

# Statement of grounds

in relation to the determination of the

Bath and North East Somerset Council  
(Public Footpath BA21/13, Charmydown, St Catherine)  
Definitive Map Modification Order 2025

10/02/2026

## 1. Background and Application

- 1.1 On 5th May 2021, Donald MacIntyre (“the Applicant”) applied to Bath and North East Somerset Council (“the Authority”) to have a public footpath at Charmydown in St Catherine added to the Definitive Map and Statement (“the Application”) (see OMA18). The Application was accompanied by 56 User Evidence Forms and three witness statements; an additional user Evidence Forms was also subsequently submitted to the Authority (see OMA16).
- 1.2 The Application sought to have the route commencing from a junction with public footpath BA21/9 at grid reference ST 7660 6890 (Point A on the Order Map) and proceeding in a generally north-easterly direction along a track for approximately 105 metres to a junction with public footpath BA21/9 at grid reference ST 7669 6896 (Point B on the Order Map) recorded on the Definitive Map and Statement (“DM&S”) as a public footpath. This route is hereafter referred to as “the Order Route”.
- 1.3 During a site visit carried out by the Authority on 1 June 2023, locked field gates were found across the Order Route at points X and Y on the Site Plan (see OMA04). The gate at point X had a sign attached reading ‘*Private Property*’ and the gate at point Y had one sign attached reading ‘*Private Property*’ and another sign reading ‘*No Public Right of Way*’. Notices were also present in the vicinity of the Order Route relating to i) a planning application and ii) a temporary traffic regulation order dated 23 February 2023.; however, neither of these matters relate directly to the Order Route.
- 1.4 The Authority undertook extensive archival research at the Somerset Heritage Centre in Taunton and in the Authority’s own records. The Authority attempted to carry out short telephone interviews with each individual who completed a user evidence form or witness statement to clarify any ambiguities in their evidence. The Authority subsequently carried out a public consultation and one objection was received on behalf of the landowner Dormie Holdings Ltd (“the Objector”). The Authority considered all evidence available and concluded that there was a reasonable allegation

that the Order Route is a public footpath. The Authority subsequently made and advertised the Bath and North East Somerset Council (Public Footpath BA21/13, Charmydown, St Catherine) Definitive Map Modification Order 2025. One objection was received from the Objector.

## **2. Documentary Evidence**

2.1 The Day and Masters' Map from 1782, Greenwood's Map from 1822, St Catherine Tithe Map and Apportionment from 1840, the plans and valuation books produced by the Inland Revenue under the Finance (1909-10) Act 1910 between 1910 and 1914 do not provide any evidence relating to the Order Route. Furthermore, the Order Route is not recorded or referred to in the Parish Survey, Draft Map, Provisional Map or DM&S and no s31(6) Landowner Deposit or legal orders permanently altering public rights in the vicinity of the Order Route has been discovered by the Authority.

2.2 The Order Route is not shown on: the Ordnance Survey (OS) County Series map published in 1873; the OS six-inch to the mile maps published in 1884, 1888, 1903, 1924 and 1857; the OS 25 inch to the mile maps published in 1886, 1903, and 1934; or the OS 1:10,560 maps published in 1961, 1962, 1981 and 1994; (see OMA19). Furthermore, each of these OS maps show a building across the full width of the Order Route in the vicinity of point Y on the Site Plan (see OMA04). The 1972 OS 25k Explorer Map shows the outline of a building at the same location but without the shading used to denote other nearby buildings. Aerial photography taken between 1975 and 2020 covers the Order Route but tree cover obscures many other sections of the Order Route.

2.3 The planning documents relating to application 99/02627/LBA includes a hand-drawn Location Plan dated April 1999 and an undated Ordnance Survey map which both show a building across the full width of the Order Route in the vicinity of point Y on the Site Plan (see OMA04). The planning documents relating to application 02/00963/FUL includes an Existing Site Plan dated November 2000 which shows the eastern half of the Order Route and there is no indication of a building across the Order Route in the vicinity

of point Y on the Site Plan (see OMA04); the western half of the Order Route is outside the mapped area. Various plans and sections relating to planning applications submitted on behalf of the landowner between 2008 and 2021 inclusive show the entirety of the Order Route. These applications are 08/04769/LBA, 11/02916/COND, 11/02917/COND, 11/05351/COND, 12/01776/COND, 12/01823/NMA, 12-05579-FUL, 12/05580/LBA and 21/04437/FUL; each include plans showing the whole of the Order Route variously labelled 'Driveway', 'New Entrance Drive' or 'Access Drive'. These depictions and descriptions do not indicate whether the Order Route was public or private.

- 2.4 Watson Bertram & Fell ("WBF"), the architectural company that oversaw the building works at Charmydown Lodge and Barn on behalf of Dormie Holdings Ltd applied for a number of temporary traffic regulation orders (TTRO) and a temporary traffic regulation notice (TTRN) (see OMA20) to be made under section 14 of the Road Traffic Regulation Act 1984 to close the sections of public footpath BA21/9 between points A, J, B, K, L on the Site Plan (see OMA04) and onwards to the east for approximately a further 20 metres and between points K and M on the Site Plan.
- 2.5 The Authority's records show that the first TTRO was made on 25 April 2012, came into effect on 1 May 2012 and was operative until 1 November 2012. A second TTRO was made on 23 October 2013, came into effect on 28 October 2013 and was operative until 23 April 2014. An emergency TTRN was issued on 29 September 2014, came into effect on that same date and remained operative until 20 October 2014. A third TTRO was made on 19 November 2014, came into effect on 24 November 2014 and was operative 24 May 2015 (see OMA20).
- 2.6 A fourth TTRO came into operation on 3 March 2023 and was subsequently extended by the Secretary of State until 2 September 2024; this fourth TTRO temporarily closed a 39 metre section of public footpath BA21/9 east of the mid-point between points B and K on the Site Plan and a six-metre section of the same public footpath southwest of point K on the Site Plan; the notice referred to in paragraph 1.3 above relates to this fourth TTRO.

- 2.7 The Objector has provided seven photographs of sections of the Order Route (see OMA21). The photographs shown Heras-type fencing surrounding the Charmydown Lodge work site and the extent of the Order Route which is visible is within the fencing. The photographs do not show fencing or any other obstruction across the Order Route but point A on the Site Plan (see OMA04) appears to be out of sight. W6 has provided three photographs of sections of the Order Route one taken on 31 October 2014 and two taken on 2 December 2014 (see OMA21). Each show Heras-type fencing surrounding the Charmydown Lodge worksite. A section of the Order Route is visible within the fencing but the photographs do not show fencing or any other obstruction across the Order Route. It is not possible to see point A on the Site Plan in any of these three photographs.
- 2.8 The Authority's PROW asset management system (CAMS) shows that during a site survey conducted on 27 July 2009 there was a metal field gate in a poor state of repair at point Z on the Site Plan (see OMA04); it is not possible to determine whether the gate was locked in 2009 and the photograph only shows the back of a sign attached to the gate meaning it is not possible to determine from the photograph what was written on the sign (see OMA21).

### **3. User and Witness Evidence**

- 3.1 The Authority received a total of 57 user evidence forms detailing use of the Order Route from 1947 until 2021 (see OMA16). All users except User 23 stated that they used the Order Route on foot, five users<sup>1</sup> stated that they used the Order Route on horseback and four users<sup>2</sup> stated that they used on the Order Route on bicycle. All of the users have stated that they have never been turned back, seen signs dissuading use of the Order Route, been granted permission to use the Order Route or been prevented from using the Order Route due to an obstruction. Two users<sup>3</sup> stated that they

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<sup>1</sup> Users 17, 21, 25 and 37

<sup>2</sup> Users 2, 23, 34 and 37

<sup>3</sup> Users 24 and 53

used the Order Route on a daily basis; 18 users<sup>4</sup> stated that they used the Order Route on a weekly basis; 30 users<sup>5</sup> stated that they used the Order Route on a monthly basis; one user<sup>6</sup> stated that they the Order Route two or three times per year and one user<sup>7</sup> stated that they used the Order Route once or twice over a 15 year period.

3.2 In addition to the user evidence forms, three witness statements were appended to the Application (see OMA17). The Authority was only able to carry out a short telephone interview with one of these individuals as the other two did not provide contact telephone numbers. Witness 1 (“W1”) was the Head of Estates for Wessex Water, who owned land in the area; W1 states that they saw members of the public using the Order Route between 1997 and 2004. Witness 2 (“W2”) lived adjacent to the Order Route from 1985 to 1994 and is also User 37; W2 states that he saw walkers using the Order Route during that period. Witness 3 (“W3”) worked in Wessex Water’s Estates Department from 1989 to 2004 and quite often saw members of the public using the Order Route.

3.3 Two witness statements were appended to the objection received during the pre-Order consultation (see OMA17). The Authority carried out short telephone interviews with these individuals to clarify any ambiguities in their evidence. Witness 4 is a director of Donovan Construction who were the company appointed to carry out construction work at Charmydown Lodge commencing in April 2012 (“W4”); W4 has made a witness statement and states that *“I recall on occasions members of the public approaching the works compound intending to walk along the driveway [the Order Route]. On each occasion they were informed that the route was private and not a public right of way.”* Witness 5 is a director of WBF (“W5”); W5 has made a witness statement and states that: *“On occasions when persons have attempted to use the Track [the Order Route], they have been turned back or informed that it is private”*. However, all 57 users stated that no one has ever

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<sup>4</sup> Users 4, 7, 12, 15, 22, 25, 30, 35, 37, 40, 44, 48, 49, 51, 52, 54, 55 and 56

<sup>5</sup> Users 2, 3, 5, 6, 8, 9, 13, 17, 18, 19, 20, 21, 23, 26, 27, 28, 29, 32, 33, 34, 36, 38, 39, 41, 42, 43, 46, 47, 50 and 57

<sup>6</sup> User 31

<sup>7</sup> User 45

attempted to turn them back or said that they had no right to use the Order Route.

- 3.4 W4 states that fencing was erected across the Order Route *“to restrict access for health and safety reasons, signs were displayed explaining there was no access.”* W5 states that *“for a prolonged period, the access track [the Order Route] was closed off and impassable whilst works were being undertaken as part of the restoration of Charmydown Lodge. This period I recollect was from April 2012 onwards and lasted for at least 18-24 months.”* Additionally, the Authority contacted Witness 6 who was previously an employee of WBF; the Authority was aware this individual was closely involved with the Charmydown Lodge and Barns building project (“W6”); W6 recalls the Order Route being fenced off when TTROs were in effect and the Charmydown Lodge construction works were taking place (see OMA17).
- 3.5 The user evidence submitted by the Applicant and the witness statements submitted by the Objector conflict with one another in respect of whether use of the Order Route was interrupted prior to the submission of the Application. Aside from User 2 who refers to builder’s netting across the full width of the Order Route *‘a few years ago’*, all 56 other users stated in their user evidence forms that there had never been any obstruction which interrupted their use of the Order Route prior to the submission of the Application.
- 3.6 As detailed in paragraph 2.5 above, TTROs and a TTRN were made in May 2012, October 2013, September 2014 and November 2014 to temporarily close sections of public footpath BA21/9 for over 18 months. Public footpath BA21/9 runs both north and south from point B on the Site Plan and is the only physically accessible onward route for members of the public who had travelled in a northeasterly direction along the Order Route. As stated in paragraph 3.4 above, W4, W5 and W6 state that during this period the Order Route was fenced off and inaccessible. However, the user evidence states that the Order Route was not fenced off.

- 3.7 As detailed in paragraphs 2.2 and 2.3 above, various OS maps published between 1873 and 1994 and the hand-drawn Location Plan dated April 1999 show a building across the full width of the Order Route in the vicinity of point Y on the Site Plan (see OMA04; this conflicts with user evidence which states that the Order Route has been used since 1947. Consequently, in addition to the short telephone interviews referenced in paragraph 1.4 above, the Authority later attempted to contact the 26 individuals who stated that they used the Order Route prior to 1999 and those who responded each stated that there was no building across the Order Route during their respective periods of use.
- 3.8 Eight individuals have stated that they used the Order Route on horse or bicycle. During the site visit carried out by the Authority on 1 June 2023, there was found to be a locked wooden field gate and an adjacent wooden stile with a public footpath waymarker on public footpath BA2/11 at point Z on the Site Plan (see OMA04); this is a short distance north of BA2/11's junction with BA2/12. Although the locked gate is on BA2/11, rather than the Order Route, it is relevant to the Order because the users who state they used the Order Route on horse or bicycle also state that they accessed the Order Route along BA2/11; pedestrians would have been able to use the wooden stile but a locked field gate at this location would present an issue for horse riders and cyclists.
- 3.9 The user and witness evidence relating to a gate at point Z on the Site Plan is contradictory. W4 states that: *'There has also always, since I have known the site, been a locked timber gate and 'Private Property' sign at the intersection of PROW BA2/12 and BA2/11'* and W5 makes a similar assertion. User 37, whose knowledge and use of the Order Route is limited to 1985 to 1994, states that there was a locked gate at point Z on the Site Plan (see OMA04) and that they had a key which allowed them to open the gate and continue onwards and along the Order Route. User 2 states that there was no gate at point Z on the Site Plan until approximately seven or eight years ago (2017-2018). User 24 does not recall there being a gate at point Z on the Site Plan when using the Order Route on bicycle between

1994 and 2010. User 48 states that they are sure there was not previously a gate at point Z on the Site Plan and that the locked gate was installed when building works first commenced on Charmydown Lodge or Barn (c.2012).

- 3.10 The user evidence does not provide consistent evidence of width: five users stated that the Order Route is between 0.9 and 1.8 metres; 11 users stated that the Order Route is between 2.4 and 2.9 metres; 14 users stated that the Order Route is approximately 3 metres; 19 users stated that the Order Route is between 3.5 metres and 4 metres; seven users stated that the Order Route is between 4.5 metres and 5 metres. However, the user evidence does consistently state that the Order Route has always been the same width and the Order Route was found to be 3 metres wide throughout when site visits were conducted by the Authority.
- 3.11 The user evidence is consistent that there were no gates or stiles on the Order Route during the Relevant Period and the gates detailed in paragraph 1.3 above were erected after the Application was duly made.

#### **4. Analysis**

- 4.1 Taken as whole, the historical documentary evidence does not provide evidence of the physical existence of the whole of the Order Route, or the existence of legal rights over the Order Route, prior to 2003. To the contrary, each edition six-inch to the mile, 25-inch to the mile and 1:10,560 Ordnance Survey Map published between 1884 and 1994 and the hand-drawn planning Location Plan dated April 1999 indicate the presence of a building across the Order Route at point Y on the Site Plan (see OMA04) which would have made the Order Route inaccessible during that period. However, the planning document dated November 2000 shows the physical existence of the eastern half of the Order Route and the planning documents submitted between 2008 and 2021 consistently show the physical existence of the Order Route during that period.

- 4.2 Section 31(7B) of the 1980 Act states that in the absence of the landowner taking any positive steps to call into question the right of the public to use a route then the ‘date of challenge’ in relation to section 31(1) of the 1980 Act will be the date which the DMMO application was duly made (i.e. 5 May 2021). If this were the case, then the relevant 20-year period of use for deemed dedication under section 31(1) of the 1980 Act would be from 5 May 2001 to 5 May 2021 (“the Relevant Period”).
- 4.3 23 individuals<sup>8</sup> have stated that they used the Order Route on foot throughout the Relevant Period and a further 33 individuals<sup>9</sup> used the Order Route on foot for at least part of the Relevant Period. This is a relatively high level of usage for a route located approximately 900m from the nearest recorded vehicular highway (Swainswick Lane) and the nearest settlement (Upper Swainswick) and would be sufficient to constitute actual enjoyment by the public on foot. However, there is sharply conflicting evidence about whether this use took place during the period when Charmydown Lodge was being renovated (c.2012-2015) and whether fencing was in place.
- 4.4 TTROs and a TTRN have been made by the Authority (see OMA20) to suspend the public rights over the route at the eastern terminus of the Order Route during the renovation of Charmydown Lodge; these were in effect for a cumulative total of over 18 months between 2012 and 2015 (which lies in the middle of the Relevant Period) and this would be a sufficiently long period of time to constitute an effective interruption of use.
- 4.5 Aside from User 2 who refers to netting being erected during an unspecified period of time, all users state that there were no barriers preventing use of the Order Route during the Relevant Period. This is stated in each of the user evidence forms and confirmed by all 25 users with whom the Authority was able to carry out short telephone interviews. In contrast, W4, W5 and W6 all state that the Order Route was fence off and inaccessible during the construction works at Charmydown Lodge.

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<sup>8</sup> Users 1, 6, 8, 9, 12, 16, 19-21, 24-26, 28, 31-34, 41, 43, 47, 51, 52 and 55

<sup>9</sup> Users 2-5, 7, 10, 11, 13-15, 17, 18, 22, 27, 29, 30, 35-40, 42, 44-46, 48-50, 53, 54, 56 and 57

- 4.6 The photographs provided by the Objector and W6 do show Heras-type fencing around the Charmydown Lodge. Point A on the Site Plan (see OMA04) is out of shot and the photographs themselves do not show whether the fencing extended across the Order Route at that point; however, the Order Route is clearly within the development site. It would have been illogical to have incurred the time and expense of erecting Heras-type fencing all the way around the development site if members of the public could still continue to pass and repass along the Order Route which ran through the development site. This supports the statements of W4, W5 and W6 who assert that members of the public could not have physically passed and repassed along the Order Route during this period because it was fenced off.
- 4.7 Even if members of the public were able to pass point A on the Site Plan (see OMA04) and continue along the Order Route, they would not have been able to continue beyond point B on the Site Plan for over 18 months because public footpath BA21/9, the only possible onward route was closed due to various TTROs and a TTRN. Again, it would have been illogical for the developer to have incurred the cost of applying for three TTROs and a TTRN if they did not prevent members of the public from using public footpath BA21/9. There is no suggestion that users were walking to point B on the Site Plan and turning around, so this again supports the statements of W4, W5 and W6 who assert that members of the public could not have physically passed and repassed along the Order Route during this period.
- 4.8 There is no suggestion that anyone has sought to mislead anyone at any point during the DMMO process but peoples' recollections of events from over a decade earlier will inevitably not be perfect. The Authority finds that the photographic evidence and TTRO/TTRN evidence supports the evidence of the witnesses who have stated that the Order Route was inaccessible during the renovation of Charmydown Lodge and that, on the balance of probabilities, the Order Route has not been actually enjoyed without interruption during the Relevant Period.

- 4.9 It is possible that use during an earlier period may have resulted in deemed dedication of a public footpath; for example, a relevant period between 25 April 1992 and the first TTRO coming into effect on 25 April 2012 could be considered. However, that would require the evidence provided by the Ordnance Survey maps and the hand-drawn Location Plan, which all show a building across the full width of the Order Route between 1884 and 1999, to be discounted; reliance would instead need to be placed on the evidence of the same individuals whose recollections from 2012-15 have already had to be discounted by the Authority.
- 4.10 Even putting aside the issues addressed in paragraphs 4.6 and 4.7, there is conflicting evidence regarding point Z on the Site Plan (see OMA04). Irrespective of whether there was a locked field gate and signage at this location, the recorded rights of way beyond point B on the Site Plan are public footpaths. The eight individuals who have stated they used the Order Route on horse or bicycle have not provided evidence of a common, onward route beyond point B on the Site Plan. In *Moser v Ambleside UDC* [1925],<sup>10</sup> Atkin LJ stated that '*you can have a highway leading to a place of popular resort*', rather than another highway. However, point B on the Site Plan does not constitute such a place of popular resort and the evidence does not therefore indicate that the Order Route possesses the fundamental characteristics of a public bridleway.

## **5. Conclusion**

- 5.1 The Authority respectfully asks the Inspector to determine the opposed Order.

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<sup>10</sup> *Moser v Ambleside Urban District Council* [1925] 23 LGR 533 540, [1925] 89 JP 118