

Frogmary Lane

BRIEF COMMENTS

re

Draft Report concerning
WILDLIFE AND COUNTRYSIDE ACT 1981 Section 53

Application for a Definitive Map Modification Order to
add a Bridleway along Frogmary Lane
in the Parishes of Seavington St. Michael and South Petherton (577M)

1. The Application for a Modification of the Somerset Definitive Map is in essence a claim that an error was made by the relevant Parish Council and Rural District Council and the County Council during the preparation of the Somerset Definitive Map. In this case the claim is that there was an error of omission, that a Public Bridleway along Frogmary Lane was omitted.
2. In making a case for the modification of the Somerset Definitive Map the Applicant’s burden of proof is an onerous one - the Applicant has to displace **two** legal presumptions - i.e.
 - (a) the presumption that the Somerset Definitive Map is correct [*Trevelyan*]
 - (b) the legal presumption of regularity; (that all things that were done were done correctly.)
3. The legal requirement for a modification is the discovery of previously unseen and therefore unconsidered evidence which would demonstrate that former evidence [considered during the preparation of the Somerset Definitive Map] had been misconstrued.
4. This Application reveals that the Applicant has gone against the Act and in fact has **re-cycled** evidence which was considered during the preparation of the Somerset Definitive Map.
5. Advice as to how a Definitive Map should be prepared was provided on page 4 of a booklet issued to all Parish, District and County Councils in 1950, titled “Survey and Maps of Public Rights of Way for the purpose of PART 1V of the National Parks and Access to the Countryside Act 1949” – a “Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY in collaboration with the Ramblers Association; recommended by the County Councils Association and approved by MINISTRY OF TOWN AND COUNTRY PLANNING” - which is known as “the 1950 Memorandum.”
6. Paragraph 2 (iii) advises on **the documents** which should be consulted and paragraph 2 (iv) advises that having examined all the documentary evidence the next step will be to consider what paths have been used by the public for not less than 20 years – thereby raising the presumption that dedication of the way has occurred.
7. This demonstrates that the Parish, District and County Councils had a twofold test, (i) to consult the documentary evidence advised in paragraph 2 (iii) to be followed by consideration of unchallenged, uninterrupted use of paths by the public [paragraph 2 (iv) for a full period of 20 years.

8. In claiming that an *error* of omission was made during the preparation of the Somerset Definitive Map the burden of proving the error is squarely on the Claimant.
9. As the claim relies solely on documents – not user - this means that only one test has to be applied during investigation of the Application. Put simply, has there been discovery of previously unseen evidence which proves on the balance of probabilities that collectively the Parish, District and County Councils erred by omitting a Public Bridleway on Frogmary Lane?
10. The short answer is No....the documentary evidence is all the other way.
11. The evidence reveals that Frogmary Lane was accepted as an Occupation Road, defined in law as a road which is limited to use by the owner occupiers of adjoining land. Therefore Private.
12. Section 23 of the Highways Act 1835 provided for the Adoption of Occupation Roads – always Provided the landowner was willing and had the capacity to dedicate. There is no evidence that Occupation Road Frogmary Lane was considered of such utility to the general public that it justified Adoption under Section 23 HA 1835. Nor is there a shred of evidence that the landowner/s dedicated the Occupation Road as a Public Bridleway or any other public status.
13. The purpose of the 1910 Finance Act was to identify land which was Subject to Increment Value Tax, not for the purpose of establishing public highways. Case law *Maltbridge Island Management Co Ltd* decided that there would need to be “supporting evidence”. In fact there is not a shred of “supporting” evidence that Occupation Road Frogmary Lane acquired public rights.
14. In summary, the *Draft* Report has reached a Decision on the alleged evidence that no reasonable person would reach.
15. Based on the Brief Comments in this paper, it stands to reason that an Order for Restricted Byway justifies being challenged.

Prepared by [REDACTED]....11.11.2019.