

DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE

25 February 2019

Report of the Director of Legal Services

**Wildlife and Countryside Act 1981 – Claim to add a Footpath from Public
Footpath No 32 to Eccles Lane – Parish of Bradwell**

**S25 Highways Act 1980 – Creation of footpath from Public Footpath No
32 to Eccles Lane – Parish of Bradwell**

1. Purpose of the Report

To enable Members to determine an application to add a footpath to the Definitive Map and Statement and to determine a proposal to create a footpath from Public Footpath No 32 to Eccles Lane in the Parish of Bradwell.

2. Information and Analysis

An application was received to add a footpath from Eccles Lane to Public Footpath No 32 in the Parish of Bradwell on 20 November 2013. This application was determined by the Regulatory Licensing and Appeals Committee on 30 October 2017 to make an Order in accordance with the Officer's Recommendation. A copy of this report is attached.

A site visit was subsequently carried out in order to survey the route to record the necessary details within the Definitive Map Modification Order although it was not possible to identify the claimed route on the ground in order to achieve this.

A further site visit was carried out by officers of Derbyshire County Council, which was attended by the Quarries Development Manager and the applicant. On this site visit it became apparent that, although there are some sections of the claimed route over which it could be proved that public rights had been acquired there were clearly sections where no one particular route had been followed and therefore there had been some meandering by users.

At the site meeting the Quarries Development Manager raised concerns regarding safety and requested that the County Council

considered a diversion of the claimed route. As the concerns raised were not with the existence of a Public Footpath but the close proximity to the workings it was advised that the landowner could enter into a creation agreement to dedicate the route. Negotiations have taken place and an appropriate route has been agreed in principle. The Order recommended to be made on 29 October 2018 has not been made.

2.6 Summary and Conclusion

Although user evidence that was initially submitted suggested that a right of way was reasonably alleged to subsist over the claimed route, the deviations described at the site meeting suggest that no definite route has been taken and therefore that public rights have not been acquired over the claimed route.

As the public rights cannot be proved it is recommended that the decision taken by the Regulatory Licensing and Appeals Committee on 10 October 2017 be revoked and that the application to add a footpath between Eccles Lane and Public Footpath No 32 in the Parish of Bradwell be rejected.

The landowner has agreed to provide and maintain a route between Public Footpath No 32 and Eccles Lane which will provide safe route for the public.

If a creation agreement were to be entered into it would create a Public Footpath from Public Footpath No 32 to Eccles Lane in the Parish of Bradwell shown between Points **A-B-C-D-E-F-G-H-J-K-L** on the attached plan. It would provide a width of 2 metres with a natural ground surface between Points **A-B-C-D-E-F-G**, a width of 2 metres with a rolled stone and natural ground surface between Points **G – J**, and a width of 2 metres with a concrete surface between Points **J-K-L**. Pedestrian gates compliant with the current British Standard (BS5709:2018) would be installed at Points **A** and **C**, and two adjacent to Point **D**. Footbridges would be installed at Points **D** and **E** and gaps would be provided at the side of the existing field gates at Points **K** and **L**.

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 of 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 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.
- 3.11 Under section 25 of the Highways Act 1980:
- (1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath, bridleway or restricted byway over land in their area.
- An agreement under this section is referred to in this Act as a "public path creation agreement".
- (2) For the purposes of this section "local authority"—
- (a) in relation to land outside Greater London means a county council, a district council; and
- (b) in relation to land in Greater London means a London borough council or the Common Council.
- (3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.
- (4) An agreement under this section shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed, provide for the dedication of the footpath, bridleway or restricted byway subject to limitations or conditions affecting the public right of way over it.
- (5) Where a public path creation agreement has been made it shall be the duty of the local authority who are a party to it to take all necessary steps for securing that the footpath, bridleway or restricted byway is dedicated in accordance with it.
- (6) As soon as may be after the dedication of a footpath, bridleway or restricted byway in accordance with a public path creation

agreement, the local authority who are party to the agreement shall give notice of the dedication by publication in at least one local newspaper circulating in the area in which the land to which the agreement relates is situated.

Assessment of legal considerations

The land owner has the necessary power to dedicate the public bridleway, and the location is within the jurisdiction of Derbyshire County Council. The other relevant local authority, Derbyshire Dales District Council, has been consulted and has not opposed the proposal. It is therefore considered appropriate to proceed with the creation agreement.

3.12 Financial Considerations

The landowner has agreed to pay all of the costs associated with entering into the agreement, all costs in bringing the route into a suitable condition for use by the public, and the future maintenance of the route which would all be contained within the agreement. In relation to the costs incurred by Derbyshire County Council in relation to the processing and advertising the agreement, it is recommended that the landowner meets the cost of the advertising, which is estimated to be in the region of £500 and that the Council does not charge the landowner for the officer time spent on processing the agreement.

Other Considerations

- 3.11 In preparing this report the relevance of the following factors has been considered: 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 - file reference 62879

5. OFFICER'S RECOMMENDATION

- 5.1 As the public rights cannot be proved it is recommended that the decision taken by the Regulatory Licensing and Appeals Committee on 10 October 2017 be overturned and that the application to add a footpath between Eccles Lane and Public Footpath No 32 in the Parish of Bradwell be rejected.

- 5.2 That the Director of Legal Services be authorised to enter into a creation agreement with the landowner to create a Public Footpath between Public Footpath No. 32 and Eccles Lane in the Parish of Bradwell under s25 Highways Act 1980.

Janie Berry
Director of Legal Services

DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE

30 October 2017

Report of the Director of Legal Services

**Wildlife and Countryside Act 1981 – Claim to add a Footpath from Public
Footpath No 32 to Eccles Lane – Parish of Bradwell**

1. Purpose of the Report

To enable Members to determine an application to add a footpath to the Definitive Map and Statement.

2. Information and Analysis

2.1 Details of the Application

An application was received from Malcolm Ball on 20 November 2013 to add a footpath from Michlow Lane to Eccles Lane in the Parish of Bradwell to the Definitive Map and Statement. The application was supported by 16 user evidence forms.

A plan showing the claimed route A-B-C-D-E-F-G-H is attached.

2.2 User Evidence

It is considered that the erection of fencing in 2013 by the owners of the Cement Works at the Michlow Lane end of the route (Point A) brought the status of the route into question for the purposes of Section 31(2) of the Highways Act 1980.

As specified by Section 31(1) of the Highways Act 1980, dedication of a route as a public right of way may be presumed after use by the public over a period of 20 years or longer.

Therefore only evidence and events between the relevant date of 1993 and the date that the route was brought into question in 2013 have been considered in assessing the claim.

A total of 16 user evidence forms were submitted with the application.

The user evidence forms were accompanied by plans on which witnesses were required to mark the route they have used. Only 1 of the user evidence forms has the full route marked on and this is the one that was submitted by the applicant. The remaining 15 plans all appear to have been completed by the same person as they are all completed in the same ink, which is different ink to that in which the user evidence forms have been completed, the route shown on these plans ends at the fishing ponds and does not extend to Eccles Lane. However, 7 of the witnesses have described the full extent of the route and 1 witness has provided a description which is sufficient to presume that this was the route used.

Although 16 user evidence forms were submitted 1 form has been completed and signed by 2 people and therefore evidence of 17 witnesses has been taken into account.

All 17 witnesses claim to have used the route on foot only. 14 witnesses have seen use on foot only and 3 have seen use on foot and pedal cycle.

9 witnesses claim to have used the route daily, 4 weekly, and 3 monthly. Reasons for using the route include dog walking and recreation, visiting places on the route and as part of a longer journey or circular route.

None of the witnesses refer to the route being blocked prior to the fencing of the route at the junction with Public Footpath No 32 in 2013.

2 witnesses refer to a gate just before the wooded area. None of the other witnesses recall seeing any stiles or gates on the route.

None of the witnesses recall seeing any signs or notices on the claimed route.

Only one of the witnesses refers to being stopped or challenged prior to 2013, however this was at the fishing ponds end of the route and was in relation to the dog being off the lead and not usage of the route.

The applicant has confirmed that he worked for the cement works between 1976 and 1992, however there is nothing in his evidence that suggests that he used the route as a means to get to work and his usage of the route is described as being of a recreational nature.

2.3 Consultation

An informal consultation exercise was carried out between 22 April 2015 and 27 May 2015. Notices were placed on either end of the claimed route at the beginning of the consultation period. A consultation letter was also sent to the local elected Member, Councillor Judith Twigg.

Three representations were received in support of the claim, these were from Bradwell Parish Council, the Derbyshire Dales Group of the Ramblers Association, and a member of the public who advised that they had used the footpath for over 20 years, and thinks that it has been a footpath for longer.

One objection was received to the claim from Hope Construction Materials, as occupiers of the land affected by the claimed route, on the grounds that it did not consider it to be a safe footpath route for members of the public to use. It advises that Footpath 32 was fenced in 2013 to prevent people from walking into the woodland area where steep and slippery ground conditions exist and that it does not feel that it is appropriate to allow the public (particularly children) access along steep sided and deep ponds.

2.4 Documentary Evidence

1st Edition Ordnance Survey Map 1880

The area of the claimed route is undeveloped and there is no evidence of a path along the line of the claimed route.

2nd Edition Ordnance Survey Map 1900

There is no change from the First Edition Map; the area of the claimed route remains undeveloped.

There is no documentary evidence to prove that any public rights of way exist over the claimed route.

2.5 Site Visit

A site visit was carried out on 06 July 2017. The route claimed on the eastern side off Public Footpath No 32 at Point A is completely inaccessible due to fencing and overgrowth. The route at the western end off Eccles Lane is a stone track providing access to the fishing ponds. There is a notice at Point H stating "Private Property Please Keep Out" attached to a gate at the road side. There is a gap at the side of the gate which allows pedestrian access. Fencing prevents accessing the claimed route after the ponds to the western end between Point E and D.

2.6 Summary and Conclusion

The evidence supports the existence of a route linking Public Footpath No 32 to Eccles Lane. There is substantial use of the route on foot for a period of more than 20 years prior to 2013, with 2 users claiming use of the route since the 1950's, 2 users claiming use of the route since the 1970's and 3 users claiming use of the route since the 1980's.

The claimed route appears to have been widely used on a frequent basis with the majority of the users claiming to have used it on a daily basis for recreational purposes.

In assessing the claim under the Wildlife and Countryside Act 1981, consideration may only be given to evidence that supports or negates the claim that public rights exist. The occupier has stated that Footpath 32 was fenced off in 2013 to prevent people walking into the woodland, indicating that it was freely used by members of the public until this time. Issues of public safety cannot affect the determination of a claim.

On balance, the evidence suggests that a right of way is reasonably alleged to subsist over the claimed route.

A finalised copy of this report has been sent to Councillor Judith Twigg as the local elected member for the area prior to the committee meeting

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
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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

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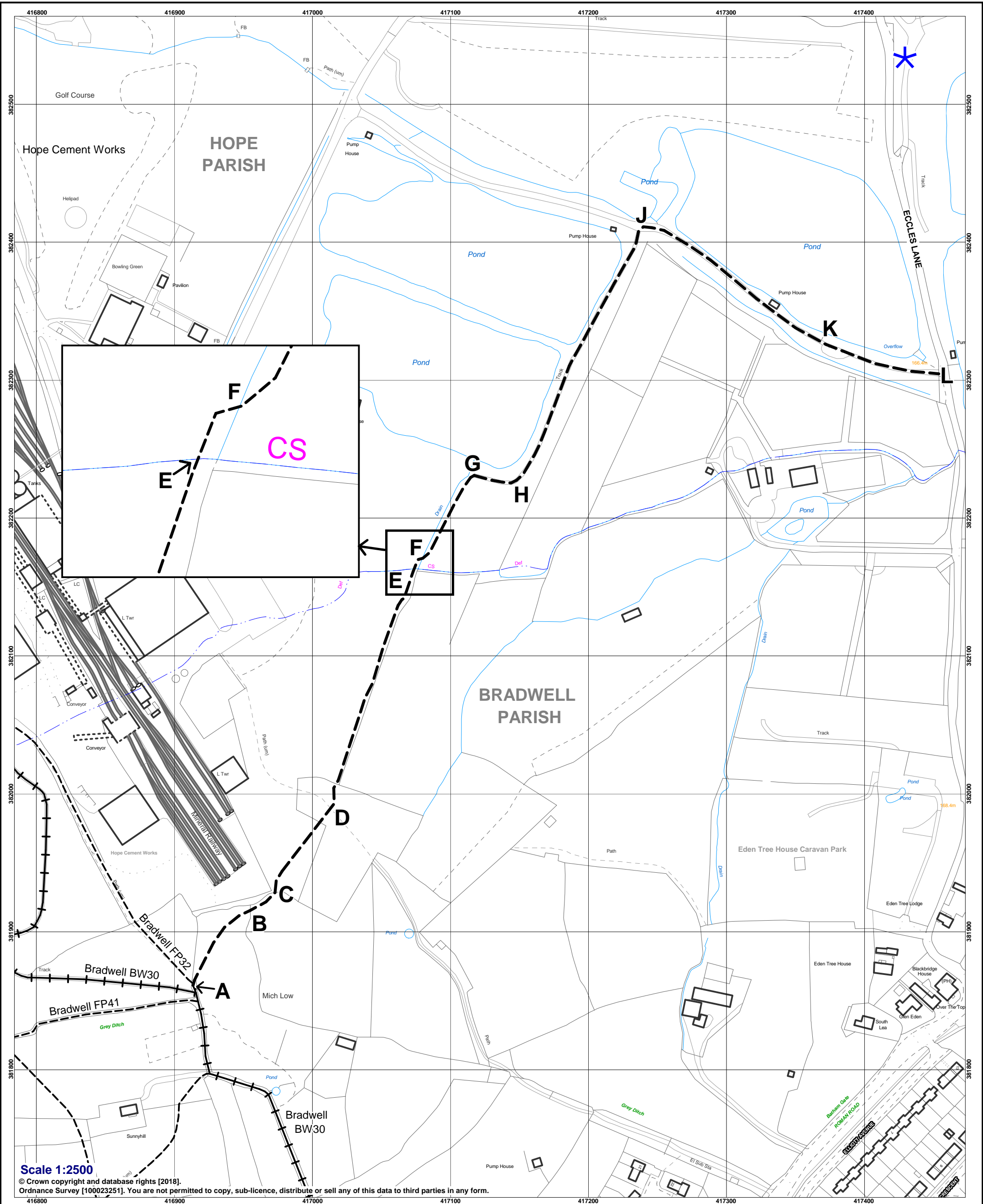
4. Background Papers

Held in Legal Services - file reference 62879

5. OFFICER’S RECOMMENDATION

That the Committee resolves to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to add a footpath from Public Footpath No 32 to Eccles Lane, Parish of Bradwell, as shown on the plan attached to this report to the Definitive Map and Statement.

John McElvaney
Director of Legal Services



Ref: TE/CH/X3946/Order/2019
Date: 24 January 2019



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Highways Act 1980 Section 25
The Derbyshire County Council (Public Footpath
from Public Footpath No. 32 to Eccles Lane
- Parishes of Bradwell and Hope) Creation Agreement 2019

Key:

Path to be added	---	Existing Public Footpath	---
Existing Public Bridleway	+ + +	District Boundary	---

