



## Order Decision

Inquiry opened on 18 September 2019

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 12 December 2019**

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### **Order Ref: ROW/3217055**

- This Order was made on 7 June 2018 under Section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the North Somerset District Council (Footpath AX 16/31 to Bridleway AX 16/31 Wrington Road to Cleeve Hill Road Congresbury) Definitive Map and Statement Modification Order No. 6 2018.
- North Somerset District Council ("the Council") was directed to make an Order to modify the definitive map and statement by upgrading Footpath AX 16/31 to bridleway status.
- There were eleven objections to this Order outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is not confirmed.**

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### **Procedural Matters**

1. I held a public inquiry into the Order on 18-20 September 2019 and undertook both unaccompanied and accompanied visits to the site.
2. An application for an award of costs was made at the inquiry and this will be the subject of a separate decision.
3. The first Order made by the Council was deemed to be fatally flawed and had to be re-made. Whilst it is the second Order that is before me, I shall have regard to all the representations relating to the proposal to upgrade the footpath to bridleway status.
4. The points referred to below correspond to those delineated on the Order Map.

### **Main Issues**

5. The Order relies on the occurrence of an event specified in Section 53(3)(c)(ii) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
  6. In considering the above test, I shall assess whether the documentary evidence is sufficient to support the dedication of higher public rights over the route claimed ("the claimed route") at some point in the past. Dedication at common law requires consideration of three issues: whether the owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there was acceptance of the dedication by the public.
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## **Reasons**

### ***Background matters***

7. A previous application to upgrade the claimed route to bridleway status was considered by an Inspector following a public inquiry held in May 1995. This application relied mainly on user evidence and the decision of the Inspector was to not confirm the Order. It is not my role to review the Inspector's decision. The user evidence previously considered is now relied upon in support of the assertion that the public have accepted the dedication of a bridleway (see below).
8. A second application, relying on documentary evidence, was submitted in 1996 by the former Woodspring Bridleways Association<sup>1</sup> ("the applicant"). The Council was directed to make an Order following a successful appeal to the Secretary of State for Environment, Food and Rural Affairs. The appointed Inspector found that the evidence was supportive of the express dedication of a bridleway. I am not bound by the decision of the second Inspector at the appeal stage who found that an Order should be made. In reaching my decision, I have had the benefit of hearing evidence from the parties and visiting the site.
9. Representatives of the Council and the present landowners, Mr and Mrs Kingston ("the landowners"), appeared at the inquiry in opposition to the confirmation of the Order. The case in support was made by Mrs Gawthorpe on behalf of the applicant. Additional people spoke in support or opposition to the Order.
10. I share the concerns of Mrs Gawthorpe regarding the evidence of Mrs Kingston. It was apparent that her evidence relied significantly on submissions contained in the statement of case prepared by her legal representative. Various matters contained in Mrs Kingston's evidence were clearly outside of the scope of her expertise or personal knowledge. Although the submissions made in the statement of case may have value, I do not find that any weight can be ascribed to the endorsement of certain matters by Mrs Kingston.

### ***Consideration of the documentary evidence***

#### *Early map evidence*

11. There are some signs of a track in the locality of point A, which is most evident from looking at the small-scale Ordnance Survey ("OS") map of 1811. This map indicates that a track physically existed from point A to an area of woodland. In contrast, the 1818 Sturges map appears to show a section of track in the locality of the eastern end of the claimed route.
12. The Congresbury and Yatton tithe map of 1839 shows a track near to the western end of the claimed route that leads to plots 1696 and 1693. The first plot is described in the tithe apportionment as a quarry and the second as an arable field. The woodland crossed by the eastern part of the claimed route is stated in the apportionment to have been in the ownership of the trustees of the Hospital of Queen Elizabeth Bristol.

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<sup>1</sup> Now known as the Axbridge Bridleways Association

13. There is no evidence to support the existence of a highway in this locality prior to the diversion outlined below. Nor do the early maps show a feature that corresponds to any significant extent to the claimed route.

*Diversion*

14. On 17 August 1877, the owner of the property known as Woodlands (William Long the younger) gave notice to the surveyor of highways of his intention to seek a diversion of a section of the highway called '*Rocky Lane*'. This way is described as proceeding between the Yatton and Wrington Road and the place called Woolmers. The diversion related to a section of the way that passed through the Woodlands plot. It was proposed to divert the way around this plot. The description of Rocky Lane and the section to be diverted are recited within the various notices provided. A plan shows the extent of the proposed diversion.
15. The various documents provided are supportive of it being proposed to divert a section of highway in order to make the way more commodious for the public. Two justices of the peace certified that they had seen the new highway and it had been made and put into good condition and repair. This part of the claimed route has subsequently followed an alignment that generally corresponds to the proposed diversion. From looking at the diversion map, I take the view that the structures represented on the existing and proposed routes are likely to be indicative of gates. This is supported by the references to gates in the description of the existing highway. Although the presence of gates could make a way less convenient, they do not provide any clarification regarding the status of a route.
16. It is generally accepted that the diversion would have been undertaken by reference to the 1835 Highways Act. The definition of a highway in this Act is stated to encompass "*all Roads, Bridges (not being County Bridges), Carriageways, Cartways, Horseways, Bridleways, Footways, Causeways, Churchways and Pavements*". This means that the use of the word '*highway*' by itself does not provide any indication of the extent of the public rights that were considered to exist at the time.
17. There are some references in the documents to the laying out of the '*new road*'. The diversion is also set out in the Quarter Session records under the heading of '*Roads*'. This contrasts with a section relating to the stopping up of public footpaths and halter paths<sup>2</sup>. The use of the word '*road*' could therefore be suggestive of a vehicular highway. In addition, the stated purpose of the diversion was to make the gradient less steep and this may be more indicative of a route used by vehicular traffic.
18. However, I am mindful there is evidence that the initial section of the claimed route had served as a means of access to a quarry. It is also evident that ochre mining took place in the woodland nearby. Additionally, the highway is described as terminating at Woolmers. These factors may mean that there was a need for the new route to be built to a sufficient standard to accommodate private rights of access for vehicular traffic in conjunction with lower public rights.
19. The lack of a surviving Order would ordinarily impact on the weight given to the diversion documents. However, the records indicate that it passed through

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<sup>2</sup> A path over which a horse was led

the required legal process. I take the view that the available documents are supportive to a greater extent of the diversion of a highway that was used by vehicular traffic. Nonetheless, it cannot be ruled out that the new road was built to a certain standard to accommodate vehicular traffic in connection with the quarry or the mining operations in the woodland.

20. I also consider it significant that this highway is consistently described as proceeding between the Yatton and Wrington Road and Woolmers<sup>3</sup>. Whilst a highway leading to Woolmers may not have served an obvious public purpose, such anomalies do sometimes exist. The highway is clearly described terminating at this location and I see no merit in the assertions by the applicant to the contrary. It is apparent that Woolmers was located neither at the parish boundary nor the ownership boundary. This means that the diversion documents cannot be taken to provide support for the existence of a highway of any status beyond this point.

#### *Later maps*

21. The 1888 OS map indicates that a through route physically existed between points A and F, but this map does not provide any clarification regarding the status of the route. As outlined above, the diversion only related to a highway as far as Woolmers. In terms of the presence of a thickened line on OS mapping, this provides support for the existence of a metalled surface.
22. Reference was made in support of the application to the depiction of the claimed route on three editions of a road atlas produced by W and A K Johnson Limited between 1940 and 1966, but no reliance was placed on these maps at the inquiry. I do not consider that the depiction of the claimed route on these maps provides any further assistance in determining the status of the route. It is also apparent that the 1929 handover map does not record the claimed route as a publicly maintained highway.

#### *1910 Finance Act evidence*

23. The claimed route is shown proceeding through various hereditaments on the Finance Act map. This is not supportive of the route being a recognised vehicular highway. Nor was any deduction claimed for a public right of way through these hereditaments in the accompanying field books. The western part of the claimed route is stated to have been in the ownership of Mr W. Long with the eastern part falling within the ownership of the Bristol Municipal Charities ("BMC"). This evidence contrasts with the earlier diversion pursued by Mr Long in relation to a section of the claimed route.

#### *1925 Agreement*

24. An agreement of 2 March 1925 was made between BMC and the new owner of the remainder of the land crossed by the claimed route (Mr Harvey). It outlines that an issue had arisen regarding the rights of the trustees over the private roads and paths belonging to Mr Harvey. This is also evident from the BMC minutes for the period prior to the completion of the agreement. BMC was granted the right to use the routes marked blue on the map attached to the agreement, some of which linked with the claimed route.
25. It is possible that the claimed route was not included in the agreement because it was already viewed as an all-purpose highway. However, this is not stated in

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<sup>3</sup> The property called Woolmers is located to the east of point D

the agreement to have been the case. Point 3 within an undated BMC minute from this period states "*That in agreement the road passing through Woodlands, Taylor's Woods, Urchinwood and Woolmers to Corporation Cottages, over which the Trustees claim rights for all purposes, should not be referred to it being possible that such a road was a public right of way*". The route described corresponds to the claimed route.

26. The agreement and the minute highlighted above only raise the possibility that the claimed route was a public right of way. Accordingly, I take the view that the agreement provides little support for higher public rights existing over the claimed route.

*The definitive map process*

27. The production of definitive maps was undertaken by surveying authorities, in this case Somerset County Council, in accordance with the National Parks and Access to the Countryside Act 1949. Responsibility for identifying the alleged rights of way was initially carried out by parish councils. The information regarding the alleged ways would eventually pass to the surveying authority, which produced a draft, provisional and finally a definitive map.
28. The Congresbury Parish Council minutes from 1951 onwards reveal that Mr Wear and Mr Gosling were involved with the survey of the alleged rights of way in the parish. The minutes record that the survey was completed in the spring of 1952. A map showing the alleged rights of way was available for inspection and the matter was advertised in the local press. A parish meeting was held on 7 April 1952 to consider the survey. As can be seen from the minutes and correspondence outlined below, discussions regarding the alleged rights of way continued after the initial survey had been completed.
29. The survey cards that are available have been completed in pencil and are not signed on behalf of the relevant local authorities. It is asserted by some of the supporters that these are not the original cards completed by the parish council. However, there is no evidence to indicate whether this is the case. The survey card for the claimed route contains a description of the way and it is listed as a footpath. Further, the parish map arising from the survey shows the claimed route coloured purple to denote a footpath albeit terminating at the drive to Woodlands rather than at point A.
30. A draft map for the district was produced in March 1957 and it shows the claimed route continuing through to point A. This amendment suggests that some consideration was given to the ways shown on the parish map. No objection was made to the recording of the route as a footpath on the draft map. It was subsequently recorded as a footpath on the definitive map published in April 1970, which had a relevant date of 26 November 1956.
31. Reference is made to where documents were kept on deposit locally. It is not for me determine over sixty years later the suitability of locations for the deposit of the draft map. The published notice at the time reveals that people were notified of where the draft map was to be kept on deposit, which included the offices of the county and rural district councils. In the absence of evidence to the contrary I must presume that the procedural requirements were properly undertaken.

*Minutes and correspondence*

32. Mr Harvey had sought clarification from Congresbury Parish Council regarding the rights of way that crossed his land in 1924. It is apparent that the parish council were unable to assist on this matter. Additional queries were raised regarding the rights of way over Mr Harvey's land in 1940 and 1942.
33. It was reported in the Western Mercury and Somersetshire Herald newspaper on 11 April 1952 that the parish map was agreed subject to certain suggested amendments being completed. It is stated that Mr Gosling had emphasised that this was only a draft map. On 18 April 1952, the newspaper published a letter that a Mr Parsons had sent to the parish council regarding seven routes omitted from the parish map. Differing views have been put forward regarding the extent to which the claimed route is mentioned in Mr Parson's letter. However, the purpose of the letter was to highlight the paths not shown on the parish map.
34. Mr Harvey wrote a letter in response on 22 April 1952 and this was published in the newspaper three days later. He clarified the routes he had recognised over his land since 1924. The fourth path is described as "*The Right of Way (Bridle Path) from the Wrington Road (Bench Mark 90) round the back of 'Woodlands' to Woolmers, and on through Corporation Woods to the road (Bench Mark 447.6) at Corporation Cottage*". This indicates that Mr Harvey viewed the claimed route to be a bridleway. Although this statement is not necessarily supported by the 1925 agreement or the contemporaneous records which only raise the possibility that the route was a public right of way. It is also apparent that Mr Harvey had previously sought clarification regarding the rights of way over his land.
35. A letter of 1 May 1952 from Col. Towill<sup>4</sup> to Mr Gosling confirms an acceptance by the BMC trustees that the claimed route was a bridleway as well as a footpath. This letter was acknowledged on 3 May 1952 and it was stated that it would be brought to the attention of the parish council at the meeting of 5 May 1952. It can only be determined from the minutes of the subsequent parish meeting that the letter was read out and the claimed route does not appear to have been specifically discussed. An additional letter of 3 May 1952 from Mr Harvey to Col. Towill also refers to the claimed route as a bridleway.
36. An undated BMC minute<sup>5</sup> records that Mr Towill had met on 15 May with Mr Gosling and Mr Harvey regarding the footpaths through the woods which were claimed to be public rights of way. It was agreed that there were only two rights of way through the woods belonging to BMC, one of which was described as a "*bridlepath from Corporation Cottage to the Congresbury-Wrington road near Woodlands*". The route described would again correspond to the claimed route. This matter was confirmed in a letter to Mr Gosling of 9 June 1952.
37. It was reported in the parish Council minutes of 8 September 1952 that Mr Gosling and Mr Harvey agreed to certain footpaths and were meeting with Mr Towill in relation to a final decision. In terms of a letter of 16 October 1952 from Mr Harvey to Mr Gosling, this does not identify the claimed route as a footpath as some have alleged. On 13 February 1953, Col. Towill wrote to Mr Gosling and he stated in respect of the claimed route: "*It is agreed that this is a bridle path as well as a footpath*".

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<sup>4</sup> The BMC Secretary

<sup>5</sup> The subsequent BMC letter confirms that the meeting took place on 15 May 1952

38. Little can be gleaned from the BMC documents of 1955-56 involving shooting rights and other matters. The location of the ways mentioned are for the most part unclear from the correspondence. A letter of 15 August 1955, which is presumed to be from Col. Towill, refers to a bridle path from Plunder Street. There is no map with the letter, but Cleeve Hill Road has at times been referred to Plunder Street. I accept that this reference could relate to the claimed route. Nonetheless, it does not add anything further to the other correspondence from the landowners where the route is referred to as a bridleway.
39. The comments of Mr Harvey and Mr Towill point to them recognising or agreeing that the claimed route was a bridleway. This evidence is supportive of the route already being viewed as a bridleway. I do not necessarily find that the comments clearly constitute express dedications by these parties. This evidence is nonetheless supportive of an inference of an earlier dedication. The fact that these statements were made on behalf of the former landowners would weigh more heavily in favour of the claimed route being a bridleway. However, this evidence needs to be considered in conjunction with the other pieces of documentary evidence.

### **Acceptance**

40. The landowners draw attention to the case of *Secretary of State for the Environment, Transport and the Regions v Baylis (Gloucester) Ltd and Bennett Construction (UK) Ltd (2000)* where it was held that a highway authority could accept the dedication of a highway on behalf of the public. It is submitted that this could equally apply to the rejection of a dedication by a local authority. However, I do not consider that the acceptance or rejection of the dedication of a highway can necessarily be carried out by any local authority. This judgment specifically refers to the highway authority. It cannot be determined in this case that the county council was aware of the correspondence involving Mr Harvey and the BMC.
41. The user evidence was considered by the first Inspector in relation to whether there had been the presumed dedication of a bridleway in accordance with Section 31 of the Highways Act 1980. He concluded that this was not the case. There is nevertheless some user evidence that is supportive of horse riders using the claimed route during the 1950s. This evidence could potentially support the acceptance of a dedication by the public. However, an implication of dedication at common law can be inferred from documentary evidence and I see no requirement for there to be actual user evidence in such cases.

### **Capacity to dedicate**

42. It is apparent that BMC comprised of a group of local charities administrated by a single body of trustees. The land crossed by the eastern section of the claimed route was part of an endowment of Queen Elizabeth's Hospital, which was one of the charities that fell within the BMC. It was an endowed school charity founded under the 1590 will of William Carr. The land itself was held as an investment rather than for educational purposes.
43. The landowners obtained legal advice on the issue of whether BMC had the capacity to dedicate a bridleway and a copy of the opinion of Francesca Quint on this matter has been provided. Mrs Gawthorpe did not specifically respond to this point, aside from pointing to there being ways recorded on the definitive

- map over the land formerly owned by the charity. Two of the supporters (Miss Roseff and Ms Thompson) did nonetheless make submissions on this issue.
44. Miss Roseff draws attention to the Rights of Way Act 1932. However, I need to have regard to the position under the common law where there is the requirement for the landowner to have the capacity to dedicate. Therefore, I do not consider the provisions of the Act to be relevant in this case.
45. The extract from the publication<sup>6</sup> provided by Ms Thompson points to charities being able to dedicate public rights of way. I note that reference is made to the position under the Charities Act 1960, which is after the dedication of a bridleway is alleged to have occurred in this case. It is also suggested that the charity's governing document is checked to ensure that there is no provision that prevents dedication.
46. Ms Quint outlines that any dedication would have required the consent of the Minister of Education in the case of an educational charity. Such consent would only have been given if it could be shown that the dedication was advantageous to the charity. It is asserted that no benefit would arise from the dedication of a bridleway in terms of the educational purposes of the charity and therefore consent would not have been granted by the Minister of Education.
47. It cannot be said that ownership of land by a charity is a bar to dedication. There are no governing documents available in this case. However, copies of two conveyances involving the sale of the charity's land have been provided. The first involves the sale of Corporation Cottage in 1955 and the conveyance refers to an Order of 13 June 1955 by the Minister of Education to authorise the trustees to sell the property. The second related to the sale of the land crossed by the claimed route in 1958 and the conveyance states that the land was sold under an Order of the Minister of Education of 17 May 1957.
48. These conveyances reveal that the charity needed the permission of the Minister of Education to dispose of land in their ownership. The fact that the charity needed to obtain consent to sell land indicates that it could not dedicate a public bridleway without first obtaining the permission of the Minister of Education. There is nothing to suggest that the charity sought consent to dedicate any right of way over its land in this locality. Further, the advice of Ms Quint suggests that consent is unlikely to have been granted in such circumstances. I therefore find on balance that neither the trustees of the charity nor the secretary (Mr Towill) were in a position to dedicate a bridleway.

### **Conclusions**

49. The diversion is clearly supportive of the western section of the claimed route being a highway. However, it is uncertain what public rights were considered to exist over this part of the claimed route. The references to the provision of a new road could be indicative of vehicular use, but it is possible that the use by vehicles was in connection with private rights of access. I find it significant that there is no other piece of documentary evidence that is supportive of the claimed route being a vehicular highway.
50. I place little reliance on the 1925 agreement, which only raises the possibility that the claimed route was a public right of way. Whilst the earlier diversion indicates that this was the case for the western section, the agreement and the

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<sup>6</sup> Known as 'Creating Multi-user Public Rights of Way'



associated documents do not provide any indication regarding the extent of the potential public rights that could have existed. It also suggests that Mr Harvey and BMC were unsure whether the claimed route was a public right of way.

51. The written comments of Mr Harvey and Mr Towill in the early 1950s are supportive of the landowners at the time believing the claimed route to be a bridleway. I have doubts regarding whether these comments can be taken to constitute expressed dedications. Nonetheless, they are supportive of the view being taken that the route was a bridleway and should be put into the balance in support of the inferred dedication of higher public rights at common law. Some weight should be given to this evidence given that Mr Harvey owned part of the land crossed by the claimed route and Mr Towill was the secretary acting for the other landowner.
52. Although the comments of Mr Harvey and Mr Towill were available to the parish council, there is nothing to indicate that this material was placed before the surveying authority at the time. Therefore, it is possible that a mistake occurred when the claimed route was recorded as a footpath. However, bearing in mind the value of the other pieces of documentary evidence, I do not consider the statements by Mr Harvey and Mr Towill to be of sufficient weight to tip the balance in favour of a finding that the claimed route was dedicated as a bridleway at some point in the past. A further issue arises in that I have accepted that BMC could not have dedicated a bridleway without the consent of the Minister of Education.
53. For these reasons I do not find on balance that the dedication of a bridleway has been shown to have occurred in this case.

### **Other Matters**

54. In light of my conclusion above there is no need for me to address the issue of public nuisance.
55. I do not consider that the reservation of private rights of access over part of the claimed route or the obligation to keep a gate closed towards its eastern end have any bearing on the extent of the public rights that exist over the route.

### **Overall Conclusion**

56. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

### **Formal Decision**

57. I do not confirm the Order.

*Mark Yates*

**Inspector**

## **APPEARANCES**

### **For the Applicant:**

Mrs A. Gawthorpe

She called:

Mrs V. Craggs

### **Additional Supporters:**

Ms R. Thompson MBE                      For the Trails Trust

Miss J. Roseff

### **Objectors:**

Mr A. Mills                                      Counsel appearing for the landowners

He called:

Mrs T. Kingston

Mrs E. Anderson                              Solicitor employed by the Council

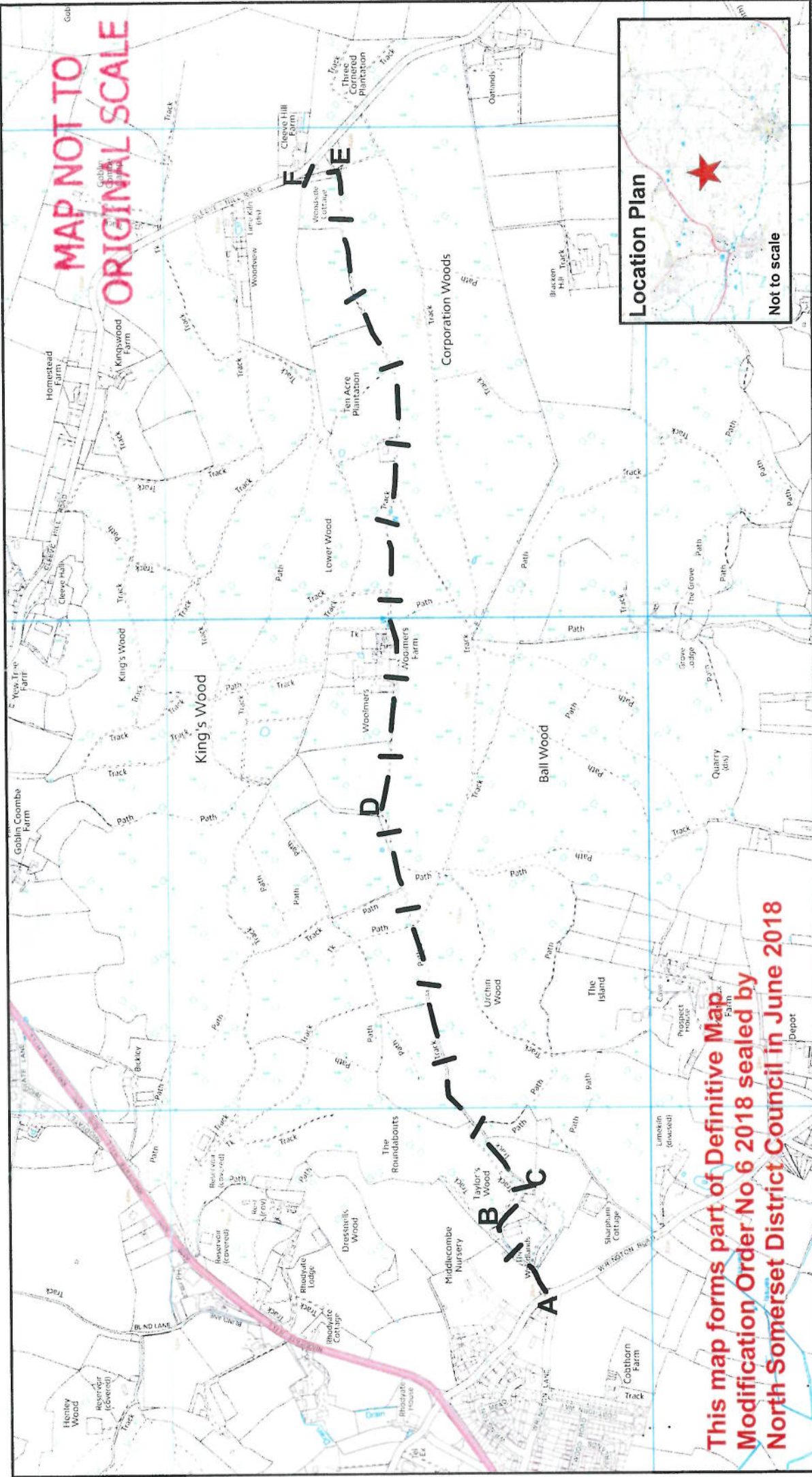
She called:

Mrs E. Bowman                              Principal Access Officer within the Council

Mrs M. Masters  
Mr T. Leimdorfer  
Ms M. Talbot

## **DOCUMENTS**

1. Conveyance of 19 March 1969
2. Letter to the inquiry from Mr Reeves
3. Letter to the inquiry from Ms Carter
4. Email to the inquiry from Mr and Mrs Perrett
5. Site photograph
6. Opening statement on behalf of the Council
7. Legal authorities relied upon in support of the case for the landowners
8. Statement of Mrs Masters and supporting documents
9. Chronology of landownership
10. Conveyance of 3 February 1925
11. Closing submissions for the landowners
12. Closing submissions on behalf of the Council
13. Closing statement for the applicant
14. Costs application on behalf of the landowners



**MAP NOT TO ORIGINAL SCALE**



**This map forms part of Definitive Map Modification Order No 6 2018 sealed by North Somerset District Council in June 2018**

**Wildlife & Countryside Act 1981 - Sec 53 North Somerset District Council  
Footpath AX 16/31 to Bridleway AX 16/31 Wrington Lane to Cleeve Hill Road  
Definitive Map Modification Order No 6 2018**



**Development & Environment**  
Public Rights of Way  
Streets and Open Spaces  
North Somerset Council  
Town Hall  
Walliscombe Grove Road  
Weston-super-Mare  
BS23 1UJ  
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**Map No. EB/Mod 20**  
**Scale 1:10560**  
**Grid Reference ST446642 - 469647**  
**Date 25 May 2018**  
**Claimed Bridleway -|-|-|-|-|**  
**A-B-C-D-E-F**