
Bath & North East Somerset Council

DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION REPORT

BEEK'S MILL

Date: 16/02/2017

INVESTIGATION REPORT

AUTHOR: GRAEME STARK

DATE: 16/02/2017

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 byway open to all traffic (BOAT).

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 and landowner. 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 final decision will be based upon the contents of this report together with any further comments, documents and other evidence supplied by the applicant, landowners, consultees and other interested parties.

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 (as explained in PINS Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered.

2. RELEVANT LEGISLATION CONSIDERED

The following legislation was considered when this case was investigated; National Parks and Countryside Act 1949, Countryside Act 1968, Highways Act 1980, Wildlife and Countryside Act 1981, Countryside and Rights of Way Act 2000, Natural Environment and Rural Communities Act 2006.

3. APPLICATION DETAILS

An application was made by Donald MacIntyre on 6 February 2013, pursuant to section 53(5) of the Wildlife and Countryside Act 1981 to add a BOAT to the Definitive Map and Statement.

4. THE ROUTE

The application route commences from a junction with Leigh Lane at grid reference ST 7611 7106 (Fig. 1) and continues in a generally northeasterly direction for approximately 200 metres along a track to the border with South Gloucestershire at grid reference ST 7624 7121 (Fig. 2). This route is hereafter referred to as “the Application Route”.

During a site visit by the Authority in May 2016 there was found to be a bridleway gate at point A with a ‘Permissive Path’ waymarker attached; the adjacent gateway was blocked by Heras fencing. There was also found to be a bridleway gate at point B with a ‘Private Bridleway’ sign attached; the adjacent five-bar gate was locked and had a ‘Private’ sign attached.

There is a marker stone to the north of point B on the Plan which reads ‘*2 Marshfield*’ and another marker stone further to the north at the Beeks Lane junction with Ashwicke Road in South Gloucestershire.



Fig. 1: Point A

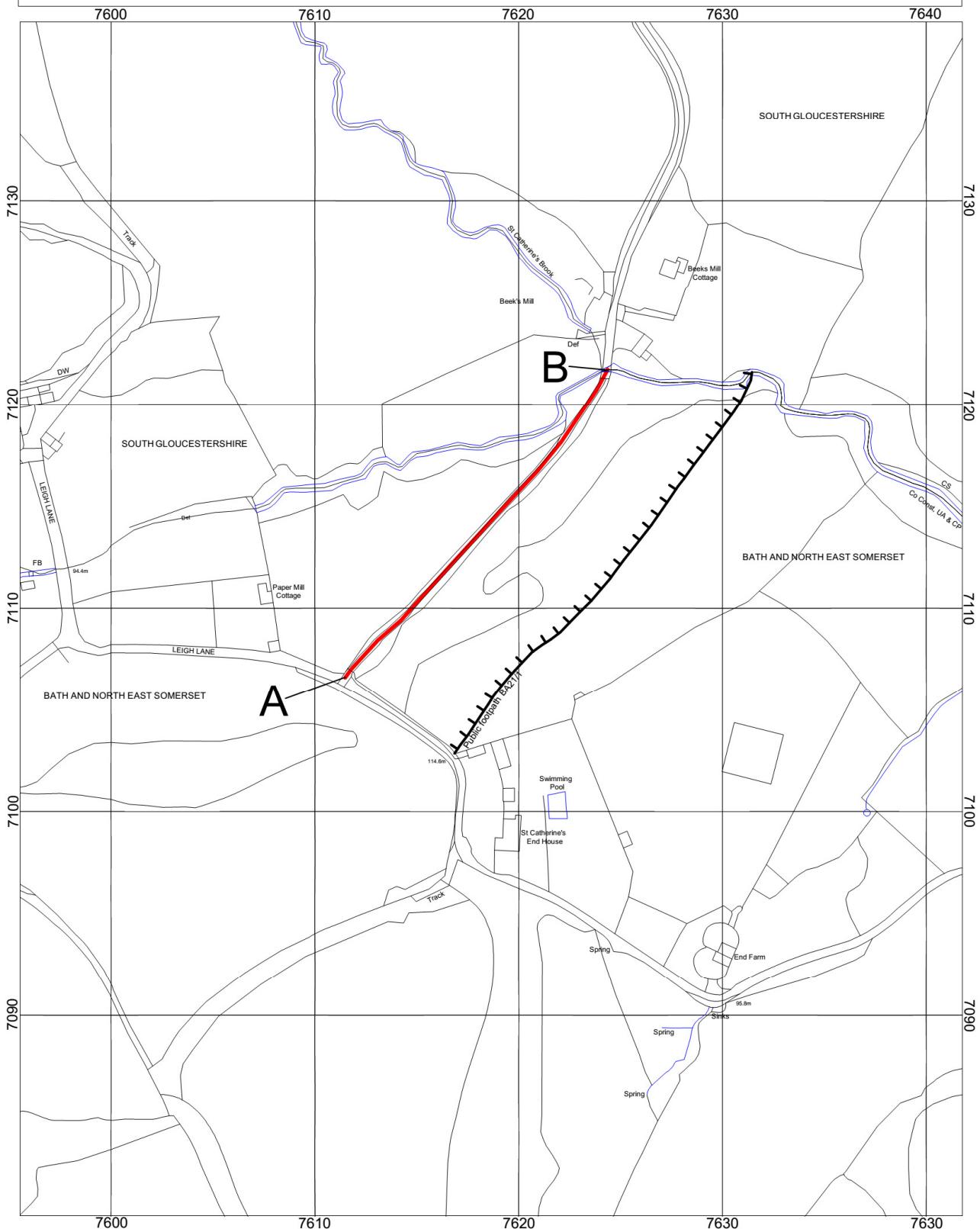


Fig. 2: Point B

Plan

Application Route A

Unaffected public footpath



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5. DOCUMENTARY EVIDENCE

DOC NO.	DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE	DOC. REF. (& LOCATION)
1.	Thorpe's Map	1742	<p>A map of Bath and its surroundings sold on subscription to the travelling public, which could be indicative of routes shown probably being public.</p> <p>The Application Route appears to be shown schematically by solid, parallel lines and labelled "To Marshfield".</p>	DD\NNE\C1375/8 (PROW)
	Investigating Officer's comments		This indicates that the Application Route physically existed in 1742 and that it may have carried public rights.	
2.	Day and Masters' Map	1782	<p>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.</p> <p>The Application Route is not shown on Day and Masters' map.</p>	D\B\wsm/38/6 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
3.	Greenwood's map	1822	<p>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.</p> <p>The Application Route is not shown on Greenwood's map.</p>	A\AUS\60 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
4.	Tithe Map and Tithe Award or Apportionment	1840	<p>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. Some awards contain additional information from which status of ways may be inferred.</p> <p>The Application Route runs through enclosure 13 but is not shown on the Tithe Map. Enclosure 13 is identified in the Tithe Apportionment as 'Whitely' (Pasture) and Tithe was paid on the enclosure.</p>	D\DRt/M/369 D\DRt/A/369 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	

5.	Cotterells Map	1850	<p>Cotterell's Map was drawn up by order of the Town Council, primarily to show sewerage pipes and gas mains. Highways were shown as they were constructed, rather than by their rights</p> <p>Although Beeks Lane to the north is shown by parallel solid lines, the Application Route itself if not shown on Cotterell's Map.</p>	(BRO)
	Investigating Officer's comments		This does not provide any evidence regarding the Application Route.	
6.	Ordnance Survey maps	1886 1904	<p>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.</p> <p>On the 1886 OS map, the Application Route is shown by a solid line to the east and a dashed line to the west. The route is shown shaded ochre and labelled 'Beck's Lane'. A solid line crosses at point A.</p> <p>On the 1904 OS map, the Application Route is shown by a solid line to the east and a dashed line to the west. A solid line crosses at point A.</p>	http://maps.nls.uk/view/122160794
	Investigating Officer's comments		This shows that the Application Route physically existed in 1886 and 1904 and suggests that it was gated at the southern end. These maps do not provide evidence of the existence of public rights.	
7.	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 856 which is shaded green and is not shown on the Inland Revenue map. No reductions are recorded as having been claimed in respect of this hereditament in the valuation book.</p>	DD/IR/8/6 DD/IR/B/8/6 (SHC)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	

8.	Parish Records & Highway Board Records; List of Streets	2006 2017	Highways Authority records show which routes were known to be publically maintainable and what works have been carried out at public expense. The Application Route is not recorded on the current List of Streets or the List of Streets as it stood on 1 January 2006.	(PROW)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
9.	Definitive Map records	1949-2017	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. <u>Definitive Map and Statement</u>. The Application Route is not referred to in any of the Definitive Map records.	(PROW)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	
10.	Google Streetview	2009	Google Streetview provides panoramic photography taken along the majority of public roads in the UK. Google Streetview shows the southern end of the Application Route. The photography shows an open field gate and an adjacent pedestrian gate which is shut but appears not to be locked. There is a sign on the open gate but it is not possible to discern what is written on the sign.	https://www.google.co.uk/maps (online)
	Investigating Officer's comments		This shows that on the day the Streetview photography was taken in 2009, the southern end of the Application Route was unobstructed.	
11.	Rights of Way Act 1932; and subsequent Section 31 deposits	1932-2017	Under the Rights of Way Act 1932 (and now s31 (6) of the Highways Act 1980) landowners could deposit a map indicating what ways they admitted had been dedicated as highways across their land. The Authority is not in receipt of any Landowner Deposit's made under section 31(6) of the Highways Act 1980 in respect of the land over which the Application Route runs.	(PROW)
	Investigating Officer's comments		This does not provide any evidence relating to the Application Route.	

These documents are available for inspection; please note that the references are as follows:

SHC = Somerset Heritage Centre

PROW = Documents held within the Public Rights of Way Team

BRO = Bath Record Office

6. WITNESS STATEMENTS

27 witness statements were submitted by the landowner. Their contents are briefly summarised below.

Witness No.	Summary of Witness Statement
1	States that their family had an agreement with the owners of Beeks Mill to use the Application Route, that there was a sign stating 'Bridleway Only' at point A on the Investigation Plan and a 'No Through Road For Vehicles' sign at the northern end of Beek's Lane.
2	States that the gate at point A on the Investigation Plan was only open for between five to ten years and that the Application Route is a private road.
3	States that there was a private sign on the gate at point A on the Investigation Plan and that the owner would reprimand anyone using the Application Route uninvited.
4	States that they and their daughter used to horse ride down the Application Route and that the Application Route is private.
5	States that they led organised walks on public footpath BA21/8 but that they didn't use the Application Route.
6	States that there used to be a signing saying 'Private' and that it is not a public right of way.
8	States that their father had an agreement with previous landowners to use the Application Route and that they have a similar agreement with the current landowner.
9	States that requests for motorcycles to use the Application Route were refused and that permission was granted to the Water Board. States that a sign was present from about 1988 onwards stating that the track was private and that there was no vehicular access. Also stated that there was a sign stating that it was a 'Bridle Way'
10	States that in the 1970s and 1980s there was a wooden notice stating 'Private' at Point A on the Investigation Plan. Also states that a new notice was affixed stating 'Private. Bridle Way Only'
11	States that their family had an agreement to use the Application Route. It is also stated that walkers and horses used the Application but that vehicles were stopped and turned around.
12	States that there was a private sign and a private bridleway sign on the Application Route. States that the Application Route is regularly used by bicycles but the only vehicle which they saw using the Application Route was the postman.
13	States that the Application Route is a no-through road and that it is marked as 'private'. States that the only vehicle that they have been used the Application Route is the postman.
14	States that trespassers were thrown off the Application Route if they were not known to the landowner and that there was a private notice. States that on one occasion he helped to resurface the track.
15	States that there were signs indicating that the Application Route was a permissive bridleway and that they and clients of a nearby livery yard used to ride the Application Route.
16	States that they used the Application Route on horse and that the neighbouring farm used the track in farm vehicles with permission of the landowner. Also states that there was a private sign at point A and that later on there was a bridleway notice.
17	States that they horse rode over the Application Route and understood that it was private.
18	States that they made deliveries to Beeks Farm via the Application Route and that there have always been private signs at point A on the Investigation Plan. States that the Application Route is used more by horses and cyclists than by vehicles.

19	States that the Application Route has always been a closed road and that there was a private sign at point A on the Investigation Plan. States that the Application Route was used by motorbikes but that they were always stopped.
20	States that a previous landowner granted permission for them to use the Application Route. States that he installed the current bridleway gate and attached a private notice at point A on the Investigation Plan on behalf of the landowner.
21	States that there was always a private sign on the gate or fence and that they used the Application Route with permission.
22	States that there was a private sign at the start of the Application route and that their family has not used the Application Route.
23	States that there has always been a private sign at point A on the Investigation Plan and that they have not used the Application Route.
24	States that the previous landowner granted permission for them to use the Application Route.
25	States that their family helped to maintain the Application Route and that they also used the Application Route for access.
26	States that their family helped to maintain the Application Route because they used the track but it was not a public right of way.
27	States that the landowner granted permission for them to use the Application Route and states that there was a private sign and more recently a sign stating 'bridleway only'

6. USER EVIDENCE

18 user evidence forms were submitted by the applicant. Their contents are briefly summarised below.

User Number	Mode of use	Period of use	Frequency of use	Other information
1	Foot and bicycle	1977-2012	Monthly	States that locked gates obstructed the Application Route in 2012
	Motor vehicle	1977-2011		
2	Horse	1985-1994	Weekly	States that there were no signs prior to 2012
	Motor vehicle	1987-1998		
3	Foot	1985-2012	Weekly at first; a few times a year towards end	Used Application Route in motor vehicle to avoid congestion on A46
	Horse	1985-2002		
	Motor vehicle	1985-2005	3 times over 30 yrs	
4	Horse	1955-1960	Daily	Met landowner but can't recall details
5	Foot	1967-2012	Daily Sept to April	Met landowner and just passed time of day
	Motor vehicle		Monthly	
6	Foot	1935-1980	'Occasionally'	It is not stated whether they were the tenant or owner, or an employee or family member of the owner or tenant.
	Horse			
	Bicycle/horse-drawn vehicle			
	Motor vehicle			

7	Foot Motor vehicle	1976-2012	2/3 times a year	States that locked gates were erected in April 2012
8	Horse	1987-2005	Twice a week	Stopped using Application Route because had a child that couldn't ride
9	Foot	1991-2012	Less than once a month	States that 'uninvited vehicles not allowed' sign erected in May 2012
	Bicycle	2011-2012	3 times a week	
	Motor vehicle	1991-2012	Less than once a month	
10	Foot	1950-1970 1976-2012	2/3 times a week	Did not use route between 1970 and 1976 due to military service
	Motor vehicle		Once a week	
11	Foot	1968-2012	Once a month. 2-3 times per year from 1980-1994	States that gates were padlocked on 28/06/2012
	Bicycle			
	Motor vehicle			
12	Foot	2009-2012	1-2 a week	States that prior to 2012 there were gates but that they weren't locked
	Horse	1997-2012	Once a week	
	Motor vehicle	2009-2010	Daily	
13	Foot	1995-2001	Once a week	Stopped using the Application Route in 2001 because they moved away from the area
	Horse			
	Motor vehicle			
14	Foot	1965-1997 2009-2010	Yearly	Used the Application Route in a motor vehicle to carry out site visits for work
	Motor vehicle		Varied from daily to not at all	
15	Motor vehicle	1979	'Occasionally'	User evidence form suggests that use was only in 1979
16	Foot	1973-2012	Weekly	States that notices prohibiting use were erected in April 2012
	Horse	1983-2012	Daily	
	Motor vehicle	1990-2012	Weekly	
17	Foot	2005, 2008 and 2011	Once during each year	User was not sure if he'd used the Application Route or the recorded footpath through the adjacent field.
18	Foot	1940-2003	Once a month	Does not stated if they were the owner, tenant or employee during their period of use.
	Bicycle/horse-drawn vehicle			