

**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 upgrade Public Footpath No. 12 to a bridleway – Parish of  
Hodthorpe and Belph****1. Purpose of the Report**

To enable members to determine an application to upgrade Public Footpath No 12 to bridleway in the Parish of Hodthorpe and Belph.

**2. Information and Analysis****Details of the application**

- 2.1 An application dated 04 December 2013 was received on behalf of the Sherwood Forest Project to upgrade Public Footpath No 12 to a bridleway in the Parish of Hodthorpe and Belph. The application was supported by a plan showing the claimed route and 17 User Evidence Forms.
- 2.2 A plan showing the claimed route is attached to this report.
- 2.3 The claimed route is recorded on the Definitive Map and Statement as a footpath which is publically maintainable. The route is approximately 141 metres long with a tarmac surface.

**User evidence**

- 2.4 There is no evidence of challenges to the usage of the route on either bicycle or horseback or that the route has ever been obstructed it is therefore considered that it is the application 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.

- 2.5 All 17 of the user evidence forms had plans attached with the route as used marked on. Eleven of these had the letters E & F printed at either end of the claimed route, with the route used highlighted, the ink used was not identical which indicates that these were highlighted by the individual witnesses confirming their usage. Fourteen of the plans also included the wording “mark the route” inside a box inserted onto the plan to be signed and dated by the user. All of the evidence forms and the description of the route including the width pre-entered onto the form. Only two of the plans attached to the evidence forms were not signed by the user which also indicated that the used route was marked on the plans by the individual users. All of the marked routes are an accurate reflection of the claimed route.
- 2.6 Of the 17 users, five claim to have used the route on horseback, 11 users claimed to have used the route on bicycle and one user claims to have used the route on horseback and on bicycle.
- 2.7 One user claims to have used the route on horseback for 20 years or more, four users claim to have used the route for less than 20 years but within the relevant period. Nine users claim to have used the route on bicycle for 20 years or more, one user claims to have used the route for less than 20 years but within the relevant period, and one user claims to have used the route on both horseback and bicycle for 20 years.
- 2.8 Of the 17 users four claim to have seen others using the route on horseback, four claim to have seen others using the route on bicycle and nine claim to have seen others using the route on horseback and on bicycle.
- 2.9 None of the witnesses recall the route being obstructed or diverted, being stopped from using the route, or being given permission to use the route on horseback or bicycle.
- 2.10 None of the witnesses recall there being any gates or stiles on the claimed route.
- 2.11 None of the witnesses recall seeing any signs or notices on the claimed route.

### **Consultation**

- 2.12 An informal consultation exercise was carried out between 22 April 2015 and 17 May 2015. Notices were placed at either end of the route at the beginning of the consultation period and letters were sent to the statutory consultees, landowners and the elected Local Member Councillor Duncan McGregor.
- 2.13 An e-mail in support of the application was received from the applicant on 23 April 2015.

2.14 An e-mail in objection to the proposal was received from Hodthorpe and Belph Parish Council on the basis that the infrastructure is not suitable for change of use and will not be in keeping of this area.

2.15 An e-mail in objection to the proposal was received from a local resident on the basis:

- That the termination point on Station Road is dangerous and would be dangerous for horses to use.
- The route is dangerous as it is tight and is used for parking by local residents.
- The objector also suggests changing the status of other Public Rights of Way within the vicinity.

2.16 An e-mail in objection was received from another local resident on the basis:

- Of public safety and limitation of access deeming the route to be unsuitable
- The objector also suggests changing the status of other Public Rights of Way within the vicinity.

### **Documentary Evidence**

2.17 Enclosure Plan and Award 1824

The Enclosure Award and Plan were inspected but no evidence was found in relation to the claimed footpath.

2.18 Sanderson's Map – Twenty Miles around Mansfield 1835

The map does not show the claimed route.

2.19 Bolsover District Definitive Map and Statement 1985

Due to a Parish boundary change Hodthorpe and Belph Public Footpath No 12 is recorded on the Definitive Map and Statement as Whitwell Public Footpath No 50.

Public Footpath No 50 is described as a 'Footpath from Belph Road at Belph in SW direction to road at Belph (546756)' and as .095 miles in length.

2.20 Ordnance Survey 1<sup>st</sup> Edition 1:2500 c.1892

Public Footpath No 12 is shown along the entire route as a double solid line.

2.21 Ordnance Survey 2<sup>nd</sup> Edition 1:2500 c.1898

Public Footpath No 12 is shown along the entire route as a double solid line.

2.22 Ordnance Survey later Editions

The claimed route is shown on later plans consistent with the 1898 edition and they offer no further information

**Additional Evidence**

2.23 A site visit was undertaken and photographs were taken of the claimed route on 13 October 2017.

2.24 Public Footpath No 12 is also a Private Road which starts at Point A and continues in a generally south south westerly direction down a two metre wide tarmac surfaced track with grass verges to Point B where it meets Public Bridleway No's 15 and 16.

**Summary and conclusion**

2.25 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.

2.26 When considering whether a landowner is deemed to have dedicated a bridleway or restricted byway, it has been considered by Carnworth LJ (see paragraph 3.12) that it would be appropriate to infer the form of the dedication by the landowner that is least burdensome to him, which would be a bridleway. Public Footpath No 12 meets Public Bridleway No's 15 and 16 and therefore a bridleway would appear more suitable.

2.27 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 it has been legal for cyclists to use bridleways since 1968 when Section 30 of the Countryside Act 1968 came into force.

2.28 The Council's Declaration Register has been checked and no s31(6) statutory declarations have been made which would affect the claim.

2.29 The duty on the Council under the Wildlife and Countryside Act 1981 is to keep an up to date Definitive Map and Statement for its area. Therefore when considering this application only evidence relating to

prove or disprove whether the claimed public rights exist can be taken into account. The objections received following the informal consultation relate only to safety which therefore cannot be taken into account when determining this application. It was suggested by two of the objectors that there were more suitable Public Footpaths in the vicinity instead of the claimed route, however the Council has a duty to investigate the rights over the route which is affected by the application and there cannot take this into account when determining this application.

- 2.30 In summary, the public do appear to have used the Public Footpath marked A-B 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, the application to modify the definitive map is based on user evidence. It is therefore considered that, on the balance of probabilities, there is sufficient evidence to show that public bridleway rights subsist.

### **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 of probability 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 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. Carnworth 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.
- 3.12 None of these factors are considered to be relevant for the purpose of this report.

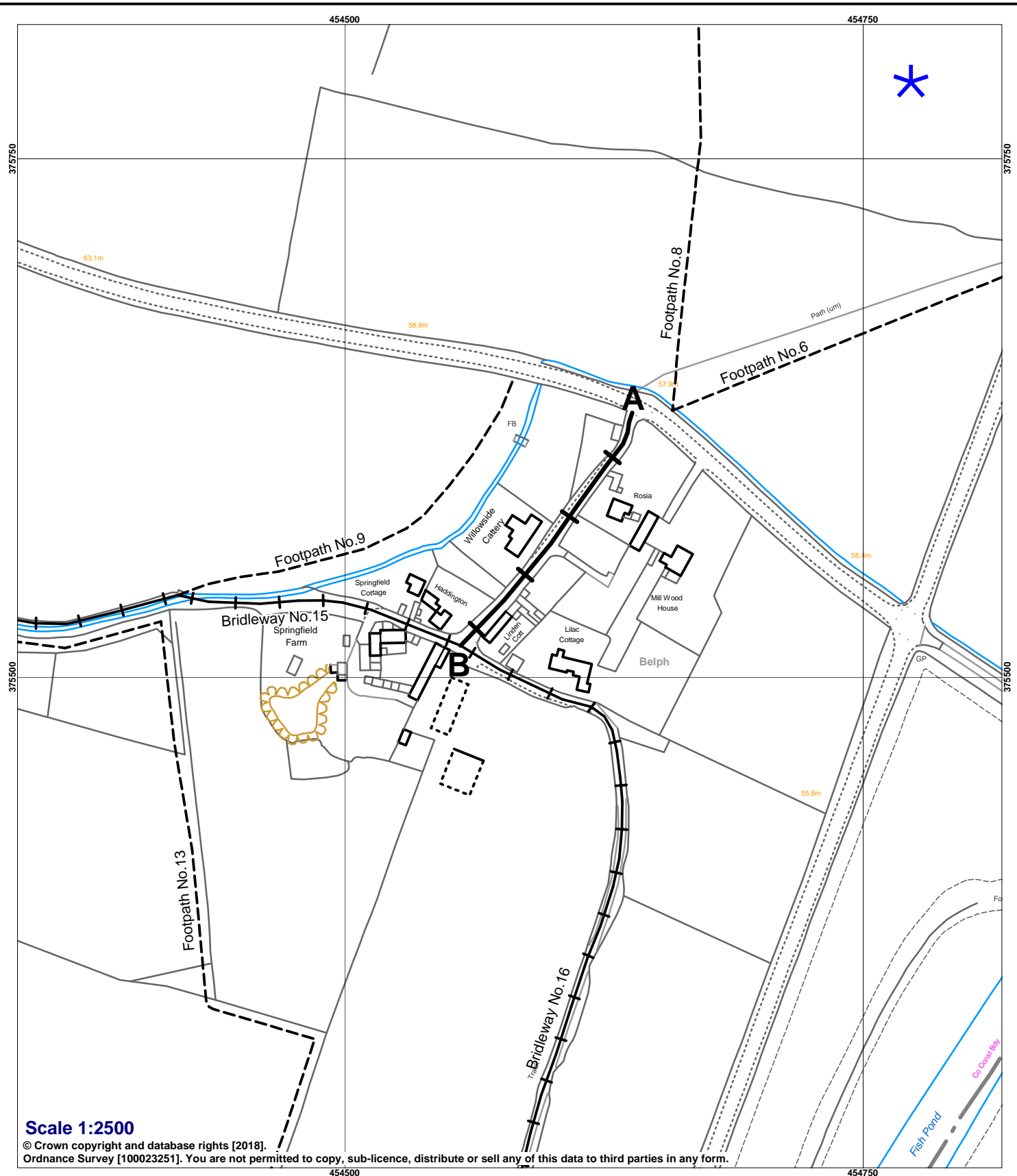
#### **4. Background Papers**

File held by Legal Services (Ref 63872)

#### **5. OFFICER’S RECOMMENDATION**

That the Committee resolves to authorise the Deputy Director of Legal Services to make an Order under s53 of the Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement by upgrading to bridleway, Public Footpath No 12 in the Parish of Hodthorpe and Belph as shown in this report.

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



Ref: TE/CH/X3963/Cttee/2018



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**Wildlife & Countryside Act 1981 Section.53**

**Claim to upgrade Public Footpath No.12  
to a Bridleway,  
Parish of Hodthorpe and Belph**

**Key:**

**Footpath Claimed  
as Bridleway (A-B)**  
**Existing Footpath**  
**Existing Bridleway**

