

**DERBYSHIRE COUNTY COUNCIL
Regulatory Licencing and Appeals Committee**

**24 July 2017
Report of the Director of Legal Services**

**Wildlife and Countryside Act 1981
Claim to add a Footpath from Morley Lane to Stanley Brook (Parish
Boundary with Morley) – Parish of Stanley and Stanley Common.**

1. Purpose of the Report

1.1 The purpose of this report is to enable Members to determine an application to amend the Definitive Map and Statement (DMS) by adding to it a footpath in the Parish of Stanley and Stanley Common.

2. Information and Analysis

2.1 An application was received from Mr Keith Shiers of the Erewash Ramblers (the Applicant) dated 31 July 2013 to add a footpath to the Definitive Map and Statement from Morley Lane to Stanley Brook in Stanley and Stanley Common. The application was accompanied by 11 User Evidence Forms (UEFs), two walking guides and a copy of email correspondence between the Applicant and a Council officer.

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

Background information

2.3 A Derbyshire County Council (DCC) officer confirmed to the applicant, in an email (submitted with the application) that the claimed route was a non-classified highway (NCH) and therefore carried public rights of footpath status or higher. The walking guides submitted with the application include the claimed route but offer no evidence of its status. The claimed route connects with Bridleway No.1 in Morley which was upgraded from footpath in 1994 by a Definitive Map Modification Order made under the Wildlife and Countryside Act 1981 (WCA). The application route was included in the highways handover schedule and is an adopted highway, it is for this reason that the route was not included on the Definitive Map even though it was claimed as a bridleway in the 1950 Parish survey of rights of way, upon which the DMS was based.

2.4 The Council's Rights of Way Team was informed in July 2014 that The Ramblers wished to withdraw the application and contacted the Legal Services section to advise of such but, did not give any reason why. It is likely that the Ramblers tried to withdraw the application in consequence of the reaction by the horse-riding fraternity, which feared that if the route were classified as a footpath they would lose a well-used riding route. Legal Services advised that it was not possible to withdraw an application as the Council had a statutory duty to investigate.

2.5 Erewash Riders Association telephoned on 04 February 2015 in response to the consultation and requested 20 UEFs. The UEFs were duly sent the same day and eight completed forms were returned. Bearing in mind the Ramblers had tried to withdraw the footpath application and the significant evidence of bridleway use submitted in response to the consultation it is sensible that all the available UEFs should be considered together in this report

2.6 The applicant claimed a route between two grid reference numbers which roughly correlate with the Points A and D on the attached plan. However, his grid references do not correlate with the route drawn on the application plan or the route drawn on the UEFs. For the purpose of this report and for determining the route subject to a possible definitive map modification order, it has been assumed that the users and the applicant have all used the non-classified highway from Point A; the metalled road known as Morley Lane, which is used as vehicular access to properties.

User Evidence

2.7 There is no evidence that the route has been obstructed or that the public have been unable to use the route freely and so it is considered that it is the application that has brought the status of the route into question for the purposes of Section 31(2) of the Highways Act 1980. Only evidence and events prior to 2013 have been considered in assessing the claim.

2.8 Eleven UEFs were submitted in support of the footpath application and a further eight in support of bridleway. The route is a clearly defined route on the plans and has been marked on all of the plans accompanying the forms between Points B and D. Some users have marked the route from Point A or thereabouts but it can be assumed that all the users will have used the section A to B as there is no other access point to the route.

2.9 When describing the route on the UEFs, ten of the users describe the route clearly, three refer only to the attached plan and six do not offer any information. Incidentally, all those who claim to have ridden horses on the route describe the route well.

2.10 All of the witnesses refer to using the route on foot, seven on horseback and six on a cycle. Two users have ridden both horses and cycles on the route which means that 11 of the witnesses have used the route as a bridleway. Fifteen of the witnesses refer to seeing other people using the route on horseback and 11 on a pedal cycle. One of the witness's claims to have driven a tractor on the route for access purposes and one user has seen a tractor on the route.

2.11 Thirteen witnesses claim to have used the route for a period of twenty years or longer. Of those who have ridden a horse or cycle on the route, seven have used the route for more than 20 years.

2.12 Of the eight witnesses who have only used the route on foot, one claims to have used the route weekly, four monthly and three less than monthly.

2.13 Of the eleven witnesses who have used the route on horse or cycle, two claim to have used the route daily, four weekly, one monthly and four less than monthly.

2.14 Two of the witnesses recall the route being obstructed; one states “I cannot give specific dates but the route was padlocked for a short time. I believe regarding a dispute over straying livestock”. It is unclear where the route was padlocked and if this prevented access to all. The other states “odd occasion farm at Stanley end padlock gate”, the same user also recalls that the ‘route changed when steps and gate put in at Dyke’. Again it is not clear exactly which gate was locked and if all access was denied.

2.15 Fifteen witnesses refer to gates on the route, six refer to stiles and four refer to the pedestrian footbridge over the brook.

2.16 Five of the witnesses recall seeing notices on the route; one refers to various way-markers including one for bridleway; one refers to a sign for bridleway in 2015; one who recalls a sign requesting that riders keep to the path; one recalls a ‘no access to vehicles’ sign and one user refers to a notice “when dike steps were built” and a “notice now diverting route at Stanley end”.

2.17 No witnesses recall being stopped from using the route, being told the route was not a public right of way or state that they have had permission to use the route.

Consultation

2.18 An informal consultation exercise was carried out between 26th January 2015 and 2nd March 2015. Notices were placed on the route at the start of the consultation period and letters were sent to the statutory consultees, landowners and the local elected member, Cllr Carol Hart.

2.19 There were 40 letters and emails submitted in response to the consultation.

2.20 Twenty-four individuals, the Parish Council, the Erewash Riders Association and the British Horse Society objected to the downgrading of a public bridleway to footpath and 21 of these stated that they had ridden the route themselves. The objectors made various comments that help paint a picture of how the route has been used: Four state they have ridden the route for many years, one for many, many years; one states they have known the route for 30 years; another since 1965 and that it is used by riders and mountain bikers; one has used it for 30 years, daily for years and now approximately every ten days; one rode it in the 1970’s; one has ridden it regularly for many years and daily between 1945 and 1995; one has ridden it several times a week for 15 years and it has always been used more by horse

riders and cyclists; one has ridden it regularly for ten years and rarely met any walkers; one has ridden the route for 18 years and never seen a pedestrian and one who states that local people have ridden the route for years.

2.21 Five people who have ridden the route objected to the route being turned into a footpath. One has ridden twice a week for thirty years; one uses it daily with his daughter and adds that there are more riders than walkers and one who has ridden the route since the early 1960's.

2.22 Two emails were received that contained only the reference, mh/61525 and the word 'object' and one email was received that had no information other than the reference, mh/61525.

2.23 An email was received on 06 February 2015 from Peak and Northern Footpaths Society stating that "the Society obviously does not object to the application". They also state that "it is part of the Midshires Way. At the entrance... is a prominent Public Bridleway marker. The route is very well used by walkers, cyclists and horse riders".

2.24 A local resident emailed a letter dated 08 February 2015. In her letter she states that the area is "very heavily used by individual walkers, dog owners, large groups of organised runners and walkers, cyclists and horses and their riders". She also raises concerns over the uneven and unsafe surface and the possibility of meeting "unpredictable horses and dogs (or cyclists)" but then adds that if horses were stopped from using the route there would be an increase of horses on the narrow lane used by vehicles. She also questions the justification of spending council money. It is not clear whether she is in support of the application or objects to it.

2.25 A member of the Derby and Derbyshire Local Access Forum sent a letter attached to an email on 09 February 2015 objecting to the 'classification of this path as a footpath'. She believes its status is "unclassified Country Road, and it has a right of way for horses, riders and cyclists" based on correspondence with DCC dating back to 1991. She had previously made a DMMO application for what is now Morley BW No.1 and she was told at the time she did not need to include the stretch now being claimed as a footpath.

2.26 A landowner sent an email on 23 February 2015. She keeps horses in an adjacent field and was informed by her solicitor when she purchased the land that "the right of way was an old cart road". She adds that over the last 15 years "horse riders continually mistreat the path and gallop up and down the full length of it. This in turn poses a great danger to people walking with their children and dogs". The landowner also raises concerns over riders propping open the gate and the ground becoming "almost impassable" in winter.

2.27 A person with an interest in highways history submitted a letter dated 02 March 2015 within which she refers to various historical documents. She writes that Sanderson's Map of 20 miles round Mansfield 1835 shows the claimed route as part of a 'cross road' between the villages of Stanley and

Morley and that the second edition Ordnance Survey 1899 shows the claimed route, marked 'B.R.' indicating it was used as a bridle road at the end of the 19th century.

She also refers to the "Shardlow Rural District Council (RDC) handover map and explanatory notes to the list of roads, 1930" and writes:

"This map shows the highways for which Shardlow RDC handed over maintenance responsibility to DCC, under the Local Government Act 1929. The claimed route is coloured black, indicating that it was a 'non-scheduled road'.

The Explanatory Notes to the List of Roads include the following information:

'The roads given consist of those roads which the council have either regularly maintained, throughout their entire length, or made themselves responsible for their being kept open to the public, by the repair of bridges or culverts upon them or minor repairs at some time or other.' {Note 4}

'Certain bridle roads and field footpaths are included, where the Council have found it necessary to expend money upon their upkeep & where the Parish Councils have declined to accept responsibility. All field footpaths were handed over to their respective Parish Councils where the latter agreed to accept. Those in the parishes of Weston on Trent, Risley and Kirk Hallam are not repaired by the Parish Council...' {Note 5}

'A number of bridle roads where no expenditure has ever been incurred by the Council are not included. These have in some instances ceased to be used.' {Note 6}

These notes suggest that the claimed route was considered to be either a public vehicular or public bridle road by Shardlow RDC in 1930. It was not considered to be a field footpath because Stanley Parish Council had accepted responsibility for field footpaths...

Conclusion

The Shardlow RDC handover records indicate that this route was a publicly maintainable highway in 1930, probably either a public bridle or carriage road. The Ordnance Survey 1:2,500 plan indicates that it was in use as a bridle road at the end of the 19th century."

Documentary Evidence

2.28 Stanley Parliamentary Enclosure Plan 1793 and Award

The claimed route is shown on the Enclosure Plan between dashed lines that follow the field boundaries on its south side. The field boundaries are marked with tree symbols. Where the route continues Easterly, the lane is shown to be bound by hedges with tree symbols on both the north and south sides. The lane leads to a

junction with Common Lane and Back Lane. Common Lane runs north to south and Back Lane continues easterly. Back Lane is allocated to plots 25 and 27; both of which are referred to in the award as 'Ancient Enclosures' and allotted to individuals. The track leading to the claimed route and the claimed route cross an area of land which is not allotted any plot numbers and is not enclosed within the Award. This area of land will have been enclosed previously and is therefore outside the scope of this Award. The claimed route runs to the parish border where the words 'From Morley' are written.

The award sets out two public carriage roads and a footway and although the claimed route is clearly shown on the Plan, there is no reference to it within the Award.

2.29 Stanley Tithe Map 1849 and Schedule

The highways on the plan are coloured yellow but are not named. The lane leading to the claimed route is shown coloured yellow and bound by solid lines to the point where the claimed route begins (Point A) although the line of the route is slightly different. The claimed route is shown coloured yellow between dashed lines with a solid line across each end. The route follows the field boundary on its south side. The land either side of the claimed route has not been allotted a plot number so it may have been considered common land. (?)

The schedule makes no deductions for any rights of way and there are no references to any road or rights of way.

2.30 Ordnance Survey First Edition 1881 Sheet 50:3

The claimed route is shown between dashed lines and as following the field boundaries to the south. Morley BW1 continues as between dashed lines over the brook and Parish Boundary which is labelled as 'Ford'. There are lines that could depict the footbridge over the ford. Morley Lane is marked between solid lines and there is a solid line across the lane where the claimed route begins. There is also a solid line across the route further to the west in Morley.

2.31 Ordnance Survey Second Edition 1900 Sheet 50:3

The plan is similar to the first edition. However, the claimed route is labelled B.R. the footbridge is labelled F.B.

2.32 Ordnance Survey 1914 Sheet 50:3

The plan is again similar and labels the route, footbridge and Ford as above.

2.33 Ordnance Survey 1960 Sheet 40/4140

The plan is similar to those before it and though the route is not labelled the 'Foot Bridge' is labelled as Foot Bridge.

2.34 Stanley Parish Claim 1950

The Parish surveyors recorded the claimed route as Bridleway 20 commencing from the railway bridge. There was a gate approximately 60 yards west of the bridge with a bridle gate alongside and a footbridge for pedestrians over the brook, continuing in

Morley Parish. The route was not recorded on the definitive map as a bridleway as at that time, where a route was already recorded as a maintainable highway on the 'List of Streets' (a highway which had been 'handed over') the Council did not consider it necessary to record on the DMS, as public rights were already acknowledged.

2.35 Sanderson's Map 20 Miles round Mansfield 1835

The claimed route is shown on the map. Morley Lane is shown between solid lines which open into the field south of the claimed route. The claimed route is then shown as a dashed line following the north side of the field boundary.

2.36 The Sharlow RDC handover records

As provided in the letter referenced above, the handover records show that the claimed route was a publicly maintainable highway of a status higher than footpath.

Additional Evidence

2.37 Site visit undertaken on 08 January 2017

The claimed route was approached from Morley Lane, which is a metalled adopted highway.

From Point A on the attached plan, the route continues from Morley Lane in a westerly direction along a well-defined muddy track, there is a stone and brick surface below the mud though it is unclear whether it is surfaced across the whole track. There is a gate on the south side of the track but not across the track and there is a green metal bench on the north side. There are wooden fences on either side and at the time of the visit there was evidence of use by horses and cyclists; tyre tracks, horse shoe prints and horse manure.

At Point B there is a field gate across the track with a bridle gate adjacent, on the north side; the field gate was locked with a bike chain-lock. The route bends round and continues in a north-westerly direction between hedges and fencing.

From Point C the track narrows and at the time of the visit the surface was extremely muddy with a ditch on the southerly side of the track. The surface appears to be natural earth for a section, then there is evidence of a stony surface before the track turns back westerly, shortly before the ford and footbridge.

On the approach to the ford the track forks; the northern fork leading to a wooden footbridge for pedestrians and the southern fork leading down a large stone surfaced slope and across the brook into the Parish of Morley and joining Bridleway No.1. There are gates leading into fields on either side of the track at various points.

Summary and conclusion

2.38 The test which has to be applied when considering the addition of a route to the Definitive Map and Statement under s53(3)(c)(i) is in two parts:

Test A – does a right of way subsist on a balance of probabilities? This test is satisfied by showing clear evidence in favour of the right of way and no credible evidence to the contrary.

Test B – is it reasonable to allege on a balance of probabilities that a right of way subsists? If there is a conflict of credible evidence and no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that a right of way does subsist.

2.39 Although 18 witnesses claim to have used the route on foot, 11 of the witnesses have used the route on horse or bicycle, seven of which have used the route for more than 20 years. The route is an adopted highway and therefore any obstruction or unofficial diversion would not be lawful. None of the users have been told the route is not a bridleway / public right of way, been stopped from using the route or been given permission to use the route and so use of the route as a bridleway between Points A and D has been as of right.

2.40 There were 40 representations made in response to consultation but none were in support of the footpath claim; there were 33 objections to the route being classified as a footpath by people who believe it is a bridleway, 26 of which confirmed their own use of the route as a bridleway; two individuals wrote letters raising concerns about bridleway use but confirmed that the route had been used as a bridleway for many years; Peak and Northern Footpath Society wrote that ‘obviously’ they did not object to the claim but added that it was part of the Midshires Way and well used by horse riders and cyclists; one person submitted evidence to indicate that the route was not a footpath and should be recorded on the DMS as a bridleway or of higher status; two people sent emails to simply ‘object’ but stated no grounds or to what they were objecting and one person sent an email with no information at all.

2.41 The documentary evidence shows that the route has existed on the ground since at least 1793 and has been depicted as bridleway since 1900. The route was included in the Shardlow RDC Handing Over in 1930 which indicates it has a higher status than footpath and it was recognised as a bridleway in the Parish Claim of 1950. There is no evidence to suggest the route should be recorded as having a higher status than bridleway.

2.42 Under the Highways Act 1980, if a route is used 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. The user evidence and the representations show that there has been uninterrupted use of the claimed

route as a bridleway and as of right over a 20 year period and therefore meets the requirements of the Act.

2.43 In summary, the user evidence, representations and documentary evidence show that on the balance of probabilities the route should be recorded on the DMS as a bridleway. Although the route claimed is between Points B and C it is clear that users will either have accessed from, or left the route by, the continuation of Morley Lane. The whole of Morley Lane and the claimed route is recorded as public highway. However, it is likely that the predominant use of Morley Lane from Point A, both NNW and SE is by vehicular traffic and beyond Point A to the west it will be by walkers, cyclists and horse riders. Therefore, it is considered appropriate to include the section of Morley Lane from Point A to Point B in any Modification Order that is made.

2.44 A finalised copy of this report has been sent to Cllr Hart as the local member for the area prior to the Committee meeting.

3. Considerations

Legal and Human Rights Considerations

- 3.1** Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified ‘events’. These events include:
- 3.2** (1) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates (section 53(3)(c)(i)); and
- 3.3** (2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance on probability that that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 3.4** Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public “as of right” and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public “as of right” means use by the public without force, without secrecy or permission.
- 3.5** Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public right to use the way is brought into question.

- 3.6** Section 31(3) provides that a notice erected on site by an owner of land over which a way passes in a manner visible to persons using the way, and maintained by him is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate the way as a highway.
- 3.7** Section 31(6) provides that an owner may provide sufficient evidence to show of his lack of intention to dedicate by depositing with the Council a map and statement showing any ways over the land he admits to having been dedicated as highways and denying the existence of other ways over it and then lodging statutory declarations to deny the addition of any ways at intervals of not less than 10 years. This will be, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any additional way as a highway.
- 3.8** A House of Lords legal judgement in 2007 (the ‘Godmanchester’ decision) has clarified what other evidence could be evidence of “no intention to dedicate” for the purpose of section 31(1). The evidence can relate to just one point in time during the period of enjoyment, ‘during’ in the context of section 31(1) need not be through out the whole period. ‘Intention’ in this context means what the relevant audience (the users of the way) would reasonably have understood the landowner’s intention to be. A letter from the landowner to his own solicitor or estate agent would not be enough; some element of communication to users of the way of an absence of intention by the owner to dedicate must be shown. In terms of section 31(1), an act by an owner which demonstrates ‘no intention ... to dedicate’ is likely in practice also to amount to an event which ‘brings the public right of way into question’.
- 3.9** In brief, unless evidence is provided of one or more specific steps having been taken by a landowner within the period to communicate overtly to the public using the route that (s)he does not intend to grant a public right of way over it, the presumption of dedication will arise under section 31(1) where there is a full period of 20 years of uninterrupted public use, calculated from the date when the public right to use the way is brought into question.
- 3.10** Where there is insufficient evidence to establish a presumption to dedicate under section 31(1) of the Highways Act 1981, there is sometimes sufficient evidence to establish an inference of dedication by the landowner under common law. In the case of *Nicholson v Secretary of State for the Environment* (2006), Dyson J stated: “*Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication...*”. No minimum period of use is required to raise such

an inference, but there must be evidence which is sufficient to infer that there was an intention to dedicate a public right of way.

Other Considerations

- 3.11** In preparing this report the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property, and transport considerations.
- 3.12** None of these factors are considered to be relevant for the purpose of this report.

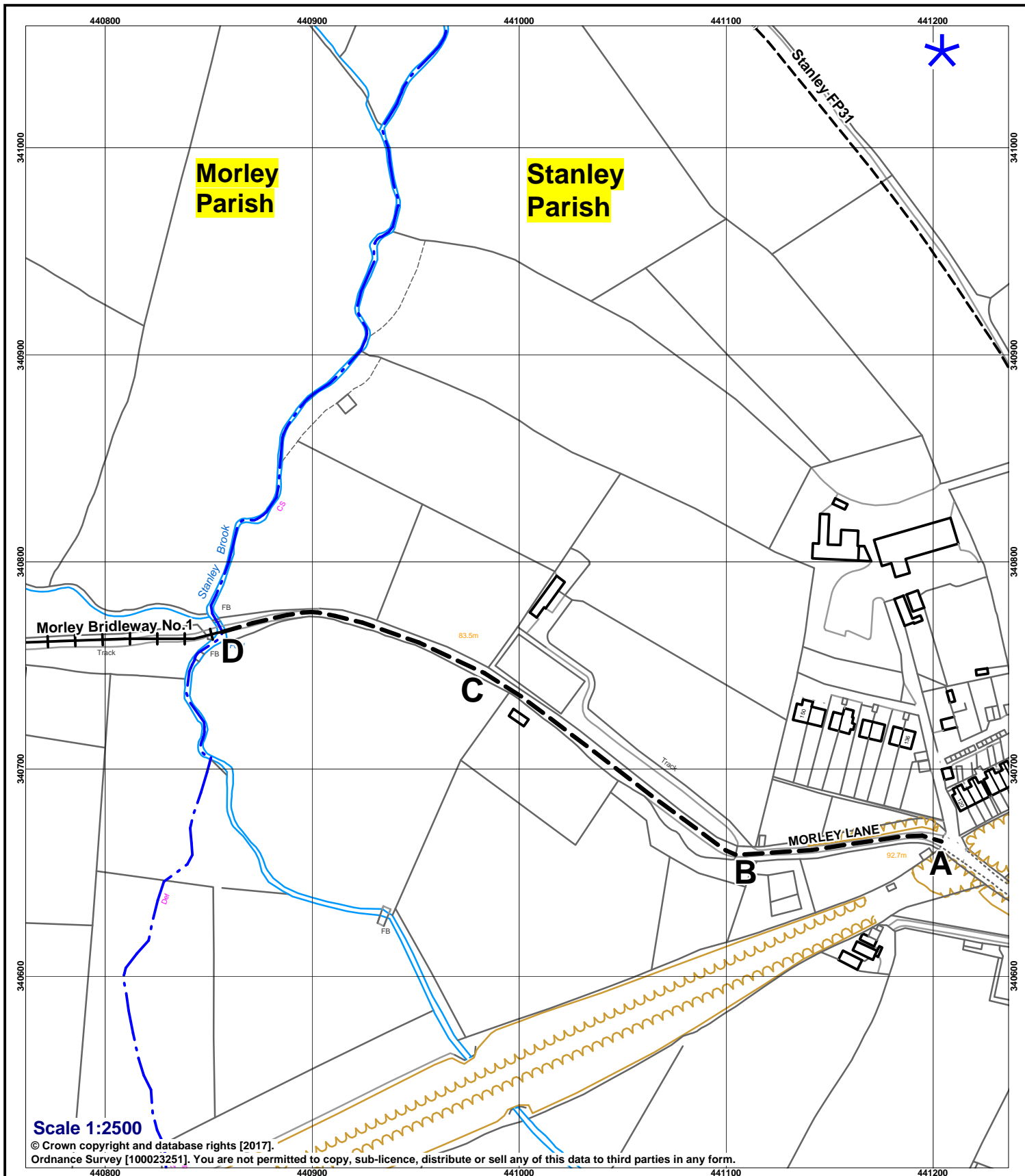
4. Background Papers

- 4.1** File held by Legal Services (ref. 61525)

5. OFFICER'S RECOMMENDATION

- 5.1** That the Committee resolves to authorise the Director of Legal Services to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement by adding a bridleway from Point A to Point D as shown on the plan attached to this report.

Chief Officer



Ref: TE/CH/X3927/Cttee/2017
Date: 13 July 2017



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Wildlife & Countryside Act 1981 Section 53
Claim to add a Footpath from Morley Lane to Stanley Brook (Parish Boundary with Morley) - Parish of Stanley and Stanley Common.

Key:

Footpath to be added (A-D)	-----
Existing Footpath	- - - - -
Existing Bridleway	+ + + + +
Parish boundary	- . - . - .

