

SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC BRIDLEWAY – Greyfield, Clutton and High Littleton

(Ward Division: **Clutton and High Littleton**)

1. The Issue

- 1.1 An application has been received for a Definitive Map Modification Order (“DMMO”) to be made under section 53(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) to modify the Definitive Map and Statement of Public Rights of Way (“the DM&S”) by adding a public bridleway running from Clutton to High Littleton.

2. Recommendation

- 2.1 It is recommended that Bath and North East Somerset Council (“the Authority”) makes a DMMO to record the Investigation Route between points A and G on the plan contained at Appendix 1 (“the Decision Plan”), and shown by a broken black line, as a public bridleway.

3. Financial Implications

- 3.1 Financial implications are not a relevant consideration which may be taken into account under the provisions of the 1981 Act. The costs associated with making a DMMO and any subsequent public inquiry, public hearing or exchange of written representations would be met from the existing public rights of way budget.

4. Human Rights

- 4.1 The Human Rights Act 1998 (“the 1998 Act”) incorporates the rights and freedoms set out in the European Convention on Human Rights (“the Convention”) into UK law. So far as it is possible all legislation must be interpreted so as to be compatible with the Convention.
- 4.2 The 1981 Act does not permit personal considerations to be taken into account. A decision relating to a DMMO would be lawful without taking account of personal considerations, as provided by section 6(2) of the 1998 Act, as it would be impossible to interpret the legislation in such a way that it is compatible with section 3 of the Convention. Further details of Human Rights considerations can be found in the Planning Inspectorate’s Public Rights of Way Advice Note No. 19.

5. Legal Framework

- 5.1 The Authority, as Surveying Authority, is under a statutory duty, imposed by section 53(2) of the 1981 Act, to keep the DM&S under continuous review. Section 53(2)(b) states:

“As regards every definitive map and statement, the surveying authority shall...keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence...of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event”

- 5.2 The ‘events’ referred to above are set out in section 53(3) of the 1981 Act. The ‘event’ to which this Application relates is set out in section 53(3)(c)(i) of the 1981 Act which states that:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, 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”

- 5.3 The meaning of ‘reasonably alleged’ was considered in *Bagshaw and Norton* [1994]¹ where Owen J. stated that:

“Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances and I am certainly not seeking to declare as law any decisions of fact. However, if the evidence from witnesses as to uses is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist then, it would seem to me, to be reasonable to allege such right.”

- 5.4 Evidence of use by the public can be sufficient to raise a presumption of dedication under section 31 of the Highways Act 1980 (“the 1980 Act”) or at common law. Section 31(1) of the 1980 Act states that:

“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

- 5.5 For a way to be deemed to have been dedicated as a public right of way at common law it must have been used by the public for a period which is sufficient to constitute evidence of an intention by the landowner to dedicate the way as public. The facts, taken as whole,

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

must be such that the rightful inference to be drawn from them was that there was an intention to dedicate the way as public. Use must be without force, secrecy or permission (i.e. 'as of right') and each case turns on whether the facts indicate an intention to dedicate.

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

“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”

- 5.7 Anyone may apply to the Authority for a DMMO to modify the DM&S and such applications must be determined in accordance with the provisions of schedule 14 of the 1981 Act. If, after consideration of an application, the Authority decides not to make a DMMO then the Applicant may appeal to the Secretary of State within 28 days of the service of notice of that decision. The Secretary of State will then re-examine the evidence and direct the Authority accordingly.

6. Background and Application

- 6.1 On 20 August 2018, Rosemary Naish (“the Applicant”) applied to have a public bridleway added to the DM&S (“the Application”); 24 user evidence forms were appended to the Application. The application route’s eastern terminus is at a route which is recorded on the DM&S as public footpath CL6/40. Consequently, the Authority decided to also investigate whether there are additional unrecorded rights over CL6/40, which does terminate at a public road (Greyfield Road).
- 6.2 The route under investigation commences from a junction with Maynard Terrace in Clutton at grid reference ST 6321 5904 (point A on the Decision Plan) and proceeds in a generally east-southeasterly direction for approximately 14 metres to a gap adjacent to a locked field gate at grid reference ST 6322 5903 (point B on the Decision Plan). The route continues in a generally east-southeasterly direction for approximately 380 metres to a junction with public footpath CL6/4 at grid reference ST 6354 5883 (point C on the Decision Plan). The route continues in a generally east-southeasterly direction for approximately 245 metres to a gap adjacent to a locked vehicle barrier at grid reference ST 6376 5872 (point D on the Decision Plan). The route continues in a generally east-southeasterly direction for approximately 245 metres to a junction with public footpath CL6/40 at grid reference ST 6397 5859 (point E on the Decision Plan). The route turns in a generally northeasterly direction for approximately 83 metres to a junction with Greyfield Road in High

Littleton at grid reference ST 6404 5864 (point G on the Decision Plan). This route is hereafter referred to as “the Investigation Route.”

- 6.3 The Investigation Route is 4.9m between points A and B on the Decision Plan, 1.2m at point B on the Decision Plan, 4.3m between points B and D on the Decision Plan, 1.2m at point D on the Decision Plan, 6.3m between points D and F on the Decision Plan and varying between 5.4m and 12.7 metres as shown shaded grey between points F and G on the Decision Plan.

7. Consultations

- 7.1 In May 2024, the Authority consulted on the Application with the Applicant, the known affected landowner, local and national user groups and the ward members. Additionally, notices were posted on the Authority’s website and on site near points A and G on the Decision Plan.
- 7.2 High Littleton Parish Council responded to state that they “*support this modification as this route has been in use as a bridleway for many years*”. Clutton Parish Council responded to state that they had “*resolved to SUPPORT this modification order to amend the Definitive Map*.” The known affected landowner stated that they would not be making any representations.
- 7.3 A further 24 user evidence forms were submitted to the Authority, bringing to total to 48 user evidence forms.

8. Documentary Evidence

- 8.1 Extensive archival research was undertaken in the Somerset Heritage Centre (SHC) in Taunton and in the Authority’s own records.
- 8.2 The Investigation Route is not shown on Day and Masters’ Map from 1782 (SHC Ref.: D\B\wsm/38/6), Greenwood’s map from 1822 (SHC Ref.: A\AUS\60) or the Clutton and High Littleton Tithe Maps from 1839 and c.1840 (SHC Ref.: D/D/rt/M/31 and D/D/rt/M/191).
- 8.3 The section of the Investigation Route between points A and D on the Decision Plan is shown with a dashed line black line and annotated ‘F.P.’ on the 1884 six-inch to the mile Ordnance Survey map. The Investigation Route is shown on the 1904 25-inch to the mile, 1961 1:10,560 and the 1967 OS maps bounded on either side by solid black lines and unbound as either end from what is now the recorded highway network. This indicates that the section of the Investigation Route between points A and D on the Decision Plan physically existed in 1884 and that the entirety of the Investigation Route has physically existed since 1904. Planning documents submitted in support of an application to build a commercial garage in the area which is now Gores Park schematically show the eastern end of the Investigation Route on a map submitted as part of the planning application and annotated ‘*To Clutton*’;

the whole of the Investigation Route is shown schematically on a smaller-scale insert map. This indicates that the Investigation Route physically existed in 1955.

- 8.4 In Inland Revenue documents, created under the Finance (1909-10) Act 1910, the Investigation Route is shown on the underlying Ordnance Survey map and it is unbound as either end from what is now the recorded highway network. It is unclear whether the Investigation Route is shown uncoloured and excluded from any taxable hereditament.
- 8.5 Public footpath CL6/4 crosses the Investigation Route at point C on the Decision Plan and CL6/4 is recorded on the Parish Survey Map, Draft Map and Definitive Map; the Definitive Statement for CL6/4 states '*...it continues in an easterly direction until making an exit on the private road to Greyfield. From the other side of the road it continues past the disused Greyfield Colliery...*'. The section of the Investigation Route between points E and G on the Decision Plan is recorded as part of public footpath CL6/40 on the Parish Survey Map, Draft Map and Definitive Map; the Definitive Statement for CL6/40 states '*it starts at the north side of Greyfield wood and runs south through the wood to the junction of F.P.'s 5 and 36.*' This indicates that the section of the Investigation Route between points E and G on the Decision Plan was public footpath but that the remainder of the Investigation Route was regarded to be a private road.

9. Landowner and User Evidence

- 9.1 The owner of the section of the Investigation Route between points A and E on the Decision Plan completed a Landowner Evidence Form in October 2018. The Landowner stated that they are aware of pedestrian use of the section of the Investigation Route on their land but that they do not regard the route to be public. They state that they have not given permission, made a Landowner Deposit or erected notices. They also state that, although they have never told anyone the Investigation Route is not public, '*some years ago gates were erected in two places to prevent vehicular use by non-permitted people*'. This indicates that the Landowner does not regard the Investigation Route to be public but that they may not have communicated a lack of intention during that period to dedicate it.
- 9.2 Authority received a total of 48 user evidence forms, detailing use of the Investigation Route.
- 9.3 There are locked gates at points B and D on the Decision Plan and the Investigation Route passes through 1.2m wide gaps immediately adjacent to those gates. The landowner and four individuals² stated that the gates were erected to prevent use of the Investigation Route by motor vehicles; two individuals³ stated that the gates were erected to prevent access by travellers. Consequently, the erection of the gates is not evidence of a lack of intention to dedicate the Investigation Route for

² Users 12, 33, 43 and 48

³ Users 15 and 16

non-motorised users during the Relevant Period. 19 individuals⁴ stated that the locked gates were present throughout the Relevant Period and four individuals⁵ state that the locked gates were present for the majority of the Relevant Period. Consequently, at points B and D on the Decision Plan, only the adjacent gaps have been actually enjoyed throughout the Relevant Period.

- 9.4 All of the users have stated that they have never been turned back, seen signs dissuading use of the Investigation Route, been granted permission to use the Investigation Route or been prevented from using the Investigation Route due to an obstruction. Furthermore, the Landowner Evidence forms does not detail any action which would constitute the calling into question of the public's right to use the Investigation Route.
- 9.5 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' will be the date which the DMMO application was duly made (i.e. 20 August 2018). Therefore, the relevant 20 year period of use for deemed dedication under section 31(1) of the 1980 Act runs from 20 August 1998 to 20 August 2018 ("the Relevant Period").
- 9.6 39 individuals⁶ used the Investigation Route on foot throughout the Relevant Period and a further six individuals⁷ used the Investigation Route on foot for at least part of the Relevant Period. 24 individuals⁸ used the Investigation Route on bicycle or horseback throughout the Relevant Period and a further five individuals⁹ used the Investigation Route on bicycle or horseback for at least part of the Relevant Period.
- 9.7 Nine individuals¹⁰ state that they used the Investigation Route in a motor vehicle. However, section 66 of the Natural Environment and Rural Communities Act 2006 prevents the creation of a public right of way for mechanically propelled vehicles after 2 May 2006 and there is nothing to suggest that any of the exemptions in the 2006 Act apply to the claimed route. Further, use by mechanically propelled vehicles will not itself give rise to a lower public right of way.
- 9.8 17 individuals¹¹ stated that they used the Investigation Route on a daily basis, 18 individuals¹² stated that they used the Investigation Route on a weekly basis, 11 individuals¹³ stated that they used the Investigation Route on a monthly basis and two individuals¹⁴ state that they used the Investigation Route twice a year.

⁴ Users 2, 3, 4, 6, 7, 9, 10, 13, 13, 15, 16, 19, 22, 33, 34, 40, 45, 46 and 47

⁵ Users 5, 36, 37 and 38

⁶ Users 1-9, 11-13, 15-27, 30, 33-35, 37, 39-43, 45-48

⁷ Users 10, 28, 31-32, 36 and 38

⁸ Users 1-8, 13, 19, 22-24, 26-27, 30, 33, 35, 37, 39, 41-42 and 47-48

⁹ Users 14, 29, 31, 36 and 38

¹⁰ Users 5, 6, 22, 30, 37, 43, 46, 47 and 48

¹¹ Users 1, 6-7, 11-12, 15-16, 20-21, 28, 31-32, 36-39 and 42

¹² Users 2, 5, 8, 13-14, 19, 22-24, 29-30, 34-35, 41 and 45-48

¹³ Users 3, 4, 17-18, 25-27, 33, 40 and 43-44

¹⁴ Users 9-10

- 9.9 The user evidence forms provide little consistent evidence regarding the width of the Investigation Route, with stated widths varying from 1 foot to 15 metres. However, the user evidence forms do unanimously agree that the width of the Investigation Route has not changed over time. During a site inspection carried out by the Authority, the Investigation Route was 4.9m between points A and B on the Decision Plan, 1.2m at point B on the Decision Plan, 4.3m between points B and D on the Decision Plan, 1.2m at point D on the Decision Plan, 6.3m between points D and F on the Decision Plan and varying between 5.4m and 12.7 metres as shown shaded grey between points F and G on the Decision Plan.

10. Conclusion

- 10.1 The user evidence forms demonstrate as of right use of the Investigation Route by a significant number of members of the public on foot, bicycle and horse throughout the Relevant Period. During the Relevant Period the landowners did not demonstrate a lack of intention to dedicate.
- 10.2 On the balance of probabilities, the Investigation Route has acquired public bridleway rights through deemed dedication under section 31(1) of the 1980 and an DMMO would be made to modify the DM&S to record these rights.

AUTHORISATION

Under the authorisation granted by the Council on 21st July 2022, the Authority formally resolves to make a Definitive Map Modification Order to modify the Definitive Map and Statement to record a public bridleway between points A and G on the Decision Plan.



Dated: 15th August 2024

Craig Jackson
Team Manager – Highways Maintenance and Drainage

