

**BRISTOL CITY COUNCIL
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE**

27th November 2024

CLAIMED FOOTPATHS AT STOKE LODGE FIELDS, STOKE BISHOP

(Report of the Network Operations Group Manager, Growth & Regeneration)

(Ward: Stoke Bishop)

Policy Implications

None arising directly from this report.

Resource Implications

There are no specific resource implications arising from this report, although if an Order is made which receives objections that are not withdrawn, there would be cost implications if the Secretary of State decided to hold a public inquiry or hearing. A way added to the definitive map is publicly maintainable if it can be shown to have come into existence prior to the 1959 Highways Act.

Other Approvals necessary

None

Recommendations

That the Head of Legal Services be authorised to make and advertise a Definitive Map Modification Order to show the footpaths in the Definitive Map and Statement, as shown on the plan attached to this report;

and,

that if the Order is opposed or any objections are lodged and not withdrawn, the Head of Legal Services be authorised to submit the Order to the Secretary of State for determination.

Legal Summary

The statutory test under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 is:

“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...”

If it is concluded that evidence has been discovered, the question to then consider is whether it can be concluded that a public right of way subsists or can be reasonably alleged to subsist.

There are therefore two different tests that may apply – either, whether the public right of way subsists or, whether it can be reasonably alleged that a public right of way subsists.

Court judgments have established that the burden of proof is different for each test:

1. For it to be concluded that a right of way subsists it must be on the balance of probability;
2. For it to be concluded that a right of way can be reasonably alleged to subsist, it must be reasonable to allege i.e. it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way subsists.

If it is concluded that either test is satisfied so that the Order should be made and advertised for consultation, the Order must not be confirmed unless it can be concluded, based on all the evidence then available, that the right of way subsists on the balance of probability.

Officer Summary

- The purpose of this report is to provide the Public Rights of Way and Greens Committee with sufficient information and guidance to determine an application for an order under S.53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of footpaths from Cheyne Road to Parry's Lane (route 1), Shirehampton Road to West Dene (route 2), said route 1 to said route 2 (route 3) and a further route from said route 1 to said route 2 (route 4). The claimed routes presumed to be dedicated are shown as 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 plan at appendix 1 to this report.
- The statutory test for presumed dedication is whether a way over any land has been actually enjoyed by the public *as of right and without interruption for a full period of 20 years*. Should this be the case, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention by the landowner during that period to dedicate it.
- The evidence shows that it is reasonable to allege that the claimed routes subsist based on the available evidence of use between 1946 and 2018.
- It would be reasonable to allege that there is insufficient evidence to indicate that landowners had taken overt action to demonstrate to users that they did not intend to dedicate a right of way over the claimed routes prior to 2018.

Officers have engaged an independent consultant (Robin Carr Associates) to prepare a report to assist Bristol City Council (the Surveying Authority) with the determination of the application which seeks to register public rights of way over the routes shown by broken black lines on the plan at appendix 1.

It is the independent consultant's view that there are sufficient grounds for making the requested Definitive Map Modification Orders on the basis that it can be reasonably alleged that public rights subsist. The Surveying Authority must make its own decision based upon the available and relevant evidence as detailed in the independent report. Should the Authority resolve to make an Order, any resulting confirmation will be on the balance of probabilities, allowing any additional evidence to come forward for the final determination.