
Bath & North East Somerset Council

Statement of Case

on behalf of

Bath and North East Somerset Council

in relation to the determination of
Bath & North East Somerset Council
(City of Bath Definitive Map and Statement Modification Order)
(No. 17 – Widcombe) 2019

Appeal Reference: ROW/3244540

24th May 2021

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1. Introduction

- 1.1 This statement is submitted on behalf of Bath and North East Somerset Council (“the Authority”). It relates to a Definitive Map and Statement Modification Order (“DMMO”) to record 17 public rights of way in the Widcombe Ward (and a small section of Combe Down Ward) in the City of Bath pursuant to section 53 (2) (b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”). The Order was made under Schedule 15 of the 1981 Act.

2. Factual Background

- 2.1 In January 2018, the Authority, in its capacity as the surveying authority, began research into the recording of the public rights of way in the Widcombe Ward (and a small section of Combe Down Ward).
- 2.2 Land Registry searches were done for all land not in the ownership of the Authority or Curo (the local social housing association). Informal consultations were carried out with landowners, national user groups, local user groups & other interested parties, residents’ associations, ward councillors, adjoining property holders and members of the public (**addresses included in Document 09, responses included in Documents 09a to 09h**).
- 2.3 On 1st March 2019, the Team Manager - Highways Maintenance and Drainage approved the recording of 33 public rights of way in the Widcombe Ward, to be included in two Definitive Map Modification Orders (**Document 18**).
- 2.4 On 21st March 2019, the Authority made the Bath & North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No. 17 – Widcombe) 2019 (“the Order”) (**Document 01**), comprising of 17 public rights of way.¹
- 2.5 The Order has the effect of adding to the Definitive Map and Statement 17 public rights of way in the Widcombe Ward of the City of Bath.

¹ On 21st March 2019, the Authority also made the Bath & North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No.16 – Widcombe) 2019, comprising of 16 public rights of way. No objections were received to the making of this order.

- 2.6 On 28th March 2019 the Authority duly advertised the making of the Order and during the statutory period for objections a letter and email were received objecting to the recording of one of the public rights of way included in the Order (“Objection 1”) **(Document 04, pages 4 to 8)** and an email was received objecting to the recording of another of the public rights of way included in the Order (“Objection 2”) **(Document 04, pages 10 to 30)**.
- 2.7 Sarah Lewis of Smallcombe Farm (“Objector 1”) submitted an objection against the recording of path BC64/7, a small part of which (approximately 8 metres in length) is on land in her family’s ownership.
- 2.8 The Paragon School (“Objector 2”) followed up their email objection with a letter, including an additional path in their objection. They objected to the recording of 2 paths (BC53/5 and BC53/6) on land in their ownership.
- 2.9 An objection was received to every path included in both Orders for the Widcombe Ward, (No. 16 – Widcombe) 2019 and (No. 17 – Widcombe) 2019. The objection was subsequently withdrawn **(Document 04, pages 32 to 43)**.
- 2.10 Emails were received as representations from 4 of the Statutory Consultees. These representations were neutral **(Document 04, pages 44 to 64)**.
- 2.11 The Authority severed the Order and the unobjected to part of the Order, comprising of 14 public rights of way, was confirmed on 26th September 2019.
- 2.12 The Public Rights of Way Team uses a numbering convention to identify those paths which have already been legally recorded. Prior to inclusion in a legal order, paths are identified with a prefix of “AQ”, “BQ” or “CQ”, broadly determined by probable maintenance responsibilities. Path BC53/5 was previously known as BQ47, Path BC53/6 was AQ76 and Path BC64/7 was CQ42.
- 2.13 To avoid confusion, the paths included in the initial public consultation were given reference numbers between 1 and 35. It was considered that these numbers would be easier for the public to identify with than the numbering convention used by the Public Rights of Way Team. Path BC53/5 (BQ47) was referred to as Path 31, Path BC53/6 (AQ76) was referred to as Path 32 and Path BC64/7 (CQ42) was referred to as Path 27.

- 2.14 The Objectors refer to the paths using the “BC” number as recorded in the Order.
- 2.15 The Authority referred the Objections to the Team Manager - Highways Maintenance & Drainage on 29th October 2019 (**Document 19**). The Team Manager - Highways Maintenance & Drainage approved the recommendation to request that the Secretary of State confirms 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.

3. Evidence

User Evidence

3.1 Information was sought from landowners, national user groups, local user groups and other interested parties, residents' associations, ward councillors, adjoining property holders and members of the public. Notices were posted on all paths inviting members of the public to submit evidence of use of the paths and details were posted on the Authority's website. Letters or emails were sent to landowners, adjoining property holders, user groups, other interested parties, residents' associations and ward councillors.

3.2 **Information from landowners:** A consultation letter was sent in May 2018. Responses were received to the consultation letter (**Document 09a**) from The National Trust, Mr & Mrs Blacker of Foxhill Grove Farm, Mr & Mrs Rhymes of Honeysuckle Farm and Bath & North East Somerset Council:

- **BC64/7:**

- i. **Rob Holden, Countryside Manager, National Trust:** *"I am writing to say that the National Trust has no objection to the proposed rights of way: CQ42 – Smallcombe Vale (Widcombe Hill) to Smallcombe Cemetery."* (**Document 09a, pages 26 to 30**).
- ii. **Smallcombe Farm:** Objector 1 was not identified for consultation and was not sent a consultation letter.

- **BC53/5:**

- i. **Paragon School (Objector 2):** No response. (**Document 09a, pages 17 to 18**).

- **BC53/6:**

- i. **Paragon School (Objector 2):** No response (**Document 09a, pages 17 to 18**).
- ii. **Title Number ST193607 - Being Foxhill Grove Farm, Fox Hill, Perrymead, Bath (BA2 5BA). PROPRIETOR: Phillip Blacker and Margaret Evelyn Blacker of Foxhill Grove Farm, Perrymead, Bath BA2 5BA:** A Landowner Evidence Form was completed, stating 11 years ownership and the belief that the path is a public footpath. They have

been aware of daily and frequent use of the footpath by members of the public. They have never required people to ask permission before using the route and have never made a Section 31(6) (Highways Act 1980) deposit. They have never stopped or turned anyone back from using the route and they have never told anyone that the route was not public. Nor has anyone on their behalf. They have never blocked or obstructed the path. **(Document 09a, pages 3 to 7).**

- iii. **Title Number AV124987- Being Land lying to the North West of Fox Hill, Perrymead. PROPRIETOR: Rupert John Rhymes and Susan Mary Rhymes of Honeysuckle Farm, Perrymead, Bath:** A Landowner Evidence Form was completed, stating 32 years ownership and the belief that the path is a public footpath. The path is regularly used by dog walkers and people walking to Lyncombe Vale. They have never required people to ask permission before using the route and have never made a Section 31(6) (Highways Act 1980) deposit. They have never stopped or turned anyone back from using the route and they have never told anyone that the route was not public. Nor has anyone on their behalf. They have never blocked or obstructed the path. There are gates which are not locked, but instead are fastened as there are often sheep in the field. There are signs at either end of their section of the path, warning people about livestock. **(Document 09a, pages 9 to 15).**
- iv. **Title Number AV17115 - Being part of the former Somerset and Dorset Railway line at Bath. PROPRIETOR: Bath and North East Somerset Council, Environmental Services - Open Spaces. Linear Park. (Small section). Response from Martin Baker, Property Services:** *"I have now looked at the proposed paths and from what I can see there wouldn't be any concerns over these proceeding. Unfortunately I don't think we are going to be able to help out with information relating to use as I don't think we have any record of signs, gates or granting permissions etc".* **(Document 09a, pages 20 to 24).**
- v. **Response from Jane Robson, Parks Manager:** *"I'm happy with the paths".* **(Document 09a, pages 20 to 24).**

3.3 **Information from adjoining property holders:** There are no adjoining property holders along paths BC53/5 and BC64/7. A consultation letter was sent in June 2018 to the property adjoining path BC53/6. No response was received. **(Document 09a, pages 32 to 33).**

- 3.4 **Information from ward councillors:** No relevant information was received regarding the Objected to paths. **(Document 09b).**
- 3.5 **Information from national user groups:** No responses were received to the consultation email **(Document 09c).**
- 3.6 **Information from local user groups and other interested parties:**
- i. Anne Thorpe of the local British Horse Society stated: *“I do not have first hand knowledge of paths 27 and 29 but as path 29 joins the restricted byway to Widcombe Hill it would make sense for this to be a bridleway or restricted byway. I will contact you again when I have heard from horse riders in the area.”* **(Document 09c, pages 7 to 8).**
 - ii. Ann Fay of the local British Horse Society stated: *“Path 27 from Widcombe Hill to Horseshoe Lane looks as if it could be useful as a bridleway link but I did not walk it so cannot comment further.”* **(Document 09c, pages 10 to 11).**
- 3.7 **Information from residents’ associations:** No relevant information was received regarding the Objected to paths. **(Document 09d).**
- 3.8 **Information from the public - Responses to the notices (Document 09e):**
- **BC53/5: 5 responses were received to the notices.**
 - i. *“Here are paths I been using regularly since 2009 for exercising dogs and children: At least 12 times per year: 8, 10, 11, 18, 19, 20, 31 [emphasis added], 32, 33. I have used all these on all occasions without permission, objection or obstruction.”* **(Document 09e, pages 8 to 9).**
 - ii. *“3/year. We have lived in Bath since 1962, first in a rented house half way up Widcombe Hill and then, since 1963, in Macaulay Buildings. As a family we walked constantly in the eastern part of Bath and we walked most of these paths. I am still walking. I was always on foot. The purpose was for pleasure, work, shopping and exploring Bath. I always followed the line of the path. From memory, the paths were about the same width. I am not, and never was, an owner, tenant or employee. I never met any landowner. I never sought nor was given permission to use any of the paths. I was never asked to turn back. A few stiles and gates have been changed for the better. They have not prevented or deterred me. I have had to cast my mind back over 56*

years and this is not easy!”² (Document 09e, pages 14 to 19).

- iii. “Paths 31 [emphasis added] and 32. I have also walked on the following paths at least once in most weeks, and sometimes twice in a week, for the last ten years, and less frequently for the preceding ten years, and have frequently see[n] others using them.” (Document 09e, pages 27 to 28).
- iv. “I have been using public footpaths 31 [emphasis added] & 32 (Widcombe) nearly every day since the 1980’s. I walk this route between my allotment (Lyncombe Vale 2) and my House (9 Meare Road). Half of the people I meet are regular walkers, the others are one-time visitors. I do not own the School that Path 31 passes over, or Honeysuckle Farm where the higher southern section of Path 32 goes. I appreciate the gates instead of fence styles [sic] on the route as I sometimes need to carry heavy luggage and plan to continue.” (Document 09e, page 30).
- v. “I live opposite the footpath and steps for Path 31 [emphasis added]. I use the steps twice daily for 6 years to walk my dogs and to join footpath 32 to journey into the woods and beyond. The routes are used by many fellow dog walkers and pedestrians at all times.” (Document 09e, page 32).

- **BC53/6: 6 responses were received to the notices:**

- i. “Here are paths I been using regularly since 2009 for exercising dogs and children: At least 12 times per year: 8, 10, 11, 18, 19, 20, 31, 32 [emphasis added], 33. I have used all these on all occasions without permission, objection or obstruction.” (Document 09e, pages 8 to 9).
- ii. “3/year. We have lived in Bath since 1962, first in a rented house half way up Widcombe Hill and then, since 1963, in Macaulay Buildings. As a family we walked constantly in the eastern part of Bath and we walked most of these paths. I am still walking. I was always on foot. The purpose was for pleasure, work, shopping and exploring Bath. I always followed the line of the path. From memory, the paths were about the same width. I am not, and never was, an owner, tenant or employee. I never met any landowner. I never sought nor was given permission to use any of the paths. I was never asked to turn back. A few stiles and gates have been changed for the better. They have not prevented or deterred me. I have had to cast my mind back over 56 years and this is not easy!”³ (Document 09e, pages 14 to 19).
- iii. “Paths 31 and 32 [emphasis added]. I have also walked on the following

² User 56

³ User 56

paths at least once in most weeks, and sometimes twice in a week, for the last ten years, and less frequently for the preceding ten years, and have frequently see(n) others using them.” (Document 09e, pages 27 to 28).

- iv. “I have been using public footpaths 31 & 32 [emphasis added] (Widcombe) nearly every day since the 1980's. I walk this route between my allotment (Lyncombe Vale 2) and my House (9 Meare Road). Half of the people I meet are regular walkers, the others are one-time visitors. I do not own the School that Path 31 passes over, or Honeysuckle Farm where the higher southern section of Path 32 goes. I appreciate the gates instead of fence styles on the route as I sometimes need to carry heavy luggage and plan to continue.” (Document 09e, page 30).
- v. “I live opposite the footpath and steps for Path 31. I use the steps twice daily for 6 years to walk my dogs and to join **footpath 32** [emphasis added] to journey into the woods and beyond. The routes are used by many fellow dog walkers and pedestrians at all times.” (Document 09e, page 32).
- vi. “Further to my father's words, I also use the **footpath 32** [emphasis added] when I come over and walk his dogs to support him. My dad is 81.5 years old and has 2 spaniels who give him a reason to get out and keep him mobile. The path is very useful and minimises the time that the dogs are on the main road to a few seconds rather than a few minutes walking up to the official path to the cycleway. My father has been using it to walk the dogs every day for 6 years. Prior to that we used it infrequently for walks since dad bought Tanglewood in 2002. We only travel up the path on foot.” (Document 09e, page 32).

- **BC64/7: 7 responses were received to the notices:**

- i. “We are five in the household, two adults and three teenage children. Collectively we have used the following paths in the last 12 months on a more or less frequent basis: 2, 3, 4, 5, 9, 10, 11, 14, 16, 17, 18, 19, 20, 24, **27** [emphasis added], 28, 29, 30, 34, 35. I am afraid that is neither feasible nor reasonable for you to expect a form to be completed by every user for every path. Please accept this as our notification of use and interest in the paths noted above.” (Document 09e, page 6).
- ii. “Here are paths I been using regularly since 2009 for exercising dogs and children: More than 3 times a week: 22, 23, 24, 26, **27** [emphasis added], 28, 29, 30, 34, 35. I have used all these on all occasions without permission, objection or obstruction.” (Document 09e, pages 8 to 90).

- iii. *“Path 27 – perhaps ten times since 1976, for leisure.” (Document 09e, pages 11 to 12).*
- iv. *“50/year. We have lived in Bath since 1962, first in a rented house half way up Widcombe Hill and then, since 1963, in Macaulay Buildings. As a family we walked constantly in the eastern part of Bath and we walked most of these paths. I am still walking. Has been used twice a day! I was always on foot. The purpose was for pleasure, work, shopping and exploring Bath. I always followed the line of the path. From memory, the paths were about the same width. I am not, and never was, an owner, tenant or employee. I never met any landowner. I never sought nor was given permission to use any of the paths. I was never asked to turn back. Recently the National Trust has been placing notices on their land. Many of them are for advertising purposes and most of the notices are unnecessary. A few stiles and gates have been changed for the better. They have not prevented or deterred me. I have had to cast my mind back over 56 years and this is not easy!”⁴ (Document 09e, pages 14 to 19).*
- v. *“Used from 1981 to present; few times a year; on foot for leisure; Quite a few people seen. I don’t own the land.” (Document 09e, pages 21 to 22).*
- vi. *“I write regarding your notice displaying the proposed PATH 27 across the National Trust land to the south of Smallcombe Valley. Whilst I have no comment about the great majority of the proposed footpath. I am concerned that it ambiguously appears to project into our private lane. This is incorrect, as there is no PROW on our lane. Bath Council have previously confirmed this. While this may be an unintentional mistake, please can you amend the drawing accordingly.” This response was received from Sarah Lewis of Smallcombe Farm. (Document 09e, pages 24 to 25).*
- vii. *“Paths 3, 4, 5, 9, 11, 13, 14, 15, 16, 17, 18, 22, 24, 27 [emphasis added], 28, and 29. I have walked on all of the following paths at least once during the last ten years, and some cases more than once.” (Document 09e, pages 27 to 28).*

⁴ User 56

3.9 Responses to the web consultation (Documents 09f, 09g and 09h):

- **BC53/5: 26 responses were received (Document 09g):**

Of the 26 web respondents⁵, all respondents used the path on foot. Seven respondents used the path daily⁶, 1 used the path 2 to 3 times a week⁷, 7 once a week⁸ and 11 once a month⁹.

Length of path usage ranged from less than 1 year to 30 years. The 6 respondents who had used the path for more than 20 years are User 43 (22 years, daily), User 46 (25 years, once a week), User 27 (27 years, once a month), User 37 (27 years, once a week), User 44 (27 years, once a month) and User 45 (30 years, daily).

The path was used for a variety of purposes: the main ones listed by respondents were for pleasure (21), work (2) and education and town (1 each). None of the respondents reported any changes to the line of the path in the years that they had been using it. One respondent (User 44) commented that the path was now wider: *“Now 3-5 metres, but previously 2-3 metres in places, a much narrower but defined path.”*

None of the respondents were the owner, the tenant or a family member of any of the above when they used the path. One respondent reported that they were an employee of the owner/tenant when they used the path (User 8).

One of the respondents (User 8) reported having spoken to the landowner or a representative of the landowner whilst using the path and also reported being given permission to use the path (from “school”). None of the respondents had been told not to use the path.

Two respondents reported seeing notices on the path:

- **User 12:** *“At the top of the route. Near the point the route crosses route 32. That the land is privately owned and that members of the public using the*

⁵ Users 4, 8, 9, 12, 13, 23, 24, 27, 29, 30, 31, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

⁶ Users 12, 31, 39, 43, 45, 47, 49

⁷ User 40

⁸ Users 8, 13, 24, 37, 41, 42, 46

⁹ Users 4, 9, 23, 27, 29, 30, 35, 36, 38, 44, 48

route must pick up dog mess and may be monitored. Continually during my use of the route.”

- **User 45:** *“Signs showing public foot path from Lyncombe Vale Road and signs in the wood requesting the picking up after dog fouling etc. as children play in the wood. Been here for ages.”*

Thirteen respondents¹⁰ reported seeing stiles or gates on the path. None of the respondents reported a locked gate, however User 37 stated that the presence of the gate had prevented / deterred her from using the route but did not state in what way. However, User 37 added an additional comment: *“This should be made accessible for wheelchair and other users (including cyclists), as a proper access point to the Two Tunnels path.”*

When asked *“Has there ever been an obstruction to your use of the route?”* none of the respondents reported any obstruction to their use of the path. User 37 responded to this question with *“No”*.

Additional comments made by the public during the web consultation:

- “Well established and used route” (User 45).*
- “I have lived in the area for a few years and only just noticed this lovely path” (User 36).*
- “It is a lovely woodland walk though quite steep and not normally maintained very well. I live close by but it’s taken me several years to find the route as it becomes overgrown and gets covered with leaves etc.... I would use it more often if it was signposted better, clearly marked and maintained. I am worried about straying onto private land which is easy to do without a clear marked pathway and also if you lose track of the path you end up shimmying down steep banks to find the way back to Lyncombe Vale Road! Definitely an underused resource” (User 29).*
- “This is a great amenity close to home so we can walk easily in the ‘countryside’ without meeting traffic and often no people. This was a fantastic and safe play route for our children and before the Two Tunnels was opened remained peaceful” (User 44).*
- “This should be made accessible for wheelchair and other users (including cyclists), as a proper access point to the Two Tunnels path” (User 37).*

¹⁰ Users 12, 23, 24, 30, 35, 37, 40, 41, 43, 44, 45, 46, 49

- **BC53/6: 28 responses were received (Document 09h):**

Of the 28 web respondents¹¹, all respondents used the path on foot. Three respondents used the path daily¹², 1 respondent used the path 2 to 3 times a week¹³, 10 respondents used the path once a week¹⁴, 11 respondents used the path once a month¹⁵ and 3 respondents used the path 3 to 6 times per year¹⁶. One respondent also used the path by bicycle, once a month¹⁷.

Length of path usage ranged from 1 year to 38 years. The 6 respondents who had used the path for more than 20 years are User 51 (21 years, once a month), User 43 (22 years, once a month), User 46 (25 years, once a week), User 27 (27 years, once a month), User 44 (27 years, once a month) and User 45 (30 years, 3 to 6 times per year).

The path was used for a variety of purposes; the main ones listed by respondents were for pleasure (25), work (3) and education and town (1 each). None of the respondents reported any changes to the line or width of the path in the years that they had been using it.

None of the respondents were the owner, the tenant or a family member of any of the above when they used the path. One respondent reported that they were an employee of the owner/tenant when they used the path (User 8). Three of the respondents reported having spoken to the landowner or a representative of the landowner whilst using the path:

- **User 45:** *“The owner of the field up to Foxhill - friendly conversations with both husband and wife with their dog.”*
- **User 43:** *“He had no objections. If walking a dog he requested that it be kept on a lead if sheep were in the field.”*
- **User 8:** *“Hello.”*

¹¹ Users 8, 9, 12, 15, 20, 23, 24, 27, 29, 30, 31, 35, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55

¹² Users 12, 31, 49

¹³ User 40

¹⁴ User 8, 15, 24, 41, 42, 46, 47, 52, 53, 54

¹⁵ Users 9, 23, 27, 29, 30, 35, 38, 43, 50, 51, 55

¹⁶ Users 20, 44, 45

¹⁷ User 51

One of the respondents (User 49) reported being given permission to use the path but gave no details. None of the respondents had been told not to use the path.

Two respondents reported seeing notices on the path:

- **User 45:** *"At Lyncombe Vale Road end - public footpath sign. On entrance to field above old railway bridge - When sheep in the field notice to keep dogs on leads. Signs showing public foot path from Lyncombe Vale Road and signs in the wood requesting the picking up after dog fouling etc. as children play in the wood. Been here for ages."*
- **User 53:** *"There is a public footpath notice encouraging you to use it."*

Twenty respondents¹⁸ reported seeing stiles or gates on the path. None of the respondents reported a locked gate.

When asked *"Has there ever been an obstruction to your use of the route?"* none of the respondents reported any obstruction to their use of the path. None of the respondents reported anything which deterred them from using the path.

Additional comments made by the public during the web consultation:

- "Well established and used route" (User 45).*
- "This is a great amenity for those of wishing to walk in the south of the city. A wonderful alternative route to going by road up to Foxhill where there is always traffic. This has always been a pleasant walk, great as countryside and to see wildlife in their natural habitat and enjoy the changing seasons. It means you can access further routes around Foxhill/Entry Hill without having meeting traffic. It means you can access wonderful view of the city" (User 44).*
- "It is understood that there might sometimes be livestock in the field so dog owners need to check in advance" (User 41).*

- **BC64/7: 34 responses were received (Document 09f):**

Of the 34 web respondents¹⁹, all respondents used the path on foot. Three respondents used the path daily²⁰, 16 respondents used the path once a week²¹,

¹⁸ Users 12, 15, 20, 23, 30, 35, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 55

¹⁹ Users 1 to 34

²⁰ Users 2, 3, 31

10 respondents used the path once a month²², 3 respondents used the path 3 to 4 times per year²³, 1 respondent used the path twice a year²⁴ and 1 respondent used the path annually²⁵.

Length of path usage ranged from 1 year to 56 years. The 8 respondents who had used the path for more than 20 years are User 17 (25 years, once a month), User 27 (27 years, once a month), User 14 (28 years, once a year), User 10 (29 years, once a week), User 26 (30 years, once a week), User 1 (33 years, once a month), User 21 (41 years, once a week) and User 4 (56 years, once a week).

The path was used for a variety of purposes; the main ones listed by respondents were for pleasure (30) and town (1). None of the respondents reported a change to the width of the path in the years that they had been using it. One respondent (User 1) reported a change to the line of the path: *“Presumably to make the route up to Widcombe Hill less steep and therefore more accessible.”* And one respondent (User 10) commented that *“There is an additional spur to the route put in by the landowner to avoid using main gate by the cemetery, which I occasionally use but it is very steep.”* This refers to a set of wooden steps which the National Trust (as landowner) installed to lead walkers to the start of a permissive path on the other side of the private access track.

None of the respondents were the owner, the tenant, an employee of the owner/tenant or a family member of any of the above when they used the path. Four respondents reported having spoken to the landowner whilst using the path:

- **User 10:** *“Some years ago I met a previous owner’s family member (whom I used to work with) on the route who assured me it was ok to walk there.”*
- **User 33:** *“Have sometimes met the National Trust ranger. We always have a little chat and say hello.”*
- **User 23:** *“National Trust discussed the work they do on the Bath Skyline.”*
- **User 26:** *“Bath National Trust employees, occasionally. Always positive and helpful as I am supporter.”*

²¹ Users 4, 6, 7, 8, 9, 10, 15, 16, 20, 21, 22, 23, 26, 28, 33, 34

²² Users 1, 13, 17, 19, 24, 25, 27, 29, 30, 32

²³ Users 5, 11, 12

²⁴ User 18

²⁵ User 14

Two respondents reported being given permission to use the path:

- **User 10:** *“Some years ago I met a previous owner’s family member (whom I used to work with) on the route who assured me it was ok to walk there.”*
- **User 33:** *“I understood it was a National Trust footpath.”*

None of the respondents had been challenged while using the path.

Four respondents reported seeing notices on the path and gave a purpose for the notices and how long they had been in place:

- **User 12:** *“At the entrance to the footpath on Widcombe Hill. Signs indicating that the land is owned by the National Trust and is accessible to the public. Continually”*
- **User 19:** *“At the bottom of the steps by Smallcombe Farm. Footpath.”*
- **User 22:** *“Each end of path. Giving directions. 2yrs.”*
- **User 33:** *“On the gates. Encouraging people to walk the Skyline. Permanently.”*

Eighteen respondents²⁶ reported seeing gates on the path. One of the respondents reported a locked gate – User 26 – *“Gates locked when animals being grazed but kissing gates, ie access always available.”*

When asked *“Has there ever been an obstruction to your use of the route?”* none of the respondents reported any obstruction to their use of the path. None of the respondents reported anything which deterred them from using the path.

Additional comments made by the public during the web consultation:

- “The steps towards the top are appreciated”* (User 1).
- “There used to be another route opposite the farm house. This is now closed, but an alternative was made”* (User 19).
- “It is used daily by hundreds of people”* (User 33).
- “Pleasant way to access the city on foot”* (User 22).
- “I believe, from previous written commentaries which were submitted when the residents of Smallcombe Farm tried to re-route the footpath away from*

²⁶ Users 1, 3, 6, 10, 11, 12, 14, 16, 19, 20, 21, 22, 23, 26, 28, 30, 33, 34

their yard, that the pathway in question is the continuation of a very ancient path which runs via Bathwick Hill, through the fields and down the steps and through the yard of Smallcombe Farm, and was there long before the buildings of Smallcombe Farm” (User 26).

Documentary evidence

3.10 Cotterell’s 1852 Map of Bath:

Cotterell’s Map was drawn up by order of the Town Council, primarily to show sewerage pipes and gas mains. Highways were shown as they were constructed, rather than by their rights. The original maps can be found at the Bath Archives at the Guildhall, Bath.

- **BC53/5:** Sheet 37 - The path does not appear to be in existence.
- **BC53/6:** Sheet 37 - The path does not appear to be in existence.
- **BC64/7:** Sheet 45 - The path does not appear to be in existence.

3.11 OS Maps:

The 1885, 1887 – 1891, 1901 – 1905, 1920 – 1933, 1933 – 1939, 1960, 1973 and 1980s maps were examined on the Council’s online mapping systems.

- **BC53/5:** The path appears to have been in existence since at least as early as 1885.
- **BC53/6:** The path appears to have been in existence since at least as early as 1885.
- **BC64/7:** Part of the path appears to have been in existence at least as early as 1885. The present-day route appears to have come into existence at least as early as 1933.

3.12 The List of Streets:

The Authority’s List of Streets is a record of maintenance responsibilities rather than of rights. However, the Authority only maintains highways which carry public rights. None of the 3 paths are included in the List of Streets.

3.13 Bath City Engineer’s Survey, 1957:

In 1957 the City and Waterworks Engineer’s Department of Bath City Council completed a survey of public rights of way in the city (**Document 20**). The document produced is titled ‘*Survey of Public Rights of Way: For the Purpose of Part IV of the*

National Parks & Access to the Countryside Act 1949. A footnote on the schedule states: “All footpaths walked by R.F. Little between June 1st & 30th 1955”. The survey did not cover all of the paths in the city of Bath, only “the footpaths and public rights of way in the undeveloped parts of Bath and the footpaths in the built-up areas which connect up with these paths.”

- 3.14 No ‘official’ action was taken on the above Act, but the 1957 survey was a fairly comprehensive survey of the rights of way. A 6” scale map was produced showing footpaths within the city boundary. AQ76 (BC53/6) is shown on the map numbered “76” and is described as: “F.P. Lyncombe Vale Road to Fox Hill Lane. Up Laneway to K.G. and across fields to stile at Fox Hill Lane”. “F.P. Lyncombe Vale Road to Fox Hill Lane.”

Additional Information:

- 3.15 The Authority holds information on file relating to general issues concerning the paths.

• **BC53/5 (BQ47) & BC53/6 (AQ76):**

- i. July 1982 – Mr Brooks, a member of the public, reported a blockage on footpath BQ47 (BC53/5) which he believed was building rubble from the new gym being constructed at the school. He requested forms for “including paths in a Definitive Map.” (**Document 21**).
- ii. August 1982 – PS Gilbert (Assistant County Footpaths Officer) replied to Mr Brooks, enclosing a map and asking Mr Brooks to mark the site of the obstruction. Mr Gilbert stated that: “we are only able to treat footpaths not shown on the D.F.M. (Definitive Footpath Map) with the same consideration as those shown on the D.F.M. if they can be proved to be public rights of way by virtue of uninterrupted use rights over a long period of time. This period of time is commonly taken to be approximately 20 years.” Mr Gilbert enclosed a blank User Evidence Form to enable Mr Brooks to gather evidence of use of BQ47 (BC53/5) (**Document 22**).
- iii. October 1982 – Mr Brooks submitted 25 completed User Evidence Forms to the Council, along with OS Maps as supporting evidence and 2 copies of the map sent to him by Mr Gilbert, showing the route of the footpath he was seeking to establish shown in blue and marked ABCD, BQ47 (BC53/5). Footpath AQ76 (BC53/6) was already shown on the Bath District Council’s Map as it was considered to be a public right of way. It was shown in red on

- the plan and marked as EBFDHG. The location of the tipping of the building rubble was marked on the route of Footpath BQ47 (BC53/5) (**Document 23**).
- iv. February 1983 – The Senior Planning Assistant (Footpaths) wrote to the owner of Lyncombe Vale School (Dr P Simpson) to advise him of *“a wealth of evidence to suggest that the footpath is a public right of way”* and to ask him his views on the matter. A map showing the route of footpath BQ47 was included (**Document 24**).
 - v. March 1983 – Dr Simpson asked to see the information that had been submitted (**Document 25**). Mr Brooks was consulted and sought permission from those he collected User Evidence Forms from (**Document 26**). Permission was granted and the information was sent to the Solicitors (Stone, King & Wardle) acting for the Paragon Educational Trust who were the new owners of the school (**Document 27**).
 - vi. September 1983 – A response from the Paragon Educational Trust was sent via Stone, King & Wardle Solicitors: *“Our clients accept that the red path is a public path and that the blue path is obviously widely used.....They are prepared to agree, however, without prejudice, that the blue path is a right of way, provided that suitable signs are erected by the County of Avon indicating exactly where the two footpaths run”*. The accompanying plan shows AQ76 (BC53/6) in red and BQ47 (BC53/5) in blue. (**Document 28**).
 - vii. November 1983 – P.S. Gilbert of County of Avon Planning Department wrote to Stone, King & Wardle to suggest that signposts should be positioned on Lyncombe Vale Road where the two footpaths leave the metalled road. Waymarks should be painted on trees at appropriate points along the footpaths. Mr Gilbert asked for confirmation that this was favourable to the school (**Document 29**).
 - viii. April 1984 – following reports from a member of the public that the footpath BQ47 had been *“completely blocked (for about three months now) by the owners of the land with material taken from the woodland”* (**Document 30**). Mr Gilbert wrote to Stone, King & Wardle again asking that the footpaths be cleared as it is an offence under section 137 of the Highways Act 1980 to block a footpath (**Document 31**). He also asked for a response to his letter of November 1983. Mr Gilbert replied to the member of public that the two footpaths were added to the *“records of those paths considered to be public footpaths”*, following a consultation with the landowner who had failed to provide any counter evidence against the residents claim for public right of way status for the two paths (**Document 32**).

- ix. May 1984 - P.S. Gilbert of County of Avon Planning Department asked the City Engineer to add the two paths to the plan showing public rights of way in the city. He also asked for the department to organise signposting the paths **(Document 33)**.
 - x. July 1984 – a works order was raised for the erection of the two signposts **(Document 34)**.
 - xi. December 1984 – a letter was sent to Mr Brooks from R Dickens (Senior Planning Assistant) to advise him that *“I can confirm that the whole of the ‘track’ footpath as shown as A through B and C to D²⁷ on the 1:2500 map supplied by you is now a public footpath..... Mrs Trimby the headmistress of the Paragon School is very concerned for the safety of the many small schoolchildren in her care and also for the protection of the trees, shrubs and constructions from vandalism. Therefore she has expressed considerable interest in securing her private property from trespass. To this end a private gate and adjacent public stile may be provided where the ‘track’ footpath leaves the Lyncombe Vale Road and the Kissing Gate restored or a stile substituted at the bottom of the other footpath.”* **(Document 35)**.
- **BC53/6 (AQ76):**
 - i. 1957 - Notification from the farmer (Mr Peter Dingle of Honeysuckle Cottage, Lyncombe Vale Farm) that he intends to plough the field with the footpath. The National Parks and Access to the Countryside Act 1949 is quoted reminding Mr Dingle of the need to reinstate the footpath. A request was made to move a gate by Mr PH Dingle of The Cottage, Midford Road. Mr Dingle was advised that it is not a problem, provided the new position of the gate is still on the line of the existing right of way **(Document 36)**.
 - ii. February 1999 – A query from Mrs Earl of Raby Place who was requesting a signpost to stop people crossing her field instead of using the footpath. March 1999 – Judith Gradwell of the Public Rights of Way Team responded to say that a footpath sign would be erected at the junction of Fox Hill and Perrymead. October 1999 – Mrs Earl chased up the erection of the signpost. November 1999 – Judith Gradwell responded that it would be a priority **(Document 37)**.
 - iii. May 2001 – Works were arranged to remove and replace broken steps **(Document 38)**.

²⁷ This footpath is BQ47, now known as BC53/5

- iv. January 2004 – Mr Rhymes made an enquiry about moving a gate on his land. He was advised that *“regardless of what happens on the ground the Recorded line of the path will remain and shall continue to be regarded as the legal right of way unless its route is legally diverted.”* (**Document 39**).

- **BC64/7 (CQ42):**

- i. An Exhibition of Public Rights of Way in Bath was held at the Bath Central Library in 2004. It was the start of the Bath Definitive Map Project to add all unrecorded public rights of way to the Definitive Map and Statement for the City of Bath. A member of the public asked to have this path added to the list of paths to be researched. The path was given the reference number CQ42 and included in the list of paths to be researched in Widcombe Ward.
- ii. The path is mainly on land belonging to the National Trust but begins on land in the ownership of Smallcombe Farm (a section of path of approximately 8 metres in length). It joins footpath BC54/40 in the middle of the access track to Smallcombe Farm.
- iii. 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. The Authority confirmed receipt of the application (**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 proposed diversion was consulted on in 2013 and footpath CQ42 was shown as an *“unaffected public footpath”* on the consultation plan (**Document 42**), and also on the Draft Order Plan which was subsequently drafted in agreement with Birketts LLP (**Document 48**). The National Trust originally gave consent to divert the section of footpath CQ42 on their land. Following an extensive consultation with the public in 2013, the National Trust made the following comment in an email dated 13th February 2014 from Wendy Stott, General Manager for the National Trust in Bath (**Document 43, pages 2 to 3**): *“Following the consultation we ran at the end of last year about proposed changes to the footpath at Smallcombe (that we were asked to consider by the owner of Smallcombe Farm) we received a number of comments, of those 28.5% were in support of the changes and 71.5% were against. In light of this feedback the National Trust feels that it cannot support the diversion as recently proposed. There are a large majority of local people (both members and non-members of the Trust), footpath users*

and interested parties who have expressed their concerns and are against this change. As you will appreciate there are strong views on either side and it is important for the National Trust as a responsible land owner to take all of these in to account.” Ryan Kuszek, Rural Surveyor for the National Trust confirmed that the National Trust was withdrawing its consent to the proposed diversion on 8th April 2014 (**Document 43, page 1**). Subsequently, Sarah Lewis withdrew her application on 29th January 2015 (**Document 44**).

- iv. A Section 31(6) Deposit was lodged in August 2012 which affects some of the land over which the path crosses. The footpath is shown on the plan accompanying the Deposit (**Document 45**).
- v. 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). The Inspector’s Decision was to confirm the Order as made and Footpath BC54/40 was added to the Definitive Map and Statement for the City of Bath, extending into the access track where it joins path BC64/7 (CQ42) (**Document 46**). Footpath BC54/40 does not end at a point of public resort, so the public right of way must continue along footpath BC64/7.

4. Assessment of the Objections to the Modification Order

4.1 The points made by the Objectors are examined below.

4.2 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”).”

4.3 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.”

4.4 On 9th May 2019, Avison Young submitted the objection as a formal objection letter (**Document 04, pages 21 to 23**) (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."

4.5 **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.

- 4.6 The evidence collected during the consultation on Widcombe Ward was assessed in a report submitted by Officers to the Team Manager - Highways Maintenance and Drainage 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 listed below.

Objection 1 (BC64/7)

- 4.7 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).
- 4.8 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).
- 4.9 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 a continuous link across the whole width of the access track, where footpath CQ42 and footpath AQ34 meet, near point C on the hand-drawn plan submitted **(Document 41)**. A Draft Order Plan was drawn up, in agreement with Birketts LLP, which explicitly shows footpath CQ42 labelled as “Public Footpath CQ42” **(Document 48)**. 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)**.

- 4.10 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.
- 4.11 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.
- 4.12 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)**, on the plan accompanying the (withdrawn) application to divert the footpath **(Document 41)** and on the Draft Order Plan which was drawn up in agreement with Birketts LLP **(Document 48)**. 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 as they are clearly not cul-de-sacs. A considerable volume of evidence demonstrating public use has been gathered and the landowner has not demonstrated a lack of intention to dedicate the route as a public footpath.

Objection 2 (BC53/5 & BC53/6)

- 4.13 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**).
- 4.14 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**).
- 4.15 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**).

5. Conclusion

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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 further research is required for every previously unrecorded path in the Authority's area, carried out on a ward by ward basis.
- 5.6 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.