

DERBYSHIRE COUNTY COUNCIL**Meeting of the Regulatory, Licensing and Appeals Committee****12 September 2016****Report of the Director of Legal Services****WILDLIFE AND COUNTRYSIDE ACT 1981
CLAIM TO ADD A FOOTPATH FROM PUBLIC FOOTPATH NO 17 ON GOOSE
LANE TO PUBLIC FOOTPATH NO 26 VIA ORMONDE FIELDS GOLF CLUB –
PARISH OF CODNOR****1. Purpose of the Report**

To enable Members to consider the application made under the Wildlife and Countryside Act 1981 to add a footpath from Public Footpath No 17 on Goose Lane to Public Footpath No 26 via Ormonde Fields Golf Club in the Parish of Codnor to the Definitive Map and Statement as shown on the attached map.

2. Information and Analysis**2.1 Details of the Application**

The application was made on 2 November 2011 by Codnor Parish Council to add a footpath from Public Footpath No 17 on Goose Lane to Public Footpath No 26 via Ormonde Fields Golf Club in the Parish of Codnor, to the Definitive Map and Statement. The application included a map showing the claimed route.

The claim was supported by 25 User Evidence Forms. Two of the forms were disregarded as they were not completed in full and the witnesses had marked other paths on the attached map, rather than the claimed route. One form was completed by four members of one family, who were asked to provide separate evidence. Three of the family members returned a separate form. Two additional witnesses sent in forms shortly after the application was received making a total of 27 completed User Evidence Forms.

The application was submitted following an incident when a walker was injured by a golf ball whilst on the Goose Lane section of the claimed path which is adjacent to one of the greens. A claim for compensation was made in the belief that the path was a public right of way, but it became apparent that the route was not registered on the Definitive Map and Statement.

This incident appeared to coincide with other attempts to challenge use of the claimed path in September 2011. In late November, following receipt of the application, a member of the public telephoned the County Council to say that her husband (who had completed a user evidence form) had had an altercation with two employees of the Golf Club and there were moves to fence off or obstruct the claimed route by the club owners.

2.2 User Evidence

The twenty-seven completed user evidence forms were examined and found to contain varying accounts of use of the claimed path and other routes in the area. One of the witnesses failed to answer the majority of the questions, but had included information which showed some knowledge of the area.

The User Evidence Forms show the following use of the claimed path:

Number of Years Route Used	Number of Witnesses
Less than and up to 10 years	2
11 – 20	3
21 – 30	1
31 – 40	6
41 – 50	5
51 – 60	5
61 - 70	1
71 - 80	1
Other routes marked	2
Unanswered question	1
Total	27

The evidence forms appear to show differing recollections of the route in question and indeed other routes in the area of Ormonde Fields Golf Club. There are witnesses who claim to have used the claimed route for extensive periods of time. The table shows that the majority of use is claimed to be between 31 and 60 years.

One witness stated that she did not use the path for a number of years and believed this was pre-1978 when the previous landowner was in situ. (The previous landowner purchased the estate in 1967 and sold it in 1978.) The witness claimed that this landowner had made it very difficult for the public to use the path. However, this witness's marked plan showed that she walked in another direction to the claimed path from the eastern end of Goose Lane.

Descriptions of the route differ between forms. The majority of witnesses describe walking along Goose Lane, which, until the autumn of 2011 would appear to be a through route to the Golf Club. Some witnesses would leave Goose Lane at its junction with Footpath No 17 and others continued to what is now the car park of the Club House. Here witnesses describe walking on to Codnor Castle, but this was either via the claimed path or passing in front of the Club House and walking along Castle Drive.

When reverting to the plans completed by users to clarify this point, 16 maps were found to have the same line drawn on in the same pink pen. This corresponded with the plan accompanying the application form, where the claimed path was also depicted in pink pen and it is presumed that this line was marked on the plans before they were handed over to witnesses for completion of the user evidence forms. The remaining forms show extensions to the claimed path or a network of routes,

including existing public footpaths. Only three forms have the claimed route independently marked on with no additions.

The following table shows the variations in the depiction of the claimed path:

Lines marked on plan	Number of witnesses
Pink line only (claimed line)	9
Pink line + other routes	6
Pink line + network of paths	1
Claimed line only not pink	3
Claimed line + other routes	3
Claimed line + network	3
Other paths + part of claimed line	2
Total	27

All the witnesses had used the path that they had claimed on foot and all but one had seen other walkers. In addition to walking, six users had cycled on the paths they had claimed. Eleven witnesses had seen other cyclists and four had seen vehicle use.

With regard to the reasons for use of the claimed path, five witnesses used it to visit places along it, nine as part of a longer journey or circular route and eleven witnesses stated both. Two users did not complete the option boxes, but stated walking, recreation and exercise as their answers.

The route was claimed to have been used by witnesses as a circular walk and to gain access to other places or various points of interest in the locality. Other places include Woodlinkin, Brinsley, Stoneyford, Ironville and points of interest named as Codnor Castle, Codnor Park Reservoir and Nature Reserve, the canal, Codnor Monument and Ormonde Fields Restaurant. Several witnesses have walked the path as part of an organised group.

With regard to frequency of use of the claimed route, twelve witnesses recorded daily usage, five weekly and seven claimed both daily and weekly depending on their changes of circumstances over the years. One other stated weekly then monthly usage, one monthly and one user did not answer the question.

The majority of users claimed that the path was blocked along Goose Lane around September 2011 by a felled tree and that the route had never been diverted prior to this. There was a reference to a blockage in the 1950's and one in the days of Mr Swain's ownership, but in both cases there was no mention of where these were.

Four witnesses referred to a stone to stop cars, but did not state its location along the route. There was one reference to a possible diversion during 'outcropping' of the area, but again no details were provided. One user mentioned a blockage, but this was not on the claimed path. Another witness stated that some paths were blocked or diverted whilst others had been re-opened. However, this user's evidence was not confined to the claimed path as it included information about other local routes.

Eighteen witnesses referred to stiles and gates, but these were not all marked on the attached plans and some marked were on paths other than the claimed route. There appeared to be at least one stile on the claimed path from the evidence given.

All of the forms stated that there were no notices along the claimed route until September 2011, when it appeared that the landowner erected a sign stating 'No public right of way'. One witness referred to a public footpath sign which was not on the claimed path.

2.3 Comments made by witnesses

Nineteen witnesses made extra comments on their user forms. Many referred to walking with their dogs, friends and families both as children, then through the generations with their own children and grandchildren. Some users stated that they were never told that they couldn't use the route and believed it was unjust that they couldn't use it now. A number said that the claimed path was used as part of a circular route to local points of interest.

Three users stated that part of the claimed route which is the section of gravelled path beyond the car park to the stile, didn't interfere with use of the golf course and provided the safest route for families.

There were many references to other local paths including ones across the golf course. A number of users referred to being abused by Ormonde Fields groundsmen and one stated that staff had driven machinery towards walkers on the footpaths. Two witnesses stated that the public footpaths in the area were not practical to use across the golf course.

2.4 Correspondence prior to consultation

On the 11 November 2011 a local resident telephoned to inform the County Council of her experiences of being recently deterred from using the claimed route. The witness also stated that a previous landowner had attempted to obstruct the claimed route around 40 years before and the obstruction was removed when a local councillor became involved in the matter.

In a further telephone call, an employee of Ormonde Fields Golf Club stated that use of the claimed path had been interrupted as walkers had often been challenged and told to keep to the existing public footpaths. The employee said that signs had been put up by the golf club asking walkers not to stray from the public footpaths, but they had always been removed.

The golf club instructed solicitors who wrote to the County Council on 21 December 2011 stating that their 'client would strenuously object to the addition of a footpath when effectively it runs across the golf course'.

2.5 Consultation

On 3 November 2014 a consultation letter was sent to the landowner, local members, user groups and statutory undertakers.

One of the statutory groups, Peak and Northern Footpaths Society, responded by email on 4 November 2014 informing the Council that the Society was not aware of any relevant evidence.

An email was received from the local elected member Councillor Celia Cox, stating that as a member of Codnor Parish Council (the applicant) she was aware of the application and in support of it.

A letter dated 12 November 2014 was received by the Council from the Greenkeeper of Ormonde Fields Golf Club, a position he had held for twenty-five years. The Greenkeeper's job description required him to prevent trespass which he stated was rarely an issue until around 15 years before. In 1998 the golf course was improved and landscaped and since that time the amount of walkers crossing the course with dogs had increased. This led to altercations between some members of the public and staff when staff directed walkers to the proper public footpaths.

The Greenkeeper stated that whilst it was difficult to monitor the whole course for anyone trespassing, as the claimed route was across the car park walkers were easy to spot. The employee claimed that because of this very few people attempted the diagonal route across the car park and any walker who he attempted to return to the footpath walked around the outskirts of the car park.

The Gamekeeper raised health and safety issues stating that the section of claimed path along Goose Lane was divided from the golf course by a hedge at head height and that walkers could potentially be hit and that it was dangerous to walk across a busy car park. The witness stated however, that few walkers used the car park and if they did were redirected.

The Greenkeeper claimed that walkers along Goose Lane would have had to ignore signage and climb over logs and piles of dirt to access the route as it had been closed for many years for security and health and safety reasons. Private property signs had been regularly put up, but frequently taken down and vandalised and fencing broken down or cut.

The Greenkeeper finally stated that the public have meandered across the site and that he believed that few walkers had used the claimed path.

A letter dated 4 December 2014 was received by the Council from the owner of Ormonde Fields Golf and Country Club. The letter outlined the details of the family's ownership of the club, the history of the area and how attempts had been made to stop walkers on the claimed route.

The landowner explained that the estate had been open cast mined by the Coal Board in the 1960's and that this involved the land to the north east and south of Ormonde Fields House. At this time the land to the north east of the car park on the line of the claimed path was inaccessible as it was fenced off with chestnut paling to prevent access.

The landowner stated that the previous landowner employed a gamekeeper in the 1970's who confronted anyone who strayed off the legal footpaths. When the

owner's father purchased the Golf Course he stated that walkers were rarely seen at this time and that staff were always instructed to redirect anyone straying from the legal paths and to ask them to adhere to the correct legal paths in future.

The owner stated that prior to the claim being made his staff had increasingly had to tell walkers to stick to the public footpaths which had resulted in altercations between staff and walkers. The owner had worked with the Council's Footpaths Officer to improve signage on existing paths and had put up 'private property' signs. In February 2004 the owner completed a Section 31(6) Declaration under the Highways Act 1980 which was renewed in 2014 showing the rights of way the owner was aware of and accepted over his land. The area of the claimed route was within the area of the plan but not marked on it.

The owner questioned how the claim came to have been made as it resulted from an incident involving a walker leading a group being hit by a golf ball. The owner claimed that the party of walkers had not passed along the claimed path through the car park and would have been stopped had they been seen.

The owner claimed that walkers who considered that they had a right to roam generally avoided the car park as they were more likely to be challenged. The owner also raised concerns that the claimed route was very dangerous particularly along the Goose Lane section where it was separated from the Golf Course by a high hedge. Security concerns were also raised.

The owner alleged that the claimed path was not shown on historic maps whilst existing legal paths were shown and these allowed ample access.

The owner included four aerial photographs of Ormonde Fields and the surrounding land. The first picture was from the 1960's and showed the main house from a southerly aspect and various outbuildings. The owner highlighted fencing where he indicated the claimed route, however it was unclear if this was along the claimed path.

A clearer photograph from 1987 showed the collection of buildings from an easterly aspect and an open area of land where the car park is now situated and where the claimed route passes. The owner indicated a stretch of barbed wire fence corresponding with the boundary of the last section of the claimed path towards its junction with public footpath no. 26; the fence was unclear.

A further photograph from 1993 clearly showed Goose Lane and an open area of land across which the claimed route passes. The owner marked 'fences down side of car park', but this was unclear.

The final photograph showed the stone gate posts, built in 1998, which led to the last section of claimed path. This area was now landscaped with a path leading to the junction with public footpath no. 26. Whilst witnesses had claimed this section it was unclear whether this had always been the walked line.

2.6 Documentary Evidence

2.6.1 Enclosure Award and Map – Map of Codnor 1792 – The Second Plan (D1160Z/P1-2) and Heanor Inclosure Award 1792 (Q/Rlc 34a)

The detailed map of Codnor village shows a route from Aldercar Lane (now Nottingham Road) and marked 'Goose Lane Road' and 'Goose Lane' slightly further along.

Goose Lane is recorded on page 32 of a transcribed copy of the Heanor Inclosure Award 1792 in the descriptions of private carriage roads. 'Goose Lane Road 20 feet' is written in the margin and the following description is provided in the main text:-

'.....AND WE do also set out and appoint ONE other private carriage road as delineated and marked in the second plan (hereafter to be called Goose Lane Road) of the width of twenty feet between the ditches leading from the Langley Mill Road at theeasterly direction to a certain lane....called Goose Lane bounded [by allotments and homestead]'

2.6.2 Sanderson's Circular Map 1834-5

Goose Lane is shown leading to the original property Hill Top.

2.6.3 Codnor and Loscoe Tithe Plan 1854 (D2360/3/1249)

The claimed path is not shown on the Codnor Tithe plan which appears to depict the main roads of Codnor village. The Tithe plan shows a small spur from what appears to be Nottingham Road, drawn as a wide track and corresponding with the current position of Goose Lane.

2.6.4 Ordnance Survey 1st Edition 1880 (Sheet no. XL-12)

Goose Lane is depicted very clearly as a wide track from the main road (Nottingham Road). The map confirms that this is the track or road which would have continued from the spur shown on the Tithe plan. The route is bounded by solid lines and appears obstructed or gated as it passes field no. 151 on the south side, shortly before the claimed path begins. The route is then shown as a bounded pecked line. Public Footpath No 17 is not shown on the map.

The buildings are shown as Hill Top which became Ormonde Fields House and subsequently Golf Club. A clear pecked boundary line emerging from Goose Lane is shown to pass in front of the house and joining with a solid bounded track which is now Castle Drive. The section of the claimed path from the top of Goose Lane across what is now the car park and on to Footpath No 26 is not shown.

Another pecked line is shown from the top of Goose Lane leading directly to the rear of a collection of buildings, but this does not correspond with the claimed path. At this time the claimed path towards Footpath No 26 would have been obstructed by a boundary hedge. Footpath No 26 is clearly marked.

2.6.5 Ordnance Survey 2nd Edition 1900 (Sheet no. XL-12)

Goose Lane is shown as a wide track within solid boundaries and with the obstruction or gate on the earlier map removed. The route opens out to a pecked bounded line with Footpath No 17 now clearly shown and marked FP. The claimed section of path along Goose Lane is shown as a pecked line.

The buildings at the end of Goose Lane are marked Ormonde Fields following a change of ownership. As on the First Edition map a pecked line continues to the rear of the buildings. The section of claimed path on the northern side is not shown, but the line of the claimed path would run through more open fields than shown on the first edition. Footpath No 26 is clearly marked.

2.6.6 Ordnance Survey Map 1915 (Sheet no. XL-12)

This map shows little change to the area from the second edition of 1900. The earlier obstruction or gate is depicted on Goose Lane, but as a pecked line.

2.6.7 Ordnance Survey Map 1939 (Sheet no. XL-12)

Goose Lane is shown within a solid boundary line changing to a pecked line on the claimed section of Goose Lane and as it passes in front of the buildings. The pecked line continues as Castle Drive. The map depicts an area to the north of the buildings made up of solid boundaries and a garden. This covers the area over which the northern section of the claimed path passes.

2.6.8 Ordnance Survey Map 1970 (Sheet no. XL-12)

Goose Lane is shown as a solid bounded road with a pecked line within the boundaries from a few metres along. The pecked line continues to the right in front of the property and along Castle Drive; this is shown as one continuous route.

The path shown on previous OS maps leading to the rear of the buildings is clearly shown on the 1970 edition together with the bounded area which may interrupt the northern section of the claimed line.

2.6.9 Book entitled 'My Village: Owd Codnor, Derbyshire' 1935 by Joseph Millott Severn

Joseph Severn's recollections from his childhood provide descriptions of the area and include mention of Goose Lane. The lane is described as a 'cart road' and the author goes on to write about changes to Goose Lane under the ownership of the property then known as Hill Top when it transferred to Mr Corfield, a Butterley Company manager:-

'An improvement was made to the Goose Lane entrance, with a closing gate across at the end of the houses.'

Mr Severn then describes two other entrances to the property which were made into 'private carriage drives'.

2.6.10 Book entitled 'The Heritage of Codnor' by Fred Thorpe

This author also refers to Mr Corfield's ownership of Hill Top and dates it to March 1889. Mr Thorpe describes how alterations were made to make Goose Lane 'an open road to his (Mr Corfield's) residence' and that a gate was installed at the Goose Lane entrance.

2.7 Additional Evidence

2.7.1 Site Visit

A site visit was undertaken by officers from the County Council's Legal Services Department on 13th April 2016.

Officers walked the claimed path and firstly inspected the section along Goose Lane. The first part of Goose Lane traverses Public Footpath No 17 with properties on the right and having the appearance of a road. The route narrowed after the Miners Welfare on the right and had a tarmac surface. The path was wide enough for a vehicle to pass, but was more conducive to a right of way on foot and was hedged on both sides with a slightly raised grass banking on each side. After a short distance Public Footpath No 17 continued off to the right of the track into a field and was accessed via a stile. This marked the beginning of the claimed path and measured 19 feet wide at this point or 20 feet to the root of the hedge.

The path descended for a short distance where it was obstructed by a metal gate, corrugated boarding on either side and a tree trunk on the far side of the gate. It was possible to see the path for a short way beyond the gate traversing up hill towards the Golf Club (out of site).

Officers drove round to the Golf Club via the official entrance off the A610 Nottingham Road and walked from the car park back towards the obstruction on Goose Lane to inspect the route from the other side. Officers returned to the end of Goose Lane and followed the claimed path to the west side of the car park. A stretch of fencing was situated on the left side and ended within the car park and although it appeared not to have any purpose would impede walkers if they were walking on the path as claimed. It was understood that the car park was put in some time between 1974 and 1976 and the fence was put up in around 1994/5.

The claimed path, as depicted on the plan, continued between two gate posts and curled around a small landscaped area, creating a small network of paths. The posts and this area were built in around 1997/8 and over what was a boggy area prior to the current ownership. The path continued in a straight line to a stile marking its junction with Public Footpath No 26. The path had a grassed surface and there was a ditch between the path and a field boundary hedge to the left. To the right was an area of shrubs and trees.

2.7.2 Additional User Evidence

It was considered that some of the evidence from the user forms required clarification. A questionnaire was circulated to the 27 witnesses who had completed a public way evidence form; 11 completed questionnaires were returned.

Witnesses were asked to describe the path that they had walked in detail as the original forms differed in this aspect and to complete a fresh plan showing the route they had walked.

Witnesses were asked to clarify their years' use of the claimed path. The shortest recorded usage was for 21 years whilst all the others recorded between 35 and over 70 years use with six recording over 40 years. Several witnesses stated daily or continual usage.

With regard to the description of the claimed path the eleven questionnaires provided seven different answers. Two forms described the claimed path and a route in front of the Golf House and along Castle Drive; this was also reflected on their marked plans. Two further witnesses described the route along Goose Lane and the route in front of the Golf House and along Castle Drive; they didn't include the section of claimed path across the car park to Footpath No 26; this was again reflected on their marked plans.

Another witness did not give a description or marked the route on the plan, however, this person did describe the claimed path on their user evidence form. One witness's answers related to other routes in the area and the plan was unmarked.

Two witnesses described the claimed route and marked it on their plans and also included the public footpaths connecting to it. Two further witnesses provided no written description, but marked their plan to reflect where they had walked. Although the claimed route was included on their plans, three separate routes were drawn on and their other comments were an overview of the area and not specific to the claimed route.

The final witness described Goose Lane, but had continued in front of the Golf House then veered off to a route southward.

Witnesses were asked if the line of the claimed route had changed over their period of use. Three said yes the line had changed when Goose Lane was blocked, one when the practice pitches were built at the north side of the car park and two said yes when there had been a change in ownership. Five witnesses said that they could not remember or their answers did not relate to the claimed path.

Seven witnesses had been verbally challenged by golfers and staff, two of whom stated that this was at the time when Goose Lane was obstructed. Three others had not been challenged and one witness's answer did not relate to the matter.

Ten out the eleven witnesses provided additional comments. Whilst some referred to the claimed path all the comments included information relating to other routes, including existing public footpaths in the area. Some comments were unconnected with the claimed route.

2.8 Summary and Conclusion

2.8.1 This application concerns a claimed footpath which is alleged to have acquired public rights by reason of presumed dedication through public use on foot.

2.8.2 It would appear from the user evidence forms that there has been some use of the claimed path, particularly along the Goose Lane section, over many years, but there is a lack of clarity amongst users as to where they have walked.

2.8.3 It is usual to find some discrepancies amongst user evidence forms in terms of recollection of a route. In this case there is a large degree of disparity amongst witnesses as to the exact line of path walked. This is illustrated in the evidence forms and particularly the plans attached where many different routes are shown. There is a further issue whereby 16 of the forms are marked along the same line (the claimed route) with the same pen indicating that these maps have not been independently completed by witnesses.

2.8.4 The majority of the witnesses claim to have walked along the claimed section of path on Goose Lane, but then appear to have branched off in various directions with only three users exclusively continuing along the claimed route through the car park and along the field boundary to the stile at the junction with Footpath No 26. This is insufficient evidence to raise a presumption of dedication.

2.8.5 The evidence in the user forms is often further confused when witnesses referred in their evidence to obstructions, blockages and notices, which were then found to be along other unrelated paths.

2.8.6 There are a large number of existing public footpaths over the land at Ormonde Fields Golf Club and there have been a number of problems along these routes in recent years. Much of the evidence in the forms relates to these issues which are unconnected with whether or not the claimed path has acquired public rights. Although the claimed path is on land owned by the Golf Club it does not cross the golf course and some of the evidence does not distinguish between existing paths across the greens and the claimed route.

2.8.7 There appear to have been challenges to the use of the claimed path over the years, including evidence that a previous owner of Ormonde Fields from the late 1960's and his gamekeeper, verbally challenged anyone who ventured onto the land. Challenges have been made by the current landowner and his staff as stated in the landowner's evidence and that of his Green keeper. The Green Keeper claimed that very few people had crossed the car park on foot and those that had had been stopped. This would of course, be a challenge to use along the claimed path, but it is worth note that in the same way that walkers have referred to different routes they have walked over Ormonde Fields land, challenges to use over the years do not always appear to relate exactly to the claimed path. The Green Keeper states that the public have 'meandered' across the site and believed few had walked the claimed route. In any event the Golf Club owners and their staff have challenged use on the land over the years and this would have been enough to interrupt continuous public use on foot along the claimed path over the requisite period.

2.8.8 The Green Keeper raised concerns regarding health and safety which have no bearing on the outcome of the claim.

2.8.9 The current owner of Ormonde Fields completed a Section 31(6) Statutory Declaration in February 2004 acknowledging rights of way on his land; this was

renewed in 2014. As the claimed path was not included in the declaration the owner has shown a lack of intention to dedicate the claimed path.

2.8.10 Goose Lane appears on much of the documentary map evidence, but there is little or no evidence of the further section of claimed path from the end of Goose Lane. It is also difficult to discern the exact line of the claimed route. The first section of Goose Lane is already acknowledged as a highway and it is only the end section from its junction with Footpath No 17 that is the subject of the claim. The Enclosure Award evidence states that Goose Lane was recorded as a private carriage road and the 'private' status of Goose Lane is further acknowledged in the two books about the locality which state that the owner put gates across three accesses to his property. Goose Lane now has footpath status to its junction with Footpath No 17 and it is interesting to note that when this status was acquired the path was routed around the property and not to the top of Goose Lane to within close proximity of the property.

2.8.11 The site visit undertaken by officers revealed that the claimed part of Goose Lane was conducive to footpath status, albeit obstructed to just after its junction with Footpath No 17. The section through the car park was less clear and a fence to the left indicated that walkers may not have stuck to an exact line. Although the continuation of the path through the stone gate posts and along the field boundary to the stile was an obvious walk there is no doubt that this area has been subject to change over the years and it would be difficult to ascertain if walkers have always traversed the same route as exists now.

2.8.12 The questionnaire exercise was undertaken to clarify the user evidence, but only served to highlight the confusion of witnesses. There was a large degree of variation in answers to all the questions.

2.8.13 The evidence would suggest that walkers have, until the obstruction of the gate across Goose Lane was erected, walked along the section from point A to the car park of Ormonde Fields Golf Club. Whilst some witnesses have continued their walk towards and along Castle Drive the claimed path at this point does not connect with another highway. The continuation of the claimed path through the car park and to the stile at the junction with Footpath No 26 is unsubstantiated by the evidence provided.

2.8.14 The lack of consistency in the user evidence forms and the plans are not sufficient to trigger section 31(1) of the Highways Act 1980 and this is further negated by challenges from landowners over the years and the implementation of the Statutory Declaration.

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 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 throughout 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.

Other Considerations

- 3.11 In preparing this report the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property, and transport considerations.
- 3.12 None of these factors are considered to be relevant for the purpose of this report.

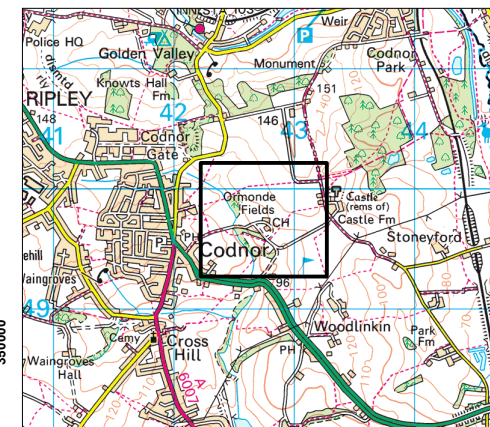
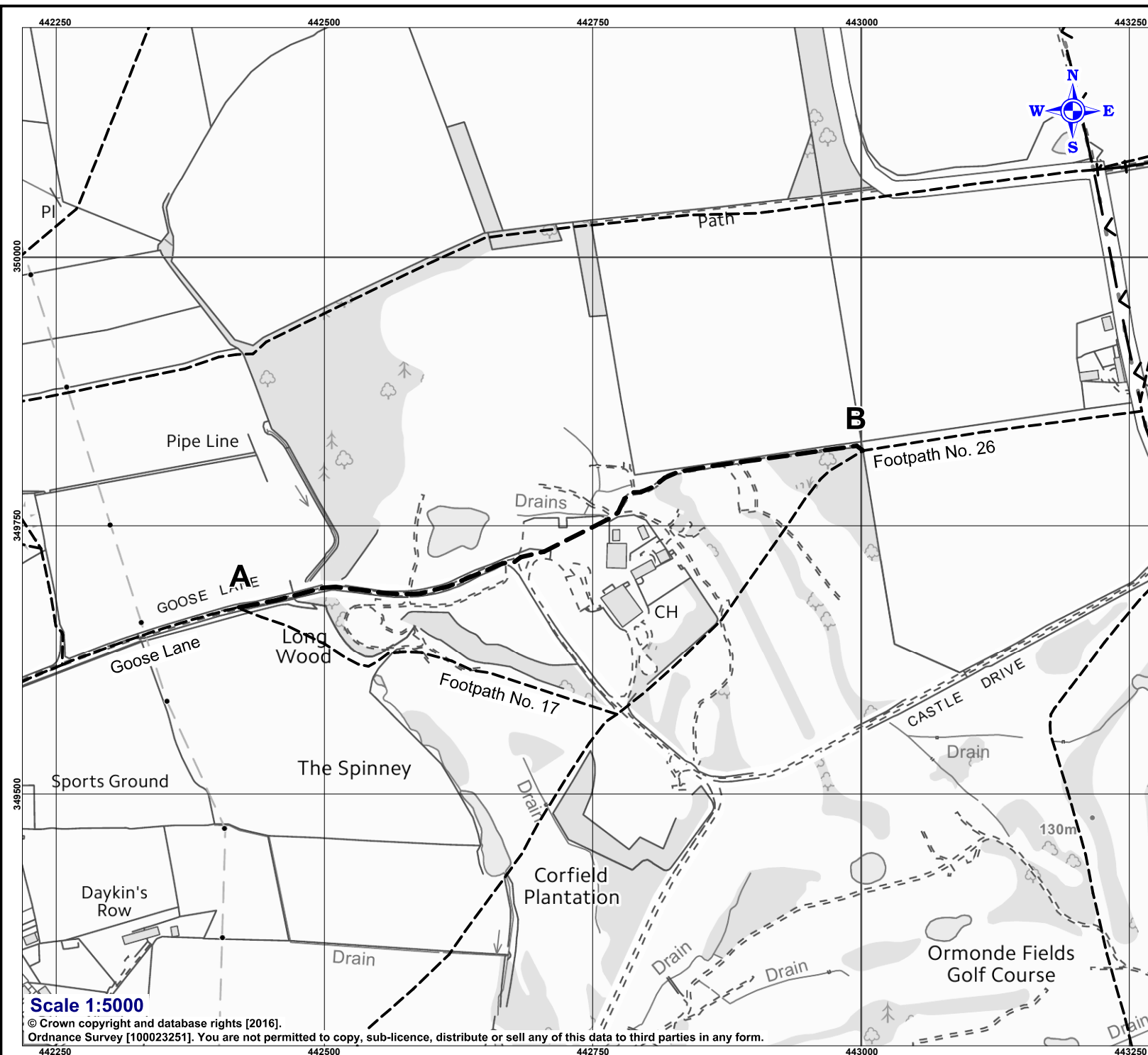
4. Background Papers

- 4.1 Director of Legal Services reference 55109.

5. OFFICER'S RECOMMENDATION

- 5.1 That the claim to add a footpath from Public Footpath No 17 on Goose Lane to Public Footpath No 26 via Ormonde Fields Golf Club in the Parish of Codnor be rejected.




JOHN McELVANEY
DIRECTOR OF LEGAL SERVICES



Wildlife & Countryside Act 1981 Section 53

Claim to add a Footpath
from Public Footpath No. 17
on Goose Lane to
Public Footpath No. 26
via Ormonde Fields Golf Club
- Parish of Codnor

KEY

Claimed Footpath 
Existing Footpaths 
Existing Restricted Byway 



Mike Ashworth
Strategic Director
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Ref: TE/JV/X3801/Ctee/2016

Scale 1:5000

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