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| **Appeal Decision** |
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| **by A Behn Dip MS MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 19 April 2024** |

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| **Appeal Ref: ROW/3323038** |
| * This appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Somerset Council (the Council) not to make an Order under Section 53(2) of that Act.
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| * By applications dated 27 August 2008 and 24 May 2010, South Somerset Bridleways Association (the applicant) claimed that footpath Y1/17 along Thornhill Drove and Ash Drove, in the parish of Ash, should be upgraded on the Definitive Map and Statement for the area to restricted byway status.
* The applications were refused by the Council and the applicant was formally notified in March 2023.
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| **Summary of Decision: The appeal is allowed.** |
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**Preliminary Matters**

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal on the basis of the papers submitted. I have not visited the site, but I am satisfied that I can make my decision without the need to do so. In writing this decision I have found it convenient to refer to points marked on the Council’s plan, and I therefore attach a copy of this plan.
2. Albeit the applications were lodged individually for Thornhill Drove and Ash Drove, they are connected and cumulatively form Public Footpath Y1/17. The Council therefore decided to consider the applications simultaneously.
3. There was a submission from one landowner that questioned the validity of the applications given the presumption of regularity with regard to the designation of footpath status following the Definitive Map and Statement process. The Council correctly advised that the only requirement under section 53 of the 1981 Act is that there is some previously undiscovered evidence, in this case the Finance Act Records of 1910, following which, all evidence both new and old can be considered together.

**Main Issues**

1. The applications were made under Section 53(2) of the 1981 Act which requires the surveying authority, (in this case Somerset Council) to keep their Definitive Map and Statement under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
2. Where it is proposed that an existing way should be upgraded from footpath to restricted byway status, Section 53(3)(c)(ii) of the 1981 Act specifies that an Order should be made following the discovery of evidence which, when considered with all other relevant evidence, shows 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’*. The evidential test to be applied is the balance of probabilities.
3. The claims were based solely on historical documentary evidence. For documentary evidence, section 32 of the Highways Act 1980 (the 1980 Act) requires consideration of 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.
4. As these applications are concerned with possible unrecorded vehicular rights, it is necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006, which extinguished rights of way for mechanically propelled vehicles (MPV’s), subject to certain exceptions. The exceptions do not appear to apply in this case and therefore, should this appeal be allowed, no public rights for MPV’s would exist over the application route.

**Reasoning**

*Pre-Inclosure map - The Manor of Milton-Falconbridge 1775*

1. A route is shown along the entirety of Thornhill Drove (points W to X), however Ash Drove is only depicted between points X to Xi and Zi to A, with the middle section of this Drove not appearing to exist as a clearly defined route at this time. There is a single line running south to north along the middle section from Zi to just short of Xi, and what appear to be two tracks running east to west adjoining the line, which may suggest a lesser route existed along this section at this time. It was the Council’s view that a footpath, or to a lesser extent, a bridleway might pass through the field without being shown as a physical feature, but it was unlikely to be a carriageway.
2. Although no route is shown on the middle section of Ash Drove, I agree with the Council that it is likely that some kind of route existed prior to Inclosure along this section, in order for the east to west tracks shown on the manorial map to have some sort of connection. The route may well have been less obvious as a vehicular route.
3. The map was not created for the recording of public rights, but is good evidence of the physical existence of most of the route as far back as 1775. The route appears wide enough to allow vehicular use for those sections shown, albeit the depiction of the middle section of Ash Drove does not indicate that a vehicular route necessarily extended along this section at this time.

*Martock Inclosure Act (1806) and Award (1810)*

1. Ash Drove is depicted in its entirety on the Award Map of 1810, shown between solid black lines from points A to Z and also from points X to Xi. The middle section of Ash Drove, from point Z to point Xi is bounded by red lines and labelled ‘*Little Field Road,’* with a width of 30 feet. On the Award this private road is described *as ‘beginning at the North end of an ancient Lane leading from the village of ash’* and terminating at the *‘South end of an ancient Lane leading to Old Inclosures*.’
2. The Council held that at least the section of Ash Drove that was bounded by red lines and described as a private road, was for the use of a limited group of people and not the general public, and further considered that the Award implied that this section of Ash Drove did not carry public rights prior to Inclosure, as the route was not ‘stopped up’ by the Commissioners when they awarded the private road. Albeit the applicant pointed out that owners of old Inclosures would have needed to reach their land via Ash Drove, the Council are correct in that the Award does specify that such owners would be able to use the private road awarded to access their land.
3. I do agree that the Award is clear in setting out that Little Field Road was a private road with private maintenance liabilities, however it does not record that the ends of the Ash Drove that connected to this road at its northern and southern ends were also private, and they are not depicted as such on the Award map. Each end of Ash Drove must have held vehicular rights, in order to be able to access the middle section that was awarded as a private road. The Council considered that if the route were public the Commissioner should have stopped up public rights before awarding the section of private road. The fact this did not happen, they felt implies that either no route existed at that location, or the rights were private. However it could also be argued that it makes little sense to award a private carriageway for the middle section of a Drove only, rather than the entire Drove, which would have been possible if there were no public rights. The applicant felt that it made sense to award the middle section of Ash Drove as a private carriageway and give liability to the landowners of the newly inclosed land, as there was little reason to make it a public carriage road being that it did not lead directly between towns.
4. On the 1810 Award map, Thornhill Drove is shown at its east and west ends, depicted by double black lines, albeit the central section falls outside of the mapping area for the Award and therefore is not shown. Approximately midway between points W and Wi a connecting cul de sac route (not part of the application route), is shown heading north, labelled ‘Tatchell’s Road.’ On the Award, this private road is described as *‘branching out of an ancient lane.’*
5. The Council considered that as the private Tatchell’s Road must have been accessed via Thornhill Drove, vehicular rights must have existed, however they considered that these could as easily have been private rights, as opposed to public rights. Albeit, this is a reasonable suggestion, there is nothing in the Award to suggest that this was the case and I concur with the applicant in this instance, that as the parts of Thornhill Drove that were included within this Award are shown by double black lines, described as ‘ancient Lanes’ and existed before the Inclosure Awards, vehicular rights could just have likely been public.
6. The applicant pointed out that the Commissioners did not set out any public roads in the Martock Inclosure Award, nor did they stop-up any pre-existing roads, which would mean that any pre-existing rights would still exist. Albeit the Council suggest that not stopping up the northern and southern ends of Ash Drove weighs against the probability of public vehicular rights existing over them at that time, I agree with the applicant in this instance that the connecting ends of Ash Drove and Thornhill Drove were more likely to be pre-existing public vehicular highway, especially in that they were described as ancient lanes and were used to access the private roads set out, such as Tatchell’s Road and Littlefield Road. ‘Ancient lane’ is also mentioned in the description of several awarded parcels of land abutting the application route, the land in these parcels being described as being in part, ‘bounded’ by the ancient lane.
7. It is notable within the descriptions of some of these allotments, that a distinction is made between private way, ancient lane, and road. Lot 87 states *‘bounded on the west by a road called Portway and on other parts by a private way called Tatchell’s Road’*. Lot 88 *states ‘bounded on the west by a road called Portway and on other parts …by a private way called Tathers Road…,and by an ancient lane’*.
8. I consider that the Inclosure Map supports the 1775 pre-Inclosure manorial map in that Thornhill Drove must have held vehicular rights in order to access the newly awarded private Tatchell’s Road, the numerous adjoining lots of land, and Ashmead Drove and Ash Drove at its eastern end. The Inclosure map also supports the existence of the northern and southern ends of Ash Drove pre-Inclosure and there is no evidence to suggest these parts of the route held private vehicular rights only. However the Award is clear on its award of the middle section of Ash Drove as private carriageway and so is not supportive of a claim to higher rights for this part of Ash Drove at that time.

*Cary’s Map 1821*

1. Cary’s Map does not depict Thornhill Drove but depicts Ash Drove in its entirety, uncoloured and according to the key is depicted as a *‘parochial road.’* The Council acknowledged the consideration of the term ‘parochial road’ in *The Commission for New Towns v JJ Gallagher Ltd [2002] EWHC 2668 (Ch), para.85*, wherein the judge considered that the denotation suggested a public carriageway. They considered therefore, that although of little evidential weight, this map is supportive of possible higher rights along Ash Drove than currently recorded.
2. The applicant commented that this caselaw focussed on whether a ‘parochial road’ on Cary’s Map was a bridleway or cart road, with the judgement accepting that the term meant the latter. In terms of this decision, the evidence and the judgement does hold a little weight in favour of possible higher rights over Ash Drove.

*Greenwood’s Map 1822*

1. Greenwood’s Map shows Ash Drove but does not show the central section of Thornhill Drove, depicting only the ends of this drove in the manner of ‘cross roads.’ There was an in depth submission made by the applicant as to the meaning and application of cross roads, referring to ancient case law regarding the use of this term, as well as reference to *Hollins v Oldham [1995]* where Judge Howarth took the view that ‘cross roads’ meant a public road in respect of which no toll was payable. As the Council stated, the judge in question was considering a map produced 35 years earlier and by a different cartographer, and I agree that the precedent set should be considered, but in the context of any individual map.
2. The Council suggested that the absence of part of Thornhill Drove might suggest it was of a different character to the depicted sections, however the suggestion of the applicant, who felt that the part of Thornhill Drove that was omitted was still unenclosed at that time seems a more likely explanation. In the absence of an Inclosure award showing that part of Thornhill Drove, this theory would be consistent with the lack of depiction of Thornhill Drove on both Cary’s Map and the Martock Inclosure Award.
3. Other routes were also shown on this map that have no public rights recorded across them today. The Council drew attention to *Merstham Manor Ltd v Coulsdon and Purley UDC [1937]* where the judge concluded there is nothing in the map to show whether the author intended to represent the road on the map as a public highway. In light of this, the map holds very limited weight, but is of assistance when viewed as part of the overall evidence submitted.

*Martock Tithe Map 1840*

1. The Tithe Map depicts both Thornhill Drove and Ash Drove, bounded by two solid lines and coloured sienna. The sienna colouring, although alluding to a vehicular highway is not conclusive evidence of that status. The Council pointed out several cul de sacs were shown in a similar manner on the Tithe map that were not deemed highways on later maps. However on this map the application route is not shown as a cul de sac route but is represented as a through route, joining highway to highway, rather than spurs leading to properties or farms.
2. The route is also not allocated an apportionment number and runs between separately apportioned lands. Its colouring and depiction as a through route in the manner of a road or lane, along with the lack of an apportionment number does raise an inference of possible higher rights than a footpath.
3. The route is also depicted in its entirety on *‘A Map of the Parish and Hundred of Martock 1823’* which was also submitted in evidence and shows the *‘Boundary of Tythings’*. The map key denotes the application route as *‘Roads and Lanes.’* The applicant suggested that if the 1823 map had been incorrect, the Tithe Map should show a correction, which it does not. Although the applicant appears to be correct in this observation, it is ultimately the case that neither map was drawn up with the purpose of identifying rights. Nevertheless, the depiction of the entire route on the Tithe Map and the fact that no tithe was payable could imply public vehicular rights, albeit as the Council submit, vehicular use could also have been as a result of private rights.

*Ordnance Survey (OS) Maps (including Cassini reprints) from 1809/11 to 1940*

1. All of the maps submitted are consistent in their portrayal of both Thornhill Drove and Ash Drove as unmetalled roads, with some maps depicting the section of Ash Drove between points A to Y as a third class metalled road in bad condition.
2. Ultimately, as recognised in *Moser v Ambleside Urban District Council[1925],* the purpose of OS maps was not to record public rights of way, but rather what features existed on the ground. From 1888 OS maps carried a disclaimer to the effect that representation of a track or a way on the map was not evidence of a public right of way. The disclaimer was presumed to apply to earlier as well as later maps. Furthermore, in 1905 surveyors were instructed that ‘OS does not concern itself with rights of way and survey employees are not to inquire into them’. Subsequently these maps, although good evidence of the physical existence of the route, hold limited weight in demonstrating the status of any public rights.
3. Contrary to the disclaimer from 1888, I note that the 1919 Cassini Map included a key that stated, *‘private roads are uncoloured’*, with both Ash Drove and Thornhill Drove being depicted in this manner. However as pointed out by the Council, some routes depicted as uncoloured on this map are recorded as public today, whilst others are not.

*OS Object Name Book 1901*

1. The Object Name Book describes both parts of the route as ‘drove’ and is good evidence of the existence of the route at this time. However the Object Name Book was concerned with the correct spelling of places shown on the maps, not with their status, public or private. Although signed by an assistant Overseer for Martock, I agree with the Council that it is unsafe to conclude from this, that routes were considered public. The book is only of assistance in showing the physical existence of the route at this time and its character.

*Yeovil Highway Records 1863*

1. In a minute record of 1863 a map was requested to distinguish roads in the district that were liable to repair. The legend on the title page identified highways as yellow, halter-paths as green and turnpike roads as red. The application route is shown on the maps uncoloured, indicating it was not considered publicly maintainable at that time.

*Sales Particulars 1883 and 1900*

1. The sales particulars relate to ‘lots’ in, and around the vicinity of Thornhill Drove near point W, so only this part of the application route is shown on the maps. On the 1900 sales map, that part of the application route shown is labelled ‘Partway Drove’, as opposed to the name of Thornhill Drove as it is known today. The route is not included in any of the lots for sale. Whilst vehicular access along the drove would have been required to access some of the lots, it is unclear whether the access would have been as a result of public rights, private rights or existing easements, and the sales particulars are of no help in this respect.
2. The sales particulars were not created with the purpose of establishing public rights and although they may be suggestive that there were public rights along this section of the application route, they are of very little weight.

*Finance Act records 1910*

1. On these records the application route is shown separately to the adjoining hereditaments and is neither numbered nor coloured. As cited in *Fortune & ORS v Wiltshire Council & ANR [2012] EWCA CIV 334 [71]*, *‘the fact a road is uncoloured on a Finance Act map raises a strong possibility or points strongly towards the conclusion that the road in question was viewed as a public highway’*.
2. The Council acknowledged that the application route shown in such a manner would be indicative of public vehicular rights, as routes with lower rights were typically dealt with by deductions recorded in the field books. However they pointed out that there could be other reasons for the route being excluded from the adjacent hereditaments. One reason given was where a route had been set out as a private road in an Inclosure Award and certainly, this is true for the central section of Ash Drove where ‘Littlefield Lane’ as it was labelled on the Inclosure Award, carried private rights for multiple users.
3. However there is no evidence before me to indicate that the rest of the route was subject to private rights. Thornhill Drove and the stubs of Ash Drove did not have private roads awarded over them at the time of the Inclosure Award, but did have private roads awarded that branched off them. The Council acknowledged ‘where the application route was not set out in an Inclosure award for multiple users, exclusion [from hereditaments in the Finance Act 1910] is usually considered more likely to be in favour of public vehicular rights’.
4. The Council then drew attention to a number of cul de sac routes also shown uncoloured on the Finance Act Map, over which no public rights are recorded today, or are cul de sac routes with no rights for vehicles but do hold footpath rights. They considered that this inferred that not all routes shown excluded and uncoloured on the Finance Act Map were considered to be public vehicular roads or even public rights of way in some instances.
5. Albeit I accept this inference is both plausible and reasonable, it is the case that the examples given by the Council are as they themselves stated ‘cul de sac’ routes with no onward termini and no obvious place of public resort. Although the application route comprises two separate droves, which on their own could be viewed as cul de sac routes, the application route as a whole, is a through route which connects to vehicular highways at both termination points.
6. The applicant directed attention to *Robinson Webster (Holdings) Ltd v Agombar [2001]* wherein the Finance Act records were considered to be ‘the most material evidence in relation to the status (of the land in question) at that time’. They pointed out that the route was not shown in any part as falling into the hereditament of a private person, but shown as part of the general road network with connections to public highways at each end. The applicant also drew attention to a Year Book case *‘33 H 6 10 from 1455’* wherein Moyle JCP when considering a case of nuisance on a way with no apparent owner of the soil considered that the plaintiff *‘ought to show who has the freehold, or else it will be understood by us to be highways’*.
7. The Land registry INSPIRE Index Polygons Service shows that the application route across Ash Drove and Thornhill Drove is unregistered, also confirmed by the Council in their investigation, who added that the land adjacent to the application route was in 10 different ownerships. The Council drew attention to the Common law presumption that in absence of evidence to the contrary, adjoining landowners own up to the centre point of a highway. Albeit they considered ownership of land was not itself evidence for or against public rights, they commented that it had been argued in some cases that routes in multiple ownership which carried private rights for those multiple users could be shown excluded from adjoining hereditaments on the Finance Act Map.
8. I accept the Council’s submission that exclusion of the route from the Finance Act Records could be due to multiple land ownership of the application route with private rights, however the two bracing lines shown on Thornhill Drove do infer that at least two parts of that Drove would have fallen into the ownership of that landowner who owned land on both sides of the route, yet the route is shown excluded from those hereditaments.
9. Overall, I do consider, in line with *Agombar,* that the Finance Act records are supportive of possible public vehicular rights over the application route at that time.

*Bartholomew’s Maps 1911 and 1927*

1. The 1911 map illustrates the application route from points A to Y as an inferior road, not recommended to cyclists. The rest of the route, from points Y to W, is denoted as a footpath or bridlepath. The 1927 Map is difficult to read but appears to show the route in a similar manner.
2. In *The* *Commission for New Towns v JJ Gallagher Ltd [2002] EWHC 2668 (Ch)* Bartholomew’s Map was considered and the implication was that an uncoloured road was considered a public carriageway. As recognised by the judge in that case, the map itself does bear a disclaimer that representation of a road or footpath is not evidence of the existence of a right of way. Although good evidence of the physical existence of the route at that time, it is only of limited weight when ascertaining the status of public rights.

*Highway Road Records – Handover Map 1929, Road Records 1930 and 1950*

1. On the 1929 Handover Map, a short section of Ash Drove between points A to Z is coloured yellow, indicating that it was thought to be publicly maintainable at that time. After point Z, the rest of Ash Drove and Thornhill Drove are uncoloured, and for the Road Records of 1930 and 1950, the entire application route is shown uncoloured. These maps were solely concerned with public liability, not the existence of public rights and so are of limited weight, albeit the records do show the route existed and the yellow colouring does indicate a likely vehicular highway in 1929 for a very short section of the route.

*Definitive Map and Statement (DMS) Preparation Records*

1. When preparation was underway for the compilation of the DMS the Parish Walking Survey Card appears to have originally indicated the route was a carriage or cartway used as footpath (C.R.F). This was then crossed through and F.P (footpath) written above it. The survey stated that the route was in bad condition and deeply rutted. Ultimately the determination was that the route should be designated a footpath, although it appears that there was brief consideration as to whether the route held public vehicular rights.

*County Surveyor letter 1970 and letter of correspondence 1994*

1. In 1970 a letter from the County Surveyor, further to an enquiry about Ash Drove and Thornhill Drove advised that they were private roads set out at Inclosure with public footpath rights across them, adding that the Highway Authority accepted no responsibility for maintaining either drove.
2. Later correspondence in 1994, concerning the obstruction of the footpath along the application route, made mention of the possibility of a bridleway application stating, *‘investigation could show evidence of old road’.*
3. The documents are consistent with the other contemporary local authority records and would indicate that in the late 20th Century, the application route was not considered a public vehicular highway, albeit there is a thread through all of the documents where the suggestion of possible higher rights was raised.

*Other sources*

1. The application route is shown in full on a map headed *‘Martock 1824’* from *The* *Victoria History of the County of Somerset: Volume IV, Oxford University Press*. The accompanying text suggests that most of the tracks shown were ‘field droves.’
2. A Gall and Inglis Map was also submitted with no key or date, although the date was agreed to be somewhere between 1821 to 1893. The map shows Ash Drove but not Thornhill Drove. Ultimately, without a confirmed date, this map is of little assistance other than showing that Ash Drove was a physical feature. Both maps are good evidence of the physical existence of the route but as they were not concerned with the status of public rights, are only of very limited weight in this regard.

**Conclusions**

1. The evidence as a whole, portrays a route of clear longevity, dating back at least as far as 1775, albeit the early evidence is rather disjointed when assessing the two droves as one application route. It is common ground that the route was wide enough for vehicular use, the question is whether vehicular rights were public or private.
2. The middle section of Ash Drove that was awarded as a private carriageway in the later Inclosure Award is the only part of the application route not depicted in the 1775 map, albeit there is suggestion on this map that a lesser route may have existed for the most part of the missing section. It was likely not made up to any standard at that time and may be the reason why a private carriageway was subsequently awarded at Inclosure.
3. By the 1810 Inclosure Award the missing section was depicted and awarded as a private carriageway, with the rest of the route, where shown, being consistently referred to as ancient lanes. Albeit not part of the Martock Inclosure Award mapping area, Thornhill Drove clearly existed, as shown in the 1775 map, and each end of that drove was depicted in the Martock Inclosure Award, along with each end of Ash Drove as ‘ancient Lane’. These ancient lanes must have been wide enough to take vehicular traffic as the private carriageway awarded, which was described as 30 feet wide, connected to them at each end. The ancient lanes must have had vehicular rights across them as such rights would have been needed to access the private roads set out in the Award as well as all of the surrounding ‘lots’ and droves.
4. Albeit the Council felt it was possible that the application route held private rights only, as public rights were not stopped up at Inclosure when the private section of carriageway was awarded, it could also be just as reasonably argued that the rights over the route were public, and there was no need to stop them up, as they were necessary to access the numerous parcels of land and private roads awarded. In light of the Award clearly differentiating between private roads, ancient lanes, and roads, I consider on balance, that with the exception of the privately awarded ‘Littlefield Road’ on the central section of Ash Drove, the application route probably held public vehicular rights at that time.
5. On the 1821 Cary’s Map the privately awarded section of Ash Drove was described as a ‘parochial road’ which would be consistent with a vehicular route that did not run directly between towns, but was part of the local road network at this time, offering access and an alternative through route to local residents.
6. By 1823 the pre-tithe map shows the route as ‘roads and lanes’ and the Tithe Map of 1840 shows the route running separately between hereditaments, coloured sienna and without an apportionment number. This representation of the application route is repeated 70 years later in the 1910 Finance Act, where such depiction is considered as strong evidence of public rights, most probably vehicular in nature. Although the Council make a reasonable assertion that land in multiple ownership with multiple private rights could be shown in this way, I agree with the applicant that this assertion is less likely than the simpler possibility of the application route being considered a public vehicular highway. The Council themselves accepted that where a route was not set out in the Inclosure Award for multiple users, its exclusion from hereditaments in the Finance Act would likely favour public vehicular rights. As it stands only the part of Ash Drove awarded as private carriageway could be reliably said to have multiple private rights.
7. Post 1910, the evidence suggests that the application route was less well used, with commercial maps of the time depicting parts of the route as a footpath or bridleway. The highway and local authority records paint the same picture, with the parish survey noting the bad condition of the route, and although the records for some part, make suggestion that higher rights may have existed, the Definitive Map process culminated in a footpath designation. I concur with the Council that local authority correspondence dating after the Definitive Map process, unsurprisingly concludes the route is a footpath, as that is what is recorded on the Definitive Map.
8. I consider the evidence in this case to be equally balanced and the views expressed by each party, well-argued and by nature subjective, raising reasonable inferences either way. Albeit no single piece of evidence conclusively points to the application route having a higher status than currently designated, there are several documents before me which, when considered together as a whole, have a synergy that suggests higher rights than a footpath may exist along the application route.
9. When looking at the evidence cumulatively, I find there is good evidence to tip the balance of probability in favour of historic public vehicular rights subsisting on the application route, along the entirety of Thornhill Drove (points W to X) and for points X to Xi and points A to Z on Ash Drove.
10. I do consider that the evidence is more finely balanced for that part of Ash Drove between Z to Xi, as a result of the award of a private carriageway between those points on the Inclosure Award. However the 1775 map is suggestive of a route possibly being in existence along that section pre-Inclosure, and following the making up of the private carriageway section, I am not persuaded that those using the route prior to Inclosure would not have continued to do so post Inclosure, or that horses and carts approaching the private carriageway from either end would have turned back. The later description of Ash Drove as a parochial road on Cary’s Map and its representation on both the Tithe Map and more importantly the Finance Act records, in the manner of a vehicular highway, would suggest that historically the entire route was considered a local vehicular through route. Ultimately the making of an Order in this particular case, will afford an opportunity for further testing on the conflicting interpretations.
11. On the balance of probabilities I consider that the evidence indicates that public footpath Y1/17 holds higher rights that currently recorded. Correspondingly I will allow the appeal for an Order to be made to upgrade the footpath to a restricted byway.

**Overall Conclusion**

1. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be allowed.

**Formal Decision**

1. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, Somerset Council is directed to make an Order under section 53(2) and Schedule 15 of the 1981 Act within three months of the date of this decision, to modify the definitive map and statement for the area by upgrading the existing footpath Y1/17 to restricted byway status.
2. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

A Behn

 **Inspector**

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