

SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH – Somerdale, Keynsham

(Ward Division: **Keynsham North**)

1. The Issue

- 1.1 An application has been received for a Definitive Map Modification Order (“DMMO”) to be made under section 53(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) to modify the Definitive Map and Statement of Public Rights of Way (“the DM&S”) by adding a public footpath running from public footpath BA27/5 to Dryleaze in Keynsham.

2. Recommendation

- 2.1 It is recommended that Bath and North East Somerset Council (“the Authority”) makes a DMMO to record the section of the Application Route between points A and D and shown by a broken black line on the plan contained at Appendix 1 (“the Decision Plan”). Furthermore, it is recommended that the Authority does not make a DMMO to record the section of the Application Route between points D and E on the Decision Plan.

3. Financial Implications

- 3.1 Financial implications are not a relevant consideration which may be taken into account under the provisions of the 1981 Act. The costs associated with making a DMMO and any subsequent public inquiry, public hearing or exchange of written representations would be met from the existing public rights of way budget.

4. Human Rights

- 4.1 The Human Rights Act 1998 (“the 1998 Act”) incorporates the rights and freedoms set out in the European Convention on Human Rights (“the Convention”) into UK law. So far as it is possible all legislation must be interpreted so as to be compatible with the Convention.
- 4.2 The 1981 Act does not permit personal considerations to be taken into account. A decision relating to a DMMO would be lawful without taking account of personal considerations, as provided by section 6(2) of the 1998 Act, as it would be impossible to interpret the legislation in such a way that it is compatible with section 3 of the Convention. Further details of Human Rights considerations can be found in the Planning Inspectorate’s Public Rights of Way Advice Note No. 19.

5. Legal Framework

- 5.1 The Authority, as Surveying Authority, is under a statutory duty, imposed by section 53(2) of the 1981 Act, to keep the DM&S under continuous review. Section 53(2)(b) states:

“As regards every definitive map and statement, the surveying authority shall...keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence...of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event”

- 5.2 The ‘events’ referred to above are set out in section 53(3) of the 1981 Act. The ‘event’ to which this Application relates is set out in section 53(3)(c)(i) of the 1981 Act which states that:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic”

- 5.3 The meaning of ‘reasonably alleged’ was considered in *Bagshaw and Norton* [1994]¹ where Owen J. stated that:

“Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances and I am certainly not seeking to declare as law any decisions of fact. However, if the evidence from witnesses as to uses is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist then, it would seem to me, to be reasonable to allege such right.”

- 5.4 Evidence of use by the public can be sufficient to raise a presumption of dedication under section 31 of the Highways Act 1980 (“the 1980 Act”) or at common law. Section 31(1) of the 1980 Act states that:

“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

- 5.5 For a way to be deemed to have been dedicated as a public right of way at common law it must have been used by the public for a period which is sufficient to constitute evidence of an intention by the landowner to dedicate the way as public. The facts, taken as whole,

¹ R v SSE ex parte Bagshaw and Norton [1994] 68P & CR402

must be such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Use must be without force, secrecy or permission (i.e. 'as of right') and each case turns on whether the facts indicate an intention to dedicate.

- 5.6 Documentary evidence should also be considered in determining applications for DMMOs. Section 32 of the 1980 Act states:

“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

- 5.7 Anyone may apply to the Authority for a DMMO to modify the DM&S and such applications must be determined in accordance with the provisions of schedule 14 of the 1981 Act. If, after consideration of an application, the Authority decides not to make a DMMO then the Applicant may appeal to the Secretary of State within 28 days of the service of notice of that decision. The Secretary of State will then re-examine the evidence and direct the Authority accordingly.

6. Background and Application

- 6.1 On 3rd June 2021, Jeffery and Denise Bruton (“the Applicants”) applied to have a public footpath added to the DM&S (“the Application”). The Application was accompanied by 16 User Evidence Forms.
- 6.2 The route shown on the plan appended to the Application commences from a junction with public footpath BA27/5 at grid reference ST 6536 6905 (point A on the Decision Plan) 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 Decision 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 Decision Plan) and turning in a generally southeasterly direction for approximately 48 metres to a junction with Dryleaze at grid reference ST 6531 6915 (point E on the Decision Plan); this route is hereafter referred to as “the Application Route”.
- 6.3 During a site visit by the Authority in June 2023, the Application Route was found to be unobstructed. Public footpath signs were located pointing along the Application Route at points A, C and E and a stile step was located at point C on the Decision Plan.

7. Consultations

- 7.1 In August 2023, the Authority consulted on the Application with the Applicant, the two known affected landowners, local and national user groups and the ward members. Notices were posted on the Authority's website and on site at points A and E on the Decision Plan.
- 7.2 The owner of the section of the Application Route between points B and C on the Decision Plan stated that the evidence '*suggest[s] there is a public footpath under the bridge*' and that they had no objection to the Application Route being added to the DM&S. The owner of the section of the Application Route between points C and E on the Decision Plan stated that they had '*no objections to the investigation.*' The Town Council responded to state that they '*support the application for a Modification Order*'. The Authority received one further User Evidence Forms; this was the only additional evidence submitted during or after the consultation.

8. Documentary Evidence

- 8.1 Extensive archival research was undertaken in the Somerset Heritage Centre in Taunton and in the Authority's own records.
- 8.2 The Application Route is not shown on either the plans or the sections produced in connection with the proposed Great Western Railway line between London and Reading and Bath and Bristol and dated 30 Nov 1833; however, a bridge was subsequently built which allows the Application Route to pass under the railway.
- 8.3 The section of the Application Route between points A and C on the Decision Plan is shown with solid, parallel black lines on the Ordnance Survey's Six-Inch 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 Decision 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 Decision Plan with double pecked lines.
- 8.4 The section of the Application Route between points A and B on the Decision Plan appears to be excluded from any taxable hereditament in the documents produced by the Inland Revenue under the Finance (1909-10) Act 1910; however, the section of the Application Route between points B and C on the Decision Plan appears to form part of Great Western Railway's hereditament and the section of the Application Route between points C and E on the Decision Plan runs through hereditament T685. No reduction was sought for 'Rights of Way or User' through the GWR hereditament or hereditament T685.
- 8.5 The National Parks and Access to the Countryside Act 1949 required Somerset County Council to prepare a DM&S. To this end, each Parish carried out a Parish Survey and Draft and Provisional Maps were

subsequently published before publication of Definitive Map and Statement.

- 8.6 The section of the Application Route between points A and B on the Decision 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 “...*running in a North-westerly direction along occupation road...*” and it is stated that site survey was carried out on 8th September 1950.
- 8.7 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; the Keynsham Bypass is not shown and it is assumed that these amendments were made after publication of the Draft Map.
- 8.8 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.
- 8.9 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.
- 8.10 The Definitive Map shows BA27/6 as a public footpath in purple; the DM&S 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 DM&S.
- 8.11 The Definitive Statement describes the route as “...*running in a North-westerly direction along occupation road...*”. The Definitive Statement states that “*A Stopping up and Diversion Order since the relevant date applies to this path*” and an alternative Definitive Statement has been appended for BA27/6 describing the path as running to the south of the bypass.
- 8.12 The section of the Application Route between points B and E on the Decision Plan is not shown or referred to in any of the DM&S documents.

- 8.13 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 Decision Plan. A diversion order was made and confirmed in 1965 to divert the whole of BA27/6 to the southern side of the bypass; a Legal Event Modification Order (LEMO) with a relevant date of 31st July 2001 was made to amend the Definitive Map and Statement accordingly.
- 8.14 Photographs from 1962, 1965 and 1982 shows a stile at point E on the Decision Plan. 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 Decision Plan. A photograph, which the Applicant states was taken in the 1980s, shows a stile at point E on the Decision Plan with a sign reading '*Public footpath to left only under arch*'. Another photograph, which the Applicant also states was taken in the 1980s, shows an adjacent field gate with a sign reading '*Cadbury Schweppes Private Property No Trespassing*'.
- 8.15 Photographs from January 2021 show the Applicants clearing vegetation from the Application Route which appears to be completed blocked at points. An article published in the April 2021 edition of the Keynsham Voice 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.
- 8.16 On 21st July 2022, Taylor Wimpey UK Ltd entered into a dedication agreement with the Authority under section 25 of the 1980 Act to dedicate the section of the Application Route between points D and E on the Decision Plan as a public footpath; a LEMO was made in 2024 to record these new rights on the DM&S.
- 8.17 Day and Masters' Map from 1782, Greenwood's map from 1822 and the Keynsham Tithe Map and Apportionment from 1839-1842 do not show the Application Route.

9. User Evidence

- 9.1 The Authority received 17 user evidence forms detailing use on foot of the Application Route by 17 members of the public from 1942 onwards; two of those users ceased using the Application Route prior to the public footpath rights being stopped up in 1965. The Authority carried out short telephone interviews with the 13 of these users who were contactable to clarify details about their use of the Application Route.
- 9.2 None of the users state that their use of the Application Route ceased as a result of actions taken by the landowner and neither of the known landowners have stated that they had an intention during that period not to dedicate public rights. Section 31(7B) of the 1980 Act states that in the absence of the landowner taking any positive steps to call the right of the public to use a route then the 'date of challenge' will be the date

which the DMMO application was duly made (i.e. 3rd June 2021). Therefore, the relevant 20 year period of use for deemed dedication under section 31(1) of the 1980 Act runs from 3rd June 2001 to 3rd June 2021 (“the s31 Relevant Period”). All users state that they had stopped using the Application Route by 2014 due, in most cases, to having moving away from the area or vegetative upgrowth blocking the route. Consequently, the user evidence does not demonstrate that the Application Route was actually enjoyed by the public “without interruption” for the full s31 Relevant Period and the user evidence does not demonstrate deemed dedication under section 31(1) of the 1980 Act.

- 9.3 For a way to be deemed to have been dedicated as a public right of way at common law it must have been used by the public for a period which is sufficient to constitute evidence of an intention by the landowner to dedicate the way as public. The user evidence demonstrates that the Application Route was used by 14 members of the public between 1965 (when public footpath rights were formally stopped up) and 2014 (when user 15 states they stopped using the Application Route, most likely due to vegetative upgrowth). All of these users have stated that their use was without force, secrecy or permission and that at no point did a landowner take any steps to prevent their use of the Application Route. Six of these users² used the Application Route on a daily basis, six of these users³ used the Application Route on a weekly basis and two of these users⁴ used the Application Route on a monthly basis. While the user evidence forms do not demonstrate a large number of people using the Application Route, those who did so used the Application Route with a relatively high frequency.
- 9.4 In assessing the landowner’s intentions, the continued presence of the stile at point C on the Decision Plan and the sign reading ‘*Public footpath to left only under arch*’ at point E on the Decision Plan are both relevant. While no evidence has been presented about who erected the stile and signage, there is also no evidence to suggest that the landowner attempted to remove them. I must also be noted that the landowner did not raise any objection to the Applicants clearing vegetation from the Application Route in 2021 or the presence of public footpath signs pointing along the Application Route which were observed by the Authority when carrying out a site visit in June 2023. The rightful inference to be drawn from this evidence is that the landowner intended to dedicate the way as a public footpath at common law.
- 9.5 Users 3, 5, 7 and 15 all state that they used the Application Route on bicycle; however, they did so by lifting their bicycles over the stile at point C on the Decision Plan. The rightful inference to be drawn from the landowner continuing to maintain a stile at this location is that they did not intend to dedicate the route for use by cyclists.

² Users 2, 3, 7, 10, 15 and 16

³ Users 1, 4, 9, 12, 13 and 14

⁴ Users 8 and 11

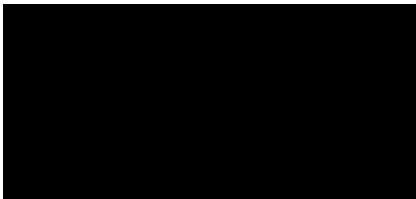
- 9.6 The width of the path as stated in the user evidence forms varies between 1.5m and 2-6m but there is little consistency about the exact width. On the ground the width is restricted to 1.8m as multiple points along its length by trees rooted, and a fence erected, immediately adjacent to the Application Route.
- 9.7 All users state that there was a wooden stile at point C on the Decision Plan throughout their periods of use and the dedication of the public footpath is therefore subject to the limitation of the right of the landowner to erect and maintain a stile at that location.

10. Conclusion

- 10.1 The Ordnance Survey maps indicate that the section of the Application Route between points A and C on the Decision Plan has physically existed since at least 1884 and the Inland Revenue documents indicate that the section of the Application Route between points A and B on the Decision Plan was a public right of way from 1910 onwards.
- 10.2 The Definitive Map and Statement confirms that the section of the Application Route between points A and B on the Decision Plan was a public footpath in 1956 but a diversion order subsequently stopped up these rights in 1965.
- 10.3 The facts, taken as whole, demonstrate that the rightful inference to be drawn from the public's use of the Application Route from 1965 onwards is that the landowner intended to re-dedicate the way as a public footpath.
- 10.4 A DMMO should be made to record the section of the Application Route between points A and D on the Decision Plan as a public footpath with a width of 1.8m and the limitation of the right of the landowner to erect and maintain a stile at point C on the Decision Plan.
- 10.5 The LEMO to record the express dedication of the section of the Application Route between points D and E on the Decision Plan in 2022 negates the need for a DMMO to make further modification in respect of this section of the Application Route.

AUTHORISATION

Under the authorisation granted by the Council on 21st July 2022, the Authority formally resolves to make a Definitive Map Modification Order to modify the Definitive Map and Statement to record a public footpath between points A and D on the Decision Plan. Furthermore, the Authority resolves not to modify the Definitive Map and Statement in respect of the section of the Application Route between points D and E on the Decision Plan.



Dated: 25/04/2024

Craig Jackson
Team Manager – Highways Maintenance and Drainage

Appendix 1: Decision Plan

