
Bath & North East Somerset Council

DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

MEADOW PARK, BATHFORD

Date: 05/11/2021

INVESTIGATION REPORT

AUTHOR: GRAEME STARK

DATE: 05/11/2021

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 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 contents of 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 (“the Investigation Plan”) shows the location of the route under investigation in the village and parish of Bathford.

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 Bathford Parish Council on 11th November 2019, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement.

4. THE ROUTE

A route commences from a junction with Meadow Park at grid reference ST 7869 6731 (point A on the Investigation Plan) (fig.1) and proceeds in a generally easterly direction over a concrete path (fig.2) for approximately 105 metres to a junction with public footpath BA3/24 at grid reference ST 7879 6731 (Point B on the Investigation Plan) (fig.3). This route is hereafter referred to as “the Application Route”.



Fig. 1



Fig.2

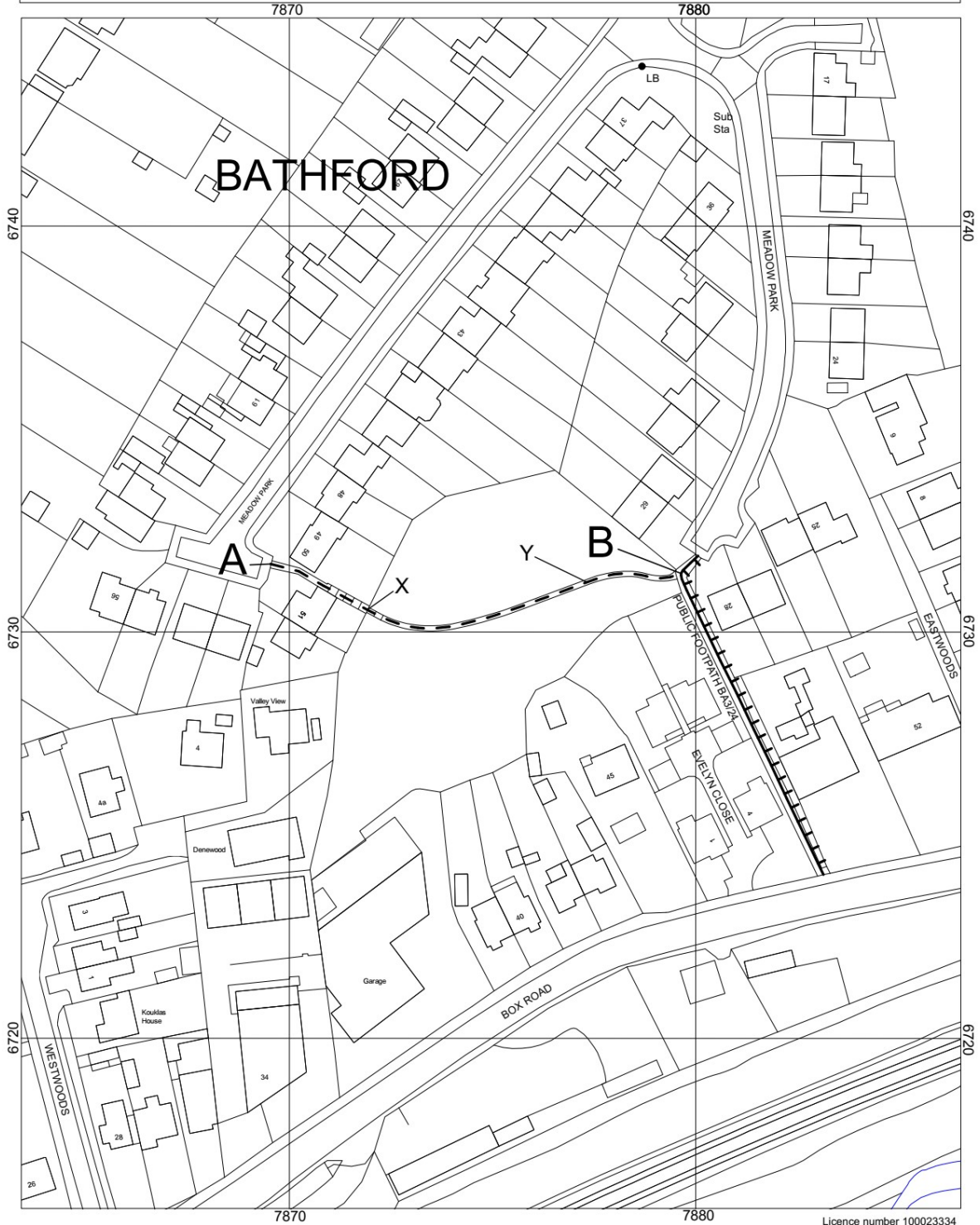


Fig.3

INVESTIGATION PLAN

Application Route A — X — Y — B

Public footpath recorded on DM&S 



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Licence number 100023334

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>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.	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.	
3.	Great Western Railway Plans	1834	<p>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 runs through enclosure 8 and an unnumbered enclosure but it is not delineated on the railway plan. Enclosure 8 is identified as <i>Pasture Meadow</i>.</p>	Q/RUP/123 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	

4.	Tithe Map and Tithe Award or Apportionment	c. 1840	<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 Award</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 runs through enclosures 87 and 89 but it is not delineated on the Tithe Map. Enclosure 87 is identified as <i>Bitile Moor (pasture)</i> and enclosure 89 is identified as <i>Upper Bridge Furlong (pasture)</i> in the Tithe Award. Tithe was paid on both of these enclosures.</p>	D/D/rt/M/167 D/D/rt/A/167 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
5.	Inland Revenue documents	1911	<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 Application Route runs through hereditament 766 which is identified as <i>Bridge Farm (house, buildings and land)</i> but it is not delineated on the Inland Revenue plan. No reductions were claimed for '<i>Public Rights of Way or User</i>'.</p>	DD/IR/OS/8/15 DD/IR/B/18/6 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
6.	Definitive Map records	1949- 1965	<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map to record the public rights of way.</p> <p>The Application Route is not included in the Parish Survey, Draft Map or Definitive Map and Statement.</p>	(PROW)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	

7.	Section 40 Adoption Records	1965	<p>An agreement for the adoption of roads at Meadow Park, Bathford.</p> <p>On 6th August 1965, C. H. Beazer and Sons Ltd (the owner and developer of Meadow Park, including the land over which the Application Route runs) and Somerset County Council (the then highway authority) entered into an agreement pursuant to section 40 of the Highways Act 1959 to adopt highways at Meadow Park in Bathford. The agreement provided for several routes to be adopted as public road and for a footpath which partially follows the alignment of the Application Route; this footpath follows A to X and Y to B on the Investigation Plan but runs in a straight line between points X and Y. On 24th July 1969, Burningham & Brown states that their client (C. H. Beazer and Sons Ltd) did not wish the footpath to be included in the Section 40 Agreement; a letter from Somerset County Council confirms that this amendment was accepted and actioned.</p>	(PROW)
	Investigating Officer's comments		This shows that the Application Route was not created as a public right of way as part of the Meadow Park development.	
8.	Lease	1969	<p>A lease relating to 47 Meadow Park, Bathford</p> <p>The lease is dated 4th March 1969 and the Chair of Bathford Parish Council has stated that the leases for nos.12 to 77 Meadow Park all are substantially to the like effect as this lease. The lease grants certain rights and benefits including "<i>a right of way...over the footway coloured brown on the said plan upon payment of a proportionate part of the cost of maintaining that said way</i>". It is unclear from the map which route is being referred to; it's possible that it's referring to the section of public footpath BA3/24 south of point B on the Investigation Plan but the Application Route is not shown coloured brown.</p> <p>The lease also grants "<i>the right to use the land edged yellow on the said plan as a woodland amenity area subject to the payment of a proportionate part of the cost of maintaining the same in good order</i>"; the land edged yellow includes the section of the Application Route between points X and Y on the Investigation Plan but does not include the remainder of the Application Route.</p>	(PROW)
	Investigating Officer's comments		This indicates that the leasehold owners of 12 to 77 Meadow Park had the right to use the section of the Application Route between points X and Y on the Investigation Plan as a woodland amenity area if they paid a proportionate amount of the maintenance costs.	

Notes: Documents are available for inspection. SHC = Somerset Heritage Centre PROW = Documents held within the Authority's PROW Team

6. USER EVIDENCE

28 user evidence forms have been submitted to the Authority detailing use of the Application Route. The Authority has carried out telephone interviews with all users to clarify their evidence, except users 5, 8, 11 and 28 who have so far not been contactable. The periods of use are summarised in the chart on page 9 and the colours denote the following:

- Blue denotes that the user did not have a lease substantially to the like effect of the lease detailed in section 5.8 above.
- Green denotes that the user did have a lease substantially to the like effect of the lease detailed in section 5.8 above but that they did not contribute towards the maintenance costs.
- Orange denotes that the user did have a lease substantially to the like effect of the lease detailed in section 5.8 above but can't recall whether they contributed towards the maintenance costs.
- Red denotes that the user did have a lease substantially to the like effect of the lease detailed in section 5.8 above and did contribute towards the maintenance costs; users 24 and 25 were unable to state during what period they contributed towards the costs.

All users used the Application Route on foot. Users 6 and 7 also used the Application Route on mountain bikes by carried the bike down steps, pushing bike down the steepest sections and riding the rest of the Application Route.

There is a gate at point B on the Investigation Plan (fig.3). All but six users¹ recall the presence of the gate. 16 users² could not recall when the gate was installed, one user³ stated that the gate was installed 20-30 years ago, one user⁴ stated that the gate was installed 10-15 years ago, one user⁵ stated that the gate was installed in 2009, three users⁶ stated that the gate was installed 10 years ago; seven users⁷ recall the presence of a stile before the gate. Five users⁸ recall the gate being locked to prevent flytipping but stated that at all times there was an adjacent stile which always allowed unobstructed use of the Application Route.

None of the users have been given permission to use the Application Route; six users⁹ stated in their user evidence forms that permission had been granted but further clarification with those users established that they were referring to the conditional right granted under the lease detailed in section 5.8 above.

No users have reported being turned back, seeing any signs deterring use of the Application Route or the Application Route being obstructed.

¹ Users 4, 6, 7, 15, 26 and 27

² Users 1, 2, 3, 5, 8, 11, 12, 14, 16, 18, 19, 20, 23, 24, 25 and 28

³ User 9

⁴ User 17

⁵ User 10

⁶ User 13, 21 and 22

⁷ Users 3, 12, 17, 19, 21, 22 and 23

⁸ Users 8, 9, 21, 22 and 28

⁹ Users 12, 19, 21, 22, 24 and 25

User Number

