



Bath & North Somerset C.

DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

PARK COPSE, COMPTON DANDO

Date: 10/08/2022

INVESTIGATION REPORT

AUTHOR: GRAEME STARK

DATE: 10/08/2022

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 tables the evidence of 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 final decision will be based upon the evidence summarised in this report together with any further comments, documents and other evidence supplied by landowners, consultees and other interested parties.

The plan attached at page 4 shows the location of the routes under investigation in the parish of Compton Dando.

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 Compton Dando Parish Council on 16th December 2020, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add a route to the Definitive Map and Statement.

4. THE ROUTE

The route shown on the plan appended to the application commences from a junction with the carriageway of Peppershells Lane at grid reference ST 6428 6481 (Point A on the Investigation Plan on page 4 below) (Fig. 1) and proceeds in a generally west south-westerly direction for approximately 18 metres to grid reference ST 6418 6492 (Point B) and turns in a generally southern direction through Park Copse for approximately 210 metres to a junction with public footpath BA8/65 at grid reference ST 6419 6476 (Point D on the Investigation Plan) (Fig. 4). This route is shown on the Investigation Plan with a blue dotted line and is hereafter referred to as “the Application Route”.

The majority of the Application Route isn’t physically evidence on the ground; however, there is also a worn path through Park Copse which commences from a junction with Peppershells Lane at grid reference ST 6418 6492 (Point B) and proceeds in a generally southerly direction (Fig. 3) for approximately 222 metres to a junction with public footpath BA8/65 at grid reference ST 6419 6476 (Point D on the Investigation Plan). This route is shown on the Investigation Plan with a red dotted line and is hereafter referred to as “the Alternative Route”.

The Authority has investigated whether a DMMO should be made to record either the Application Route or the Alternative Route on the Definitive Map and Statement.



Fig. 1: Point A looking south



Fig. 2: Sign near point B



Fig. 3: Alternative Route



Fig. 4: Looking south towards point D

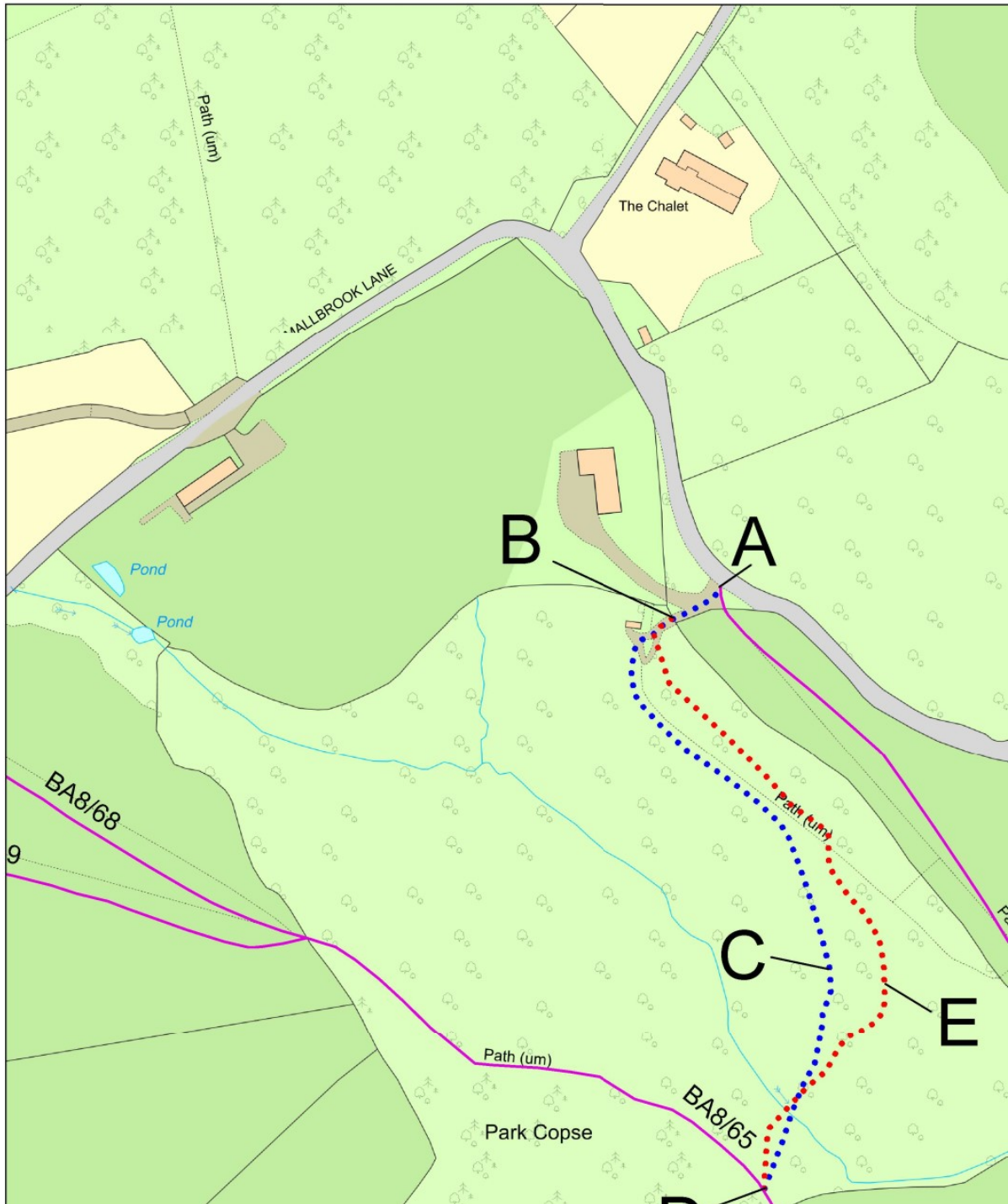
Investigation Plan

Park Copse

Application Route 

Alternative Route 

Unaffected public footpath 



5. DOCUMENTARY EVIDENCE

Doc No.	DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE	DOCUMENT REFERENCE (& 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>Neither the Application Route nor the Alternative Route are shown on Day and Masters' map.</p>	D:\B\wsm/38/6 (SHC)
	Investigating Officer's comments		This does not provide any evidence regarding the Application Route or the Alternative Route.	
2.	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>Neither the Application Route nor the Alternative Route are shown on Greenwood's map.</p>	A\AUS\60 (SHC)
	Investigating Officer's comments		This does not provide any evidence regarding the Application Route or the Alternative Route.	
3.	Tithe Map and Tithe Award or Apportionment	c.1840 -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. However, the maps do mark roads quite accurately and can provide useful supporting evidence (in conjunction with the Tithe award) to other documents.</p> <p>The <u>Tithe Apportionment</u> is a legal document (produced under the Tithe Commutation Act of 1836) to show the value of titheable lands in a parish. Some awards contain additional information from which status of ways may be inferred.</p> <p>The Application Route and the Alternative Route would run through enclosure 77. Neither the Application Route nor the Alternative Route are shown on the Tithe Map and the Tithe Apportionment shows that Tithe was paid on enclosure 77.</p>	D/D/rt/M/407 D/D/rt/A/407 (SHC)
	Investigating Officer's comments		This does not provide any evidence regarding the Application Route or the Alternative Route.	

4.	Inland Revenue documents	1910	<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>Neither the Application Route nor the Alternative Route are shown on the Inland Revenue map and no dedications for 'rights of way or user' were claimed for the hereditament through which the Application Route and the Alternative Route run.</p>	D:\IR\B\13\9 DD\IR\B\13\10 (SHC)
	Investigating Officer's comments		This does not provide any evidence regarding the Application Route or the Alternative Route.	
5.	Google Street View	March 2009	<p>Google Street View provides interactive panoramas from positions along many streets in the world. Peppershells Lane has only been photographed once in March 2009.</p> <p>The section of the Application Route between points A and B on the Investigation Plan is visible from Peppershells Lane. At point A on the Investigation Plan there is a metal field gate and adjacent gap and no furniture or obstructions can be found at point B on the Investigation Plan. A sign can be seen at point B on the Investigation Plan but the sign does not appear to contain any legible writing.</p>	Online
	Investigating Officer's comments		This indicates that a sign was present in 2009 but that it wasn't legible	
6.	Landowner Deposit	2012 2021	<p>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.</p> <p>The landowner submitted a statement under section 31(6) of the Highways Act 1980 on 20th November 2012; neither the Application Route nor the Alternative Route are admitted as existing public rights of way. The landowner followed up the statement with a declaration on 15th October 2021 which stated that during the intervening period there was no intention to dedicate new rights in addition to those admitted in 2012.</p>	(PROW)
	Investigating Officer's comments		The Landowner Deposit shows that the landowner demonstrated a lack of intention to dedicate either the Application Route or the Alternative Route from 20 th November 2012 until 15 th October 2021.	

7.	List of Streets	2022	<p>Under section 36 of the Highways Act 1980, local highway authorities are required to keep a list of streets maintainable at public expense. The List of Streets for Bath and North East Somerset includes spatial data showing the mapped extent of each highway.</p> <p>The section of the Application Route between points A and B on the Investigation Plan is shown as part of Peppershells Lane, which is recorded as Class 4 highway (unclassified county road). The remainder of the Application Route and the whole of the Alternative Route is not show.</p>	(PROW)
	Investigating Officer's comments		This shows that the section of the Application Route between points A and B on the Investigation Report is public road.	

Notes:

These documents are available for 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 SUBMITTED STATEMENTS

The landowner has submitted a completed Landowner Evidence Form and written statements from five members of the public. The Authority carried out telephone interviews with each individual to clarify details of their evidence.

Doc No.	Document title	Brief summary of contents
1.	Landowner Evidence Form	<p>The current landowner has owned the land since 13th May 1969. They are aware that members of the public have used the Alternative Route but they state that they have turned people back and that they don't regarding either the Application Route or the Alternative Route to be public.</p> <p>He states that the now illegible sign at point B on the Investigation Plan (Fig. 2 above) was most likely erected in 1980 and read 'PRIVATE SHOOT KEEP OUT' in white letters on a black background; it is stated that the signs were clearly legible in 2000/01 and partly legible for a further 3-5 years thereafter.</p> <p>He states that locked gates were erected towards the northern end of the Application Route at various points in the 70s, 80s and 90s; RSJs were also inserted vertically into the ground to prevent public access and that these disappeared in the early 2000s.</p>
2	Witness Statement 1	<p>Witness 1 oversaw the Woollard Shoot in Park Copse from 1989 until 2016. He turned people back on numerous occasions on the landowner's instructions. He states that the sign shown in Fig. 2 above read 'Private Shoot Keep Out' and was present when he started overseeing shoot; the sign remained visible and readable into the 1990s but began to fade thereafter. He refers to RSJs and locked gates also being present.</p>
3	Witness Statement 2	<p>Witness 2 is a neighbouring landowner. He recalls RSJs topped with barbed wire about 30 years ago and states that the sign shown in Fig. 2 above read 'Keep Out' and could still be read in 2001.</p>
4	Witness Statement 3	<p>Witness 3 is a local resident. States that the sign shown in Fig. 2 read 'Keep Out' and 'Private Shoot' and that it was visible in the 1990s. Also refers to the presence of RSJs and a chained gate.</p>
5	Witness Statement 4	<p>Witness 4 was a member of the Woollard Shoot and now is the gamekeeper covering the land over which the Application Route and the Alternative Route run. The sign shown in Fig.2 read 'Private Shoot' and 'Keep Out' and was erected in the 190s; it remained visible for 'many years' afterwards. States that RSJs were erected in the 1980s and locked gates were erected in the late 1980s; both remained until c.2006.</p>
6	Witness Statement 5	<p>Witness 5 is a local resident and adjacent landowner. States that RSJs were installed and were replaced with a gate that was 'clearly secured'. States that he turned back members of the public on the authority of the landowner. The sign shown in Fig. 2 read 'Private Shoot' and 'Keep Out' when he joined the Woollard Shoot in 1997.</p>

7. USER SUBMITTED STATEMENTS

The DMMO application was accompanied by eight user evidence forms detailing user of the Route. The Authority attempted to carry out telephone interviews with each user to clarify details of their evidence; the Authority was unable to contact users 4 or 5. All users interviewed stated that they used the worn path through Park Copse (the Alternative Route), rather than the Application Route, and it is assumed that users 4 and 5 also used the Alternative Route as their user evidence forms state that the route they have used has not altered over time.

All users state that they used the Alternative Route on foot only. Users 1, 2, 6, 7 and 8 state that they used the Alternative Route once a month, User 4 states that they used the Alternative Route once a week or once a month, Users 5 states that they used the Alternative Route once a week and User 3 states that they used the Alternative Route six times over a 40 year period. Although User 4 states that they had permission to use the Alternative Route the permission was not granted by the landowner or an individual believed to be acting on behalf of the landowner; none of the user during the relevant period was therefore by permission. None of the Users state that they were ever turned back or challenged prior to 2012. The periods of use are shown below.

User 1 stated that the sign shown in Fig. 2 above, which is located near point B on the Investigation Plan, probably referred to something relating to a private shoot and that it was erected in the early 1980s by his brother-in-law; none of the other users recall seeing the sign. User 1 remembers the presence of RSJs near point B on the Investigation Plan and User 3 possibly remembers a single RSJ; none of the other users remember RSJs or gates until recent years.

