

**BRISTOL CITY COUNCIL
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
23 JULY 2007**

**CLAIMED FOOTPATH FROM BERKELEY ROAD TO FP567
(FRIARY ROAD)**

Joint Report of the Director of Planning,
Transport and Sustainable Development and
the Director of Central Support Services) **(Ward: BISHOPSTON)**

Purpose of Report

1. To determine an application for a Modification Order under the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a footpath from Berkeley Road to Public Right of Way No. 567 in Bishopston.

Background

2. An application for a Modification Order has been received from a member of the public to modify the Definitive Map by adding a footpath from Berkeley Road to FP567. The claimed route, also known as Friary Road, is shown on the Location Plan at Appendix A and runs from Berkeley Road near its junction with Kings Drive (point A), to the existing Public Right of Way No. 567 (point B) which continues to Cornwall Road. The claim is for the full width of Friary Road, including verges.
3. The act that brought the public right into question and prompted the claim was the encroachment in July 2000 of land in Friary Road adjacent to No. 111 Berkeley Road, comprising of a grass verge. This prevented the use of the verge from that date, but not the use of the surfaced area of Friary Road.

Legal Framework

4. Bristol City Council as Highway and Surveying Authority is under a statutory duty, as imposed by Section 53(2) of the Wildlife and Countryside Act 1981, to keep the Definitive Map and Statement

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under continuous review and to determine any valid applications for Modification Orders that it receives.

5. Section 53(5) of the Act enables any person to apply to the surveying authority for an order to be made modifying a definitive map and statement as respects any of the 'evidential events' specified in paragraphs (b) and (c) of section 53(3). The procedure for the making and determination of applications is set out in Schedule 14 of the Act. It includes the right for applicants to appeal to the Secretary of State against the refusal of the surveying authority to make an order. A Surveying Authority must take into consideration all other relevant evidence available to them concerning the status of the right of way involved, if it discovers or is presented with evidence which suggests that a definitive map and statement should be modified to reflect additional rights over a way in respect of which the use for presumed dedication is claimed (DoE Circular 2/93).

6. The relevant statutory provision in this case, which applies to adding a route to the Definitive Map and Statement, is set out in subsection (3)(c)(i) of Section 53 of the Act, which requires the Surveying Authority to modify the Definitive Map and Statement following:

“The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

(i) 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, being a right of way to which this Part applies.”

7. Section 31 of the Highways Act 1980 provides for the statutory presumption of dedication of a public right of way following 20 years continuous use. Subsection (1) 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

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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.”

The way that is deemed to have been dedicated as a highway should correspond to the nature of the use shown. Section 68 of the Natural Environment and Rural Communities Act 2006 inserted sub-section (ss.) 1A into Section 31 of the Highways Act 1980. New ss.1A applies in relation to the presumed dedication of ‘Restricted Byways’ by virtue of use for non-mechanically propelled vehicles, such as use by pedal cycles. No presumption of dedication arises if such use would, by reason of interference with the convenience of other users, constitute a public nuisance, or the physical characteristics of the way are such as to make the way impassable by such vehicles.

Subsection (2) states that:

“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.”

8. Under Section 329 of the Highways Act 1980, a “street” is defined as the whole or part of the following, irrespective of whether it is a thoroughfare – i.e. *“any highway and any road, lane, footpath, square, court alley or passage ... and includes any part of a street”*. The term “private street” is defined under Section 203 of the Act as *“a street that is not a highway maintainable at the public expense”*, and includes any land declared to be a private street by a street works authority.
9. In addition to statute law, a highway can be established by dedication and acceptance under Common Law. The landowner may dedicate a way for a particular class of traffic in perpetuity, e.g. a footpath, bridleway or carriageway. But he cannot dedicate for a particular section of the community, i.e. the inhabitants of a particular parish. The evidence must show that

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the landowner intended to grant a public right of way, i.e. by deed or agreement with the highway authority or that dedication of a highway could be inferred from conduct or acquiescence in the use of the way by the public. Three years of a high level of use without force, secrecy or permission has been held to be sufficient to establish a highway under common law. Where such a highway was established, the general rule is that the highway extends from one boundary to another, e.g. fence or hedge, even though only part has been surfaced. At common law, a frontager has a private right of access to the highway subject to the limitation that he must not interfere unduly with the public right of passage along the highway.

User Evidence submitted in support of the Application

10. On 18 March 2001, Mr Mark Shearman submitted an application to modify the Definitive Map and Statement by adding the footpath as described in paragraph 2 above on the basis that there has been a presumed dedication as a highway in accordance with Section 31 of the Highways Act 1980. The application is supported by 29 Public Rights of Way Evidence Forms from residents of Cornwall Road, Fenton Road, Egerton Road, Logan Road, Kings Drive, Monmouth Road and Bishop Road in Bishopston and as far afield as Redland, Westbury Park and Easton, which are included as background papers to this report. The full width of Friary Road, including verges, is claimed as stated in Mr Shearman's covering letter of 18 March 2001 with the application, and as confirmed in his statement of 5 March 2007. Use of the route is claimed for varying periods of time between 1937 and 2001.
11. All bar one of the witnesses who completed Evidence Forms also marked the route they used on the map supplied with the form, which is the route (or part only of the route) shown as A to B on the plan attached at Appendix A. Some witnesses also show other routes connecting to Friary Road, although they do not form part of the claimed route. The majority of witnesses (22) marked the claimed route from A to B and a minority (6) marked part of the route between Berkeley Road to Egerton Road. Thirteen witnesses marked the width of the claimed route

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- to include the verge adjacent to No. 111 Berkeley Road, although many appear to exclude the narrow verges at the mid-point by the Church and the pavement abutting the School boundary from the marked width (see Appendix C.1).
12. The Bar Chart at Appendix B shows the number of years over which use of the route is being claimed. Use has continued up to the present day, as evidenced in the witness statements (included with background papers to this report). The Chart shows that 14 witnesses claim continuous use of the route for the relevant 20-year period in question from 1980 to 2000. Two additional witnesses had a break in their use of the way during this period (Form 3, route not used for one year between 1984-85; and Form 27, route not used between 1980-82).
 13. A summary of evidence provided in both the evidence forms and witness statements is shown at Appendices C1 and C2 for ease of analysis. Use of the route as a public footpath is claimed unhindered and unchallenged by a total of 29 people through user Evidence Forms, 14 of these for the full 20-year period in question (10 of these stating frequent use, and 4 monthly or occasional use). Eleven people also provide evidence of bicycle use, five for the full 20-year period (three of these stating frequent use and two stating occasional use). No witnesses claim vehicular use of the whole route between points A and B (or between Berkeley Road and Egerton Road only) during the relevant 20-year period, although one person drove a car before 1979 and another a motorbike up to 1997. 17 witnesses refer to bollards installed by the Church in the 1980s that prevented vehicular use between Egerton Road and Berkeley Road from that time and two refer to a 'No Through Road' sign at the bottom of Friary Road. None of the 29 witnesses were employees or tenants of the landowners and none have stated that they had asked or been given permission to use the route. The main purpose of journey for the majority of witnesses was for social or leisure pursuits, for trips to shops, public transport, doctor's surgery or work.
 14. On 5 and 6 March 2007, 14 witnesses were interviewed, and a précis of additional evidence contained in the witness

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statements that is not already summarised at Appendix C is shown at Appendix D.1, together with a summary of the answers to Question 12, i.e. 'other information' (Appendix D.2). The statements are held with the background papers to this report and include a statement made by the applicant, Mr Shearman. This evidence reveals that seven witnesses stated that they have walked or stepped onto the verge (or both verges) at the Berkeley Road end of the route, and two witnesses have used the pavement by the school during the relevant 20-year period (see Appendix D1). The majority of these 14 witnesses saw vehicles using Friary Road for access to church, school or private garages. Two witnesses recalled that Friary Road was used as a through route to Egerton Road, and that vehicles accessed the church car park from Egerton Road prior to the erection of the bollards. One witness thought that the 'No Through Road' sign was erected in Friary Road at the Berkeley Road end about 15 years ago.

Documentary and Other Evidence submitted in support of the Application

15. Mrs O'Farrell produced over 50 documents in support of the Application, which are listed in chronological order at Appendix E. These were researched and further documents reviewed if thought appropriate, which are included in the Table held with the background papers to this report. The documentary evidence is divided into 3 main categories - maps, text and documents required by law (e.g. Finance Act 1910, land registry entries).
16. There was no Inclosure Act, which affected Horfield, and the earliest map reviewed was the 1845 tithe map for Horfield and Filton (see Appendix E.1). The boundaries to what is now known as Friary Lane are consistently shown from the Tithe Map of 1845 through to the latest editions produced by the Ordnance Survey and the Altered Apportionment of Tithe (see Appendix E.1A, and paragraphs 22-23 below).
17. The 1845 tithe map shows a route providing a connection between the parcels of land numbered 27, 29 and 38. Some

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- roads are colour washed brown but not all colour washed routes end up connecting to through routes (e.g. Plot Nos. 36 and 24), nor were there any roads shown across the common (which is to the north of the area shown on the map). Gates and gaps are not shown on the map. At the time of the tithe commissioners the occupiers were different individuals and the landowner / copyholder was the Bishop of Gloucester and Bristol with others.
18. The Bishop Monks Horfield Trust set up in the mid-19th Century owned parcels of land and the plan at Appendix E.2 shows other fields owned by different landowners. The plan uses a Manor of Horfield base, undated, and the claimed route is uncoloured and remains outside the ownership of the abutting premises.
 19. The construction of the dwellings commenced with Egerton and Berkeley Roads circa 1872. The Conveyance dated 11.05.1872 at Appendix E.3(a) states that Plot 8 (111 Berkeley Road) is *“bounded on the north, northwest by the road leading to Egerton Road”*. The published 1883 Ordnance Survey map shows the completion of the dwellings, with the exception of 112 Egerton Road (see Appendix E.3(b) and paragraph 22 below).
 20. The 1900 building plans for the construction of St Bonaventures Church imply that the main access to the church and friary was from Egerton Road and the ‘Lane’ is shown on the plan at Appendix E.4.
 21. The 1910 Finance Act map, field books and valuation books have been reviewed (see extracts at Appendix E.5a to c). The Act allowed deductions to be made for public rights of way across landowners land. The evidence supplied by Mrs O’Farrell includes the Public Record Office copy of the plan and surveyors field book. The claimed route is not included in the survey (i.e. not numbered); the abutting properties are, although the survey numbers are not always annotated on the plan. The principle of the exclusion of a route from the plan and written record often but not exclusively indicates that it was considered a public highway. However no clear instructions have been traced that were issued by the Inland Revenue.

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22. The ordnance survey 1st Edition published 1883 shows the surrounding farmland with the claimed route as parcel 258 with acreage .643 (see Appendix E.3(b)) and is shown as a tree lined western boundary. There are two benchmarks located on the property boundaries with two spot heights taken along the claimed route; one of these is perpetuated throughout the publication of the County Series (1880's – 1930's). Although benchmarks and spot heights often indicate the route of a road or way it cannot be taken as evidence of public use. [NB The Ordnance Survey reference notes for draftsmen are included with the background papers to this report.]
23. In the 1903 revised edition the Church and Friary have been built and by 1916 so has much of the surrounding housing to the north and east (see Appendices E.6 & E.7). The extract from the 1931 revision shows Kings Drive and a boundary inserted on the base (see Appendix E.8). A comparison of these editions shows a constant alignment and width at the southern end of the lane. The 1951 edition is the last pre-digital plan traced (see Appendix E.9).
24. The plan used for the Finance Act 1910 (at Appendix E.5a to c) is a hybrid of the 1903 and 1916 published plans. The plot numbers and acreages are from the 1903 base but Cornwall Road is not built then (1904 – 1909) and the change of typeface reflects the earlier edition.
25. The Ordnance Survey maps first use the name Friary Road on the published 1931 edition. The street name had to be in local use, and agreement by the local authority was needed to confirm and use the name. In conveyances of 1928 for a section of the Church car park [Appendix E10(a)] and 1929 for 102 Kings Drive [Appendix E.10(b)], Friary Road was named on the plans and referred to by name in the former but not the latter document. The 1872 building plan (Plots 1-8 Berkeley Road) gives the name of Davey's Lane [see Appendix H.1(a)].
26. The title deeds, part C Charges Register, for the dwellings abutting Friary Road from Berkeley Road contain the stipulation that:

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'he will erect the back and side boundary walls of the said premises such walls not to exceed six feet in height...and that the grantee his heirs or assigns will not alter the boundary walls of the said plot'. [See Appendix E, page 3, para. 6]

27. A similar entry for Egerton Road says that the fences are not to exceed five feet. The Land Registry search results are held with the background papers to this report.
28. A letter at Appendix E.11 from the J Gilmore, solicitor, dated 1890 to Rev Thaddeus of 120 Egerton Road states that:

'the lane originally formed part of the common and the Shadwell Trustees do not claim it. It has been semi public property for some time and it would appear to be a great pity that the Horfield Board [do?] not take it into their hands.'

29. Horfield Urban District Council (UDC) Minute Books 1 & 2 (1866-1872), 6 & 7 (1893-1901) did not include any specific reference to the route. The UDC had a procedure whereby it declared routes to be public highways after building works had been completed, unless objected to by the owners, and employed a surveyor to report on roads and paths.
30. A letter from the City Engineer and Surveyor to Rev A McCarthy of The Friary dated 23 May 1905 says that the lane is not a highway repairable by the inhabitants at large (see Appendix E, page 3 para. 7). On 21 October 1905 a second letter sent to Rev A McCarthy raises the question of encroachment by new fencing on the lane between Egerton and Berkeley Roads by the church. This letter is annotated (see Appendix E.12).
31. The planning history of Friary Road includes a report on the planning street files dated 23/1/1962 which details the expense that Bristol City Council would incur if Friary Road was made up to a standard for formal adoption, as the Church was exempt under the Highways Act 1959 from making contribution (see Appendix E.13). The report makes reference to:-

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'the position of this road, however, in relation to the surrounding streets makes it well used by both vehicular and pedestrian traffic'.

Other more recent planning matters are summarised at Appendix F and planning documents are held as background papers to this report. They include planning permission for a two-storey rear extension to 111 Berkeley Road granted in 1986 and a two-storey side extension granted in 1999. A photograph taken by the planning officer in 1999 shows both grass verges at the entrance to Friary Road. The verge adjacent to No. 111 appears to be gently sloping and the church car park is separated from the lane by white posts (see Appendix F3). Other photographs supplied by Mrs Blackwell show the verge before the trees were planted (undated) and after the wall was built (circa 2000) (see Appendix F4(a) p.2). Legal advice was sought regarding a further application for a new side fence/wall lodged in respect of 111 Berkeley Road, which is still awaiting determination (see Counsel's opinion at Appendix G). This advice implies that if sufficient documentary evidence exists to show that the land in dispute was *'properly part of the highway at the beginning of the 20th century'*, that this will render the adverse possession claim by Mrs Blackwell ineffective.

32. Evidence in support of Definitive Map Modification Order No.4 1989 (now Public Right of Way No. 567) provides evidence of pedestrian use for the current application. Work to a wall and garage at 23 Cornwall Road in 1987 precipitated this application which was confirmed unopposed and became operative on 4 January 1990. There were 24 evidence forms submitted and 9 of these showed use of the full length of Friary Road, two of these claimants have also presented evidence for the current claim (see Table at Appendix E.14). At the time of this former application the legal advice that was given for not including the portion of the route from the southern end of footpath 567 to Egerton Road was on the basis that Friary Road was an unadopted street. This advice was clarified by memo. dated 24 August 1988 at the time of drawing up the order map, confirming the legal view that the public had rights over Friary Road and the fact that Friary Road is unadopted would not stop there being

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public rights over it. [N.B. This correspondence, together with the Committee Report of 26.02.1988 is included with the background papers to this report. There is also a reference to Friary Road as an 'unadopted street' in the committee report dated 22.03.1983 at Appendix H.1(b).]

33. Mrs O'Farrell also provided copies of correspondence regarding the enclosure of the grass verge abutting No. 111 Berkeley Road in 2000 by Mrs Blackwell (see chronological list at Appendix E). The main points raised by the correspondents in this additional evidence are:
- The removal of *'the safe verge which pedestrians could previously step onto out of the way of cars'* (M Shearman to BCC Planning 14.08.2000);
 - Pedestrians have *'no option but to walk in the roadway' as 'there is no longer a refuge from passing traffic'* (Dr Spence to BCC Planning 6.09.2000);
 - The verge *'was used extensively in the past by pedestrians wishing to avoid cars' ... and 'used by myself and my children daily'* (A. Coughlan to BCC Planning 8.09.2000);
 - The enclosed land is not part of the property of No. 111 Berkeley Road and *'users of the school and church have the right of access'* (Mrs Cowper to Mrs Blackwell 15.09.2000);
 - *'The verges on both sides of the road are essential to stand back on as cars pass'* (Dr Wilkinson & Mr Matthews to Mrs Blackwell 21.09.2000);
 - *'As a parishioner, past parent ... and current (school) governor I can vouch for the fact that both adults and children regularly used the grass verge as a refuge' 'I would venture to suggest that since you do not seem to live at 111 Berkeley Road you would not be in a*

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position to state otherwise' (Mrs Smailes to Mrs Blackwell 24.09.2000);

- *'This wall is a dangerous infringement of a right of way'. 'The green verge ... was the safest side of the road on which to shelter from the cars'* (Mr Heydon to Mrs Blackwell 29.09.2000);
- *'I understand that whilst you are an owner of the property ... you do not live at this address and so it seems that you do not realise that this verge is used on a regular basis as a common access walkway ... and my family and I have, along with many others, used this verge as a pedestrian access'* (Mr Edwards to Mrs Blackwell 1.10.2000)'
- *'The land now annexed ... formed a 'safety space' for those walking alongside the road'* (Mr & Mrs Nelson to Mrs Blackwell 9.10.2000);
- *'When I first moved to Berkeley Road in 1979 ... the lane was not safe as it was badly potholed and through traffic posed a threat to pedestrians... I converted the verge by my house from a rubbish dump covered with brambles to a nice area with trees and grass'* (Mrs Blackwell to Mrs Rodliff 15.10.2000);
- *'Although it was possible to stand on the verge, it was not possible to use it as a walkway, as the trees extended to the edge of the tarmac'* (Mrs Blackwell to Mr Edwards 18.10.2000);
- *We 'walk up and down Friary Road every day, morning and afternoon... Pedestrians are now forced to walk in the road itself'* (Mrs Shapiro to Mrs Blackwell 20.10.2000);
- Re. concerns about the tending of the verge and planting of trees by Mrs Blackwell, assurance was

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given by Father Fitzpatrick *'that Miss Blackwell had no intention of annexing this piece of unregistered land over which we have public rights of access'* (Mrs Fowler to Mrs Blackwell 7.11.2000);

- *'I have cycled down Friary Road every school day for the past seven years on my way to work... Parents would shepherd children onto the grass verge to avoid passing cars and would also use the verge for babies and young children in prams and pushchairs'* (Mr O'Dwyer to Mrs Blackwell 24.11.2000);
- *'Putting a path' on the other side of Friary Road 'would have been a much more practical proposition... It is level there and only needs a few weeds removing and the no through road pole reinstated'* (Mrs Blackwell to Fr M Healy, 30.12.2000);
- Mrs Blackwell has *'taken down a boundary wall ... in order to accommodate drainage for the new extension.'* The wall *'borders on an area of land over which she has no title and on which many local residents have rights of prescriptive easement'* (Mr Hickey to BCC Planning 19.01.2001);
- *'All the trees ... were planted 0.9m from my old wall ... The verge beside my house was a bank and I planted the trees on it about 20 years ago and have tended it ever since ...'* (Mrs Blackwell to 'Neighbour, Parishioner or Parents ...' November 2001);
- In 1979 Friary Road *'was full of potholes filled with water so that anyone walking up it was in considerable danger of getting splashed by cars which came down the lane from Egerton Road at considerable speed'*. The Church surfaced the lane c. 1985 and erected bollards and *'the Council has erected a 'no through road' sign in Egerton Road.'* *'In order to establish my right to enjoy the land ... I built a very small wall along*

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the edge of the kerb stone at the edge of the new tarmac' (Mrs Blackwell to Mr Payne, undated);

- The original wall to 111 Berkeley Road was knocked down *'in or about 24 July 2000'* for drains which should be reinstated *'back onto the land forming 111 Berkeley Road from Friary Road'*. Prior to the enclosure of the land it *'was used regularly by primary school children and other pedestrians to pass and repass along'* (D. O'Farrell' Statement of 14.06.03).
34. Two Bristol Evening Post photographs were supplied by the modification order applicant, Mr Shearman (see Appendix F.4(b)) which show the wall being built over the verge (BEP October 2000), the finished wall (photo supplied by Mrs Blackwell) and the wall subsequently demolished (BEP January 2001). [N.B. The Evening Post articles are held with the background papers to this report.]
- 35 Officers' comments on the points raised above are as follows:
- All maps and plans give the same alignment and within the limitations of scale a similar width, although the first Definitive Map base, relevant date 31 January 1954, was part hand drawn and part O.S. based and Friary Road is shown but not named and not recorded as a Public Right of Way. The current Definitive Map base, relevant date 30 September 1966, is of indeterminate O.S. origin but has generalisations of scale for depicting highways and Friary Road is named, but not recorded as a Public Right of Way. Copies of both Definitive Maps are held with the background papers to this report.
 - The letter dated 21.10.1905 from the City Engineer and Surveyor challenging the encroachment, implies that Friary Road is accepted as a public highway;
 - The OS Map of 1931 showing the street name implies evidence of acceptance as a highway by the authority;

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- The report of 23.01.1962 referring to Friary Road as being well used by vehicular and pedestrian traffic implies public rather than private use;
- At the time of the modification order claim in 1989, a legal view was given that Friary Road was a public highway and the claim itself provides additional user evidence of pedestrian use of the full length of Friary Road;
- A Planning photograph of 1999 appears to show a relatively flat verge adjacent to 111 Berkeley Road, which would not deter pedestrian use;
- According to letters written by Mrs Blackwell, she tended the grass verge abutting her property during the relevant 20-years claimed use and also acknowledged that people could stand on the verge;
- Although most of the correspondence provided by Mrs O'Farrell was written following the 20-year period of claimed use, it does provide additional evidence to corroborate the use of Friary Road and the disputed verge during the relevant period;
- Public Rights of Way affected by development can be taken into consideration under the Town and Country Planning Act 1990.

Landowner Evidence

36. The title to the land over which the claimed route runs is unknown. The Church and School grounds fronting Friary Road are owned by the Clifton Catholic Diocesan Trustees (freehold Title AV63597 & AV10501) and Mrs Christine Blackwell (formerly Grima) has lodged an adverse possession claim (Title BL67295) relating to the verge adjacent to No. 111 Berkeley Road. A plan depicting freehold Title to land abutting Friary Road is attached at Appendix I. On 24 May 2007, the Diocesan Surveyor wrote to the Council on behalf of the Parish and the School stating that they do not have any objection to the

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“proposed public right of way being created along Friary Road”. The evidence submitted by Mrs Blackwell and other frontagers is referred to in paragraphs 38-40 below and is held as background papers to this report.

37. The Applicant served notice of the claim in accordance with the requirement in Schedule 14 of the Wildlife & Countryside Act 1981. It was served on the frontagers, i.e. owner/occupiers of Nos. 99 to 111 Berkeley Road, Nos. 98 to 102 Kings Drive, Nos. 119 & 122 Egerton Road, St Bonaventure’s Parish Church and School, Clifton Catholic Diocesan Trustees and Christine Kate Blackwell on 18 March 2001, 9 April 2002 and 24 January 2003.
38. At the time the application was made, the applicant was unable to discover the identity of the landowner of the unregistered land that makes up Friary Road, despite having made several enquiries. Consequently the applicant was directed by the Council to serve notice on the ‘owner or occupier’ by fixing the notice to a conspicuous object on the land, as required under Schedule 14.2 (2) of the 1981 Wildlife and Countryside Act. Notices were posted by the Applicant at each end of Friary Road on 28 December 2002 and maintained for a period of two weeks or more.
39. Mrs Blackwell submitted a letter to the Council dated 14 January 2006, which explained the background leading up to her decision to enclose the adjacent verge into her garden. She states in her letter that she does not object to the claimed right of way *“as the lane has been in public use for many years”*. However, Mrs Blackwell does object to the inclusion of the verge as part of the width of the claimed way on the following basis:
 - *“Pedestrians and vehicles used and still use the roadway”* and not *“the bank with trees and at sometime shrubs and flowers growing on it”*;
 - A copy letter from [the former] owner of 100-102 Kings Drive dated 19 March 2001 which states that *“contrary to popular [belief] there was no possibility of walking off the road along the right side of the road heading*

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towards the social club. This was a grass and tree covered steep bank which would have been dangerous to walk on". [N.B. In a subsequent email dated 2 July 2007, Mr Sage has confirmed 30 years of personal pedestrian use of Friary Road and states that the disputed verge was not "a viable footpath" in the past, but that people did walk along the "strip of rough land" adjacent to his former property, i.e. the opposite verge which is now a tarmacked footway].

- *"There was definitely NO footpath on the land I have enclosed so I have NOT caused any diversion alteration to the route". "Only 5 of the evidence forms mention this bank and they are incorrect in saying that I have narrowed the right of way and obliterated the footpath or extended the garden across the path"; as it "was not used by the public to walk up the lane".*

40. Additional evidence submitted with Mrs Blackwell's letter included research into the history of Friary Road, which is summarised at Appendix H.1, together with a summary of evidence contained in her landowner evidence form and letter of 9 March 2007. The matters raised by Mrs Blackwell include:-
- a. 1872 building plan showing the lane as 'Davy's Lane' [see Appendix H1(a)];
 - b. In 1979 the lane was potholed and vehicles drove from Berkeley Road to the car park or to Egerton Road, some driving at excessive speed;
 - c. A request for a Traffic Regulation Order (TRO) was refused by the Council in 1983. The Committee report referred to Friary Road as an '*unadopted street*' and not a major traffic route, therefore a TRO could not be justified '*in relation to other priorities*' [see Appendix H1(b)]
 - d. In 1986 the Church tarmacked two sections of the lane and erected bollards to prevent through traffic between Berkeley Road to Egerton Road "*quite illegally*", although

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no complaints were made by those with private access. The bollards became damaged and were replaced, subsequently the Council erected 'No Through Road' signs in Egerton Road.

- e. A Liberal Alliance newsletter in April 1986 stated that the lane was privately owned and that legal advice to the Church was that the lane *“was a right of way for pedestrians but not for vehicles”*. Consequently the Church installed concrete bollards *“to prevent the lane being used as a ‘rat run’”*. In Mrs Blackwell’s opinion *“there was a vehicular right of way at that time”*. She also pointed out (in her email of 9.07.07) that the newsletter highlights the fact that at this time parents were being encouraged to use the car park to drop children off [and not Egerton Road].
 - f. In 2000 Mrs Blackwell *“sought to enclose the land under the law of adverse possession”* as she believes *“the lane itself may be part of my property”*.
 - g. In 2002 the Church *“constructed a footpath on the opposite side of the lane”*. A plan provided by Mrs Blackwell shows changes to property boundaries [see Appendix H1(c)]
41. Further evidence contained in Mrs Blackwell’s landowner evidence form and enclosures of 9 March 2007 confirms that Mrs Blackwell believes that the claimed route has had the status of a private road for 25 years, but that there has not been any public access to the verge in question. Consequently, she did not require anyone’s permission to use the verge and did not turn anyone back from using the claimed way. Mrs Blackwell confirmed that the ‘bank’ was enclosed by a wall between July and December 2000, and since that date by Herris fencing; and that she has not deposited a Section 31(6) Highways Act statement. Other points made, in addition to those raised in paragraph 40 above are summarised in Appendix H1 (pages 2-4) and concern:

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- The curtilage of the property and Mrs Blackwell's argument that the 'bank' was historically "*part of the parcel of land before the land for the pavement was taken from the front gardens*" [see Appendix H1 p.3(m) and Appendices H1(d) and H1(e)];
- Photographs taken between 1979 and the late 1980s, stated as evidence that the area could not be walked on [see Appendix H1(f)];
- Correspondence from residents of Kings Drive and one other in 2001, 2002 and 2007 stating that it was not possible to walk on the grass verges either because the land sloped and was unsuitable for walking on, or because cars parked on them;
- Letter from resident at 104 Berkeley Road stating that Friary Road '*was rarely used by through traffic between Berkeley and Egerton Road. It was used mainly by residents who owned garages along its route and by parishioners of the church...*' Also that in the late 1980s the parish priest consulted residents about tarmacking two sections of road and the parish subsequently funded the project. '*The new tarmac road was constructed slightly wider than the original 'dirt' track and levelling work for the road left a steeply banked grass verge on the side fronting No. 111 Berkeley Road.*' In a further letter dated 21 June 2007 this resident confirmed the points raised in his previous letter and in addition commented that Friary Road was rarely used by through traffic due to its poor state of repair. '*Before tarmac was laid, there was very little through traffic ...*' Once tarmacked, '*through traffic ... increased until the parish installed concrete bollards ... a few months after the tarmac had been laid and traffic build up had occurred...*' These were subsequently vandalised and replaced. '*In recent years, vehicle traffic from Berkeley Road into the car park ... has increased considerably; for access to the primary school ... and for an increasing number of events held at the parish club ...*' Enclosed with this letter were photos taken circa 1991 of a

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young tree and shrub planted in the verge alongside the garden wall of No. 111 Berkeley Road, as evidence that the owner of No. 111 maintained the verge.

- Letter from the Church's solicitors on 30 August 2000 claiming long prescriptive easement benefiting the Diocesan Trustees and previous owners of the school and church over the land enclosed by Mrs Blackwell; a further letter dated 27 September 2005 stating that the ownership of the roadway is unclear and has never been established and that neither the Diocese [nor Mrs Blackwell] owns this area.

42. Officers' comments on the points raised above are as follows:

- There appears to have been sufficient public or private vehicular use from Berkeley Road to Egerton Road, between 1979 (when Mrs Blackwell moved to 111 Berkeley Road) and the second petition in 1983, to warrant complaints from residents and a request for a Traffic Regulation Order (TRO);
- The committee report of 22.03.1983 considering the request for a TRO implies acceptance by the authority that Friary Road is a public highway, albeit with insufficient vehicular use to warrant an order being made;
- The reference in the Liberal Alliance newsletter of April 1986 to Friary Road being private land and not adopted, does not negate any pre-existing public rights;
- Sufficient documentary evidence exists of the historic width of Friary Road between boundaries, as set out in paragraphs 16 to 28 above, to rebut the adverse possession claim by Mrs Blackwell to the verge abutting her property. However, land ownership is not relevant to the question of whether or not public highway rights have been established over the land.

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- The evidence of the construction by the Church in 2002-03 of the footpath which replaced the grass verge on the west of Friary Road, is outside of the relevant 20-year period of use in question. The allegations that a strip of adjoining land has been taken into the path may impact on the width of the claimed route by increasing it and requires corroboration;
 - With the exception of use of the grass verge adjacent to No. 111 Berkeley Road, the evidence of public use of Friary Road is not challenged by Mrs Blackwell and most of those adjacent property owners who gave evidence;
 - Assertions that the poor condition and slope of the verge adjacent to No. 111 Berkeley Road would make it difficult or impossible for pedestrians to access has been corroborated by evidence given by the resident of No. 104 Berkeley Road of an event in the 1980s that led to an increase in the gradient of the slope. However, these assertions are directly contradicted by the user evidence set out in paragraphs 10 to 14 above;
 - The letter from the Church's solicitor of 30 August 2000 assumes an easement or private right along the claimed route, but ownership of Friary Road is not as yet established.
43. The Council has no legal obligation to consult anyone prior to making an Order, although it is considered to be good practice to carry out pre-order consultation and responses were received from eight other adjacent property owners by way of 'Landowner Evidence Forms'. The matters raised by these property owners are summarised at Appendix H.2 and include the following:
- Way used daily by the public but is not publicly maintained. The Church met the costs of works (tarmacing/bollards) c.1985 (owner of 96 Kings Drive)

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- The path constructed on the western side of Friary Road c. December 2002 has encroached onto his land. A neighbour gave up land to widen the path (owner of 98 Kings Drive)
- There is '*permissive access*' to the land which is owned by adjoining properties. Since 1978 '*the use of the lane for public access has never been called into question nor has access [for pedestrians or cyclists] been impeded or restricted*'. Has had a private right of access to their garage since 1978. N.B. '*by 1971 most of the properties adjoining Friary Road owned garages*'. (owner of 97 Berkeley Road)
- Way has been public for over 60 years and '*has always been used by all*'. It was always used to access garages, but vehicular use increased after the club and school were built. '*So to walk up the lane both sides were used by the public and cars to get at one time to Egerton Road ...*' until bollards erected. (owner of 101 Berkeley Road)
- There has been access to garages and '*100s of pedestrians and cyclists*' have used the way since 1997. Public user brought into question '*when No. 111 Berkeley Road moved their garden wall*'. '*The public can use Friary Lane to walk or cycle on but ... the land itself is not owned by anyone or the council*'. (owner of 107 Berkeley Road)
- Way has been public for over 30 years for pedestrians and vehicular access to the church car park. Has partially obstructed the way with temporary scaffolding in 1989 and again in 2004. Title deeds show that his property '*extends no further than the west wall of the house and garden*', but '*the brick footings of the house and garden walls extend out under the verge*'. (owner of 122 Egerton Road)
- Has used the footpath frequently for 11 years and seen others use the way on a daily basis. Has assumed '*a right to drive over, but not to park, in Friary Road*'. (owner of 21 Cornwall Road).

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- Believes the way has been a Byway since 1953. Seen daily pedestrian and vehicular access to school and garages since 2005. Referred to Statutory Declarations from previous owners regarding private vehicular access to the garage at rear of property since 1953. (owner of 23 Cornwall Road)
44. Your officers' comments on these further matters are that if at the culmination of the legal process Friary Road is deemed to be a public highway, this will not affect any existing private rights of these residents and other relevant parties to access over the highway. The modification order application must be decided on the issue of whether or not public highway rights have been established. The private use of Friary Road is not inconsistent with public rights of way.

Consultation

45. Informal consultation with footpath societies and user groups has been undertaken and no responses have been received to date.
46. The modification order applicant and abutting property owners have been given an opportunity to comment on a draft of this report. Additional comments were received from Christine Blackwell on 9 July 2007, which do not introduce any significant additional evidence. This will therefore be addressed by officers at this Committee alongside any other evidence submitted by way of Statements to Committee.

Site Visits

47. Officers undertook site visits on 18.01.02, 1.05.03 and 18.04.07 and a photographic record of these visits is held in the background papers to this report. Photographs taken in January 2002 show that scaffolding which previously surrounded the property has been replaced by Heras fencing and plastic sheeting enclosing the grass verge. The original edging strip which is flush with the road surface matches that surrounding the grass verge on the opposite side of Friary Road, and can be seen alongside the remains of the wall constructed by Mrs

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Blackwell in 2000 to enclose the grass verge (see paragraph 39 above and photos at Appendix J.1). Photographs taken in May 2003 show the bollards, garages, boundary fencing to the church car park, 'new' footway and speed humps, Heras fencing adjacent to No. 111 Berkeley Road and Friary Road name plate on the side wall of No. 122 Egerton Road referred to in the user evidence (see summary at Appendix C1 and photos at Appendix J.2). It can be seen from these photos that the edging strip surrounding the grass verges at the mid-point of Friary Road matches the edging strip shown in the 2002 photographs. Photographs taken in April 2007 show the Heras fencing still in situ, the footway adjacent to the School and the recent planning application site (see Appendix J.3).

Conclusion

48. The Committee must decide on all the evidence before it whether the allegation that the claimed route is a public footpath is substantiated. There must be evidence to show that the route shown between points A and B on the plan attached at Appendix A has been used by the public at large, rather than individuals exercising a private right, over the relevant 20 year period. The evidence must be sufficient to raise a presumption that the way has been dedicated as a public right of way which has not been rebutted by any other evidence to show that there was no intention on the part of any landowner to dedicate. In this case no landowner has been traced.
49. Officers consider that use of the claimed route as a public right of way was brought into question in July 2000 when the former grass verge was enclosed into the garden of No. 111 Berkeley Road. Members should therefore look for evidence of continuous use of the claimed route up to this date and should decide whether the user evidence supplied supports the full period of 20 years user claimed. The documentary evidence supports/strengthens the user evidence and covers a period from 1845 to the current time. All maps and plans imply the same alignment and width, which includes both verges.

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50. There must be sufficient evidence to show that the route marked A to B on the plan attached at Appendix A has been used by the public at large, rather than individuals exercising a private right, for such a period to raise a presumption that it has been dedicated as a public right of way and that this evidence has not been rebutted by any other evidence.
51. Officers conclude, on the basis of all evidence available to them at this time and on the balance of probability, that 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 whole width of the claimed route shown on the attached plan between points A and B. However, there is not considered to be sufficient user evidence of the pavement abutting the school grounds (coloured up on Location Plan at Appendix A – also see Appendix D1 and paragraph 14 above) and it is not clear whether the pavement was constructed during the 20-year period of use in question. As a presumption is raised that it was laid out by the landowner for public use and subsequently accepted by the public, then the pavement may have acquired highway status under common law. Finally, although the application is for pedestrian rights, it appears to officers more reasonable than not to allege that the public has used the claimed route for 20 years or more on foot and bicycle and to conclude that an order for Restricted Byway should therefore be advertised. On a restricted byway the public has a right of way on foot, on horseback or leading a horse, and a right of way in or on vehicles other than mechanically-propelled vehicles, i.e. pedal cyclists and drivers of horse-drawn vehicles.
52. In respect of public vehicular use, the user evidence of Friary Road as a throughway to Egerton Road and the School, or between Egerton Road to the School and Church car park, is insufficient as it occurred either prior to the 20-year period claimed or until bollards were erected by the Church in the 1980s. Other evidence of vehicular use mentioned in correspondence supplied by Mrs O'Farrell, Mrs Blackwell and other adjacent property owners is not conclusive as to whether it refers to public or private use. By the same token neither has there been at this time sufficient evidence submitted by the

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landowners to rebut the presumption of dedication, nor to rebut the claimed use of the way.

53. In deciding whether the claim is made out, Members have to decide whether the rights as claimed subsist or are reasonably alleged to subsist. It is the opinion of the Director of Central Support Services (Legal Division) and the Director of Planning, Transport & Sustainable Development that, on balance, the rights claimed are reasonably alleged to subsist. Evidence indicates that, since the early twentieth century, the Council has viewed Friary Road as a public highway. A road can have highway status regardless of whether it has been adopted by the Council. Public highway rights may be established either under the provisions of the Highways Act 1980, or at Common Law. In either instance the evidential test is one of 'balance of probability' and in making a decision as to whether or not public highway rights exist, the Committee should determine an application in a '*quasi-judicial*' manner. This means it must act in the manner of a court of law and make its decision based upon evidential fact. Issues such as desirability, security or impact of traffic use, although important, are not relevant considerations under the provision of Section 53 of the Wildlife and Countryside Act 1981 and cannot lawfully be taken into account. Section 68 of The Natural Environment & Rural Communities Act 2006 has amended Section 31 of the Highways Act 1980 to enable use by pedal cyclists during the relevant 20-year period to found a statutory claim for a deemed dedication of the way as a restricted byway.

Options

54. The Committee must consider whether there is sufficient evidence to support the allegation that the presumption of dedication is raised under Section 31 of the Highways Act 1980, following 20 years of continuous use of the claimed route by the public. The standard of proof is the civil one, being a proof of the balance of probabilities; i.e. that it is more likely than not that the allegation of presumed dedication is true. Members must weigh up all the evidence provided and if, on balance, they consider that the claimed public right of way is reasonably

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- alleged, then the presumption is raised. If, on the other hand, Members consider that there is insufficient evidence to support the allegation of presumed dedication; or that the evidence in support has been rebutted by sufficient evidence to show that there was no intention to dedicate; then on balance they may consider that it is more likely than not that the allegation of presumed dedication is false.
55. The onus on the landowner is to produce evidence that there was no intention on his part to dedicate; for example an overt act on the part of the landowner to show the public at large that there was no such intention. Such evidence may consist of notices or barriers, or the locking of the way on one day in the year and drawing this to the attention of the public; or the deposit of a Statutory Declaration under Section 31(6) of the Highways Act 1980 to the effect that no additional ways (other than any specifically indicated in the Declaration) have been dedicated as highways since the date of the deposit.
 56. If the Committee considers that the claim is made out - i.e. that there is sufficient evidence to reasonably allege that there has been uninterrupted use by the public over a period of 20 years which has not been sufficiently rebutted by other evidence - it must resolve to make a Definitive Map Modification Order as requested. Public use of the way must have been without hindrance or permission from the landowner or his agents. The 20 year period must end with the date when use of the path was first 'called into question', which in this case is considered by officers to be July 2000 (see paragraph 3 above).
 57. Alternatively, if the Committee considers that the claim is not made out, it should resolve not to make an Order.
 58. As Members are aware, financial implications must not be taken into consideration when determining this modification order application, as the Council has a statutory duty to make an Order if it believes there is sufficient evidence to support it.
 59. Should the Committee decide to make and advertise an Order, authority is given to the Head of Legal Services to prepare and

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seal an Order to modify the Definitive Map and Statement by including the claimed route as a Restricted Byway. A Notice of Making of the Order will be served on all affected owner/occupiers and statutory consultees, advertised in the local press and displayed on site. The Notice will indicate a period during which the public and those affected by the Order will have an opportunity to make formal representations or objections. If any are received, they will be reported back to this Committee at a future date. If none are received within the time limit specified, the Order may be confirmed as unopposed.

Appendices

- Appendix A - Location Plan
- Appendix B - Bar Chart of User Evidence
- Appendix C - Table and Summary of User Evidence from evidence forms
- Appendix D - Précis of User Evidence from witness statements
- Appendix E - Documentary and Other Evidence in support of Application
- Appendix F - Planning History
- Appendix G - Counsel's opinion of 20 January 2006
- Appendix H - Summary of representations and historical evidence supplied by Mrs Blackwell and other adjacent landowners
- Appendix I - Plan showing Land Registry search results - land fronting Friary Road
- Appendix J - Photographs from Site Visits in January 2002, May 2003 and April 2007

Policy Implications

None arising directly from this report.

Resource Implications

There are no specific resource implications arising from this report, although under Section 49 of the Countryside & Rights of Way Act 2000, Restricted Byways are publicly maintainable. Also, if an Order is made which receives objections that are not

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withdrawn, there would be cost implications if a public inquiry were to ensue.

Other Approvals necessary

None

Recommended: that the Head of Legal Services be authorised to make a Definitive Map Modification Order to show a Restricted Byway in the Definitive Map and Statement, as shown on the plan attached to this report.

Local Government (Access to Information) Act 1985

Background Papers:

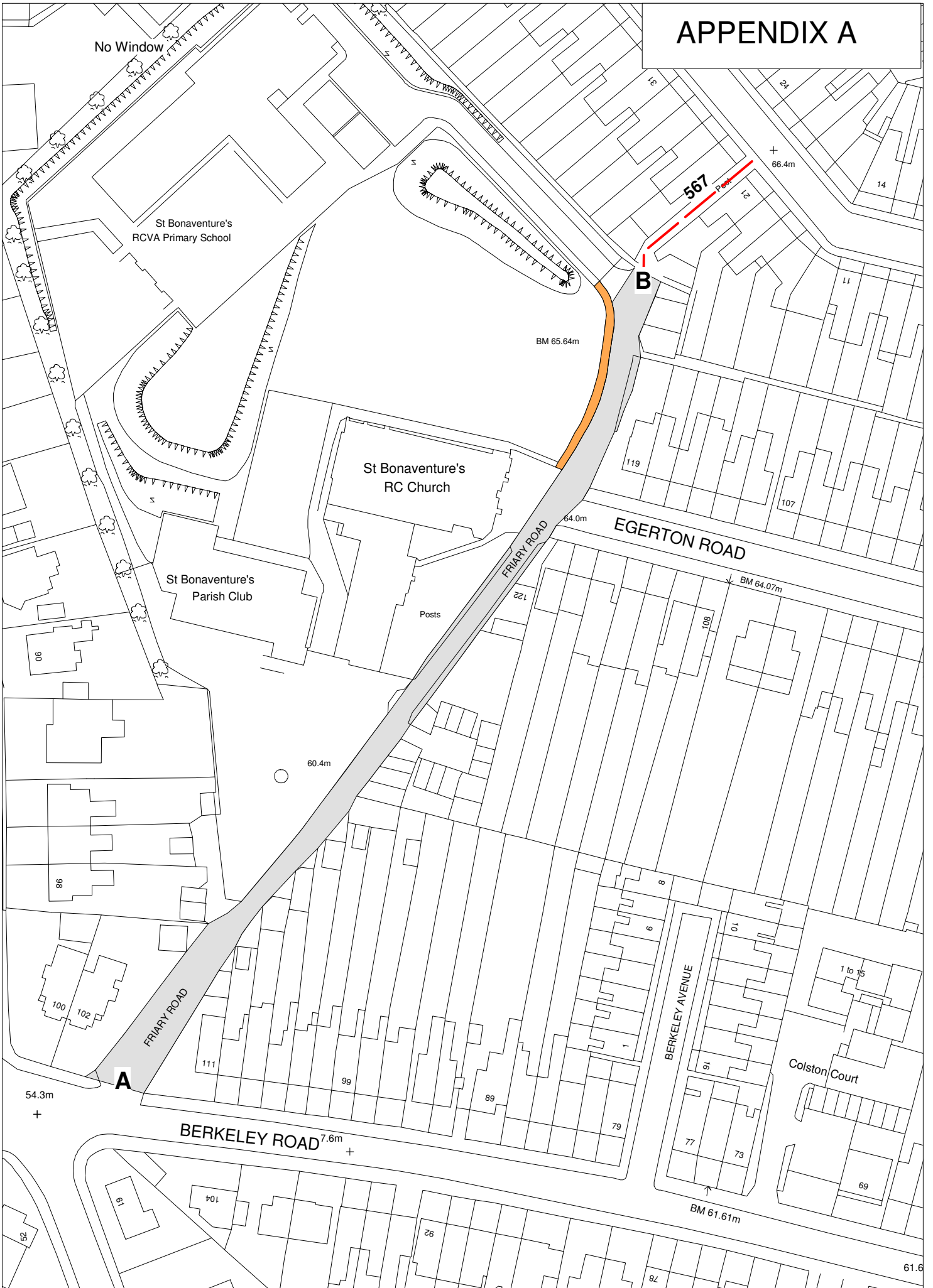
- 1 Wildlife & Countryside Act 1981, Highways Act 1980, Countryside & Rights of Way Act 2000, The Natural Environment & Rural Communities Act 2006 and DoE Circular 2/1993 Annex B (obtainable from HMSO).
- 2 General Permitted Development Order 1995, Schedule 2, Part 9 (obtainable from HMSO).
- 3 Application for Modification Order dated 18 March 2001 (held by Legal Officer, Statutory Orders, CSS).
- 4 Public Rights of Way Evidence Forms, Witness Statements, and documentary evidence in support of the Application and Landowner Evidence Forms/documentary evidence from abutting residents et al (held by Legal Officer, Statutory Orders, CSS).
- 5 Photographic record of site visits on 18.01.02, 01.05.03 and 18.04.07 (held by the Public Rights of Way Officer, Traffic Management, PTSD).
- 6 Land Registry search results (held by the Public Rights of Way Officer, Traffic Management, PTSD).
- 7 Ordnance Survey 'Instructions to Draftsmen & Plan Examiners', 1906 (held by the Public Rights of Way Officer, Traffic Management, PTSD).
- 8 Copies of Definitive Map dated 31 January 1954 and 30 September 1966 (held by the Public Rights of Way Officer, Traffic Management, PTSD).

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- 9 Report to the County of Avon Planning Highways and Transport, Definitive Map Modification Sub-Committee of 26 February 1988 and related correspondence (held by the Public Rights of Way Officer, Traffic Management, PTSD).
- 10 Planning documents relating to Planning Application Nos. 3209H/85N, 99/01984/H and 05/03338/H/N (held by the Public Rights of Way Officer, Traffic Management, PTSD).
- 11 Letter dated 20.03.2003 from the Head of Planning Services to Mr J Hickey and letter dated 23.05.2003 from the Head of Legal Services to Mr J Hickey and Mrs M O' Farrell (held by the Public Rights of Way Officer, Traffic Management, PTSD).
- 12 Petition to Bristol City Council Planning Department and objection dated June 2006 in relation to Planning Application No. 05/03338/H/N (held by the Public Rights of Way Officer, Traffic Management, PTSD).

Contact Officers:

Andrew Whitehead, Principal Officer, Road Safety, Walking and Cycling team, Traffic Management, Department of Planning, Transport and Sustainable Development, Tel. (0117) 903 6592
Helen Woodward, Solicitor – Planning and Highways, Central Support Services. Tel. (0117) 922 2338



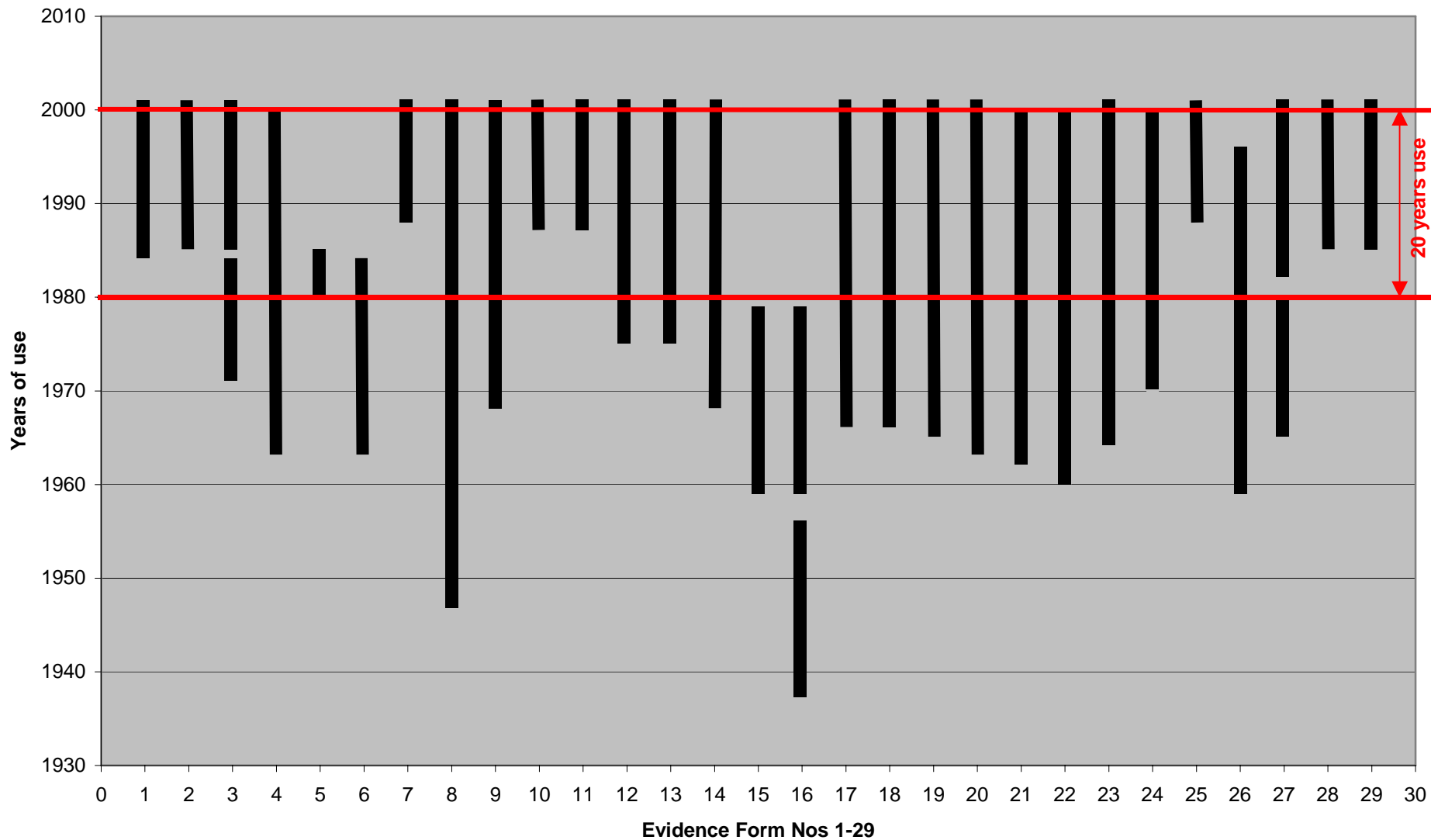
Claimed Route
Footway to School

Location Plan

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Bristol City Council LA09055L 2007

NORTH
Scale 1:1000

Claimed footpath – Friary Road Graph showing years of use



FRIARY ROAD - SUMMARY OF EVIDENCE FROM 29 EVIDENCE FORMS

- All witnesses marked the route they used on maps with one exception (Form 23). The majority (22 witnesses) marked the whole of the claimed route from points A-B (Berkeley Road to FP567/Cornwall Road – see Location Plan at Appendix A) – Forms 1-3, 5-6, 9-20, 22 & 25-28. A minority (6 witnesses) marked part only of the claimed route from Berkeley Road to Egerton Road – Forms 4, 7-8, 21, 24 & 29. The width of the way was also marked on the maps by thirteen witnesses – Forms 1, 2, 8-13, 14, 17, 20-21 & 24. All of these witnesses included the verge adjacent to No. 111 Berkeley Road as part of the claimed route, although two excluded the verge adjacent to No. 102 Kings Drive (Forms 1 & 12) and many of these 13 witnesses appear to exclude the narrow verges in proximity to the Church and the pavement abutting the School boundary fence from the claimed width.
- Eleven witnesses believe the status of the way is as Footpath, Bridleway or cycleway (Forms 1-2, 5, 8, 10, 14-16, 21, 22 – with access to garages & 24) as opposed to ten witnesses who believe the way to be a Road and Footpath (Forms 3-4, 9 – with car access to Church, 12, 17 – with private vehicle access, 18-19, 26, 28 – public vehicular use to School & Church and Form 29 – footpath middle section with a public road at either end). Two witnesses believe the way to be a Road Used as a Public Path (RUPP) or Bridleway (Forms 20 and 23). Two witnesses did not know its status (Forms 7 and 25); two witnesses believed it to be a public way but of no particular status (Forms 11 & 13) and one witness believed it to be a private road with public access (Form 27).
- The way has been known as public for at least 13 years (Forms 7 & 25) and at most, 100 years or more (Forms 10, 11, 14, 22 & 27).
- The width of the way is stated by the majority of witnesses as varying between the narrower top end (near Cornwall Road) and the wider Berkeley Road end. The minimum width as stated is 8ft (Form 2) to a maximum of two-car width or 25-30ft (Forms 2, 10, 12, 15-16 & 26) or between property boundaries (Forms 8-9 & 14). One witness has estimated road width only, as the footpath was obstructed (Form 7) or the footpath was extra (Forms 12 & 25).

One witness specified a width including the 'bank' by No. 111 (Form 24) and two witnesses specifically excluded this verge from their stated widths (Forms 28 & 29).

- The claimed way was used by the majority of witnesses on their way to work, school and church, public transport, shops, allotments, library, doctor or dentists and for social or recreational purposes.
- A clear majority (27 witnesses) used the route on foot (NB two people didn't specify the form of use – Forms 4 & 5): - 23 of these walked the route daily/weekly or more - Forms 1-3, 6-11, 12-13, 15-17, 20-23, 25-29 – nine over the full 20-year period claimed; four people walked the route monthly or so (Forms 14 & 17-19) during the full 20-year period (refer to Bar Chart at Appendix B). A minority (11 witnesses) also used a bicycle; four of these cycled daily or weekly – Forms 9, 21, 25, 27 – and seven cycled monthly or occasionally – Forms 1, 2, 10, 14, 17, 20 (six years from 1975) & 22 (occasionally between 1970 – 75); and of these 11 witnesses, five cycled during the full 20-year period claimed (Forms 9, 14, 17, 20-21). One witness (Form 16) specified use by car and bicycle up to 1979 which is prior to the start of the relevant 20-year period. Another witness (Form 24) claimed use of the way between 1970 and 2000 on foot (60% of use) and by car to the Church car park (40% of use), also cycling up to c.1976. One witness stated occasional use of the way by motorbike between 1977-97 and private use by car to a rented garage in Friary Road in the early 1980s (Form 27).
- Only five witnesses recall Notices on the claimed route – on the School boundary (Form 1); 'No Through Road' sign at bottom of Friary Road (Forms 18 & 19); a Public Footpath sign (Form 2) and a 'Cycling Prohibited' post which disappeared when bollards were installed (Form 27) both located at the Cornwall Road end of the way and which may relate to the signing of FP567. One witness refers to the Friary Road name-plate (Form 4).
- In respect of obstructions to the way, 17 witnesses refer to bollards installed by the Church in the 1980s, which prevent vehicular access between Egerton Road and Berkeley Road (Forms 1, 4, 8-10, 12-13, 16-22, 24-25, 28 & 29). Five witnesses refer to the obstruction of the 'footpath' adjacent to No. 111 Berkeley Road

(Forms 7, 14, 20, 23 & 25) and three witnesses to an obstruction of Public Right of Way No. 567 at the top end of Friary Road "at the time it was claimed as a right of way" (Form 9); for "one night or more" (Form 1) or "nearly a year in late 1980s" (Form 2).

- The great majority of witnesses knew or had seen others using the claimed route: fourteen witnesses referred to other local residents or family members (Forms 1, 3, 8, 12, 14-23); twelve witnesses saw many people (mostly walkers and occasional cyclists) using the route (Forms 2, 7, 9, 16-17, 20, 22, 24-25 & 27-29); three witnesses refer to parishioners, school staff and parents walking to School and Church (Forms 10, 26 & 29); two witnesses saw cars being driven between Egerton Road and Berkeley Road in the 1960s/1970s, in addition to pedestrians and cyclists (Forms 16-17) and two witnesses saw people driving to garages or car park (Forms 22 & 28).
- Any changes to route - occasional re-surfacing of Friary Road (Forms 17 & 27).

Definitive Map Modification Order Application - s53, Wildlife and Countryside Act 1981

ANALYSIS OF EVIDENCE

CLAIMED: Public Footpath, FRIARY ROAD

FILE REFERENCE: ID3/346 & ID3/274

[KEY: FORMS 1-29 - Summary of evidence from Evidence Forms [The additional evidence contained in Statements is shown in *ITALICS*]

NAME OF WITNESS	FORM NO	MAP	DESCRIPTION OF ROUTE	BELIEVED STATUS	KNOWN AS PUBLIC	HOW WIDE?	USED BETWEEN (calendar years)	TOTAL No. OF YEARS ' USE	PURPOSE OF JOURNEY	NO. OF TIMES USED PER YEAR	ON FOOT, HORSEBACK, OR OTHER	WHOLE LENGTH OF ROUTE / any diversions/alterations?	STILES / GATES?	WORKED FOR LANDOWNER?	NOTICES?	EVER STOPPED?	EVER TOLD NOT PUBLIC?	OBSTRUCTIONS /LOCKED GATES?	GIVEN PERMISSION TO USE ROUTE?	PRIVATE RIGHT?	KNOWN OTHERS USING ROUTE / other information?
C. EICKELMANN	1	Y	Cornwall Road to Berkeley Road	FP (from sign at Cornwall Rd end)	Since 1984	about 10ft	1984 to 2001	17	To work and back & to shops on Glos. Rd	4/5x weekly + occasional cycling	Walking & cycling	Y Bollards by the church	N	N	Y on school boundary	N	N	Y (on PROW 567*)	N	-	Y Cornwall Road residents
S. HAWKINS	2	Y	Cornwall Road to Berkeley Road	FP & cycleway	At least 15 yrs	Varies, from 8ft to 2x car width	1985 to 2001	16	Walking to work	200 (occasional use 1991 -1997)	Mostly by Foot	Y - walking (& cycling twice monthly in 1990s)	N	N	FP sign by Cornwall Rd	-	N	Y (on PROW 567**)	N	N	N mostly pedestrians, occasional cyclists
D. KELLY	3	Y	Cornwall Road to Berkeley Road	ROAD	-	-	1971-1984 & 1985-2001	29	Walking to bus or train	Daily - 500	Foot	Y	N	N	-	N	N	Bollards to prevent vehicles	N	N	Family
E.M. KELLY	4	Y	St Bonaventures Church to Berkeley Road	FP, ROAD, LANE	34 yrs	Width varies	1963 to 2000	37	-	-	-	Y Bollards at top, tarmac top & bottom of RD	N	N	N	N	N	N	N	N	- Friary Rd name-plate

* PROW567 briefly blocked by adjacent occupier (one night or more)

** PROW567 closed for nearly a year in late 1980s for repairs to No 23 Cornwall Rd. Parents of children at school petitioned to re-open path.

NAME OF WITNESS	FORM NO	MAP	DESCRIPTION OF ROUTE	BELIEVED STATUS	KNOWN AS PUBLIC	HOW WIDE?	USED BETWEEN (calendar years)	TOTAL No. OF YEARS · USE	PURPOSE OF JOURNEY	NO. OF TIMES USED PER YEAR	ON FOOT, HORSEBACK, OR OTHER	WHOLE LENGTH OF ROUTE / any diversions/alterations?	STILES / GATES?	WORKED FOR LANDOWNER?	NOTICES?	EVER STOPPED?	EVER TOLD NOT PUBLIC?	OBSTRUCTIONS /LOCKED GATES?	GIVEN PERMISSION TO USE ROUTE?	PRIVATE RIGHT?	KNOWN OTHERS USING ROUTE / other information?
F. KELLY	5	Y	Cornwall Road to Berkeley Road	FP	35 yrs	-	1980 to 1985	5	-	-	-	Y	N	N	N	N	N	N	N	N	-
M. KELLY	6	Y	Cornwall Road to Berkeley Road	-	Since 1963	-	1963 to 1984	21	Walk to bus stop Logan Road.	260	Foot	Y	N	N	N	N	N	N	N	N	- Lived in Cornwall Rd during use
E. LARKIN	7	Y	Egerton Road to Berkeley Road	?	13 yrs	Road width, FP obstructed	1988 to 2001	13	Walk to work, shops, allotment & friends.	Daily	Foot	Y Recent wall has narrowed RoW & obliterated FP	N	N	N	N	N	N	N	N	100s of people use route daily
A.C. MABY	8	Y	Egerton Road to bottom of Kings Drive	Bridleway	54 yrs	Varying between boundaries	1947 to 2001	54	Catch bus, visit doctor, post letters.	200	Foot	Y Bollards installed approx in 1980	N	N	N	N	N	N	N	N	Residents of Egerton Road
P. McLAREN	9	Y	Berkeley Road to Egerton & Cornwall Road	FP & car access to church	30 yrs also before 1969	See map (between boundaries)	1968 to 2001	33	Mainly shortcut to Cornwall or Egerton Road.	100 on foot, cycle weekly	Foot & cycle from 1980s	Mostly. Posts installed to prevent vehicle access	N	N	N	N	N	N*	N	N	Lots mostly walkers, ** some cyclists/cars
A. NELSON	10	Y	Cornwall Road to Jct Berkeley Rd & Logan Road	PROW - FP /bridleway + cycling	Approx 100 yrs	2x car width to car park, then 1xcar width	1987 to 2001	14	Shops, doctor, dentist, tennis & recreation.	70-100 return journeys on foot	Foot & rarely cycle	Y occasionally via Egerton Road	N	N	N	N	N	Bollards erected by Church c. 1987	N	N	Seen mostly walkers to school + church

* FP567 was obstructed at the time it was claimed as a right of way.

** Before bollards were erected, Friary Road was used as a through way mainly to Egerton Road.

NAME OF WITNESS	FORM NO	MAP	DESCRIPTION OF ROUTE	BELIEVED STATUS	KNOWN AS PUBLIC	HOW WIDE?	USED BETWEEN (calendar years)	TOTAL No. OF YEARS · USE	PURPOSE OF JOURNEY	NO. OF TIMES USED PER YEAR	ON FOOT, HORSEBACK, OR OTHER	WHOLE LENGTH OF ROUTE / any diversions/alterations?	STILES / GATES?	WORKED FOR LANDOWNER?	NOTICES?	EVER STOPPED?	EVER TOLD NOT PUBLIC?	OBSTRUCTIONS /LOCKED GATES?	GIVEN PERMISSION TO USE ROUTE?	PRIVATE RIGHT?	KNOWN OTHERS USING ROUTE / other information?
J. NELSON	11	Y	Cornwall Road to Jct Berkeley Rd & Logan Road	PROW	Approx 100 yrs	Approx 15 ft	1987 to 2001	14	Doctor, dentist, Lwr Gloucester Road.	52	Foot	Y	N	N	N	N	N	N	N	N	-
E.A. PHILLPOTTS	12	Y	Cornwall Road to Berkeley Road	Vehicular and FP	25 yrs	2-way, 1-way & FP	1975 to 2001	25	To school, shopping, walking dog and bus.	Most Days	Foot	Y Bollards put in by Church to block vehicle access	N	N	N	N	N	N	N	N	Mrs Forbes
H.S. PHILLPOTTS	13	Y	Cornwall Road to Berkeley Road	PROW	25 yrs	See map - varies	1975 - 2001	25	To work, shops, dog walking, social.	4-5 weekly	Foot	Y Bollards put in by Church to restrict vehicles	N	N	N	N	N	N	N	N	Y
J. QUINNELL	14	Y	Cornwall Road to Berkeley Road	Pedestrians / Cycleway	100 yrs	Varies between boundaries	1968 to 2001	33	Visiting friends.	50	Foot & cycle	Y Garden extension at bottom of lane July 2000	N	N	N	N	N	N	N	N	Y - wife
J.T. RIGG	15	Y	Cornwall Road to Berkeley Road	FP	42 yrs	12' Cornwall Rd to 25' Berkeley Rd	1959 to 1979	20	To shops, Cinema and Library.	Frequent use	Foot	Y	N	N	N	N	N	N	N	N	Husband & children
R.L. RIGG	16	Y	Cornwall Road to Berkeley Road	FP/cycle-way/bride-way	63 yrs	Varies c. 12ft at N end to c.25ft S end	1937-1956 & 1959-1979	39	School, shops, Library & Cinema & St Brendans	*Frequent use/ daily	Foot/ cycle + car	Y by foot (Egerton Rd-Berkeley Rd by car & cycle)	N	N	N	N	N	Bollards erected by Presbety	N	N	Family, seen walkers, cyclists & drivers

* By foot and by bike between 1937-1945, then less frequent cycling until 1959. Used car from 1948 for several years.

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A. SADLER	17	Y	Cornwall Road to Berkeley Road	Unadopted public road & private vehicle use	At least 35 yrs	Estimate 14 ft	1966 to 2001 + to date	35	Bus stop Cranbrook Rd and cycling to Birchall Rd, Redland, Cotham & Clifton	Between 5 & 200	Foot & cycle	Y	N	N	N	N	N	Y - bollards after re-surfacing late '70s early '80s	N	N	Family+saw walkers & occasional cyclists *
E. SADLER	18	Y	Cornwall Road to Clare Avenue and return	Unadopted public road	35 yrs	Estimate 14 ft	1966 to 2001	35	To visit Clare Avenue.	20	Foot	Y	N	N	N	N	N	Y - 2 x bollards	N	N	Family. 'No through Rd' sign bottom of Friary Rd
H.A. SADLER	19	Y	Friary Road to Logan Rd and Clare Avenue	Unadopted public road	At least 36 yrs	Estimate 14 ft	1965 to 2001	36	Dentist and visits.	20	Foot	Y	N	N	N	N	N	Y - 2 x bollards	N	N	Family. 'No through Rd' sign bottom of Friary Rd
B. SEARLE	20	Y	Cornwall Road & Egerton Road to Berkeley Road	RUPP or bridlepath	26 yrs (since 1960s)	Approx 3 to 4 m or more	1963 to 2001	38	Visiting friends, shops & Coldharbour Road	6x yr cycling, 2/3x week on foot.	Foot (& cycle from 1975)	Y Recent garden extension across path at Berkeley Rd end	N	N	N	N	N	Bollards erected in 1970s or 1980s	N	N	Family+seen walkers & some cyclists/drivers
F.G. SEARLE	21	Y	Egerton Road to Berkeley Road	FP	Unadopted path c. 38 yrs	Variable width	1962 to 2000	38	Visiting brother & to bus stop	Occasional use to 2 x daily	Foot & cycle	Y Posts below N end to prevent vehicles c. 1975	N	N	N	N	N	Y - posts	N	N	Residents to walk dogs
L.B. SEARLE	22	Y	Cornwall Road & Egerton Rd to Berkeley Road	FP & access to garages	At least 100 yrs	Variable width	1960 to 2000 + to date	40	Visiting friends, relatives & doctors	Walking c.150, cycling a few x	Mostly Foot (& cycle 1970-1975)	N - from Egerton Rd - bollards near church	N	N	N	N	N	Bollards 1970s or 1980s.	N	N	69 Melbourne Rd + pedestrians & cyclists**

* In the 1960s cars would drive from Egerton Road to Berkeley Road.

** Also saw cars going to garages and car park.

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T. SEARLE	23	N	Top Egerton Road to Berkeley Road	RUPP or bridlepath	26 yrs	3 to 4 m	1964 to 2001	37	Visiting friends, school & bus stop.	300-400 between 1973 & '81	Foot	Y – Garden wall built out into path	N	N	N	N	N	N	N	N	Family members
M. & J.A.C. SMITH	24	Y	Egerton Road to Berkeley Road	FP, Bridleway/cycleway	Over 70 yrs	Min. 16ft (including bank by No. 111)	1970 to 2000 + to date	30	Visiting friends + Sunday Church service	40% car / 60% walking	Car and foot (cycling mostly before 1976)	Y – also drove to church car park	N	N	N	N	N	Y – bollards erected 10-15 years ago	N	N	Residents of Egerton & Cornwall Rd seen walkers & cyclists
C. SPELLER	25	Y	Egerton Road to Berkeley Road & Cornwall Road	Don't know	13 years or more	Road width, previously included verge.	1988 to 2001	13	To allotment, surgery, shops & friends & running.	Daily on foot, weekly cycle	Foot & cycle	Y – building of wall at Berkeley Rd end narrowed ROW	N	N	N	N	N	Bollards by Church	N	N	Seen many others walking, some cycling.
K. TAGNEY	26	Y	Cornwall Road to Berkeley Road	Road and footpath	c20yrs Since Friars left	Varies from 12' Cornwall Rd to 30' Berkeley Rd	1959 to 1996	37	To allotments Monk Rd shops, church & school.	250	Foot	N	N	N	N	N	N	N	N	N	Many others - St Bons parishioners -school staff, parents etc.
S. TAGNEY	27	Y	Cornwall Road to Berkeley Road	Private road with public access	Since church was built c.1900	4m midpoint to 10m Berkeley Road end.	1965 - 1980 & 1982-2001*	34	Mostly walking, occasionally cycle/motor-bike	More than 50	**Foot/cycle motorbike (& car - private)	Y – occasional resurfacing	N	N	***	N	N	N	N	N	Many others
D.G. VOWLES	28	Y	Cornwall Rd/ Egerton Rd to Berkeley Rd (see map)	FP,public ve hicular use to School & Church	N - 16 yrs approx.	4 to 5 m approx. (not grass verge)	1985 to 2001	16	Visiting friends shopping & walking.	350 to 400	Foot	Y	N	N	N	N	N	Bollards by church	N	N	Many + to garages & cyclists

* Occasional motorbike use between 1977-1997

** Rented garage opposite car park between c.1982-1984

*** 'Cycling Prohibited' post at Cornwall Road end (cast iron) which disappeared when bollards went up. 5 of 6

NAME OF WITNESS	FORM NO	MAP	DESCRIPTION OF ROUTE	BELIEVED STATUS	KNOWN AS PUBLIC	HOW WIDE?	USED BETWEEN (calendar years)	TOTAL No. OF YEARS ' USE	PURPOSE OF JOURNEY	NO. OF TIMES USED PER YEAR	ON FOOT, HORSEBACK, OR OTHER	WHOLE LENGTH OF ROUTE / any diversions/alterations?	STILES / GATES?	WORKED FOR LANDOWNER?	NOTICES?	EVER STOPPED?	EVER TOLD NOT PUBLIC?	OBSTRUCTIONS /LOCKED GATES?	GIVEN PERMISSION TO USE ROUTE?	PRIVATE RIGHT?	KNOWN OTHERS USING ROUTE / other information?
G.M. VOWLES	29	Y	Egerton Road to Berkeley Road (see map)	FP middle, public road either end	16 yrs	Road width excluding verges	1985 to 2001 + to date	16	Shopping, visiting friends, going to bank.	3x weekly c.150	Foot	-	N	N	N	N	-	Bollards by church	N	N	Many residents - to church and walking.

FRIARY ROAD – PRÉCIS OF ADDITIONAL EVIDENCE FROM WITNESS STATEMENTS (All Questions)

(A Summary of Evidence is held as a background paper to this report)

[N.B. The Statements and Evidence Forms have been given the same reference number]

The grass verge adjacent to No. 111 Berkeley Road

This additional evidence implies that the verge adjacent to No. 111 Berkeley Road was historically a grass verge used mostly as a 'pedestrian refuge' from vehicular traffic gaining access to the Church or School. In addition to use of the road, seven witnesses stated that they walked or stepped onto this verge during the relevant 20-year period, some with children (Statements 2, 9, 10, 24, 25 & 27) and after the trees were planted (Statement 24) or saw others use the verge prior to 1979 (Statement 16); and six witnesses state that they have never used the verge (Statements 1, 16, 17, 22, 28 & 29). One witness has used verges on both sides of the road (Statement 2) and two witnesses have used the pavement by the School (Statements 1 & 22) during the relevant period.

The Church car park and improvements to Friary Road

Witnesses recall that the Church car park was built c. 1960 and was historically either an orchard or allotments (Statements 16 & 22). One witness recalls that a string was put across the entrance to the car park once a year. Also that Friary Road was tarmacked from Berkeley Road to the car park and Egerton Road to the top end of the car park in the 1980s, when two concrete bollards were erected which were knocked down and replaced (Statement 27). When the Berkeley Road end of Friary Road was tarmacked, two speed humps were put in (Statement 28). Another witness recalls that at the time the Church wrote to adjacent residents to request a contribution towards the surfacing of the whole length of Friary Road (Statement 29) and that the walkway to the Church car park is a recent construction (Statement 27).

Vehicular use of Friary Road

Most witnesses refer to vehicular use of Friary Road for access to Church, School or private garages, although one witness has referred to

the use of Friary Road as a 'throughway' to Egerton Road (Statement 9) or vehicular access to school and church car park before the bollards were erected (Statement 20). One witness had a private right to drive to a rented garage in Friary Road (Statement 27). Two witnesses have referred to seeing notices, either aimed at cyclists – 'cyclists dismount' (Statement 1); or aimed at car drivers - erected at the time the car park was tarmacked c. 15 years ago, plus 'No Through Road' sign in Friary Road 50yds from Berkeley Road (Statement 17).

FRIARY ROAD - SUMMARY OF ADDITIONAL EVIDENCE FROM WITNESS STATEMENTS (from Question No. 12 - 'other information')

[N.B. The Statements and Evidence Forms have been given the same reference number]

Christina Eickelmann (Statement 1)

I have never walked on any of the verges and only ever walk/cycle on the road. I would step on the pavement by the school when cars were coming.

Sue Hawkins (Statement 2)

During school hours when traffic uses Friary Road to go to the car park, I myself have used the verge adjacent to 111 Berkeley Road and seen others use it.

If the road was quiet, I would either walk on the edge of the road or cross to the other verge.

I have also seen cars at the top end of Friary Road. They drive from Egerton Road and along Friary Road. Some would be going to the school and others would park on Friary Road and walk in, although this was discouraged.

Pat McLaren (Statement 9)

Since the trees were planted the verge by 111 Berkeley Road has increased in height and the boundary was moved. The verge was previously flatter and the original boundary was behind the trees.

You could step onto the verge when a car came along, but otherwise I'd walk on the road.

From the top end of Friary Road, after the end of Egerton Road I would still walk on the road through to the footpath to Cornwall Road.

Andy Nelson (Statement 10)

I have used the verge adjoining No. 111 on a number of occasions when taking my children to school. It's a safety verge, it's flat and we stand on it when there's traffic in the road.

You can walk in the centre of the road after the turning to the church on the left-hand side, which I do unless there is traffic and I have to move to one side of the road.

I walk up and down Friary Road for general walking purposes a handful of times a month.

Mr R L Rigg (Statement 16)

I walked down the centre of the road and can't think why I would have used the grass verge adjoining No. 111. If cars came down Friary Road I would have thought I'd have stood to one side, but I can't remember.

I remember the verge being flat and the same level as the road surface - I don't recall it being built up. People could step onto it easily.

Ann Sadler (Statement 17)

(Ann discussed her parents' forms as they are elderly and not able to attend for interview - Evidence Forms 18 & 19.)

In the 1980s and 1990s my father went to the dentist at the bottom of Clare Avenue and when he first came to Bristol in the late 1960s he had lodgings in Claremont Road. When he attended Good Shepherd Church he came along Friary Road into Cornwall Road and to the Church. My mother visited people all over the place and quite often she would go along Egerton Road into Cornwall Road.

In 2005 my mother accompanied me on a collection and we walked the length of Friary Road. Both my parents walked - they did not use a bicycle or car.

Both parents said there was a 'No Through Road' sign in Friary Road (50 yards in from Berkeley Road).

I only ever walked on the road - we used to walk the dog, but never on the verge adjoining No. 111.

I think that the end of Friary Road going onto Berkeley Road was tarmacked within the last 10 years.

Ben Searle (Statement 20)

In the 1970s, in my late teens, myself and friends used to walk from Egerton Road along Friary Road and along Clare Avenue to Tiffany's night club.

A good friend used to live in Cairns Road so I would go from Egerton Road along Friary Road to go along Birchall Road to visit them.

I believe the grass verge adjoining No. 111 should be included in the right of

way so it is clearly defined and others can't take a chunk of the right of way.

It's possible I walked on the verge when cars were coming and I stepped onto the verge out of the way. It's likely as a young child I played on the verge.

Lilian Searle (Statement 22)

In 2000 the original boundary wall adjoining No. 111 was taken down and No. 111's garden was extended to include the grass verge.

I use the pavement adjoining the school before walking into Cornwall Road. I think the pavement was put there when the school was built.

I haven't walked along the verge by No. 111 (or the other verges). I think the verge by No. 111 was flat and had rough grass. I only ever walked on the road.

M & J Smith (Statement 24)

The verge adjoining No. 111 formed part of the road - you could stand on it when a car came past. The trees were planted about 15 years ago on the embankment but you could still stand on the verge. No. 111's garden was extended to include the verge about 8 - 10 years ago.

Dr C Speller (Statement 25)

The verge adjoining No. 111 was rough ground with a path through that children had trodden over time. The verge sloped slightly to the boundary wall of No. 111. The boundary wall adjoined the verge. I have walked on this verge and seen parents and children walking on it.

Some time ago a safe route to school was to be created and this verge was to be incorporated. I think the roadway is less safe now the verge has been included within the garden of No. 111.

Simon Tagney (Statement 27)

The verges would be used at peak traffic times, school drop off and collection times and Sunday Mass times. Especially when two cars are passing each other (including verge adjacent to No. 111). The pavement to the school was laid out over six years ago.

If the road was empty I would walk up the middle of it. At the Berkeley Road end there were grassy verges either side. The verge

by 111 was a grassy bank and the one the other side was flatter.

The walkway to the car park is a recent addition, I think since I filled out my evidence form in 2001.

In the 1980s the road was tarmacked from Berkeley Road to the car park and two concrete bollards erected. At one point they were knocked down and replaced.

David Vowles (Statement 28)

I have never walked over the grass verge adjoining No. 111. I have seen cars going to the car park and also driving to the top end and people driving to the school (including ice cream vans). Cars go to the garages, but most of the garages aren't used.

Gwyneth Vowles (Statement 29)

I have never walked over the grass verge adjoining No. 111 or seen anyone else walk over it - it was on a steeper slope than it is now. It was a dumping ground for litter and dog mess. You would have had to walk at an angle.

A big improvement over the past 3-4 years is that children going to school now have a footpath/walkway along the left-hand side of Friary Road. This makes it safer for children but I'm not sure how this was done, i.e. whether a verge was cut into.

Children never walked on the right hand side or on the verge as far as I know. Children can now access the school from the walkway on the left-hand side of the Church. They used to walk the length of Friary Road before there was a walkway.

DOCUMENTS SUBMITTED BY MRS D O'FARRELL IN SUPPORT OF THE CLAIM FOR PUBLIC RIGHT OF WAY - FRIARY ROAD, BISHOPSTON

DOCUMENTS RECEIVED ON 18 JUNE 2003 AND HELD WITH BACKGROUND PAPERS TO THIS REPORT (LEGAL FILE REF. ID3/274)

N.B. Reference to D. O'Farrell's appendice numbers in brackets)

1 Tithe Map - copy documents

Tithe Map of 1843 (*Appx. 18*) showing the Manor of Horfield.

Tithe Map base dated 1899 (*Appx. 19*) showing the Parish of Horfield and stating 'Map detached from Tithe Apportionment pursuant to an Order of the Board of Agriculture dated 27.01.1889'.

Certificate of Redemption of Tithe Rentcharge dated 15.10.1926 (*Appx. 21*) in respect of lands in the Parish of Horfield

Tithe Map of 1931, Scale 1/2500 (*Appx. 20*) showing '*the Altered Apportionment of Tithe Rentcharge in the Parish of Horfield*'.

2 Copies of Pre Registration Documents of Title, between 1852 and 1975

Indenture of 23.01.1852 between Thomas Holt, Rev. J.Henry, Lord Bishop of Glos. and Bristol, the Copyhold Commissioners, Rev. H. Richards and wife, E.G. Richards and C.H. Richards (*Appx. 48*) - Release and Enfranchisement of land of Copyhold and Customary tenure being houses lands rights of common tenements and heridaments [of the Manor of Horfield]. [*No copy of Map provided*].

Deed of Enfranchisement of 26.02.1852 to J.M.E.T. Shadwell (*Appx. 49*) Tenements (granted to Tenant in reversion) within the Manor of Horfield. (*No copy of Map provided*).

1866 Map – Orders of Exchange of lands between Hon Sir W Pagewood and Trustees of Bishop Monks Horfield Trust (*Appx. 22*)

The map shows Berkeley Road leading to Wentworth Road and Egerton Road. An unnamed way (now Friary Road) is shown running between boundaries in a northeasterly direction at the western end of Berkeley Road.

Indenture of 31.12.1889 (H.E. Shadwell et al) (*Appx. 50*) - Conveyance of Land at Horfield in the County of Glos. The Schedule refers to Indentures of 23.01.1852, 15.03.1852 and 2.04.1888. The Deed refers to *'This Indenture of 31.12.1889 between F.H. Shadwell, J.H.E. Shadwell and G. Wadham (Trustees) and J.M.E.T. Shadwell, J.A. Murphy, J.E. Witsker and T.H. Fitzgerald'*. The *"Plan Within referred to"* shows a plot of land labelled *"Trustees of J.M.E.T. Shadwell Esq. – Monk's Trust"* and a *"lane"* outside of the eastern boundary of the land with Berkeley Road and Egerton Road leading off of the lane. At the bottom of p.9 of the Deed: *"All and singular the house lands rights of common tenements and hereditaments mentioned and described in the said Third Schedule hereunto annexed and (except as to the said rights of common) delineated in the said Maps hereupon endorsed ... other than the rights of common mentioned in the said Second Schedule hereunto annexed"*.

Indenture of 29.10.1902 between vendors J.A. Murphy, J.E. Whitsker and T.H. Fitzgerald and purchasers O.P. Cooney, J.E. Whitsker, L. Costello and N. Barre (*Appx. 51*) [*N.B. No copy of Plan provided*].

Abstract of Title of Messrs. H & B Filer dated 1926 (*Appx. 52*) Title to Land situate at Bishopston, Bristol. The Plan Scale 1/2500 referred to land coloured pink, and excludes St Bonaventure's Church, Egerton Road and Berkeley Road and the lane (now Friary Road) between these two roads.

Conveyance dated 15.10.1928 between vendors H. Filer and B. Filer and purchasers Rev. O.P. Cooney, Rev. J.E. Witsker and N. Barre (*Appx. 53*) Conveying *"all that triangular piece of land situate adjoining Friary Road and formerly part of Haselton Farm Bishopston and part of No. 2368 on the O.S. Map 1916 Edition for the Parish of Horfield ... shewn in the plan annexed ... coloured pink."* The Plan shows Friary Road and Berkeley Road coloured yellow abutting the 'pink' land.

Conveyance dated 22.07.1931 between Rev. J.E. Whitsker and N. Barre (Grantors) and Rev. C H. Doyle and Rev. J.A. McGhee, Rev. J. A. Bonnar, Rev. A.B. Worham (Trustees) (Appx. 54) - Conveying *“All that triangular piece of land abutting on the south side of the piece of land first hereinbefore described and adjoining Friary Road and formerly part of Hazelton Farm Bishopston and part of No. 2368 on the O.S. 1916 Edition for the Parish of Horfield ...”*. Plan shows Friary Road is not included with the land conveyed and a strip of land connects end of Friary Road with Cornwall Road.

Conveyance dated 1975 between the Trustees of the Charity of the Order of Friars Minor to Rev B O’Halloran & others (Appx. 56) - The Plan shows Friary Road excluded from the land to be conveyed.

Transfer of Title No. AV63597 dated 15.10.1981 being land and buildings known as St Bonaventure’s Egerton Road, Bishopston (Appx. 57) -Transfer of land between the Trustees for the Charity of the Order of Friars Minor and the Clifton Catholic Diocesan Trustees Registered (Plan annexed to Conveyance dated 22.07.1931 between Whitsker and Barre of the one part and Doyle et al of the other) *“subject to exceptions and reservations covenants contained or referred to therein and subject to a Lease dated the 10.06.1977 made between the Vendors and the County Council of Avon (excluding property registered in HM Land Registry under Title No. AV10501 upon the trusts contained in a Trust Deed dated the 6.05.1934”*.

- 3 **Map c. 1900 on display in City Museum**, which Mrs O’Farrell states is *“depicting the whole of Friary Road clearly”*. **Picture Postcards of Bristol** showing Church & Friary, Bishopston and Interior, St Bonaventure’s, Bishopston, Bristol (Appx. 24). Captions read: *“In 1889 agreement was reached with the Shadwell Trustees, who owned much of the land in the Logan and Shadwell Road area, which was originally part of Shadwell Farm, to purchase land to build a Friary. Three and a half acres of land was purchased at the top of Egerton Road. This Franciscan Friary and Church is known as St Bonaventures.”*
- 4 **Finance Act 1910 copy documents**

Extract from Inland Revenue Glos. LXXI. 12. NE (Appx. 5) showing the land of the Franciscan Friary – St Bonaventure’s RC Church, School and Burial Ground as Plot No. 1082 and the Tennis Courts as Plot No. 1084. The unnamed route which runs along the eastern boundary (now known as Friary Road) is Plot No. 1083. N.B. The western boundary of the property on the corner of Berkeley Road (now 111 Berkeley Road) is parallel with the edge of the pavement at the end of Berkeley Road. Egerton and Berkeley Roads are unbounded at their junctions with the unnamed route, although a line is shown at the boundary between the northern end of the unnamed route and path to Cornwall Road.

Inland Revenue Field Book Entry for Ref. 2721 (Appx. 8)

Inland Revenue Field Book Entry for Ref. 1315 (Appx. 12)

- 5 Copy of OS LXXI.16 Revised 1916 (based on Survey of 1879-80) (Appx. 6)**

This shows the Franciscan Friary, St Bonaventure’s RC Church and School (Plot No. 2369) abutting the western boundary of the unnamed route (Plot No. 2370).

- 6 Land Registry copy documents 1872, 1999, 2000 and 2003**

Conveyance between H.F. Buckland and H. Boucher dated 11.05.1872 (Appx. 34). The map shows Berkeley Road and a way between boundaries ‘*To Egerton Road*’ excluded from the land conveyed. N.B. Plot 8 is now 111 Berkeley Road.

Office Copy Entries dated 20.08.99 for Title No. AV63597 (Appx. 36) held by Clifton Catholic Diocesan Trustees – The Plan excludes land forming Friary Road.

Office Copy Entries dated 28.09.00 (Appx. 32) for Title No. BL40035 (Edition 8.06.87) held by Christine Kate Grima of 111 Berkeley Road, Bishopston, Bristol excludes land forming Friary Road. N.B. The Charges Register contains the following covenant and a note stating that the boundary walls referred to affect the land in this title: *“The Grantee for himself his heirs executors and*

administrators hereby covenants with the Grantor his heirs and assigns that he will erect the back and side boundary walls of the said premises such walls not to exceed six feet in height and to be of nine inch brick work with brick on edged coping and to be party walls and that the Grantee his heirs or assigns will not alter the boundary walls of the said plot”

Form 96 – Index Map (Appx. 28) – results dated 13/01/03 for Friary Road - the land on Plan X coloured red is unregistered, land shaded green is freehold Title No. AV63597 and the land shaded blue is affected by a caution against first registration priority notice Title No. BL71064 and BL67295.

7 **Copy Correspondence, various dates between 1890 and 1985**

Letter 10.06.1890 of John Gilmore Solicitor to Rev Fr Thaddens (Appx.41) *“The lane originally formed part of the Common and the Shadwell Trustees do not claim it. It has been [semi] public property for some time and it [would] appear to be a great pity that the Horfield Board [did] not take it into their [lands].”*

Letter of T.H. Yabbicom, City Engineer & Surveyor for the City & County of Bristol to Rev. A.C. McCarthy of 24.05.1905 (Appx. 42) stating that *“the lane is not a highway repairable by the inhabitants at large”*.

Letter of T.H. Yabbicom, City Engineer & Surveyor for the City & County of Bristol to Rev. A. McCarthy of 21.10.1905 (Appx. 43) notifying him that the new position of the fence on the western side of the lane between Egerton and Berkeley Roads *“will be an encroachment on the highway”* and querying *“under what authority the work is being carried out”*.

Letter 1.11.1917 of Charity Commissioners to Bishop Monk Memorial Fund (Appx. 25), enclosing copies of the deed of Foundation of the Bishop Monk Memorial Fund dated 4.07.1913 and Will and Codicils of Miss J.E. Monk.

Letters of 1.02.1985 and 28.02.1985 of the Councillor for Bishopston, M. Withers, to Mrs Mahony, Secretary of the Parish Council (Appx. 44 & 45) regarding the condition of the pavement

outside the entrance to St Bonaventures Church due to *“the heavy use ... by all members of the community”*.

Memo. of 14.05.1985 of Councillor Withers to the City Engineer regarding the condition of the road outside St Bonaventure Church, junction of Friary Road and Egerton Road, which is *“both dangerous to vehicles and pedestrians”* due to potholes - *“sited directly outside the Church, which is used by very many elderly people”*.

- 8 **Copy correspondence various dates between 2000 and 2001**
[N.B. Appendix numbers refer to documents appended to Mrs. O’Farrell’s Report of 14.06.03]

Letter of Mark Shearman to Bristol City Council Planning dated 14.08.00 (Appx. 16) regarding building works which *“consist of an extension to the garden over the verge area of Friary Road. The area of land walled off is at its widest about 2.5m wide and runs the length of the property”*. *“Friary Road is a private road which provides access to St Bonaventure’s Primary School, its car park, St Bonaventure’s Church and Club. The Parish Hall and numerous private garages belonging to residents of Berkeley Road, Egerton Road and Kings Drive. It is also used as a through route to Egerton and Cornwall Roads by pedestrians and cyclists and although it is not registered as a Public Right of Way, I suspect it would not be difficult to find people who have used it as such for the last 40 or 50 years or even longer.”* *“Friary Road is also used as a through route by children and parents walking to Bishop Road School ...”*. *“For pedestrians using Friary Road, [the construction of the wall] removes the safe verge which pedestrians could previously step onto out of the way of cars accessing the school car park. Most of these pedestrians are parents and children accessing St Bonaventure’s and Bishop Road Schools.”*

Letter of Dr Spence to the Planning Department dated 06.09.00 (Appx. 18) regarding access to St Bonaventures Church Car Park, stating his concern that *“the verge to the right of the access lane from Berkeley Road has recently been walled off leaving pedestrians with no option but to walk in the roadway when leaving or returning to their cars. There is no longer a refuge from passing traffic.”*

Letter of Anne Coughland to John Bishop dated 08.09.00 (Appx. 19) concerning *“the building work that has taken place to extend the garden of the above property into Friary Road, which provides access to St Bonaventures Primary School thereby annexing in its entirety a wide grass verge which was used extensively in the past by pedestrians wishing to avoid cars entering and leaving Friary Road. The area of land which has been annexed is approximately 2.5 metres wide at the widest point, and runs the entire length of 111 Berkeley Road.”* Further that the building of the wall *“has removed a wide grass verge used by myself and my children daily in order to avoid the traffic on Friary Road as we walked up to St Bonaventures.”* *“The construction of the wall affects not only children at St Bonaventures, but anyone using the Church, the Club and the Parish Hall, and pedestrians and cyclists who use Friary Road to access Egerton Road and Cornwall Road.”*

Letter of Mrs Cowper to Mrs Blackwell dated 15.09.00 (Appx. 3) concerning the building of a wall extending the garden of No. 111 Berkeley Road *“by several feet, on land which is not part of your property and to which users of the school and church have the right of access”*. According to Mrs Cowper: *“Although there was not a formal path on this strip of land, I have many times witnessed people walking on it or stepping on to avoid the traffic and let cars pass.”*

Letter of Dr Wilkinson and Mr Matthews to Mrs Blackwell dated 21.09.00 (Appx. 4) objecting to the *“recent building of a wall in Friary Road”* and stating that *“this congested road and walkway ... is our only access to St Bonaventure’s School. The verges on both sides of the road are essential to stand back on as cars pass.”*

Letter of Mrs Smailes, governor of St Bonaventure’s school, to Mrs Blackwell dated 24.09.00 (Appx. 5) referring to *“the wall which has been built at the corner of Friary Road and 111 Berkeley Road ... on land to which you have no legal right to exclusive use ...”*. *“As a parishioner, past parent of children at St Bonaventure’s school and current governor I can vouch for the fact that both adults and children regularly used the grass verge as a refuge when cars were accessing the car park and I would venture to suggest that since you do not seem to live at 111 Berkeley Road you would not be in a position to state otherwise.”*

Letter of Mr Heydon to Mrs Blackwell dated 29.09.00 (Appx. 6) objecting to the wall *“which you have erected along the side of Friary Road but beyond the boundary of your property at 111 Berkeley Road. This wall is a dangerous infringement of a right of way.”* *“I frequently walk my own son to school and I am acutely aware of what a perilous process this is. The green verge that has now been obliterated was the safest side of the road on which to shelter from the cars.”*

Letter of Mr Edwards to Mrs Blackwell dated 01.10.00 (Appx. 7) concerning the erection of *“a brick wall on the verge which forms part of the access to our school and church car-park. By constructing this wall beyond the original fence line you had in place beforehand, you have increased the area of your plot but in so doing you have eliminated the large majority of the width of verge that was used by children, parents and parishioners as access. I understand that whilst you are an owner of the property at 111 Berkeley Road, you do not live at this address and so it seems that you do not realise that this verge is used on a regular basis as a common access walkway to and from the church, its hall and the school. I am annoyed since I have lived in the locality for a number of years and my family and I have, along with many others, used this verge as a pedestrian access.”*

Letter of Mr & Mrs Nelson to Mrs Blackwell dated 09.10.00 (Appx. 8) regarding the erection of a wall to the side of 111 Berkeley Road, stating that: *“The land upon which the wall has been built, together with the land now annexed by you, formed a ‘safety space’ for those walking alongside the road. This land has, no doubt, been used as common land for probably one hundred years for access to St Bonaventure’s, the rear of other properties and as a shortcut to Egerton Road.”* *“Many parents, including ourselves, use the lane for walking children to school and church.”*

Letter of Mrs Blackwell to Mrs Rodliff dated 15.10.00 (Appx. 29) stating that *“When I first moved to Berkeley road in 1979, children walked up the lane to school, all the cars went up Egerton Road. However, the lane was not safe as it was badly potholed and through traffic posed a threat to pedestrians. I campaigned hard to have the lane closed and get the Church to provide a tarmac surface to help protect the children walking to school. At the same time, I converted*

the verge by my house from a rubbish dump covered with brambles to a nice area with trees and grass.”

Letter of Mrs Blackwell to Mr Edwards dated 18.10.00 (Appx. 31) stating that *“Although it was possible to stand on the verge, it was not possible to use it as a walkway, as the trees extended to the edge of the tarmac. You may be interested to know that it was at my instigation that the Church tarmaced the lane and that the entrance to the School is in Egerton Road.”*

Letter of Mrs Shapiro to Mrs Blackwell dated 20.10.00 (Appx. 9) whose daughter attends Bishop Road School and that they *“walk up and down Friary Road every day, morning and afternoon.”* Further that *“the wall you have had built on the ground next to the road” ... “means that pedestrians are now forced to walk in the road itself.”*

Letter/affidavit of Mrs Fowler ‘To whom it may concern’ dated 07.11.00 (Appx.34) regarding the extension to garden wall at 111 Berkeley Road, stating that at the time Mrs Blackwell first started to tend the grass verge to Friary Road, she had voiced her objections to Father Fitzpatrick and voiced her concerns when Mrs Blackwell subsequently planted trees in the verge. Mrs Fowler stated that she was *“assured by Father Fitzpatrick that Miss Blackwell had no intention of annexing this piece of unregistered land over which we have public rights of access. I have been a parishioner at St Bonaventures Church for over fifty years and I have used Friary Lane as access for this period of time. I know of a number of other senior parishioners who will verify all of the above to be true.”*

Letter of Mr O’Dwyer to Mrs Blackwell dated 24.11.00 (Appx. 11) stating that: *“The new wall flanking your property and Friary Road now makes approaching St Bonaventure’s from the south also hazardous for children. After leaving my children at school I have cycled down Friary Road every school day for the past seven years on my way to work. Until the wall was built parents would shepherd children onto the grass verge to avoid passing cars and would also use the verge for babies and young children in prams and pushchairs.”*

Letter of Mrs Blackwell to Father Michael Healey dated 30 December 2000 (Appx. 32) regarding the removal of part of the wall

and the erection of security fencing. In respect of the construction of a path on the other side of Friary Road as an alternative, Mrs Blackwell states that: *“Putting a path there would have been a much more practical proposition in any case. It is level there and only needs a few weeds removing and the no through road pole reinstated.”*

Letter of Mr J Hickey to Bristol City Planning Department dated 19.01.01 (Appx. 20) regarding building works in connection with planning consent Ref. 99/01984 (Appx. 26) for a two-storey side extension to 111 Berkeley Road. Mr Hickey states that during building works Mrs Blackwell has *“taken down a boundary wall bordering on Friary Road in order to accommodate drainage for the new extension. This boundary wall clearly marked on her deeds and on the planning application borders on an area of land over which she has no title and on which many local residents have rights of prescriptive easement.”*

Letter of Mrs Blackwell to neighbours etc. dated November 2001 (Appx. 33) with a plan attached which shows the position of the boundary wall to 111 Berkeley Road prior to July 2000, the position of the wall constructed July/August 2000 and the location of three trees in the verge. Mrs Blackwell states in her letter that: *“Tree 3 was planted approx. 1.4 metres from the edge of the tarmac. Tree 1 was planted approx. 1.2 metres from the tarmac. All the trees, including the one which caused the damage to my house and was removed were planted .9m from my old wall and the trees were planted approx. 4.3m apart.”* *“The Church does not own Friary Road. It has a right of way up the lane, as do all of us who have a garage there and the building of the wall did not obstruct this access. The verge beside my house was a bank and I planted the trees on it about 20 years ago and have tended it ever since, removing rubbish and mowing the grass.”*

Letter of Mrs Blackwell to L Payne, undated (Appx. 35)
According to Mrs Blackwell: *“When I moved to 111 [Berkeley Road] in August 1979, Friary Road was a dirt track leading to the car park. In winter it was full of potholes filled with water so that anyone walking up it was in considerable danger of getting splashed by cars which came down the lane from Egerton Road at considerable speed.”* In respect of the ownership of Friary Road – *“The Land*

Registry had no record (their letter to me 11 June 1980) and as far as the Council was concerned it was an unadopted road. I wrote to the Bishop and his secretary wrote to me on the 18 March 1981 to say it did not belong to the Church.” Mrs Blackwell also stated that she “organised a petition (28 October 1981), with the signatures of all those with an interest along the lane, and sent it to the City Engineer asking him to close the lane ... This was turned down. ... In February 1983 (28th) I tried again with a petition requesting a prohibition of access order for traffic not needing to use the lane. It again failed.” In respect of maintenance of the lane, Mrs Blackwell states that the Church surfaced the bottom and top of the lane around 1985 and also erected bollards and that subsequently *“the Council has erected a ‘no through road’ sign in Egerton Road.”* In respect of Friary Road grass verge, she states that: *“In order to establish my right to enjoy the land I was working so hard to keep tidy, I built a very small wall along the edge of the kerb stone at the edge of the new tarmac.”*

10 Recommendation/Statement of Dorothy O’Farrell dated [14.06.03] to the Planning Authority, Bristol City Council

In her report Mrs O’Farrell demonstrates the encroachment onto land forming Friary Road by the owner of 111 Berkeley Road, by reference to *Title No. BL40035 and Conveyance dated 11 May 1872 between Henry Fitzherbert Buckland and Henry Boucher*. She also clarifies the boundary line of the original wall to 111 Berkeley Road, which she states was knocked down *“in or about 24 July 2000 (see para. 3.1)”*, by reference to *Item 2 of the Charges Register of Title No. BL40035*. Mrs O’Farrell requested Bristol City Councillors and [Planning] Committee to authorise a Planning Enforcement Notice against the owner of 111 Berkeley Road in order to remove the fencing enclosing part of Friary Road, to reinstate the drains *“back onto the land forming 111 Berkeley road from Friary Road”* and to reverse *“any and all works undertaken by Mrs Blackwell, her servants or agents from January 2000 onwards which impinge, affect or relate to any part of Friary Road from the original boundary of 111 Berkeley Road with Friary Road” (paras. 1.1 – 1.1.4 and 11.2).”*

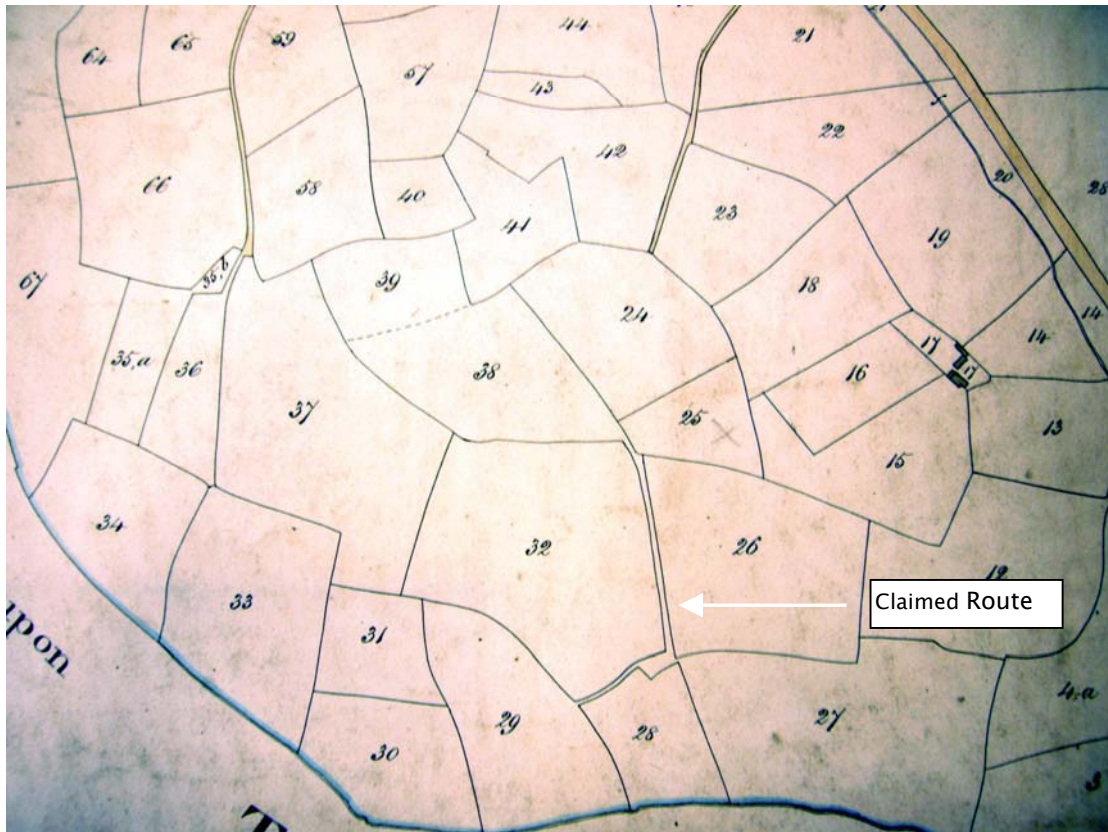
In her report Mrs O’Farrell also claims that immediately prior to the enclosure of part of Friary Road it was freely available for use by the local community *“and was used regularly by primary school children*

and other pedestrians to pass and repass along” (paras. 2.3, 3.2, 3.4, 11.4-11.7 and 11.9.2) and has “for at least 150 years been used by members of the public to pass and repass along” (para. 3.3 and 3.6.3) (or from at least 1843 – see para. 3.6.1). This is disputed by Mrs Blackwell (see para. 3.5 quoting from Mrs Blackwell’s e-mail dated 31.08.00 and also Appx. 27); the planting of trees on the land by Mrs Blackwell – paras. 3.6.1 and 10.8; and para. 3.6.5 referring to her care of the land in her letter of 26.09.00 (see also Appx. 28); although Mrs O’Farrell suggests that Mrs Blackwell’s letter implies public use over 24 years from 1979.

Mrs O’Farrell also refers in her report to the general community use of Friary Road by vehicles to and from St Bonaventure’s Parish Car Park and to garages owned by *“various occupants of Berkeley Road”*, plus pedestrians and cyclists travelling to bus stops and premises on Kings Drive and Cranbrook Road and to nearby schools (*paras. 5.1 - 5.4.7 and 6.2*).

- 10 **St Bonaventure’s Primary School – Draft School Travel Plan for 2003/04** (Appx. 4) Paragraph 9.4 “Recognition of Friary Road as a public right of way, adoption of the road by the Council, re-surfacing and provision of shared use for pedestrians and cyclists, whilst preserving the rights of way of other members of the community.”

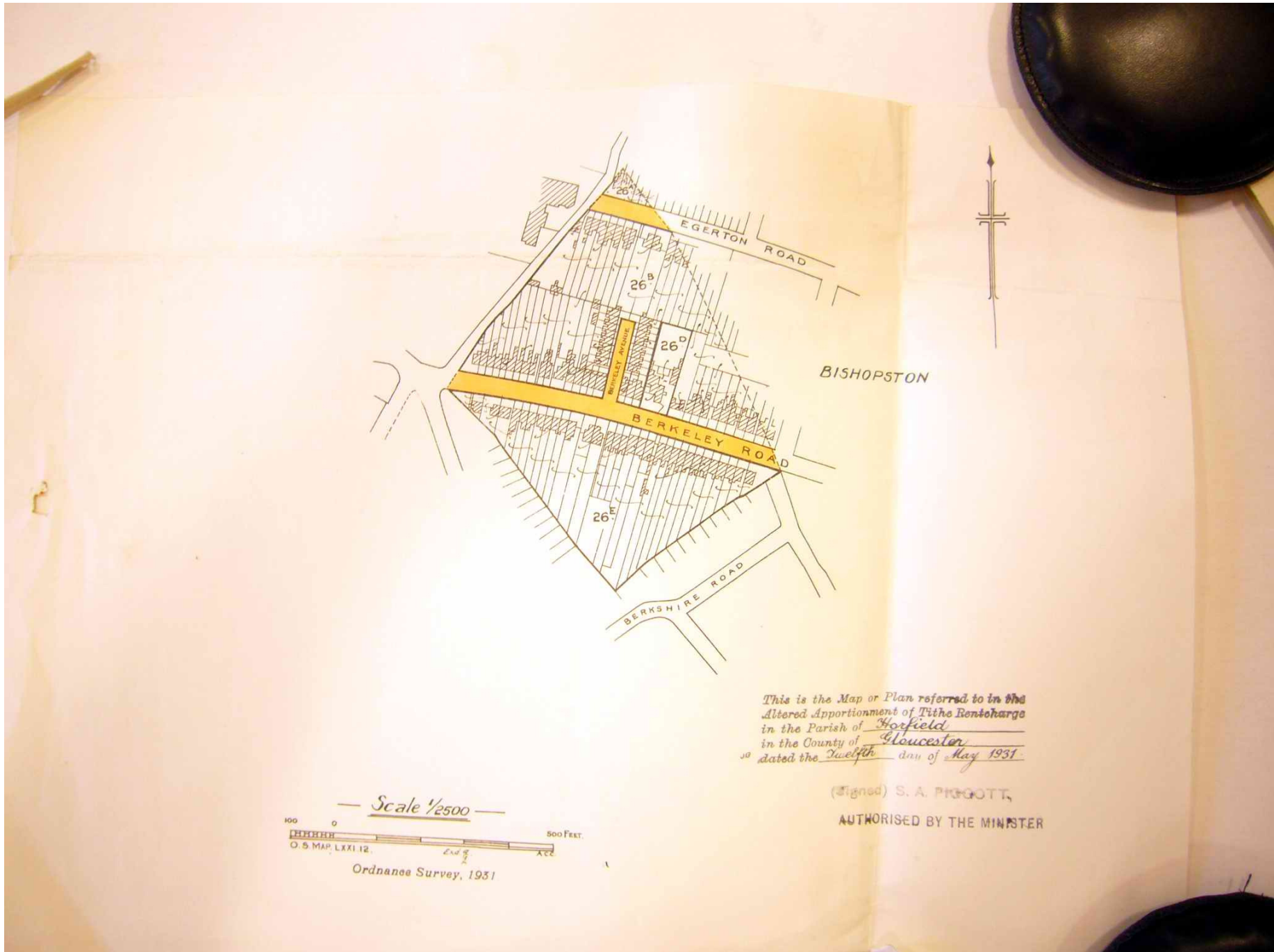
Appendix E.1



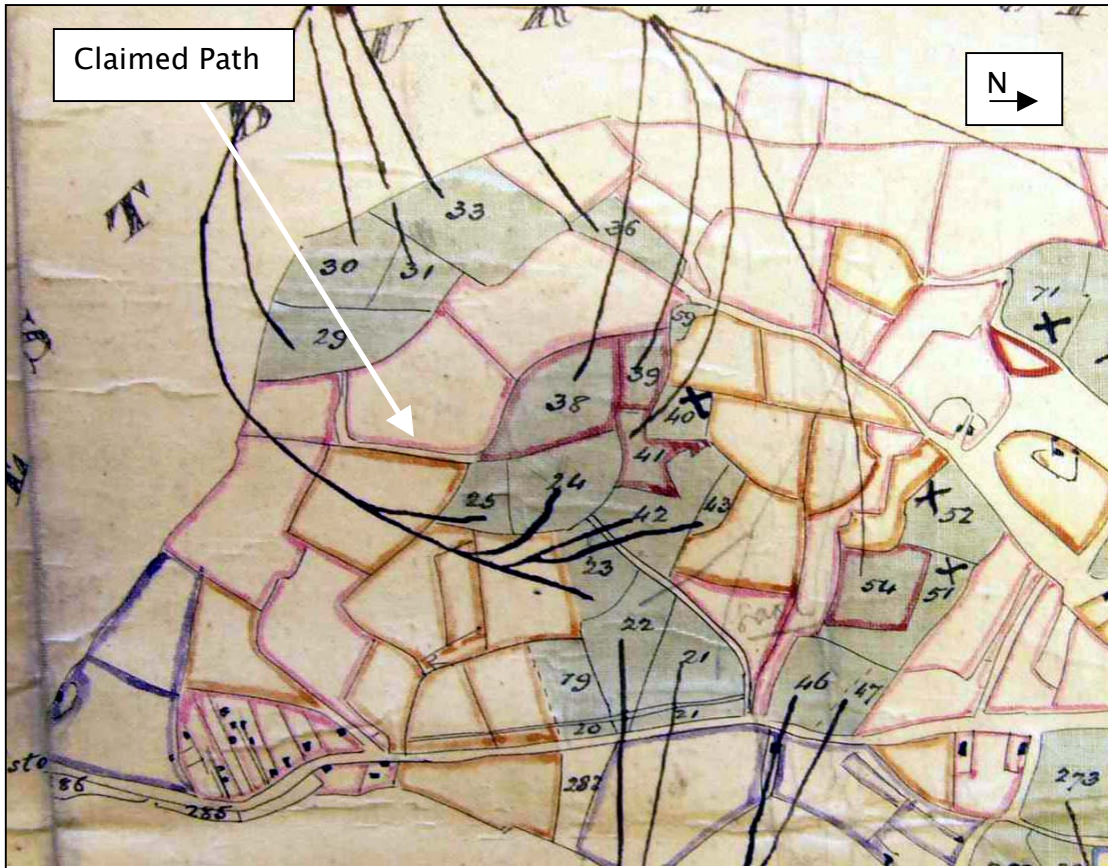
Horfield Tithe Map 1845

TITHE 1845					
Landowner	Occupier	No.	Description	State of cultivation	Area a r p
Copyhold of Bishop of Glouc & Bristol, H Shadwell	John Pope	25	Horthy	Pasture	2 1 1
Copyhold of Bishop of Glouc & Bristol, H Shadwell	John Pope	27	Great Haselton (with cow sheds)	Pasture	11 3 37
Copyhold of Bishop of Glouc & Bristol, H Shadwell	John Pope	32	Great Gout Shard	Pasture	10 3 3
Copyhold of Bishop of Glouc & Bristol, Henry Richards (clerk)	Samuel Fry	24	Hither Horthy	Arable	5 0 14
Copyhold of Bishop of Glouc & Bristol, Henry Richards (clerk)	Joseph Musty	26	Anders Leaze	Pasture	8 1 30
Copyhold of Bishop of Glouc & Bristol, David Davis	Himself William Harford	38	Gaskins		
Copyhold of Bishop of Glouc & Bristol, David Davis	Himself William Harford	28	Haselton	Pasture	3 0 12
Copyhold of Bishop of Glouc & Bristol, David Davis	Himself William Harford	39	Further Hinder Moors	Pasture	8 0 3
Copyhold of Bishop of Glouc & Bristol, Henry Richards (clerk)	Joseph Musty	29	Lower Bushy Ground	Pasture	6 2 13
John Shadwell	George Weston	152	Lane-not coloured		0 2 8
John Shadwell	George Harrison	156b	Lane-not coloured		0 0 29

Horfield Tithe Apportionment 1845



Altered Apportionment Berkeley Rd & Egerton Rd
Dated 12 May 1931



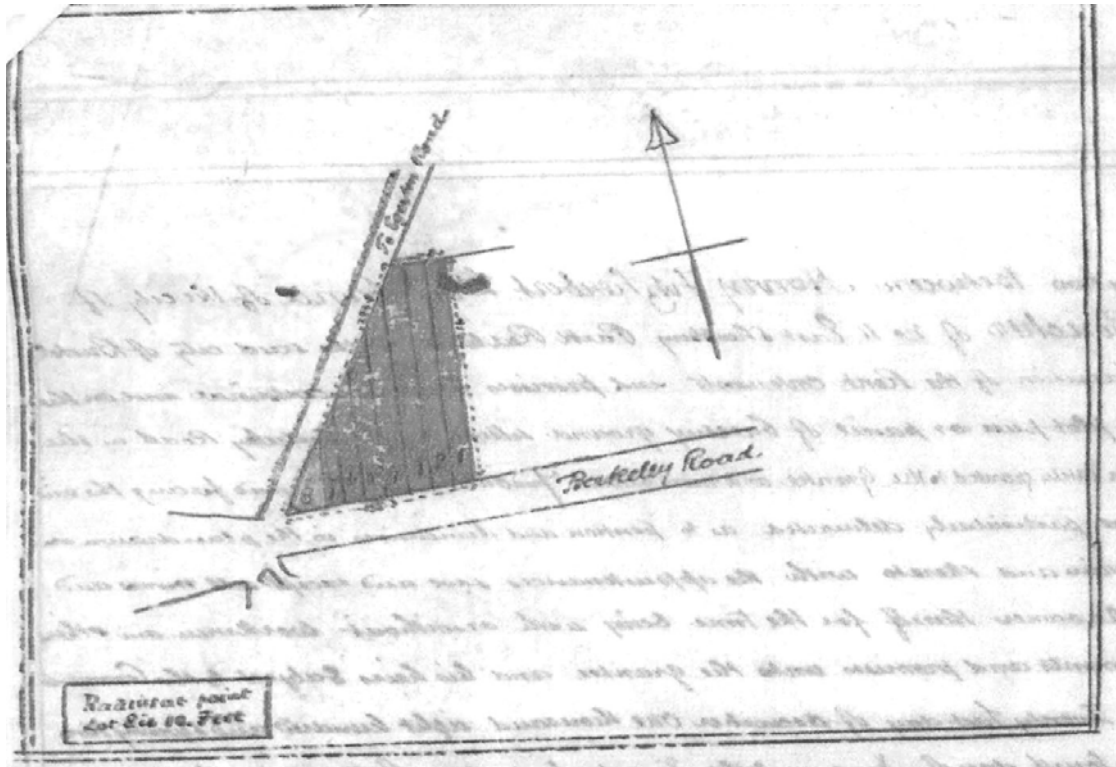
Extract from Bishop Monk Trust Ownership undated

REFERENCE.

OUR PARISH OF ST. PAUL

Premises belonging to the Trustees of Bishop Monks Horsfield Trust			coloured
D ^o	D ^o	D ^o reversion expectant on the death of E. W. Walker	D ^o [Red Box]
D ^o	D ^o	D ^o D ^o Va Widowhood	D ^o [Orange Box]
D ^o	D ^o	D ^o D ^o Va Widowhood	D ^o [Purple Box]
D ^o	D ^o	The Right Reverend the Lord Bishop of Gloucester and Bristol	D ^o [Green Box]
D ^o	D ^o	Henry Eugent Shadwell	D ^o [Pink Box]
D ^o	D ^o	Reverend Henry Richards	D ^o [Orange Box]
D ^o	D ^o	Reverend Henry Hare	D ^o [Blue Box]
D ^o	D ^o	William Henry Bromley Way	D ^o [Orange Box]
D ^o	D ^o	Anthony Mervin Storey Muskelyne	D ^o [Blue Box]
D ^o	D ^o	Reverend Joseph Lambert	D ^o [Red Box]
D ^o	D ^o	Mayor and Corporation of Bristol	D ^o [Blue Box]
D ^o	D ^o	Thomas Hillier	D ^o [Blue Box]
D ^o	D ^o	Reverend Henry Robert Fowler	D ^o [Blue Box]
D ^o	D ^o	John Gayner	D ^o [Orange Box]
D ^o	D ^o	William Bennett	D ^o [Red Box]

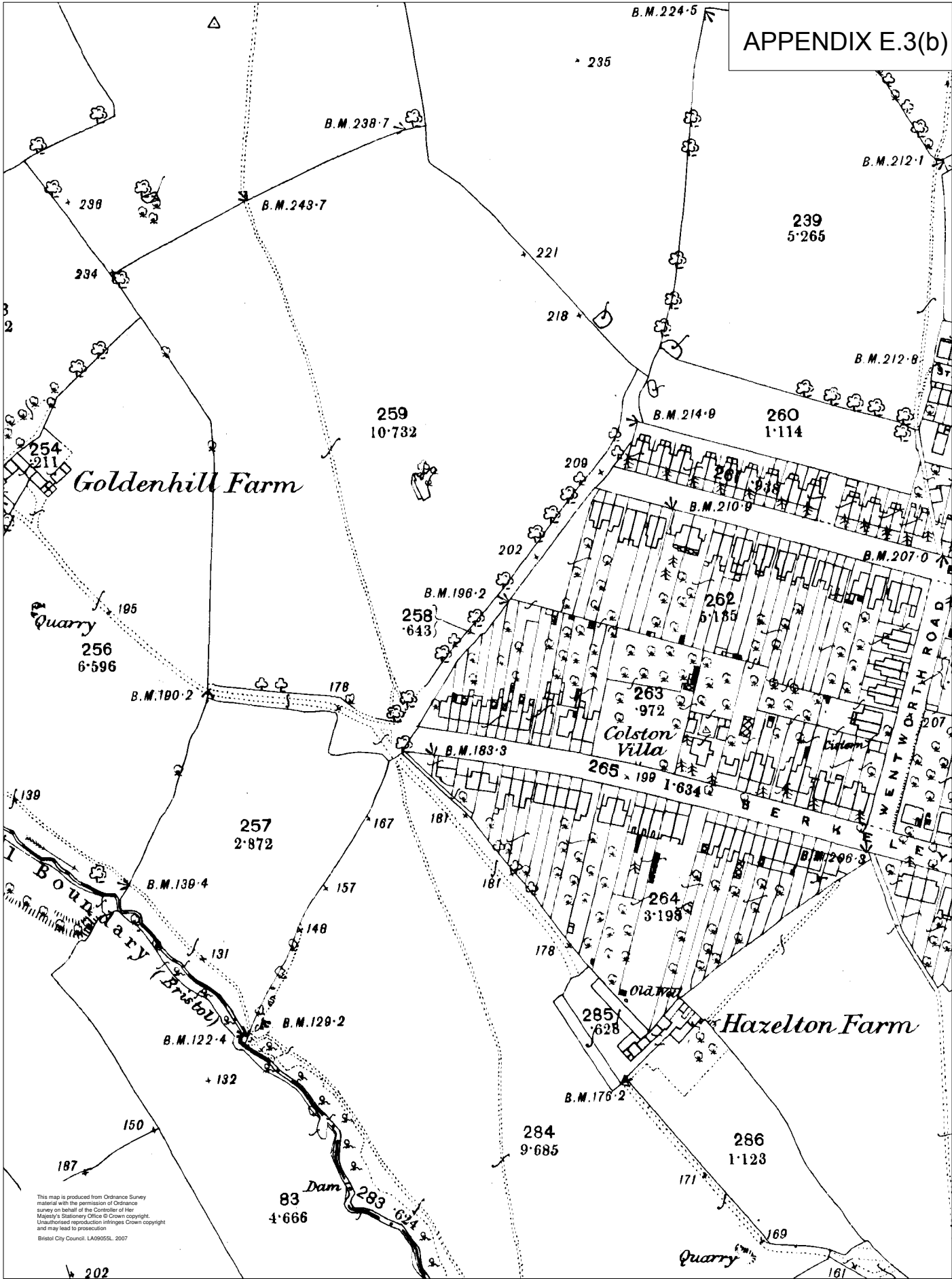
Key for Bishop Monk Trust Map



Conveyance 1872 Plot 8
111 Berkeley Road

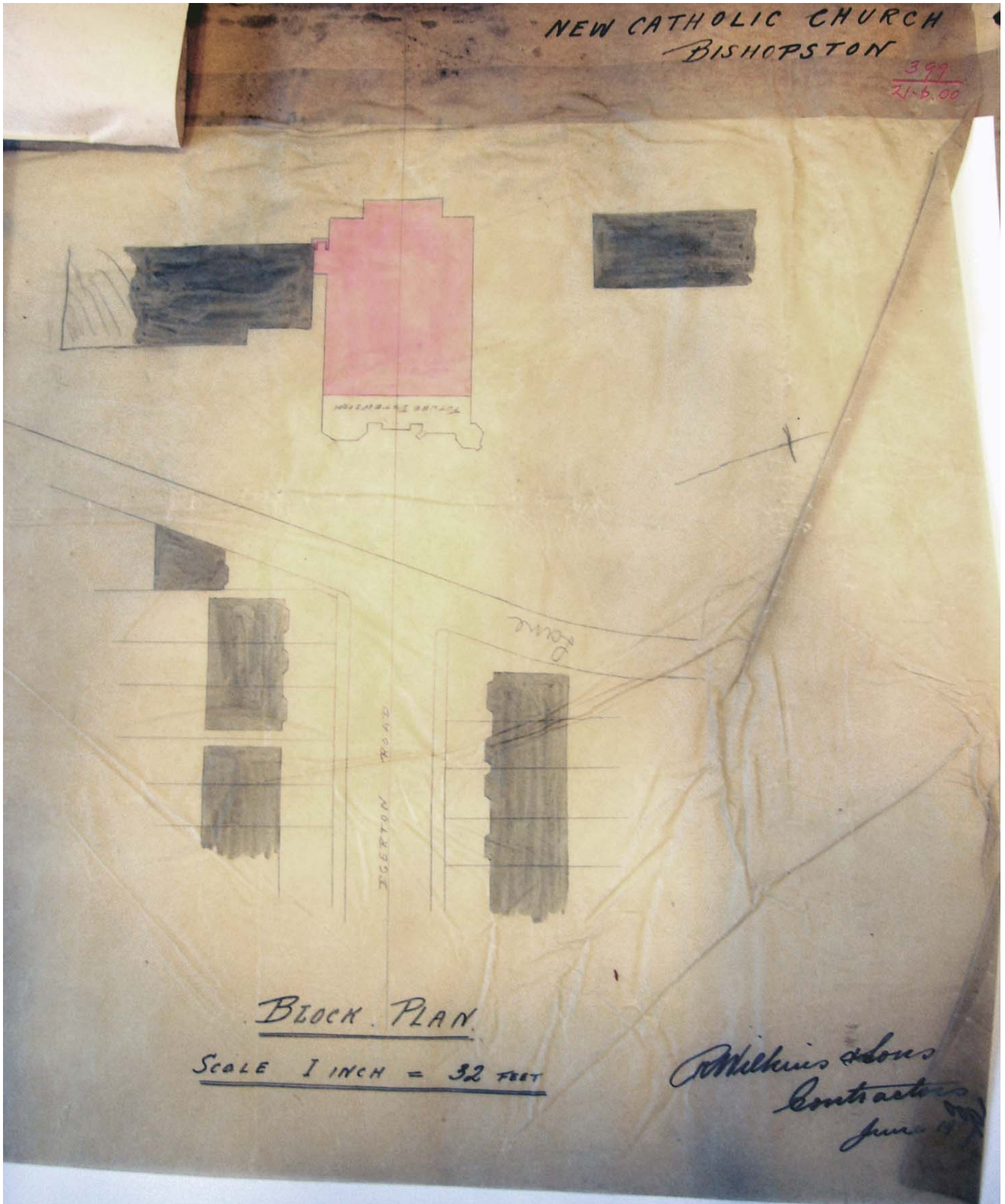
Excerpt from conveyance

“All that plot piece or parcel of building ground situate in the Berkeley Road in the Parish of Horfield in the County of Gloucester bounded on the north north west by the Road leading to Egerton Road”.



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202



Church Building Plan 1900

APPENDIX E.5(a)

PUBLIC RECORD OFFICE
Ref: 1R58/13177

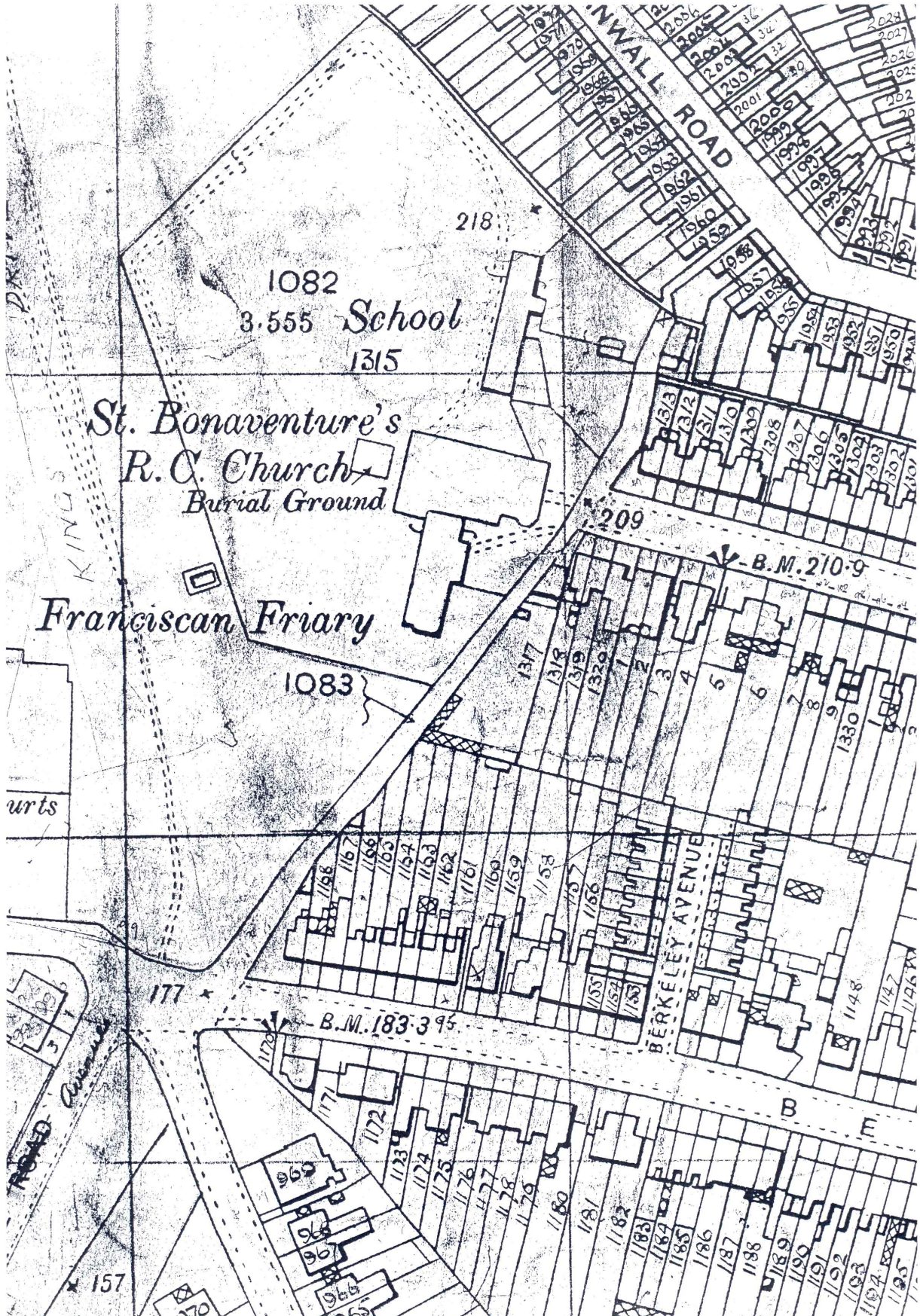
Reference No. *71.12.11.E* Map No. *B.H.O.*
 Situation *Great Gablehead*
 Description *Land*
 Extent
 Gross Value { Land £ *47* Buildings £ *47* Rateable Value { Land £ *47* Buildings £ *540*
 Gross Annual Value, Schedule A, £
 Occupier *Lawrence Slattery*
 Owner *Sane as 2718 B.H.*
 Interest of Owner *Freehold*
 Superior interests
 Subordinate interests
 Occupier's tenancy, Term *Agreement* from *25 March 1979*
 How determinable *Yearly*
 Actual (or Estimated) Rent, £ *40*
 Any other Consideration paid
 Outgoings—Land Tax, £ paid by
 Tithe, £ paid by
 Other Outgoings
 Who pays (a) Rates and Taxes (b) Insurance
 Who is liable for repairs
 Fixed Charges, Easements, Common Rights and Restrictions
 Former Sales, Dates
 Interest
 Consideration
 Subsequent Expenditure
 Owner's Estimate, Gross Value
 Full Site Value
 Total Value
 Assessable Site Value
 Site Value Deductions claimed *Yes*
 Roads and Sewers, Dates of Expenditure
 Amounts

Reference No. *212.C*
 Particulars, description, and notes made on inspection
Public Well. bounded by 2 foot paths.
807a acy = 130.12
 Charges, Easements and Restrictions affecting market value of Fee Simple
Lt. of 2.6.3 pa. = 400 p. val.
 Valuation.—Market Value of Fee Simple in possession of whole property
 in its present condition @ £250 per acy = £20750
 Add for foot paths 180
 15
 4713
 Deduct Market Value of Site under similar circumstances,
 but if divested of structures, timber, fruit trees, and
 other things growing on the land
 £ 4698
 Difference Balance, being portion of market value attribut-
 able to structures, timber, &c. £ 15
 Divided as follows:
 Buildings and Structures £
 Machinery £
 Timber £ 5
 Fruit Trees £
 Other things growing on land £
 Market Value of Fee Simple of Whole in its present condition
 (as before) £
 Add for Additional Value represented by any of the following
 for which any deduction may have been made when
 arriving at Market Value:—
 Charges (excluding Land Tax) £
 Restrictions £
 GROSS VALUE £ *4713*

PUBLIC RECORD OFFICE
Ref: 1R58/13177

Index letter	Description of Buildings	Dimensions			Cubical Contents	Condition	Remarks
		Frontage	Depth	Height			

Reference No. *4713*
 GROSS VALUE £ *4713*
 Less Value attributable to Structures, timber, &c. (as before) £ *15*
 FULL SITE VALUE £ *4698*
 Gross Value (as before) £ *4713*
 Less deductions in respect of—
 Fixed Charges, including—
 Fee Farm Rent, rent seek, quit rent, chief rents, rent of Assize £
 Any other perpetual rent or Annuity £
 Tithe or Tithe Rent Charge £ *60*
 Other Burden or Charge arising by operation of law or under any Act of Parliament £
 If Copyhold, Estimated Cost of Enfranchisement £
 Public Rights of Way or User £ *180*
 Rights of Common £
 Easements £
 Restrictions £
 TOTAL VALUE £ *4533* *4713*
 Less Value attributable to Structures, timber &c. (as before) £ *15*
 Value directly attributable to—
 Works executed £
 Capital Expenditure £
 Appropriation of Land £
 Redemption of Land Tax £
 Redemption of other Charges £
 Enfranchisement of Copyhold, if enfranchised £
 Release of Restrictions £
 Goodwill or personal element £
 Expense of Clearing Site £ *15*
 ASSESSABLE SITE VALUE £ *4518* *4698*
 If Agricultural land, the value for Agricultural purposes including—
 excluding Sporting Rights £ *1015* *905*
 Value of Sporting Rights £
 If Licensed Property, the annual license value £
 Liabilities to Undeveloped Land Duty as from
 For further reference as to Apportionments, &c., see



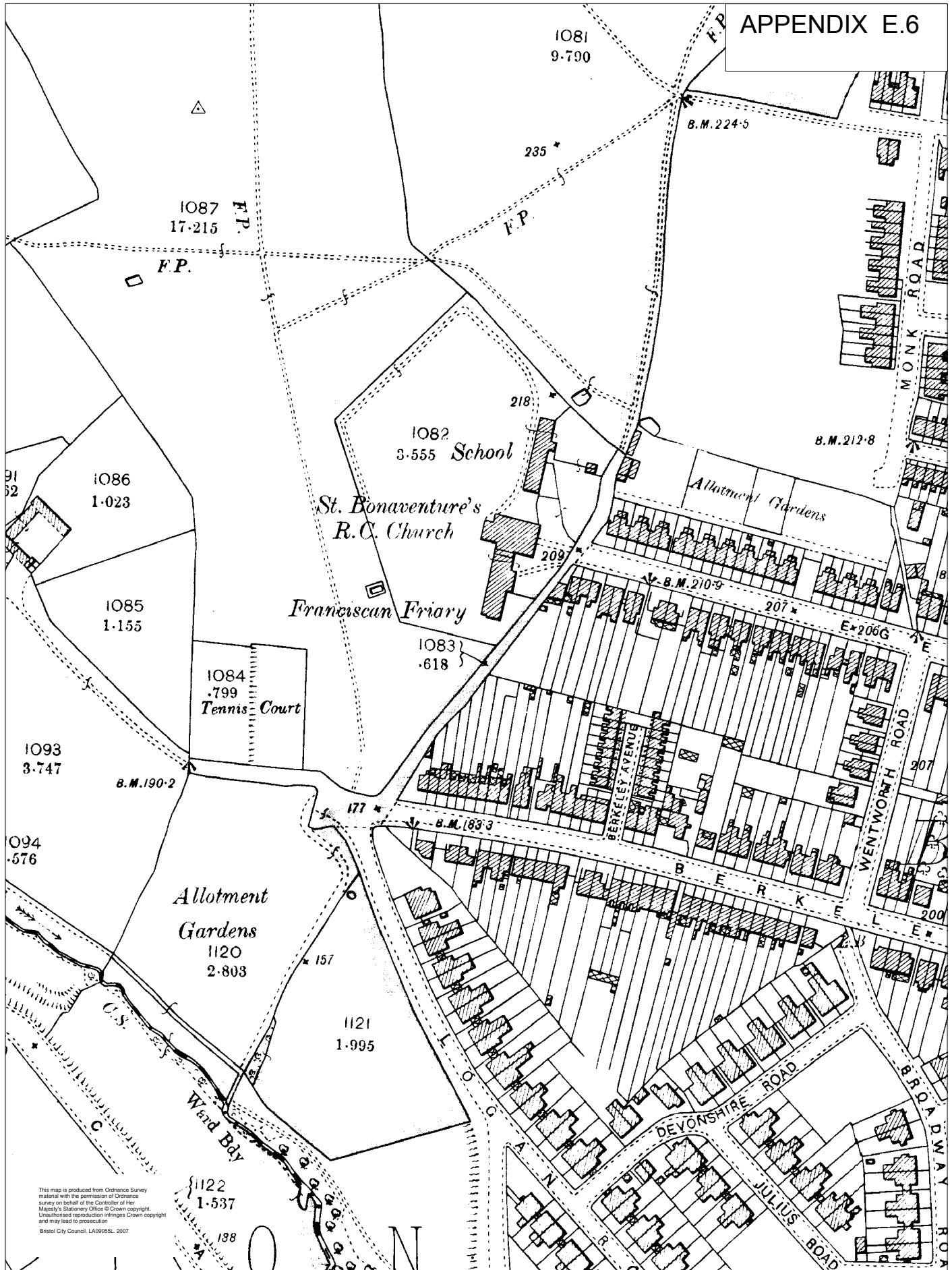
Map Extract from Finance act 1910

APPENDIX E.5(c)

No. of Assessment	No. of Plot Date	Christian Names and Surnames of Occupiers.	Christian Names and Surnames of Owners, with their Residences.	Description of Property— If an Inn, &c., the name or sign by which known.	Street, Place, Name and Precise Situation of Property.	No. of House	Estimated Extent.	Gross Annual Value.		Rateable Value.	References to Maps.	Extent as stated by Valuer.	
								£	s.			£	s.
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1161	1162	Ralph Edw. Henry	Horsington 2 Oakley Court Rd	House	75 Berkeley Road			19		16			
2	3	Green Cole J.	Self			97		19		16			
3	4	Rankin George H.	George Rankin 102 St. James's Road			99		19		16			
4	5	Burd George	Burd G.			101		19		16			
5	6	Beckham Geo. W.	Thomas J. J. 79 Somerville Road			103		17		14 10			
6	7	Prade Annie	Smith Edwin 15 Berkeley Rd. Oak Road			105		16		13 10			
7	8	Hunt Eliza	Thomas J. J. 79 Somerville Rd			107		18		15 10			
8	9	Humburg Alfred H.	Tolman H. K. 2 Rupert St.			109		17		14 10			
9	10	Tolman Rose				111		17		14 10			
1170	1	Clements Maud Ellen	Self			104		22		18 10			
	2		Lowe G. J. Stephen Street			102		22		18 10			
	3	Beckwith Andrew G.	Self			100		25		21			
	4	Harrison Samuel Henry	Kell F. 46 Oakfield Road			98		18		15 10			
	5		Redwell W. F. 5 Drummond Road			96		19		16			
	6	Wood Frederick	Ree Fred. K. 58 Belmont Rd.			94		18		15 10			
	7	Deviet George	Jones G. Mrs. 26 Woodfield Rd.			92		18		15 10			
	8	Badling Edwin				90		18		15 10			
	9	Frigger Walter				88		18		15 10			
	10	Hing Francis William				86		17		14 10			
1180	1	Tolman Saml. Jas	Tolman Saml. J.			84		19		16			

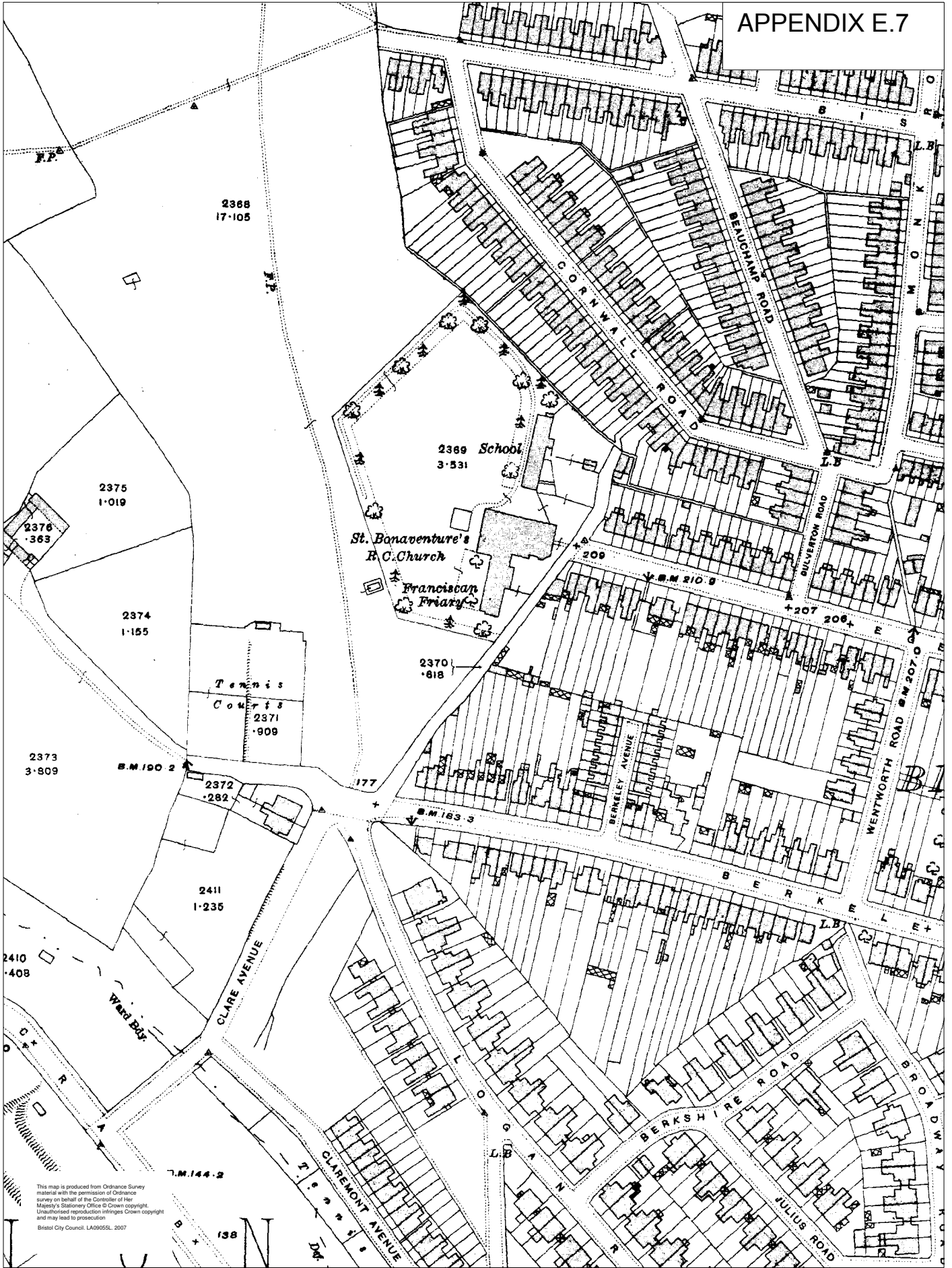
Commissioners of Inland Revenue, as amended on Appeal (if any).																																
Original Full Site Value.	Fixed Charges.					Deductions for								Original Total Value.	Deductions for			Original Assessable Site Value for Original Capital Value of Minerals).	Value of Agricultural Land for Agricultural purposes, where different from Assessable Site Value.													
	20	21	22	23	24	25	26	27	28	29	30	31	32		33	34	35			36	37	38	39									
£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£						
110																																
88	55																															
88	55																															
88	55																															
80	55																															
72	55																															
68	55																															
105																																
150																																
120																																
80																																
80																																
92																																
85																																
87																																
92																																
156																																

Finance Act 1910 - Valuation book - 111 Berkeley Road



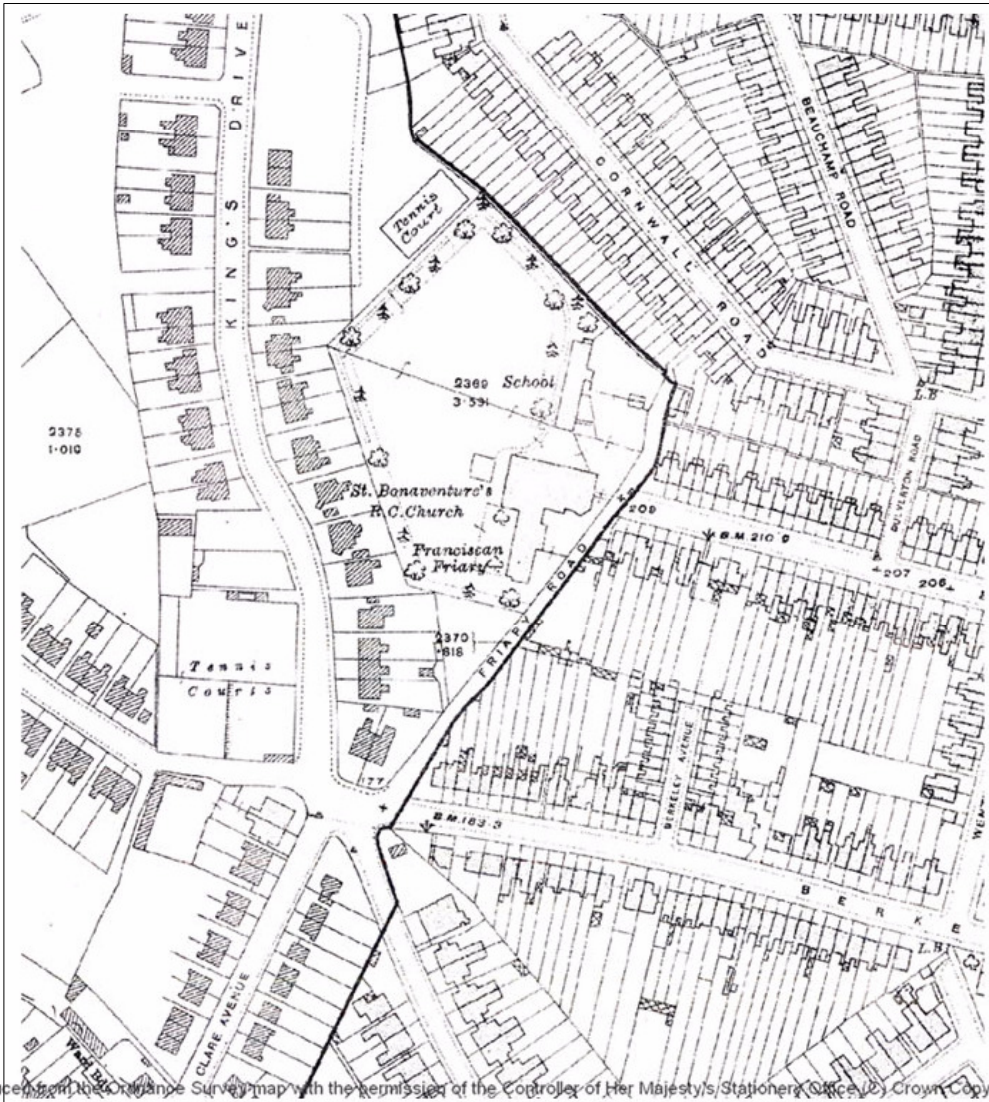
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O S County Series
Published 1931 revision





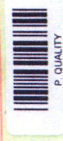
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 Published 1951

NORTH
 Scale 1:2500

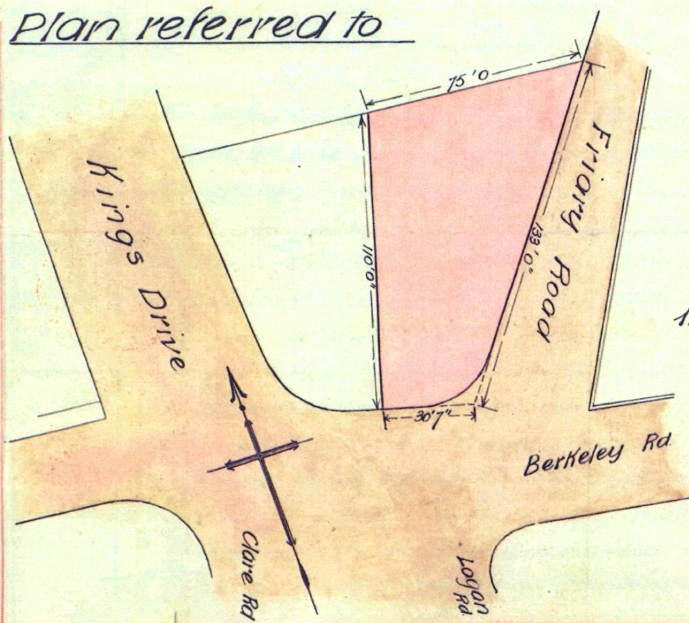


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This Conveyance made the *twenty second* day of *May* - One thousand and nine hundred and twenty nine ~~Between~~ *Harry Filer* formerly of 110 Lancashire Road Horfield in the City and County of Bristol and now of Kingway House Bishop Road Bishopston in the said City and County - *Bulder* and *Bertie Filer* formerly of the Wattle Bungalow - *Runswick Road* *Bristolington* in the said City and County and now of *Gablecroft* *Bishop Road* *Bishopston* aforesaid *Bulder* (hereinafter called "the Grantors") of the one part and *Albert Edward Chapman Bryant* of 110 Downend Road Horfield Bristol Company Director (hereinafter called "the Grantee") of the other part ~~Whereas~~ the Grantors are seized of the hereditaments hereinafter described in unincumbered fee simple in possession as joint tenants subject to certain covenants and conditions hereinafter referred to and by virtue of the Law of Property Act 1925 they hold the same on trust for sale ~~And whereas~~ the Grantors have agreed with the Grantee for the sale to him of the property hereinafter described in consideration of the sum of One thousand two hundred pounds and of the perpetual yearly rent charge of Ten pounds and ten shillings hereinafter limited and the covenants by the Grantee hereinafter contained ~~And~~ in pursuance of the said agreement and in consideration of the sum of One thousand two hundred pounds now paid to the Grantors by the Grantee (the receipt whereof the Grantors hereby acknowledge) and of the perpetual yearly rent charge hereinafter reserved to the Grantors and of the covenants by the Grantee hereinafter contained **this Deed witnesses** as follows

Plan referred to



1. The Grantors as Trustees for sale as aforesaid hereby convey unto the Grantee ~~all~~ ~~that~~ ~~piece~~ of land of irregular shape situated near a new road called Kings Drive on the Kingway Building Estate formerly part of Haselton

Conveyance 102 Kings Drive with plan
 Dated 22 May 1929

DATED 10th FEB 1928

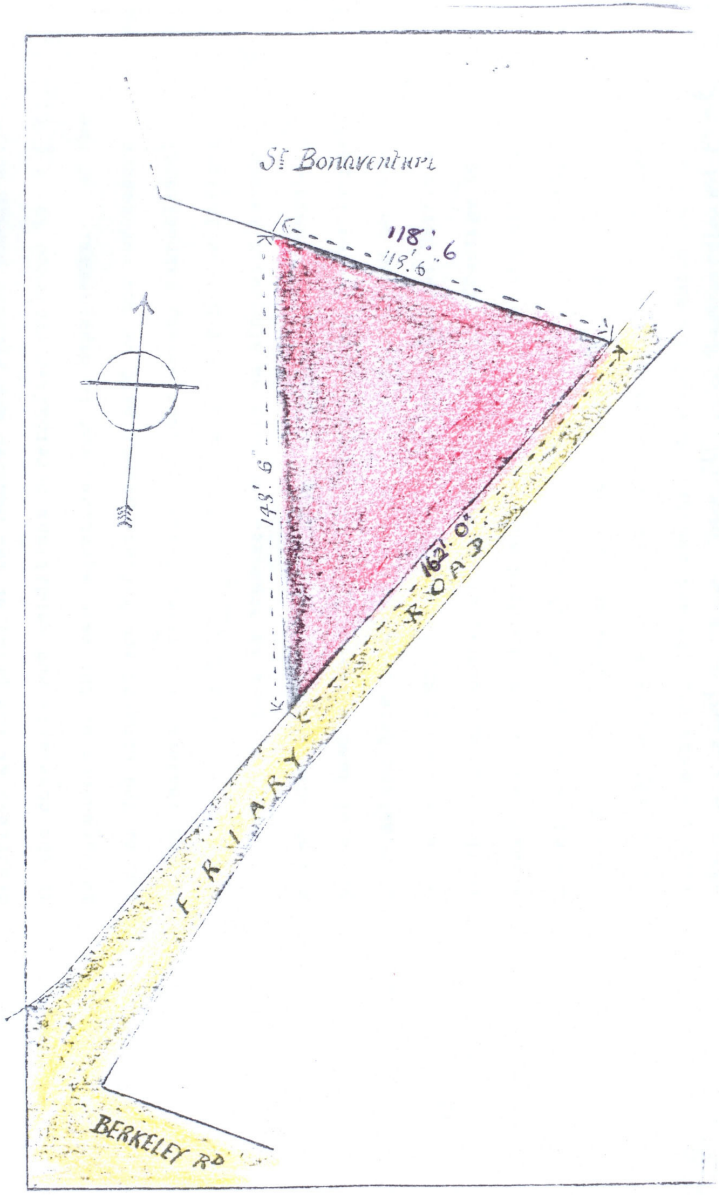
MESSRS. H. & B. FILER

- to -

THE REVEREND OSMUND PATRICK COONEY
and OTHERS

CONVEYANCE

of
a piece of land near Bishop Road
Bishopston, Bristol



1918 Conveyance naming Friary Road

JOHN C. GILMORE,
Solicitor,
AND AT SALTFORD

ALBION CHAMBERS,
BRISTOL.

10 June 1890

Dear Sir

The lane originally formed part of the Common & the Shadwell Trustees do not claim it. It has been [semi] public property for some time & it would appear to be a great pity that the Horfield Board do not take it into their hands.

Yours faithfully
Mr. C. Gilmore

Rev. Mr. Thaddeus
120 Egerton Road
Bishopston

Transcription

To: John Gilmore, Albion Chambers, Bristol

10 June 1890

Dear Sir

The lane originally formed part of the common and the Shadwell Trustees do not claim it. It has been [semi] public property for some time and it would appear to be a great pity that the Horfield Board [do] not take it into their hands

Yours faithfully

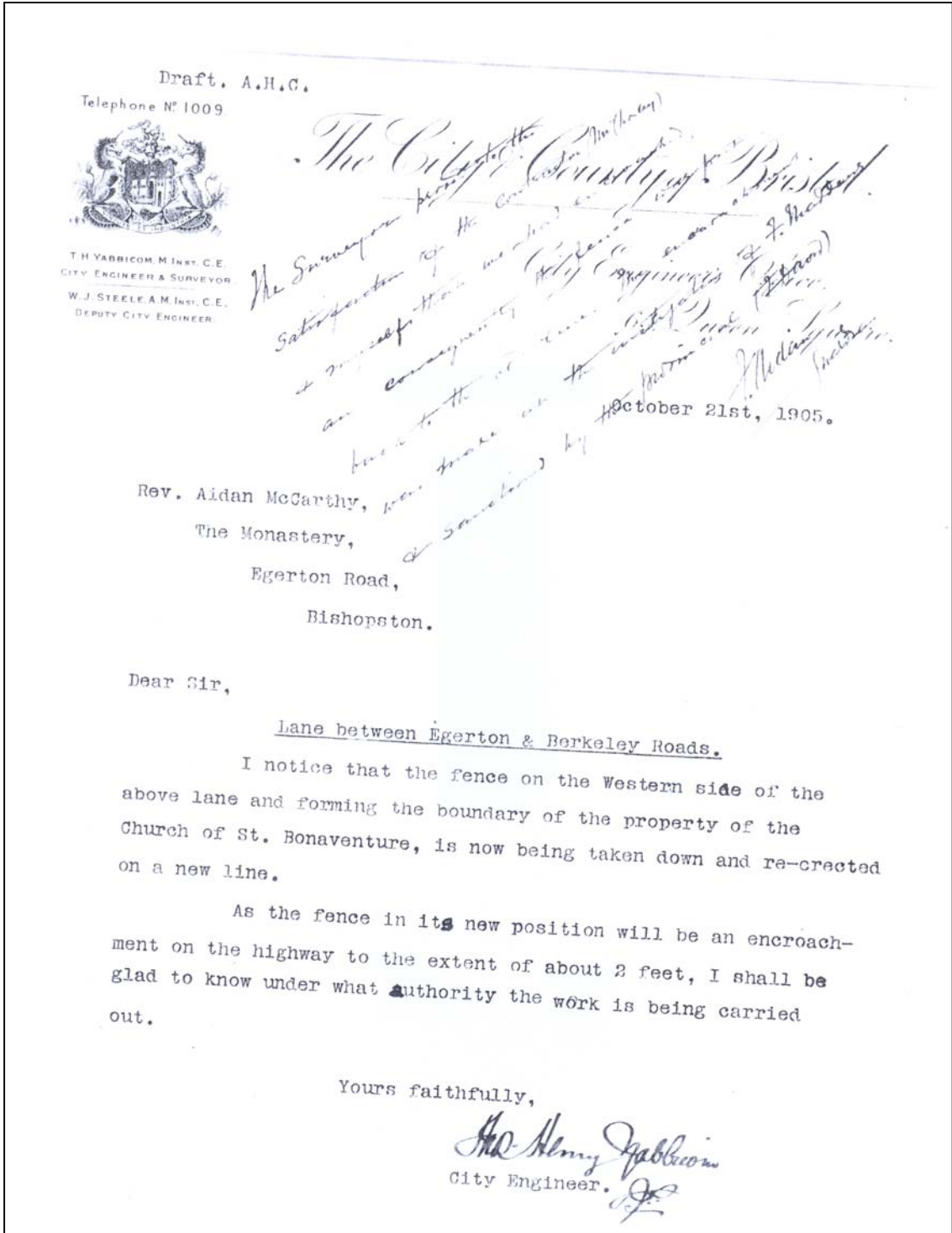
Mr C Gilmore

Rev Thaddeus

120 Egerton Road

Bishopston

Letter from Mr Gilmore to Rev Thaddeus



TRANSCRIPT

The surveyor proved to the satisfaction of the contractor (Mr Thornley) and myself that we had encroached and consequently the fence was put back to the old line. The encroachment was made on the instigation of F Matthews and sanctioned by the of F David

Signed F Aidan

.....

F = father ?

E/24

23 JAN 1962

FRIARY ROAD, BISHOPSTON.

A letter has been received from the Rev. Bernard Staunton of The Friary, Bishopston, with regard to Friary Road.

Friary Road is virtually a secondary access road with a total frontage on both sides of 955 ft. of which 380 ft. is occupied by the Roman Catholic Church of St. Bonaventure and the remainder of the frontage with the exception of access to one set of garages, consists either of side frontages or rear access to premises in Egerton Road, Berkeley Road and King's Drive.

The position of this road, however, in relation to the surrounding street makes it well used by both vehicular and pedestrian traffic and the Rev. Staunton points out that there is a history of complaints from residents and users because of the bad surface and lack of lighting and he feels that the road is a blemish on an otherwise well kept district. The Rev. Staunton has, therefore, asked if the Planning and Public Works Committee would be prepared to make a contribution towards the cost of making up the road.

Before your Committee would be empowered to make such a contribution it would be necessary for the road to be made up to a standard for formal adoption as a highway maintainable at public expense and your Engineer considers that a carriage way of 17 ft. and a single footpath of 4'6" would be necessary, which would entail widening adjacent to the frontage of St. Bonaventure Church and the total cost of the works is estimated at £2,190.

For the information of your Committee it is estimated that if ever notices to make up the street were served under the Highways Act 1959, your Committee would contribute £1169 towards the total cost. This consists of £371, being the cost of making up the street adjacent to the Church premises for which, under the Act, the Church authorities are exempt, and £298 being the contribution which your Committee normally would make towards the side frontages. It is also pointed out that the Church authorities would receive the sum of £60 in payment for the land required for the widening.

Planning File

Copy file note on request to surface Friary Road Dated 23 January 1962

-2-

Your Committee are therefore required to consider what contribution, if any, it would make towards the cost of making up the street with a view to adoption if the Church authorities would come to some arrangement with the other frontages.

If your Committee were not prepared to make any contribution and it was decided not to proceed with the work, no doubt your Committee would be prepared to maintain public lighting if it was put in at the expense of the Church authorities and the other frontages, the estimated cost of which is £250.

RELEVANT EVIDENCE FORMS FROM 1989 CLAIM

NAME	ADDRESS1	ADDRESS 2	ADDRESS 3	DATES	NUMBER OF YEARS	FOR WHAT PURPOSE	NUMBER OF EVIDENCE FORM
Mrs Beckley	61 Cornwall Road	Bishopston	BS7 8LJ	1961 - 1987	26	Zetland Road Buses	9
Mr Beckley	61 Cornwall Road	Bishopston	BS7 8LJ	1961 - 1988	26	Zetland Road, Kings Drive, Buses	16
Mrs S Norris	29 Cornwall Road	Bishopston	BS7 8LJ	1945 - 1987	42	Buses	5
Mr S Norris	29 Cornwall Road	Bishopston	BS7 8LJ	1944 - 1988	43	Buses	6
Mrs M O'Sullivan	30 Cornwall Road		BS7 8LH	1985 - 1987	2	Buses, Friends, Church Hall	17
Mrs M Phelps	96 Downend Road	Bishopston	BS7 9PN	1950 - 1987	37	Buses, Kings Drive	7
Mrs M Scadding	32 Cornwall Road	Bishopston	BS7 8LH	1970 - 1987	17	Church Hall, Bus Stop, Friends	4

FRIARY ROAD – RECENT PLANNING HISTORY

Planning Application Nos. 3209H/85N & 99/01984/H

Permission dated 13.1.86 (3209H/85N) for a two-storey rear extension to 111 Berkeley Road (applicant – C. Grima) and permission (99/01984/H) for a two-storey side extension granted on 02.08.1999 (applicant – Christine Blackwell). Approved Plans for the latter development: Dwg. 304/PO1 shows the NW corner of the proposed extension a minimum of 1m from the existing boundary wall; and Dwg. 304/PO6 shows the grass verge abutting the boundary wall (see Plans at Appendix F.1 and F.2). Planning Advice A4(a) specifies that alterations or amendments to the approved plans may require a fresh planning application (held with background papers to this report).

Photographs taken by the planning officer on 30.06.99 show the grass verges either side of Friary Road and the Church car park separated from the lane by white posts/fencing. The verge abutting No. 111 Berkeley Road is gently sloping and there are four semi-mature trees abutting the boundary wall [see Appendix F.3].

During development work in 2000, the boundary wall of No. 111 Berkeley Road was removed and the verge enclosed into the garden of the property. On 3 May 2001 Christine Blackwell wrote a letter to the Council's Tree Preservation Officer to request that the remaining three trees on the grass verge be protected and enclosed two photographs, one showing the verge before the trees were planted and one showing the wall built in the previous year to enclose the verge [see photographs and letter at Appendix F.4(a)]. The annexing of the verge triggered a petition, which was presented to the Council on 5 October 2000. A modification order application for Friary Road had not yet been lodged at this date and consequently the petition was forwarded to the Planning Enforcement Team who decided that no planning enforcement action could be taken. A further petition was submitted in March 2003 by Mr Hickey and Mrs O'Farrell, requesting that the Planning Authority take enforcement action against the enclosure of the land. However, the Authority did not consider it expedient to take action in respect of the dispute, pending consideration of the modification order application now lodged by Mr Shearman. Letters dated 20.03.2003 from the Head of Planning Services and dated 23.05.2003 from the Head of Legal Services explaining this decision are held with the background papers to this report.

Planning Application No. 05/03338/H/N

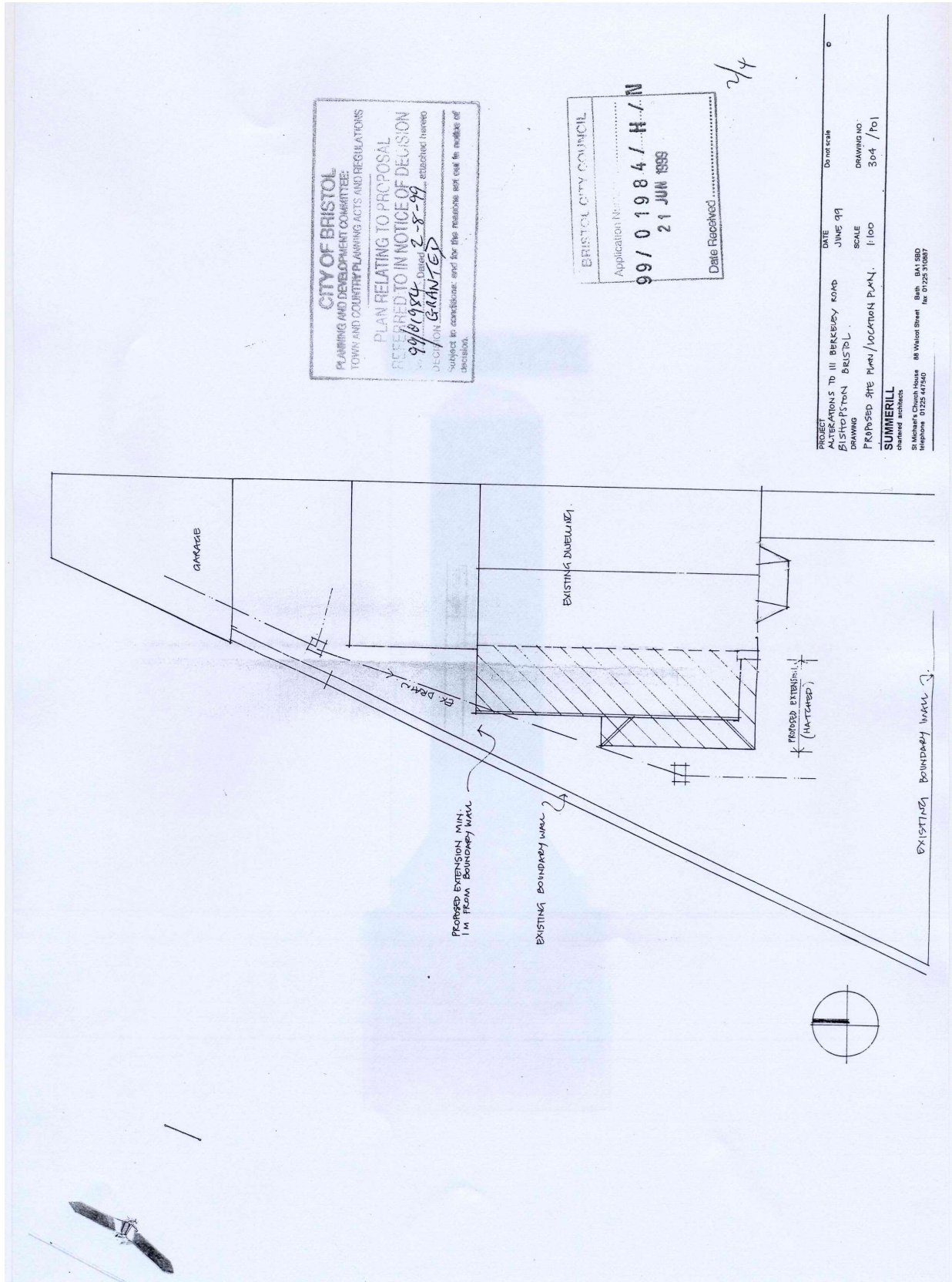
In November 2005 a further planning application was submitted in respect of 111 Berkeley Road (05/03338/H/N) for a new side fence/wall to the property [but not on the original boundary line], and to rebuild the front wall on the boundary with Berkeley Road (applicant – Christine Blackwell). The proposal triggered a 150-signature petition of objection to the Council's Planning Department in June 2006 lodged by Mr J Hickey, stating that the petitioners "*object to the erection of a wall on Friary Road, extending the garden of 111 Berkeley Road, Bishopston, which encroaches on land on which we, as parents of St Bonaventures school, or*

parishioners of the church, walked our children to and from the school". An additional objection was lodged with the planning authority by Mrs O'Farrell on 26 June 2006, stating that the applicant was *"endeavouring to rebuild in a different position and is seeking to alter the use of the land. She is seeking to enclose an area of land that prior to July 2000 was available for use and was used by the public."* In Mrs O'Farrell's view, the proposed development would not be permitted under Schedule 2 Part 2, Class A of the Town & Country Planning (General Permitted Development) Order 1995 as the height of the wall to be erected adjacent to a highway used by vehicular traffic would exceed one metre above ground level. (The afore-mentioned petition and objection are included with background papers to this report.)

As the planning officer was minded to refuse the planning application, legal advice was sought on whether it would be proper to refuse it on the basis that the wall is proposed to be sited on land which is claimed to be part of the public highway. Counsel's opinion dated 20 January 2006 (see Appendix G) states that the modification order application *"may be a material consideration"* and that *"the PROW evidence forms appear to show that there is a proper case for asserting that the land in dispute is part of the public highway."* Furthermore, that *"if the OS and/or Finance Act maps show that the land in question was properly part of the highway at the beginning of the 20th century it will mean that the assertion in the statutory declaration of Christina Blackwell supporting the Caution shown on title no. BL67295 is ineffective."* Also, that *"it could be said therefore that there was a rebuttable presumption that the land outside the boundary wall was land dedicated to the public as a highway and accepted by the public as such (Hale v. Norfolk CC [2001])"*. Counsel concluded that the proper course when determining the planning application would be to take into account the principles set out in his advice and, should planning permission be given, that an 'Informative' be attached to the notice of decision to point out that the decision *"confers permission only under the Town and Country Planning Acts, that there is evidence that the site is part of the highway and in that event the applicant proceeds with the development at her own risk."* (See paragraphs 4, 5(3), 6 and 10 of Counsel's opinion at Appendix G). (N.B. Results of Land Registry searches are held with the background papers to this report.)

Planning Application No. 07/02469/F

A recent planning application for the proposed demolition of the former workshop on Friary Road (rear of 119 Egerton Road) and construction of a 3-bed house and garage (07/02469/F) shows a build-out on the plans, which is intended as a threshold for the dwelling to discourage parking immediately outside of the property. If approved this will effectively narrow Friary Road at this point, as it is not intended as a footway although private vehicular access to the adjoining properties 21 and 23 Cornwall Road should not be affected. (The plans are held as background papers to this report.)



CITY OF BRISTOL
 PLANNING AND DEVELOPMENT COMMITTEE:
 TOWN AND COUNTRY PLANNING ACTS AND REGULATIONS

PLAN RELATING TO PROPOSAL
 RECEIVED TO IN NOTICE OF DECISION
 99/01984 Dated 2-8-99 attached hereto
 DECISION GRANTED

Subject to conditions, and for the reasons set out in notice of decision.

BRISTOL CITY COUNCIL

Application No: 99/01984/H/W
 21 JUN 1999

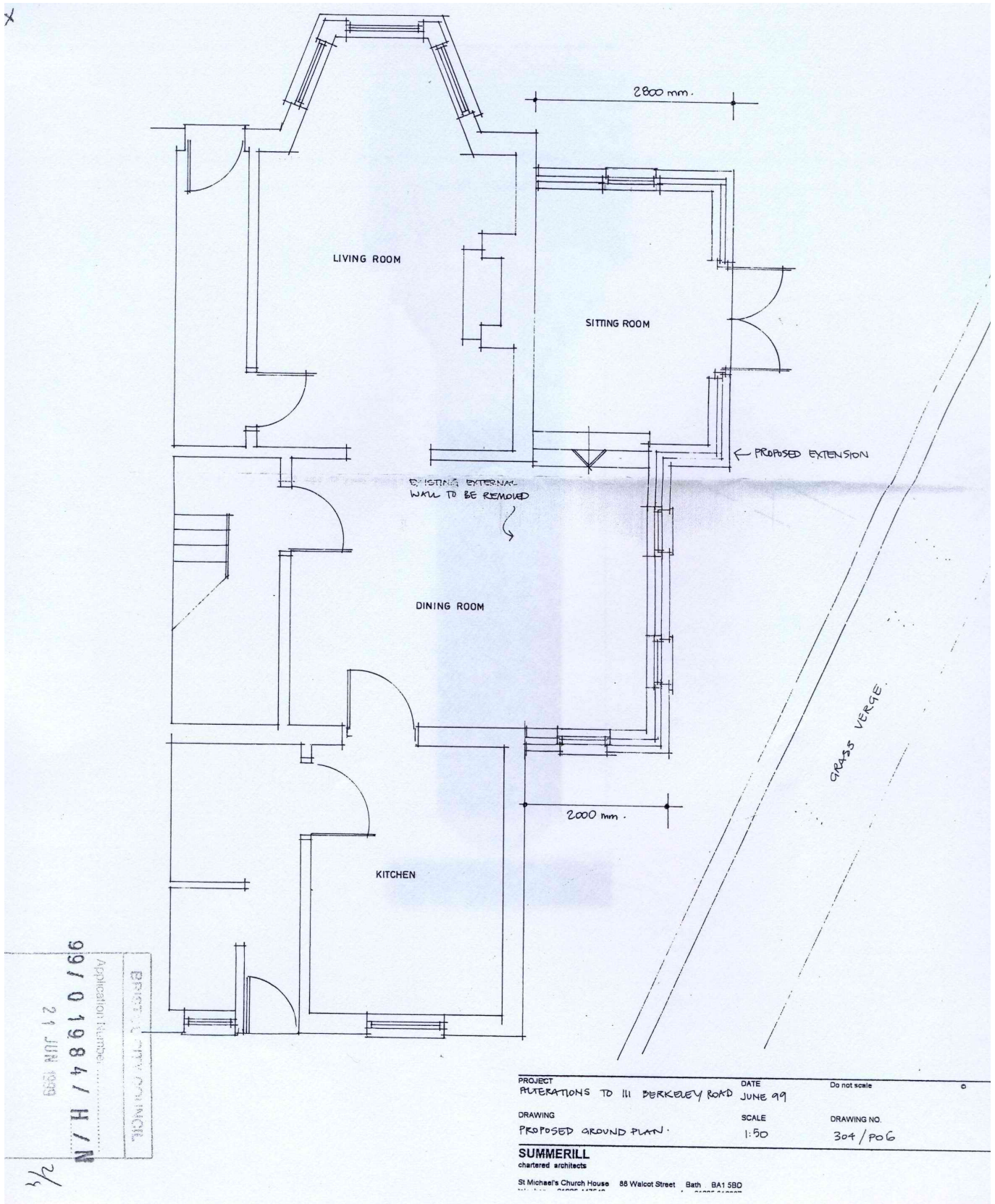
Date Received: 2/4

PROJECT: ALTERATIONS TO 111 BERKELEY ROAD BISHOPSTON BRISTOL
 DRAWING: PROPOSED SITE PLAN/LOCATION PLAN. 1:100
 DRAWING NO: 304/P01

DATE: JUNE 99
 SCALE: 1:100

SUMMERILL
 ARCHITECTS
 25 Wick Street, Bristol, BA1 1SD
 Telephone: 01252 617490
 Fax: 01252 310871

Planning Application 99/01984/H Drawing 304/P01
 111 Berkeley Road



Planning Application 99/01984/H Drawing 304/P06
 111 Berkeley Road



Planning photographs dated 30 June 1999, (Planning Application 99/01984/H

4 - Amanda 2st side extension approved Aug'99 (95/0154/H) - L.C.J.
 Check with Clary. 'closed' Enforcement case 00/30373/wmc
 re suitability of Trees (Jon Bishop) - about the wall and this land.
 for a TPO. Controversy has gone on for some time.

4 Mount Pleasant
 FAIRFORD
 Glos
 GL7 4BA

phone 01285 712019
 mobile 07974 388718
 e-mail blackwell@messages.co.uk

3 May 2001

Tree Preservation Officer
 Bristol City Council
 Brunel House
 BRISTOL

Dear Sir/Madam

Trees on verge in Friary Road adjoining 111 Berkeley Road, Bishopston

A number of years ago, I planted 4 trees on this verge. One of them, a eucalyptus, I was obliged to cut down because it was causing damage to the foundations of my house. The remaining 3, a rowan, a prunus and a silver birch, remain.

I am in the process of extending my house and so that the remaining trees will not cause damage to the new building, the foundations have been constructed to a high specification.

However, I now understand that these trees are under threat from the Catholic Church who want, I believe, to cut them down and put a footpath. They have, in my opinion, no legal right to do this but this does not apparently concern them.

I am most concerned that these trees are not interfered with and the only way I can see that will be possible, is if you can put a preservation order on them.


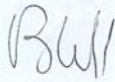
They are not of specific interest individually, but they enhance the aspect along the edge of Friary Road quite considerably and shield the side of my house.

I feel that the felling of these trees will sadly give the area around this end of Berkeley Road a very stark and barren look.

I enclose copies of two photographs, one taken before the trees were planted and one taken last summer.

I would be very grateful if you could give consideration to my request.

Yours sincerely

Christine Blackwell

Environment Transport
 & Leisure
 93362
 - 3 MAY 2001
 Please respond within 15
 working days
 Referred to: ... BCC

Letter dated 3 May 2001
 Enclosed 2 photographs



Mrs Blackwell supplied photograph showing grass verge before trees were planted



Mrs Blackwell supplied photograph showing new wall surrounding verge, summer 2000

Parents say youngsters must walk in road



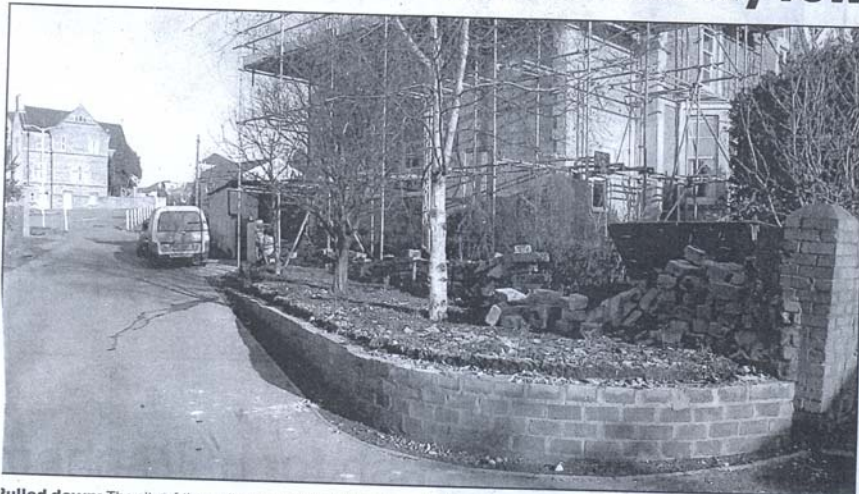
Going up: The wall being built over the verge on the approach road to St Bonaventure's Primary School

Under construction Evening Post 4 October 2000



Finished Wall

Parents demolish wall after safety row



Pulled down: The site of the wall in Bishopston which parents claimed prevented pupils from walking to school safely

Evening Post January 2001

BRISTOL CITY COUNCIL

re

Land at Friary Road, Bishopston, Bristol**OPINION**

1. I am asked to advise the Council in circumstances where both the Rights of Way Team and the Planning Services Team are involved in applications for a Modification Order under the Wildlife and Countryside Act 1981 relating to the highway in Friary Road and a planning application to erect a new side fence and wall at 111, Berkeley Road. As I read the plans, the side fence or wall will be in Friary Road as of course 111, Berkeley Road is a corner plot.
2. The issue is whether it would be proper to refuse the planning application on the basis that the wall is proposed to be sited on land which is claimed to be part of the public highway, in this instance the footway or what is thought to be part of the historic footway. The owner's contention (as I understand it) is that the area of land is properly part of the garden of 111, Berkeley Road.
3. I am slightly surprised (without implying any criticism) that it has not been possible to resolve the issue. I know the area, although I do not live anywhere near there, and it strikes me that Friary Road has been part of the street scene since, I would guess, the late 19th century. In those circumstances it must have featured on the OS maps from then and will have featured on the Finance Act 1909-1910 maps drawn for the purposes of land tax assessment. I mention this because of the OS practice of showing boundary features and the practice of owners when dealing with

Counsel's Opinion

land tax assessments of showing the minimum areas of property and also being willing to show public rights of way over their land to reduce tax liability. Granted that this last approach is more applicable to rural estates than urban areas, the maps under the Act tended to be very accurately drawn and could be of assistance here. They will be in the Public Record Office at Kew and some are still available in County or City record offices.

4. I have in mind the well known dictum 'once a highway, always a highway' and the duty of the Council under section 130 Highways Act 1980 to assert and protect the rights of the public to any land that is part of a highway. If the OS and/or Finance Act maps show that the land in question was properly part of the highway at the beginning of the 20th century it will mean that the assertion in the statutory declaration of Christina Blackwell supporting the Caution shown on title no. BL67295 is ineffective. The assertion is that in 1985 she built a one brick high wall between the tarmac and the verge thus asserting that the verge was part of her property. That seems to me to be the earliest proper assertion of ownership that could be relied on. But it post-dates, on my hypothesis, the date when the area became part of the highway.

5. The analysis could be:

(1) examination of the OS/Finance Act maps shows that, when they are scaled and related to measurements on the ground, the only proper conclusion is that the verge was then part of the highway.

(2) I say that because the Conveyance of 11th May 1872 on title BL40035 contained a covenant to erect back and side

boundary walls of nine inch brickwork. One would expect the OS to have shown this feature – if erected – on their maps.

(3) The wall abutting Friary Road would have been a wall erected against the highway and, in part, to prevent trespass by the public. It could be said therefore that there was a rebuttable presumption that the land outside the boundary wall was land dedicated to the public as a highway and accepted by the public as such (see *Hale v. Norfolk CC* [2001] Ch. 717).

(4) Thus measurements in this way could be conclusive. But of course all this may fall down because the OS and other maps do not show boundary features from which measurements can be scaled or there may be other difficulties. In that event, I accept that – unless later OS maps show boundary features from which the same conclusions can be drawn - we are thrown back on the assertion of those producing the PROW evidence forms.

(5) All I will say about these (because I have not spent time analysing them in any detail) is that they seem to me to show a proper case for asserting that the disputed land is part of the highway.

6. The planning application must of course be dealt with under the Town and Country Planning Acts (as amended) and in accordance with the Development Plan and any material regional and national planning guidance and taking into account any other material considerations. Planning applications must normally be dealt with in a period of 8 weeks. My Instructing Solicitor correctly observes that the existence of an application under the Wildlife and Countryside Act may be a material consideration but also, I agree,

the weight that can be attached to the application may be limited. I do not agree however that no weight can be given to the application and the evidence. As I have pointed out the PROW evidence forms appear to show that there is a proper case for asserting that the land in dispute is part of the public highway.

7. National policy in PPG13 asserts, as one of its objectives, giving priority to access on foot and seeks to plan more road space for pedestrians (see para. 6). To the extent that this application may diminish such access, e.g. by forcing pedestrians into contact with cars, that objective is not assisted. But I agree that it is material that there is no need for a footpath shown in any Rights of Way Improvement Plan. On the other hand, I do not know if there are any Local Plan policies which may assist in support of PPG13.

8. But the weight of these matters is for the Committee or the officers who make the decision. I would not be very surprised if they did not attach a great deal of weight to these considerations. That is because another principle of planning policy comes into play. This indicates that planning policies should not cut across matters within the scope of other legislative requirements (see, e.g., PPS1 para. 31) and hence to leave the issues raised here to be dealt with under the Highways Act or the Wildlife and Countryside Act would be a perfectly proper approach.

9. I agree also that unless either the existence of the footpath is, or there is strong evidence that it will be¹, determined in a way that shows there is a highway on the site there is no basis for putting a Grampian condition on the planning permission requiring the stopping up or diversion of the highway before development is

¹ Hence my comment about the historic evidence above which might be determinative of the issue before any PROW Inquiry.

commenced.

10. My view is that the proper course, in the circumstances of this case, is for the Committee to determine the application taking into account the principles I have set out above. If they did grant permission however, it would be open to them, either in the reasons for granting permission or in an 'Informative' attached to the notice of decision, to point out that their decision confers permission only under the Town and Country Planning Acts, that there is evidence that the site is part of the highway and in that event the applicant proceeds with the development at her own risk

11. My answer to the question whether the Committee can justify attaching a planning condition or seeking a planning obligation requiring the provision of a footpath is that they are unlikely to be able to do so and that, secondly, they should proceed (if they grant permission) in the way I have indicated above.

12. If my Instructing Solicitor has any queries she should not hesitate to contact me whether by telephone or otherwise.

PETER WADSLEY

St. John's Chambers,
Small Street,
Bristol BS1 1DW

20th January 2006

SUMMARY OF HISTORICAL AND DOCUMENTARY EVIDENCE OF MRS BLACKWELL

1 Letter dated 14 January 2006

- (a) When the Friars lived at the Presbytery, they used to close the lane once a year but that this ceased sometime in the 1940s or 50s;
- (b) 1843 Tythe Map clearly showing lane;
- (c) 1872 building plan showing lane, then known as Davy's Lane "*presumably because it joined two pieces of land owned by David Davis*" [see Appendix H.1(a) with reference to the Tithe Map at Appendix E1];
- (d) 1904 map showing lane;
- (e) In 1979, when Mrs Blackwell moved to No. 111 Berkeley Road, the lane was 'very rough' and potholed and vehicles drove from Berkeley Road to the Club car park or to Egerton Road and some cars drove at excessive speed;
- (f) A 15-signature petition of complaint from residents dated 28 October 1981 about the use of Friary Road by vehicles between Egerton Road and Berkeley Road, requesting that the lane be closed or restricted via a Traffic Regulation Order as it was "*distressing and dangerous for pedestrians, including school children, as there is no pavement*". Also that "*there are several garages along the lane which open directly onto it making it most unsuitable as a thoroughfare*". The petition was considered by the Planning, Highways and Transport Committee at its meeting on 22 March 1983 who rejected the request. The Committee report refers to Friary Road as "*an unadopted street 150m long connecting the end of Egerton Road with Berkeley Road near its junction with Kings Drive. It serves a parish hall car park, a number of private garages and is used by children going to and from St Bonaventures Junior School*". Also as Friary Road: "*is neither a major traffic route nor a bus route nor is there a problem of serious congestion ... it is not considered that a Traffic Regulation Order can be justified at the present time in relation to other priorities*" [see Appendix H.1(b)].
- (g) In 1987, as stated by Mrs Blackwell: "*the Church tarmacked two sections of the lane and erected a bollard in the lane to prevent vehicular access from Berkeley Road to Egerton Roads. This was done quite illegally but none of those with access on the lane objected. Someone tried to remove the bollard but it was repaired and no further action was taken and the City Council subsequently erected No through road signs in Egerton Road which confirmed the closure.*"
- (h) Mrs Blackwell provided a copy of a Liberal Alliance newsletter dated April 1986, which pointed out, that "*the lane is private land (not an adopted road) with several owners including the Church*". Also that "*the Church's solicitors advised that the lane was a right of way for pedestrians but not for vehicles. This enabled the concrete bollards to be installed to prevent the lane being used as a 'rat run'.*" The newsletter went on to explain that Paul Nagle, a member of the 'Focus' team, had written to the City Engineer for a 'cul-de-sac' sign on Egerton Road. In Mrs Blackwell's opinion, Paul Nagle "*was not correct in saying that the right of way was for pedestrians only as I am sure there was a vehicular right of way at that time*".
- (i) In 2000 at the time that Mrs Blackwell enclosed the bank, she "*sought to enclose the land under the law of adverse possession*". This triggered a

dispute with the Catholic Church. From her research and from Land Registry information, she believes that *“the lane itself may be part of my property”*.

- (j) In 2002 the Church *“constructed a footpath on the opposite side of the lane to my property”* [see plan provided by Mrs Blackwell showing the path and changes to property boundaries at Appendix H.1(c)].

2 Landowner Evidence Form & enclosures of 9 March 2007

Further correspondence was received from Mrs Blackwell, which included a completed landowner evidence form dated 9 March 2007, an annotated map and other enclosures including copy correspondence, plans and photographs (held with the background papers to this report). Mrs Blackwell raised the following points in addition to those referred to in paragraph 38 of this Report:

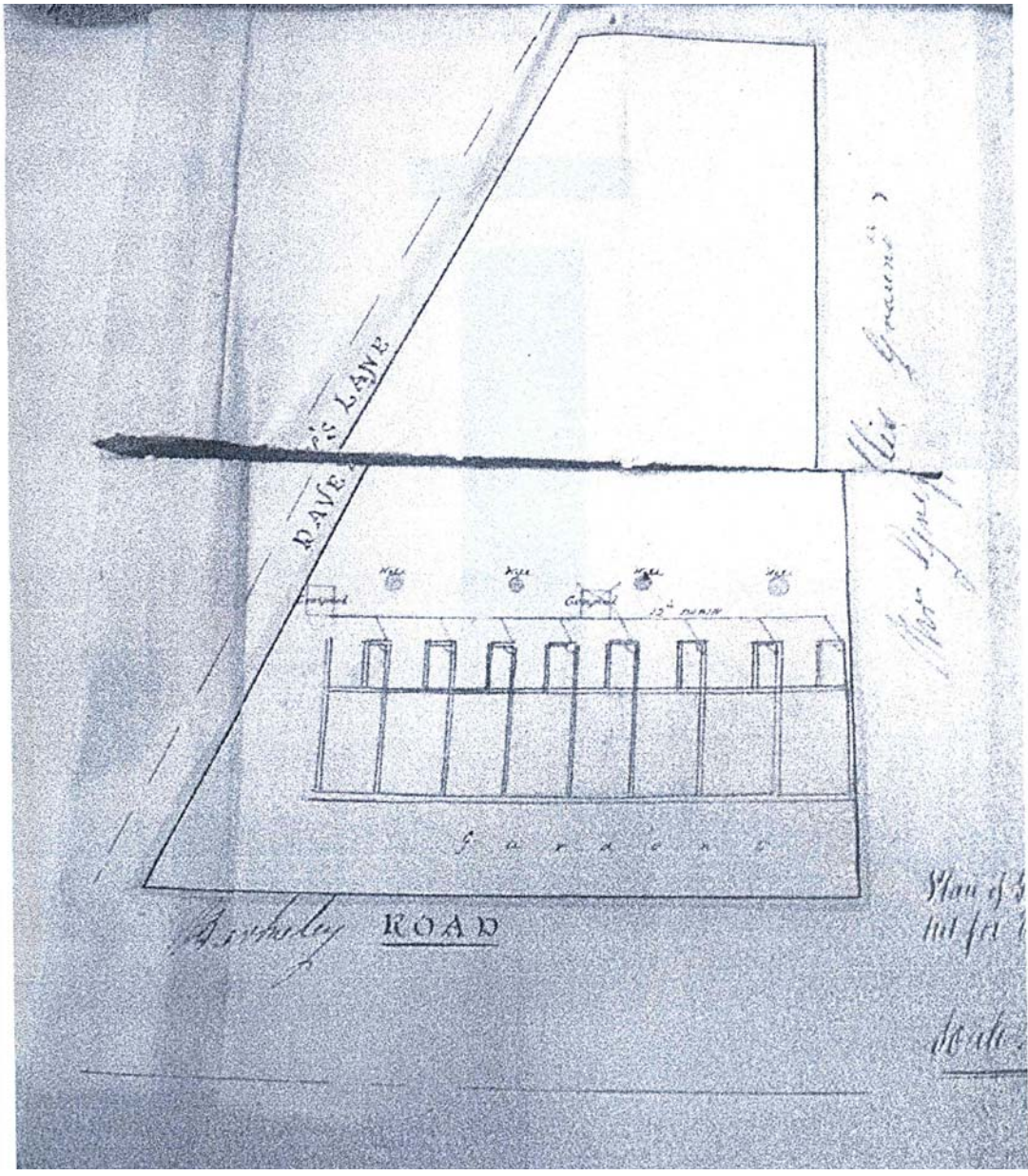
- (a) The claimed route including the bank adjoins her property;
- (b) 111 Berkeley Road has been in her ownership since September 1979;
- (c) She believes that the claimed way is public and has had the status of a private road for 25 years, that members of the public use it daily and she has never required people to ask permission to use it or prevented people from using it;
- (d) She has not obstructed the way;
- (e) As far as she understands, there is no vehicular access to St Bonaventures Primary School *“although since 1986 parents have been encouraged to use the car park to drop off their children there”*;
- (f) The tarmacked footpath on the west side of the lane was built in 2003. *“Previously the area was covered with rubbish and grass and shrubs but was level with the lane. The pavement in front of 102 Kings Drive curved into Friary Road and now continues as part of the pathway. The owners of 102 Kings Drive gave up a slither of their garden to make it wider at the top end nearest their garage.”*
- (g) In 1979 the bank adjoining her property *“was very rough and stoney with brambles and much rubbish. Gradually over the years I cultivated the bank as if it was part of my garden. In approx. 1982, I planted four trees. For a number of years, I also had shrubs and perennial flowers planted there. One of trees was removed in 1999 because it caused damage to my house walls, but the other 3 remain.”*
- (h) Mrs. Blackwell states that *“the bank was approx 2 meter wide at its widest and between ½ and ¾ metre high. It was flat on the top where the trees were and then sloped steeply to the lane.”*
- (i) In 2000 when the house was extended Mrs Blackwell removed *“parts of the old stone and rubble wall which till now separated the bank from my garden, to gain access to the site. As I had always considered the bank as mine, I asked my builder to rebuild the wall on the edge of the lane. This was done 10” to the east of the edge of the lane.”* The bank was enclosed by the wall between July to December 2000 and since that date by Herris fencing.
- (j) Mrs Blackwell states that *“during this time, no vehicle or pedestrian has been prevented from using the lane (as 24 of the witness statements testify) or inconvenienced by the presence of the fence.”*
- (k) Traffic used Friary Road as a short cut between Egerton Road and Berkeley Roads;

- (l) *“The Church has NOT maintained the verge for the last 10 years and until the path on the other side was made, it did not maintain that verge either.”*
- (m) Building plans for Nos. 97 to 111 Berkeley Road *“appear to show that the bank on my side of the lane were part of the parcel of land before the land for the pavement was taken from the front gardens”* [see annotated Plan at Appendix H.1(d) and Plan at Appendix H.1(a)];
- (n) *“In the title deed of my house and having taken measurements from the street, it would appear that my property extended to include 4ft of the bank”* [see copy Abstract of Title at Appendix H.1(e)];
- (o) Although the land is not specifically included in her title deeds, Mrs Blackwell has lodged a caution on the land through adverse possession. In a letter to Mrs Blackwell dated 5 May 2006, the Land Registry advised that ‘by virtue of the ad medium filum presumption ... if you do in fact own the land, the land will be included in your title ... under the “general boundaries rule” (section 60 of the Land Registration Act 2002)’.
- (p) Photographs from 1979 showing rubble on the verge adjacent to No. 111 Berkeley Road [see Appendix H.1(f) p.1] and from the late 1980s showing grass verges on either side of Friary Road and mature vegetation on the verge adjacent to her property, which in Mrs Blackwell’s view, shows the area could not be walked on [Appendix H.1(f) pp. 3&4].
- (q) Photographs from 2000 showing the wall under construction and the completed wall [Appendix H.1(f) p.1], then in December 2000 showing the remains of the partly dismantled wall enclosing the verge [Appendix H.1(f) p.2];
- (r) Photograph from January 2003 showing a level path on the west side of Friary Road under construction [Appendix H.1(f) p.2];
- (s) Letter dated October 2001 from Mr Sage of 100/101 Kings Drive to Stone King solicitors regarding the dispute between the Church and Mrs Blackwell. In his letter, Mr Sage states that he did not see people walk down the verge adjacent to 111 Berkeley Road and states that it was not possible to walk there ‘because of the 18inch drop on the corner of Berkeley Road’. The bank ‘then tapered away to nothing at Mrs Blackwell’s back gate’.
- (t) Email dated 9.03.07 from Mr Massey, previous owner of 102 Kings Drive from 1982-1990 who maintained the verge on his side, stating that the verges on both sides of Friary Road were ‘both uncultivated banks, quite unsuitable for walking on’. And ‘the only use I saw them being put to was for parking the cars of worshippers and visitors to the Parish Club when the car park there was full. They also frequently blocked the entrance to our garage... ‘In my experience it was never a through road. It leads only to the church and club and, during term time, the school’.
- (u) Letter from the Vowles family dated 22.1.02 stating that ‘not once have been seen adult, child or vehicle on the land’ adjacent to 111 Berkeley Road and that ‘unlike the opposite verge the land sloped’.
- (v) Letter dated 12.03.07 from Andrew Donaldson who has resided at 104 Berkeley Road since May 1975 and who states that ‘it was generally assumed that the land over which Friary Road passed was owned by the residents of the adjacent properties ...’ ‘Friary Road was rarely used by through traffic between Berkeley and Egerton Road. It was used mainly by residents who owned garages along its route and by parishioners of the church...’. He also states that in the late 1980s, the Church consulted neighbouring residents about tarmacking two sections of road and funded the project: ‘The new

tarmac road was constructed slightly wider than the original "dirt" track and levelling work for the road left a steeply banked grass verge on the side fronting No. 111 Berkeley Road. This bank was reseeded with grass and replanted with shrubs by the owner of that property; and has been maintained by the same person ever since'.

In a further letter dated 21 June 2007, Mr Donaldson confirmed the points raised in his previous letter and further commented that Friary Road was rarely used by through traffic due to its poor state of repair. 'Before tarmac was laid, there was very little through traffic ...' Once tarmacked, 'through traffic ... increased until the parish installed concrete bollards ...a few months after the tarmac had been laid and traffic build up had occurred...'; the bollards were subsequently vandalised and replaced. 'In recent years, vehicle traffic from Berkeley Road into the car park ... has increased considerably; for access to the primary school ... and for an increasing number of events held at the parish club ...' Enclosed with his letter were photos taken circa 1991 of a young tree and shrub planted in the verge alongside the garden wall of No. 111 Berkeley Road, as evidence that the owner of No. 111 maintained the verge.

- (w) A letter dated 30 August 2000 from Stone King, the Church's solicitors, claiming long prescriptive easement benefiting the Diocesan Trustees and previous owners of the school and church over the bank enclosed by Mrs. Blackwell. Plus further letter dated 27 September 2005 from the Clifton Diocese Property Services Officer to Wards (Mrs Blackwell's solicitor) observing that: 'the Diocese, in common with [other abutting property owners], has established rights at all times and for all purposes along Friary Road to gain access to their property. The actual ownership of the roadway is, however, unclear and has never been established. Neither the Diocese nor [Mrs Blackwell] owns this area ... 'The conclusion to this is that the fence which has been construction by [Mrs Blackwell] on the roadway represents a trespass and is actionable by all those whose rights to pass and repass along the roadway are being infringed'. However, the Diocesan Trustees 'declined to take any further action in relation to the trespass' without prejudice to the rights of the Diocese and others.



1872 Building Plan, names Friary Road as Davey's Lane

Mr. C. Grima,
11, Berkley Road,
Bishopston,
Bristol.

Director of Administration
and County Solicitor

Basil D Smith
P O Box 11
Avon House
The Haymarket
Bristol BS99 7DE
Telephone Bristol (0272) 290777

46

Dear Sir,

RE: PETITION -
FRIARY ROAD, BISHOPSTON, BRISTOL.

The Planning, Highways and Transport Committee at its meeting on 22nd March 1983 considered and approved the attached Report of the County Engineer and Surveyor. I shall be obliged if you would note the recommendations contained therein and inform your fellow petitioners accordingly.

Yours faithfully,

John R Williams

for Director of Administration
and County Solicitor.

Planning, Highways and Transport Committee - 22nd March 1983

Report of the County Engineer and Surveyor

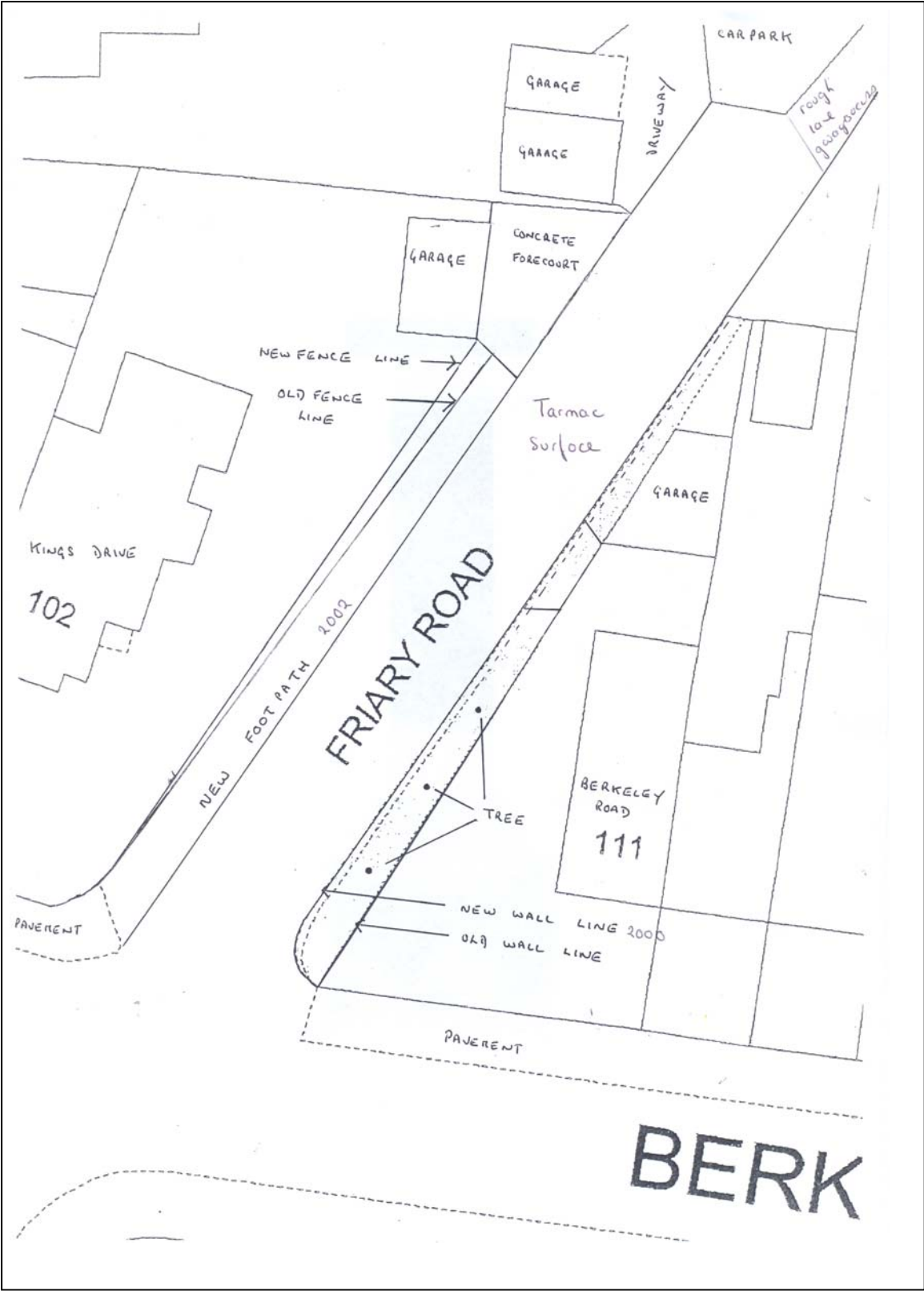
14. PETITIONS

(6) Friary Road, Bishopston, Bristol - O.S. Ref 585 755

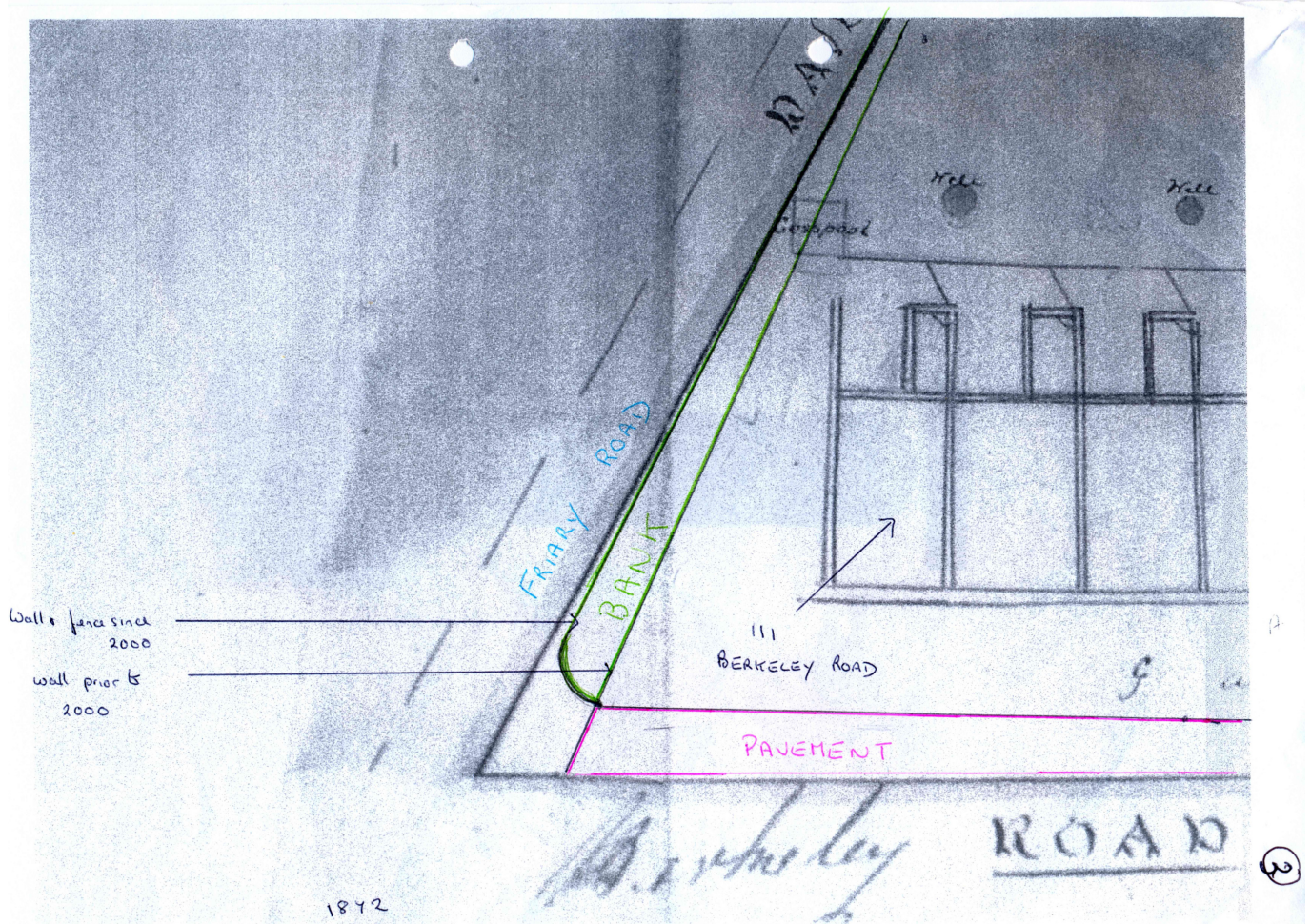
1. A petition has been received bearing 15 signatures of residents who have access onto Friary Road, Bishopston requesting that investigations be carried out into the possibility of introducing a Traffic Regulation Order prohibiting all motor vehicles except for access.
2. Friary Road is an unadopted street 150 m long connecting the end of Egerton Road with Berkley Road near its junction with Kings Drive. It serves a parish hall car park, a number of private garages and is used by children going to and from St. Boneventurus Junior School.
3. At the meeting of the 20th April 1982 (Minute No 133 (19) (III) refers) the Committee considered a previous petition from residents of Friary Road requesting its closure. It was resolved that the petitioners be informed that the closure of Friary Road was not practicable but that investigations would be made into the possibility of introducing a Traffic Regulation Order to reduce the volume of vehicles using the street, although this would have to be considered in relation to other priorities.
4. Subsequently, investigations have shown that no personal injury accidents have been recorded during the past five year period. Also, it is neither a major traffic route nor a bus route nor is there a problem of serious congestion; therefore, it is not considered that a Traffic Regulation Order can be justified at the present time in relation to other priorities.

RECOMMENDED

That the petitioners be informed accordingly.



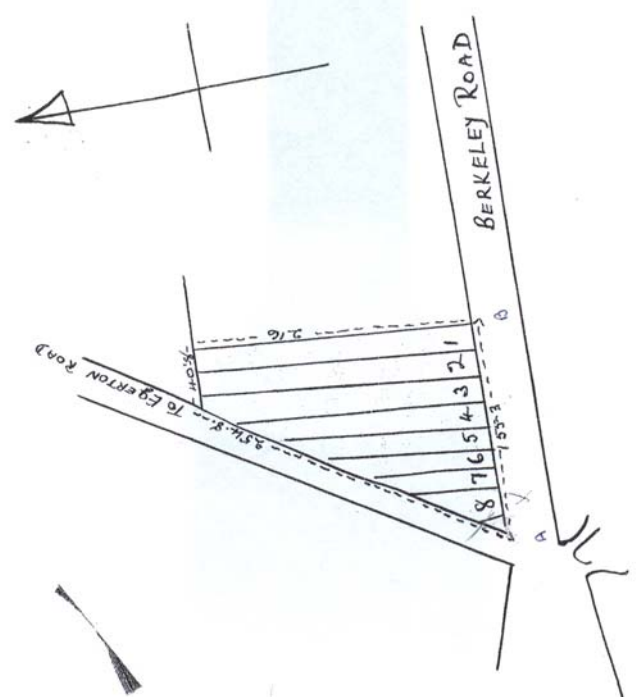
Plan provided by Mrs Blackwell with letter of 14 January 2006



Annotated plan of 1882 referred to by Mrs Blackwell
Letter dated 9 March 2007

(10)

Recent measure of A to B
and my old front wall is.
161'



Radius at Point
Lot 8 is 10 FEET
153' 3"
+ 12' 10"

165' 3"

referred to in
COPY PLAN OF INDENTURE
DATED 18th DECEMBER 1875.

A B S T R A C T of the T I
- of -

of Michael Fluskey to No 111 Berkeley
Bishopston Bristol (formerly known as
Villas Berkeley Road Harfield Bristol,

AND THE PART OF THE...

of Bristol Centre of lot pt ELIZABETH
Bristol and Spinners of the 2nd pt & WI

Tolman H.I. Tolman & H. Tolman in eq
& conveyed unto sd W.H.C. Salomon & his
alia.)

BY AND THAT plot or parcel of land sit
in the Part of Harfield in Coy of CLOS bounded

(5)

1949

slowing rubble on
bank at side of
roadway



2000

Wall under construction
slowing branches
removed from
situate birch
tree to allow
access to the
bank.



Completed wall

It is proposed to
replace with
brick & timber.



Series of pictures supplied by Mrs Blackwell

DECEMBER 2000

Slowing rubbish
thrown on site
I had spent last
28 years removing
rubbish.



DECEMBER 2000

Back picture I have to
show top of bank was
level with my garden
inside the old wall
which had NO foundations



JANUARY 2003

slowing verge on west
side of lane level
with garden of
102 King Drive.



Late 1980's

(C)

bank covered
in vegetation
(trees & shrubs)



(C)

(C)

slowing
with side usage
level with torso.



6

1988

showing quercus growing
on bank and tree
branches low and overhanging
to edge of bank.



altw 1999

showing rosa rugosa
in front of garage
wall showing area
could not be
walked on.



**SUMMARY OF EVIDENCE CONTAINED IN LANDOWNER EVIDENCE FORMS
COMPLETED BY OTHER ADJACENT LANDOWNERS
(Forms held as Background Papers to this Report)**

96 KINGS DRIVE

Owned by Mr Cholmondeley since May 1981. who believes that the claimed right of way has been private for 24 years, but is aware that the way is used on a daily basis by members of the public whom he has not challenged or turned back. In approx. 1985 Mr Cholmondeley told Father Fitzpatrick of St Bonaventures Church that the way was not public *“concerning responsibility for tarmac of road and placing bollards”*. Mr Cholmondeley believes the Church met the costs of works.

98 KINGS DRIVE

Mr Potter provided copies of correspondence with the Church and photographs in connection with the commencement of works to construct a path on the western side of Friary Road in December 2002 (which is outside of the relevant 20-year period in question). Mr Potter states that the new pathway has encroached onto his land but that *“the Church did not want to buy my land and did not enter into any further negotiations.”* Also that *“the verge on my side of the lane was too narrow to walk on at my end of the verge such that my neighbour gave some of their garden to make it wide enough for the path to be constructed.”*

97 BERKELEY ROAD

Owned by Mr & Mrs Mason since July 1978. They believe the claimed way is not public, that the land is owned by the adjoining properties *“but with the public having permissive access”* and have seen pedestrians, cyclists and garage users/cars using the way since 1978. They have not prevented people using the way or told anyone that it was not public and state that *“the use of the lane for public access has never been called into question nor has access been impeded or restricted.”* Mr & Mrs Mason *“object most strongly to any change in designation of Friary Road.”* They point to the right of access they have enjoyed since 1978 to their garage and state they they also *“hold evidence that by 1971 most of the properties adjoining Friary Road owned garages and therefore enjoyed vehicular access; including access to the school and social club car park. Since 1978 at no time has access along Friary Road for pedestrians or cyclists been restricted.”*

101 BERKELEY ROAD

Owned by Marea Moseley since January 1945. Marea believes the way has been public for over 60 years and *“has always been used by all”*. She states that *“the lane has always been used by cars i.e. for the garages. Then the club was built and school so then the lane was used a lot more by cars. So to walk up the lane both sides were used by the public and cars to get at one time to Egerton Road ...”* [before bollards]. *“The lane is dangerous now because only one car at a time can pass because extra land that has been taken away by 111 Berkeley Road. It is dangerous for walkers because cars park right on the corners of Berkeley Road. The lane is a public right of way.”*

107 BERKELEY ROAD

Owned by Andrew Taylor since 1997. Andrew believes the way is a public footpath and has seen *“car users accessing their garages continually, 100s of pedestrians and cyclists”* using the way. He believes the user was first called into question *“when No. 111 Berkeley Road moved their garden wall”*. *“Scaffolding has been erected around the garden of No. 111 and the verge for about 4 years now. It is unsightly and dangerous as you have to step into the path of cars before you can see around it.”* Andrew also believes *“that the public can use Friary Lane to walk or cycle on but that the land itself is not owned by anyone or the council. Our garage adjoins the lane and we would not want our access restricted in any way. Also, other than garage owners or for access to St Bons car park no motor vehicles use the lane for at least the last 10 years.”*

122 EGERTON ROAD

Owned by Mr Dixon since 16 July 1976. Mr Dixon believes the claimed way has been public for over 30 years, with access for pedestrians and vehicular access to the church car park. He has obstructed the way on two occasions in October 1989 and August 2004 by way of *“temporary scaffolding to west wall of my house approx. 5 feet wide i.e. only partial obstruction.”* Mr Dixon states that his title deeds show that the property *“extends no further than the west wall of the house and garden”*, but that *“the brick footings of the house and garden walls extend out under the verge.”* Consequently, Mr Dixon will have an interest in any proposals concerning Friary Road which affect the verge adjacent to his property.

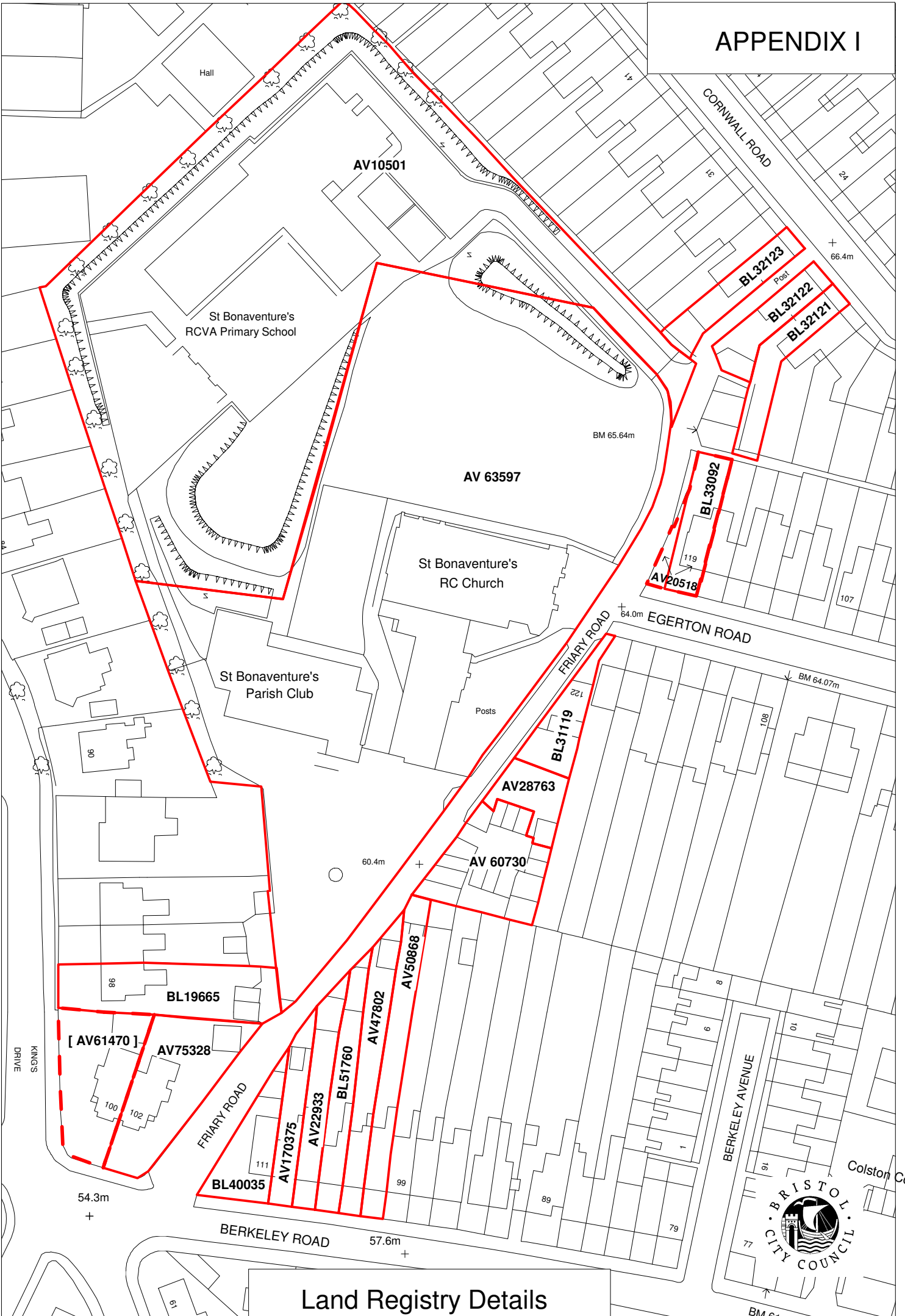
21 CORNWALL ROAD

Leasehold by Janet Grimes since December 2005. Janet believes the way to be public as *“we have lived in the vicinity for 11 years and have used the footpath frequently”*. She has also seen others use the way on a daily basis. No. 21 Cornwall Road has a parking area in the garden created by the previous owners, with access via the ‘top’ end of Friary Road. Janet is currently negotiating the purchase of the freehold and has not had sight of the deeds to confirm access rights. Consequently, they have *“assumed a right to drive over, but not to park, in Friary Road”*.

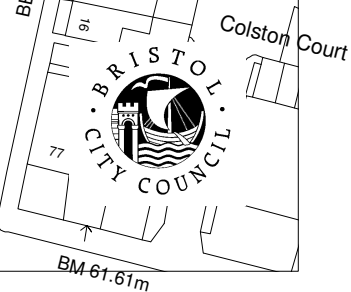
23 CORNWALL ROAD

Owned by Mr H Collet since 19.09.2005. Mr Collet believes that the way is a Byway and states that *“previous owners have held this belief since 1953”*. He has seen pedestrians and vehicles daily since he moved to the property for access to the school and garages. N.B. This use is outside of the 20-year period of user in question. Mr Collet has provided copies of two Statutory Declarations made by previous owners of 23 Cornwall Road, which declare that they have enjoyed private vehicular access to the garage (or Coach House) at the rear of the property for a continuous period of time since 1953 *“as of right without the consent or objection of any person and without interruption or payment of any kind to any person”*.

APPENDIX I



Land Registry Details





SITE VISIT 18.01.2002 – Heras fencing surrounding grass verge abutting No. 111 Berkeley Road, looking towards Friary Road from Berkeley Road.



SITE VISIT 18.01.2002 – Continuation of Heras fencing abutting No. 111 Berkeley Road as viewed from Friary Road, looking towards Berkeley Road.



SITE VISIT 1.05.2003 – Bollards at mid-point of Friary Road, between Church and No. 122 Egerton Road.



SITE VISIT 1.05.2003 – Garages in Friary Road across from the Church Car Park.



SITE VISIT 1.05.2003 – Speed humps at entrance to the Church Car Park and in Friary Road (Berkeley Road end).



SITE VISIT 1.05.2003 – ‘New’ footway and Heras fencing at the Berkeley Road end of Friary Road.



SITE VISIT 1.05.2003 – Friary Road nameplate on side of No. 122 Egerton Road.



SITE VISIT 18.04.2007 – Planning Application 07/01328/F, the former workshop on Friary Road (rear of 119 Egerton Road).



SITE VISIT 18.04.2007 – Signs erected on the boundary fencing of St Bonaventures School.



SITE VISIT 18.04.2007 – Footway abutting St Bonaventures School boundary fence, looking towards Cornwall Road from Egerton Road junction with Friary Road.



SITE VISIT 18.04.2007 – Footway and Heras fencing on either side of Friary Road (looking from Berkeley Road towards Friary Road).