
Bath & North East Somerset Council

DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

SOMERDALE LINK, KEYNSHAM

Date: 04/01/2024

INVESTIGATION REPORT

AUTHOR: GRAEME STARK

DATE: 04/01/2024

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 applicant. 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 Keynsham.

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 Jeffery and Denise Bruton on 3rd June 2021, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add a public footpath to the Definitive Map and Statement.

4. THE ROUTE

The route under investigation commences from a junction with public footpath BA27/5 at grid reference ST 6536 6905 (point A on the Investigation Plan on page 4 below) and proceeding in a generally northwesterly direction adjacent to the Great Western Railway for approximately 158 metres to grid reference ST 6523 6914 (point B on the Investigation Plan) and turning in a generally north easterly direction under the railway line for approximately 57 metres to a junction with public footpath BA27/87 at grid reference ST 6527 6918 (point D on the Investigation Plan) and turning in a generally southeasterly direction for approximately 48 metres to a junction with Drylease at grid reference ST 6531 6915 (point E on the Investigation Plan).

This route is hereafter referred to as “the Application Route.”



Fig. 1: Point A looking NE towards point B



Fig. 2: Point B looking NE under railway

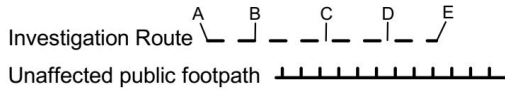


Fig. 3: Stile at point C



Fig. 4: Point D looking SE towards point E

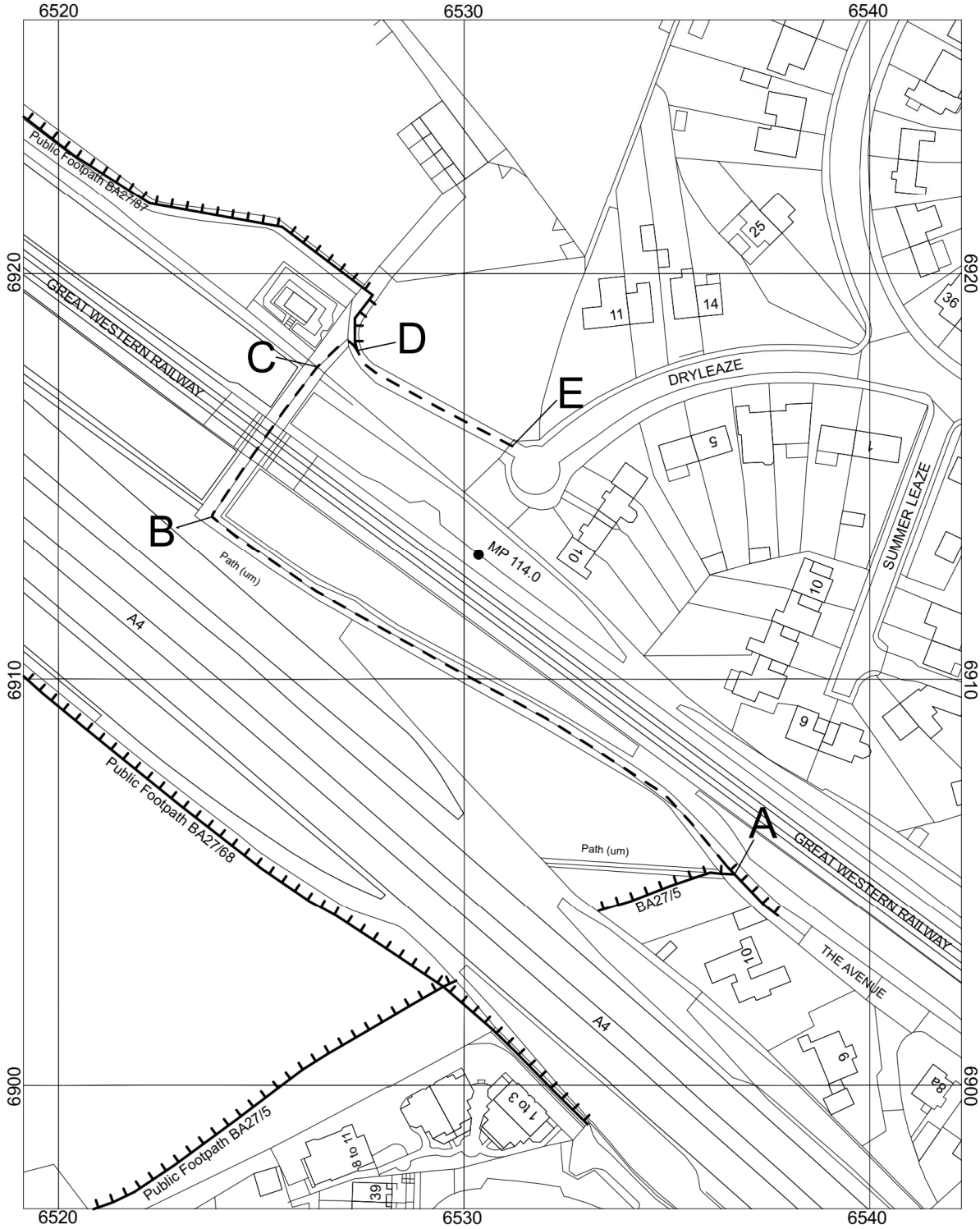
Investigation Plan



Bath & North East Somerset Council

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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>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.</p> <p>The Application Route is 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 Route.	
2.	Proposed Great Western Railway - plans and sections	1833	<p>Plan and section for the proposed Great Western Railway lines between London and Reading and Bath and Bristol dated 30 Nov 1833. A private Act of Parliament was required before these could be built. Plans and books of reference relating to land either side of projected railways and canals had to be drawn up and required consultation with and the agreement of the landowners. As a result, they can provide strong evidence of status.</p> <p>The Application Route is not shown on either the plans or the sections; however, a bridge was subsequently built which allows the Application Route to pass under the railway.</p>	Q/RUP/120 (SHC)
	Investigating Officer's comments		This suggests that the Application Route was not a public right of way.	
3.	Greenwood's map	1822	<p>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.</p> <p>The Application Route is 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 Route.	
4.	Tithe Map and Tithe Award or Apportionment	1839-1842	<p>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.</p> <p>The Application Route is not shown on the Keynsham Tithe Map.</p>	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>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.</p> <p>The section of the Application Route between points A and B on the Investigation Plan appears to be excluded from any taxable hereditament; however, the section of the Application Route between points B and C on the Investigation Plan appears to form part of Great Western Railway hereditament and the section of the Application Route between points C and E on the Investigation Plan runs through hereditament T685. No reduction was sought for 'Rights of Way or User' through the GWR hereditament or hereditament T685.</p>	DD/IR/B/21/1 (SHC)
	Investigating Officer's comments		This indicates that the section of the Application Route between points A and B on the Investigation Plan was a public right of way but this does not provide any evidence relating to the section between points B and E on the Investigation Plan.	
6.	OS Maps	1884-1946	<p>The Ordnance Survey has produced a series of topographic maps at different scales notably the One Inch, Six Inch and 1:2500. The large scale 1:2500 plans from the 1870's onwards provide the good evidence of position of routes and the existence of any structures, and also good evidence of width. They generally do not provide evidence of status.</p> <p>The section of the Application Route between points A and C on the Investigation Plan is shown with solid, parallel black lines on the Ordnance Survey's Six-978781Inch maps dated 1884, 1887, 1904, 1905, 1920 and 1932. In addition to showing the section of the Application Route between points A and C on the Investigation Plan with solid, parallel black lines, the Ordnance Survey's Six-Inch maps dated 1944 and 1946 also show an approximation of the Application Route between points C to E on the Investigation Plan with double peaked lines.</p>	https://maps.nls.uk/os/
	Investigating Officer's comments		This indicates that the section of the Application Route between points A and C on the Investigation Plan has physically existed since at least 1884 and that the section of the Application Route between points C and E on the Investigation Plan physically existed in 1944 and 1946. This does not provide evidence that the Application Route was a public right of way.	

6.	Definitive Map records	1949-1973	<p>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>.</p> <p>The section of the Application Route between points A and B on the Investigation Plan is recorded on the Parish Survey as part of footpath 6 which is a longer route continuing along the southern side of the railway towards Durley Lane; the Walking Survey card describes the route as “...<i>running in a North-westerly direction along occupation road...</i>” and it is stated that site survey was carried out on 8th September 1950.</p> <p>This same section of the Application Route is recorded on the Draft Map as part of public footpath BA27/6 which is shown in purple; the Draft Map was published on 26th November 1956. The purple line is crossed out in pencil and an alternative alignment to the south is shown in pencil; it is assumed that these amendments were made after publication of the Draft Map and the Keynsham Bypass is not shown.</p> <p>BA27/6 is shown with a purple line on the Draft Modification Map; this map shows routes which are intended to be either added or removed from the subsequent Provisional Map. The purple line is crossed out in ink, the Keynsham Bypass is shown in pencil and an alternative alignment for BA27/6 is shown immediately to the south of the bypass in blue; it is unclear when these amendments were made.</p> <p>Despite being shown on the Draft Modification Map (which would ordinarily suggest the route was to be removed from the Provisional Map), the Provisional Map still shows BA27/6 in purple as a public footpath; the Provisional Map was published on 8th August 1967. The purple line is crossed out in ink, the Keynsham Bypass is shown in brown ink and edged in black and an alternative alignment for BA27/6 is shown immediately to the south of the bypass in blue; it is assumed that these amendments were made after publication of the Provisional Map.</p> <p>The Definitive Map shows BA27/6 in purple as a public footpath; the Definitive Map was published on 25th January 1973 with a relevant date of 26th November 1956. The purple line is crossed out in ink, the Keynsham Bypass is shown in brown ink and edged in black and an alternative alignment for BA27/6 is shown immediately to the south of the bypass in blue; it is assumed that these amendments were made after publication of the Definitive Map.</p>	(PROW)
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			<p>The Definitive Statement describes the route as “...<i>running in a North-westerly direction along occupation road...</i>”. The Definitive Statement states that “<i>A Stopping up and Diversion Order since the relevant date applies to this path</i>” and an alternative Definitive Statement has been appended for BA27/6 describing the path as running to the south of the bypass.</p> <p>The section of the Application Route between points B and E on the Investigation Plan is now shown or referred to in any of the Definitive Map documents.</p>	
	Investigating Officer's comments		This indicates that the section of the Application Route between points A and B on the Investigation Plan was a public footpath but that those rights were stopped up by legal order at a later date.	
7.	Photographs	1962-2021	<p>A number of photographs were appended to use evidence forms.</p> <p>Photographs from 1962, 1965 and 1982 shows a stile at point E. A photograph, which the Applicant states was taken in the 1980s, shows the section of the Application Route between points D and B on the Investigation Plan. A photograph, which the Applicant states was taken in the 1980s, shows a stile at point E with a sign reading '<i>Public footpath to left only under arch</i>'. Another photograph, which the Applicant also states was taken in the 1980s, shows an adjacent field gate with a sign reading '<i>Cadbury Schweppes Private Property No Trespassing</i>'.</p> <p>Photographs from January 2021 show the Applicants clearing vegetation from the Application Route which appears to be completed blocked at points.</p>	(PROW)
	Investigating Officer's comments		This indicates that pedestrians were able to join the Application Route from Dryleaze and that at least the section between point B and E on the Investigation Plan was a public footpath. However, this also indicates that the track which ran adjacent to the Application Route was private.	
8.	Diversion Order	1964-65	<p>Keynsham Bypass constructed in 1964 and 1965.</p> <p>The Keynsham Bypass was to be constructed on land which included the section of public footpath BA27/6 (as originally recorded) north of point B on the Investigation Plan. A diversion order was made to divert BA27/6 to the southern side of the bypass. A Legal Event Modification Order with a relevant date of 31st July 2001 was made to amend the Definitive Map and Statement accordingly.</p>	(PROW)

	Investigating Officer's comments		This shows that the section of the Application Route between points A and B on the Investigation Plan ceased to be public footpath when the bypass was constructed.	
9.	Newspaper article	2021	An article published in the April 2021 edition of the Keynsham Voice. The article contains comments from the Applicants stating that the Application Route was well used by the public up until it became overgrown 10-15 years previously. The article states that the Applicants cleared the vegetation from the Application Route in 2021 and that it has been well used since.	(PROW)
	Investigating Officer's comments		This suggests that the Application Route has previously been used by the public.	
10.	Dedication Agreement	2022	Keynsham Hams Somerdale Creation agreement. On 21 st July 2022, Taylor Wimpey UK Ltd entered into a Section 25 Dedication Agreement with the Authority to dedicate the section of the Application Route between points D and E on the Investigation Plan as a public footpath.	(PROW)
			This shows that the section of the Application Route between points D and E on the Investigation Plan is a public footpath.	

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

7. USER EVIDENCE FORMS

16 user evidence forms were received by the Authority. The evidence of use on foot between points A and E on the Investigation Plan is summarised in the chart below.

