

## **SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981**

### **APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH – Candy’s Bridge, Bathampton**

(Ward Division: **Bathavon North**)

#### **1. The Issue**

- 1.1 An application has been received for a Definitive Map Modification Order (“DMMO”) to be made under section 53(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) to modify the Definitive Map and Statement of Public Rights of Way (“the DM&S”) by adding a public footpath near Candy’s Bridge in Bathampton.

#### **2. Recommendation**

- 2.1 It is recommended that Bath and North East Somerset Council (“the Authority”) makes a DMMO to record the Application Route between points A and B on the plan contained at Appendix 2 (“the Decision Plan”), and shown by a broken black line, as a public footpath.

#### **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]<sup>1</sup> 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,

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<sup>1</sup> 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 21<sup>st</sup> January 2022, Bathampton Parish Council (“the Applicant”) applied to have a public footpath added to the DM&S (“the Application”); 31 user evidence forms were appended to the Application.
- 6.2 The route under investigation commences from a junction with public footpath BA1/6 immediately north of Candy’s Bridge at grid reference ST 7694 6619 (point A on the Decision Plan) and proceeds in a generally east-north-easterly direction for approximately 45 metres to a junction with public footpath BA1/5 at grid reference ST 7698 6622 (point B on the Decision Plan). This route is hereafter referred to as “the Application Route.”
- 6.3 During a site visit carried out by the Authority on 13<sup>th</sup> June 2025, the Application Route was found to be open and available for use by the public without any obstructions, notices or gates/stiles.

## **7. Consultations**

- 7.1 On 30<sup>th</sup> July 2025, the Authority consulted on the Application with the presumed landowner, the Applicant/parish council, local and national user groups and the ward members. Additionally, notices were posted on the Authority's website and on site at points A and B on the Decision Plan.
- 7.2 The Land Revenue documents produced under the Finance (1909-10) Act 1910 showed that at the time the land was owned by G. W. Railway Co. The land was therefore assumed to now be owned by Network Rail but Network Rail responded to the consultation stating that *"all the documents [they] have available suggest that the railway under any guise has not owned the land in question, this aside, there are no objections to the footpath being dedicated being points A and B, especially as the fencing on the railway boundary in up to suitable standards due to the palisade."*
- 7.3 The Ramblers Bath Group Footpath Officer responded stating *"I have no further evidence of [the Application Route's] use."* No other responses were received.

## **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 Application Route is not shown on Day and Masters' Map from 1782 (SHC Ref.: D\B\wsm/38/6), three different plans deposited for the proposed construction of the Avon and Somerset Canal from 1793 (SHC Ref.: DD/WG/5/3/2 and DD/HY/3/5/2), Greenwood's Map from 1822 (SHC Ref.: A\AUS\60), the Bathampton Tithe Map and Apportionment (SHC Ref.: D/D/rt/M/450 and D/D/rt/A/450), the Ordnance Survey Six-inch to the Mile maps published in 1886, 1904, 1933 and 1947 or the Land Revenue documents produced under the Finance (1909-10) Act 1910 (SHC Ref.: DD/IR/OS/14/2 and DD/IR/B/18/5).
- 8.3 Furthermore, the Application Route isn't recorded or referred to in the Parish Survey, Draft Map, Provisional Map or Definitive Map and Statement and no Landowner Deposit has been lodged under section 31(6) of the 1980 Act in respect of the land over which the Application Route runs.

## **9. User Evidence**

- 9.1 Authority received a total of 31 user evidence forms, detailing use of the Application Route. All of the users have stated that they have never been turned back, seen signs dissuading use of the Application Route, been granted permission to use the Application Route or been prevented from using the Application Route due to an obstruction.

Furthermore, no evidence has been discovered by the evidence which calls into question the right of the public to use the Application Route.

- 9.2 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' will be the date which the DMMO application was duly made (i.e. 21<sup>st</sup> January 2022). Therefore, the relevant 20-year period of use for deemed dedication under section 31(1) of the 1980 Act runs from 21<sup>st</sup> January 2002 to 21<sup>st</sup> January 2022 ("the Relevant Period").
- 9.3 The user evidence details use of the Application Route from 1950 until 2022. 15 individuals<sup>2</sup> used the Application Route on foot throughout the Relevant Period and a further 16 individuals<sup>3</sup> used the Application Route on foot for at least part of the Relevant Period.
- 9.4 Of those individuals who used the Application Route throughout the Relevant Period: one used the Application Route on a daily basis<sup>4</sup>; five used the Application Route on a weekly basis<sup>5</sup>; and seven used the Application Route on a monthly basis<sup>6</sup>.
- 9.5 Approximately 50% of users state that the Application Route was approximately 3 feet wide and the remaining users state a variety of widths ranging from 6 feet wide to 3 metres wide. During the sit visit conducted on 13<sup>th</sup> June 2025, the Application Route was found to be restricted on either side by a combination of mature trees, stone walls and railway fencing which appear to have been in situ throughout the Relevant Period. The available width between these features was 1.3 metres.
- 9.6 The user evidence is consistent that there were no gates or stiles on the Application Route during the Relevant Period and any public rights which are deemed to have been dedicated during the Relevant Period would therefore have been dedicated without any limitations.

## **10. Conclusion**

- 10.1 The user evidence forms demonstrate use of the Application Route without force, secrecy or permission by the public on foot 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 evidence shows that the Application Route is a public footpath and an DMMO would be made to modify the DM&S to record the Application Route as a public footpath.

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<sup>2</sup> Users 1, 3, 5, 8, 9, 11, 13-19, 29 and 31.

<sup>3</sup> Users 2, 4, 6, 7, 10, 12, 20-28 and 30.

<sup>4</sup> User 29

<sup>5</sup> Users 1, 3, 16, 17 and 31

<sup>6</sup> Users 8, 9, 11, 13, 14, 18 and 19

## **AUTHORISATION**

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

A handwritten signature in black ink, appearing to read 'Craig Jackson', is written over a faint rectangular stamp.

Dated: 15<sup>th</sup> September 2025

Craig Jackson  
Team Manager – Highways Maintenance and Drainage

## APPENDIX 1: DECISION SCHEDULE

### SCHEDULE

#### PART I

##### Modification of Definitive Map

###### Description of path or way to be added

A public footpath commencing from a junction with public footpath BA1/6 immediately north of Candy's Bridge at grid reference ST 7694 6619 (point A on the Order Map) and proceeding in a generally east-north-easterly direction for approximately 45 metres to a junction with public footpath BA1/5 at grid reference ST 7698 6622 (point B on the Order Map).

#### PART II

##### Modification of Definitive Statement

###### Variation of particulars of path or way

A new statement for BA1/44 shall be recorded as follows:



**Path Number:** BA1/44  
**Status:** Public footpath  
**Length:** 45 metres  
**Parish:** Bathampton  
**Width:** 1.3 metres  
**Limitations:** None

Description of Route				
From		General Direction	To	
County Road or Right of Way	Grid Reference		County Road or Right of Way	Grid Reference
BA1/6	ST 7694 6619	ENE	BA1/5	ST 7698 6622

##### **General Description:**

A public footpath commencing from a junction with public footpath BA1/6 immediately north of Candy's Bridge at grid reference ST 7694 6619 and proceeding in a generally east-north-easterly direction for approximately 45 metres to a junction with public footpath BA1/5 at grid reference ST 7698 6622.

# APPENDIX 2 DECISION PLAN

Application Route   
Unaffected public footpath 

**Bath & North East  
Somerset Council**

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