

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 Coach Road,
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 Coach Road 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.

2. Information and Analysis

2.1 Background to the Investigation

A DMMO claim dated 17 May 2004 was received by the County Council, the effect of which, if such an Order was confirmed, would be to add Coach Road (also known as Overton Coach Road and Overton Road) in Ashover to the definitive map and statement of public rights of way as a Byway Open to All Traffic (BOAT).

The route is located just to the south of Ashover village. It branches off the A632 at Slack Hill and continues south eastwards to Overton (Overton Hall). Only the section of tarmac road from Slack Hill to the junction with Back Lane near Greenend Farm has been claimed as a BOAT - this section is included on the County Council's List of Streets as a non-classified highway (NCH). However, as discussed in the body of the report, historically Overton Coach Road would have continued south eastwards to Overton and beyond. The section of the Coach Road from Greenend Farm to Overton itself is recorded on the definitive map as a public footpath (No. 64) and south east of Overton the route continues along Gin Lane.

The section of Coach Road claimed as a BOAT has a good tarmac surface. Beyond the junction with Back Lane the route becomes a rough stone metalled track, and where it becomes Gin Lane south east of Overton Hall the route is rougher still.

The County Council has a duty not only to deal with the BOAT application as made, but also to consider whether the evidence examined points to any other modification(s) to the definitive map and statement that are required.

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 22 January 2007 the Clerk to Ashover Parish Council wrote to the County Council objecting to BOAT status on the grounds that, as the route leads to a network of footpaths and bridleways, its use as a BOAT would be to the detriment of the rights of way network of the area.

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.

In January 2007 an Ashover resident wrote to the County Council regarding the BOAT application. She stated that Overton Road has been a private access road for Overton Hall for 200-300 years and still is a cul de sac private access road for people who live at the hall and thereabouts. In this context she referred to the presence of a 'no through road' sign at Amber Lane (Slack Hill)

However, she also referred to the fact that the road has a good tarmac surface and is maintained by the County Council.

On 5 February 2007 residents of Milltown in Ashover wrote to the Council to express their opposition to the route they described as “Coach Road/Back Lane leading to Gin Lane” becoming a BOAT. They stated that to their knowledge the tracks concerned; “are used only by walkers, horseriders and occasional cyclists”

2.3 User Evidence

The County Council received 7 completed user evidence forms from recreational motorists who said they had driven along Coach Road 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.

The County Council also received 19 completed user evidence forms from horse riders stating that they had ridden along Overton Coach Road.

All bar one of the horse riders appear to have incorporated Overton Coach Road and Gin Lane, along with Back Lane, into a loop around the Overton area. A further three riders stated that as well as the loop, they had ridden along Overton Coach Road to Slack Hill.

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

One of the horse riders said they had ridden along the Gin Lane and the Coach Road as far as the junction with bridleway 145 but did not reveal where they had gone beyond that point.

Of the 19 riders, 11 said they had ridden Overton Coach Road/Gin Lane over a period of 20 or more years: 7 of those having done so in the course of riding the longer loop up to Greenend Farm and 4 only as far as 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 only as far as bridleway 145.

The longest period of user was an individual who had ridden Coach Road/Gin Lane up as far as Ashover bridleway No 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 Coach Road/Gin Lane route 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 shows the claimed route as forming part of a cul de sac road leading to Overton and falling into the 'cross road' category. Gin Lane, the road which these days forms the continuation of the road south east of Overton Hall, is not shown.

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 it is likely that the route 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 bridle roads 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, then turned south westwards at a location then known as Orchard Lane Gate across the grounds of Overton immediately in front of the Hall, before running westwards in front of Overton Cottages and then southwards through Overton Park.

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 bridleway in question crosses the road leading to Overton (known these days as Coach Road or Overton Coach Road) but otherwise its diversion does not affect it.

However, the 1774 Diversion Order also 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 before heading across Lidyard towards Overton Hall.

Because the bridleway which this footpath connected with was going to be stopped up and diverted, the termination point of the footpath also needed to be altered to connect with the wider highway network. The new diversion took the footpath a little further to the west to connect directly with the Overton Coach Road/Gin Lane, the particular part of which was then (in 1774) called Brimstone Dike Lane. The fact that the diversion of this footpath went ahead is demonstrated by large scale OS mapping from the late 19th Century which clearly shows this particular footpath on its new (diverted) alignment.

The Order specifically states that Brimstone Dike Lane leads to the new bridleway alignment, implying that members of the public using the footpath had a right of way on foot at least along the lane.

While the plan attached to the Order does show the Overton Hall end of Coach Road as a physical feature and labelled 'Brimstone Dike Lane', there is no indication of the south-eastwards continuation along Gin Lane as of 1774.

The 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 it. However the plan does show the western part of the claimed route falling within that scope.

The route 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 Holystone 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 joins the continuation of the enclosure awarded Overton Road near the property ‘Greenend Farm’.

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

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 section between the Back Lane junction and Overton labelled ‘Coach Road’.

The continuation of Coach Road south-east of Overton, known these days as Gin Lane, is depicted on the map: It is shown partly by dashed lines where it crosses a field south-east of Overton Hall and is shown linking up with the route which runs from Ravensnest towards Milltown.

All the routes described above, according to the key of the map, fall into the ‘cross road’ category. As with Burdett’s map described above, the only other category of roads depicted on this document are Turnpike Roads and past researches of this 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 as part of a route linking the main Matlock to Chesterfield road on Slack Hill with Overton Hall and proceeding beyond to connect 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, the Overton Coach Road 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.

Whereas modern maps show the Gin Lane continuation also by means of solid lines, i.e. implying the route is bounded on both sides by solid boundaries, this particular plan reveals that at this date (1851) Gin Lane immediately south east of Overton Hall was unbounded where it crosses the first field because here it is depicted by means of a pair of dashed lines.

Neither Overton Coach Road or Gin Lane are named as such.

1869/70 Sales Particulars relating to the sale of the Overton Estate

This sale catalogue, produced in 1869/70, appears to describe the road separating Overton Hall from Overton Cottages (the continuation of the claimed route – also recorded on the definitive map and statement as Ashover footpath 64) as a ‘Private Road’.

The catalogue also deals with the sale of a property lying further north-west, on the claimed route itself. The property is shown on modern mapping as Overton Lodge and in 1869/70 it was described as being a cottage and garden let to James Hopkinson “at a small rent, in consideration of its being a Lodge and entailing the trouble of opening a gate leading to Overton Hall.”

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 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.

The Coach Road route is shown as running between solid boundaries all the way to Overton Hall. Beyond the hall the continuation route (named Gin Lane on the plan) initially forms an open (unbounded) track running over parkland associated with the hall before once again continuing south eastwards then eastwards between solid field boundaries towards Milltown.

Finance Act 1910

The majority of Overton Coach Road appears to be excluded from the hereditaments (taxable land holdings), the exception being on the approach to the Overton Hall area where the route enters a hereditament associated with the hall and the lands around it: This hereditament is numbered 316 and whilst there is a £50 deduction in the valuation book for the presence of ‘public rights of way or user’, it is not possible to say whether the Coach Road is one of those ways for which a deduction was claimed because there are a number of other ways, including for example a number of public footpaths and also part of the so-called ‘Coffin Way’ (Ashover bridleway 145), which could have been ways for which the deduction was claimed.

Gin Lane, which is the physical continuation of Overton Coach Road to the south-east of Overton Hall, is also included in the hereditament No. 316 and in another hereditament (No. 289) associated with the property 'Ravensnest'. The valuation book has a deduction of £30 for the presence of 'public rights of way or user' over plot 289 but the same argument as referred to plot 316 applies; namely, that there are a number of other ways which the deduction could have been claimed for, as well as Gin Lane.

The Ordnance Survey (OS) base plan on which the Finance Act information has been marked shows that the name Gin Lane also applied to the route where it turns eastwards along a route currently recorded as Ashover bridleway No.67 (also used as the main access road to the property 'Ravensnest') and most of this west to east section of Gin Lane is excluded from hereditaments.

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 (excluding the historic continuation to the south-east via Overton) 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 Back Lane 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 the claimed route).

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.

The section of Overton Coach Road from Greenend Farm south eastwards to Overton and Gin Lane south east of Overton evidently came to be shown on the draft definitive map as a public footpath (No. 64). However, Ashover Parish Council clearly thought they had claimed the entire length of Overton Coach Road, from Slack Hill on the main Matlock/Chesterfield road to Overton, as a public footpath at the time of the original parish survey, because in 1955 they wrote to the County Council asking why that section from the main road to Greenend Farm 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;

"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 'public path from Greenend Farm' must be a reference to the northern end of Back Lane, which branches off Overton Coach Road near Greenend Farm, because the numbered paths referred to in the letter formed connections with that part of Back Lane.

The omission of Back Lane is also 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 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 the bridleway known as the Coffin Road – Br 145, 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 the part of Overton Coach Road that was already publicly maintainable 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 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

The Ashover Enclosure Award evidence of 1784 clearly shows that this route originated as a private carriage road providing access to Overton Hall.

Burdett's c1760s map of Derbyshire shows it as a cul de sac leading to Overton Hall, the family seat of 'B. Hodgkinson Esq'. The presence of a lodge building (shown on large scale OS maps and plans and still present on the ground today) on the route reinforces the notion that the route was a private drive.

The route appears to have been generally known by the name 'Overton Coach Road' (or just 'Coach Road') for many years. It is referred to as such in the original parish claim of the 1950s and is so-named on Sanderson's 1835 map. There is also a reference to this name in the 1774 Diversion Order. This would not be the usual way of referring to a public carriage road: The name probably alludes to the type of traffic used to access the Hall (i.e. private horse drawn coaches) and might be compared with the more commonly used expression 'coach drive'.

In terms of later evidence: The treatment of Overton Coach Road on the 1910 Finance Act documentation is not particularly consistent with public carriage road status extending all the way to Overton. It might be thought that the exclusion of the western half of the route from hereditaments reflects the fact that it, together with Back Lane, formed a through route avoiding Overton Hall. However, as stated in the Planning Inspectorate's guidance (Consistency Guidelines Section 11), exclusion from hereditaments 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 part of Coach Road 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 that part of 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 Overton Coach Road.

However, the information taken from the time of the c1950 original parish survey indicates that the parish then viewed the route as a public footpath and they subsequently queried its omission as such from the draft definitive map.

It should be noted that in the 1950s the parish also claimed the linking part of Back Lane as a public path (under the National Parks and Access to the Countryside Act 1949 the term 'public path' refers generally to footpaths and bridleways so in terms of Back Lane's status the parish may have had in mind a route that was part footpath and part bridleway).

As regards 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 number of horse riders provided evidence of their use of the claimed route and its continuation through Overton: While only three riders said they had ridden along the claimed route itself, a larger number said they had ridden the continuation of the claimed route (along Overton Coach Road and Gin Lane) frequently in the course of doing a loop which included Back Lane.

This horse riding evidence spans a considerable number of years from the 1960s to the present and it seems probable that Overton Coach Road and Gin Lane, from the junction with Back Lane (point B on the attached plan) south eastwards to the junction with bridleway 67 (point D on the plan), 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 that part of the route has become dedicated as a public bridleway.

In terms of the status of the claimed route itself (the section from Slack Hill to Back Lane junction); there is insufficient user evidence from which to raise a presumption of dedication either of bridleway or public carriage road status. However, while the documentary evidence points firmly to the route historically

being a private carriage road, it seems clear that in the 1950s local people were of the view that, in terms of any highway rights, it was just a footpath.

Neither public footpath nor public bridleway status would be inconsistent with a route also being a private carriage road and on balance it seems that the County Council was probably wrong to dismiss the footpath claim purely on the basis that that particular section of Overton Coach Road was already recorded on the Council's highway maintenance record.

In conclusion therefore; it seems likely that whilst Overton Coach Road (continuing as Gin Lane) probably originated as a private road; by the 1950s public footpath rights are likely to have been dedicated over the entire route and subsequent horse riding use from the 1960s onwards of part of the route from Back Lane south eastwards via Overton and along Gin Lane to the junction with bridleway 67 is likely to have given rise to public bridleway rights over that section.

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 23322 and documents referred to in this report.

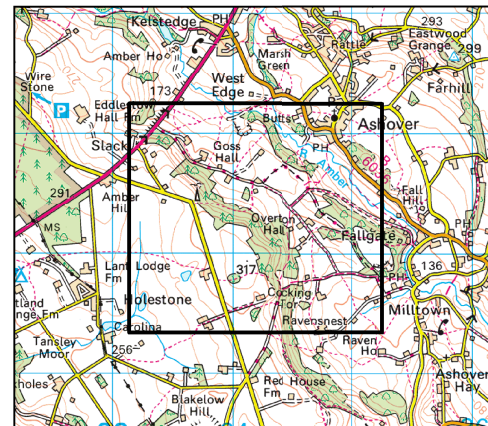
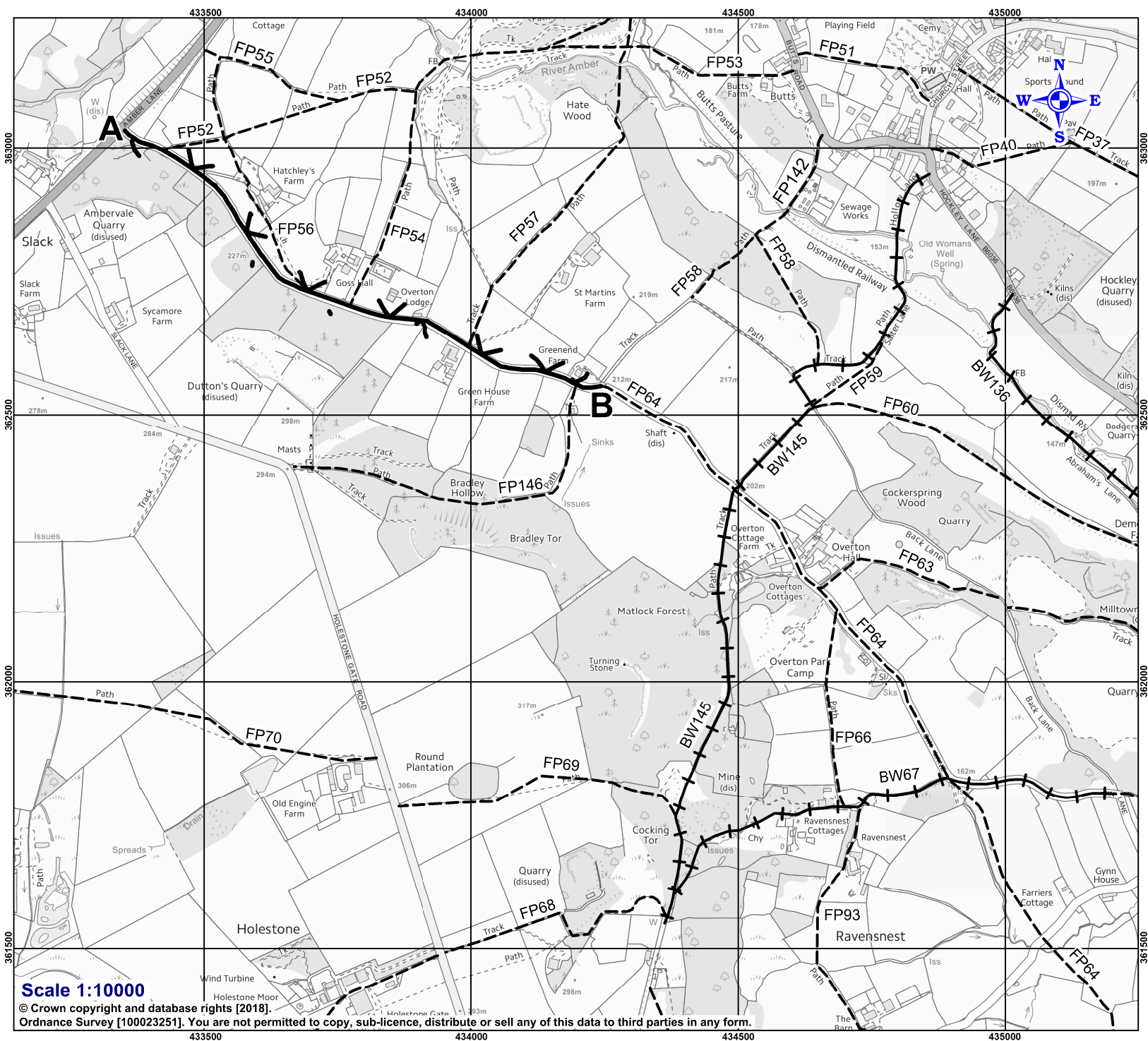
6. Officer's Recommendation

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 footpath along Overton Coach Road from Slack Hill (point A) to Back Lane (point B).
- 6.2 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 upgrading Ashover public footpath No 64 between Back Lane (point B) and public bridleway No 67 (point D) to public bridleway status.

Janie Berry

Director of Legal Services



Wildlife & Countryside Act 1981 Section 53

Claim to add a Byway Open to All Traffic (BOAT) from A632 Amber Lane along the Coach Road to Greenend - Parish of Ashover

Key:

Claimed BOAT



Existing Footpath



Existing Bridleway



Ref: TE/CH/X3149/Cttee/2018

Date: 5 July 2018



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