

05 STATEMENT CONTAINING THE ORDER MAKING AUTHORITY'S COMMENTS ON THE OBJECTION

1. Introduction

- 1.1 An email was received by the Authority as an Objection against the inclusion of footpath BC64/7 in the Order. The same document was also sent as a letter of Objection ("Objection 1") (**Document 04, pages 4 to 8**). An email was received by the Authority as an Objection against the inclusion of footpath BC53/5 in the Order (**Document 04, page 27**). A subsequent letter was sent which also extended the objection to include footpath BC53/6 in the Order ("Objection 2") (**Document 04, pages 20 to 24**). The objector sent a final version of the objection letter on 11th July 2019 (**Document 04, pages 10 to 11**).
- 1.2 A letter of objection was received to every path included in both Orders made for the Widcombe Ward from Mr & Mrs Knight (**Document 04, pages 38 to 39**). Following correspondence between Mr & Mrs Knight and the Authority, the objection was withdrawn (**Document 04, pages 33 to 37**). Mr & Mrs Knight had responded to the informal consultation about a small section of public footpath BC53/7 on land in their ownership in which they stated their belief that the footpath was a public right of way (**Document 04, pages 40 to 43**). The Authority does not feel the need to comment further on these correspondences.
- 1.3 Six responses were received from statutory undertakers expressing a neutral stance to the Order (**Document 04, pages 45 to 64**). The Authority does not feel the need to comment further on these correspondences.
- 1.4 The Authority severed the Order and confirmed the unobjected to part, comprising of 14 public rights of way.
- 1.5 Prior to the making of the Order, the paths were referred to as BQ47 (BC53/5), AQ76 (BC53/6) and CQ42 (BC64/7). The Objectors refer to the paths using the "BC" number as recorded in the Order.

2. Objections

- 2.1 An email of Objection (“Objection 1”), dated 8th May 2019 (**Document 04, pages 4 to 8**), was received in response to the making of the Order. It was sent by Porter Dodson, Solicitors and Advisors on behalf of their client, Sarah Lewis of Smallcombe Farm, Bath, BA2 6DD. A paper copy was received in the post at a later date.
- 2.2 An email dated 27th March 2019 (**Document 04, pages 29 to 30**), was sent by Mr Tan Tootill, Estates Director, on behalf of The Paragon School, Lyncombe House, Lyncombe Vale, Bath, BA2 4LT, in response to the making of the Order for path reference BC53/5. A formal letter dated 9th May 2019 (Objection 2) (**Document 04, pages 21 to 22**) was then sent by Avison Young on behalf of their client, The Paragon School, Lyncombe House, Lyncombe Vale, Bath, BA2 4LT. The objection was extended to included path reference BC53/6. A final version of the objection letter was received, dated 11th July 2019 (**Document 04, pages 10 to 11**).

3. Assessment of the Objections to the Modification Order

3.1 The points made by the Objectors are examined below.

3.2 Objection 1

Objection 1, dated 8th May 2019 (**Document 04, pages 4 to 8**), was sent by Porter Dodson Solicitors & Advisors on behalf of their client Sarah Lewis of Smallcombe Farm, Bath in response to the making of the Order for path reference BC64/7:

“Our client objects to the order made on 21st March 2019 (“the Challenged Order”) chiefly on the grounds that there is not, nor has there ever been a public right of way of any description from the southern end of public footpath BC54/40 to the southern boundary of Smallcombe Farm land. Accordingly the proposed new footpath must end at the northern boundary of the Trust’s land not a point “A” shown on the map annexed to the Challenged Order (“the Order Map”).”

3.3 Objection 2

An email dated 27th March 2019 (**Document 04, pages 29 to 30**), was sent by email by Mr Tan Tootill, Estates Director, on behalf of the Paragon School, Bath, in response to the making of the Order for path reference BC53/5.

“I would like to register our objection to the proposed registration, particularly the section of path (BC53/5) from points B-C-D-E-F-G. This “loop” is within a designated woodland play area for the children of the school and public access would represent a safeguarding, health and risk for our site. There is no merit in having two routes within such close proximity both reaching the same exit point on our land.”

3.4 On 9th May 2019, Avison Young submitted the objection as a formal objection letter (**Document 04, pages 21 to 22**) (Objection 2) from the Paragon School in response to the making of the Order for path reference BC53/5 and BC53/6. A final version of the objection letter was received, dated 11th July 2019 (**Document 04, pages 10 to 11**):

“The proposed location of these formal Public Rights of Way are located within an established woodland play area for the children of the school; public access would represent a safeguarding and health and safety risk; the school raise concerns with potential rough sleepers, drug paraphernalia and open fires within the woodland area, and on school grounds if these pathways were to become formal right of way routes. Requiring the school to monitor users of the Public Right of Way for the

safety of their students would not be practical and would open up the school grounds to unsupervised visitors. This would ultimately result in the school having to significantly reduce its space for outdoor play, and therefore the unfortunate loss of additional play space for the school's students."

3.5 **Officer Comments on Objections 1 and 2**

The Authority can only consider whether or not public rights exist over the paths. Factors such as the impact on a landowner of having the routes recorded on the Definitive Map cannot be taken into consideration when considering whether or not to include the path in a Definitive Map Modification Order.

- 3.6 The evidence collected during the consultation on Widcombe Ward was assessed in a report submitted by Officers to the Highway Maintenance and Drainage Manager who granted authorisation on 1st March 2019 for the making and sealing of an Order to add 17 public rights of way in the Widcombe Ward to the Definitive Map and Statement for the City of Bath (**Document 18**). The summary of evidence for paths BC53/5, BC53/6 and BC64/7 is addressed in **Document 03**.

Objection 1

- 3.7 The public response to the informal consultation carried out prior to the making of the Order shows that the path is well used. The DMMO seeks to record a route which has been in existence since at least as early as 1933 and is recognised as a public right of way by the major landowner (National Trust).
- 3.8 The northern-most tip of path BC64/7 joins footpath BC54/40 in the middle of the access track to Smallcombe Farm, at the boundary between Bathwick and Widcombe Wards. Half of the access track is in Widcombe Ward and half is in Bathwick Ward (prior to the Ward Boundary changes of May 2019).
- 3.9 In March 2009, Sarah Lewis of Smallcombe Farm applied to divert footpath AQ34 (now recorded as footpath BC54/40) on land in her family's ownership (**Document 40**). The proposed diversion route submitted by Birketts LLP, on behalf of Sarah Lewis, clearly shows the route of footpath CQ42 meeting footpath AQ34 in the middle of the access track at point C on the plan submitted, providing a continuous link (**Document 41**). The National Trust gave consent to divert the section of footpath CQ42 on their land. Following an extensive consultation with the public in 2013 (**Document 42**), the National Trust withdrew their consent to the proposed diversion on 8th April 2014

(Document 43). Subsequently, Sarah Lewis withdrew her application on 29th January 2015 **(Document 44)**.

- 3.10 In Point 3.1 of the Statutory Declaration dated 14th September 2012 **(Document 45)**, the landowner, Jane Lewis has stated: *“I admit that the route shown coloured green on the said plan is the only public footpath over the Land which is dedicated for use by the public”*. The green line on the plan accompanying the Statutory Declaration extends to the southern boundary of land in the Objector’s family ownership, and includes the northernmost part of footpath BC64/7.
- 3.11 In 2015, the Lewis family objected to the recording of footpath BC54/40 on the Definitive Map and Statement for the city of Bath. The case was determined by the Planning Inspectorate (Case Reference FPS/F0114/7/22 - Bathwick & Combe Down) **(Document 46)**. The Decision was to confirm the Order as made and the footpath was added to the Definitive Map and Statement for the city of Bath.
- 3.12 Sarah Lewis suggested that the path does not extend onto land owned by her family (the access track to Smallcombe Farm). However, the path is shown linking with footpath BC54/40 on the Section 31(6) Landowner Deposit made by her family **(Document 45)** and on the plan accompanying an application to divert the footpath (which was subsequently withdrawn) **(Document 41)**. Footpath BC54/40 does not stop at a point of popular resort. The National Trust admit that the section of footpath BC64/7 on their land is a public right of way and so it is reasonable to assume that the section of footpath BC64/7 on land in the Objector’s family ownership must be the continuation of these two routes which are clearly not cul-de-sacs.

Objection 2

- 3.13 BC53/5 - The public response to the informal consultation carried out prior to the making of the Order shows that the route is well used by the public. The DMMO seeks to record a route which has been in existence since at least as early as 1933 and is recognised as a public right of way by the Authority and accepted as a public right of way by the previous owner of The Paragon School **(Document 28)**.
- 3.14 BC53/6 - The public response to the informal consultation carried out prior to the making of the Order shows that the route is well used by the public. The DMMO seeks to record a route which has been in existence since at least as early as 1885 and is recognised as a public right of way by the Authority, the other landowners and accepted as a public right of way by the previous owner of The Paragon School **(Document 28)**.

3.15 Correspondence held on file by the Public Rights of Way Team shows that the paths BC53/6 (previously AQ76) and BC53/5 (previously BQ47) were signposted where they left Lyncombe Vale Road at the request of the owner of the Paragon School (**Document 47**). The signposts are still in place. A signpost was erected at the other end of path BC53/6 (AQ76), where it leaves Fox Hill at the request of the landowner (**Document 37**). A sign erected by the landowner on path BC53/6 clearly states: "PUBLIC FOOTPATH OVER PRIVATE LAND" (Photograph 1, **Document 47**).

4. Conclusion

- 4.1 Once an objection or representation is duly made the Authority must submit the Order to the Secretary of State for consideration. The Definitive Map Modification Order titled Bath & North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No. 17 – Widcombe) 2019 was made on 21st March 2019 to add 17 public rights of way to the Definitive Map and Statement for the City of Bath.
- 4.2 Considerable evidence of use by the public was gathered for all three objected to paths during the initial consultation, via the Web Consultation and notices posted on site. The consultation with the public received 31 responses for BC53/5, 34 responses for BC53/6 and 41 responses for BC64/7. No objections were received from the other owners of land over which the paths cross.
- 4.3 The documentary evidence is strong for path BC53/6, being recorded on the 1957 Bath City Engineer's Map, the 1885 OS Map and subsequent OS Maps. Path BC53/5 was shown in its present day alignment as early as the 1933 OS Map and on subsequent OS Maps. Path BC64/7 was shown in its present day alignment as early as the 1933 OS Map and on subsequent OS Maps.
- 4.4 Prior to the creation of the Definitive Map and Statement for the City of Bath, the Authority kept a map and list of paths to be treated as definitive. A member of the public submitted a claim to add path BC53/5 to the records. The School was consulted and in May 1984, P.S. Gilbert of County of Avon Planning Department asked the City Engineer to add two paths (BC53/5 and BC53/6) to the plan showing the public rights of way in the city. Mr Gilbert also asked the department to organise signposting the paths.
- 4.5 The first Definitive Map and Statement for the City of Bath was sealed in 2006, by which time the records were so out of date that research has had to be undertaken for every path in the Authority's area, carried out on a ward by ward basis.
- 4.6 The Authority has examined the Objections with the evidence and respectfully requests that the Secretary of State confirms that part of the Order as made for BC53/5, BC53/6 and BC64/7 and adds the public rights of way BC53/5, BC53/6 and BC64/7 to the Definitive Map and Statement for the City of Bath.