

DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE

14 January 2019

Report of the Director of Legal Services

**INVESTIGATION INTO THE RIGHTS OF WAY STATUS OF TADDINGTON
PUBLIC FOOTPATHS 6 (PART) AND 7**

1. Purpose of the Report

1.1 To enable members to determine whether a definitive map modification order (DMMO) ought to be made modifying the recorded status of Taddington footpaths 7 and 6 (part) to that of public bridleway.

2. Information and Analysis

2.1 In the course of preliminary investigations into an application from a member of the public to add a non-classified highway (NCH) named Broadway Lane and Bulltor Lane in Taddington and Brushfield parishes to the definitive map and statement as a Byway Open to all Traffic (BOAT), evidence was discovered which showed that the current Taddington public footpath 7 and part of Taddington public footpath 6 ought to be recorded as carrying public bridleway status.

2.2 The route concerned forks off Bulltor Lane above Millers Dale and proceeds generally north eastwards towards Litton Mill on the River Wye.

For the most part it forms a grassy track or path. The initial section from Bulltor Lane runs along what looks like a rake (where a vein of lead has historically been worked from the surface and forms a line of worked ground) before dropping steeply across fields, which have also been intensively mined for lead, to a substantial bridge over the old railway line (now the Monsal Trail) where a short path connects the bridge crossing with the trail.

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

Consultation

2.3 On 12 June 2017 the County Council consulted various groups and individuals regarding this investigation, including any relevant landowner(s), local and national rights of way user groups and the District Council and Parish Council.

The consultees were asked whether they were aware of any evidence or information which might be helpful to the Council in terms of deciding whether the status of the route ought to be modified.

A copy of the consultation letter and accompanying plan was also displayed on site.

2.4 The only substantive response was from a person with an interest in highway and landscape history. She wrote to the County Council on 17 July 2017 detailing the historic documentary evidence relating to this route.

The earliest document she referred to was a 1649 Map of Litton Mill and Brushfield by Henry Hawes. Whilst it does not help with regards to the existence of the route under investigation at that date, it does confirm that at that date there was a 'Litton Mill' on the River Wye in more or less the same location as the present mill building.

The consultee also referred to other documents such as the Taddington Enclosure Award and others which are described below.

She concluded by stating that; "In the absence of an order of Quarter Sessions stopping up the public bridleway rights, such rights continue to exist."

Documentary Evidence

2.5 Pre-enclosure Evidence

Burdett's c1760s map of Derbyshire appears to show this route branching out of the route known these days as Bulltor Lane and forming part of a longer 'cross road' (ways other than turnpike roads shown on the key to the map) linking Priestcliffe (which on this map is named 'Presley') with Litton village one and half miles or so north of the River Wye.

This route is shown crossing the River Wye at the same point as a water mill, which given the location of other mills along the river, can only have been at the location of Litton Mill.

The building on the current site of Litton Mill is said to have originated in 1782 (though there is little left of the original structure) however Burdett's map suggests that there must have been a water mill at that same location or thereabouts in the 1760s. (The consultation response referred to above also refers to documentary evidence from 1649 of the existence of a mill at this location)

2.6 Parliamentary Enclosure Evidence

The 1795 Taddington and Priestcliffe Enclosure Award sets out a route called the Litton Bridle Road which appears from the accompanying enclosure plan and the description in the Award to have run partly along the alignment of the route under investigation (Taddington footpath 7 and part of Taddington footpath 6).

The route is described in the Award as follows;

"One Public Bridle Road branching from and out of the said Brushfield Road near to Brushfield Nether Gate and extending along the Hayside Valley over allotments herein after made to Francis Eyre No 14 and Robert Bagshaw No

13 into Brushfield Upper Road along the said Upper Road to the said Nether Common Road and along the said Nether Common Road to Burfoot Gate and from thence over the several allotments herein after made to Thomas Roberts No 6 Ellis Needham No 9, 8 and 7 to an ancient bridle gate in the boundary fence between the hamlets of Taddington and Litton in the same direction it has heretofore been accustomed to be used”

The first part of this description, up to Brushfield Upper Road, is already a public bridleway (Taddington Br 24). Brushfield Upper Road corresponds to part of a route recorded these days as a non-classified highway (NCH) called Bulltor Lane. The junction of Brushfield Upper Road and Nether Common Road as described in the enclosure description corresponds with the sharp bend in Bulltor Lane and this is the point at which the Litton Bridle Road starts along the course of Taddington footpath 7 and then footpath 6.

The location Burfoot Gate corresponds with the point where Taddington footpath 6 bears northwards towards Litton Mill: It marked the eastern end of the enclosure awarded Nether Common Road which, as well as being a public bridleway, provided private carriage road access to an area of the parish historically known as Burfoot.

A note in the margin states;

“This Road is rendered impassable by Litton Mill Dam using The River Wye”

This marginal note, which looks like it has been written in the same hand as the rest of the award, shows that even in 1795 the Litton Bridle Road was not useable as a though route. The wording “in the same direction it has heretofore been accustomed to be used” also shows that this was a pre-existing route which the enclosure commissioners clearly thought it necessary to preserve by setting out in their Award.

2.7 Early 19th Century Published Maps

Greenwoods 1825 map of Derbyshire shows a ‘cross road’ on the alignment of the enclosure awarded Litton Bridle Road. The map is a little awry in terms of the proximity of Litton Mill to the River Wye end of the route but there can be no doubt that it is this route being depicted.

The term ‘cross road’ was used to describe any route shown on the map that didn’t fall into the ‘turnpike road’ category and it included some private carriage roads and bridle roads as well as known public carriage roads.

Sanderson’s 1836 map of Derbyshire, however, does not show the Litton Bridle Road route.

2.8 Taddington Tithe Apportionment plan of 1848

The Taddington tithe plan shows a route approximating to the alignment of the route set out in the 1795 Enclosure Award as Litton Bridle Road although it appears to show the route running a little further to the east, nearer the Brushfield boundary, than as shown in the enclosure plan.

2.9 Railway Plans

Railway plans are drawn to a large scale and generally show a swathe of land along the alignment proposed for the railway.

The Manchester, Buxton, Matlock and Midland Junction Railway Plan of 1845 shows a route indicated by a dashed line on the approximate alignment of part of the enclosure awarded Litton Bridle Road. It is numbered 371 and proceeds directly to the River Wye slightly to the west of the Litton Mill complex.

The accompanying book of reference of 1845 identifies number 371 as applying to a “public bridle way and right of road across river” and as being owned by the “surveyors of highways”.

A slightly later railway plan of 1959 (for the same proposed line) indicates the route, again via a dashed line, on a more easterly alignment in Brushfield rather than Taddington parish. The route is shown reaching the river and crossing via a narrow bridge and it seems to be regarded as a footpath rather than a bridleway.

2.9 Early Ordnance Survey Maps

The route itself is not shown on the 1st ed 1” OS map from the mid-19th Century but that is perhaps unsurprising given the small scale of the map and the fact that it was a relatively minor right of way. However, the swathe of land that the route occupied can be made out as well as a bridge carrying the route over the Midland Railway line.

The c1880 1st ed 1:2500 OS and c1898 2nd ed 1:2500 OS plans show a route more or less corresponding with the Enclosure-awarded Litton Bridle Road though the later of the two plans shows it labelled ‘F.P.’ meaning footpath. The plans show that by this date the Midland Railway Rowsley to Buxton extension had been constructed and both plans show the route crossing the railway by means of a narrow but substantial bridge – the later plan shows it labelled ‘F.B.’ (footbridge).

These plans show the route on a very similar alignment to that taken by the route under investigation. As explained above, this alignment is slightly different to that shown on the earlier 1848 Tithe Plan, however it is clear that the ground in this area has been subject to extensive mining (lead) operations in the past and this may have caused the alignment of the used way to have varied slightly during the 19th Century.

2.10 1910 Finance Act Evidence

The entire length of the route under investigation, from where it branches out of Bulltor Lane to the point where it meets the Midland Railway, is included in a taxable land holding (hereditament) plot No. 362.

The Finance Act valuation book does not give any deduction for the presence of ‘public right of way or user’ but it was by no means unusual for minor or little-used paths not to be claimed. The onus for claiming a deduction was on the landowner and in the case of such routes they might decide that the admission of the existence of a public right of way was not worth the small tax deduction.

2.11 Definitive Map Evidence

At the time of the original parish survey in the 1950s the route under investigation was claimed as a public footpath. However, on the survey map used by the parish to mark their claimed rights of way, someone involved in the process has annotated the highways which were set out in the Taddington Enclosure Award, and by the side of this particular route is written "Pub. B.R."; meaning 'public bridle road'.

Another route in Taddington parish (public footpath No. 8), which also forks off the Broadway Lane/Bulltor Lane non classified highway at a sharp bend and heads north eastwards towards Millers Dale, was claimed in the 1950s as a public bridleway but ended up being recorded on the definitive map and statement as a public footpath, so it may be that at that time there was some confusion about which of the two similarly aligned routes was the historic bridleway. As intimated, ultimately neither route was shown as a bridleway.

Analysis and Conclusion

The 1795 Taddington Enclosure Award evidence points firmly to the existence of a public bridleway linking the road network in Taddington parish with Litton and other parishes north of the River Wye.

The Enclosure plan accompanying the 1795 Award is, in comparison with modern mapping, quite crudely drawn, and whilst it is not possible to say for certain where exactly on the ground the historic route ran, it nevertheless appears to correspond well with the alignment of Taddington footpaths 7 and 6 (part).

As explained above, the area has been intensively mined for lead during the 19th Century and this may well have resulted in minor variations over the years (this might explain the difference in alignment shown on the tithe plan of 1848), however the alignment of these footpaths is also very nearly as shown on the large scale Ordnance Survey plans from the late 19th Century, so there is a fair amount of consistency in the way the route has been depicted.

It is also clear from the 1845 Railway Plan that knowledge of the route as a bridleway lasted well into the 19th Century even though by then it had probably not been usable as such for many years.

The construction of that railway, and the fact that it was later closed and then became used as a recreational route (the Monsal Trail), means that while the longer historic route to Litton Mill and beyond remains unusable (and undetectable on the ground north of the trail), the rest of the route south of the Monsal Trail would nevertheless provide a bridleway connection between the trail (which is undoubtedly a place of public resort) and the wider rights of way network around Taddington.

In conclusion, on the balance probabilities it is considered that the alignment of the current Taddington footpath No. 7 and 6 (part) corresponds with part of a bridle road route which has historically existed between Priestcliffe and Litton and that therefore

a definitive map modification order (DMMO) ought to be made upgrading the lengths of the footpaths concerned to the status of public bridleway.

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:

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 there shown as a highway of a different description", (section 53(3)(c)(ii)).

Other Considerations

- 3.11 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.
- 3.12 None of these factors are considered to be relevant for the purpose of this report.

4. Background Papers

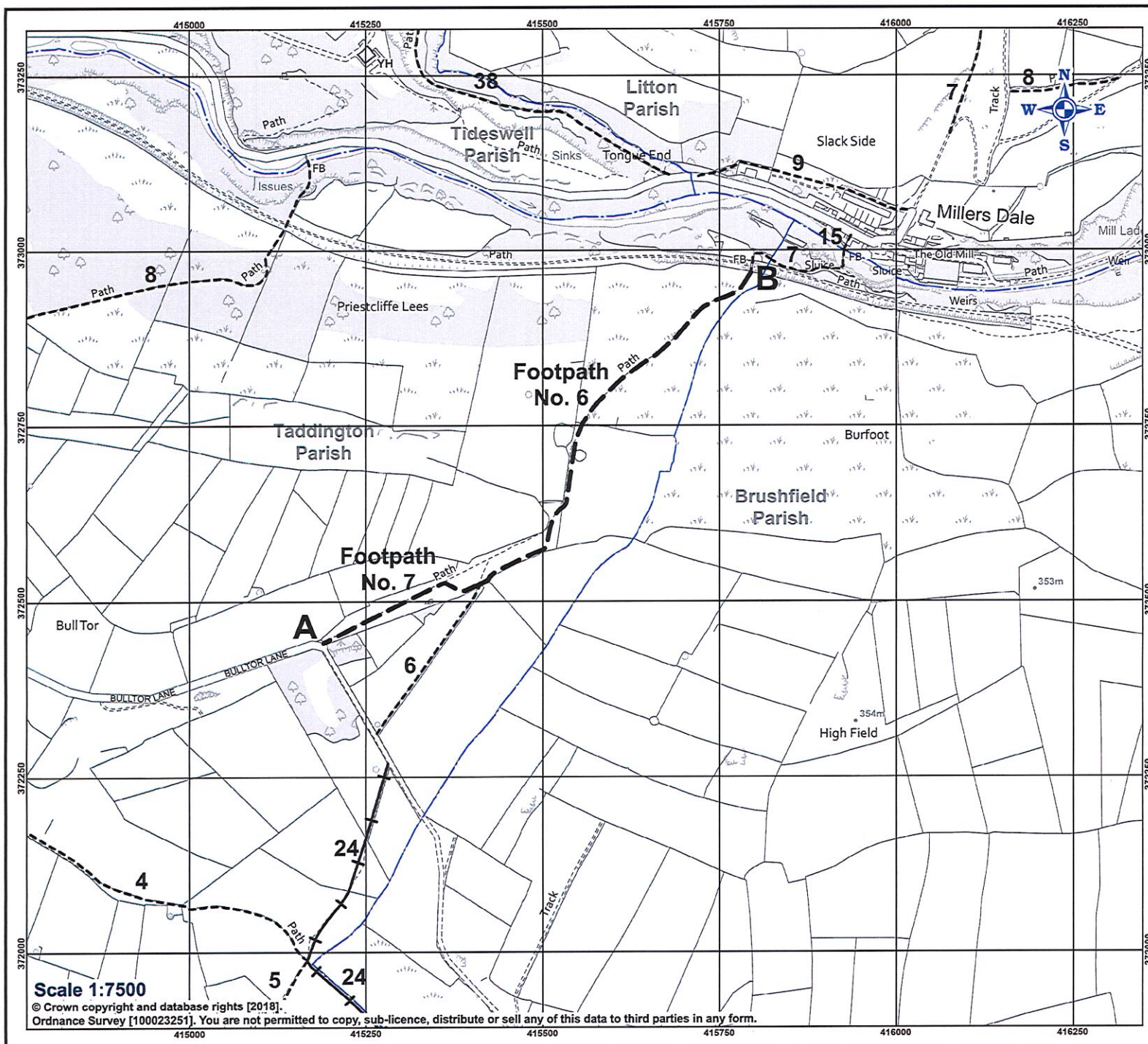
Held in Legal Services on file number 22828.

5. OFFICER'S RECOMMENDATION

That the Committee resolves to authorise the Director of Legal Services to make an Order under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement by:

Upgrading Taddington public footpath 7, and the part of Taddington footpath 6 leading from footpath 7 to the junction with the Monsal Trail, to the status of public bridleway

Janie Berry
Director of Legal Services



**Wildlife & Countryside Act 1981,
Section 53(30)(ii).**

**Route Under Investigation
Regarding its Status in Terms
of Public Rights of Way.**

Key:

Route under investigation	-----
Existing Footpath	-----
Existing Bridleway	+ + + + +
Parish boundary	-----

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