

STATEMENT OF CASE

DEFINITIVE MAP MODIFICATION ORDER APPLICATION

FOOTPATH BETWEEN 2 SHALDON ROAD & REAR OF 247 MULLER ROAD, BS7 9NW

BRISTOL CITY COUNCIL

Planning Inspectorate Ref: ROW/3244722

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. Following an application to modify the Definitive Map by adding a footpath as a public right of way from Shaldon Road to Morris Road, the order making authority carried out a consultation before determining that, on the balance of probabilities, the way had been used as a Public Right Of Way for in excess of 20 years.
- 1.4. On that basis, the order making authority resolved to make a Definitive Map Modification Order (DMMO) for public consultation. Following the making of the DMMO on 5 February 2019, objections were received. As those objections have not been withdrawn, and as the order making authority propose to make a modification to the DMMO, the order making authority is required to submit the DMMO to the Secretary of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 DMMO application was submitted on 9th May 2007 and validated on 18th May 2007. The application was to modify the Definitive Map and Statement by adding a footpath, including two spurs, from Shaldon Road to Morris Road to meet the adopted highway which runs down the side of No. 1 Morris Road at the rear of the Unity Chapel, Lockleaze. The claimed route is the lane which runs at the rear of Nos. 233-247 Muller Road and the side and rear of No. 2 Shaldon Road, continuing along the rear of Nos. 2 to 88 Shaldon Road, as shown on the plan attached at Appendix A of the Committee Report (the report and its appendices are attached as **Appendix 1**).

2.2. The activity that brought the public right into question and prompted the DMMO application was the erection of two sets of (locked) gates across the way in February 2007 by "Shaldon Watch" (i.e. Shaldon Road residents association whose properties back onto the lane - see letter dated 28 February 2007 from the DMMO applicant at Appendix B of the Committee Report, and Photographs 1 & 3 from a site visit in March 2007 at Appendix P2 of the Committee Report (**see Appendix 1**).

2.3. The erection of (locked) gates was in response to alleged incidences of anti-social behaviour. The 'proposed' additional sets of gates annotated on the hand drawn map with the applicant's letter (see Appendix B of the Committee Report at **Appendix 1**) had been installed by the time of the site visit in March 2007, which effectively prevented subsequent public use of the claimed route (see photo 7 – gates and fencing - at Appendix P2 of the Committee Report – **Appendix 1**).

3. LEGAL TESTS TO BE APPLIED

3.1. The relevant statutory provision is set out in Section 53(3)(b) of the Act which requires the order making authority to modify the Definitive Map and Statement following:

"the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;"

3.2. Section 31(1) of the Highways Act 1980 provides 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.”

3.3. Section 31(2) states:

“The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice ... or otherwise.”

3.4. Given the right of the public to use the way was brought into question when the gates were erected, the 20 year period should therefore be calculated retrospectively from February 2007 i.e. to February 1987.

3.5. In determining whether to make an order, case law has clarified that the test that the order making authority has to meet is whether, on the evidence, it is reasonable to allege that the right of way subsists. However, when determining whether to confirm an order, the surveying authority, or Secretary of State as appropriate, must be satisfied that on a balance of probabilities, the right of way subsists (see Todd v Secretary of State for the Environment, Farming and Rural Affairs [2004]1 WLR 2471 (**Appendix 2**)).

4. DOCUMENTARY EVIDENCE

4.1. It is the order making authority’s practice to search historical records held by the Bristol Records Office or held on digital archives such as ‘Know Your Place – Bristol’.

4.2. The evidence obtained and its detailed review by officers is set out in the Committee Report at paragraphs 10 – 28 and the corresponding appendices (see **Appendix 1**).

4.3. As a summary of the historic information obtained:

- 4.3.1. the four historic footpaths which were shown on the early O.S. maps were also shown on the 1935 conveyance of the land. However, archive evidence indicates that these historic paths were legally diverted to make way for the Lockleaze housing estate;
 - 4.3.2. evidence of the layout, width and status of the claimed route is first available from the November 1935 Conveyance, the 1946 aerial photo and the 1949 OS map, although for reasons as yet undiscovered it was not recorded as a public right of way on either the 1954 or 1966 editions of the definitive map and was not entered on the Council's adopted highway records.
- 4.4. In terms of the archived planning documents, officers' conclusions were that the lane at the rear of Shaldon Road was treated as if it was an existing public right of way and set out as such on the approved plans in association with the housing development that took place in the mid-1960s. The accompanying drawings indicated a lane of uniform width throughout. However, the subsequent removal of the proposed garages at the rear of Morris Road and the erection of bollards implies that a decision was reached by the Housing Department to prevent vehicular access to Morris Road via the lane at this point, but not to prevent public access for pedestrians. The bollards are still in situ – see site visit photographs Nos. 7 & 15 at Appendix P2 & P3 of the Committee Report (**Appendix 1**). It is clear that the bollards would not have prevented the continued public use of the link from the lane to Morris Road by pedestrians prior to the gating of the lane in 2007. The second link, from the 'shared access road' to Morris Road at the rear of the Unity Chapel, was unaffected by the proposal.
- 4.5. Officers undertook site visits in March 2007 and July 2017. A photographic record is attached at appendix P of the Committee Report (**see Appendix 1**). The initial site visit in 2007 took place shortly after the decision to erect gates was fully implemented – see photographs Nos. 1, 3 & 7 of appendix P2 of the Committee Report, showing the (locked) gates at Shaldon Road adjacent to the Unity Chapel, Morris Road adjacent to No. 1 and Morris Road at rear of Nos. 76 & 78.
- 4.6. Photographs from a site visit in July 2017 show the gates at the rear of Muller Road unlocked (see Committee Report Appendix P3 photo 10 – gates at rear of No. 4 Shaldon Road facing rear of Nos. 233-235 Muller Rd (**Appendix 1**)). It can be seen

in photo 10 that a car has been parked in the lane which blocks part of the width of the lane at this point. However, not all of the Shaldon Road properties have a garage at the rear and some garages may have become disused as a result of the overgrowth of the lane approximately at the rear of Nos. 22 to 50 Shaldon Road (see 2012 Aerial Photo at Appendix Q and photos 11 and 12 at appendix P3 of the Committee Report). It can be seen from the aerial photo that many residents' cars are now parked off road at the front of properties.

4.7. The claimed route is shown on the Location Plan at appendix R of the Committee Report (**Appendix 1**) (between points A-B-C-D-E-F on the plan). Due to the gating of the lane, officers estimated from a desk top exercise that the width of the lane between boundaries varies between 2.5m-6.5m. The length of the lane between points A to D is approximately 355m (from point A - Shaldon Road, adjacent to No. 2, to the rear of the Unity Chapel at point D – i.e. to connect with the adopted footpath adjacent to 1 Morris Road). The spur to Shaldon Road between points D to E (down side of No. 88 Shaldon Road) is approximately 48m; and the spur to Morris Road between points C to F (between Nos. 76 and 78 Morris Road) is approximately 24m.

4.8. In terms of landowner evidence, with the exception of the linking path between Nos. 76 and 78 Morris Road, the title to the land over which the claimed route runs is not registered with the Land Registry.

4.9. Bristol City Council owns the freehold to the land between Nos. 76 & 78 Morris Road (Title No. BL132196) and the land abutting the north side of the claimed route (Title No. BL113619), which was conveyed to the Council in 1935 - see plans at appendix C1 & C2 of the Committee Report (**Appendix 1**). Both titles state that the parcels of land have the benefit of rights granted by the Conveyance dated 13 November 1935 as follows:-

“Together with a right of way in perpetuity for all purposes over and along the back lanes thirteen feet in width shown on the said plan and therein coloured green together also with the free and uninterrupted right of access in perpetuity at any point and for all purposes to the said piece or parcel of land from the said back lanes.”

4.10. Officers wrote to the owner/occupiers of properties fronting the claimed route on 27th March 2018 inviting comments on the application, and seeking evidence regarding use of the route by the public during the relevant 20-year period from 1987 to 2007; or evidence of any actions taken to prevent or deter the public from using the route over this time. A summary of the comments received is set out at paragraphs 41-42 of the Committee Report and in the table at appendix T of the Committee Report (**Appendix 1**).

5. USER EVIDENCE

5.1. The DMMO applicant provided only user evidence in support of their application (**Appendix 3**). A detailed analysis of this user evidence is set out in paragraphs 29 to 38 in the Committee Report and its Appendix S (**Appendix 1**).

5.2. Officers concluded that the user evidence supporting the DMMO application provided strong evidence of pedestrian use of the route for the relevant 20-year period from 1987 to 2007. Further evidence, indicating that a route has been available at the rear of Shaldon Road adjacent to the former allotment land since 1935, is corroborated by the documentary evidence set out above. Additional documentary evidence indicates that the only major change affecting the claimed route prior to the relevant 20-year period occurred in 1965 when bollards were erected which prevented vehicular access to the lane from the link between Nos. 76 & 78 Morris Road, although pedestrian access was unaffected. Vehicular access continued to be available via the adopted section of lane adjacent to 1 Morris Road at the rear of the Unity Chapel, until the (locked) gates were erected in 2007.

6. COMMENTS ON OBJECTIONS OR REPRESENTATIONS

6.1. Following the making of the DMMO and its publication for consultation, objections were made by members of the public and not withdrawn. The issues raised relate to loss of private rights of vehicular access, risk of criminal activity, impact on residential amenity, impact on access for disabled, lanes hardly used by pedestrians due to condition and the width of the land between 88 Shaldon Road and Unity Chapel being 3m not 4m.

6.2. The order making authority considers that the objections are duly made. However, those objections regarding the desirability, suitability or necessity of adding the route

to the definitive map are not matters that can be taken into account under section 53 of the Act. The majority of objections were on these grounds and, in addition, had already been considered in the initial report presented to Committee before the decision was made to make the DMMO.

6.3. The objection on the basis that the lane is hardly used by pedestrians due to its condition is in contradiction to the evidence collated and presented in the Committee Report (**Appendix 1**). Without further evidence to support this claim, the order making authority considers this objection provides little weight in supporting the contention that there has not been 20 years continuous use.

6.4. The order making authority considers that only the point raised regarding the width of the land/proposed public footpath is of relevance for further consideration. As this was an error in the drafting of the Order, the order making authority requests that this aspect of the draft Order should be modified.

7. SUMMARY

7.1. The order making authority propose that on the basis of evidence available, and on the balance of probability, there is sufficient evidence to reasonably allege that the presumption of dedication contained in Section 31(1) of the Highways Act 1980 has been raised for the claimed footpath. It appears to officers more reasonable than not to allege that the public has used the claimed footpath for 20 years or more. Likewise, there has been, to date, insufficient evidence submitted by adjacent property owners to rebut the presumption of dedication or to rebut the claimed use of the way.

7.2. In the event that the Secretary of State determines that the DMMO should be confirmed, the order making authority request that the draft Order should be modified to reflect the point raised that the width of the footpath between 88 Shaldon Road and Unity Chapel is 3m not 4m.