

COMMONS AND RIGHTS OF WAY COMMITTEE

MINUTES of a meeting of the Commons and Rights of Way Committee held on Tuesday 2 June 2026 at the Committee Room - Shire Hall, Gloucester.

PRESENT:

Cllr Cheryl Agg
Cllr Glenn Andrews
Cllr Angela Boyes
Cllr Tom Bradley

Cllr Dr Ian Cameron (Vice-Chair)
Cllr Leigh Challis
Cllr Jason Preece

Substitutes:

Apologies: Cllr Alex Hegenbarth and Cllr Dr Rebecca Trimnell

1. ELECTION OF CHAIR

On calling for nominations for the Chair for the ensuing civic year, Cllr Tom Bradley and Cllr Angie Boyes were duly proposed and seconded. On being put to the vote the Committee:

Resolved

That Cllr Angie Boyes be elected Chair for the ensuing civic year.

2. ELECTION OF VICE CHAIR

On calling for nominations for the Vice Chair for the ensuing civic year, Cllr Cheryl Agg and Cllr Tom Bradley were duly proposed and seconded. On being put to the vote, the vote was tied. The meeting was therefore adjourned briefly whilst advice was sought on the appropriate procedure for managing the situation. Upon reconvening, the Vice Chair was determined by the toss of a coin. It was therefore:

Resolved

That Cllr Tom Bradley be elected Vice Chair for the ensuing civic year.

3. MINUTES

Resolved

That the minutes of the previous meeting held on 23 March 2026 be approved as a correct record.

4. DECLARATIONS OF INTEREST

No declarations of interest were made.

5. PUBLIC QUESTIONS ON APPLICATION(S)

No public questions had been received on the application before the Committee.

6. MEMBERS' QUESTIONS ON APPLICATION(S)

No questions from members had been received on the application before the Committee.

7. APPLICATION FOR MODIFICATION ORDER TO ADD A PUBLIC FOOTPATH FROM RECTORY LANE TO ZGL64, HEMPSTED PARISH, CITY OF GLOUCESTER (REF:573/11/99(10))

- 7.1 Julie Haworth, Highway Records Officer (Definitive Map), gave a detailed presentation to the Committee aided by a PowerPoint presentation, which included photographs of the route under consideration.
- 7.2 The Committee considered an application for a Definitive Map Modification Order (DMMO) to add a public footpath from Rectory Lane to ZGL64, in the parish of Hempsted. At Appendix JAH2 the claimed route was shown running between points A–E.
- 7.3 The Committee was informed that an application was made by Mr Meads on 14 September 2024 to add a public footpath to the Definitive Map and Statement. This included certification that all affected landowners had been notified and photos were submitted of the application route.
- 7.4 A Section 31(6) deposition was received by P Parkinson of KMT Farming and Consultancy Ltd on behalf of one of the Landowners, Mr S Harwood which was submitted on 19 June 2024. This deposit was not retrospective and therefore it acted from the deposit date only. In this instance, the user evidence for the claimed route would be assessed over the 20-year period prior to March 2024; consequently, the deposition would not affect this application.
- 7.5 Members were informed that Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 related to the discovery of evidence which showed that a right of way that was not shown on the Definitive Map and Statement subsisted or could be reasonably alleged to subsist. Members were informed of the two tests which applied when deciding whether to make a DMMO, as clarified by case law Bagshaw and Norton 1994. Members were reminded that such investigations determined existing rights, not suitability or desirability or lack thereof.
- 7.6 The Highway Records Officer presented a series of photos of the claimed route. The initial site inspection took place on 10 September 2024 and it was then reinspected on 15 October 2024, accompanied by the landowner Mr S Harwood. The following key points were raised:
- At point A at the junction of county maintainable highway 483510 known today as Rectory Lane, there was a wooden gate with a public footpath yellow arrow waymark pointing in a southerly direction, two public footpath

fingerposts and an undated map showing the location of ZGL156 and asking walkers to stay on the public footpath.

- Between points B-C there was open grassland. There was a locked kissing gate with barbed wire covering an opening. Due to the section at points C-D of the claimed route being closed, the site inspection resumed at point E at the junction with ZGL64.
- At point E (with the junction of public footpath ZGL64) there was a metal kissing gate with a public footpath waymark sign. Just to the north of point E was another metal gate with two public footpath signs on the opposite side.
- At point D there was a metal gate which gave access to a bridge over the drain. To the left of the metal gate were two permissive footpath waymark signs which were obscured by plant growth.
- There was a further metal gate at the southern end of the bridge, which was locked, had barbed wire across the gate and a sign stating: "PRIVATE LAND No public right of way". The route between points D-C could not be accessed but the claimed route appeared to run through overgrown woodland.

7.8 The Highway Records Officer explained that the documentary evidence detailed at section 8 of the report was considered to be insufficient on its own to support a claim of dedication. Members were informed of the following points:

- 1811 Ordnance Survey Pen and Ink Map showed a track on a similar alignment as the claimed route. The route was marked by double pecked lines which suggested it was open on both sides. It proceeded from what was known today as Rectory Lane towards the river.
- On the Hempsted Tithe Map 1840, the majority of the claimed route from point A to approximately point B ran through an area which was identified as "tithe free" and therefore not shown. Section D-E was shown as enclosed and numbered 164 with a physical barrier at point D. The apportionment indicated that 164 was owned by Rev Samuel Lysons and occupied by John Boyce and was described as "Pasture Lane to Meadow", which could infer private usage.
- A Gloucester City Council Planning Application by Cory Environmental Ltd from 2005 which had a footpath arrangement plan showing part of the claimed route (approximately from point B-D) annotated as a purple unbroken line and was shown in the attached key as an "Existing permissive footpath".

7.9 The Officer drew the Committee's attention to the user evidence as detailed at section 10 of the report. She explained that under Section 31 of the Highways Act 1980, where a route had been used by members of the public "as of right" for a continuous period of 20 years, there was a presumption in law that a public right of

way had been established. Where a landowner could produce evidence to show that he had taken steps to prevent the accrual of new public rights of way through use of a route by the public, no such right would be dedicated. Such steps must be overt and make the public aware of the landowner's intentions.

- 7.10 The date that the public's use of the way was challenged, thereby providing the retrospective 20-year timeframe over which the user evidence could be analysed, was deemed to be when it was noted by a user of the claimed route that "it was obstructed and closed in March 2024". The user evidence would therefore be assessed over the retrospective 20-year period prior to March 2024.
- 7.11 The Committee was informed that eleven user evidence forms were submitted but three were not included in the overall analysis; members were informed that was because their use was outside of the qualifying period. Use by the public was on foot, and dated back to 1963. Two users claimed use over the whole qualifying period c.2004-2024. In accordance with case law *Davis v Whitby* (1974), it was not essential for the claimed route to have been used for the full period of 20 years by the same persons; the period may accrue as a result of use by different persons for shorter periods. Nor did it matter that the use was not continuous in the sense that it may not have occurred every day.
- 7.12 It was reported that Ms Pullen, Ms Jarman and Mrs Heath reported seeing no signs or notices, a view largely shared by Mr Meads, who noted only a permissive route marker on the landfill side that was often obscured by vegetation. In contrast, Mr Burgess, Mr Bricknell, Mr Davies and Mrs Davies confirmed seeing signage, with the latter noting permissive route markers by the concrete footbridge indicating a path running adjacent to the perimeter fence of the landfill site.
- 7.13 The Committee was informed that there was no evidence of use by force or secrecy but there was evidence that use of the application route was by permission. Five out of the eight users commented that there were permissive route markers although no one was verbally or physically prevented from using the application route over the timeframe 2004-2024 leading up to the securing of gates by Mr S Harwood in April 2024. This use would constitute use "by right", i.e. by easement or permission, and not "as of right".
- 7.14 It was explained that to rebut presumed dedication, there must be sufficient, contemporaneous evidence of a landowner's lack of intention to dedicate, brought to the attention of those people concerned with using the claimed route. Under Section 31(3)–(6) of the Highways Act 1980, a landowner may prevent dedication by taking prescribed steps, including erecting visible notices inconsistent with dedication; in the absence of contrary evidence, this was sufficient to negate the intention to dedicate the way as a highway.
- 7.15 Five out of the eight users, who claimed use of the route over the qualifying period, commented that there were permissive route markers at certain points along the claimed route. Members were informed of the relevant comments made by the users.

- 7.16 The Highway Records Officer directed the Committee to note that the current landowner also indicated at a site visit with officers on 15 October 2024 that he removed permissive path waymarks on his land in March 2024, one being on the west side of point C. Consequently, the permissive signs were considered to be sufficient evidence of the landowner's lack of intention to dedicate the claimed route and as a result would fail the statutory test for dedication.
- 7.17 The Committee was informed that Section 31 of the Highways Act 1980 did not displace common law dedication, which remained preserved by Section 31(9). Therefore, if the statutory test was not met, a right of way may still arise at common law where landowner actions (or inaction) show an intention to dedicate and the public had accepted it. Public use "as of right" (without force, secrecy, or permission) could evidence this intention. There was no fixed period at common law; the required duration depended on the circumstances, with more open and intensive use needing less time and the burden of proof rested with the claimant.
- 7.18 In accordance with the principle established in case law *Mann v Brodie* (1885), the number of users must be "such as might reasonably have been expected, if the way had been unquestionably a public highway". However, the claimed use of eight individuals was not compelling and was not considered to constitute use "as of right", based upon the fact that five of those eight individuals stated that they encountered permissive route markers along the claimed route and therefore this was insufficient to give rise to an inference of dedication at common law.
- 7.19 The Highway Records Officer, in concluding her presentation, explained that it was her view that the insufficiency of documentary evidence, and the fact that five of the eight accepted statements of use acknowledged awareness of, and use of, a permissive path, thereby indicating that use was "by right" not "as of right", was considered to be insufficient to establish a reasonable allegation that rights subsisted either by presumed statutory dedication or inferred dedication at common law. Therefore, the recommendation was that no order be made to add a length of public footpath to the Definitive Map of Public Rights of Way between points A- E.
- 7.20 In response to questions, it was confirmed that, prior to 24 March 2024, there was no indication whether or not the landowners had maintained the permissive route markers or kept them clear and visible to walkers. It was noted that any such information would need to be drawn from the user evidence forms.
- 7.21 In response to questions, officers confirmed that there were no records indicating when the permissive route signs were erected or by whom, despite a review of available documentation. It was noted that some user evidence suggested the signage may have been installed in the mid-1980s (approximately 1985–1986), based on recollection of works taking place on the route at that time. Officers were unable to advise on the typical lifespan of such signage. It was indicated that responsibility for the provision or replacement of signage would likely rest with the landowner, either by request or by undertaking the works themselves. It was further noted that, notwithstanding any deterioration or loss of signage over time, permissive path markers remained present on site, as referenced within the report.

- 7.22 It was confirmed that the current landowner had closed only one section of the route which was within their ownership. As a continuous through-route from one highway to another relied upon access across all landholdings, the removal of permission over one section prevented the use of the route as a whole. It was further explained that a highway must connect to a highway unless it led to a recognised place of public resort, which did not apply in this case. It was noted that no representations had been received from the other landowners.
- 7.23 Further clarification was sought regarding land ownership and the extent of the closure. Officers confirmed that the current landowner owned land from point A to D but had only closed the section between C and D, where the gates were located and had been locked. The section between A and C comprised open grassland and could not physically be closed. It was also noted that point A provided access to existing recorded public rights of way.
- 7.24 A member noted that the route had been used by several people over a long period, including prior to March 2024 and before the change of ownership in December 2023, and referred to historic mapping which appeared to show a similar alignment. The member also observed that the route followed a logical and convenient line across the landscape.
- 7.25 Officers clarified that historic Ordnance Survey mapping was indicative of the existence of a route only and did not demonstrate public highway status. Members should take into account the user evidence regarding the presence of permissive path markers. It was explained that permissive rights may be withdrawn at any time, and the legal test therefore remained whether use of the route has occurred without force, secrecy or permission.
- 7.26 A member noted the absence of responses from adjacent landowners and suggested that this could be interpreted as indicating no objection and an acknowledgement of the route. Officers advised that no such inference could be drawn, confirming that a lack of response could only be recorded as such, without assumption as to the landowners' position.
- 7.27 The Highway Records Officer explained that should the Committee resolve to refuse the application, no order would be made to add the route to the Definitive Map. However, the applicant would have a right of appeal to the Secretary of State against that decision, should they choose to exercise it.
- 7.28 A member suggested that the route may have provided access to a viewpoint of the river, noting that it appeared to represent the most direct route and connected with existing footpaths running north and south along the river.
- 7.29 Members were advised that their focus should be on the period between 2004 and 2024, when the route was first brought into question. The key issue was whether use during that period was "as of right" or by permission. The presence of permissive markers throughout much of that period suggested that use was permissive in nature, and therefore "by right" rather than "as of right". In order for the route to be added to the Definitive Map, there must be evidence of use "as of

right”, without force, secrecy or permission. If use was found to have been permissive during the relevant period, this would not satisfy the legal test for dedication. The actions taken by the landowner after 2024 were not material to the assessment of the qualifying period

- 7.30 A member commented that in her view the documentary evidence was insufficient to establish dedication of the claimed route. The member observed that only eight of the eleven user evidence forms could be accepted and just two demonstrated use over the whole qualifying period, and that this level of evidence did not constitute sufficient use by the public. In addition, the presence of permissive signage indicated a lack of intention by the landowner to dedicate the route as a public right of way. Having considered the legal framework and the evidence presented, the member expressed agreement with the officer’s conclusions and confirmed that they would support the recommendation that no order be made to add the claimed footpath to the Definitive Map.
- 7.31 A degree of frustration was expressed amongst some members regarding the absence of records relating to the installation of the permissive route markers, noting that these were a key element in assessing the status of the route.
- 7.32 A member stated that they were not persuaded that the path was ever permissive in its nature prior to the signage going up, the timing of which remained uncertain and was based solely on user recollection. She questioned how such signage could have been installed without a clear legal basis or record of instruction.
- 7.33 Members of the Committee considered all the evidence, it was proposed, seconded and

Resolved

That no order be made to add a length of public footpath to the Definitive Map of Public Rights of Way between points A-E.

(Three members voted in favour of the recommendation, three voted against and one member abstained. The vote being tied, the Chair used a casting vote in favour of the recommendation.)

8. OPTIONS/CONSIDERATIONS REPORT - PART 2

- 8.1 Karen Pearman, Highway Records & DMMO Team Leader, introduced the report and informed members that the report followed the Committee's decision at its 23 March 2026 meeting where members considered the recommendation from the Gloucestershire Local Access Forum (GLAF) to increase the use of delegated powers, making them the default route for determining applications. Whilst the Committee did not support making delegated powers the default for all cases, there was strong support for reviewing the current terms of reference with a view to including more straightforward cases. The report set out how this could be achieved.

- 8.2 It was explained that whilst all Definitive Map Modification Order (DMMO) applications could technically be determined under delegated authority, the Council operated under agreed terms of reference which specified those applications that were routinely determined by officers. At present, the main category of applications currently not included within the delegated arrangements was those relying on user evidence.
- 8.3 The report highlighted the importance of transparency and public interest in the decision-making process. Members were reminded that all determinations must be based solely on the evidence presented and the applicable legal tests, and not on personal views or opinions as to whether a claim was desirable.
- 8.4 The Committee was reminded that determination of an application was not the final stage of the process. Where an application was refused, the applicant retained a right of appeal to the Secretary of State. Conversely, where an order was made, it must be formally advertised and was open to objection before confirmation. These statutory safeguards were applied irrespective of the initial decision-making route.
- 8.5 The Committee was informed of the proposed two additional categories of applications to be included within delegated powers, as outlined in the report. Officers explained that this approach would enable the Committee to focus its consideration on more marginal or finely balanced cases.
- 8.6 The Officer also explained that in line with the Nolan Principles of public office, it was proposed that any application involving a serving councillor, whether as applicant or landowner, be automatically referred to the Committee. The same approach would apply in cases where a potential conflict of interest involving staff was identified.
- 8.7 A member raised the issue of limited public engagement in some cases, observing that only a small number of individuals had come forward with evidence in relation to the application considered by the Committee today. It was suggested that the level of public engagement could be a significant factor in determining whether an application was successful, and that reduced visibility of cases, if more were determined under delegated officer powers, could further diminish engagement.
- 8.8 Further comments were made regarding the absence of a provision enabling councillors to “call in” applications for Committee determination. Clarification was sought as to whether such a provision could be incorporated into the recommendations. In response, officers advised that the inclusion of a call-in mechanism had been carefully considered. However, there had been concerns that such a process could introduce a degree of subjectivity and uncertainty into the decision-making framework. It was explained that the intention of the proposed approach was to provide clear and consistent criteria for determining which cases were dealt with at officer level and which were referred to Committee. Consequently, the inclusion of a councillor call-in provision had not been recommended as part of the revised arrangements.

- 8.9 A member referred to the process used by the Minerals and Waste Planning Team, where division councillors were notified of new applications within their area and were given the opportunity to comment or request that an application be referred to the Planning Committee. In response, the officer explained that Committee members were required to undertake specific training to ensure that decisions were made in accordance with the relevant legal framework. It was emphasised that, unlike planning and minerals and waste decisions, DMMO determinations were based solely on an evidential test as to whether a public right of way existed, rather than on broader considerations of planning policy or desirability.
- 8.10 The potential risks associated with introducing a call-in mechanism were highlighted, including the possibility of decisions becoming influenced by subjective opinion rather than evidence. It was also noted that such a process could give rise to lobbying, which may undermine the impartiality of the decision-making process. For these reasons, officers reiterated their view that a call-in mechanism prior to determination would not be appropriate, as the process must remain focused on the assessment of the evidence presented.
- 8.11 A member asked what further steps could be taken to increase public engagement in relation to applications, to ensure that individuals had adequate opportunity to comment. In response, it was confirmed that the Council followed the statutory consultation process. This included consultation with parish and district councils, the placing of site notices to inform the public that the status of a route has been called into question, and invitations for representations to be made. It was noted that, ultimately, participation was reliant on the public choosing to submit evidence. Officers advised that, in some cases, there had been significant public engagement, evidenced by a high number of user evidence submissions.
- 8.12 Members were reminded that the statutory process also included advertisement in the press and the display of notices on site, providing formal opportunities for engagement. A member expressed the view that reliance on traditional press notices may be less effective given changes in how the public accessed information, suggesting that greater use of social media could improve engagement earlier in the process.
- 8.13 In response, officers advised caution in the use of social media for this purpose as this could introduce uncertainty regarding the validity of comments and responses.
- 8.14 A member suggested that information could be shared via social media as a means of publicising applications, similar to formal notices, but without incorporating informal comments into the evidential process.
- 8.15 In response to a question as to whether the application considered by the Committee today, would have been presented to the Committee under the proposed revised arrangements, officers confirmed that it would not. Officers advised that there was no requirement to amend the existing terms of reference if members were satisfied with the current arrangements. The proposed changes had been presented as an option, following recommendation from the GLAF.

- 8.16 A member highlighted the importance of councillors being aware of applications within their divisions, particularly where there may be public interest. Members could then play a key role in advising constituents on how to engage with the process, including the submission of user evidence to ensure that their views were formally considered.
- 8.17 A member queried whether there was a defined threshold in terms of the number of representations for an application to be referred to Committee. In response, the officer explained that the current terms of reference for delegated powers operated on clearly defined criteria, with applications either meeting those criteria or not. The proposed additional categories would introduce a more nuanced assessment, particularly in cases where evidence was considered insufficient or overwhelmingly sufficient to meet the legal test. It was emphasised that all user evidence submitted was taken into account as part of the evidential assessment. However, the decision-making process was not based on a numerical threshold of representations, but on the quality and weight of the evidence considered against the legal tests.
- 8.18 It was further explained that the “balance of probabilities” test would still result in a proportion of applications being referred to Committee, particularly where the evidence was more evenly balanced. There would be an increase in efficiency within the process if those cases where the evidence was clearly insufficient or clearly sufficient were determined under delegated powers.

8.19 **On being put to the vote the Committee resolved that:**

That the terms of reference for officer delegated powers be amended as detailed at paragraph 7.3 to the report.

(Four members voted in favour of the recommendation, two voted against and one member abstained.)

9. PUBLIC QUESTIONS - ABOUT THE MATTERS WHICH ARE WITHIN THE POWERS AND DUTIES OF THE COMMITTEE

No public questions had been received about the matters which were within the powers and duties of the Committee.

10. MEMBERS' QUESTIONS - ABOUT THE MATTERS WHICH ARE WITHIN THE POWERS AND DUTIES OF THE COMMITTEE

No questions from members about the matters which were within the powers and duties of the Committee had been received.

11. DELEGATED DECISIONS

- 11.1 In response to a request from a member, it was agreed that going forward, the delegated decisions report would include the location and reference to the parish

and district for each application. Officers would also look into whether a link to the decision report could be included for each application.

ACTION: Highway Records & DMMO Team Leader

- 11.2 In response to a question, regarding the cancellation of the 6 October 2026 meeting, it was confirmed that this was due to a three-day public inquiry being held in relation to a previously considered application, the next scheduled Committee meeting would therefore take place in December.
- 11.3 It was explained that the public inquiry related to an order that had already been made following Committee consideration, which was subsequently subject to objection. As a result, the matter had been referred to the Secretary of State, and an Inspector from the Planning Inspectorate would conduct the inquiry to determine whether the order should be confirmed.
- 11.4 In response to a request for further information to assist members' understanding of the inquiry, it was agreed that a link to the relevant documentation would be circulated. It was noted that, whilst the inquiry would not be broadcast online, it would be open to attendance by members of the public and would be held in the Council Chamber.

ACTION: Highway Records & DMMO Team Leader.

Resolved:

That the Committee noted the Delegated Decisions report.

CHAIR

Meeting concluded at 11.20 am