

COMMONS AND RIGHTS OF WAY COMMITTEE

MINUTES of a meeting of the Commons and Rights of Way Committee held on Tuesday 10 December 2024 at the Committee Room - Shire Hall, Gloucester.

PRESENT:

Cllr Paul Baker	Cllr Graham Morgan (Vice-Chair)
Cllr Beki Hoyland (Chair)	Cllr Robert Vines
Cllr Mark Mackenzie-Charrington	Cllr Dr David Willingham

Substitutes: Cllr Roger Whyborn

Apologies: Cllr Terry Hale, Cllr Alex Hegenbarth and Cllr Vernon Smith

1. MINUTES

Resolved

That the minutes of the previous meeting held on 8 October 2024 be approved as a correct record.

2. DECLARATIONS OF INTEREST

- 2.1 Cllr Robert Vines declared a personal interest in relation to Agenda Item 6, on the basis that he was related to one of the landowners. Cllr Vines therefore left the meeting and took no further part in the proceedings.
- 2.2 At this juncture Cllr Dr David Willingham reported that he had undertaken an independent informal site visit on Sunday 8 December 2024.

3. PUBLIC QUESTIONS ON APPLICATION(S)

- 3.1 Three public questions had been received on the matters which were within the powers and duties of the Committee. A copy of the questions and answers had been circulated and uploaded to the Council's website.
- 3.2 The Committee noted the questions and answers.
- 3.3 The following oral supplementary questions were asked:

John Callinan: "Are you aware as the Commons and Rights of Way Committee that Stonehouse Town Council as part of its public consultation for the Town Green application, which you will be seeing in the new year, had over 1100 responses of positive support for the application? Stonehouse has a population of 8200, that is a sizable show of support on what you will looking at later."

In response, Jaci Harris, Asset Data Officer, explained that she had not included information on the Town Green application within her report and members of the Committee would not be aware of the application.

Michael Giles: "The reasoning for the extinguishment of MST28, is based on suggested evidence. Therefore, that evidence is not clear or conclusive.

If MST28 is erased completely now, it would not exist at the time of the accepted and 'not yet started' Friends of Verney Fields DMMO application. Therefore, that review may not take place, and, any potentially new evidence would not be available for consideration.

However, if the DMMO applications were to proceed, it could result in the cliff section only being deleted, and leave the cul-de-sac sections above and below the cliff face, to remain intact. If these sections either side of the cliff face that have been used for over 20 years, were linked by new pathways, it would be a natural evolution of MST28, and correct the previous errors, and maintain a most important precedence 'once a highway always a highway'.

Would the Committee consider deferral on these grounds, or guarantee an alternative mechanism is used to consider the proposed modified routes and issue a new nomenclature accordingly."

In response, Karen Pearman, Asset Data Team Leader, explained that the Committee's consideration of MST28 was separate to the Friends of Verney Fields DMMO application; if MST28 was agreed for deletion then effectively it would not have existed so any decision would be independent of the Friends of Verney Fields claimed route. The Friends of Verney Fields application would be considered against the submitted and discovered evidence, and if there was evidence to show that the routes existed then a recommendation would be made accordingly, that may also include an alternative termination point depending on whether MST28 had been deleted.

4. MEMBERS' QUESTIONS ON APPLICATION(S)

No questions from members had been received on the application before the Committee.

5. APPLICATIONS FOR MODIFICATION ORDERS TO ADD PUBLIC FOOTPATHS ACROSS LAND ADJACENT TO BRAMBLE LANE, STONEHOUSE PARISH, GLOUCESTERSHIRE (REF:573/11/212(6)(7)(8)(9)(10))

- 5.1 Jaci Harris, Asset Data Officer (PROW Definitive Map), gave a detailed presentation to the Committee aided by a PowerPoint presentation, which included photographs of the claimed route under consideration. (For information: A copy of the presentation slides have been uploaded to the Council's website.)
- 5.2 The Committee considered five applications for Definitive Map Modification Orders (DMMO) to add public footpaths across land adjacent to Bramble Lane, Stonehouse Parish, Gloucestershire. There were 12 sections of claimed route that were identified by solid or broken coloured lines on the map, held as slide 3 in the officer's presentation, connecting the following points; A-B, B-D, E-F-K-O, O-Q-T,

Minutes subject to their acceptance as a correct record at the next meeting

N-K, J-O, M-O, L-O, P-Q, U-H, G-I & B-C. The claimed routes were located across land in the vicinity of “Verney Fields”, Stonehouse.

- 5.3 The Asset Data Officer explained that the five applications were submitted by Stonehouse Town Council on 4 July 2023. Notification was served upon the affected landowners on the same day.
- 5.4 The Asset Data Officer informed members that points F, K, M, P & Q, did not have independent lawful termination points and were dependent upon the routes which they connected to, being deemed to carry highway rights. Documentary evidence, as detailed under section 7 of the report, did not assist the applications. No evidence of the application routes had been found within documents and none were claimed as part of the process of compiling the Definitive Map and Statement. Therefore, the Committee’s determination would be based upon an analysis of the submitted user evidence.
- 5.5 The Asset Data Officer presented a series of photographs of the claimed route J-O as detailed on slide 4, which were supplied by members of the Stonehouse community over the period 2018 – 2023. She also presented a series of photographs as detailed in slides 5-11, taken by staff on 1 March and 3 May 2023 which showed the character of some of the claimed routes. Members were also shown five Google Earth aerial maps covering the timeframe 1999 – 2023, which showed some use of the claimed routes.
- 5.6 The Committee was informed that for 10 out of the 12 claimed routes across Verney Fields (coloured green on slide 3) and part of one connecting route across the land coloured yellow, the public’s use was raised in an email dated 29 March 2023 by the applicant who stated that: “A new owner has just bought the field and closed off many of the paths with signs”. Those signs challenged public use and therefore the claimed routes would be considered over the timeframe 2003-2023, against the Section 31 Highways Act 1980 statutory test of dedication.
- 5.7 The remaining application routes E-F & B-C, which crossed the land coloured blue on slide 3, both of which would fail the statutory test over this 20 year timeframe due to a Section 31(6) Highways Act 1980 deposition, lodged by Mr & Mrs Godsell in 2019, covering the land coloured blue. This was a mechanism which could prevent claims for additional public rights of way across someone’s land from the point of signing. It did not however, act retrospectively.
- 5.8 Members were informed that taking the 2019 deposition as the challenge to the public’s use, there was no 20 year retrospective timeframe due to the effect of the 2001 foot and mouth epidemic. The most recent opinion (case R (on application of Roxlena Limited v Cumbria County Council [2017] EWHC 2651)), considered that the Foot and Mouth Disease closures in 2001 constituted a break in the required 20 years of user (as opposed to an interruption of user, such as a locked gate, which a landowner was using to prevent public use). This opinion may be subject to reversal as a Judicial Review was scheduled for February 2025.

- 5.9 Statutory dedication could not replace the principles of implied dedication at common law where the actions of the landowners (or lack of action), indicated that they intended a way to be dedicated as a highway and where the public had accepted that dedication. Use by the public at common law could be evidence of that acceptance and whilst it should be “as of right” without force, secrecy, or permission, there was no fixed period of use. Sections E-F & B-C would therefore be considered at common law over the 18 year period: 2001-2019.
- 5.10 The Asset Data Officer reminded members that for a successful claim, routes required a lawful termination point at either an existing highway or a place of popular resort. Section F-K-O, although crossing land subject to statutory dedication test, was dependent on the lawful termination point E, across the blue land and therefore the claimed route E-F-K-O, would be considered at common law.
- 5.11 The Asset Data Officer drew members’ attention to Section 9 of the report which set out the analysis of the user evidence. She explained that 241 User Evidence Statements were completed by 242 individuals, in support of the 12 sections, many claiming use of more than one. The claimed use on foot was substantial. Use of the claimed routes dated back to either 1937, 1948 or 1958. Use was considered to be by the public and “as of right” for all 12 claimed routes whether assessed against the statutory test or at common law. The stated use of the application routes was mainly for the purpose of dog walking and recreation.
- 5.12 By applying the relevant case law (R v SSETR ex parte Dorset County Council (1999)) the claimed use of routes by less than 5 individuals was set aside because it would not give rise to a presumption of dedication. This included the claimed bicycle use of one individual of some of the routes. Members were directed to note that some individuals claimed use of existing public footpaths. As the claims and user evidence support footpath status and no evidence had been found to suggest greater rights, this had also been set aside. The Asset Data Officer advised the Committee that the user evidence as supplied was considered to be sufficient to give rise to a statutory presumption or an inferred dedication at common law of public footpaths.
- 5.13 It was explained that consideration had to be given to whether there was evidence of a lack of intention to dedicate a public right of way. By applying the relevant case law (Godmanchester 2007) there must be evidence of overt acts from the landowner to show the public that they had no intention to dedicate. The evidence must be inconsistent with an intention to dedicate, it must be contemporaneous, and it must have been brought to the attention of those people concerned with using the way by actions such as putting up physical barriers, erecting notices stating that a route was not a public right of way of the type being claimed or turning people back.
- 5.14 In considering whether there was evidence of a lack of intention to dedicate, the Asset Data Officer outlined to the Committee, comments and statements made by landowners, tenants and agents directly affected by the five applications over the timeframes considered in the report. She explained that in summing up the various landowners and tenant’s attitude towards public use, it appeared that Mr Sibly

welcomed walkers across the land he owned (blue) and tenanted (green) until 2013/ 2019. No evidence had been submitted showing that Mr Oakhill was anything other than tolerant of public use from 2012/13 to 2019. Mr and Mrs Godsell, who owned all of the land coloured blue from 2019 erected notices in 2019 and removed the stile or did not replace one in 2020. Halls Keck (owners of Verney Fields) were tolerant or acquiescent of public use, as seen by the existence of stiles and although threatening to fence off the routes, did not and did nothing to prevent use until 2023 when the land was sold to Ms Maiik. The Asset Data Officer advised the Committee that it was considered that the landowners, tenants and Agents were at least tolerant of public use over the timeframes considered either under statute or at common law.

- 5.15 The Committee was informed that there were four main objections raised by current landowners Mrs Godsell and Ms Maiik. Both claimed that use of the claimed routes, prior to their ownership, was by force. Ms Maiik further claimed that some use constituted “wandering at will” or was used under the “right to deviate” principle or was by permission.
- 5.16 The Asset Data Officer explained that Mrs Godsell, the owner of the land highlighted blue over which sections E-F & B-C crossed, which was being considered at common law over the timeframe 2001-2019, considered that use along these sections was by force over the period 2006-2023 and therefore not “as of right” (members were directed to note that Mrs Godsell’s purchased the land crossed by E-F in 2019 and the land crossed by B-C in 2012/13). The 81 individuals who claimed use of the routes B-C & E-F, responded “No” to Q.14 “Have you ever been stopped or turned back from using the application route?”.
- 5.17 Mrs Maiik claimed that sections A-B & G-I were used “by force”. Members were directed to note that Ms Maiik had no legal interest in the Verney Fields over the statutory time frame 2003-2023. For the section of the application route A-B, Mrs Godsell, confirmed that a stile was located at point B until 2020 when it was replaced by a gate. This was corroborated by 14 of the 55 individuals claiming use of section A-B, but they stated that it was still possible to walk around it. The barbed wire, which prevented access, was not installed until 2023. The individual, identified in the summary as No.110, stated: “There was a stile and footpath signpost where metal gate now is- replaced in 2020. In March 2023 barbed wire was put to prevent people using the gap next to the gate”. Use was not “by force” whilst the landowner tolerated walkers bypassing the gate. For section G-I, 55 individuals claimed use of this section of application route. They noted barbed wire and a “Private” notice being erected on the field gate in 2023 but were not verbally or physically prevented from using this claimed route prior to that. The Committee was advised that this did not suggest “use by force” over the timeframes being considered.
- 5.18 It was explained that a public right of way provided members of the public a right to pass and re-pass along a defined linear route at all times between singular termination points. Straying or wandering over land would not give rise to the dedication of a public footpath. It was apparent that all 242 individuals independently drew by hand, the routes that they claimed to have walked over the

open fields. Ms Maiik considered that the user evidence for section N-K constituted “wandering at will”. 11 of the 38 individuals whom claimed use of section N-K which was a route crossing an open field drew a route which varied from the applicant’s plan by upwards of 30m and as such could constitute “wandering at will”. However, the remaining 27 provided a defined linear route sufficiently similar to that claimed by the applicant, and as such met the criteria for a claim of dedication.

- 5.19 The Asset Data Officer informed members that Ms Maiik claimed that use of the claimed route J-O, its connecting route M-O plus L-O, had been used under the “right to deviate” principle on the basis that fences were installed across MST30 and prevented public use. A total of 169 individuals claimed use of these three sections, 3 of whom stated that they used these routes to avoid public footpath MST30, not because it was physically obstructed by fences, but as a preference because it could be overgrown, dark, steep or slippery. This would not constitute use under a right to deviate. A further 3 individuals used these routes to avoid a short 45m section across land in the vicinity of point L coloured yellow which was considered to have been historically undermined by the quarry. The right to deviate principle applied where the public deviate from a highway because the landowner had created an obstruction along it. It was important to note however, as stated by Ruth Stockley of Kings Chambers, that: “Even in obstruction cases, there is no right to deviate on third party land as opposed to the land of the owner responsible for the obstruction”. Members were advised that although the action of quarrying could be attributed to the Stonehouse Brick & Tile Company, the area of land coloured yellow (which included the quarry) was conveyed to Melbourne Investments in 1973, whereas Verney Fields (green) was not disposed of until 2023. When considering the qualifying statutory timeframe of 2003-2023, it was apparent that the land was in different ownerships and therefore the right to deviate principle could not apply.
- 5.20 The Asset Data Officer informed the Committee that for the section of application route B-A-Q, Ms Maiik stated that permission for access was granted by Mr Sibly, tenant farmer of Verney Fields, to Wycliffe Students to sledge. She referred to the relevant case law *R (Barkas) v North Yorkshire County Council 2015*, where consideration was given to the question of whether permission could be implied from inactivity of a landowner when confronted by use by the public of a quality which may be regarded as the assertion of a public right. She explained that Mr Sibly’s comments regarding public use of the land that he tenanted suggested acquiescence and it was known that Bruton Knowles, Agents for Halls-Keck described use of Verney Fields as “unconsented” or without permission, but even if express/ implied permission had been granted to Wycliffe students, it did not follow that this demonstrated a wider lack of intention to dedicate to the public at large. A total of 55 individuals claimed use of the claimed route A-B, but all responded “No” to Q.12: Did the owner or occupier ever give you permission (or did you seek permission) to use the application route? .
- 5.21 The Committee was informed that when considering applications to add routes to the Definitive Map and Statement, there were two tests i.e. that a right of way “subsists” (Test A) or was “reasonably alleged to subsist” (Test B). Where there was no conflicting evidence of challenge to public use or overt actions the test of

whether a right of way “subsists” was on the balance of probability. For Test B, it was necessary to show that “a reasonable person having considered all of the relevant evidence available could reasonably allege a right of way to subsist”. If there was conflicting evidence which could only be tested or evaluated by cross-examination at a public inquiry, then an Order was appropriate. The landowner/tenant, Mr Sibly and his sub-tenant Mr Fletcher, encouraged public use and facilitated it by providing and maintaining stiles as access to the land. The owners, Mr Oakhill, Halls-Keck & the Godsell’s, were acquiescent of public use, taking no action to prevent or qualify it over the timeframe considered. Conversely, 4 individuals had claimed awareness of signs asking people to keep to the official routes and two landowners had claimed that there was rebutting evidence, although it was reiterated that Mrs Godsell was not landowner over part of the timeframe analysed and Ms Maiik had no legal interest over any of the timeframe for which public use had been considered. It was appropriate therefore to apply Test B, i.e. the evidence was sufficient to “reasonably allege that the routes subsist”.

- 5.22 The Asset Data Officer explained that a total of 234 individuals claimed one or more of the 10 claimed routes across the land coloured green and known as Verney Fields, which had been considered against the statutory test. Of those, 156 claimed use over the whole 20 year qualifying period 2003-2023. The use was considered to have been by the public, “as of right”, not ‘wandering at will” and not under the “right to deviate”. It was considered however that insufficient overt action was taken by the landowners and tenant to demonstrate to the public a lack of intention to dedicate those routes as public highways. It was further suggested that the evidence of acquiescence of the public use was sufficient to make a presumption of statutory dedication of the claimed routes A-B, B-D, O-Q-T, N-K, J-O, M-O, L-O, P-Q, U-H & G-I.
- 5.23 The Committee was informed that a total of 81 individuals claimed one or more of the 2 claimed routes over the land coloured blue, considered at common law. Of those, 44 claimed use over the whole 18 year qualifying period 2001-2019. The user evidence was considered to be “by the public”, “as of right” and of sufficient quantity and quality. The previous landowner, Mr Sibly, claimed that he “continued our grandfather’s policy of welcoming walkers”. This statement was suggestive of dedication. Historic stiles providing access to the claimed routes which remained in situ until circa 2020, suggested acquiescence by Mr & Mrs Godsell and the claimed use by 81 members of the public provided evidence of their acceptance. As a result, the evidence was considered to be sufficient to infer dedication at common law of the claimed routes B-C, & E-F-K-O.
- 5.24 In concluding her presentation the Asset Data Officer advised that if the Committee accepted these conclusions, then it was submitted that the 12 routes: A-B, B-D, E-F-K-O, O-Q-T, N-K, J-O, M-O, L-O, P-Q, U-H, G-I & B-C, claimed in support of the five applications subject to this report, were reasonably alleged to subsist and should now be protected by being recognised on the Definitive Map as public footpaths.
- 5.25 In response to a question, the Asset Data Officer explained that Ms Maiik, in her submission, had responded as if she was the landowner. She emphasised to the

Committee that as Ms Maiik purchased her property in 2023, she had no legal interest in Verney Fields over the statutory time frame 2003-2023. Ms Maiik had a right as a member of the public to try and rebut the claims made but not as a landowner.

- 5.26 One member referred to a letter circulated to members of the Committee by Ms Maiik's legal Counsel on 9 December 2024, and questioned whether the officer felt that it would be appropriate to respond to any of the points raised. In response, the Asset Data Officer explained that she had not had a chance to review it in full; however, it did not appear to have raised any issues that were not already covered within her report. She did not feel that any specific point needed to be raised.
- 5.27 In response to a question on the relevance of people wandering away from the claimed route, the Asset Data Officer explained that in law, straying or wandering over land would not give rise to the dedication of a public footpath. A public right of way provided members of the public with a right to pass and re-pass along a defined linear route at all times between singular termination points. She explained that there was some evidence of "wandering at will", as some individuals whom claimed use of section N-K, a route crossing an open field, drew a route which varied from the applicant's plan by upwards of 30m. However, there was still a sufficient number of users who provided a defined linear route similar to that claimed by the applicant, and as such met the criteria for a claim of dedication.
- 5.28 In response to a question, the Asset Data Officer explained that the test for statutory dedication under Section 31(1) of the Highways Act 1980 was looking for use that was "as of right", without force, secrecy or permission and without interruption for a full period of 20 years. The test for use under common law was less constrained; essentially you would be looking for evidence that a landowner had dedicated a way and where the public had accepted that dedication. Under common law whilst use should be "as of right" without force, secrecy, or permission, there was no fixed period of use. She added that for the application routes E-F & B-C, user evidence as supplied was considered to be sufficient to give rise to a statutory presumption or an inferred dedication at common law of public footpaths.
- 5.29 Cllr Dr David Willingham explained that on his site visit he had walked up to MST62 and walked across MST30. In his view it was clear that the viewpoint constituted a place of popular resort and that people had been using the track leading up to it. He had noted that people were using the track where it had not been fully fenced. He also pointed out that he had observed some abandoned caravans and evidence of fly tipping on the land.
- 5.30 Members of the Committee considered all the evidence, it was proposed, seconded and

Resolved

That orders be made to add a length of public footpath to the Definitive Map of Public Rights of Way between the following points: A-B, B-D, E-F-K-O, O-Q-T, N-K, J-O, L-O, M-O, P-Q, U-H, G-I & B-C.

6. APPLICATION FOR MODIFICATION ORDER TO ADD A PUBLIC FOOTPATH FROM OAK WAY TO MST30, STONEHOUSE PARISH, GLOUCESTERSHIRE (REF:573/11/212(4))

- 6.1 Julie Haworth, Asset Data Officer (PROW Definitive Map), gave a detailed presentation to the Committee aided by a PowerPoint presentation, which included photographs of the claimed route under consideration. (For information: A copy of the presentation slides have been uploaded to the Council's website.)
- 6.2 The Committee considered an application for a Definitive Map Modification Order (DMMO) to add a public footpath from Oak Way from MST30, Stonehouse Parish, Gloucestershire. On the Plan on slide 3, the claimed route was shown by a solid blue line connecting from Oak Way which was within the Rosedale Housing Development at point A ascending towards MST30 at point C.
- 6.3 The Asset Data Officer reported the following corrections to be noted in her report:
- The highway number referred to in paragraph 6.1 should read 47737 as opposed to 407737.
 - The first 8.5m of the claimed route from point A was designated as the publicly maintainable highway (61293). This concerned paragraph 1 and paragraph 9.21 of the report.
- 6.4 The Committee was informed that the application was submitted by a Mr Tipper on 14 February 2023. There was a question mark regarding the ownership of the upper part of the land over which the claimed route crossed so the applicant was authorised by Gloucestershire County Council to erect impersonal notices to "owners and occupiers" to notify anyone with an interest in the land.
- 6.5 The Asset Data Officer explained that there was no documentary evidence of the claimed route and therefore the Committee's determination of the application would be based upon the submitted user evidence.
- 6.6 The Committee was informed that if it was not considered that there was an overt act by the landowner that brought use into question, as was the case for this application, then in line with Section 69 of the 2006 Natural Environment and Rural Communities Act, the date of the submission of the application for a DMMO could be considered to question the status of the way. The relevant 20 year period under Section 31 of the 1980 Highways Act would therefore be 2003 to 2023.
- 6.7 The Asset Data Officer drew members' attention to Section 9 of the report which set out the analysis of the user evidence. She explained that the report considered the 10 User Evidence Statements completed by 10 individual members of the public in support of this application plus five statements which were included in the applications for DMMOs detailed in agenda item 6 and now encompassed into this report

- 6.8 Members were informed that 14 individuals claimed use of the application route on foot dating back to 1978, 1 of whom also claimed use by pedal cycle and 1 individual did not give information regarding method of use. A total of 11 individuals identified a route which was consistent with the depiction of the claimed route A-B-C as shown by the applicant. In addition, 4 individuals also covered the claimed route but included a short section from point C, across a field boundary which incorporated a stile which then led to an unrecorded route into land known as Verney Fields. This short section was considered as part of the previous applications under agenda item 6 and excluded from this one.
- 6.9 The Asset Data Officer explained that one individual claimed use of the route by bicycle in addition to by foot. By applying the relevant case law *Crown v SSETR ex parte Dorset County Council (1999)* the evidence supplied by one individual of bicycle use along these application routes would be insufficient to infer dedication of a bridleway or restricted byway.
- 6.10 It was explained that it was not essential for the claimed route to have been used for the full period of 20 years by the same persons; the period may accrue as a result of use by different persons for shorter periods. Nor did it matter that the use was not continuous in the sense that it may not have occurred every day. A total of 7 individuals claimed use of the route over the whole 20 year qualifying period, 7 individuals claimed use of the route over a 10-20 year period and the remaining individual claimed less than 10 years use. With regard to sufficiency, it was held in the case *Mann v Brodie 1885* that “the number of users must be such as might reasonably have been expected, if the way had been unquestionably a public highway. In a semirural area such as this, it would be generally accepted that the amount of use of a way may be less than a way in an urban area”.
- 6.11 The Asset Data Officer explained that over half of the individuals assumed the claimed route was already a public right of way and there were numerous comments regarding how well used the route was and the fact the route linked through to the Verney Fields area. None of the 15 individuals supplying evidence of their use of the claimed route noted stiles, gates, notices, or obstructions along the route and none were challenged or verbally turned away.
- 6.12 The Committee was informed that when examining the use by the public, all of the individuals claiming use of the route lived in or around the Oak Way area. Consideration was given to whether the use was actually use by the public. The *Crown v Southampton inhabitants 1887* cited “user by the public must not be taken in its widest sense.... For it is common knowledge that in many cases only the local residents ever use a particular road or bridge”. This comment was backed up by various observations within the user evidence including from a resident of Oak Way of 22 years use where they had stated to being a daily dog walker and another of 13 years claimed use stating it was a well-used route to access the Verney Fields area. Therefore it was considered that the use of the claimed route did not constitute use by the public.
- 6.13 For a claim to give rise to a presumption of dedication, use must be without force, secrecy, or permission. Use that complied with these three requirements was

termed user “as of right”. There was no evidence that use of the claimed route was by force, secrecy or permission.

- 6.14 It was explained that consideration had to be given to whether there was evidence of a lack of intention to dedicate a public right of way. By applying the relevant case law (Godmanchester 2007) there must be evidence of overt acts from the landowner to show the public that they had no intention to dedicate. The Land Registry documentation showed the upper part of the claimed route (points B-C) as unregistered. However, documents indicated that this unregistered land was owned by Melbourne Investments Limited, (a wholly owned subsidiary of Taylor Wimpey PLC) by way of purchase from Halls-Keck Investments Limited on 6 February 1973. Taylor Wimpey had stated however that they were unable to confirm this.
- 6.15 The Asset Data Officer informed the Committee that this would not preclude statutory dedication. There was no explicit reference in Section 31(1) of the Highways Act 1980 of use having to be of a level to have come to the attention of the landowner. It did not speak of a landowner being deemed to have dedicated the way, but of the way being deemed to have been dedicated, i.e. irrespective of the existence or non-existence of a person capable of dedicating the routes.
- 6.16 She explained that the sufficient evidence must be inconsistent with an intention to dedicate, it must be contemporaneous, and it must have been brought to the attention of those people concerned with using the way. In this instance, no evidence was provided of use being publicly challenged or of a lack of intention to dedicate prior to 2023.
- 6.17 Members were informed that if it was considered that highway rights were deemed to subsist resulting in the direction that an Order should be made, it should be noted that the claimed route (apart from the 8.5m at the southern end starting at point A) would not be accepted as publicly maintainable on the basis that public rights came into being post 1959 when the criteria for routes proposed for adoption as publicly maintainable was introduced. However, the local authority, under its general duty of care, would work with the landowner to ensure that highway rights could be exercised.
- 6.18 The Asset Data Officer concluded her presentation by advising the Committee that the analysis of the User Evidence Statements indicated that the claimed route, as described and marked on the accompanying maps, had been used by members of the public, on foot, “as of right” and without interruption for over 20 years. No evidence had been provided of any subsequent challenge to public use or a lack of intention to dedicate the claimed route prior to the application in 2023. Therefore, it was submitted that the claimed route was deemed to subsist and must now be protected by being recognised on the Definitive Map as a public footpath.
- 6.19 One member questioned whether the stub path between the two houses could be taken as evidence as an intention to provide a link to the claimed route, thus a link to a public footpath. In response, the Asset Data Officer explained that the stub

path was implemented as part of the development in the 1970s and it was not possible to infer what the developers intention was.

- 6.20 Cllr Dr David Willingham reported that on his site visit he had walked a circular route up to the end of MST30 and had walked back from points C-B-A, he had noted that there was an obvious path, there were no barriers and it was freely accessible. He was satisfied with the evidence to support the recommendation.
- 6.21 Members of the Committee considered all the evidence, it was proposed, seconded and

Resolved

That an Order be made to add a length of public footpath to the Definitive Map of Public Rights of Way between points A-B-C.

7. GLOUCESTERSHIRE COUNTY COUNCIL INSTIGATED DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION: THE ALIGNMENT OF PUBLIC FOOTPATH MST28, STONEHOUSE PARISH, GLOUCESTERSHIRE

- 7.1 Jaci Harris, Asset Data Officer (PROW Definitive Map), gave a detailed presentation to the Committee aided by a PowerPoint presentation, which included photographs of the route under consideration. (For information: A copy of the presentation slides have been uploaded to the Council's website.)
- 7.2 The Committee considered an application to delete Public Footpath MST28 from the Definitive Map and Statement between points: A-B-C, on the basis that it was subject to a drafting error. On the Plan at Slide 3, MST28 was shown commencing at a point marked A at its junction with public footpath MST30. It ran in a west south westerly direction for approximately 79 metres across a grass field to a field boundary stile (recently removed) at a point marked B, marking the start of the section being considered for extinguishment. It continued in a south south westerly direction across a further grass field for approximately 44m before crossing an area of excavated quarry carried out by the Stonehouse Brick and Tile Company who traded between the years 1891-1968. The lower end of the quarry was later subject to development. Two properties: No's 67 & 52 Rosedale Avenue, were built across the official alignment of MST28. The route terminated at public footpath MST27, abutting the railway (point C) marking the end of the section being considered for extinguishment.
- 7.3 The Asset Data Officer reported the following correction to the report:
- On page 79 of the report Stonehouse Town Council was incorrectly stated as the applicant. It was Gloucestershire County Council that instigated this investigation following receipt of the five DMMO applications submitted by Stonehouse Town Council in 2023.
- 7.4 The Asset Data Officer explained that the Definitive Map was conclusive evidence as to the existence and status of any right of way shown (without prejudice to other rights), whilst the Statement was conclusive evidence as to the position, width and limitations or conditions.

- 7.5 She explained that the presumption of regularity had to be considered and referred to case law *Trevelyan v Secretary of State For Environment, Transport & Regions* [2001] which related to an order to delete a bridleway from the Definitive Map and Statement. Members were advised that the conclusive nature of the legal record and the presumption of regularity, combined, required a higher threshold of evidence to determine that the Definitive Map and Statement was in error.
- 7.6 Members were informed that Section 53(3)(c)(iii) of the Wildlife and Countryside Act did provide for deletions of designated public highways where the evidence showed that “there is no public right of way over land shown in the map and statement as a highway of any description”. DEFRA guidance required that: the evidence must be new & cogent (“convincing & sound”) and of sufficient substance to displace the presumption that the Definitive Map is correct.
- 7.7 The Asset Data Officer explained that she had no photographs of the current alignment of MST28. Nature had reclaimed much of the quarry since its closure in 1968 and the scrub and woodland made it impossible to appreciate its extent and scale. Slide 4 however held two photos courtesy of the Stonehouse History Group. The photos circa 1936, showed the extent and scale of the quarry and also that the route of MST28 was affected at that point.
- 7.8 The Asset Data Officer reported that a consultation was carried out on 25 July 2024, Mr Townley, representative of the Open Spaces Society provided the only response on 8 September 2024. He considered that the routes shown on the 1921 or 1936 Ordnance Survey maps had been independently dedicated at common law under the “right to deviate” principle. The case law surrounding this principle was based upon the idea that where a landowner obstructed a route temporarily, albeit of some year’s duration, users could deviate around it as long as they remained on his land. Mr Townley also claimed that the connecting route between MST62 and MST28, shown by a broken red line between points B & D, should also be added to the Definitive Map as an independent highway.
- 7.9 There was no associated user evidence for the route under consideration and therefore determination would be against available documentary sources. Members were informed that some of the documents had been georeferenced against a modern base map which included a public right of way layer. This process enabled comparison and analysis of changes over time.
- 7.10 The Asset Data Officer reported that the Stonehouse Brick & Tile Company set up in 1891, embarked on a programme of quarry expansion which by the early 1900s was starting to encroach onto a track seemingly used by the public, and recorded on the Stonehouse Tithe Map 1839. This Ordnance Survey 6” second edition 1903 published map had been georeferenced against a modern map to provide perspective against the situation on the ground today. She referred to Stonehouse Parish Council minutes which had recorded the discussions around the diversion of this route.

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- 7.11 It was explained that the Finance Act 1910 identified the newly diverted route, B-C (MST28), across hereditament 1047 for which a £15.00 deduction was claimed. As no other tracks were identified across 1047, it would be reasonable to attribute the deduction to MST28.
- 7.12 The Ordnance Survey 25" Third Edition map (published 1923), showed a track annotated "F.P." adjacent to but unaffected by the quarry. Georeferencing this map on a modern base map identified the route as MST28.
- 7.13 As part of the process for drawing up the Definitive Map and Statement under the National Parks and Access to Countryside Act, 1949, the returned documents showed that MST28 was claimed by Stonehouse Parish Council but numbered initially as No.18. The route was described in the schedule as follows: "From footpath 16 (now MST27) up the side of Gays hill and over two stiles effect a junction with footpath 10 (now MST30)".
- 7.14 On the Draft Map covering Stonehouse the footpaths were now coloured purple and had been re-numbered, i.e. No.18 (now MST28) & No.10 (now MST30). MST28 was shown to be obstructed by the quarry. The draft written statement described MST28 as a footpath connecting MST27 and MST30 across field parcels: 185,184 & 173 (1936 edition).
- 7.15 The Asset Data Officer informed members that there were two objections received regarding MST28 on the Draft Map 1954, and she detailed the content of those objections. She explained that Mr Milne QC, a Barrister-at-Law, and an Acting County Justice, was appointed to hear the representations and objections made to the County Council in connection with the Footpath Survey and to submit his recommendations. A copy of the Highways Committee Report dated 8 June 1959 included Mr Milne's report; The Highway Committee resolved that the particulars contained in the Draft Map and Statement including the agreed diversion of MST28, were to be modified in accordance with the report and recommendations of Mr Milne. However, the Definitive Statement was not updated to reflect this resolution.
- 7.16 Members were informed that on 10 June 1959, the Deputy County Surveyor wrote to Stonehouse Parish Council outlining the objections concerning footpaths in the Parish of Stonehouse during the deposit of the Draft Map. An attached map identified the location of claim 2. Claim 2 fitted the description of the Ramblers Association's 1954 objection and the subsequent agreed diversion of MST28.
- 7.17 It was explained that the County Surveyor appeared to have considered that claim 2 was an entirely separate route to that subject to the Highway Committee approval of 8 June 1959. On 6 November 1959, he wrote to the Stonehouse Brick & Tile Company regarding the claims and included the plan. The company was asked to confirm that they crossed land in their ownership and whether they were agreeable to the paths being marked on future maps prepared under the Public Rights of Way Survey. The Stonehouse Brick & Tile Company responded on 19 November 1959 stating their agreement to the paths being marked on future maps. They made a slight variation of the path, extending it further away from the edge of the quarry, and stated that the diversion was made three years ago in co-operation with the

Parish Council due to its dangerous nature. The Asset Data Officer informed members that this was the route referred to by Mr Townley in the 1963 conveyance map prepared by the liquidators for the Stonehouse Brick & Tile Company and Halls-Keck Investments. The County Surveyor responded on 21 November 1959 to say that they would arrange for the path near the edge of the quarry to be marked on the line indicated on the plan.

- 7.18 It was reported that the Highway Committee minutes of 7 December 1959 included: "That an additional footpath be marked in Stonehouse Parish on a line previously agreed between the Stonehouse Brick & Tile Co. Ltd, and the Parish Council along the eastern perimeter of the Claypitts, Stonehouse".
- 7.19 Claim 2, which was the agreed diverted route of MST28, appeared to have been overtaken by the County Surveyors agreement to the landowner's subsequent request to further divert it to the position known today as MST62. The effect of this was to extinguish highway rights along MST28.
- 7.20 The Committee was informed that Gloucestershire County Council produced a Modified Draft Map to reflect the amendments in response to the Draft Map as detailed on slide 12. This map appeared to show the confusion surrounding MST28. It showed the original route of MST28 across both map sheets: 4 & 10/ the 1954 agreed diversion, the northern half of which was shown in pencil on the alignment requested by the Ramblers in 1954 & 1959, connecting with MST28 but the southern map sheet: 10, showed this diversion around the quarry tipped out. It also showed the subsequent alignment requested by the landowner which was labelled MST28 and was shown on the Parish Council's 1954 claimed alignment connecting with MST30. There was no explanation as to why the original obstructed route of MST28 was retained.
- 7.21 The Asset Data Officer explained that the Modified Draft Map was placed on deposit on 7 May 1965 and was open to further public consultation until 21 June 1965. She detailed to members that an extract of the London Gazette dated 7 May 1965, included changes for Stonehouse Parish, seemingly confirming the confusion relating to the alignment of MST28.
- 7.22 Members were informed that the next stage of the process was the Provisional Map and Statement (produced 1971) as detailed on slide 13. The apparent error on the Modified Draft Map was transposed onto the Provisional Map, i.e. the original alignment of MST28 across the quarry and subject to the 1954/ 1959 objections was included, plus the route subject to the extended diversion, previously numbered 28, but now identified as 62. The accompanying written Statement located the route of MST62 across field parcels 184a & 184, which was the original alignment of MST28 across the quarry and referenced the Highway Committee resolution of 7 December 1959 against the entry for MST62. The fact that at this stage the entry for MST28 in this document did not reference the first Highway Committee agreement of June 1959, further illustrated the confusion. The Provisional Map was made subject to consultation by landowners/representatives only before the final stage which was the Definitive Map. No further comments or objections were made and therefore the drafting error on the Modified Draft Map

which was transposed onto the Provisional Map was subsequently copied onto the Definitive Map.

- 7.23 The Committee was informed that the documentary evidence was considered to be of sufficient substance to displace the presumption that the alignment of MST28 on the Definitive Map and Statement was correct. MST28 was part of a multi-stage statutory process, which took place over a number of years, and was subject to consultation with parish councils, landowners and the public. The paperwork considered in the report regarding the alignment of MST28 suggested that the process of compiling the Definitive Map and Statement was complicated by the expansion of the quarry over the same period. It could not be explained why the discussions regarding MST28 resulted in two independent routes when the paperwork suggested that MST62 was the second iteration or diversion of MST28. As a result, the alignment of MST28 as shown on the Definitive Map and Statement was considered to be incorrect and therefore the legal record should be amended.
- 7.24 The Asset Data Officer advised the Committee that Mr Townley suggested that MST28 was shown to have been obstructed by the quarry on the 1920-1921 Ordnance Survey revised map & then again on the 1936-1938 revision, giving rise to the inference at common law that highway rights were established along them under the “right to deviate” principle. In the report it had been shown that by georeferencing the 1921 Ordnance Survey map onto a modern day base map with the addition of public rights of way, MST28 abutted the quarry and was not obstructed by it at this time. Georeferencing the 1936/ 1938 Ordnance Survey edition, however, did show MST28 lost to the quarry. The “right to deviate” however was not deemed to apply because there was no route to deviate from due to the fact that MST28 had been permanently lost to the quarry and could not be returned to unlike the case in *Dawes v Hawkins* 1860. It could be inferred however that highway rights were dedicated at common law along the approved “diverted” section B-C (or the 1936 -38 revision) (slide 11, map 1) on the basis of the claimed use by Stonehouse Parish Council in 1954 and by the Ramblers Association in 1954 & 1959, subsequently approved by the Highway Committee in 1959. However, these discussions took place as part of an ongoing statutory process of compiling the Definitive Map and Statement. The evidence suggested that consultation with the landowner, the Brick & Tile Company in 1959, resulted in their rejection of the approved diverted route, seeking its extension further east. This was approved, giving rise to MST62 (as detailed on slide 11, map 2). If this evidence was accepted, it would have had the effect of extinguishing any highway rights along the previously approved diversion between points B-C in addition to MST28.
- 7.25 Members were informed that Mr Townley also suggested that dedication could be inferred along the connecting route between MST62 and MST28 (B-D as detailed on slide 11, map 2) on the basis that this route was claimed by the Ramblers Association in 1954 & 1959. The Stonehouse Brick & Tile Company appeared to support this connection when they identified their preferred route in 1959, and the 1963 conveyance plan prepared by the liquidators for the Stonehouse Brick & Tile Company and Halls-Keck Investments identified the same alignment. However, the

route added to the Definitive Map and Statement reflected the route claimed by Stonehouse Parish Council. The alignment of MST62 connecting MST27 & 30 would have had the effect of replacing highways rights along A-B-C (not just the section affected by the quarry, i.e. B-C). No further comments or objections had been found regarding this omitted section from the Ramblers Association. Following the presumption of regularity, it could be inferred that this alignment issue was considered at the time as part of the Definitive Map and Statement process and the route B-D was rejected in favour of the alignment connecting point D with MST30.

- 7.26 In concluding her presentation, the Asset Data Officer advised the Committee that if the foregoing conclusion was accepted, this left the question of how MST28 was addressed “erroneously” remaining on the Definitive Map. The Court of Appeal in *R v Secretary of State for the Environment, ex parte Burrows, and Simms (1990)* held that the Definitive Map and Statement was, under section 56, conclusive evidence of the existence of a public right of way, unless and until there was a modification of the map under the provisions of section 53 of the 1981 Act.
- 7.27 The Asset Data Officer explained that her recommendation was that that an Order be made to delete the length of Public Footpath MST28 on the Definitive Map of Public Rights of Way between the points A-B-C on the basis that it is subject to a drafting error.
- 7.28 In response to a question, the Asset Data Officer explained that there was a diversion proposed to facilitate Rosedale Avenue, but the diversion was not confirmed, and the development at that end of Rosedale Avenue was completely changed. There was no further subsequent diversion beyond the developers aiming to leave a path which they had believed to be the route of MST28.
- 7.29 One member referred to slide 11 and questioned whether there was evidence that the drafting error showed a path going from point B to the corner of a house and then leading back to the tip of the alleyway to the north of Rosedale Avenue, and that this was a deviation. In response, the Asset Data Officer explained that there was no evidence of this; however, the section of the path between the two houses was designated on the List of Streets as a class 6 highway. The member commented that what was evident on the ground did not match well with what was detailed on the maps. The Asset Data Officer explained that it could be determined from Highway Committee minutes, that MST28 moved in June 1959 eastwards along the track that was marked “footpath” to the windpump. She advised the Committee that consideration needed to be given to whether there was sufficient evidence that the route of MST28 as show on slide 11 (map 2) was correct.
- 7.30 One member questioned whether the section of the path at points A-B-D was walkable. In response, it was explained that the section at points A-B was walkable, there had been a stile at point B but this had been removed; past where the stile had been in place there was another approximate 40 metres of MST28 before reaching the quarry. The section of the path between points B-D was not currently walkable. She added that in her report it was detailed that the section being considered to move eastwards was at points B-C as this would be directly

affected by the expansion of the quarry. On the Definitive Map the route followed the alignment of MST62 going in a more northerly direction. Stonehouse Parish Council in 1954 supported a more northerly direction to the route to connect with MST30, whereas the Ramblers Association wanted the route to connect back towards MST28. However, the Modified Draft Map detailed the route curving back to MST28, and the route of MST62 was shown going in a straight northerly direction.

- 7.31 In response to comments made about the section at points A-B, the Asset Data Officer explained that she had included this section in her report, instead of only the section at points B-C, because of the affect of the way MST62 was portrayed. On the Definitive Map today the original line of MST28 was shown going across the quarry and the path of MST62 going in a straight northerly direction. She asked members to consider whether discussions had taken place during the statutory process of finalising the Definitive Map around the final route to be included; if they had not taken place this could explain why the route had become the section detailed at points A-B-C, instead of just the section at points B-C.
- 7.32 One member referred to the route detailed on slide 11, map 2 which showed the crossed out indicative line of the route, which he felt was due to it being too close to the edge of the quarry. He could understand why it had been crossed out and pushed further over so that the quarry could be developed. He had no objections to the deletion of section B-C as it did not lead to anywhere.
- 7.33 One member pointed out that the section of the claimed route between points P-Q (as part of the five DMMO applications across land adjacent to Bramble Lane, Stonehouse Parish set out in agenda item 6), crossed through the section of MST28 at point B. The Asset Data Officer confirmed that there would be a connection at point B with the route between points P-Q. The member therefore questioned whether it would be prudent to leave the section between points A-B on the Definitive Map, on the basis that the Committee had resolved that section P-Q be added to the Definitive Map as a public footpath.
- 7.34 The Asset Data Officer explained that the majority of the evidence set out in her report dealt with the section between points B-C. It was for the Committee to decide whether to resolve that only the section B-C be deleted.
- 7.35 Members commented that there appeared to be sufficient evidence to resolve that the section between points B-C be deleted due to a drafting error. One member questioned whether it was possible for the section between points A-B to remain on the Definitive Map, but that be based on the condition that an Order was subsequently made for the section between points P-Q to be added to the Definitive Map (following the Committee's resolution on that application). Officers advised, however, that instead of justifying why the section between points A-B should remain, the Committee may wish to resolve that only the section between points B-C, which was obstructed by the quarry, be deleted, and that section A-B not be addressed.

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- 7.36 Members of the Committee considered all the evidence, it was proposed, seconded and

Resolved:

That an Order be made to delete the length of Public Footpath MST28 on the Definitive Map of Public Rights of Way between the points B-C on the basis that it was subject to a drafting error.

8. PUBLIC QUESTIONS - ABOUT THE MATTERS WHICH ARE WITHIN THE POWERS AND DUTIES OF THE COMMITTEE

- 8.1 One public question had been received on the matters which were within the powers and duties of the Committee. A copy of the question and answer had been circulated and uploaded to the Council's website.

- 8.2 The Committee noted the question and answer.

- 8.3 Cllr Sid Phelps from the Forest of Dean District Council (Lydbrook ward) asked the following oral supplementary question:

"Some of you long standing members might remember that the Blackbridge was closed at Lydbrook a few years ago, very disappointingly it has been closed again for urgent repairs. My question was to ask about the approximate timescales for the re-opening of this. I have had a full answer, but lots of things I already knew. Please could I have an approximate timescale, the answer says we cannot give an exact timescale, I understand that so I am just asking for an approximate timescale. Thank you."

- 8.4 In response, Karen Pearman, Asset Data Team Leader, explained that the bridge was under the jurisdiction of the Council's Structures Team, and that a response to Cllr Phelps would be provided following the meeting.

9. MEMBERS' QUESTIONS - ABOUT THE MATTERS WHICH ARE WITHIN THE POWERS AND DUTIES OF THE COMMITTEE

No questions from members about the matters which were within the powers and duties of the Committee had been received.

10. DELEGATED DECISIONS

Resolved:

That the Committee noted the reports.

CHAIRMAN

Meeting concluded at 1.20 pm

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