

SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH – Combe Grove and Claverton Down, Monkton Combe and Combe Down

(Ward Division: **Combe Down and Bathavon South**)

1. The Issue

- 1.1 Two applications has been received for Definitive Map Modification Orders (“DMMO”) to be made under section 53(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) to modify the Definitive Maps and Statements of Public Rights of Way (“the DM&S”) by adding a public footpath at Combe Grove and Claverton Down in Monkton Combe and Combe Down.

2. Recommendation

- 2.1 It is recommended that Bath and North East Somerset Council (“the Authority”) refuses the applications and does not make DMMOs in respect of the Application Routes between points A and G on the plan contained at Appendix 1 (“the Decision Plan”), and shown by a broken black line, on the DM&S.

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 DMMOs 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.

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 user 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 that there was an intention to dedicate the way as public. Use must be without force,

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

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 February 2023, Kate Bowman (“the Applicant”) applied to have a public footpath added to the City of Bath DM&S between points A and D on the Decision Plan. The Applicant had mistakenly assumed that point D on the Decision Plan was a junction with a public right of way already recorded on the DM&S; point D on the Decision Plan is not in itself a ‘*place of popular resort*’ as per *Wills J Eyre v New Forest Highway Board* [1892]. Consequently, on 8 September 2023, the Applicant submitted a further application to add a public footpath to the Bathavon DM&S between points A and D on the Decision Plan. Both applications will be considered together.
- 6.2 The route under investigation commences from a junction with Claverton Down Road at grid reference ST 7689 6276 (Point A on the Decision Plan) and proceeds in a generally south-south-easterly direction for approximately 130 metres to the Combe Down/Monkton Combe boundary at grid reference ST 7695 6265 (Point B on the Decision Plan) and turns in a generally south-easterly direction for approximately 200 metres to grid reference ST 7706 6253 (Point C on the Decision Plan) and turns in a generally east-north-easterly direction for approximately 260 metres to the Monkton Combe/Combe Down boundary at grid reference ST 7730 6261 (Point D on the Decision Plan). The route continues in a generally east-north-easterly direction for approximately 440 metres to grid reference ST 7771 6275 (Point E on the Decision Plan) and turns in a generally north-north-westerly direction for approximately 201 metres to a junction with public footpath BC72/1 at grid reference ST 7766 6294 (Point F on the Decision Plan) and continues in a generally north-north-westerly direction for approximately 18 metres to a junction with Claverton Down Road at grid

reference ST 7766 6296 (Point G on the Decision Plan). This route is hereafter referred to as “the Application Routes”.

- 6.3 During a site visit carried out by the Authority on 1 June 2023, locked field gates were found across the Application Route at points D and E on the Decision Plan.
- 6.4 The Application Route between points A and D on the Decision Plan runs over land owned by The Elmhurst Foundation. The Elmhurst Foundation acquired the land on 21 March 2017 and the company operates the Combe Grove Health and Wellbeing Centre. The Application Route between points D and G on the Decision Plan runs over land owned by Wessex Water Services Ltd. Wessex Water acquired the land on 6 October 2014 and the land is currently tenanted by a local farmer.

7. Consultations

- 7.1 On 15 January 2026, the Authority invited The Elmhurst Foundation and Wessex Water to complete Landowner Evidence Forms and s16 Notices to help the Authority to build a clearer picture of the claimed routes and to help the Authority ensure that everyone with an interest in the land could be consulted. The evidence submitted by the two landowners is considered in sections 8, 9 and 10 below.
- 7.2 In March and April 2026, the Authority consulted on the Application with the landowners, the Applicant, local user groups, the ward members, and the parish council. Additionally, notices were posted on the Authority’s website and on site at points A, D and G on the Decision Plan.
- 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, Bath Record Office (BRO) and in the Authority’s own records.
- 8.2 The Application Routes are 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 Monkton Combe Tithe Map and Apportionment from 1840 (SHC Ref.: D/D/rt/M/477 and D/D/rt/A/477) or the Ordnance Survey Six-inch to the Mile maps published in 1885, 1904, 1933, c.1947 and c.1952. On the plans produced by the Inland Revenue under the Finance (1909-10) Act 1910, the Application Routes runs through hereditaments 800 and 850 but they are not demarcated on the map and the valuation book shows that tax was levied against both hereditaments. A reduction of £25 was claimed against hereditament 850 for ‘*Right of Way or User*’ but a route corresponding with the alignment of public footpath BC72/1 is demarcated on the underlying O.S. map and annotated ‘*F.P.*’ so it is not possible to determine whether the reduction was claimed in respect of the Application Routes.

- 8.3 On 26 June 1968, the Minister for Transport made The Stopping up of Highways (City and County Borough of Bath) (No.2) Order 1968. The Order came into immediate force and had the effect of diverting an existing public footpath onto the route between points F and G on the Decision Plan. The Order Plan shows the unaffected remainder of the public footpath continuing in a generally southeasterly direction from point F on the Decision Plan and the Order does not affect any other section of the Application Routes.
- 8.4 On 12 August 2015, the Authority made the Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No.11 – Bathwick & Combe Down) 2015; the Order has a relevant date of 14 April 2015 and the non-severed parts of the Order were confirmed on 20 January 2016. The Order records a public footpath continuing in a generally southeasterly direction from point F on the Decision Plan as public footpath BC72/1; the Definitive Statement describes point F on the Decision Plan as being a junction with public footpath AQ96C.
- 8.5 On 9 September 2021, the Bath and North East Somerset Council (City of Bath) Legal Event Modification Order 2021 was made to record the section of the Application Routes between points F and G on the Decision Plan as a public footpath pursuant to the 1968 Order detailed in paragraph 8.3 above. The Legal Event Modification Order modifies the Definitive Map and Statement to record the section of the Application Routes between points F and G on the Decision Plan (which was formally known as AQ96C) as part of public footpath BC72/1; the kissing gate at point G on the Decision Plan is recorded as a limitation. The remainder of the Application Routes are not referred to in any other Definitive Map record.
- 8.6 The Application Routes are not visible in the aerial photography held at the Somerset Heritage Centre ((SHC Ref.: A/DXC/2/89/1); the photographs are undated but features buildings which do not appear to have been constructed when the O.S. map published in 1952 was surveyed. Google Earth contains a series of aerial photographs taken between 1985 and 2025. The resolution of the photograph taken in 1985 is too low to discern any details relating to the Application Routes. However, except where tree cover is present, the access road which runs between points A and D on the Decision Plan is visible in each capture from 1999 to 2025; additionally, a worn path can be seen between points E and G on the Decision Plan. The aerial photography relating to the section of the Application Routes between points D and E on the Decision Plan varies over time; there is no worn path in the 1999 capture, a quad bike track crosses the Application Routes in 2005 capture and the access point into the field appears to be approximately 40 metres south of point E on the Decision Plan in 2006 capture. A worn path is visible in 2009 but not visible in 2013, 2014 or 2017 and a worn path is then visible again from 2018 onwards.
- 8.7 On 7 August 1992, planning application 15153-3 was submitted for the ‘*construction of new entrance and driveway*’ (BRO Ref.: BC/8/6/8/C/811/15153-3); this new access road corresponds in part with the section of the Application Routes between points A and D on the Decision Plan. The application proposed that ‘*The current access to St Winifred’s [now known as the Dower House] will be closed and replaced with a new*

driveway from the proposed access'. Drawing number 21198/B/01 shows the pre-existing entrance located approximately 10 metres east of point A on the Decision Plan and the new entrance to be located at point A on the Decision Plan. Planning Permission was granted on 5 July 1994.

- 8.8 An email sent on 22 September 2016 from an Estates Manager at Wessex Water to the maintenance team at Combe Grove states *'I am happy for you to access the site through the locked gate from Combe Grove Manor access road, however as you know this gate is very overgrown with brambles and nettles' and '...I can arrange the gate to be unlocked.'* An email sent on 2 February 2017 from an Estates Manager at Wessex Water to the maintenance team at Combe Grove states *'If you need access, I can either get you in through the gate next to your access drive or alternatively you are welcome to come in through the main gate from Claverton Down Road.'* An email sent on 3 December 2018 from an Estates Manager at Wessex Water to the maintenance team at Combe Grove states *'Just to let you know the side gate into our field from your access road is unlocked. I will lock it again on my way home and open again tomorrow for you to continue with the clear up.'*
- 8.9 The Elmhurst Foundation submitted two photographs to the Authority which show a padlock securing the latch on the gate at point D on the Decision Plan. The embedded metadata shows that the photographs were taken on 18 July 2018 and 7 March 2019.
- 8.10 The Elmhurst Foundation submitted a statement under section 31(6) of the Highways Act 1980 on 1 June 2023 in respect of the land they own which includes the Application Route between points A and D on the Decision Plan. The Application Route is not admitted as an existing public right of way and a follow-up declaration has not yet been submitted. Wessex Water submitted a statement under section 31(6) of the Highways Act 1980 on 14 April 2023 in respect of the land they own which includes the Application Route between points D and G on the Decision Plan. The Application Route is not admitted as an existing public right of way and a declaration was submitted on 24 May 2023 which stated that during the intervening period there was no intention to dedicate new rights beyond those already admitted in April 2023.

9. User and Witness Evidence

- 9.1 The Application submitted on 21 February 2023 included user evidence forms detailing use of the Application Route between points D and G on the Decision Plan and the Application submitted on 8 September 2023 included user evidence forms detailing use of the Application Route between points A and D on the Decision Plan. Some individuals have provided evidence of user of both Application Routes (i.e. A to D *and* D to G on the Decision Plan) but other individuals have only provided evidence of use of one of the Application Routes (i.e. A to D *or* D to G on the Decision Plan).
- 9.2 In total 21 individuals submitted user evidence forms which detail use of the Application Routes from 1969 to 2026. The Authority carried out carry out short telephone interviews with each of these individuals to clarify any ambiguities in their evidence. Additional blank user evidence forms were

sent to all users who had not already submitted forms in respect of both Application Routes; however, the Authority does not have any evidence that users 2, 6 or 14 have used the Application Route between points A and D on the Decision Plan or that users 16, 17, 18 and 20 have used the Application Route between points D and G on the Decision Plan. All users started using both Application Routes at the same time except User 1 who only used the Application Route between points D and G on the Decision Plan from 2017 until 2019 because they thought beyond point D was private but they nevertheless started using between points A to D on the Decision Plan from 2019 onwards.

9.3 The user evidence states that the Application Routes were used by:

- One individual² between 1969 and 1994;
- two individuals³ between 1994 and 1996;
- four individuals⁴ between 1996 and 1997;
- eight individuals⁵ between 1997 and 2000;
- nine individuals⁶ between 2000 and 2001;
- 11 individuals⁷ between 2001 and 2015;
- 12 individuals⁸ between 2015 and 2016;
- 13 individuals⁹ between 2016 and 2021;
- 12 individuals¹⁰ between 2021 and 2022;
- seven individuals¹¹ between 2022 and 2023.

9.4 On their user evidence forms, eight individuals¹² have provided identically worded answers to question 17(e) which asks whether any gates on the Application Routes were ever locked; the typed formatting used by four of those individuals¹³ matches that used in the User Evidence Form completed by the Applicant but visually differs significantly from the handwritten answers throughout the rest of those users' forms. This strongly suggests that these answers have been provided by the Applicant, rather than the individual users, and this significantly undermines the integrity of the user evidence on this particular point.

9.5 When the Authority carried out the telephone interviews referenced in paragraph 9.2 above, the majority of users¹⁴ provided different information than they had previously provided in their user evidence forms regarding the gate at point D on the Decision Plan:

- Users 20 and 21 stated that the gate has been locked since at least 1994,
- User 15 stated that the gate has been locked since at least 1996,

² User 7

³ Users 7 and 21

⁴ Users 7, 15, 19 and 21

⁵ Users 7, 9, 10, 11, 12, 15, 19 and 21

⁶ Users 7, 9, 10, 11, 12, 13, 15, 19 and 21

⁷ Users 4, 8, 7, 9, 10, 11, 12, 13, 15, 19 and 21

⁸ Users 3, 4, 8, 7, 9, 10, 11, 12, 13, 15, 19 and 21

⁹ Users 1/9, 3, 4, 5, 8, 7, 10, 11, 12, 13, 15, 19 and 21

¹⁰ Users 1, 4, 5, 7, 8, 10, 11, 12, 13, 15, 19 and 21

¹¹ Users 1, 5, 10, 11, 12, 13, 15 and 21

¹² Users 3, 4, 7, 8, 9, 10, 13 and 14

¹³ Users 4, 8, 9 and 10

¹⁴ Users 1, 2, 4, 5, 6, 7, 9, 10, 11, 13, 14 and 15

- Users 7 and 13 stated that the gate has been locked since 2010,
- User 2 stated that the gate has been locked since at least 2015,
- User 6 stated that the gate has been locked since at least 2016,
- Users 1, 9 and 10 stated that the gate has been locked since at least 2017,
- Users 4, 11 and 18 stated that the gate has been locked since The Elmhurst Foundation purchased Combe Grove in 2017,
- User 14 stated that the gate has been locked since 2018,
- User 5 stated that the gate has been locked since 2019,
- Users 3 and 8 stated that the gate has been locked since 2021,
- User 19 stated that the gate has been locked since 2023,
- User 12 stated that the gate has been locked since 2022,
- User 17 stated that the gate has been locked since 2024,
- User 16 was not able to recall whether the gate had been locked.

Eight of individuals¹⁵ stated that the gate was periodically unlocked and relocked since they first became aware of the gate being locked. It should be noted that the evidence of ten of these individuals¹⁶ does not necessarily conflict with one another; these ten users have all stated that when they first encountered the gate it was already locked and all of this users evidence would be consistent with the gate being locked prior to 2017.

9.6 11 users refer to the gate at point E on the Decision Plan being locked when they completed their user evidence forms. Five users¹⁷ state the gate was locked at some point in 2022, three users state that the gate was locked recently or 'a few years ago' and two users¹⁸ do not state when the gate was locked.

9.7 All of the users have stated that they have never been turned back, seen signs dissuading use of the Application Routes or been granted permission to use the Application Routes. However, when the gate at point D on the Decision Plan was locked users state that they climbed over the gate. Such use would be with 'force' (vi) and therefore not as of right. Evidence of an individual's use of the Application Routes cannot be reasonably accepted without also accepting that they were climbing over a locked gate when this is also part of their evidence. Consequently, it is necessary to exclude the 'with force' use and this leaves the following usage of the Application Routes during different periods:

- one individual¹⁹ between 1969 and 1996;
- two individuals²⁰ between 1996 and 1997;
- six individuals²¹ between 1997 and 2000;
- seven individuals²² between 2000 and 2002;
- nine individuals²³ between 2002 and 2010;
- seven individuals²⁴ between 2010 and 2015;

¹⁵ Users 1, 2, 4, 6, 9, 10, 11 and 15

¹⁶ Users 1, 2, 6, 7, 9, 10, 13, 15, 20 and 21

¹⁷ Users 4, 5, 7, 8, 13 and 18

¹⁸ Users 2 and 20

¹⁹ User 7

²⁰ User 7 and 19

²¹ User 7, 9, 10, 11, 12 and 19

²² Users 7, 9, 10, 11, 12, 13 and 19

²³ Users 4, 7, 8, 9, 10, 11, 12, 13 and 19

- eight individuals²⁵ between 2015 and 2016;
 - nine individuals²⁶ between 2016 and 2017;
 - five individuals²⁷ between 2017 and 2019;
 - four individuals²⁸ between 2017 and 2021;
 - two individuals²⁹ between 2021 and 2022;
 - one individual³⁰ between 2022 and 2023;
- 9.8 User 11 confirmed during their second telephone interview that i) there was only ever one entrance onto Claverton Down Road in the vicinity of the Dower House, ii) there was a wall along the remainder of this section of the boundary, and iii) the entrance was only moved to point A on the Decision Plan in 1994. Although User 7 states in their User Evidence Form that they have used the Application Routes from 1969 until 2022, they stated during their second telephone interview that they could not remember any details prior to 1994 and that they could not therefore comment on the evidential implications of the planning application.
- 9.8 A number of Landowner Evidence Forms have been received from Wessex Water, The Elmhurst Foundation (who operate Combe Grove), Combe Grove employees and a resident who lives adjacent to the Application Routes. A Landowner Evidence Form submitted on behalf of The Elmhurst Foundation states that The Elmhurst Foundation acquired the land on 21 March 2017 and they do not regard the Application Route on their land to be public. It is stated that previous employees challenged walkers using the Application Route. It is further stated that the gate at point D on the Decision Plan was already locked when The Elmhurst Foundation acquired the land in 2017 and that it remained locked thereafter.
- 9.10 A Landowner Evidence Form submitted by an employee at Combe Grove (“CG1”) states that they do not regard the Application Route on The Elmhurst Foundation’s land to be public. It is stated that the gate at point D on the Decision Plan was already locked when they first took up employment at Combe Grove on 8 March 2005 and that Combe Grove had a key for the lock throughout that period.
- 9.11 A Landowner Evidence Form submitted by a second employee at Combe Grove (“CG2”) states that they do not regard the Application Route on The Elmhurst Foundation’s land to be public. It is stated that the gate at point D on the Decision Plan was already locked when they first took up employment at Combe Grove in September 2006 and that guests arriving (presumably by helicopter) from the field immediately east of point D on the Decision Plan had to ‘*jump over the gate*’ but Combe Grove was able to unlock the gate upon request.

²⁴ Users 4, 8, 9, 10, 11, 12, and 19

²⁵ Users 3, 4, 8, 9, 10, 11, 12, and 19

²⁶ Users 3, 4, 5, 8, 9, 10, 11, 12, and 19

²⁷ Users 3, 5, 8, 12, and 19

²⁸ Users 3, 8, 12, and 19

²⁹ Users 12, and 19

³⁰ User 12

- 9.12 A Landowner Evidence Form submitted by a third employee at Combe Grove ("CG3") states that they do not regard the Application Route on The Elmhurst Foundation's land to be public. It is stated that the gate at point D on the Decision Plan was already locked since they first took up employment at Combe Grove 2001.
- 9.13 A Landowner Evidence Form submitted on behalf of Wessex Water states that Wessex Water acquired the land on 6 October 2014 and they do not regard the Application Route on their land to be public. It is stated that employees challenged members of the public using the Application Route on six occasions between August 2016 and August 2025 and erected signage stating that the land was private but the signs were always removed within 24 hours. It is further stated that the gate at point D on the Decision Plan was already locked when Wessex Water acquired the land in 2014 and that it remained locked thereafter except for short periods to allow access for maintenance. Additionally, it is stated that the gate at point E on the Decision Plan was locked in April 2018.
- 9.14 A Landowner Evidence Form submitted by the owner of the Dower House (which is located adjacent to point A on the Decision Plan but does not include any land over which the Application Routes run) states they acquired the property in December 1994 and the gate at point D on the Decision Plan has always been locked. The owner states that the driveway works detailed in paragraph 8.7 above were completed shortly before they purchased the property and that previous to this "*There is no way that people were using A-B [on the Decision Plan]*".

10. Analysis

- 10.1 The Authority is required to weigh all available evidence in the balance and apply to it to the relevant legal principles.
- 10.2 The 1968 Order detailed in paragraph 8.3 above and the 2021 LEMO detailed in paragraph 8.5 above demonstrate that the section of the Application Routes between points F and G on the Decision Plan is a public footpath. There is no documentary or user evidence to suggest that these rights have been stopped up or that higher rights have been dedicated. Consequently, the correct legal rights are already recorded in respect of the section of the Application Routes between points F and G on the Decision Plan and there is no need to modify the DM&S in respect of this section.
- 10.3 There is no documentary evidence to either support or refute the claimed rights in respect of the remainder of the Application Routes until the 1992 planning application which is detailed in paragraph 8.7 above. The planning documents indicate that the driveway which corresponds with the section of the Application Route between points A and D on the Decision Plan was constructed after planning permission was granted on 5 July 1994; the owner of the Dower House states that the new driveway was constructed shortly before they acquired the property in December 1994 and Users 11 and 12 has confirmed that there was only ever one entrance onto Claverton Down Road and that this was moved to point D on the Decision Plan in 1994. As stated in paragraph 9.8 above, User 7 has stated they cannot

remember any details prior to 1994 and this provides only very weak evidence in respect of use during that period.

- 10.4 User 7's claimed use of the Application Routes prior to 1994 cannot therefore be reasonably accepted in light of their own concession that they do not recall any details from this period of their usage and the evidence provided by the planning documents, the owner of the Dower House and Users 11 and 12 who all state that there was a wall across point A on the Decision Plan until the latter half of 1994.
- 10.5 The Landowner Deposit submitted by Wessex Water on 14 April 2023 demonstrates a clear lack of intention to dedicate from that date but the evidence of an earlier challenge to public use is considerably more contradictory. The Wessex Water and Elmhurst Foundation state that the gate at point D on the Decision Plan was locked before they acquired their respective lands in 2014 and 2017 and three Combe Grove employees state that the gate was locked prior to the start of their employment in 2001, 2005 and 2006 respectively. Additionally, the evidence of ten users³¹ would be consistent with the gate being locked since at least 2016. In contrast, 10 users³² state that the gate was locked after 2016.
- 10.6 However, the 22 September 2016 email detailed in paragraph 8.8 above provides evidence that the gate at point D on the Decision Plan was locked at that time; furthermore, the email sent on 3 December 2018 and the photographs taken on 18 July 2018 and 7 March 2019 confirm that the gate was locked at that time too. In light of the strong, contemporaneous evidence provided by the emails and photos and the supporting witness/user evidence, it cannot be reasonably accepted that the gate was locked after 2016 as alleged by the 10 users³³. Consequently, use of the Application Routes after 22 September 2016 could not have been as of right.
- 10.7 The email sent on 22 September 2016 confirms that the gate at point D on the Decision Plan was locked prior to this date. Even if the gate was only locked for the first time on the previous day, the relevant 20-year period of use for deemed dedication under section 31(1) of the 1980 Act would run from 21 September 1996 to 21 September 2016 ("the Relevant Period"). Section 31(1) of the 1980 Act requires use "*by the public...for a full period of 20 years...*" During the first two years of the Relevant Period only one individual³⁴ used the Application Routes and during the following year only two individuals³⁵ used the Application Routes. This is insufficient to demonstrate use by the public, particularly along a route located in, and on the outskirts of, a city with a population of c.94,000 residents. Consequently, it has not been demonstrated that the section of the Application Route between points A and F on the Decision Plan has acquired public rights through deemed dedication under section 31(1) of the 1980 Act.

³¹ Users 1, 2, 6, 7, 9, 10, 13, 15, 20 and 21

³² Users 3, 4, 5, 8, 11, 12, 14, 17, 18 and 19

³³ Users 3, 4, 5, 8, 11, 12, 14, 17, 18 and 19

³⁴ User 7

³⁵ User 7 and 19

- 10.8 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. Even if the evidence from Wessex Water, The Elmhurst Foundation, the three Combe Grove employees and multiple users that the gate was locked prior to 2017 can reasonably be rejected, there is still insufficient evidence to reasonably allege dedication at common law. Between the entrance works being completed in the latter half of 1994 and the email sent to 22 September 2016 there was no more than nine individuals³⁶ using the Application Routes in any one year and during the first four years of this period there was no more than two individuals using the Application Routes in any one of those years. Three of these individuals³⁷ used the Application Routes on a daily basis, three used the Application Routes on a weekly basis³⁸ and three individuals³⁹ used the Application Routes on a monthly basis. This is a low level of usage for a route located in, and on the outskirts of, a city. Furthermore, the aerial photography taken mid-way through this period in 2005 shows the landowner had made a small quad-bike track which twice crosses the Application Routes which suggests their intention was not to dedicate a new public footpath.
- 10.9 Even if the evidence that signs were erected to deter use, members of the public were turned back and the gate at point D on the Decision Plan was locked can be reasonably rejected, the rightful inference to be drawn from the evidence as a whole is that the landowners did not have the requisite intention to dedicate the way as public at common law.

11. Conclusion

- 11.1 The evidence demonstrates that the correct legal rights are already recorded in respect of the section of the Application Routes between points F and G on the Decision Plan and therefore no DMMO is necessary in respect of this section.
- 11.2 The evidence does not demonstrate a reasonable allegation that the remainder of the Application Routes between points A and F on the Decision Plan has been dedicated as a public right of way and a DMMO should therefore not be made to modify the DM&S in respect of this section.

³⁶ Users 4, 7, 8, 9, 10, 11, 12, 13 and 19

³⁷ Users 11, 12 and 13

³⁸ Users 4, 7 and 8

³⁹ Users 9, 10 and 19

AUTHORISATION

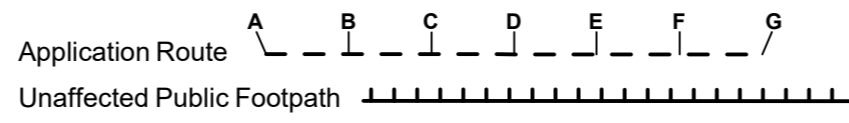
Under the authorisation granted by the Council on 21 July 2022, the Authority formally refuses to make Definitive Map Modification Orders to modify the Definitive Maps and Statements in respect of the Application Routes between points A and G on the Decision Plan.

MP Johnson

Dated: 27/04/2026

Mike Johnson
Team Manager – Highways Maintenance and Drainage

APPENDIX 1 DECISION PLAN



**Bath & North East
Somerset Council**

Improving People's Lives

