

**COMMONS AND RIGHTS OF WAY COMMITTEE
7 JUNE 2021**

AGENDA ITEM:

**APPLICATION FOR A MODIFICATION ORDER TO ADD A PUBLIC FOOTPATH AT
BREAKHEART HILL, NORTH NIBLEY, GLOUCESTERSHIRE**

REPORT OF THE LEAD COMMISSIONER; COMMUNITIES & INFRASTRUCTURE

1. PURPOSE OF REPORT;

To consider the following application: 573/11/161(3)

Nature of Application:	To add a public footpath at Breakheart Hill, North Nibley, Gloucestershire
District:	Stroud
Name of Applicant:	Mrs P Gibbs
Date of Application:	24 February 2020
Landowner:	A-B; Mr D Pegler → September 2019 when land was sold to Mr J Moss B-C; Unregistered, although believed to be the Breakheart Community Project Ltd
Witness Evidence forms:	Total of 29 User Evidence Statements (“UESs”) submitted by 29 individuals.

2. RECOMMENDATIONS OF THE CASE OFFICER

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.

3. RESOURCE IMPLICATIONS

Average staff cost in taking an application to the Committee- £5,000. Cost of advertising Order in the local press, which has to be done twice, is approximately £500 per notice. In addition, the County Council is responsible for meeting the costs of any Public Inquiry associated with the application. If the application were successful, the path would become maintainable at the public expense.

4. SUSTAINABILITY & EQUALITY IMPLICATIONS

No sustainability or equality implications have been identified.

5. DEPARTMENTAL CONTACT

Jaci Harris, Asset Data Officer (Definitive Map), Highway Authority.
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6.

STATUTORY AUTHORITY

Section 53 of the Wildlife and Countryside Act 1981 imposes a duty on the County Council, as surveying authority, to keep the Definitive Map and Statement under continuous review and to modify it in consequence of the occurrence of an 'event' specified in sub section [3]. Any person may make an application to the authority for a Definitive Map Modification Order on the occurrence of an 'event' under section 53(3) (b) or (c). The County Council is obliged to determine any such application that satisfies the required submission criteria in accordance with schedule 14 of the Act.

Section 53(3)(c)(i) relates to the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way that 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.

HIGHWAYS ACT 1980 - Section 31: Dedication of a way as highway presumed after public use of 20 years.

- a) Where a way over any land...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 during that period to dedicate it.
- b) The period of 20 years...is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice...or otherwise.

INFERRED DEDICATION AT COMMON LAW

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate the way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises, rests with the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

7. ISSUES TO BE DECIDED

- 7.1 The primary issue to be decided is whether there is evidence to show that public rights subsist or are 'reasonably alleged' to subsist. It is not necessary therefore for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map and Statement ("DMS") can be made. If there is genuine conflict in the evidence, for example between the evidence of users on the one hand and landowners on the other, an order should be made so that the evidence can be tested at a public inquiry.
- 7.2 Where a Definitive Map Modification Order ("DMMO") is made, the process allows for objections to the order to be submitted. Further evidence could potentially be put forward for examination along with an objection. In these circumstances, the County

Council cannot confirm the order, and the matter would need to be referred to the Secretary of State.

- 7.3** Where an order has been made and no objections are received, the Order Making Authority (“OMA”) can confirm it.
- 7.4** In the event of an application under Section 53 being refused, the applicant has the right to appeal against the decision to the Secretary of State, who may direct the OMA to make the order that is sought.

REPORT

8. BACKGROUND

- 8.1** A location map at scale 1:10,000 is attached **JH1** showing the position of Breakheart Hill, North Nibley, immediately south of Dursley and found within Ordnance Survey Grid Square ST 7596.
- 8.2** The DMMO application made by Mrs Gibbs on 24 February 2020, included Form 1 and an accompanying plan, drawn at 1:2500 scale, of the claimed path which is highlighted in magenta. Form 3 was also supplied, certifying that the application had been served upon:-

- Mr Julian Moss, c/o Mr Pierre Bell, Langford Mill, Charfield, Road, Kingswood &
- Severn Trent Water Ltd.

- 8.3** Part of the land over which the claimed path crosses is unregistered. Authorisation was therefore granted for Form 2; ‘Notice to Owners and Occupiers’ to be posted at the end of the claimed route.

9. DESCRIPTION OF CLAIMED PATH

- 9.1** In Form 1 of the application, Mrs Gibbs stated that the claimed path connected CNN9 to CNN10. The accompanying plan however, appended **JH2** to this report, identified the claimed path as a straight diagonal line across the field incorporating approximately 40m of designated Public Footpath CNN9 (part of which was legally diverted around the reservoir in 1979). This 40m section of path is annotated by the Case Officer for identification purposes only as running between points X and Y. The Definitive Map provides conclusive evidence as to the status of this section of claimed path designated as Public Footpath CNN9 (without prejudice to higher rights). The user evidence submitted has been of pedestrian use only and so this report does not need to give any further consideration to this section of path.
- 9.2** With regard to the opposite end of the claimed route near CNN10, the applicant identified a path that appeared to pass through the field boundary south of the field gate before connecting with Public Footpath CNN10. In addition to the application, Mrs Gibbs also submitted a User Evidence Statement (“UES”) and in response to Q.3; describe the application route, responded “*This is indicated on the attached map from stile to stile...*” Applicants are not expected to be cartographers and therefore an email dated 30 March 2021 was sent to Mrs Gibbs seeking clarification of the route used at this point. Two maps were attached, one of the route as originally claimed and the other as appended **JH3** to this report which shows the path connecting with the track at a section of fencing adjacent to the field gate which is referred to as a ‘stile’ by

nearly everyone associated with this application including the current landowner, Mr Moss, before then proceeding along the track to connect with Public Footpath CNN10. The applicant was asked to clarify which route she used. She responded on 31 March 2021 stating “*The route I took was A to B and B to C and always over the stile*”. This statement confirms the route used as that shown on the plan appended **JH3**.

- 9.3** Appendix **JH3** is drawn at a scale of 1:1250 which more accurately reflects the path used. The route of the claimed path is shown A-B-C and does not include the 40m section of path currently designated as Public Footpath CNN9.
- 9.4** The field over which the claimed path crosses was visited on 21 January 2020 and then again on 1 March 2021. Using appendix **JH3** as a reference, a description of the path follows;
- 9.5** The claimed path commences at a point marked A on the said plan at Ordnance Survey Grid Reference (OSGR) ST7569/ 9657 at its junction with Public Footpath CNN9. It runs in a generally east north easterly direction for approximately 138 metres across the field to a point marked B on the said plan at OSGR ST7583/ 9659. The path then continues for a further 8m in a generally easterly direction to a point marked C on the said plan at OSGR ST7584/ 9659 at its junction with Public Footpath CNN10. A stile is located at point A and a ‘stile’ (as referred to in paragraph 9.2, without a step) is located at point B adjacent to an old padlocked wooden field gate. The claimed path viewed from points A and B could be identified on the ground and was found to be unenclosed and unsurfaced across a grass field.
- 9.6** The current landowner, Mr Moss, has confirmed that he installed a stock fence and 2 padlocked wooden field gates in October 2019 and planted a mixed native hedge one month later around the field as indicated on **JH3**. This work resulted in the obstruction of the claimed path running diagonally A-B across the field. Nonetheless, the inspections carried out in January 2020 and March 2021 both showed evidence of use of the path as claimed across the field.
- 9.7** A track, as shown by a dotted red line on **JH3**, is set out around the perimeter of the field between the natural field edge and the stock fence installed and the hedgerow planted in 2019. Part of this track has served for many years as private access to the reservoir but now additionally serves as the route of a signed permissive path provided by the current landowner, Mr Moss. White directional waymarks have been erected along the route stating ‘*Permissive Footpath*’.
- 9.8** Land Registry records that Mr Moss has held title to the field over which this claimed path crosses since 19 September 2019. Prior to this, the land was for many years in the ownership of the Pegler family. Mr Moss helpfully provided the following information with regard to past ownership; Mr Frederick Thomas Pegler owned the field from 1939 – 1996 and Mr Dennis Pegler owned it from 1996 – 2019. Land Registry records an easement in favour of Severn Trent along the northern perimeter of the field to facilitate access to the reservoir.
- 9.9** The claimed route forms part of;
- The Lantern Way, a 14 mile circular path, launched by ‘Dursley Welcomes Walkers’ in August 2015. The applicant advised in an email dated 5 January 2020 that stickers fixed to waymarkers at either end of the path to promote the Lantern Way were removed and replaced by the ‘Permissive Path’ sign. Lantern Way signs were reintroduced but were again removed shortly thereafter.

- The Breakheart Trail, a 3 mile circular walk set up by 'Dursley Welcomes Walkers' in 2016.
- Dursley Dozen Run set up by the Dursley Running Club, in 1989.
- "12 Favourite Walks in the South of Gloucestershire", a walks booklet, first published in 1995 by the Ramblers Association which included the claimed path in walk No.9; 'Dursley – Waterley Bottom'. A second edition of this booklet dated 2007 included the claimed path in walk No.12; 'Dursley Woods and Waterley Bottom'.

9.10 Photos taken on 21 January 2020 and 1 March 2021, showing the character of the claimed path, are held **JH4.1 - 4.8**.

10. DOCUMENTARY EVIDENCE

10.1 Under Section 32 of the Highways Act 1980, when determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified in the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

10.2 A report was commissioned of Gloucestershire Archives. The report received on 24 September 2020 is appended as a background paper to this report. The County Archivist has examined sources to see if this path is marked in any way and has identified other sources which might be useful in establishing the status of any right of way along this route. These sources have then been checked and added to by the Case Officer. Historic documents such as Tithe, Inclosure and Finance Act maps do not show the claimed path. However, the 1950's statutory process of compiling the DMS (legal record of public rights of way) provides background information with regard to the claimed path and details a conflict within the legal record which affects it. Separately, internal files belonging to Gloucestershire County Council suggest a level of concern held by the Ramblers' Association and North Nibley Parish Council with regard to the obstruction of Public Footpath CNN9 and their interest in the route of the claimed path over the period 1996 - 2007.

10.3 County Surveyor: papers relating to survey of footpaths under National Parks and Access to Countryside Act, 1949 ("NPACA 1949"); Glos Archives.

10.4 Under this legislation, all highway authorities were required to draw up a DMS which would form the legal record of public rights of way. Gloucestershire County Council initially provided parish councils in 1950 with maps to identify the paths that they considered to be public rights of way.

10.5 A parish meeting was required to be held before the maps were submitted to the County Council. North Nibley's Parish Council minutes of 23 January and 15 February 1951 confirm that a meeting was proposed and took place. Copies of these minutes are held as background papers to this report; **Ref; P230a (Glos Archives)**.

10.6 The returned documents are referred to as 'original submissions'. North Nibley's original submission shows that the path subject to this application was not claimed. For the purpose of this report however, it is important to consider the route

designated today as Public Footpath CNN9. It was originally claimed as a bridleway and was identified by a line drawn in red ink, numbered 9 and shown running through Millend Wood around Breakheart Quarry. Importantly, the eastern end of this path is shown terminating at the end of the wood. A copy of North Nibley's original submission is held **JH5. Ref; 687/1/4 (Glos Archives)**.

- 10.7** As a note of interest, a letter found amongst the original submission documents, dated 21 May 1952 from Tony Drake of the Ramblers Association, entitled 'Report on Parish Omissions' states with regard to Breakheart Hill (Millend Wood); "*Consider these dead-end tracks are probably private and they do not lead anywhere anyway*".
- 10.8** A requirement for a claim of presumed dedication is that the path has definite start and end termination points, either at a designated highway or a place of popular resort. Public user cannot give rise to a presumption of dedication if it does not. This was considered in Moser v Ambleside 1925, which concerned a local beauty spot, Atkin L.J. states that '*It has been suggested that you cannot have a highway except in so far as it connects to other highways. That seems to me to be too large a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway...*'
- 10.9** We can infer that some discussion took place with regard to the termination of the eastern end of path No.9 due to the fact that it did not end at a highway or a place of popular resort. The original submission identifies two routes drawn in pencil from the red line termination point; one of which continues in a generally north north easterly direction to connect with the 41472 highway and the other continues in a generally east north easterly direction to connect with a footpath marked with a blue pen annotated No.10.
- 10.10** The submissions once completed were collated by the Divisional Surveyor's Office at the County Council where officers would examine the returned maps, make queries and seek clarification where necessary before publishing the Draft Map. Paths were identified using purple for footpaths, green for bridleways, and green dashes for Roads used as Public Paths. They were numbered within each parish and for convenience were grouped into the areas of their former rural/ urban districts and boroughs. Therefore the claimed bridleway No.9 became CNN9 and the claimed footpath No.10 became CNN10.
- 10.11** Accompanying the draft maps were statements which recorded the detail as to the position and width of the paths shown on the map and any limitations or conditions affecting them. The relevant date of Dursley Rural District's draft map which included North Nibley is 24 September 1953.
- 10.12** The draft maps for the various districts were placed on deposit for four months during the 1953/54 period and were available for public inspection at county and district council offices. Parishes had copies covering their areas. A copy of the North Nibley Draft Map and Statement is held **JH6.1 & 2. Statement ref 687/1/4 (Glos Archives). Map held at Shire Hall.**
- 10.13** The draft map does not show the route of the claimed path but again it is important to note that the eastern end of CNN9, identified as a bridleway, is now shown extending beyond Millend Wood in a north north easterly direction to the 41472 highway, one of the routes marked in pencil on the original submission. (The Case officer has noted the original termination point submitted by the parish with a red X). The accompanying statement indicates that the bridleway started at the 41472 highway,

crossed Millend Wood to Breakheart Hill, across field parcel numbers 717, 720a & 726 back to the 41472 highway.

- 10.14** As a result of the public consultation, an objection was received with regard to CNN9. A copy of this objection is appended **JH7**. It was received from Mr R G Kirkwood, Assistant Land Steward, Merchant Venturers, Bristol, on 22 June 1954. The complaint stated, "*That CNN9 should be shown between OS 722 & 720 and not through OS 720a. Is this a draughtsman's error?* The word '*withdrawn*' is written alongside but is crossed out. The objection has further wording added to it; *Reclassify to F.P. Notes by the County Surveyor's department following investigation state; Submitted by Parish Council as far only as is shown marked on OS through Millend Wood. When questioned, Parish Clerk stated that it should continue, north, as shown on the Draft Map. On site, the track (CNN9; Case Officer's annotation) is well worn and there is a stile at its east end. From the stile, there are plain signs of use by pedestrians in an ENE direction to a field gate which leads to the south end of CNN10. The field gate has a notice on its top bar "Please shut this gate". There is no sign of a track from the wood N to the road as indicated at present on Draft Map, nor is there any stile at the first boundary from the road. It would seem that the NE end of the path, as marked on the Draft Map is an error. **Objection held in internal GCC file.***
- 10.15** Any claims regarding omitted paths from the draft map or objections to paths shown on it were referred back to the parish councils and landowners, and agreement sought to alter the maps or secure withdrawal of the objection. Where agreement could not be reached, a hearing was arranged and Mr W.G. 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. His recommendations were in turn ratified by the County Highways Committee.
- 10.16A** Schedule of Draft Map Objections covering Dursley Rural District is held as a background paper; **Ref; K687/2/3/8 (Glos Archives)**. Objection No.18 as shown on appendix **JH8**, relates to CNN9 and records two committee dates; 8-12-58 & 12-5-58 against it. The remarks column holds two sets of handwritten notes, seemingly by the same hand; in blue ink, the words; "*Parish Council agrees to CNN9 being reclassified as a footpath*" and in pencil "*and re-aligned to O.S.field No's 720a, 719 and 721*".
- 10.17** These remarks correspond with an extract of Highway Committee Minutes of 12 May 1958. Page 25 states, under sub-heading 9(1)(a); PUBLIC RIGHTS OF WAY; National parks and Access to the Countryside Act,1949; Survey of Public Rights of Way;- The Chairman presented the following Report of Mr W.G.Milne, Barrister-at-Law;- 1) *The following objections and claims are either unopposed or agreed by all interested parties, hence no hearing has been necessary. My RECOMMENDATIONS are as follows;* - In the Rural District of Dursley; Page 26 is held **JH9** and states; Objection No.18 by the Merchant Venturers. "*Map No.10 – that bridle road CNN9 in the parish of North Nibley shall be reclassified to a footpath*". Although there is no mention of the re-alignment of CNN9, the Schedule of Objections lists two separate committee date entries against objection No.18; 8 December 1958 & 12 May 1958. However, no further mention of CNN9 was found within this record. **Ref; GCC/ENV/1/1/53 (Glos Archives)**.
- 10.18** The Highway Committee minutes of 9 June 1958 (point 5) include a general comment with regard to the Draft Map objections held for Dursley Rural District "*All objections in the Dursley Rural District have been referred to parish councils for observations and it is not anticipated that there will be any great difficulty in resolving*

matters in this area". An entry in the North Nibley Parish Council minutes dated 18 January 1955 (pgs188 & 190) reads; "A letter from the County Surveyor was read stating that an objection had been made regarding a footpath on Breakheart Hill. The original Draft Map shows a path leading north through a stone wall, when the path should run eastward across the hill and then northward to the road. The Clerk reported he had visited the place and the new position was the correct path. It was decided to agree that the new position of path is correct". A further entry dated 22 March 1955 (pages 190 & 191) reads "A letter from Mr Boyce re footpath on Breakheart Hill was read and it was agreed that this Right of Way be in future a footpath and not a bridleway. The parish council minute extracts are held as background papers to this report – **Ref; P230a (Glos Archives)**).

10.19 The dates of these documents show that the process of addressing the Draft Map objections took years, but as stated previously, the objection with regard to CNN9 was either unopposed or agreed by all interested parties with no need for a hearing.

10.20 A letter from Guy. H. Davis, Clerk to the County Council, dated 22 September 1960, was sent to the objector, Mr Kirkwood, stating "*With reference to your objection dated 22 June 1954, to the draft map of public rights of way, I hereby give you notice that the County Council in pursuance of Section 29(3) of the above mentioned Act, has formally determined to modify the draft map and statement as follows; The bridle road CNN9 in North Nibley Parish should be reclassified to a footpath and realigned to O.S. field Nos. 720(a), 719 and 721*". A copy of this response is held **JH10. Reference held on internal GCC file.**

10.21 Section 29(4) NPACA49, states "*Where under the last foregoing subsection the Surveying Authority determine to modify the particulars contained in the draft map and statement.....(a) they shall cause notice of their determination, in such form as may be prescribed by regulations..... to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority....*" Following acceptance of Mr Milne's recommendation by the Highways Committee, fresh O.S 6" 1924 edition maps were prepared called the Draft Modified Maps to reflect the determinations made following investigation at the draft map stage. These were placed on deposit for 28 days during which time any individuals could comment/object. The date of Dursley Rural District's Modified Draft Map was 25 November 1960. Notice of the determinations was placed in the London Gazette, The Citizen and The Stroud, News and Journal on 28 October 1960.

10.22 The entry regarding CNN9 was as follows "*Re-classify to footpath the whole of bridle road CNN.9 from County Road 41472 at Millend Wood to the point where it re-joins County road 41472 at Breakheart Hill, and realign via O.S. field Nos. 720a, 719 and 721*". In addition to the two committee dates noted against objection No.18, this entry in the newspapers confirms that the alignment issue was determined and accepted by the Highway Committee. Unhelpfully, there is no map to confirm the route of the re-aligned section of CNN9. However, a compass bearing of ENE (taken from the County Surveyor's description of the used path as detailed in paragraph 10.14) from the termination point shown on North Nibley Parish Council's original submission (shown by Case Officer's X on the Draft Map **JH6.1**), suggests a route similar to that of the claimed path and follows the second route marked in pencil on the original submission. Unfortunately, although the statement was modified to correctly reflect the determination; re-classification and the re-alignment, the Modified Draft Map merely reflected the re-classification to footpath. The re-alignment of CNN9 was not shown. A copy of the Modified Draft Map is held **JH11. Ref; held in Shire Hall.**

10.23 After all determinations and decisions were made, the County Council drew up the Provisional Map, dated 25 February 1966. Again this map was placed on deposit for 28 days during which time only landowners, lessees or occupiers of land could appeal to a Court of Quarter Session (later Crown Court). There are no further records of discussions under this process with regard to CNN9. Regrettably the error of not reflecting the re-alignment of CNN9 on the Modified Draft Map was transposed onto the Provisional Map and then onto the final Definitive Map dated 26 October 1973. An extract of the Provisional Map **Ref: K687/3/6 (Glos Archives)** is held **JH12** and an extract of the Definitive map and Statement is held **JH13.1 & 2 Ref; held at Shire Hall**.

10.24 NORTH NIBLEY PARISH COUNCIL PAST CORRESPONDENCE

10.25 There follows a record of correspondence with North Nibley Parish Council regarding the obstruction of CNN9 and use of the claimed path. *All documents referred to are held within GCC's internal working files.* Mr Powell, a North Nibley Parish and Stroud District Councillor, took a keen interest in the public rights of way network, ensuring that any obstructions were brought to the attention of the Public Rights of Way ("PROW") Team.

10.26 A report submitted by Mr Powell on 17 November 1999 stated with regard to CNN9; *"Eastern exit path to Stinchcombe Hill-Whiteway Road does not exist"*.

10.27 The Case Officer investigating this application today was the PROW officer with responsibility for the network of paths in North Nibley (October 1999-2006).

10.28 The obstruction of CNN9 by a wall meant that the public could not access the 41472 highway. The PROW officer responded to North Nibley Parish Council by letter dated 26 November 1999 detailing the anomaly with regard to CNN9 and the claimed path on the DMS and advised that the matter had been passed to the Highway Records Team. The PROW officer further commented *"I would appreciate it meanwhile, if you could ascertain whether it is possible to walk the section of route highlighted green, as shown on the statement (i.e., 720a, 719 and 721, thereby connecting with CNN10). I feel therefore that it is reasonable for us to regard it as the intended route and therefore inappropriate to force a route through parcel number 726 (highlighted in pink)"*.

10.29 A map under cover of a letter dated 9 December 1999 was sent by the PROW officer to Mr Powell to identify the route used by the public. The PROW officer highlighted in green the routes of CNN9 and CNN10 excluding the section of claimed path subject to this report which was highlighted pink. The field parcel numbers as recorded on the Written Statement were also provided. A copy of this map is held **JH14**.

10.30 Photographs taken by Mr Powell on 23 December 1999 (signed and dated on reverse) were returned to PROW on 7 January 2000 with the accompanying map annotated. On the returned map, Mr Powell had annotated the pink route drawn by the PROW officer; *"This red route not viable into 719"*. He drew a second route connecting the stile at point H with the stile adjacent to the field gate at point J. Against this route he added the words *"This red route in current use"*. This path follows the alignment of the claimed path. The photos are held **JH15**.

10.31 One of the photos identified as 'K' taken from CNN10 is of the wooden field gate and adjacent 'stile'. The route of the claimed path can be seen beyond them. The reverse of the photo states *"Westward view from the stoned area back across 720a"*.

- 10.32** A photo identified as '1' appears to have been taken from the claimed path in the direction of the stile and field gate. The claimed path is apparent on the ground. The reverse of the photo is annotated "*Continuing the current path across 720A aiming towards the fence/ stile beside vehicle gate put in by Severn Trent*".
- 10.33** The PROW file details a site visit on 22 October 2003 between Mr Powell of North Nibley Parish Council and Andrew Houldey of Highway Records and Mr Hawking, Diversions Officer, Gloucestershire County Council. They all walked the route of CNN9 as shown on the Definitive Map, the line of the path referred to in the Written Statement and the route used by walkers (there is no explanation as to why there is a difference between the last two). It was suggested that the best way forward was to process a Public Path Order to extinguish the eastern section of CNN9 in favour of the route of the claimed path as used by the public. Mr Powell agreed to sound out the landowner.
- 10.34** Mr Powell wrote to Mr Houldey of Highway Records on 4 November 2003. The letter, copied to Mr Dennis Pegler and to the Parish Council, detailed his understanding of the problems using CNN9. He stated "*The route walkers have taken since the reservoir and its access road was built is directly across the field 920a (Case Officer suggests that it should read 720a) from the stile behind the quarry to the gate of the access road. On the northern side of that vehicular gate is a post and rail fence, about three feet long that the walkers use as a stile to enter the lane. From there they either turn down the bank on CNN10 to the pub or turn left on CNN10 out to the road. I have spoken to Mr Pegler and he is quite happy with the situation as currently walked and I have explained that you will contact him before taking the necessary steps to regularise the situation. I am presuming that your office will bear the cost of sorting out this anomaly from the past*".
- 10.35** An Excel spreadsheet of PROW diversions includes an entry dated 25 November 2003 for the diversion of CNN9. It states "*County Council sponsored application to sort out Definitive Map anomaly at Breakheart Quarry. Waiting response from landowner*". Regrettably Mr Hawking retired many years ago and no file has been found.
- 10.36** A table of diversions was found within the PROW computer files at Gloucestershire County Council. It records that that the diversion of CNN9 was assigned to Sarah Ellis (Macaulay-Lowe). The entry states "*negotiating compensation with landowner – last correspondence 2007*".
- 10.37** A memo on file dated 19 February 2007 from Sarah Ellis to two PROW Line Managers stated; "*You are probably aware of the anomaly that exists on part of footpath CNN9 at Breakheart Hill Quarry in North Nibley. The Definitive Map and Statement do not agree and the map shows the footpath running past a reservoir where it is then obstructed by a stone wall which has been there for many years. The public currently walk across a field belonging to a Mr Pegler of Five Acres to connect with footpath CNN10 which then leads back to the road. In 1997 this anomaly became apparent and the Parish Council and Ramblers Association got after us to sort this out. The sensible option is to divert the section of CNN9 to where the public walk across Mr Pegler's field. I met Mr Pegler today and explained the situation. Although this has been going on for a very long time, he was only made aware of this just before Christmas when I wrote to him. He will accept the diversion onto his land if we give him some compensation. He asked for £150.00. Do we do this? It does not seem much to sort out this long standing problem? I told him I was unable to make a decision but would get back to him after talking to you both. The stiles at either end are not in a good condition and would need replacing with kissing gates. Mr Pegler*

would be happy for kissing gates to be installed". The letter referred to was dated 25 October 2006 and is held as a background paper to this report. A copy of the plan showing the proposed diversion attached to this letter is held **JH16**.

10.38S. COTSWOLD RAMBLERS' ASSOCIATION GROUP; PAST CORRESPONDENCE

10.39 The following paragraphs detail past correspondence with the S. Cotswold Ramblers' Association Group. *All documents referred to are held within GCC's internal working files.*

10.40 A letter dated 17 November 1996 was received from Mrs Taylor. Accompanying her letter was a hand drawn map of paths in the vicinity of Dursley which were obstructed. The letter draws attention to the Ramblers' Association campaign in 1997 to draw attention to the number of obstructed paths still to be cleared in order to meet the Countryside Commission's aim of having the whole PROW network open by the year 2000. It states "*This Group intends to try to walk a route in the Dursley area, where there are some very long standing difficulties. Enclosed is a detailed diagram and notes as to the current state of affairs.*" Point G of the enclosed diagram refers to the routes of CDU72 and CNN9 recording that "*Both paths non-existent on the def. line – unofficial diversions*". The route of the claimed path is shown with an arrow pointing to it and the annotation "*unofficial diversion of CNN9*". A copy of the plan is held **JH17**.

10.41 A telephone log dated 20 November 1996 is held on file from Mrs Taylor & Jack Redfern with regard to part of the route of CNN9 being non-existent. The anomaly was explained in a letter of response dated 25 February 1997 along with the assurance that the matter had been passed to Highway Records.

10.42 A letter dated 20 August 2001 from Mr Heaton, Footpath Secretary. He detailed the obstruction of CNN9 by the wall and advises that walkers have "*for many years gone eastwards across an open meadow with fine views southwards over Waterley Bottom, to cross a primitive stile beside a gate at point C and join CNN10....However in this case the unofficial permissive route is far preferable and in any case leads to CNN10. We should therefore prefer the eastern end of the PROW to be diverted to the unofficial route. We have been unable to discover who the landowner is but there has never, as far as we are aware, been any attempt to deter walkers on the unofficial route, I have used it personally for over 20 years without let or hindrance.*" A map attached to this letter which clarifies that the path referred to was the claimed path is held **JH18**. The Case Officer has marked the route A-B.

10.43 On 22 August 2001 Mr Heaton was advised by the PROW officer of the anomaly and advised that it had been passed to Highway Records to address.

10.44 On 4 August 2002, Mr Heaton wrote "*.....you have indicated that the unofficial route being currently used is on the statement but not on the definitive map. It follows that the definitive route out to the road is blocked by a stone wall and at the road. The RA would prefer the unofficial route, but the current situation is highly unsatisfactory. The County has, of course, the power to require the removal of the obstructions on the definitive route or to impose a diversion. We would hope that the latter action will be followed and we look forward to a diversion being made. If this does not happen, we shall have to consider further options*".

10.45 Mr Poole, new Footpath Secretary, contacted the PROW team by email on 24 March 2006. He advised that the new 2007 edition of the "*12 Favourite Walks in the South of Gloucestershire*" would include a walk which makes use of the claimed path. He

stated "In section B you will see that the walk uses path CNN9 at Breakheart Quarry and then cuts across to CNN10 to descend through the wood and field to the New Inn. On the definitive map path CNN9 bends north to join the road 41472, but this part is unused, as the line taken towards CNN10..... is well defined on the ground and has been used as if it were a path for many years. This anomaly has been a concern of our group footpaths subcommittee for some years now and was handled personally by Peter Heaton before he moved away..... Tony Drake has now suggested that we consider serving a s63 of the CROW Act 2000 to force some progress on this matter. I am reluctant to do this both because of your general discouragement of such action but also because re-opening on the definitive line is not really what we want to achieve. Can you see a way forward that would achieve a diversion of the path to the line used in our walk description? Failing that, could the path we used be dedicated as a permissive path of sufficient permanence that the OS would represent it with brown dashes on the Explorer Map?....This report notes that Tony Drake referred to in this email was the same person who in paragraph 10.7 considered the paths in Millend Wood to be "dead-end tracks are probably private and they do not lead anywhere anyway".

10.46 DOCUMENTARY EVIDENCE CONCLUSIONS;-

10.47 Historic documents such as the Inclosure Award, Tithe Map and Finance Act Map do not show the claimed path.

10.48 The statutory process of drawing up the legal record of public rights of way in the 1950s resulted in a conflict between the Definitive Map and the Written Statement which exists today. The presumption of regularity is claimed with regard to the Written Statement which followed the regulatory process to its conclusion without further objection and would be considered to be conclusive evidence in a court of law today. The same however cannot be said for the Definitive Map which failed to show the 'determined re-alignment of CNN9' and although the paper trail suggests the intent and this report will show by means of user evidence that the claimed route was being used in the late 1950s, members of the public were denied the opportunity of making representation to the route as it should have been shown on the Modified Draft Map.

10.49 Nothing in the correspondence between Gloucestershire County Council and North Nibley Parish Council and the S. Cotswold Ramblers' Association Group over the period 1996 and 2007, suggests that the landowner obstructed their use of the claimed path in any way. Further the RA held internal discussions with regard to pressing GCC as Highway Authority to use its statutory powers to address the obstructions along CNN9 but ultimately chose not to do so in favour of lobbying for an official diversion to the route of the claimed path. The correspondence shows the intent of both agencies which was to have the claimed path added to the Definitive Map.

11. CONSULTATION

11.1 North Nibley Parish Council, Stroud District Council, Severn Trent Water, The Ramblers' Association, The Cotswolds AONB, Mr Moss & Breakheart Community Project Ltd (landowners), County Councillor Cordwell, Mr Cherry and Mr Ashbee of Dursley Welcomes Walkers were consulted on 26 February and 1 March 2021. The following responses were received;

11.2 Mr Palmer of North Nibley Parish Council responded on 28 February 2021. His comments below exclude the paragraphs which have been detailed under - North Nibley Parish Council's Past Correspondence;

CNN9; It is my understanding that the route of CNN9 was obstructed in the late 1950s when a reservoir was built there. Presumably this caused walkers to use the diagonal path east across field 7557 (720) to the farm gate at the end of the track 8467 (721). There is currently a stile at the corner of the field.

From "A Survey of the Footpaths in the Parish of North Nibley, Gloucestershire – May/June 1981".

Circular path above Millend Wood; blocked by M.E.B. railings and deliberate inefficiency; as a consequence, no path is now possible; the East stile has been walled up and wires; gate spiked; entry can be gained over a crumbled wall and along edge of a field where a further wall can be gained over a crumbled wall and along edge of a field where a further wall and dirty cattle yard prevent further progress; after this there is an official diversion by the Water Board; only part of the path exist! with a stile provided by the Water Board; after 50 yards to the South the path is obstructed again by a CEGB dump; entry to the path from the road has an (illegal) keep out sign. So you can see how the diagonal path across the field came about.

I received a letter dated 6th October 2006 ref CNN9/SKE from Sarah Ellis [Macaulay-Lowe] which says "I am sure you are aware of an old anomaly that exists with regards to the footpath which passes around Breakheart Hill Quarry, North Nibley. Many years ago, our attention was drawn to the fact that public footpath CNN 9 had been cut off by the reservoir. A wall was built which stopped walkers from being able to use the definitive line of the footpath." ..."North Nibley Parish Council together with the Ramblers' Association encouraged Gloucestershire County Council to resolve this anomaly by making a Public Path Order to legally divert the obstructed length of footpath to one which the public is now using unhindered. Unfortunately, this never happened and we are still faced with an obstructed footpath, and the public are using a route which is not shown on the Definitive Map." Accompanying this letter is a map showing the replacement footpath with a dotted line crossing the field from west to east. The usage of "old anomaly" and "public is now using unhindered" shows that this route had been in use by many walkers for a considerable period of time by October 2006. A copy of this letter is held as a background paper to this report and the plan is appended **JH16**.

I can confirm that the path and stiles were in use in 2005 when I took on the responsibility for footpaths for NNPC and were clearly not new at that time.

11.3 Mr David Ashbee of Dursley Welcomes Walkers responded on 1 March 2021; "I was told by a Nibley councillor that the landowner Mr Pegler was aware that people used the route and gave me his phone number. When I spoke to Mr Pegler, he said that as far as he was aware, the path was now an official right of way. Rights of Way told me the proposal had stalled, perhaps on grounds of cost. So on our leaflet we had to declare it as Permissive. But Mr Pegler had no objections and seemed to think its status had already been changed. Your records should show that he applied - that would be prior to 2014".

11.4 Stroud District Council responded on 3 March 2021;-

Thanks for your email and my apologies for the delay in responding but I've only just returned from leave.

Although I was at SDC in 2015 I don't recall having any involvement in the 'Lantern Way' walk but that was probably because it didn't involve SDC's land, at least in terms of the section in question so cannot say what, if any, approach may have been made to the landowner. However having just checked the Land Registry I see it's currently registered to Julian James Moss [REDACTED] who acquired it in Sept 2019 in which case even if an approach had been made it wouldn't have been to them so it's probably academic. I attach a copy of the LR Register and Title Plan.

As regards the application itself, given SDC does not own any part of route being claimed, nor owns any land in the vicinity, I can't see that it has any objections to or comments to the application and you may therefore take this email as SDC's formal response.

I trust that this will enable you to process the application but should you need anything further please let me know.

11.5 Mr Chris Cherry, Chairman of 'Dursley Welcomes Walkers' responded to Malcolm Taylor of the Ramblers' Association on 1 March 2021;-

Hi Malcolm,

Thanks for your email on the route of this path across Breakheart Hill.

I personally know this path very well and know that people have been walking across this field for many years, I moved to the area nearly 25 years ago and have been using it for nearly all that time. I am aware that there was no official footpath across the hill but it is not possible to follow the PROW alongside the nearby reservoir and this route, which we assumed was a permissive route, was regularly walked as it provided some wonderful views.

From the Dursley Welcomes Walkers aspect - when we conceived the idea of The Lantern Way our aim was to put this route onto Public Rights of Way wherever possible, if it was not possible to be on a Public Right of Way then we would seek permission from the landowners to route the path across there land. In the case of this field a telephone conversation was held with the landowner of the time (Mr Denis Pegler) and he gave permission for our Lantern Way Walkers to cross his field, he also went on to say that the route would become a public footpath.

11.6 Mr Cherry, Chairman to 'Dursley Welcomes Walkers', responded directly to GCC on 15 March 2012 to say;-

Thank you for forwarding the letter of consultation with regard to the application for an unrecorded length of public footpath across a field at Breakheart Hill, North Nibley.

The path we use for the Lantern Way across the field at Breakheart Hill has been walked for many years by myself since I moved to the area around 25 years ago. We first discovered the walk when we purchased the South Cotswold Ramblers book of "12 Favourite Walks in the South of Gloucestershire" which was published in 1995.

When Dursley Welcomes Walkers looked at the planning for our Lantern Way walk we were keen to ensure that the walk remained on Public Rights of Way wherever possible and if the walk route did use paths that were not a PROW then we should contact the landowner and seek permission.

David Ashbee has already written to you to say "I was told by a Nibley councillor that the landowner Mr Pegler was aware that people used the route and gave me his phone number. When I spoke to Mr Pegler, he said that as far as he was aware, the path was now an official right of way. Rights of Way told me the proposal had stalled,

perhaps on grounds of cost. So on our leaflet we had to declare it as Permissive. But Mr Pegler had no objections and seemed to think its status had already been changed. Your records should show that he applied - that would be prior to 2014.” Having obtained this permission we proceeded with our plans for The Lantern Way.

On another occasion, sorry I can't remember the date, but it was some years before the Lantern Way was introduced, I had a site visit concerning the footpath CNN9 as it was not possible to walk the path past the reservoir and onward top the road. We discussed the possibility of reopening the path CNN9 of formalising the walked route. The Rights of Way Officer advised that the landowner was happy with the access across his field but he did not want it to be a Right of Way. It was because of this information we obtained the permission detailed above. It does seem strange that CNN9 is still on the definitive map when it appears that no one has been able to use it/follow it for many years which is why walkers followed the path they have, across the field in question.

11.7 MR MOSS, (LANDOWNER SINCE 6 SEPTEMBER 2019) EVIDENCE

Mr Moss provided a Landowner Statement via email on 28 March 2021.

The whole response is held as a background paper to this report. The document consists of 19 pages of information and therefore the submitted evidence has been paraphrased. For ease of reference, the points referred to by Mr Moss on his documents have been substituted by the reference points used on appendix **JH3**. Mr Moss challenged the line of the path as portrayed by the applicant and as a result stated that he had never observed any person walking the route claimed.

Mr Moss confirmed that he put up Permissive Path signs with a route marked around the field edge on 6 September 2019.

On 10 October 2019 he erected a stock fence and gates around the field between points A-B which resulted in the public being unable to use the claimed path. In November 2019 a mixed native hedge was planted along side the stock fence. In response to Q.10, Mr Moss indicated that he had granted permission to various individuals to access the claimed route.

In response to Q.13, Mr Moss stated that he had erected green Permissive Path Notices at points A and B; first on 6 September 2019 and the second on 1 November 2019 *“in response to feedback from a walker that the time restrictions prevented her early morning walk”*. White circular waymarkers with an arrow surrounded by the words ‘Permissive Footpath’ were erected along the field edge path alongside the green permissive path signs.

Mr Moss noted the stile at point A. A waymark with an arrow pointing north with the words ‘Circular Walk’ around it is fixed to the stile with steel screws and on this waymark is a ‘Lantern Way’ sticker. This section of the trail is promoted as a permissive path.

In response to Q.15, Mr Moss stated that he had sent a s31 (6) Deposit & plan to the highway authority thereby rebutting any future claims for additional PROWs across his land at Breakheart Hill. This was however a misunderstanding and Mr Moss clarified by email of 29 March 2021 that he had not made such a deposit.

11.8 WILSON’S SOLICITORS (ON BEHALF OF LANDOWNER, MR MOSS)

Mr Moss raised a letter of objection via Wilsons (“Wilson’s”) Solicitors dated 21 April 2021 to the application and provided a further letter dated 26 April 2021 in reply to GCC’s response of 22 April 2021, all of which are held as background papers to this report. A summary of the grounds stated are provided below:

- The Foot & Mouth Disease of 2001/ 2 prevented a continuous retrospective 20 year period from 2019.
- The fact that the diversion was not processed meant that there was insufficient evidence to support either a Definitive Map Modification Order or a Public Path Order because the evidence failed the 20 year statutory test and showed that there was no intention to dedicate it.
- Permission granted to the Dursley Welcomes Walkers Group for the path to be included in the Lantern Way and the Breakheart Trail walks and also to the Dursley Running Group for their annual run rebuts the statutory test.
- As a result of the above, there is insufficient user evidence to raise a claim of presumed dedication.
- Doubt was cast upon the information supplied with regard to the ‘anomaly’ which resulted in the conflict between the Definitive map and the Written Statement.

12. USER EVIDENCE

12.1 Section 31(1) of the Highways Act 1980 (“s31HA80”) states that where a way over any land, other than a way of such 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’; without force, secrecy or permission 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 during that period to dedicate it”.

12.2 Section 31(2) states that the period of 20 years in sub-section (1) is to be calculated retrospectively from the date when the right of the public to use the way is brought into question through an overt act by the landowner which makes it clear to the public that their right is being challenged.

12.3 When the status of the claimed route was called into question;

The date of calling into question is simply the date when, as the result of some action, the public’s entitlement to use the way was challenged. The landowner obstructed the claimed route by means of a stock fence and padlocked gate erected in October 2019 and a native hedge planted shortly thereafter.

12.4 For the purpose of this report therefore the user evidence will be assessed over the 20 year period 1999-2019 leading up to the application.

12.5 Land Registry indicates that the land over which section B-C crosses as shown on **JH3** is unregistered. An inspection of the Rural Payments Register however records that this land is now in the ownership of the Breakheart Community Project Ltd. Historically a conveyance dated 1958, between the Merchant Venturers of the City of Bristol & Dursley Rural District, granted an easement for access to the reservoir “*along the roads or way coloured brown on the said plan*”. The road referred to included the section of unregistered land B-C. It should be noted however that there is no explicit reference in section 31(1) HA80 of use having to be of a level to have come to the attention of the landowner. It does 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 paths.

12.6 The extent and nature of the claimed use;

12.7 Under s31HA80, after a period of 20 years user 'as of right', it is presumed that a right of way has come into existence. Where a landowner can produce evidence to show that he has taken steps to prevent the accrual of new public rights of way through use of a route by the public, no such right will be dedicated. Such steps must be overt and make the public aware of the landowner's intentions. The analysis of the user evidence is detailed in the following paragraphs.

12.8 It is not essential for the paths or ways 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.

12.9 The application was initially supported by the user evidence of 29 individuals, collected on User Evidence Statements ("UES"). A summary of the UESs is attached to this report which is, by necessity, a generalisation, but it provides an insight into the evidence which has been put forward in support of the application. The summary and a useful bar chart of use are held as **JH19 & JH20** respectively.

12.10 All but three of the 29 individuals identified a path which is largely consistent with the depiction of the claimed route A-B-C as clarified by the applicant and held **JH3**. Most described the path as running between 2 stiles, i.e. A-B, thus falling short by 8m of the termination point C. However, most of the individuals also either drew the path on the accompanying plan extending to point C or supplied grid references which included it. At the start of this report it was stated that the applicant was not expected to be a cartographer. Similarly it would be unreasonable to expect that the individuals who supplied user evidence in support of the application to be either. Individuals who omitted the 8m of path extending to point C completely were contacted by letter of 19 February 2020 seeking clarification. Those who did not respond are identified in the summary as No's 3, 4 & 10 and as such their UES' are not included within the overall tally of users.

12.11 It was held in *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. It is generally accepted that in remote areas the amount of use of a way may be less than a way in an urban area.

12.12 Use by the remaining 26 individuals dates back to 1969 and all claim use of the path over part or all of the qualifying period; 1999-2019. Of those, 17 claim use of the path over the whole period. All use appears to have been for recreational purposes by individuals on foot only and the frequency of use varies; 4 claimed daily use, 15 claimed weekly use, 3 claimed monthly use and 4 claimed use of the path every few months. In response to Q.6; *how wide is the application route?* There were a variety of responses; 2 individuals did not specify a width, 12 stated 1m (3ft), 4 stated 1.5m (4/5ft), 2 stated 2m, 3 stated 3m, 1 stated 4m, one stated walking width and one stated wide enough for two people to walk side by side. Where no evidence exists as to the boundaries of a track, the presumption would be that the way is a "*strip of reasonable width*" (*Secretary of State for Defence v Percy* 1998). The application is for a footpath and thus if councillors are minded to direct that an order should be made, a width of 2m is recommended based on the common law presumption that a path should be wide enough for 2 people to pass and re-pass.

- 12.13 Without interruption;** Mr Moss via his legal representative, Wilsons, alleged that the Foot and Mouth Disease (“FMD”) 2001/ 2, during which the national public rights of way network was placed under a closure order (in Gloucestershire from 28 February 2001) constituted sufficient evidence of an interruption for the purposes of s31HA80 to rebut the statutory test of presumed dedication.
- 12.14** An ‘interruption’ for the purposes of s31HA80 is an action taken by the landowner to show that he maintains that the way is not a highway and has no intention of dedicating it as such. The custom of locking a gate to exclude the public once a year is a classic example of this. In *Merstham Manor v Couldson and Purley* 1932, it was considered that to constitute an interruption, there must be some “*physical and actual stopping up of enjoyment*” of the public’s use of the way and it must not be shown to be for any other purpose, i.e., preventing cattle escapes (*Lewis v Thomas* 1950).
- 12.15** The Planning Inspectorate’s Advice Note No.15 considered whether this question. It took the view that FMD did not constitute an interruption because the closure of land did not displace ownership and thus it would be reasonable for an Inspector to take the view that, in a period of 20 years or more, periods of non-use of a way may occur. It states “*Against this background, it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an “interruption” under section 31(1). In addition, whether the failure to remove a Foot and Mouth notice amounts to a challenge/bringing into question’ will depend on the particular circumstances of the case, including who erected the notice and the content of it. The failure to remove statutory notices cannot be taken as a public denial or challenge to the existence of the public rights*”.
- 12.16** Kerr J in the High Court judgement in *Roxlena* 2017 criticised the Planning Inspectorate’s advice note on FMD. He nevertheless acknowledged that there was enough evidence of use of the paths that the ‘reasonably alleged’ test was sufficiently met without investigating the extent of abstinence of use during the FMD outbreak. Therefore his finding on the question of FMD and interruption was *obiter*. The Court of Appeal 2019 reached the same conclusion on the ‘reasonably alleged’ test, and did not dwell on the question of FMD and interruption. Lindblom LJ (with whom the rest of the court agreed) recited but did not endorse (nor depart from) Kerr J’s finding in the court below on the question of FMD and interruption.
- 12.17** The Planning Inspectorate was challenged on their position regarding FMD by Mr Alan Kind, a consultant on public rights of way issues for over 30 years and editor of ‘Byways and Bridleways Trust’ journal following the *Roxlena* case. The response to him dated 8 December 2017 was as follows “*Re: Advice Note 15: ‘Breaks in user caused by Foot and Mouth Disease’.* Thank you for your letter of 3 December addressed to the Director, which has been passed to me for reply. In light of the contents of your letter, and email, I have discussed the matter with DEFRA and agreed my reply. We have noted Mr Justice Kerr’s comments in para 73 of the judgement, that he did not agree with the proposition in the Advice Note. Since his view was not essential to his decision in the Judicial Review of a decision made by Cumbria County Council, in which he dismissed each of the four grounds of the Claimants’ case, neither DEFRA nor PINS will be taking any further action”. To date, the Planning Inspectorate stands by Advice Note No.15 and has not withdrawn it.
- 12.18** The claimed path subject to this application, not being an official public footpath, was not subject to DEFRA’s national closure of public rights of way and Gloucestershire County Council did not supply FMD closure notices for land which was not part of the existing PROW network. No evidence has been submitted by users, or indeed by

members of North Nibley Parish Council or the Ramblers' Association, to show that they were prevented by the landowner from using the path over this period, whether by word of mouth, notice or by physical obstruction. Following the guidance provided by DEFRA and the Planning Inspectorate therefore, this report does not accept that FMD acted as an interruption capable of rebutting a statutory claim of presumed dedication.

12.19 Use 'as of right' (without force, secrecy or permission); 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 an ancient principle namely, 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. The House of Lords held that it was only necessary to prove that they have made use of the paths without resort to force, secrecy and as if they had a right to do so – that is, without having been granted any licence/ permission by the landowner.

12.20 There is no evidence that use of the claimed path has been by force or in secrecy.

12.21 Permission – Mr Moss alleges that this claimed path has been used by express permission, thus defeating the 'as of right' part of the statutory test. It is claimed that the landowner granted permission to the following organisers to use the path;

- Lantern Way; set up by 'Dursley Welcomes Walkers' in August 2015
- Breakheart Trail; set up by 'Dursley Welcomes Walkers' in 2016
- Dursley Running Club set up the Dursley Dozen Run which incorporated the claimed path in 1989. The run takes place annually in early February.
- "12 Favourite Walks in the South of Gloucestershire"; 1995 & 2007 editions – South Cotswold Ramblers' Group ("RA")

12.22 The law draws a distinction between acquiescence by the owner on the one hand and licence or permission on the other. Use, which is by acquiescence of the landowner is 'as of right' and passive toleration is all that is required to evidence this. However, a path used with express permission and thus not 'as of right' would mean that a landowner was granting the public a temporary, revocable license but with the intent that it should not be permanently dedicated as a public right of way. To rebut the 'as of right' test therefore, involves some positive act or acts on the part of the landowner to show his intent.

12.23 This report acknowledges that these trails, walks and the run have been promoted by the organisers for years. It is also acknowledged that permission has been sought privately from the previous landowner, Mr Pegler, although no evidence of this has been submitted.

12.24 It does not follow however that the issuing of express/ implied permission to specific parties demonstrates a wider lack of intention to dedicate to the public at large (*Beresford Trustees v Secretary of State for the Environment and Cumbria CC*, 1995).

12.25 When considering the Dursley Dozen Run and the RAs walks booklets, no evidence has been submitted to show that the 'permission' was communicated to the public. In *R v SSETR ex parte Dorset County Council* 1999 Dyson J was not satisfied that a landowner's letter to DoE, passed to the County Council but not communicated to the users, satisfied the spirit of s31HA80. The test to be applied is that enunciated by Denning LJ in *Fairey v Southampton County Council* 1956. Dyson J's interpretation of

that judgement is that; *“Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway.”*

12.26Dursley Running Club did not advertise the permission as part of their online promotion of the event or by means of physical notices along the claimed path itself. An email was received from Mark Clarke, a member of the Dursley Running Club on 23 March 2021. He said *“I contacted Graham Hawkins, a long term member of Dursley Running Club and one of the organisers of the Dursley Dozen. He confirmed that the race started about 30 years ago. He also gave me the telephone number of the original organiser, Trevor Lewis. I immediately contacted Trevor and we had a long telephone conversation. Trevor confirmed that he wrote to the previous landowner, Mr Pegler, in advance of each race over a period of about 10 years. He did this ‘out of courtesy’ given that this was a public event, involving many runners, which could cause some disruption. Importantly though, he also contacted all the other landowners over whose land the race was run irrespective of the status of each path/track”. Further, the organisers did not seek to prevent the public from using the path during the run. Mark Clarke advised in an email of 1 April 2021 “members of the public not participating in the Dursley Dozen were not prevented from using route at the same time. I marshalled at two separate places and on several occasions walkers would turn up and I would just warn them that the race was taking place and that there would be a lot of runners”.*

12.27With regard to the RAs walks booklets, there is no mention within either edition; 1995 or 2007, that use of the claimed path was by permission. A comment made by Mr Heaton, S.Cotswold RA Footpath Secretary however, in a letter dated 20 August 2001, which can be read in full at paragraph 10.42 of this report, appears to contradict this statement. He described the claimed path in the following way *“...in this case the unofficial permissive route is far preferable”*. However he then admitted *“... we have been unable to discover who the landowner is...”*. This comment casts doubt on whether permission was sought from the landowner to include the claimed path within the walks booklets and it follows that ‘permission’ in this context cannot rebut a claim of presumed dedication.

12.28The action of privately seeking permission to use the claimed path as part of the Dursley Dozen’s annual run or by the RA as part of their walks booklet, but not communicating this to the public would not constitute sufficient evidence of use by ‘permission’ thus defeating the ‘as of right’ test.

12.29Unlike the Dursley Dozen Run or the RA’s walks booklets, the Lantern Way and the Breakheart Trail, produced by ‘Dursley Welcomes Walkers’, both advise the public that use of this claimed path is with the landowner’s permission and thus in the light of previous statement might be expected to constitute sufficient evidence to defeat a claim of presumed dedication. Mr Ashbee, a member of Dursley Welcomes Walkers, was responsible for seeking the landowner’s permission to incorporate the path within the walks. He supplied user evidence and is identified as No 22 in the summary. In response to Q.12; ‘Did the owner give you permission to use the application route?’ he confirmed *“Yes”... “Owner said to me by telephone he allowed the path to be used and I could sign it as part of a new route called the Lantern Way – about 2014”*.

12.30However it is again important to consider the context in which the word permission has been used. The Ramblers’ Association was one of the consultees for this application. Malcolm Taylor, present secretary to the S. Cotswolds RA Group was asked to respond. He in turn contacted Chris Cherry, Chairman of ‘Dursley Welcomes Walkers’.

Chris responded to him on 1 March 2021 (can be read in full at paragraph 11.5 of report); - From *the Dursley Welcomes Walkers* aspect - *when we conceived the idea of The Lantern Way our aim was to put this route onto Public Rights of Way wherever possible, if it was not possible to be on a Public Right of Way then we would seek permission from the landowners to route the path across their land. In the case of this field a telephone conversation was held with the landowner of the time (Mr Denis Pegler) and he gave permission for our Lantern Way Walkers to cross his field, he also went on to say **that the route would become a public footpath** (Case Officer's emphasis).*

12.31 Chris Cherry responded to GCC direct by email on 15 March 2021 to explain "*When Dursley Welcomes Walkers looked at the planning for our Lantern Way walk we were keen to ensure that the walk remained on Public Rights of Way wherever possible and if the walk route did use paths that were not a PRow then we should contact the landowner and seek permission. David Ashbee has already written to you (Case Officer's addition; 1 March 2021 – recorded in paragraph 11.3 of report) to say "I was told by a Nibley councillor that the landowner Mr Pegler was aware that people used the route and gave me his phone number. **When I spoke to Mr Pegler, he said that as far as he was aware, the path was now an official right of way. Rights of Way told me the proposal had stalled, perhaps on grounds of cost. So on our leaflet we had to declare it as Permissive. But Mr Pegler had no objections and seemed to think its status had already been changed** (Case Officer's emphasis). Your records should show that he applied - that would be prior to 2014". "Having obtained this permission we proceeded with our plans for The Lantern Way".*

12.32 Whilst granting permission for the claimed path to be included in the walks leaflets, Mr Pegler's direct remarks to Mr Ashbee, show that he considered the claimed path to be an official public footpath. This may be based upon the fact that 7 years previously in 2007, he had been contacted by Sarah Ellis (Macaulay-Lowe) a Public Rights of Way Officer to ask him if GCC could divert part of CNN9 onto his land along the route of the claimed path. This was to address the anomaly explained at the start of this report which had resulted in a conflict in the DMS. An email on file from Sarah to her Line Managers dated 19 February 2007 (can be read in full in paragraph 10.37 of this report) states "*I met with Mr Pegler today and explained the situation. Although this has been going on for a very long time, he was only made aware of this just before Christmas when I wrote to him. He will accept the diversion onto his land if we give him some compensation...The stiles at either end are not in a good condition and would need replacing with kissing gates. Mr Pegler would be happy for kissing gates to be installed".* Shortly after this Sarah transferred to the Public Rights of Way Operations team and it seems that this diversion was overlooked.

12.33 GCC's internal files also hold a letter dated 4 November 2003 written by Mr Powell, North Nibley Parish Councillor, following a meeting with GCC representatives in October 2003 when they all agreed that the best way to resolve the anomaly was to officially divert part of CNN9 to the route being used – the claimed path. He met Mr Pegler and secured his agreement to divert the path at GCC's expense to resolve the anomaly. He wrote "*The route walkers have taken since the reservoir and its access road was built is directly across the field 920a (Case Officer suggests that it should read 720a) from the stile behind the quarry to the gate of the access road. On the northern side of that vehicular gate is a post and rail fence, about three feet long that the walkers use as a stile to enter the lane. From there they either turn down the bank on CNN10 to the pub or turn left on CNN10 out to the road. I have spoken to Mr Pegler and he is quite happy with the situation as currently walked and I have explained that you will contact him before taking the necessary steps to regularise the situation. I am presuming that your office will bear the cost of sorting out this anomaly from the past".*

12.34 Mr Pegler's 'permission' for the claimed path across his land to be included in the Lantern Way and the Breakheart Trail was not based upon a temporary license which could be revoked at will whilst retaining his intention of not permanently dedicating the path. His direct comments to Mr Ashbee indicate that he was under the impression that the GCC sponsored diversion had been processed and the path had been dedicated as an official public footpath. Mr Pegler in effect rebutted the allegation himself that use of the path was by permission and thus not 'as of right'. The fact that the diversion had not taken place or that no compensation had been paid is irrelevant. Following the launch of the walks, he did not punctuate the public use of the path across his land by occasional closures or notices. Whilst aware of the use to which the land was being put, he took no action to deter it. Mr Ashbee's statement suggests that the decision was taken by the organisers, in good faith, but independent of the landowner, to use of the word 'permission' within the description of the Lantern Way and Breakheart Trail, perhaps because they did not want to misrepresent the status of the path. Mr Ashbee stated in response to Q.13 of his UES; "*I knew from maps that it (claimed path – officers clarification) was not a PROW.*" A better word to describe the claimed path within the leaflets may have been 'unofficial'. They did not however reflect the landowner's view with regard to the path and therefore use of the word 'permission' in the walks description in this context is not considered sufficient evidence to rebut the 'as of right' test.

12.35 Members of the public claiming use of this path were asked in Q.12 of the UES; "*Did the owner give you permission (or did you seek permission) to use the application route?*" 24 out of the remaining 26 individuals responded "No".

12.36 The 2 who responded "Yes" were;

- Mr Ashbee, identified as No. 22 in the summary. His permission, as discussed in the last few paragraphs was for use of the claimed path as part of the Lantern Way. We have seen however that this permission was not temporary or dependant upon the path not being dedicated as a permanent highway.
- Mr Pagett, identified as No.16 in the summary. He responded; *previous owner, Dennis Pegler always gave permission to walk over the land.* In a conversation with Mr Pagett on 23 March 2021, he clarified that his father worked for Mr Pegler and the families got on well to the point that no permission was necessary. The case officer asked; did he ask Mr Pegler for permission? He responded that he never did - Mr Pegler was happy for people to walk anywhere.

12.37 The issue of use of the claimed path by the public is probed further by the following questions within the UES.

Q.10 asks; *have you ever seen signs or notices suggesting whether or not the application route is a public right of way? (prior to the 2019 permissive path signs);*

- Mr Snell, identified as No.26 in the summary stated "*Yes- marked public footpath by both stiles marked on the map since I've been using it between 1977 and 2019*".
- Mr Scragg, identified as No.23 in the summary stated "*yes – public footpath arrow on both stiles*".

- Mr Chaplin, identified as No.12 in the summary said “yes- there was a sign on the stile post on entry to the field from the track marking it as the Lantern Way which was removed prior to the new permissive foot path sign”.
- Ms Blitz, identified as No.2 in the summary said “Yes – Gloucestershire County Council Public Footpath signs were in place both sides of both stiles indicating a public right of way. Also Jubilee Way and lantern Way signs”.
- Mrs Gibb (applicant) identified as No.1 in the summary said “Yes- Signs PROW, Lantern Way and also Jubilee Circular Walk, until September 2019 and then permissive sign was introduced”.

12.38 In response to Q.13; *has anyone ever told you that the application route was not public?* No one responded ‘Yes’. Mr Ashbee commented however that “*I knew from maps it was not prow*”.

12.39 The responses above indicate that the public did not consider that they used the path with permission or that they required it. The following comments taken from the UES in response to Q.17; *Please give us any further information which you consider would be helpful in reaching a decision*” provides an appreciation of how the path is viewed.

Mrs Watts, identified in the UES summary as No. 14, responded; “*This footpath is well worn by many many years of usage. It is very distinctive within the field. Generations of people have walked this without any problems and it has been passed on as a walk with lovely views*”.

Ms Price, identified in the summary as No. 10, responded; “*The footpath in question has been well used for years by local walkers*”

Mr Heaven, identified in the summary as No. 8, responded; “*I thought if a path was regularly use be a member of the public over a certain No of years it automatically became a public footpath*”.

Ms Maynard, identified in the summary as No. 7, responded; “*The footpath has been well used by generations of walkers- the dip in the field, made by thousands of footsteps, is testament to this*”.

Mr Swift, identified in the summary as No. 6, responded; “*As stated in my previous answers, I and many others have used the path for walking/ dog walking using access through the stiles providedAlways unmolested by landowners or Council officials*”.

Mrs Russell, identified in the summary as No. 3, responded; “*I have walked this route for over fifty years and made many friends along the way. At no time did I think it was not a right of way*”.

The Applicant, Mrs Gibbs, identified in the Public Right of Way User Evidence Statement (“PUES”) summary as No. 1, responded; “*.....I first noticed in September 2019 when notices were erected with Permissive path and instructions of use. Other signs – Public Rights of Way, The Jubilee Circular Walk and Lantern Way were removed. As I had been walking this path for over 50 years I decided to do a bit of research and was informed that the original path CNN9 was by the reservoir but this wasn’t accessible due to Severn Trent sometime in the 70s fencing it off. I have also approached the other end of CNN9 and find no signs or evidence of a PROW. I then had a chat with Mrs Margaret Owens who with her husband Gordon has farmed the*

land for 50 years and she had no knowledge of the original path and informed me that it was not on their deeds.

The path that I and others have been using from stile to stile has now been fenced off and the Permissive path takes you around the edge of the field with two padlocked gates and bushes and trees planted around the perimeter so this beautiful view that has been enjoyed by many will be lost forever. I also noticed recently that new Lantern Way signs had been put up on the stiles but they had been removed soon after.”

12.40 USER EVIDENCE CONCLUSION

12.41 GCC’s internal files show that members of North Nibley Parish Council and the Ramblers’ Association used the claimed path for many years and in the case of the parish, use is noted as starting from the construction of the reservoir and access track in the late 1950s (based upon the 1958 easement referred to in paragraph 12.5). None of their correspondence however reflected concern with regard to any actions or attempts on behalf of the landowner to prevent or obstruct their use of it. As stated in this report, both agencies could have pressed GCC to re-open the official route of CNN9 but the correspondence showed that they continued to urge GCC to process the diversion of the eastern end of CNN9 to the route used, i.e. the claimed path, thus making it an official public footpath. Mr Pegler agreed to the proposed diversion of the eastern end of CNN9 to the field in his ownership. Conversations with the organisers of the Lantern Way indicate that he considered that the diversion process was complete. Stiles have been recorded at each end of the path on which public footpath waymarks were attached for many years. No evidence has been shown that the landowner physically or verbally obstructed use of the path. Together with the UES of the 26 individuals who claim use ‘as of right’, and without interruption for over 20 years, this report considers that the user evidence in this rural location would support a case of deemed dedication as a public footpath.

12.42 **Whether there is evidence of a lack of intention to dedicate a public right of way;** “Intention to dedicate” was considered in *Godmanchester 2007*, which is the authoritative case dealing with s31HA80. In his leading judgement, 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”*.”

12.43 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.

12.44 The current landowner alleges that FMD constitutes an ‘interruption’ and the promoted use of the path by ‘permission’ in walks leaflets and booklets for tourists, walkers and the like are considered to be sufficient to rebut a claim of presumed dedication. This is rejected for the reasons set out in the previous paragraphs.

12.45 In addition to the evidence submitted within the UESs, the promoted use of the claimed path via the walks leaflets and booklets is evidence of user by the public of such a volume that the landowner could not have been unaware of it even if he had not been approached by the organisers of events and walks. The physical characteristics of the path demonstrate the landowner’s acquiescence. The applicant, Mrs Gibbs, noted PROW waymarks on the stiles at either end of the path throughout

her use of the path which dates back to 1972 and Mr Snell noted similar signs throughout his use from 1977. Stiles at each end of the path were noted by Mr Peace who claimed use of the path from 1969.

- 12.46** Considering the qualifying period 1999-2019, no evidence has been submitted to show that any 'overt' action was taken by the landowner to challenge the public's use of the claimed way or to indicate to them that he had no intention of dedicating the path, whether verbally, by notice or by physical obstruction. This report has shown that the converse is true – the outward appearance of the landowner's action is of acquiescence over a long period. Further, in 2003 & 2007 he agreed to dedicate the path as an official public footpath and considered by 2014 when approached by one of the organisers of the Lantern Way, that it had become so.
- 12.47** It is suggested therefore that the evidence is sufficient to show, that a public footpath is reasonably alleged to subsist over the claimed route and should be recorded on the definitive map and statement.

13. COMMON LAW

- 13.1** This application can also be considered at common law. The principals for statutory dedication with regard to use, i.e., by the public, 'as of right'; without force, secrecy or permission & without interruption equally apply at common law. The question of dedication is purely one of fact and public user is no more than evidence, which has to be considered in the light of all available evidence. Public use will not, therefore, raise the inference of dedication where the evidence in its totality shows that the public right of way status was not intended. The claimed use must be sufficient and will therefore vary according to the particular circumstances of the case.
- 13.2** This report suggests that the Pegler family, who owned the field over which the claimed path crosses from 1939, knew of and acquiesced in the use of the path by the public. Unlike the statutory test, the total period spanned by the user evidence can be considered at common law.
- 13.3** This would include;
- Stiles with official public footpath waymarks at either end of the path noted by Mr Peace from his use of the path in 1969.
 - The evidence of use submitted by individuals in their UES covers a period of 50 years from 1969 until 2019 when the public's right to use the path was challenged. Even considering the 32 years prior to 2001, there have been 19 individuals who claimed use 'as of right' and 'without interruption' of the path. Of those, 9 claimed use of 20 years or more and 2 claimed more than 30 years use.
 - Walkers using the RAs' 1995 promoted walks booklet, for which it is doubtful that the landowner's permission was secured based upon the fact that he was unknown to them.
 - The documented use from the late 1950s, referred to by Mr Powell on behalf of North Nibley Parish Council in his letter of 4 November 2003 when he stated that the claimed path was "*the route taken since the reservoir and its access road were built*" (based upon the 1958 easement referred to in paragraph 12.5 of this report).

- Signed and dated photos taken by Mr Powell of the claimed path taken on 23 December 1999.
- The letter of 20 August 2001 from Mr Heaton, RA secretary, who stated that “*I have used it personally for over 20 years without let or hindrance*”.

13.4 This use is considered sufficient to represent ‘acceptance by the public’, one of the pre-conditions for the creation of a highway at common law.

13.5 It is re-iterated that there is no evidence that any permission granted by the landowner to the Ramblers Association for their 1995 walks booklet and the organisers of the Dursley Dozen Run which started in 1989 was communicated to the public and thus would not rebut the ‘as of right’ test.

13.5 The lack of ‘overt’ action taken by the landowner to rebut any suggestion of dedication such as erecting physical barriers, installing notices stating that the route is not a public right of way or turning people back represents the other pre-condition for the creation of a highway at common law; implied dedication.

13.6 The available evidence suggests that there has been a route corresponding to the claimed path dating back to the late 1950s which the public has used on foot, as of right and without interruption thus giving rise to an inference of dedication at common law.

14. CONCLUSIONS

14.1 Section 53(3) (c) (i) of the Wildlife and Countryside Act 1981 relates to the discovery by the Authority of evidence that shows that a right of way that 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.

14.2 Paragraph 12 of Annex B of the Department of Environment Circular 2/93 states that before making an order the surveying authority must be satisfied that the evidence discovered by the Council, when considered with all other relevant evidence available, shows that the Definitive Map and Statement require modification because a right of way which is not shown on the map and statement subsists, or is reasonably alleged to subsist. The relevant tests are now set out in section 4.4 of the Defra Rights of Way Circular 1/2009, version 2 (October 2009) and discussed below.

14.3 THE TESTS

14.4 R v SSE ex parte Bagshaw and Norton 1994: explained that s53(3)(c)(i) involves consideration of two tests;

- (1) *Test A*: Does a right of way subsist? Test A requires clear evidence in favour of the applicant and no credible evidence to the contrary.
- (2) *Test B*: Is it reasonable to allege that a right of way subsists? For this possibility to arise it will be necessary to demonstrate that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. If there is a conflict of credible evidence, but no incontrovertible evidence that a right of way could not be reasonably alleged to subsist, then it is reasonable to allege that one does.

- 14.5** In Emery Appeal (1997) LJ Roch approved Bagshaw and Norton and provided further clarification of the reasonably alleged to subsist test at the Sch14 stage (determination). This was a case about conflicting evidence of use. Held in relation to s53 WCA1981: *“where there is a conflict of apparently credible evidence, a right of way is ‘reasonably alleged to subsist’ if, reasonably accepting the evidence of one side, and reasonably rejecting that of the other, the right would be shown to exist. Also an order made under s53(2) following a Sch14 procedure still allows the applicant and objectors the right to appeal under Sch15 (submission to Secretary of State) when conflicting evidence can be heard at a public inquiry and the matter subsequently determined”*.
- 14.6** This report has made a case for a claim of statutory presumed dedication over the period of 1999–2019 but has also considered a claim of inferred dedication at common law citing use dating back to the late 1950s. There is conflicting evidence between the current landowner and the users with regard to use being ‘interrupted’ and ‘by permission’. However this report rejects the arguments and submits that the user evidence is sufficient to show that the claimed path; A-B-C is reasonably alleged to subsist as a public footpath and therefore this section of path must now be protected by being recognised on the Definitive Map as a public footpath.
- 14.7** Thus the recommendations is as follows:
- (a) 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.

15. APPENDICES:

JH1	1:10,000 scale Location Map
JH2	Application plan
JH3	Claimed path plan; 1:1250 scale
JH4.1 – 4.8	Photos of claimed path
JH5	Original Submission
JH6.1	North Nibley Draft Map &
JH6.2	North Nibley Draft Statement
JH7	Objection No.18 & County Surveyor’s inspection
JH8	Dursley RDC Schedule of Draft Map; Objection No.18
JH9	Highway Committee minutes 12 May 1958
JH10	County Surveyor letter of determination; 22 September 1960
JH11	Modified Draft Map
JH12	Provisional Map
JH13.1	Definitive Map &
JH13.2	Definitive Statement
JH14	Map attached to letter of 9 December 1999 sent to Mr Powell, North Nibley Parish Councillor
JH15	Photos taken of claimed path by Mr Powell; 23 December 1999
JH16	Plan attached to letters; 6 and 25 October 2006 to Mr Palmer and Mr Pegler, respectively, of proposed diversion
JH17	Hand drawn map of path from Mrs Taylor, S.Cotswold RA Group based upon letter of 17 November 1996
JH18	Letter (20 August 2001) & plan from Mr Heaton, RA Secretary
JH19	Summary of User Evidence Statements
JH20	Bar chart of use; 1999 - 2019