

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE

21 July 2008

**STRATEGY FOR DEALING WITH OUTSTANDING MODIFICATION ORDER APPLICATIONS AFFECTING COUNCIL LAND**

(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 on the current position with regard to Section 53 applications for modification orders affecting Council land, and to update members on proposals for dealing with such claims.

**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) of the Act states that the Authority has a duty to make modifications to the map and statement as a consequence of:  
*(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;*  
*(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 to which this Part applies;*  
*(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 10 outstanding claims waiting to be determined by the Authority (see appendix A of the update report, Agenda Item No. 11). Six of these claims affect Council land, all but one on land managed by Leisure Services.
5. At the last Public Rights of Way and Greens Committee, Members resolved that a report on the proposed strategy for dealing with outstanding claims on Council land be brought before this Committee. Officers from the Public Rights of Way team have met with senior managers of Culture and Leisure Services and it was agreed that the two departments would work together to look at the impacts of dedicating Public Rights on a case by case basis. If agreement on dedicating a public route in perpetuity was agreed in principle, a meeting would then be facilitated between the land owning department and the claimants to confirm acceptance of the proposals with a view to securing withdrawal of the claim following formal dedication. The details below outline the progress made to date.

## **SNEYD PARK**

6. Agreement has been reached whereby Culture and Leisure Services (C&LS) will dedicate a Public Right of Way through Sneyd Park and maintain the path as part of the ongoing management plan for the site. Transport Operations will advise the local ward members and residents as to the way forward, will agree with C&LS the works that will be required to bring the path up to the state in which it was claimed and undertake these initial works. A Deed of Dedication will then be drawn up and signed, to enable the path to be added to the Definitive Map.

## **ARGYLE PLACE, CLIFTON WOOD**

7. 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. The right was brought into question when the land was subject to a development proposal that prevented access from Cliftonwood Terrace to Argyle Place. Outline planning consent was granted at appeal on 5 October 1998. Reserved matters were approved on 23/10/2002 on condition that land is transferred by the developer to the Council as Public Open Space, to include a path linking Argyle Place to Cliftonwood Terrace.
8. The development has now taken place and the maintenance period ends in September 2008. The Council will take on the land as Open Space subject to being happy with the works that have been carried out. Once the land and the path have been confirmed as Open Space the head claimant will be contacted to determine if they are happy to

withdraw the claim, subject to the dedication of the alternative footpath provided.

### **BARRACKS LANE, AVONMOUTH**

9. A claim for Public Right of Way was deemed as validly made on 25 November 1998 over Council land, part of which is leased to Avonmouth Rugby Club. The claim was triggered when a bridge that spans a rhine was demolished.
10. Officers of C&LS and Transport Operations met on site on 17 June 2008 to look at the implications of the claim and to clarify the location of the routes. Since 1998 an alternative bridge and the Lawrence Weston Greenway route have been constructed. The head claimant is untraceable, but Officers have consulted other claimants three of whom attended a site meeting on 26 June 2008. At this stage, these claimants intimated that if all the routes claimed, apart from the bridge, could be dedicated by the Council that they would withdraw their claim.
11. The Park Manager for the area stated that there was no objection in principle to dedication of any of the claimed routes, but would not be happy about reinstating the bridge due to costs and the likelihood of use by motorbikes.
12. In respect of the northernmost part of the sports ground, which is in private ownership, Officers are in the process of consulting the landowner about a possible dedication.

### **LITTLE MEAD, KINGSWESTON**

13. A valid claim for a public Right of Way was received on 4 March 2000. The public rights were brought into question when a section of the published and waymarked Severn Way link path that runs over land owned by C&LS was leased out for grazing, and the paddock consequently fenced and enclosed.
14. Officers of C&LS and Transport Operations have met on site to look at the implications of a dedication of the claimed route across the paddock. There will be a meeting with the head claimant in the near future to determine their stance on the conditions of the proposed dedication.

### **DUNDRIDGE PARK, ST GEORGE**

15. A valid claim for a bridleway around the perimeter of Dundry Park was received on 6 April 2004. The claim was prompted through the locking of a gate opposite Preddy's Lane, as requested by local residents suffering from anti- social behaviour.

16. Colleagues from C&LS have recently met with the head claimant to see if an alternative access would be acceptable and a bridleway gate has been provided alongside the car park to allow equestrian access. The head claimant has agreed a temporary trail for access, which has been provided on a permissive basis. However, the Council as Highway Authority has a duty to consider and process any claims and, if challenged over the permissive arrangement, will have no option but to process the modification order application.

Consultation                      None.

Appendices                      There are no appendices.

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

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

### **Legal Implications:**

At common law a highway is created by the express or implied dedication of a right of passage to the public by the owner of the land, together with acceptance by the public of that right (as confirmed by *Hale v Norfolk County Council*). A dedication will be in perpetuity; i.e. the public at large will have the right of passage for all time. From the moment that a dedicated way has been accepted, i.e. used by the public, the way is a highway.

Bristol City Council cannot go through the process of creation by agreement with itself. However, under Common Law (and Section 31(9) of the Highway Act 1980) the Council's landowning department may issue a declaration, or 'Deed of Dedication', and the Council (in its capacity as Highway Authority) may issue a letter expressing acceptance on behalf of the public by the highway authority of the land so dedicated, without there having been actual use by the public. The land may also be dedicated subject to restrictions on the type of user or subject to the existence of limitations or conditions. Where the dedication is done by an agreement, and entered into with the Council acting on behalf of the public, this is an 'instrument' and would be a 'legal event' for the purposes of Section 53(3)(a) of the wildlife & countryside act 1981 ("*.....the coming into operation of any enactment or instrument, or any other event*"). Hence the path could be added to the Definitive Map and Statement under this section.

All land owned by a Local Authority is held for statutory purposes, e.g. housing land, public open space, highway land, cemeteries etc. If land is no longer required for the stated purpose, statute gives power to the Local Authority to

“appropriate” it to another purpose by using powers under Section 122 of the Local Government Act 1972. This is an executive function delegated to officers (unless it is a key decision). The power to appropriate land for highway purposes can be applied in respect of the creation of public rights of way or adopted paths across Council-owned land. Once the principle of dedication of public rights is agreed, approval to proceed is sought from the relevant Divisional Directors.

### **Options**

- 1) Where the dedicated way is proposed to be constructed to adoptable standards for future maintenance by the Highway Authority, appropriation (i.e. transfer of land from one department to another) will be required.
- 2) If ongoing maintenance of the way is intended to be carried out by the land managing department, then a decision should be made as to whether appropriation is required.
- 3) There are specific advertising requirements in relation to the appropriation of common land and public open space for another purpose. In these cases, the appropriation to a different purpose has to be advertised in a local newspaper for two consecutive weeks and any objections considered before proceeding, in accordance with Section 122.

Other Approvals Necessary                      None.

**Recommended -                      that the report be noted**

### **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 Background Papers**

None.

### **Contact Officer:**

For queries relating to rights of way matters:  
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