



Somerset Council

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: June 2023

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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 Council (SC)¹ has a duty to investigate and determine the application.

1.2. In this case, SC 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 Somerset Council came into existence on 1 April 2023. The predecessor organisations were Somerset County Council and the District Councils. Unless relevant to the point being discussed, Somerset Council (SC) is referred to throughout this document regardless of whether Somerset Council or Somerset County Council were the relevant organisation at the time.

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 SC 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](#).²

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. **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

²https://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.

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.³ 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. 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

³ 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

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.'"⁴.

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.⁵ 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 usual⁶. 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 (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)

⁴ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, second edition* (London: Charles Close Society, 2005), p. 96

⁵ 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

⁶ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, second edition* (London: Charles Close Society, 2005), p. 97

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: 1:25000

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”.⁷ 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”.⁸

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.

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

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

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 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;'.⁹ 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

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

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.

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: SC
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: SC
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: SC

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: SC
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: SC
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: SC
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: SC

Appendix number: No appendix

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

Provisional Map

Source: SC

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: SC

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 E	Did not consider the route to be suitable for a bridleway as it crosses the A303 at grade and would be a significant safety concern
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 landowner raised safety concerns. 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 concerns that have been raised, they do not have a bearing on the outcome of this investigation.

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

5.10. 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.

5.11. 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