

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.

 <p>Place Directorate 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</p>	<p>Project The Uplands</p> <p>Location The Uplands</p> <p>Client Applicants Plan</p> <p>OS Licence No. 100023397</p>
<p>Scale 1:2307</p> <p>Drawn by Mrs E Bowman</p> <p>Drawing No.</p>	<p>Date 15 July 2023</p>

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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 16th 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 28th 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 thatand 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 23rd 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.....

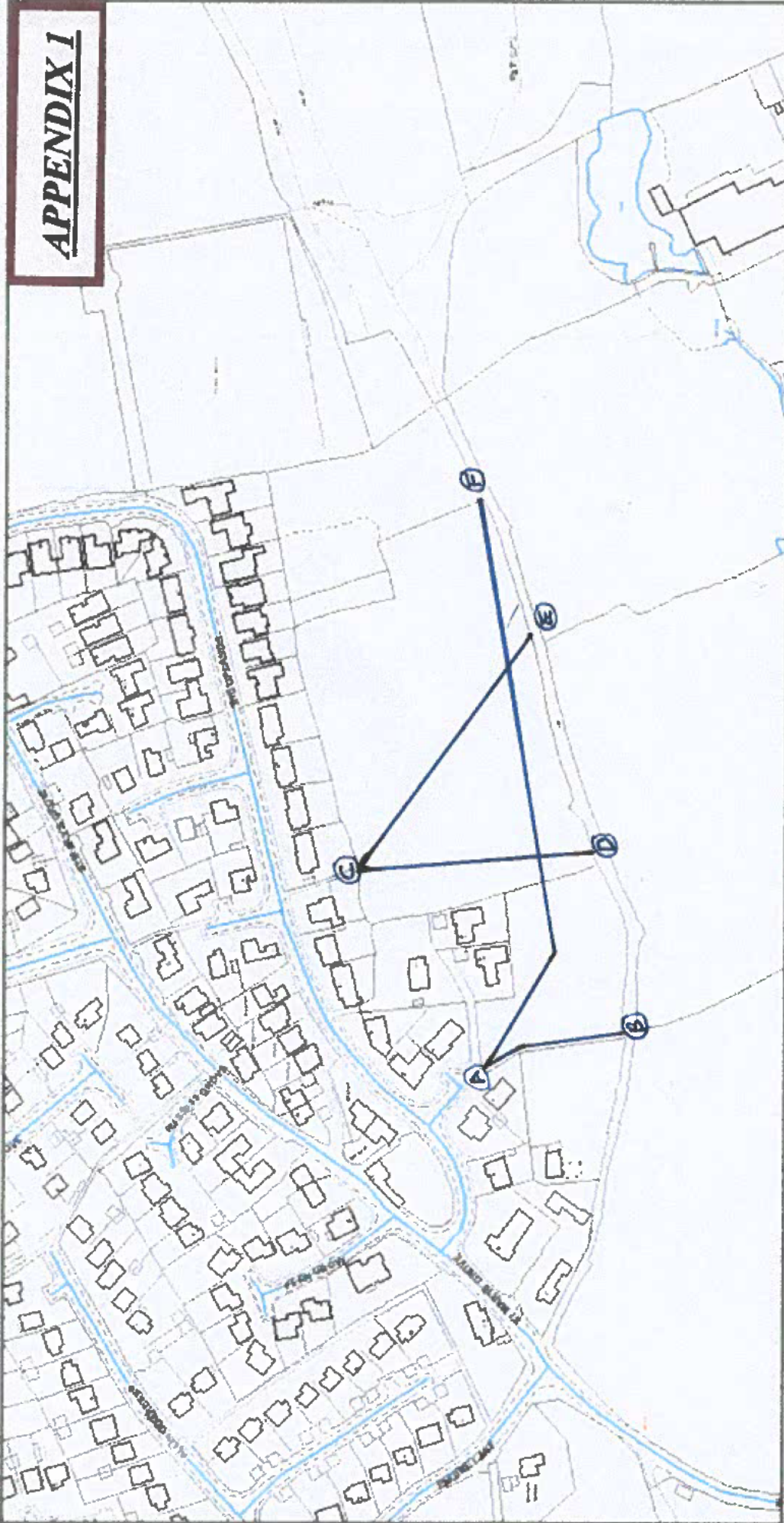
NOTES FOR GUIDANCE

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.

Development & Environment

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

Project Route Identification

Location
 The Uplands Nailsea
 Client
 Mr R Turvey
 OS Licence No.
 100023387

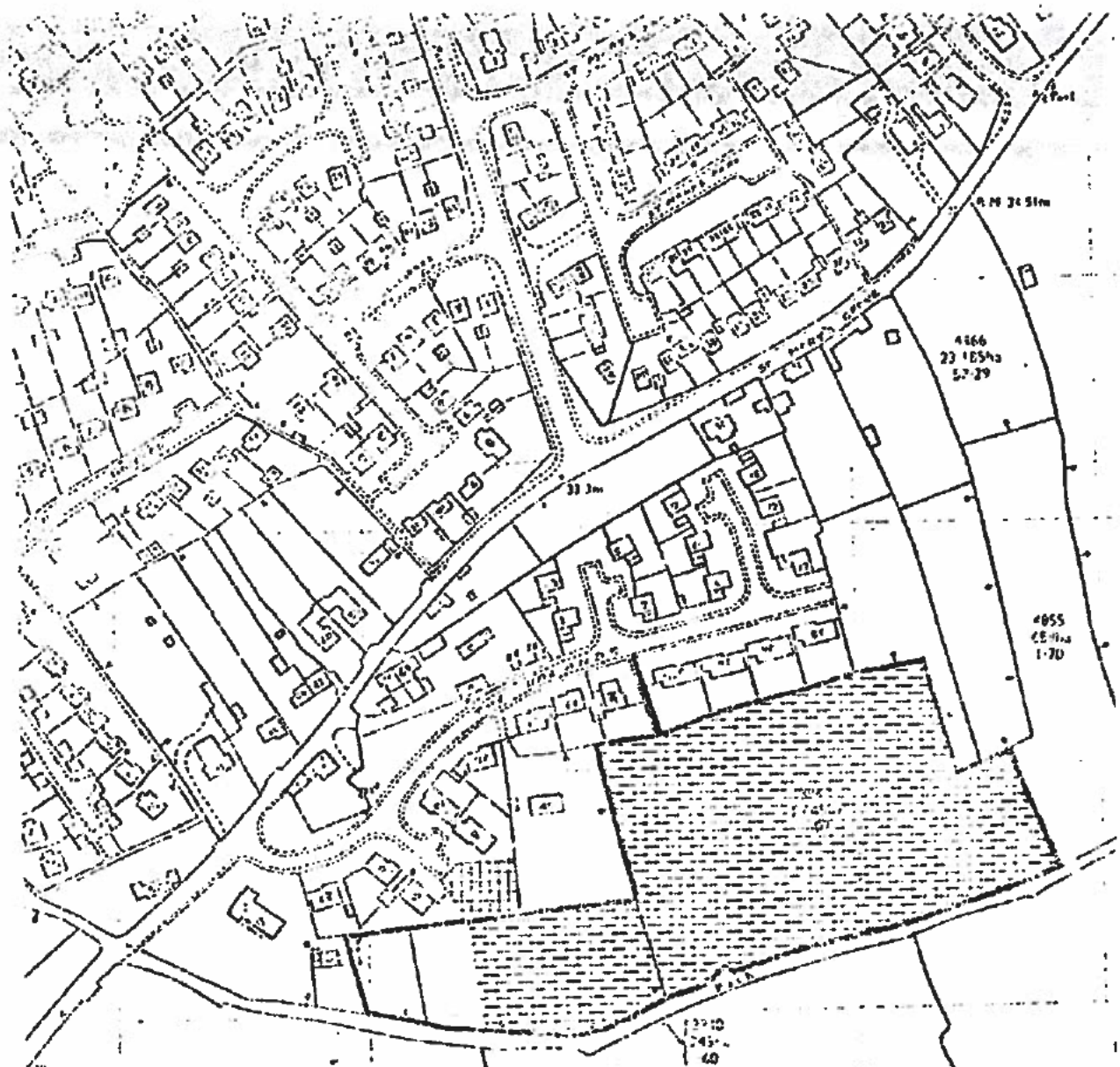
Scale

Scale 1:2500

Drawn by
 Mrs E Bowman
 Drawing No.

Date
 20 April 2017






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

letter	date	revision

SCALE 1:2500
 File ref 1575/76

To be acquired:


 Zoned P.O.S.

 Zoned Ra

Site to which S.17 Certificate relates



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

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

Job No. Drawing No.
 76(UP)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/L2/6/10/CS

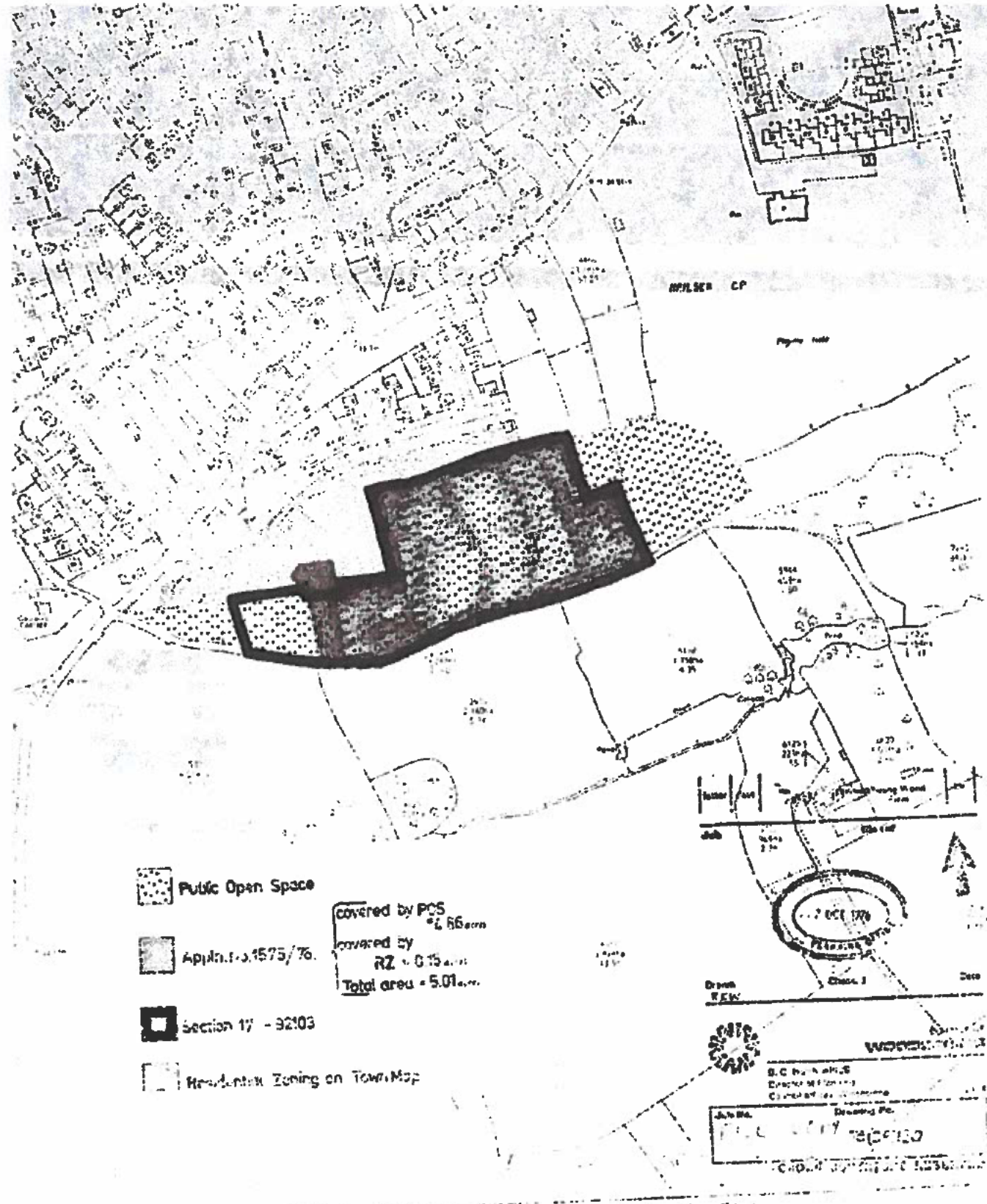
Your ref 20/7/77

Date 20th JUN 1977

LAND AT THE CORNER OF THE HILARAS ST AND X'S 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



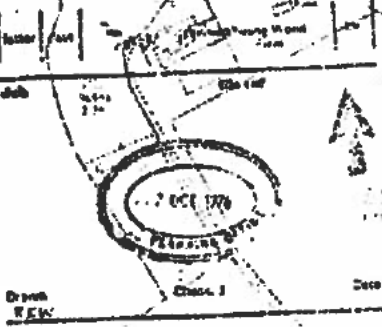
 Public Open Space


 Applies to 1575/76

 Section 17 - 32103

 Residential Zoning on Town Map

covered by POS
6.86 acres
covered by
RZ - 0.15 acres
Total area - 5.01 acres



 **MILBURN**
S. C. P. A. M. S.
Director of Planning
Comprehensive Department
Drawing No.
PLC 170 1976
1976

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,

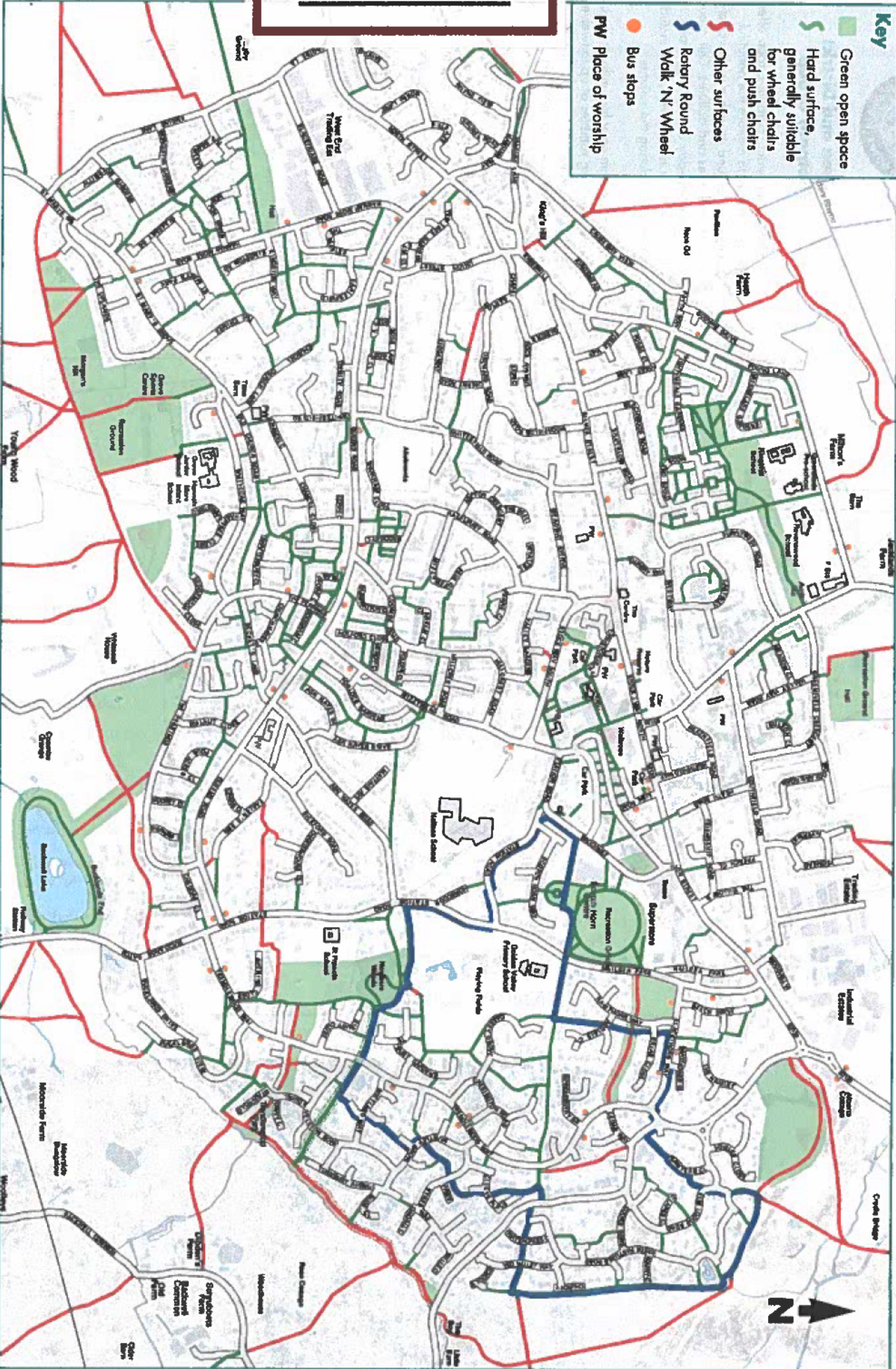


Chief Executive and Clerk

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



Nailsea and District Footpath Group

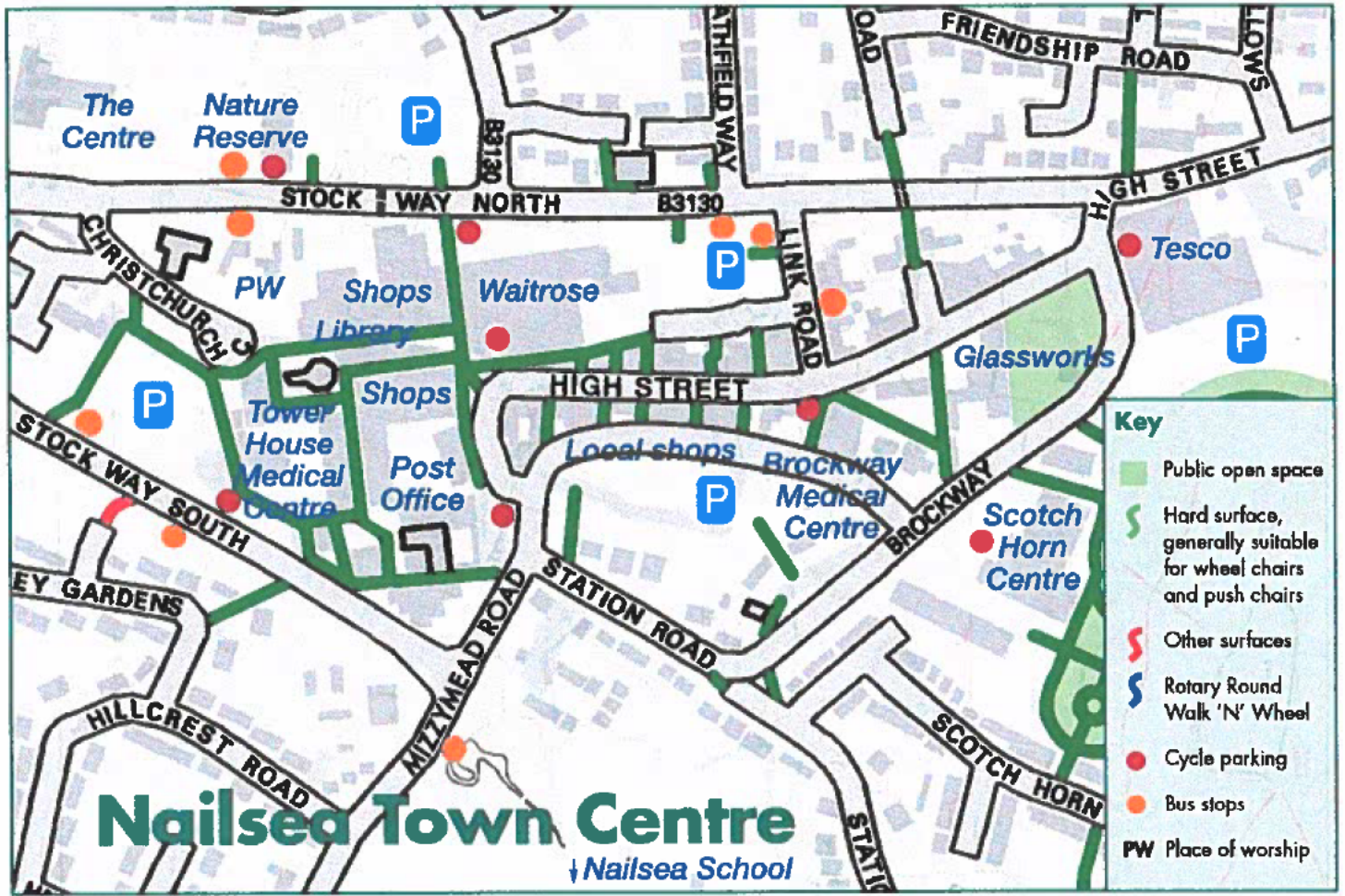
Nailsea and District Footpath Group offers the opportunity to explore the beautiful countryside around us with a wide variety of walks for all ages and abilities. Our group arranges whole-day and half-day walks, during the week and at weekends, including evening walks during the summer.

Walks range from easy four mile strolls to more challenging rambles of up to twelve miles. Many walks are local but we also venture further afield to areas like The Mendips, Quantocks, Catswolds and Welsh Hills. Our programme is published three times a year, and is available on our website www.nfdpg.org.uk - we also advertise our walks on notice boards and at the local library.

We walk throughout the year and members are free to join as many or as few walks as they wish. However, it is recommended that walkers wear footwear and clothing appropriate to the season and the weather.

An important aim of our group is to encourage people to use the paths in Nailsea and adjoining parishes, and so enjoy the local countryside. This helps to preserve local footpaths, and save those under threat. The Group makes appropriate representations on issues where public rights of way are involved.

New members of all ages are always welcome. More information about our group can be found on our website.



North Somerset Council
Park Lane, Nailsea, North Somerset, BA4 7AA
01274 383100
www.northsomerset.gov.uk

Nailsea town paths

Be keen by bike
www.northsomerset.gov.uk

Nailsea Town Council
www.nailsea-tc.co.uk

Rotary Walks 'N' Wheel
for website search (Rotary Nailsea) - click on our Home Page and then '2/2/1' we'll be in

Traveline
www.traveline.co.uk

Travelwest
www.travelwest.co.uk

The information on this site is for general information only and does not constitute an offer of any financial product or service. It is not intended to be used as a basis for investment decisions. Please contact your financial adviser for more information.

We welcome donations from individuals and organisations to help fund our work. For more information, please contact Nailsea and District Footpath Group, c/o Nailsea Town Council, Nailsea Town Centre, Nailsea, North Somerset, BA4 7AA. We are a registered charity and our registration number is 1094141. Our accounts are audited and we are a member of the National Council for Voluntary Organisations (NCVO).

In partnership with
Nailsea Town Council
North Somerset Council

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 1) 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 FP1			✓			
FP2		✓				
FP3				✓		
FP4				✓		
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 23rd 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

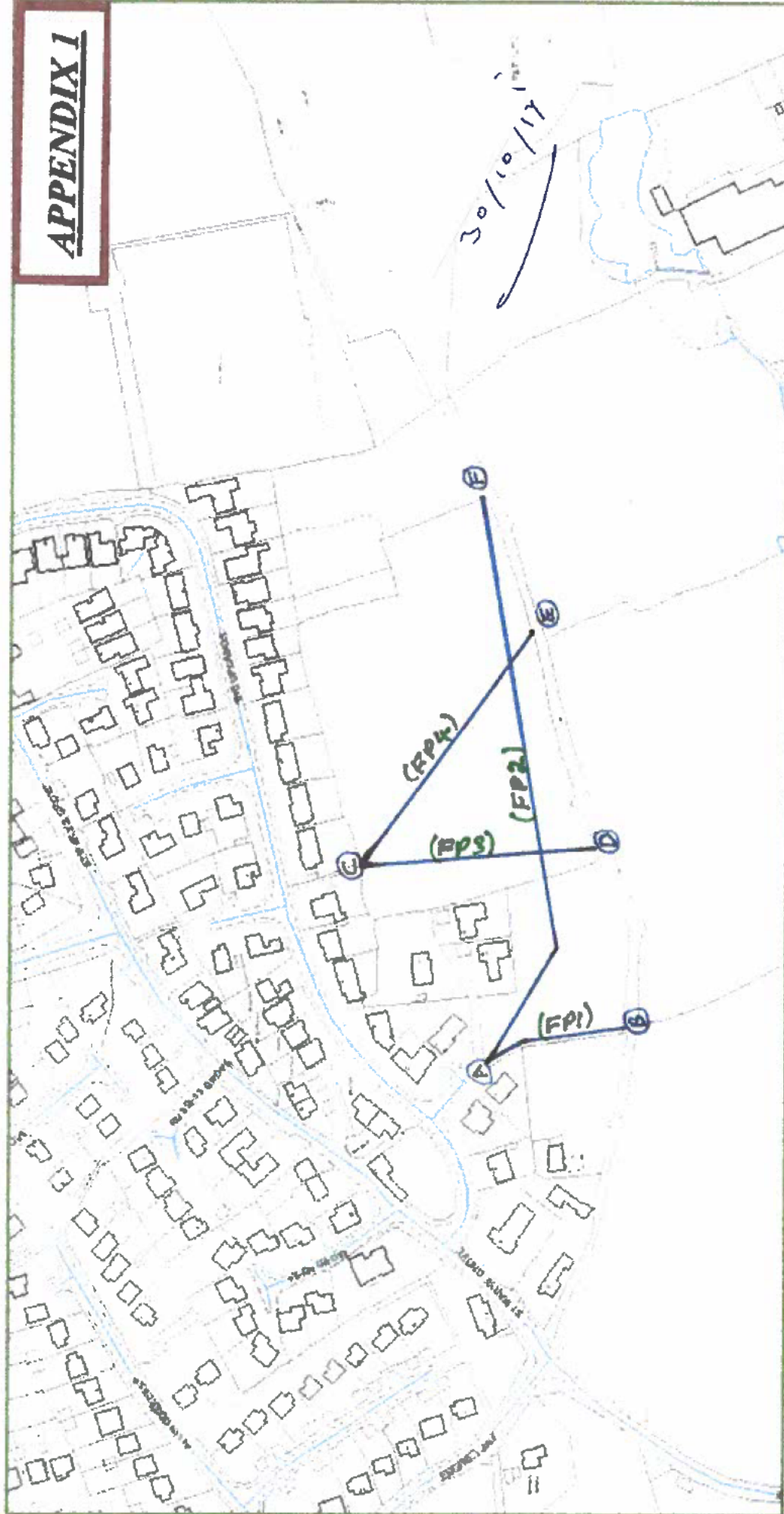
Yes

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

No

Yes

APPENDIX 1



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
The Uplands Hallsee
 Client
 Mr R Turvey
 OS Licence No.
 100023397

Scale 1:2500

Drawn by
 Mrs E Bowman
 Drawing No.
 Date
 20 April 2017



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

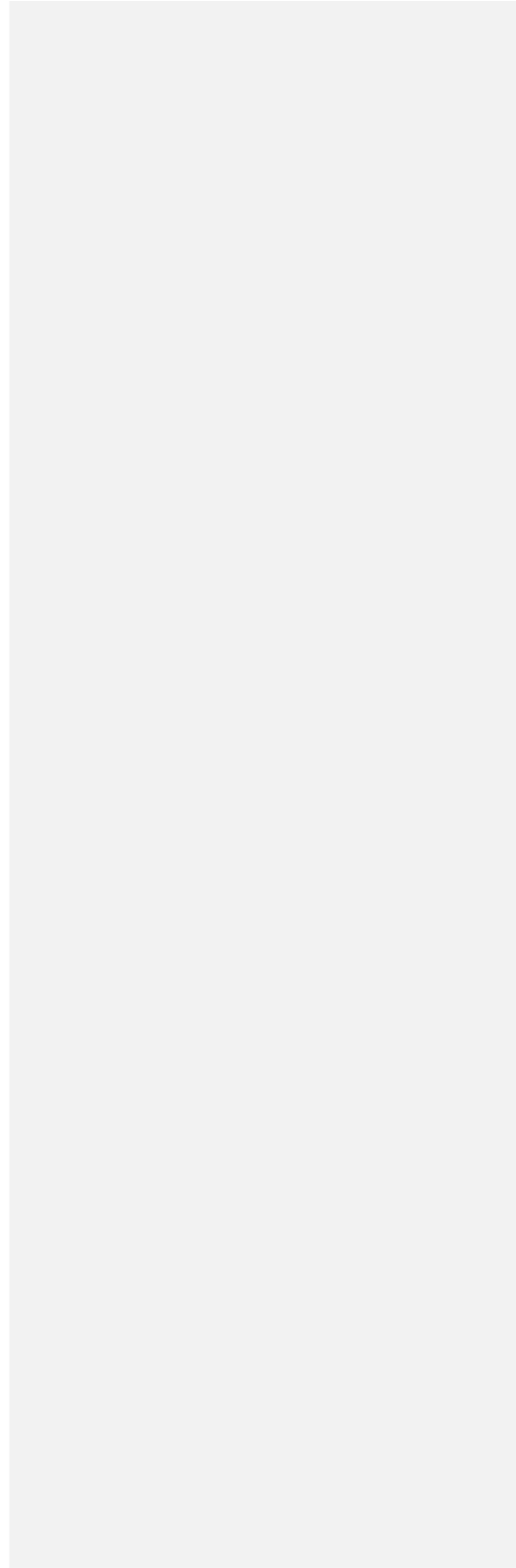
and

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**)¹.

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.²

Agreed terms

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

Definitions

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

² 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.]³

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

³ 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 title⁴**

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]

⁴ Add new clauses e.g. chargee's consent as relevant

(Indicative routes only)

