

APPEAL FORM



For official use:

Rights of Way Section
The Planning Inspectorate
3A Eagle
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN
rightsofway2@planninginspectorate.gov.uk

WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53 AND SCHEDULE 14 **Appeal to the Secretary of State Secretary of State for Environment, Food and Rural Affairs** **under paragraph 4 (1)**

1. Name: Compton Dando Parish Council

2. Address: 28
Kenilworth Drive,
Willsbridge, Bristol
Postcode: BS30
6UP
Daytime telephone:
07746930582
Email: Comptondando-
parishcouncil@outlook.com

3. Name of surveying authority: Bath & NE Somerset Council

4. Title of definitive map: Park Copse, Compton Dando

5. Description of the way:

The route goes through Park Copse starting at the start of the current PROW, but forking right and then joining the path shown on the OS map and coming out at the pathway/driveway that gives access to the field on the left where a barn has recently been converted into a house
The routing between grid references ST 64217 64738 and ST 64200 64926 and ends in Peppershells Lane

<p>6. Date and reference of application to surveying authority: Posted on 16/12/2020 not notified of receipt until 26/02/2021 No reference provided</p>	<p>7. Date of service of notice of decision: 08/02/2023</p>
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(please continue on separate sheet(s) if necessary)

I enclose 2 separate copies of:

- the application made to the surveying authority
- the notices associated with the application
- a map showing the alleged right(s) of way
- the authority's decision letter

other relevant supporting documentation:

landowner statement
Park Copse Investigation report
Paths 1912-1943.jpg
Paths 1945-71 OS.jpg
Paths 1947-72 OS.jpg

I understand that a copy of this appeal and supporting papers may be made available for public inspection.

Signed SE Smith Date 06/03/2023
(Clerk to Compton Dando Parish Council)

Certification

I served notice of this appeal on the surveying authority on: 07/03/2023 [date]

Signed SE Smith Date 07/03/2023

Note: Your appeal will be invalid if you fail to correctly serve notice of your appeal on the surveying authority within the 28 day deadline.

How we use your information

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our [privacy notice](#)

Reasons for the appeal document:

Section 53 of the Wildlife and Countryside Act 1981

PARK COPSE, COMPTON DANDO

Application for a Definitive Map Modification Order to Record a Public Footpath

Compton Dando Parish Council wishes to Appeal against the decision dated 7 February 2023 to modify the Definitive Map.

Comments made below relate to the Clauses in the notice, and should be read with the notice – our comments in **bold**.

1. **The Issue:** Agreed as stated: "An application has been received for a Definitive Map Modification Order ("DMMO") to be made under section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") to modify the Definitive Map and Statement of Public Rights of Way ("the DM&S") by adding a public footpath running from Peppershells Lane in Compton Dando through Park Copse to public footpath BA8/65."
2. **Recommendation:** This letter is an Appeal against this recommendation for the reasons outlined below
3. **Financial Implications:** Noted
4. **Human Rights:** Noted
5. **Legal Framework:**
 - 5.1 Noted
 - 5.2 The 'events' referred to above are set out in section 53(3) of the 1981 Act. The 'event' to which this Application relates is set out in section 53(3)(c)(i) of the 1981 Act which states that: "the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic"
The original application was to make the case that a path subsisted in the area of Park Copse described
 - 5.3 The meaning of 'reasonably alleged' was considered in Bagshaw and Norton [1994]1 where Owen J. stated that: "Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances and I am certainly not seeking to declare as law any decisions of fact. However, if the evidence from witnesses as to uses is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist then, it would seem to me, to be reasonable to allege such right."
We believe that the application placed was reasonably alleged, but would question some of the materials put forward by the landowner and his colleagues
 - 5.4 Evidence of use by the public can be sufficient to raise a presumption of dedication under section 31 of the Highways Act 1980 ("the 1980 Act") or at common law. Section 31(1) of the 1980 Act states that: "Where a way over any land, other than a way of such a 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.”

We would argue that there is not sufficient evidence of prior intention.

5.5 For a way to be deemed to have been dedicated as a public right of way at common law it must have been used by the public for a period which is sufficient to constitute evidence of an intention by the landowner to dedicate the way as public. The facts, taken as whole, 1 R v SSE ex parte Bagshaw and Norton [1994] 68P & CR402 must be such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Use must be without force, secrecy or permission (i.e. ‘as of right’) and each case turns on whether the facts indicate an intention to dedicate.

As in 5.4 there appears to be little evidence of a serious intention over most of the previous timescale of no prior intention

5.6 Documentary evidence should also be considered in determining applications for DMMOs. Section 32 of the 1980 Act states: “A court or other tribunal, before 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 by 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.”

As will be discussed later (8.1) there is considerable evidence from maps dating back a hundred years of a foot path in the area under appeal

5.7 This is the Appeal being made to the Secretary of State as indicated.

6. Background and Application:

6.1 As pointed out in 8.3, the date of usage had to go back 20 years from November 2012 i.e. about 30 years. For there to be eight user reference forms from a period that long ago is a reasonable representation considering the number of people from a small village who will have moved away in that time, or become critically ill, or died.

We would ask how many of the landowner’s residents statements were from people who actually would have been using the area as adults over 30 years ago?

6.2 Noted

6.3 The route depicted on the map with the original application was a best guess as to the route within 20 metres either side in the absence of surveying equipment by local villagers. Over the years the route has changed to some degree as trees have fallen across the path and walkers have diverted around the trunks. We are happy for the route marked out by B&NES to be the route under proposal.

6.4 For many years there has been Heras fencing at point A, but as pointed out, it has been possible for pedestrians to make their way round it. There had been no fencing or obstruction of any kind at point B until the landowner of the property north of the A-B roadway received planning permission to convert stabling into a domestic residence and building work started in 2019/20. At that point Heras fencing was positioned at point B and later this was replaced by a locked field gate.

The illegible metal sign referred to, positioned 4 metres up a tree, is in height well above the range of vision of most people walking in the woods (Note: that trees grow from the top, and so the height at which it is currently will have been the height it was installed at.)

7. Considerations: Noted

8. Documentary Evidence:

8.1 The documents listed here are not particularly relevant. We attach OS maps from 1912 onwards showing footpaths in the area under discussion indicating that there has been enough use of the area for footpaths to exist to show on the series of maps for over 100 years – if the footpaths had not been used regularly, the forest floor would have taken them over.

8.2 The observations in this sub-clause corroborate our response in 6.4 that there had been no previous obstruction at point B

8.3 The 2012 dates indicated are the reasons that statements were provided from residents from 30 years ago – see 6.1

8.4 Neither the Application nor the Appeal relate to a Street maintainable at public expense

8.5 As in 8.4, this is not applicable

9. Landowner Evidence:

Much of the landowner evidence relates to activities after November 1992 and hangs around a metal sign that has been at a height well above eye level.

There was no suggestion of a sign pointing in the other direction so walkers coming up the hill would not have been aware of a sign even if they had been looking upwards.

There are conflicting comments as to whether and what there may have been at Point B.

There is agreement that there was an obstruction to traffic at Point A.

That the path still existed indicates that the path continued to be used throughout the period under debate.

If the Woollard Shoot had been operating in Compton Dando and within the heavily wooded Park Copse, the walkers on the admitted PROW BA8/65 would have affected, and been affected by, the shoot equally.

10. User Evidence:

As covered in 6.3, the actual route of the path has varied over the years as trees have fallen across the existing path, and so the exact route of the path, either the Application Route or the Alternative Route, will depend on the date. That there has been a path around the area of the route +/- 20 metres seems to have been agreed upon and the landowner also agrees that this has been used by members of the public.

It was the introduction of a blockage at Point B in 2020 that instigated the request that what has been used as a route by the public through Point B for over 100 years be allowed to continue, and if necessary by establishing a PROW.

The discussion around the width is somewhat academic, as the path will not be and is not the same width along its length, and it will be a different width at different times of year as the plants (mainly bulbs) grow up and die away.

11. Analysis:

11.1 Noted

11.2 The fact that a footpath is shown on OS maps for over 100 years is accepted that this does not indicate a legal right, but this does show the use by the public for an extended length of time, over and above the 30 year window that we required to show.

11.3 Our understanding is that due to the length of time from the date of submission of the Application and the date of telephone follow up (well over 12 months) that it had not been possible to make contact with all of the 8 users due to absence or illness. That the discussion was around what route was taken was not going to be seen as important by the Users within the variations covered in 10 above.

11.4 If there had been real intent to keep the public away from either of the Routes, then an effective block would have been put in place at the start of the period under discussion,

and not when Points A and B had become parts of the drive into the new domestic dwelling to the north of A-B. In addition there would have been indications put in place at the start of the path, and to this day there is still no such indication.

12. Conclusion:

12.1 Noted

12.2 It would appear from the work carried out by B&NES, that the route to be considered under a DMMO is the Alternative Route for which there is evidence that it has been used by the Public for more than 30 years.

Summary comments

Over the years the route between B and D on the map have been used by many people since the incline is much more gentle for those with mobility and health restrictions than the PROW BA8/65 and thus gives them the opportunity to enjoy the spring wood anemones and bluebells that they otherwise would be unable to do. This route has also offered a pleasant circular walk up the route D-B, and back down the PROW BA8/64.

For people taking the latter route there has been no sign or indication from the current or previous landowners that they had any intent for this route not to be used. The only indication has been a metal sign well above the eye line and pointing upwards near the route near point B, that questionably would be visible to walkers, but only from the other direction, if that. There is little evidence, if any, that pedestrians have been restricted nor discouraged from using the route, apart from this metal sign which was legible for only a few years. See also comments relating to 11.4.

The discussion around the exact route has arisen in that the applicants did not have access to the means to draw an accurate map, of the route, and what was submitted was a best guess. What B&NES has provided as the "Alternative Route" is accepted as being an accurate description of the current route in question, and thus would ask the Secretary for State to consider this route as the Application Route.

(The Landowner separately indicated to the group of village walkers that he escorted along the route a year ago that his aim was to protect the ancient woodland from too much footfall. Unfortunately, people who have been used to taking the D-B route have continued to do so, and finding their way blocked at point B, have now been creating a new foot path across the forest floor to get to the top of PROW BA8/65, thereby trampling over areas that had not been regularly walked previously.)

The basis of the appeal therefore is that there is evidence that there has been a footpath along much of the route B-D for over 100 years, though the exact route will have varied with time due to trees falling, etc, and that there has never been a real effort in effect to stop the route being used by the public. Therefore we request that the DMMO be granted, and the impedance at point B be removed or access through this spot be granted by a small opening for walkers.

Attachments:

OS map Paths 1912-1943

OS map Paths 1945-1971

OS map Paths 1947-1972

DMMO notice 7 Feb 2023