

# Order Decision

Site visits made 11 & 12 April 2016

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 27 January 2017**

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## Order Ref: FPS/F0114/7/20M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order)(No. 9 – River Path and Towpath) 2011.
- The Order is dated 16 March 2011 and proposes to add a number of footpaths and a restricted byway to the Definitive Map and Statement on routes within the City of Bath. Full details of the routes are set out in the Order Plans and Schedule.
- In accordance with paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order subject to modifications.

**Summary of Decision:    The Order is confirmed subject to modifications originally proposed, with additional minor modifications, as set out in the Formal Decision.**

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## Preliminary Matters

1. The omnibus Order made related to twenty footpaths and one restricted byway in the City of Bath. Bath and North East Somerset Council, the order-making authority ("the OMA"), severed the Order, confirming that part to which there were no outstanding objections on 4 September 2013. By the time of the site visits only one objection remained.

## Procedural Matters

2. The Interim Order Decision ("the IOD"), issued on 5 May 2016, was made following my unaccompanied site visits, taking account of the written representations submitted. In the IOD I proposed modification to two of the routes under consideration. In relation to AQ92a I proposed to record part of the route on a different alignment and width. For AQ193 I proposed to modify the recorded status from restricted byway to footpath.
3. Following notice of the proposed modifications an objection was duly made by the OMA, raising matters relevant to the modified part of the Order, with some evidence not previously submitted. There was no request to be heard and I dealt with the matter by way of written representations.

## Main issues

4. In relation to AQ92a the OMA requested some minor modifications to those proposed, in order to better reflect the route on the ground. For AQ193 the OMA submitted some further information to support the original Order status of restricted byway.
5. The main issue is whether the newly submitted evidence, taken in conjunction with the evidence as a whole, indicates that the proposed modifications should

be amended or removed or additional modifications should be made or proposed, on the balance of probabilities.

## **Reasons**

### **AQ92a**

6. No objection has been made to the proposal to record an alternative alignment for this route and I remain satisfied that the identified route should be recorded. However, the OMA have helpfully identified some modifications to ensure the details of that route are correct.
7. Reviewing the information submitted I am satisfied that these modifications are appropriate. I am satisfied that these minor modifications do not require advertisement. For clarity I shall make the modifications to the original Order, rather than make further modifications to the interim proposed Order.

### **AQ193**

#### *Grosvenor Bridge, 1830s*

8. Grosvenor Bridge crosses the River Avon to the north-west of point B<sup>1</sup>, on the alignment of Footpath BA1/2, shown on the map. In 1839 the owner of a public house known as The Folly, situated near point B, signed an agreement which included that he would "*...not make or allow to be made any carriage road or way through the said Ground or any part thereof to communicate with the suspension bridge now existing there or any other Bridge hereafter built over the river Avon....*". The OMA argue that if vehicular traffic could not reach The Folly, and other buildings in this area, via Grosvenor Bridge then it must have used the route from Hampton Row, now recorded as a public footpath, BC65/1, shown by the OMA as C – X<sup>2</sup>, and the eastern section of the Order route, referred to as X – B.

#### *Cotterell's Map of Bath, 1852*

9. The route coloured on this map is that running to Hampton Row, rather than following the Order route to point A; the section A – X was not shown on this map. This assists in showing that the original route would have been on this alignment but does not assist with regard to status; the route to and crossing the Grosvenor Bridge, which the OMA indicate was a private toll bridge until acquired under the powers of the 1925 Bath Corporation Act, is also coloured in this way.

#### *Ordnance Survey mapping*

10. The submitted sections of the 1885 Ordnance Survey ("OS") map shows that there was a level crossing with gates and a signal box on the Hampton Row alignment. I agree with the OMA that, in comparison to other routes crossing the railway, this treatment suggests that the route was not simply a footpath. I note that there are also lampposts indicated which would have been gas lit and more likely to be found on a well-used route.

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<sup>1</sup> Points A and B identify the Order route on the Order maps, Part 13

<sup>2</sup> Points C and X have been added to the Order map purely for identification purposes

### *Great Western Railway*

11. The London Gazette on November 25, 1887, referred to the Parliamentary Session 1888 and changes to a public footpath in the Parish of Bathwick. The intention was to divert a footpath, making a new one at or near the site of a level crossing. There was no indication of stopping up of higher rights on the level crossing.
12. The subsequent OS mapping shows a footbridge over the railway line to Hampton Row, annotated on some of the maps as "F.B." with the route from there "F.P.". The route A – X – B can be seen from 1904 mapping onwards.

### *List of Streets*

13. The OMA submitted a copy of the current List of Streets ("LOS"). This shows the route coloured green as an isolated Class 4 highway, which the OMA indicate carries vehicular rights. There was some discussion regarding the recording of the route in 2001, which led to the current situation.
14. I note that the OMA place weight on this mapping as showing the status, rather than simply maintenance and I accept it as strong evidence of the view of the OMA. However, unlike the Definitive Map and Statement, these maps are not subject to public scrutiny before alterations are made and, in my view, this lessens the weight to be attached to them. In this case there have been alterations to the depiction of the route over time, suggesting some lack of clarity as to status and maintenance responsibilities.

### *Use*

15. The OMA say that the Order route is undoubtedly being used by bicycles. However, no evidence of such use has been submitted and I did not see indication of such use during my site visit.

### *Summary*

16. The OMA seek to place weight on the agreement not to create a vehicular route over Grosvenor Bridge as showing that the original route from Hampton Row must have provided vehicular access to and from The Folly and other properties in that area. I agree that the early OS mapping is suggestive of greater use than footpath, but this does not assist in showing whether such use was public or private. Although it may be hard to imagine today, I see no reason why access to a public house would necessarily be vehicular, as oppose to by foot or horse, with private vehicular rights available to the proprietor.
17. The changes made in relation to the railway refer only to rights of public footpath, which are recorded on the Definitive Map and Statement. The south-western end of the Order route, A – X, was first shown on the 1904 OS map, although there were formerly two other routes in the area. There is no indication of diversion of public vehicular rights from the Hampton Row route, C – X onto the Order route, A – X, at the south-western end. For the reasons set out earlier I feel unable to place significant weight on the current depiction of the route on the LOS.
18. The additional evidence supplied by the OMA does tip the balance a little further towards the status of restricted byway. Even so I find the evidence as a whole insufficient, on the balance of probabilities, to support the claimed

higher rights over the Order route, or any part thereof. I made a typographical error in paragraph 40 of my IOD – the point was that the higher rights do not appear to have continued to the west over the towpath, which is to be recorded as a public footpath AQ92d by this Order. The footpaths at the eastern end, BA1/1 and BA1/2, have been recorded as such since at least 1956 and lead to Grosvenor Bridge, over which the OMA point out there were to be no vehicular rights. I find it difficult to understand why there might be an isolated section of route with higher rights joining only to public footpaths at either end. I do not consider this to meet the common law understanding of a public highway.

19. Taking account of the evidence as a whole, I remain of the view that the Order route should be recorded with the status of footpath rather than restricted byway.

### Conclusion

20. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should be confirmed, subject to modifications with regard to alignment of part of the route of AQ92a. That part of the Order relating to AQ193 should be confirmed as proposed, with the status of public footpath.

### Formal Decision

21. I confirm the Order subject to the following modifications:

- Within Part I of the Schedule:
  - for '**AQ92a**':
    - replace "...The footpath continues in a northerly direction for a distance of approximately 3 m to point F at a footbridge across a lock gate at Grid Reference ST 7555 6426. The footpath crosses the lock gate for a distance of approximately 9 m to where it ends at point G at Grid Reference ST 7555 6427. The footpath continues for a distance of approximately 5m to where it finishes on the towpath (footpath AQ92b) at point H at Grid Reference ST 7555 6427 and shown by a broken black line with short intervals marked A-B-C-D-E-F-G-H on the map numbered Part 9 annexed to this order, the number of this footpath to be known as BCTOW/1. Width 0.76m – 7.1m between Grid Reference ST 7538 6428 and Grid Reference ST 7555 6427." with "...The footpath continues south and then north-west for a distance of approx. 12 m (on the southern side of the steps) to finish on the footway of Pulteney Road at point X at Grid Reference ST 7554 6426 and shown by a broken black line with short intervals marked A-B-C-D-E-X on the map numbered Part 9 annexed to this order, the number of this footpath to be known as BCTOW/1. Width 1.2m – 7.1m between Grid Reference ST 7538 6428 and Grid Reference ST 7554 6426";
  - for '**AQ193**':
    - replace "Restricted Byway" with "Footpath" throughout;
    - after text "...shown by a..." replace "...bold broken line and small arrowheads..." with "...broken black line with short intervals...";

- Within Part II of the Schedule:
  - for 'Path Number: **AQ92a**':
    - for '**Length**' replace "193 m" with "188m";
    - for '**Width**' replace "...0.76m..." with "...1.2m";
    - for '**Description of Route, To**' replace "Footpath AQ92b" with "Pulteney Road" and show the Grid Reference as "ST 7555 6426";
    - for '**General Description**' replace "...The footpath continues in a N direction for a distance of approx. 3 m to a footbridge across a lock gate at Grid Reference ST 7555 6426. The footpath crosses the lock gate for a distance of approx. 9 m to where it ends at Grid Reference ST 7555 6427. The footpath continues for a distance of approx. 5m to where it finishes on the towpath (footpath AQ92b) at Grid Reference ST 7555 6427." with "...The footpath continues south and then north-west for a distance of approx. 12 m (on the southern side of the steps) to finish on the footway of Pulteney Road at Grid Reference ST 7554 6426";
    - for '**Conclusive Evidential Provisions**' remove all text and add "None";
  - for 'Path Number: **AQ193**' replace "Restricted Byway" with "Footpath" throughout;
- On the Order plan:
  - for '**Part 9**' (AQ92a);
    - alter key to refer to route A – D – X;
    - for 'The width of the footpath to be recorded varies between...' replace "...0.76m..." with "...1.2m...";
    - remove text relating to widths between points E, F, G and H;
    - add text "Between Point E and Point X the width of the footpath is 1.2m - 2.0m";
    - add point X on Pulteney Road footway;
    - delete section E – F – G;
    - add route from E – X;
  - for '**Part 13**' (AQ193);
    - replace text "...Restricted Byway..." with "...Footpath..." throughout;
    - show Order route and key as broken black lines;
    - add points C and X.

*Heidi Cruickshank*

**Inspector**



# Wildlife & Countryside Act 1981

## Part 9

Bath & North East Somerset Council

Public Footpath AQ92a at Widcombe Ward, Bath. City of Bath Definitive Map and Statement Modification Order (No.9 - River Path and Towpath) 2011

Bath & North East Somerset Council  
Riverside  
Temple Street  
Keynsham  
Bristol BS31 1LA  
Tel 01225 477000

**Key** Footpath to be added to the Definitive Map and Statement.

A ————— H D --- X

ST 7538 6428 ST 7555 6427

The width of the footpath to be recorded varies between <sup>1.2m</sup> 0.76m - 7.1m.

Between Point A and Point B the width of the footpath varies between 2.1m - 7.1m

Between Point B and Point C the width of the footpath varies between 1.5m - 3.0m

Between Point C and Point E the width of the footpath is 1.6m

~~Between Point E and Point F the width of the footpath is 1.8m~~

~~Between Point F and Point G the width of the footpath is 0.76m across the lock gate.~~

~~Between Point G and Point H the width of the footpath is 1.8m~~

Order Map



Scale 1:1250

Date: Nov 2010

*Between Point E and Point  
X the width of the footpath  
is 1.2m - 2.0m.*





# Wildlife & Countryside Act 1981

## Part 13

Bath & North East Somerset Council  
Riverside  
Temple Street  
Keynsham  
Bristol BS31 1LA  
Tel 01225 477000

Bath & North East Somerset Council

Public Restricted Byway AQ193 at Bathwick Ward, Bath. City of Bath Definitive Map  
and Statement Modification Order (No.9 - River Path and Towpath) 2011

### Key

Restricted Byway to be added to the Definitive Map and Statement. The width of the Restricted Byway to be recorded is shown shaded and varies between 1.3m - 7.8m.

Order Map



Scale 1:2000

Date: Nov 2010

A  B

Unaffected public footpath

ST 7610 6580 ST 7633 6596

