

# North Somerset Council

## REPORT TO PUBLIC RIGHTS OF WAY SUB COMMITTEE

<b>Date of Meeting</b>	<b>:</b>	<b>19 November 2013</b>
<b>Subject of Report</b>	<b>:</b>	<b>Part of Footpath AX 6/12, AX 6/14 and AX 6/15 South Hill Farm Bleadon</b>
<b>Town or Parish</b>	<b>:</b>	<b>Bleadon</b>
<b>Officer/Member presenting</b>	<b>:</b>	<b>Elaine Bowman</b>
<b>Key Decision</b>	<b>:</b>	<b>No</b>

### RECOMMENDATIONS:

- i) That the Committee approve the making of a Section 119 Public Path Diversion Order for Footpath AX 6/12, AX 6/14 and AX 6/15; and
- ii) to arrange their subsequent confirmation if no objections are received when the Orders are published; or
- iii) if objections are received and sustained, to forward the Orders to the Secretary of State for determination, and to promote the Orders in any subsequent proceedings.

### 1. Summary of Report

This application submitted under Section 119 of the Highways Act 1980 proposes the diversion of parts of Footpath AX 6/12, AX 6/14 and AX 6/15 from their currently recorded legal lines which cross open land and pass through the farm yard of South Hill Farm Bleadon.

The proposal is to move AX 6/15 to a route which appears to be the preferred route currently walked by the public, to amend part of Footpath AX 6/12 to avoid passing through an old quarried area and a working farmyard to a route which will avoid the farm and pass into open fields and to divert Footpath AX 6/14 which again passes through the farm to an alternative route along the riverbank and open field to connect to the farm access track.

### 2. Policy

This proposal forms part of the management of the Public Rights of Way network and so contributes to two corporate aims: "enhancing health and well being" and "protecting the environment".

### **3. Application**

An application dated 14 February 2013 was received from the owner of South Hill Farm, Bleadon, through whose property the definitive lines of Public Footpath AX 6/12, AX 6/14 and AX 6/15 passes. The existing legal line of these footpaths and the proposed alternative routes are shown on Map No PPO 159 which is attached as **Appendix 1**.

The applicant wishes to divert Footpath AX6/14 away from the farmyard for Bio/Disease Security, Health and Safety concerns due to machinery being used in the farmyard. The diversion of this route will assist with avoiding contact between users and animals during 'over wintering' when the animals are brought into the farmyard area.

In addition to this at the point where Footpaths AX 6/12 and AX 6/15 intersect there is a small quarried area which the public seem to avoid. The applicant has based his proposed alternative routes, having used aerial photographs, upon where the public seem to be walking to avoid this area.

It would appear that the footpaths on South Hill are used by local walkers with or without their dogs and the routes to the south of South Hill Farm by users of the public rights of way network as part of longer walks. The applicant believes that those using the southern routes will enjoy walking along the River Axe with all the flora and fauna that goes with such a location.

This application has been out to pre order consultation and attracted six objections which are detailed below.

### **4. Legal Tests**

As this application relates to the diversion of public footpaths it is necessary to have regard of the provisions of Section 119 of the Highways Act 1980 detailed below

#### **Highways Act 1980 – Section 119**

##### **Section 119 (1)**

Where it appears to a council as respect a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order -

- (a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and
- (b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of Section (3) below, the public right of way

over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a "public path diversion order."

#### Section 119 (2)

A public path diversion order shall not alter a point of termination of the path or way –

- (a) if that point is not on a highway, or
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

#### Section 119 (3)

Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall -

- (a) specify a date under subsection (1)(a) above, and
- (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.

#### Section 119 (6)

The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which –

- (a) the diversion would have on public enjoyment of the path or way as a Whole,
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

## 5. Objections

The six objections are outlined below:

NAME	NATURE OF OBJECTION
<b>Objection No 1</b>	<p>We would like to express our concern over the new fencing on South Hill, Bleadon. While we understand the need to make stock secure, there has been stock on this hill for many years, without this extensive fencing being necessary.</p> <p>The natural beauty of the hill, which is enjoyed by many visitors to the area as well as locals, has been spoiled. This hill is on the edge of the Mendip Hills AONB, attracts many walkers, and with views over the Levels to Glastonbury; it is a Site of Nature and Conservation Interest.</p> <p>Although there are permitted footpaths marked on the map, these differ from the established footpaths which we have been walking for over 30 years. We feel that the current fencing has seriously spoilt our ability to walk across and around the hill whilst enjoying the views and space around it.</p> <p>In addition the top/north side walk from the quarry to Wonderstone has now been blocked by current fencing preventing access to Wonderstone or to complete a circular walk, or onto the Hellenge Hill route. Is there anything that can be done to open up this walk again? Are the other suggested diversions needed as the walks they affect are essentially the same?</p>
<b>Objection 2</b>	<p>Subsequent to our meeting on South Hill to discuss the PROW diversion proposals for South Hill we would like you to consider the following concerns and comments.</p> <p>The most feedback we have received is about the new fencing and the public's inability to complete a circular walk around the hill i.e. the fencing on the north side from the quarry to Wonderstone, and through the centre of the hill, which now cuts off access to one of the Hellenge Hill routes and Wonderstone. Although the north route is not an official one it has been enjoyed by local people and visitors alike for many decades, and locals in particular would like this to continue. Is there anything that can be done to open up this walk again as the current situation has substantially reduced the public's (and particularly the elderly dog walkers) ability to enjoy South Hill, lowering the character, quality and diversity of the walk and views experienced including those over the Somerset Levels and toward Glastonbury Tor. While we understand the farmer's want to ensure that his stock are safe and secure, such fencing has been unnecessary in the past, and certainly not present since we have been using this area.</p> <p>A route through a working farm is unique and a pity to lose. We are concerned that the proposed new route avoiding the farm should not unreasonably lengthen the path and access through to the river Axe or Shiplate. All paths should be maintained to protect users from any potential dangers or hazards e.g. boggy, slippery or overgrown paths to ensure public safety and enable them to use them easily. People are already more concerned that due to the new fencing</p>

	<p>potential routes of escape from the cows are more limited.</p> <p>We note that the proposed new routes have a minimum width of 2m for the footpaths. We would like to see that these always remain open and not bounded so as to maintain the surrounding natural beauty of the location within the SNCI and adjoining AONB i.e. not corridors of fencing with unsightly metal kissing gates which spoils the look and feel of the area.</p> <p>Although the new installed metal kissing gates interrupt the walk they should be safe and secure in the ground, they currently appear to be a temporary solution or work in progress.</p> <p>The proposed new route, as shown on the North Somerset plan, appears to divert paths away from the small quarry area in the centre of South Hill reducing the public's ability to enjoy this feature of interest.</p> <p>The current footpaths, official and unofficial, are currently maintained by grazing animals so we are keen to ensure that any new proposals should not result in any direct or indirect maintenance costs to the local taxpayer.</p> <p>We have walked South and Hellenge Hills for many years with our child and dog. We feel that the additional fencing and associated kissing gates will make it even more difficult to access and use the hill with pushchairs or other wheeled transport.</p> <p>In summary, when taken in combination with the restrictions of the new fencing, we do not see how these diversions will benefit the public, particularly if the historic circular walk remains blocked, so we must question the point of implementing them.</p>
<p><b>Objection 3</b></p>	<p>May I just make two comments about the reorganisation of footpaths on South Hill, Bleadon - a very well-used amenity by local villagers, an area with a rich limestone flora and an extremely attractive piece of open space that must be protected?</p> <p>First, I would be strongly opposed to any public footpaths being enclosed in fenced corridors as this would not only be unpleasant for walkers it would be detrimental to the visual appearance of the hill.</p> <p>Second, I am concerned that what was an unofficial path, or it may even have been a permissive path, from The Veale to Wonderstone is no longer accessible. I spent 25 years walking the hill with my dogs from about 1975 to 2000 and although this path was not part of my regular route I expect I will have walked it on occasions. It is a pity that this section is now closed to walkers. I wonder if you could please possibly negotiate a permissive path with the new landowner, to include suitable access, and with a sign saying it is a permissive path only. This would enable this part of the hill to be used by casual and serious walkers and would not be harmful to the grazing regime that the farmer has put in place. I am sure there are many other users of the hill who would wish the path to be reopened.</p>
<p><b>Objection 4</b></p>	<p>As a child growing up in Weston-super-Mare we frequently walked down the 'Old Line' (now Winterstoke Road) and up over the Hill from Hutton/Oldmixon with our dogs to walk the Hills and paths surrounding Bleadon. I was lucky enough to have a close relative who introduced me to the local wild flowers, fauna, birds and animals - it was a ready made 'Nature Lesson' where I learnt to respect and appreciate nature and its seasons.</p>

	<p>When having grown up and living elsewhere I regularly returned to this area and always aimed to return and settle in Bleadon. I returned to live in the village some eight years ago and as a senior citizen I can reflect on the many changes that have taken place. These changes have occurred with very few exceptions in the village itself - <b>not on the surrounding areas.</b></p> <p>Hence, I am writing to express my concern over the fencing and diversions that have recently been introduced on South Hill and of the new ones now set out in a further application.</p> <p>Over the past eight years I think I am correct in saying that a few of the cows have found their way down into the churchyard on two occasions - once coming down through the hedgerow above Birch Avenue and on the occasion using the pathway gate which had been left open. I therefore wonder why the present fencing is necessary let alone even more.</p> <p>Conservation quite rightly is high on the agenda and in its media information uses phrases such as 'Traditional Character' and 'Natural Environment'. The fencing and gates presently in situ and, if the same that which is proposed, can in no way be described as in 'Traditional Character' and so spoils a 'Natural Environment'.</p> <p>The initial fencing was installed and then just recently a locked gate was introduced so making it impossible to complete a circular walk around the hill, carry on to Wonderstone or across to Hillenge Hill.</p> <p>The footpaths have been walked with respect for many many years whilst appreciating the beautiful views across The Levels (with its history) and beyond. It also offered a sense of peace and freedom. Surely we should be protecting this at all costs.</p> <p>Returning to my initial remarks I do feel that we have a duty to protect this beautiful site so both the present and future generations can appreciate and enjoy the space and views. I do appreciate the need to make livestock secure but also this has been with case with the odd exception without the need for such fencing.</p>
<p><b>Objection 5</b></p>	<p>I have today walked the proposed Bleadon diversion and listened to the views of some local users.</p> <p>This would seem to be an ideal application to be settled by compromise. There is no doubt some of the paths are extensively used and objections could be put forward under enjoyment with many local loathe to lose the ability to walk through a working farm. Concerns also exist about the "walk ability" of some of the proposed routes</p> <p>It does seem however that they are even more loathe to lose the ability to walk a circular route around the hill which has been cut off by the new stock fence. I am advised that ample evidence can be produced to demonstrate usage (and a claim) of this route well in excess of the required 20 year period.</p> <p>I would urge the applicant to include dedication of the said route (under s25) as a condition to the confirmation of the order. I believe if this was included then the applicant would be more likely to achieve success.</p>

	<p>If not then I will organise the claiming of the route after taking further advice re the locals wishes.</p> <p>On a personal note I would ask that all furniture be installed to the required standards and dimensions as some kissing gate seem to have been planted rather than fitted. Way marking will also need to be improved</p>
<b>Objection 6 Ramblers Association</b>	Withdrawn

A site visit has been undertaken with some of the objectors above during the consultation period. When the consultation period ended all of the above comments were forwarded to the applicant for comment. In addition to this a site meeting has been held with the landowner and representative of the Ramblers Association to discuss their concern about the application. Following that meeting an email was received on the 1 August 2013 from the representative for the Ramblers Association which stated "I have discussed the proposed diversions at South Farm, with Somerset are foot-path secretary and am pleased to inform you that there are no objections from Woodspring Ramblers to the proposals submitted". Therefore their objection has not been detailed in this report..

## 6. Landowner response to Objections

NAME	RESPONSE TO OBJECTION
<b>Applicant Mr S Warburton</b>	<p>At the outset I do not consider 6 comments a high volume, especially as one is a pre consultation from The Ramblers.</p> <p>For one outlining compromise, this suggests give and take, no doubt that I will consider any proposals on that premise.</p> <p>I do not wish to enter into a discussion about good practices in forming this response. Suffice it to say it is a farmer's responsibility to ensure his animals do not leave his property. I take this seriously and therefore good fencing, gates etc are essential and for which I make, no apology. The ground in question is not 'open space' it is my livelihood, and it has rights of way across it.</p> <p>Comment 1. As I understand there is only one issue regarding the necessity to move the 'official line' to the line that people actually walk. As I have previously explained the only reason for moving this line is so it represents where people <u>do</u> walk and therefore any gates will be in the places where people walk rather than in a location designated by a red line and therefore avoiding disruption to the walkers of the footpath.</p> <p>Comment 2. The route through the farm, this has issues around Health and Safety, Bio – Security</p>

	<p>and no longer held as good practice. Farm yards have large items being moved by mechanical means, often poor visibility and slippery surfaces can be a recipe for disaster and not the place for safe walks.</p> <p>Grazing animals will still be on the hill with footpaths being maintained. As the works so far have been totally at my expense including the 'safe route' I have created outside the fenced area at the north boundary of the hill, solely put in for the Public's advantage, so people who wish to walk away from the cattle can do so, an example of give (and not take).</p> <p>Comment 3. There are no enclosed corridors.</p> <p>Comment 4. I fail to see any objection here.</p> <p>Comment 5. All the proposed diversions will be walkable without being any more difficult than current routes</p> <p>Comment 6. Comment removed as Objection withdrawn.</p>
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## 7. Council's assessment of application and objections

The application submitted by the landowners is an attempt to allow better management of the farm yard area as well as aligning the public rights of way's Definitive Map with routes that seem to be the preferred routes walked by the public.

As can be seen from the attached aerial photograph of this area taken in 2009 (**Appendix 2**) the use that has been made of this area is varied. Despite the depiction and signage of the existing public rights of way, users have walked all over this land. This land was previously owned by the Church Commissioners who tenanted out the land. At this time the area was open and available for the public to wander as they wished. Once the current owner took possession of the land he has decided to fence the area off in order to protect his stock. This was undertaken following consultation with the Public Rights of Way Team who advised on the most suitable furniture to install. Although initial furniture was installed incorrectly, the landowner has arranged for this to be corrected.

The applicant, who acquired this land in 2011, having recognised that the public were not walking the legal line of either Footpath AX 6/15 or AX 6/12, included these diversions within his application to divert Footpath AX 6/14 so that the main routes walked by the public could become the legally recorded routes.

In regard to the proposed diversion of AX 6/14 the landowner wishes to remove the footpath from going through the farmyard for Security and Safety reasons. The proposed alternative will take the public alongside the river, around and across fields to connect with the footpaths on the hillside.



**Section 119 (1) “that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted”**

It is clear that this application is in the interest of the landowners over whose land the existing rights of way pass. By diverting Footpath AX 6/14 to the proposed line this will provide the landowners with the privacy that they seek and will enable the landowners to re-inforce the security of their land, buildings and stock, including creating an area to the side of the farm for their animals when ‘over wintering’.

The landowner has expressed concerns relating to users of Footpath AX 6/12 passing through the yard area of the property where they may come into close contact with machinery and animals. The relocation of this footpath to an area which is away from the buildings will remove this potential conflict and give the users a pleasant walk with views of the countryside and connection to Footpath AX 6/14 to the riverside.

Certain aspects of this application can also be considered as being in the interest of the public. In respect of Footpaths AX 6/12 and AX 6/15 the landowner has proposed diverting the legal line to those being walked by the public as depicted on the aerial photographs.

**Section 119 (2) A public path diversion order shall not alter a point of termination of the path or way**

The existing line of Footpath AX 6/12 (D-E-F-G-H) at Point D is connected to Footpath AX 6/16. The proposed alternative route will also connect to Footpath AX 6/16. At the other end of the route the proposed alternative route will connect at Point H on AX 6/12.

The existing line of Footpath AX 6/15 at Point A is connected to Footpath AX 6/16. The proposed alternative route will also connect to Footpath AX 6/16 at Point C. The other end Point B is at the same location on AX 6/15.

The existing line of Footpath AX 6/14 at Point G connects to Footpath AX 6/12 which is the subject of diversion. The proposed alternative route along the river and field edge will connect back to Footpath AX 6/12 at Point H.

Therefore it would appear that the proposed alternative route shall connect to another point which is on the same highway, or a highway connected with it.

**Section 119 (6) deals with the confirmation of an Order.**

**An Order shall not be confirmed unless satisfied that the diversion to be effected by it is expedient as mentioned in section (1) and further that the path or way will not be substantially less convenient to the public.**

As can be seen from the objections that have been received to this application most of them relate to the changes that have occurred on this land namely the erection of fencing which has obstructed routes which are not public rights of way. The users of

the hill feel that this fencing now restricts their full use of the hill. However, this process should only deal with the proposal to divert Footpaths AX 6/12, 6/14 and 6/15. Claims that other routes should be recorded as public rights of way are dealt with under different legislation.

In respect of AX 6/14 it could be stated that this proposed diversion will not be as convenient to the public however it should be noted that pleasant views along the riverbank and fields will be replacing those of a working farmyard. In addition if the diversion of Footpath AX 6/12 is successful then without being diverted Footpath AX 6/14 will become a dead end path.

To illustrate the walking differences between the existing and proposed routes: Footpath AX 6/15, A – B is approximately 535 metres in length, whereas A-C-B is approximately 565 metres in length.

Footpath AX 6/12, D-E-F-G-H is approximately 588 metres in length, whereas L-E-M-H is approximately 617 metres in length.

Footpath AX 6/14, K-J-G is approximately 258 metres in length, whereas K-J-N-H is approximately 410 metres in length.

Although there are proposed increases in the lengths of these definitive routes these are not regarded as being excessive when balanced against the benefits of open extensive views of the countryside and removing the need to pass through a working farmyard.

## **8. Procedure**

If made, an Order can only be confirmed by North Somerset Council if no objections are received following publication and if the Council is satisfied that the legal tests in S119 of the Highways Act 1980, as outlined in Section 4 of this Report, have all been met.

In the event of an objection being sustained, the decision rests with the Public Rights of Way Sub Committee as to whether the matter should be submitted to the Secretary of State for determination or that the Order should be abandoned leaving the legal line unaltered. When referred to the Secretary of State the matter can be dealt with in a number of ways: Written Representations; a Hearing or a Public Inquiry. Written Representations are the least expensive procedure and a Public Inquiry is the most expensive procedure.

## **9. Financial Implications**

The applicant has undertaken to bear the Council's charges for administration and advertising of the Order, to meet the costs of bringing the new path into a fit condition for use by the public and to defray any compensation which may become payable to any other landowner affected by the diversion. If the Order is submitted to the Secretary of State for determination, none of the associated costs can be recovered, so these would be borne by the Council.

## **10. Consultation**

Pre-Order consultations were carried out on 2 May 2013 (Utilities, Local Contacts, Parish/Town Councils, Councillors and Owners/Occupiers). Six objections were received as detailed above however it should be noted that Woodspring Ramblers have subsequently withdrawn their objection.

## **11. Equality Implications**

The public rights of way network is free at the point of use and available to all irrespective of wealth, gender or ethnic background.

## **12. Corporate Implications**

The changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

## **13. Options Considered**

The options considered were:

- i) To approve the making of a Section 119 Diversion Order for Footpath AX 6/12, AX 6/14 and AX 6/15 and subsequent confirmation if no objections are received when the Order is published or, if objections are received and sustained, to forward the Order to the Secretary of State for determination, and to promote the Order in any subsequent proceedings.
- ii) That the Committee decline to proceed with this application.

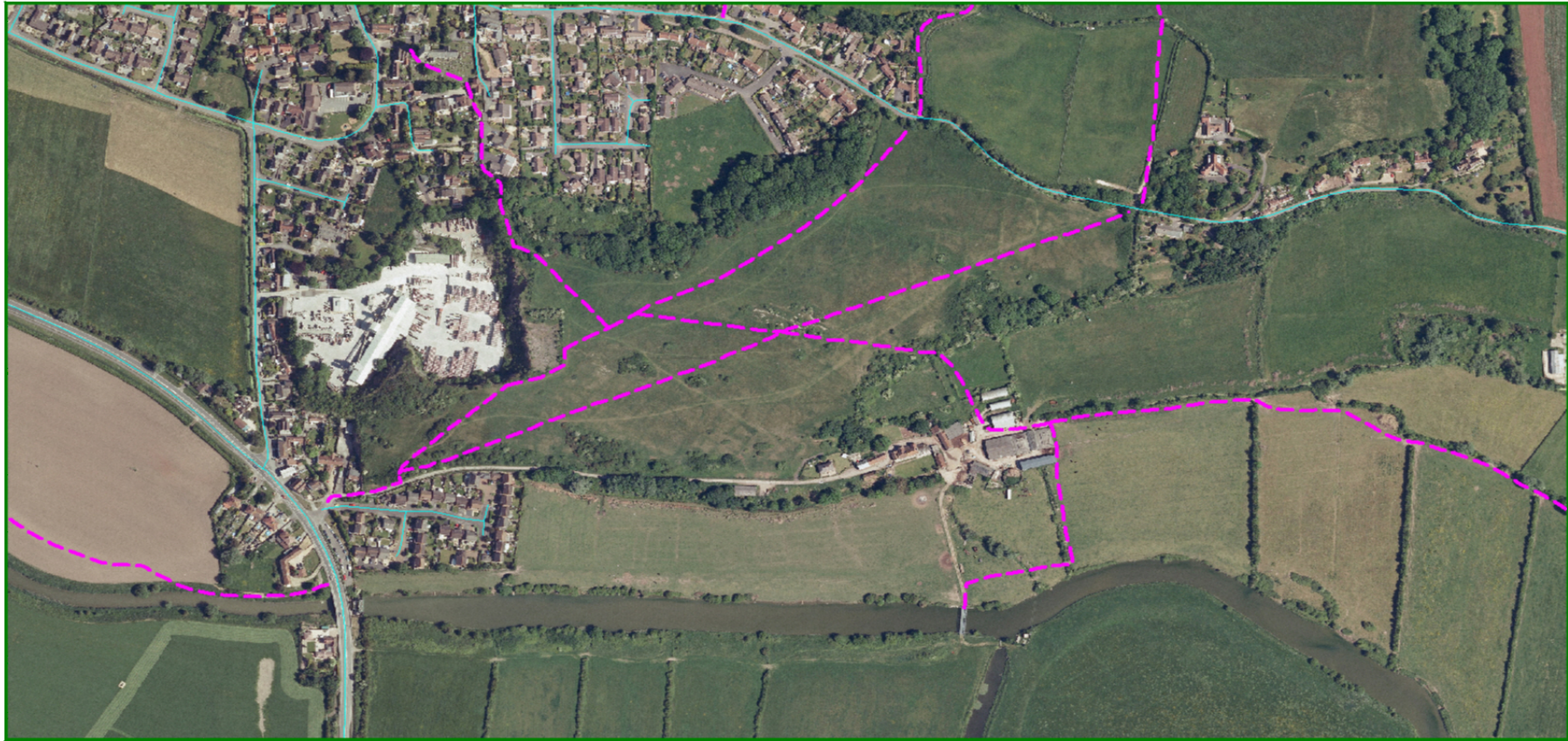
## **Author**

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## **Background Papers**

Access Team File PPO 159





The Definitive Map has a relevant date of 26th November 1856 and has not been formally re-published since then. This map shows an electronic working copy of the Definitive Map which attempts to show the information on the Definitive Map and any subsequent legal changes. The Council can accept no responsibility for any error or inaccuracy which may arise from use of the electronic Working Copy map.

	<b>Development &amp; Environment</b> Public Rights of Way Streets and Open Spaces North Somerset Council Town Hall Walliscote Grove Road Weston-super-Mare BS23 1UU  Tel: 01934 888 802	<b>Project</b> <b>AX 6/12, AX 6/14 and AX 6/15 Proposed Public Path Diversion Order</b>	 <b>Scale 1:5000</b>
		<b>Location</b> <b>South Hill Farm Bleadon</b>	<b>Drawn by</b> <b>E Bowman</b>
		<b>Client</b> <b>PROW Sub Committee</b>	<b>Drawing No.</b> <b>PP0 159</b>
		<b>OS Licence No.</b> <b>100023397</b>	<b>Date</b> <b>4 November 2013</b>

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