

**COMMONS AND RIGHTS OF WAY COMMITTEE  
4 OCTOBER 2022**

**AGENDA ITEM: APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO:-**

- 1) ADD A LENGTH OF PUBLIC BRIDLEWAY, KNOWN AS GUNHOUSE LANE, CONNECTING LONDON ROAD (A419 PUBLIC HIGHWAY) WITH THRUPP LANE (41327 PUBLIC HIGHWAY), &**
- 2) ADD A LENGTH OF PUBLIC FOOTPATH, KNOWN AS GUNHOUSE LANE, CONNECTING PUBLIC FOOTPATH ZST57 & SAID LONDON ROAD, BRIMSCOMBE & THRUPP PARISH, GLOUCESTERSHIRE**

**REPORT OF THE ASSISTANT DIRECTOR: TRAFFIC AND TRANSPORT**

**1. PURPOSE OF REPORT**

To consider the following application: 573/11/36.5(1) previously 573/11/214(11)

**Nature of Application:** A length of footpath & separate bridleway at Gunhouse Lane, Bowbridge, Brimscombe & Thrupp Parish

**Name of Applicant:** Mrs M Fernando & Mr W T Reddaway

**Date of Applications:** 1 December 2020

**Landowners:** Moore, Allen & Innocent, for and on behalf of The Executors of the late R I Orchard, Mrs P. Laing, Mr D. Cook & Mr M. Cullimore

**Witness Evidence forms:** Total of 45 PPEFs submitted by 46 individuals.

**2. RECOMMENDATIONS OF THE CASE OFFICER**

- That no order is made to add a bridleway between the points A-D-B-C to the legal record of public rights of way.
- That an order is made to add a restricted byway between the points A-D-B-C.
- That an order is made to add a footpath between the points D-E.

**3. RESOURCE IMPLICATIONS**

Average staff cost in taking an application to the Committee- £5,000. Cost of advertising Order in the local press, which has to be done twice, is approximately £500 per notice. In addition, the County Council is responsible for meeting the costs of any Public Inquiry associated with the application. If the application were successful, the routes would become maintainable at the public expense.

**4. SUSTAINABILITY & EQUALITY IMPLICATIONS:** no such implications have been identified.

**5. DEPARTMENTAL CONTACT**

Jaci Harris, Asset Data Officer (Definitive Map), Highway Authority.  
Telephone Gloucester (01452) 328981  
E-mail: [jaci.harris@gloucestershire.gov.uk](mailto:jaci.harris@gloucestershire.gov.uk)

6.

### **STATUTORY AUTHORITY**

Section 53 of the Wildlife and Countryside Act 1981 imposes a duty on the County Council, as surveying authority, to keep the Definitive Map and Statement under continuous review and to modify it in consequence of the occurrence of an 'event' specified in sub section [3]. Any person may make an application to the authority for a Definitive Map Modification Order on the occurrence of an 'event' under section 53(3) (b) or (c). The County Council is obliged to determine any such application that satisfies the required submission criteria in accordance with schedule 14 of the Act.

Section 53(3)(c)(i) relates to the discovery by the Authority of evidence that shows that a right of way that is not shown on the map and statement subsists, or is reasonably alleged to subsist, over land in the area to which the map relates.

**HIGHWAYS ACT 1980 - Section 31:** Dedication of a way as highway presumed after public use of 20 years.

- a) Where a way over any land...has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- b) The period of 20 years...is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice...or otherwise.

### **PRESUMED DEDICATION AT COMMON LAW**

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate the way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises lies on the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

## **REPORT**

### **7. ISSUES TO BE DECIDED**

- 7.1 The primary issue to be decided is whether there is evidence to show that public rights subsist or are 'reasonably alleged' to subsist. It is not necessary therefore for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map and Statement ("DMS") can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, an order should be made so that the evidence can be tested at a public inquiry.
- 7.2 Where a Definitive Map Modification Order ("DMMO") is made, the process allows for objections to the order to be submitted. Further evidence could potentially be put forward

for examination along with an objection. In these circumstances, the County Council cannot confirm the order, and the matter would need to be referred to the Secretary of State.

- 7.3** Where an order has been made and no objections are received, the Order Making Authority (“OMA”) can confirm it.
- 7.4** In the event of an application under Section 53 being refused, the applicant has the right to appeal against the decision to the Secretary of State, who may direct the OMA to make the order that is sought.

## **8. BACKGROUND**

- 8.1** A location map at scale 1:15,000 is attached (**JH1**) showing Gunhouse Lane, Bowbridge. It is found within Brimscombe & Thrupp Parish, approximately 1.8km southeast of the centre of Stroud and is found within Ordnance Survey Grid Squares SO8504 & 8604.
- 8.2** The Definitive Map Modification Order (“DMMO”) application, made jointly by Mrs Fernando & Mr Reddaway on 1 December 2020, included Form 1 and an accompanying map of the claimed routes drawn at 1:1,2000 scale. Form 3 was also supplied, certifying that the application had been served upon Mr M Cullimore, Mrs P Laing, Mr D Cook & Mr R Orchard.
- 8.3** Mr Watton of Hawkins Watton Ltd, responded on behalf of Mr Orchard by letter on 22 December 2020. He stated *“I suspect that there is no query as to the existence of the footpath but there is an obvious inconsistency to the designation as a bridleway by virtue of the exit onto Thrupp Lane which is barred by an existing right of way and construction of the wall onto Thrupp Lane. This therefore cannot be achieved for use by horses due to the danger of entering Thrupp Lane.... I therefore confirm that I am authorised by Mr Richard Orchard, the freeholder of the land in question to object to the designation...”*

## **9. DESCRIPTION OF CLAIMED ROUTES**

- 9.1** A plan of the claimed routes at a scale of 1:2500 is attached (**JH2**). The claimed bridleway is shown as a continuous black line with cross bars at intervals between points A-D-B-C and the claimed footpath is shown as a broken black line between points D-E. Both routes are known as Gunhouse Lane and therefore to distinguish between them, this report refers to the route A-D-B-C as the ‘*main*’ route and the route D-E as the ‘*spur*’ route. They were surveyed on 25 May 2022.
- 9.2** **The main route** commences at a point shown A on the plan at Ordnance Survey Grid Reference (“OSGR”) SO 8586/ 0426 at its junction with the A419 public highway (known as London Road). On highway land near point A, there is an aluminium sign stating ‘Gunhouse Lane Private Road’ (Google Map - not in existence in July 2012) and a 20 mile an hour speed limit sign. A further similar sign stating ‘Private Road-No Parking’ is located at point D (Google Map – not in existence in July 2009). A third handmade ‘Private Road’ sign is located just beyond the boundary of The Elms Coach House. A substantial pillar is located in the vicinity of point D on which the remains of old hanging plate fixings for a gate is attached. The route extends in a south easterly direction for a length of approximately 437metres to a point marked B on the plan at OSGR SO 8617/ 0398. The route then continues in a generally southerly direction for approx. 49metres to a point marked C at OSGR SO 8617/0393 at its junction with the 41327 public highway, known as Thrupp Lane. The section of route between points A-D-B has a good tarmac surface, is without limitation and has a width of approx. 3m. The section of route between points B-C crosses a small coppice. Although unenclosed, there is a width of approx.1.5m between trees, it is un-surfaced and terminates at a wall which has been constructed to incorporate a 1.4m gap, on which the remains of old hanging plate fixings for a gate were found. Land Registry

records that householders along Gunhouse Lane have private easements to drive motor vehicles along it. Any private easements remain unaffected by this report.

**9.3 The spur route** is shown commencing at a point marked D on the plan at OSGR SO 8590/0424 at its junction with the main route where a 'walking man' directional arrow is fixed to a metal post pointing along the spur route. On this same post is the previously described 'Private Road - No Parking' sign. The part enclosed; part unenclosed route extends in a north easterly direction for a length of approximately 84 metres to a point marked E on the plan at OSGR SO 8597/0430 at its junction with Public Footpath ZST57. The first approx. 17 metres of route has a good tarmac surface which gradually deteriorates becoming an un-made, unenclosed track without limitation.

**9.4** Photos of the 2 routes are held (**JH3A-K**).

## **10. CONSULTATIONS: affected landowners**

**10.1** On 17 & 18 May 2022, letters of consultation were sent to the following landowners which Land Registry indicated were directly affected by this application: Mr R I Orchard (Braybourne, 31 St Stephen's Road, Cheltenham), his legal representative, Mr Watton of Hawkins Watton Ltd, Heathville Residential Care Ltd, Mr D A Thorley & Ms C I Blakemore, Mr R N Cullimore, Ms S A Orchard, Ms A Orchard, Ms G Orchard and Ms H Wittig, Ms J Riley & Mrs J Orchard. The full letters and any responses are held as background papers to this report. Any responses pertinent to this report will be included.

The letter to Mr Orchard was returned as 'not known at this address', and a second letter was sent on 23 May 2022 to his business address, C/O Autocrafts (Stroud) Ltd, Staverton Court, Cheltenham, (again, his legal advisor was copied in). It should be noted that Mr Orchard is now deceased and at the time of processing this application, his estate is subject to probate.

Following a telephone conversation with Mrs Orchard on 26 May 2022, the consultation paperwork was sent to her on 4 July 2022, and we agreed to extend the consultation until the end of August. On 13 July 2022, Davies and Partners advised us that they were representing Mrs Van Orchard.

### **10.2 Moore, Allen & Innocent on behalf of The Executors of the late R I Orchard ("Estate") responded by email on 31 August 2022**

The email included a copy of a Landowners Evidence Statement ("LES") sent to Mrs Orchard on 4 July 2022. The accompanying Declaration clarifies that it has been filled in by Moore Allen & innocent on behalf of The Executors of the late R I Orchard.

The LES confirms that Mr Orchard was the Freehold owner of the land affected by the application.

Within the LES, general claims, without any direct supporting statements are made, including

- Members of the public were stopped or turned back from using the route.
- A walking group in 2011/12 was advised that the route was not public.
- Use of the route on horseback over the years was with permission – either express or due to rights in their deeds.
- A 'closed' gate at the eastern end of the claimed bridleway existed until around 2008/9".
- Notices were installed: "Private Road" at point A (prior to 2000) and "Trespassers will be prosecuted" at point B (prior to 1970).

- The following comments were made, *“The late Mr Orchard was well known to the horse-riding community and was known to have given a number of horse riders and groups explicit permission to use the route now claimed as bridleway. The use of this route on foot was generally accepted and tolerated – in effect the route has been treated as a permissive footpath”*.
- *“The owners of Tanglewood ran a yoga studio around 2011-12 and customers of this used to park on the route, which was deterred resulting in the addition of hedging. A group of cyclists using the route for racing were stopped in around 2014. Approaches from walking groups in around 2011/12 were rejected”*.
- *The Pony Club were given permission for youngsters on horseback to use the route to avoid the main road on Pony Club meeting days.*

### **10.3 CONSULTATION: adjacent landowners**

**10.4** On 18 May 2022, letters of consultation were sent to the following properties adjacent to the claimed routes: The Gunhouse, Gun House Cottage, Moreton Place, The Elms Coach House, Elm Cottage, Thrupp Lodge, The Elms, Solstice, 39 Thrupp Lane, Tanglewood, Campden Lodge, Red Roofs, Cotswold, Corinium, Lagham, Windrush, Ardoo, 27, Thrupp Lane, 43, Thrupp Lane, The Old Coach House, Flats A - L Thrupp House. The responses received are as follows:

#### **10.5 Red Roofs – (23 May 2022)**

*“We frequently use the claimed bridleway, shown by red line A to B, for walking and cycling and have done so since we moved to Gunhouse Lane in 2015. When 2 of our children were at Thrupp school we used this route to walk to and from school. We have also observed many people using this route cycling, walking and horse riding. We also use the footpath frequently, route C to D on the map to go for walks and again have observed many other people doing so too”*.

#### **10.6 Lagham – (23 May 2022)**

*“By reference to the map provided with your letter Gunhouse Lane is a Private Lane that commences at Letter D (i.e., not the short stretch from A to D) and provides access to the various private properties in Gunhouse Lane as well as access to Thrupp House at the top of the Lane. I have resided continuously at the property with my family since the building was completed in 1962. At all times Gunhouse Lane has been a Private Lane and is clearly marked as such beside the lane at Letter D as shown on your map. Over the past 60 years I am unaware of Gunhouse Lane being used by the public either on foot or horseback or for any right of way to do so. Indeed, residents of the properties have historically challenged strangers using the lane pointing out that it is a private lane. There is no through road for a vehicle to use. As such the lane is used by residents to access their property. The cost of upkeep and maintenance of Gunhouse Lane is a burden for the residents as the road is not adopted.*

*In summary Gunhouse Lane is owned by the residents and to the best of my knowledge there has never been any intention, express or implied, by the residents to grant rights of way on foot, horseback, or car. If you require any further information, then please feel free to contact me”*.

#### **10.7 39 Thrupp Lane (24 May 2022)**

*“We have lived in the lane for 32 years. Gunhouse Lane and the footpath are owned by the late Mr Richard Orchard, he died earlier this year so his executors will be in charge. Gunhouse Lane has a sign down the bottom near the A419 saying “Private Road” (near your letter D). There was a sign on the Thrupp Lane gate entrance to the proposed Bridleway (sic) saying “Private, Trespassers will be Prosecuted” at your letter B (Author’s note – on*

appendix JH2 this is point C). (However, the gate was damaged about 15 years ago and there has not been a sign there since). As I understand it, residents of Gunhouse Lane had permission to use the footpath, but not the general public. Please be aware that the exit from the route onto Thrupp Lane (at your letter B) is dangerous as there is no visibility due to the high wall. The tree roots and tree stumps on the route make it a trip hazard”.

#### **10.8 Windrush (7 June 2022)**

*“My wife and I were delighted to receive your invitation to comment. We moved to live in this Lane in 1974. Our three children took up places in local schools. The youngest attended Thrupp School in Thrupp Lane. From the outset he would walk up from Windrush the short distance through the yew wood at the top of the Lane to gain direct access to Thrupp Lane and on to school.*

*The only alternative would be a much longer route down to the bottom of this lane, along the single-track route immediately alongside the A419 with his back towards the oncoming traffic speeding away from the Bowbridge traffic lights and up Thrupp Lane at its lowest end. It has no pavements.*

*This same route up Gunhouse Lane has been followed over the years since and continues today by pupils attending Thrupp School and who come from the Bowbridge Wharf and Lock areas and cross the A419 at the Bowbridge Traffic lights. They are never a problem, we exchange greetings with escorting parents, and all is part of a pleasant, safer, and perhaps unusual journey to school. The landowner keeps the wood clear of scrub so that it can be used in this way.*

*I should mention that the local post box is also just a short walk up from the far side of the wood and like most other residents who live in the longest section of this uphill lane we have used this route through the wood since we came here. One resident moved in 1965...*

*We do see occasional walking groups and individuals passing by in the lane, so the usage is well established. The horses too - we occasionally only see two or perhaps three - are a splendid sight as they clop sedately by. However, in these changing times, it would be good to see things properly formalised. We hope this will now happen”.*

#### **10.9 The Elms Coach House (Bowbridge/ Thrupp Residents Association & Neighbourhood Watch BTRA) (23 May 2022)**

*“Since 2010 the Bowbridge Thrupp Residents Association (BTRA) has represented the interests of the residents of Gunhouse Lane and Thrupp lane (from London Road to Thrupp School)”. Having consulted the BTRA members I write to confirm that we have had free and full rights of access in an uninterrupted and continuous fashion to the areas marked A B C D on the map and are fully in favour of a bridleway being added as proposed”.*

#### **10.10 The Elms Coach House (undated)**

*“We have been the registered owners of the property known as The Elms Coach House..... since 7 September 2006 during this time, we have had free and full right of access in an uninterrupted and continuous fashion to the areas marked A B C D. On purchasing The Elms Coach House, we received Statutory Declarations from the past owners of the property copies of which I attach herewith. We have the original documents in our possession. We are fully in favour of a bridleway being added as detailed on the map you supplied with your letter”.*

#### **10.11 Thrupp House (Hoskin) – (23 May 2022)**

*“Further to our phone conversation today re. Gunhouse Lane order application for additional Bridleway and Footpath {your ref-573/11/214(11)}-here are some comments and thoughts about this application.*

Thank you for your reassurance that the section of the proposed Bridleway on Gunhouse Lane- running from near Thrupp House to Thrupp Lane **will not** be altered.

- The road from the A419 up to Thrupp House is currently metalled and used by vehicles. (as well as walkers, horses etc), then just beyond Thrupp House this road becomes a **footpath**, through a small spinney of old yew trees, leading to a gateway in the wall that opens onto Thrupp Lane. This section is currently used by walkers, horses, and cyclists...this is not a problem.
- I would strongly object (and believe other residents would too) if this section were to be altered in any way, necessitating the felling of the yew trees, and widening the historical gateway in the wall on Thrupp Lane.
- Currently Gunhouse Lane is a **cul-de-sac for vehicles**, this makes it much safer for pedestrians, particularly children who use this as a route to and from Thrupp Primary School, horse riders and cyclists.
- This is an **Area of Outstanding Natural Beauty**-having through vehicles using Gunhouse Lane would damage wildlife -flora and fauna etc”.

## 10.12 CONSULTATION: general

10.13 On 19 May 2022 letters of consultation were sent to representatives of the Open Spaces Society, Cycling UK, Cheltenham & County Cycling Club, The British Horse Society, The Ramblers Association, Brimscombe & Thrupp Parish Council, Stroud District Council, County Cllr Turner. The following responses were received:

### 10.14 Stroud District Council (email of 19 May 2022)

*“Thank for your email with accompany letter and plan showing the proposed modification to the existing PROW. Having looked at both I have no comments to make on behalf of SDC and will leave the application to be determined in accordance with the relevant processes”.*

### 10.15 The Open Spaces Society (25 May 2022)

*“I have no evidence to offer but fully support the application.  
I shall be glad if you can inform me of any objections received, please”.*

### 10.16 Brimscombe & Thrupp Parish Council (emailed letter 29 June 2022)

*“The Parish Council considered this matter at their meeting on 7th June 2022, agenda item 8.8. The Parish Council agreed to support this application and asked for me to write to you to communicate this.”*

### 10.17 Brimscombe & Thrupp Parish Councilor Whiteside (23 May 2022)

*“Thank you for your notification. As a parish Councillor for Brimscombe and Thrupp I would like to confirm that I have used the bridleway (sic) for both walking and cycling since 1996 and the footpath for walking”.*

### 10.18 The Ramblers Association (7 June 2022)

*“Thank you for your letter dated 19th May (Your Ref 573/11/199(1)) regarding the application to add a bridleway and a footpath to the Definitive Map...Local Ramblers members are familiar with these routes and there has been a recent site visit to the routes.*

*Claimed Bridleway A to B.*

*About three quarters of the route is a private road about 2.5 meters wide and is therefore suitable as a bridleway. However, the southeast end of the route, between Thrupp House and Thrupp Lane is an earth route which is only about one metre wide in places. Due to this surface and use by cycles and horses the route can become muddy and rutted,*

*making it difficult to use by walkers. We have observed that this route is used by school children rather than the footway along the main road, making it a safer route. Ramblers note that an increase in the route width and an improvement to the surface on this section would ensure the bridleway is available at all times to all users.*

#### **Claimed Footpath C to D**

*Ramblers have no issues with this route which appears to be open and well used. Taking into account the observations above Gloucestershire Ramblers would have no objection to the proposed application to add a bridleway and a footpath to the Definitive Map”.*

## **11. USER EVIDENCE**

- 11.1 The extent and nature of the claimed use;** 45 Public Path Evidence Forms (“PPEFs”) completed by 46 individual members of the public were submitted in support of this application in 2020. The user evidence for the claimed routes is substantial and long running. It indicates extensive, public enjoyment of the routes for a period of up to 53 years dating back to 1967. Use of the route is described as being for access to ‘The Heavens’, for travelling to work, shopping, dog walking and recreation. Witnesses claim to have used the main route by foot, horseback, and bicycle and the spur route on foot only. There is an element of overlap due to some individuals using a combination of modes of transport. A summary of PPEF’s can be seen at **(JH15)**.
- 11.2** There is some conflict regarding the perceived ‘use’ of the main claimed path by local residents living along Gunhouse Lane. One resident (para 12.7) stated, *“Over the past 60 years I am unaware of Gunhouse Lane being used by the public either on foot or horseback or for any right of way to do so. Indeed, residents of the properties have historically challenged strangers using the lane pointing out that it is a private lane.* However other statements contradict this, as follows: - 1) (para 12.6), *“We have also observed many people using this route cycling, walking and horse riding. We also use the footpath frequently, route C to D on the map to go for walks and again have observed many other people doing so too”* and 2) (para 12.9) *“We do see occasional walking groups and individuals passing by in the lane, so the usage is well established. The horses too - we occasionally only see two or perhaps three - are a splendid sight as they clop sedately by”.*
- 11.3** A further email response was received from a householder (para 12.8) who has lived in Thrupp Lane for 32 years (since 1990). He advised that a sign saying *‘Trespassers will be prosecuted’* had been attached to the gate onto Thrupp Lane at point C but it was removed approx. 15 years ago (author’s note: -approx. 2007). This sign was similarly claimed by the Estate who said it was in situ prior to 1970. Section 31(3) Highways Act 1980 provides that where the owner of land *“erected in such manner as to be visible to persons using the way, a notice inconsistent with the dedication of a way as a highway... is sufficient evidence to negative the intention to dedicate the way as a highway”*. This notice was aimed at all members of the public and would therefore be capable of rebutting the claimed use of the main route subject to this application leading up to 2007. It is noted however that the gate and sign were not replaced by the landowner.
- 11.4** Further, the Estate pointed to 3 ‘Private Road’ notices located along the main route, one at point A which they allege was in situ prior to 2000. Google Earth however shows a ‘Private Road’ sign in situ at this location in 2015 but a sign saying ‘Gunhouse Lane’ only on the previous 2012 & 2009 Google Earth photos. The second sign at point D was not shown as being in situ in 2009. Unhelpfully, Google Maps do not hold more recent photos at this point but as it is a similar sign to the one at point A, it would be reasonable to infer that they were installed at the same time. It is not known when the third painted handmade sign was installed. As stated in the previous paragraph, Section 31(3) Highways Act 1980 provides that a carefully



worded sign, inconsistent with dedication, can rebut a claim of dedication. Use of the word 'road' however on these signs suggests use with motor vehicles. As a result, these signs would not rebut a claim of a lower status, i.e., footpath, bridleway, or restricted byway, none of which permit public use with motor vehicles.

**11.5** One of the requirements of statutory dedication is evidence of 20 years use of a path by members of the public. If we consider the 20-year retrospective timeframe from the date of application (2020) to the date that the "*trespassers will be prosecuted*" notice was last in situ (2007), we have only 13 years of user evidence to analyse. Worse yet, statutory dedication requires that the 20 years use must be counted retrospectively from any action which challenged public use (in the event of no challenge, the application date can be used). The "private road" signs, although not rebutting a claim based upon pedestrian, equestrian and/ or cycle use, would present a challenge to public use and this would have the effect of reducing the 13-years down to 8. A claim of statutory dedication for this application therefore cannot succeed.

**11.6** Where an application fails the test for statutory dedication under S31HA80, rights may have been dedicated at common law. *Essentially, evidence is required to show that a landowner at some point in the past dedicated the paths and that they were accepted by the public.* The principals regarding use, i.e., use being by the public, 'as of right' (without force, secrecy, or permission) apply equally at common law. The question of dedication is purely one of fact and public user is no more than evidence, which has to be considered in the light of all available evidence. Public use will not, therefore, raise the inference of dedication where the evidence in its totality shows that the public right of way status was not intended. The claimed use must be sufficient and will therefore vary according to the particular circumstances of the case, but case law shows that inference is more likely where the way has been physically laid out by a landowner and the public has 'accepted' it through use. No minimum period of time for the use is required and, in some cases, relatively short periods have been accepted to infer that there was an intention to dedicate at common law. In the case of *R v Petrie* (1855) the evidence showed that a street had been laid out and used as a highway for 6 to 8 years, when the defendant obstructed it. The jury were directed that they might infer a dedication from the evidence of the user.

**11.7** This report will therefore consider the user evidence at common law over the 13-year period; 2020 (application) - 2007 (no trespassing sign). The claimed use can be broken down as follows:

44 members of the public claimed use of the main and spur routes, as of right (without force, secrecy, or permission), for part or all of the 13 years under consideration and all 44 have indicated the routes claimed by the applicants.

Main route: A-D-B-C

- 19 claimed use on **foot** and of those, 9 claimed use over the whole period.
- 13 claimed use by **bicycle** and of those, 5 claimed use over the whole period.
- 12 claimed use by **horseback** and of those, 3 claimed use over the whole period.

Spur Route: D-E

- 15 claimed use on **foot** and of those, 9 claimed use over the whole period.

**11.8** A claim for inferred dedication at common law requires use to be 'as of right' (without force, secrecy, or permission). Use that complies with these three requirements is termed user 'as of right'. The House of Lords in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335 (*Sunningwell*) reasserted an ancient principle namely, that if sufficient people carry on an activity openly and for long enough without anyone trying to stop them, it is

right and proper that the activity should be treated by the law as having a lawful origin. The House of Lords held that it was only necessary to prove that they have made use of the routes without resort to force, secrecy and as if they had a right to do so – that is, without having been granted any licence/ permission by the landowner. There is no evidence of use by secrecy or force over the 13-year timeframe.

**11.9** The law draws a distinction between acquiescence by the owner on the one hand and licence or permission on the other. Use, which is by acquiescence of the landowner is 'as of right' and passive toleration is all that is required to evidence this. However, a path used with express permission and thus not 'as of right' would mean that a landowner was granting the public a temporary, revocable license but with the intent that it should not be permanently dedicated as a public right of way. To rebut the 'as of right' test, therefore, involves some positive act or acts on the part of the landowner to show his intent.

**11.10** When considering use by 'permission', the following comments points have been raised and addressed:

- Mr Bingle (No.33 in the summary of PPEFs) in answer to Q.8d: *have you been given permission to use the route?* responded that his access along the claimed bridleway was by means of an easement dated 28 June 2004 between the previous property owner and the landowner, Mr Orchard. This refers to a private easement which would be irrelevant to this application.
- Mr & Mrs Olsen (No's 34 & 35) separately responded to Q.8d: *have you been given permission to use the route?* "Yes - by Public Footpath Notice". This official public footpath directional signpost is located at point D, at the junction of the main route and the spur. This sign would not constitute 'permission' by the landowner and thus this use would be considered to be 'as of right'.
- Mrs Fernando (No.38) Responded to Q.8C: *Were you working for the landowner or a tenant?* Tenant 1994-99 of Mrs Laing. The tenancy is outside the time frame being considered: 2007-2020. Her claimed use therefore from 2007 is 'as of right'.
- The Estate claimed that use of the routes was by permission. Walking groups and The Pony Club were specifically identified as being granted permission. Caution should be taken with regard to this general statement because no first-hand statements have been received from family, friends, or employees of the late landowner. No mention was made of any permission in the response received from the Ramblers' Association as referenced in para 12.19 and upon query, representatives of the Pony Club stated by email of 8 September 2022, "*Both Catie and I have made enquiries of long-standing members of Stroud Pony Club but haven't found anyone who remembers being given permission to use Gunhouse Lane. It is likely that members have used it for riding horses/ponies over the years, but no-one that we asked remembers either written or verbal permission to do so*".

**11.11** It does not follow that the issuing of express/ implied permission to specific parties demonstrates a wider lack of intention to dedicate to the public at large. Apart from the comments received above, the remaining individuals who submitted evidence of use over this period did not consider that they used the routes with permission or needed it.

## **11.12 USER EVIDENCE (COMMON LAW) CONCLUSIONS**

44 members of the public claimed use of the routes, 'as of right' along defined routes, over a timeframe of 13 years. It is suggested that the landowner tolerated the use.

Gunhouse Lane / section of main claimed path A-D-B is set out as a well-maintained tarmac road, used by adjacent residents, who have a private easement to drive motor vehicles along it. They also have a responsibility to contribute towards its maintenance. The continuation of this route: B-C, has a sign at point C at the junction of the main route with Thrupp Lane was attached to a gate saying, "*Trespassers will be prosecuted*". Whilst this sign was in situ, it was sufficient to rebut a claim. However, when this gate was damaged and removed ©2007, it was not replaced or relocated. 8 years later, 'Private Road' signs were installed along Gunhouse Lane/ section A-D-B. It seems however that these were considered to be directed at those with motor vehicles because 44 members of the public submitted statements of their use on foot, by horse back and bicycle over this time and the consultation responses show that this use was observed by householders living adjacent, most apparently happy about it and a couple not. The response from the late Mr Orchard in 2020 following receipt of the notice of application suggests that he was acquiescent of the use. His lawyer wrote "*I suspect that there is no query as to the existence of the footpath but there is an obvious inconsistency to the designation as a bridleway by virtue of the exit onto Thrupp Lane which is barred by an existing right of way and construction of the wall onto Thrupp Lane. This therefore cannot be achieved for use by horses due to the danger of entering Thrupp Lane...*". Mr Orchard objected to the application on the basis of feasibility and safety of the bridleway. The Estate subsequently claimed that this horse-riding use was by express permission, which appears to contradict Mr Orchard's concerns and the Pony Club have denied receiving permission anyway. The Estate made the following comment, "*The use of this route on foot was generally accepted and tolerated – in effect the route has been treated as a permissive footpath*". The important words in this statement are 'accepted and tolerated'. The Estate may consider the pedestrian use of the path to be permissive, but the statements made by the public show that it was not received as such.

## **12. DOCUMENTARY EVIDENCE**

- 12.1 Under Section 32 of the Highways Act 1980, when determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified in 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.**
- 12.2** The County Archivist has examined sources in the Gloucestershire County Record Office to see if the claimed routes are marked in any way and has identified other sources which might be useful in establishing the status of any right of way along this route. These sources have then been checked and added to by the Asset Data Officer. The documents have been listed in chronological order. A copy of the commissioned report is held as a background paper to this report.
- 12.3 Ordnance Survey Maps.**
- 12.4** The original surveys were conducted by Royal Engineers at the time of the Napoleonic wars in order to better plan the transportation of ordnance around the country. It was only in the early 20th century that the OS evolved to become a public service that sold its mapping

information to the public. Since the 1960s this mapping information has included public rights of way, which are derived from each county's Definitive Map.

**12.5** The Ordnance Survey has produced a series of topographic maps at different scales notably the one inch, six inch and 25 inch. The detailed, large scale 1:2500 maps from the 1870s onwards provide the best evidence of the position and width of routes and the existence of any structures on them. These maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways etc. However, the disclaimer which has been added to all editions since the 2nd edition maps (circa 1898 in Gloucestershire), along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way.

**12.6 Ordnance Survey 1811 2":1 mile Pen & Ink on Paper Drawing by Robert Dawson (Cheltenham OSD172): British Library via Wikimedia Commons – Open Government License Version 1.0**

This finished plan is attributed to Robert Dawson. Robert Dawson was appointed a first-class draughtsman on formation of the Royal Corps of Military Surveyors and Draughtsmen, a corps of warrant officers under the Board of Ordnance, with headquarters in the Tower of London. A government mandate was issued to map the whole country in response to military needs during the Napoleonic wars. Critical communication routes such as roads and rivers were to be shown clearly and accurately. Preliminary drawings were made at a scale of six inches to one mile for areas of particular military significance, down to two inches to one mile elsewhere. Back in the Tower of London, copies of the drawings were prepared at the scale of one inch to one mile. From these, copper plates were engraved for printing. The British Library possesses 351 of the original preliminary drawings made by the surveyors between the 1780s and 1840 – one of which is the 1811 drawing of Cheltenham by Robert Dawson.

This map shows the hamlet of 'Bow Bridge' and the roads, known today as Bowbridge Lane, Thrupp Lane and Claypitts Lane. The London Road was yet to be constructed. The section of main route between points A-D-B is shown in a similar manner as the previously-mentioned roads. It is shown as part of a through route starting at the junction of Bowbridge Lane and Butterow Hill and extending to Thrupp and Brimscombe. The sections of main route B-C and the spur route D-E are not shown. An extract of this map is held (**JH4**).

**12.7 Plan and Book of Reference for the Proposed new Road from Stroud to Chalford 1813. Ref: (Q/Rum/51- Heritage Hub)**

Plan and Book of reference: R. W. Hall, surveyor. Shows existing roads and junctions, inns, mills, some landowners, commons, woods, quarries, windmills, chapels and the Stroudwater, Thames and Severn Canals. Scale: 4" to 1 mile. Act of 54 George III, cap. 80 [1813-14] made provision for a turnpike road similar in route to that in this plan, except that there was to be no branch from Cainscross to Stroud. The Plan shows the proposed route of the turnpike (London) road (marked in red). The section of main route A-D-B forms part of section No.6 which the Explanation states is '*the old road from Brimscombe to Bowbridge*'. The length of this old road is recorded as being 1 mile, 2 furlongs and 32 yards. This road is identified as plot No.34 which the accompanying Book of Reference describes as: '*old Road from Bowbridge to Stroud*' for which there is no landowner. Section B-C of the main route and the spur route D-E are not shown. An extract of the plan is held (**JH5**).

## 12.8 Stroud & Chalford Roads Act 1814 (54 Geo.3. c.80)

By an Act of Parliament in 1814, new roads were created in Stroud, including the London Road; *'An Act for making and maintaining certain roads from the Town of Stroud and several other places therein mentioned, all in the County of Gloucester'*. Further, this Act gave the trustees the additional power *"And whereas it will also be of public utility if powers are granted to improve, widen, and keep in good repair the present Carriage Road leading from Bowbridge aforesaid, through the village of Thrupp to Brimscombe aforesaid...."*. This description applies to the section of claimed main route A-D-B, known as Gunhouse Lane, as shown in the plan and book of reference referred to in the previous paragraph and suggests that it pre-dates this Act. The Act granted trustees the statutory power to divert the road from Hermitage Bottom to Cirencester and stop up the previous route. There is no mention however of the carriage road from Bowbridge to Thrupp & Brimscombe being similarly stopped up.

## 12.9 British History Online, A History of the County of Gloucester: Volume 11, Bisley and Longtree Hundreds; Extracts, referencing Gunhouse Lane or 'the old road' connecting Bowbridge to Thrupp and Brimscombe follow.

- **'Stroud: Introduction' - N M Herbert and R B Pugh (London, 1976), pp. 99-104.**

*"The route out of the south-east corner of the town along the Frome valley was of only local importance before the early 19th century. It ran by Bowbridge Lane down to the river at Bowbridge and then turned up the hill again by Gunhouse Lane to Thrupp hamlet. From Thrupp it ran along the hillside by Thrupp Lane and Bourne Lane through Far Thrupp, Bourne, and Blackness, coming down to the river again at Chalford"*.

- **'Stroud Growth of the Town and Outlying Settlements' - A P Baggs, A R J Jurica and W J Sheils, Pages 104-111**

*"The Town of Stroud grew up on the road from Paganhill to Bisley.....and the other branch leading by way of Nelson Street, Castle Street, and Lower Street to Bowbridge Lane and the old road to Thrupp and Chalford"*.

*"The southern part of the eastern division of the parish was more thickly populated, with a succession of cloth-mills at intervals of 300-400 yards along the Frome, and, higher up, loosely grouped settlements of cottages and some large clothiers' houses lying on or around the old road from Stroud town to Chalford"*.

*"In the 18th and early 19th centuries several houses were built at the bottom of the lane at the complex of mills and dye-works at Bowbridge, but most were demolished in 1961 and 1962. Nearby where the old road turned up the hill again to Thrupp another small group includes the Gunhouse, a substantial early-17th-century house which was occupied by a clothier, John Webb, in 1659"*.

*"Thrupp, more usually called The Thrupp, was recorded as a settlement name from 1367 and seems to have originally applied to the group of houses at a bend in the old road, where Thrupp House, the centre of the Clutterbucks' estate, an adjoining cottage which was later the farmhouse of the estate, and a few other cottages stood by the late 17th century"*.

## 12.10 Bryant Map 1824 (ref: Coaley.net)

Andrew Bryant's 1824 Map of Gloucestershire was drawn from an original survey. The "explanation" (or legend) lists "Turnpike and Mail Roads", "Good Cross or Driving Roads" and "Lanes & Bridleways". Bryant's map was sold to members of the public and cost 3-4 guineas. The commercial nature of the map means that routes shown are usually public

and publicly maintainable, unless there is strong contemporary evidence which shows that routes are private.

The key to Bryant's map identifies Gunhouse Lane / section A-D-B of the main route as a 'Good Cross or Driving Road'. It is coloured brown in a similar manner to Bowbridge Lane. It runs between 2 full boundaries and connects to Thrupp Lane (41327 highway), providing a direct through route between Bowbridge and Thrupp and Chalford. Section B-C and the spur route D-E are not identified. An extract is held as **JH5A**.

#### **12.11 Greenwood Map 1824 (ref: Coaley.net)**

Like Bryant's Map 1824, Christopher Greenwood's Map was drawn from an original survey. Greenwood's map was also sold to members of the public. The commercial nature of the map, as with Bryant's Map means that the routes shown are usually public and publicly maintainable unless there is strong contemporary evidence which shows the route is private. In *Hollins v Oldham* (1995) a comment was made with regard to Burdett's Map of 1777 which identifies the same two types of road in its key as Greenwood: firstly; turnpike roads, which are roads that could be used upon payment of a toll, and secondly; crossroads. The Justice said, "*This map was probably produced for the benefit of wealthy people who wished to travel either on horseback or by means of horse and carriage... There is no point, it seems to me, in showing a road to such a purchaser which he did not have the right to use*".

The key to Greenwood's map identifies the section of main route A-D-B and the spur route D-E as unenclosed crossroads. The former is shown as part of the route connecting Bowbridge to Thrupp and Chalford. The Planning Inspectorate's Advice Note No.4 states that "*In modern usage, the term "crossroad" and "crossroads" are generally taken to mean the point where two roads cross. However, old maps and documents may attach a different meaning to the term "crossroad". These include "a highway running between, and joining, other highways, a byway and a road that joined regional centres"*.

It was noted in the appeal court decision of *Fortune & Others v Wiltshire County Council*, March 2012 that "*the judge concluded that Greenwood's map supported the emerging picture of an established thoroughfare. In our judgement the label "crossroad" added further support*". Section B-C of the main route is not shown. An extract is held as **JH5B**.

#### **12.12 Plan of the Tithings of Upper Lypiatt, Lower Lypiatt & Steanbridge 1820, Charles Baker (ref: P320 VE 1/9, Heritage Hub)**

Scale 1:6580 (approx.) about 1 inch to 1 mile. Charles Baker of Painswick, Ink, and watercolour, covers Stroud, Bowbridge, Thrupp and Brimscombe Port showing buildings, mills, woods, commons, streams, roads, canal, hedges, land use. Fields are numbered. Gunhouse Lane is shown in a similar manner to and connecting freely with the existing highway network of the time. The main claimed route is shown in its entirety: A-D-B-C, unnumbered and with the same colouring as Thrupp Lane and the London Road. A barrier is shown near point D. The route is shown with a solid boundary to one side and unfenced on the other. The spur route: D-E is shown in a similar manner to the main route for a short distance. There is a barrier across the route which appears to designate a change of surface. The continuing route is numbered 593, (**JH6**).

#### **12.13 Ordnance Survey 1<sup>st</sup> edition 1":1-mile sheet 34, Surveyed 1808 – 1817 National Library of Australia, via The Charles Close Society (Published at the Tower of London)**

This is a colour washed first edition 1":1mile map "Engraved at the Ordnance Map Office in the Tower under the Direction of Lieutenant Col. Colby" ...."Published 12 August 1828" from the pen and ink drawings of the Royal Corps of Military Surveyors and Draughtsmen as referred to in para 9.12 above. The cost of the map is noted as being twelve shillings and six pence (2017 equivalent - £42.38). As with the Bryant and Greenwood Maps, the commercial nature of this map means that routes shown are usually public and publicly maintainable, unless there is strong contemporary evidence which shows that routes are private. Gunhouse Lane/ the section A-D-B of the main route is shown in a similar manner to Bowbridge Lane and Thrupp Lane as a through route connecting Bowbridge to Thrupp and Brimscombe. Section B-C and the spur route D-E are not shown. An extract of this map is held (JH7).

#### **12.14 The Report of the Commissioners for inquiring into the state of the roads in England and Wales -1840, pg150.**

This document includes information on the maintenance of roads in Gloucestershire, one of which is the 'old road': A-D-B, subject to this report.

Heading: George Wathen, Painswick, Lower Grange, Gloucester, Stroud and Chalford, 1)...*N.B. This includes an old road from Bow-bridge, through the Thrupp to Brimscombe, being about 1 mile, 2 furlongs and 32 yards, which has never been repaired by the trustees.....* (Authors note: this length accords with the description of the old road noted in the Plan and Book of Reference – para 10.7)

5)*The whole of the road is repaired by the Trustees, except 1 mile, 2 furlongs and 32 yards which is an old road that has always been repaired by the parish of Stroud or by individuals* (Author's note - parishes at this time were responsible for the maintenance of roads which passed through their area).

8) "*An Act for making and maintaining certain roads from the town of Stroud and several other places therein mentioned, all in the county of Gloucester*" (continued by Annual General Acts..... will expire at the end of the Session of Parliament next after 31 May 1841: 54 Geo.iii, cap.80. (Authors note- this references the Stroud & Chalford Roads Act 1814 as per paragraph 10.8)

#### **12.15 John Wood (Surveyor) Map 1835 – (D1159, Heritage hub)**

This map is drawn at a scale of 5.5 chains to one inch. The land over which the claimed routes cross is annotated W & C Chambers. The map shows the whole of the main route: A-D-B-C, running between solid boundaries, in a similar manner to Bowbridge Lane, Thrupp Lane, and the London Road. There are no indications of barriers preventing access to the highway network. The spur route D-E is shown as a wide track running between solid boundaries with a barrier across it at the boundary of the adjacent property, Gunhouse- (JH8).

#### **12.16 Tithe Map of Bisley & Stroud 1842 (Part 2) (P47/SD/2/3)**

Although not produced to record public rights of way, Tithe Maps provide important evidence as to the physical existence of such routes. The maps were drawn up under statutory authority by the Tithe Commissioners under the provisions contained in the Tithe Commutation Act of 1836 to record and number all cultivated land, arable and pasture, as tithe was payable on land producing crops. It is unlikely that a tithe map will show public footpaths and bridleways as their effect on the tithe payable was likely to be insignificant. They were required to show wasteland and roads, because tithe was not payable on these, although this is not necessarily an indication that the land was public. Lord Denning said in

Kent County Council v Loughlin 1975 *"If a road passed over a man's land, he would naturally require it to be shown so as not to pay tithe on it"*. Thus, a distinction is made between tithable and untithable land, with roads clearly marked as untithable.

An 1837 amendment to the Act provided for Tithe Maps to be either first or second class. First class maps, being signed and sealed by the commissioners, are considered to be a true record of matters relating to the purposes for which the map was designed. Second class maps, signed but not sealed, which failed in some, often minor way to meet the stringent test for first class status, are not necessarily inferior from a cartographic point of view. Both first- and second-class maps have been accepted by the courts as evidence (Smith v Lister 1895).

The Tithe Bisley & Stroud (Part 2) Map 1842 is first class. The surveyors being Daniel Trinder and Thomas Hall. Stroud was at this time was part of the Bisley Hundred, the division of a shire for administrative, military and judicial purposes under the common law until the introduction of urban and rural districts and parish councils under the Local Government Act 1894.

The main route: A-D-B-C, is shown in a manner similar to other known highways in the parish: un-numbered, coloured and excluded from adjacent plots of land. It is shown running between solid boundaries and connecting freely with roads known today as public highways such as Bowbridge Lane, London Road and Thrupp Lane. Interestingly, the Apportionment accompanying the Tithe Map states that plot 1262 is 'Strip below new road'. This new road referred to is the London Road (A419 highway) but is shown in a similar manner to the main claimed route. The spur route is uncoloured and numbered 1205. A copy of the Tithe Map 1842 showing the route is held (JH9).

#### **12.17 Bruton Knowles- Chambers v Playne, Thrupp- Valuation, maps & copy will of Francis Chambers (1789 – 1850) (ref: D2299/1/1/66 Heritage Hub)**

This copy will, signed on 2 September 1846, directed that his trustees, executors, or administrators carry out a careful and accurate survey and valuation. The valuation, dated 1 January 1881, lists all of the parcels of land within the Thrupp Estate, using the same plot numbers as used on the Tithe Map. Neither the main claimed route nor the spur is included. The valuation is accompanied by draft plan on tracing paper and a coloured plan. The latter is entitled 'Parish of Stroud Tithing of Upper Lypiatt, Scale 6 chains to an inch'. It is also annotated 're Francis Chambers deceased – The Thrupp Property'.

The plan shows the whole of the main route: A-B-D-C, in the same manner as the highways known today as Bowbridge Lane, Thrupp Land and the London Road. It is shown as an un-numbered, enclosed route, excluded from the adjacent plots of land with no barriers along it. The fact that the main route is unnumbered and omitted from the valuation suggests that it did not form part of Francis Chamber's estate. Interestingly, a separate parcel of land numbered 820 is recorded and described as 'road'. The corresponding plan which identifies this road is known today as Public Footpath ZST50. This document appears to conflict with the following documentation which refers to the 'purchase' of Gunhouse Lane by Mr Chambers in 1834. The spur route: D-E is not shown. A copy of the plan is attached (JH10).

#### **12.18 Historical Survey of Tanglewood, 49 Thrupp Lane, Stroud, by Ian Mackintosh & Nigel Paterson - October 2004 (ref D9529/126 - Heritage Hub)**

The property, Tanglewood (49 Thrupp Lane), is located adjacent to the section of main route B-C. A report was compiled in 2004 for the renovation of the property. The report provided a history of the property and included a statement, as shown below, to the effect that



Gunhouse Lane was closed and sold to Mr Chambers, owner of the estate. The article was allegedly placed in the Gloucester Journal on 15 May 1834, which was a Thursday. However, this weekly newspaper was published on Saturday (from July 1, 1826). Copies of the Gloucester Journal newspapers for the month of May 1834 were inspected at the Heritage Hub but the article was not found. Notice of stopping up or diversion orders were lodged with the Court of Quarter Sessions at this point. The Quarter Sessions Order Books covering 1828-1836 (*ref: Q/SO/16*) & 1836-1845 (*ref: Q/SO/17 Heritage Hub*) were also inspected. No record of a closure or stopping order affecting Gunhouse Lane (the main route A-D-B) was found.

### History

Tanglewood until recently was a part of the Thrupp House estate. This was created when the manor of Nether Lyppiatt was divided between the daughters of Thomas Freame. Elizabeth Clutterbuck, heiress of this part, died in 1701. It was still in the hands of her heirs, now called Chambers, in 1939.

Originally the main house of the estate stood beside the old Thrupp Lane, now Gunhouse Lane. The road continued behind Tanglewood to join the existing Thrupp Lane. The Gloucester Journal of 15/5/1834 announced the closure of this road and its sale to Mr Chambers, the owner of the estate. By 1850 the cottage faced onto a spur of the road which is now the footpath through the front garden.

The Victoria County History volume xi describes the site of Thrupp:

*... Thrupp House, the centre of Chambers' estate, an adjoining cottage, which was later the farm house of the estate, and a few other cottages stood by the late C17th.*

**12.19 Ordnance Survey First Edition; 25"1 mile, Map sheet 49.4 - published 1885- (National library of Scotland);** This is one of the first edition sheets which used colouring. The colours identified.

- Blue for water features
- Burnt sienna for roads
- Carmine for buildings made of brick or stone
- Grey for buildings made of wood or iron.

A distinction is drawn in the way that the main route: A-D-B-C is shown. The first section of the main route from the London Road to the boundary feature, just past the spur route at point D, is numbered 523 and coloured carmine in a similar manner to the London Road, Bowbridge Lane and Thrupp Lane. It then continues, uncoloured and numbered 510. Part of the main route is shown running between solid boundaries but the section on the side of and in the vicinity of Thrupp House is unfenced (dashed line). There are no braces however connecting Thrupp House to the main route.

The spur route D-E is coloured carmine up to the boundary feature, which is located adjacent to the property, Gunhouse. The route is un-numbered, runs between solid boundaries and is excluded from adjacent land. The coloured section is shown to be much wider than the rest of the route. There is a further boundary feature at the point that the spur route connects with the main route at point D and also one at the junction with the route known today as Public Footpath ZST57 at point E. An extract of this map is held (JH11).

**12.20 Ordnance Survey; Second and Third Editions, 25":1 mile, Map sheet 49.4 – published 1902 & 1923- (National library of Scotland);** These uncoloured maps are similar in their depiction of the claimed routes. The main route is shown as per the first edition, running between solid boundaries and in the vicinity of Thrupp House, unfenced sections. There is one boundary feature in the same location as shown on the first edition at point D. All plots are numbered. The main route: A-D-B being numbered 200, and the section B-C numbered 86. This route is shown braced to Thrupp House.

The spur route on both maps is shown running between solid boundaries, excluded from adjacent land. It is numbered but has only one boundary feature at its junction with the route known today as Public Footpath ZST457 at point E. Extracts of both maps are held (JH12 & 13).

**12.21 Inland Revenue, maps compiled under the Finance Act, 1910, based on Ordnance Survey 25": 1 mile, c.1902 edition, marked up by Inland Revenue c.1915, and reference books or files. Map sheet 49.4.**

The Finance Act 1910 provided for the levying of a tax upon the incremental value of the site itself. The tax was to be paid every time the land changed hands. A Land Valuation Officer was appointed for each income tax parish, and they were given the responsibility of plotting and recording every piece of land, assign every land holding a number and provide ownership and occupation details for valuation purposes. The initial part of the process was the completion of a 'Form 4' by the landowner. This form asked whether the relevant unit of land ownership (hereditament) was subject to any public rights of way or any public rights of user. Information from the Form 4 was copied into Field Books in the District Valuation Office before the valuers went into the field to inspect and assess the hereditaments. Deductions were awarded for public rights of way across land. All private land *including private roads* were assigned an assessment number. Valuers would have been extremely reluctant to show any land as a public road if it could be assessed for duty. Landowners and occupiers would be anxious to ensure that public rights of way were recorded correctly because the existence of such a way reduced the value of the land and thus their tax liability. The exclusion of a route from surrounding parcels was the common way of showing public highways.

Section 11 of the Planning Inspectorates Consistency Guidelines (2<sup>nd</sup> revision June 2008) says in paragraph 11.7; "*The 1910 Act required all land to be valued, but routes shown on the base plans which correspond to known public highways, usually vehicular, are not normally shown as included in the hereditaments, i.e., they will be shown uncoloured and unnumbered. .... So, if a route in dispute is external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books; however, there may be other reasons to explain its exclusion*".

In the case of *Fortune & Ors v Wiltshire Council & Anor (2012)*, the court considered the weight to be attached to the finance act document which showed a disputed route having been excluded from claimed ownership. The judge stated, "*the fact that a road is shown uncoloured on a Finance Act Map, raises a strong possibility or points strongly towards the conclusion that the road in question was view as a highway*".

The physical representation of the claimed routes as shown on the Valuation Plan is as per the 25" Second Edition OS map (paragraph 10.20). The majority of the main route is shown crossing hereditaments 1177 & 1150. No deduction in tax was identified for '*Public Rights of Way or user*' in the field book entries for these plots. However, the short northern section of route from the end of hereditament 1177 to the London Road is uncoloured and excluded from the adjacent hereditaments in a similar manner to Thrupp Lane and the London Road.

This may suggest a public highway. The spur route is shown similarly, but this representation could also be explained by the fact that it leads to fields and more than one landowner may have shared the access/ occupation road leading to it, but none claimed to own it. An extract of Finance Act Map is held (JH14).

#### **12.22 Sale of Thrupp Estate –1941 (D1405/2/198 – Heritage Hub)**

Thrupp Estate encompassed Thrupp House and Thrupp Farm. It was put up for sale in 1941. The particulars described Thrupp House, "*The stone-built family residence approached by a carriage drive and known as Thrupp House, near Stroud. The accommodation comprises: Hall.....numbered, 198,197,200 and 199 on the O.S.M and containing in all about 6 acres*". The carriage drive, known today as Gunhouse Lane is annotated 200 and is the section of claimed main route: A-D-B.

#### **12.23 County Surveyor: papers relating to survey of footpaths under National Parks and Access to Countryside Act, 1949 ("NPACA 1949").**

Under this legislation, all highway authorities were required to draw up a Definitive Map and Statement which together would form the legal record of public rights of way. Gloucestershire County Council initially provided parish councils with Ordnance Survey 6":1 mile, 1924 edition maps to record their local public route networks. The routes subject to this application were not claimed under this process.

#### **12.24 DOCUMENTARY EVIDENCE CONCLUSIONS**

The historic documentary evidence suggests that dedication of the section of main route: A-D-B, has arisen at common law whereby the actual evidence of dedication is lost in the mists of the past, or in other words, the documentary evidence points towards the historic reputation of the route as a public carriage road, known as Gunhouse Lane, apparently, the only road prior to the construction of the London Road in 1814, connecting Bowbridge to Thrupp and Brimscombe. The carriage road is specifically referenced in an Act of Parliament, for the construction of the London Road and the improvement of "*the carriage road leading from Bowbridge...through the village of Thrupp to Brimscombe*". It is shown on the plan and listed in the Book of Reference prepared in advance of this Act. The Turnpike Commissioner's report noted that the carriage road had always been repaired by the '*parish of Stroud or by individuals*', thus providing evidence that it was maintained at public expense. The valuation directed to be carried out as part of the Will belonging to the owner of the Thrupp Estate, excluded the main route of Gunhouse Lane, even though another road within the estate was numbered and listed as part of the estate. The old road has been consistently shown in a manner similar to other known roads in the area: coloured, un-numbered, with no barriers preventing access to the existing highway network until the start of the 1900s when the path seemingly became less well used and ultimately became a cul-de-sac. There is conflicting evidence however, in the form of an article in the Gloucester Journal which claims that Gunhouse Lane was closed and sold to the adjacent landowner in 1834. However even this supports the fact that it was originally public.

**12.25** The process of extinguishing highway rights would have been carried out by Justices of the peace under the direction of the Court of Quarter Sessions. Crucially however, no record has been found of a stopping up order. Following the principle "*Once a highway, always a highway*", if the way is shown to have carried highway rights at any time in the past, the public's rights will still exist today (unless there is evidence of formal closure). Simple disuse of a right of way does not mean that the right no longer exists, just that the right is not being exercised.

- 12.26** When considering the remaining section of main claimed route B-C & the claimed spur route D-E, the physical representation of both can be dated back to 1820. There is less documentary evidence with regard to these sections, but the user evidence, considered at common law over the timeframe 2007 -2020 suggests that use of the spur path: D-E would support a claim of inferred dedication of a footpath and the section of main route, not part of the old public carriage road: B-C would support a claim of inferred dedication as a restricted byway.
- 12.27** If it is accepted that the section of main route A-D-B is deemed to carry historic public carriage road rights, this has the effect of making the user evidence, and any comments, for or against this section of route and the Private Road signs irrelevant because 'existing' carriage rights would encompass the lesser rights of walkers, cyclists, and horse riders. In the absence of evidence to show that those carriage rights were stopped up, we must apply the legal maxim of 'once a highway, always a highway', and consider the implications of the Natural Environment and Rural Communities Act 2006.
- 12.29** The Natural Environment and Rural Communities Act 2006 (NERC) sought to restrict motor vehicular access in the countryside and to this end, section 67(1) of the NERC Act extinguished public rights for mechanically propelled vehicles over *all* highways, whether recorded on the Definitive map or not, except existing byways open to all traffic (BOATs). This would include claims based upon evidence of historic rights which have not been stopped up by alternative means. This extinguishment is however subject to several exceptions, (for applications such the one considered by this report, received after the relevant date of 20 January 2005) as set out in s.67(2) and listed below:
- (a) ways where the main public use was by motor vehicles (rather than by other users, e.g., walkers, cyclists, horse riders and horse drawn vehicles) over the period 2001-2006.
  - (b) ways that are recorded on the list of highways maintainable at public expense (the List of Streets) but are *not* recorded on the Definitive Map of Public Rights of Way.
  - (c) ways that have been expressly created (by legislation or by instrument) for motor vehicles [for example by a Section 38 agreement, provided that the wording was clear, or other expressed dedication].
  - (d) ways that have been created by the construction of a road intended to be used by motor vehicles [for example Gloucester South West Bypass using Section 24 Highways Act 1980]; and
  - (e) ways over which rights for motor vehicles were *created through motor vehicle use prior to 1930*, when it first became an offence to drive off-road. The position as regards this exemption is addressed by Angela Sydenham, Rights of Law Review; 7.1 pg. 99. "*Many BOATs will have originally been used not by MPVs but by horse drawn vehicles. Even if the routes are subsequently used by MPVs they will not be covered by this exception... **The public right of way must have been created by the use of MPVs.***"
- 12.30** The claimed *public* use of the main route: A-D-B, has only been pedestrian, equestrian and by bicycle, it was not recorded on the List of Streets as of May 2006, it was not created for motor vehicles by legislation, instrument or by construction and there is no evidence that suggests that it was created by public motor vehicle use prior to 1930; thus the s.67(2) exceptions do not apply.
- 12.31** It should be noted that where a private right of way for vehicles is extinguished by subsection 67(1) NERC, then a private motor vehicular right is preserved under s67(5) for those people who have reasonable need for access by motor vehicles to land in which they have an interest. The private right of way for motor vehicles extends to landowners, occupiers, and

tenants. It will also include lawful visitors to the person who has an interest in the land including business, trade, or professional visitors; postal or other deliveries; the highway authority; and utility companies who have apparatus/ equipment along the highway.

### **13. CONCLUSIONS**

- 13.1** Section 53(3) (c) (i) of the Wildlife and Countryside Act 1981 relates to the discovery by the Authority of evidence that shows that a right of way that is not shown on the map and statement subsists, or is reasonably alleged to subsist, over land in the area to which the map relates.
- 13.2** Paragraph 12 of Annex B of the Department of Environment Circular 2/93 states that before making an order the surveying authority must be satisfied that the evidence discovered by the Council, when considered with all other relevant evidence available, shows that, the Definitive Map and Statement require modification because a right of way which is not shown on the map and statement subsists, or is reasonably alleged to subsist. The relevant tests are now set out in section 4.4 of the Defra Rights of Way Circular 1/2009, version 2 (October 2009).
- 13.3** This report considers that Gunhouse Lane is deemed to have carried historic public carriage road rights for which there is no evidence of a stopping up order. By virtue of s67(1) NERC Act 2006 however, public mechanically propelled vehicle rights have been stopped up and the available evidence suggests that none of the s67(2) exemptions apply. If this assessment is accepted, then the section of main route A-D-B should be preserved as a restricted byway, the highest classification of public route without motor vehicle rights.
- 13.4** The user evidence for Section B-C is considered sufficient to support a case of deemed dedication as a restricted byway.
- 13.5** The user evidence for the spur route D-E is considered sufficient to support a case of deemed dedication as a public footpath.
- 13.6** It is submitted that these sections of route must now be protected by being recognised on the Definitive Map. It is recommended therefore:
- That no order be made to add a bridleway between the points A-D-B-C to the legal record of public rights of way.
  - That an order be made to add a restricted byway between the points A-D-B-C.
  - That an order be made to add a footpath between the points D-E.

### **14. APPENDICES:**

<b>JH1</b>	1:15,000 location map
<b>JH2</b>	Plan of claimed route; 1:2500 scale
<b>JH3 A-K</b>	Photos
<b>JH4</b>	Ordnance Survey 1811 2":1 mile Pen & Ink on Paper Drawing
<b>JH5</b>	1813 Plan and Book of Reference for the Proposed new road
<b>JH5A</b>	Bryants Map 1824
<b>JH5B</b>	Greenwoods Map 1824
<b>JH6</b>	1820 plan of the Tithings of Upper Lypiatt, Lower Lypiatt
<b>JH7</b>	1828 Ordnance Survey 1 <sup>st</sup> edition 1":1-mile
<b>JH8</b>	1835 John Wood (Surveyor) Map 1835
<b>JH9</b>	1842 Tithe Map of Bisley & Stroud

<b>JH10</b>	Valuation, maps & copy will of Francis Chambers (1789 – 1850)
<b>JH11</b>	OS 1885 – 25” First Edition
<b>JH12 &amp; 13</b>	OS 1902 & 1923 25” Second and Third editions
<b>JH14</b>	1910 Finance Act
<b>JH15</b>	Summary of user Evidence Forms