

REPRESENTATIONS AND OBJECTIONS TO THE ORDER (INCLUDING SUPPORTERS), ALONG WITH A COVERING LIST OF THEIR NAMES

Outstanding Objections

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Formal Objection to DMMO Application

Alleged Public Right of Way between BA2/11 and BA2/12 at Charmydown Lodge, St Catherine

Submitted by: Context Planning Ltd on behalf of Dormie Holdings Ltd

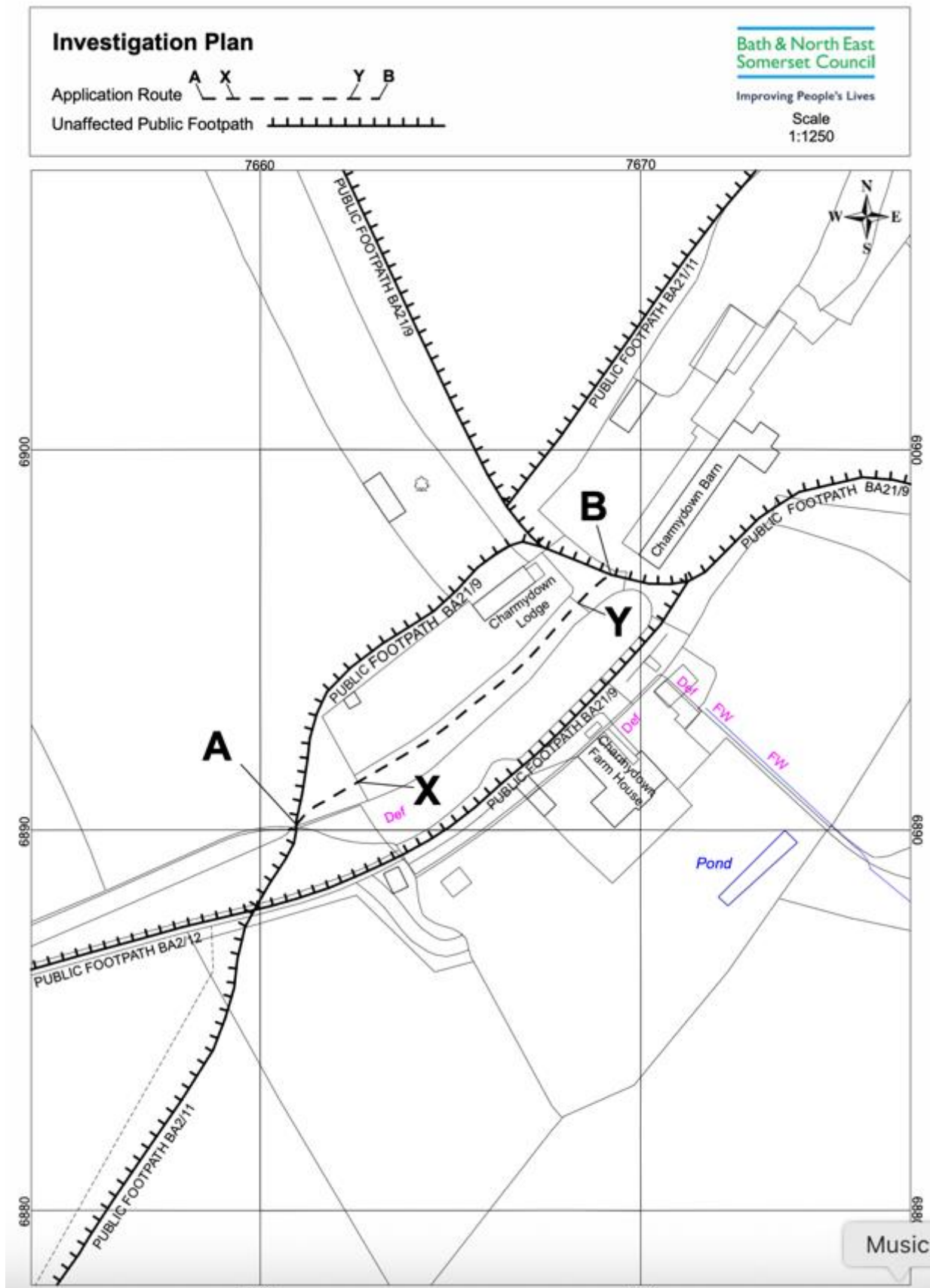
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Date: 14th September

To: Graham Stark, Public Rights of Way Team, Bath & North East Somerset Council

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Contents	Page
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1. Executive Summary	4
2. Background and Site Context	5
3. Legal Framework: Section 31 Highways Act 1980 and Case Law	8
4. Documentary Evidence and Historic Mapping	9
5. Physical Exclusion: Locked Gate and Signage	9
6. Existing PROW Network (BA21/9) and Patterns of Public Use	12
7. Rebuttal of the '20 Years' Use' Assertion	13
8. Determination Principles	14
9. Conclusion	15

Appendix A: Authorities & Quotations

Appendix B: Witness Statement (Mark Donovan, Donovan Construction)

Appendix C: Witness Statement (Mark Watson, Watson Bertram & Fell)

Appendix D: Glossary of Terms and Acronyms

1. Executive Summary

This submission, prepared on behalf of the landowner, Dormie Holdings Ltd, objects to the Definitive Map Modification Order (“DMMO”) application that seeks to record a public right of way over a private access track serving Charmydown Lodge and Charmydown Barn. The application’s core premise, that the public has used the track ‘as of right’ for a continuous period exceeding 20 years, is incorrect in fact and law.

The route, is and has always been, a private vehicular access track. The footpath network proximate to the site comprises, footpath BA21/9 which forms at the point at which BA2/12 and BA2/11 merge. It runs in two spurs to the north west and south east of Charmydown Lodge thereafter. Both routes are longstanding, well signposted and have been in regular use by the public during the relevant period to this application.

The DMMO application seeks to designate the ‘application route’ between points A and B (on the consultation plan map). On the approach to this point, a locked wooden gate at the BA2/12–BA2/11 junction, has existed controlling access during the 20 year period in question, it extends the full width of the access track. This gate has always been adorned with a sign clearly stating ‘Private Property’. The only way past the gate is over a stile which follows the PROW (BA21/9) and its route thereafter is clearly signposted.

The presence of the gate and signage are overt, effective acts evidencing the landowner’s lack of intention to dedicate any public right of way. Historic mapping consistently fails to depict a route along the application route; the Council’s own investigation report acknowledges that mapping does not indicate any route. On the balance of probabilities, no public right of way subsists, nor is one reasonably alleged to subsist, along the claimed track.

Where access has, notwithstanding the above, taken place during the 20 year period, a decisive interruption of access took place between 2012 and 2014 during restoration works at Charmydown Lodge. During these works the driveway was fenced off, signed as a working site, and used for construction access with no public access permitted or indeed possible.

During the works and at other points after, contractors actively challenged walkers and redirected them to the existing public rights of way (BA21/9 routes).

The evidential and legal tests for designation are not met. The DMMO should be refused; if not, the matter should be referred to the Planning Inspectorate for determination.

2. Background and Site Context

The claimed route lies within the parish of St Catherine. The application seeks to create a public footpath traversing a track that provides vehicular access to Charmydown Lodge and Charmydown Barn. The surrounding public rights of way network includes BA21/9, with spurs to the north west and south east of Charmydown Lodge. Those spurs are unobstructed, signposted and evidently in active use. The below (photos 1 & 2) (taken on 5 September 2025) clearly show the well-trodden path of the spur that runs north west of Charmydown Lodge.

The southern spur of the access is unobstructed and the section which leads through the curtilage of Charmydown Farm House can be clearly discerned with entrance points marked by a stone stile (photo 3) and a wooden stile (photo 4) (photos 3 & 4 taken on the 5th September 2025).



Photo 1 – Part of the route to the north west of Charmydown Lodge



Photo 2 – Part of the route to the north west of Charmydown Lodge



Photo 3 – Signed entrance to southern spur of BA21/9 (approaching from the east)



Photo 4 – Stile access to BA21/9 at Charmydown Farm House (approaching from the west)

The landowner, Dormie Holdings Ltd, has no knowledge of any person being granted permission to walk along the claimed route and knows of no occasion on which the public were permitted or regarded as having a right to pass along it. In circumstances when the route beyond the junction of BA2/12 and BA2/11 has been physically open and walkers have been seen using the application route they have been verbally challenged and directed to the footpaths.

Historic plans do not depict a public route along the corridor now claimed. The Council's own investigation report accepts that mapping does not indicate any route along the claimed corridor.

3. Legal Framework: Section 31 Highways Act 1980 and Case Law

Section 31(1) of the Highways Act 1980 creates a rebuttable presumption of dedication where a way has been actually enjoyed by the public 'as of right' and without interruption for a full period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it. Section 31(2) provides that the 20 year period is to be calculated backwards from the date on which the public's right to use the way was first brought into question, for example by an effective obstruction or explicit challenge. Sections 31(3) – (6) recognise overt acts and formal statements or declarations by which a landowner may negate dedication.

In *R (Godmanchester Town Council) v Secretary of State* [2007] UKHL 28, the House of Lords confirmed that a landowner's lack of intention to dedicate is an objective matter, to be established by conduct. Overt acts including locked gates, notices expressly denying a public right, and verbal challenges to users are sufficient to demonstrate the requisite lack of intention to dedicate. The courts have also recognised that even periodic closure such as locking a gate annually may, depending on context, suffice to prevent the accrual of public rights by presumed dedication.

Determination of a DMMO is a question of status based exclusively on evidence; considerations of convenience, safety or desirability are irrelevant to whether a right of way subsists. Where the evidential tests are not met on the balance of probabilities, an authority should refuse the application or, if an order is made and opposed, refer it to the Planning Inspectorate for determination.

4. Documentary Evidence and Historic Mapping

Historic Ordnance Survey mapping, estate plans and planning records provide no support for a through-route along the alignment now claimed. Across successive map series the corridor is either blank or depicted as a private drive/access serving the residential properties, consistent with the track's private function. The Council's investigation report accepts that mapping does not indicate any route along the claimed corridor.

While national guidance recognises the definitive map is not necessarily exhaustive, in this case the persistent omission of any public path across multiple sources, combined with physical exclusion on the ground is powerful corroborative evidence that no public right has ever been recognised or dedicated.

5. Physical Exclusion: Locked Gate and Signage

The following photos (all taken on 5 September 2025) document overt, long-standing physical exclusion at the entrance to the private drive. It is inconceivable that someone using the route could assume a right of access, along the extent of the access track, which is gated at its beginning, and clearly signed.



Photo 5: BA2/12–BA2/11 junction — Locked gate with chain/padlock; ‘Private Property/No Public Right of Way’ signage; full-width barrier preventing passage.



Photo 6: BA2/12-BA2/11 junction— Locked field gate with signage



Photo 7: BA2/12-BA2/11 junction — Locked gate; signage; consistent with systematic exclusion along the track.

Temporary Stopping Up During Construction Works (2012–2014)

In April 2012 substantial restoration works commenced at Charnydown Lodge to reintroduce a residential use within the building. As a precursor to these works, the driveway forming the claimed route was fenced off and sealed in order to prevent any public access during these works. The fencing was erected across the full width of the drive and supplemented with construction site safety signage explaining there was no access through and the site was a construction site.

For the duration of the restoration, the driveway itself was integral to the construction process. It was used extensively for:

- the daily parking of contractor and construction vehicles,
- the unloading and storage of building materials,
- manoeuvring of plant and equipment, and

-
- access for deliveries and waste removal.

The driveway was therefore not only unsafe but physically impassable to pedestrians. Contractors were under strict instructions to keep the area secure for health and safety reasons.

Crucially, personnel from Donovan Construction, the principal contractor, recall that during this period members of the public occasionally attempted to walk along the drive. On each such occasion, site staff informed them clearly that no public right of way existed along the drive, and that it was private property under construction. Walkers were directed instead to the lawful, unobstructed, and signposted public footpaths (BA21/9 spurs) which pass around the complex. These overt challenges are directly relevant under *R (Godmanchester Town Council) v Secretary of State* [2007] UKHL 28, as they constitute explicit acts demonstrating the landowner's lack of intention to dedicate.

The obstruction lasted for a period of approximately 18–24 months, covering the main phase of restoration and a period thereafter in connection with some works at Charmydown Barn. This prolonged and deliberate interruption in access is wholly inconsistent with the assertion of uninterrupted 20 years of public use.

6. Existing PROW Network (BA21/9) and Patterns of Public Use

Two spurs of recorded public footpath BA21/9 exist to the north and south of Charmydown Lodge. They are unobstructed, waymarked and in obvious current public use. This pattern confirms that the public had accessible routes through the countryside via the recorded network without accessing the private track.

7. Rebuttal of the ‘20 Years’ Use’ Assertion

The application’s assertion that the public has used the route ‘as of right’ and without interruption for more than 20 years is unsustainable:

- Any use by residents, invitees, delivery and service vehicles, or contractors is private and cannot find a public right.
- A locked gate with clear signage exclaiming ‘private property’, has existed throughout the period on the approach to the application route; these acts are overt and objectively demonstrate no intention to dedicate.
- Any alleged public use has not endured for 20 years. Its route was closed during construction works (2012–2014), during which period the claimed route was fenced off and signed as a working construction site. For a period of approximately 18-24 months, the driveway was physically impassable for would be users.
- Contractors, including Mark Donovan of Donovan Construction, recall multiple occasions when walkers attempted to enter. They were stopped, informed that the drive was not a public right of way, and redirected to the signposted BA21/9 routes.
- Legal effect: Even if passage had occurred at points during the period, the statutory test under section 31 Highways Act 1980 requires 20 years of continuous, as of right use. A closure of this length, accompanied by overt challenges, breaks continuity and prevents any presumption of dedication arising.
- Accordingly, the period 2001–2021 cannot be shown to comprise uninterrupted public use. At the very least, the closure between 2012 and 2014 is fatal to the applicant’s case.
- The applicant’s witness statements do not support the case for the DMMO. Mr Routh and Ms Davey’s knowledge of the site ceased in 2004 when Wessex Water sold the land. Mr Bean who resided at Charmydown Farm House moved out in 1994. None of the witness statements help the applicant in seeking to establish 20 continuous years of

‘as of right’ use. The 20 year period goes back from the date the DMMO was lodged (30th April 2021) i.e. it started on the 30th April 2001 and continuous as of right from this point forward must be demonstrated. Of course, this is impossible given the periods which the three witnesses have knowledge of the site.

- The user evidence forms submitted to the Council are in some cases illogical. Some alleged users state that they accessed the route on horseback. The wooden gate at the junction of BA2/11 and BA2/11, with only a timber stile crossing, has always prevented any access on horseback. This perhaps indicates confusion as to the route in question on the part of the relevant respondents. Likewise, some users argue they have used it for cycling but accessing/egressing the route on bike would not be possible given the impediment of the stile.

- There are a number of inconsistencies within the user evidence forms, particularly in respect of the width of the access which is purported to be anywhere between 2m - 5m in width. This again would indicate some of the respondents were perhaps referencing alternative routes or were unfamiliar with the route in question.

8. Determination Principles

A DMMO must be determined solely by reference to whether, on the balance of probabilities, a public right of way subsists or is reasonably alleged to subsist. Factors of convenience, desirability, or safety are not relevant to status. Where the evidential threshold is not met, the authority should refuse the application. If an order is made and is opposed, the matter must be referred to the Planning Inspectorate for determination by written representations, hearing or public inquiry. The objector is willing to provide a full Statement of Case, witness sworn statements and any further documents as required but fully expects the DMMO application to be refused by the Council.

9. Conclusion

Applying the legal tests to the facts, we note the following:

- The track's nature and use are private; it is a driveway/access to residential premises and a barn complex. There is no evidence of dedication or public acceptance.
- Public rights are provided and exercised along BA21/9 spurs; this confirms how the public accesses the area and contradicts any reliance on the private track.
- Overt, long-standing exclusion via a locked gate and signage rebuts any statutory presumption under section 31(1). The fact that where identified users have been verbalised challenged likewise supports the case to refuse. Under *Godmanchester*, these acts objectively demonstrate lack of intention to dedicate.
- The documentary record, particularly the consistent omission of any route on historic mapping, corroborates the absence of any historic recognition of a public way.
- The works of renovation to Charmydown Lodge between 2012-2014 required the full width of the track to be closed off to enable the construction works, parking and storage of materials and for site safety. This period of closure inevitably defeats any case for 20 years of 'as of right' passage existing.
- The applicant's witness statements do not cover the relevant 20 year period and do not therefore support the application. User evidence forms are inconsistent as regards basic description of the route. Access by horse or bike is not possible and indicates some confusion as regards the route in question.

In conclusion, on the balance of probabilities, no public right of way subsists or is reasonably alleged to subsist over the application route. The application should be refused. If an order is nonetheless made and opposed, it should be referred to the Planning Inspectorate.

Appendix A: Authorities & Quotations

Highways Act 1980, s31(1): *'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.'*

R (Godmanchester Town Council) v Secretary of State [2007] UKHL 28: The House of Lords held that intention is determined objectively; overt acts such as locked gates, signage and challenges to users may be sufficient to show a lack of intention to dedicate. The landowner 'must take steps to disabuse' the public of any belief that a right exists.

Definitive Map and documentary evidence: while omission from the definitive map alone is not conclusive of absence of public rights, consistent omission across historic mapping, together with physical exclusion on the ground and absence of user evidence 'as of right', is strong corroborative evidence that no public right exists along the claimed corridor.

Appendix D: Glossary of Terms and Acronyms

- ‘As of right’: Without force, without secrecy and without permission.
- DMMO: Definitive Map Modification Order.
- Definitive Map: The legal record of public rights of way.
- PROW: Public Right of Way.
- Section 31(6): Statutory process for landowners to deposit statements/maps confirming no intention to dedicate additional public rights.

Appendix B: Witness Statement, Mark Donovan of Donovan Construction

1. I am Mark Donovan the Director of Donovan Construction. My company was appointed to carry out restoration works at Charmydown Lodge commencing in April 2012. We also undertook the project of converting Charmydown Barn and associated buildings.
2. As part of the works to Charmydown Lodge, fencing was erected across the Charmydown Lodge private driveway to restrict access for health and safety reasons, signs were displayed explaining there was no access. There was no access along the 'application route' identified on the plan which accompanies the DMMO.
3. The driveway was used throughout the works for contractor parking, deliveries, storage of materials, and manoeuvring of construction vehicles. It was not possible and indeed it would not have been safe for pedestrians to pass along it.
4. The driveway remained closed and in use as a construction access for a period of at least 18–24 months.
5. I recall on occasions members of the public approaching the works compound intending to walk along the driveway. On each occasion they were informed that the route was private and not a public right of way. They were directed instead to the signposted public footpaths (BA21/9) which pass around the complex.
6. At no time during the works was public access along the driveway permitted or tolerated.
7. 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.

I believe that the facts stated in this witness statement are true.

Signed: Mark Donovan

Date: 15/09/25

Appendix C: Witness Statement (Mark Watson, Watson Bertram & Fell)

I, Mark Watson, of 6 King Street, Bath will say as follows:

1. I am familiar with the access track serving Charmydown Lodge and Charmydown Barn (the 'Track'). I have known the Track since approximately 2006, we have been appointed project architects since this point.
2. To my knowledge, the Track has always been used as private vehicular access only. I have never understood the Track to be a public right of way.
3. There has been a locked gate and 'Private Property' sign at the intersection of PROW BA2/12 and BA2/11.
4. For a prolonged period, the access track was closed off and impassible 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.
5. I have not seen members of the public using the Track 'as of right'. On occasions when persons have attempted to use the Track, they have been turned back or informed that it is private.
6. I make this statement from my own knowledge and belief, intending to assist the authority/Inspector in determining status.



Signed: Mark Watson

Date: 13/09/25

Graeme Stark

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