

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. The section of the Application Route between points C and E on the Plan contained at Appendix 4 ("the Plan") is shown by a dashed black line on the Parish Survey Map (Fig. 1) and the associated Parish Survey Card describes this section as follows; *"...then S.E. to five barred wooden field gate, straight across field to hedge then proceed along hedge to five barred wooden gate, continue along hedge to corner of field..."* (Fig. 2). This section has subsequently been scored through in red pencil. The Parish Survey Card records the route as parish path number 2 and as a footpath.

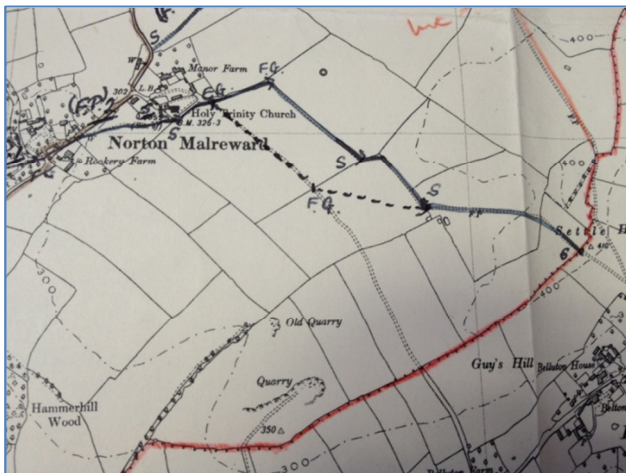


Fig.1 Parish Survey Map

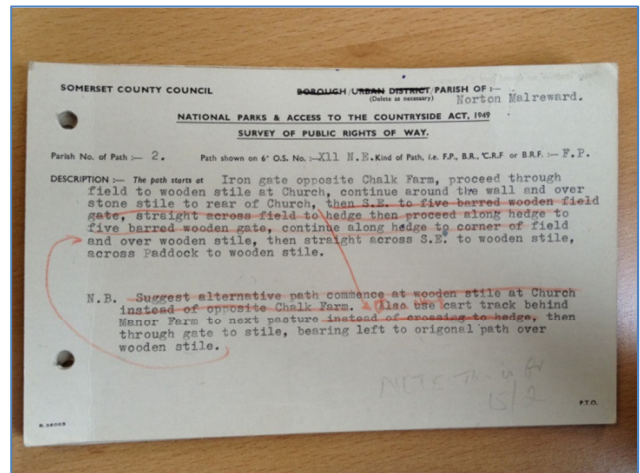


Fig.2 Parish Survey Card

3. The walking survey for this particular path was carried out on 3 August 1950. The route's inclusion in the Parish Survey was agreed at Norton Malreward Parish Council's meeting on 15 November 1950 and the Parish Council minutes record the path as running *"...along private road in second fields SE of Church..."* This was required by section 28(3) of the 1949 Act and, in addition to the minutes, compliance with this provision is confirmed in the Parish Survey Cards by the then Chair of the Parish Council Mr Luton. 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 remainder of the Application 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. The section of the Application Route between points C and E on the Plan 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).

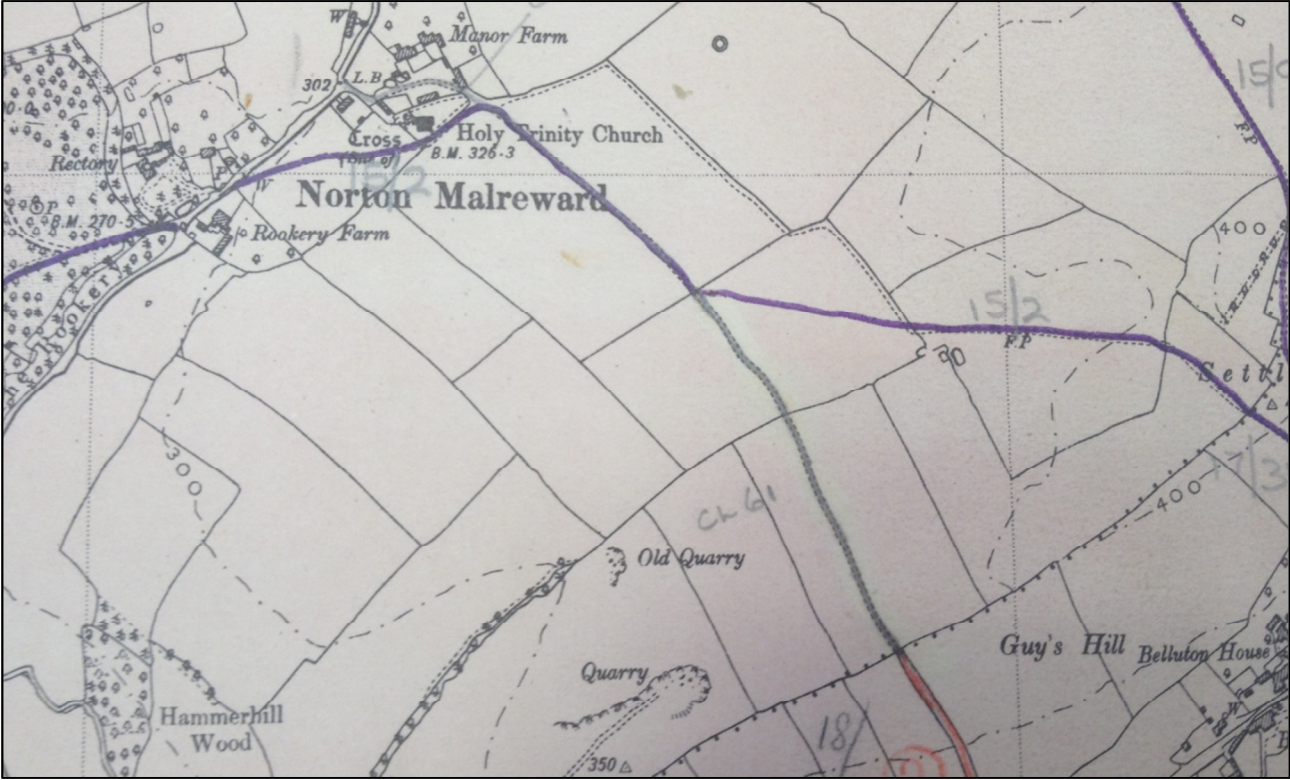


Fig. 3: Draft Map

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 the Application 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 Objection	Objectioner	No. (if known) on Draft Map	Name and Address of Objectioner and reference (if any)	Summary of Objection	Comments by Clerk	Determination
(1)	(2)	(3)	(4)	(5)	(6)	(7)
35.	Hampnett Threshell	14/42	Bristol Motor Cycle Club	Inclusion of 14/42 from Hampnett Street north-easterly to Highlands as a bridleway instead of a CRF.	No evidence available.	Decline to amend Draft Map.
39.	do.	"	Quarry Council	Cancellation of south-west section of Long Here lane as a CRF.	Agreed.	11/5/56 Add CRF to Draft Map.
60.	do.	"	Quarry Council	Cancellation of continuation south-easterly of 14/42 as a CRF (known as Hilton).	do.	25/11/56
61.	Stanton Malreward	"	Ramblers' Association 21/55/56	Cancellation 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.	Stanton to Stanton Drew said as CRF - use N.E.S. operates to an ancient highway. Cannot admit public rights.	16/11/56 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 Application Route.
7. SCC subsequently added the whole of the Application Route to their 'Draft Map Modification' map which was produced on 20 August 1965. The Application Route is delineated by a green dashed line (Fig. 5).

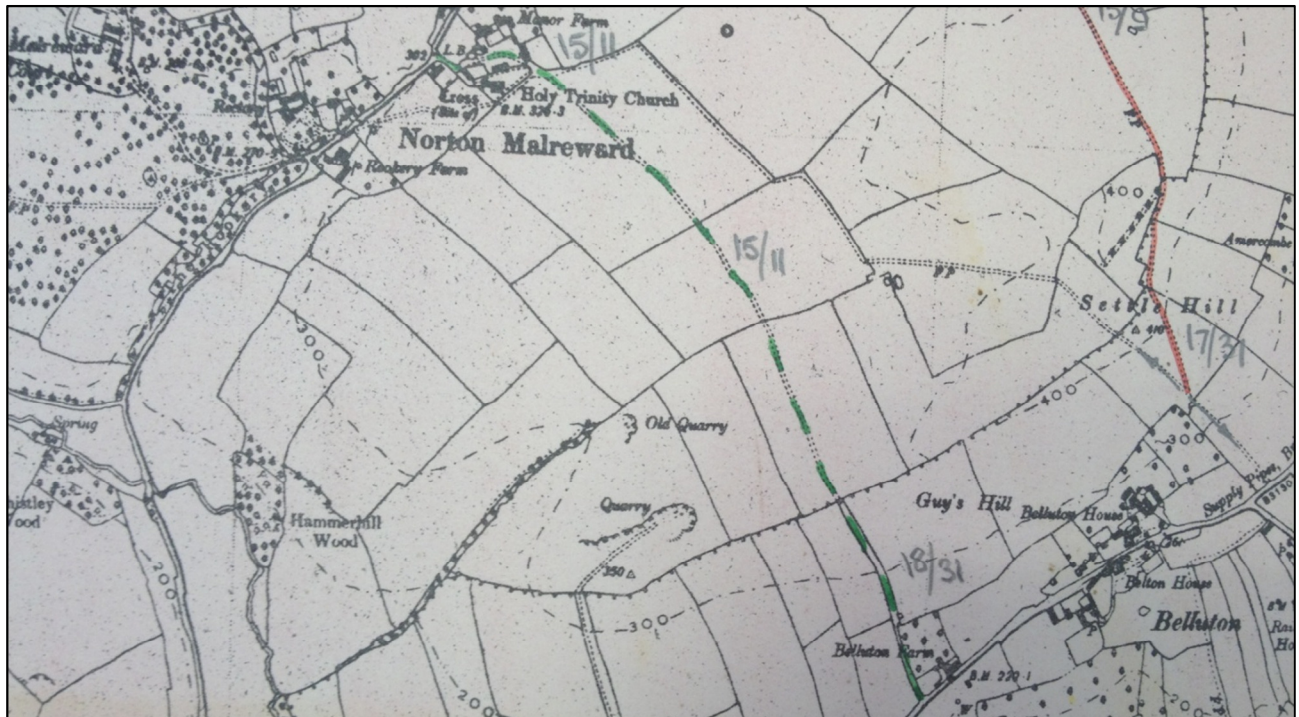


Fig. 5: Draft Map Modifications

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 Application 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 Application 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 Application Route was recorded on the Definitive Map with a broken green line (Fig. 6) and the Definitive Statement records the Application 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.

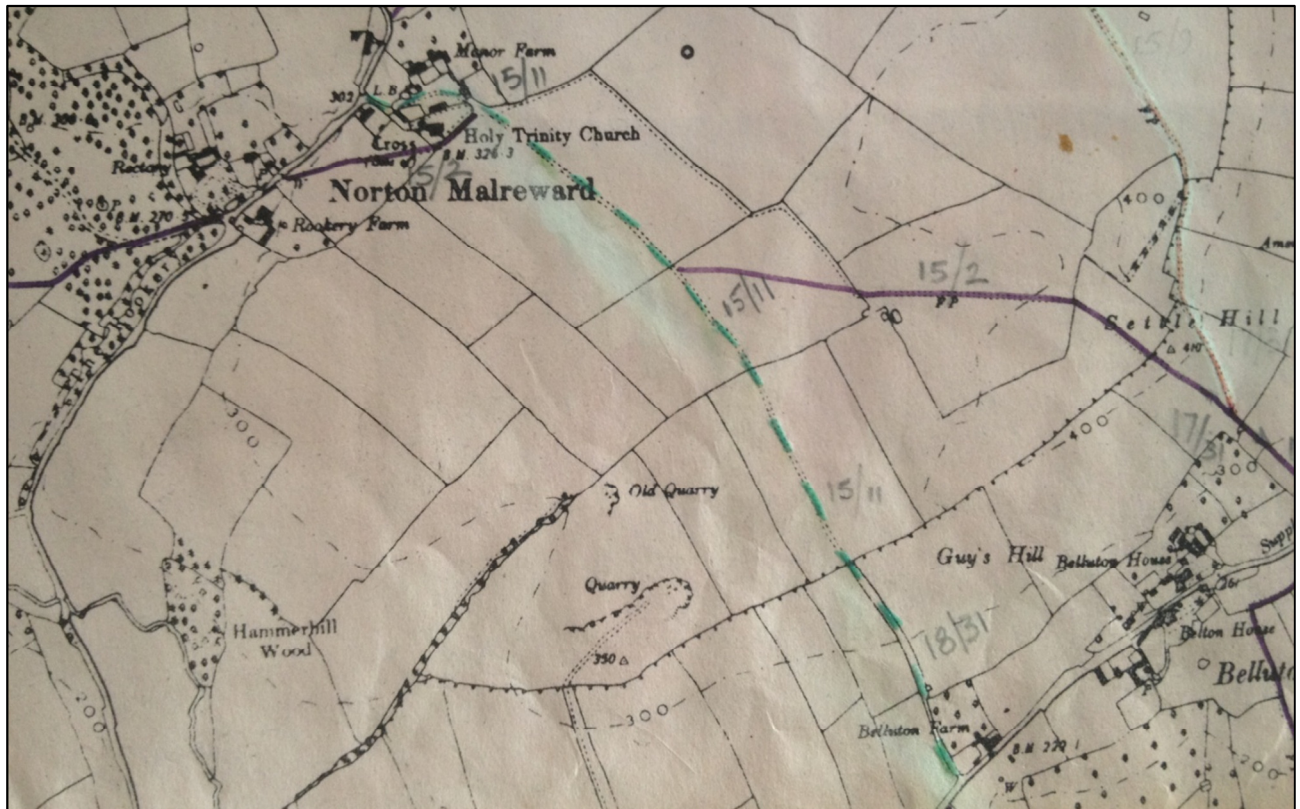


Fig. 6: Definitive Map

(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.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

S/N/189

TITLE BELOW THIS LINE

(3) NAME OF PARISH	(4) No. of Path	(5) Kind of Path	(6) Shown on 1 Ork. Sm. No.	(7) DATE OF WALKING SURVEY & BY WHOM MADE
Norton Malreward	11	C.R.F.	12 NS	

SYMBOLS TO BE USED IN BOX (5) BELOW

Footpath F.P.

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

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

STON EA. STATION: DREW PUBLLOW PAULTON EPI RADSTOCK TINSBURY

Fig. 7: Definitive Statement

9. The Application 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 7.