

**DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE**

**18 JANUARY 2016
REPORT OF THE DIRECTOR OF LEGAL SERVICES**

**WILDLIFE AND COUNTRYSIDE ACT 1981
CLAIM TO UPGRADE TO BRIDLEWAY PUBLIC FOOTPATH NOS. 17
(part), 18, 12 (part) and 23 – PLEASLEY AND SHIREBROOK.**

1. Purpose of the Report

To enable Members to determine two applications to amend the Definitive Map and Statement by upgrading to bridleway, public footpath nos. 17 (part), 18, 12 (part) and 23 in Pleasley and Shirebrook.

2. Information and Analysis

2.1 On 10 October 2012 Stephen Parkhouse submitted two applications to the Council to upgrade FP Nos. 17 (part) & 18 in Pleasley (Outgang), and 12 (part) & 23 in Shirebrook (Littlewood) to bridleway. Outgang is accompanied by 60 user evidence forms and Littlewood by 33. Both are accompanied by various photographs, correspondence and copies of documents relating to the area and two other applications the applicant has made with Nottinghamshire County Council.

2.2 A plan showing the claimed routes is attached (Appendix 1). Route A-B-C being the Outgang claim and Route D-E-F being the Littlewood claim.

2.3 The claimed routes are recorded on the Definitive Map & Statement as footpaths which are not publically maintainable. Outgang is approximately 1200 metres long and the whole route is tarmacked with road markings; its appearance is no different to the local road network. Littlewood is approximately 1300 metres long and is bounded by hedges on both sides.

User Evidence

2.4 There have been no specific actions that have brought use of the routes on horseback into question and so for the purpose of this report the date on which the applications were submitted has been taken to be that date, which was October 2012. The period under consideration is therefore between 1992 and 2012.

2.5 **Outgang:** Of the 60 witnesses, six have used the claimed route on horseback (five of whom have used the route on a bicycle as well) during the period under consideration; five for the whole 20 year period (all for more than 30 years) and one for 19 years of this period. The user evidence on horseback covers the years from 1952 to 2012 with the longer user claiming use for 60 years.

2.6 43 witnesses have used the claimed route on pedal cycle (including the five who have also used the route on horseback) during the period under consideration; 41 for the whole 20 year period; one for 19 years and one for 15 years of this period. The user evidence on cycle covers the years from 1947 to 2012 with the longer user claiming use for 65 years.

2.7 50 witnesses have seen other users on horseback and 59 on pedal cycle.

2.8 Of the 44 witnesses who have used the route on horseback or cycle 23 claim to have used the route weekly, nine monthly, six daily and six less than monthly.

2.9 Descriptions of the width of the route varied between 12 and 30 feet or 6 and 7 metres; the most common description being 25 feet.

2.10 The users have all marked the route they have used on a plan and all 44 who have used the route on horseback or cycle clearly show use of the whole of the claimed route either on pedal cycle or horseback.

2.11 The majority of users report that there are barriers across the route but access for pedestrians and cyclists is clearly signposted through a gap to the side.

2.12 None of the users report seeing any stiles nor do they remember the path being diverted or blocked, being stopped or told there was no public right of way or being given permission to use the route on horseback or cycle.

2.13 Three witnesses refer to the 'security guards' on Outgang Lane who are aware that people use the route on cycles but do not do anything to deter such use, in fact they are friendly and happy to talk to users of the lane.

2.14 **Littlewood:** Of the 33 witnesses, six have used the claimed route on horseback (five of whom have used the route on a bicycle as well) during the period under consideration; four for the whole 20 year period (all for more than 30 years) and two for 19 years of this period. The user evidence on horseback covers the years from 1952 to 2012 with the longer user claiming use for 60 years.

2.15 32 witnesses have used the claimed route on pedal cycle (including the five who have also used the route on horseback) during the period under consideration; 28 for the whole 20 year period; two for 19 years and one for 16 years of this period. The user evidence on cycle covers the years from 1947 to 2012 with the longer user claiming use for 65 years.

2.16 30 witnesses have seen other users on horseback and 33 on pedal cycle.

2.17 Of the 33 witnesses who have used the route on horseback or cycle 13 claim to have used the route weekly, nine monthly, two daily, six more than twice a week and three occasionally.

2.18 Descriptions of the width of the route varied between 10 and 15 feet or 3 and 5 metres; the most common description being 10 feet.

2.19 The users have all marked the route they have used on a plan and all 33 clearly show use of the whole of the claimed route either on pedal cycle or horseback.

2.20 None of the users report seeing any stiles, gates or barriers nor do they remember the path being diverted or blocked, being stopped or told there was no public right of way or being given permission to use the route on horseback or cycle.

Consultation

2.21 Informal consultation exercises were carried out between 03 June 2013 and 04 July 2013. Notices were placed on the routes and letters were sent to the statutory consultees, landowners and the local elected member, Cllr Marian Stockdale.

2.22 Following the consultation, no representations were received either in favour of or in objection to the applications.

Documentary Evidence

2.23 Pleasley Enclosure Plan and Award 1748

The Enclosure Plan does not cover either of the claimed routes.

2.24 Burdett's Map of Derbyshire Circa 1860

The map does not show the claimed routes.

2.25 Sanderson's Map – Twenty Miles round Mansfield 1835

The route along Outgang Lane is shown from the east as part of the road network between solid lines as far as the lower mill, approximately 490 metres due East of Point A at the northerly arc of the meander. From this point it is shown by a single dotted line adjacent to the boundary of Pleasley Park and then between double dotted lines through to where it meets the 'T' junction of Northfield Lane and Common Lane in Notts.

The route along Littlewood Lane is shown between double dotted lines south of the county border in Notts and continues as such in Derbyshire, a short distance NE to 'Littlewood'. At 'Littlewood', the eastern boundary of the lane is shown by a solid line with the western dotted, it is then shown between solid double lines for approx. 650 m. There is then a section of approx. 300

m. where the western boundary is again shown as a dotted line before once again between two solid lines to Wood Lane. There is a solid line across the junction with Wood Lane

2.26 Pleasley Tithe Plan and Award 1843

On the 'Plan of the Township of Shirebrook' (1841), Plot 31, which is part of 'Littlewood', encompasses the southern 570 metres or thereabouts of Littlewood Lane and is recorded in the Award as 'Pasture' land and named as 'Dumble'. There are no reductions for public rights. The track runs northerly between boundaries for approx. 570 m. and ends at a field with a solid line across the end. There is no indication of any route continuing to Wood Lane or in any direction from 'Littlewood'.

On the 'Plan of the Township of Pleasley' (1841), the Outgang Lane route is shown as initially part of Plot 262. It looks like open road or public space and encompasses several buildings, wider spaces and water. Plot 262 is described in the Award as 'Two Cotton mills dwelling house with Cottages workshops sheds etc Gardens dams and Land on each side'. The continuation would be encompassed in Plots 263 and 264, which are both recorded as 'Meadow'. There are no reductions for or references to Public Rights. There is no through route shown to Littlewood.

2.27 Shirebrook Definitive Statement

Footpath 12 is described as a 'Footpath from Wood Lane opposite path No 11 in SE direction to Littlewood Farm thence SW via Little Matlock to the parish boundary' and as 1865 metres in length.

Footpath 23 is described as a 'Footpath from path NO 12 SW of Littlewood in S direction to the parish boundary at weir', and as 61 metres in length.

2.28 Pleasley Definitive Statement

Footpath 17 is described as a 'Footpath from the E end of Outgang Lane in SE direction along Pleasley Vale to the parish boundary NE of the war memorial and as 1162 metres in length.

Footpath 18 is described as a 'Footpath from the parish boundary NW of Meden Bank in W direction to path No 17 NE of war memorial, Pleasley Vale and as 92 metres in length.

2.29 Ordnance Survey 1st Edition 1:2500 Derbyshire Sheets 31:8 & 31:4 circa 1880

Sheet 31:8 Outgang Lane is shown between two solid lines and appears to be part of the road network. It runs easterly past Top Mill and then Bottom Mill and just past Bottom Mill is a school (for boys and girls), approximately 260 metres WSW of Point B. Past the school the route is shown between dotted lines for a length before returning to solid lines and

entering into Nottinghamshire; the plan is blank over the county boundary and the continuation of the route is not shown. There is a very short section of Littlewood Lane shown from the Notts boundary leading to Derbyshire Sheet 31:4.

Sheet 31:4 The claimed route along Littlewood Lane is shown to continue from where it leaves Derbyshire Sheet 31:4 between solid lines for approx. 1100 m. where it runs open-ended into a field, the route is then marked between dotted lines to its junction with Wood Lane. There is a solid line across the junction.

2.30 Ordnance Survey 2nd Edition 1:2500 Derbyshire Sheets 31:8 & 31:4 circa 1898

The whole of Littlewood Lane is shown between solid lines and is named. There is a footpath marked which appears to end at Littlewood Lane which could infer that the lane carried Footpath status or higher. Outgang Lane is named and is shown predominantly between solid lines but with sections of dotted lines. It too is joined by a 'footpath' which again could infer footpath or higher status.

2.31 Ordnance Survey later Editions

The claimed routes are shown on later plans consistent with the second edition and they offer no further information.

Additional Evidence – Site visit

2.32 Outgang Lane. The whole route is tarmacked with road markings; its appearance is no different to the local road network. The route passes between the mills and continues into Nottinghamshire. In Nottinghamshire this and other routes are signposted with the destination, distance and a bicycle symbol. There are barriers and signs on the route which prevent free vehicular access and which direct pedestrians and cyclists through gaps at the side; this could be taken as a sign of dedication by the landowner.

2.33 Littlewood Lane. The southern end of Littlewood Lane, where it meets Northfield Lane in Nottinghamshire is recorded as a bridleway. The northern end, near Shirebrook in Derbyshire, is accessed from Wood Lane at the junction with Meadow Lane; Meadow Lane and Wood Lane are both recorded as adopted highway. Littlewood Lane is a stone and mud track which also provides access to Littlewood Farm. It is of single track width with verges and is bounded by hedges. The route continues past Littlewood Farm to the County boundary at a bridge over the river and continues in Nottinghamshire. There are some curb-height natural stone blocks which have been placed around the outer curve of the access to Littlewood Farm which would not hinder use by cyclists or equestrians in any way.

Summary and conclusion

2.34 The test which has to be applied when considering the upgrading of a route on the Definitive Map and Statement under s53(3)(c)(ii) is on the balance of probabilities:

2.35 The earliest document which records the claimed route is 'Sanderson's Map – Twenty Miles round Mansfield 1835' and the routes have been recorded consistently since that date. Although the routes are shown on the Ordnance Survey (OS) maps and appear to carry at least footpath status, OS maps are not a record of the status of rights of way; they only show 'what is on the ground'. Both the claimed routes are recorded as Footpaths on the Definitive Map and Statement and the Parish Claims offer no evidence of anything different.

2.36 There has been no opposition to the claims to upgrade the footpaths to bridleways. As the routes are already recorded as footpaths, the barriers to vehicular use could not prevent pedestrian access. In this case, signs next to the barriers indicate that access with bicycles is also permitted. When considering whether a landowner is deemed to have dedicated a BW or RB, it has been considered by Carnwath, LJ (see paragraph 3.12) that it would be appropriate to infer the form of dedication by the owner that is least burdensome to him, which would be a bridleway. In this case the positioning of barriers would prevent the use of horse and cart as well as motorised traffic and so a bridleway would appear more suitable.

2.37 Outgang: Five users claim to have ridden the route on horseback for a period of twenty years or more and one for 19 years while 41 users claim cycle use for 20 years or more throughout the claim period.

Littlewood: Four users claim to have ridden the route on horseback for a period of twenty years or more and two for 19 years while 21 users claim cycle use for 20 years or more throughout the claim period.

The majority of the witnesses have seen other people using the routes on horseback and so there is sufficient evidence to suggest that the general public, without specific knowledge of the routes' statuses, would in all likelihood presume the routes to be bridleways.

2.38 Current case law suggests that regular use of a route by horse riders and cyclists is consistent with presumed dedication of the route as a bridleway because cyclists have been able to use bridleways since 1968 (see below).

3. Considerations

Legal and Human Rights Considerations

3.1 Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified 'events'. These events include:

- 3.2** (1) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates (section 53(3)(c)(i)); and
- 3.3** (2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance on probability that that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 3.4** Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public “as of right” and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public “as of right” means use by the public without force, without secrecy or permission.
- 3.5** Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public right to use the way is brought into question.
- 3.6** Section 31(3) provides that a notice erected on site by an owner of land over which a way passes in a manner visible to persons using the way, and maintained by him is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate the way as a highway.
- 3.7** Section 31(6) provides that an owner may provide sufficient evidence to show of his lack of intention to dedicate by depositing with the Council a map and statement showing any ways over the land he admits to having been dedicated as highways and denying the existence of other ways over it and then lodging statutory declarations to deny the addition of any ways at intervals of not less than 10 years. This will be, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any additional way as a highway.
- 3.8** A House of Lords legal judgement in 2007 (the ‘Godmanchester’ decision) has clarified what other evidence could be evidence of “no intention to dedicate” for the purpose of section 31(1). The evidence can relate to just one point in time during the period of enjoyment, ‘during’ in the context of section 31(1) need not be throughout the whole period. ‘Intention’ in this context means what the relevant audience (the users of the way) would reasonably have understood the landowner’s intention to be. A letter from the landowner to his

own solicitor or estate agent would not be enough; some element of communication to users of the way of an absence of intention by the owner to dedicate must be shown. In terms of section 31(1), an act by an owner which demonstrates 'no intention ... to dedicate' is likely in practice also to amount to an event which 'brings the public right of way into question'.

- 3.9** In brief, unless evidence is provided of one or more specific steps having been taken by a landowner within the period to communicate overtly to the public using the route that (s)he does not intend to grant a public right of way over it, the presumption of dedication will arise under section 31(1) where there is a full period of 20 years of uninterrupted public use, calculated from the date when the public right to use the way is brought into question.
- 3.10** Where there is insufficient evidence to establish a presumption to dedicate under section 31(1) of the Highways Act 1981, there is sometimes sufficient evidence to establish an inference of dedication by the landowner under common law. In the case of *Nicholson v Secretary of State for the Environment* (2006), Dyson J stated: "*Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication...*". No minimum period of use is required to raise such an inference, but there must be evidence which is sufficient to infer that there was an intention to dedicate a public right of way.
- 3.11** Section 30(1) of the Countryside Act 1968 provides that any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway.
- 3.12** In *Whitworth v Secretary of State for Environment, Food and Rural Affairs* ([2010] EWCA Civ 1468) the Court of Appeal concluded that the route under consideration in that case had acquired bridleway status by 1968. Subsequent use of the route by cyclists would have been permitted by the Countryside Act 1968 and the route had no higher rights than those of bridleway. Carnwath LJ expressed the opinion that the same conclusion would have been reached even if there had been no finding of pre-existing bridleway rights and that although, use by horse riders and cyclists was also consistent with an assumed dedication as a restricted byway, it was appropriate to infer the form of dedication by the owner that is least burdensome to him.

Other Considerations

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

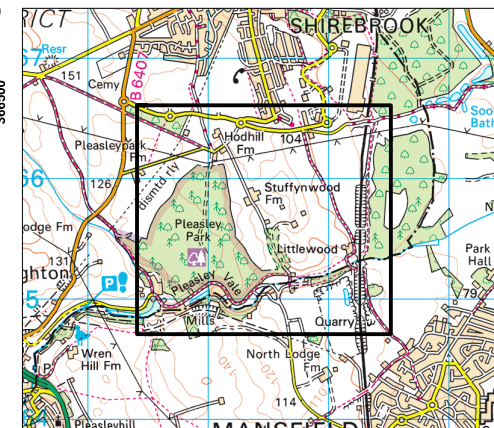
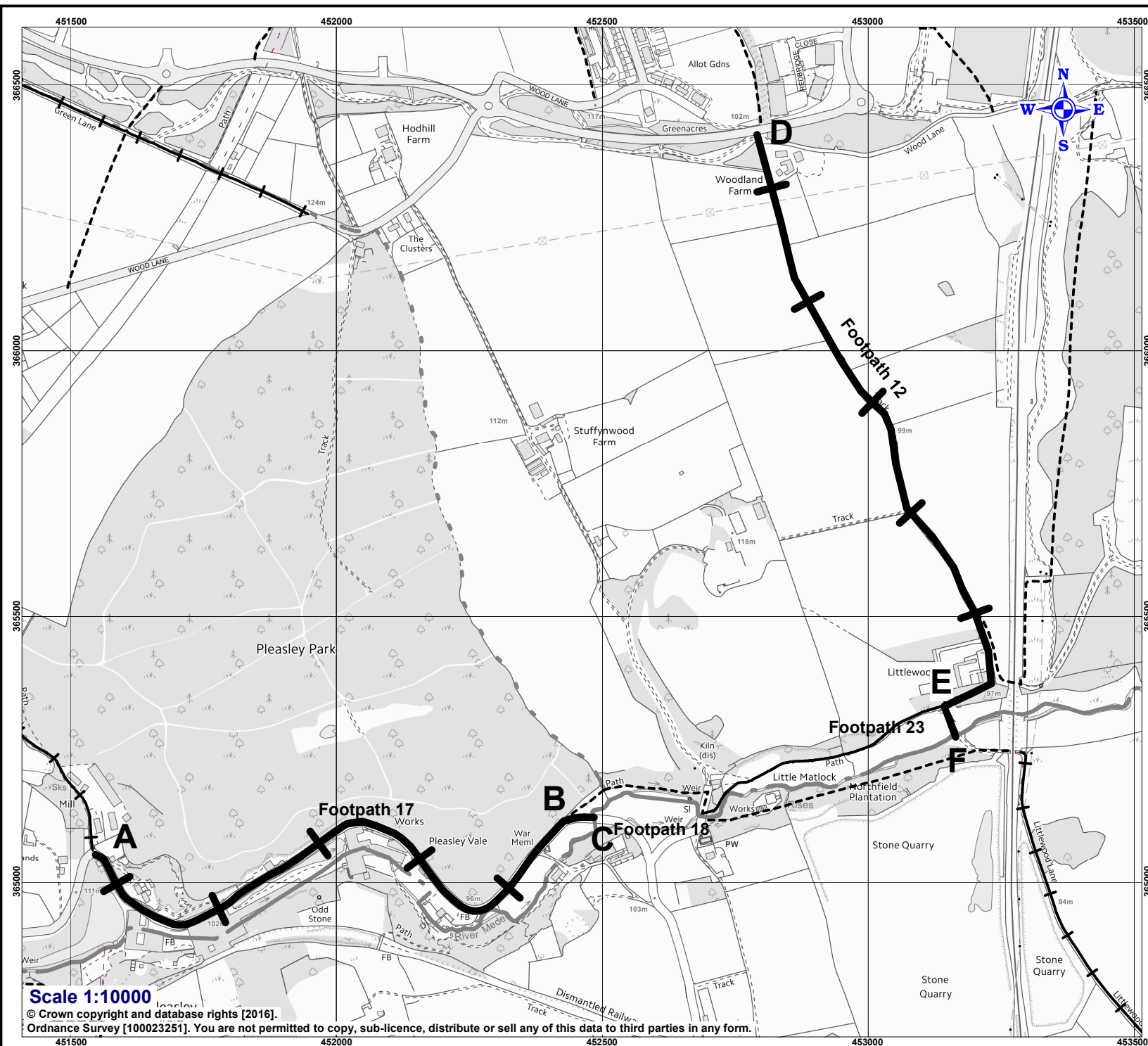
4. Background Papers

Files held by Legal Services (ref. 58432 & 58433).

5. OFFICER'S RECOMMENDATION

That the Committee resolves to authorise the Director of Legal Services to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement by upgrading to bridleway, Public Footpath Nos. 17 (part) & 18 in Pleasley and 12 (part) & 23 in Shirebrook which are shown between Points A-B-C and D-E-F respectively, on the plan attached to this report.

Chief Officer



Wildlife & Countryside Act S53
Claim to Upgrade Public Footpath
Nos. 17 (part) and 18 - Parish of
Pleasley and Public Footpath
Nos. 12 (part) and 23 - Parish
of Shirebrook to a Public
Bridleway

KEY	
Claimed bridleway	
Existing bridleway	
Parish Boundary	
County Boundary	

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