

Bath & North East Somerset Council

TITLE: Withy Bed TVG Registration Application

WARD: Bathavon North

AN OPEN PUBLIC ITEM

List of attachments to this report:

Appendix 1 – Plan of land to which the Application relates

Appendix 2 – Application

Appendix 3 – Landownership

Appendix 4 – Objection to the Application

Appendix 5 – Applicant's response to the Objection

Appendix 6 – Inspector's Report

1. THE ISSUE

- 1.1 An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority ("the Authority") to register land known as Withy Bed in Bathford as a Town or Village Green ("TVG"). The Application was advertised and an objection was received against registration.
- 1.2 An independent expert was instructed by the Authority to advise the Authority as to whether or not Withy Bed should be registered as TVG.

2. RECOMMENDATION

- 2.1 It is recommended that the application should be refused and the land coloured orange and the land coloured purple on the plan attached at **Appendix 1** ("the Plan") should not be registered as a TVG.

3. FINANCIAL IMPLICATIONS

- 3.1 The potential financial implications of the land being successfully registered are not a legally relevant consideration in the determination of the Application. The expenditure associated with processing this TVG application including officer time and the Inspector for the public inquiry has been agreed by the Divisional Director: Environmental Services.

4. THE REPORT

4.1 **Application.** On 26 November 2015, Bathford Parish Council (“the Applicant”) applied under section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as ‘Withy Bed’ as a TVG.

4.2 The Application, excluding the supporting evidence which is available upon request, is contained at **Appendix 2**. The Application was made on the basis that the land qualifies for registration by virtue of section 15(3) of the 2006 Act, namely that;

“...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; they ceased to do so before the time of the application but after the commencement of this section; and the application is made within the period of one year beginning with the cessation”

4.3 The land to which the Application was made is coloured orange and purple on the Plan. The land is owned by a number of different parties, including an area in unknown ownership, as shown on the plan contained at **Appendix 3**. The Authority has a statutory duty under the 2006 Act to consider and dispose of the Application.

4.4 **Advertising.** On 10 December 2015, the Application was advertised by placing a notice in the Bath Chronicle and on the Authority’s website and serving notice on all known interested parties including the known landowners, the ward members and the Applicant. Additionally, notices were placed at three conspicuous locations around the Withy Bed and maintained on site until 4 February 2016. The Authority received an objection, made on behalf of Mr and Mrs Waterman, against the Withy Bed being registered as TVG (**Appendix 4**). Additionally, the Authority received representations from Doug Parker on behalf of Network Rail and Richard Park on behalf of Wales & West Utilities Ltd.

4.5 On 10 February 2016, the Objection was forwarded to the Applicant to give them an opportunity to respond to the points raised. On 9 March 2016, a barrister acting on behalf of the Applicant responded to the Objection and accepted that the land coloured orange on the Plan (“the Orange Land”) should not be registered as TVG (see **Appendix 5**). The Environment Agency land has been securely fenced for well in excess of a year prior to the making of the Application, the car parking area has only been used for car parking rather than lawful sports and pastimes and the footway is part of the adopted highway and use of this land has been *by right* rather than *as of right*; this is common ground between the parties and the Orange Land has not enjoyed qualifying use under the 2006 Act. However, the Applicant’s response challenged the points raised in respect of the land coloured purple on the Plan (“the Purple Land”). On 16 March 2016, Officers of the Authority made an assessment of the Application, the Objection and the Applicant’s response to the Objection. It was concluded that there remained significant points of dispute between the Applicant and Objector and it was therefore decided that an independent expert should be instructed to provide advice to the Authority as to how to proceed with the Application.

4.6 **Public Inquiry.** The Authority subsequently instructed Rowena Meager (“the Inspector”), of No.5 Chambers, who is a barrister and an independent expert in TVGs. The Inspector considered the Application, the Objection and the Applicant’s response to the Objection and deemed that a non-statutory public inquiry would be necessary to assess the evidence. The inquiry was held over the course of four day from 12 September to 15 September 2016 and the Inspector’s report is contained at **Appendix 6**. The Applicant and Objector were given the opportunity to comment on the Inspector’s report; the Objector stated that they accepted the Inspector’s report and Applicant stated that they noted the Inspector’s report, that they felt the standard of proof required was extremely high and that they were surprised that the Inspector discounted use of the land for the purposes of getting to the River or By Brook for canoeing purposes. The Inspector has provided a strictly non-binding recommendation and it now falls to Officers to determine the Application under delegated authority on behalf of the Authority.

5. STATUTORY TEST

5.1 The statutory test under consideration is set out in section 15(3) of the 2006 Act, which states that; “...*a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they ceased to do so before the time of the application but after the commencement of this section; and the application is made within the period of one year beginning with the cessation*”

5.2 The Authority can only consider whether the legislative test set out in the 2006 Act has been met. The Authority cannot take into account whether registration is deemed desirable nor what may or may not happen to the land in the future. As stated in paragraph 4.5 above, it is common ground between all parties that the Orange Land has not enjoyed qualifying use and paragraphs 5.3 to 5.7 below will therefore address only issues relating to the Purple Land.

5.3 **...a significant number of the inhabitants of any locality or of any neighbourhood within a locality...** The Parish of Bathford is a civil parish and therefore constitutes a ‘locality’ within the meaning of the 2006 Act. Use of the Purple Land as a through route, either for kayaking/canoeing or on the unrecorded PROW, does not constitute the kind of informal recreation required to establish TVG rights. Once this non-qualifying use has been discounted, the remaining evidence presented by the Applicant is not sufficient to demonstrate use by a significant number of the inhabitants of Bathford.

5.4 **...have indulged as of right...** Fences and locked gates were erected between 14 January 2015 and March 2015 and use on this particular area of the Purple Land ceased to be *as of right* at that time. Although it has been asserted that there were signs on the Purple Land previously, it has not been possible to make any positive finding of fact in this respect. Prior to the erection of fences and locked gates, use was without force, secrecy or permission. Use of the remainder of the Purple Route was *as of right* up until the making of the Application.

5.5 **...in lawful sports and pastimes...** Lawful sports and pastimes such as nature watching have taken place; however, as stated in paragraph 5.3 above, the PROW-type use must be discounted. Once this has been done there is insufficient evidence to show that these qualifying activities have been carried out by a significant number of inhabitants.

- 5.6 **...on the land...** Sections of the Purple Land are unlikely to be usable for recreational purposes as a result of its topography but could still qualify for the purposes of the 2006 Act. However, it is appears that some areas, particularly the majority of Network Rail's land, are overgrown through neglect and lack of use.
- 5.7 **...for a period of at least 20 years.** The 20 year period immediately predates the fences and locked gates which were erected between 14 January 2015 and March 2015. The installation of the gas pipeline and the holding of raves on the Purple Land did not interrupt public use and there was a 20 year period. However, as stated in paragraph 5.3 above there was not use by a significant number of the inhabitants during this whole period.
- 5.8 **Conclusion.** An officer from the Authority carried out an independent assessment of both the applicable law and the facts in this case and agreed with the Inspector's conclusions and recommendation. The Application fails to fulfil elements of the statutory test for registration of the Application Land as set out under section 15(3) of the 2006 Act and the Authority should therefore refuse the Application and not register the Application Land as TVG.

6 RISK MANAGEMENT

- 6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Authority's decision making risk management guidance.

7. EQUALITIES

- 7.1 A proportionate equalities impact assessment has not been carried out as the Application must be considered solely in relation to the test set out in the 2006 Act.

8. CONSULTATION

- 8.1 *Ward Councillor; Cabinet Member; Other B&NES Services; Service Users; Local Residents; Community Interest Groups;*
- 8.2 Extensive consultation was carried out as detailed in paragraph 4.4 above.

9. ISSUES TO CONSIDER IN REACHING THE DECISION

- 9.1 Legal Considerations; as detailed in paragraphs 5.1 and 5.2 above.

AUTHORISATION

Under the authorisation granted by the Council on 12 May 2016, the Authority formally rejects the application to register Withy Bed as a town or village green.

... Dated: 07/03/17...

Craig Jackson

Team Manager – Highways Maintenance and Drainage

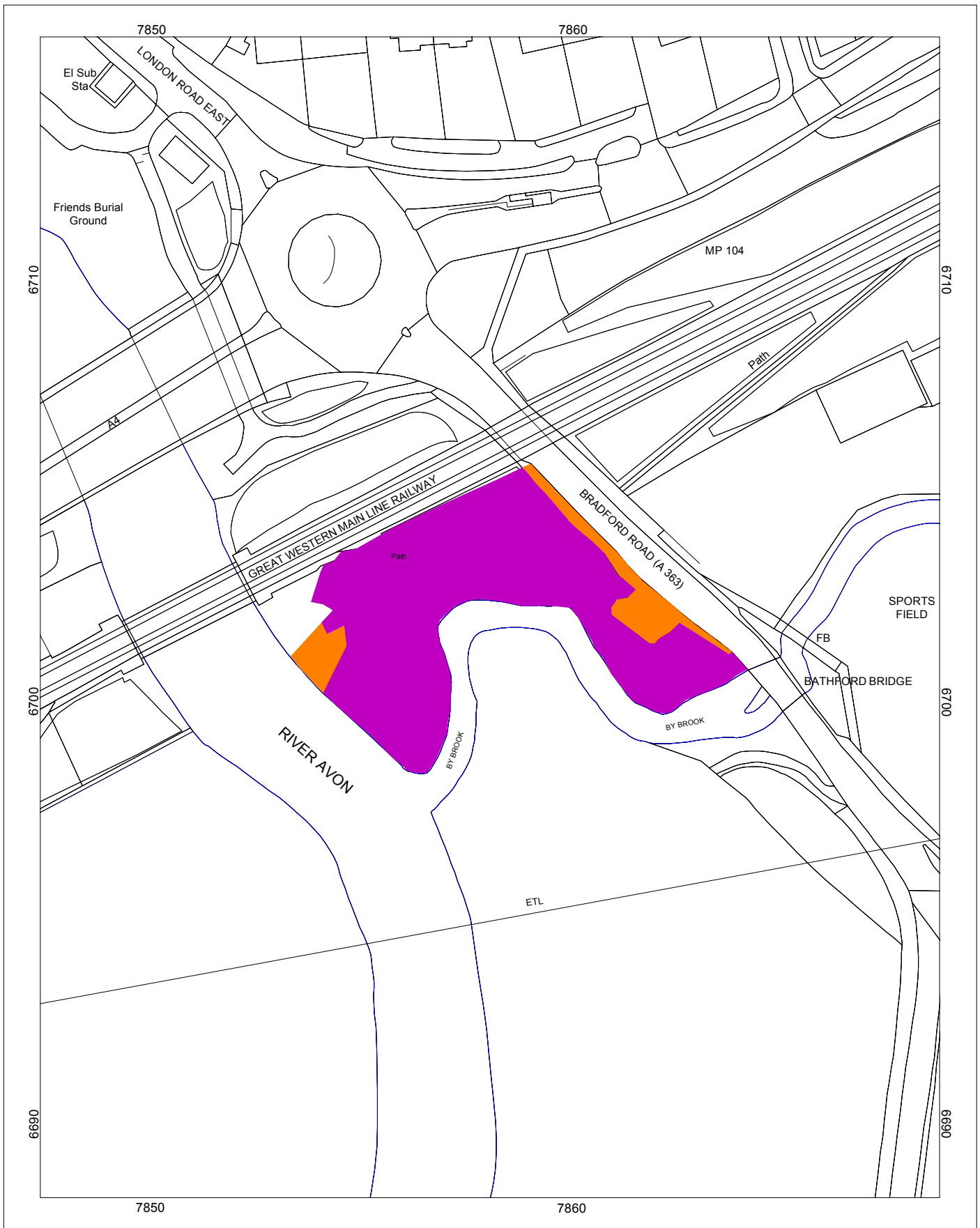
APPENDIX 1

Plan of land to which the Application relates









Land the Applicant seeks to have registered
Land that the Applicant accepts is incapable of registration

Scale 1:1250

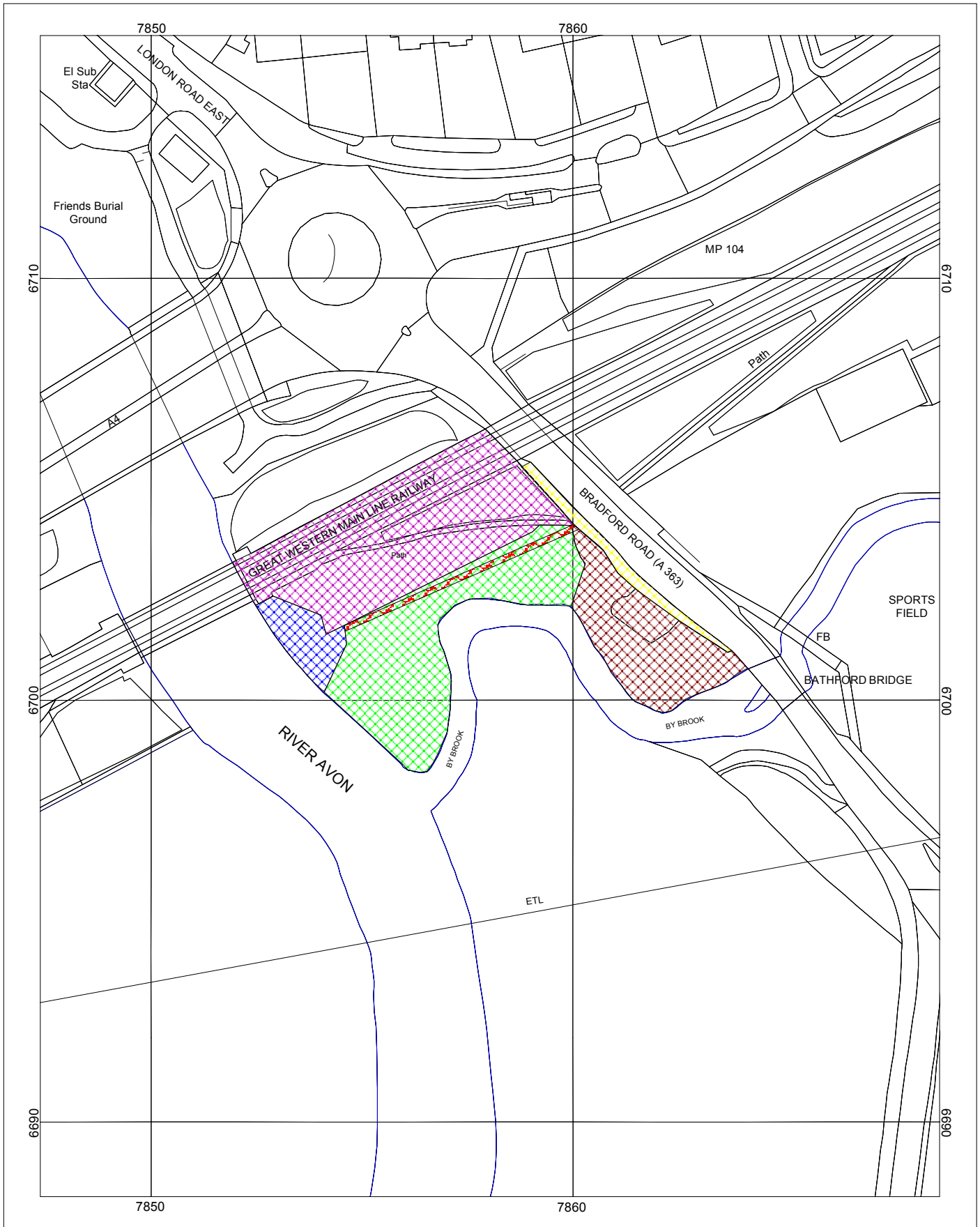


APPENDIX 3 Landownership

Network Rail	
Environment Agency	
Mr and Mrs Waterman	
Vested in Highway Authority	
Unknown	
Wales and West Easement	



Scale 1:1250

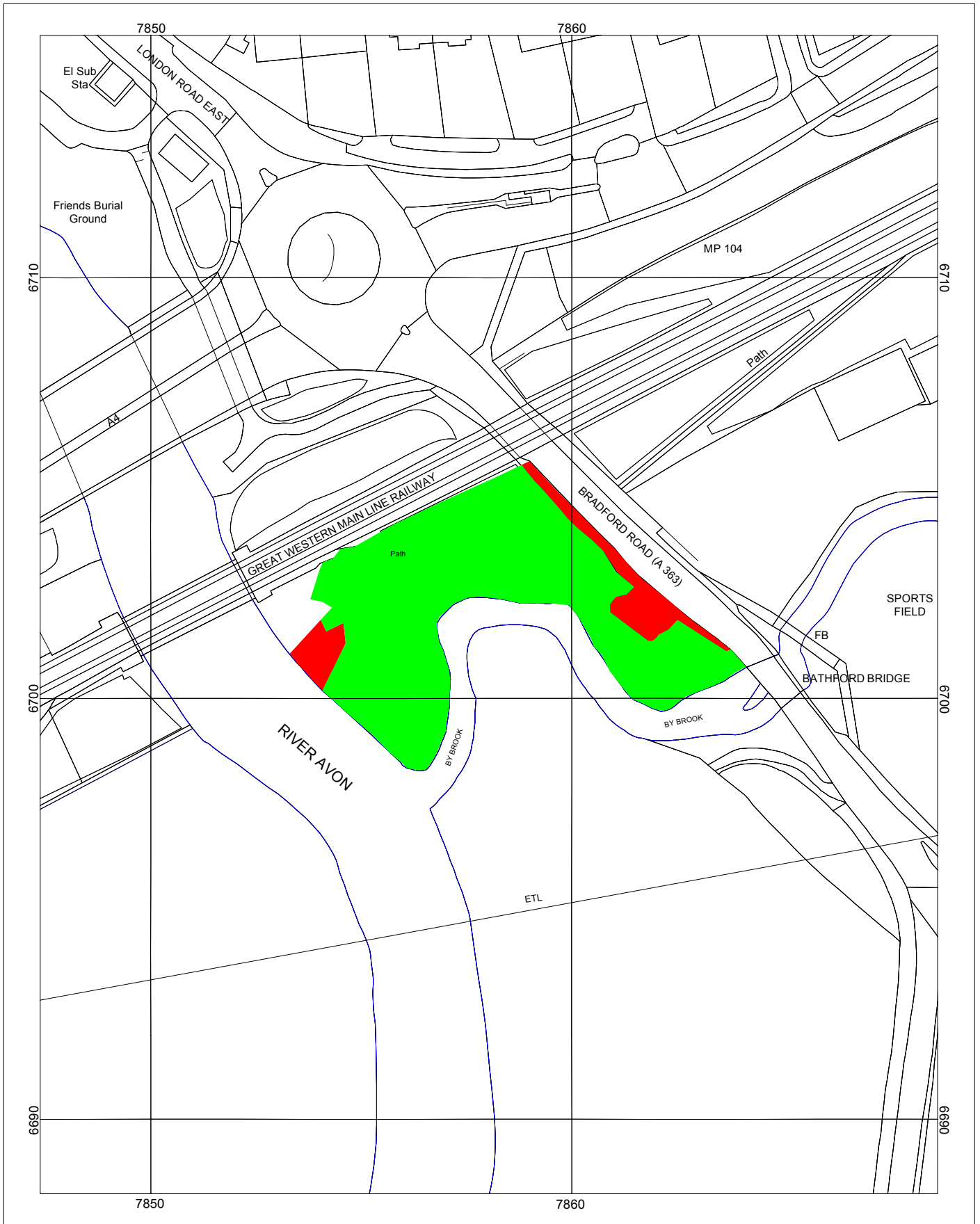


APPENDIX B Withy Bed (TVG15/2)



Land the Applicant seeks to have registered
Land that the Applicant accepts is incapable of registration

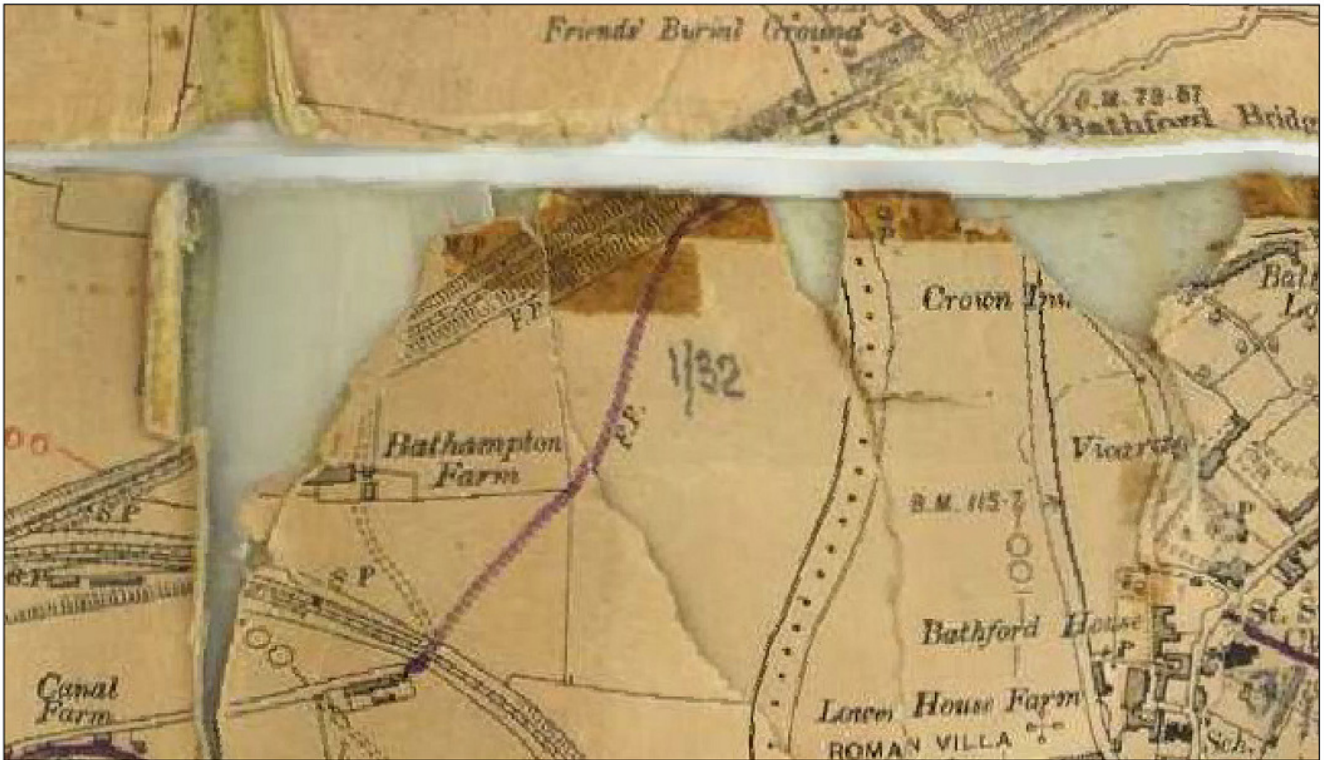
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APPENDIX C Definitive Map



Bath & North East
Somerset Council



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Definitive Statement

(1) PARISH NO. OF PATH: 52

(2) CONCISE DESCRIPTION OF PATH (TO INCLUDE WIDTH, NATURE OF SURFACE, MEANS OF ACCESS, OBSTRUCTIONS, ETC.)

SYMBOLS TO BE USED IN BOX (5) BELOW

Footpath F.P.
Bridle Road (including Driftway for Cattle) B.R.
Carriage or Cart Road or Green (unmetalled lane) mainly used by Public as a public path C.R.P.

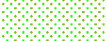
FROM: Canal Road
TO: G.W.R. main line fence east
DESCRIPTION: THE PATH IS A F.P. IT STARTS AT eastern end of Canal Road and runs north west across GWR (Bathampton Branch) line and thence across two fields to GWR main line boundary fence. Over stile it continues as a private path.

S/N/189

TITLE BELOW THIS LINE

(3) NAME OF PARISH	(4) No. of Path	(5) Kind of Path	(6) Shown on 6 Ord. Sht. No.	(7) DATE OF WALKING SURVEY & BY WHOM MADE
Bathampton	32	F.P.	8 SE 14 NE	0.35km
Bathampton	37	F.P.	14 N.W.	0.2km

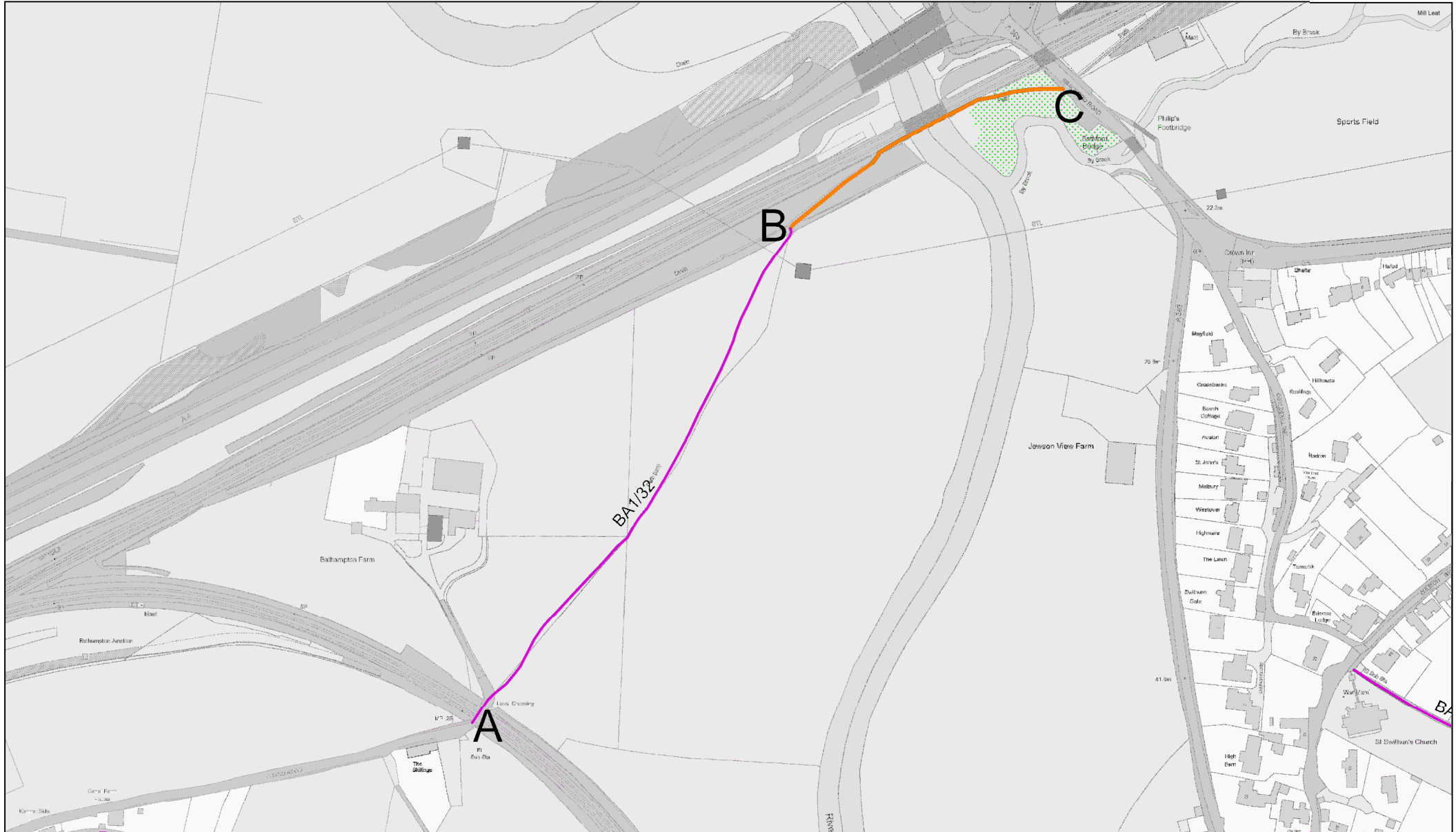
APPENDIX C Working Copy

Recorded public footpath **A** ————— **B**
Unrecorded path **B** ————— **C**
TVG Application Land 

Scale 1:1250

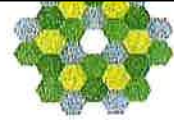


**Bath & North East
Somerset Council**



Land Registry
Official copy of
title plan

Title number **ST140194**
Ordnance Survey map reference **ST7867SE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Bath and North East Somerset**



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Key

1. Environment Agency
2. M Waterman
3. Network Rail ~ lower embankment
4. Network Rail ~ upper embankment
5. The Pound
6. Car Park
7. Footpath
8. Rights Strip ~ 6 metres wide
(3 metres wide either side of broken line edged in blue)
9. Pavement

Area by Percentage %

1. 5.88
2. 24.14* ~ [2 + 8 = 38.62]
3. 15.76
4. 10.77
5. 17.20
6. 3.00
7. 4.55
8. 14.88*
9. 4.22

