



Order Decision

Site visit made on 9 November 2021

by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 27 January 2022

Order Ref: ROW/3244540

- This Order dated 1 March 2019 is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Bath and North East Somerset Council City of Bath Definitive Map and Statement Modification Order (No.17 – Widcombe) 2019.
- The Order is dated 1 March 2019 and proposes to modify the Definitive Map and Statement for the area by recording footpaths within the City of Bath. Full details of the routes are given in the Order maps and schedules.
- There were two objections outstanding when Bath and North East Somerset Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed

Procedural Matters

1. No party requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations submitted to me. I made an unaccompanied site visit on 9 November 2021.

Background and Main Issue

2. This Order was made by Bath and North East Somerset Council, the order-making authority ("the OMA"), to record seventeen rights of way in the City of Bath. Two objections were received relating to three of the routes to be recorded and so the OMA severed the Order, confirming those to which there had been no objections. I am only dealing with the remaining routes in the Order, proposed to be recorded as BC53/5, BC53/6 and BC64/7. If confirmed, the effect of the Order would be to add three sections of Public Paths within the Widcombe Ward.
3. Although the Order specifies three separate routes, it is appropriate to consider BC53/5 and BC53/6 together as they relate to the same immediate area and BC53/5 could only take place in conjunction with the route of BC53/6. BC64/7 is considered in isolation.
4. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of the occurrence of events specified in section 53(3)(c)(i). The main issue is therefore whether the discovery of evidence by the OMA when considered with all other relevant evidence available is sufficient to show, on the balance of probabilities, that rights of way which are not shown in the map and statement subsist on the routes in question such that the definitive map and statement require modification and that the definitive map and statement

require modification because there is no public right of way over land shown in the map and statement as a highway of any description.

5. Section 31 of the Highways Act 1980 ('the 1980 Act') permits dedication of a public right of way to occur through a long period of use. It provides that where a way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that during that period the landowner had no intention to dedicate it. Use 'as of right' means use which has been without force, secrecy, or permission. The period of 20 years is calculated retrospectively from the date when the right of the public to use the way was brought into question, either by a notice or otherwise.
6. Alternatively, an implication of dedication may be shown at common law if there is evidence from which it can be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. The evidence in support of the dedication of a right of way under common law may relate to a different period to that identified for the purpose of statutory dedication
7. Issues about loss of privacy, safety and security, suitability of the route and the existence of other alternatives are not relevant to the main issue.

Reasons

8. There is no identifiable event which brought into question the public's right to use the Order routes. Accordingly, I have taken the Council's application itself as the trigger for the purposes of section 31(2) of the 1980 Act. It was made in March 2019, which gives a 20-year period of March 1999 to March 2019.
9. The Order routes of BC53/5 and BC53/6 both commence along different sections of Lyncombe Vale Road with each having a public footpath sign on the road edge. BC53/5 climbs steadily through a wooded area that also contains various items of play and a nature trail associated with the nearby Paragon School. The route follows the natural contours between Points B, C, D, E and F and terminates at Point G on the Order Map at a location on the northern side of the dismantled railway embankment, which is also marked by a pedestrian gate. Order route BC53/6 has a much steeper climb through the same wood from Point A on Lyncombe Road crossing BC53/5 at Point B beyond which is a flight of timber steps built into the steep slope to Point C alongside a fence that forms the northern boundary to the former railway embankment. It then turns sharply to follow this fence line to Point D on the Order route, which coincides with Point G on the Order route to BC53/5. At this point, the Order route crosses the former embankment and connects to the previously recorded route of BC53/6 at point F and then climbing diagonally across an open field to a pedestrian gate at Point G before linking to a tarmac road that serves Honeysuckle Farm at Point H, which itself is demarcated by a footpath sign. At this location, the Order route follows the tarmac road in a south-easterly direction to Point I, where it meets Fox Hill Lane at a crossroad junction.
10. Order route BC64/7 commences at the pedestrian gate at Point A where it meets the already legally recorded public footpath BC54/40 south of Smallcombe Farm on the edge of the access road to Bathwick Cemetery. It crosses the road at this point through a metal kissing-gate before climbing up through a well-trodden path to stone steps and another metal kissing-gate at Point B. The route then climbs through part of the National Trust's Smallcombe

Estate in a south-easterly direction to a metal gate at point C before joining the kissing-gate on Widcombe Hill.

Documentary evidence

11. There is limited evidence of the presence of all three routes on historic mapping. Ordnance Survey mapping shows BC53/5 and BC53/6 as being in existence since at least the early part of 1885 whilst BC64/7 is also shown but in part on the 1885 map.
12. None of the routes are shown on the List of Streets held by the Council. However, this List is a record of maintenance liabilities rather than of rights.
13. The former City Council carried out a survey of public rights in 1957 entitled 'Survey of Public rights of way: For the purpose of Part IV of the National Parks & Access to the Countryside Act 1949'. Although no subsequent action was taken by the City Council in relation to those routes identified, a 6-inch scale map was produced showing footpaths within the City limits. Order route BC53/6 was shown on the map and described as "F.P. Lyncombe Vale Road to Fox Hill Lane. Up Laneway to K.G. and across fields to stile at Fox Hill Lane." "F.P. Lyncombe Vale Road to Fox Hill Lane."
14. Thus, these historical documents indicate the physical existence of parts or all of the three Order routes over many years. They do not show the presence of a public footpaths in their entirety but that does not prevent the subsequent acquisition of rights through public use.

Other evidence

15. The OMA holds information relating to general issues normally concerning rights of way, including complaints about the blocking of BC53/5 in 1982, which resulted in the authority suggesting that the complainant gathers evidence through the completion of User Evidence Forms, which was subsequently submitted. By that time, BC53/6 was being shown on the Bath District Council's Map as it was considered to be a public right of way. The Council wrote to the owner of Lyncombe Vale School (the Paragon Educational Trust and later renamed the Paragon School) in 1983 requesting removal of rubble from the route of BC53/5. The Trust's solicitors in response accepted that BC53/6 was a public path and acknowledged that BC53/5 "is obviously used...".
16. During 1984, file records indicate that there was intention to add BC53/5 and BC53/6 to the Definitive Map and works order placed by the Rights of Way team to erect signposting of the routes and separately, confirmation was provided between officers of the council that BC53/5 was also to be treated as a public path. Various other events are on record, including a request to plough the field where path BC53/6 passes between Points F and G on the order route in 1957 and requests for signage works to be undertaken in 1999 and the provision of replacement steps in 2001.
17. In relation to Order Route BC64/7, an exhibition of public rights of way was held in 2004 as part of the Bath Definitive Map Project commissioned to add all unrecorded public rights of way to the Definitive Map and Statement for the City of Bath. A member of the public requested that BC64/7 be so added. Subsequently, the owner of Smallcombe Farm applied to divert footpath BC54/40 on land in her family's ownership. The plan associated with that

diversion request clearly showed the line of BC64/7 and the owner of the majority of land along the line gave consent to divert the section of footpath on their land.

18. I would conclude that the other evidence described above supports further the documentary evidence cited above that the use of all three paths are longstanding. I now turn to the evidence of use by the public.

Evidence of use by the public

19. Information was sought from landowners, national user groups, local user groups and other interested parties, residents' associations, ward councillors, adjoining property owners and members of the public through letters or emails, information placed on the Council's website and notices placed on all the paths.

BC53/5

20. Five responses were received to the notices and twenty-six to the web consultation. Some of the evidence dates back over a number of years prior to the commencement of the relevant period. The use documented largely occurred on a regular basis. Whilst reference to the route having either stiles or gates were made, no one suggested that they were ever locked or that any landowner had prevented the use of the path; it was recoded however that the landowner had placed notices relating to dog fouling.

BC53/6

21. Six responses were received to the notices and 34 to the web consultation. At least eight respondents claimed that they have regularly used the path for periods of over twenty years. Reference is made to the presence of stiles and gates with some respondents stating when they were erected. No one had been prevented from using the paths although notices had been displayed warning of dog owners to walk their dogs on lead when sheep were in the field.

BC64/7

22. Seven responses were received to the notices and 34 to the web consultation. Eleven respondents claimed that they had regularly used the path for periods of over twenty years and claims that the route is used by hundreds of people. Reference is made to the presence of stiles, gates and kissing-gates with only one respondent stating that one of the gates being locked during when animals are being grazed but with the availability of the kissing-gate for access. Reference is also made to the landowner improving access by installing steps to ease access.
23. The evidence forms, including those covering only part of the relevant period, all refer to walking the entire length of each of the three routes. Analysis of the user evidence forms reveals that the respondents used the route on a regular basis, many on a daily or weekly basis. Others record using the route on a monthly basis, but some less frequently. In addition, I am satisfied that no meaningful evidence exists to suggest that those completing the user evidence forms or responding to the Council's website publicity were ever challenged whilst using any of the paths, by notice or otherwise, or used the route in secret or with express permission.

Other matters

24. In relation to Order Route BC64/7, in addition to evidence that the path has been in existence since at least 1933, the major landowner, the National Trust has recognised that it has been used as a public right of way.
25. The northernmost tip of BC64/7 joins footpath BC54/40 in the middle of the access track to Smallcombe Farm at point A on the Order Map. An objection was lodged to the Order on the basis that there had never been a public right of way from the southern end of BC54/40 and that the route of BC64/7 terminated at the northernmost section of the National Trust land to the south of the access track.
26. However, this objection contradicts previous statements made by the landowner and her solicitors to a previous withdrawn application to divert BC54/40 and again, in a later statutory declaration.
27. I conclude that insufficient evidence has been put forward by the objector that the paths do not join as indicated on the Order Map. Although I accept the objector's arguments that there would be instances where highways can be culs de sac, the likelihood that with longstanding pedestrian gates located directly from one another and that there has been no indication that the landowner has sought to prevent walkers from using the route, I therefore cannot discount the very strong possibility that walkers have used the lane as part of BC64/7 and which has connected paths BC64/7 with BC54/50.
28. Turning to Order Route BC53/5 and BC53/6, Paragon School object on the basis that these routes are not public footpaths and would be unsuitable as public footpaths in the future. The School explains that the paths run through a well-used and established woodland area, which is used by school students for play. I was able to confirm this during my site visit. The objection cites potential safeguarding issues and health and safety risk from public usage. It would also reduce the area available for use by the school for educational purposes. The only historic rights relate to the school's use and by owners of Lyncombe Lodge.
29. I recognise that Paragon School may have genuine concerns with regards to the welfare of their students; however, this has no bearing on whether public rights have been acquired over these routes.
30. Evidently, the use of both paths has been longstanding – since at least 1933 in the case of BC53/5 and since 1885 in the case of BC53/6. Indeed, there is written evidence that the former owners of the school accepted both BC53/5 and BC53/6 as public rights of way, including their request that the footpaths be signposted from Lyncombe Vale Road. I noted that these signs are still in place.
31. I conclude on balance that use of the three Order routes by the public was as of right and without interruption for the 20-year period under consideration, and indeed in excess of 20 years for some individuals. Furthermore, there is insufficient evidence that any landowner demonstrated a lack of intention during this period to dedicate the routes. Therefore, the tests in Section 31 of the 1980 Act are met and the ways are deemed to have been dedicated as public footpaths as a result of use by the public over the period 1999-2019.

Conclusion

32. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed as indicated in the Order.

Formal Decision

33. I confirm the Order.

Gareth W Thomas

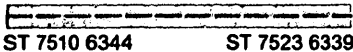
INSPECTOR

Wildlife & Countryside Act 1981 **Part 2**
 Bath & North East Somerset Council
 Public Footpath BC53/5 at Widcombe Ward, Bath. City of Bath Definitive Map and Statement
 Modification Order (No.17 - Widcombe) 2019

Key Footpath to be added to the Definitive Map and Statement.

Order Map

A B C D E F G



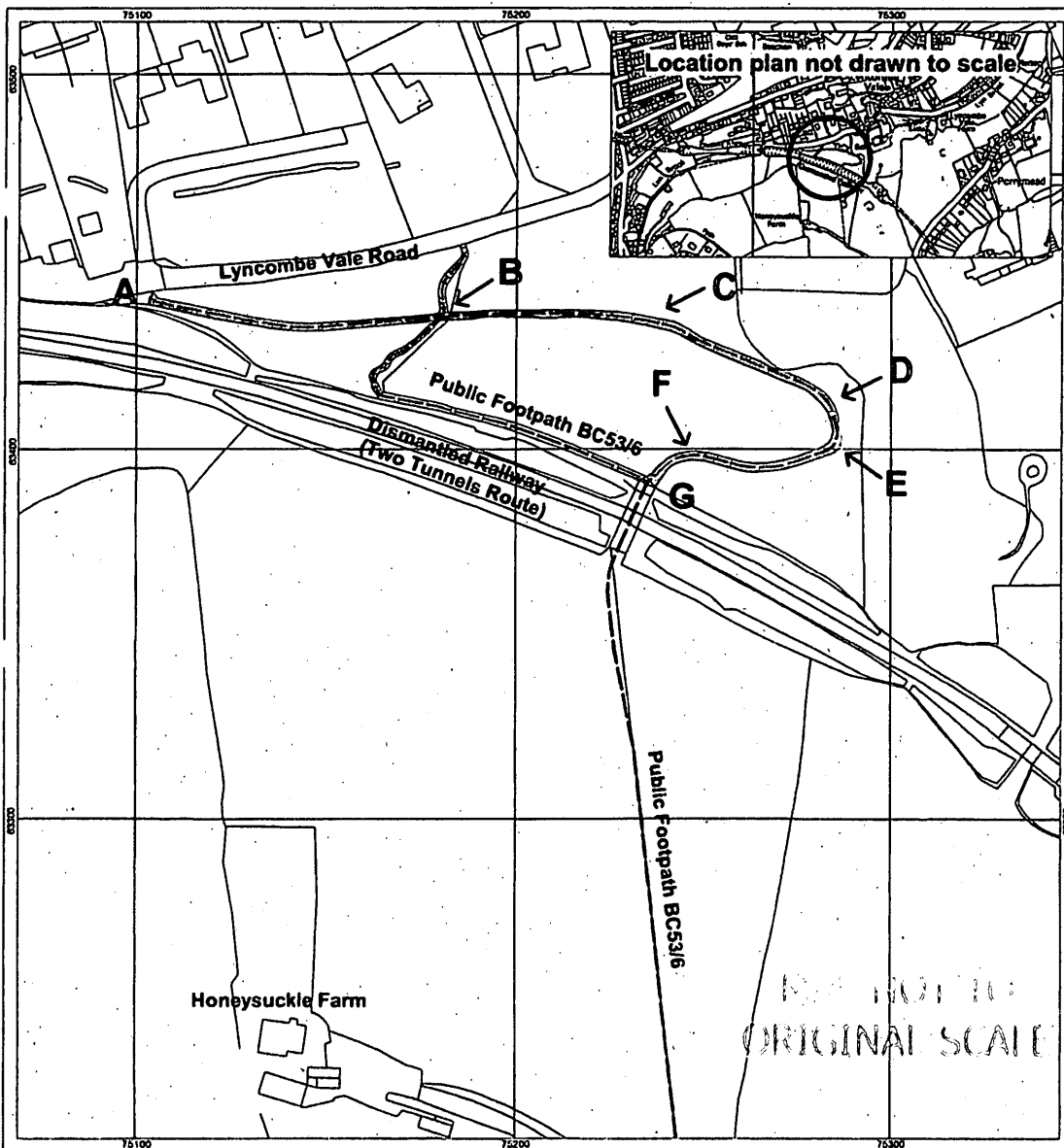
The width of the footpath to be recorded is shown shaded and varies between 1.6 metres - 3.8 metres



ST 7510 6344

ST 7523 6339

Other footpaths included in this Order



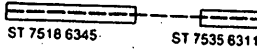
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Wildlife & Countryside Act 1981
Bath & North East Somerset Council
Public Footpath BC53/6 at Widcombe Ward, Bath: City of Bath Definitive Map and Statement
Modification Order (No.17 - Widcombe) 2019

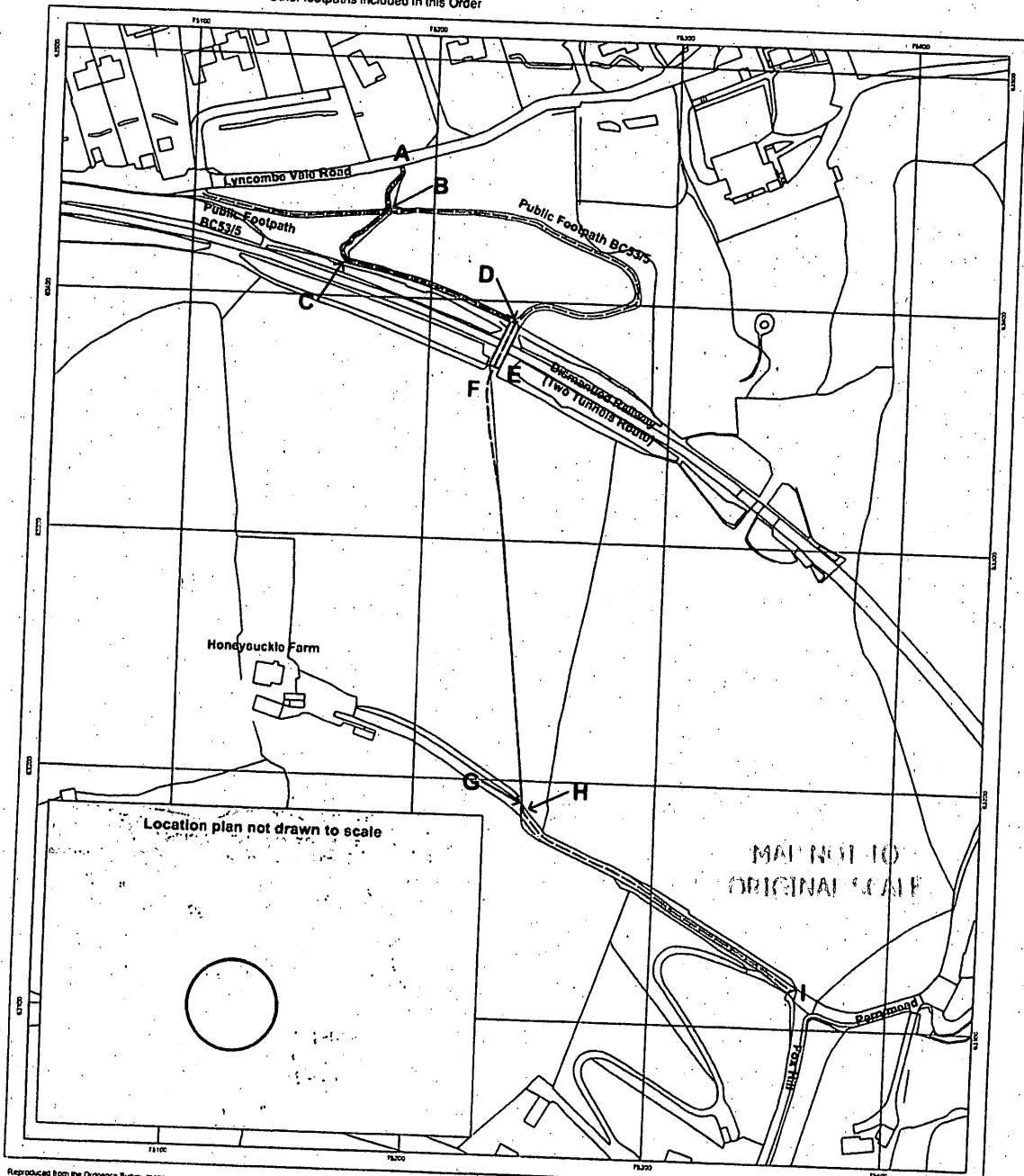
Part 3

Key Footpath to be added to the Definitive Map and Statement.

A B C D E F G H I Varies between 1.0 metres - 4.0 metres between Points A and E,
 narrowing to 0.9 metres at the Pedestrian Gate at Point D and
 narrowing to 0.5 metres at the Pedestrian Gate at Point E
 1.8 metres between Points E and G,
 narrowing to 1.2 metres at the Pedestrian Gate at Point G
 Varies between 2.4 metres - 4.0 metres between Points G and I



Order Map
 N
 Scale 1:1500



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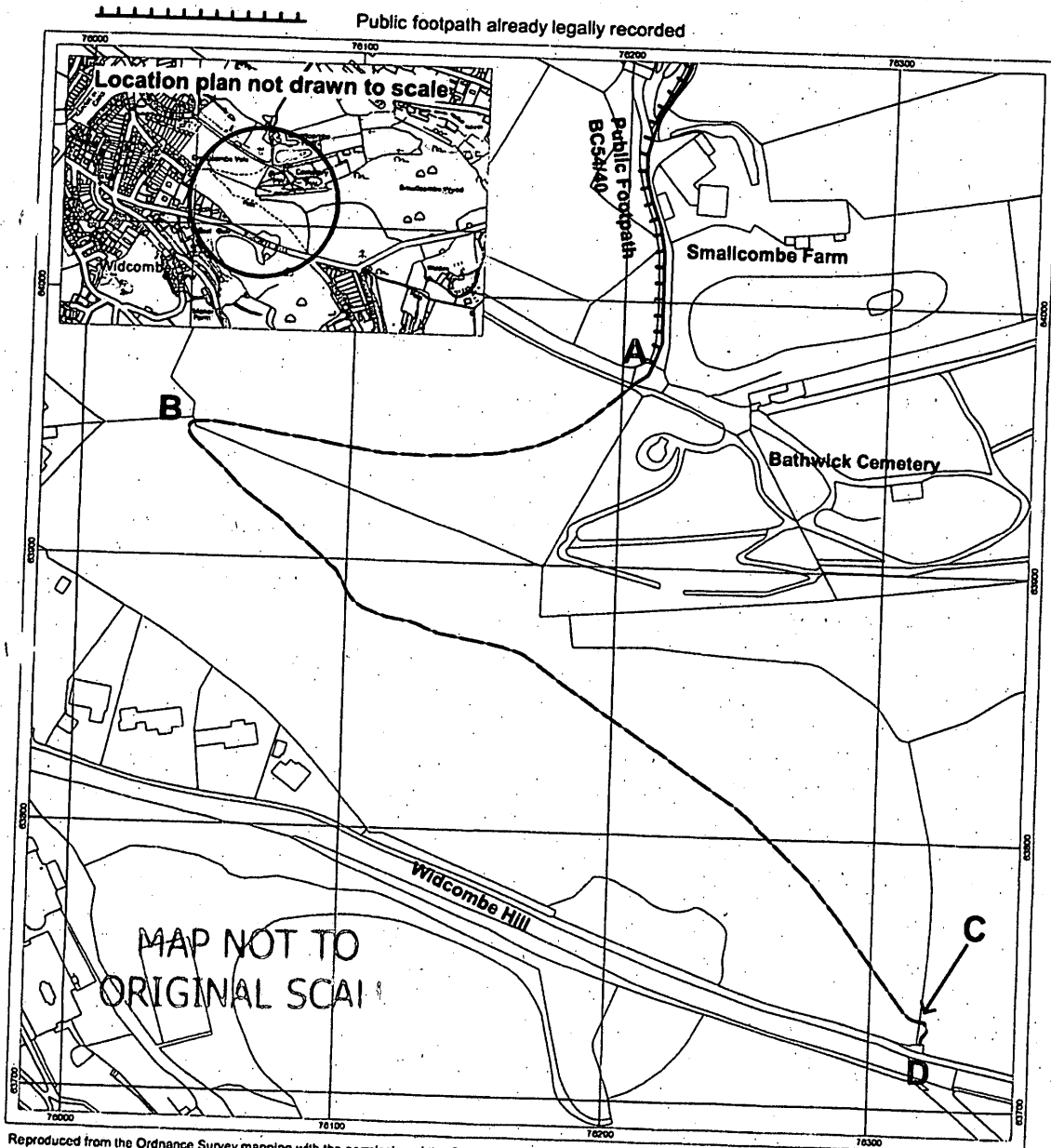
LICENCE NUMBER 100073334

Wildlife & Countryside Act 1981 **Part 17**
Bath & North East Somerset Council
Public Footpath BC64/7 at Widcombe Ward, Bath. City of Bath Definitive Map and Statement
Modification Order (No.17 - Widcombe) 2019

Key Footpath to be added to the Definitive Map and Statement.

A **B** **C** **D** The width of the footpath to be recorded is 1.8 metres.
ST 7620 6417 ST 7632 6392

Order Map
N
Scale 1:2000



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