

SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH – Tynning, Radstock

(Ward Division: **Radstock**)

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 at Tynning, Radstock.

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]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, must be such that the rightful inference to be drawn from them was

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

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 29th February 2024, Dominic Tristram (“the Applicant”) applied to have a public footpath added to the DM&S (“the Application”); 12 user evidence forms and documentary evidence was appended to the Application.
- 6.2 The route under investigation commences from a junction with Morley Terrace at grid reference ST 6931 5525 (point A on the Decision Plan) and proceeds in a generally easterly direction past Tynning Inn public house for approximately 66 metres to a junction with public footpaths CL24/81 and CL24/82 and Stoneable Road at grid reference ST 6938 5526 (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 11th September 2025, the Application Route was found to be open and available for use by the public without any obstructions or notices. Staggered barriers were present at either end of the Application Route.

7. Consultations

- 7.1 On 16th October 2025, the Authority consulted on the Application with the landowners, the Applicant, Radstock Town Council, local user group representatives 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 Radstock Town Council wrote to state that their Planning and Local Development Committee held a meeting on 21st October 2015 to discuss the application and resolved to support the application, noting *"Historically local footpath known and used regularly by local residents."*

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 Radstock Tithe Map and Apportionment (SHC Ref.: D/D/rt/M/30 and D/D/rt/A/30) or a map of Radstock Manor from 1877 (SHC Ref.: DD/WG/MAP/14a). Furthermore, the SHC does not hold the Land Revenue documents produced under the Finance (1909-10) Act 1910 in respect of the land over which the Application Route runs.
- 8.3 The Application Route would follow the boundary of a parcel of land south of Tynning Inn on the 6 inch to the mile maps published in 1885, 1904, 1931 and 1949, the 25 Inch to the mile maps published in 1886, 1904 and 1931, the 1:10,560 maps published in 1951 and 1969 and the 1:2500 maps published in 1958 and 1976. The 1885-1904 maps show part of the Application Route segregated from the remainder of that parcel of land and all show the route continuing to the west-south-west of point A and the east-south-east of point B on the Decision Plan. This suggests that the Application Route has physically existed since at least 1885 but these maps do not provide evidence of the existence of public rights over the Application Route.
- 8.4 A planning application was submitted in 1966 for '*Alterations to Tynning Inn, Radstock*'. The section of the Application Route immediately south of the Tynning Inn is shown on both the '*Premises as existing*' and '*Proposed alternations*' plans and labelled '*Lane*'; the remainder of the Application Route is outside the mapped area of these two detailed plans. The whole of the Application Route is shown on the incorporated insert plans; the Application Route is shown open to Morley Terrace and, although there is a line across the south-western terminus the Application Route, a route is shown continuing onwards from point B on the Decision Plan with two parallel dashed lines. The planning application states that no existing highways are affected by the application.

- 8.5 A separate planning application was submitted in 1966 for an '*Illuminated sign for Tynning Inn, Radstock.*' The Application Route is outside the area shown in a photograph accompanying an application for new signage on the Tynning Inn but the Application Route is shown on the incorporated insert plan which states it is based on the Ordnance Survey 1:2500 Somerset Sheet No.XX/15. This indicates that the Application Route has physically existed since at least 1966.
- 8.6 The Application Route forms part of '*Morley Terrace*' (USRN 47903386) and '*Access road to Tynning Inn*' (USRN 47903425) which are recorded on the List of Streets, which the Authority is required to keep pursuant to section 36(6) of the 1980 Act, as highway maintainable at public expense. The extent of highway, as recorded on the List of Streets, is as shown shaded grey on the Decision Plan.
- 8.7 Highways Maintenance records are held on the Confirm database, which records entries from 2000 onwards. Confirm shows regular inspections and remedial works on Morley Terrace from 18th July 2001 to 7th May 2025 and on Access road to Tynning Inn from 28th November 2001 to 7th May 2025. This indicates that the Application Route has been highway maintainable at public expense since at least 18th July 2001.
- 8.8 Street lighting records show that the streetlight which is located mid-way along the Application Route was replaced by the Authority, in its capacity as the local highway authority, in 2009. The records do not show how long prior to the replacement being installed the Authority has been maintaining a streetlight at this location.
- 8.9 Issue 50 published in summer 2004 refers to a local resident sampling walnuts which had fallen from a tree at Tynning House (immediately north of point A on the Investigation Plan) and "*passing on this way to the Board School.*" The article does not specify during what period this use occurred. This indicates that the Application Route was physically available during an unspecified period of time.
- 8.10 Furthermore, the Application Route is not 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. The Authority has no record of the Application Route being diverted or stopped up

9. User Evidence

- 9.1 Authority received user evidence forms from a total of 12 individuals, 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. 29th February 2024). Therefore, the relevant 20-year period of use for deemed dedication under section 31(1) of the 1980 Act runs from 29th February 2004 to 29th February 2024 ("the Relevant Period").
- 9.3 The user evidence details use of the Application Route from 1958 until 2024. 10 individuals² used the Application Route on foot throughout the Relevant Period and a further two individuals³ used the Application Route on foot for at least part of the Relevant Period. Two users⁴ also used the Application Route on bicycle throughout the Relevant Period.
- 9.4 Of those individuals who used the Application Route throughout the Relevant Period, nine used the Application Route on a daily basis⁵ and two used the Application Route on a weekly basis⁶. Two users⁷ have not stated how often they used the Application Route.
- 9.5 Four users⁸ state that the Application Route is 6 foot wide and one user⁹ states that the Application Route starts at 1 metre wide and 'opens up' beyond that point. None of the other users state a specific width.
- 9.6 Nine users¹⁰ refer to the presence of bars or barriers on the Application Route and one user¹¹ refers to a stile/stiles; it is presumed that all these users are referring to the barriers which are currently in situ at either end of the Application Route.

10. Conclusion

- 10.1 The documentary evidence demonstrates that the Authority has maintained the Application Route as publicly maintainable highway since at least 18th July 2001.
- 10.2 The user evidence demonstrates that the Application Route has been actually enjoyed by the public on foot, as of right and without interruption throughout the Relevant Period. Furthermore, there is no evidence that the landowners demonstrated a lack of intention during that period to dedicate it. Consequently, an order should be made to record the Application Route as a public footpath on the DM&S.

² Users 1, 2, 4, 5, 6, 7, 8, 9, 10, 12 and 13

³ Users 3 and 11

⁴ Users 5 and 6

⁵ User 1-6, 9-11

⁶ Users 8 and 12

⁷ Users 7 and 9

⁸ Users 4, 7, 8 and 9

⁹ Users 11

¹⁰ Users 1, 2, 4, 6, 7, 8, 9, 10 and 11

¹¹ User 5

- 10.3 The majority of the user evidence does not provide evidence of width and the width stated in the remaining user evidence forms appears to oversimplify the situation on the ground. However, the List of Streets demonstrates that the highway rights exist over a width varying between 1.9 metres and 12.0 metres as shown shaded in grey on the Decision Plan and this should therefore be recorded as the width of the Application Route.
- 10.4 The user evidence indicates that the staggered barriers at either end of the Application Route have been present throughout the Relevant Period. Consequently, the right of the landowners to erect and maintain these staggered barriers should be recorded as a limitation upon the landowners' dedication of the Application Route.
- 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.

AUTHORISATION

Under the authorisation granted by the Authority 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 footpath between points A and B on the Decision Plan.



Dated: 14/11/2025

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 Morley Terrace at grid reference ST 6931 5525 (point A on the Order Map) and proceeding in a generally easterly direction past the Tynning Inn public house for approximately 66 metres to a junction with public footpaths CL24/81 and CL24/82 and Stoneable Road at grid reference ST 6938 5526 (point B on the Order Map).

PART II

Modification of Definitive Statement

Variation of particulars of path or way

A new statement for CL24/136 shall be recorded as follows:

Path Number: CL24/136

Status: Public footpath

Length: 66 metres

Parish: Radstock

Width: Varying between 1.9 metres and 12.0 metres between grid references ST 6931 5525 and ST 6938 5526 as shown shaded grey on the map forming part of the Bath and North East Somerset Council (Public Footpath CL24/136, Tynning, Radstock) Definitive Map Modification Order 2025.

Limitations: The right of the landowners to erect and maintain staggered barriers at grid references ST 6931 5525 and ST 6937 5526.

Description of Route				
From		General Direction	To	
County Road or Right of Way	Grid Reference		County Road or Right of Way	Grid Reference
Morley Terrace	ST 6931 5525	E	CL24/81, CL24/82 and Stoneable Road	ST 6938 5526

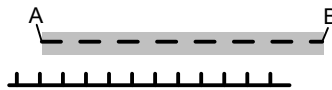
General Description:

The public footpath commences from a junction with Morley Terrace at grid reference ST 6931 5525 and proceeds in a generally easterly direction past the Tynning Inn public house for approximately 66 metres to a junction with public footpaths CL24/81 and CL24/82 and Stoneable Road at grid reference ST 6938 5526.

APPENDIX 2 Decision Plan

Application Route

Unaffected public footpath



1:1,000

