

Regulatory Committee:	Commons and Rights of Way Committee; Report of the Lead Commissioner Communities & Infrastructure
Date:	10 December 2024
Chair:	Cllr Hoyland
Presenting Officer:	Jaci Harris
Item Type:	For decision
Purpose of Report:	<p>To supply evidence to enable the determination of the following Definitive Map Modification Order applications:</p> <p style="text-align: center;">APPLICATIONS FOR MODIFICATION ORDERS TO ADD PUBLIC FOOTPATHS ACROSS LAND ADJACENT TO BRAMBLE LANE, STONEHOUSE PARISH, GLOUCESTERSHIRE (ref:573/11/212(6)(7)(8)(9)(10))</p>
Recommendations of the Presenting officer:	<p>That Orders be made to add lengths of public footpath to the Definitive Map of Public Rights of Way between the following points:</p> <p style="text-align: center;">A-B, B-D, E-F-K-O, O-Q-T, N-K,J-O, M-O, L-O, P-Q, U-H, G-I & B-C</p>
Background Documents:	<ul style="list-style-type: none"> • Sub-heading 8. 'Consultations'.
Forthcoming Decisions:	To flag those items that get referred on to Council for determination.
Appendices:	Paragraph 9.9 - SUMMARY
Contact Information (For information on the report)	<p>Jaci Harris, Asset Data Officer (Definitive Map) Highway Records & DMMO Team Telephone: 01452 328981 Email: jaci.harris@gloucestershire.gov.uk (quoting file reference)</p>

1. RESOURCE IMPLICATIONS

Average staff cost in taking an application to the Committee- £5,000. Cost of advertising Order in the local press, which must be done twice, is approximately £500 per notice. In addition, the County Council is responsible for meeting the costs of any Public Inquiry associated with the application. If the applications were successful, the routes would become maintainable at the public expense.

2. SUSTAINABILITY & EQUALITY IMPLICATIONS

No sustainability implications have been identified.

3. STATUTORY AUTHORITY

Section 53 of the Wildlife and Countryside Act 1981 imposes a duty on the County Council, as surveying authority, to keep the Definitive Map and Statement under continuous review and to modify it in consequence of the occurrence of an 'event' specified in sub section [3]. Any person may make an application to the authority for a Definitive Map Modification Order on the occurrence of an 'event' under section 53(3) (b) or (c). The County Council is obliged to determine any such application that satisfies the required submission criteria in accordance with schedule 14 of the Act.

Section 53(3)(c)(i) relates to the discovery by the Authority of evidence that shows that a right of way that is not shown on the map and statement subsists, or is reasonably alleged to subsist, over land in the area to which the map relates.

HIGHWAYS ACT 1980 - Section 31: Dedication of a way as highway presumed after public use of 20 years.

- Where 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, 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 period of 20 years...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.

PRESUMED DEDICATION AT COMMON LAW

Section 31(9) of the Highways Act 1980 says that nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years. If there is no presumption of dedication under Section 31 of the 1980 Act, then we will consider whether the evidence is such as to establish, again on a balance of probabilities, dedication at Common Law. Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate the way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises, rests with the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

4. ISSUES TO BE DECIDED

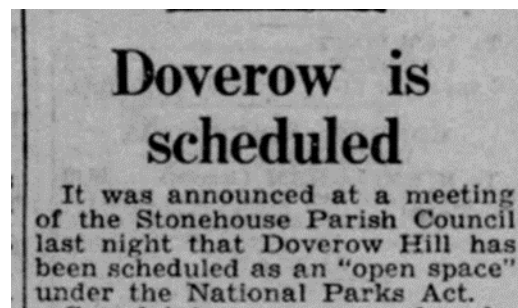
- 4.1** Where a Definitive Map Modification Order ("DMMO") is made, the process allows for objections to the order to be submitted. Further evidence could potentially be put forward for examination along with an objection. In these circumstances, the County Council cannot confirm the Order, and the matter would need to be referred to the Secretary of State.

- 4.2 Where an Order has been made and no objections are received, the Order Making Authority (“OMA”) can confirm it.
- 4.3 In the event of an application under Section 53 being refused, the applicant has the right to appeal against the decision to the Secretary of State, who may direct the OMA to make the Order that is sought.

REPORT

5. BACKGROUND

- 5.1 A map at scale 1:25,000 is attached (**slide 2**) showing the location of the claimed routes across land found on the urban fringe of Stonehouse Parish. Nearly all of the routes are contained within a 17 acre plot of agricultural land known locally as Verney Fields (“Verney Fields”) shown green (**slide 3**). This area of land is bounded to the west by a 1980s housing estate, to the south by a disused quarry and to the east and north by agricultural land and Doverow Hill; a 6 acre area of land (coloured pink) conveyed to the Local Board of Stroud to be held in trust as a ‘*place of public recreation*’ ©1880 under the Public Health Act 1875. It was subsequently conveyed to Stonehouse Parish Council ©1896 with the charge that the land was “*to be kept and maintained as a Pleasure ground according to the true intent and meaning of The Public Health Act 1875*”. It appears to have been subsequently designated as an area of ‘*open space*’ under the National Parks and Access to the Countryside Act 1949 by agreement, as evidenced below in the article from the Gloucester Citizen Newspaper - December 6, 1951.



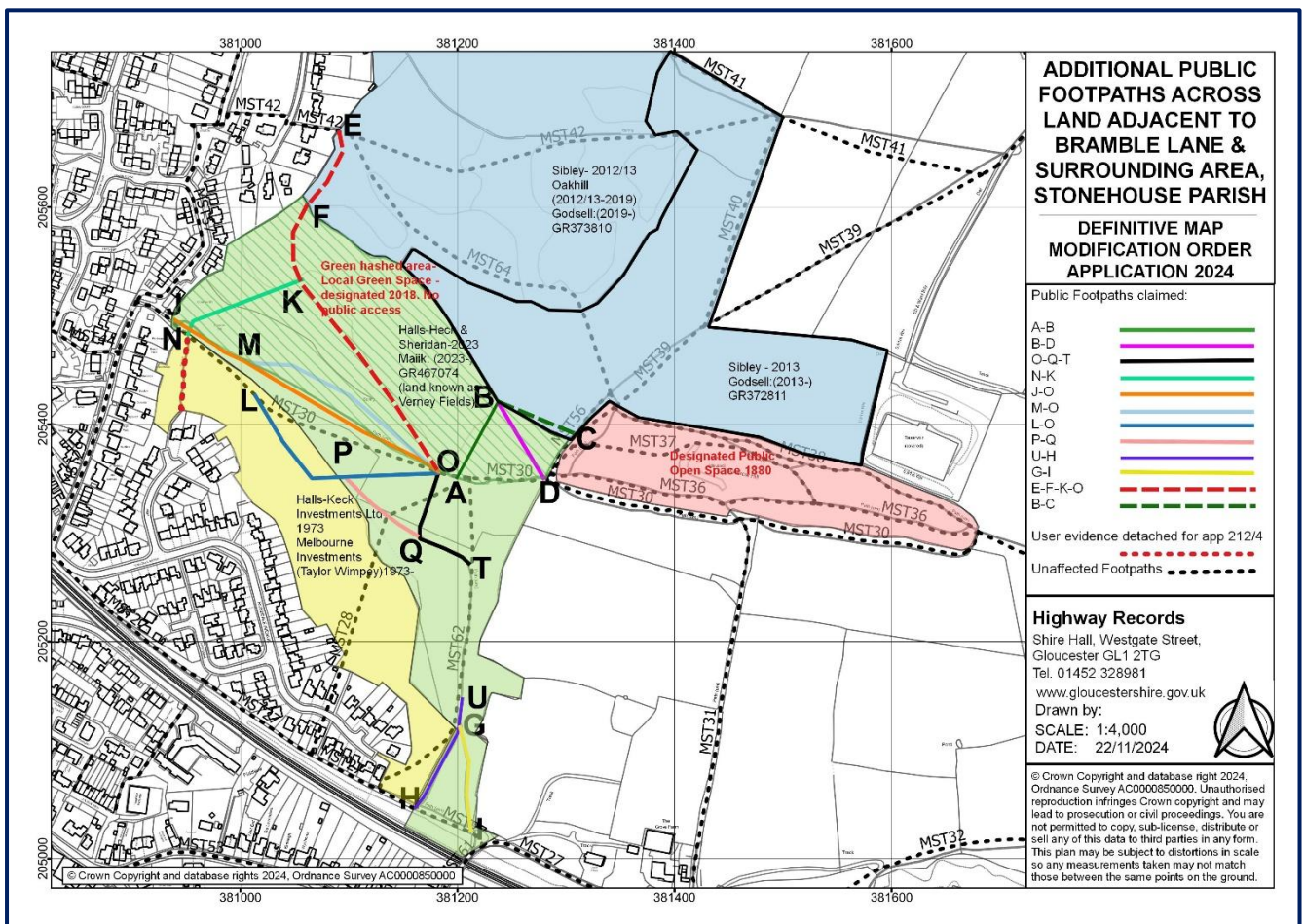
- 5.2 It has been suggested that all of the land, affected by the five applications, is similarly subject to historic designations permitting public access. No evidence has been found to substantiate this, however. It is noted that this area was not designated as ‘*open access land*’ under the Countryside and Rights of Way Act 2000, which gave a public right of access to land mapped as ‘*open country*’ (mountain, moor, heath and down) or registered common land.
- 5.3 Applications were submitted for the designation of Verney Fields as an Asset of Community Value in 2016. The last attempt was rejected by Stroud District Council on 2 September 2016. However, part of this 17 acre site was subsequently designated as an area of Local Green Space (area shown by green hashed lines on **slide 3**) and included in the Stonehouse Neighbourhood Development Plan 2016-2031 (document adopted by Stroud District Council on 22 February 2018). This designation does not grant public access to the land concerned but as explained in the government’s Planning Practice Guidance: “*Local Green Space designation is a way to provide special protection against development for green areas of particular importance to local communities.*”
- 5.4 Five Definitive Map Modification Order (“DMMO”) applications were submitted by Stonehouse Town Council on 4 July 2023. The applicant certified that notice had been served upon the following landowners:-
- Ms L Maiik, c/o John Copland & Sons, 77 High Street, Sheerness, ME12 1TY
 - Mr & Mrs Godsell, Far Westrip Farm, Far Westrip, Stroud, Glos, GL6 6HE

- Ownership of parts of the affected land was unknown. Permission was granted on 11 April 2023 to erect impersonal notices.

5.5 For information:- Verney Fields, is also subject to a separate ongoing and unconnected application by the same applicant, for registration as a Town and Village Green pursuant to section 15(1) of the Commons Registration Act 1965, for the purpose of lawful sports and pastimes.

6. DESCRIPTION OF CLAIMED ROUTES

6.1 The user evidence, submitted by 242 members of the public in support of the 5 applications, many of whom claimed use of more than one way, has been broken down into 12 sections. These are identified by solid or broken coloured lines on the following map, held as **slide 3**, connecting the following points; **A-B, B-D, E-F-K-O, O-Q-T, N-K, J-O, M-O, L-O, P-Q, U-H, G-I & B-C**.



6.2 The claimed routes were surveyed on 1 March & 3 May 2023 at which time photos were taken. These are shown on (slides 5-11). Mrs Godsell, owner of the land highlighted blue stated within her evidence, that notices were first installed in 2019 asking the public to keep to the official footpaths and stiles providing access to claimed routes at points F & B were removed (or not replaced when dilapidated) ©2020. Following the purchase of Verney Fields in March 2023, Ms Maiik, arranged for further stiles providing access to claimed routes to be removed. She also arranged for the erection of barbed wire fences, trenches to be dug and 'Private' notices to be installed to deny access. Over the subsequent months, the grass fields have become overgrown, and the application routes are not easily identified.

6.3 There follows a description of the 12 sections of claimed route. Although the five application routes have been split into sections, points B, F, K, M, P & Q, do not have independent lawful termination

points and therefore, if for example, section J-O failed to succeed, then the connecting section M-O would also fail. All lengths and directions are approximate:-

A-B (green (continuous)):- The route commences at its junction with Public Footpath MST30 at a point marked A on the plan at Ordnance Survey Grid Reference (OSGR) SO8119/0535. The route runs in a north north easterly direction for 84m to a point marked B, where a stile (with a footpath waymarker) was located until ©2020 when it was replaced by a field gate & wire fencing at (OSGR) SO8123/0542.

B-C (green (broken)):- The route commences at the said point B and runs in an east south easterly direction for 75m before connecting with Public Footpath MST56 at a metal kissing gate, at a point marked C at (OSGR) SO8121/0539.

B-D (magenta):- The route commences at the said point B and runs in a south south easterly direction for 82m to its junction with Public Footpath MST30 at a metal kissing gate at a point marked D at (OSGR) SO8128/0535.

E-F-K-O (red (broken)):- The route commences at its junction with Public Footpath MST42 at a point marked E at (OSGR) SO8109/0566 and proceeds in a south south westerly direction for 71m to a field boundary stile (dilapidated step was not replaced ©2020) at a point marked F at (OSGR) SO 8106/0560. The route continues in a southerly direction for 69m to a point marked K at (OSGR) SO8104/0554 then continues in a south easterly direction for 210m to a point marked O, near an oak tree under which a bench was located, at (OSGR) SO 8117/ 0535.

O-Q-T (black):- The route commences at the said point O and continues in a south south westerly direction for 56m to a point marked Q at OSGR SO 8116/ 0529 then continues in an east south easterly direction for 57m to a point marked T at OSGR SO 8120/0527 at its junction with Public Footpath MST62.

N-K (bright green):- The route commences at its junction with Public Footpath MST30 at a point marked N on the plan at a stile (step removed in 2023) at (OSGR) SO8095/0547. The route runs in an east north easterly direction for 123m to the said point K.

J-O (orange):- The route commences at a point marked J at (OSGR) SO8093/0549 at a stile (removed in 2023) and runs in an east south easterly direction for 284m to the said point O. This route along with route M-O are claimed and described by one individual (No.36 in the summary of UEFs ("summary")) in the following way: "*There are 2 well used paths through Verney Fields, often referred to as 'top' and 'bottom'. Each path is well established, but the bottom path is better in bad weather*".

M-O (light blue):- The route commences at a point marked M at a stile (removed in 2023) on the plan at (OSGR) SO8099/0545. The route runs in an east south easterly direction for 167m to the said point O.

L-O (bright blue):- The route commences at its junction with Public Footpath MST30, a point marked L at a stile (boarded up in 2023) on the plan at (OSGR) SO8101/0542. The route runs in a southerly direction for 79m, then an easterly direction for a further 163m to the said point marked O.

P-Q (pink):- The route commences at a point marked P on the plan at (OSGR) SO8109/0535. The route runs in a south easterly direction for 88m to the said point Q.

U-H (purple):- The route commences at its junction with Public Footpath MST62 at a point marked U at (OSGR) SO8120/0514 and runs in a southerly direction for 104m to its junction with Public Footpath MST27 a point marked H at (OSGR) SO8116/0504.

G-I (yellow):- The route commences at its junction with Public Footpath MST62 at a point marked G at (OSGR) SO8120/0512 and runs in a southerly direction for 95m to its junction with Public Footpath MST27 a point marked I at (OSGR) SO8120/0502.

6.4 An inspection of Google Earth Arial Maps appears to identify some of the claimed routes. Five maps are attached (**slides 12–16**) covering the years 1999, 2005, 2013, 2017 & 2023. Allowing for shadows, tree & hedge field boundaries & canopies, the following routes, both official and claimed, can be identified;

- (1999) A-B, B-D, O-Q-T, M-O, U-H, G-I & MST39
- (2005) A-B, B-D, U-H, G-I, & MST39
- (2013) A-B, B-D, M-O, O-Q-T & U-H, G-I & MST39 / MST41
- (2017) A-B, B-D, O-Q-T, U-H, G-I, J-O, M-O, E-F-K-O, N-K
- (2023) A-B, B-D, O-Q-T, U-H, G-I, J-O, M-O & MST39/ MST41

7. DOCUMENTARY EVIDENCE

7.1 Under Section 32 of the Highways Act 1980, when determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified in the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

7.2 The County Archivist has examined sources in the Gloucestershire County Record Office to see if this route is marked in any way and has identified other sources which might be useful in establishing the status of any right of way along this route. These sources have then been checked and added to by the Asset Data Officer.

7.3 Ordnance Survey Maps; The original surveys were carried out by Royal Engineers at the time of the Napoleonic wars to better plan the transportation of ordnance around the country. It was only in the early 20th century that the OS evolved to become a public service that sold its mapping information to the public. Since the 1960s this mapping information has included public rights of way, which are derived from each county's Definitive Map.

The Ordnance Survey has produced a series of topographic maps at different scales notably the one inch, six inch and 1:2500. The detailed, large scale 1:2500 maps from the 1870s onwards provide the best evidence of the position and width of routes and the existence of any structures on them. These maps provide good evidence of the physical existence of routes at the time the map was surveyed. When compared with earlier, less accurate maps they can help corroborate the existence of routes. Ordnance Survey maps show features that physically exist and may label routes as footpaths and bridleways etc. However, the disclaimer which has been added to all editions since the 2nd edition maps (circa 1898 in Gloucestershire), along with official guidance to the surveyors of the maps at the time, states that the representation of any track or way is no evidence of a public right of way.

7.4 Ordnance Survey 1811 2":1 mile Pen & Ink on Paper Drawing attributed to Robert Dawson (Cheltenham OSD172) Wikimedia - This drawing shows Doverow Hill but does not show any of the claimed routes.

7.5 1824 Bryant & Greenwoods Maps – do not identify any of the claimed routes.

7.6 Ordnance Survey 1st edition 1":1 mile 1830 (Published at the Tower of London) Sheet 35 (National Library of Australia) - This is a colour washed first edition 1":1mile map "*engraved at the*

Drawing Room in the Tower under the Direction of Lieut. Col. Colby of the Royal Engineers"...."Published 1 May 1830" from the pen and ink drawings of the Royal Corps of Military Surveyors and Draughtsmen as referred to in para 7.6 above. None of the claimed routes are identified.

- 7.7 Stonehouse Inclosure Map & Award (Gloucestershire Archives - Q-RI-139)** None of the claimed routes are identified.
- 7.8 Stonehouse Tithe Map 1839 (Gloucestershire Archives - GDR/T1/172)** The purpose of Tithe maps was to identify titheable land that was capable of producing crops. They were not produced to record public rights of way, although they can sometimes be helpful in determining the existence and status of routes. Showing the claimed route in the same manner as known public highways is suggestive of public rights, but not status. None of the claimed routes are identified.
- 7.9 Ordnance Survey First, Second & Third Editions; 25"1 mile, Map sheets 49.2 & 41.14; published 1885, 1901 & 1922 - (National Library of Scotland);** None of the claimed routes are identified.
- 7.10 National Archives - Inland Revenue, maps compiled under the Finance Act, 1910, based on Ordnance Survey 25": 1 mile, c.1902 edition, marked up by Inland Revenue c.1915, and reference books or files. Map sheets 49.2 & 41.14.** None of the claimed routes are identified.
- 7.11 County Surveyor: papers relating to survey of footpaths under National Parks and Access to Countryside Act, 1949 ("NPACA 1949"); Glos Archives.** The application routes were not claimed under this process or included on the Definitive Map.
- 7.12 DOCUMENTARY EVIDENCE CONCLUSIONS;-** The documentary evidence, is considered to be insufficient on its own, to establish dedication of the 12 claimed sections.

8. CONSULTATIONS

- 8.1** In July 2024, the following organisations, user groups and landowners (as identified by Land Registry) were consulted regarding this application: Stonehouse Town Council (applicant), Ms Maiik, Mr & Mrs Shiner, Mr & Mrs Godsell, Taylor Wimpey (Melbourne Investments), Stroud District Council, The Byways & Bridleways Trust, County Councillor Housden, The Ramblers Association, The British Horse Society, Cycling UK, Open Spaces Society, and The Trail Riders Fellowship. A letter was later sent to Mr Oakhill on 13 September. Acknowledgements were received from Stroud District Council, the Trail Riders Fellowship and the Byways & Bridleway Trust. A response was received from The Open Spaces Society representative and four further responses were received in the form of Landowner Evidence Statements from Mr & Mrs Shiner, Mr & Mrs Godsell, Ms Maiik & Mr Nagai, all of which can be read in full, as background papers to this report.
- 8.2 Mr Townley, local representative of The Open Spaces Society** on 9 September 2024. The following comments were made: *"....These applications are very welcome applications to add unrecorded routes which appear to have been well used "as of right" by residents for well in excess of 20 years as well as evidence of dedication by previous landowners. They also include routes in a number of landownerships. I have not examined the individual detail of the evidence submitted but it is apparent that each route claimed has significant number of evidence forms submitted for each route (with a minimum of 34 evidence forms up to 111). In the event that this matter is not resolved by Gloucestershire County Council I will happily provide supporting evidence to any inquiry on this evidence.*

A possible concern with the evidence is the extent to which it will enable the council to determine, in each case, that the route existed before 1 January 1960. This is the commencement date of the Highway Act 1959, which without any genuine or proper consultation repealed Section 47 of the National Parks and Access to the Countryside Act 1949 which would have enabled all such routes to be "maintainable at public expense". I would therefore urge that the County Council considers making a Section 25 Order, on the basis

that this would not only require the county council to maintain the route but also place a statutory duty to protect and assert the public rights to use the route.....”

8.3 Mr Shiner submitted a Landowner Evidence Form dated 28 August 2024. He was consulted because 11 individuals claimed a route across his land. He stated in response to Q.18 - Please give any further particulars or comments; *“The Route R-S follows an existing footpath and not a new route”*. Georeferencing (aligning a digital copy of a map or aerial photograph over another by matching specific points, such as field edges, landmarks or street corners, so they overlap correctly) the Definitive Map over a modern map base with a public rights of way layer, indicated that the section of claimed route across Mr Shiner’s land was part of Public Footpath MST30. As such, section R-S, has been removed from this report.

8.4 Mrs Godsell submitted a Landowner Evidence Form dated 15 August 2024 on behalf of herself and her husband. This followed clarification of the timeframe being considered for the two sections of claimed route affecting their land. On 6 August 2024, the Case Officer confirmed, *“...The 2 sections of claimed routes across your land; E-F & B-C (as per attached plan), although also having over 20 years claimed use, are constrained by the s31(6) Deposition which you signed in 2019 and the latest considered opinion of foot & mouth in 2001. The investigation will therefore consider the user evidence affecting your land at common law over the 18-year period; 2001 – 2019”*. The following points were made by Mrs Godsell;

Mrs Godsell claimed that she and her husband had seen people using sections; B-C & E-F, across their land over the period 2006-2023 but had stopped or turned people away. In response to Q.8 -Have you or other with your authority, ever stopped or turned back anyone using the route, or made it known to them that the route was not public? she stated, *“Myself and my husband have stopped walkers and asked them to keep to the footpaths. Some walkers apologised and agreed to keep to the public footpaths. Others argued, some were aggressive, but in all cases we insisted that they kept to the public footpaths in future”*. She stated that a maize crop in 2014 and long grass (every year apart from 2014) would have made claimed route B-C difficult to use whilst brambles along section E-F would have made it impassable. It should be noted that Mr Sibly owned all of the land coloured blue until 2012/13. Mr Oakhill purchased the land crossed by section E-F from Mr Sibly in 2012/ 13. He subsequently sold it to Mr & Mrs Godsell in 2019. They cannot therefore represent either Mr Sibley or Mr Oakhill’s position regarding public access across this part of the land over the period 2006 - 2019. Mr Oakhill was consulted on 13 September 2024. He did not respond.

Mrs Godsell further noted that no-one had sought permission to walk claimed routes B-C or E-F and none was given. *“Point B on the map has nearly always been a gate. At one time there was a stile by the gate, but we removed this in 2020 and replaced the corroding gate with a fence consisting of stock fencing and 2 strands of barbed wire. After this was repeatedly destroyed, we replaced the fence with a new gate, and welded it shut”*. *“At point F on the map, there has always been a post and rail fence. At one time, there was a stile, but this fell down due to disrepair and was not replaced”*. Signs were initially installed in April 2019, requesting walkers to keep to the footpaths, and also informing walkers of Neospora (a potentially deadly infection of cows from dog faeces). These signs were replaced several times over the years 2019 & 2020 after being torn down repeatedly. Mrs Godsell submitted a copy of one of the notices, in which reference was made to the claimed routes; *“...We have closed some of the informal paths previously used....”*

In response to Q.18 – Please give any further particular or comments: The following statement was made *“We have cleared all of the official footpaths, replaced all the stiles with kissing gates and marked all of the Rights of Way. The public now has better access to Doverow Woods than ever before. This work began in April 2019. We have tried to get walkers to keep to Public Footpaths, particularly in our field coloured blue and outlined in pink (Ed’s note – land affecting claimed section E-F). There have been some very angry walkers who have cut fences around the field, not just in areas they had previously walked. That is why we replaced the new fencing with a gate welded shut at point B on the map as we were unable to keep the field stock proof.*

Residents of Stonehouse and Parishes beyond this were inundated with banners in the streets, flyers and articles, suggesting that they need to complete documentation about where they walk in order to retain access to Doverow Woods. This was very misleading as none of the access points into Doverow Woods would be affected by restricting walkers to public Rights of Way. I spoke to several people who only completed their evidence because they believed the propaganda, that access to Doverow Woods would be restricted if they did not.....” Reference was made to an anonymous article placed in the Randwick Runner, a weekly newsletter for the Parish of Randwick, an extract of which is found below.



3. EXTRACT FROM "RANDWICK RUNNER" 11/6/2023

Doverow Hill footpath danger

Local walkers are being urged to support a campaign to support Stonehouse Council in their bid to register footpaths in the Doverow Wood area. None of the footpaths are currently registered as public rights of way (PROWs). This means there is a danger the public will no longer be able to enjoy walking near or around the woods.

The campaign is calling on landowners of the surrounding fields to recognise and formally register these footpaths as public rights of way.

You can access details of the campaign on Facebook via #savethefootpathsondoverowhill



Butterflies and moths

One of the Runner's very own editors, Philip Rush, is hosting a fascinating talk at the Museum in the Park next Thursday evening, June 15. His Yew Tree Press is publishing two beautiful new books. Andrew Fusek Peters will be talking about his butterfly photography and Sarah Gillespie about her mezzotints of moths. Copies of both books will be for sale.

<http://www.yewtreepress.co.uk>

8.5 Ms Maiik, by email of 15 October 2024, submitted a Landowner Evidence Form (“submission 2”), under cover of an undated letter. This followed an initial submission (“*submission 1*”) by Mr Nagai (son) on 11 October 2024. Submission 1 formed the basis for objection to the Town & Village Green application. Comments considered to affect the DMMO applications however are included below.

8.6 Submission 1;

Stonehouse Town Council’s unsuccessful applications to register Verney Fields as an Asset of Community Value (“ACV”) and the associated reasons for rejection by Stroud District Council. Caution must be applied because the tests for registration of land as an ACV are provided under a different legal provision to those considered for a DMMO.

Objections to the Town and Village Green were also included. This report has included statements which reference first-hand personal or observed use of the claimed routes, whether for or against. Comments constituting hearsay or general views regarding the applications have been disregarded.

- Mr Richards (17 April 2024): *"I have seen notices erected by previous owners asking the public to stick to footpaths..."*
- Mr Price (8 May 2024): *".. For as long as I can remember (almost 80 years).....Access was always gained from Verney Road through a gate or stile which led into the bottom of "the Verney" which had a right of way to Cotswold Green. The pathway, which was most used went from the stile, passing an electric transformer on a post, up the hill to about halfway where it divided into two separate paths. One went steeply to a plateau area and the other path took you past the oak tree which had a bench underneath it. A bench has always been there. I remember it there throughout my childhood and as I grew older and used the area to walk my dogs, I would often look forward to having a rest on the bench to admire the view .."*
- Ms Dowling (14 May 2024): *"Throughout the years I recall seeing signage indicating that the land was private and urging visitors to keep to the footpaths....and fences being cut for unauthorised access..."*
- Mr Clements (20 May 2024): *"....if we strayed from the paths, we were told off by the landowner...The signs asking us to keep to the footpaths were clear to see".*
- Ms Douglas (20 May 2024): *"....I have lived in the town for 30 years. I have walked through Verney Fields regularly throughout the last three decades. I run a small business from my home and have walked up Doverow as my 'daily commute' to my office since 1993".*
- Ms Martin (13 May 2024): *..."My parents and grandparents always regularly used to walk up Doverow Hill/ Verney Field for leisure and also a way to get to Ebley or Stroud..."*
- Mr Seccombe (20 May 2024): *"I have been a resident....in Stonehouse since 1993. I have walked through Verney Fields and into Doverow Woods for most of the last 30 years. For the last 20 years or so I have walked these fields nearly every day. ..."*
- Ms Burns (undated): *"..I was aware of a public footpath but as with most walkers it was easier to cut through the field".Over the many years of using the unofficial paths, the only time that I can recall the field having any other use by the public ...was when there was snow".*
- Miss Jones (2 June 2024) – granddaughter to tenant farmer, Martin Fletcher; *"....My family worked the land, and I recall them facing countless issues with regard to public wandering,verbal abuse (mostly stemming from telling the public to get back on footpath after blatantly ignoring signage)".* Miss Jones was 16 when her grandfather, Martin Fletcher, ended his tenancy of Verney Fields in 2012.
- Mr Stewart (5 June 2024): *"it was possible to walk up from the oak tree viewpoint to the gate but there was no footpath and down from the oak tree to the top of Verney Road on the footpath... The footpath was through the field itself as the footpath through the wood was inaccessible until recently when it was re-instated".... The fields below Verney Fields towards Browns lane and the footpath from Browns Lane to the railway station... were always fenced or gated off"....."I have also found significant damage caused to the fences that have been erected to protect the land..."*
- John Copland & Son – (21 May 2024) solicitor responding for Ms Maiik, stated, *"Permissive user, including use of the rope swing, sledging, walking on the former permissive paths and use of the former stiles (installed as an alternative to repeated fencing repairs), must also be discounted as non-qualifying user", "...cutting of the fencing rendered subsequent user by force...", ".....Members of the public straying off public footpaths have been verbally challenged to the effect that they must stick to the public footpaths..."*, *The periodic erection of signage (including Private Road, Private and Permissive paths signs) is further evidence that the*

application should be refused. The fact that those signs have been routinely torn down by persons unknown does not alter the position”.

- Kay Nagai (son of owner) – (21 May 2024) *“Since our ownership, we have experienced a long line ofvandalism, fence cutting....”*
- *“Over the last 6 years, I have seen the footpaths crossing the land abused, fly-tipped, excessively littered, excessive dog fouling...”*
- *“Over the last 12 years I have never seen any organised sporting use....”*

8.7 Submission 2;

Ms Maiik’s undated covering letter stated, *“We object to all paths applied for and will provide substantial evidence to refute all claims. I deny any of the footpaths applied for qualify”.... “ The attached gives some background to quarrying in the 1920s and 1960s which caused large sections of public rights of way MST30, MST62 and MST28 to be blasted away, obstructed and impassable; therefore, deviation paths emerged. Following reinstatement of the definitive PROW MST30 and MST62 in 2023, deviation paths & permissive paths were withdrawn.....”*

The following points were made using the Landowner Evidence Statement by Linda Maiik, freehold owner of the land known as Verney Fields, highlighted green on **slide 3**, since March 2023.

- Verney Fields was tenanted for cattle grazing until 2012. The COVID lockdowns, were considered to increase dog walkers & footfall, creating many wandering paths. Application routes; A-B, B-D, J-O, M-O, E-F-K-O, O-Q-T, G-I, H-U were considered to be used primarily by agricultural vehicles.
- In response to Q.6.”Have you ever seen people using the routes?” Ms Maiik replied that she has but it was by permission or was challenged. She then went on to provide further information along with associated Google & OS Maps for each of the following sections;
- Use of route A-B was considered to be ‘by force’ in 2006 due to the gate at point B being lifted off its hinges. Ongoing use of the route to point C was therefore considered to be subject to ‘right to deviate’. This is addressed in the report under section 9.
- Ms Maiik stated that permission for access was granted by Mr Sibly, tenant farmer of Verney Fields, to Wycliffe Students by Sibley to sledge from B-A-Q. This is addressed in the report under section 9.
- Section N-K is rebutted on the basis that use constituted ‘wandering at will’. This is addressed in the report under section 9.
- Section O-Q-T is considered to be subject to the right to deviate when a Sycamore tree fell at point T, which blocked Public Footpath MST62 and was impassable for a year until 2014. It should be noted that MST62 was not fenced until after 2023, and no-one referred to it in their user evidence.
- Section P-Q is considered to be very new, and it did not exist before 2018. The claimed user evidence for this section is detailed in paragraph 9.18 and in terms of quantity, is sufficient to give rise to a claim.

- Sections J-O, connecting M-O, & L-O are considered to be subject to the right to deviate and a history of fencing has been supplied. The quarry was excavated ©1954 affecting part of MST30 as described in paragraph 9.21 of this report.
- Section U-H is also considered to constitute 'right to deviate' due to quarrying. Georeferencing the OS 10K layer – (1960) map over a modern base map indicates that the quarry did not extend so far eastwards. The Stonehouse Brick & Tile Co. closed in 1968.
- Use of section G-I is considered to be 'by force' due to field gates being lifted off their hinges. This is addressed in the report under section 9.

Ms Maiik and her son, Kay have made statements regarding use of the land crossed by the application routes, prior to their ownership of 2023. They have asserted that use constituted 'wandering at will', was 'by force' or 'permission' or was used under the 'right to deviate' principle. When asked for clarification of their interest in the land prior to 2023, Ms Maiik responded "*We have both known the land since 2013, are familiar with the land & how it has & has not been used; We also know its history going back a long way, as detailed thoroughly in our LES.*" It is suggested that although Ms Maiik and her son have submitted detailed responses to the applications, ultimately they were not the owner or tenant until 2023 and therefore were not in a position to determine how the landowners at the time viewed the public use.

9. USER EVIDENCE - STATUTORY DEDICATION

9.1 Section 31(1) of the Highways Act 1980 ("s31HA80") states that 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 been actually enjoyed by the public 'as of right'; without force, secrecy or permission and without interruption for a full period of 20 years, 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".

9.2 Section 31(2) states that the period of 20 years in sub-section (1) is to be calculated retrospectively from the date when the right of the public to use the way is brought into question through an overt act by the landowner which makes it clear to the public that their right is being challenged.

9.3 USER EVIDENCE - COMMON LAW

9.4 The provisions of section 31 of the 1980 Highways Act do not supersede the principles of implied dedication that existed at common law before 1932, these principles being preserved by Section 31(9) of the 1980 Act which says that nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years.

9.5 If the test for statutory dedication under s31HA80 Act fails, public rights may nevertheless have been dedicated at common law where the actions of the landowners (or lack of action), indicate that they intended a way to be dedicated as a highway and where the public have accepted that dedication. Use by the public can be evidence of the intention to dedicate; this use should be as of right without force, secrecy, or permission. There is no fixed period of use at common law and use may range from a few years to several decades, based on the facts of the case. The more intensive and open the use, the shorter the period required to raise the inference of dedication. The burden of proof lies with the claimant to demonstrate that the evidence is sufficient to indicate an intention of dedication.

9.6 When the status of the claimed routes were called into question; The date of calling into question is simply the date when, as the result of some action, the public's entitlement to use the way was challenged.

- **The land highlighted green** and known as Verney Fields, changed hands, and was registered by Ms Maiik at Land Registry (“LR”) under title GR467074 on 9 March 2023 by way of purchase from Jeremy Halls-Keck & Clive Sheridan. An email, dated 29 March 2023, from the applicant advised that “*A new owner has just bought the field and closed off many of the paths with signs*”. At this point, public use of the routes across this land was challenged. For the purposes of statutory dedication under section 31 of the Highways Act 1980, the qualifying period of use for the routes: A-B, B-D, O-Q-T, N-K, J-O, M-O, L-O (part), P-Q, U-H, & G-I, is taken to be: 2003-2023.
- Similarly, **the land highlighted yellow** over which the connecting part of the claimed route L-O crosses, was subject to the same challenge to public use as the land highlighted green above. There is a query regarding ownership, however. Documents indicate that this unregistered land is owned by Melbourne Investments Limited, (a wholly owned subsidiary of Taylor Wimpey PLC) by way of purchase from Halls-Keck Investments Ltd on 6 February 1973. Taylor Wimpey have stated however that they are unable to confirm this. This would not preclude statutory dedication. There is no explicit reference in section 31(1) HA80 of use having to be of a level to have come to the attention of the landowner. It does not speak of a *landowner being deemed to have dedicated* the way, but of the *way being deemed to have been dedicated*, i.e., irrespective of the existence or non-existence of a person capable of dedicating the routes. For the purposes of section 31 of the 1980 Highways Act, the qualifying period of use for the route L-O (part), is also taken to be: 2003-2023.
- **The land highlighted blue** was registered by Mr & Mrs Godsell on 23 May 2019 and 9 May 2013 under respective LR registration titles GR372810 purchased from Mr Oakhill & GR372811 from Mr Sibly. The land under both titles was made subject to a s31(6) Highways Act 1980 deposit and statutory declaration lodged with the highway authority on 20 August 2019. This is a mechanism enabling landowners to acknowledge the presence of existing rights of way across their land whilst negating the dedication of further ways thereby preventing new rights being established. This is effective however from the date of signing only – it does not act retrospectively. This procedure would therefore rebut any user evidence submitted after 20 August 2019 affecting the sections of claimed route E-F & B-C or those sections of claimed route across adjacent land which are dependent on lawful termination points located along it, such as route F-K-O.

Further, section 31(1) of the Highways Act states that the 20 years use must be without interruption. An “interruption” has been defined as “an actual and physical stopping of the public’s enjoyment” (*Merstham Manor Ltd v Coulsdon and Purley UDC (1937) 2KB 77*) as opposed to an act that merely challenges the public’s right. It is not a mere absence in the continuity of use. Moreover, such interruption must be with the intention to prevent public use. *R (on application of Roxlena Limited v Cumbria County Council [2017] EWHC 2651* considered whether the Foot and Mouth Disease closures in 2001 amounted to an interruption in public use (within the context of section 31(1)), and whether the public’s cessation of use was a break in continuity of use sufficient to rebut a full twenty years of user. Although such restrictions did not directly apply to the claimed routes, as they were not dedicated public highways, they were affected because they could only be accessed from existing PROWS which were subject to the restrictions.

The Planning Inspectorate’s Advice Note 15 states in paragraph 9 “...it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an ‘interruption’ under section 31(1) [of the 1980 Act]”. Judge Kerr J, did not agree “...that an interruption which is more than *de minimis* but caused by measures taken against foot and mouth disease, is incapable in law of amounting to an interruption in use of a footpath or other way. I see no basis for that proposition. Use or non-use is a question of fact; the cause of any non-use is not the issue.”

Judge Kerr J's remarks were *obiter* (i.e. not essential to the judgment and not binding) but have been followed by the Inspector in the latest *Roxlena* decision (ROW/3296708 10 April 2024) who considered that the Foot & Mouth crisis, which resulted in a nationwide closure of public rights of way in 2001, constituted a break in use (as opposed to an interruption of user). Applying this opinion, the claimed routes subject to this report across the area of land coloured blue do not meet the full 20 year statutory criteria.

The claimed routes E-F-K-O (dependant on the lawful termination point E), & B-C will therefore be considered at common law over the 18 year period 2001-2019 where the criteria is similar to that of statutory dedication but does not rely on 20 years use.

9.7 Therefore, the following qualifying periods of use will be considered for the purpose of this report:

- A-B, B-D, O-Q-T, N-K, J-O, M-O, L-O, P-Q, U-H & G-I, is taken to be: 2003-2023 for which the statutory s31 HA80 test will be applied.
- E-F-K-O & B-C is taken to be: 2001-2019 for which the 18 years of user will be analysed at common law.

9.8 The extent and nature of the claimed use; There is no statutory minimum level of user required to show sufficient use to raise a presumption of dedication. Use should have been by a sufficient number of people to show that it was use by 'the public' and this may vary from case to case. Often the quantity of user evidence is less important in meeting these sufficiency tests than the quality (i.e., its cogency, honesty, accuracy, credibility, and consistency with other evidence, etc.)

9.9 Claimed use on foot is substantial; 241 User Evidence Statements ("UESs") were completed by 242 individuals in support of the 12 sections of claimed route for which use dates back to either 1937, 1948 or 1958. A copy of the summary of UEFs is held as SUMMARY.

9.10 Use by the public; none of the individuals who submitted user evidence stated that they had worked for any owner or occupier of the land crossed by the application routes at the time they used it or were a tenant/ licensee of any such owner. Further, use was by a number of people who together may reasonably be taken to represent the community. Coleridge LJ in *R v Southampton (Inhabitants) 1887* said that "*user by the public must not be taken in its widest sense...for it is common knowledge that in many cases only the local residents ever use a particular road or bridge.*" Their use, therefore, is considered to satisfy the criteria of use 'by the public' for statutory and common law dedication. A summary ("summary") of the UESs is held as a background paper.

9.11 Some individuals, when marking up their claimed use, included parts of existing public footpaths; MST39, MST38, MST36, MST30, MST56, MST37, MST33, MST32, MST29, MST53, MST61, MST62 & part of MST30. The claims and user evidence support footpath status and no evidence has been found to suggest greater rights. As such, this claimed use is disregarded.

9.12 The individual, identified in the summary as No.11, claimed use of the routes; J-O, O-Q-T & U-H by bicycle in addition to by foot. In *R v SSETR ex parte Dorset County Council (1999)* it was accepted that, "*although the evidence within five UEFs was truthful, it was insufficient to satisfy the statutory test of dedication*". Therefore, the evidence supplied by one individual of bicycle use, would also be insufficient to infer dedication of a bridleway or restricted byway. Using the same case law, the claimed use of routes by 5 or less individuals would also be considered to be insufficient and would not give rise to dedication. This affects part of the user evidence supplied by some individuals including those identified in the summary as;

- No's.210,195,196, 199 who claimed a route between points E-D.
- No's 205 & 215 who claimed routes connecting MST64 and different points at Doverow Hill.

9.13 It should be noted that five individuals claimed use of the route connecting Oak Way and Public Footpath MST30 identified by red dots on **slide 3**. This route is the subject of a separate DMMO application – 573/11/212(4) and therefore the user evidence submitted by the five individuals as part of the applications subject to this report has been detached and will be considered as part of the separate investigation.

9.14 A public right of way gives members of the public a right to pass and re-pass along a defined linear route at all times between singular termination points. Straying or wandering over land will not give rise to the dedication of a public footpath. Members of the public supplying user evidence are not however expected to be cartographers, and it is apparent that all 242 individuals drew by hand, the routes that they claimed to have walked over the open fields. The accompanying description and grid references (where supplied) in the UESs, can assist in identifying the alignment of a claimed route. The fact that individuals have not relied upon photocopies of used routes, which could suggest possible collusion, raises the persuasiveness and value of their evidence.

9.15 Ms Maiik considered that the user evidence for section N-K, constituted '*wandering at will*'. 38 individuals claimed use of section N-K which is a route crossing an open field. Of those 11 drew a route, which varied from the applicant's plan by upwards of 30m and as such could constitute '*wandering at will*'. The remaining 27 however, provided a defined linear route sufficiently similar to that claimed by the applicant, and as such meet the criteria for a claim.

9.16 For s31 HA80 statutory dedication, it is not essential for the routes or ways 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 (Davis v Whitby (1974)). Nor does it matter that the use is not continuous in the sense that it may not have occurred every day.

9.17 There follows a breakdown and analysis of the claimed use and frequency of each of the 12 sections. The tables below, on the left provide a breakdown of the overall claimed use whilst the tables to the right show the frequency. The routes considered for s31 HA80 statutory dedication over the 20 year statutory qualifying period:-2003-2023 are listed first;

- **A-B:-** A total of 55 individuals claimed use of this route dating back to 1958. Of those, 35 claim use over the whole 20 year statutory qualifying period 2003-2023.

20 (less than) years	19
20+ years	19
30+ years	8
40+ years	3
50+ years	6

Daily	10
Weekly	29
Monthly	5
Variable	11

- **B-D:-** A total of 34 individuals claimed use of this route dating back to 1958. Of those, 19 claimed use over the 20 year statutory qualifying period 2003-2023.

20 (less than) years	15
20+ years	11
30+ years	2
40+ years	3
50+ years	3

Daily	8
Weekly	15
Monthly	5
Variable	6

- **O-Q-T:-** A total of 85 individuals claimed use of this route dating back to 1937. Of those, 47 claimed use over the whole 20 year statutory qualifying period 2003-2023.

20 (less than) years	37
20+ years	21
30+ years	11
40+ years	7
50+ years	9

Daily	15
Weekly	45
Monthly	15
Variable	10

- **U-H:** A total of 79 individuals claimed use of this route dating back to 1937. Of those, 49 claimed use over the whole 20 year statutory qualifying period 2003-2023.

20 (less than) years	29
20+ years	17
30+ years	12
40+ years	12
50+ years	9

Daily	11
Weekly	40
Monthly	17
Variable	11

- **G-I:-** A total of 55 individuals claimed use of this route dating back to 1958. Of those 29 claimed use over the whole 20 year statutory qualifying period 2003-2023.

20 (less than) years	26
20+ years	11
30+ years	6
40+ years	6
50+ years	6

Daily	11
Weekly	31
Monthly	9
Variable	4

- **L-O:-** A total of 24 individuals claimed use of this route dating back to 1958. Of those, 14 claimed use over the whole 20 year statutory qualifying period 2003-2023. Some however claimed to walk to the viewpoint only, before retracing their steps. A requirement for a claim of presumed dedication is that a route has definite start and end termination points, either at a designated highway or a place of popular resort. Public user cannot give rise to a presumption of dedication if it does not. This was considered in *Moser v Ambleside 1925*, which concerned a local beauty spot, Atkin L.J. states that *'One of the first questions that one always has to enquire into in such a case as this is from whence does the highway come and whither does it lead? It has been suggested that you cannot have a highway except in so far as it connects to other highways. That seems to me to be too large a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway...'* The viewpoint, which has been used as a focal point for celebrations and bonfires by the public for many years, is considered to constitute a place of popular resort and would not preclude a presumption of dedication.

20 (less than) years	7
20+ years	9
30+ years	4
40+ years	3
50+ years	1

Daily	2
Weekly	8
Monthly	8
Variable	6

- **M-O:-** A total of 51 individuals claimed use of this route dating back to 1948. Of those 38 claimed use over the whole 20 year statutory qualifying period 2003-2023.

20 (less than) years	13
20+ years	14
30+ years	11
40+ years	5
50+ years	8

Daily	8
Weekly	29
Monthly	9
Variable	5

- **N-K:-** A total of 38 individuals claimed use of this route dating back to 1948. 11 of those were considered to be 'wandering at will' which leaves 27. Of those, 20 claim use over the whole 20 year statutory qualifying period 2003-2023.

20 (less than) years	7
20+ years	9
30+ years	4
40+ years	3
50+ years	4

Daily	6
Weekly	11
Monthly	4
Variable	6

- **P-Q:-** A total of 20 individuals claimed use of this route dating back to 1958. Of those 14 claimed use over the whole 20 year statutory qualifying period 2003-2023.

20 (less than) years	6
20+ years	6
30+ years	2
40+ years	4
50+ years	2

Daily	3
Weekly	8
Monthly	4
Variable	5

- **J-O:-** A total of 94 individuals claimed use of this route dating back to 1937. Of those 60 claimed use over the whole 20 year statutory qualifying period 2003-2023.

20 (less than) years	34
20+ years	18
30+ years	16
40+ years	12
50+ years	14

Daily	14
Weekly	52
Monthly	16
Variable	12

9.18 The routes which fail the required 20 years for statutory dedication and will be considered at common law over the 18 year period 2001-2019 are listed below.

- **B-C (Common Law) :-** A total of 41 individuals claimed use of this route dating back to 1958. Of those, 25 claim use over the whole 18 year period 2001-2019.

20 (less than) years	12
20+ years	14
30+ years	6
40+ years	4
50+ years	5

Daily	8
Weekly	24
Monthly	6
Variable	3

- **E-F-K-O (Common Law):-** A total of 40 individuals claimed use of this route dating back to 1948. Of those, 23 claim use over the 18 year period 2001-2019. Although section F-K-O

crosses land for which statutory dedication could be considered, there is no lawful termination point at F. This whole route therefore will be considered at common law where it can rely on the termination point at point E.

20 (less than) years	12
20+ years	15
30+ years	5
40+ years	3
50+ years	5

Daily	9
Weekly	18
Monthly	6
Variable	7

- 9.19** The stated use of the application routes is mainly for the purpose of dog walking and recreation. Referring to **slide 3**, a bench under an Oak tree (adjacent to point O) appears to have been a focal point for many walkers over the years. An individual, identified as No.39 in the summary stated, *“This footway provides access to a well-known and much enjoyed local viewpoint where there is a bench under a famous tree. This is a place much used by local people for generations”*. A further focal point is the viewpoint at the southern tip of route L-O, which has been used as the location for many celebrations over the years. The individual identified in the summary as No.90, stated, *“the viewpoint is regularly accessed to celebrate/ mark national events such as coronations, state funerals, jubilees, etc when the beacon is lit. This has been the case for decades”*.
- 9.20** Of the 94 individuals who claimed use of section J-O, three; No’s 24, 48 & 117 in the summary, stated that they used this section in preference to Public Footpath MST30 due to the fact that the latter was at times overgrown, dark, steep or slippery. Mr Stewart made a similar comment in response to the Town and Village Green application as detailed in paragraph 8.6. Three further individuals; No’s 35, 36 & 42, preferred J-O because they considered MST30 to be undermined by past quarry excavation. Prior to recent improvement works carried out along sections of MST30 by the owner of Verney Fields and the Cotswold Wardens on behalf of Gloucestershire County Council, i.e., the cutting of steps, edging, handrails, and some surfacing, it was historically an uneven, muddy rural path. Approximately 45m runs adjacent to an area of quarry in the vicinity of point L on **slide 3**, (the area consisting of a slope covered in trees and scrub as opposed to a sharp vertical drop) and as with any public right of way, was subject to seasonal overgrowth and weather conditions, which at times made MST30 unpleasant to use. An inspection of the Public Rights of Way operational files however does not record any complaints regarding MST30 over the timeframes being considered by this report, i.e. 2003 - 2023 & 2001 - 2019.
- 9.21** Ms Maiik suggested that individuals used section J-O, and connecting routes M-O & L-O, under the ‘right to deviate’ principle due to the extent of the quarrying and resultant fencing. In *R v Oldreeve (1868) 32 JP 271* case Willes J held that: *“If there is a public way over a man’s field, and he puts an obstruction upon it, then the public ... are entitled to go round a reasonable distance into his field by the side of the way and use that as a temporary way until he removes the obstruction. But if the obstruction is caused by the actions of the elements, then no such right accrues to the public ...”*. However as noted by Ruth Stockley, Kings Chambers, *“Even in obstruction cases, there is no right to deviate on third party land as opposed to the land of the owner responsible for the obstruction”*. Although the action of quarrying can be attributed to the Stonehouse Brick & Tile Co., the area of land coloured yellow (which includes the quarry) was conveyed to Melbourne Investments in 1973, whereas the land known as Verney Fields was not disposed of until 2023. When considering the qualifying timeframes of 2003-2023 & 2001-2019, it is apparent that land was in different ownership and therefore the right to deviate principle cannot apply.
- 9.22 Use ‘as of right’ (without force, secrecy, or permission);**
- 9.23** For a claim to give rise to a statutory presumption of dedication or an inference of dedication at common law, user must be without force, secrecy, or permission. Use that complies with these three requirements is termed user ‘as of right’. It was once thought that users had to have an honest belief

that there was a public right. The House of Lords in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] clarified that there is no such requirement and reasserted an ancient principle, namely, that if sufficient people carry on an activity openly and for long enough without anyone trying to stop them, it is right and proper that the activity should be treated by the law as having a lawful origin. The House of Lords held that it was only necessary to prove that they have made use of the routes without resort to force, secrecy and as if they had a right to do so – that is, without having been granted any license/ permission by the landowner. This test has been assessed over the different areas of land affected by the claimed routes.

9.24 Land coloured yellow – (against s31 HA80 statutory dedication test over the period 2003-2023):

There is no evidence of use by force, secrecy or permission over this area of land.

9.25 Land coloured green (known as Verney Fields) – (against S31 HA80 statutory dedication test over the period 2003-2023):

9.26 Secrecy: There is no evidence that use of this land was by secrecy.

9.27 Force: Ms Maiik considered that use of the claimed routes A-B & G-I was 'by force' and as a result the use of connecting B-C was considered to constitute '*right to deviate*'.

9.28 A-B; Mrs Godsell, owner of the land coloured blue, confirmed that a stile was located at point B until 2020 when it was replaced by a gate. This was corroborated by 14 of the 55 individuals claiming use of section A-B, but they stated that it was still possible to walk around it. The barbed wire, which prevented access, was not installed until 2023. The individual, identified in the summary as No.110, stated "*There was a stile and footpath signpost where metal gate now is- replaced in 2020. In March 2023 barbed wire was put to prevent people using the gap next to the gate*". Use was not 'by force' whilst the landowner tolerated walkers bypassing the gate. Section B-C would not constitute use under the '*right to deviate*' principle due to the fact that, as explained in paragraph 9.21, there are different owners either side of point B.

9.29 G-I; 55 individuals claimed use of this section of application route. They noted barbed wire and a 'Private' notice being erected on the field gate in 2023 but were not verbally or physically prevented from using this claimed route prior to that. This does not suggest 'use by force' over the timeframe being considered.

9.30 Mr Sibly previously owned the Godsell's land, coloured blue, and was also the tenant of Verney Fields which was in the ownership of Halls-Keck Investments Ltd. In an email dated 12 October 2024, he said "... *The land shown in green on your map was never owned by the Siblys. I acted as landlord for our farm on Doverow from 1982 to 2012 and paid rent to Halls Keck for our tenant to use the Verney Fields...*". in a further email of 17 October 2024, he stated "*Martin Fletcher was our tenant throughout the period I mentioned, sadly he died very close to the time we sold the farm. I don't recall anything in our agreement with Halls Keck, in fact I'm not sure that we had a written agreement. My recollection is that we only paid a fairly notional rent for their land, which was never fully maintained for agriculture. The spring, however, was very useful for animals to drink from. There were access points from the HK land onto ours at points B,D and F. The area hatched green (and more) was widely used by local people for walks and recreation and we were happy to see this happen*". This statement suggests acquiescence of public use of the land subject to all 12 sections of claimed route, by Mr Sibly and his sub-tenant, Mr Fletcher.

9.31 Whilst a landowner has the capacity to dedicate a public right of way across his land, a tenant does not. However, in *Rowley v SSTR & Shropshire County Council* May 2002, Elias J held that the acquiescence of a tenant may bind the landowner on the issue of dedication. In *Lewis v Thomas* [1950] the court took the view that if it is alleged that the freeholder had a different intention to the tenant, there should at least be evidence establishing that. The individual identified in the summary as No.50, who

claimed use of route J-O, from 1994, stated, “*The route has been walked by so many in the community for decades. When it was grazed by the farmer, Mr Fletcher, we were able to use the path during his use of the site. Previous owner, Mr Keck allowed full use of the whole of the fields including the paths*”.

- 9.32 Bruton Knowles, Property Consultants for Halls Keck, responding to the 2016 application for Verney Green to be designated as Local Green Space, commented “*....In addition, consideration will be given to fencing the land to ensure any unconsented access to the land beyond the footpaths - is stopped. I am sure you will agree this would be an unfortunate position for residents, but you will appreciate my client has no option but to protect any interest in the land*”. This suggests that the landowner whilst aware of the use to which the land was being put, took no action to deter it. This demonstrates tolerance or acquiescence of public access as opposed to use ‘by force’.
- 9.33 The landowner’s and tenant’s acquiescence was reinforced by the existence of stiles located in field boundaries F, B, J, L, M, & opposite point N) providing access to the claimed routes. A photo of one of the stiles located at point J (below) had a ‘Public Footpath’ waymarker attached to it in addition to a painted arrow on the fence post. Use of the land known as Verney Fields is not considered to be by force.



- 9.34 *Permission*: Ms Maiik stated that permission for access was granted by Mr Sibly, tenant farmer of Verney Fields, to Wycliffe Students to sledge from B-A-Q. Mr Sibly’s comments regarding public use of the land that he tenanted suggest acquiescence but even if express/ implied permission had been granted to Wycliffe students, it does not follow that this demonstrates a wider lack of intention to dedicate to the public at large.
- 9.35 In *R (Barkas) v North Yorkshire County Council 2015*, consideration was given to the question of whether permission could be implied from inactivity of a landowner when confronted by use by the public of a quality which may be regarded as the assertion of a public right. In his judgement, Neuberger stated, “*The law draws a distinction between acquiescence by the owner on the one hand and licence or permission from the owner on the other hand. In some circumstances, the distinction may not matter,*

but in the law of prescription, the distinction is fundamental. This is because user which is acquiesced in by the owner is 'as of right'; acquiescence is the foundation of prescription. However, user which is with the licence or permission of the owner is not 'as of right'. Permission involves some positive act or acts on the part of the owner, whereas passive toleration is all that is required for acquiescence".

- 9.36** Repeating part of Mr Sibly's statement (paragraph 9.30), "*....The area hatched green (and more) was widely used by local people for walks and recreation and we were happy to see this happen*". Mr Sibly was the tenant of Verney Fields, and it is unlikely therefore that he would have the power to grant permission to the public for use of the land without the owner's agreement. The owner, Halls Keck Investment Ltd, was tolerant of their tenant's view of public access because they did nothing to negate it, but use was not considered to be by permission because they described the public use, through their Agent, Bruton Knowles, as 'unconsented'.
- 9.37** We can further consider the UES's which indicate that none had sought or had been given permission to use the claimed routes by anyone, whether tenant or landowner, prior to 2023. This is evidenced by the responses made by the individuals who claimed use of the routes: A-B, B-D, O-Q-T, N-K, J-O, M-O, L-O, P-Q, U-H & G-I, over the period: 2003-2023 to the following questions:
- **Q.10-** *Have you ever seen any signs or notices suggesting whether or not the application route is a public right of way? (for example, "Private", "Keep Out", No Right of Way "Trespassers will be Prosecuted", "Permissive Route Only")* – **NO** (apart from those who noted PRIVATE signs installed following the purchase of Verney Fields in 2023 which provided the challenge date for analysis of the retrospective 20 years of use and would not rebut a claim of presumed dedication).
 - **Q.12** - Did the owner or occupier ever give you permission (or did you seek permission) to use the application route? - **NO**.
 - **Q.13-** Has anyone ever told you the application route was not public (including by an owner, tenant of the land or by anyone in their employment)? - **NO**.
 - **Q.15-** Have you ever had a private right to use the application route? (for example, an easement, private right of access, license, etc.) - **NO**.
- 9.38** Public use over the land coloured yellow and green, being considered against the s31 Highways Act 1980 statutory test, is deemed to be 'as of right'.
- 9.39** **Land highlighted blue – (considered at common law - 2001-2019):**
- 9.40** *Secrecy:* no evidence has been provided of use by secrecy.
- 9.41** *Force:* Mrs Godsell, the owner of the land highlighted blue over which sections E-F & B-C cross, considered that use along these sections was by force over the period 2006-2023 and therefore not 'as of right'. She stated, "*Myself and my husband have stopped walkers and asked them to keep to the footpaths. Some walkers apologised and agreed to keep to the public footpaths. Others argued, some were aggressive, but in all cases we insisted that they kept to the public footpaths in future*". Again, it should be noted that Mr & Mrs Godsell did not own the land crossed by section E-F until 2019 and cannot therefore represent the landowner's view towards public access during this time. Miss Jones, granddaughter to tenant farmer, Martin Fletcher said in response to the Town and Village Green application; "*....My family worked the land, and I recall them facing countless issues with regard to public wandering,verbal abuse (mostly stemming from telling the public to get back on footpath after blatantly ignoring signage)*".
- 9.42** A similar claim was made in R v SofS (Emery) 1997 by a landowner with regard to his attempts to prevent public use of a path across his land. In the High Court ruling, LJ Roch commented "*If the refusals of which Mr Diggory speaks in his statement were refusals to use the path as a footpath, and were as constant as he claims, it would to my mind be inconceivable that all those answering the questionnaires would have escaped challenge*".

- 9.43** The 81 individuals who claimed use of the routes B-C & E-F, responded, “No” to Q.14; Have you ever been stopped or turned back from using the application route?”.
- 9.44** This report has already shown that Mrs Godsell’s predecessor in title, Mr Sibly, until 2012/13, “...continued our grandfather’s policy of welcoming walkers” and as previously noted, Mrs Godsell’s comment is also at odds with her own response regarding the stile located at point B which provided direct access to their land. She stated that this was not removed until 2020 and notices asking walkers to keep to the official public footpaths, were first installed in 2019. Use over the land coloured blue is not considered to be ‘by force’ over the common law timeframe being considered; 2001-2019.
- 9.45** *Permission:-* Mrs Godsell stated in response to Q.10 & 11 (UES) that no-one had requested permission to use the routes, and no permission had been granted. Use therefore was by trespass and forms the basis of presumed or inferred dedication.
- 9.46** Public use over the land coloured blue being considered at common law, is deemed to be ‘as of right’.
- 9.47** **Whether there is evidence of a lack of intention to dedicate a public right of way;** “Intention to dedicate” was considered in *Godmanchester 2007*, which is the authoritative case dealing with s31HA80. In his leading judgement, Lord Hoffmann approved the obiter dicta of Denning LJ (as he then was) in *Fairey v Southampton County Council* [1956] who held “*in order for there to be ‘sufficient evidence there was no intention’ to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path...that he had no intention to dedicate*”.
- 9.48** The ‘sufficient evidence’ must be inconsistent with an intention to dedicate, it must be contemporaneous, and it must have been brought to the attention of those people concerned with using the way by actions such as putting up physical barriers, erecting notices stating that a route is not a public right of way of the type being claimed or turning people back.
- 9.49** The statements by Mr Sibly show that he, like his grandfather, actively encouraged walkers across the land owned by him (blue) until 2012. This was corroborated by the existence of stiles, which had facilitated access for over 40 years to all of the land affected by the 5 applications subject to this report. It is difficult to understand why, as has been asserted, his tenant farmer, Mr Fletcher, over the same timeframe, would take an opposing view. Mr Oakhill, owner of part of the land coloured blue, affecting section E-F between 2012/13 & 2019 did not respond to the consultation but there is no evidence to suggest that he did anything other than tolerate public use. Mrs Godsell, as Mr Oakhill & Mr Sibly’s successor in title, did not install notices asking walkers to keep to the official routes until 2019 and the stile at point B was removed in 2020. Halls Keck Investment Ltd (owners of Verney Fields until 2023) knew of the public use, but did not remove the stiles during their ownership. Further, as illustrated by their Agent’s response to the application for Verney Fields to be designated as an Asset of Community Value in 2016, they threatened to take action to prevent use but crucially, did not. Public use was described as unconsented or without permission. This lack of action by the landowner suggests tolerance or acquiescence of the use. The statements supplied by 242 individuals in support of all 12 claimed routes suggests that insufficient ‘overt’ actions were taken by the landowners to challenge use of the claimed routes and evidence a lack of intention to dedicate prior to either 2023 (under statutory dedication of the land coloured yellow or green) or 2019 (against common law dedication over the land coloured blue).

10. CONCLUSIONS

- 10.1** Section 53(3) (c) (i) of the Wildlife and Countryside Act 1981 relates to the discovery by the Authority of evidence that shows that rights of way that are not shown on the map and statement *subsist*, or are *reasonably alleged to subsist*, over land in the area to which the map relates.

- 10.2** Bagshaw & Norton (1994), explains that there are, in fact two tests in Section 53(3)(c)(i), i.e. that a right of way "*subsists*" (Test A) or is "*reasonably alleged to subsist*" (Test B). Where there is no conflicting evidence (e.g. the owner has not provided evidence that witnesses were stopped or challenged by notices etc.) the test of whether a right of way 'subsists' is on the balance of probability. For Test B, it is necessary to show that "*a reasonable person having considered all of the relevant evidence available could reasonably allege a right of way to subsist*". If there is conflicting evidence which could only be tested or evaluated by cross-examination at a public inquiry, then an Order is appropriate. That decision was re-affirmed in the later Court of Appeal case in 1997 - R v. Sec of State for Wales ex parte Emery. If an applicant can produce credible evidence of public enjoyment of a path for 20 years, then even though there may be conflicting evidence, it is reasonable to say that a right of way is deemed to exist. In this case, 4 individuals have claimed awareness of signs asking people to keep to the official routes and two landowners have claimed that there is rebutting evidence, although it must be re-iterated that Mrs Godsell was not landowner over part of the timeframe analysed and Ms Maiik, had no legal interest over any of the timeframe for which public use has been considered. It is appropriate however to apply Test B, i.e. the evidence is sufficient to 'reasonably allege that the routes subsist'.
- 10.3** A total of 234 individuals claimed one or more of the 10 claimed routes across the land coloured green and known as Verney Fields, which has been considered against the s31HA80 statutory test. Of those 156 claimed use over the whole 20 year qualifying period 2003-2023. The use is considered to have been by the public, 'as of right', not 'wandering at will' and not under the 'right to deviate'. It is considered that insufficient overt action was taken by the landowners and tenant to demonstrate to the public a lack of intention to dedicate those routes as public highways prior to 2023. It is further suggested that the evidence of acquiescence of the public use is sufficient to make a presumption of statutory dedication of the claimed routes **A-B, B-D, O-Q-T, N-K, J-O, M-O, L-O, P-Q, U-H & G-I**.
- 10.4** A total of 81 individuals claimed one or more of the 2 claimed routes over the land coloured blue, considered at common law. Of those, 44 claimed use over the whole 18 year qualifying period 2001-2019. The user evidence is considered to be 'by the public', 'as of right' and of sufficient quantity and quality. The previous landowner, Mr Sibly, claimed that he "*continued our grandfather's policy of welcoming walkers*". This statement is suggestive of dedication. Historic stiles providing access to the claimed routes which remained in situ until ©2020, suggest acquiescence by Mr & Mrs Godsell and the claimed use by 81 members of the public provides evidence of their acceptance. As a result, the evidence is considered to be sufficient to infer dedication at common law of the claimed routes **B-C, & E-F-K-O**.
- 10.5** If these conclusions are accepted, it is submitted that the 12 routes; **A-B, B-D, E-F-K-O, O-Q-T, N-K, J-O, M-O, L-O, P-Q, U-H, G-I & B-C**, claimed in support of the 5 applications subject to this report, are reasonable alleged to subsist and should now be protected by being recognised on the Definitive Map as public footpaths.
- 10.6** Thus, the recommendations are as follows:
- That orders be made to add a length of public footpath to the Definitive Map of Public Rights of Way between the following points: **A-B, B-D, E-F-K-O, O-Q-T, N-K, J-O, L-O, M-O, P-Q, U-H, G-I & B-C**.