

CONSULTATION RESPONSES

CONSULTEE 1

From: [REDACTED]
Sent: 12 October 2011 05:05
To: Graeme Stark
Cc: John Everitt; [REDACTED]
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 email. I take it you have received mine of yesterday with copies of correspondence from August 1998. Have you sent a copy of your report to [REDACTED]?

I note that you are asking if there is any additional information to be added over that which accompanied the original request in 1998, sent to your Legal department. Nothing has changed in the intervening years.

When writing perhaps you could explain why there has been a lapse of 13 years between our application and the present day?

Regards,
[REDACTED]

From: Graeme Stark
Sent: 12 October 2011 14:04
To: [REDACTED]
Cc: John Everitt; [REDACTED]
Subject: RE: Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Norton Malreward area

Dear [REDACTED]

Thank you for your emails dated 11 and 12 October 2011.

Judith Gradwell's letter clearly states that she was willing to temporarily accept the alternative route; "...provided that the route is kept totally clear." Unfortunately in recent years we have twice received complaints from horseriders that the alternative path has become obstructed by encroaching vegetation and it has therefore been necessary on both occasions for my colleague Colin Hudson to make arrangements for the vegetation to be cleared.

Additionally, the situation has changed in that a member of the public has served notice on the Authority under section 130A on the Highways Act 1980. This requires the Authority to take whatever means are necessary to make the legal line of the right of way open and available for use by the public. If the legal line is not subsequently unobstructed then the Complainant can apply to the magistrates court for an order requiring action to be taken. I have asked the Complainant whether they would be prepared to temporarily put the Section 130A proceedings on hold while your Definitive Map Modification Order (DMMO) Application is processed and I will let you know as soon as I receive a response.

I have only recently taken over the processing of DMMO Applications and it is unclear from the case files why your application has not been processed before now. However, I would like to apologise on behalf of the Authority for the delay. I started the archival research into your application earlier in the year and, as you will note from my earlier email, the matter is now out for consultation. Applicants for DMMOs can apply to the Secretary of State for a 'Direction to Determine' if the Authority hasn't determined an application within 12 months; however, no application for a Direction to Determine appears to have been made. Thank you for providing [REDACTED] last known address; I can confirm that I have sent a copy of the Investigation Report to [REDACTED] and all affected landowners who are known to the Authority.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 13 October 2011 08:37
To: Graeme Stark
Cc: John Everitt; [REDACTED]
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 note the comments contained in your email and make the following observations.

1. While there is no implied criticism of your action in this case, I must point out that there was never any recognition of the application for Modification from the Legal department, or any statement of my rights to ask the Secretary of State to determine. Hence no application was made.
2. You refer to obstructions to the alternative route in recent years and the Authority's action to clear obstructions. As no indication of these matters had been conveyed to me, I was totally unaware of these matters.
3. The alternative route has been in use for thirteen years, without any objections and if there are obstructions that are causing problems please let me know and I will take the appropriate action to rectify.
4. As Ms Gradwell pointed out, the precise route of the disputed track is difficult to determine "bearing in mind the limitations imposed by the small scale of the Definitive Map" Consequently, it is impossible, with any certainty describe the route.
5. After so many years, what has caused a member of the public to raise the matter?

Like Ms Gradwell in her time at the Authority, I too want to be helpful in this matter. Would it be of help to seek confirmation of the present route and put an end to the matter?

Regards,

[REDACTED]

From: Graeme Stark
Sent: 13 October 2011 15:50
To: [REDACTED]
Cc: John Everitt; [REDACTED]
Subject: RE: Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Norton Malreward area

Dear [REDACTED]

Thank you for your email

There are a number of correspondences on file which appear to suggest that the right to apply for a 'Direction to Determine' was discussed with [REDACTED] but he did not wish to pursue this course of action. In any case, the application is now being processed and the Complainant is happy to await the outcome of the DMMO Application before pursuing the Section 130A Notice any further. I'm afraid I don't know what caused this particular member of the public to serve notice on the Authority or why the issue is being raised at this point in time.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 16 November 2011 04:47
To: Graeme Stark
Cc: John Everitt; [REDACTED]
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 reply and please accept my apologies for the late acknowledgment. While it is history, it is unfortunate that I, being a party to the request for modification was not advised of my rights to seek a Secretary of State determination. No matter where we are.

I refer to your Investigation Report of October 10th 2011.

1. On page 2 of that report, Section 3. It refers to no paperwork being added to the application. We, the applicants, wrote to the Authority in March 1998, specifically asking the Authority to re-examine three particular aspects. A copy of this letter is appended. We also felt and as stated in that letter, that as the Authority had already received the voluminous paperwork and it sufficed to remind the Authority that all of the relevant information was in their hands.
2. On page 3 and 4, the report refers to various signages. I wish to point out that these were erected at various times post 1994, while at the time being disputed.
3. Documentary Evidence (page 5 onwards) In 1840, the Tithe Map era, confusion on the existence of a Definitive Route, even if one existed at all has emerged. Subsequent information appears to establish the presence of an Application route, but neither the Definitive line of public rights are confirmed.
4. In 1861 the complexity of the matter is compounded further as the Vestry Minute book would tend to suggest that even if an unspecified Application route existed an offer of an alternative route to the west was made.
5. The development of the Manor Farm site in 1914 appears silent on the matter of any Right of way. Is this not significant?
6. It is relevant and significant that Highway Authority records appear to confirm the non-existence of the Application route.
7. The Investigating Officers' comments regarding the Parish Council views in 1950, on the extent of the Public footpath, namely between points C and D on the report map, tends to suggest that it did not extend beyond point C but perhaps accorded with the route delineated on the Ordinance Survey map of 1811.
8. I find it difficult to accept the Investigating Officer's comments relating to the outcome of searches of Definitive Map records (1950-1958). While there appears to be some evidence to support the Application Route, it appears that the definitive line, particularly with reference to the actual route through the Manor Court farmyard, is derived on the presumption of the lack of any documentary objection by the then landowner. I arrive at this conclusion as the route as shown on the map between points C and B would have traversed the closed cattle collection yard for the milking parlour. This remained in existence until the farm suspended dairying activities sometime in the late 1970's.
9. I am not clear what evidence the Investigating Officer calls upon to draw the conclusion (Section 13, Definitive Map Records). It would be helpful to expand on the reasoning that there is evidence to support the comment on the extent of rights.
10. Reclassification Order (1989-1997). This remains the subject of debate.

In my last email correspondence to you, I posed the question of seeking a modification of the disputed line to the one that has been in existence for the last 13 years. While I personally would prefer the route to take the line to the South of the Church as indicated on the 1811 O.S. Map, if it would put an end to this longstanding case I would be happy to go down that route.

Regards,

[REDACTED]

From: [REDACTED]
Sent: 22 November 2011 09:03
To: Graeme Stark
Cc: Malcolm Hanney (Cllr)
Subject: FW: CL 15/11 - Consultation of Investigation Report
Attachments: NortonMalrewardComments.docx

Dear Mr Stark,

Further to my recent emails on this subject, I enclose below and an attachment information provided by [REDACTED] who represented [REDACTED] and myself in the matter many years ago. I request that the contents of the email and attachment are taken into account when the Application is considered by the Authority.

Regards,

[REDACTED]

From: [REDACTED]
Sent: 15 November 2011 15:40
To: Peter Edwards (Cllr)
Subject: Re: Definitive Map Modification Order Investigation Report

Dear Mr. Edwards,

Thank you very much for keeping me in the picture. As you may know my name is now on the List of Interested Parties - and I have been advised that [REDACTED] the Applicant is also on the List. Unfortunatley BANES has been sending correspondence to him at the wrong address.

I am somewhat disappointed by the contents of the e-mail, given that the alleged "age" of what is also an alleged Public Bridleway has simply nothing to do with it . . . the law operates on "evidence" - and the evidence is that there was never a Public Bridleway through the yard of Manor Farm.

Moreover, of course, and most significantly, only the owners of the land, probably more than one in this case, can determine to allow a Bridleway - after the determination of the evidence. The Parish Council cannot "decide" that it should remain . . . a Parish Council can only decide whether to Support or not to Support the Application.

Lastly, the fact that riding has been taking place whilst the route was in dispute, cannot provide "evidence" that the way is now a Public Bridleway. On the contrary, whilst the Bridleway has been shown on the Definitive Map [and that is only since the Public Inquiry which defeated BOAT status - and therefore cannot meet the required period of a "full period of 20 yeaqrs" even if it did apply!] the landowner/s have not been able to challenge or prevent use by horseriders. This does not mean that the way is now a Public Bridleway . . . far from it.

Sorry to be the messenger of such news . . . what normally happens is the "evidence" is tested, and if it demonstrates there is no Bridleway, then the landowner or owners can always decide later between them if they wish to dedicate a Bridleway OR allow "permissive" riding. In which event, they can apply limitations [such as a gate] or restrictions on user.

I shall be most grateful if you will advise the Parish Council accordingly.

Yours sincerely,

[REDACTED]

From: Dennis Baber <d.baber@talktalk.net>
To: [REDACTED]
Cc: [REDACTED]
Peter Edwards (Cllr) <Peter_Edwards@BATHNES.GOV.UK>; Malcolm Hanney (Cllr) <Mchanney1@aol.com>
Sent: Tuesday, 15 November, 2011 17:28:13
Subject: RE: Definitive Map Modification Order Investigation Report

[REDACTED]
Thank you for your advlce and information on the Right of Way CL/15/11.

From the regular horse usage of the route, allowed by the owners, I can understand the confusion in terminology, as I thought it was a bridleway.

Following information advised by Mike Burns at the Parish Council Meeting, that due to the age of the route, the alternative proposal past the front of the church would not be allowed and the Bridleway route would remain as at present.

The Parish Council will not be objecting to this decision.

Regards
Dennis Baber

From: [REDACTED]
To: d.baber@talktalk.net
CC: [REDACTED] Peter_Edwards@BATHNES.GOV.UK,
Mchanney1@aol.com
Sent: 15/11/2011 19:31:02 GMT Standard Time
Subj: Re: Definitive Map Modification Order Investigation Report

Mr. Baber,
Thank you for responding to my e-mail to Mr. Edwards.
I wonder if we are talking at cross purposes? The reference to "*The front of the Church* . . ." doesn't make sense to me . . .

The alleged Bridleway was the result of a Reclassification of a "CRF" - allegedly a RUPP. The CRF was not claimed by the Parish Council - it was Added to the Somerset Definitive Map by a very questionable procedure. The Inspector at the Second Inquiry had his hands legally "tied" - he was not allowed in law to determine the error - that required the Application . . . later . . .

The route of alleged CRF 15/11 [Public Carriage or Cart road or Unmetalled Green Lane used as a Footpath was alleged to follow the Private entrance to Manor Farm and turn Left into the farm yard, thence across what was the stock collecting yard between

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two clearly ancient stone barns. Which could never have been a "public carriage road" through a gate marked "F.P." to Belluton. And that was the crux of the case.

Because of the classification recorded on the Definitive Map, "CRF" alleged RUPP - - - it suggested the route had public vehicular rights although it was mainly used by the public on foot, thence the claim that it should be Reclassified as a BOAT. [The] Mr. [now Lord] Justice Sullivan decided differently when [REDACTED] challenged the Second Inquiry Inspector's Decision that the route did not have public vehicular rights.

If it could be shown that the route had Bridleway rights, the classification would have been "CRB" - Public Carriage or Cart Road or Green unmetalled Lane used mainly as a Bridleway. But it didn't. It was a CRF.

The Application is not proposing a Diversion. CL 15/11 which is the subject of the Application, is recorded as going through the farmyard. Which was clearly wrong and distressed [REDACTED]. The daughters of the former owner, [REDACTED] attended a meeting to clarify that there was never a Footpath or any right of way through their farm yard.

The evidence in the 1894 Parish Minutes recorded that the Parish had requested of Sir Greville Smyth [Ashton Court] if they could have a path straight to the Church, as the muddy farmyard was "not fitting to God" There was clearly an ancient Church Footpath - through the farmyard and thence through a stone wall. We identified the location of the stone-stile in the wall for the Inspector at the Inquiry site visit.

Once Sir Greville Smyth had authorised his Agent to oversee the setting out of the new *straight* path to Church, which is what exists now, then the old Church path through the farm yard should have been amended on the records. It wasn't. This has been shown in other Parishes. The in-house documents were not kept up to date. It resulted in a claim, but not by the Parish Council.

This is only one of many errors recorded as a result of the same person claiming paths which were not claimed by Parish Councils.

The Parish Minutes had been discovered between the two Inquiries; a Parishioner had passed away and in clearing the bedroom the Parish Minutes were found on top of the wardrobe. Apparently they had been purchased at a Jumble Sale! They were literally "God sent" as the very first entry explained the Parish Council's wish. I believe [REDACTED] may remember the name of the person who passed away.

I was asked by the Somerset Record Office if I could persuade the Parish Council to deposit them for safe keeping. I do not know what happened to them after the 1998 Inquiry which defeated off-roading 4x4s and Trail riding motorcycles which annoyed everyone, not just the new owner.

[REDACTED] the Applicant, submitted the Application to Delete the error immediately following the defeat by [REDACTED] of LARA in the High Court, [1998] it was [REDACTED] of course who challenged the Secretary of State's Decision - he was convinced that the CRF meant it was public vehicular, he was wrong; and under Statute law the Decision on the Application should have been made "within 12 months" . . . which of course it wasn't, despite [REDACTED] stalwart efforts.

The Application to Delete the error is therefore yet to be determined, despite advice from Ms. Gradwell, RoW officer at the time, that the investigation was complete and her Report of Findings was due to go before the appropriate Committee in the October. I don't think she meant in 2012 !

There is no procedure which allows the Application to be "abandoned" at this stage.

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The legal procedure has to "run its course" - and I repeat, it should have been determined within 12 months of the Application date.

Given the time, trouble, and expense the error of the alleged CRF caused [REDACTED] and the fact that he waited until the High Court Decision before submitting the Application to correct the error by way of Deleting what should never have been recorded in the first place, it would be interesting to know precisely what Ms. Gradwell's own Consultations, etc. were included in her Report of Findings.

A usual and statutory procedure is that a Consultation must take place with "other Authorities" [Parish and, where they exist, District] it would be interesting to know the stance adopted by the Parish Council then.

am reliably advised that Ms. Gradwell retired in 2002. It is absolutely astonishing that this matter has been "gathering dust" since then.

Incidentally, I distinctly recall that Mr. Colin Hudson was at the Second Inquiry at which I represented not only the two landowners of the time, [REDACTED] and [REDACTED] but the Parish Council ! I also recall the names of the Parish Councillors involved. The Council records will include *a//* papers and documents involved in the First Inquiry [for which [REDACTED] instructed legal representation] and all those presented at the Second.

I trust this e-mail goes some way to explain the situation - the Statute requires a Council to "achieve a Definitive Map of the highest attainable accuracy." Mistakes made during the preparation of the Definitive Map must be corrected.

The subject of Public Rights of Way is a very complicated one, if I can be of any further help, please do not hesitate to contact me.

My regards,

[REDACTED]

From: Mchanney1@aol.com [mailto:Mchanney1@aol.com]
Sent: 22 November 2011 15:45
To: [REDACTED]
Subject: CL 15/11 - resending my e-mail of 15 November

Hi [REDACTED]

Further to my recent e-mail, you may be interested in the forwarded correspondence between [REDACTED] and the Parish Council.

Malcolm

Malcolm Hanney

Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com

The attachment referred to in the email sent at 09:03 on 22 November 2011 is contained in the consultation response of Consultee 2.

From: Graeme Stark
Sent: 30 November 2011 16:56
To: [REDACTED]
Cc: John Everitt; [REDACTED]
Subject: RE: Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Norton Malreward area

Dear [REDACTED]

Thank you for your emails regarding the Manor Farm DMMO Application.

The documents which are referred to in your letter dated 16 March 1998 will all be considered by the Authority when deciding whether or not to make an order. The reference in Section 3 of the Investigation Report was intended to convey that the documents were referred to rather than actually attached to the application. Although there is only a fine distinction between the two, Schedule 14(1)(b) of the Wildlife and Countryside Act 1981 states that; "*An application shall be made in the prescribed form and shall be accompanied by copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.*" This matter was considered by the courts in *R (on the application of the Warden and Fellows of Winchester College and Humphrey Feeds Ltd) v Hampshire CC and SSEFRA* [2008], EWCA Civ 431 and it was held that an application would not be duly made if the evidence upon which it was made was referred to rather than actually attached to the application. Although the Application is not 'duly made', the Authority will continue to process the application and will take the documents you have referred to into account.

I note your comments regarding the signage and the various historical documents and all your comments will be taken into consideration by the Authority when deciding whether or not to make an order. The 'Block Plan of Site' which accompanied the 1914 planning application does not cover the area over which the Application Route runs and I had not therefore attached significant weight to these documents.

The Definitive Map and Statement are the legal record of rights of way in Bath and North East Somerset and section 32(4) of the National Parks and Access to the Countryside Act 1949 states that the Definitive Map and Statement are conclusive evidence in law of the particulars they contain. Taken in isolation, the recording of the Application Route as a CRF/RUPP on the Definitive Map and Statement therefore constitutes strong evidence of the existence of public rights. It should be noted that the 'Investigating Officer's Comments' each relate to specific pieces of evidence but the Authority's decision will be based upon a consideration of all of the evidence as a whole.

You are welcome to make an application to divert the Application Route; however, the Authority will still be required to process this DMMO application and the legal line of a right of way would still need to be open and available for use while a diversion application is being processed. If you would like a copy of the Authority's Public Path Order Application Pack for diverting rights of way please do let me know.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 01 December 2011 03:25
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,

Thanks for your email. I would appreciate a copy of the Application pack for diversion at your convenience.

Regards,

[REDACTED]

From: Graeme Stark
Sent: 01 December 2011 10:11
To: [REDACTED]
Subject: RE: Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Norton Malreward area
Attachments: 06 Scale of Charges (Appendix 4).doc; 02 Application Form.doc; 03 Guidance Notes (Appendix 1).doc; 04 Section 119 (Appendix 2).doc; 05 PPO Policy (Appendix 3).doc

Dear [REDACTED]

Thank you for your email.

Please find attached, as requested, an application pack for a Public Path Diversion Order under section 119 of the Highways Act 1980. In addition to the application form, the pack includes Guidance Notes which explain the process involved, some relevant considerations regarding applications and how to complete the application form (Appendix 1), an extract of the relevant legislation (Appendix 2) and a copy of the Council's Public Path Order Policy (Appendix 3). It is important that all of these documents are read before completing the application form.

Unlike the majority of the Public Rights of Way Team's functions, the power to divert public rights of way is purely discretionary and a higher priority will be given to statutory duties. Consequently there is likely to be a considerable delay before an application is processed. However, we are currently exploring the possibility of changing our procedures for diverting rights of way, whereby, an agent acting on behalf of the applicant carries out the non-statutory elements of the application. This will allow applications to be dealt with much sooner and if you wish to make an application I will let you know how this trial progresses.

I trust this is satisfactory but if you wish to discuss this matter further, please do not hesitate to contact me.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: Graeme Stark
Sent: 13 April 2012 12:38
To: [REDACTED]
Subject: Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Norton Malreward area
Attachments: Application Letter.pdf

Dear [REDACTED]

I am writing regarding your application to delete bridleway CL15/11 from the Definitive Map and Statement.

Your letter dated 26 March 1998 refers to an "1811 Ordnance Survey map supporting the Ramblers claim that a route went south of the Church rather than North". Unfortunately I have been unable to find any record of the Ordnance Survey having published a map covering Norton Malreward prior to 1830.

I would be very grateful if you are able to provide a copy of the aforementioned map.

Regards,

Graeme Stark
Senior Rights of Way Officer

CONSULTEE 2

From: [REDACTED]
Sent: 25 October 2011 10:58
To: Colin Hudson
Cc: Peter Edwards (Cllr)
Subject: Norton Malreward

Dear Mr. Hudson,

You will recall that we met at the Second Norton Malreward Inquiry at a time when Mrs. Jenny Reed and Miss Judith Gradwell were Rights of Way officers. The case concerned the recorded "CRF" allegedly a RUPP through Manor Farm, then the property of [REDACTED]. Therefore the evidence was considered under Section 54 of the WCA 1981.

You will also recall that at the Second Inquiry I was presenting the case for the Objectors, who included the Parish Council, and that I had been responsible for the investigative research, which demonstrated to the satisfaction of the Inquiry Inspector that no public *vehicular* rights could be shown to exist.

Subsequently [REDACTED] of LARA mounted a statutory High Court challenge [against the Inspector's Final Decision] which he lost. So the route was deemed a Public Bridleway . . . on grounds that it had been *used* as a Bridleway - the case apparently resting on the *use* exercised by the daughter [and her friends] of the former owner. Given the fact that it is not possible for an owner to claim a "public right" on his/her own land, and that *historical use* would have to be shown, the evidence reveals this is an error to be determined under Section 53 WCA 1981.

The evidence revealed that the route was a *customary way* to the Church, a route formerly accessed through the Manor Farm farmyard and through a stone stile in the yard wall until realigned to its present line by way of permission from the then owner Sir Greville Smyth. This indisputable evidence is set out in the historical Norton Malreward Parish Minutes.

Almost immediately following the High Court Decision, [REDACTED] [then still owner of Manor Farm], submitted an Application under Section 53, *viz* that an error was recorded on the Definitive Map, there never had been a Public Bridleway through the private farm yard and it should be Deleted. This action was impossible under the case before the Inquiry Inspector - who was considering an Order made under Section 54, that is, whether the alleged RUPP should be a BOAT. Under the powers of Section 54 he could not consider whether the RUPP was an error. Since then of course RUPPs have ceased to exist by virtue of legislation.

My attention has been drawn to the fact that although [REDACTED]'s Application was submitted in 1998 it is apparently only just currently undergoing Consultation [which flies in the face of advice given to me by Miss Gradwell just before she retired when she advised that her Report was now complete and due to be placed before Committee for Decision ["possibly in October."]] You and I of course are aware that by way of Statute any Application should receive its Decision within twelve months. It appears this matter has taken *circa* 12 years, despite Miss Gradwell's own official investigation.

Given my previous involvement in this matter, the fact that I was responsible for the investigative research and the interpretation of the historical documents, I shall be grateful if you will register that I have an interest in this matter.

By coincidence, only a matter of weeks ago I was contacted by [REDACTED] who believed that due to my deep involvement in this matter I was the best person to whom all the relevant papers should be given. I travelled to Ston Easton and met [REDACTED] and he filled my estate car with boxes full of correspondence and documents *specifically* related to the case. These of course are supported by my own archived files. As he was directly involved, [REDACTED] also confirmed his willingness to help in any way in this matter.

I shall be grateful therefore if you will add my name to the list of those who should be advised on this matter and its progress.

It may be that the Norton Malreward Parish Council will wish me to continue as their Representative in achieving an accurate Definitive Map, which at present it clearly is not. If that is the case, then I would be happy to do so.

As the Council has a duty under Section 53 of the WCA 1981 to keep its Definitive Map and Statement under continuous review and achieve a Map and Statement of the highest attainable accuracy, it follows that this is an important matter, governed by legislation/statutory requirements.

Please do not hesitate to contact me if there is any way in which I can assist the Council in achieving that goal.

My regards,

[REDACTED]

From: Graeme Stark
Sent: 07 November 2011 14:48
To: [REDACTED]
Subject: RE: Norton Malreward

Dear [REDACTED]

Thank you for your email regarding the Manor Farm DMMO Application.

I have added your details to the list of interested parties as requested. If you have any evidence regarding the status of this route I would appreciate it if you could ensure it reaches me by 22 November 2012. In the fourth paragraph of your email you refer to "Norton Malreward Parish Minutes"; I have not been able to track down the Minutes you refer to and I would therefore be grateful if you could also provide these prior to 22 November 2012.

My address is Public Rights of Way, Bath and North East Somerset Council, Riverside, Temple Street, Keynsham BS31 1LA.

Regards,

Graeme Stark
Senlor Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 03 November 2011 20:09
To: Colin Hudson
Cc: Peter Edwards (Cllr)
Subject: Fw: Norton Malreward

Dear Mr. Hudson ,

I note with some surprise that my files indicate I have not received an acknowledgment of my e-mail to you of 25 October . . .

I would be grateful if this could receive attention.

Yours sincerely,

From: Colin Hudson <Colin_Hudson@BATHNES.GOV.UK>
To: [REDACTED]
Cc: Graeme Stark <Graeme_Stark@BATHNES.GOV.UK>
Sent: Wednesday, 9 November, 2011 9:21:57
Subject: RE: Norton Malreward

Dear [REDACTED]

Thank you for your emails.

I forwarded your last email on to Graeme Stark as he is dealing with the issues on Norton Malreward CL15/11a and I was under the impression that he was going to contact you, and hence I did not think that I needed to. I therefore must apologise if you have not heard from anyone at the Council at all.

I am forwarding this email from yourself and my response to it to Graeme, and I shall also speak to him about it when I next see him in the office.

Yours sincerely

Colln Hudson, Public Rights of Way Officer

From: [REDACTED]
Sent: 09 November 2011 10:20
To: Colin Hudson
Subject: Re: Norton Malreward

Dear Mr. Hudson,

Many thanks - I have had an e-mail from Mr. Stark - surprisingly asking me for "any evidence" I may have!! That raised a smile, I can tell you!

Given the knowledge and experience I have acquired in general over the past 20 years and which will have an effect on Norton Malreward [all of which may prove useful to your own department], I repeat I am interested in this case - and the duty on BANES and other Authorities to "achieve a Definitive Map and Statement of the highest attainable accuracy."

Where errors are properly identified and corrected it can only have a knock-on effect when similar errors are identified in other Parishes. In short, "consistency" not "inconsistency" where the former Somerset Definitive Map is concerned, specifically the fact that it was never Subject to a Five-yearly Review and errors simply perpetuated.

I will be in touch with Mr. Stark shortly - you will not be surprised to hear that I am currently heavily involved with cases to be determined early in the New Year at Inquiries.

My regards,

[REDACTED]

From: Graeme Stark
Sent: 11 November 2011 15:34
To: [REDACTED]
Subject: RE: Norton Malreward

Dear [REDACTED]

Thank you for your email sent on 9 November 2011.

I can confirm that the following email was sent on 7 November 2011;

Dear [REDACTED]

Thank you for your email regarding the Manor Farm DMMO Application.

I have added your details to the list of interested parties as requested. If you have any evidence regarding the status of this route I would appreciate it if you could ensure it reaches me by 22 November 2012. In the fourth paragraph of your email you refer to "Norton Malreward Parish Minutes"; I have not been able to track down the Minutes you refer to and I would therefore be grateful if you could also provide these prior to 22 November 2012.

My address is Public Rights of Way, Bath and North East Somerset Council, Riverside, Temple Street, Keynsham BS31 1LA.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

If you have any further queries please do not hesitate to contact me on 01225 477650.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 11 November 2011 16:13
To: Graeme Stark
Subject: Re: Norton Malreward

Hello Mr. Stark,

I am a little puzzled - in my e-mail to Mr. Hudson on 9th. I acknowledged that I had received an e-mail from you.

I shall of course comply with your request for any evidence I may have by 22 nd. November

Incidentally, whilst writing - I shall need to retrieve all my files to put with those I collected recently from [REDACTED] - un til I have I shall be grateful if you will confirm when Miss Judith Gradwell left the employ of BANES.

Sincerely,

[REDACTED]

From: Graeme Stark
Sent: 11 November 2011 16:42
To: [REDACTED]
Subject: RE: Norton Malreward

Dear [REDACTED]

Please accept my apologies, I appear to have misread your email.

I can confirm that Judith Gradwell left the Authority in 2002.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 11 November 2011 17:53
To: Graeme Stark
Subject: Re: Norton Malreward

Apologu accepted; certainlhy no harm done that I can see, Mr.Stark.

[REDACTED]

From: [REDACTED]
Sent: 14 November 2011 14:19
To: Graeme Stark
Subject: Re: Norton Malreward

Dear Mr. Stark,

I have today received a letter from [REDACTED] who was the Applicant for the Deletion of the error on the Definitive Map. He expresses a keen interest in what is taking place.

Given one or two informative comments he made in his letter, I believe your office should make contact with him, when his comments will be "first hand" [to you] and not hearsay [from me]. He may advise that he wishes his name to be added to the List of interested parties.

As I also represented the other landowner, [REDACTED] I would be interested to know whether he has been advised of recent developments, and whether the third owner of the land which is crossed by this path, i.e. [REDACTED] has been contacted.

Yours sincerely,

[REDACTED]

From: Graeme Stark
Sent: 14 November 2011 15:27
To: [REDACTED]
Subject: RE: Norton Malreward

Dear [REDACTED]

Thank you for your email.

I can confirm that [REDACTED] are already included on the list of interested parties and that the consultation documents have been sent to [REDACTED] inviting them to submit to the Authority any evidence they may have regarding the Application Route; the documents were sent to [REDACTED]. This is the address which the Authority has been provided with for [REDACTED] and if their current address is not [REDACTED] I would appreciate it if you could let me know. I have also sent consultation documents to the current owners of [REDACTED] and two other individuals with an interest in the land over which the Application Route runs.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 14 November 2011 17:41
To: Graeme Stark
Subject: Re: Norton Malreward

Hello again Mr.Stark,

Gload to hear [REDACTED] are already on the List.

Address: That was a "senior moment!" I thought I had given you [REDACTED]'s address! The West Harptree address was a rented stopover while they were househunting.

So,

[REDACTED]

What about the other landowners? [REDACTED] and [REDACTED]?

Yours sincerely,

[REDACTED]

From: [REDACTED]
Sent: 14 November 2011 17:59
To: Graeme Stark
Subject: Re: Norton Malreward

P.S.

Sorry - another senior moment I'm afraid ...

I forgot to say that although it was the Parish Council's intention to forward the Consultation paper to me for comment, it has not appeared.

I shall be grateful if your office will forward a copy to me.

If a copy was sent to the wrong address , i.e. to [REDACTED] at West Harptree, [which apparently they haven't received] I anticipate you will be sending another copy to the correct address.

Does this mean you will be "reasonable" in allowing a short extension beyond 22 November for comments? As I am virtually in the same boat [no pun intended!] and have not studied the Consultation paper [and have to finalise and submit a Statement of Case by 22 November for forthcoming Inquiry] a short extension would be much appreciated.

Lastly, late this afternoon I replied [and posted] to [REDACTED] bringing him up to speed, he will be expecting contact from you. To the best of my knowledge he doe snot communicate by wya of e-mail. Only by Royal Mail.

Sincerely,

[REDACTED]

From: [REDACTED]
Sent: 21 November 2011 18:14
To: Graeme Stark
Cc: d.baber@talktalk.net; Peter Edwards (Cllr); [REDACTED] Malcolm Hanney (Cllr); [REDACTED]
Subject: Evidence re alleged CL15/11: Parish of Norton Malreward.
Attachments: Norton Malreward Comments.docx

Dear Mr. Stark,

Attached please find the evidence on which I rely that CL15/11 is an error recorded on the Definitive Map and Statement.

I believe it is self-explanatory. In the event that your legal department cannot provide you with copies of the relevant case law, please do not hesitate to contact me.

It is significant that *Trevelyan* was decided in 2001 and therefore after the submission of the Application

May I take this opportunity to say that for well over 20 years I have researched the preparation of the Somerset Definitive Map in general, and the 1929 Handover Map and its accompanying Unclassified Road List - and the 1930 Road Records, in particular.

As it is specific to the alleged CRF/RUPP CL15/11, Norton Malreward, the High Court decision [which was not Appealed] in *Stevens v Secretary of State* [1998] is extremely relevant; it was made clear that as the 1929 Handover Map was an inhouse document with no public participation it could be subject to errors. Therefore the fact that a way was recorded on the 1929 Handover Map is, in any event, not evidence to rely on that the document is "conclusive."

In fact my research revealed that not only does it include ancient Accommodaiton Roads which are not public highways, but it also included errors. In the case of Norton Malreward of course, the evidence indisputably revealed that an amendment of the Records did not take place when in 1894 Sir Greville Smyth provided a strip of land to access the Church without the need to go into what was referred to as the *muddy* farm yard.

Having researched the Ministry of Transport files in the National Archives, and the County Surveyor's files in the Somerset Record Office [now the Somerset Heritage Centre] for many years I believe I speak with authority on the Class 5 Category Z Yellow roads as they were my "specialist subject."

On no account can the 1929 Handover Map be considered any more than an "administrative" record. The Secretary of State acknowledges that it does not record legal status Only "belief of maintenance" - or, in my own experience, lack of

The 1910 Finance Act Map was not evidence relied upon in 1950, and since it has become available and was produced [and interpreted] to the Second Inquiry it can be seen that it has no evidential weight. In fact it goes all the way in supporting that the Manor Farm court/farm yard was totally private property.

A "customary churchway" is not a public highway; it is a privilege or a "favour" which benefits the Parishioners. Accordingly, it does not feature in *Halsbury's* Volume on "Highways" - it features in the Volume on "Custom and Usage." If you require a copy of the relevant passage, again please do not hesitate to contact me.

I shall be grateful if you will peruse the Chelwood Inquiry Decision letter - which was promoted by then Avon County Council when it was realised that an error of inclusion was made by the Objector for the Ramblers' Association.

Please do not hesitate to contact me if I can assist in this matter in any way. You will note that as a matter of courtesy I have copied this e-mail and attachment to other parties who I believe will be interested.

Yours sincerely,

[REDACTED]

WILDLIFE AND COUNTRYSIDE ACT 1981: SECTION 53 (3) (c) (iii) :

Application for a Definitive Map Modification Order
to Delete alleged Public Bridleway CL15/11 in the Parish of Norton Malreward.

- 1.0. Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ["the 1981 Act"] places a duty on the Surveying Authority [the County Council] to continuously review its Definitive Map and Statement - this should ensure a Definitive Map and Statement of the "highest attainable accuracy."
- 2.0. An Application lodged under the Wildlife and Countryside Act 1981 ["the 1981 Act"] 53 (3) (c) (iii) places a statutory duty on the Surveying Authority [the County Council] to make an Order when there has been "*the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows . . .*" with reference to subsection (c) (iii) "*that there is no public right of way over land shown in the map and statement as a highway of any description . . .*" It stands to reason therefore that evidence which affects this alleged Bridleway and was produced at the two Reclassification Inquiries, should be part of this investigation.

There is no requirement under Section 53 (b) [presumed dedication] to investigate all relevant evidence available to them] . . . the relevant evidence in such a case being the Evidence of unchallenged, uninterrupted User tested against the landowner's intention; not documents.

The Application which is the subject of this investigation relates to Section 53 (3) (c) (iii) - that the inclusion of CRF CL15/11 was an error which should be deleted in order to achieve an accurate Definitive Map and Statement. What cannot be considered is "desire" or "want." The law operates on "evidence."
- 3.0. The National Park and Access to the Countryside 1949 ["the 1949 Act"] imposed a statutory duty on all County Councils to prepare a Definitive Map of Footpaths, Bridleways and Roads used as Public Paths ["RUPPs"] [viz used as Footpaths and Bridleways] all of which were *reasonably alleged to subsist - [exist]*.
- 4.0. In the belief that Parish Councils would have the necessary "local knowledge" they were to *assist* the County Councils by providing necessary information. There is no evidence that the Act imposed a statutory duty on Parish Councils.
- 5.0. Guidance in the form of a pamphlet entitled "*Surveys and Maps of Public Rights of Way for the purpose of Part IV of the National Parks and Access to the Countryside Act 1949. Memorandum prepared by the Commons, Open Spaces and Footpath Preservation Society in collaboration with the Ramblers Association; recommended by the County Councils Association and approved by the Ministry of Town and Country Planning*" [for ease of reference commonly referred to as "The 1950 Memorandum"] was issued to all County,

Rural District and Parish Councils. The 1950 Memorandum guidance has no legal force.

- 6.0. As the initial task of *ascertaining* the *reasonably alleged* existence of Footpaths, Bridleways and RUPPs fell on the Parish Council Paragraph 2 subsection (iii) of page 4 of the 1950 Memorandum identified documents which the Parish Council should examine when preparing what was in law a *non-statutory* Parish Survey Map - and, as no map is *self-interpreting*, a Survey Card which served to interpret the Survey Map to assist the Surveying Authority i.e. the County Council.
- 7.0. The documents included the following:-

Inclosure Award Maps [Note: no mention of examining the *text* of the Award]; Tithe maps [which High Court leading authority decided in 1905 [*Att-Gen v Antrobus 1905*] only showed physical feature] ; Parish maps [in law purpose must be identified]; Maps deposited by landowners under Section 1 (4) of the Rights of Way Act 1932 [later Repealed]; written statements by landowners expressly [legally] dedicating paths, old Ordnance Surveys [which High Court leading authority in 1905 above decided were only *admissible evidence* for the purpose of recording *physical features not legal status*] ; maps in local guide books and histories [provenance of which should have been disclosed] , footpath rambling guides [provenance again] and old minutes of the Parish and District Councils. Unless there is evidence to the contrary, the law presumes that this advice was followed.
- 8.0. Accepting the legal principle that everything that was done was done correctly, the records show that Norton Malreward Parish Council did not consider that it could be "reasonably alleged" that public rights existed through Manor Farm court/farm yard - they did not claim a path classified as "CRF" CL15/11-
- 9.0. The 1950 Memorandum advised use of the non-statutory term "CRF" to identify a "Public carriage or cart road or Green [unmetalled] lane mainly used as a Footpath ." The "character" of the land was that it was the Private entrance and court/farm yard of Manor Farm and not a Public Carriage or Cart Road or even an "unmetalled" green lane."
- 10.0. If it had been "local knowledge" that the route was used as a Bridleway then the correct but non-statutory classification was the term "CRB" which identified a Public Carriage or Cart Road or Green [unmetalled] lane mainly used as a Bridleway. Norton Malreward Parish Council claimed no path at all; no Footpath, Bridleway, CRF or CRB.
- 11.0. Therefore in relation to Clutton RDC, "as at the relevant date" **March 1957** CL15/11 was not claimed by Norton Malreward Parish Council and was not recorded on the Draft Map. It did not exist. No public path was shown on the Parish Survey Map or the Draft Map which, according to Somerset County Council was the date on which the Committee Resolved that public rights *existed*.
- 12.0. However, by way of explanation to Arthur Stock Esq., the Parish Clerk of Wellow [then in Somerset] the County Surveyor of Somerset, Mr. J.B. White, who was involved with the preparation of the Somerset Definitive Map until

its completion in 1972, wrote in August 1954 [among other things] as follows:-

"Your council has claimed a C.R.F. (No. 94) along the lane. In other words a public footpath is claimed along an unadopted, i.e. private road."

It stands to reason therefore that Mr. White was not claiming a **Bridleway** when he referred to a "C.R.F." and that the path passed along a private 'road' not a public carriage or cart road which was a public vehicular highway now *used as* a Footpath. Put simply, the claim was for a Footpath on Private land the "character" of which was a 'road.'

- 13.0. The records show that following the publication of the Norton Malreward Draft Map the Ramblers' Association lodged an Objection as to its accuracy. That it was in error by "omitting" a public path on Manor Farm land. The primary evidence of the Ramblers' Objection was not disclosed, suggesting either there was none, or it has not survived.
- 14.0. Somerset County Council's records reveal that countless Objections to Draft Maps specifically relating to "omissions" of a path were lodged by the "Hon Sec." of the Ramblers, that is, Mr. S. Marriott [now deceased] who lived in Westbury-on-Trym, Bristol. It is reasonable to accept that he was the Objector in this case.
- 15.0. The records do not show on what evidence the Ramblers relied in order to claim an error of omission had taken place.
- 16.0. Given the evidence which was researched and investigated during the claim that "CRF CL 15/11" should be reclassified as a BOAT, it is more than reasonable to accept that in compliance with the advice in the 1950 Memorandum the Rural District Council examined their Records, and in particular the 1929 Handover Map - annotations on the documents are in support of its use in the preparation of the Definitive Map. Of note is the fact that while a considerable number of Class 5 Category Z Yellow *cul-de-sac* roads have been annotated with the letters "C.R.F." - a term which did not come into existence until 1950, there are a number which are annotated with the letters "F.P."
- 17.0. Unfaithful to the Schedule the *cul-de-sac* leading into Manor Farm court/farm yard was coloured **Brown**. Clearly a mistake on the "inhouse" document which was prepared without any public participation and which was regarded by the Secretary of State in the 1985 *Cumbria Decision* as simply an "administrative document."
- 18.0. "Brown" colouring indicated a Class 4 Category Y road, a "village *loop* road" which was of local importance only. It could never have applied to the Church path passing over Manor Farm court/farm yard/
- 19.0. The term "Unclassified road" does not feature in highway law, it existed simply to distinguish *un* classified roads from those which are *classified* - that is, "A" or "B".

- 20.0. The two categories of "unclassified roads" - Class 5 and Class 4 should be carefully considered :- In the event that the criteria for the preparation of the 1929 Handover Map and the accompanying Unclassified Road List has not survived and therefore a conclusion has to be reached by way of comparative exercise, *why* was it necessary to have two categories of "unclassified roads" ?
- 21.0. The evidence suggests either that Class 5 *cul-de-sacs* were simply Footpaths which required minimal maintenance - whereas Class 4 - the village loop roads that were vehicular required higher level of maintenance, OR that "unclassified" referred to *maintenance liability* . . . that Class 5 *cul-de-sacs* which were Private roads which had a Footpath were not repairable at public expense. The evidence suggests the latter. That Class 5 *cul-de-sacs* were ancient "roads" in the parish which were not repairable [or used by] by the 'general public.'
- 22.0. In short they were ancient Accommodation Roads, and used by the parishioners as a *privilege*. In this case to access the Church.
- 23.0. A careful study of all relevant material revealed that the Norton Malreward Parish Church was approached over the private road which provided access to Manor Farm, its court/farm yard and its farm buildings.
- 24.0. A *customary churchway* is NOT a public highway. It exists for the benefit and privilege of a limited but fluctuating number of people, such as the parishioners. [*Halsbury's 4th Edition; found in "Custom and Usage not "Highways."*] Unless an "event" decrees otherwise, and the *reason* for its existence no longer applies, such a way is enforceable by the law. *Brocklebank v Thompson [1903]*.
- 25.0. Norton Malreward Parish Minutes of 1894 record an entry requesting the landowner [of most of the Parish] Sir Greville Smyth [of Ashton Court] to allow the setting out of a way to Church, grounds stated as being that it the then present way was muddy and it was not "fitting to God" to pass through a muddy farmyard to Church. Unavailable at the first Inquiry this evidence was "discovered" and was produced at the Second.
- 26.0. Coupled with the CRF/RUPP Inquiry site visit which demonstrated the "muddy" access was by way of [possibly a stone stile] in a stone wall which had been in-filled, this 1894 Parish Minute more than suggests that that Footpath Churchway was accessed through the muddy farmyard of Manor Farm.
- 27.0. Sir Greville Smyth responded favourably and advised liaison with his Agent who would agree the strip of land required. The "new" Churchway is the one which exists today, there is no need whatsoever to go through the private property of Manor Farm to access the Church. The private access co-exists with the way to Church and provides a private easement to the rear of Manor Farm Cottages - evidence of which was produced at the Second Inquiry. The evidence is unequivocal that the Manor Farm access way was and is a Private road, and inspection of the hard surface was agreed by the Authority that it was not of the quality used for maintaining a public highway.

- 28.0. As the *customary [right of way] to Church*, the ancient Accommodation way, was no longer required it should have been Deleted from the inhouse records.
- 29.0. But it wasn't. It served only to provide confusion some 100-odd years later.
- 30.0. As these were Clutton RDC records, the Norton Malreward Parish Council would have been totally unaware that the records had not been updated in accordance with the new approach to the Church in 1894. The evidence also supports the fact that the 1929 Handover Map and records were not prepared in 1929, but were "rolled over" from earlier existing documents which have not been identified.
- 31.0. So far as the protection of Footpaths was concerned, this was enshrined in the 1894 LGAct which specified in section 13 (2) that Parish Councils had a permissive right to maintain Footpaths, but not Bridleways or Driftways. This was acknowledged in *The Hobhouse Committee Report of 1947*.
- 32.0. Having drawn attention to the strong evidence that the route which comprised CRF CL 15/11 was simply a ancient Footpath *cul-de-sac* which provided the *customary way* to Church, and that the in-house Rural District Council Records had not been efficiently updated, attention should now be drawn to the several references to this path in accordance with the preparation of the Definitive Map.
- 33.0. During the RUPP Reclassification Second Inquiry the Inspector's attention was drawn to the several references to the path being "South-East" of the Church.
- 34.0. In fact the indisputable mapping evidence reveals that it was drawn on a line North of the Church. Notwithstanding the fact that another Footpath was claimed South-East of the Church leading from Norton Malreward to Belluton, where only a Pedestrian gate existed on the Parish boundary.
- 35.0. The Reclassification Inquiry Inspector's remit:
Prior to recent legislation, Reclassification of a "CRF" alleged RUPP was determined under the *exclusivity* of Section 54 of the 1981 Act. The Inspector had no power or authority to consider whether the recording of the path was in fact an error.
- 36.0. The Inspector's remit was solely concerned with establishing the status of public rights which - on the balance of probabilities - existed on the route. The *test* in Section 54 was whether public vehicular rights could be shown "to exist", whether Bridleway rights had not been shown not to exist [double negative], if neither could be established, then the route would be Reclassified as a Footpath. The Inspector had no power to decide the path was recorded in error and should be deleted - even if he thought so.
- 37.0. Which is why it was necessary to follow legal advice and submit an Application under Section 53 (3) which operates to correct errors recorded on the Definitive Map *during its preparation*. This was the procedure followed by then Avon County Council when it Deleted a Bridleway in the

Parish of Chelwood – a path which again had been claimed as an omission by the Ramblers' Association.

- 38.0. The 1949 Act failed to provide the means to correct a mistake recorded on the Definitive Map – and this was the Decision handed down in the Court of Appeal case *Morgan v Hertfordshire County Council* in July 1965.
- 39.0. The Decision records that [then] Lord Denning M.R. noted that 'while a new public way may be added, the Act contains no machinery for deleting a public way from the map, however inappropriate it may be. The applicant must accept the hypothesis that there is a public way along this strip' [of land]. [Claimed by the Ramblers.]
- 40.0. The failure to provide "the machinery" to delete a path from the Definitive Map, resulted in authorities researching for other legal procedures to achieve the correction of a mistake. Somerset County Council advised the same procedure when they discovered a Court Declaration and an Injunction against public use. It was not processed.
- 41.0. Whilst an applicant *could* apply to the proper authority for it to be stopped up, this would mean admitting that it was a public path. Few were willing to put themselves at risk by actually *admitting* that a public path legally existed, in order to claim it was "unnecessary" for public use and ought to be extinguished. They simply wanted the error corrected by way of Deletion.
- 42.0. The "failure" was recognised by Parliament - and eventually the 1981 Act provided "the machinery" for the correction of errors in the subsections of (c) of Section 53 (3). (i) the omission of path; (ii) the wrong status, such as a FP ought to be a Bridleway and *vice versa*; and (iii) (comprising two *limbs*) (a) no right of way existed and (b) the particulars in the Definitive Statement require modification.
- 43.0. It follows therefore that even if the error of inclusion had been acknowledged [as the "CRB" in *Morgan* above] there was no way of correcting the error by Deletion until April 1983 when the WCA came into force.
- 44.0. Even if the recording of the "CRF" was correct [which is denied] then it was only a *customary* Footpath – a *cul-de-sac* which ended in the Manor Farm court/farm yard from which a pedestrian would have to retrace his/her steps back to the village road. There is nothing of "special interest" which would allow for a *cul-de-sac* Public Footpath. [It was not a Bridleway which also has the right for bicyclists.]
- 45.0. The most significant *test* is laid down in the Court of Appeal *Trevelyan* 2001 judgment, which said among other relevant matters, that an investigation should commence with the *presumption* that everything was done correctly – but that at the end of the day the standard of proof required is "the balance of probabilities." The *evidence* relied upon in the first instance should be considered; it stands to reason that an unsupported "assertion" that there is no public right of way will carry little weight, that there must be "cogent" evidence to place in the balance.

46.0. In many cases the use of the word "*cogent*" has been interpreted as "compelling" or even "conclusive" . . . but if the *standard of proof* required is simply the balance of probabilities, then it should not require "compelling" or "conclusive" evidence to rebut the *presumption* that the evidence relied upon in the first place was deficient.

47.0. In summary therefore:-

- (a) The Norton Malreward Parish Council did not claim CRF CL15/11, there was no "reasonable allegation" that a path subsisted;
- (b) As a consequence neither the Parish Survey Map nor the Draft Map included CRF CL15/11;
- (c) As at the relevant date - March 1957 - CRF CL15/11 did not exist.
- (d) CRF CL15/11 was "Added" to the [the] Somerset Definitive Map as the result of an Objection by the Ramblers' Association that the Draft Map was in error by way of omitting a path through Manor Farm;
- (e) There is no mention or reference to the evidence which was relied upon in the first instance;
- (f) There is evidence which suggests that the route was Added to the Draft Map as a *Modification* as a result of being [erroneously] recorded as a *cul-de-sac* on the 1930 Road Records.
- (g) The 1929 Clutton RDC Handover Map was replaced by the 1930 Road Records under the Local Government Act 1929 which came into force on 1st April 1930. The evidence of the annotations on the 1930 Road Records indisputably reveals the Maps were used in connection with preparing the Somerset Definitive Map.
- (h) The fact that a *cul-de-sac* into Manor Farm court/farm yard which was [*despite the wrong colouring*] recorded on the 1930 Road Records had not been erased in accordance with the Parish Council's negotiations with Sir Greville Smyth and his Agent in 1894, was clearly a *cogent* [compelling] factor when pedestrian rights were being claimed and recorded by the Clutton RDC in 1950.
- (i) Little to no evidential weight was given to the fact that a Class 5 Category Z 'road' was simply an ancient Accommodation Road, in this case a *customary* way to Church for the parishioners - which had been abandoned in favour of a new route which avoided the acknowledged *muddy* farm yard.
- (j) Had the inhouse records held by the District Council been subjected to regular and efficient amendment, then the *cul-de-sac* would not have appeared and unless there was evidence on which the Norton Malreward Parish Council reasonably believed there was a public right of way, the CRFCL15/11 would not have been claimed.
- (k) In short, the failure to amend the Road Records resulted in a false claim.
- (l) There is no evidence that the Objector relied on long use; given that it was a *customary* footpath and that the evidence suggests not maintained by the public at large, on the balance of probabilities CRF CL15/11 should not have been Added to the Draft *Modification* Map on grounds of Objection to the omission of a path.

48.0. In my considerable experience, a comparative exercise of the 1930 Road Records will demonstrate other parallel handwritten annotations relating to the preparation of the [then] Somerset Definitive Map.

- 49.0. An error recorded on the Definitive Map does not provide "the machinery" for claiming a public right of way on grounds of long User [*presumed dedication*] given that while it is on the Definitive Map a landowner cannot challenge User. This was clarified in *Hansard*.
- 50.0. The evidence shows that *on the balance of probabilities* the Addition of the CL15/11 was an "error of inclusion" which Section 53 (3) (c) (iii) of the WCA 1981 requires to be Deleted in order to achieve a Definitive Map and Statement of the highest attainable accuracy.



21 November 2011.

From: Graeme Stark
Sent: 30 November 2011 15:18
To: [REDACTED]
Cc: 'd.baber@talktalk.net'; Peter Edwards (Cllr); [REDACTED] Malcolm Hanney (Cllr); [REDACTED]
Subject: RE: Evidence re alleged CL15/11: Parish of Norton Malreward.
Attachments: 01 Investigation Report.pdf

Dear [REDACTED]

Thank you for your email regarding the Manor Farm DMMO application.

Please find attached as requested a copy of the Investigation Report. I have forwarded a copy to the address you kindly supplied for [REDACTED] and extended the deadline for the submission of comments and evidence to 3 January 2012. I can confirm that I have already sent a copy of the consultation documents to [REDACTED] and [REDACTED] and both have since been in contact,

I have noted your comments regarding the evidence and relevant case law and they will be fully taken into account by the Authority when making a decision; if you have any further comments or evidence then I would appreciate it if you could ensure that they reach me by 3 January 2012.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 02 January 2012 15:50
To: Graeme Stark
Subject: Re: Evidence re alleged CL15/11: Parish of Norton Malreward.

Dear Mr. Stark,

In compliance with your request that any further comments should be made to you by 3rd January 2012, I shall be grateful if you will consider the following:-

1. Miss Gradwell went to great lengths to demonstrate and confirm that the CRF alleged RUPP 15/11 started from the village road known as "Church Road" and not from the farmyard. As I have copies in my own files, I am in no doubt that reference to this matter and letters will be found in the relevant Council files.
2. She further explained that there were Three versions of the Somerset Definitive Map in this case [based upon my experience of the Somerset Definitive Map that is not unusual] - in a letter in my Norton Malreward files however she went even further and confirmed that Mr. Peter Malarby [solicitor for then Avon County Council] had specifically confirmed that the conclusive [Somerset] Definitive Map was the one held by the Avon County Council [as Authority] and therefore was the one to be relied upon. She included a plan which indisputably showed the CRF alleged RUPP starting from the County Road/Church Road. In view of this, it would be illogical to say at a later stage that the CRF alleged RUPP *started in* the farmyard or somewhere in that location - - and that the customary Churchway / private farm access/ private vehicular easement to Manor Farm Cottages - remained a CRF alleged RUPP which had not been Reclassified as a Bridleway.
3. Reclassification of the route shown on the Definitive Map held by Avon County was the whole purpose and intention of the two Public Inquiries.
4. If there has been a drafting error on the map attached to the Application Form this should be addressed without delay - the intention of the Application was to Delete the erroneous Public Bridleway from the entire route shown as a CRF alleged RUPP.
5. Put as simply as possible, the inclusion of the CRF alleged RUPP was an error, a claim without any substance - the only "public" right is the Customary Churchway - nothing more.

I trust the specific matter of the abovementioned drafting matter will be carefully considered. Given my involvement in this case, i.e. advice to the landowners, the lengthy and laborious investigative research which proved necessary for the Second Inquiry, the presentation of that evidence at the Inquiry by myself, the numerous files in my possession, my attendance in the High Court and therefore my knowledge of *obiter* discussion, please do not hesitate to contact me if I can be of any assistance.

Incidentally, there is extremely cogent evidence recorded on the Tithe Map. This was overlooked at the first Inquiry and was accepted when I drew attention to it [with the aid of a projector] at the second.

In short, therefore, CRF CL 15/11 was an error of inclusion which should be Deleted [without delay when considering the time it has taken to reach this stage.] As you aware, the duty of the

Council is to keep the Definitive Map under continuous review and of the highest attainable accuracy.

As it stands, the evidence shows that the Definitive Map is in error. However, once accuracy has been achieved, the situation may change; whatever the several landowners collectively decide is entirely their prerogative.

Yours sincerely,

[REDACTED]

From: Graeme Stark
Sent: 09 January 2012 11:09
To: [REDACTED]
Subject: RE: Evidence re alleged CL15/11: Parish of Norton Malreward.

Dear [REDACTED]

Thank you for your email sent on 2 January 2012.

I will ensure that your comments and the evidence you refer to is taken into account by the Authority when making a decision. I appreciate your offer of assistance if I need clarification on any of the points you have raised and I will be in touch if needs be prior to a decision being made.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 09 January 2012 11:24
To: Graeme Stark
Subject: Re: Evidence re alleged CL15/11: Parish of Norton Malreward.

Acknowledgment noted, Mt. Stark. Thank you. Incidentally, whilst writing - Ms. Gradwell [who attended the Inquiries and advised the Inspector that the CRF alleged RUPP started from the Church Road, [supported by a letter from Peter Malarby the County solicitor] advised me prior to leaving employment with BANES, that she had finished her Repor; I should very much like to examine it and study her conclusions/recommendation.

From: Graeme Stark
Sent: 09 January 2012 12:01
To: [REDACTED]
Subject: RE: Evidence re alleged CL15/11: Parish of Norton Malreward.

Dear [REDACTED]

Thank you for your email.

In a letter to [REDACTED] dated 24 August 2001, Ms Gradwell states that; "*I am not therefore in a position to finalise my report*" which would appear to confirm that at least a draft report did previously exist. However, I have checked both the electronic and paper case files and unfortunately I cannot find a copy of either a draft or completed report by Ms Gradwell.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 09 January 2012 12:23
To: Graeme Stark
Subject: Re: Evidence re alleged CL15/11: Parish of Norton Malreward.

How frustrating Mr.Stark! However, presumably her files still exist . . . in any event, mine do, and I have the larger portion of [REDACTED]'s [which include the documents]. In a letter the other day, he advised me he has some more that he wishes to hand over to me for safe keeping.

As I am unsure of the contents of the latter, I am unable to say whether or not they will contain anything of significance - and due to the Festive Season my time has been limited . . I have not visited him in Ston Easton to collect them - yet. When I have, I will advise accordingly.

[REDACTED]

From: Graeme Stark
Sent: 09 January 2012 17:19
To: [REDACTED]
Subject: RE: Evidence re alleged CL15/11: Parish of Norton Malreward.

Dear [REDACTED]

Thank you for your email.

I can confirm that Ms Gradwell's files do still exist, however they don't appear to contain either a draft or completed report. The Application will be determined by the Authority's Regulatory (Access) Committee and I will be writing the necessary reports shortly. If in the meantime [REDACTED] does provide you with any information that either he or yourself would like to be considered then please do not hesitate to forward it to myself.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email .

From: Graeme Stark <Graeme_Stark@BATHNES.GOV.UK>
To: [REDACTED]
Sent: Friday, 13 April 2012, 12:21
Subject: RE: Norton Malreward

Dear [REDACTED]

I am writing regarding the Manor Farm DMMO Application.

In the fourth paragraph of your email sent on 25 October 2011 you refer to "Norton Malreward Parish Minutes" which are presumably the Parish Vestry Minutes for 12 February 1861. Unfortunately, I have not been able to locate the original Minutes. If you have a photocopy or photograph of the relevant section of the Minute Book or if you know the location of the Minute Book I would be very grateful if you could let me know.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 13 April 2012 12:30
To: Graeme Stark
Subject: Re: Norton Malreward

Will do my best to locate it. It is possible that a Parishioner knows what happened to the Minute Book - I was asked by Somerset Record Office if I could persuade the holder to deposit it . . . but I do not know if this actually happened . . .

Will get back to you a.s.a.p., but as I am busy, and the weekend is looming , don't hold your breath! Will do my utmost to locate t=it though a.s.a.p.

[REDACTED]

From: Graeme Stark
Sent: 13 April 2012 12:34
To: [REDACTED]
Subject: RE: Norton Malreward

Dear [REDACTED]

Thank you for your email.

I was unable to locate the Vestry minutes book at the Somerset Heritage Centre, so I presume that it was not deposited with them. I have also asked the Rector of Holy Trinity Church in Norton Malreward and the current Parish Council and I am hoping one of these parties may hold the minute book.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 13 April 2012 12:57
To: Graeme Stark
Subject: Re: Norton Malreward

No, Mr.Stark, it is in private hands - it was purchased at a Jumble Sale many years ago and was discovered on the top of a wardrobe when the then owner died - which happened between Inquiries - which is apparently why it wasn't produced at the First Inquiry - which I did not attend.

[REDACTED]

From: [REDACTED]
Sent: 13 April 2012 13:05
To: Graeme Stark
Subject: Re: Norton Malreward

A second thought, Mr. Stark -

I believe you will agree that the remit in this case is not the status of the route, but whether SCC recorded an error on the Definitive Map - the fact that SCC defined the non-statutory term "CRF" was a private road with a footpath and never used the statutory term RUPP, is a great help in understanding what they recorded but not the evidence they relied upon "in the first instance" [*Trevelyan*] to do so.

My lengthy and laborous research of over 20 years now, reveals that [REDACTED] was responsible for many Objections to omissions - and he remiss in failing to provide evidence as to the route being dedicated to the public at large.

In an Inquiry held at Chew Magna which I attended, one such erroneously added "CRF" was Deleted . . .

[REDACTED]

From: Graeme Stark
Sent: 13 April 2012 13:11
To: [REDACTED]
Subject: RE: Norton Malreward

Dear [REDACTED]

Thank you for your email.

I agree that the application is into whether the Application Route should be deleted from the Definitive Map and Statement. I wished to view the Vestry Minutes because they have been referred to by consultees and the Authority wishes to consider all evidence which may be relevant to the application.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 13 April 2012 13:38
To: Graeme Stark
Subject: Re: Norton Malreward

I am quite happy to retrieve the copy for you [if I can!] Mr. Stark - but it is not 'relevant evidence'; it was not considered or relied upon by [REDACTED] when he claimed an omission - and cannot affect the procedure followed by SCC when they Added this CRF on after [REDACTED]'s Objection. That was the whole point, there simply was no evidence that a "CRF" [which was alleged to have public vehicular rights] existed along the private entrance drive and through the farm yard. In fact, the evidence pointed all the other way. The Inquiry Inspector could not concede an error of inclusion under Section 54.

The Minutes were relied upon to show how the historic Churchway path had been moved out of the farmyard by the permission of [I believe the name in the Minute book was] Sir Grenville Smyth - who advised contact with his Agent to set out the new Churchway . . . There was certainly no reliance on the Minute to prove legal status! What

In any event, you will no doubt have realised that the the private driveway to Manor Farm which also happens to provide a way to the Church, is linked to the plot adjoining on the Tithe Map. This is the clearest possible evidence that the way is Private, paying Tithe but Subject to the footpath to the Church [which in law is not a public highway.]

[REDACTED]

From: [REDACTED]
Sent: 13 April 2012 14:23
To: Graeme Stark
Subject: Re: Norton Malreward

Dear Mr. Stark,

The following may assist you in this matter:

- the 1835 HA decreed that all public highways which were publicly maintainable before 1835 were publicly maintainable after; that an Occupation [private] Road had to be adopted under Section 23 HA 1835 if it was desired for public use in exchange for public maintenance.
- the Parish Minute is dated *post*-1835 - there is no evidence that the way to Church was ever publicly maintainable. In fact again the evidence is all the other way. The quality of the tarmac surface in the farmyard was shown to be of the private use variety and not the heavy duty variety relied upon by the Highway Authority.
- the Parish did not go to the Highway Authority to request "Diversion" of the Church path, they went to the landowner - and requested he provide a *strip of land* to set out a new way to the Church which would not go through the farmyard -

by no stretch of imagination or interpretation of the Parish Minute or other historical document could it be claimed that the way being abandoned and re-set out in a straight line to the Church is or was a public highway, maintainable at public expense. Moreover, nor could it be claimed that it was in fact a public vehicular highway.

The Title Deeds to the property record Private Easements for the benefit of the rear of Manor Cottages, and access to the fields retained following sale of part of the Manor Farm.

This case relies entirely on [REDACTED]'s Objection to omission - and the procedure followed by SCC, then the Surveying Authority.

Sincerely,

[REDACTED]

From: Graeme Stark
Sent: 13 April 2012 14:31
To: [REDACTED]
Subject: RE: Norton Malreward

Dear [REDACTED]

Thank you for your email.

Your comments will be fully taken into account by the Authority when determining the Application.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 17 April 2012 12:41
To: Graeme Stark
Subject: Re: Norton Malreward

Good afternoon Mr. Stark,

I agreed to search my files for the elusive Vestry Minute, and have done so for the past couple of days without success. Very frustrating, because I do not dispose of any files, but perhaps if you saw just how many files, law books, documents, maps, etc., line the walls of a 10 x 12 stable set aside for the specific purpose of storage - add that to the number of bookcases also used for storage in various rooms in the house, you would not be at all surprised that a file is proving difficult to locate . .

However, during my search it occurred to me that a copy of all documents was handed in at the Second Inquiry - and all those documents were relied upon for the Application under Section 53 to Delete. My simple way of thinking suggests that BANES should already hold a copy among all the Inquiry papers. Has that possibility been pursued?

Meanwhile, I will continue my search . . . I will be in touch if I am successful -

[REDACTED]

From: [REDACTED]
Sent: 18 April 2012 15:57
To: Graeme Stark
Cc: Malcolm Hanney (Cllr); [REDACTED]
Subject: The 1861 Vestry Minute

I am delighted to say, Mr. Stark, that my terrier-like diligence has paid off - I have located the box which holds the copy of the elusive document you require, for what its worth as "relevant evidence" the 1861 Vestry Minute ; plus all the other documents etc for Norton Malreward.

As I produced all the maps, documents etc at the Inquiry as Acetate copies by way of a projector, the Vestry Minute is also on Acetate. I am unsure if it will "scan" in order to forward a copy to you, but I will make an attempt following this e-mail.

My 'Norton Malreward box' contains a very large number of documents and maps [including coloured copies of the 1910 Finance Act maps which I retrieved at the time - including [REDACTED]'s Registered Plan from the Land Registry indicating that the access to Manor Farm from the village road known as Church Road, is private - but has a Private Easement over it in favour of the land then retained by the late Mr. Roy Young together with a private Easement in favour of Manor Farm Cottages.

All this evidence was examined by the Inspector at the Second Inquiry - and, examined as to "status" bears no relevance to the procedure of "Adding" a CRF followed by Somerset County Council.

What it did indisputably reveal was that there had been a failure to keep Records up to date when the Footpath to the Church was moved from the Manior Farm farmyard to a "strip of land" provided by landowner Sir Greville Smyth upon the request of the Parish Vestry. [You will appreciate that in 1861 there was no Parish Council; Parish matters were dealt with by the Vestry. Parish Councils were introduced in 1894.]

I repeat, and you have confirmed, that the remit of the current investigation is whether, on the balance of probabilities, Somerset County Council made an error "of inclusion" during the preparation of the Somerset Definitive Map. That remit should involve examination/investigation of the evidence relied upon by Somerset County Council when the path was recorded "*in the first place.*"

The evidence more than suggests the likely probability that the only "evidence" relied upon by the Somerset County Council was, in the absence of evidence which showed that the Vestry had requested a new and fresh path and therefore it had been moved to its present location, the existence of two versions of the then Clutton RDC Road Records. That in fact the way to Church had ceased to exist through the farmyard.

The failure to keep the Records up to date resulted in this long-drawn out and tedious procedure, which must have been and apparently still is - a monumental drain on everyone's time and resources.

As I have now located all the documents, and can interpret them with ease, if I can be of any further assistance please do not hesitate to contact me. Incidentally, whilst trawling through to locate the Acetate Vestry Minute, I note that Mr. Colin Hudson was then Assistant Rights of Way officer involved in exchange of correspondence with [REDACTED]. In fact to my distinct knowledge he also attended the Second Inquiry.

I will now attempt to scan the Acetate Vestry Minute.

Regards,

[REDACTED]

From: [REDACTED]
Sent: 18 April 2012 16:07
To: Graeme Stark
Cc: Malcolm Hanney (Cllr); [REDACTED]
Subject: Scan of the 1861 Vestry Minute - Norton Malreward
Attachments: Norton-1861 Vestry Minute.PDF

I believe this scan confirms everything Mr. Stark - and is, fortunately, legible. Indisputable in demonstrating all that should be done was done correctly . . . **in 1861.**

If you do have a problem reading it, please do not hesitate to contact me. You will note that the Church Council approved the alteration they had requested - "in lieu of . . ."

[REDACTED]

From: Graeme Stark
Sent: 20 April 2012 08:37
To: [REDACTED]
Cc: Malcolm Hanney (Cllr); [REDACTED]
Subject: RE: Scan of the 1861 Vestry Minute - Norton Malreward

Dear [REDACTED]

Thank you for your emails and for the scan of the 1861 Vestry Minutes. I very much appreciate you taking the time to find the acetate in your records.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 20 April 2012 08:51
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,

If it helps . . . it is more than a "likely probability" that the Ordnance Survey "Drawing" = "OSD" is dated 1809 - - - the first Ordnance Map usually dated around 1811, was prepared from it . . . without checking my records the first OS map was of a scale of 2 inches to One mile. Consequently, they should record precisely the same "physical features."

I seem to recall correctly interpreting the document - that the path went South of the Church [on the O.S. evidence] - i.e. the line of CL 15/2 I believe.

What was claimed as "an omission" was in reality taken from a flawed document, one which there had been a monumental failure to correct. However, what this does help you with, is the fact that this proves the 1929 Handover Map was **not** prepared in 1929 at all, but is far more likely to have been prepared from Vestry Minutes *circa* 1770s. A Parish Churchway which was of *ancient* origin.

In North Stoke it was shown by Counsel for the landowners at Inquiry [which lasted five days] that the criteria relied upon by Somerset CC when preparing the Definitive Map was that a "CRF" was "ancient." In fact it can now be shown that the "ancient" element was relevant to "ancient Accommodaiton Roads." See The 1950 Memorandum.

Regards,

[REDACTED]

From: [REDACTED]
Sent: 24 April 2012 10:09
To: Graeme Stark
Cc: Malcolm Hanney (Cllr); [REDACTED]
Subject: Re: Scan of the 1861 Vestry Minute - Norton Malreward

Dear Mr. Stark,

I have been working on some other papers over the past few days, and I believe you may find the following useful in your Findings Report:-

1. The Clutton RDC Schedule of Roads identified Five different levels, main road [Red], secondary main road [Blue], District road [Green] Local road [Brown], cul de sacs, etc. [Yellow]. Overnight - in 1950 - approximately 500 Class 5 Yellow roads disappeared without trace or legal procedure.

My research on these Schedules and the identifying colours has been ongoing for over 20 years, and the conclusion received on comparative exercise across the County of Somerset revealed that Class 5, Yellow roads, were ancient, private roads. In fact, "ancient Accommodation Roads."

2. Norton Malreward Church path originally [and anciently] followed a line from the village Church Road and turned Left into the Manor Farm farmyard. In **1861** - when the Vestry took responsibility for administration of the Parish - there was a request to the landowner Sir Greville Smyth for a strip of land to access the Church *in lieu of* the *cul-de-sac* customarily followed through the farmyard -

3. The Church *cul-de-sac* into the farmyard was shown on the 1929 Road Records in Yellow, a Class 5 *cul-de-sac*; [in 1950 ALL Class 5 "Yellow roads" were inexplicably overlaid with the colour Brown thereby elevating them to Class 4, a "road of local importance" - a "village loop road" . . . equivalent to public vehicular. There is absolutely no evidence that this was done by way of a legal procedure.]

Somerset County Council officers have admitted no evidence and non-survival of criteria relied upon to prepare the 1929 Handover Map and Unclassified Road List.

It can be reasonably accepted that in "elevating" a Class 5 to a Class 4 no legal procedure was followed - the simple and unauthorised overlay of a different elevating colour has led to incalculable damage and misunderstanding.

4. The point of the above is as follows:- The Vestry Minute of 1861 is evidence that it was the landowner, Sir Greville Smyth, who was approached in order to move the line of the Customary Churchway [an "event" which could be considered a Diversion] - and not the Justices of the Peace . . . who would have been approached if the way to Church was a "public highway."

5. In short, as defined in law, the Churchway was NOT a "public highway" but was a "right of way" exercised Customarily and by way of ancient privilege and favour which existed *only in* the "fluctuating body of people such as the inhabitants of the Parish." Put simply, a "road or way with a privilege." [See "Halsbury's Custom and Usage" - not "Highways."]

6. This supports my research that a Class 5 Yellow road was *not* a "publicly maintainable public 'highway', but was a private way or road used by the 'public' = Coke's classification of ways . .

. . that the definition of the word *public* "twofold" = (i) to all the King's [or Queen's] subjects" and (ii) between neighbour and neighbour . . (see explained by Sedley [then J.] in the *Dunlop case* 1995).

7. Overlaying this ancient Manor Farm *Class 5 Yellow road* with Brown in 1950 when it had been agreed between the landowner and the Vestry in **1861** that it could be moved to a different line away from the farmyard, was of course gross incompetence. Clearly demonstrated that inhouse Road Records were not kept up to date by Somerset County Council.

8. The "bottom line" in this is that **if** the Customary Churchway was in fact and in law a "public highway maintainable at public expense" [**which is denied**] then it was not in the power of the Vestry to approach the private landowner to agree to a new line [with his Agent] - given the "Diversion" of a *public highway* would require the Authority of the Justices of the Peace and a legal procedure.

9. Case law *Brocklebank and Thompson* considered the matter of Customary Churchways.

I hope the above is of some assistance in understanding the inhouse 1929 Handover Records; it should not be overlooked that when the Norton Malreward case was decided in the Court [and I was an observer on behalf of the then landowner Mr. Michael Pye] - [then] Mr. Justice [now Lord Justice] Sullivan decided that [given no public participation] the inhouse Road records could include errors.

If I can help you in any other way please do not hesitate to contact me. I would be willing to make a visit to your office if it would help.

Incidentally, during the "reign" of Avon County Council, an erroneous "CRF" was Deleted from the Somerset/Avon Definitive Map by way of Inquiry at Chew Magna . . . and a Bridleway was Deleted from the Somerset/Avon Definitive Map by way of Inquiry at Chelwood. I attended both. The Rights of Way officers identified errors without bias or prejudice. It is unfortunate that this present matter has been left to gather dust for so long.

Yours sincerely,
[REDACTED]

From: Graeme Stark
Sent: 24 April 2012 11:50
To: [REDACTED]
Cc: Malcolm Hanney (Cllr); [REDACTED]
Subject: RE: Scan of the 1861 Vestry Minute - Norton Malreward

Dear [REDACTED]

Thank you for your email.

Your comments will be taken into consideration by the Regulatory (Access) Committee when reaching their decision.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: [REDACTED]
Sent: 24 April 2012 12:27
To: Graeme Stark
Cc: Malcolm Hanney (Cllr); [REDACTED]
Subject: Re: Scan of the 1861 Vestry Minute - Norton Malreward

Dear Mr. Stark,

I am puzzled by your response; does it mean that "my comments " will simply be attached to a Report to Committee - the Members of which will have little to no idea of what I am talking about [unless I am present and speak, which is my intention in any event] - or does it mean that you will be incorporating an explanation of "my comments" in your Report to the Committee . . ?

Yours sincerely,

[REDACTED]

From: [REDACTED]
Sent: 24 April 2012 14:01
To: Graeme Stark
Cc: Malcolm Hanney (Cllr) [REDACTED]
Subject: Re: Scan of the 1861 Vestry Minute - Norton Malreward

Dear Mr. Stark,

In view of my opinion on the Customary Churchway and the fact that there was no formal or legal procedure in re-aligning the Churchway, I am now examining the provisions and requirements of 1835 HA, [and as a matter of interest only] the 1773 HA . . . However, by 1861 the 1835 Highways Act was well in place, which incorporated all other Highway Acts.

I maintain that if the way was a "public highway" then re-alignment aka Diversion, would require legal procedure. Lack of which more than suggests that the path which was Added by way of Objection by the Rambler, was not a public highway in the first place - given it was only a "right" established by ancient custom to pass over private property on foot in order to reach the Church. Use by pedestrians does not appear to have caused much conflict with regard to "maintenance" . . . unless I am mistaken the Toll Bridge at Batheaston allows free passage to pedestrians, to my distinct knowledge so does the Clifton Suspension bridge . . . not forgetting the private Toll road at Porlock . . this also was the case on all Turnpike Roads which I have investigated.

By contrast, Toll Roads charged for use by "wheeled vehicles" and [historically] animals.

An ancient custom clearly required the agreement of those in whom the "privilege or favour" existed, i.e. the parishioners. It stands to reason that a "custom" ceased if the *purpose* for which it existed expired. For instance, if the Church butned down and left only the *purpose* of the access to the ancient burial ground.

The Rambler in question who regularly and frequently lodged Objections claiming "omission of error" [he advised he claimed "1200 paths in Somerset, Dorset and Wilts (among other things) from O.S. maps, Inclosure Award maps and Quarter Sessions records . . ."] did not understand the "first principles" i.e. the legal principle of "dedication [by the owner] and acceptance" [by the general public] - and appears to have had a deep misunderstanding of precisely what was required in law.

Apparently someone had a belief which was generated in (a) The 1950 Memorandum and (b) Circular 91 , that if no-one Objected to an inclusion then dedication could be *presumed* . . . [totally disregarding the [second] principle . . . Acceptance by the general public] - presumed dedication arising from such disingenuity could only be relied upon of course if the landowner actually *knew* that the path had been claimed in the first place and did not lodge an Objection to its inclusion.

The records indisputably show that whilst SCC had Resolved [policy] to notify all landowners affected by the Addition of a path during the preparation of the Somerset Definitive Map and Statement, in reality there was a failure to do so. Leading to the revelation of errors of inclusion when investigation later took place as a result of claims under WCA 1981 of the existence of "higher rights." The errors of inclusion, and procedures, were illuminated by the evidence produced from the existing archives.

Yours sincerely,

[REDACTED]

From: Graeme Stark
Sent: 26 April 2012 14:04
To: [REDACTED]
Cc: Malcolm Hanney (Cllr); [REDACTED]
Subject: RE: Scan of the 1861 Vestry Minute - Norton Maireward

Dear [REDACTED]

Thank you for your email.

My report will cover the evidence which has been discovered or put forward in this case; the report will also include all consultation response received. If you have any further comments you will need to make these directly to the Committee.

The application will be considered at the next meeting of the Regulatory (Access) Committee which has been scheduled for **Wednesday 30 May 2012 at 18:00 In the Council Chamber at Keynsham Town Hall, Keynsham, Bristol BS31 1NL**. Requests to speak at the meeting should be made to Democratic Services at least five working days prior to the meeting. Democratic Services contact details are as follows:

- Email: Democratic_Services@BATHNES.GOV.UK
- Telephone: 01225 394435
- Postal Address: Riverside, Temple Street, Keynsham BS31 1LA.

I will email you again closer to the date of the meeting to let you know when a copy of the agenda and my report are available on the Authority's website.

Regards,

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

CONSULTEE 3; BYWAY AND BRIDLEWAY TRUST

From: [REDACTED]
Sent: 12 October 2011 15:41
To: Graeme Stark
Subject: Re: Public bridleway CL15/11 (Manor Farm, Norton Malreward)
Attachments: Deletion & downgrading tests.pdf; ATT00001.htm

Dear Graeme,

Thanks for the report. I'm not going to press on the s.130A while you are running this through. I can always serve another if necessary!

The report - that is a very good tabulation on the units of evidence. I'd only observe is that it would be impossible rationally to say that a CRF is not a RUPP - our counsel's advice.

You are not telling members about the tests to be applied to the evidence. This paper is one I have used 100% successfully so far ... maybe half a dozen cases in the last 3 years.

The evidential high-jump bar, just to get an order, let alone confirm, is rather high. Balance of probability but with a strong presumption in favour of the status quo. Vital to inform members of that.

Regards

The paper referred to above is contained at Appendix 8.

From: Graeme Stark
Sent: 12 October 2011 16:32
To: [REDACTED]
Subject: RE: Public bridleway CL15/11 (Manor Farm, Norton Malreward)

Dear [REDACTED]

Thanks for your email.

The Investigation Report wasn't intended to detail the test to be applied but on reflection it would probably be helpful for everyone involved if our Investigation Reports did cover this issue too. Once the consultation period has ended I will write a report covering all the evidence and legal considerations and a decision will be taken by officers under delegated authority. Thank you also for the attached paper; this is most helpful and there does not appear to be any differences between our respective understandings of the law.

I will let you know the Authority's decision as soon as possible after 22 November but if in the meantime you have any queries please do not hesitate to contact me.

Regards,

Graeme.

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

CONSULTEE 4; NORTON MALREWARD PARISH COUNCIL

From: Peter Edwards (Cllr)
Sent: 15 November 2011 14:06
To: Colin Hudson
Cc: 'Dennis Baber'; Malcolm Hanney (Cllr); [REDACTED]
Subject: Definitive Map Modification Order Investigation Report

Good Afternoon to you Colin,

Thank you for the abovementioned document dated 10th October 2011 the opportunity to debate in full arose at the recent Norton Malreward Parish Council Meeting

I am now able to let you have Minute No 11/54 from the meeting :-

**RIGHT OF WAY CL/15/11
PAPER WORK ON THE DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT-MANOR FARM NORTON MALREWARD HAVING BEEN CIRCULATED TOGETHER WITH AN E-MAIL FROM MRS MASTERS WAS DEBATED IN FULL. CLLR BURNS THE CURRENT OWNER OF THE PROPERTY GAVE ADVISE AND COUNCIL UNANIMOUSLY DECIDED THAT DUE TO THE AGE OF THE ROUTE, THAT IT SHOULD REMAIN IN PLACE AS A BRIDLEWAY.**

kIND REGARDS
PETER EDWARDS
Clerk to the Parish Council

From: Graeme Stark
Sent: 18 November 2011 16:20
To: Peter Edwards (Cllr)
Subject: RE: Definitive Map Modification Order Investigation Report

Dear Peter

Thank you for the parish council's comments on the application. They have been noted and I will be sure to keep the parish council updated with regards to developments in this case.

Regards,

Graeme.

**Graeme Stark
Senior Rights of Way Officer**

Please consider the environment before printing this email

CONSULTEE 5; WARD COUNCILLOR FOR CHEW VALLEY NORTH

From: Malcolm Hanney (Cllr)
Sent: 22 October 2011 09:24
To: Graeme Stark
Subject: Application for Modification Order - PROW Norton Malreward

Hi Graeme,

Thank you for your letter of 11 October.

I should be grateful for a copy of Investigation Report.

Can you advise who has made the application?

Malcolm

**Malcolm Hanney (Cllr.)
Chew Valley North Ward**

**Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com**

From: Graeme Stark
Sent: 07 November 2011 15:04
To: Malcolm Hanney (Cllr)
Subject: RE: Application for Modification Order - PROW Norton Malreward
Attachments: 01 Investigation Report.pdf

Dear Malcolm

I'm very sorry, I've got a terrible feeling I didn't respond to your email; please accept my apologies.

I've attached a copy of the Investigation Report as requested. If you've got any queries please do not hesitate to contact me on 01225 477650. The application to delete the bridleway from the Definitive Map and Statement was made by Mr and Mrs Pye (who previously lived at Manor Farm in Norton Malreward) and Mr Jones (who still lives at Manor Court).

I will let you informed about developments with the application.

Regards,

Graeme.

**Graeme Stark
Senlor Rights of Way Officer**

Please consider the environment before printing this email

From: Malcolm Hanney (Cllr)
Sent: 09 November 2011 08:40
To: Graeme Stark
Subject: Application for Modification Order - PROW Norton Malreward (CL 15/11)

Graeme

I refer to my e-mail of 22 October. I haven't yet received a copy of your Investigation Report as requested or perhaps I have misunderstood and not yet prepared.

Please advise.

Malcolm

Malcolm Hanney (Cllr.)

**Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com**

From: Graeme Stark
Sent: 11 November 2011 15:38
To: Malcolm Hanney (Cllr)
Subject: RE: Application for Modification Order - PROW Norton Malreward (CL 15/11)
Attachments: 01 Investigation Report.pdf

Dear Malcolm

Sorry, I did email you a copy of the Investigation Report but I presume this must have got lost in the system somewhere. I've attached another copy and if you've got any queries please do not hesitate to contact me on 01225 477650.

Regards,

Graeme.

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: Malcolm Hanney (Cllr)
Sent: 11 November 2011 15:53
To: Graeme Stark
Subject: Re: Application for Modification Order - PROW Norton Malreward (CL 15/11)

Hi Graeme

Thanks

Malcolm

Malcolm Hanney

Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com

From: Malcolm Hanney (Cllr)
Sent: 22 November 2011 10:01
To: Graeme Stark
Cc: Peter Edwards (Cllr); d.baber@talktalk.net; gareth [REDACTED]
Subject: Definitive Map Modification Order PROW Norton Malreward

Dear Graeme,

I refer to your letter of 11 October 2011; the copy of your Investigation Report dated 10 October 2011 (subsequently provided); various correspondence which you have received from Mr. Gareth Jones, Norton Malreward Parish Council and Mrs. Marlene Masters; and to our telephone conversation today.

I confirm my request that this matter be referred to Committee rather than dealt with under delegated authority.

1. Clearly the issues in this case are extremely complex and the Council's decision must be based on the evidence provided and not on the views or preferences of interested parties. The matters as regards evidence raised in the submissions made by [REDACTED] and [REDACTED] and your prospective responses thereto are, I believe, appropriate for consideration by the Committee before any decision by the Council is made. I also expect that a further and detailed submission will be made by [REDACTED] during the extended period for representations that you have given him due to his change of address and the related delayed notification as an Applicant.

2. I note that Norton Malreward Parish Council, when it met on 8 November 2011, did not have the benefit of having available the representations from [REDACTED] and [REDACTED]. It may or may not wish to make further submissions having now read those submissions and / or speak before the Committee if and when it considers the 'Application.'

3. I believe that there is the potential here for a challenge (whether by Appeal to the Secretary of State or by Judicial Review) irrespective of the decision taken by the Council. In such circumstances I believe a Committee decision would be preferable to a delegated decision.

4. I note the 13 year period wait for consideration by the Council for an Application made on 31 March 1998.

I look forward to your confirmation that the matter will be referred to Committee.

Many thanks.

Malcolm

**Malcolm Hanney (Cllr.)
Ward Councillor for Chew Valley North
Bath & NE Somerset Council**

**Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com**

From: Graeme Stark
Sent: 30 November 2011 17:01
To: Malcolm Hanney (Cllr)
Cc: Peter Edwards (Cllr); d.baber@talktalk.net; [REDACTED]
Subject: RE: Definitive Map Modification Order PROW Norton Malreward

Dear Malcolm

Thank you for your email.

I can confirm that the matter will be referred to the Regulatory (Access) Committee and I will ensure that yourself and all other interested parties are informed when a date has been set. I have noted your comments and they will all be taken into consideration as the application is processed.

Regards,

Graeme.

**Graeme Stark
Senior Rights of Way Officer**

Please consider the environment before printing this email

From: Malcolm Hanney (Cllr)
Sent: 12 December 2011 19:59
To: Graeme Stark
Cc: Peter Edwards (Cllr); dennis.baber@talktalk.net; [REDACTED]
[REDACTED]
Subject: Vernon Hitchman; John Everitt; Glen Chipp
CL 15/11 - Norton Malreward
Attachments: CommentsonInvestigationReport111211.doc

Hi Graeme,

Further to my e-mail of 22 November, I have subsequently asked my wife (a solicitor who specialises on Public Rights of Way) to review for me the paperwork (including the Investigation Report). I attach a copy of her preliminary report which I am copying to Norton Malreward Parish Council, [REDACTED] (one of the Applicants), [REDACTED] (also to forward to [REDACTED] the other Applicant) and [REDACTED]. I am also copying Vernon Hitchman, John Everitt and Glen Chipp given the 13 years that it has taken for the Application to be considered by the Council. In this connection I note, as an aside, that the Service Plan which was considered by the Planning Transport and Environment Policy Development & Scrutiny Panel last week indicated that the proposed budget cut for 2012/13 to the Public Rights of Way department might lead to an extended delay in consideration of Applications!

I asked [REDACTED] to take a look at the paperwork for 2 reasons i) the complexity of the issues and ii) the fact that it has taken 13 years for the Application to be dealt with and my now somewhat hazy recollection of the issues - I spent a considerable amount of time on this back in the 1990s when I was first a Councillor although I have sadly not retained all my records. Nonetheless I am fairly certain as to my recollection of a lack of any credible evidence for CL15/11 to be a public right of way and particularly across the section including the farmyard (i.e. A-C on the map).

I believe it is important that the Council now gets this right irrespective of whether the landowners may or may not wish to grant permissive rights over any part of the alleged route of CL 15/11 or any alternative route acceptable to them.

You will see from [REDACTED]'s report that there are some concerns as to whether the Investigation Report is fully appropriate for consultation and decision in the circumstances. Whether you may need to consider withdrawing the report for further work to be undertaken etc. must be for you to decide with colleagues.

Malcolm

Malcolm Hanney (Cllr.)
Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com

Comments on Investigation Report – Norton Malreward

1. Prior to commenting on the evidence evaluated in the Investigation Report, there are a number of preliminary issues that need to be addressed and clarified.
2. Firstly, the Report indicates that the application was not duly made. This comment relies on the judgment in the *Winchester* case which was heard in 2008. This judgment applies to those applications for DMMOs where reliance is placed on one of the exemptions in the NERC Act 2006 as to vehicular rights. The judgment clearly states that in respect of other applications, that is those such as the application currently under investigation, the Council can waive the formal procedures as to whether or not the documents relied upon actually accompany the application form. This application to delete was made in 1998. It was accepted as valid in 1998. If the Council did not consider it valid in 1998, the applicants should have been advised accordingly and the application returned. It was not. The judgment in *Winchester* does not apply in these circumstances. Reference to this point in the Report is therefore irrelevant and prejudicial to the applicants and should be removed.
3. Secondly, the extent of the route to be deleted needs to be clarified. The plan on the Council's register of DMMO applications, which presumably is the plan that accompanied the application to delete, shows the path to be deleted as running from the village road (Church Road) south eastwards to the parish boundary with Stanton Drew. This coincides with the description of the CRF which was added to the Draft Map (see para 11 below) and the description of the route which was the subject of the *Stevens* case in 1998, but differs from the plan that accompanied the Investigation Report which shows point A several yards to the east of the village road.
4. The plan appended to the Report also refers to the short section between Church Road and the 'new' point A as a restricted byway. Clarification is required as to whether this section is shown on the Definitive Map as a restricted byway and, if it is, how it was added as such.
5. Thirdly, the covering letter of 16 March 1998 clearly describes the supporting evidence for the application. This refers to two public inquiries and the documentation relating thereto and highlights three documents – 1811 Ordnance Survey Map, [REDACTED]'s letter of 1 October 1990 and paragraph 180 of the Decision Letter dated 28 May 1997 - which in particular should be re-examined. It also refers to additional evidence from [REDACTED] and a further statement from [REDACTED]. None of these documents appear to have been referred to in the Report and it can therefore only be concluded that that they were not considered during the investigation. It is also my understanding that Norton Malreward parish council minutes and the 1910 Finance Act map were considered at the public inquiries. Again these have not been mentioned. It would therefore appear that there is a considerable amount of evidence related to this matter that has not been evaluated during the investigation. Any recommendation to the Committee must be based on an evaluation of all the available evidence, not merely a few selected documents.
6. An application to delete in effect alleges that an error was made at the time the Definitive Map was prepared and that the disputed route should not have been recorded on the map. In order to assess

such a claim it is necessary to consider what evidence was available that supported the recording of the route at the relevant date. In this case the relevant date was 26 November 1956.

7. On the basis of the Investigating Officer's evaluation of the limited amount of documents that were considered in the Report, it is clear that prior to the preparation of the Definitive Map there is no evidence of public rights of any type along the disputed route. Documents 1-4 and 7-10 either provide no evidence regarding the disputed route or only provide evidence that it physically existed not its status.
8. Document 5 comprises the Tithe Map and Award for Norton Malreward. As a matter of law it is accepted that the purpose of tithe records was to identify productive and therefore titheable lands, not to show roads or their status. Roads, whether public or private, would be non-productive land and therefore non-titheable. Tithe maps would therefore show roadways marked upon them as untitheable parts of land whether they were public or private. According to this Report, the disputed route was not shown on the Norton Malreward Tithe Map and the Award indicates that tithe was paid on all three enclosures through which the disputed route would have passed. One of these enclosures was described as Road, but all three were described as arable. This material therefore does not provide any evidence either of the physical existence of the disputed route or regarding the status of the route.
9. Document 6 comprises the Tithe Map and Award for Stanton Drew, the neighbouring Parish. As such this provides no evidence relating to the disputed route which lies in its entirety in the parish of Norton Malreward. The Report indicates that a route is shown on the Stanton Drew Tithe Map with a direction marker "from Norton Malreward". As already noted, Tithe Maps did not differentiate between public and private roads, and this map therefore provides no evidence that the route shown thereon is public. The direction marker is just that. It does not provide any evidence of either the physical existence or status of the disputed route. No mention is made of the contents of the Tithe Award for Stanton Drew. No implications as to either the physical existence or status of the disputed route can therefore be drawn from this material.
10. At the time of the Parish Survey only the section C-E was claimed by Norton Malreward Parish Council as a public footpath. It is understood that there are parish council minutes to the effect that [REDACTED] (who owned the land crossed by the disputed route in the 1950s) had given permission for the public footpath to run along his private track from points C-E. This would have linked up the two sections of what is now footpath CL15/2.
11. According to the Report it would appear that when the Draft Map was published section C-E was recorded as a footpath as part of the longer route, the western and eastern sections of which now appear as footpath CL15/2. An objection was received from the Ramblers to the omission of the remainder of the disputed route from the Map and also objecting to the status of C-E. The entire disputed route from Church Road to the parish boundary with Stanton Drew (A-F on plan accompanying application to delete) was then added as a CRF. No evidence appears to have been supplied by the Ramblers as to why A-F was considered to be a CRF. The only comment relates to

the extension of the route (south eastwards from point F) in the next parish which, of course, provides no evidence in relation to the disputed route itself.

12. This lack of evidence as to the reason why the disputed route was added as a CRF was confirmed at the second public inquiry where at paragraph 180 of his Order Decision the Inspector stated: "The paths in the locality were first discussed at a Parish Meeting in November 1950 as a result of a request from Somerset County Council to survey and tabulate rights of way in the parish. According to the minutes they did not discuss the route of 15/11 except to describe it as a private road on to which Footpath 15/2 should be diverted for part of its length. It was not until 1963 that, following an objection by the Ramblers' Association, CL 15/11 was added to the map. There is no evidence of why the objection was accepted or why 15/11 was classified as a RUPP and CRF".
13. It should be emphasised that until this time the section of the disputed route from Church Road to point C was only ever considered to be private and/or customary (churchway) and then a farmyard.
14. The Report indicates that 'there is no record of the landowner objecting to the recording of the Application Route as a public bridleway on the provisional Map'. (NB it was recorded as a CRF/RUPP not a bridleway). However, there is also no record that the landowner was even notified of such an amendment and was thus aware of it.
15. The Investigating Officer's comments in relation to the recording of the disputed route on the Definitive Map as a CRF/RUPP are inaccurate and misleading. As held in the High Court case relating to this matter – "the mere fact of classification as a RUPP is not in itself evidence of the existence of any vehicular right of way over the track. The surveyors mapped footpaths, bridleways and RUPPs on the basis that a right of way of that kind subsisted or was reasonably alleged to have subsisted. Section 34 subsection (1) then deliberately left open the question whether the public enjoyed any vehicular rights over a RUPP. Whilst vehicular rights might have been alleged, they might prove on examination to have been exercised only by the farmer owning the land to get to and from his fields."
16. The Reclassification Order was made under Section 54 WCA 1981. As such there was only the power to reclassify the disputed route as a BOAT, a bridleway or a footpath. There was no power to conclude that no public right of way existed. The fact that the disputed route was reclassified as a public bridleway does not therefore provide any evidence in relation to an error being made at the time the Definitive Map was prepared. This is clear from the judgment in the *Stevens* case which did not address the issue.
17. The Inspector at the second inquiry went on to say at para 181, "I consider that the new documentary evidence casts considerable doubt as to the existence of a BOAT over route 15/11. It was not claimed as such (or as any type of right of way) by the Parish meeting in 1950, who specifically referred to it as a private road. The owner of the land over which it runs stated in a letter to Avon County Council dated 1 October 1990, that no vehicular use had taken place except for 4/5 years prior to his letter, and that until March 1989 there was a wooden gate (Bridle gate) at the junction of

CL15/11 and 18/31. This coupled with the evidence of horseriding over the route ... leads me to the conclusion that, on the balance of probabilities, the then owner dedicated the route as a bridleway, and that the public accepted it as such. It is therefore the case that bridleway rights have not been shown not to exist".

18. It is understood that the evidence of bridleway use referred to was in fact use by the then owners' daughter and friends. This is not 'public' use. It is not known why this was not evaluated correctly at the public inquiry. However, I believe that this evidence should still be available on the Council's file and should therefore be considered as part of the Investigation Report.
19. The Report states that 'each piece of evidence will be tested on the balance of probabilities'. This is incorrect and appears to stem from confusion between the difference between weight of evidence and standard of proof.
20. In considering documentary evidence, pursuant to s32 Highways Act 1980, it is necessary to give such weight to each piece of evidence as "justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled and the custody in which it has been kept and from which it is produced".
21. The weight or probative value of evidence is based on the believability or persuasiveness of the evidence
22. Balance of probabilities relates to the standard of proof required and only comes into the equation when weighing up the totality of evidence after all the evidence has been presented.
23. The standard of proof is that the evidence must show on the balance of probabilities that an error was made when the Definitive Map was prepared and the disputed route should not have been recorded on the map.

Conclusion

24. The Report as it stands has not considered all the available evidence and has incorrectly analysed some of the documents and is therefore misleading. The relevant questions that should be asked in coming to a conclusion are 'Why was the disputed route added to the Definitive Map in the first place?' and 'What evidence was available at the relevant date that would have supported the disputed route being recorded on the Definitive map?'
25. All the evidence that was before the two Inquiries should have been considered and specifically the documents highlighted in the covering letter to the application should have been considered.
26. In the absence of these questions and consideration of all the evidence, it is not possible for the consultees or the Council to assess properly the evidence.

From: Graeme Stark
Sent: 22 December 2011 12:18
To: Malcolm Hanney (Cllr)
Subject: RE: CL 15/11 - Norton Malreward

Dear Malcolm

Thank you for your email.

I will respond to the points which you have raised shortly,

Regards,

Graeme.

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

From: Malcolm Hanney (Cllr)
Sent: 11 January 2012 20:05
To: Graeme Stark
Cc: Vernon Hitchman; Glen Chipp; [REDACTED]
Subject: CL 15/11

Dear Graeme,

[REDACTED] has forwarded me a copy of your e-mail to him of 12 January 2012. I have been unable to discuss, as yet, with my wife who is away for a long weekend in Spain. However, I have the following comments:-

1. I do not believe the Council's interpretation of Schedule 14(3) of the Wildlife and Countryside Act 1981 ('the Act') as regards the position of the Planning Inspectorate is necessarily correct. The full wording of the relevant clause is 'Where the authority decide not to make an order the Applicant may, at any time, within 28 days after service on him of notice of the decision, serve notice of appeal against that decision on the Secretary of State and the Authority.'

I suggest it would only be open to the Planning Inspectorate to refuse to consider an appeal if the Council decided not to make an order on the basis that it was not duly made. In that case the Planning Inspectorate might refuse to consider an appeal.

2. With regard to the Council's position as regards whether the Application was duly made, I would note:-

i) Paragraph 2 of [REDACTED]'s 'Comments on Investigation Report - Norton Malreward'

'Firstly, the Report indicates that the application was not duly made. This comment relies on the judgment in the *Winchester* case which was heard in 2008. This judgment applies to those applications for DMMOs where reliance is placed on one of the exemptions in the NERC Act 2006 as to vehicular rights. The judgment clearly states that in respect of other applications, that is those such as the application currently under investigation, the Council can waive the formal procedures as to whether or not the documents relied upon actually accompany the application form. This application to delete was made in 1998. It was accepted as valid in 1998. If the Council did not consider it valid in 1998, the applicants should have been advised accordingly and the application returned. It was not. The judgment in *Winchester* does not apply in these circumstances. Reference to this point in the Report is therefore irrelevant and prejudicial to the applicants and should be removed.

ii) There is substantive correspondence in 1998 that indicates that the Council was treating the Application as duly made and Judith Gradwell undertook an Investigation which I now understand was virtually complete in the 1990's.

iii) The Council has not indicated at any time during the period of almost 14 years since the Application was made that it considered the Application as being other than duly made. The comment in your Investigation Report was the first indication that the Council considered or might seek to consider the application not to have been duly made. I think it would be very difficult for the Council to argue / determine that the Application was not duly made i.e. it is effectively estopped from so doing given how it has dealt with the Application since 1998 and further that it has had all the relevant documents within its own files.

iv) In my view, should the Council seek to argue or decide that the Application was not duly made it would be open to a claim of maladministration and / or judicial review and I do not see any basis under which it could win.

v) As indicated in 2 i) above it appears to be open to the Council to waive the formal procedures as related to whether or not the documents relied upon actually accompanied the Application. In my view its actions in 1998 and subsequently have given such a de facto waiver. It is also clear from your e-mail to [REDACTED] that you are still proposing to proceed to process the Application. It would therefore seem sensible for the Council to agree formally to provide the waiver rather than expect the Applicants to act in a way that is prejudicial to their strong case that the Application was duly made.

vi) If the Council no longer has copies of all relevant documents then I am sure Mr. Jones, Mr. Pye and Mrs Masters will endeavour to provide copies.

I should be grateful for your comments before I respond formally to [REDACTED]' e-mail to me.

Malcolm

Malcolm Hanney (Cllr.)

Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com

From: Malcolm Hanney (Cllr)
Sent: 28 January 2012 13:52
To: [REDACTED] Graeme Stark
Cc: Vernon Hitchman; Glen Chipp; [REDACTED]
Subject: Fwd: Norton Malreward

For info. The reference should be read in conjunction with my e-mail of 11 January 2012 to Graeme Stark to which I cannot trace a reply.

Malcolm

Malcolm Hanney (Cllr.)

Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com

From: Graeme Stark
Sent: 08 February 2012 10:01
To: Malcolm Hanney (Cllr)
Cc: Glen Chipp
Subject: CL 15/11 - Norton Malreward

Dear Cllr Hanney

I am writing further to my email sent on 22 December 2012.

Firstly, I would like to thank Mrs Hanney and yourself for taking the time to respond to the consultation and for raising your concerns. I can assure you that all these concerns and all the available evidence will be taken into consideration by the Authority's Regulatory (Access) Committee when determining the DMMO application.

We have previously been verbally informed by the Planning Inspectorate that they would only process a Schedule 14 Appeal if the application met the requirements of Schedule 14(1) of the Wildlife and Countryside Act 1981. I have been seeking written confirmation of their position on this matter which is one of the reasons for having only acknowledged receipt of your earlier email. The Planning Inspectorate have unfortunately not been forthcoming with a response and I am therefore grateful to you for providing a link which clarifies the situation.

Regards,

Graeme.

Graeme Stark
Senior Rights of Way Officer

Environmental Services
Telephone: 01225 477650
Facsimile: 01225 394205
Email: graeme_stark@bathnes.gov.uk
www.bathnes.gov.uk

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From: Malcolm Hanney (Cllr)
Sent: 15 February 2012 18:22
To: Graeme Stark
Cc: [REDACTED]
Glen Chipp
Subject: CL 15/11
Attachments: Comments on Investigation Report 111211.doc

Dear Graeme,

Thank you for copying me your e-mail of 15 February 2012 to [REDACTED]

I am a little concerned as to process. Is it your intention to prepare a report for Committee which would incorporate your Investigation Report and would the Investigation Report be amended from that which has previously been the subject of consultation?

If the Investigation Report is not to be amended, and given the comments in my wife's commentary sent to you previously (copy attached for ease of reference) there may be some concern as to whether all documentary evidence will have been reviewed and / or been properly the subject of consultation with opportunity for comment. I think there were also one or two phrases which might be viewed to be prejudicial.

I look forward to hearing from you.

Malcolm

Malcolm Hanney (Cllr.)

Home Address - Magna House, Battle Lane, Chew Magna, BS40 8PX
Telephone - 01275 333397 (H); 07768 943455 (M)
e-mail - mchanney1@aol.com

From: Graeme Stark
Sent: 16 February 2012 08:28
To: Malcolm Hanney (Cllr)
Cc: [REDACTED]
Glen Chipp
Subject: RE: CL 15/11

Dear Malcolm

Thank you for your email.

I will be preparing a report for Committee which will cover all the evidence and consultation responses received; I can confirm that the committee report won't include the investigation report.

Regards,

Graeme.

Graeme Stark
Senior Rights of Way Officer

Please consider the environment before printing this email

