



## Order Decision

Inquiry opened on 18 July 2017

Site visit made on 19 July 2017

**by Alan Beckett BA MSc MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 24 August 2017**

---

### **Order Ref: FPS/G3300/7/97**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Somerset County Council (No. 1) Modification Order, 2015.
- The Order is dated 13 February 2015 and proposes to modify the Definitive Map and Statement for the area by deleting footpath L12/33 as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed.**

---

### **Application for costs**

1. At the Inquiry an application for costs was made by Mrs M P Masters against Mrs S Bucks of the South Somerset Bridleways Association and Mr C Earl of the Somerset Ramblers' Association. This application is the subject of a separate Decision.

### **Preliminary Matters**

2. I held a public local inquiry into the Order on 18 and 19 July 2017 having made an unaccompanied inspection of the Order route on 17 July. At the inquiry, Somerset County Council ('the Council') adopted a neutral stance having been directed to make the Order by the Secretary of State. That direction had arisen from a non-statutory inquiry held in October 2014 to re-determine an appeal against the Council's decision not to make an order to delete footpath L12/33 from the definitive map and statement in response to the application dated 17 April 2009 ('the 2009 application').
3. The 2009 application is the third application to request the deletion of footpath L12/33 from the definitive map and statement. The earlier applications, made in 1987 and 1997 had been rejected by the Council. The application made in 1997 had been dismissed on appeal by the Secretary of State on 21 October 2002. An appeal against the rejection by the Council of the 2009 application had been dismissed by the Secretary of State however that decision had been quashed by consent following an application for judicial review.
4. The Order route commences on Turn Hill Lane in the parish of High Ham at point A on the Order plan and runs in a generally south westerly direction for approximately 520 metres to point B at the parish boundary with the neighbouring parish of Aller. The Order relates to the deletion of footpath L12/33 in High Ham and does not include any part of footpath L1/13 which lies within Aller.

## Procedural Matters

5. On 2 April 2015 the South Somerset Bridleways Association ('SSBA') made an application to the Council to modify the status of footpaths L1/13 and L12/33 to that of a public bridleway. It was submitted on behalf of the SSBA that the claim made in the application prevented a determination of the Order as the test to be applied under section 53 (3) (c) (iii) required a finding that there was "no public right of way over land shown in the map and statement as a highway of any description".
6. The view of SSBA was that the inquiry should be adjourned until such time that the Council had determined the schedule 14 bridleway application and then any resulting order arising from that application could be considered together with the current Order. Failing that, determination of the Order would have to be undertaken in discrete stages; first, a determination of whether footpath L13/33 was put on the map in error; if the conclusion on this matter was negative, then the Order would not be confirmed and the schedule 14 bridleway could proceed in its own time. Secondly, if a conclusion was reached that footpath L13/33 was recorded in error, then consideration would have to be given as to whether there was 'no...highway of any description'. This would require account to be taken of the evidence adduced so far in support of the schedule 14 bridleway application.
7. If a consideration of that evidence raised a *prima facie* case that there was 'a highway of any description' then the test found in section 53 (3) (c) (iii) could not be satisfied and the Order could not be confirmed.
8. The supporters view was that the application to record a bridleway had been made as a means of objecting to the Order and the submission that the inquiry should have been adjourned was an abuse of process as it had only been made on the opening morning of the inquiry. Furthermore, the fact that an application to record a bridleway had been made had no impact whatsoever on my ability to determine the Order.
9. I do not accept the submissions put forward on behalf of the SSBA regarding the procedure to be followed in the determination of this Order or that my ability to determine the Order is in any way fettered by the bridleway application having been made. The Order before me has been made in consequence of an event specified in section 53 (3) (c) (iii) of the 1981 Act namely "*that there is no public right of way over land shown in the map and statement as a highway of any description*", a test which can only apply to a right of way which is shown in the definitive map and statement at the time the Order is being determined.
10. The term '*highway of any description*' in relation to '*no public right of way over land shown in the map and statement*' is inclusive of the those types of highways (footpaths, bridleways, restricted byways and byways open to all traffic) which may be subject to a section 53 (3) (c) (iii) order. It does not and cannot relate to ways which are not shown in the map and statement; it would be absurd if an order could be made to delete a way which is alleged to subsist and which was not shown at all. The test found in section 53 (3) (c) (iii) cannot relate to a right of way which is not shown in the map and statement as the definitive map does not provide conclusive evidence of what is not shown.

11. With regard to the evidence submitted in support of the bridleway application, I can give consideration to that evidence in so far as it might shed light on the issue of whether a mistake was made when footpath L12/33 was initially recorded in the map and statement. However, it is not my task to consider whether the evidence submitted by the SSBA does or does not demonstrate the existence of a public bridleway. To reach any such conclusion on that question would be wholly improper as it would usurp the position of the Council as the authority charged with determining the schedule 14 application. The determination of the Order at the Schedule 15 stage and the determination of the Schedule 14 application are two separate and independent processes.
12. If the current Order were to be confirmed, this would not preclude the Council from making an order to subsequently add a public bridleway to the definitive map (if the evidence was considered by the Council to be sufficient to justify the making of an order) as section 53 (3) (c) (i) provides for the addition of a public right of way where no right of way is shown. The deletion of footpath L12/33 which is sought would have no impact upon the Council's consideration and determination of the schedule 14 application.
13. It follows that I consider that there is no impediment to the consideration of the evidence adduced in the case and that there is no impediment to the confirmation of the Order if the evidence is considered sufficient to demonstrate that a mistake was made when footpath L12/33 was first added to the map and statement.

### **The Main Issues**

14. Section 53(3) (c) (iii) of the 1981 Act provides that an order to modify the definitive map and statement should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that there is no public right of way over land shown in the map and statement as a highway of any description. Section 32 of the Highways Act 1980 (the 1980 Act) requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
15. In the *Trevelyan*<sup>1</sup> case, Lord Phillips MR held that "*Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists.*"
16. In *Trevelyan* the Court also quoted with approval guidance which had been published in Department of the Environment Circular 18/90. The guidance stated that it was for those who contended that there was no right of way to prove that the definitive map was in error and that a mistake had been made

---

<sup>1</sup> *Trevelyan v Secretary of State for Environment, Transport and the Regions* [2001] EWCA Civ 266

when the right of way was first recorded; it also stated that the evidence needed to remove a right of way from the record would need to be cogent, and that it was not for the surveying authority to demonstrate that the map was correct.

17. Circular 18/90 has been superseded by Defra Circular 01/09<sup>2</sup>. Circular 01/09 says at paragraph 4.33 *"The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with "higher" rights to a way with "lower" rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:*
- *the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
  - *the evidence must be of sufficient substance to displace the presumption that the definitive map is correct.*
  - *the evidence must be cogent.*

*While all three conditions must be met they will be assessed in the order listed."*

18. It was submitted on behalf of the SSBA that the guidance issued by the Welsh Government to local authorities on public rights of way in October 2016 contained a four part test. Whilst the first three parts of the test mirrored those found in Circular 1/09, the fourth element (in paragraph 5.51) required that *"there must be positive evidence of any erroneous recording"*. It was submitted that the inclusion of the fourth element to the test was the correct approach and should be adopted in this case. In addition, it was submitted that the three tests were 'gatekeeper' tests to be applied to the new evidence alone; the second and third tests should not be applied to the totality of the evidence.
19. The objectors submitted that the SSBA's submissions as to the 'gatekeeper' test were incorrect and pointed to the judicial review of an Inspector's decision not to allow a schedule 14 appeal where the approach taken had been to consider the new evidence in isolation from all other evidence. The relevant passages from the consent order<sup>3</sup> read:

*"5. The Inspector held that he did not need to consider the new evidence in conjunction with the evidence considered in the 2008 inquiry unless the new evidence was "substantial enough to outweigh the initial presumption that public rights exist on the appeal route". At paragraphs 16-27 he explained why the map/plan evidence did not meet this test. His only reference to the land ownership evidence in the operative part of his decision letter was at paragraph 27, when he stated "I conclude that neither the railway plan evidence, nor the landholding evidence, nor both taken together, is substantial enough to outweigh the initial presumption..."*

*6. The Defendant concedes that in viewing the new evidence submitted by the Claimant in isolation as opposed to considering it in conjunction with all*

---

<sup>2</sup> Defra, version 2 October 2009

<sup>3</sup> CO/8481/2012: Stubbing Community Group v Secretary of State for Environment, Food and Rural Affairs

*relevant evidence (including the previous Inspector's findings following the 2008 inquiry), the Inspector erred in law."*

20. The SSBA's submission regarding the 'gatekeeper' tests only being applied to the new evidence is at odds with the construction of section 53 (3) (c) (iii) and the judgement in *Trevelyan*. The test in section 53 (3) (c) (iii) is "*the discovery by the authority of evidence which (when considered with all other relevant evidence available to them*" shows that the map and statement is incorrect. Furthermore, as noted above Phillips LJ states "*At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities.*"
21. Whilst acknowledging the guidance published by the Welsh Government, the guidance to be followed in English rights of way cases is that found in Circular 1/09 which does not contain the fourth element. Furthermore the Welsh Government's guidance says at 5.52 "*While all four conditions should be met, they should be considered in the order listed. Before making an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map and statement should be modified*". The Welsh Government guidance, when read as a whole, follows the construction of statute and the findings of the Court in *Trevelyan*.
22. Whilst it is a requirement that new evidence has been discovered to engage section 53 (3) (c) (iii), if such evidence has been discovered then the correct approach is to consider the available evidence as a whole to determine whether the evidence, taken collectively, is of sufficient substance and cogency to displace the initial presumption that the map and statement are correct.
23. The principal issues are therefore first, whether new evidence has been discovered so that the terms of section 53 (3) of the 1981 Act are engaged; secondly, whether, when the evidence discovered, when considered with all other relevant available evidence, shows on a balance of probabilities that there is no public right of way over the Order route.

## **Reasons**

### ***Whether new evidence has been discovered***

24. The new evidence on which the supporters of the Order relied in making the 2009 application comprised an entry in the OS Boundary Remark Book of 1883 for part of Wood Lane in the Parish of Aller, a statutory declaration made by a Mr J Meaker in which he provided additional explanation of the statements made in an evidence form which he had completed in 1987 in support of the first application to delete footpath L12/33; extracts from the Finance Act 1910 and an example of an objection form from the parish of Wellow.
25. In addition, the supporters had submitted additional documentation following the determination of the 2009 application by the Council. This additional documentation was considered at the 2014 non-statutory inquiry and comprised an extract from the one-inch OS "Popular" map, "notes" prepared by Mr S F Marriott of the Ramblers Association, and correspondence from Mr Marriott to Wiltshire County Council on the principle of dedication and acceptance. Also considered at the 2014 non-statutory inquiry was the Huish

Episcopi Walking Survey Card for footpath L13/33, and a coloured copy of the Huish Episcopi Parish Survey Map.

26. Furthermore, the supporters submitted the following as evidence which had not previously been considered; an extract from the 1883 OS Boundary Remarks Book which identified the boundary between Aller and Huish Episcopi where it ran along Wood Lane; an extract from Cary's 1811 New Map of Somersetshire; and a survey plan of the area crossed by the Order route prepared by Somerset County Council in 1989.
27. I am satisfied that the documents submitted in support of the 2009 application, together with the documents submitted to the 2014 non-statutory inquiry and those documents submitted in support of the confirmation of the order and identified above constitute new evidence which has been discovered by the supporters of the Order and which is sufficient to engage the provisions of section 53 (3) (c) (iii) of the 1981 Act.

### ***The process leading to the inclusion of the Order route on the Definitive Map***

28. It is not disputed that neither High Ham Parish Council nor Aller Parish Council claimed footpath L12/33 or L1/13 respectively when the survey of public rights of way within the parishes were carried out. It is also not disputed that both Parish Councils carried out surveys within their parishes and submitted the results of their surveys to the Council so that the Council could prepare a draft map of public rights of way.
29. Evidence that a survey was carried out by High Ham Parish Council and the extent of the detail provided by the Parish Council for each path surveyed is demonstrated by the walking survey cards for footpaths 12/10 and 12/11. These cards show that the position of gates and the condition of the surface of the path were recorded by those who conducted the parish survey. No record card was produced by High Ham parish council for the Order route, nor was a record card produced by Aller Parish Council for L1/13. There is nothing in the available documentation which relates to the survey to suggest that either High Ham Parish Council or Aller Parish Council considered that the Order route or the continuation of the path in Aller enjoyed the reputation as a public right of way.
30. In June 1998 the clerk to High Ham parish council wrote to the Council in response to a letter regarding the proposed deletion of footpath L12/33<sup>4</sup>. In response to a query as to why the Parish Council had not claimed the route as a public footpath as part of the initial parish survey in the 1950s, the then clerk wrote that councillors and old parishioners had discussed the matter and concluded that "*Wood Lane is a wide and stoned track of very ancient use by wheeled vehicles into the wood and on to Aller. There is no doubt that in 1949 this was regarded as a road or track for public use and therefore was not submitted as a footpath. There are at least two other examples of this sort of lane in the parish.....As with the case of Wood Lane these were not submitted as footpaths but records show they were regarded as tracks with public rights of way.*"

---

<sup>4</sup> This letter is likely to have been written in response to the application made in 1997 to delete the footpath

31. The objectors say that this letter provides evidence of the reputation the path as a public way at the time of the survey and that the 'old parishioners' in 1998 would have been able to provide evidence of reputation from their knowledge which would have extended back into the 1920 or 1930s. I agree that if those 'old parishioners' had been around 80 years of age in 1998, their personal knowledge is likely to have encompassed the period in the mid to late 1950s when the parish survey was being undertaken. However, the retrospective recollections of individuals in 1998 is in complete contrast to the survey records where no attempt was made by the parish to record L12/33 as having any public status whatsoever.
32. There is no contemporaneous evidence from the period of the survey which gives support to the retrospective claims some 40 years later that the Order route had been considered to be a public vehicular way. The Council's records of publicly maintainable highways from 1929 onwards do not demonstrate that the Order route had been considered to be a public vehicular way and although it would be possible for public rights to subsist over a privately maintainable road, no evidence has been presented to show that the Order route has been used by the public with vehicles. As evidence of the reputation of the Order route in the 1950s, I place little weight upon the Parish Council's letter of June 1998.
33. In the absence of any claim by High Ham parish that the Order route was subject to public rights, footpath L12/33 was not shown on the High Ham parish survey map, nor was it shown on the draft map when it was published in April 1956. Similarly, footpath L1/13 was not shown on the Aller parish survey map or on the draft map. The copy of the draft map submitted shows a faint pencil line on the L1/13 - L12/33 alignment along with the annotation 'LP1'. Given that those routes which were included in the parish survey are represented by a bold purple line and that the annotation 'LP1' appears to relate to an objection made to the draft map, it is highly likely that the pencil line was added to the draft map subsequent to its initial publication. However, it is not known by whom or when the pencil additions were made to the draft map.

***The Objection by the Ramblers' Association, the Aller objection form and the Summary of Objections***

34. Following the publication of the draft map, provision was made for landowners and members of the public to inspect the draft map and statement and make objections to the inclusion of or omission of routes or to object to the status of routes shown. In the case of the Order route, an objection was made by a Mr Marriott on behalf of the Ramblers' Association although the letter or form which recorded the actual making of the objection is not available.
35. The evidence relating to the objection is found in the form referenced LP.1-3143/D18 for the parish of Aller. The 'Particulars of objection' (Part I of the form) reads "*Omission of Wood Lane from junction of 13/33 and 1/7 north easterly through Aller Wood via Nettlebed Cottage to Turn Hill at Bench mark 329.1*". As the letter or form on which the original objection was made is not available, it is not known whether the details recorded under the "Particulars of objection" accurately reflect the objection which was originally submitted. It is noted that the objection is recorded as relating to Aller parish and not to High Ham.

36. Part II of the form was reserved for the observations on the objection by the parish council and for details of affected landowners; this section is blank. Part III of the form records the observations of the County Surveyor which read "*Not claimed by High Ham or Aller P.C.s; Not accepted as a County road; most probably an old timber road*". The final part of the form records the observations of the County Archivist as being "*Tithe Map 1838 LP.1 is shown as a road; Enclosure Awards in E.108 dated 1799 the Award Map marks LP.1 as a road; Quarter Sessions Orders – None*".
37. The objections received to the draft map for Langport Rural District were tabulated by the Council and correspondence dated 14 May 1957 between the County Clerk and Mr Windsor of High Ham shows that a copy of that tabulated objections entitled "Summary of Objections" was sent to the Parish Council along with a copy of the particulars of objection relating to High Ham parish. This letter asked the parish council to provide its comments in Part II of the 'particulars of objection' form.
38. The Summary of Objections form contains 9 entries that can be said to relate directly to High Ham and on which the views of the Parish Council was requested. From a study of the 'summary of objections' submitted it appears that the document I have before me is a copy of the document prepared after comments had been received from the parish; in relation to objection LP.46 for example under the heading 'observation by Clerk' is the comment '*Parish Council do not agree*'. What I draw from this is that High Ham Parish Council was consulted on those objections which had been made to the draft map which had been identified as affecting High Ham parish.
39. The entry for the objection LP.1 is shown as being in Aller parish and is not set out in the tabulation as affecting High Ham parish. The name Aller appears in typescript and on the copy of the summary of objections which has been submitted 'High Ham' has been added in manuscript. Under the column headed 'Observations by Clerk' is 'Shown on tithe Map 1838 and inclosure award 1799 as a road. Parish Council agree this is public'. Under the heading 'determination' is the typescript note 'add footpath to Draft Map' with 12/33 and 1/13 having been added in longhand.
40. It is not known when or by whom the longhand additions were made to the Summary of Objections. It is submitted by the supporters that it was likely that High Ham Parish Council had not been consulted on objection LP.1 as the original typescript Summary of Objections only listed LP.1 under Aller parish with no separate entry being made in relation to High Ham. The supporters contend that the heading 'observations by Clerk' supports this proposition; the comment that 'Parish Council agrees this is public' is in the singular, not the plural.
41. The supporters point to the minutes of both parish councils for the relevant period as evidence that only Aller Parish Council had agreed that LP.1 should be recorded as a footpath. The minute of the meeting of Aller Parish Council dated 21 November 1958 reads "*Submitted letter from Somerset County Council requesting the observations of the Council upon an objection lodged by the Ramblers Association to the Definitive Map and Statement of Public Right of Way. The objection referred to the 'omission of Wood Lane from junction of 13/33 and 1/7 north easterly through Aller Wood via Nettlebed Cottage to Turn Hill at bench mark 329.1' The Clerk was instructed to reply to the effect that*



*the council agreed this lane should be included as a public right of way". The minutes for High Ham Parish council of 29 May 1956 reads: "The Clerk reported that the draft map of rights of way for the parish was deposited at the Post Office for public inspection. Councillor Wilkins together with the Clerk agreed to inspect the maps with regard to a right of way situated at the top of Turn Hill". The minute of 27 June 1956 reads "arising from the minutes with regard to a Right of way situated at Turn Hill the Council decided to take no action".*

42. The minutes of High Ham Parish Council are unclear as to which path at Turn Hill they were concerned with; it may have been the Order route, equally it may have been another route. What is clear is that there is no contemporaneous minute which records High Ham Parish Council's response to the 14 May 1957 letter from the County Council. It is not possible to determine whether High Ham Parish Council had been consulted about objection LP.1; I consider it highly likely that the Parish Council had been consulted on those objections which were on the typescript list as affecting High Ham Parish, but it cannot be determined one way or the other as to whether that consultation included LP.1. What can be said is that the only recorded response the Council received regarding objection LP.1 was from Aller Parish.
43. Although there is no evidence one way or the other regarding the views of High Ham Parish Council on objection LP.1, the objectors made much of the doctrine set out by Denning LJ in *R v SSE ex parte Hood 1 QB891 [1975]*: "*the definitive map in 1952 was based on evidence then available, including no doubt, the evidence of the oldest inhabitants then living. Such evidence might well have been lost or forgotten by 1975. So it would be very unfair to re-open everything in 1975*".
44. The objectors submit that the objective view of the Parish Councils was that LP.1 was a public through route and that local knowledge of the way in the 1950s may have extended back to the 1880s. Whilst the guidance offered by *Hood* may be a general guide and whilst it is not possible to unpick the statutory process under the 1949 Act which led to the production of the definitive map, section 53 (3) (c) (iii) does provide a mechanism whereby the inclusion of a public right of way on the definitive map can be questioned.
45. In this case, there is no evidence of use of the Order route by the public which pre-dates the inclusion of the route on the definitive map and whilst the possibility that the route was added to the draft map on the basis of the recollections of the '*oldest inhabitants*' cannot be discounted, it is necessary for there to be some evidence that the path was considered to have the reputation of a public right of way for the '*oldest inhabitants*' doctrine to gain some traction. The objectors point to the 1998 letter from High Ham Parish Council discussed above as evidence that the '*old parishioners*' in 1998 had concluded that the Order route formed part of a public vehicular route. However, as noted above, there is no contemporaneous evidence which suggests that was the view taken around 40 years earlier when the parish survey had been conducted. Had there been evidence from "*the oldest inhabitants then living*" in the mid-1950s of use of the order route, I consider it highly likely that the Parish Council of the day would have included the Order route in its survey of public rights of way. That this was not done, suggests that there was no evidence from the "*oldest inhabitants then living*" in the parish that the route was considered to be a public right of way.

46. Indeed there is evidence that the Peppards had erected prohibitory notices as early as 1949 and that such notices remained present until the late 1990s. Furthermore, the minutes of Aller Parish Council of 29 May 1959 record that "*The Council were informed of certain difficulties being experienced by occupiers of land adjoining the lane due to the occupier of Nettlebed Cottage claiming that no right of way existed*". Although the prohibitory notices have to be regarded as misleading while the Order route is shown on the definitive map, the parish minutes clearly record that the existence of a public right of way over the Order route was in dispute.

### ***The description of the footpath in the objection form and Summary of Objections***

47. The supporters contend that the description of the route found in the objection Form and Summary of Objections may not relate to the Order route but to a different route which became recorded as the appeal route in error. Whilst there might be inconsistencies in the overall description of the route which claimed to have been omitted from the draft map, such as footpath 13/33 and 1/7 not making a junction, the Order route being flanked by Beer Wood and pasture land and not by Aller Wood, there is no consequence to these minor inconsistencies. The description of the claimed path as passing Nettlebed Cottage (which is annotated on the underlying map) and terminating near the Benchmark 329.1 are clear references to features which are present and only present in the vicinity of the Order route.

48. I acknowledge that the successive editions of OS maps have incorrectly annotated the buildings at Turn Hill Farm as 'Nettlebed Cottage' and that the OS have accepted that the marking of the Order route as 'Wood Lane' is incorrect. However, the references to features peculiar to the Order route make it more likely than not that the path described in the Objection Form and the Summary of Objections included the Order route and not some other path.

### ***The evidence listed in the Summary of Objections***

#### *Inclosure Award*

49. The earliest evidence referred to in the summary of objections is the High Ham inclosure award of 1799. Copies of that section of the award map which relate to the former open field known as Beer Field were submitted and at the inquiry the original inclosure award and map was produced from the Archive. The Order route is not shown on the map nor is it described in the Award.

50. A route that is described in the award is Breechwood Road which was awarded as a private road, the north-western end of which may have made a connection with the Order route. However, it is quite clear from a study of the award map that the Order route is not shown either in whole or in part.

51. The objectors submit that the award made no reference as to who was to benefit from the 'private' Breechwood Road which had been awarded and that the 'private' roads to which it connected (Lloyds Road and its continuation as Standhill Road) were now all-purpose public highways. In the absence of any identifiable persons which would have benefitted from the 'private' road, it could not be concluded that such routes were not open to the public.

52. Whether or not the public were entitled to use these private roads following the inclosure commissioners determination or whether (in the case of Lloyds Road

and Standhill Road) public rights were subsequently acquired through long use, the fact remains that the Order route does not form part of any route set out under the High Ham Inclosure Award.

53. It remains unclear as to why Part IV of the objection form and the Summary of Objections records the County Archivist and the County Clerk respectively as saying that the inclosure award shows LP.1 as a road or why reference was made to the 1799 inclosure award when the High Ham award and plan does not show any part of the Order route. Any reliance which appears to have been placed upon the inclosure award as evidence of the existence of a public footpath was therefore erroneous.

#### *Tithe map and apportionment*

54. The tithe records were compiled under the procedures set out in the Tithe Commutation Act 1836. The commutation process was aimed at replacing the payment in kind of one tenth of the productive capacity of the land with a monetary payment based on a seven-year average of the price of grain. The tithe documents were not produced for the purpose of identifying public rights of way.
55. Tithe maps were produced for Aller and High Ham parishes in 1838; as the Summary of Objections records 'Tithe Map' in the singular it is unclear which tithe document is being referred to. However, for the purpose of the Order route, the relevant tithe map is that for High Ham, the original of which was produced at the inquiry. The High Ham tithe map is the earliest document to show the Order route as a physical entity on its current alignment. The route is shown enclosed by solid lines from Turn Hill; at or around the current location of Turn Hill Farm the western boundary of the Order route is shown by a broken line. The Order route is shown uncoloured and without an apportionment number in common with other routes shown on the map.
56. The depiction of the Order route on the tithe map in this way could indicate either a public or a private way as both routes were likely to diminish the productive capacity of the land for the purpose of assessing the value of the tithe. The tithe map is therefore neutral with regard to whether a public right of way subsisted over the Order route in 1838 and at best only provides evidence of the physical existence of the way at the time of the tithe survey.
57. Any reliance placed upon the tithe documents as evidence of the status of the Order route was therefore in error.
58. The Inclosure Award and tithe map were the only documentary sources listed in the Summary of Objections and no other documentary evidence appears to have been taken into consideration with regard to objection LP.1.

#### *High Ham and Aller Parish Councils*

59. The Summary of Objections records "*Parish Council agree this is public*" in relation to objection LP.1. Consideration has already been given in paragraphs 41 to 46 above of the minutes of both Aller and High Ham Parish Councils with regard to objection LP.1. There is no record of High Ham Parish Council making a response in regard of objection LP.1 which may explain the use of "parish council" in the singular. It may be that High Ham Parish Council was not asked to comment as the Summary of Objections originally only considered that objection LP.1 affected Aller parish.

60. There are no other sources of evidence referred to in the Summary of Objections. I shall now turn to consider the remainder of the evidence which is available to me.

***Documentary evidence not referred to in the Summary of Objections***

61. Maps and plans produced or published prior to the 1838 tithe map do not show the Order route or only show that part of it to the west of the route set out as the private Breechwood Road under the 1799 inclosure award. A number of documents were submitted by the objectors that post-date the tithe map (1857 map of turnpike roads and the 1880 dis-turnpiking map) which continued to show Breechwood Road and not the Order route. These maps and those published or produced prior to 1838 are of limited assistance in determining whether a mistake was made when the Order route was added to the definitive map.
62. A number of Ordnance Survey (OS) maps and other material generated by OS have been submitted in this case. It is generally accepted that OS maps provide an accurate depiction of topographical features present on the ground at the time of the survey but that they do not provide evidence of the status of any route shown, nor are they conclusive as to the existence of public rights over any route shown. The Order route is shown on the 1885 25 inch to 1 mile map enclosed by solid lines and carries the parcel number 431 which was measured at 0.908 acres; the end of this land parcel is marked by dashed lines which are shown crossing the route.
63. The Order route is also shown on the 1904 second edition 25 inch map enclosed by solid lines with a dashed line across the route at the junction with Turnhill Road and just to the east of the parish boundary. This parcel is identified as 431 containing 0.888 acres. The 1904 six-inch map shows a solid line across the Order route in the same position as the broken line on the 1885 and 1904 25 inch maps. The opinion of Dr Yolande Hodson, in research commissioned by the supporters, was that this line represented a gate. This may well be the case, although I agree with the objectors that the existence of a gate on a route is not necessarily inconsistent with the existence of a public right of way; there are a number of gated roads in the country and provision may be made at the side of a gate for the passage of pedestrians.
64. I am also not persuaded by the supporters' submission that the identification by OS of the Order route as a parcel of land separate from the route in Aller Wood indicated that the Order route was a separate entity and that there was no continuous through route. Although the supporters submit that land acreages were surveyed in relation to parishes it is to be noted that the land parcel identified by OS is not concurrent with the boundary between Aller and High Ham parishes but a little to the east of that boundary. However, the depiction of the Order route in this way lends a little support to the contention that there was a gate or some other feature across the route just to the east of the parish boundary which made it possible for the OS surveyor to differentiate between the Order route and the track which had no physical boundary within Aller Wood.
65. In addition to OS maps, a number of other documents prepared by OS can be of assistance in providing evidence of the existence and status of routes surveyed. The Object Name Books were produced by OS to ensure the correct spelling of places and features named on the map and the Boundary Remark

- Books provided detailed survey notes of the position of parish and other administrative boundaries. The extract from the Boundary Remark Book of 1883 shows part of the boundary between Huish Episcopi and Aller in the vicinity of Full Moon and Half Moon Plantations. At this location, Wood Lane is described as an "*accommodation road*". The OS Object Name Book of 1901/1903 records Wood Lane in Aller as an "*occupation road extending from near the West end of Half Moon Plantation along the west edge of Bowdens*". The entry does not state how far north Wood Lane was considered to run.
66. The supporters submit that the entries "*occupation road*" and "*accommodation road*" are synonymous with the route described being a private road. The objectors dispute this conclusion and point to the Object Name Book description of Wood Lane having been signed for by the clerk to Aller Parish Council who would have been authority for the correct spelling of matters of public interest. However, the 1905 '*Instructions to Field Examiners*' provides guidance as to what OS meant by the term "*occupation road*". Page 18 of the 1905 instructions states "*Occupation roads are shown, whether made or unmade. This term includes roads leading from a public road to a farm or inhabited house, and roads over which there is a private right of way from a public road, through one or more fields, to other fields which have a different owner or occupier. They are more or less of a permanent character*". This seems to me to be the description of a private road which provides access to adjacent land which may be in different ownerships. The Parish Clerk, in confirming the description of the route as an "*occupation road*" also appears to be acknowledging that Wood Lane was a private road.
67. Whilst the Object Name Book and the Boundary Remark Book extracts do not relate directly to the Order route, the OS Popular Edition 1918 provides support for the supporters' contention that the Order route was of a similar status. The Popular Edition shows the Order route as an enclosed uncoloured cul-de-sac road whereas the section of Wood Lane in Aller immediately to the south-west is not shown as being separately identifiable from Aller Wood. The key to the 1918 Popular Edition states that "*Private Roads are uncoloured*" and this depiction would be consistent with the Order route being an occupation or accommodation road at that time. The 1919-1922 reprint of the Popular Map submitted by the objectors shows the Order route in the same manner as the 1918 map.
68. A plan extract from the sale of Beer Farm dated 1890 shows two small parcels of woodland within the High Ham part of Beer Wood being offered for sale. Access to these small thin parcels (2 roods 9 perches and 2 roods 16 perches) was from Wood Lane. The objectors submit that as no provision for access was mentioned in the sale catalogue it can be inferred that access to the woodland was taken from a public route. However, prospective purchasers would have had to make their own inquiries as to the arrangements for access to these parcels and the use of Wood Lane to access these parcels would not be inconsistent with the lane being an occupation or accommodation road.
69. The Finance Act 1910 made provision for a survey of all land in England and Wales for the purposes of levying a tax on the incremental rise in value. The boundaries of taxable parcels of land, called hereditaments, were recorded on large scale OS maps by colouring the boundary of the property. Details of ownership and occupation (amongst other things) were recorded in Field Books and Valuation Books. The value of a hereditament (and the extent of duty to be

- levied on it) could be reduced if the landowner acknowledged the existence of a public right of way over the land. In general, public vehicular roads were excluded from the valuation and were uncoloured on the maps produced during the process.
70. The Order route is shown excluded from adjacent hereditaments and is uncoloured. The continuation of the route in Aller parish is not excluded and is shown as being included as part of several hereditaments. The exclusion of a route from adjacent taxable hereditaments has been considered indicative of the existence of a public highway, normally but not necessarily vehicular. However, there may be other reasons as to why a route was excluded from valuation, for example where it was not possible to identify a single owner as a route provided a means of access to multiple properties. In the case of the Order route, the Finance Act plan shows that six separate hereditaments were served by the Order route (203, 205, 439, 156, 158 and 244) with hereditaments 439, 244 and 158 otherwise being landlocked.
71. A consideration of what conclusions can be drawn from the Finance Act documents has to be set in the context of other available evidence which relates to the same route. Seen in isolation, the Finance Act documents could be construed as indicating that the Order route was a public highway, however, when considered as part of the overall evidence the exclusion from adjacent hereditaments is not inconsistent with the Order route being an accommodation or occupation road.
72. Bartholomew's Cyclists map of 1911 shows the Order route as part of an uncoloured route which was considered "*inferior and not to be recommended to cyclists*". The map also carries a disclaimer similar to that found on OS maps to the effect that "*the representation of a road or footpath is no evidence of the existence of a right of way*". The Order route is depicted in the same manner on the map published by Bartholomew's in 1924 and carries the same disclaimers. Although it may have been possible to ride a pedal cycle along the Order route in the 1920s, these maps do not assist with a determination of the status of the Order route at the time of their publication.
73. The Order route is not shown on the Handover Map prepared in accordance with the Local Government Act 1929, nor has it ever been recorded as a publicly maintainable road. The absence of the Order route from the 1929 Handover Map is consistent with the observations of the Clerk in the Objection Form that Wood Lane was not a County road. There are no records of the Order route ever having been maintained by the responsible local authority and the absence of the Order route from the record of maintainable highways is not inconsistent with it being an accommodation or occupation road.
74. The 1934 extract plan to accompany the sale details of Glebe Land in High Ham shows the Order route in the same manner as Standhill Road. The sale plan is schematic and shows the land offered for sale in the context of other topographic features in the immediate area and was not produced to indicate the existence of a public right of way.
75. An extract from volume III of A History of the County of Somerset edited by R W Dunning notes that "*A ridgeway along the summit of Aller Hill was described as a processionway in 1572 and 1563 and was known as Wood Lane by 1885.*" No plan was submitted to demonstrate the location of this processionway and

the Order route is not shown on any maps prior to 1838. It is therefore unlikely that the route described in the extract included the Order route.

76. The map produced as part of the National Farm Survey of 1940-1941 has been submitted but was not accompanied by any farm records or census returns. The map appears to show that the Order route did not form part of the survey and does not assist in determining what the perceived status of the order route was at the time of the survey.

### ***Conclusions on the documentary evidence***

77. The earliest document to show the physical existence of the Order route is the tithe map of 1838 and subsequent maps show that the Order route has remained on that alignment. The Order route was not set out under the High Ham Inclosure Award and the OS object name books and Boundary Remark Books describe the continuation of the Order route through Aller Wood as an accommodation or occupation road. The Order route was not assessed as being capable of producing a titheable crop and was excluded from adjacent hereditaments in the Finance Act 1910 records; whilst these exclusions may suggest the existence of a public right of way, they are not inconsistent with the Order route being an accommodation or occupation road that provides access to a number of individual properties. The Order route was not claimed by High Ham Parish Council as a public right of way when it conducted its survey.
78. Having given consideration to the documentary evidence adduced in relation to the Order route, I conclude on a balance of probabilities that it does not provide evidence of the reputation of the Order route as a public right of way.

### **Evidence of Use**

#### *Peppard family evidence*

79. I heard from two members of the Peppard family at the inquiry; Mr Rodney Peppard and Mrs Primrose Purchase. In addition to the oral evidence given by these two individuals, statutory declarations made in 1997 from the late Archibald Bridgeman Peppard, the late Victoria Ivy Peppard and the late Bessie Larder were submitted, together with a statement from Joseph James Meaker. In addition to these statutory declarations, copies of evidence forms completed in 1989 were also submitted.
80. Mr Archie Peppard states that he had been born at Turn Hill Farm in 1925 and had known the track to the Farm to be private property. He said that there had been an agreement between his family and a Mr Lawrence of Charity Farm that Mr Lawrence could use the track to the farm as a means of access to his field known as 'Nettlebeds'; neither Mr Lawrence nor his successor claimed a right to use the track, nor did they undertake and maintenance of it. Mr Peppard states that there was no public use of the track prior to 1973 and that those people who held land in Aller Wood used the track in Aller to reach their land and did not use the Order route to reach Aller Wood.
81. Mr Peppard also states that the track beyond Turn Hill Farm had been overgrown for many years as a result of the woods not being managed; a letter from 1973 from the clerk of the Parish Council to the County Surveyor states that the path had been blocked by vegetation. In addition to the overgrowth and undergrowth, the path had been blocked by a duck pond and the track had

had bars across it for as long as he could remember to mark the end of Aller Wood.

82. Mr Peppard also stated that he had erected notices which said '*Private Road*' and '*No Parking*' at the eastern end of the track on Good Friday 1949 in response to cars being parked along the track which prevented access to the Farm. He recalled the date as he had been returning home with his hounds after hunting and found the track blocked by a car belonging to a local coal merchant. He had also challenged anyone walking along the track that he had encountered as did other members of the family. Photographs of the notices taken in 1997 were submitted as part of the supporter's evidence and the location of the notices was pointed out to me by Mr Rodney Peppard as part of my site visit.
83. Mr Peppard also stated that his family had not been notified of the modification made to the draft map following the objection by the Ramblers' Association. He understood from correspondence in 1986 that the Council had intended to notify owners of the proposed modifications, but no such consultation had been carried out.
84. Veronica Ivy Peppard stated that she had been born in 1931 and had always known the track to the Farm to be private. She stated that at a bar had always been across the boundary of the property with Aller Wood and that a duck pond had also blocked access between the track and the wood. She had never seen anyone using the wood for access to Turn Hill or using the track for access to Aller.
85. Bessie Larder had been born at Turn Hill Farm in 1913 and had been told by her grandfather John that he had built the property when he was 18 which would have been around 1848. She recalled playing in the woods where her grandfather worked and that no-one used the track to the farm to get to Aller Wood or came from Aller to reach Turn Hill as there had always been a bar or rail at the end of Aller Wood which prevented access. The only maintenance that was done to the track was carried out by her brothers Archie and Joe. She stated that there was no public right of way over the track to Turn Hill Farm and that there had been no attempt to use the path until after 1973; her brother had challenged anyone found walking along the track.
86. Mr Meaker's statement was made to amplify and supplement the evidence he had given in a user evidence form which had been submitted as part of the 1987 application to delete footpath L12/33. By 2006 (the date of his statement) Mr Meaker had known the Peppard family for around 50 years. He had first become aware of the signs erected by Archie Peppard in the late 1940s or early 1950s which had been erected in a tree on the northern side of the track. He also knew of the bars at the western end of the route at the junction with Aller Wood; the bars had deterred and prevented anyone from crossing from Aller onto the track to gain access to Turn Hill and demonstrated that the Peppards maintained the right to deny unauthorised access.
87. Mr Rodney Peppard had been born in 1961 and had been raised at Turn Hill Farm. He said that his grandmother would not have tolerated people passing outside her front door if she did not know them. For as long as he could remember there had been a sign which said "Private" and another which said "keep out" in a tree on the northern side of the track. The only maintenance which had been done to the track had been undertaken by his Uncle Archie and



- there had never been a sign which said 'Public Footpath' anywhere along the track to Turn Hill Farm. At the site visit, Mr Peppard showed me the pond which was said to have obstructed access between Turn Hill Farm and Aller Wood which had been used as a source of water for his uncle's hounds.
88. According to Mrs Purchase, the family history of how there came to be a track on the alignment of the order route leading to Turn Hill Farm was that the Peppards had surrendered their right of access over Breechwood Road in return for a strip of land to create a more direct route to their property. Breechwood Road had subsequently reverted to being part of the surrounding farm land. The family history is that the new access had been physically constructed by John Peppard with the Peppard family being responsible for the maintenance and upkeep of the new private access road.
89. Mrs Purchase's recollection was that Wood Lane ended at a bar at the boundary of Aller Wood and did not continue to Turn Hill Farm. Mrs Purchase also recalled that when the public had wandered onto the lane to pick primroses in the spring her grandmother had turned them back. In her view, this demonstrated that her grandmother had not accepted that the public had a right to walk along the track. Mrs Purchase also recalled the existence of a duck pond near Aller Wood which would have prevented people from walking between Aller Wood and Turn Hill Farm.
90. The evidence contained within the statutory declarations and the oral evidence submitted at the inquiry by various members of the Peppard family is consistent; since at least 1949 there had been 'Private Road' notices present on the lane which appear to have remained visible until at least 1997. In addition, the evidence is that the path at its western end was obstructed by a rail or bar which together with the duck pond prevented access between the farm and Aller Woods. Although challenges to the public encountered on the path since the publication of the definitive map would have been ineffective due to the conclusivity of the map and statement, consistent attempts were made to challenge people walking along the track; for example those persons picking primroses were asked to leave.
91. Although I only heard from two witnesses at the inquiry, the evidence of Mr Peppard and Mrs Purchase was not undermined by cross-examination and I found them to be credible witnesses.
92. It is common ground that no member of the Peppard family appears to have been consulted on the objection made by the Ramblers' Association which resulted in the Order route being added to the definitive map and statement. The procedures set out under the 1949 Act did not require landowners to be directly consulted about the process and were expected to become aware of the survey and its purpose through meetings of the parish authorities and the publicity process which was specified by the 1949 Act.
93. Archie Peppard referred to a letter he had received from the Council in 1986 in which it had been explained that it had been the intention of the Council to consult each landowner regarding the survey. There is, however, no record of such consultation having taken place. The absence of any such consultation does not undermine the 1949 Act process; no objection was received to the inclusion of L12/33 in the map and statement and in the absence of any such objection, the modification shown in the draft map was subsequently shown on the provisional and then definitive maps.

94. It is known from the letter dated 14 May 1957 that the Council wrote to High Ham Parish Council and enclosed a copy of the "Summary of Objections" which requested the observations of the Parish Council on the objections and which suggested that the Parish Council should obtain the views of the owner or tenant of the land affected by the objections; there is no record than any approach was made to the Peppard family regarding their views. What is known is that with regard to objection LP.1, only Aller parish council is recorded as providing a response.
95. Although the Peppard family claim that they first experienced members of the public using the track in or around 1973, the available evidence suggests that actions were being taken by them to deny the existence of other rights over the track as early as 1949 when Archie Peppard erected "private road" signs; the Aller parish minutes of May 1959 noted that the occupiers of Nettlebed Cottage disputed that a right of way existed over the track.
96. One of the main grievances from the Peppards is that they were not notified directly of the objection made by the Ramblers' Association and consequently had no opportunity to respond. It was not a statutory requirement for landowners to be notified individually and the absence of direct consultation is not evidence of error. I accept that the public notice given of the proposed modification of the draft map was vague as to which paths were affected as in relation to High Ham the notice read "Added 5 new footpaths and 1 CRF"; a reading of the public notice is unlikely to have alerted a landowner that his land was being affected. Nonetheless, publicity was given according to the requirements of the statute and any shortcomings in the process cannot be used as evidence that a mistake was made. However, the absence of direct consultation does not appear to have prevented the Peppards from asserting that there was no right of way over the track to Turn Hill Farm.
97. The objectors criticise the user evidence submitted by the Peppards and claim that the knowledge of those members of the family who had provided evidence did not go far enough back in time to undermine the recording of the route on the definitive map. Taking support from the finding of Denning LJ in *Hood*, the objectors considered that the recollections of the '*oldest inhabitants then living*' in High Ham is likely to have provided evidence of the reputation of the Order route which went back to the 1880s. Whilst it is entirely probable that the parish survey in the 1950s would have drawn upon the recollections of the '*oldest inhabitants then living*', this does not explain why High Ham Parish Council did not claim that the Order route was a public right of way at the time of the survey.
98. If High Ham Parish Council had considered the Order route to be a public road as alleged by the letter of 1998, it would have been open to the Parish Council to have claimed the route as a CRF or CRB as part of its survey. However, the Order route was not included by the Parish Council in the survey. The conclusion to be drawn from this is that even assisted by the evidence of the '*oldest inhabitants then living*' there was no recognition of the route as a public right of way. I place little weight upon the retrospective assertions of the parish council some 40 years after the fact that it had been understood that the route had been a public vehicular way.
99. The objectors produced no evidence of use to support their case and there is consequently no other contemporaneous evidence before the inquiry regarding

the conditions prevalent on the ground at the time immediately prior to, and during the period of the survey under the 1949 Act. It is the supporter's case that there never has been a public right of way over the Order route and that L12/33 was recorded in error. The evidence before me is that the Peppards have never accepted that a public right of way exists over the track to Turn Hill Farm.

### **Conclusions on the user evidence**

100. It is not known what, if any, user evidence was taken into account by High Ham Parish Council when it conducted its survey. However, given that the Order route did not form part of the survey and neither the Order route nor its continuation in Aller was claimed by either Parish Council suggests that it did not have the local reputation as a public right of way at the time of the survey despite a physical inspection of public rights of way within the parish having been carried out.
101. Although the objectors contend that the Parish Council did not claim the route as a public footpath because it was considered to be a public road, the notices erected by Archie Peppard in 1949 would have been sufficient to question the existence of such a route and yet there is no record within the parish minutes of the erection of these notices having given rise to any concern on the part of the Parish Council. The lack of reputation of the route as a public right of way is understandable in the light of the Peppard family's evidence that the route was inaccessible due to vegetation overgrowth, the presence of a duck pond on the claimed route and a physical barrier which prevented access between the track and Aller Woods.

### **Other matters**

102. The objectors submit that it would be highly unlikely for a route which had been consistently depicted on maps since 1838 as a through route between parishes would abruptly change status at the parish boundary or that the public would have travelled along Wood Lane in Aller to point B and then would have turned round again. There was no place of public resort at point B which anyone travelling from Aller would have wished to journey to; the destination of anyone undertaking such a journey would have been Turn Hill at point A.
103. I acknowledge that the deletion of footpath L12/33 from the definitive map would leave footpath L1/13 as a cul-de-sac. However, the consequences which would follow from the deletion of the Order route from the definitive map are not relevant matters which can be taken into account in determining whether an error was made when the Council originally added footpath L12/33 to the map. The supporter's case does not raise questions about footpath L1/13 in Aller; the supporters simply contend that a mistake was made when footpath L12/33 was added to the definitive map and that mistake, in their view, should be rectified.

### **Conclusions on the evidence**

104. The terms of the objection made by Mr Marriott to the omission of the Order route from the draft map are not available and all that is recorded is the description of the route which had been omitted. The description found in the Objection Form and the Summary of Objection describes a route which is more

likely than not to include the Order route as the claimed path is said to pass Nettlebed Cottage before terminating in the vicinity of the roadside benchmark.

105. It is not known what sources Mr Marriott consulted in making his claim nor whether his claim was based on the depiction of the route on old maps or whether he had himself walked the route. In the absence of any evidence or knowledge of the route that Mr Marriott possessed, it is likely that the evidence considered in relation to the route amounted to those matters set out in the Objection Form and the Summary of Objections; had other evidence been considered then it is likely that it would have been specified in the forms.
106. The 1799 inclosure award does not show the Order route and the 1838 tithe map does not indicate the status of the Order route as public and private roads are equally unlikely to have produced a titheable crop. Neither of these documents demonstrates the existence of public rights and any reliance which may have been placed upon them as evidence of public rights over the Order route at the time Mr Marriott's objection was determined would have been in error. Other evidence which is not listed as having been taken into consideration suggests that the Order route was considered to be an occupation or accommodation road and whilst it is possible for public rights to coexist over such routes, there is no evidence to suggest that this was the case when the Order route was first added to the definitive map.
107. The evidence of the Peppard family is that there was no use of the route by the public and that it would not have been possible in any case to walk into Aller from the Order route due to it being obstructed by vegetation, a duck pond and a physical barrier. The Peppard's evidence is also that any use of the Order route had been challenged, that such challenges commenced prior to the route being added to the draft modification map and that those challenges had been maintained ever since.
108. I have already concluded that the supporters have provided new evidence which had not been considered when the Order route was first added to the definitive map. I conclude that that evidence, when considered with all other evidence available to me shows on a balance of probabilities that there is no public right of way over the Order route. The evidence is of sufficient substance is to displace the presumption that the definitive map is correct and the evidence is cogent. It follows that I conclude that the Order should be confirmed.

### **Formal Decision**

109. I confirm the Order.

*Alan Beckett*

Inspector

## APPEARANCES

Supporting confirmation of the Order:

Mrs J Hanney

Mrs M Masters

Who called

Mrs M Masters

Mr R Peppard

Mrs P Purchase

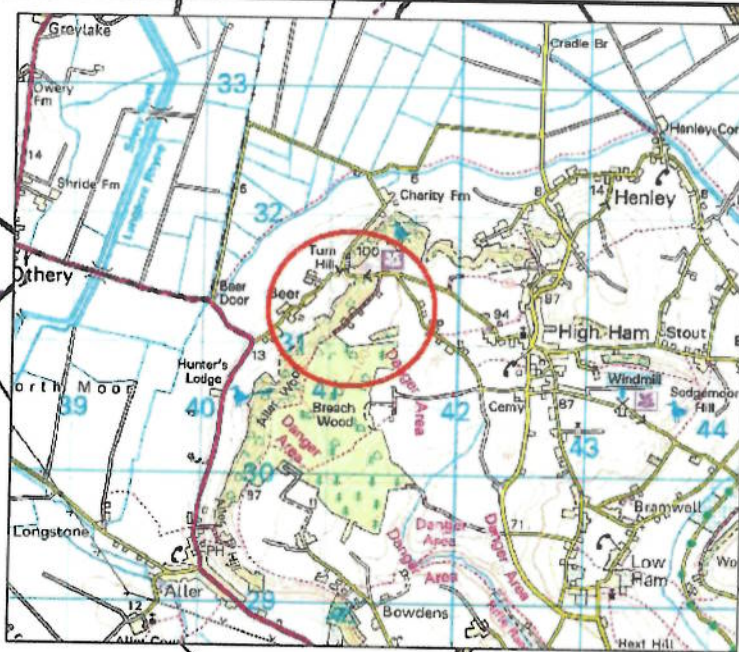
Opposing confirmation of the Order:

Mr A D Kind

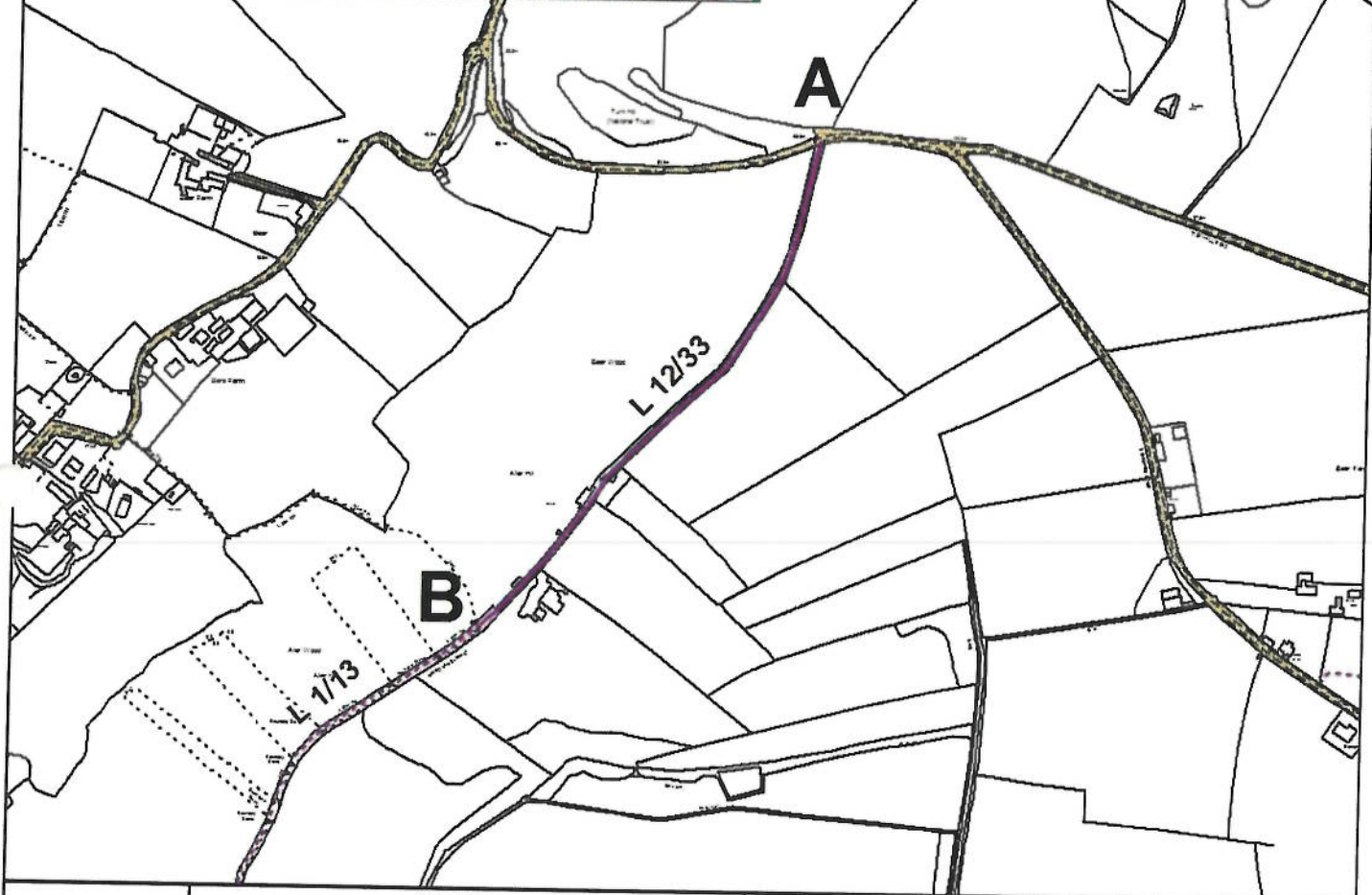
on behalf of South Somerset Bridleways  
Association and Somerset Ramblers' Association

## **Inquiry documents**

1. Photographs of Nettlebed Cottage and Turn Hill Farm.
2. Extract from High Ham tithe map 1838.
3. Photographs of the site relating to the position of point B.
4. Statement of case Addendum on behalf of South Somerset Bridleways association and Somerset Ramblers' Association.
5. Legal Submission Addendum on behalf of South Somerset Bridleways Association and Somerset Ramblers' Association.
6. List of additional papers submitted on behalf of South Somerset Bridleways Association and Somerset Ramblers' Association.
7. Letter from Mrs Masters regarding the late submission of documents by South Somerset Bridleways Association and Somerset Ramblers' Association.
8. Note of typographical errors in the Peppard's Statement of Case.
9. "Queries" card for Huish Episcopi parish.
10. Description of the documents produced from the Somerset Records Office (Q/RDE/108 and D\D\Rt/M/25).
11. Copy of the 2<sup>nd</sup> edition 1904 6 inch to 1 mile map.
12. Transcript extract from the High Ham Inclosure award; extract from ordnance Survey map showing part of Breech Wood; list of questions put to Mrs Masters; extract from section 7 of the Consistency Guidelines; two maps to show the position of Mrs Purchase's house.
13. Closing submissions on behalf of South Somerset Bridleways Association and Somerset Ramblers' Association.
14. Closing submissions on behalf of Mr Peppard.



MAP NOT TO ORIGINAL SCALE



**664M**  
 Parish: High Ham  
 District: South Somerset  
 Date: 10/02/2015  
 Drawing No: H008-2015  
 Drawn By: MHardwill  
 Centre Grid Ref: ST 413 315  
 Scale: 1:1500

Wildlife and Countryside Act 1981  
 The Somerset County Council  
 (No. 1) Modification Order, 2015  
 Parish of High Ham

Footpath to be deleted A-B —————  
 Unaffected footpath - - - - -

The precise line of a Right of Way can only be determined by reference to the Definitive Map (1:10560 scale) and the attached plan has been produced by transposing the Rights of Way Definitive Map onto a larger scale. The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.