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| **Appeal Decision** |
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| **by Susan Doran BA Hons MIPROW** |
| **an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 25 July 2025** |

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| **Appeal Ref: ROW/3351420** |
| * 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 County Council not to make an Order under Section 53(2) of that Act. |
| * The Application dated 6 April 2009 was refused by Somerset County Council on 14 August 2024. |
| * The Appellant claims that the appeal route, Footpath CH 5/66 from Dyke Hill to Chard Junction should be upgraded to a Restricted Byway on the Definitive Map and Statement. |
| **Summary of Decision: The appeal is dismissed** |
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Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under section 53(5) and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (‘the 1981 Act’).
2. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
3. The appeal concerns an application made on behalf of the South Somerset Bridleways Association (‘the Appellant’). For ease of reference, attached to this decision is a copy of the route plan included in the Somerset County Council (‘the Council’) submissions and shown as points A-B-C-D-E, with a further point, F, shown on the plan.

Main issues

1. The application was made under section 53(2) of the 1981 Act which requires the surveying authority to keep their Definitive Map and Statement (‘DMS’) under continuous review, and to modify them upon the occurrence of specific events cited in section 53(3).
2. Section 53(3)(c)(ii) of the 1981 Act specifies that an 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.
3. The evidence adduced is documentary. 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 is appropriate, before determining whether a way has been dedicated as a highway.
4. The Appellant’s grounds of appeal are that the Council has misinterpreted the historical evidence, in particular the Inclosure records, Tithe Map, Finance Act evidence, and District Highway Board Minutes. In addition, they have ignored evidence in Turnpike records, Sales documents and old maps.

**Reasons**

1. The appeal route forms a continuous way some 1.03 km in length between Dyke Hill in the west (A) and Chard Junction to the east (E), crossing a north-south footpath, ford, and former railway line along its course.

***Documentary evidence***

*Chard Inclosure Map and Award 1819 and Inclosure Act 1815 (incorporating the 1801 Inclosure Consolidation Act)*

1. The Inclosure Commissioners awarded 86 roads of which 22 were ‘public carriage roads’ (which were to be set out at 40 feet wide) and 64 were ‘private roads’. Land between A and just west of B fell outside the area to be enclosed. Within the area subject to inclosure a route is shown on the Map running broadly from just west of B to F, with the annotation ‘No.81 20 foot’ at D. Plot 81 is listed in the Award as a private road and described as being 20 feet in width. The Award does not specify who was entitled to use the length of private road. No rights were set out over the remainder of the appeal route from east of D to F which passed through other numbered allotments and there appears to be no reference to it in the Award.

*Chard Tithe Map 1841 and Altered Apportionment 1925*

1. The appeal route is shown on the Tithe Map between A and F and is un-numbered. The Apportionment records a total of 160 acres of ‘roads, wastes, rivers’ and so forth. The lack of an apportionment number could indicate it was considered to be a public road, although an unproductive private road could be shown in the same way. Some other routes are shown in the same manner which are public vehicular roads today, for example the route which the appeal route connects with at A, whilst others are shown in the same way but where no public rights are currently recorded.
2. The altered tithe map shows the route between C-F.

*Finance Act records 1910*

1. Whilst the appeal route appears to be largely excluded from hereditaments on the Finance Act plan there is some ambiguity between A and B where the coloured lines to do not fully encase the route. However, a length at D clearly passes through a hereditament numbered 710. There is no deduction in value for ‘public right of way or user’ recorded in the Valuation Book for 710. However, the Field Book records a deduction of ‘£1 p a’ for ‘Right of Way’ under the heading ‘Charges, Easements and Restrictions’ for this land owned by the London & South Western Railway Company.

*Chard Rural District Council Highway Committee Minutes 1931*

1. The Minutes refer to correspondence from the Parish Council requesting the appeal route from Dyke Hill to Chard Junction be put into a better condition for its whole length for use by vehicles as well as pedestrian traffic as it is *‘a highway very largely used by the residents of Tatworth to get to Chard Junction’.* Reference is made to recent repairs to part of the road, although this seemingly refers solely to the northwest end at A. However, the District Council declined to undertake any liability as the route was only a footpath. Nevertheless, this could indicate the Parish Council considered the route was used by the public, perhaps with vehicles, which the Appellant suggests would have been between Tatworth and the station and goods yard.

*Turnpike records*

1. Although the Appellant states the Council has ignored Turnpike evidence, I have been unable to locate any relevant documents from either party.

*Sales documents*

1. Sales particulars for land at Chilson Common 1868 and for land in Chard including Hurtham Farm 1870 show the appeal route apparently excluded from sale lots. The Appellant states there is no mention of easements or private rights of access in the particulars, and the route is shown in the same manner as public roads.

*Old Maps*

1. A 1799 Plan of the Manor of Chard shows the western end of the appeal route (where it appears gated near A) and a section east towards the ford, beyond which the Appellant says it crosses the common, and considers it is shown as a road.

County maps

1. Greenwood’s 1822 map shows A-F as a ‘cross road’. Many of the routes shown on the map are public roads today, although the Council comments that some routes shown in this way were set out as private roads under Inclosure a few years earlier. The map was produced for sale to the public so it may be considered unlikely to show routes the public were not entitled to use.
2. Bartholomew’s 1902, 1923 and 1927 maps show the appeal route by a broken red line indicating a ‘Secondary (Good) road’ although due to the scale of the map it is unclear if it follows the alignment A-E or A-F. The 1943 map shows a broken yellow line indicating a ‘Serviceable motor road’ suggesting it was well maintained. The maps carry a disclaimer with regard to evidence as to rights of way. The 1911 Bartholomew map shows it as an ‘indifferent road (passable)’. Similarly, these maps were sold to the travelling public, including cyclists who at the time had no right to use bridleways.

Ordnance Survey (‘OS’) maps

1. The 1809-11 map shows the appeal route between A and C as a ‘road’. The First Edition County Series map of 1888 shows it as an uncoloured enclosed route, possibly gated near C. The railway is now depicted, and the appeal route’s alignment has moved from D-F to D-E. The Second Edition map of 1901 is similar with another gate between C-D. The Popular Edition of 1919 shows the route uncoloured. A footbridge and ford are at C.
2. The Appellant maintains the route is shown in the same manner as public routes today and this is good evidence it carried vehicular rights. A map of 1898-1900 shows it uncoloured as a ‘Third class road’, whilst a map dated 1919 depicts it as a ‘Minor road in bad condition’.
3. These records confirm the physical existence of the appeal route, its features and alignment rather than its status.

*Other documents*

Council records

1. Part of the appeal route (A-B) is coloured yellow on the 1929 Handover Map and Schedule denoting a ‘road of little importance’ and thus maintained at public expense. The remainder of the appeal route is not coloured. This suggests some consistency with the slightly later 1931 Minutes described above. It is uncoloured on Road Records dated 1930 and 1950, but coloured pink from just before B to E on the 1970 record, which may reflect this section’s recording on the DMS as a public right of way.
2. It was not claimed for inclusion in the Parish Survey which led to the production of the DMS. However, the Draft Map colours it orange with the reference CH33. This relates to an objection by the Ramblers Association to its omission. Records indicate the British Transport Commission admitted public rights, and reference is made to its depiction on Tithe*.* It was determined that a public footpath be added to the DMS.

Deposited Plans

1. An 1810 plan of the Intended Bridgewater and Seaton Canalsuggests A-B of the appeal route existed and is consistent with the earlier 1799 Plan (paragraph 16).
2. Various plans and books of reference dating between 1845 and 1851 for proposed and actual railways and branch lines consistently depict sections of the appeal route between C and F. All are consistent in describing the route as an ‘Occupation Road’, naming the owner(s). An exception to this, however, is the 1846 Proposed Railway from Yeovil and Bridport to Exeter with Branches. Here, the Book of Reference describesD-F and C-D as ‘Occupation Road and footpath’, again listing the various owners.
3. An 1861 Map of proposed Chard Junction Stationshows a short section of the appeal route west of D coloured sienna. However, there is no key or description provided to establish what the colouring indicated, although such colouring is often used in mapping to denote a public route.
4. The 1864-5 Lyme Regis Junction Railway documents depict the alignment C-D-E, which is described in the Book of Reference as an ‘Occupation Road’. However, the railway had already been built which had the effect of the appeal route’s course moving from D-F to D-E.

Ministry of Food Farm Survey 1941-3

1. This document recording part of the appeal route shows it separate from land holdings and the Appellant argues in the same manner as the roads it connected to.

Land Registry records

1. Current data shows part of the appeal route is on registered land, and some is not. This the Appellant suggests indicates evidence where unregistered of a vehicular highway of ancient origin.

***Analysis***

1. Although the western end of the appeal route existed as a physical feature as early as 1799 as shown in the estate plan, this document would have been drawn up for private purposes and unlikely to have been in the public domain. Both the OS map 1809-11 and the Canal plan 1810 were public records. However, whilst the western end of the route may have the appearance of being part of the wider network, none of these extracts provided afford evidence as to its status.
2. With the short section around C-D set out as a private road under Inclosure (1819), I agree with the parties that whatever status the remainder of the pre-existing route (west to A or east to F) enjoyed prior to the process remained unaffected by the Award, given that there is no evidence the Commissioners stopped up any existing routes. Having been set out as a private road and therefore for private use, in all likelihood the remaining sections were also private roads. I can see nothing to indicate the Council confused the awarded plot 81 with the awarded road 81, as asserted by the Appellant. However, if the appeal route, or either end of it were a public vehicular way prior to inclosure, as the Appellant maintains, then the awarding of a private road in the middle of the route would have resulted in two culs-de-sac public rights of way. Furthermore, there would have been no purpose served in setting out a private road over an existing public one, had the Commissioners considered both ends to have been existing public highways. I agree with the Council it is more likely than not that in setting out a private road use would have been restricted to a limited section of society rather than the public as a whole, and this was in keeping with any existing rights enjoyed over the remainder of the appeal route at this date.
3. Greenwood’s map (1822) shows the appeal route in its entirety as a through route recorded as a cross road and this provides some support in favour of it being a public highway. Similarly, the Tithe records (1841) in depicting the appeal route as untithed are suggestive of a public road, although a private road could also be unproductive, so not assessed for a tithe payment.
4. It is apparent from the deposited railway plans and associated records (1845-1865) that the appeal route was consistently described as an ‘occupation road’ or ‘occupation road and footpath’. This weighs strongly against it being a public vehicular way since such a route would have enjoyed private rather than public vehicular rights. Furthermore, these documents were in the public domain, and where a scheme progressed to completion were subject to a parliamentary process. With the building of the railway the eastern alignment of the route moved from D-F to D-E. No evidence has been adduced of a formal or legal diversion of any public rights.
5. Whilst the majority of the appeal route was apparently excluded from landholdings on the Finance Act (and likewise in sales documents in the late 1860s), which may suggest a public road, part is shown within a hereditament, where an easement is recorded. On balance, and given the earlier evidence, any exclusion is likely to be due to the land being held in several ownerships which is consistent with the railway documents which recorded an occupation road in multiple ownership.
6. Later evidence favouring the possible existence of public vehicular rights can be found in the Handover Map (1929) and Highway Committee Minutes (1931), the latter insofar as the views expressed by the Parish Council that the route was well used, and that the District Council carried out some maintenance. Bartholomew’s maps (early to mid-20th Century) are suggestive of a route which enjoyed vehicular rights, although the weight attaching to them is limited.
7. Throughout its depiction in the historical record, the appeal route has had the appearance of a way capable of being used by vehicular traffic. However, it does not follow that such use was by the public. I am not convinced by the Appellant’s view that the appeal route existed as a public vehicular way prior to 1835. Of note is that part of the appeal route was awarded as a private road in the Inclosure process, it was consistently recorded as an occupation road in the railway records, and in the Finance Act records an easement is recorded over part of it.Notwithstanding that some evidence points to the possibility of the existence of higher rights, when considering all the evidence available to me in the balance, I do not consider it is of sufficient weight to lead to a conclusion that the appeal route should be upgraded to a restricted byway.

**Conclusion**

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

Formal Decision

1. I dismiss the appeal.

S Doran

**Inspector**

Order Map – Copy Not To Scale

