

DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE

21 May 2018

Report of the Deputy Director of Legal Services

Wildlife and Countryside Act 1981
Claim to add a footpath from Ladygrove Road to Public Footpath No 54
– Darley Dale

1. Purpose of the Report

To enable members to determine an application to amend the Definitive Map and Statement by adding to them a footpath from Ladygrove Road to Public Footpath No 54 – Darley Dale and to consider evidence discovered for the existence of a bridleway along Knab Lane to Public Footpath No 42 and to upgrade Public Footpath No 42 and part of Public Footpath No 53 to bridleway – Darley Dale.

2. Information and Analysis

Details of the application

- 2.1 An application dated 13 May 2014 was received to add a footpath from Ladygrove Road, two Dales via Old Mill House to junction with existing footpath at Ladygrove Wood. The application was supported by a plan showing the claimed route and 28 User Evidence Forms.
- 2.2 A plan showing the claimed route is attached to this report.

User Evidence

- 2.3 There is no evidence of challenges to the usage of the route or that the route has ever been obstructed until the gate and fencing were erected in 2013. It is therefore considered that it is this that has brought the status of the route into question for the purposes of Section 31(2) of the Highways Act 1980. Only evidence and events prior to 2013 have been considered in assessing the claim and therefore the relevant period is 1993-2013.
- 2.4 Of the 28 users 20 claim to have used the route on foot, 3 claim to have used the route on horseback, 2 claim to have used the route on foot and on horseback, and 3 claim to have used the route on foot and on bicycle.

- 2.5 Of the 28 users 18 claim to have used the route on foot for 20 years or more, such use covering the relevant period, and one claims to have used the route on foot for less than 20 years but within the relevant period. Two users claim to have used the route on horseback for 20 years or more, and one claims to have used the route on horseback for less than 20 years but within the relevant period. Two users claim to have used the route on foot and on horseback for 20 years or more. Two users claim to have used the route on foot and on bicycle for 20 years or more, and one user claims to have used the route on foot and on bicycle for less than 20 years but within the relevant period.
- 2.6 Of the 28 users 10 claimed to have seen others using the route on foot, one claims to have seen others using the route on horseback, 11 claim to have seen others using the route on foot and on horseback, one claims to have seen others use the route on foot and on bicycle and five claim to have seen others use the route on foot, horseback and bicycle.
- 2.7 Only two of the users recall the route ever being obstructed or diverted prior to the erection of the locked gates and this was during the Foot and Mouth outbreak.
- 2.8 None of the witnesses recall there being any gates or stiles on the claimed route until the erection of the gates in 2013 which called the status of the route into question.
- 2.9 One witness refers to a signpost in the wood denoting bridleway, none of the other witnesses refer to any signs or notices along the route until the private signs were erected on the gates.

Correspondence received from landowner

- 2.10 Following receipt of the notice of the application a letter was received from a landowner in objection to the application. The grounds for objection are summarised as follows:
- The land has never been an official public footpath.
 - The house was bought 21 years before the application and the access has been closed annually for maintenance purposes.
 - Unauthorised vehicles have previously used the access in a dangerous manner.
 - Walkers allow their dogs to foul the area.
 - There is no documentary evidence to support the claim that there is a Public Footpath along the claimed route.
 - Signposts erected by the Council on the adjoining public rights of way confirm that they are aware there has never been a Public Footpath.

- The fencing of the land has not prevent access to Ladygrove Wood.

2.11 Following receipt of the notice of the application an e-mail was received from a landowner raising initial concerns/objections which are summarised below

- The proposed route of the footpath is along an un-adopted road where there are heavy goods vehicles turning and moving of heavy plant and machinery, therefore questioning the safety of the public in this area.
- Part of the track is narrow and in poor condition and therefore concerns are raised regarding public safety should the application be approved.
- Concerns regarding the personal liability for the safety of the public.

Consultation

- 2.12 An informal consultation exercise was carried out between 08 June 2015 and 13 July 2015. Notices were placed on either end at the start of the consultation period and letters were sent to statutory consultees, landowners. There was no local elected member at the time the consultation was carried out.
- 2.13 A telephone call was received from one of the landowners raising concerns regarding responsibility of the eroding wall alongside the route.
- 2.14 An e-mail was received from a previous landowner advising that in the 22 years that they had lived at the property there had never been a Public Footpath over the un-adopted road and that it would be unsafe to create one due to the vehicles using it.
- 2.15 An e-mail was received from the applicant in support of the addition, however concerns were raised that the route had also been used on horseback but insufficient evidence was obtained by the applicant to apply to add the route as a bridleway.
- 2.16 An e-mail was received from Darley Dale Town Council in support of the application.
- 2.17 A letter in support of the application was received from a local resident stating that both the resident and his wife had walked the proposed footpath regularly since moving into their property in 1990 until the route was fenced in 2013. It was also stated that the fencing had been removed by the new owners of the property and that the route was available to walk at the time of writing.

- 2.18 An e-mail was received from a local resident in support of the application stating that being in their 70's they had lived at the property for a long time and that for as long as they can remember this has always been available to walk along.
- 2.19 An e-mail was received from one of the landowners in support of the application advising that the route has been used as a footpath for as long as anyone can remember and legally recording the status will prevent blockage of the route in the future.
- 2.19 A letter was received providing some historical information which the writer thought may be some of assistance to the Council when investigating the status of the route.

Documentary evidence

2.20 Enclosure Award Evidence

The area of the claimed route is partly subject to the 1769 Darley Enclosure Award and shown on the Enclosure Plan.

The Award does not refer to the claimed route, however the Award does refer to a route adjoining the claimed route as Nether Hanging Holes Road:

"Also we do hereby Award direct and appoint a publick Riding and Drift Road beginning at the North End of an Ancient Lane adjoining to the Northwest Corner of an Ancient Inclosure belonging to George Lambert and from thence Extending in a Northerly direction on the West Sides of the Allotments hereinafter made Numbered One hundred and Forty two One hundred and Forty three and one hundred and Forty Four to an Ancient Lane called Ball Lane along the said Lane into the Allotment hereinafter made number One hundred and Twenty one and on the South Side of the said Allotment into an Ancient Lane Called Dunn Lane which said Road is Called Nether Hanging Holes Road which said publick highway we do hereby award and direct shall at all times hereafter be made repaired and kept in repair in such manner as the publick highways within the said Township or Hamlet of Darley aforesaid are now by Law required and directed to be repaired and kept in repair..."

2.21 Finance Act 1910

The Finance Act record plan, which is based on the 2nd Edition 1:2500 Ordnance Survey plan of 1898 shows the area of the claimed route. The route mentioned in the Enclosure Award is shown as excluded from hereditaments, suggesting that the valuer considered it be a road either private or public.

2.22 Tithe Map and apportionment 1838

A route roughly resembling that set out in the Enclosure Award is shown on the Tithe Map.

2.23 Sandersons Map 1835

Sanderson's reputable map of the 'Country Twenty Miles Round Mansfield' clearly shows the claimed route and the route mentioned in the Enclosure Award. They are depicted by a pair of solid lines and according to the key, falls within the 'cross road' category. This map show private access roads and bridle roads, as well as known public carriage roads, falling into the 'cross road' category.

2.24 Ordnance Survey 1st Edition 1:2500 c.1890

The claimed route is shown between double solid lines from Ladygrove Road to the Mill, where is shown as single dashed line continuing between double solid lines through the wood where it meets Public Footpath No 54.

Public Footpath No 53 is shown between double solid lines proceeding in a generally northerly direction from Holt Road until it's junction with Public Footpath No 42.

Public Footpath No 42 is shown between double solid lines from its junction with Public Footpath No 53 proceeding in a generally north north easterly direction to its junction with Public Footpath No 54.

The remainder of the route referred to in the Enclosure Award is shown between double solid lines from its junction with Public Footpath No 42 to its junction with Ladygrove Road.

2.25 Ordnance Survey later Editions

The routes are shown on later plans consistent with the 1890 edition and they offer no further information.

2.26 Definitive Map Evidence

The claimed route is not shown on the Definitive Map.

Footpath No 42 is described as a Footpath from Ladygrove Road opposite Losker Row (287629) Cottages south westwards to junction with path No 53 at Holtwood (286626) Holt Road.

Footpath No 53 is described as Footpath from Sydnop Hill at Sydnop Farm (290640 south eastwards to Dale Nursery thence southwards through Hanging Holes to junction with path No 44 at Holt Road (286625).

Additional evidence

2.27 Site Visit

The claimed route is approximately 319 metres in length. From Point A it follows a tarmacadam surface access road to just beyond the Old Mill House and varies between 3 metres and several metres in width. Just beyond the Old Mill House is a gate where the path becomes 2 metres in width and has a natural surface. The route beyond the gate was clearly well walked as the wet weather conditions showed footprints in a muddy area. The gate also has a notice attached to it requesting that Dog Litter is removed therefore indicating that the owner is aware and accepting that the claimed route is being used as a public footpath. The gate had a chain around it holding it closed but was not locked at the time of the site visit.

Public Footpath No 53 follows an access track of approximately 3 metres in width and joins Public Footpath No 42.

Public Footpath No 42 is a field edge path and has a natural grass surface.

The route from C-D is along access track with a tarmacadam surface and is approximately 3 metres wide.

There were no users on either of the routes at the time that the site visit was carried out.

Summary and conclusion

- 2.28 The test which has to be applied when considering the addition of a route to the Definitive Map and Statement under s53(3)(c)(i) is in two parts:

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.

- 2.29 All 28 of the witnesses claim to have used the route as of right and 24 witnesses claim to have used the route as of right for 20 years or more, this usage covers the full relevant period from 1993-2013. None of the witnesses recall any stiles or gates on the route until the erection of the gate in 2013.
- 2.29 None of the witnesses recall the route being obstructed or diverted or seeing any notices on the route suggesting that it was not a public right of way or being prevented from using the route in any way prior to the erection of the gate, fencing and notices in 2013.
- 2.30 The Council's Declaration Register has been checked and no S31(6) statutory declarations have been made which would affect the claim.
- 2.31 In summary, the public do appear to have used the route A-B as a footpath for 20 years or more covering the relevant period between 1993-2013, 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 rights over this route but, the application to modify the definitive map is based on user evidence. There has been evidence submitted suggesting that the claimed route has never been used as a public right of way and therefore it is therefore considered that, is it reasonable to allege on a balance of probabilities that a right of way subsists.
- 2.32 Following research into the documentary evidence in relation to the claimed route it was found 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 and that a route not claimed within the application and not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates
- 2.33 The Enclosure Award refers to a 'public riding and drift road' between C-D-E on the plan. A 'public riding and drift road' would nowadays equate to a right of way of public bridleway status. Therefore part of Public Footpath No 53 and all of Public Footpath No 42 are required to be upgraded to public bridleway status and the remainder of the enclosure awarded route from the northern end of Public Footpath No 42 northwards and along Knab Lane are required to be added to the definitive map and statement as public bridleway.

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: financial, social value, 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

File held by Legal Services (Ref 64198)

5. OFFICER'S RECOMMENDATION

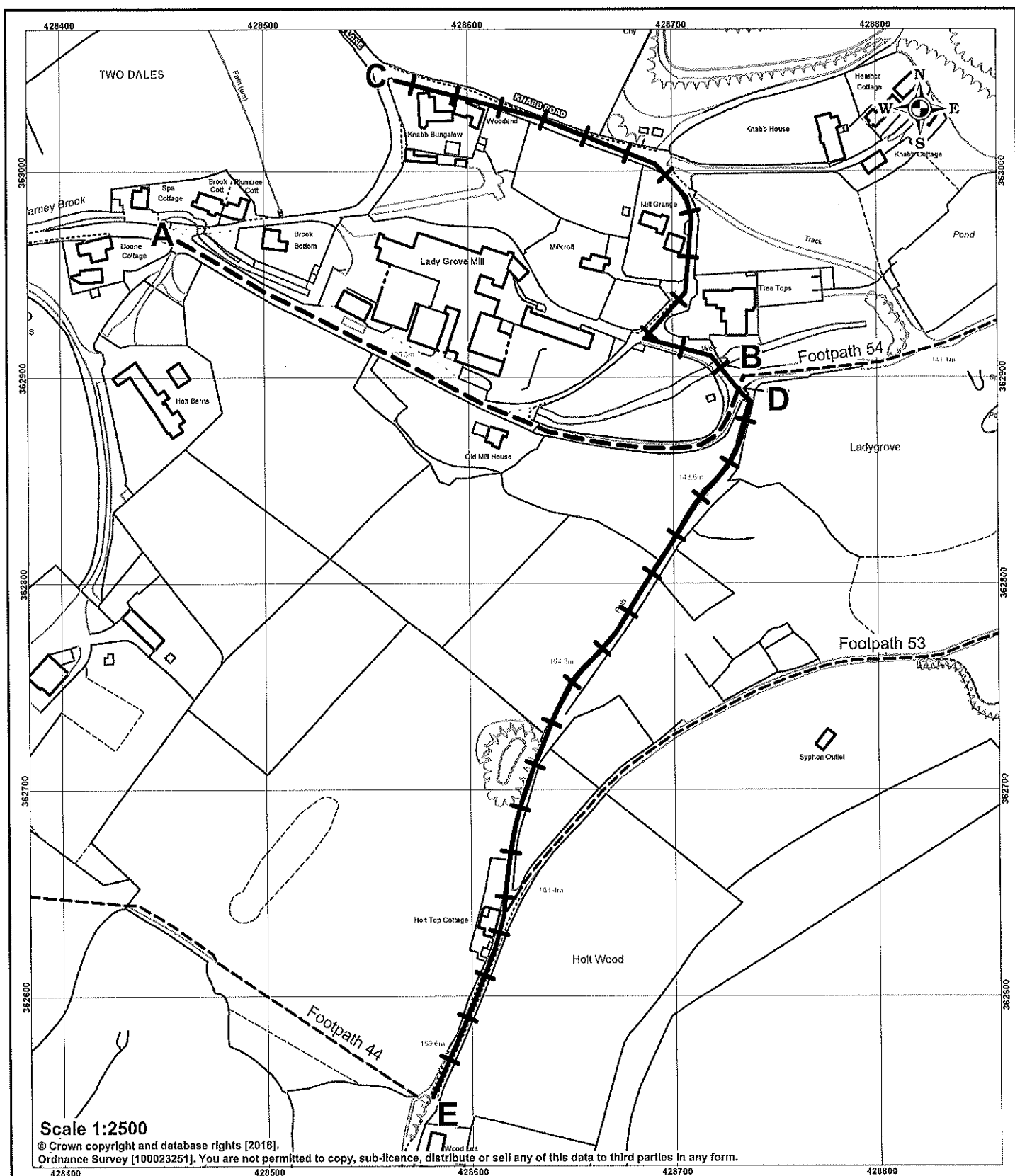
That the Committee resolves to authorise the Deputy Director of Legal Services to make an Order under s53 Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement

PUBLIC

ITEM NO. 10

- 5.1 By adding a footpath from Ladygrove Road to Public Footpath No 54
- 5.2 By adding a bridleway along Knab Road to Public Footpath No 42
- 5.3 By upgrading Public Footpath No 42 and Public Footpath No 53 (part) to bridleway.

Simon Hobbs
Deputy Director of Legal Services



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 Date: 26 April 2018



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Wildlife & Countryside Act 1981 Section 53
Claim to add a Footpath from Ladygrove Road to Public Footpath No. 54, to add a Bridleway along Knabb Road continuing to Footpath No. 42, and the upgrading of Public Footpath No. 42 and Public Footpath No. 53 (Part) Darley Dale

Key: Footpath to be added (A-B)
 Bridleway to be added (C-D)
 Path to be upgraded to Bridleway (D-E)
 Existing Footpath

