

DERBYSHIRE COUNTY COUNCIL**Meeting of the Regulatory, Licensing and Appeals Committee****18 January 2016****Report of the Director of Legal Services****WILDLIFE AND COUNTRYSIDE ACT 1981
CLAIM TO ADD A FOOTPATH FROM THE SQUARE TO GLEBE PARK –
PARISH OF EYAM****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 The Square to Glebe Park in the Parish of Eyam to the Definitive Map and Statement.

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

The application was made on 1 June 2011 by Eyam Parish Council to add a footpath from The Square to Glebe Park, Parish of Eyam, to the Definitive Map and Statement. The application was supported by 27 Public Way Evidence Forms and a map showing the claimed route. Several other historical maps and an aerial photograph in support of the route were also submitted with the claim. A further 4 evidence forms were received by the County Council on 15 June 2011 making a total of 31.

The application was submitted following the installation, in 2008, of two gates on the claimed route, by the owners of Mompesson Cottage, and the subsequent erection of signs on the gates in 2010 reading 'Private – No Public Right of Way'. The gates were positioned at the Glebe Park end of the route, enclosing the front garden of the property.

During the preliminary inspection of the claim it was found that most of Glebe Park, which connected with the claimed route, had not been adopted as public highway. The application was returned to the Parish Council who amended the claim by extending the route over Glebe Park to join Church Street to the south and in a northerly direction over Glebe Park and other land to join Public Footpath No. 13, Eyam. However, none of the witnesses were asked to amend their user evidence forms to reflect the extended claimed routes. References to the 'claimed route' in this report are to the initially claimed route from The Square to the point of termination at its junction with Glebe Park.

Glebe Park, which was constructed on a line that varied from the access road to the Glebe Mine site which previously occupied the land, and the housing development accessed from it, was under construction from around 2006. Although a small section of the newly constructed road was adopted at an earlier date, most of Glebe Park was adopted as a publicly maintainable highway in July 2015.

2.2 User Evidence

The thirty-one user evidence forms were examined and were found to contain varying accounts of use of the claimed path. Two of the witnesses failed to provide a description of the route, but completed further questions which indicated where they had walked.

The Public Way Evidence Forms show the following use of the path:

Number of Years Route Used	Number of Witnesses
Less than and up to 10 years	0
11 - 20	1
21 - 30	2
31 – 40	5
41 - 50	4
51 – 60	10
61 – 70	7
71 – 80	2
Total	31

The evidence forms showed that the claimed route had been used over a considerably long period of time, with 19 of the witnesses claiming use for more than 50 years. It is those with longer periods of use that claimed to have walked the claimed path as a through route, as described below. From the evidence forms it appeared that there had been no hindrance to the use of the route up until the time when the gates and signs were put in place at Mompesson Cottage.

The majority of the witnesses have described the claimed route between Glebe Park or Estate to the Square with several extending the description beyond Glebe Park to the sports field, play area, cricket field and some to the church yard (all of which are situated on land to the west of Glebe Park). All the witnesses have used the route on foot with only one having used it additionally on a pedal cycle. All users have seen others walking the way and six have seen cyclists.

With regard to the reasons for use of the claimed path, eighteen witnesses have used the route both as part of a longer journey and to visit places along it, whilst three state that they have used it only as part of a longer journey.

Although eight have ticked the box to indicate that they have specifically used the claimed path for deliveries and visits to houses or other places along the route, by their descriptions 10 appear to have used it in this manner. Similarly there are witnesses who claimed use of the path as both for visiting and as part of a longer journey, but have only detailed use for personal visits to friends on the route. Information regarding specific usage is also provided in the comments section of the user evidence forms.

Five users describe delivering newspapers or magazines along the claimed path, 8 recall visiting houses along the route and one refers to visiting a café that used to be accessed from the path. One witness is more specific, stating that Mompesson Cottage was a Tea Rooms called Rowlands. Another witness, of 61 years use, was employed as a home help for a period of time and visited Mompesson Cottage for this purpose.

With regard to frequency of use of the claimed route six witnesses walked it on a daily basis, one of whom was delivering papers for some of the period. The majority, 13 witnesses, walked the claimed path on a weekly basis, 6 monthly, 2 less than monthly and 4 users had a mixture of frequency over the years. Only 3 of the witnesses refer to a gap in their use, 2 for armed forces service (3 and 10 years) and one for a gap of eleven years with no reason given.

Nearly all of the users refer to the gates being installed in 2008 and the notices saying 'Private – No Public Right of Way' following two years later. None of the witnesses refer to ever having been deterred from using the path prior to the installation of the gates and notices.

Only one witness states that she had permission to use the way having used it on occasions as part of a Women's Institute or village fundraising group. Three witnesses comment that there were no restrictions, permission was never needed and that the path had always been a public right of way. No one refers to having been stopped or told the route was not public until around 2009 when the new owners of Mompesson Cottage told one of the witnesses that she could not go that way. The witness said that she was delivering the parish magazine and that the route was a public right of way.

A resident of Eyam who did not complete a user evidence form e-mailed the County Council stating that in the days when the Glebe Mine was in operation, employees from the east end of the village used the claimed route to walk to work. The resident said that the route has always been used as a public footpath and no one disputed this until Mompesson Cottage was put up for sale and the gates and notices were put in place.

2.3 Comments made by witnesses

Witnesses added further comments regarding the claimed path. Several refer to a boundary wall which stood in front of Mompesson Cottage. The claimed

path ran between the wall and a boundary on the southern side. Many refer to use by workers of the Glebe Mine whilst it was in operation, particularly by miners who lived to the east of the mine. Family members of Glebe Mine employees also used the path to this end, delivering packed lunches.

2.4 Correspondence prior to consultation

A resident of Eyam who lives in a property accessed via the claimed path contacted the County Council by telephone shortly after the claim was made to confirm the exact line of the path, having concerns that it would traverse his garden. The caller said that he had used the claimed path himself since childhood and there had been attempts to close it off when recent new owners had erected gates and deterred use. The resident said that there was no path through his garden, but the claimed route had been used for many years.

A letter of objection was received from the then owners of Mompesson Cottage strongly opposing the claimed path over their land. The owners stated that in accordance with their deeds the only people they allowed access to were the adjoining neighbours and their visitors. The residents were concerned that the claimed path would interfere with the enjoyment of their own property and render it unsafe for animals and small children. They rendered the benefit of the claimed path as minimal, as it was only a short cut of a hundred yards or so and would be a detriment to themselves and their neighbour.

2.5 Consultation

On 3rd November 2014 a consultation letter was sent to landowners, 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 on 5 November 2014 from a local resident, in support of the claim. This was followed by a letter dated 11 November from a local couple stating that the claimed path had been used by themselves, their family and previous generations.

On 3 December 2014, the owners of a property along the claimed path sent an email stating that they had bought their house that year. They were aware that although not well used 'a public footpath now exists in front of the house', used by certain local residents. The owners stated that they had no objections to this, but wanted to know how an Order would affect the existing gates and fences and who would be responsible for maintaining the route. The owners were told that if an Order was made and confirmed all obstructions would have to be removed and the maintenance responsibility would depend on what was discovered during the investigation.

The Derbyshire Dales Group of the Ramblers' Association replied to the consultation letter by email dated 5 December 2014. The group had no objections to the claimed path provided that all landowners had been consulted and were in agreement and that exits from the path on to adjoining roads were not hazardous.

2.6 Documentary Evidence

2.6.1 Enclosure Award and Map of Eyam 1813

The claimed route was not depicted as a path, but there is a field boundary shown which corresponds to it.

2.6.2 Eyam Tithe Plan 1842

The claimed path is shown on the map, with a solid line at each end possibly denoting a gate or other barrier. There are properties adjacent to the track, which appears to give access to them, and trackways to other properties off the claimed route. The boundary line on the southern edge corresponds to that on the Enclosure Award Map.

2.6.3 Ordnance Survey 1st Edition 1880

The claimed route is discernible on the first edition and shown as open ended from The Square. A cross roads with tracks leading off to the left and right is apparent half way along the route. It is not possible to see the end of the path at Mompesson Cottage as a tree is drawn over the end of the route. What would have been the road leading to Glebe Mine is shown with a solid line across it at the southern end where it meets the main road.

2.6.4 Ordnance Survey 2nd Edition 1898 (Sheet no. XVI.7)

The claimed route is shown with open access from The Square and at the Mompesson Cottage end. There is a solid line, perhaps denoting a gate, at the southern end of the road leading from the main road to the mine.

2.6.5 Finance Act 1910 Land Values Map and Book of Reference (based on Ordnance Survey 2nd Edition 1898)

The claimed route is shown as described for the 2nd Edition above. There are various parcels of land surrounding and including parts of the claimed path.

The parcel of land including Glebe Mine (no. 902) is shown as being in the ownership of Rev F L Shaw of The Rectory, Eyam. Whilst a single dotted line denoting footpath is shown passing through this plot, there are no deductions awarded for rights of way in the schedule.

At its easterly end the first section of the claimed path is not included in any hereditaments, but the remainder of the path is included in three parcels of land. The section falling within parcel No. 121 and named Orchard Bank in the schedule is in the ownership of Samuel Barnes and occupied by Edward Dane; there are no deductions for rights of way. The next parcel, no. 16, encompasses a small section of the claimed path and land and buildings to either side. This area known as Court Green belonged to Rev Shaw and was occupied by George Bennett and there were no deductions for public rights of way. The final parcel, no 120, over which Pear Tree Cottage and Mompesson Cottage now stand was owned and occupied by Annie and Sarah Dane. The property is recorded in the schedule as South View or Glebe Cottage, Town End and described as a House and Shop. A deduction of £2 is awarded for public rights of way or user. Plot no. 122, lies to the north of plot no. 120 and was owned by Annie and Edward Dane. This property is described as a Shop and Tea Room and there are no deductions for rights of way.

2.6.6 Ordnance Survey Edition of 1922

This edition is almost identical to the 2nd edition, with the exception of a solid line, perhaps a gate, depicted across the claimed route between the properties now known as Pear Tree and Mompesson Cottages.

2.6.7 Ordnance Survey Edition of 1951

This edition shows a solid line across the route at the Mompesson Cottage end.

2.6.8 Ordnance Survey Editions of 1971 & 1974

The claimed path is depicted with open access at both ends.

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 the 10th June 2015.

From the Square the route takes a steep incline and has a gravel surface. There is a building to the left followed by a stone wall with a gap. The surface changes to tarmac which continues to the top of the claimed route where it is grassed in front of the last but one cottage and prior to the first low positioned gate.

As one traverses up the claimed path there is a low building to the right and various gaps which are vehicular driveway accesses to properties.

The front of Mompesson Cottage (the property at the western end of the claimed route) is enclosed by two low gates. There are paving slabs and a grass border within the front garden. The gates were closed and officers did not walk this section of the path, but looked at the route from the Glebe Park end. It is assumed that the gates were unlocked as witnesses had recently stated that there was free access along the claimed path from the Square through to Glebe Park. Opposite Mompesson Cottage the claimed route is bounded to the south by a fence immediately next to a boundary stone wall within.

The path exits onto a driveway which passes between Glebe Park and the boundary of Mompesson Cottage, which appears to follow the line of part of the access road to the former mine site.

The claimed route was a car width for most of its length, narrowing through the garden of Mompesson Cottage. The southern boundary wall and fence are set at an angle along this section.

2.7.2 Additional User Evidence

It was considered that some of the evidence from the user forms required clarification and the case officer undertook to seek further evidence from witnesses. The case officer wanted to establish what had been the nature and use of the land where Glebe Park now stands, after the closure of the Glebe Mine in the 1960's and if there had ever been a connection to a highway from section of the claimed route terminating at Mompesson Cottage.

Telephone conversations with seven witnesses revealed that the path had been widely used during the period when the mine was active and not as much after the closure. Most of these witnesses could not remember what the land was like between the closure of the mine and the construction of the estate, but thought that the land was rough or waste land. One witness said that it was where the young people of the village played or congregated; this witness also said that there was a public footpath from this land to the church yard. Another witness stated that there was always a gap through to the land beyond the mine buildings whilst it was in operation and after its closure.

The evidence forms considered by the case officer showed some confusion on the part of the witnesses between their use of the claimed route as a public right of way, and any private rights that had existed and this was also highlighted when speaking to witnesses. It was discovered that another witness had owned a building which is accessed via the claimed route and was not aware that her use to access this property was probably use of a private right of access, differing from use of the path as a through route. When the claimed route was obstructed in around 2011, by the then owners of Mompesson Cottage, residents who lived along the claimed path, their visitors and delivery people were challenged by the owners. This had caused ill feeling and also appears to have been a trigger for the footpath claim.

Some witnesses said in conversation that they had in fact, not used the claimed route very much, including one person who said that she had not used it for 50 years, even though she had completed a user evidence form which suggested otherwise.

A further questionnaire was circulated by the case officer to gather more details of public use of the claimed path and further clarification of use of the land over which the Glebe Mine ran, particularly after its closure in the 1960's.

Witnesses were asked to clarify their years of use of the claimed path and most claimed to have walked along it for many years. However, some had used it with little frequency and in some cases locals had used the way more when the mine was in operation. Many had used the path more often to make deliveries or pay visits to properties along it rather than as a through route.

The destinations described in the public way evidence forms were repeated on the forms. These were:-

The play/sports area (only established since the construction of Glebe Park)

The Church and Church yard

Sludge dam

As a through route around the village

Joining other paths and destinations beyond the village of Eyam

Visiting friends on the path

Delivering newspapers/magazines

Home help visitor

Witnesses were asked if they could recall the nature of the land during the years between the closure of the Glebe Mine and before the houses on Glebe Park were built. Users often described the land in a similar way with many referring to the removal of the mine buildings and that it was possible to walk through the former site. The area is described as, derelict, open ground, waste land, a wildlife park, agricultural land and grassy wasteland. Witnesses mention that the mine shaft was eventually capped and others that the land provided access to the bottom of the church yard. Others stated that the land was walked over by many people, another that there was a pebbled path over it and one witness who states that it was possible to follow a worn track, but he could not accurately say where that was now. Some people say that they accessed the path (they do not specify whether this is the claimed path or another) by 'Wheelwright's'. From maps this would appear to be on the corner of what was the road to the mine from the main road.

Further general comments were made including that the roadway (presumably to the mine) was still there and that the pathway or original route was still walkable and became more popular. Some stated that they used the claimed path to access the land and that the road still remained through the middle of the site.

None of the witnesses say that they were challenged on the claimed path until the gates were put in place in 2010.

Additional information provided includes that of two witnesses who appear not to want to pursue the claim as they refer to there being no problem now. Others say that they used the claimed route to play on with friends or to carry out errands. Some witnesses say that the path is well-trodden and has been used 'forever' and they don't want to lose it. It is claimed that the path was there before the 1950's and that the path to the Church between the houses was left open when Glebe Park was built.

One user considers that the claimed path has been used by a few locals only for many years, but that it does not merit the status of public footpath.

Very informative evidence was submitted by several witnesses in the form of old maps and photographs of the area. Particularly of interest were photographs of the mine showing a track or road from the main road up to the mine and taking a circular route around the site. The road which is now Glebe Park does not follow the line of the mine access road and properties now stand over the upper section of the site to the east. Aerial photographs show the claimed route and a path over the mine site is visible. Some maps also show a route slightly to the east of the route up to the mine, from the main road, which traverses a northerly direction between properties and joins the claimed path opposite Pear Tree Cottage.

2.7.3 Further submission

Following renewed local interest in the claimed path the Council were contacted by the owners of Pear Tree and Mompesson Cottages, the two properties most directly affected by the application.

The current owner of Mompesson Cottage wrote to the Council in a letter dated 9th November 2015. The owner stated that she had lived on the claimed path since April 2014 and had been a resident of Eyam for 32 years and was aware of the animosity caused when, what she describes as access to the cottages, was obstructed by the previous owner of Mompesson Cottage, with the erection of gates and a 'No Public Right of Way' notice.

The owner states that she has been happy to allow limited and necessary (presumably private) access over the past year to a small number of locals. She indicated that she did not respond to the Council's consultation letter as she was not aware that if the modification order was successful footpath signs would be erected and the general public would be at liberty to use the path.

The owner objects to the claimed path on the grounds that it is not necessary, stating that the pavement from The Square to Glebe Park removes the necessity for access to private land. Other grounds of objection are that The

Square end of the path is unmaintained and has an uneven surface and is used as a vehicular access; it is steep and hazardous to pedestrians. She also raises concerns about maintenance and public liability insurance.

The owner claims that the path is presently only used by locals and as Eyam is a tourist village, there would be a large increase in use of the path if it became public. There would be increased dog walking and fouling and property damage. There was also a local problem of cyclists and motor cyclists using paths.

The owner had no personal evidence of historic use of the claimed path, but understood that since the mine closed, the family who lived at Mompesson Cottage actively deterred people from crossing their property. The owner claims that the approach to the mine site became overgrown and there was only unofficial use of this route to access the mine area which was private.

On 18th November 2015 a letter of objection was received from the owner of Pear Tree Cottage, together with 10 statements from local residents claiming that the route from The Square to Glebe Park has not been used unchallenged or uninterrupted for the 20 year period to 2011.

The owner of Pear Tree Cottage alleges that those who claim to have used the route may have done so as neighbours and friends of the family, formerly of Mompesson Cottage from 1948 to 2008 and that the path led to the privately owned disused mine site with no public path across this site to link up with the claimed route.

The 10 statements included with this resident's submission were as follows:

1. This resident of Eyam has lived in his property, which is accessed along the claimed path, since 1980 and considers that the route has never been a public footpath. The owner stated that the route had been very private and peaceful and used only by residents of the properties along it; he expressed concerns that a footpath sign would cause a security risk.
2. This objector stated that his parents bought Mompesson Cottage in 1948 and it was owned by his family until 2008. The witness's parents actively discouraged people from crossing in front of their house and believed that it was never a public footpath, but only provided a right of access to their cottage and the neighbouring property.
3. The third objector stated that he has lived in Eyam all his life (from 1968) and that there has never been a public right of way across the proposed route. The resident recalled from childhood, a gate at the end of the path that if you tried to go past, the householders would challenge you and say that the path was private.

4. The resident stated that as a teenager in the late 1980's he and his friends played on the former Glebe Mine land and whenever they used the claimed footpath the owner of Mompesson Cottage would shout at them; on occasions he let his terriers out to chase them away.

5. The next resident of 50 years in the village also played on the old mine site and was constantly shouted at by the owner of Mompesson Cottage for sneaking over his property for a short cut. The owner of the Cottage always maintained that the path was part of his garden and there was no way through. To the witness's knowledge the claimed route has never been a public footpath.

6. This resident stated that the claimed path only led to a private, derelict mine area so was never a public footpath. As a young adult he would play on the mine site with friends, but they were not allowed to access it via the front yard of Mompesson Cottage.

7. The objector stated that to the best of his knowledge the purpose of the claimed path had always been to provide access to the properties along it. The route was not an access to the Glebe Mine to which there was a private road off the main road. This resident says that he derives his opinion from living in Eyam for 22 years between 1971 and 1993 and from the owner of Mompesson Cottage at that time.

8. Another long standing Eyam resident stated that he and his friends played on the former mine site and were stopped from using the claimed path by the owners of Mompesson Cottage. The witness only succeeded in using the route if there was no sign of the cottage owner or his dogs.

9. The next witness described trying to walk the claimed path in the early 1990's with friends to access the old mine sludge dams and being challenged by the owner of Mompesson Cottage who told them that the path was not a public right of way.

10. The last objector again stated that she went to the old mine area in the early 1990's with friends and always accessed it from the main road as she knew the path from the Square was out of bounds and viewed the claimed path as private access to the houses. They were also told not to use the path by the owners of Mompesson Cottage and by another resident who lived along it. The resident had lived in Eyam for 36 years.

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 Public Way Evidence Forms that the claimed path was well used particularly during the years when the Glebe Mine was in operation. Overall, the evidence suggests that use of the route has continued over a long period of time, but that the frequency and nature of that use has changed.

2.8.3 It is probable that some of the claimed use relates to the exercise of private rights, accessing properties adjacent to the claimed route. This is a short route and does not lead to a particular place of public resort. With such a 'user' claim it would be more usual to find that most users have accessed the claimed route as part of a longer walk, which raises some doubt over the status of user of this route. The description of visits to properties accessed from the path has limited value in establishing the existence of a public right of way. This was highlighted by the witness whose use was challenged in around 2009 by the owner of Mompesson Cottage. Although the witness considered that the route was a public right of way, use of the route for deliveries is more likely to be the exercise of a private right for visitors to the properties accessed from it.

2.8.4 A number of witnesses refer to a wall in front of Mompesson Cottage, separating the house from the claimed footpath which appears to have been in situ in the earlier time of the path's usage. It is unclear when the wall was removed but there has been no suggestion that any changes in the boundary features of the path raised any concerns in the minds of users of the path.

2.8.5 Given that 31 users claimed to have used the path at varying times the frequency of use appears to be greater in the period when the Glebe Mine was in operation. Only 6 of the witnesses claim use on a daily basis at any time, one of which was for delivery purposes and frequency of use overall appears to diminish, especially after the closure of the mine. This is stated on a number of user evidence forms and some (even though they have claimed up to 50 year use) go as far as to say they stopped walking the path many years ago.

2.8.6 It is certainly possible that, as suggested by one witness, the claimed path was used by miners who lived to the east of the route. However, it is unlikely that this was the exclusive route to the mine. A route is shown on maps from the main road with a definite road or track leading to the colliery. The map evidence reveals that during some periods of time (including during the working life of the mine) this route had a gate or other barrier where it joins the main road. However this barrier could have been opened to provide access to the mine during its hours of operation.

2.8.7 Little information was presented to the Council during the consultation period. There were several letters and emails in support of the claim from locals but the footpath groups offered no evidence, suggesting that this was not a well-used path familiar to ramblers.

2.8.8 Most of the map evidence clearly shows a route on the ground corresponding to the claimed path, although the depiction of a route on the maps examined is evidence of its existence on the ground not of its status. In any event the maps generally show a barrier of some kind across the route, although the position/s of such barrier/s appear to have changed over the years.

2.8.9 The evidence from the Land Values Finance Act 1910 showed a deduction for rights of way or user within the boundary of what is now Mompesson Cottage. This property is described as a business, as is the property to the north of it. However the documents do not provide detail of the location of the public right of way.

2.8.10 The physical features found on site visit were conducive to an available footpath on the ground. Whilst there are two gates in place enclosing the front garden of Mompesson Cottage these are unlocked making the route accessible to current users.

2.8.11 No evidence has been presented to, or discovered by the Council, relating to the status of the former mine access road, to which the claimed route would have connected prior to 2006. Part of that old roadway is still in existence, giving access to a property and anyone using the claimed route would need to cross this before reaching the now adopted Glebe Park.

2.8.12 The amendment of the application by the Parish Council suggests two extensions to the claimed route; one leading across the road and along the pavement in a northerly direction connecting with Public Footpath No 13 to the north of Glebe Park and the other turning to the south and connecting with the main road. However, the line of those extensions is shown along Glebe Park, which at the earliest existed from 2006 and which would have been obstructed by the construction works in any event. The user evidence does not substantiate the particular routes suggested by the amendment, nor does it provide cogent evidence of any other route.

2.8.13 The questionnaire exercise further highlighted confusion between private and public use of the route and was helpful in establishing the nature of the Glebe Mine site after its closure. The overall view is that this was rough land and was probably walked over but there is a tenuous connection to the claimed path in that not enough evidence has been provided to join up the end of the claimed route with either Footpath No 13 or the main road. Even if people walked the claimed path and connected with the public footpath beyond it is unclear how many did this and for how long.

2.8.14 Submissions from the current owners of Pear Tree Cottage and Mompesson Cottage raise issues that are not relevant to the determination of this claim. However the evidence collated by the owner of Pear Tree Cottage, statements of those who were challenged along the claimed route in the past, suggests that the former owner of Mompesson Cottage did challenge users of

the route and that such challenges would have been a clear communication of a lack of intention to dedicate the route to the public.

2.8.15 The evidence suggests that the challenges were made to users who were children or teenagers during the period of use referred to, and that they congregated on the old mine site. The challenges to their use is in conflict with the evidence of the long users who completed evidence forms who do not refer to being stopped from using the claimed path by the same landowner. The landowner may have differentiated between types of user, allowing older residents to use the path, and perhaps did not challenge those using the route to make deliveries or access other properties as he appreciated that they had a private right to do so.

2.8.16 The conflicting evidence of use suggests that there have been challenges to use of the claimed route between The Square and Glebe Park (or the former mine access road) by the owner in residence at Mompesson Cottage. Whilst some local inhabitants may have used the path without challenge this does not negate a lack of intention to dedicate communicated to some users. Taking an overview of the evidence it seems likely that much of the use of the route by most local inhabitants has been in the manner of a private right, such as access to properties along the route including the Glebe Mine site accessed at its western end, and is insufficient evidence to establish it as a public right of way.

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 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.

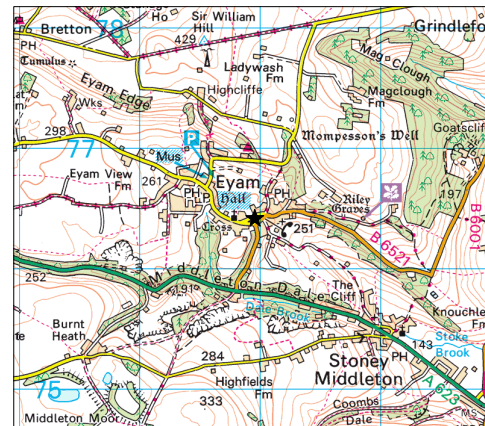
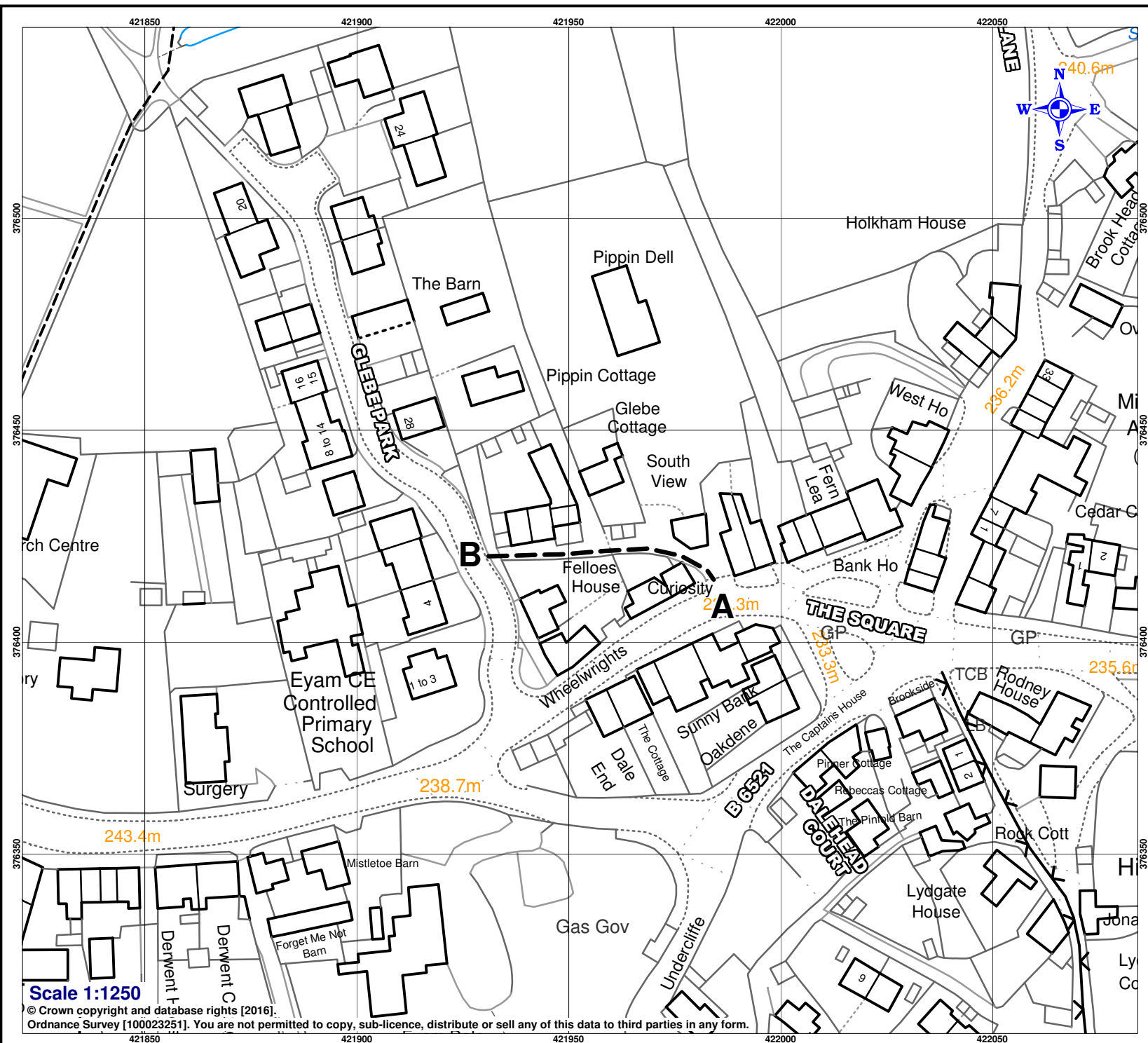
4. Background Papers

- 4.1 Director of Legal Services reference 53256

5. OFFICER’S RECOMMENDATION

- 5.1 That the claim to add a footpath from The Square to Glebe Park in the Parish of Eyam be rejected.

**JOHN McELVANEY
DIRECTOR OF LEGAL SERVICES**



Wildlife and Countryside Act 1981 S.53

Claim to add a Footpath from The Square to Glebe Park - Parish of Eym

KEY

Claimed footpath	---
Existing footpaths	---
Existing BOAT	---



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