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# Bath & North East Somerset Council

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## DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

GLENAVON FARM, SALTFORD

Date: 30/11/2017

# **INVESTIGATION REPORT**

**AUTHOR:** GRAEME STARK

**DATE:** 30/11/2017

An application has been made under section 53(5) of the Wildlife and Countryside Act 1981 for an order to be made to amend the Definitive Map and Statement of Public Rights of Way by adding a public footpath.

This report contains a précis of the evidence which Bath and North East Somerset Council (“the Authority”) is aware following a preliminary investigation of records held by the Authority and the Somerset Heritage Centre and submitted by the applicants and one of the landowners. When the decision is taken as to whether an Order should be made, and if so the status of the route (i.e. footpath, bridleway, restricted byway or byway open to all traffic), it will be based on the Authority’s interpretation of this evidence and any other relevant evidence produced to the Authority before the date of the decision. This Investigation Report is a factual account of the application and its processing up to this point, and the evidence provided and/or discovered which is relevant to the existence and status of the route.

The plan attached at page 4 shows the location of the route under investigation which is in the parish of Saltford.

An order will be made if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”
- The status of a recorded right of way needs to be changed
- There is no right of way over land as recorded on the Definitive Map and Statement
- Details of the Definitive Map and Statement need to be changed.

When considering evidence, if it is shown that a highway exists, then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused; this is until a legal order stopping up or diverting the rights has been made.

Section 53 of the Wildlife and Countryside Act 1981 (as explained in PINS Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered.

## **2. RELEVANT LEGISLATION CONSIDERED**

The following legislation was considered when this case was investigated; National Parks and Countryside Act 1949, Countryside Act 1968, Highways Act 1980, Wildlife and Countryside Act 1981, Countryside and Rights of Way Act 2000, Natural Environment and Rural Communities Act 2006.

## **3. APPLICATION DETAILS**

An application was made by Reginald Williams and Howard Griffith on 9 March 2015, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add two public footpaths to the Definitive Map and Statement.

#### 4. THE ROUTE

The first application route commences from a junction with Manor Road at grid reference ST 6707 6691 (Point A on the Investigation Plan on page 4 below) (Fig. 1) and proceeds in a generally northwesterly direction for approximately 190 metres to a junction with Application Route B as described below at grid reference ST 6697 6707 (Point B) and continues in a generally northwesterly direction (Fig. 2) for approximately 142 metres to a junction with public footpath BA27/30 at grid reference ST 6686 6715 (Point C). This route is hereafter referred to as “Application Route A”.

The second application route commences from a junction with Application Route A at grid reference ST 6697 6707 (Point B) and proceeds in a generally northerly direction (Fig. 3) for approximately 307 metres to grid reference ST 6703 6736 (Point D) and turns in a generally easterly direction for approximately 249 metres to grid reference ST 6728 6733 (Point E) and turns in a generally northerly direction (Fig. 4) for approximately 204 metres to a junction with public footpath BA27/27 at grid reference ST 6729 6753 (Point F). This route is hereafter referred to as “Application Route B”.

Application Route A and Application Route B are hereafter referred to collectively as “the Application Routes.”



Fig. 1: Point A



Fig. 2: From Point B looking northwest



Fig. 3: Between points B and D



Fig. 4: Point E looking north

# Investigation Plan

- Application Route A ● ● ● ● ●
- Application Route B ● ● ● ● ● ● ●

NOT TO SCALE



Unaffected Public Footpath —



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## 5. DOCUMENTARY EVIDENCE

DOC No.	DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE	DOC. REF. (& LOCATION)
1.	Day and Masters' Map	1782	<p><b>County Map made from an original survey to be sold to the travelling public, which could be indicative of routes shown probably being public. Footnote states that the map was published according to an Act of Parliament.</b></p> <p>The Application Routes are not shown on Day and Masters' map.</p>	D\B\wsm/38/6 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Routes.	
2.	Map of the Bristol Turnpike Roads	1818	<p><b>Map of the Bristol Turnpike Roads (Division C) with the intended alterations and new piece of road</b></p> <p>The Application Routes appears to be outside the surveyed and mapped area.</p>	W/RUP/59c (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Routes.	
3.	Greenwood's map	1822	<p><b>County Map made from an original survey carried out in 1820 and 1821 to be sold to the travelling public, which could be indicative of routes shown probably being public.</b></p> <p>The Application Routes are not shown on Greenwood's map.</p>	A/AUS\60 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Routes.	
4.	Tithe Map and Tithe Award or Apportionment	1840	<p><b>The <u>Tithe Map</u> is a detailed large scale map of the parish. It was produced to locate titheable land described in the award, not rights of way and their status. The <u>Tithe Award</u> is a legal document (produced under the Tithe Commutation Act of 1836) to show the value of titheable lands in a parish.</b></p> <p>The Application Routes run through enclosures 1481, 1483, 1484, 1444 and 1488 but they are not shown on the Tithe Map. Enclosure 1481 is identified as Gorley Hills &amp; Brains Close (pasture), enclosure 1483 is identified as Holly Moor &amp; Little Mead (Pasture), enclosure 1484 is identified as Gorley Hills (Pasture), enclosure 1444 is identified as Part of Little Mead and enclosure 1488 is identified as Plantation. Tithe was paid on all these enclosures.</p>	D\D/Rt/M/363 D\D/Rt/A/363 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Routes.	

5.	Inland Revenue documents	1910-1914	<p><b>Plans, valuation books, and field books created under the Finance (1909-10) Act 1910. Deductions in value provide good evidence of public rights if position can be accurately located. Annotations on field maps and colouring of routes may provide supporting evidence of status. However, if no reduction was claimed this does not necessarily mean that no rights of way exist.</b></p> <p>The Application Routes run through hereditament 501. No reductions are recorded as having been claimed in respect of this hereditament in the valuation book.</p>	DD/IR/7/14 DD/IR/B/21/1 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Routes.	
6.	Definitive Map records	1949-1973	<p><b>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map. To this end, each Parish carried out a <u>Parish Survey</u> and <u>Draft and Provisional Maps</u> were subsequently published before publication of <u>Definitive Map and Statement</u>.</b></p> <p>The Application Routes are not referred to in any of the Definitive Map records.</p>	(PROW)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Routes.	
7.	Conservation Walks	2001	<p><b>Occupiers received funding under the Countryside Stewardship Scheme to provide permissive access to their land under DEFRA's Farm Conservation Scheme</b></p> <p>A poster shows a network of permissive routes at Glenavon Farm in Saltford. The Application Routes are shown with bold, broken, green lines which the key identifies as permissive bridleways. Countryside Stewardship Scheme ran from 2001; a copy of the poster is still located at point A on the Investigation Plan and states that '<i>Access ends in September 2010</i>' but a copy taken from the DEFRA website states that access ended in September 2013.</p>	(PROW)
	Investigating Officer's comments		This shows use of the Application Routes on foot, horse and bicycle between 2001 and either September 2010 or 2013 was by virtue of express permission from the landowner.	
8.	Rights of Way Act 1932; and subsequent Section 31 deposits	2014	<p><b>Under the Rights of Way Act 1932 (and now s31 (6) of the Highways Act 1980) landowners could deposit a map indicating what ways they admitted had been dedicated as highways across their land.</b></p> <p>On 30 October 2014 the landowner made a Landowner Deposit. The Application Routes were not included on the map or referred to in Part B. On 31 October 2014 the landowner made a subsequent Landowner Deposit including a Part C. The Part C declaration stated that the landowner had no intention to dedicate any new public rights of way in the intervening period.</p>	(PROW)

	Investigating Officer's comments	This shows that the landowner did not regard either of the Application Routes to be public rights of way on 30 October 2014 and that the landowner demonstrated a lack of intention to dedicate between 30 October 2014 and 31 October 2014.	
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The above documents are available for public inspection. Please note that the references are as follows:

SHC = Somerset Heritage Centre

PROW = Documents held within the Public Rights of Way Team

## 6. LANDOWNER STATEMENTS

The current landowner has submitted copies of four statements from people connected with the land. Some of the key points are summarised below:

1.	<p><b>The previous owner of the land over which the Application Routes run made a written statement dated 22 September 2015</b></p> <p>The land at Glenavon Farm was purchased in 1967 and the concrete track between points E and F on the Investigation Plan was constructed in 1970. The wide grass margin along the remainder of Application Route B did not exist in 1967 and there was a heavy iron gate at point E on the Investigation Plan which was difficult to open. There was a barbed wire fence crossing Application Route B between points D and E on the Investigation Plan and the gap at this location was only created in c.2001 as part of the Countryside Stewardship Scheme. The current field margin was ploughed up from early 1980s until 2001.</p> <p>The gate at point A on the Investigation Plan was installed in 2001 or 2002 and there was previously a barbed wire fence across the section of Application Route A between points A and B on the Investigation Plan. In March 1982 planning permission was granted for tipping waste and this tipping made it virtually impossible for anybody to walk Application Route B at that time.</p>
2.	<p><b>The current owner of the land over which the Application Routes run made a written statement dated 22 September 2015.</b></p> <p>There was previously a barbed wire fence crossing Application Route B between points D and E on the Investigation Plan and a gap was only created in c.2001 as part of the Countryside Stewardship Scheme. The Application Routes were opened up as permissive bridleways in March 2001 as part of the Countryside Stewardship Scheme. A sign explaining the permissive access was located north of point F on the Investigation Plan from 2001 until 2014. An identical sign is still in situ at point A on the Investigation Plan. These permissive paths closed in November 2013 and signs were erected informing members of the public. The landowner entered into a new permissive path agreement for the Application Routes in November 2014. A map issued by Saltford Parish Council dated December 1996 and updated in April 2008 shows the Application Routes as '<i>Permissive and other paths</i>'.</p>

3.	<p><b>A herdsman who previously worked between 1968 and 1983 on the land over which the Application Routes runs made a written statement dated 6 May 2015.</b></p> <p>The herdsman helped to lay the concrete track between points E and F on the Investigation Plan with the landowner and states that prior to the construction of the concrete track there was a dry stone wall crossing Application Route B at point E on the Investigation Plan. A barbed wire fence crossed Application Route B between points D and E and between points A and B on the Investigation Plan. There was no stile or gate onto Manor Road and he did not see members of the public using the Application Routes.</p>
4.	<p><b>The son of the individual who owned the land from c.1949, and latterly the farmer of the land until 1966, made a written statement dated 2 September 2015.</b></p> <p>There has never been a footpath along the track between points E and F on the Investigation Plan.</p>

## 7. USER EVIDENCE FORMS

14 user evidence forms were submitted to the Authority detailing use of the Application Routes. All users state that they used the Application Routes on foot only, except user 7 who states that they used the Application Routes on horseback from 1950 until 1958. All users state that they were not given permission to use the application Routes. The Authority carried out short telephone interviews with those users who were contactable to seek clarification of any ambiguous details from their user evidence forms. The periods of use are summarised on the chart overleaf.



