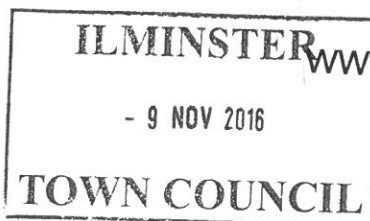


**Somerset County Council**

County Hall  
Taunton  
Somerset  
TA1 4DY

30/11/16 - message left  
saying response would be  
sent after 16.11.16.



WWW.SOMERSET.GOV.UK



Agenda No 8

Miss J. Norris, Clerk  
Ilminster Town Council  
Council Offices  
North Street  
Ilminster  
TA19 0DG

please ask for  
Erica Darch

direct line  
01823 356242

email  
edarch@somerset.gov.uk

my reference  
RW/795M

08 November 2016

Dear Miss Norris,

**WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53 APPLICATION**  
**To upgrade footpath CH 32/21 (Winterhay Lane) to a restricted byway, Ilminster**

The County Council has received an application from the South Somerset Bridleways Association. The Association believe that the above mentioned footpath in Ilminster (i.e Winterhay Lane) has been wrongly recorded on the Definitive Map and Statement<sup>1</sup> and that it should in fact be shown as a Restricted Byway<sup>2</sup>. The application therefore seeks to modify the Map and Statement to reflect this. The route in question is coloured blue on the enclosed plan.

To support their application the Association has submitted various historic documents. The applicant is of the opinion that the evidence demonstrates that, at some point in the past, higher rights existed over the route. If this is correct, and if those rights have not subsequently been extinguished or diverted, then they will still legally exist today and as such will need to be recorded on the Definitive Map.

As you may recall, there was a recent investigation of the nature of public rights of way over Winterhay Lane (SCC reference 252M) which concluded in the confirmation of the Modification Order to record a footpath over the route on 29 June 2016<sup>3</sup>. However, the application referred to above is a separate application submitted after the investigation of case 252M had progressed significantly. The decision was taken not to delay the outcome of the first case by attempting to incorporate a second application at a relatively late stage in the process.

In order for an application to be successful it requires the 'discovery of new evidence'

<sup>1</sup> The Definitive Map and Statement are the legal record of public rights of way in the county.

<sup>2</sup> Restricted byways are rights of way which can be used by any member of the public on foot, horseback, bicycle or any other non-mechanically propelled vehicles such as a horse and cart.

<sup>3</sup> Heidi Cruickshank Inspector, The Planning Inspectorate, Order Ref: FPS/G3300/7/94

that was not considered as part of the previous investigation. If such evidence were to come to light then it would need to be considered alongside the other available information<sup>4</sup>. However, as this application currently stands it does not appear to contain any evidence that was not considered by The Planning Inspectorate when they made their decision regarding Winterhay Lane in June. Therefore, unless more evidence is forthcoming, it seems unlikely that the requirement for new evidence will be met. In such circumstances the County Council would not be in a position to make an order to record the additional rights claimed and the application would be rejected.

However, the County Council still has a responsibility under Section 53 of the Wildlife and Countryside Act 1981 to consider any application and to decide whether or not an Order should be made. The effect of any Order if made would be to amend the Definitive Map and Statement.

I am in the process of investigating this claim and should be very grateful if you would assist by providing me with any information that you consider relevant. It would be particularly helpful if your council could provide any factual evidence relating to the route under investigation. I should be grateful if you would let me know the records you have retained, the years they cover and whether or not they reveal any information to help our enquiries. I realise that this may not be a simple task and so, if there is anything that I can do to assist or if you would like any further information regarding the application or the process currently being followed please feel free to contact me.

Importantly, under the current legislation, opinions on the desirability or otherwise of the proposed modifications are irrelevant. Instead the County Council is tasked with deciding what, if any, public rights already exist over the routes in question. Further information about our responsibilities, the Definitive Map and the legal background to applications of this type can be found in Natural England's booklet entitled 'A Guide to Definitive Maps and Changes to Public Rights of Way'<sup>5</sup>.

It would be helpful if you were able to submit any evidence in the next 28 days. However, if you need more time, or if you have any questions concerning the application please let me know.

Please note that under the current rules governing Parish Councils I am afraid that I am unable to accept representations from a member of the Parish Council on behalf of the Council. The response from the Parish Council must come from the clerk (or the chairman if acting as clerk). To this end I should be grateful if you would add this consultation as an agenda item at your next meeting and send me a copy of the resolution.

Thank you for your help.

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<sup>4</sup> Section 53(3)(c) of The Wildlife and Countryside Act 1981.

<sup>5</sup> A copy of which can be found on this page of their website:  
<http://publications.naturalengland.org.uk/publication/31038>.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'E Darch', written in a cursive style.

Erica Darch  
Rights of Way - Definitive Map Team

Please note that Somerset County Council is a data controller for the purposes of the Data Protection Act 1998. This Act regulates how we obtain, use and retain personal information. The information you supply will be used for the purpose of fulfilling our functions and duties, including those under the Highways Act 1980 and the Wildlife and Countryside Act 1981. Any information provided, including personal details will be available for public inspection, disclosed to interested third parties and may be used during public inquiries and other proceedings. By replying to this consultation you are consenting to your personal information being retained and used for these purposes.



Parish: Ilminster  
 District: South Somerset  
 Date: 26/10/2016  
 Drawing No: H070-2016  
 Drawn By: MHardwill  
 Grid Ref: 334900 115370  
 Scale: 1:6000



**Section 53 Wildlife and Countryside Act 1981.**  
**795M**  
**Claimed Restricted Byway over Footpath CH 32/21 Winterhay Lane, Ilminster**

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 The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.