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# **Bath & North East Somerset Council**

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## Statement of grounds on which it is considered the Order should be determined

in relation to the determination of  
Bath & North East Somerset Council  
(City of Bath Definitive Map and Statement Modification Order)  
(No. 17 – Widcombe) 2019

19<sup>th</sup> December 2019

## 1. Introduction

- 1.1 In January 2018, Bath & North East Somerset Council (“the Authority”), in its capacity as the surveying authority, began research into the recording of the public rights of way in the Widcombe Ward (and a small section of Combe Down Ward).
- 1.2 Land Registry searches were done for all land not in the ownership of the Authority or Curo. Informal consultations were carried out with landowners, national user groups, local user groups & other interested parties, residents’ associations, ward councillors, adjoining property holders and members of the public (**addresses included in Document 09, responses included in Documents 09a to 09h**).
- 1.3 On 1<sup>st</sup> March 2019, the Highway Maintenance and Drainage Manager approved the recording of 33 public rights of way in the Widcombe Ward, to be included in two Definitive Map Modification Orders (**Document 18**).
- 1.4 On 21<sup>st</sup> March 2019, the Authority made the Bath & North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No. 17 – Widcombe) 2019 (“the Order”) (**Document 01**), comprising of 17 public rights of way.<sup>1</sup>
- 1.5 The Order has the effect of adding to the Definitive Map and Statement 17 public rights of way in the Widcombe Ward of the City of Bath.
- 1.6 On 28<sup>th</sup> March 2019 the Authority duly advertised the making of the Order and during the statutory period for objections a letter and email were received objecting to the recording of one of the public rights of way included in the Order (“Objection 1”) (**Document 04, pages 4 to 8**) and an email was received objecting to the recording of another of the public rights of way included in the Order (“Objection 2”) (**Document 04, pages 10 to 36**).
- 1.7 Sarah Lewis of Smallcombe Farm (“Objector 1”) submitted an objection against the recording of path (BC64/7), a small part of which (approximately 8 metres in length) is on land in her family’s ownership.

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<sup>1</sup> On 21st March 2019, the Authority also made the Bath & North East Somerset Council (City of Bath Definitive Map and Statement Modification Order) (No.16 – Widcombe) 2019, comprising of 16 public rights of way. No objections were received to the making of this order.

- 1.8 The Paragon School (“Objector 2”) followed up their email objection with a letter, which included an additional path in their objection. They objected to the recording of 2 paths (BC53/5 and BC53/6) on land in their ownership.
- 1.9 An objection was received to every path included in both Orders for the Widcombe Ward, (No. 16 – Widcombe) 2019 and (No. 17 – Widcombe) 2019. The objection was subsequently withdrawn (**Document 04, pages 38 to 48**). Emails were received as representations from 4 of the Statutory Consultees. These representations were neutral (**Document 04, pages 50 to 69**).
- 1.10 The Authority severed the Order and the unobjected to part of the Order, comprising of 14 public rights of way, was confirmed on 26<sup>th</sup> September 2019.
- 1.11 The Public Rights of Way Team uses a numbering convention to identify those paths which have already been legally recorded. Prior to inclusion in a legal order, paths are identified with a prefix of “AQ”, “BQ” or “CQ”, broadly determined by probable maintenance responsibilities. Path BC53/5 was previously known as BQ47, Path BC53/6 was AQ76 and Path BC64/7 was CQ42.
- 1.12 To avoid confusion, the paths included in the initial public consultation were given reference numbers between 1 and 35. It was considered that these numbers would be easier for the public to identify with than the numbering convention used by the Public Rights of Way Team. Path BC53/5 (BQ47) was referred to as Path 31, Path BC53/6 (AQ76) was referred to as Path 32 and Path BC64/7 (CQ42) was referred to as Path 27.
- 1.13 The Objectors refer to the paths using the “BC” number as recorded in the Order.
- 1.14 The Authority referred the Objections to the Team Manager - Highway Maintenance & Drainage on 29<sup>th</sup> October 2019 (**Document 19**). The Team Manager - Highway Maintenance & Drainage approved the recommendation to request that the Secretary of State confirms the Order as made for BC53/5, BC53/6 and BC64/7 and adds the public rights of way BC53/5, BC53/6 and BC64/7 to the Definitive Map and Statement for the City of Bath.

## 2. Evidence

### User Evidence

2.1 Information was sought from landowners, national user groups, local user groups and other interested parties, residents' associations, ward councillors, adjoining property holders and members of the public. Notices were posted on all paths inviting members of the public to submit evidence of use of the paths and details were posted on the Authority's website. Letters or emails were sent to landowners, adjoining property holders, user groups, other interested parties, residents' associations and ward councillors.

2.2 **Information from landowners:** A consultation letter was sent in May 2018. Responses were received to the consultation letter (**Document 09a**) from The National Trust, Mr & Mrs Blacker of Foxhill Grove Farm, Mr & Mrs Rhymes of Honeysuckle Farm and Bath & North East Somerset Council:

- **BC64/7:**
  - i. **Rob Holden, Countryside Manager, National Trust:** *"I am writing to say that the National Trust has no objection to the proposed rights of way: CQ42 – Smallcombe Vale (Widcombe Hill) to Smallcombe Cemetery."* (**Document 09a, pages 26 to 34**).
  - ii. **Smallcombe Farm:** Objector 1 was not identified for consultation and was not sent a consultation letter.
  
- **BC53/5:**
  - i. **Paragon School (Objector 2):** No response. (**Document 09a, pages 17 to 18**).
  
- **BC53/6:**
  - i. **Paragon School (Objector 2):** No response (**Document 09a, pages 17 to 18**).
  - ii. **Title Number ST193607 - Being Foxhill Grove Farm, Fox Hill, Perrymead, Bath (BA2 5BA). PROPRIETOR: Phillip Blacker and Margaret Evelyn Blacker of Foxhill Grove Farm, Perrymead, Bath BA2 5BA:** A Landowner Evidence Form was completed, stating 11 years ownership and the belief that the path is a public footpath. They have been aware of daily and frequent use of the footpath by members of the

public. They have never required people to ask permission before using the route and have never made a Section 31(6) (Highways Act 1980) deposit. They have never stopped or turned anyone back from using the route and they have never told anyone that the route was not public. Nor has anyone on their behalf. They have never blocked or obstructed the path. **(Document 09a, pages 3 to 7).**

- iii. **Title Number AV124987- Being Land lying to the North West of Fox Hill, Perrymead. PROPRIETOR: Rupert John Rhymes and Susan Mary Rhymes of Honeysuckle Farm, Perrymead, Bath:** A Landowner Evidence Form was completed, stating 32 years ownership and the belief that the path is a public footpath. The path is regularly used by dog walkers and people walking to Lyncombe Vale. They have never required people to ask permission before using the route and have never made a Section 31(6) (Highways Act 1980) deposit. They have never stopped or turned anyone back from using the route and they have never told anyone that the route was not public. Nor has anyone on their behalf. They have never blocked or obstructed the path. There are gates which are not locked, but fastened as there are often sheep in the field. There are signs at either end of their section of the path, warning people about livestock. **(Document 09a, pages 9 to 15).**
- iv. **Title Number AV17115 - Being part of the former Somerset and Dorset Railway line at Bath. PROPRIETOR: Bath and North East Somerset Council, Environmental Services - Open Spaces. Linear Park. (Small section). Response from Martin Baker, Property Services:** *"I have now looked at the proposed paths and from what I can see there wouldn't be any concerns over these proceeding. Unfortunately I don't think we are going to be able to help out with information relating to use as I don't think we have any record of signs, gates or granting permissions etc".* **(Document 09a, pages 20 to 24).**
- v. **Response from Jane Robson, Parks Manager:** *"I'm happy with the paths".* **(Document 09a, pages 20 to 24).**

2.3 **Information from adjoining property holders:** There are no adjoining property holders along paths BC53/5 and BC64/7. A consultation letter was sent in June 2018 to the property adjoining path BC53/6. No response was received. **(Document 09a, pages 32 to 33).**

- 2.4 **Information from ward councillors:** No relevant information was received regarding the Objected to paths. **(Document 09b).**
- 2.5 **Information from national user groups:** No responses were received to the consultation email **(Document 09c).**
- 2.6 **Information from local user groups and other interested parties:**
- i. Anne Thorpe of the local British Horse Society stated: *“I do not have first hand knowledge of paths 27 and 29 but as path 29 joins the restricted byway to Widcombe Hill it would make sense for this to be a bridleway or restricted byway. I will contact you again when I have heard from horse riders in the area.”* **(Document 09c, pages 7 to 8).**
  - ii. Ann Fay of the local British Horse Society stated: *“Path 27 from Widcombe Hill to Horseshoe Lane looks as if it could be useful as a bridleway link but I did not walk it so cannot comment further.”* **(Document 09c, pages 10 to 11).**
- 2.7 **Information from residents’ associations:** No relevant information was received regarding the Objected to paths. **(Document 09d).**
- 2.8 **Information from the public - Responses to the notices:**
- **BC53/5: 5 responses were received to the notices.**
    - i. *“Here are paths I been using regularly since 2009 for exercising dogs and children: At least 12 times per year: 8, 10, 11, 18, 19, 20, 31, 32, 33. I have used all these on all occasions without permission, objection or obstruction.”* **(Document 09e, pages 8 to 10).**
    - ii. *“3/year. We have lived in Bath since 1962, first in a rented house half way up Widcombe Hill and then, since 1963, in Macaulay Buildings. As a family we walked constantly in the eastern part of Bath and we walked most of these paths. I am still walking. I was always on foot. The purpose was for pleasure, work, shopping and exploring Bath. I always followed the line of the path. From memory, the paths were about the same width. I am not, and never was, an owner, tenant or employee. I never met any landowner. I never sought nor was given permission to use any of the paths. I was never asked to turn back. A few stiles and gates have been changed for the better. They have not prevented or deterred me. I have had to cast my mind back over 56*

*years and this is not easy!*<sup>2</sup> (Document 09e, pages 14 to 19).

- iii. *“Paths 31 and 32. I have also walked on the following paths at least once in most weeks, and sometimes twice in a week, for the last ten years, and less frequently for the preceding ten years, and have frequently see(n) others using them.” (Document 09e, pages 27 to 28).*
- iv. *“I have been using public footpaths 31 & 32 (Widcombe) nearly every day since the 1980's. I walk this route between my allotment (Lyncombe Vale 2) and my House (9 Meare Road). Half of the people I meet are regular walkers, the others are one-time visitors. I do not own the School that Path 31 passes over, or Honeysuckle Farm where the higher southern section of Path 32 goes. I appreciate the gates instead of fence styles [sic] on the route as I sometimes need to carry heavy luggage and plan to continue.” (Document 09e, page 30).*
- v. *“I live opposite the footpath and steps for Path 31. I use the steps twice daily for 6 years to walk my dogs and to join footpath 32 to journey into the woods and beyond. The routes are used by many fellow dog walkers and pedestrians at all times.” (Document 09e, page 32).*

- **BC53/6: 6 responses were received to the notices:**

- i. *“Here are paths I been using regularly since 2009 for exercising dogs and children: At least 12 times per year: 8, 10, 11, 18, 19, 20, 31, 32, 33. I have used all these on all occasions without permission, objection or obstruction.” (Document 09e, pages 8 to 10).*
- ii. *“3/year. We have lived in Bath since 1962, first in a rented house half way up Widcombe Hill and then, since 1963, in Macaulay Buildings. As a family we walked constantly in the eastern part of Bath and we walked most of these paths. I am still walking. I was always on foot. The purpose was for pleasure, work, shopping and exploring Bath. I always followed the line of the path. From memory, the paths were about the same width. I am not, and never was, an owner, tenant or employee. I never met any landowner. I never sought nor was given permission to use any of the paths. I was never asked to turn back. A few stiles and gates have been changed for the better. They have not prevented or deterred me. I have had to cast my mind back over 56 years and this is not easy!”<sup>3</sup> (Document 09e, pages 14 to 19).*
- iii. *“Paths 31 and 32. I have also walked on the following paths at least once in*

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<sup>2</sup> User 56

<sup>3</sup> User 56

most weeks, and sometimes twice in a week, for the last ten years, and less frequently for the preceding ten years, and have frequently see(n) others using them.” (Document 09e, pages 27 to 28).

- iv. “I have been using public footpaths 31 & 32 (Widcombe) nearly every day since the 1980’s. I walk this route between my allotment (Lyncombe Vale 2) and my House (9 Meare Road). Half of the people I meet are regular walkers, the others are one-time visitors. I do not own the School that Path 31 passes over, or Honeysuckle Farm where the higher southern section of Path 32 goes. I appreciate the gates instead of fence styles on the route as I sometimes need to carry heavy luggage and plan to continue.” (Document 09e, page 30).
- v. “I live opposite the footpath and steps for Path 31. I use the steps twice daily for 6 years to walk my dogs and to join **footpath 32** to journey into the woods and beyond. The routes are used by many fellow dog walkers and pedestrians at all times.” (Document 09e, page 32).
- vi. “Further to my father’s words, I also use the **footpath 32** when I come over and walk his dogs to support him. My dad is 81.5 years old and has 2 spaniels who give him a reason to get out and keep him mobile. The path is very useful and minimises the time that the dogs are on the main road to a few seconds rather than a few minutes walking up to the official path to the cycleway. My father has been using it to walk the dogs every day for 6 years. Prior to that we used it infrequently for walks since dad bought Tanglewood in 2002. We only travel up the path on foot.” (Document 09e, page 32).

- **BC64/7: 7 responses were received to the notices:**

- i. “We are five in the household, two adults and three teenage children. Collectively we have used the following paths in the last 12 months on a more or less frequent basis: 2, 3, 4, 5, 9, 10, 11, 14, 16, 17, 18, 19, 20, 24, **27**, 28, 29, 30, 34, 35. I am afraid that is neither feasible nor reasonable for you to expect a form to be completed by every user for every path. Please accept this as our notification of use and interest in the paths noted above.” (Document 09e, page 6).
- ii. “Here are paths I been using regularly since 2009 for exercising dogs and children: More than 3 times a week: 22, 23, 24, 26, **27**, 28, 29, 30, 34, 35. I have used all these on all occasions without permission, objection or obstruction.” (Document 09e, pages 8 to 10).
- iii. “Path 27 – perhaps ten times since 1976, for leisure.” (Document 09e, pages

**11 to 12).**

- iv. *“50/year. We have lived in Bath since 1962, first in a rented house half way up Widcombe Hill and then, since 1963, in Macaulay Buildings. As a family we walked constantly in the eastern part of Bath and we walked most of these paths. I am still walking. Has been used twice a day! I was always on foot. The purpose was for pleasure, work, shopping and exploring Bath. I always followed the line of the path. From memory, the paths were about the same width. I am not, and never was, an owner, tenant or employee. I never met any landowner. I never sought nor was given permission to use any of the paths. I was never asked to turn back. Recently the National Trust has been placing notices on their land. Many of them are for advertising purposes and most of the notices are unnecessary. A few stiles and gates have been changed for the better. They have not prevented or deterred me. I have had to cast my mind back over 56 years and this is not easy!”<sup>4</sup> (Document 09e, pages 14 to 19).*
- v. *“Used from 1981 to present; few times a year; on foot for leisure; Quite a few people seen. I don’t own the land.” (Document 09e, pages 21 to 22).*
- vi. *“I write regarding your notice displaying the proposed PATH 27 across the National Trust land to the south of Smallcombe Valley. Whilst I have no comment about the great majority of the proposed footpath. I am concerned that it ambiguously appears to project into our private lane. This is incorrect, as there is no PROW on our lane. Bath Council have previously confirmed this. While this may be an unintentional mistake, please can you amend the drawing accordingly.” This response was received from Sarah Lewis of Smallcombe Farm. (Document 09e, pages 24 to 25).*
- vii. *“Paths 3, 4, 5, 9, 11, 13, 14, 15, 16, 17, 18, 22, 24, 27, 28, and 29. I have walked on all of the following paths at least once during the last ten years, and some cases more than once.” (Document 09e, pages 27 to 28).*

## 2.9 Responses to the web consultation (Documents 09f, 09g and 09h):

- **BC53/5: 26 responses were received (Document 09g):**

Of the 26 web respondents, all respondents used the path on foot. Seven respondents used the path daily<sup>5</sup>, 1 used the path 2 to 3 times a week<sup>6</sup>, 7 once a week<sup>7</sup> and 11 once a month<sup>8</sup>.

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<sup>4</sup> User 56

<sup>5</sup> Users 12, 31, 39, 43, 45, 47, 49

<sup>6</sup> User 40

Length of path usage ranged from less than 1 year to 30 years. The 6 respondents who had used the path for more than 20 years are User 43 (22 years, daily), User 46 (25 years, once a week), User 27 (27 years, once a month), User 37 (27 years, once a week), User 44 (27 years, once a month) and User 45 (30 years, daily).

The path was used for a variety of purposes: the main ones listed by respondents were for pleasure (21), work (2) and education and town (1 each). None of the respondents reported any changes to the line of the path in the years that they had been using it. One respondent (User 44) commented that the path was now wider: *“Now 3-5 metres, but previously 2-3 metres in places, a much narrower but defined path.”*

None of the respondents were the owner, the tenant or a family member of any of the above when they used the path. One respondent reported that they were an employee of the owner/tenant when they used the path (User 8).

One of the respondents (User 8) reported having spoken to the landowner or a representative of the landowner whilst using the path and also reported being given permission to use the path (from *“school”*). None of the respondents had been told not to use the path.

Two respondents reported seeing notices on the path either encouraging or discouraging their use of it:

- **User 12:** *“At the top of the route. Near the point the route crosses route 32. That the land is privately owned and that members of the public using the route must pick up dog mess and may be monitored. Continually during my use of the route.”*
- **User 45:** *“Signs showing public foot path from Lyncombe Vale Road and signs in the wood requesting the picking up after dog fouling etc. as children play in the wood. Been here for ages.”*

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<sup>7</sup> Users 8, 13, 24, 37, 41, 42, 46

<sup>8</sup> Users 4, 9, 23, 27, 29, 30, 35, 36, 38, 44, 48

Thirteen respondents<sup>9</sup> reported seeing stiles or gates on the path and some stated when they were erected and how long were they in place. None of the respondents reported a locked gate, however User 37 stated that the presence of the gate had prevented / deterred her from using the route, but did not state in what way. However, User 37 added an additional comment: *“This should be made accessible for wheelchair and other users (including cyclists), as a proper access point to the Two Tunnels path.”*

When asked *“Has there ever been an obstruction to your use of the route?”* none of the respondents reported any obstruction to their use of the path. User 37 responded to this question with *“No”*.

**Additional Comments:**

- *“Well established and used route.”*
  - *“I have lived in the area for a few years and only just noticed this lovely path.”*
  - *“It is a lovely woodland walk though quite steep and not normally maintained very well. I live close by but it’s taken me several years to find the route as it becomes overgrown and gets covered with leaves etc.... I would use it more often if it was signposted better, clearly marked and maintained. I am worried about straying onto private land which is easy to do without a clear marked pathway and also if you lose track of the path you end up shimmying down steep banks to find the way back to Lyncombe Vale Road! Definitely an underused resource.”*
  - *“This is a great amenity close to home so we can walk easily in the ‘countryside’ without meeting traffic and often no people. This was a fantastic and safe play route for our children and before the Two Tunnels was opened remained peaceful.”*
  - *“This should be made accessible for wheelchair and other users (including cyclists), as a proper access point to the Two Tunnels path.”*
- **BC53/6: 28 responses were received (Document 09h):**  
Of the 28 web respondents, all respondents used the path on foot. Three respondents used the path daily<sup>10</sup>, 1 respondent used the path 2 to 3 times a week<sup>11</sup>, 10 respondents used the path once a week<sup>12</sup>, 11 respondents used the

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<sup>9</sup> Users 12, 23, 24, 30, 35, 37, 40, 41, 43, 44, 45, 46, 49

<sup>10</sup> Users 12, 31, 49

<sup>11</sup> User 40

path once a month<sup>13</sup> and 3 respondents used the path 3 to 6 times per year<sup>14</sup>. One respondent also used the path by bicycle, once a month<sup>15</sup>.

Length of path usage ranged from 1 year to 38 years. The 6 respondents who had used the path for more than 20 years are User 51 (21 years, once a month), User 43 (22 years, once a month), User 46 (25 years, once a week), User 27 (27 years, once a month), User 44 (27 years, once a month) and User 45 (30 years, 3 to 6 times per year).

The path was used for a variety of purposes: the main ones listed by respondents were for pleasure (25), work (3) and education and town (1 each). None of the respondents reported any changes to the line or width of the path in the years that they had been using it.

None of the respondents were the owner, the tenant or a family member of any of the above when they used the path. One respondent reported that they were an employee of the owner/tenant when they used the path (User 8). Three of the respondents reported having spoken to the landowner or a representative of the landowner whilst using the path:

- **User 45:** *“The owner of the field up to Foxhill - friendly conversations with both husband and wife with their dog.”*
- **User 43:** *“He had no objections. If walking a dog he requested that it be kept on a lead if sheep were in the field.”*
- **User 8:** *“Hello.”*

One of the respondents (User 49) reported being given permission to use the path but gave no details. None of the respondents had been told not to use the path.

Two respondents reported seeing notices on the path, either encouraging or discouraging their use of it:

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<sup>12</sup> User 8, 15, 24, 41, 42, 46, 47, 52, 53, 54

<sup>13</sup> Users 9, 23, 27, 29, 30, 35, 38, 43, 50, 51, 55

<sup>14</sup> Users 20, 44, 45

<sup>15</sup> User 51

- **User 45:** *"At Lyncombe Vale Road end - public footpath sign. On entrance to field above old railway bridge - When sheep in the field notice to keep dogs on leads. Signs showing public foot path from Lyncombe Vale Road and signs in the wood requesting the picking up after dog fouling etc. as children play in the wood. Been here for ages."*
- **User 53:** *"There is a public footpath notice encouraging you to use it."*

Twenty respondents<sup>16</sup> reported seeing stiles or gates on the path and some stated when they were erected and how long were they in place. None of the respondents reported a locked gate.

When asked *"Has there ever been an obstruction to your use of the route?"* none of the respondents reported any obstruction to their use of the path. None of the respondents reported anything which deterred them from using the path.

**Additional Comments:**

- *"Well established and used route."*
  - *"This is a great amenity for those of wishing to walk in the south of the city. A wonderful alternative route to going by road up to Foxhill where there is always traffic. This has always been a pleasant walk, great as countryside and to see wildlife in their natural habitat and enjoy the changing seasons. It means you can access further routes around Foxhill/Entry Hill without having meeting traffic. It means you can access wonderful view of the city."*
  - *"It is understood that there might sometimes be livestock in the field so dog owners need to check in advance."*
- **BC64/7: 34 responses were received (Document 09f):**

Of the 34 web respondents, all respondents used the path on foot. Three respondents used the path daily<sup>17</sup>, 16 respondents used the path once a week<sup>18</sup>, 10 respondents used the path once a month<sup>19</sup>, 3 respondents used the path 3 to

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<sup>16</sup> Users 12, 15, 20, 23, 30, 35, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 55

<sup>17</sup> Users 2, 3, 31

<sup>18</sup> Users 4, 6, 7, 8, 9, 10, 15, 16, 20, 21, 22, 23, 26, 28, 33, 34

<sup>19</sup> Users 1, 13, 17, 19, 24, 25, 27, 29, 30, 32

4 times per year<sup>20</sup>, 1 respondent used the path twice a year<sup>21</sup> and 1 respondent used the path annually<sup>22</sup>.

Length of path usage ranged from 1 year to 56 years. The 8 respondents who had used the path for more than 20 years are User 17 (25 years, once a month), User 27 (27 years, once a month), User 14 (28 years, once a year), User 10 (29 years, once a week), User 26 (30 years, once a week), User 1 (33 years, once a month), User 21 (41 years, once a week) and User 4 (56 years, once a week).

The path was used for a variety of purposes: the main ones listed by respondents were for pleasure (30) and town (1). None of the respondents reported a change to the width of the path in the years that they had been using it. One respondent (User 1) reported a change to the line of the path: *“Presumably to make the route up to Widcombe Hill less steep and therefore more accessible.”* And one respondent (User 10) commented that *“There is an additional spur to the route put in by the landowner to avoid using main gate by the cemetery, which I occasionally use but it is very steep.”* This refers to a set of wooden steps which the National Trust (as landowner) installed to lead walkers to the start of a permissive path on the other side of the private access track.

None of the respondents were the owner, the tenant, an employee of the owner/tenant or a family member of any of the above when they used the path. Four respondents reported having spoken to the landowner whilst using the path:

- **User 10:** *“Some years ago I met a previous owner’s family member (whom I used to work with) on the route who assured me it was ok to walk there.”*
- **User 33:** *“Have sometimes met the National Trust ranger. We always have a little chat and say hello.”*
- **User 23:** *“National Trust discussed the work they do on the Bath Skyline.”*
- **User 26:** *“Bath National Trust employees, occasionally. Always positive and helpful as I am supporter.”*

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<sup>20</sup> Users 5, 11, 12

<sup>21</sup> User 18

<sup>22</sup> User 14

Two respondents reported being given permission to use the path:

- **User 10:** *“Some years ago I met a previous owner’s family member (whom I used to work with) on the route who assured me it was ok to walk there.”*
- **User 33:** *“I understood it was a National Trust footpath.”*

None of the respondents had been challenged while using the path.

Four respondents reported seeing notices on the path, either encouraging or discouraging their use of it, and gave a purpose for the notices and how long they had been in place:

- **User 12:** *“At the entrance to the footpath on Widcombe Hill. Signs indicating that the land is owned by the National Trust and is accessible to the public. Continually”*
- **User 19:** *“At the bottom of the steps by Smallcombe Farm. Footpath.”*
- **User 22:** *“Each end of path. Giving directions. 2yrs.”*
- **User 33:** *“On the gates. Encouraging people to walk the Skyline. Permanently.”*

Eighteen respondents<sup>23</sup> reported seeing gates on the path and some stated when they were erected and how long were they in place. One of the respondents reported a locked gate – User 26 – *“Gates locked when animals being grazed but kissing gates, ie access always available.”*

When asked *“Has there ever been an obstruction to your use of the route?”* none of the respondents reported any obstruction to their use of the path. None of the respondents reported anything which deterred them from using the path.

**Additional Comments:**

- *“The steps towards the top are appreciated.”*
- *“There used to be another route opposite the farm house. This is now closed, but an alternative was made.”*
- *“It is used daily by hundreds of people.”*
- *“Pleasant way to access the city on foot.”*

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<sup>23</sup> Users 1, 3, 6, 10, 11, 12, 14, 16, 19, 20, 21, 22, 23, 26, 28, 30, 33, 34

- *“I believe, from previous written commentaries which were submitted when the residents of Smallcombe Farm tried to re-route the footpath away from their yard, that the pathway in question is the continuation of a very ancient path which runs via Bathwick Hill, through the fields and down the steps and through the yard of Smallcombe Farm, and was there long before the buildings of Smallcombe Farm.”*

### **Documentary evidence**

#### 2.10 **Cotterell’s 1852 Map of Bath:**

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. The original maps can be found at the Bath Archives at the Guildhall, Bath.

- **BC53/5:** Sheet 37 - The path does not appear to be in existence.
- **BC53/6:** Sheet 37 - The path does not appear to be in existence.
- **BC64/7:** Sheet 45 - The path does not appear to be in existence.

#### 2.11 **OS Maps:**

The 1885, 1887 – 1891, 1901 – 1905, 1920 – 1933, 1933 – 1939, 1960, 1973 and 1980s maps were examined on the Council’s online mapping systems.

- **BC53/5:** The path appears to have been in existence since at least as early as 1885.
- **BC53/6:** The path appears to have been in existence since at least as early as 1885.
- **BC64/7:** Part of the path appears to have been in existence at least as early as 1885. The present day route appears to have come into existence at least as early as 1933.

#### 2.12 **The List of Streets:**

The Authority’s List of Streets is a record of maintenance responsibilities rather than of rights. However, the Authority only maintains highways which carry public rights. None of the 3 paths are included in the List of Streets.

2.13 **Bath City Engineer's Survey, 1957:**

In 1957 the City and Waterworks Engineer's Department of Bath City Council completed a survey of public rights of way in the city (**Document 20**). The document produced is titled '*Survey of Public Rights of Way: For the Purpose of Part IV of the National Parks & Access to the Countryside Act 1949*'. A footnote on the schedule states: "*All footpaths walked by R.F. Little between June 1st & 30th 1955*". The survey did not cover all of the paths in the city of Bath, only "*the footpaths and public rights of way in the undeveloped parts of Bath and the footpaths in the built up areas which connect up with these paths.*"

- 2.14 No 'official' action was taken on the above Act but the 1957 survey was a fairly comprehensive survey of the rights of way. A 6" scale map was produced showing footpaths within the city boundary. AQ76 (BC53/6) is shown on the map numbered "76" and is described as: "*F.P. Lyncombe Vale Road to Fox Hill Lane. Up Laneway to K.G. and across fields to stile at Fox Hill Lane*". "*F.P. Lyncombe Vale Road to Fox Hill Lane.*"

**Additional Information:**

- 2.15 The Authority holds information on file relating to general issues concerning the paths.

- **BC53/5 (BQ47) & BC53/6 (AQ76):**
  - i. July 1982 – Mr Brooks, a member of the public, reported a blockage on footpath BQ47 (BC53/5) which he believed was building rubble from the new gym being constructed at the school. He requested forms for "*including paths in a Definitive Map.*" (**Document 21**).
  - ii. August 1982 – PS Gilbert (Assistant County Footpaths Officer) replied to Mr Brooks, enclosing a map and asking Mr Brooks to mark the site of the obstruction. Mr Gilbert stated that: "*we are only able to treat footpaths not shown on the D.F.M. (Definitive Footpath Map) with the same consideration as those shown on the D.F.M. if they can be proved to be public rights of way by virtue of uninterrupted use rights over a long period of time. This period of time is commonly taken to be approximately 20 years.*" Mr Gilbert enclosed a blank User Evidence Form to enable Mr Brooks to gather evidence of use of BQ47 (BC53/5) (**Document 22**).
  - iii. October 1982 – Mr Brooks submitted 25 completed User Evidence Forms to the Council, along with OS Maps as supporting evidence and 2 copies

of the map sent to him by Mr Gilbert, showing the route of the footpath he was seeking to establish shown in blue and marked ABCD, BQ47 (BC53/5). Footpath AQ76 (BC53/6) was already shown on the Bath District Council's Map as it was considered to be a public right of way. It was shown in red on the plan and marked as EBFDHG. The location of the tipping of the building rubble was marked on the route of Footpath BQ47 (BC53/5) **(Document 23)**.

- iv. February 1983 – The Senior Planning Assistant (Footpaths) wrote to the owner of Lyncombe Vale School (Dr P Simpson) to advise him of “*a wealth of evidence to suggest that the footpath is a public right of way*” and to ask him his views on the matter. A map showing the route of footpath BQ47 was included **(Document 24)**.
- v. March 1983 – Dr Simpson asked to see the information that had been submitted **(Document 25)**. Mr Brooks was consulted and sought permission from those he collected User Evidence Forms from **(Document 26)**. Permission was granted and the information was sent to the Solicitors (Stone, King & Wardle) acting for the Paragon Educational Trust who were the new owners of the school **(Document 27)**.
- vi. September 1983 – A response from the Paragon Educational Trust was sent via Stone, King & Wardle Solicitors: “*Our clients accept that the red path is a public path and that the blue path is obviously widely used.....They are prepared to agree, however, without prejudice, that the blue path is a right of way, provided that suitable signs are erected by the County of Avon indicating exactly where the two footpaths run*”. The accompanying plan shows AQ76 (BC53/6) in red and BQ47 (BC53/5) in blue. **(Document 28)**.
- vii. November 1983 – P.S. Gilbert of County of Avon Planning Department wrote to Stone, King & Wardle to suggest that signposts should be positioned on Lyncombe Vale Road where the two footpaths leave the metalled road. Waymarks should be painted on trees at appropriate points along the footpaths. Mr Gilbert asked for confirmation that this is favourable to the school **(Document 29)**.
- viii. April 1984 – following reports from a member of the public that the footpath BQ47 had been “*completely blocked (for about three months now) by the owners of the land with material taken from the woodland*” **(Document 30)**. Mr Gilbert wrote to Stone, King & Wardle again asking that the footpaths be cleared as it is an offence under section 137 of the

Highways Act 1980 to block a footpath (**Document 31**). He also asked for a response to his letter of November 1983. Mr Gilbert replied to the member of public that the two footpaths were added to the “*records of those paths considered to be public footpaths*”, following a consultation with the landowner who had failed to provide any counter evidence against the residents claim for public right of way status for the two paths (**Document 32**).

- ix. May 1984 - P.S. Gilbert of County of Avon Planning Department asked the City Engineer to add the two paths to the plan showing public rights of way in the city. He also asked for the department to organise signposting the paths (**Document 33**).
  - x. July 1984 – a works order was raised for the erection of the two signposts (**Document 34**).
  - xi. December 1984 – a letter was sent to Mr Brooks from R Dickens (Senior Planning Assistant) to advise him that “*I can confirm that the whole of the ‘track’ footpath as shown as A through B and C to D<sup>24</sup> on the 1:2500 map supplied by you is now a public footpath..... Mrs Trimby the headmistress of the Paragon School is very concerned for the safety of the many small schoolchildren in her care and also for the protection of the trees, shrubs and constructions from vandalism. Therefore she has expressed considerable interest in securing her private property from trespass. To this end a private gate and adjacent public stile may be provided where the ‘track’ footpath leaves the Lyncombe Vale Road and the Kissing Gate restored or a stile substituted at the bottom of the other footpath.*” (**Document 35**).
- **BC53/6 (AQ76):**
    - i. 1957 - Notification from the farmer (Mr Peter Dingle of Honeysuckle Cottage, Lyncombe Vale Farm) that he intends to plough the field with the footpath. The National Parks and Access to the Countryside Act 1949 is quoted reminding Mr Dingle of the need to reinstate the footpath. A request was made to move a gate by Mr PH Dingle of The Cottage, Midford Road. Mr Dingle was advised that it is not a problem, provided the new position of the gate is still on the line of the existing right of way (**Document 36**).

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<sup>24</sup> This footpath is BQ47, now known as BC53/5

- ii. February 1999 – A query from Mrs Earl of Raby Place who was requesting a signpost to stop people crossing her field instead of using the footpath. March 1999 – Judith Gradwell of the Public Rights of Way Team responded to say that a footpath sign would be erected at the junction of Fox Hill and Perrymead. October 1999 – Mrs Earl chased up the erection of the signpost. November 1999 – Judith Gradwell responded that it would be a priority **(Document 37)**.
- iii. May 2001 – Works were arranged to remove and replace broken steps **(Document 38)**.
- iv. January 2004 – Mr Rhymes made an enquiry about moving a gate on his land. He was advised that *“regardless of what happens on the ground the Recorded line of the path will remain and shall continue to be regarded as the legal right of way unless its route is legally diverted.”* **(Document 39)**.

- **BC64/7 (CQ42):**

- i. An Exhibition of Public Rights of Way in Bath was held at the Bath Central Library in 2004. It was the start of the Bath Definitive Map Project to add all unrecorded public rights of way to the Definitive Map and Statement for the City of Bath. A member of the public asked to have this path added to the list of paths to be researched. The path was given the reference number CQ42 and included in the list of paths to be researched in Widcombe Ward.
- ii. The path is mainly on land belonging to the National Trust but begins on land in the ownership of Smallcombe Farm (a section of path of approximately 8 metres in length). It joins footpath BC54/40 in the middle of the access track to Smallcombe Farm.
- iii. In March 2009, Sarah Lewis of Smallcombe Farm applied to divert footpath AQ34 (now recorded as footpath BC54/40) on land in her family’s ownership. The Authority confirmed receipt of the application **(Document 40)**. The proposed diversion route submitted by Birketts LLP, on behalf of Sarah Lewis, clearly shows the route of footpath CQ42 meeting footpath AQ34 in the middle of the access track at point C on the plan submitted, providing a continuous link **(Document 41)**. The proposed diversion was consulted on in 2013 and footpath CQ42 was shown as an *“unaffected public footpath”* on the consultation plan **(Document 42)**. The National Trust originally gave consent to divert the section of footpath CQ42 on their land. Following an extensive consultation with the public in 2013, the

National Trust made the following comment in an email dated 13<sup>th</sup> February 2014 from Wendy Stott, General Manager for the National Trust in Bath (**Document 43, pages 2 to 3**): *“Following the consultation we ran at the end of last year about proposed changes to the footpath at Smallcombe (that we were asked to consider by the owner of Smallcombe Farm) we received a number of comments, of those 28.5% were in support of the changes and 71.5% were against. In light of this feedback the National Trust feels that it cannot support the diversion as recently proposed. There are a large majority of local people (both members and non-members of the Trust), footpath users and interested parties who have expressed their concerns and are against this change. As you will appreciate there are strong views on either side and it is important for the National Trust as a responsible land owner to take all of these in to account.”* Ryan Kuszek, Rural Surveyor for the National Trust confirmed that the National Trust was withdrawing its consent to the proposed diversion on 8<sup>th</sup> April 2014 (**Document 43, page 1**). Subsequently, Sarah Lewis withdrew her application on 29<sup>th</sup> January 2015 (**Document 44**).

- iv. A Section 31(6) Deposit was lodged in August 2012 which affects some of the land over which the path crosses. The footpath is shown on the plan accompanying the Deposit (**Document 45**).
- v. In 2015, the Lewis family objected to the recording of footpath BC54/40 on the Definitive Map and Statement for the City of Bath. The case was determined by the Planning Inspectorate (Case Reference FPS/F0114/7/22 - Bathwick & Combe Down). The Inspector’s Decision was to confirm the Order as made and Footpath BC54/40 was added to the Definitive Map and Statement for the City of Bath, extending into the access track where it joins path BC64/7 (CQ42) (**Document 46**).

### 3. Assessment of Evidence

- 3.1 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.”*

- 3.2 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, secrecy or permission (i.e. ‘as of right’) and each case turns on whether the facts indicate an intention to dedicate.

#### **BC53/5**

- 3.3 The evidence of use of the path collected during the consultation in 2018 and listed in paragraphs 2.8 and 2.9 demonstrates that the path is a public right of way and is used ‘as of right’. In total, 31 members of the public responded to the consultation. Of these, 5 responded to the notices with anecdotal information regarding their use (**Document 09e**), although User 56 gave details regarding length and frequency of use of the path, demonstrating 55 years use of the path, 3 times per year. The 26 users who responded to the web consultation completed an online User Evidence Form and gave details of their use of the path (**Document 09g**).
- 3.4 The consultation took place in 2018 and 6 users<sup>25</sup> demonstrated over 20 years use of the path prior to this date (7 users including the anecdotal information provided by User 56). One user<sup>26</sup> reported having been given permission to use the path from “the School”, balanced against 25 users who did not report being given permission to

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<sup>25</sup> Users 43, 46, 27, 37, 44 and 45

<sup>26</sup> User 8

use the path. User 37 stated that the presence of a gate had prevented / deterred her from using the route, balanced against 25 users who were not prevented / deterred from using the route by the presence of a gate. No other obstructions or deterrents to use of the path were reported.

- 3.5 In 1982, a member of the public submitted 25 User Evidence Forms regarding use of the path, of which 6 users had used the path for a period of over 20 years prior to 1982 (**Document 23**). Avon County Council and Bath City Council accepted the evidence that was submitted and added the footpath to the list of paths considered to be definitive (as there was no formal Definitive Map and Statement for the City of Bath until 2006). The evidence was submitted to the Headmaster of the Paragon School in 1983, who accepted the status of footpath provided a suitable sign was erected (**Document 28**). The Council erected a public footpath sign on the path, which is still in place.
- 3.6 The path appears to have been in existence since at least as early as 1885. Following the submission of user evidence forms, the path was added to the map of public rights of way for the City of Bath. A previous owner of the Paragon School accepted that the path is a public right of way in 1983 (**Document 28**). The Council erected a public footpath sign on the path, which is still in place (Photograph 4, **Document 47**).
- 3.7 The present landowner (Objector 2) did not respond to the consultation.

#### **BC53/6**

- 3.8 The evidence of use of the path collected during the consultation in 2018 and listed in paragraphs 2.8 and 2.9 demonstrates that the path is a public right of way and is used '*as of right*'. In total, 34 members of the public responded to the consultation. Of these, 6 responded to the notices with anecdotal information regarding their use, although User 56 gave details regarding length and frequency of use of the path, demonstrating 55 years use of the path, 3 times per year. The 28 users who responded to the web consultation completed an online User Evidence Form and gave details of their use of the path (**Document 09h**).

- 3.9 The consultation took place in 2018 and 6 users<sup>27</sup> demonstrated over 20 years use of the path prior to this date (7 users including the anecdotal information provided by User 56). One user<sup>28</sup> reported having been given permission to use the path, balanced against 27 users who did not report being given permission to use the path. None of the respondents reported that they had been prevented or deterred from using the path or had their use interrupted.
- 3.10 The path appears to have been in existence since at least as early as 1885. The path was included in the 1957 Survey by the Bath City Engineer as a footpath. Queries regarding the status of the path over the years have been given the response that the path is a public footpath and this was accepted by a previous owner of the Paragon School in 1983 (**Document 28**). As a result of the query, the Council erected a public footpath sign on the path, which is still in place (Photograph 3, **Document 47**). A request for a signpost at the Fox Hill end of the footpath was also granted (Photograph 2, **Document 47**).
- 3.11 There are 4 current landowners, one of whom did not respond to the pre-Order consultation (Objector 2). However, a notice placed on the footpath clearly reads “PUBLIC FOOTPATH OVER PRIVATE LAND” (Photograph 1, **Document 47**). The other 3 landowners recognise the path as a public footpath.

### **BC64/7**

- 3.12 The evidence of use of the path collected during the consultation in 2018 and listed in paragraphs 2.8 and 2.9 demonstrates that the path is a public right of way and is used ‘*as of right*’. In total, 41 members of the public responded to the consultation. Of these, 7 responded to the notices with anecdotal information regarding their use, although User 56 gave details regarding length and frequency of use of the path, demonstrating 55 years use of the path, 50 times per year. The 34 users who responded to the web consultation completed an online User Evidence Form and gave details of their use of the path (**Document 09f**).
- 3.13 The consultation took place in 2018 and 8 users<sup>29</sup> demonstrated over 20 years use of the path prior to this date (9 users including the anecdotal information provided by

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<sup>27</sup> Users 27, 43, 44, 45, 46 and 51

<sup>28</sup> User 49

<sup>29</sup> Users 1, 4, 10, 14, 17, 21, 26 and 27

User 56). Two users<sup>30</sup> reported having been given permission to use the path, balanced against 32 users who did not report being given permission to use the path. None of the respondents reported that they had been prevented or deterred from using the path or had their use interrupted.

- 3.14 Part of the path appears to have been in existence at least as early as 1885. The whole present day route appears to have come into existence at least as early as 1933. The National Trust, as the major landowner, is happy with the inclusion of the path in a legal order. In 2014 the National Trust withdrew its support of the proposed diversion at Smallcombe Farm due to the overwhelming public disapproval of the proposal during the informal consultation (**Document 43**). A very significant amount of evidence of use by the public was gathered during the consultation on public rights of way in 2018 (**Documents 09e and 09f**).
- 3.15 Sarah Lewis (Objector 1) responded to the consultation notice stating that the path does not extend onto land owned by her family (the private access track). However, the path is shown linking with footpath BC54/40 on a Section 31(6) Landowner Deposit made by her family in 2012 (**Document 45**) and on the plan accompanying an application to divert the footpath (**Document 41**), which was subsequently withdrawn by Sarah Lewis.

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<sup>30</sup> User 10, 33

## 4. Objections / Representations

- 4.1 Objection 1, dated 8<sup>th</sup> May 2019 (**Document 04, pages 4 to 8**), was sent by Porter Dodson Solicitors & Advisors on behalf of their client, Sarah Lewis of Smallcombe Farm, Bath in response to the making of the Order for path reference BC64/7.

*“Our client objects to the order made on 21<sup>st</sup> March 2019 (“the Challenged Order”) chiefly on the grounds that there is not, nor has there ever been a public right of way of any description from the southern end of public footpath BC54/40 to the southern boundary of Smallcombe Farm land. Accordingly the proposed new footpath must end at the northern boundary of the Trust’s land not a point “A” shown on the map annexed to the Challenged Order (“the Order Map”).”*

- 4.2 An email dated 27<sup>th</sup> March 2019 (**Document 04, pages 35 to 36**), was sent by email by Mr Tan Tootill, Estates Director, on behalf of the Paragon School, Bath, in response to the making of the Order for path reference BC53/5.

*“I would like to register our objection to the proposed registration, particularly the section of path (BC53/5) from points B-C-D-E-F-G. This “loop” is within a designated woodland play area for the children of the school and public access would represent a safeguarding, health and risk for our site. There is no merit in having two routes within such close proximity both reaching the same exit point on our land.”*

- 4.3 On 9<sup>th</sup> May 2019 (**Document 04, pages 24 to 26**), Avison Young submitted the objection as a formal objection letter (Objection 2) from the Paragon School in response to the making of the Order for path reference BC53/5 and BC53/6.

*“The proposed location of these formal Public Rights of Way are located within an established woodland play area for the children of the school; public access would represent a safeguarding and health and safety risk; the school raise concerns with potential rough sleepers, drug paraphernalia and open fires within the woodland area, and on school grounds if these pathways were to become formal right of way routes. Requiring the school to monitor users of the Public Right of Way for the safety of their students would not be practical and would open up the school grounds to unsupervised visitors. This would*

*ultimately result in the school having to significantly reduce its space for outdoor play, and therefore the unfortunate loss of additional play space for the school's students."*

- 4.4 A full examination of the objections is made in the Authority's Comments on Objections which can be found at **Document 05**.

## 5. Conclusions

- 5.1 In conclusion, the Objection listed in point 4.1 above refers to the landowner's belief that there is no public right of way along the section of footpath on land in the ownership of Smallcombe Farm. The section of BC64/7 which crosses land in the family ownership is shown on the Section 31(6) Landowner's Deposit, made by the Lewis family in 2012 (**Document 45**) and on the plan submitted for consultation with the public as part of the application to divert the footpath (**Document 41**), which was subsequently withdrawn by the Objector (**Document 44**).
- 5.2 In conclusion, the Objection listed in points 4.2 and 4.3 appears to relate to a presumed threat to the pupils of the school from users of the footpath rather than the existence or non-existence of public rights of way along the footpath. Paths BC53/5 and BC53/6 were acknowledged as public rights of way by the School in 1983 (**Document 28**) and public footpath signs remain on Lyncombe Vale Road (**Document 47**).
- 5.3 Officers have considered the Objections and remain of the same view regarding all three paths (BC53/5, BC53/6 and BC64/7): i.e. that on considering the evidence based on the balance of probabilities, the Order should be confirmed.
- 5.4 The Authority, therefore, respectfully requests that the Secretary of State confirms the Order as made for BC53/5, BC53/6 and BC64/7 and adds BC53/5, BC53/6 and BC64/7 to the Definitive Map and Statement for the City of Bath.