

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

**15 JANUARY 2018**

**REPORT OF THE DIRECTOR OF LEGAL SERVICES**

**THE DERBYSHIRE COUNTY COUNCIL (FOOTPATH FROM THE  
JUNCTION OF HYDE BANK ROAD AND ST GEORGES ROAD TO PUBLIC  
BRIDLEWAY 180 – NEW MILLS) MODIFICATION ORDER 2012**

**1. Purpose of the Report**

Members are requested to note the submission of this Order to the Secretary of State and to determine the stance to be taken by the Council regarding the confirmation of the Order.

A copy of the Order is attached to this report.

**2. Information and Analysis**

- 2.1 On 02 September 2002 the County Council received an application from Susan Stevens, submitted on the headed paper of New Mills Town Council, to amend the Definitive Map and Statement by adding a bridleway between the Sett Valley Trail (BW 180) and St Georges Road/Hyde Bank Road (FP 141) in New Mills. The application was supported by 15 Public Way Evidence Forms, a plan showing the claimed route and five photographs.
- 2.2 A consultation exercise was undertaken between 02 February and 09 March 2007 in order to obtain relevant information regarding the origins and subsequent history of the route.
- 2.3 Following the consultation exercise a further 11 Public Way Evidence Forms were submitted in support of the application.
- 2.4 The application was reported for determination to the Council's Regulatory Licensing and Appeals Committee on 22 October 2012, where it was resolved, in accordance with the officer recommendation, to make an Order to add a footpath under S53 Wildlife and Countryside Act 1981.
- 2.5 The Order was made on 15 November 2012. The notice of the making of the order was posted on site on 16 January 2013, published in the

local newspaper on 17 January 2012 and sent to relevant interested parties on 15 January 2012. Two objections were received to the making of the Order. In cases where objections are received to an Order the matter may only be determined by the Secretary of State.

- 2.6 The Planning Inspectorate, who administers these matters, requires the Council, on submission of the Order, to state whether it supports the confirmation of the Order. The matter may thereafter be dealt with by way of written representations, a hearing or local public inquiry. Committee is requested to determine what stance the County Council is to take in this matter. Three options are available – to support the confirmation of the Order, to oppose it, or to take a neutral stance.

- 2.7 \*-The test which was applied when considering the application was that set out in s53(3)(c)(i) of the Wildlife and Countryside Act 1981 (WCA). This test can be expressed in two parts, which are considered in the alternative. That is:-

Test A – does a right of way subsist on a balance of probabilities? This test is satisfied by showing clear evidence in favour of the right of way and no credible evidence to the contrary.

Test B – is it reasonable to allege on a balance of probabilities that a right of way subsists? If there is a conflict of credible evidence and no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that a right of way does subsist.

- 2.8 Following initial investigation of the application the County Council were satisfied that an Order should be made on the basis that the requirements of Test B had been met.
- 2.9 However to confirm the Order the County Council must be satisfied that the requirements of Test A have been satisfied.
- 2.10 Re-examination of the evidence submitted in support of the application has revealed that although there appears to have been extensive use of the route by the public and photographic evidence that there was a used path on the ground it is felt that it is not possible to distinguish from the evidence provided whether there has been extensive wandering on the land as opposed to using the claimed route as a Public Footpath.
- 2.11 It is therefore felt that the County Council is unable to confirm the Order on the basis that objections have been received to the making of the Order and the County Council cannot be satisfied that the requirements of Test A have been satisfied.

### **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 through out 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: social value, 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**

Held in Legal Services on file 15742

## **5. OFFICER'S RECOMMENDATION**

That the Committee:

6.1 notes the submission of the Derbyshire County Council (Footpath from Public Footpath No 36 to Public Footpath No 37 – Parish of South Darley) Modification Order 2015 to the Secretary of State for determination; and,

6.2 approves the adoption of a neutral stance with regards to the Confirmation of the Order.

**John McElvaney**  
**Director of Legal Services**

**DATED**

**15 NOVEMBER**

**2012**

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**DEFINITIVE MAP AND STATEMENT FOR  
THE COUNTY OF DERBYSHIRE**

**THE DERBYSHIRE COUNTY COUNCIL (FOOTPATH FROM THE  
JUNCTION OF HYDE BANK ROAD AND ST GEORGES ROAD TO PUBLIC  
BRIDLEWAY 180- NEW MILLS) MODIFICATION ORDER 2012**

**CASE NO: 15742  
DMMO NO: X2730**

**JOHN McELVANEY  
MATLOCK**

## **WILDLIFE AND COUNTRYSIDE ACT 1981**

### **DEFINITIVE MAP AND STATEMENT FOR THE COUNTY OF DERBYSHIRE**

#### **THE DERBYSHIRE COUNTY COUNCIL (FOOTPATH FROM THE JUNCTION OF HYDE BANK ROAD AND ST GEORGES ROAD TO PUBLIC BRIDLEWAY NO. 180- NEW MILLS) MODIFICATION ORDER 2012**

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 New Mills require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) 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.

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

1. For the purpose of this order the relevant date is 14 November 2012.
2. The Definitive Map and Statement for the County of Derbyshire for New Mills 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 (Footpath from the junction of Hyde Bank Road and St Georges Road to Public Bridleway No. 180 - New Mills) Modification Order 2012.

### **SCHEDULE**

#### **PART I**

##### **Modification of Definitive Map**

Section as indicated on the map	Description of Path or Way to be added
<b>A-B-C</b>	Footpath in New Mills from Point A (Ordnance Survey Grid Reference ("GR") SK 0020 8586) proceeding in a generally east, north easterly direction to Point B (GR SK 0030 8588). Then in a generally north easterly direction and finally south easterly direction to Point C (GR SK 0046 8601), a distance of 314 metres or thereabouts.

## PART II

### Modification of Definitive Statement

#### Variation to add of particulars of Path or Way

Path No	1/10,000 OS Sheet Ref No	Status and Description of Route	Nature of Surface	Approx. Length	Approx. Width	Remarks
195	SK08NW	Footpath from junction of Hyde Bank Road and St Georges Road (GR SK 0020 8586), in ENE direction passing the southern boundary of Salem Cottages for a distance of 104 metres. Then NE crossing land to the east of the River Sett for a distance of 210 metres and finally turning SE to junction with Bridleway No. 180 (GR SK 0046 8601) on the Sett Valley Trail.	Grass Natural ground	314 metres	2.0 metres	Modification Order 2012 DCC Ref: X2730

THE COMMON SEAL of the Derbyshire )  
County Council was hereunto )  
Affixed the Fifteenth day of November )  
Two Thousand and Twelve )  
in the presence of:- )

  
Director of Legal Services

Number in Seal  
Book, 2012/1187





**Wildlife and Countryside Act 1981 S.53**

**The Derbyshire County Council**  
**(Footpath from the junction of**  
**Hyde Bank Road and**  
**St Georges Road to Public**  
**Bridleway No. 180 - New Mills)**  
**Modification Order 2012**

**KEY**

- Footpath to be added ———
- Existing bridleway —+—+—
- Existing footpath - - - - -



**DERBYSHIRE**  
 County Council  
 Improving life for local people

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Produced by Public Rights of Way on 21 September 2012  
 Ref: PE/GM/X2730/Order/2012

