



# Bath & North East Somerset Council



## DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

GREYFIELD, CLUTON AND HIGH LITTLETON

Date: 20/05/2024

# **INVESTIGATION REPORT**

**AUTHOR:** GRAEME STARK

**DATE:** 20/05/2024

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 bridleway.

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 parishes of Clutton and High Littleton.

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 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 20 August 2018, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add a public bridleway to the Definitive Map and Statement.

The application route's eastern terminus is at a route which is recorded as public footpath CL6/40. Consequently, the Authority decided to also investigate whether there are additional unrecorded rights over CL6/40, which terminates at a public road (Greyfield Road), as the route being investigated would otherwise be a cul-de-sac for horse riders and cyclists.

**4. THE ROUTE**

The route under investigation commences from a junction with Maynard Terrace in Clutton at grid reference ST 6321 5904 (point A on the Investigation Plan on page 4) (see Fig. 1) and proceeds in a generally east-southeasterly direction for approximately 14 metres to a gap adjacent to a locked field gate at grid reference ST 6322 5903 (point B on the Investigation Plan). The route continues in a generally east-southeasterly direction for approximately 380 metres to a junction with public footpath CL6/4 at grid reference ST 6354 5883 (point C on the Investigation Plan) (see Fig. 2). The route continues in a generally east-southeasterly direction for approximately 245 metres to a gap adjacent to a locked vehicle barrier at grid reference ST 6376 5872 (point D on the Investigation Plan) (see Fig. 3). The route continues in a generally east-southeasterly direction for approximately 245 metres to a junction with public footpath CL6/40 at grid reference ST 6397 5859 (point E on the Investigation Plan) (see Fig. 4). The route turns in a generally northeasterly direction for approximately 83 metres to a junction with Greyfield Road in High Littleton at grid reference ST 6404 5864 (point G on the Investigation Plan). This route is hereafter referred to as "the Investigation Route."



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



Fig. 2: Point B looking ESE towards point C



Fig. 3: Gate at point D



Fig. 4: Point E looking NE towards point F



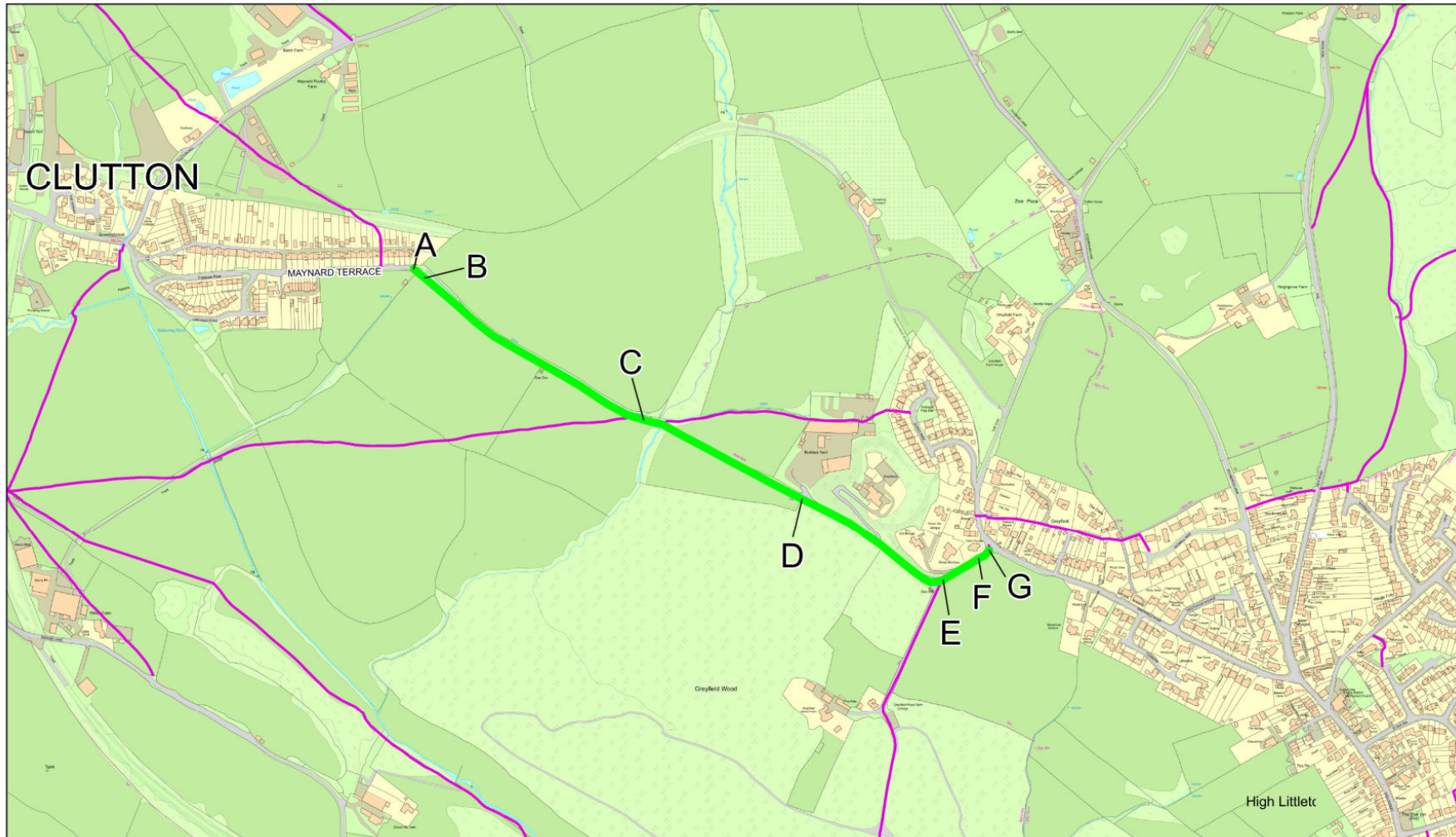
# INVESTIGATION PLAN

Unaffected public footpath 

Investigation Route  A B C D E F G



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><b>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.</b></p> <p>The Investigation 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 Investigation Route.	
2.	Greenwood's map	1822	<p><b>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.</b></p> <p>The Investigation 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 Investigation Route.	
3.	Tithe Map and Tithe Award or Apportionment	1839 & c.1840	<p><b>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.</b></p> <p><b>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.</b></p> <p>The Investigation Route runs through enclosures 29 (Bushey Grove), 96 (Grayfield), 88 (Orleys) and 89 (Great Orleys) on the Clutton Tithe Map and enclosure 37 (Lane and Barton) on the High Littleton Tithe Map. The Investigation Route is not shown on the Tithe Maps and Tithe was paid on all enclosures through which the Investigation Route would have run.</p>	D/D/rt/M/31 D/P/clut/3/2/1 D/D/rt/M/191 D/D/rt/A/191 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Investigation Route.	
4.	Ordnance Survey maps	1884	<p><b>The Ordnance Survey has produced a series of topographic maps at different scales notably the One Inch, Six Inch and 1:2500. The large scale 1:2500 plans from the 1870's onwards provide the good evidence of position of routes and the existence of any structures, and also good evidence of width. They generally do not provide evidence of status.</b></p> <p>The section of the Investigation Route between points A and D on the Investigation Plan is shown with a dashed line black line and annotated 'F.P.' on the 1884 six-inch to the mile OS</p>	<a href="https://maps.nls.uk/">https://maps.nls.uk/</a>

			<p>map.</p> <p>The Investigation Route is shown on the 1904 25-inch to the mile, 1961 1:10,560 and the 1967 OS maps bounded on either side by solid black lines and unbound as either end from what is now the recorded highway network.</p>	
	Investigating Officer's comments		This indicates that the section of the Investigation Route between points A and D on the Investigation Plan physically existed in 1884 and that the entirety of the Investigation Route has physically existed since 1904.	
5.	Inland Revenue documents	1910-1914	<p><b>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.</b></p> <p>The Investigation Route is shown on the underlying Ordnance Survey and it is unbound as either end from what is now the recorded highway network. The Investigation Route is shown uncoloured and excluded from any taxable hereditament.</p>	DD/IR/20/5 DD/IR/B/21/1 (SHC)
	Investigating Officer's comments		This indicates that the Investigation Route was a public highway.	
6.	Definitive Map records	1949-1973	<p><b>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>.</b></p> <p>Public footpath CL6/4 crosses the Investigation Route at point C on the Investigation Plan and CL6/4 is recorded on the Parish Survey map, Draft map and Definitive Map; the Definitive Statement for CL6/4 states '<i>...it continues in an easterly direction until making an exit on the private road to Greyfield. From the other side of the road it continues past the disused Greyfield Colliery...</i>'.</p> <p>The section of the Investigation Route between points E and G on the Investigation Plan is recorded as part of public footpath CL6/40 on the Parish Survey map, Draft map and Definitive Map; the Definitive Statement for CL6/40 states '<i>it starts at the north side of Greyfield wood and runs south through the wood to the junction of F.P.'s 5 and 36.</i>'</p>	(PROW)

	Investigating Officer's comments		This indicates that the section of the Investigation Route between points E and G on the Investigation Plan was public footpath but that the remainder of the Investigation Route was regarded to be a private road.	
7.	Planning Documents	1955	<p><b>Planning documents submitted in support of an application to build a commercial garage in the area which is now Gores Park</b></p> <p>The eastern end of the Investigation Route is shown schematic on a map submitted as part of the planning application and annotated 'To Clutton'; the whole of the Investigation Route is shown schematically on a smaller-scale insert map.</p>	D/R/clu/22/1/43-60 (SHC)
			This indicates that the Investigation Route physically existed in 1955.	
8.	Landowner Statement	2018	<p><b>The owner of the section of the Investigation Route between points A and E on the Investigation Plan completed a Landowner Evidence Form in October 2018.</b></p> <p>The Landowner stated that they are aware of pedestrian use of the section of the Investigation Route on their land but that they do not regard the route to be public. They state that they have not given permission, made a Landowner Deposit or erected notices. They also state that, although they have never told anyone the Investigation Route is not public, <i>'some years ago gates were erected in two places to prevent vehicular use by non-permitted people'</i>.</p>	(PROW)
			This indicates that the Landowner does not regard the Investigation Route to be public but that they may not have communicated a lack of intention during that period to dedicate it.	

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

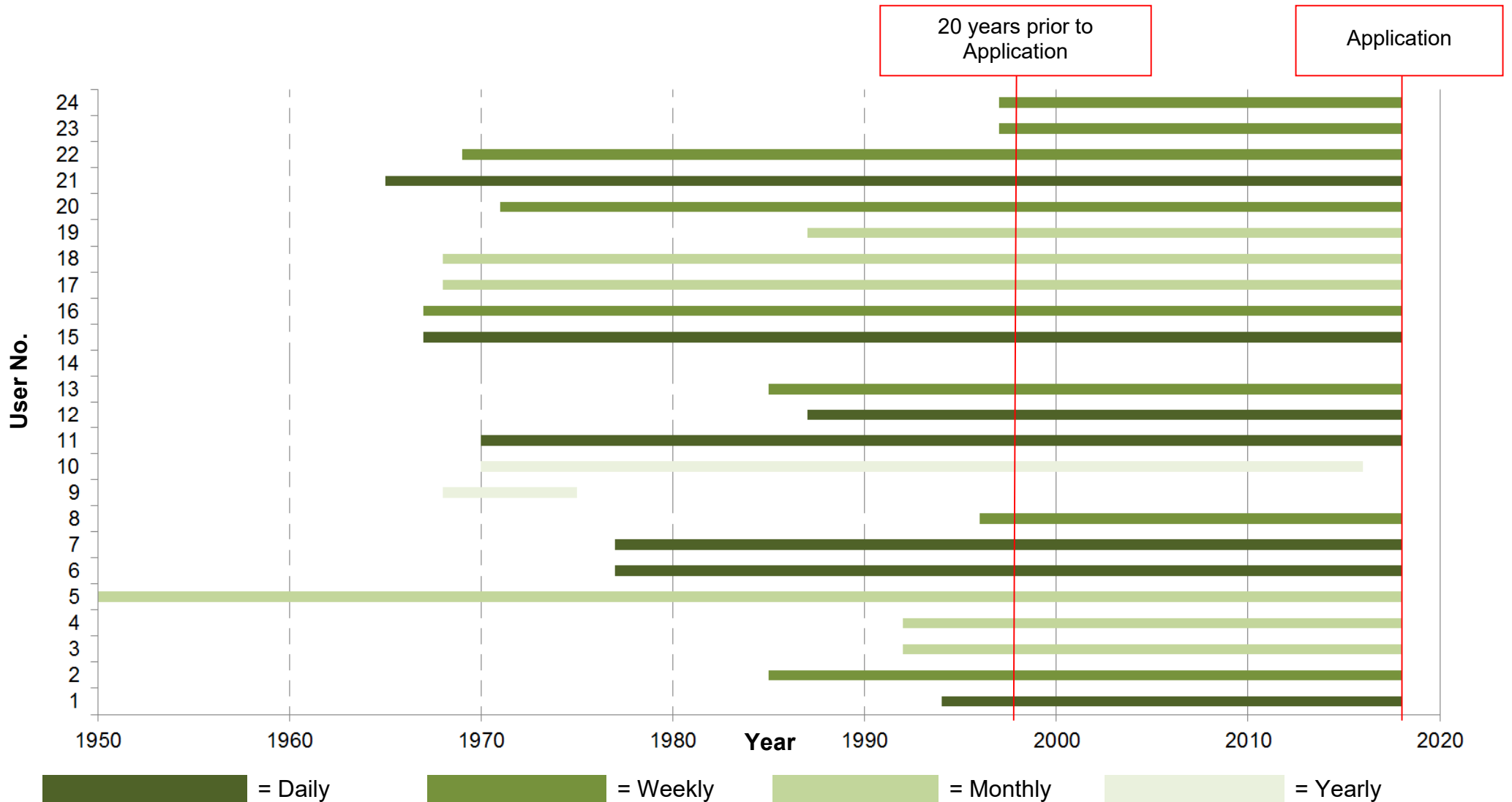
SHC = Somerset Heritage Centre

PROW = Documents held within the Public Rights of Way Team



## 7. USER EVIDENCE FORMS

24 user evidence forms were received by the Authority. The evidence of use on foot between points A and E on the Investigation Plan is summarised in the chart below. The section between points E and G is already recorded as public footpath.



The evidence of use on horse or bicycle between points A and G on the Investigation Plan is summarised in the chart below.

