

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

**15 January 2018
Report of the Director of Legal Services**

**Wildlife and Countryside Act 1981
Claim to Upgrade to Bridleway Public Footpath Nos. 4, 54, 5 (Parts) and
55 – Taddington.**

1. Purpose of the Report

To enable Members to determine an application to amend the Definitive Map and Statement by upgrading to bridleway, public footpath nos. 4, 54, 5 (Parts) and 55 in the Parish of Taddington.

2. Information and Analysis

2.1 On 13 August 2014 Alison Turner submitted an application to the Council to upgrade FP Nos. 4, 54, 5 (Parts) and 55 in the Parish of Taddington to bridleway. The application is accompanied by 15 user evidence forms (UEFs) and two photographs of a woman riding a horse on the route approximately 30 years ago.

2.2 A plan showing the claimed route is attached (Appendix 1).

2.3 The claimed route is recorded on the Definitive Map & Statement as footpaths which are publically maintainable. The route is approximately 1550 metres long and the whole route is bound by dry-stone walls; its appearance is that of single farm track.

User Evidence

2.4 There have been no specific actions that have brought use of the route on horseback into question and so for the purpose of this report the date on which the application was submitted has been taken to be the date use of the route was brought into question, which was August 2014. However, all of the UEFs were completed in October or November 2013. Therefore the period of user evidence under consideration for the purposes of this report is the 20 year period from 1993 to 2013 (i.e. Oct/Nov 2013 when the UEFs were completed).

2.5 Of the 15 witnesses, all 15 have used the claimed route on horseback during the period under consideration (three of whom have used the route on a bicycle and 11 on foot as well); seven for the whole 20 year period (three for more than 30 years), two for 19 years of this period, one for 12 years and five for less than 10 years. The user evidence on horseback covers the years from 1976 to November 2013 with the longest user claiming use for 38 years.

2.6 Fourteen witnesses have seen other users on horseback and three on pedal cycle.

2.7 Of the 15 witnesses who have used the route on horseback one claims to have used the route daily, one several times a week, six weekly, two monthly, four less than monthly and one user states she used it daily when living in the village but now, every few weeks.

2.8 Descriptions of the width of the route varied between 5 and 9 feet or 2 and 4 metres. One user describes the route as 'car width' another as 'single track', another as 'variable', another as 'enough for a car' and five give no indication of the width.

2.9 All the UEFs have the route marked on them in a green highlighter pen which suggests the Applicant has marked the plans rather than the users themselves. Six of the users have failed to describe the route on the UEFs, one of whom has no plan attached to his UEF. Although the descriptions of the route are generally vague, the route itself is a well-defined track bound by walls and so is clear on plans and on the ground.

2.10 None of the users report seeing any stiles or gates 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.

2.11 Seven witnesses refer to notices on the route that prohibit motorised vehicles from using the lane.

Consultation

2.12 An informal consultation exercise was carried out between 08 June 2015 and 13 July 2015. Notices were placed on the routes and letters were sent to the statutory consultees, adjacent landowners (the route itself is unregistered) and the local elected member, Cllr Simon Spencer.

2.13 There were three objections received in response to the consultation while the Peak and Northern Footpaths Society emailed to confirm they had no evidence to support or rebut the application but felt that use "as a bridleway would not have been a nuisance to walkers" and the Derbyshire Dales Ramblers emailed to state they had no objection.

2.14 An email was received dated 06 July 2015 from a Senior Partner/Group Secretary of NFU Mutual. The email raised the objections of a landowner, specifically to FPs 4 and 5 which "run directly through meadows..." adding that "there is sufficient bridleway... along the section you note on your map, being point A to point B" (Point A-E on the attached plan). He continues to describe FP 55 as "an old lane or track... (that) provides adequate resource for horse owners to utilise".

The objector appears to have misunderstood the application and objects to the entire length of FPs 4 and 5 being upgraded to BW while indicating that they believe the claimed route is already a bridleway from point A to Point E.

2.15 Taddington Parish Council sent an email on 12 July 2015 raising concerns about the application. The emails states that all the members of the Parish Council walk the route regularly and have seen no evidence of regular use by horses or cycles (droppings or tracks) except by landowners (and associates) to access their land or use by the Peak Hunt, believed to be by consent. They note that the route terminates at the A6 and “no-one has seen horses riding along the A6 or a horsebox parked” by the path and that the route is a popular walking route “precisely because it is not haunted by horses and cyclists”. The Parish Council believe the paths are access lanes not intended for horses and cyclists. They also state that an upgrade to bridleway “can only be by undertaking improvements that will have a harmful effect on the locality and local ecology”.

2.16 A local resident sent a letter dated 09 July 2015 offering the following information and objections.

Information:

- Existing FP crosses quiet farmland and connects an existing BOAT and Taddington Bypass
- The path has a narrow middle section and wider sections at each end affording access to farm vehicles only
- The middle section has for many years been used as FP only and is lined with wild flowers and grasses, waist height in spring and summer and has become a corridor for wildlife

Objections:

- Entry or exit from the A6 would be extremely dangerous due to fast moving traffic. There is no footpath on the northern side of the bypass, the central reservation is narrow and not sufficient to provide refuge to horses or cycles. “Escape from the A6 via a footpath directly opposite... would not be available for cycles and horses as this footpath is not subject to the claim”
- An alternative BW from A6 to Priestcliffe already exists in close proximity
- Proposed upgrade could lead to parking on the A6 verges
- There are sufficient alternative bridleways and BOATS in the vicinity and the “introduction of further cycle routes would damage the current valued solitude, quiet and environment of the area. Any physical upgrading of the path would similarly be detrimental and an unnecessary waste of resources”
- “There has been no local request for upgrading or attempted routine use other than as a footpath”

Documentary Evidence**2.17 Taddington and Priestcliffe Enclosure Plan and Award 1793**

A single line marks the plan generally in line with the claimed route. Although none of the claimed route is named, the westerly continuation from Point B, of what is now FP54 is named 'Wallcliff Road' and FP 56, north of Point B is named 'Stopes Mere Road'. The road now known as Broadway Lane is named further NW as 'Middle Lees Road'.

The Award sets out both 'Wallcliff Road' and 'Stopes Meer Road' as private carriage and drift roads. The hereditaments adjacent to the claimed route were found in the Award and one large plot, No.125A mentions a road but does not name it or refer to any status. The western side of plot 125A is bounded by 'Ditch furlong Road' and it is likely that this is the road referred to in the Award.

2.18 Taddington and Priestcliffe Tithe Plan and Award 1848

The claimed route is clearly shown on the Tithe plan between solid lines and coloured yellow as are other roads on the plan. There is dashed line across its northern junction and across the route at approximately Point B. The route then continues between solid lines and opens into the rest of the road network. The claimed route is allotted three different hereditament numbers; 1369, 1372 and 1374.

The Award sets out various 'Public Highways' but the claimed route is not included in these. The Award also sets out various 'Occupation Roads' which are all owned by individuals '& others'. The three hereditament numbers given to the claimed route are listed and are not subject to any tithes or payments.

Occupation Roads may carry public rights as well as providing private access to various fields etc. but they do not carry public vehicular rights.

2.19 Ordnance Survey 1st Edition 1879 sheets 22:4 & 22:8

The claimed route is shown on Derbyshire Sheet 22:4. The northern section of the claimed route from Broadway Lane to FP56 is shown uncoloured between solid lines while the rest of the claimed route and FP56 is shown coloured yellow as part of the road network. There is a pond at Point B and the claimed route cuts across the eastern corner. The route continues onto Sheet 24:8 and is open to the road network.

2.20 Ordnance Survey 2nd Edition 1898 sheets 22:4 & 22:8

The claimed route is shown generally between solid lines and while there are dashed lines across its junctions and along short sections, the southern end (on sheet 24:8) is open to the road network.

2.21 Ordnance Survey 1922 sheets 22:4 & 22:8

The 1922 editions is very similar in appearance to the 1898 edition.

2.22 Taddington Parish Claim 1950

The map for the parish claim shows FPs 4 and 5 drawn in red and labelled 'Pub F.P.' while FP 54 is labelled as 'Walcliff Rd, Priv. C&D Rd' and FP 55 is labelled only '55'. The available statements record FPs 4 and 5 as footpath but several statements are missing from the file.

2.23 Ordnance Survey 1972 SK1472/1572 and 1973 SK1471/1471

The northern section of the claimed route is shown on the 1972 plan in the same way as Broadway Lane, between solid lines with double dashed lines in-between (apart from a short section near the junction with Broadway Lane).

2.24 Ordnance Survey 1973 SK1471/1471

The majority of the claimed route is shown on the 1973 plan between solid lines and is labelled 'Track'. Taddington bypass is also shown on the plan and there is a dashed line across the junction with the claimed route. There is also a solid line across the route at the junction of FPs 5 and 55.

2.25 Taddington Definitive Statement (1st April 1948)

- Footpath 4 is described as a 'Footpath from Broadway Lane north east of Priestcliffe (142722) in southerly direction along cart road then in easterly direction to path No 24 (152720)' and also states, 'Limitations: 8 Stiles Inclosure Award of 1795'.
- Footpath 5 is described as a 'Footpath from the Taddington Bypass south of Horse Stead (145714) in north easterly direction to junction of path No's 4 and 24 at High Dale (152720)' and also states, 'Limitations: 5 Stiles Inclosure Award of 1795'.
- Footpath 54 is described as a 'Footpath from road south west of Rock Cottage (137716) in north easterly direction along Walcliffe road crossing paths No's 53 and 52 to path No 4 north east of Priestcliffe (143722). There are no limitations.
- Footpath 55 is described as a 'Footpath from path No 54 north east of Priestcliffe (142711) in south easterly direction to path No 5 east of Horse Stead (149717)'. There are no limitations.

Additional Evidence**2.26** A site visit was undertaken on 24 October 2017.

At Point A on the attached plan there was a DCC sign stating that it is an offence to drive a mechanically propelled vehicle on the route (accept for access).

The claimed route is a stone and natural earth farm track which connects two adopted highways. It is of generally single track width with verges and is bounded by dry stone walls. At the time of the site visit the track was very muddy and although clearly well used there were no signs of any horse or bicycle use: there were no tracks in the mud and no horse dung on the ground.

The route begins at Broadway Lane (Point A) and follows FP4 south for approximately 85 metres to FP54 at Point B. The route continues SW along FP54 for approximately 85 metres to Point C, where the route opens out and meets FP55. FP 54 continues to the west while the claimed route turns ENE along FP55 and follows a farm track bounded by dry stone walls. After approximately 125 metres FP55 turns generally SE for approximately 590 metres, passing by a derelict barn after approximately 100 metres then turns briefly ENE for 30 metres then SES for approximately 180 metres where it meets FP5 at Point D. From Point D the route follows FP5 in a generally SW direction for approximately 430 metres to the A6 Taddington Bypass at Point E, a fast and busy dual carriageway.

Summary and conclusion

2.27 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:

2.28 The earliest document which records the claimed route is the 1793 Taddington and Priestcliffe Parliamentary Enclosure Plan and the routes have been recorded consistently since that date. None of the historical or mapping evidence offers any confirmation of the claimed route's status, other than the definitive map and statement which records all the claimed route as footpath and the Parish Claim which records FPs 4 and 5.

2.29 Although there have been three objections to the application one objector has clearly misunderstood the consultation plan and application and appears to consider the claimed route as bridleway already. His objections to the whole of FPs 4 and 5 being upgraded as they cross meadows are not relevant to this claim.

2.30 Taddington Parish Council state they have seen no evidence of regular bridleway use except by landowners and consensual use by the Peak Hunt; that they believe the paths are access lanes not intended for horses and

cyclists and an upgrade to bridleway would necessitate improvements harmful to the local ecology; that the route terminates at the A6 and no-one has seen horses riding on the A6 or a horsebox parked by the path and that the route is popular with walkers precisely because horses and cyclists don't use it.

The Parish Council do not provide any evidence to support their belief that any signs of horse or cycle use have been left by the landowners, why they believe the route to be access lanes not intended for horses and cyclists or why an upgrade would require harmful physical works. If an Order was confirmed to upgrade the route to bridleway there would be no physical works and in any event these are not grounds of objection considered relevant under current legislation.

The fact that the route terminates at the A6 and no member of the Parish Council has seen a horsebox or rider on the A6 is also not relevant. A right of way should terminate at a highway of equal status or higher and bridleway no. 24 terminates at the A6 approximately 850 metres to the east.

The Parish Council state the route is not used by horse riders or cyclists and there were no signs of such use when the DCC officer undertook a site visit. Although this suggests that the route is not well used as a bridleway it does not prove definitively that it is not used as claimed by those who have completed UEFs. However, if the route were used to the extent claimed it would be expected that some sign of that use would be found on the ground.

The objections on grounds of safety, potential parking on the A6, alternative bridleways and BOATs, potential impact on the 'solitude, quiet and environment' and the assumption that there has been no local request to upgrade are not considered relevant under the current legislation. Similarly the legislation does not allow for the consideration of the impact of any physical upgrading of the path or the belief it would be a waste of resources. As already stated above, there would be no physical upgrading were an Order to amend the Definitive Map and Statement to be made.

2.31 Seven users claim to have ridden the route on horseback for a period of twenty years or more and two for 19 years throughout the claim period.

2.32 All but one of the witnesses have seen other people using the route on horseback and 13 have seen others using the route on a cycle.

2.33 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). The user evidence suggests that the general public, without specific knowledge of the route's status, may presume the route to be bridleway.

2.34 The claimed route forms an open through route without any limitations from Broadway Lane to the A6, both adopted highways, and is open to the general road network at either end.

2.35 There is a sign prohibiting use of the route in motorised vehicles but, there have been no challenges made to use of the route as a bridleway and there has been nothing put in place, such as notices, to prevent such use.

2.36 In summary, the public do appear to have used the route as a bridleway for 20 years or more, that use has been as of right; without secrecy, permission or force and as required by the legislation. The documentary evidence offers no proof of public bridleway rights but, shows that there has been a track on the ground since 1793 and one landowner's representative refers to the claimed route as a bridleway. There has been no evidence submitted to show that the claimed route has not been used as a public bridleway and it is therefore considered that, on the balance of probabilities, there is sufficient evidence to show that a public bridleway subsists.

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

- 3.13** 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.
- 3.14** None of these factors are considered to be relevant for the purpose of this report.

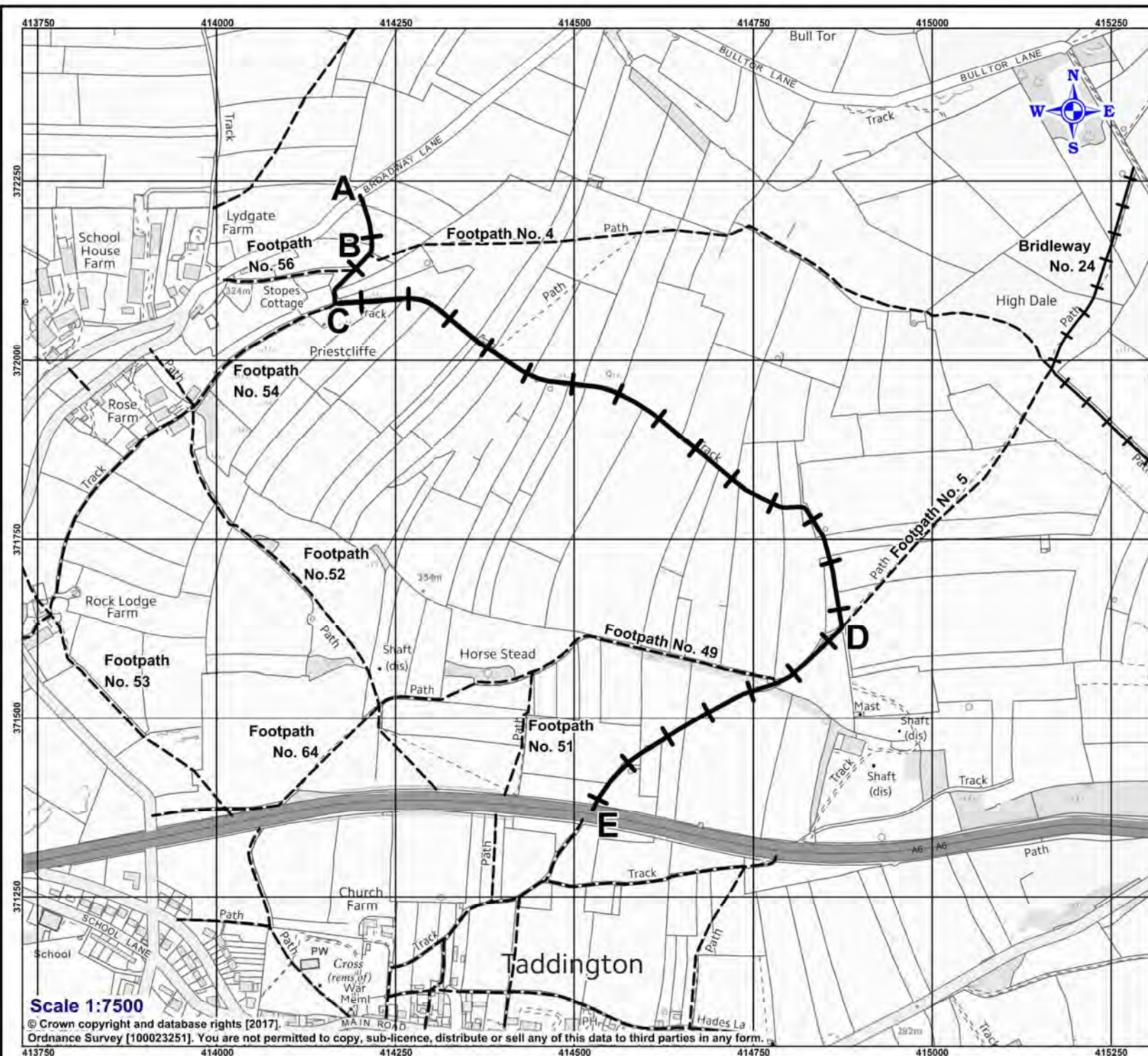
4. Background Papers

Files held by Legal Services (ref. 64960).

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. 4, 5, 54 (parts) & 55 in the Parish of Taddington & Priestcliffe which are shown between Points A-B-C-D-E on the plan attached to this report.

Chief Officer



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Wildlife & Countryside Act 1981 Section 53

**Claim to upgrade Public Footpath
Nos. 4, 5, 54 (parts) and 55 to a
Bridleway - Parish of Taddington**

Key:

Footpath Claimed
as Bridleway



Existing Footpath



Existing Bridleway



Ref: TE/CH/X3977/Cttee/2018

Date: 9 November 2017



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