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Public Rights of Way Management & Consultancy Services

Wildlife & Countryside Act 1981

The City Council of Bristol Definitive Map and Statement Modification Order (No 7) 2024 (Stoke Lodge Playing Field)

Proof of Evidence of Robin Carr FIPROW MAE

PINS Ref: ROW/3363939

Bristol City Council Reference: BCC/DB3/7398116

1.0 Introduction

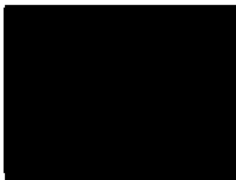
- 1.1 My name is Robin Carr.
- 1.2 I am an independent consultant, specialising in Public Rights of Way and Highway matters. I am a Fellow of the Institute of Public Rights of Way & Access Management (IPROW), a Member of the Academy of Experts and a Registered Expert Witness.
- 1.3 My experience is based, most generally, on an expertise that has been developed over a thirty five-year plus period as a Public Rights of Way & Highways practitioner.
- 1.4 I hold a post-graduate level certificate in Leisure Management from the Institute of Leisure and Amenity Management. I am also a former Treasurer and founding Director of the Institute of Public Rights of Way and Access Management (IPROW). In 2019 I was a Regional Finalist for the Midlands Regions in the Rural Business Awards; and in 2019, 2022, 2023 & 2025 I was the recipient of “Lawyer Monthly” magazine Expert Witness Awards. In 2025 I also received the Lawyer Legal Award for Expert Witness Service of the Year and in 2026 am a recipient of the Advisory Excellence award for Public Rights of Way and Highways Expert of the Year (UK).
- 1.5 I have had papers published, on the subjects of: a) highway record management and b) rail crossing closures under the Transport and Works Act 1992, in the journal of the Institute of Public Rights of Way and Access Management. I also have a published Practice Guidance Note on Rights of Way Improvement Plans on the “LexisNexis” legal resource website.
- 1.6 Between 1987 and 2003 I was employed by a number of local authorities as a rights of way and highways practitioner, including six years at principal officer (management) level, during which time I was responsible for the management of the authority’s

statutory public rights of way functions as well as the maintenance of the authority's highway records.

- 1.7 Since 2003 I have worked as an independent consultant specialising in public rights of way and highway matters, and more specifically on matters relating to the existence, status and extent of public highways. In doing so I have prepared reports for various local authorities and private individuals, as well as giving evidence at local public inquiries, the Magistrates Court, County Court and High Court. I also represented Clients at local public inquiries, hearings and similar fora.

2.0 Statement of Truth

- 2.1 This report has been prepared in line with the requirements of the Civil Procedure Rules on the production of expert reports. As such I am required to include a Statement of Truth:
- 2.2 I understand that my overriding duty is to the Inquiry, and I have complied with that duty. I am aware of the requirements of CPR Part 35, its practice directions and the CJC Guidance for the instruction of experts in civil claims.
- 2.3 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
- 2.4 I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Robin Carr FIPROW MAE



7th September 2026

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Version 2: 01/09/2026
Version 3: 04/09/2026
Version 4: 07/09/2026

3.0 Legislative Context

3.1 Whilst I do not claim to be an expert in the law, that is a matter for lawyers and the Courts, the matters considered in the production of my advisory report for the Order Making Authority (the RCA Report) [OMA SoC App 6] [CD2.4], and indeed the matters before this Inquiry do require an understanding of the legislative framework within which the decision to make the Order rests. To this end a summary overview of my understanding of the legislative tests etc is set out within Section 4 of the RCA Report [OMA SoC App 6] [CD2.4].

4.0 My understanding of the General Background to this Case

4.1 In Section 5 of the RCA Report [OMA SoC App 6] [CD2.4] I set out my understanding of the general background to the case and history of the site from circa 1946 to 2023. I set out below a summary chronology of events 1947 to June 2025 which has been compiled for me by Officers of the Order Making Authority. Items highlighted in Green relate specifically to the DMMO Application and the Order:

Date	Event
1947-1974	Bristol City Council is landowner of Stoke Lodge Playing Fields (the Site)
1974-1996	Avon County Council is landowner of the Site
1983/85	Signs erected
1996- present	Unitary Authority of Bristol City Council is landowner of the Site
2000	Cotham Grammar School began using Site
7 March 2011	Application made by local resident to register Site as Town and Village Green (first TVG Application)
31 August 2011	Bristol City Council grant Cotham School 125-year lease for the Site [CD5.11]

22 May 2013	TVG Inspector's initial report recommending registration of the land as a TVG subject to allowing the parties to comment on the Report.
June-July 2016	TVG Inquiry
14 October 2016	TVG Inspector's Report issued [CD7.1] - TVG Inspector recommended that the Site should not be registered as a TVG.
12 December 2016	Site registered as TVG by Council's Public Rights of Way and Greens Committee (acting as the Commons Registration Authority)
9 March 2017	Proceedings issued by Cotham School to challenge PROWG committee decision
1 May 2018	Submission of application to modify the Definitive Map and Statement to include four footpaths across Stoke Lodge playing fields ('the Application') [CD1.1-1.5]
3 May 2018	Decision to register the land as a TVG quashed by the High Court [CD7.5]
25 June 2018	On reconsideration of the application, the Commons Registration Authority refuse registration of TVG
24 July 2018	Signs put up on the Site by Cotham school
13 September 2018	Second TVG application submitted
22 July 2019	Third TVG application submitted
2 March 2021	TVG Inspector decided no public inquiry necessary and recommended refusal of the Second and Third TVG applications. [CD7.2]
14 March 2023	TVG Inspector again recommended the Second and Third TVG applications be refused. [CD7.3]
18 May 2023	TVG Inspector considered submissions and maintained recommendation to refuse the Second and Third TVG applications [CD7.4]
28 June 2023	Council's Public Rights of Way and Greens Committee (in their role as Commons Registration Authority) register the Site as a TVG.

20 November 2023	Cotham School make application to Court to rectify town and village green register.
16 May 2024	Robin Carr (PROW Consultant) undertook site visit
7 October 2024	Draft consultant report issued to interested parties for comment
20 October 2024	Objection received from Cotham School to the Application/comment on the draft report [CD2.2]
28 October 2024	Response by applicant to the PROW Consultant's draft report [CD2.1]
14 November 2024	Robin Carr final report issued [CD2.4]
19 November 2024	Robin Carr report published on web for public comment prior to committee
27 November 2024	Public Rights of Way Committee - resolved to make a Definitive Map Modification Order [CD2.9]
10 December 2024	The City Council of Bristol Definitive Map and Statement Modification Order (No.7) 2024 ('the DMMO') made [CD3.1]
16 December 2024 – 10 February 2025	Public consultation period
5 February 2025	Cotham School's Objection received [CD3.2]
10 April 2025	DMMO submitted to PINS for determination
10 June 2025	Judgment issued re Cotham School TVG rectification application. [CD7.6] Site did not meet statutory criteria, register rectified by removing entry.

5.0 Background to My Involvement in this Case

- 5.1 In Spring 2024 I was instructed by Duncan Venison, Network Operations Group Manager at Bristol City Council, to prepare an independent report (the RCA Report) [CD2.4] to assist the Order Making Authority with the determination of an application made by Mr A W Preece on 1st May 2018 [CD1.1-1.5] which sought to register public rights of way over the Order Routes.
- 5.2 In conducting my Investigations I was aware of the Village Green Applications which had been submitted and which, at that time, were the subject of ongoing litigation.
- 5.3 As part of my investigations I undertook a limited amount of historic research from which I concluded that it was unlikely that any claim for public rights of way would be supported by such evidence. The RCA report [CD2.4] therefore focused, in the first instance, on the modern user-based evidence that had been put forward by the Applicant [CD1.2-1.5].
- 5.4 The user evidence was considered by way of a desk-based assessment of the user evidence forms that had been submitted in support of the applications. At this stage of the process, I did not consider it necessary to conduct face-to-face interviews with user witnesses.
- 5.5 In preparing my report I was mindful that the lower (reasonable allegation) test was all that was needed to be applied at that time; and that in *R (Roxlena Ltd) v Cumbria County Council [2019]* [CD8.3] the Court of Appeal had said that the consideration of evidence at this stage of the Modification Order process was “necessarily less intense” than at confirmation stage. The evidence might or might not be satisfactorily sustained when the Order comes to be confirmed, but that does not mean an Order cannot be lawfully made at this juncture.

- 5.6 On Thursday 16th May 2024 I visited the site accompanied by Officers of Bristol City Council. During the visit I also met the Applicant and representatives of the landowners (Bristol City Council) and Cotham School who lease the fields for sport, recreation and educational purposes. During my site visit, I walked the Order Routes and witnessed quite a number of people using the fields for recreational purposes and dog walking across the whole of the fields and not necessarily on specific or defined routes.
- 5.7 As part of the investigation the Applicant and parties with a land-owning interest were consulted on the first draft of the RCA report and offered the opportunity to make submissions. Where appropriate those responses were taken into consideration in the production of the finalised RCA Report. Copies of any such responses were also appended to the final version of the RCA Report **[CD2.1-2.3]**.
- 5.8 In drafting my report I was also mindful that in *R v Secretary of State for Wales ex parte Emery [1998]* **[CD8.5]** it was held that where there is a conflict of apparently credible evidence, and a public right of way is reasonably alleged to subsist, an Order should be made to allow that evidence to be tested through the Order making process.
- 5.9 With the above considerations in mind I should clarify that the conclusion reached within the RCA Report **[CD2.4]** that the “reasonable allegation” test had been met, should not be interpreted in a manner to suggest that I had concluded that the higher “balance of probability” test had not, or could not be met. Put quite simply, it was not a conclusion that I needed to consider once I had concluded there was a reasonable allegation in favour of the alleged public rights of way. For the avoidance of doubt, I consider that, subject to the user evidence withstanding more vigorous interrogation, the Order is capable of confirmation.
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5.10 In reaching this conclusion I take into account the substantial number (96) of additional user evidence forms submitted by the Applicant in his Statement of Case **[CD5.7]**. This amounts to a total of no less than 251 user witnesses¹ claiming use of the Order Routes. To put this in context, cases of this nature are often determined favourably with as few as a dozen or so user witnesses. In this case however the Order Routes are in a highly populated area therefore I would expect greater number of users. Notwithstanding this, it is rare indeed to have a case with so many people claiming use of the paths in dispute.

6.0 Matters Arising from Objector's Statements of Case [CD6.1]

6.1 In paragraphs 16-25 under the heading "The Relevant Date" the Objector discusses the issue of the date that the existence of rights was "brought into question" pursuant to Section 31(2) of the Highways Act 1980 **[CD9.2]**.

6.2 At paragraph 18 the Objector refers to the erection of signage in 1983, whereas the Order Making Authority had concluded that the signs were erected some two years later in 1985. If the Objector is correct, which appears to be the case, then this would shift the requisite twenty-year period from 1965-1985 to 1963-1983.

6.3 The Objector appears to suggest that the setting out of sports pitches should be taken as the date when the existence of public rights was brought into question for the purposes of Section 31 of the 1980 Act **[CD9.2]**. Whilst I understand the point being made, I do not consider that such actions were sufficient to bring it home to the public that their right to use the Order Routes was being challenged, nor do I consider it to cause an actual obstruction to use of the Order Routes. There is no evidence of any public outcry, such as that which occurred when the signs were erected in 1983 (e.g. press articles).

¹ The Applicant states 259 in his Statement of Case

- 6.4 In my experience, as matters are clarified through the determination process, it is not unusual for these time periods to shift, sometimes by a substantial number of years. This is not necessarily fatal to the outcome of the Order, it simply requires reconsideration of the evidence.
- 6.5 The Order **[CD3.1]** divides the Order Routes into nine separate paths, albeit each individual path would not be capable of coming into being without reliance on at least one other route. In the RCA Report **[CD2.4]** I divided the Order Routes into four separate routes to avoid this problem and allow clearer analysis of the user evidence **[CD2.5]**. The Order plan also uses different lettering of points to the RCA Report causing further difficulties in interpretation.
- 6.6 In the RCA Report **[CD2.4]** I concluded that, what became Order Routes 679, 681, 682 and 684 were subject to use between 1965 and 2018 which, on face value, if the signs were erected in 1983 as per the Objector's case, there would not be a full twenty-year period of use. However, Order Routes 685 and 686 which rely upon the use of all or parts of Order Routes 679, 681, 682 and 684 were both, according to the evidence questionnaires in support of the Application **[CD1.2-1.5]**, subject to use before 1963, thus suggesting there is in fact a full period of twenty years to be relied upon. There is now also the additional user evidence submitted by the Applicant in his Statement of Case **[CD5.7]** which must be put into the balance, and in my view strengthens the case in support of the Order. In my opinion this is a matter that can be clarified by the live testimony and cross-examination of the actual users.
- 6.7 At paragraphs 20-24 **[CD6.1]** the Objector introduces arguments based upon aerial photography to assist with matters relating to the setting out and location of various sports pitches over time. To assist the Inquiry with this matter I attach, as **Appendix 1 [CD10.2]** to this proof of evidence, a range of aerial photographs with the Order Routes superimposed upon them. I am not an expert in the interpretation of aerial
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photographs. I do however accept that the aerial images do not appear to show any obvious indication of the Order Routes.

- 6.8 The Objector also refers to Judge Matthews’ comments in *Cotham School v. Bristol City Council* [2025] EWHC 1382 (Ch) at [312] **[CD7.6]**. The applicability of that case to these proceedings is a matter for legal submission, but I do note that this was a Village Green case as opposed to a public rights of way case. The matter is however addressed in paragraphs 93 to 101 of the Authority’s Statement of Case **[CD4.1]**.
- 6.9 At paragraph 25 **[CD6.1]** the Objector suggests that the requisite twenty-year period should be July 1943 to July 1963. At this time, I am unclear as to the rationale behind that assertion as they do not bring forward any evidence of an event which would constitute a “bringing into question” for the purposes of Section 31(2) of the 1980 Act **[CD9.2]** in 1963. As discussed in paragraph 6.3 above I do not consider the setting out of sports pitches to be sufficient to bring into question the existence of the Order Routes.
- 6.10 At paragraph 33a **[CD6.1]** the Objector asserts that the access point off Parry’s Lane (Point A) was not available prior to 1957 due to it being blocked by a continuous stone wall. A section of the wall was removed in 1957 when the road was widened. They go on to say that the gap was blocked with a chain link fence.
- 6.11 I have seen no evidence to support this proposition, but users claim to have gained access at Point A since 1946. This is a matter which will need to be tested with the actual user witnesses. However, I note that the gap in the wall was provided before the start of the twenty-year period initially relied upon by the Order Making Authority (1965 – 1985) but stated by the Objector to be 1963-1983.

- 6.12 At paragraph 33b **[CD6.1]** the Objector suggests that Order Route No 2 (C-D-E-B-I-H) was obstructed by a Pavillion from 1966. The aerial photographs appended to my Proof of Evidence at Appendix 1 **[CD 10.2]** do confirm the existence of the Pavilion between 1970 and 1980 (due to dates of images). This may however only have an impact on Order Route 681 (I-H) on the Order Map **[CD3.1]**. It would not necessarily have any impact on the remainder of the path (C-D-E-B-I).
- 6.13 At paragraph 33c **[CD6.1]** the Objector notes, quite correctly, that there is a lack of any visible worn paths along the Order Routes. Whilst I am bound to accept that the images do not appear to show any obvious indication of the Order Routes, I do not consider that this amounts to determinative evidence in support of the proposition that the Order Routes are not or have not been used. As noted above the interpretation of aerial photographs is not my area of expertise; there may be a number of reasons relating to land conditions, or its state of maintenance which etc, that may have an effect of what is visible. I tend to take the view that they are very much like Ordnance Survey maps in that they show physical features in a snap-shot in time. They do not show the existence or otherwise of public rights, which are not a physical entity. Furthermore, as with most sources of documentary evidence, the fact that a path is not shown is not evidence that public rights do not subsist.

7.0 Conclusion

- 7.1 In conclusion, at the time of making the Order there was a significant amount of user evidence in support of the establishment of public rights of way over the Order Routes. As is the nature of these processes, that evidence has been supplemented by additional evidence which further supports the Application **[CD1.1]**. In a similar manner the Objector has provided additional information, evidence and clarification over various issues which supports their beliefs. It is my professional opinion that, the evidence, taken as a whole and “as read” appears to be supportive of confirmation of

the Order. That evidence will however be more rigorously tested throughout the Inquiry process.