of evidence

4.6.1. The Quarter Sessions Roll in 1873 refers to an application to stop up divert and turn part of a highway in the parishes of Sparkford and Queen Camel. From the description of the proposals and the accompanying plan the part of the highway that was to be stopped up ran south-west from point CE2 along a

line broadly consistent with the right of way recorded on the Definitive Map as WN 23/12 to point CE4 and then south to point E2. Although the proposal sought the stopping up of this part of the highway, rights on foot ('a footway') were to be reserved. At point CE2 it was proposed that the highway would turn to continue in a south-easterly direction along a new road.

4.6.2. The Quarter Sessions plan shows the proposed alteration of roads with the proposed new road coloured pink and marked B – E. The existence of rights over the line of the proposed new road were the subject of application 869M and have been considered in a separate report. The highway proposed to be stopped up is coloured green and marked B-C-D and corresponds with application route 859 section CE2 to CE4 and with section CE4 to E2 as shown on Appendix 1.

4.6.3. A route is shown on the Quarter Sessions plan continuing passed CE4 along the line of the application route to CE5 to E. However, the green colouring does not continue along this section and so it does not form part of the proposed stopping up of the existing highway. At point E there is no obvious opening shown to the Ilchester Road and no letter on the Quarter Sessions plan marking the junction. A narrower linear feature is shown running along the line of footpath WN 23/12 from CE5 to E1. At point E1 at the junction with the Ilchester Road the letter N is marked on the plan.

4.6.4. The Quarter Sessions plan also shows a route marked A-B that corresponds with section C to CE2 of application 859 from which the proposed new road extends at the point marked B (CE2 on Appendix 1). At the other end, at a point marked A (point C on Appendix 1) the route continues in a north-easterly direction (towards B on Appendix 1) and there are the words "to South Barrow". The plan includes the statement "Distance saved from Barrow to Queen Camel and Yeovil by proposed New road 533 yards. Distance lost from Barrow to Ilchester by proposed New road ----- 263 yards." Indicating that at that time the route connected South Barrow to Queen Camel, Yeovil and Ilchester, with the original route providing a slightly more direct link to Ilchester than the proposed diversion.

4.6.5. The area covered by the plan does not extend as far as section A to B of application 858. Whilst, just after the point marked A (C on Appendix 1) the route is labelled "to South Barrow" and the village lies to the north. There is nothing on the plan to indicate the actual route followed. On the DMS there are currently two rights of way recorded at this point that lead towards South Barrow; WN25/14 which continues in a north-easterly direction, and WN 23/40 which turns to head in a north-westerly direction and follows the line of the application route from point A3 to A.

4.6.6. Other documents in the Quarter Session roll show some of the steps which were taken to process the application including:

- a. A certificate of the Justices that they have viewed the part of the Highway to be stopped up reserving a footway and the proposed new road and found that it will be more commodious to the public.
- b. The signed consent of the landowner to the new highway
- c. Notice to the Highway Board of the proposed alterations
- d. Notice to Queen Camel Waywarden
- e. Notice to Queen Camel Churchwardens
- f. Resolution of the Queen Camel vestry meeting
- g. Notices printed in the Western Gazette

4.6.7. These documents confirm that all procedural matters in advertising and reviewing the proposed alterations had been undertaken.

4.6.8. The Quarter Sessions Order book records in the Epiphany Session of 1874 the reasons why the new road will be more commodious to the public

“because the said new road is much wider than the said old road and because the said new road is a hard level and well constructed road and will at all seasons of the year be a firm and good road and open to the public and all Her Majesty’s liege subjects to use and pass along the same with and without horses, carts and carriages or otherwise to use the same as a public highway”

4.6.9. The fact that the Court considered the proposed new road would be available for the public to use with and without horses, carts and carriages indicates its status would be a public carriageway. This would imply that the remaining highway prior to being turned onto the new highway was also a public carriageway because if it were otherwise the public would not be able to reach the new highway “with and without horses, carts and carriages” to then turn on to and make use of it. This is further supported by the fact that for the part of the existing highway to be stopped up rights on foot were to be reserved. If the existing highway only had the status of a footpath, then there would have been no higher rights to stop up and a Court Order would not have been necessary.

4.6.10. The Court ordered

“that when the said proposed new highway mentioned and described in the said certificate and particularly delineated in the said plan as lying between the points marked with the letters B and E and therein colored pink shall be made and put into good condition and repair and be certified by two Justices of the Peace [...] the said part of the said old highway [...] be turned diverted and stopped up accordingly”

4.6.11. Following the Epiphany Session of 1874, the Quarter Sessions Roll includes a certificate dated April 1874 certifying that two Justices had viewed the new road and further certified that “the aforesaid new road or highway so ordered to be substituted as aforesaid is now completed and put into good condition and repair”.

4.6.12. The Quarter Sessions had statutory powers to stop up and divert highways. The records in this case show that a court order was made to stop up an existing highway, although reserving rights on foot, from point CE2 to E2 shown on the plan at Appendix 1. The higher rights were stopped up at the point at which the two Justices certified that the new road was in a good condition.

4.6.13. The Planning Inspectorate’s Consistency Guidelines advise

“Quarter Sessions records go back a long way. They may provide conclusive evidence of the stopping up or diversion of highways. [...] It should be borne in mind that Quarter Session records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters. Reliance on orders alone can be misleading and evidence of completion may be required.”⁴

4.6.14. Therefore, the weight that can be given to the evidence for the various sections of the application routes varies depending on how directly it relates to the matter the Court decided.

4.6.15. The stopping up of public rights and only reserving those on foot along the line coloured green on the plan was a matter directly decided by the Court. Therefore, for section CE2 to CE4 the Quarter Sessions records provides conclusive evidence of public rights on foot only from April 1874. This is consistent with the DMS. It also provides conclusive evidence of public rights on foot outside of the application route and footpath WN 23/12 from point CE4 to E2, shown on Appendix 1. If those rights have not subsequently been extinguished or diverted, then they will still legally exist today.

4.6.16. The rights over the part of the highway not being stopped up already existed, so were not a matter to be decided by the Court. However, both the line and status of the existing highway would be relevant to the Court in making its decision with regards to the proposed diversion. The evidence presented to the Court and the Court’s ultimate decision are strong evidence of both a highway existing along section CE2 to C of application 859 to South Barrow and its status, at the time, as a public carriageway. If those rights have not

⁴ Paragraph 6.3 of the Planning Inspectorate (April 2016) Definitive Map Orders: Consistency Guidelines

subsequently been extinguished or diverted, then they will still legally exist today.

4.6.17. However, sections 66 and 67 of the Natural Environment and Rural Communities Act 2006 (NERC) are of relevance. NERC extinguished rights for mechanically propelled vehicles (MPVs) over any routes that were recorded on the Definitive Map as footpaths, bridleways or restricted byways and over any routes that were not recorded on the Definitive Map, or the list of highways maintained at public expense. There are a few exceptions to the general rule outlined above, none of which appear to apply in this case. Therefore, the highest level of rights that may exist today, along section CE2 to C, are those of a restricted byway.

4.6.18. Less relevant to the decision was the wider setting of the highway under consideration. Therefore, although a feature is shown on the plan corresponding to section CE4 to E of application 859, the weight that can be given to the evidence is weak and is evidence of the possible existence of a physical route rather than its status.

4.7. **Ordnance Survey maps**

1811-17 OS 'old series' map
Cassini Timeline reprint (extract only)
Original scale: 1:63,360/one inch to the mile
Appendix 10 (i)

4.7.1. Although not the original version of the OS's 'old series' maps, the Cassini Timeline reprints are reliable copies, re-projected and enlarged to match modern 1:50,000 mapping.

4.7.2. There are linear features on the map that are broadly consistent with sections A to approximately A1 and approximately B to E of the application routes.

4.7.3. However, the map differs from the route claimed for section A1 to B. On the map, at approximately A1, instead of continuing in a south-easterly direction the linear feature turns to head south-westerly towards "Hazlegrove". A linear feature then heads from "Hazlegrove" to approximately point B.

1884 OS Boundary Sketch Map (extract)
Source: The National Archives

Reference: OS 27/4713
Appendix 10 (ii)

4.7.4. The boundary sketch map and remark books are of particular relevance as sections A to A2 and B to E of the application routes lie along the Queen Camel Parish boundary. A linear feature is shown on the map that corresponds to section A to A2. Another linear feature is shown on the map that corresponds to section CE2 to B. This feature differs from the first in that it is represented by a dashed rather than solid line and is labelled "Private Road". At point B the feature is shown as turning to head north-west but then ends.

4.7.5. There is no feature shown connecting point B to A2. This map is concerned with the Parish boundary, therefore features that were set off from the boundary may not have been included.

4.7.6. A solid line linear feature is shown continuing from point CE1 to CE2 where it turns to head in a south-easterly direction. No linear feature is shown that corresponds to section CE2 to approximately CE3 of the application route. There is a linear feature shown running from approximately CE3 to E that also includes a turning at point CE4 heading in the direction of E2.

1883 OS Boundary Remark Books (extracts)
Source: The National Archives
Reference: OS 26/9226 & OS 26/9397
Appendix 10 (iii)

4.7.7. As would be expected, what is shown in the Boundary Remark Books is consistent with the Boundary Sketch Map. However, the remark books do contain some additional description of the physical features near to the boundary. For the section of route from A2 towards A1 are the words "New Paling" confirming that this section of route was fenced at that time.

1887 OS County Series First Edition Map
Sheet Nos: LXXIV.3 & 7
Survey Date: 1885
Scale: 1:2500
Appendix 10 (iv)

4.7.8. On sheet LXXIV.3 at point A, at the junction of application route 858 with Babcary Road there is a pecked line across the start of the route indicating a feature which either did not obstruct pedestrians or which was indefinite or

surveyed to a lower standard than usual⁵. Leading from Babcary Road the route is shown as parallel solid lines.

4.7.9. At point A1 the width of the route reduces but continues as parallel solid lines. At point A2 it meets a solid line indicating a physical feature obstructing the route, for example, a gate⁶. Although today it is more typical to find gates and other limitations on footpaths, bridleways and / or private roads, in the 19th century it was not uncommon for minor public roads to be gated.

4.7.10. From A2 parallel pecked lines head in a south-easterly direction then cross a wider set of parallel pecked lines coming from the direction of Hazelgrove House. The pecked lines continue in a south-easterly direction to the edge of the sheet where the letters 'F.P.' are marked. "[T]he object of... F. P. being that the public may not mistake them for roads traversable by horses or wheeled traffic"⁷. The wider set of pecked lines meets the edge of the sheet further to the east where the letters 'B.R.' are marked. "Bridle roads were regarded as passable on horseback. From 1884 they were shown as 'B. R.'"⁸

4.7.11. Continuing on sheet LXXIV.7 the pecked lines marked F.P. head to point C and the pecked lines marked B.R. head to point B where they are joined by a narrower set of pecked lines that have come from the north-east on the other side of the South Barrow Parish boundary and labelled F.P. at the north edge of the sheet. There is no line shown running directly from point A2 to B.

4.7.12. Although after point A2 two routes intersect, the map indicates that they are two physically different routes, with the less physically significant route running from A2 to point C. The other route running from Hazelgrove House to point B. The route from Hazelgrove House is consistent with the line of a metalled route shown on the later 1898 OS Revised New Series Map. As this route originates from a private residence it is more likely to have been private and therefore the landowner would have had a greater interest in maintaining it. It also corresponds with the section of route shown on the Boundary Remark Book labelled "Private Road".

4.7.13. From point B to CE1 the route is shown as a wide set of parallel pecked lines. At point CE1 there is a solid line indicating a physical feature obstructing the route, for example, a gate. From point CE1 to CE2 the route is shown

⁵ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, second edition* (London: Charles Close Society, 2005), p. 97

⁶ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, third edition* (London: Charles Close Society, 2013), p. 117.

⁷ *Ibid.*, p. 96

⁸ *Ibid.*, p. 96

coloured sienna. The sienna colouring was used to indicate a metalled surface⁹. This section of the route is also set between solid lines with a thickened easternmost casing line with the words "Hazelgrove Lane" underneath.

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"¹⁰. 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. In the late 19th century 'carriage drive' appears to have meant 'private vehicular route' to the OS¹¹. This would mean that some public and some private roads would be shown on OS maps with a shaded casing line.

4.7.16. The Quarter Sessions records describe the road between CE2 and CE3 as a private drive to Hazelgrove House. It is coloured sienna indicating it is metalled. Comparing the shading of the casing line of the metalled carriage drive with the shading of the casing line of Hazelgrove Lane there is a marked difference. For Hazelgrove Lane there is a clearly visible difference in thickness whereas for the carriage drive it is difficult to discern any difference in thickness between the casing lines.

4.7.17. In addition, each of the other routes with a clearly shaded casing line on this map sheet, are shown as public highways on modern road records. This would suggest that they were given a shaded casing line on account of them being considered well maintained public roads as opposed to metalled carriage drives. Therefore, it is likely that section CE1 to CE2 of the application route is shown with a shaded casing line for similar reasons. This conclusion is entirely consistent with the strong evidence of public vehicular rights over this section provided by the Quarter Sessions evidence.

4.7.18. At point CE2, where the Quarter Sessions record that the highway was to be stopped up but reserving a footpath, the sienna colouring and thickened casing line ends. The application route crosses the boundary lines of OS plot 100 and continues in a south-westerly direction as a narrow set of parallel pecked lines towards CE4 consistent with the route being a footpath. At CE4 the

⁹ Hodson, Y., 'Roads on OS 1:2500 plans 1884 – 1912' in Rights of Way Law Review, July 1999, Section 9.3, p110

¹⁰ DMO Consistency Guidelines, 6th revision May 2015 Section 12.26, page 8

¹¹ Hodson, Y., 'Roads on OS 1:2500 plans 1884 – 1912' in Rights of Way Law Review, July 1999, Section 9.3, p.109

pecked lines are set within solid lines and turn to head south to E2 in accordance with the route of the highway to be stopped up shown on the plan presented to the Quarter Sessions (see Appendix 9). Two other features are also shown that lead from point CE4 to points E and E1 respectively. This is also consistent with the plan presented to the Quarter sessions.

4.7.19. A smaller scale (1:10,560) map was also published based on the 1885 survey. There is no additional information shown on this map compared to the larger scale map that assists in determining the status of the route (see Appendix 10 (ix)).

Map of Queen Camel (1889)

Source: South West Heritage Trust (copy supplied by the applicant, extract only)

Reference: SHC DD/BT/ 5/18

Appendix 10(v)

4.7.20. The applicant believes the map to date from 1885 and appears to be a draft of the later OS map. The South West Heritage Trust have it dated 1889 and recorded as a tracing of the OS map¹². A section of the map showing the date is included in the appendix. The map covers parts of application routes 858 and 859. There is no discernible difference between how these parts of the routes are shown on this map and how they are shown on the 1887 OS map, therefore the document does not add any additional weight to the case.

1898 OS Revised New Series Map

Sheet 296

Survey Date: 1884-85; Revised: 1897

Scale: 1:63,360 (one inch to the mile)

Appendix 10 (vi)

4.7.21. Although based on the same survey and published at a smaller scale than the first edition county series map, the revised new series map does include more detail regarding the character of the ways shown on it.

4.7.22. Sections A to A2, CE1 to CE2, and CE3 to E, are depicted as fenced, metalled third class roads. The OS used the third class road symbols to record both public and private roads.¹³ However, the thickened casing line on the earlier OS map would indicate that section CE1 to CE2, at least, was public. From point CE1 to B the route is shown as unfenced and then from point B deviates

¹² [Map of Queen Camel. \(swheritage.org.uk\)](http://swheritage.org.uk)

¹³ Y. Hodson, *Popular Maps: The Ordnance Survey Popular Edition One-Inch Map of England and Wales 1919-1926*, (London: Charles Close Society, 1999), p. 132.

from the application route by heading to Hazelgrove House, a destination which is more indicative of a private road.

4.7.23. There are no roads or footpaths shown for sections A2 to B, CE2 to CE3, or CE4 to E2. If routes did exist, at that time, along such lines this map would suggest that they were not considered to be of sufficient significance to warrant inclusion.

1903 OS County Series Second Edition Map
Sheet Nos: LXXIV.3 & 7
Survey Date: 1885; Revised: 1901
Scale: 1:2500
Appendix 10(vii)

4.7.24. The application routes are shown on this map in a broadly similar way to the first edition map. However, there are a number of notable differences that could indicate some alterations in the physical nature of the routes.

4.7.25. At point A1 a solid line is now shown across the route, possibly indicating the introduction of a gate at this point. From A1 to A2 the western most solid line is now shown as a pecked line indicating that this section of route may no longer be fenced. The letters B.R. have been added indicating it was passable on horseback. However, the route from A2 to C is still marked F.P.

4.7.26. The solid line across the route at point CE1 and the westernmost solid lines for sections CE1 to CE2 and CE4 to E2 are no longer present, indicating these sections are no longer fenced. Section CE2 to CE3 is now marked F.P., consistent with the Quarter Sessions records.

4.7.27. A smaller scale (1:10,560) map was also published based on the 1901 revision. Compared to the larger scale map there are fewer details. The B.R. annotation at A2 and F.P. annotations between CE2 to CE3 and CE5 to E1 are absent but otherwise there are no discernible differences in how the route is shown (see Appendix 10 (x)).

1919 OS 'popular edition' Map
Cassini Timeline reprint
Original scale: 1:63360 (one inch to the mile)
Appendix 10 (viii)

4.7.28. 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.

4.7.29. A linear feature shown on this map corresponds to section A to A1 of the application route. Another linear feature appears to be shown that corresponds to section B to CE2, but this is less clear, possibly due to a dotted line being used rather than a solid line for this section. The key indicates that "Unfenced Roads are shewn by dotted lines". At point B the feature is shown leading towards Hazelgrove House.

4.7.30. Both features are uncoloured. 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.

4.7.31. There are no discernible roads or footpaths shown linking point A1 to B or from CE2 to E. If routes did exist, at that time, along such lines, this map would suggest that they were not considered to be of sufficient significance to warrant inclusion.

Interpretation of evidence

4.7.32. The information contained within the OS maps is consistent with the Quarter Sessions records. In that, prior to the date of the stopping up and diversion order, a physically significant route is shown running all the way from B to E. After the stopping up (but reserving rights on foot) and diversion of the route at point CE2, the route towards E is then either absent or shown as less physically significant and on the 1903 County Series Second Edition Map labelled as a footpath.

4.7.33. What is less clear from the OS maps is the line of a route from point B to, as indicated on the Quarter Sessions plan, "South Barrow". The 'old series' map indicates a route that heads between the buildings of Hazelgrove before turning towards point A1 and continuing to point A. The later OS maps show a route from B to Hazelgrove House but no connection from Hazelgrove House to A2 or A1, although a route from A2 to A1 to A is shown. The boundary remark and sketch books provide little assistance as they do not extend very far from the boundary line being principally concerned with the boundary itself.

4.7.34. The larger scale maps indicate a route marked F.P. running from C to A2. However, this is only indicative of the physical characteristic of a route on the ground and not its legal status. This interpretation is supported by case law which states that "If the proper rule applicable to Ordnance maps is to be applied, it seems to me that those 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".¹⁴ In fact, since 1888 OS maps have carried the statement "The representation on this map of a road, track or footpath is no evidence of the existence of a right of way".¹⁵

4.8. **OS Object Name Book**

OS Object Name Book (1901)
Source: National Archives (extract only)
Reference number: OS 35/6400
Appendix number: 11

Description and interpretation of evidence

4.8.1. The name Hazelgrove Lane (approximately CE2 to CE1) is listed in the object names book in the column "Various modes of Spelling the same Names". The word "obsolete" is written in red in brackets underneath. The "List of Names as written on the Plan" column is blank. In the remarks column it states "West side of lane demolished".

4.8.2. The details above are consistent with the differences between how the lane is shown on the 1887 OS map and how it appears on the 1903 OS map. The name Hazelgrove Lane is no longer written on the 1903 map and the solid line to the westerly side is no longer present.

4.8.3. However, if higher public rights than those on foot did exist along this route the falling out of use of the name 'Hazelgrove Lane' would not extinguish those rights nor would the removal of a hedge or fence particularly as other parts of the route were previously shown as unfenced. It is possible that the lane became less well used by carriages and on horseback following the diversion of the route for this type of traffic. The diversion, whilst shortening the distance from Barrow to Queen Camel and Yeovil, increased the distance from Barrow to Ilchester and added a sharp turn (see Appendix 9). Even if the diversion did result in a reduction in use or the route fell out of favour for other reasons, public rights cannot be extinguished simply through a lack of use.

4.9. **1910 Finance Act**

¹⁴ *Moser v Ambleside Urban District Council* (1925) 89 JP 118, p. 119.

¹⁵ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, third edition* (London: Charles Close Society, 2013), p. 109.

Working Plans and Valuation Book
Source: South West Heritage Trust
Reference: SHC DD/IR/OS/74/7&3 and SHC DD/IR/B/27/1
Appendix number: 12

Record Plans and Field Books
Source: National Archives (extracts only)
Reference: IR 128/9/905 & 909 and IR 58/5381 & 5383
Appendix number: 12

Description and interpretation of evidence

4.9.1. The working plans for the area show how the land is divided into hereditaments. The application routes run through hereditaments numbered 76, 54 (which includes 226), and 86, except for section A to A1 which is excluded from any hereditament.

4.9.2. Where a linear way is excluded from surrounding hereditaments, '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'.¹⁶ However, this section was not shown as excluded on the later, more authoritative, record plan

4.9.3. There are no deductions recorded for rights of way in the valuation book for any of the hereditaments through which the application routes run. However, this is not the case for the later field books.

4.9.4. The record plans differ from the working plans in that section A to A1 is no longer excluded from hereditament 76. However, the extract from the field book for hereditament 76 describes the area previously excluded as a "right of way". There is no indication in the extract as to the level of rights.

4.9.5. The extract from the field book for hereditament 54 includes a deduction for "public rights of way or user", which in a separate entry are described as foot paths. Hereditament 54 is a particularly large hereditament that covers section A2 to CE3 as well as a large area of land to the north of the application route. The extract gives no indication as to the route of the right of way that the deduction relates to.

¹⁶ DMO Consistency Guidelines 5th revision July 2013 Section 11 page 3

4.9.6. Hereditament number 86 has been used for a number of wooded plots. Application 859, section CE3 to E runs through one such plot. The other wooded plots with hereditament number 86 are outside the application routes.

4.9.7. The extract from the field book for hereditament 86 describes the hereditament as "Woods. Plantations and Road Wastes". The extract gives no further details as to the status or location of the road wastes. However, the plot that application 859 section CE3 to E runs through contains sections of the former private carriage drive to Hazelgrove House and the former public highway that was stopped up reserving a footpath along its length. It is possible, but by no means certain, that these are the 'road wastes' referred to.

4.9.8. Overall, this document set provides some evidence of the existence of public rights of way within plots of land through which the application routes run. This is consistent with what is already recorded on the DMS and there is little evidence within this document set to indicate that the public rights of way are of a higher status than currently recorded. However, that does not mean that higher rights could not exist. It may simply be that the landowners did not want to acknowledge the full extent of rights over their land, at that time.

4.10. **Highway authority records**

1929 Handover Map and Schedule, 1930 Road Records, 1950 Road Records, Modern Road Records

Source: SCC

Appendix number: 13

Interpretation of evidence

4.10.1. The application routes are not recorded on any of the above Road Records.

4.10.2. The Road Records are good evidence of the status of routes which are shown however it would be unsafe to hold that the fact that a road does not appear to have been accepted by the highway authority necessarily suggests that it cannot have been a highway. The road record documents did not typically record public bridleways or footpaths. Thus, the omission of a route does not necessarily indicate that it was not a highway at the time the documents were produced.

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

Survey Map

Source: SCC

Appendix number: 14(i)

4.11.1. The application routes lie within the Parish of Queen Camel. The Queen Camel survey map is marked with a red line that follows the line of the parish boundary. Section B to E1 is shown on the survey map as black lines numbered 38 and 12. All routes numbered on this parish survey map are shown as black lines so no inference as to the type of right of way can be drawn from the colouring.

4.11.2. Two red circles are shown at point CE2. There is no key to indicate what these represent but there are other red circles shown on this parish survey map, mainly at points where routes intersect. Therefore, a likely explanation is that they simply denote the point where paths 12 and 38 meet.

4.11.3. There is no black line covering section A to B and from point B instead of turning to head north-west the black line continues in a north-easterly direction to the South Barrow parish boundary. At point CE5 instead of following the line of the application route to E the black line continues to point E1.

4.11.4. On the Sparkford parish survey map there is no numbered route shown that corresponds with CE4 to E2, the final section of the route of the rights reserved on foot, as shown on the Quarter Sessions plan.

Survey Cards (1950-51)

Source: SCC

Appendix number: 14(ii)

4.11.5. All the survey cards have the 'kind of path' written as 'F.P.'. The survey card for path 12 (E1 to CE2) describes four kissing gates at certain points along the route although for two it is noted that the actual gates are missing. One section is described as joining a lightly metalled C.R.B. even though this has a kissing gate across it. However, this description is consistent with the Quarter Sessions record of a public highway that has been stopped up but reserving rights on foot. For path 38 (CE2 to north-east of B) there is a reference to "stiles in good condition" but there is no indication on that survey card or the map as to where these stiles were. However, it appears that the survey card for path 12 originally described both paths 12 and 38 then the path 38 description was

crossed through. What appears to be the path 38 description on this card refers to a stile being at the point where the path passes back into the parish of Sparkford (possibly point C) and may therefore have been in the Parish boundary rather than across the route.

4.11.6. Therefore, at the time of the parish survey, it would appear that section E1 to CE2 was only accessible on foot. The accessibility, at that time, of section CE2 to B is less clear.

Draft Map (1956)
Source: SCC
Appendix number: 14 (iii)

4.11.7. Section B to E1 is shown on the draft map as a purple line indicating a public footpath. There is no purple line covering section A to B and from point B instead of turning to head north-west the purple line continues in a north-easterly direction to the South Barrow parish boundary. There are no purple lines covering sections CE5 to E (part of the application route) nor CE4 to E2 (part of the route shown on the Quarter Sessions plan).

Summary of Objections to the Draft map
Source: SCC
Appendix number: 14(iv)

4.11.8. There is a record of an objection that relates to the omission of a route between point C and A that would form a continuation of 27/16 and 27/15. The determination is to "Add FP. 23/40".

Draft Modification Map (1968)
Source: SCC
Appendix number: 14(v)

4.11.9. A purple line labelled '23/40' is shown running from C heading north westerly following the line of the route on the underlying OS map marked F.P. to point A3 to A. There is a corresponding undated parish survey card describing the route starting at point C going north westerly to A.

Summary of Counter Objections to the Draft Modification Map
Source: SCC
Appendix number: 14(vi)

4.11.10. There is a record of a counter objection to the alignment of path 23/40 with the observations of the clerk as “no evidence to the contrary”. The determination is to amend the route

Provisional Map (1970)
Source: SCC
Appendix number: 14(vii)

4.11.11. The routes are shown in the same way as on the Draft Map except for the addition of path 23/40. The alignment of path 23/40 has been altered from that shown on the Draft Modification Map. It still runs from point A to A3 but instead of following the route on the underlying OS map marked F.P. to point C, it follows the South Barrow parish boundary to meet path 23/38 at point X.

Definitive Map and Statement
Source: SCC
Appendix number: 14(viii)

4.11.12. All routes are shown in the same way as on the Provisional Map. They are all classified in the Statement as footpaths and shown on the Definitive Map as purple lines.

4.11.13. There is a difference in how the route of path 40 is described in the Statement and how it appears on the Map. The route described in the Statement is from “Junction of footpaths 27/16 and 27/15 at Parish boundary [C] north-westerly to County road at ‘122’. [A]” as shown on the Draft Modification Map. The route description does not appear to have been amended to reflect the changed alignment shown on the Provisional and Definitive maps, with the route heading north-westerly to A from the junction of footpaths WN 23/38 and WN 25/14.

4.11.14. As the right of way is now under review, neither the Map nor the Statement have precedence with regard to the weight to be attached to the information on each.¹⁷ Therefore, the actual alignment needs to be determined by reference to the evidence presented.

Interpretation of evidence

4.11.15. Sections A to A3 and B to CE5 of the application routes have been recorded on the DMS as public footpaths. There is no right of way recorded on

¹⁷ R (Norfolk CC) v Secretary of State for Environment, Food and Rural Affairs (2005)

the DMS that corresponds with section CE5 to E of the application route or CE4 to E2 as shown on the Quarter Sessions records.

4.11.16. The Map and Statement provide conclusive evidence of what it shows. However, it is not conclusive as to what it omits. Therefore, the fact that a section is not shown at all or is only shown as a footpath does not preclude the existence of higher rights.

4.11.17. The DMS provides conclusive evidence of a public right of way on foot existing between point A3 and WN 23/38. However, the Map and Statement are inconsistent as to the exact alignment of the route and neither of those alignments corresponds with that set out in the application (A3 to B).

4.11.18. In reviewing the DMS preparation records it can be seen that the Statement records the route as set out on the Draft Modification Map and survey card. Following a counter objection, the route was amended to that shown on the Provisional Map and subsequent Definitive Map. Therefore, it appears that the Authority did not update the Statement to reflect the changed alignment. This weighs the evidence towards the Map, as opposed to the Statement, as being the correct record of the alignment.

4.12. **Turnpike Records**

Ilchester Turnpike Maps (1826)
Source: South West Heritage Trust
Reference: SHC D/T/ilch/1 1826
Appendix number: 15

Description and interpretation of evidence

4.12.1. The Queen Camel section of the A303 roughly follows the line of a former turnpike road that is included within the Ilchester turnpike maps. The map set includes a small scale route map then a series of more detailed large scale maps.

4.12.2. The small scale map shows linear features broadly similar to sections A to A2 and B to E of the application routes. At point A1, in addition to the route to A2, a route is shown heading towards Hazelgrove House. At point B, a linear feature with dashed lines also continues towards Hazelgrove House.

4.12.3. The large scale map is more focussed on the turnpike road itself but does show features that adjoin the road. At point E, a break is shown in the turnpike boundary and a linear feature is shown running north. The map key indicates

the route, at this point, is fenced and there is no indication of a gate across the route.

4.12.4. These documents provide evidence of the physical existence of sections A to A2 and B to E, at that time. However, they do not provide direct evidence of status. The primary interest of these documents is the turnpike road itself and surrounding routes may have only be shown to provide points of reference in relation to the turnpike route.

4.12.5. There is no route recorded that directly connects point A2 to B, although that does not mean that one did not exist. It is possible, it was just not considered to be relevant in relation to the turnpike road.

4.13. **Commercial Maps**

Greenwoods 1822 (extract)
Appendix number: 16

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

4.13.2. In this case the map shows sections broadly similar to A to A1 and B to E 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".¹⁸ However, in that case the judge was considering a map produced 55 years earlier than Greenwood's and by a different cartographer. Therefore, while consideration should be given to this legal precedent, it is important to consider the term "cross road" in the context of any individual map before drawing any inferences.¹⁹

4.13.3. While the majority of cross roads shown on Greenwood's maps are now recognised as public vehicular roads, there are many which are not. (see Appendix 15).

¹⁸ *Hollins v Oldham* (1995)

¹⁹ *Definitive Map Orders: Consistency Guidelines, Third revision* (2013), 2.26.

4.13.4. 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.

4.13.5. 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".²⁰ 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.²¹

4.13.6. It seems as though Greenwood's either did not consider all "cross roads" to be public vehicular routes, or that he did not make very careful checks about the public status of the routes they recorded. In this particular case, section A to A1 is shown as a cul-de-sac and section E to B is shown as terminating at Hazelgrove House (a private residence), both situations being more indicative of private rather than public rights. In the circumstances this map is only of very limited weight and confirms the physical existence of parts of the application routes in 1822.

4.14. **Other Sources**

Manorial Maps (1827-48)

Source: South West Heritage Trust

Appendix number: 17(i-v)

4.14.1. Five other early 19th Century maps were submitted by the applicant in support of their applications. Four of these maps appear to depict the extent of the Mildmay estate lying mainly within the Parish of Queen Camel and it is possible that one is simply a copy of the other. The other map is contemporary with and broadly similar to the South Barrow tithe map.

4.14.2. All the maps include linear features that correspond with section A to A1 and those covering the Mildmay estate all include a linear feature that corresponds to section B to E.

4.14.3. This depiction of linear features is the same as other maps of that period considered above, for example; the Queen Camel Inclosure Map (1795), and the Queen Camel Tithe Map (1842).

²⁰ *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77.

²¹ *Fortune & Ors v Wiltshire Council & ANR* [2012] EWCA Civ 334.

4.14.4. All four maps covering the Mildmay estate depict a linear feature running westerly from point B to Hazelgrove House along a line broadly similar to that shown on the Queen Camel Inclosure Map (1795). In addition, the 1827 Manorial map of Queen Camel (Appendix 17 (i)) and 1848 map of Queen Camel (Appendix 17 (v)) give some indication of another linear feature also running from point B but to A2 then A1. Comparing these features to the later 1887 OS map it can be seen that by that time there is no longer a route shown on the ground running westerly from point B to Hazelgrove House instead it follows a line broadly similar to that shown running from point B to A2 but just before it reaches A2 it then turns west to join a path running behind Hazelgrove House.

4.14.5. The two estate maps above indicate that a linear feature may have run directly from point A2 to A1, at that time, whereas the later 1887 OS map shows the linear feature as fenced and following the line of the field boundary from point A2 to A1. The 1883 OS boundary remark book notes the existence of "New Paling" between points A2 and A1 alongside the field boundary and this would likely have dictated the line then followed.

4.14.6. The manorial maps corroborate the physical features A-A1 and B to E being present at that time, and two of them also provide some indication as to how the linear features in the vicinity of Hazelgrove House may have changed over time.

Exchange of lands (extract) (1873)

Source: National Archives

Reference: MAF 11 /142/4306

Appendix number: 17 (v)

4.14.7. The extract covers from point CE4 to north-east of CE2 of the application route. The date and location of the exchange ties in with the construction of a new road set out in the Quarter Sessions application to stop up divert and turn part of a highway (see section 4.6 above).

4.14.8. Consistent with the Quarter Sessions plan the north-east end of the route is labelled "to South Barrow". Other routes shown on this extract are similarly labelled with their place of origin or destination and these are along lines broadly similar to modern public roads. In contrast, the private carriage drive to Hazelgrove House has no direction label.

4.14.7. The primary purpose of this document is to record an exchange of lands, not the status of surrounding highways. Therefore, whilst supportive of public rights along the application route to South Barrow it has limited weight.

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 June 2021. The 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. The remainder of this section of the report summarises the responses received to that consultation. Landowners are identified by letter (i.e. Landowner A, Landowner B etc). These letters correspond with the references on the landownership plan at Appendix 3. Where responses were received from individual members of the public (as opposed to organisations) who are not landowners, they have been referred to as 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	Had no objection to upgrading the footpaths to bridleways but expressed concerns regarding the alignment of section A2 to B as this would impact on the school playing surfaces, disrupt the school's activities and cause major safeguarding concerns. They strongly wish to retain the current alignment that exists on the ground and follows the field boundaries as shown on the modern OS map. They submitted conveyance documents from their archives, for information, and a section of the modern OS map showing the current alignment of the footpath (see Appendix 18).
Landowner B	They advised that the gate at point A has been kept locked for the past 27 years and remains locked to stop cattle and sheep being stolen. The landowner also commented that they experience enough problems with the route being a footpath with walkers parking and blocking the farm entrance. Also in the past, a barn has been burnt down. They consider it totally unacceptable to change the footpaths to bridleways.
Historic England	Their understanding based on 1st edition Ordnance Survey maps (1873-1888) is that a bridleway ran to the north of Hazelgrove House, across the northern end of the park to

	<p>join the former Hazelgrove Lane running north-south along the east perimeter of the park. The lane terminated just to the north of the park's south drive, spurring east to join Sparkford High Street. This has now been severed by the A303. The route that continues south west across the park, from where the lane terminates, is a footpath.</p>
Local Member	<p>Considers there is evidence that the footpaths on the Mildmay Estate, Queen Camel were private rights of way. Highlighted the 1795 map of Queen Camel as not indicating that the application routes were bridleways. They also drew attention to Historic England's website making mention of the Mildmay family visiting the kennels.</p>
Queen Camel Parish Council	<p>They noted that the application falls within the boundary of land owned by the Mildmay family. They asserted that "it is known that [the Mildmay family] did not permit public access to the land, except for the usual purposes of working and running the estate, (in other words with their express permission) and it seems inconceivable to local people that they would permit people to cross their land by horse as a matter of right by the routes suggested".</p> <p>There was local recollection that the Bridle Road ran from the kennels, up Hazelgrove Lane and then curved round to the stables at the back of the house (crossing the footpath). Their interpretation of the 1885 OS maps is that a bridle road runs from Hazelgrove House round to point B and the routes running from point A2 to C and CE2 to E are shown as footpaths. The bridle road continues along Hazelgrove Lane and at the end of the lane (CE2) appears to turn 90 degrees. At the junction with the road a second 90 degree turn would then lead along the side of the road to the estate's kennels. They suggest the purpose of such a route would be to keep the formal driveway to the house free of animal traffic.</p> <p>A redacted version of their full report is included at Appendix 18.</p>
Respondent 1	<p>They assert that thickened casing lines on historical OS maps are used to indicate metalled surfaces and that the presence of gates indicates an occupation (private) road. They are of the view that the track continuing from point B annotated B.R. is evidence of horse use associated with the Mansion House due to its ultimate destination.</p> <p>They draw attention to the route from B to Hazelgrove House being annotated F.P. on the 1903 OS map.</p> <p>Due to the 1903 OS map showing Hazelgrove Lane as no</p>

	<p>longer being enclosed and the OS object names book recording the name of the lane as obsolete (extract provided), they conclude that the lane was subsumed by the adjacent plot and that this would not have happened without challenge if the lane had been a public bridleway. A redacted version of their full report is included at Appendix 18.</p>
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5.4. This investigation is concerned with correctly recording public rights, which may be higher than those currently recorded. Concerns about suitability and desirability of the application route, while understandable, cannot be taken into account under the current legislation. Though it is important to acknowledge the various concerns that have been raised, they do not have a bearing on the outcome of this investigation.

5.5. The alignment of paths shown on the conveyance documents submitted by Landowner A are likely to be based on an original OS map as they bear a strong resemblance to the 1903 OS map. Therefore, they provide little in the way of additional evidence.

5.6. Historic England's description of the route is broadly consistent with the Quarter Session records.

5.7. The local member draws attention to a 1795 map of Queen Camel. The 1795 map of Queen Camel has been considered as part of the Inclosure award records in section 4.4.

5.8. The Parish Council claim that the Mildmay family did not permit public access to their land although it is not clear from their submission on what basis this claim is made. Even if the Mildmay family were not disposed to creating any new public rights over their land, this would not have affected those public rights that already existed. The Quarter Sessions records considered in section 4.6 are also evidence of the Mildmay family both acknowledging public rights of way existing over their land and creating a new public right of way. Even where they applied for a section of highway to be stopped up, they did not apply to stop up rights completely as they proposed to still maintain public rights on foot over their land.

5.9. The Parish Council draws attention to the information set out in historical OS maps. The historical OS maps are considered in section 4.7.

5.10. Both the Local Member and the Parish Council make mention of the Mildmay estate's access to kennels. The 1887 OS map does indicate the

existence of kennels within the Mildmay estate that lie south of point CE2, close to Sparkford High Street. However, because the estate may have made use of a route does not automatically mean that only private rights exist over it. In fact, the route described by the Parish Council does not lead directly to the kennels and includes a section where there is conclusive evidence from the Quarter Sessions records that it was a public carriageway.

5.11. Respondent 1 also draws attention to the information set out in historical OS maps, in particular their interpretation of the significance of thickened casing lines, gates across routes and the F.P. annotation. All these aspects are discussed in section 4.7 above.

5.12. Respondent 1 also makes mention of the description of Hazelgrove Lane in the OS Object Names Book. The OS Object Names Book has been considered in section 4.8 above.

6. Discussion of the evidence

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

6.2. The key document set in this case is the Quarter Sessions records of 1873/4. The Quarter Sessions were law courts who had powers to create, divert and stop up highways.

6.3. The Quarter Sessions records provide conclusive evidence that the higher public rights along section CE2 to E2 were stopped up, but with the public rights on foot remaining. No evidence has been found that those rights on foot have since been stopped up, therefore they will still exist today. For section CE2 to CE4 rights on foot are already recorded on the DMS. For section CE4 to E2 no rights are currently recorded and these must be added to the DMS.

6.4. The application route continues from point CE4 to E. All the historical evidence, including from the Inclosure, Turnpike, Tithe and Ordnance Survey records and the Greenwoods and Manorial maps, points towards CE4 to E being the original continuation of the route B to CE4. Furthermore, section CE4 to E is consistently shown on each document in the same manner as section B to CE4. It appears to have been the only continuation of B-CE4 prior to CE4-E2 coming into existence (which based on the tithe record and manorial maps may have been between 1842 and 1848). The 1873 Quarter Sessions records provide

strong evidence that B to CE4 was a public carriageway prior to it being stopped up by the court. It therefore follows that CE4 to E would also have been a public carriageway connecting the route to the road network.

6.5. At some point between the 1842 Queen Camel tithe map and the 1848 manorial map (Appendix 17 (v)) an additional route was created running from CE4 to join the road network further east at E2. The Quarter Sessions records indicate that by 1873 public rights existed over this additional route or there would have been no need for the landowner to apply to the court to stop them up reserving rights on foot only. However, the creation of public rights over an alternative route (CE4-E2 in this case) would not in itself stop up any public rights existing over the original route as highway rights can only be extinguished through due legal process.

6.6. Section CE4 to E was omitted from the 1873 application to the Quarter Sessions for a stopping up order. A search of the County Council's own records and of those held by the South West Heritage Trust, where the record of a legal stopping-up would be expected to be found, has produced nothing to suggest that a stopping-up of section CE4 to E took place either before or after 1873. However, the Natural Environment and Rural Communities Act 2006 will have had the effect of extinguishing mechanically propelled vehicular rights over the route while leaving all other 'lower' rights. As such the route would now be a restricted byway but due to the legal stopping up of section CE2 to CE4 in 1873 it is effectively a cul-de-sac for all public rights other than those on foot.

6.7. The Quarter Sessions records provide strong evidence of the existence of a public highway running from point E2 to C, towards B and ultimately South Barrow. If no such public highway existed there would be no need for the landowner to apply to the courts to have section E2 to CE2 stopped up and diverted onto a new line.

6.8. Having covered routes to the south west of point CE2, this report now turns to the route between CE2-A. The Quarter Sessions records show that the status of the proposed new road onto which the existing highway was to be turned, at point CE2, was that of a public carriageway. It then follows that the existing highway (including that part which leads from CE2-B and beyond) was itself a public carriageway otherwise a cul-de-sac would have been knowingly created by the court, for certain classes of user, with no means to continue from or to South Barrow.

6.9. Sections CE2 to B and A1 to A, are also recorded in historical documents as physically significant routes. This includes the Inclosure, Turnpike, Tithe and Ordnance Survey records and the Greenwoods and Manorial maps reviewed above. In particular, these sections are recorded on the 1842 Queen Camel Tithe

Map indicating they were significant enough, at that time, to affect the tithe payable. On the 1887 County Series OS map, section CE2 to CE1 has a thickened casing line and is coloured sienna indicating a metalled, well maintained public road. All this evidence is consistent with the route being a public carriageway, as indicated in the Quarter Sessions records.

6.10. There is an established legal maxim that 'once a highway, always a highway: for, the public cannot release their rights, and there is no extinctive presumption or prescription'²². Highway rights can only be extinguished through due legal process. Therefore, even if the OS maps show the route as being maintained to a lower standard than others in the vicinity and the route was omitted from the Road Records, this does not result in public rights being extinguished.

6.11. A search of the County Council's own records and of those held by the South West Heritage Trust, where the record of a legal stopping-up since 1874 would be expected to be found, has produced nothing to suggest that such a stopping-up took place. However, the Natural Environment and Rural Communities Act 2006 will have had the effect of extinguishing mechanically propelled vehicular rights over the route while leaving all other 'lower' rights. As such the route would now be a restricted byway.

6.12. The line that the route follows is consistently shown on the historical records as being broadly similar to section CE2 to B of the application route. A route is also consistently shown on the historical records broadly similar to section A1 to A of the application route and at point A joins to Babcary Road, a public highway, which leads onto roads to South Barrow.

6.13. However, the various tithe maps (1839-43) whilst showing routes from A to A1 and B to CE2, give no indication as to the line followed from A1 to B. Possibly because the route was unfenced at this point allowing animals to graze so not affecting the tithe payable.

6.14. The 1811-17 OS old series and 1826 turnpike maps show a route that turns at point A1 towards Hazelgrove then between the buildings of Hazelgrove and on to approximately point B. However, an 1827 and 1848 manorial map do not indicate such a route but do indicate a possible route from A1 to A2 to B. By 1887 the physical routes shown on the ground on the OS map includes a route from A1 to A2 to C that crosses or changes to one from Hazelgrove House to B. It is possible that the diversion in 1874 had an impact on the type and volume of use and the route taken over unfenced sections altered.

²² Dawes v Hawkins 1860

6.15. However, it is evident from the Quarter Sessions records that from approximately point B a public carriageway continued to South Barrow. That the two sections (CE2 – B and A1-A) would be connected by a public right of way is further supported by *Eyre v New Forest Highway Board* 1892.

“if I [...] were satisfied in my own mind that Tinker’s Lane was really a public highway up to that gate [...] it would take a great deal to persuade me that it was possible that that state of things should co-exist with no public way across the little piece of green”

6.16. A public right of way is recorded on the Definitive Map leading from point B to A1 and ultimately South Barrow (B-X-A3-A2-A1). The Map and Statement provide conclusive evidence of what it shows but is not conclusive as to what it omits. Therefore, the fact that it is only shown as a footpath does not preclude the existence of higher rights, such as a restricted byway, along that line.

6.17. Regard has to be given to Section 53(3) of the Wildlife and Countryside Act 1981 that 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.

6.18. A record was found in SCC files where the County Archivist refers to the 1874 Quarter Sessions Order (see Appendix 14 (ix)). This record relates to the County Archivist’s observations on an objection to path WN 27/15 which lies outside of the routes considered in this report. Other routes referred to in the observations are 27/16 and 23/14. These also lie outside of the routes considered in this report. It is apparent that the County Council were aware of the existence of the 1874 Quarter Session order when preparing the DMS. However, there is no evidence to suggest that it was considered in relation to the application route in question here. In fact, given that the Quarter Sessions records provide such strong evidence of the existence of higher rights over CE2-CE4 in particular, it seems unlikely that the County Council did consider them in relation to the application route. Had they done so they would undoubtedly have been recorded at least part of the route as having higher rights than a footpath.

6.19. The Quarter Sessions records do not have to be sufficient on their own to conclude that restricted byway rights exist. However, once new evidence has been discovered it must be considered with all other available evidence. The evidence, considered as a whole, points towards restricted byway rights and rights on foot existing as set out below.

7. **Summary and Conclusions**

7.1. Analysis of this evidence and all the other available evidence has indicated on the balance of probabilities that:

- the recorded footpaths WN 23/38 and WN 23/40 are restricted byways
- section CE2 to CE4 of the application route (part of WN 23/12) is correctly recorded on the DMS as a footpath
- section CE4 to CE5 of the application route (part of WN 23/12) is a restricted byway

7.2. Analysis of this evidence and all the other available evidence has indicated that no public right of way subsists or is reasonably alleged to subsist from points A3 to B.

7.3. Analysis of this evidence and all the other available evidence has indicated that a footpath subsists or is reasonably alleged to subsist from point CE4 to E2.

7.4. Analysis of this evidence and all the other available evidence has indicated that a restricted byway subsists or is reasonably alleged to subsist from point CE5 to E.

8. Recommendation

Therefore, it is recommended that the parts of the applications which seek to add bridleways from point A3 to B, and to upgrade footpath WN 23/12 from point CE4 to CE2 to a bridleway, as shown on Appendix 1, be **refused**.

It is further recommended that:

- i. an Order be made, the effect of which would be to amend the Definitive Map and Statement to upgrade footpaths WN 23/38, point CE2 to X, and WN 23/40, point X to A, to restricted byways and to amend the Statement to record WN 23/40 as running from point X to A, as shown on Appendix 1.
- ii. an Order be made, the effect of which would be to amend the Definitive Map and Statement to add a footpath from point CE4 to E2, as shown on Appendix 1.
- iii. an Order be made, the effect of which would be to amend the Definitive Map and Statement to upgrade footpath WN 23/12 from point CE4 to CE5 to a restricted byway and to add a restricted byway from point CE5 to point E, as shown on Appendix 1.

- iv. if there are no objections to such Orders, or if all objections are withdrawn, they be confirmed (subject to the order meeting the legal tests for confirmation).
- v. if objections are maintained to such Orders, they will be submitted to the Secretary of State for Environment, Food and Rural Affairs.

List of Appendices

Please note that the document reproductions in the appendices are not to 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. Queen Camel Inclosure Award
8. Tithe records
9. Quarter Sessions
10. Ordnance Survey maps
11. OS Object Name Book
12. Finance Act 1910
13. Road records
14. DMS preparation records
15. Turnpike records
16. Commercial maps
17. Other sources
18. Consultation submitted reports