

SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH – Bathampton Ferry, Lambridge

(Ward Division: **Lambridge**)

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 a junction with BA2/3 to the former Bathampton Ferry departure point on the northern bank of the River Avon in Lambridge.

2. Recommendation

- 2.1 It is recommended that Bath and North East Somerset Council (“the Authority”) makes a DMMO to record the Application Route, as shown by a broken black line on the plan contained at Appendix 1 (“the Decision Plan”), on the DM&S.

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 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.

- 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 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.”

- 5.6 Although most highways connect two other highways, in *Moser*¹, Atkin LJ stated: ‘...you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway, and you can get no further either by reason of physical obstacles or otherwise.’

6. Background and Application

- 6.1 On 5th May 2021, Peter John Wardle of 243 Bailbrook Lane, Bath (“the Applicant”) applied to have a public footpath added to the DM&S (“the Application”). The Application was accompanied by photographs, maps and 44 User Evidence Forms (“UEFs”); a further 12 UEFs were received prior to a public consultation being carried out.
- 6.2 The route under consideration commences from a junction with public footpath BA2/3 at grid reference ST 7737 6697 (Point A on the Decision Plan and continues in a generally southerly direction for approximately 48 metres to the northern bank of the River Avon at ST 7738 6692 (Point B on the Decision Plan). This route is hereafter referred to as “the Application Route”.
- 6.3 During a site visit carried out by the Authority’s Principal Officer: Public Rights of Way in May 2021, a locked gate topped with barbed wire was found to be preventing public access near point A on the Decision Plan; a sign was attached which read: ‘*Private No public right of way*’. There was a second sign mid-way along the Application Route which appears to relate to the adjacent field to the west and read: ‘*Private Property Keep Out*’. There was a third sign visible from the river and attached to a tree at point B on the Decision Plan which read ‘*PRIVATE Keep out*’.
- 6.4 The Application Route lies solely within registered title AV200826. The freehold title has been owned as a joint tenancy by the present two owners since April 2001 and a completed Section 16 notice has confirmed that no other party has an interest in the land.

7. Consultations

- 7.1 In May 2022, the Authority consulted on the Application with the Applicant, the affected landowner, local and national user groups and the ward members. A notice was also erected near point A on the Decision Plan and on the Authority’s website.
- 7.2 The Authority received 15 UEFs during the consultation; this brought the total number of UEFs received by the Authority to 67. The Authority received emails requesting updates on the processing of the application but no other substantive responses during the consultation period.

¹ *Moser v Ambleside Urban District Council* [1925] 23 LGR 533 540

8. Documentary Evidence

- 8.1 Extensive archival research was undertaken in the Somerset Heritage Centre (“SHC”) in Taunton, the Bath Record Office (“BRO”) and in the Authority’s own records.
- 8.2 On Day and Masters’ Map from 1782 (SHC Ref: D\B\wsm/38/6), the Application Route appears to be shown schematically with solid parallel lines as part of a longer route continuing north to London Road West at a junction opposite a building annotated as ‘*The Villa*’. The Application Route runs through an area with heavy shading, possibly indicating woodland, and this partially obscures any demarcation of the Application Route. The map was made from an original survey to be sold to the travelling public, which could be indicative of the Application Route being public highway.
- 8.3 An Indenture of Release dated 4th December 1807 (SHC Ref: D/P/baton/23/15), conveys land identified as ‘*Avon Land Mead*’ from George Edward Allen to Thomas Walters. The document reserves a right for the vendor and various parties associated with the vendor to pass over the land “*from the Ferry...into a...Lane...leading into the London Turnpike Road (London Road West)*” in “*carts, waggons, carriages and Horses*”. This described route corresponds with the Application Route and an associated letter indicates that Mr Allen retained ownership of the ferry crossing. If the Application Route carried higher public rights than that of a footpath there would have been no need for the vendor to reserve a private right of way to use the Application Route with carts, waggons, carriages and horses; if the Application Route was not a public footpath then Mr Allen would have needed to retain a right on foot for his customer and associates to continue to access his ferry. The Indenture of Release therefore indicates that the Application Route was already a public footpath by 1807.
- 8.4 A photocopy of a drawing of Bathampton Ferryhouse from 1820 (SHC Ref: DD\SAS/G1818/4/2/3) depicts the ferryhouse on the Bathampton side of the River Avon. The Application Route is outside the area shown in the drawing and the drawing does not provide any evidence relating to the Application Route.
- 8.5 Greenwood’s map from 1822 (SHC Ref: A\AUS\60) shows the Application Route with parallel pecked lines as part of a longer route continuing on to London Road West. This county map was made from an original survey and was sold to the travelling public, which indicates the Application Route was probably public highway.
- 8.6 The minutes from the September 1826 meeting of ‘*The Committee for Protecting the Rights of the Public to the Footway through Batheaston Meadow*’ (“the Committee”) (SHC Ref: D/P/baton/23/7) state that the Surveyor of the Parish of Batheaston was attempting to apply to the Quarter Sessions for an order to “*stop up part of an ancient and*

commodious Footway leading from Batheaston Bridge to Bathampton Ferry and from thence into the London Road of Lambridge"; the Application Route is shown with parallel pecked lines to the ferry crossing on an accompanying plan. The minutes show that the Committee opposed the proposals on the grounds that they would be an *"infringement of the Rights of the Public and more particularly of the Poor Inhabitants of the neighbourhood who have from time immemorial enjoyed the user of the said footway"*. On 5th October 1826, the Bath Chronicle and Weekly Gazette reported that the Committee requested that the Magistrates rescind the order and the Quarter Sessions records do not appear to contain any reference to the application actually being heard in the Magistrates Court or that the public rights were stopped up. This provides strong evidence that the Application Route was a public footpath and that those rights continued to subsist.

- 8.7 In May and June 1840, proposals were brought forward to stop up another public highway in Batheaston (SHC ref: D/P/baton/23/7) but these relate to what is now public footpath BA2/5 and BA2/4. The Application Route is outside the mapped area on the accompanying plan and the deposited documents do not contain any reference to the Application Route.
- 8.8 On the Batheaston Tithe Map from 1840 (SHC Ref: D/D/rt/A/352), the Application Route is shown as a continuation of what is now public footpath BA2/2; this route is delineated on the Tithe Map with parallel pecked lines. The Application Route lies in the vicinity of enclosures 13 and 14; enclosure 14 is identified as *'Part of Ebland'* (pasture) on the Tithe Apportionment (SHC Ref: D/D/rt/M/352) but enclosure 13 does not appear to be listed in the Apportionment. It is unclear whether the Application Route runs through one or both of these enclosures or between them. The Application Route would have run between enclosures 9 and 1A in the documents produced in pursuance of the Extraordinary Tithe Redemption Act but it is again unclear whether the Application Runs through or between those enclosures. Consequently, the Tithe documentation shows that the Application Route physically existed but it is ambiguous with regards to its status.
- 8.9 A reproduction of an engraving by W. Williams (SHC Ref: A/DQO/26/4) depicts Bathampton Mill and a boat, presumably a ferry, at point B on the Decision Plan. The etching is undated but other etchings from around the local area by the same artist were executed in the first half 19th century. This etching supports the existence of a ferry at the time but does not provide evidence regarding the existence of legal rights over the Application Route.
- 8.10 The Application Route is shown with a broken black line on each of the Ordnance Survey's 25-inch to the mile and one-inch to the mile Ordnance Survey Maps published between 1886 and 1924; the Application Show is not shown on any of the subsequent OS maps published at those scales. These OS maps show that the Application Route physically existed between 1886 and 1924 but they do not provide evidence regarding the rights over the Application Route.

- 8.11 The Application Route runs through hereditament 181 on the plan produced by the Inland Revenue under the Finance (1909-10) Act 1910 (SHC Ref: DD/IR/B/18/6, DD/IR/m/14/2 and DD/IR/m/8/14); the accompanying valuation book shows that tax was levied against this land and that no deductions were made for '*Rights of Way or User.*' These documents do not provide any evidence in respect of the Application Route.
- 8.12 An extract of local history book written by Mike Chapman submitted by the Applicant includes a map which depicts the Application Route with a dotted black line on a plan included in the book. The map shows both relatively recently constructed houses and the ferry crossing (which ceased operating around the time the toll bridge was constructed in 1872) and it's therefore unclear when the information relates to. This indicates that the Application Route physically existed at some point in time but does not provide evidence of the existence of public rights over the Application Route.
- 8.13 A photograph appended to the Application shows a field gate near point A on the Decision Plan with a sign reading '*No Public Access. This Field is Strictly Private.*' The photo is annotated '*Padlocked gate and barbed wire fence*' and a written statement with the application indicates that it was taken earlier in 2021 than May, when the Application was submitted.
- 8.14 The Application Route is not shown on the Parish Survey, Draft, Provisional or Definitive Map and Statement or the List of Streets maintainable at public expense. The Authority is not in receipt of a Landowner Deposit under section 31(6) of the 1980 Act. The Authority is not in receipt of a legal order which has diverted or stopped up the Application Route.

9. User Evidence

- 9.1 As stated in 7.2 above, the Authority has received 67 UEFs detailing use of the Application Route. The Authority attempted to carry out telephone interviews with each of the individuals who submitted UEFs prior to the consultation to confirm and clarify details of their evidence.
- 9.2 12 users² state that there was a sign erected near point A on the Decision Plan in September, October, Autumn or late 2020 with wording which was variously described as prohibiting picnics, bathing, boating or fishing or asking people to keep the footpath; these are most likely to all be the same sign. Taking into account the indicative wording suggested by those 12 users, this sign may have been similar the sign which is still in situ at the junction of Toll Bridge Road and public footpath BA2/2. However, neither the wording stated by the 12 users for the Toll Bridge Road sign prohibit the passing and repassing of pedestrians along the Application Route and this sign does not therefore demonstrate a lack of intention to dedicate the Application Route as a public footpath.

² Users 3, 9, 11, 17, 20, 21, 27, 28, 29, 46, 47 and 48

- 9.3 Three users³ refer to the '*Private Property Keep Out*' signs detailed in paragraph 6.3 above as having been erected in 2020; User 29 states this was erected in Autumn 2020, User 8 states this was erected in December 2020 and User 50 states that the sign was erected in '*Dec 2020 or earlier Jan 2021*'. The positioning of the sign indicates that it relates to the field immediately to the west which is unenclosed from the Application Route and does not relate to the Application Route itself. Again, this sign does not therefore demonstrate a lack of intention to dedicate the Application Route as a public footpath.
- 9.4 11 users⁴ refer to a '*Private Keep Out*' sign near point A on the Decision Plan as having been erected in March 2021; nine users⁵ variously describe the sign as being erected in '*early 2021*', '*April 2021*', '*2021*', '*recently*', in the '*last few months*' prior to April 2021, '*several months*' prior to June 2022 or '*in the last 2 years*'. User 53 refers to a '*Private No public right of way*' sign near point A on the Decision Plan as having been erected in 2020 but their UEF was completed in June 2022, which is over a year later than the first 52 UEFs and those earlier 52 forms are therefore regarded to be more reliable on this matter.
- 9.5 Taken as a whole, the evidence detailed in paragraph 9.4 above indicates that the first sign seeking to prohibit pedestrian use of the Application Route was a sign reading erected in March 2021 which read '*Private Keep Out*'. This sign appears to have been replaced by May 2021 with the '*No Public Access. This Field is Strictly Private*' sign as detailed in paragraph 8.13 above and later replaced again with a sign reading '*Private No public right of way*'. All three signs served substantially the same purpose.
- 9.6 14 users⁶ state that the gate near point A on the Decision Plan was erected and locked in March 2021; user 21 states that the exact date was 17th March 2021. 16 users⁷ variously describe the locked gate as being erected in '*2020? 2021?*', '*Late 2020/early 2021*', '*February*' 2021, '*April*' 2021, '*2021*', '*recently*', in the '*last few months*' prior to April 2021, '*in the last 2 years*' prior to 2022 or just being present. 3 users⁸ refer the gate near point A on the Decision Plan as having been erected in 2020 but, again, their UEFs were completed in June 2022, which is over a year later than the first 52 UEFs and those earlier 52 forms are therefore regarded to be more reliable on this matter.
- 9.7 Taken as a whole, the evidence detailed in paragraph 9.6 above indicates that on balance the locked gate was most likely erected on 17th March 2021. Given that the first sign referred to in paragraph 9.5 was erected on the gate it follows that the sign could not have been erected prior to 17th March 2021. Consequently, the evidence indicates that the public's right to use the Application Route was called into

³ Users 8, 29 and 50

⁴ Users 3, 4, 6, 7, 8, 9, 12, 18, 26, 29 and 45

⁵ Users 15, 16, 24, 43, 49, 54, 58, 60 and 61

⁶ Users 4, 6, 7, 9, 12, 13, 17, 18, 20, 26, 28, 29, 45 and 46

⁷ Users 2, 16, 24, 25, 27, 43, 49, 50, 54, 56, 57, 58, 60, 61, 63 and 64

⁸ Users 54, 65 and 66

question on 17th March 2021 and that the relevant 20 year period of use under section 31(1) of the 1980 Act runs from 17th March 2001 to 17th March 2021 (“the Relevant Period”).

- 9.8 The UEFs detail use of the Application Route by 19 members of the public⁹ on foot throughout the whole Relevant Period. A further 47 members of the public¹⁰ used the Application Route on foot for part of the Relevant Period and 27 of these members of the public used the Application Route for over 50% of the Relevant Period. At least 26 people used the Application Route in each year of the Relevant Period and this is sufficient to demonstrate that the Application Route has been actually enjoyed by the public on foot for a full period of 20 years.
- 9.9 It should be noted that even if the sign detail in paragraph 9.2 above did call the public’s right to use the Application Route into question or a locked gate had been erected in 2020 as suggested by the three users in paragraph 9.6 above then there would still be sufficient evidence to demonstrate use by the public over the 20 years prior to either event.
- 9.10 User 26 states that they used the Application Route on a bicycle between 2015 and 2020 and User 56 stated that they used the Application Route on bicycle between 2005 and 2020. This is not sufficient to demonstrate use by the public on bicycle for a full period of 20 years as required for statutory dedication, nor is the use of such character as to demonstrate dedication at common law.
- 9.11 Prior to the erection of signs and locked gates on 17th March 2021, all users state that their use was without force, secrecy or permission. No users refer to having been turned back or challenged by the landowner and the Authority is not in receipt of a Landowner Deposit under section 31 of the 1980 Act. There is no evidence to demonstrate that the landowner has effectively communicated a lack of intention to dedicate the Application Route as a public footpath during the Relevant Period.
- 9.12 The southern end of the Application Route terminates at the northern bank of the River Avon, rather than a junction with another public highway. However, almost all users state that their use of the Application Route was for pleasure and point B on the Decision Plan is a place to which the public may wish to resort because of its attractive views across the river and a location for enjoying nature.
- 9.13 44 users¹¹ state that the Application Route is 2 metres wide; this represents over half of the 67 users that completed UEFs and is comfortably the most consistent width stated. Three users¹² state that the Application Route is 1.5-2.0 metres wide, a three users¹³ state that

⁹ Users 2, 3, 4, 5, 6, 8, 11, 12, 14, 15, 16, 21, 23, 27, 28, 51, 52, 57 and 63

¹⁰ Users 7, 9, 10, 13, 17, 18, 19, 20, 22, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 58, 59, 60, 61, 62, 64, 65, 66 and 67

¹¹ Users 1, 2, 3, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 44, 45, 46, 48, 49, 51, 52, 53, 59, 61, 64, 65 and 66.

¹² Users 4, 6 and 8

¹³ Users 10, 25 and 56

the Application Route is 2-3 metres wide, three users¹⁴ state that the Application Route is 3 metres wide and two users¹⁵ state that the Application Route is 1-3 metres. The other widths stated were: 0.5 metres, 1 metre, 1.8 metres, 3-5 metres, 5m, 4-6 foot, 8 foot, 1m increasing to 3-4 metres at the river, 12 feet and '*don't know*'; however, only one individual stated each of those widths.

9.14 The Application Route is unenclosed on its western side and, in such circumstances, it is usual for there to be differences within UEFs about the stated width of a route. However, the UEFs do provide relatively consistent evidence that the Application Route is 2 metres wide.

9.15 Aside from the relatively recently erected gates detailed in paragraph 9.6 above, none of the users state that there were gates on the Application Route during their periods of use. The evidence therefore indicates that any dedication of public rights was not subject to any limitations or conditions.

10. Conclusion

10.1 The documents relating to the stopping up proposals from 1826 which are detailed in paragraph 8.6 above and the Indenture of Release from 1807 which is detailed in paragraph 8.3 above provide particularly strong evidence that the Application Route was a public footpath; this is supported by Day and Masters' Map from 1782 and Greenwood's Map from 1822. In the absence of a legal order to divert or stop up these rights, they will continue to subsist. Having considered the documentary evidence pursuant to section 32 of the 1981 Act it can be determined that there is sufficient evidence to demonstrate that a public footpath subsists or is reasonably alleged to subsist over the Application Route.

10.2 The user evidence detailed in section 9 above would also be sufficient to demonstrate that that the Application Route has been actually enjoyed by the public as of right and without interruption for a full period of 20 years and that the Application Route would therefore have been deemed to have been dedication as a public footpath pursuant to section 31 of the 1980 Act.

10.3 The documentary evidence does not provide evidence regarding the Application Route's width but the user evidence provides relatively consistent evidence that the public footpath is 2 metres width throughout.

10.4 Neither the documentary evidence or the user evidence indicates that the dedication of the Application Route as a public right of way was subject to any limitations or conditions.

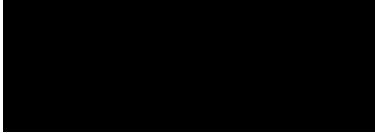
¹⁴ Users 17, 57 and 63

¹⁵ Users 50 and 55

10.5 An order should be made to record the Application Route as a public footpath on the DM&S as a consequence of an event under section 53(3)(c)(i) of the 1981 Act.

AUTHORISATION

Under the authorisation granted by the Council on 21st July 2022, the Team Leader: Place (Legal & Democratic Services) is hereby requested to seal an Order to record the Application Route on the Definitive Map and Statement as detailed in Appendix 1 and Appendix 2.



Dated: 30/08/2022

Craig Jackson
Team Manager – Highways Maintenance and Drainage

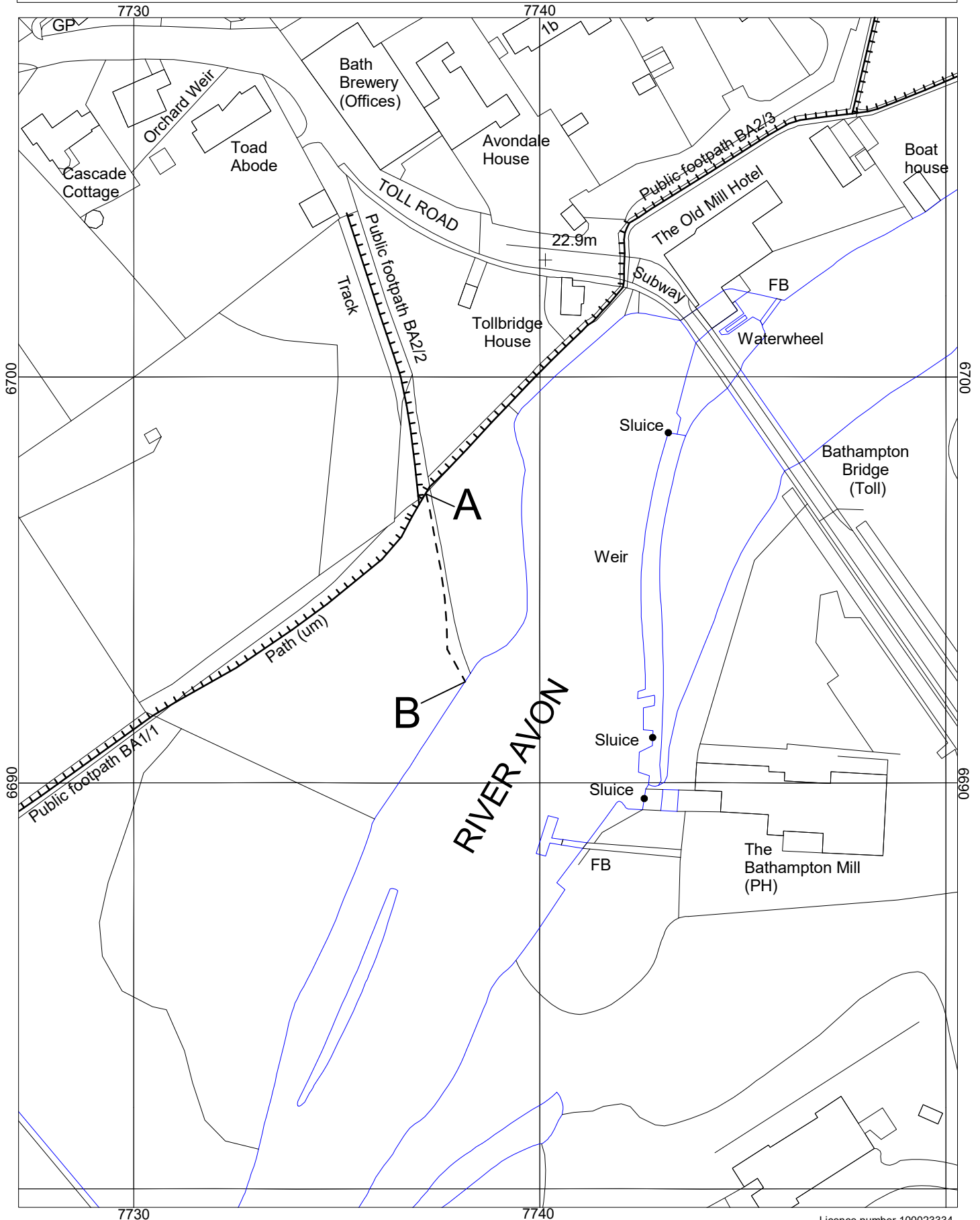
Appendix 1: Decision Plan



Application Route A ----- B

Unaffected Public footpath

Scale 1:1250



SCHEDULE**PART I****Modification of Definitive Map****Description of path or way to be added**

A public footpath commencing from a junction with public footpath BA2/3 at grid reference ST 7737 6697 (Point A on the Order Plan) and proceeding in a generally southerly direction for approximately 48 metres to the northern bank of the River Avon at ST 7738 6692 (Point B on the Order Plan).

PART II**Modification of Definitive Statement****Variation of particulars of path or way**

A new statement for BA2/55 shall be recorded as follows:

Path Number: BA2/55

Status: Public footpath

Length: 48 metres

Parish/Ward: Formally Batheaston, now Lambridge

Width: 2 metres

Limitations: None

Description of Route				
From		General Direction	To	
County Road or Right of Way	Grid Reference		County Road or Right of Way	Grid Reference
Public Footpath BA2/3	ST 7737 6697	S		ST 7738 6692

General Description:

A public footpath commencing from a junction with public footpath BA2/3 at grid reference ST 7737 6697 and proceeding in a generally southerly direction for approximately 48 metres to the northern bank of the River Avon at ST 7738 6692.