

PORTSMOUTH CITY COUNCIL

DEFINITIVE MAP MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

**PORTSMOUTH CITY COUNCIL DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY**

**THE PORTSMOUTH CITY COUNCIL (NO.2 – COMPTON ROAD –
BATTENBURG AVENUE (ADDITION OF PUBLIC FOOTPATH))
DEFINITIVE MAP MODIFICATION 2022**

On the 12 March 2024 the Secretary of State for Environment, Food and Rural Affairs confirmed this Order.

The effect of the Order as confirmed is to record a public footpath numbered 105 from Compton Road (GR 465781 103042) in a southerly direction for approximately 80m to Battenburg Avenue (GR 465784 102980). The width of the public footpath is between 1.4m and 2.7m.

All distances are approximate, all directions are general.

A copy of the Order and the Order map have been placed and may be seen free of charge at the offices of Portsmouth City Council, Civic Offices, Guildhall Square, Portsmouth, PO1 2AL from 9am to 4:30pm Monday to Friday (excluding public holidays). Copies of the order and map may be bought from there at the price of £1.00.

The Order came into force on 12 March 2024 but if any person aggrieved by the Order wants to question its validity or that of any provision contained in it on the ground that is not within the powers of the Wildlife and Countryside Act 1981, or on the ground that any requirement of the Act, or any regulation made under the Act has not been complied with in relation to the Order, he or she may under paragraph 12 of Schedule 15 to the Act within forty two days from 28 June 2024 make application for the purpose to the High Court.

DATED this 28th day of June 2024



Order Decision

Papers on file

by **Claire Tregembo BA(Hons) MIPROW**

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 12 March 2024

Order Ref: ROW/3317794

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Portsmouth City Council (No. 2 - Compton Road - Battenburg Avenue (Addition of a Public Footpath)) Definitive Map Modification Order 2022.
- The Order is dated 29 April 2022 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
- There were three objections outstanding when Portsmouth City Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Preliminary Matters

1. The Order route runs between Compton Road and Battenburg Avenue along the eastern side of the church hall on Compton Road and the western side of the church on Battenburg Avenue. Reference is also made to another path to the west of the church hall, but it is not included in the Order before me. I have appended a plan of the Order route to the end of my decision for ease of reference.
2. The objections concern issues relating to the suitability and desirability of the footpath such as crime, anti-social behaviour, security, alternative routes, and the development of the site. These are issues that cannot legally be taken into consideration. Therefore, I have not addressed them in my decision.
3. The objections also refer to the potential use of a path to the west of the church hall following the construction of residential properties over the Order route. However, these objections do not relate to the Order route, and I cannot take them into consideration. If I confirm the Order, Portsmouth City Council (the Council) will need to determine what action to take if the Order route is obstructed by the new properties.
4. The objectors were given the opportunity to submit revised objections, but none were received. As there are no relevant objections, the Order is determined based on the papers on file. I have not undertaken a site visit, but I am satisfied I can make my decision without undertaking one. I still need to consider the merits of the Order and make a decision based on the evidence before me.
5. The witness statements on behalf of the landowners were not provided by the Council. Copies were requested but unfortunately are no longer available. A summary of the witness statements is provided in the report determining the definitive map modification order application (DMMOA). None of the parties have challenged the contents of this report or disputed its content. I am satisfied I can make my decision without seeing the original witness statements.

The Main Issues

6. The Order has been made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of an event specified in Section 53(3)(c)(i). This requires me to consider if, on the balance of probabilities, the evidence shows a public footpath subsists along the Order route. This is a higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.
7. The evidence submitted in support of the Order relies on the presumption of dedication arising from tests laid out in Section 31 of the Highways Act 1980 (the 1980 Act). This requires me to consider if the public have used the route as of right and without interruption, for a period of twenty years immediately prior to its status being brought into question. I must establish the date when the public's right to use the Order route was brought into question and determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowner to dedicate a public footpath during this period.
8. Use by the public can be evidence of the intention to dedicate. For an inference of dedication, this use should be as of right without force, secrecy, or permission. There is no fixed period of use at common law and use may range from a few years to several decades, based on the facts of the case. The more intensive and open the use, the shorter the period required to raise the inference of dedication. The burden of proof lies with the claimant to demonstrate that the evidence is sufficient to indicate an intention of dedication.

Reasons

Bringing into question

9. To bring into question the right of the public to use the Order route some actions or events must have occurred that brought home to at least some of those using it that their right to do so was being challenged. These must have been sufficiently overt to bring that challenge to the attention of the public using the route.
10. In the absence of evidence of overt acts bringing the right of the public to use the route into question, Section 31(7a) and (7b) of the 1980 Act provides that a DMMOA made to the surveying authority can serve as a challenge to use for the purposes of Section 31(2) of the 1980 Act.
11. None of the path users recall any challenges, interruptions, obstructions, or permission to use the Order route. Fifteen people recall a pedestrian gate at the Battenburg Avenue end but state it was never locked. Path users refer to notices along the Order route stating, 'please do not let your dog foul the footpath', 'no ball games', and 'no cycling'. The dog fouling and cycling notices were photographed during a site visit by the Council in 2020 and appear to have been present for many years. The 'no cycling' notice challenges use on a bicycle, but I do not consider it brings into question the use of the Order route on foot.
12. A DMMOA was made to the Council in 2018 and appears to have been made following proposals for the redevelopment of the church hall. I have not seen the

development plans, but the objection letters indicate the development has been completed and obstructs the Order route.

13. I therefore consider the DMMOA to be the date of challenge and the relevant twenty year period of use to be 1998 to 2018.

Analysis of use

14. To satisfy the requirements of Section 31, use must be by those who can be regarded as the public. For use to be as of right it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, any interruption must be by the landowner, or someone acting on their behalf. The interruption should be with the intention of preventing use of the way by the public and not for other purposes such as car parking or building works. I must also be satisfied that there was sufficient use by the public to raise a presumption of dedication.
15. User evidence forms were submitted showing use of the Order route between 1979 and 2018. Thirty people used the Order route for the whole of the relevant twenty year period with an additional 27 people using it during part of it. Use is frequent with 33 people claiming to use it daily and 20 others using it at least once a week.
16. Everyone completing forms used the Order route on foot and 24 people also used it on a bicycle. The Order route was used to reach local facilities including shops, the park, schools, bus stops, a post box, doctors, dentists, and chemists. People also used it to visit friends and family, to get to work and for dog walking. Use appears to be open and without secrecy or force.
17. Two people state they were relatives, tenants, or employees of the landowner with one clarifying that they had been employed by a tenant of the church hall. Therefore, they would have been using the Order route for private purposes or with the permission of the landowner. Twelve people also used the Order route to reach the church or the church hall which would be considered as private use with permission of the landowner. However, all twelve also used the Order route to reach other places and facilities. Most path users did not use it to access the church or church hall and were not relatives, tenants, or employees of the landowner.
18. Four people also stated that they considered their use to be a private right to reach their own or friend's properties. These properties all appear to have been on Compton Road or Battenburg Avenue and were not directly accessed from the Order route. Therefore, I do not consider this use to be for private purposes.
19. I consider there is sufficient evidence of use of the Order route, without force, secrecy, or permission during the relevant twenty year period to demonstrate a presumption of dedication of a public footpath.

Lack of intention to dedicate

20. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware that they have no intention of dedicating a public right of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.

21. A parishioner who lives close to the Order route recalls there was a gate at the Compton Road end of the footpath and another in front of the church which were locked after the Christmas morning service and remained closed until after Boxing Day. However, after the church hall was built in the 1960s changes to the fencing and gates made it more difficult to close the path and the annual closures stopped. A former priest also claims the path was closed every year on Boxing Day from 1975 to 1979 for 24 hours and members of the public would visit the clergy house to complain about the closure. Another former priest claims that the path was closed on the first of January every year from 1982 to 1986 to affirm that it was not a public right of way. These closures were not during the relevant twenty year period and path users do not recall the Order route being closed. The evidence before me suggests the annual closures stopped before the start of the relevant twenty year period.
22. The 'no cycling' sign is a clear challenge to use on a bicycle and would prevent the dedication of a bridleway or restricted byway. However, I do not consider it to be a challenge to use on foot. The presence of no cycling and dog fouling signs suggests the landowners were aware of public use but only took action to challenge cyclists.
23. A site visit was undertaken by the Council in December 2020 and a notice stating 'No Right of Way Emergency Exit Only' was attached to the western wall of the church hall alongside the other path. However, it is not visible from the Order route. One of the priests recalls a similar notice on the Order route in the 1970s but believes this may have been removed when the hall was 'resurfaced' after they left. None of the path users recall seeing this notice along the Order route but some refer to the one on the western side of the church hall.
24. I do not consider there is sufficient evidence of a lack of intention to dedicate a public footpath along the Order route during the relevant twenty year period.

Conclusions on Section 31

25. I have concluded above that there is sufficient evidence of use on foot by the public as of right and without interruption between 1998 and 2018. I have also concluded there is insufficient evidence of challenge, permission, or other actions to demonstrate that the landowner had no intention of dedicating a public footpath.
26. I am satisfied the evidence before me is sufficient to show that, on the balance of probabilities, a footpath exists over the Order route.

Conclusions

27. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

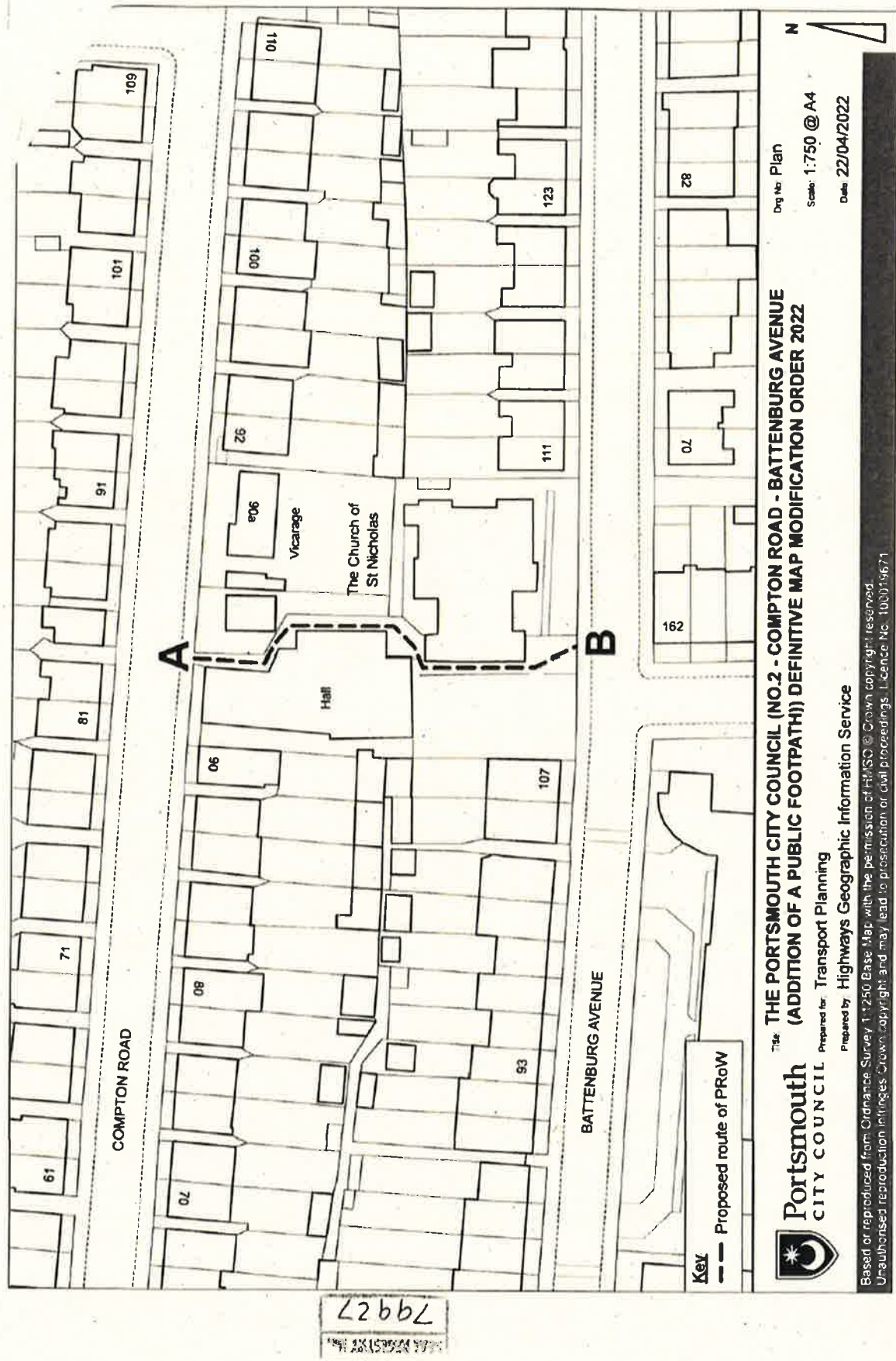
Formal Decision

28. I confirm the Order.

Claire Tregembo

INSPECTOR

Order Map



PORTSMOUTH CITY COUNCIL

DEFINITIVE MAP MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

PORTSMOUTH CITY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY

THE PORTSMOUTH CITY COUNCIL (NO.2 - COMPTON ROAD - BATTENBURG AVENUE (ADDITION OF A PUBLIC FOOTPATH)) DEFINITIVE MAP MODIFICATION ORDER 2022

This Order is made by Portsmouth City Council ("the Authority") under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to the Authority that the Portsmouth Definitive Map and Statement requires modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i), namely the discovery of evidence by the Authority which shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a public footpath to which this Part of the Act applies.

The authority has consulted with every local authority whose area includes the land to which the order relates.

The Portsmouth City Council hereby orders that:

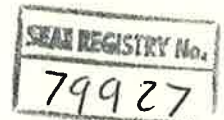
1. For the purposes of this Order the relevant date is 13 April 2022.
2. The Portsmouth Definitive Map and Statement of Public Rights of Way shall be modified as described in Part I AND Part II of the Schedule and shown on the map attached to this Order.
3. This Order shall take effect on the date it is confirmed and may be cited as The PORTSMOUTH CITY COUNCIL (NO.2 - COMPTON ROAD - BATTENBURG AVENUE (ADDITION OF A PUBLIC FOOTPATH)) DEFINITIVE MAP MODIFICATION ORDER 2022.

This ORDER is MADE by affixing the)
COMMON SEAL of PORTSMOUTH)
CITY COUNCIL in pursuance of a)
resolution of the Council passed at a)
meeting duly convened and held :-)



Authorised Signatory

Date: 29 April 2022



The foregoing order is hereby confirmed

Claire Tregembo 12 MAR 2024

An Inspector appointed by The Secretary of
State for Environment, Food and
Rural Affairs

SCHEDULE

PART I MODIFICATION OF DEFINITIVE MAP

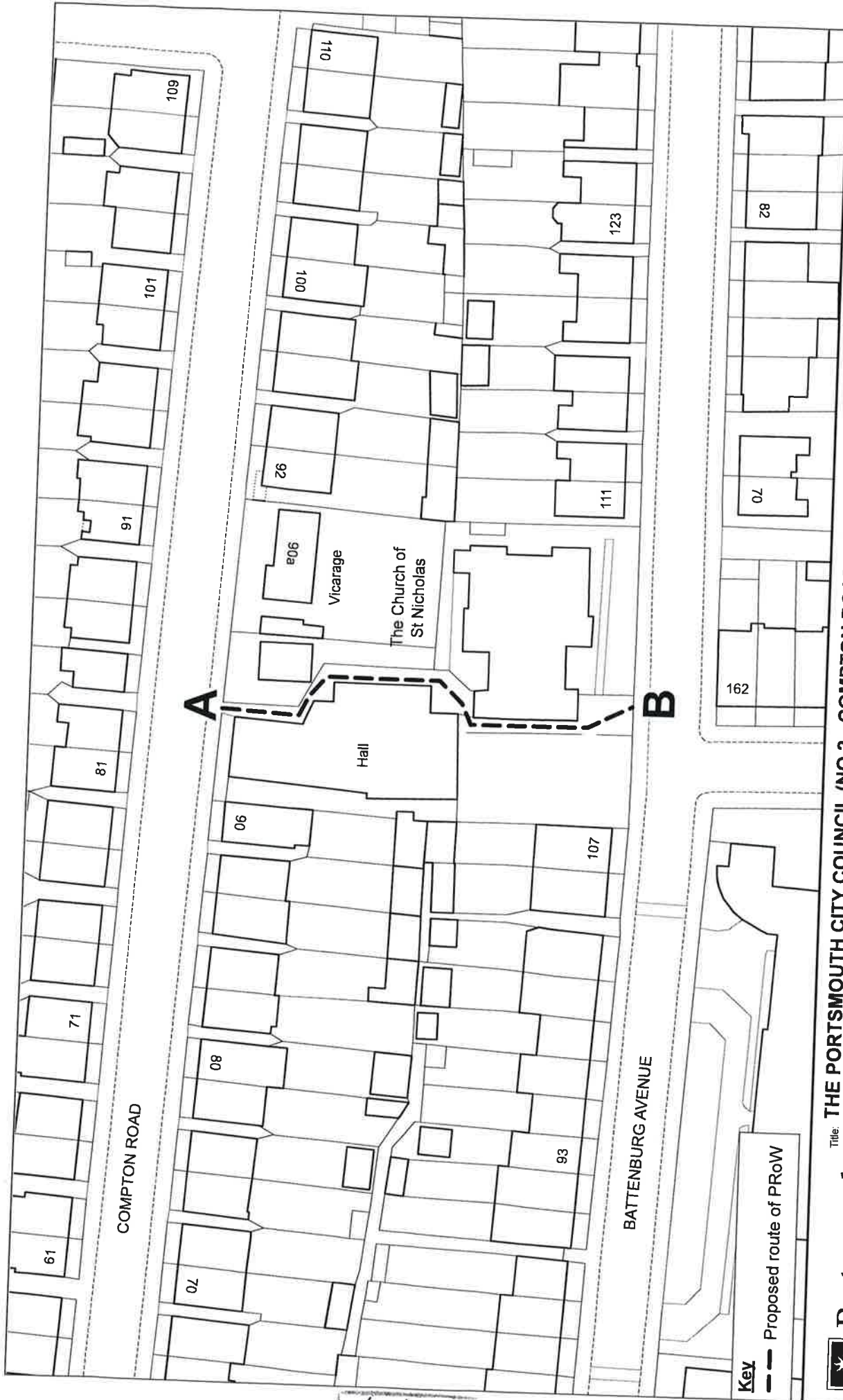
Description of path or way to be added

The addition of a public footpath number 105, commencing at point A on the order plan GR (465781 103042) from Compton Road and continues along a metalled path in a southerly direction for approximately 80 metres. The path terminates on Battenburg Avenue at GR 465784 102980 (Point B). Between the points A-B, the path has a variable width of between 1.4 and 2.7 metres.

PART II MODIFICATION OF DEFINITIVE STATEMENT Variation of particulars of path or way

The statement for the Portsmouth City Council Definitive Statement shall be amended as follows:

Route ID	Photo	Variable	Description
105	n/a	Name: Compton Road Footpath	Length (metres) 80 Surface Tarmac Type of route Suburban Lighting n/a Width (metres) 1.4m - 2.7m Boundary Type Buildings and Railings Ownership Private Accessibility Good Relief Flat Status Public Footpath Condition Good
		Description	The unadopted, metalled path between 1.4m and 2.7m wide named COMPTON ROAD FOOTPATH, extending from Compton Road (GR 465781 103042) in a southerly direction for approximately 80m to Battenburg Avenue (GR 465784 102980).
		Lawful Obstructions and Conditions	Pedestrian Gate at Battenburg Avenue



Key

--- Proposed route of PRoW



Portsmouth
CITY COUNCIL

Title: THE PORTSMOUTH CITY COUNCIL (NO.2 - COMPTON ROAD - BATTENBURG AVENUE
(ADDITION OF A PUBLIC FOOTPATH)) DEFINITIVE MAP MODIFICATION ORDER 2022

Prepared for: Transport Planning

Prepared by: Highways Geographic Information Service

Dwg No. Plan

Scale: 1:750 @ A4

Date: 22/04/2022

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