

BRISTOL CITY COUNCIL

**PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
20 February 2012**

**DEDICATION OF A PUBLIC RIGHT OF WAY ON FOOT, GLENAVON
PARK TO THE PORTWAY**

(Report of the Strategic Director of Neighbourhoods and City Development)

(Ward: Stoke Bishop)

Purpose of Report

1. To inform Committee of the latest proposal concerning the matter of the dedication of a public right of way on foot through Old Sneed Park from Glenavon Park to the Portway, and to seek approval to proceed with a dedication agreement between departments of an alternative route.

Background

2. The committee has previously considered the claimed route on 24 March 1997 and 8 April 2002 (Appendix A) and on both occasions the decision was to negotiate a dedication agreement with the land holding directorate. The proper officer gave approval for a formal agreement to be drawn up between departments on 3 July 2006 (Appendix B).
3. A subsequent report for information on 21 July 2008 set out the dedication procedure for Wildlife and Countryside Act 1981 Section 53 applications for modification orders affecting Council land. It was reported that agreement had been reached between City Development (Transport Operations) and Culture and Leisure Services for a deed of dedication to be drawn up and signed to enable the footpath in Old Sneed Park to be added to the Definitive Map and Statement (Appendix C, para. 6, p.30).
4. In November 2008 a letter was sent to ward members and adjacent residents notifying them of the need to undertake clearance works, which triggered concerns about the condition of the abutting wall at the rear of Cavendish Gardens. Responsibility for the wall lies with the residents themselves. As a consequence of these concerns, officers have consulted all parties on an alternative route through Council land from the end of Cavendish Gardens where it then connects to the claimed path further to the south west and continues to the Portway (see Appendix D).

Alternative Route

5. Residents of Cavendish Gardens and an adjacent resident from Horseshoe Drive were consulted in April 2011 regarding dedication by the Council as landowner of the claimed right of way from Glenavon Park to the Portway, and the proposal for dedicating an alternative route.

14 objections were received primarily on the grounds that the path is not needed, that it will emerge onto the Portway, that there will be increased traffic and parking in Cavendish Gardens and that it is a waste of tax payers' money. The officer's response is summarised as follows:-

- the proposed alternative dedication route continues to show signs of frequent use;
- there is an existing public right of way which emerges onto the Portway from Horseshoe Drive (PROW No. 168) and the dedicated route will connect with this path;
- there is no evidence to suggest that if a right of way is dedicated that Cavendish Gardens will become heavily parked. The proposed alternative route is already in use;
- the council has a statutory duty to investigate a claim for a right of way that has been correctly made, validated and has not been withdrawn. Generally, it is more cost effective, where the landowner is Bristol City Council, to consider whether the route may be dedicated as a right of way which may reduce legal charges and the likely expense of a public inquiry (see under Finance below). Should the Committee decide to dedicate the alternative route, this will entail some costs for works and signing of the route.

6. Agreement has been reached whereby Parks and Estates Services will dedicate the alternative route as a Public Right of Way through Old Sneyd Park and will maintain the path as part of the ongoing management plan for the Old Sneyd Park Nature Reserve. Preliminary works will be necessary to provide easier access for pedestrians and these works will be undertaken by Transport Services.
7. The lead witnesses have been consulted on the proposed alternative route, which they have accepted in principle, subject to the formal dedication of the alternative route.

Procedure

Legal

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. 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, or accepted by the highway authority on behalf of the public, the way is a highway.

Bristol City Council cannot go through the process of creation by agreement with itself. However, the Council's landowning department may dedicate a public right of way over its land by way of a deed of dedication under section 2 Local Government Act 2000. A common law dedication and acceptance is what is needed to effect this. The landowning part of the Council make a written declaration by way of committee resolution or delegated decision and the public can signify their acceptance by their use of the right of way or by acceptance by the highway authority on behalf of 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.

Once the principle of dedication of public rights is agreed, approval to proceed with a deed of dedication is sought from the relevant Directorate. The Council as landowner has the legal capacity to expressly dedicate a right of way and is not required to consult the public on the dedication procedure. However, it is considered good practice to undertake informal consultation. It is advisable for the notice of dedication to be advertised in the local press and Ordnance Survey should be notified of the subsequent 'legal event' modification order.

The withdrawal of a claimed right of way does not prevent any future application.

Finance

The costs of improving and signing the alternative route from Cavendish Gardens to the Portway will be met by the Highway Authority. Ongoing maintenance of the path through Old Sneyd Park Nature Reserve will be carried out by Bristol City Council's land managing department, Parks and Estates Services, who have agreed in principle to the dedication of the route.

No value is attached to the dedication of a right of way over land managed by Parks and Estates Services. The dedication procedure is considered to be the most cost effective use of the Council's legal resources compared with the costs of processing a modification order.

The legal costs for making a Deed of Dedication are currently in the region of £500 per dedication plus advertising costs. The alternative option of processing a modification order would involve the allocation of significant Council resources and officer time. Where objections are received to an order, it must be referred to the Secretary of State who will most likely call a Public Inquiry held at the expense of the Council. The legal costs for processing contested orders based on recent cases are approximately £11,000 to £14,000 per order including advertising costs.

RECOMMENDATION

That the report be noted and approval be given to proceed with the making of a deed of dedication for the alternative route from Cavendish Gardens to the Portway.

APPENDICES

Appendix A: Minutes of meetings of 24 March 1997 and 8 April 2002

Appendix B: Record of Officer Delegated Decision dated 3 July 2006

Appendix C: Report for information of 21 July 2008

Appendix D: Plan showing proposed alternative route from Cavendish Gardens to the Portway

BACKGROUND PAPERS

1. Report to Planning, Transport and Development (Public Rights of Way) Sub Committee of 24 March 1997
2. Report to Public Rights of Way and Greens Committee of 8 April 2002
3. Report to David Bishop, Director of Planning, Transport and Sustainable Development of 27 April 2006
4. Letter to ward members and residents dated 19 and 26 November 2008
5. Emails from lead claimants dated 11 February and 30 March 2011
6. Letter to residents and ward members dated 18 April 2011
7. Responses from residents dated between 28 April and 16 May 2011
8. Agreement in principle from land managing department (Parks and Estates Services)

CONSULTATION

Internal Legal Division, Central Resources
 Parks and Estates Service, Neighbourhoods and City Development
Executive Members for Transport and Neighbourhoods

OTHER APPROVALS NECESSARY

Under the Council's Constitution and Scheme of Authorities, strategic directors have authority to take land decisions.

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985

Background Papers:

1. Wildlife & Countryside Act 1981
2. Highways Act 1980

Contact Officer:

Duncan Venison, Network Operations Manager, Traffic Services, Neighbourhoods and City Development. Tel. No. 0117 9036576

RESOLVED - that approval be given to the making of a modification order for the claimed route and undertake any necessary measures for the route to be re-established.

P139/162

PTD

550.3/97

CLAIMED FOOTPATH : OLD SNEED PARK, SNEYD PARK

The sub-committee considered a report of the Director of Planning, Transport and Development Services (agenda item no 15) advising of possible future applications under Section 53(5) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the inclusion of a footpath running between the Portway and Glenavon Park, Sneyd Park shown as "AB" on the plan accompanying the report (appendix 1).

RESOLVED - that the continued negotiations on the future of this route be supported, and that further reports be submitted to future meetings of the sub-committee on this matter.

PTD

551.3/97

POSSIBLE FUTURE MODIFICATION OF PUBLIC RIGHTS OF WAY
- UPDATE

The sub-committee considered a report of the Director of Planning, Transport and Development Services (agenda item no 16) advising of possible future applications under Section 53(5) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the inclusion of a footpath.

RESOLVED - that the report be noted, and that a further report be submitted to future meetings of the sub-committee for decision when matters have progressed.

PTD

552.3/97

SECOND SEVERN CROSSING LINK ROAD - RIGHTS OF WAY
IMPLICATIONS

The sub-committee considered a report of the Director of Planning, Transport and Development Services (agenda item no 17) advising of continuing issues surrounding diverted/closed Public Rights of Way as a result of the new M49 link road.

RESOLVED - (1) that the response received from the Highways Agency be acknowledged;

(2) that the submission of a detailed programme of remedial measures/signing to the Highways Agency be supported, together with a request for appropriate funding.

- Peter Gould, on behalf of Dr Briggs of the Bristol Civic Society, referred to his statement (copied into minute-book). He re-iterated view that forthcoming Terms of Reference need to be strengthened and that these comments should be considered when they are next being drawn up.

RESOLVED - that the comments be considered when the Terms of Reference for next years Committee are being drawn up then agreed through the Annual Council Meeting on 14th May 2002.

- Mrs Ruth Gilliam, the applicant on Item 11, read her statement. No copy available. She wanted confirmation that any attempt by City & St James' Property Holdings Ltd to get the inquiry moved back again, now in July, would not be allowable. She stressed the importance of having a set date so that she can co-ordinate the support for her application accordingly. Senior Solicitor, Frances Horner, explained that the final date would be one at which everyone could attend and that this should be secured within the next week.

**PROWG
26.4/02**

CLAIMED FOOTPATH: OLD SNEED PARK, SNEYD PARK

The Committee considered a report of the Director of Environment, Transport and Leisure (agenda item no. 6) to report for information on progress made in respect of negotiations on the Portway to Glenavon Park section of the suspended Modification Order application at Sneyd Park, Stoke Bishop.

RESOLVED - that the report be noted.

**PROWG
27.4/02**

CLAIMED PUBLIC FOOTPATH FROM THE A4018 PASSAGE ROAD TO MACHIN ROAD, HENBURY

The Committee considered a joint report of the Director of Environment, Transport and Leisure and the Director of Central Support Services (agenda item no. 7) 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 seek approval to referring the order to the Secretary of State for a decision to be made on whether or not to confirm the order.

PLANNING, TRANSPORT & SUSTAINABLE DEVELOPMENT

Record of Officer Delegated Decision

Subject Matter: Dedication of a public right of way for pedestrians through Old Sneed Park, between Glenavon Park and The Portway

Issues: The Council has a statutory duty to determine a claim for a public right of way over Old Sneed Park in Stoke Bishop. Traffic Management and Legal officers believe that a prima facie case has been established by the user evidence and, as the claim affects land in the ownership of Bristol City Council, that the most appropriate use of Council resources is to seek approval to draw up a formal agreement between Culture and Leisure Services and Planning, Transport and Sustainable Development, to appropriate land for highway purposes, followed by a formal dedication of the land as public highway (i.e. as a public footpath).

Decision: Authority is given to draw up a formal inter departmental to transfer approximately 1,204 m² of Old Sneed Park for highway purposes, to be followed by a formal dedication of the land as a public footpath.

Consultations:

Internal – Culture and Leisure Services (Parks)
Legal Division (Commercial & Environment Services)
Chair of Public Rights of Way and Greens Committee
Executive Member for Transport & Development Control

External – None, as dedication by landowner does not require external public consultation.

Decision taken by: David Bishop

TITLE: Director of Planning, Transport & Sustainable Development

Signature:



Date:

3.7.06

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.

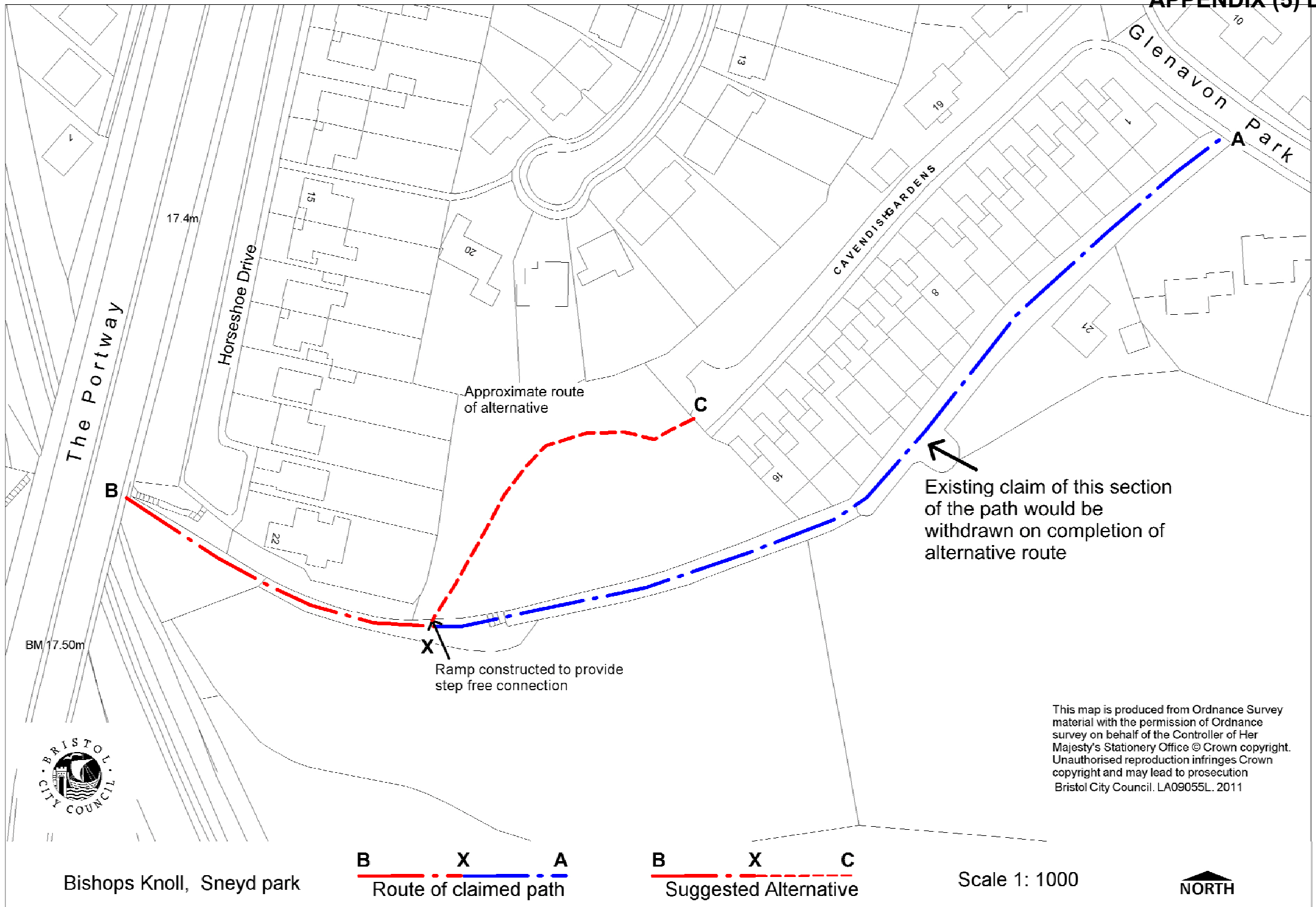
Recommended - that the report be noted

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 Background Papers

None.

Contact Officer:

For queries relating to rights of way matters:
Kevin Hill, Senior Solicitor, Legal Division, Central Support Services
Andrew Whitehead, Walking & Cycling, Traffic Management, PTSD



Existing claim of this section of the path would be withdrawn on completion of alternative route

Ramp constructed to provide step free connection

Approximate route of alternative

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Bishops Knoll, Sneyd park

B **X** **A**
Route of claimed path

B **X** **C**
Suggested Alternative

Scale 1: 1000

