



**Wildlife and Countryside Act 1981
Definitive Map of Public Rights of Way for Gloucestershire
(Additional Length of Public Footpath at Witcombe Farm)
(Parish of Great Witcombe) Order 2009**

**Gloucestershire County Council's Statement of Reasons for
Confirmation of the above Order**

Please note that all document references ("Doc. Ref") refer to the electronic list submitted to PINS in association with this order.

1.0 Effect of Modification Order

- 1.1 The Modification Order, if confirmed, will have the effect of adding a length of public footpath from Witcombe Farm Lane (unclassified road number 41143) through Witcombe Farm to public footpath AWG 4 adjacent to Witcombe Reservoirs in the parish of Great Witcombe. The footpath is shown on the Order map by a continuous black line with short bars between points A-B-C-D.
A copy of the Modification Order and map is attached at **Doc. Ref 1**.

2.0 Description of Path

- 2.1 The footpath is in the parish of Great Witcombe and is located approximately 8 km south east of the centre of Gloucester. A location map showing the position of the footpath is included in the Modification Order at **Doc. Ref 1**. The 1:2.500 scale Order map shows the footpath commencing at point A from its junction with Witcombe Farm Lane south of 2 Hillview Cottages. The path runs in a generally southerly direction along a tarmacadamed surface to point B at its junction with a private road (which extends from point B in a westerly direction to Witcombe Reservoirs Pumping Station).
- 2.2 At the time of inspection in January 2009 there were 3 notices at point B which appear to relate to the continuation of the Order route B-C-D:

- 1) An off-white notice with black lettering, some of which has faded, stating "PRIVATE ROAD. NO UNAUTHORISED VEHICLES"
- 2) A green notice with white lettering stating "WITCOMBE ESTATE. PRIVATE LAND. NO PUBLIC RIGHT OF WAY" and
- 3) A notice regarding fly-fishing for trout by the Cotswold Fishery.

Photographs taken in January 2009 showing these notices and the Order route are attached at **Doc. Ref 17.7.**

- 2.3 The photographs show the claimed route continuing southwards along a rough tarmac/gravel surface track with grass verges either side, although this track had recently been resurfaced with tarmac at that time. About 100 metres south along the footpath from point B there are farm buildings either side of the path (near point C). On one of the buildings there was a notice stating "SMILE. YOU'RE ON CCTV". The farm house itself is situated about 30 metres to the east of the path.
- 2.4 The path continues in a south westerly direction through point C to point D at its junction with public footpath AWG4 where there are two public footpath signs which indicate the easterly and westerly extensions of footpath AWG 4. In September 2005 a notice was seen at point D stating "WITCOMBE ESTATE. PRIVATE LAND. NO PUBLIC RIGHT OF WAY", as at point B. However when the path was inspected again in February 2007, this notice had gone. The easterly section of AWG 4 continues over a stile and down steps across a grass field whilst the westerly length goes through double metal gates (open at the time of inspection) and across the embankment between Witcombe Reservoirs.

3.0 Modification Order Application and Evidence

- 3.1 On 6 September 2005 Dr Nick Gilbert, a local resident, submitted a Modification Order application for the length of footpath from Witcombe Farm Lane to Public Footpath AWG 4 to be added to the Definitive Map. In support of his application, Dr Gilbert submitted forty-nine public path evidence forms on behalf of 50 named witnesses. The landowner, Mrs Hicks Beach of Witcombe Farm, disputed the application and her solicitor Charles Russell made detailed comments on the evidence forms and submitted statements and witness evidence forms in opposition to the application. Dr Gilbert commented on these in turn and provided supplemental

statements from existing witnesses specifically addressing the landowner's comments.

3.2 The application was investigated and consultations carried out. The attached report considered by the Commons and Rights of Way Committee on 20 March 2007 sets out full details of the application, including the evidence, observations from the landowner, consultations with local councils and others and legal comments and conclusions. A copy of the 2007 Committee report and enclosures is attached at **Doc. Ref 4 (and 4.1)**. There was a large amount of material submitted by the applicant and the solicitors acting for the landowner. The 2007 Report summarised the evidence forms and the opposing witness forms and statements. The full submissions were available as background papers and are attached to this statement at **Doc. Ref 9 (9.1 - 9.12)**. These also include:

- 1) Application letter (page 3 of **Doc. Ref 17.4**) plus 49 evidence forms (**Doc. Ref 15.1 - 15.4**);
- 3) The applicant's letter dated 11 November 2005 setting out the background and reasons for the application (**Doc. Ref 9.1**);
- 4) Charles Russell's letter of 7 July 2006 commenting on the user and documentary evidence; enclosing statements from 5 people including Arnold Price; letter and 14 witness evidence forms in opposition to the application (**Doc. Ref 9.2**);
- 5) The applicant's letter dated 26 October 2006 commenting on the 19 witness statements from the landowner; containing observations on the landowner's comments on the public path evidence forms; and enclosing a further 24 statements (plus 1) on behalf of 27 of the same witnesses specifically addressing comments made by the landowner (referred to in paragraph 13.4 of the Committee report) (**Doc. Ref 9.3**).

3.3 The application was decided on the basis of the user evidence as it was considered that the documentary evidence available did not assist with respect to the status of the route. With reference to the date of challenge, there were two notices of relevance on the site. The first of these was a notice at point B (on the Order map) stating "PRIVATE ROAD. NO UNAUTHORISED VEHICLES " erected over 25 years ago (from the date of the 2007 report). However, because of the ambiguity of the wording which referred to vehicles, it was not considered that this notice was effective in denying a public right of way on foot. However further notices were subsequently erected

stating “WITCOMBE ESTATE. PRIVATE LAND. NO PUBLIC RIGHT OF WAY”. These notices were seen to be in place at points B and D in September 2005, although the notice at D was no longer in position in February 2007. Although there was some uncertainty about the exact date these signs were erected, the general consensus was that it was in about 2001/2002. A cautious approach was therefore taken and the year 2001 was taken as the date of challenge. Thus the relevant period of public use, as required by Section 31 of the Highways Act 1980, was considered to be the 20-year period from 1981 - 2001.

- 3.4 The 2007 Report concludes that there was strong user evidence dating back to the 1930’s. However, there was conflicting evidence in this case and the Members of the Commons & Rights of Way Committee who were deciding upon the application were advised that they should apply the tests set out in the *Bagshaw/Norton* High Court case of 1994. These are as follows:

Test A: Does a right of way subsist? This requires that there is clear evidence in favour of the right of way and no evidence to the contrary.

Test B: Can a public right of way be reasonably alleged to subsist? Where there is a conflict of credible evidence, it is necessary to show that a reasonable person having considered all the relevant evidence could reasonably allege a right of way to subsist.

The *Bagshaw/Norton* case was reaffirmed by the *Emery* Court of Appeal decision in 1997 which stated that where there is conflicting evidence which could only be tested or evaluated by cross-examination, an order would seem to be appropriate and concluded that “*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*”.

Members of the Committee were advised that the requirements of Test B had been met and that under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, a right of way had been reasonably alleged to subsist. It was therefore recommended to the Committee that a Modification Order be made to add the claimed footpath to the Definitive Map.

4.0 Committee Decision

4.1 The application was considered by the Commons and Rights of Way Committee on 20 March 2007 when members resolved, contrary to the recommendation, that the application should be refused. A copy of the Minute of the meeting which includes the reasons given for the refusal is attached at **Doc. Ref 17.2**. It is recorded in the Minute that Members acknowledged that case law indicated that if there was a conflict of user evidence then on balance the application should be accepted. However it appears they were concerned about a number of issues which contributed to their resolution that no Order should be made. In summary these issues were:

- (1) There was no documentary evidence to show the status of the route.
- (2) The Great Witcombe Parish Meeting had never requested that the route be added to the Definitive Map.
- (3) No further response had been received from the Ramblers Association regarding the application.
- (4) The recent parish survey indicated by a small majority that people who lived in the parish and had responded felt the path was private.
- (5) The Minutes state: "Members felt the evidence was clouded and confused, the majority of the local public were opposed to it, there was no documentary evidence, there was an avenue of appeal, there were anomalies with the use of gates."

5.0 Appeal

5.1 The applicant appealed to the Secretary of State for Environment, Food and Rural Affairs against the Committee's decision on 9 April 2007. During the appeal process further correspondence and evidence was submitted by the applicant, the solicitor acting on behalf of the landowner and the Ramblers Association. These documents are contained at **Doc. Ref 17** and include the following:

- 1) Appeal dated 30 April 2007 and letter of same date from Dr Gilbert setting out six main grounds of appeal. (**Doc. Ref 17.1**)
- 2) Letter from Charles Russell dated 4 July 2007 setting out landowner's comments on grounds of appeal, and enclosing two letters plus two further evidence forms supporting the landowner. (**Doc. Ref 17.11**)

- 3) Letter from Dr Gilbert dated 10 September 2007 (**Doc. Ref 17.15**) including response to Charles Russell's comments in Appeal & comments on the four further pieces of evidence supplied by Charles Russell.
- 4) Letter dated 2 October 2007 from Dr Gilbert (**Doc. Ref 17.18**) raising the question of whether Gloucestershire Wildlife Trust members had been given permission to use the path.
- 5) Letter from Mrs J Byrne, Ramblers' Association Secretary, dated 21 June 2007 enclosing 3 emails and 2 letters from users of the claimed path. (**Doc. Ref 17.10**)

5.2 The case was considered by an Inspector, Helen Slade, and the Council was informed of the Secretary of State's decision on 25 November 2008. The Secretary of State considered that a Modification Order should be made and directed the County Council to make an Order accordingly. A copy of the Secretary of State's decision and the Inspector's report giving the reasons for the decision is attached at **Doc. Ref 16**.

5.3 The Inspector did not consider any of the reasons given by Members of the Committee for refusing the application to be justifiable. She agreed there was a conflict of evidence and that the correct legal test was that set out clearly by officers in the Committee report. Consequently, while Members are entitled to take a different view to their officers if it can be justified, the Inspector in this case agreed with the officers' recommendation that the legal test had been met and that it had been reasonably alleged that a public footpath subsisted along the route in question. The Inspector therefore considered that the appeal should be allowed. Her finding was endorsed by the Secretary of State and the Council was directed to make a Modification Order.

6.0 Modification Order

6.1 The Modification Order was duly made on 18 March 2009 and advertised on 26 March 2009. (A copy of the Modification Order is attached at **Doc. Ref 1**, and the Notice at **Doc. Ref 7**).

6.2 It can be seen from the Order map that the length of footpath A-B-C-D on this map is slightly longer than the route originally claimed (copy of Application map can be found on page 2 of **Doc. ref 17.4**). The reason for this is that when the Order was being drawn up, it was realised that the class 4 highway, Witcombe Farm Lane, was shown on the List of Streets as stopping short at the southern boundary of 2

Hillview Cottages and that it did not in fact extend as far as the access to the reservoir. (Whilst the road was shown on the County Council's computer mapping system as extending as far as the access, it is the List of Streets which is the legal document). The Order map therefore includes an additional length A-B, a length of approximately 65 metres. The total length of the footpath in the Order is therefore approximately 275 metres.

- 6.3 Before the Order was published further checks were carried out with respect to landownership. Anne Bennett, of Charles Russell solicitors advised that the Witcombe Estate is held in two Trusts: the Witcombe Trust and the Mark William Hicks-Beach Will Trust. However Land Registry searches revealed that the length A-B was unregistered (although Anne Bennett confirmed that land either side was in the ownership of the Hicks Beach family). For this reason the Planning Inspectorate was asked for dispensation for the service of notice with respect to the length A-B in accordance with paragraph 3 (4) of Schedule 15 of the Wildlife and Country side Act 1981. Dispensation was granted on 4 March 2009 and a copy of the Planning Inspectorate's letter of this date is attached at **Doc. Ref 7.1**.

7.0 Objection received

- 7.1 Following the publication of the Order, one objection dated 6 May 2009 was received from Charles Russell solicitors on behalf of the Witcombe Trust and the Mark Williams Hicks Beach Will Trust. A copy of the objection letter is attached at **Doc. Ref 6.1**. Charles Russell solicitors dispute the evidence and ask the Council to stand by its original decision at Committee and join with them in objecting to the Order.
- 7.2 In the light of the Appeal decision, the case was referred back to the Council's Commons and Rights of Way Committee to establish the Council's stance in relation to the Appeal and subsequent objection. The matter was reported to the Committee on 25 November 2009 and a copy of the Committee Report together with the Minute is attached at **Doc. Ref 5 (and 5.1-5.2)**. Having considered the appeal decision and the Inspector's judgement on the reasons given by members for refusing the application in 2007, Members at the Committee meeting on 25 November 2009 unanimously resolved to support the Modification Order.

8.0 County Council's Comments on Objection dated 6 May 2009

- 8.1 The Council's comments are as follows and take Charles Russell solicitor's paragraph headings in turn (**Doc. Ref 6.1**):
- 8.2 **Grounds of Objection (Charles Russell's paragraph 1.1)** – It is agreed that the relevant legislation is Section 53(3)(b) of the Wildlife and Countryside Act 1981. This states that an Order should be made to modify the definitive map and statement where it can be shown that a period of time has expired such that the enjoyment of the public of a path during that time raises the presumption that the way has been dedicated as a public path. It is considered, contrary to Charles Russell's assertion, that the applicant has in fact shown that this legal presumption has been raised.
- 8.3 Section 53(3)(c)(i) of the 1981 Act states that an Order should be made on the discovery by the authority of evidence which, when discovered with all other relevant evidence available, shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates. The two tests to be applied here are set out in *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw* (1994) and clarified in *R v Secretary of State ex parte Emery* (1997), as set out in more detail in paragraph 3.4 of this statement. The Secretary of State in the Appeal decision of 25 November 2008 considered that Test B had been met in this case and that a reasonable allegation had been made that a public footpath subsists along the route in question (paragraph 99 of Appeal decision). At its meeting on 25 November 2009 the Council's Rights of Way Committee agreed with this finding and unanimously supported the Modification Order.
- 8.4 **Section 31 of the Highways Act 1980 (Charles Russell's paragraph 1.2)** - As explained in paragraph 3.3 of this statement, the relevant 20-year period of public use as required by Section 31 is considered to be 1981 – 2001. The Council accepts that the landowner has submitted some evidence against the application, but does not agree that this is sufficient to show there was no intention during the relevant period to dedicate it, nor that there was only "limited use" of the way.
- 8.5 **Frequency of Use (paragraph 2)** –It is unlikely that any of the people either living or working in the vicinity of the path can have watched the path continuously and some users may well have walked through without being seen. The actual farm house is situated about 30 metres to the east of the path and faces south thus it is not very likely that the path can be seen from inside the building.

The position of the farm house is indicated on map 6B attached to the Council's Committee report of 20 March 2007 (**Doc. Ref 4.1 page 2**).

- 8.6 **Quality of Evidence (paragraph 3.1)** – It is not accepted that the evidence produced in support of the landowner is significantly better. Just because some of the users live some distance from the site does not mean they have not used the path. Some of the witnesses lived in the area during the time of their usage and have since moved away – this does not mean their evidence is any less valid. It is possible to drive to the area and walk from there. Charles Russell solicitors state that a number of the users live “a considerable distance” from the site. The Council's comments on those witnesses listed by Charles Russell solicitor are as follows:

Witness No 15 Gary John gives his address as Cranham which is just over 2 km to the south west of the claimed path. It appears he used to live in Brockworth as he states in his evidence form that he walked the path “from my home in Brockworth to friends in Cranham”. The centre of Brockworth is about 2 km to the north west of the claimed path: neither Cranham nor Brockworth are very far from the claimed route. To illustrate this point a location map of the local area is attached at **Doc. Ref 11** showing Witcombe and Brockworth. Mr John has provided a supplemental statement confirming his use of the path.

Witness No 20 Mrs Ruddleston gives her address as Berkeley. However in her path evidence form she states she walked from Great Witcombe and in a supplemental statement Mr Ruddleston explains that from 1987 until 2003 he and his wife lived in the Great Witcombe area.

Witness No 22 states he lives in Cheltenham which is about 8 km to the north east of the claimed path. In his evidence form he states he walked from home to the Roman villas to the cricket pitch to home.

Witness No 25 lives in Swindon. However in his evidence form he states he was going “formerly to and from home in Witcombe and latterly from relatives”.

Witness No 26 lives in Cheltenham and states in his evidence form he was going from “Witcombe village to reservoirs and beyond”.

Witness No 32 lives in Monmouthshire. However it is apparent from her evidence form that she lived in the Witcombe area up to 1983. This witness, Louise Taylor, is the applicant's sister and states she

walked from Pasaderas in Little Witcombe which is where her parents live. Louise Taylor has provided a supplemental statement confirming her use of the route.

Witness No 33 lives in Taunton but the witness has confirmed in a letter accompanying his evidence form that from 1967 to 1975 he lived in Cheltenham.

Witness No 42 This is Mr Ruddleston –the comments for witness No 20 above apply.

Witness No 47 lives in Stroud. However in his evidence form he states that from 1955 to 1997 he used to walk “from Little Witcombe (home)”.

- 8.7 Thus those witnesses who live a long distance away, such as Taunton, Swindon and Monmouthshire, lived in the Witcombe area when they walked the path. The other places mentioned are Brockworth, Cranham and Cheltenham: all are within walking distance of the path.
- 8.8 Charles Russell state “many claim to have used it only occasionally” but give only 5 examples. Of these, No 22 states he has used the path “several xxx10” sic (times a year); No 33 states “15 to 20 times a year” which the Council considers more than occasional use; and No 43 states “as a child often, after this about twice” (a year). It is agreed that No 14 states “occasionally” and No. 18 states “infrequently”.
- 8.9 Charles Russell solicitors also states, “much of the use falls outside the claim period”. However the 20-year period is a minimum and use prior to 1981 (the beginning of the 20 year period) helps to illustrate that this is a long-established path.
- 8.10 **Paragraph 3.2** As a general comment, many of the users are walking for recreation and would not therefore necessarily use the shortest route. Witness No 2, Mr James Gilbert the applicant’s father, has written a long supplemental statement testifying to his use of the route. Witness No 5 has also provided a supplemental statement confirming her use of the route. Witness No 12 states she used the route for “walking trips” from Brockworth. No 13 also walked from Brockworth: there seems no particular reason why they should not have done so. Witness No 45 has submitted a supplemental statement confirming his use of the path and, as stated

previously, witness No 47 although now living in Stroud used to live in Little Witcombe.

- 8.11 **Paragraph 3.3** Almost all the evidence forms are accompanied by a map on which each witness has marked the path he or she is referring to. Each map is signed and dated. All of those referred to by Charles Russell except one have marked the map attached to their evidence form to show the path in question. No 26 has not marked the attached map (it is not known why, presumably an error of omission) but he does state on his evidence form that he walked from “Witcombe village to reservoirs...” There is no reason why the claimed path could not form part of a circular walk.
- 8.12 **Paragraph 3.4** As explained in paragraph 8.5 of this statement, the actual farm house is about 30 metres to the east of the path and faces south, not towards the path. The site office and farmyard are in close proximity to the path although employees would presumably have had various tasks to undertake and could not have been watching the path continuously.
- 8.13 **Uninterrupted Use of the Route (Paragraph 4)** It is agreed that there are a number of instances where witnesses have been challenged. However these relate to the period 2004/2005. The date 2001 was taken as the date of challenge and any challenge after this date does not affect the 20-year period. With respect to the examples quoted by Charles Russell:

Witness No 8 states he was challenged on one occasion although he does not give the date on his evidence form. In his supplemental statement however he gives the date as 2005.

Witness No 14 was challenged in Spring 2005.

Witness No 22 states he was challenged. Although he does not give the date, Charles Russell state it was 2005 (their letter dated 7 July 2006).

Witness No 27 gives the date as Summer 2004.

Witness No 32 does not say she was stopped in her evidence form. Charles Russell allege she was “stopped on many occasions” (letter dated 7 July 2006). However the witness provided a supplemental statement in which she says “on no occasion was I ever asked to stop walking that way”.

Witness No 36 in her evidence form dated 18 May 2005 says that “Recently Celia Hicks Beach warned me that I must not use the path...”

Thus all the examples given relate to witnesses being stopped in 2004 or 2005 which does not affect the 20 year period of use (1981 to 2005).

Further analysis of the evidence forms with respect to the witnesses being challenged is contained in paragraph 14.10 of the Council’s Committee report of 20 March 2007.

- 8.14 **Use “As of Right” paragraphs 5.1 – 5.3** It is of course agreed that for the presumption of dedication to arise use cannot have been with permission. Charles Russell state that permission to use the route was given to the Wildlife Trust (and in their previous letter of 7 July 2006 refer specifically to path evidence forms from Mike Teesdale and Tony Metcalfe). However, as the applicant points out in his letter of 2 October 2007, it is not clear whether such permission was given only to Committee members of the GWT or given to all ordinary members. According to the applicant, Mrs Hicks Beach herself does not seem clear on this point.
- 8.15 The question of permission is dealt with at some length in paragraph 14.13 of the Council’s Committee report of 20 March 2007 which contains comments on all the evidence forms quoted by Charles Russell in their paragraph 5.2. In summary, it is accepted that some users walked the path with permission, but not nearly as many as those listed by Charles Russell. Of the witnesses listed by Charles Russell, it is accepted that Nos. 5, 17, 19, 33 and 45 used the path for some part of the time with permission, but by no means all. Witnesses 39 and 40 state they were given permission many years ago by Mrs Diana Hicks-Beach. However as the Committee report states, the fact that some people used the way with permission will not necessarily prevent use by the public in general from being without permission (*Beresford Trustees v Secretary of State for the Environment and Cumbria CC* 1995).
- 8.16 **Lack of Intention to Dedicate ... (paragraph 6)** – It is accepted that there was a challenge in 2001 by virtue of the notices erected at that time. Although there has been some verbal challenge, as paragraph 8.13 of this statement explains, this relates to the period 2004/5. Of the witnesses listed by Charles Russell, Nos 7 and 32 do not say they were challenged in their evidence forms and, in her supplemental statement, No 32 emphatically denies being

challenged. The remainder of the witnesses given as examples by Charles Russell (14, 22, 27 & 36) were, as explained in paragraph 8.13 above, all challenged in 2004 or 2005 and **not during the relevant 20-year period.**

- 8.17 **Other Matters (paragraph 7.1)** – Great Witcombe and Cranham are very attractive areas. The Cotswold Way runs through Witcombe Wood and Coopers Hill and there is a Roman Villa in the vicinity. It is the type of area where people are likely to take circular walks for pleasure and not necessarily the shortest route. The map of the local area at **Doc. Ref 11** may assist here.
- 8.18 **The Poll (paragraph 7.2)** – this relates to a survey carried out by the then Chairman of Great Witcombe Parish Meeting, Mr T Buxton, by means of sending a letter to each household with a reply slip for each person eligible to vote. However this was to gauge local opinion and it does not constitute evidence. Further, the survey only covered a limited area as only the inhabitants of Great Witcombe were entitled to vote. The claimed path lies near the edge of the parish boundary, as illustrated by the map at **Doc. Ref 11**, and users of the path living in Brockworth or other areas were not entitled to vote. It should be noted that Mr Buxton himself gave evidence on behalf of the landowner in a statement dated 8 November 2005, as did Mrs Buxton, although this was not received by the Council until later, being enclosed with Charles Russell's letter of 7 July 2006.
- 8.19 The Inspector in the Appeal decision commented that whilst the survey may have been conducted in a genuine attempt to gauge local opinion, ...it cannot provide evidence of the claimed route...It is not evidence of the landowner's lack of intention to dedicate a public right of way and can only express the feelings of the members of the parish some considerable time after the qualifying period of user". (paragraph 94 of Appeal decision **Doc. Ref 16**).
- 8.20 **Veracity of Evidence...(paragraph 8.1 of Charles Russell's objection)** – Charles Russell state although use is claimed in some instances back to the 1930's, the path was not recorded on the Definitive Map following the initial survey under the National Parks and Access to the Countryside Act 1949. Whilst it is true that the path is not recorded on the Definitive Map, the very purpose of the current legislation (Section 53 of the Wildlife and Countryside Act 1981) is to enable applications to be made for paths to be added to the Definitive Map that were not included when the Map was produced in the early 1950s. The Definitive Map is based on information provided by parish councils following the 1949 Act and

parishes within Gloucestershire varied widely as to the amount of research they carried out and the number of public rights of way actually claimed. In an earlier letter (dated 4 July 2007) Charles Russell state that there is an entry in the minutes of Great Witcombe parish meeting dated 31 March 1951 which shows that “the parish approved maps showing public rights of way with modifications”. However, as the applicant has pointed out, the minutes record that only 3 people were present: Major W W Hicks Beach MP (Chairman), Mrs D Hicks Beach and Mrs Cox which does not show there was consultation with the wider community. The Minutes have been examined by the County Council. Thus it is not accepted that the failure to record the route at an earlier stage casts doubt on the veracity of user evidence which in any case is outside the 20-year period.

- 8.21 Inconsistencies in recollections of users (paragraph 8.2) –** Charles Russell again raise their point about the gate only being recollected by only some of the witnesses. This matter is referred to in paragraph 14.18 of the March 2007 Committee report. One of the witnesses for the landowner, Mr Arnold Price (now deceased), stated that “Up until the 1970s there was always a gate across the farm entrance...”(at point B on the Order map). “This was removed when the farm machinery used was too wide to access through the gate.” Six supporting witnesses refer to a gate in their evidence forms but a further 16 who also began using the path before 1971 do not refer to a gate. However there was no evidence as to whether the gate was locked or even closed. If the gate was closed, it is the purpose for which it was closed that is relevant. For example if a gate is closed for stock control this would not prevent a public right of way from coming into being. The Inspector in the Appeal decision agreed with the applicant’s explanation that the gate was often open and unnoticed by users of the route and that its presence did not preclude the dedication of a public right of way (paragraphs 92 & 93).
- 8.22 Recollections of users re: Notices (paragraph 8.2) –** Charles Russell state that the recollections of the witnesses of the existence of the notices (at point B on the Order map) also sheds doubt on the reliability of their evidence. The Council considers that it would be suspicious if all evidence forms said exactly the same thing. In this instance 32 of the 49 supporting witnesses have referred to the WITCOMBE ESTATE. PRIVATE LAND. NO PUBLIC RIGHT OF WAY notices in their evidence forms and 16 of the witnesses have referred to the PRIVATE ROAD. NO UNAUTHORISED VEHICLES notice. Paragraph 14.19 of the March 2007 Committee report gives more detail on this.

8.23 **Paragraph 8.3** – this point has already been dealt with in paragraphs 8.6 and 8.17 of this statement.

8.24 **The Relevant Standard of Proof (paragraphs 9.1- 9.3)** – It is agreed that the test for confirmation of an Order is the “balance of probability” test. Having considered all the points raised by Charles Russell in their objection letter and carefully reconsidered the user evidence in the light of this, the Council has come to the conclusion that not only is the evidence in support of the Order credible, but that it substantially outweighs the counter evidence put forward on behalf of the landowner. It is therefore considered that the relevant test has been met.

9.0 Further Comments on Documentary Evidence

9.1 Although the documentary evidence does not assist with respect to the status of the route, it is perhaps worth drawing attention to the Ordnance Survey maps examined as these show that the Order route has existed as a physical feature as far back as 1884. It is interesting that the earlier Bryant map of Gloucestershire of 1824 shows a route following a similar alignment to the Order route although running to the east of Witcombe Farm (rather than to the west of the Farm as the Order route). Bryant’s key indicates he believes the route to be a “lane or bridleway”. These documents are referred to in paragraphs 11.3 and 11.4 of the Committee report of 20 March 2007 and copy extracts of the documents are attached at **Doc. Ref 4.1** (Item E and Fi & Fii).

9.2 As the 2007 Committee report states, the Inland Revenue map sheet 34/6 is not held in Gloucestershire Archives and sheet 34/10 is not coloured. A search has been carried out in the National Archives and whilst they do not have sheet 34/6, they do have sheet 34/10 which is coloured. On this map, Witcombe Farm lies within hereditament No. 449. The accompanying Book of Reference for this hereditament lists a deduction of £50 under “Public Rights of Way or User”. However there are other paths in the vicinity and it is not possible to tell which path the deduction refers to. Copy photographs of the map and relevant entry are attached at **Doc. Ref 18.2** (Item E and F - front & rear).

9.3 Further research into the documentary evidence was undertaken at Gloucestershire Archives and the National Archives in 2014 and this is set out in **Doc. Ref 18.1 and 18.2**. These documents included a Witcombe Manor plan for 1704, a Witcombe Estate plan c.1800,

Great Witcombe Tithe Map for 1837, Conveyance of land for reservoir 1859, 1910 Finance Act valuation plan, form 37 and Field Book, and also looked at the objections to the draft map by Major W W Hicks-Beach M.P., of Great Witcombe.

- 9.4 The Witcombe Manor plan for 1704 shows a road or way passing to the east of Witcombe Farm, which is marked. The 1800 Estate Map and the Tithe Map for 1837 both show a road or way running to the east of Witcombe Farm, where it terminates. The 1859 conveyance of land for Witcombe Reservoir show a track running to the west of Witcombe Farm.
- 9.5 Research at the National Archives on the 1910 Finance Act map field book entry for Witcombe included an entry under “Fixed Charges, Easements, Common Rights and Restrictions” for “Cart road and footpath.”
- 9.6 Major W W Hicks Beach M.P., Chairman to the Great Witcombe Parish Meeting, objected in 1955 to the draft definitive map of public rights of way for Cheltenham Rural District Council, as it related to Great Witcombe parish. It was noted in paragraph 8.20 that the parish meeting of 31 March 1951, which approved the maps showing public rights of way with modifications, was only attended by three people: Major W W Hicks Beach M.P. (Chairman), Mrs D Hicks Beach and Mrs Cox. A letter from the County Surveyor to Major Hicks Beach dated 4 August 1955 states that “The original map was subsequently checked through with Mr A G Organ, now deceased, who, it is believed acted on behalf of the Parish Meeting when you were away. From this meeting a number of further paths were agreed to be public rights of way, and were duly shown on the Draft Map...” It would seem that Major Hicks Beach objected to five paths which were included within the parish submission by the parish meeting in his absence. Although the claimed route was not one of the six paths to which he objected, this correspondence does provide us with an insight into how the parish meeting undertook its duties under the 1949 National Parks and Access to the Countryside Act.

10 Conclusion

- 10.1 Having carefully considered the objection to this Order, the Council believes that although there is evidence on both sides, the user evidence in this case is cogent and substantially outweighs the evidence put forward on behalf of the landowner. On the basis of the user evidence, supported to an extent by the documentary evidence, the Council considers that the test for confirmation of the Order has

been met and that on the balance of probability a public footpath subsists along the Order route.

10.2 The Secretary of State's decision in relation to the Appeal was decided in favour of the applicant and, in contrast to their original decision, members of the Commons and Rights of Way Committee on 25 November 2009 unanimously resolved to support the Modification Order. For these reasons, the Council respectfully requests that the Modification Order dated 18 March 2009 be confirmed as made.

END.