

The Fosse Way and Highway Rights through Beacon Hill Wood

by Peter Banks

Contents (links are in red)

1.	Preface	pg. 2
2.	Introduction	pg. 3
3.	Early Maps and other documents (pre 1800)	pg. 4
4.	18 th Century Enclosure Awards	pg. 5
5.	Taxation Maps	pg. 7
6.	Modern Maps (from 1800)	pg. 8
7.	Rights of Way	pg. 9
8.	Conclusion	pg. 10

Appendix 1.

Illustrations: (see another publication).

Fig 1	Strachey (1736) map
Fig 2	Day & Masters (1782) map
Fig 3	Stoke Lane Enclosure Award (1776) map
Fig 4	Shepton Mallet Enclosure Award (1785) map
Fig 5	Shepton Mallet Enclosure Award (1785) key and detail
Fig 6	Doultling Tithe Apportionment (1836) map
Fig 7	Stoke St Michael Tithe Apportionment (1836) map
Fig 8	Shepton Mallet Tithe Apportionment (1836) map of lane
Fig 9	Shepton Mallet Tithe Apportionment (1836) map of plantation
Fig 10	Finance Act (1910) map
Fig 11	Ordnance Survey field drawings (1808) sketch map
Fig 12	Greenwood (1822) map
Fig 13	Rev. Skinner (1820) sketch
Fig 14	Ordnance Survey 25 inch (1884) map
Fig 15	Ordnance Survey 25 inch (1904) map
Fig 16	Corney M. Archaeological Survey (2002) map of surface features

Appendix 2.

Report summary:

An archaeological investigation of the route of the Fosse Way in Beacon Hill Wood.
By Peter Leach

1.0 Preface

1.1: The purchase of Beacon Hill Wood by the Woodland Trust in 1995 was achieved through the local community seeking to ensure continued access to a treasured amenity. During initial consultations it was realised that the site provided a rare opportunity to accommodate and enjoy a wide range of diverse interests. These interests could be grouped under three broad headings; Heritage, Wildlife and Recreation. Whilst each aspect was considered to be of equal and fundamental importance it was recognised that there may be conflicts of interest between them. It was intended that by understanding and resolving these issues, the overall value of the site would be enhanced and much learnt that could benefit the wider countryside.

1.2: One of the more sensitive issues relates to the existence of a public right of way, classified as a Road Used as a Public Path (RUPP), which runs through the wood. This RUPP is all that remains here of a major Roman Road known as the Fosse Way. Abandoned by every day traffic, it is typical of the many unmade roads which are enjoyed by riders, of both horses and motorcycles, seeking informal recreation throughout the countryside. Where public vehicular rights exist, as they might along the line of this RUPP, the activity will require accommodation within the management plan for the wood. The wood is also used occasionally by riders of non-road legal motorcycles, 'joy-riding' around the trees and earthworks, away from the RUPP; this activity is inappropriate, unauthorised and needs to be discouraged.

1.3: A further need to study the vehicular rights through Beacon Hill Wood has resulted from the recent Countryside and Rights of Way Act 2000; this challenges current vehicular use of all RUPPs. The implications of this Act on future recreational pressures in the wood require careful consideration.

1.4: This review seeks to clarify current highway rights through the wood in order to enable a viable management plan to be decided. The research makes no claim to be comprehensive; it is merely a review of the more usual documents relevant to highway rights, available at the Somerset County Record Office and the County Studies Library in Taunton. Additionally; Michael McGarvie kindly supplied details of Strachey's c1736 description of the Fosse, I have also extracted information from the 1987 SIAS publication 'The Legacy of the Turnpikes' by J B Bentley & B J Murless, and the Archaeological Surveys of Beacon Hill carried out on behalf of the Woodland Trust / Beacon Society by Ian Powlesland in 1997, and Mark Corney with Peter Leach and Richard Tabor in 2002.

1.5: All interpretations of the information and legal situation are my own and no guarantee is offered as to their accuracy.

*Peter Banks
December 2002*

2.0 Introduction

2.1: The Fosse Way is one of Britain's better known Roman roads. Having typical, almost ruler straight alignments, which only occasionally pass through ancient towns or villages, it runs from the Devon coast south of Axminster, in a north easterly direction across Somerset to Bath, to end at Lincoln. Constructed during the Roman occupation it was provided with a firm road surface, side drainage ditches and wide verges to enable unimpeded cross-country travel in all seasons. Although some sections have fallen into disuse, modern roads have been laid over much of its length and its route can clearly be seen on today's road maps. The missing links can often be found following a green lane and the reasons for abandonment are usually not difficult to identify. Steep hills, or the proximity of a large market town not actually situated on the route, are common causes for an alternative route being established. Both these reasons apply to the section of Fosse Way through Beacon Hill Wood.

2.2: Beacon Hill Wood is situated approximately two miles north of Shepton Mallet, on a high point of the East Mendip ridge. It is a conspicuous site, where early signal beacons would have been set up, and is at the centre of a Bronze Age barrow cemetery. The area has also been a source of materials, from Iron Age pottery and quern stones, right through to stone for mid 18th century turnpike road construction. The extent of quarrying activity before and after the Roman occupation is still evident; such that the exact line of the Roman carriageway, or agger, through the site is no longer obvious. The situation is further confused by the existence of several holloways which are unlikely to be of Roman origin. Not only has the line of the Roman road been lost, the route and origin of the present public Right of Way (RoW) through the area is also not clear.

2.3: Modern maps, intended to show acknowledged Rights of Way, were drawn up by the Highway Authority (HA) in the 1950s. On these the status of the Fosse Way through Beacon Hill Wood is shown as a Road Used as a Public Path (RUPP), indicating that it was a carriageway used mainly by horse riders and walkers. However, the line of this RUPP does not follow any of the holloways, it ignores them entirely and actually crosses one at right angles. Certainly not a route that was ever used by horse drawn vehicles.

2.4: The line of the RUPP runs right through the plantation; from the tarmac road on the northern boundary, it winds down the hill to the southern boundary of the wood, and continues on for a further 550 metres as a 'green lane' to Yellingmill Lane. At each end of the RUPP the Fosse Way can be followed, south to Shepton Mallet and north to Oakhill, as unclassified roads (UCRs). Despite the lack of a tarmac surface, both these UCRs are shown on the Highway Authority List of Streets as publicly maintainable vehicular routes.

3.0 Early Maps and other documents (pre 1800)

3.1: The Fosse Way continued in use as a major highway into the 18th century, its route across the Mendips being depicted on several maps. Two of the earliest examples are; Strachey (1736) and Day & Masters (1782).

3.2: A map of the east Mendip area by Strachey printed in 1736 [fig 1] shows the Fosse way as double parallel lines passing close by the Beacon. Other principal routes are shown as single lines of doubtful accuracy; for example, the present line of the A37/A367 over the ridge and down to 'Oakly' (Oakhill?) is not depicted. Strachey (d 1740) had a particular interest in Roman remains and in a manuscript describing the route of the Fosse Way from Stow on the Wold to Seaton describes the section over Mendip '*...Leaving Ashwike Church ½ a Mile on ye right & Stokelane on ye Left Mounts Mendip to a Stone on a large Tumulus on the very Apex of ye hill serving for a Beacon called Stone Beacon. It is about 6 feet high & 2 feet Square. This Stands in a direct line with ye road but ye foss takes a little turn to avoyd this Steep Summit & Leaves it scarce a furlong on ye Left....The Foss descends hence to a village belonging to Shepton Mallet called Charlton...*'. The strip map which accompanies this text shows the route as unfenced from Ashwick to Charlton.

3.3: Day & Masters 1782 [fig 2] does not show Yellingmill Lane but depicts the Fosse entirely, though unfenced from Bolters Lane north over Beacon Hill and down towards Oakhill as far as the junction with a lane east to Three Ashes; this being the point where a 'double dog leg' is set out in the Shepton Enclosure of 1785 [fig 5b] and a deep holloway exists today.

3.4: It is likely that the Fosse was falling into disuse well before the end of the 18th century as more direct and less arduous routes became established between the market town of Shepton Mallet and local settlements. Maintenance of these routes was not of a high standard, being the responsibility of the parishes over which they ran, and this led to a 'turnpike' system of toll roads being laid out in the second half of the 18th century. At this time measures were taken to restrict use of 'back roads'; which is what this length of the Fosse had become. For example, the turnpike cottage at Charlton was set up to prevent free access onto the section of Fosse immediately north of that point. The ridge road adjacent to Beacon Hill Wood was turnpiked from the east by the Frome Trust in 1757 as far as the Fosse, the continuation west to Wells being completed by the Wells Trust in 1764. Half a mile to the west a more direct route from Shepton Mallet to Oakhill was eventually turnpiked in 1780, by the Shepton Mallet Trust (formed 1776), along the line shown on Day & Masters [fig 2].

3.5: Development of these roads may have caused the Fosse to finally fall into disuse. The Shepton Mallet Enclosure Act (1785) did not clearly recognise the course of any route through the wood when the various allotments were set out. Besides those with vested interests who might have been concerned to restrict passage along non-turnpike roads, such as the Fosse Way through Beacon Hill Wood, the local parishes, along whose borders the Fosse ran, would also have been relieved of the burden of maintenance if it was abandoned.

4.0 18th Century Enclosure Awards

4.1: Even if actual use of the Fosse Way south from Beacon Hill ceased, due perhaps to the construction of more convenient alternatives, the actual right of the public to use the route may well have endured. If statutory stopping up ever occurred it is most likely to have resulted from the late 18th century Parliamentary Enclosures. Two such Enclosure Acts of the 'wastes of Mendip' are relevant to this section of the Fosse; the Stoke Lane and Doulling Act of 1776 and the Shepton Mallet Act of 1785.

4.2: The first of these, the Stoke Lane and Doulling Enclosure Act of 1776 [fig 3], enclosed the land adjacent to the east side of the Fosse as far south as the present Yellingmill Lane. The map attached to this award shows the land to the east of the Fosse and south of the ridge road as being one large field, numbered 117 in Stoke Lane parish and 126 in Doulling parish. The hedge line forming the western boundary of the award is depicted as being ruler straight all the way from the present Yellingmill Lane north across the ridge road and down to Fosse Farm in Oakhill. The exact line of the parish boundary with Shepton Mallet is not annotated on the map despite a boundary stone set up in 1766, which still stands within the wood, being at least 30 yards west of this alignment. There is no road depicted as following this hedge line, except at each end where the 'The Foss Road' is indicated but as veering west onto the as yet unenclosed land of Shepton Mallet parish. Yellingmill Lane is clearly shown running west from the Fosse Way.

4.3: The Shepton Mallet Enclosure Act of 1785 [fig 4] encloses land to the west of the Fosse. The parish boundary is not annotated and the hedge line forming the eastern boundary is again ruler straight from Yellingmill Lane to Fosse Farm. The map indicates a lane to the east of this hedge along almost the entire boundary of the Award, except where a sketched line suggests the tree ring known today and at a double dog leg toward Oakhill which is set out in the text, as well as on the map [fig 5b], as a public road. The Award sets out a plot which forms the western section of Beacon Hill Wood, (the area covered by a recent archaeological survey [fig 16]); plot 95 is awarded to Thomas Strangway Horner, 14 acres 13 perches called Martin's Hill Tenement. There is no mention in the Award of a Highway through this plot, nor any of the other allotments south as far as Yellingmill Lane.

4.4: No reference was found in the award of any intention to stop up a Highway along the line of the Fosse south of the ridge and further enquiries are required to confirm whether this is significant. There are, however, a couple of indications that a public Highway was accepted on this section of the Fosse, though, for reasons unknown, this was not clearly laid out in the Award.

- First, the award appears quite precise; plot 95 is 14 acres 13 perches, or 68153 sq yds. The area covered by the recent survey is 6.2 ha i.e. 15.32 acres or 74149 sq yds. Therefore the Award is for an area of land 5996 sq yds less than that measured on the ground today and this could equate to a strip just over 41 ft wide running the length of the plot north to south. The width of public roads set out under the Shepton Mallet Enclosure Award is forty feet.

- Second, the Award sets out various *'private Ways or Roads for the accommodation and convenience of particular persons'* [fig 5a]. In each case the way is delineated on the map by dotted lines starting from a public road. One of these private Ways is set out *'from edge of certain pit in plot 192 to Levi Amos's several allotments'* Plot 192 and the dotted lines of the private Way is only accessible from a point on the Fosse 200 metres north of Yellingmill Lane!

4.5: The existence to this day of a distinct agger in the field from Yellingmill Lane north to plot 192 may indicate that this section of the Fosse did remain in use; at least until the Shepton Mallet Enclosure when use was relocated east to the lane in the present position. The continuation north from plot 192 appears to have been abandoned earlier, perhaps as the more direct Shepton to Oakhill road became established; the stone from the Fosse may even have been removed as a ready supply of construction material.

4.6: It is of interest to note that the direct line of the Fosse, south from the end of the present RUPP across the field to the north end of Martins Lane, does appear to have been stopped up at this time, with an extension of Yellingmill Lane being laid out, as a substitute called *'new cart lane'*, to connect with Bolters Lane. The Act also sets out ways to enable the owner of *'Erring Mill'*, which situated at the site of the Millbrook water works, to repair and maintain the mill pond and dam. The Enclosure map also confirms that by this date a main road followed the present line of the A37; with a bridge over the stream just south of the western end of Yellingmill Lane.

5.0 Taxation Maps

5.1: Maps drawn up for the purpose of the Tithe Commutation Act of 1836 clearly lay out the areas covered by the three parishes and the schedule sets out the use of each plot. None of the maps [figs 6-9] or schedules includes any reference to a public highway through the wood along the line of the Fosse; the whole area is recorded as being plantation with no tithe payable.

5.2: The owner/occupier of the plantation in Shepton Mallet parish, plot 246, is recorded as Thomas Strangways Horner, the area is again given as 14 acres 13 perches and the map [fig 9] appears to confirm this as extending as far as the tree ring!

5.3: The owner of the plantation in Stoke St Michael parish is recorded as Thomas Strangway Horner Esq. and the owner in Doultong parish as William Melliar Foster Melliar Esq., even though the parish boundary cuts across the circular tree ring where no physical boundary is known to have existed [figs 6, 7]. The location of two boundary stones, bearing the initials 'WMFM', which still exist at the bottom of the escarpment [fig 16:28-29] and a three parishes boundary stone at the top, bearing the date 1766 [fig16:26], also indicate some ambiguity as to exactly where the parish boundaries lay and the size of the western section of Beacon Hill Wood.

5.4: The green lane south to Yellingmill Lane [fig 8] is in Shepton parish, its owner/occupier is recorded as Thomas Lewis, the land described as being a house and paddock, the state of cultivation as 'Homestead', with a tithe of 2 shillings (10p) payable on an area of 1 acre. The plot is numbered 254b the suffix 'b' being added to differentiate it from an adjacent field on the west with the number 254a. Being a separate plot, it is not clear why it was not given a number of its own. This, together with the fact that no other map has been found depicting this dwelling, suggests it may have been somewhat short-lived; perhaps an encroachment onto disused land. Field 254a is set out in the Shepton Enclosure Award as plot 192 and 193, across the former a private way is set out at the junction of which the dwelling appears to have been erected.

5.5: The Finance Act of 1910 provided for the levying of a tax upon the incremental value of land. The various holdings were set out on an Ordnance Survey 25 inch map of 1904 [fig 10], and schedules of owners were prepared by the Inland Revenue. Roads were excluded from property on the map and deductions could be claimed by a landowner where his land was crossed by a public right of way. The whole Beacon Plantation is depicted as being under a single owner with no roads across it and no deductions for RoW. The green lane south to Yellingmill Lane is now included entirely with owners of the fields to the east and again no deduction is made for road or RoW. Many landowners did not claim a deduction, taking the view that the additional tax liability was less onerous than the implications of disclosing a public right of way and this might be particularly so if there was a wish to establish an encroachment onto waste land.

6.0 Modern Maps (from 1800)

6.1: Some early 19th century road maps still show the line of the Fosse although it must have been falling into disuse by this time. It is shown as a minor road on maps by Smith (1804) and Cary (1805) at a scale of 3 miles to 1 inch; but is missing from Cary's later ½ inch maps published in 1823 and 1832

6.2: The Ordnance Survey Drawings of 1808 [fig 11], which were made from a new survey, are surprisingly lacking in detail for this area. The barrow cemetery is depicted fairly accurately with what may be part of the tree ring, but the area of the Fosse has a few unclear marks and a couple of parallel lines; but no detail anywhere of any trackways or watercourses. Even Yellingmill Lane is inaccurately depicted despite its line being extended in the 1785 Enclosure Award.

6.3: Greenwood in 1822 [fig 12] shows both Yellingmill Lane and the Fosse Way with the latter fenced as far as the plantation and then only a parish boundary is depicted (a single dotted line) going straight over the ridge and down towards Oakhill; a lane being shown again from the 'double dog leg'.

6.4: Parson Skinner in his sketches of 1820 clearly shows a hedged lane as far as the plantation and then an unfenced section round the hill; much as we have today. The Fosse immediately to the north of the plantation is less clearly depicted, even confused on his sketch of Aug 17 1820 [fig 13].

6.5: The 1884 25 inch O.S. map [fig 14] gives the acreage of the various plots and sets out the parish boundaries. This shows the green lane section being in the parish of Shepton Mallet; the boundary running down the lane 4 foot from the east hedge. On entering the wood the parish boundary line veers away from the hedge to follow a line approximately following the existing boundary stones. Other dotted lines are depicted; one appears to indicate the line of the 'Fosse Way Roman Road'. This follows a direct line from the 'agger' north of Yellingmill Lane to a point opposite the centre of the lane down to Oakhill; i.e. straight up the steep scarp and yards to the east of the 1766 three parishes' boundary stone! The map does not show contours and the holloways are not depicted. A route is indicated which follows the line of the present public Right of Way, though it is not recognised as a Footpath, by being annotated with the letters F.P., until the 1904 survey [fig 15]. The area of plantation in Shepton Mallet parish is given as 14.051 acres, which is 145 sq yds less than that allotted to Horner in 1785. The 1884 survey shows the circular 'tree ring' and plantation to the east planted with mixed broadleaf and conifer trees. A narrow area along the parish boundary appears to have been cleared and is depicted as furze and brushwood; the 1904 survey indicates this area replanted with conifer.

7.0 Rights of Way

7.1: The National Parks and Access to the Countryside Act of 1949 required County Councils to prepare a map of all the public rights of way in their area, classifying them as Footpaths, Bridleways or Roads Used as Public Paths (RUPPs). The draft map, drawn up in the early 1950's, depicts the route as a Footpath, running along a line shown on the 1904 Ordnance Survey 25 inch map where it is also annotated as a Footpath. Objections to this classification were made by the Ramblers Association and the published Definitive Map was amended to show the route as a RUPP. The reasons for the objection and why it was accepted require further study.

7.2: An Act of Parliament in 1968 questioned whether the carriageways along which RUPPs ran were public vehicular routes, in which case they should be reclassified as Byways Open to All Traffic (BOATs), or merely private carriageways, when they would be down graded to Bridleways; but this question was never investigated in Somerset as the Act required. In that situation public bridleway rights were considered conclusive and a question remained over public vehicular rights.

7.3: The Definitive RoW through the wood was surveyed and marked out on the ground in 1996; this showed that the line certainly does not follow a route which would have been used by any vehicle, public or private. For example, it cuts obliquely across the principal holloway and this holloway, whilst unlikely to be of Roman origin, was certainly created and maintained for use by vehicles. The Definitive line, drawn up prior to the present plantation, does make a sensible route for walking through the wood as it avoids use of holloways, which by their nature would almost invariably be muddy, and skirts around quarried areas *[fig 16]*.

7.4: The Countryside and Rights of Way Act 2000 seeks to clarify the situation by reclassifying all RUPPs as Restricted Byways (RBs) which confirms a right for horses and horse drawn vehicles whilst excluding lawful use of any motorised vehicle; unless for access by an adjoining landowner. The public will be required to acquire sufficient evidence, and at least apply to have the route recognised as a BOAT, before it may be lawfully used by motorised vehicles.

7.5: The RUPP and the UCR south to Shepton Mallet are currently subject to a Traffic Regulation Order (TRO) which excludes use by all vehicles except bicycles and motorcycles. The UCR north toward Oakhill remains open to all traffic. To be effective a TRO requires the presence of HA approved signs informing the public of the situation.

8.0 Conclusion

8.1: There is little doubt that almost two thousand years ago, under the Romans and possibly even earlier, the Fosse Way was a major cross country route and its use by the population at large was presumably as free and unrestricted as on any route in the country. More recent records, covering the past 250 years, indicate general use of this section of the Fosse gradually being abandoned in favour of alternative routes. Lack of use in itself does not remove highway rights; this would have to be the result of a specific legal event. The most likely occasion when rights may have been stopped up would have been during the 18th century Enclosure Acts, but research so far has not come up with clear evidence that this ever occurred. Maps for the 1836 Tithe Apportionment and 1910 Finance Act indicate that no highway existed along the line of the RUPP at that time; though this may be the result of a claim on disused land. There does appear to be several ambiguities regarding the line of the parish boundaries and ownership of the area.

8.2: Even if highway rights through Beacon Hill Wood have been stopped up, new rights may well have since been established by deemed dedication. There has been a long tradition of use by horse riders and motorcyclists of this section of the Fosse Way right up to the present and this will almost certainly have established Bridleway rights. Recent use by vehicles will not have established new rights, if none existed previously, but such activity may be used to confirm vehicular rights where they can be shown to have existed before 1930 and never stopped up. Those sections of Fosse Way to the north and south of Beacon Hill Wood, which are recognised as Unclassified Roads, have probably been in continuous use by all forms of traffic since the Roman occupation and, subject to any TRO, will continue to be so used for the foreseeable future.

Peter R Banks

postscript

To help ensure the preservation of archaeological features surviving in Beacon Hill Wood and to promote a preferred route for riders travelling through it, The Beacon Society in conjunction with the Woodland Trust implemented a scheme of improvement along the principal holloway (no. 3 on [Fig 16](#)) in the autumn of 2002. This involved the clearance of mud and debris along the base of this track, and provided an opportunity for some archaeological investigation along its sides in the vicinity of a postulated junction with the original Fosse Way road approaching from the south. A summary of the results is provided in [Appendix 2](#).

P R B

Appendix 2

An archaeological investigation of the route of the Fosse Way in Beacon Hill Wood

In the autumn of 2002, three archaeological trenches were cut along the sides of the principal holloway which descends the steep south-facing slope immediately below the crest of Beacon Hill. These were dug by hand, in conjunction with a project to clear debris from the bottom of the holloway to improve access, and were subsequently backfilled. Their purpose and location was prompted by the archaeological earthwork survey, completed earlier in the year (Corney, *et al*, 2002), which suggested that the remains of an earthwork agger representing the original line of the Roman Fosse Way were cut through by the holloway identified as no. 3 on that survey (Fig. 16). Two linked trenches, totalling 32m (1 and 2), were cut to depths varying between 0.3m and 1.0m along the lower southern edge of the holloway. A third trench (3) 5m long was cut along part of the north side.

It was hoped that these trenches might locate some remains of a road surface, its foundations, or side ditches, but in the event no such features were recognised. The only archaeological feature encountered was part of a pit towards the east end of Trench 1, cut over one metre into the underlying stony sands and subsoil, and containing a single flint point or arrowhead of Neolithic type. Clearance along the bottom of the holloway in this sector exposed a roughly cobbled surface that extended westwards as far as the quarry (no. 20 on Fig. 16). The excavations along its side revealed that this had been deliberately laid but no dating evidence was recovered.

Failure to locate remains of the Fosse Way here may be accounted for by a misidentification of the agger earthwork, a different line for the original road, or major disturbance and destruction of any such remains in this area. The latter is perhaps the most likely explanation, given the presence of several deeply cut holloways on this steep slope, combined with the processes of erosion and perhaps deliberate robbing of former road makeup. The topography of Beacon Hill here seems to rule out a straight course for the Fosse Way through the wood northwards from this point, and a small divergence to the west would be logical to ease the ascent of a very steep scarp. This factor also accounts for the development of the holloways over the centuries between the deterioration and probable obliteration of the Roman road, and the likely abandonment of this route as a regular highway during the 18th century. Whether any further information on the character of the Fosse Way here can be gained, or the original course of the road ever be traced, must await future research or discoveries.

Corney, M. Leach, P. & Tabor R. 2002 *Beacon Hill Wood: An Archaeological Survey* (prepared for The Woodland Trust and The Beacon Society)

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February 2003