

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

15<sup>th</sup> October, 2018

**CLAIMED FOOTPATH FROM SHALDON ROAD TO MORRIS ROAD (with a spur to Morris Road between Nos. 76 – 78 Morris Road, and another to Shaldon Road between No. 88 and the Unity Chapel), LOCKLEAZE**

(Report of the Service Director for Transport, Place directorate)

**(Ward: Lockleaze)**

**Purpose of Report**

1. To determine an application for a modification order under the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a footpath from Shaldon Road to Morris Road, Lockleaze, Bristol.

**Legal Framework**

2. Bristol City Council as highway and surveying authority is under a statutory duty, as imposed by Section 53(2) of the Wildlife and Countryside Act 1981, to keep the Definitive Map and Statement under continuous review and to determine any valid applications for modification orders that it receives.
3. Section 53(5) of the Act enables any person to apply to the surveying authority for an order to be made to modify the definitive map and statement as respects any of the 'evidential events' specified in paragraphs (b) and (c) of section 53(3). The procedure for the making and determination of applications is set out in Schedule 14 of the Act and includes the right for applicants to appeal to the Secretary of State against the refusal of the surveying authority to make an order.

**Background**

4. The Definitive Map Modification Order (DMMO) application was submitted on 9<sup>th</sup> May 2007 and validated by Bristol City Council Legal Services on 18<sup>th</sup> May 2007. The application is to modify the Definitive Map by adding a footpath, including two spurs, from Shaldon Road to Morris Road to meet the adopted highway which runs down the side of No. 1 Morris Road at the rear of the Unity Chapel) Lockleaze. The claimed route is the lane which runs at the rear of Nos. 233-247 Muller Road and the side and rear of No. 2 Shaldon Road, continuing along the rear of Nos. 2 to 88 Shaldon Road. A copy of the map submitted with the DMMO application is attached at Appendix A and shows the claimed route with two spurs – one to Shaldon Road between No. 88 Shaldon Road and the Unity Chapel; and one to Morris Road between Nos. 76 and 78 Morrison Road.
5. The relevant statutory provision in this case, which applies to adding a route to the Definitive Map and Statement, is set out in Section 53(3)(b) of the Act which requires the surveying authority to modify the Definitive Map and Statement following:

*“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 a presumption that the way has been dedicated as a public path or restricted byway;”*

6. Section 31 of the Highways Act 1980 provides for the 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.”*

7. The act that brought the public right into question and prompted the claim was the erection of two sets of gates across the way in February 2007 by Shaldon Watch (i.e. Shaldon Road residents association whose properties back onto the lane) - see letter dated 28.02.2007 from the DMMO applicant at Appendix B and Photographs 1 & 3 from a site visit in March 2007 at Appendix P2. This was in response to alleged incidences of anti-social behaviour, including fly tipping and burglaries from garages, reported to community safety staff and police officers in 2006-07 before the gates were erected. The ‘proposed’ additional sets of gates annotated on the hand drawn map with the applicant’s letter (see Appendix B) had been installed by the time of the site visit in March 2007, which effectively prevented subsequent public use of the claimed route (see photo 7 – gates and fencing - at Appendix P2). Further evidence to corroborate the date on which the public’s right to use the way was brought into question is set out in the summary of user evidence below (see paragraphs 31, 33(f), (g) & (h) and Table at Appendix S).

### **Documentary Evidence supporting the existence of the route**

8. The DMMO applicant did not provide any further documentary evidence in addition to the user evidence submitted in support of the application, a detailed analysis of which is set out in paras. 29 to 38 in the report below.
9. Section 32 of the Highways Act 1980 permits other sources of documentary evidence to be taken into consideration which may provide additional evidence relevant to the existence of a public right of way. It is this authority’s practice to search historical records held by the Bristol Records Office (BRO) or held on digital archives such as ‘Know Your Place – Bristol’. Officers’ evaluation of documents from the Council’s archives is summarised in paragraphs 21 to 23 below.
10. According to modern records, Nos. 2 to 62 Shaldon Road were built in the 1930s as private housing and never formed part of the Lockleaze Housing Estate. Shaldon Road

was adopted in phases: Nos. 2 to 64 in the 1930s and Nos. 66 to 88 in 1949. Nos. 241 to 247 Muller Road were built in 1937 and Nos. 233 to 239 in 1947.

11. The Morris Road housing estate and the open space land which abuts the lane to the north forms part of the Lockleaze estate which was developed immediately after World War II. Although much of the housing was owned by Bristol Corporation, some are now privately owned. The Bristol City Council Housing land between Nos. 76 and 78 Morris Road has four concrete bollards at its junction with the lane, which prevented vehicular but not pedestrian access until the fencing was erected in 2007. The bollards were erected circa 1965 – see paragraph 22(c) below.
12. According to a local history of the church, the former Unity Chapel and other buildings in Midland Road St Philips were sold in 1946 and the proceeds used to build the current chapel in Lockleaze. Part of the claimed route to Morris Road, adjacent to No. 1 Morris Road at the rear of the Unity Chapel, is adopted highway and was gated at its junction with the lane in 2007.
13. The lane at the rear of properties is accessed from Shaldon Road at two points, one adjacent to No. 2 Shaldon Road and the other adjacent to No. 88 Shaldon Road. There are two additional access points from Morris Road, one between Nos. 76 to 78 Morris Road and the another adjacent to No. 1 Morris Road. The lane is not adopted for maintenance purposes by the highway authority and is not registered with the Land Registry. However, it is customary for private rights of access to be recorded in the Title Deeds of adjacent properties – see paragraphs 14, 39 and 40 below.
14. According to Bristol City Council Property Services, the Council is the historical beneficiary of a right of way in perpetuity over the whole of the lane at the rear of Shaldon Road by virtue of the conveyance by Dennis Cottrell of the adjacent land to the Council on 13<sup>th</sup> November 1935 – see Property Services plan at Appendix C1 and the 1935 Conveyance plan at Appendix C2. The access rights come with a covenant on the Council to pay half the cost of repair and maintenance of the lane, which responsibility would transfer to any future owner of the land. At the time of the gating of the lane in 2007 a former ward Councillor provided anecdotal evidence that for many years a maintenance boundary was clearly marked.
15. There is documentary evidence of the legal diversion of historical footpaths in the 1930s in preparation for the development of the land for housing purposes. Documents obtained from the BRO have revealed that in 1935 the owner of land off Muller Road earmarked for development, one Dennis Cottrell (Builder), applied to The Urban Sanitary Authority of the City and County of Bristol to divert four footpaths. The development land was conveyed by the Trustees to Mr Cottrell in 1935 (see copy of Plan referred to in the Conveyance dated 5<sup>th</sup> January 1935 at Appendix D, which shows the four footpaths in question). The Plan showing the ‘Proposed Diversion of Footpaths between Muller Road and Purdown’ is attached at Appendix E. The section of ‘Footpath No. 1’ from Downend Farm to Muller Road to be diverted ran from points ‘B’ to ‘A’ on the Plan through the allotment site and was proposed to be stopped up and replaced with a short section of ‘12 feet wide Road into Allotments’ from Muller Road. ‘Footpath No. 2’ was proposed to be diverted from point ‘C’ along a ‘new footpath 5 feet wide’ towards the junction with and then along the ‘Proposed Town Planning Road’ which subsequently became Shaldon Road.

16. The four footpaths referred to above were shown on the 1880 and 1900 Ordnance Survey maps, which were published before Muller Road was built in the 1920s. The maps show the GWR railway line (from Temple Meads to South Wales) and 'Footpath No. 1' joined the footpath leading to Ashleyhill Station (see Appendix F1 & F2). The November 1935 Conveyance plan shows the road layout, and the former footpaths are marked as dashed lines annotated 'F.P.' on the extract of the conveyance plan at Appendix C2. The lane which abuts the conveyed land at the rear of Shaldon Road is coloured green on the plan and is clearly annotated '**13' – 0" Right of Way**'.
17. The 1946 aerial photograph at Appendix G shows Nos. 241 to 247 Muller Road and 2 to 80 Shaldon Road, but the four historic footpaths are no longer in existence. However, the claimed route running adjacent to the new allotment site at the rear of Nos. 2 to 80 Shaldon Road and 241 to 247 Muller Road is clearly shown. Note that the Unity Chapel and Nos. 82 to 88 Shaldon Road had not yet been built, although the houses had been built by 1949 along with Nos. 233 to 239 Muller Road (see 1949 O.S. map at Appendix H).
18. Documents held by Bristol Archives reveal that the allocation of a site in the Lockleaze Estate for the Unity Chapel was granted to the trustees in 1953 by the City Engineer & Planning Officer following negotiations between the Housing Committee, the Local Churches Committee and the Free Church Federal Council. According to the history of the Unity Chapel held on the Gloucestershire Places of Worship database, the Chapel was founded and certified for worship before 1960 and registered for solemnising marriages by Bristol's Registrar General on 26 September 1960.
19. Morris Road was adopted in 1969. This includes the section of Morris Road at the junction with Shaldon Road to the east of the Unity Chapel.
20. The published Definitive Map and Statement of 1954 and the review of the map published in 1966 at Appendices I.1 & I.2 do not show the claimed route as a recorded right of way. However, the lane at the rear of Shaldon Road and Muller Road houses is clearly seen in the 1966 Definitive Map extract, as is the entrance to the allotment site at the Muller Road end of the lane.
21. To summarise the historic evidence set out above: the four historic footpaths which were shown on the early O.S. maps were also shown on the 1935 conveyance of the land. However, archive evidence indicates that these historic paths were legally diverted to make way for the Lockleaze housing estate. Evidence of the layout, width and status of the claimed route is first available from the November 1935 Conveyance, the 1946 aerial photo and the 1949 OS map, although for reasons as yet undiscovered it was not recorded as a public right of way on either the 1954 or 1966 editions of the definitive map and was not entered on the Council's adopted highway records. It should be noted that only public rights of way are recorded on the definitive map. However, private rights of access in association with a public right of way may be recorded in the definitive statement which accompanies the map, if evidence of private rights exists in the title deeds of adjacent properties. Adopted highways are recorded on the Council's List of Streets.
22. Evidence from the Council's Planning archives is summarised as follows:
  - a) In July 1947 the Planning and Reconstruction Committee granted temporary permission for the retention of a portable hut at Muller Road, near Shaldon Road erected

by the building contractor, Sidney Cottrell. In a letter dated 29 June 1947 to the City Engineer, Mr Cottrell explained that the hut was used in conjunction with the erection of “8 dwelling-houses” in Muller Road. The accompanying plan at Appendix J was annotated to show that four houses were built in 1937 and a further four houses were “under construction at present time [i.e. 1947] and are now in process of being roofed” (see paragraph 10 above).

b) Approval was given in January 1964 for housing on part of the former allotment gardens - ‘Site No. 22’ Shaldon Road, Lockleaze (Appl. No. 3457/63) – see plan which accompanied the Notice of Decision at Appendix K. It can be seen from the plan that the blue line of the development site enclosed part of the former historic footpath ‘No. 2’, referred to in paragraph 15 above, which is shown running through the ‘Allotment Gardens’ and continuing on to Shaldon Road down the side of No. 88 (see also 1935 diversion plan at Appx. E). The claimed route can be seen running at the rear of Nos. 2 to 88 Shaldon Road and although Nos. 25 to 41 Romney Avenue are shown on the plan, the Unity Chapel is not. The chapel is however shown on Drawing No. 711.21 at Appendix L which also provided details of two blocks of garages to be accessed via the ‘Shared Access Road’ at the rear of Shaldon Road – note that the lane appears to be of a uniform width on the drawing. It is apparent from the drawing that the Council’s intention was to provide two links to Morris road from the rear access lane on completion of the housing development; one at the side and rear of the Unity Chapel adjacent to No. 88 Shaldon Road, and a second link to Morris Road between housing units most clearly marked by their elevation, ‘156.50’ and ‘160.00’.

c) Following correspondence in July 1965 with the Chief Officer of the Fire Brigade concerning an ‘emergency access way’ from Shaldon Road to Morris Road for fire prevention purposes, the Housing Department wrote to the City Engineer and Planning Officer about ‘The Restriction of access from Morris Road to the rear access serving houses at Shaldon Road’. The proposal by Housing was to erect removable bollards in the position indicated on the approved plans for a block of seven garages to be built at the rear of Morris Road. A copy of the plan which accompanied the Housing Manager’s letter is attached at Appendix M and shows the location of the garages to be omitted, the proposed site for the bollards and the lane at the rear of Shaldon Road which is annotated as the ‘Rear Access to Shaldon Road’.

23. Officers’ interpretation of the archive planning documents outlined above is that the lane at the rear of Shaldon Road was treated as if it was an existing public right of way and set out as such on the approved plans in association with the housing development that took place in the mid-1960s. The accompanying drawings indicate a lane of uniform width throughout. However, the subsequent removal of the proposed garages at the rear of Morris Road and the erection of bollards implies that a decision was reached by the Housing Department to prevent vehicular access to Morris Road via the lane at this point, but not to prevent public access for pedestrians. The bollards are still in situ – see site visit photographs Nos. 7 & 15 at Appendix P2 & P3 – and it is clear that the bollards would not have prevented the continued public use of the link from the lane to Morris Road by pedestrians prior to the gating of the lane in 2007. The second link, from the ‘shared access road’ to Morris Road at the rear of the Unity Chapel, was unaffected by the proposal.

## Current development proposals

24. Planning Application No. 17/01920/F – land to south of Morris Road – proposed development of 40 dwellings and two common houses. The proposal includes provision of pedestrian and cyclist access to the site via the lane at the rear of Shaldon Road, which may entail removal of one set of gates to facilitate access. Only part of the claimed route is affected by the proposed cycleway link, i.e. the Muller Road end of the lane (see Proposed Landscape Layout at Appendix N). Planning permission was granted at the Development Control Committee B meeting on 27 September 2017, subject to the provision of a Planning Agreement. Further details of the pedestrian/cycle access arrangements are required under Condition No. 12.
25. Planning Application No. 18/00422/F – 88 Shaldon Road – proposed five bed attached house and single storey rear garage. The proposal includes relocation of the existing gates fronting Shaldon Road to facilitate access to two parking bays (see plan at Appendix O). Part of the claimed route is affected by the proposal, i.e. the section of lane adjacent to No. 88 Shaldon Road. As the landowner is unknown, the developer was required to serve a Certificate D notice which was erected near the site and an advert published in the local press in February 2018. Planning permission was granted on 4<sup>th</sup> April 2018.

## Site Visits

26. Officers undertook site visits in March 2007 and July 2017 - a photographic record is attached at Appendix P. The initial site visit in 2007 took place shortly after the decision to erect gates was fully implemented – see photographs Nos. 1, 3 & 7, Appendix P2, showing the gates at Shaldon Road adjacent to the Unity Chapel, Morris Road adjacent to No. 1 and Morris Road at rear of Nos. 76 & 78.
27. Photographs from a site visit in July 2017 show the gates at the rear of Muller Road unlocked (see Appendix P3 photo 10 – gates at rear of No. 4 Shaldon Road facing rear of Nos. 233-235 Muller Rd). It can be seen in photo 10 that a car has been parked in the lane which blocks part of the width of the lane at this point. However, not all of the Shaldon Road properties have a garage at the rear and some garages may have become disused as a result of the overgrowth of the lane approximately at the rear of Nos. 22 to 50 Shaldon Road (see 2012 Aerial Photo at Appendix Q and photos 11 and 12 at Appendix P3). It can be seen from the aerial photo that many residents' cars are now parked off road at the front of properties.
28. The claimed route is shown on the Location Plan at Appendix R (between points A-B-C-D-E-F on the plan). Due to the gating of the lane, officers have estimated from a desk top exercise that the width of the lane between boundaries varies between 2.5m-6.5m. The length of the lane between points A to D is approximately 355m (from point A - Shaldon Road, adjacent to No. 2, to the rear of the Unity Chapel at point D – i.e. to connect with the adopted footpath adjacent to 1 Morris Road). The spur to Shaldon Road between points D to E (down side of No. 88 Shaldon Road) is approximately 48m; and the spur to Morris Road between points C to F (between Nos. 76 and 78 Morris Road) is approximately 24m.

## Evidence submitted in support of the application

29. The DMMO application to modify the Definitive Map and Statement by adding the footpath as described in paragraph 4 above, is supported by 26 user evidence forms (UEFs) which are included with the background papers to this report. The forms provide evidence of use of the claimed route for varying periods of time between 1965 and 2007 when the gates were erected which curtailed public use of the route (see tabular summary of UEFs at Appendix S). The evidence contained in the UEFs and accompanying maps is summarised below.
30. Twelve of the maps provided with the UEFs are marked to show the whole of the claimed route plus the two spurs, which is shown as A-B-C-D-E-F on the location plan at Appendix R (Forms 2, 3, 4, 5, 8, 9, 10, 12, 16, 20, 21, 22). Four maps are marked to show the claimed route between points A-B-C-D-E including one spur, but exclude the other spur to Shaldon Road by the Unity Chapel, i.e. points E-F (Forms 7, 17, 24 and 25). Four maps show the claimed route between points A-B-C-E-F including one spur, but exclude the spur to Morris Road between Nos. 76-78 Morris Road, i.e. points C-D (Forms 1, 6, 15 and 23). Three maps are marked to show the claimed route between points A-B-C-E only, excluding both spurs (Forms 11, 18 and 19). Two witnesses have marked only the spur between points C-D to Morris Road and a few metres of the lane at the rear of Nos. 76 and 84 Morris Road (Forms 13 and 14). One witness (Form 26) has marked part only of the claimed route between points B-C-E, but has included the spur to Shaldon Road between points E-F. Two witnesses also have marked the cul-de-sac at the rear of Muller Road (rear of Nos. 221 – 231) – an extension of the claimed route - which the use of, however, does not add to the evidence in support of the claimed route shown on the map submitted with the DMMO application at Appendix A.
31. Many witnesses also marked the maps with their UEFs to show the location of the gates and fencing and the date the first gates were installed:- Forms 1, 22, 23 and 26 – on 20<sup>th</sup> February 2007; Forms 7, 8, 9, 10, 11, 15, 16, 17, 20 and 21 – in February 2007; Form 12 – “installed in the last few weeks” (Form dated 20.04.2007); Form 22 – “installed in last few weeks, i.e. 1<sup>st</sup> one 20.02.2007” (Form dated 16.04.2007); Forms 24 and 25 – “new gates recently installed (both Forms dated 19.04.2007). Six witnesses marked three sets of gates plus fencing on their maps (Forms 11, 12, 17, 18, 19, 26); six witnesses marked four gates and fencing (Form 13, 15, 16, 20, 21 and 22); three witnesses marked 2 sets of gates (Form 1, 24 and 25). One witness marked 4 sets of gates and noted on the map “saw first gates on 20.02.2007, next two followed in next few weeks” (Form 23 dated 15.04.2007).
32. The summary of user evidence at Appendix S reveals that the majority of witnesses (15 out of 26) claim continuous use of the route for 20 years or more during the relevant period in question from 1987 to 2007 (Forms 1-6, 9, 10, 13, 14, 19, 22-25). Eleven witnesses claim use of the way for varying periods of time between 2 to 19 years during the 20-year period, which adds to the overall strength of evidence in support of the Application (Forms 7, 8, 11, 12, 15-18, 20, 21 and 26). Fourteen witnesses also provided evidence of use for varying periods of time between 5 to 22 years prior to the 20-year period in question (i.e. between 1965 and 1987) – Forms 1-7, 9, 10, 19 and 22-25.
33. Other evidence from the UEFs is set out in the table at Appendix S and summarised as follows:

- a) Historic and other evidence of width of the claimed route is set out in paragraphs 21(b) and 27 above. User evidence of the width of the way is as follows:
- 17 witnesses state a width of 3 to 6 metres (Forms 1, 5-8, 11,12 and 17-26);
  - “The lane is big enough to fit a car down it comfortably” – Form 16;
  - 3 to 6 yards – Form 15;
  - 15 feet – Forms 13 and 14;
  - About 10 feet – Forms 9 and 10;
  - Width varies, wider at Morris Road entrance – Forms 2 and 3;
  - Question unanswered – Form 4.
- b) Three witnesses believe the status of the way is Footpath (Forms 4 to 6). Six witnesses believe the status is Bridleway (Forms 2, 3, 13, 14, 18 and 19). Two of these witnesses, Forms 13 and 14, stated that they were “told by the Council” that there was a bridlepath down the side and rear of their property (No. 78 Morris Road). One witness stated that “this route has always been known as a bridlepath” (Form 26). Ten witnesses did not define the status of the way but believed it to be a ‘public right of way’ (Forms 7, 12, 17 and 20-26) and seven witnesses left this question unanswered (Forms 1, 8-11, 15 and 16). This may be due in part to the private vehicular use of the way contributing to a lack of certainty over the status of the way.
- c) The purpose of their journey for the majority of witnesses was for access to Muller Road, library and shops (B&Q, Tesco & Ashley Down shops) – Forms 1, 4, 5, 8, 9, 11, 12, 15, 18, 19 and 21-25; three witnesses used the route whilst dog walking (Forms 7, 17, and 26) and two witnesses used the route as a short cut to Morris Road (Forms 2 and 3). The claimed route was also used by five witnesses on their way to work (Forms 5, 6, 24, 25 and 26); and for access to the bus stops on Shaldon Road (Forms 5, 10, 20, 22 and 23). Two witnesses (Forms 13 & 14) used the route solely to access the rear of No. 78 Morris Road for maintenance purposes although they did not claim a private right to do so. One witness did not answer this question (Form 16).
- d) 25 of the 26 witnesses stated that they did not have a private right to use the lane. However, one witness (Form 11), who used the route frequently for access to Shaldon Road and Muller Road, stated that they had a private right to gain access to the rear of their property for maintenance purposes (82 Morris Road).
- e) Despite the belief by many of the witnesses that the claimed route was a bridleway, all 26 witnesses used the route on foot. 16 witnesses walked the route daily or more over the full 20-year period claimed (Form Nos. 1-12, 15, 17, 20 & 24); seven witnesses walked the route weekly or more (Forms 13, 14, 18, 19 and 21-23) and two witnesses cycled to work – approximately twice daily (Form 25) or weekly (Form 26). One witness (Form 16) didn’t specify frequency of use.
- f) The majority of witnesses did not recall any notices along the claimed route (Forms 1-3, 5-11, 13-15, 18, 19 and 22-26). One witness (Form 4) stated that there weren’t any notices until February 2007. Three witnesses referred to a notice on the gate/fence - Forms 22, 23 & 26 and another witness stated this was “a recent handwritten note” (Form 17). One of these witnesses specified the date on which the notice was displayed as 20<sup>th</sup> April 2007 (Form 22) and one referred to notices

stating "Private Lane" (Form 21). Two other witnesses observed notices "recently on the newly installed gates" (Forms 12 & 15); and three witnesses (Forms 16, 20 & 21) stated that "since the gates were put up there have been notices saying private and a phone number to call".

g) No witnesses were ever told that the way was not public, or were stopped from using the route, although one witnesses (Form 6) stated they were turned back "when the gates were erected in 2007". One other witness (Form 16) was told that the way was private by "the tenants of 1 Morris Road and the man on the Shaldon Road entrance, No. 88". One witness (Form 17) stated, with reference to the erection of the gates, that "I have been using lane for ten years. I have never seen any cars or motorbikes burnt out. This is why gates were put up so I have been told."

h) No witnesses recalled any obstructions to the way over the twenty year period being claimed. Two witnesses (Forms 1 and 26) stated there were no obstructions to the way until 20.02.2007 when the first gates were installed. This is corroborated by fifteen other witnesses who stated that there were no obstructions until gates were put up in February 2007 (Forms 15, 17, 20 and 21), gates installed "in last few weeks" (Forms 7 and 12); gates recently installed (Forms 8, 9, 10, 24 and 25); locked gates in 2007 (Form 6) and "gates and fence put up in 2007" (Form 11) "1<sup>st</sup> one 20.2.07" (Forms 22 and 23). One witness did not answer the question (Form 18).

i) Many witnesses knew or had seen other residents of Morris Road using the claimed route (Forms 1-3, 5, 6, 11, 15, 17, 18, 19, 21, 24 and 26). One witness (Form 7) stated they "always saw people going in and out of lane entrances" and another witness (Form 4) stated they were "too numerous to mention". Two witnesses stated that "many people use the lane as it leads to Shaldon Road and the bus stop" (Forms 9 and 10). One witness saw residents from Morris Road, Downman Road, Gaskins and Shaldon Road using the route (Form 16) and one witness saw residents from "the area" (Form 20). Three witnesses referred to use of the claimed route by school children: "I and many others used route after school to go to shops whilst pupil of St Thomas More School in 1970s" (Form 7); the route was "used in summer by school children to get to school in Muller Road" and was "very popular for many people use to get to Muller Road and to collect blackberries" (Forms 13 and 14).

34. In respect of the user evidence referred to at the end of paragraph 30 above regarding the short section of cul-de-sac at the rear of Muller Road, this section of the lane was not included as part of the claimed route (see Appendix A). The evidence is considered by officers to be insufficient for the cul-de-sac to be included as an additional spur to the claimed route, and consequently it will be disregarded for the purposes of this report.
35. In conclusion, officers believe that the user evidence which supports the DMMO application provides strong evidence of pedestrian use of the route for the relevant 20-year period from 1987 to 2007. Further evidence, indicating that a route has been available at the rear of Shaldon Road adjacent to the former allotment land since 1935, is corroborated by the documentary evidence set out in paragraphs 14 and 16 above. Additional documentary evidence indicates that the only major change affecting the claimed route prior to the relevant 20-year period occurred in 1965 when bollards were erected which prevented vehicular access to the lane from the link between Nos. 76 & 78

Morris Road (see paras. 22 (c) and 23 above), although pedestrian access was unaffected. Vehicular access continued to be available via the adopted section of lane adjacent to 1 Morris Road at the rear of the Unity Chapel, until the gates were erected in 2007.

36. In respect of the user evidence concerning the width of the way, set out in paragraph 33 (a) above, the majority of witnesses state a width of between 3 to 6 metres (21 out of 26 witnesses). This is supported by officers' estimate of a width between 2.5 to 6.5 metres (see para. 28 above). However, it is important to note that the archive plans showed a width of 13ft in 1935 and a uniform width at the time of the housing development in the mid-1960s (see Appendices C2, K, L & M). Also, any narrowing of the lane resulting from vegetation overgrowth over time is not stated by witnesses to have become an obstruction to public pedestrian use of the route - see user evidence in paragraph 33 (h) above.
37. According to common law, if a path runs between the boundaries of private properties on either side of the way, the presumption is that the whole area between boundaries has been dedicated to the public. "Mere disuse of a highway for any length of time cannot deprive the public of their rights in respect of it" (*Harvey v Truro district Council 1903*); provided that the boundary was laid out by reference to the highway (*Attorney General v Benyon 1969*). Members of the public may enforce their right 'to pass and re-pass' over the whole width against 'any encroachment or neglect of duty' (*Foy v Hertfordshire County Council 1990*). Comparison of site visit photos between 2007 and 2017 indicates that the lane has become overgrown since the gates were installed in 2007 (see Photos 5, 7, 11, 12 and 15, Appendix P). Although vegetation overgrowth may have led to a reduction in the available width of the lane, under common law it is deemed to be a temporary obstruction and will not affect the rights of the public to request enforcement action be taken to restore the full width of the way, should the claim for public right of way succeed.
38. Concerning the status of the claimed route (see para. 33 (b) above), the majority (17 out of 26 witnesses) stated it was a 'public right of way or did not answer the question. Six witnesses believed it to be a bridleway and three believed it was a footpath. In terms of the private vehicular use of the lane, any current or past vehicular use of the lane cannot lead to public vehicular rights over the lane as the Natural Environment and Rural Communities Act of 2006 (Part 6) had the effect of preventing future registration of a public right of way for mechanically propelled vehicles and also extinguished such rights not already recorded on the Definitive Map. Officers believe that vehicular use of the lane by 'frontagers' is deemed to be private use by lawful authority of the landowner, as under common law an owner of land is able to make a lawful grant of the easement of access over their land. N.B. Use with "lawful authority" is not prohibited by section 34(1) of the Road Traffic Act 1988 which made off-road driving unlawful. However, it does not appear from the archive evidence that the landowner had dedicated the lane as a public vehicular highway following construction of the Shaldon Road properties in the 1930s and 1940s, due to the erection of the bollards at the rear of Morris Road in 1965 (see paragraph 23 above).

## Landowner Evidence

39. With the exception of the linking path between Nos. 76 and 78 Morris Road, the title to the land over which the claimed route runs is not registered with the Land Registry. As ownership of the land is unknown, the DMMO applicant served notice of the claim by site notice on 26<sup>th</sup> April 2007 in accordance with the requirement in Schedule 14 of the Wildlife & Countryside Act 1981. Notice was also served by the applicant on adjacent property owner/occupiers on 9<sup>th</sup> May 2007.
40. Bristol City Council owns the freehold to the land between Nos. 76 & 78 Morris Road (Title No. BL132196) and the land abutting the north side of the claimed route (Title No. BL113619), which was conveyed to the Council in 1935 - see paragraph 14 above and plans at Appendix C1 & C2. The Property Registers of both titles state that the parcels of land have the benefit of rights granted by the Conveyance dated 13 November 1935 as follows:-
- “Together with a right of way in perpetuity for all purposes over and along the back lanes thirteen feet in width shown on the said plan and therein coloured green together also with the free and uninterrupted right of access in perpetuity at any point and for all purposes to the said piece or parcel of land from the said back lanes.”*
41. Officers wrote to the owner/occupiers of properties fronting the claimed route on 27<sup>th</sup> March 2018 inviting comments on the application, in particular seeking evidence regarding use of the route by the public during the relevant 20-year period from 1987 to 2007; or evidence of any actions taken to prevent or deter the public from using the route over this time. Three letters and 22 emails were received from occupiers of Shaldon Road properties, plus one email from Morris Road and two emails from Muller Road occupants, which are available for viewing with the background papers to this report. A summary of the comments received is set out in the table at Appendix T. The majority of correspondents (x22) declared or wished to assert their private rights of access to the lane as shown on property deeds and to state that they have carried out maintenance work to the lane over the years (x12). Two of the correspondents provided evidence of the encroachment of vegetation which hampered their use of garages from circa 2003 (Emails 5 and 12). Seven correspondents referred to the lane as ‘private’ (Letter 2 and Emails 7, 8, 14, 15, 16 and 18); and the majority (x11) made reference to crime and anti-social behaviour, the cumulative results of which led residents to take action in 2007 to gate the lane for security purposes with police support.
42. Four correspondents have acknowledged public use of the lane during the relevant claim period – Letter 1 and Emails 11 & 13, and for blackberry picking (albeit deemed to be ‘trespassing’ - Email 8). However, two correspondents stated that the lane “has never been a public footpath” (Letter 2) and “has been a private lane [since 1939] and has never been a public thoroughfare” (Email 15); and one stated that they had never seen anyone use it as a footpath (Email 5 – a resident of Shaldon Road for the last four years of the relevant claim period). N.B. Any evidence provided concerning public use of the lane during the years after the relevant 20-year period is deemed to be irrelevant as the lane was gated in 2007. One correspondent stated that the small section of lane at the rear of Muller Road “was always a public right of way”, although the lane at the rear of Shaldon Road “was and still is a private lane” (Email 8). One Shaldon Road correspondent, whose family have lived at the property since 1939, referred to the historic gating of the lane

“when there were allotments on the land to the rear of our property and only allotment holders and Shaldon Road residents had access”. Also that, when the Morris Road estate was built, “the council accepted that it was a private lane and did not allow any access from the Morris Road properties to our lane” (Email 15). The latter comment does accord with the background history of the land between Nos. 76 and 78 Morris Road as set out in the report above (see paragraphs 22(c) and 23), but the action taken by the Council in 1965 to erect bollards in this location would not have prevented continuing pedestrian access to the lane during the relevant 20-year period in question.

43. Officers’ comments on the evidence set out in paragraphs 41 and 42 above must be focussed on establishing whether the claimed route has become a right of way by means of presumed dedication under Section 53(3)(b) of the Wildlife & Countryside Act 1981. It is necessary to establish whether there has been uninterrupted use as of right by the public over the period of twenty years from 1987 to 2007. Public use as of right excludes use which was known to be with the permission or licence of the landowner, and thus excludes the permitted access rights of any residents who can provide evidence of private rights in their property deeds. Dedication must be presumed from evidence of the use of the way made by the public and the actions – or inactions – of the landowner.
44. Concerns raised by adjacent residents regarding crime or anti-social behaviour, important as they are, do not provide evidence to show that the landowner during the relevant 20-year period had no intention to dedicate the claimed right of way. Consequently the evidence of public use submitted with the DMMO application and summarised in paras. 29 to 38 above, must be offset by evidence that the landowner during that time had no intention to dedicate the way. Definitive Map Modification Orders are about whether rights already exist, not about whether they should be created or taken away. The suitability of a way for users who have a right to use it, or the nuisance that they are alleged to cause, or to be likely to cause, are therefore irrelevant. If the rights exist, then the map must be modified, regardless of any effect on anyone’s property interests, or whether or not the route physically exists at the present time on the ground.
45. In respect of the future maintenance responsibilities for the lane, the public’s right to pass and re-pass is independent of duties to maintain. If the claim is successful and the route is added to the Definitive Map as a public footpath the route will continue to be maintainable by the frontagers, unless they enter into an agreement with the Highway Authority under Section 38 of the Highways Act 1980 for the lane to be ‘adopted’ for future maintenance purposes.
46. In respect of the private vehicular rights of access demonstrated by the frontagers, if the claim is successful and the route added to the Definitive Map, public use of the way will be limited by its status as a public footpath. This means that any private vehicular rights of access must not be exercised in such a way as to interfere with the public’s pedestrian rights. All public rights of way are highways in law and must be kept open and available for public use at all times. The highway authority’s interest is limited to the surface of a public right of way and where no-one is able to show title to the land, the presumption ‘*usque ad medium filum*’ applies – i.e. each owner of land fronting onto the highway is presumed to own the sub-soil up to the mid-point of the lane, for the length of their frontage.

## **Additional Consultation**

47. Informal consultation with footpath societies and other user groups has been undertaken and no comments have been received to date.
48. The DMMO applicant has been given an opportunity to comment on a draft of this report, but no further correspondence has been received from the DMMO applicant.
49. The Council, as owner of the land between Nos. 76 and 78 Morris Road, has been given an opportunity to comment on a draft of this report. No further comments have been received.

## **Conclusion**

50. The Committee must decide on all the evidence before it whether the allegation that the claimed route is a public footpath is substantiated. There must be evidence to show that the route marked with a black line on the plan attached at Appendix R (points A-B-C-D-E & spur C-F) has been used by the public at large, rather than individuals exercising a private right, over the relevant 20 year period. The evidence must be sufficient to raise a presumption that the way has been dedicated as a public footpath which has not been rebutted by sufficient evidence to show that there was no intention on the part of the landowner to dedicate.
51. Officers consider that use of the claimed footpath as a public right of way was brought into question in 2007 when the route was blocked by gates preventing subsequent public access (see paragraph 7 above and Appendices B & P2). Members should therefore look for evidence of continuous use of the claimed route up to this date and should decide whether the evidence supplied supports the full period of 20 years.
52. Use of the route as a public footpath is claimed by a total of 26 people through user Evidence Forms and public use of the route is acknowledged in the comments supplied by four residents following informal consultation of occupiers of properties abutting the claimed route. Fifteen of the people who completed evidence forms claim use for a period of 20 years or more up to 2007 unhindered and unchallenged; and eleven claim use of the way for varying periods of time between 2 to 19 years during the 20-year period, which adds to the overall strength of evidence in support of the application. None stated that they had asked or been given permission to use the route. Only one of the 26 witnesses claimed to have private rights to use the route.
53. There must be sufficient evidence to show that the route marked A-B-C-D-E and C-F on the plan attached at Appendix R has been used by the public at large, rather than individuals exercising a private right, for such a period to raise a presumption that it has been dedicated as a public footpath and that this evidence has not been rebutted by any other evidence.
54. Documentary evidence implies that the bollards, which were erected circa 1965 at the boundary of the section of the claimed route (C-F) with the remainder of the claimed route (A-B-C-D-E), were intended to prevent vehicular access from the Morris Road estate to the lane at the rear. This would not have prevented pedestrian access to the claimed route, and there is evidence from fourteen witnesses who state that they used the route

between 1965 and 1987 prior to the 20-year period in question (see para. 32 above). Any evidence of notices, obstructions and verbal warnings aimed at preventing use of the route occurred around the time of the erection of gates in 2007.

55. In respect of the width of the claimed route, it appears that for most of the relevant 20-year period of use of the claimed route (i.e. between 1987 and 2007) the lane was kept reasonably clear for vehicular access to garages. There is evidence that the frontagers maintained the lane and that the encroachment by vegetation occurred towards the end of the 20-year period, from around 2003 onwards. Documentary evidence indicates an original width of 13ft throughout and the user evidence states an average width of 3-6 metres. Under common law, the presumption is that the whole area between boundaries has been dedicated to the public.
56. Officers conclude that on the basis of evidence available to them at this time and on the balance of probability that there is sufficient evidence to reasonably allege that the presumption of dedication contained in Section 31(1) of the Highways Act 1980 has been raised for the claimed footpath. It appears to officers more reasonable than not to allege that the public has used the claimed footpath for 20 years or more. By the same token there has been at this time insufficient evidence submitted by adjacent property owners to rebut the presumption of dedication, nor to rebut the claimed use of the way.
57. In deciding whether the claim is made out, members have to decide whether the right as claimed subsists or is reasonably alleged to subsist. It is the opinion of the Director of Transport and the Director of Legal & Democratic Services that, on balance, the rights claimed are reasonably alleged to subsist.

## Options

58. The Committee must consider whether there is sufficient evidence to support the allegation that the presumption of dedication is raised under Section 31 of the Highways Act 1980, following 20 years of continuous use of the claimed route by the public. The standard of proof is the civil one, being a proof of the balance of probabilities; i.e. that it is more likely than not that the allegation of presumed dedication is true. Members must weigh up all the evidence provided and if, on balance, they consider that the claimed public right of way is reasonably alleged, then the presumption is raised. If, on the other hand, members consider that there is insufficient evidence to support the allegation of presumed dedication; or that the evidence in support has been rebutted by sufficient evidence to show that there was no intention to dedicate; then on balance they may consider that it is more likely than not that the allegation of presumed dedication is false.
59. The onus on the landowner is to produce evidence that there was no intention on their part to dedicate; for example an overt act on the part of the landowner to show the public at large that there was no such intention. Such evidence may consist of notices or barriers, or the locking of the way on one day in the year and drawing this to the attention of the public; or the deposit of a Statutory Declaration under Section 31(6) of the Highways Act 1980 to the effect that no additional ways (other than any specifically indicated in the Declaration) have been dedicated as highways since the date of the deposit.

60. If the Committee considers that the claim is made out - i.e. that there is sufficient evidence to reasonably allege that there has been uninterrupted use by the public over a period of 20 years which has not been sufficiently rebutted by other evidence - it must resolve to make a Definitive Map Modification Order as requested. Public use of the way must have been without hindrance or permission from the landowner or his agents. The 20 year period must end with the date when use of the path was first 'called into question', which in this case is considered to be 2007.
61. Alternatively, if the Committee considers that the claim is not made out, it should resolve not to make an order.
62. As Members are aware, financial implications must not be taken into consideration when determining this modification order application, as the Council has a statutory duty to make an order if it believes there is sufficient evidence to support it.
63. Should the Committee decide to make and advertise an Order, authority is given to the Head of Legal Services to prepare and seal an Order to modify the Definitive Map and Statement by including the claimed route as a footpath. A notice of making of the Order will be served on all affected owner/occupiers and statutory consultees, advertised in the local press and displayed on site. The notice will indicate a period during which the public and those affected by the Order will have an opportunity to make formal representations or objections. If any are received, they will be reported back to this Committee at a future date. If none are received within the time limit specified, the Order may be confirmed as unopposed.

## Appendices

- Appendix A: DMMO Application Map
- Appendix B: Letter from Applicant dated 28.02.2007
- Appendix C1: BCC Property Interests, January 2018
- Appendix C2: Extract from 13.11.1935 Conveyance Plan
- Appendix D: 05.01.1935 Conveyance Plan
- Appendix E: 08.01.1935 Footpath Diversion Plan
- Appendix F1: 1880s O.S. Map
- Appendix F2: 1900s O.S. Map
- Appendix G: 1946 Aerial Photo
- Appendix H: 1949 1:2500 O.S. Map
- Appendix I.1: 1954 Definitive Map extract
- Appendix I.2: 1966 Definitive Map extract
- Appendix J: Plan with 1947 letter to City Engineer
- Appendix K: Plan with NOD January 1964
- Appendix L: Dwg. No. 711.21 – proposed garages
- Appendix M: 04.08.1965 Plan with Housing Letter
- Appendix N: Planning Appl. 17.01920 - Landscape Plan
- Appendix O: Planning Appl. 18.00422 – Site Plan
- Appendix P1: Key Plan - Site Visits 2007 & 2017
- Appendix P2: Photos – Site Visit March 2007
- Appendix P3: Photos – Site Visit July 2017
- Appendix Q: 2012 Aerial Photo
- Appendix R: Location Plan – Claimed Route

Appendix S: Table of Evidence – Summary of User Evidence Forms  
Appendix T: Shaldon Road Frontagers – Table of Evidence

### **Policy Implications**

None arising directly from this report.

### **Resource Implications**

There are no specific resource implications arising from this report, although if an Order is made which receives objections that are not withdrawn, there would be cost implications if the Secretary of State decided to hold a public inquiry or hearing. A way added to the definitive map is publicly maintainable if it can be shown to have come into existence prior to the 1959 Highways Act.

### **Other Approvals necessary**

None

### **Recommended:**

**That the Head of Legal Services be authorised to make and advertise a Definitive Map Modification Order to show a footpath in the Definitive Map and Statement, as shown on the plan attached to this report;**

**and,**

**that if the Order is unopposed or any objections lodged are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order.**

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

- 1 Wildlife & Countryside Act 1981 (obtainable from HMSO);
- 2 Application for Modification Order dated 2007
- 3 Public Rights of Way Evidence Forms and documentary evidence in support of the Application
- 4 Letters of Representation, plans and correspondence relating to the claimed route.

### **Contact Officers:**

Theo Brumhead, Public Rights of Way team, Network Operations, Traffic Services, Place.



**TRAFFIC MANAGEMENT**  
 Received 1 MAR 2007  
 Response Due 21 MAR 2007

From: Mr. RR and Mrs. LA. Thomas,  
 64, Morris Road,  
 Lockleaze,  
 Bristol BS7 9TU  
 tel: 9515092  
 28-02-2007

070448 - JR/CP

Christine Pouncett,  
 Public Rights of Way Officer,  
 Traffic Management, Bristol City Council.  
 Wilder House, Bristol BS2 8PH

Dear Christine Pouncett,

the  
 Public Right of Way in respect of Lane which runs behind the  
 gardens in Shaldon Road and which borders a City Council owned  
 'mini-wood' which itself borders Morris Road, Lockleaze BS7

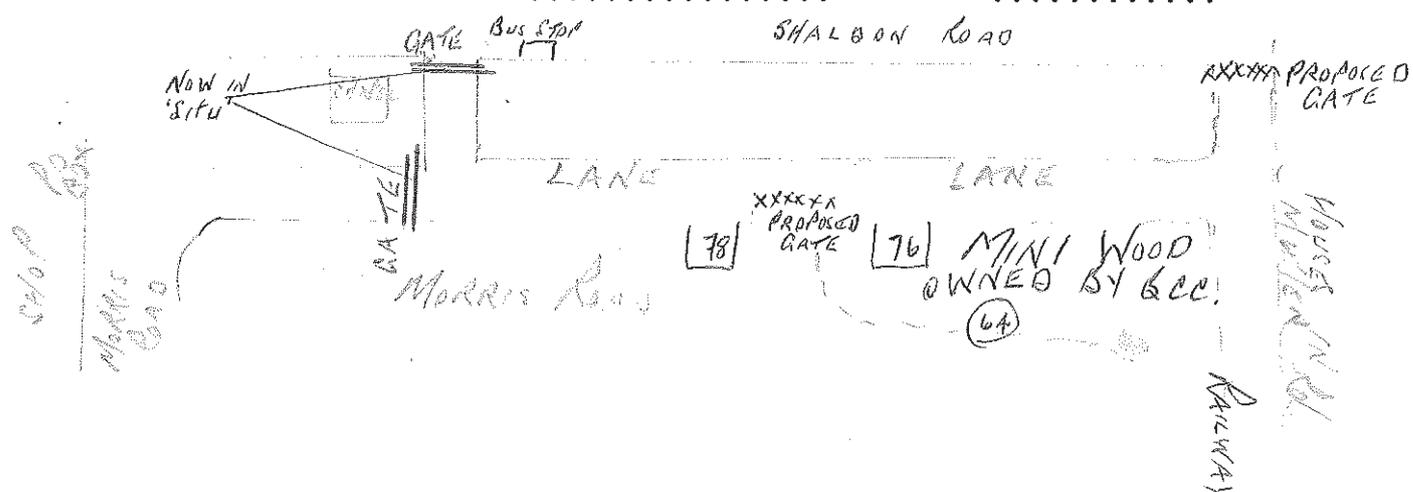
Thank you for your very prompt and helpful response to our  
 telephone call in which we expressed concern at the installation  
 of gates in the above lane which will end The Public Right of Way  
 which has existed - up and down the Lane for over 42 years.

We apologise for the delay in returning the attached map. We have  
 been trying to get a precise answer from the Estate Management  
 Office, Bristol City Council in Southmead to the questions viz  
 'How many gates are to be installed and where in the Lane will  
 they be installed?' The Officer(s) concerned refuse to give us  
 this information. Two gates have already been installed at the  
 top of the Lane (where the Lane meets Morris Road) thus,  
 preventing any access except to 'keyholders'. We have been  
 reliably informed that 2 further gates are to be installed. One  
 to prevent access from the 'middle' of Morris Road (between 76 and  
 78) which we use and one at the very bottom of the Lane  
 effectively making the whole lane a NO-GO area - except for key  
 holders. As well as 'ending' the Public Right of Way' it will  
 also prevent residents enjoying the amenities of a local authority  
 (community) owned wood especially from Spring to Autumn.

Below we produce a very rough outline map.  
 There has been no consultation with residents of Morris Road  
 in regard to this decision.

Yours sincerely

*RR Thomas*  
 .....  
*Rashomes*



## APPENDIX C1

**Shaldon Road - Lane at rear of 2-88 Lockleaze Bristol**

### Legend

-  Interests
-  Right of Way 104464/INT

ST6075NW

SITE PLAN : To ensure boundary accuracy, please refer to deeds.  
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Ordnance Survey 100023406.



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### PROPERTY

Plan No	: Shaldon Road
Prop ID Ref	: 104464/INT
Polygon Ref	: N/A
Scale	: 1:2,500
Date	: 16.03.2018

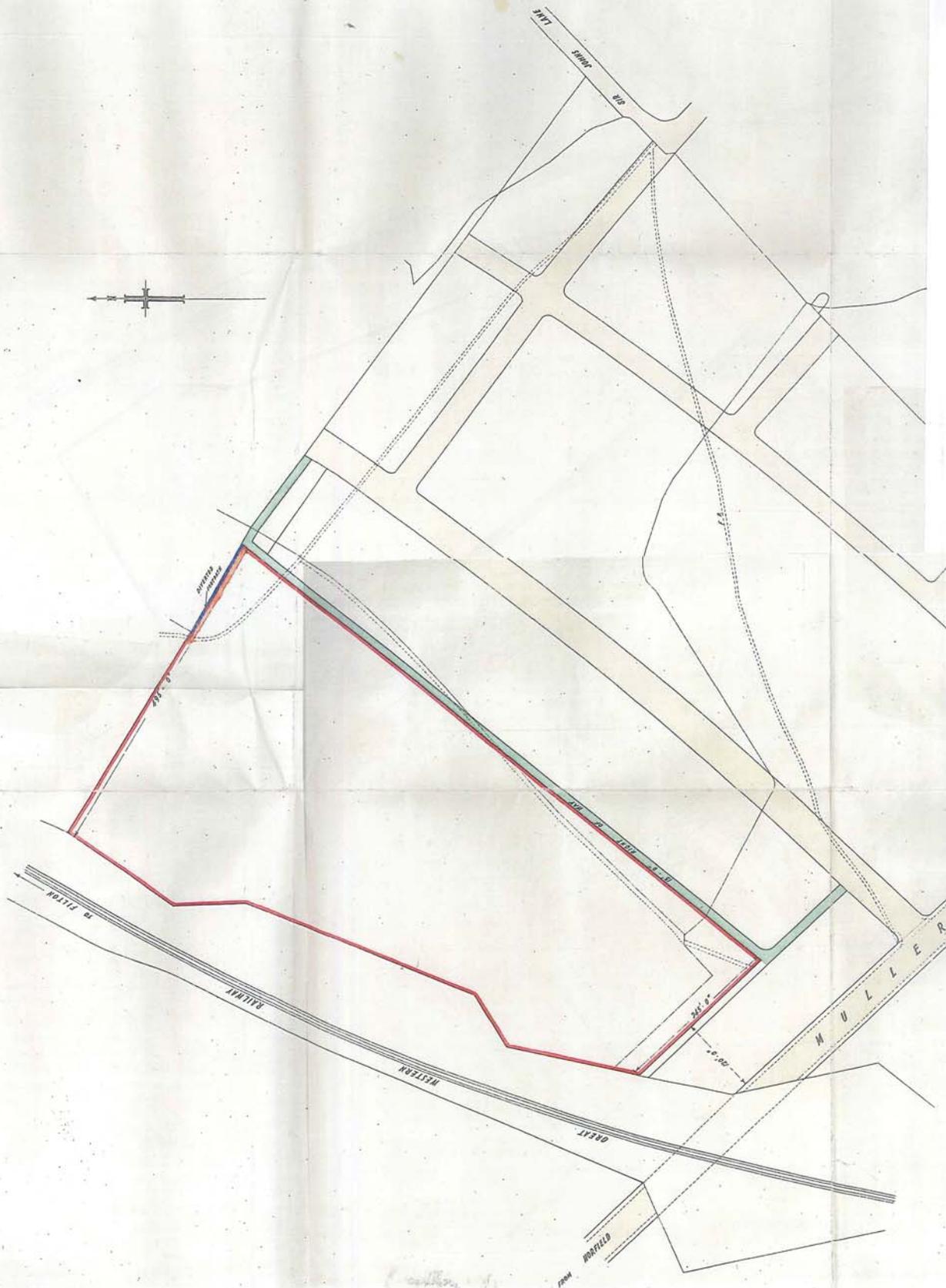


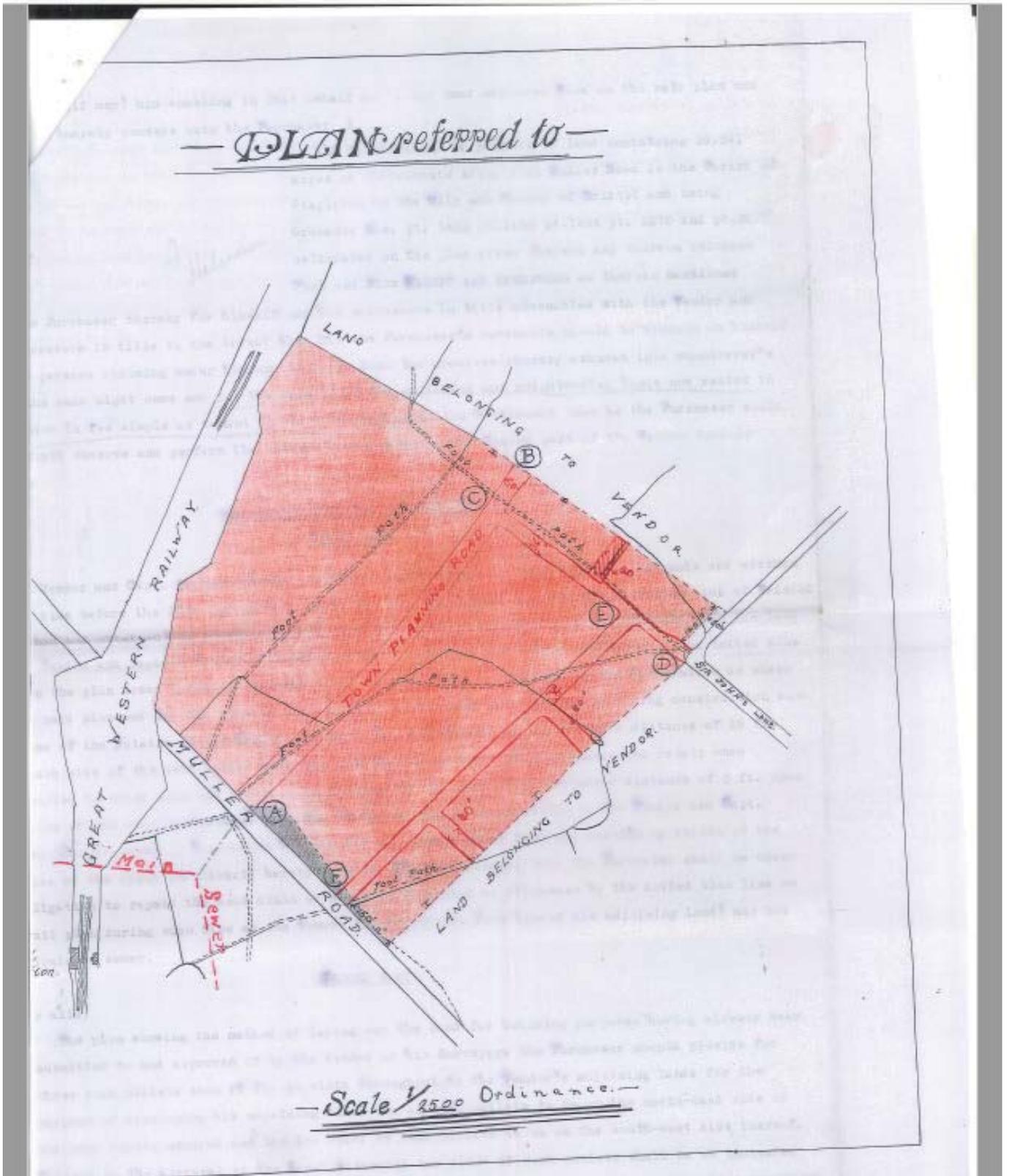
### CORPORATE PROPERTY

City Hall  
PO Box 3176  
Bristol BS3 9FS

[www.bristol.gov.uk](http://www.bristol.gov.uk)



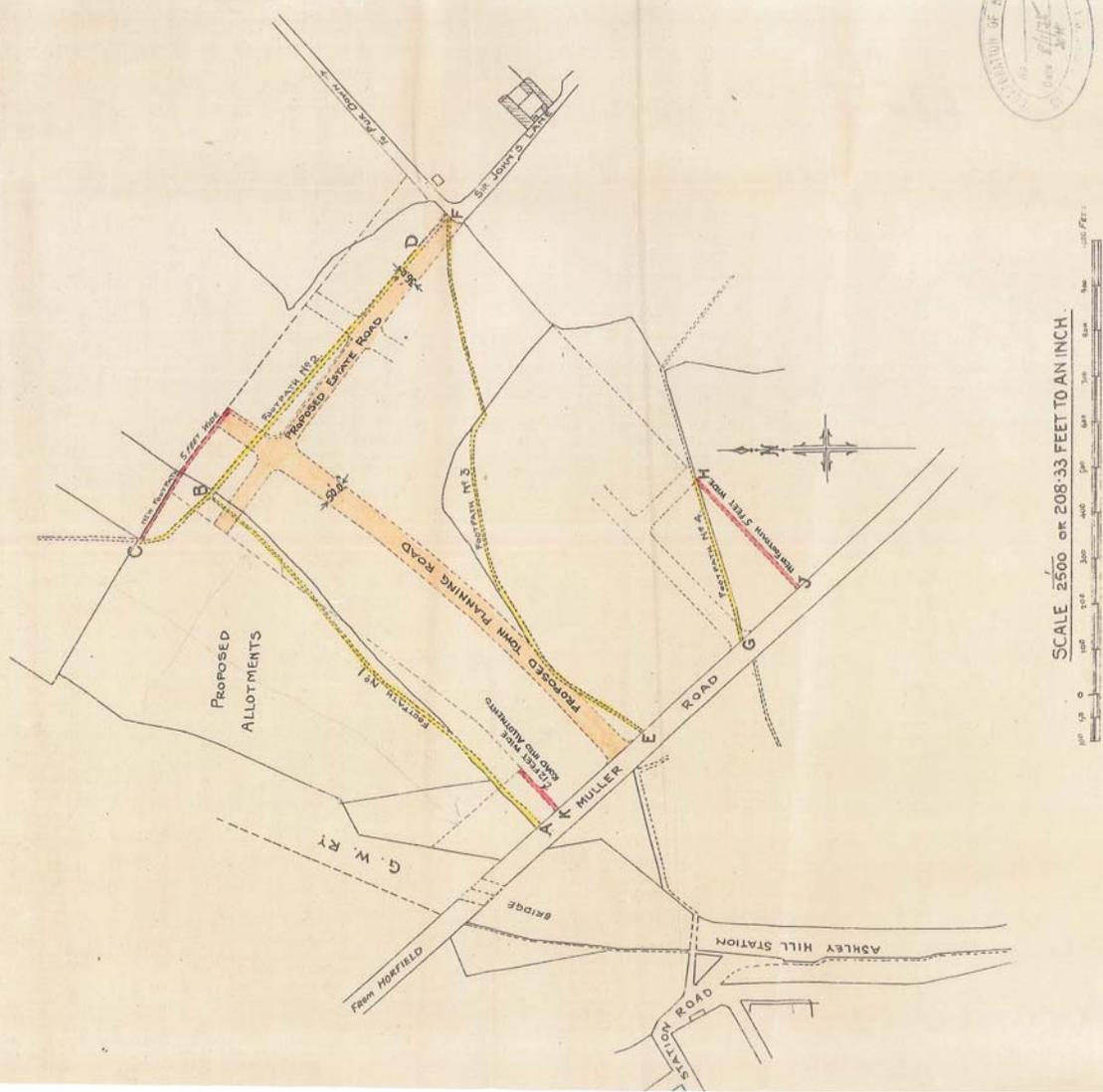




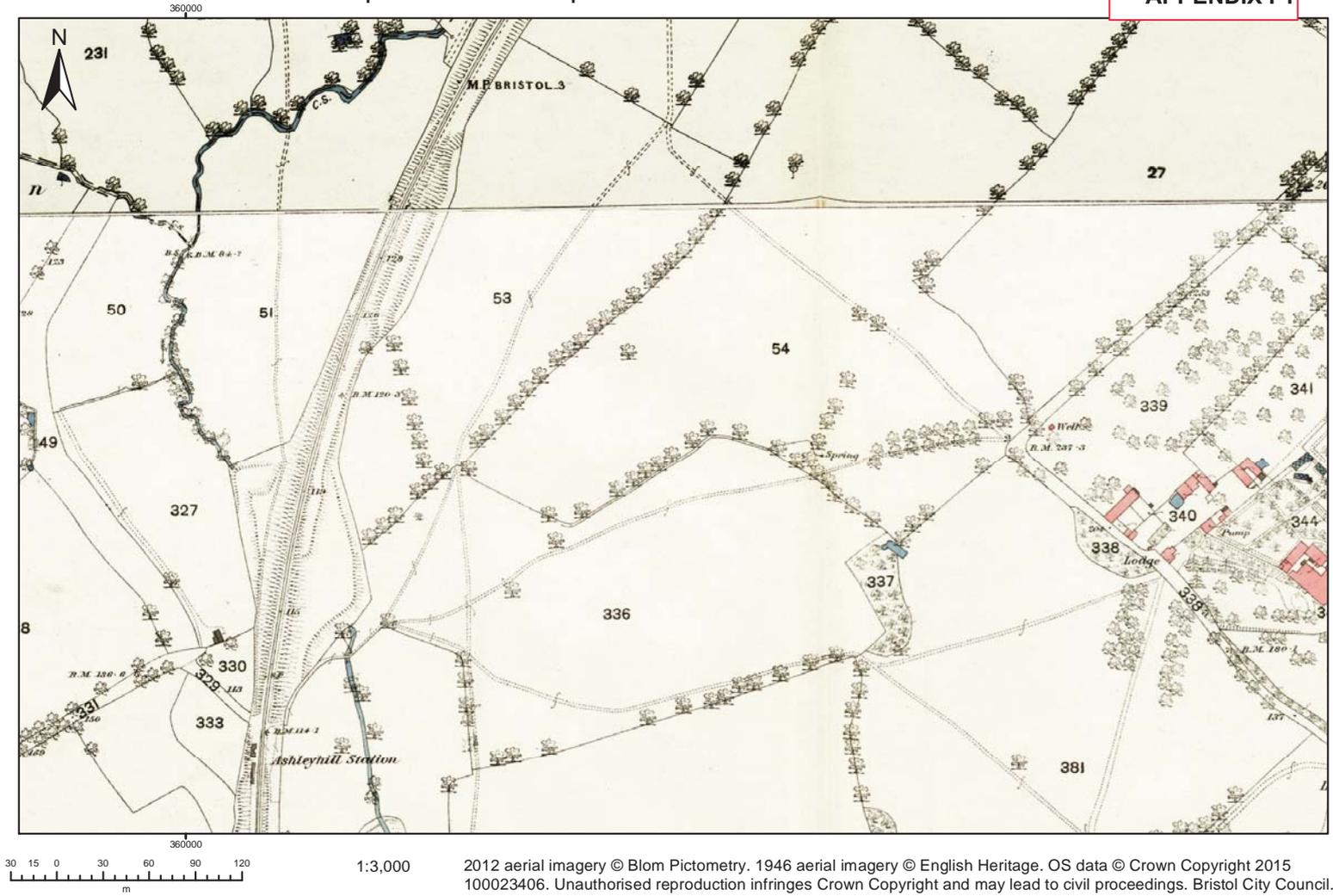
Plan with Conveyance dated 5<sup>th</sup> January 1935 between Thomas Cottrell-Dormer and Dennis Cottrell et al

APPENDIX E

PROPOSED DIVERSION OF FOOTPATHS  
BETWEEN MULLER ROAD AND PUR DOWN



# 1880s epoch 1 - OS Map

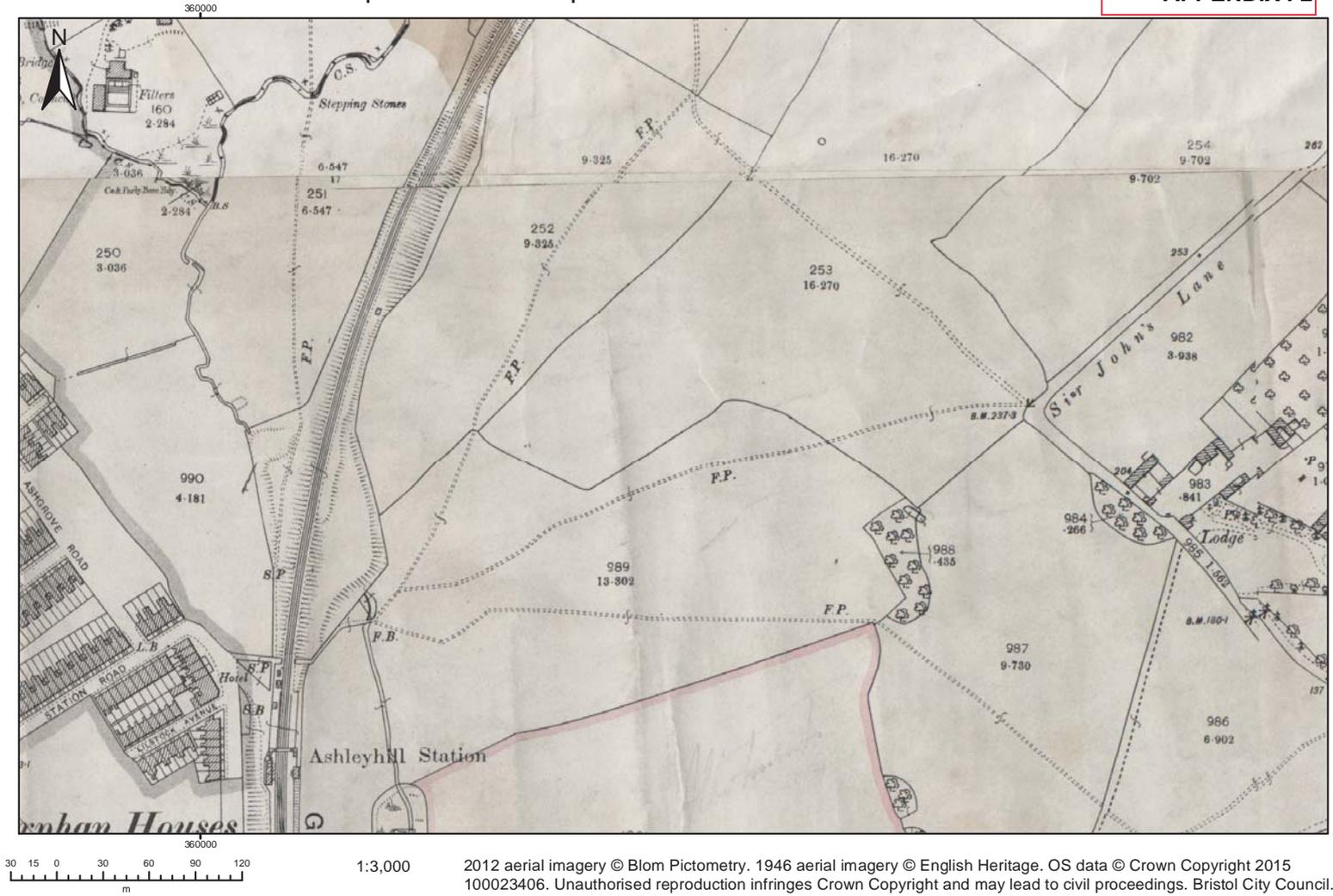


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# 1900s epoch 2 - OS Map

Document created on Thursday

**APPENDIX F2**



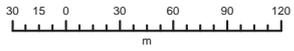
# 1946 Aerial Photo

Document created on **APPENDIX G** 7:34

360000



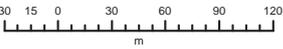
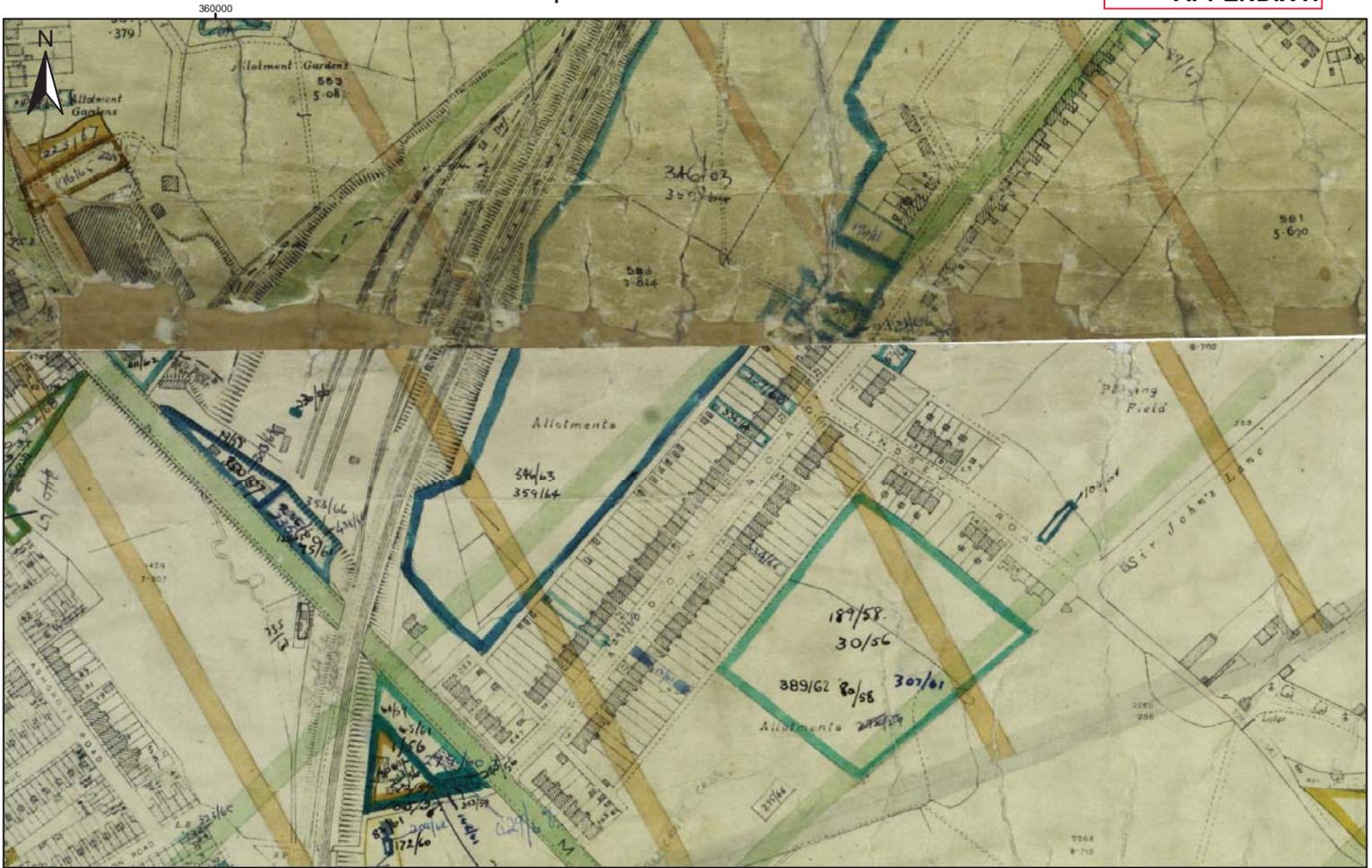
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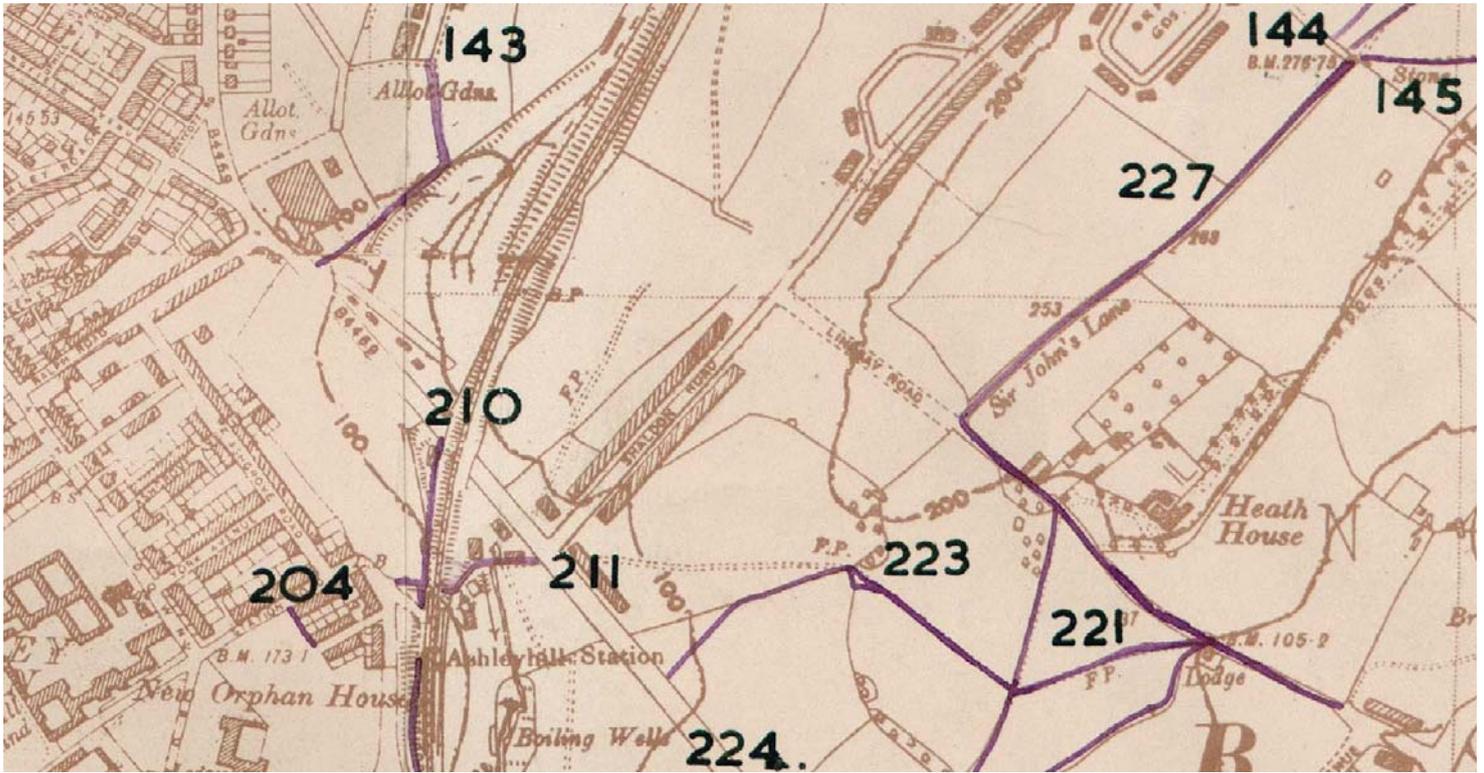
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1949 1:2500 OS Map

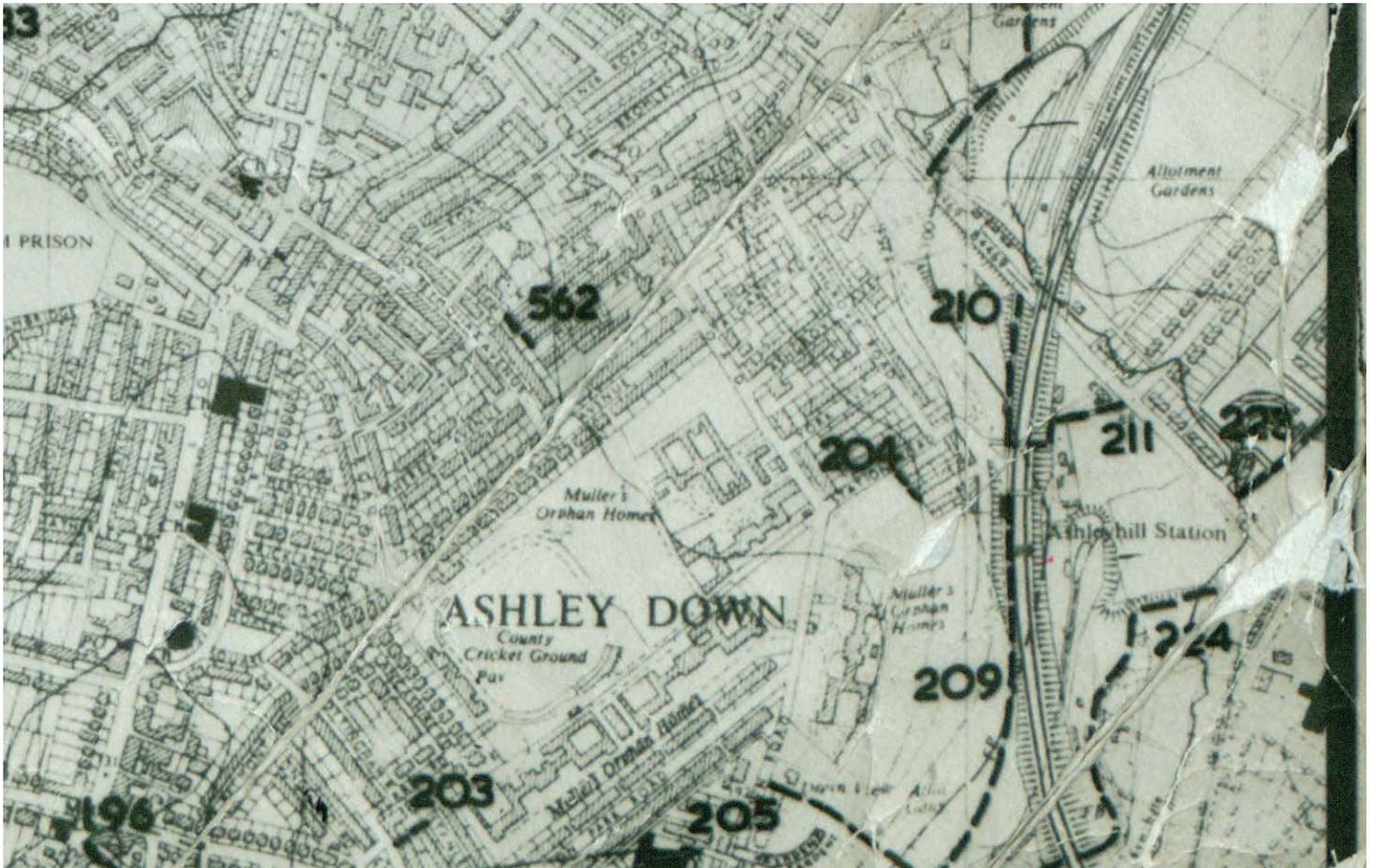


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EXTRACT FROM DEFINITIVE MAP PUBLISHED 1954



EXTRACT FROM DEFINITIVE MAP PUBLISHED IN 1966

4 Houses built pre 1939.  
4 Houses under construction at present time and are now in process of being roofed.

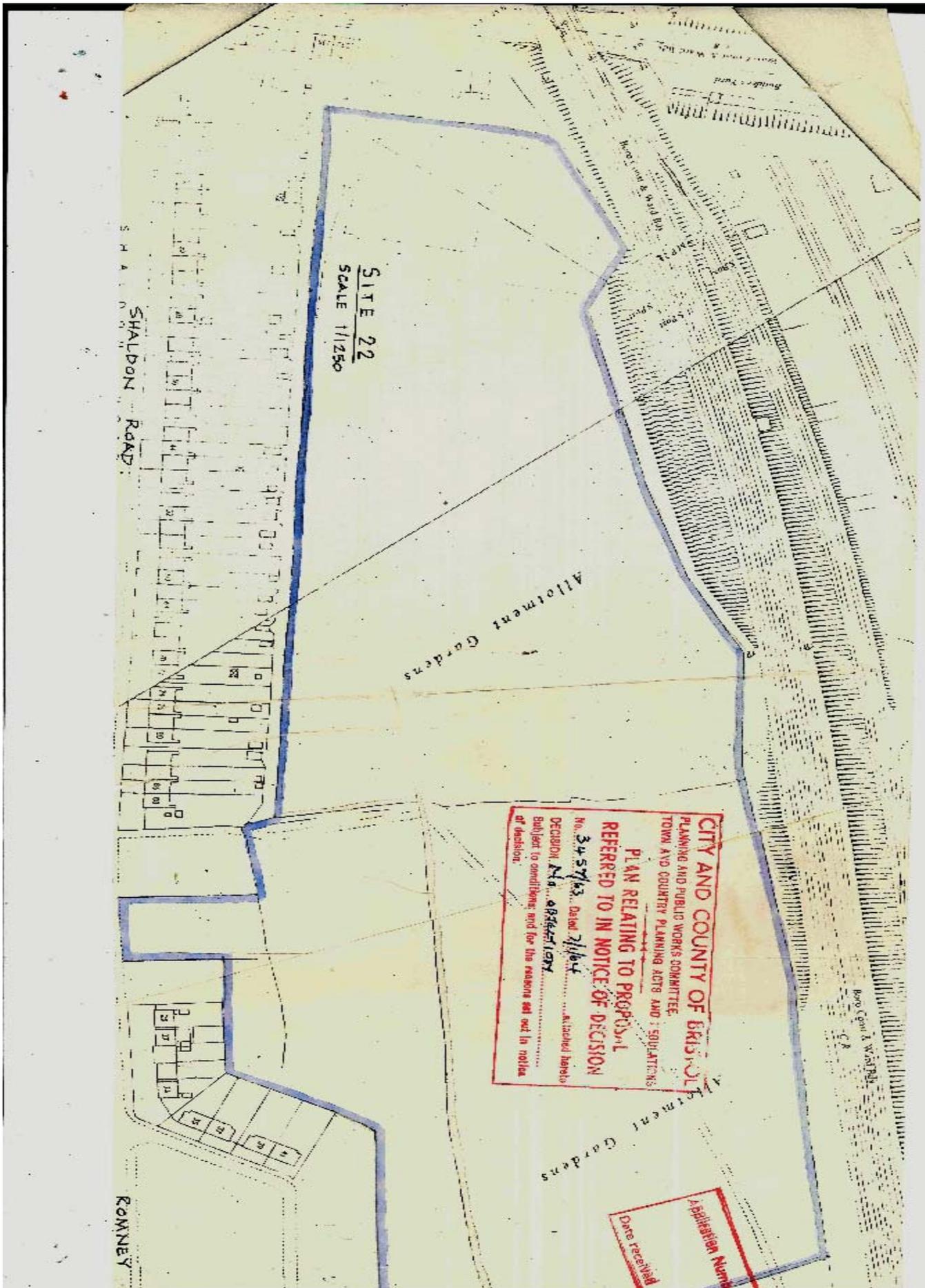
MULDER ROAD

ESTIMATE OFFICE

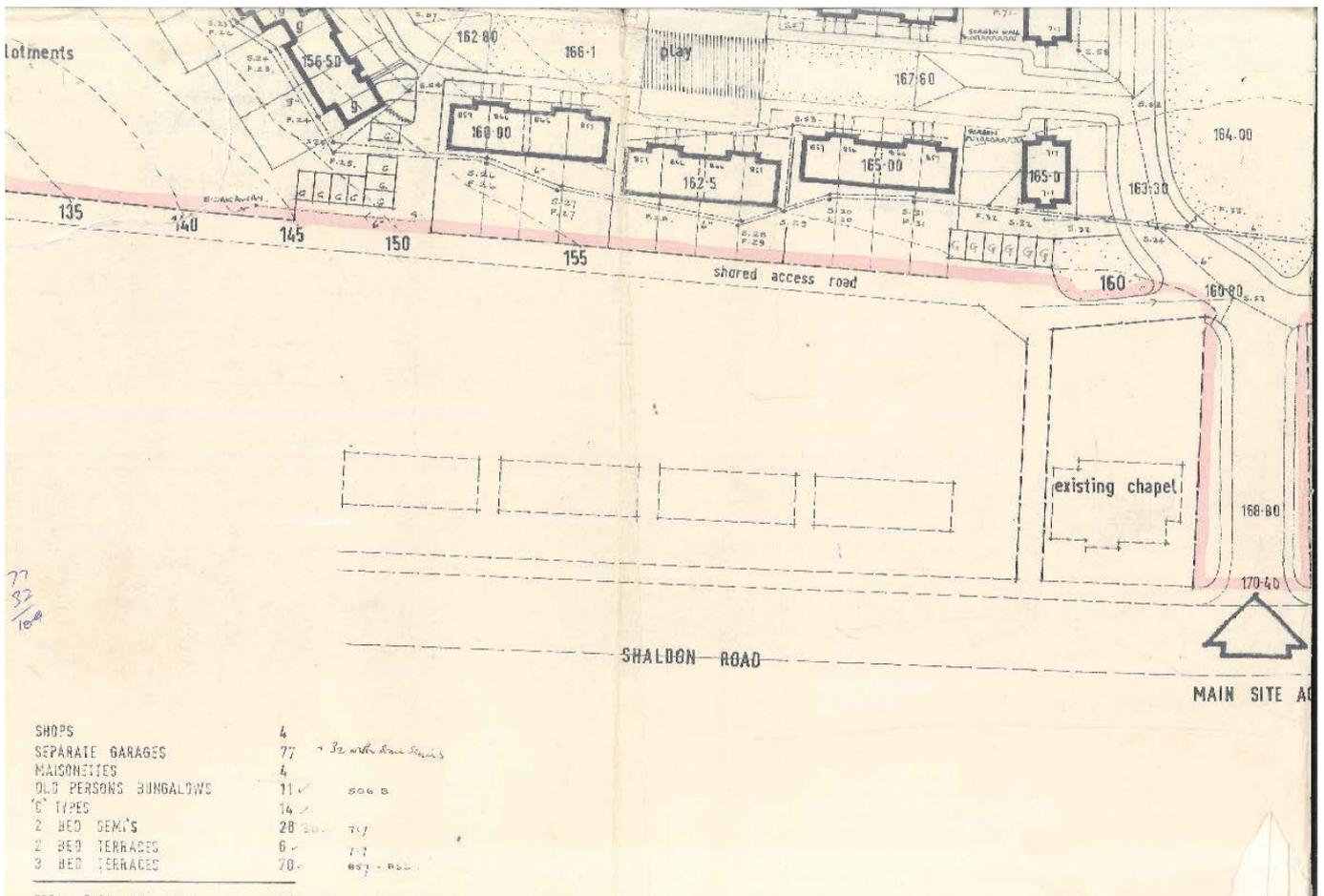


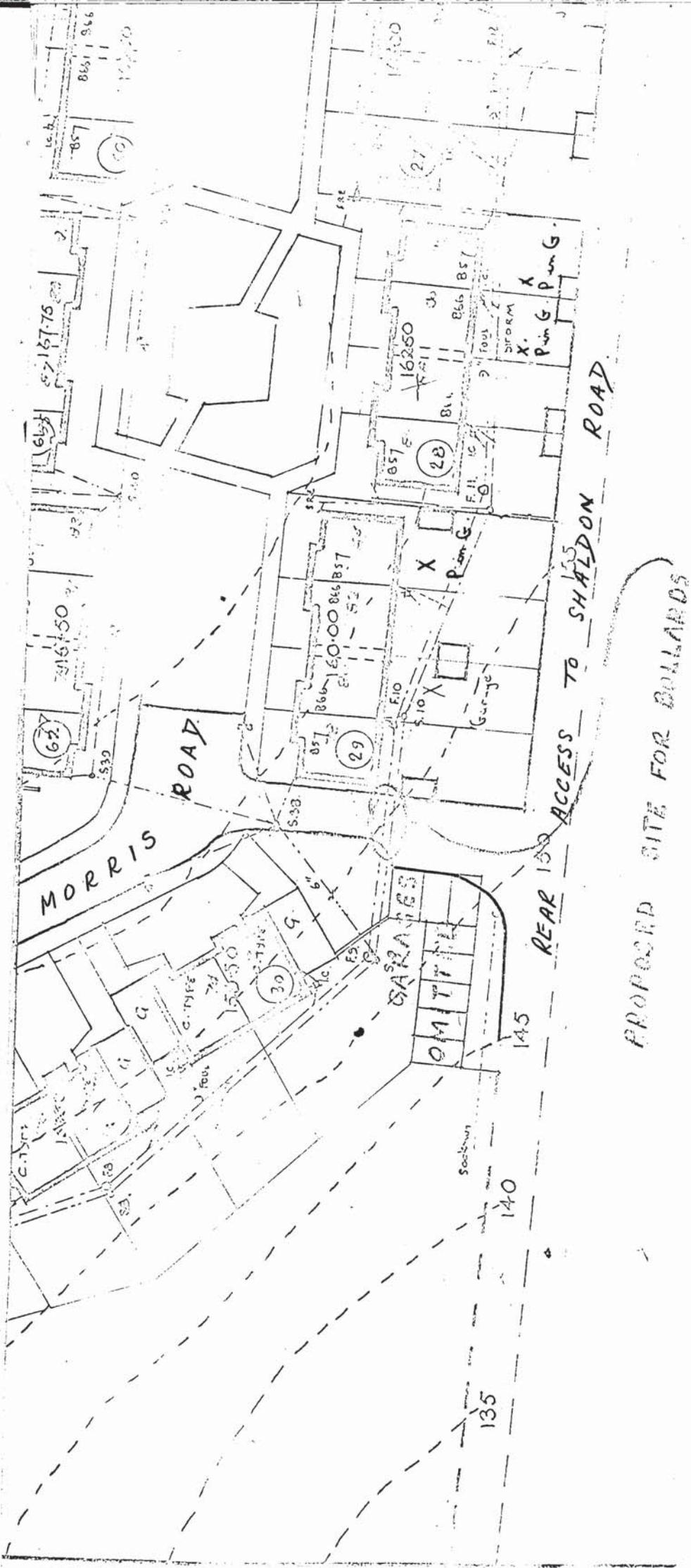
SHALDON ROAD

Plan accompanying letter dated 29.06.1947 to City Engineer



Plan with Notice of Decision – Planning Appl. 3457.63 – January 1964





# APPENDIX N



- Existing trees retained
- Birch / oak woodland
- Native woodland shrubs
- Decorative shrubs & groundcover
- Edible planting
- Woodland-margin groundcover
- Front garden planting
- Raised bed 'allotments'
- Grass / Wildflower Lawn
- Wildflower meadow
- Pond / Wetland
- Grasscrete or similar
- Specimen trees
- Focal-point specimen trees
- Seats
- Boardwalk / decking steps
- Pergolas over paths and parking
- Play seat
- Gabion retaining walls
- Communal bike storage
- Communal bin storage

**DO NOT SCALE**  
copy/RTI releases orchard landscape consultants

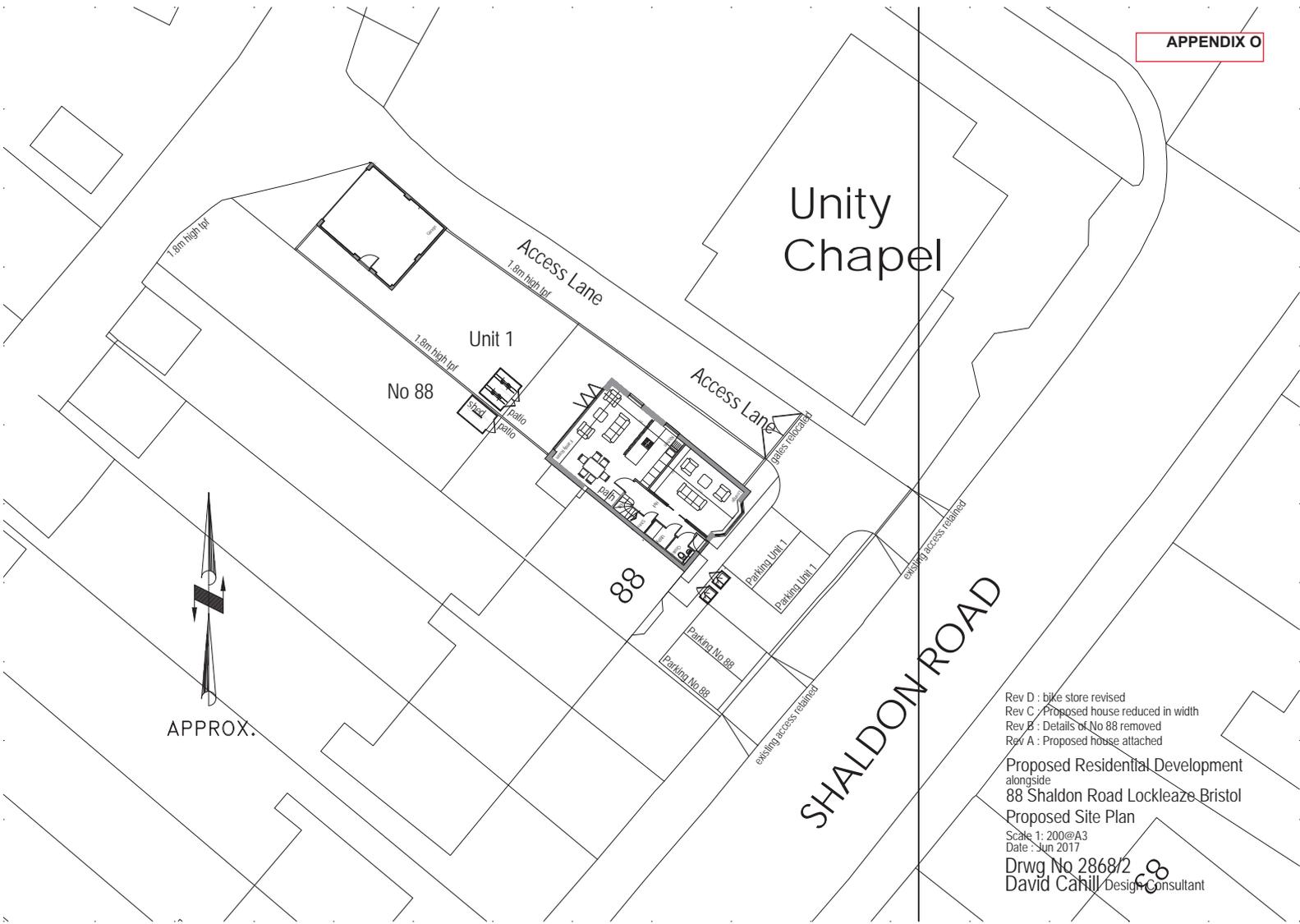
**PLANNING**  
 SHALDON-ROAD  
 BCLT  
 ARCHTYPE

Rackless Orchard Landscapes  
 The Studio, The Mill, Mill Lane, Shaldon, Devon, PL36 9JH  
 www.racklessorchard.com

**LANDSCAPE-LAYOUT**

scale	date	drawn by	checked by
1:200(80)	16/01/17		LB
			LB

262,16,LD,300



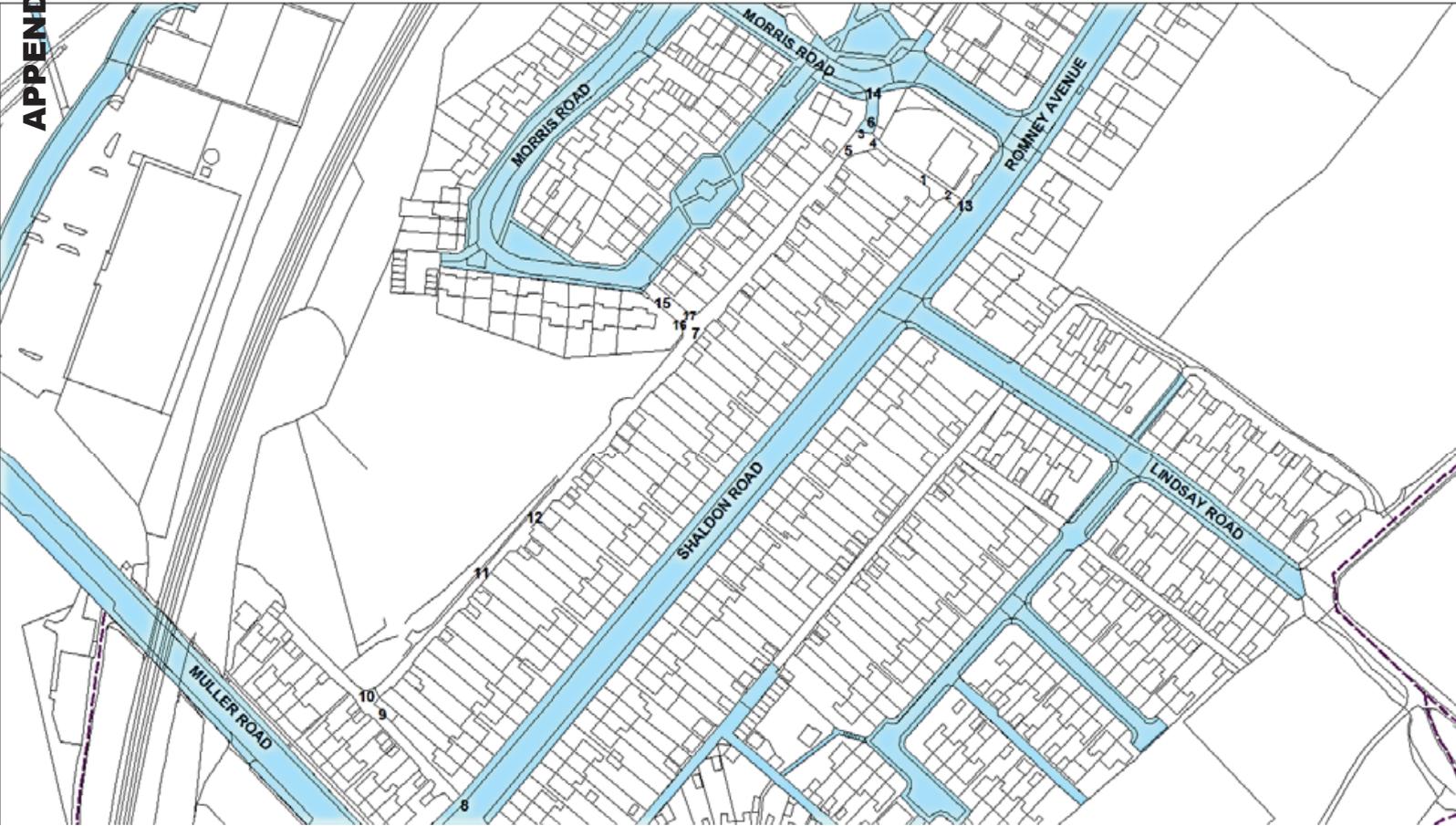
Rev D : bike store revised  
Rev C : Proposed house reduced in width  
Rev B : Details of No 88 removed  
Rev A : Proposed house attached

Proposed Residential Development  
alongside  
88 Shaldon Road Lockleaze Bristol  
Proposed Site Plan

Scale 1: 200@A3  
Date : Jun 2017

Drwg No 2868/2  
David Cahill Design Consultant





Site Visits Key  
2007 (Photos 1 - 7)  
& 2017 (Photos 8 - 17)



**PHOTO 1 – Site Visit 20.03.2007 – Shaldon Road gates between Unity Chapel and No. 88**



**PHOTO 3 – Site Visit 20.03.2007 - Rear of Unity Chapel adjacent to No. 1 Morris Road**



**PHOTO 4 – Site Visit 20.03.2007 – Looking towards Shaldon Road gates from lane at rear of Unity Chapel and No. 88 Shaldon Road**



**PHOTO 5 – Site Visit 20.03.2007 – Lane at rear of Shaldon Road**



**PHOTO 7 – Site Visit 20.03.2007 – Fencing/gate between Nos. 76 & 78 Morris Road**



**PHOTO 10 – Site Visit 19.07.2017 – Gates at rear of Muller Road**



**PHOTO 11 – Site Visit 19.07.2017 – disused garages at rear of Shaldon Road properties**



PHOTO 12 – overgrowth in lane at rear of Shaldon Road properties



PHOTO 13 – Site Visit 19.07.2017 – Gates between 88 Shaldon Road and Unity Chapel



**PHOTO 14 – Site Visit 19.07.2017 – Gates adjacent to No 1 Morris Road**



**PHOTO 15 – Site Visit 19.07.2017 – Gate and fencing between Nos. 76 & 78 Morris Road**

# Aerial photo 2012 - lane at rear of Shaldon Road

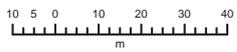
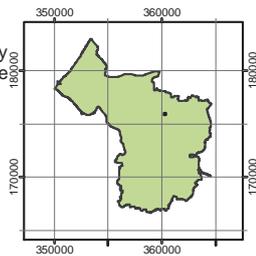
APPENDIX Q



### Legend

 Selected feature

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Crown Copyright and may lead to civil  
proceedings. Bristol City Council.

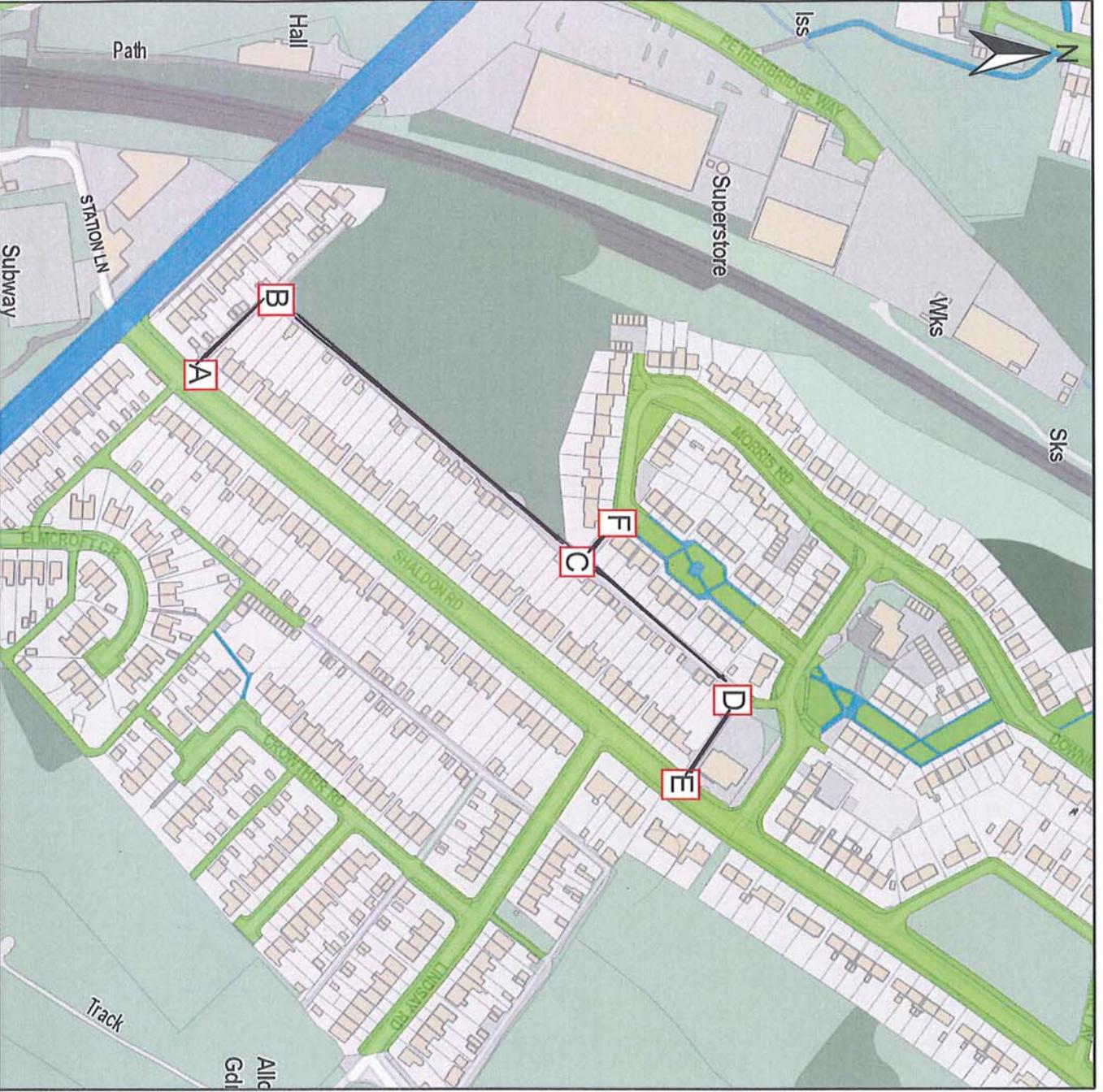


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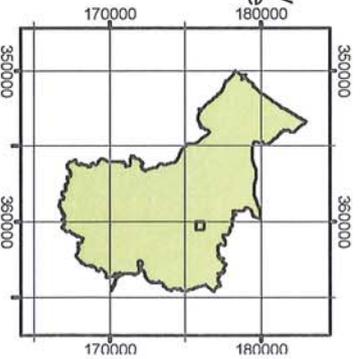
# LOCATION PLAN - Claimed FP at rear of Shaldon Road

## Legend



- A Road
- B Road
- C Road
- Footpath
- Motorway (not BCC-maintained)
- Pedestrianised
- Trunk Road A
- Unclassified
- UNADOPTED, CONFIRMED**
- Section 38
- Prospectively Maintainable
- ADOPTED, UNDER REVIEW - Check With Highways**
- A Road
- B Road
- C Road
- Footpath
- Motorway (not BCC-maintained)
- Pedestrianised
- Trunk Road A
- Unclassified
- UNADOPTED, UNDER REVIEW - Check With Highways**
- Prospectively Maintainable
- Selected feature

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Document created on Wednesday 24th January 2018 at 11:51



APPENDIX S

	A	B	C	D	E
	Name of witness	Form No.	Description of route	Believed Status	Known as public
1			Description of route		
2	S P Beacham	1	From Morris Road to Shaldon Road		Y
3	Pamela M Brimson	2	From bottom of Shaldon Road (near traffic lights) to Morris Road	Bridleway	Y - but only for pedestrians
4	William W Brimson	3	From bottom of Shaldon Road (near traffic lights) to Morris Road	Bridleway	Y - but only for pedestrians
5	D M Burton	4	See Map	Footpath	Y
6	Diane Collett	5	From Morris Road to Shaldon Road (Lane behind houses in Shaldon Road)	Footpath	Y
7	F S Collett	6	From Morris Road, Lockleaze to Shaldon Road Bottom and onto Muller Road	Footpath	Y
8	Gail Dent	7	From Morris Road to Shaldon Road (bottom)	Public Right of Way	Y
9	Mary Dillon	8	From Morris Road to end of Shaldon Road		Y
10	Keith Flinders	9	From Shaldon Road to Morris Road		Y
11	Maisie Flinders	10	From Shaldon Road to Morris Road		Y
12	A Flook	11	From Morris Road to Sheldon Road (bottom)		Y
13	M Hawken, J Loosemore	12	From Morris Road to bottom of Shaldon Road	Public Right of Way	Y
14	J R Headford	13	From side of 78 Morris Road to rear of 78 Morris Road	Bridleway	Y
15	P A Headford	14	From side of 78 Morris Road to rear of 78 Morris Road	Bridleway	Y
16	I R Hellings	15	From Morris Road to Bottom of Shaldon Hill on to Muller Road		Y
17	Karen Iles	16	From Morris Road to Shaldon Road and Muller Road		Y
18	Vernon Charles King	17	From Morris Road to no. 1 start of lane to bottom of Shaldon Road onto Muller Road	Public Right of Way	Y
19	L Lydon	18	From Morris Road to bottom of Sheldon	Bridleway	Y
20	M Lydon	19	From Morris Road to bottom of Sheldon Road	Bridleway	Y
21	Holly Besley Lyne	20	From Morris Road to bottom of Shaldon Road	Public Right of Way	Y
22	Andrew Stanford	21	From Morris Road to bottom of Shaldon Road	Public Right of Way	Y
23	L A Thomas	22	From Morris Road to bottom of Shaldon Road	Public Right of Way	Y
24	R R Thomas	23	From Morris Road to bottom of Shaldon Road	Public Right of Way	Y
25	B M Williams	24	From Morris Road to bottom of Shaldon Road	Public Right of Way	Y
26	R E Williams	25	From Morris Road to bottom of Shaldon Road	Public Right of Way	Y
27	Wendy Wiltshire	26	From Morris Road to bottom of Shaldon Road	Public Right of Way	Y

	F	G	H	I	J	K
1	How wide?	Used between (calendar years)	Total no. of years in use	Purpose of journey	no. of times used per year	On foot, horseback or other
2	3m-6m approx.	1965-2007	42	Access Muller Road	2x daily	foot
3	Varies - wider at Morris Rd entrance	1976-2007	31	Shortest route from bottom of hill	Many	foot
4	Varies - wider at Morris Rd entrance	1976-2007	31	Shortest route from bottom of hill	Many	foot
5		1968-2007	39	To access B&Q and Ashley Down Shops	Weekly	foot
6	3m-6m	1968-2007	39	Access Muller Road, work and bus stops	Daily	foot
7	3m-6m	1968-2007	39	Walking to & from work	Daily	foot
8	3m-6m	1971-1976 2005-2007	7	Walking dog to the field	Twice daily	foot
9	3m-6m	1994-2007	13	Walking to Tesco and Gloucester Road	Nearly every day	foot
10	About 10'	1967-2007	40	To and from Muller Road	When working 500, until recently 300	foot
11	About 10'	1967-2007	40	Access bus stop on Shaldon Road		400 foot
12	Between 3m-6m	1997-2007	10	Access Sheldon Road and Muller Road	530+	foot
13	3m-6m approx.	1995-2007	12	Down to Muller Road		200 foot
14	15'	1987-2007	20	To access rear of 78 for maintenance	50-60	foot
15	15'	1987-2007	20	Access rear of 78 for maintenance	50-60	foot
16	3yd-6yd	1992-2007	15	To and from Muller Road		400 foot
17	wide enough for a car	2001-2007	6			
18	About 3m-6m	1997-2007	10	Walking dog		200 foot
19	3m-6m	1988-2007	19	Access to Muller Road and Sheldon Road	100+	foot
20	3m-6m	1979-2007	28	Access Sheldon/Muller Road		110 foot
21	3m-6m	2002-2007	5	Access bus routes for work	Varied between 10 to daily (600+)	foot
22	3m-6m	2002-2007	5	Access major streets		50 foot
23	Approx. 3m-6m	1965-2007	42	Access Muller Road or bus stop		100 foot
24	3m-6m approx.	1965-2007	42	Access Muller Road, bus stops		50 foot
25	3m-6m approx.	1965-2007	42	Access work and shops	Approx. 300 now 50	foot
26	3m-6m approx.	1965-2007	42	Access work, shops, library	700 approx. when working, now 104	foot, bicycle
27	3m-6m approx.	1999-2007	8	Walking dog, to and from work and school	30 approx.	foot, bicycle

	L	M	N	O
	Whole length of route/any diversion	Stiles/Gates	Worked for landowner?	Notices?
1				
2	Gates installed 20.02.07	Gates	N	N
3	None	N	N	N
4	None	N	N	N
5	None	N	N	N
6	None	N	N	N
7	None	N	N	N
8	Gates installed 'a few weeks ago'	N	N	N
9	Gates put up	N	N	N
10	None	Gates installed Feb 2007	N	N
11	None	Gates installed Feb 2007	N	N
12	Gates and Fence put up in 2007	N	N	N
13	None	Gates put up recently	N	Y - recently on newly installed gates
14	None	N	N	N
15	None	N	N	N
16	Gates put up February 2007	Now Gates	N	N
17	No changes until Gates installed	N	N	Y since gates put up notices sying private and phone number to call
18	None	N - until February 2007	N	N - recent hand written notice
19		N	N	N
20	Steep Hill of Shaldon Road	N	N	N
21	None	Gates installed Feb 2007	N	Y - not until February 2007 "Private Lane"
22	None	Gates installed Feb 2007	N	Y - "Private Lane"
23	None	Gates installed in "last few weeks" - first one installed 20.02.2007	N	N - hand written notices appeared 20/4/2007
24	None	Gates - first one installed 20.02.07?	N	N - hand written notice appeared - first one 20/2/2007?
25	None	Gates now installed	N	N
26	None	Gates recently erected	N	N
27	None - until gates installed 20/2/2007	N	N	N - hand written notice appeared on recent installed gates

	P	Q	R
1	Ever stopped	Ever told not public?	Obstructions/locked gates?
2	N	N	Y - Feb 2007
3	N	N	N
4	N	N	N
5	N - Gates installed February 2007	N	N - until February 2007
6	N	N	N
7	Y - Gates installed 2007	N	Y - locked gates 2007
8	N	N	N - Gates installed 'a few weeks ago'
9	N	N	N
10	N	N	Y - None until recently
11	N	N	Y - None until recently
12	N	N	N - Not until Gates and fence put up in 2007
13	N	N	Y - Gates installed in last few weeks
14	N	N	N
15	N	N	N
16	N	N	Y - Gates now put up
17	N - until gates were installed	Y. the tenants of 1 Morris Rd and the resident of 88 Shaldon Road	N
18	N	N	N - Gates chained and locked
19	N	N	N
20	N	N	N
21	N	N	N - until February 2007
22	N	N	N - newly installed gates
23	N	N	N - Gates and fence installed April 2007
24	N	N	N - Gates and fence installed 20/2/2007
25	N	N	Y - Gates recently installed
26	N	N	Y - gates installed recently
27	N	N	N - Gates installed 20/2/2007

	S	T
1	Given permission to use route?	Private right?
2	N	N
3	N	N
4	N	N
5	N	N
6	N	N
7	N	N
8	N	N
9	N	N
10	N	N
11	N	N
12	N	Y - Access to maintain rear of property
13	N	N
14	N	N
15	N	N
16	N	N
17	N	N
18	N	N
19	N - never thought or told couldn't use it	N
20	N	N
21	N	N
22	N	N
23	N	N
24	N	N
25	N	N
26	N	N
27	N	N

	U	V	W
		Known others using route/other info Signed declaration	Description
1			
2	Y - Most of Neighbours	Y	Exiting Sha
3	Y - Numerous people in Morris Road	Y	Exiting Sha
4	Y - Numerous people in Morris Road	Y	Exiting Sha
5	Y - too numerous to mention	Y	Exiting Sha
6	Y - Everyone in Morris Road	Y	Exiting Sha
7	Y - Most residents of Morris Road. Has been using right of way for over 40 years	Y	Exiting Sha
8	Y - always saw people using lane but names and addresses unknown. In 1970s used route after school to go to shops on Morris Road.	Y	Exiting Sha
9	N	Y	Exiting Sha
10	Y - Many people to Shaldon Road and bus stop	Y	Exiting Sha
11	Y - most people in the area as it leads to bus stop	Y	Exiting Sha
12	Y - other residents in Morris Road	Y	Exiting Sha
13	N	Y	Exiting Sha
14	Y - School children, people accessing Muller Road, blackberry picking	Y	From Morr
15	Y - School children, people accessing Muller Road, blackberry picking	Y	From Morr
16	Y - Residents of Morris Road	Y	Exiting Sha
17	Y - Residents of Morris, Downman, Gaskins and Shaldon Roads	Y	Exiting Sha
18	Y - Maisie Flinders, 24 Morris Road, Mark and Jenny 28 Morris Road. Never saw burnt out cars or motor bikes on the route. Told this was reason for gates.	Y	Exiting Sha
19	Y - Other residents of Morris Road. Needs access to maintain the rear of property.	Y	Exiting Sha
20	Y - Other residents of Morris Road. Access to maintain back of property.	Y	Exiting Sha
21	Y - R+A Thomas, 64 Morris Road and other residents of the area.	Y	Exiting Sha
22	Y - R+AThomas, 64 Morris Road, N Hook, 90 Morris Road	Y	Exiting Sha
23	Y - evidence forms to be submitted	Y	Exiting Sha
24	Y - evidence forms to be submitted	Y	Exiting Sha
25	Y - respondent's children	Y	Exiting Sha
26	Y - family	Y	Exiting Sha
27	Y - all residents of Morris Road. Route always been known as a 'bridle path'.	Y	Exiting Sha

	X	Y	Z	AA	AB	AC	AD	AE	AF	AG	AH	AI	AJ	AK	AL	AM	AN
1	of map/notes on drawing																
2	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Also marked footway back onto																
3	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Additional connection marked t																
4	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Additional connection marked t																
5	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until turning 90 degrees to the left and continuing along Morris Road to number																
6	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Also marked footway back onto																
7	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Also marked footway back onto																
8	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Also marked footway back onto																
9	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road.																
10	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Also marked footway back onto																
11	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Also marked footway back onto																
12	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. 3 x sets of Gates and fencing m																
13	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Also marked way back onto Sha																
14	s Road, between 76 and 78 Morris Road onto footway behind 80 Shaldon Road, for a short way to the North East and South West.																
15	s Road, between 76 and 78 Morris Road onto footway behind 80 Shaldon Road, for a short way to the North East and South West.																
16	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Also marked footway back onto																
17	don Road in a perpendicular fashion, continuing to rear of 2 Shaldon Road and turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Roa																
18	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. 3 gates and fencing marked on																
19	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Gates marked at front and rear																
20	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Gates marked at front and rear																
21	don Road in a perpendicular fashion, continuing to rear of 2 Shaldon Road and turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Roa																
22	don Road in a perpendicular fashion, continuing to rear of 2 Shaldon Road and turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Roa																
23	don Road in a perpendicular fashion, continuing to rear of 2 Shaldon Road and turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Roa																
24	don Road in a perpendicular fashion, continuing to rear of 2 Shaldon Road and turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Roa																
25	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Additional connection marked t																
26	don Road in a perpendicular fashion, before turning 90 degrees to the right and continuing parallel to Shaldon Road until meeting adopted highway of Morris Road. Additional connection marked t																
27	don Road in a perpendicular fashion, before turning 90 degrees to the left and continuing parallel to Shaldon Road to rear of 2 Muller Road. 3 x gates marked on map.																



**SUMMARY OF EVIDENCE FROM FRONTAGERS TO CLAIMED ROUTE**

LETTER/EMAIL	DATE	SUMMARY OF EVIDENCE
Letter 1	9.04.18	Resident Shaldon Road 40 years which covers the 20-year claim period. Private rights to access lane shown on property deeds and annotated 'Road' on deed plan. Section of lane at rear of property privately maintained. Acknowledged that lane was used by public, but also referred to incidents of burglaries, break-ins and burnt-out stolen cars which had led to installation of gates by Shaldon Road residents.
Letter 2	14.04.18	Resident of Shaldon Road since 1963 which covers the relevant claim period. Hand drawn copy of plan from 1937 freehold title deeds annotated 'private lane' and a stream running parallel to the lane on the north side. Copy plan also annotated 'hardcore road' 13ft wide. Resident states that the lane "has never been a public footpath".
Letter 3	11.04.18	Resident of Shaldon Road. Is opposed to re-opening the footpath due to incidents of ASB, including fires and graffiti, when the footpath was open.
Email 1 & 2	8.04.18 & 12.04.18	Resident of Shaldon Road for 13 years (two years of which cover the 20-year claim period). Gates were paid for and erected by Shaldon Road residents as a result of ASB, break-ins and fly tipping. Several residents drive through the lane to use garages at the rear of their properties and people walking through the lane would therefore not be safe. Residents did contact the local councillor (Sen Emmett) in the past about responsibility for maintenance of the lane – property deeds stated that residents were responsible to maintain part of the lane and "the council were responsible for the rest". Consequently residents cleared the lane when needed, but not aware that the Council took any action over the last 13 years.
Email 3	12.04.18	Resident of Shaldon Road. Concern about access to traffic (cars or motor bikes) to lane at rear. No objection to use as footpath.
Emails 4 & 25	12.04.18 & 24.04.18	Resident of Shaldon Road. Wishes to assert private rights to the lane. The property deeds (and neighbours' deeds) "identify the 'lane' as actually being a 'Road', and confirm our private rights to use it by vehicle access".
Email 5	17.04.18	Resident of Shaldon Road for the last 15 years (four years of which cover the 20-year claim period). Lane was overgrown and impassable at one end and resident has never seen anyone use it as a footpath. "The only people who used it were residents to access their garages and gardens ....". The gates were erected because of evidence of antisocial behaviour and crime. Only residents maintained the lane – not aware that the Council undertook any maintenance.
Email 6	17.04.18	Resident of Shaldon Road since 2015 which falls outside of the relevant claim period of 1987-2007. Has been told by neighbours that residents are responsible for maintenance of the lane. Wishes to assert private rights to the lane.
Email 7	18.04.18	Resident of Shaldon Road for 46 years which covers the relevant claim period. Has been using the lane for access to garage since 1972 and the lane has been private since 1938 when the houses were built. Residents paid for and fitted gates following a spate of crime and ASB. Will assert private rights to the lane.
Email 8	18.04.18	Resident of Shaldon Road for over 40 years and before that resident of Muller Road, which covers the relevant claim period. "While the lane running parallel to Muller Road to the Shaldon Road lane was always a public right of way the latter was and still is a private lane". Apart from residents, has witnessed seeing a "very small number" of 'trespassers' in the summer picking blackberries.
Email 9	19.04.18	Resident of Shaldon Road for the last 19 years (Eight years of which cover the relevant claim period). Before the gates went up in 2007 reported an incident to police of someone jumping over fence into property. Wishes to assert private rights of access to lane.

Email 10	19.04.18	Resident of Shaldon Road since 2017 which falls outside of the relevant claim period of 1987-2007. Told by neighbours that residents are responsible for maintenance of the lane. Wishes to assert private rights of access to the lane, as stated on deeds to the property.
Email 11	19.04.18	Resident of Shaldon Road. Wishes to document objections based on evidence of crime and ASB during the relevant claim period. "Although I do not have any actual evidence to substantiate my concerns we have been made aware from our previous neighbours and friends who lived there, that prior to the gates being put up, the lane was used as a public footpath."
Email 12	19.04.18	Resident of Shaldon Road for over 50 years which covers the relevant claim period. Three photographs supplied which provide evidence that from 01/04/1990 to 01/08/2003 the lane was used to park family cars in the garage at the rear of the property. The garage was not used after 2003 because of encroaching vegetation from "the 'waste' ground not tended to by the Council that completely took over the lane and it became impossible to keep the undergrowth back". The lane has always been used for vehicular access to garages and "my mother and I wish to assert our private rights to the lane".
Email 13	20.04.18	Resident of Shaldon Road for approx. 30 years, which covers the relevant claim period. The property has a garage at the rear which has been in constant use (photograph supplied). Wishes to assert private rights to the lane and has regularly maintained the lane at the back of property to "ensure easy vehicle access". "When the lane was open to the public we used to suffer with high levels of crime and fly tipping."
Email 14	20.04.18	Residents of Shaldon Road for nearly 26 years (15 years of which cover the relevant claim period). Were told that the lane was private for residents only to use for garage access. The gates were erected by residents after incidents of crime and ASB.
Email 15	21.04.18	Residents of Shaldon Road – family have lived in the property "since it was built in 1939", which covers the relevant claim period. Wish to assert their private rights to the lane which "has been a private lane from this date and has never been a public thoroughfare". "This lane was in fact gated when there were allotments on the land to the rear of our property and only allotment holders and Shaldon Road residents had access." Gates were "reinstalled" in 2007. Lane is used 'all year round' to park car in garage 'at all times'. "When the houses were built on the land at the rear of our property the council accepted that it was a private lane and did not allow any access from the Morris Road properties to our lane."
Email 16	23.04.18	Resident of Shaldon Road for 31 years, which covers the relevant claim period. Asserts private rights of access to the lane which is shown on the deeds of the property. Back lane is private and has always been used for access to the rear of the property. Is concerned about vulnerability of the property to crime in the event of public access.
Email 17	23.04.18	Residents of Shaldon Road. Wish to draw attention to their original lease and title deeds which state they have access to the lane at the rear of property. They have maintained the lane and object to any possible denying of vehicular access to their garage.
Email 18	23.04.18	Resident of Shaldon Road for the last 10 years, which falls outside of the relevant claim period of 1987-2007. "I have maintained this access at the rear of my property for the 10 years I have lived here and at no time has this been open to the public." Understands that the gates were erected due to 'significant' problems of crime and ASB. "The lane is and historically has been a private lane for the use of those who have a private right to the lane."
Email 19	23.04.18	Residents of Shaldon Road for 23 years (12 years of which cover the relevant claim period). Property deeds state they were responsible for the upkeep of their section of lane and they have done so for 23 years. "We have always had vehicle access to the lane to access our garages and sheds and have a right of way across our neighbours parts of the lane". The

**APPENDIX T**

		Neighbourhood Watch group were supported by the police to erect gates due to crime and ASB.
Email 20	24.04.18	Residents of Shaldon Road. Wish to assert private rights to the lane in order to access parking at the rear of property and for access to the rear garden. The gates were erected for security reasons, i.e. to prevent crime and ASB.
Email 21	24.04.18	Resident of Muller Road. Wishes to assert private access right to the lane at the rear, which is used as access to the bike store at the rear of the property.
Email 22	24.04.18	Resident of Muller Road. Uses rear access to property to park vehicle in garage at the rear. Wishes to assert private rights of vehicular access to the lane. Has carried out maintenance to the lane, including "levelling out some bumps and dips".
Email 23	24.04.18	Resident of Shaldon Road since August 2014, which falls outside of the relevant claim period of 1987-2007. For the last three and a half years has maintained the private rights to the rear of the property in order to provide vehicle access to the rear of the property. As tenant, wishes to assist Landlord in the assertion of private rights and "was given express instruction by the Landlord regarding the necessity of maintenance of the back lane prior to moving in." The responsibility for maintenance and the private rights of access are rights in common with other residents as set out in property deeds (photographs of deeds to property attached to email).
Email 24	24.04.18	Landlord of Shaldon Road property wishes to assert private rights to the lane. "Vehicular access has been used by at least houses 2-20 continually and for many years, and is essential".