

Statement of Case

by

Donald MacIntyre

Determination by

The Secretary of State for Environment, Food and Rural Affairs

LOCAL PUBLIC INQUIRY August 7th, 2018

Bath and North East Somerset Council

(Restricted Byway BA21/12, Beek's Mill, St Catherine)

Definitive Map Modification Order 2017

Appeal Reference: ROW3186868

Donald MacIntyre

Manor Farm, Langridge, Bath, BA1 8AJ

Tel: 01225 858656, 07515 561726, Email: donald.macintyre@hotmail.co.uk

1. INTRODUCTION

1.1. This Statement of Case is made by myself, Donald MacIntyre ("**the Applicant**") and is submitted in support of the Definitive Map and Statement Modification Order ("**DMMO**") issued by Bath and North East Somerset Council ("**the Authority**") on July 18th 2017. The DMMO seeks to record a Restricted Byway between St Catherine Lane at grid reference ST 7611 7106 (**Point A**), along an existing track in a generally north-easterly direction for approximately 200m, to the border with South Gloucestershire at grid reference ST 7624 7121 (**Point B**). If confirmed the route will be recorded on the Bathavon Rural District and Keynsham Urban District Definitive Map and Statement ("**the DM&S**") pursuant to section 53 of the Wildlife and Countryside Act 1981 ("**the 1981 Act**").

1.2. I am a farmer and I own and I have farmed for 51 years the land immediately adjacent to the east of the route Point A to Point B (**the application route**) (Document 1).

1.3. On February 6th 2013 I submitted, to The Authority, a DMMO application for the application route, supported by an account of documentary evidence (Document 2) and a bundle of completed User Evidence Forms.

1.4. The Authority, having duly consulted and considered all the evidence, published a Statement of Grounds (Document 3), a Decision

Notice (Document 4) and Order (Document 5). The Statement of Grounds concluded "There is a reasonable allegation that The Application Route has become a public restricted byway through presumed dedication under Section 31(1) of The Highways Act 1980 ("**the 1980 Act**").

- 1.5. The Order was advertised and put out for consultation in accordance with the 1981 Act and The Authority received five sustained objections, one subsequently withdrawn. As there are four outstanding objections (Document 6) The Authority has submitted The Order, as required under schedule 15(7)(1) of the 1981 Act, to The Secretary of State for Environment, Food and Rural Affairs for determination.

2. APPLICATION ROUTE DESCRIPTION, FORM and FEATURES

- 2.1. The mill at Beek's was operational from at least 1584 to the 1880's and it may be deduced that the application route was, at that time, a pack horse route for transporting goods between Beek's Mill and St Catherine, and beyond to Bath.
- 2.2. Beek's Mill Cottage is of later construction, mid-late C18, and therefore the layout of the application route, and Beek's Lane, are likely to have been more heavily influenced by the presence of Beek's Mill, very

important during it's time, than the presence, later, of Beek's Mill Cottage.

2.3. The application route appears to also form part of a section of Beek's Lane that would have formerly linked St Catherine with Marshfield.

2.4. At ST 7764 7331 at the Marshfield town end of Beek's Lane stands a marker stone. It may have been a direction post; possibly indicating the way, but today no inscription can be seen.

2.5. At ST 7624 7124, on Beek's Lane beside Beek's Mill stands a milestone with an inscription roughly carved reading "2 Marshfield". This milestone is situated two miles from Marshfield (Document 2), suggesting that the application route formed part of a through road between St Catherine and Marshfield.

2.6. A stone bridge is situated at Point B on the application route close to Beek's Mill (Document 7). It has low sides, typical of bridges used by pack-horses carrying sacks.

2.7. The present day track over which the application route passes is clearly of great age (Document 8). Banks have been constructed on both sides. The bank on the east side is high and separates the track from a

deep drainage ditch and woodland, and a mature grown out hedge is situated on top of this bank. The track itself is cut in at its northern end to reduce and spread the gradient.

- 2.8. Close by Point A on the application route, at the top of the rise, is a passing place (Document 9). This appears to be situated to allow ascending mill traffic to have priority over descending traffic.

3. DOCUMENTARY EVIDENCE

- 3.1. The Authority has undertaken extensive archival research and has presented and assessed the documentary evidence (Document 3)
- 3.2. Thorpe's Map (SHC ref: DD/NNE/C1375/8) (Document 10) was published in 1742 and shows Bath and the surrounding areas including St Catherine. The application route is shown schematically by solid, parallel lines and labelled "To Marshfield". The map was sold on subscription to the travelling public, indicating probably that the routes shown had public rights.
- 3.3. The 1:2500 Ordnance Survey Map of 1886 (Document 11) records the application route as a solid line to the east and a dashed line to the west. The route is shown shaded ochre and labelled "Beck's Lane".

3.4. The 1904 Ordnance Survey Map and more recent Ordnance Survey Maps all show the application route marked variously by solid and dashed lines.

4. **USER EVIDENCE**

4.1. The Authority has received 31 completed User Evidence Forms, and a further 28 non-user submissions, from members of the public (Document 3).

4.2. The access route was closed to public use from 2012 by the fitting of padlocked gates and the display of several PRIVATE signs (Document 2). The Authority assessed the evidence and found that the qualifying "20 year" period for use should be at some time before 2012.

4.3. On each of the 31 User Evidence Forms it is stated that the user used the route in a period up to 2012 (1) without permission from the owner, their employees or family, (2) without being turned back or being told that the route was private, (3) without their way being obstructed and (4) without ever seeing any PRIVATE notices.

4.4. The Authority found sufficient User Evidence to reasonably allege that the Application Route has become a public restricted byway through presumed dedication under Section 31(i) of the 1980 Act.

4.5. Users 1, 2, 7, 10, 11, 16, 19, 22, 23 and 23 have agreed to attend the Public Inquiry as witnesses and give evidence in support of The Order.

5. CONCLUSION

5.1. The form and features of the application route suggest that it is of great age and was once an approach road to Beek's Mill and part of a through route between St Catherine and Marshfield.

5.2. Thomas Thorpe's Map of 1742 depicts the application route as part of a through road between St Catherine and Marshfield for use by the travelling public.

5.3. I believe that sufficient User and other Evidence exist to justify, on the balance of probabilities, confirmation of The Order.

Donald MacIntyre, April 3rd, 2018

6. LIST OF DOCUMENTS

Document 1 – The application route. Page 9

Document 2 – Applicant's documentary evidence of February 6th, 2013. Pages 10-20

Document 3 – The Authority's Statement of Grounds of October 11th, 2017. Pages 21-34

Document 4 – The Authority's Decision Notice of July 18th, 2017. Page 35

Document 5 – The Order of July 18th, 2017. Pages 36-38

Document 6 – Outstanding objections. Pages 39-423

Document 7 – Bridge at Beek's Mill at Point B. Page 43

Document 8 – Application route showing banks and hedges. Page 44

Document 9 – Passing place at Point A. Page 45

Document 10 – Thomas Thorpe's Map of 1742. Page 46

Document 11 – 1886 Ordnance Survey Map. Page 47

Document 2 – Applicant's documentary evidence of February 6th, 2013

DOCUMENTARY EVIDENCE, AND OTHER EVIDENCE, OFFERED IN SUPPORT OF THE APPLICATION

Application for modification to the Definitive Map and Statement for Bath and North East Somerset

APPLICATION TO RECORD A BYWAY OPEN TO ALL TRAFFIC ON THE SECTION OF BEEK'S LANE BETWEEN St CATHERINE LANE AND BEEK'S MILL

The route to which this application refers concerns the section of Beek's Lane between St Catherine Lane and Beek's Mill, and is marked on this Ordnance Survey map by the letters **A** and **B**. Public rights of way exist on the remainder of Beek's Lane



Evidence is presented below in support of this application to record public rights of way on the section of Beek's between **A** and **B** on the map above. The evidence is presented in chronological order, and seeks to give an historical account of the route, up to the present day.

The evidence consists of old maps and documents, accounts from living memory, artefacts on the ground, and photographic records of more recent events.

1742 MAP by THOMAS THORPE

This early map covers Bath (and 5 miles around), and shows the section of Beek's Lane between St Catherine Lane and Beek's Mill (then known as Catherine Mill), to which this application refers. The route is marked on the map by the letters **A** and **B**, and is represented on the map by two solid lines. The solid lines are open at both ends indicating that the route was un-gated at that time, and the route is annotated "To Marfhfield".

The inference from this map is that the route existed in 1742 as an important public right of way for traffic between St Catherine and Marshfield and beyond, and between farms and mills along the way. St Catherine Lane did not continue west to the Gloucester Road at that time, as it does today, and no other route existed then for travel between Upper St Catherine and Marshfield.



1742 MAP by THOMAS THORPE

MILE STONE at BEEKS MILL

A milestone survives today just south of Beek's Mill on the east verge of Beek's Lane. The position of this milestone is close to the point that is marked by the letter **B** on the maps above. This milestone is two miles from Marshfield market place, and the inscription on the stone reads: 2 MARSFIELD. Another milestone, unmarked, is situated at the Marshfield end of Beek's Lane.

A milestone serves to show travellers that a public right of way exists, and it may also show the distance to the next town or village. The presence of a milestone just south of Beek's Mill is strong evidence that an important historic public right of way has existed for many years for travellers along the entire route of Beek's Lane between St Catherine Lane and Marshfield. This milestone is evidence of a through route, as one would not normally be placed at the end of a no through road.

We are unable to date the milestone. However, its appearance, and the fact that milestones usually predate Ordnance Survey Maps and other way markers, suggest that this stone is centuries, rather than decades, old.



Milestone on the east verge of Beek's Lane

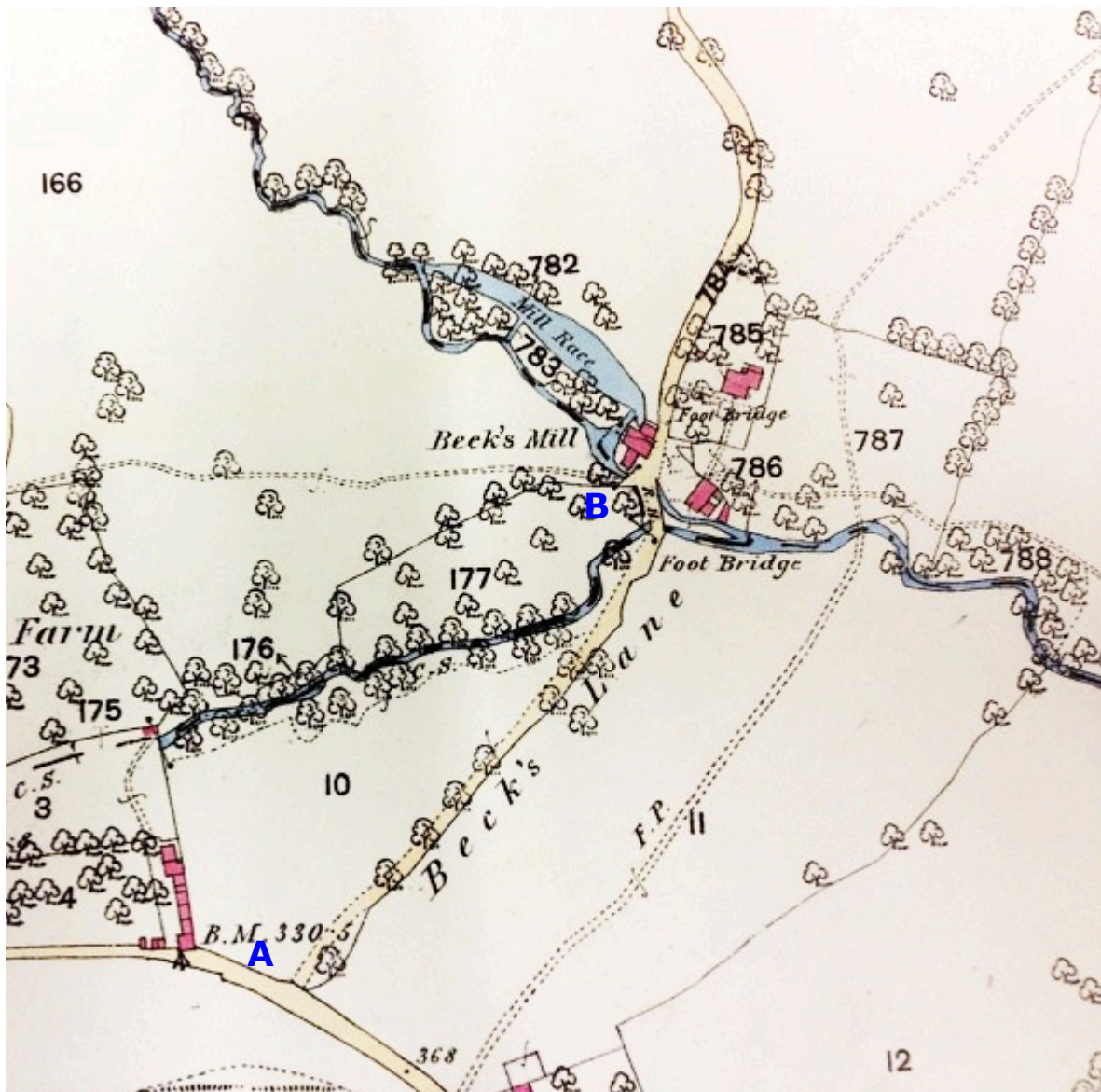


Milestone showing inscription

1886 ORDNANCE SURVEY MAP

The 1886 "1:10,000" Ordnance Survey Map shows the route of Beek's Lane as a continuous public right of way for traffic between St Catherine Lane and Marshfield. The section between St Catherine Lane (A) and Beek's Mill (B) is coloured yellow on the map, indicating that it is a route with full public access, and this section is annotated "Beek's Lane".

This map shows a cluster of buildings at Beek's Mill, with a row of workers cottages to the south-west. Two other mills and three farms were also nearby. Beek's Lane was probably a busy route at that time.

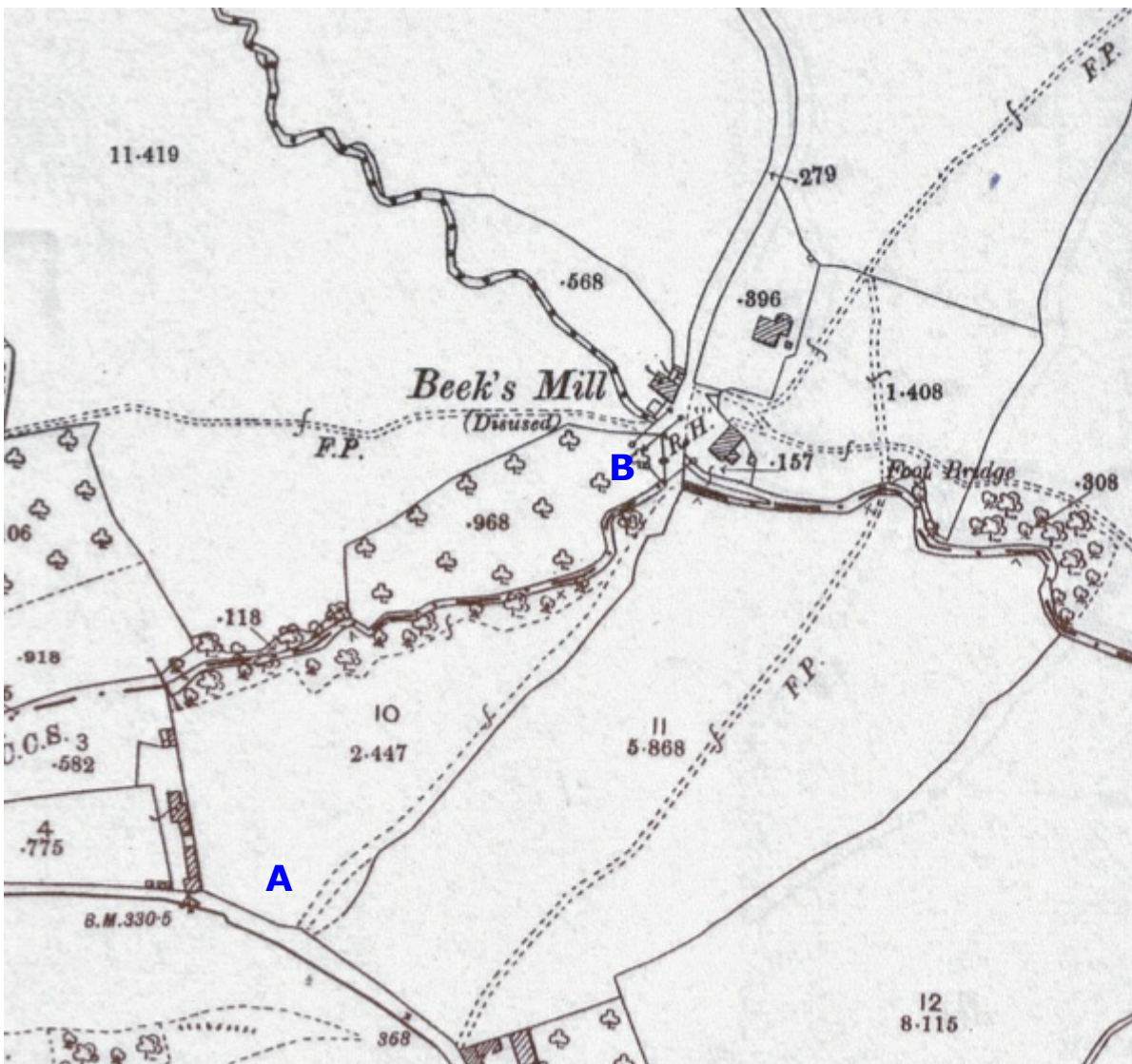


1886 ORDNANCE SURVEY MAP

1904 ORDNANCE SURVEY MAP

The 1904 "1:10,000" Ordnance Survey map continues to show the section of Beek's Lane between St Catherine Lane(A) and Beek's Mill(B).

The notation "R.H.", on the map close to Beek's Mill, refers to a "Road House" or wayside inn, and can be identified with the building to the south-east of Beek's Mill. This building is still standing. The presence of a wayside inn near to Beek's Mill is further evidence that Beek's Lane was a through route with public access continuous between St Catherine and Marshfield. It may be argued here, as with the milestone, that an inn would not be placed at the end of a no through road.



1904 ORDNANCE SURVEY MAP

There are many other maps that show Beek's Lane, but those presented above are thought to be the ones that best show the application route, it's features, evidence of public rights of way, and changes over time.

ACCOUNTS FROM LIVING MEMORY

Local residents of long standing can recall that the route from St Catherine Lane to Beek's Mill and beyond has been used freely for at least 60 years, without permission, without being challenged, and without the way being barred. During this time there has been a wooden gate at the junction of Beek's Lane with St Catherine Lane, but it has never been locked, and the route has been used on foot, on bicycle, on horseback, and by motor vehicles.

The route has been, and remains, important for travel between St Catherine and Marshfield (for agriculture, trade and leisure) and for service vehicles, such as postal deliveries, and for emergency and rescue vehicles. However, use of the route has always been at a very low level because of the poor state of the road surface and the necessity to open and close the gate at the junction with St Catherine Lane.

This application to record the route on the definitive map will allow usage to return to former levels. There will be no merit or need to improve access, or the road surface, and recording the route will not result in increased usage.

THE DEFINITIVE MAP

The bridge over St Catherine Brook, just south of Beek's Mill, marks the boundary between the counties of Bath and North East Somerset, and Wiltshire, and the parishes of St Catherine and Marshfield. The greater part of Beek's Lane lies in the Parish of Marshfield. The short section between St Catherine Lane and Beek's Mill lies in the Parish of St Catherine.

In 1948 individual Parish Councils were charged with putting forward proposals for public rights of way for inclusion on the definitive map, with separate maps held by each county. Marshfield Parish proposed that the part of Beek's Lane in their parish (and Wiltshire) should be recorded as a public right of way. St Catherine Parish did not propose inclusion of the short section of Beek's Lane that lies within Bath and North East Somerset. The consequence of these decisions is that an anomaly now exists in that a small section of Beek's Lane is not recorded as having public rights of way, while the remainder does.

Few local people have been aware of this anomaly, and all contacted in gathering evidence for this application had thought that there were long standing public rights of way on the entire length of Beek's Lane, and have used the route accordingly, over many years.

Beek's Mill recently changed ownership, and the new owners, aware of the details of the definitive map, proceeded to restrict public access to the section of Beek's Lane between St Catherine Lane and Beek's Mill, as is their right. These restrictions are recorded below to complete the chronology of events and to establish the date on which access to the route was barred.

CHANGES TO GATES

On December 16th, 2011, new off-centre gateposts were put in place at both ends of the unrecorded section of Beek's Lane, reducing access from 4.30m to 3.10m, and making it impossible to pass with farm machinery. New gates were hung on these gateposts.



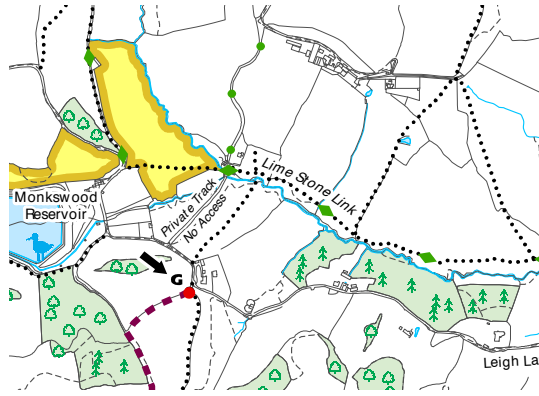
Gateway at the junction with St Catherine Lane, looking north



Gateway at Beek's Mill, looking north

CHANGES TO MAPPING

The new owners of Beek's Mill have requested three changes to official Ordnance Survey and Natural England mapping. These amendments were granted, but when challenged by the applicant, the changes were reversed. These changes to mapping are described in more detail below.



Ordnance Survey map

- (1) The owners of Beek's Mill requested that Natural England maps include the notation "Private Track No Access" beside the section of Beek's Lane between St Catherine Lane and Beek's Mill. Natural England granted this request. When challenged by the applicant, Natural England reversed the change with effect from 20th April 2012.
- (2) The owners of Beek's Mill claimed that the north-west boundary of the section of Beek's Lane between St Catherine Lane and Beek's Mill was unfenced. They therefore requested that Ordnance Survey change their mapping so that that section of Beek's Lane was mapped as one broken line and one solid line, rather than two solid lines. Ordnance Survey agreed to this request and accordingly changed the OS Master Map, the OS 1:25,000 map and the OS 1:50,000 map. When challenged by the applicant, Ordnance Survey reversed the change with effect from 3rd May 2012.
- (3) The owners of Beek's Mill claimed that there was no public right of way on the section of Beek's Lane running north from Beek's Mill to the turning to Beek's Farm. This section is marked on Ordnance Survey maps by three green dots indicating "routes with public access". The owners requested that Ordnance Survey remove the three green dots. Ordnance Survey agreed to this request and accordingly changed the OS Master Map, the OS 1:25,000 map and the OS 1:50,000 map. When challenged by the applicant Ordnance Survey reversed the change with effect from 16th May 2012.

PRIVATE SIGNS AND PADLOCKS

Private signs were placed on the gates at both ends of the route, at the junction with St Catherine Lane and at Beek's Mill, on April 25th, 2012. These signs say that the route is private and that there is no public right of way.

The gates at both ends of the route, at the junction with St Catherine Lane and at Beek's Mill, were padlocked on June 28th, 2012, and remain padlocked. Use of the route by the public ceased from this date.



Private signs and padlocked gates at the junction of St Catherine Lane and Beek's Lane



Private signs and padlocked gates at the junction of St Catherine Lane and Beek's Lane

SUMMARY of the EVIDENCE

The evidence in support of this application to record the section of Beek's Lane between St Catherine Lane and Beek's Mill as a public right of way is summarized as:

1. The Thomas Thorpe map of 1742 and The Ordnance Survey map of 1886 clearly show Beek's Lane as a public right of way along its entire length from the junction with St Catherine Lane to Marshfield.
2. A milestone stands on the east verge of Beek's Lane south of Beek's Mill indicating that the entire length of Beek's Lane is an historic public right of way.
3. Notation on the 1904 Ordnance Survey map suggests that a wayside inn once stood south of Beek's Mill, providing further evidence of an historic public right of way along the entire length of Beek's Lane.
4. It is argued that the omission from the definitive map of the section of Beek's Lane that runs between St Catherine Lane and Beek's Mill is an anomaly arising because Beek's Lane crosses parish and county boundaries.
5. "User Evidence Statements" accompanying this application are evidence that Beek's Lane has been used as a public right of way, without permission, hindrance, obstruction or challenge, along its entire length from St Catherine Lane to Marshfield, for at least 60 years. Mapping evidence extends this period to 270 years.
6. Access to the route was barred from June 28th, 2012 by private notices and padlocked gates positioned at the junction with St Catherine Lane, and at Beek's Mill. The route remains barred to public access.

February 6th, 2013

Donald MacIntyre
Manor Farm
Langridge
Bath
BA1 8AJ

Document 3 – The Authority's Statement of Grounds of October 11th, 2017

**Bath & North East
Somerset Council**

Statement of grounds

in relation to the determination of the

Bath and North East Somerset Council
(Restricted Byway BA21/12. Beeks Mill, St Catherine)
Definitive Map Modification Order 2017

11 October 2017

1. Background and Application

- 1.1 On 6 February 2013, Mr Donald MacIntrye of Manor Farm, Langridge, Bath (“the Applicant”) applied to have a BOAT added to the Definitive Map and Statement (“the DM&S”). 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 Order Map) 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 Order Map). This route is hereafter referred to as “the Order Route”.
- 1.2 The land over which the Order Route runs has been in the ownership of Beeks Mill since at least 1933. Beeks Mill was bought in 1965 by Rev. Michael Lane¹ and, after Rev. Lane died, the property was sold to its current owner in September 2009. The Life-Tenant took up occupation around Christmas 2011 once renovations had been completed to Beeks Mill.

2. Consultations

- 2.1 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 Order Route and on the Authority’s website and the case officer gave a presentation on the Application to a parish meeting.

¹ User 43

- 2.2 The Authority received a letter of objection from the affected Landowners and representations both in support of, and in opposition to, the Application.

3. Documentary Evidence

- 3.1 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 Order Route.
- 3.2 Thorpe's Map (SHC ref.: DD\NNE/C1375/8) was published in 1742 and shows Bath and the surrounding areas including St Catherine. The Order 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 Order Route.
- 3.3 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 Order 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.
- 3.4 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 Order Route is shown by parallel solid lines, the Order Route itself is not shown on Cotterell's Map.

- 3.5 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 map², the Order Route is shown by a solid line to the east and a dashed line to the west. The route is shown shaded ochre and labelled ‘*Beck’s Lane*’. A solid line crosses the Order Route at its southern terminus. On the 1904 OS map³, the Order Route is shown by a solid line to the east and a dashed line to the west. A solid line again crosses the Order Route at its southern terminus. This shows that the Order 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.
- 3.6 The 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 Order 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.
- 3.7 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 Order 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 Order Route runs and this sign itself does not therefore render use of the Order Route to be

² <http://maps.nls.uk/view/122160794>

³ <http://maps.nls.uk/view/122160794>

contentious. Furthermore, a number of witnesses state that it was known that the Order Route was private but the *Sunningwell*⁴ 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 Order Map. The words "2 Marsh Field" have been crudely scratched into its surface and this does not 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.

- 3.8 The Order 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 Highways Act 1980 ("the 1980 Act"); this includes the List of Streets as it stood on 1 January 2006. Additionally, the Order 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 Order Route.
- 3.9 Thorpe's map suggests that the Order 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 Order Route are the Ordnance Survey maps which show that the Order Route physically existed in 1886 and 1904 but they do not provide evidence regarding the existence of public rights.

4. User Evidence

- 4.1 The Authority received 59 statements from members of the public. Although each witness is numbered 'User 1', 'User 2', 'User 3' etc., it

⁴ *R v Oxfordshire County Council and Another ex parte Sunningwell Parish Council* [1999] 3 WLR 160

should be noted that this does not necessary mean that they have used the Order Route themselves. 31 members of the public submitted User Evidence Forms (UEFs); three of these Users⁵ 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 provided telephone numbers and were contactable.

4.2 Users 22, 33, 36, 53 and 56 stated that they were granted permission to use the Order 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 Order 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 Order Route. Furthermore, Users 26 and 50 used the Order 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 Order 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 4.3 to 4.6 below. All other Users have stated that their use was without force, secrecy or permission.

4.3 **Foot.** The user evidence details pedestrian use dating back to 1935.⁶ The user evidence details pedestrian use of the Order Route by:

- two people⁷ during the 1940s (averaging 12 times per year),
- three people⁸ during the 1950s (averaging 71 times per year),

⁵ Users 22, 27 and 31

⁶ User 6

⁷ Users 6 and 18

⁸ Users 6, 10 and 18

- between three and six people⁹ during each year of the 1960s (averaging 67 times per year),
- between five and 13 people¹⁰ during each year of the 1970s (averaging 38 times per year),
- between 12 and 14 people¹¹ during each year of the 1980s (averaging 31 times per year),
- between 13 and 18 people¹² during each year of the 1990s (averaging 28 times per year),
- between 13 and 19 people¹³ during each year of the 2000s (averaging 49 times per year),
- between 7 and 16 people¹⁴ during each year of the 2010s (averaging 48 times per year).

4.4 **Horse.** The user evidence details horse use dating back to 1935¹⁵. The user evidence details horse use of the Order Route by:

- one person¹⁶ during the 1940s (used '*occasionally*'),
- two people¹⁷ during the 1950s (used '*occasionally*'),
- between two and four people¹⁸ during each year of the 1960s (averaging 112 times per year),
- between three and five people¹⁹ during each year of the 1970s (averaging 82 times per year),
- between 3 and 9 people²⁰ during each year of the 1980s (averaging 65 times per year),
- between nine and 13 people²¹ during each year of the 1990s (averaging 72 times per year),

⁹ Users 6, 10, 11, 14, 18 and 23

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

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

¹² Users 1, 3, 7, 9, 10, 11, 13, 14, 16, 18, 19, 21, 23, 27, 28, 30, 31 and 34

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

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

¹⁵ User 6

¹⁶ Users 6

¹⁷ Users 6 and 10

¹⁸ Users 5, 6, 11 and 49

¹⁹ Users 5, 6, 11, 35 and 49

²⁰ Users 2, 3, 5, 8, 11, 16, 28, 34 and 48

²¹ Users 2, 3, 5, 8, 11, 12, 13, 16, 28, 29, 34, 45 and 48

- between six and 11 people²² during each year of the 2000s (averaging 74 times per year),
- between two and six people²³ during each year of the 2010s (averaging 102 times per year).

4.5 **Bicycle/Carriage.** The user evidence details bicycle and horse-drawn carriage use dating back to 1935²⁴. The user evidence details bicycle and horse-drawn carriage use of the Order Route by:

- two people²⁵ during the 1940s (averaging 12 times per year),
- between two and three people²⁶ during the 1950s (averaging 189 times per year),
- between two and three people²⁷ during each year of the 1960s (averaging 25 times per year),
- between three and six people²⁸ during each year of the 1970s (averaging 18 times per year),
- six people²⁹ during each year of the 1980s (averaging 19 times per year),
- six people³⁰ during each year of the 1990s (averaging 14 times per year),
- between five and six people³¹ during each year of the 2000s (averaging 16 times per year),
- between two and six people³² during each year of the 2010s (averaging 16 times per year).

4.6 **Motor Vehicles.** The user evidence details bicycle and carriage use dating back to 1935³³. The user evidence details motor vehicle use of the Order Route by:

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

²³ Users 5, 11, 12, 16, 34 and 45

²⁴ User 6

²⁵ Users 6 and 18

²⁶ Users 4, 6 and 18

²⁷ Users 8, 11 and 18

²⁸ Users 1, 6, 11, 18, 28 and 31

²⁹ Users 1, 11, 18, 28, 30 and 31

³⁰ Users 1, 11, 18, 21, 28, 30 and 31

³¹ Users 1, 11, 18, 21, 28 and 30

³² Users 1, 9, 11, 21, 28 and 30

- one person³⁴ during the 1940s (used '*occasionally*'),
- two people³⁵ during the 1950s (averaging 2.5 times per year),
- between two and four people³⁶ during each year of the 1960s (averaging 17 times per year),
- between four and eight people³⁷ during each year of the 1970s (averaging 24 times per year),
- between nine and 11 people³⁸ during each year of the 1980s (averaging 20 times per year),
- between 12 and 14 people³⁹ during each year of the 1990s (averaging 20 times per year),
- between nine and 13 people⁴⁰ during each year of the 2000s (averaging 48 times per year),
- between six and 11 people⁴¹ during each year between 2010 and 2012 (averaging 31 times per year); the UEFs do not detail any motorised use after 2012.

4.7 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 the Order Map on 16 December 2011⁴². The Applicant states that various signs stating that the Order Route was private were erected on 25 April 2012⁴³; this is broadly supported by Users 9 and 10 but User 23 states that these were erected in 2011. There is broad consensus that the gates at either end of

³³ User 6

³⁴ Users 6

³⁵ Users 6 and 10

³⁶ Users 5, 6, 10 and 23

³⁷ Users 1, 5, 6, 7, 10, 19, 23 and 31

³⁸ Users 1, 2, 3, 5, 7, 10, 11, 19, 23, 30 and 31

³⁹ Users 1, 2, 3, 5, 7, 9, 10, 11, 13, 16, 19, 23, 30 and 31

⁴⁰ Users 1, 3, 5, 7, 9, 10, 11, 12, 13, 14, 16, 19, 20, 23, 24, 25 and 30

⁴¹ Users 1, 5, 7, 9, 10, 11, 16, 20, 23, 24 and 25

⁴² Evidence appended to Application

⁴³ Evidence appended to Application

the Order Route were locked on 28 June 2012⁴⁴; 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 Order Route could have been called into question. However, there is conflicting evidence whether or not the public's right to use the Order Route was called into question at an earlier date due to signage.

- 4.8 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 Order Map. 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 some of 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, the Authority concludes that on the balance of probabilities any use in excess of a bridleway was contentious from at least 2001 onwards.
- 4.9 29 users⁴⁵ state that there were no signs deterring public use prior to 2012. 18 users states that there were signs stating that the Order 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.
- 4.10 **Reasonably alleged and balance of probabilities.** The evidence summarised in paragraph 4.9 above regarding signage prior to 2012 is sharply conflicting and the two opposing views cannot be reconciled with one another. The meaning of 'reasonably alleged' is set out in the

⁴⁴ User 1 and 11, 16

⁴⁵ 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,

*Bagshaw*⁴⁶ judgement and that 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.

4.11 The Authority was not, and is still 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 was therefore compelled to rely on the UEFs and witness statements which have been submitted both in support and in opposition to the Application. In this circumstance there was a reasonable allegation that there were no private signs prior to 2012 and it was on this basis that the Order was made.

4.12 However, the Order must now be determined based on the balance of probabilities. As stated above, there is a significant volume of sharply conflicting witness evidence and the two opposing views cannot be reconciled with one another. It will therefore be necessary for a public inquiry to be held to allow the witnesses to give evidence in chief and be cross examined on their evidence to determine the facts of the case on the balance of probabilities.

4.13 If the date of challenge to public motorised vehicular use of the Order 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 people⁴⁷ used the Order Route on foot during each of those 20 years and 4 people⁴⁸ used the Order Route for a shorter period of time during that period,
- three people⁴⁹ used the Order Route on horse during each of those 20 years and 10 people⁵⁰ used the Order Route for a shorter period of time during that period,

⁴⁶ R v SSE ex parte Bagshaw and Norton [1994] 68P & CR402

⁴⁷ Users 1, 7, 11, 13/14, 16, 18, 19, 21/31, 23, 28 and 30

⁴⁸ Users 3, 9, 27 and 34

⁴⁹ Users 5, 11 and 28

⁵⁰ Users 2, 3, 8, 12, 13, 16, 29, 34, 45 and 48

- six people⁵¹ used the Order Route on bicycle/carriage during each of those 20 years,
- nine people⁵² used the Order Route in motor vehicles during each of those 20 years and four people⁵³ used the Order Route for a shorter period of time during that period.

In total 13 people⁵⁴ used the Order Route during each of those 20 years with each User using the Order Route with an average frequency of 119 times per year. An additional 10 people⁵⁵ used the Order Route for just part of the Relevant Period. This level of use is sufficient to demonstrate that the Order 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. However, the Authority regards a public inquiry to be necessary to determine whether the landowner erected signage to demonstrate a lack of intention to dedicate to the public.

4.14 **NERC Exemptions.** 13 people⁵⁶ used the Order Route in motorised vehicles between May 2001 and May 2006 and during this period they used the Order Route a combined total of 1398 times in motor vehicles. During this same period, 20 people⁵⁷ used the Order Route on foot, horse, bicycle/carriage between May 2001 and May 2006 and during this period they used the Order Route a combined total of 7031 times using non-motorised means.⁵⁸ The main lawful use of the Order Route during this period was for non-motorised vehicles and the Order Route does not therefore qualify for the exemption under section 67(2)(a) of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”) relating to the preservation of motorised rights.

4.15 Furthermore, as stated in paragraph 3.8 the Order Route was not recorded on the List of Streets immediately before 2 May 2006. There is no

⁵¹ Users 1, 11, 18, 28, 30 and 21/31

⁵² Users 1, 5, 7, 10, 11, 19, 23, 30 and 16/31

⁵³ Users 2, 3, 9 and 13

⁵⁴ Users 1, 3/31, 5, 7, 10, 11, 14, 16/45, 18, 19, 23, 28 and 30

⁵⁵ Users 2, 8, 9, 12, 13, 21, 27, 29, 34 and 48

⁵⁶ Users 1, 3, 5, 7, 9, 10, 11, 16, 19, 20, 22, 23, 30

⁵⁷ Users 1, 3, 5, 7, 8, 9, 11, 12, 16, 18, 19, 22, 21, 23, 27, 28, 29, 30, 34, 45

⁵⁸ Used 1764 on foot, 4788 on horse and 479 on bicycle/carriage during the five year period.

evidence that the Order Route was created on terms which expressly provided for use by motor vehicles. The Order 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 1935⁵⁹ and consequently there is no evidence that the Order Route acquired motorised vehicular rights through presumed dedication during a period ending before 1 December 1930. The Order Route does not qualify for any of the exemptions under sections 67(2)(a) to (e) of the 2006 Act and any motorised vehicular rights which previously existed would have been extinguished on 2 May 2006 by virtue of section 67(1) of the 2006 Act. The Order Route would therefore have been automatically downgraded to a restricted byway.

- 4.16 **Limitations.** 37 Users⁶⁰ state that there has always been a gate at point A on the Order Map. Only User 17 states that there was not a gate on the Order Route and the remaining users are ambiguous on the issue. User 6 states that the gate has been present since they started using the Order 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 Order Map would therefore be a limitation upon the dedication of the Order Route as a public right of way.
- 4.17 Five users⁶¹ state that there was also a gate a point B on the Order Map and during site visits carried out by the Case Officer in 2016 there was an old gate 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 it 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 show on the balance of

⁵⁹ User 6

⁶⁰ 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

⁶¹ Users 7, 36, 39 and 43, 55

probabilities that a gate at this location was a limitation at the time of dedication.

- 4.18 **Width.** The Order Route currently physically exists on the ground as a 3.1 metre wide track. Five users⁶² have not addressed the question of whether the width of the Order Route has changed and User 11 has answered this question in the context of a recent gate restricting the width of the Order Route. However, all other users have stated that the width of the Order Route has not changed. If the Order Route has acquired public rights then these would exist over a consistent width of 3.1 metres.

5. Conclusion

- 5.1 There was a reasonable allegation that the Order Route had become a public restricted byway through presumed dedication under section 31(1) of the 1980 Act. The Authority was therefore under a statutory duty to make a Definitive Map Modification Order to record the Order 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 Wildlife and Countryside Act 1981.
- 5.2 It will be necessary to hold a public inquiry to determine whether on the balance of probabilities the Order Route is a public right of way.
- 5.3 The Authority respectfully requests that the Inspector determines the Order.

⁶² Users 4, 6, 17, 18 and 31

Document 4 – The Authority's Decision Notice of July 18th, 2017

**Bath & North East
Somerset Council**

**Investigation into evidence
Section 53 of the Wildlife and Countryside Act 1981**

BEEKS MILL, ST CATHERINE

DECISION

Bath and North East Somerset Council ("the Authority") consulted the following parties on the Application:

- the landowners and tenant
- the applicant
- the Parish Meeting
- the Ward Councillors for the area
- local and national user groups

All evidence and comments received by the Authority were taken into consideration when making the Decision.

Having considered the evidence and comments, the Authority is satisfied that an Order should be made to show:

- 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).
- The restricted byway is to be recorded with a width of 3.1 metres throughout
- The right of the landowner to erect and maintain a field gate at grid reference ST 7611 7106 will be recorded as a limitation on the Definitive Map and Statement of Rights of Way in Bath and North East Somerset.

The effect of this is shown on the attached plan.

Dated this 18th day of July 2017



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

Document 5 – The Order of July 18th, 2017

WILDLIFE AND COUNTRYSIDE ACT 1981

**Somerset County Council, Bathavon Rural District and
Keynsham Urban District Definitive Map and Statement**

**Bath and North East Somerset Council (Restricted Byway BA21/12,
Beeks Mill, St Catherine) Definitive Map Modification Order 2017**

This Order is made by Bath and North East Somerset Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Somerset County Council, Bathavon Rural District and Keynsham Urban District Definitive Map and Statement require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i), namely, 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.

The authority has consulted with every local authority whose area includes the land to which the Order relates. The Bath and North East Somerset Council hereby order that:

1. For the purposes of this Order the relevant date is 18th July 2017.
2. The Somerset County Council, Bathavon Rural District and Keynsham Urban District Definitive Map and Statement shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Bath and North East Somerset Council (Restricted Byway BA21/12, Beeks Mill, St Catherine) Definitive Map Modification Order 2017.

Given under the Common Seal of the Bath and North East Somerset Council on the 2nd day of August 2017.

The COMMON SEAL of the
BATH AND NORTH EAST SOMERSET
COUNCIL
was hereunto affixed
in the presence of:-



Authorised signatory



8311

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 Order Map) and continuing in a generally northeasterly direction for approximately 200 metres along a track to the county boundary with South Gloucestershire at grid reference ST 7624 7121 (Point B on the Order Map).

PART II

Modification of Definitive Statement

Variation of particulars of path or way

A new statement for BA21/12 shall be recorded as follows:

Path Number: BA21/12

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 county boundary with South Gloucestershire at grid reference ST 7624 7121.

This map forms part of the Bath and North East Somerset Council (Restricted Byway BA21/12, Beeks Mill, St Catherine) Definitive Map Modification Order 2017



Restricted byway to be added  A B
Unaffected public footpath 

Scale 1:2500



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Document 6 – Outstanding objections

OUTSTANDING OBJECTIONS TO THE ORDER

Outstanding Objections

Ms Alice Craigmyle of Court Farm, St Catherine, Bath, BA1 8HA

Mr M J Roberts of 116 Catherine Way, Batheaston, Bath, BA1 7PA

Mr Andrew Turner of 18 Withymead Road, Marshfield, Chippenham, SN14 8PB

Mr Robin Guild of Ayford Farm, Ayford Lane, St Catherine, Bath, BA1 8HB

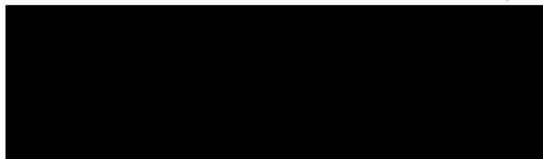
Court Farm
St Catherine
Bath BA1 8HA

29 August 2017

To Whom it May Concern:

Re. The Recommendation that the Private Lane leading to Beek's Mill off St Catherine's Lane should become a Public Right of Way.

I object to the council's recommendation on the grounds that in the past there was a sign on the gate saying "PRIVATE" which surely means that the route is not a public right of way?



Alice Craigmyle

116 Catherine Way,
Batheaston,
Bath.
BA1 7PA

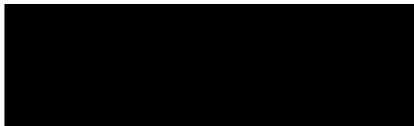
07 September 2017

TO WHOM IT MAY CONCERN

Route running from S. Gloucestershire border to St Catherine's Lane, B&NES - the subject of a DMMO application with a "reasonably alleged" recommendation that it become a Restricted Byway.

I object to this route being made into a public right of way. For as long as I can remember, there has always been a prohibitory notice. In fact, it is highly likely that this has always been the case ever since the route first came into existence, - especially as it is not, nor ever has been - on any public maps. The Thorpe map is no evidence of public status. Paper Mill (a mere 60 yards west of the route) - predates Thorpe and yet is not depicted. Beeks Mill Lane has a right-angled bend whereas Thorpe paints it dead straight. Things like this are either out of alignment or nonsensical. Catherine Mill is over in St Catherine's and Beeks Mill has never been in the Parish of St Catherine. The route itself disappears from subsequent maps till end of 19th century - when it seems to have been created at the same time as Monkwood Reservoir. Moreover, as there is a public footpath running parallel to the track, (60 yards east of it) the route described by Thorpe and promoted as if it is the one in question today is in my opinion likely to be the public footpath. Given that Thorpe does not generally omit houses, this in turn would explain why there is no Paper Mill.

Yours faithfully,



M. J. Roberts.

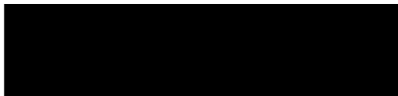
18 Withymead Road, Marshfield, Chippenham, S. Gos. SN14 8PB

27 August 2017

Regarding: The Restricted Byway at Beeks Mill, DMMO application.

I object to this being made into a public route. For as long as I have known it, there have always been "Private" signs on the top gate against "St Catherine's Lane".

Yours Faithfully,

A black rectangular redaction box covering the signature of Andrew Turner.

Andrew Turner.

Document 7 – Bridge at Beek's Mill at Point B



Document 8 – Application route showing banks and hedges



Document 9 – Passing place at Point A



Document 10 – Thomas Thorpe's Map of 1742



Document 11 – 1886 Ordnance Survey Map

