Document No 3 – STATEMENT OF CASE

PUBLIC PATH EXTINGUISHMENT AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER (No. 1) 2025

PUBLIC FOOTPATH BCC/589 BRISTOL

BRISTOL CITY COUNCIL'S STATEMENT OF CASE

1. The Public Path Extinguishment and Definitive Map and Statement Modification Order (No. 1) 2025 ('**the Order'**) has been made by Bristol City Council ('**BCC'**) pursuant to Section 118 of the Highways Act 1980, as amended ('**the Act'**). The Order proposes to extinguish public footpath BCC/589, at Avons Mead, St Philips Causeway, running from point A to point B on the map accompanying the Order ('**the footpath'**).

2. BCC made the Order on the 23 January 2025. The statutory consultation commenced on 30 January 2025 until 7 March 2025. Two letters of objection were received by BCC. BCC responded to the objectors on 13 March 2025, with follow up letters in April. These objections have not been withdrawn.

3. Given these objections, BCC is submitting the Order to the Secretary of State for determination.

STATUTORY TEST FOR MAKING AN ORDER UNDER S118

4. S118(1) of the Act states:

"*Where it appears to a council as respects a footpath… in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.*"

5. Pursuant to s118 therefore, the test for making an order is that it is expedient that the path should be stopped on the ground it is not needed for public use.

GROUNDS FOR MAKING THE ORDER

6. As set out in the Officer's delegated report (**Annex A**), BCC resolved to make the Order because the footpath is obstructed in multiple locations owing to riverbank erosion and resulting collapse of the path. It is therefore no longer serving a need for the public as sections of the route, in effect, no longer exist.

7. In support of its grounds for making the Order, BCC refer to the decision in R (on the application of Gloucestershire County Council v Secretary of State for the Environment, Transport and the Regions [2001] ALL ER (D) 2081 (**Annex B**). This Judgment confirms that where a footpath or part of it has been lost due to river erosion, the route does not

automatically deviate but instead ceases to exist (see paragraphs 75-80 of the Judgment).

8. To reinstate or restore the footpath would be prohibitively expensive. The works would include significant river-bank re-shoring along a main river, installation of flood defences to mitigate damage from high tides, a new public entry from private land (potentially via the Showcase Cinema car park), and major waste and vegetation management. Any proposed deviation would also require the use of private land.

9. Furthermore, the footpath was originally dedicated so that Point B connected to a permissive path commencing at Point B of the Order plan (see Deed of Dedication – **Annex C**). That permissive path was located on land owned by Network Rail and also on land belonging to the Showcase Cinema, and allowed passage from Point B to a route which passed under the old truss railway bridge. BCC understands that Network Rail rescinded this permissive path in approximately 2021, when fencing was installed by Network Rail to prevent access from Kings Park Avenue to the old truss bridge. BCC also understands that this decision was due to concerns about safety under the old truss railway bridge, and for reasons of repeated trespass and vandalism.

10. Consequently, the footpath now terminates at a dead end at Point B on the Order map, some 165m from the nearest publicly accessible land (being the carriageway at Avonside Industrial Estate). There is no further public access along this route up to and under the bridge as it is private land. This loss of the permissive path further supports the ground that there is no longer a public use need for this footpath.

SUBMISSION TO SECRETARY OF STATE TO CONFIRM THE ORDER

11. Two objections were submitted during the public consultation period. The objections covered various issues and BCC responded separately to the objectors (see Doc 05 of the submission documents). The objections have not been withdrawn and so BCC are submitting the Order to the Secretary of State for confirmation.

12. Pursuant to s118(2) of the Act:

"*The Secretary of State shall not confirm a public path extinguishment order… unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below***."**

13. In considering whether it is expedient to confirm the Order, the Secretary of State must therefore consider the extent of the likely use of the footpath by the public (if not for the Order) and the effect the extinguishment of the path would have on the land served by the footpath.

14. As previously stated, and as explained in the response to the objections [Doc 5 of the submission document], part of the footpath has been lost to riverbank erosion. The Council suggests that this is material in the consideration of likely use of the footpath and expediency of the confirmation (as was also the case with regard to the missing bridge in the Gloucester Judgment, [see paragraph 90 of **Annex B**]).

15. Additionally, as the permissive route to the north of the footpath (at Point B) is no longer available, the footpath terminates at a dead end some 165m from the nearest publicly accessible land (being the carriageway at Avonside Industrial Estate). Again, BCC suggests this is material in the consideration of likely future use of the footpath (if there was no Order).

16. The Secretary of State is also required to have regard to the effect which the extinguishment would have as respects the land served by the footpath.

17. Originally, the route consisted of public right of way BCC/589 and the permissive route over land on the bank of the River Avon which led from St Philips Causeway northwards along the Avon, to Kings Park Avenue within the Kings Business Park. The path comprised a riverside section followed by a rail bridge underpass, then a narrow alley between industrial estate fencing to its endpoint at Kings Park Avenue.

18. As previously identified, that land located to the north of the footpath, from Point B onwards, is private land. The permissive route is no longer available and so there is no public access to or across this private land (and the owners of this private land have their own access to that land). There is therefore no public 'through route' provided by this footpath to any publicly accessible land. BCC therefore suggests that there is no longer any land served by the footpath.

19. As BCC pointed out in its response to one objection, there is no evidence to support the claim that the footpath is well used by the public as a right of way. There are no desire lines present along the length of the footpath, and no through-route available to the public owing to the rescindment of permissive rights beyond Point B.

20. Section 118(6A) also states that the Secretary of State must also have regard to any material provisions of the rights of way improvement plan (Doc 30 of the submission documents). BCC considers that the BCC Rights of Way Improvement Plan does not include any provisions that are material to the determination of the Order.

21. Section 121(4) of the Act requires that:

    "*The Secretary of State shall not … confirm a public path extinguishment order… if the order extinguishes a right of way over land under, in, upon, over, along or across which there is any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking unless the undertakers have consented to the making or, as the case may be, confirmation of the order*."

22. Subsection 121(5) states:

"*A consent under subsection (4) above may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers as they reasonably require, but a consent under that subsection shall not be unreasonably withheld, and any question whether the withholding of such a consent is unreasonable or whether any requirement is reasonable shall be determined by the appropriate Minister*."

23. Following the making of the Order, the Council consulted with those statutory undertakers listed in Document 10 of the submission documents. The following responses were received:

i. BT

BT confirmed there is apparatus in the area but they raise no objection. They do however 'insist on maintaining our rights under the appropriate legislation'.

It is not clear what rights or legislation they are referring to. BCC has no objection to the Order being modified to include such provisions (if any) as BT reasonably require.

ii. Bristol Water

Bristol Water raised no objection

iii. Virgin Media

Virgin Media confirmed they have no apparatus in the area.

iv. Wales & West Utilities

Wales and West Utilities confirmed they have apparatus in the area but have raised no objection.

v. Western Power/National Grid

WPD have confirmed they have apparatus in the area but have raised no objection.

CONCLUSION

24. BCC made the Order on the basis that the footpath no longer serves a need for the public as sections of the route, in effect, no longer exist due to river-bank erosion. In addition, as the permissive path from Point B onwards had been rescinded, there is no longer any through route to publicly accessible land.

25. BCC suggests that:

    . given the above reasons for making the order, and
    . the lack of evidence from third parties of public use

    the likely use of the footpath, if not for the Order, would be limited and there is no longer land served by the footpath which would be affected by the Order.

26. Consequently, BCC requests that the Secretary of State confirms the Order as proposed.