



WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53, SCHEDULE 14
APPLICATION TO MODIFY THE DEFINITIVE MAP AND STATEMENT BY
ADDING A RESTRICTED BYWAY OVER RIVER DROVE IN THE PARISH
OF SOMERTON
698m

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1. Introduction

1.1 On 2nd August 2010, South Somerset Bridleways Association made an application under Schedule 14 and Section 53(5) of the Wildlife & Countryside Act 1981 for an Order to amend the Definitive Map and Statement by adding a Restricted Byway over the route described in paragraph 2 below.

1.2 A public Restricted Byway can be used by the public on foot, pedal cycle, horseback and other non-mechanically propelled traffic e.g. horse drawn carriage.

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 application is based on documentary evidence. The applicant supplied a number of documents with the application, as follows:

- Current OS map
- Photographs of route
- 1806 Somerton Inclosure Award
- 1809-1833 Cassini OS Map
- 1822 Greenwoods map
- 1843 Somerton Tithe map
- 1899-1900 Cassini OS Map
- 1903 OS Object Names Book
- 1910 Finance Act Maps
- 1913 RAC touring map
- 1919-1922 Cassini OS Map
- 1920 Somerton estate sale particulars
- 1921 Compton Dundon estate sale particulars
- 1927 Bartholomew's map

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

2.2 No user evidence was submitted with the application. No evidence that the general public have used the application route as a restricted byway in recent years has been found during the investigation.

2.3 The claimed route is shown by green dashes on Appendix 1. The route starts at Point A from its junction with public bridleway L 25/52 and heads in a generally south easterly direction along a defined track feature known as River Drove via Point B and proceeds on to Point C to join a lane

just north of Somerton Door Bridge. The route is approximately 1,654 metres long and, although it varies, averages approximately 2.5 metres wide.

2.4 Photographs of the claimed route taken in 2010 are at Appendix 2.

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

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 rights rather than create or extinguish the rights themselves. Practical considerations such as suitability, 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 footpaths, bridleways or restricted byways and over any routes that were not recorded on the Definitive Map or the list of highways maintained at public expense. There are a few exceptions to the general rule outlined above, none of which appear to apply in this case. There is therefore no question of rights for MPV’s existing over the claimed route.

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, 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.

4. Documentary Evidence

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

Type of Documentary Evidence
Explanation of the type of evidence
Evidence source, reference & appendix number
Description and interpretation of evidence

4.1 Enclosure Records:

4.1.1 Explanation of the type of evidence Enclosure 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 needed to authorise the procedure and an Enclosure 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. Enclosure Awards provide statutory evidence of the existence of certain types of highway. They enabled public rights of way to be created as necessary, confirmed and endorsed and sometimes stopped up. Enclosure Commissioners surveyed land that was to be enclosed and had the power to ‘set out and appoint public and private roads and paths’ that were often situated over existing ancient ways.

4.1.2
Somerton Inclosure Map & Award 1806
(Incorporating Inclosure Consolidation Act 1801)
‘Kings Sedgemoor’ Plan B
Appendix 3&4

4.1.3 Description and interpretation of evidence

In general, inclosure maps and awards can give some interesting and strong indications of public rights. Various inclosure awards have been examined from 1795 – 1829 but only one of these, the Somerton Award, sheds any light on the claimed route and its status.

The claimed route is clearly shown as a defined lane/drove feature on the inclosure map and named River Drove. It is described in the accompanying award as:

*‘One other **private carriage road and driftway and public bridle way** of the breadth of thirty feet as the same is marked and staked out and delineated on the said plan B and distinguished by the name of River Drove branching out of Somerton Drove aforesaid at the north-east corner of the allotment no 6 and extending a westward and north-westward direction until the same enters Walton Drove aforesaid at the north corner of the allotment no. 10’.*

The local Act under which the Award is made incorporates the Inclosure Consolidation Act 1801 which, amongst other things, gave the Commissioner the power to set out private roads, public roads, bridleways and footways. The award is therefore strong evidence of the application route’s public status. The award sets the claimed route out as a public bridleway. The fact the route has been described as a private carriage road and driftway and public bridleway is good evidence of private vehicular rights and public bridleways rights (but not public vehicular rights).

The fact the route is described in an inclosure award as a ‘public bridleway’ is very strong evidence of public bridleway status at the time of the award. If those rights were legally created by the award then, unless they have been legally stopped up since, they will still exist today. On the other hand, the inclosure award does not provide supportive evidence of the existence of public vehicular rights. These documents carry considerable weight as evidence in this case.

4.2 Tithe Records:

4.2.1 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 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.

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

Tithe maps and apportionments were not prepared for the purpose of distinguishing between public and private rights; they were intended to apportion a monetary rent in lieu of tithe payments in kind.

Tithe maps provide good topographical evidence that a route physically existed and can be used to interpret other contemporary documents.

4.2.2

Somerton Tithe Map 1843

Ref: D/D/Rt/M/63

Appendix 5

4.2.3 Description and interpretation of evidence

The Map and Apportionment for Somerton 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 South West Heritage Centre.

The Tithe map for Somerton 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 claimed route is shown as a clear lane feature and is coloured a light brown sienna in the same way as other ways in the area, with no hereditament number being attached to it. The claimed route is depicted in the same way as Somerton Drove which is today recorded as a county road, Walton Drove which is today recorded as public bridleway L25/52, several routes with no recorded status which are currently subject to DMMO applications, and at least four routes with no recorded status which are cul-de-sacs and unlikely to carry public rights (i.e. Moor Lane, a route leading north from Park Lane past Wild Meadow Farm, a route leading east from Somerton Door Drove immediately north of Somerton Door Farm, and Short Drove).

There is no apportionment record associated with the claimed route and the surrounding fields with hereditament numbers are described as wither meadow, pasture or arable in the accompanying apportionment. It is often believed that, in many cases, public roads were coloured light brown on tithe maps, but this was not a mandatory convention and private roads were also frequently coloured, so some caution has to be given to this interpretation. The Planning Inspector Consistency Guidelines on this matter states that 'the colouring of a road (usually sienna) on a tithe map is not, in itself good evidence of public vehicular rights'. There is general agreement among many that the colouring on maps varies and in the absence of a key for the colouring (as in this case) the colouring is arguably of little evidential value in itself.

Also given the purpose of the maps was purely to take tithes for productive land it is difficult to conclude for certain from these maps whether the rights that exist were public or private.

In light of all of the above, the tithe maps weigh neither for or against public rights over the application route. They are, however, very strong evidence for the physical existence of the routes.

4.3 Ordnance Survey Records:

4.3.1 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.

4.3.2 "1811" OS surveyor's drawings,

2 inch: 1 mile
Ref: SHC, OSD no 50
Appendix 6

The claimed route can be seen as a clear physical lane feature bounded by two solid lines along the whole of the claimed route.

4.3.3 1st Edition County Series Map
6 inch: 1 mile OS map
“1887”
Ref: 63 SW
Appendix 7

The claimed route is mostly marked by double solid lines, and is named ‘River Drove’.

4.3.4 1st Edition County Series Map
25” OS map (microfiche)
1887
Ref; 63.9 and 63.10

Appendix 8

The claimed route is clearly marked by double solid lines and named ‘River Drove’. Some bracing marks are evident referencing different landownership sections of the claimed route with surrounding fields.

4.3.4 2nd Edition County Series Map
25 inch: 1 mile OS map
“1901”
Ref: 63.9 and 63.10

Appendix 9

The claimed route is clearly marked by double solid lines and named ‘River Drove’. Some bracing marks are evident referencing different landownership sections of the claimed route with the surrounding fields.

4.3.5 3rd Edition 25 inch: 1 mile OS map
“c1930”
Ref: 63.9 and 63.10

Appendix 10

The claimed route is clearly marked by double solid lines and named ‘River Drove’. Some bracing marks are evident referencing different landownership sections of the claimed route with the surrounding fields.

4.3.6 OS Object Name Book
Jan 1942

Ref: OS 35/6365

Appendix 11

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

The claimed route is clearly identified in the Object book as 'River Drove' and described as '**A Public Road extending from Pitney Steart Bridge to Somerton Door Drove**'. Somerton Drove, which is today recorded on the county road records, is also described on the same page as '**a public road**'. The information was corroborated by a member of the community and became final data in January 1902. This document was produced for internal purposes by Ordnance Survey to confirm the names used on routes on the County Series Map and was not available for the scrutiny of the general public. However, it does refer explicitly to the public status of the route, and as such is evidence of the reputation of the route in 1902.

4.3.7 Cassini OS maps, Bartholomew and RAC commercial maps

Cassini maps 1809- 1922

Appendix 12

Bartholomew map 1927

Appendix 13

1913 RAC touring map

Appendix 14

The applicant also submitted various extracts of the Cassini reprints of OS map series from 1809 – 1922 all of which show the claimed route as a clearly defined route bounded by solid lines. The Bartholomew map of 1927 as well as the RAC touring map of 1913 show the route as a defined lane feature between solid lines.

4.3.8 Description and interpretation of evidence

All editions of OS maps examined from the 1811 OS drawings through to more modern-day mapping depict the claimed route as a very clear through route. Indeed, the OS Object Book refers to it as a public road and clearly regards the route as carrying public rights probably, but not necessarily, vehicular.

Other commercial maps such as Bartholomew's and the RAC touring map provided by the applicant also clearly show the claimed route. Whilst these maps were produced for sale to the public they offer little assistance in verifying whether the route marked have public or private rights.

The OS and commercial maps confirm the existence of the application route as a physical feature on the ground since at least 1811 but provides little evidence as to the status of the claimed route. The OS Object Book is evidence of the route having the reputation of a public highway, probably vehicular, in 1902 as the claimed route is described as a Public Road.

4.4 1910 Finance Act

4.4.1 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 mid 1980's. It cannot therefore have been considered during the Definitive map making process and can be considered "new evidence", if it is relevant.

4.4.2

Finance Act Record Plans, Sheet numbers 63-9 & 63-10
Ref: applicant supplied
Appendix 15

4.4.3 Description and interpretation of evidence

No working copy of the Finance Act Map is present for Somerton at the Somerset Heritage Centre however the applicant has submitted what looks like the original record plan with their application. The accompanying Field Book has not been viewed.

The claimed route is shown as a 'white route' excluded from surrounding land parcels and un-numbered for most of the route along River Drove. However, at the eastern end of the drove hereditament 374¹² lies to the north and south of the application route. This section of the drove is not shown as excluded from 374¹² by coloured lines, but a bracing line is broken across the application route linking the two parts of hereditament 374¹² but excluding the application route. Therefore, although depicted in different ways, the whole route seems to have been excluded from the surrounding hereditaments.

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. However, there are other possible reasons why a route might be excluded from the surrounding hereditaments, one of which is that the route was set out in an inclosure award for multiple users without any owner being assigned. Given that the application route was set out as a private road in the inclosure award, this offers an equally convincing reason why it would have been marked white on the Finance Act map.

Therefore, although exclusion from valuation on a Finance Act map is usually good evidence for public vehicular rights, in this case there is a very plausible alternative reason. In order to determine why the application route has been excluded it is therefore important to consider it in the context of all the other documents

4.5 Highway Road Records held by the County Council

4.5.1 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.

4.5.2 1929 Handover Map and Schedule Appendix 16

The claimed route is marked as a clear lane feature but not coloured in. There are some markings around Somerton Door Bridge. These are difficult to interpret but, in any case, the markings do not relate directly to the claimed route.

**4.5.3 1930 Road Records
Appendix 17**

The claimed route is marked as a clear lane feature but not coloured in.

**4.5.4 1950 Road Records
Appendix 18**

The claimed route is marked as a clear lane feature but not coloured in.

4.5.5 Description and interpretation of evidence

The claimed route is not depicted as a highway maintained at public expense on any of the old highway maps. However, public bridleways and public footpaths were not typically shown on these maps. The route may have been considered public, but not maintainable by the highway authority and therefore not shown on the maintenance records, or the highway authority may simply have been unaware of the existence of a public right of way. Therefore, whilst these maps provide no evidence in favour of public rights, they do not weigh against their existence either.

4.6 Definitive Map and Statement preparation records

4.6.1 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 four statutory 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 deposited 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

<p>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>
<p>4.6.2 Survey Card Appendix 19</p> <p>There is no survey card for the claimed route. This is not surprising given that the route is not on the Definitive Map currently. The query card records several issues with the parish survey but nothing that appears to reference the claimed route or any nearby public rights of way.</p>
<p>4.6.3 Survey Map Appendix 20</p> <p>The survey map shows the claimed route as a clear lane /drove feature on the OS base mapping but does not depict it as a Public Right of Way. The nearest markings are Somerton Drove & Somerton Door Drove which are coloured brown.</p>
<p>4.6.4 Draft Map Appendix 21</p> <p>The claimed route is clearly shown as a lane/drove feature on the base mapping of the Draft Map but is not depicted as a Public Right of Way. No other nearby public rights of way seem to be shown in the immediate vicinity, not even public bridleway L25/52.</p>
<p>4.6.5 Draft Modification Map Appendix 22</p> <p>The claimed route is shown as a physical lane /drove feature on the base mapping of the Draft Modification Map but is not marked as a public right of way. Nearby public bridleway L25/52 is shown at the western end of the claimed route near Point A.</p>
<p>4.6.6 Provisional Map Appendix 23</p> <p>This map shows nearby public bridleway L25/32 which the claimed route joins at Point A. The claimed route is shown on the base mapping but not marked as a public right of way on the provisional map.</p>
<p>4. 6.7 Definitive Map Appendix 24</p> <p>The claimed route is not shown on the Definitive Map as a public right of way hence the reason for the application. Again, it is shown as a clear lane /drove feature on the OS base map.</p>

4.6.8 Description and interpretation of evidence

The claimed route, is not shown as a public right of way on the provisional, draft maps etc. The fact that the claimed route is not shown on the Definitive Map and predecessor maps in its formation does not mean it is not a Public Right of Way. If sufficient evidence is found the Definitive Map and Statement can be amended. Consequently, in this case, only neutral weight should be given to these maps as Section 53 of the Wildlife and Countryside Act 1981 clearly allows routes to be added to the Definitive Map where evidence of their existence is proved. A balanced approach has to be taken and all of the evidence needs to be taken into account. The fact the route wasn't marked on the Definitive Map and predecessor maps certainly does not mean the claimed route is not a public right of way.

4.7.1 Other Sources

4.7.3 Estate sales particulars

Ref: Somerton Estate sales particulars 1920 SHC (DD/KW/3)

Ref: Compton Dundon estate sales particulars 1921 SHC (DD/EDN/44)

Appendix 25 &26

The Somerton sales particulars clearly show that the claimed route has been excluded from the estate sale. Many of the other droves/lanes in this area are also excluded from the sale lots. Whilst there is no information in the accompanying sales particulars suggesting any private easements/rights over the claimed route, it does not follow that they did not exist and therefore that public rights must have done. In fact it is known from the Inclosure Award evidence that private rights had historically existed over the route. Furthermore, given that the drove was set out as a private road with no allotted owner at inclosure it is quite likely that the land was not being sold because it was not owned by the estate

The Compton Dundon estate sales particulars also do not include the application route in any of the lots for sale. Again, whilst there is no information in the accompanying sales particulars suggesting any private easements this does not mean that no such private rights existed.

Neither sale document provides evidence against the existence of public rights, but neither do they provide evidence in favour of them.

4.7.4 Day and Masters 1782

Appendix 27

Published in 1782, this commercial map included very little detail typically only depicting settlements, major roads (particularly those in and between settlements), and rivers. It is therefore unsurprising that the claimed route is not shown on this map as a physical feature. However, this does not remove

the possibility that the route existed in the late 18th century.

4.7.5 Greenwoods 1822 Appendix 28

Greenwoods map of 1822 is far more detailed than Day and Masters and shows the claimed route as part of a clear through route from east to west.

The map includes a key which identifies the application route as a Cross Road, and those roads with thickened casing lines as Turnpike Roads. The term 'cross road' was clearly not being used to refer simply to the point at which two roads cross. While the precise meaning of the term therefore needs to be considered in relation to what the map itself shows, it is worth noting that in one prominent case the courts defined the same term as meaning 'a **public** road in respect of which no toll is payable'¹ (my emphasis). In that case the judge was not referring specifically to Greenwoods map but to a different map and it is of course possible that the term was used for a different purpose on different maps².

As the map was produced for use by members of the public it is very likely that the surveyor would have placed more importance on depicting those roads that he believed to be publicly accessible or that were useful for the public in some other way. However, at a time when travel could only be on foot, horseback or by horse drawn vehicle, it is entirely plausible that footpaths and bridleways could have been included as important routes. Furthermore, several other routes which were unlikely to have carried public vehicular rights are also shown similarly eg Pitney Moor Drive to the west which is a dead end lane and Walton Drove today recorded as a public bridleway L25/52

It seems likely that 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.

Despite some criticism relating to the accuracy of Greenwoods maps, it provides good evidence that the route physically existed at the time of the survey and, possibly, that the surveyor considered the route to be of some importance. Whether it was marked to depict a public or private route is difficult to deduce. Consequently, no conclusions can be drawn from this map other than the claimed route formed part of a clearly defined route in 1822.

4.7.6 Aerial photograph 1946 Appendix 29

¹ Hollins v Oldham (1995) in *DMO Consistency Guidelines – 5th revision July 2013*

² Section 2.24, page 7, *DMO Consistency Guidelines – 5th revision July 2013*

It is just about possible to make out the track / lane feature of the claimed route which seems more visible at its western end where it joins BW 25/52.

4.7.7 Description and interpretation of evidence

The commercial maps and aerial photography concur with the OS mapping examined and show that the claimed route has been a well-defined lane / drove since the early 1800's at least.

The sales particulars of the 1920's provide no direct evidence as to whether the claimed route had public status or not as it was not included as a lot for sale in either the Somerton Estate or Compton Dundon Estate particulars and no details of easements or access over the application route were given. For the reasons set out above, this is not indicative of the route being public. These documents demonstrate that some forms of access, presumably vehicular, must have existed along the application route to the various plots for sale, but does not help determine whether that access was by virtue of a public or private right.

4.8.1 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 records
- Inclosure Maps Q/RDE/43: Long Sutton, Somerton etc 1829
- Inclosure Map Q/RDE/116 Kings Sedgemoor 1795
- Somerset County Council rights of way files 5/GN/RDC
- Somerset County Council District file RW 5/91

4.8.2. Documentary Evidence conclusions

Investigations consistently show that the claimed route has been marked as a physical lane / drove feature named 'River Drove' from the early 1800's. The route is shown on OS maps, other commercial maps, the tithe map, the finance act map, inclosure awards, sales particulars and aerial photography. The route has been shown to clearly connect to another lane at the western end (bridleway L25/52) and to Somerton Door Drove at its eastern end and been shown as a clear through route.

The Inclosure Award of 1806 is of very high importance as it was implementing powers granted by an Act of Parliament to establish highways and it had gone through a process of public consultation. The route is clearly referred to in the Award as a **private** carriage road and driftway and a **public** bridleway (my emphasis). This is extremely strong evidence that the route was set out with private vehicular rights, but also public bridleway rights in

1806. If the public bridleway rights have not been legally stopped-up they will still exist today. Public vehicular rights could have been dedicated or acquired since inclosure, but there is little evidence to support this.

The OS Object Name Book does refer to the route as a Public Road which is more likely to indicate vehicular rights, but the document was not produced to record public rights nor was it subject to public scrutiny.. The route is excluded from the surrounding hereditaments on the 1910 Finance Act maps, which is normally a good indication of public rights, usually but not necessarily vehicular. However, in this case this document would be equally consistent with the public bridleway and private carriage road set out in the inclosure award.

The claimed route is not marked as a public road maintainable at public expense on any of the highway record maps from 1929 to the 1950s, but these did not typically record bridleways or footpaths. Given that the application route was laid out in the Inclosure Award of 1806 as a public bridleway, and that no evidence has been found that these public rights have been legally stopped up since then, the documentary evidence is sufficient to reasonably allege public bridleway 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. Factual first-hand evidence carries more weight than opinion, hearsay or third-party evidence.

Landowner and response
Landowner A - who owns land at the far western end of the claimed route states that he had been told that the drove belonged to farmers who owned land along it but he was unsure if this was true.
Landowner B – who owns land near the middle section of claimed route merely confirms their landownership with no further comments.
Landowner C – who owns land at eastern end of claimed route states they believe surrounding farmers own the drove up to middle either side as they have maintained it over the years. They question whether it is a restricted byway and state they were not aware of the application and asks what evidence to this effect has been provided.

5.1.1 Comments on Landowner Evidence.

The landowner's comments focus mainly around maintenance issues and ownership. Public rights can and often do run over privately-owned land, and therefore ownership is not relevant to determining the public status or otherwise of the claimed route. Although the comment about the route being maintained by nearby landowners is of interest it does not, in itself, prove that the route carries no public rights.

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 January 2017. The table below shows who was consulted and gives brief details of replies that were received if any.

Consultee and response
Parish Council
District Council
Local Member
Ramblers Association – Somerset Office
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

No response was received from any of the above organisations.

6.1.2 This report was also sent out to consultation in December 2019 to all relevant consultees including the applicant, affected landowners, local councillors, parish council, user groups and other relevant bodies. Very few responses were received other than from Historic England to state none of their assets were affected by the recommendation and they had no further comments. In addition, the Trail Riders Fellowship also responded to say they had no comments but were impressed by the detail and depth of information within this report.

7. Summary and Conclusions

The application route has been present on the ground since at least the early 1800's and forms a through route between a public vehicular road at its eastern end and a public bridleway at its western end. This is clearly demonstrated on old OS maps, other commercial maps, tithe map, finance act map, inclosure awards, sales particulars and aerial photography.

The two key pieces of evidence that shed significant light on the public status of the route are the Somerton Inclosure Award 1806, and OS Object Name Book. Not only do both these documents show that the route was a physical feature but there is clear reference as to the public status of the route. The Inclosure Award of 1806 is of very high importance as it was implementing

powers granted by an Act of Parliament to establish highways and it had gone through a public consultation process. The route is clearly referred to in the Award as a **private** carriage road and driftway and a **public** bridleway (my emphasis).

This is extremely strong evidence that the route was set out with private vehicular rights and also public bridleway rights. None of the subsequent evidence is inconsistent with the route being anything less than this (the claimed route is not marked as a public highway on any of the council highways records, but these did not typically record bridleways or footpaths).

Given that the application route was laid out in the Inclosure Award of 1806 as a public bridleway, and that no evidence has been found that these public rights have been legally stopped up since then, the documentary evidence is sufficient to reasonably allege public bridleway rights exist over the application route.

The fact that the route was set out as a bridleway in 1806 does not, in itself, mean that public vehicular rights could not have been dedicated or acquired since. However, evidence of such a post-inclosure dedication would be necessary before it could be concluded that higher public rights exist over the application route. That evidence would collectively need to positively indicate public vehicular rights rather than simply being consistent with those rights known to exist as a result of inclosure.

The majority of the post-inclosure documents, including the Finance Act valuation, may be consistent with public vehicular rights. However, they are equally consistent with those rights set out at inclosure (i.e. a private road and public bridleway). The main exception to this is the OS Object Name Book which refers to the route as a Public Road. This is arguably supported by Bartholmew's Map. However even when considered together these documents are insufficient to demonstrate the existence of a public vehicular route particularly when set against the background of known private vehicular rights and public bridleway rights.

The application did not include any user evidence, and none has been found or submitted during this investigation. In the absence of evidence of use, and having considered all of the evidence together, it is concluded that it is reasonably alleged that the application route is a Public Bridleway.

8. I therefore recommend that.....

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

List of Appendices

Please note that the document reproductions in the appendices are not to scale. The report writer has added the red letters A, B and C present on Appendix 1 to maps to help the reader identify the sections of the route the document is depicting.

1. Plan showing claimed route
2. Photos of claimed route
3. Inclosure Award map 1806
4. Inclosure Award 1806
5. Tithe map
6. 1811 OS drawings
7. 1st edition OS map 6"
8. 1st edition OS map 25"
9. 2nd edition OS map 25"
10. 3rd edition OS map 25"
11. OS Object Book
12. Cassini Maps 1809-1922
13. Bartholomew maps 1927
14. RAC touring map 1913
15. 1910 Finance Act Map
16. 1929 Roads handover map
17. 1930 Road records map
18. 1950's Road records map
19. Survey Card
20. Survey map
21. Draft Map
22. Draft Modification map
23. Provisional map
24. Definitive map
25. Somerton estate sales particulars 1920
26. Compton Dundon and Somerton sales particulars 1921
27. Days & Masters map 1822
28. Greenwood map 1946

29. Aerial photo 1946