

PROOF OF EVIDENCE OF:

Karen Pearman
Highway Records & DMMO Team Leader
Gloucestershire County Council

Title of Order:

S53 of the Wildlife & Countryside Act 1981
Definitive Map of Public Rights of Way for Gloucestershire
(Additional Length of Footpath at Witcombe Farm)
(Parish of Great Witcombe) Order 2009

Planning Inspectorate Reference:

ROW/3354782

Public Inquiry:

6 October 2026
Council Chamber, Shire Hall,
Gloucestershire County Council
Westgate Street, Gloucester. GL1 2TJ

INTRODUCTION

1. My name is Karen Pearman. I am the Highway Records & DMMO Team Leader for Gloucestershire County Council ("GCC"). I have been the Team Leader since 2011, and I oversee the investigation and processing of Definitive Map Modification Order ("DMMO") applications in accordance with the Wildlife and Countryside Act 1981 ("the 1981 Act").
2. This Proof of Evidence supports GCCs request that the Inspector acting on behalf of the Secretary of State ("SofS") confirms the "Additional Length of Footpath at Witcombe Farm) (Parish of Great Witcombe) Order 2009" ("the Order").
3. Evidence relied upon by GCC in support of the confirmation of the Order is detailed in GCCs Statement of Grounds/Statement of Case and appended documents.

BACKGROUND INFORMATION

4. The DMMO application was submitted on 6 September 2005 by Dr Nic Gilbert ("the Applicant") of Wychbury in Great Witcombe. The application sought to add a public footpath from Witcombe Farm Lane through Witcombe Farm connecting to Public Footpath AWG4, as shown between points A-B-C-D on the Order Plan (GCC Submission ref: 01). The application was supported by 49 Public Path Evidence Forms ("PPEF"), with some additional representations being submitted later.
5. The land subject to the application was, at the time the application was made, owned by the Hicks Beach family ("the Landowner(s)"), and - as at 5 August 2026 - it remains so, under the name of Frederick David Hicks Beach (Title number GR324318).
6. The application was duly investigated and a Determination Report ("2007 Report") written by a former member of the Highway Records team in conjunction with our Legal Services department (GCC Submission ref: 04). It was taken to the GCC Commons & Rights of Way Committee ("CROWC") on 20 March 2007. Whilst the 2007 Report concluded that there was strong user evidence dating back to the 1930's and the statutory test of "reasonably alleged to subsist" was considered to be met, the Committee were not satisfied, and it was determined that no order should be made.
7. The Applicant appealed the refusal on 9 April 2007.
8. The appointed Inspector, Helen Slade, allowed the appeal in her detailed judgment dated 21 January 2008 (GCC Submission ref: 16), and directed GCC to make an Order. The

Order was made and sealed on 18 March 2009 (GCC Submission ref: 01), and subsequently published as required.

9. One objection to the made Order was received by letter dated 6 May 2009 (GCC Submission ref: 06.1), from Charles Russell Solicitors on behalf of the Witcombe Trust and the Mark William Hicks Beach Will Trust (“the Objectors”).
10. Whilst the objection was duly recorded in 2009, there is no statutory requirement compelling immediate submission to the SofS. Unfortunately, resource constraints within the department necessitated prioritisation elsewhere meaning there was a delay in the submission. Following a review of priorities and capacity, and as the objection had not been withdrawn, the matter was allocated to another Highway Records Officer. The case was submitted to the Planning Inspectorate (“PINS”) (acting on behalf of SofS) in October 2024.
11. It is accepted there has been a long delay in bringing this matter forward, and this has meant that a number of those who filled out PPEFs are no longer contactable, having either relocated or, sadly, passed away.
12. However, it is important to note their evidence was accompanied by a signed and witnessed declaration that the information given was true to the best of their knowledge and belief, and so is no less valid.
13. Unfortunately, the Case Officer who submitted the matter to PINS in October 2024 became significantly unwell just prior to the commencement of the Inquiry timetable; as a result, responsibility for the matter transferred to me, as the Team Leader.

LEGAL TESTS AND STATUTORY FRAMEWORK

14. The relevant statutory provisions are:
 - Section 53(3)(c)(i) of the 1981 Act (discovery of evidence that a public right of way subsists or is reasonably alleged to subsist).
 - Section 31(1) & (2) of the Highways Act 1980 (“HA 1980”), relating to presumed dedication following 20 years’ use “as of right”.
15. To meet the statutory criteria, the facts must demonstrate:
 - A minimum of 20 years’ uninterrupted use by the public “as of right” (without force, secrecy or permission).
 - No evidence of landowner intention to prevent dedication.

- Sufficient user and/or documentary evidence to satisfy Test A (a right of way subsists) or at minimum Test B (a right of way is reasonably alleged to subsist), as outlined in Defra Circular 1/2009. Noting that it is Test A to confirm an Order.

16. The act which brought the right of the public to use the order route in question is taken to be the erection of suitably-worded notices in 2001, such that the relevant twenty-year period is considered to be 1981 to 2001. This date range was deemed reasonable by the Inspector who considered the Appeal (GCC Submission ref: 16, paras 71-74).

HISTORIC DOCUMENTARY/MAP EVIDENCE

17. It is considered that analysis of the available historic documentary/mapping evidence (GCC Submission ref: 04 & 04.1) shows that none depict the Order route in a manner that could support a historic claim.
18. I therefore consider historic documentary/mapping evidence to be neutral in determining the existence of the claimed right.

USER EVIDENCE

19. The absence of the path from historic documentary/mapping evidence, however, does not prevent dedication arising through long-term public use. Thus, the case is considered to rest upon modern user evidence.

THIRD-PARTY STATEMENTS OF CASE (submitted to PINS August 2026)

20. It is noted that four Statements of Case were submitted ahead of the Inquiry: three in support and one in objection.
21. It is further noted that the Statement of Case Objection was a copy of the Objection submitted in 2009 (GCC Submission ref: 06.1) on behalf of the Witcombe Trust and the Mark William Hicks Beach Will Trust, and nothing new was added.

POINTS OF DISPUTE

22. The arguments, as set out in the Objector's filed 2009 Objection, have been commented upon previously in the Council's Statement of Case, but the main points of dispute are themed and summarised as follows:

Frequency of Use

23. It is evidenced in the PPEFs (GCC Submission ref: 15.1-15.4) that use ranges from “*infrequently*” to “*3-4 times a week*”. Whilst the Objector comments they were “*extremely surprised*” by the claimed frequency of use by those who filled in PPEFs, it must be noted that (1) it is unlikely that any of the people either living or working in the vicinity of the path could have watched the path continuously in order to see all use, and (2) many of the users were not known to the Landowner or their representatives.
24. Furthermore, as confirmed by Inspector Helen Slade in her Appeal Decision (GCC Submission ref: 16, para 77), “*The mere fact that the landowner’s witnesses had not seen many of the user witnesses using the claimed route does not constitute evidence that the claimed use did not take place*”.

Distance travelled to reach claimed path

25. The Objector comments that the distance of the User’s address from the path is pertinent (GCC Submission ref: 06.1, para 3.1), citing 9 (out of the 49 who submitted evidence) users as living ‘distant’ from the claimed path. Thereby, conversely though, also acknowledging that 40 were ‘local’.
26. However, the fact that some of the witnesses lived in the area only during at least part of the time of their usage, does not mean their evidence is any less valid. Unlike Village Greens, a public right of way does not operate just for a ‘neighbourhood’.
27. All 49 witnesses stated that they used the claimed route for reasons of leisure and/or exercise. When choosing to walk for such reasons, the public will often travel in a vehicle to reach the start of their walk.
28. It is acknowledged that some of the frequency of use dropped whilst the User lived away; however, the evidence - when considered as a whole - was considered sufficient across all 49 PPEFs.

Not the obvious path to take for some users/mistaken use

29. The Objector states (GCC Submission ref: 06.1, para 3.2), “*there is no obvious reason why those people should use this particular route*”. However, when walking for leisure and/or exercise, people will often not just take the most direct path from one location to another.

30. The evidence shows that at least 9 users (Users no's 2,6,7,9,16,24,36,44,48) used the claimed route as part of a defined circular walk, returning to the point they started from - use is not required to be to a 'specific destination'.
31. The Objector's claim that the Users were mistaken as to the route they were using is simply not supported by the evidence, particularly given they accept that at least 40 Users had local connections, and so familiarity, with the area.
32. With regard to the Objector comments regarding the use of the 'alternative' Public Rights of Way in the area. Although there were comments in the PPEFs that the 'alternative' route was often boggy/flooded, contained a stile and/or sometimes housed horses, there is no suggestion that use of the claimed route was used under a 'right to deviate'. The evidence is far more consistent with users exercising a perceived public right along the Order route, rather than users regarding their use as merely conditional on the state of the alternative (i.e. in response to occasional obstructions or inconvenience).

Verbal challenge to use

33. In terms of those that the Landowner or their representatives alleges to have turned back, the evidence from the PPEFs demonstrates that 31 Users said they had not been verbally challenged.
34. Of those who commented they had been turned back, 16 (of the remaining 18) said they had only been challenged after 2001/02, which was outside the relevant period 1981 to 2001. Of the remaining 2 users (User no's 21 and 28), both were said by the Landowner to be unknown to them. User 21 also states they were "*greeted pleasantly by the occupier of the land over the past 20 years*" (GCC Submission ref: 15.2, pg 11, qu.8d).

Permission to use

35. Whilst the Landowner claims to have given permission to a number of Users, it should be noted that 45 users claimed that no permission had been given prior to the end of challenge period.
36. Of the remaining 4 Users, 3 (no's 39 & 40 [married]) and 41) state that permission was given, but the date of such was not noted. The fourth (no. 18) states they were given permission for the annual Rogation Service, but additionally that they "*never knew it was not an ordinary lane that people could use to go to the reservoirs and other foot paths*" (GCC Submission ref: 15.2, pg 2, qu.9).

37. User 45 (Rev. John Thornton) also mentioned permission being given for the annual Rogation Service. However, it is unclear as to whether that permission was specifically just in relation to use of the claimed route, or to include additional use of the Landowner's land. Additionally, the Reverend also stated that, in respect of his personal use of the claimed route, permission had not been given.
38. It is not considered that permission given for an annual religious service on a given day over an unspecified area of land means that all use of the order route at other times would be with that permission.
39. Permission for use needs to be expressly given; it cannot be 'assumed' or 'implied' simply by, say, seeing the owner (or their representative) and not being told not to use the route, or by just having a 'chat' while 'passing by'. Such encounters do not count as permission.

Notices on site

40. Evidence shows that there were 2 Notices on site (near point B on the Order plan). The below photographs (paras 41 and 42) were taken on 29 September 2005. (The DMMO Application date was 6 September 2005).

41.



42.





Copy of this image included only to show that it's not relevant to this claim.

- 43.
44. It is unclear as to when the “PRIVATE ROAD. NO UNAUTHORISED VEHICLES” notice was first erected. However, it is contended that such a notice only relates to use by vehicles and would have no bearing to use on foot.
45. The evidence suggests that the “WITCOMBE ESTATE. PRIVATE LAND. NO PUBLIC RIGHT OF WAY” notice appeared in 2001/02 (GCC Submission ref: 16, Appeal Decision para 71), which ultimately contributed to the lodging of the Modification Order Application by the Applicant. As a consequence, it is contended that it would not interrupt the statutory period relevant to dedication, being 1981 - 2001.

Other comments by the Objector

46. The Objector has challenged certain aspects of the testimonies of some individual users regarding their assumed fitness and ability; however, such views are opinions or conjecture, rather than based on fact, and so are not considered relevant.
47. The Objector has also suggested that the evidence submitted by relatives of the Applicant carry less weight. However, the fact they are related to the Applicant makes their evidence no less credible, as they are reporting on their own separate use of the route.
48. Other suggested inconsistencies with regard to the existence (or not) of gates would not preclude the dedication of a right of way. Whilst several Users noted the gates, there was no evidence they were ever locked to prevent access. The Inspector in the Appeal decision stated that its presence did not preclude the dedication of a public right of way (GCC Submission ref: 16, para 92 & 93).

Other comments by Users

49. In order to further support the confirmation of the Order, I pick out the following 10 comments made by Users, 9 of whom report the full 20 years use over the challenge

period (one having 17 years), with such use commencing from 1930 through to 1984, and none having been given permission or turned back from using the path during the challenge period.

- (i) “It is a pity that a path which has been used for so many years by local people has now been closed” (User 5, born 1935).
- (ii) “We are claiming use of this roadway by local people for over 25 years prior to the closure in 2001”, and “I am not in the habit of trespassing” (User 10, born 1928; Chairman of the Brockworth Parish Council Rights of Way Committee).
- (iii) “For almost 40 years I have walked freely in this area” (User 12, born 1937).
- (iv) “This road has been used for many years by myself, husband and his parents and family for over a hundred years” (User 17, born 1923).
- (v) “In the past it seems to be a very busy footpath used by local people from the village” (User 19, born 1934).
- (vi) “All my life this road has been a right of way” (User 30, born 1926).
- (vii) “We always used it as a right of way” (User 34, born 1925).
- (viii) “I always assumed that this way was alright to use as the owner never said otherwise, and was always said good day to by the owner” (User 36, born 1943).
- (ix) “Have used this path for many years until I understood that there was a problem” (User 46, born 1948).
- (x) “My family and I have used this path regularly (for much of the time on a daily basis) since 1957 to 2005 and have on no occasion been told not to use it” (User 48, self-described as “over 21”).

50. It is considered that the body of user evidence, taken as a whole, is sufficient in both quantity and credibility to suggest that the public had enjoyed use of the claimed route “as of right” for an uninterrupted period of 20 years leading up to 2001.

CONCLUSION

51. In case law *R. v. SSETR (ex p. Dorset) [1999]*, the judge considered that although the evidence within five PPEFs was truthful, it was insufficient to satisfy the statutory test. It

is therefore considered that, in this case, there is more than sufficient user evidence of use without force, secrecy or permission over the 20-year period of challenge from 1981 to 2001 to satisfy the test.

52. Whilst there is some evidence within the comments of the Objector and the Landowner's Witnesses (GCC Submission ref: 09.02) suggesting that certain users may have been challenged or were never seen using the route, it is difficult to reconcile that rebuttal with the substantial body of user evidence, where 49 individuals provided signed evidence forms attesting to their use of the route; the majority stating that they used it openly, without force, secrecy or permission, and without challenge over the relevant period.
53. The Notices, too, are not considered to defeat the claim. The "No unauthorised vehicles" sign would not be applicable to users on foot, and the "No public right of way" signs, being only erected in c.2001/02, only served to provide the period of challenge - they were not in situ during the period of challenge.
54. I therefore do not consider that the Objector has produced sufficient evidence to demonstrate that, during the 20-year period from 1981 to 2001, the Landowner(s) undertook sufficient overt and effective actions of a kind that would have communicated to the public as a whole a clear lack of intention to dedicate the route as a public right of way.
55. I consider that use of the claimed route prior to c.2001 was "as of right" and there is substantial evidence that the Landowner acquiesced in that use during that time. It was seemingly only after c.2001 that the Landowner's position changed and use was challenged; however, not before the right is considered to have been created.
56. Consequently, I believe the evidence overall is considered sufficient to raise a presumption that the way has been dedicated and that the Order to add the length of public footpath at Great Witcombe to the Definitive Map of Public Rights of Way between points A-B-C-D on the Order Plan should be confirmed as made.

STATEMENT OF TRUTH

I, Karen Pearman, confirm that the evidence contained in this Proof is true to the best of my knowledge and belief, and that the opinions expressed represent my professional judgment.

Signed:



Dated: 2 September 2026