

GLOUCESTERSHIRE COUNTY COUNCIL



WILDLIFE AND COUNTRYSIDE ACT 1981 THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR GLOUCESTERSHIRE ADDITIONAL PUBLIC FOOTPATHS ACROSS LAND KNOWN AS VERNEY FIELDS & SURROUNDING AREA, STONEHOUSE PARISH MODIFICATION ORDER 2025

STATEMENT OF REASONS (& CASE)

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Date; 19 December 2025

All appendices refer to the electronic list submitted to PINS in association with this order.

1. Executive Summary

1.1 This Statement is submitted in support of the Gloucestershire County Council ("GCC") Modification Order entitled "*Wildlife and Countryside Act 1981, The Definitive Map and Statement of Public Rights of Way for Gloucestershire, Additional Public Footpaths across land known as Verney Fields & surrounding area, Stonehouse Parish, Modification Order 2025*" ("the Order"). The Order adds twelve public footpath sections across land locally known as Verney Fields and the surrounding area in Stonehouse Parish.

1.2 The Order was made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (“WCA 1981”) on the basis of the event in section 53(3)(c)(i): the discovery of evidence which, when considered with all other relevant evidence available, shows that rights of way not currently shown on the Definitive Map and Statement (“DMS”) subsist or are reasonably alleged to subsist.

1.3 The principal evidential basis comprises 241 Public Right of Way User Evidence Statements (“UESs”) completed by 242 individuals, together with landowner and tenant statements indicating acquiescence during the relevant periods. Documentary sources were also reviewed. GCC determined that the evidence met at least the “reasonably alleged to subsist” test for all twelve routes and made the Order accordingly.

1.4 Fourteen representations were received to the made Order, including five objections. GCC’s responses to each objection are set out in Section 15 of this Statement. For the reasons given, GCC respectfully requests the Secretary of State to confirm the Order as made.

2. Background

2.1 On 4 July 2023 Stonehouse Town Council (“the applicant”) submitted five Definitive Map Modification Order (“DMMO”) applications to GCC under section 53(2)(b) WCA 1981 seeking to add public footpaths across open land known as Verney Fields and the surrounding area. For ease of reference the applications have been split into twelve routes: A–B, B–D, O–Q–T, N–K, J–O, M–O, L–O, P–Q, U–H, G–I, E–F–K–O and B–C. A copy of the applications are held (Doc ref: 16).

2.2 One composite Order was made, the cumulative effect of which is to add the twelve footpath sections listed above. A further plan, based on the Order Plan, identifies three separate landholdings (shaded blue, green (known as Verney Fields) and yellow) over which the 12 routes cross. This coloured plan is referenced throughout this Statement. A copy is provided at (Doc ref: 03.3).

2.3 Part of section L–O crosses unregistered land (shaded yellow). Pursuant to permission granted by GCC, notices were erected at either end of this section to inform any owner or

person with an interest of the application. The applicant erected Form 2 notices and supplied dated photographic evidence of compliance.

2.4 Prior to receipt of the applications, photographs of the Order routes were taken on 1 March and 3 May 2023 (slides 5–11 of the accompanying PowerPoint of report at 03.7).

2.5 Verney Fields (green land) is separately subject to an application for registration as a Town or Village Green (“TVG”) under section 15(1) of the Commons Registration Act 1965. That process is distinct and does not preclude the confirmation of linear public rights of way (see Section 12 of this Statement).

3. Consultation and Investigation

3.1 On 17 July 2024, GCC commenced an investigation into all available evidence. Relevant stakeholders were consulted, including landowners identified via HM Land Registry, adjoining owners, user groups and statutory consultees. The parties contacted were: Stonehouse Town Council (applicant); Ms Maiik (owner of land shaded green); Mr & Mrs Godsell (owners of land shaded blue); Taylor Wimpey/Melbourne Investments (believed to be owners of land shaded yellow); Stroud District Council; The Byways & Bridleways Trust; County Councillor Housden; The Ramblers; The British Horse Society; Cycling UK; Open Spaces Society; Cotswold Carriage Driving; The Trail Riders Fellowship. Additionally, on 13 September 2024, a consultation letter was sent to Mr Oakhill, a previous owner at the relevant time of part of the land shaded blue.

3.2 Acknowledgements were received from Stroud District Council, The Trail Riders Fellowship and The Byways & Bridleways Trust. The Open Spaces Society responded in support. Three objections were submitted at this stage by Mr & Mrs Godsell, Ms Maiik and Mr Nagai.

3.3 An email dated 5 December 2024 from Mrs Godsell, and a letter dated 9 December 2024 from Ms Maiik’s solicitors (John Copland & Son) was received shortly prior to the scheduled meeting of the Commons and Rights of Way Committee (“the Committee”) on 10 December 2024. No new evidence was presented. Owing to their timing, inclusion in the Committee report (“report”) would have disadvantaged the applicant; therefore, neither was appended. Copies of all pre-determination responses, whether included in the report or not, are held (Doc ref:07).

4. Decision to Make the Order

4.1 On 10 December 2024 the Committee considered the officer's investigation report, consultation responses and the relevant law and case law. The Committee resolved that an event under section 53(3)(c)(i) WCA 1981 had occurred and that an order should be made to add the twelve sections of public footpath listed at paragraph 2.1. The report is at (Doc ref: 03.2).

4.2 Whilst documents indicated that the area of unregistered land, shaded yellow on the coloured plan, was owned by Melbourne Investments (a wholly owned subsidiary of Taylor Wimpey PLC) by way of purchase from Halls-Keck Investments Ltd on 6 February 1973, no response was received from them at the pre-determination stage. Dispensation was sought from the Planning Inspectorate under Schedule 15(3)(4) WCA 1981 to erect notices addressed to "the owners and any occupiers" of the unregistered land (shaded yellow). Dispensation was granted (Doc ref:13). The Order was sealed on 14 January 2025 and advertised on 22 January 2025 (Doc ref:05). A list of notice recipients is held (Doc ref:08).

4.3 Fourteen representations were received following advertisement, including five objections. These are addressed in Section 15 of this Statement.

5. The Order Routes

5.1 The twelve Order routes are shown on the Order Plan and described in paragraph 6.3 of the officer's report. For ease of reference, the coloured plan (Doc ref:03.3) indicates landholdings: blue, green and yellow, over which the twelve Order routes cross. This Statement refers to those colours where relevant to the analysis.

6. Statutory and Legal Framework

6.1 **Wildlife and Countryside Act 1981.** The Order is made under section 53(2)(b) based on the event in section 53(3)(c)(i): discovery of evidence which, when considered with all other relevant evidence, shows that a right of way not shown on the DMS subsists or is reasonably alleged to subsist, being a public path, restricted byway or (subject to section 54A) a byway open to all traffic.

6.2 **Highways Act 1980 ("HA 1980"), section 31(1)).** Where a way over land (other than a way whose character would prevent presumed dedication at common law) has been actually

enjoyed by the public as of right and without interruption for a full period of 20 years, it 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 20-year period runs back from the date when the right of the public to use the way is brought into question (section 31(2)).

6.3 Highways Act 1980, section 32. Before determining whether a way has been dedicated, or the date of dedication, the decision-maker shall take into consideration any map, plan, history of the locality or other relevant document tendered in evidence, giving such weight as is justified having regard to its antiquity, the status of the maker and the purpose for which it was made.

6.4 Case law relied upon includes: R v Secretary of State for the Environment, ex parte Billson [1998] (*paragraphs 12.2 & 15.4c*); R (on the application of Roxlena Limited) v Cumbria County Council [2025] (*paragraphs 15.4a, 15.6c & 15.6e*); R v Secretary of State for the Environment, Transport and the Regions, ex parte Dorset CC [1999] (*paragraph 9.1*); Wimbledon & Putney Commons Conservators v Dixon [1875] (*paragraphs 9.3, 15.4f & 15.5(EFKO)*); Moser v Ambleside [1925] (*paragraph 9.5*); R v SSW ex parte Emery [1997] (*paragraph 15.4a*); R (Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs [2007] (*paragraph 10.5*) and Fairey v Southampton County Council [1956] (*paragraph 10.5*). The List of Documents is held (Doc ref:03.4).

7. Documentary Evidence

7.1 In accordance with GCC practice, a search was undertaken at Gloucestershire Heritage Hub (Archives) for evidence relevant to the existence and status of the Order routes. Sources included Ordnance Survey mapping, Greenwood (1824) and Bryant (1824) commercial maps, the Stonehouse Inclosure Map and Award, Stonehouse Tithe Map (1839), Inland Revenue records, and documents relating to the National Parks and Access to the Countryside Act 1949 survey.

7.2 None of the twelve routes were identified on these documents nor were they claimed during compilation of the original DMS. Extracts are provided at (Doc ref: 03.4).

8. Date the Rights Were Brought into Question and Relevant Periods

8.1 Green and Yellow land. The land shaded green, (Verney Fields), transferred to Ms Maik by way of purchase on 9 March 2023 from Jeremy Halls-Keck & Clive Sheridan (“Halls-Keck”). Shortly thereafter stiles were removed, and “PRIVATE” notices and barbed-wire fencing were erected, preventing public access and thereby challenging public rights. An email of 29 March 2023 from the applicant recorded: *“A new owner has just bought the field and closed off many of the paths with signs.”*

8.2 Land shaded yellow - unregistered. Although unregistered, section 31 HA 1980 does not require an identifiable owner for presumed dedication to operate. There were no “PRIVATE” signs on the land shaded yellow during the relevant period and there is no record of a section 31(6) HA 1980 deposit being lodged with the highway authority. The relevant 20-year period for sections of Order route across the land shaded green/yellow is therefore March 2003 to March 2023 as detailed in paragraph 9.17 of the report.

8.3 Blue land. The land shaded blue on the coloured plan, over which sections E–F, B–C and F–K–O (the latter crossing adjacent land but reliant upon the lawful termination point at E), was subject to an earlier challenge to public use. A section 31(6) HA 1980 deposit & declaration (under cover of signed Statements of Truth) was lodged on 20 August 2019, challenging further accrual of public rights from that date. The original analysis was considered at common law over the 18-year timeframe; 28 February 2001–20 August 2019, to account for the Foot and Mouth Disease (Amendment) (England) Order 2001 across Gloucestershire dated 28 February 2001. Following clarification in the High Court in 2025 however, to the effect that Foot and Mouth restrictions did not break continuity of user in law for the purposes of dedication, these sections of claimed route will also now be considered over the 20-year statutory period; 20 August 1999–20 August 2019.

9. User Evidence — Nature and Extent

9.1 A total of 241 User Evidence Statements (“UESs”) completed by 242 named individuals were examined claiming use from 1937 (land shaded green) and from 1948 (land shaded blue) on foot. The analysis of user evidence is set out in paragraphs 9.8 – 9.49 of the report. Evidence was screened to exclude pedestrian use along existing public footpaths, insufficient claimed bicycle use by one individual on the basis of *R v SSETR ex*

parte Dorset County Council (1999), checked for duplication, and assessed route-by-route for frequency and longevity of use, as detailed in paragraphs 9.17 & 8.18 of the report. A copy of the summary of UEFs is held along with the individual UEs (Doc ref: 15a) & (Doc ref: 15b) respectively.

9.2 Two additional tables are included below showing the frequency and volume of use along Order routes B-C & E-F-K-O (land shaded blue) over the 20-year statutory timeframe 1999-2019 in light of the current position regarding Foot & Mouth.

B-C – 41 individuals

Less than 20 years	12	Daily	8
20+ years	14	Weekly	21
30+ years	6	Monthly	6
40+ years	4	Variable	6
50+ years	5		

E-F-K-O – 40 individuals

Less than 20 years	13	Daily	9
20+ years	14	Weekly	17
30+ years	5	Monthly	8
40+ years	3	Variable	6
50+ years	5		

9.3 Hand-drawn route maps were considered alongside written descriptions and grid references. Modest lateral variance across open fields was not treated as “*wandering at will*” where users described travel between defined points (Wimbledon & Putney Commons Conservators v Dixon [1875]). For L–O, eleven submissions were discounted as wandering at will; the remaining twenty-seven described a defined linear route consistent with the application.

9.3 As all five applications involve twelve Order routes that traverse and interconnect across the same area of land, they naturally share similar characteristics. The stated purpose of use was for recreation, dog walking and general exercise. No individuals stated they were an owner, employee or tenant of the land crossed. Use is therefore considered to be by the public at large.

9.4 Analysis of all 241 UEFs indicates that all of the claimed Order routes were used without barriers, or obstructions as is illustrated by the responses to the following questions:

- Q.5: Have the application routes always followed the same course? 228 responded 'yes' whilst 15 witnesses; 26, 80, 97, 98, 142, 167, 196, 204, 205, 220, 221, 222, 226, 231 & 239, added words to the effect '*until recently March 2023*', '*stile removed in 2020 and footpath blocked with fencing and gate*', '*in the last few months the land has changed hands, and previously ancient routes have been cut off and been redirected*'.
- Q.8c: Have there been any barriers on the route? 240 individuals responded 'no' or 'yes after March 2023', due to the trenches dug parallel to MST30, stiles being removed, particularly the one at point B being replaced with a gate in 2020 and barbed wire in 2023, the stile at Cotswold Green being boarded up, barbed wire being erected preventing access at Browns Lane and notices being erected at various places across the site, asking people to keep out because the land was private. Individual, No' 215 referred to "*the only barrier being the cliff path from Rosedale Avenue which has been restricted for safety*".
- Q.9: Did any of the above prevent you from using the application route? 173 Individuals responded 'No' whilst 53 witnesses responded with variations of 'Yes' due to barbed wire (March 23), 'March 23 board over stile at Cotswold Green', 'ditches and fences', 'recent excavations/ trenches', 'stile removed and gate was locked – discouraged use (point B)', 'sign stating to only follow MST62 from end of Rosedale', 'March 2023 – new owners have put up signs saying 'Private Land- Keep Out'.
- Q.14 Have you ever been stopped or turned back when using the application route? 236 individuals responded 'No'. Witnesses 45 & 105 (responded 'yes' during foot & mouth 2001) & 226 (responded 'yes' a few weeks ago).

9.5 24 individuals claimed use of route L-O. Some however claimed to walk to the viewpoint only, before retracing their steps, i.e. a cul-de-sac. Cul-de-sac usage to a viewpoint on L-O does not prevent dedication. In *Moser v Ambleside* [1925], Atkin LJ recognised highways to places of popular resort, such as the viewpoint, even though users return by the same route.

10. Use “As of Right” and Intention to Dedicate

10.1 As required by section 31 HA 1980, user must be without force, without secrecy and without permission. This was considered in detail over paragraphs 9.22–9.49 of the report. Within the relevant periods (2003–2023 for land shaded green/yellow; 1999–2019 statutory and 2001–2019 common law for the land shaded blue) no persuasive evidence of use by force, secrecy or permission was identified as is indicated by the responses to the following questions:

- Q.10: Were there any signs or notices suggesting whether or not the application route is a public right of way (i.e. Private, Keep Out, No Right of Way, Permissive Route only)? 206 individuals noted that there were no such signs across any of the Order routes. Of those, 87 clarified that notices went up in ‘March/ April/ Spring 2023’ or with regard to point B, two people noted signs going up in 2020 denying access, all of which post-dates the relevant periods.
- Q.12 Did the owner or occupier ever give you permission to use the application route? 239 individuals responded ‘No’. Two witnesses: No’s 192 and 215 did not respond to this question.

10.2 The user evidence consistently refers to stiles at points F, B, J, L, M, & opposite point N). The stiles were waymarked “public footpath”. Later obstructions (barbed wire, welded gates, removal of stiles and “PRIVATE” notices) arose only after the relevant periods.

10.3 Assertions of forced access at point B are contradicted by witness accounts and by the statements made by landowners and a tenant who had an interest in the land over the relevant timeframe 2001-2019 & 1999-2019 (land shaded blue) and 2003-2023 (land shaded green/ yellow). The stile at B was removed in 2020 and users continued to pass around a gate until barbed wire was added in 2023. Further detail relating to the stile at point B is found at paragraph 15.4b of this Statement.

10.4 Taylor Wimpey (owners of the land shaded yellow) stated by letter dated 24 April 2025 that they had no objection to the made Order.

10.5 Intention to dedicate. In R (Godmanchester) [2007], Lord Hoffmann (approving Fairey v Southampton [1956]) explained that sufficient evidence of “no intention to dedicate”

requires contemporaneous overt acts brought to the attention of the public using the way. No such evidence exists within the relevant periods.

11. Application of the Two Tests (Defra Circular 1/2009)

11.1 Members were directed to the two statutory tests referenced at paragraph 4.4 of Defra's Rights of Way Circular 1/2009 (version 2, October 2009): (A) whether a right of way subsists; and (B) whether a right of way is reasonably alleged to subsist.

11.2 GCC concluded that all the routes in the Order met at least Test B and therefore the Order should be made. See Committee minutes 10 December 2024 (Doc ref: 24a) and approval of those minutes on 17 March 2025 (Doc ref:24b).

12. TVG Application and Coexistence of Rights

12.1 The separate application to register Verney Fields as a Town or Village Green (TVG) under section 15(1) of the Commons Registration Act 1965, for lawful sports and pastimes, does not preclude the existence or confirmation of linear public rights of way across the same land.

12.2 In *R v Secretary of State for the Environment, ex parte Billson* [1998], Sullivan J accepted that where a track is used by the public as a route between defined points (rather than merely for "air and exercise"), such usage can in principle establish a right of way under section 31 HA 1980 notwithstanding wider recreational rights over the land.

13. Widths and Limitations

13.1 GCC considered that lawful limitations existed historically in the form of stiles at points F, B, J, L, M, & opposite point N).

13.2 The widths supplied by individuals in their UEFs are approximate and varied between 1-2m. Where no evidence exists as to the boundaries of a track, the presumption would be that the way is a "*strip of reasonable width*" (*Secretary of State for Defence v Percy* 1998). Given that the application and evidence relate to pedestrian use, a width of 2m is

recommended based upon the common law presumption that a footpath should be wide enough for 2 people to pass and re-pass.

14. Documentary Evidence — Summary Outcome

14.1 The documentary record (Section 7 of the report) does not by itself prove the existence of any of the Order routes. However, under section 32, HA 1980 it has been considered and given appropriate weight in the overall assessment. The primary evidential basis is user evidence supported by landowner/ tenant material indicating acquiescence.

15. Objections and Representations

15.1 Following advertisement of the Order on 22 January 2025, fourteen representations were received, nine of which indicated support or no objection, and five of which objected. Copies along with any responses, are held at (Doc ref: 04.1-9; support/ no objection) and (Doc ref:04.10-14; objections).

Support / No Objection

- Mr G Tennant (4 March 2025): support for GCC's decision to make the Orders.
- Dr Simon Opher MP (22 April 2025): support for the Modification Orders.
- Taylor Wimpey (24 April 2025): no objection (owner of land shaded yellow).
- Cadent Gas (28 January 2025): no objection.
- Stroud Rambling Club (25 January 2025): welcomed progress.
- Openreach (28 January 2025): not affected.
- National Plant Enquiries (27 January 2025): no objection.
- Open Spaces Society (26 February 2025): reconfirmed support and anticipated further representations in the event of objection.
- South Cotswold Ramblers (22 January 2025): no objection.

Objectors and GCC Responses

15.2 Mr Jones (5 March 2025). He stated that his grandfather farmed the land in question for decades and included the following comments- *"The land is unsuitable and inappropriate for a commons/town green. It is FARMLAND ONLY. The recent public dismay is simply a reaction to the new ownership of said land"....."Within the many years my family worked*

this land I recall them facing countless issues with regards to public wandering, trespass with intent to vandalise, verbal abuse (mostly stemming from telling public and their often out of control dogs to get back on the FOOTPATH after blatantly ignoring signage) dog & human fouling, fires, littering & more serious fly tipping, fencing wire cut weekly by walkers to gain new access to PRIVATE LAND, wooden fencing steaks pulled out/ burnt/snapped. Dog attacks to young calves had been witnessed as well as arson to cattle sheds. Cattle were often escaping from their grazing site due to fence vandalism; gates being left open and even taken off hinges...". "With regards to uses typical of a town green, that is laughable! It has never been used for markets, fêtes or sporting use within my 27 years in the vicinity NOR prior to".

The Case officer responded by email on 3 May 2025 - *"Thank you for your email. I regret that I cannot accept your objection in its current form. This is a legal process, and any objection must be made against a specific Order. You refer to public footpaths across land at Stonehouse and a town and village green application. I need you to clarify what you are objecting to. Further, you refer to your grandfather but do not name him, or state the area of land that he farmed in Stonehouse; was he a tenant farmer - if he was who did he work for? I am not asking you to re-write your email of objection, but I do need you to provide clarification. Thank you- please do not hesitate to phone me if you wish to discuss this".* No further response was received.

As detailed in section 12 of this Statement, in addition to the five DMMO applications, pursuant to section 53 of the WCA 1981, an application has also been submitted for the registration of the green land as a Town or Village Green pursuant to section 15(1) of the Commons Registration Act 1965, for the purpose of lawful sports and pastimes. The objection submitted by Mr Jones does not specify which application it relates to and has not provided any further clarification with regard to issues relating to specific routes. As a result, the Inspector is asked to dismiss this objection.

15.3 Ms Backus (7 February 2025). The objection questioned the need for additional paths, raising issues of suitability, land management burden and duplication. Under section 53 WCA 1981, the question is whether rights subsist or are reasonably alleged to subsist; considerations of desirability or convenience are not material. The objection therefore does not prevent confirmation.

15.4 John Copland & Son (28 February 2025) on behalf of Ms Maiik (owner of land shaded green). The objection advanced the following points, each addressed below: (a) alleged failure to undertake proper assessment or to evaluate conflicting evidence; (b) alleged failure to consider use by force; (c) conflict with the concurrent TVG application; (d) alleged failure to have regard to Stroud District Council's previous refusal to list the land as an Asset of Community Value ("ACV"); (e) interpretation of satellite imagery/tractor marks; (f) "right to deviate" in relation to obstructions; and (g) uniform 2m width not evidenced.

(a) Assessment and evaluation.

The Committee applied the two-stage approach recognised by the courts for which the comments of Lindblom LJ in *Roxlena Ltd, v Cumbria County Council* 2019 (appeal) with regard to the two tests applied to the evidence, 'subsist' and 'reasonably alleged to subsist' assist with the point regarding assessment and evaluation of evidence. Lindblom said (at p.37) "*under the 1981 Act the order-making part of the process is separate from confirmation and involves a different approach to the evidence. This has been consistently recognised by the courts. The procedure under Schedule 14 to the 1981 Act was described by Roch L.J. in ex.p. Emery (at p.277b) as "preliminary". He said (at p.377e-h) that where there is no credible evidence of 20 years user and where there is incontrovertible evidence that the landowner had no intention **during the period** (officer's emphasis) to dedicate the way to the public,... then the decision should not be merely that the allegation that a right of way subsists is not reasonable, but that no right of way as claimed subsists". However, where there is "conflicting evidence on one or other or both issues" an authority "must bear in mind that an order under s53(2) made following a Schedule 14 procedure still leaves objectors with the ability to object to the order under Schedule 15 when conflicting evidence can be heard and those issues determined following a public inquiry". The evidence before GCC, including 241 UESs, and landowner/ tenant material within the relevant periods, met at least the "reasonably alleged to subsist" test.*

(b) Use by force.

No persuasive evidence of force within the relevant periods was identified. Landowner/ tenant evidence indicates acquiescence within the relevant periods. Stiles and gates were passable and waymarked. Obstructions (barbed wire, welded gates, removal of stiles, "PRIVATE" notices) arose after the relevant periods. Assertions of forced access at B are contradicted by the following:

Mrs Godsell, owner of the land shaded blue, (across which Order route B-C crosses) from 2019, submitted a Landowner Evidence Statement, under cover of a Statement of Truth, signed and dated 15 August 2024. In response to Q,12; Have you ever erected/ locked gates or placed any other obstructions along the claimed routes? Mrs Godsell responded “Yes”. Q.12(a) asked; Please describe the nature of the gate or obstruction and mark the location on the attached plan. Mrs Godsell responded: “*Point B on the map (coloured plan – Officers clarification) 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*”. The removal of the stile in 2020 postdates the relevant period under consideration for the land shaded blue; 2001-2019 (common law) or 1999-2019 (statutory dedication).

Assertions of forced access at point B, are further contradicted by the statement of Mr Sibly, the owner of the land shaded blue prior to 2013, who stated in an email dated 12 October 2024 “... *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. For the land we did own, i.e. that shaded blue plus the field crossed by paths MST39 and MST41, I continued our grandfather’s policy of welcoming walkers*”. 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*”.

The claim of use by force is further contradicted by Bruton Knowles, Property Consultants for Halls Keck (owners of the land shaded green until 2023), responding to the 2016 proposal for Verney Green to be designated as Local Green Space. A letter dated 24 June 2016 to the applicant, included the comment, “**....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 statement acknowledges the unconsented (without permission) use of the land. The threat of fencing was never carried out.

Lastly the claim of use by force is contradicted by 14 of the 55 individual witness accounts evidencing continued passage over the stile at point B until 2020. Thereafter they walked around the gate until the barbed wire was added in 2023. The individual, identified in the UES 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*". This statement is corroborated by 13 other individuals. Use was not 'by force' over the relevant timeframes for statutory or common law dedication. The Inspector is asked to dismiss this objection.

(c) The Town and Village Green application

This application, pursuant to section 15(1) Commons Act 2006 seeks designation for the purpose of lawful sports and pastimes. The objector suggests that this application undermines the validity of the current Order for the creation of linear public footpaths across the same area of land. However, this issue was considered in *R v Secretary of State for the Environment, ex parte Billson* [1998], which dealt with an area of common land subject to a public right of "air and exercise" under section 193 of the Law of Property Act 1925. Sullivan J acknowledged that "*if a track across a common is not used for the purpose of air and exercise but is being used by the public for some other purpose; as a route between points A and B for example, from the village across a common to a nearby school, church, or railway station, then in principle such usage of the track is capable of establishing a right of way over it under section 31 of the 1980 Act*". Accordingly, the application for the registration of Verney Fields as a Town or Village Green for recreational use, would not preclude confirmation of statutory or common law dedication of linear public highways across the same area of land. The Inspector is asked to dismiss this objection.

(d) Previous ACV decisions.

ACV listing under the Localism Act 2011 concerns prospective community value and management; it is not relevant to determining whether evidence shows that public rights of way have been dedicated under the Wildlife and Countryside Act 1981/ Highways Act 1980. The refusals do not undermine the legal tests considered for confirmation of this Order.

(e) Satellite imagery/tractor marks.

Agricultural use does not preclude concurrent pedestrian use capable of giving rise to presumed dedication. Aerial imagery alone, cannot disprove the on-the-ground pedestrian usage claimed by 242 individuals across twelve routes.

f) Deviation to avoid obstructions

It has been reported that some individuals deviated from the original route to avoid obstructions. The responses to questions within the 241 UEFs as detailed in paragraph 9.4 of this Statement, suggest that most users of all 12 sections of Order route did not attribute their use to any obstructions, and their use was as a matter of preference.

Members of the public are not expected to be cartographers, and it is noted that the land over which the 12 Order routes cross was historically open land. It is evident that the Order routes on all 241 plans have been drawn freely by hand and there is no evidence of responses in UEFs or plans being copied. As a result, as provided in (*Wimbledon & Putney Commons Conservators v Dixon 1875*), modest lateral variation across open ground would not transform defined linear use into "wandering at will" where start and end points are consistent.

One of the 'obstructions' raised is the fallen tree along MST62. Four witnesses (Nos. 17, 123, 125, and 150) noted that a stile was historically located along Public Footpath MST62 and marked its position on the accompanying plans, within the field boundary north of point T on the coloured map.

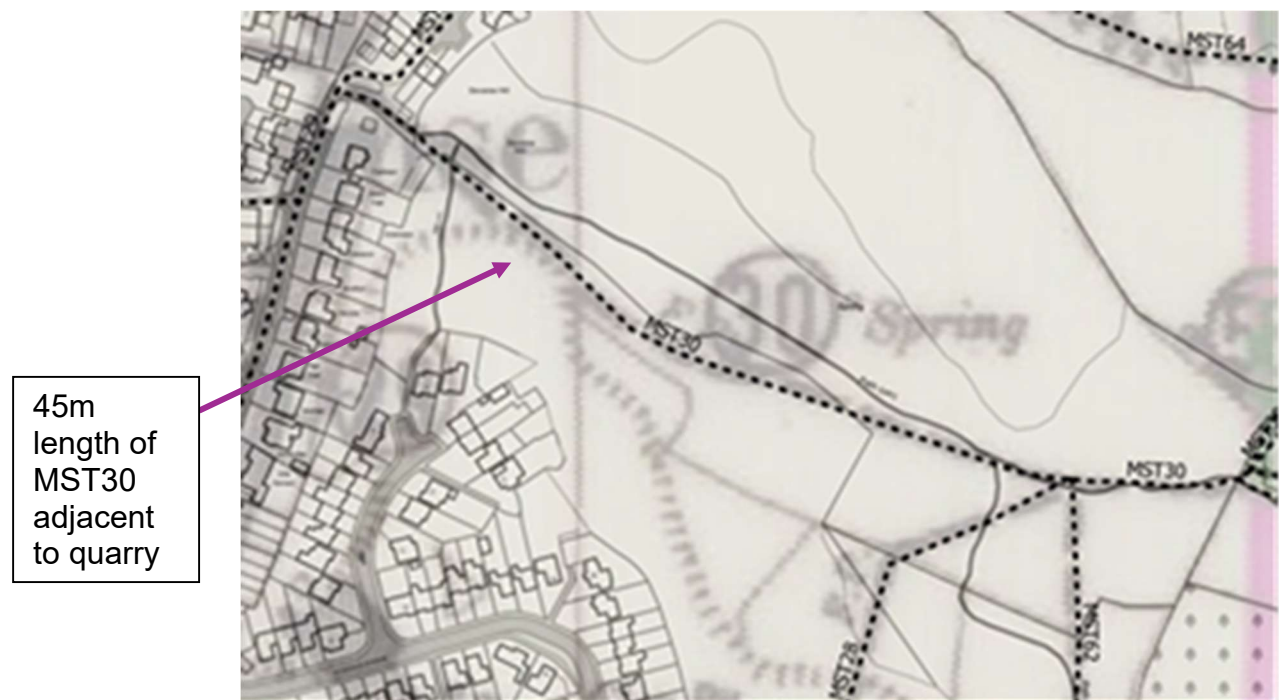
Of these, however, only witnesses 17 and 150 noted that it was destroyed when a tree fell on it and only witness 150 further indicated that, as a result, he diverted from MST62. In response to Question 8a of the User Evidence Form, he stated: "*Stile 100m short of end of track before joining MST30. Few years ago, fallen tree blocked route so track moved 75m west through 5-bar gate to joining MST30.*" This location does not form part of the Order Route; however, the route used as a deviation by this witness corresponds to Order Route O-Q-T.

A total of 85 individuals claimed use of route O-Q-T "as of right" dating back to 1937. Of these, 47 claimed continuous use throughout the 20-year statutory qualifying period (2003–2023). Many witnesses referred to using the 5-bar gate situated in the field boundary north of point Q as access. There is no evidence to suggest that anyone other than witness 150,

claimed use of Order route O-Q-T to avoid an obstruction, and therefore would not preclude a claim of dedication of it.

The quarry and fencing adjacent to Public Footpath MST30 (“MST30”) for which sections J-O, M-O & L-O are affected has also been raised as an example of right to deviate. Of the 169 individuals who claimed use of these three sections, only 3 people; No’s 35, 36 & 42 claimed that they wished to avoid the section of MST30 because they considered it to have been historically undermined by the quarry. A further three individuals: No’s 24, 48 & 117, stated that they used this section in preference to MST30 due to the fact that the latter was at times overgrown, dark, steep or slippery. The remaining 163 individuals chose to use the claimed routes.

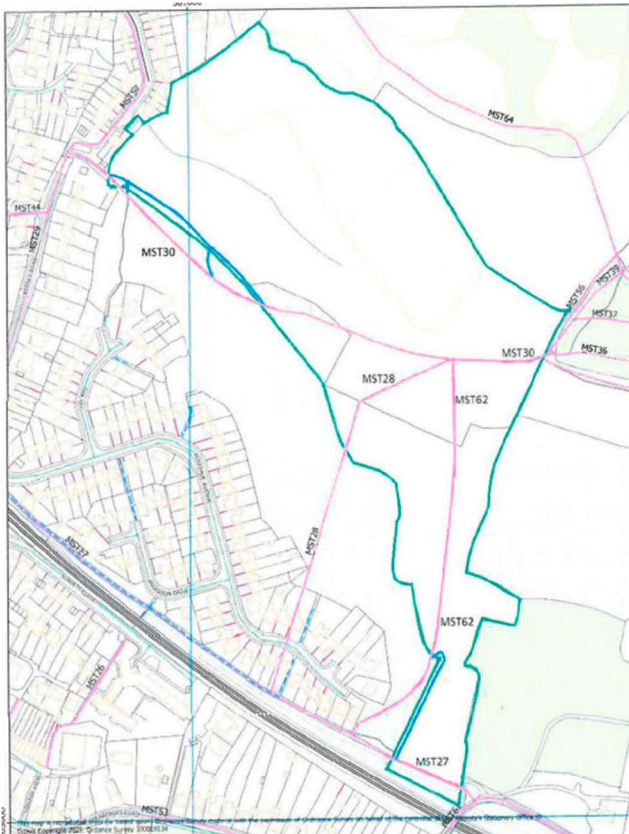
An extract of the 6” (10,560 scale) Ordnance Survey Map, published 1954 (below) of the Definitive Map (relevant date 1 March 1953), georeferenced with a modern map with the digitised public rights of way layer, shows the unchanged route of MST30 adjacent to the quarried area. It also shows the historic fencing south of MST30 affected by a 45m length of quarry and its replacement fencing north of it, following the conveyance of land to Melbourne Investments in 1973 (conveyance plan overleaf). No part of MST30 was ‘lost’ to the quarry – the 45m length of route running between the quarry and the new fencing to the north has a scaled width of nearly 5m.



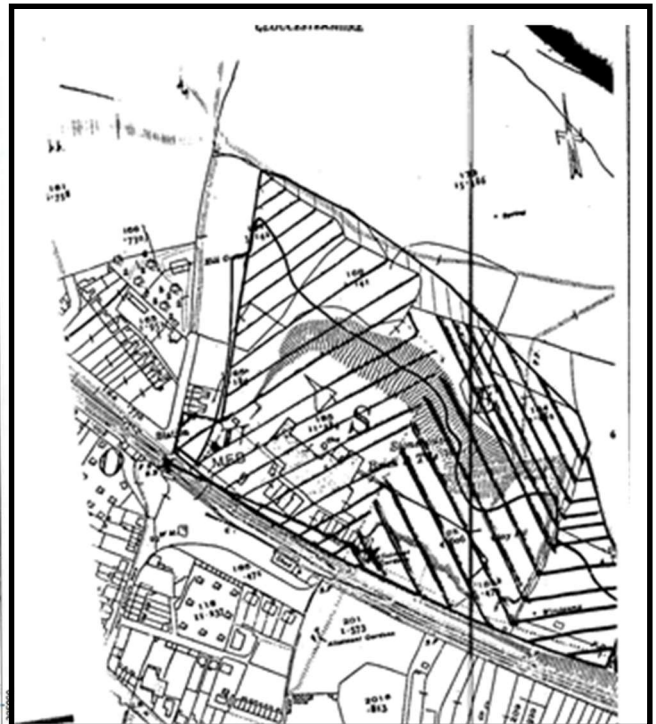
The right to deviate principle allows deviation onto the obstructing owner’s land for the duration of an obstruction, not onto third-party land.

The land shaded green on the coloured map was in the ownership of Halls-Keck Investments Ltd from August 1963 until 1990. This company was liquidated in 1990, transferring the land to Jeremy Halls-Keck & Clive Sheridan (Halls-Keck) who owned it until 2023, when it was sold to Ms Maiik. Ms Maiik's boundary ownership is clearly identified by the green outline in the map overleaf (left) which accompanied the s31(6) deposition (under cover of a Statement of Truth) dated 9 & 14 June 2023. A copy is held (14).

The boundary corroborates the land shaded yellow (overleaf right), which was in the ownership of Melbourne Investments Limited, (a wholly owned subsidiary of Taylor Wimpey PLC) by way of purchase from Halls-Keck Investments Ltd on 6 February 1973. Therefore, over the relevant timeframes under consideration, 2003-2023/ 2001-2019 & 1999-2019, the land was in different ownership and as a result, the right to deviate cannot apply. The Inspector is asked to dismiss this objection.



Ms Maiik's land (outlined in green)



Melbourne Investments conveyance plan

g) The Definitive Map Modification Order requires a stated width to be applied. The widths supplied by individuals are approximate and varied between 1-2m. Where no evidence exists as to the boundaries of a track, the presumption would be that the way is a “*strip of reasonable width*” (Secretary of State for Defence v Percy 1998). The application is for

footpaths and thus a width of 2m is recommended based upon the common law presumption that a footpath should be wide enough for 2 people to pass and re-pass. The Inspector is asked to dismiss this objection.

15.5 Mr Nagai – son of Ms Maiik (5 March 2025). Points included: (a) request for deferral to the Secretary of State on the basis that evidence provided, has not been considered; (b) assertion that most claimed paths arose under the right to deviate; (c) proposition that land boundaries (centreline of MST62 and MST30) engage the right to deviate; (d) allegation of use by force; (e) route-specific challenges (A–B use by force; B–C and B–D farm tracks; E–F–K–O wandering at will; G–I and U–H right to deviate; J–O/M–O/L–O right to deviate; N–K wandering at will; O–Q–T right to deviate; P–Q never existed). GCC's responses are as follows:

(a) Further detailed investigation required: Please see response 15.4(a).

(b) Right to deviate: Please see response 15.4(f).

(c) Boundaries: It is claimed that the boundary of Ms Maiik's land (shaded green) actually encompasses the route of MST30 in the vicinity of the quarry (shown as part of the land shaded yellow) and therefore the right to deviate principle does apply. Please see response 15.4(f). It is suggested that this is not an issue which needs to be addressed because, as detailed, only 6 of 169 individuals deviated from MST30 to avoid the area they considered was undermined by the quarry or was overgrown and slippery. The remaining 163 individuals used it by preference.

(d) Use by force: See response 15.4(b). Although not confirmed by Mr Jones, his grandfather appears to have been Mr Fletcher, tenant for over 30 years of Mr Sibly. Mr Jones' comments are at odds with the statements made by the landowner, Mr Sibly, and the existence of historic stiles in place for many years until 2023 when the land was transferred to Ms Maiik. These statements suggest acquiescence of public use of the land subject to Order routes, by the owners of the land subject to this Statement over the considered timeframes; Halls-Keck, Mr Sibly and his sub-tenant, Mr Fletcher.

(e) Route specifics:

A-B: use by force – gate was lifted of its hinge in 2006. Please see response 15.4(b).

B-C: has rarely existed and was a vehicle route - *A total of 41 individuals claimed use of this route, as of right, dating back to 1958. Of those, 25 claim use over the whole 18-year period 2001-2019. The use of a track by tractors and farm vehicles would not preclude a claim by of pedestrian use also.*

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

E-F-K-O: wandering at will over this section: *A total of 40 individuals claimed use of this route, as of right, dating back to 1948. Of those, 23 claim use over the 18-year period 2001-2019. The individuals are not expected to be cartographers. They have drawn the route which they walked across an open field. Individuals identified as Nos.180,181,182,187, 191, 202 & 208, have also supplied a written description of the route walked, i.e. connecting with Verney oak or the oak tree. This not considered to be wandering at will because the start and end points were the same. In *Wimbledon and Putney Commons Conservators v Dixon 1875* the court held that the fact that people used several tracks across a common to get 200 yards from a definite point A to a definite point B, did not prevent there being a right of way from point A to point B.*

G-I: Objector refers to much historical obstruction of this section leading to a right to deviate. A total of 55 individuals claimed use, as of right, of this route dating back to 1958. Of those, 29 claimed use over the whole 20-year statutory qualifying period 2003-2023.

All responded, 'Yes' to Q.5: Has the application route always followed the same course? Individuals identified as No's 142 & 204 clarified "Yes until recently March 2023".

In response to Q.8c: Have there been any barriers on the route? In addition to the 'no' responses, the following clarification was received:

- No 152 *"MST62 has recently been fenced (May 23) curtailing this access route. Additionally, MST27 has been fenced preventing the access from Brown's Lane (May 23)".*
- *"Fence added at bottom of field exiting onto Brown's Lane added between 10/5/23 & 16/5/23.*

In response to Q.9: Did any of the above prevent you from using the application route?

Individuals responded either 'No' or 'Yes' due to barbed wire (May 23).

The statements of use do not provide evidence of obstruction over the timeframes considered for statutory dedication of this section prior to the fencing in May 2023 and therefore the issue of right to deviate is irrelevant.

U-H: A total of 79 individuals claimed use of this route, as of right, dating back to 1937. Of those, 49 claimed use over the whole 20-year statutory qualifying period 2003-2023. The response received by those who claim use of this section again state that no obstructions were in existence until March – May 2023 and therefore the issue of right to deviate is irrelevant.

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

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

L-O: A total of 24 individuals claimed use of this route, as of right, dating back to 1958. Of those, 14 claimed use over the whole 20-year statutory qualifying period 2003-2023.

J-O, M-O & L-O : There is no right to deviate - please see response to point 15.4(f).

N-K: A total of 38 individuals claimed use of this route, as of right, dating back to 1948. As detailed in paragraph 9.15, 11 were considered to constitute 'wandering at will' but this left 27 accepted UEFs.

O-Q-T: A total of 85 individuals claimed use of this route, as of right, dating back to 1937. Of those, 47 claimed use over the whole 20-year statutory qualifying period 2003-2023. The individual No.10 stated that this section was used during cross country at Maidenhill School from 1983- 1985. Use of this section was not by deviation. Please see response 15.4(f).

P-Q: A total of 20 individuals claimed use of this route, as of right, dating back to 1958. Of those 14 claimed use over the whole 20-year statutory qualifying period 2003-2023. No evidence has been provided to rebut this claim

15.6 Mr and Mrs Godsell (26 January 2025). Objections included: (a) B–C not visible on aerial mapping; (b) use by force at B; (c) a three-week closure for cabling works interrupting statutory user; (d) sustainability—bird-seed management area; (e) E–F–K–O acquiescence

but later attempted blocking; (f) A–B blocked in 2018; (g) B–D a farm track; and (h) difficulty distinguishing multiple similar routes (M–O, J–O, L–O, P–Q, O–Q–T). GCC's position is as follows:

(a) Aerial mapping: This route is not shown on aerial maps due to the canopy or shadow of the tree line and would not rebut extensive user evidence.

(b) Use by force at B: This is disputed. Mr & Mrs Godsell state that the stile at point B was removed in 2018. However, in response to Q.12a) Landowner Evidence Form: Have you ever erected / locked any gates or placed any other obstructions along the claimed route? Mrs Godsell responded "*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*". This was corroborated by 15 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 following comments were made regarding point B:

- Witness 98: "stile at top of hill where metal farm gate – SO 81237/05420 – removed 2020 – locked gate. Footpath sign removed. Barbed wire – March 2023 – gap closed by new owners".
- Witness 104: "*there was a stile there for many years. The stile was removed and the metal gate put across in approx. 2020. Barbed wire has been put by the gate to stop people getting round 2023*".
- Witness 110: "*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*".
- Witness 112: "*This stile was removed sometime in 2020, but access was still possible to the side of the gate that was installed. Where there used to be a stile the gap by the gate has been sealed with barbed wire. This barbed wire was fitted April/ May 2023*".
- Witness 113: "*Stile & Footpath sign at top of hill where metal gate is. Replaced during 2020 with metal gate. Barbed wire placed around in March 2023 to prevent walkers passing around the side of the gate*".

(c) Temporary closure: the three week utility closure to lay a cable during the 20-year period was not done with the intention of preventing public use of the Order route as a

footpath and as considered in R (on the application of Roxlena Limited) v Cumbria County Council [2025] would be a temporary intercession which would not interrupt accrual for common law or statutory dedication.

(d) Environmental management: under WCA 1981 the decision concerns the subsistence of rights; environmental suitability is not a material consideration.

(e) E–F–K–O: The timeframe considered for this section of claimed route was originally the 18 years at common law from 2001-2019 and subsequent to the most recent Roxlena position, the 20-year statutory period of 1999 – 2019. The photo overleaf, taken on 3 May 2023 shows the stile at point F which Mrs Godsell stated in her Landowner Evidence Statement, fell into disrepair but was not replaced. No one has claimed that they were unable to access this stile over the relevant timeframes.



(f) A–B: claim that stile at point B was removed in 2018. please see 15.6(b).

(g) B–D farm track: Agricultural vehicle tracks do not negate pedestrian user submitted by *34 individuals whose use dates back to 1958 and of whom 19 claimed use over the 20-year statutory qualifying period 2003-2023.*

(h) Multiple routes: It is apparent that the land shaded green today is overgrown, and the order routes are difficult to identify. However, photographs taken over the relevant timeframe (04.1) of report indicate that the routes were all obvious and clearly being used.

16. Reasons and Conclusion

16.1 GCC considers that the evidence demonstrates 20 years' use by the public, as of right, without interruption, over the relevant periods: (a) March 2003–March 2023 for the land shaded green/ yellow; and (b) 20 August 1999–20 August 2019 (statutory) and 16 June 2001–20 August 2019 (common law) for the land shaded blue.

16.2 Insufficient evidence has been presented of a lack of intention to dedicate within those periods.

16.3 GCC therefore submits that public footpaths A–B, B–D, O–Q–T, N–K, J–O, M–O, L–O, P–Q, U–H, G–I, E–F–K–O and B–C subsist as shown on the Order Plan, with limitations in the form of historic stiles at F, B, J, L, M, & opposite point N, and with a specified width of 2 metres.

16.4 The Secretary of State is respectfully invited to confirm the Order as made: *“Wildlife and Countryside Act 1981, The Definitive Map and Statement of Public Rights of Way for Gloucestershire, Additional Public Footpaths across land known as Verney Fields & surrounding area, Stonehouse Parish, Modification Order 2025.”*

Order References: 573/11/212 (6)(7)(8)(9)&(10) — Gloucestershire County Council