
Order Decision

Inquiry opened on 23 May 2017

Site visit made on 24 May 2017

by Alan Beckett BA MSc MIPROW

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

Decision date: 03 July 2017

Order Ref: FPS/G3300/7/96

- 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.3) Modification Order, 2016.
- The Order is dated 1 April 2016 and proposes to modify the Definitive Map and Statement for the area by deleting that part of footpath WG 12/13 shown between points A and B on the Order plan and described in the Order Schedule and by adding a footpath shown between points C and B on the Order plan and described in the Order Schedule.
- There were 2 objections and one representation outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. Following the withdrawal of the objections made to the Order on behalf of Mr & Mrs Dinneen there was no remaining dispute as to the existence of a public right of way over WG 12/13. The only issue between the Council and Mr & Mrs Williams was over the correct alignment of the path between point B and the road which runs past St Margaret's Church. It is common ground between the parties that there is only one public footpath running north from point B.
 2. For the purposes of the inquiry, the Council had produced a plan showing the entire length of footpath WG 12/13 between Thorne St. Margaret and the road leading to Holywell Lake. This additional plan was annotated B – D – E with point D being at the southern end of the enclosed section of path to the south of point B and point E being the termination of the path on the road to Holywell Lake. I intend to follow this convention if it is necessary to refer to parts of the path to the south of point B.
 3. Following the close of the inquiry, Mr Williams submitted an annotated plan which he said showed the location of a door in the wall at Townsend which gave access to the garden of Church Cottage. It was Mr Williams' contention that the door provided evidence of an historic access between the two properties and showed that the definitive map line was passable at that point.
 4. Mr Williams' plan and his comments were circulated to the other parties for comment. Mr Hasell responded that he had owned Church Cottage since 1977 and that there had never been access between Church Cottage and Townsend via the claimed door, nor had he ever seen any indication of such an opening in the property boundary. Mr Hagan considered that the door being referred to was a door into the log store at Townsend. Mr & Mrs Dinneen had visited
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Church Cottage with Mr Hasell and had found no evidence of a door which could have provided a means of access between the two properties. Mrs Masters considered that as Mr Williams had not mentioned the existence of this door at any time during the course of the inquiry, this post-inquiry correspondence was an attempt to delay the decision on the Order.

5. For the Council, Mr Saint responded that he did not recall seeing a door in the claimed location during any of the visits he has made to the site and that no door was highlighted during the post-inquiry site visit. Furthermore, the definitive line of the footpath was shown as running through a building which had been present since at least 1830 and could not have been walked by the public during the living memory of those alive when the definitive map was first published.
6. I note here that Mr Williams had not mentioned this door in his evidence in chief nor had he raised its existence with any of the witnesses who appeared in support of the Order; the appropriate time to introduce such evidence would have been during the course of the inquiry. Despite viewing the two properties from either side of the boundary no such structure was pointed out to me.
7. In the light of the responses received to the circulation of Mr Williams' correspondence and plan, I attach no weight to the post-inquiry submissions which are of no assistance in determining whether a mistake had been made when the Definitive Map & Statement ('DM&S') was originally compiled.

The Main Issues

8. In the *Trevelyan*¹ 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. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.*"
9. 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 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.

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

10. Circular 18/90 has been superseded by Defra Circular 01/09². 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."

11. The main issues in this case are therefore first, whether the Council has "discovered" evidence so that the terms of Section 53 (3) of the 1981 Act are engaged; secondly, whether the evidence discovered, when considered with all other relevant evidence available, shows on the balance of probabilities that there is no public right of way of any description over A – B; and finally, whether the evidence discovered, when considered with all other relevant evidence available shows on a balance of probabilities that a public right of way subsists over C – B which is not currently shown in the Definitive Map and Statement.

Reasons

Deletion of A - B

Discovery of evidence

12. With regard to any proposal to delete a footpath from the definitive map the starting point as set out by the Court of Appeal in the *Trevelyan* case is that the definitive map is presumed to be correct and that for the deletion of the footpath to be confirmed, some new evidence has to have been discovered which was not previously known to the surveying authority when the path was first marked on the definitive map. It is the Council's case that an error had been made in showing A – B as part of footpath WG 12/13 and that the outlet of the footpath onto the road which runs past St Margaret's Church should have been recorded on the alignment C – B. Mr and Mrs Williams contend that the alignment A – B is correct and should remain.

13. The Council acknowledges that in addressing the question of whether a right of way shown in the DM&S should be deleted it is not permissible to simply review the evidence known to have been available at the time the path was first shown and reach a different conclusion. What is needed, as the judgement in the *Trevelyan* case sets out, is that evidence needs to be produced which was not available or had not been considered at the time the path was first added to the definitive map and when considered alongside all other relevant evidence shows that an error had been made.

² Defra, version 2 October 2009

14. That this is the correct approach has been endorsed by the courts in a number of cases considered over the years. In the *Mayhew*³ case, Potts J held that “to discover” meant to “find out or become aware”; that “discovery” involved a mental process “in the sense of the discoverer applying his mind to something previously unknown to him”; and that the “event” in Section 53 (3) (c) was the “finding out of some information which was not known to the surveying authority when the earlier definitive map was prepared”.
15. The question of the alignment of footpath WG 12/13 between point B and the road running past St Margaret’s Church appears to have arisen as a result of Taunton Deane Borough Council conducting a survey in 2000 on the accessibility of public rights of way within its area (as the agent for the highway authority) and finding that the line of the path shown on the copy of the definitive map it held showed the path as passing through Greenhayes and the outbuildings of Townsend. In addition the path was shown as running both on the eastern and western sides of the boundary between Townsend and Greenhayes as well as running along the boundary in places.
16. The Council submitted that it was highly unlikely that the line shown on the definitive map would have been capable of use by the public as it is shown as passing through the outbuildings of Townsend which other map evidence shows have been present in one guise or another since at least 1830. Furthermore, no documentary evidence had been adduced which demonstrated that a path on the definitive map alignment had been present prior to 1830. In the Council’s view, the fact that the path was shown passing through buildings which had been present on site for 120 years prior to the definitive map being compiled was clear evidence of an error having been made regarding the recording of the alignment of WG 12/13 north of point B.
17. The Council also submits that the records relating to the production of the definitive map assist in demonstrating that an error had been made in the recording of WG 12/13. The Parish Meeting had claimed the route C – B – D – E during its survey of public rights of way within the parish⁴; the Council’s view was that the parish considered the route to have the reputation as a public right of way. The Parish Meeting’s description of the path was “*The path starts at entry on south side of road in Village, opposite the vicarage, and follows a metalled track to the bottom of the hill. It then turns S.E between hedges, crosses a stile, through field and into road at gateway*”. This is a clear description of the route C – B – D – E; point C is opposite the former vicarage; point B being at the bottom of the hill; between points B and D the path runs (as it did at the time of the parish meeting survey) between hedges to the stile at point D then over a field to E on the road to Holywell Lake.
18. Although the surveying authority of the day did not include footpath 5 in the draft map, an objection to its omission was made by Mr Marriott on behalf of the Ramblers’ Association. The description of the path which Mr Marriott sought to be added was however given in the vaguest of terms. The objection read “*Omission of path from St Margaret’s Church, Thorne St. Margaret, south south easterly to road*”. This description was interpreted as being the alignment A – B – D – E. I consider it significant that Mr Marriott subsequently wrote to the County Council regarding the alignment of WG 12/13 shown on the Provisional Map saying “*My objection should have been a little more explicit – I*

³ *Mayhew v Secretary of State for the Environment* (1993)

⁴ Shown as footpath 5 in the parish survey

only intended to claim 12/13 as going through the farm road and not along the track starting at "Sunday School".

19. Although the documents relating to the production of the definitive map are illustrative of the process by which WG 12/13 came to be marked on the map, and although Mr Marriott's correspondence demonstrates his concern that the path marked on the Provisional Map was not the one his earlier objection had referred to, these are documents which the surveying authority of the day would have access to when the definitive map was compiled and as such, they cannot be regarded as 'new' evidence.
20. What the Council offers as 'new' evidence which is unlikely to have been considered previously are the minutes of the Parish Meeting between 1898 and 1937, the minutes of the Rural District Council dated 1903 and 1904 and the Finance Act 1910 map, valuation book and field book. The only documents known to have been considered during the preparation of the definitive map are those relating to the commutation of tithes.
21. Although it is not impossible that the Parish Meeting minutes were consulted, there is nothing before me to suggest that this was done; consequently, the minutes are 'new' evidence. In addition, given that the Finance Act documents were not publicly available during the early 1950s, it would not have been possible for the surveying authority to have taken these documents into consideration when compiling the Definitive Map and Statement.
22. I am satisfied that the Council has discovered new evidence which has a bearing upon the question of the position of WG 12/13 of the kind envisaged by Section 53 (3) and the *Trevelyan* and *Marriott* cases. This new evidence can be assessed as to whether it is of sufficient substance to displace the initial presumption that the definitive map is correct and whether it is cogent. This evidence can then be assessed with all other relevant evidence before a determination can be reached as to whether the line of WG 12/13 requires correction.

Documentary evidence

Parish minutes

23. Extracts from the Parish Meeting minutes were provided for various dates between January 1898 and March 1937 which refer to the route at issue. At the meeting of 26 January 1898 the minutes noted *"the bad state of the lane leading from the road to the cottage occupied by Mr Parkman and the Church path to Holywell Lake"*. The minutes of 22 February 1899 record that *"Mr J S Page, assistant Overseer, be requested to write to J H R Winwood Esq calling his attention to the state of the lane leading to the Church Path from Holywell Lake"*.
24. A further complaint about the condition of the road was recorded in March 1902: *"Complaint was made of the bad state of the short piece of road giving access to the cottage occupied by Mr Parkman and to the footpath through Mr Hill's field"*. The Parish Meeting sought the assistance of the Rural District Council ('RDC') for the repair of the road and stated in its letter *"At this meeting a complaint was made of the exceedingly bad state of a very short piece of road in the village between the metalled road and a gate leading to a path across a field in the occupation of Mr James Hill, thereby rendering access*

to the path and to the adjoining cottages very difficult and at night even dangerous".

25. The RDC minute of 8 May 1902 noted that the RDC had received the Parish Meeting's letter and *"resolved that the clerk be instructed to reply and state that the Council cannot recognise their liability to repair what appears to be an occupation road"*. The parish minute of 29 September 1902 noted the RDC's response that *"the roadway referred to forms part of a footpath only, and has not hitherto been repaired by the Highway Authorities. The Council are therefore unable to accept the liability for its repair"*.
26. The assistant overseer subsequently wrote to Mr Winwood asking him to put the road into repair, and the minutes show that Mr Winwood's Agent had viewed the road and made suggestions.
27. The minutes of March 1904 noted that *"It was reported that nothing had yet been done to remedy the bad state of the footpath leading from Thorne St Margaret across 'Barns Close' to the Road leading to Holywell Lake"*. In May 1904, the RDC replied to the parish meeting that *"the Council or their predecessors have never repaired the footpath in question and repudiate any liability"*.
28. In March 1914 the parish meeting resolved to write to the Winwood Estate regarding *"the defective footpath leading from Thorne St Margaret to Holywell Lake owing to the choking of a drain near to cottage in the dip of the footpath"*. The drain continued to be a source of concern as the minute of 12 November 1936 records that the RDC would be notified that *"the 4 inch pipe at the top of Cores Lane leading down to the Church foot path, was quite inadequate to take the volume of water which comes down the road from higher up..."*.
29. The minutes of 3 March 1937 record that *"regarding the flooding of Cores Lane the Surveyor had been instructed to see into it. It was decided to reply at next meeting...and also a complaint respecting...the church path from Holywell Lake to Thorne St. Margaret"*.
30. It was the Council's case that the parish minutes provided evidence that C – B was considered to be a public footpath in the late nineteenth and early twentieth centuries as all the references in the minutes relate to that route and the continuation of the footpath to the road to Holywell Lake. Mr Williams however, contended that the Council's interpretation of the parish minutes was incorrect; in his view, the description of the lane as leading to the 'Church Path' in the minutes of 26 January 1898, 22 February 1899 and 12 November 1936 were references to the lane making a connection with the path A – B as that path led directly to the church.
31. In response, the Council submitted that the term 'Church Path' was a descriptive term used by the Parish Meeting to distinguish between the enclosed lane and the cross-field footpath leading from it to the road to Holywell Lake and also a generic description of the path over the fields from Holywell Lake which led in the general direction of St. Margaret's.
32. From the description given in the minutes there is a distinction drawn between 'the lane', 'the short piece of road', 'Cores lane' and the 'Church Path'. In coming to a view on whether the 'Church Path' was or was not a reference to a direct route to St Margaret's I place some weight upon the description

contained in the letter from the parish meeting to the RDC in May 1902. In that letter, the parish meeting complains of the condition of the lane which provides access to cottages and the footpath over Mr Hill's field and states that the condition of the lane rendered *'access to the path and to the cottages very difficult and at night even dangerous'*.

33. In my view, had there been a second path on the alignment A – B in existence at the time, then the poor condition of the lane would not have rendered access to the *'path across the field'* difficult or dangerous. The 1902 letter suggests that the only access to the *'path across the field'* that the parish meeting was aware of was along the poorly maintained lane C – B. That being the case, it is more likely than not that the references to the church path were descriptive references to the path from Holywell Lake that ran in the general direction of St Margaret's church; I saw from my site visits that the tower of St Margaret's church came into view within 16 paces of the Holywell Lake road.
34. There is no evidence from the parish minutes that the path across the fields to point B or its continuation along the lane was for the sole use of those worshipping at St Margaret's church. The general tenor of the minutes is that the Parish Meeting was concerned about the condition of the lane and the path over the fields as a public way which it considered the public authorities were responsible. The fact that the RDC denied responsibility for maintenance of either the lane or the footpath does not detract from the understanding of the Parish Meeting that the entirety of the route was open to the public; if the Parish Meeting had considered the route to have been solely used by those attending church for divine worship there would have been no need for the maintenance of the path to be raised with the highway authority.
35. I am not persuaded by any argument put forward that the route at issue was a church way for the following reasons. First, Halsbury's Laws states that *"a right of way to a Parish Church, however, is not necessarily a customary right of way but may be a public highway"*. Secondly, and of more relevance in this case, neither A – B nor C – B are paths which lead directly to the parish church; they only lead to the road passing through the village.
36. In my view, a number of conclusions can reasonably be drawn from the parish minutes. First, that over a period of around 40 years, the Parish Meeting was concerned by the condition of the road and footpath between Thorne St Margaret and the road to Holywell Lake. Secondly, that the Parish Meeting considered this route to be a public right of way and that the liability for maintenance and repair lay with the public authorities. Thirdly, there was no other means of access to point B other than along the enclosed lane as it was the disrepair of the lane which meant that access to the path beyond B was made difficult or dangerous. Finally, the references to *'lane'*, *'short section of road'*, *'occupation road'* and *'Cores lane'* are more likely than not to be references to the route C – B than they are to A – B, given the consistent depiction of C – B on successive mapping as an enclosed lane giving access to various properties whereas A – B has none of those attributes.
37. I consider it unlikely that the parish meeting minutes had been consulted by the surveying authority prior to the production of the DM&S. Had the minutes been consulted, the surveying authority would have found evidence of the reputation of the route C – B – D – E as a public right of way to justify the inclusion of the path claimed by the Parish Meeting as footpath 5.

Finance Act 1910

38. The survey plans for the 1910 Finance Act shows that part of the C – B route north of the Greenhayes boundary as excluded from claimed ownership. The remainder of the route and the southern part of A – B are shown to be within hereditament 189 (as is the remainder of footpath WG 12/13); the northern part of A – B is shown to be within hereditament 161.
39. The valuation book entry for hereditament 161 does not show a reduction in site value of the land due to the presence of public rights of way or user. The entry for hereditament 189 records a reduction in value of £50 but as the hereditament extended to 210 acres it is difficult to determine with any degree of certainty whether the allowance was made as a result of the owner acknowledging the existence of a footpath over this part of his holding or over other parts of his estate.
40. The Council submitted that the Finance Act evidence was significant as that part of C – B was not considered to be privately owned at the time of the survey and the exclusion from private ownership was indicative that the route was considered to be a public highway of some description.
41. The exclusion of routes from adjacent hereditaments has been considered on a number of occasions by the Courts and whilst the information found in the Finance Act records are not definitive as to the status of any particular way as the recording of public rights was not the primary purpose of the survey, they provide evidence which has to be considered alongside other evidence which is relevant to the route at issue.
42. In this case, the absence of a deduction from the site value of hereditament 161 shows that at the time of the survey, no public right of way was recognised over that part of A – B which crossed that landholding. Additionally, the exclusion of the majority of C – B suggests that the track was considered to be part of the ordinary highway network of the village. Although the route may not have been open to the public with vehicles, it would certainly have been capable of carrying public pedestrian traffic. The depiction of part of C – B on the Finance Act plan reflects the understanding of the Parish Meeting that the route was a public right of way of some kind.
43. Whilst the Finance Act records are not conclusive of the existence of a public right of way along C – B, they support and reflect the evidence found in the Parish Meeting minutes that the route had the reputation of a public right of way.

Other documentary evidence

Tithe map and apportionment

44. The tithe map does not show the existence of a path or track on the A – B alignment and there are no breaks in the land parcel boundaries to show that access along such a route was possible. The parcels of land crossed by A – B are listed as orchards and gardens. The route C – B is depicted as an enclosed track coloured in the same way as the public road to which it joins and is numbered 94 with Greenhayes being numbered 100. The apportionment entry for parcel 94 is '*Road and waste*' and parcel 100 is recorded as '*Cottage, yard and road*'.

45. Although the primary purpose of tithe commutation was not the recording of public rights of way, there is nothing in the tithe documents which demonstrates the physical existence of the route A – B whereas C – B is shown as an enclosed road which would have been capable of carrying public pedestrian traffic.

Ordnance survey maps

46. Ordnance Survey maps provide good evidence of what was present on the ground at the time of the survey and have, since the late nineteenth century carried a disclaimer that the depiction of a track or way is not an indication of the existence of a public right of way. The 1802 1 inch to six-mile surveyors drawing shows the enclosed lane C – B extending to the south past Greenhayes to meet the Holywell Lake road to the east of point E. This depiction of an enclosed lane running south from B to the Holywell Lake Road is repeated on the 1809 2 inch map. These documents suggest that the enclosed section of the path B – D are the remnants of a much longer enclosed route which ran to the Holywell Lake road on a slightly different alignment to B – D – E.
47. The first large scale map of the area is the 25 inch to 1-mile map of 1889. A peck line is shown to the west and south of the Sunday School and running parallel to the cottages to the west as far as the boundary of parcel 37. A similar peck line runs from the northern boundary of parcel 37 in a southerly direction from the outbuildings of what is now Townsend towards Greenhayes. These two peck lines are not joined. These peck lines may indicate the presence of a path but equally they may indicate a visible change of surface in the vicinity of the adjacent buildings. The route C – B – D is shown as an enclosed track which is broken by a solid line at what appears to be the boundary of Greenhayes. From point D a double peck line track is shown running on the current alignment of WG 12/13 which is annotated 'F.P.'.
48. The 1887 6 inch to 1-mile map shows the same ground detail as the contemporaneous 25 inch map with the exception of the absence of the peck line feature running south-east from the rear of the Sunday School. The D – E section of WG 12/13 is annotated 'F.F.' This is generally used to indicate the position of parish or other administrative boundary and stands for '*Face of Fence*'. Given that the adjacent boundary feature does not represent the parish boundary, this annotation may be erroneous.
49. The 25 inch to 1-mile map of 1904 shows a means of access from the road to the land to the rear of the Sunday School but there is no representation of a track or path within that land. The map shows a double peck line track running wholly within parcel 37 with no continuation northwards towards point A or southwards towards point B. Other than the route D – E being annotated 'F.P.' the depiction of that part of footpath WG 12/13 between B – D – E is unchanged from the 1889 map, and the route C – B is shown as a continuous enclosed road without any obstruction at the current boundary between Greenhayes and The Old Farmhouse. The depiction of the routes on the 1905 6-inch to 1 mile map is the same as on the 1904 25-inch map.
50. The Ordnance Survey maps are consistent in their depiction of C – B as a through route which has been in existence since at least 1802 whereas there is little evidence of the existence of a through route over A – B. Although there are a number of peck line features shown within parcel 37, none of the maps considered show the existence of a through route on the alignment shown in

the definitive map. Whilst the maps show that it may have been possible to travel from Greenhayes to the outbuildings that are now part of Townsend (and the property boundaries in 1902 may have been different from what they are now), they do not demonstrate that a means of access toward and past the Sunday School was available on the ground.

51. Although Ordnance Survey maps do not provide evidence as to the status of any track or way shown, the depiction of the C – B route and the absence of the A – B route is consistent with the evidence found in the parish minutes and the Finance Act documents that a public right of way ran over C – B and not over A – B.

Highways Records

52. The Local Government Act 1929 transferred the responsibility for the maintenance and repair of public carriageways from Rural and Urban District Councils to County Councils. As part of the transfer of responsibilities, RDCs and UDCs prepared maps and schedules of those highways which had been maintained by them. The 1929 'handover' map and subsequent maps and schedules of maintainable highways prepared by the Council do not show any part of C – B as being publicly maintainable.
53. The non-depiction of C – B on the Council's highway records is entirely consistent with the responses made by the RDC to the parish meeting's requests for C – B to be put into repair by the RDC. Although the route C – B was not maintainable at public expense this does not preclude the existence of a public right of way over it.

Definitive map records

54. As noted above the description of the path given by the parish survey of 'footpath 5' accurately describes the route C – B – D – E: *"The path starts at entry on south side of road in Village, opposite the Vicarage, and follows a metalled track to the bottom of the hill. It then turns S. E between Hedges, crosses a stile, through field and into road at gateway"*. This route was depicted on the parish survey map by a bold black line.
55. The second survey map shows the C – B – D – E route in red ink with pencil crosses having been drawn on it. The deletion of the route claimed by the parish to be a public footpath is contrary to the evidence found in the Parish Meeting minutes, whereas the recording of 'footpath 5' was wholly consistent with the Parish Meeting's understanding of the status of the route.
56. Footpath 5 was not shown on the third iteration of the survey map and did not appear on the draft map when it was published. On the draft map, footpaths are depicted by a solid purple line; a line drawn in pencil follows the A – B route and is annotated 'WG40' which is a reference to the objection made on behalf of the Ramblers' Association by Mr Marriott.
57. Mr Marriott's objection was made on the grounds of *"Omission of path from St Margaret's Church, Thorne St. Margaret south south easterly to road just east of path 12/5"*. It is not known if Mr Marriott submitted a plan showing the route he considered had been omitted, but his subsequent correspondence would suggest that no plan was included with the objection. The Clerk of the Council noted on the objection form *"Not claimed by P.C. Duplicated by adjacent County road, but owner admits footpath"*.

58. Whilst the route which was subsequently shown on the provisional and definitive maps had not been claimed by the Parish Meeting, it is quite clear from the chronology of the definitive map that the parish meeting had claimed a public right of way C – B – D – E and not A – B – D – E which was shown on the provisional map. The fact that a nearby county road may have served the same purpose is also of no relevance to the question of whether a public right of way subsisted between the road past St Margaret's and the road to Holywell Lake. There is no evidence available which sheds light on the identity of the owner or which footpath he had acknowledged.
59. The A – B route was shown on the Draft Modification Map, the Provisional Map and the Definitive Map. The description of the route shown in the definitive map is *"The path is a footpath. It starts at St Margaret's Church, and runs south south easterly to county road leading to Holywell Lake"*. The description is vague as to the position of the path between St Margaret's and the road to Holywell Lake but appears to be a description of a path which commences at point A.
60. Correspondence from Mr Marriott to the County Council at the Provisional Map stage reads *"My objection should have been a little more explicit – I only intended to claim 12/13 as going along the farm road and not along the track starting at "Sunday School". However, there may be a path there and as no-one has objected, I suppose the map should be left as it is"*.
61. To my mind, this correspondence demonstrates that Mr Marriott's understanding was that the public footpath ran on the C – B alignment (*'along the farm road'*) and that he was unaware of a footpath on the A – B alignment (*'however, there may be a path there'*). In my view, this correspondence demonstrates that the objection made by Mr Marriott lacked precision and was subsequently misinterpreted by the County Council of the day which, having already deleted C – B, erroneously added a footpath on the A – B alignment to the Draft Definitive and Provisional Maps. There is no evidence within the documents relating to the production of the DM&S that a survey of the route shown in the draft modification and subsequent maps had been undertaken; such a survey is likely to have revealed that the A – B alignment was obstructed by buildings which had been present for at least 100 years.

Property and title deeds

62. Copies of title deeds, land registry searches and local authority search forms were submitted to the Council by Mr & Mrs Dinneen during the Council's investigation of the position of the footpath, and copies of extracts from land registry titles were also submitted by Mr & Mrs Williams. A number of these documents make reference to the existence of private rights of way with or without vehicles over C – B. Mr Williams submitted that the existence of such easements or covenants demonstrated that there had never been a public right of way over C – B; had a public right of way been in existence, the covenants and easements would have been unnecessary.
63. I am not persuaded by Mr Williams' submissions on this point. The granting or retention of a private right of access with or without vehicles over C – B is a means by which access to private property can be ensured and has no bearing upon the question of whether a public right of way on foot subsists over the same route. Public and private rights of access can, and frequently do, co-exist over the same strip of land; however the existence of a public right of way on

foot would not give rise to a private right of access with a vehicle. The private rights set out in the various deeds and conveyances are there to ensure that access to property can be lawfully taken and that all parties to a transaction are aware of their rights and obligations. In my view, the property and title deeds are of no assistance in determining the correct position of footpath 12/13.

Local knowledge

64. There is evidence from residents and landowners whose personal knowledge of the area extends back to the 1950s and 1960s. Mr & Mrs Coates had lived in Thorne St Margaret between 1953 and 1997 and had owned The Old Farmhouse, Greenhayes and Townsend. Their understanding was that the C – B route had been known and used as a public footpath and had been used by residents in the village to draw water from the well just north of point B until mains water arrived in the village in 1962. The C – B route had also been used by schoolchildren to travel to Holywell Lake to catch the bus to school.
65. Mr & Mrs Coates recalled that a Mr Holden used to live in Church Cottage and used its land as a vegetable garden; to their knowledge no-one had walked through the gardens of Church Cottage. A 1968 aerial photograph of Church Cottage submitted by Mr Hasell shows the vegetable garden and although there is a gate to the east of the cottage which provides access to the side and rear gardens there is no evidence of a way through to the land belonging to Townsend.
66. Mr Hasell has lived in Thorne St Margaret since 1951; he recalled children walking to Holywell Lake to catch the school bus and submitted a written statement from a Mr Gribble who had used C – B as with his brother as their route to and from school: *"We walked across Mr Coates fields at the start of the footpath, then down across his other field as we couldn't get down the proper track between the hedges as it was not used. We used to walk up Church Lane past Mr Coates' farm (then called Crosslands) and past the 2 old cottages up to the road"*.
67. The evidence of those whose personal knowledge extends back to the time of the definitive map survey process provides further evidence of the reputation of the route C – B as being used by the public as a right of way. It is of note that Mr Gribble refers to the route past The Old Farmhouse (formerly Crosslands Farm) as being Church Lane. This reflects the references found in the Parish Meeting minutes of the route from Holywell Lake being known as the church path.

Plans of the Sunday School

68. The 1874 sketch of the site of the Sunday school shows that the gardens of the nearby cottages abutted the Sunday school site and that no provision was made for access to the east of the building. The Sunday School site does not appear to have had any land to the east or south until its conversion for residential purposes in the late 1950s, and the 1958 plans for the conversion do not indicate that a public right of way ran immediately to the east of the building.

Other matters

69. There is little evidence of recent use of either the A – B or C – B routes. This is of little relevance to the determination of the correct position of the public right of way between Thorne St. Margaret and Holywell Lake as the issue is a question of where the public right of way ran at the time the definitive map was first published. Similarly, the notices erected by Mr & Mrs Williams denying the existence of a public right of way over C – B are of no effect as a public right of way over that route has existed for over a hundred years prior to their purchase of their property.
70. Issues raised by the objectors regarding the impact the recording of a public right of way over C – B would have on privacy, land use and property values are not matters I can take into account and these matters have had no bearing upon my decision regarding the historical alignment of footpath WG 12/13.

Conclusions

71. I have already concluded that the minutes of the parish meeting and the Finance Act records are 'new' evidence which had not been available to or considered by the surveying authority when the definitive map was first published. The evidence found in the parish minutes demonstrates that the C – B route had the reputation of a public right of way on foot as well as being an access road to properties. The Finance Act evidence also demonstrates that the road as far as the well was considered to be part of the public highway network within the village.
72. I conclude that the evidence found within the parish minutes and the Finance Act documents to be of sufficient substance to displace the presumption that the definitive map is correct. I also conclude that the evidence is cogent and that the definitive map and statement should be modified. The reputation of the route C – B as a public right of way in the late nineteenth and early twentieth centuries was sufficient to have justified the parish meeting originally recording the C – B – D – E route as 'footpath 5'. Furthermore, the basis for the inclusion of A – B – D – E was the misinterpretation of Mr Marriott's vague description of the route he understood to be a public right of way. Mr Marriott's subsequent correspondence with the County Council demonstrates that the route he knew of was on the C – B alignment and not A – B.
73. There is very little documentary evidence which supports the existence of a through route on the alignment A – B and little evidence of the route A – B having been available to, or used by, the public. In my view, the preponderance of the evidence is that C – B – D – E is the historic route of a public footpath between Thorne St. Margaret and the road to Holywell Lake.
74. I conclude that the inclusion of A – B in the definitive map was an error and that there is no right of way of any description on that alignment; consequently the definitive map and statement require modification. I also conclude that the documentary evidence discovered demonstrates, on a balance of probabilities, that there is a public right of way on foot over C – B and that it should be recorded in the definitive map and statement.
75. It follows that I conclude that the Order should be confirmed.

Formal Decision

76. I confirm the Order.

Alan Beckett

Inspector

APPEARANCES

For Somerset County Council

| | |
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| Mr R Carr | Robin Carr Associates, 2 Friarage Avenue, Northallerton, North Yorkshire DL6 1DZ. |
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Who called:

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| Mr A Saint | Senior Rights of Way Officer, Somerset County Council, County Hall, Taunton, Somerset, TA1 4DY. |
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Supporter

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| Mr C Earl | Area Footpath Secretary, Somerset Ramblers |
|-----------|--|

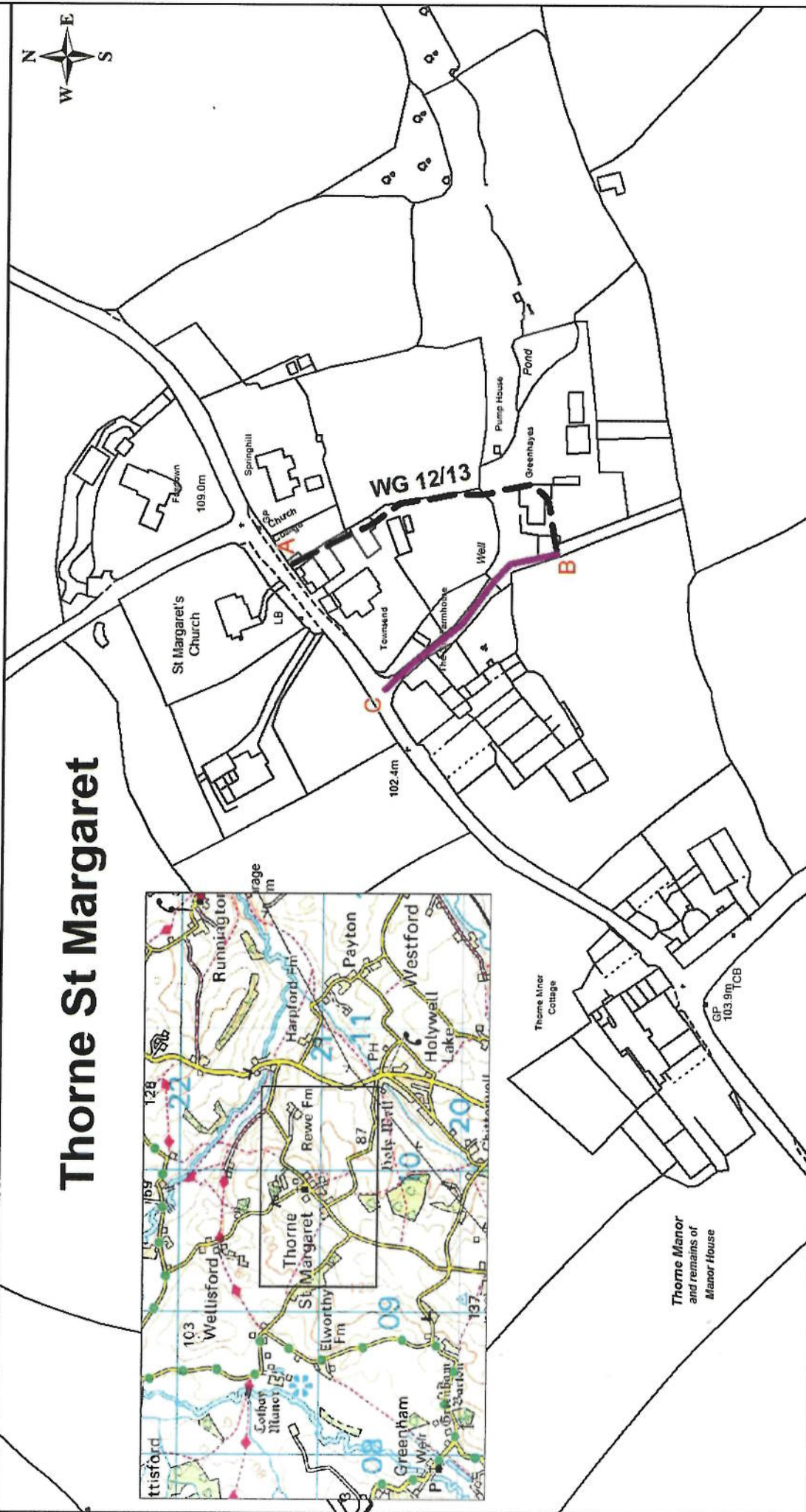
Objector

| | |
|---------------|---------------------|
| Mr G Williams | Thorne St. Margaret |
|---------------|---------------------|

Inquiry documents

1. Bundle of correspondence between Mr & Mrs Dinneen and Taunton Deane Borough Council – March / April 2000.
2. Extracts from "*The History and Antiquities of the Villages of Sampford Arundel, Thorne St. Margaret, Holcombe Rogus, Burlescombe, Ashbrittle, Bathealton, Stawley and Kittisford*"; R. L Thorne (undated).
3. Extracts from the Valuer's Field Book for the Parish of Kittisford.
4. Extract from the 1929 Handover Map.
5. Copy of Inspector's decision on FPS/G3300/7/79.
6. Copy of Ministry of Defence v Wiltshire County Council [1995] All ER 931.
7. Copy of "*Surveys and Maps of Public Rights of Way*"; Commons, Open Spaces and Footpaths Preservation Society, January 1951.
8. Statement in support of the Order from Mr Earl on behalf of The Ramblers.
9. Statement in objection to the Order from Mr & Mrs Williams, together with bundle of documents and location plan.
10. Closing submissions on behalf of Mr & Mrs Williams.
11. Closing submissions on behalf of Somerset County Council.

Thorne St Margaret



Route to be Added
 Route to be Deleted

The Somerset County Council (No. 3) Modification Order 2016
Parish of Wellington Without

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 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.

Parish: Wellington Without
 District: Taunton Deane
 Date: 08/02/2012
 Drawing No: MHardwill
 Drawn By: H029-2012
 Grid Ref: 309868 121033
 Scale: 1:1250

