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| **Appeal Decision** |
| Papers on File |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 23 August 2024** |

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| **Appeal Ref: ROW/3322968** |
| * This Appeal is made under section 53 (5) and Paragraph 4 (1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Somerset Council not to make an Order under section 53 (2) of that Act. * The application submitted on 27 August 2008 was refused by the Council on 18 May 2023. |
| * The appellant claims that Footpaths Y1/10 and L21/49 should be upgraded to bridleway as shown on the plan appended to this decision.   **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 under section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act).
2. The appeal has been determined on the papers submitted. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
3. On some of the earlier historic documents Witcombe is spelt Widcombe. I have used the spelling used in the document throughout my decision.

Main Issues

1. Section 53 (3)(c)(ii) of the 1981 Act provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a highway shown in the map and statement as a highway of a particular description ought to be shown as a highway of a different description. The evidential test to be applied is on the balance of probabilities.
2. The case in support relies on historical documents and maps. I need to consider if the evidence provided is sufficient to infer the dedication of higher public rights over the claimed route at some point in the past. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

Reasons

1. Two applications were made for a route between Knole Hill and Witcombe which were determined together. I have appended a map of the two application routes to the end of my decision and I will refer to various points shown on it within my decision.
2. The Applicant intended for the boundary of the applications to be the River Yeo at point S. However, the Council understood the boundary to be just south of the river at point T. The appeal form states the appeal route is from Knole Hall Lane to the River Yeo as does the Definitive Map Modification Order application for Driveway Drove. However, the application maps appear to show the boundary at point T. I have not seen the application form for Witcombe Drove.
3. The route along Driveway Drove between Knole Hill (point I) and the River Yeo (point S) was refused. A decision was taken to make an Order for a restricted byway along Witcombe Drove between T and V. Section S to T was not considered to carry vehicular rights and will not be included in the Order.
4. The appellant has requested I consider section S to T as part of the appeal. If I consider the evidence before me indicates additional rights exist over section S to T, I can direct that any Order made includes these rights in accordance with *Trevelyan* *v Secretary of State for the Environment, Transport, and the Regions* [2001] EWCA Civ 266.

***Documentary Evidence***

*Kingsmoor Court Book 1732-1796*

1. From 1743 there is a regular entry in the Kingsmoor Court Book stating ‘every person not being a commoner driving any waggons or wains or such like carriages over the moor shall pay to the Reeve or Hayward 4d for use of Lords of the Leet for each time offending and the said Reeve to make return the next Court under the penalty of one pound for each person making default’. From 1768, the exception for commoners is omitted. Individuals were presented to the Court for taking waggons over the moor without paying.
2. This suggests vehicles were only permitted on Kingsmoor if they paid a fee and failure to pay the fee resulted in a fine. Commoners initially did not have to pay this fee but later everyone did. This could suggest there were no public vehicular rights over the common before Inclosure. It could equally suggest the public could use it provided they paid for its maintenance. The Court Book does not indicate where carriages were being driven, so it is not possible to tell if the appeal route was in existence and being used at this time. It also provides no evidence relating to bridleway rights over Kingsmoor.

*The Manor of Milton Falconbridge 1775*

1. A bridge is shown across the River Yeo on the map of the Manor of Milton Falconbridge, 1775. Witcombe Drove is shown between V and T with bold solid lines which widen out at point T to meet the river by the bridge at point S.

*Marriage Settlement 1782*

1. It is claimed a marriage settlement for the marriage of Lord George Cavendish and Lady Elizabeth Compton demonstrates the appeal route was held in strict settlement. Therefore, no one had the capacity to dedicate public rights over it. Copies of these documents have not been provided.
2. An extract from an attested copy for the Settlement of the Estates of Lord George Cavendish and his wife Lady Elizabeth and William Cavendish dated 1805 includes property in Kings Sedgemoor. However, the descriptions for the plots are not sufficient to identify their location.

*Deposited Navigation plans*

1. On the Plan of the River Yeo 1793, the Plan of Navigation from Ilchester to Langport 1794, and the Plan of the Navigation from Ilchester to Langport 1794-5 section S to U is shown as parcel 51. This parcel is described as ‘waste ground at Widcombe Bridge belonging to… Banbe Sydenham Esq. as Lord of the Manor of Widcombe.’ On the 1793 and 1794 plans section S to U is labelled ‘Widcombe Road’. On the 1794 plan Widcombe Road, including section S to T, is coloured brown. All three plans show a bridge over the river labelled ‘Widcombe Bridge’.
2. On the cross-section of the proposed Navigation from Ilchester to Langport 1794 Widcombe Bridge is labelled at 3 ¾ miles. The ford is not shown. Pibsbury Ford is shown on the cross-section, but there is no ford shown alongside Pill Bridge, although the possible remains of a ford are visible today.
3. On the Plan of the Parrett and Yeo Navigation between Ilchester and Langport 1836 section K to S is shown with double dashed lines and labelled 67. Section S to U is shown with double solid edges and coloured brown as is Kingsmoor Drove. No bridge is shown and an uncoloured parcel of land by the river alongside section S to T is labelled 65. The Book of Reference records parcel 65 as pasture owned by Robert Leach and parcel 67 as Public Drove owned by the Waywardens of the Parish. Seventeen routes are shown on this plan coloured and unnumbered. The Council states eight of these have no recorded public rights so presumably, the rest carry public rights.

*Kingsmoor in Somerton Inclosure Award circa 1803/1829*

1. The appeal route from Driveway Bridge to S is set out in the Kingsmoor in Somerton Inclosure Award as a ‘private carriage road or driftway of the breadth of 30 feet… called the Widcombe Drove beginning at the north side of the said moor at a certain gate called Driveway Gate… and extending southwards over the said moor…unto a certain bridge at the parish of Martock called Widcombe Bridge’. It is shown on the Award map with double solid edges. Kingsmoor Drove, which is recorded on the Definitive Map and Statement (DMS) as a public bridleway, is shown in the same way on the Award map as is North Drove which has no recorded status today. Both were set out in the Inclosure Award as private carriage roads or driftways with a width of 35 feet. Only one public road, the Turnpike Road from Somerton to Martock was set out as a public carriage road. Widcombe Bridge is shown on the Award map.
2. The private roads in the Award are described as being for the use of the owners and occupiers of the allotments, messuages, and old inclosures which do adjoin them and to where the said Road do severally and respectively lead. They were to be repaired by them at their expense. The Award also sets out to the Earl of Ilchester ‘as a compensation and in full satisfaction for the standing of part of a bridge called Widcombe Bridge on the said moor and in lieu of an annual payment or composition usually paid to the said Earl by commoners or persons having a right of common in respect of lands and tenements within the parish of Martock for the standing and accommodation of the said bridge all that allotment or parcel of land situate in and part of Kingsmoor aforesaid number 141’. This suggests the bridge was for the use of commoners rather than the wider public.
3. The Act under which the Award was made stated all public roads except bridleways and footpaths had to be to a width of forty feet. Any former roads which shall not be continued, set out, and ascertained as aforesaid, shall be deemed part of the Moors and Lands to be divided and allotted.

*Long Sutton Inclosure Map 1814*

1. The Long Sutton Inclosure map shows the appeal route from I to Driveway Bridge with double solid edges coloured brown. Other public carriageways including Knowle Hill Lane and Stone Mead Lane are shown in the same way, but so is Hammock’s Lane which has no recorded status. Other routes are shown uncoloured. I consider section I to Driveway Bridge to be the route described in the Kingsmoor Inclosure Award as Driveway Gate. A copy of the Award is not available.

*Maps of the Parish and Hundred of Martock 1823*

1. On both copies of the Map of the Parish and Hundred of Martock 1823, section K to S is mostly shown with double solid and some dashed edges. It is coloured buff on one of the maps. There is no bridge over the river. Section S to T is within parcel 211. A survey book accompanying the map describes parcel 211 as Waste owned by Robert Leach and the occupiers are Common. A route is shown continuing south of T to point V with double solid edges and is coloured buff on one of the maps. On one of the maps parallel lines which are partially filled in black are drawn across the road at point T, these are likely to indicate a gate. The key indicates roads and lanes are coloured buff and footpaths are shown with dotted lines. Some vehicular highways are shown in this way but so are other routes with no recorded status.

*Tithe Maps*

1. On the Martock Tithe map 1840 section K-R-S is shown with double solid edges, but the colouring is not clear. The key indicates it is a road or lane. Other public roads and bridleways, including Kingsmoor Drive, are shown in the same way as are cul-de-sac routes with no public status. There does not appear to be a bridge over the river. Section S to T appears to be part of the route to the south to point V but it is open on the east side to plot number 211. Plot 211 is described as ‘Waste and Pasture’ occupied by Christopher Leach and owned by Ann Loggan. Section S to T does not appear to be coloured on the copy held at the National Archives, but the section between T and V is.
2. The appeal route between I and S is shown on the Somerton Tithe Map 1843 with double solid edges and coloured brown. A bridge is not shown over the river. Section I-Q-K is shown on the Long Sutton Tithe map 1844 with double solid edges and coloured brown. On both maps, other public roads, and bridleways, including Kingsmoor Drive, are shown in the same way, as are other routes with no recorded public rights.
3. The purpose of Tithe records was to identify titheable land capable of producing crops. Normally a detailed survey was undertaken. They are statutory documents which were in the public domain. They were not produced to record public rights of way, although they can be helpful in determining the existence and status of such routes. Public roads were normally shown coloured brown on Tithe maps.

*Martock Partition 1857*

1. Section S to T is shown coloured yellow as part of a longer route continuing south to point V. Other routes carrying public vehicular rights are shown in the same way. The map shows land in joint ownership which was subject to division by the Inclosure Commissioners.

*Exchange of Glebe Land 1871*

1. Approximately 225 metres of the northern end of the appeal route is shown on the exchange plan with double solid edges and coloured yellow. Other public roads are shown in the same way but so are routes without recorded public rights including cul-de-sac routes.

*Sales Particulars*

1. An 1883 sale plan for property in several Parishes shows a short section of the appeal route just north of S. Section S to T is shown as part of a wider parcel and a route is shown continuing south of T to point V with double solid edges. None of the appeal route is included in the sale lots.
2. On the 1913 sales plan for the Knole Estate, the appeal route is shown between I and K with double solid edges but is not included in any of the sale lots. Other public roads and bridleways including Kingsmoor Drove are shown in the same way, but so are routes with no recorded public rights. Each lot was subject to all rights of way, both public and private and to all rights of way over occupation roads. It also refers to an 1860 settlement and 1901 disentailing, but it is not clear if the Order route is part of the settled land.
3. The sales plan for the Somersetshire Estate of the Duke of Devonshire 1919 uses an Ordnance Survey (OS) map. The appeal route is shown between I and K with double solid edges and between K and T with double dashed edges labelled ‘*B.R.’* A footbridge and ford are shown crossing the river. South of T a route is shown continuing with double solid edges. OS parcel 759 Livery Drove is listed as being part of Lot 4, but Driveway Drove is not. The appeal route does not appear to be included within the sale lots. The sale plan for the Somerton Estate 1920 uses the same OS base map. The appeal route is not near any of the sale lots. In both sale plans, the lots are sold subject to all rights of way and easements whether mentioned in the particulars or not.
4. The sales plans were drawn up to sell land for sale and did not intend to show public rights of way. They indicate the appeal route was not part of the lots for sale, but they provide no evidence of the existence of public rights.

*Finance Act Records 1910*

1. The appeal route between points I to K and R to S is excluded from the surrounding hereditaments. Section K to R is within hereditament number 1156, but no field or valuation books are before me. Section S to T also appears to be excluded from surrounding parcels along with Witcombe Drove from T to V. Other routes with and without recorded public rights are also excluded from the surrounding hereditaments.
2. The Finance Act 1910 imposed a tax on the increase in land value, which was payable when the land changed hands. Maps were produced to show taxable land following a survey by the Board of Inland Revenue. It was a criminal offence to make false statements to reduce tax payments. The existence of public rights of way over land reduced its value and the liability for tax so were recorded in the survey. The exclusion of part of the appeal route from the adjoining hereditaments could indicate public rights which are more likely to be vehicular.

*Parish Minutes*

1. The Ash Parish minutes of 31 March 1942 refer to a letter asking who was responsible for keeping the river bridge in repair. The Clerk was to respond saying it was the responsibility of the landowners or occupiers.

*Highway and Definitive Map Records*

1. Minutes from Yeovil Highway Board meetings in 1863 authorised the District Surveyor to produce a report on roads, repair responsibilities, their condition, and cost to maintain them, and maps distinguishing the highways and turnpikes within the district. In 1864 the surveyor was instructed to report on the name and extent of bridleways within each parish. A map of parishes within the former Yeovil Highway District 1863 shows sections K to S and T to V uncoloured with double solid edges. There does not appear to be a bridge over the river. Kingsmoor Drive is coloured green. The key indicates highways were coloured yellow, ‘halter-paths’ green and Turnpikes red.
2. The appeal route is not coloured on the 1929 Handover maps, or the 1930s and 1950s Road records which show highways maintainable at public expense.
3. Works Committee reports by the County Surveyor in 1955 refer to a request from leaseholders of the Kingsmoor Trust in 1951 for a replacement footbridge over the River Yeo after it was washed away in 1946. No action was to be taken until it was known if a footpath would be claimed under the Rights of Way Survey. It had since been claimed, and the Kingsmoor Trustees were asking for an immediate replacement. A new bridge was approved in February 1956 and minutes from November 1956 and January 1957 refer to the completion of the new bridge for foot traffic. The minutes for the Somerset River Authority 1956 state the bridge had a 64 foot span and was 3 feet wide.
4. On the Long Sutton Survey map produced to claim public rights of way, the appeal route between I and K is coloured green and numbered 49. The Long Sutton Survey card claims it as a footpath from Knole Hill Lane, down Driveway Drove to the Parish Boundary at Kingsmoor Drove.
5. On the Ash Survey map, section K to V is shown coloured blue and numbered 13. On the Parish Survey card, 13 has been changed to 11 and it is claimed as a ‘C.R.F’, a carriage road used mainly as a footpath. It is described as starting from Witcombe Lane and proceeding north to the River Yeo. It ‘is a grassy track with wheeltracks metalled. At the River Yeo, the ancient ford was formerly spanned by a footbridge, but this was swept away some years ago. It is understood that it is shortly to be replaced by a modern footbridge so again obtaining continuity of Whitcombe Drove with the Bridle road across the river, which crosses Kingsmoor & leads to Knole.’ Two survey cards for 11 claim the appeal route as a footpath with one describing it as ‘Widcombe ~~Drove~~ Lane to Witcombe ~~Drove~~ Lane’ and the other describing it as starting from the C386 and running north up Widcombe Drove to FP1/9 or FP1/10.
6. On the Draft map, section I to K is coloured purple as a footpath. The map for the rest of the appeal route is not available. The whole of the appeal route is shown in the Provisional and Definitive Maps as a footpath. There were no objections to the recording of the appeal route as a footpath.

*Ministry of Food National Farm Survey 1941-1942*

1. The appeal route between I and T is largely shown excluded from the surrounding farm parcels. The northern end is within one of the parcels and section T to U of the application route to the south is also included within a farm parcel. I have not been provided with a description of the parcels for the included sections. The proximity of public roads and the condition of farm roads were included in the survey, but this was not their primary purpose.

*Ordnance Survey Maps and Records*

1. The OS ‘old series’ map 1809-1811 Cassini Timeline reprint shows the appeal route as part of a continuous route with the application route to the south between points I and V. The route is narrower to the north of the river, widens out on the south bank then gradually narrows to point V. It crosses the river, but it does not state the crossing type. Other public and private roads and bridleways are also shown in the same way including cul-de-sac routes.
2. The OS Boundary Remark book for Somerton 1883 shows the appeal route north of K with double solid lines and south of K with double dashed lines labelled ‘Bridle Path’. It is shown in the same way on the OS Boundary Remark book for Long Sutton 1883 but is labelled ‘Footpath’ south of K.
3. The OS Boundary Sketch Map for Martock and South Petherton 1884 shows the appeal route either side of K with a double solid line to the north and a double dashed line to the south. The OS Boundary Sketch Map for Pitney, Somerton, Long Sutton, and Compton Dundon 1885 shows the appeal route with double solid edges between I and Q, but it is not shown south of Q.
4. On the 1887 OS County Series map, the appeal route is shown uncoloured with double solid lines between I to K. There are also double dashed lines between the solid lines for most of the appeal route between I and Q which would suggest a track with verges to the side. Between K and T, the appeal route is shown running across fields with double dashed lines and is labelled ‘*B.R.*’ A footbridge is shown over the ditch at point K and a ford over the river. Two parallel routes are shown on either side of the river. A solid line over the river is also shown and is likely to indicate a bridge. The ford and bridge are connected by a brace symbol which indicates they are within the same land. South of point T a route continues with double dashed lines between solid lines to point V forming a continuous route between I and V. The route is labelled Driveway Drove to the north of the river and Witcombe Drove to the south. Other public footpaths, bridleways and private routes are shown in the same way. Public roads appear to be coloured brown.
5. The appeal route is shown in largely the same way on the 1903, 1929, and 1930 OS County Series maps but a footbridge is shown alongside the ford. On the 1903 map, there are solid lines across the Order route at point T which could indicate a gate. On the 1930 map, the footbridge over the ditch at K is no longer shown. Roads are no longer shown coloured brown.
6. On the OS Revised New Series maps of 1898 and 1900 the appeal route is shown as an unmetalled road between I and K. It is shown with a dashed line between point K and T which the key indicates is a footpath. Two solid lines crossing the river are labelled ford. The key does not include a symbol for bridleways.
7. The OS Object Name Book 1901 describes Driveway Drove as a bridle road running between Driveway Bridge and Kingsmoor Drove (point K) with Driveway Bridge being described as a bridge at the north end of Driveway Drove, the property of the Langport Drainage Board. Nine Commons Drove is also described as a bridle road. Livery Drove was originally described as a bridle road but was amended to occupation road. The Assistant Overseer confirmed the spellings.
8. On the OS Popular Edition map of 1919, the appeal route is shown between I and K as a minor road. It is then shown with a single dashed line between K and T which the key indicates is a footpath or bridleway, and a ford crosses the river.
9. The appeal route is shown with double dashed lines on the OS War Revision map of 1940 from just north of K to T and crosses the river at a ford. It continues south to V with double solid lines. The key indicates these are fenced and unfenced ‘minor roads in towns, drives, and unmetalled roads’. Footpaths and bridle paths are shown with a single dashed line.
10. On the OS sheet ST42SE of 1962 the appeal route is shown in much the same way as on the County Series maps. However, section K to S is now labelled ‘*F.P.*’ and only one route is shown on either side of the river which is crossed by a footbridge. The key indicates the double solid edged sections are ‘other roads (unclassified by the Ministry of Transport)’.

*Commercial Maps*

1. Section S to V is shown on Day and Masters’ map 1782 as an enclosed road, Greenwood’s 1882 map as a cross road, and Larby’s English Roads at a Glance for Motorists, Cyclists and Golfers as an ‘other metalled roads’. It is part of a longer route to Ash. The rest of the appeal route is not shown.
2. The appeal route is not shown on Cary’s 1810 map of Somersetshire. Cary’s New Map of Somersetshire 1824 shows section T to V with double solid edges.
3. Cary’s 1821 and 1832 Improved Maps of England and Wales, Gall and Inglis’ map circa 1890, and Bartholomew’s 1911 and 1927 maps show section I to V as a continuous route. The key for Cary’s 1821 map states it is a parochial road. The key to Bartholomew’s maps states it is an inferior road and not to be recommended. His maps also included footpaths and bridleways.
4. On Hoare and Reeves’ New map of the County of Somerset 1840, and the RAC Touring Map 1913, section K to V is shown with double solid edges which continues to Ash. The key to Hoare and Reeves’ map indicates it is a bye road.
5. Many other routes with public vehicular or bridleway rights are shown on the commercial maps in the same way as the appeal route, but so are routes, including cul-de-sacs, with no recorded public rights.
6. Commercial maps were produced for sale to the public who would have expected them to show routes that were available for use and some of the commercial maps were aimed at cyclists and drivers. The scale of some of the maps would also suggest the routes shown on them were significant and can be suggestive of public vehicular rights.
7. The quality of commercial maps and the weight that can be given to them varies. They are rarely sufficient in their own right to infer the routes shown on them are public highways. However, when considered with other evidence, they can tip the balance in favour of public rights.

*Land Registry Records*

1. Section S to T is not included with registered adjacent parcels of land. Section S to T is included within a parcel but the rest of the route to V is not.

*Local History*

1. Local history records indicate that various routes were used over Kingsmoor by the public with Driveway Bridge being in existence since at least 1720. Witcombe Bridge is believed to have been in existence since 1543 and gave the residents of Witcombe access to Kingsmoor.

*Highway Law*

1. The Highways Act 1773 (the 1773 Act) contained a wide wheel clause for highways, other than turnpikes, which were much prejudiced by the narrowness of wheels and the excessive load of carriages. Narrow wheeled carriages drawn by too many horses were subject to fines for every horse above the number set out for the wheel width. Carriages with wheels wider than sixteen inches could be drawn by any number of horses or cattle. It has been implied that the entry in the Kingsmoor Court Book (see paragraph 10 and 11) is a way of regulating traffic over the moor in the same way as the clause in the 1773 Act.
2. In Treaties of the Pleas of the Crown by William Hawkins, sixth edition published in 1777, consideration was given to what constitutes a highway. A highway was considered to be any way which led directly to a market town or from town to town and if carts used it, it was a King’s highway. It was also considered there was no reason that a way leading from village to village which was a thoroughfare to other towns could not properly be called a common highway because it was common to all the King’s subjects. Routes were only considered to be private if they went to a parish church, common field, private house or perhaps to a village where it terminated.
3. Various judgments concerning cul-de-sacs and definitions of highways presume through routes are highways. Cul-de-sacs can be highways if they lead to a place of public resort or were expressly laid out as a highway by statute. *Eyre v New Forest Highway Board* [1892] JP 517found that where a short section of uncertain status exists between cul-de-sacs it can be presumed its status is that of the two highways linked by it. Other case law has held that continuous routes are unlikely to have different public rights over different sections.

*Conclusions*

1. I must consider the evidence before me as a whole, weighing up the evidential value of each document accordingly. A consistent depiction of the appeal route over many years can be a positive indication of status. I need to consider if there is a synergy in the documents that points, on the balance of probabilities, to the appeal route having bridleway rights.
2. The Council considers the entry in the Court Book suggests public vehicular rights did not exist over Kingsmoor because a fee had to be paid for taking waggons or wains over the common. However, if the entry was a way of regulating traffic in the same manner as the wide wheel clause in the 1773 Act, this could suggest a public carriageway existed over it. There is nothing in the Court Book to show where vehicles were driving or if the appeal route existed. Therefore, it provides no evidence of public rights over the appeal route.
3. Most of the appeal route is awarded as a private road and driftway in the Kingsmoor Inclosure Award. The appellant considers it odd that only one public carriage road was set out in this Award whilst eleven private carriage roads were set out over Kingsmoor. They consider it illogical that the public would not be able to use routes set out as private roads and driftways because the public would need to travel twice the distance using public roads.
4. The Council and the appellant agree that any route that existed prior to the Award was extinguished unless it was set out in the Award. The appellant considers public rights were not extinguished if a private road was set out over an earlier public highway. None of the maps before me show routes over Kingsmoor before the 1803 Inclosure map. Therefore, I cannot determine if the route set out in the Kingsmoor Inclosure was over an earlier highway.
5. The Council also considers the allotting of a plot to the Earl of Ilchester in lieu of payment from the commoners for the bridge standing suggests the appeal route was private, not public. Overall, I consider the Kingsmoor Inclosure does not provide evidence of public rights.
6. The Long Sutton Inclosure map, Martock Parish map, Tithe maps, Martock Partition and Glebe Land Exchange map all show sections of the appeal route in the same manner as other public roads and bridleways. I consider them to be suggestive of public rights of a higher status than footpath.
7. Five of the commercial maps show the whole of the appeal route as a road which continues along Witcombe Drove to V with others showing part of the appeal route. The OS maps show it as a mixture of road and bridleway with only three maps showing section K to T as a footpath. Several records refer to the appeal route as a bridleway, including the Somerton OS Boundary Remark book, and 1901 Object Name Book, although the Long Sutton Boundary Remark book refers to it as a footpath. Overall, I consider the OS records to be suggestive of public rights of bridleway status. The commercial maps also suggest the appeal route has public rights of a higher status than footpath.
8. Various maps between 1821 and 1962 show a through route between I and V with other maps showing routes on either side of the river. The ford is shown on maps between 1887 and 1940, and a bridge is shown on maps or referred to in documents between 1757 and 1946 when it was washed away. The ford is shown on maps after the Navigation Plans suggesting that either the navigation works did not result in the removal of the ford, or that it was provided after 1836.
9. I consider it likely the ford and bridge existed between the dates above, even when they were not shown on the maps. Therefore, both existed at the same time for many decades. It is likely the bridge was used on foot and the ford by horses, vehicles, or both. The ford would have connected the Droves on either side of the River Yeo making them a thoroughfare.
10. Most of the maps show the appeal route as part of a continuous route between Witcombe and Knole with others showing section T to K as a route connecting Witcombe Drove to Kingsmoor Drove. The Council has determined to make a Modification Order for a restricted byway after considering there to be sufficient evidence of public vehicular rights over section T to V and Kingsmoor Drove is recorded on the DMS as a public bridleway. However, public rights of a higher status than footpath over Widcombe Drove are not recorded on the DMS and any Order made for higher rights may not be confirmed. The maps consistently show section S to I as one continuous route suggesting the whole of Driveway Drove has the same status.
11. The 1836 Navigation plans refer to section K to S as a public drove road. There is no legal definition of a drove road, but it is widely considered to be a route to drive livestock along. Public bridleways include a right to be accompanied by a beast of burden as well as a right to ride, and they can also include a right to drive animals. Therefore, I consider this suggests public bridleway rights over this section.
12. The exclusion of most of the route from the surrounding parcels in the Finance Act map, Farm Survey, and property titles is suggestive of public rights of a higher status than footpath. However, there could be other reasons for their exclusion such as multiple private right holders. Therefore, I can only give them limited weight.
13. The 1863 Road map and report, Handover maps, and Road Records intended to show publicly maintainable highways. Records of this type often do not show footpaths and bridleways and highways may also not be shown if they were privately maintained. The Definitive Map records only record public footpath rights, although one of the Parish Survey cards did suggest bridleway rights over section I to S. The Highway and Definitive Map records would also not extinguish unrecorded public rights.
14. The replacement of the footbridge in the 1950s using public funds would indicate public footpath rights over it. However, this does not preclude the existence of higher public rights over the adjacent ford.
15. The Council considers Driveway Bridge to be private because it was owned by a drainage board. In my experience, where drains cross public highways, it is normally the drainage board’s responsibility to provide and maintain bridges. I do not consider the ownership of the bridge indicates public rights did not exist.
16. Settled land is usually land held in trust for the benefit of a tenant for life which transfers to the next person on their death. If land is held in strict settlement there is no one with the capacity to dedicate public rights, therefore dedication at Common Law cannot be presumed to have taken place. Land in the area was subject to strict settlement. However, none of the documents show the appeal route was part of the settled land. I do not consider there is sufficient evidence to show there was no one with the capacity to dedicate public rights over the appeal route. Even if the appeal route was subject to strict settlement, public rights could be dedicated before or after the period of settlement.
17. Public highways can only be extinguished by due legal procedure. Failure to maintain the ford, its obstruction, or removal would not result in the extinguishment of any public rights over it. There is no evidence to indicate any public rights over the ford route have been extinguished.
18. There is some conflict in the documents before me with cul-de-sac routes and routes with no recorded public rights being shown in the same way as the appeal route and established public highways. There is no single piece of compelling evidence but that is not unusual when investigating historical records. Several documents including OS maps, the Somerton OS Boundary Remark book, the OS Object Name book and the 1836 Navigation plans indicate public bridleway rights over the route before me. The route has also been consistently shown for over 100 years as a thoroughfare in a manner that suggests public rights of at least bridleway status due to its connection with Kingsmoor Drove. Taken as a whole, I consider the evidence suggests public bridleway rights exist, on the balance of probabilities, between I and T, including over the ford.

###### Other Matters

1. A landowner states they are unaware of bridleways or restricted byways over their land and the appeal route is signed as a footpath with stiles along it. However, their modern knowledge and current use does not affect the documentary evidence before me.
2. It is suggested there were ample opportunities to object to the omission of higher rights when the DMS was produced. It is also suggested that the documentary evidence is not new. However, there is no indication that many of the documents before me were considered when the DMS was produced. Therefore, it constitutes the discovery of new evidence, and the legislation allows for the correction of errors made when producing the DMS.

###### Overall Conclusions

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

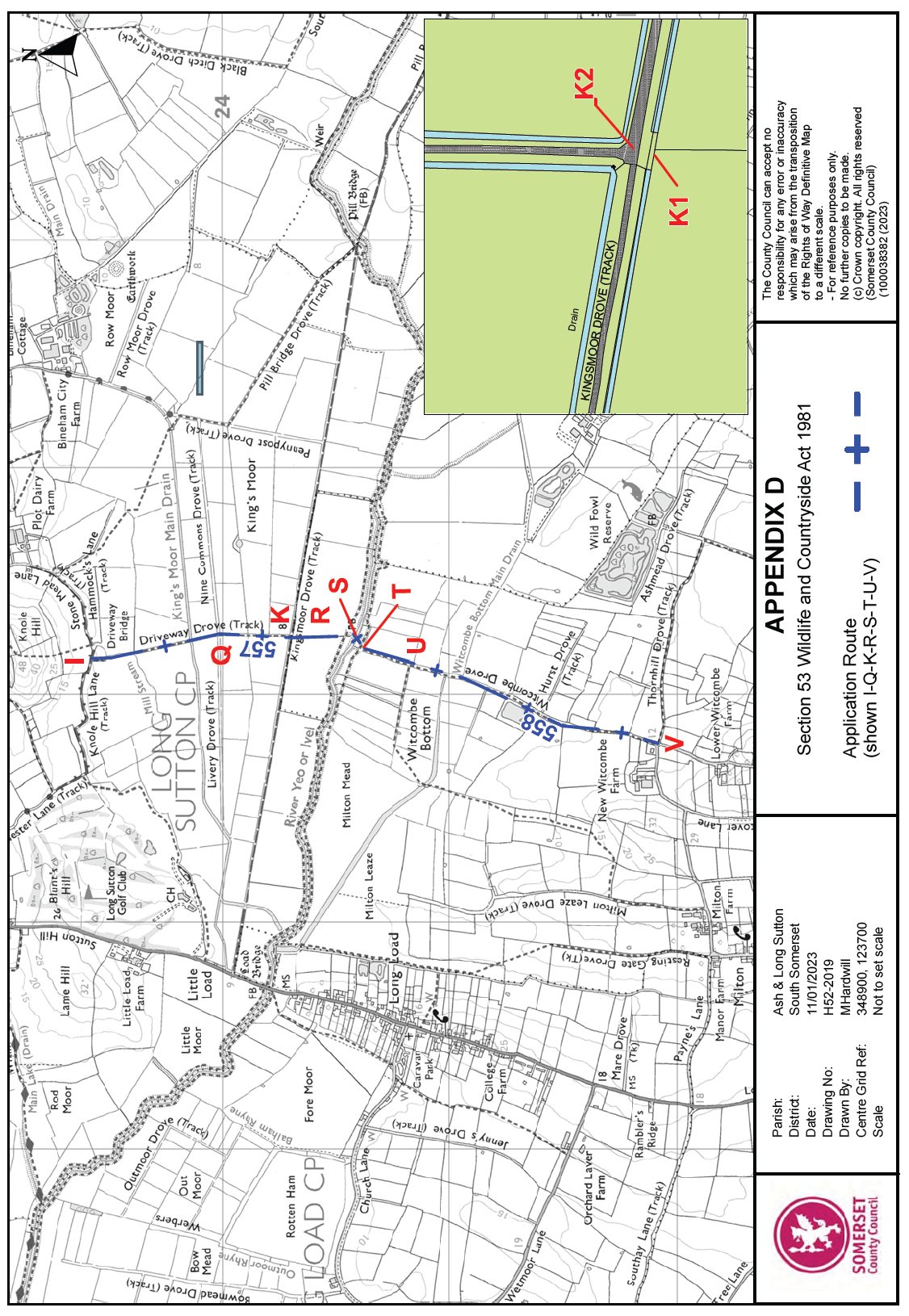
###### Formal Decision

1. In accordance with paragraph 4(2) of Schedule 14 of 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 upgrade public footpaths to public bridleways as shown as section I-Q-K-R-S-T on the plan appended to this decision.
2. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with their powers under Schedule 15 of the 1981 Act.

Claire Tregembo

INSPECTOR

**Appeal Route**

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