

DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE

23rd July 2018

Report of the Director of Legal Services

**Wildlife and Countryside Act 1981 – Claim to add Back Lane, Ashover
to the Definitive Map and Statement as a Byway Open to All Traffic**

1. Purpose of the Report

To enable Members to determine whether to authorise the making of a definitive map modification order (DMMO) adding a non-classified highway (NCH) called Back Lane in Ashover parish to the definitive map and statement of public rights of way.

Please find attached to this report a plan showing the claimed route (between points A, B, C, D and E).

2. Information and Analysis

2.1 Background to the Investigation

A DMMO claim dated 3 February 2004 was received by the County Council, the effect of which, if such an Order was confirmed, would be to add Back Lane in Ashover to the definitive map and statement of public rights of way as a Byway Open to All Traffic (BOAT).

Please Note: South of the junction with Bridleway 67 (just to the north of Point D on the attached map) and along to Oakstedge Lane at Point E, the claimed route is a tarmac road and actually forms part of Gin Lane, a route which commences at Overton along Footpath 64 and then Bridleway 67. The section between points D and E also continues as Gin Lane south westwards and is a tarmac road serving various properties.

For the sake of simplicity however this report largely refers to the claimed route as Back Lane.

The route is located near Overton roughly half a mile or so south of the centre of Ashover village. It branches off the metalled road leading to Overton (widely known as Overton Coach Road) and skirts the edge of the grounds of Overton Hall before re-connecting with the wider road network in the vicinity of Milltown.

The entire route is included on the County Council's highway maintenance record (the 'List of Streets') as a non-classified highway (NCH). Back Lane is unsealed and has the appearance of an unmade or roughly metalled track whereas the Gin Lane section is a tarmac road.

2.2 Consultation

On 5 January 2007 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.

Many of the people who responded to the consultation objected to any proposal to record the route as a BOAT on the grounds that the character of the route was such that recreational vehicle use of the route was unsuitable, and/or posed a threat to the safety of other users, and/or damaged the fabric of the route and the local environment. Those sorts of issues are generally not relevant to the matter of what level of highway rights subsist over the route in question, however, a number of consultees provided relevant information, e.g. knowledge of the way the route has been used or information regarding the origins of the route, and that information is referred to below:

On 10 January 2007 a long-standing resident of Ashover contacted the County Council to say that he always understood Back Lane to be a private way used by workers walking to the various lead mines in the vicinity. He added that he did not think it had ever been open to public cart or carriage road use.

Another local resident wrote to the County Council on 17 January 2007: He stated that only the lower part of Back Lane (the Milltown end) has been used by vehicles (small industrial vehicles) to gain access to the adjoining Milltown Quarry, but that this use ended some time before the beginning of 2005 when quarrying operations ceased.

On 18 January 2007 a representative of the Milltown, Fallgate and Ashover Hay Residents Association wrote to the Council expressing the Association's concern about what BOAT status for Back Lane may mean. The Association stated that part of the route nearest to Milltown Quarry was used by traffic associated with the quarrying operations but that since those operations ceased it has reverted to use as a footpath and bridleway and should now be recorded as such. They added that the route has never been maintained by the Council even though it was their understanding that the Council is liable for its maintenance.

On 19 January 2007 the North East Derbyshire District Council (NEDDC) Ward Member for Ashover emailed the County Council with a vehement objection to BOAT status on the grounds that such use is unsuitable, poses a threat to the safety of other users and damages the local environment.

On 22 January 2007 the Clerk to Ashover Parish Council wrote to the County Council objecting to BOAT status on the grounds that it would be to the detriment of local life. The parish stated that the route had been used as an internal haul route during the extraction of fluorspar from a nearby quarry.

On the subject of old maps, the Parish Council referred to the case *Merstham Manor Ltd v Coulsden and Purley Urban District Council* where it had been adjudged that there was nothing in the depiction of a route on old maps to show whether the author/topographer was intending to show a public highway and that the depiction of a route on a tithe map was equally inconclusive since such maps drew no distinction between public and private roads.

On 23 January 2007 the Clerk to the Parish Council wrote again to inform the County Council that at a meeting of the council it had been resolved to request that Back Lane be added to the definitive map and statement as a public bridleway.

On 1 February 2007 the elected member for the area emailed the County Council to say that he echoed the views of the Parish Council on this matter.

On 24 January 2007 a local person living near to the northern end of Back Lane wrote to the County Council. He stated that since the early 1980s Back Lane has been used extensively by walkers and occasionally by horse riders, however equestrian use has tailed off dramatically as the route has become overgrown, to the extent that he had not observed horse riders on the route for twenty years.

He added that recreational motor cyclists have used the route occasionally for most years since 1983. He went on to clarify that 'occasional' use meant about two or three times per year.

On 5 February 2007 the Peak and Northern Footpaths Society wrote to the County Council to say that their inspector had concluded that the route was very narrow and was only capable of being used as a public footpath.

Residents of Ashover wrote to the Council on 5 February 2007 objecting to BOAT status. They stated that to their knowledge the route has only been used by walkers, horseriders and the occasional cyclists.

On 9 February 2007 an Ashover resident wrote to the Council objecting to BOAT status. She wrote again on 16 February 2007 to say that she had spoken to a local man who had known the route all his life and who was adamant that it had always been a public bridleway and should stay that way.

On 15 February 2007 Ashover residents wrote to the Council objecting to BOAT status. Whilst their objection was primarily made on grounds that are not deemed relevant to the issue of highway status, they referred to the route as a bridleway and said they had used it with a pony.

Also on 15 February 2007, Derbyshire residents wrote to the Council objecting to BOAT status and they too referred to the route as a bridleway.

The Allestree Ramblers (affiliated to the Ramblers Association) wrote to the Council on 15 February 2007. They stated that their group had used Back Lane for over twenty years and had always considered it to be a bridleway.

Ashover residents living in the area of Back Lane wrote to the Council on 19 February 2007. They opposed BOAT status for Back Lane and said that they considered it to be just a footpath/bridleway.

A resident of Ashover of nearly 80 years standing wrote to the Council on 19 February 2007. They stated that they walked Back Lane at least twice a week and had never seen a 4x4 vehicle on the route.

Another resident of Ashover wrote to the Council on 20 February 2007 objecting to BOAT status. They disagreed with the applicant's claim that the depiction of the route on some early maps (e.g Sanderson's 1835 map of the area around Mansfield) was indicative of public vehicular rights and pointed to examples of other routes similarly shown on Sanderson's map which definitely did not carry such rights, e.g. cul de sac private access routes.

They stated that Back Lane has always been part of the Overton estate and has been used as a footpath and bridleway. They went on to say that they had used the route several times a week, both on foot and on horseback, for the last 14 years and have generally only ever met other walkers and horse riders. They stated that occasionally they would meet a cyclist and, rarely, a motorcyclist. They went on to state that the route should be recognised as a public bridleway, a status it has enjoyed since time immemorial.

On 21 February 2007 another Ashover resident who lives quite close to the route wrote to the Council objecting to BOAT status for Back Lane. They referred to the route as one they had enjoyed using on horseback. They also stated that, to their knowledge, in the 20 years they had lived in the vicinity not a single 4x4 vehicle had used the route.

Another Ashover resident, from Overton, wrote to the Council on 22 February 2007 objecting to the BOAT Order. They referred to the route's current status as public bridleway and said that in the three years they had lived at Overton they had never seen a vehicle on it.

On 22 February 2007 an Ashover resident wrote to the Council providing copies of a 1774 diversion Order affecting part of Back Lane (this Order is described below under the section dealing with documentary evidence).

They stated that this 18th Century legal Order demonstrated that Back Lane had formed part of a public bridleway and suggested that other parts of the route were linking paths. They also referred to a stone dated 1699 which can be observed on the part of the route which once formed the old bridleway and suggested that this was the date of the bridleway boundary wall at this location.

They provided various photographs of the route including some showing the narrow 'sunken' nature of the route as it approaches Gin Lane at the Milltown end. This they suggested would have been caused not by wheeled traffic but by horses and foot traffic.

They went on to say that much of the employment in these parts related to the mining and smelting of lead which centered on the Fallgate and Milltown area from around 1610 onwards. They stated that lead and 'white coal' (woodchips) would have been transported via strings of packhorses to Kelstedge, where the lead would be smelted.

They stated that the appearance of Back Lane was such that it was clearly used for foot traffic (i.e. rather than vehicles).

Another Ashover resident wrote to the Council in February 2007 with a very detailed objection to BOAT status. She included a letter written by Graham Plumbe of the Green Lanes Protection Group (GLPG) in which he states his view that all or part of the route has not been saved from the extinguishment of public motor vehicle rights under the Natural Environment and Rural Communities Act 2006 (the NERC Act).

The objector stated that, not only was the original application not made in compliance with the legal requirements, the documentary evidence did not support the existence of public vehicular rights but, together with user evidence, showed that it should be recorded as a bridleway.

She referred to several other horse riders who had known and ridden Back Lane by horseback for very many years; she mentioned the owner of a local riding school who had ridden in the area (including Back Lane) for nearly 50 years as well as two other long standing local horse riders who she said have ridden the lane all their lives.

The objector also included three letters from local people: A letter from two sisters who had grown up and lived in the Overton area for over eighty years states that they had always known the route to be used by walkers and horse riders and they wished to support it being recorded as a bridle way.

In another letter the aforementioned riding school owner states that she had ridden the route many times for nearly fifty years.

Another long-standing (80 years) resident of Milltown stated that during their lifetime Back Lane has never been used by vehicles but has been used by walkers and horse riders.

A resident of Overton wrote to the County Council in February 2007. She stated that historically Overton had been a private estate and that the evidence did not support public vehicular rights along the Coach Road/Back Lane through-route from Slack Hill to Milltown; however she said that there was a network of footpaths and bridleways that intersected the Overton area.

She suggested that Back Lane was a means by which walkers and horse riders, including those living and working in the area, would have avoided the immediate environs of Overton Hall.

She pointed to the evidence from several Ordnance Survey maps and plans which show Back Lane labelled as a 'footpath': The 1955 1:10,560 (6" to 1 mile) plan shows the section of Back Lane immediately NW of Salter Lane labelled 'F.P.' (meaning footpath); the 1967/70 plan of the same scale shows the labelling 'Path' at several points along the lane and also 'Tk & Path' immediately NE of Greenend and the 1978/88 1:10,000 plan shows the same. The 1:10,000 plan of 2000 shows the route similarly labelled and also shows the Back Lane route appreciably narrower than the Coach Road/Gin Lane through-route, with which it connects at either end.

It should be noted that historically Ordnance Survey maps and plans have always included a disclaimer regarding any public rights that can be interpreted as existing over the ways they show.

2.3 User Evidence

The County Council received 7 completed user evidence forms from recreational motorists who said they had driven the Back Lane route over various periods and frequencies. According to the completed forms, 4 of the motorists had driven the route over a period of 20 or more years and 3 had done so between 10 and 19 years.

All of the motorists said they had used the route infrequently (on a less than monthly basis); the use ranging between a maximum frequency of 6 times per year and a minimum of once a year.

As well as the many consultation letters that referred to individual use of Back Lane on horseback, the County Council also received 18 completed user evidence forms from horse riders stating that they had ridden along Back Lane.

All of the riders appear to have incorporated Back Lane and the Overton Coach Road/Gin Lane route via Overton into a loop around the area. Three of the riders stated that they had ridden along Overton Coach Road to Slack Hill.

Most of the riders (13) stated that they had used the entire length of Back Lane as far as the junction with Overton Coach Road near Greenend Farm while a smaller number (5) indicated that they had only used the part of the route south east of Ashover bridleway 145, i.e. they incorporated Br 145 and Gin Lane into a smaller circuit.

Of the 18 riders, 10 said they had ridden Back Lane over a period of 20 or more years: 7 of those having ridden the longer loop up to Greenend Farm and 3 the smaller loop incorporating bridleway 145. Of the remaining 8 riders who had ridden the route over a period of up to 19 years, 6 had ridden the longer loop and 2 the smaller loop.

The longest period of user was an individual who had ridden Back Lane up as far as bridleway 145 over a period of 41 years. In all, the user evidence of the horse riders spans a period from 1963 up to 2004 when the BOAT application marked a calling into question of public rights.

All of the riders are reasonably local to the area and the majority of them stated that they used the route either weekly or monthly. One of them provided maps used in connection with organised long distance endurance rides held in 2006 and 2012 which show that the 'loop' up to Greenend Farm was part of the organised ride.

Several of the horse riders recounted a conversation they'd had with a resident of Overton who had told them that the route through Overton itself (Coach Road/Gin Lane) was just a public footpath and that they shouldn't be riding their horses on it. This appears to have taken place in about 2015/16 although one of the riders recalled a similar exchange in 2011.

2.4 Documentary Evidence

Burdett's 1760s Map of Derbyshire

This map does not show Back Lane but it does show Coach Road, the route which Back Lane branches off to the north-west of Overton Hall, as a cul de sac road leading to Overton and falling into the 'cross road' category.

There is the labelling 'Overton' and the name 'B. Hodgkinson Esq' written at the point where the route terminates. Overton Hall was the seat of the Hodgkinson family and this route clearly provided access to the hall.

This map only shows two categories of road; 'cross roads' and 'those with a turnpike'. Past research of the document has found that the cross road category includes not only acknowledged public carriage roads that were not turnpike roads

but also some routes that were not public carriage roads, e.g. public bridleroads and private carriage roads.

Quarter Sessions Highway Diversion Order of 1774

This particular order describes a bridleway leading from the town of Ashover to High Moor (thought to be the area known these days as Dethick Common¹) and diverts that section in the immediate vicinity of Overton Hall onto an alignment running to the north and west of the Hall. The route concerned is these days recorded on the definitive map and statement as Ashover public bridleway No. 145.

Prior to the 1774 Diversion Order this bridleway ran from Salter Lane, along Back Lane as far as Cockerspring Wood, before turning south-westwards at Orchard Lane Gate, across the grounds of Overton immediately in front of the Hall, and then proceeding westwards in front of Overton Cottages before turning southwards through Overton Park.

The Order refers to the section of bridleway to be stopped up and diverted as being 702 yards in length. This corresponds very well with the length of the section described above; from the point at which the bridleway nowadays turns south-westwards on its 'new' alignment off Back lane to a point in Matlock Forest where the old and new alignments meet just to the south-west of Overton Cottage Farm.

Whilst the 1774 Diversion Order only relates to the middle part of Back Lane, it provides evidence for the likely status of the north-west and south-east sections of the route at that date:

The fact that Salter Lane and the section of Back Lane south-east of the Salter Lane junction carried public bridleway rights means that the part of Back Lane running north-west from that junction (then turning south-west to Coach Road) must have carried public bridleway rights at most, and may even have carried only public footpath rights (Ordnance Survey mapping from the late 19th Century shows a footpath connecting with this section of Back Lane where it turns south-west) or possibly no public rights at all. Any public carriage road rights would necessarily have been left as a cul de sac at the Salter Lane junction and it seems unlikely that the justices of the peace would have allowed that to happen.

Likewise, the fact that part of the middle section of Back Lane was stopped up as a public bridleway in 1774 means that that section carried no public rights at all, but it also suggests that the section of Back Lane immediately south-east probably carried no public rights either because after 1774 any public rights that did exist along the route would have ended in a cul de sac.

¹ Lea and Dethick were formerly part of the large parish of Ashover. Some local historians refer to this route as the Coffin Road, so-named because it was apparently used to bear dead parishioners from Lea and Dethick to Ashover Church for burial.

The 1774 Diversion Order deals with the slight diversion of a public footpath affected by the stopping up of the bridleway in front of Overton Hall. It is described as running from Yew Tree Seat in Cow Lane across a close called Lidyard. These features are identified on the plan attached to the Order and from the plan it appears that the footpath must either have branched off or crossed the south-east section of Back Lane. Ordnance Survey (OS) mapping from the late 19th Century appears to show the same public footpath crossing the south-east section of Back Lane so it is possible that such rights could also have existed along part of the route at the south-east end.

1783 Ashover Enclosure Award and accompanying Plan

The area around Overton evidently fell outside the geographical scope of the Parliamentary Enclosure process because the 1783 Ashover Enclosure plan does not show Overton or Back Lane. However the plan does show the road that Back Lane connects with near the property 'Greenend Farm' (see attached plan).

These days that particular road is known as Overton Coach Road² but it is set out in the Award as 'Overton Road', an 18' wide private carriage road branching out of the Matlock Turnpike Road and extending to a lane called Greenhouse Lane (the derivation of this latter road name is probably the property Green House Farm which sits adjacent to the route).

Parliamentary enclosure awards tend to be worded in a broadly similar way and the way in which Overton Road is described indicates that its continuation beyond the scope of the enclosure process was called Greenhouse Lane. The name Overton Road suggests that ultimately the road led to Overton and, since it is highly unlikely that the route would have changed status at the geographical limit of the enclosure process, the assumption must be that as of 1783 Overton Road and Greenhouse Lane formed part of a private carriage road that ran from the main Matlock road to Overton.

Another private carriage road, called Greenhouse Road (probably the same derivation as referred to above) is set out in the Award: This extends from Holestone Gate Road and is described as leading to "a lane called Bradleys Lane". Nowadays this route has a public right of way status of footpath and is known as Bradley Hollow. It too joins the aforementioned Coach Road near the property 'Greenend Farm'.

As indicated above, Back Lane would therefore have formed a branch off the Overton Road/Greenhouse Lane private carriage road.

Greenwood's 1824/5 Map of Derbyshire

This map clearly shows the public bridleway from Ashover towards High Moor (Dethick Common) subject to the 1774 diversion Order referred to above but does

² The name 'Coach' Road can be equated to the expression coach drive often used to describe an access to a large residence.

not give any indication of either Back Lane or the route it branches off, Overton Coach Road.

Sanderson's 1835 map of the 'Country Twenty Miles Round Mansfield'

The claimed route is clearly shown; depicted by means of a pair of solid lines and with the short section aligned south-west to north-east at the western end labelled 'Church Lane'.

According to the key of the map, the route falls into the 'cross road' category. As with Burdett's map described above, the only other category of road depicted on this document are Turnpike Roads and past researches of the map have found that the cross road category includes not only acknowledged public carriage roads that were not turnpike roads but also some routes that were not public carriage roads, e.g. public bridleroads and private carriage roads.

1st ed 1" Ordnance Survey map c1840

The claimed route is clearly shown, branching off Overton Coach Road and then proceeding to the east of Overton Hall before connecting with the route which runs from Ravensnest (named Overton Farm on this map) to the area around Milltown.

1851 Ashover Tithe Map

This particular tithe map, unlike many others, does not show roads (public or private) coloured up. Nevertheless, Back Lane is clearly shown as a physical feature depicted by a pair of solid lines and on the same alignment as shown on modern maps and plans. The route is not named on the plan.

c1898 2nd ed 1:2500 Ordnance Survey Plan

This large scale OS plan shows that, as of c1898, there was a building called 'The Lodge' alongside Coach Road (the route which Back Lane branches off) complete with a gate across the route at the same point. This reinforces the notion that historically Coach Road was a private road serving Overton Hall.

Back Lane itself is shown as a somewhat narrower route than Coach Road and it is labelled 'Back Lane'. Where it joins Gin Lane there is a small piece of open land; possibly part of the nearby quarry workings.

Finance Act 1910

Back Lane appears to be entirely excluded from the taxable land holdings (hereditaments) ascertained for the purposes of the Finance Act 1910.

c1929 'Handing Over' documents produced pursuant to the 1929 Local Government Act

This documentation was produced when the responsibility for maintaining all the highways which previously had been maintainable by the Chesterfield Rural District Council (all bar main roads) was transferred to the County Council. The documents comprise schedules listing the individual roads and a plan showing the location of the routes concerned.

The plan (the so-called 'handing over plan') shows the entire length of the claimed route while the key to the plan identifies the route as a 'district road' as opposed to a 'classified' or 'DCC main' road, i.e. the route was maintainable by the district but had no classification.

An examination of the handing over schedule shows that the claimed route was handed over together with Overton Coach Road as part of a longer through-route commencing from the main Matlock/Chesterfield road and finishing on Oakstedge Lane near Milltown. The route is numbered 222 and is named in the schedule as 'Goss Hall Lane' (Goss Hall is sited adjacent to Overton Coach Road).

It should be noted that, just because the claimed route was handed over as part of a longer route, it doesn't necessarily follow that the two routes historically formed part of the same through-route. The people compiling the handing over documents often appear to have combined two or more routes when it was convenient to do so, probably in order to keep the schedule to a reasonable length.

c1950s Parish Survey for the Draft Definitive Map and Statement

In the early 1950s Parish Councils undertook surveys of their area to decide what public rights of way should be claimed for inclusion on the draft definitive map and statement of public rights of way required to be produced pursuant to the National Parks and Access to the Countryside Act 1949.

After the parishes had completed their survey they returned the paperwork (6" OS maps marked up with the claimed routes and claim schedules for each path) to the County Council who then compiled the draft definitive map for the area.

Ashover Parish Council evidently claimed the entire length of Back Lane as being part public path³ and part public footpath at the time of the original parish survey because in 1955 they wrote to the County Council asking why the route had been omitted from the draft definitive map.

They state at paragraph 3 of the letter dated 4th April 1955, addressed to The County Surveyor;

³ Under the National Parks and Access to the Countryside Act 1949 the term 'public path' refers generally to footpaths and bridleways.

“Draft map does not indicate the public footpath along the Overton Coach Road from ‘Lord Nelson Inn’ on the Slack to Greenend Farm, nor the public path from Greenend Farm Ashover. Paths 59, 58, 65 & 142 enter this en route”

The Overton Coach Road is the route that Back Lane branches off near Greenend Farm but the ‘public path from Greenend Farm’ must be a reference to the northern part of Back Lane itself because the numbered paths referred to in the letter formed connections with that part of Back Lane.

The omission of the remaining, southern, section of Back Lane is queried at paragraph 6 where the parish ask;

“Why no marks as public footpath on the road from junction of paths 59 and 60 southwards to junction of paths 67 and 91”

The junction of paths 59 and 60 is the point where Back Lane connects with footpaths from Fallgate (60) and Salter Lane (59) and the junction of paths 67 and 91 is at the southern end of Back Lane, where it connects with the bridleway from Ravensnest (67) and the footpath from the direction of The Miners Arms (91).

The reason why the County Council had omitted part of Overton Coach Road and Back Lane from the draft map was because they were routes that were already recorded as being maintainable by the County Council: On the letter from the parish someone from the County Council (presumably someone from the County Surveyors department) has written in pencil by the side of paragraph 3 “already maintained by DCC”, and by the side of paragraph 6 they have written “C [meaning county] Road”.

A file copy of a letter sent back to the parish on 6th May 1955 states that “the paths referred to in paragraphs 1, 3, 5, 6 & 7 of your letter of the 5th April, are already maintained by the County Council and were, therefore, not included in the draft map”

Two of the other omitted routes referred to by the parish (‘Bradley Hollow’ footpath No. 146 referred to at paragraph 1 of the letter and bridleway 145 known as the Coffin Road, referred to at paragraph 5) eventually became recorded on the definitive map.

The route referred to at paragraph 7 of the letter (Ralph Lane, also known as Marsh Green Lane) was a public carriage road and eventually became added to the definitive map and statement as a BOAT following a public inquiry.

The County Council effectively dismissed Ashover Parish Council’s claim that Back Lane carried public footpath rights, but there is no indication that that decision was based on actual evidence, i.e. that the Council found that the route was a highway of a higher status. It appears from the evidence we have that the County Council had formed a view at that time (now considered to be wrong) that

it was unnecessary to include routes on the definitive map and statement that were already included on their records as publicly maintainable highways.

2.5 Summary and Conclusion

Back Lane does not fall within the geographical scope of the Ashover Parliamentary Enclosure process and so is not dealt with in the Enclosure Award.

However, the fact that the linking road at the north-west end (widely known as Overton Coach Road) was set out in the Award as a private carriage road strongly suggests that that end of Back Lane did not historically carry any public rights at all, since any highway rights that did exist would necessarily have ended in a cul de sac where they met the enclosure awarded private road.

The middle section of Back Lane in the vicinity of Overton Hall currently coincides with part of Ashover public bridleway 145. This route was subject to a stopping up and diversion Order in 1774 and is evidently part of an historic route linking Ashover village and more distant 'detached' portions of the parish.

The wording of the 1774 Order provides proof that, prior to the bridleway being partly stopped up and diverted, a longer section of Back Lane once formed part of this ancient route. For the reasons stated in the body of the report, this evidence also establishes that the middle and lower sections of Back Lane cannot have been public carriage roads either before or immediately after the 1774 diversion Order.

The 1774 Order also deals with the minor diversion of a public footpath which must either have crossed, or partly run along, the Back Lane route. Other sections of Back Lane may conceivably have carried a public right of way where they coincided with 'crossing' footpaths but the 1774 diversion Order, together with the slightly later 1783 Ashover Enclosure Award, appears to establish that, as of the late 18th Century, part of Back Lane coincided with a crossing bridleway but did not carry public carriage road rights.

In terms of later evidence: The entire length of Back Lane, continuing along Gin Lane, is excluded from hereditaments (taxable land holdings) on the 1910 Finance Act documentation. However, as stated in the Planning Inspectorate's guidance (Consistency Guidelines Section 11), this would not necessarily be incompatible with a highway of public bridle road status or even with a private route carrying no highway rights.

The guidelines state that;

"It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending on the circumstances. It must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation"

Likewise, the fact that the responsibility to maintain Back Lane was 'handed over' to the County Council from Chesterfield Rural District Council, and that the route has subsequently made its way on to the Council's List of Streets, does not constitute evidence of highway status, though it does mean that public motor vehicle rights, should they exist, will not have been extinguished by the Natural Environment and Rural Communities Act 2006 and the route may, in that circumstance, be added to the definitive map and statement as a BOAT.

Other documentary evidence is generally inconclusive with regard to the matter of what, if any, highway rights subsisted over those sections of Back Lane which did not form part of the historic bridleway between Ashover village and other parts of the parish.

However, the information taken from the c1950 original parish survey indicates that at that time the parish probably had in mind a route that at its northern end was part footpath and part bridleway and at its southern section was a footpath.

Many of the comments received from local people during the initial consultation process also indicate that Back Lane was generally viewed not as a public carriage road but rather as a bridleway, with some respondents referring to it as a footpath and bridleway. One of the correspondents provided useful historic information suggesting that the route could have been used by packhorses in connection with the lead extraction and smelting industry.

In terms of the user evidence: Whilst some consultees commented that they had never seen motorists on the route, a number of recreational motorists provided evidence of their use over a number of years. However this evidence is insufficient in terms of the overall number and frequency to raise a presumption that the route has become dedicated as a public carriage road.

A larger number of horse riders also provided evidence of their use of Back Lane: Most of them said they'd ridden the route frequently in the course of doing a loop which included the entire length of Back Lane up to the junction with Overton Coach Road.

This horse riding evidence spans a considerable number of years from the 1960s to the present and, taken with the evidence of local people gathered from the consultation exercise, it indicates that the entire length of Back Lane from its junction with Overton Coach Road at Greenend Farm south east to the junction with the existing bridleway 67 near Milltown has probably been used and enjoyed as a public bridleway over a sufficiently lengthy period prior to being called into question in 2004 (by the submission of the BOAT application) such as to raise a presumption that the route has become dedicated as a public bridleway.

No evidence has been forthcoming to show that the part of the claimed route called Gin Lane (from the end of Back Lane at the junction with bridleway 67 southwards to point D on the attached plan) carries public vehicular rights and, since Gin Lane

already continues along bridleway 67 as a public bridleway, it seems likely that that section also carries public bridleway rights (a number of the horse riders stated in their forms that they had used this part of Gin Lane as part of their ride).

However, as explained above under 'Background to the Investigation', the part of the claimed route between points D and E also continues south westwards as Gin Lane: No evidence has come to light to show that this part of the route ought to be recorded on the definitive map; it seems likely that it forms part of the local village road network has been used mainly by motorists accessing various properties.

In conclusion; while certain items of documentary evidence indicate a particular highway status at particular points in time, i.e. the 1774 Diversion Order establishes bridleway status at that date for part of the route and the c1950 original rights of way survey is suggestive of a route that was then part footpath and part bridleway, subsequent use and knowledge of the route as a bridleway firmly point to such rights being dedicated along the entire length of Back Lane and its southwards continuation Gin Lane to point D.

3. 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. 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)); and

(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)).

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 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.

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 (2nd 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 2nd 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)."

4. Other Considerations

In preparing this report the relevance of the following factors has been considered: Financial, Human Resources, Equality and Diversity, Health, Environmental, Transport, Property and Prevention of Crime and Disorder.

None of these factors are considered to be relevant for the purpose of this report.

5. Background Papers

Legal Services file 21894 and documents referred to in this report.

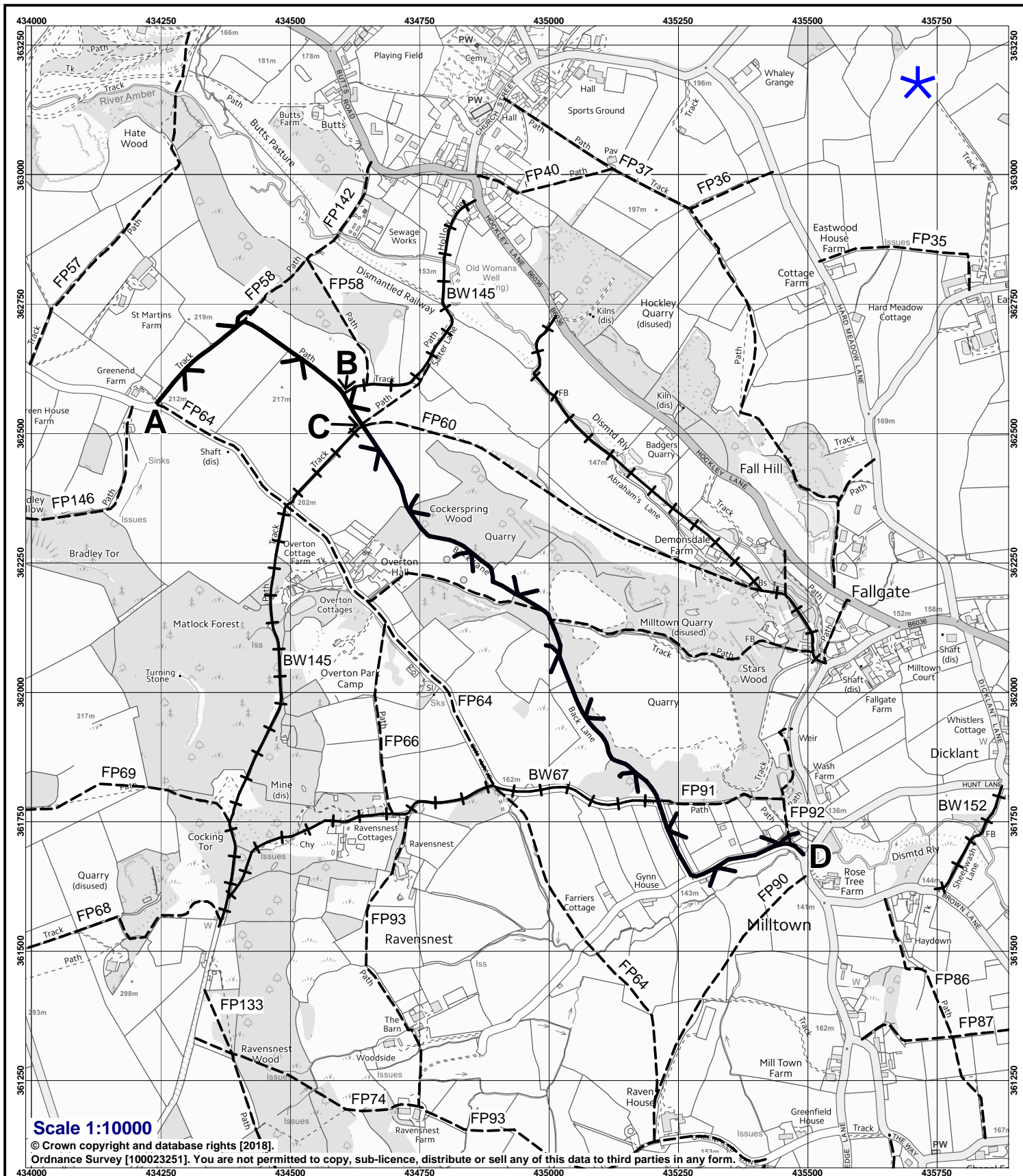
6. Officer's Recommendation

That the Committee resolves:

- 6.1 To authorise the Director of Legal Services to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding a public bridleway along Back Lane and part of Gin Lane, Ashover from;
 - a) the junction with Overton Coach Road near Greenend Farm (point A) in a north east and then south east direction to the junction with Ashover public bridleway No 145 (point B), and;
 - b) the junction with Ashover public bridleway No 145 (point C) in a generally south east direction to point D.
- 6.2 To reject the BOAT claim for the claimed route between points D and E.

Janie Berry

Director of Legal Services



Ref: TE/CH/X3017/Cttee/2018
 Date: 5 July 2018



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Wildlife & Countryside Act 1981 Section 53

Claim to add a Byway Open to All Traffic (BOAT) along Back Lane between Greenend Farm and Oakstedge Lane at Milltown, including the Upgrading of part of Public Bridleway No. 145 - Parish of Ashover

Key: Claimed BOAT

Bridleway claimed as BOAT (B-C)

Existing Footpath

Existing Bridleway

