

**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 Bridleway along non classified highways known as  
Border Lane and Oxcroft Lane – Parishes of Clowne and Elmton**

**1. Purpose of the Report**

To enable Members to determine an application to amend the Definitive Map and Statement by adding bridleways in the Parishes of Clowne and Elmton.

**2. Information and Analysis**

**2.1** On 13 April 2015 an application was submitted to the Council to add two bridleways in the Parishes of Clowne and Elmton. The application is accompanied by 43 user evidence forms (UEFs).

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

**Additional Evidence**

**2.3** The claimed routes are recorded as non-classified highways, known as Oxcroft Lane and Border Lane, which are publically maintainable. Both routes are single track lanes predominantly bounded by hedges.

**2.4** In a letter dated 6th July 2015 the applicant submitted two letters to support the application, one from the Clowne Parish Council and one from the Elmton and Cresswell Parish Council. Elmton and Cresswell Parish Council state they have no objections and the Clowne Parish Council state that they had 'agreed to support in principle, subject to Derbyshire County Council approval, the application for the grading of Border Lane'.

**2.5** A resident of Border Lane submitted an enquiry raising concerns about the 'proposal to change the current highway to bridleway' as it is the vehicular access to their home. It was explained that regardless of the classification given to the lane, their private vehicular rights would not be affected.

**2.6** Both the claimed routes are unregistered with the Land Registry.

## **User Evidence**

**2.7** There have been no specific actions that have brought use of the route by the public, on horseback or by other means, 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 April 2015. Therefore the period of user evidence under consideration for the purposes of this report is the 20 year period from 1995 to 2015.

**2.8** Of the 43 witnesses, 17 have used the claimed routes on horseback during the period under consideration and 7 have used the claimed routes on a bicycle. An additional 13 people have used the routes on both a bicycle and on horseback.

**2.9** Twenty-four users have used the routes either on horseback or bicycle, or both, for the whole 20 year period. Fourteen of those have used the routes for more than 30 years. Of the others, one used the routes for 19 years of this period, two for 15 years and six for 10 years or less - three users did not record their years of use. The user evidence on horseback or bicycle covers the years from 1950 to 2015 with the longest user claiming use for 65 years.

**2.10** Forty-one witnesses have seen other users on horseback and thirty-four on pedal cycle. Most of the longest standing users of the way (including those that used the route in the 1950s/60s) say that they also saw cyclists on the routes, i.e. cyclists appear to have been using the routes for very many years; probably from at least the 1950s onwards.

**2.11** Of the 37 witnesses who have used the route either on horseback or bicycle, or both, seven claim to have used the route daily, six daily/weekly, 16 weekly, three monthly, four less than monthly and one user does not specify.

**2.12** Descriptions of the width of the route vary between 6 to 12 feet or 3 to 4 metres. Six users give no indication of the width. The most common estimation of width as stated by fourteen users was 10-12 feet while eight stated the width to be 3-4 metres.

**2.13** All but three of the UEFs have a plan attached to them showing the claimed routes, and all those plans have the routes marked on them by the letters A, B and C. Thirty-one of the plans are marked in the same yellow coloured highlighter pen which suggests the Applicant may have marked the plans rather than the users themselves. However, the users have signed the UEFs which include a statement that the marked route is the one they have used. When describing the routes they have used, 23 users refer to Oxcroft Lane and Border Lane, one just to Border Lane, seven refer to the attached map, four provide a vague description and eight fail to provide any description. Although the descriptions of the route are generally vague, the routes themselves are well-defined tracks and so are clear on plans and on the ground.

**2.14** None of the users report seeing any stiles or gates on either route.

**2.15** One user recalls that ‘a person once tried to stop access but can’t remember when’ and also being told the route was not public but ‘not from anyone important’. The user does not specify how they were using the route at that time.

**2.16** One user said that from the 1980s to 2007 she was given permission to use the route (she doesn’t say whether it was Border Lane or Oxcroft Lane, or both) with a vehicle by the owner of Grange Farm (Grange Farm is located on Ringer Lane which is recorded as a public bridleway).

**2.17** Eleven witnesses refer to notices on the route; seven to a way marker at Point A, two to an unreadable signpost and two users refer to notices about ‘nuisance motorcycles at both ends’.

### **Consultation**

**2.18** A consultation exercise was carried out between 18th December 2015 and 22<sup>nd</sup> January 2016. Notices were placed on the routes and letters were sent to the statutory consultees and the local elected members, Cllr Duncan McGregor and Cllr Anne Western.

**2.19** An email was received on 4<sup>th</sup> January 2016 from someone who had ridden the routes for many years on a motor cycle and who objected ‘very strongly’ to ‘removing the higher rights that may exist’. He states that there was a weight restriction sign at the Clowne end of Border Lane. He also refers to Ordnance Survey maps from the 1860’s which show the routes before any buildings were built along them.

**2.20** Elmlton and Cresswell Parish Council sent an email on 7<sup>th</sup> February 2016 stating that the Parish Council had no objections to the application

**2.21** An email dated 8<sup>th</sup> January 2016 was received from a horse rider giving her support to the application, stating that the route has been used by horse riders for many years and should be classed as bridleway.

**2.22** Clowne Parish Council sent an email on 8<sup>th</sup> February 2016 reiterating their support for the application.

**2.23** A local resident sent an email dated 9<sup>th</sup> February 2016, adding to his previous email (paragraph 2.5) raising concerns that people may refuse to deliver in a vehicle if the lane were classified as a bridleway.

**2.24** A local resident sent an email dated 10<sup>th</sup> February 2016, stating that it was imperative that access for emergency vehicles was not inhibited in any way.

## **Documentary Evidence**

### **2.25 Bolsover Enclosure Plan 1780 and Award 1781**

The Bolsover Enclosure Plan shows the length of Border Lane subject to this claim as part of the road network; depicted between solid lines, coloured pale yellow and open to other roads. The plan does not name Border Lane and there is no reference to Border Lane in the section of the Enclosure Award that sets out both 'Public Roads' and 'Private Roads'.

The western section of Oxcroft Lane is shown from its junction with Mansfield Road (Point A on the attached plan) to just beyond its junction with Border Lane (Point B) as part of the road network but is not named on the Plan or referred to in the Award.

From this it is evident that Border Lane and Oxcroft Lane fell outside the geographical scope of the Parliamentary enclosure process (i.e. they did not cross any of the lands subject to enclosure), however the fact that the routes are clearly depicted on the 1780 plan accompanying the enclosure award provides irrefutable evidence of the existence of the routes at that early date.

### **2.26 George Sanderson's 1835 Map of the area twenty miles round Mansfield**

This relatively large scale map shows only two types of road; turnpikes and cross roads. Turnpike roads were the main roads of that particular era but the category 'cross road' appears to cover virtually everything else that did not fall into the turnpike category, be it a public carriage road, public bridle road or private road.

The claimed routes are shown on this map as cross roads. They are depicted by means of a pair of solid lines, as connecting freely with the wider road network and they are named.

### **2.26 Clown Tithe Map 1839**

The western section of Oxcroft Lane is shown from its junction with Mansfield Road to just beyond its junction with Border Lane. It is shown by means of a pair of solid lines and connects freely with the wider road network. Border lane is shown in the same way. Both routes are excluded from the adjacent titheable (numbered) plots of land.

### **2.27 Ordnance Survey (OS) 1<sup>st</sup> Edition 1:2500 of 1875 (Derbyshire Sheet 19:15)**

Both the claimed routes are shown as part of the wider road network and are named. Oxcroft Lane is shown between solid lines while Border Lane is shown between solid lines with a single dashed line within the eastern boundary along its southern length.

### **2.28 OS 2<sup>nd</sup> Edition 1:2500 of 1898 (Derbyshire Sheet 19:15)**

As with the earlier 1:2500 described above, both the claimed routes are shown as part of the road network and are named. The western section of Oxcroft Lane is shown between solid lines while the section of Oxcroft Lane from Point B, and Border Lane are shown between solid lines with double dashed lines within.

## **2.29 Land Values Plan (Finance Act) 1910**

Both Oxcroft Lane and Border Lane are excluded from the adjacent hereditaments. The Finance Act used the 1898 OS plan as described above.

## **2.30 OS 1916 1:2500 Derbyshire Sheet 19:15**

The 1916 plan shows the two lanes very similarly to the 1898 plan.

## **2.31 Handing Over Documentation and other Highway Maintenance Records held by Derbyshire County Council**

The c1929 'Handing Over' documentation was produced pursuant to the Local Government Act 1929 and it dealt with the transfer of highway maintenance liability from the old rural district councils to the County Council.

The documents consist of a map or plan showing the highways to be transferred or 'handed over' and a schedule listing the same highways.

The handing over map for the old Clowne Rural District Council shows both of the claimed routes as 'other' district roads: That is; they were roads that were not 'main', 'classified' or 'scheduled' but were nevertheless publicly maintainable.

The depiction of the area around point D shows that the length of publicly maintainable road extended all the way to point D, i.e. Ringer Lane forked off the maintainable highway rather than the other way around.

In the handing over schedule Border Lane is numbered 270a and is described as leading between Clowne Church crossroads and Oxcroft Lane. Oxcroft Lane is numbered 291 and is described as leading between Elmton Street and Border Lane.

Both of the claimed routes are included on the County Council's current record of publicly maintainable highways (the so-called 'List of Streets') as non-classified highways.

There is a note on the Council's record to the effect that inclusion of a way is not proof of a particular highway status; it simply shows that the route is publicly maintainable.

## **2.32 Clowne Parish Rights of Way Claim c1950**

The Clowne Parish Claim does not record either route as a public right of way. Both lanes are shown on the plan between solid lines and as part of the road network. On the Parish Claim plan Border Lane has been labelled as 'County Road'. The western section of Oxcroft Lane is coloured green, as are other roads on the plan – it was common for the County Council to colour in the roads they considered publicly maintainable before handing the plan to the Parish Council for the purpose of the Parish Claim.

## **2.33 Elmton Parish Rights of Way Claim c1950**

The Elmton Parish Claim does not record either route as a public right of way. Both lanes are shown on the plan between solid lines as part of the road network. Both

lanes are coloured red, as are other roads on the plan (see explanation above). Ringer Lane (now public bridleway No. 22) which connects the two claimed routes is coloured green and labelled '22'. The fact that Ringer Lane was considered to be a public bridleway and that it is only accessible via the two claimed routes, indicates that the claimed routes must have been thought of as being of at least public bridleway status.

### **2.34 OS 6 inch to 1 mile map – surveyed in 1914 with additions in 1947**

On some maps and plans the Ordnance Survey employed a technique known as 'shading' in the way it depicted certain roads that were evidently being maintained to a reasonable standard at the time of the survey. A shaded line, in OS terminology, was where one of the lines depicting a particular route was drawn thicker than the usual width. On roads this would mean that the line on the south or east side would be drawn thicker than that on the north or west side.

The particular OS 6 inch to 1 mile map used as the base for the rights of way survey for Elmdon Parish (see above) shows that the route between points A and D on the attached plan was shown with a shaded line whereas Bridleway No. 22 (Ringer Lane) was depicted in the conventional (non-shaded) manner.

This adds weight to the argument that Oxcroft Lane between points A and D was seen as being of a higher status than bridleway No. 22, i.e. it supports the parishes' apparent conclusion that the Ringer Lane bridleway commenced not at Spring Lane corner (point D) but forked off Oxcroft Lane a little to the north.

### **2.33 OS 1:2500 mapping from the 20<sup>th</sup> Century**

1:2500 plans dating from 1960, 1962 and 1996 have been examined and they all show the claimed routes in broadly the same way as the earlier 1:2500 plans from the late 19<sup>th</sup> and early 20<sup>th</sup> Centuries.

## **Additional Evidence**

**2.34** A site visit was undertaken on 09 February 2018. At Point A on the attached plan there is a traffic regulation order sign prohibiting vehicles over 7.5 tonnes except for access. There is sign of the same kind at the end of Border Lane, at its junction with Ridgeway. Across Mansfield Road from Point A, Oxcroft Lane continues as a minor road, with road markings.

**2.35 Route A-B-C:** Oxcroft Lane, heading east north-easterly from Point A is a single track tarmac road for approximately 90 metres that provides access to residential buildings and agricultural land. The tarmac then stops and the lane continues along a metalled stone track with a hedge on the south side and open land to the north, for approximately 110 metres. Shortly before Point B the lane becomes bound by hedges on both sides.

At Point B the route continues along Border Lane, a metalled stone track bound by hedges, in a generally north-east then north north-east direction to Point C.

**2.36 Route B-D:** Oxcroft Lane continues from Point B in an east south-easterly direction along a metalled stone track bound by hedges to its junction with Spring Lane at Point D.

**2.37** The surface on sections of both lanes was very muddy at the time of the site survey and in places the stone track was not visible on the ground. There was evidence of horse and pedestrian use as well as vehicle tracks.

Although the routes are passable in a vehicle (evidently both routes are used by vehicles for access) their character lends itself more to use by the public for recreational purposes rather than as part of the ordinary 'road' network.

### **Summary and conclusion**

**2.38** The test which has to be applied when considering whether to add a route to the Definitive Map and Statement is 'the balance of probabilities':

**2.39** The earliest document which records the claimed routes is the 1780 Bolsover Parliamentary Enclosure Plan and the routes have been cartographically recorded consistently since that date.

None of the historical documents or maps offer any firm evidence of the claimed routes' status. However, the fact that neither route was claimed as a right of way in the 1950s, and that a way which was claimed (as a bridleway - Ringer Lane) is only accessible via the claimed routes, tends to indicate that both Oxcroft Lane and Border Lane were considered to be ways of a higher status than public bridleway.

The fact that a particular claimed route has a name is not necessarily an indication of any highway status, however it should be noted that the name 'Oxcroft Lane' is probably derived from the fact that ultimately it leads from Elmtun village to a place called Oxcroft. This would tend to suggest that it was not a minor route. In addition, the name Border Lane almost certainly derives from the fact that it coincides with the boundary between Elmtun and Clowne and since parish boundaries very often develop along pre-existing natural or man-made features it is suggestive of a route of some antiquity.

Both lanes are excluded from the adjacent hereditaments on the 1910 plan to the Finance Act and, according to The Planning Inspectorate's 'Definitive Map Orders: Consistency Guidelines'; where a route is "external to any numbered hereditament, there is a strong possibility that it was considered a public highway, normally but not necessarily vehicular, since footpaths and bridleways were usually dealt with by deductions recorded in the forms and Field Books."

Though not proof of public carriage road rights, the treatment of the routes on other maps and plans, such the 1839 Clowne Tithe Map, Sanderson's 1835 map and large scale OS plans, is at least consistent with public carriage road status.

**2.40** There has been one objection to the bridleway application concerning the 'removing the higher rights that may exist' and two other people have raised similar concerns about removing vehicular rights.

**2.41** The objector claims to have ridden the route on a motorcycle for many years and points out that there is a weight restriction on Border Lane, which would suggest public vehicular rights.

Two local residents have also objected to the application as they believe Border Lane to carry public vehicular rights and believe that that if Border Lane were made a bridleway this could cause problems with deliveries and emergency vehicles.

**2.43** Whilst the routes have predominately been used by horse riders, particularly during the relevant twenty year period from 1995 to 2015 but also for many years prior to that, there has also been significant use of the route by cyclists from as far back as 1950. In addition, many users have over many years observed cyclists on the route even if they did not themselves cycle on it.

**2.45** Whilst 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 lawfully use bridleways since 1968), longer standing pre-1968 use of a route by cyclists is consistent with public vehicular rights (see below under Legal and Human Rights Considerations).

**2.46** Both routes form open through-routes connecting freely with the wider road network. Both are adopted highways, and there are road traffic signs restricting use of the A to C section by goods vehicles over 7.5 tonnes.

**2.42** Looked at as a whole the historical and mapping evidence, for the reasons given above, is firmly consistent with, if not proof of, the existence of public carriage road rights. In addition, the way in which the routes have been used by the public over very many years suggests that they were viewed as all-purpose highways.

**2.48** Overall, the evidence is sufficient to show, on the balance of probabilities, that both Oxcroft Lane and Border Lane have historically carried public carriage road rights. Long-standing subsequent use of the routes by the public is considered to have been by dint of those pre-existing rights. The character of both routes is such that, as explained above, they are more likely to be used for recreational purposes (e.g. for horse riding and cycling etc) than as parts of the ordinary road network and this is backed up by the user evidence that has been received. It is considered therefore that both routes qualify for inclusion on the definitive map and statement as Byways Open to All Traffic.

### **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:
- (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)).
- 3.2** A Byway Open to All Traffic (BOAT) is a special category of way recorded on definitive maps. It is a carriageway and thus a right of way for vehicular traffic, but one which is used mainly for the purposes for which footpaths and bridleways are used, i.e. by walkers and horse riders.
- 3.3** 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.
- 3.4** 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.
- 3.5** 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. Prior to this legislation, cyclists could only lawfully ride on public carriage roads.

### **Other Considerations**

- 3.6** 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.
- 3.7** None of these factors are considered to be relevant for the purpose of this report.

## **4. Background Papers**

Files held by Legal Services (ref. 66414).

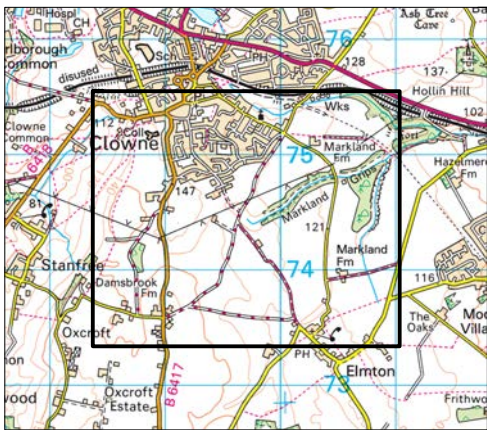
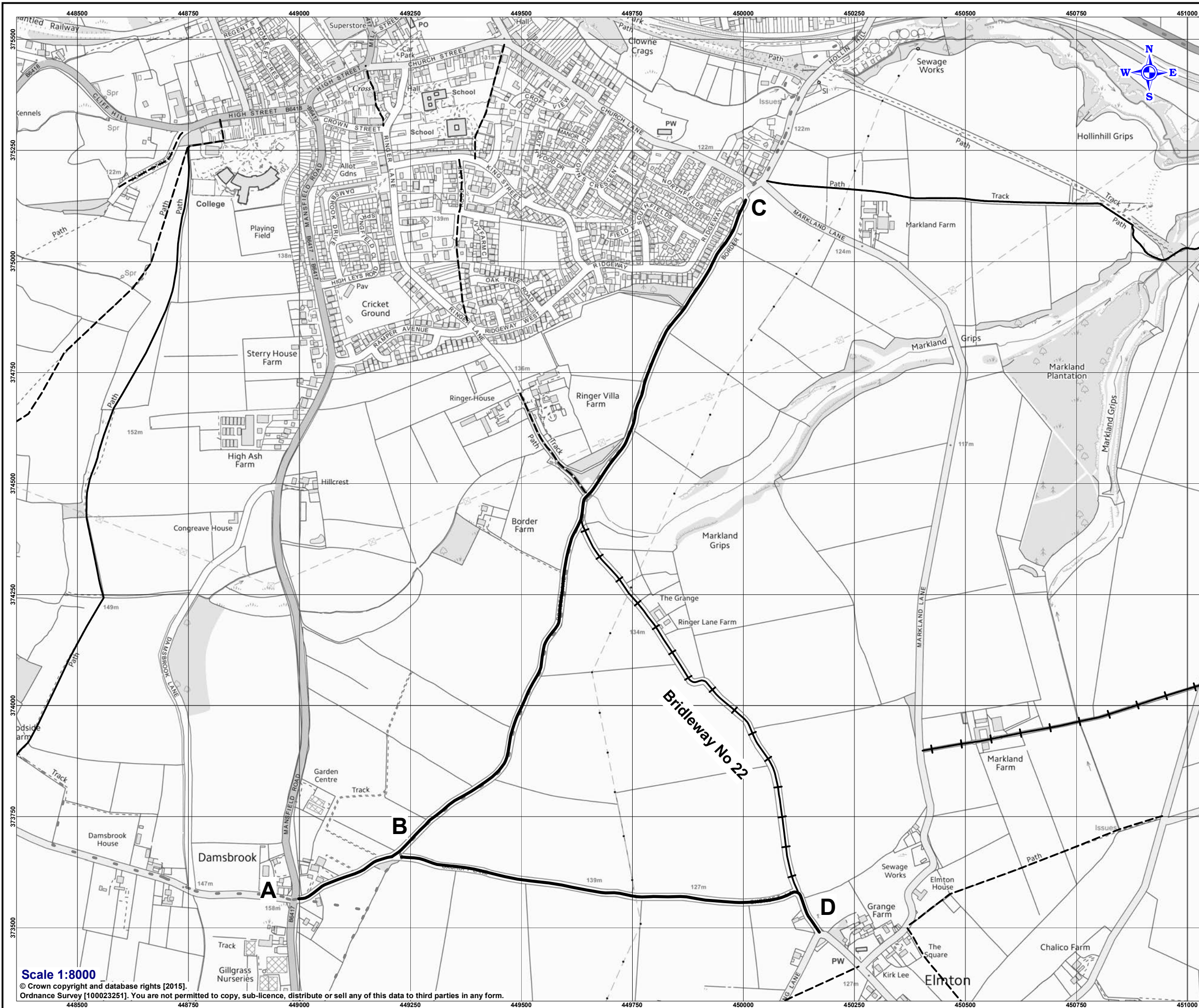
**5. OFFICER'S RECOMMENDATION**

That the Committee resolves to authorise the Deputy 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:

- a) adding a byway open to all traffic along Oxcroft Lane in the Parishes of Elmton & Cresswell and Clowne as shown between Points A, B and D on the plan attached to this report, and:
- b) adding a byway open to all traffic along Border Lane in the Parishes of Elmton & Cresswell and Clowne as shown between Points B and C on the plan attached to this report.

**Simon Hobbs**  
**Deputy Director of Legal Services**





**Wildlife and Countryside Act**  
**Section 53**

**Claim to add a Bridleway  
along non-classified  
highways known as  
Border Lane and Oxcroft  
Lane - Parishes of  
Clowne and Elmtown**

**KEY**

- Claimed Bridleway ———
- Existing Footpath - - - - -
- Existing Bridleway + + + + +



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Produced by Public Rights of Way on 28 September 2015  
Ref: TE\_DC\_X4026\_Cons2015