

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

15th October, 2019

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 Network Operations Manager, Growth & Regeneration)

(Ward: Lockleaze)

Purpose of Report

1. To advise Committee Members of the responses which have been received to the Notice of Making Order relating to the above path, and to assist Members in reaching an appropriate decision in respect of the objections received.

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 sub-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

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. Presumed dedication can be either at common law or by Statute (s.31 of the Highways Act 1980) . Section 31 of the Highways Act 1980 supplements the

common law position and 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 application was the erection of two sets of gates across the way in February 2007 by Shaldon Watch.
8. At the meeting on 15th October, 2018, the Committee decided to make and advertise an Order to modify the Definitive Map and Statement by including the claimed route as a footpath, providing authority to the Head of Legal Services to:
 - i) make and advertise the Order; and
 - ii) if the Order is unopposed, or any objections are subsequently withdrawn, to confirm the Order.
9. . A notice of making of the Order was served on all affected owner/occupiers and statutory consultees, advertised in the local press and displayed on site (see Appendix A). The notice indicated a period during which the public and those affected by the Order had an opportunity to make formal representations or objections.
10. Formal objections were received. The Rights of Way team responded to the objectors, requesting that they consider withdrawing their objections on the basis that the grounds for objection were not relevant to the determination. At present, all objections still remain (and are summarised in Appendix B).
11. As the objections have not been withdrawn, the Head of Legal services does not have authority to confirm the Order. The statutory requirement is for the Order to instead be referred to the Secretary of State for Environment for confirmation. Once referred to the Secretary of State, he can hold a hearing or inquiry if he considers that matters have been raised that are relevant to the determination.
12. The objections are therefore now being reported back to this Committee with a view to a decision on the next steps

Objections

Objections have been made by members of the public and none of these have been withdrawn. For a detailed breakdown of the objections received rebuttals see Appendix B. The issues raised are listed below:

- Loss of private rights of vehicular access
- Risk of criminal activity
- Impact on residential amenity
- Impact on access for disabled
- Lanes hardly used by pedestrians due to condition
- Width of lane between 88 Shaldon Road and Unity Chapel is 3m not 4m

Options

Given that the objections have not been withdrawn, the sub-committee can decide:

1. That all of the objections are not 'duly made', and so in effect that the Order is unopposed. If this is the case the Order can be confirmed.
2. That some or all of the objections are 'duly made', and that the matter should be passed to the Secretary of State for the Environment, for confirmation.
3. That some or all of the objections are 'duly made', and that the matter should be passed to the Secretary of State for the Environment, together with the proposed modification to the path width (see below), for confirmation.

Officer's Advice

In the light of the contents of this Report, it is clear that the objections received in response to the Order constitute duly made objections in that they are in writing, within the time specified in the Notice of Making of the Order, as well as addressed to the proper person. Option 1 above is therefore not appropriate.

The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, objections based on potential criminal activities, private rights of access, residential amenity, impact on access for disabled are not matters that can be considered by the Secretary of State. The majority of the objections were on these grounds and raised matters previously dealt with in the initial report presented to the committee before they made their decision to make the Order on 15th October 2018.

The only matter for consideration is whether or not the presumption of dedication has been established so that the public rights exist. The evidence provided by an

objector that lanes are ‘hardly used by pedestrians due to condition’, is in contradiction to the evidence presented in the report brought to Committee 15th October 2018. Without any further evidence (which was requested but has not been provided) this objection provides very little weight for deciding against the previous resolution.

The only matter raised in the objections which has relevance is the width of the lane or proposed public footpath BCC/611. As this was an error in the drafting of the Order (BCC/611 is 3 metres wide, not 4 metres), that aspect of the Order should be modified accordingly.

Recommendation

It is the recommendation of the Network Operations Manager that the Committee resolves to submit the Order to the Secretary of State for confirmation (with a request that it be modified to correct the recorded width of BCC/611).

Appendices

Appendix A Notice and Order Map

Appendix B Table of Objections

NOTICE OF MODIFICATION ORDER**SECTION 53 OF THE WILDLIFE AND COUNTRYSIDE ACT 1981****CITY COUNCIL OF BRISTOL****CITY COUNCIL OF BRISTOL DEFINITIVE MAP AND STATEMENT****CITY COUNCIL OF BRISTOL DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER
NO. 1, 2019**

The above Order made on 5th February 2019, if confirmed as made, will modify the definitive map and statement for the area by adding to them:

- a footpath (No.609) in Lockleaze in the City of Bristol, shown by a broken black line with short intervals on the map contained in the Order, running from point A on the map between 2 Shaldon Road and the rear of 247 Muller Road grid ref. ST 60199 75803 in a north westerly direction for 52.5m to point B, at grid ref. ST 60163 75842 then in a north easterly direction through point C at grid ref. ST 60289 75996 then continuing in the same direction to point D at grid ref. ST 60360 76070, a junction with highway 4558356, Morris Road between 1 Morris Road and the Unity Chapel a total distance of approximately 361 metres with a width of 4m;
- a footpath (No.610) in Lockleaze in the City of Bristol, shown by a broken black line with short intervals on the map contained in the Order, running from said point C in a north westerly direction for 22m to point F at grid ref. ST 60274 76008 between 76 & 78 Morris Road with a minimum width of 5 metres;
- A footpath (No. 611) in Lockleaze in the City of Bristol, shown by a broken black line with short intervals on the map contained in the Order, running from the said point D in a south easterly direction to reconnect with Shaldon Road between 88 Shaldon Road and the Unity Chapel at point E grid ref. ST 60398 76042 a distance of approximately 46 metres, with a width of 4m.

A copy of the Order and the Order map may be seen free of charge at the offices of Bristol City Council, City Hall, Bristol, BS3 9FS during normal office hours.

Copies of the Order and map may be bought there at the price of £0.30. Copies of the Order and map may be sent by second class post on receipt of a written request at a price of £6 to cover the Council's administrative costs.

Any representation or objection relating to the Order must be sent in writing to the Service Director, Legal and Democratic Services, City Hall, PO Box 3176, Bristol, BS3 9FS, quoting reference IE0.1538 not later than 28 March 2019, and applicants are requested to state the grounds on which it is made.

If no representations or objections are duly made to the Order, or to any part of it, or if any so made are withdrawn, Bristol City Council, instead of submitting the Order to the Secretary of State (or part of it if the authority has by notice to the Secretary of State so elected under paragraph 5 of Schedule 15 to the Wildlife and Countryside Act 1981) may itself confirm the Order (or that part of the Order). If the Order is submitted to the Secretary of State, in whole or in part, any representations or objections which have been duly made and not withdrawn will be sent with it.

Dated: 5 February 2019

Tim O'Gara – Service Director, Legal and Democratic Services

Bristol City Council Definitive Map & Statement

Modification Order No. 1 2019 Wildlife & Countryside Act 1981

Section 53 Footpath Nos. BCC/609, BCC/610 & BCC/611



Date: February 2019

Plan No.: 609, 610 & 611

Scale 1:2500

Grid ref. ST 60199 75803



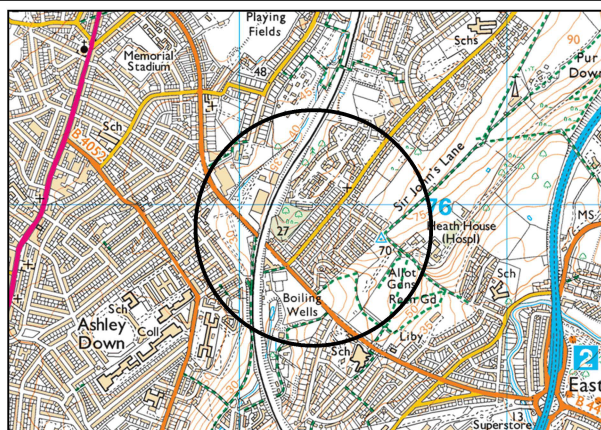
This map is produced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution

Bristol City Council, LA09055L, 2018

KEY

A - B - C - D BCC/609
C - F BCC/610
D - E BCC/611

A 60199 75803
B 60163 75842
C 60289 75996
D 60360 76070
E 60398 76042
F 60274 76008



APPENDIX (1) B

Property Address	Objection	Council response	Further Response/Objection withdrawn	Council Observations
8 Shaldon Road	<ul style="list-style-type: none"> Private rights of vehicular access Risk of criminal activity 	16 April 2019	<ul style="list-style-type: none"> Private rights of access Never seen people walking along route OBJECTION NOT WITHDRAWN 	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, potential criminal activities and private rights of access are not matters that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
10 Shaldon Road	<ul style="list-style-type: none"> Private rights of vehicular access 	16 April 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, a private right of access is not a matter in itself that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or</p>

				not public rights exist.
12 Shaldon Road	<ul style="list-style-type: none"> Risk of criminal activity Private rights of vehicular access 	25 April 2019	<ul style="list-style-type: none"> Criminal activity Devalue property OBJECTION NOT WITHDRAWN 	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, potential criminal activities and private rights of access are not matters that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
14 Shaldon Road	<ul style="list-style-type: none"> Private rights of vehicular access Risk of criminal activity Impact on residential amenity 	16 April 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, potential criminal activities, private rights of access and impact on amenity are not matters that can be considered by the Secretary of State.</p> <p>The only matter for</p>

				consideration is whether or not public rights exist.
16 Shaldon Road	<ul style="list-style-type: none"> Private rights of vehicular access Risk of criminal activity Impact on residential amenity 	16 April 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, potential criminal activities, private rights of access and impact on amenity are not matters that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
20 Shaldon Road	<ul style="list-style-type: none"> Impact on access for disabled Private rights of vehicular access 	17 April 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, private rights of access and access for the disabled are not matters that can be considered by the Secretary of State.</p> <p>The only matter for</p>

				consideration is whether or not public rights exist.
20 Shaldon Road	<ul style="list-style-type: none"> Impact on access for disabled Private rights of vehicular access 	17 April 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, private rights of access and access for the disabled are not matters that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
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22 Shaldon Road	<ul style="list-style-type: none"> Risk of criminal activity 	21 March 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, risk of criminal activity is not a matter that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
48 Shaldon Road	<ul style="list-style-type: none"> Private rights of vehicular access 	14 April 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, private rights of access is not a matter that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
64 Shaldon Road	<ul style="list-style-type: none"> Risk of criminal activity Private rights of vehicular 	21 March 2019	No	<p>The desirability, suitability or necessity of adding the route</p>

	access			<p>to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, private rights of access and potential criminal activity are not matters that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
66 Shaldon Road	<ul style="list-style-type: none"> • Risk of criminal activity • Private rights of vehicular access 	16 March 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, private rights of access and potential criminal activity are not matters that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
76 Shaldon Road	<ul style="list-style-type: none"> • Risk of criminal activity 	21 March 2019	No	The desirability, suitability or

	<ul style="list-style-type: none"> • Lanes hardly used by pedestrians due to condition 			<p>necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, private rights of access and potential criminal activity are not matters that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>
88 Shaldon Road	<ul style="list-style-type: none"> • Risk of criminal activity • Width of lane is 3m not 4m • Private rights of vehicular access 	21 March 2019	No	<p>The desirability, suitability or necessity of adding the route to the Definitive Map are not matters that can be taken into account under Section 53 of the Wildlife and Countryside Act 1981. Therefore, private rights of access and potential criminal activity are not matters that can be considered by the Secretary of State.</p> <p>The only matter for consideration is whether or not public rights exist.</p>

				The width of Footpath BCC/611 is 3 metres, not 4 metres, so that the Order should be amended accordingly.
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