

Statement of Reasons

in relation to the refused to make a
Definitive Map Modification Order for a claimed
public footpath at Park Copse, Compton Dando

21/09/2023

1. Application, Routes and Consultation

- 1.1 On 16th December 2020, Compton Dando Parish Council applied to Bath and North East Somerset Council (“the Authority”) to have a public footpath added to the Definitive Map and Statement (“the Application”) (see **OMA1**). The Application was accompanied by eight User Evidence Forms and a total of 21 User Evidence Forms and emails have now been received by the Authority (see **OMA2**). Following receipt of the notice served under schedule 14(2)(1) of the Highways Act 1980 (“the 1980 Act”), the affected landowner submitted a Landowner Evidence Form and written statements from five local residents (see **OMA3**).
- 1.2 The Application sought to have the route commencing from a junction with the carriageway of Peppershells Lane at grid reference ST 6428 6481 (Point A on the Plan) (see **OMA4**) and proceeding in a generally west south-westerly direction for approximately 18 metres to grid reference ST 6418 6492 (Point B on the Plan) and turning in a generally southern direction through Park Copse for approximately 210 metres to a junction with public footpath BA8/65 at grid reference ST 6419 6476 (Point D on the Plan) recorded on the Definitive Map and Statement (“DM&S”). The section shown by a dotted orange line between points A and B on the Plan is hereafter referred to as “the Peppershells Route” and the section shown by a dotted blue line between points B and D on the Plan is hereafter referred to as “the Application Route”.
- 1.3 The Authority carried out a site visit in January 2021 and found that the Application Route was not physically evident on the ground; however, there was a worn path through Park Copse which is shown on the Plan with a red dotted line and is hereafter referred to as “the Alternative Route”. The Application Route and Alternative Route have the same termini but their alignment varies by up to 20 metres. During the site visit, Heras fencing, which was not obstructing passage, was found at point A on the Plan and a locked metal field gate blocking the Application Route was found at point B on the Plan. A rusted and illegible sign was found attached to a tree approximately 3 metres from point B on the Plan (“the Metal Sign”).
- 1.4 In August 2022, the Authority consulted on the Peppershells Route, Application Route and the Alternative Route with the Applicant, the affected landowner, local and national user groups and the ward members. Notices were posted on the Authority’s website and on site at points A and D on the Plan. The Authority received 10 further User Evidence Forms and three emails from members of the public (see **OMA2**). The Applicant and Landowner both stated that they did not wish to submit any further evidence at that point.
- 1.5 Although this Statement of Reasons makes reference to the Alternative Route, the Application only related to the Peppershells Route and the Application Route. Consequently, this appeal under schedule 14(4)(1) of the Wildlife and Countryside Act 1981 does not relate to the Authority’s refusal to record the Alternative Route on the DM&S.

2. Documentary Evidence

- 2.1 Extensive archival research was undertaken in the Somerset Heritage Centre ("SHC") in Taunton and in the Authority's own records. A route approximating the section of the Application Route between points B and C on the Plan is shown with a single dashed line on the 2011 revision of the Ordnance Survey's 1:25,000 map.
- 2.2 Google Street View images taken in March 2009 show the Peppershells Route, and a short distance beyond, from Peppershells Lane's carriageway. At point A on the Plan there is a metal field gate and adjacent gap and no furniture or obstructions can be seen at point B on the Plan. The Metal Sign can be seen but the sign does not appear to contain any legible writing.
- 2.3 A Landowner Statement was submitted under section 31(6) of the the 1980 Act on 20th November 2012 in respect of the land over which the Application Route runs (see **OMA5**); the Application Route is not admitted as an existing public rights of way. The landowner followed up the statement with a Landowner Declaration on 15th October 2021 which stated that during the intervening period there was no intention to dedicate new rights in addition to those admitted in 2012. If the Landowner Deposit is taken as the date of challenge then the relevant 20 years period of use under section 31(1) of the 1980 Act would run from 20th November 1992 until 20th November 2012.
- 2.4 On the List of Streets maintainable at public expense which the Authority is required to keep pursuant to section 36 of the 1980 Act, the the Peppershells Route is shown as part of Peppershells Lane, which is recorded as Class 4 highway (unclassified county road). The Application Route is not shown (see **OMA6**).
- 2.5 The Peppershells Route and the Application Route are not shown on the Parish Survey, Draft, Provisional or Definitive Map and Statement and the Authority is not in receipt of a legal order which has diverted or stopped up these routes.

3. Landowner Evidence

- 3.1 There is no registered owner of the Peppershells Route; however, as detailed in paragraph 2.4 above, this land forms part of Peppershells Lane as recorded on the List of Streets and, consequently, the surface of the highway is vested in the Authority, in its capacity as the highway authority. The Application Route runs over land owned by the same individual since 13th May 1969 ("the Landowner"). The Landowner has completed a Landowner Evidence Form and five local residents ("LW") have submitted written statements detailing their knowledge of the Application Route and Alternative Route (see **OMA3**). The Authority carry out short telephone interviews with each of these individuals (see **OMA7**).

- 3.2 The Landowner states that he is aware that the Alternative Route has been used by members of the public but that he does not regard it to be public. It is stated that members of the public were challenged but the only occasion which the Landowner is able to recall specific details about was on 9th January 2004 when he was on site with the Authority's then Public Rights of Way Officer; that officer has since retired and has declined to give evidence in respect of the Application. LW 1 has been involved with the Woollard Shoot, whose area included Park Copse, since the early 1980s and it is stated that he turned people back but is unable to provide further details about who they were or when this took place.
- 3.3 The Landowner states that a sign reading '*PRIVATE SHOOT KEEP OUT*' was erected, most likely, in 1980 and replaced in a higher position on the same tree a few months later after the first sign was removed. It is stated that this was the Metal Sign which is still present and that it remained fully legible until 2000/01 and partially legible for a further two to three years thereafter. The LWs recall the sign and state that it remained legible until some point between 1999 and 2003.
- 3.4 The Landowner states that a gate was present at point B on the Plan in 1971, that a new gate was installed at the same location in the mid-1970s which remained in situ until the early 1980s and that another gate was erected at some point after 2004. LW 1 states that barriers were repeatedly erected and removed over the years.
- 3.5 The Landowner states that a row of Rolled Steel Joists ("RSJs") were inserted vertically into the ground at this same location, but they disappeared in the earlier 2000s. LWs 2, 3 and 5 recall the RSJs being present in the past.

4. User Evidence

- 4.1 The Authority received 21 user evidence forms and emails detailing use by 22 members of the public between 1967 and 2022. The Authority carry out short telephone interviews with each of these individuals except user 5; user 5 was telephoned on five occasions but did not answer or return any messages left. All those that were contactable stated that they used the Alternative Route and that they did not use the Application Route. Although not subject to this appeal, the Authority did consider whether a definitive map modification order should be made to record the Alternative Route on the DM&S; however, it was decided that there was insufficient evidence to reasonably allege the existence of recordable rights.
- 4.2 Although user 5 was not contactable they state that the route they used through Park Copse did not change over time and that they followed a '*well trodden path*'; it is therefore reasonable to assume that they also used the worn Alternative Route, rather than the Application Route. Consequently, there is no evidence that the Application Route has been used by the public. However, if user 5 is to be regarded as having used the Application Route, rather than the Alternative Route, then their period of use runs from 1988 to 2020.

- 4.3 User 1 stated that the Metal Sign was erected by his brother-in-law approximately 40 years ago when he was part of a shooting syndicate; the sign referred to a '*private shoot*' but they couldn't recall the exact wording or state for how long the sign remained visible. Users 4, 13, 16, 17, 18 and 21 have seen the Metal Sign but none can recall it being legible; no other users recall seeing the Metal Sign.
- 4.4 Users 1, 3 and 18 are the only users who recall the RSJs but they state that they did not prevent access at point B on the Plan. None of the users recall gates or other obstructions preventing access prior to 2020. Although a number of users refer to a gate in their user evidence forms prior to 2020, it was clarified during their telephone interviews that they were actually referring to a kissing gate on public footpath BA8/65.

5. Analysis

- 5.1 The Peppershells Route forms part of Peppershells Lane, which is a Class 4 Highway (unclassified county road), used predominantly by motor vehicles. Consequently, while there is no dispute that this is public highway, it is not a class of highway recordable on the DM&S.
- 5.2 The section of the Application Route between points B and C on the Decision Plan is shown on an Ordnance Survey map but this is only evidence of the physical existence of that path on the ground and not the existence of legal rights. The remainder of the documentary evidence does not provide evidence that the Application Route was, or is, a public right of way.
- 5.3 The user evidence does not provide evidence of the Application Route having been used by the public unless User 5 is regarded to have used the Application Route. Use of the Application Route by a single individual is not sufficient to demonstrate it has been '*actually enjoyed by the public*' as required by section 31 of the 1980 Act. Furthermore, this level of use is insufficient to raise a presumption that the Application Route has been dedicated as a public right of way at common law.

6. Conclusion

- 6.1 No order should be made in respect of the Peppershells Route as this is a public road and not of a class recordable on the DM&S.
- 6.2 No order should be made in respect of the Application Route as there is no documentary evidence of public rights or evidence of its actual use by the public.
- 6.3 The Authority therefore respectfully asks the Inspector to refuse the appeal.