
Bath & North East Somerset Council

DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

CHARMYDOWN, ST CATHERINE

Date: 01/07/2025

INVESTIGATION REPORT

AUTHOR: GRAEME STARK

DATE: 01/07/2025

An application has been made under section 53(5) of the Wildlife and Countryside Act 1981 for an order to be made to amend the Definitive Map and Statement of Public Rights of Way by adding a public footpath.

This report contains a précis of the evidence which Bath and North East Somerset Council (“the Authority”) is aware following a preliminary investigation of records held by the Authority and the Somerset Heritage Centre and submitted by the applicant. When the decision is taken as to whether an Order should be made, and if so the status of the route (i.e. footpath, bridleway, restricted byway or byway open to all traffic), it will be based on the Authority’s interpretation of this evidence and any other relevant evidence produced to the Authority before the date of the decision. This Investigation Report is a factual account of the application and its processing up to this point, and the evidence provided and/or discovered which is relevant to the existence and status of the route.

The plan attached at page 4 shows the location of the route under investigation which is in the parish of St Catherine.

An order will be made if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”
- The status of a recorded right of way needs to be changed
- There is no right of way over land as recorded on the Definitive Map and Statement
- Details of the Definitive Map and Statement need to be changed.

When considering evidence, if it is shown that a highway exists, then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused; this is until a legal order stopping up or diverting the rights has been made.

Section 53 of the Wildlife and Countryside Act 1981 does not allow factors such as suitability, the security of properties or the desirability of a route to be taken into consideration.

1. APPLICATION DETAILS

An application was made by Donald MacIntyre on 5th May 2021, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add a public footpath to the Definitive Map and Statement.

2. THE ROUTE

The route under investigation commences from a junction with public footpath BA21/9 at grid reference ST 7660 6890 (Point A on the Investigation Plan at page 4 below) (fig. 1 below) and proceeding in a generally north-easterly direction along a track for approximately 105 metres to a junction with public footpath BA21/9 at grid reference ST 7669 6896 (Point B on the Investigation Plan) (fig. 2 below). This route is hereafter referred to as “the Application Route.”

During a site carried out by the Authority on 1st June 2023, locked field gates were found across the Application Route at points X and Y on the Investigation Plan. The gate at point X had a sign attached reading ‘*Private Property*’ and the gate at point Y had one sign attached reading ‘*Private Property*’ and another sign reading ‘*No Public Right of Way*’. Notices were also present in the vicinity of the Application Route relating to i) a planning application and ii) a temporary traffic regulation order; however, neither of these matters relate to the Application Route.





Fig. 1: From Point A looking northeast along the Application Route



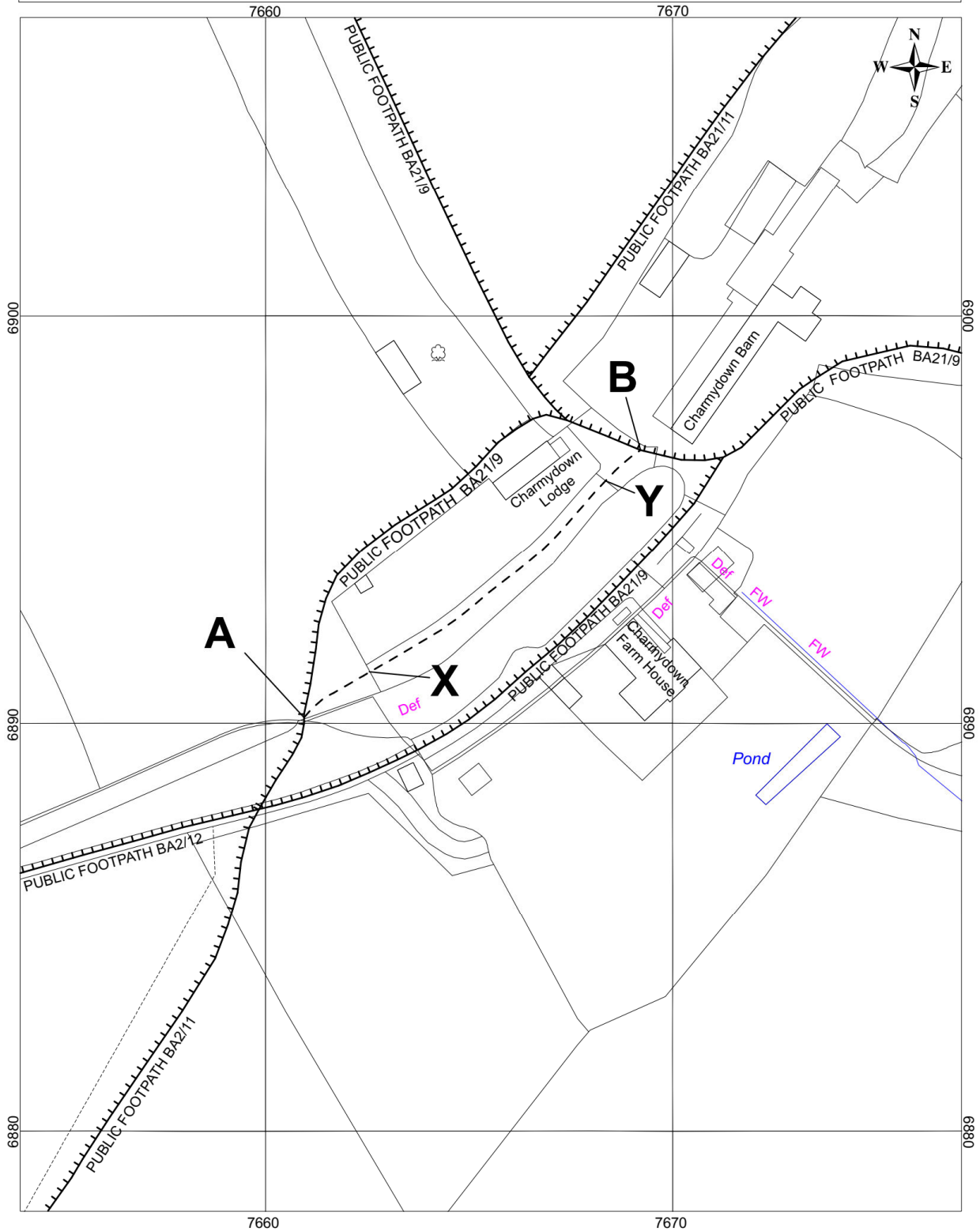
Fig. 2: From Point B looking southwest along the Application Route

Investigation Plan

Application Route 
 Unaffected Public Footpath 

Bath & North East
Somerset Council

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3. DOCUMENTARY EVIDENCE

Doc No.	DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE	DOC. REF. (& LOCATION)
1.	Day and Masters' Map	1782	County Map made from an original survey to be sold to the travelling public, which could be indicative of routes shown probably being public. Footnote states that the map was published according to an Act of Parliament. The Application Route is not shown on Day and Masters' map.	D\B\wsm/38/6 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
2.	Greenwood's map	1822	County Map made from an original survey carried out in 1820 and 1821 to be sold to the travelling public, which could be indicative of routes shown probably being public. Greenwood's Map shows a route in the vicinity of the Application Route but due to the small-scale mapping it is not possible to determine whether this is the Application Route.	A\AUS\60 (SHC)
	Investigating Officer's comments		This provides only indeterminate evidence relating to the Application Route.	
3.	Tithe Map and Tithe Award or Apportionment	1840	The <u>Tithe Map</u> is a detailed large scale map of the parish. It was produced to locate titheable land described in the award, not rights of way and their status. The <u>Tithe Award</u> is a legal document (produced under the Tithe Commutation Act of 1836) to show the value of titheable lands in a parish. The Application Route runs through enclosures 61 and 62 on the St Catherine Tithe Map but is not demarcated on the Tithe Map. Tithe was paid on both enclosures.	D/P/st.c/3/2/2 D/P/baton/3/2/16 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
4.	Ordnance Survey maps	1884-1994	The Ordnance Survey has produced a series of topographic maps at different scales notably the One Inch, Six Inch and 1:2500. The large scale 1:2500 plans from the 1870's onwards provide the good evidence of position of routes and the existence of any structures, and also good evidence of width. They generally do not provide evidence of status. The Application Route is not shown on the six-inch to the mile maps published in 1884, 1888, 1903, 1924 and 1857, the 25 inch to the mile maps published in 1886, 1903, and 1934, the 1:10,560 maps published in 1961, 1962, 1981 and 1994 and the County Series map	https://maps.nls.uk/

			published in 1873. Furthermore, each of these maps show a building across the full width of the Application Route in the vicinity of point Y on the Investigation Plan. The 1972 25k Explorer Map shows the outline of a building at the same location but without the shading used to denote other nearby buildings.	
	Investigating Officer's comments		This indicates that the Application Route did not physically exist between 1873 and 1994.	
5.	Inland Revenue documents	1910-1914	<p>Plans, valuation books, and field books created under the Finance (1909-10) Act 1910. Deductions in value provide good evidence of public rights if position can be accurately located. Annotations on field maps and colouring of routes may provide supporting evidence of status. However, if no reduction was claimed this does not necessarily mean that no rights of way exist.</p> <p>The Application Route runs through hereditament 877. No reductions are recorded as having been claimed in respect of this hereditament in the valuation book.</p>	DD/IR/8/10 DD/IR/B/21/1 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
6.	Definitive Map records	1949-1973	<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map. To this end, each Parish carried out a <u>Parish Survey</u> and <u>Draft and Provisional Maps</u> were subsequently published before publication of <u>Definitive Map and Statement</u>.</p> <p>The Application Route is not referred to in any of the Definitive Map records.</p>	(BANES)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
7.	Aerial Photography	1975-2020	<p>Aerial photography shows the physical existence of landscape and manmade features but it should be noted that this is distinct from evidence of status.</p> <p>Majority of the Application Route is visible in aerial photography from 2017 and smaller sections are visible in aerial photography from 2006 and 2020; tree cover obscures the other sections in the aerial photography from those three years and the whole of the Application Route in aerial photography from 1975, 1991, 1999, 2005 and 2009. The area in the vicinity of point Y on the Investigation Plan is obscured in the aerial photography taken between 1975 and 2009; this area is visible in the aerial photography taken between 2017 and 2020 and no building is visible across the Application Route at this location.</p>	(BANES)
	Investigating Officer's comments		This indicates that at least parts of the Application Route physically existed in 2009, 2017 and 2020.	

8.	Planning Applications	1999-2020	<p>Planning applications are accompanied by associated documents which support and clarify the proposals. They are a good indication of what physically existed and what was proposed for a site.</p> <p>The planning documents relating to application 99/02627/LBA includes a hand drawn Location Plan dated April 1999 and an undated Ordnance Survey map which both show a building across the full width of the Application Route in the vicinity of point Y on the Investigation Plan.</p> <p>The planning documents relating to application 02/00963/FUL includes an Existing Site Plan dated November 2000 which shows the eastern half of the Application Route and there is no indication of a building across the Application Route in the vicinity of point Y on the Investigation Plan.</p> <p>Various plans and sections relating to applications 08/04769/LBA, 11/02916/COND, 11/02917/COND, 11/05351/COND, 12/01776/COND, 12/01823/NMA, 12-05579-FUL, 12/05580/LBA and 21/04437/FUL show the whole of the Application Route variously labelled 'Driveway', 'New Entrance Drive' or 'Access Drive'.</p>	(BANES)
	Investigating Officer's comments		This indicates that the Application Route did not physically exist in 1999 but did physically exist from November 2000 until at least 2021.	

The above documents are available for public inspection. Please note that the references are as follows:

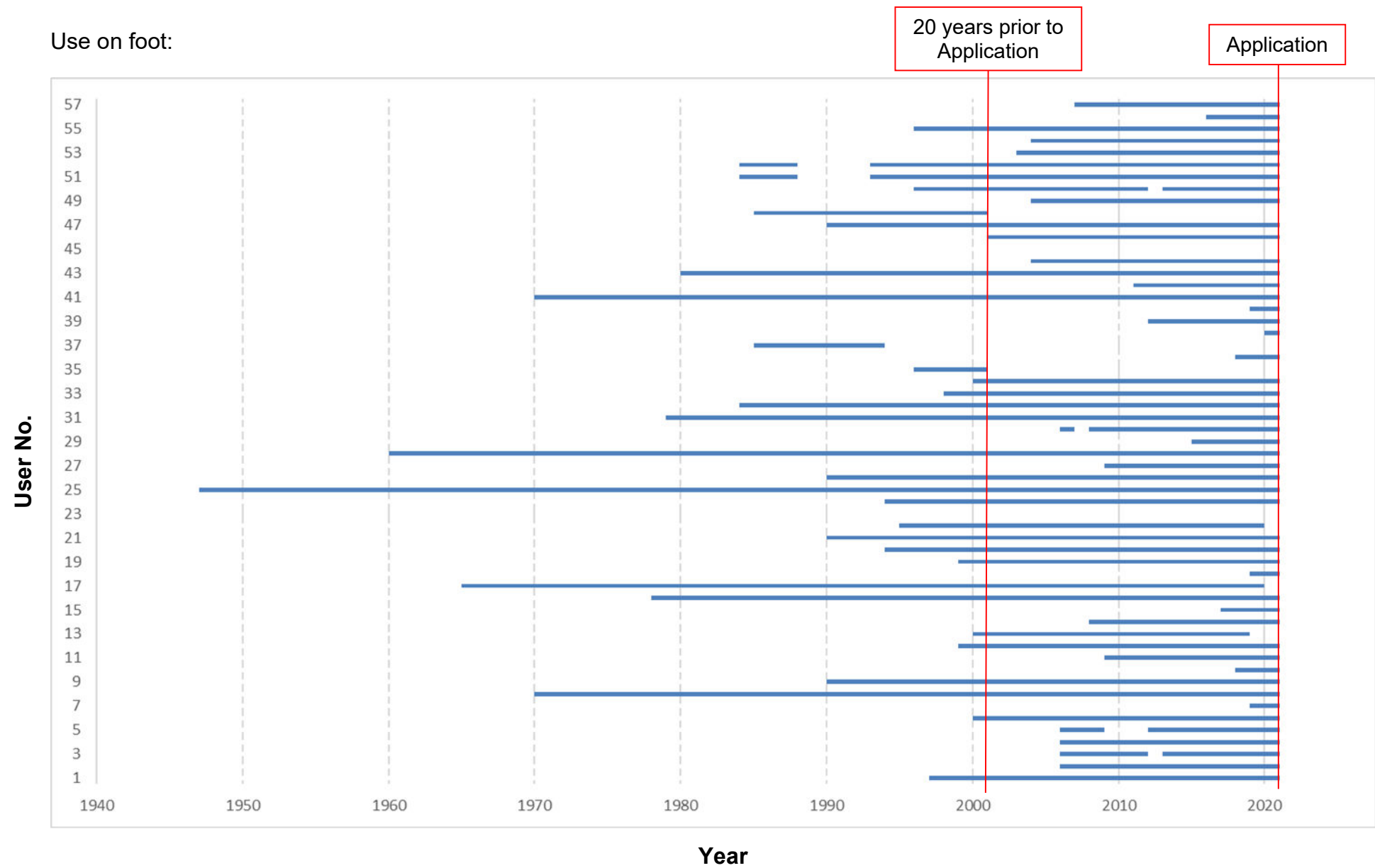
SHC = Somerset Heritage Centre

BANES = Documents held by Bath & North East Somerset Council

4. USER EVIDENCE FORMS

57 user evidence forms were received by the Authority which are summarised in the charts overleaf. In addition to the user evidence forms, the Authority has received three witness statements: Witness 1 was the Head of Estates for Wessex Water (who owned land in the area) stating that they saw members of the public using the Application Route between 1997 and 2004; Witness 2 lived adjacent to the Application Route from 1985 to 1994 and saw walkers using the Application Route; Witness 2 worked in Wessex Water's Estates Department from 1989 to 2004 and quite often saw members of the public using the Application Route.

Use on foot:



Use on horse and bicycle:

