

REGULATION COMMITTEE

Thursday 3 November 2022

2.00 pm Luttrell Room - County Hall,
Taunton – and virtual joining option for
non-committee members



To: The members of the Regulation Committee

Cllr T Lock (Chair), Cllr S Coles (Vice-Chair), Cllr J Baker, Cllr B Bolt, Cllr M Caswell, Cllr M Dunk, Cllr T Grimes, Cllr E Hobbs, Cllr M Martin, Cllr M Murphy, Cllr K Pearce, Cllr A Soughton and Cllr M Wale

All Somerset County Council Members are invited to attend.

Issued By Scott Wooldridge, Monitoring Officer and Head of Governance and Democratic Services
- 26 October 2022

For further information about the meeting, please contact Jamie Jackson on 01823 357628 or democraticservicesteam@somerset.gov.uk or Fiona Abbott on 01823 357628 or democraticservicesteam@somerset.gov.uk

Guidance about procedures at the meeting follows the printed agenda. **In the light of the current situation, any members of the public who wish to attend the meeting / make representations to the Committee are encouraged to attend the meeting virtually.**

This meeting will be open to the public and press, subject to the passing of any resolution under Regulation 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

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AGENDA

Item Regulation Committee - 2.00 pm Thursday 3 November 2022

**** Public Guidance notes contained in agenda annexe ****

1 **Apologies for Absence**

2 **Declarations of Interest**

Details of all Members' interests in District, Town and Parish Councils can be viewed on the [Council Website](#)

The Statutory Register of Member's Interests can be inspected via request to the Democratic Service Team.

Any new or updated declarations of interest will be received.

3 **Accuracy of the Minutes of the meeting held on 1 September 2022** (Pages 9 - 14)

The Committee will consider the accuracy of the attached minutes.

4 **Public Question Time**

The Chair will allow members of the public to present a petition on any matter within the Committee's remit. Questions or statements about the matters on the agenda for this meeting will be taken at the time when the matter is considered and after the Case Officers have made their presentations. Each speaker will be allocated 3 minutes. The length of public question time will be no more than 30 minutes.

5 **Wildlife and Countryside Act 1981 Section 53 Schedule 14 Applications relating to Queen Camel and Sparkford, South Somerset - Applications 858M (northern section, A - C) and 859M** (Pages 15 - 160)

Applications to upgrade parts of footpaths WN 23/40, WN 23/38 and WN 23/12 to bridleways and add sections of bridleway, in the parish of Queen Camel, South Somerset.

There is a covering report (see pages 15 – 57) and 18 appendices.

Note – members of the Committee will be undertaking a site visit ahead of the meeting on 31 October 2022.

Item Regulation Committee - 2.00 pm Thursday 3 November 2022

6 **Wildlife and Countryside Act 1981 Section 53 Schedule 14 Applications relating to Queen Camel and Sparkford, South Somerset - Application 858M (southern section)** (Pages 161 - 248)

Application to add a bridleway, from WN 23/38 to High Street, Sparkford, South Somerset.

There is a covering report (see pages 161 - 187) and 14 appendices.

Note – members of the Committee will be undertaking a site visit ahead of the meeting on 31 October 2022.

7 **Wildlife and Countryside Act 1981 Section 53 Schedule 14 Applications relating to Queen Camel and Sparkford, South Somerset - Application 851M** (Pages 249 - 358)

Application to upgrade footpath WN 27/4 and part of footpath WN 23/11 to bridleways from the A303 Queen Camel to Sparkford Hill, Sparkford.

There is a covering report (see pages 249 - 279) and 17 appendices.

Note – members of the Committee will be undertaking a site visit ahead of the meeting on 31 October 2022.

8 **Application for variation in planning condition at Blackford Hill Quarry, Blackford Hill, Yeovil, Somerset BA22 7EA (SCC/3940/2022)** (Pages 359 - 384)

Section 73 planning application which seeks a variation of planning condition 2 that limits lorry movements from Blackford Quarry.

To consider this report (see pages 359 – 379).

Note – members of the Committee will be undertaking a site visit ahead of the meeting on 31 October 2022.

9 **Any Other Business of Urgency**

The Chair may raise any items of urgent business.

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Regulation Committee General Guidance notes for the meeting

1. **Council Public Meetings**

The former regulations that enabled virtual committee meetings ended on 7 May 2021. Since then, all committee meetings need to return to face-to-face meetings. The requirement is for members of the Committee and key supporting officers to attend in person, along with some provision for any public speakers. Provision will be made wherever possible for those who do not need to attend in person including the public and press who wish to view the meeting to be able to do so virtually.

2. **Inspection of Papers**

Any person wishing to inspect minutes, reports, or the background papers for any item on the agenda should contact Democratic Services at democraticserviceteam@somerset.gov.uk or telephone 01823 357628. They can also be accessed via the council's website on www.somerset.gov.uk/agendasandpapers.

3. **Members' Code of Conduct requirements**

When considering the declaration of interests and their actions as a councillor, Members are reminded of the requirements of the Members' Code of Conduct and the underpinning Principles of Public Life: Honesty; Integrity; Selflessness; Objectivity; Accountability; Openness; Leadership. The Code of Conduct can be viewed on the council website at [Code of Conduct](#).

4. **Minutes of the Meeting**

Details of the issues discussed, and recommendations made at the meeting will be set out in the minutes, which the Committee will be asked to approve as a correct record at its next meeting.

5. **Public Question Time**

At the Chair's invitation you may ask questions and/or make statements or comments about **any matter on the Committee's agenda**. You may also present a petition on any matter within the Committee's remit. **The length of public question time will be no more than 30 minutes in total.**

A slot for Public Question Time is set aside near the beginning of the meeting, after the minutes of the previous meeting have been considered. However, questions or statements about the matters on the agenda for this meeting will be taken at the time when that matter is considered and after

the Case officers have made their presentations.

The Chair will usually invite speakers in the following order and each speaker will have a maximum of 3 minutes:

1. Objectors to the application (including all public, parish council and District Council representatives)
2. Supporters of the application (including all public, parish council and District Council representatives)
3. Agent / Applicant

Where a large number of people are expected to attend the meeting, a representative should be nominated to present the views of a group. If there are a lot of speakers for one item than the public speaking time allocation would usually allow, then the Chair may select a balanced number of speakers reflecting those in support and those objecting to the proposals before the Committee.

Following public question time, the Chair will then invite local County Councillors to address the Committee on matters that relate to their electoral division.

If you wish to speak either in respect of Public Question Time business or another agenda item, you must inform the Committee Administrator by 5.00pm three clear working days before the meeting email democraticserviceteam@somerset.gov.uk or telephone 01823 357628. When registering to speak, you will need to provide your name, whether you are making supporting comments or objections and if you are representing a group / organisation e.g. Parish Council.

Statements/questions must be received in writing and by the PQT deadline which is three clear working days before the meeting.

Requests to speak after this deadline will only be accepted at the discretion of the Chair.

You must direct your questions and comments through the Chair. You may not take direct part in the debate.

Comments made to the Committee should focus on setting out the key issues and we would respectfully request that the same points are not repeated.

The use of presentational aids (e.g. PowerPoint) by the applicant/agent or anyone else wishing to make representations to the Committee will not be permitted at the meeting.

An issue will not be deferred just because you cannot be present for the meeting.

In line with the Council's procedural rules, if any member of the public interrupts a meeting the Chair will warn them accordingly.

If that person continues to interrupt or disrupt proceedings the Chair can ask the Democratic Services Officer to remove them as a participant from the meeting.

The Chair will decide when public participation is to finish. The Chair also has discretion to vary the public speaking procedures.

Remember that the amount of time you speak will be restricted, normally to three minutes only.

6. **Substitutions**

Committee members are able to appoint substitutes from the list of trained members if they are unable to attend the meeting.

7. **Late Papers**

It is important that members and officers have an adequate opportunity to consider all submissions and documents relating to the matters to be considered at the meeting and for these not to be tabled on the day of the meeting.

Therefore any late papers that are to be submitted for the consideration of the Regulation Committee, following the publication of the agenda/reports, should be sent to the Strategic Commissioning Manager via planning@somerset.gov.uk in respect of Planning and Town and Village Green items, and to the Senior Rights of Way Officer via planning@somerset.gov.uk in respect of Rights of Way items, and should be received **no less than 48 hours before the meeting**.

8. **Meeting Etiquette**

- Mute your microphone when you are not talking.
- Switch off video if you are not speaking.
- Only speak when invited to do so by the Chair.
- Speak clearly (if you are not using video then please state your name).
- If you're referring to a specific page, mention the page number.
- Switch off your video and microphone after you have spoken.
- There is a facility in Microsoft Teams under the ellipsis button called

turn on live captions which provides subtitles on the screen.

9. **Recording of meetings**

The Council supports the principles of openness and transparency. It allows filming, recording, and taking photographs at its meetings that are open to the public - providing this is done in a non-disruptive manner. Members of the public may use Facebook and Twitter or other forms of social media to report on proceedings. No filming or recording may take place when the press and public are excluded for that part of the meeting.

Please contact the Committee Administrator or Democratic Services on 01823 357628 or email democraticserviceteam@somerset.gov.uk if you have any questions or concerns.

REGULATION COMMITTEE

Minutes of a Meeting of the Regulation Committee held in the Luttrell Room - County Hall, Taunton, on Thursday 1 September 2022 at 2.00 pm

Present: Cllr T Lock (Chair), Cllr S Coles (Vice-Chair), Cllr B Bolt, Cllr M Caswell, Cllr M Dunk, Cllr T Grimes, Cllr E Hobbs, Cllr M Murphy, Cllr K Pearce, Cllr A Soughton and Cllr M Wale

Other Members present: Cllr M Stanton

Other members present virtually: Cllr A Boyden*, Cllr A Kendall*, Cllr H Kay*, Cllr S Osborne*, Cllr A Hadley, Cllr L Redman, Cllr A Dingwall, Cllr S Wakefield, Cllr S Ashton, Cllr R Wyke and Cllr L Trimnell
(* Reserve Committee member)

Apologies for absence: Cllr J Baker (Cllr M Martin – absent)

1 **Declarations of Interest** - Agenda Item 2

There were no new declarations made at the meeting.

2 **Public Question Time** - Agenda Item 3

There had been no requests registered by the deadline. The Chair advised that in view of the particular circumstances he had on this occasion agreed to receive a written statement from 2 members of the public which was taken during consideration of the relevant agenda item (agenda item 4 - application to add restricted byway and upgrade parts of footpaths in the Parish of Huish Episcopi, South Somerset).

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

1. The Committee considered the Report by the Rights of Way Officer, concerning the applications from South Somerset Bridleways Associations to add a restricted byway over Huish Drove, Frog Lane, and Park Lane, and to upgrade parts of footpaths L 13/42 and L 13/43 to a restricted byway, from the junction with footpath L 13/45 westwards to the A378 in the Parish of Huish Episcopi, South Somerset (application references 681M (Huish Drove), 682M (Frog Lane), 683M (Park Lane)).
2. The Rights of Way Officer outlined the application by reference to the report, supporting papers and the use of maps, plans and photographs and the report and the presentation covered: the applications and supporting evidence; description of the route; relevant legislation;

documentary evidence; evidence from landowners, consultations and other submissions; discussions of the documentary and user evidence; and included a summary, conclusions and recommendations: -

- That the documentary evidence for all three application routes indicates that it is reasonable to allege (and in the case of footpaths L 13/42 and L 13/43, on the balance of probabilities) that the application routes have historically carried public vehicular rights. Key evidence includes Quarter Sessions records, Finance Act records, and several deposited plans. The various pieces of supporting evidence (including several commercial maps) are supportive of this conclusion.
 - The majority of the remaining evidence examined was not inconsistent with the existence of public vehicular rights over the application routes, and there is no incontrovertible evidence that public rights cannot have existed over Huish Drove, Frog Lane, and Park Lane.
 - The Natural Environment and Rural Communities Act 2006 (NERC) extinguished mechanical vehicular rights over the routes. This excludes the eastern section of Huish Drove (between points A-A1), which is recorded on SCC's List of Streets as a vehicular carriageway.
3. The Chair advised that he had agreed to receive the submission from Mr and Mrs Brooke, affected landowners opposing the application regarding Park Lane, and a summary of their points was read out at the meeting by the Governance Manager. The Governance Manager clarified that this was a statement from the affected landowners who opposed the application and that he has also been advised that the Chair of Drayton Parish Council does not agree with how the Parish Council has been depicted within the written submission: -
- Mr and Mrs Brooke started by explaining their difficult current circumstances have made it unrealistic for them to properly engage with the contents of the investigation report – hence why asking the Committee's consideration of the application to be deferred. The majority of their efforts in attempting to counter the modification application over Park Lane address the user evidence case rather than the documentary evidence case. They also raised concerns over the way in which the modification application was promoted and discussed on social media.
 - Knowing that the Committee members have now walked the route, they drew attention to the quarry office and lime kilns between points E and E1 and contend that the rail track on the industrial site to the south of Park Lane may have run over the lane itself to link the two quarries. This, they suggest, means that the lane was private, as if it were a public route then this rail track would have caused some consternation. Mr and Mrs Brooke additionally refer to the gate at point E1. They argue that the original gate, which

stood between 2001 and 2010, included fencing that together with the gate covered the whole width of Park Lane, stressing that this was essential to keep in livestock and maintain biosecurity. A new gate was installed in 2010, which initially had a metal frame adjacent to it which covered the gap, but this was subsequently removed by a third party. They also suggest that the user evidence is in error on this matter as the user statements contained in the investigation report do not distinguish different gates that have been present at point E1 between 2001 and the present day. Mr and Mrs Brooke maintain that the design of the current gate was to prevent horses, bikes and wandering livestock, which they believe it clearly does. They also stress that the main gate has always been locked and that the padlock and chain has been replaced at least six times. Attempts were also made to challenge members of the public using Park Lane and on one occasion this led to a threatening response.

- They conclude by asserting that “the report’s conclusions do not reflect an accurate representation of the facts”. They request that consideration by the Committee of this item is deferred or that the modification application is refused.

4. The Rights of Way Officer responded to the matters raised by the objectors: -

- Referred to the user evidence information and the relevant period of use was 2000 – 2020. There is conflict in the evidence on the matter - Mr and Mrs Brooke suggest that the gate and accompanying fencing spanned the whole of Park Lane between the years 2001 and 2010, whereas the user evidence suggests that there was access available for both pedestrians and cyclists.
- Given the large volume of user evidence submitted and the fact that there is no conclusive evidence concerning the design of the 2001 to 2010 gate, it is considered reasonable to allege that the side gate or gap has been present since the gate was first erected at point E1, and that the public use of Park Lane on foot and by bicycle was not affected by this gate.
- The argument about the rail track crossing Park Lane is not supported by any documentary evidence (and referred to Appendix 10G of the report).
- The Investigation report does not dispute Mr and Mrs Brooke’s version of events, but nor does it discount the evidence of use provided by members of the public.
- The user evidence concerning this aspect of the case is in conflict, and so in these circumstances, and in the absence of incontrovertible evidence to the contrary, it is reasonable to allege that bridleway rights came into being over Park Lane between the years 2000 and 2020.

- Stressed that the documentary evidence indicates that it is reasonable to allege that Park Lane was already a public vehicular carriageway at this point from at least 1910, as evidenced by the Finance Act record plan and other documents.
5. The Chair welcomed the Local Divisional Member, Cllr M Stanton to the meeting. Cllr Stanton confirmed that he was also representing the views of the local Divisional member, Cllr R Wilkins, who was unfortunately unable to attend the meeting due to work commitments. Cllr Stanton made the following comments: -
- That he represents the area at Parish and District Council level;
 - There is essentially a difference of opinion between the landowners and those wanting to be able to use the byway;
 - The route is easy to use surface for bikes, walking and horses – feels as if it ought to be in public use;
 - Cllr Wilkins has campaigned for it to be opened up as it provides safe, traffic free cycling and riding and walking route and will be of benefit to the communities in area as well;
 - Based on the evidence, the Officers' recommendation and the huge number of historical documentation, would like the Committee to decide in favour of the officers recommendation to keep open this really much needed natural route between parishes and villages.
6. The Committee discussed the matter and the following comments were made and responded to by Officers, as follows: -
- Thanked Officers for the comprehensive report and for the opportunity to visit the site ahead of the meeting;
 - Park Lane and comment about possibility of gate being shown on earlier documentation – explained that it is possible for a public vehicular route to have a gate on it which is open and closeable;
 - Relevance of ownership – the fact that a route is privately owned does not mean that public rights cannot exist over it;
 - Huish Drove and Frog Lane applications are well evidenced – in respect of Park Lane, the evidence it is in conflict and referred back to the points made by the landowners and the user evidence and that the documentary evidence as a whole suggests it is reasonable to allege that public vehicular rights exist over Park Lane.
7. Cllr Caswell, seconded by Cllr Hobbs, moved the recommendation and the Committee unanimously **RESOLVED**: -
1. That an Order be made the effect of which would be to add to the Definitive Map and Statement, restricted byways between points A1-A2-B-C-D, D-E, and E-E1-F-G-G1-H as shown on Appendix 1 of the submitted report.

2. That if there are no unwithdrawn objections to such an Order, the Order be confirmed.

4 **Any Other Business of Urgency** - Agenda Item 5

There were no additional items of business raised at the meeting.

(The meeting ended at 2.58 pm)

CHAIR

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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

Author: Sue Coman

Date: October 2022

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to discuss the details.

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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.

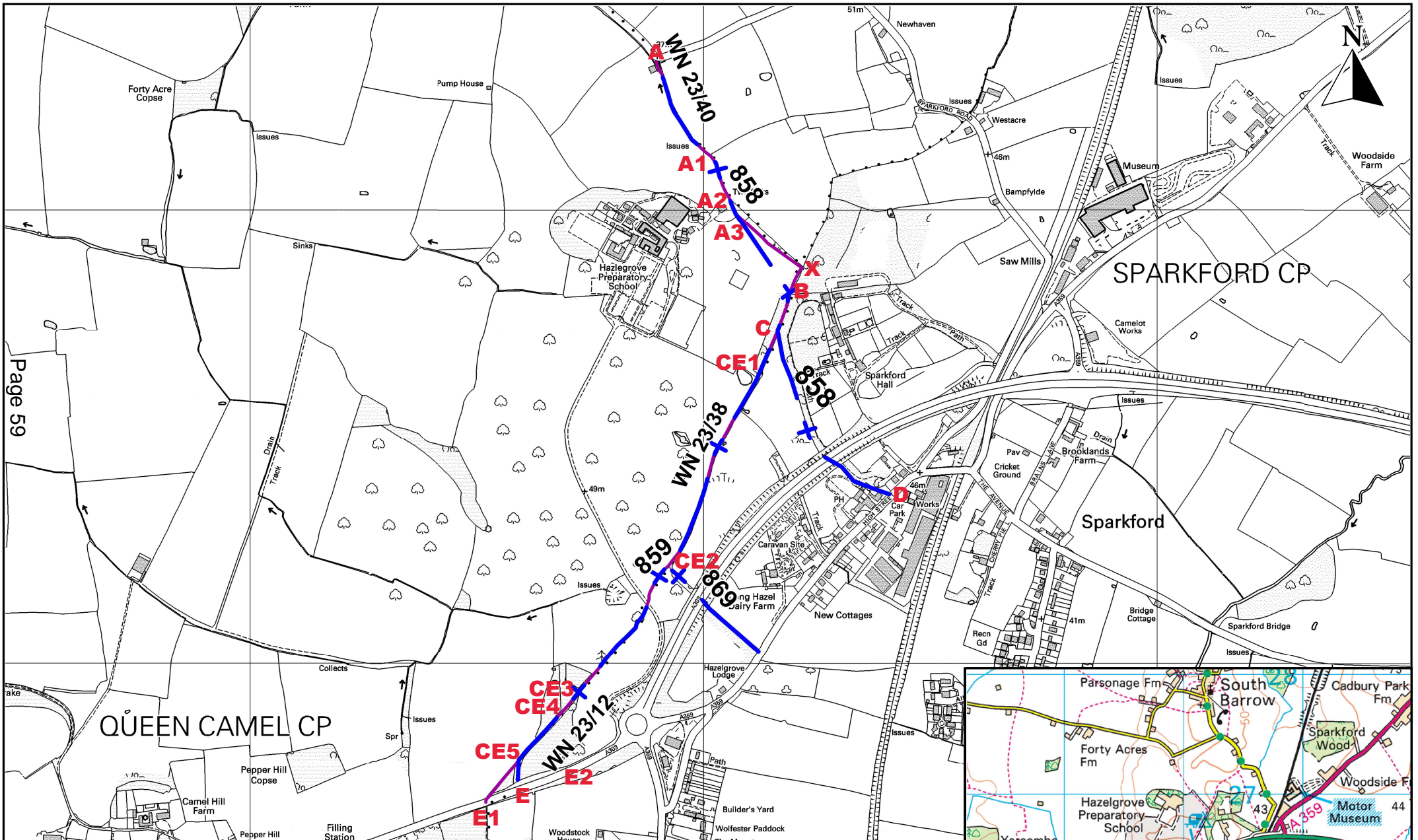
- iv. if there are no objections to such Orders, or if all objections are withdrawn, they be confirmed (subject to the order meeting the legal tests for confirmation).
- v. if objections are maintained to such Orders, they will be submitted to the Secretary of State for Environment, Food and Rural Affairs.

List of Appendices

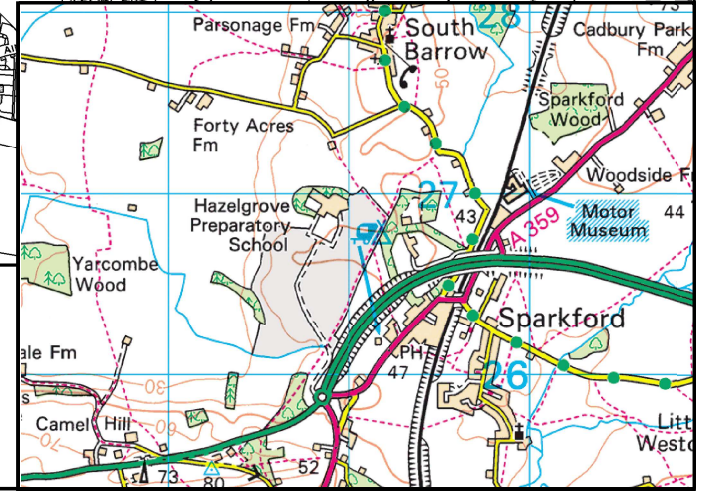
Please note that the document reproductions in the appendices are not to a standard scale. The report writer has added the red letters which broadly correspond with the present on Appendix 1. This is to assist the reader in identifying those sections of the route the document is depicting. Red circles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

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Parish: Queen Camel, Sparkford & South Barrow
 District: South Somerset
 Date: 04/10/2021
 Drawing No: H39-2021
 Drawn By: MHardwill
 Centre Grid Ref: 359830, 125970
 Scale: 1:11,000

Modification Route

The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.
 - For reference purposes only.
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Photographs of the application route

Source: officer site visits 24 & 30 June 2021



Photograph 1, at point A looking north onto Babcary Road



Photograph 2, at point A looking south

Appendix 2 – Photographs of the application route



Photograph 3, just south of point A looking back towards point A



Photograph 4, between points A and A1 looking towards point A1

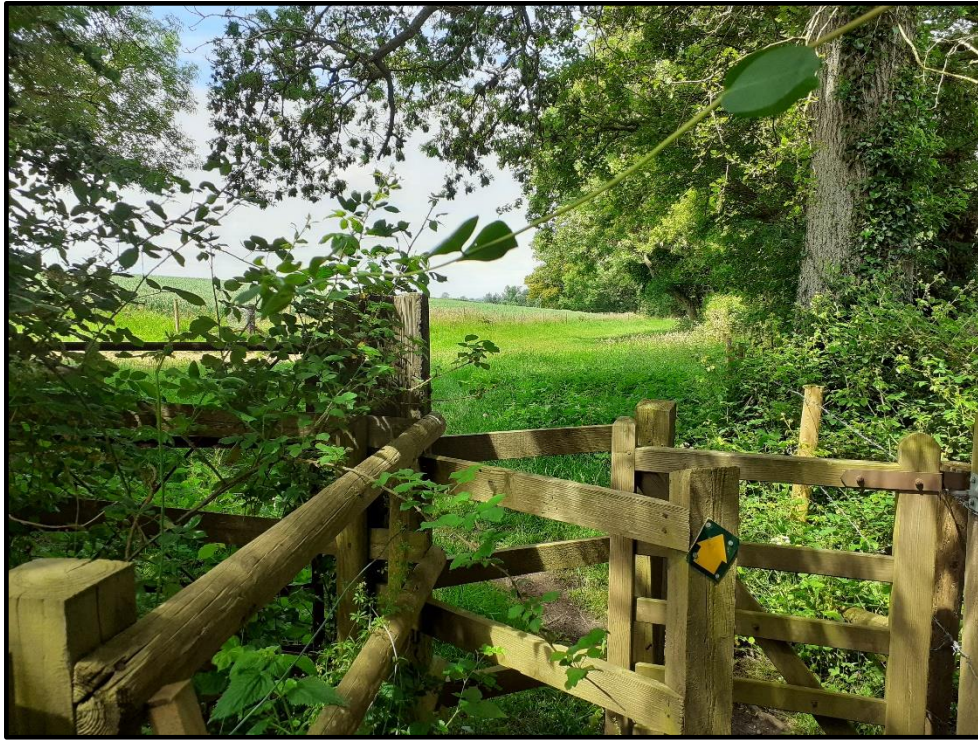


Photograph 5, just north of point A2 looking towards point A2



Photograph 6, near point A2 looking towards point A3

Appendix 2 – Photographs of the application route



Photograph 7, near point A2 looking towards A1



Photograph 8, south-east of point A2 and east of the route looking towards point A3



Photograph 9, near point A3 looking across school sports grounds towards point B



Photograph 10, between points A3 and B looking towards point A3

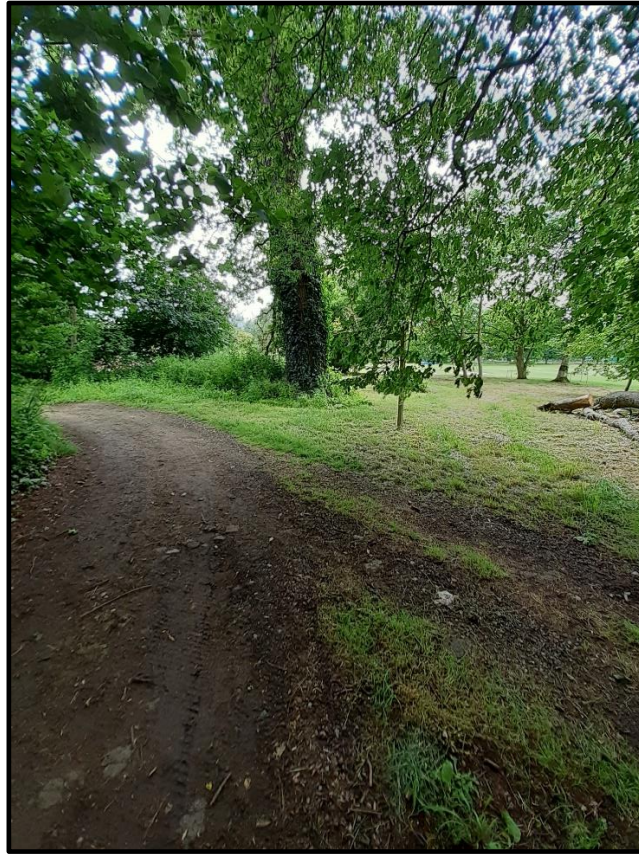


Photograph 11, at the junction of footpaths WN 23/40 and WN 23/38 looking towards point B



Photograph 12, between points B and C, looking towards C

Appendix 2 – Photographs of the application route



Photograph 13, at point C looking towards point CE1



Photograph 14, close up at point C looking towards point CE1



Photograph 15, at point CE1 looking towards point C



Photograph 16, at point CE1 looking towards point CE2



Photograph 17, to the west of CE1 looking towards the line of the route between CE1 and CE2



Photograph 18, between CE1 and CE2 looking towards CE1



Photograph 19, between CE1 and CE2 looking towards CE2



Photograph 20, nearer to CE2 looking towards CE1



Photograph 21, nearer to CE2 looking towards CE2



Photograph 22, to the south-west of Hazlegrove School drive looking towards CE2

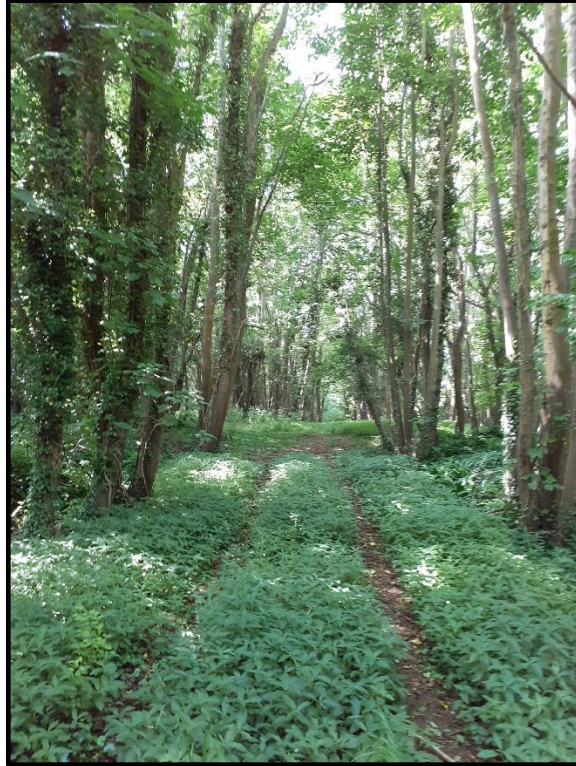


Photograph 23, between points CE2 and CE3 looking towards CE3



Photograph 24, at point CE3 looking towards point E

Appendix 2 – Photographs of the application route



Photograph 25, between points CE3 and CE4

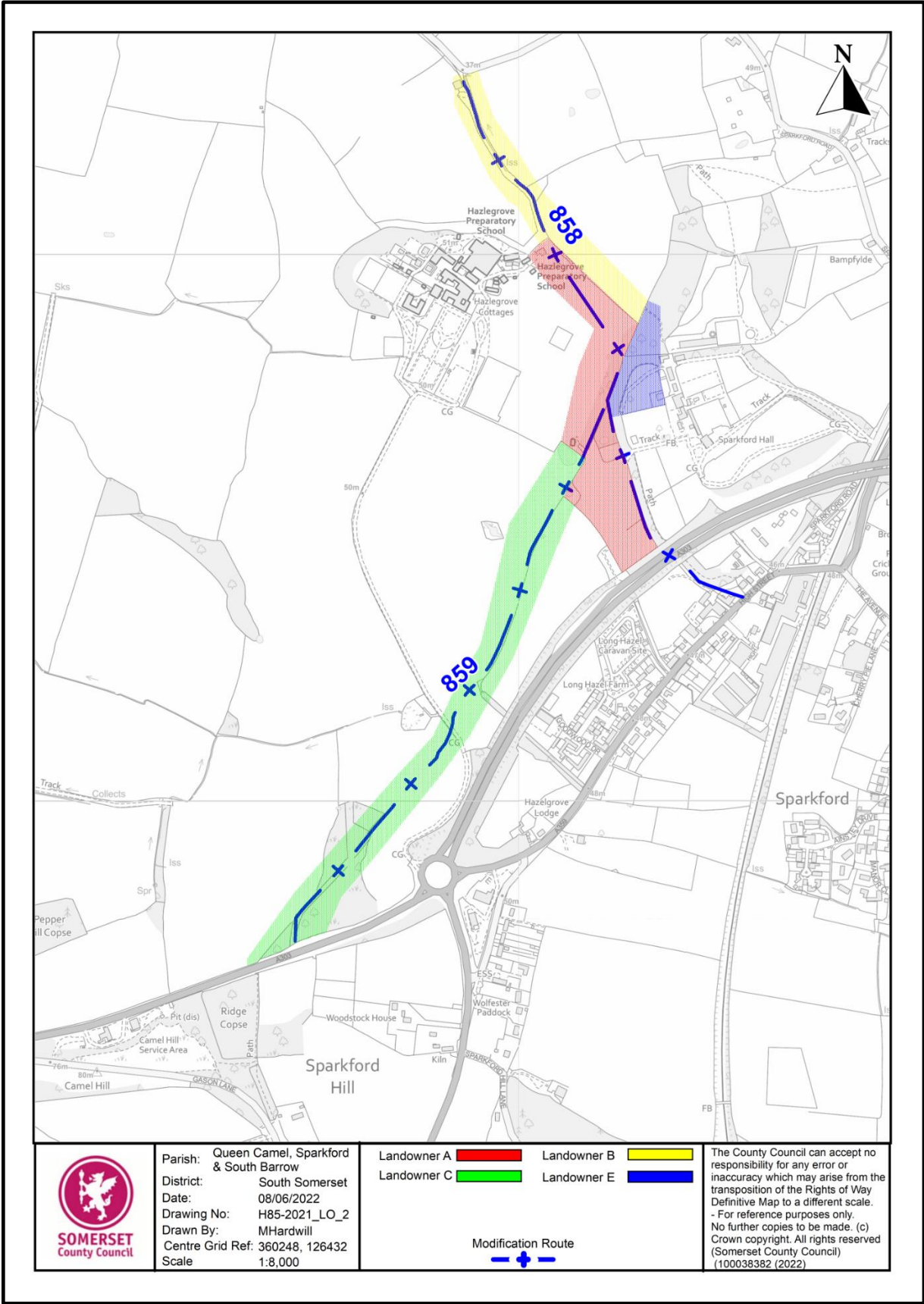


Photograph 26, between points CE4 and E looking towards CE4



Photograph 27, between points CE4 and E looking towards E

Landownership plan
Reference: H85-2021_LO_2



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Legal Framework

1. General

- 1.1. Footpaths, bridleways, restricted byways and byways open to all traffic, often referred to as public rights of way, are public highways. A highway is a way over which the public have a right to pass and re-pass. Not all highways are maintainable at public expense, nor is there any need for a way to have been 'adopted' before it is either a highway or a highway maintainable at public expense.
- 1.2. While topographical features may be attributed to, or provide evidence of, the existence of a public highway, the public right itself is not a physical entity, it is the right to pass and re-pass over (usually) private land.
- 1.3. Once a highway has come into being, no amount of non-user can result in the right ceasing to exist. The legal principle of 'once a highway, always a highway' applies.¹ Such rights, except in very limited circumstances, can only be changed by way of certain legal proceedings.
- 1.4. The **National Parks and Access to the Countryside Act 1949** placed a duty on all surveying authorities in England and Wales (such as Somerset County Council) to produce a Definitive Map and Statement, indicating and describing public rights of way within their areas. The resulting documents are conclusive of what they show but not of what they omit.
- 1.5. The 1949 Act also required surveying authorities to keep their Definitive Map and Statement under periodic review. However, with the passing of the **Wildlife and Countryside Act 1981** the requirement for periodic reviews was abandoned. Instead, section 53(2)(b) of the 1981 Act provides that the surveying authority must keep the Definitive Map and Statement under continuous review and must make such modifications as appear to them to be requisite in the light of certain specified events.
- 1.6. Those events are set out in section 53(3) of the 1981 Act. The following are of particular relevance:
 - Section 53(3)(b) states the Map and Statement should be modified on "the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path".
 - Section 53(3)(c)(i) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside

¹ *Harvey v Truro Rural District Council* (1903) 2 Ch 638, 644 and *Dawes v Hawkins* (1860) 8 CB (NS) 848, 858; 141 ER 1399, 1403

all other available evidence, shows “that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path a restricted byway or, subject to section 54A, a byway open to all traffic”.

- Section 53(3)(c)(ii) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows “that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description”.
- Section 53(3)(c)(iii) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows “that there is no public right of way over the land shown in the map and statement as a highway of any description, or any other particulars in the map and statement require modification”.

- 1.7. Section 53(5) enables any person to apply to the surveying authority for an order to be made modifying the Definitive Map and Statement in respect of the events listed above. On receipt of such an application the surveying authority is under a duty to investigate and to determine whether the Definitive Map and Statement require modifying. It is under these provisions that applications to modify the definitive map are made.
- 1.8. Section 32 of the **Highways Act 1980** states that a Court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced.
- 1.9. The standard of proof to be applied in determining whether an order should be made to change the Definitive Map depends on whether it is proposed to add a new route to the Map, to change the recorded status of a route, or to delete from the record a route that currently appears on the Definitive Map.
- 1.10. Where the route of a claimed right of way is not already shown on the Definitive Map and Statement (i.e. orders made under section 53(3)(c)(i) of the **Wildlife and Countryside Act 1981** to add an unrecorded route) the Council is required to consider two questions in determining whether an order should be made to modify the Definitive Map. Firstly, does the evidence produced by the claimant together with all the other evidence available show that the right of way

subsists? Alternatively, does that evidence show that the right of way is reasonably alleged to subsist?

- 1.11. The evidence required to satisfy the second question is less than that required to satisfy the first. In *R. v Secretary of State for the Environment Ex p. Bagshaw and Norton*, Owen J explained the difference between the two questions as follows:

To answer either question must involve some evaluation of the evidence and a judgment upon that evidence. For the first of those possibilities to be answered in the affirmative, it will be necessary to show that on a balance of probabilities the right does exist. For the second possibility to be shown it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist.²

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

Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances [...]. However, if the evidence from witnesses as to user is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist, then it would seem to me to be reasonable to allege such a right. I say this because it may be reasonable to reject the evidence on the one side when it is only on paper, and the reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.³

- 1.13. The standard of proof to be applied in relation to all other types of order made under section 53(3)(c) (e.g. applications to upgrade, downgrade or delete a right of way) is the balance of probabilities test. This test is based on the premise that, having carefully considered the available evidence, the existence (or in the case of some orders under section 53(3)(c)(iii), non-existence) of a particular right of way is determined to be more likely than not.

- 1.14. The differences in the tests to be applied to the evidence exist only in relation to the first stage of the order making process. Such an order can only be confirmed (the second stage of the process) when the evidence meets the balance of probabilities test. This is the case even where the order was made on the lower reasonably alleged test. Only once an order is confirmed are the Definitive Map and Statement updated.

- 1.15. The purpose of section 53 of the **Wildlife and Countryside Act 1981** is to record rights which already exist and to delete those which do not. This section of the act does not create or extinguish rights of way but allows for the legal record to be updated so that it accurately records what already exists. Therefore,

² *R v. SSE ex p. Bagshaw and Norton* [1994] 402 QBD 68 P & CR 402.

³ *Ibid.*

practical considerations such as suitability, security and the wishes of adjacent landowners cannot be considered under the legislation unless it can be shown that these factors affected the coming into existence, or otherwise, of public rights.

- 1.16. Section 66 and 67 of the **Natural Environment and Rural Communities Act 2006 (NERC)**, extinguished rights for mechanically propelled vehicles (MPVs) over 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. Without further qualification this would have extinguished public vehicular rights over most of the existing highway network. To prevent this NERC included a number of exceptions to the general extinguishment provision. Some of the key exceptions can be summarised as follows:
- Section 67(2)(a) excepts ways that have been lawfully used more by motor vehicles than by other users, e.g. walkers, cyclists, horse riders and horse-drawn vehicles, in the five years preceding commencement. The intention here is to except highways that are part of the “ordinary road network”.
 - Section 67(2)(b) excepts ways that are recorded on the “list of streets” as being maintainable at public expense and are not recorded on the Definitive Map and Statement as rights of way. This is to exempt roads that do not have clear motor vehicular rights by virtue of official classification but are generally regarded as being part of the “ordinary road network”.
 - Section 67(2)(c) excepts ways that have been expressly created or constructed for motor vehicles.
 - Section 67(2)(d) excepts ways that have been created by the construction of a road intended to be used by mechanically propelled vehicles.
 - Section 67(2)(e) excepts from extinguishment ways that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive “off-road”.
- 1.17. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an order changing the Definitive Map is made, the decision maker must be satisfied that public rights have come into being at some time in the past. This might be in the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence). The decision is a quasi-judicial one in which the decision maker must make an objective assessment of the available evidence and then conclude whether or not the relevant tests set out above have been met.
- 1.18. Evidence of the status of a route will often take one of two forms, documentary evidence and evidence of use. Each of these is discussed in turn below.

2. Documentary evidence

2.1. Once a highway (which includes public rights of way) has come into being, no amount of non-user can result in the right ceasing to exist. The legal principle of “once a highway, always a highway” applies.⁴ Such rights (except in very limited circumstances) can only be changed by way of certain legal proceedings, typically a legal order pursuant to specific legislation⁵ or a Court order. Therefore, claims based on documentary evidence will normally be accompanied by historical records which are intended to show that public rights were created or existed over a route in the past (or, in the case of a deletion or downgrading, that rights have been extinguished or never existed).

3. User evidence

3.1. Use by the general public can give rise to the presumption of dedication of a way under section 31 of the **Highways Act 1980**. Section 31 begins:

- (1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

3.2. Therefore, under section 31 it is necessary to demonstrate that the public have used the route in question for a period of 20 or more years. That period is to be measured backwards from the date on which use was challenged by some means sufficient to alert the public that their right to use the route was in question. The use must have been uninterrupted and *as of right*, meaning that the public must have used the route

- without force: e.g. use cannot have been via the breaking of fences or locks to gain entry
- without secrecy: use must be of such a nature that a reasonable landowner would have had an opportunity to be aware of it. For example, use which was only at night when the landowner was known to be away is likely to be considered secretive

⁴ *Harvey v Truro Rural District Council* [1903] 2 Ch 638 and 644, and *Dawes v Hawkins* [1860] 8 CB (NS) 848 and 858; 141 ER 1399 and 1403.

⁵ Such as the Highways Act 1980.

- without permission: use must be without the permission of the landowner.
- 3.3. Where the use has been sufficient to meet the tests of section 31, it raises the presumption that public rights have been dedicated. However, that presumption can be rebutted where it can be shown that the landowner demonstrated to the public that they had no intention to dedicate during that period. Examples of how this can be demonstrated include erecting a sign or notice with words that clearly deny a public right of way. Another example allows a landowner to deposit a map and statutory declaration with the highway authority under section 31(6) of the **Highways Act 1980** "to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit."
- 3.4. In addition to section 31 of the **Highways Act 1980**, rights of way can also be dedicated at Common Law, and this option should always be considered.

At Common Law a highway may be created by the landowner dedicating the strip of land to the public to use as a highway, and the public accepting this action by using said land. However, the act of dedication does not need to be explicit or in writing. In some circumstances it can be inferred from the actions (or inactions) of the landowner. The requirements for a Common Law dedication are summarised in *Halsbury's Law* as follows:

Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute. User by the public is a sufficient acceptance [...] An intention to dedicate land as a highway may only be inferred against a person who was at the material time in a position to make an effective dedication, that is, as a rule, a person who is absolute owner in fee simple [...] At common law, the question of dedication is one of fact to be determined from the evidence. User by the public is no more than evidence, and is not conclusive evidence [...] any presumption raised by that user may be rebutted. Where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that he had the capacity to dedicate. The onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication.⁶

- 3.5. As mentioned in the above quote, use by the public can be evidence of an implied dedication. If the level of use was such that the landowner must have been aware of it and they acquiesced to that use (i.e. they did nothing to stop it) then it is evidence (but not necessarily conclusive evidence) of their intention to dedicate a highway.
- 3.6. There is no minimum qualifying period at Common Law, although use still has to be without force, without secrecy and without permission. The actions of the

⁶ *Definitive Map Orders: Consistency Guidelines, ninth revision* (2016), 5.46.

landowner also need to be taken into account when considering whether it can be inferred that a right of way has been dedicated. Public use does not raise the inference that the way has been dedicated where evidence as a whole shows highway status was never intended, for example, the erection of “no public thoroughfare” notices and “turning people back wherever possible”.⁷

- 3.7. The burden of proving the landowner’s intention to dedicate rests with the party asserting the right of way. Unlike a statutory dedication there is no presumption that rights have been acquired no matter how long a route happens to have been used for.

Useful links

Natural England’s [A guide to definitive maps and changes to public rights of way](#) (2008) offers a detailed introduction to the Definitive Map Modification Order (DMMO) process.⁸

The Planning Inspectorate’s [Definitive Map Orders: Consistency Guidelines](#) (ninth revision 2016) offers clear information and advice on interpreting documentary evidence.⁹ 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.

[Legislation.gov.uk](#) provides access to the numerous acts referenced above.

⁷ *Poole v Huskinson* (1843) 11 M&W 827.

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414670/definitive-map-guide.pdf

⁹ <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>

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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>
Inclosure records	✓		✓	7
Tithe records	✓		✓	8
1811-1817 OS Old series	✓		✓	10
OS boundary sketch map and remark books	✓		✓	10
OS County Series First Edition 25 Inch map	✓		✓	10
1885/9 OS draft or trace map	✓		✓	10
OS County Series 6 Inch maps	✓			10
OS Revised New Series	✓		✓	10
OS County Series Second Edition 25 Inch map	✓		✓	10
OS Object Name Book	✓			11
1919 OS popular edition	✓		✓	10
Finance Act 1910	✓		✓	12

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.

Appendix 5 – Documentary evidence details

Handover map 1929	✓			13
Road records 1930	✓			13
Road records 1950	✓			13
Road records 1970	✓			13
Modern road records	✓			13
Definitive Map and Statement Preparation (DMSP) Survey Map	✓			14
DMSP Survey Card	✓			14
DMSP Draft Map	✓			14
DMSP Draft Modification Map	✓			14
DMSP Provisional Map	✓			14
Definitive Map and Statement	✓			14
Local Authority records		✓		
Greenwoods map	✓		✓	16
Aerial photography		✓		
1795 Map of Queen Camel	✓		✓	7
1827 Manorial map	✓		✓	17
1830 map of Queen Camel	✓		✓	17
1843 map of South Barrow	✓		✓	17
1848 map of Queen Camel	✓		✓	17
1873 Exchange of lands	✓		✓	17
Quarter Session Records	✓			9

Turnpike Records	✓			15
Hazlegrove School archived conveyance documents	✓			18

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.
- 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.

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

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. 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

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).

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.

Appendix 6: Consultation list

Somerset County Council seeks to consult as widely as is possible and practicable during a DMMO investigation. In addition to contacting landowners, the following user groups, organisations, and individuals were contacted in June 2021. Those who responded are referred to in the main body of the report.

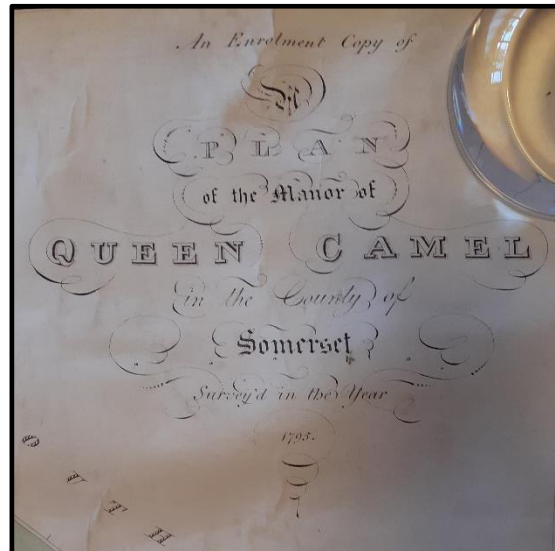
Consultee
Sparkford Parish Council
Queen Camel Parish Council
South Somerset District Council
Local Member of County Council
Ramblers – Somerset Office
Ramblers – National Office
British Horse Society – Somerset Office
Trail Riders Fellowship – Somerset Office
All Wheels Drive Club
Open Spaces Society – Somerset Office
Natural England
British Driving Society
Auto Cycle Union
Cyclist Touring Club
Historic England

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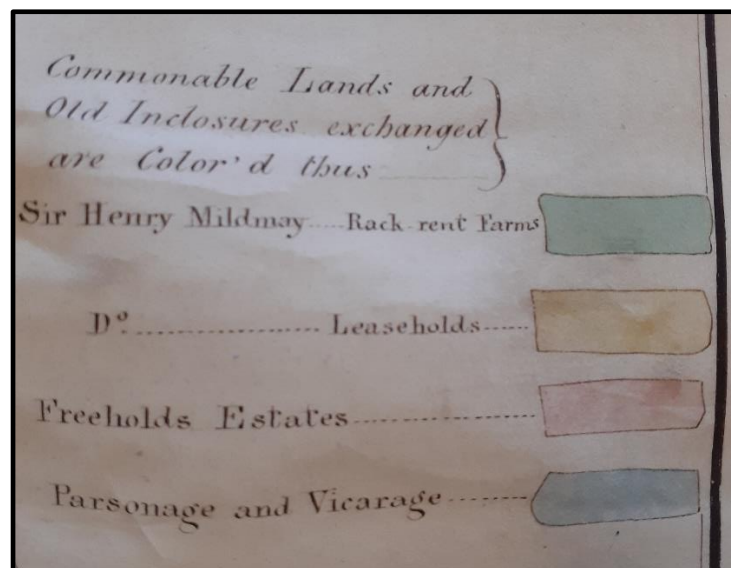
(i) Queen Camel Inclosure Award and Plan (1798 & 1795)

Source: Reproduced by the kind permission of South West Heritage Trust

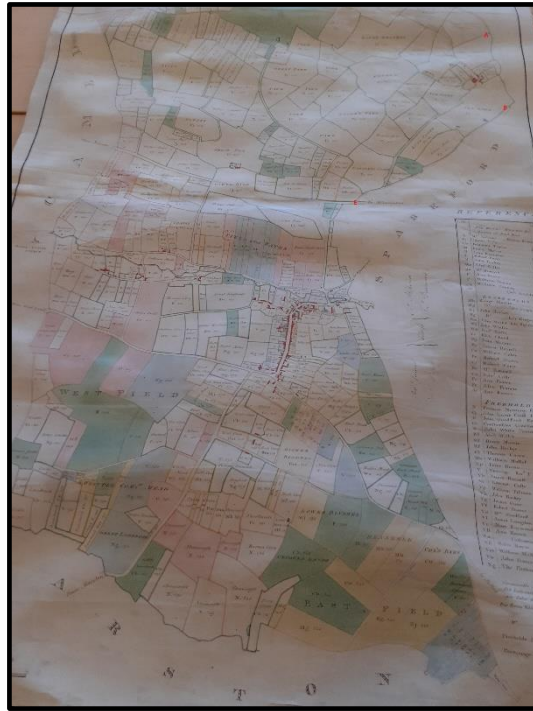
Reference: SHC Q/RDE/35



Plan title



Part of the plan key



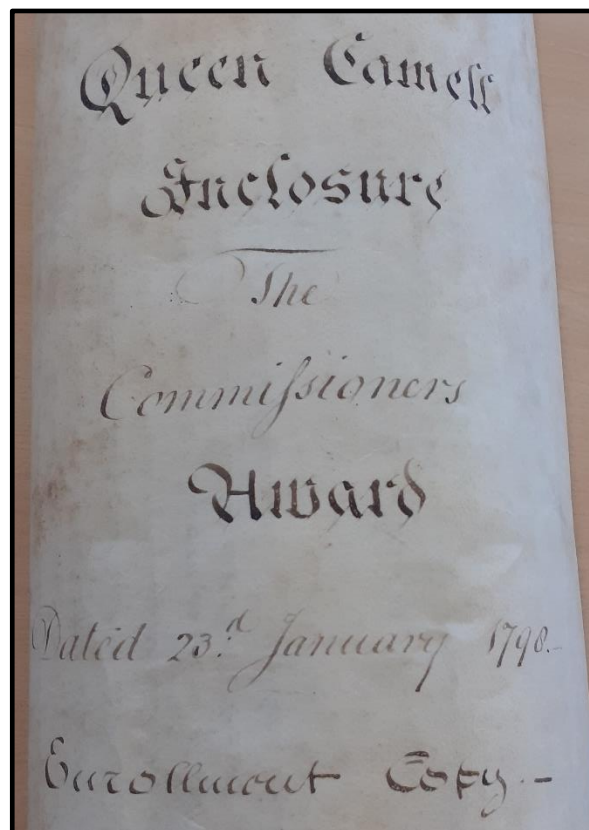
The full plan with red letters added to mark the application routes.



Section of the plan covering part of application route 859. The red letters have been added to mark the location of the application route.



Section of the plan covering parts of application routes 858 and 859. The red letters A, A1, B and C added to mark the location of the routes.



The Inclosure award

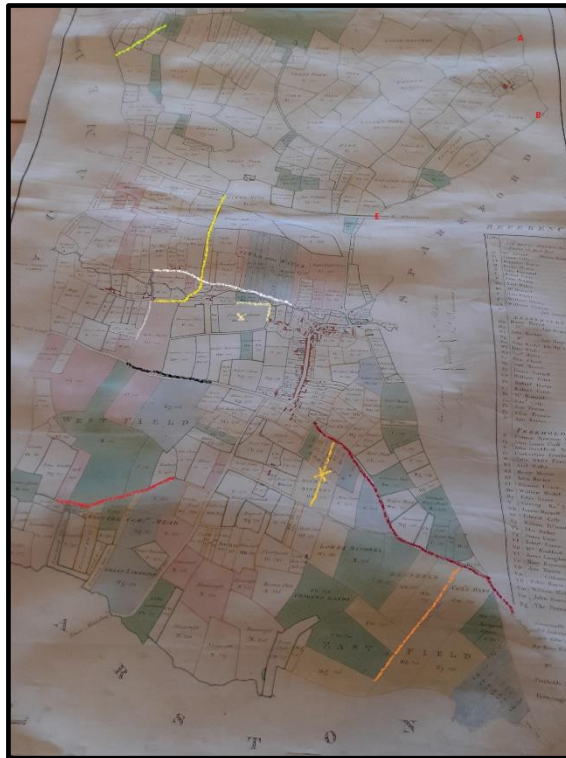
To Sir Henry Paulet St John Mildmay for Henry Morris's Farm - - -

Also we do hereby order award set out and allot to the said Sir Henry Jane his Wife One Close of Meadow called Little Sheam late Part of and by Lands of said Sir Henry Mildmay on the South by Lands of said Henry Lettered and numbered in the Plan M. 395 bounded on the North South and numbered in the Plan M. 415 bounded on the East by Hazlegrove Lane and M 121 bounded on the East by the Parish of Weston on the North and West has Parts Lettered and numbered in the Plan M 227 bounded on the Mildmay and Vicarage. The Fences of this allotment are made and

Sir Henry Paulet

allot to the said Sir Henry Paulet St John Mildmay and Dame Jane his Wife in her Right for and in Respect of an Little Sheam late Part of and belonging to the Vicarage of East Camel otherwise seven Camell aforesaid contains South by Lands of said Henry Morris and on the East by said Camell large One Close of Pasture called Larks Leaze bounded on the North South and West by Lands of the said Sir Henry Mildmay One other Close of Pasture called Woolcock East by Hazlegrove Lane and on the West North and South by Lands of Sir Henry Mildmay One other Close or Part of the Vicarage on the North and West by Abel Wilkin's Greenhold and on the North and South by John Hockley's Leasehold M 227 bounded on the North by the Highway leading from Camel to Sutton on the South by Collier's allotment are made and to be for ever maintained by the said Sir Henry Mildmay.

Section of the award referring to plot M415 "numbered in the Plan M. 415 bounded on the East by Hazlegrove Lane and on the West North and South by lands of Sir Henry Mildmay" Red boxes added to mark relevant sections.



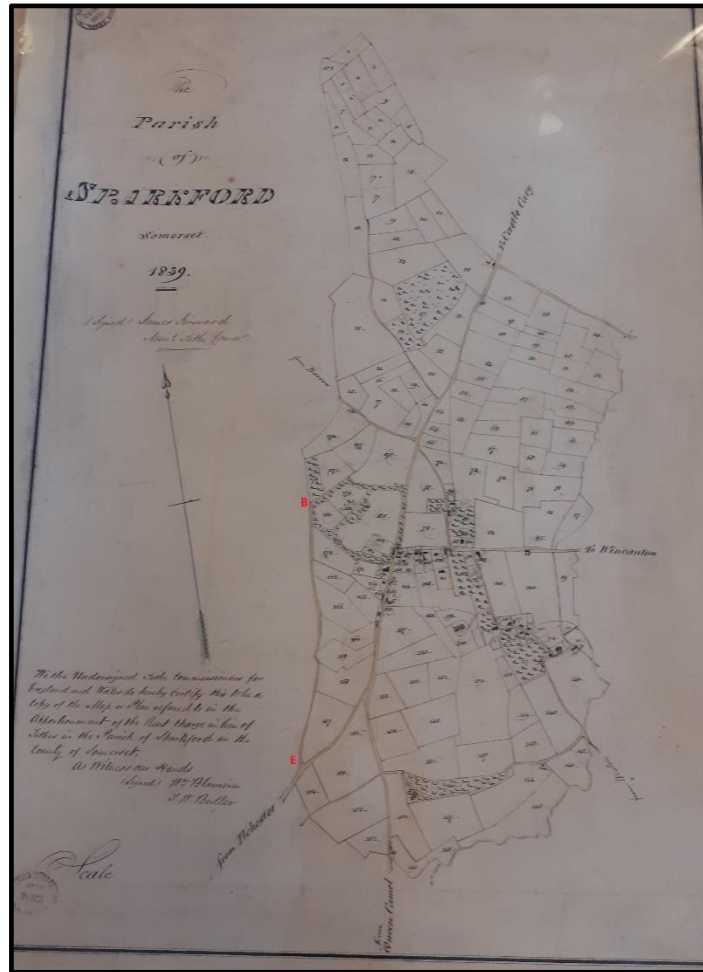
Plan with coloured lines added to show the approximate routes of highways described in the award and crosses added for routes described as stopped up. The red letters added to mark the location of the application routes.

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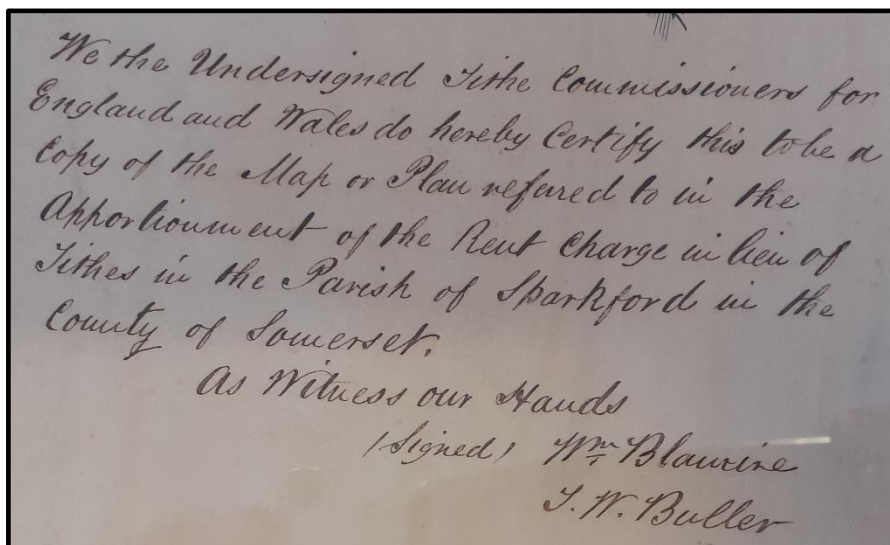
(i) Sparkford Tithe Map (1839)

Source: reproduced by the kind permission of the South West Heritage Trust

Reference: SHC D/D/Rt/M/75



The tithe map with red letters added to mark the application routes



The certification

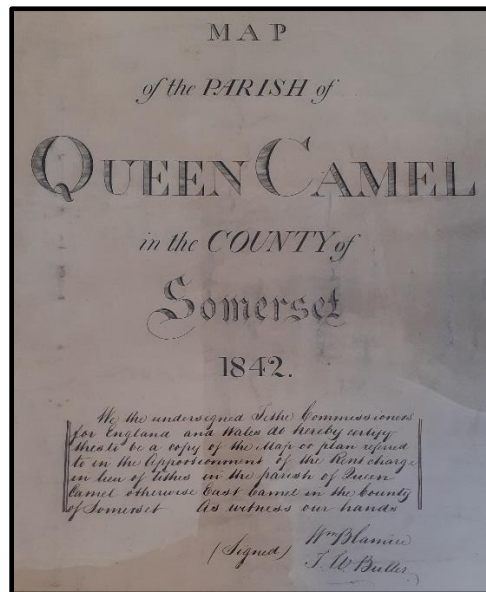


Section of the map with red letters added to mark the application routes.

(ii) Queen Camel Tithe Map and Apportionment (1842)

Source: reproduced by the kind permission of the South West Heritage Trust

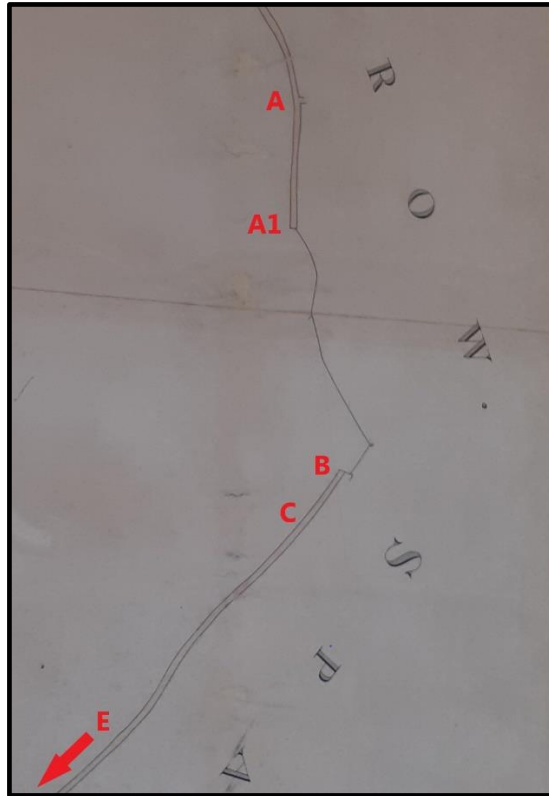
Reference: SHC D/D/Rt/M/377 and SHC D/D/rt/A/377



Map title and certification



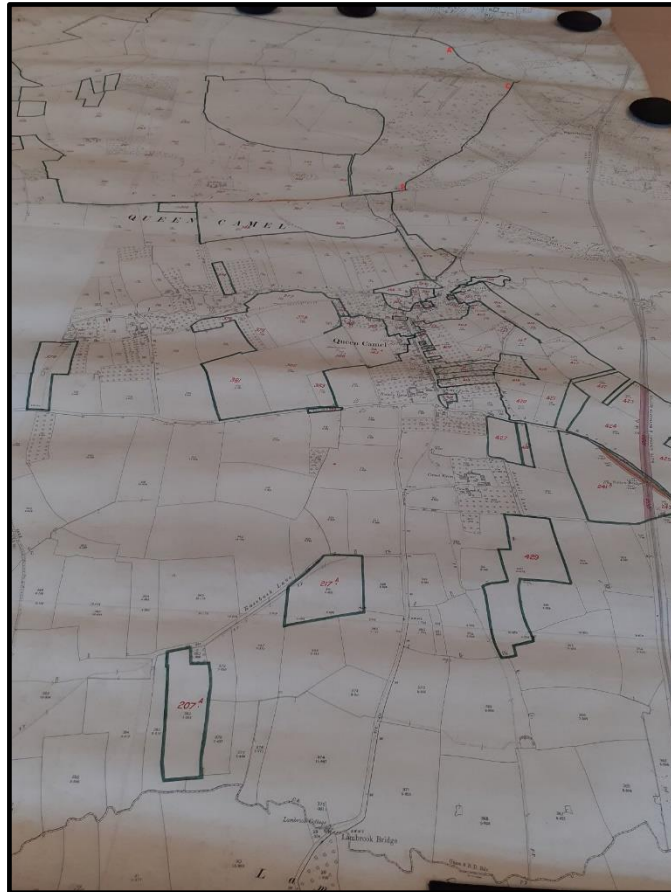
The tithe map with red letters added to mark the application routes



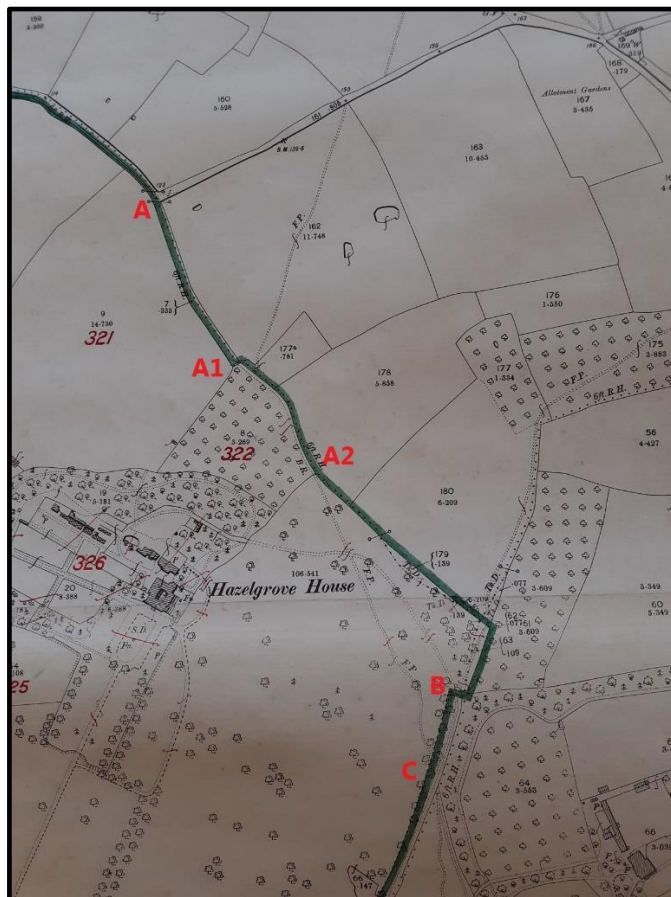
Section of the map with red letters added for reference



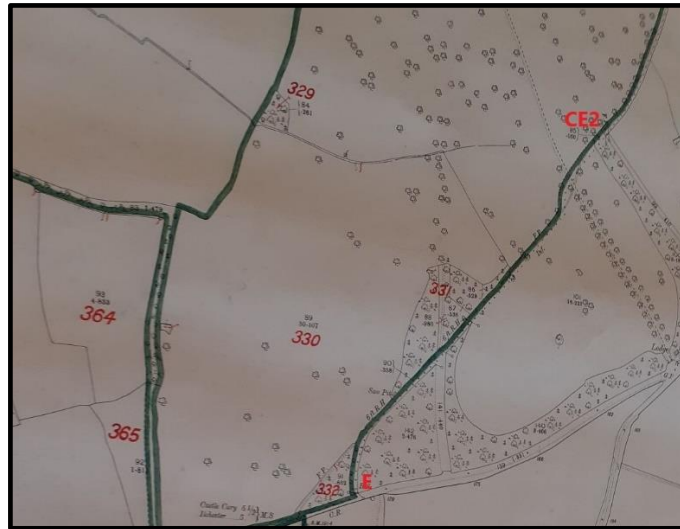
Section of the map with red letters added for reference



Tithe map with red letters added to mark application routes



Section of the map with red letters added to mark the application routes

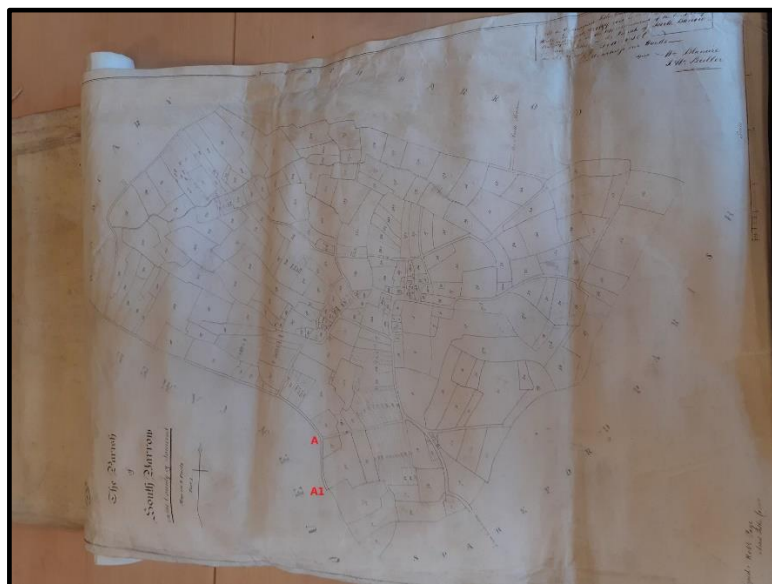


Section of the map with red letters added to mark the application routes

(iv) South Barrow Tithe Map (1843)

Source: reproduced by the kind permission of the South West Heritage Trust

Reference: SHC D/D/Rt/M/422



Tithe map with red letters added to mark application routes

We the undersigned Tithe Commissioners for England and
Wales do hereby certify this to be a Copy of the Map or
Plan ^{in two parts} referred to in the Apportionment of the Lord Charge
in the Parish of South Barrow
in the County of Somerset.

— as witness our Hands —

Signed *Wm Blamire*
J. W. Buller

Map certification



Section of the map with red letters added to mark part of application route 858

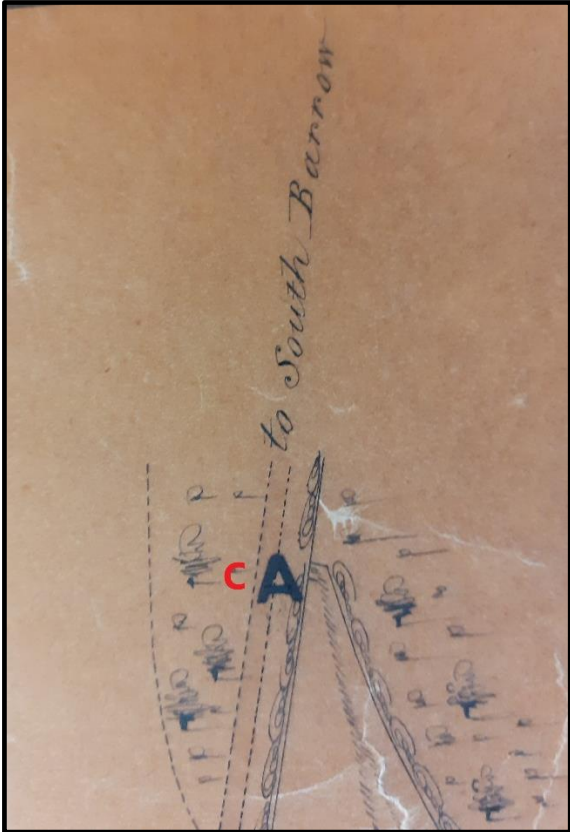
Quarter Sessions Roll (1873)

Source: Reproduced by the kind permission of the South West Heritage Trust

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



Plan of proposed alteration of roads. Red letters added to indicate sections of the application routes.

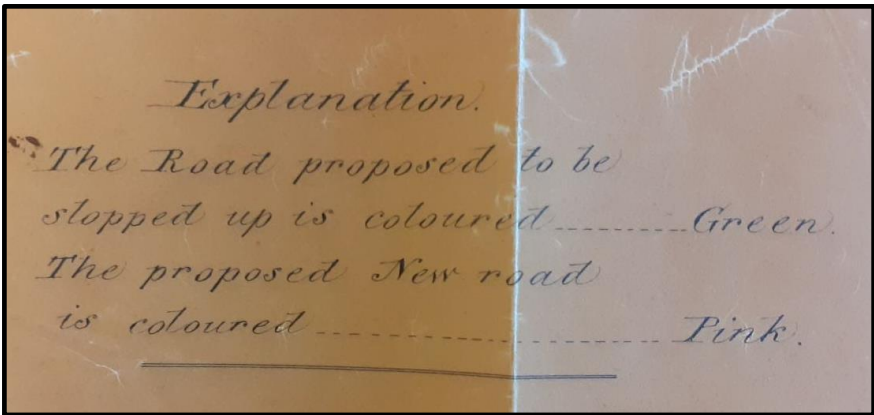


Section of the plan showing the wording "to South Barrow". Red letter added to indicate section of the application route.

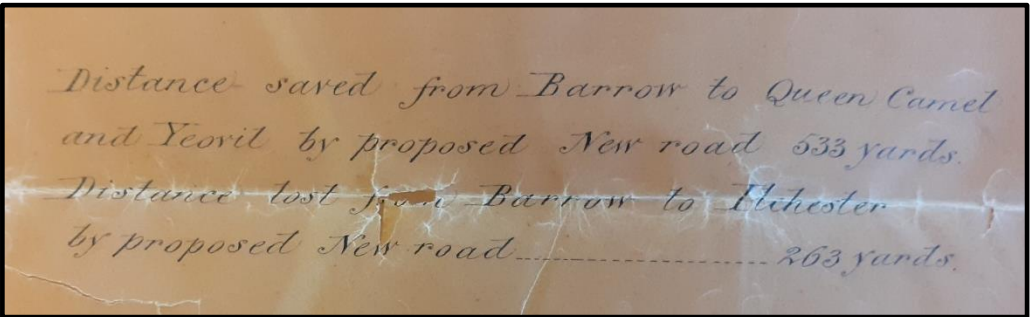
Table of Distances.

	<i>Yards</i>
AB	029
ABC	1062
ABCD	1210
ABCDF	1615
ABE	935
ABEF	1084
AC	567
ACE	849
BC	435
BE	306
CD	150
DF	398
EF	150
EC	282

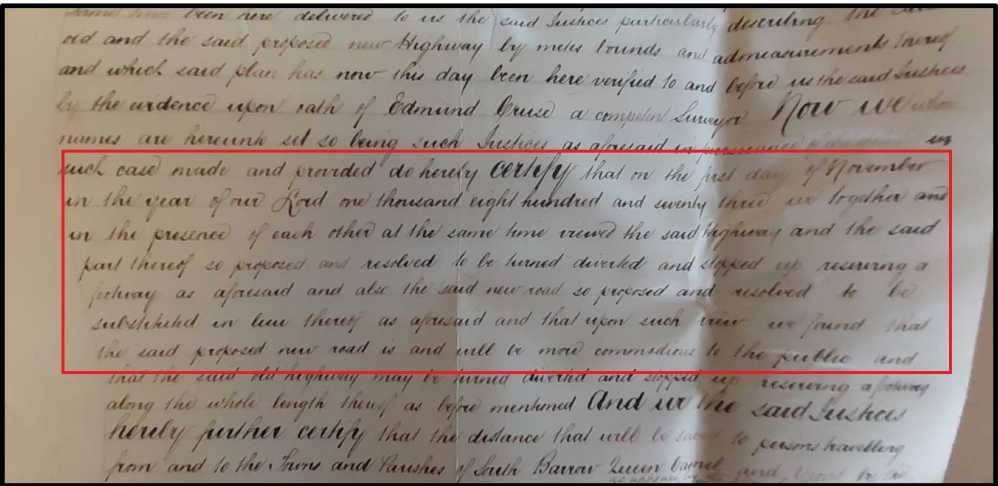
Section of plan showing the "Table of Distances"



Section of plan showing the key to the road colouring



Section of plan detailing destinations and difference in distances saved or lost due to the proposed road alterations



Certificate of the Justices with red box added to highlight relevant text.

Certifying that they

"viewed the said Highway and the said part thereof so proposed and resolved to be turned diverted and stopped up reserving a footway as aforesaid and also the said new road so proposed and resolved to be substituted in lieu thereof as aforesaid and that upon such view we found that the said proposed new road is and will be more commodious to the public"

I Henry George St John Maltman
 of Hazelgrove House in the parish of Queen Camel
 in the County of Somerset Esquire being the owner
 of the lands described in the plan hereto annexed
 through which part of a certain highway lying
 between South Barron and Hechester is intended
 to be diverted and turned do hereby consent to
 the making and continuing such new Highway
 through my lands
 Given under my hand this Third, day of
 December, one thousand eight hundred and
 seventy three
 Henry George St John Maltman

Consent of landowner to the making and continuing of the new highway

To the Highway Board, of the Highway
 District of Wincanton in the County of Somerset and to the
 Surveyors of the Highways of the parishes of Queen Camel and
 Spaxford within the said Highway District -
 I the undersigned Henry George St John Maltman of Hazelgrove
 House in the said parish of Queen Camel in the said County of
 Somerset Esquire being an owner of Land in the said parishes of
 Queen Camel and Spaxford do hereby give you notice that I am
 desirous of stopping up, diverting, and turning part of a certain
 Highway situate partly in the said parish of Queen Camel and
 partly in the said parish of Spaxford and leading from South
 Barron to Hechester Queen Camel and Yeovil which said part
 of the said Highway so proposed to be stopped up is bounded on
 all sides thereof by lands belonging to me and commences at or
 near the point where the said Highway leads into a new road
 recently formed and constructed by me from which point the
 said Highway proposed to be stopped up, as aforesaid runs
 through lands belonging to me and proceeds in a southerly and
 southeasterly direction and ends at a point where it runs into the

Notice to Highway Board of proposed alterations of roads

At 97 Samuel Brooks Waywarden for the parish of
Queen Camel Somerset

I hereby request you to give notice to the
Churchwardens and Overseers of the parish of
Queen Camel requesting them to forthwith convene a
Vestry Meeting of the inhabitants of the said parish
of Queen Camel in compliance with the notice of
which the annexed is a copy.

Dated this 21st day of August 1873

James Lancaster
Clerk to the Highway Board
of the Highway District of
Wincanton Somerset

Notice to the waywarden

To the Churchwardens and Overseers
of the parish of Queen Camel Somerset

I hereby request you forthwith to convene a Vestry Meeting
of the inhabitants of the parish of Queen Camel in compliance
with the notice of which the annexed is a copy.

Dated this 22nd day of August 1873

Samuel Brooks
Waywarden for the said
parish of Queen Camel

Notice to the Queen Camel Churchwardens to convene a vestry meeting

Parish of Queen Camel

At a Meeting of the Vestry of the parish of Queen Camel on Tuesday the eleventh day of September 1873 at the Church in this parish pursuant to a Notice of such Meeting duly published and given on Monday the seventh day of September and there being present at such Meeting

The Reverend Charles Langdon } in the Chair
 Samuel Brooks }
 Richard Leavelle }
 John Bromley }
 and the Vestry of the said parish it was resolved
 That the work and proposal of Henry George Robert of
 Exeter and his part of a certain highway situated partly
 in this parish and partly in the adjoining parish of
 and particularly detailed in the plan herewith annexed
 be agreed to as just the same in any part thereof is situated in
 this parish

Charles Langdon } Chairman

Copy of the Vestry Minutes of the Parish of Queen Camel in the year 1873
 The Vestry of the Parish of Queen Camel met on Tuesday the 11th day of September 1873 at the Church in this parish pursuant to a Notice of such Meeting duly published and given on Monday the seventh day of September and there being present at such Meeting
 The Reverend Charles Langdon } in the Chair
 Samuel Brooks }
 Richard Leavelle }
 John Bromley }
 and the Vestry of the said parish it was resolved
 That the work and proposal of Henry George Robert of Exeter and his part of a certain highway situated partly in this parish and partly in the adjoining parish of and particularly detailed in the plan herewith annexed be agreed to as just the same in any part thereof is situated in this parish
 Charles Langdon } Chairman

Record of Queen Camel vestry meeting

NOTICE IS HEREBY GIVEN, that, on the sixth day of January next, APPLICATION will be made to HER MAJESTY'S JUSTICES of the PEACE assembled at QUARTER SESSIONS, in and for the COUNTY of SOMERSET, at Taunton, in the said County, for an ORDER for STOPPING UP, DIVERTING, and TURNING part of a certain HIGHWAY (reserving a footway along the whole length thereof) situate partly in the parish of QUEEN CAMEL, and partly in the parish of SPARKFORD, both within the Highway District of Wincanton, in the said County of Somerset, and leading from South Barrow to Hebeater, Queen Camel, and Yeovil, which said part of the said Highway proposed to be stopped up (reserving a footway as aforesaid) is bounded on all sides thereof by lands belonging to HERVEY GEORGE ST. JOHN MILDMAI, of Hazelgrove House, in the said parish of Queen Camel, Esquire, and commences at or near the point where the said Highway leads into a new road, recently formed and constructed by the said HERVEY GEORGE ST. JOHN MILDMAI, through and over his land in the said parish of Sparkford, from which aforesaid point the Highway proposed to be stopped up as aforesaid proceeds in a southerly and south-easterly direction, through lands belonging to the said HERVEY GEORGE ST. JOHN MILDMAI, and crosses the private drive to Hazelgrove House aforesaid, and ends at a point or corner where the said Highway leads into the Turnpike-road to Hebeater, Queen Camel, and Yeovil aforesaid; and which said new road proposed to be substituted for the aforesaid Highway is situate in the said parish of Sparkford, and commences at the point aforesaid, near to the spot where the said Highway crosses the aforesaid private drive, and leads in a south-easterly direction in a straight line through and over lands belonging to the said HERVEY GEORGE ST. JOHN MILDMAI, into and ending at the aforesaid Turnpike road between Sparkford Inn and the Lodge at the entrance from the said Turnpike road to the said private drive to Hazelgrove House aforesaid, which said new road is bounded on the north side thereof by lands belonging to the Reverend HENRY BENNETT, and on the south side thereof by lands belonging to the said HERVEY GEORGE ST. JOHN MILDMAI; and which said part of the said Highway proposed to be stopped up and diverted as aforesaid contains in length from one extremity to the other 591 yards or thereabouts; and which said new road proposed to be substituted for the aforesaid Highway contains in length from one extremity to the other 306 yards or thereabouts; and that the Certificate of two of Her Majesty's Justices of the Peace for the said County of Somerset, having viewed the said Highway and the proposed turnings and diversions thereof, and the said new road proposed to be substituted in lieu thereof as aforesaid, with the plan of the old and proposed new Highway, will be lodged with the Clerk of the Peace for the said County on the sixth day of December next.

Dated this first day of November, 1873.

CHAS. BARTON,	} Members of the Highway Board of the Highway District of Wincanton.
WIL. VINCENT,	
JAMES LANCASTER,	} Clerk to the said Highway Board.
B. ATWELL, District Surveyor.	

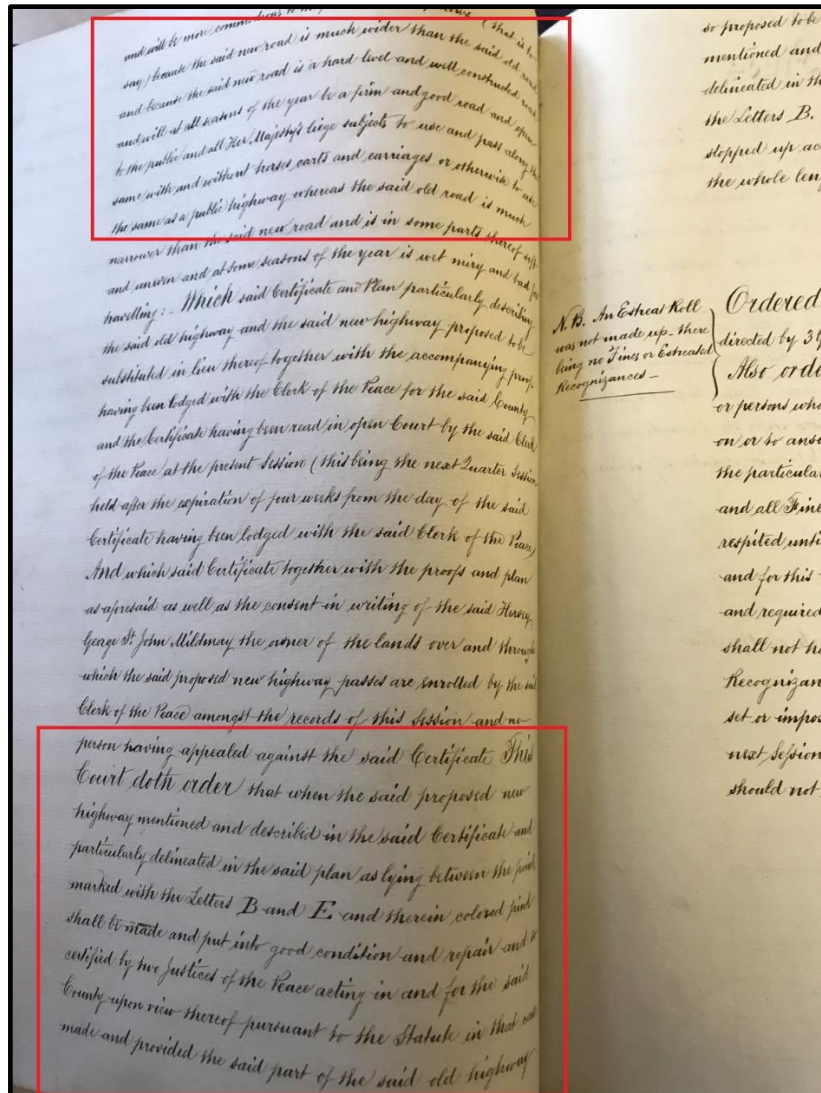
1873.

Notice in the Western Gazette of proposed alteration of roads

Quarter Sessions Order Book (1874)

Source: Reproduced by the kind permission of the South West Heritage Trust

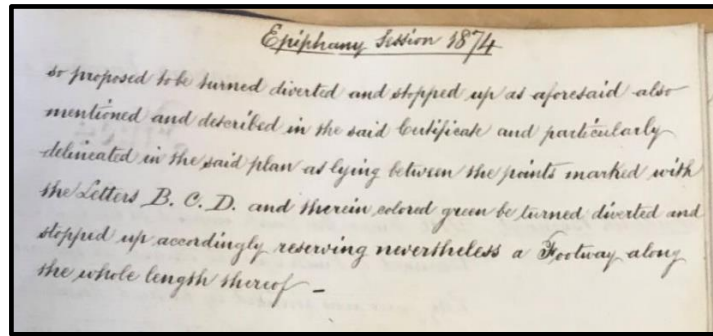
Reference: SHC Q/SO/25



Section of the Quarter Sessions Order Book with red boxes added to highlight relevant text.

Transcript

"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 [...] this Court doth order 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 acting in and for the said County upon view thereof pursuant to the Statute in that case made and provided the said part of the said old highway"



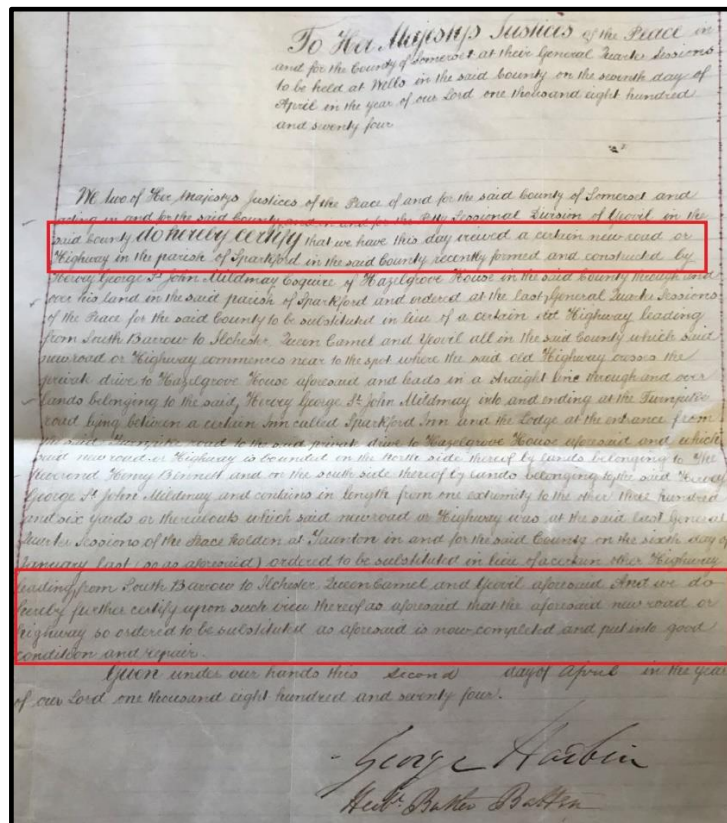
Quarter Sessions Order Book continued
Transcript

“so proposed to be turned diverted and stopped up as aforesaid also mentioned and described in the said Certificate and particularly delineated in the said plan as lying between the points marked with the letters B.C. D. and therein colored green be turned diverted and stopped up accordingly reserving nevertheless a footway along the whole length thereof”

Quarter Sessions Roll (1874)

Source: Reproduced by the kind permission of the South West Heritage Trust

Reference: SHC QSR/695/56



Certificate of the Justices of the Peace with red boxes added to highlight relevant text
Transcript

“do hereby certify that we have this day viewed a certain new road or Highway in the parish of Sparkford [...] And we do hereby further certify upon such view thereof as aforesaid that the aforesaid new road or highway so ordered to be substituted as aforesaid is now completed and put into good condition and repair.”

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Ordnance Survey Maps

Source: Extracts submitted by applicant; others reproduced with the permission of the National Library of Scotland from their [map images website](#)

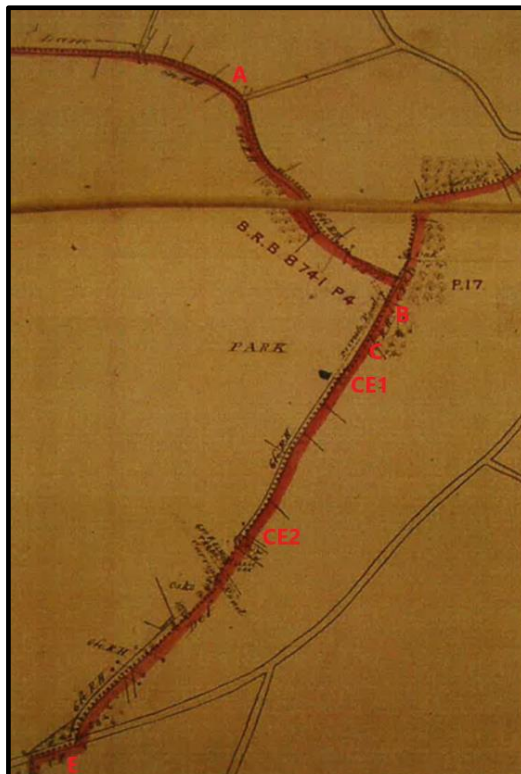
Red letters added to indicate the sections of the claimed routes.

(i) OS 'Old Series' Map (extract) (1811-1817)



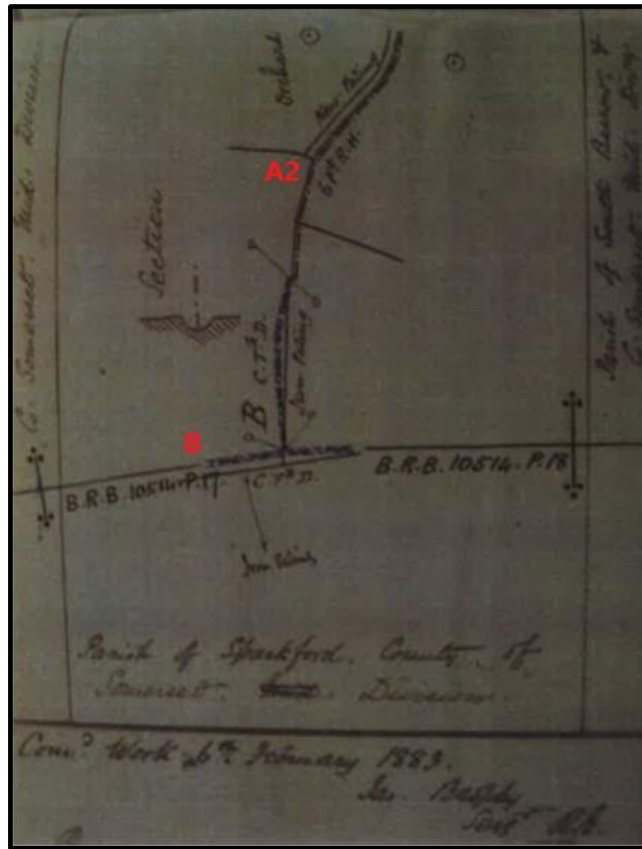
Extract covering application routes 858 and 859. Red letters added for reference

(ii) OS Boundary Sketch Map (extract) (1884)

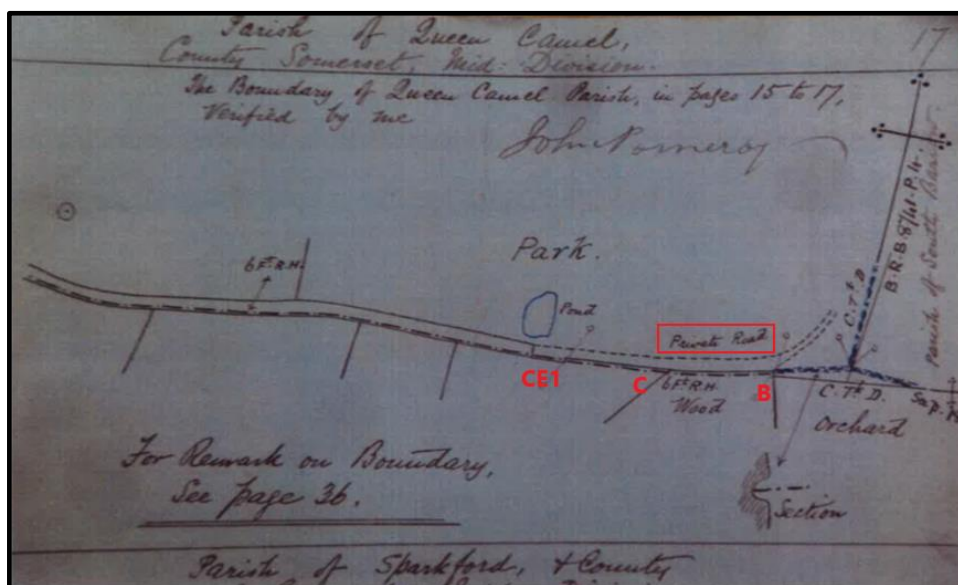


Extract covering application routes. Red letters added for reference.

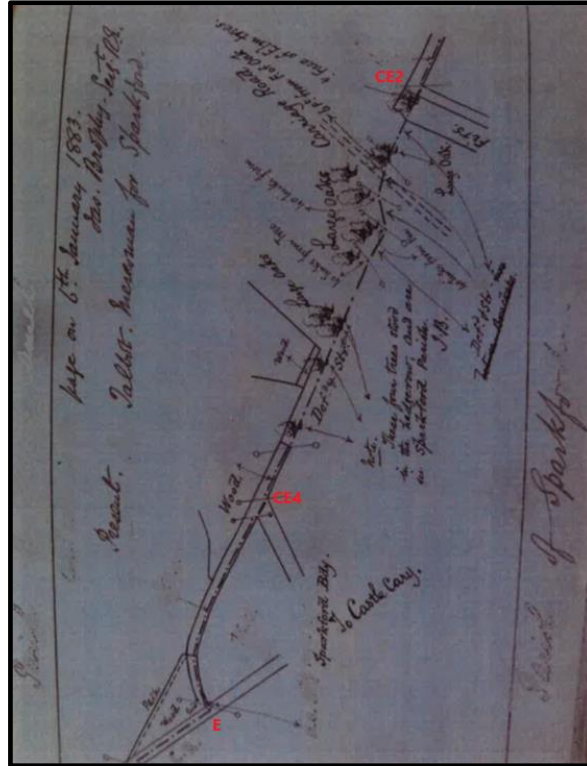
(iii) OS Boundary Remark Book (extracts) (1883)



Extract from the OS Boundary Remark book for South Barrow Parish covering part of application route 858

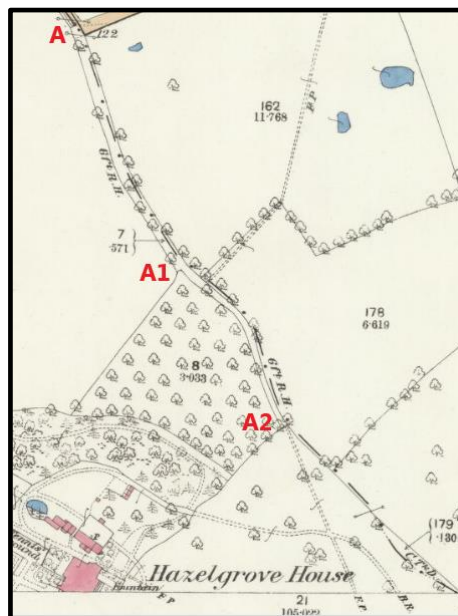


Extract from the OS Boundary Remark book for Sparkford Parish covering parts of application routes 858 and 859. A red box has been added to highlight the wording "Private Road".

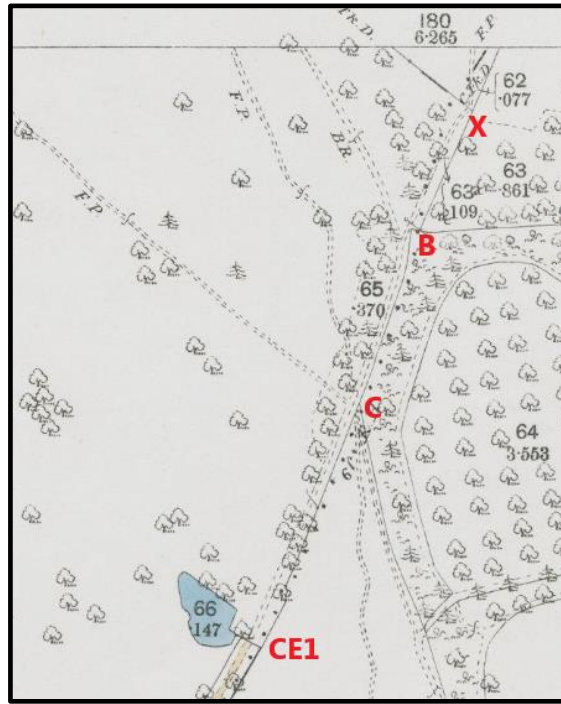


Extract from the OS Boundary Remark book for Sparkford Parish covering part of application route 859.

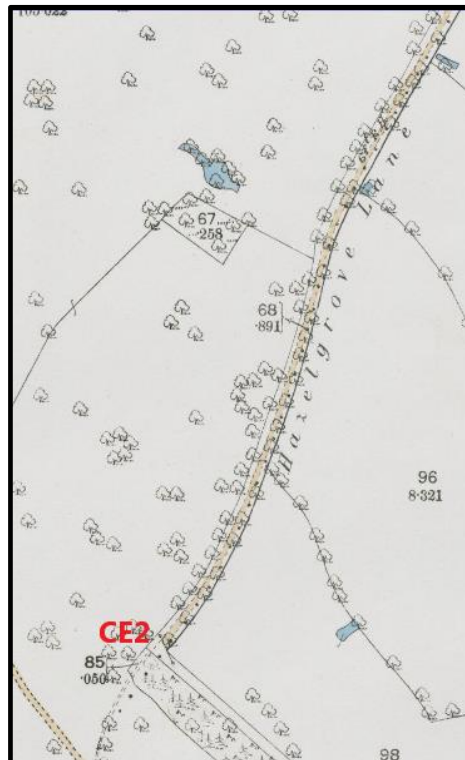
(iv) OS County Series First Edition Map (1887)



Sheet LXXIV.3 covering application route 858 A towards B



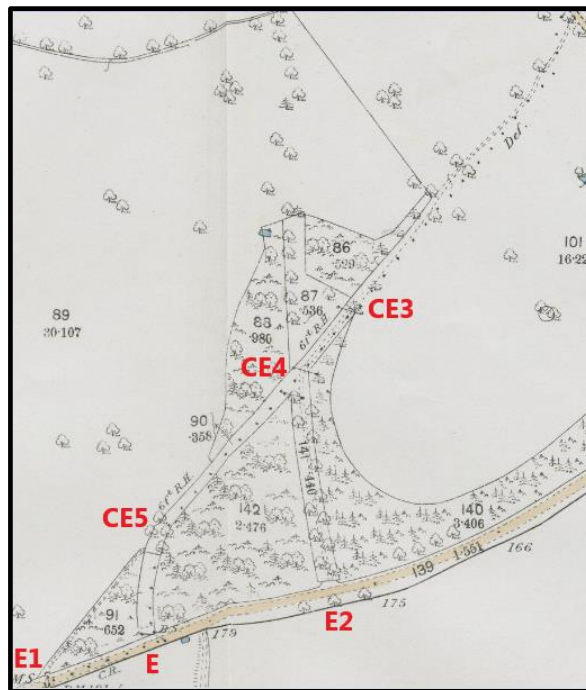
Sheet LXXIV.7 covering parts of application routes 858 and 859



Sheet LXXIV.7 covering part of application route 859

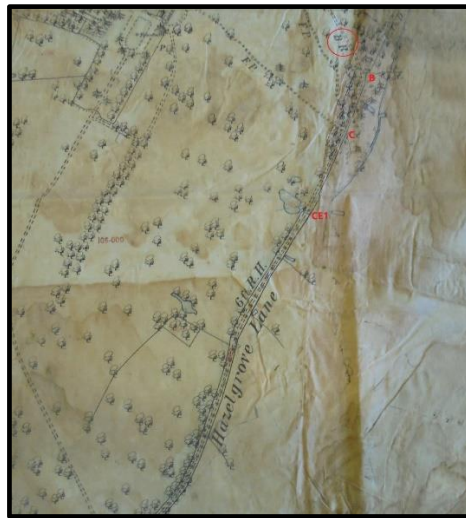


Sheet LXXIV.7 covering; part of application route 859, and a private carriage drive. A red box has been added to highlight the carriage drive.

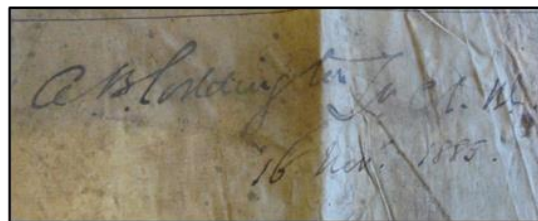


Sheet LXXIV.7 covering part of application route 859 from after CE2 to E

(v) Map of Queen Camel (1889)



Section of 1889 Map of Queen Camel covering parts of application routes 858 and 859. (from extract supplied by the applicant). Red letters added to mark the application routes.

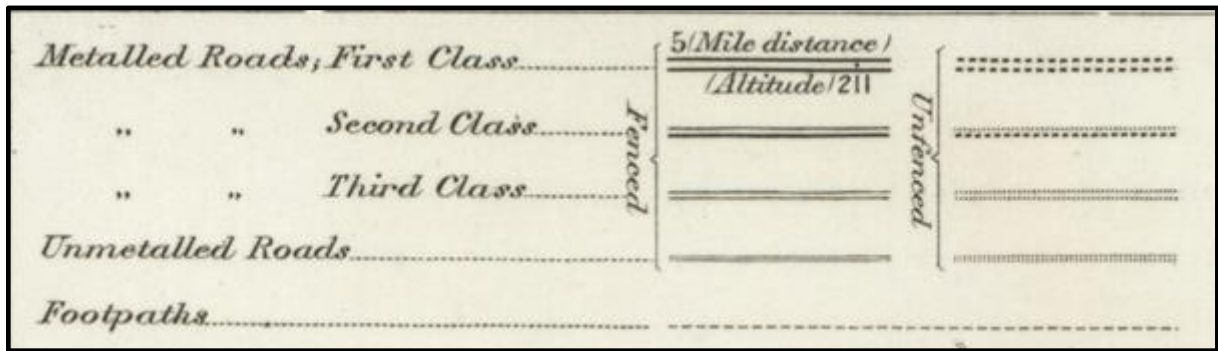


Close up of the signature and date on the map (from extract supplied by the applicant)

(vi) OS Revised New Series Map (1898)

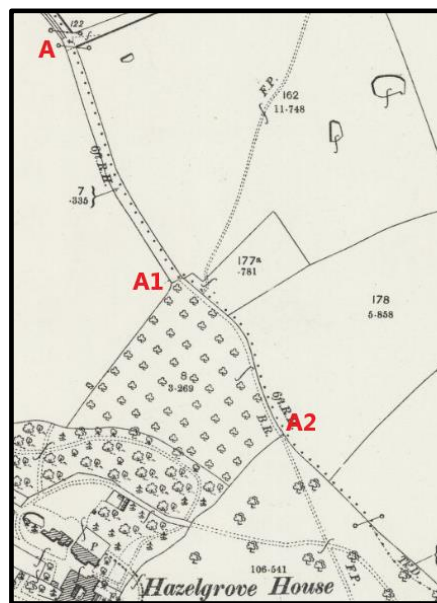


Sheet 296, red letters added for reference

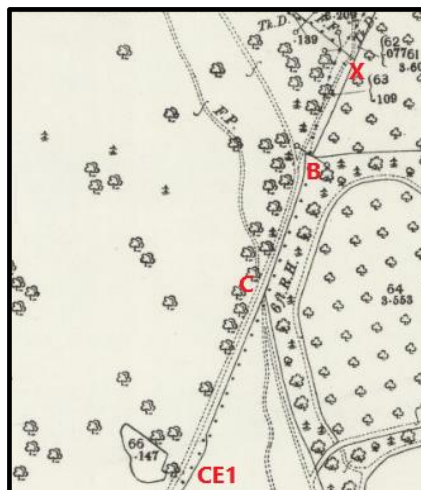


Section of map key showing the different classes of road

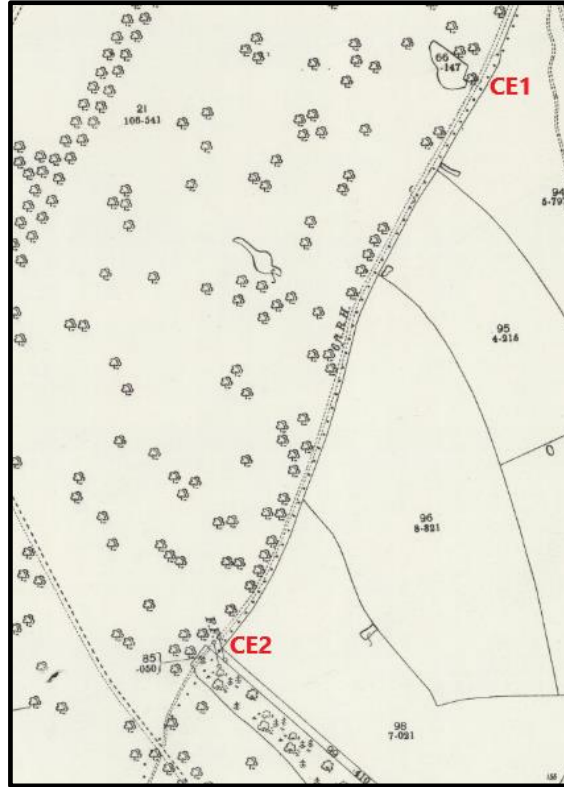
(vii) OS County Series Second Edition Map (1903)



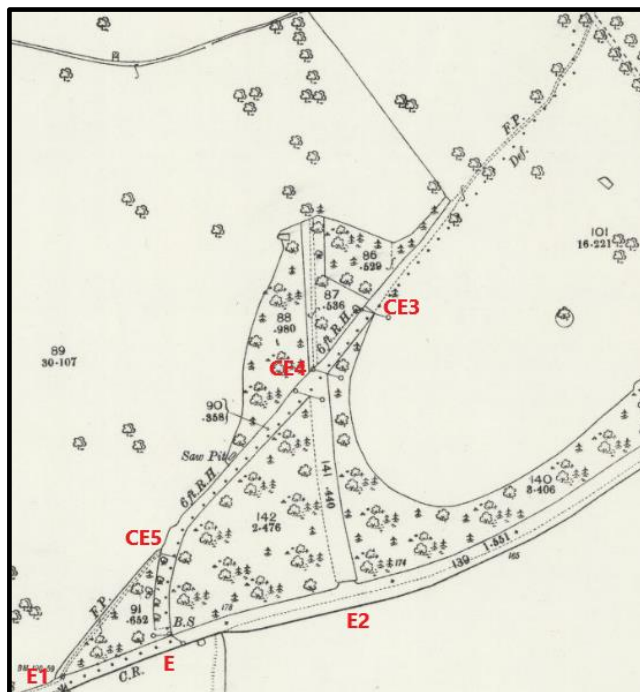
Sheet LXXIV.3 covering application route 858 A towards B



Sheet LXXIV.7 covering parts of application routes 858 and 859



Sheet LXXIV.7 covering part of application route 859

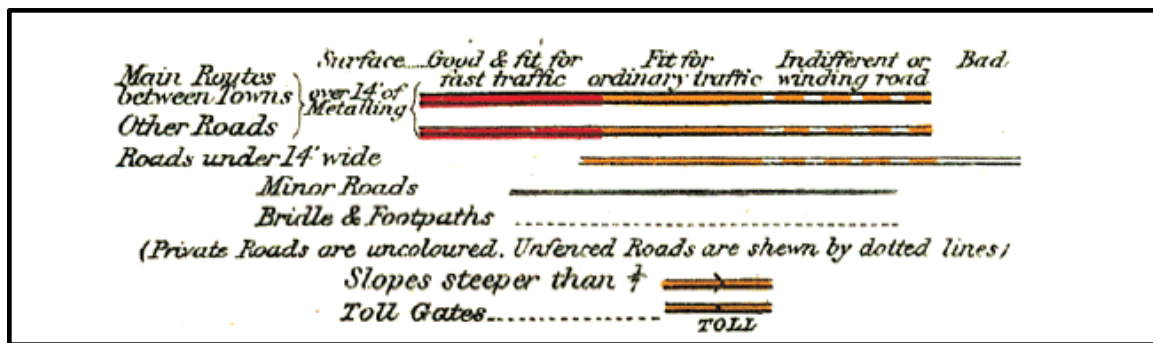


Sheet LXXIV.7 covering part of application route 859 from after CE2 to E

(viii) OS 'Popular Edition' Map (extracts) (1919)



Red letters added for reference.



Map key showing road classifications

(ix) OS 'six-inch' Map (1886)



Red letters added for reference

(x) OS 'six-inch' Map (1904)



Red letters added for reference

OS object name book (1901)

Source: National Archives (extract only)

Reference: OS 35/6400

Names collected & entered by A. Sprague in November 1901

Names as altered introduced in 1882 by J. G. Colony Dept. Gen. Dist. 1881

O. S. 21.

No Somerset Queen's Canal Pt. Sheet LXXIV. N.E.

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation			Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Plan	Trace	
	<i>Hazelgrove Lane (Obsolete)</i>	<i>Mr. A. Brooks. (Agent) Queen's Canal see form 231 att. authority for obsolete</i>	LXXIV	7	2	<i>West side of lane demolished.</i>

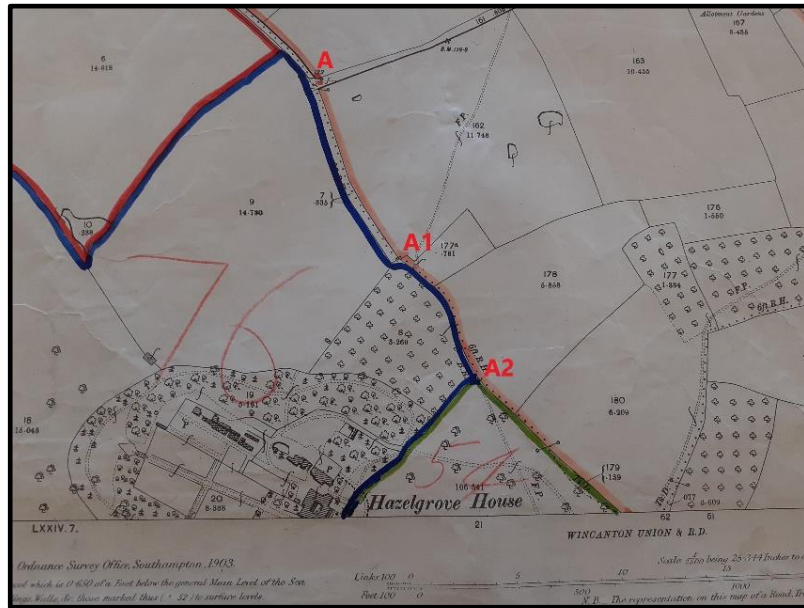
Entry listed in the object names book for Hazelgrove Lane

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(i) Finance Act 1910 working plans

Source: Reproduced by kind permission of the South West Heritage Trust

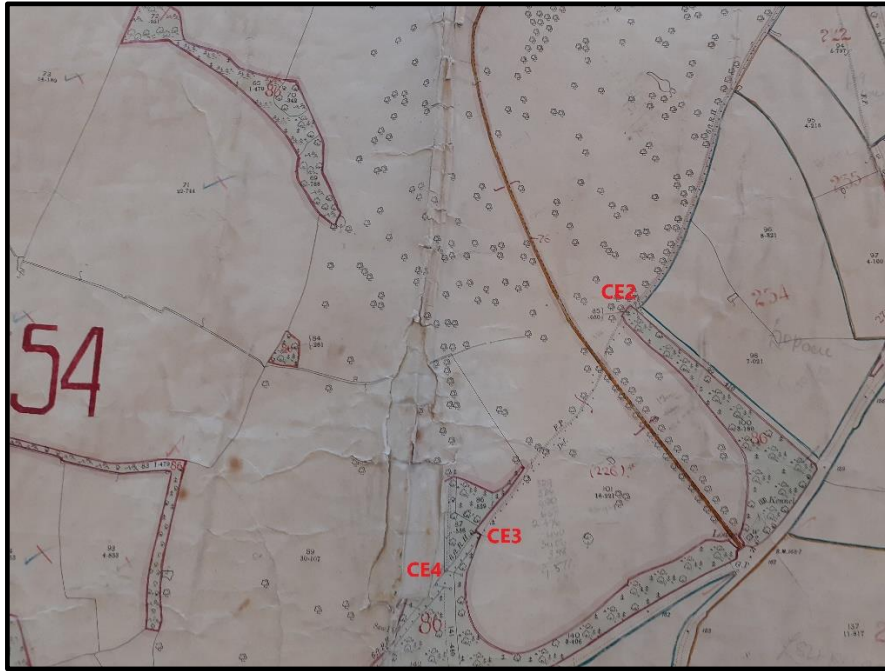
Reference: SHC DD/IR/OS/74/7 and SHC DD/IR/B/27/1



Map sheet 74-3 showing part of application route 858. Red letters added for reference.



Map sheet 74-7 showing part of application routes 858 and 859. Red letters added for reference.



Map sheet 74-7 showing part of application route 859. Red letters added for reference.



Map sheet 74-7 showing part of application route 859. Red letters added for reference.

(ii) Finance Act 1910 record plans and field books

Source: National Archives (extract)

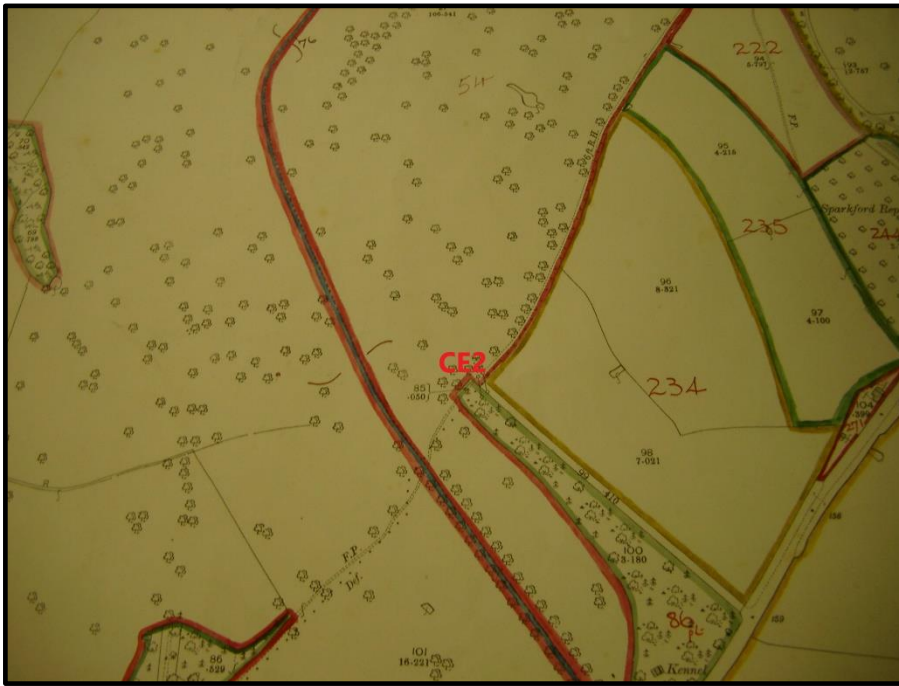
Reference: IR 128/9/905 & 909 and IR 58/5381 & 5383



Extract from map sheet 74-3 showing part of application route 858. Red letters added for reference.



Extract from map sheet 74-7 showing part of application routes 858 and 859. Red letters added for reference.



Extract from map sheet 74-7 showing part of application route 859. Red letters added for reference.



Extract from map sheet 74-7 showing part of application route 859. Red letters added for reference.

SCHEDULE		
Dist. in meters	Description	Area
4	right of way	.525
7	hedges	14.930
2	enclosed	2.267
19	Plantation	3.171
20	Longwood Forest of America	2.278
18	Plantation	15.045
42	hedge	2.101
24	hedge	.700
101	hedge	.260
		50.886
	- 1150	61.77

 A section of a working plan showing a blue-shaded area, possibly a right of way or a specific plot. A red box highlights a small area labeled '7' and '335'. The plan includes various lines, curves, and other markings, with some points labeled 'A' and 'A1'. The background is a light-colored paper with some grid lines.

Extract from the field book for hereditament 76 and section of the working plan showing OS number 7.

Part Bids $\frac{1}{2} \times 20 \text{ YP}$
 Total (offered) $\frac{1}{2} \times 12 \times 20 \text{ YP} = \frac{1}{2} \times 2217/4 = 2546$
 Valuation.—Market Value of Fee Simple in possession of whole

146 land
(See next page)
450
2546

Public Rights of Way or User	£
Rights of Common	£ 50
Easements	£
Restrictions	£

Extracts from the field book for hereditament 54

Particulars, ...
 Woods, Plantations and Road Wastes as
 per Schedule filed with Form IV

Extract from the field book for hereditament 86

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Highway Authority Road Records

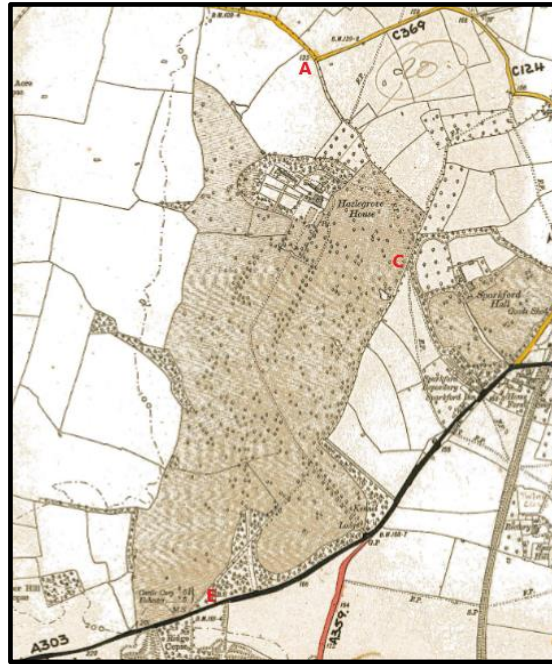
Source: Somerset County Council



1929 Handover map, red letters added for reference



1930s road records, red letters added for reference



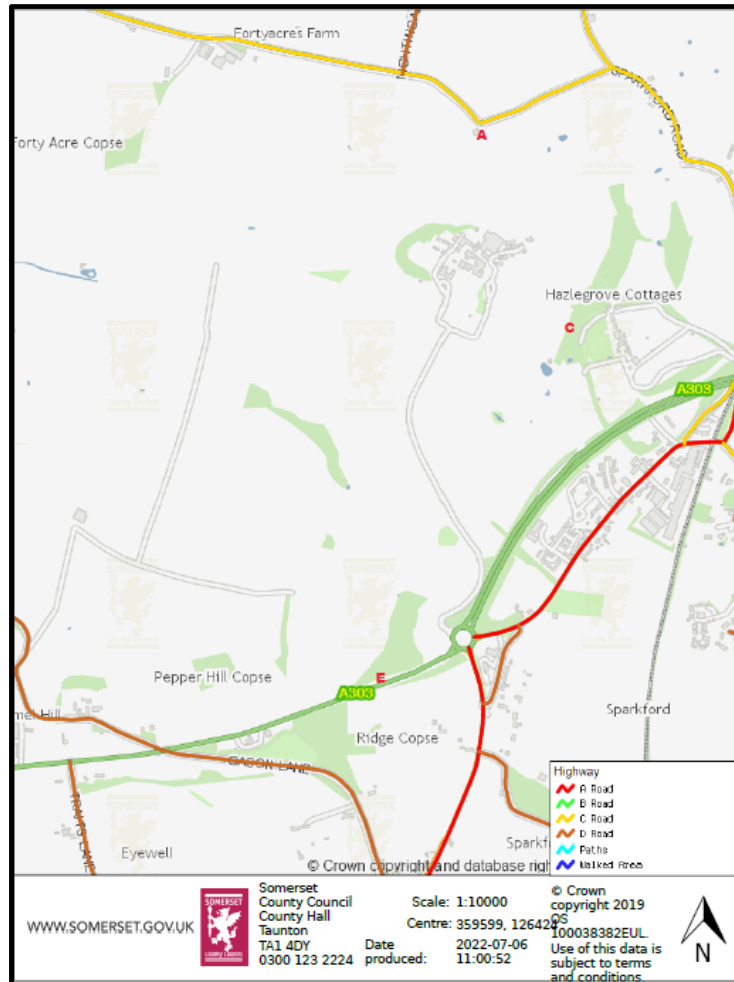
1950s road records, red letters added for reference



1970s road records, red letters added for reference

KEY	
MOTORWAY	DARK BLUE
TRUNK ROAD	BLACK
CLASS I	SCARLET RED
CLASS II	GRASS GREEN
CLASSIFIED UN-NUMBERED	LEMON YELLOW
UNCLASSIFIED	TERRACOTTA
DEFINITIVE FOOTPATH	PURPLE
DEFINITIVE BRIDLEWAY	TRUE GREEN
URBAN FOOTPATH	ULTRAMARINE BLUE
R.U.P.P.S (B.O.A.T.S/C.R.F.)	TRUE GREEN
COUNTY/PARISH BOUNDARY	SKY BLUE
DIVISIONAL BOUNDARY	DUNG
DISTRICT BOUNDARY	GREY
EXCEPTED AREA	PINK

1970s road records key

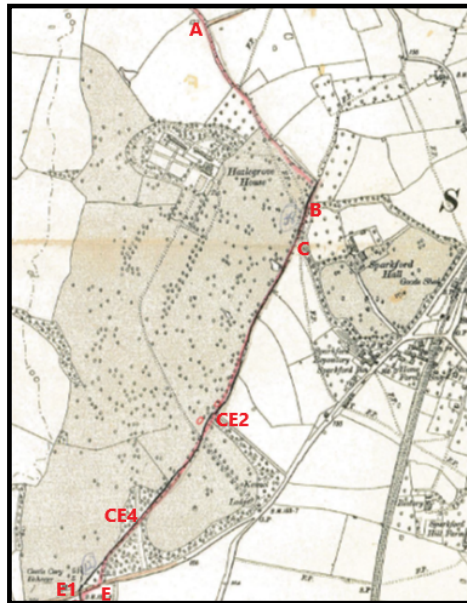


Modern road records, red letters added for reference

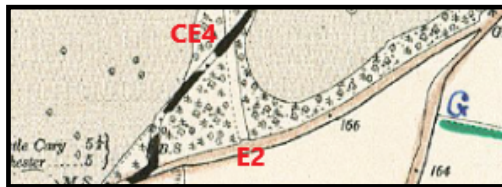
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(i) Parish survey maps

Source: SCC



Section of Queen Camel survey map showing the application routes. Red letters added for reference.



Section of Sparkford survey map showing CE4 to E2. Red letters added for reference.

(ii) Parish survey cards (1950-51)

Source: SCC

SOMERSET COUNTY COUNCIL		BOROUGH/URBAN-DISTRICT/PARISH OF :- <i>QUEEN CAMEL</i> <small>(Delete as necessary)</small>	
NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949			
SURVEY OF PUBLIC RIGHTS OF WAY.			
Parish No. of Path :- <i>38</i>	Path shown on 6" O.S. No. :- <i>74.NE.</i>	Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. :- <i>F.P.</i>	
DESCRIPTION :-	<i>The path starts at edge of henge in Hozlegrove Park - continuing path starting in Sparkford Parish - and proceeds along Boundary to end of Park and re-enters Sparkford Parish.</i>		
	<i>Path ill-defined - little used - stiles in good condition.</i>		

Queen Camel survey card number 38

SOMERSET COUNTY COUNCIL BOROUGH/URBAN DISTRICT FARM OF: QUEEN CAMEL
(Where necessary)

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path: — 12 Path shown on 6" O.S. No. — 74 NE Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. — F.P.
(Continuation of 11)

DESCRIPTION: — The path starts at Kissing Gate (gate missing; only 4 stones) and proceeds N.E. to 2nd Kissing Gate (gate also missing; as above). Path then joins lightly metalled C.R.F. which takes it into Haylegrove Park by 3rd Kissing Gate (in fair condition). The C.R.F. here ends in the Park and the path becomes somewhat ill-defined until it crosses the drive to Haylegrove House. Path from here on is better defined though it has the appearance of a cattle track. It should pass through a narrow strip of wood 150 yds from drive but the Kissing gate at West end is wired up and there is no exit at all on East end which is obstructed by barbed wire. Path, however, appears to skirt this wood, ~~and then follows bank fence~~ ^{cut by one of the gates from the fence} and ~~has the appearance of a cattle track. It should pass through the strip of wood~~ ^{the strip of wood (in fair condition) and then follows bank fence} ~~and then follows bank fence~~ ^{cut by one of the gates from the fence} ~~and then follows bank fence~~ ^{cut by one of the gates from the fence}

P.T.O.

Queen Camel survey card number 12

(iii) Draft Map (1956)
 Source: SCC



Section showing the application routes. Red letters added for reference.

(iv) Summary of objections to the draft map

Source: SCC

Serial No. of Objection (1)	District or Parish (2)	No. (if known) on Draft Map (3)	Name and Address of Objector and reference (if any) (4)	Nature or Reason for Objection (5)	Observations by Clerk (6)	Determination (7)
98A.	North Cheriton	-	County Council	Omission of CRP. along eastern section of Grove Lane.	Agreed.	✓ Add CRP. 20/3.
98B.	do.	-	do.	Omission of CRP. along lane leading south off Lower Charlton Lane to path 20/4.	Agreed.	✓ Add CRP. 20/10.
98.	Penselwood	-	Ramblers' Association 3172/238	Omission of path along Coombe Bottom.	Objection withdrawn.	No action.
102.	Pitcombe	-	Ramblers' Association 3163/238	Omission of path from Count's road just south of Lower Barn north-westerly along track shown on 6 in. map, thence westerly across field to junction with 22/16.	No evidence of public user.	Decline to add. Amend route of 22/16, and also 22/17 and 22/22 as on Draft Map.
103.	do.	-	Ramblers' Association 3163/240	Omission of path from junction of paths 22/19 and 22/20 south south-westerly to parish boundary, thence continuing south south-easterly along boundary to road east of Lower Barn.	No evidence of public user.	Decline to add.
104.	do.	22/17	British Transport Commission	Inclusion of 22/17 from junction with footpaths 22/7 and 22/9 at St. Leonard's Church, Pitcombe, north-easterly crossing the railway to Godminster Farm.	Objection withdrawn.	Decline to delete footpath.
99.	do.	-	Ramblers' Association 3163/243	Omission of path along railway.	Objection withdrawn.	No action.
100.	do.	-	Ramblers' Association 3163/232	Omission of path from Grove Cottages to Sleight Lane.	Objection withdrawn.	No action.
101.	do.	-	Ramblers' Association 3163/246	Omission of Nettlecombe Hill.	Already a County road - objection withdrawn.	No action.
20.	do.	-	Ramblers' Association 3163/242	Omission of path from Colestle Farm north-easterly across railway to junction with 22/2 at Gants Hill.	No evidence of public user.	Decline to add.
20A.	do.	-	County Council	Omission of CRP. known as Well Ladder Lane.	Agreed.	✓ Add CRP. 22/29
105.	Queen Camel	-	Rural District Council	Omission of bridleway known as Green Lane from northern end of 23/23 north north-westerly to 23/22 (Green Lane).	This is a County road.	No action.
106.	do.	-	Ramblers' Association 3162/223 and Rural District Council	Omission of continuation of 27/16 and 27/15 north-westerly across the corner of Hazelgrove Park, thence along parish boundary to road at "122".	Appears to be public.	✓ Add CRP. 23/40
107.	do.	-	County Council	Omission of CRP. known as Bindwell Lane (part).	Agreed.	✓ Add CRP. 23/41

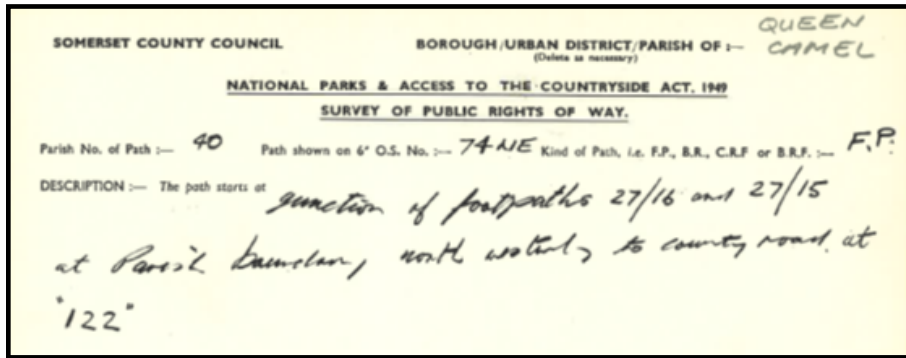
Section showing objection relating to the route of application 858 north. Red box added to highlight the relevant objection.

(v) Draft Modification Map (1968)

Source: SCC



Section showing the application routes. Red letters added for reference.



Queen Camel survey card for the added route number 40 (undated).

(vi) Summary of counter objections

Source: SCC

District or Parish	No. (if known) on Draft Map	Name and Address of Objector and reference (if any)	Nature or Reason for objection	Observations by Clerk	Determination
(a)	(b)	(c)	(d)	(e)	(f)
Hilborne Part	17/29	Mrs. Tophan	Deletion of path 17/29		
do.	17/29	Mr. Collyer	do. do.		
do.	17/30	Mrs. Tophan	Deletion of bridleway 17/30	No evidence of public user as of right	Decline to revoke determination to delete path from Draft Map
do.	17/30	Mr. Collyer	do.		
do.	17/30	Rushlers' Association	do.		
North Cadbury	-	Rushlers' Association	Creation of paths (a) From Hearn lane southerly to Cockhill lane west of Sandbrook Farm (b) From junction of Sandbrook lane and Hearn lane southerly to 19/30	Further evidence of public user supplied by Objector, but no user	No action
Queen Camel	23/40	King's School, Bruton	Route of path 23/40 wrongly shown	No evidence to contrary	No action 23/40 shown route accordingly
North Cadbury	27/30	do.	Deletion of 27/30 and continuation as 19/50 and 19/50 in North Cadbury and North Cadbury	No evidence of public user	Decline to restate path Draft Map
do.	27/30	North Cadbury Parish Council	Deletion of 27/30 and continuation as 19/50 in North Cadbury	No evidence of public user	Decline to restate path Draft Map

Section showing objection relating to the route of application 858 north. Red box added to highlight the relevant objection.

(vii) Provisional map (1970)

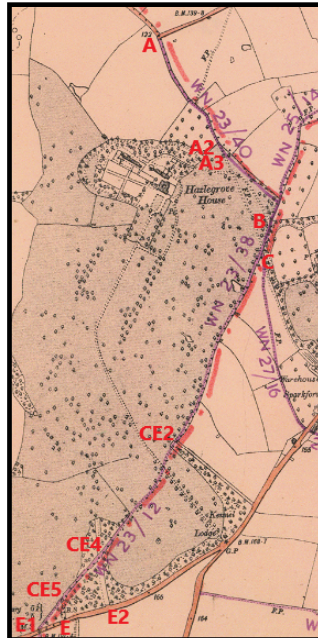
Source: SCC



Section showing the application routes. Red letters added for reference.

(viii) Definitive map and Statement (1972)

Source: SCC



Section of the map showing the application routes. Red letters added for reference.

		(1) PARISH NO. OF PATH- 40
(2) CONCISE DESCRIPTION OF PATH (TO INCLUDE WIDTH, NATURE OF SURFACE, MEANS OF ACCESS, OBSTRUCTIONS, ETC.)		
SYMBOLS TO BE USED IN BOX (2) BELOW Footpath F.P. Bridle Road (including Chalkways for Cycling) B.R. Cartilage or Cart Road (or Green (unenclosed land) usually used to Public use or public path) C.R.	FROM-	F.P.'s 27/16 and 27/15
	TO-	County road
	DESCRIPTION: THE PATH IS A	F.P. IT STARTS AT Junction of footpaths 27/16 and 27/15
		at Parish boundary north-westerly to County road at "122".

Statement for path WN 23/40

(THIS SIDE ONLY TO BE COMPLETED BY PARISH COUNCIL AT TIME OF FIRST SURVEY)		(1) PARISH NO. OF PATH- 38
(2) CONCISE DESCRIPTION OF PATH (TO INCLUDE WIDTH, NATURE OF SURFACE, MEANS OF ACCESS, OBSTRUCTIONS, ETC.)		
SYMBOLS TO BE USED IN BOX (2) BELOW Footpath F.P. Bridle Road (including Chalkways for Cycling) B.R. Cartilage or Cart Road (or Green (unenclosed land) usually used to Public use or public path) C.R.	FROM-	F.P. 12
	TO-	Parish Boundary
	DESCRIPTION: THE PATH IS A	F.P. IT STARTS AT the north eastern end of F.P. 12
		and runs in a north easterly direction along the boundary in Haselgrove Park to the South Barrow Parish Boundary where it continues as 25/14.

Statement for path WN 23/38

(THIS SIDE ONLY TO BE COMPLETED BY PARISH COUNCIL AT TIME OF FIRST SURVEY)		(1) PARISH NO. OF PATH:- 12
SYMBOLS TO BE USED IN BOX (3) BELOW Footpath F.P. Bridle Road (including Driveway for Cart) B.R. Garage or Gable Road or Green (unenclosed land) Marked used by Public as (1) Footpath F.P. (2) Bridleway B.R.	(2) CONCISE DESCRIPTION OF PATH (TO INCLUDE WIDTH, NATURE OF SURFACE, MEANS OF ACCESS, OBSTRUCTIONS, ETC.)	
	FROM:- North side of Ilchester road E.N.191.4 TO:- Sparkford Green Lane DESCRIPTION:- THE PATH IS A F.P. IT STARTS AT the north side of the Ilchester road at E.N.191.4 and runs north east through woods and Hasselgrove Park to the Sparkford Green Lane.	

Statement for path WN 23/12

(ix) File notes (1958)

PART III
(To be completed by the County Surveyor)

Observations of the County Surveyor on the objection:-

This is shown as claimed by P.C.
However, it can be said to duplicate 27/16.
Suggest one be deleted.

J. H. H. WILKES
 (Signed).....
 Date.....12 DEC 1958

PART IV
(To be completed by the County Archivist)

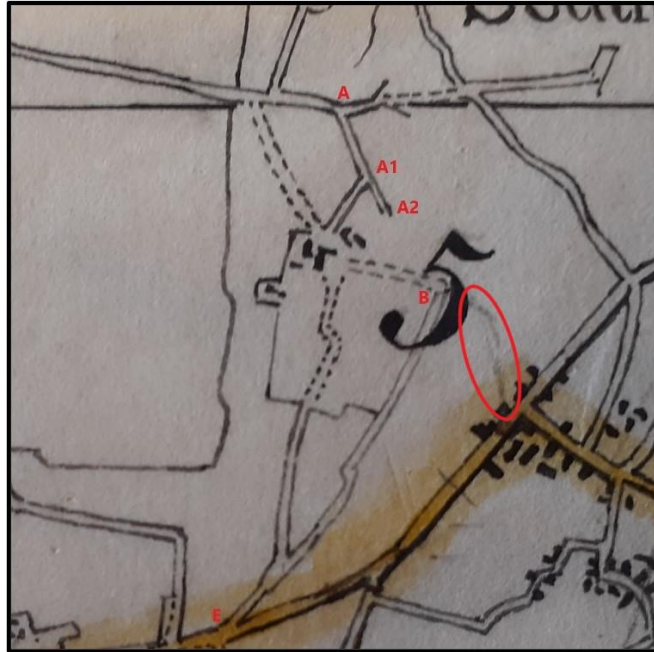
Observations of the County Archivist on the objection:-

Title Map, 1839 - Footpaths not shown
Enclosure Awards - Area not covered by Award.
Quarter Sessions Orders - An Order made at Epiphany, 1874, which dealt with the line of 23/14, and shows 27/16, also shows the drive into Sparkford Hall (along the line of 27/15), but at the point where this drive turns east north east it shows a footpath as continuing north west along the line now claimed by 27/15.

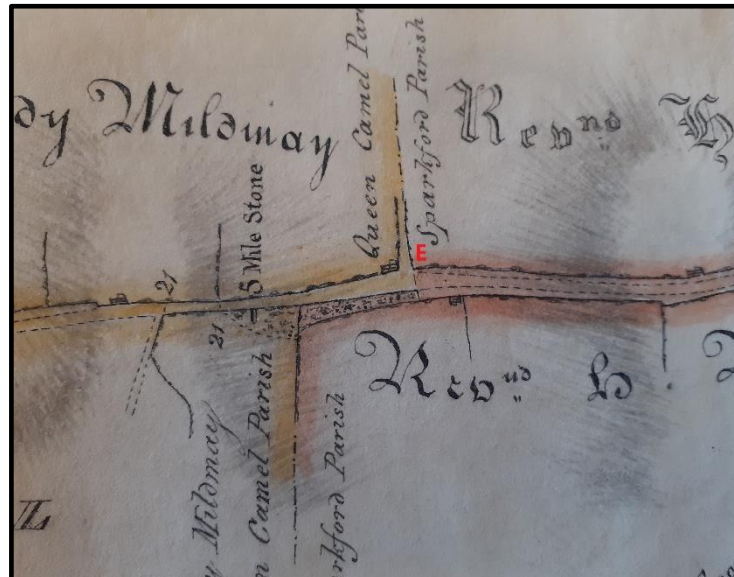
(Signed).....
 Date.....12 DEC 1958

Observations of the County Archivist on the objection to path 27/15, where reference is made to the 1874 Quarter Sessions Order but only in relation to the line of 23/14, 27/15 and 27/16.

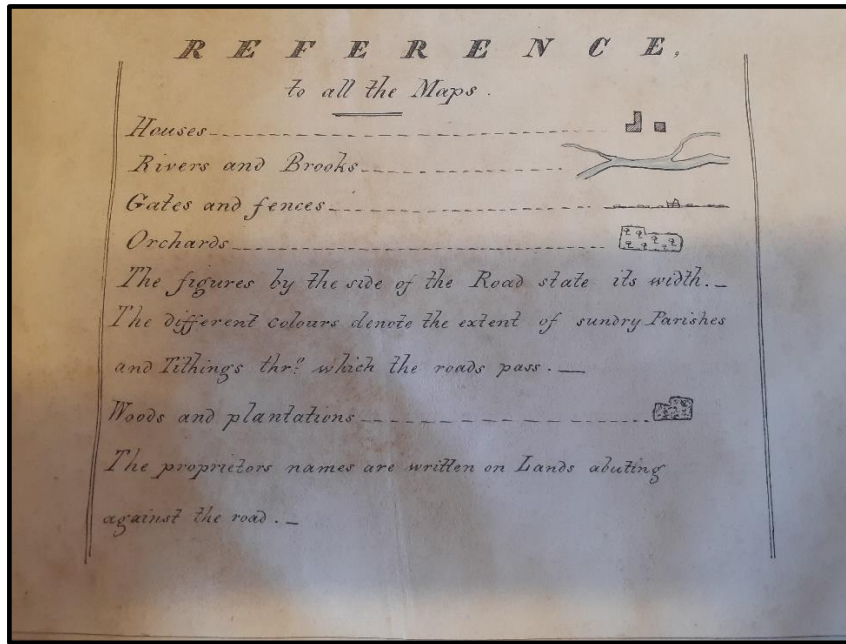
Ilchester Turnpike Maps (1826)
Source: South West Heritage Trust
Reference: SHC D/T/ilch/1



Route map with red letters added to mark the application routes. Some markings in pencil appear to have been added at an unknown date (circled in red).

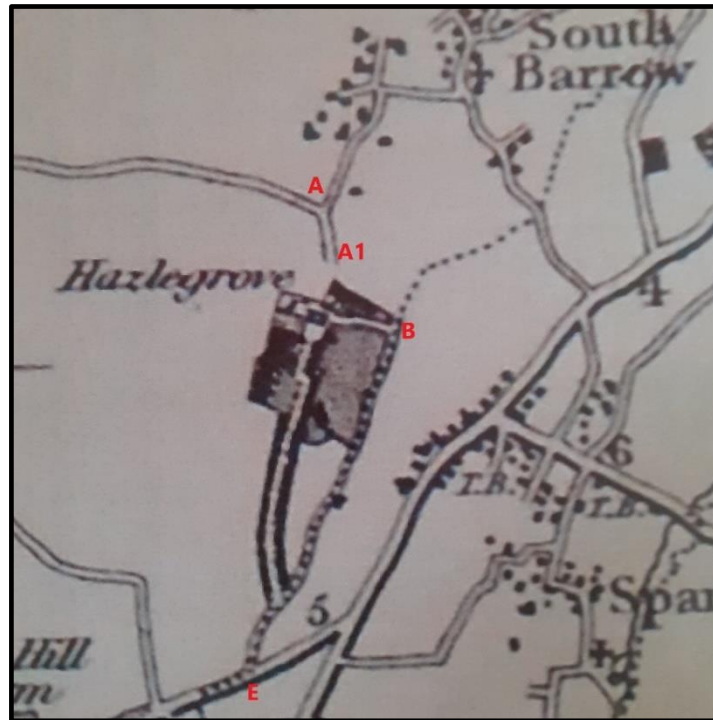


Detailed map with red letter added to mark the application route



Map key

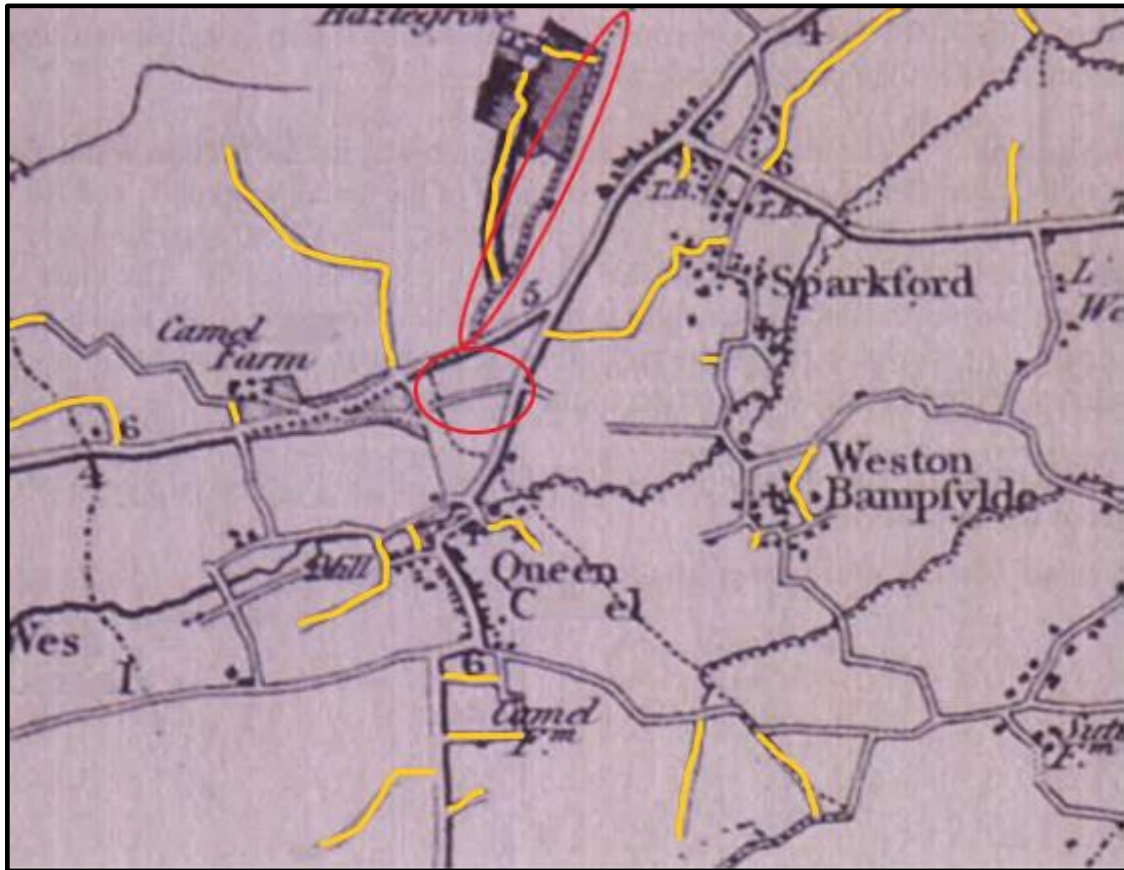
Greenwoods Map (extracts) (1822)



Extract covering application routes. Red letters added for reference.



Extract showing the map key

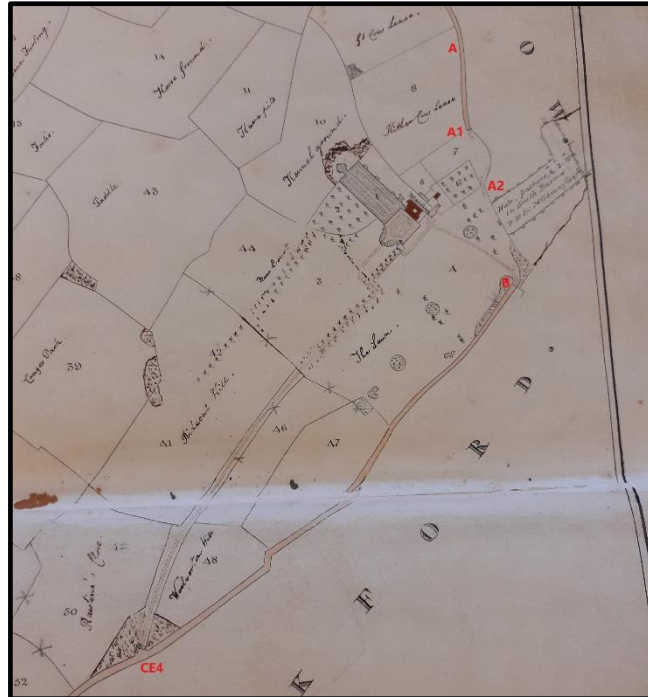


Extract with routes that are not recorded as modern public vehicular highways highlighted in yellow (although some do have lower level rights recorded over them). The two routes circled in red do not have public vehicular rights recorded but are the subject of modification applications, the northernmost being section B to E of the application routes under consideration in this report.

(i) Manorial map of Queen Camel (1827)

Source: South West Heritage Trust

Reference: SHC DD/MI/10

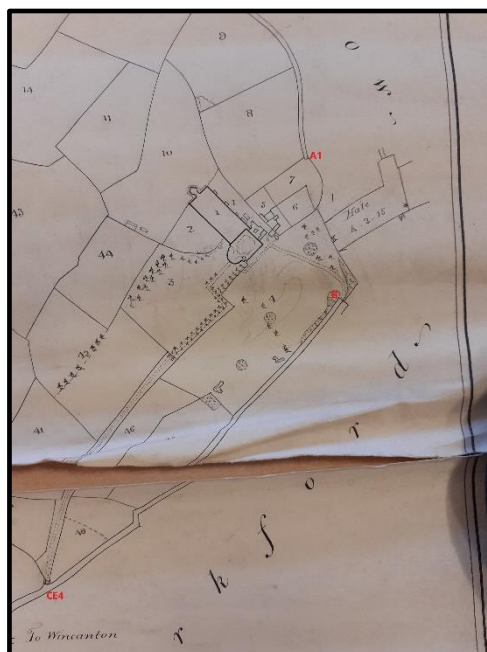


Red letters added for reference

(ii) Copy of Manorial map of Queen Camel (1827)

Source: South West Heritage Trust

Reference: SHC DD/SAS/C212/10/3

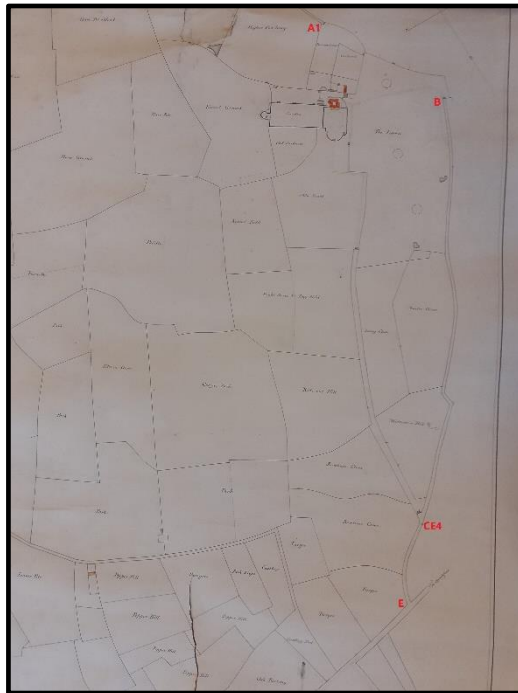


Red letters added for reference

(iii) Map of Queen Camel (1830)

Source: South West Heritage Trust

Reference: SHC DD/WY/9/2/75

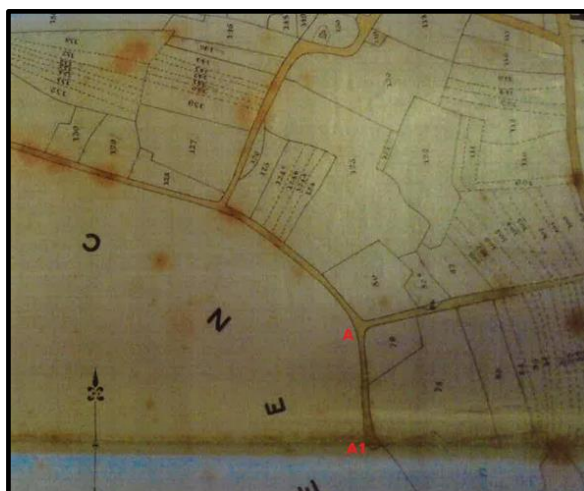


Red letters added for reference

(iv) Map of South Barrow (1843)

Source: South West Heritage Trust

Reference: SHC DD/MI/10



Red letters added for reference

(v) Map of Queen Camel (1848)
 Source: South West Heritage Trust
 Reference: SHC DD/S/CM/2



Red letters added for reference

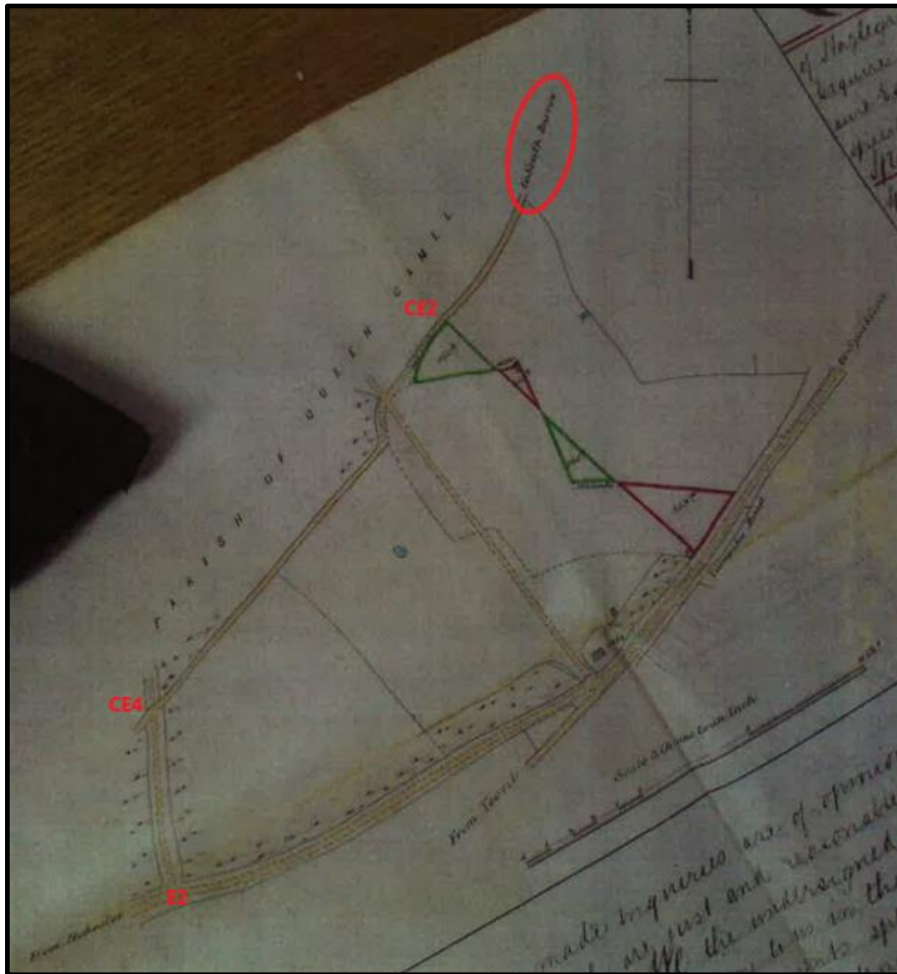
Lands belonging to P. H. S. Esq. Mildmay Esq.		
Arable Lands, Homesteads &c.	colored	Brown
Pasture, Orchard and Woodland	do	Green
Lifehold Estates	do	Pink
Copyhold	do	Blue
Lands in the Parish of Sparkford	do	Yellow

Map key

(vi) Exchange of lands (extract) (1873)

Source: National Archives

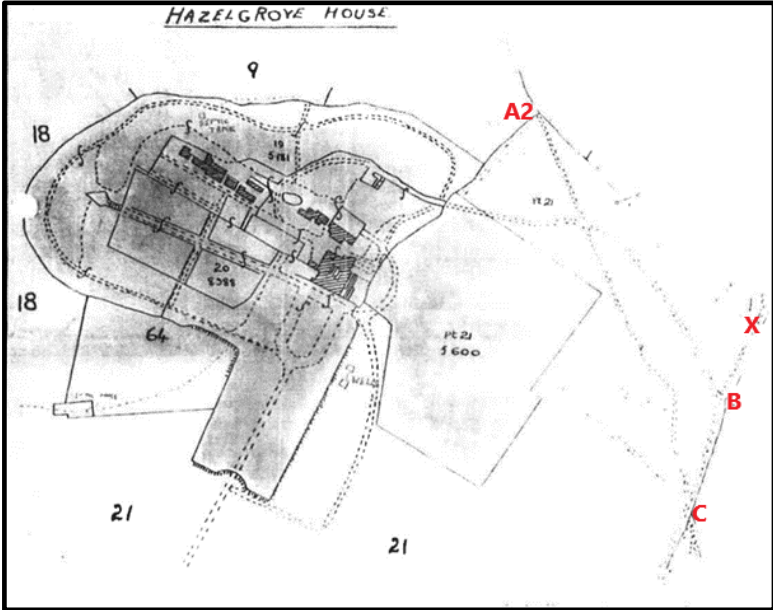
Reference: MAF 11 /142/4306



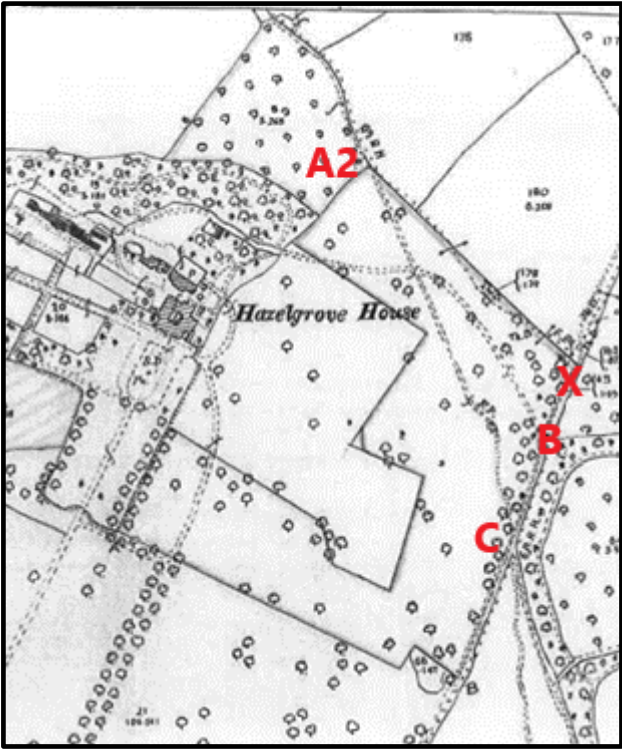
Red letters added for reference. Wording "to South Barrow" circled in red.

Conveyance documents (extracts) (1953 & 1969)

Source: Landowner A



Extract from 1953 conveyance. Red letters added for reference.



Extract from 1969 conveyance. Red letters added for reference.

Written submission from Queen Camel Parish Council (redacted extracts)**1. Evidence from Queen Camel farmers**

I have met with [REDACTED] of [REDACTED] Queen Camel and taken scans of some maps. (Supplied for your reference at Annex 1). His family purchased farmland from the Mildmay Estate around 1920. They have in their possession papers relating to the estate going back to the 1880s, but have not found any information in them relating to public paths across the land or an Estate Map.

[REDACTED] land is not affected by the application, but the longstanding family relationship with the Estate means that some information about how it used to operate has been handed down. His father's recollection [REDACTED] is that the Bridle Road (BR) ran from the kennels, up Hazelgrove Lane and then curved round to the stables at the back of the house (crossing the footpath).

It is also the case that the entire area of the three proposed bridleways 851, 858 and 859 fall within the boundary of the land owned by the Mildmay family. It is known that they 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.

2. Map Evidence

We have reviewed this 1885 map <https://maps.nls.uk/view/101462194> and the larger scale County Series from which it would have been derived

<https://maps.nls.uk/geo/explore/#zoom=16&lat=51.03090&lon=-2.57395&layers=178&b=1>

Links to other maps that have been reviewed are at Annex 2.

2.1 Proposed Bridleway 858 confuses a footpath with a bridle road (BR)

On both the above maps the BR is shown as a double pecked track crossing the double pecked route of the footpath. It emerges from the area at the rear of the house and crosses over the footpath, to curve round and join up with Hazelgrove Lane.

The application has the upper part of the proposed route of the Bridleway turning NNW where the footpath and Bridleway cross, and heading up the footpath. If they are claiming that the proposed Bridleway route is following the old BR then this is incorrect (and makes no sense when taken with [REDACTED] point above that the purpose of the route was to connect stables to kennels).

The routes of the footpaths/bridle roads on this map have clearly been surveyed as they curve and follow one side or another of featured trees – as opposed to being interpreted (shown as a straight line between two points). Therefore their routes and difference in widths they indicate (the BR is a wider path than the footpath) may be given credibility.

BR 858 continues to the rear of the Inn and the route agrees with the proposed Bridleway.

2.2 Proposed Bridleway 859 includes footpaths

Going south the BR turns into a stretch named Hazelgrove Lane. At the time of this map the lane does not connect with the formal driveway up to the house. Instead the route appears to have been diverted to go round a 90 degree bend running along the side of the copse. Having reached the road there is an option to join the road, or to continue round another bend to follow alongside the road to reach the kennels. This route kept the formal driveway to the house clear of animal activity and the double fence-lines make sense for animal control. Bear in mind that fence gates are not shown on the map, so fence lines look solid their whole length.

Returning to the end of Hazelgrove Lane, it continues as a footpath across the driveway area. Within this stretch is the designation 'Def' which stands for 'Defaced' meaning that the parish boundary at this point has become indistinct, perhaps due to landscaping. When the path reaches the woodland on the north side of the road near Ridge Copse it again opens out to suggest a track, but is not designated a road because it has no sienna colouring. The woodland track(s) also have no BR designation, because they lead to nowhere useful for a horse to travel to, so it seems they remain as paths.

Therefore the proposed Bridleway and the BR shown on the old map are not in agreement as the former follows a route that is actually a footpath in several places.

In summary, we would ask you to

- Consider the purposes of the original bridle roads and tracks when determining their route.
- Acknowledge that the Mildmay family would not have been likely to designate a public bridleway across their land, especially one running close to the house. (The Bridle Roads near the house have disappeared from the 1904 map, when it was still in family ownership)
- Look carefully at the distinctions between the bridle roads and the footpaths on the old maps, as it is possible that the applicant has misinterpreted footpaths as bridle routes.

Written submission from respondent 1 (redacted)

**The Mildmay Estate
Hazelgrove House, Queen Camel.**

**Comments for consideration
in the matter of claims for Public Rights**

**20 August 2021 based on recent
research in the National Archives.**

1. No map is self-interpreting; however knowledge of the “vocabulary and language” of the map means it will “speak” [to you.]

2. For example: Thickened lines on the South and East of a route, coloured Light Sienna on the expensive edition of the Ordnance Survey [“O.S.”] 25-inch scale map indicates a “metalled” / hard surface: “thin” lines indicate “unmetalled” – a “soft” surface.

Absence of the Light Sienna colouring on the black and white cheaper edition of the O.S. Map provides the reader with the knowledge that the surface of the route is metalled / hard.

For an explanation of the earlier O.S. symbology, the thickened lines on a route, see O.S. text book.

3. Among other things the evidence relied upon in the claim for modifications of the Somerset [Queen Camel] Definitive Map included two Ordnance Survey [O.S.] Maps for the specific area – that is

(i) the **1887** First Edition “County Series” = 25 inch scale. LXXIV.7.

This map was Surveyed in 1885. Therefore what was seen “on the ground” on the day of the Survey was recorded.

(ii) the **1903** Second Edition “County Series” = 25 inch scale. LXXIV.7.

This map was Surveyed in 1901. Again, what was seen “on the ground” on the day of the Survey was recorded.

For precision, O.S. map LXXIV.3 was carefully examined as well.

3. There is no evidence that the relevant explanation of *named Objects* shown on the two O.S. maps which is provided in the O.S. Object Names Book was submitted by the Applicant.

4. In order to leave no stone unturned, during the week of 16 August 2021 investigative research of the relevant O.S. Object Names Books in the National Archives [aka The Public Record Office] - and later a comparative exercise of the relevant Maps was undertaken.

5. Knowledge of the vocabulary and language of the O.S. maps meant they were able to “speak” to me - [REDACTED]

My findings are listed below:-

(a) **The 1887 O.S. 25-inch scale First Edition “County Series” map** is coloured. A gated uncoloured [*unmetalled - indicated by double thin lines*] unnamed “road” [O.S. plot 99 acreage .410 [“plot 99”] branches West from the Sparkford High Street [O.S. plot 105]. The O.S. symbology indicates that plot 99 [the unnamed gated road which branches from the Sparkford High Street] is a “road” which is “*on trespass*” = Private = Occupation Road. Not a public highway of any status.

(ai) Plot 99 turns [on the parish boundary [which is 6ft from the Root of the Eastern hedgeline] North East and continues as a Lane [enclosed [double lines] metalled [coloured Light Sienna, with a thickened line on the East] named “*Hazelgrove Lane*” which has its own identifying O.S. plot number **68 acreage .891**.

(aii) The fact that it is unequivocally gated [solid black line] at the end [*near the water feature O.S. plot 66*] indicates it is accepted as an Occupation Road = private.

(aiii) Thereafter an unenclosed track [shown by double pecks of the “thin” variety] continues, *braced* into the acreage of O.S. 21 but annotated with the letters “B.R.” which, when identifying its destination can reasonably be taken to mean evidence

of horse use associated with the Mansion House....but given the O.S. Disclaimer since 1889 cannot be reasonably taken to mean “public” bridleway.

(aiv) The unenclosed unmetalled track then continues on O.S. **LXXIV.3 but** veers West [still braced as part of O.S. 21] towards a gated entrance to the garden of Hazelgrove House. Double pecks annotated with the letters “F.P.” [braced into O.S. 21] cross over the B.R. route going North towards an enclosed, unmetalled track.

(av) The O.S. symbology on this [1887] map suggests the paths and tracks are simply “Estate paths” - not public highways. It is disingenuous to suggest that a “large-scale” map which covers such a small area would be relied upon and used by “the travelling public.”

(b) The 1903 O.S. 25-inch scale Second Edition “County Series” map is not coloured....it is black and white. It has evolved since 1887.. some of the features “on the ground” have changed.

(bi) O.S. plot 99 which - still unmetalled [thin lines] - can now be seen to be gated at each end unequivocally indicating O.S. symbology for an Occupation road, which still *branches* from the Sparkford High Street.

(bii) The route [braced into O.S. 21] which was formerly annotated with the letters “B.R.” and veered West through a gate into the garden of Hazelgrove House **no longer exists as an enclosed route with its own “name” - O.S. plot number and acreage;** that is -

on the day of the Survey, the Surveyor only saw an unenclosed *unnamed* track, braced into the acreage of O.S. 21...

the explanation for this was discovered in the undisclosed O.S. Object Names Book [1903 in the National Archives..] and will be included below -

(biii) The soft unenclosed original track travels as before to the gate which leads to the garden of Hazelgrove House.... However it is now annotated with the letters “F.P.”

(biv) Another route annotated “F.P.” travels North [towards the parish of South Barrow] to a track which is **gated at each end**. Again, O.S. symbology for an Occupation Road. The path travels through the first gate and is then braced into the orchard O.S. plot **8** acreage 3.269.

(bv) The second gate continues to an enclosed track O.S. plot **7** acreage .335. which exits [ungated] on the corner of a road in South Barrow [which has a thickened line on the South indicating it is metalled -[plot 162]. It is an accepted public vehicular highway, leading to Babcary.

(bvi) For clarity...a O.S. symbology for an Occupation Road is as follows:-

1. gated at each end
2. gated at the end of a track where it enters a field [or similar property]
3. gated at the *entrance* to a track

(bvii) The existence of several Occupation Roads more than *suggests* they were Estate tracks/roads/paths – necessary for running the large acreage of the private Estate.

The 1903 O.S. Object Names Book [National Archives, Kew.]

“Hazelgrove Lane” is not listed in the opening pages of the Book...unusual. BUT it is recorded in the **second column** of a page later in the Book. [Usual practice is an entry in the opening Index, followed by an entry in the First column of the relevant page.]

As the word “Obsolete” is written to the entry [which has been “authorised” by the Estate’s Agent] it stands to reason the Lane no longer exists as a “feature”. This is confirmed by the entry on the same page which says “***West side of lane demolished.***”

When a hedge [or even a wall] is “demolished” the small acreage of a lane or track is “thrown into” [subsumed by] the adjoining larger plot of land...such as, in this case, the 100-acre field [more likely than not referred to as “The Park”] through which the metalled unenclosed Carriage Driveway runs to the Mansion house - and the O.S. plot number which identifies the lane or track simply disappears. It is standard agricultural practice – and “X”s which indicate the procedure can often be seen on plans/maps used by Estates – including the one which owned our dairy farm.

Subsuming the acreage of the land of a Public Bridleway [however small] into private land would not go unnoticed..... but there is a deafening silence as to any complaint.

The detailed entry for the Sparkford “Repository” was also photographed and is included.



WILDLIFE AND COUNTRYSIDE ACT 1981
SECTION 53 SCHEDULE 14 APPLICATION TO ADD A BRIDLEWAY, FROM
WN 23/38 TO HIGH STREET, SPARKFORD

Application: 858M (southern section)

Author: Sue Coman

Date: March 2022

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



RNID typetalk

to discuss the details.

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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 an application to modify the DMS by upgrading parts of footpaths WN 23/38 and WN 23/40 to bridleways and adding sections of bridleway, from Babcary Road, South Barrow to High Street, Sparkford (shown A-B-C-D on appendix 1). This report is only concerned with the southern section of the application route where no existing public rights are recorded. This section is situated within the Parish of Sparkford and runs from WN 23/38 to High Street, Sparkford (C-D). The northern section of the application route that lies within the Parish of Queen Camel (A-B-C) will be dealt with in a separate report together with application 859M that continues the route along WN 23/38 on the Queen Camel parish boundary. The purpose of this report is to establish what public rights, if any, exist over the southern section of 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 considering this application, the investigating officer has examined a range of documentary evidence.

1.5. Analysis of this evidence has indicated that no right of way is reasonably alleged to subsist along section C to D of the application route as shown on Appendix 1.

1.6. The report therefore recommends that no Order is made in relation to this section of the application route.

1.7. This report begins by summarising the application in relation to the southern section of the route. 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 the 6 April 2018 South Somerset Bridleways Association made an application under Section 53(5) and Schedule 14 of the Wildlife & Countryside Act 1981, for an order to amend the Definitive Map and Statement by upgrading parts of footpaths WN 23/38 and WN 23/40 to bridleways and adding sections of bridleway, from Babcary Road, South Barrow to High Street, Sparkford. The route in question is shown on drawing number H39-2021pt2 (Appendix 1). The section of route considered in this report is marked C to D on Appendix 1.

2.2. The applicant believes that the application route should be recorded as a bridleway.

Their case is based on a range of documentary evidence. The evidence that relates to section C to D of the route is discussed below and recorded in Appendix 5.

The applicant argues that "While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate bridleway reputation over many years, indicating that the route does indeed have bridleway status."

2.3. Photographs of the claimed route taken on 24 June 2021 are at Appendix 2. The route starts at point C on the Queen Camel and Sparkford Parish boundary and at the junction of footpaths WN 23/38 and WN 27/16 (photograph 1). As shown on Appendix 1, footpath WN 27/16 follows a line heading south from point C and the claimed route follows a line on a slightly more easterly direction. On the ground, there is only a discernible path heading in the south-easterly direction. This is bounded by a fence on the east side and trees / shrubs on the west side (photograph 2).

2.4. The route on the ground continues along the line of the claimed route and the east side boundary changes to trees / shrubs (photographs 3 & 4). Further south the trees / shrubs continue on the east side boundary, but the west side is more open. At point C2, there is a boundary feature perpendicular to the route on the west side (photographs 5 & 6). The gap between this boundary feature and the east side of the route was measured as 3.8 metres.

2.5. At C2, the line of the claimed route continues ahead in a south-easterly direction through overgrowth with no discernible path (photograph 7). This is in contrast to the discernible route on the ground which turns to head south-west to meet the stile and steps down to the A303 for footpath WN 27/16,

although there is no discernible route on this side of the A303 following the line of footpath WN 27/16.

2.6. From C2 to C3 the claimed route is bounded on the east side by woods and has no boundary on the west side (photographs 8, 9 & 10). At C3 the claimed route meets the A303.

2.7. The length of the route from C to C3 is approximately 280 metres.

2.8. From C3 the claimed route turns eastwards to circumvent what would have been the boundary of a cattle market but is now covered by the A303. At C4 the claimed route leaves the boundary of the A303 through a private garden (photographs 11, 12 & 13).

2.9. From C5 the claimed route continues through private gardens. Firstly, of an 18th century property (photograph 14) and then of a modern property (photographs 15, 16 & 17). At point D it meets a stone wall running alongside the pavement of Sparkford High Street. There is no break in the wall at this point. The wall is part old, with a modern repair, and part newly constructed where the modern property has been built (photograph 18).

2.10. The length of the route from C3 to D is approximately 180 metres, making the overall length of the route from C to D approximately 460 metres.

2.11. A land registry search was carried out on 8 June 2021 and identified five owners of the southern section of the application route (C to D) and four adjoining landowners.

The landownership is shown at Appendix 3.

2.12. 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 section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 is of particular relevance. That subsection states that the DMS should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows " that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates,

being right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic”.

3.2. The standard of proof to be applied in cases such as this (i.e. 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.

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.

3.3. 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

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.

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. **Quarter Session records**

Quarter Sessions Roll 1873
Source: South West Heritage Trust
Reference: Q/SR/694/ 70-88
Appendix number: 7

Description and interpretation of evidence

4.4.1. The Quarter Sessions Roll in 1873 refers to an application to stop up divert and turn part of a highway in the parishes of Queen Camel and Sparkford. A plan setting out the existing highway and route of the proposed diversion was submitted to the court. The highway that was to be stopped up was situated to the south-west of what is today footpath WN 23/38 and approximately 500 metres from the application route. Therefore, the plan has been reviewed for any details that may relate to the application route.

4.4.2. There are markings on the plan that may indicate a route that corresponds with part C to approximately C3 of the application route.

4.4.3. A single line runs alongside a boundary line from point C (labelled A on the plan itself) to point C1. Just south of point C the single line running from C to C1 splits with a second line running in a direction that is broadly similar to the existing footpath WN 27/16. Written along that line is the word "footpath". There is no corresponding annotation on the route between C1 and C3.

4.4.4. At C1 there are two parallel pecked lines coming from the direction of Sparkford Hall which make a right-angled turn and head towards C3. These then pass through a field boundary and make another right-angled turn to follow that boundary north-east. The plan does not continue beyond that point.

4.4.5. Other linear features on the plan that are composed of parallel pecked lines represent existing roads, the proposed new road, and the private road from Hazelgrove House. Whilst it is likely that the parallel pecked lines running

through C1 and C3 are also meant to represent some form of road there is nothing marked on the plan to indicate whether it was considered to be a public or private road.

4.4.6. The fact the route between C1 and C3 is shown running from the grounds of Sparkford Hall means it is more likely that it was a private access road for Sparkford Hall.

4.4.7. If the route was a private road from C1 through C3 this does not mean that public footpath or bridleway rights could not also exist over it. That a route, of some description, continues on north-westwards past the Sparkford Hall turning would support that view.

4.4.8. The Planning Inspectorate's Consistency Guidelines advise "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". The application route was incidental to the decision being put before the Court. Therefore, the depiction of the route on the plan, cannot be considered conclusive evidence and does not provide direct evidence of status. However, it does provide some evidence of the existence of routes over parts of the application route, at that time.

4.5. **Tithe records**

Sparkford Tithe Map (1839) and Apportionment (1837-9) Diocesan copy

Source: South West Heritage Trust

Reference: SHC D/D/rt/M/75 and SHC D/D/rt/A/75

Appendix number: 8(i) & (ii)

Sparkford Tithe Map (1839)

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

Reference: IR 30/30/381

Appendix number: 8(iii)

Description and interpretation of evidence

4.5.1. Three tithe maps were produced for each area, for the Diocese, Parish, and Commissioners respectively. There can sometimes be slight variations

between these maps. Two versions (the Diocesan and Commissioners' copies) have been examined in relation to this case and each will be discussed in turn.

4.5.2. The Diocesan copy of 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.

4.5.3. 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 routes connecting between them are modern day public roads. There are also routes coloured sienna on the map that today have no public rights over them. Therefore, the sienna colouring on this map does not necessarily indicate public rights of way.

4.5.4. The line of the application route runs through plots that are numbered 172 and 186. 172 is recorded on the apportionment with the description "Seven Acres" and under state of cultivation as "Meadow". 186 is recorded with the description "Plantations" and under state of cultivation as "Wood".

4.5.5. There is no linear feature shown on the map that corresponds with the line of the application route. A linear feature is shown running from approximately point D1 on Sparkford High Street and between plots 170 and 186 then into plot 171.

4.5.6. Plot 170 is recorded on the apportionment with the description "Sparkford Inn Garden & Yard". There is the outline of a rectangle on the plot that has a shape and position (near D1) that corresponds with an outbuilding of the Sparkford Inn that exists today and was probably a former livery stables.² The linear feature mentioned above runs along the north-east side of the stables to the back of the Sparkford Inn and into plot 171 where it runs up to the north-west boundary of the plot. It is not clear if it terminates at this point by an outbuilding or if it makes a right-angled turn to a gap into plot 172. Plot 171 is recorded on the apportionment as "Little Mead" and state of cultivation "Orchard". The recorded occupier "John Masters" is the same as the Sparkford Inn (plot 170) and Seven Acres (plot 172).

4.5.7. The route does not appear to lead anywhere other than to plot 171 or possibly plot 172. This would tend to support a conclusion that it was some form of private access road.

4.5.8. There are some key differences in how this linear feature is shown on the extract of the Commissioner's copy of the tithe map submitted by the applicant.

² Historic England listing, outbuilding about 5 metres north-east of Sparkford Inn <https://historicengland.org.uk/listing/the-list/list-entry/1243391>, accessed 11 August 2021

The representation of buildings and linear features between the Sparkford Inn and the Roundhouse (a building with a distinctive circular bay on its east side situated between D1 and D) are difficult to distinguish on this map but it is possible they may indicate the stable block with a route either side. A linear feature is clearly shown inside the boundary of plot 171, as before, although on this map at the end of the plot it more clearly turns to follow the north-west boundary of the plot. In addition, another linear feature is shown on the eastern side of the Roundhouse (near point D) running north-west through plot 186 and then either ends or possibly turns east. There is no indication on the map of the feature turning west towards plot 172.

4.5.9. There is nothing marked on either map to indicate the existence of a route running through Seven Acres meadow (plot 172) alongside the Plantations (plot 186). This does not mean that a right of way could not have existed through this plot. 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". However, if a route did continue through Seven Acres it was clearly of less interest to the tithe commissioners than the part from Sparkford High Street.

4.5.10. In conclusion, this document set provides evidence of a possible route between Sparkford High Street and the present day A303 in the vicinity, but not along the line, of the application route. The map gives no explicit indication as to whether it was a public or private route.

4.6. **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 9(i)

4.6.1. 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.

4.6.2. The map shows a linear feature that is broadly similar to the one on the tithe maps. It runs from Sparkford High Street towards Hazelgrove Lane but terminates in a right angled turn approximately midway between them.

4.6.3. This document extract provides further support for the existence of a physical route on the ground in the proximity of part of the application route. However, it does not provide direct information on the status of the route.

1887 OS County Series First Edition Map
Sheet No: LXXIV.7
Survey Date: 1885
Scale: 1:2500
Appendix 9(ii)

4.6.4. From point C to point C1 the application route is shown as a pair of close parallel pecked lines. A route following the line of footpath WN 27/16, and marked F.P., is shown in the same way.

4.6.5. At point C1 a route is shown coming from the grounds of Sparkford Hall and turning to head towards point C2. The route from C1 through C2 to C3 is now shown as a visibly wider pair of parallel pecked lines. Just south of C1 the route is marked B.R. "Bridle roads were regarded as passable on horseback. From 1884 they were shown as 'B. R.'"³.

4.6.6. There is no route shown on this map that leads from C3 to C4. A route is shown between C4 and C5 but from C5 it heads some distance north-east of point D, to where there exists today a 19th century entrance gateway in the setting of Sparkford Hall.⁴ From C4 it heads north-west around the plantation grounds that encircle Sparkford Hall.

4.6.7. Just south of point C3 a route does continue but on a different line to the application route. It crosses a solid line, most likely indicating a boundary feature such as a hedge or a fence, into the repository. Within the repository the route follows the boundary round as parallel pecked lines then continues on in a south-easterly direction with one side of the pecked lines joining the solid line of the boundary. Then further on the other pecked line meets the intermittent solid lines of "cattle pens".

4.6.8. From the cattle pens a narrow physical feature is shown continuing around the Sparkford Inn boundary and running part way alongside the stables of the Sparkford Inn. At this point a dashed line is shown across the route indicating a feature which either did not obstruct pedestrians or which was indefinite or surveyed to a lower standard than usual⁵. There is nothing shown on the map to indicate a route after this point. At the junction with Sparkford High Street the gap between the Sparkford Inn stables and the Roundhouse

³ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, second edition* (London: Charles Close Society, 2005), p. 96

⁴ Historic England listing, entrance gateway about 250 metres south east of Sparkford Hall <https://historicengland.org.uk/listing/the-list/list-entry/1243392>, accessed 9 November 2021

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

(point D1) is shown with a solid line running across it indicating a physical feature obstructing the route, for example, a gate.

Map of Queen Camel (1889)

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

Reference: SHC DD/BT/ 5/18

Appendix 9(v)

4.6.1. 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 map. A section of the map showing the date is included in the appendix. The map covers the Queen Camel and Sparkford Parish boundary. The start of a route into Sparkford Parish is indicated at point C. This could relate to the application route but it could also equally apply to footpath WN 27/16 that also starts at point C. There is no discernible difference between how this part of the route is shown on this map and how it is shown on the 1887 OS map so the document does not add any additional weight to the case.

1898 OS Revised New Series Map

Sheet 296

Survey Date: 1885; Revised: 1897

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

Appendix 9(iii)

4.6.9. 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. There is no route shown on the map that corresponds to the application route. If a route did exist along the line of the application route, this map would suggest that it was not considered to be of sufficient significance to warrant inclusion.

1903 OS County Series Second Edition Map

Sheet No: LXXIV.7

Survey Date: 1885; Revised: 1901

Scale: 1:2500

Appendix 9(iv)

4.6.10. In general, section C to C3 of the application route is shown on this map in the same way as on the 1887 OS County Series First Edition Map. However, there are two notable exceptions:

- There is no longer a visible difference between the width of section C to C1 of the route and section C1 to C3

- Section C1 to C3 of the route is no longer marked B.R.

4.6.11. There are some differences in how the route that continues from C3, on a different line to the application route, is shown

- There is no depiction of a route just south of C3 within the area of the cattle pens
- The linear feature near C5 that continues around the boundary of the Sparkford Inn now has solid lines across both ends and no longer continues part way along the side of the stables of the Sparkford Inn.

4.6.12. As mentioned in paragraph 4.6.5 above there is a narrowing of the possible route around the Sparkford Inn boundary. Measurements taken from a digitised version of the map show the route to be restricted to less than 1.5 metres in places. Considering this part of the route includes a right-angled turn it is difficult to see how it could easily be navigated other than on foot.

Interpretation of evidence

4.6.13. Whilst OS maps provide evidence of the physical existence of a route, they do not provide direct information on its status i.e. whether it was public or private. 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".⁶ 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".⁷

4.6.14. The 1:2500 OS maps above show a physical route existing on the ground between C and C3 which may then have led through the repository and onto Sparkford High Street at D1. There is less indication of a physical route existing along the line of the application route from C3 through the plantations to D. Although a physical route is not shown on the 1:63,360 map that doesn't mean that it didn't exist. The scale of that map means that smaller routes would not have been shown. The line of the route on the 1:2500 maps is also consistent with those parts recorded on the 1839 Tithe map and the 1873 plan presented at the Quarter Sessions.

4.6.15. On the 1887 OS county series first edition between C1 and C2 the route is marked B.R. indicating it is a bridle road. However, at C1 this route

⁶ *Moser v Ambleside Urban District Council* (1925) 89 JP 118, p. 119.

⁷ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, third edition* (London: Charles Close Society, 2013), p. 109.

clearly turns towards Sparkford Hall, a private residence, and connects the Hall to the Repository and the Inn.

4.6.16. A route continues from C1 to C but there is a distinct difference in the width depicted for that route compared to the route from C3 to Sparkford Hall. This change in the depiction of the route at C1 is also consistent with the 1873 plan presented at the Quarter Sessions. Therefore, it cannot be assumed that the B.R. annotation applies to section C1 to C. This section may not have been used on horseback or alternatively, it was just maintained to a lower standard as it was of less interest to Sparkford Hall.

4.7. **OS Object Name Book**

OS Object Name Book (1901)
Source: National Archives (extract only)
Reference: OS 35/6400
Appendix number: 10

Description and interpretation of evidence

4.7.1. The book includes an entry for the Sparkford Repository that reads, as later amended "Applies to a Cattle Sale Yard Situate at the North West side of Sparkford Inn. Used on each alternate Monday. [...] This is an important repository, & well attended by people for miles around, the name is very well known & advertised."

4.7.2. The repository is located behind the Sparkford Inn and there must have been some form of access to it from the road. However, such an access route solely for a class of the public i.e. customers of the repository, would not create a right of way for the public at large.

4.7.3. In considering the route that would have been used, the restricted route around the side of the Sparkford Inn to D1 may not have been suitable for such a well attended repository. With the People's Refreshment Association being the occupier of both the Sparkford Inn and the Sparkford Repository (see appendix 12(i)), customer access to the repository could have been provided through the grounds of the Inn itself.

4.7.4. Even if the customers of the repository were required to use the route around the side of the Sparkford Inn from D1 the earlier tithe map indicates a route following that line without any record of a repository existing at that time.

4.7.5. What the 1839 tithe map doesn't show is a route from C to C3. In fact there is no evidence of the physical existence of a route over this section before the Quarter Sessions records of 1873. The OS map shows that by 1885 the repository had been built. Therefore, it seems plausible to suggest that this part of the route (C-C3) came into existence as a useful short cut for those travelling from South Barrow to attend the Repository. In this respect it should be noted that the Tithe records show that C to C3 was in the same ownership as the land which would later become the Repository. If the owners of the Repository continued to own the land to the north then those people who were using C-C3 to access the Repository would have been doing so as a guest/invitee and would not have been asserting a public right.

4.7.6. In conclusion, the Object Name Book is consistent with the existence of some forms of private access routes, but it is far from conclusive particularly in regard to the route around the side of the Inn.

4.8. **Turnpike records**

Ilchester Turnpike Maps (1826)
Source: South West Heritage Trust
Reference: SHC D/T/ilch/1 1826
Appendix number: 11

Description and interpretation of evidence

4.8.1. Sparkford High Street is a former turnpike road and is included within the Ilchester turnpike maps. Two access points to the turnpike road are shown on the map in the vicinity of point D. The first is at the side of a building that corresponds in shape and location to the Roundhouse, point D1. The second is to the north-east of the Roundhouse, near point D.

4.8.2. Both access points end in a solid line and the map gives no indication as to whether routes continue on past those points, or the direction of any such route. They could simply provide access between an individual property or plot of land and the turnpike road. However, their positions are consistent with the later tithe map and as such provide support for the physical existence of a route from D1 into tithe plot 171 behind the Sparkford Inn. For the access point shown to the north-east of the Roundhouse the indication from the Commissioners copy of the tithe map is that a route may have run north-west within tithe plot 186 and either ended or turned east as opposed to heading in a more westerly direction along the line of the application route to point C3.

4.9. **1910 Finance Act**

Working plan and valuation book

Source: South West Heritage Trust

Reference: SHC DD/IR/OS/74/7 and SHC DD/IR/B/27/1

Appendix number: 12(i)

Record plan and field book

Source: National Archives (extract only)

Reference: IR 128/9/909 and IR 58/5383

Appendix number: 12(ii)

Description and interpretation of evidence

4.9.1. The working plan for the area shows how the land is divided into hereditaments. The application route is described by the applicant as running through hereditaments numbered 222 (Seven Acres) and 215 (Sparkford Hall). The route as it appears in historical OS maps and described in paragraph 4.6.9 above would run through hereditaments 222, 244 (Sparkford Inn and Repository) and 25[illegible] (The Roundhouse) with a small section near point C5 running between hereditament 244 and 215 and shown as excluded from both hereditaments.

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';⁸ However, in this particular case, if it was a public highway it is difficult to see how the excluded section near C5 could have been vehicular due to the overall narrowness of the route which is further exacerbated by a sharp turn. Also, the excluded section does not extend into the known highway network and was not shown as excluded on the later, more authoritative, record plan.

4.9.3. As footpaths and bridleways were usually dealt with as a deduction, the entries in the valuation book were checked for hereditaments 222, 215 and 244. There were no corresponding deductions for any of these hereditaments even though hereditament 222 has a known public footpath running diagonally across it. A review of all the entries in the valuation book for Sparkford Parish found that no deductions had been recorded against any entry despite the existence of several rights of way within the Parish. No conclusion can therefore be reached based on the valuation book.

⁸ DMO Consistency Guidelines 5th revision July 2013 Section 11 page 3

4.9.4. The record plan differs from the working plan in two ways. Firstly, the section near point C5 is no longer shown as being excluded. As mentioned in paragraph 4.9.2 above, rather than being shown as excluded, footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books. However, it is not clear which hereditament this section of the route falls within.

4.9.5. Secondly, hereditament 25[illegible] (the Roundhouse) is now shown outlined in the same colour as hereditament 215 (Sparkford Hall) and has no separate hereditament number. Therefore, it is possible that the Roundhouse became included within hereditament 215. The field book entries for hereditament 215 show that no deduction was made for public rights of way. However, from the entries in the field book it also appears that the Roundhouse may not be included as part of that hereditament. There is a schedule setting out the total area as a sum of listed OS numbered areas. On the OS map used for the record plan the grounds of the Roundhouse are braced with OS number 89. The Roundhouse portion of OS area 89 has not been included within the schedule. OS area 89 is mainly covered by hereditament 244. The field book entries for hereditament 244 were not included as part of the application so have not been considered in this report. Therefore, it is not known whether any deductions were made for public rights of way within that hereditament.

4.9.6. The field book entry for hereditament 222 (Seven Acres) does include a deduction for a footpath. Notes included in the field book indicate the footpath runs diagonally across the land. This corresponds with the line of existing footpath WN 27/16 as opposed to the line of the application route. This would suggest that no deduction was sought by the landowner for a public right of way along the line of the application route. Maybe the most likely inference to be drawn is that the landowner considered the application route to be their private right of way.

4.9.7. However, without more of the original documentation (which may no longer exist) some doubt remains over the landowner's intention. For example, the landowner may not have wanted to acknowledge equestrian rights over their land.

4.9.8. On balance, the Finance Act evidence is not supportive of the application route being a public right of way.

4.10. **Highway authority records**

1929 Handover Map and Schedule, 1930 Road Records, 1950 Road Records, Modern Road Records
Source: SCC
Appendix number: No appendix

Interpretation of evidence

4.10.1. The application route is 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: 13(i)

4.11.1. A route is shown on the survey map that is consistent with section C to C3 of the application route. It then deviates from the application route by following a line directly through the Sparkford Repository and the Sparkford Inn. The route is labelled 15 and coloured green from point C to just south of C3 then coloured orange as it passes through the repository and inn. There is no key to indicate the significance of the two different colours used. The other routes coloured green on this survey map have, generally, been added to the DMS as footpaths. For the five other routes or sections of route coloured orange, four were recorded on road records as unclassified roads. This would appear to indicate that the orange colouring was used for those routes or sections that had the physical characteristics of a road.

Survey Card
Source: SCC
Appendix number: 13 (ii)

4.11.2. The survey card for path 15 describes a route that corresponds to the one shown on the map. Against the heading "Kind of Path" BR and BRF have

been crossed out suggesting that the Parish Council considered the route to be a footpath or possibly a carriage road used as a footpath. The survey card refers to both a field gate and stile into Seven Acres from the direction of the Inn (just south of point C3) but then just stiles over two boundaries after that point. Comparing the description to the markings on the survey map indicates that the last two stiles are just to the north of point C1 (the turning to Sparkford Hall).

4.11.3. The typed survey card signed as approved on 9 April 1951 also has a handwritten note referring to a letter on file dated 15.5.54. This is before the publication of the draft map in 1956. A letter dated 15th May, 1954 was found in the County Council's records. It is a response from the Divisional Surveyor to a letter from a resident of Sparkford regarding a right of way from the forecourt of the Sparkford Inn to Hazelgrove House. This description would be broadly consistent with the route shown on the parish survey although not that part of the application route which runs D-C3. The Divisional Surveyor was of the opinion that no right of way exists and pointed out the existence of a notice erected by the Inn stating that there is no public right of way. There was no copy of the resident's letter on file. A further memo from the Divisional Surveyor to the County Surveyor makes further reference to the notice erected by the Inn stating that it "was in existence before the war and I have never known it to be challenged."

Draft Map

Source: SCC

Appendix number: 13 (iii)

4.11.4. A route is shown on the draft map that is broadly consistent with section C to C3 of the application route. It then deviates from the application route by following a line through the Sparkford Repository into the yard of the Sparkford Inn to meet the High Street at a point between the Sparkford Inn and the former stables. The route is labelled 27/15 and coloured purple to show a footpath.

Summary of Objections to the Draft map

Source: SCC

Appendix number: 13 (iv)

4.11.5. An objection made on behalf of the People's Refreshment House Association Ltd is recorded against footpath 27/15. The clerk's observations are that a "Notice under Rights of Way Act 1932, exists on site" and a determination is made to delete the path.

4.11.6. Particulars of the objection were sent by the Clerk to the County Surveyor and subsequently the County Archivist for their observations.

4.11.7. A form in the County Council's files dated 12 Dec 1958 details the observations of both the County Surveyor and County Archivist in relation to path 27/15. The section to be completed by the Parish Council is blank.

4.11.8. The County Surveyor notes that the route "can be said to duplicate 27/16" and suggests one is deleted. The County Archivist refers to the 1839 Tithe map, Enclosure Awards and Quarter Sessions Orders. They note that routes corresponding to both 27/16 and 27/15 are found in the Quarter Session Orders.

Draft Modification Map
Source: SCC
Appendix number: 13 (v)

4.11.9. The route is shown on the map labelled 27/15 and coloured pink.

Summary of Counter Objections to the Draft Modification Map
Source: SCC
Appendix number: No appendix

4.11.10. No references to the route were found in the summary of counter objections.

Provisional Map
Source: SCC
Appendix number: 13 (vi)

4.11.11. The route is no longer labelled and just a faint orange colouring remains where it was originally drawn.

Definitive Map
Source: SCC
Appendix number: 13 (vii)

4.11.12. The route is not shown on the Definitive Map.

Interpretation of evidence

4.11.13. It is clear from the survey map and card that the Parish Council claimed a route that followed the line of the application route from C to C3 but then differed from the application route by continuing through the repository and then the yard of the Sparkford Inn to Sparkford High Street.

4.11.14. After the Parish survey was completed, there is some correspondence from the Divisional Surveyor indicating they were of the opinion that there was no right of way. Nevertheless, the route was included on the draft map as a footpath.

4.11.15. An objection was subsequently received, and the County Council then reviewed the 1839 Tithe map and the 1874 Quarter Sessions Order in relation to the route claimed by the Parish Council. The existence of the 1932 Act sign was also noted. As a result, the claimed route was removed from the record at the provisional map stage and was not included in the DMS.

4.11.16. The DMS are legally conclusive of the existence and status of those public rights of way that they show but they are not conclusive as to what they omit. A route with some similarities to the application route and the alternative line shown on historical maps, was clearly considered as part of the DMS preparation process. Section 53(3) of the Wildlife and Countryside Act 1981 requires the 'discovery' of new evidence (i.e. evidence not considered when the Definitive Map was originally drawn up or last reviewed) before an order to amend the definitive map can be made.

4.11.17. Therefore, for an order to be made in relation to section C to C3 of the application route or the part of the route shown on historical maps as running through the repository evidence other than that already considered as part of the DMS preparation process would be required.

4.11.18. With regards to the part of the route shown on historical maps as running around, as opposed to through, the Sparkford Inn the DMS preparation records do indicate a notice erected by the owners of the Inn. A notice can be seen on the side of the former stables in a recent photograph supplied by landowner D, see Appendix 14. It is likely that this is the notice referred to. Whilst the notice could reasonably apply to the route claimed by the Parish Council as running through the yard of the Sparkford Inn, its application to a route between the former stables and the Roundhouse is questionable. In any event, if historical rights existed over this route these could not be extinguished simply by an adjacent landowner putting up such a sign.

4.11.19. For section C3 to C it is also worth noting that the locations indicated for stiles and field gates on the Parish survey records are consistent with earlier maps in that, from point C1 to C, the nature of the route changes to become physically less significant and at the time of the Parish survey only accessible on foot.

4.12. **Land registry documents**

Title Plan and Register for part of former Sparkford Repository
Source: HM Land Registry
Reference: WS27873
Appendix number: No appendix

Description and Interpretation of evidence

4.12.1. The title register for a plot of land covering part of the site of the former repository records a conveyance dated 1938 that details the rights of the owners of Sparkford Hall “to pass and repass with or without animals and vehicles of all kinds over” what is described as an “existing roadway”. The roadway is shown on the title plan as running along the north-eastern boundary of the repository along a line consistent with the route indicated in the 1887 OS map from C4 to C5.

4.12.2. If there were full public vehicular rights over this roadway such a provision for private rights would appear to be unnecessary. However, the existence of private vehicular rights would not prevent lower public rights existing over a route as well. It is also possible that by 1938 the existence of any public vehicular rights may have been forgotten.

4.12.3. The site of the former repository itself has the benefit of rights granted by a conveyance dated 1919 including a “right of way at all times and for all purposes with or without vehicles and animals of all kinds” through the yard of the Sparkford Inn. This tends to support the conclusion regarding the evidence from the OS Object Name Book in that the private access between the highway and the repository was through the grounds of the Sparkford Inn, the route around the side of the stables being outside the boundary of the Inn and not wide enough to easily accommodate animals and vehicles.

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 full 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
Landowners B, C and D	Strongly objected to the route where it crosses their gardens on the basis that their title deeds show that their dwellings and gardens are and were private with no mention of public rights of way over them. They submitted two old photographs showing a wall existing between their gardens and Sparkford High Street. They submitted a photograph of the Sparkford Inn's "no public right of way" sign (see appendix 14) and contend that this resulted in the applicant claiming the route continued across their gardens rather than through the grounds of the Sparkford Inn. Landowner B also highlighted a number of trees with tree preservation orders in the vicinity of the claimed route.
Landowner H	Did not consider that they would be affected whether the route was a footpath or bridleway. They did raise concerns about the alignment of the route but not specifically with regard to the section C-D considered in this report.
Respondent 1	Submitted an extract from the OS object names book for the Sparkford Repository (see Appendix 10)
Sparkford Parish Council	Objects to the route and has no evidence that a footpath or bridleway has ever existed across the gardens of The Roundhouse, Hawthorn House and The Entrance Lodge. They can find no records of signage, maintenance or repair.
Queen Camel Parish Council	Examined historical OS maps and found that where application 858 continues (from Hazelgrove Lane) to the rear of the Inn the route agrees with the claimed bridleway.

5.4. Three landowners have claimed that their land is private and there is no mention of public rights of way in their title deeds. Public rights of way can, and often do, run across private land. A failure to record a public right of way in title deeds would not extinguish those rights, if such rights existed.

5.5. Two, early 20th Century, photographs were submitted that showed a wall running in front of the properties facing Sparkford High Street. The wall still largely exists today and can be seen in photographs 18 and 19 in Appendix 2. The photographs show that there was no access from Sparkford High Street at point D, at that time. However, access was not obstructed by the wall at point D1 as it ends at the side of the Roundhouse.

5.6. A photograph was submitted showing a no “public right of way” sign. The implications of the sign have been considered in paragraph 4.11.20 above. With regard to the line of the claimed route, the report has given consideration both to the line claimed and the surrounding area.

5.7. One landowner has raised the existence of a tree preservation order. Whilst this may restrict work that could be undertaken on the site it would not extinguish existing public rights of way, if any.

5.8. One respondent submitted an extract of the OS object names book. This has been considered in section 4.7.

5.9. Sparkford Parish Council have no records of the claimed route existing as a public right of way. Whilst this does not lend any support to the existence of a right of way it does not mean that one could not have existed.

5.10. Queen Camel Parish Council acknowledged that the line of section C to C3 of the application route corresponded to that shown on historical OS maps. The information contained within historical OS maps is explored in section 4.6 above.

6. Discussion of the evidence

6.1. As discussed in section 3 above, the County Council is under a duty to modify the Definitive Map where evidence comes to light that it is in error. The standard of proof to be applied in cases such as this consists of two limbs. An order should be made to modify the Definitive Map if the evidence shows that a right of way:

- i. subsists, or
- ii. is reasonable to allege to subsist.

6.2. 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.

6.3. Section C-C3 appeared on the parish survey and the draft Def Map. An objection was received, and we know as a result of that objection SCC reviewed the Quarter Sessions, Tithe Map and presumably the County Series map upon which the draft map had been drawn. They considered the same documents in relation to a route which ran from point C3 through the repository and the Inn. It seems reasonable to conclude that, having had those documents in front of them, they would also have been aware of them in relation to other potential routes in the immediate vicinity including the application route between C3 and D and the route around the repository to point D1.

6.4. Arguably therefore there is no new evidence of public rights in this case. The Land Registry documents, photographs and Object Name Book are not supportive of public rights and so are not new evidence. The working copy of the Finance Act valuation documents excluded a small section of a route but this was later amended in the more authoritative record plan and so the document set is not considered to be in favour of the existence of public rights. Similarly, the turnpike records may not have been considered during the preparation of the DMS but these do not appear to show the physical existence of the application route so can hardly be taken as new evidence in favour of public rights over it. Finally, part of the route is marked BR on the County Series first edition. However, this simply refers to the physical character of the route which SCC would have been aware of from the other maps that they were referring to.

6.5. Having said this, even if it were considered that there was new evidence in this case, the evidence as a whole is insufficient to reasonably allege the existence of a public bridleway.

6.6. None of the evidence points towards a right of way or even a physical route over the application route from C3 to D.

6.7. A route from C-C3-D1 has physically existed.

6.8. Initially a route from D1 towards C3 appears to have existed in isolation, probably as an access to fields and therefore presumably carrying only private rights (see OS 'old series' map and Tithe documents).

6.9. The Quarter Sessions map of 1873 shows a route from C-C3 so, by this point there was a physical through route. However, beyond its physical existence there is no evidence to suggest that this through route carried public rights. On the contrary, there is evidence of private rights in the form of the Land Registry records and the fact that the route leading north-west from C3 to C1 appears to have predominately been an access to Sparkford Hall (a private residence) (see 1887 OS Map and Appendix 10).

6.10. There is also evidence that the route leading south-east from C came into existence as a way of accessing the repository. The repository and route are both recorded as being in existence on the 1887 OS map but not in the earlier tithe records or OS 'old series' map. The 1901 OS Object Name Book makes it clear that the repository was "well attended by people for miles around". Therefore, it is likely that residents of the neighbouring parish of South Barrow would have attended and C to C3 would have provided a useful short cut to access the repository from that direction.

6.11. Furthermore, the through route appears not to have been physically suitable to accommodate equestrians on account of the narrow section near to C5 and, by 1950, the stiles between C and C1.

7. Summary and Conclusions

7.1. There is insufficient evidence and a lack of any confirmed new documentary evidence to reasonably allege that a right of way subsists either along the line of section C to D of the application route or the alternative line C to D1.

8. Recommendation

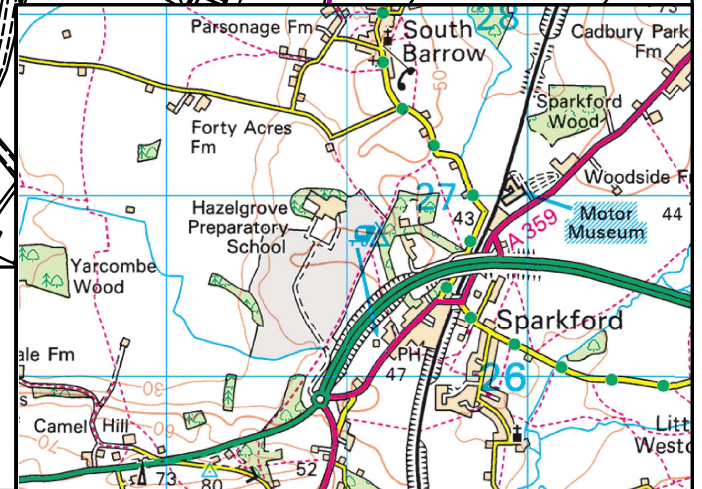
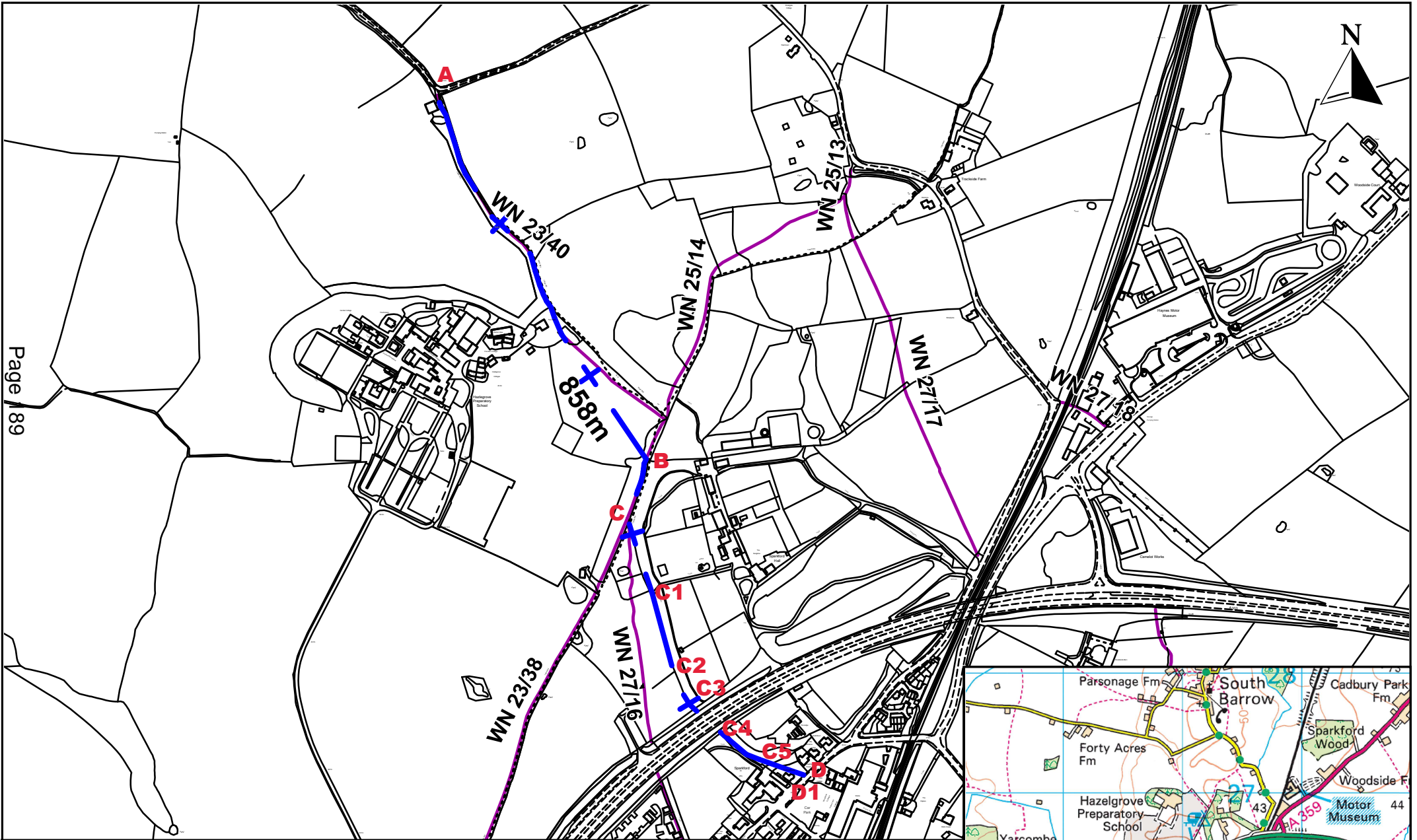
8.1. It is therefore recommended that section C to D of application 858M as shown on Appendix 1, which seeks to add a bridleway, be refused.

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 those present on Appendix 1. This is to assist the reader in identifying the 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. Quarter Sessions
8. Tithe records
9. Ordnance Survey maps
10. OS object name book
11. Turnpike records
12. 1910 Finance Act records
13. DMS preparation records
14. Photographs submitted

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SOMERSET
County Council

Parish: Queen Camel, Sparkford & South Barrow
 District: South Somerset
 Date: 01/07/2021
 Drawing No: H39-2021pt2
 Drawn By: MHardwill
 Centre Grid Ref: 359830, 125970
 Scale: 1:7,000

Modification Route 
 Definitive Footpath 

The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.
 - For reference purposes only.
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Photographs of the application route

Source: officer site visits 24 June and 1 September 2021



Photograph 1, at point C looking south-west



Photograph 2, at point C looking south-east



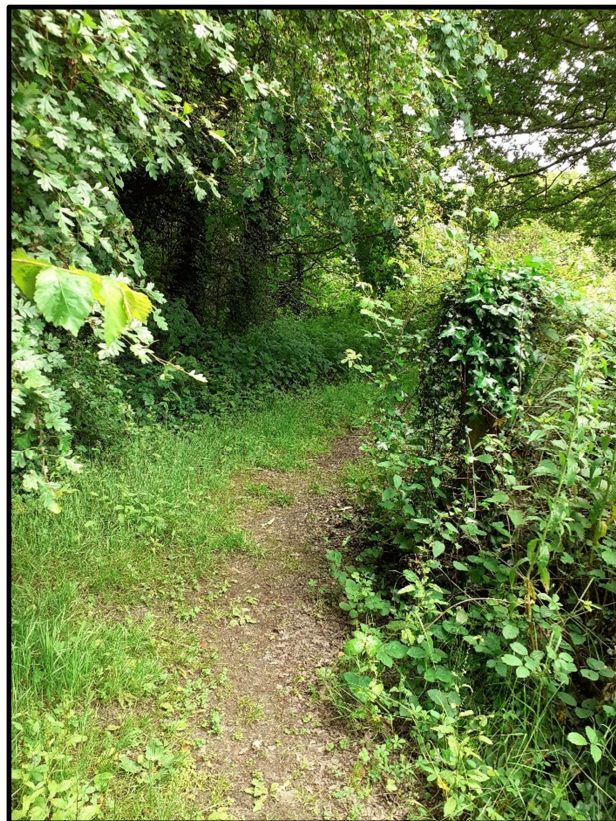
Photograph 3, just south of point C looking south-east



Photograph 4, just south of point C looking towards the east side boundary



Photograph 5, at point C1 looking north-west



Photograph 6, at point C1 looking south-east



Photograph 7, just after point C1 looking south-east



Photograph 8, standing to the west of the route looking across open ground towards the east side boundary trees, between points C1 and C2.



Photograph 9, between C1 and C2, looking south-east



Photograph 10, between C1 and C2, looking north-west



Photograph 11, at point C3 looking north-west



Photograph 12, between points C3 and C4 looking towards C3



Photograph 13, from the site of the former cattle pens looking across the garden boundary of the claimed route



Photograph 14, between points C4 and D looking towards D.



Photograph 15, between points C4 and D looking towards C4



Photograph 16, between points C4 and D looking towards D



Photograph 17, close to point D looking towards D.



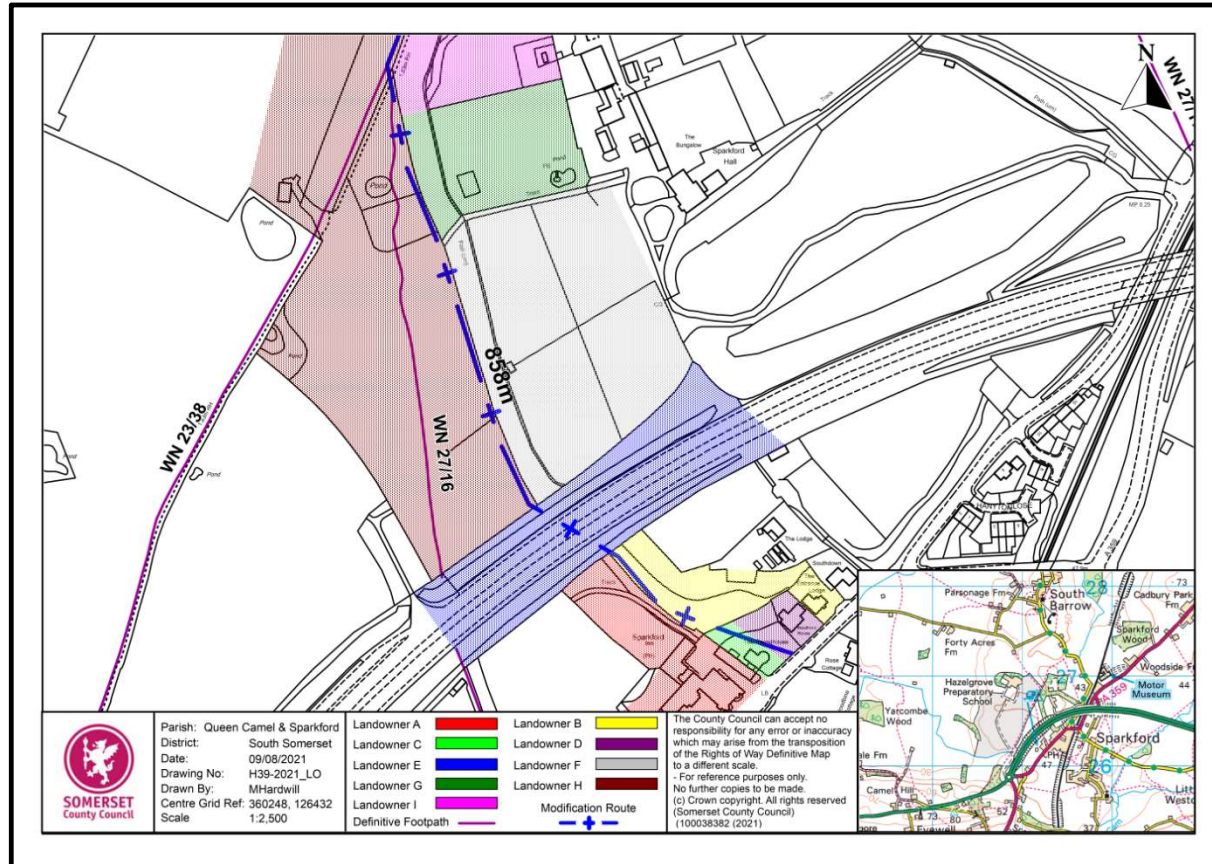
Photograph 18, looking at point D from the other side of the road



Photograph 19, looking at point D1

Landownership plan

Reference: H39-2021_LO



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Legal Framework

1. General

- 1.1. Footpaths, bridleways, restricted byways and byways open to all traffic, often referred to as public rights of way, are public highways. A highway is a way over which the public have a right to pass and re-pass. Not all highways are maintainable at public expense, nor is there any need for a way to have been 'adopted' before it is either a highway or a highway maintainable at public expense.
- 1.2. While topographical features may be attributed to, or provide evidence of, the existence of a public highway, the public right itself is not a physical entity, it is the right to pass and re-pass over (usually) private land.
- 1.3. Once a highway has come into being, no amount of non-user can result in the right ceasing to exist. The legal principle of 'once a highway, always a highway' applies.¹ Such rights, except in very limited circumstances, can only be changed by way of certain legal proceedings.
- 1.4. The **National Parks and Access to the Countryside Act 1949** placed a duty on all surveying authorities in England and Wales (such as Somerset County Council) to produce a Definitive Map and Statement, indicating and describing public rights of way within their areas. The resulting documents are conclusive of what they show but not of what they omit.
- 1.5. The 1949 Act also required surveying authorities to keep their Definitive Map and Statement under periodic review. However, with the passing of the **Wildlife and Countryside Act 1981** the requirement for periodic reviews was abandoned. Instead, section 53(2)(b) of the 1981 Act provides that the surveying authority must keep the Definitive Map and Statement under continuous review and must make such modifications as appear to them to be requisite in the light of certain specified events.
- 1.6. Those events are set out in section 53(3) of the 1981 Act. The following are of particular relevance:
 - Section 53(3)(b) states the Map and Statement should be modified on "the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path".
 - Section 53(3)(c)(i) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside

¹ *Harvey v Truro Rural District Council* (1903) 2 Ch 638, 644 and *Dawes v Hawkins* (1860) 8 CB (NS) 848, 858; 141 ER 1399, 1403

all other available evidence, shows “that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path a restricted byway or, subject to section 54A, a byway open to all traffic”.

- Section 53(3)(c)(ii) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows “that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description”.
- Section 53(3)(c)(iii) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows “that there is no public right of way over the land shown in the map and statement as a highway of any description, or any other particulars in the map and statement require modification”.

- 1.7. Section 53(5) enables any person to apply to the surveying authority for an order to be made modifying the Definitive Map and Statement in respect of the events listed above. On receipt of such an application the surveying authority is under a duty to investigate and to determine whether the Definitive Map and Statement require modifying. It is under these provisions that applications to modify the definitive map are made.
- 1.8. Section 32 of the **Highways Act 1980** states that a Court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced.
- 1.9. The standard of proof to be applied in determining whether an order should be made to change the Definitive Map depends on whether it is proposed to add a new route to the Map, to change the recorded status of a route, or to delete from the record a route that currently appears on the Definitive Map.
- 1.10. Where the route of a claimed right of way is not already shown on the Definitive Map and Statement (i.e. orders made under section 53(3)(c)(i) of the **Wildlife and Countryside Act 1981** to add an unrecorded route) the Council is required to consider two questions in determining whether an order should be made to modify the Definitive Map. Firstly, does the evidence produced by the claimant together with all the other evidence available show that the right of way

subsists? Alternatively, does that evidence show that the right of way is reasonably alleged to subsist?

- 1.11. The evidence required to satisfy the second question is less than that required to satisfy the first. In *R. v Secretary of State for the Environment Ex p. Bagshaw and Norton*, Owen J explained the difference between the two questions as follows:

To answer either question must involve some evaluation of the evidence and a judgment upon that evidence. For the first of those possibilities to be answered in the affirmative, it will be necessary to show that on a balance of probabilities the right does exist. For the second possibility to be shown it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist.²

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

Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances [...]. However, if the evidence from witnesses as to user is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist, then it would seem to me to be reasonable to allege such a right. I say this because it may be reasonable to reject the evidence on the one side when it is only on paper, and the reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.³

- 1.13. The standard of proof to be applied in relation to all other types of order made under section 53(3)(c) (e.g. applications to upgrade, downgrade or delete a right of way) is the balance of probabilities test. This test is based on the premise that, having carefully considered the available evidence, the existence (or in the case of some orders under section 53(3)(c)(iii), non-existence) of a particular right of way is determined to be more likely than not.

- 1.14. The differences in the tests to be applied to the evidence exist only in relation to the first stage of the order making process. Such an order can only be confirmed (the second stage of the process) when the evidence meets the balance of probabilities test. This is the case even where the order was made on the lower reasonably alleged test. Only once an order is confirmed are the Definitive Map and Statement updated.

- 1.15. The purpose of section 53 of the **Wildlife and Countryside Act 1981** is to record rights which already exist and to delete those which do not. This section of the act does not create or extinguish rights of way but allows for the legal record to be updated so that it accurately records what already exists. Therefore,

² *R v. SSE ex p. Bagshaw and Norton* [1994] 402 QBD 68 P & CR 402.

³ *Ibid.*

practical considerations such as suitability, security and the wishes of adjacent landowners cannot be considered under the legislation unless it can be shown that these factors affected the coming into existence, or otherwise, of public rights.

- 1.16. Section 66 and 67 of the **Natural Environment and Rural Communities Act 2006 (NERC)**, extinguished rights for mechanically propelled vehicles (MPVs) over 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. Without further qualification this would have extinguished public vehicular rights over most of the existing highway network. To prevent this NERC included a number of exceptions to the general extinguishment provision. Some of the key exceptions can be summarised as follows:
- Section 67(2)(a) excepts ways that have been lawfully used more by motor vehicles than by other users, e.g. walkers, cyclists, horse riders and horse-drawn vehicles, in the five years preceding commencement. The intention here is to except highways that are part of the “ordinary road network”.
 - Section 67(2)(b) excepts ways that are recorded on the “list of streets” as being maintainable at public expense and are not recorded on the Definitive Map and Statement as rights of way. This is to exempt roads that do not have clear motor vehicular rights by virtue of official classification but are generally regarded as being part of the “ordinary road network”.
 - Section 67(2)(c) excepts ways that have been expressly created or constructed for motor vehicles.
 - Section 67(2)(d) excepts ways that have been created by the construction of a road intended to be used by mechanically propelled vehicles.
 - Section 67(2)(e) excepts from extinguishment ways that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive “off-road”.
- 1.17. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an order changing the Definitive Map is made, the decision maker must be satisfied that public rights have come into being at some time in the past. This might be in the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence). The decision is a quasi-judicial one in which the decision maker must make an objective assessment of the available evidence and then conclude whether or not the relevant tests set out above have been met.
- 1.18. Evidence of the status of a route will often take one of two forms, documentary evidence and evidence of use. Each of these is discussed in turn below.

2. Documentary evidence

2.1. Once a highway (which includes public rights of way) has come into being, no amount of non-user can result in the right ceasing to exist. The legal principle of “once a highway, always a highway” applies.⁴ Such rights (except in very limited circumstances) can only be changed by way of certain legal proceedings, typically a legal order pursuant to specific legislation⁵ or a Court order. Therefore, claims based on documentary evidence will normally be accompanied by historical records which are intended to show that public rights were created or existed over a route in the past (or, in the case of a deletion or downgrading, that rights have been extinguished or never existed).

3. User evidence

3.1. Use by the general public can give rise to the presumption of dedication of a way under section 31 of the **Highways Act 1980**. Section 31 begins:

- (1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

3.2. Therefore, under section 31 it is necessary to demonstrate that the public have used the route in question for a period of 20 or more years. That period is to be measured backwards from the date on which use was challenged by some means sufficient to alert the public that their right to use the route was in question. The use must have been uninterrupted and *as of right*, meaning that the public must have used the route

- without force: e.g. use cannot have been via the breaking of fences or locks to gain entry
- without secrecy: use must be of such a nature that a reasonable landowner would have had an opportunity to be aware of it. For example, use which was only at night when the landowner was known to be away is likely to be considered secretive

⁴ *Harvey v Truro Rural District Council* [1903] 2 Ch 638 and 644, and *Dawes v Hawkins* [1860] 8 CB (NS) 848 and 858; 141 ER 1399 and 1403.

⁵ Such as the Highways Act 1980.

- without permission: use must be without the permission of the landowner.
- 3.3. Where the use has been sufficient to meet the tests of section 31, it raises the presumption that public rights have been dedicated. However, that presumption can be rebutted where it can be shown that the landowner demonstrated to the public that they had no intention to dedicate during that period. Examples of how this can be demonstrated include erecting a sign or notice with words that clearly deny a public right of way. Another example allows a landowner to deposit a map and statutory declaration with the highway authority under section 31(6) of the **Highways Act 1980** "to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit."
- 3.4. In addition to section 31 of the **Highways Act 1980**, rights of way can also be dedicated at Common Law, and this option should always be considered.

At Common Law a highway may be created by the landowner dedicating the strip of land to the public to use as a highway, and the public accepting this action by using said land. However, the act of dedication does not need to be explicit or in writing. In some circumstances it can be inferred from the actions (or inactions) of the landowner. The requirements for a Common Law dedication are summarised in *Halsbury's Law* as follows:

Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute. User by the public is a sufficient acceptance [...] An intention to dedicate land as a highway may only be inferred against a person who was at the material time in a position to make an effective dedication, that is, as a rule, a person who is absolute owner in fee simple [...] At common law, the question of dedication is one of fact to be determined from the evidence. User by the public is no more than evidence, and is not conclusive evidence [...] any presumption raised by that user may be rebutted. Where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that he had the capacity to dedicate. The onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication.⁶

- 3.5. As mentioned in the above quote, use by the public can be evidence of an implied dedication. If the level of use was such that the landowner must have been aware of it and they acquiesced to that use (i.e. they did nothing to stop it) then it is evidence (but not necessarily conclusive evidence) of their intention to dedicate a highway.
- 3.6. There is no minimum qualifying period at Common Law, although use still has to be without force, without secrecy and without permission. The actions of the

⁶ *Definitive Map Orders: Consistency Guidelines, ninth revision* (2016), 5.46.

landowner also need to be taken into account when considering whether it can be inferred that a right of way has been dedicated. Public use does not raise the inference that the way has been dedicated where evidence as a whole shows highway status was never intended, for example, the erection of “no public thoroughfare” notices and “turning people back wherever possible”.⁷

- 3.7. The burden of proving the landowner’s intention to dedicate rests with the party asserting the right of way. Unlike a statutory dedication there is no presumption that rights have been acquired no matter how long a route happens to have been used for.

Useful links

Natural England’s [A guide to definitive maps and changes to public rights of way](#) (2008) offers a detailed introduction to the Definitive Map Modification Order (DMMO) process.⁸

The Planning Inspectorate’s [Definitive Map Orders: Consistency Guidelines](#) (ninth revision 2016) offers clear information and advice on interpreting documentary evidence.⁹ 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.

[Legislation.gov.uk](#) provides access to the numerous acts referenced above.

⁷ *Poole v Huskinson* (1843) 11 M&W 827.

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414670/definitive-map-guide.pdf

⁹ <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>

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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.

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.

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Appendix 6: Consultation list

Somerset County Council seeks to consult as widely as is possible and practicable during a DMMO investigation. In addition to contacting landowners, the following user groups, organisations and individuals were contacted in June 2021. Those who responded are referred to in the main body of the report.

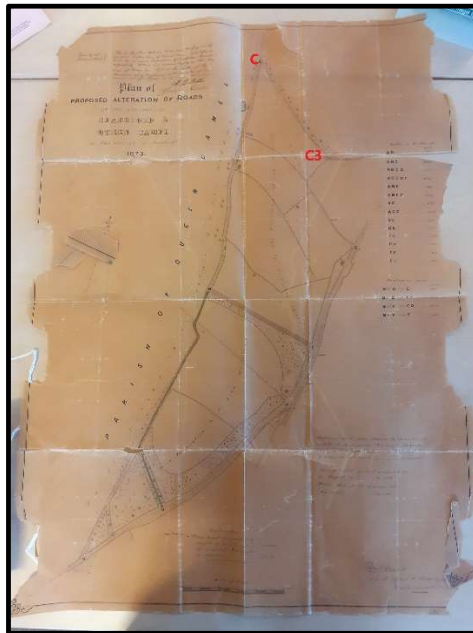
Consultee
Sparkford Parish Council
Queen Camel Parish Council
South Somerset District Council
Local Member of County Council
Ramblers – Somerset Office
Ramblers – National Office
British Horse Society – Somerset Office
Trail Riders Fellowship – Somerset Office
All Wheels Drive Club
Open Spaces Society – Somerset Office
Natural England
British Driving Society
Auto Cycle Union
Cyclist Touring Club
Historic England

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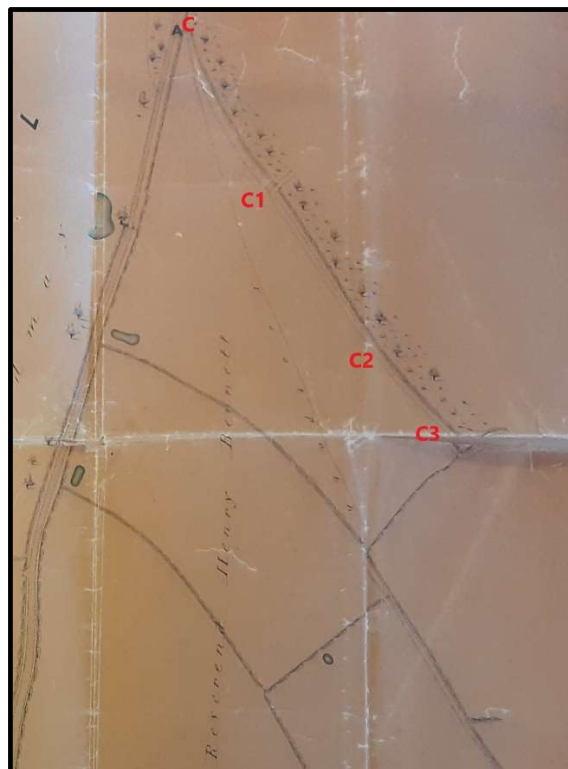
Quarter Sessions Roll (1873)

Source: Reproduced by kind permission of the South West Heritage Trust

Reference: SHC Q/SR/694/73



Plan of proposed alteration of roads (1873). Red letters C and C3 added to show the application route.



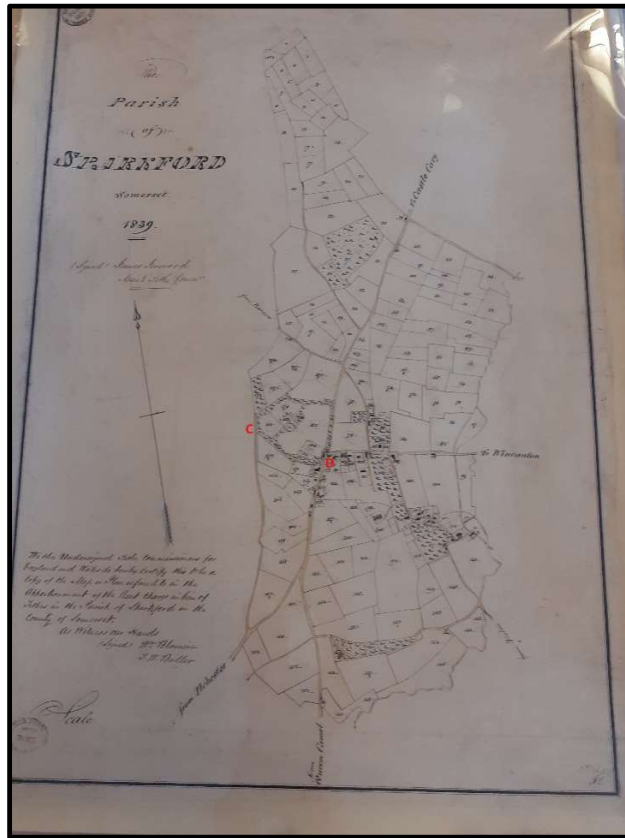
Close up of the section of the plan that covers the application route. Red letters C, C1, C2 and C3 added to show the application route.

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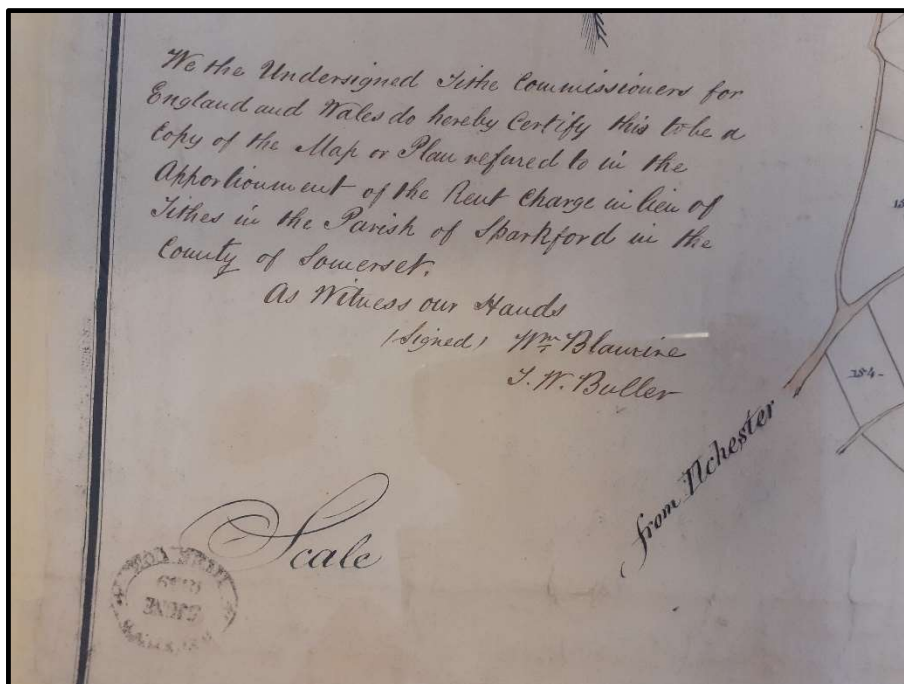
(i) Sparkford Tithe Map (1839)

Source: Reproduced by kind permission of the South West Heritage Trust

Reference: SHC D/D/Rt/M/75



Tithe map dated 1839. Red letters C and D added to show the application route.



Close up showing the signed certification



Close up showing apportionment numbers 170, 171, 172 and 186. Red letters C, C3 and D added to show the application route. Red letter D1 has been added to highlight the point where the linear feature on the tithe map, discussed in the report, meets Sparkford High Street.

(ii) Sparkford Tithe Apportionment (1838)

Source: Reproduced by kind permission of the South West Heritage Trust

Reference: SHC D/D/Rt/A/75

<i>John Masters</i>	112	<i>Garden opposite the Inn</i>	<i>"</i>
	160	<i>West Fields</i>	<i>Meadow</i>
	161	<i>Long Bagle</i>	<i>Arable</i>
	162	<i>D^o D^o</i>	<i>Meadow</i>
	163	<i>D^o D^o</i>	<i>D^o</i>
	170	<i>Sparkford Inn Garden & Yard</i>	<i>"</i>
	171	<i>Little Mead</i>	<i>Orchard</i>
	172	<i>Seven Acres</i>	<i>Meadow</i>

Apportionment entries for plots 170, 171, 172

Numbers referring to the Plan.	NAME AND DESCRIPTION of LANDS AND PREMISES.	STATE of CULTIVATION.	QUANTITIES in STATUTE MEASURE.			apportion upon the several Payable to
			A.	R.	P.	
30	A Garden	Grass	10	..
27	Bonchard's Mead	Meadow	4	1	27	1
116	House and Garden	Chequer 1/2	1	3	32	..
146	Sparkford Hill	Wood 1/2	7	2	36	1
146*	St. Dunstan's Church	Grass	3	2	2	1
179	High's Baswell	Grass	1	1	22	..
181	A Garden	Grass	6	3	22	..
186	Plantations	Wood	26	3	21	1

Apportionment entry for plot 186, outlined in red.

(iii) Sparkford Tithe Map (1839) extract

Source: National Archives

Reference: IR 30/30/381



Red letters D and E added by the applicant to show the application route. These roughly correspond with points C and D on Appendix 1.

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Ordnance Survey maps

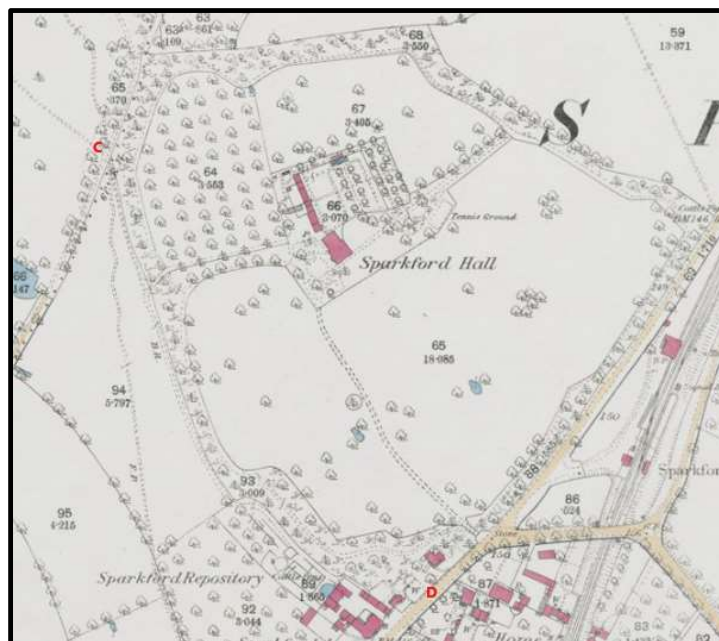
Source: (i) extract supplied by applicant
(ii), (iii), (iv) reproduced with the kind permission of the National Library of Scotland from their map images website <https://maps.nls.uk/index.html>
(v) extract supplied by applicant

(i)

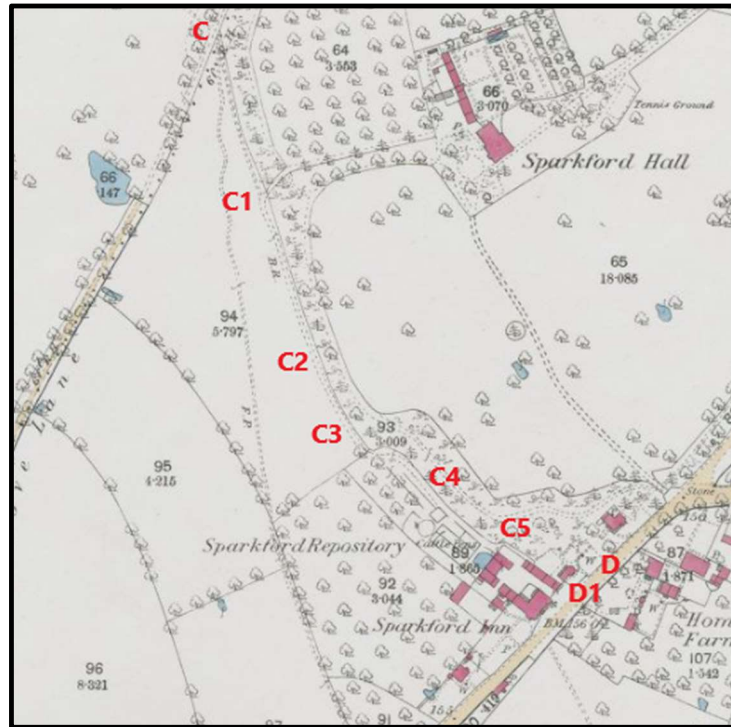


1811-17 OS 'old series' map Cassini Timeline reprint (from extract supplied by the applicant). Red letters added to indicate the line of the application route. Red circle added to highlight a feature in the vicinity of the application route.

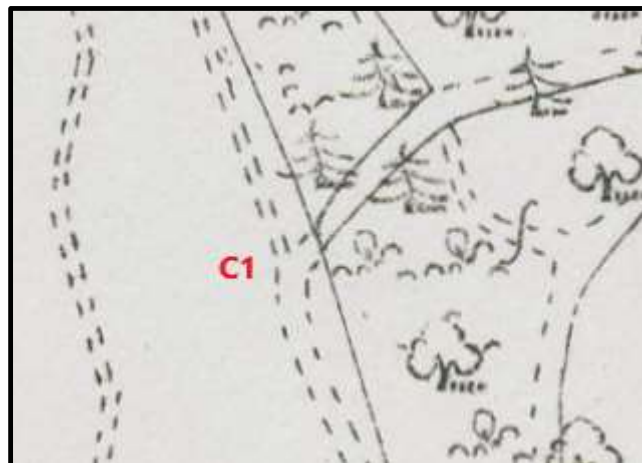
(ii)



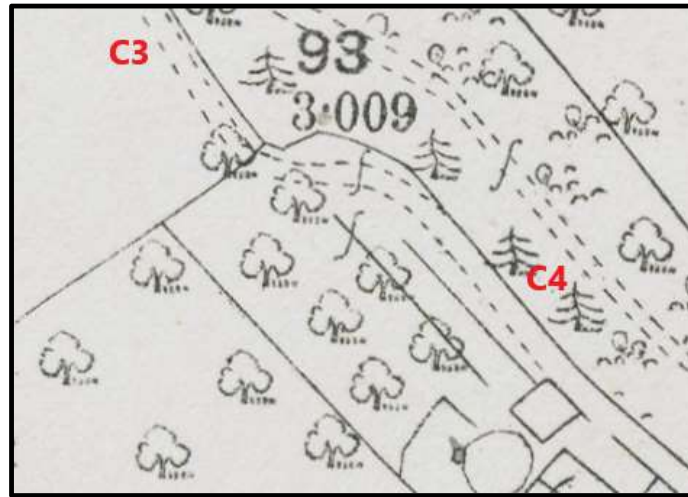
1887 Ordnance Survey (OS) County Series First Edition Map. The application route as set in the wider context of Sparkford Hall. Red letters C and D have been added to indicate the line of the application route.



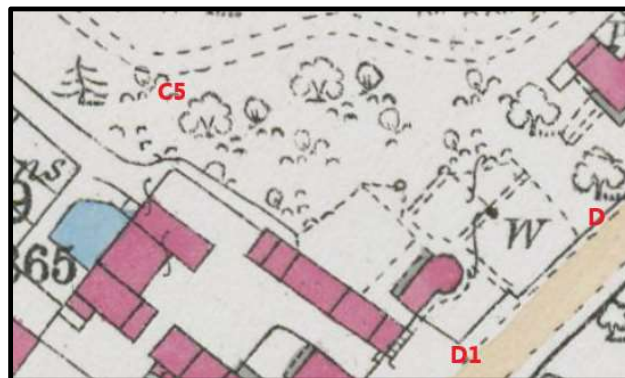
Closer view of the application route with red letters C to D added to indicate the line of the route. Red letter D1 added to indicate the possible junction of a route with Sparkford High Street based on historical records.



Close up of the map, red letter C1 has been added to mark the part of the application route.

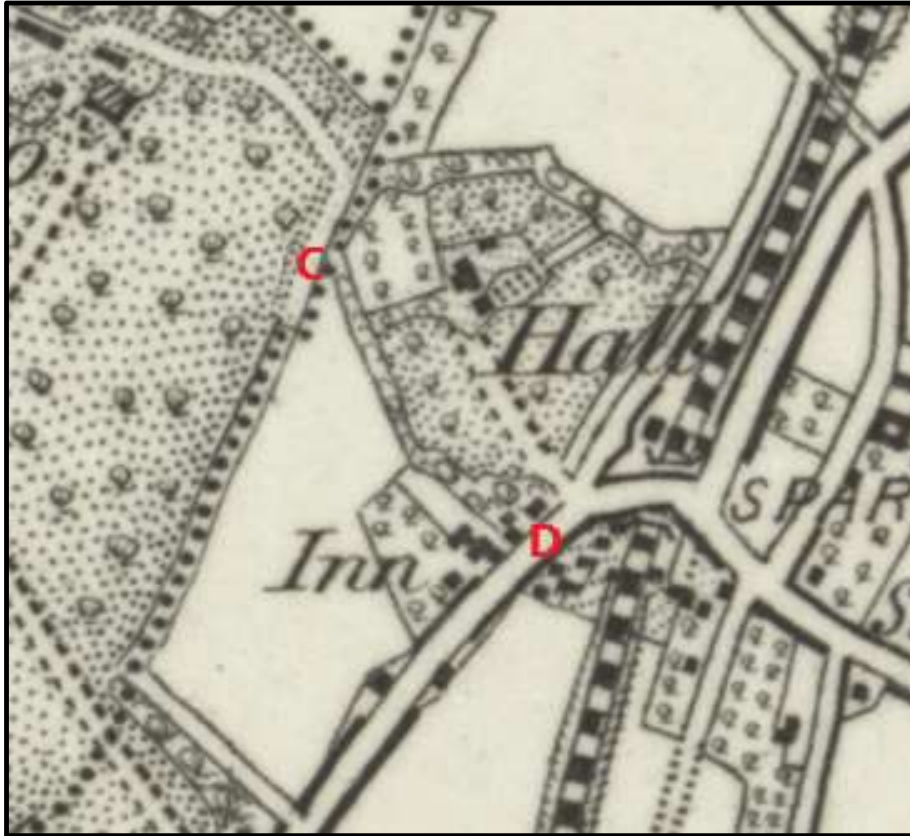


Close up of the map, red letters C3 and C4 have been added to mark the part of the application route.



Close up of the map, red letters C5 and D have been added to mark the part of the application route. Red letter D1 added to indicate the junction of a route with Sparkford High Street based on historical records.

(iii)

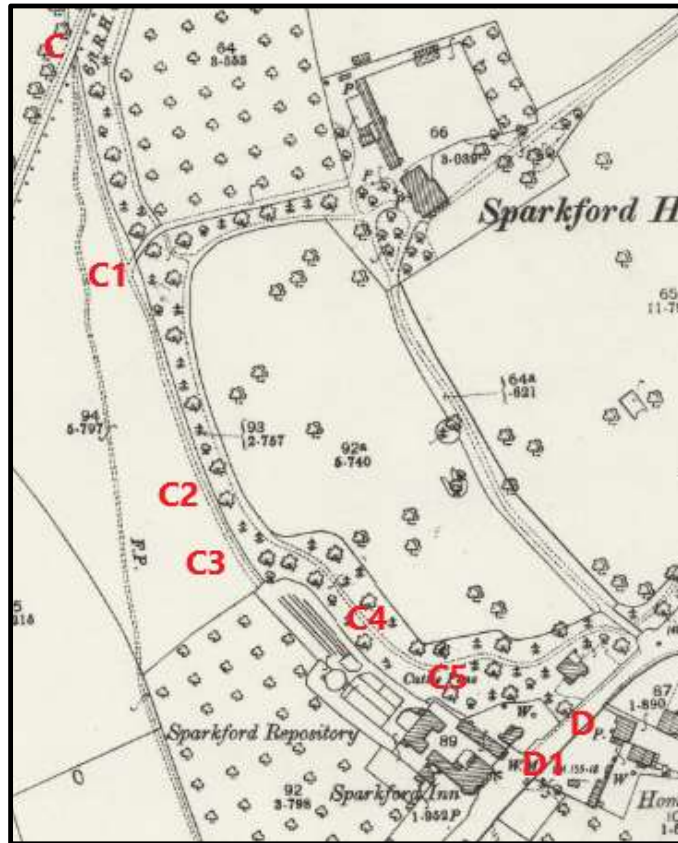


1898 OS revised new series map. Red letters C and D added to indicate application route.

<i>Metalled Roads; First Class</i>	} Fenced	} Unfenced	5 (Mile distance)
" " <i>Second Class</i>			(Altitude) 211
" " <i>Third Class</i>			
<i>Unmetalled Roads</i>			
<i>Footpaths</i>			

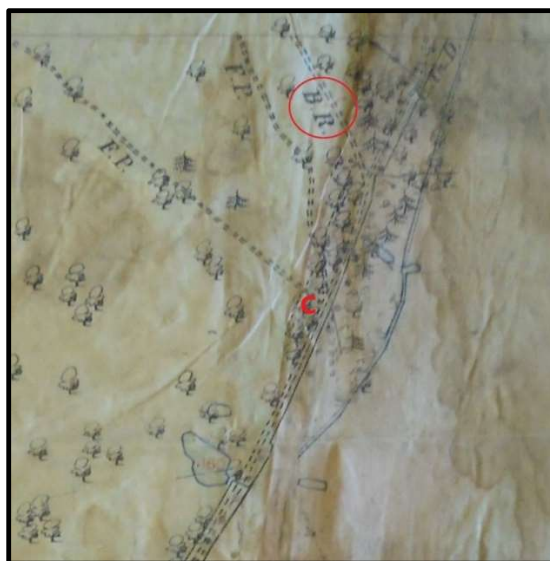
OS revised new series map key.

(iv)



1903 OS County Series Second Edition map. Red letters C to D added to indicate the application route. Red letter D1 added to indicate the possible junction of a route with Sparkford High Street based on historical records.

(v)



Section of 1889 Map of Queen Camel covering the application route (from extract supplied by the applicant). Red letter C added to indicate the application route.



Close up of the signature and date on the map (from extract supplied by the applicant).

Ordnance Survey Object Name Book (1901)

Source: National Archives (extract only)

Reference: OS 35/6400

Ordnance Survey Object Name Book (1901)

Sheet - LXXIV. N. 8

List of Names as written on the Plan	Various modes of Spelling the same Names	Authority for those modes of Spelling	Situation		Descriptive Remarks, or other General Observations which may be considered of Interest
			Sheet	Page	
Station	Sparkford Station	Mr H. P. Bassett Station Sparkford Station See also Sheet LXXIV. P. 7	7	3	Applies to a passenger goods station at the north end of Sparkford village on the railway railway station between Sparkford Junction, Westbury, Marlborough, the property of the G.W.R. Co.
Sparkford Hall	Sparkford Hall	Mr John Wood Estate opposite the station See also Sheet LXXIV. P. 7	7	3	Applies to a gentleman's residence situated 1/2 chains N.W. of Sparkford Station, with ornamental grounds & out-buildings etc. property of Mr J. S. Bennett, vicarage, Portwood vicarage of the late Capt. Bennett's property.
Sparkford Repository	Sparkford Repository	as above See also Sheet LXXIV. P. 7	7	3	Applies to a cattle sale yard situated at the north west side of Sparkford Inn, used on each alternate Monday. It is also known as a market. This is an important repository & well attended by people for miles round the town on days when the market is held.
Sparkford Inn	Sparkford Inn	as above See also Sheet LXXIV. P. 7	7	3	Applies to a full licensed public house situated 1/2 chains S.W. of Sparkford Station. It has good accommodation for cyclists & travellers. Rev J. S. Bennett, Portwood vicarage stockport. trustee of the above property.

Extract showing the entries for the Sparkford Hall, Sparkford Repository and Sparkford Inn

above attd LXXIV. P. 7	7	3	Applies to a gentleman's residence situated 1/2 chains N.W. of Sparkford Station, with ornamental grounds & out-buildings etc. property of Mr J. S. Bennett, vicarage, Portwood vicarage of the late Capt. Bennett's property.
above attd LXXIV. P. 7	7	3	Applies to a cattle sale yard situated at the north west side of Sparkford Inn, used on each alternate Monday. It is also known as a market. This is an important repository & well attended by people for miles round the town on days when the market is held.
above attd LXXIV. P. 7	7	3	Applies to a full licensed public house situated 1/2 chains S.W. of Sparkford Station. It has good accommodation for cyclists & travellers. Rev J. S. Bennett, Portwood vicarage stockport. trustee of the above property.

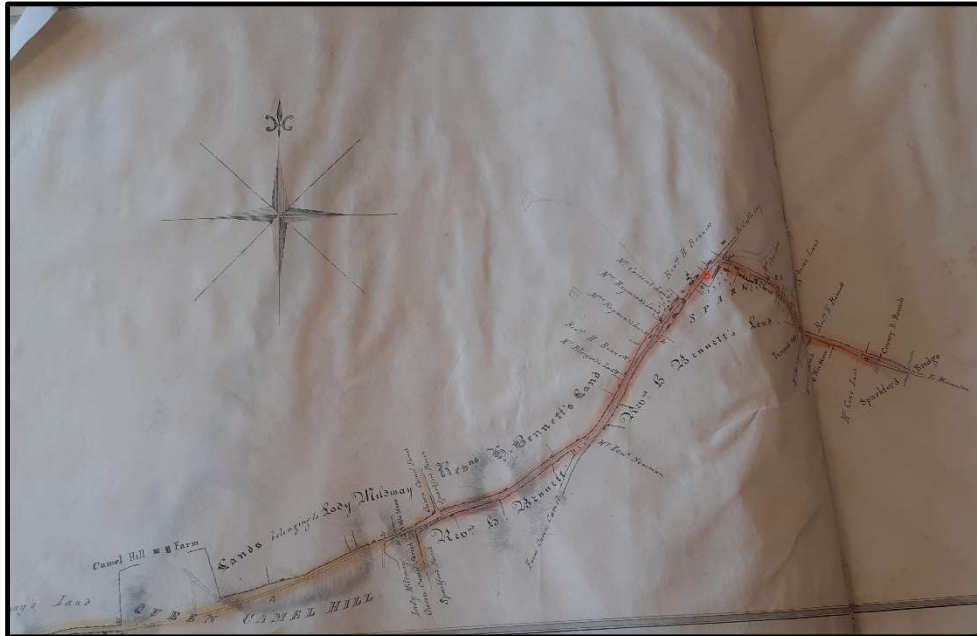
Close up of the observations column

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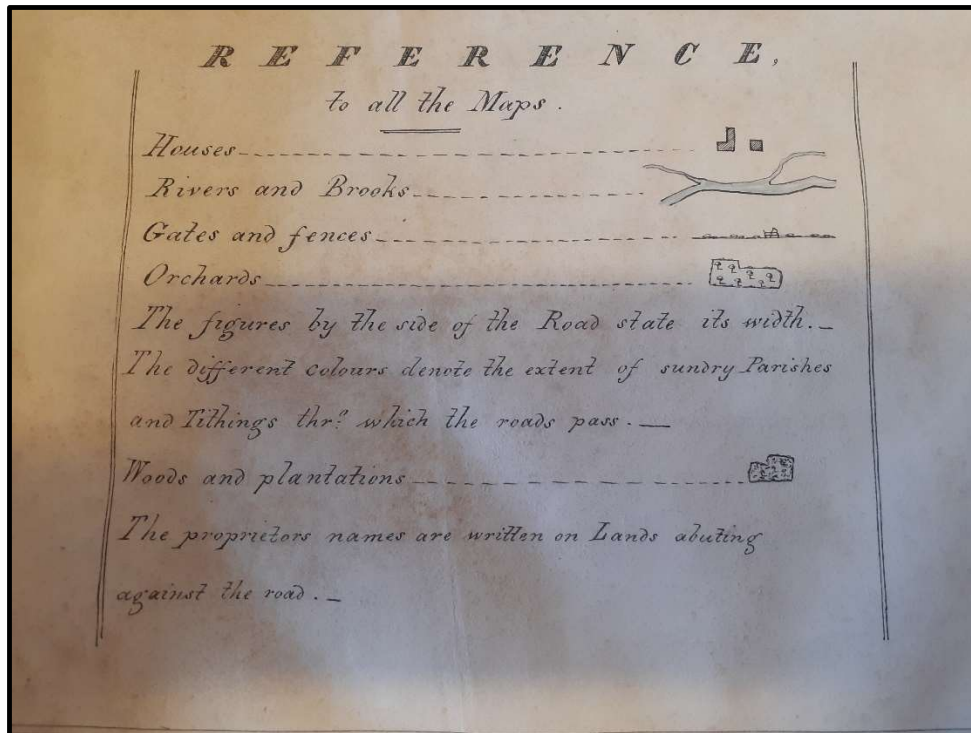
Ilchester Turnpike Maps (1826)

Source: Reproduced with kind permission of the South West Heritage Trust

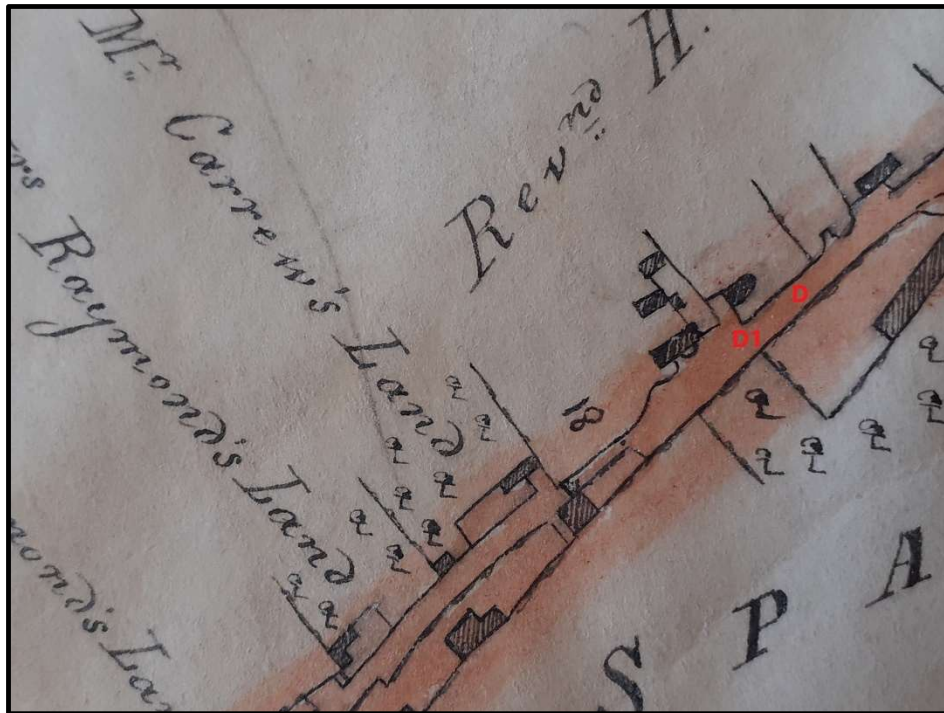
Reference: SHC D/T/ilch/1 1826



Map 5 covering the route through Queen Camel and Sparkford. Some markings in pencil have been added at an unknown date. The red letter D has been added to show the application route's junction with Sparkford High Street.



Map reference key

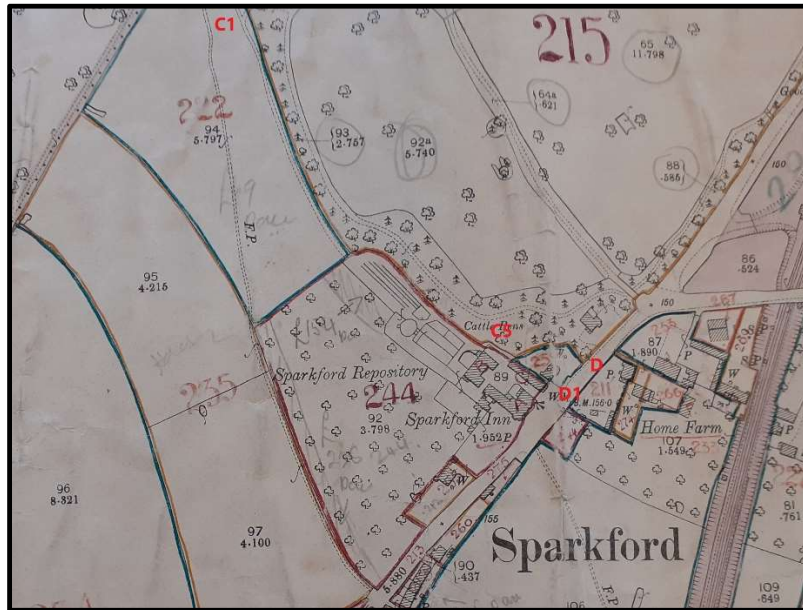


Close up of the section where the application route meets Sparkford High Street. The red letter D has been added to show the application route's junction with Sparkford High Street. The red letter D1 has been added to indicate the possible junction of a route with Sparkford High Street based on historical records

(i) Finance Act 1910 working plan and valuation book

Source: Reproduced by kind permission of the South West Heritage Trust

Reference: SHC DD/IR/OS/74/7 and SHC DD/IR/B/27/1



Section of plan showing hereditaments 222, 215 and 244. Pencil markings have been added to the plan at an unknown date. Red letters C1, C5 and D added to mark the application route. Red letter D1 added to indicate the possible junction of a route with Sparkford High Street based on historical records.

No. Hereditament	No. of Acres	Class of Hereditament and Description of Occupation	Owner's Name and Residence, with their Successors	Character of Property - If of Freehold, the name or name of the tenant	Use, Trade, Name, and Formal Situation of the Property	Valuation in Pounds	Rateable Value	Rateable Value	Rateable Value	Rateable Value
208	11	Loops Heury	Rev. J. Griffiths	Land	Heapsfield	4 1/4	14	13 10		
209	12	"	Rev. J. Griffiths	Land	Loops Heury	1 3/4	5 10	5 5		
210	15	Griffiths J. Rev.	"	Orchard	Heapsfield	4 2	10	9 1/2		
211	14	Mrs. Elizabeth	Messrs. Bennett	Col. Sparkford	Sparkford	2	7	8 1/2		
212	15	Perry John G.	Rev. J. Griffiths	Land	Pasture	14 3/4	26	25 5		
213	16	James W. M.	Self	6 Cott.	Sparkford	7 1/2	52	41 2		
214	17	Hatches Job	Messrs. Bennett	Col. Sparkford	"	1 7/8	17	15 0		
215	18	O. Norman, W. D. Esq.	"	Land	Sparkford	20	52 1/2	77 1/2		
216	19	"	"	No. Building	Hill land	17	70	63		
217	20	"	"	"	The Hall	25	22 10			
218	21	"	"	"	Spelling (St. Brendans Lane)					
219	22	"	"	"	Hill & House	6	6			
220	25	"	"	Wood	Hill	7 3/4	3 1/2	3 1/2		
221	23	Watts Henry	"	Quarry	Sparkford	3	3			
222	24	"	"	Land	Loops Heury	5 3/8	14 7 1/2	13		
Total								338 5 3/4		

Valuation book showing entries for hereditaments 215 and 222.

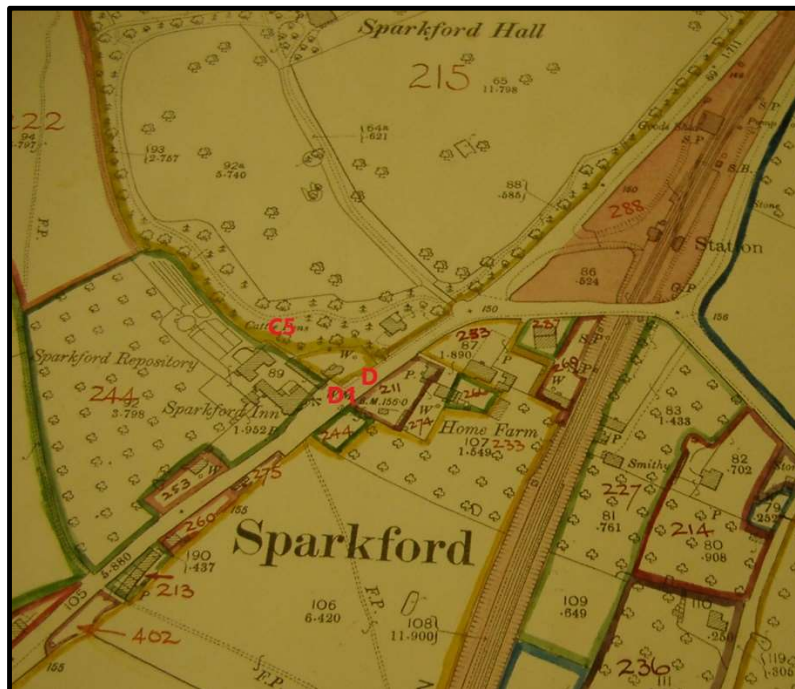
No. of hereditaments		Name of hereditament	Use or nature of hereditament	Area or extent of hereditament	Value	Rate	Amount	Other particulars		
257	39	Longman W ^m	Major's Hall, North Cottingham, Bath	Land	North Cottingham	63	75	59	57	10
235	40	Perry, John G	G. Isaac	Col. of far	Laurel Cottage	2	10	9		
239	41	Walker & Marrow	St. James		Crampfield	2	5	14	10	
240	42	Isaac G	"	Land	"	11	16	14	10	
241	43	"	St. John Midway (late)	"	Heal	14	18	20	19	10
242	44	Midway the road	(agent as before)	Plantation	Kingsdown	7	2	10	5	10
243	45	"	"	Lodge	"	2	14	3	5	
244	46	Peplin's Peplin, Lewis	Thomas Bennett	Inn	Sparkford Inn	37	5	31	15	1
245	47	"	"	Land	Richard	10	11	10		

Valuation book showing entry for hereditament 244.

(ii) Finance Act 1910 record plan and field book

Source: National Archives (extract)

Reference: IR 128/9/909 and IR 58/5383



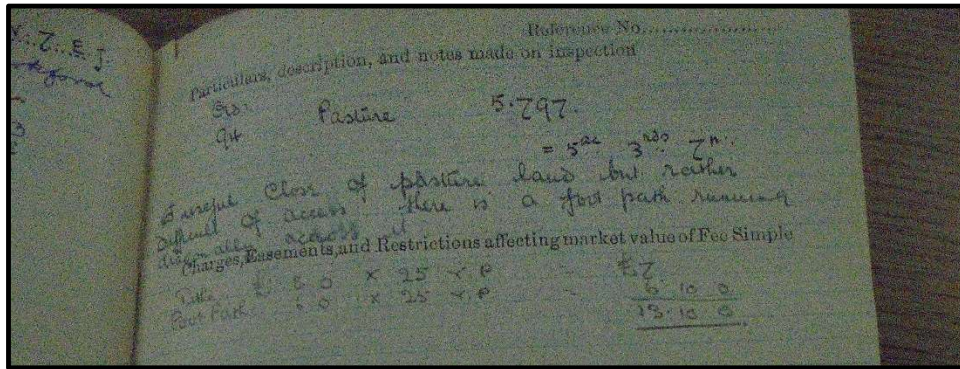
Section of plan showing hereditaments 222, 215 and 244. Red letters C5 and D added to mark the application route. Red letter D1 added to indicate the possible junction of a route with Sparkford High Street based on historical records.

Ord.	Schedule Description	Area
64.	Orchard	3.553.
66	Sparksford Hall premises	3.039.
67.	Pasture	3.405.
68.	Plantation	3.550
65.	Pasture	11.498
64 ^a	Orchard	.621
88.	Plantation	.585
93.	Plantation Lodge etc	2.754
92 ^a .	Pasture	5.440
		<u>Ac 35.048</u>
		= 35 ac. or so

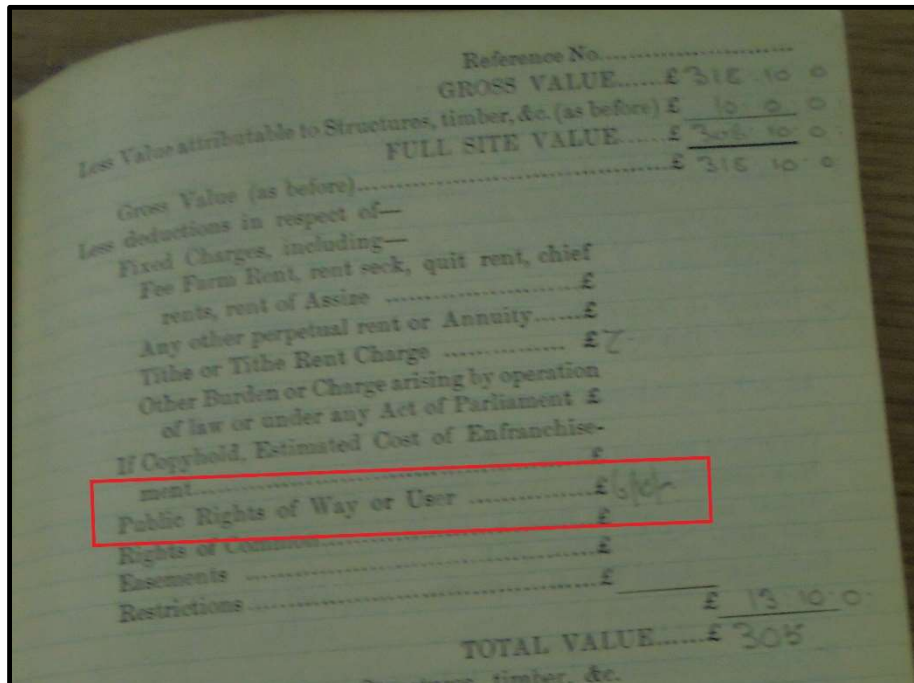
Extract from the field book for hereditament 215 showing the areas included within the hereditament with reference to OS numbers.

	Reference No.
GROSS VALUE.....	£ 11911
Less Value attributable to Structures, timber, &c. (as before) £	2774
FULL SITE VALUE.....	£ 21180
Gross Value (as before).....	£ 11911
Less deductions in respect of—	
Fixed Charges, including—	
Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize	£
Any other perpetual rent or Annuity.....	£
Tithe or Tithe Rent Charge	£ 100
Other Burden or Charge arising by operation of law or under any Act of Parliament	£
If Copyhold, Estimated Cost of Enfranchisement.....	£
Public Rights of Way or User	£
Rights of Common.....	£
Easements	£
Restrictions	£
	£ 100
TOTAL VALUE.....	£ 11080

Extract from the field book for hereditament 215. Public rights of way deduction section highlighted in red.



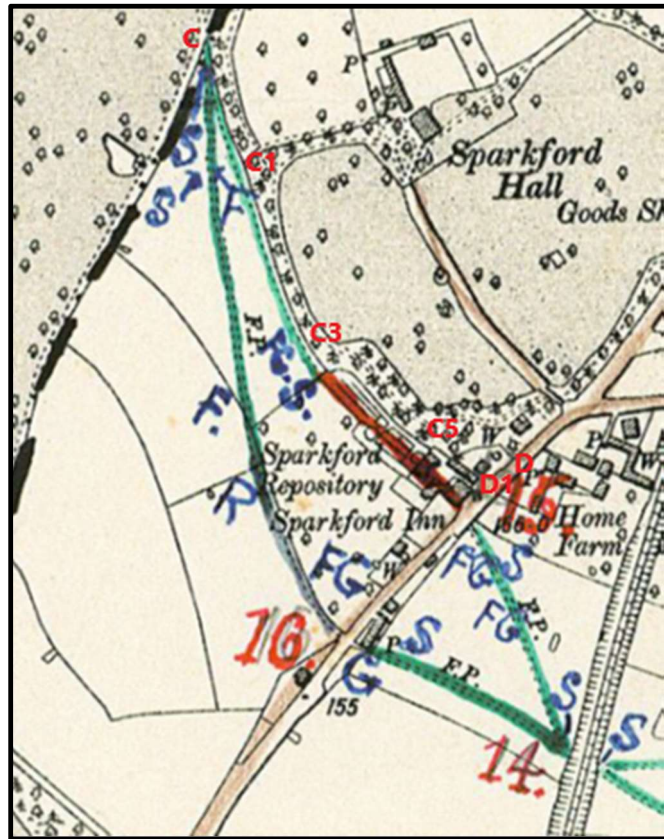
Extract from the field book for hereditament 222 showing notes relating to a footpath. “[illegible] useful class of pasture land but rather difficult of access there is a foot path running diagonally across it”



Extract from the fieldbook for hereditament 222. Public rights of way deduction section highlighted in red.

(i) Sparkford parish survey map

Source: SCC



Section of the survey map showing route number 15. Red letters C1, C3, C5 and D added to show the application route. Red letter D1 added to indicate the possible junction of a route with Sparkford High Street based on historical records.

(ii) Sparkford parish survey card (1950s)

Source: SCC

SOMERSET COUNTY COUNCIL

BOROUGH: ABAN-DISTRICT/PARISH OF: —
(Delete as necessary) S P A R K F O R D.

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949

SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path: — 15. Path shown on 6" O.S. No. LXXIV, NE. Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. —
FROM SPARKFORD INN TO HAZLEGROVE, BABCARY LANE, & STH: BARROW.

DESCRIPTION: — The path starts at

Right of Way through Inn and Auction yards to fieldgate and stile in Seven Acres, footpath alongside hedge by Sparkford Hall Plantation to stile and fence, then Hornblotton stile into Hazlegrove Park. (boundary with Queen Camel Parish).

see letter on file dtd 15.5.52

P.T.O.

Survey card for path number 15.

COPY

DS/15/1.

SURVEYORS OFFICE,
WINCANTON,
SOMERSET.

15th May, 1954.

Dear Madam,

I beg to acknowledge receipt of your letter of the 9th instant.

I am of opinion that no right of way exists from the forecourt of the Sparkford Inn to Hazelgrove House. You will no doubt have noticed that the Owners of the Inn have erected a notice under the Rights of Way Act, 1932 stating that there is no public right of way and as far as I am aware this has never been challenged.

I will make enquiries as to whether a path as you suggest has been included in the more recent survey of rights of way under the National Parks and Access to the Countryside Act, 1949.

Yours faithfully,
M. F. J. HATSWELL
Divisional Surveyor.

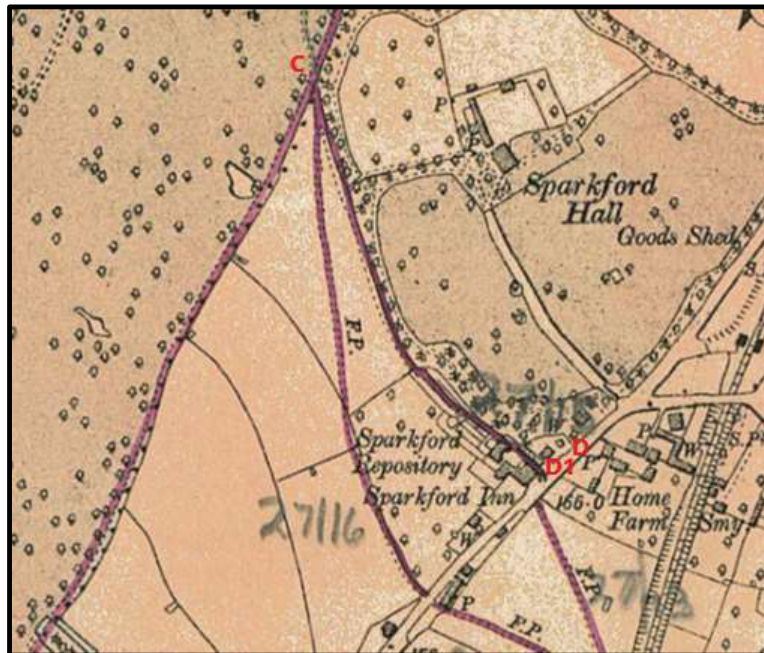
Letter on file dated 15.5.54

<p style="text-align: center;">Memorandum to THE COUNTY SURVEYOR, County Hall, Taunton</p> <p>SUBJECT: <u>National Parks and Access to the Countryside Act, 1949.</u> <u>Parish of Sparkford.</u></p> <p>DATE 15th May, 1954.</p> <p>I enclose original letter received from Mrs. Wilcox of Sparkford and a copy of my reply thereto.</p> <p>The path to which Mrs. Wilcox refers is on the 1/2500 Ordnance Sheet LXXIV. 7 and runs through plots Nos. 89, 94 and 21.</p> <p style="border: 1px solid red; padding: 5px;">The notice under the Rights of Way Act, 1932 was in existence before the war and I have never known it to be challenged.</p> <p>I shall be glad if you will let me know whether this alleged path was included in the survey recently submitted for this parish.</p>	<p style="text-align: right;">15</p> <p style="text-align: right;">From The Divisional Surveyor, WINCANTON } Rural District</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: small;">Central Office reference and file number</td> <td>JBW. <i>WN/SPA?</i></td> </tr> <tr> <td style="font-size: small;">Divisional reference and file number</td> <td>DS/15/1.</td> </tr> </table>	Central Office reference and file number	JBW. <i>WN/SPA?</i>	Divisional reference and file number	DS/15/1.
Central Office reference and file number	JBW. <i>WN/SPA?</i>				
Divisional reference and file number	DS/15/1.				

Accompanying memo on file dated 15.5.54

(iii) Draft map (1956)

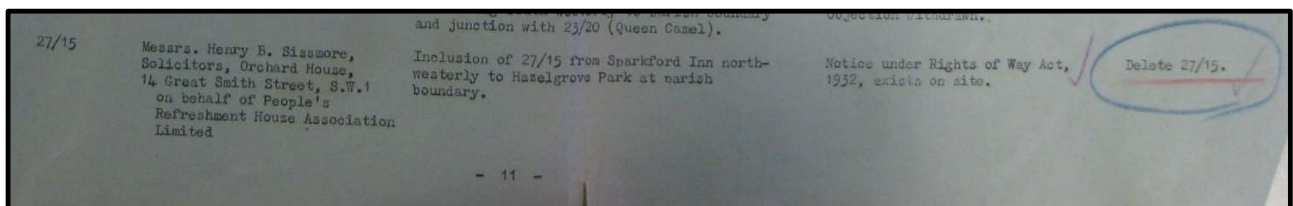
Source: SCC



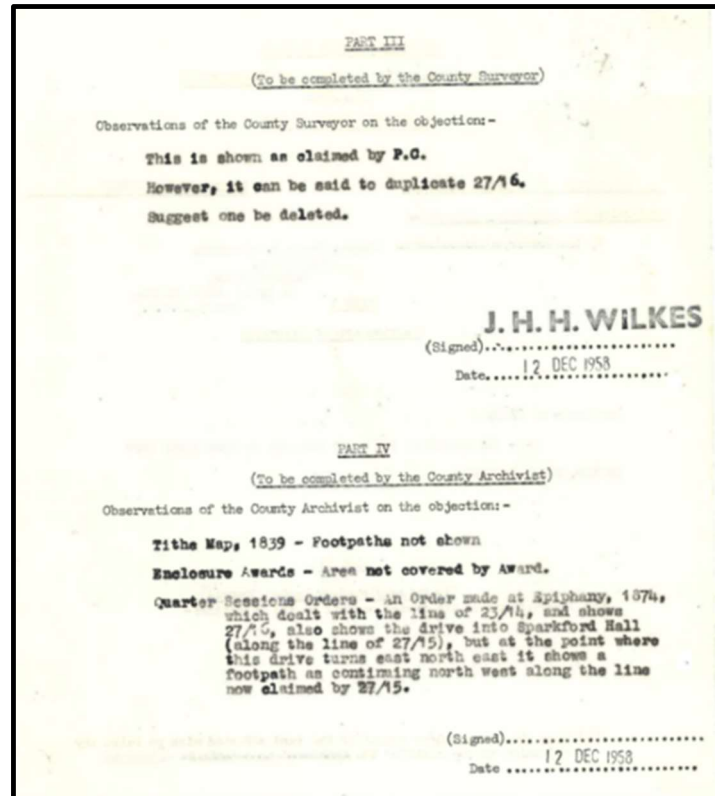
Section of the draft map showing route 27/15. Red letters C and D added to show the application route. Red letter D1 added to indicate the possible junction of a route with Sparkford High Street based on historical records.

(iv) Summary of objections to the draft map

Source: SCC



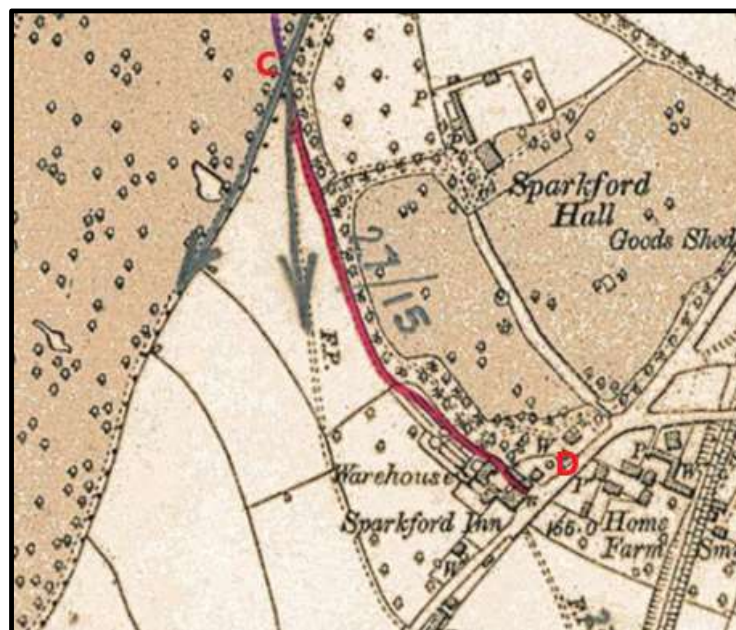
Entry relating to path 27/15.



Observations of the County Surveyor and County Archivist on the objection to path 27/15

(v) Draft modification map (1968)

Source: SCC



Section of the draft modification map showing route 27/15. Red letters C and D added to show the application route.

(v) Provisional map (1970)

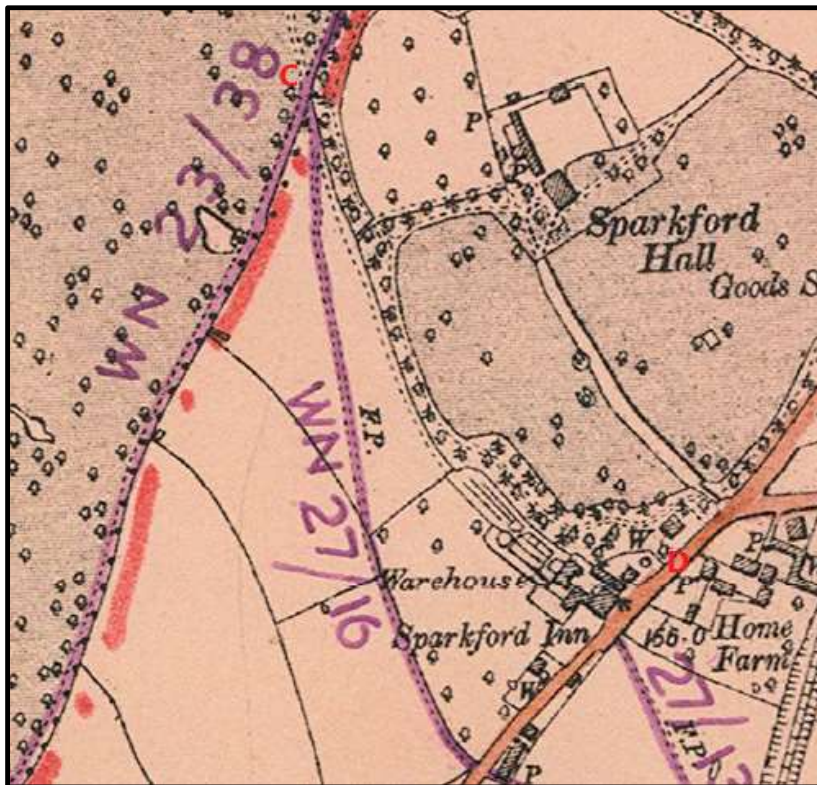
Source: SCC



Section of the provisional map. Red letters C and D added to show the application route.

(v) Definitive map (1972)

Source: SCC



Section of the definitive map. Red letters C and D added to show the application route.

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Photographs, Sparkford High Street

Source: Landowner D



Landowner D photograph 1, notice on side of former stables.



Landowner D photograph 2, close up of the notice.

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WILDLIFE AND COUNTRYSIDE ACT 1981
SECTION 53 SCHEDULE 14 APPLICATION TO UPGRADE FOOTPATH WN
27/4 AND PART OF FOOTPATH WN 23/11 TO BRIDLEWAYS FROM THE
A303, QUEEN CAMEL TO SPARKFORD HILL, SPARKFORD

Application: 851M
Author: Sue Coman
Date: July 2022

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to discuss the details.

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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 an application to modify the DMS by upgrading footpath WN 27/4 and part of footpath WN 23/11 to bridleways from the A303, Queen Camel to Sparkford Hill, Sparkford. 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 land registry documents were found to be of particular significance in this case.

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

- section F to F1 of the application route, as shown on Appendix 1, (part of WN 23/11) is correctly recorded on the DMS as a *footpath*
- section F1 to G of the application route (WN 27/4) is a *bridleway*

1.6. Although not included in the application, it came to light during examination of the evidence that, on the balance of probabilities the recorded footpath WN 23/15 (F1 to F2) is a *bridleway*

1.7. The report therefore recommends that:

- the application to upgrade section F to F1 to a bridleway, as shown on Appendix 1, be refused
- an Order be made, the effect of which would be to upgrade footpaths WN 27/4 and WN 23/15 to bridleways.

1.8. This report begins by summarising the application. 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 9 May 2017 Sarah Bucks made an application under Section 53(5) and Schedule 14 of the Wildlife & Countryside Act 1981, for an order to amend the DMS by upgrading footpath WN 27/4 and part of footpath WN 23/11 to bridleways from the A303, Queen Camel to Sparkford Hill, Sparkford. The route in question is shown in blue on drawings number H39-2021 pt 3 (Appendix 1).

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

2.3. The applicant argues that "While no single piece of evidence is conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status."

2.4. Photographs of the claimed route taken on 30 June 2021 are at Appendix 2. The route starts on the south side of the A303 at point F (photographs 1 & 2). It heads south uphill through a wood. There is a fence behind trees along the eastern boundary and trees on the western boundary (photographs 3, 4 & 5). Distances measured from the fence through the trees on the eastern boundary to mature trees on the western boundary ranged from 5.0 to 5.9 metres.

2.5. Near point F1, at the top of the hill, there is a pedestrian kissing gate (photograph 6). After the kissing gate at F1 the route makes a 90 degree turn to head east. At this point there is a pedestrian stile and wooden gate, the gate is secured with a metal chain (photograph 7). The gate measured 1.1 metres wide.

2.6. The route continues east along WN 27/4 with a copse on the northern side and open grassland on the southern side (photographs 8 & 9). At point G3 the copse ends, and the route continues across open grassland (photograph 10).

2.7. At point G2 trees and a fence then form a boundary on the northern side of the route (photographs 11 & 12). Between G1 and G2 two field gates (3.6 metres wide in total) have been tied together across the route and the southern boundary fenced (photograph 13) with a further field gate across the route at point G1 (photograph 13 & 15).

2.8. After G1, the route continues with a building on the northern boundary and a fence on the southern boundary with a width between them of 4.6 metres. There is a hedge between the building and the fence (photographs 14 & 15).

Where the hedge ends there is a stile in the southern boundary (photograph 16). The route then continues to the road at point G bounded by the building on the north and the fence on the south with a width between them of 4.3 metres (photographs 17 & 18).

2.9. A land registry search was carried out in May 2021 and identified two owners of the application route and one adjoining landowner. A further landowner was identified during the consultation process. The landownership is shown at Appendix 3.

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

3. **Legislative framework**

3.1. An overview of the legislation relating to the circumstances in which a Definitive Map Modification Order can be made can be found in Appendix 4. Paragraph 1.3 of that appendix sets out the circumstances in which SCC must make an order to modify the DMS. In this case section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 is of particular relevance. This subsection states that the DMS should be modified 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 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.

3.3. 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. Part of the application route (F - F1) lies within the Parish of Queen Camel and therefore falls within the area of the plan. The plan shows plots of land with individual reference numbers and a number of linear features.

4.4.2. Although section G – F1 of application 851 lies within the parish of Sparkford a linear feature of solid parallel lines is shown on the plan from a location broadly similar to point F1 and heading east towards G. Heading north there is a linear feature consisting of two sets of pecked lines, but these are in a position that is broadly similar with the start and end of WN 23/14. Section F1 to F would run through the plot marked Pj 143. However, there is no feature shown within that plot that corresponds to F1 to F. There is also no feature

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.

shown on this plan that corresponds to F1 to F2, an alternative continuation for section G to F1, of the application the route.

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. Plot Pj 143 is uncoloured but the adjacent plot, Hw 144 is coloured.

4.4.4. Whilst there is mention of plot Hw 144 Cross in the award, no additional details are provided regarding the land surrounding it.

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 any 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 F1 towards G, at that time. The lack of any linear features from F to F1 or F1 to F2 does not necessarily mean that no routes existed. They may have been physically less significant features 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”. 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) and Apportionment (1837-9)
Source: South West Heritage Trust
Reference: SHC D/D/rt/M/75 and SHC D/D/rt/A/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 public rights over them. Therefore, the sienna colouring on this map does not necessarily indicate public rights of way.

4.5.3. It is only section G to F1 that lies within the Parish of Sparkford but section F1 to F lies along the Sparkford Parish boundary. There is a linear feature shown on the map running along a line broadly similar to section G to F1, between plots 154 and 155 to the north and plot 153 to the south. The state of cultivation of plots 153 to 155 are all recorded in the apportionment book as arable.

4.5.4. The Map appears to indicate that section G to F1 of the application route was not subject to a tithe, as no apportionment number is included at any point. This may have been because the route was a public road. Equally, the route could have been an unproductive (i.e. not used to produce a crop) and therefore unnumbered private road.

4.5.5. The Tithe Map offers strong evidence that section G to F1 physically existed in 1839. It is less helpful in determining its reputation or status; whether it enjoyed public or private rights, or indeed, if rights that did exist were higher than those currently recorded. The primary purpose of these documents was to record the payment of tithes, not to ascertain or survey the nature of public or private rights that may have existed. While the tithe records are not inconsistent with the presence of public bridleway rights over the application route, they equally do not offer direct evidence that such rights were present.

4.5.6. At point F1, instead of turning north to head to point F, the route is clearly shown on the tithe map as continuing west towards F2 in a direction broadly similar to the recorded right of way WN 23/15. There is no linear feature shown that corresponds to section F1 to F.

4.5.7. The fact that no route is shown corresponding to section F1 to F does not mean that a right of way could not have existed over that route. The land is outside the Sparkford Parish boundary so any route over it would not have affected the Sparkford tithe.

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)

4.5.8. 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.

4.5.9. 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 public rights over them. Therefore, the sienna colouring on this map does not necessarily indicate public rights of way.

4.5.10. The application route does not lie wholly within the area of the tithe map as section G to F1 is mainly within the Parish of Sparkford. However, at F1 there is a break in the line along the parish boundary at that point with two short lines extending into the Sparkford side at an angle comparable to section G to F1 of the application route. If this feature does represent such a route, there is no indication on the map as to where it leads on the Queen Camel side.

4.5.11. There is no linear feature shown running from point F1 to F of the application route nor from F1 west towards F2, even though both these sections lie within the Parish of Queen Camel. The absence of any linear features between points F to F1 and F1 to F2 does not 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".²

4.5.12. The section of the application route that lies within Queen Camel (F-F1) and the alternative route F1 to F2 run through apportionment plot number 1. This 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.

4.5.13. In conclusion, this document set provides evidence of a possible route existing, at that time, at point F1 heading east. The map gives no explicit indication as to whether it was a public or private route nor its ultimate destination.

² DMO Consistency Guidelines 5th revision July 2013 Section 8 page 5

Queen Camel Tithe Map (1924)
Source: South West Heritage Trust
Reference: SHC D/D/rt/M/377A
Appendix number: 8(iii)

4.5.14. 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.

4.5.15. Section G to F1 lies outside the area of the map. For section F1 to F there is a corresponding feature on the underlying OS map situated within an apportionment with the red number 370. The feature is marked on the map with a red brace linking it to the apportionment. A linear feature that continues west from F1 to F2 is also shown in the same way. This indicates that the routes were included within the tithable areas. As mentioned in paragraph 4.5.8 above, the effect of footpaths and bridleways on the tithe payable was likely to be negligible. Therefore, it is plausible that such routes would be braced to be included within the respective apportionment.

4.5.16. In conclusion, whilst routes may have existed between points F to F1 and F1 to F2 it appears that they were not considered to be of a nature that would impact on the tithe payable.

4.6. **Quarter Session records**

Quarter Sessions Roll 1873
Source: South West Heritage Trust
Reference: SHC Q/SR/694/ 70-88
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. A plan setting out the existing highway and route of the proposed diversion was submitted to the court. The part of the highway that was to be stopped up, although with rights on foot reserved, was situated along a line broadly similar

to footpath WN 23/12 and approximately 200 metres from the application route. Therefore, the plan has been reviewed for any details that may relate to the application route.

4.6.2. There is a set of parallel pecked lines shown on the plan that follows a line broadly similar to a short part of the application route from point F (near the letter N on the plan) towards F1. However, the plan does not extend any further over the application route.

4.6.3. Other linear features on the plan that are composed of parallel pecked lines represent existing roads, the proposed new road, and the private road from Hazelgrove House. Whilst it is likely that the parallel pecked lines running from F towards F1 are also meant to represent some form of road there is nothing marked on the plan to indicate whether it was considered to be a public or private road.

4.6.4. 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."³

4.6.5. Therefore, the weight that can be given to the evidence depends on how directly it relates to the matter the Court decided. The wider setting of the highway under consideration would not have been of particular relevance to the decision. Therefore, although a feature is shown on the plan corresponding to a small section of the application route from point F, the weight that can be given to the evidence is weak and is evidence of the possible existence of a physical route at that point, 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)

³ Paragraph 6.3 of the Planning Inspectorate (April 2016) Definitive Map Orders: Consistency Guidelines

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 is a linear feature on the map that is broadly consistent with section F1 to G of the application route.

4.7.3. However, the map differs from the route claimed for section F1 to F. On the map, at point F1, the linear feature continues slightly further west before heading north along a line broadly similar to the recorded footpath WN 23/14 as opposed to F1 to F. There is no feature shown that corresponds to recorded footpath WN 23/15 (F1 to F2).

1883 OS Boundary Remark Book (extracts)
Source: The National Archives
Reference: OS 26/9397
Appendix 10 (ii)

4.7.4. A linear feature is shown running from point F towards F1. From the detail in the extract covering point F1 it can be seen that this feature is considerably wider than those features heading east, west and south from point F1. This is inconsistent with all the other OS evidence, including the subsequent Boundary Sketch Map, where section F to F1 is either not shown at all or if it is included is shown as being as, or less, physically significant a feature as section F1 to G and WN 23/15 (F1 to F2). Therefore, it is possible that the pecked line from F to F1 rather than representing a road, indicated a feature which either did not obstruct pedestrians or which was indefinite or surveyed to a lower standard than usual⁴.

1884 OS Boundary Sketch Map (extract)
Source: The National Archives
Reference: OS 27/4713
Appendix 10 (iii)

4.7.5. A linear feature is shown running from G to F1 although it is visibly narrower than surrounding routes, such as the Ilchester Road and Sparkford Hill. It is shown continuing a short way west past F1. There is no discernible feature shown running from F1 to F.

⁴ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, second edition* (London: Charles Close Society, 2005), p. 97

1887 OS County Series First Edition Map
Sheet No: LXXIV.7
Survey Date: 1885
Scale: 1:2500
Appendix 10 (iv)

4.7.6. At point F south of the boundary line for the Ilchester Road (modern day A303) the application route is shown as a narrow set of parallel pecked lines heading south to cross the southern boundary line of Ridge Copse to point F1. At point F1 there are parallel pecked lines heading east to F2, south, and west to G. Application 851 follows the lines heading east across the Parish and field boundary. For section F1 to G the pecked lines are variable in width and the letters B.R. are marked underneath. From 1884 the annotation 'B.R.' was used to show a bridle road and "Bridle roads were regarded as passable on horseback".⁵ At point G the pecked lines meet the solid line boundary of Sparkford Hill.

4.7.7. 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 (x)).

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 (v)

4.7.8. 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.

4.7.9. Section G to F1 of the application route is depicted as a footpath but rather than turning to head to point F, it is shown continuing west to Gason Lane (F1 to F2). The use of the footpath symbol does not mean it could not have also been a bridleway.

"There was, in fact, no symbol solely dedicated to bridleways on the one-inch maps. Since a network of these undoubtedly existed in the nineteenth century and earlier, the possibility that they were shown in the same way as minor roads or tracks cannot be discounted."⁶

⁵ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, second edition* (London: Charles Close Society, 2005), p. 96

⁶ Y. Hodson, 'Roads on OS one-inch maps 1801-1904', *Rights of Way Law Review*, 9.3, p. 120.

4.7.10. The fact that on both the preceding and following County Series maps section G to F1 is annotated as being a bridle road tends to support that argument. It is also consistent with the later small scale OS 'popular edition' maps where the same symbol is used to cover both footpaths and bridle paths.

4.7.11. However, the use of this particular symbol does indicate that the route was not metalled and not considered suitable for wheeled traffic, at that time, because there are other symbols to indicate routes of that nature.

4.7.12. There are no roads or footpaths shown for section F to F1. If a route did exist, at that time, along such lines this map would suggest that it was 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(vi)

4.7.13. The application route and WN 23/15 (F1 to F2) are shown on this map in a broadly similar way to the first edition map and is still annotated B.R.. The only notable difference being that for section F1 to G the previously pecked lines have been replaced by solid lines near point G, indicating that this section was now fenced.

4.7.14. At point G the adjacent building is labelled as a "Limekiln". This would have required a regular supply of limestone which was most likely obtained from the nearby quarry. Therefore, a route may have come into existence to link the two. However, the route to the quarry diverges from the application route at point G2 heading north-west whilst the application route continues west to F1. Whilst there is another quarry further west of F1 there is also another limekiln shown on the map just to the south of that quarry. Therefore, the existence of a limekiln near point G does not necessarily explain the existence of the application route.

4.7.15. A smaller scale (1:10,560) map was also published based on the 1901 revision. 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 (xi)).

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

4.7.16. There appears to be no difference in how the route is shown on this map and the earlier Revised New Series Map. However, the map key now makes clear that the symbol used relates to both "Bridle & Footpaths". Section G to F1 is shown continuing west to Gason Lane (F1 to F2) instead of turning to head north to point F. There are no roads or footpaths shown for section F to F1. If a route did exist, at that time, along such lines this map would suggest that it was still not considered to be of sufficient significance to warrant inclusion.

1946 OS New Popular Edition Map
Sheet No: 177
Scale: 1: 63360 (one inch to the mile)
Appendix 10 (viii)

4.7.17. This map differs from the earlier popular edition map in that it now shows a route along F1 to F in addition to the earlier recorded route from G to F2. The map key indicates that the symbol used covers both footpaths and bridle paths.

1962 OS "six-inch" Map
Sheet: ST 52 NE
Scale: 1: 10,560 (six inches to the mile)
Appendix 10 (ix)

4.7.18. This map differs from the earlier six-inch maps in that section F1 to G has been annotated with the letters FP instead of B.R. The corresponding map key indicates that this is the symbol for a footpath. However, as can be seen from the map key, there is now no longer a specific symbol to represent a bridle road. The change in annotation could be due to a decline in the physical nature of the route to that more resembling a footpath. Alternatively, it could be because during this period the OS did not make a distinction between footpaths and bridlepaths on their "six-inch" series maps.

Interpretation of evidence

4.7.19. Whilst OS maps provide evidence of the physical existence of a route, they do not provide direct information on its status i.e. whether it was public or private. 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".⁷ In fact,

⁷ *Moser v Ambleside Urban District Council* (1925) 89 JP 118, p. 119.

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”.⁸

4.7.20. Taken as a whole the OS maps provide evidence of the physical existence of a route from F to G. The evidence also points towards G to F1 to F2 being physically more significant than section F to F1 with the 1898 Revised New edition and 1919 Popular edition maps recording section G to F1 to F2 but not F to F1. And whilst the annotation B.R., indicating a route that was passable on horseback, was applied to section G to F1 no such annotation was recorded against section F to F1.

4.8. **Turnpike Records**

Ilchester Turnpike Maps (1826)
Source: South West Heritage Trust
Reference: SHC D/T/ilch/1 1826
Appendix number: 11 (i)

Road plans; Yeovil turnpike to Sparkford Cross (1852)
Source: South West Heritage Trust
Reference: SHC Q/RUP/222
Appendix number: 11 (ii)

Description and interpretation of evidence

4.8.1. The Queen Camel section of the A303 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.

4.8.2. The small scale map shows a linear feature along the line of section G to F1 of the application route. However, at F1 instead of turning to head north to F it continues west for a short distance but instead of continuing to F2 turns to head north.

4.8.3. The large scale map is more focussed on the turnpike road itself but does show features that adjoin the road. There is a linear feature running south from F but from the map key this would appear to represent a fence line. In contrast, a short distance to the west there is a break in the turnpike road boundary and a set of parallel lines running in a southerly direction. This is consistent with the feature as shown on the small scale map and in a position broadly similar to footpath WN 23/14.

⁸ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, third edition* (London: Charles Close Society, 2013), p. 109.

4.8.4. The later, 1852, road plan depicts Sparkford Hill to the Sparkford Cross road junction. The plan shows a linear feature heading west from G towards F1, broadly consistent with that part of the application route.

4.8.5. These documents provide evidence of the physical existence of section F1 to G, at that time. There are no routes recorded corresponding to F to F1 or F1 to F2 although that does not mean they did not exist. It is possible they were just not considered to be relevant in relation to the turnpike roads. This would be understandable for F1 to F2 which is some distance and not directly connected to either turnpike road. However, F to F1, would form a direct connection to the Ilchester turnpike road and if it was a significant route, at that time, it would be reasonable to expect it to be recorded.

4.9. **1910 Finance Act**

Working Plans and Valuation Book

Source: South West Heritage Trust

Reference: SHC DD/IR/OS/74/7 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 and IR 58/5381 & 5383

Appendix number: 12

Description and interpretation of evidence

4.9.1. The working plans for the area shows how the land is divided into hereditaments.

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;'.⁹ The application route has not been excluded from surrounding hereditaments on either the working or the later, more authoritative, record plan.

⁹ DMO Consistency Guidelines 5th revision July 2013 Section 11 page 3

4.9.3. On the record plan section F to F1 of the application route runs through hereditament number 86, section F1 to G, through hereditament number 200 and section F1 to F2 through hereditament number 54.

4.9.4. There are no deductions recorded for rights of way in the valuation book for any of these hereditaments. However, this is not the case for the later, more authoritative, field books.

4.9.5. 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. Although section F to F1 runs through hereditament 86, this hereditament number covers a range of separate wooded plots. One of the plots contains sections of a former private carriage drive to Hazelgrove House and a 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 and have no bearing on the application route. No evidence of a corresponding financial deduction for recorded rights of way in relation to this hereditament has been received.

4.9.6. Hereditament 200 covers section F1 to G of application 851. The extract from the field book does include a deduction for a right of way over this hereditament. The entry gives no indication as to where within the hereditament the right of way runs. However, apart from the application route, there are no other known physical routes within the hereditament that the deduction may relate to.

4.9.7. Hereditament 54 is an extensive hereditament with several known rights of way running through it. The extract from the field book does include a deduction for 'Foot Paths' but there is insufficient detail to establish which routes this deduction applies to.

4.9.8. Overall, this document set provides evidence of the existence of public rights of way within the plots of land through which section F1 to G and F1 to F2 run. This is consistent with what is already recorded on the DMS. There is no clear evidence within this document set to indicate that the public rights of way (WN 27/4 and WN 23/15) are of a higher status than currently recorded.

4.10. **Highway authority records**

1929 Handover Map and Schedule, 1930 Road Records, 1950 Road Records, 1970 Road Records, Modern Road Records
Source: SCC
Appendix number: 17

Interpretation of evidence

4.10.1. The application route is 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: 13 (i)

4.11.1. Sections F to F1 of the application route lies 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 F to F1 is shown on the survey map as a black line numbered 11. 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. On the Sparkford parish survey map section F1 to G is shown as a green line numbered 4 and marked F.G. at two points and H.G. at the Queen Camel parish boundary. The other colour used for numbered routes on this survey map is orange. There is no key to indicate the significance of the two different colours used. However, the other routes coloured green on this survey map have, generally, been added to the DMS as footpaths. For the six routes or sections of route coloured orange, four were recorded on road records as unclassified roads. This would appear to indicate that the orange colouring was used for those routes or sections that had the physical characteristics of a road.

4.11.3. For section F1 to G, on the underlying OS map used for the survey the annotation B.R. can be seen on the line of the route.

Survey Cards (1950-51)
Source: SCC
Appendix number: 13 (ii)

4.11.4. The two corresponding survey cards have the kind of path written as F.P.

4.11.5. The Queen Camel survey card for path 11 (south of F1 to F) describes kissing gates at certain points along the route.

4.11.6. The Sparkford survey card for path 4 (G to F1) refers to a fieldgate, gate, and hunting gate. This is consistent with the markings on the survey map. Although subsequently crossed through, the typed description began "bridle path continues, (3),". Sparkford survey path 3 was along Sparkford Hill Lane, an unclassified road, and not ultimately recorded on the DMS.

4.11.7. It would appear that, at the time of the parish survey, section G to F1 may have been physically accessible on horseback whereas sections F1 to F, due to the existence of a kissing gate, would only have been accessible on foot.

4.11.8. Although section F1 to F may not have been accessible on horseback it is possible that path 27/4 (G to F1) instead of turning to head north to F continued ahead along path 23/15 to Gason Lane. The survey card for path 23/15 certainly indicates that these two routes are continuous. This survey card refers to a "wicket gate" at the parish boundary but makes no other reference to gates or stiles across path 23/15.

Draft Map (1956)
Source: SCC
Appendix number: 13 (iii)

4.11.9. The application route is shown on the draft map as purple lines indicating they have been identified as public footpaths.

Summary of Objections to the Draft map
Source: SCC
Appendix number: No appendix

4.11.10. There was no record of objections relating to the application route.

Draft Modification Map (1968)

Source: SCC
Appendix number: 13 (iv)

4.11.11. There were no markings on the Draft Modification Map relating to the application route.

Summary of Counter Objections to the Draft Modification Map
Source: SCC
Appendix number: no appendix

4.11.12. There was no record of a counter objection relating to the application route.

Provisional Map (1970)
Source: SCC
Appendix number: 13 (v)

4.11.13. The application route is shown in the same way as on the Draft Map.

Definitive Map and Statement
Source: SCC
Appendix number: 13 (vi)

4.11.14. The application route is shown in the same way as on the Provisional Map. Paths WN 23/11 (south of F1 to F) and WN 27/4 (F1 to G) are both classified in the Statement as F.P. and shown on the Definitive Map as purple lines.

4.11.15. The Statement for path 27/4 now describes the route after the parish boundary as continuing as 23/15.

Interpretation of evidence

4.11.16. The application route (WN 27/4 and part WN 23/11) and WN 23/15 have been recorded on the DMS as public footpaths. Unlike WN 23/11, for WN 27/4 and WN 23/15, the notes on the survey card do not indicate the presence of any structures, such as a kissing gate or stile, that would have made the route physically inaccessible on horseback, at that time.

4.11.17. 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 route is shown as a footpath does not preclude the existence of higher rights.

4.11.18. Section 53(3) of the Wildlife and Countryside Act 1981 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. The underlying OS maps used during the DMS preparation process have the annotation B.R. against section G to F1. Therefore, it is difficult to see how SCC would not have been aware of this evidence when preparing the DMS. The annotation simply refers to the physical character of the route being passable on horseback and not whether public rights exist.

4.11.19. For section F1 to F the DMS survey card indicates that this part of the route was only physically accessible on foot, at that time.

4.12. **Local Authority records/minutes**

Divisional Surveyor Memoranda
Source: SCC
Appendix number: 16

4.12.1. Two memoranda, from a Divisional Surveyor, were found in the Local Authority records relevant to the application route. One dated 1963 refers to a footpath running through OS plot 111 (F to F1). The other dated 1974 refers to 23/15 as a bridle path and bridle way. WN 23/15 is a possible continuation of the route of WN 27/4 (G to F1).

Interpretation of evidence

4.12.2. There is no information in the later memorandum that indicates why the Divisional Surveyor considered 23/15 to be a bridle path. It would be reasonable to assume a Divisional Surveyor had some knowledge of the routes within their area although it is clear they did not have a copy of the relevant section of the DMS at the time. Whilst this evidence is consistent with the OS evidence of the east to west route (G to F1 and continuing west) being a more significant route than the north-south section (F to F1), it cannot be given a great deal of weight because the basis for the reference to a bridle path is unclear.

4.13. **Commercial Maps**

Day & Masters 1782 (extract)
Source: South West Heritage Trust
Appendix number: 14 (i)

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

4.13.2. There is no route shown that corresponds to section F to F1 in the application route

4.13.3. However, the east to west section (G – F1) of the application route is shown on the map and that route is shown as continuing west along a line broadly similar to F1 – F2 and Gason Lane. This suggests that it must have been either a very prominent physical feature or a route of some importance (or both). Based on this assumption it is arguably more likely that it would have carried public rights. However, little is known about the basis upon which Day & Masters selected the features which were to be shown on their maps. Furthermore, even if they did consider it to be public, this can only be taken as the view of the individual surveyor rather than the wider public. In the circumstances this map can be given some, but not a great deal of, weight.

Greenwoods 1822 (extract)
Source: South West Heritage Trust
Appendix number: 14 (ii)

4.13.4. 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.

4.13.5. In this case the map shows section F1 to G as a "cross road". Although not specifically defined on the map, this term was being used to refer to more than just the point at which two roads cross. In one prominent case the courts defined a cross road as "a public road in respect of which no toll is payable".¹⁰ 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

¹⁰ *Hollins v Oldham* (1995)

the term “cross road” in the context of any individual map before drawing any inferences.¹¹

4.13.6. While the majority of cross roads shown on Greenwood’s maps are now recognised as public vehicular roads, there are many which are not. Most of those which are not now public vehicular roads are shown on Greenwoods Map as culs-de-sac which are unlikely to have carried public vehicular rights (see Appendix 14).

4.13.7. 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.

4.13.8. 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”.¹² 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.¹³

4.13.9. This map therefore confirms the physical existence of section F1 to G in 1822 and supports the view that this west-east element of the application route was a thorough fare. However, it seems as though Greenwood’s either did not consider all “cross roads” to be public vehicular routes, or that he did not make very careful checks about the public status of the routes they recorded. In the circumstances this map is only of very limited weight in support of public rights over the application route.

Ministry of Food National Farm Survey 1941-42
Source: National Archives (extract only)
Reference: MAF 73/36/74
Appendix number: 15

4.13.10. The survey was carried out to assist with increasing food production during the Second World War.

4.13.11. Whilst the proximity to public roads and condition of any farm roads was included in the survey, it was not the primary purpose of the survey, and the written portion of the records has not been seen in this case. In a recent

¹¹ *Definitive Map Orders: Consistency Guidelines, Third revision* (2013), 2.26.

¹² *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77.

¹³ *Fortune & Ors v Wiltshire Council & ANR* [2012] EWCA Civ 334.

decision issued by the Secretary of State it was considered that, although recording public rights of way was not the primary purpose of this survey “The exclusion of part of the routes may nevertheless indicate that the routes were considered to be vehicular highways. The weight to be given to this evidence is however very limited.”¹⁴

4.13.12. Section F to F1 of the application route runs through a plot of land that has not been highlighted so no conclusion can be drawn in relation to that section. Also, from G to G1 the land to the north is not part of a highlighted plot. From just west of G1 to G2 a short section of the route between plots does appear to be excluded which could indicate public vehicular rights although west of G2 the route is not excluded. Therefore, this document may be evidence in favour of public vehicular rights but is given very limited weight.

Land documents

Appendix number: no appendix

4.13.13. The title register for landowner B’s land includes details of a conveyance dated 1968 that the land is “Subject [...] as to that part of the property hereby conveyed coloured [blue] on the said plan to a public right of way and bridle path running from the main road”. On the accompanying plan section G to G1 is coloured blue.

4.13.14. The title plan for landowner A’s land includes an area tinted blue that covers section G1 to G2 of the application route and an area tinted pink that covers section G2 to F1 of the application route.

4.13.15. The area tinted blue is subject to the rights reserved in a conveyance dated 5 October 1966. This states that the land coloured blue is “SUBJECT to the public right of way and bridlepath running from the main road across the Northern end of the property”. An accompanying plan shows G1 to G2 coloured blue.

4.13.16. The area tinted pink is subject to the rights reserved in a conveyance dated 8 January 1962 which includes it being “subject to [...] The existing public right of way and bridle path running from the main road across the northern side of the property”. On the plan dated 8 January 1962 the word “BRIDLEPATH” is written between points G2 and G3.

¹⁴ ‘Appeal Decisions FPS/G3300/14A/18, 19 & 20’, The Planning Inspectorate (14 November 2019), [44], https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848995/fps_g3300_14a_18_to_20_decision.pdf, accessed 28 April 2020.

4.13.17. No limitations on use of the bridle path to specific landowners or classes of user are set out in either of the title registers.

4.13.18. The title registers are legal documents and provide strong evidence that the way (G-F1) is both public and can be used on /with a horse.

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 full 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.

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

Consultee	Details
Local Member	Highlighted the 1795 map of Queen Camel as not indicating that the footpaths are bridleways. They also submitted photographs of a map of Queen Camel that is displayed inside of the West Door of St Barnabas Church, Queen Camel.
Queen Camel Parish Council	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". Their interpretation is the route was part of an occupational road, and the evidence for this was the 1885 OS map that shows the route starts at a Lime Kiln and progresses to the quarry. The BR annotation on the OS map was considered to extend to the main quarry (west of F1) and therefore

	<p>represents the main route to that quarry. They noted that there is no habitation or any other obvious reason for there to be a bridle route, apart from activity relating to the quarry. An FP annotation (south of F1) on the OS map was highlighted as showing it was possible that footpath continues up the side of Ridge Copse (F1 to F), rather than the Bridle Road (G to F1) suddenly swerving northwards. They are of the view that while the quarry was in operation it is unlikely that there would have been public bridle access to it, and it appears to have been downgraded to a footpath once quarrying ceased. A 1962 OS map was submitted as evidence of the downgrading to a footpath of section G to F1. A 1972 OS map was submitted as evidence of no footpath from G to F1 and evidence that F1 to F was a continuation of the footpath from south of F1.</p>
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5.4. The local member submitted photographs of a map displayed at the church in Queen Camel (see Appendix 7). There is a note on the map indicating that it is based on the 1795 inclosure plan. The 1795 map of Queen Camel has been considered as part of the inclosure award records in section 4.4.

5.5. Queen Camel Parish Council noted that the application route fell within land owned by the Mildmay family. The historical records confirm this for section F to F1 which is within the Queen Camel Parish but not for section F1 to G which falls within the Parish of Sparkford.

5.6. 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.

5.7. The Parish Council have submitted and referred to a number of OS maps as evidence of public bridleway rights not existing along the line of the application route, this includes an extract from a 1975 OS map. However, in 1958 the OS accepted a recommendation that the information contained within the DMS should be shown on OS maps.¹⁵ The route (F-G) was recorded as a

¹⁵ J. Riddall & J. Trevelyan, *Rights of Way: a guide to law and practice, fourth edition* (Ramblers' Association & Open Spaces Society, 2007), p. 109

footpath when the Map and Statement became definitive in 1972. Therefore, it is difficult to draw a conclusion on the historical status of the route based on its depiction in an OS map once the DMS has become the legal record of public rights of way. The evidence from the earlier OS maps has been considered in section 4.7.

5.8. The Parish Council's interpretation of the earlier OS maps is that the purpose of the bridle route (G to F1) was to link the lime kiln at G to the quarries to the west of G. However, the route (G to F1) is shown on the 1839 Sparkford Tithe Map and there is nothing on that map, nor within the apportionment, to indicate a lime kiln at point G nor a quarry north of G2-G3, at that time. Yet it has been recorded in the apportionment that lime kilns and quarries are situated in plots 144 and 146. As a tithe was not normally payable in relation to lime kilns or the stone from quarries, their impact on a plot would have been relevant to the calculation of the tithe.¹⁶ Therefore, it is likely that the route predates the existence of a lime kiln at point G. This demonstrates that, while at a later date the application route may have been used for accessing the quarry and/or the lime kiln it is unlikely to have been its sole purpose. The conclusion drawn by this report is that the route's destination was most likely Gason Lane, thereby forming an east - west link between two public highways. That the route connected Sparkford Hill to Gason Lane is also supported by both the OS 1898 Revised New Series and 1919 'Popular Edition' maps (see Appendix 10).

6. Discussion of the evidence

6.1. As discussed in section 3 above, the County Council is under a duty to modify the Definitive Map where evidence comes to light that it is in error. The standard of proof to be applied in this case is whether, on the balance of probabilities, the higher rights subsist. In other words, is it more likely than not that those rights subsist.

6.2. Evidence from the 1873/4 Quarter Sessions and the later County Series Ordnance Survey maps indicates the physical existence of a route along section F to F1. However, there is little evidence to indicate the route has any higher status than currently recorded on the DMS.

6.3. In contrast, the route running from point G towards F1 is specifically recorded within the Land Registry documents as being a public right of way and bridle path.

¹⁶ L. Shelford, *The Acts for the Commutation of Tithes in England and Wales, and Directions and Forms as settled by the commissioners, also the Reports as to Special Adjudications, &c. and the Plans, third edition* (London: S. Sweet and Stevens & Norton, 1842), p.3 and 151.

6.4. Section G to F1, is also recorded in historical documents as a physically significant route. This includes both the 1826 and 1852 Turnpike records, Day & Masters and Greenwoods maps, and all the OS maps reviewed above including the 1811-1817 Old Series map. In particular, the route is recorded on the 1839 Sparkford Tithe Map indicating it was significant enough, at that time, to affect the tithe payable. It is specifically marked as a bridle road on the 1887 and 1903 County Series OS maps and by the 1950s it is possible the route was still physically accessible on horseback. All this evidence is entirely consistent with the route being a bridle path, as set out in the Land Registry documents.

6.5. The 1910 Finance Act documents, whilst containing insufficient detail to determine whether rights were on foot or a bridleway, do corroborate the existence of public rights across the land that section G to F1 lies within.

6.6. However, section G to F1 by itself would form a cul-de-sac. Whilst the Planning Inspectorate's Consistency Guidelines acknowledge that cul-de-sac highways do exist, in certain circumstances, it notes that they most frequently arise when the cul-de-sac leads to a place of public interest. At F1 there is no discernible point of public interest so a question remains as to where the bridle path leads if there is little evidence of it running from F1 north to meet the A303 at point F.

6.7. The evidence from the OS 1898 Revised New Series and 1919 'Popular Edition' maps points towards the bridle route continuing west along WN 23/15 to Gason Lane. The route continuing in a westerly direction is also supported by the 1782 Day & Masters map, the 1839 Sparkford Tithe Map, and the DMS that records WN 27/4 (G-F1) "continues as [WN] 23/15".

6.8. With section F1 to F2 forming a continuation of section G to F1, the evidence in favour of G to F1 being a bridleway is then also evidence in favour of similar rights existing over F1 to F2. That the route, rather than forming a cul-de-sac, links Sparkford Hill and Gason Lane, two public highways, is also consistent with public bridle rights along the whole length.

6.9. 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.

6.10. The evidence contained within Land Registry documents has been set out in section 4.15 above. Land registration within South Somerset did not

become compulsory until 1989.¹⁷ Therefore, it is very unlikely that information contained within individual property deeds would have been publicly available for consideration during the Definitive Map making process and can be considered new evidence.

6.11. The Land Registry documents do not have to be sufficient on their own to conclude that bridleway 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 bridleway rights existing from G to F1 through WN 23/15 to Gason Lane.

7. Summary and Conclusions

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

- section F to F1 of the application route (part of WN 23/11) is correctly recorded on the DMS as a footpath
- section F1 to G of the application route (WN 27/4) is a bridleway
- the recorded footpath WN 23/15 is a bridleway

8. Recommendation

Therefore, it is recommended that the application which seeks to upgrade part of footpath WN 23/11 to a bridleway between F and F1 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 27/4 and WN 23/15 to bridleways.
- ii. if there are no objections to such an order, or if all objections are withdrawn, it be confirmed (subject to the order meeting the legal tests for confirmation).
- iii. if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs.

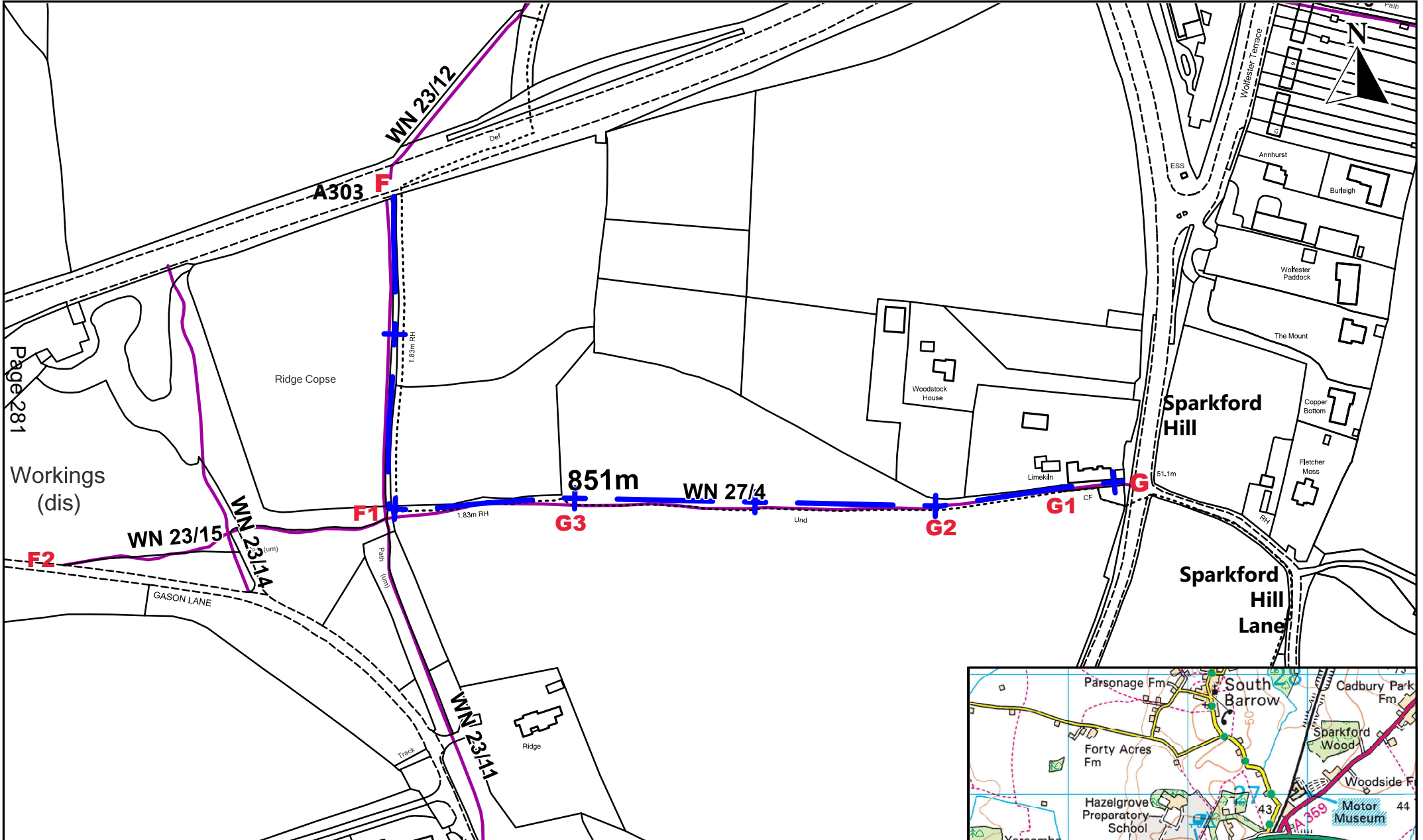
¹⁷ <https://www.gov.uk/government/publications/first-registrations/practice-guid-1-first-registrations>, accessed 29 March 2022

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 those 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. Turnpike records
12. Finance Act 1910
13. DMS preparation records
14. Commercial maps
15. Ministry of Food survey
16. Local Authority records
17. Highway Authority road records

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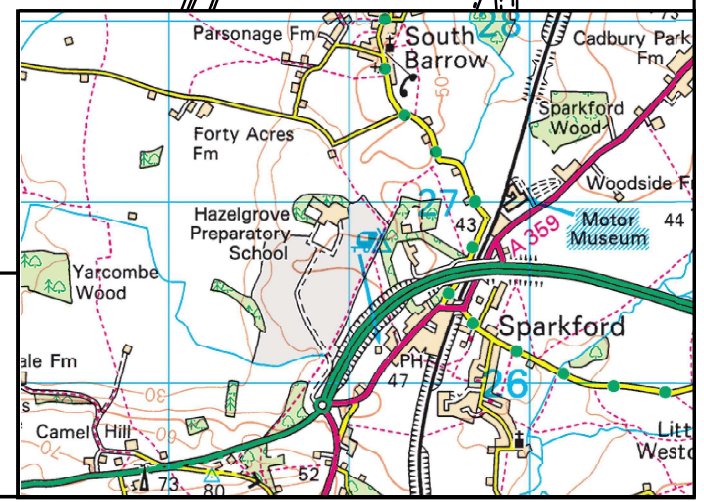
Workings (dis)



Parish: Queen Camel, Sparkford & South Barrow
 District: South Somerset
 Date: 01/07/2021
 Drawing No: H39-2021 pt3
 Drawn By: MHardwill
 Centre Grid Ref: 359830, 125970
 Scale: 1:2,500

Modification Route 
 Definitive Footpath 

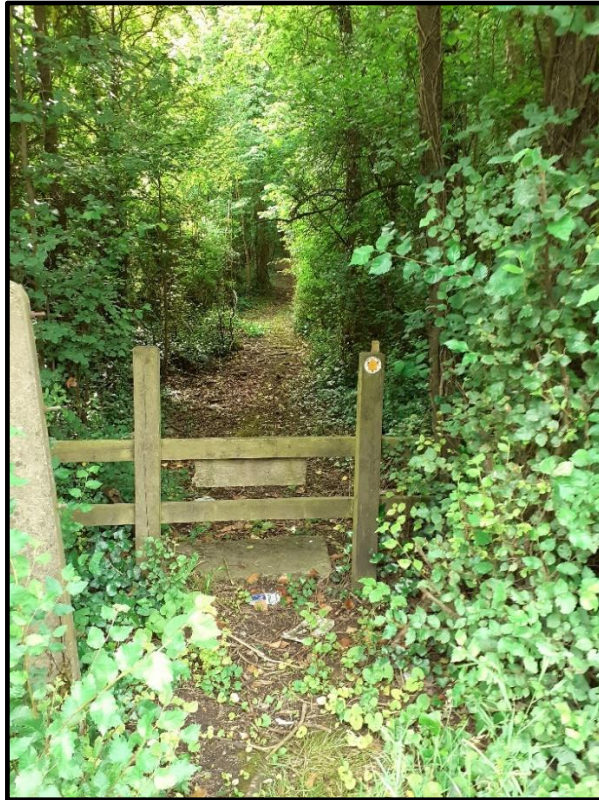
The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.
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Photographs of the application route

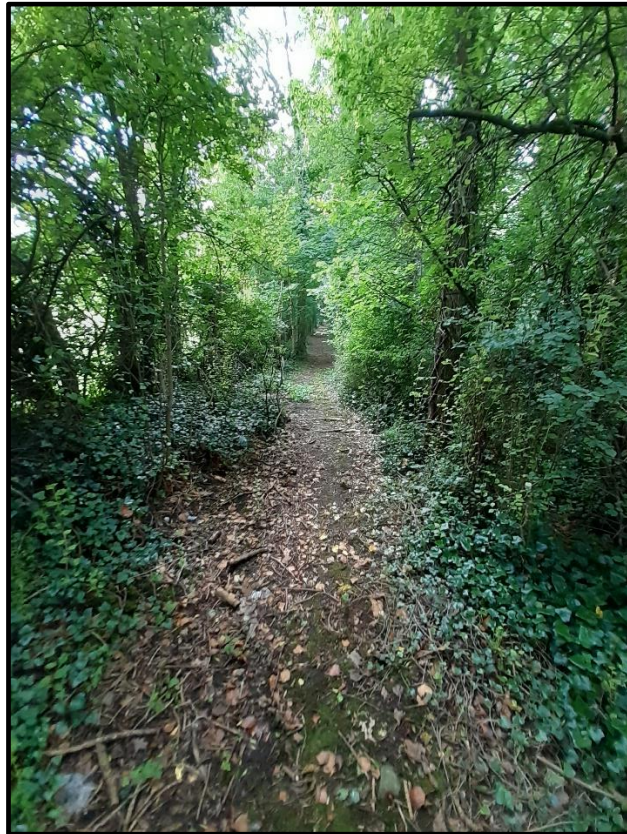
Source: officer site visit 30 June 2021



Photograph 1, at point F looking towards F1



Photograph 2, facing north looking at point F



Photograph 3, between F and F1, looking towards F1



Photograph 4, between F and F1, looking towards the western boundary



Photograph 5, between F and F1, looking towards the eastern boundary



Photograph 6, north of F1, looking south



Photograph 7, east of F1, looking west



Photograph 8, between F1 and G3, looking east



Photograph 9, between G2 and G3, looking west



Photograph 10, between G2 and G3, looking east



Photograph 11, between G1 and G2, looking east



Photograph 12, between G1 and G2, looking towards the northern boundary



Photograph 13, between G1 and G2, looking at G1



Photograph 14, between G and G1, looking east

Appendix 2 – Photographs of the application route



Photograph 15, between G and G1, looking at G1



Photograph 16, between G and G1, looking west



Photograph 17, between G and G1, looking east

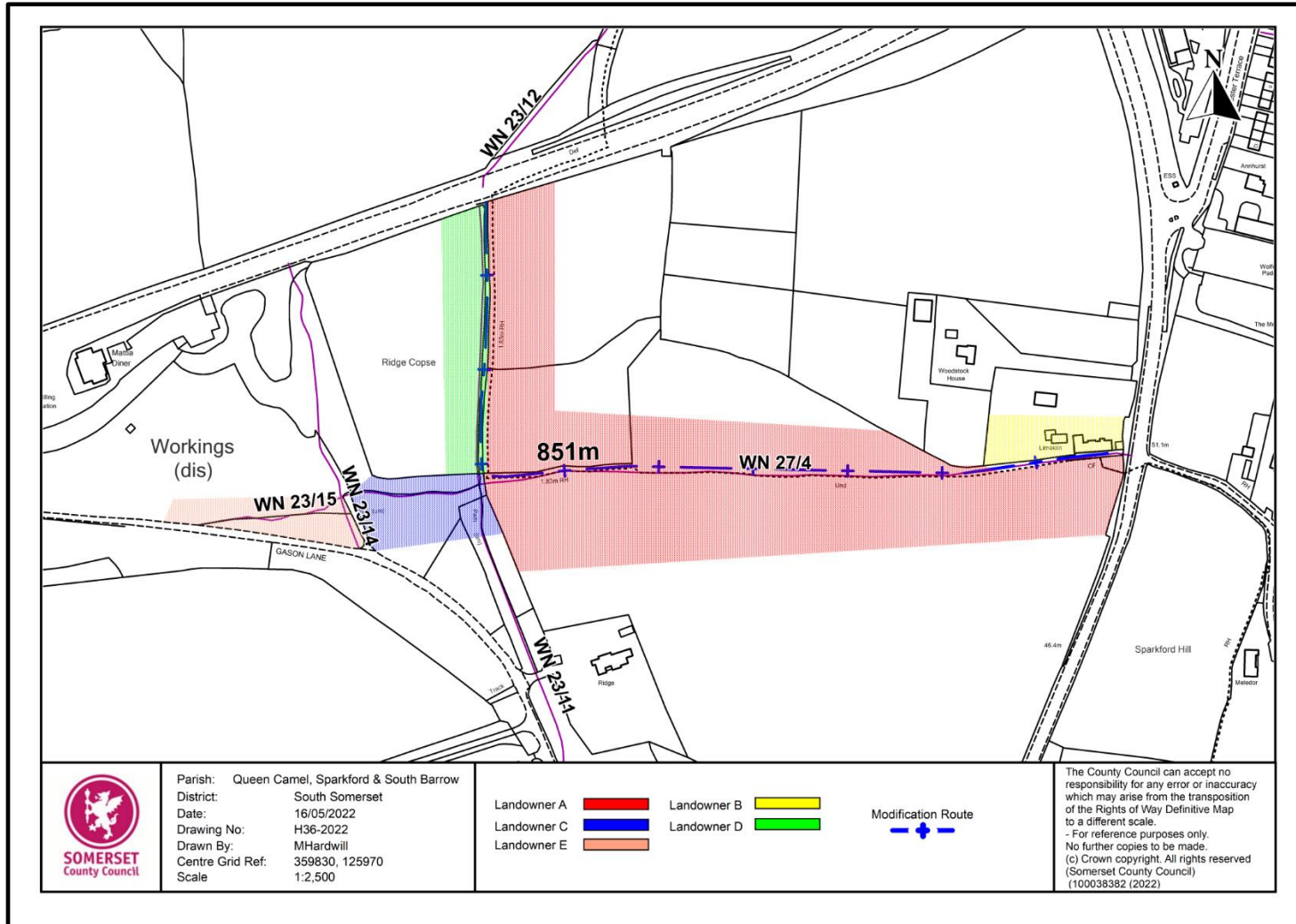


Photograph 18, at G, looking west

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Landownership plan

Reference: H36-2022



The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.
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Legal Framework

1. General

- 1.1. Footpaths, bridleways, restricted byways and byways open to all traffic, often referred to as public rights of way, are public highways. A highway is a way over which the public have a right to pass and re-pass. Not all highways are maintainable at public expense, nor is there any need for a way to have been 'adopted' before it is either a highway or a highway maintainable at public expense.
- 1.2. While topographical features may be attributed to, or provide evidence of, the existence of a public highway, the public right itself is not a physical entity, it is the right to pass and re-pass over (usually) private land.
- 1.3. Once a highway has come into being, no amount of non-user can result in the right ceasing to exist. The legal principle of 'once a highway, always a highway' applies.¹ Such rights, except in very limited circumstances, can only be changed by way of certain legal proceedings.
- 1.4. The **National Parks and Access to the Countryside Act 1949** placed a duty on all surveying authorities in England and Wales (such as Somerset County Council) to produce a Definitive Map and Statement, indicating and describing public rights of way within their areas. The resulting documents are conclusive of what they show but not of what they omit.
- 1.5. The 1949 Act also required surveying authorities to keep their Definitive Map and Statement under periodic review. However, with the passing of the **Wildlife and Countryside Act 1981** the requirement for periodic reviews was abandoned. Instead, section 53(2)(b) of the 1981 Act provides that the surveying authority must keep the Definitive Map and Statement under continuous review and must make such modifications as appear to them to be requisite in the light of certain specified events.
- 1.6. Those events are set out in section 53(3) of the 1981 Act. The following are of particular relevance:
 - Section 53(3)(b) states the Map and Statement should be modified on "the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path".
 - Section 53(3)(c)(i) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside

¹ *Harvey v Truro Rural District Council* (1903) 2 Ch 638, 644 and *Dawes v Hawkins* (1860) 8 CB (NS) 848, 858; 141 ER 1399, 1403

all other available evidence, shows “that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path a restricted byway or, subject to section 54A, a byway open to all traffic”.

- Section 53(3)(c)(ii) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows “that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description”.
- Section 53(3)(c)(iii) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows “that there is no public right of way over the land shown in the map and statement as a highway of any description, or any other particulars in the map and statement require modification”.

- 1.7. Section 53(5) enables any person to apply to the surveying authority for an order to be made modifying the Definitive Map and Statement in respect of the events listed above. On receipt of such an application the surveying authority is under a duty to investigate and to determine whether the Definitive Map and Statement require modifying. It is under these provisions that applications to modify the definitive map are made.
- 1.8. Section 32 of the **Highways Act 1980** states that a Court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced.
- 1.9. The standard of proof to be applied in determining whether an order should be made to change the Definitive Map depends on whether it is proposed to add a new route to the Map, to change the recorded status of a route, or to delete from the record a route that currently appears on the Definitive Map.
- 1.10. Where the route of a claimed right of way is not already shown on the Definitive Map and Statement (i.e. orders made under section 53(3)(c)(i) of the **Wildlife and Countryside Act 1981** to add an unrecorded route) the Council is required to consider two questions in determining whether an order should be made to modify the Definitive Map. Firstly, does the evidence produced by the claimant together with all the other evidence available show that the right of way

subsists? Alternatively, does that evidence show that the right of way is reasonably alleged to subsist?

- 1.11. The evidence required to satisfy the second question is less than that required to satisfy the first. In *R. v Secretary of State for the Environment Ex p. Bagshaw and Norton*, Owen J explained the difference between the two questions as follows:

To answer either question must involve some evaluation of the evidence and a judgment upon that evidence. For the first of those possibilities to be answered in the affirmative, it will be necessary to show that on a balance of probabilities the right does exist. For the second possibility to be shown it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist.²

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

Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances [...]. However, if the evidence from witnesses as to user is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist, then it would seem to me to be reasonable to allege such a right. I say this because it may be reasonable to reject the evidence on the one side when it is only on paper, and the reasonableness of that rejection may be confirmed or destroyed by seeing the witnesses at the inquiry.³

- 1.13. The standard of proof to be applied in relation to all other types of order made under section 53(3)(c) (e.g. applications to upgrade, downgrade or delete a right of way) is the balance of probabilities test. This test is based on the premise that, having carefully considered the available evidence, the existence (or in the case of some orders under section 53(3)(c)(iii), non-existence) of a particular right of way is determined to be more likely than not.

- 1.14. The differences in the tests to be applied to the evidence exist only in relation to the first stage of the order making process. Such an order can only be confirmed (the second stage of the process) when the evidence meets the balance of probabilities test. This is the case even where the order was made on the lower reasonably alleged test. Only once an order is confirmed are the Definitive Map and Statement updated.

- 1.15. The purpose of section 53 of the **Wildlife and Countryside Act 1981** is to record rights which already exist and to delete those which do not. This section of the act does not create or extinguish rights of way but allows for the legal record to be updated so that it accurately records what already exists. Therefore,

² *R v. SSE ex p. Bagshaw and Norton* [1994] 402 QBD 68 P & CR 402.

³ *Ibid.*

practical considerations such as suitability, security and the wishes of adjacent landowners cannot be considered under the legislation unless it can be shown that these factors affected the coming into existence, or otherwise, of public rights.

- 1.16. Section 66 and 67 of the **Natural Environment and Rural Communities Act 2006 (NERC)**, extinguished rights for mechanically propelled vehicles (MPVs) over 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. Without further qualification this would have extinguished public vehicular rights over most of the existing highway network. To prevent this NERC included a number of exceptions to the general extinguishment provision. Some of the key exceptions can be summarised as follows:
- Section 67(2)(a) excepts ways that have been lawfully used more by motor vehicles than by other users, e.g. walkers, cyclists, horse riders and horse-drawn vehicles, in the five years preceding commencement. The intention here is to except highways that are part of the “ordinary road network”.
 - Section 67(2)(b) excepts ways that are recorded on the “list of streets” as being maintainable at public expense and are not recorded on the Definitive Map and Statement as rights of way. This is to exempt roads that do not have clear motor vehicular rights by virtue of official classification but are generally regarded as being part of the “ordinary road network”.
 - Section 67(2)(c) excepts ways that have been expressly created or constructed for motor vehicles.
 - Section 67(2)(d) excepts ways that have been created by the construction of a road intended to be used by mechanically propelled vehicles.
 - Section 67(2)(e) excepts from extinguishment ways that had been in long use by mechanically propelled vehicles before 1930, when it first became an offence to drive “off-road”.
- 1.17. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an order changing the Definitive Map is made, the decision maker must be satisfied that public rights have come into being at some time in the past. This might be in the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence). The decision is a quasi-judicial one in which the decision maker must make an objective assessment of the available evidence and then conclude whether or not the relevant tests set out above have been met.
- 1.18. Evidence of the status of a route will often take one of two forms, documentary evidence and evidence of use. Each of these is discussed in turn below.

2. Documentary evidence

2.1. Once a highway (which includes public rights of way) has come into being, no amount of non-user can result in the right ceasing to exist. The legal principle of “once a highway, always a highway” applies.⁴ Such rights (except in very limited circumstances) can only be changed by way of certain legal proceedings, typically a legal order pursuant to specific legislation⁵ or a Court order. Therefore, claims based on documentary evidence will normally be accompanied by historical records which are intended to show that public rights were created or existed over a route in the past (or, in the case of a deletion or downgrading, that rights have been extinguished or never existed).

3. User evidence

3.1. Use by the general public can give rise to the presumption of dedication of a way under section 31 of the **Highways Act 1980**. Section 31 begins:

- (1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

3.2. Therefore, under section 31 it is necessary to demonstrate that the public have used the route in question for a period of 20 or more years. That period is to be measured backwards from the date on which use was challenged by some means sufficient to alert the public that their right to use the route was in question. The use must have been uninterrupted and *as of right*, meaning that the public must have used the route

- without force: e.g. use cannot have been via the breaking of fences or locks to gain entry
- without secrecy: use must be of such a nature that a reasonable landowner would have had an opportunity to be aware of it. For example, use which was only at night when the landowner was known to be away is likely to be considered secretive

⁴ *Harvey v Truro Rural District Council* [1903] 2 Ch 638 and 644, and *Dawes v Hawkins* [1860] 8 CB (NS) 848 and 858; 141 ER 1399 and 1403.

⁵ Such as the Highways Act 1980.

- without permission: use must be without the permission of the landowner.
- 3.3. Where the use has been sufficient to meet the tests of section 31, it raises the presumption that public rights have been dedicated. However, that presumption can be rebutted where it can be shown that the landowner demonstrated to the public that they had no intention to dedicate during that period. Examples of how this can be demonstrated include erecting a sign or notice with words that clearly deny a public right of way. Another example allows a landowner to deposit a map and statutory declaration with the highway authority under section 31(6) of the **Highways Act 1980** "to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit."
- 3.4. In addition to section 31 of the **Highways Act 1980**, rights of way can also be dedicated at Common Law, and this option should always be considered.

At Common Law a highway may be created by the landowner dedicating the strip of land to the public to use as a highway, and the public accepting this action by using said land. However, the act of dedication does not need to be explicit or in writing. In some circumstances it can be inferred from the actions (or inactions) of the landowner. The requirements for a Common Law dedication are summarised in *Halsbury's Law* as follows:

Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute. User by the public is a sufficient acceptance [...] An intention to dedicate land as a highway may only be inferred against a person who was at the material time in a position to make an effective dedication, that is, as a rule, a person who is absolute owner in fee simple [...] At common law, the question of dedication is one of fact to be determined from the evidence. User by the public is no more than evidence, and is not conclusive evidence [...] any presumption raised by that user may be rebutted. Where there is satisfactory evidence of user by the public, dedication may be inferred even though there is no evidence to show who was the owner at the time or that he had the capacity to dedicate. The onus of proving that there was no one who could have dedicated the way lies on the person who denies the alleged dedication.⁶

- 3.5. As mentioned in the above quote, use by the public can be evidence of an implied dedication. If the level of use was such that the landowner must have been aware of it and they acquiesced to that use (i.e. they did nothing to stop it) then it is evidence (but not necessarily conclusive evidence) of their intention to dedicate a highway.
- 3.6. There is no minimum qualifying period at Common Law, although use still has to be without force, without secrecy and without permission. The actions of the

⁶ *Definitive Map Orders: Consistency Guidelines, ninth revision* (2016), 5.46.

landowner also need to be taken into account when considering whether it can be inferred that a right of way has been dedicated. Public use does not raise the inference that the way has been dedicated where evidence as a whole shows highway status was never intended, for example, the erection of “no public thoroughfare” notices and “turning people back wherever possible”.⁷

- 3.7. The burden of proving the landowner’s intention to dedicate rests with the party asserting the right of way. Unlike a statutory dedication there is no presumption that rights have been acquired no matter how long a route happens to have been used for.

Useful links

Natural England’s [A guide to definitive maps and changes to public rights of way](#) (2008) offers a detailed introduction to the Definitive Map Modification Order (DMMO) process.⁸

The Planning Inspectorate’s [Definitive Map Orders: Consistency Guidelines](#) (ninth revision 2016) offers clear information and advice on interpreting documentary evidence.⁹ 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.

[Legislation.gov.uk](#) provides access to the numerous acts referenced above.

⁷ *Poole v Huskinson* (1843) 11 M&W 827.

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414670/definitive-map-guide.pdf

⁹ <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>

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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>
Inclosure records	✓		✓	7
Tithe records	✓		✓	8
Ordnance Survey (OS) Old series	✓		✓	10
OS boundary sketch map and remark books	✓		✓	10
OS County Series First Edition 25 Inch map	✓		✓	10
1886 OS six-inch	✓			10
OS Revised New Series map	✓		✓	10
OS County Series Second Edition 25 Inch map	✓		✓	10
1904 OS six-inch	✓			10
1919 OS popular edition	✓		✓	10
1945/6 OS popular edition	✓		✓	10
Finance Act 1910	✓		✓	12
Quarter Sessions	✓			9

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.

Appendix 5 – Documentary evidence details

Handover map 1929	✓			17
Road records 1930	✓			17
Road records 1950	✓			17
Modern road records	✓			17
Definitive Map and Statement Preparation (DMSP) Survey Map	✓			13
DMSP Survey Card	✓			13
DMSP Draft Map	✓			13
DMSP Draft Modification Map	✓			13
DMSP Provisional Map	✓			13
Definitive Map and Statement	✓			13
Local Authority records	✓			16
Greenwood's map	✓		✓	14
Day & Masters map	✓		✓	14
Aerial photography		✓		N/A
1795 Map of Queen Camel	✓		✓	7
Turnpike records	✓		✓	11
Ministry of Food Farm Survey	✓		✓	15
INSPIRE (2016)		✓	✓	N/A
Land registry records	✓			No appendix

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

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

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.
- 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. 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.

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).

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 in 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.

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Appendix 6: Consultation list

Somerset County Council seeks to consult as widely as is possible and practicable during a DMMO investigation. In addition to contacting landowners, the following user groups, organisations and individuals were contacted in June 2021. Those who responded are referred to in the main body of the report.

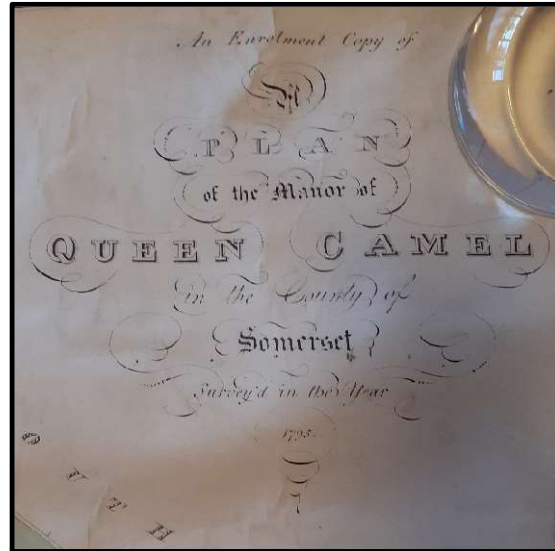
Consultee
Sparkford Parish Council
Queen Camel Parish Council
South Somerset District Council
Local Member of County Council
Ramblers – Somerset Office
Ramblers – National Office
British Horse Society – Somerset Office
Trail Riders Fellowship – Somerset Office
All Wheel Drive Club
Open Spaces Society – Somerset Office
Natural England
British Driving Society
Auto Cycle Union
Cyclist Touring Club
Historic England

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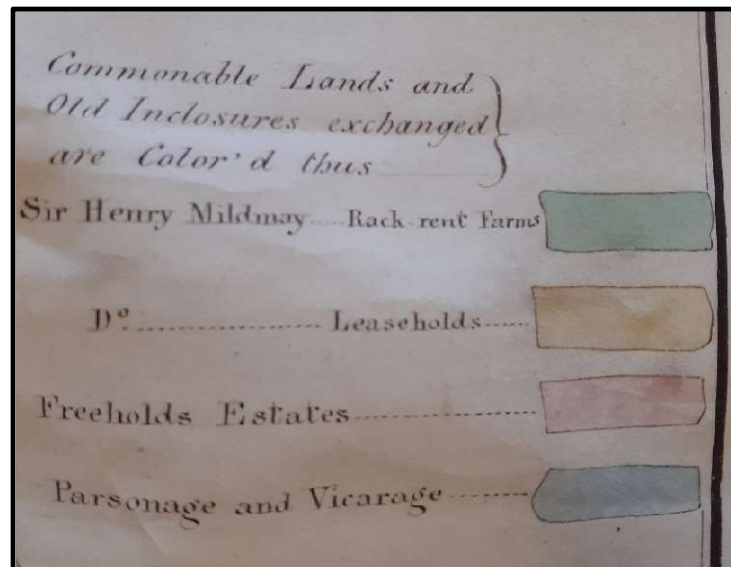
(i) Queen Camel Inclosure Award and Plan (1798 & 1795)

Source: Reproduced by the kind permission of South West Heritage Trust

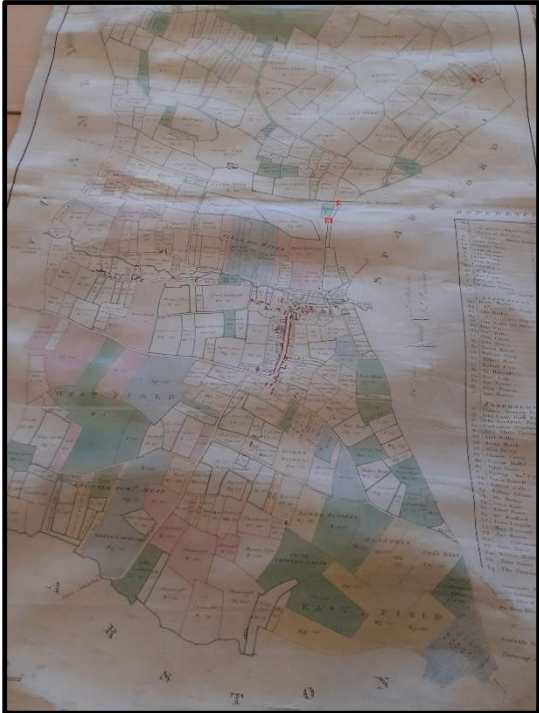
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Plan title



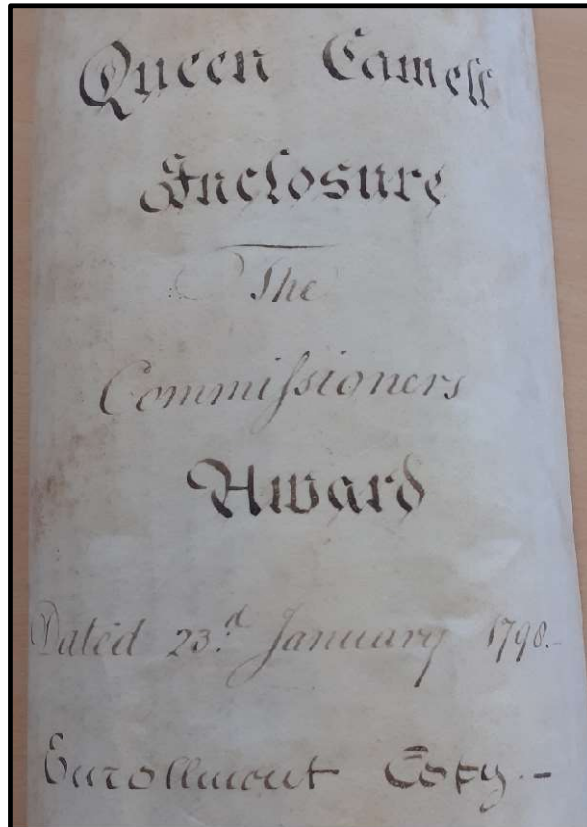
Part of the plan key



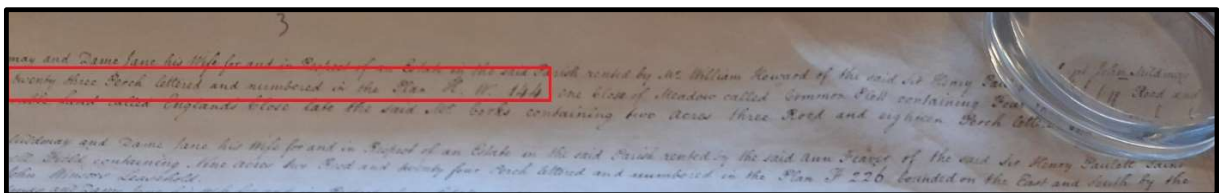
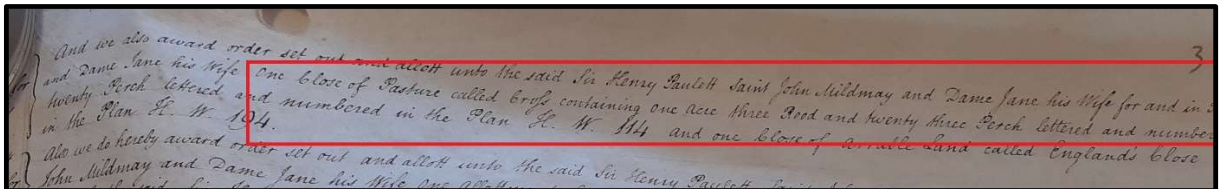
The full plan with red letters added to mark the application route.



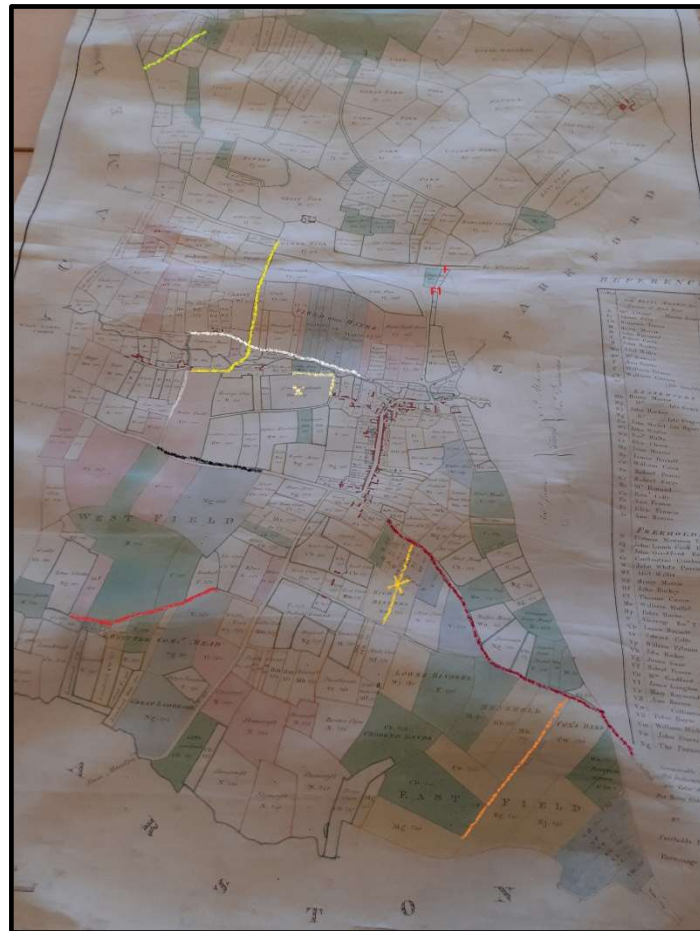
Section of the plan covering the application route. The red letters F and F1 added to mark the location of the route.



The Inclosure award



Section of the award referring to plot HW 144 "one Close of Pasture called Cross containing one Acre three Rood and twenty three Perch lettered and numbered in the Plan H. W. 144". Red boxes added to mark relevant sections.



Plan with coloured lines added to show the approximate routes of highways described in the award and crosses added for routes described as stopped up. The red letters F and F1 added to mark the location of the application route.

(ii) Map of Manor Queen Camel (1795) (extract)

Source: South West Heritage Trust

Reference: SHC DD/MI/20/6



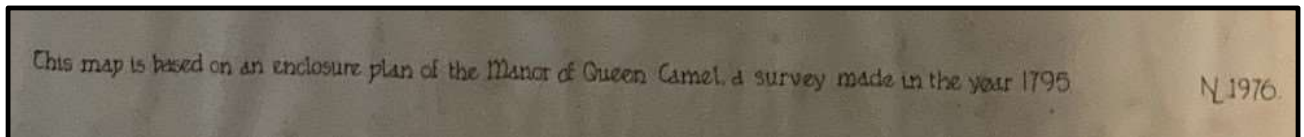
Section of the map covering the application route. The red letters F and F1 added to mark the location of the route.

(iii) Map of Queen Camel (1976)

Source: St Barnabas Church, Queen Camel



Section of the map covering the application route. The red letters F and F1 added to mark the location of the route.



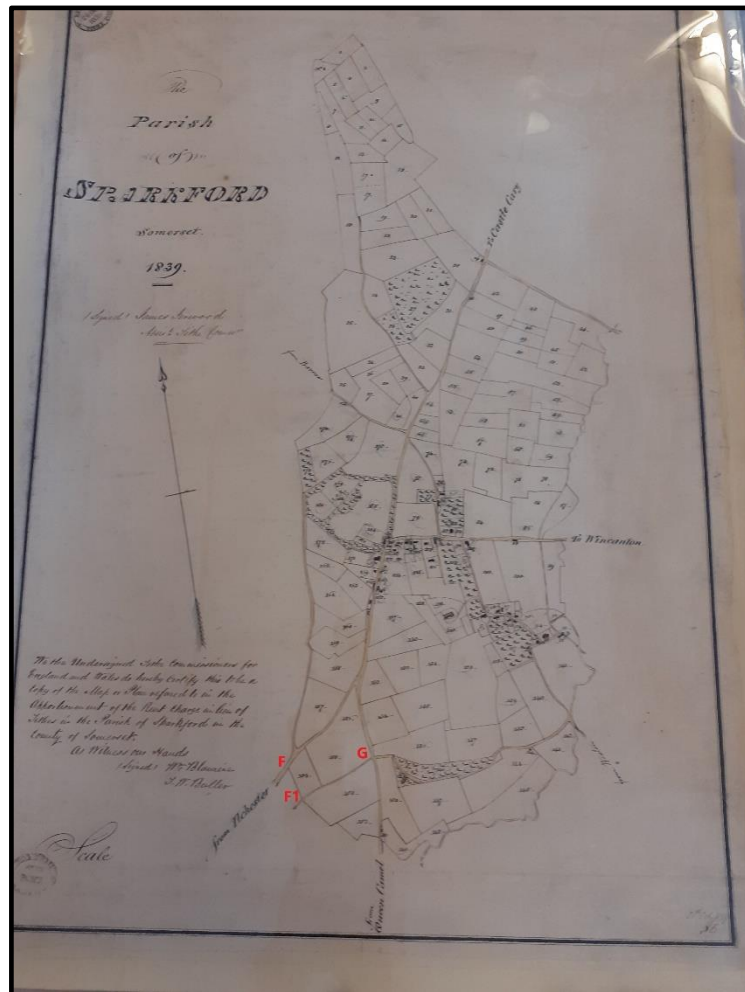
Note on the map confirming the basis of the map as the 1795 Inclosure plan.

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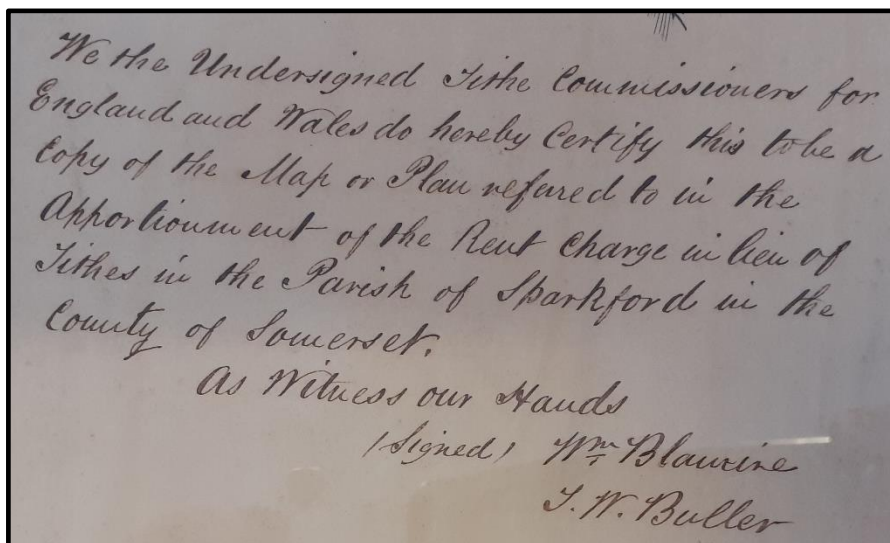
(i) Sparkford Tithe Map (1839)

Source: reproduced by the kind permission of the South West Heritage Trust

Reference: SHC D/D/Rt/M/75 and SHC D/D/Rt/A/75



The tithe map with red letters added to mark the application route



The certification



Section of the map with red letters F, F1 and G added to mark the application route.

152	Garret Down End	Uable	3 3 26
153	South Hill	2 ^o	12 3 34
154	Simon's Hill Close	1 ^o	4 1 4
155	South Hill	2 ^o	10 3 14
156	Three Corner Ground	Meadow & Orchard	5 3 22
			133 2 19

Apportionment book entries for apportionments 153, 154 & 155

144*	Limelick and Quarry		10
------	---------------------	--	----

Apportionment book entry for apportionment 144

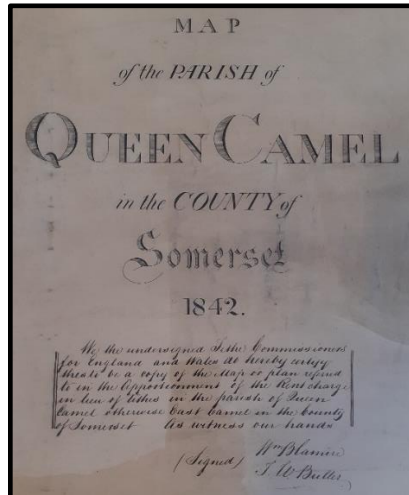
146	Sparkford Hill		}
146*	2 ^o Quarries & Limelick		

Apportionment book entry for apportionment 146

(ii) Queen Camel Tithe Map and Apportionment (1842)

Source: reproduced by the kind permission of the South West Heritage Trust

Reference: SHC D/D/Rt/M/377 and SHC D/D/rt/A/377



Map title and certification

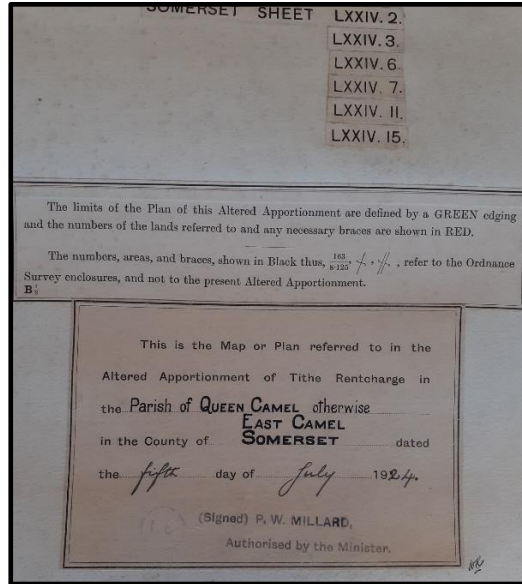


The tithe map with red letters added to mark the application route

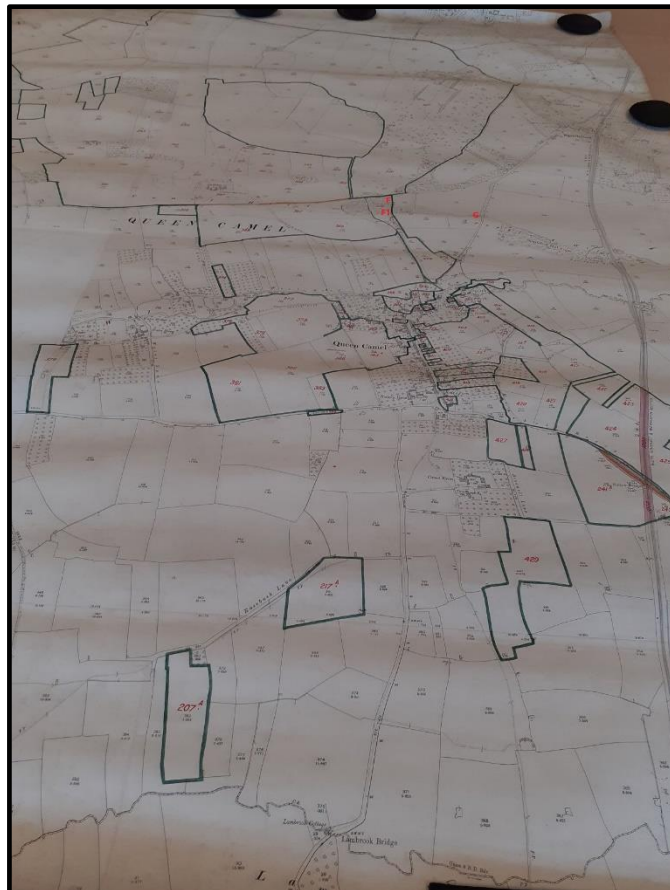
(iii) Queen Camel Tithe Map (1924)

Source: reproduced by the kind permission of the South West Heritage Trust

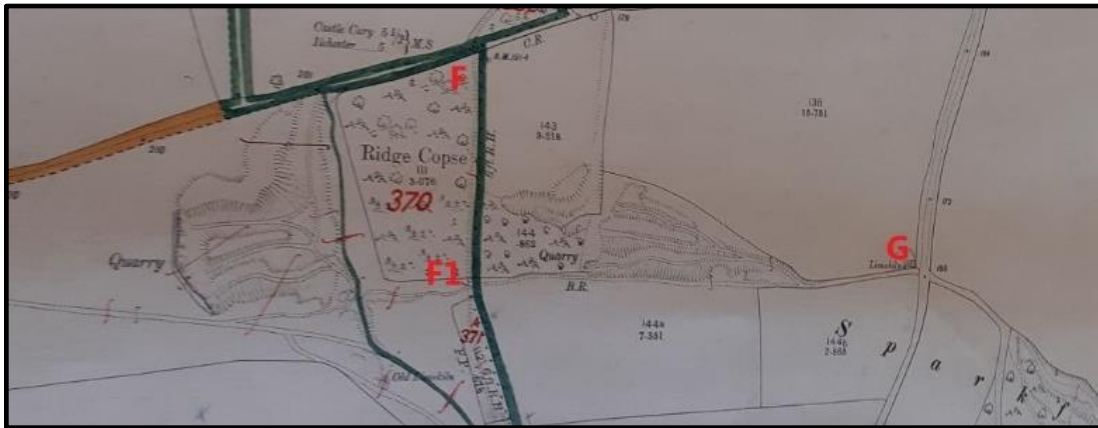
Reference: SHC D/D/Rt/M/377A



Map key



Tithe map with red letters added to mark the application route

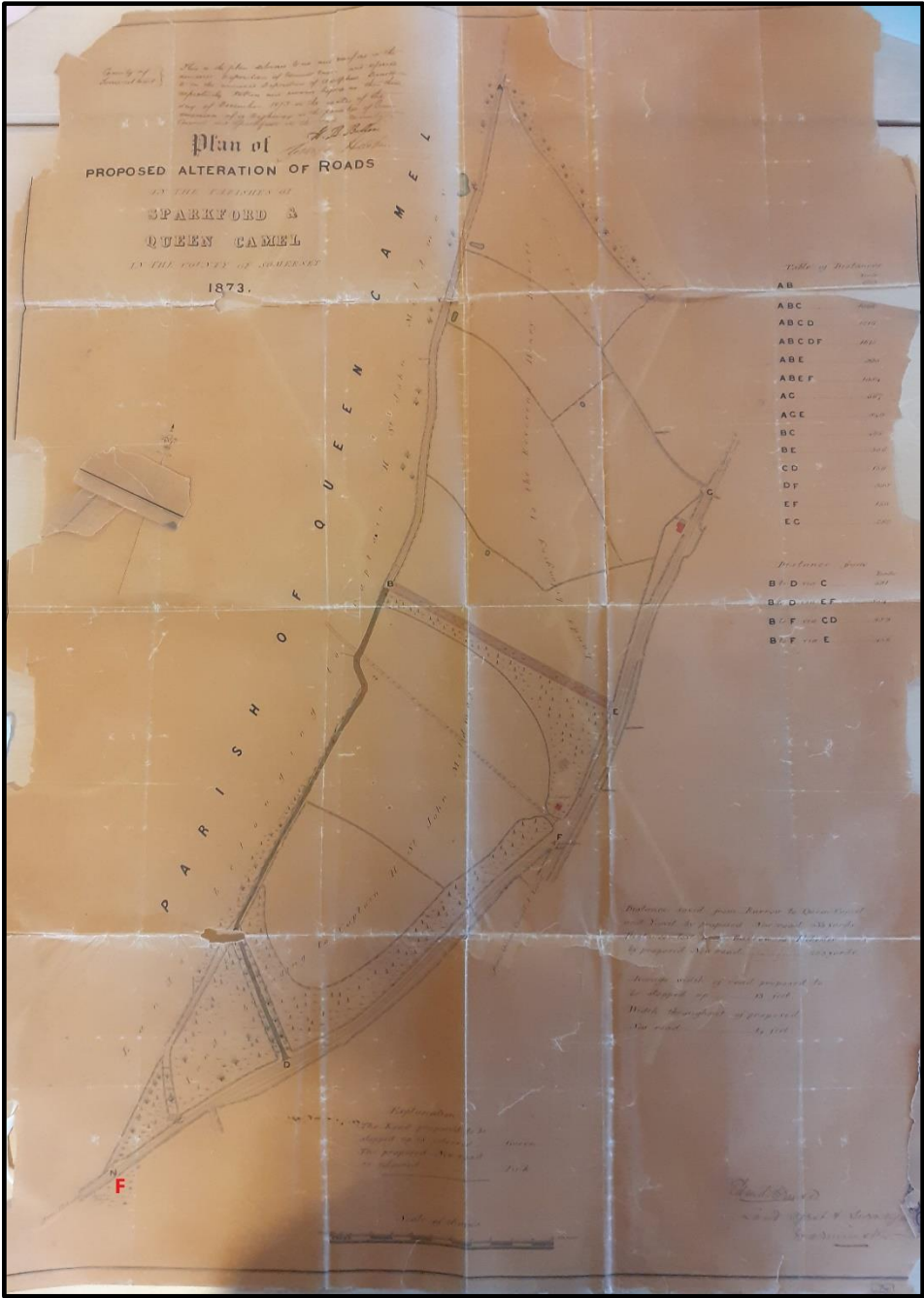


Section of the map with red letters F, F1 and G added to mark the application route

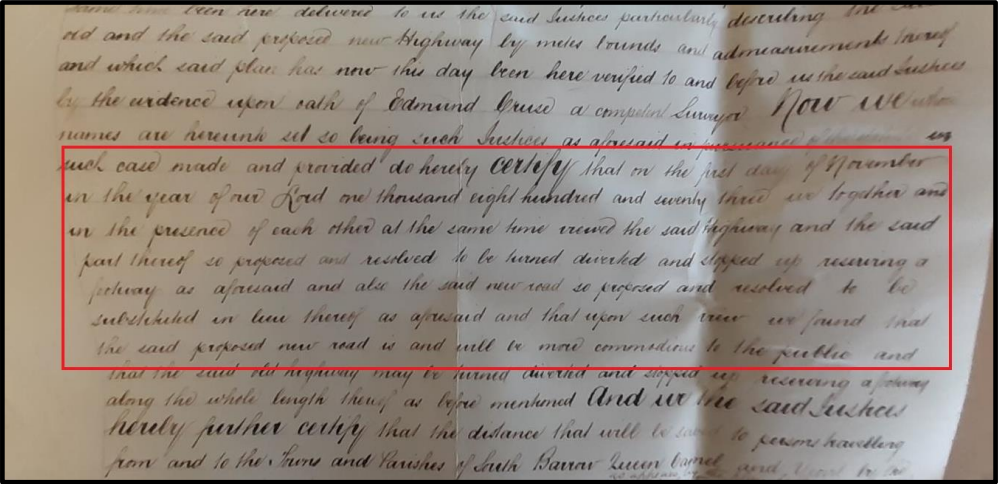
Quarter Sessions Roll (1873)

Source: Reproduced by the kind permission of the South West Heritage Trust

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



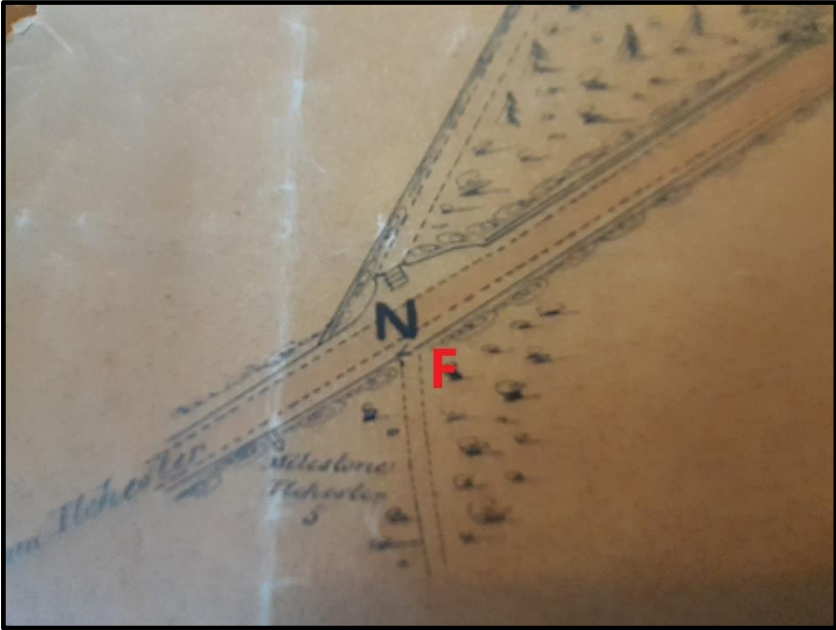
Plan of proposed alteration of roads. Red letter F added to indicate section of the application route.



Certificate of the Justices with red box added to highlight relevant text.

Certifying that they

“viewed the said Highway and the said part thereof so proposed and resolved to be turned diverted and stopped up reserving a footway as aforesaid and also the said new road so proposed and resolved to be substituted in lieu thereof as aforesaid and that upon such view we found that the said proposed new road is and will be more commodious to the public”

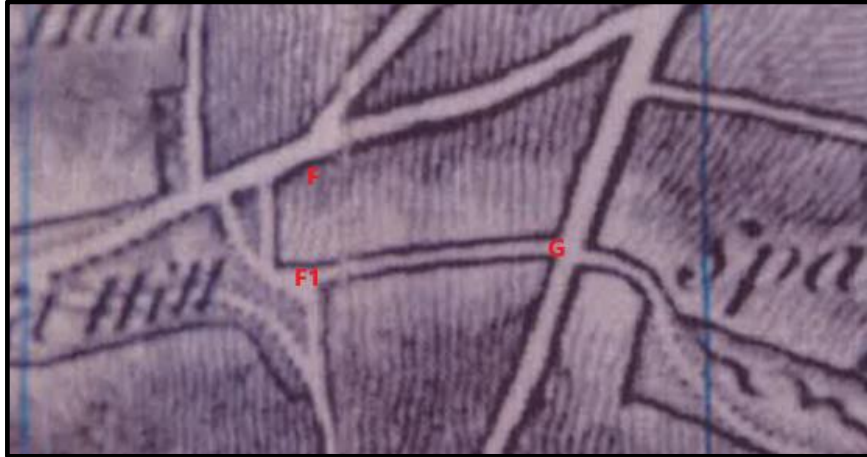


Section of the plan covering part of application 851. Red letter F added to indicate application route.

Ordnance Survey Maps

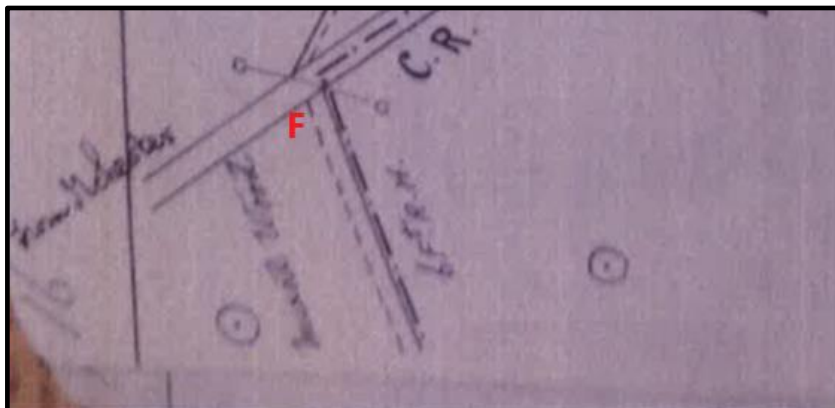
Source: Extracts submitted by applicant; others reproduced with the permission of the National Library of Scotland from their [map images website](#)

(i) OS 'Old Series' Map (extract) (1811-1817)

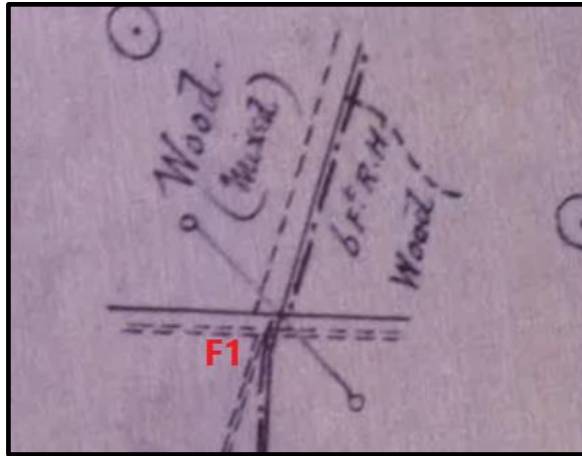


Extract covering application route, red letters F, F1 and G added to mark the application route

(ii) OS Boundary Remark Book (extracts) (1883)



Extract from the OS Boundary Remark book for Sparkford Parish covering part of the application route. The red letter F has been added to mark the route.



Extract from the OS Boundary Remark book for Sparkford Parish covering part of the application route. The red letter F1 has been added to mark the route.

(iii) OS Boundary Sketch Map (extract) (1884)



Extract covering application route. Red letters added to mark the application route.

(iv) OS County Series First Edition Map (1887)



Sheet LXXIV.7, red letters added to mark the application route

(v) OS Revised New Series Map (1898)

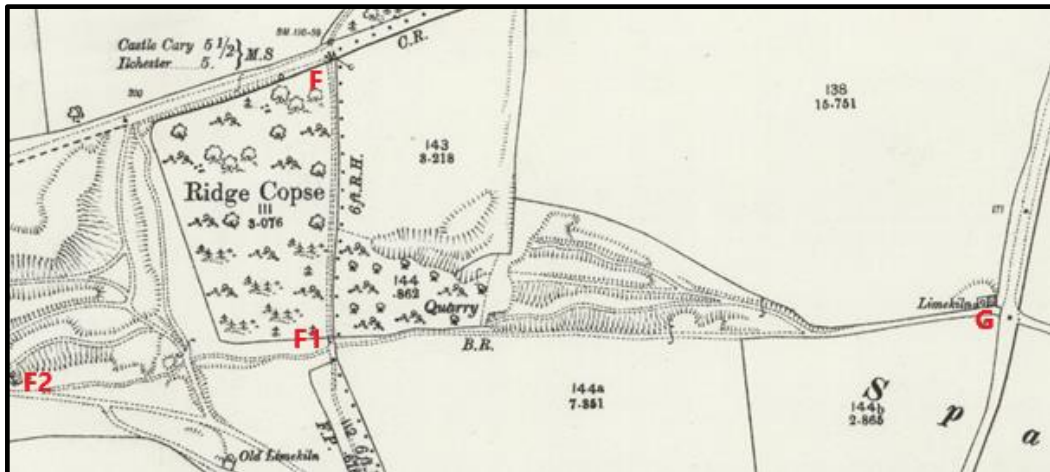


Sheet 296 covering application route. Red letters F, F1 and G added to mark the route.

<i>Metalled Roads, First Class</i>	} Fenced	$\frac{5(\text{Mile distance})}{\text{Altitude} \cdot 211}$	} Unfenced
" " <i>Second Class</i>		=====	
" " <i>Third Class</i>		=====	
<i>Unmetalled Roads</i>		=====	
<i>Footpaths</i>		-----	

Section of map key showing the different classes of road

(vi) OS County Series Second Edition Map (1903)

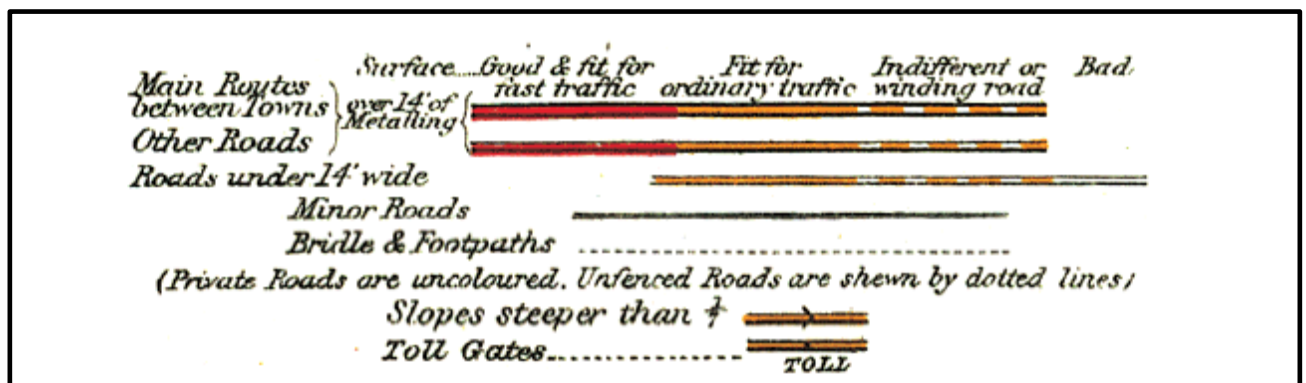


Sheet LXXIV.7 covering application route. Red letters F, F1 and G added to mark the route.

(vii) OS 'Popular Edition' Map (extract) (1919)



Extract covering the application route. Red letters F, F1 and G added to mark the route.



Map key showing road classifications

(viii) OS 'Popular Edition' Map (1946)



Red letters added to mark the application route

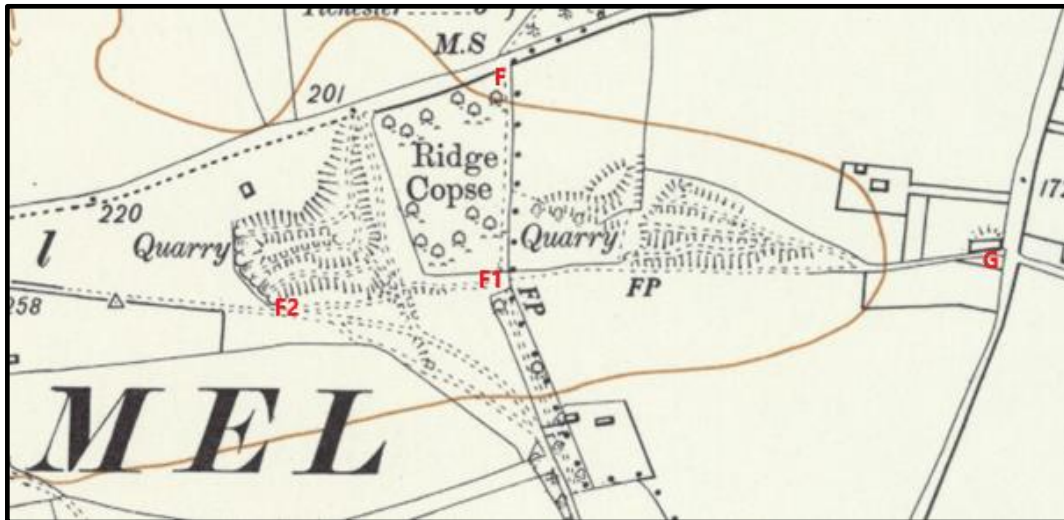
Roads	Ministry of Transport, Class 1	A.38
	" " " " 2	B.3210
	14 feet of Metalling and over (not classified by M. of T.)	TOLL
	Under 14 ft. of Metalling Good	Gate
	" " " " Bad	" " "
Minor Roads in towns, Drives and Unmetalled Roads. (Unfenced Roads are shown by pecked lines)		
Footpaths & Bridle Paths		
Steep Gradients, over 1 in 7		over 1 in 5

Map key showing road classifications

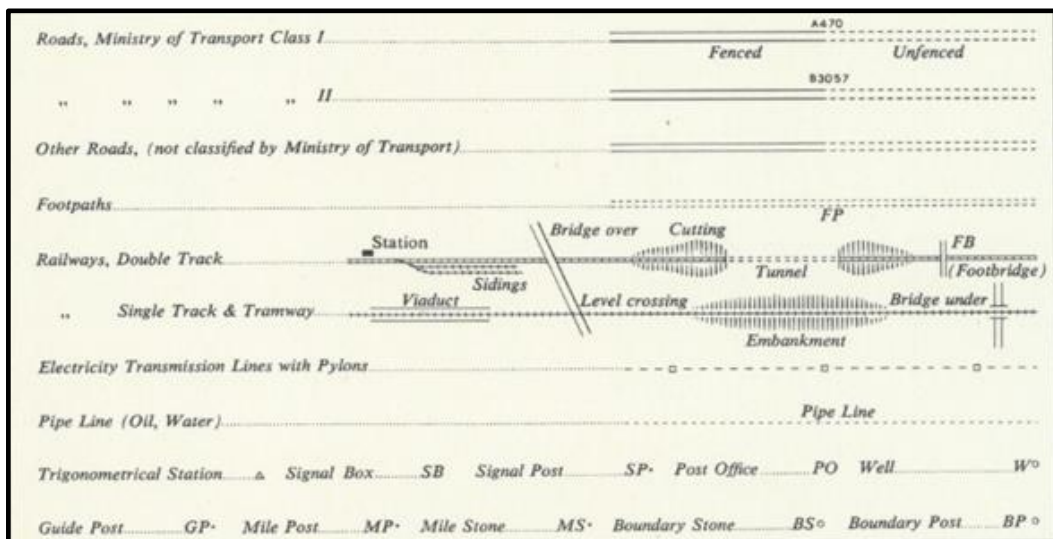
Boundaries, Parish	County	-----
" County & Parish	National	+ - - +

Map key showing boundaries

(ix) OS 'six-inch' Map (1962)

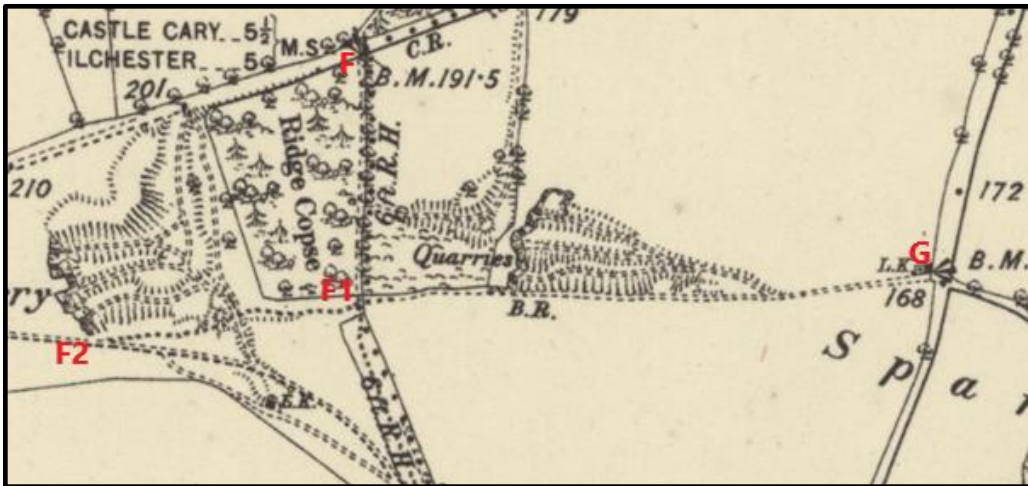


Red letters added for reference



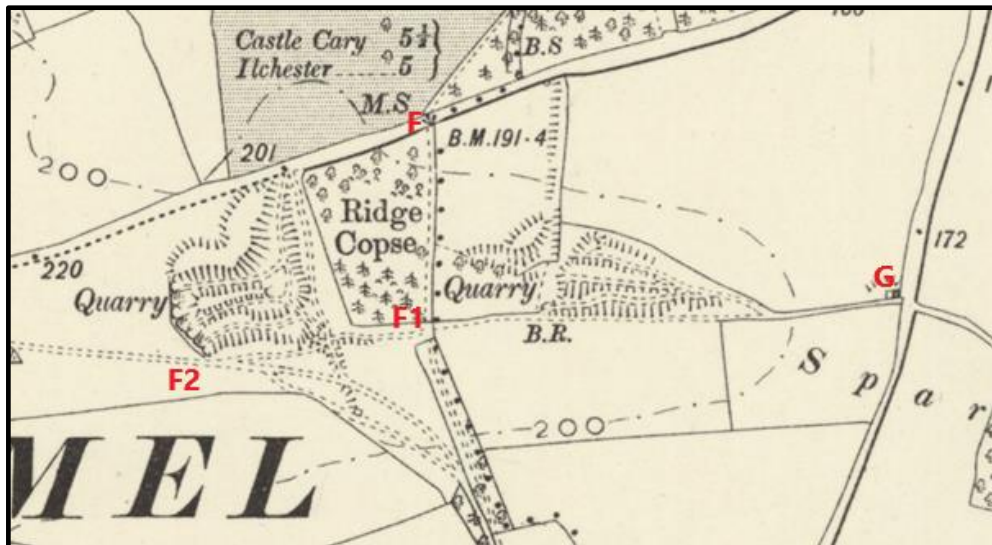
Map key

(x) OS 'six-inch' Map (1886)



Red letters added for reference

(xi) OS 'six-inch' Map (1904)



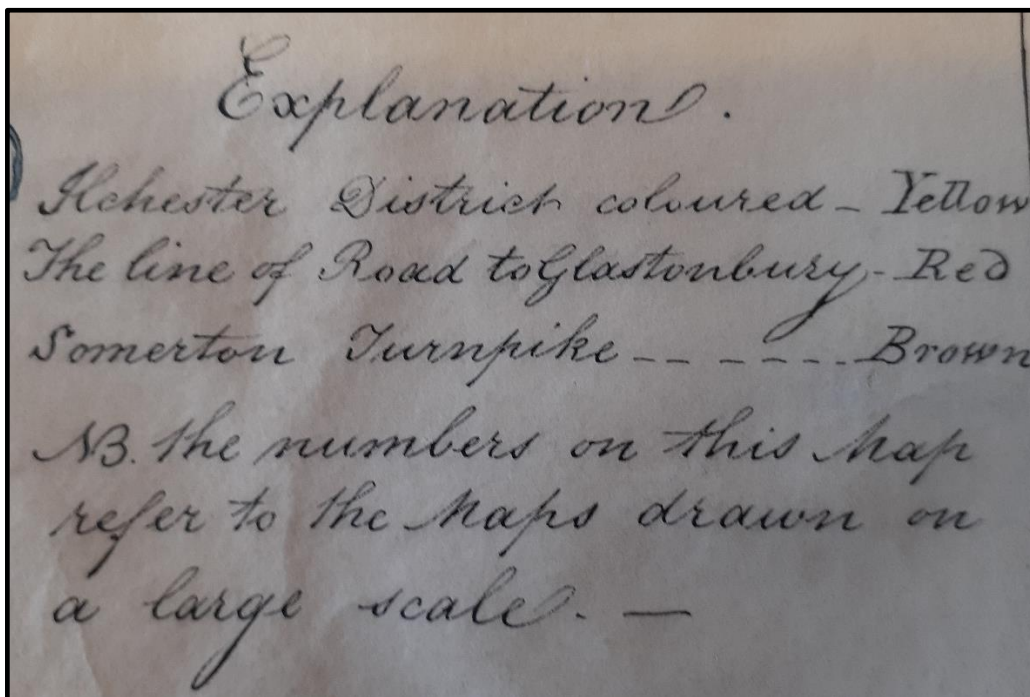
Red letters added for reference

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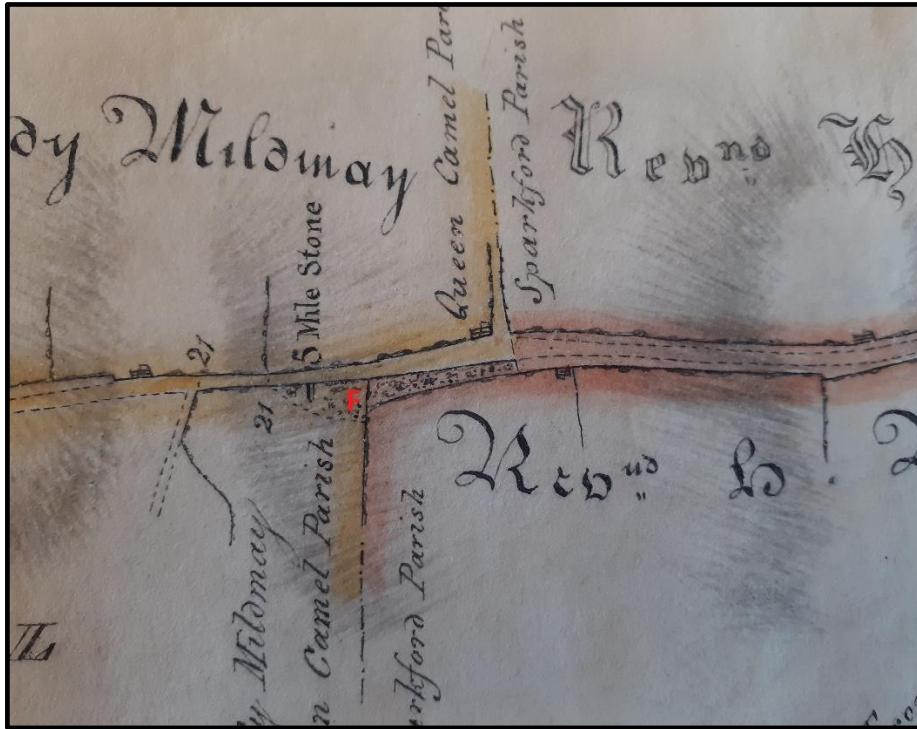
- (i) **Ilchester Turnpike Maps (1826)**
Source: South West Heritage Trust
Reference: SHC D/T/ilch/1 1826



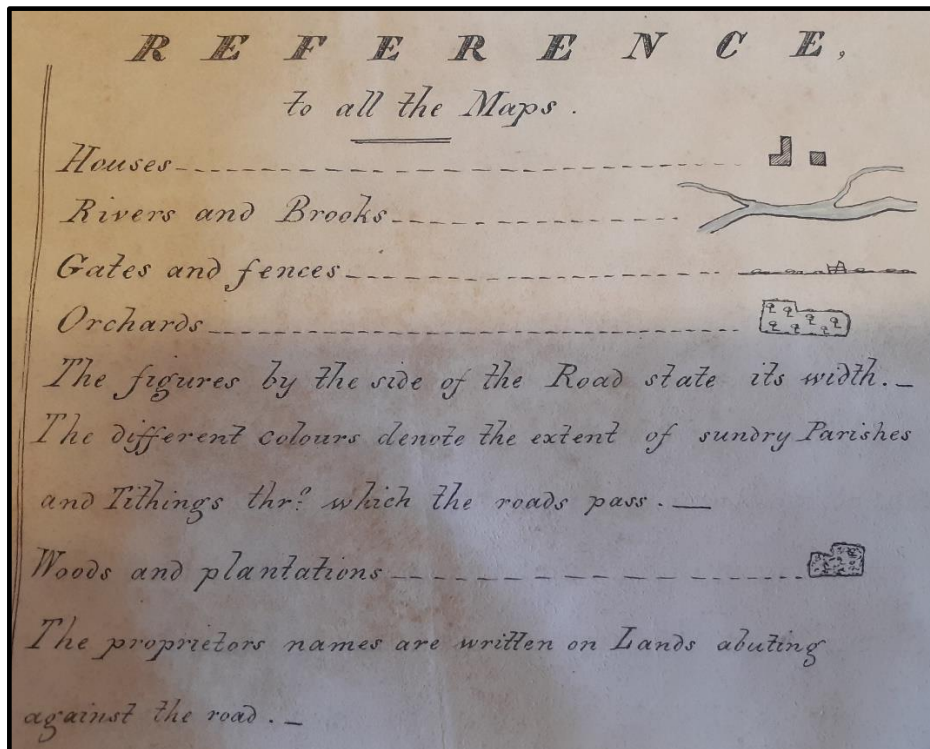
Small scale map with red letters added to mark the application route



Small scale map key



Section of large scale map number 5 covering north-south part of the application route. Red letter F added to mark the application route.

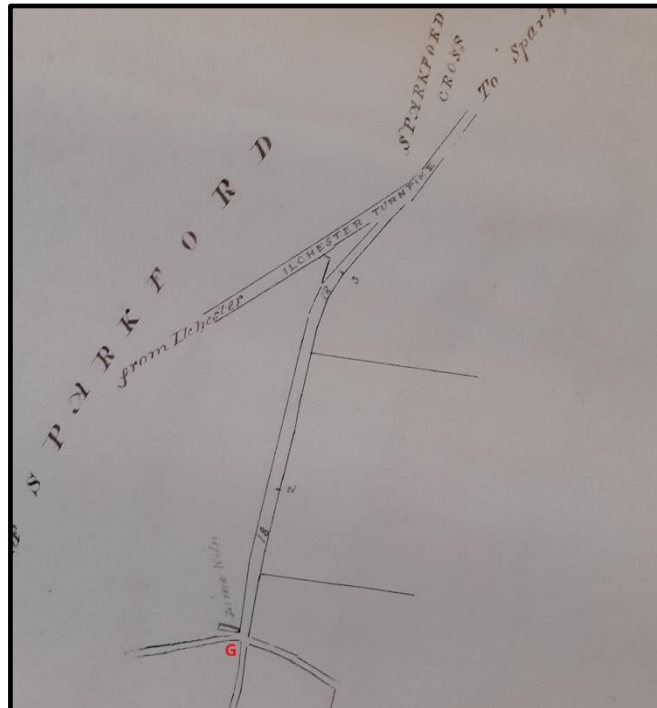


Large scale map key

(ii) Road plans; Yeovil turnpike to Sparkford Cross (1852)

Source: South West Heritage Trust

Reference: SHC Q/RUP/222



Section covering east-west part of the application route. Red letter G added to mark the application route.

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(i) Finance Act 1910 working plans

Source: Reproduced by kind permission of the South West Heritage Trust

Reference: SHC DD/IR/OS/74/7 and SHC DD/IR/B/27/1

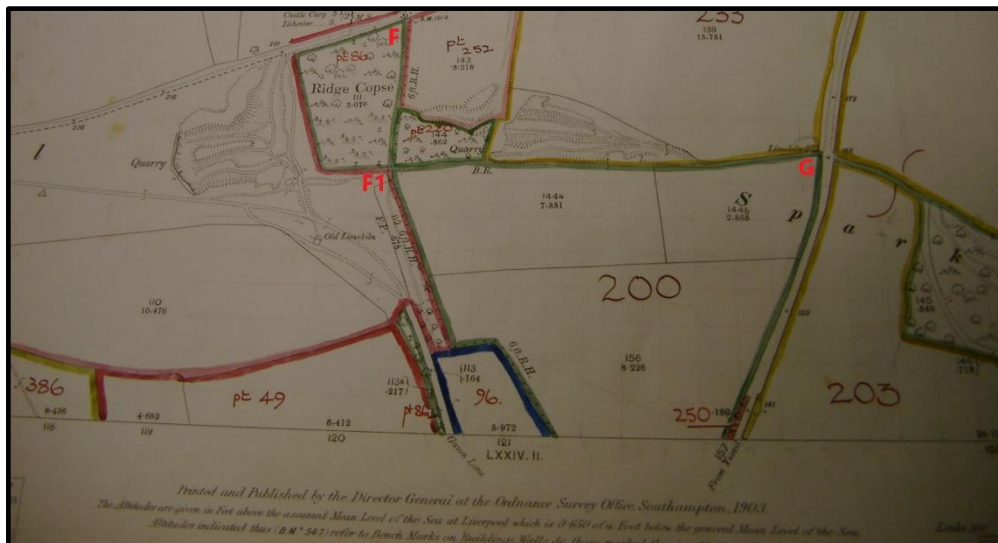


Map sheet 74-7 covering the application route with red letters F, F1 and G added to mark the route.

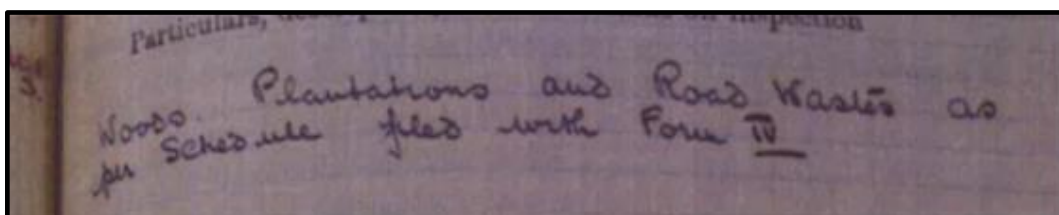
(ii) Finance Act 1910 record plans and field books

Source: National Archives (extract)

Reference: IR 128/9/905 and IR 58/5381 & 5383



Extract from map sheet 74-7 showing part of application route 859 and application route 851. Red letters added for reference.



Extract from the field book for hereditament 86

Land is poor & lies on.
The hill with a thin soil.

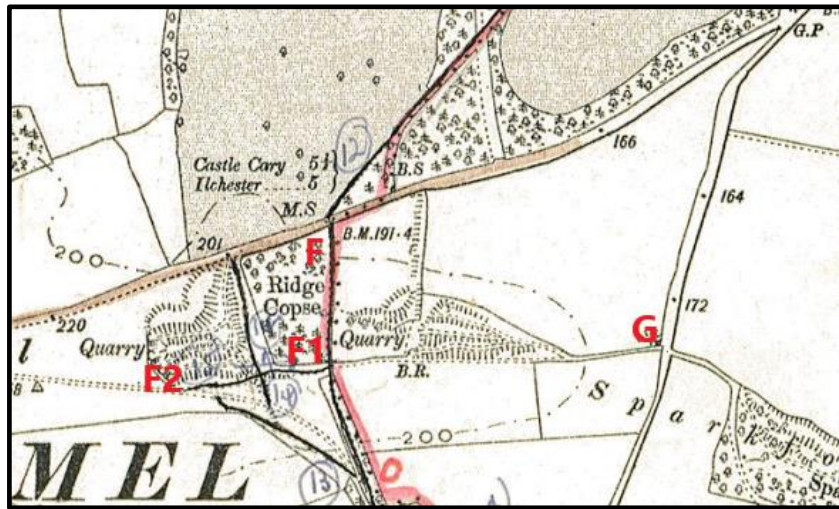
Charges, Easements, and Restrictions affecting market value of Fee Simple

Cost of Way	40 x 25 Y.P.	=	2 10 0
Land Tax	2/6 x 25 Y.P.	=	4 10 0
Total	2 12 6 x 25 Y.P.	Sub	97 0 0
			<u>109 0 0</u>

Extract from the field book for hereditament 200

(i) Parish survey maps

Source: SCC



Section of Queen Camel survey map covering the application route. Red letters added for reference.



Section of Sparkford survey map covering section F1 to G. Red letters added for reference.

(ii) Parish survey cards (1950-51)

Source: SCC

SOMERSET COUNTY COUNCIL BOROUGH/URBAN DISTRICT/PARISH OF :- QUEEN CAMEL
(Delete as necessary)

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path :- 11 Path shown on 6" O.S. No. :- 74. SE. Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. :- F.P.
* NE.

DESCRIPTION :- The path starts at
South end of Gasson Lane and runs parallel and to the east of it. Soon after start (at either end of bouncil house are two wooden wicket gates, both of which are wired up Path then runs along West hedge of field to kissing gate at South end of hapse and through hapse to entrance of "Ridge" and thence into second hapse which meets path no. 15 at Kissing gate at entrance to 2nd hapse and runs through to Jochenin Road.
Path in first and second cope much obstructed by overgrowth.

P.T.O.

Queen Camel survey card number 11

SOMERSET COUNTY COUNCIL BOROUGH/URBAN DISTRICT/PARISH OF :- SPARKFORD.
(Delete as necessary)

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF PUBLIC RIGHTS OF WAY.

Parish No. of Path :- 4. Path shown on 6" O.S. No. :- LXXIV, NE Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. :- FP

DESCRIPTION :- The path starts at **FROM MAIN ROAD TO CAMEL HILL.**
 bridle path continues, (→), at Limekiln Bungalow, (fieldgate), to gate now at end of enclosure; up field known as Southfield, or Allistons, along by trees at Old Quarry, to Hunting Gate, (boundary with Queen Camel Parish).

Sparkford survey card number 4

SOMERSET COUNTY COUNCIL BOROUGH/URBAN DISTRICT/PARISH OF :- QUEEN CAMEL
(Delete as necessary)

NATIONAL PARKS & ACCESS TO THE COUNTRYSIDE ACT, 1949
SURVEY OF PUBLIC RIGHTS OF WAY.

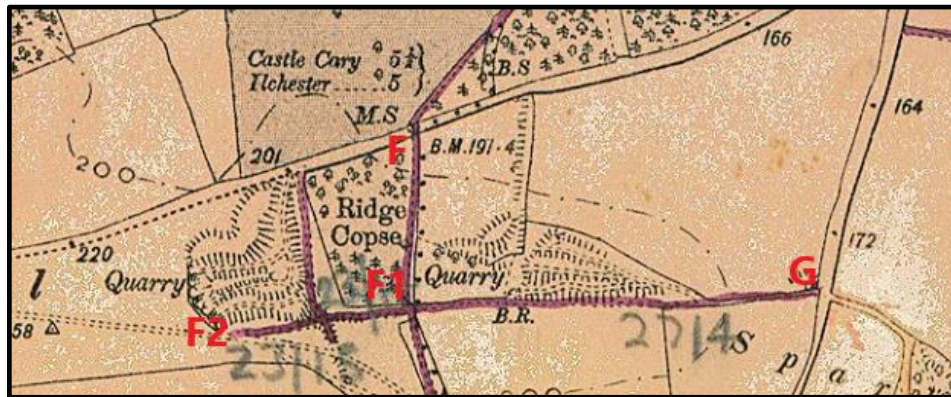
Parish No. of Path :- 15 Path shown on 6" O.S. No. :- 74. NE. Kind of Path, i.e. F.P., B.R., C.R.F. or B.R.F. :- F.P.

DESCRIPTION :- The path starts at
Observation Hut and proceeds east, crosses path no. 14 and then Path no. 11 and here enters parish of Sparkford by Wicket gate (good condition)
Path well defined except last 30 yds which is much obstructed by undergrowth.

Queen Camel survey card number 15

(iii) Draft Map (1956)

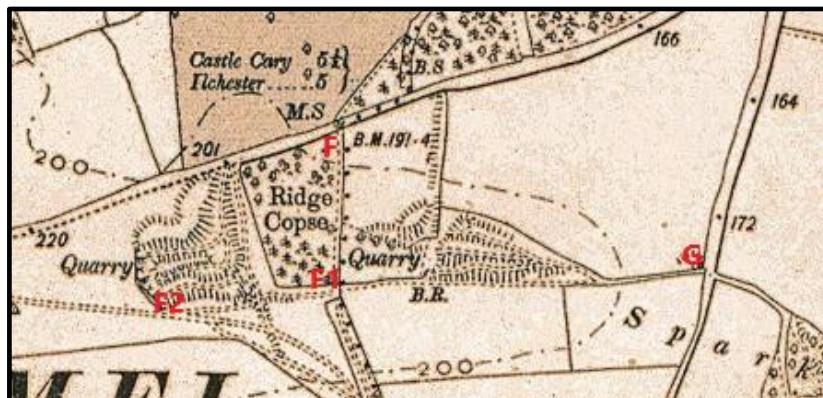
Source: SCC



Section covering the application route. Red letters added for reference.

(iv) Draft Modification Map (1968)

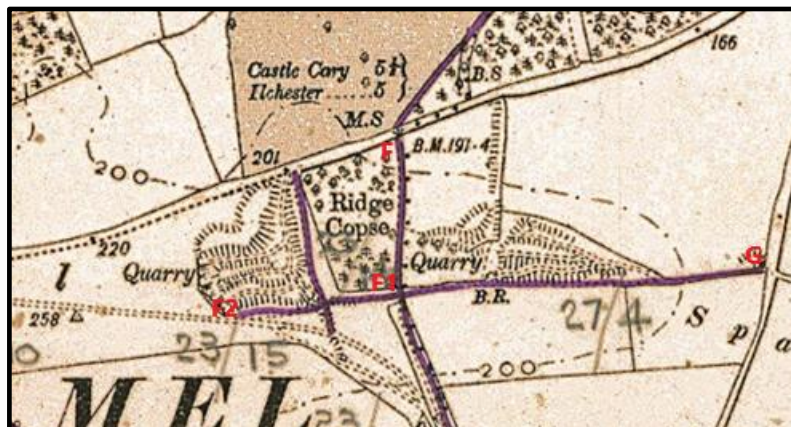
Source: SCC



Section covering the application route. Red letters added for reference.

(v) Provisional map (1970)

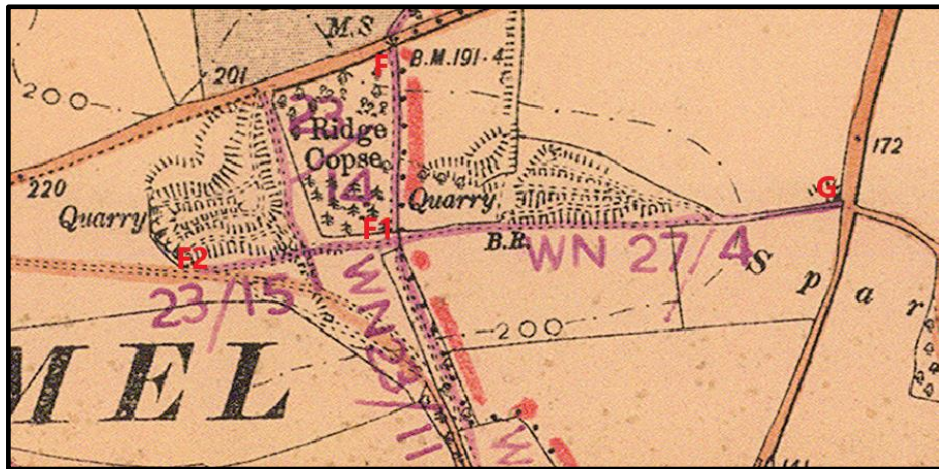
Source: SCC



Section covering the application route. Red letters added for reference.

(vi) Definitive map and Statement (1972)

Source: SCC



Section of the map covering the application route. Red letters added for reference.

(THIS SIDE ONLY TO BE COMPLETED BY PARISH COUNCIL AT TIME OF FIRST SURVEY) (1) PARISH NO. OF PATH:- 11

SYMBOLS TO BE USED IN BOX (1) BELOW

(2) CONCISE DESCRIPTION OF PATH (TO INCLUDE WIDTH, NATURE OF SURFACE, MEANS OF ACCESS, OBSTRUCTIONS, ETC.)

FROM:- South end of Gason Lane
 TO:- Ilchester Road
 DESCRIPTION:- THE PATH IS A F.P. IT STARTS AT the south end of Gason Lane and runs parallel and to the east of it, in a northerly direction to the south side of Ridge Copse. It continues through the Copse and alongside the boundary to the Ilchester road at B.M. 191.4.

Statement for path WN 23/11

(THIS SIDE ONLY TO BE COMPLETED BY PARISH COUNCIL AT TIME OF FIRST SURVEY) (1) PARISH NO. OF PATH:- 14

SYMBOLS TO BE USED IN BOX (1) BELOW

(2) CONCISE DESCRIPTION OF PATH (TO INCLUDE WIDTH, NATURE OF SURFACE, MEANS OF ACCESS, OBSTRUCTIONS, ETC.)

FROM:- A359 Yeovil - Sparkford Road
 TO:- Camel Hill
 DESCRIPTION:- THE PATH IS A F.P. IT STARTS AT opposite Sparkford Hill Lane on the west side of the A359 Yeovil - Sparkford road and runs west by old quarry to the parish boundary at Hunting Gate where it continues as 23/15

Statement for path WN 27/4

(THIS SIDE ONLY TO BE COMPLETED BY PARISH COUNCIL AT TIME OF FIRST SURVEY)	(1) PARISH NO. OF PATH:- 15
(2) CONCISE DESCRIPTION OF PATH (TO INCLUDE WIDTH, NATURE OF SURFACE, MEANS OF ACCESS, OBSTRUCTIONS, ETC.)	
FROM:-	The Observation Hut
TO:-	Sparkford Parish Boundary
DESCRIPTION:-	THE PATH IS A F.P. IT STARTS AT an observation Hut and proceeds east crossing F.P. 14 and proceeding to F.P.11 at the Sparkford parish boundary where it continues as F.P.27/4.

Statement for path WN 23/15

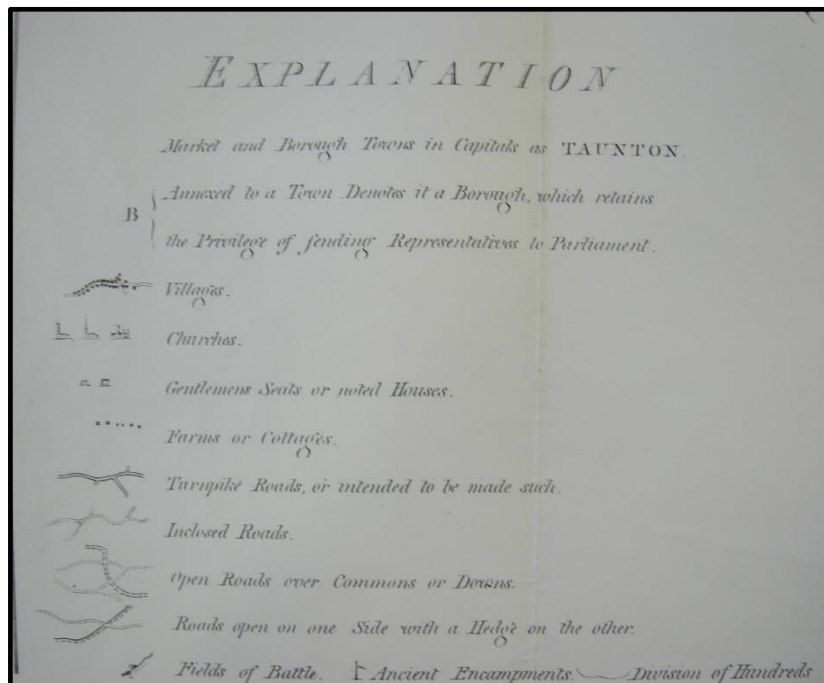
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(i) Day & Masters Map (extract) (1782)

Source: South West Heritage Trust



Extract covering application route. Red letters added for reference.



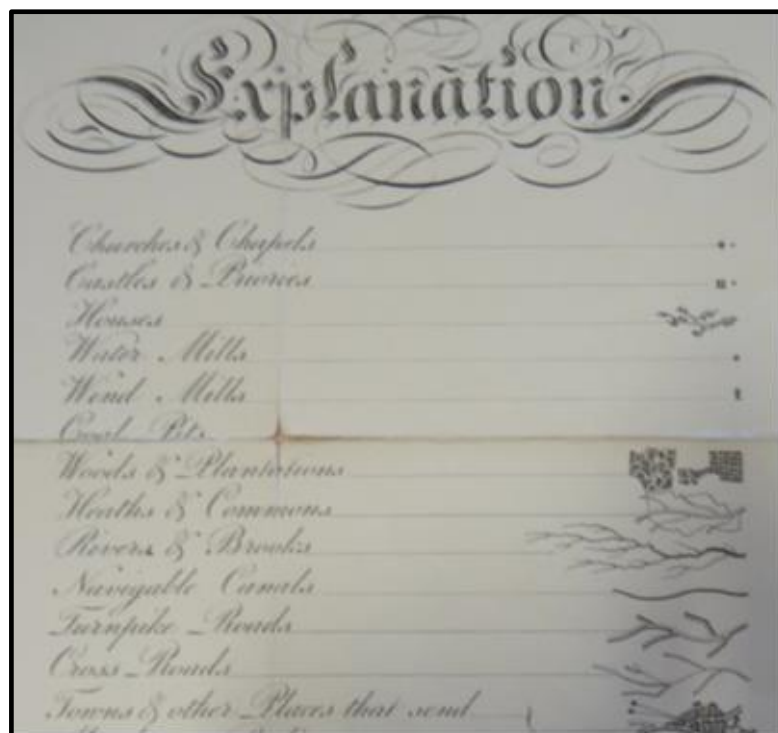
Map key

(ii) Greenwoods Map (extract) (1822)

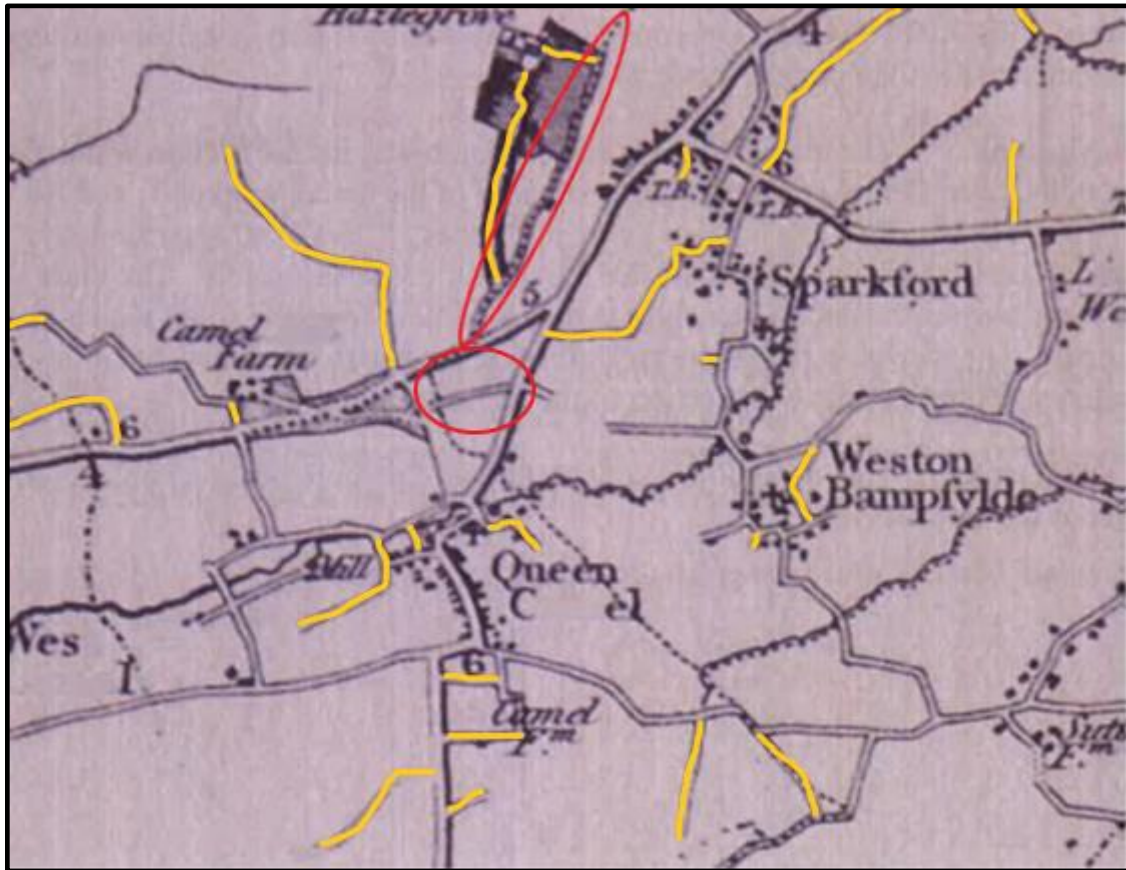
Source: South West Heritage Trust



Extract covering application route. Red letters added for reference.



Extract showing the map key



Extract with routes that are not recorded as modern public vehicular highways highlighted in yellow (although some do have lower level rights recorded over them). The two routes circled in red do not have public vehicular rights recorded but are the subject of modification applications, the southernmost being section F1 to G of application 851.

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Ministry of Food National Farm Survey (1941-42) (extract)

Source: National Archives

Reference: MAF 73/36/74



Extract covering the application route. Red letters added for reference.

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Divisional Surveyor Memoranda (1963 & 1974)

Source: Somerset County Council files

MEMORANDUM	
<p>FROM :- THE DIVISIONAL SURVEYOR WINGANTON</p> <p>MY REFERENCE :- DS/RJT/15/1.</p> <p>DATE :- 24th December, 1963.</p>	<p>TO :- THE COUNTY SURVEYOR</p> <p>YOUR REFERENCE :- (JBW)</p>
<p>Footpath at Camel Hill.</p> <p>The Queen Camel Parish Council have asked for the path from Camel Hill through Ridge Copse to Ilchester Road and thence to Hazelgrove to be cleared of overgrowth. This is on 1/2500 Ordnance Sheet LXXIV.7 and runs through plots numbers 121, 112, 111, 91, 90, 101, 21 and 85.</p> <p>I shall be glad if you will let me know whether this is on the schedule and whether it will be in order to clear the surface.</p> <p style="text-align: right;"><i>R. J. T. Jarrett</i> Divisional Surveyor.</p>	

Memorandum relating to section F to F1 of the application route. Red boxes added to highlight relevant sections.

MEMORANDUM							
<p>FROM :- THE DIVISIONAL SURVEYOR SOUTH EAST DIVISION</p> <p>MY REFERENCE :- 2/21/MDBH/SPP</p> <p>DATE :- 21st March 1974.</p>	<p>TO :- THE COUNTY SURVEYOR</p> <p>For the attention of Mr. Dixon</p> <p>YOUR REFERENCE :- WN/NCA (RND)</p>						
<p><u>Queen Camel</u></p> <p>I would be grateful if you could give me a plan showing the location of Bridle Path 23/15 on the Definitive Map. I require this information as I have been approached by the Queen Camel Parish Council about the possible obstruction of this Bridle Way and I would like to inspect the site before I forward this to the new Yeovil District Council for their attention, if necessary.</p> <p style="text-align: left;"><i>M. O. Bayliss - Hayward</i> County Divisional Surveyor</p> <div style="text-align: right;"> <table border="1"> <tr> <td colspan="2" style="text-align: center;">COUNTY SURVEYOR SOMERSET</td> </tr> <tr> <td colspan="2" style="text-align: center;">22 MAR 1974</td> </tr> <tr> <td>Handled by <i>RND.</i></td> <td>Taken</td> </tr> </table> </div>		COUNTY SURVEYOR SOMERSET		22 MAR 1974		Handled by <i>RND.</i>	Taken
COUNTY SURVEYOR SOMERSET							
22 MAR 1974							
Handled by <i>RND.</i>	Taken						

Memorandum relating to WN 23/15 (F2-F1). Red boxes added to highlight relevant sections.

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Highway Authority Road Records

Source: Somerset County Council



1929 Handover map, red letters added for reference



1930s road records, red letters added for reference

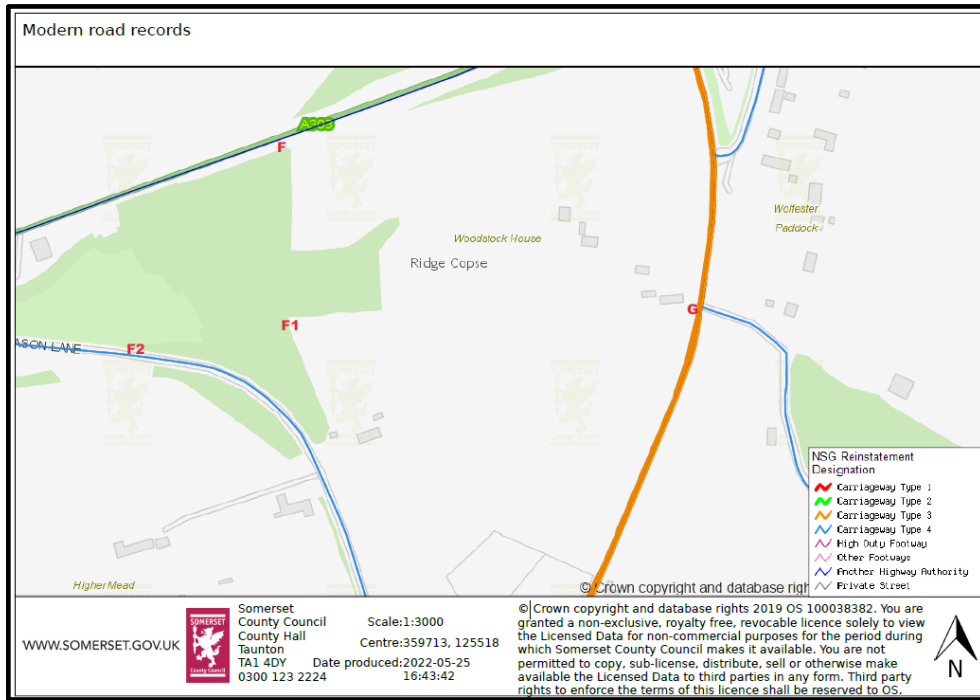


1950s road records, red letters added for reference



1970s road records, red letters added for reference

KEY	
MOTORWAY	DARK BLUE
TRUNK ROAD	BLACK
CLASS I	SCARLET RED
CLASS II	GRASS GREEN
CLASSIFIED UN-NUMBERED	LEMON YELLOW
UNCLASSIFIED	TERRACOTTA
DEFINITIVE FOOTPATH	PURPLE
DEFINITIVE BRIDLEWAY	TRUE GREEN
URBAN FOOTPATH	ULTRAMARINE BLUE
R.U.P.P.S (B.O.A.T.S/C.R.F.)	TRUE GREEN
COUNTY/PARISH BOUNDARY	SKY BLUE
DIVISIONAL BOUNDARY	DUNG
DISTRICT BOUNDARY	GREY
EXCEPTED AREA	PINK



Modern road records, red letters added for reference

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Somerset County Council

Regulation Committee – November 2022

Report by Service Manager - Planning & Development, Enforcement & Compliance:

Application Number: SCC/3940/2022

Date Registered: 21 April 2022

Parish: Compton Pauncefoot Parish,

District: South Somerset District Council ,

Member Division: Blackmoor Vale,

Local Member: Councillor Sarah Dyke

Case Officer: Ruth Amundson

Contact Details:

Description of Application: Section 73 planning application which seeks a variation of planning condition 2 that limits lorry movements from Blackford Quarry

Grid Reference: Easting - 366000, **Northing** - 125188

Applicant: Mr Zak England, Somerset Stone Supplies

Location: Blackford Quarry, Blackford Hill, Yeovil, Somerset,BA22 7EA

1. Summary of Key Issues and Recommendation(s)

The main issue is the impact on the local environment and on the living conditions of nearby residents as a result of the proposal to increase the number and vary the type of vehicles used to haul stone from the site to the processing facility at Tout Quarry.

It is recommended that planning permission be granted subject to conditions

2. Description of the Site

2.1 Blackford Hill Quarry is a small building stone quarry located approximately 900 metres south of the centre of the village of Blackford, which itself lies to the south of the A303 Yeovil to Wincanton road and 42 kilometres east of Taunton. The site is an historic quarry that was used to produce stone for agricultural use before small-scale commercial extraction commenced in 2021.

2.2 Access is gained via an agricultural track from the minor road leading from Blackford to Charleton Horethorne at Quarry Hill. The boundary of the site is marked by mature hedgerow and a bank adjacent to the road to the east and there is woodland to the north and west, forming part of a small copse within which the quarry is situated. To the south the site adjoins open agricultural fields.

2.3 The settlement pattern surrounding the site is characterised by small villages and scattered, isolated dwellings. Quarry Hill Cottage, the nearest, lies 45 metres to the north east of the entrance to the quarry. A small group of houses lies approximately 150 metres to the south east of the extension area.

3. The Proposal

3.1 Permission was granted on 1 July 2021 for an extension to Blackford Hill Quarry, reference CC/3777/2020. Permission was granted subject to a number of conditions restricting the proposed development, including a condition requiring the development to be carried out in accordance with the approved plans, drawings and documents, which included correspondence describing the access, number of trips and type of vehicles.

Planning Permission Ref: SCC/3777/2020 therefore specifies the exact type of HGV allowed to transport stone, which is a 3-axle articulated lorry tractor unit with a demountable body able to carry a 16-tonne payload.

3.2 The current application seeks to vary the conditions restricting the type and number of vehicle movements. It states that due to the characteristics of the stone being extracted, the permitted HGV can only accommodate payloads of up to 10 tonnes rather than the originally envisaged 16-tonnes. The quarry has, therefore been exporting only around 20 tonnes a week.

3.3 The applicant has investigated a number of options. To minimise fuel use, the operator would like the option to use a short tipper trailer on the existing vehicle, retaining the cap of 2 HGV loads (4 movements) per week for that vehicle combination. However, to provide operational flexibility, it is proposed to change the restrictions on HGVs transporting stone to include the following options:

- a) 4 HGV loads (8 HGV movements) per week using a 3-axle tractor unit with a demountable tipper body (the vehicle currently approved); or
- b) 2 HGV loads (4 HGV movements) per week using a 3-axle tractor unit with a short tipper trailer (the number of vehicle trips currently approved); or
- c) 2 HGV loads (4 HGV movements) per week using a 3-axle tractor unit with a demountable tipper body and 1 HGV load (2 HGV movements) per week using a 3-axle tractor unit with a short tipper trailer.

The current application does not seek to amend any other aspect of the previously approved development, including output, method of working or restoration.

4. Planning history

4.1 Permission was granted in 2021, reference SCC/3777/2020 for the extraction of 21,000 tonnes of natural building stone over a period of 14 years. The stone produced at the site had characteristics that make it suitable for conservation of historic buildings in the local area as well as new buildings reflecting the local vernacular.

4.2 Mineral is extracted using a single excavator and stone is transported to the applicant's masonry works at Tout Quarry for cutting and dressing. The dressed stone is also sold from Tout Quarry.

4.3 Not all the stone excavated is expected to be suitable for building and lower quality material will be retained on site to restore the quarry to agricultural use when mineral extraction ceases.

5. The Application

5.1 Documents submitted with the application include the following

Application form

Supporting statement

Transport statement

6. Environmental Impact Assessment (EIA)

6.1 The proposed development falls within schedule 2 of the 2017 EIA regulations. The application has been screened and it is not considered to be EIA development.

6.2 The quarry is small-scale and the effects have been assessed to be limited and experienced over a temporary period of 14 years. The potential impacts, including noise, dust, additional traffic movements, loss of agricultural land, visual impact, landscape impact, impact on ecology and habitats and impact on heritage assets are capable of mitigation through the imposition of planning conditions.

6.3 The site is not within or close to a sensitive area as defined in the regulations, the site area is significantly less than 15 hectares and at 1,500tpa the output would be less than the indicative threshold of 30,000tpa where EIA is more likely. In view of this and having regard to the selection criteria, the proposal is unlikely to generate significant environmental effects or effects over a wider than local area.

6.4. Restoration of the site would significantly reduce the effects in the longer term and offers the opportunity for environmental enhancement. The effects of quarrying are, therefore, reversible through the restoration of the site.

7. Consultation Responses Received

External Consultees

7.1 North Vale PC

The application should be refused for the following reasons:

Paragraph 5 of the applicant's planning statement requests to vary condition 2 of the original grant of planning permission 'due to the characteristics of the stone being extracted'

The 'characteristics' of the stone are the same now as at the time of the original planning application, this is not a valid reason to vary the conditions.

Local residents are already suffering in full the expected noise, dust, vibration and congestion of heavy vehicles on narrow lanes. There is no justification to further reduce their amenity by acceding to the applicant's request to either increase the size of the vehicles or increase the frequency of the journeys.

7.2 Blackford and Compton Pauncefoot Parish Meeting

The application should be refused for the reasons below.

As PM Chair I carried out a full community consultation prior to the original application to re-open Blackford Quarry as a commercial enterprise. The objection to the quarry was overwhelming and I made inputs to that effect at the time.

I have consulted again and identified no change in the community's very negative view on Blackford Hill Quarry and its impacts. Many residents are horrified that yet more heavy and now even longer vehicles might travel through Blackford, with transit numbers increased by up to 100%. I am aware that a number of objections to that effect have already been made.

In trying to establish the veracity of the claims made by the applicant I asked the Council for extraction data from the quarry, but to date none has been made available, despite previous advice that the Council could obtain this at any time. This key piece of data ought to underpin the rigorous consideration of the applicant's claims.

The application does not present any sort of balanced argument for change. There would be significant impacts on the community through increased highway risk and heavy vehicle transit nuisance, but these are hardly addressed. The community is being asked to accept further impositions and degradations to the quality of life here, simply as a result of the failure of the quarry operator to define his operating parameters correctly in the first place. Such extra impositions on the village are unreasonable.

There is a developing highways nightmare in Blackford due to quarry related traffic. Heavy vehicle traffic has become much worse since the approval of Blackford Hill Quarry. The traffic associated with the now heavily used Plantation Hill (agricultural) quarry at Maperton routes through the village via an agricultural track and exits onto Quarry Hill. Evidence of significant overloading of the highway and elevated safety risk has been forwarded to SCC and SSDC for months but SCC Highways Department seems content that the village is being turned into a major quarry haul route. I invite the Highways responder and the Planning Officer to walk the haul route to the A303 with me so that the issues and risks can be properly appreciated

7.3 CPRE Somerset

CPRE Somerset attended the Regulations Committee to object to the original application. The case was then made by the applicant and quarry operator that this was a small relic quarry from which a modest amount of stone would be extracted for repair of historic buildings.

The new proposed changes involve a very substantial percentage increase in output and/or the number of HGV movements and/or the size of vehicle from levels originally consented.

This quarry is located on a narrow rural lane between two residential conservation areas. Conservation Areas are heritage assets protected by law. The site is also located in close proximity to residential dwellings, which are suffering unacceptable impacts to residential amenity from dust and noise. The narrow lane is used by pedestrians, cyclists and riders. It is clear from resident's comments that there are serious cumulative impacts also now arising, as this lane also services another nearby quarry. Great weight should be given to such cumulative impacts in the planning balance.

We are extremely concerned that Blackford Parish Council, in its consultation response, should describe the existing quarrying operations at this site as having created 'nightmare conditions' for residents. National, County and Local Policy gives great weight to the amenity of residents affected by quarrying operations.

On these grounds, we ask that this proposal should be refused.

7.4 South Somerset District Council

SSDC do not wish to raise any objections however request that the impact of additional traffic/larger vehicles is assessed adequately by Somerset County Council Highways Authority and that sufficient consultation is undertaken with Blackford Parish Council, as well as Charlton Horethorne Parish Council and neighbouring residents.

7.5 Charleton Horethorne PC

No response received

Internal Consultees

7.8 Highways Development Management

"As detailed in the submitted information the Highway Authority has no objections to either proposal subject to a suitable condition to impose the controls on the new method of working."

7.9 Minerals and Waste Policy

"... on the basis that the variation relates only to the type of HGV vehicle to be used and/or increasing the number of weekly HGV movements to a maximum of 4 per week, the proposed scheme does not give rise to any mineral policy issue. Thus, no mineral policy objection is raised. I would support the condition as recommended by the Highway Authority."

7.10 SCC Rights of Way

No response received

Public Consultation

7.10 The application was advertised by means of a press notice and a notice posted at the site. Nineteen representations were received raising the following issues:-

Noise

Vibration

Disturbance from HGVs

Dust, mud and debris on the road

Danger to pedestrians, cyclists and horse riders from HGVs

Road safety – poor visibility

Road safety – narrow roads

Potential damage to causeway structure

Damage to road verges

Heritage concerns – historic structures and conservation area

8. Comments of the Service Manager – Planning Control, Enforcement & Compliance

8.1 The key issues for Members to consider are:-

Planning policy and the principle of the development

Impact on the living conditions of neighbours

Impact on highway safety and capacity

Environmental impact

8.2 The Development Plan

By virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the decision on this application should be taken in accordance with the development plan unless material considerations indicate otherwise.

The development plan comprises:

The Somerset Minerals Plan Development Plan Document up to 2028 Adopted February 2015

The South Somerset Local Plan 2006-2028

8.3 Material Considerations

Other material considerations to be given due weight in the determination of this application include the following:

National Planning Policy Framework 2021

Planning Practice Guidance

8.4 The principle of the development

8.4.1 The principle of mineral working has been established by the 2020 permission. The current application seeks to vary the limitations imposed by conditions on that permission but if the current application was refused, the applicant would be entitled to continue working under the terms of the previous permission. If approved, the current application would form a new permission in its own right and those conditions that remain relevant should be carried over to the new permission. The council may, however, review the conditions and revise them if appropriate.

8.4.2 Policy SMP 5 Building stone supports the extraction of stone where

- a) the proposal will deliver clear economic and other benefits to the local and/or wider communities; and
- b) there is an identified need for the specified stone; and
- c) the nature, scale and intensity of the operation are appropriate to the character of the local area; and
- d) the proposal includes measures to mitigate to acceptable levels adverse impacts on the environment and local communities.

8.4.3 The policy also sets out the importance of an adequate supply of building stone so that the local character of Somerset is maintained. The Plan highlights that the use of reconstituted or imported stone can produce different aesthetics or physical characteristics to local stone.

8.4.4 The NPPF, Paragraph 205 states that great weight should be given to the benefits of mineral extraction, including to the economy. It also encourages mineral planning authorities to recognise the small-scale nature and impact of building and roofing stone quarries and the need for a flexible approach to the duration of planning permissions reflecting the intermittent or low rate of working at many sites.

8.4.5 The proposed development is consistent with SMP policy SMP5 and paragraph 205 of the NPPF subject to consideration of the environmental and amenity impacts of the development.

8.5 Highways and transportation

8.5.1 No increase in annual output is proposed but the applicant has found that the current limit on the number of loads and the type of vehicle used for transportation is unduly restrictive.

8.5.2 The applicant has advised that the quarry produces large block stone and smaller walling stone. . When loading a lorry with small walling stone, to achieve a good payload due, the stone is packed together with very few voids. In contrast, when loading large block stone the voids are bigger hence less pay load.

8.5.3 The quarry was initially operated by the landowner not the applicant under permitted development rights for agriculture and extraction focussed on smaller walling stone at that time. Since the applicant commenced operation in 2021 the focus has been on producing larger block stone.

8.5.4 The demountable body on the permitted HGV will only accommodate payloads of up to 10 tonnes, due to the size and shape of the stone being extracted. With only 2 weekly HGV loads permitted, the quarry is therefore only able to operate at about 20 tonnes per week output rather than the 32 tonnes anticipated under the permitted movements, so is running more than a third under capacity.

8.5.5 In order to save on transportation costs, stone will always be transported using the fewest vehicle movements possible, the application states. However, the applicant asks for flexibility to increase the vehicle movements using the tractor with demountable body from the 2 loads a week currently permitted should the need arise or to use the permitted tractor body with a short tipper trailer, which has more length to accommodate a payload of up to 16 tonnes or a combination of both.

8.5.6 Operating within the limit on HGVs imposed under the previous application the outputs for the last 11 months (October 2021 to August 2022) have totalled 1,010.3 tonnes. With only 1 month left during this operational year, it is clear that the consented 1,500 tonne per annum limit has not been met.

8.5.7 The proposed variation to the permitted vehicle movements would allow the permitted 1,500 tonnes a year to be achieved. Currently, condition 8 not only limits outputs from the quarry but also requires the Applicant to keep and make available records. As a result, there is already a mechanism to control outputs, even if the 4 HGV loads per week was adopted.

8.5.8 8The application is supported by a transport assessment, which has been independently reviewed by SCC Highways Development Management. The report assesses the implications of the proposal and concludes that the proposal would have no material impact on the safe operation of the local highway network. It also provides diagrams showing that the short tipper trailer unit can enter and exit the quarry to the north within the confines of the public highway.

8.5.9 The Highway Authority has reviewed the transport statement and concludes that it does not consider up to 8 vehicle movements (4 trips) in a week to be onerous in highway terms, as this is within the daily variation which could already be experienced in a rural area where seasonal agricultural traffic could amount to more than 8 additional movements in a

week. The highway authority, therefore, raises no objection subject to the wording of the new condition reflecting the amended details.

8.5.10 Having regard to the advice of the highway authority, it is considered that the proposal is consistent with SMP policy DM9: Minerals Transportation, which states that applications must demonstrate that the road network serving the site is suitable for the proposed volume and nature of the traffic associated with it without undue harm to the character of the countryside or settlements having regard to highway safety, alignment, proximity to buildings, air quality, capacity of the road network and disruption to local communities.

8.6 Impact on the living conditions of local residents

8.6.1 SMP policy DM8: Protecting Local Amenity states that planning permission will be granted for mineral development subject to the application demonstrating that the proposal will not generate an unacceptable adverse impact on local amenity and measures will be taken to mitigate impacts from vibration, dust and odour, noise and lighting.

8.6.2 The proposal could result in a maximum of two additional vehicle trips a week using a tractor and demountable trailer as previously permitted or the same number of vehicle trips as previously approved i.e. 2 using a short tipper trailer with a 16-tonne capacity.

8.6.3 The additional impact of two additional trips per week in terms of noise, dust and vibration is considered to be very minor and the quarry traffic would remain a small proportion of the overall traffic on the local road network. Conditions restricting the hours for vehicle movements could be re-imposed to minimise any additional impact.

8.6.4 Subject to a condition restricting hours for vehicle movements and the development being carried out as described with a maximum of 4 vehicle trips a week over the two days a week the quarry is permitted to operate, it is considered that the small increase in vehicle movements would not have an unacceptable impact on the living conditions of neighbours

8.7 Environmental impact

8.7.1 No change is proposed to the processes or method of mineral extraction previously approved within the site. Mineral extraction will take place above the water table and mineral waste will be retained on site for restoration purposes in accordance with the approved drawings. Taking this into account, the proposal would not result in an unacceptable impact on the water environment, ecology, landscape character and air quality or an unacceptable increase in noise and dust.

8.7.2 The proposal has the potential to increase noise, dust and disturbance from vehicle movements. However, given the small scale of the proposed increase in vehicle trips, it is considered that this can be adequately regulated through planning conditions. The proposal is, therefore, in accordance with SMP policy DM8: Protecting Local Amenity, DM4: Water resources and flood Risk and paragraph 174 in the National Planning Policy Framework.

8.8 Other considerations

8.8.1 There are no footpaths within the site but PROW runs along Blackford Hill adjacent to the site. Traffic enters and exits the site from the north, travelling towards the A303. The route

takes vehicles through the Blackford conservation area and across a causeway structure to the north of the site, which has been monitored for structural defects. Objections have been received on the grounds of the impact of the proposal on pedestrians and cyclists using the rural roads near the site and the impact on historic buildings within the conservation area. Concern has also been expressed about the impact of the additional vehicle trips on the causeway structure.

8.8.2 While those concerns are noted, the total number of vehicle trips generated by the quarry would remain small and they would form a small proportion of the total number of vehicles using the road network near the site. The small increase in vehicle trips has to be weighed against other material considerations, including the support for building stone production in policy SMP5 and support for rural industries, which in turn support the local economy (paragraph 84, NPPF). The NPPF recognises that there are three strands to sustainable development: Economic, Social and Environmental. Paragraph 11 sets out a presumption in favour of sustainable development which encourages local planning authorities to approve development proposals that are in accord with an adopted development plan without delay. Policy SMP SD1: Presumption in favour of sustainable development reiterates that message, stating that permission should be granted unless material considerations indicate otherwise taking into account whether any adverse impacts would demonstrably outweigh the benefits or where specific policies indicate that development should be restricted.

8.9 Conclusion

8.9.1 The proposal is considered to be in accordance with the development plan and there are no material planning indications that indicate a decision should be taken other than in accordance with the development plan.

Human Rights Act 1998

Article 8 of the Human Rights Act 1998 (as amended) states that everyone has the right to respect for his private and family life. A public authority cannot interfere with the exercise of this right except where it is in accordance with the law and is necessary (amongst other reasons) for the protection of the rights and freedoms of others. Article 1 of Protocol 1 of the Act entitles every natural and legal person to the peaceful enjoyment of his possessions.

The law provides a right to deny planning permission where the reason for doing so is related to the public interest. Alternatively, having given due consideration to the rights of others, the local planning authority can grant planning permission in accordance with adopted policies in the development plan.

All material planning issues raised through the consultation exercise have been considered and it is concluded that by determining this application the County Planning Authority would not detrimentally infringe the human rights of an individual or individuals.

Climate Change

Somerset's Climate Emergency Strategy was adopted in November 2020. The aim of the strategy is to reduce carbon emissions in the county and make Somerset a county resilient to the inevitable effects of Climate Change.

The strategy provides some high-level detail explaining what climate change is and what causes it, where carbon emissions arise from globally, nationally and locally and what the impacts will be here in Somerset. It also sets ambitious goals to become a carbon neutral county by 2030 and also outlines what the five Somerset councils intend to do to address the most important issues around the Climate Emergency

The adopted Minerals Local Plan predates the Climate Emergency declaration, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. Planning is concerned with land use in the public interest. The key focus of overarching policy is to provide opportunities for holistic change by promoting a move away from landfill, promoting the decentralization of energy production, and by reducing the reliance on primary won fossil fuels such as oil, coal and gas.

9. Recommendation

9.1 It is recommended that planning permission be granted subject to the following conditions.

Conditions

1. The development hereby permitted shall be commenced within three years of the date of this permission. Written notification of the date of commencement shall be sent to the mineral planning authority within seven days of commencement.

Reason: To comply with section 91 of the Town and Country Planning Act 1990 and to enable the mineral planning authority to monitor the development

2. Unless where required or allowed by other conditions attached to this permission/consent, the development hereby approved shall be carried out in accordance with the information (including details on the proposed materials) provided on the application form and the following plans/drawings/documents:

SCC/3777/2020

Application form 22 December 2020, certificates and fee

Covering letter 22 December 2020

Supporting statement and appendices A, B, C, D, E, F, G dated 22 December 2020

Drawing number 803A/001 Location Plan
Drawing number 803A/002 Site Plan
Drawing number 803A/003 Topographical Survey
Drawing number 803A/004 Phase 1 Working Plan
Drawing number 803A/005 Phase 2 Working Plan
Drawing number 803A/006 Restoration Plan
Drawing number 803A/007 Sections Phase 1
Drawing number 803A/008 Sections Phase 2
Drawing number 803A/009 Restoration Sections
Email re vehicle trips dated 11/03/2021

SCC/3940/2022

Application form dated 21 April 2022

Planning statement dated 21 April 2022

Transport statement dated April 2022

Reason: To define the permission.

3. This permission shall be limited to a period expiring on 31 December 2035. There shall be no working of building stone on the site after that date and the site shall be fully restored in accordance with the submitted details by 31 December 2036.

Reason: To ensure that the development is carried out in accordance with the application and to ensure that the site is satisfactorily restored within a reasonable timescale and in accordance with Policy SMP8 of the Somerset Minerals Plan 2015-2030.

4. In the event of the cessation of winning and working of minerals prior to 31 December 2035 which, in the opinion of the mineral planning authority, constitutes a permanent cessation within the terms of paragraph 3 of schedule 9 of the Town and Country Planning Act 1990, a restoration and aftercare scheme shall be submitted in writing to the mineral planning authority within 6 months of the cessation. Once approved the restoration scheme shall be fully implemented within 6 months from the date of approval and aftercare shall be carried out for a period of five years after the completion of restoration.

Reason: To ensure that the site is restored to a beneficial after-use in a timely manner to protect local amenity and in accordance with Policy SMP8 of the Somerset Minerals Plan 2015-2030.

5. No operations or uses authorised or required by this permission shall be carried out on the site except between the following times:-

*0800 hours and *1700 hours Mondays to Fridays

There shall be no working on Saturdays, Sundays, Bank Holidays or National holidays

Reason: To protect the amenity of the local area and in accordance with Policy DM8 of the Somerset Minerals Plan 2015-2030 and Policy EQ7 of the South Somerset District Local Plan 2006-2028.

6. No waste other than waste stone derived from the application site shall be deposited on the site.

Reason: To define the extent of this permission and to protect the visual amenity of the area in accordance with Policy DM1 of the Somerset Minerals Plan 2015-2030 and Policy EQ2 of the South Somerset District Local Plan 2002-2028.

7. No vehicles used in connection with the development hereby permitted shall enter or leave the site except between the following times:-

0800 hours and 1700 hours Mondays to Fridays;

There shall be no vehicle movements on Saturdays, Sundays, Bank Holidays or National Holidays.

Reason: To protect the amenity of the local area and in accordance with Policy DM8 of the Somerset Minerals Plan 2015-2030 and Policy EQ7 of the South Somerset District Local Plan 2006-2028.

8. The total output of materials from the site shall not exceed 1,500 tonnes in any calendar year. The operator shall retain such records as necessary to demonstrate the amount of material that has been removed and shall provide them on request to the mineral planning authority.

Reason: To minimise the likelihood of disturbance from the development and in accordance with Policy DM8 of the Somerset Minerals Plan 2015-2030 and Policy EQ7 of the South Somerset District Local Plan 2006-2028.

9. Any surface water runoff during operation shall be discharged at a rate and volume no greater than greenfield runoff rates and volumes, and post operation (restoration) the site shall be restored to greenfield conditions including the provision of any drainage measures that are necessary to achieve this.

Reason: To ensure that the development is served by a satisfactory, sustainable system of surface water drainage and that the approved system is retained, managed and maintained throughout the lifetime of the development, in accordance with National Planning Policy Framework (July 2018) and the Technical Guidance to the National Planning Policy Framework.

10. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the mineral planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the mineral planning authority). The remediation strategy shall be implemented as approved.

REASON: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site in accordance with Policy EQ7 Of the South Somerset District Local Plan 2006-2028.

11. The development hereby approved shall be carried out in strict accordance with the scheme for prevention of pollution during the construction and operational phases of development approved on 12 August 2021 under reference SCC/3777/2020/Cond11. The scheme includes details of the following:

1. Site security.

2. Fuel oil storage, bunding, delivery and use.
- 3 How both minor and major spillage will be dealt with.
4. Containment of silt/soil contaminated run-off.
5. Disposal of contaminated drainage, including water pumped from excavations.
6. Site induction for workforce highlighting pollution prevention and awareness.
7. Any facilities for the storage of oils, fuels or chemicals associated with this development

The scheme shall be implemented in full throughout the duration of the development.

REASON: To prevent pollution of the water environment and in accordance with Policy EQ7 of the South Somerset District Local Plan 2006-2028

12. No winning and working of minerals shall take place below the water table.

Reason: Working below the water table would require more detailed consideration of impact on groundwater.

13. The development hereby approved shall be carried out in strict accordance with the details of materials and design of any floodlighting approved on 18 August 2021 under reference SCC/3777/2020/Cond13.

Reason: To minimise disturbance to bats and to protect the amenity of the local area in accordance with Policies EQ4 and EQ7 of the South Somerset District Local Plan 2006-2028.

14. Trees, shrubs and other plants shall be planted in accordance with the details set out the application documents within the first planting season following commencement of the development and measures for their protection in the course of the development, shall be implemented as described in the details supplied under reference SCC/3777/2020/Cond 14 and approved on 30 September 2021. For a period of five years following their planting the trees/shrubs shall be protected and maintained, and any trees/shrubs which die, or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size and species, unless the County Planning Authority gives written approval to any variation.

Reason: To protect amenity, biodiversity and amenity interests in the local area and in accordance with Policy DM1 of the Somerset Minerals Plan 2015-2030 and Policy EQ2 of the South Somerset District Local Plan 2006-2028.

15. For the duration of the development hereby permitted, existing hedges and trees around the application site boundary shall be retained and maintained.

Reason: To protect amenity interests in the local area and in accordance with Policy DM1 of the Somerset Minerals Plan 2015-2030 and Policy EQ2 of the South Somerset District Local Plan 2006-2028.

16. The development hereby approved, including ground works and vegetation clearance, shall take place strictly in accordance with the environmental management plan (EMP:Biodiversity) approved under reference SCC/3777/2020/Cond16 on 27 September 202, which includes the following:-

- a) Risk assessment of potentially damaging construction activities
- b) Identification of "biodiversity protection zones", including hedgerow and tree buffer zones marked by suitable fencing or barriers,
- c) The location and timing of sensitive works to avoid harm to biodiversity features,
- e) The times during construction when specialist ecologists need to be present on site to oversee works,
- f) Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority,
- g) The role and responsibilities on site of an ecological clerk of works or similarly competent person,
- h) Use of protective fences, exclusion barriers and warning signs,
- i) Ongoing monitoring, including compliance checks by a competent person during construction and immediately post completion of construction works

The approved EMP shall be adhered to and implemented throughout the duration of the development strictly in accordance with the approved details

Reason: In the interests of European and UK priority species and habitats listed on section 41 of the Natural Environment and Rural Communities Act 2006, and to ensure that adequate measures are put in place to avoid or manage the risk of pollution during construction and operation of the proposed development in accordance with policies DM3 and DM7 of the Somerset Waste Core Strategy 2013

17. The development hereby approved shall be carried out strictly in accordance with the biodiversity enhancement plan (BEP) approved on 17 September 2021 under reference SCC/3777/2020/Cond17. including provision of the following:

a) Two bat boxes (Schwegler 1FF) shall be installed onto mature trees at the boundaries of the site to enhance roosting opportunities.

b) One no. Schwegler 1B and one no. Schwegler 2H bird boxes shall be installed onto retained trees at the boundary

c) Installation of two Schwegler no 10 swallow nesting cups or similar shall be erected on to a main beam of the open-sided building near the entrance to the site at a height above three metres.

d) The hedgerows on the site will be cut on a three-year rotation allowing sections to mature to a height of at least three metres following the principles set out in "How to Manage a Hedgerow for Wildlife - The Wildlife Trusts".

Reason: In accordance with Government policy for the enhancement of biodiversity within development sites as set out in paragraph 170(d) of the National Planning Policy Framework and the Environment Bill 2020.

18. The applicant shall ensure that all vehicles leaving the site are in such condition as not to emit dust or deposit mud, slurry or other debris on the highway. In particular (but without prejudice to the foregoing), efficient means shall be installed, maintained and employed for cleaning the wheels of all lorries leaving the site, in accordance with the details approved under reference SCC/3777/2020/Cond18 on 14 September 2021. The approved scheme shall be maintained and implemented until the use of the site discontinues.

Reason: In the interests of highway safety and to protect the amenity of the local area and in accordance with Policy TA5 of the South Somerset District Local Plan 2006-2028.

19. Notwithstanding the provisions of part 6, class C and part 17 of schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking, re-enacting or modifying that order, which relate to mineral working for agricultural purposes and development ancillary to mining operations, there shall be no development or activity at this site additional to that specified in this planning permission.

Reason: To enable the mineral planning authority to adequately control the development according to the submitted application and to minimise disturbance to the local area.

20. The development hereby approved shall be carried out strictly in accordance with the dust control and mitigation scheme approved on 31 August 2021 under reference SCC/3777/2020/Cond20 which includes:

- minimising drop heights when returning waste stone to the site;
- impact of wind direction on the risk of dust escaping the site boundaries towards residential properties;
- frequency of visual assessments for dust, recording of the assessments and required actions;
- complaint handling procedures including measures for review of the scheme in response to those complaints.

The approved scheme shall be fully implemented from the time the development hereby permitted is first brought into use and shall be maintained in full for the duration of the development hereby permitted.

Reason: To protect the amenity of the local area and in accordance with Policy DM8 of the Somerset Minerals Plan 2015-2030 and Policy EQ7 of the South Somerset District Local Plan 2006-2028.

21. The development hereby approved shall be carried out strictly in accordance with the scheme approved on 30 September 2021 under reference SCC/3777/2020/Cond21, setting out measures to minimise noise impact, including:

- no mechanical breaking of stone
- No mechanised screening of stone
- plant and machinery shall be operated and maintained to minimise noise and fitted with silencers in accordance with the manufacturer's specification
- no tonal reverse warning devices shall be used

The approved scheme shall be implemented in full throughout the duration of operations.

Reason: To protect the living conditions of nearby residents and in accordance with Policy DM8 of the Somerset Minerals Plan 2015-2030 and Policy EQ7 of the South Somerset District Local Plan 2006-2028

22. Noise levels during arising from site operations shall not exceed an Laeq(1-hour) level of 46dB free field at the boundary of any residential dwelling present at the time of this planning permission.

Reason: To protect the living conditions of nearby residents and in accordance with Policy DM8 of the Somerset Minerals Plan 2015-2030 and Policy EQ7 of the South Somerset District Local Plan 2006-2028

23. No topsoil or sub soil shall be removed from the site. All soils stripped from the excavation area shall be stored separately to prevent mixing and shall be protected from contamination until required. Topsoil, subsoil and overburden stores shall not exceed three metres in height and shall be graded, seeded with grass and subject to weed control.

Reason: To ensure availability of sufficient and suitable restoration materials to restore the site once mineral extraction has been completed and in accordance with Policy SMP8 of the Somerset Minerals Plan 2015-2030

24. Within three months of the completion of winning and working of minerals an aftercare scheme detailing such measures as may be required to bring the land to a condition suitable for agricultural after-use shall be submitted for the approval of the mineral planning authority. The scheme shall include - details of cultivation, seeding and management of grassland in accordance with the rules of good husbandry

- fertiliser and lime application based on soil analysis
- grazing management
- field water supplies
- ditch, water course and piped drainage systems to manage surface water run-off and prevent soil erosion

provision for an annual review to consider the operations that have taken place in the preceding 12 months and the programme of management for the next 12 months. The parties to the review shall be the mineral planning authority, the site owner and site operator together with any other organisation or body that may be required to advise on the aftercare.

- At least four weeks before the date of each review, the operator shall provide the mineral planning authority with a written record of the operations and management covered by the review.

Once approved the scheme shall be carried out in full for a period of five years.

Reason: To ensure satisfactory aftercare takes place and the site is returned to beneficial use and in accordance with Policy SMP8 of the Somerset Minerals Plan 2015-2030

INFORMATIVES

10. Relevant Development Plan Policies

1 The following is a summary of the reasons for the County Council's decision to grant planning permission.

2 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 the decision on this application should be taken in accordance with the development plan unless material considerations indicate otherwise. The decision has been taken having regard to the policies and proposals in:-

Somerset Minerals Plan Development Plan Document up to 2030, adopted February 2015

South Somerset Local Plan 2006-2028

The policies in the development plan particularly relevant to the proposed development are:-

SMP 5: Proposals for the extraction of building stone

DM9: Minerals transportation

DM8: Protecting local amenity

3 The County Planning Authority has also had regard to all other material considerations.

4 Statement of Compliance with Article 35 of the Town and Country Development Management Procedure Order 2015

In dealing with this planning application the County Planning Authority has adopted a positive and proactive manner. The Council offers a pre- application advice service for minor and major applications, and applicants are encouraged to take up this service. This proposal has been assessed against the National Planning Policy Framework, Minerals Local Plan and Local Plan policies, which have been subject to proactive publicity and consultation prior to their adoption and are referred to in the reasons for approval. The County Planning Authority has

sought solutions to problems arising by liaising with consultees, considering other representations received and liaising with the applicant/agent as necessary.

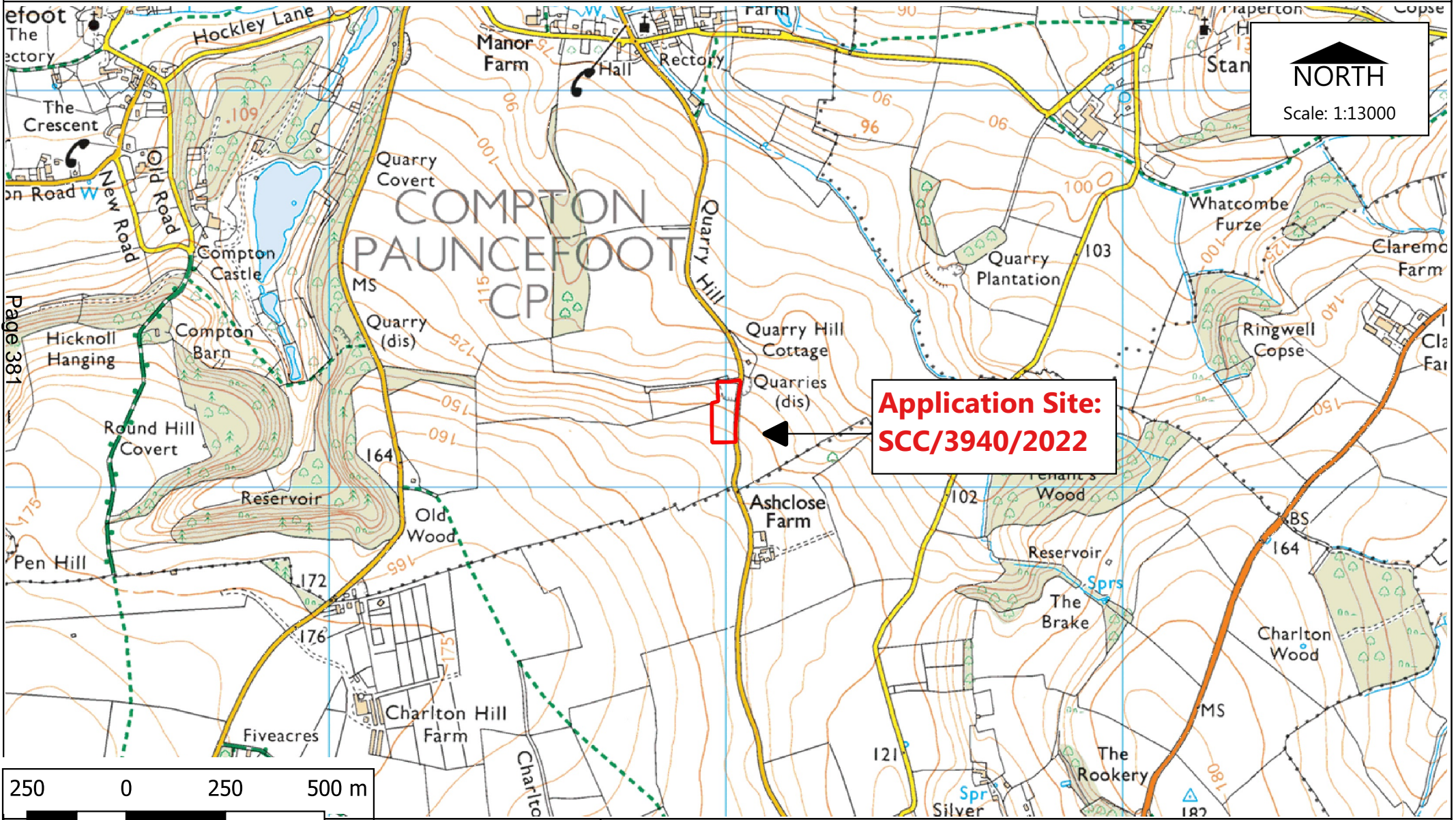
The proposal is in accordance with the Development Plan and in particular the following policies:

5 The developers are reminded of the legal protection afforded to badgers and their resting places under the Protection of Badgers Act 1992 (as amended). It is advised that during construction, excavations or large pipes (>200mm diameter) must be covered at night. Any open excavations will need a means of escape, for example a plank or sloped end, to allow any animals to escape. In the event that badgers or signs of badgers are unexpectedly encountered during implementation of this permission it is recommended that works stop until advice is sought from a suitably qualified and experienced ecologist at the earliest possible opportunity.

6 The developers and their contractors are reminded of the legal protection afforded to bats and bat roosts under legislation including the Conservation of Habitats and Species Regulations 2017. In the unlikely event that bats are encountered during implementation of this permission it is recommended that works stop and advice is sought from a suitably qualified, licensed and experienced ecologist at the earliest possible opportunity.

7 The applicant's attention is drawn to the attached comments of the Environment Agency and Lead Local Flood Authority, which are included for information / action.

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SOMERSET
County Council

Paul Hickson,
Strategic Commissioning Manager
Community & Environmental Services
Somerset County Council
County Hall, Taunton, TA1 4DY

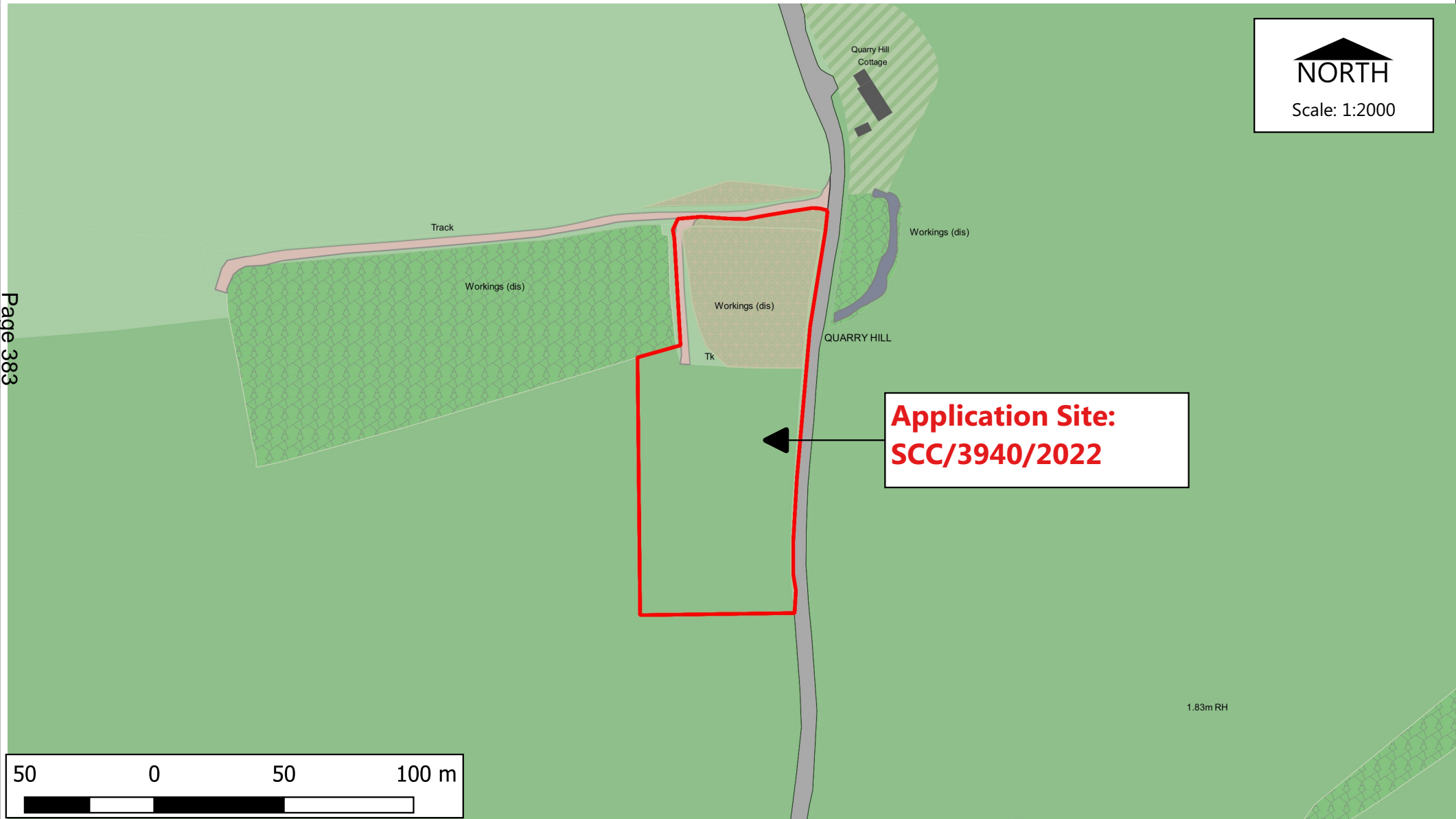
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LOCATION PLAN

Dated: 13/10/2022

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**Application Site:
SCC/3940/2022**



Paul Hickson,
Strategic Commissioning Manager
Community & Environmental Services
Somerset County Council
County Hall, Taunton, TA1 4DY

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Planning Control
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SITE PLAN

Dated: 13/10/2022

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