

Regulatory Committee:	Commons and Rights of Way Committee; Report of the Lead Commissioner Communities & Infrastructure
Date:	2 June 2026
Chair:	
Presenting Officer:	Julie Haworth
Item Type:	For decision
Purpose of Report:	To supply evidence to enable the determination of the following Definitive Map Modification Order application: APPLICATION FOR MODIFICATION ORDER TO ADD A PUBLIC FOOTPATH FROM RECTORY LANE TO ZGL64, HEMPSTED PARISH, CITY OF GLOUCESTER (ref:573/11/99(10))
Recommendations of the Presenting Officer:	That no order be made to add a length of public footpath to the Definitive Map of Public Rights of Way between points A-E.
Background Documents:	• Paragraphs 7.1 & 7.3 – Site Visit Notes • Paragraph 8.2 – County Archivist Report • Sub-heading 9 – Consultations
Forthcoming Decisions:	To flag those items that get referred on to Council for determination.
Appendices:	As listed under sub-heading 13: ' <i>Appendices</i> ' in the report.
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1. RESOURCE IMPLICATIONS

- 1.1** 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 application were successful, the claimed route would not be maintainable at the public expense.

2. SUSTAINABILITY & EQUALITY IMPLICATIONS

- 2.1** In exercising its functions, the Council has a duty under Section 149 of the Equality Act 2010 to have due regard to the need to:

- eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and people who do not; and
- foster good relations between people who share a protected characteristic and those who do not

The relevant protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The Council is likewise committed to promoting sustainability and responsible land management in all aspects of its work.

- 2.2** However, applications made under Section 53 of the Wildlife & Countryside Act 1981 must be determined solely on the basis of evidence of whether a public right of way does or does not exist. These decisions are legal and evidential in nature and cannot, by statute, be influenced by equality, sustainability or wider policy considerations. Accordingly, it is not considered that any aspect of the Council's duties under the Equality Act 2010 will affect the determination of this application.

3. STATUTORY AUTHORITY

- 3.1** 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.

- 3.2** Section 53(3)(c)(i) relates to the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) 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.

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

- a) 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.
- b) 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.

- 3.4 PRESUMED 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 particular circumstances of 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** The primary issue to be decided is whether there is evidence to show that public rights 'subsist' or are 'reasonably alleged' to subsist. It is not necessary therefore for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map and Statement ("DMS") can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and Landowners on the other, an order should be made so that the evidence can be tested at a public inquiry.
- 4.2** 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.
- 4.3** Where an order has been made and no objections are received, the Order Making Authority ("OMA") can confirm it.
- 4.4** 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. APPLICATION

- 5.1** A location map at scale 1:10,000 (**JAH1**) showing the position of the claimed route within Hempsted parish. It is found within Ordnance Survey Grid Squares SO8116 to SO8017. A plan of the claimed route at a scale of 1:5,000, is appended (**JAH2**).
- 5.2** The DMMO application was made by Mr A Meads on 14 September 2024 which included a Form 1 and an accompanying scaled plan (approx, 1:10,000) of the claimed route, which is highlighted in yellow, along with comments on the claimed route as well as an aerial photograph. A User Evidence Statement Map dated 18 August 2024 was also provided, showing the claimed route in red. A Form 3 dated 17 September 2024 was also submitted, certifying that notification had been served upon all affected landowners.

6. BACKGROUND

- 6.1** HM Land Registry ("HMLR") records show that land parcels GR59598 and GR107803 were in the ownership of Gloucestershire County Council until March 2014 which was then transferred to Messrs Warner until January 2024 when it was finally transferred to the current landowner Mr S Harwood. The land parcel number marked GR153348 has been in the ownership of Enovert South Limited from 1993 until the present day.
- 6.2** **Section 31(6) Depositions** - Section 31(6) of the Highways Act 1980 allows landowners to make their intention clear that they do not intend to dedicate any additional ways as a highway by depositing with the Highway Authority, a Map and Statement which admit the public rights of way and public 'roads' that already exist on their land. If the landowner then follows this by depositing a Statutory Declaration, at

intervals of no greater than ten years (formerly six years) in 2004 and currently every 20 years from 2013, to confirm that no further rights of way have been dedicated; any public use of his land will not count towards the establishment of new public rights of way. This gives the landowner a way of protecting his property, while still allowing a degree of permissive public access. Once lodged with the Highway Authority, the map, statement and declaration become public documents and available for public inspection.

6.3 This process, if carried out correctly, will rebut claims of presumed dedication from the date of deposit. They do not however act retrospectively and would not prevent a claim from succeeding if the claimants can prove there has been unchallenged public use over a period of 20 years leading up to the date when the Statement and Plan were first deposited.

6.4 A deposition under Section 31(6) was made by P Parkinson of KMT Farming and Consultancy Ltd on behalf of the Landowner, Mr S Harwood which was submitted on 19 June 2024 with a date to reaffirm by 18 June 2044. As previously stated, this deposit is not retrospective and therefore it acts from the deposit date only. In this instance, the user evidence for this claimed route will be assessed over the 20-year period prior to March 2024 so consequently it will not affect this application.

7. DESCRIPTIONS OF CLAIMED ROUTE

7.1 The claimed route was inspected on 10 September 2024 (by Rachel Russell (Highway Records Technician), whose site visit notes are held as a background paper). It commences at a point marked A on the plan at Ordnance Survey Grid Reference ("OSGR") SO 8125/1696 at its junction with Rectory Lane, (publicly maintainable highway 483510). At Point A there was a wooden gate with a public footpath yellow arrow waymark pointing in a southerly direction, two public footpath fingerposts and an undated map showing the location of ZGL156 and asking walkers to stay on the public footpath. The claimed route then continued across unenclosed grassland for approximately 286 metres to Point B. At Point B there was an open section of hedging with a sign to the right stating '*PRIVATE LAND no public access or right of way*'. The claimed route continued from Point B for approximately 146m across unenclosed grassland to Point C and a locked metal kissing gate with barbed wire covering an opening to the side of the gate. Due to this section (C-D) of the claimed route being closed the site inspection then recommenced at Point E (at the junction with ZGL64).

7.2 At Point E (with the junction of Public Footpath ZGL64) was a metal kissing gate with a public footpath waymark sign. Just to the north of Point E is another metal gate with two public footpath signs on the opposite side. The claimed route then continued for approximately 215 metres along a grass track enclosed by fencing on one side and a drain on the other. At Point D there is a metal gate which gave access to a bridge over the drain. To the left of the metal gate are two permissive footpath waymark signs which are obscured by plant growth. A further metal gate at the southern end of the bridge was locked, had barbed wire across the gate and a sign stating, '*PRIVATE LAND No public right of way*'. Again the route between Points D-C could not be accessed but the claimed route seemed to run through overgrown woodland. Photographs are appended (**JAH3A-P**).

7.3 The claimed route was inspected again on 15 October 2024 (by Rachel Russell (Highway Records Technician) and Jaci Harris (Highway Records Officer) with the landowner, Mr S Harwood in attendance. Issues regarding the site and what actions Mr Harwood has taken (site visit notes are held as a background paper) were discussed. Mr Harwood indicated that he removed permissive path waymarks on his land in March 2024, one being on the west side of Point C. Photographs are appended (**JAH3Q-R**)

8. DOCUMENTARY EVIDENCE

8.1 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.

- 8.2** The County Archivist has examined sources in the Gloucestershire Heritage Hub 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 by the Highway Records Officer and the Archivist report is retained as a background resource.
- 8.3** **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.
- 8.4** 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.
- 8.5** **Ordnance Survey 1811 2":1 mile Pen & Ink on Paper Drawing attributed to Robert Dawson (Cheltenham OSD172) Wikimedia** - The map shows a track on a similar alignment as the claimed route. The route is marked by double pecked lines which suggests it is open on both sides. It proceeds from what is known today as Rectory Lane towards the river. **(JAH4)**
- 8.6** **Ordnance Survey 1st edition 1":1 mile 1831 (Published at the Tower of London) Sheet 43 (National Library of Australia)** - This is a colour washed first edition 1":1mile map "*engraved at the Ordnance Map Office in the Tower under the Direction of Lieut. Col. Colby of the Royal Engineers*"....". "*Published 29th Sept 1831*" from the pen and ink drawings of the Royal Corps of Military Surveyors and Draughtsmen as referred to in para 8.5 above. The map shows a track on a similar alignment as the claimed route. The route is marked by double pecked lines which suggests it is open on both sides. It proceeds from what is known today as Rectory Lane towards the river. **(JAH5)**
- 8.7** **Ordnance Survey First, Second & Third Editions; 25":1 mile, Map sheets 33.2; published 1886, 1902 & 1923 - (National Library of Scotland)** - The claimed route is not identified.
- 8.8** **Hempsted Inclosure Map & Award 1815 (Gloucestershire Archives - Q-RI-79)** - The claimed route is not identified.
- 8.9** **'Plan of Lanthoney and Newark Estates in the County of Gloucester belonging to His Grace the Duke of Norfolk'– D134/P8 (nd) (Gloucestershire Heritage Hub)** - The claimed route is not identified within this map.
- 8.10** **Bryant & Greenwood Commercial Maps 1824** – These maps did not identify the claimed route.
- 8.11** **Hempsted Tithe Map 1840 (Gloucestershire Archives - GDR/T1/99)** – The majority of the claimed route from Point A to approximately Point B runs through an area which is identified as '*tithe free*' and therefore not shown. Section D -E is shown as enclosed and numbered 164 with a physical barrier at Point D. The apportionment indicates that 164 is owned by Rev Smauel Lysons and occupied by John Boyce and is described as '*Pasture Lane to Meadow*', which could infer private usage. **(JAH6)**

- 8.12 **Inland Revenue, maps compiled under the Finance Act, 1910, based on Ordnance Survey 25": 1 mile, c.1902 edition, Map sheet 33.2 – (Lloyd George Survey – online).** The claimed route is not identified.
- 8.13 **County Surveyor: papers relating to survey of footpaths under National Parks and Access to Countryside Act, 1949 ("NPACA 1949"); Glos Archives.** The application route was not claimed under this process.
- 8.14 **Countryside Stewardship Scheme – Gloucestershire Heritage Hub (D12676/4/24/11 – 1-3)** The Department for Environment, Food and Rural Affairs (DEFRA) operated a number of grant schemes, one of which was The Countryside Stewardship Scheme. This was an experimental scheme which was operated by the Countryside Commission from 1991 and it provided financial incentives to land managers in return for a five year agreement aimed at conserving wildlife, the landscape and historic features. Gloucestershire was one of many counties which took part in the scheme which provided for permissive access only and did not aim to create permanent rights of way.
- 8.15 A Conservation Walks and Rides in Gloucestershire Access Register was produced every year to show the conservation walks within the Gloucestershire area. Although there was a route shown within the Hempsted parish on adjacent land (Church Farms Ham), no evidence was found of any permissive conservation walks along the claimed route or on the land in question.
- 8.16 **Gloucester City Council: Planning Application A Household Waste Recycling Centre Plan 2005 (Ref : 05/0075/GLFUL/CAPS)**
- 8.17 A full planning application for the construction and operation of a Household Recycling Centre (HRC) by Cory Environmental Ltd was submitted in August 2005. Within the Planning Statement, public rights of way were referred to as being *located 'to the northeast and southwest of the application site. This will not be affected by the development proposals'*. There was also a footpath arrangement plan showing part of the claimed route (approximately from Point B-D) annotated as a purple unbroken line and shown in the attached key as an *'Existing permissive footpath'*. (JAH7)
- 8.18 **DOCUMENTARY EVIDENCE CONCLUSIONS;-** The documentary evidence is considered to be insufficient on its own to establish dedication of the claimed route.

9. **CONSULTATIONS**

- 9.1 In December 2025, the following organisations, user groups, landowners/adjacent landowners (as identified by Land Registry) and applicant were consulted regarding this application: The Green Lanes Association, Gloucestershire Ramblers, Open Spaces Society, Gloucester City Council, County Councillor Dr Rebecca Trimnell, Mr A Meads, Mr J Harwood and Enovert South Limited. Responses were received from Gloucestershire Ramblers, Mr S Harwood and Mr A Meads, both of which can be read in full, as background papers to this report.
- 9.2 **Mr P Griffin, Footpaths Secretary of Gloucester Ramblers (Gloucestershire Ramblers Area)** responded by email on 5 January 2026. The email contained a research report supporting the addition of the claimed route to the Definitive Map. The report included comments regarding the claimed route such as *'the route has been used by Ramblers Members and affiliated clubs on walks'* and *'The path has been used 'as of right'. There was never believed any need to seek permission'*. The report also noted that the claimed route *'shows that since the arrival, in late 2023, of a new landowner, the path has become progressively blocked. In 2024 access to the kissing gate at point S was restricted with a makeshift barbed wire fence'*. This report also included copies of OS Maps, aerial photographs and site visit photographs.

- 9.3 Mr A Meads, Applicant** responded by email on 10 December 2025. Mr Meads queried to why he was consulted when he had already submitted the application with evidence. He was replied to the same day by the Highway Records Technician that the applicant was included to give them the opportunity to give any further information and notification that the process was continuing. No further information was received.
- 9.4 Mr S Harwood, Landowner** responded by email on 10 December 2025. He asked for confirmation as to the date when the landowner statement was required by. He was replied to the same day by the Highway Records Technician that the return date was by 30 January 2026. His landowner statement was submitted on 30 January 2026. Within the landowner statement Mr Harwood noted that he had purchased the land in December 2023, that *'The route was a permissive footpath. It is not disputed that walkers used the footpath regularly on foot'*. When asked if he had stopped anyone using the claimed route, his positive reply and comment was *'walkers were requested to stay on the permissive footpath and not trespass on adjacent farmland because of nesting birds and damage being caused to the crops. The response to this request was physical threats and online abuse. This led to the closure of the permissive footpaths'*. Mr Harwood also commented that *'The permissive footpath was closed on 08/04/2024 and the gates locked' and noted that 'Permissive footpath waymarkers were used to denote the permissive footpath' and 'Permissive footpath closed' signs were erected in April 2024'*. In answer to whether Mr Harwood ever maintained or replaced signs he replied *'Vegetation was cleared to ensure they remained visible. The waymarkers were clearly visible and legible when the permissive footpath was closed and they were noted as being present in a number of the user evidence statements'*.
- 9.5 Mr Warner, previous landowner to Mr Harwood** was contacted via letter on 16 March 2026 requesting whether he had any historical knowledge or experience of the claimed route (in particular any notices signs or correspondence he had regarding his land at the time of ownership). Mr Warner replied to the Case Officer by telephone on 18 March 2026. He confirmed that he had brought the land from GCC in 2014 (approximately 10 years into the 'challenge' period) and owned the land until Mr Harwood purchased it in December 2023. He also confirmed that in his ownership he did not give any permission to the public and was happy for walkers to use the land as they wished and further commented that there were no formal routes in the direction of the claimed route. He was aware of gates on the claimed route but were there before his ownership. Mr Warner did not install any further physical barriers such gates or post any notices or signs of any description.
- 9.6** No additional responses were received from other consultees during the informal consultation period.

10. USER EVIDENCE

- 10.1** 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".
- 10.2** 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.
- 10.3** **When the status of the claimed route was called into question:**
- 10.4** 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. User number 6 (Mr Bricknell) noted that the claimed route was *'obstructed and closed in March 2024'*. User number 8 (Ms Davies) also noted that the gates on the claimed route were *'locked this year - March 24'* and Mr Harwood (landowner) commented on the site visit of 15 October 2024 that *'he shut up the route in April 2024'*.

- 10.5** For this report therefore, the user evidence will be assessed over the 20-year period prior to March 2024, which is the earliest known date of challenge.
- 10.6** **Analysis of user evidence**
- 10.7** This report will consider the 11 User Evidence Statements (“UESs”) completed by 11 individual members of the public in support of this application (573/11/99(10)). A bar chart is appended. **(JAH8)**
- 10.8** All 11 individuals claim use of the application route on foot dating back to 1963, but only the evidence of 8 individuals can be accepted because they identified a route which is consistent with the depiction of the claimed route as shown by the applicant. The three that did not are as follows:
- 10.9** User number 2 (Mr Roderick) claimed use of section A-C only. As a Definitive Map Modification Order application must relate to a route with a clear termination point or recognised place of public resort. This evidence does not meet the necessary criteria and therefore cannot be included within the assessment for this report.
- 10.10** User number 11 (Ms Barker) claimed use of a route, from point A in a westerly direction to connect with Public Footpath ZGL64. This an entirely different alignment to that claimed by the applicant and therefore cannot be included within the assessment of the report.
- 10.11** Similarly, user number 4 (Mr Stockwell) claimed use of the route between points A-B and D-E but claimed a completely different alignment between points B-D which was considered to be sufficiently different to the route claimed by the applicant.
- 10.12** These three individuals claimed different routes and therefore their evidence individually or collectively could not give rise to a claim of dedication either at statute or common law.
- 10.13** **Full period of 20 years**
- 10.14** Of the 8 accepted statements of use, 2 claimed use over the whole qualifying period c.2004-2024. It is not essential for the claimed route to have been used for the full period of 20 years by the same persons; the period may accrue as a result of use by different persons for shorter periods (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.
- 10.15** Mr Meads, Ms Jarman, Mr Davies and Ms Davies all assumed that the claimed route was already a public right of way. Mr Meads, Ms Pullen, Mr Davies, Ms Davies, Ms Heath, noted that the route was very well used, and Ms Pullen, Ms Jarman, Mr Bricknell, Ms Davies, Ms Heath, all commented on the links between the claimed route and access to the River Severn to watch nature or the Severn Bore.
- 10.16** All of the 8 individuals supplying evidence of their use of the claimed route noted gates at multiple locations along the claimed route, the majority of which also noted that the gates were never locked. Mr Meads, Mr Davies and Mrs Davies all noted that a stile used to be present but had disappeared over time. Mr Bricknell also noted a stile and commented that it was *‘a wooden stile existed in the mid 1980’s before being replaced by a metal gate at the part before the concrete bridge’*. None of the individuals noted any further barriers or obstructions on the claimed route.
- 10.17** When asked if they had seen any sign or notices, Ms Pullen, Ms Jarman and Mrs Heath all indicated they had not. Mr Meads also replied no but commented *“Permissive route marking on landfill side indicating path to the right usually this disappeared behind vegetation”*. Mr Burgess indicated he had seen signs along with Mr Bricknell, Mr Davies and Mrs Davies who commented further that permissive route markers by the concrete footbridge indicated a path running adjacent to the perimeter fence of the landfill site.
- 10.18** All 8 individuals indicated that the owner/occupier did not give or that they sought permission to the use the claimed route. Mr Bricknell also commented that *“The route has been in place for decades with the*

kissing gates inserted in the mid 1980's under a council funded scheme to help young unemployed people return to work".

10.19 Use by the 'public'

10.20 All of the 8 remaining individuals claiming use of the route live within the Hempsted village area. Consideration therefore should be given to whether this constitutes use by the 'public'. There appears to be no legal interpretation of the term 'the public' as used in s31. The dictionary definition is "the people as a whole, or the community in general. Hence, arguably, use should be by a number of people who together may sensibly be taken to represent the community. However, Coleridge LJ (as he was then) in *R v Southampton (Inhabitants)* 1887 said *"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"*. This report considers therefore that use of this application route does constitute use by the public.

10.21 The user evidence shows that all individuals used the claimed route to access to the river Severn, nature trails, or walking dogs. Observations made by some of the 8 individuals include;

- Ms Pullen of Bridle Court (47 years claimed use, including 19 over the qualifying period) stated; *"As a path it links the village of Hempsted with the river bank and is a lovely facility for people to enjoy walking and the outdoors"*.
- Mr Bricknell of Hempsted Lane (37 years claimed use, including 17 over the qualifying period) stated the claimed route was; *"frequently used by walkers for dog walking and rambling. It is often used as a means to view the Severn Bore with people using the path to gain access to the bank of the river Severn"*.
- Ms Heath of St Swithun's Road (56 years claimed use, including 15 over the qualifying period) stated that she had; *"joined many fellow residents in using the footpath for regular walks and also as a teacher in the local school, taking children on nature walks and to view the Severn Bore. This sort of activity has continued over the years"*.

10.22 Use 'as of right' (without force, secrecy, or permission)

10.23 For a claim to give rise to a presumption of dedication, user must be without force, secrecy, or permission. Use that complies with these three requirements is termed user 'as of right'. The House of Lords in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335 (*Sunningwell*) 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 licence/ permission by the landowner.

10.24 There is no evidence of use by force or secrecy but there is evidence that use of the application route was by permission. Five out of the eight users commented that there were permissive route markers although no one was verbally or physically prevented from using the application route over the timeframe 2004-2024 leading up to the securing of gates by Mr S Harwood in April 2024. This use would constitute use 'by right', i.e., by easement or permission, and not 'as of right'.

10.25 Whether there is evidence of a lack of intention to dedicate a public right of way

10.26 "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”.

10.27 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. It is not known how long these signs were in position but *‘Godmanchester upheld the earlier decision of Sullivan J in Billson that the phrase “during that period” found in S31 (1) did not mean that a lack of intention has to be demonstrated “during the whole of that period”. The House of Lords did not specify the period of time that the lack of intention had to be demonstrated for it to be considered sufficient; what would be considered sufficient would depend upon the facts of a particular case’.* In *R v Secretary of State ex parte Cowell* (Court of Appeal) 1993, Staughton LJ considered that the common practice of closing a gate for one day a year was sufficient to be a lack of intention to dedicate (as mentioned by Lord Denning in *Fairey v Southampton County Council* 1956).

10.28 Section 31(3)-(6) Highways Act 1980, provides specific legal steps whereby a landowner can protect his land from claims for new public rights of way. One of these is found in Section 31(3).

“Where the owner of the land over which any such way as aforesaid passes – (a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway..... in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway”.

10.29 As was stated previously, five out of the eight users, who claimed use of the route over the qualifying period, commented that there were permissive route markers at certain points along the claimed route. Comments from the users include :

- Mr Meads - *“Permissive route marking on landfill side indicating path to the right usually this disappeared behind vegetation”.*
- Mr Bricknell - *“....onto permissive path alongside drainage ditch”.*
- Mr Davies - *“Permissive marking by concrete bridge indicating path around perimeter of landfill site”.*
- Mrs Davies – *“Permissive markings by concrete bridge showing track following the edge of land fill site”*
- Mr Burgess – Indicated ‘yes’ to Question 10 of the UES *‘Have you ever seen any signs or notices suggesting whether or not the application route is a public right of way? i.e. “Private”, “Permissive route only” etc.*

It should also be noted that Mr Harwood (the current landowner) also indicated at a site visit with DMMO Officers on 15 October 2024 that he removed permissive path waymarks on his land in March 2024, one being on the west side of Point C.

10.30 As such these permissive signs are considered to be sufficient evidence of the landowner’s lack of intention to dedicate the claimed route and as a result would fail the statutory test for dedication.

11. COMMON LAW

11.1 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.

11.2 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.

11.3 In accordance with the principle established in *Mann v Brodie* (1885), the number of users must be “*such as might reasonable have been expected, if the way had been unquestionably a public highway*”. The claimed use of 8 individuals is not compelling and is not considered to constitute use ‘as of right’, based upon the fact that 5 of those 8 individuals stated that they encountered permissive route markers along the claimed route and therefore is insufficient to give rise to an inference of dedication at common law.

12. CONCLUSIONS

12.1 Section 53(3) (c) (i) of the Wildlife and Countryside Act 1981 relates to the discovery by the Authority of evidence that shows that 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.

12.2 Paragraph 12 of Annex B of the Department of Environment Circular 2/93 states that before making an order the surveying authority must be satisfied that the evidence discovered by the Council, when considered with all other relevant evidence available, shows that the Definitive Map and Statement require modification because a right of way which is not shown on the map and statement subsists, or is reasonably alleged to subsist. The relevant tests are now set out in section 4.4 of the Defra Rights of Way Circular 1/2009, version 2 (October 2009) and concluded below.

12.3 Having considered the evidence as a whole, it is concluded that the insufficiency of documentary evidence, and the fact that five of the eight accepted statements of use acknowledged awareness of, and use of, a permissive path – thereby indicating that use was ‘by right’ not ‘as of right’, is considered to be insufficient to establish a reasonable allegation that rights subsist either by presumed statutory dedication or inferred dedication at common law.

12.4 Therefore, the recommendation is as follows:

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

13. APPENDICES:

JAH1	1:10,000 scale - Location Map
JAH2	1:5,000 scale - Claimed Route Map
JAH3A-R	Photographs of Claimed Route
JAH4	Ordnance Survey 1811 2”:1 mile Pen & Ink
JAH5	Ordnance Survey 1st edition 1”:1-mile 1831, Sheet 43
JAH6	Hempsted Tithe Map 1840
JAH7	Footpath Arrangement Plan 2005
JAH8	Bar chart of use