

PLANNING INSPECTORATE REFERENCE ROW/3354782
SECTION 53 OF THE WILDLIFE AND COUNTRYSIDE ACT 1981
DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY FOR GLOUCESTERSHIRE
(ADDITIONAL LENGTH OF FOOTPATH AT WITCOMBE FARM)
(PARISH OF GREAT WITCOMBE) ORDER DATED 18TH MARCH 2009
CLOSING STATEMENT ON BEHALF OF THE LANDOWNER/OBJECTOR
FREDERICK DAVID HICKS BEACH

OBJECTORS POSITION

This closing statement is made on behalf of the landowner who respectfully requests that the Order is NOT confirmed.

THE ORDER

This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the Act) and a copy of that Order is attached but for ease of reference the Schedule at Part 1 of the Order describes the Footpath to be added as follows:

"A length of public footpath in the parish of Great Witcombe, commencing at Point A on the Plan annexed to the Order (the Order Plan) at Ordnance Survey Grid Reference (OSGR) SO9064/1520 at its junction with unclassified road number 41143 known as Witcombe Farm Lane south of 2 Hillview Cottages and running in a generally southerly direction for a distance of 65 metres to Point B on the Order Plan at OSGR SO9063/1514 north of Witcombe Farm, continuing in a southerly direction for 140 metres running between the farm buildings to Point C on the Order Plan at OSGR SO 9062/1500 and then continuing to in a south westerly direction for a further 70 metres to Point D on the Order Plan at OSGR SO 9059/1494 at its junction with public footpath AWG 4 on the eastern side of Witcombe Reservoirs. The footpath is shown by a continuous black line with short bars at intervals on the Order Plan.

Width of Path

Points A-B 6 metres (including verges)

Points B -C between 5 and 6 metres wide (including verges)

Points C -D between 4.5 and 5 metres (including verges)

The Order was made following an initial application to Gloucestershire County Council (GCC) under Section 53 (2) of the Act submitted in September 2005 by the claimant, Dr N J Gilbert which was refused by GCC's Commons and Rights of Way Committee in 2007 and which was appealed by the claimant under Paragraph 4(1) of Schedule 14 of the Act and in 2008 a planning inspector allowed the appeal and directed GCC to make the Order which was sealed and dated 18th March 2009.

The landowner objected to the Order on the 6th May 2009.

TIMING

The length of time that has been allowed to elapse between 2009 and 2026 is unfortunate but impacts all parties to this inquiry equally.

THE RELEVANT STANDARD OF PROOF/LEGAL TESTS AND STATUTORY FRAMEWORK

Whilst The Secretary of State allowed the claimant's appeal and directed GCC to make the Order, the relevant test for the "making" of an Order "is whether it is reasonable to allege that a public right of way subsists".

The standard of proof for the "confirmation" of this Order is however significantly higher where the claimant must show "on the balance of probability that a public footpath subsists along the route in question"

This position is confirmed by GCC in their Statement of Reasons and in the Proof Of Evidence of Karen Pearman.

There is conflicting evidence between the parties and in the Court of Appeal case R -v- Secretary of State for Wales ex parte Emery it was ruled that such evidence can only be tested or evaluated by cross examination. This is confirmed at Para 63 of the Report To The Secretary Of State for Environment, Food And Rural Affairs dated 25th November 2008. If an applicant can produce credible evidence of public enjoyment of a path for twenty years then even though there maybe conflicting evidence, it is reasonable to say that a right of way is deemed to exist. This statement will demonstrate below that the evidence produced by the Claimant is however not credible.

EVIDENCE AT THE INQUIRY

The inquiry heard from the following witnesses:

For Claimant:

Karen Pearman
Dr Nichols J Gilbert User 1
Michael Roberts User 08
David Cooper User 21
Louise Taylor User 32 Sister of Dr Gilbert
Gary John User 15
Simon Ruddleston User 42
Teresa Peachy User 14
Anna McNeil User 42

For Landowner

Georgina Davies

Carole Dielt

Tony Dielt

Interested Parties For Claimant

Penelope J Canbilen Sister of Dr Gilbert User 31

There was conflicting evidence from the witnesses in their Proof Of Evidence papers and to questions for Landowner but recorded as follows:

Comments for Landowners request.**Karen Pearman**

Item 4 of summary proof of evidence the fact that as none of the historic documents and mapping evidence show the claimed route A-B-C-D as a public right of way and therefore the evidence is neutral.

This is an incorrect assumption; the evidence does not show the route as a dedicated ROW and therefore the evidence is that it is not a ROW. In examination Karen Pearman was not certain what her view or that of GCC would be if the evidence proved that there was a public ROW.

This is an important statement and is incorrect in my opinion.

Item 40 Evidence of Notices on Site. In particular with reference to the White sign and the words Private Road and below No unauthorised Vehicles. This does not mean that the route it is open to all pedestrians.

Item 50 states the body of user evidence "taken as a whole" is sufficient in quantity and credibility to suggest that the public had enjoyed use "as of right". Quantity of evidence is not in itself sufficient to suggest this and credibility should be given more consideration. GCC had not interviewed any of the witnesses. There needs to be a more balanced consideration of the witness statements for the objectors.

Dr Nicholas Gilbert Claimant

Gave a commentary rather than evidence.

Not seeking modification.

Confirmed that claimed route is not for reason of deviation.

Had little interaction with the farm tenant (Paget) at Witcombe until he left in early 1980 and subsequently little contact with Mark and Celia Hicks Beach when they moved into Witcombe Farmhouse.

Was aware of fishing enterprise but saw little of bailiffs. Consider the reference to bailiffs strange.

Had no recollection of Georgina Davies at stables.

Michael Roberts

Stated how few walkers he would see, no more than one or two.

Would not use the existing ROW AWG4 (East) at Point D due to steep bank and access issues for family member.

Had on occasion driven to the reservoirs via claimed route despite the "Private Road – No unauthorised Vehicles" sign.

A more relaxed approach to accessing farmland.

David Cooper

States regularly accessed the claimed route and been a regular user. Recalls Georgina Davies and her dog.

States how rare it is to see or be seen by the Hicks Beach.

Louise Taylor

Accessed the claimed route from 1975, sometimes turning back at Point D or if time permitted walking/riding a loop.

Does not recognise bailiffs nor the construction works that took place 1994 onwards.

Gary John

Stated that main use of claimed route was from 1975 to 1984 ween 1984 to 1987 as away but returned and used claimed ROW until 1995 when moved to Cranham. Did not recall fishing office or fishermen. No recollection of change in the yard area.

Stated not aware of footpath AWG4.

Stated that he saw 100's of walker/runners.

Simon Ruddleston

Stated that he saw lots of fishermen in contrast to other witnesses but does not recall bailiff's hut but did know the bailiffs 1997-2003 whilst in Great Witcombe. Claimed route is more commodious. Would use footpath AWG 4 once in ten visits.

Stated that he would see 1-200 people walking.

Referred to another disputed footpath that Dr Gilbert had discussed but not proceeded with.

Anna McNeill

Member of walking group using claimed route once in every 4-6 weeks and would walk with family once in every two months.

Has no recollection of bailiffs but is aware of the Witcombe fishery.

Could not recall any gates or cattle.

Comment at Item 10 of Proof Of Evidence (no recollection of signs) related to Point D and not Point B but also stated that was not aware of public footpath at AWG 4.

Teresa Peachey

Stated that claimed route is preferred as it metalled/hard surface and easily accessible.

Does not know the Paget's or subsequently Mark & Celia Hichs Beach.

No recollection of current fishing office but does recall wooden hut at Reservoir Lodge (1970 - 1980) which sold fishery tickets.

Would visit Mr Pritchard who worked for Severn Trent and occupied Reservoir Lodge. This property has access rights granted under the Gloucester Water Works Act 1855 and would therefore be considered as permissive.

Mrs Peachey states at Item 5 that she is used to reading maps having worked for the Ordnance Survey and BT. Mrs Peachy stated that the section AB of the claimed route was an existing public right of way and shown on the OS Explorer Map Ref 179 1:25,000 and Land Ranger Map Ref 162 1:50,000. Inspection of both maps confirm that this is incorrect and that the section AB of the claimed route is not shown as a public right of way.

Georgina Davies

Employed as stable manager and instructor at Witcombe and lived at The Park between 1989 and 1995. Worked with Mark and Celia Hicks Beach to establish the stable/livery enterprise including the reconfiguration of the silage clamp into a riding arena and converting stables/loose boxes. Responsible for the Cheltenham Ladies College and overseeing the yard.

Tony Diett

Resides at Berries Cottage which was inspected externally during the site visit. During the relevant period Tony Diett was operating his own building contracting business and would be working from home for 40% of the week and evenings and weekends would regularly see walkers heading to or from the claimed route. For all but approx. 10 metres Tony has a view to Point A on the claimed route but would also be able to see the walkers particularly from his garden, there is no alternative route at this Point A.

Knew Mark and Celia Hicks Beach when they moved to Witcombe Farmhouse in around 1983 and would be invited for drinks and following Mark's death Celia would call Tony to assist in dealing with trespassers. However, Tony did not use the Claimed Route for any other purpose. Tony knows many of the witnesses for the Claimant and does not recognise that they used the claimed route as often or as regularly as claimed.

Carole Ann Diett

Wife to Tony Diett and confirmed that she knows 16 of the witnesses for the Claimant but has only ever see three walking to or from the claimed route. This being:

Michael Roberts No 8

David Cooper No 21

Rev John Thorton No 45

Interested Parties**Penelope J Canbilen in support of Claimant. Verbal Report**

Has known Witcombe since 1975 as a walker and rider and recalls the Paget's and Mark & Celia Hicks Beach, Fred Hicks Beach, Lucy Hicks Beach and would see speak with Arnold Price. Recall Georgina Davies (Nee Bennet) and Ron Stephens (Fishing Bailiff).

PJC remembers that Mark and Arnold did set the tone for Witcombe with their tractors but does not remember the gates particularly as the farm machinery increased in size.

Recalls the Diett's from 1979 and was quite clear that they would see and know who was walking past.

PJC confirmed that her remarks only related to the relevant period but unfortunately expended her remarks to deal with matters arising after 2001 which as unfortunate and unnecessary and have no bearing on this inquiry.

CONFLICTING EVIDENCE

The above commentary demonstrates how the evidence conflicts between those for the Claimant and those for the Landowner and in the case of those for the claimant between themselves.

PERMISSIVE ACCESS

A number of people or cohorts were given permission to access the claimed right of way. These being the fishery syndicate, day ticket fishermen the bailiffs, Rogation Sunday, Severn Trent staff and occupiers of reservoir Lodge, those visiting the Gloucester Wildlife Trust, the liveries at the stables, farm and livery staff Cheltenham Ladies College and certain individuals.

There is also evidence that some individuals seeking to utilise the Claimed right of way were in fact trespassing and turned back. There is again conflicting evidence, but the Landowner has referred to the following witness evidence 8,14,22,27,32 and 36.

There are other adequate alternative definitive routes and therefore there is no reason why the users need to use the claimed route at all.

USE AS OF RIGHT

The Landowner does not accept that it is necessary to grant permission on each and every occasion that the permission is exercised and that users granted permission by the Landowner are, unless it is expressly stated otherwise, permitted to use the claimed route until such permission is withdrawn.

The attached schedule analysing the times that the evidence states the witness was using the claimed route is attached which shows that the individuals use was no continuous.

LACK OF INTENTION TO DEDICATE

A lack of intention to dedicate must be overt and not merely a state of mind on the part of the landowner. The Landowners evidence that it has been his family's and employees practice to turn back anyone using the claimed route without permission throughout their period of ownership is good evidence of a lack of intention on the part of the Landowner to dedicate a footpath over the claimed route.

CONCLUSION

The Landowner asserts that on balance the evidence for the Order not to be confirmed is more credible than that for the Claimant for the reasons given in this closing statement and the inspector is invited not to confirm the Order.

R F DREW FRICS FAAV FOR THE LANDOWNER

8th OCTOBER 2026

SECTION 53 OF THE WILDLIFE AND COUNTRYSIDE ACT 1981
DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY FOR GLOUCESTERSHIRE
(ADDITIONAL LENGTH OF FOOTPATH AT WITCOMBE FARM)
(PARISH OF GREAT WITCOMBE) ORDER 2009

This Order is made by Gloucestershire County Council ('the Authority') under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the Act') because it appears to the Authority that the Definitive Map and Statement of Public Rights of Way for Gloucestershire requires modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) namely the discovery by the surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and the statement subsists or is reasonably alleged to subsist over land in the area to which the map relates being a right of way as described in Part I of the Schedule hereto

The Authority has consulted with every Local Authority whose area includes the land to which the Order relates. The Gloucestershire County Council hereby order that:

- 1) For the purposes of this Order the relevant date is *18th March* 2009
- 2) The Definitive Map and Statement of Public Rights of Way for Gloucestershire shall be modified as described in Parts I and II of the Schedule hereto and shown on the plan annexed to this Order ('the Order Plan')
- 3) This Order shall take effect on the date it is confirmed and may be cited as the Definitive Map of Public Rights of Way for Gloucestershire (Additional Length of Public Footpath at Witcombe Farm) (Parish of Great Witcombe Gloucestershire) Order 2009

GIVEN under the Common Seal of Gloucestershire County Council the
18 day of *March* 2009

THE COMMON SEAL of

GLOUCESTERSHIRE COUNTY COUNCIL

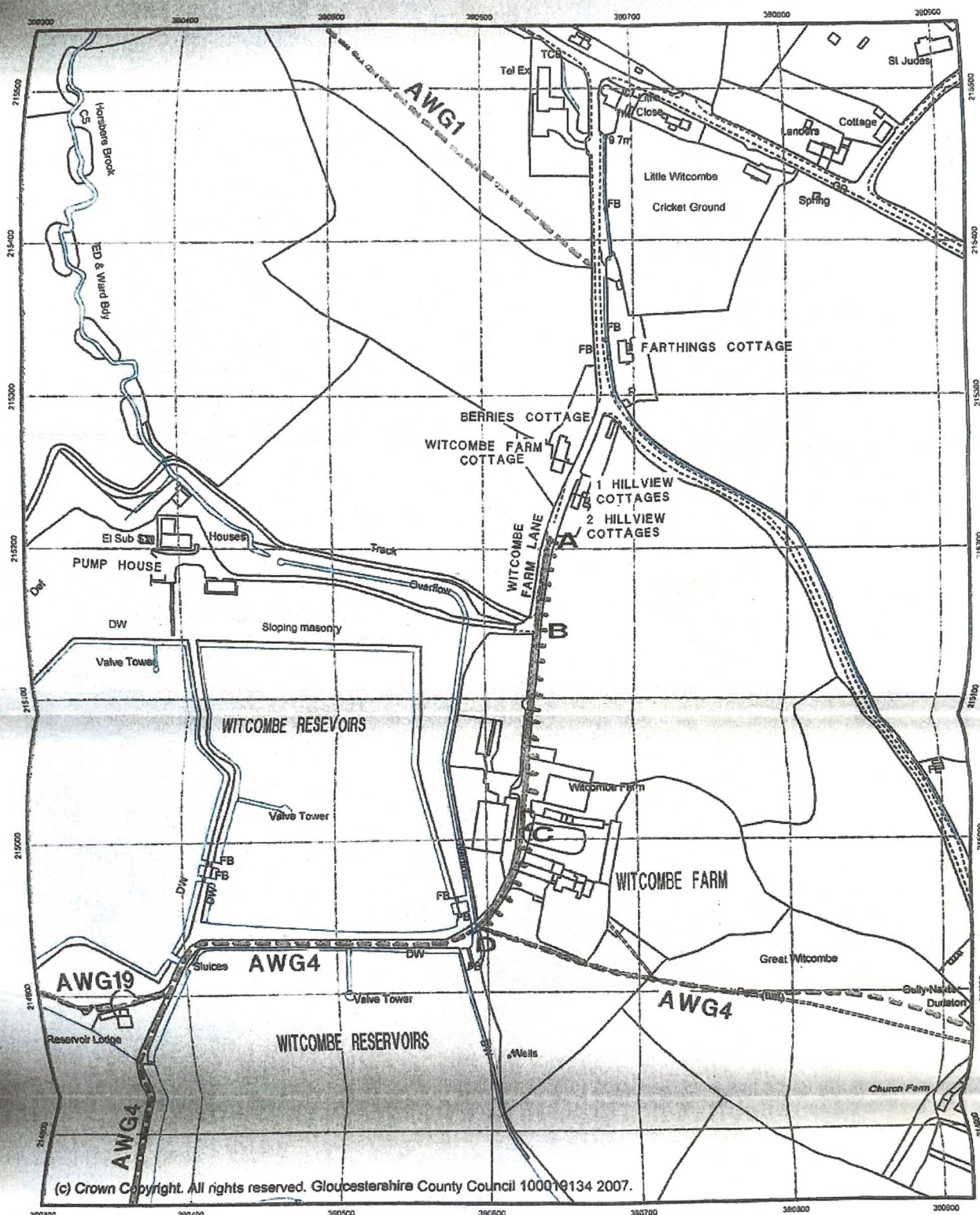
was hereunto affixed

in the presence of:-

UBM

Director of Law and Administration

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Gloucestershire County Council
Public Rights of Way
Shire Hall, Westgate Street
Gloucester GL1 2TG
Tel: (01452) 425576
www.gloucestershire.gov.uk

DRAWN BY: SCM
SCALE: 1:2,500
DATE: 03/02/09



MAP SHOWING CLAIMED FOOTPATH THROUGH WITCOMBE FARM PARISH OF GREAT WITCOMBE

KEY

PUBLIC FOOTPATH

CLAIMED FOOTPATH

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SCHEDULE
PART 1
Description of Footpath to be added

A length of public footpath in the parish of Great Witcombe, commencing at point A on the Plan annexed to the Order ("the Order Plan") at Ordnance Survey Grid Reference ("OSGR") SO 9064/1520 at its junction with unclassified road number 41143 known as Witcombe Farm Lane south of 2 Hillview Cottages and running in a generally southerly direction for a distance of 65 metres to point B on the Order Plan at OSGR SO 9063/1514 north of Witcombe Farm, continuing in a southerly direction for 140 metres running between the farm buildings to point C on the Order Plan at OSGR SO 9062/1500 and then continuing in a south-westerly direction for a further 70 metres to point D on the Order Plan at OSGR SO 9059/1494 at its junction with public footpath AWG 4 on the eastern side of Witcombe Reservoirs. The footpath is shown by a continuous black line with short bars at intervals on the Order Plan.

Width of Path:

- Points A- B: 6 metres (including verges)
- Points B- C: between 5 and 6 metres wide (including verges)
- Points C- D: between 4.5 and 5 metres (including verges)

Application for a Modification Order to add a Public Footpath through Witcombe
Farm Parish of Great Witcombe

Summary of Public Path Evidence Forms Submitted in 20005

	Name on 2005 Listing of Evidence Forms	Times Walked A-D Route			Full 1980 2001 time	Comments
		WEEK	MONTH	YEAR		
1	Dr N J Gilbert	3			Y	Notes sign at point A
2	Mr J O Gilbert			many	Y	Never though needed permission
3	Mrs E D Gilbert				Y	Daily early year, always frequently
4	Mrs M J Gilbert	3			N	Less from 1984
5	Mrs A Vickery	1			Y	Asked when Delivering Church magazine
6	Mr S McNeil			10	N	Notes sign at point A
7	Mrs A McNeil			12	N	Notes sign at point A
8	Mr M G Roberts			35	Y	Told to use footpath – refused as muddy
9	Mrs V Mason		1+		N	Authorised footpath often quagmire
10	Mrs I O German			many	Y	Authorised footpath deep mud, slippery
11	Mrs M Heggie			15	N	Authorised footpath – style and field
12	Mrs C Neal		1		Y	Walked freely 40-years
13	Mrs S Watts			several	Y	Verbal notice – use alternative path over style and through field
14	Mr/Mrs A E Peachey			occasionally	Y	Challenged but allowed to pass after agreeing not claim injuries
15	Mr G D John			100+	N	Recall gates across claimed path opened after cattle moved
16	Mr A P Hosler			10	N	For 1995 to 2005 time period
17	Mrs M Organ				Y	“as often as time permitted Notes cattle gate on claimed path
18	Mrs M Pither				Y	Use “infrequently”. For Church Rogation Service
19	Mr A Pither		monthly		Y	No specific volume of use given
20	Mrs C Ruddleston			45	N	Single track road used by walkers and horses
21	Miss V Cooper	several			N	Asked to move when by reservoir
22	Mr D Cooper jnr				N	No figure given for use only “several”. Given verbal notice
23	Mr D Cooper			20	Y	Not challenged but aware many people being stopped. Constant use by fishing - stables
24	Mrs L S Cooper	several			Y	Says Mark Hicks-Beach allowed access and few others given permission -fishing – holiday cottages

	Name on 2005 Listing of Evidence Forms	Times Walked A-D Route	Full 1980 2001 time	Comments		Name on 2005 Listing of Evidence Forms
25	Mr C Cooper				Y	No frequency qty given, says "used path for many years"
26	Mr R Cooper			10 to 15	Y	Not challenged, occupants say hello
27	Mrs M J Beard			4 to 6	N	Notes sign at point A. alternative footpath loose horses, styles etc
28	Mr D Hepburn			20 to 30	N	Use 1997-98 weekly after Mr H-Beach died freedom previously granted to the locals using the path has been restricted
29	Mrs R Hepburn			20+	N	Use 1997-98 weekly Spoken to Hicks Beaches to say hello whilst using the path
30	Mrs S I Knight				Y	Use "frequently years ago". Father used in early 1990's
31	Mrs P J Canbilen	many			Y	Mr Mark Hicks Beach used to say hello as she used path
32	Mrs L M Taylor	XX			Y	Used "several times a week until 1983 moved" "Now when visits" Alternate route difficult styles – horses. Stable and fishing people pay to use path
33	Mr J K Comrie			XX	N	Use "15-20 times per year to 1975 and occasionally later". Notes Glos Trust Nature Reserve sign on claimed path. Worked for GTNC unimpeded access
34	Mrs R J Hellerman	several			Y	Use in summer. Visiting friends at Witcombe Farm
35	Mrs M Hossler		1		N	Accessed by car as painter
36	Mrs O Dell			50	N	Always said 'good day' to owners when using path – thought public
37	Mrs A Hendry			15	Y	Told by man in fishing office 'private' Not use alternate footpath unsuitable for prams
38	Mr J G Miles			20+	Y	Always used path
39	Mr E W Pope				Y	Use "often with young family – less lately". Given permission some time ago by Mrs D Hicks Beach
40	Mrs B I Pope				Y	Use "often with young family – less lately". Given permission some time ago by Mrs D Hicks Beach
41	Mrs S Willis	XX			Y	Use "3-4 times per week to 1988 then weekly". Previous tenant gave her permission to use path
42	Mr S Ruddlestone			30	N	Used for many years by locals and non-locals

	Name on 2005 Listing of Evidence Forms	Times Walked A-D Route	Full 1980 2001 time	Comments		Name on 2005 Listing of Evidence Forms
43	Mrs P A Willis			XX	Y	Use "as child often – later years about twice a year. Notes gate past turning to Pump House (Point A) saying "Private"
44	Mrs P Curtis	weekly			Y	Notes gate to reservoir 1950/60's Turned back 1994/5. Given permission in 1999/2000
45	Rev J Thornton				Y	Notes gate at entrance to Witcombe Farm has been removed. Use not given. Walked and Church Rogation
46	Mr J Oye			several	Y	Used path for many years
47	Mr B Mills			XX	N	Use – no figure given for the time under consideration. Not noticed any obstructions on path
48	Mrs E E Straley	XX			Y	Use Often daily except during college term time. Conversed with owners and has never been told to not use path. Alternative footpath impassable at times and precludes disabled people
49	Mr P Bradshaw			various	Y	As part of Glos Trust Nature Reserve access by foot car at any time as have an agreement.

Summary of Public Path Evidence Forms Submitted in 20005 Reviewed 07 October 2026