



Somerset Council

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
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Date: September 2023

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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 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 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

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.

- 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 SC 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](#).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.

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.

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 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".³

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.

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

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

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.”⁴

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)

⁴ 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 usual⁵.

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

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

Hill. It is shown continuing a short way west past F1. There is no discernible feature shown running from F1 to F.

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".⁶ 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.

⁶ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, second edition* (London: Charles Close Society, 2005), p. 96

“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.”⁷

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.

⁷ Y. Hodson, ‘Roads on OS one-inch maps 1801-1904’, *Rights of Way Law Review*, 9.3, p. 120.

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”.⁸ 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”.⁹

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)

⁸ *Moser v Ambleside Urban District Council* (1925) 89 JP 118, p. 119.

⁹ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, third edition* (London: Charles Close Society, 2013), p. 109.

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.

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;'.¹⁰ The application route has not been excluded from surrounding hereditaments on either the working or the later, more authoritative, record plan.

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.

¹⁰ DMO Consistency Guidelines 5th revision July 2013 Section 11 page 3

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: SC

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: SC

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: SC

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: SC

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: SC

Appendix number: No appendix

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

Draft Modification Map (1968)

Source: SC

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: SC

Appendix number: no appendix

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

Provisional Map (1970)

Source: SC

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: SC

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 SC 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: SC

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)

Source: SC

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”.¹¹ 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.¹²

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 Greenwood’s 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”.¹³ 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.¹⁴

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.

4.14. **Other Sources**

¹¹ *Hollins v Oldham* (1995)

¹² *Definitive Map Orders: Consistency Guidelines, Third revision* (2013), 2.26.

¹³ *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77.

¹⁴ *Fortune & Ors v Wiltshire Council & ANR* [2012] EWCA Civ 334.

Ministry of Food National Farm Survey (1941-42)

Source: National Archives (extract only)

Reference: MAF 73/36/74

Appendix number: 15

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

4.14.2. 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 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.”¹⁵

4.14.3. 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 Registry Documents

Appendix number: No appendix

4.14.4. 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.

4.14.5. 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.

¹⁵ ‘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.

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

4.14.7. The area tinted pink on the title plan 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.

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

4.14.9. 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.

Sale catalogue, Hazelgrove Estate (1920)

Source: South West Heritage Trust

Reference: SHC DD/X/WBB/177

Appendix number: 19 (i)

4.14.10. This document set details the property being put up for sale in 1920 and sets out the conditions of sale. There are also two maps showing the locations of all 66 plots included in the sale.

4.14.11. Paragraph 17 of the special conditions of sale advises that “The vendor sells and will convey as a tenant for life under the Settled Land Acts, 1882 to 1890”. This is evidence that the land for sale was held in strict settlement. In addition, paragraph 6 refers to a settlement of 1837 and resettlement of 1877 in relation to “certain parts of the property”.

4.14.12. However, from a review of the maps it was found that the land to which this sale relates is outside the area of the application route. It cannot be assumed that the same status applied to all other land held at any time by the Mildmay family. It is noted in paragraph 5 of the special conditions of sale that different conveyance dates apply to the various plots indicating that the details for one plot of land within the Mildmay estate cannot automatically be applied to all other plots of land within the estate.

4.14.13. Furthermore, if a right of way had been dedicated prior to land being held in strict settlement, then the change in how the land was held would not affect pre-existing rights.

Sale catalogue, Hazelgrove Estate (1929)

Source: South West Heritage Trust

Reference: SHC D/P/q.ca/23/16

Appendix number: 19 (ii)

4.14.14. This document details the property being put up for sale in 1929 and sets out the conditions of sale. There was no map included in the archive with this document, but the description of the property includes the Ordnance Survey numbers for each plot.

4.14.15. Paragraph 17 of the conditions of sale advises that “The vendor [...] is selling as tenant for life under the powers conferred by the Settled Land Act, 1925”. This is evidence that the additional land being sold in 1929 was also held in strict settlement. However, from a review of the Ordnance Survey numbers it was found that the land to which this sale relates is also outside the area of the application route. It cannot be assumed that the same status applied to all other land held at any time by the Mildmay family.

4.14.16. As mentioned in paragraph 4.14.13 above, if a right of way had been dedicated prior to land being held in strict settlement, then the change in how the land was held would not affect pre-existing rights. As noted in paragraph 5 (c) of the conditions of sale “Each Lot is sold [...] subject to [...] any of the following incidents applicable thereto [...] namely [...] All rights of way (whether public or private)”.

Mildmay estate papers (1795 – 1807)

Source: South West Heritage Trust

Reference: SHC DD/X/WN/2

Appendix number: 20

4.14.17. Hazelgrove House and a significant amount of land within the parish of Queen Camel belonged to the Mildmay family. It has been suggested that the Mildmay family held the land in strict settlement at all material times and therefore would not have been able to make a valid dedication of a public right of way over that land. Extracts from the Mildmay estate papers were submitted as evidence.

4.14.18. Extracts were provided from a document titled “Abstract of the Title to a Messuage and Lands at Queen Camel and Marston Magna com Somerset bought under the Trusts of the Will of Carew Hervy Mildmay Esq^{re}”. Pages 16 to 22 of this document detail pleadings to the Court of Chancery during 1789-92 to allow first the cutting and selling of timber from the estate and subsequently to use the proceeds from that sale to purchase further land within Queen Camel.

4.14.19. The fact that a decision from the Court is needed in order to both cut the timber and to use the proceeds of sale to purchase land is indicative of the estate not being held in fee simple, at that time. No map is included with this document to show the extent of the original estate and whether it covered any part of the application route. At various points the document does refer to field names in relation to the land in Queen Camel being purchased by the Mildmay estate. Comparing the field names to those shown on the 1795 inclosure plan none related to the plots through which the route runs except for a reference to the “north side of Queen Camel Hill”. Section F1 to F2 of the route runs through a plot named Camel Hill on the 1795 inclosure plan. However, closer examination of the detail in the Abstract of Title indicates that this is not the same plot.

4.14.20. The document also indicates that the plaintiff in the case is “Henry St John Carew St John Mildmay eldest son & heir apparent of the s[ai]^d Sir Henry Paulet St John Mildmay Bar[one]^t by Dame Jane his wife”. He is described, throughout the document, as being an infant. It is not clear from this document how the land was held after Henry St John Carew St John Mildmay reached maturity or whether that happened.

4.14.21. Extracts were provided from a further document titled “19th March 1807, Sir H. P. St John Mildmay Bar[one]^t & Dame Jane his Wife to John Jerritt Esq[ui]^r & his Trustee, Somersetshire, Copy, Bargain and Sale of a Messe & lands in Charlton Mackerell under the Powers of the Landtax Redemption Act” which sets out details of the title for land in Charlton Mackrell and its sale.

4.14.22. Whilst both the land being sold and the Mildmay manor to which that land relates lie outside of Queen Camel it does set out some of the details of the will of Carew Hervy Mildmay.

4.14.23. It states that “Carew Hervy Mildmay being in his life time and at the time of his decease [1784] seized of a good Estate of inheritance in fee simple of and in divers Manors Messuages Lands Tenements Hereditaments Advowsons and Real Estates situate lying and being in the several Counties of Essex Somerset Dorset and Southampton and Elsewhere in England”. It then details how his estate initially passed to his daughter Ann Mildmay for her use “during the term of her natural life but without power to do or Commit any Manner of Waste”. And that after “the death of the s[ai]^d Testators Daughter Ann Mildmay [1789] without Issue of her body the s[ai]^d Dame Jane Mildmay became Tenant for life of all & singular the s[ai]^d several Manors Messuages Lands Tenemts Heredit Advowsons & real Estates with remainder to her first & other sons successively in Tail Male”.

4.14.24. This document therefore provides evidence that the land included within the Mildmay estate at that time was held in fee simple until Carew Hervy Mildmay’s death in 1784 and from then until at least, and most likely beyond, 1807 was held in strict settlement.

4.14.25. Together the Hazelgrove Estate sales catalogues and the Mildmay estate papers provide evidence that significant amounts of land within Queen Camel was held in strict settlement at least for the periods from 1784 to 1807 and from 1837 to the 1920s. Whether this applies to the land over which the route G to F1 to F2 runs is not certain, but the 1842 Queen Camel tithe map indicates that section F1 to F2 did lie within the Mildmay estate, at one time. However, section G to F1 lies within Sparkford and no evidence has been found to indicate that this land ever formed part of the Mildmay estate.

4.14.26. The earliest map examined of the area is the Day and Masters map of 1782 which shows a route along a line broadly similar to G to F1 to F2. This corresponds with the period when the evidence points towards the Mildmay estate being held in fee simple. Therefore, the evidence of land being held in strict settlement is not considered sufficient to show that at all material times there was no-one with the capacity to dedicate.

4.14.27. Further extracts provided were from a “Dra^t Abstract of the Title of S[i]^r H[enr]^y Paulet S^t John Mildmay Baro[ne]^t to a Farm at Charlton Mackarell in the County of Somerset. Also Abstract of Title to Freehold Premises at Sherborne in Dorsetshire. Sold in Lots ...”. The document title indicates that this may be a draft document and it does contain a significant number of crossing outs and insertions which would be consistent with it

being a draft. Therefore, the amount of weight that can be given to this document is minimised. The document title also indicates that it relates to land outside of the application route and there is nothing within the extract submitted to indicate that this document provides evidence of how the land over which the route runs was held at the time of dedication.

4.14.28. A further extract was from an "Abstract of the mortgages referred to in the Schedule to the Deed of 23rd Decem[be]r 1718 and of the Assignments and Reconveyances thereof". Land being mortgaged does not equate to it being held in strict settlement. The title and first page of the document indicate that it only covers the period from 1698 to 1718 and without an accompanying map it is not possible to confirm whether any of the land mortgaged over that period included land crossed by the application route.

Earl Poulett settlement (1813)
Source: South West Heritage Trust
Reference: SHC DD/BR/ehp/27
Appendix number: 18

4.14.29. This document is described by the Somerset Heritage Centre as the settlement by John Earl Poulett and John Viscount Hinton of Somerset, Dorset and Devon estates. None of the other evidence considered above links these names with the Mildmay estate. The Somerset Heritage Centre then lists the various manors that are included in the settlement and neither Hazelgrove nor Queen Camel is included in the list. It has not been possible to discern the relevance of this document to the application route.

5. Consultation and other submissions

5.1. Consultations regarding the application route were sent out to 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 and later submissions. 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
Councillor Lewis	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.
Councillor Hobhouse	Submitted photographs of extracts from a selection of Mildmay estate papers and from deeds of the Bellamy family of Rampisham & Matthews family of Yetminster. The document references for two sales particulars relating to the Hazelgrove estate were also provided. Cllr Hobhouse was of the view that these documents provide evidence that the land over which the application route runs was held in strict settlement and therefore could not have been dedicated as a public right of way.
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 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

	<p>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>
Landowner A	<p>Highlighted the failure of the applicant to notify them of the application. Raised safety concerns and do not consider that a bridleway would be compatible with their use of the land for their herd of ponies. They believe there is no new evidence in this case other than evidence they consider to be irrelevant. They draw attention to the quarry and limekiln on the land and claim the route was more likely to be private, used by Estate tenants / employees. They believe the route is of no obvious use to the public because in their view it does not join nearby villages.</p>
National Highways	<p>They remarked that the modification of WN27/4 falls outside the extents of the A303 project and as such is not directly impacting the project. The interface is to a section of the existing A303 that will become a no through road and it is therefore considered that the modification will not have a detrimental impact on the Trunk Road Network.</p>

5.4. Councillor Mike Lewis 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.¹⁶ The route (F-G) was recorded as a 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. Landowner A raises this point as an indication that the route was private and that it would be of no obvious use to the public. 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.¹⁷ Therefore, it is likely that the route pre-dates 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

¹⁶ J. Riddall & J. Trevelyan, *Rights of Way: a guide to law and practice, fourth edition* (Ramblers' Association & Open Spaces Society, 2007), p. 109

¹⁷ 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. &c. and the Plans, third edition* (London: S. Sweet and Stevens & Norton, 1842), p.3 and 151.

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).

5.9. Landowner A considers there is no new evidence in this case other than evidence they believe to be irrelevant. They did not give any explanation as to why they consider the evidence to be irrelevant. Consideration of the requirement for new evidence is set out in section 6 below.

5.10. Landowner A raised a number of 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 various concerns that have been raised, they do not have a bearing on the outcome of this investigation.

5.11. Landowner A highlighted the failure of the applicant to notify them of the application. The failure of the applicant to certify the application does not necessarily prevent it being determined unless a landowner can demonstrate that they have been substantially prejudiced by the failure. All landowners were written to in May 2023 setting out the position with regards to uncertified applications and giving them the opportunity to comment. No evidence has been received to support a claim of substantial prejudice in this case.

5.12. Councillor Hobhouse provided several extracts of documents as evidence that the land over which the application route runs was held in strict settlement and therefore there would not have been anyone with the power to dedicate public rights over it. These documents have been considered in section 4.14 above and discussed in section 6 below.

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.

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 4.14 above. Land registration within South Somerset did not become compulsory until 1989.¹⁸ In this case the two title registers indicate dates of first registration of 1999 and 2003. Therefore, it is very unlikely that information contained within these 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.

Settled Land

6.12. Settled land is usually held in a trust for the benefit of a tenant for life, and on their death the benefit of the trust is to be transferred to the next person in line – the reversioner or remainderman. The tenant for life usually receives the rents and profits of the land but cannot sell it, although much will depend on the actual provisions of the settlement agreement itself. In this way land is transferred to (usually) successive generations of a family, without an owner in fee simple during the period of settlement.

6.13. 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 the dedication 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:

¹⁸ <https://www.gov.uk/government/publications/first-registrations/practice-guid-1-first-registrations>, accessed 29 March 2022

“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 [...] 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.*” (emphasis added)¹⁹

6.14. Thus, if the land over which a public right of way is alleged to exist was ever in strict settlement this might have a material effect of whether dedication at Common Law can be presumed to have taken place. It does not, however, remove any rights which were dedicated prior to settlement, nor does it prevent them from being dedicated after the period of settlement has come to an end.

6.15. There is evidence (see 4.14) that land within the Mildmay estate was subject to strict settlement for periods of time but at other times was held in fee simple. None of the documents explicitly show that the land over which section F1 to F2 of the route runs formed part of the land held in strict settlement and there is no evidence that the land over which section G to F1 of the route runs ever formed part of the Mildmay estate. Furthermore, there is evidence of the route being in existence prior to the Mildmay estate settlement of 1784. Therefore, the evidence does not show that there was no one with the capacity to dedicate over the route (or any part of it) at all material times and it is not considered sufficient to negate the possibility of dedication.

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

¹⁹ Definitive Map Orders: Consistency Guidelines, ninth revision (2016), 5.46.

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 from G to F2 as shown on Appendix 1 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.

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
18. Earl Poulett settlement
19. Sale catalogues, Hazelgrove Estate
20. Mildmay estate papers