



# Bath & North East Somerset Council



## DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

### STOCKLAND END LANE

Date: 15/05/2024

# **INVESTIGATION REPORT**

**AUTHOR:** GRAEME STARK

**DATE:** 15/05/2024

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 footpath.

This report summarises the evidence of 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 final decision will be based upon the contents of this report together with any further comments, documents and other evidence supplied by landowners, consultees and other interested parties.

The plan attached at page 4 shows the location of the route under investigation in Bishop Sutton in the parish of Stowey Sutton.

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 Steve Ward on 20<sup>th</sup> October 2021, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement.

### 4. THE ROUTE

The route under investigation commences from a junction with public footpath CL20/20 at grid reference ST 5865 5936 (point A on the Investigation Plan on page 4 below) (fig.1) and proceeding in a generally east-north-easterly direction for approximately 119 metres to a junction with Church Lane at grid reference ST 5876 5940 (Point B on the Investigation Plan) (fig.4). This route is hereafter referred to as “the Application Route”.



Fig. 1: From CL20/20 looking ENE



Fig. 2: 20 South of Highmead Gardens

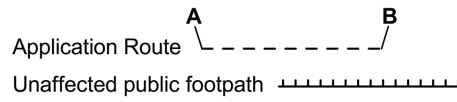


Fig. 3: South of Sutton Cottage

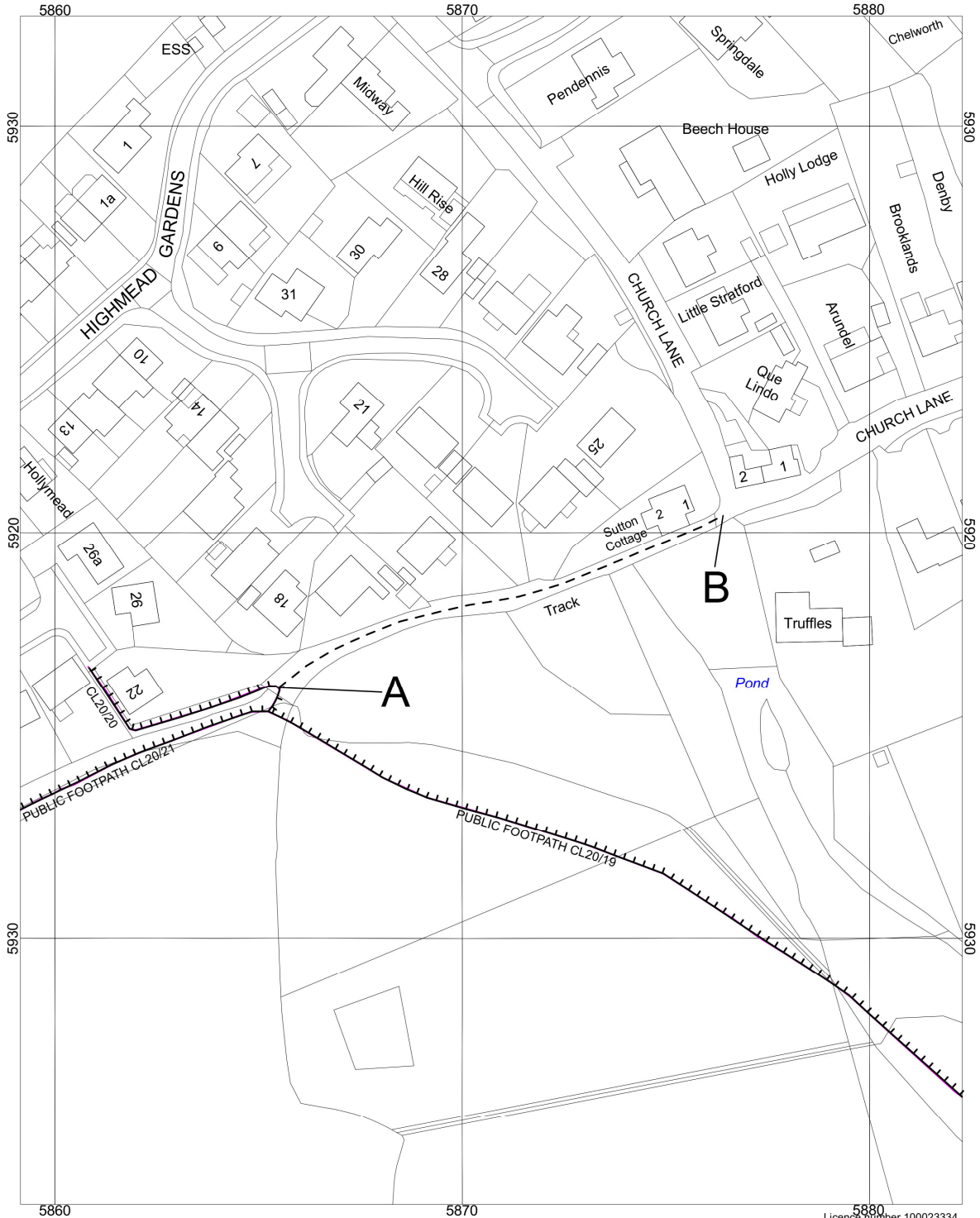


Fig. 4: From Church Lane looking WSW

**INVESTIGATION PLAN**



Scale 1:1250



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Licence number 100023334

## 5. DOCUMENTARY EVIDENCE

Doc No.	DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE	DOCUMENT REFERENCE (& 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 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.	Mortgage of Stokeley Lane End and Stockland End	1813	<p><b>These can provide evidence that a route was in existence long before the earliest available map showing roads, by describing a plot as "abutting on the east side the highway leading from x to y".</b></p> <p>The mortgage documents do not refer to the Application Route.</p>	DD/FS/30/2/3-4 (SHC)
			This does not provide any evidence relating to the Application 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 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><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. However, the maps do mark roads quite accurately and can provide useful supporting evidence (in conjunction with the Tithe award) to other documents.</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. Some awards contain additional information from which status of ways may be inferred.</b></p>	D/D/rt/M/285 D/D/rt/A/285 (SHC)

			The Application Route is shown as a continuation of what is now public footpath CL20/21 and they are collectively labelled 'Stockland End Lane'. The Application Route is bounded on either side by solid black lines and unbound as either end from what is now the recorded highway network. The Application Route does not have a parcel number and the Tithe Apportionment does not levy any tithe against the land over which the Application Route runs.	
	Investigating Officer's comments		This suggests that the Application Route was a public highway.	
4.	Definitive Map records	1949-1967	<p><b>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map. Each Parish carried out a <u>Parish Survey</u>. The Parish Surveys were collated into the <u>Draft Map and Statement</u>, and given a "Relevant Date". The Draft Map was amended following the recommendations for the area, and Notice of the <u>Provisional Map</u> was published. <u>Definitive Map and Statement</u> was then produced from the Provisional Map, and included any amendments made.</b></p> <p>The Application Route isn't recorded or referred to in the Parish Survey, Draft Map, Provisional Map or Definitive Map and Statement.</p>	(PROW)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
5.	Ordnance Survey maps		<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 Application Route is shown bordered by solid black lines on the Ordnance Survey Six-inch to the mile maps dated 1884 and 1903 and the 1:10,560 maps dated 1961 and 1967, which also label the route as 'Tk' [track].</p>	
	Investigating Officer's comments		This indicates that the Application Route has physically existed since at least 1884.	

Notes: These documents are available for inspection; please note that the references are as follows  
SHC = Somerset Heritage Centre                      PROW = Documents held within the Public Rights of Way Team

## 6. USER EVIDENCE

23 user evidence forms were received by the Authority. The evidence of use of the Application Route on foot is summarised in the chart below; user 23 also stated that they used the Application Route on horseback between 1970 and 1971. All users state that their use was without force, secrecy or permission; furthermore, no users state that they ever found the Application Route obstructed or that they were ever turned back.

