

**DERBYSHIRE COUNTY COUNCIL**

**Meeting of the Regulatory, Licensing and Appeals Committee**

**23 May 2016**

**Report of the Director of Legal Services**

**WILDLIFE AND COUNTRYSIDE ACT 1981 – APPLICATION TO ADD A BYWAY  
OPEN TO ALL TRAFFIC ALONG NON-CLASSIFIED HIGHWAY IN PIN DALE –  
PARISHES OF CASTLETON AND BRADWELL**

**1. Purpose of the Report**

To ask Members to consider the available evidence relating to the non-classified highway (NCH) in Pin Dale and to determine whether to authorise the making of a definitive map modification order (DMMO) to add the route to the definitive map and statement.

Please find attached to this report a plan showing the route.

**2. Information and Analysis**

**(i) Background to the Investigation**

A DMMO claim dated 3<sup>rd</sup> November 2005 was received by the County Council, the effect of which, if such an Order was confirmed, would be to add the NCH in Pin Dale to the definitive map and statement of public rights of way as a Byway Open to All Traffic (BOAT).

In support of his claim the applicant provided copies of certain items of documentary evidence including the Castleton Tithe Plan, Ordnance Survey maps and plans and various other documents either showing or referring to the route.

**(ii) Consultation**

On 9 December 2015 the County Council consulted various groups and individuals on the claim it had received, including any relevant landowner(s), local and national rights of way user groups and the District Council and Parish Council.

The consultees were asked whether they were aware of any evidence or information which might be helpful to the Council in terms of deciding what level of public access rights existed over the claimed route.

A copy of the consultation letter and accompanying plan was also displayed on site.

The Clerk to Castleton Parish Council emailed an initial response to the County Council on 9 December 2015 in which she helpfully alerted the County Council to the fact that, contrary to the impression given by the consultation plans, the claimed route is not called Pindale Road.

The Peak District National Park Authority emailed the County Council on 17 December 2015 informing the County Council that, whilst it had no information on the status of the route, it is recorded by the authority as a 'priority route'. This means that, in terms of its use by the public with vehicles, it is considered to be potentially unsustainable and requiring improved management.

On 21 December 2015 the Chairman of the Peak & Derbyshire Vehicle User Group (PDVUG) emailed the Council stating that his group wished to register their support for the BOAT claim. He went on to say that his members had driven the route for many years and that he believed they could gather evidence of such use for the past 3 decades or more. In a separate email he notified the Council of the fact that a necessary part of the used route is the road at the western end which connects the claimed route with the non classified highway named Siggate.

Councillor Jocelyn Street emailed the Council on 12 January 2016 to say that she has known this track for over 25 years and regularly sees who uses it. She said that she had never seen motorised vehicles on it and believes that that kind of traffic does not use it. She went on to say that some of the older inhabitants of the village have said that the route originated as an access track leading to a quarry in Pin Dale. She added that this quarry has not been worked since the 1950s and the people she has spoken to are not aware of any vehicular use of the old quarry road since that time.

A representative of the Green Lane Association Limited (GLASS) emailed the Council on 10 January 2016. He stated that his organisation supported BOAT status for the route. He added that the route was on the Council's 'List of Streets' as a publicly maintainable highway and is shown on Ordnance Survey (OS) maps as "Other route with public access".

He went on to state that "GLASS members and other members of the public have used Pindale Road (including the route from point A to point B on the DCC map) over very many years, on the basis that it is a route open to motor vehicles".

He added that; "In addition to the user evidence referred to above, a number of our long-standing members have worked with the police and national park rangers over several years on Operation Blackbrook events which were sponsored by Inspector Bryan Hall. This police-led operation involved various agencies, and members of GLASS were invited to take part in several of the events between 2007 and 2014. Some of these events took place at Pindale, and the police instructions at these events were clear - that use of Pindale Road was legally allowed for private motor vehicles if the vehicles were MoT'd, taxed and insured, and if they kept to the road itself without entering the adjacent SSSIs or the old quarry workings."

The GLASS representative attached a photograph showing vehicles at one of these events in Pindale. He went on to say that; "A member of the traffic police explained to the undersigned during one of these events that the police could act against illegal

(e.g. untaxed, uninsured) vehicles on Pindale Road because it was a public road and the normal road traffic laws applied. A second photograph is attached, showing GLASS and TRF volunteers at a “working weekend” in 2010 where MPV users were invited to help the police and national park rangers erect “keep to the track” signs showing the vehicular route. It is GLASS’s contention that both the national park authority and Derbyshire police believe that Pindale Road has always been a vehicular right of way.”

### **(iii) User Evidence**

A total of 27 completed user evidence forms were received from members of the public stating that they had driven or ridden over the route in or on a motor vehicle.

A total of 5 of those said they had used the route for a period of twenty or more years prior to public rights being called into question by the submission of the BOAT claim in 2005, with a further 5 saying that they had used it for between ten and nineteen years in the same period. The remaining 17 individuals said either that they had not used the route prior to 2005 or had used it during a period of one to nine years during the twenty years up to that date.

Most of the people who completed evidence forms said they had used the route less frequently than monthly, including the 5 who had driven/ridden it over the longest period.

### **(iv) Site Visit**

Pin Dale is situated three quarters of a mile or so south east of the centre of Castleton village.

The application route has the appearance of a roughly metalled stone track which leaves the minor road between Castleton and Hope and proceeds along Pin Dale in a south westerly direction to its junction with the old public road that once linked Castleton and Bradwell: In the early 1960s quarrying operations meant that that road was stopped-up just south of the junction with the application route and diverted some distance to the west.

Towards its north eastern end the application route runs through an open quarried area. Elsewhere it is defined by stone wall boundaries and buildings.

### **(v) Documentary Evidence**

#### **Pre-Enclosure Evidence**

A 1691 Map of all the Wastes & Commons belonging to the Town and Liberties of Castleton etc is held in the County Record Office (Ref D267/69/1).

The claimed route is clearly shown on this plan, as are the other roads which it connects with in this specific area. It is shown by means of a pair of dashed lines proceeding from an area labelled ‘Pindale End’ (where a group of buildings have been sketched on the plan) to a gate across the route (also sketched) at the Bradwell parish boundary. It should be noted that the Bradwell parish boundary

crosses the claimed route not far from its south westerly end, near the point where a footpath forks off to the Dirtlow Rake road.

#### Parliamentary Enclosure Award Evidence

An examination of the plan accompanying the Hope, Bradwell, Aston & Thornhill Inclosure Award of 1819 shows that the geographical scope of the enclosure process in Bradwell did not extend far enough northwards to include the small section of the claimed route which lay in that township.

In Hope, however, the Award does set out a public carriage road running south westwards from Hope village to the Castleton parish boundary a short distance to the north east of the group of buildings known as 'Pindale'.

The relevant description in the Award reads: "One other public carriage road and highway herein called Peak Forest Road in the hamlet of Hope branching from the Bradwell Road last described and extending in its ancient direction over the said waste called Eccles Bank through private and mesne inclosures to the south end of Pindale Lane in Castleton Liberty."

The 1819 Award also sets out another section of the 'Peak Forest Road' further south near Little Hucklow, which indicates that this road is the one which, prior to quarrying in the 1970s, proceeded southwards from the head of Pin Dale before heading generally south westwards to Peak Forest along a minor road which roughly corresponds with the ancient alignment of Batham Gate, the reputed roman road which lead from Brough, via Peak Forest, to the roman baths at Buxton.

The enclosure documentation does not reveal whether the linking section of the 'Peak Forest Road' which fell outside the geographical scope of the 1819 Award connected the two enclosure awarded sections via the claimed route up Pin Dale or via the alternative route incorporating the hairpin bend up the route known as 'Siggate'. If it was the former, then the Award provides very good evidence for the existence of historic public carriage road rights along the claimed route.

However, the Award's description of Peak Forest Road connecting with the south end of 'Pindale Lane in Castleton Liberty' may be an indication that it headed further north towards Castleton village (along the aforesaid Pindale Lane) before doubling back on itself along Siggate and heading southwards across the head of Pin Dale towards Batham Gate.

An entry in the Award states:

"And we do hereby declare that the said several public carriage roads and highways, public bridle ways, drift ways and footways are set out and awarded for the use of all persons having occasion to pass along and use the same accordingly, and that the said several private carriage roads, private bridle roads and drift ways and private footways are set out and awarded as such for the use of the several owners and occupiers for the time being of the lands and grounds to which such roads respectively lead or adjoin."

There appears to be no mention in the Award of the width of public carriage roads or of their maintenance.

### Early Published Maps

Burdett's c1760s Map of Derbyshire does not show the claimed route but it does show the route referred to above as 'Siggate', i.e. the route which runs eastwards from Castleton then across the south west end of Pin Dale and due south towards the area of Tideswell. However, we can be fairly sure that the claimed route was in existence when Burdett surveyed his map because the earlier 1691 map of wastes and commons etc in Castleton (see above) clearly shows it. Past investigations of Burdett's map have shown that some of the more minor highways were excluded from the published map.

Greenwood's c1824/5 Map of Derbyshire and Sanderson's slightly later 1836 Map of Derbyshire both show two types of road; 'cross roads' and 'turnpike roads'. Both maps show some private carriage roads and public bridle roads, as well as known public carriage roads, falling into the former category.

On these maps the application route is shown as part of a network of ways falling into the 'cross road' category which, apart from the major diversion of the road leading southwards towards Bradwell, generally corresponds to the local road network we see nowadays.

### Other Parish Plans

An 1819 'Plan of the Township of Castleton' (County Record Office Ref D911 Z/P1), very similar to the later 1841 Tithe plan described below (it may well have been used as the basis for the later document) clearly shows the claimed route coloured up burnt sienna in the same way as other roads (including private access roads).

In terms of the road layout in this specific area, excepting the road stopped up and diverted because of quarrying operations, this plan shows the same situation subsisting on the ground in 1819 as exists today; namely a highway (Siggate) climbing from the minor road between Castleton and Hope near Townhead, above and parallel to Pin Dale to the higher ground of Dirlow, with the claimed route also proceeding from the same Castleton/Hope route and running on a broadly parallel alignment along Pin Dale itself before connecting with the Siggate route higher up the dale.

The road which the claimed route connects with at its south west end is labelled 'From Bakewell' where it leaves the scope of the plan whilst the connecting road at the north east end is labelled 'To Bradwell'. Like the Tithe documentation, this plan is accompanied by a schedule which provides information about land ownership and cultivation etc. However, as on the Tithe Plan, the claimed route is un-numbered.

### Tithe Map and Apportionment

The Castleton Tithe Plan of 1841 shows the claimed route, like the other roads which are shown, lacking any numbering and un-named. Also like other roads, including private access roads, it is coloured burnt sienna.

The route is shown proceeding generally south westwards from a group of buildings labelled 'Pindale' to its junction with another road which these days forms a spur off a road heading generally southwards from Castleton. This other road is the one which modern mapping names 'Siggate' and the labelling 'From Bakewell' where this road leaves the scope of the plan at the parish boundary indicates that at this date what is these days a dead end spur once continued southwards as a highway across an area of land which is now a quarry.

At the location identified as Pindale a road continues north eastwards towards Hope whilst another heads generally westwards and north westwards to Castleton, the former being labelled 'To Bradwell' where it leaves the scope of the plan at the parish boundary.

The road from Pindale to Castleton meets the Siggate at a hairpin bend just east of the Townhead part of Castleton.

The Bradwell Tithe plan of 1844 shows the road which the claimed route connects with in the vicinity of the parish boundary on its pre-diversion alignment (i.e. before it was diverted around the western edge of a large area of quarrying).

As referred to above, before being diverted this connecting route lay on a generally north to south alignment and provided a link between Castleton parish to the north and Little Hucklow and Bradwell to the south and south east respectively.

Where it crosses northwards into Castleton parish this connecting route is labelled as heading 'to Castleton' however there is no sign of the claimed route, which at that point runs partly along the boundary in a north eastwards direction. It is therefore perhaps surprising that there is no indication of the application route on this plan.

### Early Ordnance Survey (OS) Maps and Plans

The c1840 1<sup>st</sup> ed 1" OS map clearly shows the claimed route on the same alignment as it exists today and linking freely with the wider road network. Whilst the rest of the present road network is also shown on this map, i.e. including the minor road which heads westwards from the hamlet of Pindale to Castleton, the claimed route appears to be depicted as the continuation of the route described above (under 'Parliamentary Enclosure Award Evidence') as 'Peak Forest Road'.

The c1898 1:2500 OS plan shows the application route as an obvious physical feature depicted by means of dashed or solid lines. Generally it appears to have its own OS plot number but where it runs through an area of quarrying in Pin Dale the route is shown to be braced to part of the adjoining quarry plot; meaning that the OS included the road and some of the quarry land in the same parcel.

The route is named 'Pindale Road' on the plan.

### Finance Act 1910

The claimed route is shown excluded from the taxable land holdings (hereditaments) on the Finance Act working plan.

## Later OS Maps

The 1962 1" to 1 mile Ordnance Survey map 'Buxton & Matlock' (reprinted in 1967 with minor changes and the addition of public rights of way) shows the claimed route as uncoloured and falling into the 'minor roads in towns, drives and unmetalled roads' category. The routes which it connects with at either end are shown as part of the coloured (yellow) road network of the area. According to the map's key these routes both fall into the 'tarred road with under 14' of metalling' category.

## Highway Maintenance Records

So-called 'handing over' documents were produced by the old rural district councils (RDCs) in about 1929, when legislation provided for the transfer of maintenance liability of roads from the RDCs to the County Council. These documents usually comprise a plan showing the location of the numbered roads and a schedule providing a brief description, however we only have a schedule for Chapel en le Frith Rural District Council, the accompanying plan having been missing for some time.

The claimed route appears to be included on the schedule as 'handed over' route No. 51a. It is described as "Pindale Road junction to Bakewell boundary" and has a stated length of 0.7461 miles. The junction in question is probably the one at the north eastern end of the claimed route, where groups of buildings named 'Black Rabbit Cottage', 'Black Rabbit Barn' and 'Pindale Cottage' are centred.

Travelling in a south westwards direction the Bakewell RDC boundary initially runs along the south eastern side of the claimed route but crosses near to its south westerly end, so that the last quarter of the route is situated in the area of Bakewell RDC (nowadays Derbyshire Dales District). The reference to the Bakewell Boundary in the above handing over schedule description must therefore be the point at which the boundary crosses the route.

Unfortunately, the short section of the claimed route which fell within Bakewell RDC appears not to have been included either on the relevant handing over schedule or accompanying map. This does not mean that the route was not at that time a highway (the very fact that it is included in the neighbouring RDC's records suggests that it was a highway of some description) but could be an indication that Bakewell RDC never had cause to do any work on the route.

The whole of the claimed route is currently recorded on the County Council's record of highways maintainable at public expense (the so-called 'list of streets' which the Council is required to keep under section 36(6) of the Highways Act 1980) as a non-classified highway or NCH - the other types of routes shown on the list of streets are A roads, B roads and Class 3 roads..

On this document there is a note to the effect that the inclusion of a way on the list of streets is not of itself proof of the existence of a particular highway status.

## Definitive Map Evidence

Following the National Parks and Access to the Countryside Act 1949 which introduced the formal recording of public rights of way on definitive maps and statements, surveys were carried out throughout England and Wales in order to ascertain the rights of way network.

The route under investigation was not claimed as a right of way for inclusion on the definitive map although a couple of footpaths were claimed which branch off it. It should be noted that the entire length of the claimed route was identified on the plans provided by the County Council for completion of the survey as a pre-existing road maintainable at the public expense.

The fact that Castleton parish did not claim the route itself for inclusion on the definitive map could be interpreted as meaning that they thought it was a highway of public carriage road status but that it was used more by vehicular traffic than other types of highway traffic and therefore did not belong on the definitive map and statement. Another explanation may be that they considered it was not a highway at all; however that does not seem likely because they claimed public rights of way which branched off it.

It should be noted however that at this time (the early 1950s) the County Council appears to have taken the view that it was unnecessary for a route that was already recorded on its highway maintenance records to be also recorded on the definitive map and statement, so that also might explain the why the route was not claimed.

In more recent years some of those NCH routes that were omitted have been found to carry either Byway Open to All Traffic or bridleway status and have been added to the definitive map and statement.

## Legal Orders

As referred to above, historically the road which the claimed route connects with at its south west end would have led southwards across Bradwell Moor to Little Hucklow as well as northwards along Siggate to Castleton. In the early 1960s that road, from a point a few metres south of the junction with the claimed route, was stopped up and diverted some distance to the west to allow quarrying to take place on Bradwell Moor.

The road was subsequently diverted further to the west in the 1990s and it still runs on its diverted alignment, which departs from the historic highway network a short distance north of the claimed route's south west end.

Consequently, the only highway connection with the south west end of the claimed route is along what remains of the old road as far as its junction with the 'new' diversion route and the road known as Siggate a short distance to the north.

Correspondence from the quarry operators to the Peak Park Planning Board in the 1960s makes reference to the County Council's requirements regarding the specifications for the new road but does not refer to the claimed route. However a plan which appears to have accompanied the correspondence (i.e. one that may



have been drawn up by the quarry operators rather than any of the local authorities involved) shows the area and labels the claimed route 'Pindale Footpath'.

### **3. Analysis and Conclusion**

Whilst it is possible that the public carriage road set out as Peak Forest Road in the Hope, Bradwell, Aston & Thornhill Inclosure Award of 1819 continued along the application route, it seems at least as likely that it continued along the alternative road known as the Siggate.

The exclusion from hereditaments of the application route on the Finance Act working plan is consistent with a route carrying public vehicular rights but, likewise, experience of these documents has shown that it is not inconsistent with a lesser highway of public bridleway status either.

Despite not being shown on some documents (notably the c1929 Bakewell RDC handing over schedule and the 1844 Bradwell Tithe Plan) it is considered that the documentary evidence generally is supportive of the route being a highway of some description; probably either public carriage road or public bridle road status.

However the historical evidence is inconclusive in terms of identifying a particular highway status.

Whilst the documentary evidence is effectively neutral in evidential terms, a reasonable number of completed user evidence forms have been supplied to the County Council detailing use of the application route over a number of years in or on motor vehicles, including a modest number (five) from people who said they had used the route for twenty or more years up to the point where the submission of the BOAT claim brought into question the existence of public rights.

One of the consultees has stated that recreational motorists do not use the application route and have never used it. This clearly contradicts the evidence of the motorists themselves (as contained in their user evidence forms).

Members will be aware that Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 contains two tests (see below). Whilst usually the County Council would seek to be able to make an Order on the basis of the balance of probabilities, that section of the Act enables the Council to make an Order where the existence of particular rights can be reasonably alleged: Case law has established that this test is not only applicable where the evidence is supportive of a particular highway status but does not quite meet the balance of probabilities test but also where there is a conflict between evidence that cannot be resolved.

Whilst in this case the evidence is considered not sufficiently persuasive to be able to make and advertise a DMMO using the balance of probabilities test, there is nevertheless sufficient evidence to justify making a Byway Open to All Traffic Order on the basis that such rights are reasonably alleged to exist.

Any highway rights of BOAT status that do exist along the application route must also subsist along the road which the route connects with at its south western end because this is the only means of access/egress to or from the wider road network at

that end. The Order should therefore also include this short spur (shown on the attached plan as proceeding from point B to point C).

#### **4. Legal and Human Rights Considerations**

Under Section 53 of the Wildlife and Countryside Act 1981 the Council is under a duty to make an order to modify the definitive map and statement ('a DMMO') as soon as reasonably practicable on the occurrence of certain specified events which include 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)). Relevant evidence can take the form of historical documentary evidence and/or evidence of use.

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 deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

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.

Section 66 of the Natural Environment and Rural Communities Act 2006 ('the NERC Act') restricts the ability to create new rights of way for mechanically propelled vehicles - evidence of use of a way by such vehicles after commencement of the NERC Act (2<sup>nd</sup> May 2006) will not give rise to a public right of way.

Section 66 of the NERC Act states:

“(1) No public right of way for mechanically propelled vehicles is created after commencement unless it is— .

(a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or .

(b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles. .

(2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.”

Section 67 (1) of the NERC Act extinguishes an existing public right of way for mechanically propelled vehicles (broadly speaking motor vehicles) over ways that, immediately before commencement of the NERC Act on 2<sup>nd</sup> May 2006, were either not shown in a definitive map and statement or were recorded only to footpath, bridleway or restricted byway status.

Subsections 67(2) contains several exceptions to the above extinguishment provisions including where:

“(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement [of the NERC Act] was use for mechanically propelled vehicles.

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense).”

## **5. Other Considerations**

In preparing this report the relevance of the following factors has been considered: financial, human resources, environmental, prevention of crime and disorder; equality of opportunity; health and property considerations.

## **6. Background Papers**

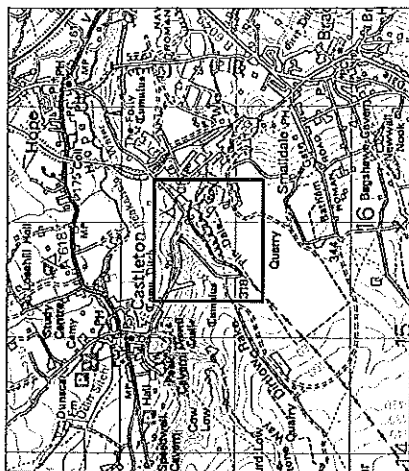
The items of evidence referred to in this report (copies with Director of Legal Services' file 36081 or in Derbyshire Record Office).

## **7. Officer Recommendation**

That the Committee resolves:

(1) to authorise the making of an order under section 53 of the Wildlife and Countryside Act 1981 to add the non classified highway in Pin Dale, shown between points A and B on the attached plan, and the short linking spur between points B and C, to the definitive map and statement for the area as a Byway Open to All Traffic.




**JOHN McELVANEY  
DIRECTOR OF LEGAL SERVICES**



Wildlife and Countryside Act 1981 Section 53

Claim to add a BOAT along  
non-classified highway known as  
Pindale Road.  
Parishes of Castleton and Bradwell

**KEY**

- Claimed BOAT A  B  
Existing Footpath   
Existing Bridleway 

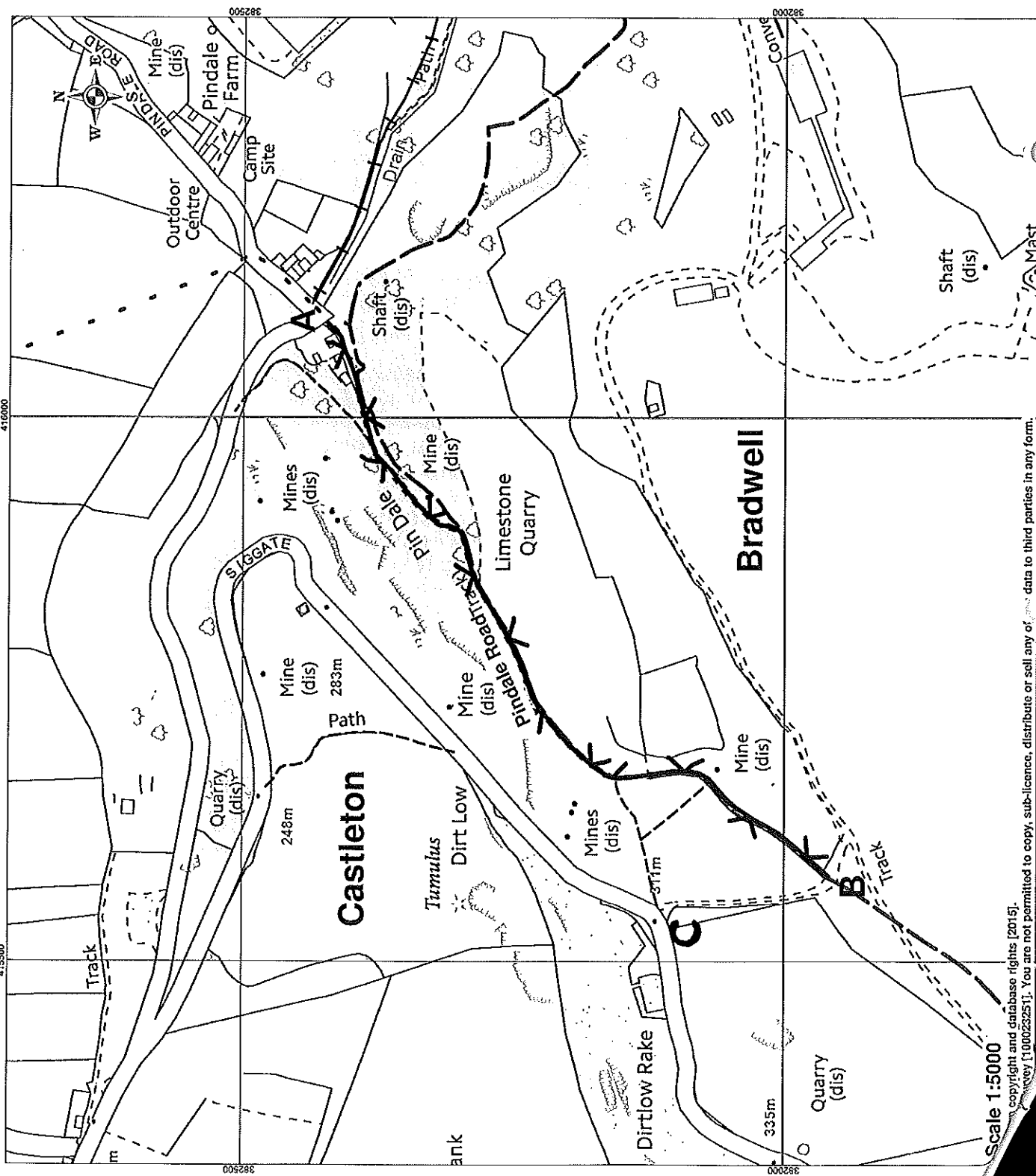


Improving life for local people

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