

# Public Document Pack

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**Date:** Monday, 17 July 2023

Dear Sir or Madam

**The Public Rights of Way Sub-Committee – Tuesday, 25 July 2023, 3.00 pm – Kenn Room**

A meeting of the Public Rights of Way Sub-Committee will take place as indicated above.

The agenda is set out overleaf.

Yours faithfully

Assistant Director Legal & Governance and Monitoring Officer

To: Members of the Public Rights of Way Sub-Committee

Councillors:

Timothy Snaden (Chairperson), Peter Burden, Ian Parker and Dan Thomas.

**This document and associated papers can be made available in a different format on request.**

## Agenda

**1. Election of Vice-Chairperson for the Municipal Year 2023-24**

**2. Public Participation (Standing Order 17)**

To receive and hear any person who wishes to address the Sub-Committee on matters within its remit. The Chairperson will select the order of the matters to be heard. Each speaker will be limited to a period of five minutes for public participation up to a maximum of 30 minutes.

Requests to speak must be submitted in writing to the Head of Legal and Democratic Services, or to the officer mentioned at the top of this agenda letter, by noon on the day before the meeting and the request must detail the subject matter of the address.

**3. Apologies for absence and notification of substitutes**

**4. Declaration of Disclosable Pecuniary Interest (Standing Order 37)**

A Member must declare any disclosable pecuniary interest where it relates to any matter being considered at the meeting. A declaration of a disclosable pecuniary interest should indicate the interest and the agenda item to which it relates. A Member is not permitted to participate in this agenda item by law and should immediately leave the meeting before the start of any debate.

If the Member leaves the meeting in respect of a declaration, he or she should ensure that the Chairperson is aware of this before he or she leaves to enable their exit from the meeting to be recorded in the minutes in accordance with Standing Order 37.

**5. Minutes (Pages 5 - 10)**

22 November 2022, to approve as a correct record (attached)

**6. Matters referred by Council, the Executive, other committees etc (if any)**

**7. Mod 105 - The Uplands Nailsea (Pages 11 - 58)**

Report of the Director of Development and Environment (attached)

**8. Urgent business permitted by the Local Government Act 1972 (if any)**

For a matter to be considered as an urgent item, the following question must be addressed: "What harm to the public interest would flow from leaving it until the next meeting?" If harm can be demonstrated, then it is open to the Chairperson to rule that it be considered as urgent. Otherwise the matter cannot be considered urgent within the statutory provisions.

## Exempt Items

Should the Public Rights of Way Sub-Committee wish to consider a matter as an Exempt Item, the following resolution should be passed -

“(1) That the press, public, and officers not required by the Members, the Chief Executive or the Director, to remain during the exempt session, be excluded from the meeting during consideration of the following item of business on the ground that its consideration will involve the disclosure of exempt information as defined in Section 100I of the Local Government Act 1972.”

Also, if appropriate, the following resolution should be passed –

“(2) That members of the Council who are not members of the Public Rights of Way Sub-Committee be invited to remain.”

### **Mobile phones and other mobile devices**

All persons attending the meeting are requested to ensure that these devices are switched to silent mode. The chairman may approve an exception to this request in special circumstances.

### **Filming and recording of meetings**

The proceedings of this meeting may be recorded for broadcasting purposes.

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting, focusing only on those actively participating in the meeting and having regard to the wishes of any members of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Assistant Director Legal & Governance and Monitoring Officer's representative before the start of the meeting so that all those present may be made aware that it is happening.

Members of the public may also use Facebook and Twitter or other forms of social media to report on proceedings at this meeting.

### **Emergency Evacuation Procedure**

#### **On hearing the alarm – (a continuous two tone siren)**

Leave the room by the nearest exit door. Ensure that windows are closed.

Last person out to close the door.

**Do not** stop to collect personal belongings.

**Do not** use the lifts.

**Follow** the green and white exit signs and make your way to the assembly point.

**Do not** re-enter the building until authorised to do so by the Fire Authority.

**Go to Assembly Point C – Outside the offices formerly occupied by Stephen & Co**



## Minutes

of the Meeting of

## The Public Rights of Way Sub-Committee

Tuesday, 22 November 2022

Kenn Room

Meeting Commenced: 3.00 pm

Meeting Concluded: 4.10 pm

### Councillors:

Mike Bird (substitute for Councillor James Tonkin)  
Robert Payne  
Timothy Snaden  
Richard Westwood

**Apologies:** Councillors: Ann Harley (Chairperson) and James Tonkin

**Officers in attendance:** Elaine Bowman (Principal Access Officer), Penny Price (Access Support Officer) and Esther Coffin-Smith (Natural Environment Manager), Michèle Chesterman (Committee Services Senior Officer)

### PRW Election of Chairperson for the Meeting

1

**Resolved:** that Councillor Westwood be elected Chairperson for the meeting.

**Councillor Westwood in the Chair**

### PRW Election of Vice-Chairperson for the Municipal Year 2022-23 (Agenda item 1)

2

**Resolved:** that the Election of Vice-Chairperson for the 2022/23 Municipal Year be deferred until the next meeting of the Sub-Committee on 21 March 2023.

### PRW Public Participation (Standing Order No 17) Agenda item 2)

3

None

### PRW Declaration of Disclosable Pecuniary Interest (Standing Order 37) (Agenda item 4)

4

None

### PRW Minutes of the Meeting held on 29 March 2022 (Agenda item 5)

5

**Resolved:** that the minutes of the meeting held on 29 March 2022 be approved as a correct record.

**PRW 6 North Somerset Council (NSC) Rights of Way Improvement Plan - Final Plan and Consultation Response - Verbal Summary (Agenda item 7)**

The representative of the Directorate of Place informed members that the current Rights of Way Improvement Plan (ROWIP) had expired in 2020. Delays to the new version had been delayed by COVID and staff capacity. The ROWIP 2022-23 had been drafted and published for consultation in August 2022 with 174 responses received (126 from individuals and 26 from organisations).

The consultation process had requested feedback on the following: RoW user's requirements; the 5 objectives in the ROWIP Plan and feedback on the Action Plan. Members were informed that the main themes in the consultation included connectivity; routes; enforcement; multi-user; maintenance and user-behaviour.

Members noted the outcomes of the consultation which were as follows:

- The user requirements would be updated to reflect changes or additional needs since the last ROWIP;
- The objectives were sound but could be broadened to better reflect what was in the action plan;
- The action plan required some additional actions and rewording so that it was clearer what was proposed.

The officer provided members with information on the ROWIP user requirements; ROWIP objectives and ROWIP actions to improve user experience – new actions and ROWIP actions to improve user experience – amended action.

In terms of the timetable for the ROWIP the next stage would be for it to be submitted to the Executive on 7 December 2022 and if no further amendments for it to be published on the internet and then to report on progress against the action plan.

**Resolved:** that the report be noted

**PRW 7 Mod 41 - Footpath Addition at Hawthorn Gardens, Weston-super-Mare (Agenda item 8)**

The representative of the Director of Development and Environment reminded members of a report which was brought to the PRow on 29 March 2022 which considered a Definitive Map Modification Order application which had been submitted on the 20 April 2000. That application requested that a route, in the ward of Weston-super-Mare Kewstoke should be recorded as a footpath. The original application was submitted supported by 12 user evidence forms and supporting letters. However, following pre-order consultation further user evidence forms were received. That application for a Definitive Map Modification Order was submitted under Section 53 (5) of the Wildlife and Countryside Act 1981. The effect of that request would be to amend the Definitive Map and Statement for the area. The report was based on user documentary evidence.

At that meeting members considered the evidence relating to that application and authorised the making of an Order, the effect of which would, if confirmed, add a

public footpath to the Definitive Map.

Following the authorisation of that Order the preparation for the Order commenced where it was discovered that the alignment shown on the previous report was inaccurate and did not reflect the route being used on the ground. This alignment did not affect the start and finish of the route, therefore was not considered to be detrimental to the making of that order.

Members were informed that the Order was made on 28 May 2022, advertised on the 9 June 2022 where comments were invited by 22 July 2022. All relevant parties were consulted including the owner of the land. At the end of this period no objections had been received to the making of the Order.

As no objections had been received to this Order, it was within the powers of the Council to confirm the Order as an unopposed Order.

**Resolved:** that the Public Rights of Way Sub-Committee authorise the confirmation of the order made on 28 May 2022, namely North Somerset District Council (Addition of Footpath AX31/105 Hawthorn Gardens, Weston-super-Mare) Definitive Map Modification Order No 2 2022 as no objections have been received to the making of this order.

**PRW 8 PPO 200 - Public Path Extinguishment Order and Definitive Map Modification Order for Public Footpath AX20/2, Old Banwell Road Locking (Agenda item 9)**

The representative of the Director of Development & Environment reported on measures to address an anomaly between the council's Definitive Map records of Public Rights of Way and a route being used by the public; where part of Public Footpath AX 20/2 at the western end of 'Old Banwell Road'/the northern end of 'The Bury' in Locking is obstructed by a dwelling and the curtilages of two dwellings.

Members' attention was drawn to Appendix 1 which stated the legal basis for determining this Public Footpath anomaly; Appendix 2 which showed the existing Definitive route at the properties 'Althelstan' and No 2 Old Banwell Road (A-B), which instead ran along an alleyway between the two properties. The route used has Public Footpath signage and path furniture; Appendix 3 which showed the research undertaken by officers, which concluded that a Public Path Diversion Order application should be submitted under the Highways Act 1980, if the affected landowners wished to seek amendment of the Definitive Public Footpath line, diverting the route from their properties to the route already being used by the public; Appendix 4 which outlined the steps taken to address this Public Footpath anomaly and finally Appendix 5 which contained further photographic and aerial photographic evidence of the 'used route'.

Members were informed that despite efforts to seek all affected landowners' approval for the formal diversion of this route, this had not been possible. Therefore, following legal opinion on how this matter should proceed, it was believed that the best course was to 'claim' the route which was being used by the public by way of a DMMO and once that process was completed to seek the

extinguishment of the currently obstructed recorded line.

**Resolved:**

That the Public Rights of Way Sub-Committee authorise the following:

- (1) (i) the making of a Definitive Map Modification Order (DMMO) adding a Public Footpath along the route shown between points C-D-B on the proposal map (Appendix 2); on the grounds that there is sufficient evidence to show a Public Footpath has been established under section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981;
- (ii) if no objections are made and sustained that authorisation be given for the confirmation of the DMMO;
- (iii) if objections are made and sustained, that the DMMO mentioned at (1) above be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination and the council support the Order through any subsequent procedure;
- (2) (i) if the DMMO authorised above is made and confirmed, that a subsequent Public Path Extinguishment Order (PPEO) be made, to extinguish that part of Public Footpath AX 20/2 between points A-B on the proposal map (Appendix 2), which will no longer be needed for public use;
- (ii) if no objections are made and sustained that authorisation be given for the confirmation of the PPEO;
- (iii) if objections are made and sustained, that the PPEO mentioned at (2) above be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination and the council support the Order through any subsequent procedure.

**PRW 9 Report on Incomplete Definitive Map Modification Order Applications (Agenda item 10)**

The representative of the Director of Development & Environment advised members that North Somerset Council ("The Council") had 23 Definitive Map Modification Order Applications on the Section 53b Register (Appendix 1) which had not been completed in accordance with the legislation laid down in Schedule 14 of the Wildlife and Countryside Act 1981.

Members were informed that North Somerset Council would be ill advised to determine these applications when the correct procedure had not been undertaken by the applicant which could lead to legal challenge by owners of the land and interested parties. It was noted that attempts had been made to contact the applicant to address this lack of process and missing information but to date no response had been received from the applicant. It was therefore proposed to cease pursuing these applications and to close them down on the Section 53b Register.

**Resolved:** that the Public Rights of Way Sub Committee authorise the relevant officer to formally close the files on the 24 Definitive Map Modification Order Applications listed in Appendix 1 of the Report from the Section 53b Register.

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Chairperson

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## **North Somerset Council**

### **Report to the Public Rights of Way Sub-Committee**

**Date of Meeting: 25 July 2023**

**Subject of Report: Mod 105 The Uplands**

**Town or Parish: Nailsea**

**Officer/Member Presenting: Elaine Bowman**

**Key Decision: No**

**Reason:**

### **Recommendations**

It is recommended that the Public Rights of Way Sub Committee authorise the withdrawal and file closure of the application for Mod 105 The Uplands Nailsea, submitted by Mr R Turvey, on the grounds that the aims of the DMMO application will be met by the developer's obligations in the s106 agreement and Public Path Creation Agreement.

#### **1. Summary of Report**

This report relates to an application for a Definitive Map Modification Order (Mod 105) under Section 53(5) of the Wildlife and Countryside Act 1981 submitted in November 2017. That application requested that four unrecorded routes on land to the south of The Uplands in the Parish of Nailsea should be recorded as Public Footpaths.

The application was based on 15 User Evidence Forms claiming that use of these footpaths had been for a period of more than 20 years. Such use was 'as of right, without permission and unchallenged'. A Location Plan showing the claimed footpaths is included within this report.

The land over which these claimed footpaths cross is land within the ownership of the Council and was considered to be Public Open Space until appropriated to planning purposes (DP130 and DP233). This report will detail what is proposed with this land, the consultation that has been ongoing with the applicant and the requirements placed on the Developer in relation to establishment of footpaths and their dedication as public rights of way.

This matter is currently recorded on the Definitive Map Register as Mod 105 and under the council's normal practice of dealing with these in chronological order would not be being considered at this time. However, as this area of land is due to be developed it is necessary for this matter to be brought to the Committee out of sequence.

## 2. Policy

The maintenance of the Definitive Map should be considered as part of the management of the public right of way network and so contributes to the corporate plan “A Thriving and Sustainable Place” (a great place for people to live, work and visit) and “An Open and Enabling Organisation” (collaborate with partners to deliver the best outcomes).

## 3. Details

### Background

#### i) The Legal Situation

North Somerset Council, as Surveying Authority, is under a duty imposed by the Wildlife and Countryside Act 1981, Section 53(2) to keep the Definitive Map and Statement under continuous review. This includes determining duly made applications for Definitive Map Modification Orders whether that is through negotiation with the owner of the land or through historical research and user evidence.

#### ii) The Role of the Committee

The Committee is required to determine whether or not a Definitive Map Modification Order should be made. **This is a quasi-judicial decision, and it is therefore essential that members are fully familiar with all the available evidence. Applications must be decided on the facts of the case, there being no provision within the legislation for factors such as desirability or suitability to be taken into account.** It is also important to recognise that in many cases the evidence is not fully conclusive, so that it is often necessary to make a judgement based on the balance of probabilities.

### Conclusion

As this application relates to routes which are not currently recorded on the Definitive Map as Footpaths it would normally be necessary for the Committee to consider whether, given the evidence available, that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist. However, on this occasion the Committee are being asked to consider whether the actions undertaken by Officers to secure routes through this area of land by formal recording within the Section 106 Agreement and dedicating them through a Public Path Creation Agreement with the successful developer is sufficient to authorise the close of this DMMO file. Relevant sections of these documents will be detailed further in this report.

## 4. Consultation

Formal consultation on the Definitive Map Modification Order (DMMO) has not been undertaken as North Somerset Council (as local planning authority) and Stonewood (as developer) have been negotiating a s106 agreement in connection with the planning permission (20/P/2000/R3) for the erection of 52 new dwellings and one substation building with the provision of car parking, landscaping and associated works on the land. The s106 is now in agreed form.

The s106 agreement includes obligations on the developer to construct footpaths across The Uplands in the indicative positions shown on drawing no UNA\_008 rev C and on the drawing titled “Uplands, Nailsea Landscape Strategies 5.5 Proposed Public Footpaths



(Public Footpath Drawing). These drawings are attached to this report (Document 4), together with an extract of Part 2 of the Third Schedule to the s106 agreement (Document 2).

It is considered that the footpaths will provide connectivity from The Uplands and from the footpath running between 20 and 22 The Uplands to the bridleway and through the woodland. In accordance with the terms of the s106 agreement, following construction of the footpaths to a satisfactory standard, the footpaths will be dedicated as public rights of way. A copy of the dedication agreement is attached (Document 3).

[The applicant has been sent relevant extracts of the s106 agreement and has been asked to confirm:

- He is happy with the footpaths as shown on the plans; and
- He has no objection to the closure of the DMMO application; and
- subject to the PROW Sub-Committee agreeing to the closure of the DMMO application he agrees that his application to modify the definitive map can immediately be treated as withdrawn; and
- In reliance on the s106 agreement being completed he does not intend to bring any further application to modify the definitive public rights of way map for The Uplands

A verbal update will be given to the committee on the applicant's response. Whilst formal consultation has not been undertaken, the applicant has been informed of the s106 negotiations and the Applicant (having consulted concerned residents) has earlier confirmed they accept the footpaths to be provided but remained concerned that there should be some form of control at two entry points to the north/south footpaths, to restrict access by cycles, e-scooters and horses. To address the applicants concerns the PROW obligation in the s106 provide for barriers and site notices to be installed in the appropriate positions shown at points A and B on the Public Footpaths Drawing.

Subject to the withdrawal and file closure of the application for Mod 105, the s106 agreement will be completed as soon as possible after the date of the decision.

## **5. Financial Implications**

In this case, as explained in the report footpaths will be secured under the s106 agreement, and that the aims of the DMMO application have been met. To date the only financial implications which have been incurred is officer time. If the officer recommendation is accepted, the Council will incur financial expenditure in line with the advertisement of the Public Path Creation Agreement. If the file is not closed and is required to be determined then further cost will be incurred in researching, determining and if objections received this matter will need to be determined by a Public Inquiry. These financial considerations **must not** form part of the Committee's decision.

### **Costs**

To be met from existing Revenue Budget.

### **Funding**

To be met from existing Revenue Budget

## **6. Legal Powers and Implications**

Section 53 of the Wildlife and Countryside Act 1981. The Wildlife and Countryside Act 1981 requires that applications which are submitted for changes to the Definitive Map and Statement are determined by the authority as soon as is reasonably possible, within 12 months of receipt. Failure could result in appeals being lodged and possible directions being issued by the Secretary of State.

## **7. Climate Change and Environmental Implications**

Improvements or additional routes added to the Public Rights of Way Network encourage sustainable travel by enabling the public to walk, cycle or ride a horse across our District reducing carbon emissions and improving our Environmental footprint.

## **8. Risk Management**

Due to the number of outstanding applications awaiting determination officers of North Somerset Council, in conjunction with the PROW Rights of Way Sub Committee have agreed a three-tier approach when determining the directed applications. A report was presented to the Committee in November 2016 which outlined a more streamline approach. This could result in challenges being made against the Council for not considering all evidence.

However, as this application is affected by proposed development, the rights of way to be secured under the s106 agreement and their subsequent adoption will meet the essence of the DMMO claim.

If the decision of this sub-committee is to authorise the withdrawal and file closure of the application for Mod 105, and the applicant is not supportive of such decision, the applicant has the right to appeal to the Secretary of State who may change the decision of the Council and issue a direction that an Order should be made.

## **9. Equality Implications**

No - Public rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

## **10. Corporate Implications**

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

## **11. Options Considered**

The options that need to be considered are:

1. Whether the Committee agree that the actions of council officers has ensured that the essence of the claim submitted by Mr Turvey for the provision of recording public footpaths on the land to the south of The Uplands has been achieved and that those footpaths are protected within the agreed draft of the section 106 agreement and Public Path Creation Order.

2. Whether the Committee agree that the file Mod 105 is closed on the understanding that the s106 agreement includes obligations on the developer to construct footpaths across The Uplands in the indicative positions shown on drawing no UNA\_008 rev C and on the drawing titled "Uplands, Nailsea Landscape Strategies 5.5 Proposed Public Footpaths (Public Footpath Drawing).
3. Whether the Committee disagree with the recommendation that File Mod 105 should be closed (such decision would result in Stonewood refusing to sign the Build to Lease agreed and affect the proposed development).

**Author:**

Elaine Bowman  
Principal Access Officer, Access Team, Natural Environment  
Telephone 01934 888802

**Appendices:**

**Location Plan indicating the claimed footpaths.**

**Appendix 1** – The Legal basis for evaluating an application

**Appendix 2** – History and description of the claim

**Appendix 3** – Planning Permission 20/P/2000/R3

**Appendix 4** – Protection of Public Rights of Way

**Appendix 5** – Communication with the Applicant Mr R Turvey

**Document 1** – Mr Turvey's Application

**Document 2** – s106 Public Rights of Way Obligations

**Document 3** – Draft Public Path Creation Agreement

**Document 4** – drawings referred in Appendix 3 and Document 2 (s106 Public Rights of Way Obligations)

**Background Papers:**


Public Rights of Way File Mod 105

# LOCATION PLAN INDICATING CLAIMED FOOTPATHS



**EXTRACT FROM ELECTRONIC VERSION OF WORKING COPY OF THE DEFINITIVE MAP**  
**FOR REFERENCE PURPOSES ONLY NO FURTHER COPIES MAY BE MADE**

The Definitive Map has a relevant date of 26th November 1956 and has not been formally re-published since then. This map shows an electronic working copy of the Definitive Map which attempts to show the information on the Definitive Map and any subsequent legal changes. The Council can accept no responsibility for any error or inaccuracy which may arise from use of the electronic Working Copy map.

	<b>Place Directorate</b> Public Rights of Way Streets and Open Spaces North Somerset Council Town Hall Walliscote Grove Road Weston-super-Mare BS23 1UJ Tel: 01934 888 802	<b>Project</b> The Uplands <b>Client</b> Applicants Plan <b>OS Licence No.</b> 100023397	<b>NORTH</b> Scale 1:2307 <b>Drawn by</b> Mrs E Bowman <b>Drawing No.</b>  <b>Date</b> 15 July 2023
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## The Legal Basis for evaluating an application.

1. The application has been made under Section 53 of the Wildlife and Countryside Act 1981, which requires the Council as Surveying Authority to bring and then keep the Definitive Map and Statement up to date, then making by Order such modifications to them as appear to be required as a result of the occurrence of certain specified events.
2. Section 53(3)(b) describes one event as, "the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway". See paragraph 4.

Subsection 53(3) (c) describes another event as, "the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (i) "that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic"

The basis of the application, if being determined, in respect of the claim for Footpath is that the requirement of Section 53(3) (c) described above has been fulfilled.

3. Section 32 of the Highways Act 1980 relating to evidence of dedication of way as highway states " A court or other tribunal, before 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 by the circumstances, including the antiquity of the tendered documents, 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".
4. Section 31 (1) of the Highways Act 1980 provides that, "Where a way over 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 actually been enjoyed by the public as of right and without interruption for a full period of twenty 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".

Section 31 (2) states, "the period of twenty years referred to in subsection (1) above 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".

Section 31 (3) states, "Where the owner of the land over which any such way as aforesaid passes-

- (a) has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and
  - (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,
- the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.

For a public highway to become established at common law there must have been dedication by the landowner and acceptance by the public. It is necessary to show either that the landowner accepted the use that was being made of the route or for the use to be so great that the landowners must have known and taken no action. A deemed dedication may be inferred from a landowners' inaction. In prescribing the nature of the use required for an inference of dedication to be drawn, the same principles were applied as in the case of a claim that a private right of way had been dedicated; namely the use had been without force, without secrecy and without permission.

**The Committee is reminded that in assessing whether the paths can be shown to be public rights of way, it is acting in a quasi-judicial role. It must look only at the relevant evidence and apply the relevant legal test.**

- 5. Modification orders are not concerned with the suitability for use of the alleged rights. If there is a question of whether a path or way is suitable for its legal status or that a particular way is desirable for any reason, then other procedures exist to create, extinguish, divert or regulate use, but such procedures are under different powers and should be considered separately.

## History and Description of the Claim

An application for a modification to the Definitive Map and Statement was delivered by hand dated 16<sup>th</sup> November 2017 from Mr R Turvey. This application claimed that four footpaths, used by local residents, should be recorded on the Definitive Map for the area as Public Footpaths providing connection to a nearby bridleway LA 13/4. Along with the accompanying letter were the following:

**Form 1** – Application form for a Modification to the Definitive Map including Appendices

**Form 1A** – Formal application to North Somerset Council

**Form 2** – Copy of Notice of Application served upon M O'Neill dated 16 November 2017

**Form 1A** – Formal application to North Somerset Council

**Form 2** – Copy of Notice of Application served upon M O'Neill dated 16 November 2017

**Form 3** – 14 User Evidence Forms

**App 1** – Location plan with claimed routes marked upon

**App 2** – letter dated 25 November 1976 re purchase of land as Open Space – This letter relates to the acquisition of the land for Public Open Space. Additional letter dated 28<sup>th</sup> June 1977 confirming that acquisition of the land has taken place.

**App 3** – Letter dated 23 August 1984 Woodspring to Mrs S Riches. This full letter primarily relates to the footpath between 20 and 22 The Uplands. It advises that it forms part of a link designed to allow residents of the houses north of St Mary's Grove to obtain access to the open space south of the Uplands. This footpath adjoining these properties was conveyed to the Somerset County Council in an agreement executed in 1973.

**App 4** – Plan of Nailsea Town Paths

**App 5** – User Evidence Form submitted by Mr R Turvey with the above appendices attached.

These documents are attached to this report as **Document 1**.

The locations of these four footpaths are illustrated on the attached location plan as black solid lines as described below:

Footpath 1 from Grid Ref Point 'A' (ST46230 69457) to 'B' (ST46245 69395)

Footpath 2 from Grid Ref Point 'A' (ST46230 69457) to 'F' (ST46480 69459)

Footpath 3 from Grid Ref Point 'C' (ST46316 69514) to 'D' (ST46328 69410)

Footpath 4 from Grid Ref Point 'C' (ST46316 69514) to 'E' (ST46427 69437)

The submission of this application co-incided with the nomination by North Somerset Council that this area of land could be considered for development. This raised concern with the residents that this area would be lost to them unless they sought the protection of the footpaths by getting them added to the Definitive Map through the DMMO system. Having received this application notification of its existence was registered with the teams who were considering the development of the site.

**PLANNING APPLICATION**

North Somerset Council owns approximately 2.5 hectares (6.14 acres) of land to the south of The Uplands, Nailsea. Full planning consent was granted on 21st October 2021 for the development of 52 dwellings at this site (application ref 20/P/2000/R3).

Planning permission (20/P/2000/R3) was granted on the 22 October 2021 for the erection of 52 new dwellings and one substation building, with the provision of car parking, landscaping, and other association works. Withing the Notice of Decision section 16 states:

“No dwelling shall be occupied until the designs of access control measures required to be constructed at the foot/cycle path accesses to the site including a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority and fully implemented in accordance with the approved details.

Reason : to ensure a safe, satisfactory and high quality design to public rights of way and paths in accordance with policy CS12 of the North Somerset Core Strategy and policy DM32 of the North Somerset Development Management Policies Sites and Policies Plan Part 1.

The proposals for the site were developed by a design team headed by Mikhail Riches architects, winners of the 2019 Stirling Prize for Architecture. A very strong emphasis has been placed on sustainability, quality of design and environment.

A formal report was presented to the Executive on the 22 June 2022. That report sought authority to approve the award of a contract for the development of the Councils Land to Stonewood Partnerships Limited. It also asked for delegating authority to the Section 151 Officer, in consultation with the Executive member for Placemaking and Economy, to enter into the contractual Joint Venture with the selected developer, subject to final due diligence and within the terms outlined in this report, including provisions for the transfer of the land and agreement on terms for the transfer.

Further Decision No 22/23 DP 494 details the requirement for Stonewood to enter into first an Agreement for Lease, which is in effect a conditional contract, and following completion of those conditions, a Build Lease, which grants a licence to the developer to carry out the development in line with agreed terms.

In addition to the above legal representatives for North Somerset Council have been in discussion with Stonewood about the footpaths depicted on the DMMO claim. Through their design for the development of this site the creation of a number of footpaths has been included, **Document 4** Public Footpath Drawing.

As can be seen this development aims to provide three public rights of way, A-C-B, F-G-H, D-C-E, which once constructed would meet the majority of the aims illustrated on the **Location plan** earlier in this report.



### PROTECTION OF PUBLIC RIGHTS OF WAY

As advised above it is the intention of North Somerset Council and Stonewood to develop this site incorporating routes which can be used by the public.

It has been confirmed to me that the legal agreement to be entered into between the Council, in its role as local planning authority, and Stonewood, the developer, and which will require Stonewood to carry out specified additional works and make monetary contributions to the Council during the development of The Uplands is now in agreed form. This agreement is known as a s106 agreement.

The s106 agreement includes obligations on the developer to construct footpaths across The Uplands in the indicative positions shown on drawing no UNA\_008 rev C and on the drawing titled "Uplands, Nailsea Landscape Strategies 5.5 Proposed Public Footpaths (above labelled Development Plan).

Part 2 of the third Schedule to the Section 106 agreement places obligations upon the developer below which is a summary:

- The developer will construct the footpaths (defined in the s106 agreement as the Public Rights of Way) using good quality materials consistent with the documents, the drawings and the timetable approved by the Council and to the Council's reasonable satisfaction.
- Barriers and site notices will be installed in the approximate positions shown at points A and B on the Public Footpaths Drawing (shown above as the development Plan).
- The footpaths will be made available for the public to use following their satisfactory completion in line with the approved phasing scheme.
- Pending formal adoption of the footpaths as public footpaths, the footpath between points C and B shown on the Public Footpaths Drawings will be available for use by both pedestrians and cyclists.
- The footpaths will be dedicated as public rights of way after the later of:
  - the transfer of the footpaths (including the sub-soil beneath) to the developer or the management company; and
  - the satisfactory construction and completion of the footpaths.
- On formal adoption of the footpaths the Council will become liable for their maintenance and upkeep.
- Following completion of the dedication agreement, the footpath between points C and B on the Public Footpath Drawing will be a permissive route for use by pedestrians and cyclists. Any withdrawal of the permissive rights for cyclists to use that section of the footpath will not affect the dedication and pedestrian rights along that part of the footpath.

For information

#### Definitions:

**Public Rights of Way:** means the semi-bound gravel footpaths and the bark chipping path to be laid out by the Developer in accordance with the Planning Permission shown in the indicative positions on the hard landscape layout drawing no UNA\_008 rev C (annexed to that deed at Appendix 6) and on the Public Footpaths Drawing and to be dedicated by the

Developer or the Management Company (whomsoever is the freehold owner of the Public Rights of Way at the relevant time) in accordance with Part 2 of the Third Schedule and the Public Path Creation Agreement.

**Public Path Creation Agreement:** means an agreement between the Developer or the Management Company (whomsoever is the freehold owner of the Public Rights of Way at the relevant time) with the Council pursuant to section 25 of the Highways Act 1980 for the dedication of the Public Rights of Way, and the grant of permissive rights to use as a cycle path that section of the Public Right of Way between point C and B as shown on the Public Footpaths Drawing in substantially the same form attached at Appendix 7 with such amendments as shall be agreed between the Developer or the Management Company (as relevant) and the Council (both parties acting reasonably).

These footpaths will provide connectivity from The Uplands and from the footpath running between 20 and 22 The Uplands to the bridleway and through the woodland. Following construction of the footpaths to a satisfactory standard, the footpaths will be dedicated as public rights of way by way of a Public Footpath Creation Agreement, the content of which has also been included within the Section 106 Agreement.

The relevant extracts of the s106 Agreement and the draft Public Path Creation Agreement are attached to this report as **Document 2 and 3**.

### CONTACT WITH THE APPLICANT

Following the submission of the DMMO application from Mr Turvey occasional contact has been kept to discuss the proposals which were being proposed by the development team.

In an email exchange in November 2022 confirmation was sought from the applicant on the footpaths which had been depicted on the planning application. At that time Mr Turvey was advised that it was my opinion that the proposed three routes provided connectivity to the areas of interest that had been depicted on the original application. The references below relate to the Location Plan at the beginning of this report.

*Within that approved planning permission, three routes have been identified which will provide access from the two access points off The Uplands to the existing bridleway and the larger woodland area to the east of the Uplands. I need to ascertain that you consider that these routes meet the aims which you hoped to achieve through your DMMO application.*

*It is my opinion that they do provide connectivity to the areas of interest that you had specified other than the smaller woodland area off the bridleway (point B). However, in order to be able to consider that the aim of the DMMO application has been met I believe that these routes must be dedicated by the owner of the land as PROW.*

*I would be obliged if you would discuss this matter with the rest of your group and confirm that subject to the Footpaths being dedicated as Public Rights of Way (Footpaths) that you agree that the file for Mod 105 The Uplands Nailsea can be closed as the intention of that application has been met, namely public access has been preserved to the bridleway (point D on your plan) and eastern woodlands (point F).*

A response was received from Mr Turvey on 2 December 2022

*Thanks Elaine for confirming the footpath positions.*

*I've spoken with the concerned residents and they accept the proposals you outline, but remain concerned that: due to the obvious health & safety risks, some clear form of control should be exercised at the two entry points to the north/south footpaths leading onto and across the Uplands This could be achieved by way of clear signage with specific reference to cycles, e-scooters and horses.*

*We hope this is possible.*

This comment was forwarded to our development team who responded

*As for the concerns about control of entry points, this should be covered in condition 16 of the planning consent*

- 16 No dwelling shall be occupied until the designs of access control measures required to be constructed at the foot/cyclepath accesses to the site including a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority and fully implemented in accordance with the approved details.

Reason: To ensure a safe, satisfactory and high quality design to public rights of way and paths in accordance with policy CS12 of the North Somerset Core Strategy and policy DM32 of the North Somerset Development Management Policies Sites and Policies Plan Part 1.

The email from Mr Turvey of 2 December 2022 seems to imply that they agree to the File Mod 105 being closed provided the requirements stated are complied with.

Following the establishment of required obligations on the developer, attempts have been made to contact Mr Turvey. Those failed so a full email was sent on 14 July 2023, this email included the wording of the obligations and a copy of the draft Public Path Creation Agreement for his information. At the time of submitting this report for posting on the Council website I have spoken to Mr Turvey who will provide a written response to be read verbally to the Committee.

Mr Turvey has been advised that a report relating to this matter will be brought to this meeting. He was asked whether in the meantime we could receive his confirmation that:

- *you are happy with the footpaths as shown on the plans; and*
- *you do not object to the closure of the DMMO application; and*
- *subject to the PROW Sub-Committee agreeing to the closure of the DMMO application you agree that your application to modify the definitive map can immediately be treated as withdrawn; and*
- *In reliance on the s106 agreement being completed you do not intend to bring any further application to modify the definitive public rights of way map for The Uplands*

It is hoped that by the time of this meeting a verbal confirmation can be given relating to the response from Mr Turvey.

NORTH SOMERSET COUNCIL

WILDLIFE & COUNTRYSIDE ACT 1981

APPLICATION FORM FOR A MODIFICATION TO THE DEFINITIVE MAP AND STATEMENT

To: Public Rights of Way
Streets and Open Spaces
North Somerset Council
Town Hall
Walliscote Grove Road
Weston-super-Mare
BS23 1UJ

I/We:

of:

hereby apply for an order under Section 53 (2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by:

- (a) Deleting the footpath / bridleway / byway open to all traffic\* which runs from: to:
(b) Adding the four (4) footpaths / bridleway / byway open to all traffic \* which are identified by 10 figure Grid References on Application Form 1A and which cross the Uplands Public Open Space from: entrance points 'A' & 'C' (see Site Map - Appendix 1) to: connect with the Public Bridle Path along the southern boundary of the site (see Site Map (Appendix1) and thereby link to the network of footpaths that radiate from the Bridle Path.
(c) Up-grading / down-grading to a footpath / bridleway / byway open to all traffic \* the footpath / bridleway / byway open to all traffic \* which runs from: to:
(d) Varying / adding to the particulars relating to the footpath / bridleway / byway open to all traffic \* which runs from: to:

by providing that .....and shown on the map annexed hereto.

I / We attach copies of the following documentary evidence (including statements of witnesses) in support of this application:-

- 1. Copy of Site Plan (attached as Appendix1) showing all the four application routes A, B, C & D as described on Application Form 1A with 10 figure Grid References.
2. Confirmation of land acquisition by the Council on 29th June 1977 for 'Public Open Space purposes (attached as Appendix 2).

3. **Letter of the 23<sup>rd</sup> August 1984 from Woodspring Council confirming the authorisation & permanency of the footpath and of the entrance to the Uplands Public Open Space at point C of the Site Map (attached as Appendix 3).**
4. **Copy of the 'Nailsea Town Paths' Map produced by; North Somerset Council, Nailsea Town Council and Nailsea & the District Footpath Group which sets out three of the above paths crossing the site (attached as Appendix 4).**
5. **My (Mr. R F Turvey) Witness Statement - as Applicant - (attached as Appendix 5).**
6. **Witness Statements of: A list of the 14 other witnesses (attached as Appendix 6).**

Signed: .....

Dated: .....16/11/2017.....

**NORTH SOMERSET COUNCIL**

**WILDLIFE & COUNTRYSIDE ACT 1981**

**FORM OF CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER**

To: Public Rights of Way  
 Streets and Open Spaces  
 North Somerset Council  
 Town Hall  
 Walliscote Grove Road  
 Weston-super-Mare  
 BS23 1UJ

I / We

(i). **Robert F Turvey**

of (ii). **4 The Uplands, Nailsea, North Somerset BS48 4RR**

hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with in relation to the attached application.

Signed .

...Dated: .....16/11/2017.....

**NOTES FOR GUIDANCE**

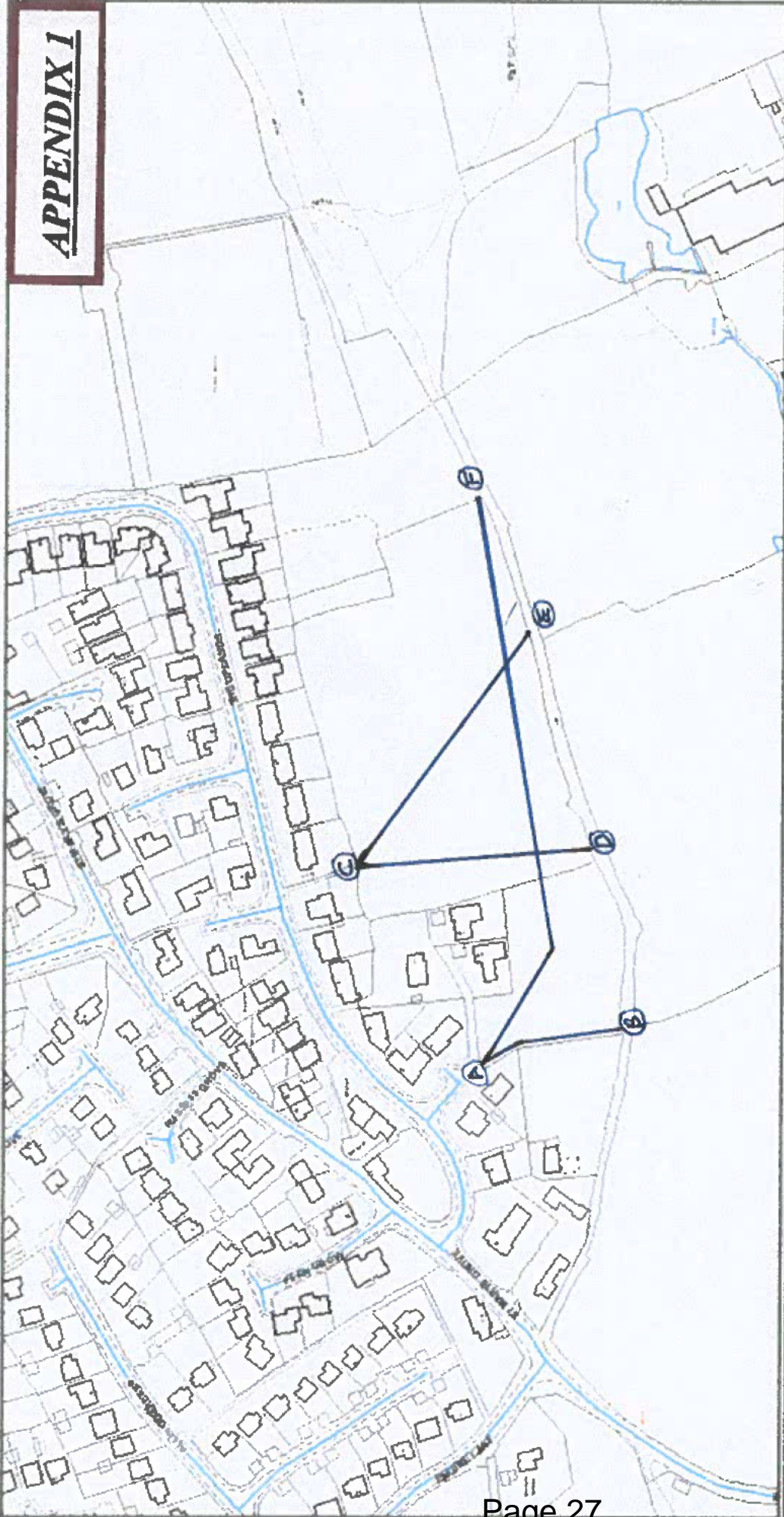
**This certificate should only be completed when notice of the application has been served on all owners and occupiers affected by the proposal. A list of the names and addresses of all individuals notified should be included in the space provided below. Please indicate if you have been unable to identify all owners and occupiers affected by the proposal.**

**Notice of Application Sent To:-**


1. **Mr Martin O'Neill, Land Manager for North Somerset Council (Sole Owner & Occupier of the Uplands Public Open Space), Walliscote Grove Rd, Weston-s-Mare BS23 1UJ.**



# APPENDIX 1



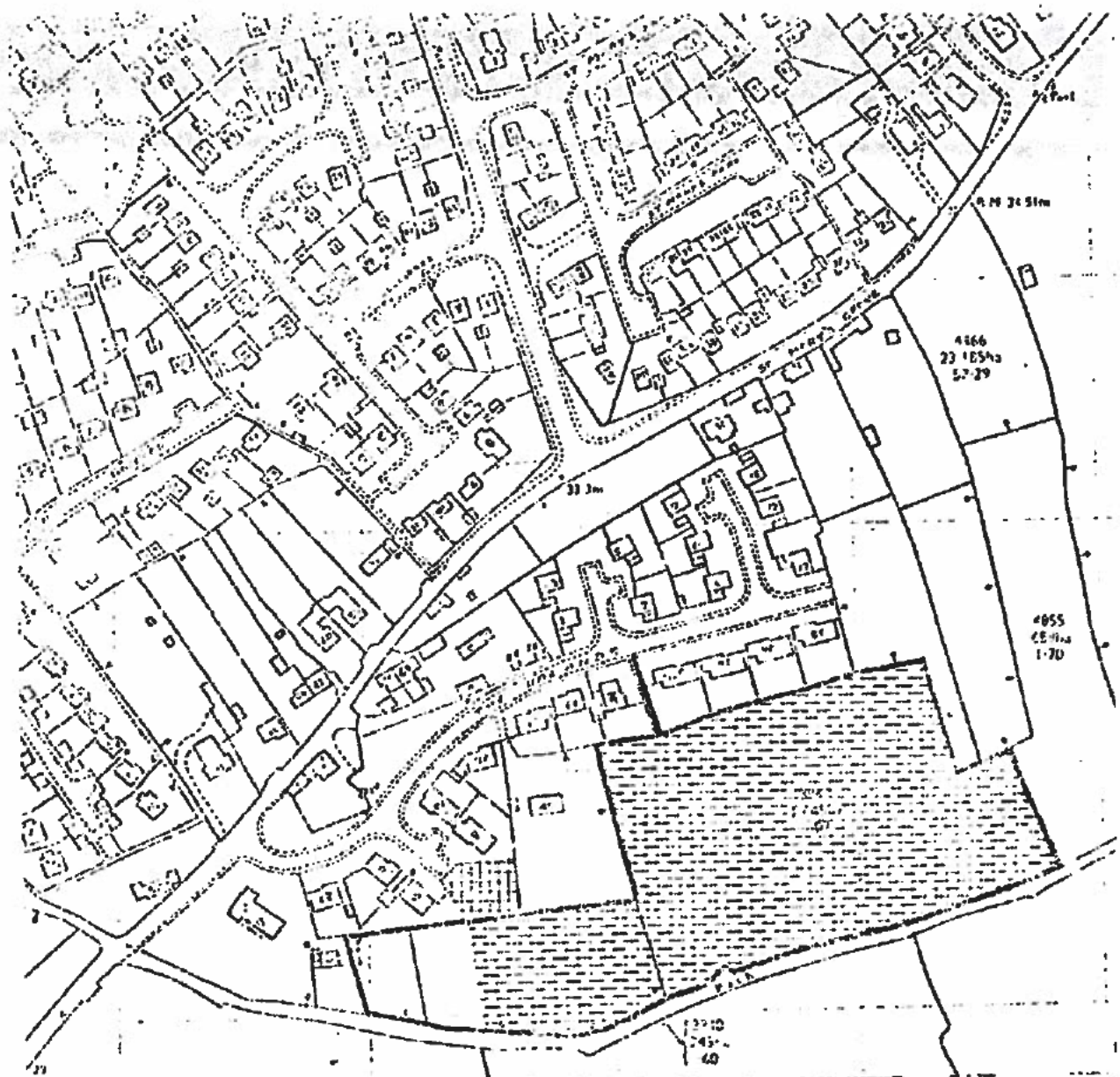
The Definitive Map has a relevant date of 26th November 1966 and has not been formally re-published since then. This map shows an electronic working copy of the Definitive Map which attempts to show the information on the Definitive Map and any subsequent legal changes. The Council can accept no responsibility for any error or inaccuracy which may arise from use of the electronic Working Copy map.

		<b>Project</b> <b>Route Identification</b>	<b>Scale</b> 1:2500 <b>Drawn by</b> <b>Mrs E Bowman</b> <b>Drawing No.</b>
<b>Development &amp; Environment</b> Public Rights of Way Streets and Open Spaces North Somerset Council Town Hall Walkscote Grove Road Weston-super-Mare BS23 1UJ Tel: 01934 888 802		<b>Location</b> The Uplands Nailsea <b>Client</b> Mr R Turvey <b>OS Licence No.</b> 100023387	<b>Date</b> 20 April 2017

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at the rear of The Uplands,  
St Mary's Grove, Nailsea.

To be acquired:

 Zoned P.O.S.

 Zoned Ra

Site to which S.17 Certificate  
relates



letter	date	revision

SCALE 1:2500

File ref 1575/76

Drawn **R.D.** Checked **P.J.G.**



**W.C.J.C.**  
B. G. HURST ARCS  
Director of Planning  
Council of Planning, Nailsea

Job No. Drawing No.  
76(OP)131

**INTERNAL MEMORANDUM**

COPY TO: THE DIRECTOR OF PLANNING



DISTRICT OF  
**WOODSPRING**

To THE DIRECTOR OF LEISURE SERVICES

From THE SOLICITOR AND DEPUTY CLERK

My ref SEJF/LR/2/10/ICS

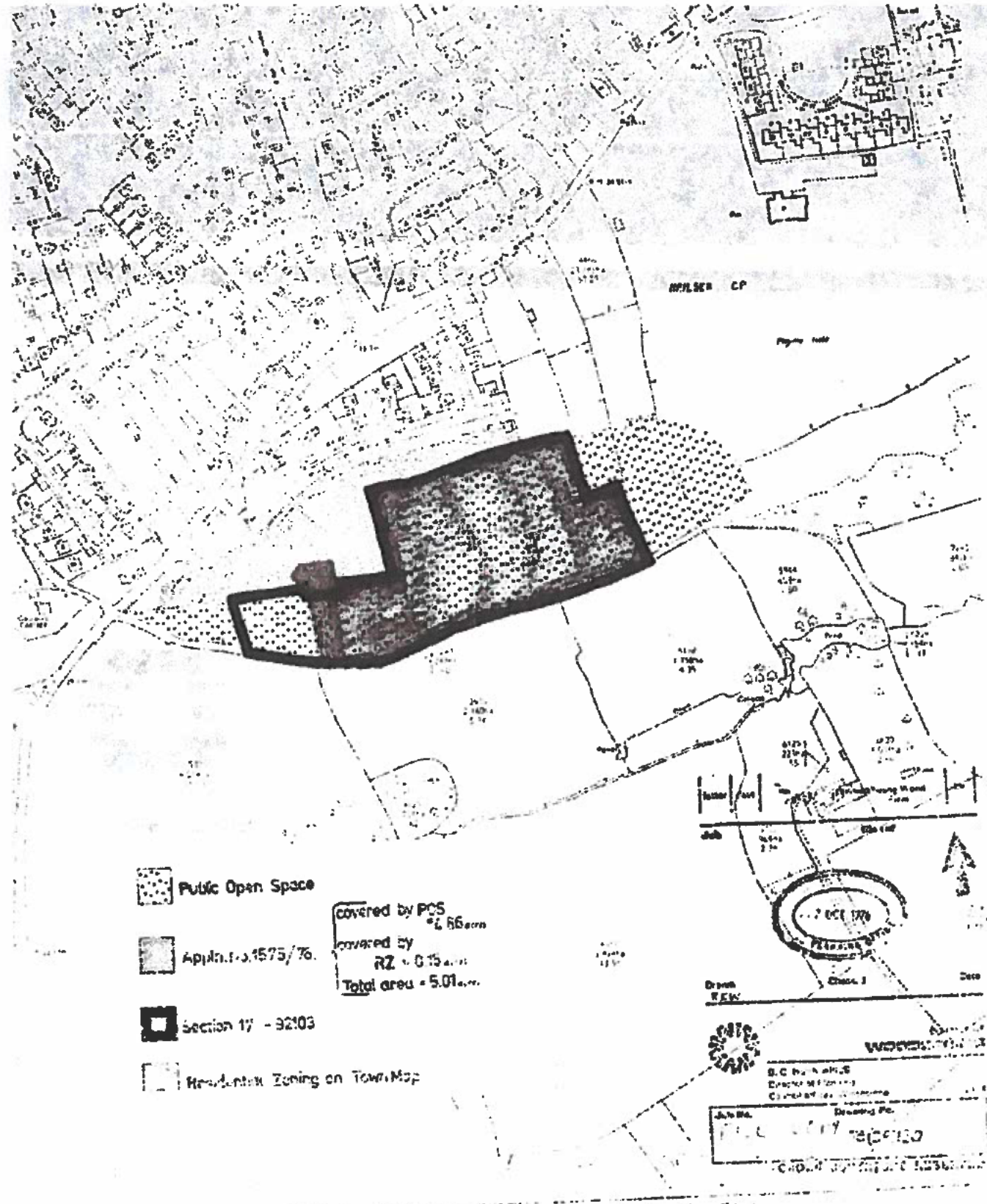
Your ref 20/7/77

Date 23rd JUN 1977

LAND AT THE CORNER OF THE HILARAS CYPRESS GROVE  
MANSE

I write to inform you that the acquisition by the council of  
the above land has now been completed. The date of the  
acquisition was 22nd June 1977.


SOLICITOR AND DEPUTY CLERK



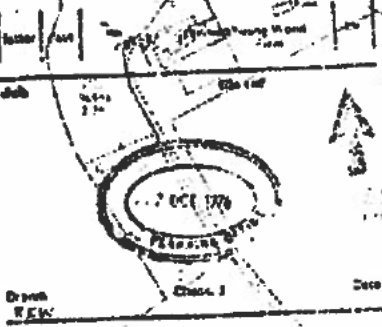
 Public Open Space


 Appls. 1-3, 1575/76

 Section 17 - 32103

 Residential Zoning on Town Map

covered by POS  
 = 6.86 ac.  
 covered by  
 RZ = 0.15 ac.  
 Total area = 5.01 ac.



 **VANCOUVER**  
 B. C. P. A. 1915  
 Director of Planning  
 City of Vancouver  
 Drawing No.  
**P.L.C. 170**  
 1960-1961



# APPENDIX 3

## DISTRICT OF WOODSPRING



Robert H. Moon *Solicitor*  
Chief Executive and Clerk  
John H. Bailey  
*Solicitor and Deputy Clerk*  
Town Hall  
Weston-super-Mare  
Avon BS23 1UJ  
Tel. (0934) 31701

Mrs. S. Riches,  
20 The Uplands,  
St. Mary's Grove,  
Nailsea,  
Bristol,  
BS19 2RR

My Ref: RHM/A

Your Ref:

When calling  
please ask for: Mr. Moon

Date: 23rd August, 1984

Dear Mrs. Riches,

Path giving access to front door of 20 The Uplands, running  
between 20 and 22 The Uplands, Nailsea

Further to my letter of the 21st August, I have now ascertained the facts concerning the footpath adjoining your house. Although it has not in fact been used as a footpath for many years because of the hedge at the end of it this strip of land is indeed a highway and in fact was acquired by the former Somerset County Council as planning authority when planning permission for development of The Uplands was given. The footpath forms part of a link designed to allow residents of the houses north of St. Mary's Grove to obtain access to the open space south of The Uplands. The footpath adjoining your property was conveyed to the Somerset County Council in an Agreement executed in 1973.

You probably know that in connection with a recent planning application for development fronting St. Mary's Grove, the District Council were able to obtain the missing link in the footpath and it now runs from St. Mary's Grove through The Uplands into the Council owned public open space. I notice incidentally that you were one of the people who signed the petition asking for the new footpath between St. Mary's Grove and The Uplands from the end of the hammer head almost opposite your house.

These being the facts I am unable to understand why you should have been told when you purchased your house that the path was purely in order to give access to the water main. The path has always been an official public footpath, properly dedicated and it is only recently with the adjoining development that we have been able to open it up through to the public open space.

/I think

I think it would have been more tactful if our staff had contacted you warning you that they intended to take down the hedge and indeed to lop the branches off the conifers on your property. This should have been done and I apologise for the fact that you were not told that the work would need to be done. Possibly our staff endeavoured to reach you but as you say you have been away for some time.

I am afraid there can be no question of the footpath being stopped up again and if you wish to apply for a reduction in your Rateable Value you should contact the Central Government officer responsible for valuation, the District Valuer and Valuation Officer at Regent House, High Street, Weston-super-Mare.

Yours sincerely,



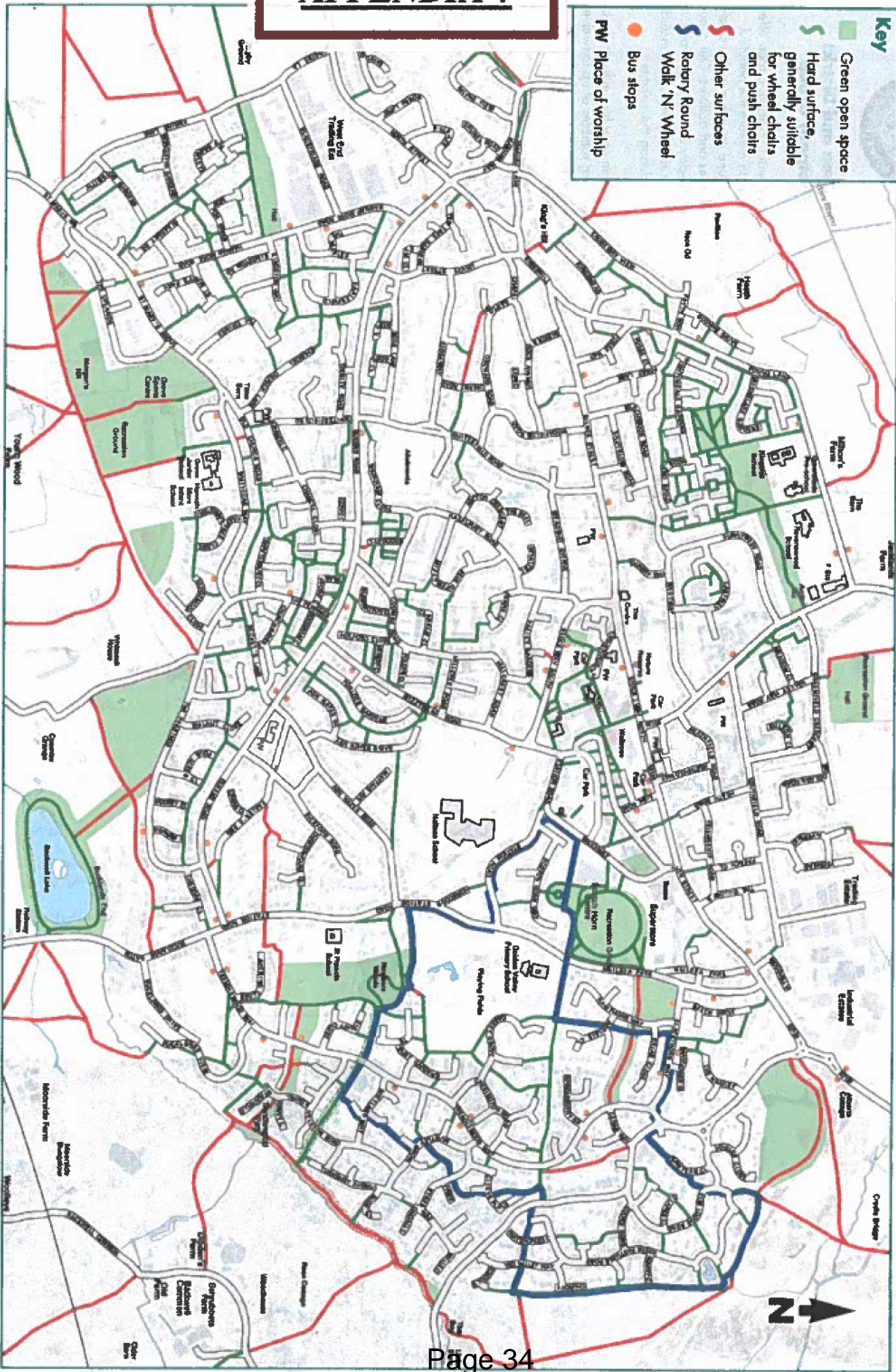
Chief Executive and Clerk



# Nailsea town paths

**Key**

- Green open space
- S Hard surface, generally suitable for wheel chairs and push chairs
- S Other surfaces
- S Rotary Round
- Bus stops
- Place of worship



## APPENDIX 4

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*Rob Turvey*

## **APPENDIX 5**

FORM 3

### **Public Right of Way User Evidence Statement**

This statement should be completed and returned to the person making the application so that it can be submitted with or form part of an application seeking a change to the Definitive Map and Statement of Public Rights of Way.

This statement is intended to provide preliminary evidence about the application. When the Order-Making Authority (OMA) commences detailed research, an officer from that authority may contact you to seek further information or ask you to be interviewed about your evidence.

This statement is designed to help establish whether or not the route being claimed in the application is a public right of way. It also provides evidence of how it is used (for example on foot, on horseback, by vehicles etc).

You should answer the questions as fully as possible and not keep back any information, whether for or against the public claim. This is important if this information is to be of real value in establishing the status of the application route. The information given may be examined at a public inquiry.

**This statement should be completed by one person only and must provide individual detailed information relating to each route that has been used. If you need more space please continue on a separate sheet which will need to be attached to this statement.**

**If completing the statement by hand, please ensure it is written legibly and in black ink.**

#### **Confidentiality – Please Read Carefully**

**The information you give in this statement cannot be treated as confidential.**

- It may be necessary for the OMA to disclose information received from you to others, which may include other local authorities, the Planning Inspectorate and other government departments, public bodies, other organisations, landowners and members of the public. If the application proceeds to a public inquiry your evidence will be made available to the inquiry.
- If the OMA proceeds with the application but it is contested (for example by a landowner), there may be a public inquiry. This will be held locally and if you are unable to attend your evidence will be given in writing, but user evidence is of much greater value if you attend in person and are prepared to answer questions about it. Inquiries are kept as informal as possible and the OMA will help you with the procedure.
- The information you give in this statement will be processed in accordance with the Data Protection Act 1998. It is held by the OMA's Rights of Way Service for the sole purpose of processing the application for the route referred to.



**DECLARATION**

**Data Protection Act 1998**

Under the Data Protection Act the OMA has a duty to inform you about how your personal data will be handled. In order to decide if a public right of way exists it may be necessary to disclose information received from you. The information provided on this statement cannot be treated as confidential (other than your personal contact details and signature contained on this page). You should only provide us with the information requested if you are happy for it to be placed in the public domain. Do not include information about another person.

This statement and the details contained therein will be considered by the OMA to establish whether a public right of way exists and, in signing it, you are acknowledging that it may be made publically available and published on the OMA's website.

Please print your name here ..... *Robert F Turvey* .....

Your: Home Telephone Number ..... ,

Mobile Telephone Number .....

Email Address .....

**Statement of Truth**

**I BELIEVE THAT THE FACTS AND MATTERS CONTAINED IN THIS STATEMENT ARE TRUE AND I HAVE READ THE DECLARATION ABOVE**

Your Signature:

Date: *01/11/14*

**You should keep a copy of the completed statement**

Warning: If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

**Information on this page of the Statement will be redacted and not made publically available**

## PUBLIC RIGHT OF WAY USER EVIDENCE STATEMENT

### ABOUT YOU

Name .....

Address .....

.....

.....

..... Postcode..... **BS48 4RR** .....

Year of Birth .....

Have you lived at any other addresses during the time you have used the path or way?  
If so, please provide details and years [full addresses are not required]

..... **No** .....

### ABOUT THE APPLICATION ROUTES

How do you think the application routes should be recorded?

- As footpaths** (public rights on foot only)
- As a bridleway (public rights on foot and on horseback or bicycle)
- As a restricted byway (public rights on foot, on horseback or any non-motorised vehicle)
- As a byway open to all traffic (public rights for all classes of use, including motor vehicles)

Describe the application route(s) (include start and finish points and provide OS grid references if you can)

***There are four (4) routes crossing the Uplands Public Open Space (UPOS) that are in daily use by the public. These are marked as routes FP1 – FP4 on the attached Site Plan – Appendix 1. I have used routes FP1 and FP2 frequently since 1977 and the other two (FP3 and FP4) since August 1984 when Woodspring Council's opened entrance point 'C' (see Appendix 1) to provide the public with an additional dedicated permanent access to the UPOS (see the Council's confirmatory letter – Appendix 2 attached).***

***Three (3) of the application routes are identified on the 'Nailsea Town Paths' map produced jointly by North Somerset Council, Nailsea Town Council and the Nailsea & District Footpath Group (attached as Appendix 3). These and the fourth (FP2 - a very heavily used route) are all illustrated on the attached Site Plan (Appendix 1).***

**THE OS GRID REFS for these are: Footpath 1 (FP1) ST46230 69457 to ST46245 69395, Footpath 2 (FP2) ST46230 69457 to ST46480 69459, Footpath 3 (FP3) ST46316 69514 to ST46328 69410 and Footpath 4 (FP4) ST46316 69514 to ST46427 69437.**

### MAP OF THE APPLICATION ROUTES

Please attach an extract from a map of your own choice to identify the routes you are providing evidence about, and annotate it with anything you provide details about in this statement. Please sign and date your map.

**Site Map (Appendix 3) Attached hereto.**

**YOUR USE OF THE APPLICATION ROUTES**

**1. In which years did you use the application routes?**

From; **1977 to Present (some 40years) for footpaths FP1 & FP2.**  
**1984 to Present (some 33 years) for footpaths FP3 & FP4**

**2. Were there any extended periods during which you did not use the route at all? If so, please state when and why?**

..... **No** .....

.....

**3. How did you use the application route and how often? [Please tick any that apply]**

	Daily	Weekly	Monthly	Every few months	Once a year	Other (please describe)
On foot <b>FP1</b>			✓			
<b>FP2</b>		✓				
<b>FP3</b>				✓		
<b>FP4</b>				✓		
On horseback						
By pedal cycle						
By car						
Other [please specify .....						

**4. Have the application routes always followed the same course?**

- Yes (But see comment below)**
- Don't know
- No

If no – how and when was the route altered?

**The site has been made available for Public Leisure use for 40yrs and hence the routes are somewhat broad and diffuse. However, I and most other users most commonly follow those tracks shown on the attached map.**

.....

5. Approximately how wide are the application routes?  
[Please give your estimate of the width across which you used the routes including the width used when passing others or walking with others. Take care to consider the overall width of the routes. If this varies, please describe how] [Or please state 'Don't know']

.....  
**As explained at paragraph 4 above, the paths are diffuse but I and most other users usually walk within a width of some 3-4m for each.**  
.....

6. What type of surface does the application route have? (for example grass, gravel, earth)  
[For varying surfaces, please describe with reference to your map]

.....  
**Grass** .....  
.....

7. Have there ever been any of the following on the application routes?

- a. Stiles [state locations and show on your map]

**The Council has installed and maintained staggered metal pedestrian entrances at 'A' and 'C' as shown on the attached map. A wooden stile was installed by the Council some 40 years ago at location 'F' but has since completely rotted away. Consequently, application footpath FP2 now extends into the adjacent woodland and connects with the Morgans Hill' bridle path.**

How long were they in place?

**'A' has been in place since 1977. 'C' since 1884.**

- b. Gates [state locations, indicate whether locked – and when - and show on your map]

**A lockable metal gate has been provided by the Council for access by grounds maintenance vehicles to service the UPOS. This is shown on the attached map at location 'A'.**

- c. Other barriers [state what they were and location, how long they were in place and show on your map]

.....  
**None, other than field boundary hedges, fences & dry stone walling.**  
.....

8. Did any of the above prevent you from using the application routes?

No

Yes

If yes, please give details

.....  
-----  
.....  
.....

9. Have you ever seen any signs or notices suggesting whether or not the application routes are public rights of way? (for example "Private", "Keep Out", No Right of Way "Trespassers will be Prosecuted")

No

Yes

Don't know

If yes – state when and give details, including when they were present and mark their location on your map

.....  
-----  
.....  
.....

10. Have you seen other people using the application routes whilst you have been using it?

No

Yes

If yes, please provide any additional information about this

**Individuals, families, joggers, walking groups and dog walkers make continual use of the UPOS (in particular, the 4 application paths) daily from early morning to late evening. This has been the case over some 40 years for routes FP1 & FP2 and 33 years for FP3 & FP4.**

.....  
.....

**Land Ownership**

**11. Were you working for any owner or occupier of land crossed by the application routes at the time when you used it, or were you then a tenant / licensee of any such owner?**

No

Yes

If yes, provide details and dates

.....  
-----  
.....  
.....

**12. Did the owner or occupier ever give you permission (or did you seek permission) to use the application routes?**

No

Yes **(Implied generic consent)**

If yes,

**a. From whom? ... Implied permission by the Council after purchasing it for POS use in 1977**

**b. When? Since 1977 for paths FP1 & FP2. Since 1984 for FP3 & FP4.**

**13. Has anyone ever told you the application routes were not public (including by an owner, tenant of the land or by anyone in their employment)?**

No

Yes

If yes, by whom and when?

.....  
-----  
.....  
.....

**14. Have you ever been stopped or turned back when using the application routes?**

No

Yes

If yes, please give details including when this happened

.....  
-----  
.....

15. Has anyone else ever told you that they were prevented from using the application routes?

No

Yes

If yes, please give details including when this happened

.....  
-----  
.....  
.....

16. Have you ever had a private right to use the application routes? (for example, an easement, private right of access, licence, etc)

No

Yes

If yes, please give full details, including who gave the permission, why and when

.....  
-----  
.....  
.....

**Other Information**

17. Do you have, or do you have knowledge of, any documentary evidence which is relevant to the application routes or which indicates public use? (for example photographs, guidebooks, letters, sale documents, old maps, etc)

No

Yes

If yes – please provide details

***The following is attached:***

**Appendix 1: Site Map showing the 4 footpaths identified on page 3 above.**

**Appendix 2: The Council's confirmation of acquisition of the land in 1976/77 for Public Open Space purposes – with associated plan.**

**Appendix 3: Letter of the 23<sup>rd</sup> August 1984 from Woodspring DC confirming permanency of access point 'C' to the Uplands POS.**

**Appendix 3: The published 'Nailsea Town Paths' leaflet (also referred to at page 3 above).**

18. Please give any further information which you consider would be helpful in reaching a decision as to whether the application routes should be recorded as a public right of way?

[Continue on a separate sheet if necessary]

[If you wish to provide a separate sketch map, please do so and attach to this statement]

***All 4 routes have been in continuous use for more than 33 years and provide Nailsea residents and walking groups with access to Youngwood Lane, Morgan's Hill, Grove Playing Fields and Backwell Lake etc. The proposed development of the land for housing will prevent the use of such useful and health promoting routes unless the routes become formally adopted as public footpaths.***

19. During the investigation the OMA may want to interview some or all of the claimants in order to gather additional information. Would you be willing to talk to an officer from the OMA about your knowledge of the application route?

No

Yes

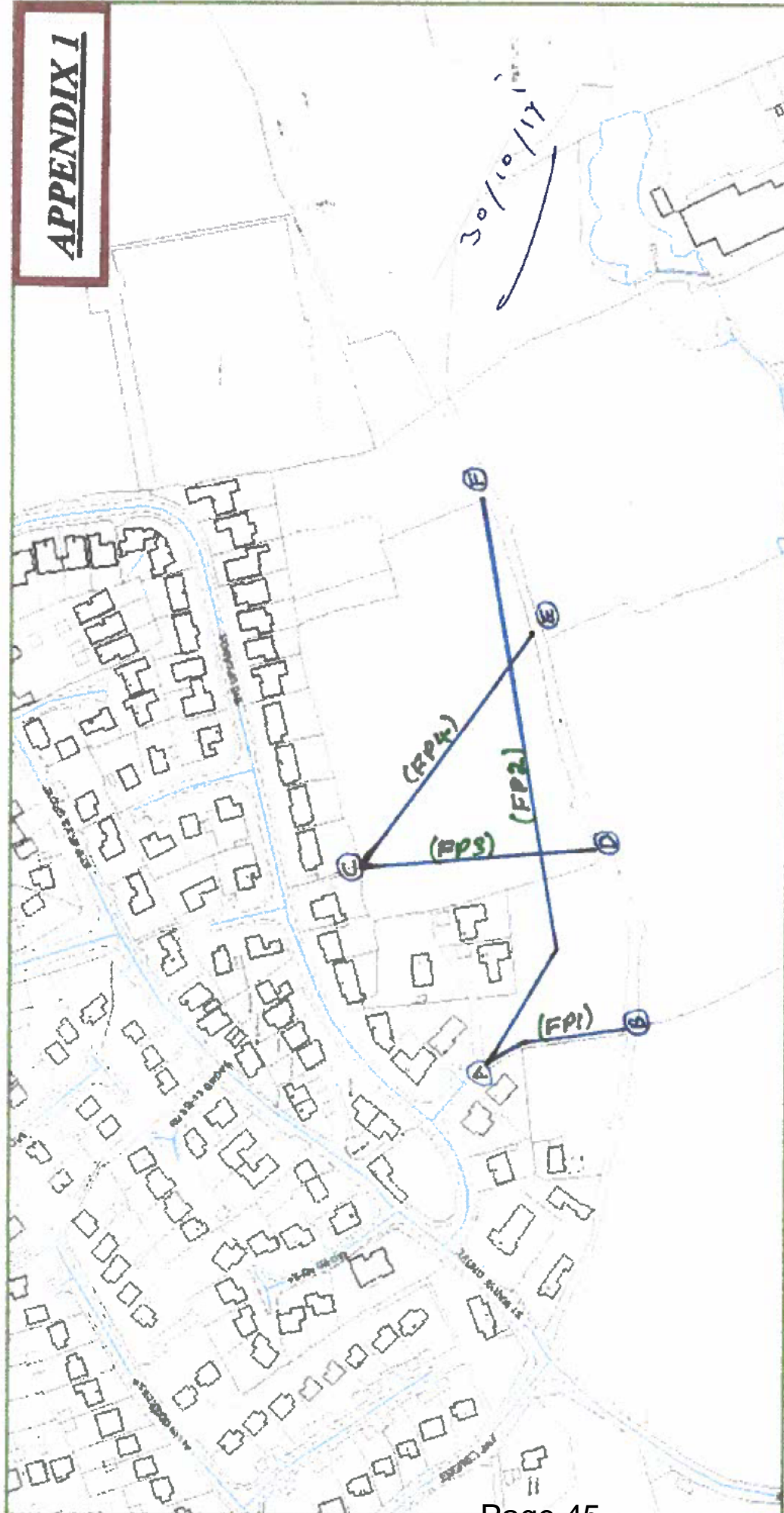
20. Would you be willing to attend a hearing, or public inquiry to give evidence if necessary?

No

Yes



# APPENDIX I



The Definitive Map was a relevant date of 28th November 2008 and has not been formally re-surveyed since then. This map shows an electronic working copy of the Definitive Map which attempts to show the information on the Definitive Map and any subsequent legal changes. The Council can't accept no responsibility for any error or inaccuracy which may arise from use of the electronic Working Copy map.

**Development & Environment**  
 Public Rights of Way  
 Streets and Open Spaces  
 North Somerset Council  
 Town Hall  
 Walcombe Grove Road  
 Weston-super-Mare  
 BS23 1UJ  
 Tel. 01934 688 602

**Project**  
**Route identification**  
**Location**  
**The Uplands Halstead**  
**Client**  
**Mir R Turvey**  
**OS Licence No.**  
**100023397**

**Scale** 1:2500  
**Drawn by**  
**Mrs E Bowman**  
**Drawing No.**  
**Date**  
**20 April 2017**



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Public Right of Way obligations in s106 agreement for The Uplands, Nailsea

Definitions:

**Public Rights of Way:** means the semi-bound gravel footpaths and the bark chipping path to be laid out by the Developer in accordance with the Planning Permission shown in the indicative positions on the hard landscape layout drawing no UNA\_008 rev C (annexed to this Deed at Appendix 6) and on the Public Footpaths Drawing and to be dedicated by the Developer or the Management Company (whomsoever is the freehold owner of the Public Rights of Way at the relevant time) in accordance with Part 2 of the Third Schedule and the Public Path Creation Agreement.

**Public Path Creation Agreement:** means an agreement between the Developer or the Management Company (whomsoever is the freehold owner of the Public Rights of Way at the relevant time) with the Council pursuant to section 25 of the Highways Act 1980 for the dedication of the Public Rights of Way, and the grant of permissive rights to use as a cycle path that section of the Public Right of Way between points C and B as shown on the Public Footpaths Drawing in substantially the same form attached at Appendix 7 with such amendments as shall be agreed between the Developer or the Management Company (as relevant) and the Council (both parties acting reasonably).

#### Part 2, Third Schedule

#### Public Rights of Way

1. The Developer shall, at its own cost and expense, carry out and complete the laying out and surfacing of the Public Rights of Way in a good and workmanlike manner and with sound and good quality materials along the routes and to a standard in accordance with the documents and drawings and the timetable approved pursuant to the Planning Permission and to the reasonable satisfaction of the Council.
2. The Developer shall install staggered barriers in the approximate position shown at point A and B on the Public Footpaths Drawing, the design of which shall allow the use of the path between points A and B to be used as a right of way on foot including with a mobility vehicle, prams and pushchairs, the design of the barriers in compliance with the provisions of the Equality Act 2010 and be approved pursuant to condition 16 of the Planning Permission.

3. The Developer shall erect notices in the approximate positions shown at points A and B referred to in paragraph **Error! Reference source not found.** of this Schedule in accordance with the details approved pursuant to condition 16 of the Planning Permission.
4. Upon completion of the construction of the Public Rights of Way the Developer shall notify the Council and the Access Officer shall inspect the Public Rights of Way as soon as reasonably practicable (and in any event no later than 28 Working Days after receipt of notification of completion from the Developer).
5. The Developer shall pay to the Council the sum of £133.00 being the Council's fees for inspecting the Public Rights of Way at the same time as the Developer gives the Council notice pursuant to paragraph **Error! Reference source not found.** of this Schedule.
6. If the Council acting reasonably considers that the Public Rights of Way to be completed to a satisfactory standard and in accordance with the Planning Permission it shall give notice in writing to the Developer of this fact.
7. If the Council do not consider that the Public Rights of Way to be satisfactorily completed it shall notify the Developer of its reasons within 28 Working Days of its inspection and the Developer shall remedy any defects and thereafter the process in paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** shall be repeated a maximum of 3 (three) times. On each occasion the process is completed the Developer shall pay the Council the sum of £66.04 at the same time as the Developer gives the Council notice to reinspect the Public Rights of Way.
8. If the process of paragraphs **Error! Reference source not found.**, **Error! Reference source not found.** and 7 has been carried out three times without written confirmation that the Public Rights of Way have reached a standard reasonably acceptable to the Council, the Council shall have the right to enter onto the Land and to rectify any

defects in the Public Rights of Way and the Developer shall pay the costs of the Council doing so Provided Always that in the event any such defects constitute a risk to health and safety, the Council may enter the Land and rectify any such defects and/or take enforcement action irrespective of the number of times the process at paragraph **Error! Reference source not found.** has been carried out.

9. Following satisfactory completion (but not before) of the Public Rights of Way (but prior to the Public Path Creation Agreement being completed) the Developer covenants to make the Public Rights of Way available to the public in perpetuity free of charge in accordance with the phasing scheme to be approved pursuant to condition 18 of the Planning Permission and until completion of the Public Path Creation Agreement to make available that section of the Public Rights of Way between points C and B as shown on the Public Footpaths Drawing for use by both pedestrians and cyclists.
10. At all times during the carrying out of the Development and until such time as replaced by a 1.2m wide semi-bound gravel footpath and a 1.5m bark chipping footpath as shown on the hard landscape layout drawing no UNA\_008 rev C the Developer shall make available for use by the public at large and keep open a temporary access over and along the route shown shaded yellow and shaded green on the plan marked 'Northern Boundary Pedestrian Route' attached to the Construction Environmental Management Plan previously approved by the Council on the 11 April 2023 pursuant to condition 17 of the Planning Permission and then onward through the Woodland to the public bridleway LA13/4/50.
11. The Developer shall not at any time before the Commencement of Development and/or during the construction phase fell or lop the hedge planted along that part of the northern boundary of the Land shown shaded yellow on the plan marked 'Northern Boundary Pedestrian Route, referred to in paragraph **Error! Reference source not found.** of Part 2 of this Schedule.

12. Until the Public Path Creation Agreement has been entered into, the Developer shall keep and maintain the Public Rights of Way to a standard reasonably required by and to the reasonable satisfaction of the Access Officer.
13. The Developer shall submit to the Council for approval a plan identifying the route of the Public Rights of Way including the width of the Public Rights of Way and the distance between the reference points. For the avoidance of doubt such plan shall show the Public Rights of Way as following the indicative routes shown on the plans appended at Appendix 6 and the only matters on the plan to be approved by the Council are the width of the Public Rights of Way and the distance between the reference points.
14. The Developer shall enter into the Public Path Creation Agreement with the Council or procure that the Management Company enters into the Public Path Creation Agreement with the Council in respect of the Public Footpaths at any time after the later of:
  - 14.1 the freehold transfer of the land upon which the Public Rights of Way are constructed to the Developer or the Management Company (as relevant); and
  - 14.2 the satisfactory construction and completion of the Public Rights of Way in accordance with the Planning Permission and this Agreement and the Council having issued the notice in accordance with paragraph **Error! Reference source not found.** and the Developer having maintained the Public Rights of Way in accordance with paragraph **Error! Reference source not found.**
15. The Developer shall pay the Council's reasonable costs in relation to the approval and completion of the Public Path Creation Agreement.
16. On completion of the Public Path Creation Agreement the Developer shall pay to the Council the Public Rights of Way Contribution.

17. Following completion of the Public Path Creation Agreement the Council shall become liable for the maintenance and upkeep of the Public Rights of Way pursuant to the terms of the Public Path Creation Agreement.

**DOCUMENT 3**

Page 1

**DATED** 20[ ]

**PUBLIC PATH CREATION AGREEMENT**

**AND GRANT OF PERMISSIVE RIGHTS**

Between

North Somerset District Council

and

**Party 2**

and

**[Party 3]**

CONTENTS



**THIS PUBLIC PATH CREATION AGREEMENT** is made on  
20[ ]

## **PARTIES**

- 1 **NORTH SOMERSET DISTRICT COUNCIL** of the Town Hall Walliscote Grove Road Weston-super-Mare, BS23 1AE (the **Council**); and
- 2 [landowner] of [address] (the **Owner**)<sup>1</sup>.

## **BACKGROUND**

- (A) The Owner owns the freehold interest in the Land.
- (B) [the freehold interest in the Property is subject to [the Charge[s] [insert details of any other restriction]
- (C) [the Landowner's charge consents to the Landowner entering into this agreement.
- (D) The Council is the relevant highway authority for the district in which the Land is situated.
- (E) Pursuant to the terms of the s.106 Agreement, it is intended to dedicate the Footpaths as public rights of way across the Land.
- (F) The Council has consulted all local authorities in whose area the land is situated and has had due regard to the needs of agriculture (including the breeding and keeping of horses) and forestry and the desirability of conserving flora, fauna and geographical features.<sup>2</sup>

### Agreed terms

1. The following definitions and rules of interpretation apply to this agreement

### **Definitions**

---

<sup>1</sup> Tenant under the Building Lease may need to be a party together with any mortgagee of the tenant or the land owner

<sup>2</sup> Add references to tenant and build lease as relevant

**[Charge]:** [the charge[s] appearing at entry number/entries [number] and [number] in the Charges Register of the title to the Land at [date and time of Official Copies]

**Drawing:** means the landscape strategies drawing, figure 5.5 'Proposed Public Footpaths' (within UNA-006 rev B) attached to this agreement at Appendix 1 which show the indicate route of the Footpaths.

**Commented [AR1]:** The drawing to be attached in the final version will be a drawing which shows the precise route of all the footpaths, the subject of the agreement and approved pursuant to paragraph 13, Part 2, Third Schedule.

**Footpaths:** means the [semi-bound gravel footpaths and the bark chipping path as shown on the Drawing.]<sup>3</sup>

**Land:** the freehold property known as land lying to the south of St Mary's Grove, Nailsea and land lying to the south of The Uplands, Nailsea and registered at HM Land Registry with absolute title under title numbers ST21741 and ST247631

**Maintenance Sum:** means the sum of £15,287.59 (fifteen thousand two hundred and eighty-seven pounds and 59p) towards the costs of the Council in maintaining the Footpaths.

**s.106 Agreement:** means the section 106 Agreement dated [ ] and made between (1) the Council (2) Stonewood Partnerships (Uplands RGI) Ltd and (3) Close Brothers Limited

- 1.1. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.2. References to clauses and schedules are references to clauses and the Schedule of this agreement and references to paragraphs are references to paragraphs of the Schedule.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. The Schedule forms part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedule.
- 1.5. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established

<sup>3</sup> Substitute plan for a plan complying with clause 2.

- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10. A reference to **writing** or **written** excludes fax and email.
- 1.11. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

The Parties agree pursuant to section 25 of the Highways Act 1980:

## 2. **Grant**

Pursuant to the provisions of the s.106 Agreement and in consideration of the Maintenance Sum paid by the Owner to the Council, receipt of which is acknowledged, and the agreements and conditions contained below, the Owner dedicates the Footpaths running from:

- 2.1. the point marked 'A' shown on the Drawing (being a point [*number*] metres distant from [*reference point*]) to the point marked 'C' shown on the Drawing (being a point [*number*] metres distant from [*reference point*]) and [*number*] metres wide; and
- 2.2. the point marked 'C' shown on the Drawing (being a point [*number*] metres distant from [*reference point*]) to the point marked 'B' shown on the Drawing (being a point [*number*] metres distant from [*reference point*] and [*number*] metres wide; and
- 2.3. the point marked [D] shown on the Drawing (being a point [*number*] metres distant from [*reference point*]) to the point marked ['C'] shown on the Drawing (being a point [*number*] metres distant from [*reference point*]) and [*number*] metres wide; and

- 2.4. the point marked [C] shown on the Drawing (being a point [number] metres distant from [reference point]) to the point marked [E] shown on the Drawing (being a point [number] metres distant from [reference point]) and [number] metres wide; and
- 2.5. the point marked ['F'] shown on the Drawing being a point [number] metres distant from [reference point]) to the point marked ['G'] shown on the Drawing (being a point [number] metres distant from [reference point]) and [number] metres wide
- 2.6. the point marked [G] shown on the Drawing being a point [number] metres distant from [reference point]) to the point marked [H] shown on the Drawing (being a point [number] metres distant from [reference point]) and [number] metres wide

for use by the public for the purpose of footpaths to the intent that the Footpaths shall be enjoyed by the public as footpaths.

3. Permissive right to use the Footpaths between points marked C and B ('Permissive Route')
  - 3.1. Subject to clause 3.2, from and including the date of this agreement to the date of expiry of not less than 12 months' notice given by the Owner to the Council, the Owner grants permissive rights to use that section of the Footpaths between points C and B as shown on the Drawing as a shared use path for cyclists and pedestrians.
  - 3.2. Prior to the Owner giving notice pursuant to clause 3.1, the Owner shall first notify the Council of its intention to serve notice to terminate the permissive right, giving reasons for the termination and if requested by the Council the parties shall work together with a view to keeping the Permissive Route open. If the parties (acting reasonably) fail to agree to keep open the Permissive Route, or the Council fails to respond to the notification within 20 working days of the date of the notice, the Owner shall then be entitled to give the notice under clause 3.1.
  - 3.3. For the avoidance of doubt the grant of the Permissive Route shall not in any way affect the dedication as a public right of way of that section of the Footpaths between points C and D, which shall remain at all times a public right of way.

4. **Proof of title<sup>4</sup>**

The Owner shall at its own cost and expense prove its beneficial ownership in fee simple in the Footpaths to the Council.

In witness whereof this agreement has been executed as a deed by the parties.

Executed by  
NORTH SOMERSET DISTRICT COUNCIL  
in the presence of:

[add other signature blocks]

---

<sup>4</sup> Add new clauses e.g. chargee's consent as relevant

**(Indicative routes only)**

