

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

12 December 2016

**CURRENT CLAIMS, INQUIRIES AND MISCELLANEOUS RIGHTS OF WAY
MATTERS**

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

(Ward: Citywide)

Purpose of Report

1. To report for information on the present position with regard to claims under Section 53 of the Wildlife and Countryside Act 1981.

Background

2. As Surveying Authority for the purposes of the Wildlife and Countryside Act 1981 the City Council has a duty, as imposed by Section 53(2)(b) of the Act, to keep the Definitive Map and Statement under continuous review and to determine any valid applications for Modification Orders which it receives.

3. Section (53)(3)(b) of the Act states:

(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises the presumption that the way had been dedicated as a public path or restricted byway;

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or

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

4. There are currently nine outstanding claims that are waiting to be determined by the Authority, the earliest of which was received by Bristol City Council in July 1998. The most recent was validated by Legal Services in November 2016.

5. There is no statutory advice relating to the order in which claims should be processed. However, the Council's standard practice and that of the neighbouring authorities is to deal with each application in chronological order, unless the claim relates to a planning application in which case it is prioritised.
6. The length of time it takes to process a claim for a Public Right of Way varies depending on the number of evidence forms and the amount of documentary evidence submitted in support of an application, and officer time available to investigate the application. It is legally possible for either user or documentary evidence to be sufficient to establish right-of-way status, but in practice most claims involve both. If an officer is allocated exclusively to investigate and evaluate an application, the minimum time for a non-contentious application is 4 to 5 months before a report is submitted to committee. See appendix A for a summary of the process.
7. When the application concerns a route across Bristol City Council land, a preliminary investigation is undertaken to determine whether there is a '*prima facie*' case for the claim. If so, the landowning department are approached to seek a dedication agreement. If there is an agreement in principle to dedicate the claimed route in perpetuity, the head claimant is contacted to secure agreement for withdrawal of the claim following the publishing of a Deed of Dedication. The dedication process is less resource intensive than undertaking a full investigation into a modification order application (see Appendix A), particularly if a public inquiry or hearing must be held.
8. In respect of claims over private land, the Guidance provided by DEFRA in 2012 (see Background Papers) concerning 'express dedication at common law' is considered by the Council as being consistent with the surveying authority's duties and powers under the Wildlife and Countryside Act 1981. That is, if a highway is properly declared under the common law principles and there is evidence of use by the public, the route becomes a new right of way under Section 53(3) of the Act and should be included on the Definitive Map and Statement by way of a 'legal event order'.
9. In light of claims dating back to 1998, claimants, witnesses and land owners are traced and contacted in order that delayed claims can be progressed. Should the lead applicant no longer wish to pursue the claim the application remains valid and the Authority must determine it in the usual way, provided all formalities have been complied with. For practical purposes a new lead person should be identified, but there is nothing in the Wildlife and Countryside Act 1981 to make this a requirement. This is in accordance with Section 53(2) and the surveying authority's duty to keep the definitive map and statement under continuous review.
10. The rights of way provisions under the Deregulation Act 2015, which are not yet in force, will necessitate a review of internal procedures on commencement of the changes in legislation. A major change introduced by the Act is the insertion of new Sections 54B and 54C into the Wildlife and Countryside Act 1981 to facilitate the making of 'modification consent orders'.

This is intended to reduce the number of Definitive Map Modification Order (DMMO) applications that are opposed by landowners, and thereby reduce the administrative burden on surveying authorities by providing an opportunity for landowners to agree to the claimed route (or an alternative provision with the agreement of the DMMO applicant).

11. The outstanding DMMO claims are as follows:-

ARGYLE PLACE, CLIFTON WOOD (Clifton)

- 11.1 A claim was deemed valid in July 1998 for a path partly across Argyle Place children's play area and land in private ownership (see Appendix B). The right was brought into question when the path was obstructed.
- 11.2 Planning Approval was granted in 2001 (Application No 01/03396/M/C) for three terraced houses on the site. As part of the planning permission a path was to be constructed close to the alignment of the claimed route with provision of the open space as part of a Section 106 Agreement. The land through which this new path runs was to be transferred to the Council as Public Open Space by April 2008, and once this had been undertaken officers would write to the head claimant seeking the withdrawal of the claim.
- 11.3 As the landowner has ceased communication with Parks, the Public Rights of Way department has decided to progress the claim through research of historic evidence, checking the contact details and interviewing those providing evidence for the claim and contacting the current land owner, before preparing a report for Committee.

ROUTE B – C, SOUTH PURDOWN (Lockleaze)

- 11.4 The claim was validated on 21/9/2011 by Legal Services (see plan showing route at Appendix C). This is the fourth claim for right of way concerning this land, which is subject to planning permission for Fairfield School playing fields. There is a complex background history to the site, which includes the diversion of a footpath to facilitate the development and a failed town green application. Legal advice has been sought on a discrete point of law concerning recent case law.

RIDGEHILL TO PUBLIC RIGHT OF WAY NO. 127, GOLDEN HILL (Westbury-on-Trym & Henleaze)

- 11.5 This claim was lodged following auction of the land, and was validated on 30.11.06 by Legal Services (see plan at Appendix D). Work has commenced to check the contact details for the applicant and those who completed evidence forms. Legal advice has been sought on the DMMO notification procedure concerning the change of landowner since validation of the claim. The landowner will be contacted in due course to enquire about express dedication of the claimed route, subject to approval of the DMMO applicant, as per the process outlined in para. 8 above.

PARKSIDE GARDENS & SOUTH HAYES TO HEATH HOUSE LANE, STAPLETON (Lockleaze)

- 11.6 The claim was validated by Legal Services on 15.03.07 (see plan at Appendix E). A check of the contact details for the applicant and witnesses, and a search of landownership are in process.

REAR OF SHALDON ROAD AND MORRIS ROAD, LOCKLEAZE (Lockleaze)

- 11.7 The claim was validated by Legal Services on 18.05.07 (see plan at Appendix F). Initial checking of contact details and land registry search are in process.

BLACKBERRY HILL (South of Frome Bridge) to PUBLIC RIGHT OF WAY No.153 (Frome Vale)

- 11.8 The claim was validated by Legal Services on 11.07.08 (see plan at Appendix G). The applicant's appeal to the Secretary of State for the authority to be given a deadline to determine the application has not been concluded.

In 2009 the Council received an application to register the land over which the claimed route runs as a Town and Village Green. The land was awarded town green status by this Committee on 15 March 2012. The Inspector's report which was appended to the committee report, and the further legal advice, took into consideration the effect of the existence of Public Right of Way No. 153 and the claimed public right of way on the application for registration of the land as a town green.

Further advice will be sought on the implications of the registration on the requirement for the Council to determine the claim for right of way.

CROW LANE TO MACHIN ROAD, HENBURY (Henbury & Brentry)

- 11.9 This claim was validated by Legal Services on 11.12.13 (see plan at Appendix H). Contact details and land ownership will be checked to make sure they are up to date.

PATH ACROSS ARNALL DRIVE OPEN SPACE, HENBURY (Henbury & Brentry)

- 11.10 The claim was validated on 18.08.14 (see plan at Appendix I). A check will be made to ensure contact details are up-to-date.

LABURNUM GROVE TO FISHPONDS ROAD, FISHPONDS (Frome Vale)

- 11.11 This is the most recent claim which was validated on 24.11.16 (see plan at Appendix J) and will be added to the Register of Definitive Map Modification Order applications pending investigation.

Consultation None.

Appendices

- Appendix A - Flowchart of internal Modification Order application process
- Appendix B - Claimed route – Argyle Place, Clifton Wood
- Appendix C - Claimed route – Route B-C, South Purdown
- Appendix D - Claimed route – Ridgehill to Public Right of Way No. 127, Golden Hill
- Appendix E - Claimed route – Parkside Gardens & South Hayes to Heath House Lane, Stapleton
- Appendix F - Claimed route – rear of Shaldon Road and Morris Road, Lockleaze
- Appendix G - Claimed route – Blackberry Hill (south of Frome Bridge) to Public Right of Way No. 153
- Appendix H - Claimed route – Crow Lane to Machin Road, Henbury
- Appendix I - Claimed route – path across Arnall Drive Open Space, Henbury
- Appendix J - Claimed route – Laburnum Grove to Fishponds Road, Fishponds
- Appendix K - Report on miscellaneous rights of way orders, agreements and legal proceedings.
- Appendix L - List of 'Legal Events' requiring the making of a modification order under S53(3)(a) of the Wildlife & Countryside Act 1981

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

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

Other Approvals Necessary None.

Recommended - that the report be noted

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 Background Papers

1) Report for information dated 21st September 2015 to this Committee on the changes to the rights of way provisions contained in the Deregulation Act 2015 – see link to papers below.

<https://democracy.bristol.gov.uk/CeListDocuments.aspx?Committeeld=170&MeetingId=1412&DF=21%2f09%2f2015&Ver=2>

2) Department for Environment, Food and Rural Affairs, Letter dated 19.11.12 on 'Express Dedication at Common Law' containing non-statutory general guidance.

Contact Officers:

For queries relating to rights of way matters:
, Solicitor, Legal Division,

, Public Rights of Way, Traffic Services, Place

