

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

14 January 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 advise members of the responses, if any, which have been received to the Notice of Making of a Modification Order relating to the above path; and
2. To establish the stance the Council will take when referring the order to the Secretary of State for a decision to be made on whether or not to confirm the order; OR to confirm the Order as unopposed.

Background

3. The City Council, as Surveying Authority for the purposes of the Wildlife and Countryside Act 1981, is under a duty, as imposed by Section 53(2) of the Act to keep the Definitive Map and Statement under continuous review, and to determine any valid applications for Modification Orders which it receives.
4. This Committee resolved on 23 July, 2007 (Minute No. PROWG10.7/07), that a Definitive Map Modification Order be made to show a Restricted Byway in the Definitive Map and Statement as shown on the plan attached to the report to committee.
5. Definitive Map and Statement Modification Order No. 1, 2007, was made on the 20 November 2007 and was advertised on the 23 November 2007 - see Appendix 6(A). The final date for making representations and objections was 8 January 2008. All the legal requirements relating to the service of the Notice

- of Making of the order were duly complied with.
6. To be taken into consideration by the order making authority, objections must be based on the use of the land during the relevant twenty-year period of the claim, i.e. between 1980 and 2000. As previously reported to this Committee, Section 31(2) of the Highways Act 1980 provides that the period of 20 years is to be calculated retrospectively from the date when the right of way is brought into question, either by the putting up of a notice or by some other act which is inconsistent with dedication of the way as a highway. The act that brought the public right into question and prompted the claim was the encroachment in July 2000 of land in Friary Road comprising of a grass verge adjacent to No. 111 Berkeley Road. This act prevented the use of the verge from that date but not the use of the surfaced area of Friary Road.
 7. The 20-year period of use by the public must have been as of right, without effective interruption. Thus to defeat a claim, objectors must provide evidence that the landowner had no intention to dedicate the way during the relevant twenty-year period, such as: evidence of a locked gate, a notice denying the existence of a right of way, a statutory declaration under Section 31(6) of the Highways Act 1980 or bringing an action for trespass.
 8. Thus objections based on evidence of safety concerns, nuisance or crime, or the availability of alternative routes cannot be taken into consideration under the Wildlife and Countryside Act 1981, regardless of the effect on anyone's property interests or whether or not the route physically exists at the present time on the ground.
 9. In respect of future maintenance of the way, the question of whether any path added to the Definitive Map by a Modification Order will be publicly maintainable when made under Section 53, is subject to confirmation by an Inspector if the matter is taken to public inquiry. Any issues of litter clearance and making up to adoptable standard is part of the question of maintenance and will be determined accordingly.
 10. As reported to Committee on 23 July 2007, the promoters of the Order claim by way of user evidence forms and statements that for the whole of the relevant 20-year period there was no obstruction preventing use of the route, and therefore no interruption to the claimed use.

11. Members are reminded that issues such as, for example, suitability, existence of alternative routes, safety, amenity and environmental considerations, are not relevant to determination of the claim under the Wildlife and Countryside Act 1981. Nor are considerations of likely or potential costs to the Authority of promoting the Order through its statutory procedures.

Procedure

12. The Procedure to be adopted will be dependant upon the responses to the public consultation, details to follow the closing of the formal consultation period on 8 January 2007.

Appendices

Appendix A - Advertised Order dated 23 November 2007

Policy Implications

None arising directly from this report.

Resource Implications

None arising directly from this report, but if a Public Inquiry or other hearing ensues, the costs will be borne by the Council. The right of objection to an order is a statutory right, but it should be exercised in a reasonable manner. Objectors who have been given the opportunity to modify grounds of objection which are not legally relevant, but have declined to do so, will be at risk of an award of the local authority's costs being made against them under section 250(5) of the Local Government Act 1972. However, it must be obvious that the objection so pursued had no reasonable prospect of success.

Other Approvals Necessary

None.

Recommended:

The recommendation will be dependant upon the responses to the public consultation. However the options to the Committee are as follows:

- (1) that having considered the objections received, if any, approval be given to accept them as duly made objections under the Wildlife and Countryside Act 1981;**
- (2) that, in the light of the objections, the order is referred to the Secretary of State with a request that the Order be confirmed;**
- (3) that an observation on those duly made objections which are not considered relevant to the Order, is included with the referred Order; OR**
- (4) that, as the order is unopposed or objections lodged have subsequently been withdrawn, approval be given to confirm the Order.**

Local Government (Access to Information) Act 1985 Background Papers

1. Notice of Making of the City Council of Bristol Definitive Map and Statement Modification Order No. 1 of 2007.
2. Statement to accompany DMMO No. 1, 2007 (held by the Director of Central Support Services - Legal Division).
3. Responses, if any, received to the above Notice (held by the Director of Central Support Services - Legal Division).
4. Report dated 23 July, 2007 relating to the original consideration of the Modification Order under 53(3)(c)(i) of the Wildlife and Countryside Act 1981.
5. Wildlife and Countryside Act 1981 (obtainable from HMSO).
6. Local Government Act 1972 (obtainable from HMSO).

Authors:

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Michelle Darby, Legal Division, Central Support Services, Tel. 0117 9222338.

PLEASE NOTE:

The following Appendix is unavailable electronically and has therefore been scanned onto the system. If you require a hard copy of this document please contact the report author direct whose name and telephone number is displayed on the front page of the report.

[IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY]

**NOTICE OF MAKING DEFINITIVE MAP AND
STATEMENT MODIFICATION ORDER NO 1 2007**

THE WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53

THE CITY COUNCIL OF BRISTOL

DEFINITIVE MAP AND STATEMENT – MODIFICATION ORDER NO 1 – 2007

The above Order made on 20th day of November 2007, if confirmed as made, will modify the Definitive Map and Statement for the area by:-

adding to them the public right of way from Berkeley Road to Cornwall Road as described in the schedule below.

A copy of the Order and the Order map have been placed and may be seen free of charge at the offices of Bristol City Council, Room 319, The Council House, College Green, Bristol BS1 5TR during normal office hours. Copies of the Order and map may be bought there at a price of 30p. Copies of the Order and Order map may be sent by second class post on receipt of a written request at a price of £6 to cover the Council's administrative costs.

Any representations about or objection to the Order may be sent in writing to the Head of Legal Services at The Council House, College Green, Bristol BS1 5TR quoting reference ID3/274 not later than 8th January 2008. Please state the grounds on which they are made.

If no representations or objections are duly made to the Order, or if any so made are withdrawn, the City Council of Bristol, instead of submitting the Order to the Secretary of State may itself confirm the Order. If the Order is submitted to the Secretary of State for Environment Food and Rural Affairs for confirmation, any representations or objections which have been duly made and not withdrawn will be sent with it.

SCHEDULE

DESCRIPTION OF PATH OR WAY TO BE ADDED

A restricted byway (585) in Bishopston in the City of Bristol known as Friary Road, running from Point A on Berkeley Road at GR 585 755 continuing in a north easterly direction for a distance of 207m to Point B at GR 586 756 connecting to public footpath 567 with a width of 11.4 metres at Point A varying throughout to a width of 4.7 metres at Point B shaded grey on the Order plan.

Dated this 23rd day of November 2007



3

Stephen McNamara
Proper Officer

WILDLIFE AND COUNTRYSIDE ACT 1981

THE CITY COUNCIL OF BRISTOL

DEFINITIVE MAP AND STATEMENT – MODIFICATION ORDER NO 1 – 2007

This Order is made by Bristol City Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the City Council of Bristol definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(b) of the Act namely the expiration, in relation to any way to which the map relates of any such period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path.

The authority have consulted with every local authority whose area includes the land to which the order relates. The City Council of Bristol hereby order that:

1. For the purposes of this order the relevant date is 23 July 2007.
2. The City Council of Bristol definitive map and statement shall be modified as described in Part I of the Schedule and shown on the map attached to the Order.
3. This order shall take effect on the date it is confirmed and may be cited as the City Council of Bristol Definitive Map and Statement Modification Order No 1 2007

**SCHEDULE
PART 1**

Modification of Definitive Map

A restricted byway (585) in Bishopston in the City of Bristol known as Friary Road, running from Point A on Berkeley Road at GR 585 755 continuing in a north easterly direction for a distance of 207m to Point B at GR 586 756 connecting to public footpath 567 with a width of 11.4 metres at Point A varying throughout to a width of 4.7 metres at Point B shaded grey on the Order plan.

Dated this 20th day of November 2007

THE COMMON SEAL of
BRISTOL CITY COUNCIL was
hereunto affixed
this 20th day of November 2007

110424

in the presence of:

[Signature]
Duty Authorised Officer

.....
Proper Officer

PART II

MODIFICATION OF DEFINITIVE STATEMENT

The Definitive Statement is to be modified by the addition of the lengths of footpath described in Part I of the Schedule with description as follows:-

Map No	Class & Right of Way	DESCRIPTION OF ROUTE					Via O.S. Parcel Nos.		Particulars as to position, width, limitations or conditions as in the opinion of the Authority it is expedient to record.	
		FROM		General Direction	TO		(Editions 1921/23 unless otherwise stated)	Post 1945	General Description of Route	Reason for inclusion
		County Road or Right of Way	Location (with bounding property Nos.)		County Road or Right of Way	Location (with bounding property Nos.)				
	Re-stricted By-way 585		Berkeley Road Grid Ref: 585 755 102 Kings Drive 111 Berkeley Rd	NE	FP 567	21 & 23 Cornwall Rd Grid Ref: 586 756			From start point follows Friary Road Total length: 207m Width: varying between 4m to 11.4m as shown shaded grey on the order plan.	Wildlife & Countryside Act 1981 Modification Order No. 1 2007

110425

GRID Ref: 585 755

[illegible]

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

14 January 2008

SUPPLEMENTARY INFORMATION

Agenda Item 6

Claimed Footpath from Berkeley Road to FP567 (Friary Road)

Purpose of Report

1. To advise members of the responses which have been received to the Notice of Making of a Modification Order relating to the above path and to recommend the options upon which the Committee must base their decision in the light of the duly made objections received.

Letter of objection from Christine Blackwell (copy appended)

Mrs Blackwell states that her objection is based on evidence that she has already submitted. This was set out in the previous report to this committee on 23 July 2007 (PROWG Committee, Agenda Item 10, paras. 39 to 41). Officer comments on the matters contained in her letter, in the order in which they are raised, are as follows:

(A) Publicising the Order and explanatory statement accompanying the Order (copy appended)

1. It is confirmed in the report to this Committee that all the legal requirements were duly complied with (paragraph 5). The authority is not required under the Act to serve notice on frontagers, although it is seen as good practice to consult informally before an order is made and this was done (see report of 23 July 2007, paragraphs 43 and 46).

2. In respect of the explanatory statement, it is made clear that it does not form part of the order and has been prepared to explain the authority's reasons for making the Order and why the order complies with the tests laid down in the Act. It is also made clear in the statement that the Order map includes the full width of Friary Road including verges.

3. As previously reported to committee on 23 July 2007 (paragraph 42), the challenge made by Mrs Blackwell to the evidence in support of the claim in respect of the disputed verge is directly contradicted by the user evidence (see paragraphs 10-14). This is a matter to be considered and weighed in the balance against the evidence of free access without let or hindrance over the whole width of the claimed route for the full period of the 20 years claimed prior to the date that the way was brought into question. If the way is obstructed for any period, however brief, during the 20 years, this is evidence of a contrary intention to dedicate which could defeat the claim.

4. As has been made clear in the report to this Committee (paragraph 6), and the previous report to Committee on 23 July 2007 (paragraph 3), the encroachment of the land comprising the verge took place in July 2000 which is considered to be the date when the right of way was brought into question. Therefore, the dispute over the evidence concerning use of the verge during the relevant 20-year period from 1980 to 2000 can only be tested at a public inquiry or hearing, as the Order has already been made and there are valid objections to it. Thus the weight to be given to this and other evidence raised by Mrs Blackwell concerning the pavement to the school, the installation of the bollards in Friary Road and the width of the claimed right of way shown on the Order Plan is a matter for the Secretary of State to consider when deciding whether or not to confirm the Order.

(B) Conduct of the Committee meeting on 23 July 2007.

1. The Council's Public Information Sheet appended to all committee papers makes it clear that Statements received by a committee will be noted and will be taken into account by the committee when it considers the item concerned. The Chair has a discretion whether or not to invite members of the public to read out their statements.

2. Officer comments on all statements were made available to Committee Members at the meeting on 23 July 2007. The fact that Mrs Blackwell's plan was printed on pink paper did not detract from the point she wished to raise about the curtilage of her property, as Members were able to compare it with the plans she previously submitted showing the "old wall line" (Appendices H1(c) and H1(d)). The boundary of No. 111 Berkeley Road has been consistently shown in the same location on all maps and plans submitted in evidence prior to July 2000 when the wall was demolished by Mrs Blackwell (see Report of 23.07.07, Appendices E, F and H).

3. In respect of Mrs Blackwell's comment on Minute 10.7/07 (ii), the sole

legal test is whether there is evidence that the public have acquired a right of way over the whole width of the claimed route. The presence of the septic tank below ground level does not provide evidence as to the existence of the rights.

4. Officer comments on the other matters raised by Mrs Blackwell on Minute 10.7/07 (i) and (iii) have been addressed in paragraph 2 above and section (A) paras. 3 & 4.

(C) The context in which the application for the order was made.

Notice was served by the applicant in accordance with Schedule 14 of the Act, as reported to Committee on 23 July 2007 (paragraphs 37 and 38). The motives of the lead claimant, Mr Shearman, are irrelevant when considering the claim.

(D) The area as detailed on the definitive map

See officer comments at Section B (2) above.

(E) The unsuitability of a significant part of the lane to become a restricted byway and consequences for the amenity of the area

1. Officers considered it appropriate for the claimed route to be classed as a restricted byway because there must be sufficient evidence to show that the claimed route has been used by the public at large over the whole of the relevant 20-year period, rather than individuals exercising a private right. No witnesses claimed vehicular use of the entire route during the relevant 20 year period. The supporting evidence received regarding public vehicular use was insufficient, as it occurred prior to the relevant 20 year period or until the bollards were erected in Friary Road and is inconclusive in respect of whether it amounts to public or private use (see paragraphs 13, 50, 51 and 52 of the report to Committee on 23 July 2007). As the Order has now been made, evidence of public vehicular use or such use by licence or permission of the landowner can only be tested at public inquiry or hearing.

4. The consequences of the Order for the amenity of the area is not relevant to the legal test under the Act. The alleged acts of criminal damage and harassment, future maintenance and safety of pedestrians cannot lawfully be considered (see Committee Report of 23 July 2007, paragraph 53; and Officer Comments on Statements of 23 July 2007, paragraph G1).

Letter of objection from Carmen Grima (copy appended)

Ms Grima's objection to the Order is duly made and raises similar issues in support of the evidence already submitted by Mrs Blackwell. As officers have stated above, the Order has been made and therefore Ms Grima's evidence will be taken into consideration by the Secretary of State when making a decision on whether or not to confirm the Order.

Representation in support of the Order from Rachel Heery (copy appended)

Ms Heery's representation in support of the Order is duly made and will be taken into consideration by the Secretary of State when making a decision on whether or not to confirm the Order.

Officer Recommendation

Officers consider that the objections received and not withdrawn are "duly made", i.e. in writing, made within the period stated in the Notice and addressed to the proper person. Consequently, this removes jurisdiction to confirm the Order from this Authority, which must now refer the order to the Secretary of State for consideration.

It is recommended, therefore, that Members base their decision on Options (1) and (2) in the current report to Committee, i.e.:

- (1) that having considered the objections received, approval be given to accept them as duly made objections under the Wildlife and Countryside Act 1981;
- (2) that in the light of the objections, the order is referred to the Secretary of State with a request that the Order be confirmed.

Appendices

- Appendix A - Letter of objection from Christine Blackwell
- Appendix B - Publicising the Order and Explanatory Statement Accompanying the Order
- Appendix C - Letter of objection from Carmen Grima
- Appendix D - Representation in support of the Order from Rachel Heery

Authors:

Andrew Whitehead and Michelle Darby - 14 January 2008

Andrew Whitehead, Road Safety, Walking and Cycling Section, Traffic Management, Department of Planning, Transport & Sustainable Development Tel. 0117 9036592; and Michelle Darby, Legal Division, Central Support Services, Tel. 0117 9222338.

111 Berkeley Road
Bishopston
BRISTOL
BS7 8HQ

27th December 2007

Head of Legal Services
Council House
College Green
BRISTOL
BS1 5TR

Dear Sir

Ref ID3/274 Wildlife & Countryside Act 1981- Bristol City Council Definitive Map & Statement Modification Order No 1 2007

I would like to appeal against the above order on the grounds of evidence already submitted by me, any evidence which may yet come to light and as follows:

- 1 Conduct of the Public Rights of Way meeting 23 July 2007
- 2 The context in which the application for this order was made
- 3 The area as detailed on the definitive map
- 4 The unsuitability of a significant part of the lane to become a restricted byway
- 5 Consequences for the amenity of the area

Firstly some comments on the statement accompanying the order:

As I understand it from one of the landowners, who had a frontage on the lane, they have not received a copy of this order.

The order makes the assumption that encroachment of the right of way has taken place. This statement is rebutted because there is evidence (as detailed in sections 1 & 3 below) that some or even all of the bank (referred to as a verge) is not part of the right of way.

It is unclear why the Rights of Way officer was unable to establish that the school footpath was part of the right of way as it is a properly formed pavement which is walked upon daily. What efforts were made to establish whether the pavement was part of the right of way? I am sure that the Church or City Council records will show when this was constructed. Mrs O'Farrell, who, with her legal knowledge as a solicitor in public office and as a governor of the school, should be able to ratify its status. I only know that I have walked along it for many years now.

Also the exact date the bollards were installed will be in the Church records as they were inserted at the same time as the tarmac at the Egerton Road end of Friary Road. I do not know the exact date but it was between the beginning of February and April 1996. The evidence should be available in the minutes of a Parish meeting on the 3 February 1986. The City Council placed 'no through road' signs in Egerton Road after the bollards were erected and a record of this should be available on council records.

There is no title to the land occupied by the lane, but again the Land Registry presumes that it is owned by those people with frontages on it.

I have also tried to verify the measurements on map 585 but am unable to do so and would, therefore, like to dispute their accuracy.

1 Conduct of the Public Rights of Way meeting 23 July 2007

I do not believe that the order was made after proper discussion at the meeting. I had carefully prepared my statement for the meeting in line with the Council guidelines, but was not allowed to make that statement to the committee. Furthermore, that statement had a plan attached to it which was printed on pink paper which destroyed the colour explanation of the details on it.

Only three members out of eight (plus one substitute) members of the committee attended the meeting, very few questions were asked and I only remember one Councillor asking them. I, therefore, do not believe that the Council gave proper consideration to the matter.

In paragraph 10.7/07 of the minutes of the meeting of the 23rd July 2007:

(i), one of the council officer replies was incorrect as appendix E and E5b of the report do not show that the original boundary did not include the bank. I have already made reference, in previous submissions, that according to the Land Registry (public guide no 6) that the plans prepared by the ordinance survey only show General boundaries. Appendix E3(a) if legible would show that the boundary of the title was not where the stone wall was in 2000 but approximately 4 feet into the bank. Therefore, the Council should not be making decisions based on general boundaries and ignoring actual title deeds.

(ii) No explanation was given as to why the presence of a septic tank would make no presumption that the land in which it was erected was not part of a parcel of land which was not part of the right of way.

(iii) No explanation was given as to why, just because someone could stand on a piece of land, it could be deemed a right of way. There are many incidences where a person's private land is stood on without it becoming a right of way. Where I work, there are very wide windowsills and these are often stood and sat upon by members of the public. Surely these are not part of a right of way. People could only stand on that area of the bank which is adjacent to the tarmac and in front of the trees. The part of the bank beside and behind the trees where people could not stand is part of my title deeds. Despite what some people have claimed, it is physically impossible to walk along the bank because of the presence of the trees.

I appreciate that the committee may have become confused by the sheer amount of irrelevant information supplied to it but that should not absolve them of proper decision making.

I believe that this issue has not been properly debated by the council and until it does any decisions are invalid. The bank which appears to be in question is partly owned by me but I was only allowed to say a few words after I had made protestations to the Committee.

2 The context in which the application for this order was made

The application should have been allowed in the first place as Mr Shearman did NOT notify all of the landowners affected.

I question Mr Sherman's motives in making the application and these motives are important if this lane is to be confirmed as a right of way. He is not local to the area but at the time I built the wall adjacent to the lane, he was part of a small group of people who sought to discredit me in the press. He took part in mediation meetings with the Priest on behalf of the Church when efforts were being made to resolve the dispute over the wall I had built. He drew plans which placed a substantial part of the bank within my boundary which formed the basis of the negotiations. This was after he had made the application for a public right of way including this area. As a highway engineer with an adjacent local authority he must have known that he was deceiving both me and the Bristol Mediation Service?

The issue at stake is whether encroachment of the lane has taken place. Of ALL of the 16 landowners with access onto the lower part of the lane, only 6 responded to the Rights of Way officer. Of these not one stated that there had been encroachment. One commented on the danger of lack of visibility, one said there had been no encroachment and one stated that only one car at a time could pass which is clearly not true. The others made no comment on the bank.

Of the hundreds of people who use the lane each day, only 29 people responded to the Rights of Way officer. And of these only 3 people, who said they had used the route in the qualifying period of 20 years, mentioned the building of the wall on the verge as an obstruction to their right of way. Of those who mentioned the verge either in the first response or in a later interview with the rights of Way officer, a number stated that there was a path yet there is photographic proof that that was not the case (as previously submitted to the council in evidence by me and also Councils planning department photographs).

The proper process has not been followed so that the process should be halted until it is.

3 The area as detailed on the definitive map

The plan I presented to the meeting clearly showed the boundary of the title of 111 Berkeley Road including part of the bank. I also produced the only other authentic detailed plan of the area in the early 1860's which showed the whole of the bank and the pavement in Berkeley Road as part of the parcel of land which subsequently became 97 to 111 Berkeley Road. At this time the lane was called Davy's lane and roughly constituted that part of Friary Road which is now tarmaced.

There is no evidence that the wall I removed in 2000 was the original wall as it was of rough stone, with no foundations, and not brick, per the front wall.

Why had the committee ignored my evidence.

4 The unsuitability of a significant part of the lane to become a restricted byway

It is difficult to understand how the lane can be deemed a restricted byway when the number of return journeys by motorised vehicles, cars vans and buses, on the part of the lane from Berkeley Road to the St Bonaventures Club car park, probably exceeds an average of 150 per day. It is used daily by parents delivering children to school (the majority of journeys say 100), staff & patients at the local doctors surgery, staff & parishoners visiting the church and members of the public attending events at the social club.

The council need to define who they consider will have a right to use the lane if the order is confirmed. It is only sensible to deem it a restricted byway if only those with a need to access their property have a right to use the lane with mechanical vehicles. Neither the Primary School or the Doctor's surgery have an access onto the lane. This may also be the same for the Church.

In 1982 **ALL** of those with a frontage on the lane petitioned the Council to have the lane closed to through traffic but at that time the council did not consider it a priority.

Now, few if any (point 3) of those with frontages onto the lane or who use the lane regularly have shown support for the Council decision, so why are they persisting with it.

5 Consequences for the amenity of the area

When I moved to 111 Berkeley Road in 1979, the lane was very unsightly and the roadway surface very poor. It was at my instigation that the tarmac was laid by the Church. At that time my relations with the Priest and Church were very amenable. I planted the trees and turned what was a rubble and bramble bank, covered in rubbish, into a pleasant area. However, in order to keep it that way, it needed almost daily attention removing bottles, glasses, various rubbish and dog excrement.

The council have not yet decided what they wish to do with the bank. Will they remove the rubbish and dog excrement daily (which is a hazard for children walking the lane). Do they intend to cut down the trees or will they maintain them as I have?

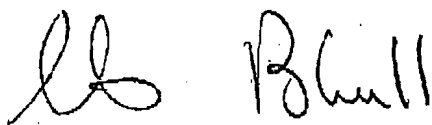
Even if the council do not wish to cut down the trees, those people who have been harassing me for the last seven years will almost certainly make sure they are removed. They have already attempted to do so.

Finally, I would ask the Council to reconsider their decision and leave the lane as it is. For as long as I remember, no one has prevented anyone using it except the Church when they erected the bollards and prevented through traffic. We, the 'owners' of the lane were happy with this.

The only real issue is the safety of pedestrians using the lane. The main hazard here is the number of cars speeding from Berkeley Road to the Club carpark, especially parents delivering children to school. There is now a pathway on the west side of the lane which mitigates this danger in the lower part of the lane.

Surely by making an order for a restricted byway a right of way, the council is only incurring unnecessary expenditure for itself and pleasing a group of people who have sought to make my life a misery through acts of harassment and criminal damage for the last 7 years.

Yours faithfully



Christine Blackwell

STATEMENT TO ACCOMPANY DEFINITIVE MAP ORDER, FRIARY ROAD

DEFINITIVE MAP MODIFICATION ORDER NO. 1, 2007

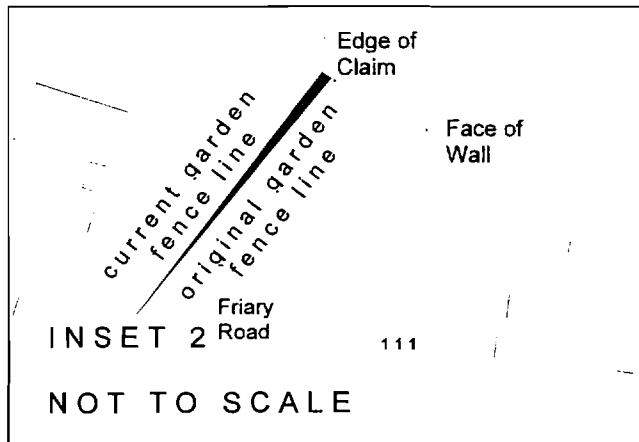
(NB - THIS STATEMENT DOES NOT FORM PART OF THE ORDER)

Under the Wildlife and Countryside Act 1981 surveying authorities have the power to make orders to modify the Definitive Map and Statement for the area. A notice that such an order has been made has to be advertised on the site of the path in question and in the local press. Notices also have to be served individually on all owners, occupiers and lessees of the land affected, and on certain other corporate bodies. This provides an opportunity for objections or representations to be made to the proposed change.

Bristol City Council has made an Order to modify the Definitive Map and Statement for the area by adding to them the public right of way from Berkeley Road to FP567 Cornwall Road as shown on the Order map and described in the Schedule. This statement has been prepared to explain various aspects of the Order.

Bristol City Council has made the accompanying Order for the following reason: 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.

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 to be July 2000. The act that brought the public right into question and prompted the application for a modification order 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. The full width of Friary Road including verges is claimed and is included in the Order, as shown shaded grey on the Order plan and demonstrated by the Inset showing Point A at a larger scale.



In respect of the point on the Order Plan referred to as 'E of C' ('Edge of Claim'), evidence was submitted that the boundary fence of 102 Kings Drive was moved in 2002 to accommodate widening and surfacing of the adjoining verge (see Inset 2 to the left and Appendix H1(c) of the Report to Committee of 23.07.07*).

The claim does not include this slither of land marked in bold in Inset 2, as the works to the verge adjacent to 102 Kings Drive took place outside the relevant 20-year period. However, further evidence may yet be discovered to establish express dedication by the landowner under Common Law.

Likewise, the footway to the School (see Appx. A of Committee report) has been omitted from the Order plan, due to insufficient user and documentary evidence and uncertainty as to when it was constructed, although evidence may yet come to light that it has become established as a highway under common law. Also, the bollards erected in the claimed route adjacent to St Bonaventure's RC Church building (see mid-point of route on Order plan annotated 'Posts' on the OS base map and photo at Appendix J2 of the Committee report) have been omitted from the Definitive Statement due to uncertainty of the date when they were erected and whether or not they constitute a limitation to be recorded in the Definitive Statement.

The title to the land over which the claimed route runs is unknown, although an adverse possession claim (Title BL67295) has been lodged with the Land Registry relating to the verge adjacent to No. 111 Berkeley Road. A plan depicting freehold Title to land abutting Friary Road was attached to the Report to the Public Rights of Way and Greens Committee meeting on 23 July 2007 (Appendix I). If you wish to inspect the report, consult the Council's website ([*www.bristol.gov.uk](http://www.bristol.gov.uk) and from the Home page Select *Council and Democracy/Council – minutes, agendas and reports*) or alternatively contact the Modern Records Office (Tel. 0117 9222376).

Bristol City Council is satisfied that the order complies with the following legal grounds laid down in the Wildlife and Countryside Act and Highways Act:

Wildlife and Countryside Act 1981, 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."

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 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." 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."

Also, that the way deemed to have been dedicated as a highway should correspond to the nature of the use shown. Subsection 1A of Section 31 of the Highways Act 1980 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.

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 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.

The Order will come into effect only after it has been confirmed: making and advertising the orders simply provides an opportunity for objections or representation to be made. The Notice indicates a period during which the public and those affected by the Order will have an opportunity to make formal representations or objections. If objections are received, they will be reported back to the Public Rights of Way and Greens Committee at a future date. If none are received within the time limit specified, the Order may be confirmed as unopposed. However, the Council has no power to modify the order.

Bristol City Council will be willing to discuss the concerns of those considering objecting or making representations relating to the Order. Contact Christine Pouncett, Public Rights of Way officer, on 0117 903 6841 if you have any questions on the issues raised in this Statement, and Deb Moreton, Legal Officer, on 0117 922 2307 for questions about the procedure for making and confirming the Order and for dealing with objections.

The right of objection to an order is a statutory right, but it should be exercised in a reasonable manner. The costs involved in dealing with objections to orders are normally awarded against objectors only in cases of unreasonable behaviour. If any objections are made and not withdrawn, then the Council must refer the Order to the Secretary of State for determination. An Inspector from the Planning Inspectorate will then hear the objections at a public inquiry or hearing, or in writing if the objectors agree. The Inspector can confirm an Order, confirm it with modification, or refuse to confirm it.

111 Berkeley Road
Bishopston
Bristol
BS7 8HQ

3 January 2007

Head of Legal Services
Council House
College Green
Bristol
BS1 5TR

Dear Sir

Ref: ID3/274 Wildlife & Countryside Act 1981-Bristol City Council Definitive Map & Statement Modification Order No 1 2007.

I am writing to object to the above proposal on the grounds that including the bank adjoining 111 Berkeley Road is needless and is not justified.

The adjoining property, 111 Berkeley Road, has been my family home for 29 years and is my current permanent address. When we moved to the property in 1979, when I was just 6, the bank adjoining the house was a mound of rubble and completely overgrown with brambles which passers by used as a rubbish dump. My mother has been the sole carer of this bank up until the present day and has spent many weekends, evenings and hours of hard toil and care, not to mention her own money, on clearing the bank and planting and tending beautiful plants and trees which has attracted much wildlife and the admiration of passers by.

More recently, as an end terrace supporting the other houses in the terrace, the end wall of our house began to crumble and the choices were to have buttresses or an extension - the extension seemed the most logical. The land in question appears on the title deeds to her house and in addition, according to the land registry, the land in the unclaimed lane belongs to the houses which adjoin it on either side - and so in good faith my mother enclosed her land into the bank area which she had managed as her own for nearly 30 years. This in no way restricted anyone's access as no-one had ever used the bank and she was not obtruding onto the land which was used by cars to access the church car park.

None of our close neighbours who have an interest in the lane or any of the regular users of the lane who knew the truth of the situation made any objection about this and she is fortunate to continue to enjoy considerable support from them.

Therefore this order, including the bank, has no justification as for the last 29 years, due to the existence of the rubble, brambles and then the trees, no-one has ever have used the bank as a footpath or public right of way and I therefore call into question the very limited and vague accounts submitted as evidence that say otherwise.

Some of those accounts submitted as evidence are also inaccurate in saying that the bank was flat – this has never been the case and there is photographic evidence to support this. Where such inaccuracies exist in statements such as these they cannot be accepted as evidence.

Even to step onto the bank is virtually impossible due to the height and breadth of the tree branches. And for someone to have maybe stepped on the bank at some point really cannot be sufficient grounds on which to establish the frontage of her property as a public right of way.

Moreover, a footpath exists on the other side of the lane opposite the bank in question and provides a safe route for pedestrians from the increasing volume of traffic that now uses the lane.

However, one man who did not know the truth of the situation, and who made no attempt to find out, stirred up a very small minority of people (who incidentally do not live near the lane and bank in question) to use any means possible to discredit and harass my mother. Despite my mother's continued attempts at mediation, some of these people began a campaign of violence, harassment and criminal damage against my mother and her property. This included a brick through the window, super-gluing the front doors so we could not get in or out, throwing paint on the doors and windows of the house, throwing acid on her car, sending letters of harassment to her workplace and neighbours, and most dangerously of all – blacking out her headlights so that on her journey at night she was not visible – which could have easily resulted in her death. They have even tried to cut down the beautiful trees on the bank - which only goes to further illustrate how little in the public interest they are acting.

I therefore strongly believe that this order cannot be allowed to be passed as the bank adjoining 111 Berkeley Road has never been used by the public in over 29 years. Furthermore, it would not serve any constructive purpose - neither safety nor otherwise - and would only result in being a continued waste of public funds and vindication for a small minority of individuals who are not acting in the public interest and have used the situation to commit violent and criminal acts.

Yours sincerely



Carmen Grima

From: Rachel Heery <rachel.heery@btinternet.com>
To: <deb.moreton@bristol.gov.uk>
Date: 08/01/08 09:55:00
Subject: Friary Road, Bishopston

I should like to register my support for making Friary Lane into a right

of way. In particular it is important to ensure the strip of land adjacent to 111 Berkeley Road is incorporated into the right of way. This strip of land provides a safety area for children and other pedestrians to avoid cars on the narrow turning into Friary Road.

Please can you inform me of any subsequent public inquiry regarding this road.

Many thanks

Rachel Heery

65 Claremont Rd
Bishopston
Bristol
BS7 8DW