

EVIDENCE

1. Introduction

- 1.1 As detailed in Appendix 7, the Authority's decision as to whether a Definitive Map Modification Order should be made to delete the Application Route, as defined in Appendix 2, 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 Applicants and consultees and which are held at the Somerset Heritage Centre in Taunton ("the 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 Application 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 Application Route.

Norton Malreward 1693. The survey of y^e man^r there

| <i>Tenants</i> | <i>Liens</i> | <i>Sightents</i> | <i>yearly value</i> | <i>Purchase</i> | <i>Purchase</i> |
|--------------------|--------------|------------------|---------------------|-----------------|-----------------|
| <i>George King</i> | <i>1</i> | <i>4 1 0</i> | <i>45-0-0</i> | <i>540-0-0</i> | <i>40-0-0</i> |
| <i>Samuel Bush</i> | <i>2</i> | <i>0 3 4</i> | <i>40-0</i> | <i>036-0-0</i> | <i>03-6-8</i> |

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 Application Route runs. However, the deeds do not make any reference to, or provide any evidence in relation to, the Application 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 Plan contained at Appendix 4 ("the Plan") is shown as "*Inclosed Roads*" (Fig. 2). However, the Application Route is not shown and the map does not therefore provide any evidence in relation to the Application 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 the Application Route between points C and F on the Plan is delineated by parallel pecked black lines between 'Norton Malreward' and another route delineated by parallel solid black lines (Fig. 3). However, the route continues to the south of All Saints Church rather than running between points A and C on the Plan. The 1809 2" Ordnance Survey map therefore provides evidence that the section of the Application Route between points C and F on the Plan physically existed in 1809, but provides no evidence of the physical existence of the section of the Application Route between points A and C on the Plan.



Fig. 3: 1809 2" Ordnance Survey map

- 5.1 Article (a) in the covering letter which formed part of the Application (see Appendix 1) 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 Application Route is delineated by parallel solid, and then parallel pecked, black lines between the settlements labelled 'Norton Malreward' and 'Belluton' (Fig. 4). The 1830 1" Ordnance Survey map therefore provides evidence that the Application Route physically existed in 1830.

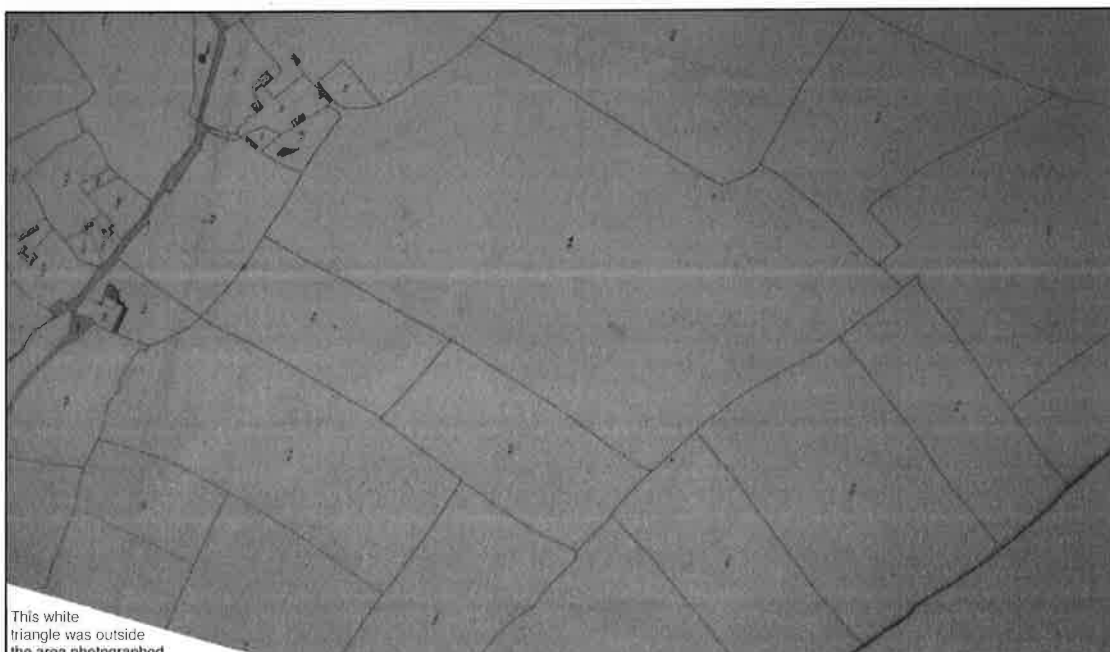


Fig. 4: 1830 1" Ordnance Survey map

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 Application Route would run through enclosures 50, 46 and 44 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 all three of these enclosures and that the land was owned by Robert Bush and occupied by Richard Wilshire. The Award describes the three enclosures as follows; 50 – House Outbuildings and Barton (Homestead), 46 – Church Furlong (Arable), 44 – Road Belluton (Arable). The only other use of the word 'Road' within the Tithe Award is in relation to enclosures which are currently undisputed public vehicular highways. However, these other roads are all listed together at the end of the Tithe Award and no Tithe was paid on these enclosures.



This white triangle was outside the area photographed

Fig. 5: Norton Malreward Tithe Map

- 7.3 The Norton Malreward Tithe Map and Award provides only ambiguous evidence regarding the Application Route and it is not possible to draw any conclusions from them as to whether the Application Route physically existed or whether there were any public rights over the Application Route.
- 7.4 Stanton Drew Tithe Map and Award were produced in 1842 and the continuation of the Application Route to the southeast of point H on the Plan is shown on the Stanton Drew Tithe Map and labelled; “*from Norton Malreward*”. The Stanton Drew Tithe Map therefore indicates that a route physically existed on the grounds between point F on the Plan and the village of Norton Malreward in 1842.
- 8. Railway Plans** (SHC Ref: Q/RUP/273b, Q/RUP/285, Q/RUP/402, Q/RUP/420 & Q/RUP/275)
- 8.1 In the 19th 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 Application Route is delineated by parallel 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 Application Route is not shown on the overview plan for the Bristol and South Western Junction Railways. The Application 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 Application 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).

At a Meeting held Feb 12 1861.
Present Robert Astwith Taylor Curate M.A.
Richmond Harding Churchwarden
William Gibbons
Henry Norris
It was proposed by the Rev. R. A. Taylor & seconded 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 from the farm yard belonging to Sir Greville Smith Bart. is neither convenient nor befitting the approach of a Place of Worship to Almighty G.D. 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 Wilshere 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 Daubeny 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 "presented".
Robert Astwith Taylor 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 Plan 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 Application 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 Application 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 Application Route is delineated by parallel pecked black lines running through enclosures 148, 159, 155 and 156 (Fig. 8); this map therefore provides evidence that the Application Route physically existed in 1903.

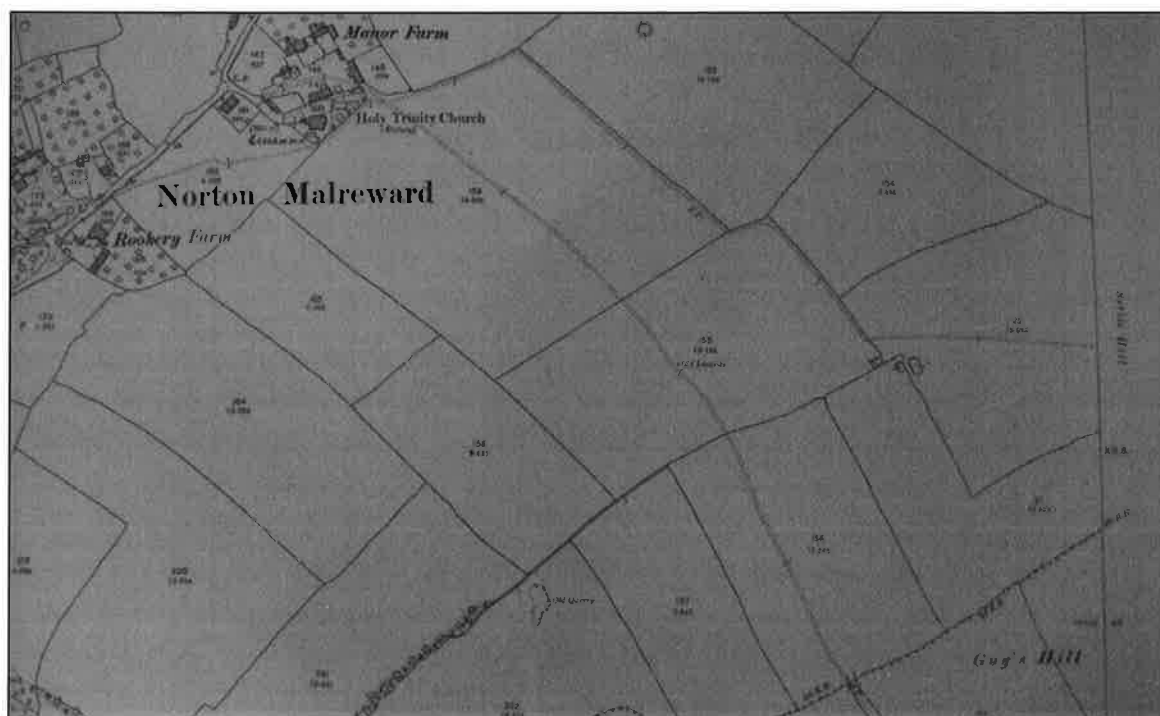


Fig. 8: 1903 1:2500 Ordnance Survey map

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 Application Route would run through hereditament 491 and is delineated by double pecked lines on the underlying 1903 1:2500 Ordnance Survey map (Fig. 9).

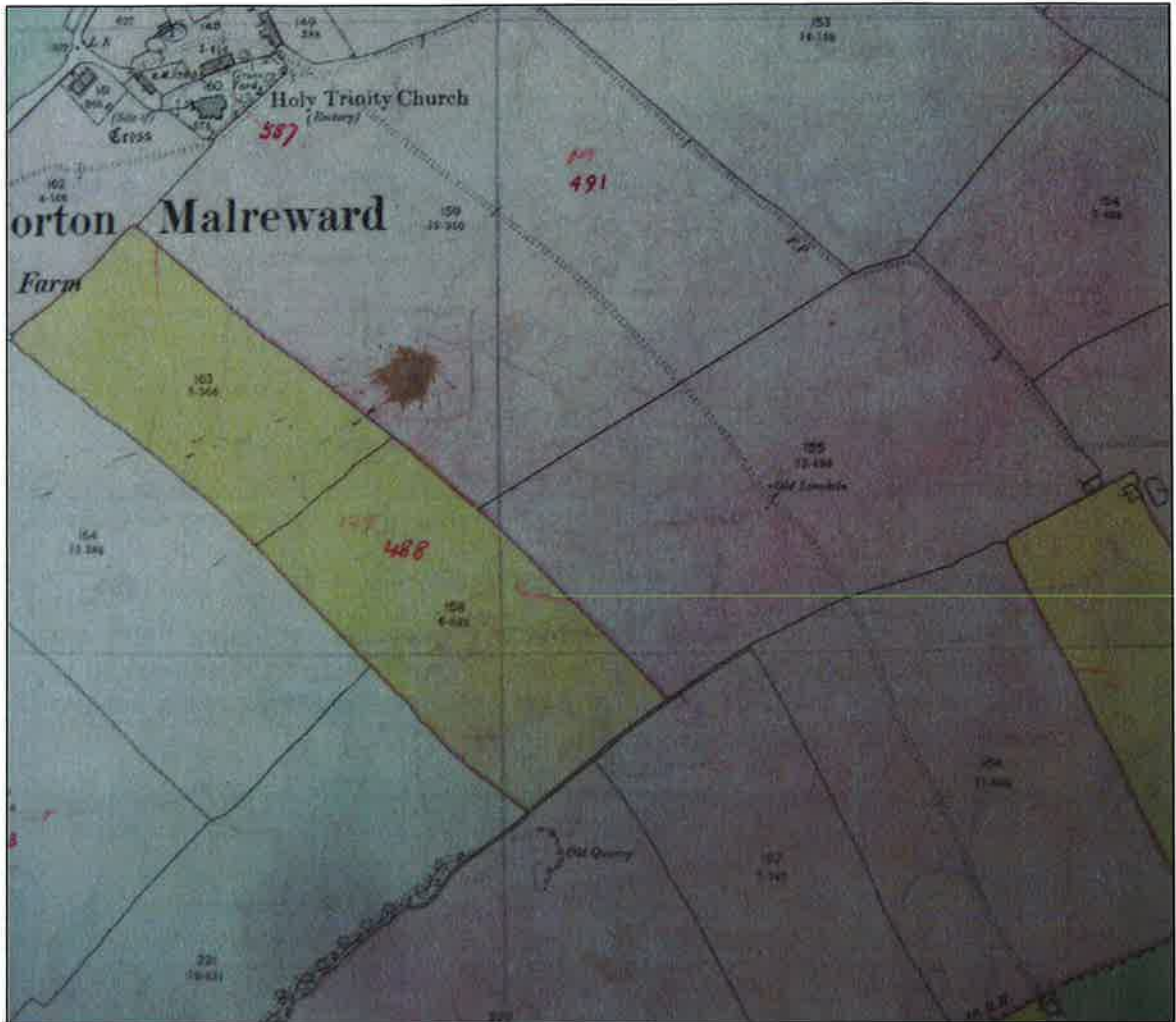


Fig. 9: Finance (1909-1910) Act 1910 plan

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 Application Route in 1903 but the Finance (1909-1910) Act 1910 documents do not provide any evidence of the existence, or otherwise, of public rights.

| No. of Hereditament | No. of Tenement | Christian Names of Occupiers | Christian Names and Occupations of Owners with their Residences | Description of Property - If on the day of valuation the same is being used for any purpose by which it is used | Street, Place, Name and Precise Situation of Property | Rate | | | | Reference to Map | Extent as determined by Value | | | | Deductions of Value | | | | |
|---------------------|-----------------|------------------------------|---|---|---|-----------|----------|--------|-------|------------------|-------------------------------|-----|---|---|---------------------|---|---|---|---|
| | | | | | | Estimated | Assessed | Hybrid | Value | | A | B | C | D | E | F | G | H | |
| | | | | | | | | | | | | | | | | | | | 2 |
| 487 | 18 | Maldenham Rev. J. L. | Himself | St. Paul's Church | Norton Malreward | 154 | 14 | 127 | 15 | | | | | | | | | | |
| 488 | 19 | Murphy Henry | Maldenham Rev. J. L. | Land | | | 11 | 94 | 17 | | | | | | | | | | |
| 489 | 20 | Branch Harold Sam | | | | | 17 | 16 | 8 | | | | | | | | | | |
| 490 | 21 | Douglas Sarah Jane | Smith Lady Lily | as before | | | 27 | 28 | 22 | 15 | 22 | 4 | | | | | | | |
| 491 | 22 | Douglas John Esq | | th. a Buildings Land | Manor Farm | | 36 | 14 | 24 | 15 | | | | | | | | | |
| | | | | | | | 217 | 107 | 163 | 148 | 148 | 148 | | | | | | | |

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

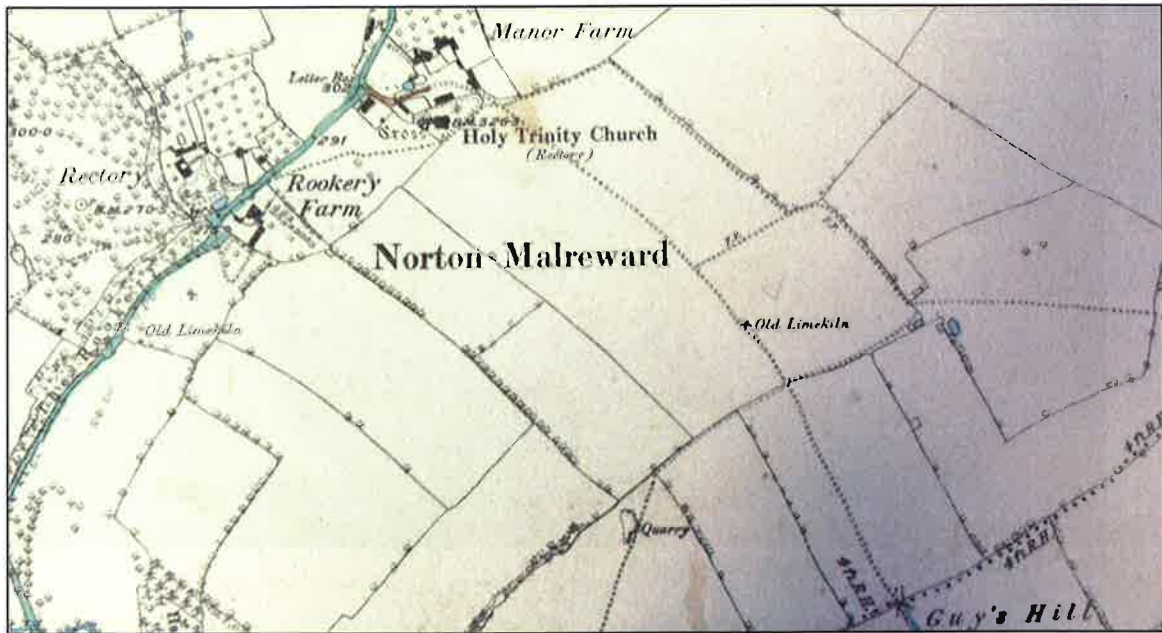


Fig.13: 1929 Take Over Map

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 covers 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 Application 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 On the 1958 1:2500 Ordnance Survey map, the section of the Application Route between points C and F on the Plan is delineated by a single pecked black line and annotated 'FP' (Fig. 15). This map provides evidence that the section of the Application Route between points C and F on the Plan physically existed in 1958.

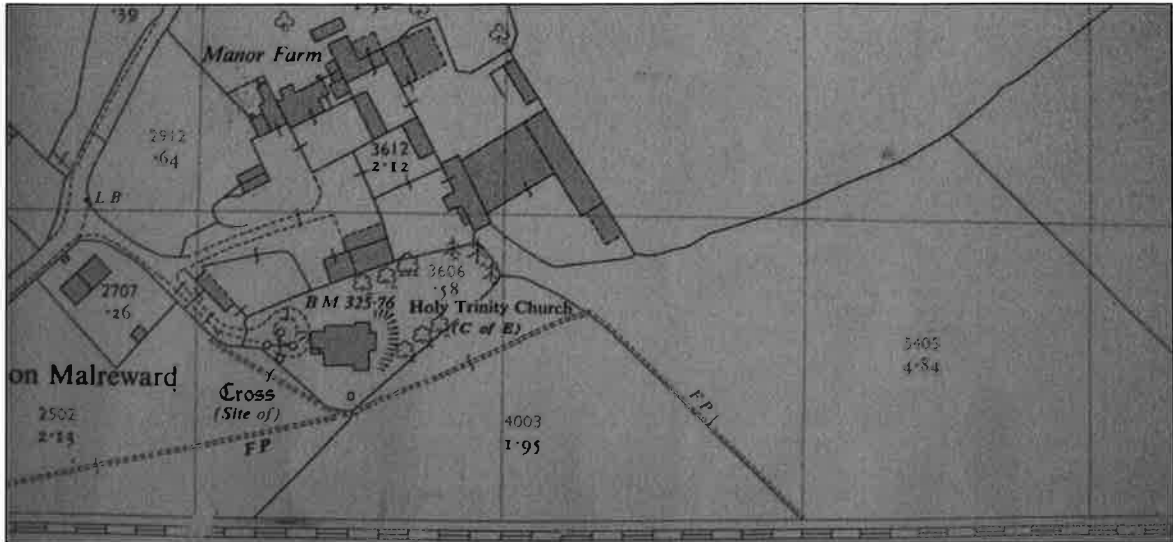


Fig. 15: 1958 1:2500 Ordnance Survey map

16. 1986 1:2500 Ordnance Survey map

16.1 On the 1986 1:2500 Ordnance Survey map, the section of the Application Route between points C and F on the Plan is delineated by a double pecked black line and annotated 'Track' (Fig. 16). This map provides evidence that the section of the Application Route between points C and F on the Plan physically existed in 1986.

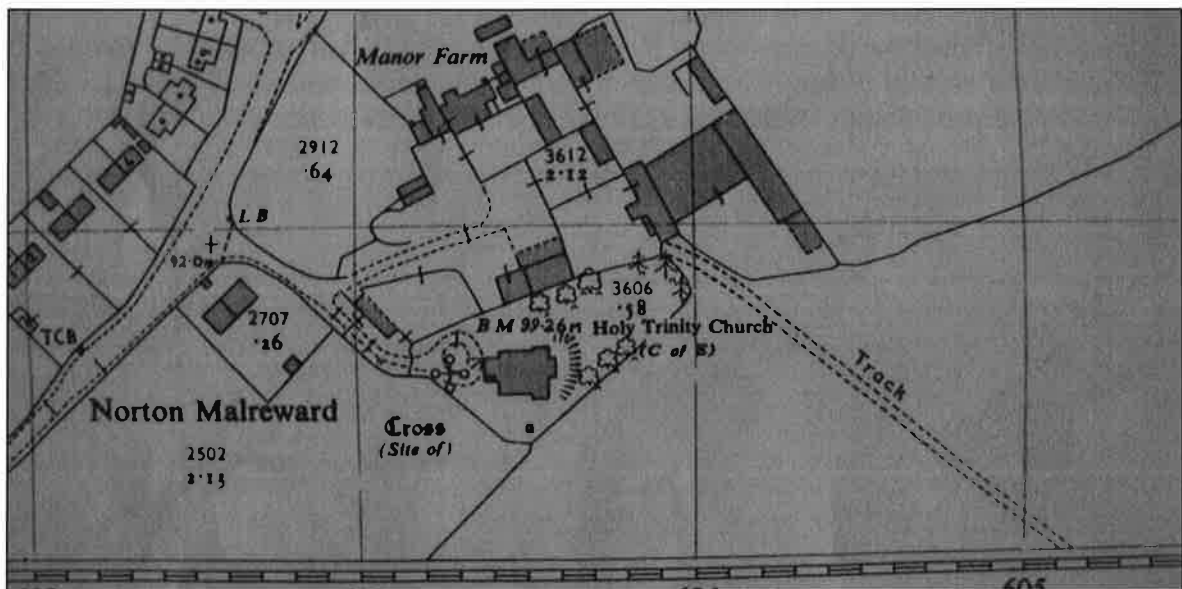


Fig. 16: 1986 1:2500 Ordnance Survey map

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 Application Route to travel from Norton Malreward to Pensford in motor vehicles from 1949 to 1970. This letter indicates that the Application Route physically existed and was used by motor vehicles between 1949 and 1970.

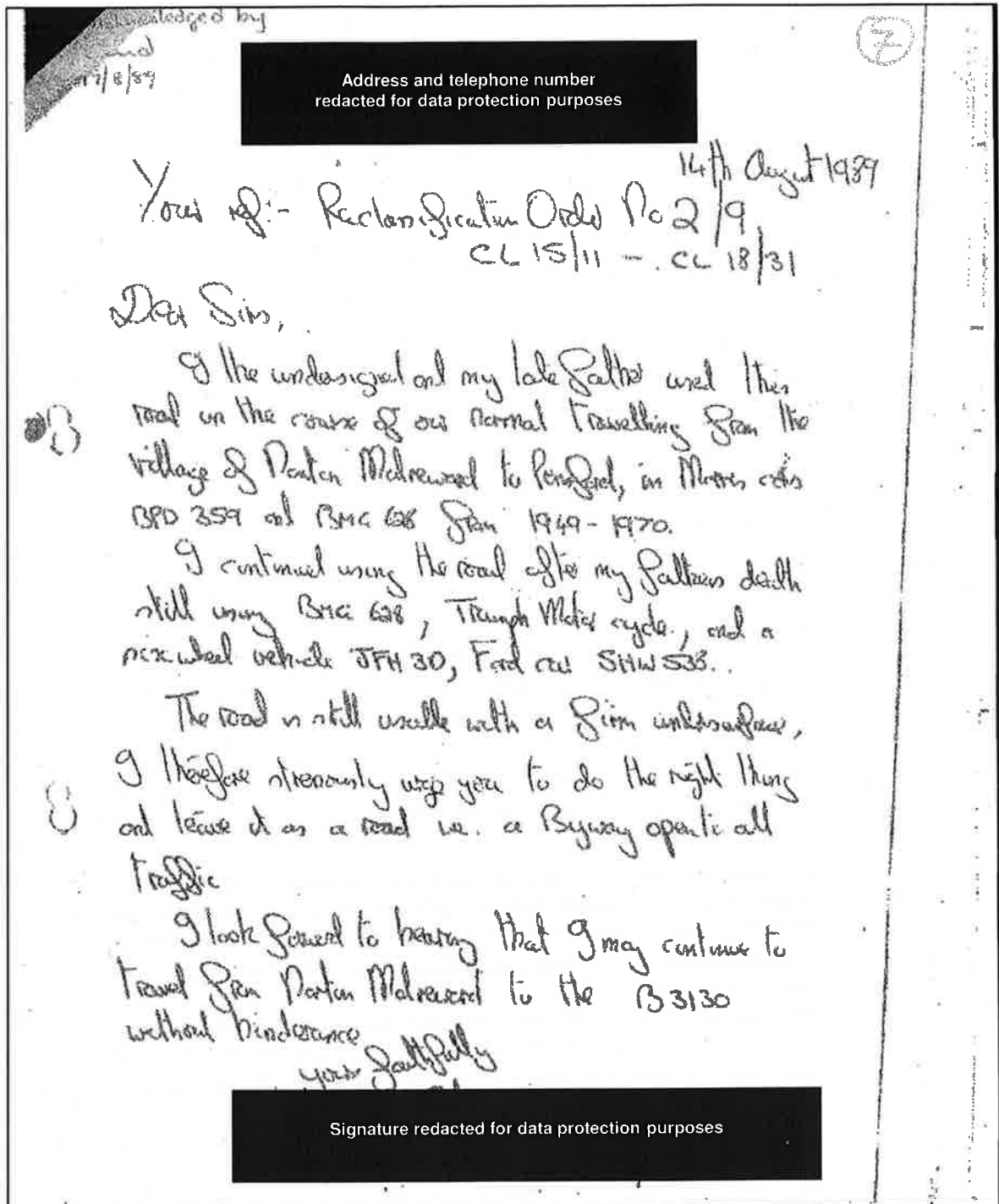


Fig. 17: User's letter

18. Landowner's letter

18.1 On 1 October 1990, the then owner of the land over which the Application route runs wrote to the then highway authority Avon County Council (Fig. 18). The letter disputes the length of time over which the Application Route has been used by motor cycles and states that the Application Route has not been, and could not physically be, used by motor cars.

COUNTY OF AVON

DEPARTMENT OF
CHIEF EXECUTIVE AND CLERK
- 3 OCT 1990

Manor Farm
Norton Malreward
Pensford
Bristol.
BS18 4HX

①

Legal Dept.
Avon County
Haymarket
Bristol.

✓ Added
4.10.90
1.10.90.

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

9/1990.

Dear Mr. Malarby,

Re. Bridleway. OL15/11. Norton Malreward.

I am writing to you as owner of Manor Farm, of which the OL15/11 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 LIFT ALONG 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 OL15/11 (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 OL15/11 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,

Signature redacted for data protection purposes

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

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. 19). The section of the Application Route between points A and C on the Plan is delineated by parallel pecked lines; the remainder of the Application Route is outside the mapped area. 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 Application Route between points A and C on the Plan physically existed in 1992.

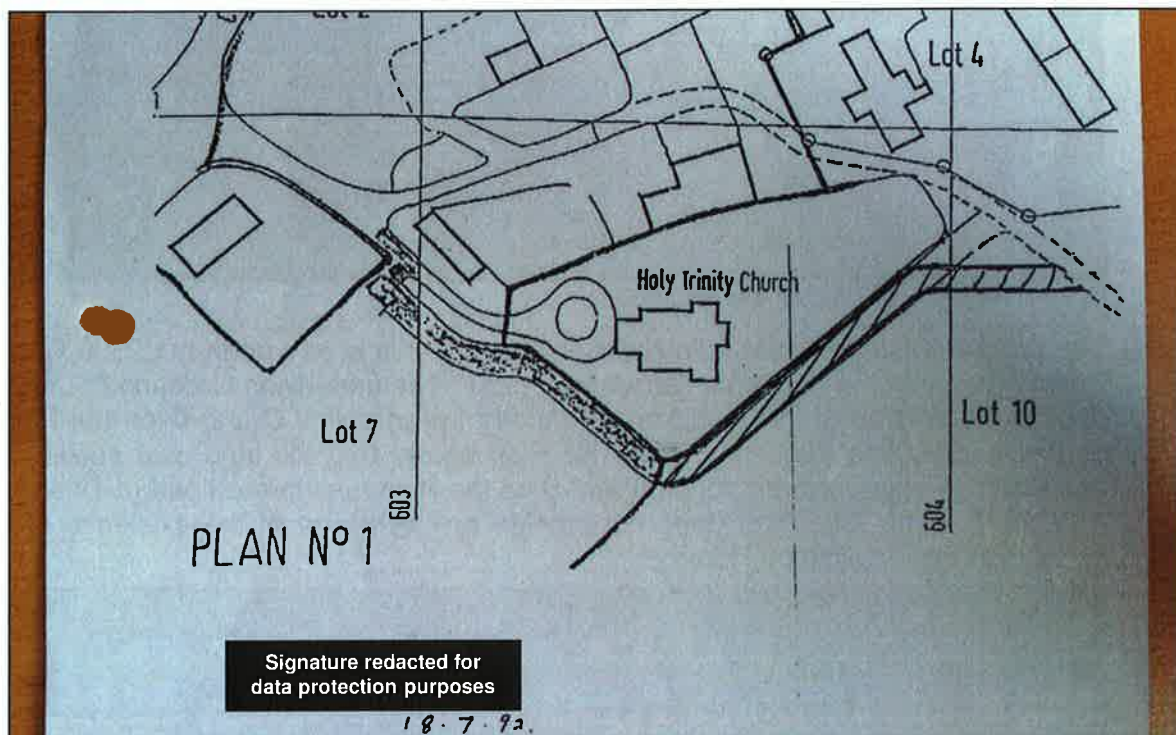


Fig. 19: Sale Particulars Plan

19.2 The plan at Fig. 20 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 depicts the section of the Application Route between points C and D with a single pecked line and the annotation 'F.P.' The section of the Application Route between points D and E is depicted with a hand drawn single pecked line and a handwritten annotation reading 'CL15/2 (& CL15/11)'; these annotations were presumably added at a later date but their provenance is unknown. This Title Plan shows that the land over which the Unclassified Road/Restricted Byway between Church Road and Point A on the Plan runs formed part of Title Number AV221579. The Title Plan does not provide any evidence of the existence of public rights over the Application Route.

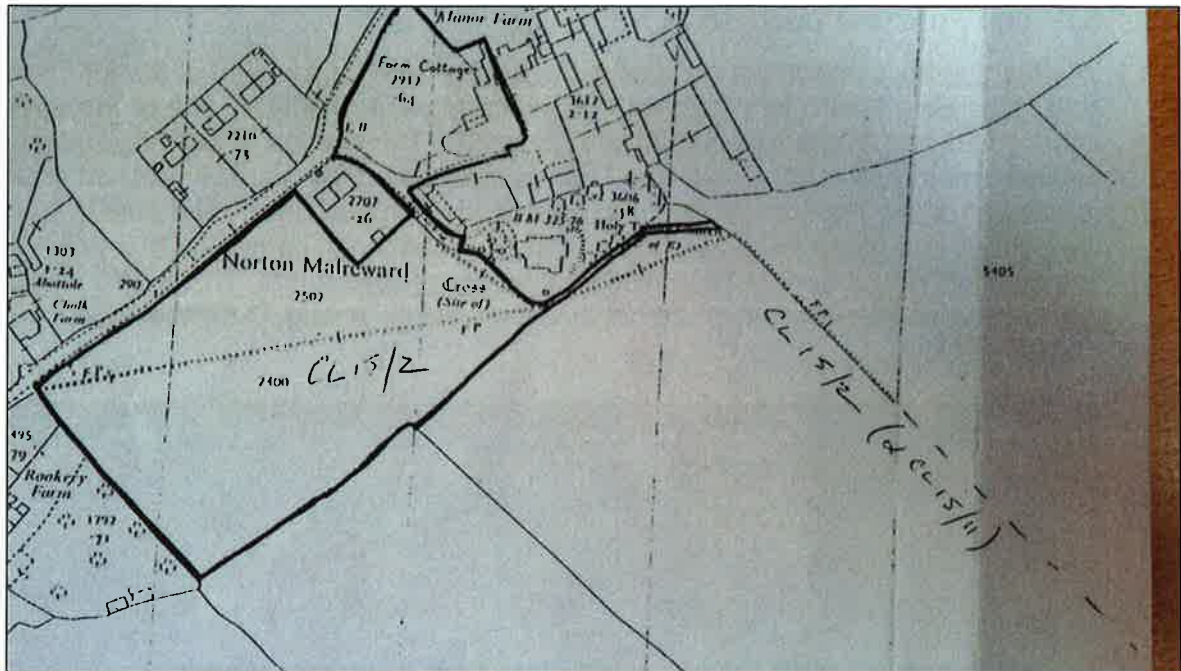


Fig. 20: Title Plan for Title Number AV221579

19.3 The Land Registry plan for Title Number AV221578 is based upon a 1:2500 Ordnance Survey map which has been enlarged to 1:1250. The underlying Ordnance Survey map depicts the section of the Application Route between points C and D on the Plan with double pecked line (Fig. 21). This Title Plan shows that the land over section of the Application Route between points A and B on the Plan runs formed part of Title Number AV221578. The Title Plan does not provide any evidence of the existence of public rights over the Application Route.

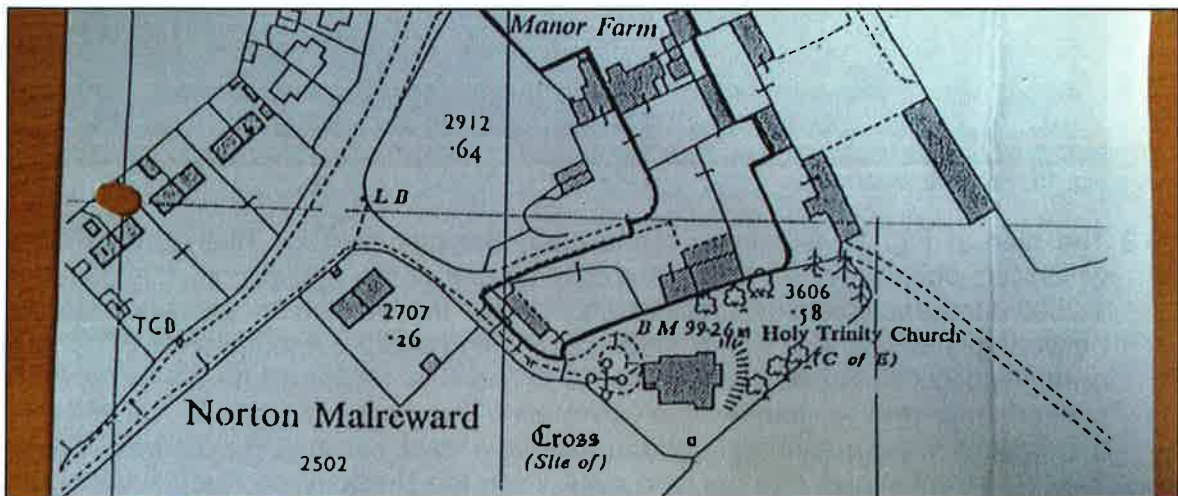


Fig. 21: Title Plan for Title Number AV221578

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. 22). Mr Goldstone describes the Application Route as being gated and fenced off from the surrounding land and he states that he never saw horseriders or vehicles using the Application 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 Application Route was not passable at point H on the Plan but that the remainder 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 the farm and indeed one of the farm fields is known as "The Quarry Ground"
9. The track was used to haul stone only from the farm and there was no thoroughfare

AND I MAKE THIS SOLEMN declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835

DECLARED AT High Street
Chew Magna
in the County of Avon.

W. J. Goldstone

this 23rd day of October 1997)

Before me, P. A. Burtles

Solicitor/Commissioner For Oaths

Fig. 22: Statutory Declaration of Walter John Goldstone

21. Path Files

21.1 Correspondences held on file by the Authority indicated that the Application 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 Application Route was obstructed in response to security concerns (Fig. 23). 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 Application Route being disputed until the commencement of the Reclassification Order process detailed in Appendix 6.

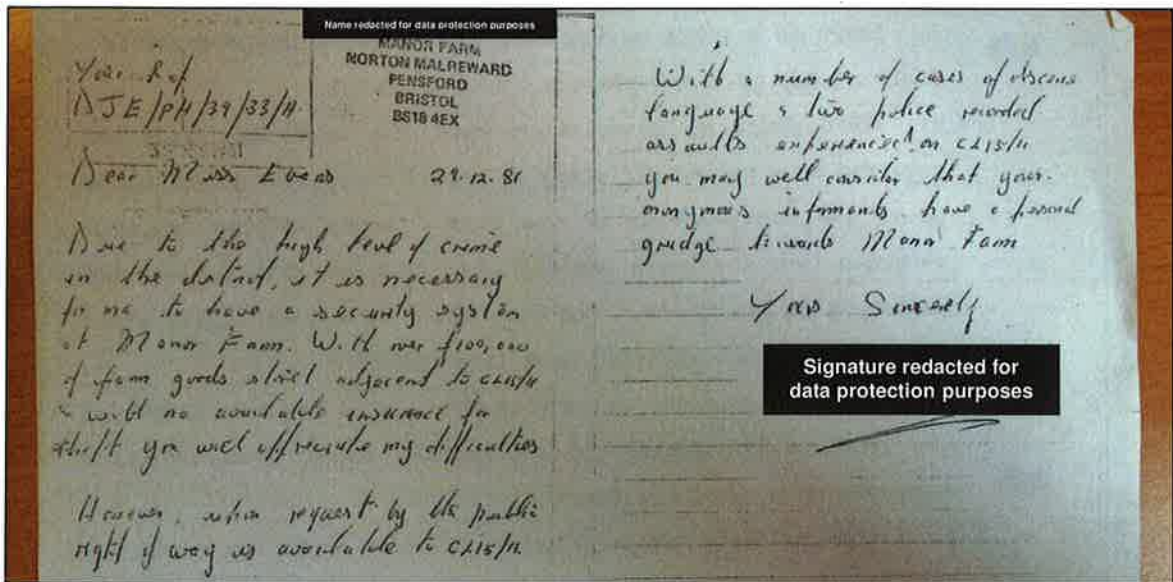


Fig. 23: A letter from the landowner to Avon County Council

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