



Regulatory Committee:	Commons and Rights of Way Committee, Report of the Lead Commissioner Communities and Infrastructure
Date:	12 December 2023
Chair:	Cllr Graham Morgan
Presenting Officer:	Andrew Houldey
Item Type:	For decision
Purpose of Report:	<p>To set out evidence to enable the determination of the following application:</p> <p>APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO ADD A LENGTH OF RESTRICTED BYWAY WILDMOORWAY LANE, PARISH OF SOUTH CERNEY</p>
Recommendations of the Presenting Officer:	<p>That an order be made to upgrade the existing public footpath to restricted byway</p> <p>That an order be made to add a length of restricted byway</p>
Background Documents:	None
Forthcoming Decisions:	To flag those items that get referred on to Council for determination.
Appendices:	As listed under subheading 16: Appendices, in the report
Contact Information (For information on the report)	<p>Andrew Houldey, Asset Data Officer (Definitive Map) Highway Records & DMMO Team Telephone: 01452 328984 Email: andrew.houldey@gloucestershire.gov.uk</p>

1. PURPOSE OF REPORT

To consider the following application:

Nature of Application:	Additional Restricted Byway
Parish:	South Cerney
Name of Applicant:	South Cerney Parish Council
Date of Application:	31 May 2017

2. RECOMMENDATIONS

- (a) That an order be made to add a length of restricted byway to the Definitive Map and Statement between points A and B (as shown on map 1B)
- (b) That an order be made to upgrade part of public footpath BSC 20 to a restricted byway between points B and C (as shown on map 1B)

3. RESOURCE IMPLICATIONS

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 path would become maintainable at the public expense.

4. SUSTAINABILITY & EQUALITY IMPLICATIONS

No sustainability or equality implications have been identified.

5. 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.

6. DEPARTMENTAL CONTACT

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REPORT

7. DESCRIPTION OF PATH

- 7.1 A location map at scale 1: 10,000 is attached (**numbered 1A**) showing the position of the claimed path at Wildmoorway Lane. The claimed path is within the parish of South Cerney, 4 miles south-east of the town of Cirencester. The area of interest lies mostly within the Ordnance Survey grid square SU 0697.
- 7.2 A more detailed plan, showing the whole length of Wildmoorway Lane, at scale 1: 6,000 at **appendix 1B**. Reference is made to the points shown on this plan throughout the report. The claimed route is between points A, B and C on this plan. A to B is not currently shown on either the list of maintainable highways or the Definitive Map and Statement. Section B to C is currently recorded on the Definitive Map as part of public footpath BSC 20. The application is to add a length of restricted byway between points A and B and to reclassify the public footpath between points B and C to restricted byway.
- 7.3 The site was visited in August 2017 and November 2023. Photographs showing the claimed route can be found at **appendix 1S**.
- 7.4 The enclosed track or way known as Wildmoorway Lane runs from Station Road in South Cerney village in an approximately eastwards direction, passing Horseshoe Lane before crossing the River Churn by a bridge and then continuing eastwards to the Thames and Severn Canal, which it crosses by an overbridge before terminating at the junction with the public footpath BSC 20.
- 7.5 The first section of Wildmoorway Lane is recorded on the list of highways maintainable at public expense (the list of streets) as a class 5 highway, number 50956. This section is tarmacked and varies in width between 3 and 5 metres. Between the end of the county maintainable highway (point A) and the River Churn (point B) public footpath BSC 20 runs parallel with the enclosed track for approximately 475 metres. It is separated from the track by a hedge. This section of Wildmoorway Lane is not recorded on either the list of streets or the Definitive Map of rights of way. When inspected in 2017 there was a metal field gate at point A, which was open; this gate had been removed by 2023. A gap had been left between the gate post and the fencing, allowing pedestrians to use the track. Attached to the fence (in 2017) was a sign, reading "Construction Zone Authorised Vehicles Only." There were also remains of a sign that referred to horses. The metal gate was erected in autumn 2016 and is associated with the development of holiday accommodation and fishing cabins around Horseshoe Lake, which is accessed by Wildmoorway Lane. At the same time, the surface of Wildmoorway Lane between points A and B was surfaced, a kerb put in and the verges on either side of the carriageway landscaped. These actions were undertaken by the adjacent landowner (of the Horseshoe Lake development) or their agents. The width of the section of Wildmoorway Lane between A and B varies between 3 and 4 metres.
- 7.6 From the River Churn (point B) east to the Thames and Severn Canal (point C), public footpath BSC 20 runs along the enclosed track or way. Thus, the way known as Wildmoorway Lane is partly unrecorded as a highway and partly recorded as a public footpath. At point B the track crosses the River Churn by a metal bridge with a planked deck; the public footpath BSC 20 crosses the Churn by a footbridge before rejoining the Wildmoorway Lane track. Earlier maps show that Wildmoorway Lane formerly crossed the River Churn through a ford. East of point B there is a chained and locked metal field gate across Wildmoorway Lane (now public footpath BSC 20) and an adjacent metal kissing gate, although in

2023 access to this section of BSC 20 was through a wide gap to the north of the gate. Attached to the kissing gate in 2017 was a wooden sign that read “Please keep to public footpath. Keep dogs under close control.” The section of Wildmoorway Lane between points B and C has an underlying stone surface and is approximately 3 metres in usable width. Close to point C the way crosses public footpath BSC 1 that runs along the Thames and Severn canal towpath. The path crosses a post and rail fence by way of a stile before passing over Wildmoorway Bridge to point C where it forms a T-junction with public footpath BSC 20.

- 7.7 The most westerly section of the current Wildmoorway Lane (recorded on the list of streets), from the junction with Station Road to a point immediately east of the railway overbridge, was formerly part of Station Road until the road was stopped up and diverted to a course further west to allow gravel extraction. This is shown on **appendix 1D**, which is taken from the plan accompanying the list of streets.

8. BACKGROUND

- 8.1 The maps issued by Gloucestershire County Council to accompany the application forms and for path users to complete to show the route they have used do not show the whole of Wildmoorway Lane as far east as point C but do show a section east of the River Churn allowing us to infer that the intention of the applicant was to include the whole of Wildmoorway Lane. This assertion is supported by the statements made by the path users. The County Council as surveying authority has a duty under section 53 of the 1981 Wildlife and Countryside Act to keep the Definitive Map and Statement under continuous review and to make orders where there is discovery of evidence that a right of way is not shown on the map or should be shown differently; this allows us to make orders that are consistent with the evidence rather than with what has been claimed.
- 8.2 The application was made in response to work undertaken over the section A to B, as part of the Horseshoe Lake development in Autumn 2016. This included road surfacing, the provision of a kerb, associated landscaping, the erection of a gate at point A and a sign that read “Construction Zone Authorised Vehicles Only.” This section is neither on the list of streets or the Definitive Map and is not registered with the Land Registry. Although a gap was left for pedestrians between the gate post and the fencing, the erection of a gate across the way and the accompanying sign resulted in an application for a Definitive Map Modification Order.

9. APPLICATION

- 9.1 An application to add a length of restricted byway was made by South Cerney Parish Council on 31 May 2017. The map provided by Gloucestershire County Council was marked up to show the claimed route along Wildmoorway Lane, from the end of the county maintainable highway at the western end beyond the bridge over the River Churn and continuing towards the Thames and Severn Canal.
- 9.2 Wildmoorway Lane is not registered with the Land Registry. The applicant was given permission by Gloucestershire County Council to erect impersonal notices on site to give notice of the Definitive Map Modification Order application. The applicant submitted the Form 3 (Certificate of Notice) and supplied photographs of the notices that they had erected to give notice of the application.

- 9.3 The application was accompanied by 20 user evidence statements, completed by 20 individuals who had used the claimed path.

10. USER EVIDENCE

- 10.1 The application was supported by 20 user evidence statements, completed by 20 individuals. A summary of these evidence forms is provided at **appendix 1C**.
- 10.2 All 20 forms attest to use on foot, with eight of the witnesses (forms 5, 9, 10, 11, 12, 15, 16 and 18) also having used the way by bicycle. In addition, form 16 refers to use by vehicle, which use dates to 1982. Of the eight cyclists, seven have used the claimed way for at least 20 years prior to the bringing into question of use in 2016.
- 10.3 Use dates back to 1953 (form 9), with another user claiming use since 1968 (form 13). Taking the bringing into question as 2016, 17 of the 20 witnesses claim use over the full period of 20 years, five of which had used the path for at least 40 years.
- 10.4 Seventeen of the twenty forms (all except forms 3, 14 and 16) refer to use being throughout the whole route from A to B to C.

11. DOCUMENTARY EVIDENCE

11.1 South Cerney Inclosure Award and Map, 1814 (Q/RI 36) (1E)

Official map with award. 'Open and Common Fields, Common meadows, Common pastures and other commonable and waste lands', including allotment of old inclosures. Map of the whole parish, gives names of owners, with numbers referring to schedule with map, acreages and field names. Scale not given. Award: 1814 (copy; original enrolled 1828, gives names of some common meadows, furlongs and old inclosures; schedule of owners, with corn rents to be paid in lieu of tithes, gives field names, acreages and amounts, with references to map. Authorised under act of 1808.

Map shows lane, named as Leather Mill Lane, and annotated "No.II, 30 feet"

Award sets out the following:

"Road No.II

And one other Public Carriage Road and Highway No II on the said map or plan of the breadth of thirty feet extending from the east end of the Leather Mill Lane in its present track over Wildmoor Way field to an Inclosure belonging to William Davis called Wildmoor."

"Private Carriage Road No VII

One other Private Carriage Road and Driftway numbered VII on the said Map or plan of the breadth of twenty feet extending from an Ancient Gateway in an allottable Inclosure called Parsons acres numbering 514 on the said Map or plan belonging to John Millington

And the said Commissioners do hereby award order and direct that the said Private Carriage Road and Drift Way shall be for the use of John Robert Lucas and John Millington respectively and the respective owners and occupiers for the time being of the allotments and inclosures to which the same leads or adjoins and shall be made and at all times for ever hereafter supported and kept in repair by and at the expense of the said John Millington

Private Carriage Road No VIII

One other Private Carriage Road and Driftway numbered VIII on the said Map or plan of the breadth of twenty feet extending from the public Carriage Road numbered II in a North eastward direction over the allotments to Ann Miles and The Thames and Severn Canal Company respectively, to an allotment to Thomas Jones Esquire And the said Commissioners to hereby award order and direct that the same Private Carriage Road and Driftway shall be for the use of the said Thomas Jones, The Thames and Severn Canal Company and Ann Miles respectively and the respective owners and occupiers for the time being of the allotments and inclosures to which the same leads or adjoins and shall be made and at all times for ever hereafter supported and kept in repair by and at the expense of the said Thomas Jones....”

South Cerney Inclosure Act 1808 (Q/R1a 36)

An Act for Inclosing Lands in the Parish of South Cerney, in the County of Gloucester

“And whereas an Act was passed in the Forty-first Year of the Reign of His present Majesty, intituled, “An Act for consolidating in one Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts:....” [page 2]

No specific reference to power to set out highways within local act, so authority derives from 1801 Inclosure Consolidation Act. Local act does refer to a prohibition on cattle being put into the roads to be set out by this Act.

11.2 South Cerney Tithe Map, 1863 (GDR/T1/46)

Map only shows gardens and adjoining roads, but apportionment is for the whole parish. Plot numbers in the tithe apportionment correspond to those used on the 1814 Inclosure Award and Map, e.g.150 Mill Ham and Leather Mill. Includes Commutation of Corn Rents, 1863

11.3 Ordnance Survey 25-inch to 1 mile, 1875 edition, Glos 59.8 (10)

Roads coloured in sienna, masonry buildings in red and watercourses in blue. The Lane is shown by two full lines, coloured sienna, in common with other known roads, as far east as the ford over the River Churn. Beyond that point it is shown by two full lines but uncoloured. A path is shown running parallel to the track or way by twin pecked lines but unannotated.

Plot number 283, included within what is now Station Road to the west, is identified in Ordnance Survey Area Book (Book of Reference) as Road 11.382 acres

11.4 Ordnance Survey 25-inch to 1 mile, 1900 edition, Glos 59.8 (1P)

Wildmoorway Lane (named) shown by two full lines and open at the western end, running from Cerney & Ashton Keynes railway station east to Wildmoorway Lock and Wildmoorway Bridge where it terminates. No boundary features shown across the way, although it crosses the River Churn by a ford. A path shown by twin pecked lines and annotated “F.P.” is shown running parallel to the lane on the southern side, re-joining the lane to the east of the ford. Wildmoorway Lane is given the plot number 346 and is 7.605 acres in extent. The plot 346 includes both Wildmoorway Lane and Station Road to the west. Wildmoorway Lane crosses the canal and connects to a path annotated “F.P.” at its eastern end.

11.5 Ordnance Survey 25-inch to 1 mile, 1921 edition, Glos 59.8 (1R)

Features as for the 1900 edition. Only change is that plot numbered 346 is given as 7.585 acres in extent.

11.6 Ordnance Survey 1; 2,500 National Grid series, SU 0597, 0697 (1973)

The 1973 Ordnance Survey sheet SU 0597 refers to the Western portion of Wildmoorway Lane as a track and shows a feature marked by double pecked lines, but with its status undefined. Footpath BSC20 is shown beneath the Lane, also marked by double pecked lines and described as "Path". Sheet SU 0697 also of 1973 shows the rest of Wildmoorway Lane marked as Track and with a drain running through it towards the River Churn. The feature of the double pecked lines is not shown to continue along this portion of the route, and BSC20 is shown beneath the Lane by double pecked lines and marked as an unmade path. The footpath is shown crossing the Churn by a footbridge and joining the track east of point B, but no bridge is shown where Wildmoorway Lane crosses the river. This map series does not show public rights of way, and describes the physical characteristics of any ways, tracks or paths.

11.7 Ordnance Survey 2" to 1 mile Surveyor's Drawing (Cirencester, OSD 64, 1816) (1F)

Wildmoorway Lane shown by two full lines, crossing the River Churn and then terminating by the Thames and Severn Canal. A branch is shown leading north (by double pecked lines) to the canal. The main route seems to be shown continuing along the Gloucestershire side of the county boundary, but this is unclear.

11.8 Ordnance Survey 1" to 1 mile, First Edition, 1830 (1I)

Wildmoorway Lane shown by two full lines, crossing the River Churn and then the Thames and Severn Canal where it terminates.

11.9 Bryant's Map of Gloucestershire, 1824 (1H)

Shows Wildmoorway Lane by two full lines, uncoloured, leading from South Cerney, crossing the River Churn and then the Thames and Severn Canal at "Lower Wilmore Bridge" before terminating. Key identifies the way as a lane or bridleway.

11.10 Greenwoods' Map of Gloucestershire, 1824 (D10820/Maps/1/1) (1G)

Wildmoorway Lane shown by two full lines, uncoloured, leading from South Cerney, crossing the River Churn and then dividing into two routes, one of which crosses the Thames and Severn Canal (named) and the other terminating at the side of the canal. Key identifies the way as a Cross Road.

11.11 Inland Revenue, maps compiled under the Finance Act, 1910, based on Ordnance Survey 25": 1 mile, 1900 edition, marked up by Inland Revenue c.1915, and reference books or files (D2428) (1Q)

Draft valuation plan (D2428/3/59/8) shows Wildmoorway Lane by two full lines, uncoloured and outside hereditament boundaries.

11.12 Maps deposited with County Planning Officer under Rights of Way Act, 1932 S1, 3 (CP/D)

Nothing held

11.13 Parish Council file, Rights of Way Act, 1932

P71a/PC/1/1-12 – Parish Council minutes, 1894-1997 (12 vols)

P71a/PC/10/1 – Clerk's copy correspondence book, 1913-1931 (1 vol)

Not checked

11.14 Duplicate copies of tithe or inclosure awards

D1388/box9403/3 South Cerney – unofficial copy of inclosure map, award and book of reference, 1814

MF1126/41 – microfilm copy of tithe map

11.15 Private estate documents and maps

Undated map of South Cerney (D1388/box17068/12)

Only a portion of the parish is included on this map; this part of the parish is not shown.

Plan of lands in parish (D1388/box9403/3)

Not obviously relevant.

Map of Parish of South Cerney, 1831 (D1388/box13581/1) (1J)

R Hall Surveyor

Shows whole parish, landownership shown by naming and colouring. Sienna used to show 'roads' which are annotated (according to inclosure award?) and named in a different hand.

Claimed way shown by two full lines coloured sienna, crossing River Churn and terminating at plot number. It is numbered II, 30 feet. In a later hand it is named Wilmoor Lane

It should be noted that the way gives access to land held by fourteen different proprietors.

Bramble v Clapper, plans of highway in South Cerney, c.1830 (D1388/box9392/2)

Relates to dispute over easement. Searched, not relevant

Particulars of the Manors of South Cerney (and of several farms), 1793 (D1388 11/282/3)

Particulars make reference to a plan, which is not extant

Lists tenants names, numbers on plan, parcel descriptions and names, state of cultivation, extent and nature of tenure

Searched, not relevant

Survey and Valuation of the Lands and Premises in the Parish of South Cerney....made to equalise the Poors Rate, May 1810 (D1388/box9407/11)

Valuation refers to a plan; numbers seem to correspond to plots shown on Inclosure Map and Award, so presumably the Inclosure Map is the plan referred to. Information given is parcel number on map, proprietor, occupier and name of parcel, state of cultivation, extent and annual value.

Parcels searched around Wildmoorway Lane.

11.16 Footpath or highway diversion orders deposited with Clerk of the Peace (Q/SRh)

Q/SRh 1822B/1, 1838D. Checked, not relevant

Q/SR 1838D, 1839A. Not checked

11.17 Plans of public schemes deposited with Clerk of Peace (Q/RUm)

Plans of schemes and sealed duplicates for public undertakings involving capital investment from private sources requiring the assent of Parliament

Q/RUm 3, 33, 123, 210, 215, 232/1-3, 336, 338, 349, 434 (all searched)

Plan of intended navigable canal from Thames and Severn Canal at Cirencester to Bristol, 1793 (Q/RUm 3)

Searched, not relevant

Map of the Proposed Turnpike Road from Cirencester in the County of Gloucester to Wootton Bassett in the County of Wiltshire, 1809 (Q/RUm 33)

Searched, not relevant

Turnpike Road from Cirencester to Wotton Bassett, 1830 (Q/RUm 123)

Strip map showing course of turnpike road

Searched, not relevant

Manchester and Southampton Railway, 1845 (Q/Rum 210) (1K)

Plans and sections of the proposed line of railway between Southampton and the Birmingham and Gloucester Railway, near Cheltenham, 1845

Plan shows middle section of Wildmoorway Lane, from the River Churn towards the canal, by two full lines, annotated "To South Cerney" at western end and "From Foss Farm" at eastern end, and numbered 98. Colour is used to denote watercourses.

Parcel number 98 is identified in the book of reference as "highway" and owner given as "Surveyor of Highways". Note that a distinction is made between private and public roads. Parcel number 118, which is annotated on the map as "Occupation Road" is described in the book of reference as "Occupation Road" and the owner listed as the Dean and Chapter of Bristol Cathedral. Other ways are annotated on the map as "footpath" indicating that a distinction was made between footpaths and 'highways', i.e. public roads.

Manchester, Southampton and Poole Railway, Cheltenham to Poole, 1845 (Q/RUm 215)

Eastern end of Wildmoorway Lane shown on plan, but outside the boundaries of the proposed railway, so not identified by a reference number

Manchester and Southampton Railway 1846-47 Andover to Cheltenham (Q/RUm 232) (1L)

Plan and Sections (Q/RUm 232/1)

Proposed railway shown crossing Wildmoorway Lane east of the crossing of the River Churn (not as built)

Course of river Churn is along the present Boxwell Stream (as shown on 1970s OS)

Way shown by dashed lines within two full lines with dashed lines as plot number 98. Annotated "to South Cerney" at western end and "From Foss Farm" at eastern end

Map coloured to show watercourses and masonry buildings

Provision made for crossing, shown by "Cross Section No.31" Average of Present Road Level Average of Road when altered 1 in 30 and 1 in 20

Gradient chart annotated "Road to be raised 12 feet and crossed on the level.

See cross section No.31"

Two photographs taken

Book of Reference (Q/RUm 232/2)

Contains the names of the owners or reputed owners, lessees or reputed lessees and occupiers of lands, houses and hereditaments intended to be taken for the purposes of a railway

South Cerney

98 Road Surveyors of Highways (owner or reputed owner)

Photograph taken

Note that the book of reference for South Cerney also refers in "Description of Property" to a Footpath (parcel 92) and an Occupation Road (parcel 87) the latter in the ownership of "Dean and Chapter of the Cathedral Church of Saint Augustin, in the City of Bristol."

Cheltenham and Gloucestershire Waterworks, 1864 (Q/RUm 336)

Plan, Sections and Book of Reference

Line of water main ran from Boxwell Spring to Cerney Wharf- searched, not relevant

East Gloucestershire and Wiltshire Railway, 1864 (Q/RUm 338)

Plans, sections and book of reference

Searched, not relevant (passes to the south of the area of interest)

Thames and Severn Canal Navigation, railways and other works, 1866 (Q/RUm 349) (1M)

Railway number 6 is along the course of the canal at South Cerney

Plan shows eastern section of Wildmoorway Lane, leading over canal to parcel number 79. The route is shown by two full lines and numbered 80.

In the book of reference, parcel number 80 is identified:

Occupation road and bridge over canal, owners given as Company of Proprietors of the Thames and Severn Canal Navigation, John Keylock, George White, James Davis, Elizabeth Moss

Photograph taken of plan and schedule

Swindon and Cheltenham Extension Railway, 1880 (Q/RUm 434) (1N)

Railway number 1 passes through South Cerney, but to the west of Wildmoorway Lane

Includes sections and book of reference

Limit of deviation passes over far western end of Wildmoorway Lane, which is plot number 65

Provisions for road refer to the road that the claimed route joins, not the claimed route itself.

Plot 65 identified in book of reference as

65 Highway The Highway Board for the District of Cirencester (William Lawrence Cooke, clerk) [under Owners or Reputed Owners]

Drawn up in November 1880

11.18 District Council Clerk's correspondence.

DA22/113/1-2 – Highways Committee minutes, 1927-37 (2 volumes). Not checked

DA22/132/51 – Clerk's general rights of way correspondence file, 1967-1973.

Checked – not relevant

DA22/132/106 - Clerk's general correspondence file for South Cerney rights of way, 1954-1967. Checked – not relevant

DA22/132/107-111 – Clerk's specific correspondence files for South Cerney.

From catalogue descriptions these don't appear relevant, so weren't checked

DA22/132/133 – Clerk's correspondence file concerning the regional water park, 1967-73. Checked – not relevant

DA22/132/134 - Clerk's general rights of way correspondence file, 1936-1955.

Checked – not relevant

11.19 County Council Solicitor's correspondence.

Nothing relevant

11.20 County Surveyor: papers relating to survey of footpaths under National Parks and Access to Countryside Act, 1949 (K687).

K687/1/3 – Original submission. The route south of the Lane is claimed, but nothing is claimed over the parallel section of Wildmoorway Lane.

K687/2/2/13-16, 19-20 – Objections files relevant to South Cerney. No obviously relevant objections.

K687/3/4 – BSC20 is shown running south of the Lane, but nothing is claimed running over the parallel section of Wildmoorway Lane itself.

11.21 Tony Drake archive (Ramblers' Association) (D12676)

D12676/2/1/27

Cotswold Water Park file, 1970-1988.

Undated leaflet (c.1990) called Cotswold Water Park, on Map 3 (Cerney Lakes), is coloured up to show a footpath running through the Lane rather than below it. A 1985 plan (Map II) also shows a footpath running through rather than below the Lane, and marks this as a public footpath to be retained. Another undated 1980s plan shows BSC20 as running through rather than below the Lane, and marks it as an existing right of way to be retained. A further footpath guide entitled Footpaths of South Cerney and Cerney Wick, produced by the South Cerney Trust (undated, post-1965) shows the route through the Lane as a footpath

D12676/2/1/70

South Cerney file, 1964-2002. Checked – not relevant

D12676/2/1/92

Cotswold District Council Cirencester South of Fosse file, 1951-1996. Checked – not relevant

11.22 Smith, A.: *The Place-Names of Gloucestershire, 1964 (EPNS vol.i, p.59)*

Wildmoorway Lane, 1863 TA, Will-, Wildmore 1653, 1669 GR 474, v. wilde, mōr, weg

12. LANDOWNERS' EVIDENCE

The whole length of Wildmoorway Lane is unregistered and falls outside the boundaries of adjacent properties. The applicants erected impersonal notices at either end of the claimed route when making the application.

12.1 Tanners Solicitors, representing owner of Horseshoe Lake, Angela Scott, letter dated 25 January 2019

Tanners Solicitors expressed an interest after seeing the notices on site; they do not claim to be the landowner. A letter was sent to Tanners by the County Council on 21 November 2018, describing the effect of the application and explaining the process by which such claims are determined; this was accompanied by a map of the claimed route and an information sheet on Definitive Map Modification Orders.

Tanners responded on behalf of their client on 25 January 2019:

Our client has owner Little Horseshoe Lake which adjoins Wildmoorway Lane since December 2015. Little Horseshoe Lake has the benefit of a private right of way on foot and in vehicles along Wildmoorway Lane for the purposes of access to and egress from the property. Since purchasing Little Horseshoe Lake, our client has undertaken works to improve the surface of Wildmoorway Lane in order to facilitate her access.

The entrance to Wildmoorway Lane from the public highway was ungated. For security purposes, our client erected a gate at the entrance in 2017. The gate was unlocked and did not hinder the private rights of way along the Lane.

When our client purchased Little Horseshoe Lake, Wildmoorway Lane was in a poor state of repair. The surface was rotted [sic] with large pot hol[e]s, some as deep as 25cm. The verges were overgrown with plants encroaching into the Lane. At that time, traversing the Lane other than on foot was extremely difficult. The work undertaken by my client to cut back the verges and resurface the Lane has been to facilitate vehicle access in accordance with her private right of way,

The Lane provides access to our client's property, neighbouring farmland and two public footpaths. Those accessing our client's property and the neighbouring farm do so in accordance with the existing private rights of way. For others using the Lane, there is no point of exit except onto the public footpaths. The access onto those footpaths is restricted or gated preventing passage other than on foot. We enclose a letter from the previous owner of our client's property confirming that this has been the case since at least 1999. We have also spoken to the tenant of the adjoining field at the end of the lane who is going to provide a letter to confirm that has been the case for 60 years. This will be forwarded on as soon as it is received. In the light of this, it is difficult to see how the Lane could have been used other than on foot since there is no point of egress for bicycles, horses or motor vehicles.

In the circumstances, our client objects to the modification order application. We ask that this objection, together with the enclosed letter from Mr Thomas and Mr Read, once it is received, be considered as part of the application and by the County Council's Commons and Rights of Way Committee.

A series of photographs taken in 2017 were subsequently submitted to show the character of Wildmoorway Lane.

12.2 Maxwell Thomas, former owner of Horseshoe Lake, letter dated 23 January 2019

I am the former owner of Horseshoe Lake, Wildmoorway Lane, South Cerney. I was first involved with the property in February 1999 and was a Director for Watermark Europe Limited which owned the property between February 2005 and December 2015. I also developed the Isis Lake Estate. As such, I am aware of the public rights of way in the area and am familiar with the layout of Wildmoorway Lane.

Throughout the time that I was involved in Horseshoe Lake, I used Wildmoorway Lane as a private right of way to get to and from the Lake. At the end of the Lane, there is a gate leading into adjoining farmland. I believe that the farmer has a private right of way along the lane. The farmer's gate is always locked.

There is a public footpath running alongside the Lane and two public footpaths leading from the end of the Lane, one alongside the Lake and by the Local Authority and one leading around the Northern edge of the Isis Lake Development on the adjacent land. There is a stile between the lane and that path which can only be crossed on foot. It would be impractical to come along Wildmoorway Lane on anything other than foot as there is no way to exit the end of the lane unless exercising the private rights of way enjoyed by the farmland and Horseshoe Lake.

I confirm that you may send this letter to Gloucestershire County Council to support Angela Scott's objection to the Modification Order Application.

12.3 David Read, Wickwater Farm, Ashton Keynes, letter dated 23 January 2019

I graze cattle in the field at the end of Wildmoorway Lane. My parents and grandparents before me have also grazed cattle in that field and we have used the Lane for 60 years to get access to and from the field.

Until about 40 years ago, there was a gate at the entrance to Wildmoorway Lane where it leaves the public highway. This gate was shut and had a stile at one side to provide access to the public footpath which runs along side the Lane. As the gravel extraction works finish and the Lakes were given over to private ownership, the gate disappeared.

Throughout my family's involvement with the field, there has always been a locked gate between Wildmoorway Lane and the field. To the side of this is a kissing gate which gives access to the public footpath from the end of Wildmoorway Lane on towards the canal.

Between May and December I use the Lane on a daily basis with agricultural vehicles to get to and from the field. I understand that the field has a private right of way along the Lane and my access is in accordance with that private right of way.

Wildmoorway Lane provides access to the field, Little Horseshoe Lake and some public footpaths. Otherwise, the Lane goes nowhere. Anyone not visiting the field or Little Horseshoe Lake could only leave the end of the Lane via the public footpath where they should not be using bicycles or horses. I am worried that if Wildmoorway Lane is made into a restricted byway, it will encourage people to try and use the public footpaths with their bicycles or on horseback which may cause damage to the field.

I confirm that I support Angela Scott in her objections to the Modification Order Application and that this letter may be sent to Gloucestershire County Council.

13. CONSULTATIONS

13.1 South Cerney Parish Council

South Cerney Parish Council were the applicants.

13.2 Cotswold District Council

Sue Bremner, Countryside and Landscape Services, Cotswold District Council was consulted on 21 November 2018; no response was received.

13.3 County Councillor

Councillor Shaun Parsons was consulted on 21 November 2018.

13.4 Ramblers' Association

Richard Holmes of Cirencester Ramblers was consulted on 21 November 2018. He responded: "I can confirm that I have used this route on foot in the past. I have not had the opportunity to check how many of our members have also used the path. I assume as you have received sufficient evidence forms there is no

requirement for additional evidence. I have not received any complaints regarding access to this route. Ramblers would support this Definitive Map Modification Order. Please let me know if you require any further information.”

13.5 Open Spaces Society

Christine Hunter was consulted on 21 November 2018.

14. LEGAL COMMENTS AND CONCLUSIONS

- 14.1 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. Section 53(3)(c)(ii) relates to the discovery of evidence that a highway of a particular description ought to be shown as a highway of a different description.
- 14.2 Section 31(1) of the Highways Act 1980 states that where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- 14.3 Section 31(2) states that the period of 20 years in sub-section (1) is to be calculated retrospectively from the date when the right of the public is brought into question whether by a notice or otherwise. The twenty years usage must furthermore be “without interruption”.
- 14.4 The provisions of section 31 of the 1980 Highways Act do not supersede the principles of implied dedication that existed at common law before 1932, these principles being preserved by Section 31(9) of the 1980 Act which says that nothing in this Section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years.
- 14.5 If there is no presumption of dedication under Section 31 of the 1980 Act, then we will also consider whether the evidence is such as to establish, again on a balance of probabilities, dedication at Common Law. The inference drawn at common law will depend on the facts of the case. *“Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication”*. (Dyson J, *Nicholson v Secretary of State for the Environment* (1996).
- 14.6 A requirement for a claim of presumed dedication is that the path joins a highway at both its start and end points or connects with a highway at its start point and with a place of popular resort at the other. Public user cannot give rise to a presumption of dedication if it does not. The section of path A to C connects to a highway at each end, but the paths it joins at point C are of a lesser status than restricted byway. The claimed route, which was set out as a public carriage road in the South Cerney Inclosure Award, gave access to fields in differing ownerships, and the Thames and Severn Canal and the lock house at its eastern end.

- 14.7 In considering whether there has been a full 20 years use by the public of the claimed route, we must ascertain whether there has been an overt act on the part of the landowner to bring it home to users that their right is being challenged. The 20 years use, for the purposes of Section 31, is to be dated retrospectively from this date of challenge (s.31(2)).
- 14.8 There is no fixed method by which the public's right is brought into question, though one (the erection of a notice) is expressly referred to in Section 31(3). The House of Lords in *R (on the application of Godmanchester and Drain) v SSEFRA [2007]* is the most recent case addressing the meaning of s.31(2) as to what act or acts constitute "bringing into question". *Godmanchester* endorses earlier judgments in this regard.
- 14.9 The words "or otherwise" in Section 31(2) leave the matter at large. In *R v SSETR ex parte Dorset County Council (1999)* Dyson J stated that the challenge had to be communicated to the user and that the test to be applied is that set out by Lord Denning in *Fairey v Southampton CC (1956)*. Denning said, "*In order for the right of the public to have been brought into question, the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it*".
- 14.10 The methods by which the public's right to use the way might be brought into question could include: the locking of a gate; putting up a notice denying the existence of a right of way; seeking a declaration that there is no highway over the land in question or physically preventing a walker from proceeding along a path. Whatever means are employed, it should be sufficient "*to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway... The persons to whom the challenge has to be brought home are the users of the way*". (Lord Dyson in *R v Secretary of State for the Environment, Transport and the Regions ex parte Dorset CC (1999)*).
- 14.11 It is not necessary for it to be the landowner who brings into question the right of the public to use the way. The date of calling into question is simply the date when, as the result of some action, the public's entitlement to use the way was put in issue. There are no words in Section 31(2) of the 1980 Highways Act confining this action to be by or on behalf of the landowner. It simply sets the date from "... when the right of the public to use the way is brought into question". This view is confirmed by *Applegarth v Secretary of State for the Environment, Transport and the Regions (2001)* in which it was stated that anybody with an interest could bring into question the right of people to use the path and this needn't necessarily be the landowner. The burden lies on whoever needs to rebut the presumption to show that the owner of the path had not intended to dedicate the path as a public highway. Whilst in practical terms, the bringing into question will be by or on behalf of the landowner, it does not have to be so.
- 14.12 It is not essential for the path or way to have been used for the full period of 20 years by the same persons; use by different persons, each for periods of less than 20 years, will suffice if, taken together, they total a continuous period of 20 years or more. So you could, in theory, have half the forms covering the first 10 years and half the second. What can be problematic is if there were more User Evidence Statements for one particular period than for the rest. So, say only 2 forms for the first two years, but 13 others which then (taken together) cover the remaining 18 years. There is then a risk of insufficient user evidence for the early period of use.

- 14.13 Nor does it matter that the use is not continuous in the sense that it may not have occurred everyday. Use should be by a number of people who together may sensibly be taken to represent the community. Coleridge LJ in *R v Southampton (Inhabitants) 1887* said that “user by the public must not be taken in its widest sense...for it is common knowledge that in many cases only the local residents ever use a particular road or bridge.”
- 14.14 There is no statutory minimum level of user required to show sufficient use to raise a presumption of dedication. Use should have been by a sufficient number of people to show that it was use by ‘the public’ and this may vary from case to case. Often the quantity of user evidence is less important in meeting these sufficiency tests than the quality (i.e., its cogency, honesty, accuracy, credibility, and consistency with other evidence, etc.)
- 14.15 It was held in *Mann v Brodie 1885* that the number of users must be such as might reasonably have been expected, if the way had been unquestionably a public highway. It is generally applicable that in remote areas the amount of use of a way may be less than a way in an urban area. Lord Watson said: “If twenty witnesses had merely repeated the statements made by the six old men who gave evidence that would not have strengthened the respondents’ case. On the other hand the testimony of a smaller number of witnesses each speaking to persons using and occasions of user other than those observed by these six witnesses, might have been a very material addition to the evidence.
- 14.16 Arguably, therefore, the evidence contained in a few forms may be as cogent - or more cogent – evidence than that in many. *R. v. SSETR (ex p. Dorset) [1999]* accepted that, although the evidence within five user evidence forms was truthful, it was insufficient to satisfy the statutory test. The finding did not consider whether use by five witnesses would satisfy the test.
- 14.17 All 20 public path evidence forms attest to use on foot, with eight of the witnesses (forms 5, 9, 10, 11, 12, 15, 16 and 18 also having used the way by bicycle. In addition, form 16 refers to use by vehicle, which use dates to 1982. Of the eight cyclists, seven have used the claimed way for at least 20 years prior to the bringing into question of use in 2016. Use dates back to 1953 (form 9), with another user claiming use since 1968 (form 13). Taking the bringing into question as 2016, 17 of the 20 witnesses claim use over the full period of 20 years, five of which had used the path for at least 40 years. This should be considered to meet the tests of sufficiency set out above.
- 14.18 The action that brought the right of the public to use the path into question is considered to be the erection of a gate across the way at point A by the adjacent landowner in 2016. The gate and the accompanying notice were taken by the path users to be a challenge to their right to use this way and were the catalyst for an application to record the way as a restricted byway in March 2017. The period of 20 years for the purposes of section 31(1) of the 1980 Highways Act is taken to be 1996 to 2016.
- 14.19 The judgment *R (on the application of Godmanchester Town Council) v S of S for Environment, Food and Rural Affairs; R (on the application of Drain) v S of S for EFRA, 2007* affirms that it is not the case that any evidence of a lack of intention to dedicate is sufficient; there has to be an overt act or acts on the part of the landowner to show the public at large that he has no intention to dedicate.

“A landowner’s intention not to dedicate a way as a highway had to be established objectively and ‘intention’ meant what users of the way would reasonably have understood his intention to be; that ‘sufficient evidence’ that there has been no intention to dedicate required evidence of some overt acts on the part of the landowner such as to come to the attention of the public who used the way and demonstrate to them that he had no such intention, and it was not sufficient for him simply to give evidence that he had not so intended; that...the landowner’s intention did not have to be continuously manifested ‘during’ the whole of the 20 year period but merely at some point during that period...”

- 14.20 The statements by the adjacent landowners refer to the gate at point B that would have prevented use by horses and bicycles and that the way only joins other footpaths, so would be a no-through byway; they do not provide any evidence of any actions that could be considered to either bring the right of the public to use the way into question (prior to 2016) or to demonstrate a lack of intention to dedicate on the part of the landowner. It could further be argued that although they have an interest in Wildmoorway Lane as it provides a vehicular access to their property, the owners of Horseshoe Lake are not for the purposes of section 31 of the 1980 Highways Act the landowner. Following *Applegarth*, anyone with an interest in the land can bring the right of the public to use the way into question, but only the landowner can show a lack of intention to dedicate within the meaning of the act.
- 14.21 Section 31(1) of the Highways Act states that the 20 years use must be without interruption. An “interruption” has been defined as “an actual and physical stopping of the public’s enjoyment” (*Merstham Manor Ltd v Coulsdon and Purley UDC (1937) 2KB 77*) as opposed to an act that merely challenges the public’s right. It is not a mere absence in the continuity of use. Moreover, such interruption must be with the intention to prevent public use. There is no evidence of any interruption in the use of this path as is defined.
- 14.22 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.
- 14.23 Wildmoorway Lane is set out by the 1814 South Cerney Inclosure Award. The accompanying map shows the lane, named as Leather Mill Lane, and annotated “No.II, 30 feet”. The award sets out the following way: “Road No.II And one other Public Carriage Road and Highway No II on the said map or plan of the breadth of thirty feet extending from the east end of the Leather Mill Lane in its present track over Wildmoor Way field to an Inclosure belonging to William Davis called Wildmoor.” This indicates that the award set-out a pre-existing way as a public carriage road. The 1814 Award was made under an 1808 local act which was based on the 1801 Inclosure Consolidation Act.
- 14.24 The significance of inclosure awards arises from the evidential value of inclosure awards as legal documents giving effect to the creation or extinguishment of public highways, depending on the powers given to the Inclosure Commissioners. (Note

that pre-1835 the term “highway” did not usually include footpaths or bridleways.) Awards and maps may also provide supporting evidence of other matters, such as the existence or status of public rights of way over land adjacent to but outside the awarded area.

- 14.25 An award based on the 1801 Act and not shown to be ultra vires is very strong evidence of the legal status of the highways described, although in *Jacombe v Turner* (1892) 1QB 47 and *Collis v Amphlett* (1918) 1Ch 232 an inclosure award was found to be only conclusive as to matters within the Commissioners’ jurisdiction. In the 1893 case of *Micklethwaite v Vincent* where an inclosure award dated 1808 was at issue, the Court of Appeal held that “*Even if the Commissioners in this case have acted ultra vires, it would be impossible to hold that the award at this distance of time could be impeached.*”
- 14.26 The cases of *Micklethwaite v Vincent* 1893 and *Fisons Horticulture Ltd v Bunting and others* 1976 show that the Courts generally uphold long-standing awards that were not challenged at the time.
- 14.27 In 1801 Parliament determined to simplify the process of Private Bills by standardising the clauses most frequently used so that these would be automatically incorporated into Local Acts, thus making them shorter and allowing for more efficient passage through the Parliamentary process.
- 14.28 Sections 8 and 9 of the 1801 Inclosure Consolidation Act included a set of provisions relating to public carriage roads including a minimum width requirement (30 feet) and the appointment of a surveyor to oversee the making up of the roads to a satisfactory standard followed by a declaration to that effect by the Justices. Commissioners were also empowered to stop up roads running through old enclosures but were required to obtain an order from the Justices to do so. Where a local inclosure act imported section 11 of the 1801 Act, any pre-existing roads on the lands being inclosed would be extinguished unless these had been ‘set out’ in the award by the Commissioners.
- 14.29 Section 44 of the 1801 Act applied its powers and provisions to all local Acts (passed after 2 July 1801) unless the latter specified otherwise. In such cases, the provisions of both the local Act and the 1801 Act should be examined. The setting out of Wildmoorway Lane as a public carriage way and highway met the provisions relating to width (sections 8 and 9 of the 1801 Act) and to the need for pre-existing roads on lands being inclosed to be set-out anew in the award (section 11.) The effect of the inclosure award is to legally create Wildmoorway Lane as a public carriageway.
- 14.30 Ordnance Survey maps carry a disclaimer that any representation of a road, track or path is no evidence of the existence of a right of way over it. However, they do provide evidence of the physical existence and extent of a way, suggesting (but not proving) that the path had been in use for a longer period than that for which user evidence is available. The 1816 Surveyor’s Drawing shows the whole length of the claimed route in a manner consistent with other known highways.
- 14.31 Bryant’s Map of Gloucestershire for 1824 shows the route by two full lines; it is identified in the key as a lane or bridleway.

- 14.32 Greenwood's Map of 1824 also shows the route by two full lines, in a manner consistent with other known highways, running east to the Thames and Severn Canal where it terminates. It is identified in the key as a "cross road." The significance of this term is discussed below.
- 14.33 In *Fortune v Wiltshire Council* Court of Appeal (2012) [para. 54], it was noted that at that time "*the expression "cross road" did not have its modern meaning of a point at which two roads cross. Rather in "old maps and documents, a 'cross road' included a highway running between, and joining other, regional centres". Indeed that is the first meaning given to the expression in the Oxford English Dictionary ("A road crossing another, or running across between two main roads; a by-road").*"
- 14.34 The Planning Inspectorate's Advice Note No.4 (Advice on the Definition of Cross Road) states that on old maps and documents the term cross road would mean "*a highway running between, and joining, other highways, a byway and a road that joined regional centres*". In the case of *Hollins v Oldham* (October 1995) quoted in Advice Note 4, Judge Howarth concluded that the category known as "cross road"... "*must mean a public road in respect of which no toll is payable. 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. The cost of such plans when they were produced would have been so expensive that no other kind of purchaser could be envisaged. 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*".
- 14.35 The appeal court decision of *Fortune & Others v Wiltshire County Council*, March 2012 stated that "the judge concluded that Greenwood's map supported the emerging picture of an established thoroughfare. In our judgement the label "cross road" added further support."
- 14.36 Wildmoorway Lane is shown and described in a series of railway schemes: the Manchester and Southampton Railway schemes of 1845 and 1847, Thames and Severn Canal (to build a railway along the course of the canal) of 1866 and the Swindon Extension Railway of 1880. The 1840s schemes show Wildmoorway Lane as parcel number 98, which is identified in the book of reference as "highway" and owner given as "Surveyor of Highways". Note that a distinction is made in the book of reference between private and public roads. Parcel number 118, which is annotated on the map as "Occupation Road" is described in the book of reference as "Occupation Road" and the owner listed as the Dean and Chapter of Bristol Cathedral. Other ways are annotated on the map as "footpath" indicating that a distinction was made between footpaths and 'highways', i.e. public roads. The 1866 scheme in contrast describes the eastern end of Wildmoorway Lane as an "occupation road and bridge over canal", with the owners given as Company of Proprietors of the Thames and Severn Canal Navigation, John Keylock, George White, James Davis, Elizabeth Moss. It should be noted that it was the Thames & Severn Canal Company who were promoting the railway scheme, to replace the canal. The 1880 scheme plan shows Wildmoorway Lane as lot 65, which is identified in the book of reference as "highway" with the owner given as "The Highway Board for the District of Cirencester (William Lawrence Cooke, clerk)."
- 14.37 Individual railway and canal schemes were promoted by Special Acts. The process for Canal Schemes was codified in 1792 by a Parliamentary Standing Order and these arrangements were extended to cover Railway Schemes in 1810. The requirements for railways were expanded in the 1845 Act, with public rights of

way which cross the route of a railway to be retained unless their closure has been duly authorised. Therefore, although it was not the primary purpose of the deposited plans to record rights of way, they can provide good evidence in this context.

- 14.38 Both canal and railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes, and to a lesser extent canal schemes, was exacting and the book of reference and deposited plans made in the course of the process needed to be of a high standard. In particular, railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully. They have been admitted by the courts as evidence of public rights of way. Where available, surveyor's notes can provide useful information regarding the then function of a particular way.
- 14.39 The process for the authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership, Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities, and Parish Councils would not have wished their parishioners to lose rights. Therefore, an entry in the book of reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a public right of some description. However, the weight to be given to this can only be determined when it is considered alongside all the other evidence. There may be reputable evidence to rebut it such as a deed, conveyance or local map. The material available relating to canal schemes is generally more limited, both in quality and scope, than that for railway schemes.
- 14.40 Where schemes were not completed, the plans were still produced to form the basis for legislation and were still in the public domain. Whilst they are likely to provide useful topographical details, they may not be as reliable as those that have passed through the whole parliamentary process. As above, the weight to be attached will need to be determined alongside all the other available evidence.
- 14.41 Railway plans and cross-sections usually differentiate between public and private roads. Where this is not the case and the route is described as 'road' in the book of reference, it is sometimes possible to establish the nature of the way by reference to the description of other roads.
- 14.42 The status of a way had an impact on the cost of the scheme, and it is unlikely that railway plans would show a route at a higher status than was actually the case. There was no obligation to bridge footpaths under the 1845 Act and, as a general rule, unless there is specific provision in the Special Act, any public route requiring a bridge is of at least bridleway status. Bridleways and footpaths which are not shown on the plan are sometimes described in the associated book of reference. Canal plans and their associated books of reference record roads, but do not normally record bridleways and footpaths. Any public rights along a towpath are generally limited to footpath.
- 14.43 For the above reasons deposited plans can be good evidence to support a claim that a highway existed at the time they were made. Where this is not the case, they are still useful in establishing that a particular route existed.
- 14.44 The First Edition 25" to 1 mile Ordnance Survey map for 1875 is a coloured edition. Water is depicted in blue, masonry structures in pink, wood and iron structures in black and metalled roads in burnt sienna. The section A to B, as far

east as the River Churn is shown coloured sienna. This indicates that the whole route was metalled. Instructions to Surveyors of the time indicate that colouring of roads may possibly be because they were publicly maintainable, but the evidence is contradictory.

- 14.45 The whole length of Wildmoorway Lane is shown coloured out and outside of hereditament boundaries on the draft valuation plan drawn up under the 1910 Finance Act. The Finance Act of 1910 imposed a tax on the incremental value of land when it changed hands. In order to levy the tax, the Board of Inland Revenue was required to ascertain the site value of all land in the United Kingdom, which meant plotting and recording every piece of land, and resulted in the most comprehensive record of land ever prepared. All private land including private roads was 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. Indeed, they would have been negligent to do so.
- 14.46 In view of the financial implications, many landowners and occupiers would have been anxious to ensure that public highways were correctly recorded on the plans and all rights of way were properly recorded in the Field Book. It was an offence to knowingly make any false statement of representation, punishable by up to six months imprisonment. The threat of criminal sanction and the fact that the survey was carried out by a public body under statutory powers are relevant in giving the survey documents weight.
- 14.47 The following decisions made by courts of record are relevant. *Robinson Webster (Holdings) Ltd v Agombar* [2001] EWHC 510 (ch) (9 April 2001) concerns the weight attached to evidence of non-inclusion of a route in the taxable land of a hereditament. *Maltbridge Island Management Co v SSE* (31/7/98) considers whether weight may be attached to Finance Act evidence. *Fortune v Wiltshire CC* [2012] EWCA Civ 334 assesses the significance of the exclusion of a route from adjacent hereditaments when weighed with all other relevant evidence.
- 14.48 The Inland Revenue Instructions to Valuers indicate that land shown 'coloured out' is because it was held by a rating authority, and that is evidence that the way is a public highway, probably but not necessarily a carriageway. Finance Act records need to be used with other sources, and it is possible that colouring out has another explanation, the most usual being that the road or track is owned or maintained by a parcel of landowners or occupiers. In this case, the colouring out of Wildmoorway Lane is consistent with its setting out as a public carriage road and highway by the 1814 Inclosure Award, and its depiction in the public scheme books of reference as a highway in the ownership of the Surveyor of Highways.
- 14.49 If it is accepted that the documentary and user evidence is supportive of the way carrying carriageway rights, we should consider whether public motor vehicular rights have been preserved under the provisions set out under s.67(2) of the 2006 Natural Environment and Rural Communities (NERC) Act. There is no evidence that any of the exemptions to extinguishment of unrecorded public motor vehicular rights have been met.

15. SUMMARY

- 15.1 Wildmoorway Lane is set out as a public carriage road and highway, to a width of 30 feet, by the 1814 South Cerney Inclosure Award, under an 1808 Local Act,

which incorporated the general provisions of the 1801 Inclosure Consolidation Act. There is no evidence that the Inclosure Commissioners acted ultra vires in setting out this way as a public carriage road and highway.

- 15.2 The Ordnance Survey large scale plan of 1875 and the detailed railway plans of 1845, 1866 and 1888 show that Wildmoorway Lane was set out to the width specified in the Inclosure Award. Other evidence of the existence of the way includes the 1816 Ordnance Survey 2" to 1 mile surveyor's drawing, the Greenwood and Bryant maps of 1824 and the 1831 Plan of South Cerney, a detailed plan showing the way giving access to land in different ownerships.
- 15.3 The railway scheme books of reference for 1845, 1847 and 1880 are consistent in showing the way as a public highway, in the ownership of the surveyor of highways, and the colouring out of the way on the 1910 Finance Act valuation plan also indicates that the way was a public carriageway. No evidence has been discovered that highway rights over Wildmoorway Lane have been subject to any legal stopping up order.
- 15.4 In addition to the documentary evidence, the application is supported by 20 public path evidence forms, completed by those members of the public who have used the claimed route. Use dates back to 1953 and 17 of the 20 witnesses claim use over the full period of 20 years, five of which had used the path for at least 40 years. This should be considered to meet the tests of sufficiency set out. Eight of the witnesses have used the claimed way by bicycle, seven for the full period of 20 years.
- 15.5 There is no evidence that any of the exceptions to extinguishment of unrecorded public motor vehicular rights set out in section 67(2) of the 2006 Natural Environment and Rural Communities (NERC) Act have been met.
- 15.6 Giving consideration to the above, the recommendations are as follows:
 - (a) that a length of restricted byway between points A and B (as shown on map B) be added to the Definitive Map; and
 - (b) that the public footpath BSC 20 between points B and C on the said map be upgraded to restricted byway

16. APPENDICES

- A. Location Map, 1: 10,000 scale
- B. Map showing claimed route, 1: 6,000
- C. Summary of public path evidence forms, 2016
- D. List of streets map, to show stopping up and diversion of Station Road
- E. South Cerney Inclosure Map, 1814
- F. Ordnance Survey Surveyor's Drawing, 1816
- G. Greenwood's Map of Gloucestershire, 1824
- H. Bryant Map of Gloucestershire, 1824
- I. Ordnance Survey 1" to 1 mile map, First Edition (1830)
- J. Plan of Parish of South Cerney, 1831
- K. Railway plan and book of reference, 1845
- L. Railway plan and book of reference, 1847
- M. Railway plan and book of reference, 1866
- N. Railway plan and book of reference, 1880
- O. Ordnance Survey 25" to 1 mile map, 1st edition Glos 59.8 (1875)

- P. Ordnance Survey 25" to 1 mile map, 2nd edition Glos 59.8 (1900)
- Q. Inland Revenue, 1910 Finance Act draft valuation plan
- R. Ordnance Survey 25" to 1 mile map, 3rd edition Glos 59.8 (1921)
- S. Photographs of claimed route, taken August 2017 and November 2023