



WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53, SCHEDULE 14
APPLICATION TO SOMERSET COUNTY COUNCIL
IN THE PARISH OF MERRIOTT
563 & 564m

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1. Introduction

1.1 On 22 September 2008, South Somerset Bridleways Association made two applications 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 Public Bridleways as described in Paragraph 2 below.

1.2 A public bridleway can be used by the public on foot, pedal cycle and horseback.

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

1.4 Private rights may exist, but have no place in this investigation and do not form part of the decision making process.

2. The Application

2.1 The applications are based on documentary evidence. The applicant supplied a number of documents with the applications, as follows:

- Photos of route
- 1809-1811 Cassini reprint OS map
- 1822 Greenwoods Map (application 564M only)
- 1843 Merriott Tithe Map
- 1898-1900 Cassini OS map
- 1907 OS Object Names Book
- 1910 Finance Act Map
- 1919 Cassini reprint OS map
- 1927 Bartholemews map

The application and supporting documents are held by the County Council.

2.2 No user evidence was submitted with either application. During investigation a very small amount of user evidence was found (ie, one person on the parish council) recalls using the claimed route and is discussed briefly at 6.1.1.

2.3 The claimed public bridleway is shown coloured blue on Appendix 1. The claimed route starts at Point A near Knapps Farm, Merriot and heads in a generally northerly direction along Middlefield Lane crossing an old parish boundary onto Ham Lane and on to Point B, the route then turns in a south easterly direction along Holdfast Lane where it joins Public Bridleway CH 19/35 at Point C. A total distance of 1,714 metres.

2.4 Photographs of the claimed route taken in 2008 are at Appendix 2.

2.5 A land registry search was carried out in January 2017 which identified that there were no registered owners for the claimed route. The Common Law presumption is that adjoining landowners own up to the centre point of the lane, in the absence of any evidence to the contrary. The surrounding landowners have been consulted as a matter of course and any comments included in this report.

3. Relevant Legislation

3.1 The Wildlife and Countryside Act 1981 specifies in Section 53(2)(b), 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 section 53(3)(c)(i) is of particular relevance. This requires the Map and Statement to be modified where the County Council discovers evidence: -

"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" (53(3)(c)(i)).

3.2 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) of the Act 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 South Somerset Bridleway Association made their application.

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

3.4 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 footpath, bridleway or restricted byway 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.

3.5 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*".

3.6 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, Members 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.

4. Documentary Evidence

The table below shows documentary evidence sources examined as part of this investigation.

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

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

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

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

4.3.2 Tithe Map and Apportionment for the Parish of Merriott 1843

Diocesan copy - Ref: SHC D/D/RT/M/89 & D/D/RT/A/89
Appendix 3

4.3.3 Description and interpretation of evidence

The Map and apportionment for Merriott is dated 1843. Three maps were produced, one for the Parish Council, one for the Diocese and a further copy for the Tithe Commissioners themselves. In this case only the Diocesan copies are available at the Heritage Centre.

The tithe map for Merriot was not sealed by the Commissioner confirming that it is a second class map. It is therefore only conclusive evidence in respect of the information it contains relating to tithes.

The Diocesan copy shows the claimed route very clearly as a through route from the south to north bounded by solid lines and is uncoloured and unnumbered.

The claimed route is not numbered or referred to in the apportionment indicating that the land was not considered to generate any titheable produce. This could be because it was considered to be a public road however it could equally have been unproductive land, and therefore unnumbered, if it was a private road.

Taken on its own the Tithe documents provide excellent evidence that the claimed route was a physical through route in 1843. However, they were never intended as a record of public rights and as such are less helpful in determining the status of any given route. In this case, even when read together, the map and apportionment give little indication as to why the claimed route was considered unproductive i.e. did they carry public or just private rights?

4.4 Ordnance Survey Records:

4.4.1 Explanation of the type of evidence 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.

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

4.4.2 1st Edition

25" OS map on microfiche

Surveyed 1886

Published 1887

Ref: LXXXIX :1 & 5

Appendix 4

This shows the whole of the claimed route as a clear lane feature bounded by

double solid lines. There are also double pecked line shown from Point A&B within the fields though annotated FP and outside of both Middlefield Lane and Holdfast Lane. Whilst FP can sometime indicate public footpath it is not always the case and should be taken in the first instance with the pecked line to just indicate a physical track on the ground. There also appears to be a small stream/gully running within the width of Middlefield lane which crosses from east to west side about 180 metres south west of Point B. This feature appears much the same of other OS map versions.

4.4.3 1st Edition
6", OS map
Surveyed 1886
Published 1886
Ref: LXXX1X NW
Appendix 5

This shows the whole of the claimed route as a clear lane feature bounded by double solid lines.

4.4.4 2nd Edition
25 inch: 1 mile OS map
Surveyed 1886
Revised 1901
Published 1903
Ref: LXXX1X 1 & 5
Appendix 6

Just the map sheet covering the southern end of the claimed route is available in the local Archives which shows this section as a defined lane feature. Online the full length of the claimed route is clearly shown between double solid lines.

4.4.5 2nd Edition (Revised)
25" OS Map
Surveyed 1886
Revised 1928
Published 1929
Ref: LXXXIX 1 & 5
Appendix 7

Just the southern section of the route is shown on the copy in the local archives which shows this section as a defined lane feature. Online the full length of the claimed route is clearly shown between double solid lines.

4.4.6 OS Object Name Book – Sheet

" 1901 - 1928"

Ref: TNA ref OS 35, 6428

Appendix 8

The Object Name Book (ONB) was created to check the names and spelling of features on OS maps, such as roads and houses. The application route follows three named lanes; Middlefield Lane, Ham Lane and Holdfast Lane.

The Object Name Book for map sheet LXXXIX:5 describes Middlefield Lane as follows:

Applies to an occupation road starting at Green Nap. and leading in a northerly direction to it's junction with Longmoor¹ and Ham Lane.

Four other lanes are described as occupation roads on the same page as Middlefield Lane; Andrew's Lane, Hackney Pit Lane, Garstone Lane and Eggwood Lane. The first two of these are cul-de-sacs with no current recorded public status. The second two are currently recorded as bridleways (CH19/25 and CH19/36) and are subject to undetermined applications to upgrade them to restricted byways. All five of the routes listed as occupation roads were corroborated by the same person who was Assistant Overseer and Clerk to the Parish Council.

Middlefield Lane continues from map sheet LXXXIX:5 onto map sheet LXXXIX:1. It was initially described in the object name book for the latter of these two sheets as follows:

Applies to a lane extending from Green Nap Merriott and going in a northerly direction to Longmoor Lane

However, this entry has been struck through and a note has been added in red stating 'Described on plan 5'.

Both Ham Lane and Holfast Lane are also included in the object name book for map sheet LXXXIX:1. These are described as:

Ham Lane: Applies to a lane extending from Longmoor Lane + going in a northeasterly direction for about ½ a mile.

Holdfast Lane: Applies to a lane extending from Ham Lane + going in a southeasterly direction to the main road about ¼ mile south of Byrne

¹ Longmoor Lane is shown as a cul-de-sac route extending west from the junction between Ham Lane and Middlefield Lane on OS 25 inch LXXXIX.1, published 1903.

Bridge.

Both names were corroborated by the same person who corroborated the entires in LXXXIX:5 but here he is referred to simply as the Assitant Overseer of Merriot; no reference is made to him being the clerk to the parish council.

4.4.8 Cassini OS Maps 1809- 1919

Appendix 10

(i) 1809-1811 reprint

(ii) 1898 – 1900 reprint

(iii) 1919 reprint

All the above Ordnance Survey maps show the claimed route bounded by solid casing lines of equal thickness as a continuous lane feature along its whole length.

4.4.9 Description and interpretation of evidence

The claimed route is shown as a clear through route on all of the OS maps examined.

The OS Object Name Book describes Middlefield Lane (covering most of the application route A-B) as an occupation road. The usual meaning of an occupation road is a road for the use of those who occupy land accessed from it, i.e. a private way. This suggests that the OS surveyor and possibly the person who held the posts of Assistant Overseer and Clerk to the Parish Council believed Middlefield Lane to be a private road. The latter of these two individuals might be expected to have had a good knowledge of the status of routes in their area. However, it is unknown whether he corroborated this description as well as the name, although whoever wrote the description must presumably have had a reason for using the term 'occupation road'. Whilst this weighs against the route having the reputation of a public vehicular highway it does not weigh against bridleway or footpath rights. However, it does not provide evidence in favour of those rights either.

The object name book describes Ham Lane and Holdfast Lane as 'Lanes' which also join a public bridleway. In itself this term is neutral in terms of status. However no reason for Ham Lane and the other half of Middlefield Lane to be of a different status is apparent – no evidence for there having been a place of public resort at this point has been found either.

The applicant has submitted a copy of the 1809-1811, 1898-1900 and 1919 Cassini reprints of OS maps, all of which show the claimed route as a clearly defined feature on the ground.

Little more can be concluded from the Ordnance Survey and other old maps other than the claimed route has had a long standing physical presence over time. The maps do not give any indication as to whether routes are public or private as the purpose of OS mapping was to record the physical features on the ground at the time of survey.

4.5 1910 Finance Act

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

Land was broken into land 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:-

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

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

The 1910 Finance Act material did not become widely available until the mid1980's. It cannot therefore have been considered during the Definitive map making process and can be considered "new evidence", if it is relevant.

4.5.2 Finance Act Map

Working Plan: Ref: SHC DD/IR/OS/89/1&5

Valutation Book: Ref DD/IR/T/20/5

Record Plan: Ref: IR128/9/1084 and IR128/9/1088 (submitted by applicant)

Appendix 11,12, 13

4.5.3 Description and interpretation of evidence

The applicant submitted a copy of the record plan from the National Archives. A working copy was also examined in Somerset Archives but this was merely a plan OS base map dated 1929. The claimed route on the National Archives record map is clearly shown as a 'white route' unnumbered and excluded from the adjoining coloured land parcels.

Planning Inspectorate guidelines state that if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular. There are other potential reasons for exclusion, including a route having been set out for multiple users at inclosure. It is therefore important to consider these documents alongside all other relevant material to an individual case. In this case the Object Book mentioned already above in 4.4.6 clearly states that Middlefield Lane (the claimed route) was considered an occupation road.

4.6 Highway Road Records held by the County Council

4.6.1 Explanation of the type of evidence The Local Government Act 1929 transferred the responsibility for maintenance of highways from Rural and Urban District Councils to County Councils. At that time 'Handover Maps' and schedules were prepared showing all roads to be maintained by the County Council at this point. Subsequent maps showing roads for which the County Council was liable to maintain were produced in the 1930s, 1950s and in the 1970s.

4.6.2 1929 Handover Map and Schedule Appendix 14

The whole of the claimed route is shown on the base mapping as a lane feature bounded by solid lines.

4.6.3 1930 Road Records Appendix 15

The whole of the claimed route is shown on the base mapping as a lane feature bounded by solid lines.

4.6.4 1950 Road Records Appendix 16

The whole of the claimed route is shown on the base mapping as a lane

feature bounded by solid lines.

4.6.5 Description and interpretation of evidence

The Highway Records do not indicate that the claimed route has been considered a public highway maintainable at public expense since 1929. However, these were primarily records of maintenance and did not typically record public footpaths or bridleways. The route may not have been included because it was considered public but not publically maintainable, or the highway authority may simply have been unaware of public rights over the route. However, whilst these records do not preclude the existence of public rights over the application route, they certainly offer no evidence in support of the existence of such rights either.

4.7 Definitive Map and Statement preparation records

4.7.1 Explanation of the type of evidence The Definitive Map and Statement were produced after the National Parks and Access to the Countryside Act 1949 placed a duty on County Councils to survey and map all public rights of way in their area. The process was undertaken in five stages:

- 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.
- 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. Any objections received were recorded in a Summary of Objections found in the District file.
- 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.
- 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 Parishes and District Council offices at this point only the tenant, occupier or landowner could object,
- 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.
<p>4.7.2 Survey Query Card Appendix 17</p> <p>There is no survey card for the application route, but the query card contains a relevant note; "Middlefield Lane not included, no evidence, no outlet, not included".</p>
<p>4.7.3 Survey Map Appendix 18</p> <p>There is a blue line drawn on the survey map running just outside the claimed route within the field on it's eastern boundary north from point A for about 660 metres. The line in question follows pecked lines labelled F.P. shown on the base mapping. The last approximately 177 meters have been crossed through with multiple short lines. The blue line forms a cul-de-sac. The nearby Bridleway CH19/35 to the east (which does not form part of the application route) is clearly marked with a similar solid line but only to Point C.</p>
<p>4.7.4 Draft Map Appendix 19</p> <p>The claimed route is not marked on the draft map as any Public Right of Way.</p>
<p>4.7.5 Draft Modification Map Appendix 20</p> <p>The claimed route is not marked as a Public Right of Way on this map.</p>
<p>4.7.6 Provisional Map Appendix 21</p> <p>The claimed route is not marked as a public right of way on this map.</p>
<p>4.7.7 Definitive Map Appendix 22</p> <p>The Definitive Map for this route falls in the area of Chard and is dated 1956. The claimed route is not shown on the Definitive Map.</p>
<p>4.7.8 Definitive Map Statement</p>

There is no Statement for the claimed route given it is not marked on the Definitive Map.

4.7.9 Description and interpretation of evidence

All the above Definitive Map preparation documents do not show the claimed route as a public right of way. The DMS is definitive of what it records, but not of what it omits. Therefore, the non-recording of a public right of way on the DMS or preparation documents is not necessarily evidence against the existence of those rights.

A route through fields parallel with part of the application route appears to have been considered at least briefly at the parish survey stage, but the County Council did not transfer it to the draft map. In any case, this does not form part of the application route.

The query card suggests that Middlefield Lane was considered to be a cul-de-sac with no evidence supporting the existence of public rights at the time of the parish survey.

4.8.1 Other Sources

4.8.3 Parish Council/Meeting Minutes

File 1 RW 5/77 from January 2000, File 2 RW 5/77 73-99

Some general correspondence was examined in the above files but nothing found relating directly to the claimed route.

4.8.6 Day and Masters Map 1782

Appendix 23

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

While the map does show a short spur leading off of Boozer Pit Road in the vicinity of point A, this appears to be more closely aligned with Wall Ditch Lane (bridleway CH19/35) rather than the application route.

Given the limited detail shown on these maps, the fact that a particular route

is not depicted should not be taken as evidence that it did not exist at the time but, equally, it is not evidence of the existence of the route or of public rights.

4.8.9 Greenwoods Map 1822 **Appendix 24**

The application route is shown from point A running north over about half the length of Middlefield Lane. The key identifies it as a 'cross road'. This confirms the physical existence of at least part of the application route in 1822. Given the level of detail shown on this map it does not necessarily mean that the rest of the route did not physically exist at the time but it is likely to have been of less significance. Despite some criticism relating to the accuracy of Greenwoods maps, it provides good evidence that part of the route physically existed at the time of the survey and, possibly, that the surveyor considered it to be of some importance. Whether it was marked to depict a public or private route is difficult to deduce. Consequently, this map is of little assistance in determining status, other than showing that the claimed route seems to have been, at the southern end, a physically defined route in 1822.

4.8.10 Bartholomews Map 1927 **Appendix 9**

The full length of the claimed application route is shown between the narrowest spaced casing lines, uncoloured. The key identifies uncoloured routes as 'inferior and not to be recommended'. The key also carries a statement to the effect that the depiction of a route is no evidence of a right of way. Bartholomew's map was considered in *The Commission for New Towns and Worcestershire County Council v J.J. Gallagher Limited*³. 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 Neuberger J. went on to say at paragraph 108 *"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."* Later in the same judgement (at paragraph 121) *Bartholomew's map is referred to as being "actually of assistance to the argument that it [Beoley Lane] was a public carriageway"*.

Following this interpretation, Bartholomew's map is evidence in favour of the application route under consideration here carrying public vehicular rights,

but can be given little weight. "

³ [2002]EWHC 2668 (Ch)

4.8.11 Aerial photograph 1946 Appendix 25

The claimed route can clearly be seen in the 1946 aerial photograph as a defined lane feature all the way through. Near Point B and on to Point C a lane feature is still visible but there appears to more tree cover in these areas.

4.8.12 Description and interpretation of evidence

Little mention of the claimed route of any relevance has been found from investigating council and old parish records. Furthermore, the route does not appear to be shown on Day and Masters map. None of these documents offer much assistance in determining the status of the application route.

The Greenwoods map of 1822 and Aerial photograph do concur with the analysis of the OS maps that the route has been a physical lane feature for a long period of time in history but do little to assist with the public or otherwise nature of the lanes.

4.9.1 Other sources of Primary Documentary Evidence which either did not cover the relevant area or did show the claimed route but do not assist in determining the status.

- Quarter Sessions SHC S/SR/1, nothing of relevance to route.

4.9.2. Documentary Evidence conclusions

The evidence shows that the application route has remained unchanged in terms of alignment since the early 1800's as it is shown on a variety of maps. The route's width and context suggest that it is likely to have been used by vehicles during at least part of its existence.

Many of the documents considered, including Tithe records and the OS County Series Maps, are as consistent with the existence of private vehicular rights as they are with public rights. Similarly, the Definitive Map preparation documents offer little in terms of determining the status of the route. Having

considered the status of Middlefield Lane the County Council clearly took the view that the evidence did not support the existence of public rights. However, it is possible that they had in mind a route adjacent to the lane which had been recorded on the parish survey. In either case the Definitive Map is not conclusive of what it omits and there is evidence available now which would not have been available in the 1950s (i.e. the Finance Act documents).

Exclusion of the route from valuation under the 1910 Finance Act could be construed as evidence that the application route is a public highway. However, it needs to be seen in the context of the evidence as a whole. A perfectly plausible alternative explanation for exclusion of a linear way from surrounding hereditaments on the record plan is if the route was set out as a private road for multiple users with no owner specified at inclosure (*Section 11, DMO Consistency Guidelines v5, July 2013*). No inclosure award has been found which covers the area of the application route. However, the Object Name Book which is nearly contemporaneous with the Finance Act documents refers to the majority of the application route as an occupation road. 'Occupation roads' are usually considered to be private roads providing access for occupiers of land. Despite the lack of an inclosure award this raises the possibility that the route was excluded from valuation as a route in multiple ownership with multiple private users.

There is no reason why a public footpath or bridleway could not run over a route, such as an occupation road, which carried private vehicular rights. Although less likely it is of course possible that the application route was excluded from the Finance Act valuation because it was a footpath or bridleway but there is little other evidence to support the existence of such rights. In the circumstances exclusion from the Finance Act valuation is therefore not inconsistent with the application route being a private road for use by numerous parties.

This conclusion is supported by further analysis of other routes which were excluded from the valuation in this area. At least two of those routes were cul-de-sacs (which are therefore unlikely to carry unrecorded public rights) which were described as occupation roads in the object name book (Andrew's Lane and Hackney Pit Lane, see paragraph 4.4.6) and over which no public rights are today recorded. As such the existence of multiple private rights is a very plausible reason for the valuer having excluded these routes.

In addition, the status of Middlefield Lane seems to have been specifically considered during the Parish Survey and it was noted that there was no evidence, and that the route did not form part of a through route (there was 'no outlet'). This weighs against the application route being in use in the early 1950s and perhaps for some time before this.

That is not to say that there is no evidence in favour of public rights. Although other commercial maps, such as Day and Masters and Greenwoods weigh neither for or against public rights. Bartholomew's Map of is given very little weight and it is not sufficient to reasonably allege public rights exist over the application route.

5. Landowner Evidence & Evidence from those against the application.

5.1 This section of the report includes information provided by the landowners.

Landowner and response
Landowner A – states concerns over liability of fencing if claim successful and surprise that they did not realise public rights of way could openly cross a field.
Landowner B – state has discussed claim with late neighbouring landowner and his son who both believe there has never been a right of way along Middlefield Lane and never seen any person attempt to use the lane either as it is a strip of woodland and impassable since late 1960's – early 1970's and vegetation renders it impassable and in winter turns into bog.
Landowner C – states they have no relevant information on the use of the claimed route but that if it was ever a Bridleway must have been a long time ago as there are now mature trees growing down middle and much of it is practically impossible to use.
Landowner D – states they have never seen anyone use the claimed route but remember his father (born about 1897) telling him some time before 1982 that horse and cart used to deliver milk from Ham Mead using the route. "Although we would rather have no use of a one-time Bridleway, we realise that it does exist, albeit many years ago." Also mentioned concerns regarding dogs not being on leads etc.

5.1.2 Comments on Landowner Evidence.

As previously stated in an earlier section regarding legislation, applications such as this cannot consider matters such as suitability, the security and

wishes of adjacent landowners cannot be considered. Therefore, whilst the concerns of the landowner are perfectly understandable they are not within the scope of this process. The fact that the route may be physically difficult to use due to vegetation etc may be of some relevance in relation to recent use of the route but the application was based on documentary evidence. If the route was a highway in the past and it has not been legally stopped-up, then it will still be a highway today even if it has not been used for some time.

The comments about never seeing anyone using the claimed route are noted. However, this evidence is in conflict with the comments of the Parish Council (discussed at Section 6) that one person recalls the route being well used. But in the absence of any user evidence being submitted with the application adds little to the investigation.

6. Consultations and other submissions

6.1.1 Consultations regarding the claimed route were sent out to all landowners and relevant local and national user group organisations in February 2017. The table below shows who was consulted and gives brief details of replies that were received.

Consultee and response
Parish Council – state that the route has been shown on OS maps as a right of way and one member of public in attendance at recent meeting recalls using it in the past and that it was used quite well. The Public Path Liaison Officer of the parish council also thinks it was a bridleway some time ago but that the landowner should be consulted about the matter.
Ramblers Association – Somerset Office State they have no factual knowledge regarding the claimed route.

No response was received from the following organisations: -

- District Council
- Local Member
- British Horse Society – Somerset Office
- Trail Riders Fellowship – Somerset Office
- All Wheels Drive Club
- Open Spaces Society – National Office
- Somerset Environmental Records Centre

- Somerset and Avon Constabulary
- English Nature – Somerset Office
- Ramblers' Association – National Office
- British Horse Society – National Office
- British Driving Society – National Office
- Ramblers' Association – Local Area Representative
- British Horse Society – Local Area Representative
- CPRE – Somerset Office

7. Summary and Conclusions

In order for the right of the public to have been brought into question the right must be challenged by some means sufficient to bring it home to the public that their right to use the way is being challenged. From this challenge date under Section 31 of the Highways Act 1980 the preceding twenty years can be taken into account to establish whether a right of way has been dedicated to the public. In this instance, the date of the application appears to be the date of challenge namely 22/9/08.

In terms of user evidence relating to this application no user evidence forms or other direct evidence of use were submitted with the application or during the investigation. Some indication from the parish council has been made that one person has used the application route in the past and thinks others used it. They believe it to be a bridleway. However, insufficient detail was provided to determine whether sufficient use took place over the full 20 year period. Consequently, the claim fails to meet the tests laid out under Section 31 of the Highways Act. However, this does not necessarily mean that rights have not existed at some point in the past and, if that is the case, then they will still exist today unless they have been extinguished by due legal process.

There is strong evidence that the application route has been present on the ground since the early 1800's at least, in particular the OS maps which are considered to be an excellent record of physical features. However, the majority of the evidence would be consistent with either a public vehicular highway or a private road with or without lower public rights (bridleway or footpath) running over it. As such they are of little assistance in this case.

The exclusion of a route from the Finance Act valuation raises a strong possibility that it was a highway, probably vehicular. However, it is important to see the document in the context of the rest of the evidence. In this case the Object Name Book, which is a nearly contemporary document to the Finance

Act maps, indicates that the application route had the reputation of a private road. There is also evidence which suggests that private roads for the use of multiple parties were excluded from the valuation in this area at least. In the circumstances the Finance Act in this case appears entirely consistent with the route being a private road.

That is not to say that there is no evidence which positively points towards the existence of public rights but what evidence there is very weak (Bartholomews Map for example). In the circumstances it is concluded that there is insufficient evidence to reasonably allege the existence of public rights over the application route.

8. I therefore recommend that.....

the application to add a Public Bridleway to the Definitive Map & Statement Shown at Appendix 1 is **refused**.

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. Photographs of claimed route
3. Tithe Map
4. 1st edition OS map 25"
5. 1st edition OS map 6"
6. 2nd edition OS map 25"
7. 3rd edition OS map 25"
8. OS Object book extract
9. Barthlomews Map 1927
10. OS Cassini reprint maps (1809- 1919)
11. Finance Act working copy (Local Archives)
- 12 & 13 1901 Finance Act coloured map (National Archives)
- 14 1929 Handover roads map
- 15 1930 Road records
- 16 1950's Road records
- 17 Survey Card
- 18 Survey Map
- 19 Draft Map
- 20 Draft Modification Map
- 21 Provisional Map
- 22 Definitive Map
- 23 Days & Master 1782 map
- 24 Greenwoods 1822 map
- 25 Aerial photos 1946

