

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53
SCHEDULE 14 APPLICATIONS TO

ADD A BRIDLEWAY ALONG FROGMARY LANE
IN THE PARISHES OF SEAVINGTON ST MICHAEL AND SOUTH
PETHERTON (577M)

Applications: 577M
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1. Introduction

- 1.1. On the 22nd September 2008, 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 bridleway. The application relates to a route known as Frogmary Lane (shown C-D-E on plan H04-2018)
- 1.2. A public bridleway is a right of way which can be used by any member of the public on foot, leading or riding a horse, or on a bicycle. In some instances, there is also a right to drive livestock.
- 1.3. The purpose of this investigation is to establish whether or not a public right already exist. There is currently no recorded public right of way on the Definitive Map along the claimed route.

2. The Applications

- 2.1. The application is based on documentary evidence and includes extracts of the following documents.
 - *Current Map and Photos of each end of the route*
 - *1782 Day & Masters Map*
 - *1809-1811 OS reprint (Cassini/Timeline)*
 - *1840 South Petherton Tithe Map*
 - *1846 South Petherton Inclosure Award (Q/RDE/141)*
 - *1883 OS Parish Boundary Maps (0527 4739)*
 - *1883 OS Parish Boundary Sketch Map (0526 9422)*
 - *1898-1900 OS Reprint (Cassini/Timeline)*
 - *1885 OS Object Names Book (0535 6416)*
 - *1910 Finance Act Maps (sheets 81-15 and 81-16)*
 - *1919 OS Reprint (Cassini/Timeline)*
 - *1940 OS War Revision*
- 2.2. No user evidence was submitted with the application. No direct evidence that the general public have used the claimed route has been found during the investigation.

3. Description of Route

- 3.1. The 'claimed route' covers the full historic length of 'Frogmary Lane', as marked from 'C' to 'D' to 'E' on appendix 1.
- 3.2. The westerly end of application 577M (around 140m from point C towards point D) is an enclosed lane banked with trees and vegetation, since February 2018 some large pieces of hardcore have been placed in this enclosed section. It also has a more recent earth embankment across the entire route (around 40m from point C), again this has been constructed since February 2018. This westerly section is followed by two middle sections. The route firstly runs between two fields (for around 200m). It is not currently traversable due to over growth and includes some young trees and a badger sett(s). There is no indication on the ground that this section of the route has been historically obstructed. The second of the two middle sections is a mud track (around 165m leading up to point D from the direction of point C). This section runs along the edge of a field with no definitive edge to the mud track. The far eastern section of the route (D-E) is now part of the A303 (as discussed later).
- 3.3. Photographs of the claimed route were taken on the 12th February 2018 and the 30th August 2019, they are in Appendix 2.
- 3.4. Land Registry searches were carried out on the 15th January 2018 which identified there were no registered owners for the claimed route. However, it was possible to identify 3 of the adjacent landowners. 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 3.
- 3.5. The case file, including the application, accompanying evidence and consultation responses can be viewed by Members by appointment.

4. Relevant Legislation

4.1. 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 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”.

4.2.1. 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 Bridleway Association made their applications.

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

4.4. Section 32 of the Highways Act 1980 states;

“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”.

4.5. 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 to C-D. There is therefore no question of rights for MPV's existing over this part of the claimed route. D-E on the other hand runs over the A303 and is recorded on the List of Streets. As such vehicular rights were preserved.

4.6. 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, 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 sources of the documentary evidence 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 an extract supplied by the applicant. Where this is the case the words 'extract only' follow the title of the document. It may sometimes be necessary to give those documents less weight on account of them only being viewed in part. If this is the case, it will be clearly stated in the analysis of the document.
- 5.2. Throughout discussion of the evidence, comparison might be made to the way in which other routes within the immediate vicinity of the application routes have been recorded. Where other rights of way, roads or physical features have been referred to their location has been identified on the plans at Appendix 4.

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 inclosed and had the power to 'set out and appoint public and private roads and paths' that were often situated over existing ancient ways.
5.3.2. Document Names: South Petherton Inclosure Award 1846 References: Q/RDE/141 Source: South West Heritage Trust (SWHT) Appendix: 5

Description and interpretation of evidence

- 5.3.3. The South Petherton Inclosure Award was made under powers granted by 'An Act for Inclosing Lands within the Parish of South Petherton 1836'. That Act incorporated the Inclosure Consolidation Act 1801.
- 5.3.4. Five maps accompany the Inclosure Award. The depiction of the routes on these maps vary. Where one map might depict a route shaded brown, another will leave the same route unshaded. Some of the linear routes shown on the maps are numbered and coloured red. The numbers correspond with entries in the text of the Award which typically refer to the routes being set out as private roads. No public roads were found to be set out in this award
- 5.3.5. One of the maps accompanying the Inclosure Award shows Frogmary Lane. The route is not numbered or coloured red. Furthermore, the text of the Award makes no reference to the route being set out as part of the inclosure process. Two important inferences can be taken from this. Firstly, the Award itself did not create any public or private rights over the application route. Secondly, the route almost certainly physically pre-dates the Award. If that had not been the case the route would not have been shown (this conclusion is supported by the OS Old Series Map, which pre-dates this award and also shows the route).
- 5.3.6. The fact that rights were not set out by the Award does not mean that it is of no assistance in determining whether or not public rights exist.
- 5.3.7. Although the application route was not set out as part of the Award, Frogmary Lane is referred to in the description of allotment 403 which reads as follows;
- 'One other piece or parcel of land situate in Fouts Close or Long Metlands numbered 403 on the said plan containing by admeasurement two acres three roods and thirty four perches **bounded on the North and South by Public Roads** and on the East and West by Old Inclosures' (my emphasis).
- Frogmary Lane is the 'public road' which forms the southern boundary of allotment 403.
- 5.3.8. By the time the Commissioner wrote this Award, he would have already consulted with the public and have been familiar with the area and the status of local routes. While the status of Frogmary Lane was not central to the purposes of the Award, it was subject to

public consultation and there is nothing to suggest there was any objection to it being referred to as a public road. In the circumstances the Inclosure Award is strong evidence that Frogmary Lane was a public road in 1846.

- 5.3.9. To summarise, the Award does not set out (or create) public rights over the application route. Nevertheless, this document is strongly in favour of the existence of public rights over Frogmary Lane in 1846.

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 given a tithe number. Some private roads, due to use could be equally not liable to a tithe. However, public and private roads could be subject to a tithe, if for instance, they produced a crop – grazing or hay cut from the verges.
- 5.4.4. The Map and Apportionment must be considered together. Roads are often 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.

5.4.6.	Document Names:	1841 Seavington St Mary Tithe Map (extract only)
	References:	IR 30/30/371
	Source:	TNA Kew
	Appendix:	6

Description of evidence

- 5.4.7. In the case of Seavington St Mary, the applicant has provided an extract of the Commissioners' copy of the tithe map. It is this document which is considered here.
- 5.4.8. Only the far westerly end of Frogmary Lane is shown on this map.
- 5.4.9. The route itself is shown between solid lines and is not numbered. This indicates the land was not considered to generate any titheable produce.
- 5.4.10. Additionally, the map has 'To South Petherton' on a route which leads north from point B.

5.4.11.	Document Names:	1840 South Petherton Tithe Map
	References:	IR30/30/333 (extract only)
	Source:	TNA Kew
	Appendix:	6

Description of evidence

- 5.4.12. As with Seavington St Mary, the applicant supplied an extract of the Commissioners' copy of the Tithe Map for South Petherton. It is this copy which is discussed here.
- 5.4.13. Frogmary Lane is clearly marked on the Tithe Map indicating it physically existed at the time these documents were drafted.
- 5.4.14. The route itself is shown between solid lines and is not numbered. This indicates the land was not considered to generate any titheable produce.
- 5.4.15. Most routes shown on this extract of the South Petherton Tithe Map, which includes Frogmary Lane, are coloured in sienna (yellow). Even on this small extract of the map it would appear that not all of the routes coloured sienna were considered public. For example, the cul-de-sac route slightly to the north of point C, doesn't seem to lead to anywhere of public interest. Due to the small extract and lack of a key to explain the reason for this sienna colouring, it is of little evidential value.

<p>5.4.16. Document Names: 1840 Seavington St Michael Tithe Map References: D/D/Rt/M/210 and D/D/Rt/A/210 Source: South West Heritage Trust Appendix: 6.4</p>
<p>Description of evidence</p> <p>5.4.17. In this case the Commissioners' copy has not been provided and so the Diocesan copy is relied upon instead. This copy portrays the route of Frogmary Lane over 3 different pages. Within the appendix these 3 pages are laid next to each other to give a collective indication of Frogmary Lane.</p> <p>5.4.18. The application route is clearly marked on the Tithe Map indicating it physically existed at the time these documents were drafted.</p> <p>5.4.19. The route itself is shown between solid lines and is not numbered or specifically referred to within the apportionment. This indicates that the land was not considered to generate any titheable produce.</p>
<p>Interpretation of evidence</p> <p>5.4.20. Because the application route forms a border between parishes, the route appears on three different sets of tithe documents. In each case it is shown unnumbered and between solid parallel lines suggesting it was unproductive. Tithe documents are primarily concerned with identifying tithable land. A private right of way can diminish the productivity of land to the same extent as a highway can. As both public and private roads might be unproductive and/or produce no crop, neither would necessarily need to be numbered, valued or recorded in the apportionment. As such the fact that the application routes are unnumbered is of little assistance in determining status.</p> <p>5.4.21. The Tithe maps in this case do show a variety of routes. Some routes shown on the Tithe maps in the same way as the application route were almost certainly public vehicular roads. However, there are also similarly portrayed routes which are more likely to have been private.</p> <p>5.4.22. The evidence submitted with the application included the Commissioner's copy of the tithe map for the parish of Seavington St Mary and South Petherton. Unlike the diocesan copies held by the Somerset Heritage Centre, these copies are in colour. Frogmary Lane is shaded sienna. Such colouring is not necessarily evidence of a route being a public highway. In the absence of a key or any other direct information as to the meaning of the shading, it is</p>

therefore of little evidential value for the current purposes. Furthermore, the extracts provided are so small as to make a comparative exercise of limited value. To the extent that a comparison is possible it shows that, although some public roads were shaded, so were other routes which were unlikely to have been public. As an example, the cul-de-sac route slightly north of Fouts Lane is coloured sienna but appears to have been of little public utility and is unlikely to carry public rights. No weight can be given to the sienna colouring of the routes in this case.

5.4.23. An inference as to status might also be drawn from the labelling of the route leading north from point B as 'to South Petherton' on the Seavington St Mary tithe map. This type of labelling is suggestive of public rights¹. However, from the map alone it is not possible to know whether the labelling in this case relates to the continuation of Frogmary Lane, Davids Lane or both. In the circumstances it is of little assistance in terms of determining the status of the application route.

5.4.24. The Tithe documents provide excellent evidence as to the existence of the route around 1840. As they were not intended to record public rights they are less helpful in determining the status of the given routes. In this case, even when read together, the map and apportionment give little indication as to why the claimed route was considered unproductive and it could equally carry public or just private rights.

5.4.25. For all of the above reasons these documents are not considered to offer much assistance in determining the status of the application routes.

5.5. **Ordnance Survey Records:**

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 the survey.

¹ DMO Consistency Guidelines, 2nd revision July 2013, Section 8, page 5, 8.12.

OS 'old series' (extract only)
Cassini Timeline reprint
1809-1811
Original scale: 1:63,360/one inch to the mile
Appendix: 7

- 5.5.3. Although not the original version of the OS's map, the Cassini Timeline reprints are reliable copies.
- 5.5.4. The application route is shown by solid parallel lines on this very early OS map. This line style was typically used to show 'other routes', these routes were distinguishable from, and depicted differently to, 'turnpike or main roads'. While some routes drawn in the same way as the application route are now known to carry public rights (e.g. David's Lane), others are more likely to have been private. For example, the route near Littlefields (see appendix 4) appears to have been a cul-de-sac of little public interest. It has no public rights recorded over it today.

OS Boundary Remark Book (extract only)
Published: 1883
Scale: not to scale
TNA ref OS26 9422
Appendix: 7

- 5.5.5. These maps were drawn in manuscript and show boundaries (mostly parish) and related ground features and carry the signatures of the relevant meresmen.
- 5.5.6. The application route is shown on two maps.
- 5.5.7. These maps show the physical existence of the route, however, they are silent in terms of determining its status.

OS Boundary Sketch Map (extract only)
Published: 1883
Scale: 12 chains to 1 Inch
TNA ref OS27 4739
Appendix: 7

- 5.5.8. These maps were drawn in manuscript and show boundaries (mostly parish) and related ground features as originally recorded in the boundary remark books. The area covered was usually a parish or, if small, several parishes.

5.5.9. The map in this case shows the application route highlighted in red; this red line shows the boundary of the parishes which converge over the application route.

OS County Series 1st Edition Map

Sheet No: LXXXI.15

Survey Date: 1886

Published: 1887

Scale: 1:2500

Appendix: 7

5.5.10. The 25 inch OS maps show more details of the potential character of a route. This map shows only the far westerly end of Frogmary Lane. It is depicted by solid parallel casing lines.

OS County Series 1st Edition Map

Sheet No: LXXXI.16

Survey Date: 1886

Published: 1887

Scale: 1:2500

Appendix: 7

5.5.11. This map shows the majority of Frogmary Lane but excludes the far westerly end (which is shown on the map above).

5.5.12. Along the southern side of the route, there are dots, these indicate the Parish boundary. Also, Frogmary Lane is shown to increase and decrease in width at various places along the route, with a section of it marked as a cutting or embankment.

5.5.13. It is noted that this map shows a set of parallel pecked lines (indicating a change in surface from the surrounding land, probably a path of some sort) meeting Frogmary Lane from the north between points D and E. Those pecked lines are annotated 'F.P.'.

OS Revised New Series Map (extract only)

Sheet No: 312

Survey Date: 1886

Published: 1898

Scale: 1:63,360

Appendix: 7

5.5.14. 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.

5.5.15. The application route is shown on the map as an 'Unmetalled Fenced Road'. The OS used this labelling to include; 'public roads, occupation roads and old metalled roads not kept in repair or roughly metalled or not metalled'². This would suggest that the symbol was used to depict private as well as public roads.

OS Country Series 2nd Edition

Sheet: LXXXI.15

Revised 1901

Published: 1903

Scale: 1:2500

Appendix: 7

5.5.16. The Western end of Frogmary Lane is shown. It is annotated 'Union & R.D. Bdy' meaning that it formed the boundary of the Poor Law Union and Rural District.

Country Series 2nd Edition

Sheet – LXXXI.16

Revised 1901

Published: 1903

Scale: 1:2500

Appendix: 7

5.5.17. The application route is largely shown in the same way as on the first edition map.

OS Popular Edition Map (extract only)

Cassini Timeline reprint

Published: 1919

Scale: 1:63,360

Appendix: 7

5.5.18. Although not the original version of the OS's map, the Cassini Timeline reprints are reliable copies.

5.5.19. The popular edition maps were produced for sale to the public and included a grading for roads and tracks.

² 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.

5.5.20. The result is much the same as the previously referred to Revised New Edition. Frogmary Lane is uncoloured and classified as a minor road. The map includes the statement 'Private Roads are uncoloured'. Therefore, the symbol used for the application routes would have been used for both public and private roads.

OS 5th Edition Style War Revision Map (extract only)
Published: 1940
Appendix: 7

5.5.21. The quality of the reproduction makes it difficult to interpret the way in which Frogmary Lane has been shown. Given that the route is known to have been the parish boundary, one would expect a dotted line to have continued along it. However, the route appears to be shown by a solid single narrow line. The meaning of this symbol is unclear as no key was provided nor has one been found.

OS Provisional Edition
Sheet No:ST41
Published: 1958
Scale: 1:25,000
Source: National Library of Scotland website
Appendix: 7

5.5.22. The cartographer depicted Frogmary Lane as a 'fenced footpath'. It is uncertain on what basis this conclusion was reached or what was meant by the term footpath in this context. Historically the OS had annotated routes 'F.P.' where they were unsuitable for horses or wheeled traffic. However, it is unknown whether or not this convention continued into the 1950s or whether, by that time, it was an indication of status. If the later, it is worth noting that the contemporaneous draft definitive map did not record Frogmary Lane as a footpath.

5.5.23. Above point E, a single dashed line runs northward off of Frogmary Lane, towards a route marked Smokeclose (Lane). This type of dashed line appears to have been used for footpaths but, unlike other routes similarly depicted, it is not annotated 'F.P.' on the map. The route in question matches that of public footpath Y24/39 as originally recorded on the Definitive Map (it has since been diverted).

**OS Object name books (ONB) 1885 & 1901
National Archives (Extract only)
Appendix: 7**

- 5.5.24. In preparing the second edition County Series map, the Ordnance Survey produced object names books. The primary purpose of which was to ensure the various names recorded on the maps (e.g. names of farms, roads, places etc) were accurate and correctly spelt. Each book contained a list of those names and a description of the feature to which they related, which was later corroborated by a prominent member of the local community (e.g. landowner or clergyman).
- 5.5.25. The description for Frogmary Lane matches the location of the said routes.
- 5.5.26. The application route is described as an occupation road. In this context the normal meaning of the term 'occupation' is for the use of those who occupy the adjacent land. While it is not impossible that such a term could have been used in relation to a public road, it is far more likely it was used to indicate private, rather than public, vehicular rights.

Description and interpretation of evidence

- 5.5.27. With the exception of the 1940 War Revision Map, the application route is shown on each of the OS maps produced since 1809-11. While the application route has not always been in good condition, they appear to show that it would historically have been physically capable of taking the vehicular traffic of the day. However, by the time of the 1958 Provisional Edition, Frogmary Lane was shown as a footpath. While weak evidence of status, this maybe is indicative this route was no longer capable of vehicular use.
- 5.5.28. Beyond showing the physical existence and character of the application route, the OS maps are of little assistance. Since 1888, all OS maps have carried a disclaimer to the effect that they should not be used as evidence of a public right of way. Furthermore, case law³ has shown OS maps are only indicative of the physical qualities of a way and should not be treated as direct evidence of status. In the circumstances, it is concluded they offer little assistance in terms of determining its status.

³ Moser v Ambleside UDC (1925) 89 JP 118

- 5.5.29. Having said this, there is some significance in the depiction of pecked parallel lines joining Frogmary Lane between points D and E on both the 1887 and 1903 County Series maps. The inclusion of 'F.P.' next to those lines suggest that they show a path which was not easily traversable by horses or wheeled traffic. The annotation is indicative of the physical character of a route rather than its status⁴. However, in this case, the route marked F.P. corresponds approximately with footpath Y24/39 as recorded on the Definitive Map when it was first produced. The significance of this is dealt with in more detail in paragraph 5.8.7.
- 5.5.30. The application route was listed in the object name book as an occupation road. This weighs in favour of it having been considered a private, rather than a public, road. However, the description is silent in relation to the possible existence of lower public rights. It is entirely possible for a route described as an occupation road to have been a private road over which there were also public rights on foot or horseback.
- 5.5.31. To conclude the OS maps provide excellent evidence as to the physical characteristics of Frogmary Lane. However, they do not provide direct evidence of status. The Object Name Book on the other hand does suggest that the route had the reputation of a private road in the early 20th century.

⁴ DMO consistency Guidelines – 6th revision May 2015, Section 12, page 7, 12.20.

<p>5.6. 1910 Finance Act</p>
<p>Explanation of the type of evidence</p> <p>5.6.1. 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.</p> <p>5.6.2. 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;</p> <ul style="list-style-type: none"> • 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. <p>5.6.3. 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.</p> <p>5.6.4. 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.</p>
<p>5.6.5. Document Names: 1910 Finance Act Record Plan and Field Book (Extract only)</p> <p>References: Sheets; IR 128/9/997 + IR 128/9/998</p> <p>Source: National Archives</p> <p>Appendix: 8</p>

Description and interpretation of evidence

- 5.6.6. Frogmary Lane is marked (on the OS base map) and, for the most part, is excluded from the surrounding hereditaments. The only exception to this is where the application route runs to the south of Hereditament 3 where there appears to be no clear line between it and Frogmary Lane. However, the size of hereditament 3 as recorded in the Field Book matches to the field size whilst not including Frogmary Lane. This suggests that, despite the lack of a coloured boundary line, the intention was to exclude Frogmary Lane from the extent of Hereditament 3 as well as all of the other adjacent hereditaments.
- 5.6.7. Case law has shown that the exclusion of a route from the 1910 valuation raises the strong possibility that the route was considered to be a highway⁵. Ordinarily one would expect highways recorded in this way to carry public vehicular rights as routes with lower rights (i.e. footpaths and bridleways) were typically dealt with by deductions recorded in the field books.
- 5.6.8. It should be noted that there may be other reasons to explain the exclusion of a route. For example, in some cases unproductive occupation roads were excluded. Similarly, routes set out in an inclosure award with multiple private rights over them could also be excluded⁶. There is no evidence that the application routes in this case were set out by such an award.
- 5.6.9. The Finance Act records, in some cases, may be very strong evidence of the existence of public rights. However, in attributing weight in any particular case it is important that this type of documentation is considered in conjunction with all of the other relevant documents.

5.7. Highway Road Records held by Somerset County Council Appendix 9

Explanation of the type of evidence

- 5.7.1. Over time responsibility for the 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 Fortune & Ors v Wiltshire Council & ANR

⁶ DMO Consistency Guidelines – 5th revision 2013, Section 11, pages 3+4, 11.7

1929 Handover Map and Schedule, Chard and Yeovil Districts

- 5.7.2. In 1929 responsibility for the maintenance of many highways was transferred from Rural District Councils to the County Council. To facilitate this, the Rural District Councils produced maps showing the highways which they considered maintainable at public expense.
- 5.7.3. Frogmary Lane runs along the border of Chard and Yeovil Rural Districts. As such it appears on the base maps for both areas. It is not coloured on either.
- 5.7.4. In conclusion, Frogmary Lane is not coloured in such a way as to indicate it was known to be a publicly maintainable highway on either the Yeovil or Chard handover maps.

1930 Road Records

- 5.7.5. Shortly after the 1929 Handover Maps the County Council produced working records of routes which were considered to be highways maintainable at public expense.
- 5.7.6. The application route is shown on the base map but is not coloured in (other than to show the rural district boundary). This indicates that it was not considered to be a highway maintainable at public expense at the time of this map.

1950 Road Records

- 5.7.7. The 1930 Road Records were updated and new versions were produced in the 1950s. Like their predecessors these maps show highways considered to be maintainable at public expense.
- 5.7.8. The application route is shown on the base map. Frogmary Lane is marked by a green dashed line with pencil crosses through it. Given the continuation of the line to the west and then north from point C it would appear to indicate the rural district boundary rather than a highway maintainable at public expense.
- 5.7.9. This indicates the route was not considered to be highway maintainable at public expense at the time of this map.

Modern Road Records

- 5.7.10. The application route is not currently recorded on the County Council's road records as a highway maintainable at public expense.

Description and interpretation of evidence

- 5.7.11. According to the Planning Inspectorate's consistency guidelines 'The evidential strength of handover maps and similar documents is that they are conclusive evidence of the highway authority's acceptance of maintenance responsibility, a commitment which would not normally have been undertaken lightly'⁷. However, they were not public documents and cannot be regarded as conclusive (for the status of a road) due to, amongst other things, the possibility that they might be an incomplete record, as mistakes may have been made.
- 5.7.12. In this case, the application route has not been recorded as highway maintainable at public expense. Despite being good evidence of the status of routes which are shown on the road records, it would be unsafe to hold that the fact that a road does not appear to have been accepted by the highway authority necessarily suggests that it cannot have been a highway. It is possible that they were simply unaware of the existence of highway rights or that the route was considered to carry public vehicular rights but not be maintainable at the public expense. Furthermore, the road record documents did not typically record public bridleways or footpaths. Thus, the omission of a route does not necessarily indicate that it was not a highway at the time the documents were produced.
- 5.7.13. To summarise, the lack of colouration of either application route on any of the road record maps indicate neither route was considered at the time to be a public vehicular highway maintainable at public expense. As such, while not necessarily inconsistent with public rights, these documents are certainly not supportive of them.

5.8. Side Road Order

- | | | |
|--------|------------------------|---|
| 5.8.1. | Document Names: | The London – Penzance Trunk Road A303
South Petherton – Broadway (Ilminster
Bypass Side Roads, No 2) Order 1985 |
| | Source: | Somerset County Council |
| | Appendix: | 10 |

⁷ DMO Consistency Guidelines – 3rd revision May 2013, Section 6, page 4, 6.9

Description and interpretation of evidence

- 5.8.2. A 'Side Road Order' (SRO), gives the Secretary of State (and in some instances the Highway Authority) authority to; stop up, divert, provide as new or improve highways which cross or enter the route of a proposed new (or to be improved) classified road. They also provide authority to stop up and provide new private means of access to premises in relation to classified road works.
- 5.8.3. The 1995 SRO affected both the eastern and western end of Frogmary Lane.
- 5.8.4. At the western end the SRO stopped up all private rights over the length of Frogmary Lane leading from point 'C' in an easterly direction for a distance of 144 metres (157yards). Those private rights were replaced by a new route immediately to the north.
- 5.8.5. It is noteworthy that only private rights were stopped up and created over the western end of Frogmary Lane. The SRO did not stop up any pre-existing public rights nor did it create any. The fact that public rights are not mentioned suggests that the Secretary of State for Transport was unaware of them existing over Frogmary Lane (had he been aware of them he would presumably have also sought to alter them in the same way as he did the private rights).
- 5.8.6. The fact that the Secretary of State was unaware of the existence of public rights over this part of the application route is maybe unsurprising given that, in preparing the SRO, he would presumably have referred to the Definitive Map which at the time did not record any public rights over the western end of Frogmary Lane (see paragraphs 5.9.18 and 5.9.19). As explained below, the Definitive Map is only conclusive of what it shows not what it omits. Therefore, the fact that no public rights are referred to over the western end of Frogmary Lane, should not be taken as evidence that such rights did not exist.
- 5.8.7. At the eastern end of Frogmary Lane, the application route coincides with the old route of Y24/39 (Smokeclose Lane) for approximately 55 metres (that is to say the 55 metres west of point E). The SRO stopped up this footpath and replaced it with a new footpath slightly further to the north. However, only the right to use the route on foot was stopped up by the SRO. Had any unrecorded higher rights existed then they are unlikely to have been affected by the order.

- 5.8.8. To the west of that section of Frogmary Lane which coincided with the historic route of Y24/39 lies a further 150 metres of the application route which also runs over what is now the A303. This is not mentioned in or affected by the SRO. Therefore, any public rights which may have existed over it would have been unaffected by the SRO.
- 5.8.9. In summary, with the exception of the eastern most 60 metres of Frogmary Lane, the application route is not referred to as a public highway in the SRO nor is there any evidence that the Secretary of State considered it to be one. As such this piece of evidence does not weigh in favour of public rights over the majority of the route. Having said this, given that the order would have been made following consultation with the Definitive Map, it is not necessarily inconsistent with the existence of such rights.
- 5.8.10. A similar conclusion can be reached in relation to the easternmost 60 metres of Frogmary Lane, albeit for different reasons. The SRO does not provide evidence in favour of public rights over this section; in fact it stopped up the right on foot which was known to exist at the time. However, the stopping up of the footpath would not necessarily have affected any unrecorded higher rights if they could be shown to have existed.

5.9. **Definitive Map and Statement preparation records**
Somerset County Council
Appendix 11

Explanation of the type of evidence

- 5.9.1. 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 a number of 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; 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.
- 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.

Survey Map and Card – Seavington St Mary CP

5.9.2. The application route was not claimed as a public right of way by the Parish Council.

Survey Map and Card – Shepton Beauchamp CP

5.9.3. The application route was not claimed as a public right of way by the Parish Council.

Survey Map and Card – Seavington St Michael

5.9.4. The survey maps and cards have not been found for this Parish.

Survey Map and Card –South Petherton

5.9.5. The survey map has not been found for this Parish.

5.9.6. The survey card for footpath Y24/39 states: 'No.39. Starts at Frogmary Lane northward, opposite entrance to Moordown Lane, thence along hedge and cartrack over cultivated field to squeezer stile (overgrown & on stone down), continuing west side of hedge over cultivated field to southern end of Smokeclose lane. This path does not appear to be much used and there is no beaten track.'

Draft Map – Chard

5.9.7. The base map only includes the far western end of Frogmary Lane.

5.9.8. The application route was not shaded on this map.

Draft Map – Yeovil

5.9.9. Although the parish and district boundaries are highlighted, the application route is not shaded as rights of way on this map.

5.9.10. Footpath Y24/39 however does connect to Frogmary Lane around 55m west of point E. The fold of the paper hides any potential colouring of this path on the final 55m on the far east end of the said Lane.

Draft Modification Maps – Chard +Yeovil

5.9.11. The application route is not shown on the Chard Modification Map.

5.9.12. No Modification Map for the Yeovil area was found.

Provisional Map – Chard

5.9.13. The application route is not shaded on this map.

Provisional Map – Yeovil

5.9.14. Though it is not normal practice, there are 2 maps labelled 'Provisional' for the Yeovil area.

5.9.15. The application route is shown on the base maps. With the exception of the easternmost 55m of Frogmary Lane, the application route is not shaded on either map. That part of Frogmary Lane which is shaded is recorded as footpath Y24/39.

5.9.16. On one of the provisional maps Frogmary Lane has been labelled with the words 'NOT A ROAD'. The map with this annotation has been filed as the 'RDC copy' presumably referring to the Rural District Council.

Definitive Map - Chard

5.9.17. The Definitive Map was required to show; Footpaths as a purple line, Bridleways as a green line and RUPPs as a dashed green line (Road used as a Public Path).

5.9.18. The Definitive Map for the Chard area does not show the application route in any of these ways. Therefore, the application route is not shown as a public right of way.

Definitive Map – Yeovil

5.9.19. With the exception of the 55 metres of footpath Y24/39 which covers the far easterly part of Frogmary Lane, the application route is not recorded as public rights of way.

Definitive Statement

5.9.20. The original pre-diversion⁸ definitive statement for footpath Y24/39, describes the route as follows:

“The path is a F.P. It starts at Frogmary Green and proceeds westerly for a short distance along Frogmary Lane and thence north west across fields into Smokeclose Lane and along lane to join the county road south west of Ben Cross”.

Description and interpretation of evidence

5.9.21. The Definitive Map is only definitive in relation to the information it contains relating to public rights of way. It does not prove, by omission, public rights do not exist.

5.9.22. With the exception of the far eastern section, the application route does not appear coloured on any of the Definitive Map preparation documents nor are they coloured on the Definitive Map itself.

5.9.23. However, the eastern most 55 metres of Frogmary Lane is shown as part of footpath Y24/39. This section of footpath was legally diverted as part of the Side Road Order (see 5.8.7) during the construction of the A303.

⁸ Footpath Y24/39 was diverted in 1985 by a side roads order (see paragraph 5.8.7).

- 5.9.24. One of the two Yeovil Provisional Maps does label Frogmary Lane as 'not a road'. It is unusual for more than one provisional map to have been produced for each rural district, the provenance of this map is therefore uncertain. However, it has been filed as the 'RDC copy' possibly indicating that it was the version which was held on deposit for consultation by the Rural District Council.
- 5.9.25. The author of the 'not a road' comment is unknown as is the basis on which they reached their conclusion. However, the fact that it is on the Rural District Council copy suggests that the annotation may have been made either by the District Council themselves or by the County Council after it was returned to them (i.e. after the original map was produced). If that were not the case one would have expected the other copy of the Provisional Map to have been similarly annotated.
- 5.9.26. In light of the uncertainty surrounding the origin of the comment, and in particular the evidence upon which it is based, it is difficult to give it anything but minimal weight against the existence of public vehicular rights.
- 5.9.27. As mentioned above, the Definitive Map is conclusive of what it contains but not to what it omits. In this case, with the exception of Y24/39 which has since been diverted, the application route is not shown as public right of way. While this is not evidence that public rights do not exist, it certainly cannot be seen as supportive of them.

5.10. Local Authority Documents							
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 people, they would have maintained 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 the status of a route can sometimes be found in local authority records and minute books.						
5.10.3.	<table border="0"> <tr> <td>Document Names:</td> <td>1862 Crewkerne Highway District Map</td> </tr> <tr> <td>Source:</td> <td>DD/SB/MAP/3/1 South West Heritage Centre</td> </tr> <tr> <td>Appendix:</td> <td>12</td> </tr> </table>	Document Names:	1862 Crewkerne Highway District Map	Source:	DD/SB/MAP/3/1 South West Heritage Centre	Appendix:	12
Document Names:	1862 Crewkerne Highway District Map						
Source:	DD/SB/MAP/3/1 South West Heritage Centre						
Appendix:	12						
Description and interpretation of evidence							
5.10.4.	Although not titled, this map appears to have been drafted as a record of those roads which were considered maintainable by Crewkerne Highway Board when it was formed in 1862. Linear routes shown on the map appear to fall into one of three categories						
5.10.5.	Firstly, some routes (the 'coloured routes') have been allocated colours other than pink/red. An analysis of the map shows that the coloured routes within each parish are all the same colour but that each parish has been allocated a different colour. For example, all the coloured routes in South Petherton are green whereas the coloured routes in Wayford are yellow. In the bottom left hand corner of the map there is a list of routes ordered by parish. Each route is identified both by a brief description and by reference to lettered or numbered points which appear on the map. The length of each route is also recorded. There is a strong correlation between those routes listed and those shown coloured on the map. Given the purpose of the map, and the fact that the Highway Board felt it necessary to list them and record their lengths, it seems very likely that these were considered highways maintainable at public expense at the time.						

- 5.10.6. The second category of route shown on this map are those shaded red/pink. These appear to have been turnpike roads⁹.
- 5.10.7. The third, and final, category of route are those which have been left uncoloured (i.e. white roads). This category includes Frogmary Lane.
- 5.10.8. Ordinarily, there would be some uncertainty as to the inference to be taken from a route being shown on this map as a white road. In general the purpose of the map was to identify those routes which were maintainable by the Highway Board. However, there are a large number of white roads which are cul-de-sacs many leading to individual properties.
- 5.10.9. Furthermore, the contemporaneous Town Tithing of Crewkerne map¹⁰ depicts a network very similar to that shown on the relevant part of the Highway Board map. The vast majority of routes which appear as white roads on the Highway Board Map are depicted as occupation roads on the Town Tithing Map. In the circumstances it seems likely that some, if not all, of the white roads were shown for a reason other than them carrying public vehicular rights.
- 5.10.10. However, in this case the map provides additional evidence which is of assistance. Firstly, adjacent to the list of coloured routes in South Petherton is a secondary list of routes labelled 'not stoned'. This 'not stoned' list is unique to South Petherton; no other parish has a similar list. It contains three routes and gives a length for each. One of the routes, which is described as 'Frogmore to Fouts', is given a length of 3 furlongs and 24 poles (approximately 724 metres). This would appear to relate to Frogmary Lane.
- 5.10.11. It is unlikely that such detail would have been included on the Highway Board map had the Board not had some responsibility for it. The fact that the route did not have a stoned surface is not, in itself, an impediment to it being maintainable at public expense. This is therefore evidence that the route was included on the map as a highway maintainable at public expense.

⁹ The list in the bottom corner of the map refers to a number of routes terminating either at a turnpike road or a toll gate. In each case the turnpike road referred to, or the road on which the toll gate is located, is coloured pink.

¹⁰ The 1862 Parish and other Road in the Town Tithing of Crewkerne (SHC reference CC/SB/MAP/3/2).

5.10.12. In conclusion, the fact that Frogmary Lane is uncoloured would not normally be strong evidence in support of public rights. In fact in some cases it might even be indicative of the existence of private rights. However, the Highway Board clearly had an interest in Frogmary Lane as it chose to record its length (albeit noting that it was not stoned). As such this document is in favour of public rights over the application route. Whilst it is acknowledged that the map is unlikely to have been subject to public consultation, it was drafted by independent officers with a knowledge of highway law and the Highway Board are unlikely to have accepted liability for a route lightly. In the circumstances this map is given significant weight in favour of the existence of public vehicular rights.

5.10.13. **Document Names:** 1924 Chard Rural District Council Minutes
Source: D/R/CH/2/2/10
 South West Heritage Centre
Appendix: 12

Description and interpretation of evidence

5.10.14. In 1924 the Rural District Council discussed Fouts Cross on two separate occasions (18 August and 17 November). In each case, reference is made to funding improvement works in the Fouts Cross area. However, it is impossible to know to what, if any, extent those works affected Frogmary Lane. Therefore, whilst there is a possibility the Lane was affected by the improvement works, it remains equally possible it does not refer to the route at all. As such this is given no weight at all.

5.11. Sale Documents

Explanation of the type of evidence

5.11.1. Evidence as to the status of a route can sometimes be found in sale maps and accompanying records. Each document should be addressed individually as they vary greatly.

5.11.2. **Document Names:** 1807 Map of Auction
Source: DD/SAS/C795/SE/2
 South West Heritage Centre
Appendix: 13

Description and interpretation of evidence

5.11.3. This map relates to the sale of a number of plots of land forming part of Shepton Beauchamp Estate. Although not for sale the western end of Frogmary Lane, in the vicinity of point C, is shown. The route is coloured yellow but there is no key indicating the meaning of such colouring. While it is clear that some public roads were coloured this way there is no reason to believe that private roads would not have been shown in exactly the same way. However, in addition to the colouring, Frogmary Lane is also annotated 'To South Petherton' at point C. As mentioned above this type of annotation often indicates the existence of a public right.

5.11.4. While the map is therefore broadly in favour of the application route being a public highway only minimal weight can be given to it for a number of reasons. Firstly, despite it appearing on other contemporaneous maps this document does not appear to show even the beginning of David's Lane which leads south from point B. This is maybe understandable given that it is on the periphery of the map but it does suggest that less care may have been taken when mapping things which were not of direct relevance to the sale. Secondly, the status of routes was incidental to the purpose of the document which was to define the land which was to be auctioned. It is therefore uncertain what, if any, consideration the map maker gave to the existence or otherwise of public rights. Thirdly, the map is unlikely to have been subject to public consultation, as such it is, at best, only the view of those who produced the map.

5.11.5. This map remains evidence that the application route had the reputation of being public but, for the reasons listed above cannot be given much weight.

5.11.6. **Document Names:** 1884 Sale of Lands
Source: DD/S/SBY/36
South West Heritage Centre
Appendix: 13

Description and interpretation of evidence

5.11.7. This map is entitled 'Plan of Farms and Accommodation Lands' and relates to land in a number of parishes including those in which the application routes are situated. It shows the land which was to be sold by auction on 1 July 1884.

5.11.8. The land abutting Frogmary Lane was not part of the sale. Nevertheless the application route is depicted on this map. It is coloured brown but there is no key to indicate the meaning of such colouring.

5.11.9. As with the sale map of 1807 discussed above, some public roads were coloured this way but there is no reason to believe that private roads would not have been shown in exactly the same way. Therefore, while this map does show the application route physically existence, it does not assist in determining their status.

5.12. Other Sources

Appendix 14

Document Names: Map of Manor Owed Land 1755
Source: DD/X/LT/3
 South West Heritage Centre
Appendix: 14

5.12.1. This map was produced to show the land owned by the manor. It is cartographically very similar to the 1807 map above and is possibly the prequel to it (it may well be that the 1807 map was based on the same survey as this one).

5.12.2. The very start of Frogmary Lane is shown. It is notable that Davids Lane, is not present on this map.

Document Names: Day and Masters 1782
Source: Somerset County Council
Appendix: 14

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

5.12.4. The full length of the application route is shown on the map. This suggests that it must have been either a very prominent physical feature or a route of some importance (or both). Based on this assumption it is maybe more likely that it would have carried public rights. However, little is known about the basis upon which Day and Masters selected the features which were to be shown on their maps. Furthermore, even if they did consider it to be public, this can only be taken as the view of the individual surveyor rather than the wider public. In the circumstances this map can be given some, but not a great deal of, weight.

Document Names: Greenwoods 1822
Source: Somerset County Council
Appendix: 14

- 5.12.5. 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.
- 5.12.6. Two types of road are shown on the key accompanying Greenwood's map. Turnpike Roads, which are shown with one thickened or shaded casing line (whether solid or broken) and Cross Roads, which are shown with casing lines of equal thickness (whether solid or broken). The key also suggests that roads through Heaths and Commons are shown with broken casing lines.
- 5.12.7. The map shows the application route as a 'cross road'. Although not specifically defined on the map, this term was being used to refer to more than just the point at which two roads cross. In one prominent case the courts defined a cross road as 'a **public** road in respect of which no toll is payable'¹¹ (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 inferences¹².
- 5.12.8. While the majority of cross roads shown on Greenwood's map are now recognised as public vehicular roads, there are many which are not. Many of those which are not now public vehicular roads are shown on Greenwoods Map as cul-de-sacs (e.g. the route running South opposite 'Littlefields Farm' off of 'Littlefields Lane', see appendix 4) which were unlikely to have carried public vehicular rights. 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. 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.

¹¹ Hollins v Oldham (1995)

¹² DMO Consistency Guideline – 5th revision July 2013, Section 2, page 7, 2.24

5.12.9. Furthermore, any inference to be drawn from Greenwood's map needs to be viewed in light of *Merstham Manor Ltd v Coulsdon UDC* 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'.

5.12.10. 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 it.

Document Names:	Aerial photograph 1946
Source:	Somerset County Council
Appendix:	14

5.12.11. The aerial photograph shows the application route as defined on the ground. The surface type is not clear in this photograph.

5.12.12. The aerial photograph is evidence for the physical existence of the route. The shape of the route is consistent with the maps already viewed in this report. However, it does not provide evidence for or against public rights.

5.13. Document sources not included

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, area as follows:

- Parish Files (held by Somerset County Council (SCC) and relating to PROW issues)
- Tithe apportionment – Shepton Beauchamp (D/D/Rt/A/122)
- 1946 OS New Popular Edition Map – sheet 177
- Ilminster Turnpike – Act, Bill, Notices and Deeds (D/T/ilm)
- Quarter Sessions records – Shepton Beauchamp + Seavington St Mary (Q/SR/315/288)
- 1830 Langport, Somerton & Castle Cary Turnpike
- 1838 Somerset Sessions

6. Landowner Evidence & from those against the application

6.1. Consultations regarding the claimed route were sent out to all landowners on 22nd January 2018. No responses were received.

7. Consultations and other submissions

7.1. Consultations regarding the claimed route were sent out to all relevant local and national user group organisations on 9th February 2018. In addition, a draft copy of this report was circulated to all interested parties on ** 2019. The table below shows who was consulted and gives brief details of replies that were received.

South Somerset Area Highways Office	7.2. Replied confirming they have no information relating to the route.
Ramblers	7.3. Replied confirming they have no relevant information on the application.
Seavingtons Parish Council	7.4. Replied stating; the path under discussion is shown as a track and they have no documentary evidence of them ever being a bridleway.
Open Spaces Society South Somerset	7.5. Two accounts of an understanding Frogmary Lane is a Bridleway. 7.6. Both of these accounts are third person evidence, as the information is a recalled conversation from the past.

Respondent A	<p>7.7. Respondent A's submission is included as appendix 15. In summary they make the following points.</p> <p>7.7.1. Case law suggests that, if a procedure was carried out, it should be assumed that it was carried out correctly (unless proved otherwise).</p> <p>7.7.2. There is a further presumption that the Definitive Map and Statement are correct.</p> <p>7.7.3. In order to modify the Definitive Map and Statement the evidence must prove, on the balance of probabilities, that an error was made during the creation of the definitive map.</p> <p>7.7.4. The burden of proof rests with those who are asserting that a right of way exists.</p> <p>7.7.5. The application can only be successful if supported by previously unseen evidence.</p> <p>7.7.6. A memo produced in 1950 by the Open Spaces Society, and approved by the Government, advised parish councils of the documents that they might like to consult when surveying the rights of way in their areas in preparation for the production of the Definitive Map.</p> <p>7.7.7. There is no new evidence in this case.</p> <p>7.7.8. All the evidence is against the existence of public rights. In fact it shows that the route is an occupation road (i.e. a private road).</p> <p>7.7.9. The Finance Act was made to identify land subject to tax, not for establishing highways. In order to be evidence of the existence of public rights, it needs to be supported by other evidence. There is no supporting evidence in this case.</p>
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7.8. No response was received from the following organisations.

- Local Member
- 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
- British Horse Society – National Office
- British Driving Society – National Office
- Ramblers' Association – Local Area Representative
- British Horse Society – Local Area Representative
- CPRE – Somerset Office

8. Interpretation of Consultation evidence

8.1. The consultation provided some comments on the status of Frogmary Lane. The Open Spaces Society is in favour of Bridleway status, however this is third hand evidence and as such can be given little weight.

8.2. Respondent A, who opposes public status, highlights a number of pertinent points. They quite rightly state that, unless there is evidence to the contrary, it should be presumed that statutory processes (including those associated with the drafting of the Definitive Map) were carried out correctly. It is also true to say that the Definitive Map and Statement are conclusive of what they show. However, they are not conclusive of what they omit. Therefore, there is no presumption that a right which is not shown on the Definitive Map does not exist. The need for evidence of some substance to displace the presumption that the Map and Statement are correct (as referred to in the Trevelyan case¹³) relates to applications to remove rights from the Definitive Map and is therefore not directly applicable in this case.

¹³ Trevelyan v Secretary Of State For Environment, Transport & Regions [2001] EWCA Civ 266

- 8.3. Respondent A also quite rightly points out that an order can only be made to modify to Definitive Map and Statement on the 'discovery of evidence'; that is evidence which was not available when the Definitive Map was last reviewed (see paragraph 4.2 above). In this case, the application route was excluded from the Finance Act 1910 valuation. The inference to be drawn from this is considered in more detail below. However, it does raise a strong possibility that the application route was considered to be a highway¹⁴. As explained in the Finance Act section above, these documents were not made public until the 1980s and as such were not available during the production of the definitive map. In the circumstances these documents are considered sufficient to satisfy the need for a discovery of evidence. Having discovered new evidence it is necessary to consider it alongside all the other available evidence in order to ascertain whether or not rights subsist or are reasonable alleged to subsist. It is this test, rather than the higher 'balance of probabilities' test, that the promoter of an order must demonstrate has been met before an order can be made to add a route to the Definitive Map.
- 8.4. Finally, it is agreed that Frogmary Lane was classed as an 'Occupation Road' in the OS Object Name book. This certainly weighs in favour the route being a private road and, as such, needs to be considered alongside the rest of the evidence.

¹⁴ A conclusion supported by the Planning Inspectorate's Consistency Guidelines (see paragraph 11.7 of that document).

9. Discussion of the evidence

- 9.1. As discussed in paragraph 4.1 above, the County Council is under a duty to modify the Definitive Map on the discovery of evidence that it is in error. The standard of proof to be applied in cases such as this (i.e. where the route of a claimed right of way is not already shown on the Definitive Map and Statement) consists of two limbs. An order should be made to modify the Definitive Map if the evidence shows that a right of way;
 - a) subsists; or
 - b) is reasonable to allege to subsist.
- 9.2. Importantly, the above paragraph describes the test for making an order. Such an order can only be confirmed (and therefore the Definitive Map modified) if the evidence meets the higher 'balance of probabilities' test.
- 9.3. It is noted that some pieces of evidence are ambiguous and there is no single document which categorically proves or disproves the existence of public rights. However, when looked at in its totality the evidence supports the conclusion that public rights can be reasonably alleged to subsist over Frogmary Lane for the following reasons.
- 9.4. Taken together the evidence clearly shows that Frogmary Lane existed by 1782. While many of the documents submitted as evidence do not necessarily assist in identifying the status of the routes, they do indicate the physical characteristics at the time the maps were drafted. They demonstrate that, although the route may have declined over time, it is likely it was capable of carrying horse and cart traffic from 1782 up to at least 1919. Of particular value in this respect are the Day and Masters map, Tithe documents, Greenwoods map, sale documents, the 1755 Manorial Map and OS Maps.
- 9.5. This evidence of character is useful in that it shows the physical nature of the application route was not inconsistent with the existence of public rights (vehicular or otherwise). However, while certainly not evidence against public rights, the route's physical character cannot be taken as directly supportive of them either. Both public and private roads may be of a size and standard capable of carrying horse and carts.

- 9.6. Of those documents referred to in paragraph 9.4 the one which maybe offers most in terms of determining status (as opposed to character) is the 1782 Day and Masters Map. The small scale of this map makes it likely that only prominent landscape features or routes of importance would have been depicted. While it is not inconceivable that a private vehicular road could fall within one (or both) of these two categories, it seems far more likely that the application route was included on account of it being considered public. While there are important caveats to this conclusion (set out in paragraph 5.12.4) Day and Masters Map remains slightly supportive of public vehicular rights over the application route.
- 9.7. Of similar weight is the 1807 auction map in relation to Frogmary Lane. While it has a number of limitations, the 'to South Petherton' annotation is indicative of the route having the reputation of a public way over Frogmary Lane.
- 9.8. A document which offers more help in determining the status of the application route is the Inclosure Award for South Petherton. The Award was made under 'An Act for Inclosing Lands within the Parish of South Petherton' dated the 7th June 1836. Awards of this nature are often of assistance in determining the status of the route because the Commissioners responsible for them often had powers to, amongst other things, create new public and private rights. Where this is the case it provides very strong evidence as to the status of a given route at the time of the Award. In this case the Award does not legally create any rights over the application route. However, that is not to say that it offers no assistance.
- 9.9. While the Award did not legally 'set out' the route, Frogmary Lane was referred to in the text as a 'public road'. The status of existing roads would have been of great significance to the Commissioners as they needed to ensure that the network that they were creating complimented that which already existed outside of the Award area. Furthermore, the Award itself would have gone through a public consultation exercise and there is no evidence to suggest that any objection was raised to the use of the term public road in relation to Frogmary Lane. The Commissioners, and probably others, clearly believed Frogmary Lane to be a public road. While it needs to be seen in the context of all the other available documentation, this is strong evidence in favour of public vehicular status.

- 9.10. The 1862 Highway Board Map also provides strong evidence that the application route was considered a publicly maintainable highway. Although not coloured, Frogmary Lane is listed along with other routes likely to be maintainable at public expense (albeit as a route which was not stoned).
- 9.11. When viewed in light of the evidence referred to above and, in particular the Inclosure Award and 1862 Highway Board Map, the exclusion of the route from the Finance Act documents provides strong evidence in favour of public rights, probably vehicular, over Frogmary Lane. In reaching this conclusion it is acknowledged that there is a case for the application route having been excluded on account of the existence of private, rather than public, rights. However, in this case, the evidence in favour of it being excluded on account of public vehicular rights is considered stronger and is therefore preferred.
- 9.12. However, as indicated by Respondent A, not all of the available documents are in favour of, or assist in, showing public rights over the application route.
- 9.13. Documents of particular note in this respect are the Object Name Book and the Provisional Map produced in preparation of the Definitive Map.
- 9.14. In the OS Object Name Book of 1901 (5.5.26), the application route was described as an occupation road. This is evidence that the OS and at least one local person (possibly more) believed the route to carry private vehicular rights. It is very useful evidence in that it is reasonably clear as to the perceived status of the route. However, it is far from conclusive and is silent in relation to the existence of lower public rights (i.e. footpaths and bridleways can and do exist over private roads).
- 9.15. The Object Name Book evidence is supportive of the argument that the application route was excluded from the 1910 Finance Act valuation on account of it being an occupation road. It is accepted that this is a plausible interpretation of the Finance Act. However, as mentioned above, exclusion from the valuation raises a strong possibility that a route was a highway, probably vehicular. When viewed in light of the rest of the evidence (summarised above) this is considered the more likely explanation for the exclusion of the application route in this case.

- 9.16. The Definitive Map preparation records only show the far eastern end of Frogmary Lane as a public right of way (in this case a footpath). Rights over this section were diverted by the 1985 SRO. In any case the depiction of rights is without prejudice to the existence of higher right. Therefore, while most of the Definitive Map evidence is certainly not in favour of the existence of public rights, it is not necessarily inconsistent with them either. Where these documents are maybe of more assistance is in the annotation of Frogmary Lane as 'NOT A ROAD' on one of the two provisional maps for Yeovil.
- 9.17. On balance this shows someone, probably an officer of Yeovil Rural District Council, felt this route was not a public road. However, the provenance of this comment (who made it, when, why and on the basis of what evidence) is unknown. As such, little weight can be given to this type of addition to a Provisional Definitive Map.
- 9.18. Therefore, although both the Object Name Book and the Provisional Map are inconsistent with the existence of public vehicular rights they are collectively of limited weight.
- 9.19. Of the remaining documents, the Handover Map/Road Records, while not supportive of public rights and equally not inconsistent with them.
- 9.20. Overall there appears to be a number of contradictions in the evidence. However, the 1755 Manorial Map, Day and Masters' map, the 1807 auction map, the Inclosure Award, the 1862 Highway Board map, the Finance Act valuation and the March 1924 Rural District Council minutes, alongside evidence of the character of the route is considered sufficient to reasonably allege that public vehicular rights have historically existed over Frogmary Lane. This is the case even when evidence to the contrary, and the Object Name Book, the Yeovil Provisional Map and witness evidence in particular, is taken into account.
- 9.21. While public vehicular rights may have historically existed they have been affected by two relatively recent legal events. In 1985 D-E of Frogmary Lane was incorporated into the A303 trunk road. As such it now forms part of a public carriageway; a category of highway which is not capable of being recorded on the Definitive Map. Any order to be made as a result of these applications will therefore not relate to that part of the route shown D-E.

- 9.22. More recently still, the Natural Environment and Rural Communities Act 2006 extinguished mechanically propelled vehicular rights over all routes not recorded on the Definitive Map as a BOAT. There is no evidence to suggest that the application route meets one of the exceptions set out in the 2006 Act. As such, since the coming into force of the 2006 Act, only those rights commensurate with a restricted byway have remained.

10. Summary and Conclusions

- 10.1. As mentioned above, the County Council is under a duty to modify the Definitive Map where evidence comes to light that it is in error. Importantly, the standard of proof to be applied in cases such as this is: do public rights subsist or can they be reasonably alleged to subsist.
- 10.2. The application route in this case has been shown to have physically existed and to have been capable of carrying vehicular traffic in the past. The South Petherton Inclosure Award provides very relevant information as to status. Frogmary Lane is referred to as a public road.
- 10.3. The inclosure evidence is supported by the evidence of the 1862 Highway Board Map and the Finance Act valuation amongst others.
- 10.4. Taken as a whole, the evidence is considered to provide enough weight to reasonably allege the historic existence of public vehicular rights over Frogmary Lane. This is the case even when considered alongside the evidence of the Object Name Book and the annotation of one of the Provisional Maps.
- 10.5. Other than the 1985 SRO relating to D-E, no legal order has been found which would have stopped up those historic public vehicular rights. However, the Natural Environment and Rural Communities Act 2006 will have extinguished rights for those in mechanically propelled vehicles. As such only restricted byway rights remain. In conclusion having considered all of the available evidence it can be reasonably alleged that, with the exception of D-E, Frogmary Lane is a restricted byway.

11. Recommendation

I therefore recommend that:

- i) An order be made the effect of which would be to modify the Definitive Map and Statement by adding a restricted byway over the route shown from C-D on the plan H04-2018. (i.e. part of Frogmary Lane).
- ii) If there are no objections to such an order, or if all objections are withdrawn, 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.
- iv) That part of application 577 which seeks to modify the Definitive Map and Statement by adding a bridleway over the route shown D-E on the plan H04-2018 is refused.

12. 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. Photos of the claimed routes
3. Land Registry Search
4. Map of Area – with reference points from the report
5. Inclosure Award
6. Tithe Records
7. OS Maps
8. Finance Act
9. Highway Road Records
10. Side Road Order
11. Definitive Map and related documents
12. Local Authority Documents
13. Sale of Lands
14. Other Sources (additional related documentary evidence)