

GLOUCESTERSHIRE COUNTY COUNCIL (“GCC”)

STATEMENT OF REASONS

Modification Order Application

DEFINITIVE MAP MODIFICATION ORDER APPLICATION TO ADD A LENGTH OF PUBLIC FOOTPATH AT HEMPSTED, FROM RECTORY LANE TO ZGL64, HEMPSTED PARISH, CITY OF GLOUCESTER, GLOUCESTERSHIRE

*Please note that all appendices refer to the electronic list submitted to PINS in association
with this Statement.*

INTRODUCTION

1. Please find attached a copy of the DMMO Determination ‘CROWC’ Report, appendices, additional appendices and presentation (**Doc refs: DR02, DR02a, DR02b and DR02c**) considered by Gloucestershire County Council’s Commons and Rights of Way Committee (CROWC), when the application was determined on 2 June 2026. Please also find CROWC minutes attached which records the decision made (**Doc ref: DR01**). In responding to Mr Mead’s appeal, reference is made to paragraphs, maps and photographs contained within this report.
2. Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 provides that an Order should be made to modify the Definitive Map and Statement if evidence is discovered which, when considered 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 in the area to which the map relates.
3. The application was considered on the basis of the documentary evidence found and user evidence submitted. Section 31 of the Highways Act 1980 provides that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention to dedicate during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
4. This application was also considered at Common Law. In order for the route to have been dedicated at common law, the evidence should be such that it can be inferred that an owner(s)

of the land over which the route passes, intended, at some time in the past, to dedicate the footpath rights and the public, by using the route, accepted that dedication.

BACKGROUND INFORMATION

5. The application is for an additional length of public footpath. A plan for the claimed route is attached to the CROWC report appendices (Doc ref: DR02a, Appendix JAH2) of which the claimed route is annotated A-E. The claimed route runs from point A at Rectory Lane to point E at the junction of public footpath ZGL64 and is marked by a blue line on the plan. **NB.** Reference is made to the points shown on this plan throughout this submission.
6. The land over which the claimed route crossed was in the ownership of Gloucestershire County Council until March 2014 when a portion of the land (A-D) was transferred to Messrs Warner until January 2024 when it was finally transferred to the current landowner Mr S Harwood (A-D). The other portion of the claimed route (D-E) has been in the ownership of Enovert South Limited from 1993 until the present day.
7. A deposition under Section 31(6) of the Highways Act was made by P Parkinson of KMT Farming and Consultancy Ltd on behalf of the Landowner, Mr S Harwood, which was submitted on 19 June 2024 with a date to reaffirm by 18 June 2044. This deposit is not retrospective and therefore it acts from the deposit date only. In this instance, and as outlined in paragraphs 10.3-10.5 of **Doc ref: DR02**, the user evidence for this claimed route was assessed over the 20-year period prior to March 2024 so consequently it will not affect the application.

DESCRIPTION OF CLAIMED ROUTE

8. A location map at scale 1:10,000 is attached at (**Doc ref: DR02a, Appendix JAH1**) showing the position of the claimed route within Hempsted parish, approximately 1 mile south-west of the City of Gloucester. It is found within Ordnance Survey Grid Squares SO8116 to SO8017.
9. Site inspections were carried out on 10 September 2024 and on 15 October 2024 (also accompanied by the landowner Mr Harwood). At Point A (junction of Rectory Lane) was a wooden gate with a public footpath yellow arrow waymark pointing in a southerly direction (identifying the route of ZGL64), two public footpath fingerposts (identifying the routes of ZGL64 and ZGL165) and an undated map showing the location of the "Glevum Way" (ZGL156 and ZGL64) and asking walkers to stay on the public right of way. The claimed route then continued across unenclosed grassland to Point B. At Point B was an open section of hedging with a sign to the right stating '*PRIVATE LAND no public access or right of way*'. The claimed route from Point B crossed unenclosed grassland to Point C where there was a locked metal kissing gate with barbed wire covering an opening to the side of the gate and where a permissive path roundel was attached to a fence post. Section C-D being closed, the site inspection then recommenced at Point E (at the junction with ZGL64). At Point E (with the junction of Public Footpath ZGL64) was a metal gate with two public footpath signs on the opposite side indicating the route of ZGL64. The claimed route then continued along

a grass track to a metal gate at Point D which gave access to a bridge over the drain. To the left of the metal gate were two permissive footpath waymark signs indicating both the route of the claimed path going eastwards towards Point C, and another former permissive path (which continued northwards), which were partially obscured by plant growth. A further metal gate at the southern end of the bridge was locked, had barbed wire across the gate and a sign stating, "PRIVATE LAND No public right of way". Again, the route between Points D-C could not be accessed as, at that time, the claimed route ran through overgrown woodland. The site visit in October with Mr Harwood (landowner) present was walked in its entirety from A-E where Mr Harwood explained that he removed some permissive signs around March 2024, one at Point C and a post with a permissive path sign just west of Point A. Photographs showing the claimed route can be found at **(Doc ref: DR02a, Appendices JAH3A to JAH3R)**.

DOCUMENTARY EVIDENCE

10. In line with GCC practice, a report on documentary sources was compiled by the archivist at Gloucestershire Archives; these sources were then checked by the Definitive Map Officer. Please see **(Doc refs: DR02a, Appendices JAH4 to JAH7 and DR02b, Appendices JH1 to JH11)** for extracts of the below.
11. **Ordnance Survey 1811 2":1 mile Pen & Ink on Paper Drawing attributed to Robert Dawson (Cheltenham OSD172) Wikimedia** - The map shows a track on a similar alignment as the claimed route. The route is marked by double pecked lines which suggests it is open on both sides. It proceeds from what is known today as Rectory Lane towards the river. **Doc ref: DR02a, Appendix JAH4.**
12. **Ordnance Survey 1st edition 1":1 mile 1831 (Published at the Tower of London) Sheet 43 (National Library of Australia)** - The map shows a track on a similar alignment as the claimed route. The route is marked by double pecked lines which suggests it is open on both sides. It proceeds from what is known today as Rectory Lane towards the river. **Doc ref: DR02a, Appendix JAH5.**
13. **Ordnance Survey First, Second & Third Editions; 25":1 mile, Map sheets 33.2; published 1886, 1902 & 1923 - (National Library of Scotland)** - The claimed route is not identified. **Doc ref: DR02b, Appendix JH1, JH2 & JH3.**
14. **Hempsted Inclosure Map & Award 1815 (Gloucestershire Archives - Q-RI-79)** - The claimed route is not identified. **Doc ref: DR02b, Appendix JH4**
15. **'Plan of Lanthoney and Newark Estates in the County of Gloucester belonging to His Grace the Duke of Norfolk'– D134/P8 (nd) (Gloucestershire Heritage Hub)** - The claimed route is not identified within this map. **Doc Ref: DR02b, Appendix JH5**
16. **Bryant & Greenwood Commercial Maps 1824** – These maps did not identify the claimed route. **Doc ref: DR02b, Appendix JH6 & JH7**

17. **Hempsted Tithe Map 1840 (Gloucestershire Archives - GDR/T1/99)** – The majority of the claimed route, from Point A to approximately Point B, runs through an area which is identified as *'tithe free'* and therefore not shown. Section D-E is shown as enclosed and numbered 164 with a physical barrier at Point D. The apportionment indicates that 164 is owned by Rev Samuel Lysons and occupied by John Boyce and is described as *'Pasture Lane to Meadow'*, which could infer private usage. **Doc ref: DR02a, Appendix JAH6**
18. **Inland Revenue, maps compiled under the Finance Act, 1910, based on Ordnance Survey 25": 1 mile, c.1902 edition, Map sheet 33.2 – (Lloyd George Survey – online).** The claimed route is not identified. **Doc ref: DR02b, Appendix JH8**
19. **County Surveyor: papers relating to survey of footpaths under National Parks and Access to Countryside Act, 1949 ("NPACA 1949"); Glos Archives.** The application route was not claimed under this process. Extract of 'Draft Map' (**Doc ref: DR02b Appendix JH9**) and the published Definitive Map (**Doc ref: DR02b, Appendix JH10**) are attached.
20. **Countryside Stewardship Scheme – Gloucestershire Heritage Hub (D12676/4/24/11 – 1-3) The Department for Environment, Food and Rural Affairs (DEFRA).**
21. The Department for Environment, Food and Rural Affairs (DEFRA) operated a number of grant schemes, one of which was The Countryside Stewardship Scheme. This was an experimental scheme which was operated by the Countryside Commission from 1991 and it provided financial incentives to land managers in return for a five year agreement aimed at conserving wildlife, the landscape and historic features. Gloucestershire was one of many counties which took part in the scheme which provided for permissive access only and did not aim to create permanent rights of way.
22. A Conservation Walks and Rides in Gloucestershire Access Register was produced every year to show the conservation walks within the Gloucestershire area. Although there was a route shown within the Hempsted parish on adjacent land (Church Farms Ham), no evidence was found of any walks along the claimed route. **Doc ref: DR02b, Appendix JH11**
23. **Gloucester City Council: Planning Application A Household Waste Recycling Centre Plan 2005 (Ref : 05/0075/GLFUL/CAPS)** A full planning application for the construction and operation of a Household Recycling Centre (HRC) by Cory Environmental Ltd was submitted in August 2005. Within the Planning Statement, public rights of way were referred to as being located *'to the northeast and southwest of the application site. This will not be affected by the development proposals'*. There was also a footpath arrangement plan showing part of the claimed route (approximately from Points B-D) annotated as a purple unbroken line and shown in the attached key as an *'Existing permissive footpath'*. *This plan also shows the second former permissive path mentioned in paragraph 9 above.* **Doc ref: DR02a, Appendix JAH7.**

DOCUMENTARY EVIDENCE CONCLUSION

24. Although the claimed route is depicted on the 1811 and 1831 Ordnance Survey maps, their later disclaimer must be borne in mind: *'the depiction of a route is not evidence of the existence of public rights'*. Likewise, whilst the route is shown in part on the Tithe Map, that document was prepared for the assessment of tithable land and was not intended to record highway status. Consequently, the presence of the route on these maps provides evidence only of its physical existence at the relevant dates, not of its legal status.
25. In contrast, the route is absent from those documentary sources generally regarded as carrying greater evidential weight in questions of highway status, including the Inclosure records, the Finance Act plans and the process of compiling the Definitive Map. When considered as a whole, the documentary evidence demonstrates the existence of a physical route but does not provide sufficiently cogent evidence of public rights over it. Gloucestershire County Council therefore concluded that the documentary evidence, taken in isolation, was insufficient to demonstrate that the route had been dedicated as a public highway.

USER EVIDENCE

26. As shown in **Doc ref: DR02, Sections 10 and 11**, the use of the claimed route is considered, under both S31 Highways Act 1980 and at common law, to be by permission due to the existence of permissive path waymarks. Thus, use was not 'as of right', therefore rebutting the claim, on the balance of probability, that highway rights had come into existence through long use.
27. In analysing the user evidence, the starting point was to consider the date when, as the result of some action, the public's entitlement to use the way was challenged. User evidence showed that the earliest known date of challenge to the claimed route was as noted by User number 6, Mr Bricknell, who stated that use of the application route was *'obstructed and closed in March 2024'*. This was largely corroborated by the landowner, Mr Harwood, during the September 2024 site visit (see paragraph 9 above), as stating he removed the permissive roundels in March 2024. Therefore, the user evidence was assessed over the 20-year period prior to March 2024.
28. The application was supported by 11 evidence forms completed by individual members of the public. All 11 individuals claimed use of the application route on foot dating back to 1963, but only the evidence of 8 individuals were accepted because they identified a route which is consistent with the depiction of the claimed route as shown by the applicant. Three individuals claimed different routes from the claimed route:
- User number 2 (**Doc ref: DR03, 02_J_Roderick**) claimed use of section A-C only. As a DMMO application must relate to a route with a clear termination point at another highway or at a recognised place of public resort, this evidence does not meet the necessary criteria and therefore cannot be included within the assessment for this report.

- User number 11 (**Doc ref: DR03, 11_M_Barker**) claimed use of a route from point A but in a generally west south-westerly direction to connect with Public Footpath ZGL64. This an entirely different alignment to that claimed by the applicant and therefore cannot be included within the assessment of the report.
- User number 4 (**Doc ref: DR03, 04_D_Stockwell**) claimed use of the route between points D-E but claimed a different alignment between points A-D which was considered to be sufficiently different to the route claimed by the applicant and therefore cannot be included within the assessment of the report.

Therefore, the evidence of these three individuals could not contribute to a claim of dedication either at statute or common law.

29. The completed user evidence forms are included at **Doc ref: DR03, numbered 01 - 11**. For ease of reference a summary of the evidence forms has been included (**Doc ref: DR04**) and the period of use is presented as a table at **Doc ref: DR02a, Appendix JAH8**.

Full period of 20 years

30. Of the 8 accepted statements of use, only 2 claimed use over the whole qualifying period c.2004-2024. It is not however essential for the claimed route to have been used for the full period of 20 years by the same persons; the period may accrue as a result of use by different persons for shorter periods (*Davis v Whitby (1974)*). Nor does it matter that the use is not continuous in the sense that it may not have occurred every day.
31. As an example, user number 6, Mr Bricknell also commented that *“The route has been in place for decades with the kissing gates inserted in the mid 1980’s under a council funded scheme to help young unemployed people return to work”*.

Use by the ‘public’

32. All of the 8 remaining qualifying individuals claiming use of the route lived within the Hempsted village area. Consideration was given to whether this constitutes use by the ‘public’ and in consulting the case law *R v Southampton (Inhabitants) 1887* which said, *“user by the public must not be taken in its widest sense... for it is common knowledge that in many cases only the local residents ever use a particular road or bridge”*, GCC concluded that the declared use of the claimed route does constitute use “by the public”.

Use ‘as of right’ (without force, secrecy, or permission)

33. For a claim to give rise to a presumption of dedication, user must be without force, secrecy, or permission. Use that complies with these three requirements is termed user ‘as of right’. The *House of Lords in R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335 (Sunningwell)* reasserted that if sufficient people carry on an activity openly

and for long enough without anyone trying to stop them, it is right and proper that the activity should be treated by the law as having a lawful origin.

34. There was no evidence of use by force or secrecy over the timeframe 2004-2024 leading up to the securing of the gates and removal of the permissive path roundels by Mr S Harwood (Landowner) in April 2024.
35. When considering use by “permission” however, although none of the remaining 8 individuals sought permission to use the claimed route, evidence was submitted and discovered that showed that sufficient use of the application route was by permission.
36. Of the 8 accepted statements of use, 5 had indicated that they had seen permissive route markers along the claimed route. They are follows:
- (Doc ref: DR03, 01_A_Meads) Mr Meads (applicant) - replied ‘no’ to seeing any signs but commented *“Permissive route marking on landfill side indicating path to the right usually this disappeared behind vegetation”*.
 - (Doc ref: DR03, 06_J_Bricknell) Mr Bricknell - described at Question 8a a gate after the concrete footbridge *“....onto permissive path alongside drainage ditch”*.
 - (Doc ref: DR03, 07_M_Davies) Mr Davies - described at Question 10 *“Permissive marking by concrete bridge indicating path around perimeter of landfill site”*.
 - (Doc ref: DR03, 08_E_Davies) Mrs Davies – described at Question 10 *“Permissive markings by concrete bridge showing track following the edge of land fill site”*
 - (Doc ref: DR03, 10_P_Burgess) Mr Burgess – Indicated ‘yes’ to Question 10 ‘Have you ever seen any signs or notices suggesting whether or not the application route is a public right of way? i.e. “Private”, “Permissive route only” etc.
37. It is therefore considered that this use would constitute use ‘by right’, i.e., by easement or permission, and not ‘as of right’.

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

38. Considering the case *Godmanchester 2007*, Lord Hoffmann approved the obiter dicta of Denning LJ (as he then was) in *Fairey v Southampton County Council [1956]* who held *“in order for there to be ‘sufficient evidence there was no intention’ to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path...that he had no intention to dedicate”*. The ‘sufficient evidence’ must be inconsistent with an intention to dedicate, contemporaneous, and been brought to the attention of those people concerned with using the way.

39. Section 31(3)-(6) Highways Act 1980, provides specific legal steps whereby a landowner can protect his land from claims for new public rights of way. Section 31(3) states *“Where the owner of the land over which any such way as aforesaid passes – (a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway..... in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway”*.
40. In this case, it was not known how long the permissive path roundels were in position as GCC did not find any evidence as to when the signs were installed on the claimed route but in *Sullivan J in R v SSE ex parte Billson 1998, approved by the House of Lords in Godmanchester (2007)*, it was held that the words 'during that period' in s.31(1) Highways Act 1980 do not require a landowner to demonstrate a lack of intention to dedicate throughout the whole of the relevant 20-year period. It is sufficient if the requisite evidence of lack of intention arises at some point within that period."
41. As was previously noted within paragraph 36 of this Statement, five out of the eight users, who claimed use of the route over the qualifying period, commented that there were permissive route markers at certain points along the claimed route. There was additionally evidence of the permissive nature of the route as indicated on the "Gloucester City Council: Planning Application A Household Waste Recycling Centre Plan 2005" plan (**Doc ref: DR02a, Appendix JAH7**).
42. As such, although it is not known when these permissive signs were erected, they were accepted as being in situ during the challenge period and so are considered to be sufficient evidence of a lack of intention to dedicate the claimed route and as a result the application would fail the statutory test for dedication.

The application was also considered at common law

43. The provisions of section 31 of the 1980 Highways Act do not supersede the principles of implied dedication that existed at common law before 1932, these principles being preserved by Section 31(9) of the 1980 Act which says that nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years.
44. If the test for statutory dedication under s31HA80 Act fails, public rights may nevertheless have been dedicated at common law where the actions of the landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted that dedication. As with statutory dedication, common law dedication requires that use by the public should be 'as of right'; without force, secrecy, or permission.
45. The lack of historical documentary evidence as to the status of the claimed route, the existence of the permissive path waymarks and the acknowledgement of 5 of the 8 individuals seeing those permissive path waymarks is not considered to constitute use 'as of right' and

therefore is also considered insufficient to give rise to an inference of dedication at common law.

APPELLANT'S COMMENTS ON THE GROUNDS OF APPEAL

'I was unable to attend the hearing as I was given only 4 days' notice and had already had a doctor's appointment for a heart condition. However, I was later able to watch the hearing via video available on the Gloucestershire County Council website.'

Point 1 - The applicant was emailed on 27 May 2026 (**Doc ref: DR06**) and given 7 days' notice of the Commons and Rights of Way Committee to be held on the 2 June 2026. This is considered to have been sufficient notice to allow the applicant to raise any questions in advance of the committee and, as acknowledged, he was able to watch it online. It must also be noted that whilst applicants may submit questions in advance of the Committee (and then ask a related supplemental question on the day), they are not able to contribute to the discussion of the Application at Committee.

'There was no indication that the evidential documents supplied had been studied by the committee members if they were indeed actually seen by them.'

Point 2 - The papers for the Commons and Rights of Way Committee meeting (**Doc refs: DR02, DR02a and DR02c**) were circulated to all Councillors and relevant staff members on 21 May 2026 nearly 2 weeks prior to the meeting. This included the officer's Report and appendices regarding the application. The documents are taken 'as read' on the day of the Committee, which means that the Case Officer is only required to summarise the salient points of the report and the relevant case law during the Committee.

'The data was summarised by a Council officer backed up with slides, but it seems the officer was unable to describe the requested footpath accurately and incorrectly stated that the majority of the local people who had submitted Evidence Forms knew the way was of a permissive nature'.

Point 3 - The assertion that the Officer was unable to accurately describe the claimed route or misrepresented the evidence is not accepted. Members of the Committee were provided with the full report and supporting appendices approximately two weeks in advance of the meeting, allowing adequate opportunity to review the evidence and familiarise themselves with the claimed route. During the meeting, the Officer gave a verbal presentation supported by photographs and mapping of the route in question. Following the presentation, Members were specifically invited to seek clarification on any aspect of the route, the evidence, or the Officer's recommendations. No concerns were raised regarding the description of the route, and the Committee was satisfied that sufficient information had been presented to enable it to reach an informed decision.

Point 4 - As set out in paragraph 36 of this statement, the evidence does not support the objector's contention. Of the eight user evidence forms accepted as evidentially valid, five individuals specifically recorded that permissive notices or signs were present on the route. This is a significant proportion of the user evidence and demonstrates that indications of the landowner's lack of intention to dedicate were apparent to a number of users. The presence

of such signs forms part of the overall body of evidence considered and must be assessed alongside all other relevant evidence when determining whether a public right of way is reasonably alleged to subsist.

'It may be that from Points F to G on the Enclosed Google Earth Image might have been permissive, but there was no visible signage to that effect'.

Point 5 - No weight can be attached to this point. The section identified by Mr Mead between points F and G on the enclosed Google Earth image (**Doc ref: DR05**) is not part of the claimed route under investigation. The presence or absence of signage on an unrelated section of path has no bearing on the assessment of the evidence relating to the claimed route and is therefore not a material consideration in this matter.

'The landowners – Enervate Company – has not objected to the map modification'.

Point 6 - No weight can be attached to this assertion. Enovert South Limited, a partial landowner affected by the application, did not engage with the consultation process and submitted no representation either in support of or in objection to the claim. Accordingly, its lack of response cannot reasonably be construed as evidence of support for the application, nor does it assist in determining whether public rights subsist over the claimed route.

'The slides shown of small roundels indicating permissive path were covered by vegetation and were very unlikely to have been seen by walkers'.

Point 7 - The assertion is not accepted. Mr Mead's own evidence acknowledges the presence of permissive path roundels on the claimed route. Whilst one of the photographs shows a roundel partially obscured by vegetation at the time the image was taken, this does not negate the existence of the signage nor justify the conclusion that it was "very unlikely" to have been seen by users of the route.

Furthermore, the evidence demonstrates that the signage was observed by users. As set out in paragraph 36 of this statement, five of the eight accepted user evidence forms specifically refer to the presence of permissive notices or signage on the route. This provides direct evidence that such indications were visible to, and recognised by, a significant proportion of users. Accordingly, the contention that the permissive signage would have been unlikely to have been seen is inconsistent with the available evidence and is not supported by the witness statements given to the Authority.

Additionally, the condition of the roundels were such that they had likely been in place for some time. This is further corroborated by the Gloucester City Waste Recycling Centre Plan from 2005 which also indicated the part of the claimed path shown as 'permissive'.

'There were no signs of any sort seen between A to E on the Google Earth image.'

Point 8 - This assertion cannot be substantiated by the Google Earth image relied upon. The resolution and scale of the image are such that it is not possible to reliably identify small features on the ground, such as signage, waymarkers, or other route infrastructure. Consequently, the absence of visible signs between points A and E on the image cannot be taken as evidence that no signage was present at those locations. The Google Earth image

is therefore of limited evidential value in determining whether signs were present along this section of the route during the relevant period.

Furthermore, whilst it is accepted that the aerial imagery shows evidence of “use” of the claimed path, it cannot give evidence of status - i.e. whether that use was without force, secrecy or permission.

‘The people who completed the Evidence Forms were residents who had lived in Hempsted for very many years. For example, I have lived at Hempsted for nearly 40 years during which time I used the way from its start at “A” Rectory Lane to the River Severn very often.

Point 9 – The Authority does not dispute that Mr Mead and other local residents have used the route over an extended period. However, the fact of use, even over many years, is not conclusive evidence that highway rights have come into being. The existence of public rights must be determined by an assessment of all relevant evidence, including the character of the use, the actions of the landowner, and any evidence indicating a lack of intention to dedicate the route as a public right of way.

‘I and many others had not seen a permissive sign in all of that time. I don’t know anyone who had. It was just referred to as “a footpath” that had existed for decades’.

Point 10 – Whilst Mr Meads can speak for himself, the attribution to “many others” is hearsay and should be given limited weight. Only 8 (accepted) Evidence forms were submitted, which is not in itself considered “many”; and the evidence submitted by a number of individuals under cover of signed Declarations of Truth, as set out in paragraph 36 of this report, does not bear this out.

‘The evidence forms contained descriptions of usage of the way and reasons why it was wanted to be retained. No mention was made of this by the Council officer. In short, the summary seemed to be very selective in the data presented and seemed to have wrongly focussed on the idea that there was an awareness that the relevant “way” was of a permissive nature’.

Point 11 - All evidence forms and their contents were analysed and all relevant information regarding actual use of the claimed route was taken into consideration and commented on within the officer’s report. Ultimately however, this application can only succeed if it can be shown that the submitted evidence meets the statutory or common law tests, one of which is that use is ‘as of right’. Issues of suitability or desirability are not relevant.

‘The hearing finished with a small number of appropriate questions leading to unsure or suggestive answers. 3 of the member councillors voted in favour of modifying the requested path. 3 others voted against based upon a presentation that ignored and misunderstood some of the evidence and details. This led to the need for a casting vote. There was clearly confusion about this and it was suggested that it should be decided by a coin toss! Perhaps this was intended as a joke, but the Chairperson had to be advised that she held the balance’.

Point 12 - All councillor questions were answered by Officers clearly, concisely and based on the evidence provided. The only point that was challenged was the unknown date that the permissive path signage was installed. However, as previously discussed in paragraph 42 of this statement, this is not relevant. The crucial factor was that the permissive signs were in situ and seen and acknowledged by the majority of those who completed User Evidence forms.

Point 13 – It should be noted that the elected members on this committee are relatively new to the process and, although they are required to have received training on DMMOs and associated case law in order to sit on the Committee, they were unsure of the procedure where a casting vote was needed. The ‘joked’ reference to a ‘coin toss’ was a result of the nomination of the new Chair of the Committee, which was decided much earlier in the meeting and not attached to the application decision in any way, and was also subject to a tied vote. In that part of the proceedings, the ‘coin toss’ was relevant; however, the officer from Democratic Services quickly clarified that the Chairperson does have the casting vote if the committee decision on an application is tied.

The coin toss decision (in respect of elections within the Committee) and the Chair’s casting vote (in respect of applications) are both in accordance with Gloucestershire County Council’s Constitution (GCC Constitution, Part 4 - Rules of procedure, Section 14 - Voting, Sub Section 14.2 - Chair’s casting vote) (**Doc ref: DR07, page 133**).

‘Thereupon instead of giving a detailed reason for her conclusion her response was “I agree with the officer” and voted against the modification’.

Point 15 - It should be noted that immediately after the end of the Officer’s presentation the Chairperson gave a very detailed summary of the application leading to her later agreeing with the officer’s recommendation. The Committee was recorded and is available for viewing at https://gloucestershire.public-i.tv/core/portal/webcast_interactive/1096871. A transcript of the Chairperson’s summing up is set out in **Doc ref: DR08** and the relevant period commences at the timestamp 00:47:50 and ends at 00:48:46.

‘The decision is described on the Gloucester County Council :[https://ww3.gloucestershire.gov.uk/PROW/ApplicationForm.aspx?RecordFilter=573%2f11%2f099(10)] as “Refused application on basis of insufficient relevant evidence” but was based purely upon the aforementioned suggestion that the majority of people who had presented evidence were aware that the path was permissive. I and people who presented their own evidence strongly reject this assertion! Little if any attention was paid to the content of the evidence forms supplied with the modification application’

Point 16 – The officer’s Report and presentation did acknowledge that there was some evidence of use by members of the public for 20 years and that it was without force or secrecy. However, as outlined above, the evidence as a whole suggested permissive use which means that their use was ‘by right’ not ‘as of right’ and is therefore considered to be insufficient to establish a reasonable allegation that rights subsist either by presumed statutory dedication or inferred dedication at common law. Therefore the decision was determined as ***“Refused application on basis of insufficient relevant evidence”***.

‘The availability of the path allows ordinary people on the edge of a growing city and young families to undertake a regular walk in the countryside to enjoy wildlife in all its forms close to home and of a manageable distance. It was highly valued by the residents of Hempsted Village and Gloucester City as an easy access to the River Severn. It was especially busy at times of the Severn Bore. It was also used as nature walks for Hempsted School’.

Point 17 - It is important to remember that a DMMO investigation is only concerned with whether a right of way already exists based on documentary evidence and/or evidence of public use. It does not create a new public right of way on the basis that it might be considered most suitable or desirable. With regard to the use by Hempsted School, no evidence was submitted to this effect (or on what basis such use was made).

Whilst the route may have been “highly valued”, the evidence submitted and discovered is not considered sufficient to demonstrate a public right.

‘The footpaths were assumed by many to be public rights of way as they were made accessible with gates, stile (at one time) and bridges by the Council. This may have been reinforced by the misleading direction given by one of the Public Footpath signs at the end of Rectory Lane pointing directly at the track in this application. This assumption included the footpath following the perimeter of the landfill site to the Severn Way as this completed the connection from Rectory Lane. I have never seen any unseemly or inappropriate activity on this route’.

Point 18 - The presence of gates, stiles and bridges on the claimed route suggests that the previous landowner(s) was not averse to public use of the application route but the installation of permissive path signs along it is evidence of a lack of intention to dedicate the route as an official public right of way.

Point 19 - The two public footpath fingerpost signs are both pointing in the general direction of the well-established public rights of way ZGL156 and ZGL64 of which both run from Rectory Lane.

‘Although in my case it is unlikely that advancing age will permit me to use the requested footpath for many more years it is important that the younger residents of Hempsted can continue to benefit from it. The land surrounding our cities and towns is being hugely urbanised and it is generally recognised that getting into the open countryside is important for their physical and mental wellbeing. People of my age were lucky to have enjoyed a time when we could walk in the countryside and appreciate it. Families were often close enough to be able to take Sunday walks and schools nature walks which taught us to respect the countryside, its nature and wildlife. This does not happen very much these days because the opportunities are no longer there and footpaths are being lost all over the country. We should cherish the footpaths in this crowded country and I urge the authority to support this application’.

Point 21 - Any community and/or health benefits are seen as desirability or suitability concerns and therefore cannot be taken into consideration regarding the application.

‘The fields in question appear to be fallow at present with no livestock as I write this and in the past, during my time, they have been used for summer/autumn cattle grazing and hay making. They regularly flood in Autumn and Winter. I have never heard of any danger to the animals, birds or vegetation other than a time when I rescued a cormorant with a broken wing between map points A and B . It had collided with electricity cables and it was taken to Slimbridge Wetlands Centre for treatment’.

Point 22 - These points above do not assist in determining whether public rights have been acquired or whether a right of way subsists. These points relate to land management and environmental conditions and do not provide relevant evidence.

CONCLUSION

It is submitted that Gloucestershire County Council came to the correct decision on the basis of all the evidence submitted and it was considered under the relevant statutory and case law. Therefore the Secretary of State is accordingly urged to uphold the Council's decision not to make an Order.

Julie Haworth

Highways Records Officer (DMMO)

23 July 2026