

**Democratic Services**

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Date: 4 December 2012

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**To: All Members of the Regulatory (Access) Committee**

Councillor Mathew Blankley (In place of Councillor Peter Edwards)

Councillor Nicholas Coombes

Councillor Douglas Deacon

Councillor Peter Edwards

Councillor Jeremy Sparks

Councillor Tim Warren

Chief Executive and other appropriate officers

Press and Public

Dear Member

**Regulatory (Access) Committee: Tuesday, 18th December, 2012**

You are invited to attend a meeting of the **Regulatory (Access) Committee**, to be held on **Tuesday, 18th December, 2012 at 6.30 pm** in the **YDA Hall, Norton Malreward, Pensford, Bristol, BS39 4EX.**

The agenda is set out overleaf.

A briefing meeting for members will commence at 5.30pm.

Yours sincerely



Jack Latkovic  
for Chief Executive

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*This Agenda and all accompanying reports are printed on recycled paper*



## NOTES:

1. **Inspection of Papers:** Any person wishing to inspect minutes, reports, or a list of the background papers relating to any item on this Agenda should contact Jack Latkovic who is available by telephoning Bath 01225 394452 or by calling at the Riverside Offices Keynsham (during normal office hours).
2. **Public Speaking at Meetings:** The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. Advance notice is required not less than two full working days before the meeting (this means that for meetings held on Wednesdays notice must be received in Democratic Services by 4.30pm the previous Friday)

The public may also ask a question to which a written answer will be given. Questions must be submitted in writing to Democratic Services at least two full working days in advance of the meeting (this means that for meetings held on Wednesdays, notice must be received in Democratic Services by 4.30pm the previous Friday). If an answer cannot be prepared in time for the meeting it will be sent out within five days afterwards. Further details of the scheme can be obtained by contacting Jack Latkovic as above.

3. **Details of Decisions taken at this meeting** can be found in the minutes which will be published as soon as possible after the meeting, and also circulated with the agenda for the next meeting. In the meantime details can be obtained by contacting Jack Latkovic as above.

Appendices to reports are available for inspection as follows:-

**Public Access points** - Riverside - Keynsham, Guildhall - Bath, Hollies - Midsomer Norton, and Bath Central, Keynsham and Midsomer Norton public libraries.

**For Councillors and Officers** papers may be inspected via Political Group Research Assistants and Group Rooms/Members' Rooms.

4. **Attendance Register:** Members should sign the Register which will be circulated at the meeting.
5. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.
6. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are sign-posted.

Arrangements are in place for the safe evacuation of disabled people.

**Regulatory (Access) Committee - Tuesday, 18th December, 2012**

**at 6.30 pm in the YDA Hall, Norton Malreward, Pensford, Bristol, BS39 4EX**

**A G E N D A**

1. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS
2. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

- (a) The agenda item number in which they have an interest to declare.
- (b) The nature of their interest.
- (c) Whether their interest is **a disclosable pecuniary interest** or an **other interest**,  
(as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer before the meeting to expedite dealing with the item during the meeting.

3. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN
4. ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

There will be few speakers to address the Committee under agenda items 8 and 9. A full list of speakers will be available at the meeting.

5. ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

To deal with any petitions or questions from Councillors and where appropriate co-opted members.

6. MINUTES OF PREVIOUS MEETING (Pages 7 - 12)
7. EMERGENCY EVACUATION PROCEDURE

The Chairman will draw attention to the emergency evacuation procedure as set out under Note 6.

8. MANOR FARM (NORTON MALREWARD) DEFINITIVE MAP MODIFICATION ORDER 2012 CL15/11 (Pages 13 - 94)

Bath and North East Somerset Council, in its capacity as the surveying authority, ("the Authority") is required to submit the Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) (No. 2) Definitive Map Modification Order 2012 ("Order No. 2") (see Appendix 1) to the Secretary of State for determination and it falls to the Regulatory (Access) Committee ("the Committee") to consider what position the Authority should adopt during the determination of Order No. 2

The Regulatory (Access) Committee is recommended to resolve that the Authority should oppose confirmation of Order No. 2.

9. HOLY TRINITY CHURCH DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION (Pages 95 - 118)

The Regulatory (Access) Committee ("the Committee") resolved that officers should investigate whether unrecorded public rights exist over a route to the south of Holy Trinity Church in Norton Malreward. An investigation has been carried out and it now falls to the Committee to determine whether a Definitive Map Modification Order ("DMMO") should be made to modify the Definitive Map and Statement ("the DM&S") based upon the evidence discovered.

The Committee is recommended to resolve that a DMMO should not be made to record additional public rights to the south of Holy Trinity Church on the DM&S.

10. UPDATE OF DEFINITIVE MAP ORDER AND PUBLIC PATH ORDER WORK (Pages 119 - 122)

The Committee Administrator for this meeting is Jack Latkovic who can be contacted on 01225 394452.

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**BATH AND NORTH EAST SOMERSET**

**REGULATORY (ACCESS) COMMITTEE**

Wednesday, 30th May, 2012

**Present:—Councillors:** Nicholas Coombes (Chair), Douglas Deacon, Jeremy Sparks, Tim Warren and Mathew Blankley (In place of Peter Edwards)

**1 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer drew attention to the emergency evacuation procedure as set out on the Agenda.

**2 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apology for absence was received from Councillor Peter Edwards. Councillor Mathew Blankley was his substitute for this meeting.

**3 DECLARATIONS OF INTEREST UNDER THE LOCAL GOVERNMENT ACT 1972**

There were none.

**4 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN**

There was none.

The Chair informed the meeting that the original venue for this meeting was the Chamber in Keynsham Town Hall. However, due to the sudden closure of Keynsham Town Hall the venue changed to Council Chamber in the Guildhall. The Chair said that the officers looked for alternative venues in Pensford, Keynsham, Farmborough and Whitchurch and none was available hence why this venue (Guildhall).

**5 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS**

The Committee noted that there was one speaker, Mrs Marlene Masters, who will address the Committee under item 9 on the agenda (Manor Farm DMMO application). Mrs Maters will have up to 5 minutes for her statement.

**6 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS**

The Committee noted that they received and read correspondence (emails and letters) from Councillor Malcolm Hanney (Chew Valley North Ward Councillor) related to item 8 on the agenda (Principles of operation for the Regulatory Access Committee) and also for item 9 on the agenda (Manor Farm DMMO application).

## **7 MINUTES OF PREVIOUS MEETING 29/11/2011**

It was **RESOLVED** that the minutes of the meeting on Tuesday 29<sup>th</sup> November 2011 be confirmed as a correct record and signed by the Chair subject to the following amendments:

- Councillor Nicholas Coombes was in attendance and to be added to the list of present Councillors for that meeting.
- Minute 67 – it was Councillor Nicholas Coombes who seconded a motion from Councillor Tim Warren on Rudmore Park TVG registration application.

## **8 PRINCIPLES OF OPERATION FOR THE REGULATORY (ACCESS) COMMITTEE - COMMITTEE PROCEDURES**

Graeme Stark (Senior Rights of Way Officer) introduced the report to the Committee.

Regulatory (Access) Committee Principles of Operation that are currently in place are substantially different to the Authority's Principles of Operation for other committees. It has been concluded that there is no need for these substantial differences to exist and they could potentially lead to confusion for members of the public. The proposed 'Principles of Operation for the Regulatory (Access) Committee' sets out revised Principles of Operation which are substantially in line with those of other committees.

The Chair said that the new Principles of Operation makes this Committee more publicly accessible as it reduces the time needed to submit something for the agenda from six weeks down to four and reduces time needed to register to speak from five days to two.

The Committee confirmed that they all received note from Councillor Malcolm Hanney related to this agenda item. The Chair said that a comment from Councillor Hanney about no specific provision for Ward and Parish/Town Councillors' statements is a valid one and there should be a provision added in section 7 for them to contribute to the Committee proceedings in that role.

Councillor Tim Warren agreed with the comments from the Chair.

On a motion from Councillor Nicholas Coombes and seconded by Councillor Tim Warren it was unanimously **RESOLVED** to adopt new Principles of Operation for the Regulatory (Access) Committee.

On a motion from Councillor Jeremy Sparks and seconded by Councillor Douglas Deacon it was unanimously **RESOLVED** that newly adopted Principles of Operation for the Regulatory (Access) Committee should have a provision for Ward and Parish/Town Councillors' statements (added in section 7) in order to contribute to the Committee proceedings in that role.

## **9 MANOR FARM DEFINITIVE MAP MODIFICATION ORDER APPLICATION**

The Chair invited Mrs Marlene Masters to read her statement to the Committee.

Mrs Masters said that she was previously the investigating researcher in this case and that she examined all the original relevant historical documents and some which had not been discovered. Mrs Masters also said that her interpretation of the historical documentary evidence was accepted by the Inquiry Inspector appointed on behalf of the Secretary of State that no public vehicular rights could be shown to exist on that path and there is no reason to believe that her interpretation of documents is in any way flawed. The case is a simple one of error. Mrs Masters listed the evidence details in her statement and requested the Committee to either reject the officer's recommendation or defer it for a site visit.

*A full copy of the statement from Mrs Marlene Masters is available on the minute book in Democratic Services.*

Members of the Committee and officers confirmed that they all received and read the letter and email from Councillor Malcolm Hanney (Chew Valley North Ward Councillor) in respect of the Manor Farm application (available on the minute book in Democratic Services). In summary, Councillor Hanney also asked the Committee to either reject the officer's recommendation or that the paper is withdrawn for further work including consultation on a revised Investigation Report.

The Chair invited Graeme Stark to introduce the report and give a short presentation. Graeme Stark stated that an application was made in 1998 to delete bridleway CL15/11 from the Definitive Map and Statement and that there was no indication why the application had not been previously processed. Graeme Stark described the Application Route and stated that it was recorded on the Definitive Map and Statement in 1956 and was the subject of a reclassification order in 1989. Graeme Stark advised Members that the paper on Public Rights of Way submitted by an Interested Party contained at Annex 8 should be disregarded as a statement of law. Graeme Stark then briefly summarised the relevant law and Circular 1/09 which he added was set out at Appendix 7. The available evidence was then summarised and it was stated that there is insufficient evidence to show on the balance of probabilities that an error was made when the Application Route was recorded as a public right of way on the Definitive Map and Statement. The officer recommendation was that the committee should resolve not to make an order to delete bridleway CL15/11 from the Definitive Map and Statement.

The Committee debated this matter and raised the following points:

Councillor Warren asked if the path is used or not and if there is an alternative route.

Graeme Stark replied that there is clear evidence of use but a section of the Application Route has been obstructed and the public use a non-legal line to get from the start of the path until end.

The Chair asked what the definition of 'new evidence' is in this case. At which point does it have to be new from.

Graeme Stark replied that the evidence needs to be 'new' subsequent to the Application Route's recording on the Definitive Map and Statement.

The Chair said that the Committee was being asked to delete the entire length of right of way and asked whether the Committee has to, after the debate, delete the entire length or whether they would have the power to delete a part, or most, of it.

Graeme Stark replied that the application itself relates to full length of the path. If the Committee consider that some of the length was public rights of way and some wasn't, they can reflect that in their decision.

The Chair asked if the Committee could have options to delete part of the rights of way.

Graeme Stark replied that the application relates to the whole path. Committee decision must be based on the evidence which shows whether or not public rights exist. If the Committee believe that a section of the route existed and some other section/s didn't then they can make an order to delete that section they believe doesn't exist.

Graeme Stark explained to the Committee that the bit that was unlawfully diverted is the section between the points B and C in the map on Appendix 4 of the report (page 29). The unofficial diversion is a little bit to the south of it. That is not similar to existing route CL15/2 but it does re-join the legal line at point C.

Councillor Warren thanked Graeme Stark for the presentation and said that this would be the first time that he will not agree with the officer's recommendation and said that the Committee should make an order to delete this part. Councillor Warren also said that he would not want to defer further this matter and the Committee should delete the path. The only issue is whether to delete the whole path or just the bit that goes through the farmyard.

Whilst it was unlikely that the bridleway would end in a cul-de-sac, and bearing in mind the duty to keep the Definitive Map and Statement under continuous review is within the remit of the Committee, Councillor Deacon asked about the option of putting a new path as alternative which was not unreasonable in light of the reference by the applicant to the possible existence of a route south of the church and the indication on the Ordinance Survey maps to the possibility of an alternative route already being in existence.

Graeme Stark replied that the path could be diverted but the Committee was asked to consider something else here. The Committee was asked to consider whether or not the evidence shows that public rights of way existed or not. Any consideration of diversion would be a separate issue. Graeme Stark advised Members that any



investigation into an alternative would be limited to the possibility of an existing right rather than the creation of a new one.

The Committee felt that this path is rarely used as public rights of way considering the photographic evidence.

Graeme Stark said that there is evidence that there was little use of the path on section B to C because of the obstruction but the Committee is asked to consider whether or not there was an error in recording of the public rights of way and not how much it was used.

On a motion from Councillor Nicholas Coombes and seconded by Councillor Jeremy Sparks it was unanimously **RESOLVED** that an order should be made to delete the section A to C (through B) of the path as members were not satisfied having considered the evidence, the representations and Officer advice the disputed section could not be proven to be a public bridleway and that an order should not be made to delete C to F. The Committee also instructed officers to investigate the existence of an alternative route south of the church.

## 10 UPDATE OF DEFINITIVE MAP ORDER AND PUBLIC PATH ORDER WORK

Graeme Stark took the Committee through the report by highlighting brief details of all Definitive Map Modification Order applications and Public Path Orders (PPO) applications and current progress on each application.

Graeme Stark highlighted a trial that is currently being run with a number of PPO applicants following a new set of procedures whereby an agent acting on behalf of the applicant carries out all the non-statutory parts of the PPO process including the initial consultation and negotiations with objectors.

It was **RESOLVED** to note the report.

The meeting ended at 6.50 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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Bath & North East Somerset Council	
MEETING:	Regulatory (Access) Committee
MEETING DATE:	18 December 2012
TITLE:	Manor Farm DMMO
WARD:	Chew Valley North
AN OPEN PUBLIC ITEM	
List of attachments to this report:	
Appendix 1 –	Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) (No. 2) Definitive Map Modification Order 2012
Appendix 2 –	Definitive Map and Statement process
Appendix 3 –	Reclassification Order
Appendix 4 –	Deletion from the Definitive Map and Statement
Appendix 5 –	Evidence
Appendix 6 –	Objections and representations

## 1. THE ISSUE

- 1.1 Bath and North East Somerset Council, in its capacity as the surveying authority, (“**the Authority**”) is required to submit the Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) (No. 2) Definitive Map Modification Order 2012 (“**Order No. 2**”) (see Appendix 1) to the Secretary of State for determination and it falls to the Regulatory (Access) Committee (“**the Committee**”) to consider what position the Authority should adopt during the determination of Order No. 2

## 2. RECOMMENDATION

- 2.1 The Regulatory (Access) Committee is requested to decide whether to support, oppose or take a neutral stance regarding confirmation of Order No. 2 which it was previously satisfied to make.

## 3. FINANCIAL IMPLICATIONS

- 3.1 Financial implications are not a relevant consideration which may be taken into account under the provisions of the Wildlife and Countryside Act 1981 (“**the 1981 Act**”). The Authority’s costs associated with the determination of Order No. 2 are likely to total in the region of £2,500 if external legal representation is not considered necessary; this will be met from existing public rights of way budgets in 2013/14. These costs include the venue and advertising of the public inquiry/hearing, legal fees and the officer time required to prepare for, and attend, the public inquiry/hearing. These costs are likely to increase by approximately £7,500 if the Authority considers that external legal representation is necessary at the inquiry/hearing.

- 3.2 Paragraph 9.1 of DEFRA's Rights of Way Circular 1/09 deals with the issue of costs awards to parties at a hearing or inquiry and states;

*"The parties in rights of way proceedings that arise when a rights of way order is submitted to the Planning Inspectorate for confirmation are normally expected to meet their own expenses. In these cases, unlike with civil litigation, an award of costs does not necessarily follow the outcome. In other words costs are not simply awarded to the party in whose favour the judgement goes. Subject to the exceptions outlined in paragraphs 9.6 to 9.9 [of Circular 1/09], costs are awarded only on grounds of "unreasonable" behaviour. The Planning Inspectorate may order that one party pay the costs of another in a case where:*

- 1. that party has behaved "unreasonably" ; and,*
- 2. the unreasonable behaviour has caused the other party to incur unnecessary costs that they would not otherwise have incurred."*

#### **4. THE REPORT**

- 4.1 The Authority is under a legal duty to keep the DM&S under continuous review under the 1981 Act.
- 4.2 On 31 March 1998, Mr M J P Pye, Mrs R A Pye and Mr J G Jones ("**the Applicants**") made an application for a Definitive Map Modification Order ("**DMMO**") to be made to delete "*bridleway CL15/11 from Norton Malreward village to Parish Boundry*" (sic.) from the DM&S on the ground that the route is not a public right of way. On 30 May 2012, the Committee resolved that a DMMO should be made to delete from the Definitive Map and Statement ("**the DM&S**") the section of bridleway CL15/11 running from a junction with restricted byway CL15/11 to a junction with public footpath CL15/2 on the grounds that it was not a public right of way. The Committee also resolved that a DMMO should not be made to delete the remainder of bridleway CL15/11 from the DM&S; the Applicants did not lodge an appeal against this decision under schedule 14(4) of the 1981 Act.
- 4.3 On 18 July 2012 the Authority made the Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) Definitive Map Modification Order 2012 ("**Order No. 1**"). The map which forms part of Order No. 1 was subsequently scrutinised by officers and it transpired that the map is fatally flawed. Consequently, on 11 September 2012 the Authority's Senior Rights of Way Officer authorised for Order No. 1 to be submitted to the Secretary of State with a recommendation that Order No. 1 is not capable of confirmation. Furthermore, a new DMMO was authorised to be made to give effect to the Committee's intentions as expressed at the meeting on 30 May 2012.
- 4.4 On 18 September 2012, the Authority made Order No. 2 which seeks to delete the section of bridleway CL15/11 commencing from a junction with restricted byway CL15/11 at grid reference ST 6033 6509 (Point A on the Order Map contained at Appendix 1 ("**the Order Map**")) and continuing in a generally easterly then southeasterly direction for approximately 84 metres to a junction with public footpath CL15/2 at grid reference ST 6041 6508 (Point B on the Order Map); this route is hereafter referred to as "**the Order Route**". Order No. 2 is therefore made pursuant to the Committee's resolution made on 30 May 2012 and referred to in paragraph 4.2 above.

- 4.5 The making of Order No. 2 was duly advertised in accordance with schedule 15(3) of the 1981 Act and consultees were informed that objections previously received in respect of Order No.1 would be considered to apply to Order No. 2 unless the objectors informed the Authority otherwise. In addition to the 48 objections originally received against Order No. 1, the Authority also subsequently received 7 additional objections against Order No. 2. This brings the total number of objections to 55 and the total number of representations to four; all objections and representations are contained at Appendix 6. In light of the outstanding objections, the Authority is required under schedule 15(7) of the 1981 Act to submit Order No. 2 to the Secretary of State for determination. The Secretary of State has authorised the Planning Inspectorate to determine DMMOs on his behalf and the Planning Inspectorate will appoint an Inspector for this purpose.
- 4.6 However, before Order No. 2 is submitted to the Planning Inspectorate for determination it falls to the Committee to consider the objections and to decide whether the Authority should support confirmation, oppose confirmation or take a neutral stance during the determination of Order No. 2. The Committee's decision should be based upon whether or not the available evidence shows the Order Route to be a public right of way.
- 4.7 The Order Route was originally recorded on the DM&S which has a relevant date of 26 November 1956. The DM&S, the process involved in the production of the DM&S and the process involved in the inclusion of the Order Route on the DM&S are discussed at Appendix 2.
- 4.8 In 1989 the Order Route was the subject of a Reclassification Order and two public inquiries together with a High Court hearing which was subsequently held, as discussed at Appendix 3. This Reclassification Order process was concerned with whether or not the Order Route should be reclassified as another status of public right of way. The purpose of the Reclassification Order, public inquiries and High Court hearing did not principally consider whether or not the Order Route was a public right of way. Subsequent to the conclusion of the Reclassification Order process, the Applicants submitted their Application contending that there are no public rights over the Order Route.
- 4.9 If Order No. 2 is to be confirmed, the Inspector must be satisfied that there is no public right of way over the Order Route. To arrive at such a conclusion the evidence must fulfil certain requirements:
- the evidence must be new,
  - the evidence must be of sufficient substance to displace the presumption that the DM&S is correct,
  - the evidence must be cogent.

Paragraphs 4.30 to 4.35 of DEFRA's Rights of Way Circular 1/09 provide guidance on what is required to delete a route from the DM&S. Extracts from this Circular, the relevant statutory and regulatory provisions and case law are contained at Appendix 4.

- 4.10 The grounds for objection broadly fall into two groups; firstly, that the evidence does not demonstrate that the Order Route is not a public rights of way and, secondly, that deleting the Order Route from the DM&S would inconvenience path users and would increase the risk to horseriders. The former of these grounds are legally relevant and the associated matters are addressed in paragraphs 4.12 to 4.15 below and in Appendix 5. The second group are not a relevant consideration as detailed in the Planning Inspectorate's Advice Note No. 7 and these grounds should therefore be disregarded by the Committee.
- 4.11 Previous to the making of Order No. 2, the Authority's Senior Rights of Way Officer examined all the available evidence in the Authority's possession comprising that which has been submitted by Applicants and consultees and that held at the Somerset Heritage Centre in Taunton and The National Archives in Kew. This evidence is detailed and assessed in Appendix 5.
- 4.12 The following documents provide evidence that, at the time they were surveyed or produced, at least a section of the Order Route physically existed:
- 1" Ordnance Survey map (1830)
  - 1:2500 Ordnance Survey map (1903)
  - 1:2500 OS map (1986)
  - User Letter (1989)
  - Sale Particulars Plan (1992)
- 4.13 The following documents which relate to the Order Route, or land adjacent to the Order Route, do not provide evidence of either the physical existence of the Order Route or whether the Order Route was a public right of way:
- Langdon Estate Survey (1693)
  - Norton Malreward Deeds (1718-1799)
  - Day and Masters' Map (1782)
  - 1" Ordnance Survey map (1809)
  - Norton Malreward Tithe Map and Award (1840)
  - Railway Plans (1860-1886)
  - Vestry Minute Book (1861)
  - Finance Act documents (1910-1914)
  - Building Control Plans (1914)
  - Take Over Map (1929)
  - Bartholomew's Map (1945)
  - 1:2500 Ordnance Survey map (1958)
  - Land Registry Title Plans (1992)
- 4.14 A letter from the then landowner Mr Young (1990) contained at Fig. 18 of Appendix 5 and the Statutory Declaration of Mr Goldstone's (1997) contained at Fig. 23 of Appendix 5 suggest that the Order Route was not physically passable. However, this evidence must be weighed in balance with other evidence, particularly that detailed in paragraph 4.12 above and the email from Mr Young's daughter (2012) contained at Fig. 19 of Appendix 5. Mr Young's letter and Mr Goldstone's Statutory Declaration rely upon recollections of events which took place several decades earlier; whereas, with the exception of the User Letter, the authoritative documents detailed in paragraph 4.12 were produced following contemporaneous surveys. On balance the Senior Rights of Way Officer considers that the Order Route did physically exist and was passable by pedestrians, equestrians and cyclists prior to, and at the time of, the DM&S's Relevant Date of 26 November 1956.

- 4.15 Aside from the DM&S, it is considered by the Senior Rights of Way Officer that the documents listed above and considered at Appendix 5 provide modest evidence of the existence of public rights over the Order Route on the Relevant Date of 26 November 1956. Notwithstanding that, the approach in relation to the confirmation of Order No. 2 must be whether there is the necessary clear and cogent evidence to remove the public rights of way over the Order Route from the DM&S and whether it has been demonstrated that an error was made when the Order Route was originally recorded. As stated in paragraph 4.34 of DEFRA's Rights of Way Circular 1/09, it is not for those supporting the continued recording of the Order Route to demonstrate that the DM&S reflects the true rights, but for those seeking deletion to show that an error was made and that the Order Route should be deleted.
- 4.16 In light of the Committee's previous decision and any new information and objections it may be necessary to revisit the Committee's earlier approach to how to deal with Order No. 2 at the inquiry.
- 4.17 If the Committee considers that there is insufficient cogent evidence to show on the balance of probabilities that an error was made when the Order Route was recorded as a public right of way on the DM&S the Authority should oppose confirmation of Order No. 2 when it is being determined by the Inspector.
- 4.18 If the Committee considers that there is sufficient cogent evidence to show on the balance of probabilities that an error was made when the Order Route was recorded as a public right of way on the DM&S the Authority should support confirmation of Order No. 2 when it is being determined by the Inspector.
- 4.19 Alternatively, the Authority can take a neutral stance if the Committee considers this to be the appropriate position to adopt. Paragraph 7 of the Planning Inspectorate's Rights of Way Section Advice Note No. 1 states; *"There may...be occasions where the [Authority] supported the initial making of the order but advertisement brought to light new information, further evidence or valid objections which caused the [Authority] to conclude that confirmation was not justified. Again, the [Authority] may opt to actively oppose confirmation of the order or it may choose to remain neutral as regards confirmation."* If the Committee resolves that the Authority should take a neutral stance then the Applicants, or any other supporter of Order No. 2, will have the opportunity to present the case for confirmation of Order No. 2.
- 4.20 Importantly, if the options in paragraphs 4.17, 4.18 and 4.19 are considered justified by the Committee the Planning Inspectorate will require an indication of the Committee's reasons for doing so.

## **5. RISK MANAGEMENT**

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

## **6. EQUALITIES**

- 6.1 An Equalities Impact Assessment has not been completed because the impact upon equalities is not a consideration which may be taken into account under the provision of the 1981 Act.

- 6.2 The Authority's position with regards to Order No. 2 must be based solely on the available evidence which indicates whether or not a public right of way exists. The Authority cannot take into consideration the desirability or suitability of the Order Route. The 1981 Act does not permit personal considerations to be taken into account.

## **7. CONSULTATION**

- 7.1 The Authority wrote to all owners of land over which the Order Route runs, the Applicants, Statutory Undertakers, national and local user groups, Norton Malreward Parish Council, the Ward Councillor and interested individuals. Consultees were provided with a copy of Order No.2 and the accompanying statutory notice. Interested parties and all other members of the public then had 42 days during which they could object to Order No.2.
- 7.2 As stated in paragraph 4.5 above, objections and representations to Order No. 1 were considered to apply to Order No. 2. A total of 55 objections and four representations were received by the Authority. The objections and representations are contained at Appendix 6 and the contents of the objections are considered in paragraph 4.10 above.

## **8. ISSUES TO CONSIDER IN REACHING THE DECISION**

- 8.1 The issues to be considered in reaching the decision are detailed in the body of the Report and in Appendix 4.

## **9. ADVICE SOUGHT**

- 9.1 The Authority's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

<b>Contact person</b>	Graeme Stark, Senior Rights of Way Officer (Telephone 01225 477650)
<b>Background papers</b>	DEFRA's Rights of Way Circular 1/09 Planning Inspectorate Rights of Way Section Advice Note No. 1 Planning Inspectorate Rights of Way Section Advice Note No. 7 Inspector's Decision Report into the Inspector's Decision Report dated 28 May 1997
<b>Please contact the report author if you need to access this report in an alternative format</b>	



**WILDLIFE AND COUNTRYSIDE ACT 1981**

1208

**Somerset County Council, Clutton Rural District Definitive Map and Statement**

**Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward)**  
**(No. 2) Definitive Map Modification Order 2012**

This Order is made by Bath and North East Somerset Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the Act') because it appears to that authority that the Definitive Map and Statement for Somerset County Council, Clutton Rural District require modification in consequence of the occurrence of an event specified in section 53(3)(c)(iii), namely, the discovery by the authority of evidence which (when considered with all other evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description.

The authority has consulted with every local authority whose area includes the land to which the order relates. The Bath and North East Somerset Council hereby order that:

1. For the purposes of this order the relevant date is 12<sup>th</sup> September 2012.
2. The Definitive Map and Statement for Somerset County Council, Clutton Rural District shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This order shall take effect on the date it is confirmed and may be cited as the Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) (No. 2) Definitive Map Modification Order 2012.

Given under the Common Seal of the Bath and North East Somerset Council the 18th day of September 2012.

The COMMON SEAL of the  
BATH AND NORTH EAST SOMERSET  
COUNCIL

was hereunto affixed  
in the presence of:-



Authorised signatory



Authority for Sealing:  
minute 9 of Regulatory (Access) Committee  
meeting of 30/05/12.

## SCHEDULE

### PART I

#### Modification of Definitive Map

##### Description of path or way to be deleted

A section of bridleway CL15/11 commencing from a junction with restricted byway CL15/11 at grid reference ST 6033 6509 (Point A on the Order Map) and continuing in a generally easterly then southeasterly direction for approximately 84 metres to a junction with public footpath CL15/2 at grid reference ST 6041 6508 (Point B on the Order Map).

### PART II

#### Modification of Definitive Statement

##### Variation of particulars of path or way

The Statement for CL15/11 shall be amended to read as follows:

**Path Number:** CL15/11

**Status:** Restricted Byway/Bridleway

**Length:**

**Ward / Parish:** Norton Malreward

**Width:**

**Limitation:**

Description of Route				
From		General Direction	To	
County Road or Right of Way	Grid Reference		County Road or Right of Way	Grid Reference
Manor Farm			BOAT CL18/31	

##### **General Description:**

The path starts as a restricted byway at county road by Manor Farm and runs to grid reference ST 6033 6509. The path recommences as a public bridleway from a junction with public footpath CL15/2 at grid reference ST 6041 6508 and runs south easterly across fields to Parish Boundary where it continues as BOAT CL18/31.

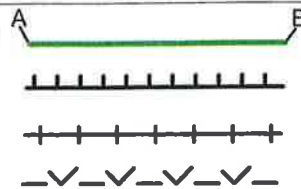
**This map forms part of the  
Bath and North East Somerset  
Council (CL15/11, Manor Farm,  
Norton Malreward) (No.2) Definitive  
Map Modification Order 2012**

Public bridleway to be deleted

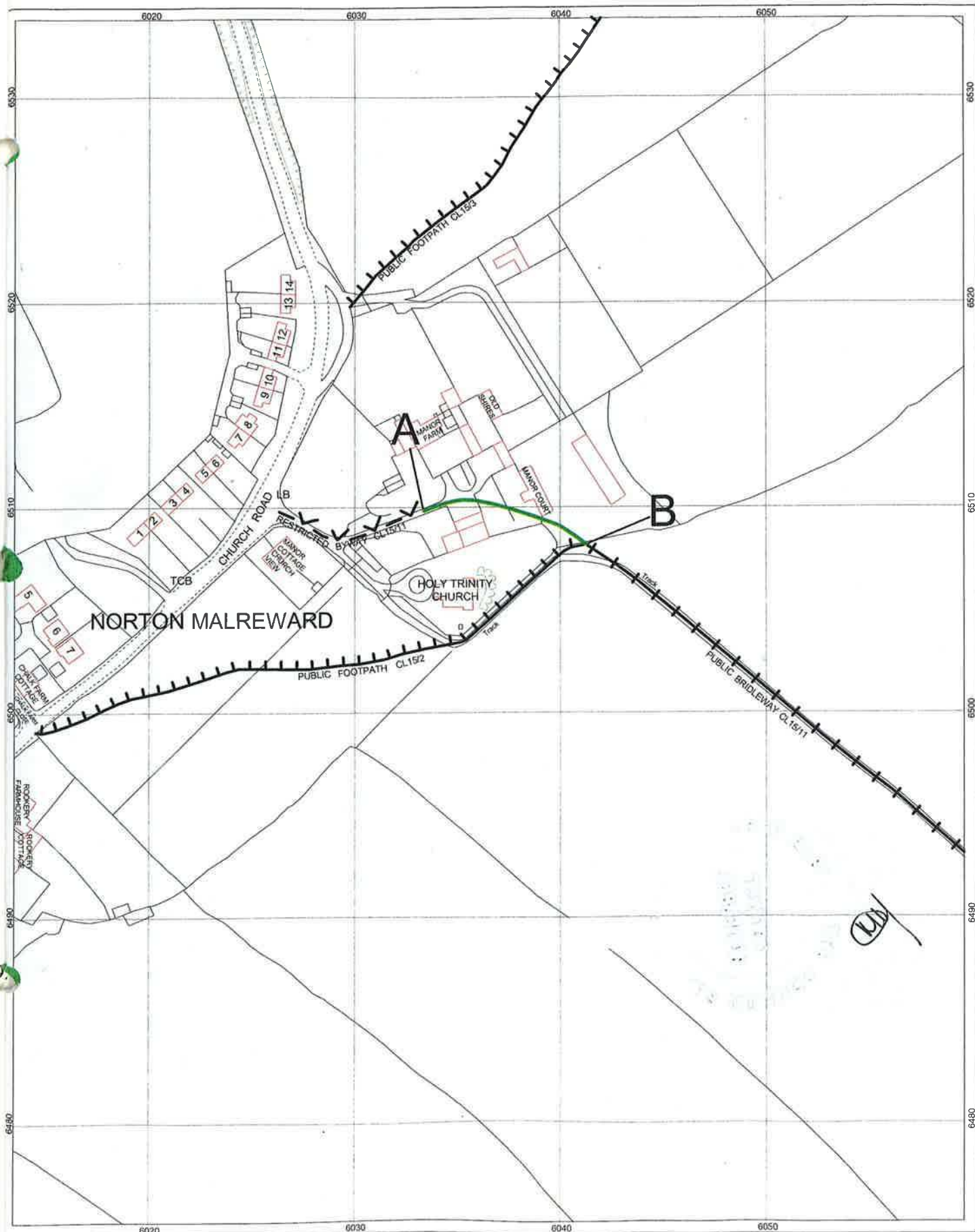
Unaffected public footpath

Unaffected public bridleway

Unaffected restricted byway



Scale 1:2500



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## DEFINITIVE MAP AND STATEMENT

1. Sections 27 to 38 of the National Parks and Access to the Countryside Act 1949 (**"the 1949 Act"**) required county councils to survey and map all rights of way in their area and to record them on a document, which was to be known as the Definitive Map and Statement (**"DM&S"**). At this time, and before a number of subsequent local government reorganisations, the parish of Norton Malreward fell within the area administered by Somerset County Council (**"SCC"**).
2. The first stage in the production of the DM&S was for a Parish Survey to be carried out under section 27 of the 1949 Act. In the parish of Norton Malreward a walking survey was carried out between 3 August 1950 and 4 December 1950 by Mr Luton, Mr Jones and Mr Palten on behalf of Norton Malreward Parish Council. A section of what is currently known as CL15/11 is shown by a dashed black line on the Parish Survey Map (Fig. 1), is described in the associated Parish Survey Card (Fig. 2) and forms part of Parish Path No. 2. However, there is no reference to the Order Route within any of the Parish Survey documents.

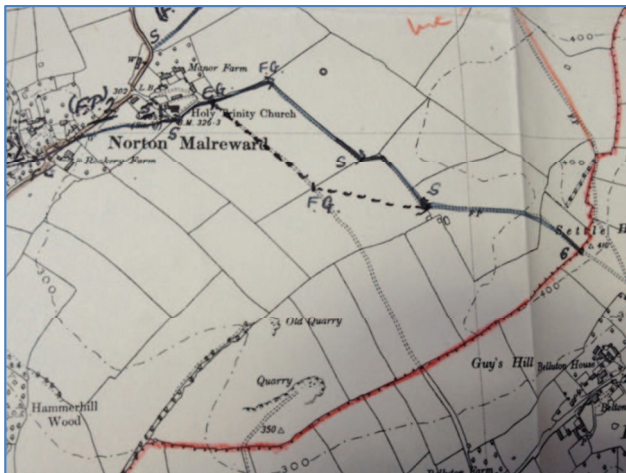


Fig.1 Parish Survey Map

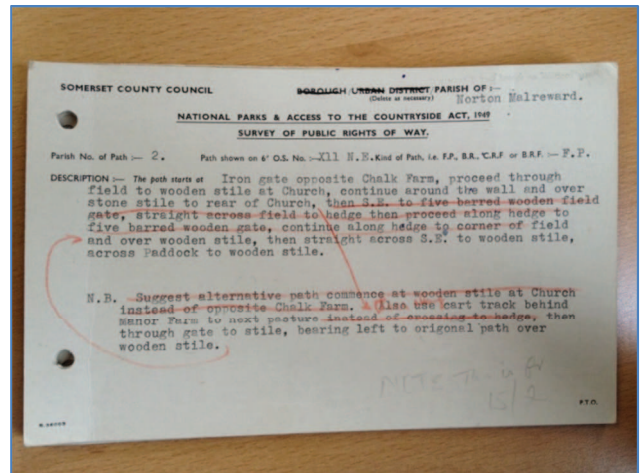


Fig.2 Parish Survey Card

3. The walking survey for Parish Path No. 2 was carried out on 3 August 1950 and the route's inclusion in the Parish Survey was agreed at Norton Malreward Parish Council's meeting on 15 November 1950. The Parish Survey Map and Cards indicate that a walking survey was carried out and it is reasonable to assume that Norton Malreward employed their local knowledge of rights of way within the parish; there is, however, no indication within the surviving records of what other information was considered. Although the majority of the Order Route is shown by double pecked lines on the underlying Ordnance Survey map it was not included in the Parish Survey.



4. The Parish Surveys for Norton Malreward and all other parishes within what is now Bath and North East Somerset were subsequently passed to SCC. SCC then considered all of the information contained within the Parish Surveys and decided which rights of way existed or were reasonably alleged to exist. A section of what is currently known as CL15/11 formed part of a longer route incorporating the two sections of public footpath which are currently recorded as CL15/2 and the whole of this route is shown by a purple line on the Draft Map (Fig. 3). The Order Route was not recorded on the Draft Map.

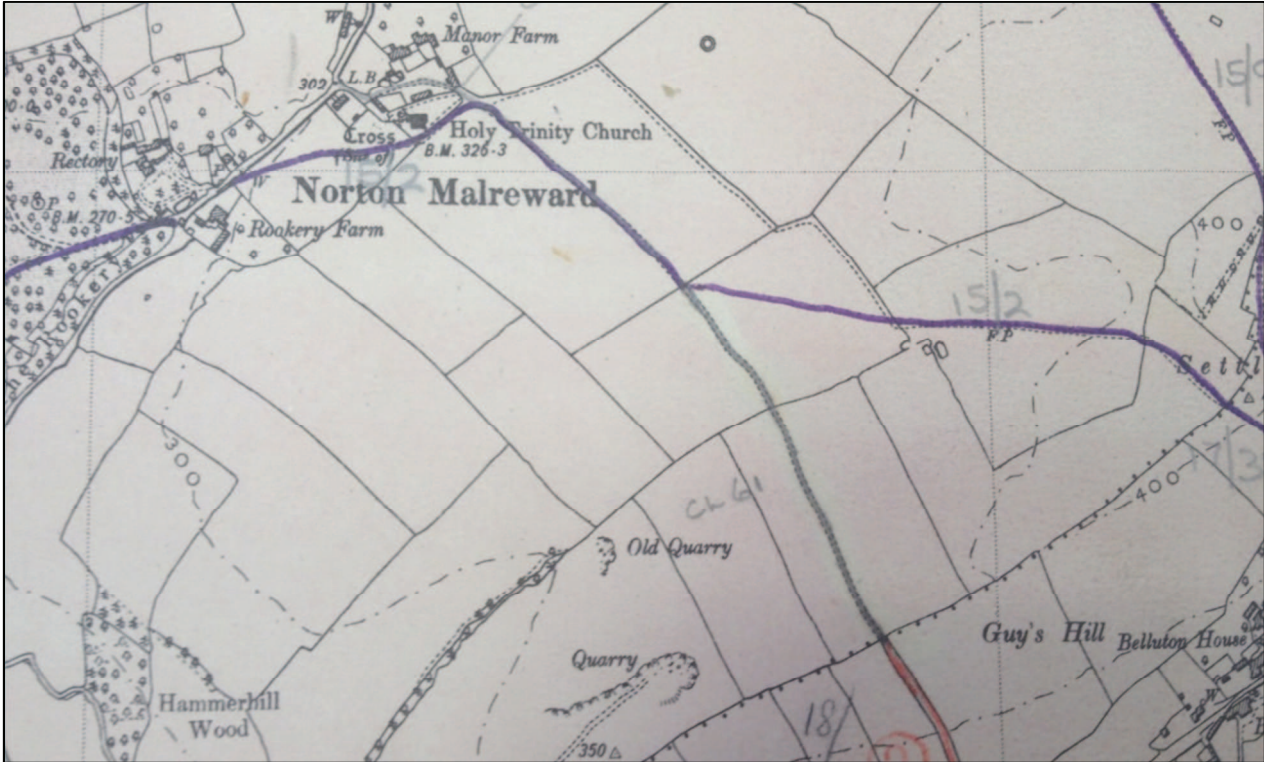


Fig. 3: Draft Map

5. As required by section 29(1) of the 1949 Act, on 26 November 1956 SCC published notice of its preparation of the Draft Map in both the London Gazette and a local newspaper; 26 November 1956 also became the ‘Relevant Date’. The notices invited any member of the public to object to either the inclusion or omission of any route from the Draft Map. The process was therefore a public one and the Ramblers’ Association objected to a route, which incorporated the Order Route, not being recorded as a ‘Carriage Road Footpath’ on the Draft Map, stating; “*Omission of CRF from County road at Manor Farm south-easterly following 15/2 thence south-easterly to parish boundary. Path continues in Stanton Drew parish.*” (Fig. 4)

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949						
CLUTTON RURAL DISTRICT						
PUBLIC RIGHTS OF WAY						
Summary of objections to Draft Map and Statement and determinations of Surveying Authority under Section 29						
Serial No. of Objections	Objectioner	No. (if known) on Draft Map	Name and Address of Objectioner and references (if any)	Summary of Objections	Objections by Clerk	Determination
(1)	(2)	(3)	(4)	(5)	(6)	(7)
35.	Russett Threlwell	14/42	Bristol Motor Cycle Club	Inclusion of 14/42 from Hopnott Street north-easterly to Siglands as a bridleway instead of a CRF.	No evidence available.	Decision to amend Draft Map.
39.	do.	-	County Council	Omission of east-west section of Long Barn Lane as a CRF.	Agreed.	add CRF to Draft Map.
60.	do.	-	County Council	Omission of continuation south-easterly of 14/42 as a CRF (known as Killtop).		add CRF to Draft Map.
61.	Stanton Drew	-	RAMBLERS' ASSOCIATION 314/512	Omission of CRF from County road at Manor Farm south-easterly following 15/2 thence south-easterly to parish boundary. Path continues in Stanton Drew parish.	Section 15 Binton Farm added as CRF - see CL.15/2. appears to be an ancient highway. Owner admits public rights.	add CRF to Draft Map.

Fig. 4: Objections to Draft Map and Statement

6. SCC considered the Ramblers' Association's representation under section 29(3) of the 1949 Act and the Clerk comments that; "*Section in Stanton Drew added as CRF – see CL.69. Appears to be an ancient highway. Owner admits public rights.*" It is unclear whether the Clerk's comments about "*an ancient highway*" and "*owner admits public rights*" relate to the section in Stanton Drew or to the Order Route.
7. SCC subsequently added the Order Route as part of CL15/11 to their 'Draft Map Modification' map which was produced on 20 August 1965. The Order Route is delineated by a green dashed line (Fig. 5).

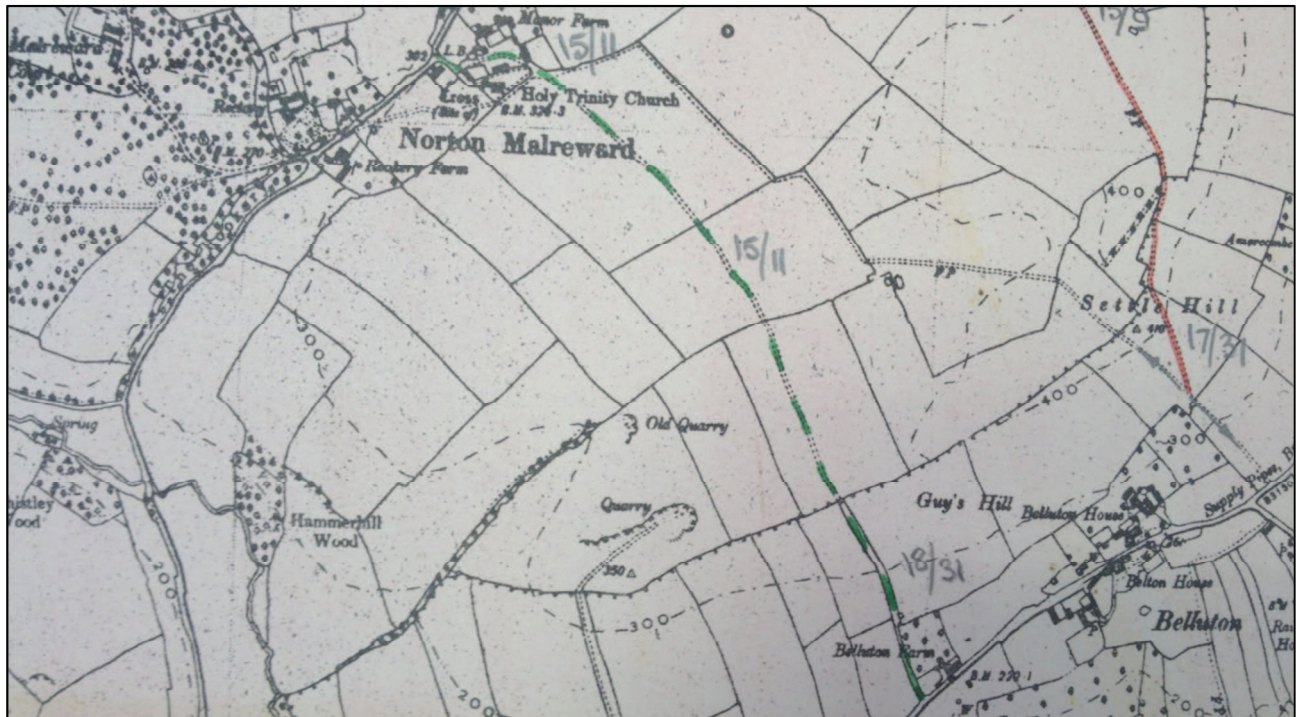


Fig. 5: Draft Map Modifications

7. Under section 30 of the 1949 Act, SCC then produced a Provisional Map and Statement which consisted of the routes shown on the Draft Map and Statement but as modified by the various subsequent determinations by SCC and the Secretary of State. Consequently, the Order Route was as per the Draft Map Modifications. Notice of the preparation of the Provisional Map and Statement was again advertised in the London Gazette and a local newspaper on 7 October 1966. Owners, occupiers and lessees had the right to apply to the Crown Court for a declaration that a route was not a public right of way; however, no such application was made in relation to the Order Route.
8. Under section 32(1) of the 1949 Act, SCC then produced the Definitive Map and Statement ("**the DM&S**") which consisted of the routes shown on the Provisional Map and Statement but as modified by any declarations made by the Crown Court following the publication of the Provisional Map and Statement. The Order Route was recorded on the Definitive Map with a broken green line (Fig. 6) and the Definitive Statement records the Order Route as follows: "*From: Manor Farm To: C.R.F. 18/31 Description: The path is a C.R.F. it starts at County road by Manor Farm and runs south easterly across fields to Parish Boundary where it continues as C.R.F. 18/31*" (Fig. 7). Notice of the production of the DM&S was advertised in the London Gazette and a local newspaper on 16 June 1967.



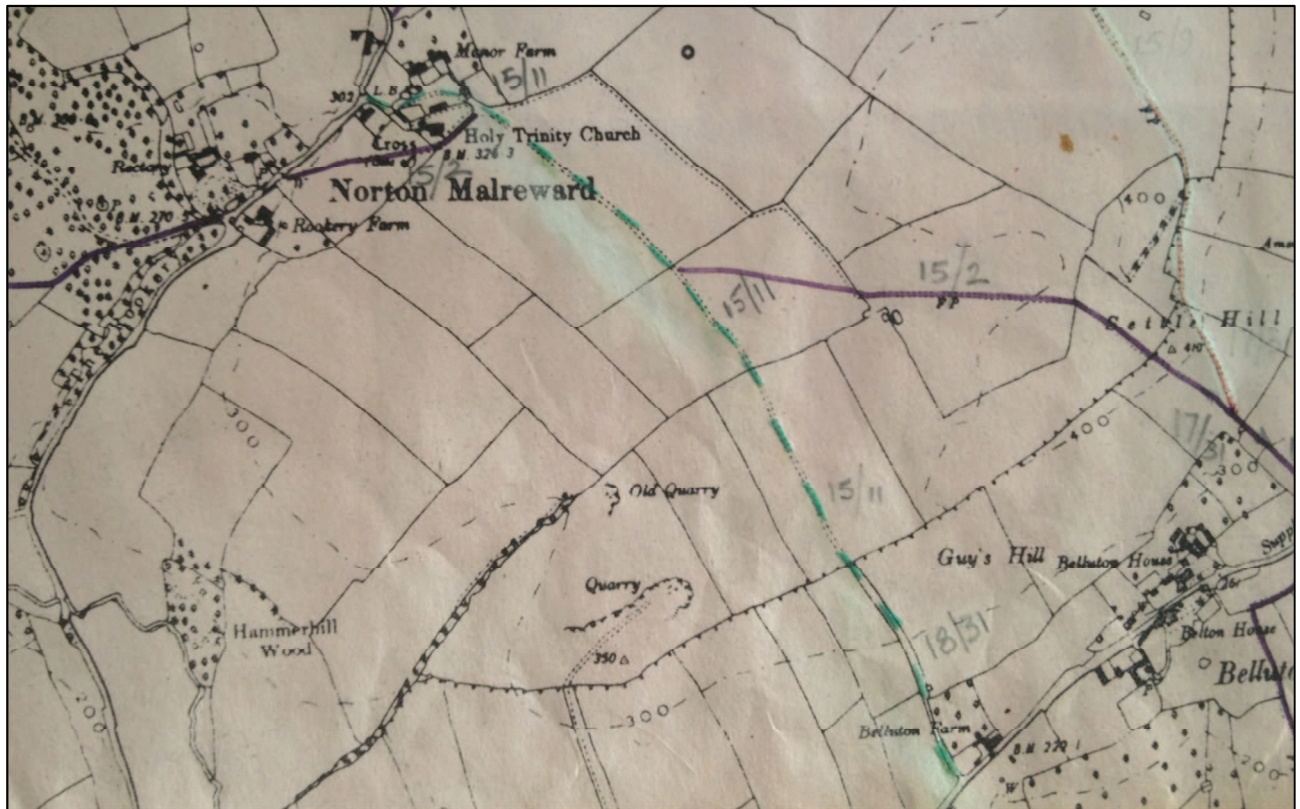


Fig. 6: Definitive Map

(1) PARISH NO. OF PATH:- 11

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

FROM: Manor Farm

TO: C.R.P. 18/31

DESCRIPTION: THE PATH IS A C.R.P. IT STARTS AT County road by Manor Farm and runs south easterly across fields to Parish Boundary where it continues as C.R.P. 18/31

5/7/189

TITLE BELOW THIS LINE

(3) NAME OF PARISH	(4) No. of Path	(5) Kind of Path	(6) Shown on 1 Orig. Sht. No.	(7) DATE OF WALKING SURVEY & BY WHOM MADE
Norton Malreward	11	C.R.P.	12 NG	

SYMBOLS TO BE USED IN BOX (5) BELOW

Footpath F.P.

Bridle Road (including Driveway for Cattle) B.R.

Carriage or Cart Road or Green (unmetalled lane) mainly used by Public as a public path C.R.P.

STON E.A. STANTON DREW PAULTON P.B. PUBLON P.B. RADSTOCK TMSBURY

Fig. 7: Definitive Statement



9. The Order Route was recorded on the DM&S as a CRF ('Carriage Road used as a Footpath') which was the equivalent of a Road Used as a Public Path. Section 27(5) of the 1949 Act defined a Road Used as a Public Path as; '*a highway, other than a public path used by the public mainly for the purposes for which footpaths or bridleways are so used.*' Section 32(4) of the 1949 Act 1949 provided that the DM&S were conclusive evidence in law of the particulars they contain; this section has since been repealed and replaced by section 56(1) of the Wildlife and Countryside Act 1981 ("**the 1981 Act**") which contains substantially the same provision. Section 53(3)(c)(iii) of the 1981 Act allows a route to be deleted from the DM&S on the grounds that the path had been included in error; this legislative test is considered further in Appendix 4.

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## RECLASSIFICATION ORDER

1. As detailed in Appendix 2, the Order Route was recorded on the Definitive Map and Statement ("the DM&S") as a 'CRF' (Carriage Road used as a Footpath) which is the equivalent of a Road Used as a Public Path ("RUPP"). Section 27(5) of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act") defined a Road Used as a Public Path as; *'a highway, other than a public path used by the public mainly for the purposes for which footpaths or bridleways are so used.'* This definition was considered unsatisfactory as it did not specify whether or not a RUPP carried vehicular rights. Following an abortive attempt to reclassify RUPPs under schedule 3 of the Countryside Act 1968, Surveying Authorities were required to review all RUPPs shown on their DM&S to be reclassified as footpaths, bridleways or Byways Open to All Traffic (BOAT). Avon County Council ("ACC"), who at the time were the Surveying Authority, were therefore required to reclassify the Order Route.
2. On 22 June 1989 ACC made the 'County Council of Avon Public Rights of Way Definitive Map and Statement Reclassification Order No.2 1989' ("the Reclassification Order"). The Reclassification Order was made to reclassify the section of RUPP CL15/11 between point A on the Order Map contained at Appendix 1 ("**the Order Map**") and the parish boundary as a public bridleway. Making of the Reclassification Order was duly advertised and objections were received from local residents and user groups. An inquiry was opened on 5 September 1995 and the Inspector issued an interim decision modifying the Reclassification Order to record the route as a Byway Open to All Traffic on 9 November 1995. The modification was duly advertised and objections were received. The Inspector reopened the inquiry on 11 February 1997 and the Inspector issued his final decision and confirmed the Reclassification Order, as originally made, on 28 May 1997. The Order Route was therefore reclassified on the DM&S as a bridleway.
3. The Application asks for paragraphs 177, 180 and 181 of the Inspector's decision to be re-examined. The Inspector's Decision Report does not in itself constitute primary evidence but rather it contains the Inspector's interpretation of the evidence which he was made aware of during the course of the Inquiry.
4. Paragraph 177 of the Decision Report (Fig. 1), indicates that the Inspector considered the section of CL15/11 between Church Road and point A on the Order Map to be public highway, although without stating what status of public highway. This section was not included in the Reclassification Order and it therefore remained a RUPP on the DM&S until it was automatically reclassified as a Restricted Byway in 2006 by virtue of section 48 of the Countryside and Rights of Way Act 2000.

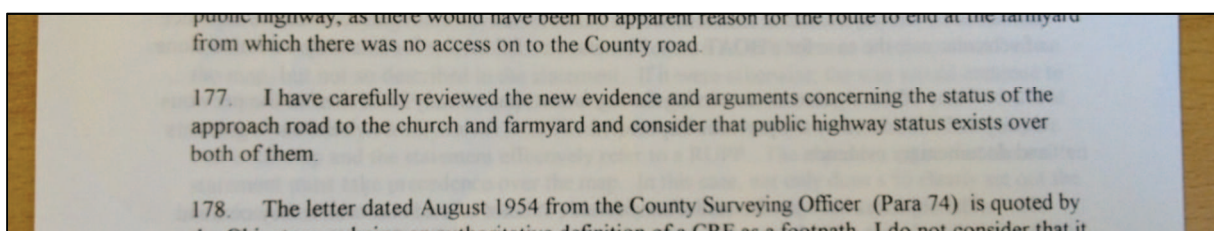


Fig. 1: Paragraph 177 of the Inspector's Decision Report dated 28 May 1997.

5. Paragraph 180 of the Decision Report (Fig. 2), deals with the original DM&S process carried out by Somerset County Council and Norton Malreward Parish Council. This matter is examined in Appendix 2.

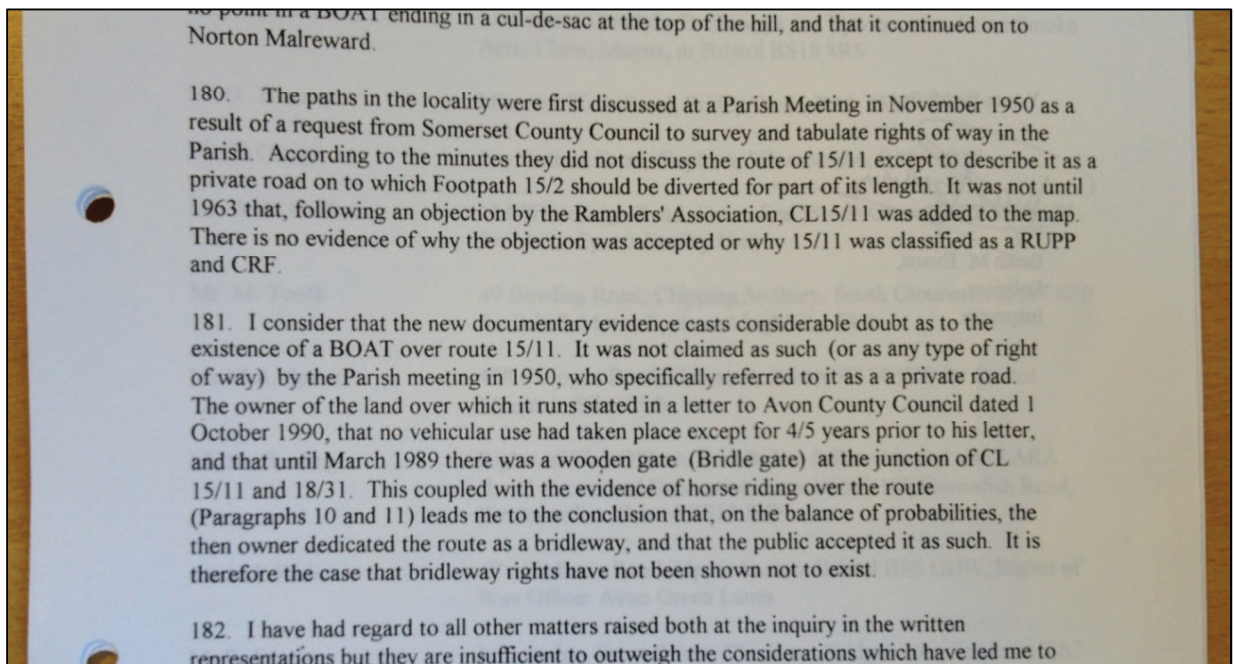
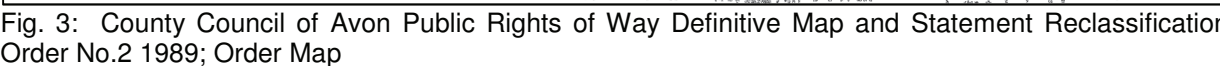


Fig. 2: Paragraphs 180 and 181 of the Inspector's Decision Report dated 28 May 1997.

6. Paragraph 181 of the Decision Report (Fig.2), deals with the issue of public vehicular rights over the Order Route. The Inspector concluded that there was no evidence of public vehicular rights over the Order Route but that the Order Route has been dedicated as a public bridleway. This is consistent with the evidence detailed in Appendices 4 and 5 and the Order Route's current recording on the DM&S.
7. On 7 August 1997 Timothy Stevens applied to the High Court – Queen's Bench Division for the confirmed Reclassification Order to be quashed (Stevens v Secretary of State (1997)). The application was not successful and the Order Route has therefore since continued to be recorded on the DM&S as a public bridleway. The Reclassification Order Map is reproduced at Fig. 3 below.

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County Planning Officer  
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Map No: SG 28



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## DELETION FROM THE DEFINITIVE MAP AND STATEMENT

### 1. INTRODUCTION

- 1.1 The Authority has made a Definitive Map Modification Order (“**DMMO**”) to delete the Order Route from the Definitive Map and Statement (“**DM&S**”) on the grounds that the Order Route was included in error.
- 1.2 Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 (“**the 1981 Act**”) states that the DM&S can be modified upon;

*“...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that there is no public rights of way over land shown in the map and statement as a highway of any description...”*

### 2. RELEVANT STATUTORY AND REGULATORY PROVISIONS

- 2.1 Section 53 of the 1981 Act provides:

- (2) *As regards every definitive map and statement, the surveying authority shall -*
- (a) *as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*
  - (b) *as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.*
- (3) *The events referred to in sub-section (2) are as follows -*
- ...*
- (c) *the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -*
    - (i) *that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;*
    - (ii) *that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or*
    - (iii) *that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.*

2.2 Schedule 15(7) of the 1981 Act as amended provides:

- (1) *If any representation or objection duly made is not withdrawn the authority shall submit the order to the Secretary of State for confirmation by him.*
- (2) *Where an order is submitted to the Secretary of State under sub-paragraph (1), the Secretary of State shall, subject to sub-paragraph (2A), either—*
  - (a) *cause a local inquiry to be held; or*
  - (b) *afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.*
- (2A) *The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(a) or (b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order, either with or without modifications.*
- (3) *On considering any representations or objections duly made and the report of any person appointed to hold an inquiry or hear representations or objections, the Secretary of State may confirm the order with or without modifications.*

### 3. SOME RELEVANT CASE LAW

3.1 In a Court of Appeal decision of the Trevelyan Case<sup>1</sup> concerning a claim for judicial review of an inspectors decision to confirm an order of the Secretary of State, it was held;

*“Where the Secretary of State or an inspector appointed by him had to consider whether a right of way which was marked on a definitive map in fact existed, he should start with an initial presumption that it did. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures had been followed, and thus that such evidence existed. At the end of the day, when all the evidence had to be considered, the standard of proof required to justify a finding that no right of way existed was no more than the balance of probabilities. Evidence of some substance had, however, to be put in the balance, if it was to outweigh the initial presumption that a right of way existed. In the instant case, the inspector had directed himself that clear and cogent evidence was necessary to remove a public right of way from the definitive map and that it had to be demonstrated that a mistake had been made. His finding that it was, on the evidence, beyond the bounds of credibility that a right of way had existed over the material portion of bridleway 8 was a finding of fact which, unless demonstrated to be perverse, manifestly satisfied the test required to justify a finding that the bridleway had been marked on the definitive map as a right of way in error.”*

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<sup>1</sup> Trevelyan v Secretary of State for the Environment, Transport and the Regions (CA) [2001] EWCA Civ 266, [2001] 1 WLR 1264 (BBE)



- 3.2 At paragraph 38 of the transcript of the Court of Appeal judgement, Lord Phillips states that:

*“Where the Secretary of State or an Inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial assumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should be assumed that the proper procedures were followed and thus such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put into the balance if it is to outweigh the initial presumption that the right of way exists.”*

- 3.3 In the Hood Case<sup>2</sup> concerning an appeal to quash an order made by the Secretary of State 2, Lord Denning states that:

*“The definitive map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living. Such evidence might well have been lost or forgotten by 1975.”*

#### **4. EXTRACT OF RELEVANT GUIDANCE IN DEFRA’S RIGHTS OF WAY CIRCULAR 1/09**

- 4.1 Further guidance is contained in paragraphs 4.30 to 4.35 of DEFRA’s Rights of Way Circular 1/09 (the guidance has no legal status) which state:

***Deletion or downgrading of ways shown on the definitive map and statement***

4.30 *The procedures for identifying and recording public rights of way are comprehensive and thorough. Authorities will be aware of the need to maintain a map and statement of the highest attainable accuracy. Whilst the procedures do not preclude the possibility that rights of way may need to be downgraded or deleted, particularly where recent research has uncovered previously unknown evidence or where the review procedures have never been implemented, it is unlikely that such a situation would have lain undiscovered over, what is in most cases, many decades without having been previously brought to light.*

4.31 *Once prepared, and until subsequently revised, the definitive map and statement is conclusive evidence in rights of way disputes. Authorities are under a duty to make an order modifying the definitive map and statement where they have evidence that a public right of way should be downgraded or deleted. They may discover evidence themselves or evidence may be presented with an application to modify the map and statement.*

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<sup>2</sup> R v Secretary of State for the Environment, ex parte Hood [1975] 1 QB 891, [1975] 3 All ER 243

- 4.32 *Notwithstanding the clear starting point in relation to the possible deletion or downgrading of ways described in paragraphs 4.30 and 4.31, the powers in section 53(3) of the 1981 Act include the making of orders to delete or downgrade rights of way shown on the definitive map and statement in cases where evidence shows that rights did not exist at the time when they were first shown on the map. In making an order the authority must be able to say, in accordance with Section 53(3) (c) (ii) or (iii), that a highway of a particular description ought to be shown on the map and statement as a highway of a different description; or that there is no public right of way over land shown in the map and statement as a highway of any description.*
- 4.33 *The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with “higher” rights to a way with “lower” rights, as well as complete deletion – will need to fulfil certain stringent requirements. These are that:*
- the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made,*
  - the evidence must be of sufficient substance to displace the presumption that the definitive map is correct,*
  - the evidence must be cogent.*

*While all three conditions must be met they will be assessed in the order listed. Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified.*

- 4.34 *Applications may be made to an authority under section 53(5) of the 1981 Act to make an order to delete or downgrade a right of way. Where there is such an application, it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence clearly shows that the right of way should be downgraded or deleted. The authority is required, by paragraph 3 of Schedule 14 to the Act, to investigate the matters stated in the application; however it is not for the authority to demonstrate that the map reflects the true rights, but for the applicant to show that the definitive map and statement should be revised to delete or downgrade the way.*

4.36 *In the case of deletions, earlier guidance indicated that a case for presumed dedication could be established on a way that had previously been recorded on the definitive map but which was found, subsequently, to have been recorded in error. This was based on the belief that user, between the time of the first recording of the way on the definitive map and statement and the time when it was determined that an error had been made could give rise to presumed dedication. The date of first recording means either the date of the original publication of the first definitive map; the date of publication of a review; or the relevant date of an order adding the path to the definitive map, whichever was appropriate. The date of first recording would have been the first point in time at which it could have been legally recognised that rights over the way were recorded in the form being challenged. Defra believes that this advice was wrong. Defra's view is that use of the way in such circumstances cannot be seen to be as of right, as rights that cannot be prevented cannot be acquired. It not possible for a right of way to be dedicated for the purposes of section 31 of the Highways Act 1980 when use of the way is by virtue of it having been shown on the definitive map but subsequently removed.*

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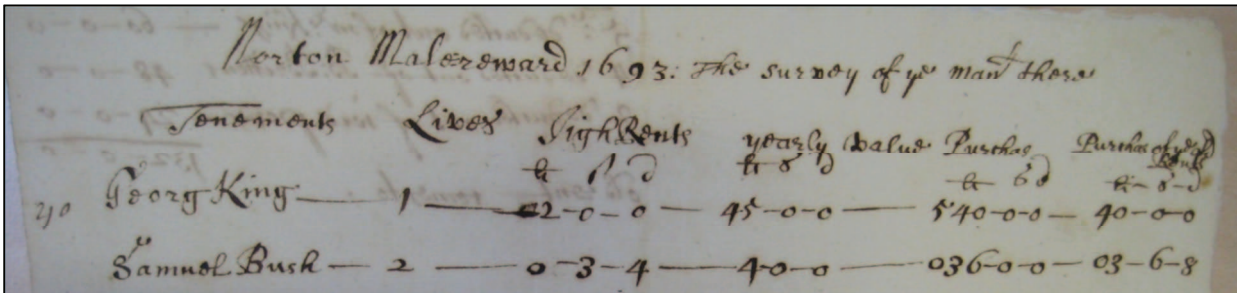
## EVIDENCE

## 1. Introduction

- 1.1 As detailed in Appendix 4, the Authority's decision as to whether the Order Route should be deleted from the Definitive Map and Statement ("**the DM&S**") must be based solely on the available evidence which indicates whether or not a public right of way exists. The Authority has examined all the available evidence which is in its possession, which has been submitted by the Applicants and consultees, and which are held at the Somerset Heritage Centre in Taunton ("**SHC**") and The National Archives in Kew ("**TNA**").

## 2. Langton Estate Survey (SHC Ref: DD\GL/118)

- 2.1 A survey was carried out of the Langton Estate in 1693 (Fig.1). The survey is annotated; "*new survey of the manor of Norton Malreward*" and at this time the manor of Norton Malreward was likely to have included the land over which the Order Route runs. However, although the survey provides information such as the names of tenants, the yearly value and purchase value of the estate, it does not include details of individual properties or evidence regarding the Order Route.



*Norton Malreward 1693: The survey of ye manor there*

Tenants	Libers	High Rents	yearly Value	Purchase	Purchase Money
20 George King	1	2-0-0	45-0-0	540-0-0	40-0-0
Samuel Bush	2	0-3-4	40-0-0	036-0-0	03-6-8

Fig. 1: Extract from the Langton Estate Survey

## 3. Norton Malreward, etc., deeds (SHC Ref: DD\X\BROC/1)

- 3.1 The deeds, dating from between 1718 and 1799, relate to the Manor of Norton Malreward which at the time included the land over which the Order Route runs. However, the deeds do not make any reference to, or provide any evidence in relation to, the Order Route.

## 4. Day and Masters' Map (SHC Ref: D\B\wsm/38/6)

- 4.1 Day and Masters' Map is a map of the County of Somerset made from an original survey and published in 1782; a footnote states that the map was published according to an Act of Parliament. The map was produced to be sold to the travelling public and, as such, the depiction of a route on the map is likely to be indicative of the surveyor at the time believing that the route was public. The section of Unclassified Road/Restricted Byway between Church Road and Point A on the map attached to the Order at Appendix 1 ("**the Order Map**") is shown as "*Inclosed Roads*" (Fig. 2). However, the Order Route is not shown and the map does not therefore provide any evidence in relation to the Order Route.





Fig. 2: Day and Masters' Map

## 5. 1809 2" Ordnance Survey Surveyor's Map

- 5.1 An original survey of the whole of the United Kingdom was carried out by the Trigonometrical Survey (which was later renamed the Ordnance Survey) primarily for the purpose of military planning. The maps provide evidence of the physical existence of geographical features but do not provide evidence of the existence, or otherwise, of public rights. A 2" surveyor's map sheet covering Norton Malreward was produced in 1809. The section of public bridleway CL15/11 between point B on the Order Map and the parish boundary is delineated by parallel pecked black lines (Fig. 3). However, the route continues to the south of All Saints Church rather than running over the Order Route. The 1809 2" Ordnance Survey map therefore does not provide evidence of the physical existence of the Order Route.



Fig. 3: 1809 2" Ordnance Survey map

- 5.2 Article (a) in the covering letter which formed part of the Application refers to an 1811 Ordnance Survey map. However, the Authority has not been able to locate, and the Applicants have not provided, a copy of an Ordnance Survey map covering Norton Malreward which was produced in 1811.

## 6. 1830 1" Ordnance Survey Map

- 6.1 A 1" map sheet covering Norton Malreward was also produced in 1830. The Order Route is delineated by parallel solid, and then parallel pecked, black lines as part of a longer route which runs between the settlements labelled 'Norton Malreward' and 'Belluton' (Fig. 4). The 1830 1" Ordnance Survey map therefore provides evidence that the Order Route physically existed in 1830.



Fig. 4: 1830 1" Ordnance Survey map

## 7. Tithe Map and Award (TNA Ref: IR30/30/312 and IR29/30/312)

- 7.1 Tithe Awards are legal documents, produced by the Tithe Commissioners under the Tithe Commutation Act of 1836, to show the value of titheable lands in a parish. Tithe Awards were accompanied by Tithe Maps, which helped to locate the titheable land described in the Tithe Award. They were not produced with the intention of recording public rights of way or their status; however, they can provide useful evidence in support of other documents.
- 7.2 The Norton Malreward Tithe Map and Award were produced circa 1840 and the former is a Second Class Tithe Map. The Order Route would run through enclosures 50 and 46 but it is not depicted on the Tithe Map (Fig. 5). The surveyor does not appear to have differentiated between hedges, fences and gates. The Tithe Award records that Tithe was paid on both of these enclosures and that the land was owned by Robert Bush and occupied by Richard Wilshere. The Award describes the two enclosures as follows; 50 – House Outbuildings and Barton (Homestead), 46 – Church Furlong (Arable). The Norton Malreward Tithe Map and Award does not therefore provide evidence regarding the Order Route.



Fig. 5: Norton Malreward Tithe Map



## 8. **Railway Plans** (SHC Ref: Q/RUP/273b, Q/RUP/285, Q/RUP/402, Q/RUP/420 & Q/RUP/275)

- 8.1 In the 19<sup>th</sup> century, new railways required a private Act of Parliament before they could be built. Plans and books of reference relating to land either side of projected railways and canals had to be drawn up and required consultation with, and the agreement of, the landowners. As a result, they can provide strong evidence of a route's status.
- 8.2 The Order Route is delineated by parallel solid and dotted black lines southwest of the words '*Norton Malreward*' on the overview plans accompanying the deposited plans for the North Somerset Railway and Branches, Bristol and North Somerset Railway, Bristol and London and South Western Junction Railway and Chew Valley Tramway (Fig. 6). However, these overview plans all appear to be based upon the 1830 1" Ordnance Survey map published in 1830, rather than an original survey, and the evidential value of this plan is as discussed in paragraph 5.1 above. The Order Route is not shown on the overview plan for the Bristol and South Western Junction Railways. The Order Route is outside the Limit of Deviation for all of the above schemes and, as such, the land affected is not surveyed on the more detailed plans.



Fig. 6: Overview Plan for the Chew Valley Tramway

- 8.3 The 1830 1" Ordnance Survey map provides evidence of the physical existence of the Order Route in 1830 but the original survey plans and books of reference for the construction of the railways do not provide any evidence of the existence, or otherwise, of public rights.

## 9. **Vestry Minute Book**

- 9.1 The Vestry were an administrative committee comprised of lay members of the congregation or parish to run the secular business of the parish which included responsibilities as the highway authority. A copy of the vestry minutes dated 12 February 1861 was provided by a consultee and refers to the landowner presenting "...to the Parish of Norton Malreward a suitable carriage Road through an adjoining field in the occupation of Mr. John Wilshere to the Church in lieu of the Road which now exists." (Fig. 7).



1. At a Meeting held Feb 12 1861.  
 Present Robert Astworth Taylor Curate M.A.  
 Richmond Harding Churchwarden  
 William Gibbons  
 Henry Norris  
 It was proposed by the Rev. R. A. Taylor & second  
 ed by Mr R. Harding "That the Parish offer their  
 best thanks to Sir G. Smyth for his kind offer  
 of presenting land for a suitable carriage Road  
 to the Church & that in all respects they give their  
 full consent to the alteration." —  
 The present road to the Parish Church thro  
 the farm yard belonging to Sir Greville Smyth Bart.  
 is neither convenient nor befitting the approach of a  
 Place of Worship to Almighty God, application has  
 been made therefore to Arthur Edwin Way Esq.  
 M.P. acting on behalf of the said Sir G. Smyth Bart.  
 to present to the Parish of Norton Malreward a  
 suitable carriage Road through an adjoining field  
 in the occupation of Mr John Wilshire to the said  
 Church in lieu of the Road which now exists.  
 To the aforesaid application A. E. Way Esq has kindly  
 assented, and has further authorized in his absence  
 from home Jos. Walters Danbury Esq. one of the Church  
 wardens of the said Parish of Norton Malreward  
 to mark out & arrange the Land so given by the  
 said Sir G. Smyth Bart. N.B. The above  
 road named should have been worded "exchanged"  
 for the old Original Church Road instead of  
 Robert Astworth Taylor <sup>presented</sup> Chairman  
 Richmond Harding Churchwarden  
 William Gibbons  
 Henry Norris

Fig. 7: Norton Malreward Vestry Minute Book

- 9.2 The Vestry Minutes appear to refer to the Unclassified Road/Restricted Byway between Church Road and Point A on the Order Map as being a 'Road' which is maintained by the Parish Vestry, who at the time were the highway authority. These minutes therefore indicate that the route was a public carriageway and a search of the Quarter Sessions records has not resulted in the discovery of any evidence to indicate that the route has been subsequently stopped up, as the minutes suggest was intended. These Minutes do not provide any evidence in relation to the Order Route.

## 10. 1903 1:2500 Ordnance Survey map

- 10.1 As with the 1830 1" Ordnance Survey map discussed in paragraph 5.1 above, the 1903 1:2500 Ordnance Survey map provides evidence of the physical existence of geographical features but does not provide evidence of the existence, or otherwise, of public rights. This, and all subsequent Ordnance Survey maps discussed below, carry a disclaimer confirming that the depiction of a route is not evidence of the existence of public rights. The Ordnance Survey used solid black lines to depict hedges, fences and gates, as can be seen crossing the Order Route at several points on the 1903 1:2500 Ordnance Survey map. It is therefore not possible to determine precisely what landscape features these solid black lines represent. On the 1903 1:2500 Ordnance Survey map, the Order Route is delineated by parallel pecked black lines running through enclosures 148 and 159 (Fig. 8); this map therefore provides evidence that the Order Route physically existed in 1903.

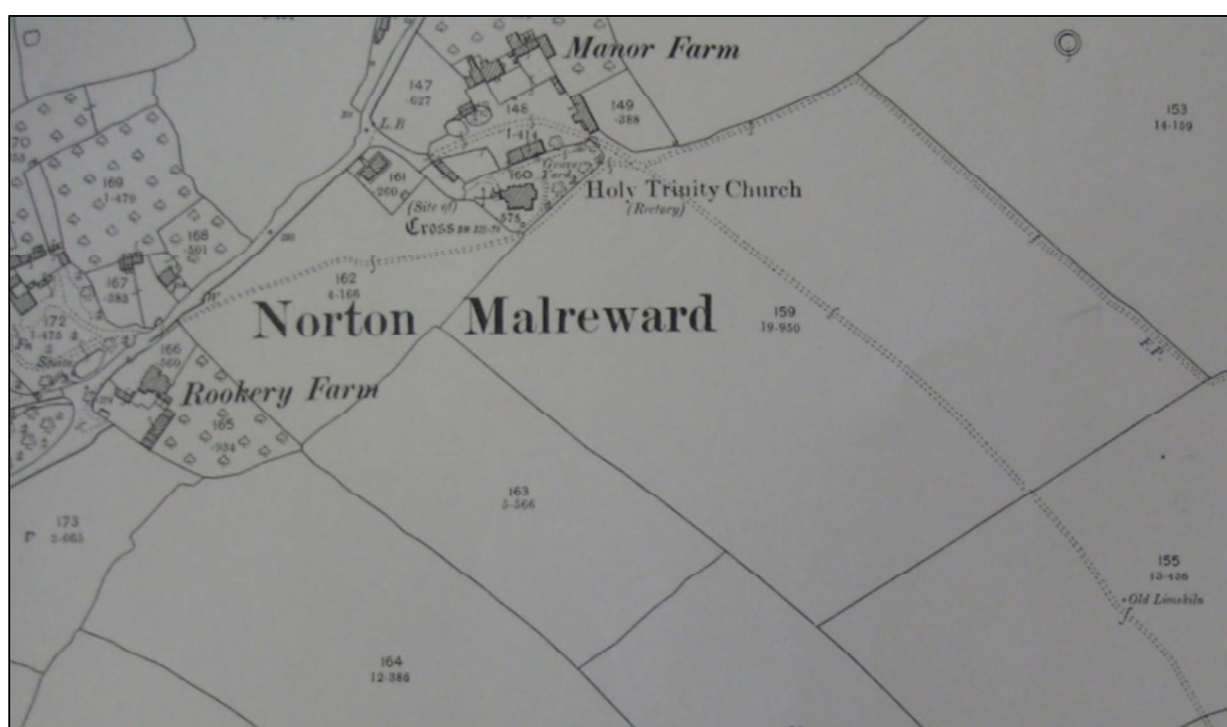


Fig. 8: 1903 1:2500 Ordnance Survey map

## 11. Finance (1909-1910) Act 1910 (TNA Ref: IR128\2\31 - SHC Ref: DD\IR\W\413)

- 11.1 Finance (1909-1910) Act 1910 was intended to create a new tax upon the incremental value of land. Plans, valuation books and field books were created for the purpose of calculating how much tax was due and landowners could claim a deduction for any public rights of way on their land. The Order Route would run through hereditament 491 and is delineated by double pecked lines on the underlying 1903 1:2500 Ordnance Survey map (Fig. 9).



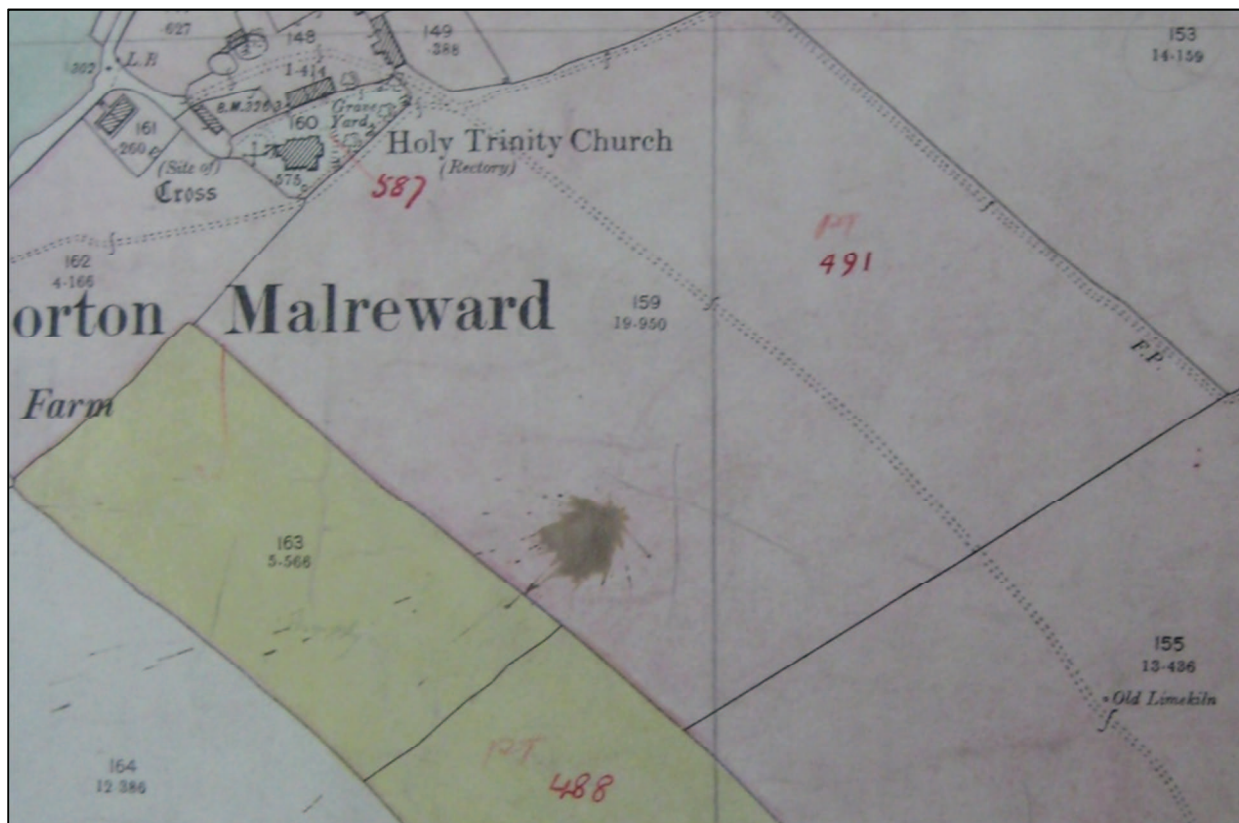


Fig. 9: Finance (1909-1910) Act 1910 plan

11.2 The valuation book does not record any deductions for 'public rights of way or user' in respect of hereditament 491 (Figs. 10 and 11). However, landowners were not required to claim a deduction and there are several undisputed public rights of way within the same hereditament. TNA and SHC do not have copies of Forms 4, 36 and 37. The 1903 1:2500 Ordnance Survey map provides evidence of the physical existence of the Order Route in 1903 but the Finance (1909-1910) Act 1910 documents do not provide any evidence of the existence, or otherwise, of public rights.

3/Parish of Norton Malreward																			
No. of Assessment	No. of Poor Rate	Christian Names and Surnames of Occupiers	Christian Names and Surnames of Owners, with their Residences	Description of Property—If an Inn, etc., the name or sign by which known	Street, Place, Name and Precise Situation of Property	Poor Rate					Reference to Map	Extent as determined by Value				Determination of			
						Estimated Extent	Gross Annual Value	Rateable Value	Extent as determined by Value				Original Gross Value	Determination of					
									Acres	R.		P.		Y.	Buildings and other Improvements by Machinery	Value	Value	Value	Value
1	2	3	4	5	No. of House	6	7	8	9	10	11	12	13	14	15	16	17	18	
487	18	Maldenham Rev. J. C. L.	Himself	The Rectory	Norton Malreward		154	14	127	15									
488	19	Murphy Mary	Maldenham Rev. J. C. L.	Land	"		46	44	17										
489	20	Branch Harold Saml	"	"	"		17	16	7										
490	21	Dowles Sarah Jane	Smyth Lady Eliza. Land as before	"	"	27 $\frac{3}{16}$	22	15	22	4									
491	22	Dowles John Fredk.	"	4 or Buildings Land	Manor Farm		28	14	24	14									
						217 $\frac{3}{16}$	165 $\frac{1}{5}$	148	14	$\frac{14}{5}$									

Fig. 10: Finance (1909-1910) Act 1910 valuation book (Entry relating to hereditament 491 encircled in red)





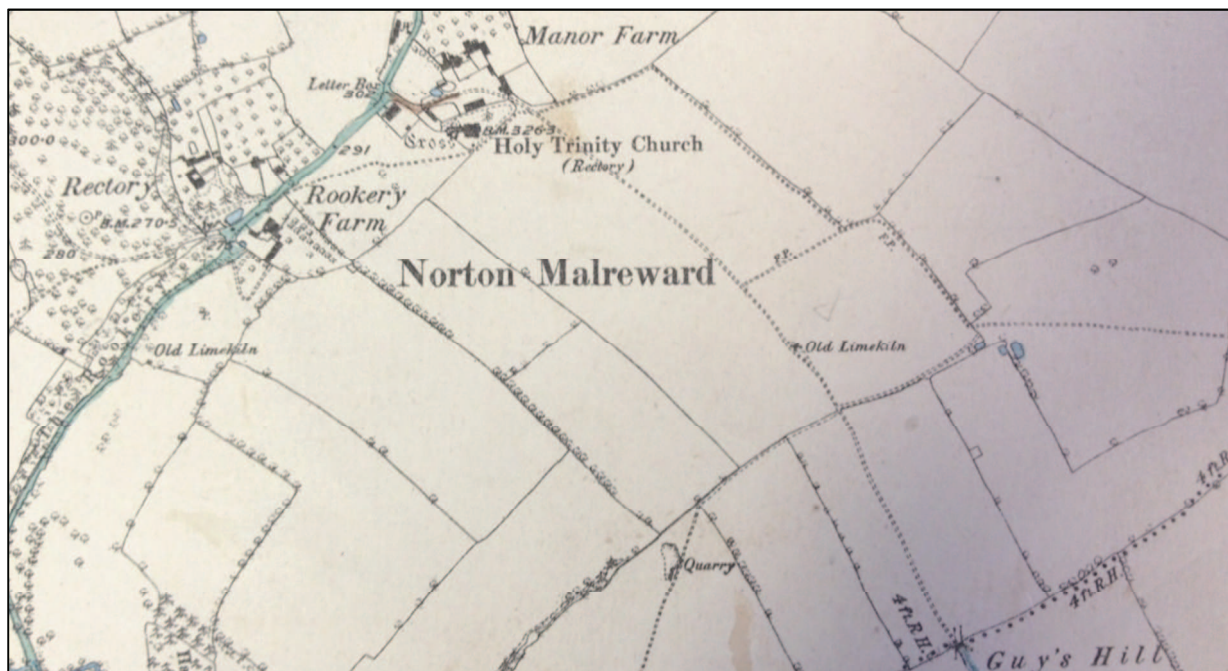


Fig.13: 1929 Take Over Map

#### 14. Bartholomew's Map

- 14.1 Bartholomew published a series of "Half-Inch" maps, which were produced from the Ordnance Survey's 1" to the mile maps, primarily for tourists and recreation. The 'North Somerset – Sheet 7' edition covering Norton Malreward was published in 1945 and carries a disclaimer stating "*N.B. The representation of a road or footpath is no evidence of right of way.*" The map does not show the Order Route and does not therefore provide any evidence regarding its physical existence (Fig. 14).

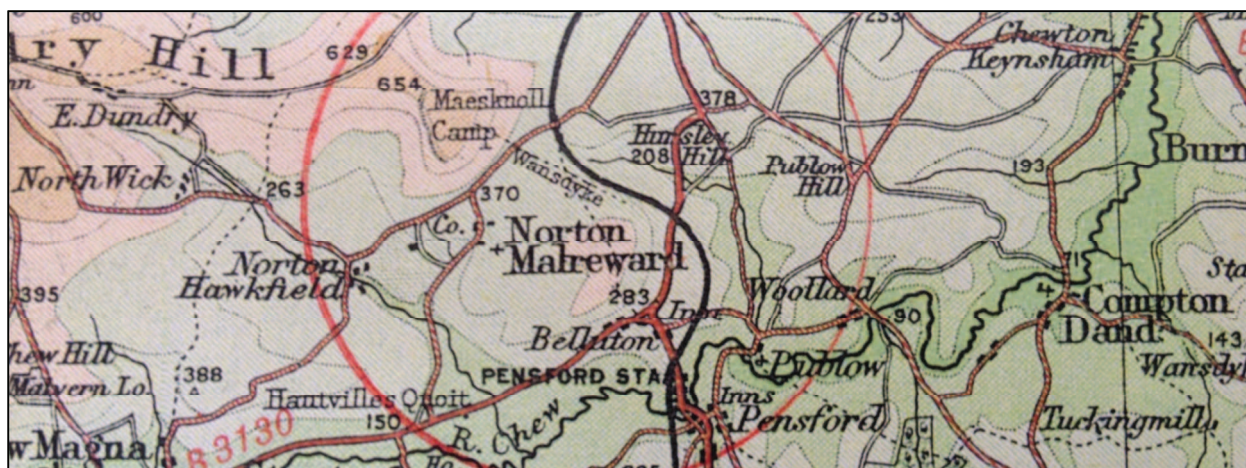


Fig. 14: Bartholomew's Revised "Half-Inch" Contoured Maps – North Somerset – Sheet 7 (Red circle added by consultee who provided the map to the Authority)

#### 15. 1958 1:2500 Ordnance Survey map

- 15.1 The Order Route is not delineated on the 1958 1:2500 Ordnance Survey map; however, the continuation of public bridleway CL15/11 from Point B on the Order Map to the parish boundary is delineated by a single pecked black line and annotated 'FP' (Fig. 15). This map does not provide any evidence regarding the Order Route.



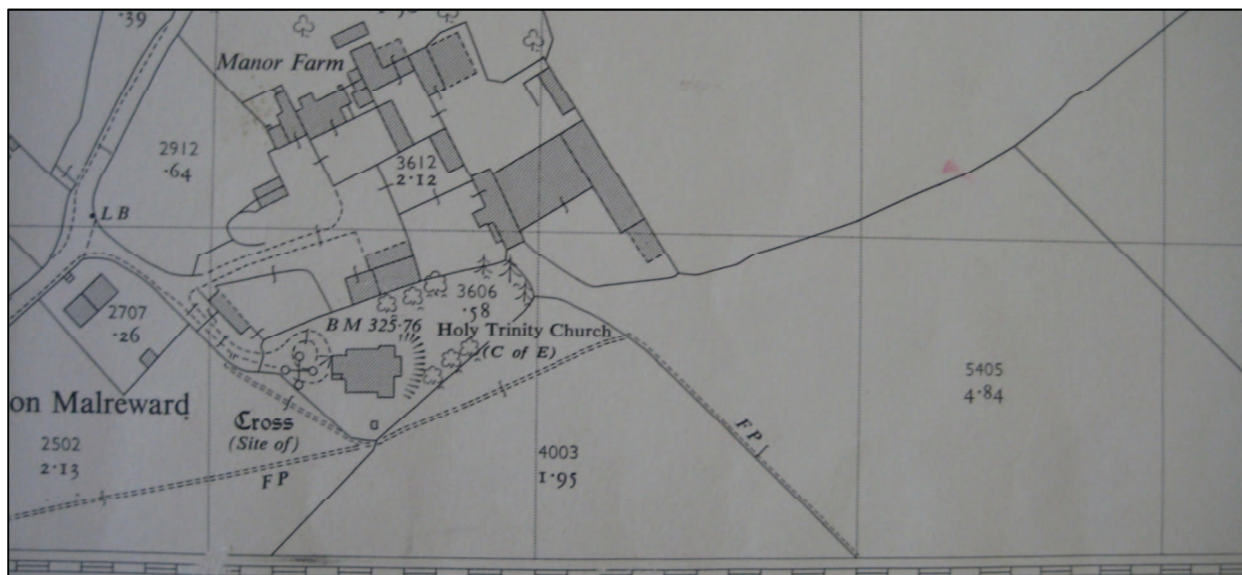


Fig. 15: 1958 1:2500 Ordnance Survey map

## 16. 1986 1:2500 Ordnance Survey map

- 16.1 On the 1986 1:2500 Ordnance Survey map, the eastern section of the Order Route is delineated by a double pecked black line and annotated 'Track' (Fig. 16). This map provides evidence that this section of the Order Route physically existed in 1986.

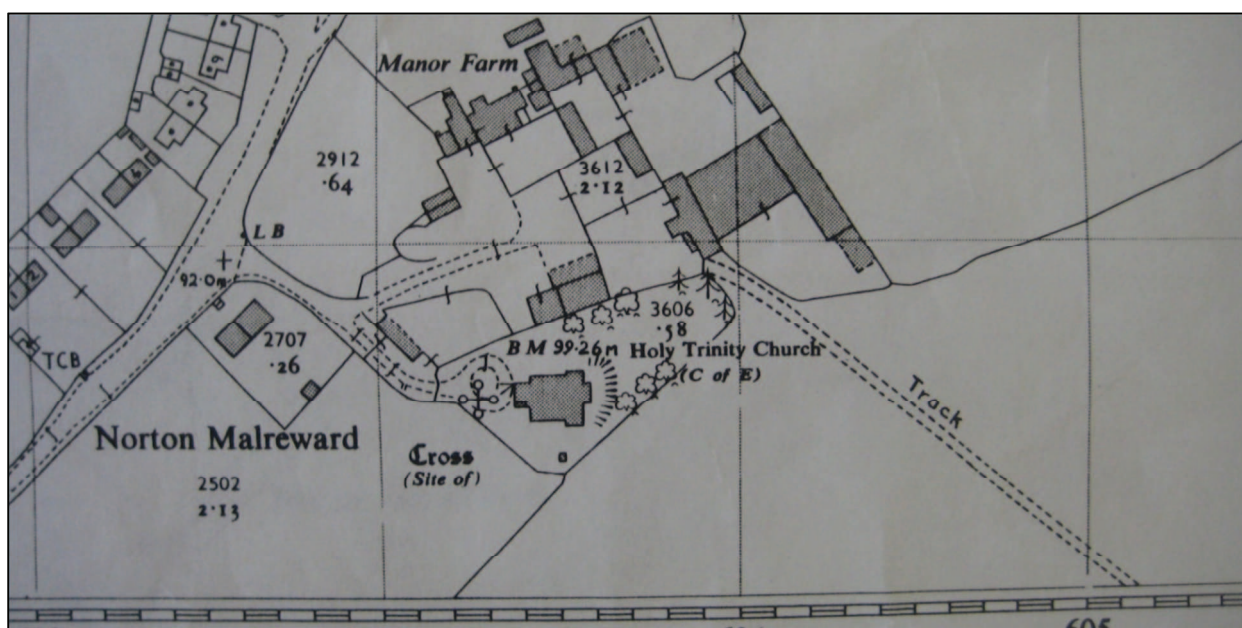


Fig. 16: 1986 1:2500 Ordnance Survey map

## 17. User's letter

- 17.1 A member of the public wrote to Avon County Council in 1989 stating they and their father used the Order Route to travel from Norton Malreward to Pensford in motor vehicles from 1949 to 1970. This letter indicates that the Order Route physically existed and was used by motor vehicles between 1949 and 1970.

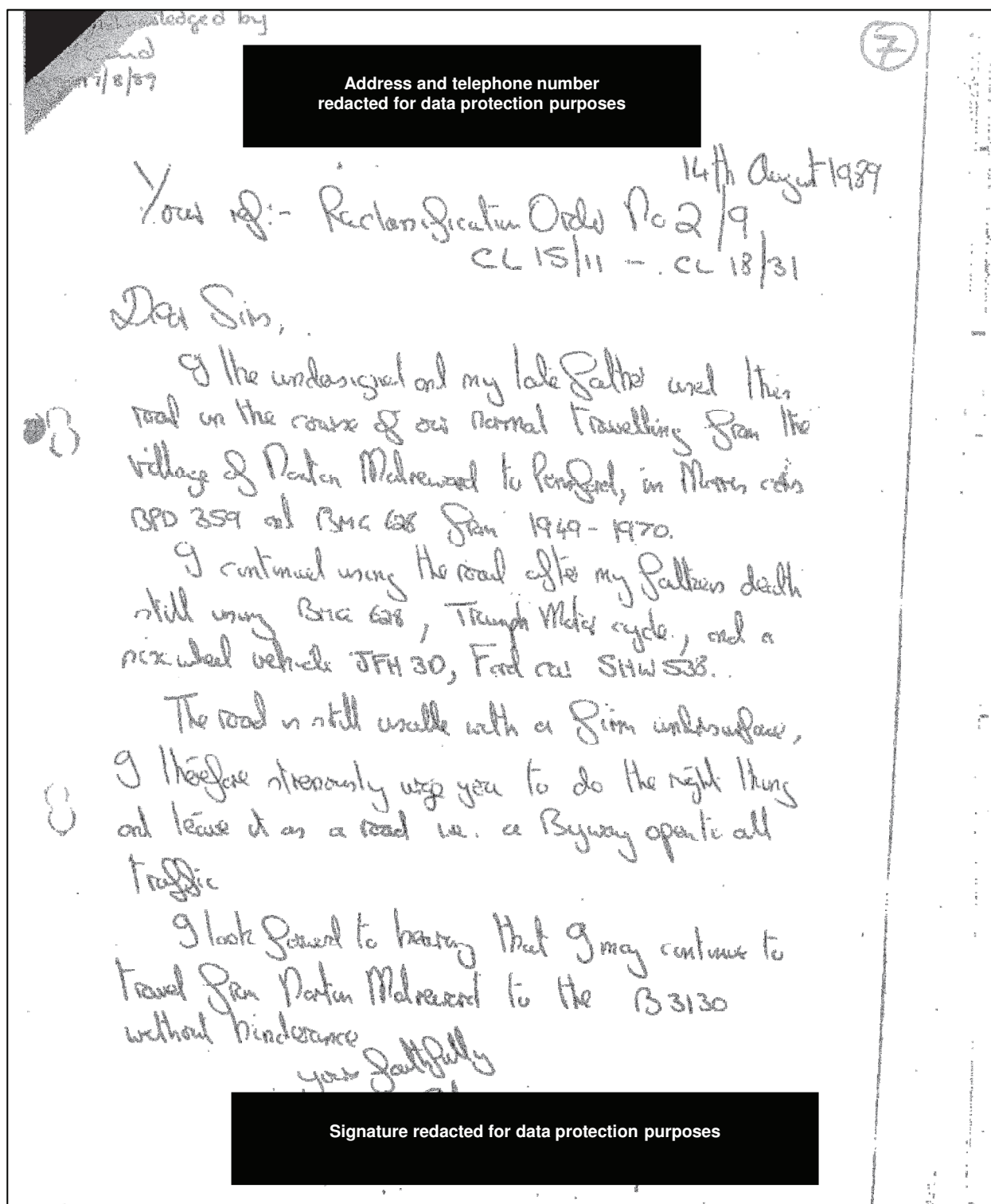
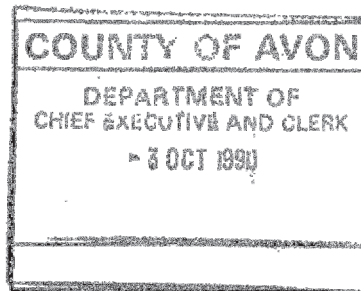


Fig. 17: User's letter

## 18. Landowner's letters

- 18.1 On 1 October 1990, Mr S R Young, the then owner of the land over which the Order Route runs, wrote to the then highway authority Avon County Council (Fig. 18). The letter disputes the length of time over which CL11/15, which the Order Route forms part of, has been used by motor cycles and states that CL11/15 has not been, and could not physically be, used by motor cars.



Manor Farm  
Norton Malreward  
Pensford  
Bristol.  
BS18 4HX

Legal Dept.  
Avon County  
Haymarket  
Bristol.

Yr. Ref. PM PH519/1a/GMS  
WF/G/

9/1990.

1.10.90.

✓ Ackd  
4.10.90

Dear Mr. Malarby,

Re. Bridleway. GL15/11. Norton Malreward.

I am writing to you as owner of Manor Farm, of which the GL15/11 passes over my land. It has been brought to my notice that certain information sent to the Council by the British Trail Riders is incorrect.

1). It was submitted that motor cycle usage extended back to 1946. I PERSONALLY OPENED UP THIS TRACK IN THE LATE 1970'S BECAUSE IT WAS NOT PASSABLE BY FOOT LET ALONE MOTOR CYCLE.

2). Motor car RAC rallies have been held over the past 10 years.

NO MOTOR CAR RAC RALLY HAS EVER BEEN HELD ON GL15/11 (Only part of 18/31 Guys Hill has been used)

3). Regular usage by Traffic since the 1940's

UNTRUE.. I HAVE LIVED HERE SINCE 1954 IT IS ONLY IN THE PAST 4/5 YEARS THE TRAIL RIDERS HAVE TAKEN ANY INTEREST IN RIDING THIS TRACK, CERTAINLY NOT 20 YEARS PLUS.

4). Submitted that the width of the track was suitable as a BOAT UNTIL MARCH 1989 A WOODEN GATE 4FT WIDE (Bridle gate) WAS AT THE JUNCTION OF GL15/11 and 18/31. this has been demolished by persons unknown since the advertising of RUPP reclassification. This proves the track was never meant for motorised vehicles.

Many people at Norton Malreward are most anxious at the outcome of this dispute, but have not written to you personally (as the 40 Trail Riders have done) as they felt they were represented by the Parish Council in a democratic way. If however you feel this would help the council arrive at a situation where the FACTS and TRUTHS are fairly considered, please let me know and I will arrange this.

As I feel the Council have been grossly misled by the so called "Evidence"

of the Trail Riders, please would you present this letter to the Council at the next meeting regarding this matter. I feel the Council should investigate for itself to ascertain what is "Evidence" and what is "Fiction".

I look forward to hearing from you in the near future.

Yours sincerely,

*S. R. Young*

S.R.Young.

Fig. 18: Letter from the then landowner to Avon County Council



18.2 On 14 August 2012, the granddaughter of the individual who owned of the land over which the Order Route ran when it was recorded on the DM&S and the daughter of the Mr S R Young referred to in paragraph 18.1 above, wrote to the Authority (Fig. 19). The email states that both her grandfather and father considered the Order Route to be a public bridleway.

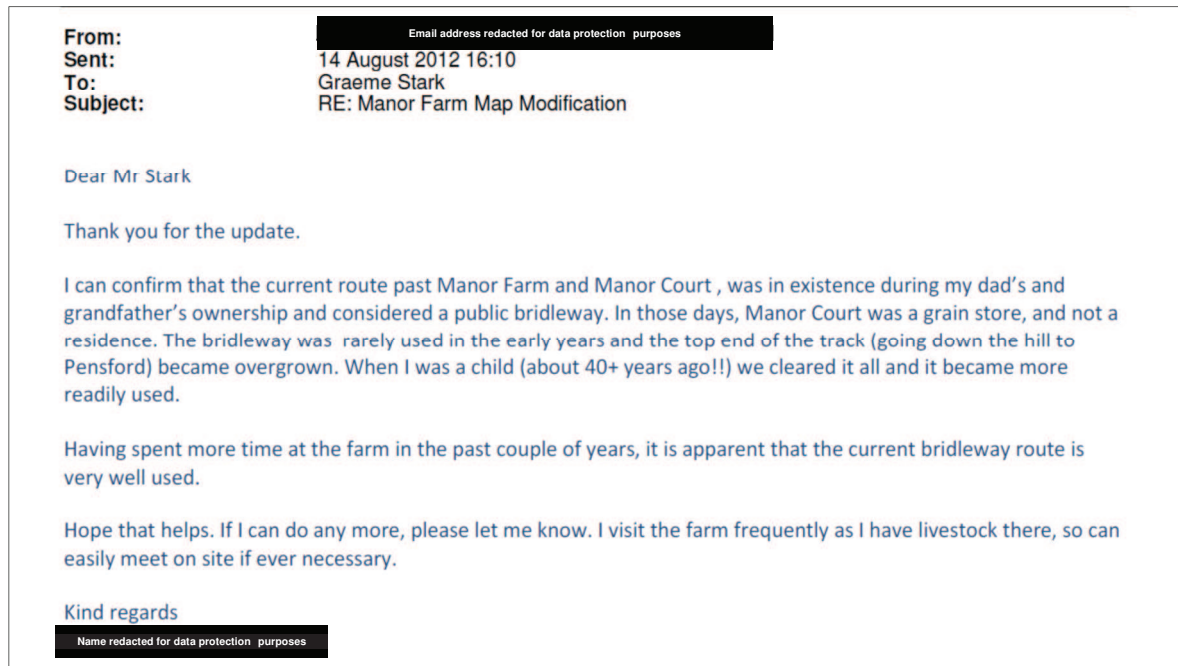


Fig. 19: Email from the daughter of Mr Young to the Authority

## 19. Sale and Purchase Documents

19.1 In 1992, the buildings and a number of the fields which formed part of Manor Farm were sold. The Sale Particulars Plan was provided to the Authority by one of the Applicants and formed part of the sale particulars (Fig. 20). The Order Route is delineated by parallel pecked and solid black lines. The plan is signed by the vendor and dated 18 July 1992; one of Applicants has confirmed that this was also 'the position' on 17 August 1992 when the sale was completed. This plan indicates that the section of the Order Route physically existed in 1992.

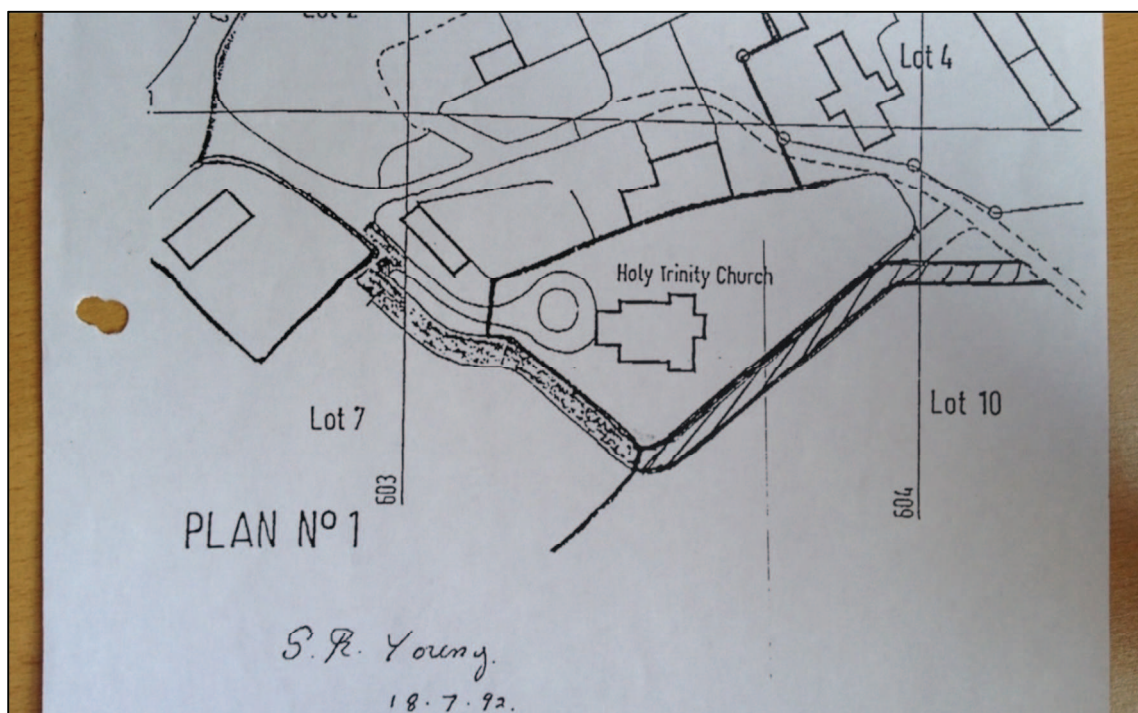


Fig. 20: Sale Particulars Plan

19.2 The plan at Fig. 21 is a copy of the Land Registry plan for Title Number AV221579 which has been provided to the Authority by one of the Applicants. It is based upon a 1:2500 Ordnance Survey map which does not delineate the Order Route; the Title Plan does not therefore provide any evidence regarding the Order Route.



Fig. 21: Title Plan for Title Number AV221579

19.3 The Land Registry plan for Title Number AV221578 appears to be based upon the 1986 1:2500 Ordnance Survey map which has then been enlarged to 1:1250. The underlying Ordnance Survey map depicts the eastern end of the Order Route with double pecked lines as detailed in paragraph 16.1 above (Fig. 22). This Title Plan shows that some of the land over which the Order Route runs formed part of Title Number AV221578. The Title Plan does not provide any evidence of the existence of public rights over the Order Route.

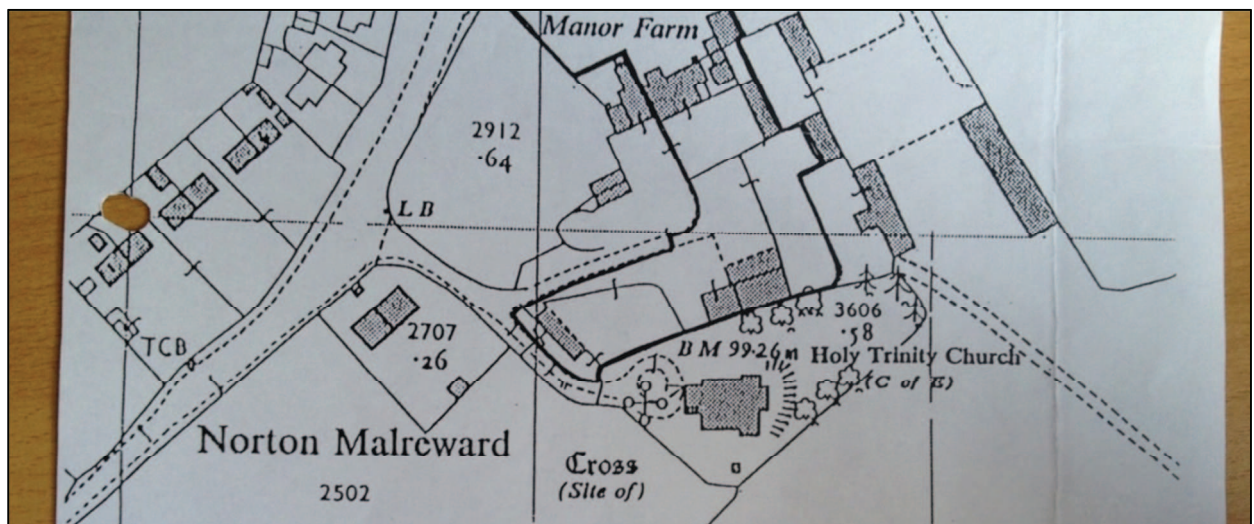


Fig. 22: Title Plan for Title Number AV221578



## 20. Statutory Declaration

- 20.1 A statutory declaration was made by Walter John Goldstone, who was a contractor at Manor Farm from 1934 to 1950 (Fig. 23). Mr Goldstone describes the Order Route as being gated and fenced off from the surrounding land and he states that he never saw horseriders or vehicles using the Order Route. Article 6 of the Statutory Declaration states that; *"At the Belluton Pensford end of the farm there was certainly no sign of exit as the boundary hedges were intact."* This statutory declaration indicates that the southeastern end of public bridleway CL15/11 was impassable but that the Order Route physically existed between 1934 and 1950.

I WALTER JOHN GOLDSTONE of 25 Castle Hill Banwell Weston-super-Mare North Somerset DO SOLEMNLY AND SINCERELY DECLARE as follows:-

1. In 1934 I moved from Woodbridge Ubley to Manor Farm Norton Malreward Pensford Bath and North East Somerset ("the farm") and I lived and worked at the farm until 1942 when I moved to Stanton Drew near Bristol Bath and North East Somerset
2. During the period from 1942 until 1950 I visited the farm at regular intervals both as a contractor (mainly ploughing) but also as a friend of the George family who lived there
3. There is a track on the farm over which I now understand a right of way is being claimed ("the track")
4. Throughout my association with the farm the track was regarded as a fenced off track to enable dairy cows to be driven up to the top pastures of the farm. After milking the cows returned into the track and the yard gate was shut to let them wander up on their own. The gate would be closed at all times to prevent cattle straying back into the yard
5. Throughout my association with the farm no one ever asked for the gate to be opened and no vehicle other than the farm machinery ever used the track
6. At the Belluton Pensford end of the farm there was certainly no sign of exit as the boundary hedges were intact
7. During the Second World War I left the farm, but still returned at times as an agricultural contractor and at no time during my association with the farm did I see any wheeled vehicles or horse riders use the track
8. From my local knowledge I know that stone was quarried from

Fig. 23: Statutory Declaration of Walter John Goldstone (continued overleaf)

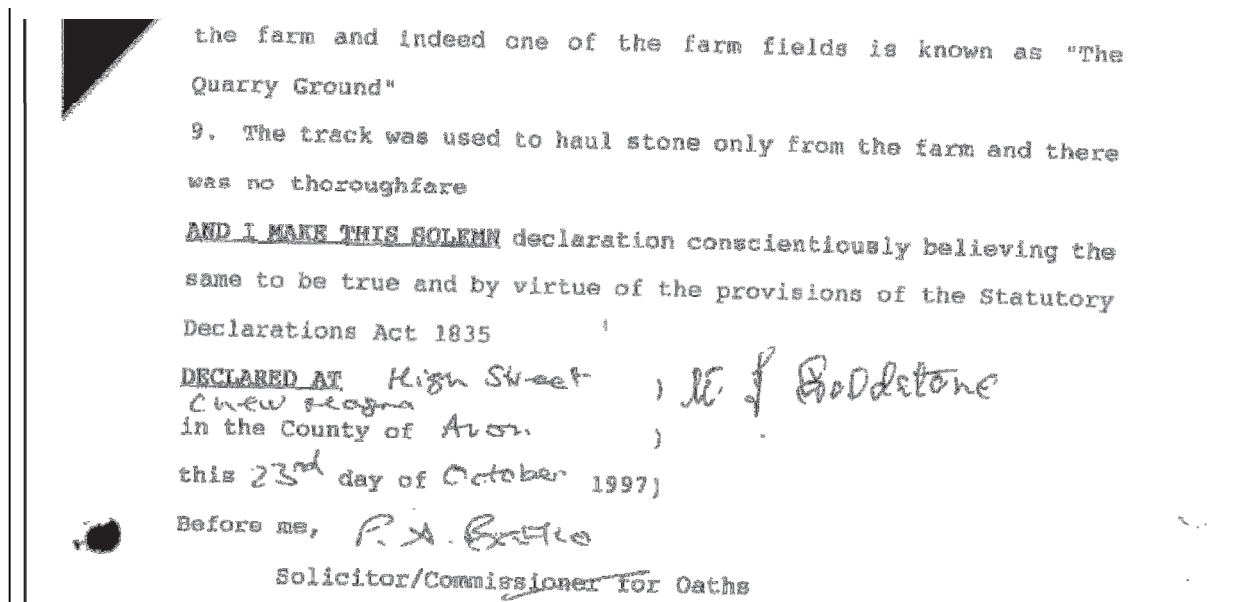


Fig. 23: Statutory Declaration of Walter John Goldstone

## 21. Path Files

- 21.1 Correspondences held on file by the Authority indicated that the Order Route has been periodically obstructed since it was recorded on the DM&S, for example in 1975 and 1981. The landowner at the time does not appear to have disputed the existence of the rights as recorded on the DM&S and correspondences indicate that the Order Route was obstructed in response to security concerns (Fig. 24). There are also a number of correspondence discussing how the path was originally came to be recorded on the DM&S, the possibility of a Traffic Regulation Order, a proposed diversion application and the possibility of vehicular rights being stopped up at the Magistrates Court. The Authority does not have any record of the rights over the Order Route being disputed until the commencement of the Reclassification Order process detailed in Appendix 3.

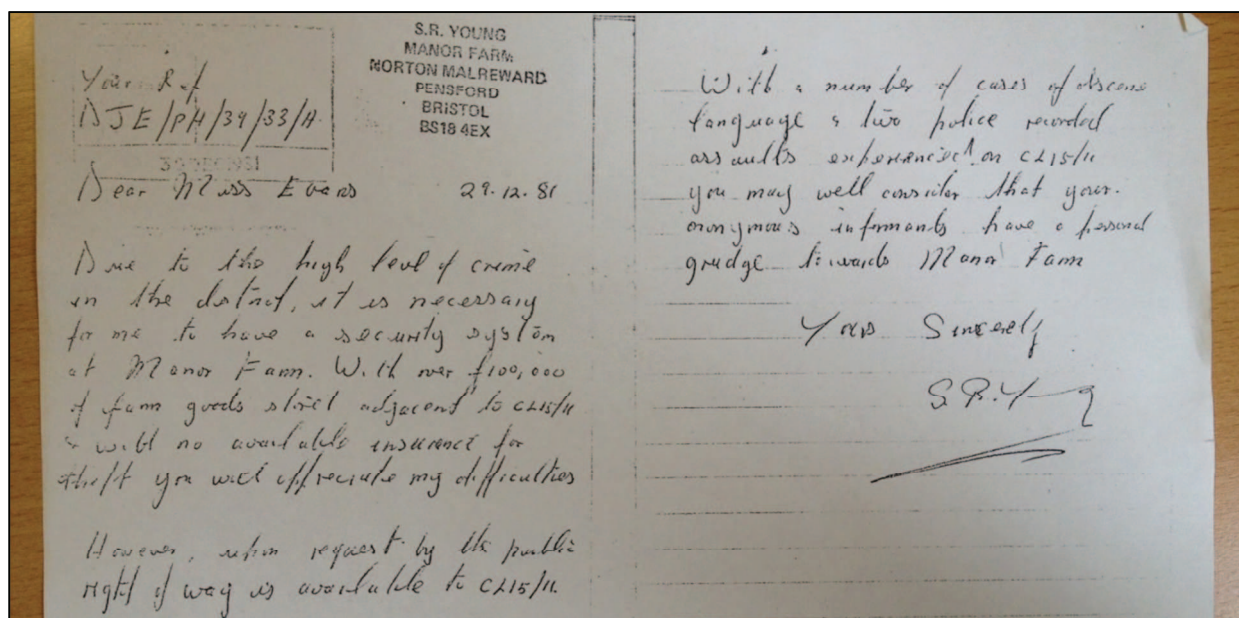


Fig. 24: A letter from the then landowner Mr Young to Avon County Council

- 21.2 The Authority is not in possession of any evidence to indicate that the Order Route has been stopped up, diverted or expressly dedicated either prior to, or following, its recording on the DM&S.



**MEER MEAD FARM  
WOOLLARD LANE  
WHITCHURCH  
BRISTOL BS14 OQR  
01275 832590**

**[B-SAUNDERS2@SKY.COM](mailto:B-SAUNDERS2@SKY.COM)**

**02 August 2012**

Mr Graeme Stark,  
Senior Rights of Way Officer,  
BANES  
Keynsham, BS31 1LA

Dear Mr Stark,

**RE: BATH AND NORTH EAST SOMERSET COUNCIL  
(CL15/11, MANOR FARM, NORTON MALREWARD)  
DEFINITIVE MAP MODIFICATION ORDER 2012-08-02**

We are writing in respect of the above order and wish to put in an objection to this proposal.

We have been riding on this bridle way for over 20 years and this will be a great loss if the above order is issued and no alternative route is found to enable riders to continue riding this bridleway. Loss to local riders who use this bridleway to get off roads where



Objection 1

traffic is ever increasing will be a great one. There are not many bridleways available to horse riders in this area and too loose part of this one will be tragic.

Unless this section under review cannot be re-routed it will not be possible to negotiate into and out of Norton Malreward and onto the bridleway.

This was accepted as a legal path in 1950 and put onto the definitive map with no objections.

It also went through a reclassification order in 1989 with no objections.

Please keep us informed of the progress in respect of this matter.

Yours sincerely,

Mr and Mrs B Saunders



A handwritten signature in dark ink, consisting of a stylized 'Z' or 'S' shape.

Objection 2

**Graeme Stark**

---

**From:** John Ives <johnives@blueyonder.co.uk>  
**Sent:** 01 August 2012 00:40  
**To:** Graeme Stark  
**Cc:** 'Kate Ashbrook'; 'Ann Fay'  
**Subject:** NORTON MALREWARD

Dear Graeme

Re our recent telecon about Norton Malreward bridleway DMMO I have written to seek the PCs views about the situation and a possible diversion.

Unfortunately it does not appear that they cannot reply until September at the earliest

If however the landowner is unwilling to consider a diversion then I feel that the OSS must object on the grounds that the applicant has not proved that the HA made an error when the definitive map was agreed.

I will clearly have to "bone up" on all the details

Regards  
John Ives

### Objection 3

**Graeme Stark**

---

**From:** Ann Fay <ann.fay@laburnumhouse.me.uk>  
**Sent:** 07 August 2012 20:55  
**To:** Graeme Stark  
**Subject:** objection

Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) Definitive Map Modification Order 2012

I am objecting to this Order on behalf of the British Horse Society.

The grounds for objection are

- 1) The path was placed on the Definitive Map in 1956 after it was in the public domain since 1950 when first surveyed under the National Parks and Countryside Act 1949. There were no objections to the actual route, only a matter of classification which was resolved by classifying it as a CRF. This path has therefore been legally in use for 56 years. How can it suddenly become illegal?
- 2) The path was subject to a reclassification process in 1989 when it was reclassified as a bridleway under the RUPP (or CRF) reclassifications. Again no suggestion that the path was illegal.
- 3) Section 53 of the Wildlife and Countryside Act 1981 states that suitability and security of properties and wishes of adjacent landowners are not relevant.
- 4) The Countryside and Rights of Way Act 2000 states that councils, before considering deletions from the Definitive Map, are required to consider whether the existing highway is unnecessary or needed for public use and whether an alternative highway should be provided. In this instance the path is definitely necessary as it forms part of a much longer bridleway coming from Stanton Drew parish which would be rendered a cul de sac. This through route is widely used by local horseriders. The alternative suggested, passing to the south of the Church, would be acceptable but must be in place, on the definitive map, before any deletion was confirmed.
- 5) the path is part of a published walk, the Three Peaks Path, which would have to be re-routed.

Ann Fay, British Horse Society Acting Access and Bridleways Officer for Bath and North East Somerset.



Objection 4

from Alan Kind  
45 The Fairway  
Gosforth  
Newcastle upon Tyne  
NE3 5AQ

e-mail mondard@mac.com

Bath & North East Somerset Council  
Public Rights of Way  
Floor 2, Riverside  
Temple Street  
Keynsham  
BS31 1LA

8 August 2012

Dear Sir,

**Re: proposed deletion of part of bridleway CL15/11, Manor Farm, Norton  
Malreward.**

Reference your order of 18 July 2012, I object to this order on the ground that there is no positive evidence of the way having been recorded in error.

May I please have a copy of Mrs Marlene Masters' submissions to your committee, which led to this order being made.

May I please have a copy of any other relevant evidence?

Can you please tell me what papers you have from the reclassification of the former RUPP, and the subsequent High Court challenge?

Yours faithfully

Alan Kins



Objection 5

Mrs Julia Bodman  
The Stables, Maes Knoll Farm  
Norton Lane  
Pensford  
Bristol  
BS39 4EZ

10th August 2012

Dear Sirs

Reference: Modification order CL15/11, Manor Farm, Norton Malreward.

I was very concerned to hear that the above order was made to close the access path to the bridleway from Norton Malreward to Belluton.

I have been riding this bridleway since I was a child (some 30 years) when it was clearly marked as a right of way and can remember in the late 80's when a reclassification order was made to an official bridleway. Official bridleway signs were erected and have legally been used as such ever since.

In this day and age when traffic has increased and horse riding on roads has become a much more hazardous task I am amazed that removal of such access after all this time can even be considered. Whilst I appreciate that the access is through the grounds of Manor Farm I have always been curious of this fact and occupants have always been pleasant and welcoming whenever I have met anyone.

If a mistake was made back in the 50's by the council or a right of way was granted by previous landowners why should the responsible horseriding community be grossly penalised now because new landowners have changed their mind.

Surely once a route has been classified on the definitive map and published it cannot just be revoked especially when it is a well used route.

I will be greatly saddened if once again the council take the stance to publically deny horses and their riders a safe off road route of exercise.

I await in anticipation the outcome of this very worrying situation.

*julia bodman*

julia bodman

Objection 6

Graeme Stark

---

**From:** Sue Russell <Secretariat@ukceb.org>  
**Sent:** 30 August 2012 08:37  
**To:** Graeme Stark  
**Subject:** Closure of Bridleway to airstrip at Norton Malreward - Objection  
**Importance:** High

Dear Sir

I am writing to object to the proposed closure of the bridleway mentioned below ...

"There is a proposal to block a bridleway at which allows access to the airstrip at Norton Malreward. If this is going to affect you (or even if it doesn't but you would like to help those who it will affect) please object by sending an email to [grame\\_stark@bathnes.gov.uk](mailto:grame_stark@bathnes.gov.uk) by 14th September. This would be a real shame as it is a great way of keeping horses off busy roads and also a great bridleway. If you would prefer to write the address is Public Rights of Way, Bath and North east Somerset Council, Riverside, Temple Street, Keynsham, BS31 1LA. Many thanks - Your support would be much appreciated!"

You may wonder why I should be objecting to the closure of a bridleway that I do not use. I am an administrator for the Horses & Road Safety Awareness Campaign, on their behalf, and almost 5000 members, I object to your proposal to close this bridleway. Our fight to stay safe is only made worse by the closure of bridleways. As many have been cut off by the construction of roads and motorways, we are forced on to the roads to access the few we have left and are putting ourselves, our horses and other road users at risk. The more that close the more accidents involving horses and riders will happen.

If you need to contact me please call on the number below.

Kind regards

*Sue*

Sue Russell  
Horses and Road Safety Awareness Group  
Mobile: 07974236505

From: rachrichisaak@aol.com  
Sent: 30 August 2012 10:49  
To: Graeme Stark  
Subject: proposed bridleway/access closure - Norton Malreward

Dear whom it may concern,

It has been brought to my attention that access to a popular bridleway is to be blocked. I strongly object to this closure. There are more and more accidents on the roads involving cars and horses, cars seem to be driving closer and faster, with little patience towards horse riders and with little care and understanding of the potential reactions of the horse. To be honest I am shocked and unsure why closures which would force more riders onto busy roads are even on the agenda. If anything, this area needs MORE OFF ROAD riding to be opened. I used to ride in Bath - there were miles of rides where I was safe from traffic, fields were made accessible bridleways were open, passable and well maintained. I rarely needed to use roads where as it is impossible to avoid them in this area. It may be a good idea to take a walk on foot on the road that we would be forced to use if horses are unable to use this bridleway. It can be terrifying riding (or walking) around a corner when you can hear a fast approaching vehicle that isn't aware you are there. You really have no idea if it will manage to avoid you in time or not. This website may also be a useful source. [www.horseawareness.co.uk](http://www.horseawareness.co.uk)

Thank you for reading, I hope our concerns are heard.

Rachael Bishop

Objection 8

**Graeme Stark**

---

**From:** sophie richards <sophierichards11@live.co.uk>  
**Sent:** 30 August 2012 19:27  
**To:** Graeme Stark  
**Subject:** Bridleway closeure threat

30.08.12

I am sending you this email as I have heard that a bridleway linking paths to Norton Marleward and the Airstrip is ear marked for closeure. I would like to put forward my objection to this. We need to keep open bridleways and byways to give horse riders safer places to ride off road.

Sophie Richards



**Graeme Stark**

---

**From:** Torrie Marshall <torriemarshall@hotmail.co.uk>  
**Sent:** 30 August 2012 21:39  
**To:** Graeme Stark  
**Subject:** SAVE THE AIRSTRIP BRIDLEWAY

Hi,

I don't think you all release what closing the airstrip means to all horse riders. It is the only safest path of riding in the area. it is off road so therefore safe enough for any horse and rider to Ride on. it is used regularly and it the most nicest ride We know being horse riders ourself. riders often get moaned at for being on the road as it interrupts the flow of traffic, this is a prime example of a perfect place for you and your horse to access without going through traffic. not only that, we all respect the way we go through past the house by staying on the path provided and quietly passing, so there is no reason why it should be closed as it is not effecting anyone. by making one or two families happy you are upsetting loads of people more then what you realize, is that really worth the trouble and upset? we know that the other bridle path that we will be able to access instead, is on a main busy road. would you want little children going down this road facing blind bends and fast flowing traffic? this is just a serious accident waiting to happen and there wont only be one as like we said this is a regularly used air strip. not all horses or riders are safe to go on the road and this is a safe way without facing lots of traffic. we thank you for reading this email and hope for all our sake you will make the right decision by keeping the airstrip bridle path open.

your sincerely,

Regular airstrip riders who use this safe bridleway.

SAVE THE AIRSTRIP BRIDLEWAY



Objection 10

**Graeme Stark**

---

**From:** jean <jean@flynn1234.plus.com>  
**Sent:** 31 August 2012 13:21  
**To:** Graeme Stark  
**Subject:** Closure of Bridleway

Sir

I would like to object to the proposed closure of the Bridleway at Manor Farm, Norton Malreward

This is the only bridleway in the vicinity where children (and adults) can ride with safety. The lanes are very narrow and the farm vehicles get larger causing enormous concern. Please consider this closure very carefully before there is an accident.

With thanks.

**Graeme Stark**

---

**From:** David Waterstone <david.waterstone@btinternet.com>  
**Sent:** 03 September 2012 15:49  
**To:** Graeme Stark  
**Cc:** Nicholas Coombes (Cllr); Chris Hogg; ann.fay@laburnumhouse.me.uk; Rachael Whitlock  
**Subject:** Manor Farm, Norton Malreward

Hi Graeme

Back in July, I received information about the proposed definitive map modification order in respect of the ROW shown to run through Manor Farm. At the time, I was looking at it from the point of view of the Ramblers Footpath Secretary and did not comment because an alternative existed which was reasonably convenient for walkers and I therefore would not be justified in objecting.

However, in my new capacity as Chairman of JLAF, it has been pointed out to me that the closure of this short section of ROW in fact will disrupt seriously a much wider circular route offering safe riding on a network of quiet lanes and paths. At a time when one of the aims of JLAF is to consider how, in these austere times, the ROW system can be developed to provide some economic support through encouraging tourism, such disruption is obviously a matter for concern.

I am conscious that concerns of this kind may not be strictly relevant to the legal question that has been raised by, I presume, the landlord. But it is background of which the Committee may wish to be aware. Turning to the legal aspects of this matter, I have not yet sought advice, but from a first glance at legal references to hand, I would say that the authority of the Committee to take this decision must be in question. Failure to record an ROW in the definitive map (which I understand to be an argument put forward) does not seem to me of itself to constitute strong evidence of non-existence. What evidence has been produced to show that an ROW does not exist?

Regards David

Objection 12

RECEIVED

05 SEP 2012

Belluton Farm  
Belluton,  
Pensford,  
Bristol,  
BS39 4JJ

2nd September 2012

Mr. G. Stark  
Public Rights of Way  
Floor 2  
Riverside  
Temple Street,  
Keynsham,  
Bristol,  
BS31 1LA

Dear Mr. Stark,

Bridal Way between Norton Marleward and the Air-Strip

I own the Farm on the Pensford side of the grass Air-Strip at Norton Marleward, and have been here for nearly 20 years. I am a keen horse rider and use the bridal way from the Air-Strip to Norton Marleward, regularly. In addition, there are several other horse riders based here at the Farm, who also ride this route.

I want to voice my strong objection to the proposal of this bridal way being closed.

Can you please kindly keep me informed of any further proceedings / outcomes of this proposal.

Kind regards,



Rob Burles

RECEIVED  
05 SEP 2012

Objections 13 to 31

We the undersigned, are against the modification order made on 18 July 2012 CL/11, Manor Farm, Norton Malreward, regarding Public Rights of Way and deleting the said section of Bridleway from grid reference ST 60411. We object to this order as there is no evidence to demonstrate that the Bridleway was recorded in error.

Name	Address with postcode	Signature and date
SALLY DARK	114 DERRICK RD BS14 8NJ	[Redacted] 31/8/12
RACHAEL CRAGG	43 BEACONSFIELD RD KNOWLE, BS4 2JE	[Redacted] 31/8/12
GLENDA SAUNDERS	2, HORNBEAM WK BS31 2RT	[Redacted] 31.8.12
Julie Green	Southview Petersfield	[Redacted] 31.8.12
Jo Rawlins	3 Maybec Gardens	[Redacted] 1.9.12
Lorraine Gredbanks	The COTT NORTON Lane BS14 0AT	[Redacted] 1.9.12
Jemma Gredbanks	The COTT NORTON Lane BS14 0AT	[Redacted] 1.9.12
Lindsay Hook	23 Gaisdale Rd BS16 2HY	[Redacted] 1.9.12
Laura Lees	244 Corporation Rd Southville, Bristol	[Redacted] 1.09.12
CHRIS DAVIES	4 MAESBURY RD KEYNSHAM BS31 0E	[Redacted] 1/9/12
ANNE THORPE	27 CAMERON RD BS56 6HN	[Redacted] 1-9-12
Charlotte MURFORD	2 Wexford rd BS4 1PU	[Redacted]
Tonie MURFORD	2 Wexford RD Knowle, BS4 1PU	[Redacted]
KIM SAUNDERS	7 Durlayh Close Needley Park	[Redacted] 1-9-12
KATH JONES	2 GOSLET ROAD, STOCKWOOD BRISTOL BS14 8SP	[Redacted] 01.09.2012
MICHELLE CLAYDON	1A BAYHAM ROAD, KNOWLE, BRISTOL BS4 2EA	[Redacted] 1.9.12
E. HAYWARD	9, BS4 4LW	[Redacted] 1.9.12
N. BURSTON	12 Avon Rd BS31 1GJ	[Redacted] 1/9/12
A CARTER	12 Imperial Rd	[Redacted] 1.9.12



## Objections 32 to 39

We the undersigned, are against the modification order made on 18 July 2012 CL/11, Manor Farm, Norton Malreward, regarding Public Rights of Way and deleting the said section of Bridleway from grid reference ST 60411. We object to this order as there is no evidence to demonstrate that the Bridleway was recorded in error.

[illegible]



06 SEP 2012

RECEIVED

9, Longmeadow Rd.

Reynham

BS 31 2 RQ

Dear Sir,

Ref: Modification order CL15/11 Manor Farm.  
Norton Malneford.

I should like to add my objections to the plans for the closure of the access path to what is known locally as "the airstrip" bridleway.

I have been using this route since the late 1990s and was devastated when I heard of the plans.

Properly signed and on the O.S. Map. and very well used: how can the landowners claim it is not an authentic route?

Riding on the roads is becoming increasingly dangerous and to remove access to one of the very few places, where we can get away from the traffic seems illogical.

Is there no way it can be 'diverted' - perhaps round the front (South) of the church. as happens with other rights of way occasionally?

I do hope you can find some way of stopping these plans.

Yours sincerely

Graeme Stark

---

**From:** PROW  
**Sent:** 07 September 2012 10:18  
**To:** Graeme Stark  
**Subject:** FW: att. Mr Grahame Strak, re closure of bridleway access from Norton Malreward to field know as the airstrip

**From:** Diane Maggs [<mailto:dianerm02@gmail.com>]

**Sent:** 06 September 2012 15:01

**To:** PROW

**Subject:** att. Mr Grahame Strak, re closure of bridleway access from Norton Malreward to field know as the airstrip

Dear Mr Stark

I have heard that the bridleway access to the field known as the airstrip at Norton Malreward may be closed. I wish to object to this as I use the to ride into Norton Malreward from the airstrip. If this is closed then it would mean that I would have to ride along the busy Chew Magna road, which can be very hair raising.

Yours sincerely

Diane Maggs

RECEIVED

07 SEP 2012

Halside

(Maes Knoll Farm)

Norton Malreward

Pemford

Bristol

BS39 4EZ

To whom it may concern,

Reference: Modification order LL15/11,  
Manor Farm Norton Malreward.

As the owners of Oak Tree Equestrian Centre and  
J.B. equestrian services, (Julia Bodman) we  
are very concerned that the above order is being  
considered to close the bridleway access from  
Norton Malreward to Belluton.

I myself have rode this bridleway for many  
years, my daughter and many riders from the above  
establishments also use it regularly without  
any problems.

They respect the path by the houses and also use

the concrete path to cross the airstrip.  
Why after all these years the Bridleway has  
become a problem?

With the amount of traffic around the lanes it  
is a pleasure to ride this Bridleway and enjoy  
the scenery without any fast cars or tractors  
coming around the corner.

If the access is denied by Manor Farm, why  
can't a hunting gate be put next to the main  
gate by the church path? That way no one  
would be disturbed by the path and riders  
would be able to access the Bridleway alot  
easier.

We want to hear what the outcome will be of  
this situation

Yours sincerely,



ANNETTE &  
LAURENCE LAINE



Objection 43



Manor Cottage  
Church Road  
Norton Malreward  
Pensford  
Bristol, BS39 4EX  
Tel: 01275 830 159  
Email lon.barfield@gmail.com

Public rights of way  
(RE Bridleway closure CL 15/11)  
Floor 2, Riverside  
Temple Street  
Keynsham  
Bristol  
BS31 1LA

Ref:  
Date: 7. Sep. 2012

**Objection to proposed closure of bridle-way  
CL 15/11 Manor Farm, Norton Malreward**

Dear sir/madam,

I see that there is a proposal to close the bridle-way running around the church in Norton Malreward, Bristol. Closing the last 200 yard stretch of a popular bridle-way without proposing any re-routing or alternatives would be a very rash decision with implications for walkers, riders, wheel-chair users, pram users and the local community, implications that are both large and unwanted. As a local user of the bridle-way I would like to object to this closure for a number of reasons.

**It would block horse traffic**

Living close to the bridle-way we have enjoyed the horses going past for more than a decade, it is one of the 'sights and sounds of the country-side' and one that our children have grown up with. It would be sad if this were no longer the case. We do get the occasional motor-bike following the route but this happens very rarely indeed.

**It would prevent walkers from visiting the church**

Holy Trinity church in Norton Malreward is something of a hidden gem and the bridle-way forms part of the 'Three Peaks Walk' so walkers on the bridle-way are often surprised to come across the church when walking that route. Now that the church doors are left open during the day they can pop in and have a look round. If the proposed bridle-way closure went ahead then walkers would still be able to walk past it via the designated public footpath but this would bring them out on the road beyond the church entrance therefore denying them direct access to the church gate. Visiting the church would require taking a 600 yard detour up the road to reach the entrance.

**It could cause parking problems**

Taking the long walk across the fields behind the church is often done by people who drive here, park near the church and then follow the bridle-way from there. If this bridle-way closure goes ahead walkers wanting to follow the route would have to start their walk, and probably attempt to park, at the start of the designated public footpath that joins the road further down which could re-

Objection 43
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sult in bad parking as the road there is narrower and busier being close to the housing estate in Chalk Farm Close.

**It would increase the chances of traffic accidents on the B3130**

Horses would still probably want to access the fields behind the church and the only way of getting there would be via the other end of the bridle-way that starts on the B3130. This end is much busier and this would mean more horses using and joining the B3130 which is a very narrow and 'fast' road and this would lead to a higher possibility of traffic accidents involving or caused by horses.

**It would render a good wheelchair/pram area inaccessible**

The field behind the church is relatively flat and the path is well finished. In theory it would be useable by wheelchairs and prams providing they are designed for more rugged terrain. More than once I have seen a pram in use there. Closing the bridle-way would render the entire field inaccessible to wheelchairs and prams since the remaining two access points are steep and muddy.

Out of curiosity I viewed the application on the BANES web site and see that it comes from Mr M J P Pye, Mrs R A Pye and Mr J G Jones Manor Farm, Norton Malreward. I know that the Pyes did indeed live in Manor Farm for a short time but I would like to know who J. Gareth Jones is. Did he live at the Manor Farm which is the address given for him?

Yours

Lon Barfield

Objection 44

RECEIVED  
10 SEP 2012

96, Allerton Crescent,  
Whitchurch,  
Bristol,  
BS14 9PX.

Telephone Number : 01275 541512

6 September, 2012.

Mr Graeme Stark,  
BANES,  
Public Rights of Way,  
Floor 2, Riverside,  
Temple Street,  
Keynsham,  
North Somerset,  
BS31 1LA.

Dear Mr Stark,

BELLUTON TO NORTON MARLEWARD BRIDLEWAY

It has been brought to my attention there is a plan to close the above bridleway. I have regularly ridden this path over the past twenty years and would be extremely upset if it was to suddenly close.

Is there any truth in the intent and is there anything I, or my colleagues who also ride the path on a regular basis, can do to challenge the decision ?

Yours sincerely,



Margaret Stenner

Objection 45

Margaret Jones  
24 Chiltern Close  
Bristol  
BS14 9RH  
and owner of land in Pensford  
7th September 2012

To Graeme Stark  
Public Rights of Way  
Floor 2  
Riverside  
Temple Street  
Keynsham  
Bristol  
BS31 1LA

RECEIVED  
10 SEP 2012

Dear Mr Stark,  
re Bridleway at Norton Malreward.

I am writing to say that the bridleway is used and valued by horse-riders in the area. We have very few places to ride off road and the removal of this one would be devastating. I have always understood that this is a right of way. It shows on the map as such. Surely this right cannot be removed from us.

Yours truly,

Margaret Jones.





Objection 46

RECEIVED  
10 SEP 2012

Manor Cottage  
Church Road  
Norton Malreward  
Pensford  
Bristol, BS39 4EX  
Tel: 01275 830 159  
Email  
imogen.barfield@gmail.com

Public Rights of Way Team  
(RE Bridleway closure CL 15/11)  
Floor 2, Riverside  
Temple Street  
Keynsham  
Bristol  
BS31 1LA

Ref:CL15/11  
Date: 7. Sep. 2012

**Objection to proposed closure of bridleway  
CL 15/11 Manor Farm, Norton Malreward**

Dear Sir/Madam,

I see that there is a proposal to close the bridle-way running around the church in Norton Malreward, Bristol. Closing the last 200 yard stretch of a popular bridleway without proposing any rerouting or alternatives would be a very rash decision with implications for walkers, riders, wheel-chair users, pram users and the local community, implications that are both large and unwanted. As a local user of the bridle-way I strongly object to this closure for a number of reasons.

Living close to the bridle-way we have enjoyed the horses going past for more than a decade, it is one of the 'sights and sounds of the country-side' and one that our children have grown up with. It would be sad if this were no longer the case. We do get the occasional motor-bike following the route but this happens very rarely indeed. Deleting a section of the bridleway will prevent horse riders from using the route over the fields behind the church, which is a popular route for riders. It will also prevent those with access issues - such as the disabled, pram users and others who find it difficult or impossible to use the pedestrian stile - from accessing the public footpath across the fields. I take my young baby up the bridleway onto the fields in our all-terrain pram but would be unable to do this if the section of bridleway were deleted. To delete one piece of a continuing bridleway/public thoroughfare thus rendering it impossible for people to use the public right of way is ludicrous.

It would also deter the public from visiting the Holy Trinity church in Norton Malreward. This church is a hidden gem and the bridle-way forms part of the 'Three Peaks Walk' so walkers on the bridle-way are often surprised to come across the church when walking that route. Now that the church doors are left open during the day they can pop in and have a look round. If the proposed bridle-way closure went ahead then walkers would still be able to walk past it via the designated public footpath but this would bring them out on the road beyond the church entrance therefore denying them direct access to the church gate. Visiting the church would require taking a 600 yard detour up the road to reach the entrance.

I should be grateful if you would acknowledge receipt of this letter to imogen.barfield@gmail.com

Objection 46

Yours faithfully



Mrs Imogen Barfield

RECEIVED

12 SEP 2012

2 Leaholme Gardens  
Whitchurch  
Bristol  
BS14 0LQ  
6.9.12.

Dear Mr Stark,

I am writing to register my disapproval for the planned access closure from Norton Airfield into Norton Malreward village. This is a route I take on a regular basis whilst riding my horse to my local instructor's yard. I will be extremely upset if this were to no longer be accessible, please re-consider this closure.

Yours Sincerely



Charlotte England.

The Tithe Barn,  
Sandy Lane,  
Stanton Drew,  
BS39 4EL.

8<sup>th</sup> September '12.

RECEIVED

12 SEP 2012

Dear Mr. Stark,

I would like to object to your current proposal to close the bridleway in Norton Malveard that goes around the church through the garden of a house.

I have used this route for several years now both on horse + by foot. It is an area of great beauty + in my experience has only been treated respectfully. There are very few off road areas to ride where I live + it would be devastating to lose this place.

Yours sincerely,

Pauline Croucher



Objection 49

22 OCT 2012

Smoke acre  
Norton Lane  
Chew Magna  
Bristol BS40 8RX

The Public Rights of Way Team  
Floor 2, Riverside  
Temple Street  
Keynsham  
Bristol BS31 1LA

18 October 2012

Dear Public Rights of Way team,

Re: BANES (CL15/11, Manor Farm, Norton Malreward) (No 2) Definitive Map  
Modification Order 2012 (Order No 2).

I am writing to object strongly to the proposed closure of the access to the bridleway  
via Manor Farm.

My family and I have used this bridleway regularly for the last 12 years and regard it  
as an invaluable right of way. It is one of the only places near where we live where  
we can safely ride off the road.

If this access is closed then the bridleway can only be accessed from the busy Chew  
Magna to Pensford main road, which is both very dangerous and unpleasant when  
riding a horse. Closing the Manor Farm access will result in more horses being ridden  
on that main road, which will increase the risk of traffic accidents involving horses.

And what is the point of a bridleway that doesn't go anywhere?

I request that a new access is permitted on the other side of Holy Trinity Church  
before you consider closing the access through Manor Farm drive.

Yours sincerely



Charles Thursby-Pelham

Objection 50

**Little Barton  
Chew Magna  
Bristol BS40 8RS  
01275 332440**

22 OCT 2012

Bath & North East Somerset Council  
Public Rights of Way Team  
Floor 2, Riverside  
Temple Street  
Keynsham  
Bristol BS31 1LA

20 October 2012

Dear Sir

**Re: BANES (CL15/11, Manor Farm, Norton Malreward) (No 2) Definitive Map Modification Order 2012 (Order No 2).**

I wish to object strongly to the proposed closure of the access to the bridleway via Manor Farm.

The bridleway is well used by many horse riders who wish to enjoy the local countryside on horseback and closure of the bridleway would be a disaster both for them and motorists in the area as horses would need to use alternative routes along busy roads to access the land.

Whilst I am not a horse rider myself, I appreciate the pleasure riders obtain from their hobby and this should not be constrained. I am, however, a motorist and your proposed closure would result in many horses being ridden along the B3130 which would be both dangerous for horse and rider and hold up the traffic. The proposed closure flies in the face of Health and Safety common sense and I am surprised the Council is even contemplating this proposal.

NO PUBLIC ADVANTAGE WOULD ENSUE FROM THE PROPOSED CLOSURE AND YOUR ACTION WOULD CREATE DANGER ON THE HIGHWAY. MARK MY WORDS.

Yours faithfully



Richard Westropp

Objection 51

Hillgrove Cottage,  
Chew Hill,  
Chew Magna,  
Bristol,  
BS40 8SA.

The Public Rights of Way Team  
Floor 2, Riverside  
Temple Street  
Keynsham  
Bristol BS31 1LA

Wednesday 24<sup>th</sup> October 2012

Dear Public Rights of Way Team,

Re: BANES (CL15/11, Manor Farm, Norton Malreward) (No 2) Definitive Map Modification Order 2012 (Order No 2).

I wish to voice my objections to the proposed closure of the access to the bridleway via Manor Farm in Norton Malreward.

There are so many wonderful walks in this area that will be made inaccessible by closing this small strip of land that must surely need very little maintenance or pose any great intrusion to the surroundings.

The current bridleway provides a safe and beautiful route for both walking and horse riding - healthy and free activities which, especially in this age of austerity and obesity, should be encouraged by the council and not restricted.

I am also concerned that the closing of this access could result in an increased risk of traffic accidents if horse riders are forced to access the remaining path from the busy Chew Magna to Pensford main road.

Please reconsider the closing of this vital access through Manor Farm, or at least secure an alternative adjacent pathway so that the rest of the countryside can be enjoyed as much as possible.

Many thanks in anticipation.

Yours sincerely,

 Emma Shaw (Mrs)

**Graeme Stark**

---

**From:** Charles and Mia Thursby-Pelham <thursby-pelham@zen.co.uk>  
**Sent:** 22 October 2012 12:57  
**To:** Graeme Stark  
**Subject:** Re: Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward)  
(No.2) Definitive Map Modification Order

Many thanks for this information. I will indeed be objecting! Have you been along the B3130, which will be the only access to the rest of the bridlepath, should the order go ahead? It is dangerous in a car, let alone on a horse, thanks to the volume of airport traffic on the road. Closing the small stretch at Norton Malreward will mean you double the number of horses on this busy road.

regards

Mia



Objection 53

Smoke acre  
Norton Lane  
Chew Magna  
Bristol  
BS40 8RX

The Public Rights of Way Team  
Floor 2, Riverside  
Temple Street  
Keynsham  
Bristol  
BS31 1LA

23/10/2012

Dear Public Rights of Way team,

Re: BANES (CL15/11, Manor Farm, Norton Malreward) (No 2) Definitive Map Modification Order 2012  
(Order No 2).

I am writing to object against the closure of the access to public bridleway on the aeroplane field via Manor Farm.

I, along with the rest of my family, have lived in the area for over 12 years and have always kept and ridden at least one horse at a time during this period. As a member of the local Pony Club, access onto this field is an essential part of getting both myself and my horse fit for competing and taking part in lessons within the Pony Club around which a large amount of the rest of my life is based. I cannot stress strongly enough how much the proposed closure will affect our lives and how it will endanger both our lives and the lives of my riding peers, through being forced to access the field via the fast and busy Chew Magna to Pensford main road instead. Why close this access in the full knowledge of the danger in which you are putting people (especially young children) and local drivers?

Clearly, closing the access to Manor Farm will result in large numbers of both adults and children being forced to access the aeroplane field via this main road, resulting in more accidents involving horse riders. I myself, when I was 12 years old, had a car drive so close to me on this very road that its wing mirror scrapped along the side of my pony and pulled me off by my leg. At the time I was wearing a high visibility jacket which shows that they are not the cure to this problem. If you were to close this access, you will be responsible for more incidents like this concerning the local residents. What if it is your child next time?

My main point, however, is that it is a public right of way which I and many others have used for a very long time and by closing the access, you are essentially closing the bridleway unless we are to put ourselves in significant danger by using the alternate route onto the bridleway. And even at best, it will be a bridleway which doesn't go anywhere, so it will not be an alternative route to using a road, but a field on which we have limited access.

I request that a new access is permitted on the other side of Holy Trinity Church before you consider closing the access through Manor Farm drive.

Yours sincerely

Sarah Thursby-Pelham

Objection 54

[charles@wookey39.plus.com](mailto:charles@wookey39.plus.com)

Graeme Stark PROW?

The Teasel Barn  
Belluton  
Pensford  
North East Somerset  
BS39 4JJ

Matthew Smith - Divisional Director Environmental Services  
Floor 2, Riverside  
Temple Street  
KEYNSHAM  
Bristol  
BS31 1LA

31 October 2012

Dear Mr Smith,

**BANES COUNCIL (CL15/11, MANOR FARM, NORTON MALREWARD) DEFINITIVE  
MAP MODIFICATION ORDER 2012**

I object to the BANES Council (CL15/11, Manor Farm, Norton Malreward) Definitive Map Modification Order 2012 which seeks to delete a section of bridleway CL15/11 at Manor Farm Norton Malreward. It would prevent horse riders from Norton Malreward using a largely traffic free route to join the bridleway network in the Pensford and Stanton Drew area and beyond. Similarly, horse riders travelling towards Norton Malreward on the 3 Peaks Walk/Bridleway will be denied access to Norton Malreward because of the creation of a dead end route.

The current landowners purchased their properties in the full knowledge of the existence of the bridleway. The Council should not be accepting an application to terminate part of the bridleway. Instead they should be encouraging negotiation with adjoining landowners to find a satisfactory alternative route that provides similar accessibility to that which currently exists.

This bridleway has been in use by horse riders for many years. Should the Council permit this application, I believe it to be a retrograde step because it will deprive this and future generations of horse riders access to and from Norton Malreward.

Yours sincerely,



C K WOOKEY

**Graeme Stark**

---

**From:** fiona sweet <fionasweet@live.com>  
**Sent:** 12 November 2012 12:17  
**To:** PROW  
**Subject:** Bridlepath proposed closure Norton Malreward

Hello,

I would like to voice my objections to the proposal to close a section of the bridleway from Church Rd, Norton Malreward.

The bridleway has been in regular use for many years, to my husbands knowledge from the mid 1970's.

My mother in law has documentary evidence from The County Council of Avon dated 31st March 1989 stating:-

" The County Council of Avon Public Rights of Way Definitive Map and Statement shall be modified by showing as a bridleway the road used as a public path described in the Schedule hereto and shown on the map annexed hereto as a broken line with cross bars in intervals." Full copies available if required.

My daughters aged 10 and 11 use this bridleway currently for rides, as a circular route from Stanton Drew via the bridleway through Belluton. To close this section of bridleway would create a "dead end" to the route, in the middle of the field with no access to Church Rd, this clearly makes no sense and couldn't have been how it has been used in previous years.

I strongly object to the closure of the bridleway for the above reasons.

Please would you be able to keep me up to date with any further developments in this case.

Regards,

Fiona Sweet.

Fiona and Gary Sweet  
Park Farm  
Norton Hawkfield  
Pensford  
Near Bristol  
BS39 4HA  
Tel +44 (0) 1275 833350

**Graeme Stark**

---

**From:** jill britten <jill\_ms\_britten@hotmail.com>  
**Sent:** 07 November 2012 18:58  
**To:** Graeme Stark  
**Subject:** RE: meeting 2nd Nov

Dear Graham,

In my capacity as parish clerk at the time of this RUPP being classified as a BOAT and the subsequent removal of the right of vehicular access down grading CL15/11 to a bridleway and footpath the matter was settled at a Public Enquiry. It cannot be right to delete the ROW from Church Road and through Manor Farm. How can the bridleway be accessed beyond Manor Farm and beyond? It makes no sense.

The person at fault here is the previous owner Roy Young, now sadly departed, who sold off the Tithe Barn through which the path goes. He should have safeguarded the ROW by keeping it outside the boundary of the barn he was selling.

I truly am exasperated at the whole sorry saga and obviously from the contents of your e mail, do not have enough information to make a judgement so will not complain. People will have to live with whatever decision you make.

Common sense seems to be non existent with these paths. At Orchard Park, Whitchurch Village there is a footpath that runs right through one of the mobile homes. Nobody seems to be able to divert this path to join another some small distance away thus leavings these retired people traumatised. Hitchens developers have an application in for 290 houses all on Green Belt Land, which if successful will leave Orchard Park vulnerable to hundreds of people having a right to traverse the Park.

yours sincerely,

Jill Britten



Representation 1

**From:** jill britten [mailto:jill\_ms\_britten@hotmail.com]  
**Sent:** 31 October 2012 20:54  
**To:** [secretary@jlaf.org.uk](mailto:secretary@jlaf.org.uk)  
**Subject:** meeting 2nd Nov

Dear Chris,

I send my apologies for absence at this Meeting on the 2nd. We are testing Cattle and I am unable to make the meeting.

I notice on the Agenda at D Items for Ratification

Objection to Manor Farm DMMO.

A decade or two ago the RUPP/ BOAT went to a Public Enquiry and through extensive research was regraded without vehicular use. This ROW has been enjoyed by Horse Riders and Pedestrians since. BANES themselves have caused this dilemma and it is the Council who has called for this closure which is quite frankly stupid. No one, Landlord, Residents, Visitors, Parish Council etc have requested any alteration of this route. This is driven by Process by BANES who did not finalise the situation a decade or more ago. Malcolm Hanney, my Ward Councillor has written in depth to the Council with regard to this route endorsing it as it is today. This is truly a significant waste of money.

I am sorry I shall not be there to give more information save to say I am in complete disagreement with this route being altered and am staggered at the stupidity and cost of this useless exercise.

regards

Jill Britten, resident of Norton Malreward.

\*\*\*\*\*

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~~Mathew Smith~~ *Maria Pinches*  
Bath & North East Somerset Council  
Floor 2, Riverside  
Temple street  
Keynsham  
Bristol  
BS31 1LA

BSKYB Telecommunications Services Ltd  
70 Buckingham Avenue  
SLOUGH  
SL1 4PN  
Tel: 0207 0323 234/250  
Fax: 020 70323252  
email: [nrswa@bskyb.com](mailto:nrswa@bskyb.com)

Date	Our Reference	Your Reference
27 July 2012	PE12-07-2665	GS

Dear Sir or Madam:

**RE: Manor Farm, Norton Malreward**

Thank you for your enquiry.

Pleased be advised that BSKYB Telecommunications Services Ltd will not be affected by these works.

Best endeavours have been made to ensure accuracy, however if you require further Information, please contact us.

If you would like to submit your enquiries electronically to BSKYB Telecommunications Services Ltd, please send them to [nrswa@bskyb.com](mailto:nrswa@bskyb.com)

Please be advised that our fax number has changed to 0207 032 3252.

Kind regards

NRSWA Department  
Network Infrastructure  
Sky Network Services

**Graeme Stark**

---

**From:** Somappa, Yashwanth <Yashwanth.Somappa@atkinsglobal.com>  
**Sent:** 10 October 2012 13:34  
**To:** Graeme Stark  
**Subject:** No Objection - CL15/11 - Maor Farm  
**Attachments:** 20120928142350723.pdf

Dear Sirs,

New Roads and Street Works Act 1991  
Stopping Up Order / Footpath Diversion / Extinguishment / Gating Order No Objection

We refer to the below or attached order and confirm that we have no objections.

Please email Stopping Ups to [osm.enquiries@atkinsglobal.com](mailto:osm.enquiries@atkinsglobal.com) To enable us to process your application as quickly as possible, please ensure you include Grid References.

A copy of the Cable and Wireless process 4461 'Special Requirements relating to the external plant network of Cable and Wireless UK Services Ltd' is available on request. The process provides guidance on working in the vicinity of Cable and Wireless's apparatus.

Many Thanks,  
The Plant Enquiry Team  
ATKINS (working on behalf of Cable&Wireless Worldwide)

Email: [osm.enquiries@atkinsglobal.com](mailto:osm.enquiries@atkinsglobal.com)  
The Hub, 500 Park Avenue, Almondsbury, Bristol, BS32 4RZ  
Tel: +44 (0)1454 662 881 | Fax: +44 (0)1454 66330  
Web: [www.atkinsglobal.com](http://www.atkinsglobal.com)

**PLEASE NOTE:**

The information given is indicative only. No warranty is made as to its accuracy. This information must not be solely relied upon in the event of excavation or other works carried out in the vicinity of Cable & Wireless Worldwide Ltd UK, plant. No liability of any kind whatsoever is accepted by C&W, its servants, or agents, for any error or omission in respect of information contained on this information. The actual position of underground services must be verified and established on site before any mechanical plant is used. Authorities and contractors will be held liable for the full cost of repairs to C&W's apparatus and all claims made against them by Third parties as a result of any interference or damage.

As of Monday 26th October 2009, Atkins will reply to Plant Enquiries for the ex-Thus network now owned by Cable and Wireless Worldwide.

Only one enquiry request is necessary per location, all responses and plans received will include both networks. The process to request this information is unchanged.

## Representation 4

**Bath & North East  
Somerset Council****Environmental Services**

Floor 2, Riverside, Temple Street, Keynsham, Bristol BS31 1LA  
 Minicom: (01225) 394166 Council Connect: (01225) 39 40 41  
[www.bathnes.gov.uk/BathNES/transportandroads](http://www.bathnes.gov.uk/BathNES/transportandroads)

Scottish & Southern Energy  
 Mapping Services  
 PO Box 6206  
 Basingstoke  
 Hampshire  
 RG24 8BW

Date: 26/09/2012  
 Our ref: GS/  
 Your ref:  
 Direct line (01225) 477650  
 Fax: (01225) 394205  
 E-Mail: [graeme\\_stark@bathnes.gov.uk](mailto:graeme_stark@bathnes.gov.uk)

copy  
 contact worked power

2012 035 17.

Dear Sir/Madam

**RE: BATH AND NORTH EAST SOMERSET COUNCIL (CL15/11, MANOR FARM,  
 NORTON MALREWARD) (NO.2) DEFINITIVE MAP MODIFICATION ORDER  
 2012**

Please find enclosed a copy of the Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) (No.2) Definitive Map Modification Order 2012 ("Order No.2").

Order No.2 was made by Bath and North East Somerset Council ("the Authority") on 18 September 2012. Order No.2 has been made to amend the Definitive Map and Statement to delete a section of bridleway near Manor Farm and Holy Trinity Church in Norton Malreward, as shown on the Order Map. Order No.2 has been made under the Wildlife and Countryside Act 1981, and I am required by Schedule 15 of the legislation to serve you with Notice of the making of this Order. Please find enclosed for your records:

- Notice of the making of Order No.2 addressed to you
- a copy of Order No.2.

The process will now be as follow.

- o The making of Order No.2 w  
 advert will be placed in the  
 Notices will be put up on site
- o Once the advertising period  
 Authority's Regulatory (Acce  
 support confirmation, oppose  
 the determination of Order N
- o If all objections and represer  
 will need to be sent to the F  
 Secretary of State for the I  
 whether or not the Order sh  
 either by written representat  
 these procedures has take



**Scottish and Southern  
 Energy**

**SSE Power Distribution  
 Mapping Services**

do not have any network records within the area of your  
 recent request

Please contact the following for details:

Scottish Power Distribution. 0141 5674155  
 Electricity North West. 0870 7510101  
 CE Electric UK. 0870 1600910  
 Eon/Central Networks. 0800 0150927  
 Western Power Distribution. 0845 6012989  
 UK Power Networks. 0800 0565866  
 EDF/Seeboard. 0800 0565866

Many Thanks  
 Mapping Services

Making Bath & North East Somerset  
 an even better place to live, work and visit



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Bath & North East Somerset Council	
MEETING:	Regulatory (Access) Committee
MEETING DATE:	18 December 2012
TITLE:	Holy Trinity Church DMMO Investigation
WARD:	Chew Valley North
AN OPEN PUBLIC ITEM	
List of attachments to this report:	
<p>Appendix 1 – Plan</p> <p>Appendix 2 – Photographs</p> <p>Appendix 3 – Section 53 of the Wildlife and Countryside Act 1981</p> <p>Appendix 4 – Consultation Responses</p>	

## 1. THE ISSUE

- 1.1 The Regulatory (Access) Committee (“**the Committee**”) resolved that officers should investigate whether unrecorded public rights exist over a route to the south of Holy Trinity Church in Norton Malreward. An investigation has been carried out and it now falls to the Committee to determine whether a Definitive Map Modification Order (“**DMMO**”) should be made to modify the Definitive Map and Statement (“**the DM&S**”) based upon the evidence discovered.

## 2. RECOMMENDATION

- 2.1 The Committee is recommended to resolve that a DMMO should **not** be made to record additional public rights to the south of Holy Trinity Church on the DM&S.

## 3. FINANCIAL IMPLICATIONS

- 3.1 Financial implications are not a relevant consideration which may be taken into account under the provision of the Wildlife and Countryside Act 1981 (“**the 1981 Act**”). The Authority’s costs associated with DMMOs are met from existing public rights of way budgets. The officer time required to make and advertise a DMMO is likely to cost the Authority between £1,000 and £1,500 and the newspaper notice to advertise the making of a DMMO is likely to cost £300.

## 4. THE REPORT

- 4.1 The Authority is under a legal duty to keep the DM&S under continuous review under the 1981 Act.

- 4.2 On 30 May 2012, the Committee considered an application to delete bridleway CL15/11 at Manor Farm, Norton Malreward from the DM&S. The Committee resolved that a DMMO should be made to delete the section of bridleway CL15/11 commencing from a junction with restricted byway CL15/11 and continuing to a junction with public footpath CL15/2. On 18 September 2012 the Bath and North East Somerset Council (CL15/11, Manor Farm, Norton Malreward) (No. 2) Definitive Map Modification Order 2012 ("**Order No. 2**") was made and Order No. 2 is also in front of the Committee for consideration under a separate agenda item.
- 4.3 The Committee also resolved that a DMMO should not be made to delete the remainder of bridleway CL15/11 between a junction with public footpath CL15/2 and the parish boundary. The junction with public footpath CL15/2 is not a point of common resort for horseriders and it is therefore highly unlikely that the public bridleway rights terminate at this location. Consequently, the Committee asked officers to carry out an investigation to determine whether the public bridleway rights continue to the south of Holy Trinity Church.
- 4.4 The route under investigation commences from a metal field gate with an adjacent narrow gap and a junction with a Class 4 Road at grid reference ST 6029 6507 (Point A on the plan contained at Appendix 1 ("**the Plan**")). The route continues in a generally southeasterly direction for approximately 65 metres to a wooden kissing gate, an adjacent metal field gate and a junction with public footpath CL15/2 at grid reference ST 6035 6503 (Point B on the Plan). The route turns in a generally north easterly direction over public footpath CL15/2 for approximately 80 metres to a junction with public bridleway CL15/11 (Point C on the Plan). The majority of the route runs to the south of Holy Trinity Church and is hereafter referred to as "the Investigation Route".
- 4.5 The metal field gates at grid reference ST 6029 6507 (Point A on the Plan) and grid reference ST 6035 6503 (Point B on the Plan) have been padlocked during most site visits carried out by officers and both field gates have signs attached to them stating: "*Private No public right of way*". Photographs of the Investigation Route can be found at Appendix 2.
- 4.6 The section of the Investigation Route between points A and B on the Plan is not currently recorded on the DM&S. If the Committee considers that on the balance of probabilities a presumption has been raised that this section of the Investigation Route has been dedicated as a public bridleway then a DMMO should be made pursuant to section 53(3)(b) of the 1981 Act. Alternatively, if evidence has been discovered which shows that a public bridleway subsists or is reasonably alleged to subsist over this section of the Investigation Route then a DMMO should be made pursuant to section 53(3)(c)(i) of the 1981 Act.
- 4.7 The section of the Investigation Route between points B and C on the Plan is currently recorded on the DM&S as part of public footpath CL15/2. If the Committee considers that on the balance of probabilities a presumption has been raised that this section of the Investigation Route has been dedicated as a public bridleway then a DMMO should be made pursuant to section 53(3)(b) of the 1981 Act. Alternatively, if evidence has been discovered which on the balance of probabilities shows that this section of the Investigation Route should be shown as a public bridleway then a DMMO should be made pursuant to section 53(3)(c)(ii) of the 1981 Act. Section 53 of the 1981 Act, as amended, is reproduced at Appendix 3.

- 4.8 The Authority's Senior Rights of Way Officer has examined all the available evidence which is in the Authority's possession, which is held at the Somerset Heritage Centre ("**SHC**") in Taunton and which has been submitted by consultees.
- 4.9 The section of the Investigation Route between points B and C on the Plan is shown by a solid black line on the Parish Survey Map which was produced by Norton Malreward Parish Council in preparing for the production of the DM&S. The associated survey card describes this section as follows; "*...proceed through field to wooden stile at Church, continue around the wall and over stone stile at rear of Church...*" The path is identified as number '2' and as a public footpath. This section of the Investigation Route is shown by a solid purple line on the Draft, Provisional and Definitive Maps. The Definitive Statement describes this section as follows; "*...through field to wooden stile at the Church. It runs around the wall and over the stone stile at the rear of the Church...*" The path is identified as 'CL15/2' and again as a public footpath.
- 4.10 The section of the Investigation Route between points A and B on the Plan is not shown or referred to in the Parish Survey, Draft Map, Provisional Map or Definitive Map and Statement. The DM&S records therefore show that the section of the Investigation Route between points B and C on the Plan was at least a public footpath but they do not provide any evidence regarding the section of the Investigation Route between points A and B on the Plan.
- 4.11 The 1809 2" Edition Ordnance Survey ("**OS**") Surveyor's Map delineates the Investigation Route by parallel pecked black lines to the south of a church, the 1903 6" Edition OS Map delineates the section of the Investigation Route between points B and C on the Plan by a solid and a parallel pecked black line to the south of Holy Trinity Church and the 1958 1:2500 Edition OS Map depicts a route to the south of 'Holy Trinity Church (C of E)' by parallel pecked lines. These OS maps provide evidence of the physical existence of these respective sections of the Investigation Route but these OS maps do not provide any evidence regarding the existence or otherwise of public rights. Additionally, the 1830 1" Edition OS Map and the 1986 1:2500 OS Map do not show any section of the Investigation Route.
- 4.12 A 'Sale Particulars Plan' (copy held by the Authority) which was produced when the buildings and a number of the fields which formed part of Manor Farm were sold in 1992 show the section of the Investigation Route between points A and B on the Plan delineated by a shaded area within 'Lot 7' and the majority of the section of the Investigation Route between points B and C on the Plan is delineated by a hatched area within 'Lot 10'. The Sale Particulars Plan is signed by the vendor and dated 18 July 1992; however, the plan does not contain a key to explain the meaning of the shaded and hatched areas. This Sale Particulars Plan suggests that almost the whole section of the Investigation Route between points A and C on the Plan physically existed in 1992 but does not provide any evidence of public rights.



4.13 The following documents which relate to the Investigation Route, or land adjacent to the Investigation Route, do not provide evidence of either the physical existence of the Investigation Route or whether the Investigation Route was a public bridleway:

- 'Langton Estate Survey' dated 1693 (SHC Ref: DD\GL/118),
- 'Norton Malreward, etc., deeds' dated 1718-1799 (SHC Ref: DD\X\BROC/1),
- 'Day and Masters' Map' dated 1782 (SHC Ref: D\B\wsm/38/6),
- 'Norton Malreward Tithe Map and Tithe Award' dated c.1840 (SHC Refs: D\D\Rt/A/78 and D\D\Rt/M/78),
- 'North Somerset Railway and Branches plans' dated 1860 (SHC Ref: Q/RUP/273b),
- 'Chew Valley Tramway plans' dated 1861 (SHC Ref: Q/RUP/275),
- 'Vestry Minute Book' dated 1861 (copy provided by a consultee and held by the Authority)
- 'Bristol and North Somerset Railway plans' dated 1862 (SHC Ref: Q/RUP/285),
- 'Bristol and London Railway plans' dated 1882 (SHC Ref: Q/RUP/402),
- 'South Western Junction Railway plans' dated 1886 (SHC Ref: Q/RUP/420),
- 'Finance (1909-1910) Act 1910 documents' dated 1910-1914 (SHC Ref: DD\IR\W413. The National Archives Ref: IR128\2\31),
- 'Highway Authority Records' dated 1930 (held by the Authority),
- 'Bartholomew's map' dated 1945,
- 'List of Streets' dated 2012 (held by the Authority).

4.14 Consultee 3, who is the daughter of the previous landowner, has stated that the two metal field gates referred to in paragraph 4.5 above were erected and locked in 1992 (see Appendix 4) and the Authority is not in receipt of any user evidence relating to the Investigation Route.

4.15 The evidence detailed in paragraphs 4.9 to 4.14 above does not demonstrate that a public bridleway subsists or can be reasonably alleged to subsist over the section of the Investigation Route between point A and B on the Plan. Furthermore, on the balance of probabilities the evidence does not demonstrate that any section of the Investigation Route should be recorded on the DM&S as a public bridleway. A DMMO should therefore not be made to modify the DM&S in respect of the Investigation Route.

## **5. RISK MANAGEMENT**

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

## **6. EQUALITIES**

6.1 An Equalities Impact Assessment has not been completed because the impact upon equalities is not a consideration which may be taken into account under the provision of the 1981 Act.

## **7. CONSULTATION**

7.1 The Authority wrote to the affected landowner and adjacent landowners, national and local user groups, Norton Malreward Parish Council and the Ward Councillor. Consultees were invited to submit any evidence or comments they had within a six week period. Copies of the responses received can be found at Appendix 4.

## **8. ISSUES TO CONSIDER IN REACHING THE DECISION**

- 8.1 The Authority's decision as to whether a DMMO should be made to record the Investigation Route as a public bridleway must be based solely on the available evidence which indicates whether or not a public right of way exists. The Authority cannot take into consideration the desirability or suitability of the Investigation Route. The 1981 Act does not permit personal considerations to be taken into account.

## **9. ADVICE SOUGHT**

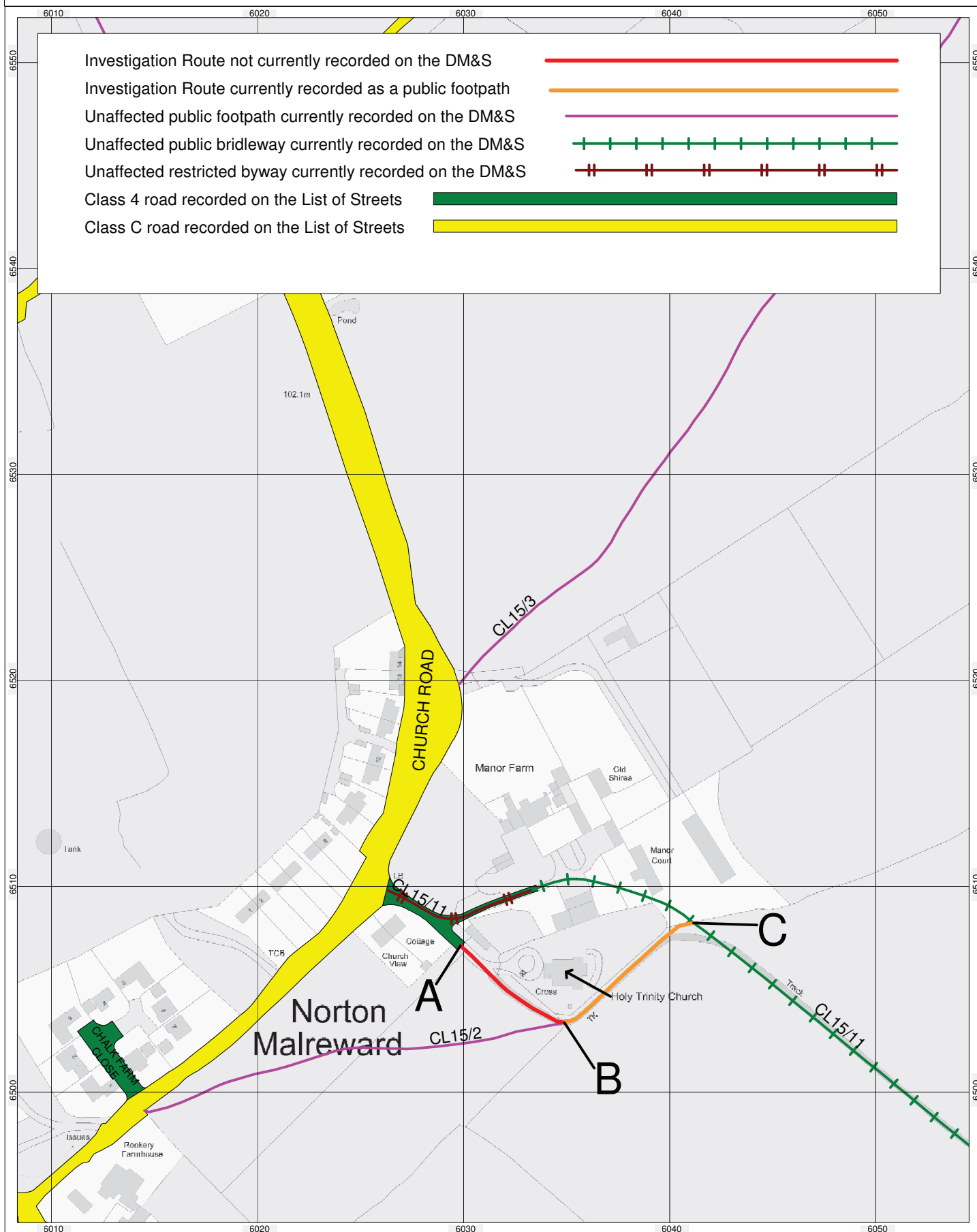
- 9.1 The Authority's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

<b>Contact person</b>	Graeme Stark, Senior Rights of Way Officer (Telephone 01225 477650)
<b>Please contact the report author if you need to access this report in an alternative format</b>	

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# Appendix 1

## Plan





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**PHOTOGRAPHS**

Approximate alignment of Application Route delineated by red dots



Fig. 1: From grid reference ST 6029 6507 (Point A on the Plan) looking southeast.



Fig. 2: From grid reference ST 6035 6503 (Point B on the Plan) looking northeast.

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## **SECTION 53 OF THE WILDLIFE AND COUNTRYSIDE ACT 1981, as amended**

53 Duty to keep definitive map and statement under continuous review.

- (1) In this Part “definitive map and statement”, in relation to any area, means, subject to section 57(3) and 57A(1)—
  - (a) the latest revised map and statement prepared in definitive form for that area under section 33 of the 1949 Act; or
  - (b) where no such map and statement have been so prepared, the original definitive map and statement prepared for that area under section 32 of that Act; or
  - (c) where no such map and statement have been so prepared, the map and statement prepared for that area under section 55(3).
- (2) As regards every definitive map and statement, the surveying authority shall—
  - (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and
  - (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
- (3) The events referred to in subsection (2) are as follows—
  - (a) the coming into operation of any enactment or instrument, or any other event, whereby—
    - (i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;
    - (ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or
    - (iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path or a restricted byway;
  - (b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;
  - (c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—
    - (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;

- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
  - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
- (4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to—
  - (a) the position and width of any public path, restricted byway or byway open to all traffic which is or is to be shown on the map; and
  - (b) any limitations or conditions affecting the public right of way thereover.
- (4A) Subsection (4B) applies to evidence which, when considered with all other relevant evidence available to the surveying authority, shows as respects a way shown in a definitive map and statement as a restricted byway that the public have, and had immediately before the commencement of section 47 of the Countryside and Rights of Way Act 2000, a right of way for vehicular and all other kinds of traffic over that way.
- (4B) For the purposes of subsection (3)(c)(ii), such evidence is evidence which, when so considered, shows that the way concerned ought, subject to section 54A, to be shown in the definitive map and statement as a byway open to all traffic.
- (5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.
- (5A) Evidence to which subsection (4B) applies on the commencement of section 47 of the Countryside and Rights of Way Act 2000 shall for the purposes of subsection (5) and any application made under it be treated as not having been discovered by the surveying authority before the commencement of that section.
- (6) Orders under subsection (2) which make only such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (a) of subsection (3) shall take effect on their being made; and the provisions of Schedule 15 shall have effect as to the making, validity and date of coming into operation of other orders under subsection (2).



## CONSULTATION RESPONSES

### CONSULTEE 1

**From:** [REDACTED]  
**Sent:** 16 July 2012 14:37  
**To:** Graeme Stark  
**Subject:** Re: Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Norton Malreward area

Dear Mr. Stark,

Thank you for your e-mail of 12 July.

Before responding to your request for any information I may have on the subject, I shall be grateful if you will forward copies of the following documents to me at my home address . .

1. The signed and dated Application Form
2. Certificate of Notice that all landowners have been legally notified.
3. The evidence which was attached to the Application *per* prescribed regulations.

Thank you in anticipation. After receipt I shall forward my comments.

Yours sincerely,

[REDACTED]

**From:** [REDACTED]  
**Sent:** 17 July 2012 08:52  
**To:** Graeme Stark  
**Subject:** Re: Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Norton Malreward area

Dear Mr. Stark,

I have re-visited your e-mail of 12 July and I note that in bullet point 1 of paragraph 1 titled "Investigation (i.e. research and consultation)" among other things you say and I quote -

*"I have already carried out research into the historical evidence such as old maps, title deeds etc. held at the Somerset Heritage Centre. I enclose the Investigation Report containing this information, which includes my interpretation of each piece of evidence."*

Please note:-

1. I would like you to confirm whose "title deeds" you examined in the Somerset Heritage Centre, and provide the Source Reference number so that I may examine them myself.
2. Please confirm that as you considered historical title deeds were relevant, whether you also examined the title deeds of the present owner/s, who purchased the property from [REDACTED]
3. As it is reasonable to accept that taken in the correct context "enclose" will mean "attach" when the correspondence is in the nature of an e-mail, I can find no "enclosure" / "attachment" which is in fact "the investigation Report." stated by you as "enclosed."

In the circumstances perhaps you will be good enough to correct the situation - and "attach" the missing Report to another e-mail to me.

At the same time, I shall be grateful for information or an explanation of the procedure of how a 1929 Class 5 Yellow road, defined as a *cul-de-sac* on the Clutton RDC 1929 Schedule, became, or was upgraded to a Class 4 Brown road, which is a "Road of local importance, that is, a village loop road" - which by any stretch of imagination is most certainly not a *cul-de-sac*.

Please provide your interpretation of the difference between a Class **C** road recorded on the List of Streets and a Class **4** road on the List of Streets.

Finally, please explain the procedure followed by BANES to modify an alleged un-Reclassified CRF/RUPP [CL 15/11] to a Restricted Byway - and advise whether the landowner/s were made aware of this procedure.

I shall of course comment on all your investigations, your interpretations, the procedure you have followed, etc., by 24th August.

Yours sincerely,

[REDACTED]

**From:** [REDACTED]  
**Sent:** 21 July 2012 10:14  
**To:** Graeme Stark

Dear Mr. Stark,

Thank you for forwarding an Application Form for a Definitive Map Modification Order in relation to Manor Farm, alleged Restricted Byway CL 15/11. I shall be dealing with as soon as is practicable.

I shall be grateful if you will now address the most specific question

- (i) whose Title Deeds did you examine
  - (ii) where are they, and
  - (iii) what is the Source Reference,
- raised in my e-mail - I explained that I would like to examine them myself.

Please confirm that you actually and personally examined the original Tithe Map held in the National Archives [ublic Record Office] at Kew, Richmond.

Yours sincerely,

[REDACTED]

**From:** Graeme Stark  
**Sent:** 25 July 2012 17:23  
**To:** [REDACTED]  
**Subject:** RE:  
**Attachments:** 08 Investigation Report.pdf

Dear [REDACTED]

Thank you for your emails sent on 16, 17 and 21 July 2012.

The investigation into whether there are public bridleway rights over the route to the south of Holy Trinity Church is not pursuant to a duly made Schedule 14 application. Consequently there are is not an Application Form or a Certificate of Notice.

Please find attached a copy of the Investigation Report. The Title Deeds relate to the Manor of Norton Malreward and are held at the Somerset Heritage Centre under reference DD\X\BROC/1. I have not examined [REDACTED]'s title deeds because they do not appear to be publically available and they do not appear to have been made available to the Authority. I can confirm that I have examined the Tithe Commissioners' copy of the Norton Malreward Tithe Map at the National Archives.

Section 47 of the Countryside and Rights of Way Act 2000 reclassified all RUPPs as Restricted Byway; I am not aware whether landowners were informed of this automatic reclassification. If you have any queries regarding the List of Streets these should be directed to Martin Laker who is the Team Leader for Systems & GIS. Mr Laker's email address is [martin\\_laker@bathnes.gov.uk](mailto:martin_laker@bathnes.gov.uk)

Regards,

**Graeme Stark**  
**Senior Rights of Way Officer**

Please consider the environment before printing this email

**From:** [REDACTED]  
**Sent:** 30 July 2012 19:42  
**To:** Graeme Stark  
**Subject:** Re:

Dear Mr. Stark,

I note that BANES did not receive an Application under Schedule 14 WCA 1981 to investigate whether a Bridleway could be reasonably alleged to exist from the now recorded Restricted Byway to Footpath CL 15/2 . . . and thereafter passing over FP CL 15/2 in order to reach Belluton [signed at that end by an official No Through Road sign. I feel sure I need not remind you that there is no right to ride or lead a horse on a Public Footpath, and to do so may constitute a public nuisance at common law.

I believe you are already aware that there is a permissive agreement for horseriders to use the "alternative route" around the Church and Public Footpath CL 15/2. In light of that permissive agreement which was agreed with BANES, please advise as follows:-

- (i) in the absence of an Application plus the evidence which the law requires to be attached, precisely what evidence is BANES relying on to conduct an investigation as to whether a Bridleway now - or previously - exists?
- (ii) in the absence of an Application, evidence, Notice of Certification to all landowners, and most importantly, in light of the knowledge that BANES agreed to an "unofficial diversion" by way of agreement for a permissive alternative Bridleway route around the Church, who authorised an investigation - and on what grounds?
- (iii) please advise on the legislation and the precise statutory section on which BANES is relying to conduct this investigation . .

You will recall that in preparing their Definitive Map, Somerset County Council relied on the non-statutory *symbol* "CRF" and not the legal term "RUPP" [Road used as a Public Path]. In your professional capacity as Rights of Way officer for BANES, you will be aware that The Planning Inspectorate Advice Note 9 states that where the symbol CRF has been used it did not confirm the existence of public vehicular rights. Therefore it is illogical that legislation has shifted the burden of proof to the landowner to prove a negative . . that the imposed status of Restricted Byway is wrong; that public vehicular rights, motorised or non-motorised, do not exist on the Manor Farm private driveway.

Please advise whether in your opinion the intention of Parliament was that all RUPPs should be automatically Reclassified without notification to the landowner - which would have provided an opportunity to produce evidence that the *alleged* RUPP did not have any higher public status than Footpath.

I would remind you that on more than one occasion I offered you assistance with regard to access to my files and the evidence produced **14 years ago at the Public Inquiry**. Your failure to take advantage of my knowledge of the case and the evidence in my possession is reflected in the flawed Decision made by the Committee Members.

Lastly, and for the record, [REDACTED]'s Title Deeds [which, as you are not a Conveyancing lawyer you are clearly unaware will have been Conveyed to the person/s who purchased Manor Farm and his land from him] were made available to everyone for examination at the Public

Inquiry in 1997 -therefore it is untrue to say that his Deeds were not publicly available or available to BANES.

In any event, as copies of the relevant sections were in my files, and had you taken advantage of my offer to make my files available to you, copies could have been made available to BANES during your investigation into the 14-year old Application.. It is therefore indefensible to state that [REDACTED]'s Title Deeds were not publicly available.

Please confirm that you do in fact have all the files in this case, and the Report prepared by Judith Gradwell - who, together with Peter Malarby, County solicitor, confirmed in writing even before the investigation, their opinion that there was a *prima facie* case that an error was made.

I look forward to your reply.

Yours sincerely,

[REDACTED]



**From:** Graeme Stark  
**Sent:** 10 August 2012 11:23  
**To:** [REDACTED]  
**Subject:** RE:

Dear [REDACTED]

I am writing further to my email sent on 2 August 2012.

I am not aware of a permissive path agreement to allow horseriders to use an 'alternative route' around the Church and over public footpath CL15/2; therefore if you could provide further details it would be much appreciated. The Authority's current position is that the section of CL15/11 between points A and B on the DMMO is not a public right of way but that the section of CL15/11 from point B to the parish boundary is a public bridleway. Point B is not point of common resort, such as a view point or a well, and it is therefore likely that the public bridleway continues from this point to another highway of equal or higher status. The Regulatory (Access) Committee, whose Terms of Reference include DMMOs, requested that an investigation is carried out to determine whether the public bridleway rights continue to the south of Holy Trinity Church; the investigation is being carried out in pursuance of the Authority's statutory duty under section 53 of the Wildlife and Countryside Act 1981 to keep the Definitive Map and Statement under continuous review.

Although CL15/11 was recorded as a CRF, the Authority's position is that a CRF is equivalent to a RUPP. Neither the term CRF nor RUPP confirms the existence of public vehicular rights; however, section 47 of the Countryside and Rights of Way Act 2000 reclassified all RUPPs as restricted byways which do have non-mechanically propelled vehicular rights. The CROW Act 2000 does not require Surveying Authorities to notify landowners of this reclassification.

On 7 November 2011 I emailed to ask you to submit any evidence you may have regarding the status of this route by 22 November 2012 and on 11 November 2011 you replied to say that you would comply with my request. The Authority does not have a copy of [REDACTED]'s Title Deeds which you state were made available to everyone for examination at the Public Inquiry in 1997. If you have a copy then I would appreciate it if a copy could be sent to the Authority. The Authority has the following documents from the RUPP reclassification;

- Jennifer Reed's Proof of Evidence and accompanying evidence bundle dated July 1995
- List of objectors to reclassification order
- The Committee Reports for the making of the reclassification order
- The Planning Inspector's decision letter dated 9 November 1995
- A partial 'List of Documents' which may have been a document bundle from the second public inquiry which opened on 11 February 1997
- Your Proof of Evidence dated 11 February 1997 and undated addendum
- Rowena Smith's Proof of Evidence dated 18 February 1997
- Final submissions of Judith Gradwell dated 28 February 1997
- The Planning Inspector's decision letter dated 28 May 1997
- Newspaper cutting from the Chew Valley Gazette dated July 1997
- Notice checking records for the confirmation of the reclassification order
- Notice of Motion for Stevens v Secretary of State
- Affidavit of Tim Stevens and the accompanying bundle marked 'TRS2'
- The judgement in Stevens v Secretary of State
- The Planning Inspector's costs decision letter dated 25 March 1998

Regards,

**Graeme Stark**  
**Senior Rights of Way Officer**

Please consider the environment before printing this email

**From:** [REDACTED]  
**Sent:** 10 August 2012 12:39  
**To:** Graeme Stark  
**Subject:** Re:

Dear Mr. Stark,

Having spent some days at Inquiry in another County, I wish to give my mind a rest.

If, as you say, you have Judith Gradwell's files and reports, then you should have no difficulty identifying the reference in her letters.

Yours sincerely,

[REDACTED]

## CONSULTEE 2; ANN FAY, BRITISH HORSE SOCIETY

From: Ann Fay [<mailto:ann.fay@laburnumhouse.me.uk>]

Sent: 27 July 2012 16:13

To: Graeme Stark

Subject: norton malreward

Hello Graeme,

thank you for the information. I shall be replying to the Modification Order re the extinguishment when I have taken advice.

Would it be of any use to send evidence forms for the use of the proposed replacement bridleway? I note that there have been 'private' signs and the gate is often locked. If it would help, could you please send me some forms?

I would guess that attempts have been made to secure a dedication or a permissive route?

Ann Fay British Horse Society

From: Graeme Stark  
Sent: 27 July 2012 16:34  
To: 'Ann Fay'  
Subject: RE: norton malreward  
Attachments: 03 User Evidence Forms.docx

Hi Ann

We would welcome any evidence relating to the Investigation Route and I have attached a copy of our standard user evidence form. However, the usage would have to pre-date the erection of the 'private' signs and the locking of the gates as these are clear evidence of the landowner's intention not to dedicate.

We haven't made any attempts to secure a dedication agreement or a permissive path because the land over which the Investigation Route runs is currently held in probate as the previous landowner passed away recently. The solicitors administering the estate will not therefore be in a position to grant new rights or permissions across the land.

If I can be of any further assistance please do not hesitate to contact me.

Regards,

Graeme.

## CONSULTEE 3; NORTON MALREWARD PARISH COUNCIL

From: Peter Edwards (Cllr)  
Sent: 13 August 2012 15:34  
To: Graeme Stark  
Cc: [REDACTED]

[REDACTED] Malcolm Hanney (Cllr)

Subject: Application for a modification order to amend the definitive Map of Public Rights of Way in the Norton Malreward Area

Good Afternoon Graeme,

**RE APPLICATION FOR A MODIFICATION ORDER TO AMEND THE DEFINITIVE MAP  
OF PUBLIC RIGHTS OF WAY IN NORTON MALREWARD AREA.**

With reference to the Definitive Map Modification Order and investigation report received under cover of your letter dated 12th July 2012, Norton Malreward Parish Council has considered the documentation put forward together with the proposal made at the recent regulatory Access Committee Meeting on 30th May 2012.

the council fully supports the reasonable compromise put forward i.e to formally delete the route A-B on CL/15/11 and to accept the amended route South of the Church and considers this to be beneficial to all concerned i.e Parishioners, Landowners , and for Public Access.

D. Baber  
Chairman Norton Malreward Parish Council  
01275 832494



**From:** Graeme Stark [[mailto:Graeme\\_Stark@BATHNES.GOV.UK](mailto:Graeme_Stark@BATHNES.GOV.UK)]

**Sent:** 14 August 2012 11:52

**To:** Peter Edwards (Cllr)

**Cc:**

[REDACTED] Malcolm Hanney (Cllr)

**Subject:** RE: Application for a modification order to amend the definitive Map of Public Rights of Way in the Norton Malreward Area

Dear Dennis

Thank you for your email.

I would like to clarify that the DMMO to delete the route between A and B and the investigation into the possible existence of a public bridleway to the south of the church is in no way intended to be a compromise. The Regulatory (Access) Committee resolved that A to B should be deleted because they regarded the evidence to show that an error was made when the route was recorded as a public right of way. Objections have been received to the DMMO and it will therefore be submitted to the Secretary of State who will decide whether or not it is confirmed.

The Committee has asked me to investigate whether unrecorded public rights exist to the south of the church. Whether or not the Committee resolves to make a DMMO to record a bridleway over this route will depend on whether or not the Committee thinks the evidence shows that public bridleway rights exist over this route. It does not follow that because a DMMO has been made to delete the route between A and B that the Committee will also resolve that a DMMO should be made to add a route to the south of the church.

I hope this helps to clarify the situation.

Regards,

Graeme.

**From:** Dennis Baber <d.baber@talktalk.net>

**Sent:** 14 August 2012 18:40

**To:** Graeme Stark; Peter Edwards (Cllr)

**Cc:**

[REDACTED] Malcolm Hanney (Cllr)

**Subject:** RE: Application for a modification order to amend the definitive Map of Public Rights of Way in the Norton Malreward Area

**Graeme**

Thanks for the clarification.


It should be noted that the route south of the church is now generally used as the footpath and access for horses, as it is simpler and more direct.

**Regards**

**Dennis Baber**

**Chairman Norton Malreward Parish Council**  
**01275 832494**

### CONSULTEE 3; DAUGHTER OF PREVIOUS LANDOWNER

  
6<sup>th</sup> August 2012

Dear Mr Stark

**Re: The Estate of Mr S R Young**

**Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Norton Malreward Area:**

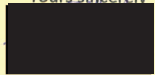
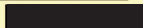

Thank you for your letter dated 12<sup>th</sup> July 2012. It has been passed by the Solicitors to the Executors of Mr S R Young. On behalf of the Executors, I will be leading on this matter, and would be grateful if you could address further correspondence to the above address.

I have one comment to add for your information in consideration of the changes to the Rights of Way proposals:

You will be aware that the proposed new route goes through two existing secured gates. These gates are always locked when the owners are not present. There is currently no farm house attached to this land. The second gate has a pedestrian 'Kissing gate' alongside it which could assumedly be altered to a Horse Gate. The first gate however is situated between two stone walls with no room for a small gate alongside. The existing gate cannot be reduced in size otherwise farm machinery will not be able to access the farm.

In the event changes are made to the Right of way, please could you advise how the costs will be covered? I look forward to receiving your comments.

Yours sincerely


  
  
(Executor  to the Late Mr S.R Young)

  
  
Dear 

#### **APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER**


Thank you for your letter dated 6 August 2012.

The investigation is into whether public bridleway rights already exist over the Investigation Route and all sides are therefore normally expected to meet their own costs. I have noted your comments regarding the locked gates and this obviously has a major bearing on whether the route could previously have been used by horses. If you are able to give me any indication as to when the gates were first locked this would be very helpful.

I will ensure that all future correspondence as addressed to  and I will write again once the consultation period has finished.

Yours sincerely

Graeme Stark  
Senior Rights of Way Officer  
Bath and North East Somerset Council



13<sup>th</sup> August 2012

Dear Mr Stark

**Application for a Definitive Map Modification Order**


Thank you for your letter dated 7<sup>th</sup> August 2012.


Manor Farm house and the farm land were separated in 1992. At about this time the 'gated' track was created to provide private access onto the remaining land. It has, since this time being locked.

During my child hood the bridleway was used up through the current route and there was no access at all along the 'proposed' new route, as it was a field right up to the church wall. This was the case from at least 1952, when my grandfather owned the farm.

In reference to your letter dated 25<sup>th</sup> July, I note that subject to the period for objections, the current bridleway will be closed between points A and B on your map. It appears that this will occur before any decision is likely on an alternative route, thus in affecting closing the bridleway. Is my understanding of this correct as no doubt, we will have practical difficulties if horse riders try and use the bridleway to come and go from Norton Malreward?

Yours sincerely



**From:** Graeme Stark  
**Sent:** 14 August 2012 14:12  
**To:**   
**Subject:** RE: Manor Farm Map Modification

Dear 

Thank you for your letter dated 13 July 2012.

I appreciate you taking the time to clarify the dates when the gates were locked; this is very helpful. Sorry to bother you further but could you let me know whether your father and your grandfather regarded the current route past Manor Farm and Manor Court to be a public bridleway?

The DMMO to delete the section of bridleway between points A and B on the Order Map won't take effect until the DMMO has been confirmed. The Authority has received a number of objections against the DMMO and cannot therefore confirm the DMMO itself. Instead the DMMO must be submitted to the Planning Inspectorate who will appoint an Inspector to independently consider whether it should be confirmed. This will take several months and will give the Authority plenty of time to consider whether a bridleway should be recorded to the south of the church.

Regards,

**Graeme Stark**  
**Senior Rights of Way Officer**

Please consider the environment before printing this email



## CONSULTEE 4; CLLR HANNEY, WARD MEMBER FOR CHEW VALLEY NORTH

**From:** Malcolm Hanney (Cllr)  
**Sent:** 03 August 2012 11:46  
**To:** Graeme Stark  
**Cc:** Vernon Hitchman; Peter Edwards (Cllr); [REDACTED] Simon Elias  
**Subject:** Definitive Map Modification Order - Norton Malreward - Investigation RepAort  
**Attachments:** RegulatoryAccessCommittee300512MH.docx

Dear Graeme,

I refer to the Investigation Report forwarded with your e-mail of 16 July 2012 and related correspondence.

I have the following comments which should be considered both as a response to the consultation and for other purposes:-

### 1. Process

i) There was no basis for the Regulatory Access Committee at its meeting on 30 May 2012 and / or for Officers subsequently to instigate an immediate investigation, complete an Investigation Report and consult widely on such an Investigation Report - all involving significant related costs which are arguably ultra vires.

In particular it was not for the Committee or Officers, on a whim, to instigate an immediate investigation as to whether public bridleway rights including on a public footpath (CL 15/2) when it had no evidence before it or any representations from the public suggesting that there was any basis whatsoever for such a bridleway over the said route.

ii) There is a required process for DMMOs which would need to be followed by all Applicants including by the Council. There is no evidence that the said process has been followed.

iii) The Council maintains a Register of DMMO Applications and my understanding is that these are required to be considered within 12 months. In practice DMMO applications have taken significantly longer to determine and the Council has justified its position (including in relation to CL 15/11 where it took 14 years to consider) on the basis of considering in turn and within available resources.

I do not believe there can be any basis for immediate consideration and investigation of an entirely new DMMO for a bridleway as referred to above in such circumstances. As an aside I suggest that the Council will not be able to argue in future that any DMMO application should not be considered within the 12 month period if it gives immediate consideration to its own 'application' with no justifiable reason for considering out of turn.

iv) It is not entirely clear as to what the Committee originally intended. I quote below the relevant part of the draft Minutes:-

[The Committee also instructed officers to investigate the existence of an alternative route south of the church.](#)

From discussion with one of my group's Committee members (Cllr. Warren), it would seem that his recollection as to what was anticipated was different from that which has been pursued:

['My recollection of the request is not quite the same as that being pursued. If I remember rightly, we were informed that a new route had been offered and that officers should look further into that, rather than there was an old one which should be resurrected.'](#)

The Committee should have been properly advised (by yourself and / or by the Legal Officer present) as to what was being proposed and the related implications including as aforesaid. It was considering a specific DMMO application - on CL15/11 - a matter which should have been determined on the evidence before the Committee. The manner in which the decision was made was unsound - see also below - including but not limited to looking to a possible alternative bridleway when that was not the Committee's statutory role.

v) On being advised on 12 July 2012 of the consultation being undertaken on the Investigation Report, I immediately raised concerns with you and the Council Solicitor and Chief Executive - see various e-mails which I can provide more details of in need. I believe the Consultation should have been immediately suspended while proper advice was sought - and bearing in mind the 14 years it had taken for the DMMO Application on CL 15/11 to be considered any argument as to urgency could hardly be justified. To continue with the consultation in such circumstances - indeed encouraging the public to come forward with evidence of bridleway use where there had been no such evidence before the Committee - cannot be the role of a statutory body. Similarly there will have been significant work and expense for the local Parish Council and the relevant landowner(s).



vi) With regard to the content of the Investigation Report, it would also have seemed to have been more appropriate (having regard to the specific terms of the draft Minute) to have reported back to the Committee asking for further instructions before embarking on any formal consultation.

The comments set out above merely confirm what I have already advised to senior Officers. In view of the fact that consultation was not suspended I confirm I am hereby making a formal complaint as to how this matter has been handled and the Council's failure to mitigate its errors by suspending consultation when advised of relevant issues and concerns.

## 2. Investigation Report

i) My comments above regarding process are germane including whether the references in Paragraph 3 to the Application Details are accurate given 1 iv) above.

On 30 May 2012, the Authority's Regulatory (Access) Committee requested for an investigation to be carried out to determine whether an Order should be made to amend the Definitive Map and Statement of Public Rights of Way ("the DM&S") by adding a public bridleway to the south of Holy Trinity Church in Norton Malreward.

ii) Paragraph 5 of Investigation Report lists the various documents that have been considered. None provide any evidence of any bridleway route or of any public rights of way (other than the public footpath portion of CL 15/2 as between B and C on the Investigation Plan). I will comment only as to a few of the documents:-

a) Doc 4 - Ordnance Survey Maps - these provide no evidence of existence or otherwise of any public rights of way. i.e. Ordnance Survey Maps don't distinguish.

b) Docs 11-13 - Definitive Map Records - indeed the Parish Council did believe that the section of the Investigation Route between points B and C on the Investigation Plan was a public footpath and there was a Survey Card - (CL 15/2). This was of course, in contrast, with CL 15/11 where there was no Survey Card. I quote from my written submission to the Regulatory Access Committee on 30 May 2012 - full copy attached for ease of reference:-

There was no Parish Survey Card for CL 15/11. The Parish Council only claimed the section C-E of what is now CL 15/11 as a public footpath. This would have linked up the two sections of what is now footpath CL 15/2 and is the logical interpretation of what the Parish Council intended and what the Landowner had agreed.

The Parish Council never claimed what is currently CL 15/11 whether as a footpath or as a bridleway. It wanted a continuous public footpath for 'CL 15/2'.

c) Doc 14 - Sale Particulars - it is not surprising there is physical evidence of a route - but there is no evidence of any public right of way except as regards the portion B-C on the Investigation Route because nobody denies that portion is on Definitive Map as a public footpath (CL 15/2).

## 3. Regulatory Access Committee 30 May 2012

i) The Committee were not properly advised on a number of matters including that they should disregard the Appendix referencing views of an Interested Party - I quote from an e-mail to Vernon Hitchman dated 14 July 2012.

Prior to the Committee Meeting on 30 May I submitted commentary as regards the inclusion of certain documentation within the Agenda papers from an Interested Party including a document by the said Interested Party purporting to state a legal opinion on public rights of way matters. My exchange with Vernon refers. I should note for the record my understanding that the Committee were not advised at the meeting to ignore the relevant Appendix as Vernon had confirmed to me that they would be. There is also no reference to the matter in the draft Minutes published on-line and I am advised the legal officer in attendance did not speak.

ii) The Committee did not make a rational decision on 30 May based on the evidence before it (see also attached) i.e. that there was and is no evidence of a public right of way over CL 15/11 other than that somebody asked for it without apparently any supporting evidence and it was added to the Definitive Map and thus in error. The evidence for the Order to delete A-B on the Decision Plan is the same as should have been applied to delete B-C on the Decision Plan. If there are any Objections to the Order to delete there will inevitably be a Public Inquiry and, I suggest, a high probability of legal action.

iii) [REDACTED] has also written to you (22 June) as regards the prejudicial remarks made at the Committee Meeting and as recorded in the Minutes:-

I am writing to register my concerns on comments in the attached minutes relating to the alleged Rights of Way CL 15/11. Committee members were advised that an illegal diversion of the alleged Right of way had been carried out by me. This is not the case. As you know, having copied you the correspondence from a previous Rights of Way officer, Judith Gradwell, the diversion was agreed pending the outcome of the appropriate Authority Committee decision on the application for a modification order. That of course was many years ago. Please will you take steps to get the appropriate amendment to the minutes.

I fully understand [REDACTED] concern on this point and the position as regards the interim diversion is as set out in my attached note to the Committee - on page 2

On 7 October 1998, Judith Gradwell (Public Rights of Way Officer) advised Norton Malreward Parish Council that 'They [the Applicants] have supplied a considerable amount of evidence and appear to have a prima facie case.' Ms. Gradwell also confirmed that it would be some time before the Council can investigate the matter and decide whether or not to make an order. In this letter and a subsequent letter of 2 November 1998, Ms. Gradwell advised that she had agreed a satisfactory interim (diversion) route [that is in respect of A-C] - 'I consider it would be very heavy handed to insist that Mr. Pye knock down a wall that has been in existence for at least 30 years when there is a perfectly good gate alongside it. Also that Mr. Jones remove a fence and allow the bridleway to cross the lawn when the route I sent you is only a matter of a few yards away.'

I note the pragmatic approach adopted by Ms. Gradwell which was taken because of the extended period of time the Council expected to process the Application. However, it should be noted that the S130A application referred to in my e-mail of 24 May 2012 no doubt seeks to do what Ms. Gradwell was seeking to avoid in terms of the impact on the relevant properties of Manor Farm and Manor Court.

I trust the Committee Minutes will be appropriately amended as requested by [REDACTED] although the prejudice it may have created with the Committee may not be so easy to remedy.

#### 4. Summary

i) I confirm that in my view the Investigation Report should never have been actioned and that the Consultation should be suspended forthwith. If the matter proceeds to Committee then the Committee should be advised that there is no evidence for a bridleway on any portion of the Investigation route.

ii) I will await the response to my formal Complaint.

iii) I will also await the outcome of the Order to Delete process as regards the relevant portion of CL 15/11 but note if there is an Objection there will be a Public Inquiry and, quite probably, subsequent legal action.

*Malcolm*

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Bath & North East Somerset Council		
MEETING:	Regulatory (Access) Committee	
MEETING DATE:	18 December 2012	AGENDA ITEM NUMBER
TITLE:	UPDATE OF DEFINITIVE MAP ORDER AND PUBLIC PATH ORDER WORK	
WARD:	All	

## 1 THE ISSUE

- 1.1 This report is provided to update Members on the present position regarding Definitive Map Order and Public Path Order work – excluding work on the Bath Definitive Map Project.

## 2 RECOMMENDATION

- 2.1 The Committee is asked to note the current workload and content regarding claims/applications to modify the Definitive Map & Statement, and to create, divert or extinguish public paths.

## 3 FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications at this stage, but Members should be aware that if objections are received (and sustained) to future Definitive Map Modification Orders (DMMO) and Public Path Orders (PPO), and are not withdrawn, resulting in a Public Inquiry, the Authority is required to bear the associated costs.

## 4 REPORT

- 4.1 **DMMO Applications:** The following provides brief details of all DMMO applications received by this Authority (for which a statutory duty exists to determine the application) and current progress on each application.

APPLICATION NAME	AFFECTED PATH(S)	APPLICATION DATE	PROGRESS
BA25/53, Wellow	BA25/53	15/11/1997	Written representations process completed; awaiting decision from Planning Inspectorate
Manor Farm, Norton Malreward	n/a	31/03/1998	Awaiting submission to the Planning Inspectorate
St Nicolas' Court, Bathampton	n/a	17/08/2003	Order confirmed by the Planning Inspectorate
Little Solsbury Hill, Bath	n/a	22/09/2004	Awaiting making of Order to record public footpath
Candlegrease Lane, Paulton	n/a	09/12/2004	Awaiting making of Order to record public footpath
Solsbury Lane, Bath	n/a	31/10/2008	Awaiting decision on whether to make an order
The Tumps, Bath	n/a	11/04/2006	Application received



Tuckingmill, Compton Dando	n/a	29/08/2006	Application received
Midford Lane, Freshford	n/a	27/04/2007	Application received
Maynard Terrace, Clutton	n/a	17/10/2007	Application received
Bathampton Mill, Bathampton	n/a	12/11/2007	Application received
Handel Road, Keynsham	n/a	18/04/2008	Application received
Somerset Place, Bath	n/a	02/06/2008	Application received
Clandown Colliary, MSN	n/a	20/08/10	Application received
Bilbie Road, Chew Stoke	n/a	06/09/10	Application received
Newbridge P&R, Newbridge	n/a	01/09/10	Application received
Bathampton Swingbridge	n/a	27/03/2012	Application received
First Avenue, Westfield	n/a	26/07/2012	Application received
St Mary's Church, Saltford	n/a	30/10/2012	Application received
BR Upgrades, Peasedown-S-J	BA19/XX	14/03/2004	Application not duly made
BA19/19 Upgrade, Peasedown-S-J	BA19/19	14/03/2004	Application not duly made
BA19/17 Upgrade, Peasedown-S-J	BA19/17	14/03/2004	Application not duly made

**4.2 PPO Applications:** The following provides brief details of all Public Path Order applications received by this Authority and the current progress on each application.

APPLICATION NAME	AFFECTED PATH(S)	APPLICATION DATE	PROGRESS
Chilcompton Road, MSN	Unrecorded	01/02/2005	Order Confirmed; awaiting completion of works on site.
Dundry Hill Farm, Whitchurch	BA26/15	08/07/2008	Order Made and being dealt with by BCC.
Upper Farm, Charlcombe	BA5/23	17/05/2010	Order confirmed, works completed and case closed
Whitchurch Railway Path	BA26/6	n/a	Order confirmed, works completed and case closed
Tuckingmill Ho., Compton Dando	BA8/6	06/02/2008	Part of trial referred to in para. 4.3 below
New Manor Fm, Farmborough	CL9/22 & 23	22/01/2009	Part of trial referred to in para. 4.3 below
Former Alcan Site, Misomer Norton	CL24/7	n/a	Application withdrawn
Prior Park College, Bath	AQ63	14/01/2009	Application received
148 High Street, Publow w/ Pens.	CL17/40	25/01/2009	Application withdrawn

Woodborough Mill, Compton D.	BA8/3	27/03/2009	Application received
Howgrove Farm, Kelston	CL14/20	31/03/2009	Application received
Smallcombe Farm, Bath	AQ34	08/07/2009	Part of trial referred to in para. 4.3 below
Henmarsh Farm, Nempnett Thrub.	CL14/45	20/10/2009	Application received
Kingswood School, Charlcombe	BA5/13	07/05/2010	Application received
Church Farm, Publow w. Pens.	CL17/20 & 21	27/08/2010	Application received
Bushy Common, West Harptree	CL23/36	11/10/2010	Application received
Orchard Path, Whitchurch	BA28/6	28/02/2011	Application received
Bickfield Farm, Compton Martin	CL7/17	18/08/2011	Application received
Easton Cottage, West Harptree	CL23/1	07/09/2011	Application received
Meade Cottage, Nempnett Thrubwell	CL14/45	12/09/2011	Application received
K2 Development, Keynsham	BA27/16	28/02/2012	Application received
Lundy, High Littleton	CL11/23	17/07/2012	Application received

4.3 A trial is currently being run with three PPO applications following a new set of procedures whereby an agent acting on behalf of the applicant carries out all the non-statutory parts of the PPO process including the initial consultation and negotiation with objectors. The Authority will then consider whether to make a PPO if all the legislative and policy tests have been met and if there are no outstanding objections.

## **5 HUMAN RIGHTS IMPLICATION**

5.1 There are no Human Rights implications to be considered from this report.

## **6 RISK MANAGEMENT**

6.1 No option exists for the Authority to disregard duly made DMMOs. Local Authorities are under a statutory duty to consider and determine all applications made within the provisions of section 53 of the Wildlife & Countryside Act 1981. Committee is required to consider all DMMO applications regardless of whether or not objections are received during consultation.

6.2 The power to make PPOs is discretionary but the Authority must exercise this discretion with due regard to natural justice and all applicable legislative tests.

## **7 EQUALITIES**

7.1 Not applicable - this report is merely to update members on the workload of the team.

## **8 CONSULTATION**

- 8.1 Relevant consultations are carried out as part of the consideration of each individual case.

## **9 CONCLUSIONS**

- 9.1 It is hoped that this report will provide Members with an overview of the current position regarding Public Rights of Way Legal Order work, and will provide an awareness of possible forthcoming decisions to be taken by the Committee.

<b>Contact person</b>	Graeme Stark (Senior Right of Way Officer)
<b>Background papers</b>	No background papers accompany this report.
<b>Please contact the report author if you need to access this report in an alternative format</b>	