Planning Inspectorate

Order Decision

Inquiry opened on 6 October 2026

Accompanied site visit made on 7 October 2026

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 9 November 2026

Order Ref: ROW/3354782

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Definitive Map of Public Rights of Way for Gloucestershire (Additional Length of Public Footpath at Witcombe Farm) (Parish of Great Witcombe Gloucestershire) Order 2009.
- The Order is dated 18 March 2009 and proposes to modify the Definitive Map and Statement ('DMS') for the area by adding a footpath.
- One principal objection was outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is confirmed.

Preliminary Matters

1. I have been appointed by the Secretary of State to determine whether to confirm the above Order. I held a public local inquiry opening on 6 October 2026, sitting for three days.

2. I inspected the alleged footpath ('the Order route') unaccompanied in the afternoon of Monday 5 October. I subsequently inspected it and the immediately connecting routes accompanied by representatives of the main parties to the Inquiry on Wednesday 7 October, and was able to observe certain features discussed during the Inquiry. Following the close of the Inquiry on 8 October I inspected the wider area, walking in a loop from St Mary's Church to the Cotswold Way and back via the reservoir 'causeway' along footpath AWG4, from which I was again able to observe much of the Order route.

3. The Inquiry was greatly assisted by the Council's production of a comprehensive bundle of the relevant available documents. Any references in this decision to documents are to them as paginated by that bundle, with the exception of some users whom I have referred to by their 'witness number', as used by the main parties and as set out in the Council's summary at page A77 and in the landowner's comments at page A154.

4. One objection was made to the Order within the relevant publicity period. A number of late objections were received shortly before or during the course of the Inquiry, and the main parties were able to comment on those (and on representations made in response by the applicant and one of his sisters). Two further representations were brought to my attention after the close of the Inquiry. They raise matters relevant only to the present merits of any footpath and have no evidential bearing on the matters before me.

5. At the time of the original application (in 2005) and the making of the Order (in 2009) objections to it were pursued on behalf of two Trusts who were between them the owners of parts of the route (and the surrounding land). The land has apparently since changed hands and now appears to be owned by one of the beneficiaries of those Trusts. Whilst there appears no documentary evidence before me of the land having been assigned, or (if it has) of the objection having been assigned to the present landowner, in reality the same individuals (save where deceased) have been involved throughout. No issue as to standing was taken by any party to the Inquiry. I shall refer to the 'objectors' (i.e. in the plural) in this decision, and where the context requires to the 'landowner' or to the 'Estate'.

6. The matter has previously been the subject of a reference to the Secretary of State. The Council originally resolved to refuse the application, whereupon the applicant availed himself of the right of appeal. A comprehensive report of the written evidence then existing was made to the Secretary of State by Helen Slade MA FIPROW on 21 January 2008 (A513) with the recommendation that the Council be directed to make the Order sought, Ms Slade having concluded that a public footpath had been reasonably alleged to subsist along the claimed route. The Council were accordingly directed by the Secretary of State on 25 November 2008 (A509) and subsequently resolved to support the Order to confirmation.

The Order route

7. The Order route, a little less than 300m long, consists of the access road to Witcombe Farm and to the reservoirs. The road itself continues past the farm buildings on either side and turns 90° onto the causeway separating the reservoirs, being hard surfaced as far as the point coinciding with the western end of the northern dam wall to the southern reservoir. The track then continues (as footpath AWG4) giving access to the Reservoir Lodge, a presently disused dwelling, and a network of paths beyond. The original application concerned the stretch from a point (now point B on the Order Map, a copy of which is appended to this decision) where the access road from the north diverges, south towards the farm (along the Order route) and west towards the Severn Trent pumping house. The other end of the Order route is as applied for, at the point (now point D) where it connects with footpath AWG4 that runs westerly from the road at a point near St Mary's Church, crossing fields and passing the farmhouse before traversing the reservoir causeway and then turning south towards the Roman Villa and the Cotswold Way.

8. At its northern end, the Order route connects with the adopted carriageway network. At the time the application was made this was understood to terminate at what is now point B, but a subsequent examination of the List of Streets revealed that the carriageway network does not extend so far as that, but terminates at a point (now point A) adjacent to the end of the garden of the southernmost property adjoining the road on the east side (2 Hillview Cottages) and, on the western side, beyond the parking layby. Hence the Order as made was extended to encompass this part.

9. The part of the Order route between points A and B is on unregistered land whose ownership is unascertained. Accordingly, a dispensation as to service of notices of the Order was given by the Inspectorate to the Council in 2009 (A137).

10. At my request the Council produced a number of maps for use at the Inquiry which were helpful in identifying where users lived and the local paths they used. Map E6 shows the Order route in the context of the surrounding rights of way and local attractions. The reservoirs are accessible on foot from the east, south and west on routes that are each at least partly unmetalled. The Order route gives the only direct access to the reservoirs from the north and is the only route connecting to the carriageway network on a fully metalled surface. The area is not highly populated but settlements lie mainly to the north-west.

The Main Issues

11. Section 31(1) of the Highways Act 1980 ('the 1980 Act') provides that where a way over land has been actually enjoyed by the public as of right (which is to say, without force, secrecy or permission) and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway, in the absence of sufficient evidence of there having been no intention to dedicate it during that period ('the criteria'). An exception applies where the way is of such character that no presumption of dedication could arise, but it is not suggested that that is of any application here.

12. Section 32 of the 1980 Act requires me, before determining whether the Order route has been dedicated as a highway, or the date on which such dedication, if any, took place, to

take into consideration any map, plan or history of the locality or other relevant document tendered in evidence, and to give it such weight as is justified by the circumstances.

13. The question arising on confirmation of any Order such as this one is whether the above criteria are established on the balance of probabilities. In order to make the Order, the decision-maker needed to be satisfied only that a reasonable allegation (that a footpath subsists) was raised. The threshold of satisfaction is now a higher one. When reporting on the issue to the Secretary of State in 2008, Ms Slade acknowledged that there appeared to be a conflict of evidence in the case. I have now had the benefit of testing some of that evidence at the Inquiry.

14. Not all of the criteria applicable under section 31(1) of the 1980 Act have proved to be controversial in the case. I set out in my opening remarks to the Inquiry the issues on which I believed there to be some common ground. In particular there was agreement that any right of use by the public had been called into question in around 2001, giving a 20 year period for consideration of 1981–2001. I shall refer to this as 'the relevant period'.

15. Considerable time has passed since the Order was made, but there is no suggestion that any dedication (deemed or otherwise) of the route based on any use since the time the application was made has happened. Thus, unless I am to consider the position at common law, the only period for consideration is the relevant period referred to above.

16. During the relevant period it is common ground that (as found by the previous Inspector) no gates across the Order route were in place. The evidence of previous gates, and whether they were recalled by users, is an issue in the case going to the veracity of those users' evidence, but there is no suggestion that any gates, or any other factor, may have resulted in any forcible use during the relevant period.

17. Nor was any use carried out in secret, or under 'false pretences'. Although a number of people might have had a private right or permission to use the Order route for certain purposes, I did not hear any evidence of any use having been claimed by any users to take place under the auspices of any such permission where it did not exist. As Ms Slade concluded (A526), there is no credible evidence to suggest that all the use of the route that took place was in secret.

18. I heard no evidence of any interruption of any use as of right (of use as a footpath) during the relevant period.

19. Thus the principal issues for consideration turn on whether the amount of use of the route was sufficient to alert the landowner that a right was being asserted, whether that use was with permission, and whether the landowner took sufficient steps during the relevant period to demonstrate a lack of intention to dedicate the way.

20. My opening remarks to the Inquiry indicated that I considered the historical documentary evidence in the case to be neutral, but it became clear from the objectors' submissions and cross-examination of the Council's professional witness that this issue remains contentious. I therefore consider it below.

Reasons

Documentary evidence

21. The objectors raised some concerns over the Council's interpretation of the historical documents in the case, but did not put forward any positive evidence to suggest that those documents are anything other than neutral on the question whether a right of way historically existed. They did however put forward a submission to the effect that because the documentary evidence does not show the Order route as a dedicated right of way then the evidence is therefore that it is not a right of way. No basis for this assertion is given and I consider it unsound.

22. The documents in the case are mainly limited to some historical maps and sales documents. They reveal that the Order route has existed as a physical feature recorded on maps for several decades. Bryant's Map of 1824 depicts a route, indicated to be a lane or bridleway, on a similar alignment to the Order route although it appears to pass the farm to the east. Buildings now surround the Order route on both sides, but I understand that the route passes the historic centre of the farm on the farm's western side.

23. Sales particulars of the farm a century later show the Order route on its present alignment, together with the reservoirs that had been constructed in the interim. The farm was by then let on an annual tenancy to Mr Paget, who was in occupation of it for many years and is referred to by some of those later giving evidence in this case. The 1929 sales particulars revealed two vehicular private rights of way over the Order route; one in favour of the Gloucester Corporation and the other, extending up to the woodland to the south, in favour of the owner of Witcombe Wood. None of these documents is determinative or even indicative of there being or not being an historical public right of way on foot.

24. Further documentary evidence was belatedly brought to my attention in the objectors' closing submissions, in the form of the Gloucester Waterworks Act 1855 ('the 1855 Act'). That Act lent Parliamentary authority to the taking of lands and construction of the reservoirs. It granted fishing rights over the reservoirs to the owners of the manor and farm of Great Witcombe. It required the Local Board (apparently the precursor to the Gloucester Corporation referred to in the 1929 sales particulars) to construct a stoned road across the reservoir causeway and to grant the Farm and the Estate a right of way over it. It also entitled the Local Board to use "the private Road leading from the Village Street to Witcombe Farm" and provided for a contribution to be made towards the road's upkeep.

25. This is a strong indication that the Order route was a "private Road" at that point. No definition of a 'Road' is found in the 1855 Act, although it did draw distinctions between 'Roads' and 'Streets' and 'Ways' (sections 32 and 42). It is not determinative of the issue of whether any public rights on foot existed. In any event none of these documents affect the possibility of public rights having arisen as a result of use during the relevant period. Granting the Local Board a private right of way over the route would not preclude any public rights later arising.

Calling into question

26. I noted above that there was agreement on the relevant period for consideration, and I have no reason to depart from that. A combination of factors appears to have caused the landowner to assert, by way of barriers and signage, the private nature of the route in around 2001. Mr (Mark) Hicks Beach died in around 1998, and it is suggested by some users that there was afterwards something of a sea change in the attitude of the Estate to the use of the route by walkers (e.g. A58, A238, A501, A597). Near-contemporaneously, the Countryside and Rights of Way Act 2000 ('the 2000 Act') was enacted. Mr Knight (A187, in support of the objectors) identified this legislation as having prompted a notable increase in the number of people roaming the land, and Mr Ruddleston (in written and in oral evidence in support of the Order) also identified one summer, which he thought was 2002 or 2003, when there was a significant increase in users of the route. Mr (Frederick) Hicks Beach (A207) claimed a recent increase in user. The statement is undated (and the accompanying form wrongly dated) but appears to be from around 2005.

27. Nothing evidentially appears to turn on whether the calling into question was in 2001 or slightly later, save for the possible intervention of 'Foot and Mouth' restrictions in 2001. As Ms Slade identified in her report of 2008, (A527) those restrictions would not have amounted to an interruption of the use for the purposes of section 31 of the 1980 Act, for the reasons she then gave. Nor would those restrictions by themselves have called the public's right to use the route into question, because the restrictions were not imposed by the landowner but by legislative order.

Sufficiency of user

28. The issue for consideration here is whether there was enough use of the Order route during the relevant period to have brought home to the landowner that a right of way was being asserted by the public. Whether and to what extent the use was permissive (or 'by right', rather than 'as of right') will be considered in the next section. Here I concentrate on the overall use of the Order route.

29. As the Council pointed out in closing submissions, the evidence of the applicant himself was not cross-examined and is therefore unchallenged. The objectors did not seek to criticise it in any way, other than that they 'consider the reference to bailiffs strange'.

30. Dr Gilbert's statement of case (B2) is a model of clarity and I found him a straightforward witness. Having amassed the 49 user evidence forms (from 50 people) in the case more than 20 years ago, he reasonably asks the question why those 50 people, most of whom he did not know, would have all completed user evidence forms, and in half the cases made supplementary statements, to support the application unless they are telling the truth about their use of the route.

31. The objectors' closing submissions were accompanied by a summary of the user evidence forms that were submitted in 2005, with some commentary. Of those users, 11 attested to at least weekly use of the route for some or all of the relevant period. Some attested to using it only a handful of times a year. The overwhelming picture from that evidence is of unhindered use on foot over a very long period, including all of the relevant period, and in sufficient quantities for any reasonably observant landowner to have noticed. The oral evidence given to the Inquiry by some of those users was much to the same effect.

32. It was stated in closing submissions for the objectors that Mr Diett, who has resided at Berries Cottage since before the start of the relevant period, 'does not recognise that [the witnesses for the Claimant] used the claimed route as often or as regularly as claimed'. In fact, Mr Diett's written evidence was to the effect that he had never seen any of the users, many of whom were known to him, use the path despite his regular surveillance of the route (and despite having seen the landowner and the fishing bailiffs turn people back). Under cross-examination he conceded that he had seen two of them. Mrs Diett's written evidence accepted that she had seen some users, but not in the claimed quantities.

33. This is of a piece with some of the other evidence submitted by the objectors. Mrs Cross had occasionally seen walkers pass her property which is on the approach to the Order route (A170) and, like Mr and Mrs Diett's property, must be passed in order to reach the Order route. Mr Higginbotham (A172) occasionally saw walkers (although believed them to have been turned back). Mr Metcalfe had observed 'very few people' (A176). Mr Cross (at the same address as Mrs Cross) had witnessed some of the 'named persons' (which I take to mean those submitting user evidence forms) walking the path, and had witnessed ramblers' groups using it about 4 or 5 times a year. Mr Knight had seen groups using the route on many occasions.

34. There is conflicting evidence from others supporting the landowner's objection, who say they had not witnessed any use, although it is self-evident that people are unlikely to declare they had witnessed walkers when there had not been any, whereas it is quite possible that people will have honestly declared not seeing walkers even when those walkers had been there.

35. There were some minor inconsistencies between the recollections of users at the Inquiry. For example, Mr John appeared to consider that the gates had remained present until the 1980s, whereas other witnesses were not aware of them. (On the evidence of Mr Price, I find that the gates were removed in the 1970s.) The applicant himself appeared to recall the development of the stable buildings at the farm differently from the facts as described by Mrs Davies with which Mr Cooper concurred.

36. As I stated in my opening remarks to the Inquiry, the matters for consideration involve events of up to nearly half a century ago, and I do not expect anyone's recollections to be perfect. Those recollections are undoubtedly coloured, however unconsciously, by the interests of those making them. That is to be expected. The matter was evidently the subject of some local tension around the time the application was made, to the extent that a village poll was conducted.

37. Some users report having used the Order route more often in the winter months, when the adjoining paths were subject to flooding. This appears to have coincided with the fishing close season when the bailiffs were not present on the site. This might partly (although by no means wholly) explain the discrepancy between the volume of those saying they used the Order route and the landowner's evidence saying that use was not witnessed.

38. I was generally persuaded by all of the oral evidence given in support of the Order, and particularly by that of the applicant and his two sisters of having made frequent use of the Order route, and of having had it pointed out to them as an available route by the vendors of their house when moving in. Photographs were supplied of the family making use of the route, including one of babies in perambulators in around 1990 taken beyond the metalled section of the causeway (B12). I accept the applicant's contention that the only way the prams will have made it to that point will have been via the Order route, because the other connecting paths will have been too difficult to negotiate.

39. A number of those submitting forms or statements in support of the objectors say that the route has a reputation as being a private way. The applicant submitted some evidence to the contrary, in the form of the Gloucester Wildlife Trust's pamphlets about the reservoirs, including directions for access (A146). Those directions included the edict "Do not take cars beyond farm entrance".

40. Mr Diett in his written evidence stated that the road to the front of his property is a single track road and there is no car parking, and this was reiterated by the landowner in 2006 when commenting on the application (A156) who stated the only available parking was at the Church or the Twelve Bells public house. There is nowadays a parking layby in the highway verge on the western side of the approach road to point A. I am not informed whether its appearance has changed since the relevant period, although photographs suggest the hedge has not moved and any grass was formerly kept short (A112).

41. Mr Dymott reports parking, possibly there but certainly in the verge of the road to Great Witcombe, before using the Order route on foot on dates falling within the relevant period (A598). Mr Beale reports parking 'on the verge' before walking through the farmyard, although possibly at a time predating the relevant period (A599), and Mr Owen also reports walking down the main track past the farm to the causeway from the mid-1980s (A597).

42. Thus it is not implausible that users of the nature reserve, perhaps upon reading the Trust's pamphlet and access directions, and whether or not members of the Trust, will have parked near to the Order route and used it (on foot) to access the reservoirs. There is some evidence that this was done, although the written evidence of the 50 (and more) users is itself persuasive of there being frequent use of the route.

43. Additionally, Mrs McNeill gave some oral (and written) evidence to the Inquiry of her use of the route as part of a local walking group. This was organised by Mrs Hellerman who had also submitted a user evidence form in the case (A455). Mrs McNeill's evidence that the walking group, consisting of 10 or 20 people, would use the Order route about once every 4 to 6 weeks (and she would also use it with her family) was unchallenged, and recorded in the closing submissions of both main parties to the Inquiry.

44. This absence of challenge was somewhat surprising, given the landowner's previous contention (A155) that neither Mrs McNeill nor any group had been seen by the landowner, her employees, neighbours or other users of the stable and yard. Mr Cross's evidence,

being that of a neighbour of the landowner who reported seeing 4 or 5 walking groups each year, had been submitted in 2006 under cover of the same correspondence as the landowner's assertion that none of her neighbours had witnessed any such groups. This inconsistency rather undermines the credibility of the landowner's evidence. I accept Mrs McNeill's evidence, which is largely consistent with that submitted by Mr Cross and Mr Knight.

45. Use by a walking group of up to 20 people at intervals of every four to six weeks over most of the relevant period (Mrs McNeill having joined the group in 1983) would unquestionably have brought home to the landowner that a right was being asserted. Mrs McNeill's evidence also assists in lending credibility to the accounts of other Brockworth residents whose evidence the landowner had suggested must be viewed with some caution given the settlement's distance from the Order route. Mrs McNeill's frequency of use is evidence in itself that the Order route was not too far from Brockworth for a recreational walk; and the landowner has not specifically identified why the accounts of any particular Brockworth residents should be disbelieved on this basis.

46. Having regard to the totality of the evidence, both written and as imparted to the Inquiry, I have no reason to depart from Ms Slade's finding at paragraph 80 (A526) that it is more likely than not that some use of the Order route has been made by the public during the relevant period.

Deviation

47. A subsidiary issue appeared to me potentially to arise upon reading the written evidence in the case, which was whether the Order route might have been used in the exercise of a 'right of deviation' from other routes, particularly the eastern section of footpath AWG4, and I asked to be informed about this at the Inquiry.

48. There were some complaints in the user evidence of the surrounding paths having been at times impassable and so the question arose whether the Order route was used out of necessity (and, if it was, whether that was in the exercise of a right). The point was not pursued by any party to the Inquiry and I am satisfied it does not arise, essentially for the reasons given in the Council's closing submissions. Although the surrounding routes were on occasion flooded, and there were reports of unfriendly horses in the fields, the general picture is one of the Order routes having been used simply in preference to those other routes which may have had disadvantages but were not obstructed.

Use with Permission

49. The objectors called no oral evidence to the Inquiry to suggest that anyone submitting user evidence forms had used the Order route with permission, and this did not form part of their closing submissions in the case. The assertion that was made, in closing submissions, was that a number of people or cohorts were given permission to use the Order route. That appears to be accepted on both sides, although the extent of any permissions given is disputed. Additionally, in earlier correspondence (A132) the landowner had asserted that most of those using the route were people to whom permission had been given, and identified a number of those submitting user evidence forms as benefitting from such a permission. None of those users gave oral evidence to the Inquiry.

50. The landowner identified 13 of the original 50 users (on 49 evidence forms) who were said to have used the route with permission. The Council's closing submissions explained the limited nature of some of the permissions conferred, but even taking the landowner's case at its highest, it leaves a number of users who must be conceded to have used the route without permission.

51. The cohorts identified by the objectors as benefitting from permissive access rights were the fishery syndicate, day ticket fishermen, the bailiffs, Rogation Sunday, Severn Trent staff and occupiers of Reservoir Lodge, those visiting the Gloucester Wildlife Trust, the liveries at the stables, farm and livery staff, Cheltenham Ladies' College and certain individuals.

52. I accept the Council's submission that a permission conferred for a limited purpose or duration would not render the entirety of that person's use permissive. For example, the former vicar, the Rev. John Thornton (no. 45) was permitted to conduct an annual Rogation Service via the Order route. His user evidence form carefully set out the distinction between his 'professional' and his 'recreational' use of the route, and he had retired in 1991. Not all (or even most) of his use will have been permissive. I also accept the Council's submission that any permission to use the Order route conferred by a previous occupier (namely, Mr Paget) will not have survived the change to when the landowners took up occupation, at least unless it can be shown (which it has not been) that Mr Paget had conferred any such permissions with the authority of the landowners.

53. The reservation of fishing rights to the owner of the farm in the 1855 Act will have meant that anyone using the fisheries will be likely to have done so at the invitation of the landowner and thus their use of the Order route (or at least of points B–D) will have been permissive. However, the Estate did not call any witnesses to give any evidence on matters of estate management, and it is difficult to discern the exact extent of any permission conferred upon the Gloucester Wildlife Trust ('the Trust') or its members.

54. The Trust appears to have established a presence at the reservoirs in about 1971 (A145). Mr Comrie (no. 33) suggested that the Water Board had given the Trust permission to access the reservoirs. Mr Bradshaw (no. 49) suggested that there was an access agreement between the Trust and Severn Trent Water, although 'our members been refused access'. It has not been explained how Severn Trent, or the 'Water Board' (who are likely to be the successor to the 'Local Board' of the 1855 Act) will have had any power to authorise anyone to use the Order route, which they do not own, for a purpose seemingly unconnected to the Board's statutory purpose for which they themselves have a right to use the route, as conferred by section 51 of the 1855 Act.

55. It is suggested by Mr Metcalfe (A175) that users of the nature reserve were advised that there was no right to access the reserve via the Order route but that they should access it via the footpath (AWG4) from St Mary's Church. Mr Teesdale (A639) reported that Committee Members of the Trust had been granted an express permission by the landowner to use the claimed path. The applicant for the Order made enquiries of the landowner about the scope of any permission conferred on the Trust or its members at around the time the application was made. He did not receive a written reply (A637) and reports a conversation with the landowner in which she appeared to have been uncertain about the nature of any permission which had been conferred (if at all) by her late husband. Mr Metcalfe's suggestion (A175) of there being a number of letters on file about the apparently disputed status of the route over a 20 year period was unfortunately not followed up by any party; or at least, those letters have not been submitted in evidence.

56. The balance of the evidence that is available is that the Committee Members of the Trust are likely to have had a permission to use the Order route, for Trust purposes. There is no credible suggestion of any wider permission having been conferred on the Trust's members by the landowner, and it has not been explained to me satisfactorily (or at all) why the Water Board would have had any authority to have granted anyone a permission to use the Order route for any purpose other than in pursuit of their own functions.

57. The lack of any oral evidence to the Inquiry about the management practices of the site as a whole, apart from in Mrs Davies' evidence about the riding yard, during the relevant period (or at any other time) means that I have received no explanation about how any

permissive users were anyway identifiable to the landowner or her servants or agents. This omission was identified by Ms Slade in her report (A526). I have also received very little evidence about the relative numbers of permissive users compared with the overall users.

58. For the reasons I have given above, I would discount as a permissive user anyone attending the nature reserve who was not a Trust committee member. It appears the Trust may have been reasonably active during the relevant period, having been established there a decade before the relevant period began, and subsequently producing pamphlets about the reservoirs. Those pamphlets (A146-151) are undated, but the telephone and fax area code numbers on them suggest they post-date 1995. The applicant wrote in 2005 of there being 'so many people using the stables and fishing facilities' (A145) and raised the question 'how a few more people would make any difference'.

59. If the Order route were the subject of a lot of permissive use, then ordinarily I would expect, as a corollary, that a relatively large amount of 'non-permissive' use would need to be evidenced in order to bring home to the landowner that a public right was being asserted. A very few 'as of right' users against a large quantity of permissive users might struggle to demonstrate this, especially if those different classes of users were not easily distinguishable. Here, little evidence was called to the Inquiry about the amount of permissive use made of the Order route, end-to-end by pedestrians, during the relevant period.

60. Mrs Davies, in examination-in-chief, stated that the fishing numbers 'would vary'. In response to my questioning, Mr Cooper's oral evidence to the Inquiry was that the number of fishermen seen at the reservoirs was about the same now as it has always been; which is to say low numbers. Mr John recalled seeing fishermen only very infrequently. There were no fishermen visibly present on any of my site inspections, although the dates and times of those may not have been representative of the overall fishing activity, whether now or during the relevant period. Nonetheless it appears unlikely that the landowner will have employed fishing bailiffs (although one of the two submitting evidence in the case stated that he was engaged on a voluntary basis) unless there was a sufficient amount of trade to justify the ongoing concern.

61. Whatever the numbers, however, I would expect that the majority of those attending the site for fishing purposes will have been readily distinguishable from footpath users by reason of being in possession of fishing rods and tackle, as well as by calling in at the bailiffs' office and in some cases being known to the bailiffs. There is, and for at least part of the relevant period was, also a dedicated area on the farm for their car parking, and I heard no evidence that any fishermen arrived at the site on foot.

62. The Rogation Service appears to have been an annual event and readily distinguishable for that. Those delivering mail (even as far as the Reservoir Lodge, so using the entirety of the Order route) will be likely to have been distinguishable by the Royal Mail uniform or vehicular livery (as I observed on one of my site visits) or, in the case of delivering a local parish magazine, to have been relatively infrequent. Those using the Order route to access the stables will likely have been distinguishable by their attire and by reason of stopping at the relevant buildings on the farm and not completing the transit of the entire route. Many of those permissive users will have arrived by car rather than on foot. Mrs Davies stated in oral evidence that the Cheltenham Ladies' College pupils would arrive by minibus.

63. Additionally, it appears that personal permissions were granted by the landowner to local individuals who may have had difficulty accessing the reservoirs any other way. Trevor Buxton was one such (A211). I would expect all those persons in receipt of a personal permission to have been known to the landowner by sight. Although the landowner claimed to have granted a personal permission to a number of those submitting user evidence forms in the case, she did not identify how many other people, i.e. those not submitting

such forms, benefitted from such a permission. In the absence of such evidence I have no reason to conclude other than that the numbers were limited.

64. Visitors to the occupier of the Reservoir Lodge, who appears to have been in the employ of the Water Board (as identified in Mrs Peachey's re-examination), may have been permissive users, but only Mr and Mrs Peachey have been expressly identified in that respect, and they did not visit the occupier on each occasion of using the Order route. In this regard I am not informed that any occupier of the Reservoir Lodge will have benefitted from any right of way over the Order route other than that conferred on the Water Board by the 1855 Act. It has not been explained to me how, or if, this right would extend to the personal visitors of the occupier of the Lodge.

65. On this issue I have no reason to disagree with Ms Slade's overall assessment that, whilst it is possible that some of the use which has been made of the Order route has been with permission, however vaguely implied or imparted, there is significant evidence of claimed use that has been carried out as of right. Users of the stables or the fishing facilities will probably have been distinguishable on sight, or will have had reason to call into the buildings adjoining the route. Those benefitting from personal permissions will probably have been known to the landowner. Against that background, the use that has been carried out as of right by others has been of a sufficient quantity to have made it clear to the reasonably observant landowner that a right was being asserted.

Demonstration of a lack of intention to dedicate

66. Although the late objections are of no probative value in determining whether there has been any (or any sufficient) use of the Order route as of right, they do at least attempt to explain why the landowner might wish to prevent the public's use of the route. The present explanations about why a public footpath is undesirable for a horse riding business or livery yard do not appear to have pertained at the beginning of the relevant period, when the route was ungated and the land use was, I understand, generally agricultural.

67. I find the claim that the fishing bailiffs were employed with the express remit of turning back users to lack credibility. Although Mr Higginbotham (A172) stated that he had cause to turn back people attempting to walk the claimed path, he does not describe this as forming part of his responsibilities, which were to issue fishing permits and supervise the signing in and out of season ticket holders. He also stated that the bailiffs' office was open and manned for only 34 weeks of the year; indicating that for a third of each year no bailiffs were on site to turn back any users. Mrs Davies confirmed the fishing activity to have been seasonal.

68. Mr Knight (A185) stated that there were not many walkers that he didn't miss (thus suggesting that there were several that he did). Although having worked as a voluntary bailiff for some eight years at the time of his evidence, given in 2005 and thus covering part of the relevant period, his discussion of turning back users is given entirely in the present tense and it is unclear whether he had been taking these measures during the relevant period or only since the erection of the additional signage he discusses after 'matters came to a head' following the passing of the 2000 Act. His discussion of his working hours suggests that no bailiff cover was provided during the winter months, which would be consistent with Mr Higginbotham's statement.

69. Oral evidence given at the Inquiry about the practice of turning back walkers was principally given by Mrs Davies, who was employed on the site for around six years during the relevant period. She was adamant that it was the practice of her and of the fishing bailiffs to have turned back walkers, but was unable to identify any particular examples. Her specific concern appears to have been with unauthorised parking on the site, which would have been consistent with the contemporaneous signage asserting that it was a private road with no access for unauthorised vehicles.

70. Mrs Davies spoke from a position of evident loyalty to her former employer. She suggested that Mr and Mrs Hicks Beach had between them 'set the tone' of the yard, and that tone would have been to have expected walkers to be turned back. Other witnesses had different views about this. Mrs Canbilen, who spoke to the Inquiry as an interested party, suggested that the tone had instead been set by Mr Hicks Beach and Mr Price, the landowners' farmhand who had been employed at the site since 1956. She recalled seeing them both, and that Mr Hicks Beach would nod and smile but not fall into conversation. She recalled seeing Mrs Davies, who had never turned her away but once took her to see her horse. The fishing bailiff at the time, Ron Stevens, she recalled as being quite chatty and once giving her a trout.

71. Mr Price's own written evidence (A168 and A183) although asserting that people using the claimed path had been turned back by the landowners or their employees, or other users of the yard, did not profess to have done so himself.

72. Mr Diett's oral evidence differed from his written statement. His written claim to have over the years seen both Mrs Hicks Beach and the bailiffs turning people back on occasions when they have attempted to walk the claimed path did not survive cross-examination, when he was unable to confirm that he had witnessed any such exchange. He did not claim to have turned back users personally.

73. Mrs Diett did profess to have explained to passers-by that the route was not a public right of way: in her written evidence this explanation was given to 'anyone enquiring' and in oral evidence she estimated that this had taken place around half a dozen times. Approximately a third of those giving user evidence forms were known to Mrs Diett, and she witnessed a small number of those using the Order route. She did not claim to have challenged any of them or to have witnessed any challenges made by or on behalf of the landowner. I accept her evidence. However, it is not suggested that her explanation to passers-by that she considered the route to be private would have amounted to any effective challenge on the landowner's behalf.

74. In closing submissions, it was put to me that some individuals seeking to utilise the Order route and submitting evidence were in fact turned back. The landowner's reference to a number of witnesses, six in all, in this regard was then drawn to my attention, and I have considered the landowner's comments on the evidence forms set out at pages A154-162.

75. The landowner herself (at the time) claimed to have turned back only one of those users (no. 36, Olivia Dell) with the remaining reports all hearsay evidence of people having been turned back by one or other of the bailiffs, her late husband, her son, and in one case (no. 27, Miriam Beard) a person unspecified.

76. Mrs Beard's written evidence (A430) was that she had been challenged in 2004. In Ms Dell's case her own evidence (A462) given in 2005 described this challenge as having happened 'recently' which suggests that it was also beyond the relevant period. Her witness statement (A283) was adamant that Mr (Mark) Hicks Beach had never told her not to walk through the yard notwithstanding that there was another contentious matter between them.

77. Witness no. 8, Michael Roberts, concurred in his written evidence with the landowner's assertion that his use had been challenged. In oral evidence he clarified that this had been in 2005, again beyond the relevant period. Witness no. 14 Mrs Peachey's written evidence (A389) was that the 'confrontation' had taken place in the Spring of 2005. She had previously (pre-1992) been told to stop cycling along the Order route, which would be consistent with the then-existing signage referring to unauthorised vehicular use.

78. The challenge to Mr. Cooper (Jnr), witness no. 22, was on the landowner's own case not said to have taken place until 2005 (A157). Mr. Cooper's own evidence form (A143) did not

identify the date of challenge, but he did state he had used the route unchallenged for 19 years beginning in 1985.

79. The remaining witness who was apparently challenged was Mrs Taylor, no. 32. She also gave oral evidence. Her use of the Order route was principally before 1983. She did not recall any challenges to that use and did not recall having personally met either of the (former) landowners. The submission by the landowner is that the late Mr (Mark) Hicks Beach up until 1983 stopped Mrs Taylor on many occasions from walking her dog along the claimed path. If correct, it is not clear whether this was an objection to the pedestrian or to the dog.

80. Mrs Taylor was not cross-examined on her oral evidence that she did not recall speaking to any of the landowners, or on her assertion that if she had been told to stop walking the Order route as a teenager then she would have done so. I found her an impressive and honest witness and accept her evidence that she was not challenged in her use of the Order route.

81. I therefore find that there was no effective challenge during the relevant period to any pedestrian use of the Order route made by any of those whose evidence has been submitted to the Inquiry. The oral evidence of others to the Inquiry is very much to the contrary. Mr John spoke in particular to the early part of the relevant period and recalled the yard staff being friendly. Mr Cooper and Mr Ruddleston each recalled the landowners driving past them on the route without any challenge being made.

82. It appears common ground that any gate at what is now 'point B' had been removed before the beginning of the relevant period. The evidence of the objectors (Arnold Price at A168) is that it had been. Thus no challenge can have been made to users, or lack of intention to dedicate the route have been demonstrated, on the basis of a gate having existed. I understand the existing gate at that point, and the chain barrier at point D, to have been installed at or after the end of the relevant period.

83. The only outstanding point on this issue, of evidence of any lack of intention by the landowner to dedicate the route as a footpath, is that of the pre-existing signage. (The existing, or recent, signage being one of the factors that called the use into question in around 2001, marking the end of the relevant period.)

84. Solicitors for the landowner (A603) noted that it appeared to be undisputed that a sign at (what is now) point B stating 'Private Road' had been in place throughout the relevant period. Those solicitors did not then assert that this sign was sufficient evidence of the landowner's lack of intention to dedicate the route. Nor was this claimed in the objectors' closing submissions.

85. A photograph of that sign shows it to have displayed the words 'Private Road' and 'No Unauthorised Vehicles'. This clearly communicated that it was asserting the vehicular use of the road to be private; and there is some uncertainty about which road it even referred to, being at the junction with the Water Board's access road.

86. Either way, I find that it was asserting the private vehicular use of the road, and was insufficient to have amounted to communication of the landowner's lack of intention to dedicate a right of way on foot. That the former signage was insufficient in this regard appears to have been recognised by the landowner, in that the replacement signage installed in around 2001 was differently worded by unequivocally stating that there is no public right of way.

87. Therefore on this issue I conclude that there was no sufficient communication of any lack of intention by the landowner to dedicate a public right of way on foot during the relevant period.

Conclusion

88. I have not referred to every witness's oral or written testimony in this decision but I have given it all careful consideration. For all the above reasons, I am satisfied on the balance of probabilities that the asserted right of way subsists. Accordingly, I conclude that the requirements for confirming the Order are satisfied.

Formal Decision

89. I confirm the Order.

Laura Renaudon

INSPECTOR

APPEARANCES

For the Order Making Authority:

Counsel	Rowena Meager, instructed by the Solicitor to the Council
Who called:	Karen Pearman, Highway Records & DMMO Team Leader
	Dr Nicholas Gilbert
	Mr Michael Roberts
	Mr David Cooper
	Mrs Louise Taylor
	Mr Gary John
	Mr Simon Ruddleston
	Mrs Teresa Peachey
	Mrs Ann McNeill

Opposing confirmation of the Order:

Richard Drew	appearing for the landowner
Who called:	Mrs Georgina Davies
	Mr Anthony Diett
	Mrs Carole Diett

Interested Parties:

Mrs Penelope J Canbilen

THE ORDER MAP

