

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE

7th April 2008

CURRENT CLAIMS, INQUIRIES AND MISCELLANEOUS RIGHTS OF WAY MATTERS

(Joint report of the Director of Planning Transport and Sustainable Development and Director of Central Support Services (Head of Legal Services)).

(Ward: Citywide)

Purpose of Report

1. To report for information the present position with regard to claims under the Wildlife and Countryside Act 1981 Section 53 informing members of the reasons for the time taken to determine these claims. Discussions with other Council departments are ongoing.

Background

2. 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)(b) 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.
3. Section (53)(3)(b) refers to the above mentioned section and states
(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises the presumption that the way had been dedicated as a public path or restricted byway;
(c) 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 such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;
(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a

different description; or

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

4. There are currently nine outstanding claims that are waiting to be determined by the Authority (see appendix A of the update report Agenda Item ?). The earliest of which was received by Avon County Council in February 7th 1992. The most recent was deemed valid on 18 May 2007.
5. There is no statutory advice relating to the order that claims should be processed but the practise followed by Bristol historically follows neighbouring authorities, which is to deal with each application in chronological order unless the claim relates to a planning application, in which case it is prioritised.
6. The length of time it takes to process a claim for a Public Right of Way varies depending on the number of evidence forms, the documentary evidence provided and the available time to investigate the application. It is legally possible for either user or documentary evidence to be sufficient to establish right-of-way status but most claims involve both. If an officer is allocated exclusively to investigate and evaluate an application, the minimum time for a non-contentious application is 4 to 5 months before submitting to committee. See appendix A for a summary of the process.
7. When the application is for a route across Bristol City Council land a preliminary investigation is undertaken to determine whether there is a *Prima facie* case for the claim. If so, the landowning department are then approached to seek a dedication agreement. If there is an agreement in principle to provide a route in perpetuity, the head claimant is contacted to request that the claim be withdrawn. The dedication process is less resource intensive than the full investigation, committee reporting and when applicable advertising a modification order, especially if a public inquiry or hearing results.
8. The concerns expressed by members of the committee with respect to the delay in processing claims relate specifically to those that run over Council land i.e. those sites for which we are investigating dedications from the land owning department. These are as follows:-

SNEYD PARK

9. The application is for a public footpath that links Glenavon Park to The Portway (see Appendix B). The route was brought into question when Glenavon Park was built and originally the claim also included a further length of path that has been built over. The claimed route runs across

Culture and Leisure Services (C&LS) land.

10. The Planning, Transport and Development (Public Rights of Way) Sub-Committee resolved on 24 March 1997, Minute No 550.3/97, to support continuing negotiations with the land owning department on the future of the claimed route and that further update reports were to be submitted to the committee.
11. A progress report was presented to this committee on 8 April 2002 (agenda item no 6.). The report detailed significant improvements delivered in Old Sneed Park by C&LS involving substantial restoration works and the reinstatement of permissive paths in the woods. A site meeting had been held with some of those that had provided user evidence to determine if any of the permissive paths provided a suitable alternative to the claimed route. Those that attended to site meeting felt that the permissive route did not provide the same mostly wide and level gradient and connectivity as the claimed route. The committee considered three options.
12. Option 1 - For the Council to seek withdrawal of the modification order application on the basis of the current permissive access in the wood. This option did not satisfy the Committee resolution of 24 March 1997.
13. Option 2 – For the Council to dedicate as a permissive path as a public right of way.
14. Option 3 – For the Council to dedicate as a public right of way the section of claimed footpath from Glenavon park to The Portway.
15. The committee agreed to progress option 3 with a view to securing the dedication to public use of the claimed route and proceeding with withdrawal of the modification order application.
16. The land owning department, C&LS, agreed to the dedication in principle in 2003 on the basis that any works to bring it up to an appropriate standard such as fencing, tree management etc would be provided by the Public Rights of Way team prior to dedication.
17. Authority was given by delegated decision on 3 July 2006 to draw up a formal inter departmental agreement to transfer the necessary land, to be followed by a formal dedication of the land as a public footpath.
18. In December 2006 officers became aware that because the Old Sneed Park was registered as Open Space, land appropriation from one department to another must be advertised in accordance with the requirements of Section 122 of the Local Government Act 1972. Further legal advice in 2007 stated that appropriation was not necessary as the

Highway Authority can accept the dedication on behalf of the public to allow the route to be added to the definitive map. Future maintenance however would remain with C&LS.

19. Agreement to future maintenance is an outstanding issue. It is the practise that public rights of way which run across a land holding directorates land is maintained by that directorate. E.g. If a route crosses a public park, then C&LS maintain the route as part of their ongoing responsibility, similar to when a route crosses Neighbourhood and Housing land.
20. If a dedication agreement is secured. Planning Transport and Sustainable Development will bring the path to a standard deemed to be safe and fit for the ordinary traffic which could be reasonably expected to use it as required by Highways Act 1980 (Secton.41). The continuing maintenance would then revert back to the land holding directorate.

ARGYLE PLACE, CLIFTON WOOD

21. A Claim was deemed valid on 24 April 1998 for a path partly across Argyle Place children's play area and land in private ownership (see Appendix C). The right was brought into question when the path was obstructed.
22. Planning Approval was granted in 2001 (Application No 01/03396/M/C) for three terraced houses on the site. As part of the planning permission a path was to be constructed close to the alignment of the claimed route with provision of the open space as part of a Section 106 Agreement. The land through which this new path runs is to be transferred to the Council as Public Open Space by April 2008. Once this has been undertaken we will write to the head claimant seeking the withdrawal of the claim.

BARRACKS LANE, AVONMOUTH

23. A claim for Public Right of Way was deemed to have been validly made on 25 November 1998 over Council land leased to Avonmouth Rugby Club. (see Appendix D)
24. The claim was triggered when the rugby club removed a bridge that spans a rhine.
25. Resolution of this claim will require the freeholder and leaseholder to agree a way forward.

LITTLE MEAD, KINGSWESTON

26. A valid claim for a public Right of Way was received on 4 March 2000. (see appendix E)

27. The public rights were brought into question when a section of the published and waymarked Severn Way link which runs over land owned by C&LS was leased out for grazing and the paddock consequently fenced and enclosed.

DUNDRIDGE PARK, ST GEORGE

28. A valid claim for a bridleway around the perimeter of Dundridge Park was received on 6 April 2004 (see Appendix F).
29. The claim was prompted through the locking of a gate opposite Preddy's Lane as requested by local residents suffering from anti- social behaviour.
30. Colleagues from C&LS have recently met with the head claimant to see if an alternative access would be acceptable. A bridleway gate is being provided alongside the car park to allow equestrian access.

Consultation None.

Appendices Appendix A – Section 53 Timescale – Outline Procedure
Appendix B – Plan of Sneyd Park
Appendix C – Plan of Argyle Place
Appendix D – Plan of Barracks Lane
Appendix E – Plan of Little Mead
Appendix F – Plan of Dundridge Park

Policy Implications There are no specific resource implications arising from this report.

Resource Implications There are no specific resource implications arising from this report.

Other Approvals Necessary None.

Recommended - that the report be noted

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers

None.

Contact Officers:

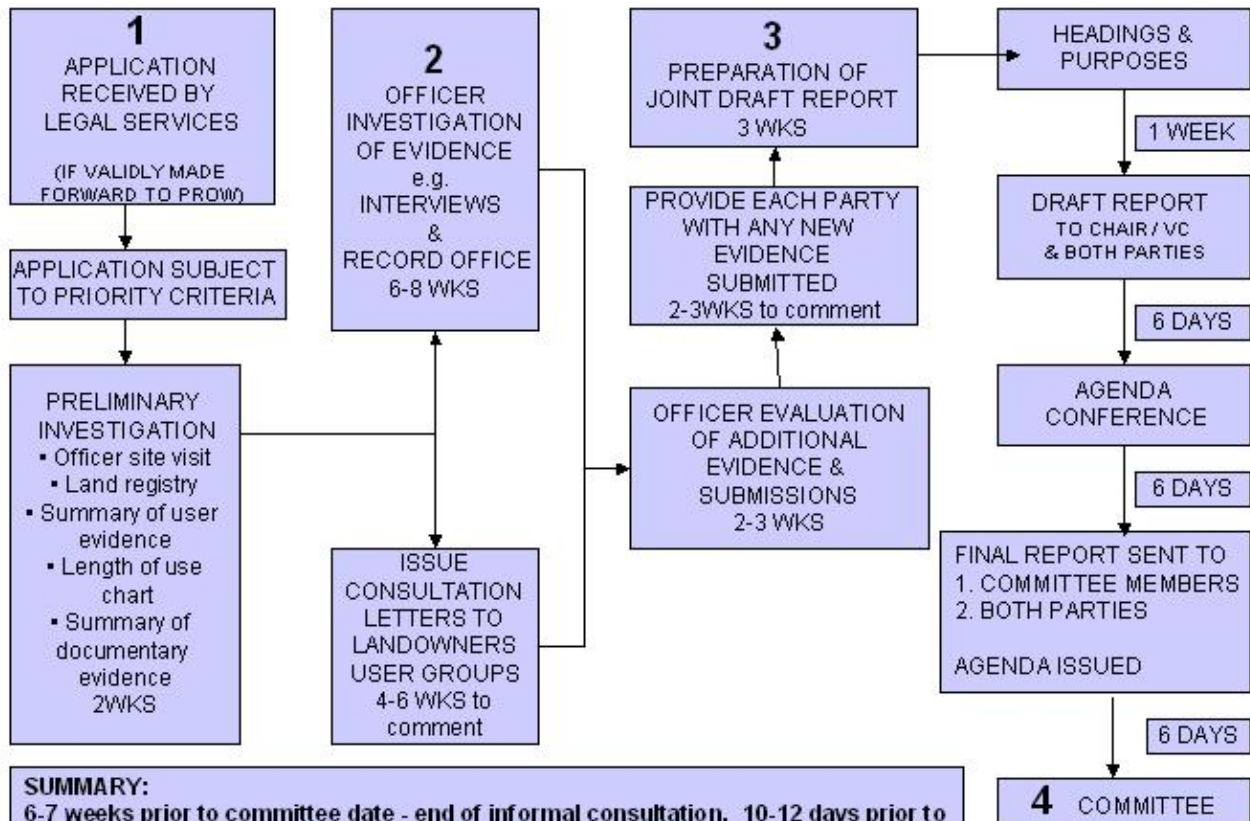
For queries relating to rights of way matters:

Rachel Johnson, Solicitor, Legal Division, Central Support Services
Andrew Whitehead, Walking & Cycling, Traffic Management, PTSD

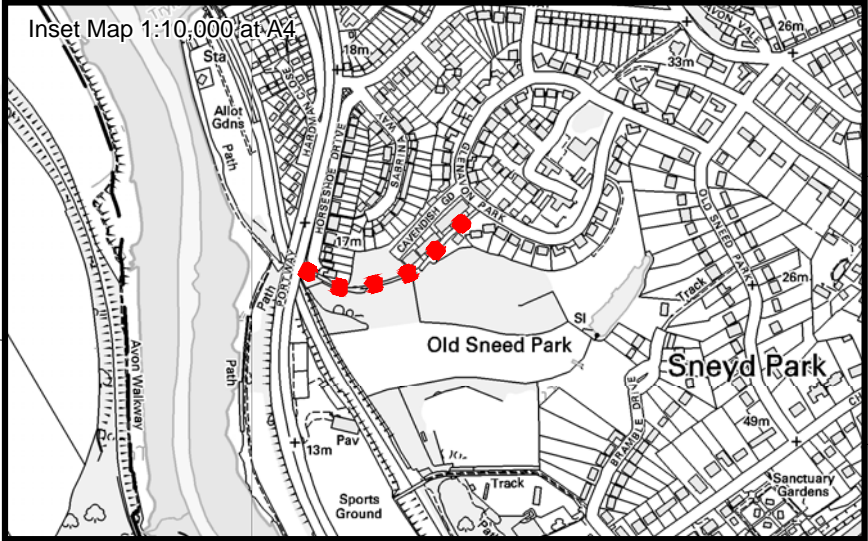
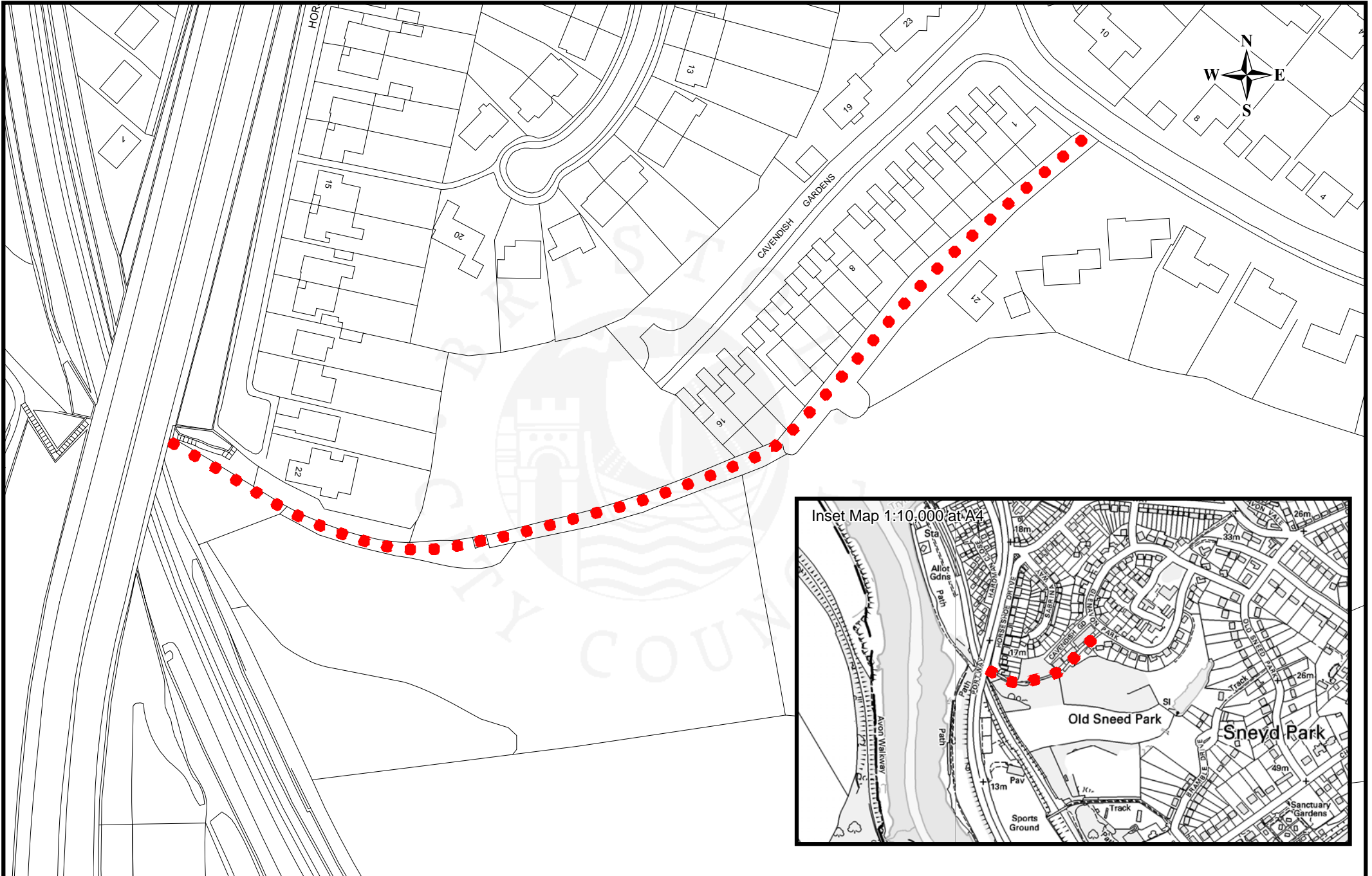
For queries relating to village green and commons matters:

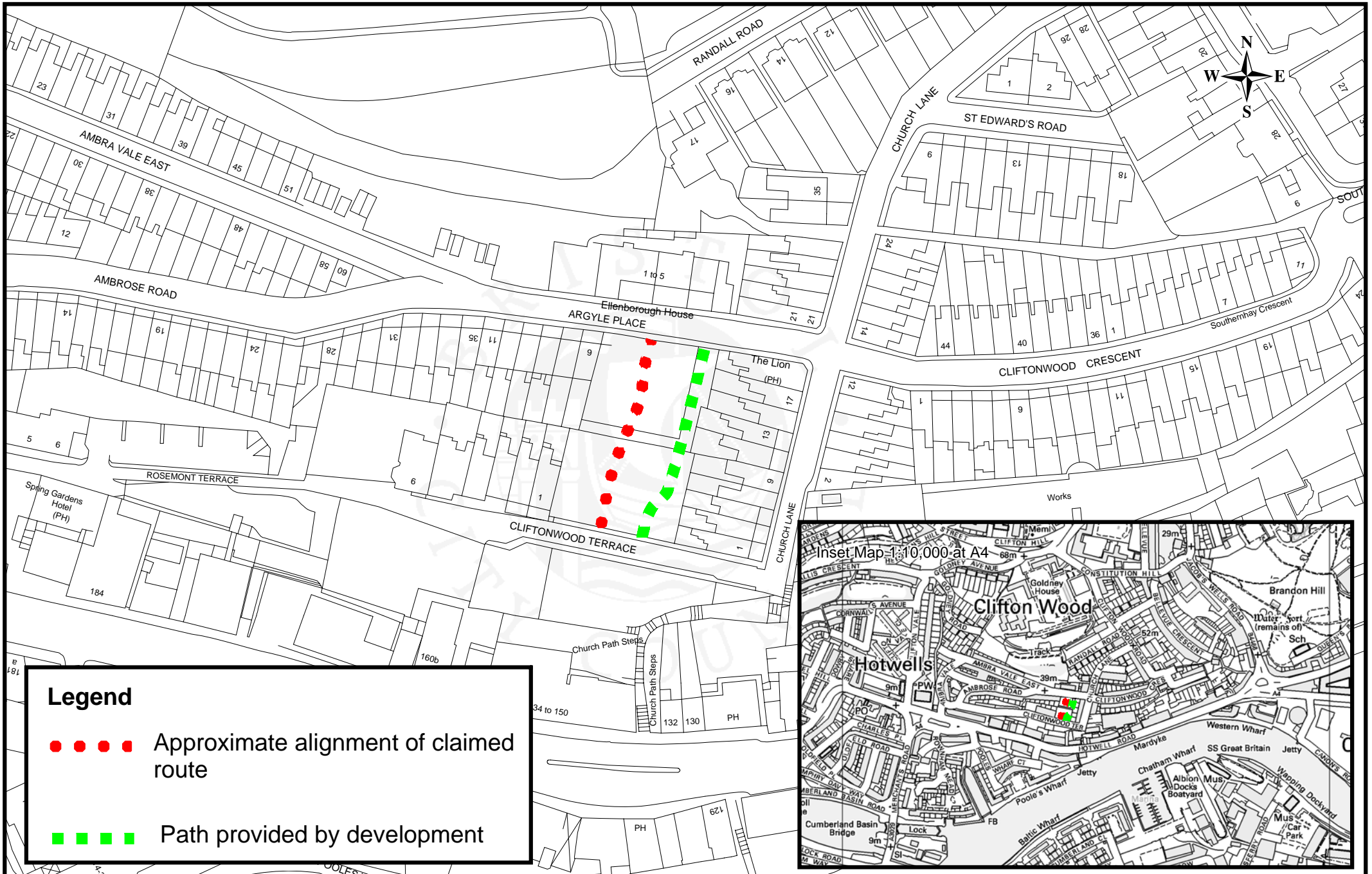
Frances Horner, Senior Solicitor, Legal Division, Central Support Services

SECTION 53 TIMESCALE - OUTLINE PROCEDURE



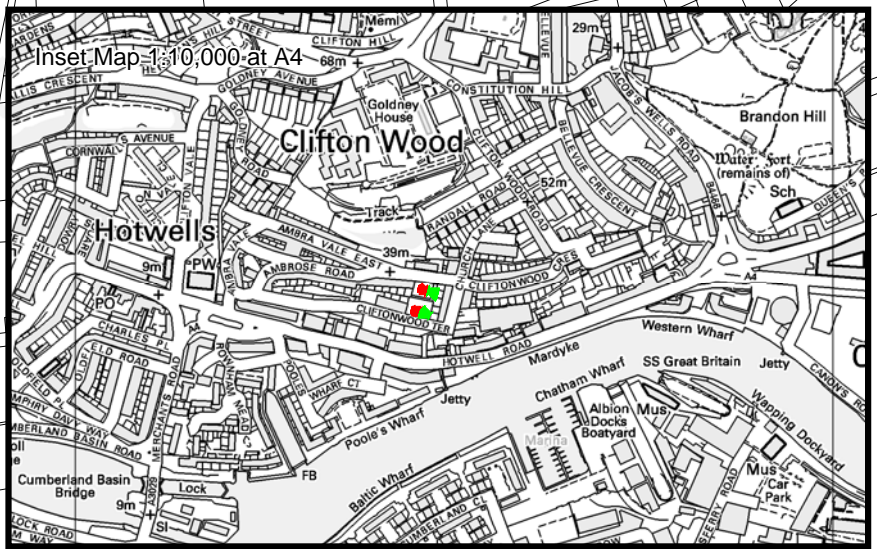
SUMMARY:
 6-7 weeks prior to committee date - end of informal consultation. 10-12 days prior to committee date - last submission of comments on draft report from both parties.
 All other time scales are approximate [TIMESCALE = 5-6 months approx. from commencing investigation (Stage 1) to committee decision (Stage 4)]

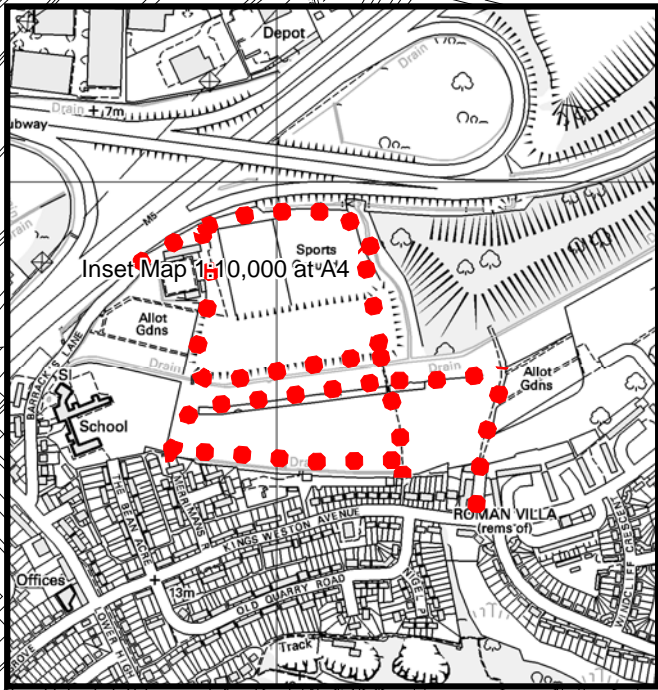
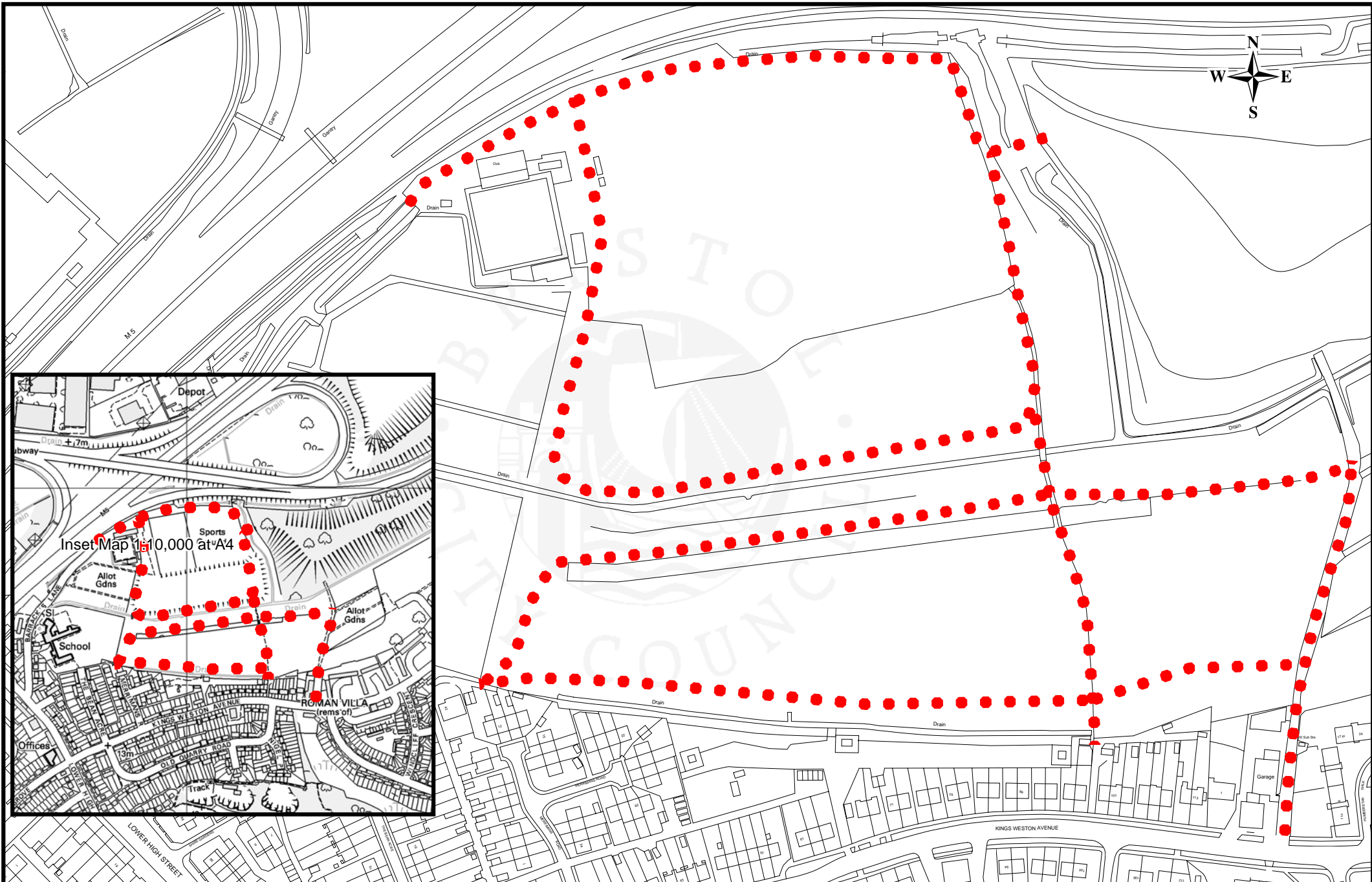


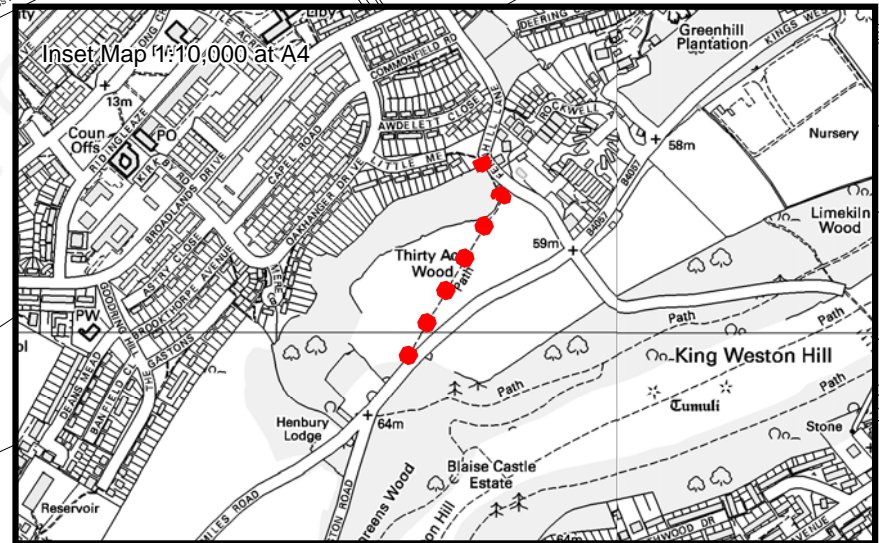
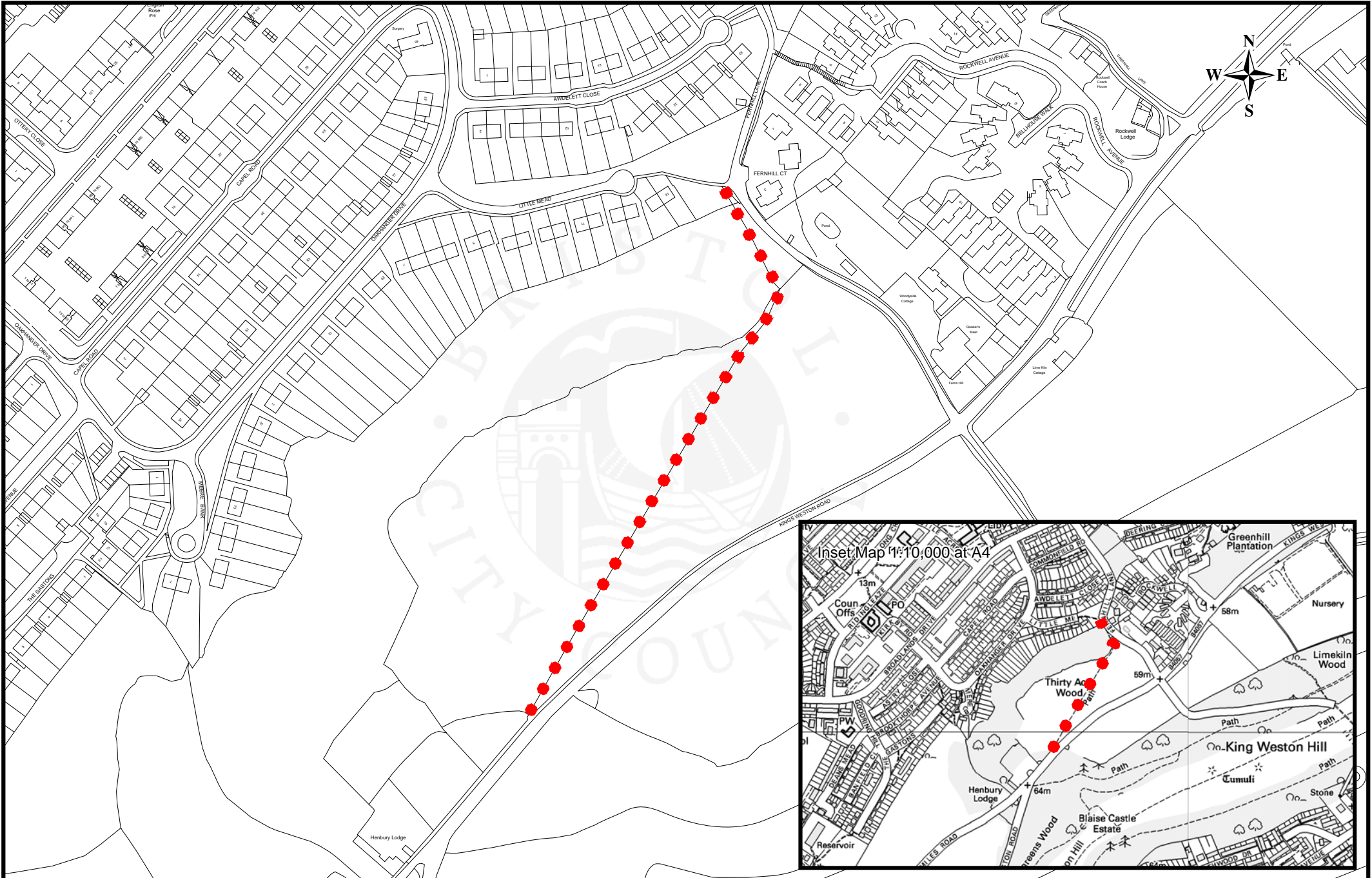


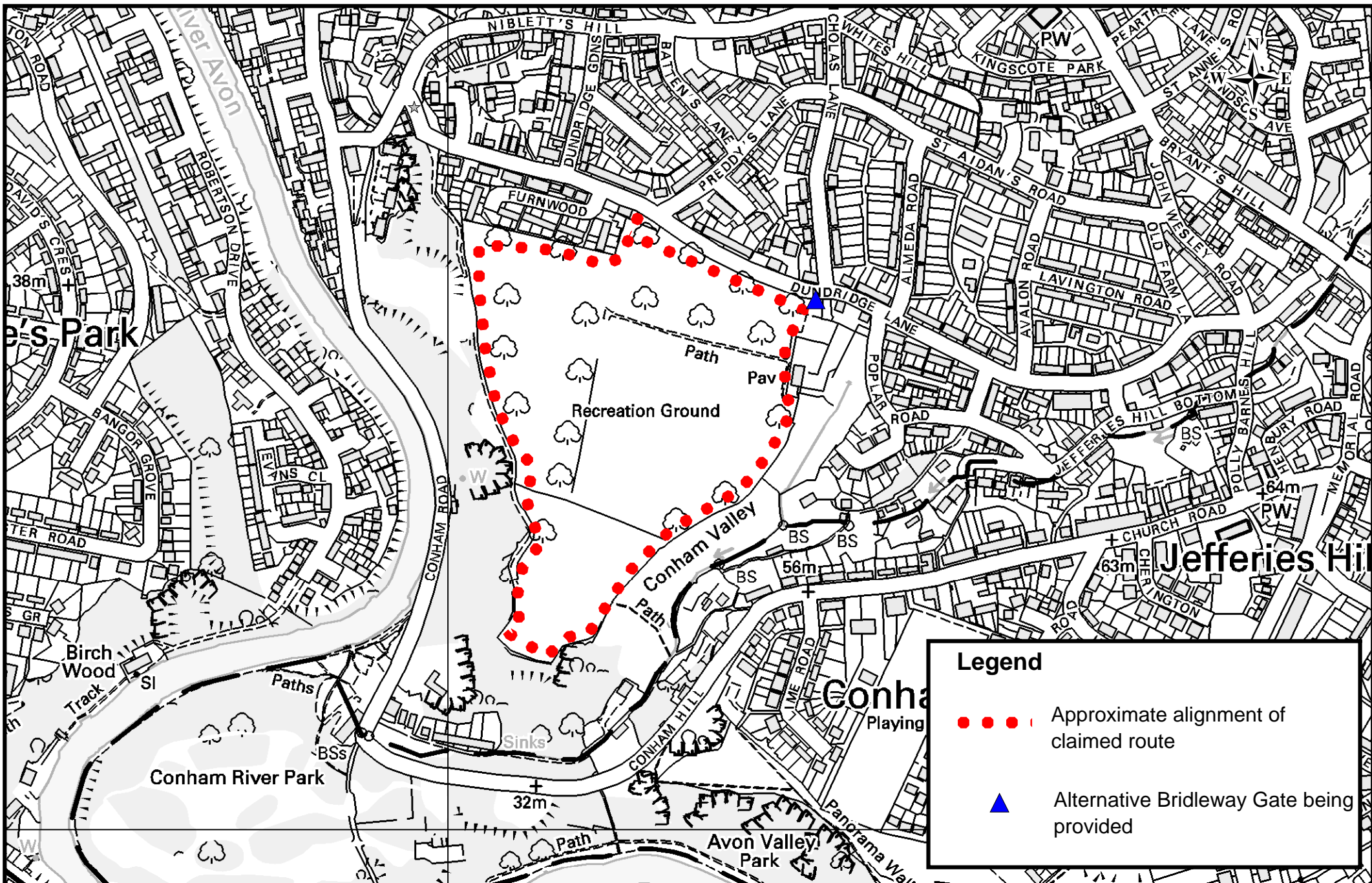
Legend

- ● ● ● Approximate alignment of claimed route
- ■ ■ ■ Path provided by development









Legend

- ● ● ● Approximate alignment of claimed route
- ▲ Alternative Bridleway Gate being provided