
Bath & North East Somerset Council

DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

MAYPOLE CLOSE, CLUTTON

Date: 30/05/2024

INVESTIGATION REPORT

AUTHOR: GRAEME STARK

DATE: 30/05/2024

An application has been made under section 53(5) of the Wildlife and Countryside Act 1981 for an order to be made to amend the Definitive Map and Statement of Public Rights of Way by adding a public footpath.

This report contains a précis of the evidence which Bath and North East Somerset Council (“the Authority”) is aware following a preliminary investigation of records held by the Authority and the Somerset Heritage Centre and submitted by the applicant. When the decision is taken as to whether an Order should be made, and if so the status of the route (i.e. footpath, bridleway, restricted byway or byway open to all traffic), it will be based on the Authority’s interpretation of this evidence and any other relevant evidence produced to the Authority before the date of the decision. This Investigation Report is a factual account of the application and its processing up to this point, and the evidence provided and/or discovered which is relevant to the existence and status of the route.

The plan attached at page 4 shows the location of the route under investigation which is in the village and parish of Clutton.

An order will be made if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”
- The status of a recorded right of way needs to be changed
- There is no right of way over land as recorded on the Definitive Map and Statement
- Details of the Definitive Map and Statement need to be changed.

When considering evidence, if it is shown that a highway exists, then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused; this is until a legal order stopping up or diverting the rights has been made.

Section 53 of the Wildlife and Countryside Act 1981 (as explained in PINS Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered.

2. RELEVANT LEGISLATION CONSIDERED

The following legislation was considered when this case was investigated; National Parks and Countryside Act 1949, Countryside Act 1968, Highways Act 1980, Wildlife and Countryside Act 1981, Countryside and Rights of Way Act 2000, Natural Environment and Rural Communities Act 2006.

3. APPLICATION DETAILS

An application was made by Rosemary Naish on 17 August 2018, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add a public footpath to the Definitive Map and Statement.

4. THE ROUTE

The route under investigation commences from a junction with public footpath CL6/10 at grid reference ST 6235 5930 (point A on the Investigation Plan on page 4) (see Fig. 1) and proceeds in a generally easterly direction for approximately 39 metres to another junction with CL6/10 at grid reference ST 6239 5930 (point B on the Investigation Plan) (see Fig. 2). This route is hereafter referred to as “the Investigation Route.”





Fig. 1: Point A looking E towards gate at point B



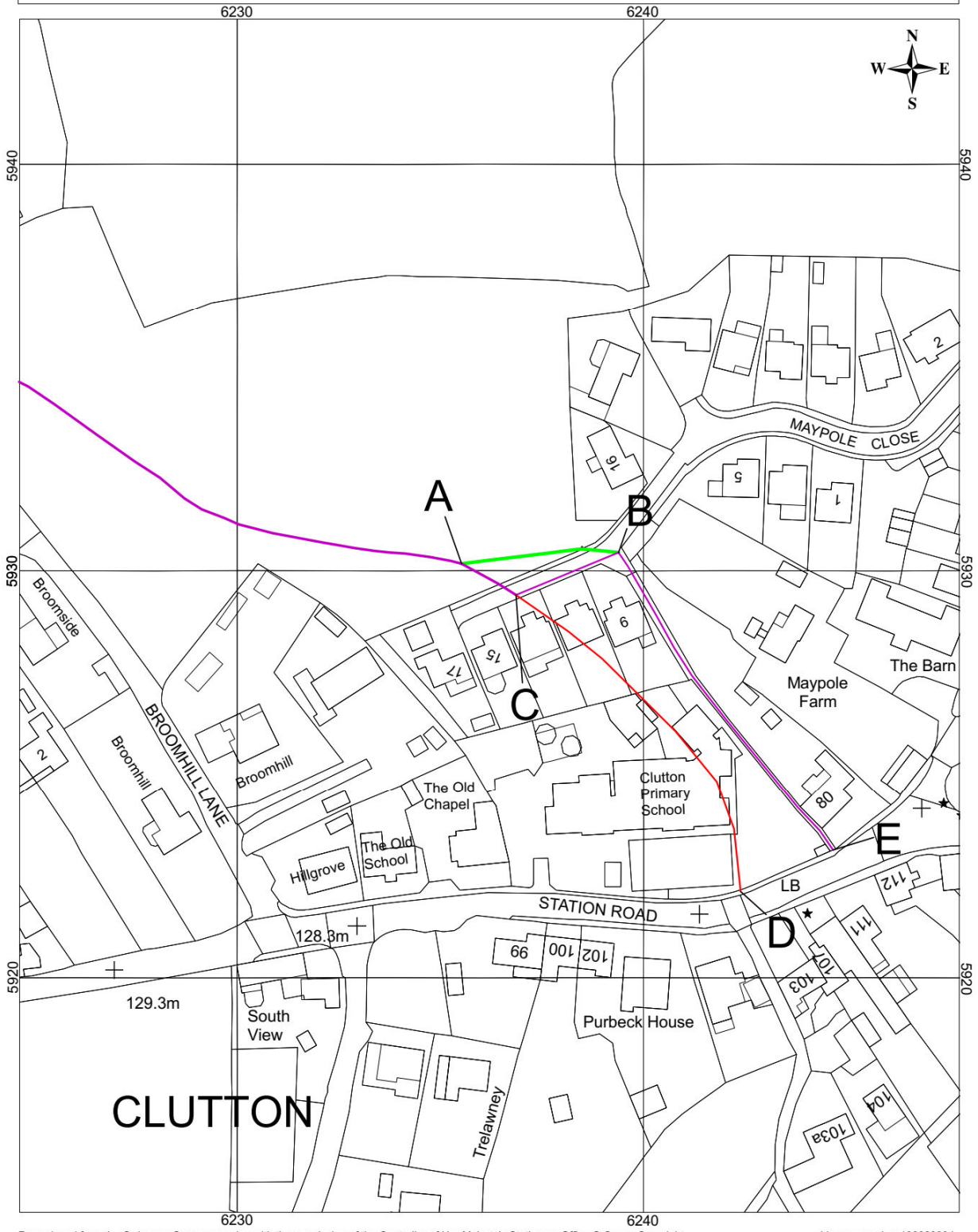
Fig. 2: Point B looking W towards point A

Investigation Plan

Application Route **A**  **B**
Unaffected public footpath 
Previous alignment of CL6/10 **C**  **D**

**Bath & North East
Somerset Council**

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5. DOCUMENTARY EVIDENCE

Doc No.	DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE	DOC. REF. (& LOCATION)
1.	Day and Masters' Map	1782	<p>County Map made from an original survey to be sold to the travelling public, which could be indicative of routes shown probably being public. Footnote states that the map was published according to an Act of Parliament.</p> <p>The Application Route is not shown on Day and Masters' map.</p>	D\B\wsm/38/6 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
2.	Greenwood's map	1822	<p>County Map made from an original survey carried out in 1820 and 1821 to be sold to the travelling public, which could be indicative of routes shown probably being public.</p> <p>The Application Route is not shown on Greenwood's map.</p>	A\AUS\60 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
3.	Tithe Map and Tithe Award or Apportionment	1840	<p>The <u>Tithe Map</u> is a detailed large scale map of the parish. It was produced to locate titheable land described in the award, not rights of way and their status. The <u>Tithe Award</u> is a legal document (produced under the Tithe Commutation Act of 1836) to show the value of titheable lands in a parish.</p> <p>The Application Route is not shown on the Clutton Tithe Map and the apportionment shows that Tithe was paid on the enclosure through which the Application Route runs.</p>	(SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Routes.	
4.	Inland Revenue documents	1910-1914	<p>Plans, valuation books, and field books created under the Finance (1909-10) Act 1910. Deductions in value provide good evidence of public rights if position can be accurately located. Annotations on field maps and colouring of routes may provide supporting evidence of status. However, if no reduction was claimed this does not necessarily mean that no rights of way exist.</p> <p>The Application Route is not shown on the underlying Ordnance Survey Map and the corresponding valuation book does not record a reduction for rights of way or user.</p>	DD/IR/7/14 DD/IR/B/21/1 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	

5.	Definitive Map records	1949-1973	<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map. To this end, each Parish carried out a <u>Parish Survey</u> and <u>Draft and Provisional Maps</u> were subsequently published before publication of <u>Definitive Map and Statement</u>.</p> <p>The Parish Survey, Draft Map and Definitive Map all record public footpath CL6/10 running in an east-south-easterly direction to point to point A on the Investigation Plan and then continuing to point C and then point D on the Investigation Plan. The Definitive Map records do not make any reference to the Application Route.</p>	(PROW)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
6.	Diversion Order	1999	<p>Bath & North East Somerset District Council (Footpath CL6/10, Maypole Farm, Clutton) Public Path Diversion Order 1997</p> <p>The section of public footpath CL6/10 between points C and D on the Investigation Plan was diverted onto the current alignment between points C, B and E on the Investigation Plan on 7th September 1999 to allow for the construction of Molly Close. The Diversion Order does not make any reference to the Application Route.</p>	(PROW)
			This does not provide any evidence relating to the Application Route.	

The above documents are available for public inspection. Please note that the references are as follows:

SHC = Somerset Heritage Centre

PROW = Documents held within the Public Rights of Way Team

7. USER EVIDENCE FORMS

25 user evidence forms were received by the Authority. The evidence of use on foot between points A and B on the Investigation Plan is summarised in the chart below. All of the users with whom the Authority was able to carry out a short telephone interview stated that there was no gap, gate, stile or other means of crossing the field boundary between points A and C on the Investigation Plan.

