

SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH – Stockland End Lane, Stowey Sutton

(Ward Division: **Chew Valley**)

1. The Issue

- 1.1 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 CL20/20 to Church Lane in Bishop Sutton.

2. Recommendation

- 2.1 It is recommended that Bath and North East Somerset Council (“the Authority”) makes a DMMO to record the Investigation Route between points A and B on the plan contained at Appendix 1 (“the Decision Plan”), and shown by a broken black line, as a public footpath.

3. Financial Implications

- 3.1 Financial implications are not a relevant consideration which may be taken into account under the provisions of the 1981 Act. The costs associated with making a DMMO and any subsequent public inquiry, public hearing or exchange of written representations would be met from the existing public rights of way budget.

4. Human Rights

- 4.1 The Human Rights Act 1998 (“the 1998 Act”) incorporates the rights and freedoms set out in the European Convention on Human Rights (“the Convention”) into UK law. So far as it is possible all legislation must be interpreted so as to be compatible with the Convention.
- 4.2 The 1981 Act does not permit personal considerations to be taken into account. A decision relating to a DMMO would be lawful without taking account of personal considerations, as provided by section 6(2) of the 1998 Act, as it would be impossible to interpret the legislation in such a way that it is compatible with section 3 of the Convention. Further details of Human Rights considerations can be found in the Planning Inspectorate’s Public Rights of Way Advice Note No. 19.

5. Legal Framework

- 5.1 The Authority, as Surveying Authority, is under a statutory duty, imposed by section 53(2) of the 1981 Act, to keep the DM&S under continuous review. Section 53(2)(b) states:

“As regards every definitive map and statement, the surveying authority shall...keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence...of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event”

- 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”

- 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.”

- 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.”

- 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.

- 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.”

- 5.7 Anyone may apply to the Authority for a DMMO to modify the DM&S and such applications must be determined in accordance with the provisions of schedule 14 of the 1981 Act. If, after consideration of an application, the Authority decides not to make a DMMO then the Applicant may appeal to the Secretary of State within 28 days of the service of notice of that decision. The Secretary of State will then re-examine the evidence and direct the Authority accordingly.

6. Background and Application

- 6.1 On 20th October 2021, Steve Ward (“the Applicant”) applied to have a public footpath added to the DM&S (“the Application”); 23 user evidence forms were appended to the Application.
- 6.2 The route under investigation commences from a junction with public footpath CL20/20 at grid reference ST 5865 5936 (point A on the Decision Plan) and proceeding in a generally east-north-easterly direction for approximately 119 metres to a junction with Church Lane at grid reference ST 5876 5920 (Point B on the Decision Plan). This route is hereafter referred to as “the Investigation Route.”
- 6.3 During a site visit carried out by the Authority in February 2024, the Investigation Route had an available width of 2.5 metres throughout.

7. Consultations

- 7.1 In May 2024, the Authority consulted on the Application with the Applicant, local and national user groups and the ward members. The land is unregistered and the landowner is unknown. Additionally, notices were posted on the Authority’s website and on site near points A and B on the Decision Plan.

- 7.2 Stowey Sutton Parish Council responded to state that they support the making of a DMMO and that there *“is clearly evidenced that the trackway has been used by walkers, farm vehicles accessing fields and the ‘driving’ of sheep for at least seventy years and indeed is marked on 1921 OS map as a clear trackway going from the public house at the end of Church Lane to the colliers bordering the south of the village.”*
- 7.3 A further three user evidence forms were submitted to the Authority, bringing the total to 26 user evidence forms.

8. Documentary Evidence

- 8.1 Extensive archival research was undertaken in the Somerset Heritage Centre (SHC) in Taunton and in the Authority’s own records.
- 8.2 The Investigation Route is not shown on Day and Masters’ Map from 1782 (SHC Ref.: D\B\wsm/38/6), Greenwood’s map from 1822 (SHC Ref.: AVAUS\60) or a Mortgage of Stokeley Lane End and Stockland End from 1813 (SHC Ref.: DD/FS/30/2/3-4). Furthermore, the Application Route isn’t recorded or referred to in the Parish Survey, Draft Map, Provisional Map or Definitive Map and Statement.
- 8.3 On the Chew Magna Tithe Map (SHC Ref.: D/D/rt/M/285), the Investigation Route is shown as a continuation of what is now public footpath CL20/21 and they are collectively labelled ‘Stockland End Lane’. The Investigation Route is bounded on either side by solid black lines and unbound as either end from what is now the recorded highway network. The Investigation Route does not have a parcel number and the Tithe Apportionment (SHC Ref.: D/D/rt/A/285), does not levy any tithe against the land over which the Application Route runs. This indicates that the Investigation Route was a public highway in 1840 but does not provide evidence of what class of highway.
- 8.4 The Investigation Route is shown bordered by solid black lines on the Ordnance Survey Six-inch to the mile maps dated 1884 and 1903 and the 1:10,560 maps dated 1961 and 1967, which also label the route as ‘Tk’ [track]. This provides evidence that the Investigation Route has physically existed since 1884 but in isolation does not in provide evidence of public rights.

9. User Evidence

- 9.1 Authority received a total of 26 user evidence forms, detailing use of the Investigation Route. All of the users have stated that they have never been turned back, seen signs dissuading use of the Investigation Route, been granted permission to use the Investigation Route or been prevented from using the Investigation Route due to an obstruction. Furthermore, no evidence has been discovered by the evidence which calls into question the right of the public to use the Investigation Route.

- 9.5 Section 31(7B) of the 1980 Act states that in the absence of the landowner taking any positive steps to call into question the right of the public to use a route then the 'date of challenge' will be the date which the DMMO application was duly made (i.e. 20th October 2021). Therefore, the relevant 20 year period of use for deemed dedication under section 31(1) of the 1980 Act runs from 20th October 2001 to 20th October 2021 ("the Relevant Period").
- 9.6 15 individuals² used the Investigation Route on foot throughout the Relevant Period and a further seven individuals³ used the Investigation Route on foot for at least part of the Relevant Period.
- 9.7 User 23 used the Investigation Route on horseback from 1970 to 1971 and user 25 used the Investigation Route on bicycle from 1962 to 1966; however, this is not regarded to be a sufficient level of use to result in common law dedication of a bridleway. Users 24 and 25 state that they have used the Investigation Route in a motor vehicle; however, section 66 of the Natural Environment and Rural Communities Act 2006 prevents the creation of a public right of way for mechanically propelled vehicles after 2 May 2006 and there is nothing to suggest that any of the exemptions in the 2006 Act apply to the claimed route. Further, use by mechanically propelled vehicles will not itself give rise to a lower public right of way.
- 9.8 18 individuals⁴ stated that they used the Investigation Route at least weekly and eight individuals⁵ stated that they used the Investigation Route on a monthly basis.
- 9.9 13 users⁶ state that the Investigation Route is 2.5 metres wide. Three users⁷ state that the Investigation Route is 2.0 metres wide. Two users⁸ state that the Investigation Route is approximately 6 feet wide. One user⁹ state that the Investigation Route is 5.0 metres wide. One user¹⁰ state that the Investigation Route is 1.5 metres wide. The 2.5 metre width which the majority of those users state is the width of the Investigation Route corresponds with the contemporary width recorded during site visits.

10. Conclusion

- 10.1 The Tithe Map and Apportionment show that the Investigation Route has been a public highway since at least 1840. The user evidence forms demonstrate use of the Investigation Route without force, secrecy or permission by a significant number of members of the public on foot throughout the Relevant Period; during the Relevant Period the landowners did not demonstrate a lack of intention to dedicate.

² Users 1-5, 8, 11, 14, 16-18, 20 and 23-25

³ Users 6, 9, 12, 13, 15, 19 and 22

⁴ Users 13, 6, 8-16, 18, 19, 22 and 24-26

⁵ Users 2, 4, 5, 7, 17, 20, 21 and 23

⁶ Users 1, 2, 5, 6, 8, 11, 12, 14, 15, 16, 17, 19 and 20

⁷ Users 4, 18 and 22

⁸ Users 10 and 25

⁹ Users 7

¹⁰ User 13

10.2 On the balance of probabilities, the evidence shows that the Investigation Route is a public footpath and an DMMO would be made to modify the DM&S to record the Investigation Route as a public footpath.

AUTHORISATION

Under the authorisation granted by the Council on 21st July 2022, the Authority formally resolves to make a Definitive Map Modification Order to modify the Definitive Map and Statement to record a public bridleway between points A and G on the Decision Plan.



Dated: 14th November 2024

Craig Jackson
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