

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

15.04.2024

CLAIMED FOOTPATH(S) FROM SOUTH HAYES AND PARKSIDE GARDENS TO HEATH HOUSE LANE, LOCKLEAZE,

(Report of the Network Operations Team Manager, Growth & Regeneration)

(Ward: Lockleaze)

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resource implications arising from this report, although if an Order is made which receives objections that are not withdrawn, there would be cost implications if the Secretary of State decided to hold a public inquiry or hearing.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

Recommendations

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that if the Order is unopposed or any objections lodged are subsequently withdrawn, the Head of Legal Services be authorised to confirm the Order.

Executive Summary

- The purpose of this report is to provide the Public Rights of Way and Greens Committee with sufficient information and guidance to determine an application for an order under the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of public footpath(s) from South Hayes and Parkside Gardens to Heath House Lane. The claimed route is shown as A-C-D & B-C-D on the plan at Appendix A to this report.
- The statutory test to be considered is whether a way over any land has been actually enjoyed by the public *as of right* and without interruption for a full period of 20 years. Should this be the case, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- The evidence shows the claimed routes have been used as of right, and without interruption, by the public for a period of 20 years prior to 2005 when the public's right to use the way was brought into question by the locking of gates preventing access to Heath House Lane from South Hayes and Parkside Gardens from what was previously access into open and undeveloped fields.
- There is insufficient evidence available to indicate that landowners had taken overt action to demonstrate to users that they did not intend to dedicate a right of way over the claimed route for at least 20 years prior to 2005.
- In determining the application, officers have also examined documentary evidence, particularly historic maps, supported by documents held at Modern Records and the Definitive Map record. It is considered that these records do not provide any additional evidence to support the claim that a public footpath subsists over the alleged route.

In conclusion the available evidence shows that, on the balance of probabilities, a presumption of dedication of the public path between points A-D and B-D has been raised and so the report recommends that an Order be made under section 53(2)(b) of the Wildlife and Countryside Act 1981 to add the claimed public footpath to the Definitive Map and Statement on the basis of the occurrence of an event. It also recommends that the Council confirms the Order if it is unopposed or asks the Secretary of State to confirm it if it is opposed.

1. Purpose of Report

- 1.1. To determine an application for an order under the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of public footpaths from South Hayes and Parkside Gardens to Heath House Lane.

2. Legal Framework

- 2.1. 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.
- 2.2. 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.

3. Background

- 3.1. The Definitive Map Modification Order (DMMO) application was submitted on the 15th of June 2006 and validated by Legal Services on the 15th of March 2007. The application is to modify the Definitive Map and Statement by adding a footpath from South Hayes to Heath House Lane with an additional spur to Parkside Gardens. The claimed route begins at the adopted highway on South Hayes and then runs across an open field to meet the spur from Parkside Gardens before continuing to Heath House Lane. A copy of the map submitted with the DMMO application is attached at Appendix K3 and shows the claimed route(s).
- 3.2. 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. This provision 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;”

- 3.3. 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.”

- 3.4. The act that brought the public right into question and prompted the claim was the erection of fencing and gates in July 2005, preventing access to the open field from South Hayes and Parkside Gardens. These gates were reported by multiple witnesses, and are referred to in a letter from the landowner (Appendix Q5). It is clear from the submitted evidence forms (summary at Appendix O) and correspondence associated with this application that this act was sufficient to bring into question the public’s right to use the route. On this basis, the relevant 20 year period should end in July 2005, and begin in July 1985.

4. Documentary Evidence

- 4.1. The DMMO applicant did not provide any further documentary evidence in addition to the user evidence submitted in support of their application.

- 4.2. However, 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’, alongside analysing the available Definitive Maps and any other relevant mapping that is held by the Highway Authority or publicly available, a detailed analysis of which is set out below.

4.3. Definitive Maps

- 4.3.1. The published Definitive Map and Statement of 1954 and the review of the Map published in 1966 at Appendices B and C1-3 do not show the claimed routes as recorded public rights of way. The extract of the 1954 Definitive Map at Appendix B shows public footpath 227 which is also known as Sir John’s Lane to the southwest of the area covered by the application. As per other historic mapping it is clear that the area was not developed, with field boundaries the only features of note. By the publication of the 1966 Definitive Map (Appendix C1-3), the base mapping included a street labelled as Parkside Gardens, but no houses.

4.4. Site History

- 4.4.1. The extract from the 1839 tithe plan of the parish of Stapleton in the county of Gloucester (appendix D1-D2) is the earliest map retrieved as part of documentary research which shows a relevant representation of the fields (with field names) and

surrounding roads and houses to the application site. There is nothing to suggest any footpaths on this plan, nor is there anything to suggest there could have been no public rights over the claimed routes at this time.

4.4.2. The tithe map (Appendix D2) is a clearer representation of the fields in the specific area of South Hayes, Parkside Gardens and the claimed routes. This map clearly shows Heath House and the fields to the north and east of the said Heath House. As per 4.4.1. there is nothing to prove or disprove the existence of any footpaths across this land at this time.

4.4.3. The OS first edition 1880s (Appendix E1-E3) shows an area of enclosed fields with an occasional water feature, or building, likely for agricultural use. The only routes displayed are a track or footpath along the route, that in future maps is shown as Heath House Lane, but which terminates on the boundary with the fields of 'Purdown Farm', and a track to the southeast of what is now Parkside Gardens, that looks like the precursor to what is now labelled as Cottisford Road. Whilst some of these features are near to the future location of Parkside Gardens and point B in Appendix A, there is nothing on the claimed route. This map is largely unchanged for the 1903 OS map (Appendix E4).

4.4.4. The 1918 OS 3rd edition (Appendix E5) shows two tennis courts, one at the north end of the future Parkside Gardens, directly obstructing the claimed route at this time. It is not clear from the available evidence or maps who owned the tennis court, or which house it was likely associated with. This does reinforce the evidence of a lack of a right of way along one of the claimed routes, but does also suggest that at this time at least people might have been crossing the fields more than hinted at by these early maps, even if any routes were only for private use.

4.4.5. The 1932 abstract from title plans (Appendix H1-2) show an area that includes the site of the future South Hayes and Parkside Gardens, but does not show any indication of the claimed routes, nor does it show anything significant that would have prevented a public right of way being established at that time.

4.4.6. The northern parcel of land appears to have been owned by members of the Stoke Park Consortium for the entirety of the relevant 20 year period (see Appendix P1-2). The south parcel of land appears to have been owned by Clifford R. McGill Limited. Various covenants retrieved from the Land Registry (Appendix J1-5) show that the land was owned by this company around 1970. In 2005 the landownership changed to the current owners, and this led to any rights along the route being first brought into question.

4.4.7. The northern parcel of land has now been incorporated into the Stoke Park estate and since January 2012 is owned by Bristol City Council, under management of the Parks Department (see Appendix U1-21). The southern area of land is still in the same ownership as when the DMMO application was made.

4.5. Planning applications and current development proposals

4.5.1. There are no current publicly available plans to develop any part of the site. Whilst the south half of the site is owned by a private landowner, the northern part is part of Bristol City Council Parks' Stoke Park estate, and any development or disposal seems unlikely for this area of the site.

4.6. Site Visits

4.6.1. Officers undertook site visits in October 2005 and February 2021 - a photographic record is attached at Appendices L1-3 and L4-6 respectively. The 2005 site visit was before the claim was validated, and is a good representation of the site prior to the date on which any public right was brought into dispute by the actions of the landowner. The fencing and gates look brand new in these photographs (appendix L1-3) and this is corroborated by information in correspondence from the landowner and in the user evidence witness forms submitted. There is evidence of desire lines across the site, especially from Parkside Gardens. The route from South Hayes is less clear, and the photographs suggest that the area of the field which this route crosses was heavily overgrown in parts, before being cleared by the landowner. The photograph (appendix L2) showing the wooden fence between the north and south fields is at the point where the route passes through the hedge or field boundary, and shows clear evidence of use over time, though this could be from both people and livestock. Evidence such as desire lines is no evidence of a public right being exercised, but does suggest that a route could be used by the public and was not obstructed. It is also true that desire lines can develop, and vegetation can grow up in relatively short period of time.

4.6.2. There are no photographs providing evidence that the landowners had no intention to dedicate the routes as public rights of way, as no photographs could be retrieved prior to the right of way first being brought into question.

4.6.3. The gate installed in 2005 at South Hayes is approximately 8m wide. The gate installed at Parkside Gardens is approximately 3.8m wide, with approximately 4m of fence either side. The fence between the northern and southern fields is very overgrown, and was not possible to measure, but is approximately 8 metres wide based on mapping and photographs from 2005. The gate or gap at Heath House Lane is approximately 5 metres wide.

4.7. Aerial photographs

4.7.1. It is important to note that in a manner not dissimilar from historic mapping, aerial photographs do not provide evidence that public rights exist, they are only a reflection of the conditions as they exist on the ground, and can thus corroborate with user evidence, or suggest that a route has been obstructed by buildings or similar.

Aerial photos reviewed are from 1975, 1991, 1999, 2004, 2005, 2008 and 2010. Of the relevant period (1985-2005) the first and last 2 photographs are not strictly relevant. The 1975 photograph (Appendix I1) is insufficiently clear to show any evidence of desire lines that might suggest use across the claimed routes. There is however also no evidence that the claimed routes were obstructed. In the 1991 aerial photograph

(appendix I2-4) little has changed, but it could be argued that there is a more significant gap in the hedge line than in the earlier photograph, and lighter grass between here and the gate onto Heath House Lane. Given the shape of this area, it is perhaps most likely that this is evidence of grazing animals, rather than a more defined desire line that would suggest pedestrian use. Clear desire lines are visible in the fields to the northwest and west of South Hayes and Parkside Gardens.

On the 1999 aerial photograph (appendix I5) there are no significant changes over the 1991 photograph. In the 2004 photograph (appendix I6) there are visible desire lines in the field immediately to the northeast of South Hayes and Parkside Gardens. Though the appearance of these in this photograph may be as a result of longer grass and vegetation when the image was captured, or as a result of the improved resolution of the imagery. Critically this photograph was taken within the relevant period, and is evidence that there were no significant obstructions to pedestrian use over the claimed route. The 2005 aerial photograph (appendix I7) has clear evidence of a desire line running from Parkside Gardens, all the way to the gate on Heath House Lane. Any evidence of a route from South Hayes is less clear, though it appears that throughout the relevant period this area of the field had denser and taller vegetation. Desire lines are therefore less likely to show up here, and it also may have been more difficult to use the route depending on time of year and amount of vegetation. Unfortunately, there is not an exact date available for this photograph, but it is probably reasonable to assume that it was taken in either before, or shortly after the relevant period end date of July 2005, given the condition of deciduous trees and grasslands. The photographs from 2008 and 2010 (Appendices I8 and 9) are outside the relevant period, however they are included for completeness. Evidence of desire lines in the field immediately adjacent to South Hayes and Parkside Gardens is less clear in these photographs, as would be expected following the obstruction of the claimed routes in July 2005. There are desire lines evident in the two fields to the northeast, but these look more like circular routes in these fields, possibly from the entrance on Heath House Lane. Whether this is use by the public, private landowner/tenant, or grazing animals is unclear.

- 4.8. In summary, prior to the development of Parkside Gardens and South Hayes residential streets, there is no evidence that the claimed routes were used any more than as part of general use of an area that may or may not have been accessible to the public. It is more likely than not that after the building of these houses and their occupation, residents and others crossed the fields, and there was no clear attempt by landowners to prevent the public from accessing the open fields, according to the evidence collected in the preparation of this report.

5. User Evidence

- 5.1. The DMMO Application to modify the Definitive Map and Statement by adding the footpath, as described in paragraph 4 above, is supported by 13 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 1950 and 2005 when the application was submitted and confirmed, following the

installation of gates and fences blocking the claimed routes in July 2005. The evidence contained in the UEFs and accompanying maps is summarised below and in Appendix O.

- 5.2. The maps provided with the UEFs are marked with some variance to show a route from South Hayes to Heath House Lane, from Parkside Gardens to Heath House Lane, or showing both routes which is shown as A-C-D & B-C-D on the location plan at Appendix A.
- 5.3. Many witnesses also marked the maps with their UEFs to show the location of gates, though whether these were before or after the use of the way was brought into question is unclear. The evidence provided suggests that the only locked gates were those at the ends of South Hayes and Parkside Gardens, which were locked on the date when the use of the routes or ways was first brought into question (2005).
- 5.4. Witnesses marked the maps on their user evidence forms with some variety. Forms 1, 6, 7, 8, 10 showed the spur from Parkside Gardens only. Forms 3, 5, 11 showed the spur from South Hayes only. Forms 2, 4 (meets in the middle of the field, not at the field boundary), 12, 13 showed both spurs. The map on form 9 was unmarked.
- 5.5. The summary of user evidence at Appendix O reveals that 7 of the 13 witnesses claim continuous use of the route for 20 years or more during the relevant period in question from 1985 to 2005. 5 witnesses provide evidence for using the route from before 1960 until 2005 (forms 1,2,7,8 & 11).
- 5.6. Historic and other evidence of the width of the claimed route is set out in section 4 above. User evidence of the width of the way is as follows:
 - Twelve users refer to a width of 1 metre, 2-6 feet, 1-2 metres, 2 metres or 10 feet. Given the nature of the path, it is the opinion of officers that witnesses are describing a path which is of unrestricted width.
 - One respondent did not answer this question.
 - Twelve of the thirteen witnesses reported gates, stiles or both gates and stiles.
- 5.7. Of the ten witnesses who answered the question on believed status, nine referred to the route as a footpath, with one witness referring to the route as a bridleway and footpath. All witnesses resolved that the route was known as public.
- 5.8. For all witnesses who answered the question, the purpose of all journeys was for, leisure, visiting family or dog walking. One witness (form 5) did not answer the question.
- 5.9. No witness stated they had a private right, although one witness responded with 'not sure' (form 9) and another did not answer the question (form 10).

- 5.10. Twelve of the thirteen witnesses used the route on foot, with only one witness referring to using the route on foot, horse and bike (form 10). Total number of journeys per year varied from 3 (form 11) to 720 (form 9).
- 5.11. One witness referred to a notice installed in 2005 (form 9) whilst one witness referred to a notice 'only at Stoke Park' (form 3). Installation of the 2005 notice is corroborated by a letter supplied by the landowner stating when signage had been installed (Appendix Q5).
- 5.12. Two witnesses reported being told that the way was not public (forms 4 and 9) with the same two witnesses also referring to being stopped from 2005. A third witness (form 12) did report being stopped from 2005 but did not report being told that the route was not public.
- 5.13. Four of the witnesses did refer to obstructions or locked gates. Witness 13 referred to this as 'from 2005', whilst witnesses 4 and 9 referred to being stopped 'from 2005' elsewhere in their evidence forms. One witness (form 3) referred to obstructions or locked gates 'only when cattle were present in Stoke Park'. Based on the evidence provided it can be assumed with relative certainty that this is referring to the larger area of parkland that forms part of Stoke Park to the north and west and connecting to public footpath BCC/145, and not as part of the claimed route.
- 5.14. All but one (form 5) of the witnesses knew or had seen other individuals using the claimed route. Most of the people referred to were unnamed, or other witnesses who also completed evidence forms.

6. Consultation & Landowner Evidence

- 6.1. Notice was served by the applicant by securing notices to 3 locations on the area of land which covers the southern area of the claimed routes. This was carried out on 15th June 2006. No record was kept of any confirmation that the landowner(s) had received or read these notices, if there was any such confirmation.
- 6.2. No notice was served at the gate on Heath House Lane, nor was any notice referred to in correspondence kept on file. Regardless, the application was recorded by the Council as a valid application as at 15th March 2007.
- 6.3. First recorded correspondence received from Stoke Park Consortium, then responsible for the area of the route now within Stoke Park was received 16th November 2005 (Appendix P1-2). This correspondence confirmed that fences and gates erected across the 'footpath' were not the responsibility of Stoke Park Consortium, or on land controlled by them.
- 6.4. Various correspondence with the owners of the southern part of the site is included at Appendix Q1-5. The landowner describes various acts to prevent public rights across the field, the installation of gates, and actions of their employees. As such, no rights

could have been accrued after this date, as any access to the fields after this date was through force (climbing over gates and fences, or accessing the fields through broken gates and fences). The landowner states that they had notices installed in September 2005, but there was no indication of these when officers visited the site in October 2005.

- 6.5. The only relevant information provided by the landowners (Birakos Enterprises Ltd) was that the 'land itself was largely overgrown such that the claimed route of the right of way was impassable' (Appendix Q1). In this letter the solicitor representing the landowner also makes this statement 'When this land was purchased by our client it was surrounded by secure fences and the only entrances were protected by locked gates'.
- 6.6. No evidence that the owners of the northern portion of the site (Stoke Park Consortium at the time when use of the route was brought into question) prevented public access was provided by the landowner from that period, or found by officers carrying out historic research.
- 6.7. Upon commencement of the investigation of this claim, first stage consultation was carried out by contacting the current landowners of the land over which the claimed route crossed, and the lead applicant. These consultations were carried out by post and email in June 2021
- 6.8. No responses were received to these consultation letters, which are included at Appendix R1-4.

7. Additional Consultation

- 7.1. Upon completion of a first draft of this report, final consultation was carried out by contacting the current landowners over which the claimed routes cross, and the lead applicant. These consultations were carried out by post and email in March 2024. These letters are included at Appendix V1-6.
- 7.2. No response was received from the lead applicant.
- 7.3. No response was received from Birakos Enterprises Ltd. The report sent via recorded delivery to the address listed on the currently available land registry documentation (identical to Appendix S1-2). Upon further investigation it was discovered that Birakos Enterprises Ltd. was dissolved in 2020. Additional efforts were made to contact the named people representing Birakos Enterprises Ltd. at the postal addresses listed on their active appointments according to Companies House in March 2024. No response to the reissued letter and report has been received.
- 7.4. A BCC Parks officer responded to the consultation, and this response is included at Appendix W1-2. The officer was unable to provide any information relating to the 20 year period in question (prior to 2005). Therefore all information provided is not relevant to the claim and this report.

8. Analysis

- 8.1. The Committee must decide on the balance of probabilities based on the evidence before it, whether the presumption has been raised that the route has been dedicated as a public footpath.
- 8.2. There must be sufficient evidence to show that the route(s) marked with a black solid line on the plan attached at Appendix A (A-C-D & B-C-D) has been used by the public at large 'as of right', rather than individuals exercising a private right, without interruption 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 from the landowner that there was no intention on the part of the landowner to dedicate.
- 8.3. Officers consider that use of the claimed footpath as a public right of way was brought into question in 2005 when gates were locked, preventing public access (see section 6.4 above and Appendices O and Q5). Members should therefore look for evidence of continuous use of the claimed route 'as of right' up to this date and should decide whether the evidence supplied supports the full period of 20 years.
- 8.4. Use of the route as a public footpath is claimed by a total of 13 people through user evidence forms, and public use of the route is supported by the available aerial photographs of desire lines on the application route. The owner of the land which the claimed route crosses, supports this evidence in referencing their actions taken to deter use in 2005. All of the witnesses who completed evidence forms claimed to have used the route for at least 20 years unhindered and unchallenged, with no restriction except for gates and stiles. Whether these were in situ for the entirety of the relevant 20 year period, some part of that period, or after the use of the route was brought into doubt by the landowner in 2005 is unclear. Consultation with the landowner and the applicants suggests that the locked gates and subsequent signage were installed in 2005, when agents of the landowner also reported instructing members of the public that the route was not a public right of way. None of the witnesses stated that they had asked or been given permission to use the route. None of the witnesses could be reasonably alleged to be exercising a private right, as there are no references to any private rights in the user evidence, and there is no record of a private right on the relevant property deeds retrieved in researching this application.
- 8.5. The onus on the landowner is to produce sufficient evidence to rebut the claim that there was an 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.

8.6. User & Documentary Evidence

- 8.6.1. Officers believe that the user evidence which supports the DMMO Application provides strong evidence of pedestrian use of the route 'as of right' for the relevant 20-year period from 1985 to 2005. Further evidence indicating that a route has been available between South Hayes and Parkside Gardens and Heath House Lane at this location since before 1985 has not been refuted by the documentary evidence set out in sections 4 above. There is sufficient user evidence to suggest that the route in question was used by the public for a period longer than 20 years prior to the purchase of the relevant title by the current landowner, and as far back as the creation of the residential streets of Parkside Gardens and South Hayes in the 1960s.
- 8.6.2. Additional documentary evidence indicates that the only major change to the wider area and landscape of the route over the 100 years prior to 2005, was the building of the residential streets of Parkside Gardens and South Hayes.
- 8.6.3. In respect of the user evidence concerning the width of the way, set out in section 5.6. above, the majority of witnesses state a width of between 1-2 metres. It is clear from photographic evidence that the route(s) were largely open and unrestricted field paths, except at field boundaries.
- 8.6.4. It is the opinion of officers that it is more likely than not that any gates on the route were not locked for the relevant 20 year period. Therefore the use was uninterrupted until the southern area of land changed owner in 2005 and these locked gates are the ones referred to in the user evidence.
- 8.6.5. It is clear that the width referred to in the user evidence forms does not refer to any particular delineation or construction. As the way is unrestricted, a minimum width of 2 metres should be recommended should the Committee decide to make an order.

8.7. Landowner Evidence

- 8.7.1. No significant evidence is provided by landowners to demonstrate there was no intention to dedicate the paths during the relevant 20 year period (1985-2005).
- 8.7.2. There is a referral to the land being overgrown in Appendix Q1, this is corroborated by the photographs from 2005 in Appendix L1, where it looks as if a large amount of vegetation has been removed. This is only at South Hayes (point A, Appendix A) and there is no evidence of this for any other part of the claimed routes. It is impossible to determine whether the way was impassable before the overgrowth was cleared from the available evidence, or how long the overgrowth had existed within the relevant 20 year period.
- 8.7.3. In Appendix Q1 the representatives of the landowner states, 'When this land was purchased by our client it was surrounded by secure fences and the only entrances were protected by locked gates'. If these gates were locked before the purchase by

Birakos Enterprises Ltd, it could only have been for a matter of weeks once the other evidence is considered.

8.7.4. Informal consultation letters (Appendices R1-4) were sent out when investigation into this application commenced, but no responses to these letters were received.

8.7.5. Additional consultation was carried out once a draft of this report was completed (Appendices V1-6 & W1-2) but no relevant new information was submitted.

9. Conclusion

9.1. The Committee must consider whether there is sufficient evidence to support the claim that the presumption of dedication is raised under Section 31 of the Highways Act 1980, following 20 years of continuous use 'as of right' of the claimed route by the public, with no (or insufficient) evidence of lack of intention to dedicate by the landowner. The standard of proof is the civil one, being on the balance of probabilities; i.e. that it is more likely than not, based on the facts. Members must weigh up all the evidence provided and if, on balance, they consider that there has been 20 years of continuous use by the public 'as of right', then the presumption of dedication is raised. If, on the other hand, Members consider that, on balance, there is insufficient evidence to support the claim of 20 years' continuous use by the public 'as of right'; or that the evidence in support has been rebutted by sufficient evidence from the landowner that there was no intention on behalf of the landowner to dedicate then, the claim of presumed dedication has not been raised.

9.2. If the Committee considers that the claim is made out - it must resolve to make a Definitive Map Modification Order as requested.

9.3. Alternatively, if the Committee considers that the claim is not made out, it should resolve not to make an Order.

9.4. As members are aware, financial implications must not be taken into consideration when determining this DMMO application, as the Council has a statutory duty to make an Order if it believes there is sufficient evidence to support it.

9.5. 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 owners/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.

10. Background Papers

Appendix	Document
A	DMMO Map
B	Definitive Map Extract 1954
C1-3	Definitive Map Extract 1966
D1-2	1839 Tithe Plan with Field Names, 1839 Tithe Map
E1-8	1880s OS First Edition with PRow Network Superimposed, 1883 First Edition OS, 1883 First Edition OS with Current OS Superimposed, 1903 OS, 1918 OS 3rd Edition, 1952 Map, Extract from 1974 OS, 1974 OS
F1-5	Plans of Stoke Park, various years
G1-19	Extracts from Envirocheck Maps
H1-2	Abstract of Title of Thomas Cottrell
I1-9	Aerial Photographs
J1-13	Land Registry Documentation
K1-3	Lead Applicant Evidence and Map
L1-6	Site Photos
M1-4	Correspondence to Lead Applicant from Bristol City Council
N1-7	Application Forms from Lead Applicant
O	Tabulated User Evidence Data
P1-2	Correspondence with Stoke Park Consortium
Q1-5	Landowner Evidence
R1-4	Consultation Letters between BCC and Landowners
S1-2	Land Registry, Register View BL70903
T	Land Registry, Title View BL70903
U1-21	Land Registry, Register View BL1165
V1-6	Letters to parties inviting informal consultation.
W1-2	Emails from BCC Landowners relating to land at Stoke Park

11. Contact Officers:

Theo Brumhead, Public Rights of Way Team, Highway Network Management, Growth & Regeneration.