

SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A BYWAY OPEN TO ALL TRAFFIC – Beeks Mill, St Catherine

(Ward Division: **Bathavon 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 byway open to all traffic (BOAT) running from St Catherine Lane in St Catherine to Beeks Mill Lane at the South Gloucestershire border.

2. Recommendation

- 2.1 It is recommended that Bath and North East Somerset Council (“the Authority”) makes a DMMO to record the Application Route, as shown by a broken black line on the plan contained at Appendix 1 (“the Decision Plan”) and described in the schedule contained at Appendix 2, as a restricted byway on the DM&S.

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...”

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 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.

5.5 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.”

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

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

“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 Section 67 of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”) extinguished motorised vehicular rights which were not recorded on the DM&S on 2 May 2006. However, this provision was subject to a number of exemptions, namely when:
- the route’s main lawful use between May 2001 to May 2006 was for motor vehicles (Section 67(2)(a))
 - the route is recorded on the List of Streets maintainable at public expense (Section 67(2)(b))
 - the route was created on terms which expressly provided for use by motor vehicles (Section 67(2)(c))
 - the route was physically constructed with the intention that it be used by motor vehicles (Section 67(2)(d))
 - the route acquired motorised vehicular rights through presumed dedication during a period ending before 1 December 1930. (Section 67(2)(e))

If one of these exemptions applies then the motorised vehicular rights will have been preserved.

6. Background and Application

- 6.1 On 6 February 2013, Mr Donald MacIntrye of Manor Farm, Langridge, Bath (“the Applicant”) applied to have a BOAT added to the DM&S (“the Application”). The Application was accompanied by both documentary evidence and User Evidence Forms (“UEFs”). The route under consideration commences from a junction with St Catherine Lane at grid reference ST 7611 7106 (Point A on the Decision Plan) and continues in a generally northeasterly direction for approximately 200 metres along a track to the border with South Gloucestershire at grid reference ST 7624 7121 (Point B on the Decision Plan). This route is hereafter referred to as “the Application Route”.
- 6.2 The land over which the Application Route runs has been in the ownership of Beeks Mill since at least 1933. The land over which the Application Route runs was bought in 1965 by Rev. Michael Lane². After Rev. Lane died the property was sold to its current owner in September 2009 and the Life-Tenant took up occupation around Christmas 2011 once renovations had been completed to Beeks Mill.

² User 43

7. Consultations

- 7.1 In February 2017 the Authority consulted on the Application with the Applicant, the St Catherine Parish Meeting, local and national user groups, the ward members and the affected Landowners and Life-Tenant. Notices were also erected at either end of the Application Route and on the Authority's website and the case officer gave a presentation on the Application to a parish meeting.
- 7.2 The Authority received a letter of objection from the affected Landowners and representations and evidence both in support of, and in opposition to, the Application. The contents of the objection along with all other evidence submitted to, or discovered by, the Authority is addressed in sections 8 and 9 below.

8. Documentary Evidence

- 8.1 Extensive archival research was undertaken in the Somerset Heritage Centre ("SHC") in Taunton, the Bath Record Office ("BRO") and in the Authority's own records. Additionally, the Applicant, Landowners and Life-Tenant submitted documentary evidence in respect of the Applicant Route.
- 8.2 Thorpe's Map (SHC ref.: DD\NNE/C1375/8) was published in 1742 and shows Bath and the surrounding areas including St Catherine. The Application Route appears to be shown schematically by solid, parallel lines and labelled "*To Marshfield*". The map was sold on subscription to the travelling public, which could be indicative of routes shown probably being public. Day and Masters' Map dated 1782 (SHC ref.: D\B\wsm/38/6) and Greenwood's map dated 1822 (SHC ref.: A\AUS\60) were also produced for the travelling public but they do not show the Application Route.
- 8.3 The St Catherine Tithe Map (SHC Ref.: D\D/Rt/M/369) and Apportionment (SHC Ref.: D\D/Rt/A/369) were produced in 1840 to locate titheable land in the parish and to show the value of that land. The Application Route runs through enclosure 13 but is not shown on the Tithe Map. Enclosure 13 is identified in the Tithe Apportionment as "*Whitely (Pasture)*" and Tithe was paid on the enclosure.
- 8.4 Cotterell's Map was drawn up by order of the Town Council in 1850, primarily to show sewerage pipes and gas mains. Highways were shown as they were constructed, rather than by their rights. Although the section of Beeks Mill Lane to the north of the Application Route is shown by parallel solid lines, the Application Route itself is not shown on Cotterell's Map.
- 8.5 The Ordnance Survey ("OS") produced a series of topographic maps at different scales. The large scale 1:2500 maps from the 1870's onwards provide good evidence of the position of routes but they generally do not provide evidence of status. On the 1886 OS map³, the Application Route is shown by a solid line to the east and a dashed

³ <http://maps.nls.uk/view/122160794>

line to the west. The route is shown shaded ochre and labelled 'Beck's Lane'. A solid line crosses the Application Route at its southern terminus. On the 1904 OS map⁴, the Application Route is shown by a solid line to the east and a dashed line to the west. The letters 'R.H.' near point B on the Decision Plan denoted 'Root of Hedge' and relates to the location of the administrative boundary; it does not denote the location of a 'Road House'. A solid line again crosses the Application Route at its southern terminus. This shows that the Application Route physically existed in 1886 and 1904 and suggests that it was gated at the southern end; however, these maps do not provide evidence of the existence of public rights as stated on the maps' disclaimers.

- 8.6 Inland Revenue produced plans and valuation books under the Finance (1909-10) Act 1910 (SHC Ref.: DD/IR/8/6 and DD/IR/B/8/6) as part of the process to levy a new land tax. Landowners could claim a deduction if a public right of way crossed a hereditament but there was no requirement to do so; consequently, if the landowner did not claim a deduction or if a route was not excluded from a taxable hereditament then this would not provide evidence that a right of way did not exist at the time. The Application Route runs through hereditament 856 which is shaded green and is not shown on the Inland Revenue plan. No reductions are recorded as having been claimed in respect of this hereditament in the valuation book.
- 8.7 In 2014, South Gloucestershire Council and the British Horse Society published a leaflet entitled '*Circular Rides in South Gloucestershire: Marshfield 4*' which states that the Application Route is used "by kind permission of the owner." South Gloucestershire Council have erected a 'No through road for vehicles' sign at the northern end of Beeks Mill Lane; however, they are not the owner of the land over which the Application Route runs and this sign itself does not therefore render use of the Application Route to be contentious. Furthermore, a number of witnesses state that it was known that the Application Route was private but the *Sunningwell*⁵ judgement makes it clear that 'belief' is not relevant to whether the use is qualifying. A small stone pillar is situated approximately 30 metres north of point B on the Decision Plan. The words "2 Marsh Field" have been crudely scratched into its surface and this doesn't appear to have been carved by a stonemason, as would be standard practice for a formal milestone. The stone's origins and intentions are ambiguous and the Authority cannot place significant weight on its presence.
- 8.8 The Application Route is not recorded in any version of the List of Streets which the Authority is required to keep under section 36(6) of the 1980 Act; this includes the List of Streets as it stood on 1 January 2006. Additionally, the Application Route is not recorded or referred to in the DM&S or any of the records associated with the creation of the DM&S. A search of the SHC and BRO archives and the Authority's records did not provide any evidence of any legal orders affecting the Application Route.

⁴ <http://maps.nls.uk/view/122160794>

⁵ *R v Oxfordshire County Council and Another ex parte Sunningwell Parish Council* [1999] 3 WLR 160

8.9 Thorpe's map suggests that the Application Route physically existed and may have carried public rights in 1742. However, only very limited weight can be applied to this piece of evidence in isolation because of its schematic nature and because it is not possible to determine with a sufficient level of certainty what Thorpe was intending to convey when he included a route on his map. The only other document which provides positive evidence regarding the Application Route are the Ordnance Survey maps which show that the Application Route physically existed in 1886 and 1904 but they do not provide evidence regarding the existence of public rights. Consequently, the documentary evidence does not provide sufficient evidence to reasonably allege the existence of public rights over the Application Route.

9. User Evidence

9.1 The Authority received 59 statements from members of the public. 31 members of the public submitted User Evidence Forms (UEFs); three of these Users⁶ also submitted written statements and several submitted photographs of the recent signage. A further 28 members of the public submitted written statements. These were sent to the Authority through a combination of being submitted via the Applicant, landowners and Life-Tenant and submitted directly to the Authority as a result of the public consultation. The Authority carried out short telephone interviews with those who were contactable.

9.2 Users 22, 33, 36, 53 and 56 stated that they were granted permission to use the Application Route. Users 43, 44, 46 and 57 all stated that the Water Board (formally Bath Corporation Waterworks and latterly Wessex Water) were granted permission to use the Application Route to access Monkswood Reservoir. User 14's motorised vehicular use between 1965 and 1997 was in connection with their employment with the Water Board and they have stated that they were not granted permission to use the Application Route. Furthermore, Users 26 and 50 used the Application Route to access the landowner's house (Beeks Mill); this use was therefore by virtue of an implied licence and 'by right'. Users 22, 26, 33, 36, 50, 53 and 56 have not used the Application Route 'as of right'. Their use does not contribute towards presumed dedication under section 31 of the 1980 Act or at common law and their use therefore is not included in the use which is summarised in paragraphs 9.3 to 9.6 below. All other Users have stated that their use was without force, secrecy or permission.

9.3 **Foot.** The user evidence details pedestrian use dating back to 1935.⁷ The user evidence details pedestrian use of the Application Route by:

- two people⁸ during the 1940s (averaging 12 times per year),
- three people⁹ during the 1950s (averaging 71 times per year),

⁶ Users 22, 27 and 31

⁷ User 6

⁸ Users 6 and 18

⁹ Users 6, 10 and 18

- between three and six people¹⁰ during each year of the 1960s (averaging 67 times per year),
- between five and 13 people¹¹ during each year of the 1970s (averaging 38 times per year),
- between 12 and 14 people¹² during each year of the 1980s (averaging 31 times per year),
- between 13 and 18 people¹³ during each year of the 1990s (averaging 28 times per year),
- between 13 and 19 people¹⁴ during each year of the 2000s (averaging 49 times per year),
- between 7 and 16 people¹⁵ during each year of the 2010s (averaging 48 times per year).

9.4 **Horse.** The user evidence details horse use dating back to 1935¹⁶. The user evidence details horse use of the Application Route by:

- one person¹⁷ during the 1940s (used 'occasionally'),
- two people¹⁸ during the 1950s (used 'occasionally'),
- between two and four people¹⁹ during each year of the 1960s (averaging 112 times per year),
- between three and five people²⁰ during each year of the 1970s (averaging 82 times per year),
- between 3 and 9 people²¹ during each year of the 1980s (averaging 65 times per year),
- between nine and 13 people²² during each year of the 1990s (averaging 72 times per year),
- between six and 11 people²³ during each year of the 2000s (averaging 74 times per year),
- between two and six people²⁴ during each year of the 2010s (averaging 102 times per year).

9.5 **Bicycle/Carriage.** The user evidence details bicycle and horse-drawn carriage use dating back to 1935²⁵. The user evidence details bicycle and horse-drawn carriage use of the Application Route by:

- two people²⁶ during the 1940s (averaging 12 times per year),
- between two and three people²⁷ during the 1950s (averaging 189 times per year),

¹⁰ Users 6, 10, 11, 14, 18 and 23

¹¹ Users 1, 6, 7, 10, 11, 14, 16, 18, 19, , 23, 28 and 31

¹² Users 1, 3, 7, 10, 11, 14, 16, 18, 19, 23, 28, 30, 31 and 34

¹³ Users 1, 3, 7, 9, 10, 11, 13, 14, 16, 18, 19, 21, 23, 27, 28, 30, 31 and 34

¹⁴ Users 1, 3, 7, 9, 10, 11, 12, 13, 16, 18, 19, 21, 23, 24, 25, 27, 28, 30 and 34

¹⁵ Users 1, 3, 7, 9, 10, 11, 12, 16, 21, 23, 24, 25, 27, 28, 30 and 34

¹⁶ User 6

¹⁷ Users 6

¹⁸ Users 6 and 10

¹⁹ Users 5, 6, 11 and 49

²⁰ Users 5, 6, 11, 35 and 49

²¹ Users 2, 3, 5, 8, 11, 16, 28, 34 and 48

²² Users 2, 3, 5, 8, 11, 12, 13, 16, 28, 29, 34, 45 and 48

²³ Users 3, 5, 8, 11, 12, 13, 16, 28, 29, 34 and 45

²⁴ Users 5, 11, 12, 16, 34 and 45

²⁵ User 6

²⁶ Users 6 and 18

²⁷ Users 4, 6 and 18

- between two and three people²⁸ during each year of the 1960s (averaging 25 times per year),
- between three and six people²⁹ during each year of the 1970s (averaging 18 times per year),
- six people³⁰ during each year of the 1980s (averaging 19 times per year),
- six people³¹ during each year of the 1990s (averaging 14 times per year),
- between five and six people³² during each year of the 2000s (averaging 16 times per year),
- between two and six people³³ during each year of the 2010s (averaging 16 times per year).

9.6 **Motor Vehicles.** The user evidence details bicycle and carriage use dating back to 1935³⁴. The user evidence details motor vehicle use of the Application Route by:

- one person³⁵ during the 1940s (used '*occasionally*'),
- two people³⁶ during the 1950s (averaging 2.5 times per year),
- between two and four people³⁷ during each year of the 1960s (averaging 17 times per year),
- between four and eight people³⁸ during each year of the 1970s (averaging 24 times per year),
- between nine and 11 people³⁹ during each year of the 1980s (averaging 20 times per year),
- between 12 and 14 people⁴⁰ during each year of the 1990s (averaging 20 times per year),
- between nine and 13 people⁴¹ during each year of the 2000s (averaging 48 times per year),
- between six and 11 people⁴² during each year between 2010 and 2012 (averaging 31 times per year); the UEFs do not detail any motorised use after 2012.

9.7 On 5 March 2012, the landowners submitted a statement under section 31(6) of the 1980 Act and this was subsequently followed up with a statutory declaration dated 30 March 2012. The statement does not admit the existence of any public rights of way across the land and the statutory declaration demonstrates a lack of intention to dedicate during the intervening period. New gates were erected at point A on

²⁸ Users 8, 11 and 18

²⁹ Users 1, 6, 11, 18, 28 and 31

³⁰ Users 1, 11, 18, 28, 30 and 31

³¹ Users 1, 11, 18, 21, 28, 30 and 31

³² Users 1, 11, 18, 21, 28 and 30

³³ Users 1, 9, 11, 21, 28 and 30

³⁴ User 6

³⁵ Users 6

³⁶ Users 6 and 10

³⁷ Users 5, 6, 10 and 23

³⁸ Users 1, 5, 6, 7, 10, 19, 23 and 31

³⁹ Users 1, 2, 3, 5, 7, 10, 11, 19, 23, 30 and 31

⁴⁰ Users 1, 2, 3, 5, 7, 9, 10, 11, 13, 16, 19, 23, 30 and 31

⁴¹ Users 1, 3, 5, 7, 9, 10, 11, 12, 13, 14, 16, 19, 20, 23, 24, 25 and 30

⁴² Users 1, 5, 7, 9, 10, 11, 16, 20, 23, 24 and 25

the Decision Plan on 16 December 2011⁴³. The Applicant states that various signs stating that the Application Route was private were erected on 25 April 2012⁴⁴; this is broadly supported by users 9 and 10 but User 23 states that these were erected in 2011. The gates at either end of the Application Route were locked on 28 June 2012⁴⁵; although, User 1 states that this happened in 2011. Consequently, 5 March 2012 is the latest date on which the public's right to use the Application Route could have been called into question. However, there is conflicting evidence whether or not the public's right to use the Application Route was called into question at an earlier date due to signage.

- 9.8 The Applicant states that at some point prior to 2012 there was a white sign with black lettering reading "*Beeks Mill Bridleway Only*" at point A on the Decision Plan. User 35 states that the sign was erected in 2001. The presence of this sign is supported by Users 34, 36, 43 and 48 and the Authority's PROW Maintenance and Enforcement Officer for the area was contacted by the Life-Tenant in 2012 enquiring whether this sign could be removed. Although the majority of the witnesses do not have any recollection of this sign, it is significant that both those opposed to, and in support of, the Application admit the sign's existence. In this context, and given the Authority's first-hand knowledge of the sign, it would not be reasonable to allege that any use in excess of a bridleway was not contentious from 2001 onwards.
- 9.9 29 users⁴⁶ state that there were no signs deterring public use prior to 2012. 18 Users states that there were signs stating that the Application Route was private prior to 2012. User 13 was unsure if there were signs, User 32 states that there was a sign but does not say what it said, User 27 states that there was possibly a private sign and User 21 states that there was a byway sign.
- 9.10 **Reasonably alleged.** The evidence summarised in paragraph 9.9 above regarding signage prior to 2012 is sharply conflicting and the two opposing views cannot be reconciled with one another. As stated in paragraph 5.3 above, the meaning of 'reasonably alleged' is set out in the *Bagshaw*⁴⁷ judgement. The user evidence relating to the Application Route is sharply conflicting, particularly in respect of the presence or otherwise of signs on the Application Route. In these circumstances the *Bagshaw* judgement makes it clear that if it is possible to reasonably accept one side and reasonably reject the other then there is a reasonable allegation and an order should be made.
- 9.11 The Authority is not in possession of any documentary evidence, such as photographs or invoices, to determine whether there were private signs in place at any point prior to 2012. The Authority must therefore rely on the UEFs and witness statements which have been submitted

⁴³ Evidence appended to Application

⁴⁴ Evidence appended to Application

⁴⁵ User 1 and 11, 16

⁴⁶ 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 (except for the Bridleway Only sign), 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31,

⁴⁷ R v SSE ex parte Bagshaw and Norton [1994] 68P & CR402

both in support and in opposition to the Application. In this circumstance there is a reasonable allegation that there were no private signs prior to 2012.

9.12 If the date of challenge to public motorised vehicular use of the Application Route is taken to be 2001 when the “*Bridleway Only*” signs were erected then the Relevant Period under section 31 of the 1980 Act would run from 1981 to 2001. During this period:

- 11 people⁴⁸ used the Application Route on foot during each of those 20 years and 4 people⁴⁹ used the Application Route for a shorter period of time during that period,
- three people⁵⁰ used the Application Route on horse during each of those 20 years and 10 people⁵¹ used the Application Route for a shorter period of time during that period,
- six people⁵² used the Application Route on bicycle/carriage during each of those 20 years,
- nine people⁵³ used the Application Route in motor vehicles during each of those 20 years and four people⁵⁴ used the Application Route for a shorter period of time during that period.

In total 13 people⁵⁵ used the Application Route during each of those 20 years with each User using the Application Route with an average frequency of 119 times per year. An additional 10 people⁵⁶ used the Application Route for just part of the Relevant Period. This level of use is sufficient to reasonably allege that the Application Route has been used by the public as of right on foot, horse, bicycle and in motor vehicles for the 20 years required by section 31 of the 1980 Act and that the landowner did not take sufficient steps to communicate a lack of intention to dedicate to the public.

9.13 **NERC Exemptions.** 13 people⁵⁷ used the Application Route in motorised vehicles between May 2001 and May 2006 and during this period they used the Application Route a combined total of 1398 times in motor vehicles. During this same period, 20 people⁵⁸ used the Application Route on foot, horse, bicycle/carriage between May 2001 and May 2006 and during this period they used the Application Route a combined total of 7031 times using non-motorised means.⁵⁹ The main lawful use of the Application Route during this period was for non-motorised vehicles and the Application Route does not therefore qualify for the exemption under section 67(2)(a) of the 2006 Act relating to the preservation of motorised rights.

⁴⁸ Users 1, 7, 11, 13/14, 16, 18, 19, 21/31, 23, 28 and 30

⁴⁹ Users 3, 9, 27 and 34

⁵⁰ Users 5, 11 and 28

⁵¹ Users 2, 3, 8, 12, 13, 16, 29, 34, 45 and 48

⁵² Users 1, 11, 18, 28, 30 and 21/31

⁵³ Users 1, 5, 7, 10, 11, 19, 23, 30 and 16/31

⁵⁴ Users 2, 3, 9 and 13

⁵⁵ Users 1, 3/31, 5, 7, 10, 11, 14, 16/45, 18, 19, 23, 28 and 30

⁵⁶ Users 2, 8, 9, 12, 13, 21, 27, 29, 34 and 48

⁵⁷ Users 1, 3, 5, 7, 9, 10, 11, 16, 19, 20, 22, 23, 30

⁵⁸ Users 1, 3, 5, 7, 8, 9, 11, 12, 16, 18, 19, 22, 21, 23, 27, 28, 29, 30, 34, 45

⁵⁹ Used 1764 on foot, 4788 on horse and 479 on bicycle/carriage during the five year period.

- 9.14 Furthermore, as stated in paragraph 8.8 the Application Route was not recorded on the List of Streets immediately before 2 May 2006. There is no evidence that the Application Route was created on terms which expressly provided for use by motor vehicles. The Application Route has been physically constructed as a rough track and was not created by the construction, in exercise of powers conferred by virtue of an enactment, with the intention that it be used by motor vehicles. The earliest evidence of use is 1935⁶⁰ and consequently there is no evidence that the Application Route acquired motorised vehicular rights through presumed dedication during a period ending before 1 December 1930. The Application Route does not qualify for any of the exemptions under sections 67(2)(a) to (e) of the 2006 Act and the motorised vehicular rights which previously existed were extinguished on 2 May 2006 by virtue of section 67(1) of the 2006 Act. The Application Route has therefore been automatically downgraded to a restricted byway.
- 9.15 **Limitations.** 37 Users⁶¹ states that there has always been a gate at point A on the Decision Plan. Only User 17 states that there was not a gate on the Application Route and the remaining users are ambiguous on the issue. User 6 states that it has been present since they started using the Application Route in 1935 and the gate is visible in the Google Streetview imagery taken in August 2009. The right of the landowner to erect and maintain a field gate at point A on the Decision Plan is therefore a limitation upon the dedication of the Application Route as a public right of way.
- 9.16 Five users⁶² state that there was also a gate at point B on the Decision Plan and during site visits carried out by the Case Officer in 2016 there was an old fence leaning against the fence at this location. However, this is not supported by the other users and witnesses and three of these users who refer to its existence state that had fallen down or fallen into disrepair. It is therefore most likely that any gate at this location had fallen into such a state of disrepair that it effectively ceased to function as a gate. Consequently, there is insufficient evidence to reasonably allege that a gate at this location was a limitation at the time of dedication.
- 9.17 **Width.** The Application Route currently physically exists on the ground as a 3.1 metre wide track. Five users⁶³ have not addressed the question of whether the width of the Application Route has changed and User 11 has answered this question in the context of a recent gate restricting the width of the Application Route. However, all other users have stated that the width of the Application Route has not changed. A consistent width of 3 meters has therefore acquired public rights.

⁶⁰ User 6

⁶¹ Users 1, 2, 3, 6, 7, 8, 10, 12, 13, 14, 16, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37 and 38, 39, 42, 43, 47, 48, 50, 51, 52, 53, 55

⁶² Users 7, 36, 39 and 43, 55

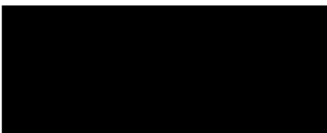
⁶³ Users 4, 6, 17, 18 and 31

10. Conclusion

- 10.1 There is a reasonable allegation that the Application Route has become a public restricted byway through presumed dedication under section 31(1) of the 1980 Act.
- 10.2 The Authority is therefore under a statutory duty to make a DMMO to record the Application Route as a restricted byway on the DM&S in consequence of an occurrence of an event under section 53(3)(c)(i) of the 1981 Act. The DMMO should record a width of 3.1 metres throughout and should record the landowner's right to erect and maintain a field gate at point A on the Decision Plan as a lawful limitation on the public's right to use the Application Route.

AUTHORISATION

Under the authorisation granted by the Council on 12 May 2016, the Planning and Environmental Law Manager is hereby requested to seal an Order to record a restricted byway as detailed in the Decision Plan (Appendix 1) and Decision Schedule (Appendix 2). The DMMO should record a width of 3.1 metres throughout and should record the landowner's right to erect and maintain a field gate at point A on the Decision Plan as a lawful limitation on the public's right to use the Application Route.



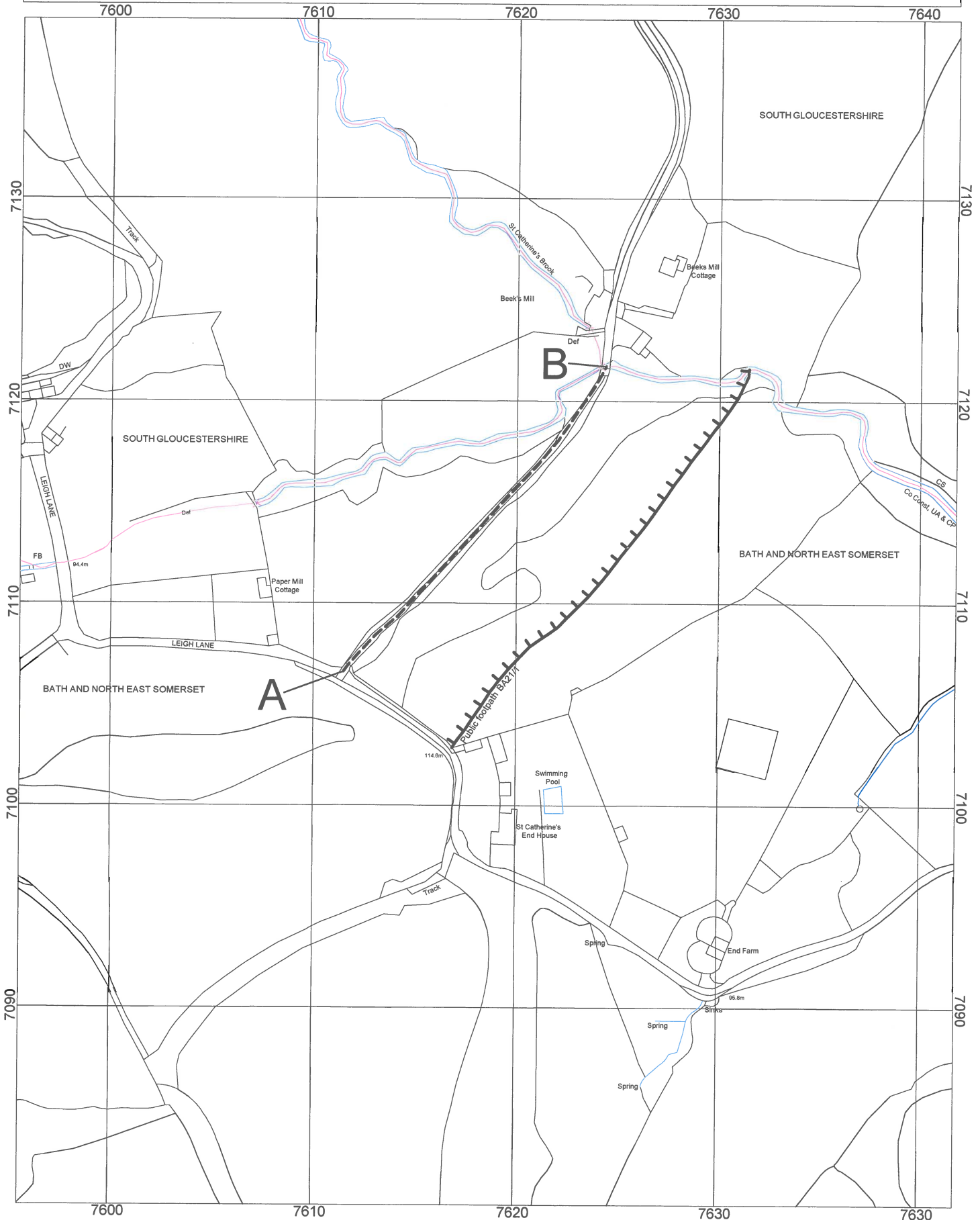
.....
Craig Jackson
Team Manager – Highways Maintenance and Drainage

Dated: 10/07/17.....

APPENDIX 1: Decision Plan



Scale 1:2500



SCHEDULE

PART I

Modification of Definitive Map

Description of path or way to be added

A restricted byway commencing from a junction with St Catherine Lane at grid reference ST 7611 7106 (Point A on the Decision Plan) and continuing in a generally northeasterly direction for approximately 200 metres along a track to the border with South Gloucestershire at grid reference ST 7624 7121 (Point B on the Decision Plan).

PART II

Modification of Definitive Statement

Variation of particulars of path or way

A new statement for BA21/8 shall be recorded as follows:

Path Number: BA21/8

Status: Restricted byway

Length: Approximately 200 metres

Parish: St Catherine

Width: 3.1 metres

Limitations: The right of the landowner to erect and maintain a field gate at grid reference ST 7611 7106

Description of Route				
From		General Direction	To	
County Road or Right of Way	Grid Reference		County Road or Right of Way	Grid Reference
St Catherine Lane	ST 7611 7106	NE	Beeks Mill Lane	ST 7624 7121

General Description:

A restricted byway commencing from a junction with St Catherine Lane at grid reference ST 7611 7106 and continuing in a generally northeasterly direction for approximately 200 metres along a track to the border with South Gloucestershire at grid reference ST 7624 7121.