

DERBYSHIRE COUNTY COUNCIL

REGULATORY LICENSING AND APPEALS COMMITTEE

15 January 2018

REPORT OF THE DIRECTOR OF LEGAL SERVICES

**Section 53 Wildlife and Countryside Act 1981
The Derbyshire County Council (Public Bridleway No. 18 (Part) and
Public Footpath No. 31 (Part) – Parish of Bradwell) Modification Order
2010**

**Section 25 Highways Act 1980
Creation of Public Bridleway at Public Bridleway No. 18 – Parish of
Bradwell**

**Section 26 Highways Act 1980
Creation of Public Footpath at Public Bridleway No. 18 – Parish of
Bradwell**

**Section 118 Highways Act 1980
Extinguishment of Public Bridleway No. 18 (Part) – Parish of Bradwell**

(1) **Purpose of Report** To seek authority for the Director of Legal Services not to pursue confirmation of the Definitive Map Modification Order (DMMO), to enter into a creation agreement with the landowner to create a Public Bridleway, to make a Creation Order to create a Public Footpath and to make an Extinguishment Order to extinguish a section of Public Bridleway No 18 at Bradwell Edge in the Parish of Bradwell.

(2) **Information and Analysis** In March 1997 a consultation exercise was carried out by the County Council's Rights of Way Section in order to try and gather as much information as possible about the origins and subsequent history of the route. It stated that it had been brought to the attention of the County Council that there was a possibility that the rights of way should run along a different alignment to that shown on the Definitive Map and Statement and therefore required further investigation.

The consultation stated that part of Public Bridleway No 18 in the Parish of Bradwell was shown on the Definitive Map for the former Rural District of Bakewell along the line shown on the attached plan (Appendix 1) between Points A-D-E-C and between Points F-G. However, the 1820 Bradwell

Inclosure Map showed the route to run between Points A-B-C, which roughly followed the hollow way on the ground. The Inclosure Award described the route as a Bridle, Foot and Drift way being 10 feet wide.

Burdetts map 1762 and Greenwoods Map 1824 showed the bridleway as a Cross Road. The term 'Cross Road' was used on the key of earlier published maps and referred to a connecting route between more major routes. The Tithe map also showed a route to run similar to that shown by these maps, owing to the scale and inaccuracies of drafting, these routes do not correspond identically with the hollow way on the ground.

The Inclosure Map and Bradwell Tithe Map also showed the alignment of the bridleway to run from Points F-H at Alderdale Gate. This followed the route that appears to have been used on the ground.

A footpath was also claimed between Points A-D-E-C and documentary evidence suggested that between Points A-D-E the route was part of the main footpath from Bradwell to Abney. Site evidence suggested that this section was unusable as a public bridleway. This right of way was claimed at the time of the original parish survey possibly because the bridle, foot and drift way referred to in the Inclosure Award (A-B-C) had fallen into disuse and had been overlooked. As a result it was considered that the section of bridleway between Points A-D-E-C should be downgraded to a footpath.

It was therefore concluded that a Definitive Map Modification Order should be made to add the bridleway between Points A-B-C and F-H, to downgrade the section of bridleway between Points A-D-E-C to a footpath, and to delete the bridleway between Points F-G on the Definitive Map and Statement for the former Rural District of Bakewell.

The matter was reported to the Environmental Services Countryside and Access Sub-Committee on 01 July 1997. At that meeting it was resolved, in accordance with the officer recommendation to make the Order

The Order was made on 16 September 2010 (Appendix 2). It was published in the local press and posted on site on 23 September 2010, and sent to relevant interested parties on 21 September 2010. Two objections were received to the making of the Order.

Objections received following the making and advertising of the Order

An objection was received from Rhoda Barnett on behalf of the Peak and Northern Footpaths Society on the grounds summarised below

- That although there does appear to be some documentary and physical evidence that the line of the bridleway does follow the line A-B-C and on to F as on the order plan, it was not felt that the

evidence had been discovered since the previous definitive map and statement were prepared as required by s53(3)(c)(i) Wildlife and Countryside Act 1981.

- That the Inclosure Award relied upon to add the bridleway rights over A-B-D-E-C does not have the power to create the highway.
- There appears to be no “discovered” evidence that public bridleway rights over A-D-E-C do not exist and that no public rights at all exist over the line F-H.
- The modification order does not extend the line of Footpath 31 north-westwards to join the line of Bridleway 18 A-B-C which it should do if the evidence of the Inclosure Award is relevant.
- Concern that the Order was made without recent authority and was therefore not assessed in the light of current law.

An objection was received from Alan Kind on the grounds summarised below

- The proposal to add a bridleway on line ABC and to downgrade a bridleway on line ADEC has an internal conflict as bridleway rights already exist.
- That F-G does not meet the stringent evidential tests.

Following re-investigation of the evidence it has been found that there is substance in the objections received and the Order is incapable of being confirmed, it is therefore intended that the Order be submitted to the Secretary of State for determination with a request not to confirm the Order.

It is felt that due to the steepness of the route, part of the current bridleway is unsuitable for use by horses and cyclists, and therefore the landowner is keen to provide safer routes for all users.

In order to do this it is proposed that Derbyshire County Council;

- (i) Enter into a Creation Agreement with the landowner under s25 of the Highways Act 1980

To create 297 metres of Public Bridleway on land at Bradwell Edge, as shown between Points A-B-C on the attached plans (Appendix 3). The bridleway shall have a natural ground surface and a recorded width of 3 metres

- (ii) Make a Creation Order under s26 of the Highways Act 1980

To create 258 metres of Public Footpath on land at Bradwell Edge, as shown between Points A-D-E-C. The footpath will have a natural ground surface and a recorded width of 2 metres

(iii) Make an Extinguishment Order under s118 of the Highways Act 1980

To extinguish the whole width of that part of Public Bridleway No 18 as shown between Points A-D-E-C

The Creation Agreement would be brought into effect with the Creation and Extinguishment Orders then to be made concurrently.

No objections were received to the proposed creations and extinguishment when informal consultation was carried out on 21 November 2017. Councillor Judith Twigg (the Local Member) and Bradwell Parish Council, Derbyshire Dales District Council, and the Peak District National Park Authority have been consulted.

Peak and Northern Footpath Society responded to the consultation stating

"We welcome the proposals, since walkers would benefit as they would have a choice of two routes, one steeper than the other, but with no possibility of conflict with cyclists and horse-riders".

The British Horse Society responded to the consultation stating

"Thank you for consulting the British Horse Society about the above public bridleway.

On behalf of the BHS I wish to record our full support for this proposal which will benefit equestrian users of the rights of way network. The existing bridleway is very difficult if not impossible to use on horseback (because of trees and steep gradients) and therefore the proposed creation and extinguishment will enable riders to better connect to the wider network".

Bradwell Parish Council responded to the consultation stating

"The parish council is comfortable with this proposal and is content for you to proceed".

Peak Horsepower Bridleways Group responded to the consultation stating that they are fully in favour of the proposals.

(3) **Financial Considerations** Derbyshire County Council has agreed in writing to defray all of the costs in respect of making and advertising the agreements and orders. This includes officer time in processing the application which is estimated to be in the region of £2000.00 and will be met from the existing rights of way revenue maintenance budget

(4) **Legal Considerations** Derbyshire County Council may enter into a Public Path Creation 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 under Section 25 of the Highways Act 1980.

The Creation Order can be made by the County Council under Section 26 of the Highways Act 1980 provided that it is satisfied that:-

Where it appears to a local authority that there is need for a footpath or bridleway over land in their area and they are satisfied that, having regard to—

- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
- (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below,

it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.

Reasons

The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

The created section of footpath would provide a safer route for pedestrians as the footpath status would remove the risk of conflict between them, and horses and cyclists on a steep embankment, whilst maintaining a convenient link with the adjoining footpath Public Footpath No 31.

The proposed creation would add to the convenience and enjoyment of the route by the public as a whole.

The effect which the creation of the path or way would have on the rights of persons interested in the land

The landowner instigated the proposal to provide safer routes for all users. The landowner is to enter into a creation agreement to create the section of bridleway and has also consented to the creation of this section of footpath on their land.

- (1) Where it appears to a council as respects a footpath or bridleway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.
- (2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

Whether it is expedient to make the Order

This existing section of bridleway is not suitable for use as a bridleway and an alternative bridleway on a safer alignment is to be created adjacent to this route. It is therefore felt that the existing section of bridleway will no longer be needed for use by the public.

It is felt that the proposal will provide more convenient and safer routes for use by the public as a whole.

(5) **Environmental and Health Considerations** Consideration has been given to the County Council's Rights of Way Improvement Plan in considering this application and preparing this report.

(6) **Other Considerations** In preparing this report the relevance of the following factors has been considered; social value, property, prevention of crime and disorder, equality of opportunity; and environmental health, property and transport

(7) **Background Papers**

Files held by Legal Services (References 882, 72090, 72091 and 72092).

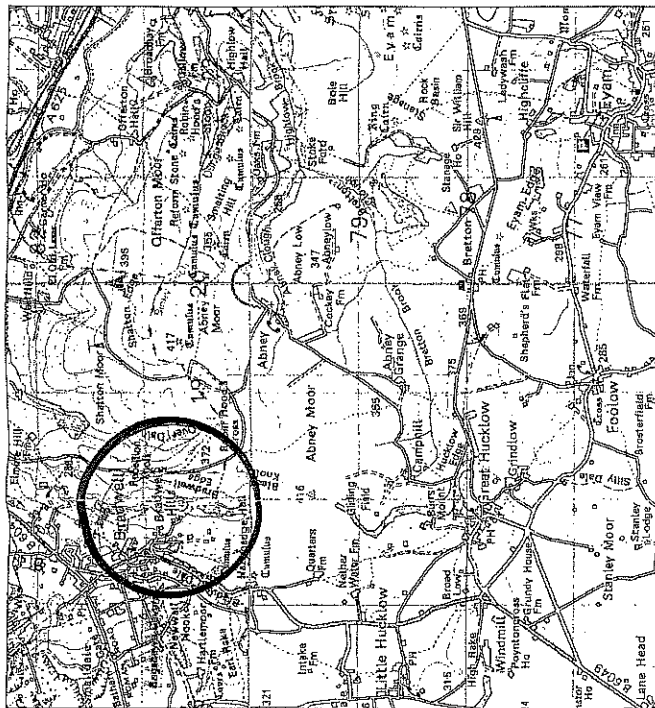
(8) **Key Decision** No

(9) **Call-In** No

(10) **Officer Recommendation** That:-

- 10.1 The Director of Legal Services be authorised not to pursue confirmation of the Definitive Map Modification Order made 16 September 2010 entitled The Derbyshire County Council (Public Bridleway No. 18 (Part) and Public Footpath No. 31 (Part) – Parish of Bradwell) Modification Order 2010 and to submit the Order to the Secretary of State with a request not to confirm the Order.
- 10.2 The Director of Legal Services be authorised to enter into a creation agreement with the landowner to create a section of Public Bridleway under s25 Highways Act 1980, to make a creation order to create a section of Public Footpath under s26 Highways Act 1980 and to make an extinguishment order under s118 Highways Act 1980.
- 10.3 Should objections be received to the making of the Orders that cannot be resolved then the matter be forwarded to the Secretary of State for determination.

John McElvaney
Director of Legal Services



KEY

Bridleway to be Added

Public Bridleway to be Downgraded to Public Footpath

Bridleway to be Deleted

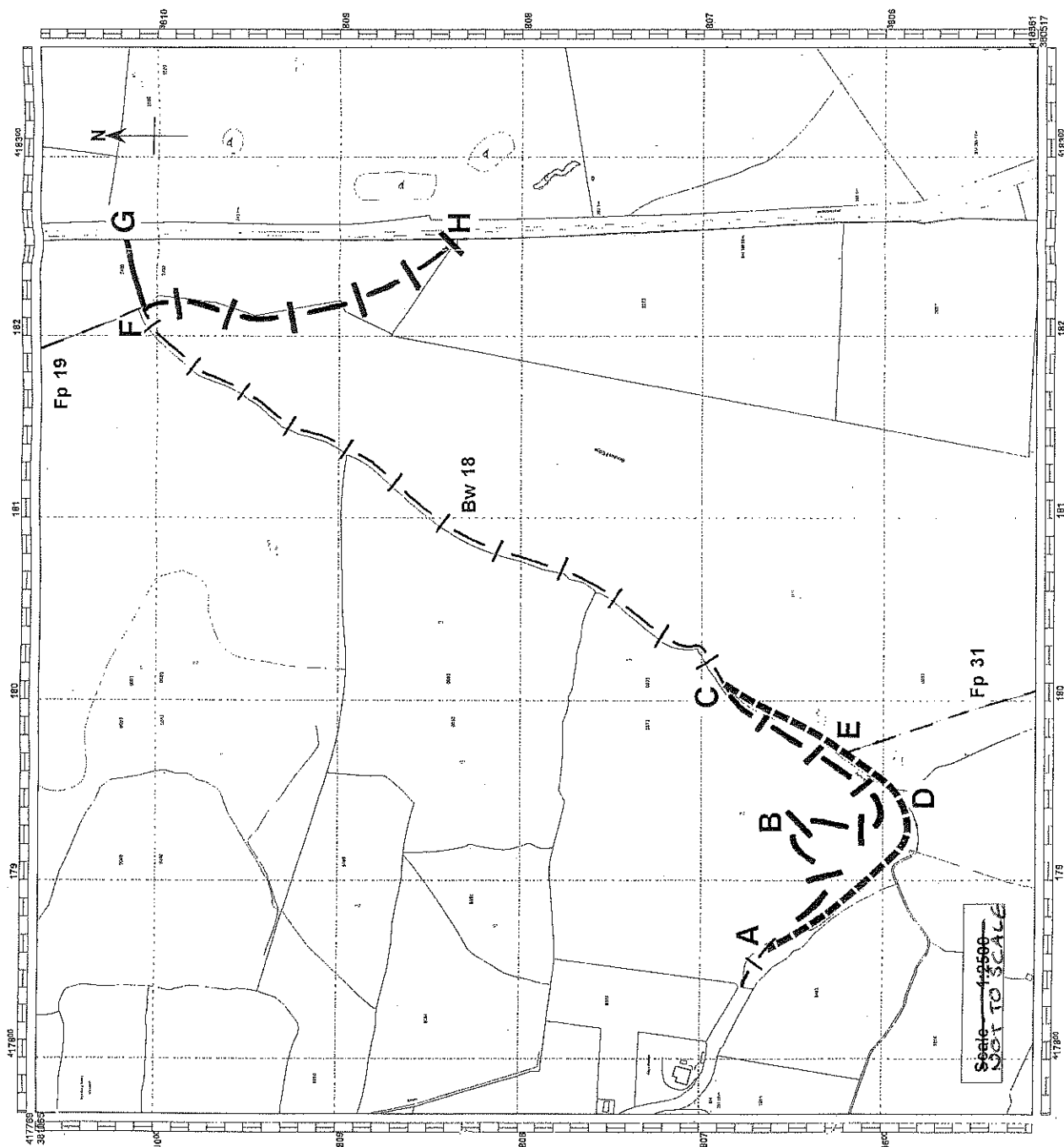
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LOCAL AUTHORITY LICENCE NUMBER LA 076554

Plan Ref: **PLAN1/MHWD17(18,31)Consult**

Produced by Public Rights of Way
Environmental Services Department
Telephone (01629) 580000
Fax (01629) 585119



Wildlife and Countryside Act 1981 Section 53

Proposed Modification to Public Rights of Way - Public Bridleway No 18 (part) and Public Footpath No 31 (part) - Parish of Bradwell

David Harvey
Director of Environmental Services
County Hall
MATLOCK
Derbyshire

DERBYSHIRE
County Council
We're proud of Derbyshire.

DATED

16 SEPTEMBER

2010

WILDLIFE AND COUNTRYSIDE ACT 1981

DEFINITIVE MAP AND STATEMENT FOR
THE COUNTY OF DERBYSHIRE

THE DERBYSHIRE COUNTY COUNCIL (PUBLIC BRIDLEWAY NO. 18
(PART) AND PUBLIC FOOTPATH NO. 31 (PART) - PARISH OF
BRADWELL) MODIFICATION ORDER 2010

CASE NO: 882
DMMO NO: X02885

JOHN McELVANEY
MATLOCK

WILDLIFE AND COUNTRYSIDE ACT 1981

DEFINITIVE MAP AND STATEMENT FOR THE COUNTY OF DERBYSHIRE

THE DERBYSHIRE COUNTY COUNCIL (PUBLIC BRIDLEWAY NO. 18 (PART) AND PUBLIC FOOTPATH NO. 31 (PART) - PARISH OF BRADWELL) MODIFICATION ORDER 2010

This order is made by Derbyshire County Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the Definitive Map and Statement in respect of the Parish of Bradwell require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i), (ii) & (iii) of the Act, namely, the discovery by that authority of evidence which when considered with all other relevant evidence available to them shows that the right of way referred to in this order which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates and that the highway referred to in this order and 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 and that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The authority has consulted with every local authority whose area includes the land to which the order relates. The Derbyshire County Council hereby order that:

1. For the purpose of this order the relevant date is 15th September 2010.
2. The Definitive Map and Statement for the County Of Derbyshire for the Parish of Bradwell shall be modified as described in Part I and Part II of the Schedule and shown on the map to the order.
3. This order shall take effect on the date when it is confirmed and may be cited as the Derbyshire County Council (Public Bridleway No. 18 (part) and Public Footpath No. 31 (part) - Parish of Bradwell) Modification Order 2010.

SCHEDULE

PART I

Modification of Definitive Map

Section as indicated on map	Description of Path or Way to be added
A - B - C	Bridleway No 18 in the Parish of Bradwell from Point A (Ordnance Survey Grid Reference "GR") (GR SK 1786 8066) proceeding in a generally south easterly then north easterly direction to Point B (GR SK 1791 8066). Then turning in a generally southerly direction then generally north easterly direction to Point C (GR SK 1800 8068) a distance of 245 metres or thereabouts. The width of the path shall be 3 metres.

F - H	<p>Description of Path or Way to be added</p> <p>Bridleway No. 18 in the Parish of Bradwell from Point F (GR SK 1821 8100) proceeding in a generally south south easterly, then south south westerly then in a south south easterly direction to Point H (GR SK 1824 8083), a distance of 183 metres or thereabouts. The width of the path shall be 3 metres.</p>
A - D - E - C	<p>Description of Public Right of Way to be downgraded to Footpath</p> <p>That part of Bridleway No. 18 in the Parish of Bradwell from the aforementioned Point A (GR SK 1786 8066) proceeding in a generally south easterly, then easterly direction to Point D (GR SK 1793 8058). Then in a generally north easterly direction through Point E (GR SK 1796 8061) to the aforementioned Point C (GR SK 1800 8068), a distance of 235 metres or thereabouts. The width of the path shall vary between 2 and 3 metres.</p>
F - G	<p>Description of Public Right of Way to be deleted</p> <p>The full width of that part of Bridleway No. 18 in the Parish of Bradwell from the aforementioned Point F (GR SK 1821 8100) proceeding in a generally north north easterly direction to Point G (GR SK 1824 8105), a distance of 62 metres or thereabouts.</p>

PART II

Modification of Definitive Statement

Variation of particulars of Path or Way

Path No	1/10,000 OS Sheet Ref No	Status and Description of Route	Nature of Surface	Length	Width	Remarks
18	SK/18 SE	Bridleway from bridle gate at SE end of the adopted section of Edge Lane (GR SK 1784 8067) SE of Edge Cottage, climbing hillside through well defined holloway bounded by banks, in a SE then NE then S then NE direction to stone posts at junction with Footpath No 44. Then continuing NE along grass trackway cut into hillside on SE side of a dry stone wall to junction with Footpath No 19. Then continuing S then SSE along W side of dry stone wall to bridle gate, before	Natural ground Grass	845 metres	3 metres (10 feet as detailed in 1820 Inclosure Award)	<p>Fieldgate: GR SK 1824 8083</p> <p>3 bridle gates: GR SK 1784 8067 GR SK 1813 8089 GR SK 1821 8089</p> <p>Stone posts (gap): GR SK 1800 8068</p> <p>Modification Order 2010 DCC Ref: X2885</p> <p>Inclosure Award 1820</p>

continuing downhill
across open field to
field gate on W side
of Brough Lane (GR
SK 1824 8083) at
Alderdale Gate.

31	SK/18 SE	Footpath from junction with Bridleway No. 18 (GR SK 1786 8066) SE of Edge Cottage, in SE direction along grass track climbing steeply adjacent to hedgerow then dry stone wall. Then E then NE, continuing through stone squeeze stile and along level grass path to junction with Footpath No 44. Then turning sharply SSE and ascending hillside, following N side of dry stone wall in SE then ESE direction to the parish boundary with Brough and Shatton (GR SK 1824 8028) W of Robin Hood's Cross.	Natural ground Grass	637 metres	Varies between 2 and 3 metres	Stone squeeze stile: GR SK 1794 8059 Modification Order 2010 DCC Ref: X2885 Includes part of Bridleway No 18 downgraded to Footpath and renumbered as a result of this Order Inclosure Award 1820
4	SK/18 SE	Footpath from junction with Bridleway No 18 (GR SK 1800 8068) at stone posts, in a generally SW direction along level grass path with a width varying between 2 and 3 metres on SE side of dry stone wall, to junction with Footpath No 31 (GR SK 1796 8061) SE of Edge Cottage.	Natural ground Grass	82 metres	Varies between 2 and 3 metres	Modification Order 2010 DCC Ref: X2885 Formerly part of Bridleway No 18 downgraded to Footpath and renumbered as a result of this Order

THE COMMON SEAL of the Derbyshire)
County Council was hereunto)
Affixed the Sixteenth day of September)
Two Thousand and Ten)
in the presence of:-)

Karen Riley

~~Asst.~~ Director of Legal Services

Number in Seal
Book 2010 | 941



Wildlife and Countryside Act 1981 Section 53

The Derbyshire County Council
(Public Bridleway No 18 (part)
and Public Footpath No 31
(part) - Parish of Bradwell)
Modification Order 2010

KEY

- Bridleway to be added
- Bridleway to be deleted
- Bridleway to be downgraded to footpath
- Existing footpaths
- Existing bridleway

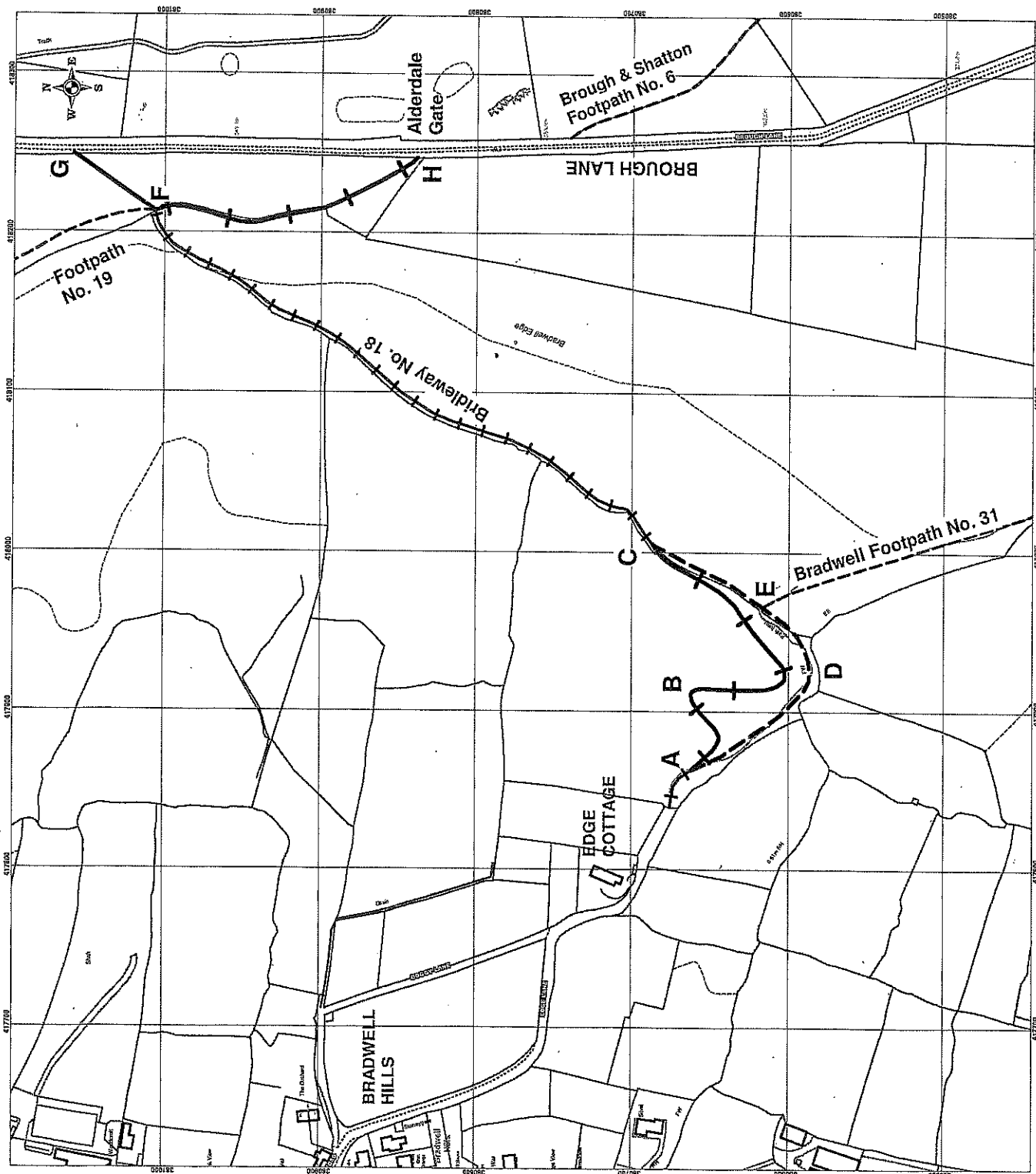
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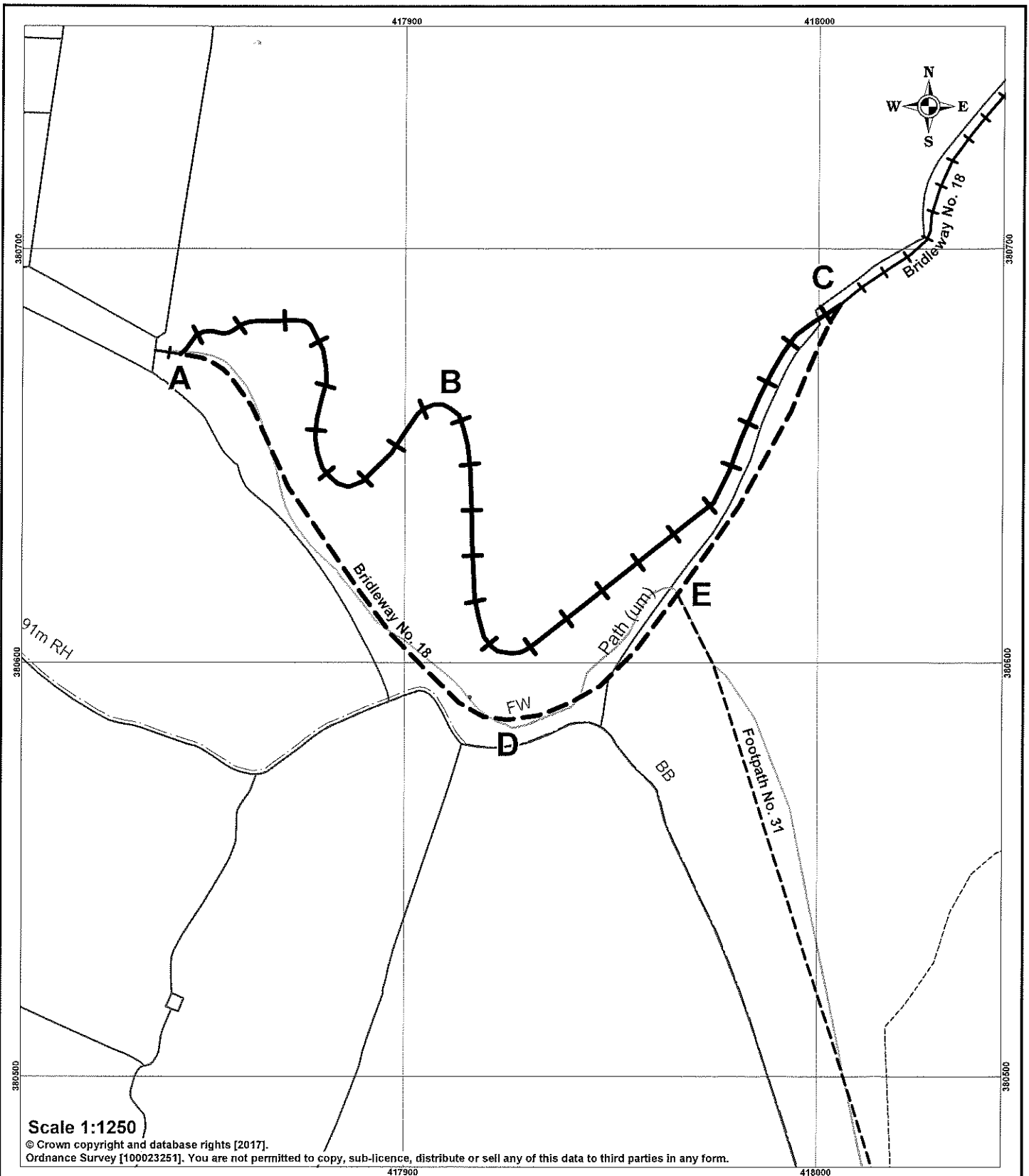
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Ref: TE/BS/X2885/Cttee/2018
Date: 5 January 2018



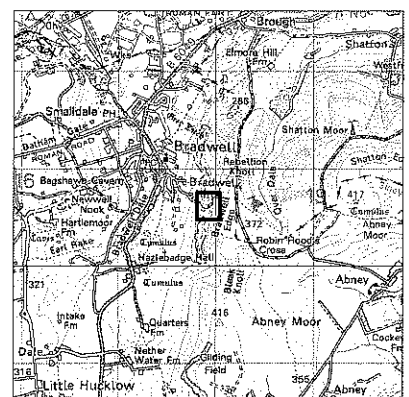
Mike Ashworth

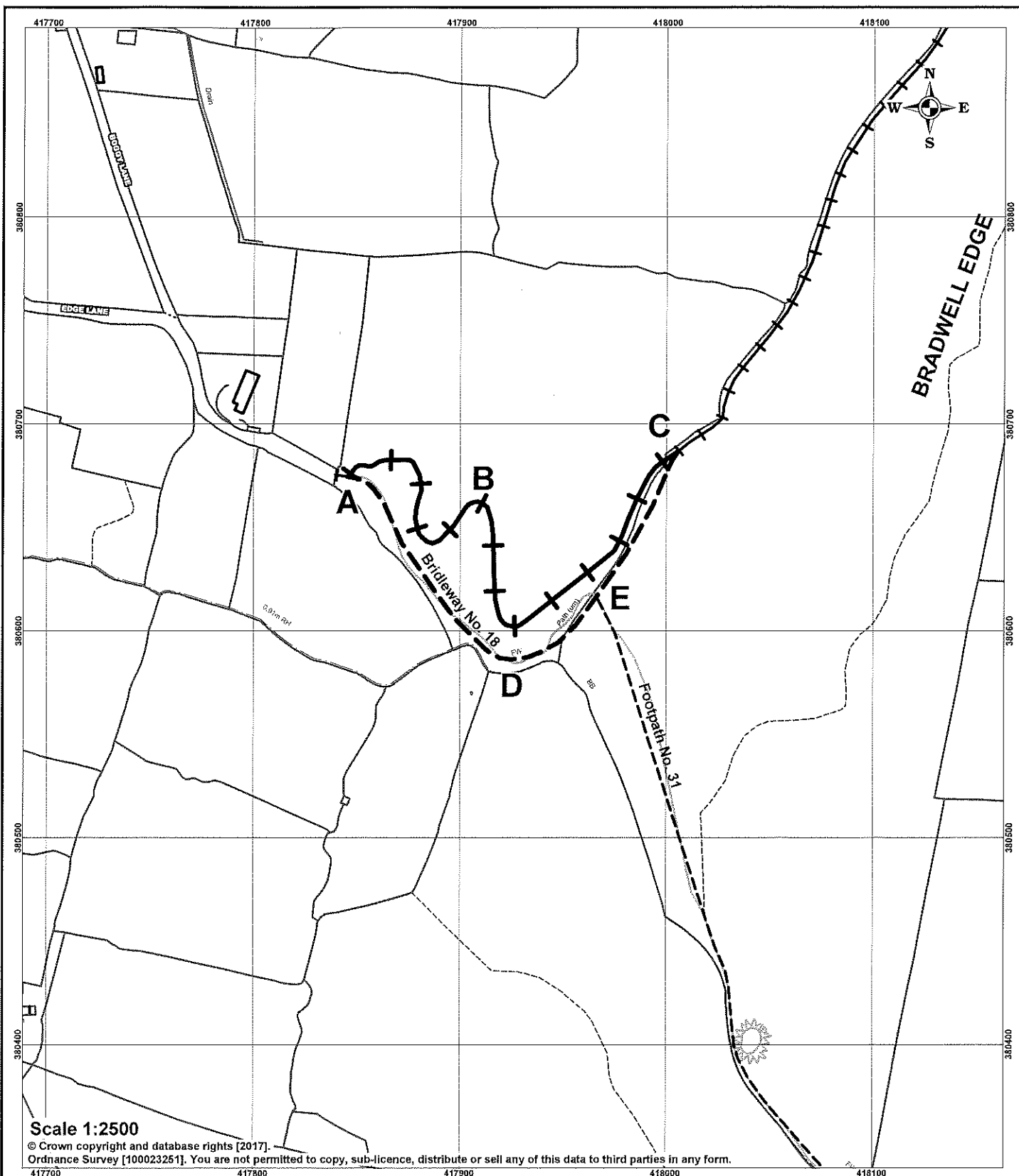
Strategic Director
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DE4 3RY

Highways Act 1980 sections 25 and 118

Proposed creation of sections of Public Footpath and Public Bridleway at Public Bridleway No. 18 and proposed extinguishment of Public Bridleway No.18 (part) - Parish of Bradwell

Key: Bridleway to be created	—+—+—+—
Bridleway to be extinguished	----
and Footpath to be created	----
Existing Footpath	----
Existing Bridleway	—+—+—+—
Parish boundary	----





Ref: TE/BS/X2885/Cttee/2018
 Date: 5 January 2018



Mike Ashworth
 Strategic Director
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Highways Act 1980 sections 25 and 118

Proposed creation of sections of Public Footpath and Public Bridleway at Public Bridleway No. 18 and proposed extinguishment of Public Bridleway No. 18 (part) - Parish of Bradwell

Key: Bridleway to be created	
Bridleway to be extinguished	
Footpath to be created	
Existing Footpath	
Existing Bridleway	
Parish boundary	

