

DERBYSHIRE COUNTY COUNCIL
REGULATORY, LICENSING AND APPEALS COMMITTEE

14 January 2019

Report of the Director of Legal Services

Wildlife and Countryside Act 1981
Claim to add a Footpath along Richardsons Lane – Riddings

1. Purpose of the Report

1.1 The purpose of this report is to enable Members to determine an application to amend the Definitive Map and Statement by adding a public footpath along Richardsons Lane in Riddings.

2. Information and Analysis

2.1 On 6 December 2016, Peter Hawkins (“the Applicant”) submitted an application to Derbyshire County Council (“the Council”) to add a public footpath to the Definitive Map and Statement. The application is accompanied by 30 user evidence forms (UEF), Land Registry title & plan, copy of deeds for No. 1 Richardsons Lane, photographs, planning application documents for adjacent housing development, evidence of postal deliveries & dustbin collection using Richardsons Lane and old maps showing Richardsons Lane.

2.2 A plan showing the claimed route is attached (Appendix 1).

Further correspondence

2.3 On 7 August 2018 the Applicant emailed the Council withdrawing his interest in the claim. He notes reason for withdrawing as ‘The Claim was originally made to help my mother connect with her neighbours on Newlands Drive’, ‘and this access is no longer required.’ The Applicant’s UEF was also withdrawn, this left twenty-nine to be considered.

2.4 On 5 November 2018 a letter was sent out to the twenty-nine witnesses who had completed a UEF informing them of the Applicant’s decision. A slip was included for them to complete and confirm whether or not they still wanted their UEF to be considered as part of the investigation.

2.5 Sixteen responded stating they no longer wanted their evidence to be considered, five wanted their evidence to be considered and eight did not respond. This left thirteen UEF’s considered in this report.

User Evidence

2.6 The application was submitted following the erection of heras fencing blocking the claimed route near the junction with Newlands Drive by the builder of the adjacent housing development. User evidence submitted suggests that the route was blocked in August 2016. In considering whether a dedication of the route can be presumed on the basis of user evidence the relevant period of use is the 20 year period up to the date that the use of the route was called into question. In this case this is 1996 to 2016. Initially the 30 UEF submitted spans the years from 1939 to 2016, with 17 users indicating use for the whole 20 year period from 1996 to 2016 (not all of them 'as of right', some of them appear to have private rights). However following the withdrawal of interest by the original Applicant, sixteen witnesses also requested their evidence to be withdrawn. The summary below is based on thirteen evidence forms left to be considered.

2.7 All of the witnesses refer to using the route on foot. One also claims to have used the route by pedal cycle with seven claiming to have used it by motor vehicle and three also using pedal cycle and motor vehicle. Eight witnesses refer to seeing other people using the route on foot, pedal cycle and motor vehicle with two seeing usage on foot and pedal cycle, one on foot and motor vehicle and two on foot, horse, pedal cycle and motor vehicle.

2.8 Six witnesses claim to have used the route for a period of twenty years or longer with two of them claiming over forty years use. Of these six only five had used the route for the full relevant period 1996 – 2016, with four of them claiming usage by vehicle as well on foot. Seven users used the route less than the required twenty years with five users using it for seven years or less.

2.9 Eight of the witnesses refer to using the route daily, three weekly, one monthly and one did not say.

2.10 Eight witnesses reported seeing the claimed route blocked which brought the route into question, many referring to the builders of the adjacent housing development blocking access. One of the witnesses refer to the month of August 2016. None of the remaining witnesses reported seeing the claimed route blocked or diverted.

2.11 None of the witnesses made reference to stiles or gates on the claimed route or recalling any notices.

2.12 None of the witnesses reported working for the owner or occupier of the land or occupying any of the land affected by the claimed route.

2.13 Two witnesses refers to a possible private right to use part of the Order route, the postman who filled out an UEF and stated he does not require permission. While the other witness reported using the route as a group stating 'When a float was built for a carnival. The float was put together in garages/houses on Richardsons Lane.' None of the remaining witnesses reported being given permission to use the claimed route.

2.14 None of the remaining witnesses reported being stopped, turned back or having been told by anyone that the route was not public except by the blocking of the route.

Consultation

2.15 An informal consultation exercise was carried out between 2 May 2017 and 6 June 2017. Notices were placed on the route and letters were sent to the statutory consultees, landowners and the local elected members, Cllr Paul Smith and Cllr Steve Marshall-Clarke.

2.16 Twenty-eight people responded to the consultation (one person responded twice) with twenty-five against the claim, one supporting, one with query regards to further comments and one stating that they have no evidence.

2.17 A member of the public who already filled out a UEF supporting the claim emailed the Council to query whether new comments were needed from those who already filled a form out.

2.18 Local Member for the area Councillor Paul Smith emailed the Council with his support for the claim. He states that 'I have lived in the Somercotes/Riddings area for 50 years and have known Richardsons Lane has been a footpath link from Newlands Road onto Newlands Drive. I have in fact used the route personally.' He goes on to add 'I always thought it was a definitive route and never believed it would be closed off. There is a lamp column on the lane which also gave me the impression that it was a recognised footpath.'

2.19 Peak and Northern Footpaths Society responded to the consultation to confirm that the society cannot provide any evidence which might be relevant to the claim.

2.20 The person who responded and objected twice (his other later objection being one of the twenty-four mentioned in para 2.21) emailed the Council his grounds of objection to the claim. All but two grounds of his objection are mentioned below. The two not mentioned were the applicants address not from the area affected by the claimed route and the loss of land from No. 1 Newlands Park if the claimed route is put in.

2.21 Twenty-four of the twenty-five people who responded to the consultation objecting to the claim responded with letters that had contents suggesting some collaboration with regard to their responses. They all have the same formatting, the same heading and similarity in reasons for objecting. All but three of the twenty-four either live on the new housing estate (Newlands Park) or owns property there. They point out that they object the claim on the grounds of the plan not being updated, pedestrian safety, motorist safety, health and safety grounds, anti-social behaviour, loss of privacy and security,

litter, dog fouling, highways issues/lack of parking and no real benefit for the claimed route.

2.22 The three (two of which are a couple) that do not live or own a property on the new housing estate all live on Newlands Drive. The couple, who live directly opposite of Point C of the claimed route, object on safety issues and highways issues with the lack of parking. The other person lives at a property that backs onto Richardsons Lane and has rear vehicle access to his property from Richardsons Lane, he also objects on the same aforementioned issues.

2.23 J Melrose Developments Limited who developed the new housing estate wrote to the Council objecting to the claim. They point out that they object to the claim on the grounds of the plan not being updated, pedestrian safety, motorist safety, health and safety grounds, anti-social behaviour, loss of privacy and security, potential to be used as a short-cut, highways issues/lack of parking, no real benefit, costs and the fact the land not having any footpath across it. They also included an updated plan which shows the new housing development.

Documentary Evidence

2.24 The applicant included some old plans in the application, which are considered below. The following plans have also considered.

2.25 1st Edition Ordnance Survey Map 1880 / 1881 – Sheet XL-4 / XL-8
Newlands Road is labelled as Greenhill Lane. Newlands Drive is not shown nor are the houses on Newlands Road or South Street. There is what appears to be a cul-de-sac track going off Newlands Road in a slightly different alignment to Richardsons Lane leading to some buildings.

2.26 2nd Edition Ordnance Survey Map 1900 – Sheet XL-4 & XL-8
Newlands Road is labelled as Greenhill Lane. Newlands Drive is not shown. Houses can now be seen on Newlands Road and South Street. The cul-de-sac is also shown from Newlands Road, again in a slightly different alignment to Richardsons Lane, leading to buildings.

2.27 3rd Ordnance Survey Map 1916 / 1917 – Sheet XL-8 / XL-4
Newlands Road is labelled as Greenhill Lane. Newlands Drive is not shown. The majority of the houses that are present today can now be seen on Newlands Road and South Street. The cul-de-sac is shown from Newlands Road, in a slightly different alignment to Richardsons Lane, leading to buildings.

2.28 3rd Ordnance Survey Map Revision of 1938 – Sheet XL-4 & XL-8
Newlands Drive and most of the houses on Newlands Drive are now shown. The majority of the houses that are present today can be seen on Newlands Road and South Street. There is what looks like a road going off Newlands Road (no open gap at this junction) in a very similar alignment to Richardsons Lane and comes out onto Newlands Drive. Building of No. 1 Richardsons

Lane is not shown on here however there are some small outbuildings at this location.

2.29 Modern Ordnance Survey 25" Map 1952 – SK 4252

Newlands Drive and most of the houses on Newlands Drive are now shown as well as houses on Newlands Road and South Street. There is what looks like a road going off Newlands Road in a very similar alignment to Richardsons Lane and comes out onto Newlands Drive. Building of No. 1 Richardsons Lane is not shown on here however there are some small buildings at this location.

2.30 Modern Ordnance Survey 25" Map 1961 – SK 4252 & 4352

Newlands Drive and most of the houses on Newlands Drive are now shown as well as all houses on Newlands Road and South Street. There is what looks like a road going off Newlands Road in a very similar alignment to Richardsons Lane and comes out onto Newlands Drive. Building of No. 1 Richardsons Lane is not shown on here however there are some small buildings at this location.

2.31 Modern Ordnance Survey 25" Map 1966 – SK 4252 & 4352

Newlands Drive and most of the houses on Newlands Drive are now shown as well as all houses on Newlands Road and South Street. Richardsons Lane is now labelled and in the same alignment as it is now and comes out onto Newlands Drive. Building of No. 1 Richardsons Lane is also shown on here.

2.32 Modern Ordnance Survey 25" Map 1996 – SK 4252 & 4352

Newlands Drive and all the houses on Newlands Drive are now shown as well as all houses on Newlands Road and South Street. Richardsons Lane is now labelled and in the same alignment as it is now and comes out onto Newlands Drive. Building of No. 1 Richardsons Lane is also shown on here. Roads surrounding Richardsons Lane has dashed lines on either side of the highway which may indicate pavements however Richardsons Lane does not.

2.33 Modern Ordnance Survey 25" Map 2005 – SK 4252 & 4352

Newlands Drive and all the houses on Newlands Drive are now shown as well as all houses on Newlands Road and South Street. Richardsons Lane is labelled and in the same alignment as it is now and comes out onto Newlands Drive. Building of No. 1 Richardsons Lane is also shown on here. Roads surrounding Richardsons Lane has dashed lines on either side of the highway which may indicates pavements however Richardsons Lane does not.

2.34 Other historical documentary evidence, including the Enclosure Awards, Tithe and Finance Act evidence, has also been considered but has been found not to assist in the determination of the claim.

Other Evidence

2.35 The applicant included with the application a Land Registry title & plan, copy of deeds for No. 1 Richardsons Lane, photographs, planning application documents for adjacent housing development, evidence of postal deliveries &

dustbin collection using Richardsons Lane and old maps showing Richardsons Lane.

2.36 A copy of the register and title plan dated 27 October 2016 for Title DY431178 was included in the application. This shows the land ownership for the new housing development which includes the claimed route from Point B to C. The land ownership in this register was listed as 'J Melrose Developments Limited'. Under the Property Register at point four it mentions 'TOGETHER with the right of way for the Purchaser and the persons deriving under it in common with the Vendor and all other persons entitled to use the same over the following existing roadways namely (a) the roadway coloured brown on the said plan drawn hereon (b) the roadway now known as Newlands Drive running from Greenhill Lane Riddings aforesaid to its junction with the before mentioned roadway and (c) the roadway leading from the said junction over and along the North side of land belonging to adjoining owners to the North West corner of the land hereby conveyed. NOTE: No brown colouring was shown on any of the Conveyance plans lodged on first registration.' Point 5 mentions 'The land hatched brown, hatched blue, tinted mauve, tinted pink and tinted yellow has the benefit of the following rights granted by the Conveyance dated 22 September 1929 referred to in the Charges Register:- "Together with a right of way for the Purchaser and the persons deriving title under him in common with all other persons entitled to use the same over the road coloured Brown on the said plan running from Greenhill Lane to the hereditaments hereby conveyed" NOTE 1: No brown colouring was shown on the plan lodged on first registration. NOTE 2: Copy plan filed.'

2.37 Also included with the application was copy of deeds for land (Now No. 1 Richardsons Lane) dated 13 December 1921. Two plans were also included, one was part of the deeds while the other was an extract from planning permission approved for No. 1 Richardsons Lane dated 21-6-53. In the deeds it mentions '... AND TOGETHER with the right for the Purchaser his heirs and assigns and his and their tenants servants visitors and others to use at all times hereafter and for all purposes of a horse cart carriage drift and footway the full length and width of the Roadway coloured brown on the said Plan...'. The deeds plan is black and white with notes written on recently by the applicant and the 'Roadway coloured brown' is not shown. The extract plan from planning permission approved for No. 1 Richardsons Lane shows the building for No. 1 Richardsons Lane and the road leading to up the site. The road then narrows significantly after passing No. 1 Richardsons Lane before connecting with Newlands Road (now Newlands Drive).

2.38 The photographs included with the application is headlined as 'Photographs of Richardsons Lane showing use by public and vehicles and current photograph showing lane closed off'. There are four photographs in total with three of them being taken from google street view and captured April 2011 (Photos No. 1, 2 and 3) and one of them showing the claimed route being closed off (Photo No. 4).

- Photo No.1 is taken from around 30 metres easterly of Point A looking towards Point B, it shows a metalled road bounded by walls indicating garden boundaries for houses on South Street, Newlands Drive, Newlands Road and No. 1 Richardsons Drive. Garage door access and gate access to a garden on the right hand side can be seen here. Nearer to Point B there are two cars parked up on the right hand side on what looks like a private drive at the back of properties No. 6 & 8 Newlands Drive and a pedestrian standing in the middle.
- Photo No. 2 is taken from 60 metres easterly from Point A looking towards Point B and C. Garage access on either side can be seen here, left hand side garage for No. 1 Richardsons Lane and the right hand side garage for No. 4 Newlands Drive.
- Photo No. 3 taken around Point B shows the claimed route through to Point C bounded by wall on the right for garden boundary of No. 2 Newlands Drive and by a chain link fencing with concrete posts along the field boundary on the left (Now a housing development).
- Photo No. 4 labelled 'Current Lane closed off Dec 2016' taken from Point B looking towards Point C shows the housing development building taking place with a heras fencing across the claimed route blocking access to Point C.

2.39 Three plan extracts from planning application reference AVA/2015/1120 for the adjacent housing development were also provided. All three plans showing the building development also shows Richardsons Lane being open and not blocked. One of the plans at the junction of Richardsons Lane and Newlands Drive is marked 'demarcation of junction with flush kerbing'.

2.40 A statement from a witness (who has withdrawn her UEF) dated 19 November 2016 outlines a discussion between herself and Amber Valley Borough Council (AVBC) refuse department on 15 September 2016. It explains how the bins for No. 1 Richardsons Lane have not been emptied for 6 weeks and states that AVBC told her '... the refuse collector could not get access as they always walked up from Newlands Drive the narrow end onto Richardson Lane as this was the shortest most direct route for collection – The bin collection has now resumed with collection from Newlands Road.' An A4 sheet of paper with 'Please see user evidence form No 4 from the postman' was also included in this section.

2.41 Three old maps was included with the application. The first one was marked 'South Street, Riddings, 1880 – 1899' which shows two lines leading to a dead-end with two outbuildings in similar alignment to Richardsons Lane, this was highlighted in red by the applicant. Newlands Drive is not shown on here. The second map labelled by the applicant as 'No2 Old local map – Approx 1820'. Again shows two lines to a dead-end in similar alignment to Richardsons Lane highlighted in red by the applicant, scale is too small to see if there are any outbuildings and Newlands Drive is not shown. The third map is marked 'Section of "The Urban District of Alfreton Official Guide" printed 1959'. Newlands Drive is shown and Richardsons Lane is shown in a slightly

more easterly alignment and is highlighted in red by the applicant. Richardsons Lane is not labelled on any of the above plans.

Site Visit

2.42 A site visit was undertaken on 31 October 2018. At Point A between properties of No. 7 & 9 Newlands Road there is a narrow metalled track with grass verges at either side and down the middle towards Point B which shows clear and obvious use of the claimed route by motor vehicles. A 'sold' sign was seen near Point A for property No. 1 Richardsons Lane. There are numerous garages and gate accesses coming off the lane for properties on Newlands Road, Newlands Drive and South Street. At Point B looking towards Point C there is a fence blocking the access, this fence is the garden boundary for 1 Newlands Park. At Point C looking towards Point B there is now a newly tarmac drive which is for No. 1 Newlands Park and 15 metres westerly from Point C is a fence with two wooden gates across the claimed route with a shed situated behind the fence.

Summary and conclusion

2.43 This claim is based on evidence of use and supported further by documents which the Applicant suggests is evidence of the claimed route being used as a public rights of way.

2.44 The Applicant withdrawing his interest in the claim does not affect the validity of the application; anyone may make an application under s53 of the Wildlife and Countryside Act 1981 and the Council has a legal duty to investigate all applications that are validly made.

2.45 There is some conflict in the Applicant's reasons for submitting the application, with his and his relative's UEF's amongst others clearly showing private rights not public rights (living and being brought-up on property on the claimed route). These UEF's were withdrawn along with the application by the Applicant.

2.46 All of the reasons for objecting to the application, plan not being updated, pedestrian safety, motorist safety, health and safety grounds, anti-social behaviour, loss of privacy and security, potential to be used as a short-cut, highways issues/lack of parking, no real benefit, costs and the fact the land does not have any footpath across it, are not relevant and cannot be taken into consideration under the Wildlife and Countryside Act 1981.

2.47 The user evidence indicates some use of the claimed route along Richardsons Lane. Only five users claim to have walked the claimed route for the entire of the relevant 20 year period with all five coming from just two separate households. Four of these five also used the route by vehicle as well as on foot.

2.48 The right to use cartways and rights of way mentioned in documents provided by the Applicant and explained in paragraphs 2.33 and 2.34 above

are noted. However there are not considered to be evidence of a public right of way and are more akin to private rights of way.

2.49 The documentary evidence shows Richardsons Lane as open all the way to Newlands Drive does not offer any reliable evidence that the status of the route is a public right of way. The older OS maps show Richardsons Lane as a cul-de-sac track to outbuildings.

2.50 The photographs mentioned in para 2.35 show Richardsons Lane as an open track but do not provide evidence that a public right of way exists. Para 2.36 describes one of the planning application plans showing the junction of Richardsons Lane and Newlands Drive open and marked 'demarcation of junction with flush kerbing'. This is for AVBC to note and offers no evidence that this is a public right of way. The statement described in para 2.37 refer to private rights of the refuse collectors and the postman and again does not provide any evidence of a public right of way.

2.51 The street lighting column on the claimed route, mentioned in para. 2.18, is noted however the existence of street lighting on an unadopted street provides no evidence that the street has been formally adopted in the past.

2.52 The County Council's Declaration Register has been checked and no Section 31 (6) declaration has been made which covers the claimed route.

2.53 In summary, there is insufficient evidence of use of the route 'as of right' during the relevant 20 year period (1996 to 2016) for a presumed dedication of the route in accordance with the statutory test set out in section 31 of the Highways Act 1980 (as set out in paragraph 3.4). Considering the evidence available and the lack of any evidence of an act of dedication or intention on part of the landowners, it cannot be considered that the claimed route has been dedicated at common law.

2.54 A finalised copy of this report has been sent to Cllr Paul Smith and Cllr Steve Marshall-Clarke as the local members for the area prior to the Committee.

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 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.

Other Considerations

- 3.11 In preparing this report the relevance of the following factors has been considered: social value, financial, prevention of crime and disorder, equality of opportunity, 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 File held by Legal Services (ref: 69682)

5. OFFICER’S RECOMMENDATION

- 5.1 That the Committee resolves to authorise the Director of Legal Services to reject the application under section 53 of the Wildlife and Countryside Act 1981 to add to the definitive map and statement a footpath along Richardsons Lane from Newlands Road to Newlands Drive in Riddings as shown between Points A-B-C on the plan attached to this report.

Janie Berry
Director of Legal Services



Ref: TE/LF/x4111/Cttee/2018
Date: 07 November 2018



Mike Ashworth
Strategic Director
Economy, Transport & Environment
Derbyshire County Council
Shand House
Dale Road South
Matlock
DE4 3RY

Wildlife and Countryside Act 1981 Section 53

Claim to add a Footpath along Richardsons Lane - Riddings

Key: Footpath to be added - - - - -

Existing Footpath - - - - -

