
STATEMENT OF CASE ON BEHALF OF APPLICANT

1. This Statement of Case is prepared on behalf of the Applicant – Professor Alan Preece.
2. It will outline the Applicant’s case as to why The City Council of Bristol Definitive Map and Statement Modification Order (No. 7) 2024 (‘the Order’) should be confirmed.
3. The Applicant has had regard to – and endorses – the Statement of Case provided by the Surveying Authority (‘the Council’). To assist the Inspector the Applicant does not intend to simply duplicate the facts, law and arguments set out in the Council’s Statement of Case.
4. Instead, his approach – which will be reflected at the Inquiry – will be to present the factual user evidence that establishes why the statutory test for presumed dedication under s.31 of the Highway Act 1980 (‘the HA’) is met, test the Objector’s evidence (where not already tested by the Council’s Counsel), and make relevant legal submissions.
5. The Applicant’s case provides the factual basis for the Council’s PROW Consultant to provide his expert evidence. The Applicant will not be calling their own PROW Consultant but relying on the Council’s expert. It will be further explained below how the Applicant will present the voluminous user evidence in a managed structured way to assist with the efficient running of the Inquiry.

A Note on Terminology

6. For ease the Applicant will adopt the terminology used by the Council as to the Routes in this Statement of Case. However, the original application (and some of the

underlying evidence relied upon) also gives the Routes a colour coding. Therefore, for completeness the following terminology applies:

Route 1: F-G-B-A on Order Plan. The **Blue** Route.

Route 2: C-D-E-B-I-H on Order Plan. The **Red** Route

Route 3: F-G-E-D-C on Order Plan. The **Green** Route.

Route 4: F-G-I-H on Order Plan. The **Yellow** Route.

Additional Factual Background

7. The Factual Background is set out in Mr Carr's Report and the Council's Statement of Case. However, the Applicant will provide more details on two areas: the nature of the Routes, and the extent of use of the playing fields historically. These two areas are focused on because they help to address two arguments raised by the Objector.

Description of Routes and their Destination

8. Each of the four Routes has a clearly defined path and users had several defined purposes for passing and repassing along them. This is important for rebutting the Objector's claim (Ground 1 of Objection) that the use is not of a public right of way character.
9. To illustrate the narrative set out below the Applicant provides marked-up maps with relevant road names and destinations referred to (Appendix 1).

Route 1 (Blue) – Description

10. Coming from the north-western end (Point F), the route follows the upper part of Cheyne Road (partly tarmacked and partly laid to grass) and enters the Stoke Lodge estate next to the veteran boundary oak tree (Point G).
11. Within the field, the route heads straight forwards in a line that takes the user to the north of the lower midfield Turkey Oak and crests the rise in the land towards the opposite side from the pavilion. It then angles slightly southwards towards the corner of the field and the Druid Hill mini-roundabout.¹
12. The route emerges onto the highway via a step through a gap currently formed by the end of the stone boundary wall on one side and a cross-braced end of fence post on the other (Point A).

Route 1 (Blue) – Purpose

13. This is the longest of the claimed routes and in addition to more local use, it is an integral part of the walking route between Clifton Suspension Bridge and Penpole Lane and so has been part of Bristol life for decades. This can be illustrated by the fact that it forms part of the Bristol Green Walk (Appendix 2).
14. More locally, people travelling southwards (i.e. G to A) would be using it for:
 - Accessing the main centre of Stoke Bishop at Druid Hill. Historically there was a Post Office but new shops were built in 1932 which included a pharmacy, grocery store and the Corner House, a combined post office/newsagent and stationer. In 1934 the parade of shops at the bottom of the hill were built and by 1937 these included a butcher; a greengrocer; an ironmonger; two hairdressers; two ladies' outfitters; a

¹ Coming the other way, the user walks in a straight line northwards towards the outermost of the trees behind Stoke Lodge house opposite the pavilion, and then angles slightly westwards to aim directly for the boundary oak at the Cheyne Road entrance.

cake shop; a tobacconist; a fancy-goods shop; a dairy outlet shop and an off-licence. From the 1950s there was a general store, Fords. Also in the village centre were/are a service garage, restaurants, the scout hut/boys' club and the Village Hall (used for meetings and classes).

- To reach the post box or bus stop by The Grove on Druid Hill.
- To continue up Stoke Hill to the Downs and towards the City centre.
- To walk via the Hollybush Lane part of the Green Walk route to the Botanic Gardens, the Downs and beyond.
- As a route to/from XIV School for Boys, which was formerly in Druid Stoke House at the end of Druid Stoke Avenue (which is just beyond the mini-roundabout near to where the route emerges).
- As a route to walk to/from Clifton High School sports events, formerly at the Grove.

15. People would travel northwards (i.e. A to G) because it is the main way for residents of Stoke Bishop/Druid Hill to reach the Trym Valley, Blaise and Kingsweston estates, or get up to Sea Mills which contained a post office and library.

Route 2 (Red) – Description

16. Coming from West Dene, the land is accessed via a gap in the wall at H (at one time this had a metal swing gate) and the route goes along the side of the pavilion building.

17. On emerging into the field at the back corner of the garden of no. 2 Lodge Cottages, the user turns at an angle to walk in a direct line westwards to the northern end of the trees that surround the old outbuildings of the House, and then south-west to join the tarmacked drive that leads towards Shirehampton Road.

18. The Route goes down the edge of the main car park to join the pedestrian walkway parallel to Shirehampton Road (just inside the boundary wall i.e. Point D), emerging through the pedestrian gate at the main entrance onto Shirehampton Road (Point C).

Route 2 (Red) – Purpose

19. This is a long-established roughly north/south route which provides essential connectivity for residents on both sides of the field.

20. This is a route for parents/children attending various schools in the area:

- The route to and from school for people who lived to the north of Stoke Lodge and attended Cedar Park (now Stoke Bishop) School.
- Historically, there was also a prep school at 15 West Dene which then moved to premises at 35 Shirehampton Road, with the route being used, in either period, by those living on the other side of Stoke Lodge.
- Pupils from West Dene Prep School (when located on Shirehampton Road) used the route to go via West Dene to and from PE lessons at Coombe Dingle Sports Centre.

21. It is a route for residents on either side of Stoke Lodge to get to bus routes:

- The no. 4 goes from bus stops close to Stoke Lodge on each side of Shirehampton Road to Cribbs Causeway/city centre via Sea Mills in one direction and Druid Hill/Sneyd Park in the other.
- At the northern end of West Dene, the no.3 goes to the same destinations but via Coombe Dingle in one direction and Parrys Lane/Westbury Road (giving access to Henleaze – more shops, library) in the other.

22. There are then numerous other destinations and reasons for the public to use the Route:

- Going south to north, the route connects to further public rights of way across the Coombe Dingle Sports Complex (university) site, leading towards Canford Park, the cemetery, the Blaise estate, allotments and the Stoke Lane shops.
- Further along Stoke Lane, destinations include two pubs (the Black Swan ('Dirty Duck') and the Prince of Wales) and beyond that to Westbury Library

and to Westbury-on-Trym itself (for a wider variety of shops, cafes, restaurants, church).

- Going north to south, the route connects directly across to Shirehampton Road with its shops and services. There are parades of shops on both sides of Shirehampton Road, running broadly from the crossroads with Bell Barn Road/Sea Mills Lane, up to the houses which start at/opposite Stoke Paddock Road. The shops included (from the 1930s/40s onwards): a branch of Lloyds Bank (at no. 86 Shirehampton Road); Rothwells sweet shop; Partington's general store; two hairdressers; a butcher; a ladies' outfitter; Luton's the bakers; Cornish stores (grocers); a fishmonger's; ironmongers/pet shop; a Co-op supermarket; a café; Masons general store; a shop selling toys and children's clothes; a chemist; a dress shop; a dentist; a newsagents called The Kiosk and a vet practice. The Mill House pub is on the corner of Bell Barn Road and Shirehampton Road. The local doctor's surgery used by residents in a broad band around Stoke Lodge (including those on the north side of the field) was on the corner of Shirehampton Road and Cedar Park from 1965 to around 1986.
- Going north to south the Route provides – over Shirehampton Road - the onward route to Sea Mills railway station.

23. Fundamentally Route 2 provides the essential connection over Stoke Lodge for residents living on the north or south to access the other side. Without this, residents would have to walk significantly further to reach the same end point.

Route 3 (Green) – Description

24. The Route – coming from F/G – initially follows Route 1 (Blue) entering the Stoke Lodge estate next to the veteran boundary oak tree.

25. However, at this point the route heads straight forwards in a line that takes the user to the south of the lower midfield Turkey Oak, heading directly towards Stoke Lodge

House where it joins the drive broadly opposite the northern part of the buildings. It then aligns with Route 2 (Red).

Route 3 (Green) – Purpose

26. Given the overlap with the north-western end of Route 1 (Blue) and the south end of Route 2 (Red) those destinations outlined above would apply equally to a walker on Route 3.
27. But a walker would use Route 3 (rather than go on Route 1 from G to B and then onto Route 2 or vice versa) because it is a more direct and obvious route to take if wanting to get from G to C.
28. It is particularly a much-used shortcut from Cheyne Road, Stoke Paddock Road, Bell Barn Road and Coombe Bridge Avenue to Shirehampton Road bus stops (including to catch a bus to school or work in the city centre) and a route to Cedar Park (Stoke Bishop) school and (historically) West Dene and XIV schools.

Route 4 (Yellow) - Description

29. The Route – coming from F/G – initially follows Route 1 (Blue) entering the Stoke Lodge estate next to the veteran boundary oak tree.
30. However, at this point the route heads towards the rear of the Lodge Cottages, aiming for the back corner of no.2 next to the pavilion. It then turns northwards towards the West Dene entrance and goes along the side of the pavilion building, emerging onto Ebenezer Lane/West Dene. This is overlapping with Route 2 (Red) between I and H.

Route 4 (Yellow) - Purpose

31. Given the overlap with northern end of Route 2 (Red) and the north-western end of Route 1 (Blue) those destinations outlined above would apply equally to a walker on Route 4.
32. But a walker would use Route 4 (rather than go on Route 2 from I to B and then onto Route 1 or vice versa) because it is a more direct and obvious route to take if wanting to get from H to G.
33. It is particularly a much-used shortcut for residents living north of Stoke Lodge as a quicker route to the Shirehampton Road shops (at the end of Stoke Paddock Road). It is also used as a route by residents living on/arriving via Stoke Paddock Road and Cheyne Road:
- going to the No. 3 bus stops on Coombe Lane (via West Dene), providing public transport access to Cribbs Causeway or into the city centre; and
 - connecting to the Coombe Dingle Sports Complex (university) site and to further public rights of way leading towards Canford Park, the cemetery, allotments and the Stoke Lane shops.

History of School Playing Field Use

34. The use of Stoke Lodge for School playing fields was and still is low level, intermittent and limited in extent. This is relevant because the Objector is relying on the playing field use as meaning – in the alternative – that either there was no actual enjoyment for 20 years (Ground 2) or there was an interruption to the use (Ground 4).
35. The main school user of the land was Fairfield Grammar School from around 1950 to summer 2000. From 1 September 2000, Cotham School took over as the main school user.

36. It is important to understand the topography of Stoke Lodge as this partly explains the limited use. It is not flat but drops around 15m from the Parrys Lane end to the Cheyne Road entrance. The lower end (i.e by Cheyne Road/the left half when looking at the Order Map) is more sloping than the top half and is prone to becoming waterlogged. This lower area is therefore less used.
37. Furthermore, the nature of the school use of the land means the use was time limited. It would not occur outside of term time and would only occur for a limited period of time during school day hours when a lesson was occurring. The ‘school run/commuter’ use of the Routes would therefore not come across the fields in use.
38. The underuse of Stoke Lodge land is consistently recognised in historical documents. Fairfield – which used it from 1950 to 2000 – was a small school of only 490 pupils.
39. In April 1994 it was noted by County of Avon Education Committee minutes 12 April 1994 (Appendix 3) that the School only required 3.5 hectares of the 11.08 hectares. This triggered the Council considering declaring the remaining land surplus (though this did not actually occur).
40. The 11 December 1997 Minutes of BCC’s Education Committee (Appendix 4) noted that apart from the land used by Fairfield School the remaining half is “*largely unused*” beyond a casual let to Shirehampton Colts AFC (see para 5). The Minutes noted at paragraph 12 that “*Currently, there can be little doubt that the playing field facility is underused.*”
41. This continues into the period when the land was used by Cotham School. A 2005 Report (Appendix 5) by the University of Bristol (who were managing the land on behalf of the Council) noted the low usage of the land which had “*an estimated 300 – 400 users per week during part of the year dropping to as little as 100 during the summer months*”.
42. The general tenor of the Report was about the poor quality of the land as a playing field with low capacity and a lack of any facilities. It noted that Cotham School’s sports

programme “takes place mainly at Coombe Dingle as a result of the fact that only the rugby and football elements is adequately catered for at Stoke Lodge”.

43. Cotham School’s use – which was limited due to their reliance on Coombe Dingle – was between 2000 to 2013. It then stopped until 2019. Even in the summer term of 2026 – which is the most intense it has been – it still equates to only approximately 7 PE lessons per week of approximately 45-60 minutes each.

Legal Framework

44. The legal framework is set out by the Council in their Statement of Case.

45. The relevant legal test is that of s.31 of the HA:

“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.”

46. This provision therefore requires that the use the public made on the Order Route during the 20-year period was uninterrupted and that the use was made “as of right” without secrecy or force or the permission of the landowner (per tripartite test as set out in **R v Oxfordshire County Council, ex parte Sunningwell** [1999] UKHL 28) (Appendix 6).

47. There must also be no intention that the landowner did not want it dedicated in the manner that is being asserted. The test for this is an objective one: whether on the facts a reasonable user of the path would have understood that the landowner intended to disabuse the user of the notion that the path was a public footpath (see **R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs** [2007] UKHL 28) (Appendix 7).

48. While specific legal principles and cases will be cited below to address specific points the Applicant will rely on the very recent summary of the relevant legal principles

endorsed and affirmed by the Court of Appeal in **Roxlena Limited v Ramblers** [2026] EWCA Civ 534 (Appendix 8) at [60]:

Mr Buley summarised the law in eight crisp propositions each of which I accept and which I quote (omitting citations):

- i) Section 31 of the 1980 Act provides that a public right of way will be deemed to have been dedicated by 20 years continuous enjoyment of a way by the public.*
- ii) "Continuous enjoyment" will be established by public "use" over the 20 year period. In the case of a footpath, such use will be by walking, in the case of a bridleway, by walking and riding, and so on.*
- iii) The use in question must be "as of right", which is interpreted to mean without force, stealth, or permission. The question is objective rather than subjective, as to whether the public conduct presented itself as "as of right" rather than whether particular members of the public subjectively believed that they enjoyed the right in question.*
- iv) For the presumption to arise, the public use over the 20-year period must be sufficient to bring home to the mind of the reasonable non-absentee landowner that the public are asserting a continuous right of enjoyment. Again, the question is "objective", as to how the use would appear to the putative reasonable landowner, not what the actual landowner believed.*
- v) In considering whether the use is sufficient in this sense, the relevant question is whether the use over the period "taken as a whole" is sufficient, not whether the use in any particular sub period is sufficient for that period seen in isolation.*
- vi) As a corollary of the previous proposition, the "use" in question need not be "continuous", and "mere absence of continuity" or "intermission" does not stop time running to establish the 20-year period. The use in question need not be continuous throughout the 20-year period. However, an intermission in use may be relevant in considering whether, seen as a whole, the use over the 20 year period is sufficient. So, intermission in use is relevant, but not necessarily fatal.*
- vii) In considering the effect on the mind of the reasonable landowner of an intermission in use, it will be relevant to consider any "explanation" for that intermission which would have been apparent, so as to consider whether the non-use in a given period is consistent with the public's assertion of a right in that period.*

- viii) *The question of whether the use is sufficient in the above sense is to be distinguished from the question of whether the "enjoyment" has been "without interruption" within the meaning of section 31(1). An "interruption" in this sense requires, not mere cessation of use, but "an obstruction", an "overt act", or an "interference with the enjoyment of the right".*

Evidence and Application to Legal Test

Date of Challenge

49. Under s.31 the relevant 20-year period is dated back from when the Route was first called into question. This is either when the application is made or if there was an earlier date of challenge from the landowner. This requires a positive act challenging the public's right so that users of the path are aware that there is a challenge and has an opportunity to meet it (per **Godmanchester Town Council**).
50. The Applicant's primary case is that for all the Routes the relevant period is **1998 to 2018** because there was no positive challenge to their use by the landowner. It is noteworthy that the Council – who remain the landowner – support the Order and do not submit that they ever positively challenged the public's use of the Routes.
51. The only potential other point of challenge that could be raised are the signs. However, there are geographical and substantive issues with this.
52. The geographic issues are that the two historic signs were not present on Route 1. Therefore the Route 1 period will always be **1998 to 2018**.
53. The substantive issue is that the two signs are not sufficient to objectively inform the reasonable user of the Routes that their public right was being challenged.
54. The 1985 Sign does not contain any reference to the Stoke Lodge land being private land nor that there are no public rights of way. Instead, it is directly specifically at the playing field use. While the sign does reference 'trespass' the signs must be read as a

whole and the text of the sign makes clear this is a specific reference to certain activities (flying of model aircraft, use of motorcycles) that would annoy those lawfully using the playing field. It does not list ‘walking’ as one of those activities.

55. It is noteworthy that if public access was being denied entirely, then the specific categories of activity referenced in the sign would be superfluous. The sign would have just said ‘private playing fields – no public access’.
56. The reasonable user would read the sign and consider that they were not prevented from exercising their public rights along the Routes. They would not objectively consider their right to be challenged.
57. The 2009 Sign does contain wording which is more express: referencing private property and no right of public access. However, the location and role of the sign is critical. It was located at the edge of the public car park used by learners visiting the Adult Learning Centre at Stoke Lodge House. It related specifically to these grounds – and not the Stoke Lodge playing field land – which can be established in several ways.
58. Firstly, the request for access on the sign is directed towards the Property and Local Taxation team at the Council. That team was responsible for Stoke Lodge House but was not responsible for Stoke Lodge playing fields which was education land, used by Cotham School and managed by the University of Bristol at that time.
59. Secondly, the Applicant’s ‘Response to Mr Carr’s Report’ appends a 2010 briefing note from the Council (see Council’s Statement of Case, Appendix Part 3 [955-973]) where – shortly after the sign is erected – they confirm at 2.41 ‘*The playing field is currently unfenced and allows unfettered community access*’. This would be directly inconsistent with the Council erecting a sign a year earlier noting there was no right of public access.
60. Thirdly, if the intention was to inform potential users of the playing fields that there were no public rights of way then it is strange that no other similar signs were erected anywhere else on the fields. If the sign was intended to prevent use of routes across the field, logically others should have been placed at West Dene and at Cheyne Road and also at the entrance near the Druid Hill mini-roundabout (point A). However, the 1985

Sign at West Dene was not replaced nor new signs at other entrances to the fields erected. The single location of this particular sign further supports that its purpose and role related to the Adult Learning Centre at Stoke Lodge House.

61. Neither sign is therefore sufficient to be considered a date of challenge.

62. However – given the user evidence is sufficient on whatever date of challenge – if (contrary to the Applicant’s case) the signs are considered sufficient then the Applicant mostly agrees² with the Council that the dates of challenge for Route 2 and 3 would be either **1965 – 1985** or **1989 – 2009** and for Route 4 would be **1965 – 1985** or **1998 – 2018**.

User Evidence

63. As stated at paragraph 26 of the Council’s Statement of Case, at the time of the original Application there were 155 user evidence forms provided. However, the Applicant produces as part of this Statement of Case 96 additional user evidence forms, included in a Supplementary Bundle (Appendix 9) with the new forms separated out according to Route. The Applicant has also picked up that a small number of the 2018 UEFs have been missed from or misplaced in the Council’s Statement of Case appendices, or included for only one route rather than multiple. A bundle containing 6 missing and 2 misplaced 2018 UEFs is therefore also provided (Appendix 10).

64. The Applicant has also produced a summary Excel Chart which shows each UEF and the period in which they used the four Routes (Appendix 11). In this spreadsheet there are 15 users who noted in their UEF distinct/separated periods of use of a specific route and this has been reflected for accuracy. Therefore the total number of users across all 4 routes is 259.

65. Broken down by Route:

- There are an additional 29 UEFs for Route 1 (Blue)

² The Council consider the 2009 Sign to have been erected in approx. 2008 and so date their period from then for Route 2 and 3. The Applicant considers it is 2009 but this does not make a material difference.

- There are an additional 22 UEFs for Route 2 (Red)
- There are an additional 20 UEFs for Route 3 (Green)
- There are an additional 25 UEFs for Route 4 (Yellow)

66. The new UEFs would alter the Table at paragraph 54 of the Council's SoC (showing users per Route per full Relevant Period) as follows:

	1965 to 1985		1988 to 2008		1998 to 2018	
	Original no.	New no.	Original no.	New no.	Original no.	New no.
Route 1 Cheyne Road to Druids Hill (Blue)	5 people	16 people	20 people	41 people	36 people	59 people
Route 2 West Dene to Stoke Lodge (Red)	4 people	13 people	19 people	34 people	32 people	46 people
Route 3 Cheyne road to Stoke Lodge (Green)	2 people	12 people	10 people	25 people	15 people	32 people
Route 4 Cheyne Road to West Dene (Yellow)	4 people	16 people	14 people	35 people	26 people	46 people

67. The new UEFs therefore add considerably to the evidenced users for all the Relevant Periods. For the earliest Relevant Period (1965 – 1985) the user evidence has – at the very least – tripled. The Applicant would already have rejected the Objector's argument – see para. 8 of Objection – that there was insufficient evidence of use by the public. But given the significant – especially considering the historic nature of the period – user

evidence that is now before the Inquiry from the collective UEFs, the point is unsustainable.

68. Collectively the UEFs form a considerable body of evidence for the frequent use of the Routes by the public for a period of over twenty years for a variety of purposes.

69. The UEFs do not disclose any consistent evidence of being challenged nor prevented from using the Routes due to – for example – use of the playing fields.

70. The majority of UEFs do not record their use being impacted by the use of playing fields but those that do reference skirting round the activity as they walked along the path.

71. The detailed presentation of User Evidence will be the focus of the proofs of evidence but the Applicant recognises that it will not be feasible (nor a good use of Inquiry time) for all 259 users submitting UEFs to be called. Instead, the Applicant has adopted a proportionate approach to provide an opportunity for the evidence of users to be confirmed under oath and tested, while ensuring the smooth running of the Inquiry.

72. The approach will be:

- Approximately 12 witness (three for each Route) will put in formal Proofs of Evidence as to their use. They will be called to give evidence and be available to be cross-examined.
- Another group of users per Route will - at the proof stage - submit expanded statutory declarations which i) expand on their UEFs and ii) are supported by a formal statutory declaration as to their validity. The intention is not for those users to be called but their more detailed evidence and willingness to make it formally enhances the weight to be given to it.

- Finally, the Inspector will be asked to have regard – and give weight to – the remaining significant number of UEFs that will be relied upon in the form submitted.

73. Collectively that approach will establish and provide the significant user evidence for the statutory dedication of the Routes.

74. Turning then briefly to outline the Applicant’s case on the relevant elements of the s.31 test.

‘Actually Enjoyed by the Public.....for a full period of 20 years’

75. The significant body of user evidence shows that all four routes were being used consistently by the public from at least the 1950s up until 2018.

76. As **Roxlena** makes clear this use must be at such a level *‘to bring home to the mind of the reasonable non-absentee landowner that the public are asserting a continuous right of enjoyment’*.

77. As set out in the Table above, whatever Relevant Period is relied upon, the volume of user evidence shows that the use was at such a high and frequent level that objectively it must have been clear that the public were enjoying the right.

78. The character of the use was also sufficient to be that of the public enjoying a particular way. As the factual section makes clear – contrary to the Objector’s Ground 1 – the four Routes each have a clear and logical route which was used for a variety of purposes entirely separate from the wider use of the playing fields which formed part of the unsuccessful Town and Village Green application. The user evidence supports that there was a significant proportion of the public who used the Routes solely as a way of passing and repassing over the land for a variety of purposes.

79. Equally there are no periods where there is an intermission in the use of the Routes. The issue of intermission was a central issue in **Roxlena** which made clear that when

considering if there had been enjoyment for a 20-year period it was looked at over the period taken as a whole.

80. This is relevant because (per **Roxlena** 60 vi) “*the "use" in question need not be "continuous", and "mere absence of continuity" or "intermission" does not stop time running to establish the 20-year period. The use in question need not be continuous throughout the 20-year period.*”.

81. The point was put even more bluntly by Lord Justice Lewison at [32]:

It is obvious common sense that a way may not be used for every minute of every day, but may nevertheless be a public right of way.

82. There is no clear intermission to the use of the Routes, but the Objector does at Ground 2 suggest that the use of the playing fields would prevent there being sufficient use over a full period of twenty years.

83. However, **Roxlena** is a complete answer to that point if it is maintained (noting in **Roxlena** the Court concluded a four-month intermission in use was not sufficient to preclude actual enjoyment for a full 20 years).

84. The point being that the use of the playing fields was factually minimal with it only occurring in limited areas, at limited times of day (lessons in the school day) and during limited periods of the year (term time). From that perspective alone the minimal playing field use compared to non-use would not be sufficient to mean the 20-year period as a whole was not enjoyed. A Route does not have to be used every minute of every day.

85. But even on those limited occasions when a walker came across an active use of the playing field in the hour or so it was occurring, it did not prevent their use of the Route. They would either walk around the use or wait until it moved to another part of the pitch before crossing (as is commonly done across the country). This falls far short of being an intermission which prevents there being 20 years’ enjoyment, especially when regard is had to the explanation for it (per **Roxlena**).

86. The Applicant will present at the Inquiry the significant body of evidence showing that the public actually enjoyed the four Routes as public rights of way for much more than twenty years (1950s and earlier to 2018). This covers all the potentially relevant periods for the Routes.

As of Right

87. The Applicant will present evidence to show that the over twenty years of enjoyment of the Routes was without force, without secrecy and without permission.

88. In relation to ‘without force’ the only evidence the Objectors have identified to argue the use was by force is the signage. There is no clear evidence of any members of the public consistently or regularly removing obstacles to allow them to enjoy the Routes.

89. In relation to the signs – as set out above – they do not relate to Route 1 and in relation to Route 2 – 4 they were not sufficient to indicate to the persons using the land, or to a reasonable person knowing the relevant circumstances, that the owner of the land actually objects and continues to object. Neither the 1985 nor 2009 sign are objectively clear as to the owner’s objection to make the use by force.

90. Furthermore, even if they were, the earliest signs were only erected in 1985 and there is sufficient evidence for a twenty-year period from 1965 to 1985.

91. In relation to ‘without secrecy’ there is clear evidence that the use was done openly and not by stealth.

92. In relation to ‘without permission’ there is no evidence that any of the users were there by permission. Furthermore, it is noteworthy that the permission giver (i.e. the Council) supports the Order and does not argue it gave permission for any of the public to be there. Instead, the consistent position of the Council was that it was aware of the use and tolerated it.

‘without interruption’

93. An ‘interruption’ must be an interference with the enjoyment of the actual public right of passage. It needs to be a physical and positive act which prevents the exercise of the right.

94. As **Roxlena** makes clear this is a different question from whether the use is sufficient, and an interruption should be distinguished from any intermission. An interruption in *“this sense requires, not mere cessation of use, but "an obstruction", an "overt act", or an "interference with the enjoyment of the right”* (per [60 viii]).

95. There is no evidence of any interruption and positive evidence from users is that their use was uninterrupted. The signs are not sufficient for the reasons set out above in relation to the date of challenge and ‘without force’.

96. The Objector relies at Ground 4 on the playing field use as being an interruption. If the point is maintained at inquiry, then it is hopeless. For the reasons set out above the use of the playing fields is not even sufficient to be classed as an intermission and even if it were it is not a fatal one. An ‘interruption’ requires a much clearer overt act which obstructs the public’s right. The use of the playing fields co-exists with the public’s use of the Routes and was not an overt challenge act. For the majority of time the uses would not interact and in the limited times they would (when an active use was going on which a walker came across) they could wait for play to move to different area of the pitch or walk around it while continuing to exercise their right.

Sufficient evidence that there was no intention during that period to dedicate it

97. Given the above there is a presumption that there is a public right of way across the 4 Routes unless the Objector can show that the landowner did not have the intention to dedicate it.

98. It is worth setting out the manner in which this question must be approached which was definitively set out by Lord Hoffmann in **Godmanchester**.

99. Lord Hoffman firstly approved the dicta of Denning LJ in **Fairey v Southampton County Council** [1956] that:

In order for there to be 'sufficient evidence there was no intention' to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path...that he had no intention to dedicate

100. This was then expanded upon by Lord Hoffman himself who noted:

upon the true construction of section 31(1), 'intention' means what the relevant audience, namely the users of the way, would reasonably have understood the owner's intention to be. The test is ... objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to 'disabuse' [him] of the notion that the way was a public highway

101. The Objector faces fundamental insurmountable hurdles in attempting to show the landowner had no intention to dedicate.

102. The first – and most straightforward – is that the landowner is represented at the Inquiry. It is the Council. They support the Order. Therefore, when the landowner themselves are not arguing that they had no intention to dedicate then it cannot be seen how the Objector could establish this.

103. The second is that the positive evidence from Users is that they were never challenged in their use. In fact several of them note that Groundskeepers who were employed by the Council were well aware of the local use and never challenged them.

104. The third is that the only evidence the Objector relies upon (Ground 5) is the signs which are insufficient both temporally (erected first in 1985 after 20 years' use), geographically and substantively.

105. The Applicant will therefore present user evidence at the Inquiry that demonstrates that all the elements of the s.31 test is met and that the Order should be confirmed on the basis of statutory dedication.

Additional Point – Statutory Incompatibility

106. The Applicant notes that the Objector raises at Ground 6 a legal argument about s.31 (8). The Applicant has read and endorses the legal submissions of the Council's SoC between 90 and 101. But the Applicant would add two observations.
107. Firstly, the submission that a public right of way is incompatible with the statutory purpose by which education land is held sits uncomfortably with the ability within the highway regime to seek a specific Order under s.118B/s.119B of the HA 1980 to extinguish or divert a highway if it is expedient to protect pupils or staff.
108. The fact that this power exists indicates there are public rights that run over educational land, and the fact that there is a threshold question of judgment about whether it is expedient to do so indicates that the two are not as starkly incompatible as the Objector submits.
109. This is illustrated by the fact that Department for Education (DfE) guidance on school security (December 1997) that acknowledges at section 3.9 that rights of way can exist across school premises (see Council's Statement of Case, Appendix Part 3 [979-990 on page 989]), and that DfE confirm (12 June 2023) that schools should take into account any third-party use of the facility and that 'it is not a requirement that all playing fields or indeed any school site should be fenced' (Appendix 12).
110. Furthermore, sight should not be lost of the fact that the school negotiated a lease (Appendix 13) in which it agreed to a bespoke clause (clause 2.1) that its right to use the land is subject to 'all existing rights and use of the Property, including use by the community'.
111. Secondly the Objector heavily relies on caselaw (**R (Lancashire County Council) v Secretary of State for Environment, Food and Rural Affairs** [2021] AC 194) from the TVG regime.

112. The Council have already set out extensive submissions as to why it is inappropriate to read over TVG caselaw to PROW issues but the matter was also touched upon in **Roxlena** where the Court of Appeal rejected an attempt to rely on the Commons Act in interpreting and applying s.31 of the HA ([28], [63 – 65]):

There are a number of flaws in this argument..... Section 31 is not ambiguous; and the Commons Act is concerned with a different species of public rights. Second, the legislative scheme enacted by the Commons Act is wholly different to the simple words of section 31

63. Dr Bowes submitted that it was rationally open to the Inspector to find that a four-month intermission in use was sufficient to preclude actual enjoyment for the full period of 20 years. In support of this submission, he relied on Betterment Properties (Weymouth) Ltd v Dorset CC [2012] EWCA Civ 250, [2012] 2 P & CR 3, and Naylor v Essex CC [2014] EWHC 2560 (Admin), [2015] JPL 217.

64. Both those cases concerned the question whether there had been use "as of right for not less than twenty years" for the purposes of the registration of a town or village green under the Commons Act 2006. In both cases the public were physically prevented for a period of some months from using part of the land claimed to be a town or village green for lawful pastimes. Both cases approached the question as one of interruption, even though that is not a word that is used in the Commons Act itself. As I have said, whether something amounts to an interruption is not the same question as whether an intermission in use can defeat a claim that there has been actual enjoyment over the full period. Moreover, as I have said, the scheme under the Commons Act is quite different from the statutory test under section 31.

65. In the Order decision in this case the Inspector considered whether there had been an interruption and concluded at [128] to [130] that there had not been. Roxlena does not challenge that conclusion. In those circumstances, I do not consider that decisions under different legislation with a different structure advance Roxlena's case.

Emphasis Added

113. This is further case precedent warning about reading TVG cases over into the PROW regime.

Summary

114. The Applicant will present user evidence at the Inquiry to establish that the test for statutory dedication under s.31 is clearly met.
115. The four Routes are long-standing historic rights of way that have been used frequently by large numbers of the public ‘as of right’ for a variety of purposes for over 70 years. The Applicant presents 259 User Evidence Forms demonstrating a substantial volume of use across all Routes and covering all potential relevant periods. The only potential contrary evidence are two types of signs (1985³ and 2009⁴) which fall far short of preventing the s.31 test being met due to temporal, spatial and substantive flaws. They were simply never intended – nor objectively interpreted – as being any sort of challenge to the public’s use.
116. The Objector places emphasis on the use of the Land as a playing field but this use – which was limited in geographic spread and frequency – was rarely encountered by walkers, and when it was they were able to continue to pass and repass. The use of the playing fields was neither an intermission preventing enjoyment over twenty years as a whole nor an interruption.
117. The Applicant will call approximately 12 users to give formal evidence as well as making the relevant legal submissions (and non-duplication cross-examination) which can be relied upon by the Surveying Authority in their promotion of the Order.

³ There were two of the same Avon County Council sign in different locations, one of which went missing and was replaced by the Bristol City Council sign.

⁴ Only one of the Bristol City Council sign.

LIST OF APPENDICES

Appendix 1 - Maps showing route destinations (produced by Applicant)

Appendix 2 - Description of Bristol Green Walk (produced by Applicant)

Appendix 3 - County of Avon Education Committee minutes 12 April 1994

Appendix 4 - BCC Education Committee minutes 11 December 1997

Appendix 5 - 2005 University of Bristol Report

Appendix 6 - **R v Oxfordshire County Council, ex parte Sunningwell** [1999] UKHL 28; [2000] 1 A.C. 335

Appendix 7 - **R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs** [2007] UKHL 28; [2008] 1 A.C. 221

Appendix 8 - **Roxlena Limited v Ramblers** [2026] EWCA Civ 534

Appendix 9 – 2025/2026 new UEFs

Appendix 10 – 2018 UEFs missing/misplaced in Council appendices

Appendix 11 - Excel chart showing user evidence over time (produced by Applicant)

Appendix 12 - Department for Education to Helen Powell (email) 12 June 2023

Appendix 13 - Cotham School lease dated 31 August 2011