



**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**SECTION 53, SCHEDULE 14 APPLICATION TO: ADD A RESTRICTED BYWAY**  
**OVER SIXTEEN ACRE LANE, COMBE ST NICHOLAS**

**Application:** 629M  
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**Date:** 8 October 2019

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# CONTENTS

	Page
1. Introduction	2
2. The application and supporting evidence	2
3. Description of route	3
4. Relevant legislation	5
5. Documentary evidence	6
6. User evidence	32
7. Landowner evidence and evidence from those against the application	33
8. Comments on landowner evidence	34
9. Consultation and other submissions	34
10. Discussion of the evidence	35
11. Summary and conclusion	38
12. Recommendation	39
List of Appendices	40

## 1. Introduction

1.1. On the 12 June 2009 the South Somerset Bridleways Association made an application under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981, for an Order to amend the Definitive Map and Statement by adding a restricted byway over Sixteen Acre Lane, Combe St Nicholas as described in paragraph 2 below. The route in question is shown on drawing number H33-2019-2 (Appendix 1).

1.2. A restricted byway can be used by the public on foot, with horses or bicycles, or with a non-mechanically propelled vehicle such as a horse and cart.

1.3. The purpose of the report is to establish what public rights, if any, exist.

## 2. The Application and supporting evidence

2.1. The application is based on documentary evidence and included extracts of the following documents:

- *1809 – 1811 OS Old series*
- *1813 Lands owned by the Deanery of Wells*
- *1814 Combe St. Nicholas Inclosure Act*
- *1818 Combe St. Nicholas Inclosure award*
- *1822 Greenwood's map*
- *1840 Combe St. Nicholas tithe map*
- *1887 OS 25 inch scale map*
- *1888 Conveyance document*
- *1898 – 1900 OS Revised New Series*
- *1901 OS Object Name Book*
- *1902 OS 25 inch scale map*
- *1910 Finance Act map*
- *1911 Bartholomew's map*
- *1912 Conveyancing document*
- *1919 OS Popular edition*
- *1927 Bartholomew's map*
- *1940 OS War Revision map*
- *1942 – 1943 Ministry of Agriculture farm records*
- *1952 Sale of Crown Estates land*
- *1963 Deed of Exchange*
- *1975 Article from the Western Gazette*
- *1994 Highways Agency consultation on Ilminster to Marsh section of the A303*

- Land Registry INSPIRE report

2.2. These, together with all other available evidence, are discussed further in section 5 below.

2.3. Based on these documents the applicant has concluded that:

*"All the evidence produced for the application route suggests that vehicular rights existed at the times the various pieces of evidence were created. While no single piece is conclusive of highway status, the fact that every standard piece of evidence leans towards vehicular rights means that, on the balance of probabilities, such rights existed prior to the commencement of the Natural Environment and Rural Communities Act 2006.*

*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."*

2.4. User evidence is discussed at Section 6.

### 3. **Description of Route**

3.1. The application route runs from point A on Priddles Lane to point B on the A303 at Ham Hill, as shown on Appendix 1.

3.2. From point A to C the application route runs generally north-east for approximately 76 metres. The surface is grassed with a bank to the south on which mature shrubs / trees are growing, and a ditch to the north beyond which is a hedge. From C to D the route runs north for approximately 214 metres. From C to D the route is grassed, but becomes more deeply rutted as it approaches D. There are banks topped with hedges to either side.

3.3. From D to B the route runs generally north north-west for approximately 483 metres. At approximately point D there are a series modern gates across the route (three closed and one open at the time of the site visit), currently used for controlling the movement of cattle. The route is then inaccessible due to vegetation for approximately 75 metres<sup>1</sup>. From this point to E (where observed) the surface of the route is very overgrown but there are distinct banks on either side with mature trees topping them, particularly to the east.

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<sup>1</sup>During the site visit inaccessible sections between D and E were bypassed via adjacent land with the permission of the landowner.

3.4. At E the route crosses a small stream. The southern bank of the stream is shallow but the northern bank rises almost vertically approximately 1.3 metres. The overgrown remains of a stone structure on the southern bank are visible, but in their current state it is not possible to say what the structure originally was. To the immediate north of the stream the extent of the route is not distinct on the ground.

3.5. Between E and F the route is extremely overgrown and almost impassable on foot. A small stream meanders across the route through a channel approximately 1.3 metres deep (see appendix 4b, photograph 15 and 16). Between E and B barbed wire low to the ground was observed across the route or parts of the route in several places.

3.6. From F almost all the way to B the route is fairly clearly divided longitudinally. On the west is a shallow but distinct bank, then a relatively flat section around 5.8 metres wide, before a distinct step down to a sunken section approximately 2.7 metres wide bounded on the east by a low but distinct bank with mature trees growing out of it in many places (see appendix 4b, photographs 17 to 19). Whilst there is not a continuous barrier, along the line of the change in level between the east and west sections there is an inconsistent but visible line of trees. At point G the remains of a stone building take up almost the whole width of the higher, western section. About 5 metres south of B this central division ceases, and the route is bounded by low but distinct banks on either side.

3.7. Measuring the width of the route in many places was not possible due to the topography and vegetation. Where measured, the approximate width of the route is shown at appendix 3.

3.8. Photographs of the claimed route taken on 20 August 2019 are at Appendix 4.

3.9. A land registry search was carried out on 06 August 2019 which identified one owner for the western part of the width of the route between B and F. The eastern part of the route between B and F is unregistered. There were no registered owners for the rest of the claimed route. Four adjacent landowners were identified. The Common Law presumption is that, in the absence of any evidence to the contrary, adjoining landowners own up to the centre point of a highway. However, determining the current ownership of the soil is not a question this report attempts, or needs to answer. The landownership is shown at Appendix 2.

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

#### 4. Relevant Legislation

4.1. Section 53(2)(b) of the Wildlife and Countryside Act 1981 provides that the County Council must keep the Definitive Map and Statement under continuous review and must make such modifications as appear to them to be requisite in the light of certain specified events. In this case 53(3)(c)(i) is of particular relevance.

4.2. Section 53(3)(c)(i) states that the Map and Statement should be modified where the County Council discover evidence which, when considered with all the 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*".

4.3. Later in the same Act section 53(5) enables any person to apply to the Authority (Somerset County Council) for an Order to be made modifying the Definitive Map and Statement in respect of a number of 'events' including those specified in *Section 53(3)(c)(i)* as quoted above. On receipt of such an application the County Council is under a duty to investigate the status of the route. It was under these provisions that the South Somerset Bridleways Association made their application.

4.4. The purpose of Section 53 of the Wildlife and Countryside Act 1981 is to record or delete rights which already exist rather than create or extinguish them. Practical considerations such as suitability, the security and wishes of landowners or user groups cannot be considered under the legislation.

4.5. Section 32 of the Highways Act 1980 states that "*a Court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give weight thereto as the Court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced*".

4.6. The Natural England and Rural Communities (NERC) Act 2006, Section 66 and 67, extinguished rights for mechanically propelled vehicles (MPV's) 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. There is therefore no question of rights for MPV's existing over the claimed route.

4.7. Any changes to the Definitive Map must reflect public rights that already exist. It follows that changes to the Definitive Map must not be made simply because such a change would be desirable, or instrumental in achieving another objective. Therefore, before an order changing the Definitive Map is made, the decision maker must be satisfied that public rights have come into being at some time in the past. This might be in the distant past (proved by historic or documentary evidence) or in the recent past (proved by witness evidence). The decision is a quasi-judicial one in which the decision maker must make an objective assessment of the available evidence and then conclude whether or not the relevant tests set out above have been met.

## 5. **Documentary Evidence**

5.1. The tables below list the documentary evidence sources examined as part of this investigation. 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 a copy or extract. Where this is the case the words 'extract only' follow the title of the document. If it has been necessary to give such 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.

5.2. 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 or on appendix 1.

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### 5.3. **Inclosure Records**

#### Explanation of the type of evidence

5.3.1. Inclosure awards are legal documents that can still be valid today. They usually consist of a written description of an area with a map attached. Awards resulted from a need by the landowners to gather together their lands and fence in their common lands. A local Act of Parliament was often needed to authorise the procedure and an inclosure commissioner was appointed as a result to oversee the compilation of the award and map. Land was divided into

individual plots and fields and redistributed amongst the existing owners. Inclosure awards provide statutory evidence of the existence of certain types of highway. They enabled public rights of way to be created, confirmed and endorsed and sometimes stopped up as necessary. Inclosure commissioners surveyed land that was to be enclosed and had the power to 'set out and appoint public and private roads and paths' that were often situated over existing ancient ways.

### Evidence

#### 5.3.2. **Combe St Nicholas Inclosure Act (1814) and Award (1818)**

**Source: South West Heritage Trust (SWHT)**

**Reference: Q\Rde/14**

**Appendix number: 5**

### Description and interpretation of evidence

5.3.3. The relevant act gave the Commissioner the power to divert, turn and stop up public highways if it appeared to him this could be done without inconvenience to the public, or if so doing would make the same more convenient to the public, or if they could be stopped-up and destroyed as superfluous and unnecessary (page 7 of the 1814 Act). The Commissioner's powers in relation to highways extended beyond the area to be newly inclosed. However, where highways outside of the area to be inclosed were being affected it was necessary to obtain the consent of two justices. There was no requirement to replace any stopped-up public way with another public way specified in the act, although the commissioner could of course do so if he wished.

5.3.4. The local Act also incorporates the Inclosure Consolidation Act of 1801 (page 2) which set out a number of provisions which could be incorporated into future acts. This included giving the Commissioner the power to set out private roads, public roads, bridleways, footways, quarries, bridges, gates, stiles and a number of other features.

5.3.5. There are 8 numbered maps of the different areas included in the Award. Map 1 (Longlie Common) includes the statement "*N. B. Public Roads colored pink Private Roads colored brown*" (sic).

5.3.6. The application route is shown on map 4 which is titled "MAP OF THE forest". The route is coloured brown and numbered 79 from point A to point E. A short uncoloured section extends slightly north of point E but the map does not cover the area of the application route from this point to point B. No barrier is shown between the application route and Priddles Lane (which is coloured



pink and numbered 39) at point A. A feature resembling a pond is shown at point C.

5.3.7. Number 79 (i.e. the application route between A and E) is described as a private road or driveway.

5.3.8. The Award goes on to describe other private roads or driveways and footpaths and then states *"All which several private carriage Roads Drove Ways or Footpaths are for the use of the several Owners and Occupiers for the Time being of the several allotments of land in the aforesaid Moors Commons and waste Lands"* and that they are to be kept in repair by the owners and occupiers of the allotments. The award first describes who had the right to use the routes, and then responsibility for maintenance, differentiating between the two. Those who are described as having the use of the routes - the 'Owners and Occupiers' - are a limited group of people, and not the general public.

5.3.9. Furthermore, case law is strongly in favour of 'private road' meaning a route which may have been for the use of one or several people, but not the general public in the absence of evidence to the contrary.

5.3.10. The judgement in *Dunlop v. Secretary of State for the Environment and Cambridgeshire County Council*<sup>2</sup> is not binding in relation to all inclosure awards, but it is persuasive, particularly in relation to any award made under an act incorporating the 1801 Inclosure Consolidation Act (as the Combe St Nicholas Award does). In that case Sedley J said;

*"No internal evidence suggests that the choice of words in the Award is casual or accidental. ...But throughout the words "public" and "private" are used differentially and with evident care in a context suggestive of the defining of rights to use the road rather than of the characterisation of the road's quality or status. All the indications are that "private carriage road" is deliberately used in the Award as a term of art distinguishing the particular road according to the extent of the particular rights over it from the public carriage roads on which all subjects enjoyed an equal right of vehicular passage. The subsequent history of many such roads, ... which has resulted in such roads becoming public routes maintained at public expense, does not destroy the distinction deliberately made in Awards such as the Glatton with Holme Award..."*

5.3.11. Language in the Combe St. Nicholas Award is used in a very similar way, and the same conclusions are drawn. Normally, therefore, the Award would be strong evidence that the part of the application route covered by the Award (A

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<sup>2</sup> *Dunlop v SSE and Cambridgeshire County Council* [1995] 70 P & CR 307, 94 LGR 427

to E) was a private road, without public rights over it in 1818. However, setting out the route as 'private' in the Award would not necessarily stop-up any rights which existed over the route prior to inclosure and would not prevent rights being dedicated after inclosure. Furthermore, other aspects of the Award are relevant to the status of the application route in this instance.

5.3.12. In addition to the ways set out by the Commissioners, the Award records that two roads were to be "*stopped up and discontinued as superfluous and unnecessary*". Those roads were "*a certain Road Way called Little Common Lane and one other certain Road way on Sticklepath Hill on the Forest and both lying within the Parish of Combe Saint Nicholas aforesaid ...*". The consent of two justices to these stopping-ups is recorded within the Award.

5.3.13. Little Common Lane is very probably located to the north of the A303 and is therefore not relevant to the current investigation but the southern end of the application route is on or near to Sticklepath Hill.

5.3.14. C to X (which does not form part of the application route) appears to have been stopped-up. The pre-inclosure OS first series map (discussed at 5.5.3, below) shows a physical through route from B to C to X. There is no physical feature resembling a linear way between C and X on the ground today, nor is one shown on the Award map, or on any post-inclosure map that has been found. It is therefore concluded that the stopping-up applied to at least C to X, and that if the route had to be stopped-up it must have carried public rights prior to inclosure.

5.3.15. However, it is not clear whether the stopping-up also applied to C to B. Public rights almost certainly existed over C to B prior to inclosure as public rights existed over X to C and these two sections formed a through route with no alternative physical route known over which the public rights could have continued. This is because A to C (which forms part of the physical through route today) is not shown as physically existing prior to inclosure.

5.3.16. The fact that C to E was set out in the Award as a private road suggests that the public rights over it were stopped-up. The Commissioner was clearly aware of the pre-existing public rights, and the need to stop them up if the route was to be private after inclosure. If the rights were not stopped-up over C to B this would have left cul-de-sac rights (although not a physical cul-de-sac) as only private rights were set out over the new continuation of A to C and the old continuation over X to C does seem to have been stopped-up.

5.3.17. However, whilst there is no evident reason for the Commissioner to turn the public rights into a cul-de-sac in this location, there is no legal reason why he could not have done so.

5.3.18. The description of the location of the route to be stopped-up is also in favour of the stopping-up applying to only part of the application route. The road that was to be stopped-up was 'on Sticklepath Hill'. C to X (which does not form part of the application route) is closer to the summit of Sticklepath Hill and the gradient is rather steeper than on the application route. It would therefore be well described as being 'on Sticklepath Hill'. The application route runs downhill at a fairly gentle gradient from C to E in a continuation of the slope from the summit of Sticklepath Hill. It would therefore be possible to describe this section of the application route as being 'on Sticklepath Hill' but it would be a less obvious description. From point E to B the application route runs gently uphill again, towards Ham Hill and to describe this section as being 'on Sticklepath Hill' would be inaccurate.

5.3.19. Although there are other routes which could be described as being on Sticklepath Hill they either appear to have been first set out at inclosure, or they are described as public at inclosure. In either case they would not require stopping-up as part of the inclosure process.

5.3.20. Whilst it could be interpreted either way, it seems reasonable to allege that the stopping-up related only to C to X as the description of the stopped-up route as being 'on Sticklepath Hill' is far more consistent with the location and gradient of C to X than the application route. In conclusion, it is reasonably alleged that X to C to B was a highway prior to inclosure, that X to C was legally stopped-up at inclosure, but that C to B was not.

5.3.21. If this is the case then the Award is fairly strong evidence that public rights, probably vehicular rights, existed over C to B prior to inclosure. These rights were not stopped-up at inclosure and will therefore still exist today (unless subsequently stopped-up). However, there is no evidence that A to C existed prior to inclosure, and only private rights were set out over this part of the application route at inclosure. The Award is therefore no evidence of public rights over A to C and is in fact good evidence that such rights did not exist at the time of the Award. However, it does not preclude public rights having come into existence over A to C at a later date.

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#### 5.4. **Tithe Records**

##### Explanation of the type of evidence

5.4.1. Tithe maps and the written document which accompanied them, (the apportionment) were produced between 1837 and the early 1850's in response to the Tithe Commutation Act 1836 to show which landowner owned which pieces of land and as a result how much they owed in monetary terms. The tax replaced the previous 'payment in kind' system where one tenth of the produce of the land was given over to the Church.

5.4.2. A map was produced by the Tithe Commissioners which showed parcels of land with unique reference numbers, and these were referred to in the apportionment document, which contained details of the land including its ownership, occupation and use.

5.4.3. Public roads which generated no titheable produce were not generally given a tithe number. For the same reason some private roads were also not liable to a tithe. However, both public and private roads could be subject to a tithe, if for instance, they produced a crop e.g. for grazing or hay cut from the verges

5.4.4. The Map and Apportionment must be considered together. Roads are sometimes listed at the end of the apportionment; there is also sometimes a separate list for private roads.

5.4.5. Tithe maps provide good topographical evidence that a route physically existed and can be used to interpret other contemporary documents but were not prepared for the purpose of distinguishing between public and private rights and so tend to be of limited weight.

#### Evidence

5.4.6. **Tithe Map, Combe St. Nicholas, 1840**  
**Source: SWHT**  
**Reference: D/D/Rt/M/209**  
**Appendix number: 6**

#### Description and interpretation of evidence

5.4.7. The applicant supplied extracts of the Combe St. Nicholas Tithe Map held by The National Archives, reference IR30/30/141. No difference of any significance to this investigation was identified between the copy provided by the applicant and the copy held at the SWHT. It is the SWHT document which is described below.

5.4.8. The whole of the application route is shown.

5.4.9. Between F and B part of the width on the western side of the application route is taken up by two long, narrow enclosures, each containing a building, numbered 610 and 611. The buildings are coloured pink but the surrounding parcels of land are uncoloured. These lots are both described in the Apportionment as 'House & Garden'.

5.4.10. The rest of the application route is coloured pale brown and unnumbered.

5.4.11. The fact that the application routes are shown on the tithe maps is very strong evidence for the physical existence in 1840. However, in itself, this offers no assistance in determining status. Similarly the fact that part of the route is un-numbered, and therefore not subject to a tithe, is of no assistance. This is because *"a private right of way can diminish to no less an extent than a highway the productiveness of the land for tithe assessment"*<sup>3</sup>. In other words both public and private roads which were unproductive would have been unnumbered.

5.4.12. Most of the routes on the plan, and therefore most of the coloured routes, are today public vehicular roads. However, there are coloured routes over which no public rights or lower public rights are recorded including;

- Part of bridleway CH 7/22 and a route extending from it which has no recorded status.
- A route extending south-west from Raisey Lane which has no recorded status
- Part of footpath CH7/36
- A route near Combe Beacon with no recorded status
- Footpath CH7/17 and a route with no recorded status extending from it

5.4.13. In general, the colouring of a road on a tithe map is not, in itself strong evidence of public vehicular rights. In this specific case, there is no key indicating that colouring was used exclusively for public highways. Furthermore, comparison with the modern recorded status of the coloured linear ways suggests a coloured route was not necessarily a public one. It would therefore be unsafe to conclude that the colouring was used only in relation to public highways.

5.4.14. In light of all of the above, the tithe maps would be consistent with the application route being either a public road, or private road with or without lower public rights running over it. The way in which the eastern part of the

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<sup>3</sup> DMO Consistency Guidelines – 2<sup>nd</sup> revision July 2013, section 8.5, page 4.

application route between B and F, and the application route from F to A is depicted on this map therefore weighs neither for or against public rights over the application route. It is, however, very strong evidence for the physical existence of the route.

5.4.15. Where the western enclosures between B and F are described as 'house and garden' this does weigh against their being a public highway (but this does not apply to the eastern side of the route). The evidence relating to the western enclosures is discussed in more detail in section 10.17 – 10.20.

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## 5.5. **Ordnance Survey Maps**

### Explanation of the type of evidence

5.5.1. The Ordnance Survey (OS) are generally accepted as producing an accurate map depiction of what was on the ground at the time of a survey.

5.5.2. OS Maps cannot generally be regarded as evidence of status; however they indicate the physical existence of a route at the date of survey.

### **Evidence**

5.5.3. **1809 - 1811 OS 'old series' map Cassini Timeline reprint  
Original scale: 1:63,360 (one inch to the mile), reprinted at  
1:50,000  
Appendix 7(a)**

5.5.4. 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.

5.5.5. In this case, this map shows the pre-inclosure landscape. The application route is shown, unlabelled, between casing lines of equal thickness from point B to approximately point C. From point C a route continues south to point X where it joins another route which continues to Y and beyond. No route is shown between A and C. Priddles Lane is shown as a cul-de-sac which terminates very approximately at point A and does not connect to the application route, nor is it shown continuing south to Raisey Lane (slightly south of point Y) as it does today. The relevance of the features shown on this map are discussed in more detail in relation to the Inclosure Award at 5.3.

5.5.6. **1888 OS County Series 1<sup>st</sup> Edition Map**  
**Sheet No: 87:7**  
**Survey Date: 1886**  
**Scale: 1:2500**  
**Appendix 7(b)**

5.5.7. The entire application route is shown between solid casing lines of equal thickness, and uncoloured.

5.5.8. Between F and B around half the width of the application route on the western side is separated off as long, narrow enclosures which include two buildings.

5.5.9. **1898 - 1900 OS Revised New Series Map**  
**Cassini Timeline reprint (extract only)**  
**Survey Date: 1886; Revised: 1901**  
**Scale: 1:63,360 (one inch to the mile)**  
**Appendix 7(c)**

5.5.10. 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.

5.5.11. The full length of the claimed route is depicted as an 'unmetalled road'. The OS used this symbol to record both public and private roads<sup>4</sup>. To the immediate west of the linear way depicted between G and B there is a small building indicated.

5.5.12. **1902 OS County Series 2<sup>nd</sup> Edition Map**  
**Sheet No: 87:7**  
**Survey Date: 1886; Revised: 1901**  
**Scale: 1:2500**  
**Appendix 7(d)**

5.5.13. The entire application route is shown between solid casing lines of equal thickness.

5.5.14. Between F and B around half the width of the application route is separated off as long, narrow enclosures including one building.

5.5.15. **1919 OS 'popular edition' Map**

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<sup>4</sup> Hodson, Y. (1999) *Popular Maps: The Ordnance Survey Popular Edition One-Inch Map of England and Wales 1919-1926* Charles Close Society for the Study of Ordnance Survey Maps, London, page 132.

**Cassini Timeline reprint (extract only)**  
**Original scale: 1:63360 (one inch to the mile)**  
**Appendix 7(e)**

5.5.16. The application route is shown uncoloured between the narrowest spaced casing lines. The key identifies the narrowest spaced casing lines as 'Minor Roads'. The key includes the statement "*Private Roads are uncoloured.*" The application route is therefore shown as either a minor road or a private minor road, or simply a private road.

5.5.17. To the immediate west of the linear way depicted between G and B there is a small building indicated.

5.5.18. **1940 OS War Revision (extract only)**  
**Appendix 7(f)**

5.5.19. The application route is shown uncoloured between the narrowest spaced casing lines.

Description and interpretation of evidence

5.5.20. OS Maps are extremely strong evidence for the physical existence of the features they depict but tend not to be direct evidence of public or private rights, or a lack of them.

5.5.21. Where OS maps were primarily intended for sale to the public it has been suggested that they would not show routes which the public were not entitled to use. However, at least one OS map refers to the depiction of private roads in the key (5.5.16) showing that private roads were depicted. Other documents also suggest the OS included private roads.

5.5.22. It has also been suggested that where the application route is shown in the same manor as routes which today carry vehicular rights, they are evidence that the application route carried the same rights. However, the OS was primarily concerned with physical characteristics rather than rights. In this case, the symbols used to depict the application route could have been used for either a public vehicular route, or a private road with or without lower public rights running over it.

5.5.23. This interpretation is supported by case law which states that "*If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative*



*of what are the physical qualities of the area which they delineate...<sup>5</sup>. In fact, since 1888 OS maps have carried the statement "The representation on this map of a road, track or footpath is no evidence of the existence of a right of way"<sup>6</sup>.*

5.5.24. Several of the maps show narrow enclosures to the west between B and F including a building or buildings. This is extremely strong evidence that the western enclosures were separate from the eastern part of the application route at the time of the relevant surveys or revisions. Where buildings are shown at least the area covered by the building could not have been physically used as a right of way while they were in place. Overall, the way in which the western enclosures between B and F are depicted on OS maps suggests the western enclosures did not have the physical character of a linear way at the time of the surveys and revisions, but the eastern part of the application route did. This suggests that the western enclosures were not in use as a right of way. However, this does preclude rights existing over the western enclosures at an earlier date, and if those rights were not stopped-up they will still exist today, regardless of how long it has been since the route was used.

5.5.25. Overall, the physical features depicted on OS maps weigh slightly against a right of way existing between B and F in the western enclosures, but do not help determine what, if any, rights exist over the rest of the application route.

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## 5.6. OS Object Name Book

### Explanation of the type of evidence

5.6.1. In preparing the second edition County Series map, the Ordnance Survey produced an 'object name book' (ONB) the primary purpose of which was to ensure that the various names recorded on the maps (e.g. names of farms, roads, places etc.) were accurate and correctly spelt. To this end each book contained a list of those names and a description of the feature to which they related. Each of the names in those books was later corroborated by a prominent member of the local community (e.g. a landowner or clergyman).

### 5.6.2. **Object Name Book for map sheet LXXXVII 7**

**Source: National Archives (extract only)**

**Reference number: OS 35/6422**

**Appendix number: 8**

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<sup>5</sup> Moser v Ambleside Urban District Council (1925) 89 JP 118 at 119, Pollock MR

<sup>6</sup> Oliver, R. (2005) *Ordnance Survey Maps, a concise guide for historians*, The Charles Close Society, London

## Description and interpretation of evidence

5.6.3. Sixteen Acre Lane is described as "*A public road extending from Ham Hill to the east end of Priddles Lane.*" The authority for the mode of spelling is E. J. Symes Esq. Asst. Overseer & clerk to Parish Council.

5.6.4. A letter dated 25<sup>th</sup> September headed 'O.S. 230' from the OS to E. J. Symes asks him to check the names in the form at the bottom of the letter. The form describes Sixteen Acre Lane under 'Parish and Owner's Name' as "*From Priddles Lane to main road on Ham Hill*". The form is signed 'E. J. Symes Chard'. Therefore E. J. Symes does not seem to have corroborated a description of Sixteen Acre Lane which indicated status.

5.6.5. The OS ONB explicitly describes the application route as a public road. Whilst there is no evidence that this description was corroborated by a suitable member of the local community and is therefore slightly weaker evidence than it might have been, the OS employee who made the entries in the ONB must presumably have had some reason to use the term. This document is therefore some weight in favour of the reputation of the status of the application route in 1901. 'Public road' would normally be interpreted as referring to vehicular rights, although it might be used in relation to lower rights.

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## 5.7. **1910 Finance Act**

### Explanation of the type of evidence

5.7.1. The Finance Act of 1910 provided, among other things, for the levy and collection of a duty on the incremental value of all land in the United Kingdom.

5.7.2. Land was broken into ownership units known as hereditaments and given a number. Land could be excluded from payment of taxes on the grounds that it was a public highway and reductions in value were sometimes made if land was crossed by a public right of way. Finance Act records consist of two sets of documents which are;

- i) Working Plans and Valuation Books: Surviving copies of both records may be held at the Local Records Office. Working maps may vary in details of annotation and shading. The Valuation Books generally show records at a preparatory stage of the survey.

- ii) The record plans and Field Books: The final record of assessment which contain more detail than the working records. The Record Plans and Field Books are deposited at The National Archives, Kew.

5.7.3. While the Valuation and Field Books were generally kept untouched after 1920, many of the working and record maps remained in use by the Valuation Offices and sometimes information was added after the initial Valuation process.

5.7.4. The 1910 Finance Act material did not become widely available until the mid 1980's. It cannot therefore have been considered during the Definitive Map making process and can be considered "new evidence". This is of particular importance for meeting the requirements of section 53(3) of the Wildlife and Countryside Act 1981 which requires the 'discovery' of new evidence (i.e. evidence not considered when the Definitive Map was originally drawn up or last reviewed) before an order to amend the definitive map can be made.

#### Evidence

- 5.7.5. **Valuation Map sheet 87-7**  
**Source: National Archives (extract only)**  
**Reference: IR 128/9/1058**  
**Appendix number: 9**

#### Description and interpretation of evidence

5.7.6. The record plan shows the majority of the application route excluded from the surrounding hereditaments. However, between F and B about half the width of the application route on the western side is taken up by two narrow hereditaments coloured green. No number is attached to them, but it seems likely they were intended to be included in a hereditament, even if they were too small to allow numbering on the map.

5.7.7. Exclusion of a route from the surrounding hereditaments raises a strong possibility that it was considered to be a public highway. However, there are other possible reasons for the exclusion of a route, one of which is that it was set out as a private road for multiple users in an inclosure award. In this case, the application route between A and E was set out in the inclosure award in just this way.

5.7.8. Therefore, although exclusion from valuation on a Finance Act map is usually good evidence for public vehicular rights, in this case there is a very plausible alternative reason at least in relation to A to C which was first set out at inclosure as private. The situation in relation to C to E is more complicated as

there is good evidence this section carried public rights prior to inclosure, but uncertain whether those rights were legally stopped-up at inclosure (discussed in more detail at 5.3). It may therefore have been excluded from the surrounding hereditaments on either the grounds it was a public highway, or because it was considered a private road for multiple users. In relation to E to B which was not set out as a private road in any inclosure award that has been found, it remains evidence in favour of public vehicular rights. However, for the reasons given above, in order to determine why the application route has been excluded it is therefore important to consider it in the context of all the other documents.

5.7.9. B to E is not covered by any inclosure award that has been found and was therefore not set out as a private road for multiple users. In relation to this section of the application route, where excluded from surrounding hereditaments, the Finance Act map raises the strong possibility that the route was considered a public highway, probably vehicular.

5.7.10. Where the application route is not excluded from the surrounding hereditaments (that is, the western enclosures between B and F) that does not preclude the existence of a highway, but it offers no evidence in support of the existence of a highway either.

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## 5.8. Highway Road Records held by the County Council

### Explanation of the type of evidence

5.8.1. Over time responsibility for maintenance of highways has passed between various different authorities. On each occasion a map was typically produced showing those highways which were considered publicly maintainable.

### 5.8.2. **1929 Handover Map, 1930 Road Records and 1950 Road Records**

**Source: SCC**

**No appendix**

### Description and interpretation of evidence

5.8.3. None of these maps show the application route coloured as a road maintainable at public expense. These maps are records of maintenance liability, not of public rights, and did not usually indicate non-vehicular public rights of way even if they were known to exist. As such, these records are excellent evidence that the application routes were not considered to be public vehicular roads maintained at public expense at the time each record was made.

However, although they provide no evidence in support of public rights over the application routes they do not necessarily weigh against the existence of such rights either.

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## 5.9. **Definitive Map and Statement and preparation records**

### Explanation of the type of evidence

5.9.1. The Definitive Map and Statement (DMS) were produced after the National Parks and Access to the Countryside Act 1949 placed a duty on County Councils to survey and map all public rights of way in their area. The process was undertaken in a number of stages:

- i) Walking Survey Cards and Maps - Parish Councils were required to survey the paths they thought were public paths at that time and mark them on a map. The route was described on a survey card, on the reverse were details of who walked the route and when. Queries for the whole parish are often noted on a separate card.
- ii) Draft Map – Somerset County Council produced the Draft Map from the details shown on the Survey Map. These Maps were agreed by the County Works Committee and the date of this Committee became the 'relevant date' for the area. The map was then published for public consultation; amongst other things this included parish and district councils being contacted directly and notices appearing in local newspapers. Any objections received were recorded in a Summary of Objections found in the District file.
- iii) Draft Modification Map – This stage in the process was non-statutory. SCC produced a map to show any proposed changes as a result of objections to the Draft Map. Any objections received were recorded in a summary of Counter Objections to the Draft Modification map, found in the District file.
- iv) Provisional Map – This map incorporates the information from the Draft Maps and the successful results of objections to the Modification Maps. These were put on deposit in the parish and district council offices at this point only the tenant, occupier or landowner could object.
- v) Definitive Map and Statement – Any path shown is conclusive evidence of the existence and status of a public right of way until proved

otherwise. The Definitive Map is without prejudice to other or higher rights.

### Evidence

#### **Survey Map (Appendix 25)**

5.9.2. The application route is not coloured on the survey map. However, a route is shown running east from C, numbered 23.

#### **Survey Card dated 18/12/1950 (Appendix 25)**

5.9.3. As the Application route is not shown on the survey map there is no card for it. However, there is a card for path 23, which is described as a footpath which starts at "*Sixteen acre lane, leading into a field by means of a field gate and proceeds towards the road towards Poltimore Cottage, but there is no outlet from the path to the road. There is no evidence that this path is used.*" The card has been crossed through with pencil and labelled 'not included'.

#### **Draft Map, Draft Modification Map and Provisional Map (no appendix)**

5.9.4. Neither the application route, nor the footpath numbered 23 on the parish survey map, are shown on any of the DMS preparation maps and no record of any objection to their omission has been found.

#### **Definitive Map and Statement (Appendix 25)**

5.9.5. The application route is not recorded on the DMS.

### Description and interpretation of evidence

5.9.6. Whilst the DMS is definitive of what it shows, it is not definitive of what it omits. Therefore, whilst it provides no evidence in favour of the application route carrying public rights, it does not necessarily mean that rights did not exist.

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#### **5.10. Local Authority Records and Minutes**

### Explanation of the type of evidence

5.10.1. As mentioned above, over the course of the past two hundred years, responsibility for the maintenance of highways has passed between various

different authorities. Furthermore, even where a local authority was not directly responsible for rights of way then, as representatives of the local community, they would have an interest in the rights of way network. This could have particularly been the case for parish councils.

5.10.2. In light of the above, evidence as to a route's status can sometimes be found in local authority records and minute books.

#### Newspaper Articles

5.10.3. **Western Gazette, 14 March 1975**  
**Chard and Ilminster News, 13 March 1975**  
**Source: Cuttings held in SCC files**  
**Appendix number: 10**

5.10.4. Two articles apparently reporting the same meeting of the Combe St Nicholas Parish Council record between them the following points;

- Yeovil District Council intended to make an enforcement order for the removal of a scrap yard on Sixteen Acre Lane.
- Preb. W. T. Taylor said the Parish Council should make it clear they were prepared to give evidence showing the land had been a bridleway since time immemorial.
- The Parish Council felt bridleways should be shown on the DMS.
- The Parish Council felt that the fact bridleways were not recorded on the DMS was an error caused by SCC not making it clear that bridleways were to be recorded as footpaths.

5.10.5. **Correspondence relating to a caravan on Sixteen Acre Lane, 6 February 1974 – 23 July 1974**  
**Source: Held in SCC files**  
**Appendix number: 11**

5.10.6. The first memorandum includes a map showing the location of a caravan and corrugated iron sheets at point B. The caravan is located within the long, narrow enclosure shown on many earlier maps on the west side of the application route. The following points are of particular relevance;

- The County Planning Office confirmed that "*neither 16 Acre Lane nor that part of the lane edged in red*" was recorded as a public right of way. They also pointed out that a right of way could still exist in that location, that evidence would be needed to demonstrate this, they had no such evidence, but they believed seemingly obvious lanes in the area had been missed off the DMS.

- Combe St Nicholas Parish Council believed Sixteen Acre Lane was a public right of way in 1974.
- Yeovil District Council asked SCC to bear the Parish Council's belief regarding the status of Sixteen Acre Lane in mind when the DMS was next reviewed.

5.10.7. **Letter from Combe St Nicholas Parish Council, 20 March 1975**  
**Source: Held in SCC files**  
**Appendix number: 12**

5.10.8. The letter shows that Combe St Nicholas Parish Council believed Sixteen Acre Lane to be a public right of way in 1975.

5.10.9. **Correspondence dated 20 February 1981 - 5 March 1981**  
**Source: Held in SCC files**  
**Appendix number: 13**

5.10.10. The correspondence shows that in 1981 Combe St Nicholas Parish Council believed Sixteen Acre Lane was a public footpath and that they also believed their predecessors had missed a number of routes off of the DMS. The County Planning Office advised that the parish council should forward any supporting evidence to the District Council.

Parish Council Minutes

5.10.11. **Combe St. Nicholas Parish Council Minutes**  
**Source: SWHT**  
**Reference: D/PC/com.n/1/2/3 and D/PC/com.n/1/2/5**  
**Appendix number: 14**

5.10.12. The minutes and newspaper cutting pasted into the minutes show that from 17 July 1974 Combe St Nicholas Parish Council believed Sixteen Acre Lane to be a public bridleway. They also show that the route became blocked by late 1974 but at the time, it appeared that at least one member of the parish council could recall it having been possible to travel the length of the lane on horseback.

5.10.13. On 13 January 1975 the Parish Council records that Yeovil District Council were seeking proof that Sixteen Acre Lane was a highway. In March 1975 the Parish Council resolved to apply to the County Secretary to have Sixteen Acre Lane marked on the Definitive Footpath Map.

5.10.14. There was probably a scrapyard established on Sixteen Acre Lane which Yeovil District Council took enforcement action against in 1975, although



not apparently on the grounds that the route was a highway. However, one newspaper cutting refers to a scrap yard on Priddles Lane.

5.10.15. In January 1981 the Parish Council recorded that bridlepaths which had not been included on the Definitive Footpath Map owing to an oversight on the part of previous parish councils, should now be included.

#### District Council Minutes

#### 5.10.16. **Yeovil District Council Planning Committee Minutes**

**Source: SWHT**

**Reference: D/DC/s.som/2/1/3**

**Appendix number:**

5.10.17. On 13<sup>th</sup> February 1975 the council resolved to take enforcement action against a scrap yard at Ham Hill on the grounds that "*such a use was seriously detrimental to the rural and visual amenities of an area which was one of great landscape value.*" The decision does not seem to have been taken because the scrap yard was considered to be obstructing a public highway. Sixteen Acre Lane is not mentioned.

#### Description and interpretation of evidence

5.10.18. The removal of the scrapyard does not seem to have been carried out because the route was considered to be a highway, and is therefore no evidence for or against the existence of a right of way over the application route.

5.10.19. Yeovil District Council and Somerset County Council acknowledge that Sixteen Acre Lane could carry unrecorded rights, and that these rights could be recorded if there was sufficient evidence to show they existed. However, neither seem to have believed they were in possession of such evidence. This weighs neither for or against the route carrying public rights.

5.10.20. A number of sources show that Combe St Nicholas parish council believed the application route carried public rights as either a bridleway or footpath, although bridleway is mentioned more often. The belief of the parish council over a period of years weighs fairly strongly in favour of public rights.

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#### 5.11. **Commercial Maps**

#### Explanation of the type of evidence

5.11.1. 'Commercial maps' are those produced for sale to the public<sup>7</sup>. They vary widely in terms of their quality and were not all produced for the same purpose. As such the weight to be given to them also varies.

5.11.2. **Greenwoods 1822**  
**Appendix number: 16**

5.11.3. Despite some criticism relating to the positional accuracy of Greenwood's maps they can provide good evidence of a route's physical existence at the time of the survey and also that the surveyor considered it to be of some importance. As the map was produced for use by members of the public it is likely that the surveyor would have focused on those roads that he believed to be publicly accessible or that were useful for the public in some other way.

5.11.4. In this case the map shows Sixteen Acre Lane as a 'cross road'. Although not specifically defined on the map, this term was being used to refer to more than just the point at which two roads cross. In one prominent case the courts defined a cross road as 'a **public** road in respect of which no toll is payable'<sup>8</sup> (my emphasis). However, in that case the judge was considering a map produced 55 years earlier than Greenwood's and by a different cartographer. Therefore, while consideration should be given to this legal precedent, it is important to consider the term 'cross road' in the context of any individual map before drawing any inferences<sup>9</sup>.

5.11.5. While the majority of cross roads shown on Greenwood's map are now recognised as public vehicular roads, there are many which are not. Most of those which are not now public vehicular roads are shown on Greenwoods Map as cul-de-sacs which are unlikely to have carried public vehicular rights. For example:

- part of bridleway CH 7/22 and a route extending north from it
- a route past Lawless Farm
- Bellmoor Lane
- part of footpath CH7/36
- route at Belcombe
- route at Street Ash

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<sup>7</sup> It is accepted that some OS maps were also made for sale to the public but these are dealt with elsewhere in this report.

<sup>8</sup> Hollins v Oldham (1995)

<sup>9</sup> Paragraph 2.26 of the Planning Inspectorate's 'Definitive Map Orders: Consistency Guidelines'.

5.11.6. A similar picture emerges when analysing other extracts of the same map. In fact, in some cases Greenwood shows as cross roads routes which only a few years earlier had been set out as private roads by an Inclosure award.

5.11.7. Furthermore, any inference to be drawn from Greenwood's map needs to be viewed in light of *Merstham Manor Ltd v Coulsdon UDC*<sup>10</sup> in which the judge concluded that 'there is nothing in the map(s) to show whether or not the topographer-author was intending to represent the road on his map as a public highway'.

5.11.8. In the circumstances it seems as though Greenwood either did not consider all 'cross roads' to be public vehicular routes, or that he did not make very careful checks about the public status of the routes he recorded. This map therefore confirms the physical existence of the application route in 1822, but is of very limited weight in support of public rights over the application route.

5.11.9. **Bartholomew's Map, 1911 and 1927 (extract only)**  
**Source: Supplied by applicant**  
**Appendix number: 17**

5.11.10. B

5.11.11. On the 1911 edition the application route is shown uncoloured between the narrowest spaced casing lines. The key states that "*The uncoloured roads are inferior and not to be recommended to cyclists*" and "*NB. The representation of a road or footpath is no evidence of the existence of a right of way*".

5.11.12. The application route is shown in the same way on the 1927 edition, and the key contains almost identical statements in relation to uncoloured roads and rights of way.

5.11.13. Bartholomew's map was considered in *The Commission for New Towns and Worcestershire County Council v J.J. Gallagher Limited*<sup>11</sup>. In that case it was considered that the implication was that the uncoloured roads on Bartholomew's map were considered public carriageways. After referring to the disclaimer (see above) Neuberger J. went on to say "*I do not consider that that means that one can cast aside what one could otherwise glean from Bartholomew as being of assistance, but the disclaimer underlines the fact that one cannot place much weight on Bartholomew's Maps, or indeed on any map which does not have the positive function of identifying public carriageways.*"

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<sup>10</sup> *Merstham Manor v Coulsdon and Purley UDC* [1937] 2 KB 77

<sup>11</sup> [2002]EWHC 2668 (Ch)

5.11.14. Following this interpretation, Bartholomew's 1911 and 1927 map are evidence in favour of the application route under consideration here carrying public vehicular rights, but not much weight is placed on them.

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## 5.12. **Other Sources**

**Plan of property belonging to the Deanery of Wells situate in the parish of Combe St. Nicholas Somerset, c. 1813.**

**Source: SWHT**

**Reference: DD/CC/T/177**

**Appendix number: 18**

5.13. The map includes the annotation "*Leasehold property coloured Pink. Copyhold do. do Yellow. The letter a denotes allotments under Inclosure award*". The application route is shown coloured buff between point A and approximately point D.

5.14. This map is recorded in the SWHT catalogue as dating from c.1813 (perhaps because the date given for the state of cultivation in the accompanying book of reference is 1813 whereas the map itself is undated). However the catalogue entry goes on to suggest that the map may be a little later as it shows the land post inclosure (1818). Furthermore, the annotation referred to above mentions plots awarded under the inclosure award. This shows that, whatever the date given in the book of reference, the map maker must have had sight of the intended post-inclosure layout and the map must therefore post-date the setting out of the roads under inclosure, if not the date at which the Award was signed. The Map therefore confirms the physical existence of the application route, as far as it is shown, post-inclosure but does not provide evidence that the application route physically existed prior to inclosure.

5.15. There is no key indicating status and the primary purpose of the map does not appear to have been to record public or private rights of way. There is no reason to conclude that the map maker was attempting to indicate the existence of public or private rights over the ways shown. Therefore, this map is no evidence for or against public rights over the application route.

### 5.15.1. **Ministry of Food National Farm Survey 1941-42**

**Source: National Archives (Extract only)**

**Reference: MAF 73/36/87.**

**Appendix number: 19**

5.15.2. The National Farm Survey was commissioned to assist the work of the County War Agricultural Executive Committees by assessing Britain's ability to feed itself in wartime. The data was gathered on a map and four forms. It included information on the location of the Farm in relation to (public) roads and the condition of the farm roads.

5.15.3. The purpose of this survey was to survey farms and not to record the status of roads. Therefore, while exclusion from the surrounding plots of land may be indicative of vehicular routes, the map provides no evidence as to the status of the roads passing through or adjacent to the landholdings (i.e. whether they were public or private vehicular routes). This is all the more true given that the map is available only in isolation and without the supporting forms. This conclusion is supported by paragraph 11.14 of the Planning Inspectorate's Consistency Guidelines which state that "*It is possible that information regarding rights of way might arise from the Survey, although, ....it seems unlikely*".

5.15.4. The application route is shown excluded from the surrounding holdings between point A and C, and from approximately D to B. The land on either side of the route belongs to different holdings over these sections. Between C and D the route is not excluded, and the land on either side forms part of the same holding. No accompanying form was supplied.

5.15.5. Ultimately, without further information, these documents are unhelpful in determining the status of the application route.

5.15.6. **Conveyance of Lands, 1888 (extract only)**

**Source: The National Archives**

**Reference: CRES 38/1906.**

**Appendix number: 20**

5.15.7. The application route is shown from point A to about halfway between point D and E. All the linear ways shown on the map, including the application route, are coloured yellow. Most of the routes shown on the plan are today public vehicular roads. However, part of bridleway CH7/22 and a route with no status extending from it are also shown coloured yellow.

5.15.8. As there is no key it is not possible to conclude that the colouring of the linear ways was intended to indicate status. The fact that some public vehicular routes are shown yellow cannot be taken to indicate that the application route must have been considered a public vehicular route because it was also shown coloured yellow. Also, although this document may still be of assistance in the

investigation, it must be borne in mind that the existence of rights of way was not central to the purpose of the document.

5.15.9. The application route itself is not included in the lots being sold, but two lots adjoining it (630 and 632) are. The written document describes 632 as being numbered 69 in the Inclosure Award and 632 on the Tithe Map, and as being bordered on the north-west (and probably west) by 'Droeways'. The location of these droeways is consistent with the location of the application route and a cul-de-sac numbered 80 on the Inclosure Award (both of which were set out as private at inclosure). However, only the application route is (partly) shown on the 1888 conveyance map. Although it is clear that the application route is being referred to as a droeway, this does not help determine status as 'droeway' is not a term which indicates (or precludes) public rights. The use of this term therefore weighs neither for or against the existence of public rights.

5.15.10. The conveyance (after describing other lots) also includes the words "*Together with all ways rights easements [... ...] and appurtenances to the same belonging or usually held therewith.*"

5.15.11. If an easement, private right of access or public right of way existed over Sixteen Acre Lane, this would appear to be covered by the statement quoted above. Therefore the fact that a specific easement to reach the lots for sale is not mentioned does not mean that none existed and consequently that a public right must have existed over Sixteen Acre Lane via which access to the land was gained. Neither does it mean Sixteen Acre Lane carried no public rights.

5.15.12. The documents are compatible with the application route being a public vehicular road, or a private road with or without lower public rights running over it. Therefore, beyond confirming the physical existence of the application route as far as it is shown, these documents are of no weight in relation to this investigation.

5.15.13. **Conveyance of Lands, 1912 (extract only)**

**Source: The National Archives**

**Reference: CRES 38/1906.**

**Appendix number: 21**

5.15.14. The conveyance includes a plan on which the application route is shown between point A and approximately point D labelled Sixteen Acre Lane. All the linear ways on the plan, including the application route, are uncoloured. Most of the routes shown on the plan are today public vehicular roads. However, part of bridleway CH7/22 and a route with no status extending from it are also shown uncoloured in the same way. It is unknown whether the map

maker intended to indicate the existence of, or types of, rights which existed over the linear ways shown. However, the existence of rights of way does not seem to have been central to the purpose of the document.

5.15.15. One of the sale lots borders the application route between A and very slightly north of C and although it is not shown split into multiple lots, it is numbered '64<sup>A</sup> 65<sup>A</sup> 66<sup>A</sup> 67<sup>A</sup>'. The application route itself is not shown as being included in any of the lots for sale.

5.15.16. The indenture includes the following text "*To hold the said scheduled lands and hereditaments (except as aforesaid) [unto?] and to the use of the Purchaser his heirs and assigns in fee simple subject to ... all rights of way light and water and other easements (if any) affecting the same ... subject also to such rights of way and such [... ...] of [..] light and water and the passage thereof as the Commissioners their successors or tenants now have or enjoy in through and upon the said scheduled lands and hereditaments or any part thereof to for or in respect of any [... ...]."*

5.15.17. If an easement, private right of access or public right of way existed over Sixteen Acre Lane, this would appear to be covered by the general terms of the indenture. The documents are therefore not evidence that access to the lots for sale must have been by virtue of a public right over the application route. In any case, the lots could have been accessed via other routes which are today public. Therefore, as the documents were not produced to record public rights, they are ultimately compatible with the application route being a public road or a private road with or without lower public rights running over it.

5.15.18. **Sale Documents, 1952 (extract only)**

**Source: The National Archives**

**Reference: CRES 59/69.**

**Appendix number: 22**

5.15.19. Extracts of two copies, apparently the same map were supplied, one of which had additional hand drawn notations regarding water supplies. The lots being sold are shown both coloured and numbered on the map. The application route is shown uncoloured and not included in any of the lots for sale. The key identifies the (presumably) tenants, and public and private water supplies (on one copy), but does not mention rights of way, easements etc.

5.15.20. Between F and B about half the width of the application route on the western side is shown as a long, narrow enclosure.

5.15.21. Some of the individual lots for sale could only be accessed via Sixteen Acre Lane, or by crossing other land. However, access could have been by virtue of either a public or a private right and the documents do not indicate which.

5.15.22. The documents do not mention public or private rights, the existence of public rights of way was not central to their purpose, and they are ultimately compatible with the application route being a public road, or a private road with or without lower public rights running over it. As such they weigh neither for or against the existence of public rights, and beyond confirming the physical existence of the application route are of no assistance in this investigation.

5.15.23. **Deed of Exchange, 1963**

**Source: The National Archives (extract only) and the Land Registry**

**Reference: CRES 59/125.**

**Appendix number: 23**

5.15.24. The deed of exchange describes two of the plots of land being exchanged as having parcel numbers 1183 and 1257 on a 1903 OS map of the parish, and as "*adjoining the public highway leading from Sticklepath to Ham Hill*". This would be an accurate description of the location of Sixteen Acre Lane, although potentially also applicable to Priddles Lane.

5.15.25. One of the plots of land borders both the application route and Priddles Lane. However, 1257 is only bordered by one linear way – the application route between C and D. Therefore, the route being described as a 'public highway' must be the application route under consideration here. The primary purpose of this document wasn't to record public rights of way and it is unlikely it would have been available for public inspection and comment, both factors which reduce the weight that can be given to it. However it does explicitly describe a route which must be Sixteen Acre Lane as 'public highway' and is therefore of weight in favour of the route having the reputation of a public highway in 1963.

5.15.26. ***A303 Trunk Road Ilminster – Marsh Improvement. Environmental Statement, Volume 2, Part 7 Pedestrians, Cyclists and Equestrians, The Highways Agency, 1994. (extract only)***

**Appendix number: 24**

5.15.27. The map extract shows the application route coloured purple from point A to point F, before the purple line leaves the application route to turn sharply north-west.



5.15.28. Paragraph 8.2.4 states "*The proposals include for a new bridleway parallel to the new dual carriageway linking Priddles Lane with Sixteen Acre Lane, with the remaining part of Sixteen Acre Lane reclassified as a bridleway.*"

5.15.29. As the document refers to 'reclassifying' Sixteen Acre Lane as a bridleway this suggests The Highways Agency did not believe it already was a bridleway, but it does not state what status they thought it had instead.

5.15.30. There is a contrast of language between the 'new' bridleway and 'reclassifying' Sixteen Acre Lane which suggests that Sixteen Acre Lane (unlike the proposed new bridleway) was thought to have some public status already. This distinction could also have been drawn because the 'new' bridleway had no physical existence whereas Sixteen Acre Lane already physically existed, but the former interpretation seems more natural. Therefore, this document is in favour of the Highways Agency believing Sixteen Acre Lane was a public footpath, a restricted byway, a byway open to all traffic or a public vehicular road – that is, any status except public bridleway. The document is therefore slightly in favour of Sixteen Acre Lane having the reputation of carrying public rights, other than as a bridleway, in 1994.

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## 6. **User Evidence**

6.1. Section 31 (1) of the Highways Act 1980 states that "*where a way over any land, other than a way of such character that use of it by the public could not give rise at Common Law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it*".

6.2. Therefore twenty years use by the general public can give rise to the presumption of dedication of a way. The period of 20 years is measured backwards from a date of challenge. If no other date of challenge is identified, the date of the application to modify the DMS will be the date of challenge.

6.3. In this case one User Evidence Form was submitted in support of the application. The user claimed to have used the route monthly on foot and on horseback between 1995 and 2019, with a break around 2002 when "*bridge over ford washed away and was not repaired for several years*". They had also occasionally observed other walkers / riders.

6.4. Use by one person is insufficient to reasonably allege the presumption of dedication has been raised, even if use has taken place over a full 20 year period. Other use which the user observed carries very little weight as it is unknown under what circumstances that use was taking place (it may have been with permission, by virtue of a private right etc.). As the presumption is not raised there is no need to consider whether there is sufficient evidence of a lack of intention to dedicate.

6.5. It is noted that the user refers to a bridge over the ford and suggests that although this was damaged, it was later repaired or replaced some time after 2002. At the time of the site visit on 20/08/2019 there was no bridge at point E where the application route crosses a stream. There was, however, the overgrown remains of an unidentified stone structure on the southern bank. It is thought unlikely that this structure is the replacement bridge to which the user referred as the vegetation growing out of it must have taken some years to grow. The structure is in too poor a state of survival to know whether it formed part of an earlier bridge.

**7. Landowner Evidence & Evidence from those against the application.**

7.1. Consultations regarding the claimed route were sent out to all landowners and adjacent landowners in August 2019.

<b>Landowner and response</b>
<p><b>Landowner B</b></p> <p>Landowner B returned a map indicating the extent of the land they owned and said <i>"Our only concern is that it could be used as a Travellers Stop (gypsy site)."</i></p>
<p><b>Landowner E</b></p> <p>Landowner E has owned the land since 2012 but before that it was owned by their family since the 1960s. They asked the previous owner, who told Landowner E that, apart from their family, it has never been used as a bridleway or footpath.</p> <p>The ground is very wet, full of trees and hard to walk through.</p> <p>Landowner E provided a map on which they indicated they owned the whole width of the application route between B and F.</p>

Landowner E provided a copy of a Land Charges search dated 29 February 2012. The search results showed there was no recorded public right of way over the land in question, but that an application had been received to record a restricted byway over the application route.

## 8. **Comments on Landowner Evidence.**

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

8.2. It is noted that Landowner E claims ownership of the whole width of the application route. This does not accord with the Land Registry search results, but it is entirely possible for land to be owned but not registered. In any case, it is not necessary for this investigation to determine the ownership of the land over which the application route runs.

8.3. Landowner E's comments regarding use of the application route since about 1960 are noted. However, if the documentary evidence shows the application route was a highway at some point in the past, and the route has never been legally stopped-up, then it will still be a highway today regardless of any period of disuse by the public.

8.4. The Land Charges search results provided by Landowner E show that no right of way was recorded over the application route in 2012. This is as expected as the route is not recorded on the DMS. However, the DMS is only definitive of what it shows, not of what it omits. Therefore, the omission of a route from the Definitive Map is not proof that rights do not exist.

## 9. **Consultations and other submissions**

9.1. Consultations regarding the claimed route were sent out to relevant local and national organisations in August 2019. The table below shows who was consulted and gives brief details of replies that were received.

<b>Consultee and response</b>
Somerset Highways: were unaware of any evidence that might assist in the investigation.

No response was received from the following organisations:

- Parish Council
- District Council
- Local Member
- Trail Riders Fellowship – Somerset Office
- All Wheels Drive Club
- Open Spaces Society – National Office
- Open Spaces Society – Local Area Representative
- Natural England
- British Horse Society – National Office
- British Driving Society – National Office
- Ramblers' Association – Local Area Representative

## 10. Discussion of the evidence

10.1. The pre-inclosure OS 'old series' map (discussed at 5.5.3 – 5.5.5) is very strong evidence that the application route physically existed between B and C prior to inclosure, with a physical continuation over C to X. However, it does not show a route between A and C.

10.2. The Inclosure Award set out A to C (as part of A to E) as a 'private road or driveway'. Taking the Inclosure Award and OS 'old series' maps together it is highly likely that A to C first came into physical existence, and rights were first created over it, at inclosure. These rights were private, not public, and the award is therefore no evidence of public rights over this section.

10.3. The Inclosure Award also stopped-up a roadway on Sticklepath Hill. It is concluded above that it can be reasonably alleged that this stopped-up section was C to X. C to X formed a continuation from the application route prior to inclosure but does not form part of the application route. If it was stopped-up it must have carried public rights. It seems very unlikely that the rest of the same through route (C to B) did not carry the same rights prior to inclosure. No stopping-up of section C to B has been found. The stopping-up in the Award is therefore strong evidence that C to B carries public rights, probably vehicular.

10.4. Many post-inclosure sources are compatible with Sixteen Acre Lane being either a public highway or a private road with or without lower public rights running over it including the Tithe map, OS Maps, the 1888 conveyance, 1910 Finance Act Maps, 1912 conveyance, 1929 Handover map, 1930s and 1950s Highway Records, 1952 sales documents, Draft Map, Draft Modification Map, Provisional Map, DMS, Greenwood's map, Deanery of Wells map and the

Ministry of Food National Farm Survey map (the relevance of some of these documents to the width of the route is discussed further at 10.17 – 10.20).

10.5. There are also a number of post-inclosure documents which weigh in favour of public rights over the application route.

10.6. The OS ONB explicitly describes the application route as a public road. However, less weight can be given to this evidence than might otherwise have been because the local authority for the name (E. J. Symes) does not seem to have had sight of a description of the route which indicated status and therefore neither confirmed or denied that the description of the route as a public road was correct.

10.7. Bartholomew's maps, for the reasons given at 5.11.9 – 5.11.14, are considered to be in favour of public vehicular rights over the application route, but can be given only very limited weight.

10.8. Whilst the application route itself is not recorded on any of the DMS preparation documents, the parish council did initially record path 23 running east from point C. Therefore, whilst not explicitly stated, they must have thought either that path 23 was a cul-de-sac, or that there were public rights (presumably higher than footpath rights, otherwise they would have recorded them as such) over at least part of Sixteen Acre Lane (either from A to C or C to B or both) enabling access to path 23. However, while this is indirect evidence of the reputation of the status of the application route, path 23 was not shown on any subsequent DMS preparation documents or on the DMS itself. No objections have been found to the exclusion of either path 23 or Sixteen Acre Lane from the DMS preparation documents. Therefore this is of only very limited weight in favour of the application route having the reputation of carrying public rights in 1950 / 1951.

10.9. The 1963 deed of exchange explicitly describes a route which must be Sixteen Acre Lane (between C and D) as being 'public highway'. All public rights of way are public highways, and this document does not state what type of public highway it is referring to (footpath, bridleway etc). Whilst not created to record public rights of way and therefore of slightly reduced weight, this document does use explicit language and is evidence in favour of the reputation of the application route in 1963. It is also unlikely this document would have been considered when the Definitive Map was drawn up and it is therefore 'new evidence' as required under section 53(3) of the Wildlife and Countryside Act 1981.

10.10. Various documents show that from 1974 Combe St Nicholas Parish Council believed the application route to have public rights, which are mostly

described as being for a bridleway or 'bridlepath'. At least one person recalled access being possible within living memory. Whilst this is only the view of the parish council, and (other than the recollection of use mentioned above) no reasons for this belief are given, it is nevertheless evidence in favour of the reputation of the route locally. The District and County Council at the time, whilst accepting the possibility that the route carried unrecorded public rights, do not appear to have held a similar belief and consequently requested evidence of status.

10.11. Whilst of limited weight, there is also evidence that the Highways Agency believing Sixteen Acre Lane carried public rights other than as a bridleway in 1994.

10.12. There are therefore a series of documents from 1901 onwards which weigh in favour of the application route having the reputation of carrying public rights, often (although not exclusively) as a bridleway.

10.13. C to B appears to have carried public rights, probably vehicular, prior to inclosure. Those rights were not legally stopped-up at inclosure and no evidence has been found that they have been stopped-up since, and will therefore still exist today even if the later evidence is more in favour of a bridleway. However, this only applies to C to B.

10.14. A to C is not shown on the pre-inclosure OS First Series map, and on the basis of the available evidence it is concluded that it was first set out at inclosure. No public rights were set out over it at that time.

10.15. Although some of the documents in favour of public rights over the application route describe it in a way which would be compatible with vehicular rights they are not applicable exclusively to routes which carry vehicular rights. The same terms could also be used to describe any public right of way (for example, public highway, public road). Where an unambiguous term is used, the route is most often described as a bridleway / bridlepath. The 20<sup>th</sup> century evidence is therefore sufficient to reasonably allege public bridleway rights came into existence at some time since inclosure over A to C.

10.16. Had the public continued to make use of B to C with vehicles after inclosure, and completed their journeys via C to A, public vehicular rights over C to A could also have been acquired. However, even though the inclosure award may not have legally stopped-up the public vehicular rights over C to E it did describe the route as private and for the use of a limited group of people. In the years following the Award it may have been accepted by local people that the route was no longer available for public use because of the way it was described in the Award, which was a well publicised document. Even though

this was not legally the case this would offer an explanation for public vehicular rights ceasing to be exercised over B to C, and therefore not being acquired through use over the new continuation of the route, C to A. It is therefore reasonably alleged that A to C carries public bridleway rights, but not public vehicular rights.

## **Width**

10.17. Many of the maps and plans from the tithe map onwards show a linear division between B and F, the western portion being made up of one or more enclosures often shown containing one or more buildings, the eastern portion having the character of a linear way.

10.18. In 1840 the western enclosures between B and F are shown on the tithe map as two houses and gardens. Maps from before and after this date which cover the relevant area either show the western enclosures as separate from Sixteen Acre Lane, or are at an insufficient scale or level of detail to tell whether or not they include the western enclosures within Sixteen Acre Lane.

10.19. A reasonably clear divide can be seen on the ground between the eastern linear way and western enclosures between B and F, with the eastern part being noticeably lower, which is suggestive of greater wear. One of the buildings in the western part is still partially standing.

10.20. The majority of the application route is excluded from the surrounding hereditaments on the Finance Act map. However, the long, narrow enclosures to the west of the application route are coloured as a hereditament and therefore do not appear to have been considered part of either a public highway or private route for multiple users. Given that both historic map and current physical evidence suggests buildings have been present across the enclosures since at least 1840 it seems unlikely there would be any such reduction.

## **11. Summary and Conclusions**

11.1. There is insufficient evidence of use to raise the presumption of dedication.

11.2. C to B physically existed before inclosure and it is reasonably alleged that it carried public vehicular rights.

11.3. A to C did not physically exist before inclosure and was set out as a private road at inclosure. Insufficient evidence has been discovered to

reasonably allege that public vehicular rights were dedicated over this route post-inclosure, but there is sufficient evidence to reasonably allege public bridleway rights came into existence, in particular the description in the OS Object Name Book, the 1963 deed of exchange and the belief of the parish council from the 1970s.

11.4. Between B and F it seems highly likely that the western enclosures shown on many maps do not form part of the highway. It is therefore not reasonably alleged that public rights exist over these western enclosures between B and F.

## 12. **Recommendation**

It is therefore recommended that:

- i. an Order be made, the effect of which would be to add to the Definitive Map and Statement a restricted byway between points B and C as shown on Appendix 1, and to add a bridleway between points C and A as shown on Appendix 1.
- ii. if there are no unwithdrawn objections to such an order it be confirmed
- iii. if objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs.



## List of Appendices

Please note that the document reproductions in the appendices are not to scale. The report writer has added the red letters A and B present on Appendix 1 to maps to help the reader identify the sections of the route the document is depicting. Red circles have also been added to some appendices to indicate the area of the claim where lettering is not appropriate.

1. Plan showing claimed route
2. Landownership Plan
3. Plan showing the width of the route
4. (a) Plan showing location of photographs taken 20/08/2019  
(b) Photographs of the claimed route taken 20/08/2019
5. Combe St Nicholas Inclosure Act (1814) and Award (1818)
6. Tithe Map, Combe St. Nicholas
7. OS Maps
  - (a) 1809 - 1811 OS 'old series' map Cassini Timeline reprint
  - (b) 1888 OS County Series 1<sup>st</sup> Edition Map
  - (c) 1898 - 1900 OS Revised New Series Map, Cassini Timeline reprint
  - (d) 1902 OS County Series 2<sup>nd</sup> Edition Map
  - (e) 1919 OS 'popular edition' Map. Cassini Timeline reprint
  - (f) 1940 OS War Revision map
8. OS Object Name Book
9. 1910 Finance Act Valuation Map
10. Western Gazette, 14 March 1975  
Chard and Ilminster News, 13 March 1975
11. Correspondence relating to a caravan on Sixteen Acre Lane, 6 February 1974 – 23 July 1974
12. Letter from Combe St Nicholas Parish Council, 20 March 1975
13. Correspondence dated 20 February 1981 - 5 March 1981
14. Combe St. Nicholas parish council minutes
15. Yeovil District Council Planning Committee Minutes
16. Greenwood's Map 1822
17. Bartholomew's Map 1911 and 1927
18. Plan of property belonging to the Deanery of Wells situate in the parish of Combe St. Nicholas Somerset, c. 1813.
19. Ministry of Food National Farm Survey 1941-42
20. Conveyance of Lands, 1888
21. Conveyance of Lands, 1912
22. Sale Documents, 1952
23. Deed of Exchange, 1963

24. *A303 Trunk Road Ilminster – Marsh Improvement. Environmental Statement, Volume 2, Part 7 Pedestrians, Cyclists and Equestrians*, The Highways Agency, 1994
25. Definitive Map and relevant preparation documents