

SECTION 53 of the WILDLIFE AND COUNTRYSIDE ACT 1981

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A PUBLIC FOOTPATH – Glenavon Farm 2, Keynsham and Saltford

(Ward Division: **Keynsham East** and **Saltford**)

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 Glenavon Farm in Saltford.

2. Recommendation

- 2.1 It is recommended that Bath and North East Somerset Council (“the Authority”) refuses to make a DMMO to record the Application Route, as shown by a solid green line on the plan contained at Appendix 1 (“the Decision Plan”), 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 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...”

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 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.

5.5 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.”

5.6 Documentary evidence should also be considered in determining applications for DMMOs. Section 32 of the 1980 Act states:

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

“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.”

6. Background and Application

- 6.1 On 11 December 2019, Mr Reginald Williams of 24 High Street, Saltford and Mr Howard Griffiths of 18 Claverton Road East, Saltford (“the Applicants”) applied to have a public footpath added to the DM&S (“the Application”). The Application was accompanied by two User Evidence Forms (“UEFs”).
- 6.2 The route under consideration commences from a junction with public footpath BA27/30 at grid reference ST 6686 6715 (Point A on the Decision Plan) and proceeds in a generally north north-easterly direction for approximately 581 metres to the Saltford-Keynsham parish boundary at grid reference ST 6707 6765 (Point B on the Decision Plan) and turns in a generally north-easterly direction for approximately 14 metres to a junction with public footpath BA27/27 at grid reference ST 6708 6766 (Point C on the Decision Plan).
- 6.3 The Authority understands that the Applicants had intended to facilitate a Section 30 Dedication Agreement and that the Application was submitted in error as a result of confusion about the different legal processes. Having received a duly made DMMO application, the Authority has a statutory duty to process the application. However, given the inadequacy of the evidence appended to the Application and the Applicants’ assertion that they weren’t seeking to record an existing right of way, the Authority did not carry out archival research into this application. Additionally, the consultation was limited to the affected town and parish councils; Saltford Parish Council responded to say that based on the information provided the Application appeared to have been made erroneously. Despite the streamlined approach to the processing of the Application, the Authority complied with the statutory duties imposed by the 1981 Act.

7. Evidence

- 7.1 No documentary evidence was submitted in support of the Application.
- 7.2 The Application was supported by two UEFs. The first UEF detailed monthly use on foot between 2000 and 2019. The user states that he had permission to use the route from 2000 onwards and this use was therefore not as of right. The second UEF details use on foot between

two and six times a year between 1972 and 1990 and between 2014 and 2019. The user states that it was a permissive path; so, again, this use was not as of right.

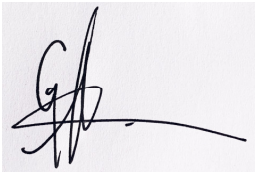
- 7.3 The user evidence only records use by two individuals, which is not sufficient to demonstrate use by the public. Additionally, this use was not as of right. Consequently, the evidence does not demonstrate that the Application Route has acquired public rights through deemed dedication either under section 31 of the 1980 Act or at common law.

8. Conclusion

- 8.1 There is not sufficient evidence to reasonably allege that the Application Route has acquired public rights. Consequently, the Authority should not make a DMMO in respect of the Application Route.

AUTHORISATION

Under the authorisation granted by the Council on 10 May 2018, the Authority formally rejects the application to modify the Definitive Map and Statement in respect of the Application Routes.



Graeme Stark
Principal Officer: Public Rights of Way

Dated: 21/04/2020

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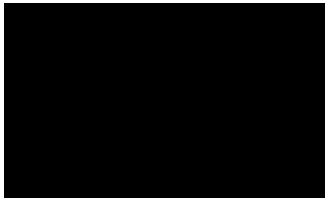
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Appendix 1: Decision Plan

Application Route



Unaffected public footpath



Parish boundary



Scale 1:2500

