



Somerset Council

WILDLIFE AND COUNTRYSIDE ACT 1981

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

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

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

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

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

1.5. Analysis of this evidence and all the other available evidence has indicated that on the balance of probabilities higher rights than currently recorded exist on parts of the application route. There are also sections of route where no rights are currently recorded but the evidence indicates it is reasonable to allege they exist.

1.6. The report therefore recommends that an Order be made, the effect of which would be to modify the DMS to record:

- A-A1-I-G-B-C-CE1-CE2 as a restricted byway
- CE4-E2 as a footpath

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.

- CE4-CE5-E as a restricted byway

1.7. It is proposed that no rights be recorded over section A3-B of the application route and sections A1-A2-A3 and CE2-CE3-CE4 remain recorded as footpaths.

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

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

For application 859 the applicant argues that

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

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

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

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

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

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

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

2.5. The line of the claimed route and footpath WN 23/40 runs through the garden of Two Oaks to the boundary with Hazlegrove School sports grounds (photograph 8). At point A3 the claimed route deviates from footpath WN 23/40 by heading diagonally across the school sport grounds to meet footpath WN 23/38 at point B (photographs 9, 10 & 12).

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

with in a separate report. Application 859 continues the route from point C along footpath WN 23/38 to point CE1.

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

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

2.9. At point CE2 the route comes to the junction of footpaths WN 23/38 and WN 23/12 and application 869. Application 869 has already been considered by Somerset County Council's Regulation Committee, who determined that a modification order should be made to add a restricted byway. Following receipt of objections to the Order the matter is to be referred to the Government's Planning Inspectorate as an opposed Order. The route of application 859 continues in a south-westerly direction along footpath WN 23/12 with no discernible boundary on either side, crossing the drive of Hazlegrove School and heading to a small wood (photographs 22 & 23).

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

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

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

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

3. Legislative framework

3.1. An overview of the legislation relating to the circumstances in which a Definitive Map Modification Order can be made can be found in Appendix 4. Paragraph 1.6 of that appendix sets out the circumstances in which SC must make an order to modify the DMS. In this case sections 53(3)(c)(i), (ii) and (iii) of the Wildlife and Countryside Act 1981 are of particular relevance.

3.2. Section 53(3)(c)(i) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows “that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path a restricted byway or, subject to section 54A, a byway open to all traffic”.

3.3. Section 53(3)(c)(ii) states the Map and Statement should be modified where the surveying authority discover evidence which, when considered alongside all other available evidence, shows “that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description”.

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

3.5. The standard of proof to be applied in cases where the route of a claimed right of way is not already shown on the Definitive Map and Statement consists of two limbs. An order should be made to modify the Definitive Map if the evidence shows that a right of way;

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

3.6. 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.

3.7. 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.

3.8. This investigation is seeking to discover whether rights of way *already* exist over the application route. The recommendation offered below 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.

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.

4.3. Throughout discussion of the evidence comparison is frequently made to the way in which other routes in the immediate vicinity of the application route have been recorded. Where other rights of way, roads or physical features have been referred to their location has been identified on the relevant appendix.

4.4. **Inclosure records**

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

Source: South West Heritage Trust

Reference: SHC Q/RDE/35

Appendix number: 7 (i)

Description and interpretation of evidence

4.4.1. Applications 858M north (A - C) and 859M (C - E) lie wholly within the Parish of Queen Camel and therefore fall within the area of the plan. The plan shows plots of land with individual reference numbers and a number of linear features. One of these linear features consists of solid parallel lines and runs from another feature labelled "to Wincanton" and follows a line broadly similar to the full length of application 859 (E-C). It then continues along a line broadly similar to section C to B of application 858. At point B there appears to be a line across the route and the solid lines change to pecked lines and curve round to Hazelgrove House.

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

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

4.4.4. M 415 Woolverton Hill is situated next to part of section CE2 to CE3 of application 859. The award document records "[...] M. 415 bounded on the East by Hazlegrove Lane and on the West North and South by lands of Sir

Henry Mildmay". The application route, being located on the eastern side of this plot, is therefore identified in the award as Hazlegrove Lane as opposed to lands of Sir Henry Mildmay.

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

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

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

Source: South West Heritage Trust

Reference: SHC DD/MI/20/6

Appendix number: 7 (ii)

4.4.7. The applicant has submitted an extract of this map in addition to the inclosure award map of the same date. The South West Heritage Trust have described it as "probably the original of the inclosure map".³ There is no discernible difference between how the application route is shown on this map and how it is shown on the inclosure award map so the document does not add any additional weight to the case.

4.5. **Tithe records**

Sparkford Tithe Map (1839)

Source: South West Heritage Trust

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

Appendix number: 8(i)

Description and interpretation of evidence

³ [Map of Queen Camel. \(swheritage.org.uk\)](http://swheritage.org.uk)

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 route under consideration does not lie within the Parish of Sparkford but from point B to E it runs adjacent to the parish boundary. Section B to E is depicted by solid parallel lines and coloured sienna. There is no key on this particular map to indicate the significance of the colouring. Assistant Tithe Commissioner Lieutenant Dawson did issue advice on the production of maps and that advice included a legend. However, there was no requirement for those producing tithe maps to follow the advice. It is therefore important to consider the line style used for a route in the context of the document as a whole and the other available evidence.

4.5.3. In this case other routes depicted in the same way as the application route include public vehicular roads such as Sparkford High Street. However, routes which currently have no recorded rights over them are also shown in the same way, for example a cul-de-sac route north of plot 140. Therefore, the line style which was used for the application route was not necessarily restricted solely to routes which were believed to carry public vehicular rights.

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

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

Source: South West Heritage Trust

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

Appendix number: 8(ii)

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

4.5.6. Two parts of the route under consideration (A-A1 & B-E) are depicted by solid parallel lines and coloured sienna. There is no key on this particular map to indicate the significance of the colouring. Assistant Tithe Commissioner Lieutenant Dawson did issue advice on the production of maps and that advice included a legend. However, there was no requirement for

those producing tithe maps to follow the advice. It is therefore important to consider the line style used for a route in the context of the document as a whole and the other available evidence.

4.5.7. In this case other routes depicted in the same way as the application route include public vehicular roads such as Babcary Road and section A-A1 of the route is shown on this map as a continuation of that feature. However, routes which currently have no recorded rights over them are also shown in the same way. For example, the route just to the west of point E that runs alongside plot 66. Therefore, the line style which was used for the application route was not necessarily restricted solely to routes which were believed to carry public vehicular rights.

4.5.8. Significantly there is no obvious link between the two sections of route depicted and each end in a solid line. They could in fact be two separate routes connecting the Hazelgrove estate to surrounding villages. A situation that would be more in favour of private rights.

4.5.9. However, the absence of any linear feature between points A1 and B does not necessarily mean that a public route could not have existed. In fact, the Ilchester to Wincanton Road that today forms part of the A303, is also shown on this map with an absence of a linear feature connecting the route to the west of point E. Although in that case the two sections of route are shown open ended.

4.5.10. This depiction does raise a question, if these were continuous routes, then why were some sections considered to affect the tithe payable but others not. One possibility is that the missing sections differed in a way that made those parts of the route productive so subject to a tithe, for example by being unfenced thereby allowing use by grazing animals. There is some consistency with this possibility and the detail shown on the OS Old Series map. The application route is shown on the OS Old Series map as changing from solid casing to pecked casing⁴ from point B towards Hazelgrove House. Similarly, the section of the Ilchester to Wincanton Road not shown on the Tithe map is shown with a pecked casing on the OS Old Series map.

⁴ "fenced roads are indicated by solid casing and unfenced roads are indicated by dotted or pecked casing" R. Hellyer and R. Oliver, *The First Ordnance Survey Map: A history and cartobibliography of the one-inch Old Series of England and Wales* (London: The Charles Close Society, 2015), p. 95.

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

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

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

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

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

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

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

Appendix number: 8(iv)

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

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

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

4.5.19. Plots within South Barrow lying adjacent to the Parish boundary from point A down to the Sparkford Parish boundary are numbered from 79 through to 75. The map shows a linear feature running adjacent to the parish boundary from plot 79 to 78 this equates to A to A1 of application 858. At A1 a solid line is shown across the end of the linear feature and there is no linear feature shown on the Queen Camel side of plots 77 to 75. This is consistent with the Queen Camel tithe maps.

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

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

Source: South West Heritage Trust

Reference: SHC DD/MI/10

Appendix number: 17 (iv)

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

4.6. **Quarter Session records**

Quarter Sessions Roll 1873

Source: South West Heritage Trust

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

Quarter Sessions Order Book 1874
Source: South West Heritage Trust
Reference: SHC Q/SO/25

Quarter Sessions Roll 1874
Source: South West Heritage Trust
Reference: SHC Q/SR/695/56

Appendix number: 9

Description and interpretation of evidence

4.6.1. The Quarter Sessions Roll in 1873 refers to an application to stop up divert and turn part of a highway in the parishes of Sparkford and Queen Camel. From the description of the proposals and the accompanying plan the part of the highway that was to be stopped up ran south-west from point CE2 along a line broadly consistent with the right of way recorded on the Definitive Map as WN 23/12 to point CE4 and then south to point E2. Although the proposal sought the stopping up of this part of the highway, rights on foot ('a footway') were to be reserved. At point CE2 it was proposed that the highway would turn to continue in a south-easterly direction along a new road.

4.6.2. The Quarter Sessions plan shows the proposed alteration of roads with the proposed new road coloured pink and marked *B – E*. The existence of rights over the line of the proposed new road were the subject of application 869M. Application 869 has already been considered by Somerset County Council's Regulation Committee, who determined that a modification order should be made to add a restricted byway. Following receipt of objections to the Order the matter is to be referred to the Government's Planning Inspectorate as an opposed Order. The highway proposed to be stopped up is coloured green and marked *B-C-D* and corresponds with application route 859 section CE2 to CE4 and with section CE4 to E2 as shown on Appendix 1.

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

along the line of footpath WN 23/12 from CE5 to E1. At point E1 at the junction with the Ilchester Road the letter *N* is marked on the plan.

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

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

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

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

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

4.6.8. The Quarter Sessions Order book records in the Epiphany Session of 1874 the reasons why the new road will be more commodious to the public “because the said new road is much wider than the said old road and because the said new road is a hard level and well constructed road and will at all seasons of the year be a firm and good road and open to the public and all Her Majesty’s liege subjects to use and pass along the same with and without horses, carts and carriages or otherwise to use the same as a public highway”

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

4.6.10. The Court ordered

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

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

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

4.6.13. The Planning Inspectorate’s Consistency Guidelines advise

“Quarter Sessions records go back a long way. They may provide conclusive evidence of the stopping up or diversion of highways. [...] It should be borne in mind that Quarter Session records are conclusive evidence of those matters the Court actually decided, but are not conclusive in relation to other matters. Reliance on orders alone can be misleading and evidence of completion may be required.”⁵

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

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

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

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

⁵ Paragraph 6.3 of the Planning Inspectorate (April 2016) Definitive Map Orders: Consistency Guidelines

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

4.7. **Ordnance Survey maps**

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

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

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

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

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

4.7.4. The boundary sketch map and remark books are of particular relevance as sections A to A2 and B to E of the application routes lie along the Queen Camel Parish boundary. A linear feature with solid casing lines is shown on the map that corresponds to section A to A2. Another linear feature is shown on the map that corresponds to section CE2 to B. From point CE2 to CE1 it has solid casing lines and from point CE1 towards B it has a pecked casing line

and at point B the feature is shown as turning to head north-west but the sketch map does not cover the route any further. The wording “Private Road” is above the pecked casing line.

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

4.7.6. No linear feature is shown that corresponds to section CE2 to CE3 of the application route. There is a linear feature shown running from approximately CE3 to CE4 to E that also includes a turning at point CE4 heading in the direction of E2.

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

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

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

4.7.8. On sheet LXXIV.3 at point A, at the junction of application route 858 with Babcary Road there is a pecked line across the start of the route indicating a feature which either did not obstruct pedestrians or which was indefinite or surveyed to a lower standard than usual⁶. Leading from Babcary Road the route is shown with solid casing lines.

4.7.9. At point A1 the width of the route reduces but continues with solid casing lines. At point A2 it meets a solid line indicating a physical feature

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

obstructing the route, for example, a gate⁷. Although today it is more typical to find gates and other limitations on footpaths, bridleways and / or private roads, in the 19th century it was not uncommon for minor public roads to be gated.

4.7.10. From A2 pecked casing lines head in a south-easterly direction then cross a wider set of pecked casing lines coming from the direction of Hazelgrove House. The pecked lines continue in a south-easterly direction to the edge of the sheet where the letters 'F.P.' are marked. "[T]he object of... F. P. being that the public may not mistake them for roads traversable by horses or wheeled traffic"⁸. The wider set of pecked casing lines meets the edge of the sheet further to the east where the letters 'B.R.' are marked. "Bridle roads were regarded as passable on horseback. From 1884 they were shown as 'B. R.'"⁹.

4.7.11. Continuing on sheet LXXIV.7 the pecked casing lines marked F.P. on this sheet head to point C and the pecked casing lines marked B.R. head to point B where they are joined by a narrower set of pecked lines that have come from the north-east on the other side of the South Barrow Parish boundary and labelled F.P. at the north edge of the sheet.

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

4.7.13. From point B to CE1 the route is shown as a wide set of pecked casing lines. At point CE1 there is a solid line indicating a physical feature obstructing the route, for example, a gate. From point CE1 to CE2 the route is shown coloured sienna. The sienna colouring was used to indicate a metalled

⁷ R. Oliver, *Ordnance Survey Maps: a concise guide for historians, third edition* (London: Charles Close Society, 2013), p. 117.

⁸ *Ibid.*, p. 96

⁹ *Ibid.*, p. 96

surface¹⁰. This section of the route also has solid casing lines with a thickened easternmost casing line with the words “Hazelgrove Lane” underneath.

4.7.14. In relation to thickened casing lines the Planning Inspectorate’s Consistency Guidelines state that “From 1884 onwards, on the large scale plans, those metalled public roads for wheeled traffic, kept in proper repair by the local highway authority, were to be shown with shaded or thickened lines on the south and east sides of the road”¹¹. However, this is not to say that all routes with a shaded line were considered public roads.

4.7.15. From 1885 OS surveyors were instructed that all Metalled Carriage Drives will in future be shaded but with shading not quite so prominent as on Public Roads. In the late 19th century ‘carriage drive’ appears to have meant ‘private vehicular route’ to the OS¹². This would mean that some public and some private roads would be shown on OS maps with a shaded casing line.

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

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

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

¹⁰ Hodson, Y., ‘Roads on OS 1:2500 plans 1884 – 1912’ in Rights of Way Law Review, July 1999, Section 9.3, p110

¹¹ DMO Consistency Guidelines, 6th revision May 2015 Section 12.26, page 8

¹² Hodson, Y. , ‘Roads on OS 1:2500 plans 1884 – 1912’ in Rights of Way Law Review, July 1999, Section 9.3, p.109

casing lines towards CE3 consistent with the route being a footpath by that time. At CE3 the pecked lines are set within solid casing lines and turn at CE4 to head south to E2 in accordance with the route of the highway to be stopped up shown on the plan presented to the Quarter Sessions (see Appendix 9). Another feature bound by solid casing lines is also shown leading from point CE4 to CE5 to E. This is consistent with the plan presented to the Quarter sessions and other historical documents. Just after point CE5 there is a line across the route possibly indicating a gate and at this point a narrow set of pecked casing lines heads to E1 along a similar line to footpath WN 23/12.

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

Map of Queen Camel (1889)

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

Reference: SHC DD/BT/ 5/18

Appendix 10(v)

4.7.20. The applicant believes the map to date from 1885 and appears to be a draft of the later OS map. The South West Heritage Trust have it dated 1889 and recorded as a tracing of the OS map¹³. A section of the map showing the date is included in the appendix. The map covers parts of application routes 858 and 859. There is no discernible difference between how these parts of the routes are shown on this map and how they are shown on the 1887 OS map, therefore the document does not add any additional weight to the case.

1898 OS Revised New Series Map

Sheet 296

Survey Date: 1884-85; Revised: 1897

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

Appendix 10 (vi)

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

¹³ [Map of Queen Camel. \(swheritage.org.uk\)](http://swheritage.org.uk)

4.7.22. Sections A to A2, CE1 to CE2, and CE3 to E, are depicted as fenced, metalled third class roads. The OS used the third class road symbols to record both public and private roads.¹⁴ From point CE1 to B the route is shown as unfenced and then from point B deviates from the application route by heading to point H at the rear of Hazelgrove House, a destination which is more indicative of a private road.

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

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

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

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

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

4.7.27. A smaller scale (1:10,560) map was also published based on the 1901 revision. Compared to the larger scale map there are fewer details. The B.R. annotation at A2 and F.P. annotations between CE2 to CE3 and CE5 to E1 are

¹⁴ Y. Hodson, *Popular Maps: The Ordnance Survey Popular Edition One-Inch Map of England and Wales 1919-1926*, (London: Charles Close Society, 1999), p. 132.

absent but otherwise there are no discernible differences in how the route is shown (see Appendix 10 (x)).

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

4.7.28. The Popular Edition was published just after the First World War. It was the first OS Map to be published in full colour for sale to the general public. It also graded both roads and tracks according to their suitability for motor traffic. The complex system attempted to give information about the road surface and how fast it was for motorists.

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

4.7.30. Both features are uncoloured. The Popular Edition contained the instruction "Private Roads are uncoloured". OS maps carried this statement until 1934, the inference being that all private roads were uncoloured, but not all uncoloured roads were private.

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

Interpretation of evidence

4.7.32. The information contained within the OS maps provides strong evidence of the physical nature of the routes and how they altered over the nineteenth and twentieth centuries. The OS maps are consistent with the Quarter Sessions records. In that, prior to the date of the stopping up and diversion order, a physically significant route is shown running all the way from A to E. After the stopping up (but reserving rights on foot) and diversion of the route at point CE2, the route from CE2 towards E is then either absent or shown as less physically significant and on the 1903 County Series Second

Edition Map labelled as a footpath. This is in contrast to section CE1 to CE2 labelled Hazelgrove Lane on the 1887 OS map and depicted in a manner consistent with a metalled public road for wheeled traffic, kept in proper repair.

4.7.33. What the OS maps also show is an alteration of the physical routes in the vicinity of Hazelgrove House having occurred between 1811-17 and 1887. The earlier route A1 to I to G to B is no longer recorded as physically evident on the ground by the time of the 1887 OS map. It appears to have been replaced by two separate routes one a through route around Hazelgrove House from A to A1 to A2 to B/C to CE1 to CE2 and the other heading from B to the rear of Hazelgrove House, labelled “private road” on the OS Boundary Sketch Map.

4.7.34. The 1887 OS map and 1898 OS Revised New Series Map show the realigned section from A2 to B/C as being less physically significant and likely unmetalled in comparison to remaining earlier sections of the route such as A to A1 and B to CE2.

4.7.35. Since 1888 Ordnance Survey maps have carried the following statement: “The representation on this map of a road, track or footpath is no evidence of the existence of a right of way”.¹⁵ This disclaimer is reinforced by case law, which states that OS 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”.¹⁶

4.8. **OS Object Name Book**

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

Description and interpretation of evidence

4.8.1. The name Hazelgrove Lane (approximately CE2 to CE1) is listed in the object names book in the column “Various modes of Spelling the same

¹⁵ R. Oliver, *Ordnance Survey Maps: a concise guide for historians*, third edition (London: Charles Close Society, 2013), 114

¹⁶ *Moser v Ambleside Urban District Council* [1925] KLR 537

Names”. The word “obsolete” is written in red in brackets underneath. The “List of Names as written on the Plan” column is blank. In the remarks column it states, “West side of lane demolished”.

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

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

4.9. **1910 Finance Act**

Working Plans and Valuation Book

Source: South West Heritage Trust

Reference: SHC DD/IR/OS/74/7&3 and SHC DD/IR/B/27/1

Appendix number: 12

Record Plans and Field Books

Source: National Archives (extracts only)

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

Appendix number: 12

Description and interpretation of evidence

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

4.9.2. Where a linear way is excluded from surrounding hereditaments, 'there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books'.¹⁷ However, this section was not shown as excluded on the later, more authoritative, record plan

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

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

4.9.5. The extract from the field book for hereditament 54 includes a deduction for "public rights of way or user", which in a separate entry are described as foot paths. Hereditament 54 is a particularly large hereditament that covers section A2 to CE3 as well as a large area of land to the north of the application route. The extract gives no indication as to the route of the right of way that the deduction relates to. The deductions may, or may not, have been for A2-CE3.

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

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

4.9.8. Overall, this document set provides some evidence of the existence of public rights of way within plots of land through which the application routes

¹⁷ DMO Consistency Guidelines 5th revision July 2013 Section 11 page 3

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

4.10. **Highway authority records**

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

Source: SC

Appendix number: 13

Interpretation of evidence

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

4.10.2. According to the Planning Inspectorate's *Consistency Guidelines*, "[t]he evidential strength of handover maps is they are conclusive evidence of the highway authority's acceptance of maintenance responsibility, a commitment which would not normally have been undertaken lightly".¹⁸ However, it should be recognised that "the maps were purely internal documents and the public had no mechanism of challenging what was shown on them." As a result, "they cannot be regarded as conclusive" as to the status of a highway.¹⁹

4.10.3. Despite these documents being good evidence of the status of routes which are actively shown on them, it would be unsafe to hold that where a road has not been recorded it is evidence that said route was not a highway. The authority may simply have been unaware of the existence of highway rights. Alternatively, they may have considered a route to carry public rights but not be maintainable at the public expense. Furthermore, the road record documents did not typically record public bridleways or footpaths, thus the omission of a route does not indicate the route was not regarded as public. The absence of the application route from these records is therefore not evidence against public rights, or even against public vehicular rights. What

¹⁸ *Definitive Map Orders: Consistency Guidelines, third revision* (2013), 6.9.

¹⁹ J. Sugden, 'Highway authority records', *Rights of Way Law Review*, 9.1, p. 14 (CD edition).

can be said with some certainty is that, in this case, the road record documents are not supportive of a public road maintainable at public expense existing over points A to E.

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

Survey Map

Source: SC

Appendix number: 14(i)

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

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

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

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

Survey Cards (1950-51)

Source: SC

Appendix number: 14(ii)

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

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

Draft Map (1956)

Source: SC

Appendix number: 14 (iii)

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

Summary of Objections to the Draft map

Source: SC

Appendix number: 14(iv)

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

Draft Modification Map (1968)

Source: SC

Appendix number: 14(v)

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

Summary of Counter Objections to the Draft Modification Map

Source: SC

Appendix number: 14(vi)

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

Provisional Map (1970)

Source: SC

Appendix number: 14(vii)

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

Definitive Map and Statement

Source: SC

Appendix number: 14(viii)

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

4.11.13. There is a difference in how the route of path 40 is described in the Statement and how it appears on the Map. The route described in the Statement is from "Junction of footpaths 27/16 and 27/15 at Parish boundary [C] north-westerly to County road at '122'. [A]" as shown on the Draft Modification Map. The route description does not appear to have been amended to reflect the changed alignment shown on the Provisional and

Definitive maps, with the route heading north-westerly to A from the junction of footpaths WN 23/38 and WN 25/14.

4.11.14. As the right of way is now under review, neither the Map nor the Statement have precedence with regard to the weight to be attached to the information on each.²⁰ Therefore, the actual alignment needs to be determined by reference to the evidence presented.

Interpretation of evidence

4.11.15. Sections A to A3 and B to CE5 of the application routes have been recorded on the DMS as public footpaths. There is no right of way recorded on the DMS that corresponds with section CE5 to E of the application route or CE4 to E2 as shown on the Quarter Sessions records.

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

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

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

4.12. Turnpike Records

Ilchester Turnpike Maps (1826)
Source: South West Heritage Trust

²⁰ R (Norfolk CC) v Secretary of State for Environment, Food and Rural Affairs (2005)

Reference: SHC D/T/ilch/1 1826

Appendix number: 15

Description and interpretation of evidence

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

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

4.12.3. The large scale map is more focussed on the turnpike road itself but does show features that adjoin the road. At point E, a break is shown in the turnpike boundary and a linear feature is shown running north. The map key indicates the route, at this point, is fenced and there is no indication of a gate across the route.

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

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

4.13. **Commercial Maps**

Day and Masters (1782)

Appendix number: 16 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. The map shows a route depicted as an inclosed road along a line broadly similar to E to B. At approximately point B the route is shown leading towards “Haslegrove” the site of Hazelgrove House and depicted as “Open Roads over Commons or Downs”. There is little other detail shown on the map for this area including further north where a route is shown in the vicinity of the modern day Babcary Road but its connection to South Barrow or the wider road network is not detailed.

4.13.3. Little is known about the basis upon which Day & Masters selected the features which were to be shown on their maps. That the route is shown as terminating at Hazelgrove House (a private residence) is more indicative of private rather than public rights. In the circumstances this map is only of very limited weight but confirms the physical existence of section E to B of the application routes in 1782 and a route from B to G.

Greenwoods (1822)

Appendix number: 16 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 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 wanted to show those roads that he believed to be publicly accessible or that were useful for the public in some other way.

4.13.5. Sections broadly similar to A to A1 and G to B to E are depicted as “cross roads”. Although not specifically defined on the map, this term was being used to refer to more than just the point at which two roads cross. In one prominent case the courts considered Burdett's map of 1777 which included in its key turnpike roads and cross roads. The judge reasoned that "This latter category [cross roads], it seems to me, must mean a public road in respect of which no toll is payable. This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage. [...] There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use. Pingot Lane [the route under consideration in that case] must have been considered,

rightly or wrongly, by Burdett as being either a bridle way or a highway for vehicles.”²¹ 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 an individual map before drawing any inferences.²²

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 (see Appendix 16). 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. In this case, the route from CE4 to the front of Hazelgrove House is shown and there has been no evidence to suggest this route was anything other than a private carriage drive.

4.13.7. 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 “these maps²³ only show it as a road. 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”.²⁴ 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.²⁵

4.13.8. It seems as though Greenwood’s either did not consider all “cross roads” to be public vehicular routes, or that they did not make very careful checks about the public status of the routes they recorded. In this particular case, section A to A1 is shown as a cul-de-sac and section E to B to G is shown as terminating at Hazelgrove House (a private residence). Whilst both these situations would be more indicative of private rather than public rights, other contemporary evidence such as the turnpike records and the OS old series map, point towards sections A to A1 and G to B to E being connected through A1 to I to G. A through route being more indicative of public rights. In the circumstances this map is only of very limited weight and confirms the physical existence of parts of the application routes in 1822.

²¹ *Hollins v Oldham* (1995), CD 19

²² Definitive Map Orders: Consistency Guidelines (2016), 2.4.3
<https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines>, accessed 29/08/2024

²³ Faden’s map of 1802 and Greenwood’s maps of 1822 and 1823

²⁴ *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77

²⁵ *Fortune & Ors v Wiltshire Council & ANR* [2012] EWCA Civ 334

4.14. **Other Sources**

Manorial Maps (1827-48)

Source: South West Heritage Trust

Reference: SHC DD/MI/10, DD/SAS/C212/10/3, DD/WY/9/2/75,
DD/S/CM/2

Appendix number: 17(i, ii, iii, v)

4.14.1. Four early nineteenth century maps were submitted by the applicant in support of their applications. These maps appear to depict the extent of the Mildmay estate lying mainly within the Parish of Queen Camel and it is possible that they were all produced from the same survey.

4.14.2. All the maps include linear features that correspond with sections A to A1 and B to E of the application route.

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

4.14.4. All the maps depict a linear feature running westerly from point B to G at Hazelgrove House along a line broadly similar to that shown on the Queen Camel Inclosure Map (1795). In addition, the 1827 Manorial map of Queen Camel (Appendix 17 (i)) and 1848 map of Queen Camel (Appendix 17 (v)) give some indication of another linear feature also running from point B but to A2 then A1.

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

4.14.6. The manorial maps corroborate the physical features A-A1 and G to B to E being present at that time, and two of them also provide some indication of a through route from A1 to B following the parish boundary.

Map of Hazelgrove Park (undated, circa 1872-1886)

Source: South West Heritage Trust

Reference: SHC DD/BT/18/13

Appendix number: 17 (vii)

4.14.7. The applicant has dated this map as 1880. The map appears to be undated but included in a bundle of papers from 1872 to 1886. The depiction of the two routes from B to H and B to A2 are similar to those shown on the 1887 OS map. This is consistent with the map being contemporary with the other documents in the bundle.

4.14.8. The map provides further evidence as to how the linear features in the vicinity of Hazelgrove House changed over time.

Plan of Queen Camel (undated, circa 1795)

Source: South West Heritage Trust

Reference: SHC DD/BT/4/2/33

Appendix number: 17 (viii)

4.14.9. The map appears to be undated but has been dated C1881 by the applicant and is also recorded on the South West Heritage Trust online catalogue with a date of 1881. However, the map reference details Sir Henry Mildmay farms at rack rent and the map bears a strong resemblance to the 1795 Inclosure Map including the same reference letters and numbers being attributed to each plot.

4.14.10. The map is most likely a copy of the 1795 Inclosure Map and therefore does not add any additional weight to the case.

Exchange of lands (extract) (1873)

Source: National Archives

Reference: MAF 11 /142/4306

Appendix number: 17 (vi)

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

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

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

Sale catalogue, Hazelgrove Estate (1920)

Source: South West Heritage Trust

Reference: SHC DD/X/WBB/177

Appendix number: 19 (i)

4.14.14. 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.

4.14.15. 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”.

4.14.16. 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 routes. 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.

4.14.17. 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)

4.14.18. 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.

4.14.19. 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 routes. It cannot be assumed that the same status applied to all other land held at any time by the Mildmay family.

4.14.20. 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

4.14.21. 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.

4.14.22. 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 funds to purchase further land within Queen Camel.

4.14.23. The fact that a decision from the Court is needed in order to both cut the timber and to use funds 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 routes. 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 were found that related to plots adjacent to or through which the application routes run.

4.14.24. 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.

4.14.25. 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.

4.14.26. 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.

4.14.27. 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”.

4.14.28. 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.

4.14.29. 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.

4.14.30. Further extracts provided were from a "Draft Abstract of the Title of Sir Henry Paulet St John Mildmay Baronet 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.

4.14.31. A further extract was from an "Abstract of the mortgages referred to in the Schedule to the Deed of 23rd Decem[ber] 1718 and of the Assignments and Reconveyances thereof". 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 routes.

Earl Poulett settlement (1813)

Source: South West Heritage Trust

Reference: SHC DD/BR/ehp/27

Appendix number: 21

4.14.32. 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.

Schedule to settlement of 1837

Source: South West Heritage Trust

Reference: SHC DD/BT/18/13

Appendix number: 22

4.14.33. This document has been re-titled “The Schedule to which the Settlement of 1837 refers” and sets out a list of named plots of land associated with the Hazelgrove Estate. Therefore, it is likely that this relates to the 1837 Settlement mentioned in the 1929 Hazelgrove Estate sales catalogue.

4.14.34. The list of named plots was compared with the Queen Camel Inclosure Award Map (1795) and Sparkford Tithe Apportionment (1839). It was found that the plots of land over which section A1 to B of the application route runs were included in the list and so likely to be held in strict settlement at that time.

4.14.35. The plots of land in Queen Camel that the sections of the route A to A1 and B to E run alongside are also included in the list. However, these sections of the route are shown on the Inclosure Award Map as separate from the individual plots and in relation to the section alongside Woolverton Hill described separately in the award. From the tithe apportionment records the land on the other side of these sections of route was not all owned by the Mildmay family. Therefore, it is not certain whether these sections of route were included within the 1837 Settlement.

4.14.36. The plot in Sparkford over which section CE4-E2 runs, Forge Pitts, was not included in the list. 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 in relation to this section.

Hazlegrove House Registered Park and Garden Statement of Significance (2018)

Source: produced on behalf of Highways England in relation to the A303 Sparkford to Ilchester dualling scheme

Appendix number: 23

4.14.37. This document was not produced for the purpose of determining the existence or status of public rights of way. However, it does contain some helpful historical information, extracts of a 1573 map of Hazelgrove and the results of an aerial survey.

4.14.38. The document states that “Hazlegrove House RPG [Registered Park and Garden] developed from the 17th century when the earlier house was extended and the existing [18th century] Palladian style frontage was built. This work effectively turned the house 180 degrees with the new frontage looking south [south-west].”

4.14.39. This re-orientation may explain why the route from A1 to I to G was no longer of interest to Hazelgrove House and therefore provided an opportunity to encourage the public to follow an alternative route closer to the boundary and away from the house particularly by the installation of new paling along a route from A1 to A2 as noted in the OS boundary remark book (1883).

4.14.40. The document goes on to state that “Part of the Tudor house remains incorporated into the current Hazlegrove House [...] an earlier porch feature faces north from the rear of the house. This suggests that the house previously faced and was approached from the north [north-east] confirmed by the 1573 map that shows a northern approach to the property with no access through the enclosures to the south [south-west].”

4.14.41. The fact that part of the Tudor house is incorporated into the current house provides a useful reference point when examining the 1573 map which is considered in more detail below.

4.14.42. The report notes that the 1573 map “implies that the southern border of the land associated with the Hazlegrove estate terminates with a track, and potential park pale, that runs to the south of the large enclosure known as Coages Park.” If this is correct then section CE2 – E of the route would have fallen outside of the Hazelgrove Estate, at that time.

4.14.43. Appendix A to the report includes an aerial survey map and associated transcription. Of particular interest is the area that covers the unfenced section of the route from point B. However, the survey information does not extend beyond point A3.

4.14.44. There are three features extending from the line of C - B that could indicate historical routes, see appendix 23. A feature marked B - K - G, that heads to Hazelgrove House. This is consistent with the route shown on the OS 'Old Series' Map, the turnpike map and the two commercial maps but does not appear on the later OS County Series maps. A feature marked B - H. This is consistent with the route shown on the OS County Series maps and indicates that this was in fact a different route to that shown on the earlier maps. A feature marked L - K - J. The report transcription has categorised this feature as type "LANE / HOLLOW WAY / PATH" and describes it as cutting the earlier route [B - K - G] but also considers that it may be a continuation of a boundary.

4.14.45. There is no feature shown on the aerial survey map corresponding to a route from B-X-A3. Although it is unclear whether the survey has extended into this area as it mainly lies outside the outline of the extant ridge and furrow markings. There are also routes known to have physically existed on the ground that have not been picked up on the aerial survey e.g. A3 - C as shown on the OS County Series maps.

4.14.46. The aerial survey map is inconclusive as to the historical route followed from B to A1 but provides further evidence of a change in the physical routes existing on the ground in the vicinity of Hazelgrove House.

Map of East Camel (1573)

Source: South West Heritage Trust

Reference: SHC DD/MI/20/5

Appendix number: 24

4.14.47. This map pre-dates changes to buildings and field boundaries visible on the 1795 Inclosure Map, particularly in the vicinity of Hazelgrove House. However, there are a number of features that can be used to establish approximate locations. The first being the buildings, which according to the Highways England report, a part remains incorporated within the current Hazelgrove House. The distinctive shape and size of Camel Leaze with its associated track is also clearly identifiable. Compass directions are written on each edge of the map. Although these appear indicative rather than precise as the northern boundary of Queen Camel runs on a more north-north-easterly line curving north-east closer to Hazelgrove and the eastern boundary following a more south easterly line.

4.14.48. There are two linear features on the map in the vicinity of the application routes. One running from the north-east boundary from what appears to be a gate at approximately point A1 towards the buildings. This is consistent with a route shown on the OS Old Series map and Turnpike Map but on the 1573 map it stops before reaching the buildings at a solid field boundary (approximately point I). There are gaps shown in the two field boundaries to the south-east that after turning to head in that direction would lead to a point where it appears possible to either then turn to access the buildings or continue through a gap in the next field boundary to approximately point B.

4.14.49. Another gap is shown in the north-east field boundary at approximately point X. The map does not extend beyond the north-east field boundaries with the exception of what appears to be a single field but this is in a different style to the rest of the map and may have been added later. Therefore, the map provides little evidence in relation to section A to A1 to A2 to X.

4.14.50. The second linear feature starts at what appears to be a gate at approximately point B and follows the south-eastern boundary towards point CE2. The linear feature is open ended at this point and the map does not cover the area beyond point CE2.

4.14.51. The location of this feature is consistent with the later evidence for section B to CE2 of Hazelgrove Lane and provides evidence of the long historical existence of the route.

5. Consultation and other submissions

5.1. Consultations regarding the application route were sent out to all landowners and relevant local and national user group organisations in June 2021. The list of consulted parties can be found at Appendix 6. At the same time, notice of the application was posted on site inviting comments and the submission of evidence.

5.2. The remainder of this section of the report summarises the responses received to that consultation. Landowners are identified by letter (i.e. Landowner A, Landowner B etc). These letters correspond with the references

on the landownership plan at Appendix 3. Where responses were received from individual members of the public (as opposed to organisations) who are not landowners, they have been referred to as Respondent 1, Respondent 2, etc.

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

Consultee	Details
Landowner A	Had no objection to upgrading the footpaths to bridleways but expressed concerns regarding the alignment of section A2 to B as this would impact on the school playing surfaces, disrupt the school's activities and cause major safeguarding concerns. They strongly wish to retain the current alignment that exists on the ground and follows the field boundaries as shown on the modern OS map. They submitted conveyance documents from their archives, for information, and a section of the modern OS map showing the current alignment of the footpath (see Appendix 18).
Landowner B	They advised that the gate at point A has been kept locked for the past 27 years and remains locked to stop cattle and sheep being stolen. The landowner also commented that they experience enough problems with the route being a footpath with walkers parking and blocking the farm entrance. Also in the past, a barn has been burnt down. They consider it totally unacceptable to change the footpaths to bridleways.
Landowner C	They highlighted the stopping up of recorded footpath WN23/12 and introduction of a substitute section of bridleway as part of the A303 Sparkford to Ilchester dualling.
Historic England	Their understanding based on 1st edition Ordnance Survey maps (1873-1888) is that a bridleway ran to the north of Hazelgrove House, across the northern end of the park to join the former Hazelgrove Lane running north-south along the east perimeter of the park. The lane terminated just to the north of the park's south drive, spurring east to join Sparkford High Street. This has now been severed by the A303. The route that continues south west across the park, from where the lane terminates, is a footpath.

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

	adjacent plot and that this would not have happened without challenge if the lane had been a public bridleway. A redacted version of their full report is included at Appendix 18.
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. Submitted a copy of the Hazlegrove House Registered Park and Garden Statement of Significance produced on behalf of Highways England in relation to the A303 Sparkford to Ilchester dualling scheme as evidence of the history of the Mildmay estate.

5.4. This investigation is concerned with correctly recording public rights, which may be higher than those currently recorded. Concerns about suitability and desirability of the application route, while understandable, cannot be taken into account under the current legislation. Though it is important to acknowledge the various concerns that have been raised, they do not have a bearing on the outcome of this investigation.

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

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

5.7. The late Mike Lewis (former Councillor) drew attention to a 1795 map of Queen Camel. The 1795 map of Queen Camel has been considered as part of the Inclosure award records in section 4.4.

5.8. The Parish Council claim that the Mildmay family did not permit public access to their land although it is not clear from their submission on what basis this claim is made. Even if the Mildmay family were not disposed to

creating any new public rights over their land, this would not have affected those public rights that already existed. The Quarter Sessions records considered in section 4.6 are also evidence of the Mildmay family both acknowledging public rights of way existing over their land and creating a new public right of way. Even where they applied for a section of highway to be stopped up, they did not apply to stop up rights completely as they proposed to still maintain public rights on foot.

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

5.10. Both the Local Member and the Parish Council make mention of the Mildmay estate's access to kennels. The 1887 OS map does indicate the existence of kennels within the Mildmay estate that lie south of point CE2, close to Sparkford High Street. However, because the estate may have made use of a route does not automatically mean that only private rights exist over it. In fact, the route described by the Parish Council does not lead directly to the kennels and includes a section where there is conclusive evidence from the Quarter Sessions records that it was a public carriageway.

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

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

5.13. Councillor Hobhouse provided several extracts of documents which he considered 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. He also provided a copy of a report produced on behalf of Highways England. These documents have been considered in section 4.14 above and discussed in section 6 below.

6. Discussion of the evidence

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

6.2. The Quarter Sessions records provide strong evidence of the existence of a public highway that ran from South Barrow to B to C to CE1 to CE2 to CE3 to CE4 to E2. If no such public highway existed there would be no need for the landowner to apply to the courts to have section CE2 to CE3 to CE4 to E2 stopped up and diverted onto a new line.

Section CE2 to CE3 to CE4 to E2

6.3. The Quarter Sessions records provide conclusive evidence that the higher public rights along section CE2 to CE3 to CE4 to E2 were stopped up, but with the public rights on foot remaining. No evidence has been found that those rights on foot have since been stopped up, therefore they will still exist today. For section CE2 to CE3 to CE4 rights on foot are already recorded on the DMS. For section CE4 to E2 no rights are currently recorded, and these must be added to the DMS.

Section CE4 to CE5 to E

6.4. The application route continues from point CE4 to CE5 to E. All the historical evidence covering the area prior to 1874, including from the Inclosure, Turnpike, Tithe and Ordnance Survey records and the Greenwoods and Manorial maps, points towards CE4 to CE5 to E being the original continuation of the route B to CE4. Furthermore, section CE4 to CE5 to E is consistently shown on each of these documents in the same manner as section B to CE4. It appears to have been the only continuation of B to CE4 prior to CE4 to E2 coming into existence (which based on the tithe record and manorial maps may have been between 1842 and 1848). The 1873 Quarter Sessions records provide strong evidence that B to CE4 was a public carriageway prior to it being stopped up by the court. It therefore follows that CE4 to CE5 to E would also have been a public carriageway connecting the route to the wider road network.

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

rights existing over the earlier route (CE4 to CE5 to E) as highway rights can only be extinguished through due legal process.

6.6. Section CE4 to CE5 to E was omitted from the 1873 application to the Quarter Sessions for a stopping up order. A search of the County Council's own records and of those held by the South West Heritage Trust, where the record of a legal stopping-up would be expected to be found, has produced nothing to suggest that a stopping-up of section CE4 to CE5 to E took place either before or after 1873. However, the Natural Environment and Rural Communities Act 2006 will have had the effect of extinguishing mechanically propelled vehicular rights over the route while leaving all other 'lower' rights. As such the route would now be a restricted byway but due to the legal stopping up of section CE2 to CE3 to CE4 in 1873 it is effectively a cul-de-sac for all public rights other than those on foot.

Sections A to A1 and B to C to CE1 to CE2

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

6.8. That Hazelgrove Lane (B to C to CE1 towards CE2) has a very long historical existence is evidenced by its inclusion in the 1573 map of East Camel.

6.9. Sections A to A1 and B to CE2, are also recorded in a number of historical documents as physically significant routes. This includes the Inclosure, Turnpike, Tithe and Ordnance Survey records and the Greenwoods and Manorial maps reviewed above. In particular, these sections are recorded on the 1842 Queen Camel Tithe Map indicating they were significant enough, at that time, to affect the tithe payable. On the 1887 County Series OS map, section CE1 to CE2 has a thickened casing line and is coloured sienna indicating a metalled, well maintained, route. In this case the thickened casing line is considered to also be slightly in favour of public vehicular rights. All this evidence is consistent with the route being a public carriageway, as indicated in the Quarter Sessions records.

6.10. There is an established legal maxim that ‘once a highway, always a highway: for, the public cannot release their rights, and there is no extinctive presumption or prescription’²⁶. Highway rights can only be extinguished through due legal process. Therefore, even if the route was omitted from later Road Records or use diminished over time, this does not result in public rights being extinguished.

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

Section A1 to B

6.12. However, the various tithe maps (1839-43) whilst showing routes from A to A1 and B to C to CE1 to CE2, give no indication as to the line followed from A1 to B. Possibly because the route was unfenced at this point allowing animals to graze so not affecting the tithe payable.

6.13. The earliest evidence, the 1573 map of East Camel, shows what appears to be a fenced route from approximately A1 towards the buildings of Hazelgrove (approximately point I) and then turning to head south-east. The 1811-17 OS old series and 1826 turnpike maps also show a route that turns at point A1 to I and then between the buildings of Hazelgrove south-east to G to B. However, other maps, such as the 1795 inclosure award map, 1827 and 1848 manorial maps do not indicate a route from A1 to I to G but do show the route G to B. The aerial survey map also confirms the existence of a route from G to B distinct from the route from H to B that is shown on later OS maps.

6.14. The earliest evidence of an alternative route from A1 that instead of heading to I heads to A2 is the 1826 Turnpike Map. The route from A1 to A2 is indicated on the 1827 and 1848 manorial maps as continuing from A2 roughly along the parish boundary to B. A similar through route from A1 to A2 to B/C is also recorded on the OS County Series maps although on a slightly altered alignment.

²⁶ Dawes v Hawkins 1860

6.15. It appears that at some point around the time of the 1826 Turnpike Map an alternative through route to the A1 to I to G to B route was created further from Hazelgrove House and closer to the parish boundary (A1 to A2 to B). By the time of the 1887 OS map no physical evidence of the earlier through route (A1 to I to G to B) was recorded. However, what appears to be the more recently created alternative through route was still in evidence by that time although on a slightly different line, possibly due to it being unfenced between points A2 and B. The OS County Series maps indicate that it was not created, or was not maintained, to the same physical standard as other parts of the route A to CE2. A new route running from point B to the rear of Hazelgrove House at point H had also been created but nothing was found to suggest the final section up to point H was intended for public use and the wording "Private Road" is included on the OS boundary sketch map near to the turning at point B.

6.16. The 1873 Quarter Sessions records indicate that public carriageway rights existed all the way from point CE2 to B and on to South Barrow. The map evidence is ambiguous as to the exact route of that carriage way between A1 and B. However, prior to 1826 it appears to have been from A1 to I to G to B. The later creation of public rights over an alternative, less physically significant section for part of the route (A1 to A2 to B in this case) would not in itself stop up any public rights existing over an earlier section of the route (A1 to I to G to B).

6.17. As mentioned in paragraph 6.11 above there is an established legal maxim that 'once a highway, always a highway'. Highway rights can only be extinguished through due legal process. Therefore, even if the public chose to switch to the alternative route or the higher level use diminished over time, this does not result in public rights being extinguished over the old route of the road (A1 to I to G to B).

6.18. A search of the County Council's own records and of those held by the South West Heritage Trust, where the record of a legal stopping-up would be expected to be found, has produced nothing to suggest that a stopping-up of section A1 to I to G to B took place with a diversion on to the new line A1 to A2 to B. This is a similar situation to section CE4 to CE5 to E where, also in the early nineteenth century, a new line was created from CE4 to E2 with no evidence found of a legal stopping-up of the earlier route. However, the Natural Environment and Rural Communities Act 2006 will have had the effect of extinguishing mechanically propelled vehicular rights over the route while

leaving all other 'lower' rights. As such A1 to I to G to B would now be a restricted byway.

6.19. In contrast to section CE4 to E2, the alternative section (A1 to A2 to B) was created over land that the Schedule to Settlement of 1837 indicates was subject to strict settlement and other Mildmay estate papers point to the estate being held in strict settlement from 1784 until at least, and most likely beyond, 1807. With the land being so close to the main residence it is likely to have also been subject to this earlier settlement. If the land was held in strict settlement there would have been nobody with the capacity to dedicate public rights over A1 to A2 to B, at that time.

6.20. We have no direct evidence of when this land ceased to be held in strict settlement, but it is likely to have been during the 1920s when sales documents indicate large parts of the Mildmay estate were being sold off. Public rights could have been dedicated over section A1 to A2 to B after the period of settlement had come to an end. The DMS preparation records provide evidence of public use after the 1920s along a line broadly similar to A1 to A2 to B but only on foot by that time. A public right on foot from A1 to A2 to A3 to X to B is already recorded on the DMS.

Discovery of evidence

6.21. 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.

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

undoubtedly have been recorded at least part of the route as having higher rights than a footpath.

6.23. The Quarter Sessions records do not have to be sufficient on their own to conclude that restricted byway rights exist. However, once new evidence has been discovered it must be considered with all other available evidence. The evidence, considered as a whole, points towards restricted byway rights and rights on foot existing as set out in section 7 below.

Settled Land

6.24. 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.

6.25. 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:

“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)²⁷

6.26. 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

²⁷ Definitive Map Orders: Consistency Guidelines, ninth revision (2016), 5.46.

it prevent them from being dedicated after the period of settlement has come to an end.

6.27. 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.

6.28. The earliest maps examined of the area are the 1573 map of East Camel and the Day and Masters map of 1782. Sections A to A1 and CE2 to E of the application route are outside the area covered by the 1573 map. However, this map does indicate the existence of fenced routes from approximately A1 to I to head south-east and B to CE2. The Day and Masters map covers the whole of the application route and depicts a route along a line broadly similar to G to B to E. These two maps cover periods prior to the dates when the evidence points towards the Mildmay estate being held in strict settlement. Rights dedicated prior to settlement would not be removed in the event of the land subsequently being held in strict settlement.

6.29. Later evidence of the route having a reputation of a highway is also relevant as that reputation could date back to a pre-settlement dedication. The strongest evidence of this being that supplied by Hervey George St John Mildmay in his application to the Quarter Sessions to stop up and divert part of the highway.

6.30. 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 in relation to sections A to A1 to I to G to B to C to CE1 to CE2 and CE4 to CE5 to E.

6.31. The evidence points towards the routes A1 to A2 to B and CE4 to E2 coming into existence during a period when a large part of the estate was likely held in strict settlement. The land over which the route A1 to A2 to B runs is listed in the Schedule to Settlement of 1837. However, the land over which CE4 to E2 runs is not listed.

6.32. Therefore, the evidence of land being held in strict settlement is not considered sufficient to show that there was no-one with the capacity to dedicate in relation to section CE4 to E2 but is considered sufficient in relation to A1 to A2 to B during the nineteenth century.

6.33. By the mid twentieth century, after the strict settlement most likely ended, the evidence points to public usage of A1 to A2 to B being on foot. This is already recorded on the DMS along this line.

7. **Summary and Conclusions**

7.1. There is strong evidence of a physical route which was capable of taking vehicular traffic existing from A to A1 and B to E, the vehicular traffic at that time being horse drawn carriages. It seems likely that those two routes were vehicular highways and that they were connected not least because the Quarter Sessions refer to a through route to South Barrow.

7.2. The earlier evidence points to the connection following a line from A1 to I to G to B. Later evidence indicates that this changed to A1 to A2 to A3 to B but we found no evidence of any formal process to change the route. The evidence also indicates that there was no-one with the capacity to dedicate a new public highway over the land at that time either. Therefore, the legal rights would have remained over A1 to I to G to B.

7.3. There is some evidence of private rights in the boundary sketch book, but this most likely relates to part of a new route serving Hazelgrove House running from H to B and not the earlier or later through routes between A1 and B.

7.4. Dedication of the vehicular rights are believed to have taken place before the first evidence of settlement in 1784. This is supported by the fact that there is evidence for significant parts of the route having physically existed before that date.

7.5. All but rights on foot were stopped up over CE2 to CE3 to CE4 to E2 by the 1874 Quarter Sessions. NERC then stopped up mechanically propelled vehicular rights over the rest of the route leaving it as a Restricted Byway.

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

- section A to A1 of the application route (part of WN 23/40) is a restricted byway
- section CE2 to CE4 of the application route (part of WN 23/12) is correctly recorded on the DMS as a footpath
- section CE4 to CE5 of the application route (part of WN 23/12) is a restricted byway

- footpath WN 23/40 runs from point X to A3 to A2 to A1

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

- no public right of way subsists or is reasonably alleged to subsist from points A3 to B of the application route
- a restricted byway subsists or is reasonably alleged to subsist from point A1 to I to G to B
- a footpath subsists or is reasonably alleged to subsist from point CE4 to E2
- a restricted byway subsists or is reasonably alleged to subsist from point CE5 to E of the application route

8. Recommendation

Application 858 northern section

It is recommended that the part of the application which seeks to upgrade part of footpath WN23/40 to a bridleway from point A1 to A2 to A3 and add a bridleway from point A3 to B, as shown on Appendix 1, be **refused**.

It is recommended that **an Order be made**, the effect of which would be to amend the Definitive Map and Statement to upgrade part of footpath WN 23/40 from point A to A1 to a restricted byway, to add a restricted byway from point A1 to I to G to B and to upgrade part of footpath WN 23/38 from point B to C to a restricted byway as shown on Appendix 1.

It is further recommended that **an Order be made** to amend the Statement to record footpath WN 23/40 as running from point X to A3 to A2 to A1 as shown on Appendix 1.

Application 859

It is recommended that the part of the application which seeks to upgrade footpath WN 23/12 from point CE2 to CE3 to CE4 to a bridleway, as shown on Appendix 1, be **refused**.

It is further recommended that:

- i. **an Order be made**, the effect of which would be to amend the Definitive Map and Statement to upgrade part of footpath WN 23/38, from point C to CE1 to CE2 to a restricted byway, as shown on Appendix 1.
- ii. **an Order be made**, the effect of which would be to amend the Definitive Map and Statement to add a footpath from point CE4 to E2, as shown on Appendix 1.
- iii. **an Order be made**, the effect of which would be to amend the Definitive Map and Statement to upgrade part of footpath WN 23/12 from point CE4 to CE5 to a restricted byway and to add a restricted byway from point CE5 to point E, as shown on Appendix 1.

If there are no objections to such Orders, or if all objections are withdrawn, they be confirmed (subject to the order meeting the legal tests for confirmation).

If objections are maintained to such Orders, they will be submitted to the Secretary of State for Environment, Food and Rural Affairs.

List of Appendices

Please note that the document reproductions in the appendices are not to a standard scale. The report writer has added the red letters which broadly correspond with 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
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4. Legal framework
5. Documentary evidence
6. Consultation list
7. Queen Camel Inclosure Award
8. Tithe records
9. Quarter Sessions
10. Ordnance Survey maps
11. OS Object Name Book
12. Finance Act 1910
13. Road records
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15. Turnpike records
16. Commercial maps
17. Other sources
18. Consultation submitted reports
19. Hazelgrove Estate sales catalogues
20. Mildmay Estate papers
21. Earl Poulett settlement
22. 1837 Settlement
23. Hazelgrove Park report
24. 1573 Map
25. Plan of recommendations