

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

### **APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH – Hantone Hill, 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 Hantone Hill 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 C 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 21st February 2022, Bathampton Parish Council (“the Applicant”) applied to have a public footpath added to the DM&S (“the Application”); 36 user evidence forms were appended to the Application.
- 6.2 The route under investigation commences from a junction with Hantone Hill at grid reference ST 7788 6569 (Point A on the Decision Plan) and proceeds in a generally east-south-easterly direction between houses for approximately 103 metres to grid reference ST 7797 6564 (Point B on the Decision Plan) and continues for 11 metres to a junction with public footpath BA1/25 at grid reference ST 7798 6564 (Point C on the Decision Plan). The route is hereafter referred to as “the Application Route”.
- 6.3 During a site survey 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.

## **7. Consultations**

- 7.1 On 11<sup>th</sup> March 2026, the Authority consulted on the Application with the known landowner, the Applicant/parish council, local user groups and the ward members. Additionally, notices were posted on the Authority's website and on site at points A and C on the Decision Plan.
- 7.2 The section of the Application Route between points A and B Decision Plan runs over land in unknown ownership. Planning documents indicate the land was owned in 1963 by C.H. Pearce & Sons who developed the surrounding land; however, C.H. Pearce & Sons no longer exist and C.H. Construction Limited, who appear to have been their successors, was dissolved in 2013.
- 7.3 No responses were received during the public consultation.

## **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), 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, 1903, 1933 and 1947, 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) or the Definitive Map records held by the Authority.
- 8.3 The section of the Application Route between points A and B on the Decision Plan is shown on the Site Layout Plan (dated March 1963) for two planning applications related to the then proposed Manor Estate which included what is now Hantone Hill. The Plan is annotated "4' 6" *Public footpath*" and the remainder of the Application Route is outside the planned area. The same section of the Application Route is shown running between two parallel solid lines on the 1:2500 OS map published in 1970.
- 8.4 The Authority does not possess documentation expressly adopting any section of the Application Route as highway maintainable at public expense. However, the section of the Application Route between points A and B on the Decision Plan is shown on the record of adopted highways from when Avon County Council took over responsibility as the highway authority from Somerset County Council in 1974 and on the record of adopted highways from when the Authority took over responsibility as the highway authority from Avon County Council in 1996. The same section of route is shown on the current List of Streets maintainable at public expense as Class 6 highway (public footpath).
- 8.5 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 The Authority received a total of 36 user evidence forms, detailing use of the Application Route; one form did not contain the user's details or signature and have therefore been excluded from the analysis below. 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 or any other reason. Furthermore, no evidence has been discovered by the evidence which calls into question the right of the public to use the Application Route or demonstrates a lack of intention to dedicate public rights.
- 9.2 The user evidence details use of the Application Route from 1965 until 2022. During the 1970s there were at least eight individuals<sup>2</sup> using the Application Route during each year of that decade, during the 1980s there were at least 11 individuals<sup>3</sup> using the Application Route during each year of that decade, during the 1990s there were at least 14 individuals<sup>4</sup> using the Application Route during each year of that decade, during the 2000s there were at least 21 individuals<sup>5</sup> using the Application Route during each year of that decade and during the 2010s there were at least 25 individuals<sup>6</sup> using the Application Route during each year of that decade.
- 9.3 Five individuals used the Application Route on a daily basis, nine individuals used the Application Route on a weekly basis, 13 individuals used the Application Route on a daily basis and five individuals used the Application Route less often.
- 9.4 24 individuals<sup>7</sup> state that there has been a public footpath sign location at point A on the Decision Plan and pointing along the Application Route. The sign can be seen in each Google Street View captures of the location taken in August 2009, August 2012, March 2023 and August 2024.
- 9.5 19 individuals<sup>8</sup> state that there has always been a gate at point B on the Decision Plan and seven further individuals<sup>9</sup> state that there was originally a stile at this location and it was replaced with a kissing gate. Users 6 and 7 state that there is a stile at this location but the totality of the evidence to the contrary suggest this is a misunderstanding of the terminology. An email from the Cotswold Voluntary Wardens to the Authority states that they repaired the kissing gate at point B on the Decision Plan on 28<sup>th</sup> March 2018.
- 9.6 The planning documents demonstrate that the owner of the section of the Application Route between points A and B on the Decision Plan

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<sup>2</sup> Users 8, 11-14, 17, 18 and 33

<sup>3</sup> Users 4, 8-14, 17, 18 and 33

<sup>4</sup> Users 4, 8-18, 24 and 33

<sup>5</sup> Users 1, 2, 4, 5, 7-13, 15-17, 22, 24, 26-28/29 and 33

<sup>6</sup> Users 1-5, 7-10, 12, 13, 15, 17, 19, 20, 22-26, 28, 29, 31, 32 and 34

<sup>7</sup> Users 1-3, 5, 8-14, 17, 18, 22, 26, 28 and 30-33

<sup>8</sup> Users 1-3, 12, 15, 16, 19, 20, 22, 24-28 and 30-34

<sup>9</sup> Users 5, 8-11, 13 and 17

intended to make that section a public footpath in 1963. Although the Authority does not have the documentation unequivocally proving the landowner followed through with express dedication at that time, the recording of that section on the highway records suggests it did nevertheless happen.

- 9.7 The user evidence demonstrates a significant level of usage over an extended period of time and no evidence has been discovered that suggests the landowners took any steps to prevent that usage. Likewise, the Application Route has been signposted as a public footpath and a kissing gate has allowed usage for a significant period of time without the landowner taking any steps to challenge either feature. The rightful inference to be drawn from these facts is that the landowners intended to dedicate the Application Route as a public footpath at common law.
- 9.8 The user evidence forms consistently state that the width of the Application Route has not altered over time and during a site survey the physically available width varied between 1.1 metres and 1.8 metres as shown shaded grey on the Decision Plan.
- 9.6 As stated in paragraph 9.5 above, the majority of users state that there has been a kissing gate located at point B on the Decision Plan throughout the use of the Application Route. Consequently, the right of the public to pass and repass on foot is subject to the limitation of the right of the landowner to erect and maintain a kissing gate at point B on the Decision Plan.

## **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 a DMMO should be made to modify the DM&S to record the Application Route as a public footpath.

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## **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.

*MP Johnson*

Dated: 15 April 2026

Mike Johnson  
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 Hantone Hill at grid reference

ST 7788 6569 (Point A on the Order Map) and proceeding in a generally east-south-easterly direction between houses for approximately 103 metres to grid reference

ST 7797 6564 (Point B on the Order Map) and continuing for 11 metres to a junction with public footpath BA1/25 at grid reference ST 7798 6564 (Point C on the Order Map).

#### PART II

##### Modification of Definitive Statement

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

A new statement for BA1/46 shall be recorded as follows:

**Path Number:** BA1/46

**Status:** Public footpath

**Length:** 114 metres

**Parish:** Bathampton

**Width:** Varying between 1.1 metres and 1.8 metres as shown shaded grey on the map forming part of the Bath and North East Somerset Council (Public Footpath BA1/46, Hantone Hill, Bathampton) Definitive Map Modification Order 2026

**Limitations:** The right of the landowner to erect and maintain a kissing gate at grid reference ST 7797 6564

Description of Route				
From		General Direction	To	
County Road or Right of Way	Grid Reference		County Road or Right of Way	Grid Reference
Hantone Hill	ST 7788 6569	ESE	BA1/25	ST 7798 6564

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

A public footpath commencing from a junction with Hantone Hill at grid reference

ST 7788 6569 and proceeding in a generally east-south-easterly direction between houses for approximately 103 metres to grid reference ST 7797 6564 and continuing for 11 metres to a junction with public footpath BA1/25 at grid reference ST 7798 6564.

# APPENDIX 2 DECISION PLAN

Application Route  
Unaffected public footpath



Bath & North East  
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