

DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE

10 September 2018

Report of the Director of Legal Services

Wildlife and Countryside Act 1981

**Claim to upgrade Public Footpath No 60 (Part) to bridleway and to add a
Public Bridleway from Public Footpath No 60 to Public Bridleway No 109
– Parish of Charlesworth**

1. Purpose of the Report

To enable members to determine an application to amend the Definitive Map and Statement by upgrading Public Footpath No 60 (Part) to bridleway and by adding a Public Bridleway from Public Footpath No 60 to Public Bridleway No 109 – Parish of Charlesworth.

2. Information and Analysis

2.1 Details of the application

An application was received from SPEED Bridleway Group dated 22 February 2013 to add a bridleway from Long Lane to Public Bridleway No 109 in the Parish of Charlesworth to the Definitive Map and Statement. The application was supported by a plan showing the claimed route and 18 User Evidence Forms.

A plan showing the claimed route is attached to this report.

2.2 User evidence

Seven of the users have stated that there have been challenges to their usage of the route, one of which was by signage. However, only one of the users has provided a date of 2011. As this date pre-dates the date of the application it is considered that the challenge of usage in 2011 brought the status of the route into question for the purposes of Section 31(2) of the Highways Act 1980. Only evidence and events prior to 2011 have been considered in assessing the claim and therefore the relevant 20 year period is 1991-2011.

One of the user evidence forms received was completed by a user, and also on behalf of their two children, however as the usage has not been verified by the signatures of the children only the evidence of the person completing the form has been considered.

All of the user evidence forms had plans attached to them, 15 of these were marked claiming that the users had used the entirety of the claimed route, one had only part of the claimed route marked on it, and two of the plans had no used route marked on them.

Of the 18 users, one claims to have used the route on foot, eight claim to have used the route on horseback, eight claim to have used the route on foot and on horseback and one claims to have used the route on foot, horseback and on bicycle.

One user claims to have used the route on horseback for 20 years, or more and seven claim to have used the route on horseback for less than 20 years but within the relevant period.

Three users claim to have used the route on foot and on horseback for 20 years or more and five claim to have used the route on foot and on horseback for less than 20 years, four of which are within the relevant period.

One user claims to have used the route on foot only for less than 20 years within the relevant period.

One user claims to have used the route on foot, horseback and bicycle for less than 20 years within the relevant period.

The majority of the users claim to have used the route on a regular basis either, more than weekly, weekly, or monthly.

Two users claim to have witnessed others using the route on horseback, one user claims to have witnessed others using the route on bicycle, ten claim to have witnessed others using the route on foot and on horseback, four claim to have witnessed others using the route on foot, horseback and bicycle, and one claims to have witnessed others using the route on foot, on bicycle and in a vehicle.

None of the users refer to the route ever being diverted.

Nine of the users refer to their usage of the route being obstructed or challenged in some way either physically by the constructing of gardens and addition of stones, by being told by the owners, or by signage. However none have stated that this took place before 2011.

Eleven of the witnesses recall signs being erected on the route around Bankwood Cottage to the effect of no horses. However none have stated that they recall any signs prior to 2011.

Only one of the users stated that they had permission to use the route, the user claiming to have used the route on foot, horseback and on bicycle for less than 20 years.

2.3 Consultation

An informal consultation exercise was carried out between 15 December 2014 and 19 January 2015. Notices were placed at either end of the route at the beginning of the consultation period and letters were sent out to the statutory consultees, landowners, and the elected Local Members Councillor Damien Greenhalgh and Councillor Ellie Wilcox.

The consultees were asked to provide any evidence or information relating to the history or use of the claimed route which they considered might be relevant to the determination of the application.

Councillor Ellie Wilcox responded stating that she had no objections to the works proceeding.

Responses received in support of the application

An e-mail was received from the New Mills Ramblers Association stating that they thought that the addition seemed like a sensible idea.

E-mails were received from the applicant, the content of which is summarised below:

- It is a shame that objections have been received when there is evidence of the route being ridden for so many years and still is.
- It is disappointing that people in the countryside don't appreciate that horses are part of where we live.
- SPEED has their own maintenance section so there should be no concern regarding the condition of the pathway.
- The route in question has been used by riders peacefully for many years. This fact is detailed by the number of evidence forms submitted. Horses are part of the community with a number of stables and an equestrian centre within 1 mile of the track.
- It is more pleasurable and better for the horses to do a circular route.
- A landowner has tried to turn horses around on a number of occasions and there have been a number of complaints that this has been done in a rude and aggressive manner. A previous altercation did result in the police being called who were said to have spoken to the owner regarding the assault but did not confirm whether the path was private or not.
- A number of bridleways have closed over the years due to owners blocking them and putting up obstacles forcing horses to use the road. It is important for riders to ride routes off road that have always been ridden.
- Encloses a map showing long dashes that they suggest proves that the track has always been established for horses and is shown as wide enough for a vehicle of horse and cart. Being so close to a railway, this indicates that this track was used to transport goods from the railway to nearby mills.

Responses received in objection to the application

Responses were received in objection to the application and are summarised below:

Objector One

- This is a private lane and path which is privately maintainable, residents will be responsible for repairs to the surface.
- The lane is too steep for horses and therefore they often use the banking at the side
- The drain halfway up the slope causes problems for the horses and has had to be repaired twice in the past
- The track is unsuitable for horses as it is narrow and unstable with steep banking and a pond on one side.
- There is insufficient room for users to pass safely.
- The steep slope would only allow users to travel in one direction as no rider would ever consider going down it.
- Raises concerns regarding the excrement and the danger this poses to motorcyclists.
- The new bridleway would serve no purpose. There is an existing bridleway which starts and finishes at the same place which carries no traffic. The lane is used for vehicular access to three dwellings and light industrial units
- Challenges the user evidence regarding challenges to their usage of the route
- Is aware of challenges, when possible, against usage of the route for nearly 30 years including signs stating “no horses” and “private path”, which were removed.
- Is aware of notices being posted stating that the path was private and not a bridleway but these were ignored.
- Is aware that landowners have been verbally abused by riders when challenging their usage.
- Is aware that the police have been called by the riders when they have been challenged. The police confirmed that the path was private and not a bridleway and advised the riders that they had no right to use it but this was ignored.
- The Council agreed that the path is not a bridleway but were unable to provide signage to this effect as the owner of the lane at Besthill Bridge could not be identified.
- Refutes impression that riders have been using the path peacefully and in harmony with the residents for many years.

Objector Two

- Opposed to addition as feels it would be detrimental to other users and totally unnecessary due to the proximity of a bridleway.
- Cannot understand why riders choose to want to ride up a busy lane when there is already a traffic free bridleway serving a similar purpose.
- The horse riders have been told that it is private property but have continued to trespass causing damage to property and being verbally abusive.

Objector Three

- Damage has been caused to the drain, verges and tarmac by horses trying to get a grip on the surface. The area has been designated as an area of historical importance and these ideals would not be commensurate with this usage.
- The height of the drystone walling and the height of the people on horseback would lend to an invasion of privacy of the adjoining landowners.
- It seems absurd to come off a custom made bridleway along a private busy lane and fields to end up on the further up.
- There is no basis for the application as the riders have been illegally riding across private land without authority to do so.
- Objects to the position of Public Footpath No 60 on the consultation plan.
- Is aware that users have breached the privacy of landowners and verbally abused them when they witnessed a rider state that they should just ride on the grass verge.
- The lane is an access road to Bankwood Mill Industrial Estate and is accessed 24 hours a day, 7 days a week.
- The access is privately maintainable by the residents and questions whether the riders are proposing to contribute to this cost.
- The application is ill founded and should be rejected.

Objector Four

- Is unaware that horses have crossed the land and has never witnessed such use in 30 years.
- There is no public right of way over the land.
- A gate was installed across the proposed route by Derbyshire County Council at the time of the construction of the Trans Pennine Trail, this has remained closed with a catch and only used for access by the landowners.
- The land is used for growing lawn turf and access would cause serious and costly damage as motorbike trespass has in the past.
- The road is unsuitable as it is narrow with no passing places and a steep fall towards the river. The road is used by heavy vehicles accessing the industrial units 7 days a week
- Local residents have commented that they have stopped horses using the track over a period of time.

Objector Five

- A perfectly adequate bridleway exists to provide a safe route from Broadbottom Bridge to Bankwood Gate. This bridleway is well maintained and it is illogical to finance another route which starts and ends at the same location.
- The proposed route is not viable.
- Raising concerns with regards to the maintenance liability to the Council
- The route is not safe for use on horseback and riders have been advised not to use the route for this reason.

- The route cannot be made safe to use due to the slippery surface, condition of the riverside retaining walls, drainage issues and future maintenance liabilities.
- The increased risk of claims against the Council for injury caused by using an unsuitable path.

Objector Six

Linder Myers Solicitors responded to the consultation on behalf of their clients stating that:

- Access to Bankwood Mill is from the main highway over and along a private access road from the time of its construction and has been used only by pedestrians accessing the public footpaths and by private vehicles to obtain access and egress.
- The road is privately maintained and public vehicles are not authorised to use it.
- Their clients believe that part of the route has not been used by horses for a period of 20 years or more.
- Their clients also raised concerns regarding the access way and requested clarification that the intention was to restrict the usage to horses, whether the County Council would maintain the access way, what sign posting would be installed and the wording of this, requested clarification as to whether the authority would be prepared to agree upon a schedule of condition prior to the Order coming into force should the application be successful due to the past and future maintenance implications to their clients.

2.4 Documentary Evidence

Enclosure and Tithe Evidence

There is no Enclosure evidence for the parish of Charlesworth, and no Tithe evidence in relation to the area over which the claimed route runs.

Parish Claim and Map

The Parish claim records part of the route as Footpath 60 with the starting point from railway viaduct path climbs to stile then descends down stone steps to Bankwood Print Works. The small scale of the map and the width of the line marked upon it makes it difficult to precisely determine the position of the path.

Charlesworth Definitive Map and Statement

Footpath 60 is described as Footpath from N end of Long Lane SE of Besthill Mill (997 938) in NW then NE direction under Besthill Bridge to Bankwood Print Works thence SE to Railway boundary and continuing alongside railway to the parish boundary SE of Robinwood Farm (008 941). The quality of the

map, the width of the line marked upon it, and the change in surroundings makes it difficult to precisely determine the position of the path in relation to the current buildings however the alignment does appear to follow that as shown on the working copy following a more easterly direction crossing the track and skirting the northern side of the pond.

Ordnance Survey 1st Edition c1890

Footpath No 60 is shown as between a double dashed line. The part of the claimed route that runs parallel to Public Footpath No 60 is not shown on the 1st Edition OS Map, although there does appear to be a track which runs as far as the cottages, the section of the claimed route between Points C – D on the attached committee plan is shown between solid lines.

Ordnance Survey 2nd Edition c1898

Footpath No 60 is shown as a single dashed line and then a double dashed line, the remainder of the claimed route then follows, what appears to be track for the entire length.

Ordnance Survey c1920

There is no change from that shown on the 2nd Edition OS map.

2.4 Additional Information

Further evidence received from the applicant

Further mapping evidence has been received from the applicant for consideration by the County Council and although the evidence does show what appears to be a track connecting to Public Footpath No 60 and then running the entire length which access the properties there is no clear evidence to state whether access is private or public.

Site visit

A site visit of the claimed route was carried out on 18 June 2018. The surface of the route from Points A-C-B is a tarmac driveway that serves as access to the properties. Part of the surface of the route to the rear of Bankwood Cottage between Points C-D is a tarmac track that appears to have reduced in available width since the application was received, this then turns into a natural soil and gravel track providing vehicular access to the fields.

2.6 Summary and Conclusion

The test which has to be applied when considering the addition of a route to the Definitive Map and Statement under s53(3)(c)(i) is in two parts

Test A – does a right of way subsist on a balance of probabilities? This test is satisfied by showing clear evidence in favour of the right of way and no credible evidence to the contrary.

Test B – is it reasonable to allege on a balance of probabilities that a right of way subsists? If there is a conflict of credible evidence and no incontrovertible evidence that a right of way cannot be reasonably be alleged to subsist, then the answer must be that it is reasonable to allege that a right of way does subsist.

The test which has to be applied when considering the upgrading of a route on the Definitive Map and Statement under s53(3)(c)(ii) is on the balance of probabilities.

When considering whether a landowner is deemed to have dedicated a bridleway or restricted byway, it has been considered by Carnworth LJ (see paragraph 3.12) that it would be appropriate to infer the form of the dedication by the landowner that is least burdensome to him, which would be a bridleway.

Current case law suggests that regular use of a route by horse riders and cyclists is consistent with presumed dedication of the route as a bridleway because it has been legal for cyclists to use bridleways since 1968 when Section 30 of the Countryside Act 1968 came into force.

The Council's Declaration Register has been checked and no s31(6) statutory declarations have been made which would affect the claim.

The documentary evidence offers no proof of public bridleway rights however, the application to modify the definitive map is based on user evidence.

Although evidence has been received by both the objectors and the users that usage of the route has been challenged it is unclear when these challenges occurred and therefore whether the users used the route as of right for in excess of 20 years. One objector has stated that they are aware that challenges have been made as to usage for nearly 30 years at the time of the consultation, however it is unclear from the information provided whether there is a clear intention of the landowner not to dedicate the route as a public right of way.

As evidence has been received which suggests that the route has been enjoyed as of right, without secrecy, force or permission as required by the legislation for in excess of 20 years, it is reasonable to allege on a balance of probabilities that a right of way subsists.

As the majority of the application relates to the addition of the bridleway from Public Footpath No 60 to Public Bridleway no 109 and it is reasonably alleged that public rights may exist on the route, on the balance of probabilities users will have ridden over part of Public Footpath No 60 and therefore acquired rights over the section between Points A and B.

3. Considerations

Legal and Human Rights Considerations

- 3.1 Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified 'events'. These events include:
- 3.2 (1) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates (section 53(3)(c)(i)); and
- 3.3 (2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance on probability that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 3.4 Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public "as of right" and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public "as of right" means use by the public without force, without secrecy or permission.
- 3.5 Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public right to use the way is brought into question.
- 3.6 Section 31(3) provides that a notice erected on site by an owner of land over which a way passes in a manner visible to persons using the way, and maintained by him is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate the way as a highway.
- 3.7 Section 31(6) provides that an owner may provide sufficient evidence to show of his lack of intention to dedicate by depositing with the Council a map and statement showing any ways over the land he admits to having been dedicated as highways and denying the existence of other ways over it and then lodging statutory declarations to deny the addition of any ways at intervals of not less than 10 years. This will be, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any additional way as a highway.

- 3.8 A House of Lords legal judgement in 2007 (the ‘Godmanchester’ decision) has clarified what other evidence could be evidence of “no intention to dedicate” for the purpose of section 31(1). The evidence can relate to just one point in time during the period of enjoyment, ‘during’ in the context of section 31(1) need not be through out the whole period. ‘Intention’ in this context means what the relevant audience (the users of the way) would reasonably have understood the landowner’s intention to be. A letter from the landowner to his own solicitor or estate agent would not be enough; some element of communication to users of the way of an absence of intention by the owner to dedicate must be shown. In terms of section 31(1), an act by an owner which demonstrates ‘no intention ... to dedicate’ is likely in practice also to amount to an event which ‘brings the public right of way into question’.
- 3.9 In brief, unless evidence is provided of one or more specific steps having been taken by a landowner within the period to communicate overtly to the public using the route that (s)he does not intend to grant a public right of way over it, the presumption of dedication will arise under section 31(1) where there is a full period of 20 years of uninterrupted public use, calculated from the date when the public right to use the way is brought into question.
- 3.10 Where there is insufficient evidence to establish a presumption to dedicate under section 31(1) of the Highways Act 1981, there is sometimes sufficient evidence to establish an inference of dedication by the landowner under common law. In the case of *Nicholson v Secretary of State for the Environment* (2006), Dyson J stated: “*Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication...*”. No minimum period of use is required to raise such an inference, but there must be evidence which is sufficient to infer that there was an intention to dedicate a public right of way. Section 30(1) of the Countryside Act 1968 provides that any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway.
- 3.12 In *Whitworth v Secretary of State for Environment, Food and Rural Affairs* ([2010]EWCA Civ 1468) the Court of Appeal concluded that the route under consideration in that case had acquired bridleway status by 1968. Subsequent use of the route by cyclists would have been permitted by the Countryside Act 1968 and the route had no higher rights than those of bridleway. Carnworth LJ expressed the opinion that the same conclusion would have been reached even if there had been no finding of pre-existing bridleway rights and that, although use by horse riders and cyclists was also consistent with an assumed dedication as a restricted byway, it was appropriate to

infer the form of dedication by the owner that is least burdensome to him.

- 3.13 Section 30(1) of the Countryside Act 1968 provides that any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway.
- 3.14 In *Whitworth v Secretary of State for Environment, Food and Rural Affairs* ([2010]EWCA Civ 1468) the Court of Appeal concluded that the route under consideration in that case had acquired bridleway status by 1968. Subsequent use of the route by cyclists would have been permitted by the Countryside Act 1968 and the route had no higher rights than those of bridleway. Carnworth LJ expressed the opinion that the same conclusion would have been reached even if there had been no finding of pre-existing bridleway rights and that, although use by horse riders and cyclists was also consistent with an assumed dedication as a restricted byway, it was appropriate to infer the form of dedication by the owner that is least burdensome to him.

Other Considerations

In preparing this report the relevance of the following factors has been considered: financial, social value, prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property, and transport considerations.

None of these factors are considered to be relevant for the purpose of this report.

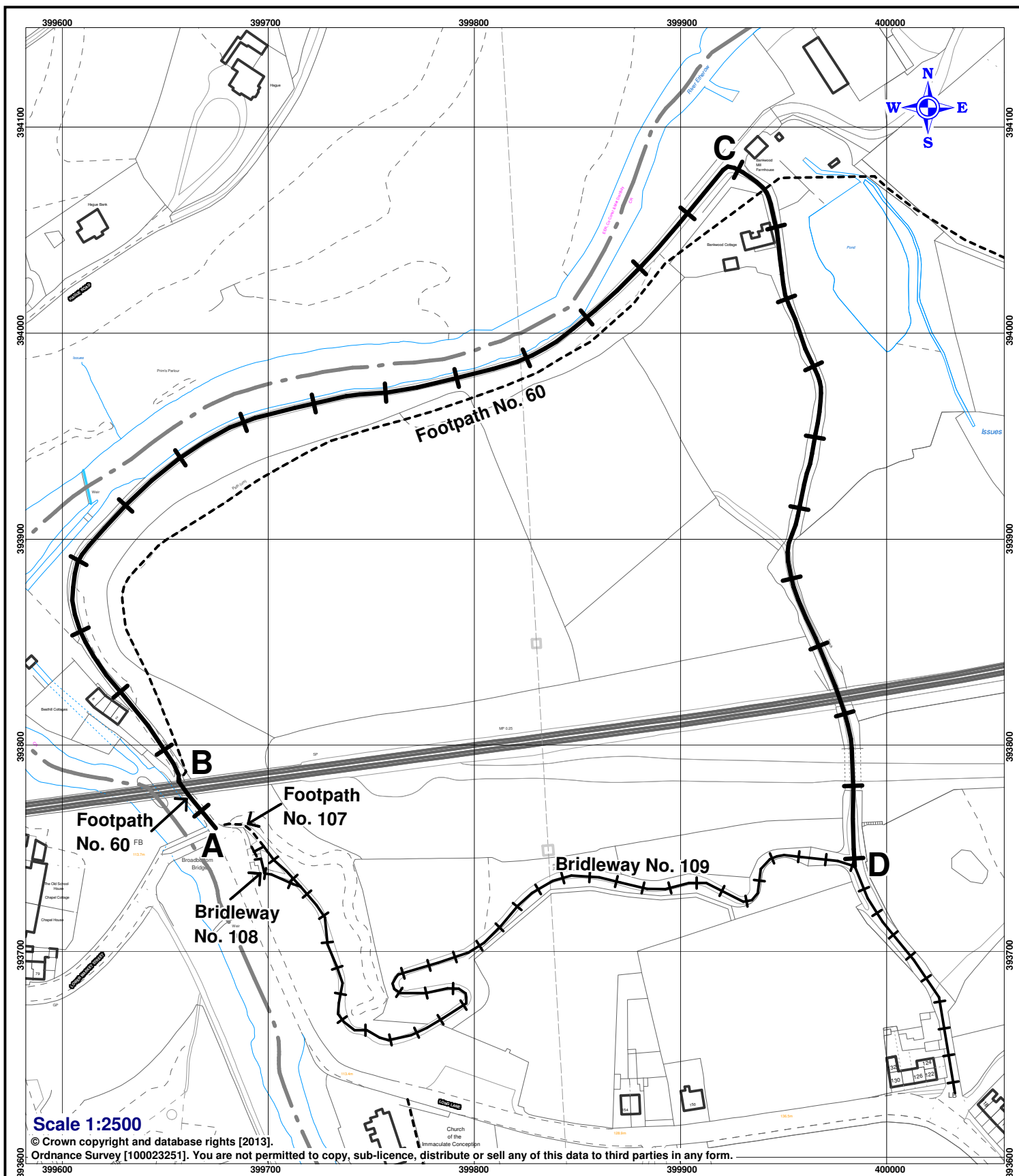
4. Background Papers

File held by Legal Services (Ref 59984)

5. OFFICER'S RECOMMENDATION

That the Committee resolves to authorise the Director of Legal Services to make an Order under s53 Wildlife and Countryside Act 1981 to amend the Definitive Map and statement by upgrading Public Footpath No 60 (Part) to bridleway and by adding a Public Bridleway from Public Footpath No 60 to Public Bridleway No 109 – Parish of Charlesworth

Janie Berry
Director of Legal Services



Ref: TE/LF/X3906/Committee/2018



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Wildlife and Countryside Act 1981
Claim to upgrade Public Footpath No 60 (Part) to bridleway and to add a Public Bridleway from Public Footpath No 60 to Public Bridleway No 109 - Parish of Charlesworth

Key:

Claimed bridleway and footpath to be upgraded

Existing bridleway

Public footpaths

