



## Order Decision

First inquiry held on 7-8 August 2018

Unaccompanied and accompanied site visits undertaken on 6 and 8 August 2018

Second inquiry held on 15 October 2019

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 19 December 2019**

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### Order Ref: ROW/3186868M

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Bath and North East Somerset Council (Restricted Byway BA21/12, Beeks Mill, St Catherine) Definitive Map Modification Order 2017.
- The Order was made by the Bath and North East Somerset Council ("the Council") on 2 August 2017 and proposed to add a restricted byway to the definitive map and statement, as detailed in the Order Map and Schedule.
- The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act I have given notice of my proposal to confirm the Order with modifications.

**Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.**

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### Procedural Matters

1. I proposed in my interim decision ("ID") of 4 October 2018 to modify the status of the route claimed ("the claimed route") to a bridleway and include an additional limitation in the Order. This decision should be read in conjunction with my ID with the numbers in square brackets representing particular paragraphs in the ID.
2. Two objections were made in response to the ID and these related to the unmodified part of the Order. One of the objections, pursued by Mr Dunlop on behalf of Ms Chubb, is on the ground that there is new evidence to show that no public right of way subsists. Additionally, a representation from the Council requests that the limitations are more clearly set out in the Order. The second inquiry was therefore held in accordance with paragraphs 7 and 8 of Schedule 15 to the 1981 Act.
3. The references to points A and B below correspond to those points delineated on the Order Map.

### Main Issues

4. I outlined the relevant matters in relation to the Order, as made, in the ID [7-10]. The main issue now is whether there is new evidence that has a bearing on my proposal to record the claimed route as a public bridleway. If I conclude that the Order should be confirmed, consideration will then need to be given to how the limitations are recorded.
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## **Reasons**

### ***Matters arising from the ID***

5. The original written evidence comprised of a mixture of user evidence forms submitted in support of the application and statements relied upon by Ms Chubb [16]. A number of people were called at the first inquiry by Mr Dunlop and the applicant (Mr MacIntyre) in support of their respective positions.
6. Having regard to the lodging of a statutory declaration by the landowners [14], the relevant twenty-year period for the purpose of Section 31 of the Highways Act 1980 ("the 1980 Act") was taken to span 1992-2012 ("the relevant period"). In light of the new evidence provided, it is possible that the status of the claimed route was brought into question by an earlier event.
7. In reaching my conclusions, I had regard to the evidence that pointed to permissive use [19] and the information obtained during cross-examination [20]. The user evidence in support of the application was bolstered by statements from others acknowledging that there had been significant use of the claimed route by horse riders. This evidence was in my view sufficient to raise a presumption of the dedication of a bridleway [21]. The extent of the use should have been sufficient to alert a reasonable landowner that the public were using the claimed route.
8. There was no evidence of challenges being issued to people walking or riding along the claimed route during the relevant period [29]. In terms of the gate at point A, the evidence was not supportive of this being locked during the relevant period [24]. The single field gate at this point was replaced by a field gate and side gate in the 1990s. Further, I was not satisfied that signage erected in this location, or elsewhere, was sufficient to inform the public that there was no intention to dedicate a bridleway [27-28].
9. I concluded that the evidence was supportive of the dedication of a public bridleway in accordance with Section 31 of the 1980 Act. Accordingly, there was no need to consider the issue of common law dedication [31].

### ***The new evidence***

10. The new evidence submitted in support of the objection pursued on behalf of Ms Chubb focusses primarily on the locking of the gate, or later gates, at point A. This new evidence should be considered in conjunction with the original evidence provided.
11. No new evidence has been provided to indicate that I should not have found on balance that the written material and oral evidence raises a presumption of the dedication of a bridleway. An additional person (Mr Castree) has provided evidence of use during this period on foot and pedal cycle.
12. Mr Lippiatt outlines that he provided some incorrect evidence at the first inquiry, for instance in relation to the presence of signage. It is concerning when witnesses change their evidence on such matters. In this case, he asserts that his original evidence had been influenced by Ms Chubb. I note that this point is not challenged by Ms Chubb. Nonetheless, it remains the case that Mr Lippiatt had permission to use the route.
13. Additional statements were provided in support of Ms Chubb's objection and eleven of these people gave evidence at the second inquiry. Seven of the

- witnesses had given evidence at the first inquiry. There are additional written statements from people who have previously provided evidence regarding the claimed route.
14. Evidence was previously provided regarding the late Mr C. Godwin sometimes locking the gate at point A in the evenings [23-24]. However, this fell outside of the relevant period. The new evidence is that there were other occasions when this gate was locked, for example during the Christmas/New Year period.
  15. There will be concerns about the reliability of this new evidence when the same people previously failed to mention the locking of the gate or gates. It should have been apparent to the parties that this was a significant matter and evidence was given on this point by the supporters at the first inquiry prior to the witnesses called by Mr Dunlop giving their evidence. Further, in some cases, there is an apparent conflict between the previous and more recent evidence provided.
  16. It was evident from the cross-examination of the eleven witnesses called by Mr Dunlop that most could not confirm that gates had been locked during the relevant period or had personally seen any locked gates. Reliance was placed in some cases on being told that this was the case. Whilst Mr Turner says that the gate at point B was occasionally locked, this statement is not corroborated by other witnesses.
  17. In terms of the additional witnesses, Mr Watkins stated that he encountered a locked gate during the Christmas period. This was also applicable to Mr Smart who spoke on his own behalf at the second inquiry. One of the new witnesses (Mr Vorstenbosch) says that he found the gate at point A to be locked one night. He also says he was challenged by someone, but he could not identify the person involved. Another new witness was Ms Chubb and she outlines that she started to lock the main gate and side together between Saturday lunch time and Sunday evening during the period the contractors renovating her home were not on site. This would have been between 2009-2011.
  18. Given the information gleaned from the witnesses during cross-examination, when set against their witness statements, there will be doubts regarding the extent to which the untested new written material can be relied upon. The additional statements provide further evidence in support of the locking of the gate/gates on occasions and during the Christmas period.
  19. Two Written statements have been made by Mr Thornhill who was the son-in-law of the late Mr Lane [22]. Mr Thornhill's wife had a share in the ownership of the land crossed by the claimed route for a proportion of the relevant period. He says in his second statement that the gate was locked at least one day a year. Again, this point was not mentioned in his original statement. Mr Thornhill arranged for the replacement field gate and side gate to be put in place. He states that the side gate was to allow pedestrians and horse riders to use the route more easily, but it did constitute a dedication of a public right of way. Reference is also made to signage being erected to state that the route was a bridleway only and asking people to please shut the gate. Mr Thornhill's statement that he challenged use in connection with the business known as '*Doggy Doos*' was disputed by Mr MacIntyre's daughter (Mrs Eli) at the inquiry.
  20. The issue to be determined is whether action was taken that made the public aware there was no intention to dedicate a bridleway. The provision of a side gate and the '*bridleway only*' sign mentioned by Mr Thornhill and others are not

indicative of public use being challenged or that use was by permission of the landowner. I have commented above on the quality of the new evidence regarding the locking of gates. Whilst there may well have been some occasions when the gates were locked prior to action being taken by Ms Chubb, I do not consider on balance it has been demonstrated that this was done to such an extent as to bring it home to the public that there was a lack of intention to dedicate a bridleway. In reaching this conclusion, I have also had regard to the evidence of the users on this issue.

21. Reference has been made to various signs being in place at times. It remains my view that this signage did not challenge public use on foot, cycle or horseback. The '*bridleway only*' sign could potentially have served to have encouraged people to use the route. The word '*private*' by itself does not make it expressly clear that public use of the claimed route was not permitted. This would particularly apply following the provision of the side gate in the 1990s.
22. The written and oral evidence from those users who support the order, which was primarily presented at the first inquiry, is generally supportive of gates not being locked prior to 2012. Nonetheless, there is an indication in a couple of the forms that a locked gate was first encountered in 2011. This would tie in with when Ms Chubb moved into the renovated house. Mr Castree estimated that a locked gate first appeared in around 2010. Given the evidence of Ms Chubb, I accept it is possible that she took action prior to 2012 that served to challenge use of the claimed route. However, even if the status of the route was brought into question a couple of years earlier, there remains sufficient evidence of use to raise a presumption of dedication over the preceding twenty-year period.
23. From an evaluation of the new and old evidence, it remains my view on the balance of probabilities that a public bridleway subsists over the claimed route.

### **Limitations**

24. The information provided is indicative of there being a field gate at point A at the onset of the relevant period. It is apparent that the side gate was provided at a later date and was not in place when the dedication occurred. Some additional evidence has been provided in support of there being a field gate in place at point B. No new evidence has been provided to indicate that the limitation of a field gate should not be recorded at point B. I concur with the Council that the Order could be modified in a manner that more clearly describes these two structures. The limitations should therefore be described in the manner suggested by the Council.

### **Conclusion**

25. Having regard to these and all other matters raised at the two inquiries and in the written representations I conclude that the Order should be confirmed with the revised modifications detailed below.

### **Formal Decision**

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

- Replace all references in the Order to "*restricted byway*" with "*bridleway*".

- Delete the text after "*Limitations*" in Part II of the Order Schedule and insert "*The right of the landowner to erect and maintain a field gate at grid reference ST 7611 7106 and erect and maintain a field gate at grid reference ST 7624 7121*".
- Replace the notation on the Order Map for a restricted byway with the notation for a bridleway and amend the map key accordingly.

*Mark Yates*

**Inspector**



This map forms part of the Bath and North East Somerset Council (<sup>Bridleway</sup> Restricted Byway BA21/12, Beeks Mill, St Catherine) Definitive Map Modification Order 2017



Scale 1:2500

