

BRISTOL CITY COUNCIL

STATEMENT OF GROUNDS

DEFINITIVE MAP MODIFICATION ORDER No. 7, 2024

STOKE LODGE PLAYING FIELDS, BRISTOL

1. INTRODUCTION

- 1.1. Bristol City Council, as highway and surveying authority (“the order making authority”), is under a statutory duty, under Section 53(2) of the Wildlife and Countryside Act 1981 (“the Act”), to keep the Definitive Map and Statement under continuous review and to determine any valid applications for modifications to the Definitive Map and Statement that it receives.
- 1.2. Section 53(5) of the Act enables any person to apply to the order making authority for an order to be made to modify the definitive map and statement as respects any of the ‘evidential events’ specified in paragraphs (b) and (c) of section 53(3) of the Act.
- 1.3. An application was submitted on the 1 May 2018 to modify the Definitive Map by adding four footpaths as public rights of way, as shown on the Order plan (‘the Application’).
- 1.4. As the Council is the landowner, the Commons Registration Authority (in relation to a TVG application on the same land) and the Surveying Authority for the Application, an external consultant Public Rights of Way officer (PROW Officer) was appointed to carry out an informal consultation with the landowners and the lead applicant and undertook further documentary investigation before recommending to the committee that, based on the user evidence provided as part of the Application, the rights of way were reasonably alleged to subsist pursuant to s.53(3)(c)(i) of the Act.
- 1.5. The order making authority resolved, by committee on 27 November 2024, that on the balance of probabilities, the rights of way subsisted and that a Definitive Map

Modification Order (DMMO) should be made for public consultation. Following the making of the DMMO on 10 December 2024, two objections were received. As those objections have not been withdrawn, the order making authority is required to submit the DMMO to the Secretary of State for confirmation.

2. DETAILS OF CLAIM OR APPLICATION

- 2.1. The Application was submitted on 1 May 2018. The Application was to modify the Definitive Map and Statement by adding footpaths from points A-B-C-D (route 1), E-F-G-C-H-J (route 2), B-G (route 3) and B-H (route 4) on the order plan.
- 2.2. The Application was supported by 155 user evidence forms. These user evidence forms covered a period of use from 1946 – 2018.

3. LEGAL TESTS TO BE APPLIED

- 3.1. The statutory provision applied to the Application is Section 53(3)(c)(i) of the Act which requires the order making authority to modify the Definitive Map and Statement following:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—

(i) 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, being a right of way such that the land over which the right subsists is a public path...”

- 3.2. The PROW Officer concluded that as the user evidence had not previously been considered by the order making authority it was a ‘discovery of evidence’ and so satisfied that requirement of s.53(c).
- 3.3. The PROW Officer proceeded to consider whether the presumption of dedication had arisen, either in accordance with s.31 of the Highways Act 1980 or under common law principles. On consideration of the common law test of presumed dedication, the PROW Officer recommended that this test had not been met in this instance.

3.4. Section 31(1) of the Highways Act 1980 provides a statutory test for the presumption of dedication of a public right of way following 20 years continuous use. It states:

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

3.5. Section 31(2) states that the 20-year period is retrospective from the date that the right to use the way is first called into question ('the Relevant Period').

3.6. The PROW Officer advised that, based on the evidence available, the Relevant Period for the four footpaths could be:

- i) For Route 1 – 1998-2018 based on the Application being the first date that the use came into question.
- ii) For Route 2 and Route 3 – 1965-1985 or 1988-2008 based on the dates that notices were erected.
- iii) For Route 4 - 1965-1985 or 1998-2018 (for the above reasons).

3.7. Notwithstanding, the PROW Officer also recognised that the routes may not just have been used as identified on the plan. Users may have used a variation of the routes so that the above Relevant Periods for each route may not have been so clearly separated. Consequently, it could be appropriate for all the above identified periods of time to be considered for all routes.

3.8. In determining whether to make an order, the test to be satisfied is whether, *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.*

3.9. The PROW Officer recommended that, based on the evidence available, it could be concluded that the ways were reasonably alleged to subsist.

4. RESOLUTION OF THE PROW COMMITTEE

- 4.1. The PROW Committee resolved, on the balance of probabilities, that the various rights of way subsist. This resolution was on the basis that the Relevant Period for all four routes was the earliest period of 1965-1985 i.e. from the date that the various notices were erected on site, and that there was sufficient evidence to raise the presumption of dedication in accordance with s.31 of the Highways Act. That presumption had not been rebutted by the landowner. Consequently, the Committee resolved to make the Order for public consultation.

5. COMMENTS ON OBJECTIONS OR REPRESENTATIONS

- 5.1. Following the making of the DMMO and its publication for consultation, two objections have been submitted. As one of the objections is from Cotham School (a landowner), and part of its submission requests determination by the Secretary of State, the order making authority does not consider the school will withdraw its objection. Consequently, the submission is being made to the Secretary of State to confirm, or not to confirm, the Order.
- 5.2. The order making authority considers that the objections are duly made. However, those objections do not appear to address the Relevant Period of 1965-1985 and do not raise matters which are applicable to the test that has to be satisfied in this instance i.e. whether or not the evidence shows that, on a balance of probabilities, the way subsists.

6. SUMMARY

- 6.1. The order making authority considers that the Relevant Period for consideration of all four routes is 1965-1985. User evidence has been provided to support the use of the various routes during this period as of right and without interruption so as to raise the presumption of dedication. There has been no evidence from the landowner to rebut that presumption.