

Democratic Services

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Date: 1 October 2014

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To: All Members of the Regulatory (Access) Committee

Councillor Douglas Nicol

Councillor Douglas Deacon

Councillor Jeremy Sparks

Councillor Peter Edwards

Councillor Mathew Blankley

Chief Executive and other appropriate officers
Press and Public

Dear Member

Regulatory (Access) Committee: Wednesday, 8th October, 2014

You are invited to attend a meeting of the **Regulatory (Access) Committee**, to be held on **Wednesday, 8th October, 2014 at 10.30 am** in the **Council Chamber - Guildhall, Bath.**

The agenda is set out overleaf.

Yours sincerely



Jack Latkovic
for Chief Executive

If you need to access this agenda or any of the supporting reports in an alternative accessible format please contact Democratic Services or the relevant report author whose details are listed at the end of each report.

This Agenda and all accompanying reports are printed on recycled paper

NOTES:

- 1. Inspection of Papers:** Any person wishing to inspect minutes, reports, or a list of the background papers relating to any item on this Agenda should contact Jack Latkovic who is available by telephoning Bath 01225 394452 or by calling at the Guildhall Bath (during normal office hours).
- 2. Public Speaking at Meetings:** The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. Advance notice is required not less than two full working days before the meeting (this means that for meetings held on Wednesdays notice must be received in Democratic Services by 4.30pm the previous Friday)

The public may also ask a question to which a written answer will be given. Questions must be submitted in writing to Democratic Services at least two full working days in advance of the meeting (this means that for meetings held on Wednesdays, notice must be received in Democratic Services by 4.30pm the previous Friday). If an answer cannot be prepared in time for the meeting it will be sent out within five days afterwards. Further details of the scheme can be obtained by contacting Jack Latkovic as above.

- 3. Details of Decisions taken at this meeting** can be found in the minutes which will be published as soon as possible after the meeting, and also circulated with the agenda for the next meeting. In the meantime details can be obtained by contacting Jack Latkovic as above.

Appendices to reports are available for inspection as follows:-

Public Access points - Riverside - Keynsham, Guildhall - Bath, Hollies - Midsomer Norton, and Bath Central, Keynsham and Midsomer Norton public libraries.

For Councillors and Officers papers may be inspected via Political Group Research Assistants and Group Rooms/Members' Rooms.

- 4. Recording at Meetings:-**

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator

The Council will broadcast the images and sound live via the internet www.bathnes.gov.uk/webcast An archived recording of the proceedings will also be available for viewing after the meeting. The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

- 5. Attendance Register:** Members should sign the Register which will be circulated at the meeting.

6. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.

7. Emergency Evacuation Procedure

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are sign-posted.

Arrangements are in place for the safe evacuation of disabled people.

Regulatory (Access) Committee - Wednesday, 8th October, 2014

at 10.30 am in the Council Chamber - Guildhall, Bath

A G E N D A

1. EMERGENCY EVACUATION PROCEDURE

The Chairman will draw attention to the emergency evacuation procedure as set out under Note 6.

2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

3. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** or an **other interest**, (as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

4. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

5. ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

At the time of publication, no items had been submitted

6. ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

To deal with any petitions or questions from Councillors and where appropriate co-opted members.

7. MINUTES OF PREVIOUS MEETING (Pages 7 - 14)

8. HANDEL ROAD DMMO (Pages 15 - 46)

An application has been received for a Definitive Map Modification Order ('DMMO') to be made under section 53(2) of the Wildlife and Countryside Act 1981 ('the 1981 Act')

to modify the Definitive Map and Statement of Public Rights of Way ('the DM&S') by adding a public footpath running from Park Road to Charlton Park in Keynsham.

It is recommended that the Regulatory (Access) Committee resolves for Bath and North East Somerset Council ("the Authority") makes a DMMO to record the Application Route, as shown by a broken black line on the plan contained at Appendix 1 ("the Decision Plan") and described in the schedule contained at Appendix 2, on the DM&S.

The Committee Administrator for this meeting is Jack Latkovic who can be contacted on 01225 394452.

Protocol for Decision-making

Guidance for Members when making decisions

When making decisions, the Cabinet/Committee must ensure it has regard only to relevant considerations and disregards those that are not material.

The Cabinet/Committee must ensure that it bears in mind the following legal duties when making its decisions:

- Equalities considerations
- Risk Management considerations
- Crime and Disorder considerations
- Sustainability considerations
- Natural Environment considerations
- Planning Act 2008 considerations
- Human Rights Act 1998 considerations
- Children Act 2004 considerations
- Public Health & Inequalities considerations

Whilst it is the responsibility of the report author and the Council's Monitoring Officer and Chief Financial Officer to assess the applicability of the legal requirements, decision makers should

ensure they are satisfied that the information presented to them is consistent with and takes due regard of them.

BATH AND NORTH EAST SOMERSET

REGULATORY (ACCESS) COMMITTEE

Friday, 15th November, 2013

Present:—Councillors: Douglas Nicol (Chair), Jeremy Sparks, Peter Edwards, Mathew Blankley and Dave Laming

21 WELCOME AND INTRODUCTIONS

The Chairman welcomed everyone to the meeting.

The Chairman and the Committee introduced themselves.

The Chairman also introduced the officers in the following order: Graeme Stark (Senior Rights of Way Officer and Case Officer for the Bath Recreation Ground Town and Village Green Registration Application), Simon Elias (Senior Legal Adviser) and Jack Latkovic (Senior Democratic Services Officer and Committee Clerk).

22 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the emergency evacuation procedure as set out on the Agenda.

23 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apology was received from Councillor Douglas Deacon. Councillor Dave Laming was substitute for Councillor Deacon.

24 DECLARATIONS OF INTEREST

There were none.

25 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

There was none.

26 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

The Committee noted that there were five members of the public who wished to make statements on the agenda item 8 (Bath Recreation Ground Town and Village

Green Registration Application). The Democratic Services Officer informed the meeting that each speaker will have up to five minutes to read their statement. The Committee might ask factual questions to speakers.

27 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

The Committee noted that Councillor David Dixon will address the Committee under item 8 on the agenda (Bath Recreation Ground Town and Village Green Registration Application) as Chair of the Recreation Ground Trust and Local Resident.

28 MINUTES OF PREVIOUS MEETING

It was **RESOLVED** that the minutes of the meeting on Tuesday 18th December 2012 be confirmed as a correct record and signed by the Chair.

29 BATH RECREATION GROUND TOWN AND VILLAGE GREEN REGISTRATION APPLICATION

The Chairman informed the meeting that the Committee will hear from Graeme Stark first.

The Committee will also hear from speakers in the following order:

Councillor David Dixon
Mr Jack Sparrow (Applicant)
Mr Steve Osgood
Mrs June Scott
Mr David Greenwood
Mrs Susan Macdonald

The Committee will then debate the matter and make their decision.

The Chairman invited Graeme Stark to introduce the report.

Graeme Stark addressed the Committee with the following statement:

‘The matter in front of the Committee today is to determine whether Bath Recreation Ground should be registered as a Town or Village Green pursuant to section 15 of the Commons Act 2006.

On 18 December 2012, Bath and North East Somerset Council, in its capacity as the Commons Registration Authority, received a duly made application from Mr Sparrow to register the land edged in red on the plan contained at Appendix 1 of my report as Town or Village Green.

The application was duly advertised and the Authority received seven objections and 18 emails and letters of support. The Registration Authority instructed an independent barrister – Mr Leslie Blohm QC - to advise on whether the Bath Recreation Ground should be registered.

The legal test which must be satisfied in order for land to be registered as town or village green is contained in section 15(2) of the Commons Act 2006 which states that land should be so registered if:

“a significant number of the inhabitants of any locality, or neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and they continue to do so at the time of the application.”

The Committee are only permitted to consider whether this legal test has been satisfied, which in relation to this particular application means whether it has been demonstrated that a significant number of the inhabitants of the city of Bath have indulged as of right in lawful sports and pastimes on the Bath Recreation Ground from 1992 to 2012. The Committee is not permitted to consider whether or not registration would be deemed desirable nor what affect registration might have upon the future use or development of the land; these matters are legally irrelevant to the matter in hand.

Paragraph 71 of the Inspector's Initial Advice advises that;

“...the Registration Authority...should dismiss the Application for Registration of The Rec, Bath as a Town or Village Green pursuant to section 15 Commons Act 2006 on the following grounds:

- (1) That usage of The Rec for lawful sports and pastimes ‘as of right’ has not been by a significant number of the inhabitants of Bath;
- (2) That usage of the land demised to Bath Rugby plc, and of the Leisure Centre and the tennis and Croquet Courts has not been ‘as of right’.

Use must be ‘as of right’; however, the 1956 conveyance gives the citizens of Bath the right to use the land for *“games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character”* use that is consistent with this description is therefore ‘by right’ and not the qualifying ‘as of right’ type of usage which is required to contribute towards registration as a TVG.

The Committee is recommended to refuse the application and not register Bath Recreation Ground as Town or Village Green.’

The Chairman asked Simon Elias to clarify the difference in definitions ‘as of right’ and ‘by right’.

Simon Elias quoted a comment from Leslie Blohm QC which was part of the Further Advice in regards of an application by Mr Jack Sparrow (application number TVG12/1), on page number 156 of the agenda:

'Mr. Sparrow has confused the terms 'by right' and 'as of right'. This is understandable as these are legal terms of art, and they do not bear the meaning that they might be thought to have if used in ordinary speech. 'As of right' refers to the quality that the use of the land must have in order for it to count towards the test for registration. It means 'as if of right', or to put it another way, in the same manner as a person would use the land if he was entitled to do so. It presupposes that the person doing the act does not have a right to do it at that time. 'By right' by contrast means 'by reason of a pre-existing right'. Therefore, if a person already has a right to use the land for recreation, then the law does not allow him to count his usage towards use 'as of right'. Mr. Sparrow suggests that citizens of Bath who are beneficiaries of the charitable trust have a right to carry out sports and games on the Rec, and that therefore their use should be considered to be 'as of right'. That is not correct. Their use of the Rec for such purposes would be 'by right' and not 'as of right'.'

The Chairman invited Councillor David Dixon to read out his statement.

Councillor David Dixon said that he was speaking on behalf of the Recreation Ground Trust Board which has 10 members. The Trust welcomed the recommendation from the Inspector, who gave quite clear advice. It still remains the view of the Trust that the uses put forward by the applicant were made 'by right' and not 'as of right'. The Trust also agreed with the Inspector that the applicant has failed to prove, and has no reasonable prospects of approving, qualifying use of the Rec by a significant number of the inhabitants of the City of Bath. The application to register the Rec as the Town and Village Green should be rejected.

The Chairman invited Mr Jack Sparrow to address the Committee. The Committee acknowledged that they received a statement from Mr Sparrow in advance of the meeting. Full statement from Mr Sparrow is attached as Appendix 1 to these minutes.

Mr Sparrow addressed the Committee as per his statement, by saying the following:

'I will assume that the committee members have read all the Town Green application papers, the objections, my response to the objections, support letters or emails, the two sets of advice from the Barrister, my additional information to the Barrister and my responses to his advice.

I will thus confine my contribution today to a series of questions, which I expect to be answered prior to the Committee making its decision.

There has obviously been some confusion on my part concerning 'As of right', 'By right' and 'As if of right' introduced by the Barrister. I preferred to use the normal English language meaning of the words not some arbitrary legalistic interpretation and chose 'The Right' finally as what Bath Citizens are entitled to.'

Mr Sparrow went through the questions, as included in the statement. The Chairman reminded Mr Sparrow that this part of the meeting, or the meeting, is not a question and answer session.

Mr Sparrow read out questions (until question 17) as printed in his statement.

Mr Sparrow finished his statement by saying that (quote) 'All the above questions and, more importantly, the original conveyance in 1956 indicate that the Recreation Ground is an ideal candidate to be a Town Green and I urge the Committee to recognise this and give it the appropriate status' and added that 'this meeting is an absolute farce and not worth counting'.

Councillor Laming asked Mr Sparrow about the comment on page 92, bullet point a), and asked how Mr Sparrow can be sure that the objector in would be aware that the Rugby Club's occupation of the Rec is illegal.

Mr Sparrow responded that everybody locally had agreed that the Rugby Club's occupation of the Rec is illegal. The Council, Trustees, the Charity Commission agreed that this is illegal.

Councillor Laming asked Mr Sparrow about the evidence for the comment made on page 94, bullet hh) (quote) 'The Council and the Trustees should be concerned because one of their main reasons for falling over backwards to keep Rugby at the Rec. is because it brings trade to the pubs and restaurants on match days. These pages show clear evidence that much of the trade goes directly to the Rugby Club and into its coffers'.

Mr Sparrow responded that half of the stands have beer provider facilities and on match days they, Rugby Club, import special caravans to sell pies and other refreshments. In Mr Sparrow's view the Club conducts illegal trade then and all of the money made at the match is not going to pubs and restaurants in Bath.

Councillor Laming asked Mr Sparrow about the evidence for the comment made on page 95, bullet ii) (quote) 'How much of the clubs profits go to the Trust for illegally permitting this commercial activity to take place on charitable land?'

Mr Sparrow responded that he cannot produce any figures because he never saw any figures on that.

Councillor Laming asked Mr Sparrow about the comment made on page 95, bullet mm) (quote) 'I assume are pictures of the seating for a charity concert allowable under the rules. I only hope that the profits made at the clubhouse were donated to the appropriate charity!'

Mr Sparrow responded that if you carry out the charity function then the significant amount of money should go to the charity. Mr Sparrow said that he never saw any evidence on that.

Councillor Edwards commented on the comment/question from Mr Sparrow about the appropriateness of non-Bath Councillors to take part in the process and stated that it is suitable or appropriate. All Councillors are duly elected and hardworking Councillors and capable of dealing with this matter.

Mr Sparrow commented that the conveyance was to the Mayor, Alderman and the citizens of Bath and not to the people outside of Bath.

The Chairman invited Mr Steve Osgood to address the Committee.

Mr Osgood (Bathwick Ward resident) read out the following statement to the Committee:

'I have questions relating to two aspects of this application:

First aspect:

The 1956 Conveyance limits the uses to which this property may be put. In 2002 the High Court order confirmed the Rec as a Charity, with B&NES as the corporate Trustee to safeguard these uses, in perpetuity. Does the Town & Village Green proposal fall within the use description? Is there a 'trigger event that would preclude its registration, under the Commons Act 2006?

Second aspect:

Owners of the subject property are Citizens of Bath – some 80,000 of them. How have these Owners responded to Notices of the Application? Have Landowner Statements been deposited that would preclude registration? (reference to Growth & Infrastructure Act 2013 amendments to Commons Act 2006).

I would like these questions answered before the meeting proceeds further.'

The Chairman reminded Mr Osgood that this is not a question and answer session.

The Chairman invited Mrs June Scott to address the Committee.

Mrs Scott read out the following statement to the Committee:

'I moved to Bath more than 45 years ago. All my children grew up here and my family regard Bath as our home town. I taught mathematics for 25 years and I feel that I served Bath well. Do I have the right to speak to you tonight? The Rec is second home to me. I played croquet there in Bath croquet club. Each day I look out of my window and I see many different activities on the Rec – joggers, dog walkers, kite flyers, kids playing football, tennis, croquet, cricket...all these people enjoying the Rec. I support the application to make the Rec Town & Village Green. Captain Forester intention was for people to use the Rec for activities above. The Rugby Club is not the only one to raise the money for Bath.'

The Chairman invited Mr David Greenwood to address the Panel.

Mr Greenwood said that several points were made today. One, that is extremely difficult, is the definition of 'by right' and 'as of right'. One thing that does affect the issue is that there is an existing right of way from Riverside through the Recreation Ground. This is 'as of right' and open to all without the need to request permission and applies for 365 days of the year. Mr Greenwood and his family have been residents of Bath for over 20 years. Friends and family were always able to access the Rec as of right. There has never been any restriction. There are many hundreds of people who use the Rec for football, cricket, and other leisure activities. Nobody ever recognised that permission would have to be sought. There is no requirement

to provide the evidence of how many people are using the Rec. In 2002 the High Court made B&NES an interested party. It is B&NES interest to reject this application. It is extremely difficult for residents and other people to distinguish that B&NES is the judge and jury for the Rec.

Councillor Laming asked that it should be noted that proposal before the Committee considers Bath as the locality.

Graeme Stark responded that Mr Sparrow application specifically said that the locality is the City of Bath. The locality has to be the area known to the law and specified elsewhere, such as electoral Ward with defined boundaries.

The Chairman invited Mrs Susan Macdonald to read out her statement to the Committee.

Mrs Macdonald read out the statement (attached as Appendix 2 to these minutes) and offered her full support to the application for the Bath Recreation ground to be granted as a Town and Village Green.

Mrs Macdonald highlighted in her statement that Captain Forester did not give away his own personal property in 1922 so that a commercial business would solely benefit from his generosity. Access to the Rec was intended to be free and open to all.

Mrs Macdonald finished her statement by saying that the Committee have a duty to respect the rules.

The Chairman thanked to all speakers who address the Committee.

The Chairman asked Graeme Stark if there are any issues to be clarified before the Committee debate the matter.

Graeme Stark responded that the Committee have to decide whether or not the land was used by significant number of inhabitants of the locality for 20 years. The on-going management of the site is not relevant for the consideration – the Committee is asked to look at the use of the land from 1992 until 2012.

The Chairman invited the Committee to debate the matter.

Councillor Laming said there are three main issues for Members of the Committee to take into account before making the decision. Those issues are; 'as of right', locality or neighbourhood and significant numbers. In terms of the locality – the Committee is asked to consider City of Bath as the locality. In terms of the significant numbers – Councillor Laming commented that he had not found a reasonable description of significant numbers. In terms of 'as of right' issue – Councillor Laming said that his understanding is that 'as of right' means that people have permission to go somewhere and there is nothing stopping you. Councillor Laming said that the applicant should have found out for himself what 'as of right' means before submitting this application.

Councillor Dave Laming moved a motion that the Regulatory Access Committee refuse the application and not to register Bath Recreation Ground as a Town or Village Green, as per officer's recommendation.

Councillor Peter Edwards seconded a motion by saying that he fully supports the reasons for the motion from Councillor Laming.

Councillor Mathew Blankley said that he will support the motion from Councillor Laming as there is no evidence that the land was used by substantial number of people for 20 years continuously.

Councillor Jeremy Sparks said that he is not a rugby supporter and that he is not representing a Bath Ward so his view is un-biased. Councillor Sparks said that in the view of legal reasons presented in the report and at the meeting he will support the motion from Councillor Laming.

The Chairman asked the Committee to vote by show of hands.

Voting: all in favour of the motion.

On a motion from Councillor Dave Laming, seconded by Councillor Peter Edwards, it was unanimously **RESOLVED** to **REFUSE** the application and not to register Bath Recreation Ground as a Town or Village Green.

Appendix 1

Appendix 2

The meeting ended at 6.25 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

Bath & North East Somerset Council	
MEETING:	Regulatory (Access) Committee
MEETING DATE:	8 October 2014
TITLE:	Handel Road DMMO
WARD:	Keynsham South
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Appendix 1: Decision Plan</p> <p>Appendix 2: Decision Schedule</p> <p>Appendix 3: Objections and Representations</p>	

1 THE ISSUE

- 1.1 An application has been received for a Definitive Map Modification Order ('DMMO') to be made under section 53(2) of the Wildlife and Countryside Act 1981 ('the 1981 Act') to modify the Definitive Map and Statement of Public Rights of Way ('the DM&S') by adding a public footpath running from Park Road to Charlton Park in Keynsham.

2 RECOMMENDATION

- 2.1 It is recommended that the Regulatory (Access) Committee resolves for Bath and North East Somerset Council ("the Authority") makes a DMMO to record the Application Route, as shown by a broken black line on the plan contained at Appendix 1 ("the Decision Plan") and described in the schedule contained at Appendix 2, on the DM&S.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 Resource implications are not a relevant consideration which may be taken into account under the provision of the 1981 Act. The costs associated with making a DMMO and any subsequent public inquiry or hearing would be met from the existing public rights of way budget.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Authority, as Surveying Authority, is under a statutory duty, imposed by section 53(2) of the 1981 Act, to keep the DM&S under continuous review. Section 53(2)(b) states:

‘As regards every definitive map and statement, the surveying authority shall...keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence...of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event’

- 4.2 The ‘events’ referred to above are set out in section 53(3) of the 1981 Act. The ‘events’ to which this Application relates are set out in sections 53(3)(c)(i) and (iii) of the 1981 Act which state that:

‘...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...’

‘...any other particulars contained in the map and statement require modification.’

- 4.3 The meaning of ‘reasonably alleged’ was considered in *Bagshaw and Norton* [1994]¹ where Owen J. stated that:

‘Whether an allegation is reasonable or not will, no doubt, depend on a number of circumstances and I am certainly not seeking to declare as law any decisions of fact. However, if the evidence from witnesses as to uses is conflicting but, reasonably accepting one side and reasonably rejecting the other, the right would be shown to exist then, it would seem to me, to be reasonable to allege such right.’

- 4.4 Anyone may apply to the Authority for a DMMO to modify the DM&S and such applications must be determined in accordance with the provisions of schedule 14 of the 1981 Act. If, after consideration of an application, the Authority decides not to make a DMMO then the Applicant may appeal to the Secretary of State within 28 days of the service of notice of that decision. The Secretary of State will then re-examine the evidence and direct the Authority accordingly.

- 4.5 Evidence of use by the public can be sufficient to raise a presumption of dedication under section 31 of the Highways Act 1980 (‘the 1980 Act’) or at common law. Section 31(1) of the 1980 Act states that:

‘Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.’

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

¹ R v SSE ex parte Bagshaw and Norton [1994] 68P & CR402
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'A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.'

- 4.7 The Human Rights Act 1998 ('the 1998 Act') incorporates the rights and freedoms set out in the European Convention on Human Rights ('the Convention') into UK law. So far as it is possible all legislation must be interpreted so as to be compatible with the Convention.
- 4.8 The 1981 Act does not permit personal considerations to be taken into account. A decision relating to a DMMO would be lawful without taking account of personal considerations, as provided by section 6(2) of the 1998 Act, as it would be impossible to interpret the legislation in such a way that it is compatible with section 3 of the Convention. Further details of Human Rights considerations can be found in the Planning Inspectorate's Public Rights of Way Advice Note No. 19.
- 4.9 In deciding whether to make a DMMO the Authority can only consider whether public rights exist^{2 3}. Paragraph 19 of the Planning Inspectorate's Public Rights of Way Advice Note No. 7 states that '*Sections 53 and 54 of the 1981 Act are concerned with the status of rights of way. Arguments about which particular rights of way are desirable or suitable are irrelevant to orders under those sections.*'

5 THE REPORT

- 5.1 On 18 April 2008, Keynsham Town Council made an application for a DMMO to record a public footpath commencing from a junction with Charlton Park at grid reference ST 6492 6825 (Point A on the Decision Plan contained at Appendix 1) and continuing in a generally easterly direction along a tarmaced path to a junction with Park Road at grid reference ST 6515 6827 (Point D on the Decision Plan). This route is 3.7 metres wide between points A and B on the Decision Plan, 2.7 metres wide between points B and C on the Decision Plan and 1.4 metres wide between points C and D on the Decision Plan and is hereafter referred to as 'the Application Route'.
- 5.2 The Authority carried out archival research into the Application Route at the Somerset Heritage Centre ('SHC') and in its own records. On 24 July 2014, the Authority commenced a six-week consultation process and received 16 objections and representations as detailed in paragraphs 8.1 to 8.3 below. The original application was accompanied by 29 user evidence forms and an additional 11 user evidence forms were submitted to the Authority during the consultation period. All the evidence submitted to, or discovered by, the Authority is considered below.

² Mayhew v Secretary of State for the Environment [1992] 65 P & CR 344; [1993] JPL 831; [1993] COD 45
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- 5.3 The Parish Survey dated 1950, the Provisional Map dated 1970 and the DM&S dated 1973 all record the section of the Application Route between points C and D on the Decision Plan as public footpath BA27/18. The accompanying Statements all describe this section as '*continuing westward terminating at back access roadway to houses in Handel Road (parcel 524).*' The Authority does not have a copy of the Draft Map and the remainder of the Application Route is not recorded or referred to on the Parish Survey, Provisional Map or DM&S. These documents show that the section of the Application Route between points C and D on the Decision Plan was a public footpath when the documents were prepared but no widths or limitations are recorded on the DM&S. The Bath and North East Somerset District Council (Former Keynsham Urban District Area) (No.1) Definitive Map and Statement Modification Order 2001 renamed this section of path as BA27/18b; the associated legal event affected a section of BA27/18 to the east of Park Road.
- 5.4 The 10,560 Ordnance Survey Maps dated 1885 and 1903 show that the section of the Application Route between points B and D on the Decision Plan physically existed when the land was surveyed. Additionally, the plan accompanying a planning application dated 1964 (SHC Ref.: D/U/Keyn/22/1/387-397) shows that a small section of the Application Route physically existed in 1964. Day and Masters' Map dated 1782 (SHC Ref.: D\B\wsm/38/6), Greenwood's map dated 1822 (SHC Ref.: A\AUS\60), Keynsham Tithe Map dated c.1840 (SHC Ref.: D\D\Rt/M/363) and Apportionment dated 1832-1835 (SHC Ref.: D\D\Rt/A/363) and Inland Revenue documents dated c.1910 (SHC Ref.: DD\IR/128/2/10) do not provide any evidence regarding the Application Route. The Authority has found no evidence to indicate that any public rights over the Application Route have been stopped up or diverted.
- 5.5 An extract from a deed dated 20 March 1939 grants a private right of way '*for all usual purposes*' along what is referred to as '*the back-way*' which is assumed to be at least a section of the Application Route. It is assumed that this particular deed grants a private right to the rear of 21 Handel Road and that similar private rights exist for the occupiers of the other properties which back onto the Application Route. It should be noted that the existence of private vehicular rights does not preclude the existence of public pedestrian rights.
- 5.6 Documents dated from between May 1999 and June 2000 detail the negotiations between local residents and the Authority's Education Department to allow contractors to access the adjacent school in exchange for the resurfacing of the section of the Application Route between points B and D. The Application Route is usually referred to in the documents as either '*lane*', '*rear lane*' or '*access lane*'. However, in one correspondence a local resident refers to it as '*the private lane*' and again states that the lane is '*private*' and in a note to the Authority's Planning Committee the same local resident again refers to the Application Route as '*the private lane*'. The note to the Planning Committee also states that the Application Route is '*used by the general public as a short cut to the High Street*'. The Method Statement for the works which was drafted by the Authority's Building Surveyor states that the '*lane may be subject to a public right of way*'. These documents provide ambiguous evidence regarding the reputation of the Application Route but indicate that the particular local resident referred to above regarded the Application Route to be private.

- 5.7 The documentary evidence therefore indicates that the section of the Application Route between points C and D has been a public footpath since 1950 and the section of the Application Route between points B and C on the Decision Plan has physically existed since at least 1885 but the documentary evidence does not provide any evidence regarding the existence, or otherwise, of public rights between points A and C on the Decision Plan.
- 5.8 There is no evidence of the landowner calling into question the right of the public to use the Application Route and Keynsham Town Council's Application submitted on 18 April 2008 therefore represents the 'date of challenge' by virtue of section 31(7B) of the 1980 Act. Under section 31(1) of the 1980 Act, the 20 year period of use extends from 18 April 1988 to 18 April 2008 ('the Relevant Period').
- 5.9 A total of 40 user evidence forms have been submitted to the Authority which have been completed by members of the public who have used the Application Route between 1953 and 2014 ('the Users'). All of the Users stated that they used the Application Route without force, secrecy or permission on foot only, except Users 31 and 39 who also used the Application Route on bicycle. None of the users appear to have a private right of way such as the private right detailed in paragraph 5.5 above. 30 users⁴ used the Application Route throughout the whole Relevant Period; however, four of these users⁵ did not use the section of the Application Route between points A and B on the Decision Plan. The remaining ten users⁶ used the Application Route for at least a part of the Relevant Period.
- 5.10 The User Evidence Forms indicated that 33% of the Users used the Application Route on a daily basis, 33% of the Users used the Application Route several times per week, 24% of the Users used the Application Route on a weekly basis and 10% of the Users used the Application Route less than once per week. The User Evidence Forms therefore indicate that the Application Route has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, as required by section 31(1) of the 1980 Act.
- 5.11 There is no evidence to indicate that the owner or owners of the land over which the Application Route runs demonstrated a lack of intention to dedicate during the Relevant Period, for example by erecting notices intended to dissuade use, turning back members of the public or making a Section 31(6) Deposit. The landowner has not therefore fulfilled the proviso contained in section 31(1) of the 1980 Act.
- 5.12 The user evidence forms do not provide consistent evidence regarding the width of the Application Route. However, the Authority tried to contact all of the members of the public who completed user evidence forms and those who were contactable confirmed that they used the section of the Application Route which is now tarmaced and that they have never used either the hard-standing areas in front of the adjacent garages or the vegetated areas adjacent to the school. This tarmaced area which has been used by the Users is 3.7 metres wide between points A and B on the Decision Plan, 2.7 metres wide between points B and C on the Decision Plan and 1.4 metres wide between points C and D on the Decision Plan. There is no evidence that there have been any structures on the Application Route during the Relevant Period and the dedication was therefore not subject to any limitations.

⁴ Users 1, 2, 3, 5, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18, 21, 22, 24, 25, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39 and 40

⁵ Users 16, 17, 18 and 34

⁶ Users 4, 6, 8, 13, 19, 20, 23, 26, 27 and 32

- 5.13 The evidence shows that a public footpath subsists over the section of the Application Route between points A and C on the Decision Plan by virtue of presumed dedication under section 31(1) of the 1980 Act. A DMMO should therefore be made to modify the DM&S pursuant to an event under section 53(3)(c)(i) of the 1981. Additionally, the DM&S does not record a width for the section of the Application Route between points C and D on the Decision Plan. The DMMO should therefore also modify the DM&S by recording the widths detailed in paragraph 5.12 above pursuant to an event under section 53(3)(c)(iii) of the 1981.

6 RATIONALE

- 6.1 The Authority has a statutory duty to process the Application and to make a DMMO when the evidence shows that the DM&S requires modification. The evidence shows that a public footpath exists along the Application Route and the DM&S therefore requires modification in this respect.

7 OTHER OPTIONS CONSIDERED

- 7.1 The Authority could refuse to make a DMMO but only if the evidence showed that the Application Route was not a public right of way. As detailed above, the evidence of the existence of a public footpath appears to be considerable.

8 CONSULTATION

- 8.1 On 24 July 2014, the Authority commenced a six-week consultation process. The Authority wrote to the suspected landowners, adjacent landowners, national and local user groups, the ward councillors, the Town Council and the statutory undertakers. Additionally, the Authority erected notices at either end of the Application Route which were checked every seven to ten days and posted the notice on the Authority's website.
- 8.2 The Authority received 16 objections and representations and an additional 11 user evidence forms which are discussed in paragraph 5.9 above. The primary objections and representations are contained at Appendix 3 and additional correspondences are available from the case officer on request.
- 8.3 The objections and representations covered a variety of issues including concerns about criminal damage, vandalism, graffiti, liability, safety, maintenance, private vehicular rights, litter, dog fouling and gating. While the Authority is sympathetic to these concerns, as explained in paragraph 4.9 above, these are not factors which the Authority is legally allowed to taken into consideration when deciding whether or not a DMMO should be made. Queries were also raised about compensation but compensation is not payable for the making of a DMMO because it only records rights which already exist. Some of the consultees state that they believe that the Application Route is a public right of way and detail use of the Application Route; while, other consultees state that they do not believe that all or part of the Application Route is a public rights of way. None of the consultees submitted evidence to indicate that there was a lack of intention to dedicate as required by the proviso in section 31(1) of the 1980 Act.

9 RISK MANAGEMENT

- 9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Authority's decision making risk management guidance.

Contact person	Graeme Stark, Senior Officer: Public Rights Of Way Tel: 01225 477650
Background papers	Handel Road DMMO Case File
Please contact the report author if you need to access this report in an alternative format	

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APPENDIX 1 Decision Plan

Application Route A B C D



Scale 1:1250



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SCHEDULE

APPENDIX 2 Decision Schedule

Part I

Modification of Definitive Map

Description of path or way to be added

A public footpath commencing from a junction with Charlton Park at grid reference ST 6492 6825 (Point A on the Order Map) and continuing in a generally easterly direction along a tarmaced path for approximately 180 metres to grid reference ST 6510 6826 (Point C on the Order Map).

Part II

Modification of Definitive Statement

Variation of particulars of path or way

A new statement for BA27/72 shall be recorded as follows:

Path Number: BA27/72

Status: Footpath

Length: 230 metres

Parish: Keynsham

Width: 3.7 metres wide between grid references ST 6492 6825 and ST 6497 6825
2.7 metres wide between grid references ST 6497 6825 and ST 6510 6826
1.4 metres wide between grid references ST 6510 6826 and ST 6515 6827

Limitation: None

Description of Route				
From		General Direction	To	
County Road or Right of Way	Grid Reference		County Road or Right of Way	Grid Reference
Charlton Park	ST 6492 6825	E	Park Road	ST 6515 6827

General Description:

A public footpath commencing from a junction with Charlton Park at grid reference ST 6492 6825 and continuing in a generally easterly direction along a tarmaced path for approximately 230 metres to a junction with Park Road at grid reference ST 6515 6827.

The Statement for BA27/18b shall be deleted.

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30th July 2014

Dear Mr Stark

Application for a Modification Order to amend the Definitive Map of Public rights of Way in the Keynsham Area.

You will have already received an e-mail from me sent earlier.

I have now received dated 24th July 2014; I tried to call your office to discuss the issues raised only to be told that you were on holiday.

Firstly, as one of the users of the private vehicle access lane with the other Handel Road residents in properties 1 – 35. I would be pleased to know who the applicant is, BANES, a local resident or someone else.

My guess is the applicant is BANES who are following up an issue raised by all affected residents in Handel Road 1-35 to try to obtain permission to install gates to provide additional security to resident's properties through the PACT forum some years ago.

The residents vehicle access lane and access over it has long been an issue for us, damage to the lane surface caused by building contractors during construction works at the school on two occasions led to a dispute with BANES and the development of an agreement with Rob Scott in property Services, managing access over the lane, permissions if you like. Copies attached.

Ownership.

Residents holding property Deeds can show the lane on plans clearly identified as a rear access to properties as a shared area provided at the time of the development of the parcel of land on which all our houses were built.

We as users of the access have a responsibility to maintain the road surface.

Each individual house is identified and has the properties defined with dimensions. Copies attached.

An annual fee is paid to Shenstone Properties

Safety and security.

As a concerned resident we need the authority to appreciate the access over lane is still a safety and security issue for us. Legally establishing a PROW

and footpath and encouraging the use of the route over a private lane, in my view is not of benefit to the residents or the community.

In daylight hours it is a delightful shortcut, but at night the character changes where vandals and graffiti artists prevail. The most recent serious events being a deliberate wheelie bin fire and the illegal dumping of 10+ commercial freezers on to the verge. It's so easy to get up to mischief and more under cover of darkness.

How on earth can this be safe as it is also primarily a vehicular access to private property?

My view is the unlit lane is a risky place at night and is on the route home from the High Street when the public houses close.

I cannot for the life of me why people cannot use the current well lit footpaths in Handel road late at night.

I cannot understand why the authority would wish to pursue this application.

Questions.

Can you explain how this will change things, and the limitations placed on the Owners and the residents, by the legal connotations of this application?

Will the school now have automatic pedestrian access via the lane?

Will BANES now install street lighting?

Will BANES now adopt the lane, maintaining it through life?

Will Shenstone Properties Ltd and those residents now freehold and free need to authorise any such change?

Will it now be recognised as a PROW and public footpath by the police providing an appropriate response to emergency calls in a public footpath rather than a measured response to calls to attend the private lane?

Who now will be liable for claims made individuals falling and injuring themselves whilst walking down the lane, as the surface deteriorates over time?

Will BANES now enforce dog fouling legislation?

My view is that none of the above will change.

Objections.

I object to this application as it introduces a legal impediment to residents if in future should we wish to engage once more with the authorities to gate the

area or pursue individuals for trespass and criminal damages should they occur.

It also raises a number of uncertainties over public liabilities with residents is the case of claims for injury once the residents vehicle access lane becomes a legal PROW and footpath.

I also think to consolidate this private vehicle resident's access lane will encourage use and increase the risks and hazards associated with its use at night.

I would be pleased to meet and discuss these issues with you in person at a time suitable to you at Riverside and review both your and my historical information.

My fellow residents have expressed the same concerns and will also be making representation.

Yours sincerely

To

Graham Stark
Senior Officer: Public Rights of Way.
Bath and North East Somerset council

Graeme Stark

From: [REDACTED]
Sent: 06 August 2014 22:46
To: Graeme Stark
Subject: Application for a modification to amend definitive map of public right of way

Dear Mr Stark,

I am a house owner in Handel Road who has a vehicular right of way at the rear of my house being the proposed route under amendment.

Who has requested this amendment? Over many years, the residents of Handel Road have raised issues of security and vandalism in the lane at the rear of our properties. We have requested the lane to be gated in the past and this has been declined.

If the right of way is granted will BANES become responsible for the maintenance of the lane? Will lighting be installed?

As there is a lit, safer route several yards from the lane, why is this being requested? The lane is not safe during the hours of darkness!

As residents, our deeds show that the lane is shared access to our properties.

In summary, I object to this modification.

Yours sincerely

[REDACTED]

Sent from my iPad

Graeme Stark

From: PROW
Sent: 07 August 2014 07:10
To: Graeme Stark
Subject: FW: Handel road foot path proposal.

-----Original Message-----

From: [REDACTED]
Sent: 07 August 2014 00:44
To: PROW
Subject: Handel road foot path proposal.

I live at [REDACTED] and believe the the land at the rear of the property's are owned by the residents and is NOT a public foot path.
I believe this as I can remember confirming with solicitor at the time of purchasing are property as I wanted to build a large garage to the rear and made shore I would have access to this.
Further more a few years ago some of us asked about having a gate put up in the lane as we where getting a lot of brake ins in the garages and people using motor bikes and graffiti in the lane (thankfully 99% of this has now stopped).
There was a public meeting held at the local church hall which I attended as people proposed this gate as they said it's always been a foot path there and they had used it for many years. We proposed that they where trespassing and if hurt by one of us in the lane then we could argue that they shouldn't be there in the first place.
If I remember righty it was settled that the bottom (20/25 feet narrow part) was a foot path but the rest was not.
Are gate proposal was turned down and this was the last we heard till now.
I would like to say I have no problem with people of any age or resign walking up/down the lane at there own risk. But if you was to make this into a public right of way foot path then sorely it would the make it Unsafe or elegal for me to use for its purpose???
I am more than willing to seek legal advice on the matter and would pursue a vast amount of compensation if I was no longer given access to my garage via the rear lane.

[REDACTED]

Trig's iPhone mail

Graeme Stark

From: Alan Hale (Cllr)
Sent: 21 August 2014 16:18
To: Graeme Stark
Cc: Matthew Smith; David Trethewey; [REDACTED]
Subject: Re application for right of way at rear of Handel Road Keynsham

Dear Graeme,

I write regarding the application from Keynsham Town Council to make the lane to the rear of Handel Road on the south side a right of way.

This lane was the subject of much discussion following a significant period of criminal damage to property by graffiti some years ago. I was engaged in trying to have the lane gated for the benefit of the residents. At a PACT meeting where the gating was discussed town councillors threw into the discussion that they would seek to have it as a right of way. They also declared that it was part of a school travel plan route to school for St Keyna primary.

That aim has lay dormant for what must be some five or six years now and yet it is suddenly thrown to the fore again, there would therefore seem little importance or urgency to their wish.

As you will know the lane runs parallel with Handel Road itself. Handel Road is a well-lit road and a much safer option as a route to school than a dark unlit lane. The road is lined with parked vehicles on both sides so pedestrian protection is afforded within Handel Road by those vehicles and because of the parking the passage of traffic is slow and it is in any case controlled by the 20mph blanket.

One of my constituents and a resident in Handel Road has told me;

"We have an agreement with BANES relating to controlled access to the School. Contractors damaged the lane on numerous occasions resulting in the residents raising planning objection for the additional classroom construction. An agreement was reached then that if the lane was restored then the residents would agree the school access for grounds maintenance and controlled access by consultation with residents for any other works"

Now if this is the case and I have no reason to doubt it, then there seems to be an ownership issue here. I have not sought any corroborating paperwork from him but I would assume that there is something in writing. The residents allowed the passage of foot traffic over the years because it did not cause an issue but then criminal elements started to attack residents property and therefore they sought to remove the free passage and I in turn supported their wish.

My view would be no different now. Therefore I would ask you to record my objection to this attempt to force a right of way upon the residents on the south side of Handel Road. Using the main Handel Road to enjoy passage from Charlton Park to Park Road would cause little additional distance to those so wishing to make the passage and I estimate that it would cause no more than 30 to 40 metres if that. The journey along Handel Road would be with the benefit of street light on dark mornings and evenings and for the pedestrian it would make it much less vulnerable to physical attack at any time.

My understanding is that the residents would still like to have the option of gating the lane but I do appreciate that this is not of direct interest to this process but hopefully David Trethewey will note this wish.

I understand that the first and narrow section of lane off of Park Road for a few metres is indeed a right of way. With that in mind I would be grateful to you if you would send a simple explanatory briefing note to me as to how we might go about seeking the re-routing of that piece of right of way in order that it can be re-routed north along Park Road and then west along Handel Road.

I would appreciate acknowledgement of receipt and recording of my objection.

Yours sincerely,
Alan

Alan Hale (Cllr)
Keynsham South
Bath and North East Somerset Council.



21/08/14

Dear Mr Stark

Your ref : GS/

Thank you for your recent letter dated 24/07/14

As far as I am aware the lane to the rear of my property is a private lane. It was created by consent of all the households to enable vehicle access.

Over the years I have had frequent vandalism to my property with graffiti being a regular occurrence.

If the lane was to be made into a public lane I foresee this getting worse.

The lane at night is very dark and not fit for public use. It is much safer for them to use the lit pathway to the front of the properties in Handel Road.

I agree with all the points raised in the letter from [REDACTED] (copy enclosed) and would like to be informed about all the points and questions he has raised.

Please keep me notified of the progress of this application.

Yours sincerely



Graeme Stark

From: Graeme Stark
Sent: 02 September 2014 16:29
To: Graeme Stark
Subject: FW: Definitive Map Modification Order Application Reference No 42 FAO Graeme Stark

From: [REDACTED]
Sent: 12 August 2014 14:05
To: Graeme Stark
Subject: RE: Definitive Map Modification Order Application Reference No 42 FAO Graeme Stark

Graeme,

Thank you for the response and the attached map.

I understand from the Investigation Plan provided that the proposed change indicates a public footpath along the existing tarmacadam path. However the plan attached to the application indicates a route that crosses both our property and that of numbers 23 and 21 Charlton Park.

My concern is that if the application is approved then this document will be used to appropriate parts of our back garden.

I would like to meet with you on Friday 15th August in the afternoon if at all possible.

Best regards,

[REDACTED]

Graeme Stark

From: [REDACTED]
Sent: 05 August 2014 14:47
To: Graeme Stark
Subject: Charlton Park-Park Road lane, Keynsham

Dear Mr Stark

re: Your letter GS/24/07/2014

It has been my understanding that the lane running between Charlton Park and Park Road was officially placed on the Town Map some time ago after rejection of Handel Road residents' application for it to become a gated area to stop vandalism and after-pub-hours anti-social behaviour of people passing through.

May I ask whose application has been made for amendment to the map, what amendment is sought and for what stated reason?


Having had various acts of vandalism on my property, by the side of which the lane is placed, I was in favour of the application of gates similar to those applied in some other areas.

The lane apparently has been owned collectively by owners of adjacent properties. The education authority negotiated with them, and agreed to resurfacing in return for being able to use the lane for heavy vehicles needed for building works to St John's School.

There has never been any restriction of public passage of which I am aware. I have lived here since August 1988 and there has been since then public right of way without let or hindrance, to use a familiar passport phrase.

Sincerely,

[REDACTED]



Wednesday 30th July 2014


F.A.D. Graeme Stark,
Senior Officer
Public Rights of Way,
BANES.

Dear Sir,

We have received your letter dated 24th July concerning a footpath in the back lane area of our side of Handel Road.

We have no objection to a public footpath - but where? The hedge to St. John's School has not been maintained for some years and needs to be cut back by whoever is responsible - BANES or Keynsham Town Council?

Yours sincerely,



Bath & North East Somerset Council
Environmental Services
Floor 2, Riverside
Temple Street
Keynsham
Bristol. BS31 1LA
Your ref : GS



4 August 2014

Dear Sir/Madam,

Thank you for your letter dated 24 July. I would be interested to know how and why the application for a public footpath from Charlton Park to Park Road has come about at this time.

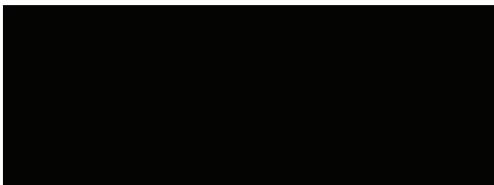
I understand our deeds show that we own the land in a continuation from our garden boundaries out and across the rear access lane you refer to and up to and including a point midway in the opposite verge. This appears to have been borne out in recent times when you wanted vehicular access via the route in question during repair works at St. Johns school. On that occasion you sent a letter to each individual house owner and asked for permission to use their strip of land to gain access.

I accept that the route is used regularly as a through link by pedestrians (and the occasional noisy unwanted motor bike), but of course its primary purpose was always to allow residents access to their own garages. This applies on both sides of Handel Road. If public footpath status is agreed I would have to insist on retaining private vehicular rights over the lane. Can you have a public footpath which can also be used by ordinary road vehicles ? We already suffer occasional vandalism in the back lane and I wonder whether making the route a public footpath might increase this problem.

I suppose it could be argued that as the land is privately owned, each occupier should be entitled to some level of compensation for a parcel of land that would now be shared for public use. I would be prepared to ignore this provided that, in the event of a public footpath being confirmed, the council give us an undertaking to occasionally maintain the route and keep it clear of obstructions. For example, there was quite a problem recently getting your people to remove 10 fridges that had been illegally dumped in the opposite verge.

I don't think it unreasonable to also ask that you provide extra dog mess bins on the route marked B to C on your map as this is a continuing problem. I suffer regularly from people allowing their dogs to foul in our hedge and garden verges which is particularly unpleasant when gardening. I try to keep the boundary of our property and the part of the rear lane that belongs to us as clear of litter as possible but extra litter bins might also help. The litter and general condition of the lane between points A and D would benefit from occasional clearance work that you should carry out.

Yours Sincerely,



Graeme Stark

From: Graeme Stark
Sent: 03 September 2014 10:11
To: Graeme Stark
Subject: DMMO Application at Charlton Park / Park Road Keynsham

From: Martin Baker
Sent: 28 August 2014 15:55
To: Ariane Robinson
Subject: DMMO Application at Charlton Park / Park Road Keynsham

Hi Ariane

I'll get back to you as soon as I can re Newbridge but just to complete matters this was the other one you wrote about on 24th July. In this case I don't think we'll have anything to contribute as the Council is not the landowner and, as owner of the school playground only at St. Johns, we wouldn't hold any evidence as to use.

I have checked the Land Registry records and it appears the route of the path is unregistered (perhaps unsurprising); it is also shown however on the late 19th century County Series map under the Historic maps on District Online so it does appear to have been in use for a century or more! The only other thing I can suggest (you might have done already) is contacting the school to see if they have any comments or record of use.

Regards

Martin

Martin Baker, Property Records Co-ordinator
Property & Project Delivery (Asset Management Group)
Bath & North East Somerset Council
Telephone: 01225 477904
Email: martin_baker@bathnes.gov.uk
www.bathnes.gov.uk
www.twitter.com/bathnes

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Graeme Stark

From: PROW
Sent: 12 August 2014 16:13
To: Graeme Stark
Subject: FW: Footpath proof of use.

From: [REDACTED]
Sent: 12 August 2014 12:26
To: PROW
Subject: Footpath proof of use.

Rights of way-proof of use.I have lived in keynsham since 1942 and in park road since 1967,the footpath between park road & chalton park has been in use all this time, we have & do use it virtually every day as we catch the bus in chalton road. This path is shown on the map dated 1760,and is part of the public path from temple street all the way to whitchurch, passing through queen chalton,where it is still known as the priest's way.It was obviously used right back to 1760 at least.We make good use of this path when enjoying our frequent walks via.queen chalton on route to cumpton dando,returning through saltford.Yours faithfully J.TAYLOR.

Your ref: GS/

Graeme Stark
Environmental Services
Floor 2, Riverside
Temple Street
Keynsham
Bristol
BS31 1LA



22nd August 2014

Dear Mr Stark

Application for a Modification Order to amend the Definitive Map of Public Rights of Way in the Keynsham area

I am writing in response to your letter dated 24th July regarding the application for a public footpath from Charlton Park to Park Road.

It is my understanding that the path in question was built/exists for the use of Handel Road and Charlton Park residents to gain vehicular access to their garages, however as it is not a private lane this has enabled people on foot to use it as a shortcut. If the path was gated, which has been looked into in the past, people would have to walk around Handel Road, which is hardly a great distance.

I would like to know the reason behind the application and what the need/benefit of a Public Right of Way is, as I cannot understand why what is essentially a residents' access lane for vehicles should be encouraged for people to use when there is an actual footpath nearby. Surely encouraging people to walk on a lane used by vehicles is dangerous.

As a resident I would ultimately like to know what effect the change would have, such as whether lights would be erected and whether the council would be responsible for maintaining the footpath etc. Also, where would residents stand if the unfortunate incident of an accident occurred on a public footpath that still needs to be used for vehicular access?

I am aware that the path is used regularly throughout the day by a variety of people, the majority of which do not cause any problems. However there has been the odd incident of vandalism, such as graffiti to residents' garages and a rubbish bin set on fire.

I believe that our deeds show that each resident owns a certain amount of the land past their current border and also some of the land is owned by Shenstone Properties, to whom an annual payment is made by the residents.

In conclusion, I do not see what benefit there is in creating a Public Right of Way and encouraging the use thereof on a residents' vehicular access lane when an actual footpath already exists nearby (Handel Road). It is my opinion that it would be better for residents if it was made a private lane, although I understand this is a different matter.

I look forward to hearing from you and being kept updated on the progress of the application.

Yours sincerely

A solid black rectangular box used to redact the signature of the sender.

Graeme Stark

From: [REDACTED]
Sent: 04 September 2014 15:37
To: Graeme Stark
Subject: Footpath Application Charlton Park - Park Road Keynsham

Hi Graeme,

It was good to speak to you a while ago about the Footpath Application Charlton Park - Park Road Keynsham. Thank you for sending papers on the above.

It was my belief that the property deeds show that the land of the alleged route now belongs to the respective householders in Handel Road, and that a right of way already existed, but you advised from your research that the right of way was only for other residents.

I explained that my mother had lived in No. 1 Handel Road since the houses were built, moving in, in 1937 I believe.

My mother was brought up in Temple Street, Keynsham, and remembers that there was a stile at the end of the existing public footpath which marked the boundary into the field on which the Handel Road houses were subsequently built. Just the other side of the stile there was a pond in the field then, which was often visited by the children. After the houses were built the stile gradually fell into disrepair eventually disappearing (presumably the responsibility for its maintenance had never been made clear).

I mentioned to you that the field was owned by a farmer Mr Button. My mother confirms there was a farmer of that name in Charlton Park but is not sure if he owned the land that the houses were built on.

Following peaks in incidents of theft and vandalism (these tend to ebb and flow over years) that clearly originated from the alleged route, residents have made attempts to restrict access. The most recent was via the PACT (Police and Communities Together) organisation. Councillors Alan Hale and Charles Gerrish should have more authoritative information about this as they were involved. Several PACT meetings voted to prioritise the closure of the alleged route, but these proposals were frustrated by the Police Superintendent who chaired a more senior committee (on the grounds of cost I believe). During these meetings other parish councillors declared that the Council had no interest in making the alleged route a right of way.

I hope that this be of use to you, let me know if I may be of any further help.

Regards

[REDACTED]

in early years hardly
used the Lane as a pathway
is in recent years it is
stead of the pavement in
Road.

object to this application
is primarily a vehicle access
all property.

Yours Sincerely




11th August 2014

Mr. Graham Stark

Application for a Modification Order
to amend the Definitive Map of
Public Rights of Way in the Kenilworth Area.

As one of the users of the private
vehicle access Lane, I would like
to know why this has been requested.

I have resided at this address
for 51 years and I hold property
deeds that show the Lane as a rear
access to our properties.

Graeme Stark

From: PROW
Sent: 18 August 2014 06:57
To: Graeme Stark
Subject: FW: RE CHARLTON PARK TO PARK ROAD - ATT GRAEME STARK

-----Ori
From: [REDACTED]
Sent: 17 August 2014 23:47
To: PROW
Subject: RE CHARLTON PARK TO PARK ROAD - ATT GRAEME STARK

Sir

I refer to the rights of way/footpath issue re Charlton Park/Park Road.

I understand the issue revolves around user "as of right" over a period of 20 years as for easements in law in general.

I personally have used the above footpath each and every year for 40 years since I moved to Keynsham in 1974. My mother worked for Wansdyke District Council (now Bath & North East Somerset) for 15 years as a resident warden. We lived at [REDACTED] Carpenters Lane from 1974 to 1989. I used this path between Park Road and Charlton Park frequently in that time. I continued to use it when I lived at subsequent addresses in Keynsham in Park Road and Albert Road between 1989 and 1993. I bought a house in Coronation Avenue, Keynsham, in April 1993 and still live there. I have used it as a footpath several times a week every year since 1993 and continue to do so. My mother as part of her job also frequently used the path though the site for elderly residents ended in Hawthorns Lane. Unfortunately she passed away last year so cannot confirm that herself.

I think it inconceivable that this part of Keynsham has not been used as a footpath, from the town, probably since the Carpenters Lane site was built in 1967. There is a footpath up from Temple Street, through Carpenters Lane (past our old door at No [REDACTED]), through Hawthorns Lane. At Charlton Park it continues through the park to Queens Road. It is wholly inconceivable to me that there has not been user "as of right" between the segment in between, Park Road and Charlton Park, for 20 years. It has been used closer to 50 years since The Hawthorns was built. I would guess the actual length of time it has been a footpath is very probably nearer the time the houses in Handel Road were built, 1920's or '30's, I would guess.

There is a bit of vandalism/graffiti to garages behind Handel Road. If I were a betting man I would guess some of those owners want to seal it off with gates to stop it (like they've done in Talbot Road, Brislington). I am in no doubt that this is a footpath with far in excess of the required time for prescriptive user in law to be designated a footpath officially. Stopping it up would be wrong in law.

I am old enough to remember a similar issue with a cut-through over the road which led from Park Road to The Labbott. That was stopped-up and not designated as a footpath. I do not think there was sufficient prescriptive user there to designate it as a footpath. It was almost impossible to prove as the site was previously an allotment and The Labbott as a housing development had only just been built.

Yours etc

[REDACTED]

Graeme Stark

From: [REDACTED]
Sent: 04 September 2014 20:00
To: PROW
Subject: Application Route - Charlton Park to Park Road

For the attention of Mr Graeme Stark,

Regarding the above application I have the following comments/ request for information;

- I understand the lane running behind Charlton Park and Handel road is a private road/access way owned by the house holders accessing the lane. How does this affect the application? What are the legal implications?
- If the application is successful, will the council maintain and service the Public right of way? If not, who will be responsible for Public right of way?
- If the application is successful will the council install lighting?
- What does 'Public right of way' actually imply?

I look forward to your response.

Regards,

[REDACTED]