

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

**25 July 2016  
Report of the Director of Legal Services**

**Wildlife and Countryside Act 1981  
Claim to add a Footpath from Station Road to Footpath No 2 via Calico  
Lane in Whaley Bridge.**

**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 by adding a footpath in Furness Vale.

**2. Information and Analysis**

**2.1** An application was received from Cllr Anne Winter on behalf of Whaley Bridge Amenity Society on 17 March 2011 to add a footpath to the Definitive Map and Statement from Station Road to Footpath No 2 via Calico Lane in Whaley Bridge. The application was accompanied by a plan, 21 User Evidence Forms and six photographs.

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

**User Evidence**

**2.3** It is considered that the erection of a notice on the gate at point C in 2010, stating that the route is not a public right of way, 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 this date have been considered in assessing the claim.

**2.4** Twenty one user evidence forms were submitted in support of the application. The route is described on all the forms, in the same writing as, "from the canal towpath down alongside 1 Lake View Cottages leading along Calico Lane to Station Road" with a width of "at least 2'6"". . The route has been marked on 11 of the plans accompanying the forms in pink highlighter pen and nine of the plans by a red dashed line. The remaining form has no plan attached.

**2.5** All of the witnesses refer to using the route on foot, with five witnesses also claiming to have used it on a pedal cycle and three on horseback. All of the witnesses refer to seeing other people using the route on foot, with twelve of these also referring to seeing people using it on a pedal cycle and four on horseback. None of the witness claim to have used the route in a motor vehicle or to have seen other people using the route in a motor vehicle. This is surprising given that Calico Lane leads to both the industrial estate and the

cottages on Lake View and several vehicles were seen using Calico Lane during the site visit on 25 April 2016.

**2.6** Seventeen witnesses claim to have used the route for a period of twenty years or longer; with four claiming over thirty years use, two over forty years use, and seven in excess of fifty years.

**2.7** Two witnesses claim to have used the route daily, one weekly, six monthly, eleven less than monthly and one at “irregular intervals”.

**2.8** Thirteen of the witnesses mention a gate on the route; five of the users specify the location being at point C; the others do not specify the location of the gate. The users’ recollections of when the gate appeared vary: one states a ‘number’, one a ‘few’ and one ‘many’ years ago. One refers to it appearing “sometime in the 90’s”, one “in the late 80’s or early 90’s” and three refer to it being erected (approximately) five years ago.

**2.9** Nine of the witnesses refer to seeing a notice on the route, seven of whom refer to the ‘current’, ‘present’ or ‘recent’ notice, one of the seven states, ‘a notice has recently been attached to the gate advising that access is only permitted to residents’ and another one of the seven states, ‘a notice has been placed recently on the gate stating that only persons going to and from the industrial estate may use the path’; one witness states, ‘a notice is on the gate now, notifying people that only certain members of the public can pass’ and one witness recalls a notice at, ‘the opposite end of the row of houses (nearest Station Rd) “PRIVATE”’. None of the witnesses specify categorically where the notice to which they are referring is situated but as far as the Council is aware, there is only one gate crossing the route which is at Point C.

**2.10** Four users state that they have had permission to use the route. One of the witnesses refers to being given permission to use the route by the “previous owner of the end property”, one witness states that they were told by a resident that they “do not mind” them using the route, another witness refers to being told by a previous property owner that it was “ok” to use the route and another writes ambiguously, “Custom and practice over the years”.

**2.11** None of the witnesses recall the route being obstructed or diverted other than by the gate at Point C.

**2.12** None of the witnesses refer to being stopped from using the route though four have been told the route is not a public right of way. One witness refers to being “told by a resident of an adjacent house” that the route is not public and although he does not give a date, it was before 2009, when he stopped using the route. One witness recalls the gate being installed in the late 1980’s or early 1990’s and being told by, ‘the then owner of the property’ that it was ok to use the path. Two other witnesses also refer to being told that the route is not public by the present owner of 1 Lakeside Cottages, in June/July 2010.

**2.13** One witness states that they were “born in Canal Row”, now Lake View and another used to live on Canal Row.

**2.14** There is a section of the UEF which asks the users their reason for using the claimed route: either ‘to visit places on the route’ or ‘as part of a longer journey’. Ten of the users have used it for both reasons and two to visit places on the route. Two of the users have delivered leaflets of collected for charity along the route. The remaining nine have used it as part of a longer journey.

### **Consultation**

**2.15** A consultation exercise was carried out between 15<sup>th</sup> September 2014 and 20<sup>th</sup> October 2014. Notices were placed at either end of the route at the start of the consultation period. A consultation letter was also sent to the local elected Member, Councillor Lomax.

**2.16** There were five responses in objection to the claim and three in support. One of the responses, from a husband and wife, requested to be counted as two objections but, as it is the *evidence* that counts not the *number of objections* the objection cannot be considered twice in this report.

**2.17** A footpaths officer for the Ramblers Association wrote on 16<sup>th</sup> September that, ‘It has my blessing...’ He did not offer any useful information in relation to the claimed route.

**2.18** Whaley Bridge Town Council confirmed that following discussion at their meeting of 9<sup>th</sup> October 2014, they support the application to add the footpath to the Definitive Map and Statement stating that, ‘This is a well used local footpath which should be adopted’.

**2.19** A Furness Vale resident wrote in support of the claim on 18<sup>th</sup> October 2014, stating that: he had used the claimed route for over 60 years and that his parents had for many years before that; it has always been a popular walk for local people; he is surprised at recent attempts to annex the path as a garden and to erect signs and a gate in an attempt to exclude walkers; there has been public access here for as long as anyone can remember and that it should be a right of way without question.

**2.20** A letter dated 5<sup>th</sup> October 2014 was received from a resident of Lakeside View objecting on grounds of security.

**2.21** An email was received on 9<sup>th</sup> October 2014 from an adjacent landowner stating the following:

- When he bought his property thirty-five years ago, access to the towpath at point C was not a recognised footpath; it was blocked by nettles, brambles and the remains of a defunct boundary wall. Residents accessed the towpath via the path at the other end of Lake View (adjacent No. 14).

- The 'canal authority' denied responsibility and so he cleared the area, built a new wall and installed a gate. At a later date he installed the concrete steps having noticed elderly neighbours struggling with what had been a muddy slope.
- At no time has any person been denied use of the facility.
- The decision to add a "private" sign onto the gate was to deter irresponsible people riding mountain bikes at high speed and horse riders not prepared to dismount and close the gate.
- The 'Private' sign is a deterrent to opportunist intruders.
- The user evidence forms submitted in support of the application were obtained in an underhand way as people were asked to sign a prewritten document.
- Issues are also raised regarding maintenance, if the route were to be added to the Definitive Map and Statement as a footpath.

**2.22** A letter was received dated 12<sup>th</sup> October 2014 from an affected landowner who has lived on Lake View for 17 years. The letter was divided into four sections stating the following grounds for objection:

*Historical and Current position*

- They understand there has been no statutory right of way for the public but there is a private right of way along the front of the cottages for residents and that 'local people traditionally used the access path from the village side to walk down to Lakeview Row, local houses and the industrial estate'.
- The wall and gate at Point C were erected by a neighbour 30 years ago to prevent his and other children having easy access to the canal. The steps were installed approximately seven years ago to help an elderly neighbour access the towpath. Prior to the concrete steps the route was a muddy and slippery sloping bank.
- Approximately seven years ago a wall and gate were installed at the other end of the row, though plans to lock the gate were objected to by local residents. The wall was initially 'pushed down' but rebuilt using steel rods. The gate was not locked but signage erected stating access was for residents only. We stated then that we would not be restricting access for local people to access the houses and industrial estate from the canal at point C.
- Fourteen years ago most local people accessed the row, local houses and industrial estate via No. 14 Lakeview. Local people coming from the northwest would use a different path to access the industrial estate and very few people walked down the proposed route.
- For the last fourteen years local people have always been allowed to use the route for access
- The private sign was erected in 2010 following a series of incidents with the public, not local people, coming through the gate – walking groups, mountain bikers and horse riders – who have been verbally abusive and aggressive. There was also a theft from the adjacent garage.
- Access to local people for genuine reasons has always been welcomed.

- The gate has been locked one day every year for 14 years, usually on Christmas Day.

### Immediate Objections

- These are centred on concerns over privacy, security, damage to property, cost implications and the devaluing of their property, liability in case of injury to the public, impact on lifestyle and personal safety (one is a magistrate and fears repercussions). They also claim that the proposed path would impact on their freedoms under The Human Rights Act 1998 (Schedule 1, Article 8), 'Right to respect for private and family life'.

### Wider Objections

- These are centred on concerns over public safety (sharing the route with vehicular traffic and the lure of cobbles to mountain bike groups), security of the industrial estate and residential properties, lack of street lighting and the lack of benefit over alternative routes. They add that the route is, 'a protected area for the Derbyshire frog, an endangered species' and that a footpath would increase the disturbance

### Further Concerns

- They believe the claim to be frivolous and vexatious stating that:
- Cllr Winter was approached by two members of the public claiming to have used the route for many years. The objectors state that they 'get to know anyone who uses this route regularly, talking to them and establishing acquaintances and friends' but they had never seen the couple before 2010 when the couple verbally confronted them about the 'private' sign.
- Cllr John Pritchard knocked on residents doors asking them to complete UEF, which appear to have been completed in the 'same hand with minimal differences'.
- The landowners at Lakeview Row have not been approached by either Cllr Pritchard or Cllr Winter contrary to what is claimed in the 'Form of Certificate of Service of Notice of Application for a Modification Order' as submitted by Cllr Winter. Another landowner at Lakeview Row was not notified either. The first communication was from DCC.
- Permissive access for local people and workers at the industrial estate has been encouraged and should the DMMO application be rejected, 'permissible' access will be continued – there is no intention to shut the route off completely.
- They have concerns that signatures in support of the application were obtained by councillors who, 'canvassed under this guise'.

**2.23** An email was received on 17<sup>th</sup> October 2014 from a resident of Lake View raising concerns about insurance premiums, potential dog and horse fouling, security of property on Lake View and safety on Calico Lane due to traffic. He also states that 'strangers are usually challenged in a polite manner' but does not reveal how long those challenges have been made or by who.

**2.24** A letter was received dated 17<sup>th</sup> October 2014 from a local resident objecting on the following grounds:

- There is no need for the claimed footpath as a safe alternative exists.
- Calico Lane is not suitable for a footpath as it has no footpaths. The verges are overgrown and used by vehicles in order to pass each other and there is no street lighting.
- Amount and speed of traffic and the safety implications for pedestrians; particularly those with pushchairs, dogs, children or walking difficulties.
- The potential for increased levels of traffic if and when further housing is built on land at the end of Calico Lane.

### **Documentary Evidence**

**2.25** There is no Enclosure Award, Tithe Map, or Land Values map that covers the claimed route – Whaley Bridge did not exist as a separate parish until 1905 and the area which includes the claimed route seems to have fallen between parishes in Derbyshire and Cheshire.

#### **2.26** 1<sup>st</sup> Edition Ordnance Survey Map

A track bound by solid lines is shown following the alignment of the claimed route. The route is shown as open and accessible at both ends.

#### **2.27** 2<sup>nd</sup> Edition Ordnance Survey Map

There is little change from the 1<sup>st</sup> edition map.

#### **2.28** 3<sup>rd</sup> Edition Ordnance Survey Map

There is little change from the 1<sup>st</sup> and 2<sup>nd</sup> edition maps.

#### **2.29** Ordnance Survey Map 1971

There is little change; the claimed route is shown and both ends are depicted as open and accessible.

### **Additional Evidence**

**2.30** Six photographs were submitted with the application. Three photographs dated 11<sup>th</sup> July 2010 show the gate at point C with a sign attached stating “Please beware: This is not a public right of way. It is private land. We allow access onto and from the canal to residents of Lake View and Bank View only. We also agree access to anyone who works on the industrial estate.” Two photographs dated 30<sup>th</sup> December 2010 show a sign attached to the same gate reading: “NOTICE this gate will be locked closed on Saturday 1<sup>st</sup> January 2011 this is not a public right of way it is private land”. A photograph dated 23<sup>rd</sup> January 2011 shows a “PRIVATE” sign attached to the gate.

**2.31** A site visit was undertaken on 25 April 2016.

Calico Lane is a private cobbled road that leads to an industrial estate and the row of cottages now called Lake View. There are also several residential properties along the road.

There is no separate provision for pedestrians or cyclists; whether signs, footways or marked paths on the ground though there are speed limit and no parking signs for motorists.

At the entrance to Calico Lane, on a stonework plinth, there is a large sign titled 'Pearwalk Properties. Furness Vale Business Centre, Calico Lane Tel: ...' which lists the businesses based on the industrial estate. Below this sign is a street sign which reads, 'CALICO LANE (PRIVATE) NO THROUGH ROAD'.

The first 180 metres of the claimed route is along the cobbled road, it then turns about 90 degrees and heads southwest up to Lake View Cottages. The track leading from Calico Lane is initially poorly maintained, the surface of which varies in patches between cobbles, tarmac and loose stone. Towards the top of the track the surface is tarmacked and better maintained. From the top of the track the claimed route continues up a block paved driveway between the end terrace of Lake View and a double garage. Level with the far side of the garages the ground is raised and leads to the towpath gate. On the gate was a sign which read 'PRIVATE'.

There is a high stone wall all the way along the towpath from the bridge to the eastern end of the Lake View Cottages and there is a gate at the eastern end of the row with a sign stating 'No public right of way. Access for residents only'. There is then another wall which runs along the front of the cottages. As the wall comes approximately level with the cottage at the western end, its structure changes and it is lower. The lower wall spans quite a wide area and in the centre is the green gate which leads to the claimed route, again the word PRIVATE is written on a sign on the gate. Further down the tow path there is no other obvious exit to the industrial estate.

The Street Sign stating 'CALICO LANE (PRIVATE) NO THROUGH ROAD' is not dated but it would seem to have been there since August 2009 as it can be seen on the Google Street View image from that time.

**2.32** Satellite Imagery from Google Earth (1999)

Satellite Imagery taken from Google Earth and dated 1999 indicates where the claimed route passes No. 1 Lake View before the steps and the gate were in place. There is an obvious walked line from the towpath and past the end cottage. The image supports the claims that the access point from the tow path used to be wide open as the eastern wall between the terrace and the towpath appears to end approximately level with the gable end of the terrace

and the western wall does not start till level with the middle of the gable end of the outbuildings.

**2.33** Further information was sought from the users who had completed UEFs by sending them a new plan and asking them to confirm the routes they had used, the years they had used them, where they had visited on the route and why: there were 13 responses. An analysis of those responses is listed below:

- 1) Marked the claimed route and others. He stated he had used them all regularly since 1978. In his UEF he claimed use from 1942.
- 2) Has marked the claimed route as part of a longer route, he claims use from 1973 to 2010 and that the route was 'open access prior to the present owners'. He also stated, during a phone conversation that the garages were put in about 15 years ago and before that it was just scrub land; the route used to be wide and open with the wall along the towpath ending approximately level with the gable end of No.1 and the owner put the wall up and moved the path, before that the road used to run straight up to the canal; his wife had a friend who lived in one of the cottages; They had also delivered letters for the school and walked to the industrial estate as well as attended / helped organise events for the school, such as fireworks at the industrial estate; Aside from the above reasons they had mainly used it for walks, as part of a walking route.
- 3) Has marked the claimed route as part of a longer route, she claims use from 1973 to 2010 and that the route was 'open access prior to the present owners'. She has used the route to visit people in Lake View Cottages, to go to the business park and to make a circular route.
- 4) Described his use during a telephone conversation. He used to live on 'Canal Row, then had a paper round till about 1963 and visited friends on the route till about 1986. When he lived there it was completely open and known as a 'through way' and the riding school used to use it. From about 1976 he and his wife would walk with their children along the tow path, down to the industrial estate and back along the cobbled road to Station Road. It wasn't blocked at either end of the terrace then and he would often use the access point by No.17 as he used to live there and enjoyed the nostalgia. He continued to ride horses along the route till horses were stopped from using it about 2001. His wife also used the route but more regularly and on foot from about 1976 to 2010. There are contrasts with the earlier evidence as he initially claimed to have used the route till 2007 not 2001. In her UEF his wife claims to have used the route 'at irregular intervals'.
- 5) Has not marked all the claimed route, she has marked a route from the tow path to the industrial estate via both ends of the terrace. In her UEF she claims use from 1990 to 1995 in order to visit a friend and to go to work at the industrial estate. In her further evidence she recalls walking the route with her parents as a circular dog walk between 1980 and 1995.
- 6) Does not mark the claimed route or add any useful information. His UEF states use from 2006 to 2009.



- 7) Has marked the claimed route as part of a longer route, he claims use as twice a week from '1986 to 200?' His UEF states use from 1985 to 2010 and as 'less than monthly'.
- 8) Has marked the claimed route as part of a longer route, she claims use as twice a week from '1986 to 2007'. Her UEF states use as 'less than monthly' from 1985 to 2010.
- 9) Has marked the claimed route as part of a longer route. She used to visit her aunt who lived on the route between 1954 and 1964. Since 1970 she, her husband and children have used the route 2 or 3 times a week for dog walking and in more recent years with her grandchildren. Her UEF states use as 'monthly' from 1956.
- 10) Has marked the claimed route as part of a longer route claiming 'frequent' use from 1970 walking with the family dog or grandchildren. His UEF states use from 1965.
- 11) Has not marked the claimed route and offers no further useful information.
- 12) Has not marked the claimed route and offers no further useful information.
- 13) Has marked the claimed route as part of a longer route. He was born in 1948 and has lived in Furness Vale all his life. His parent used to take him on walks along the claimed route and he continues to use it now. He states that, 'in the village of Furness Vale it is recognised as a through route... between the canal towpath and Station Road'. His UEF states use as 'monthly' from 1952 though he used it 'more often when younger'.

### Summary and conclusion

**2.34** Anyone may make an application under s53 of the Wildlife and Countryside Act 1981 and the Council has a legal duty to investigate all applications that are validly made. The fact that the applicant is a local Councillor does not affect the validity of the application. The fact that the majority of the UEF appear to have been part-completed does detract some weight from the evidence but does not prove that the evidence is false – the claimed route is along a cobbled road and clearly continues through to the towpath, as evidenced by the landowner's decision to put up a 'private' sign and although it would be preferable for the users to draw their own route on the plan, when the route is obvious it is of less importance. Each user has signed their own form to confirm that this is the route they have used.

**2.35** There is no provision under the WCA to consider as relevant, objections based on such grounds as alternative routes, privacy, security or inconvenience to individuals who live near the route and though one objector refers to Section 1 of the Human Rights Act 1998 (HRA) it should be noted that Section 6 of the HRA provides that 'it is unlawful for a **public authority** to act in a way which is incompatible with a Convention right'. This obligation does not extend to individual members of the public, such as the users who believe they have a right to pass and repass along the claimed route and have made the application. If the Council makes an Order to amend the DMS,

it is doing so in accordance with its statutory duty, by recognising the rights the public have acquired.

**2.36** Thirteen users refer to there being a gate on the route but none mention it being locked. Both the users and the landowners have stated that the gate has been in place since about 1980. The landowners state that the gate has been locked on one day of each year for the last 13 years, usually Christmas Day. Locking the gate is commonly considered to be a method of showing a lack of intention to dedicate a route as a public right of way but in the absence of any collaborative evidence it is insufficient to negate the claim entirely. The landowners intention cannot be said to have been communicated overtly to the public – see legal considerations below. None of the users mentions a closure of the path at any time and the only available evidence of the path being closed over the Christmas period is two of the photos submitted by the applicants which show notice stating a closure on 1 January 2011 which post-dates the period under consideration.

**2.37** The landowners state that they have never stopped anyone from using the route and none of the users recall being stopped from using the route though four users recall being told it was not a public right of way; two in 2010 when use of the route was brought into question. The other two do not give dates. Four users also state they had permission to use the route though they do not give dates or details. One of the affected landowners states that strangers have been challenged in a polite manner. Although this would amount to a challenge to public use as of right, the landowner does not give details of any such challenges and none of the user evidence corroborates this information. Without more information on the date, frequency and method of challenge this is insufficient evidence to bring a lack of intention to dedicate to the public's attention and to negate the claim.

**2.38** From the initial user evidence provided and the additional evidence submitted it would appear that many of the users have, or have had, a private right to use the route during some period of their claimed use – for example to visit people who lived along the route. However, many of the same people have also claimed to have used the route as of right, for example, at a later date. The additional evidence submitted does differ slightly from the original evidence on the UEF but overall there is still a substantial amount of use over the required 20 year period.

**2.39** 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 submitted with this application shows that the route has been used in excess of 20 years and so meets the requirements of the legislation.

**2.40** The landowners claim to have locked the gate one day a year for the last 13 years. Some members of the public have been told the route is not public but, no dates have been confirmed. Recent caselaw has cast doubt on

the effectiveness of closing a route on Christmas Day in negating a claim for a public right of way.

**2.41** Although the presence of an endangered species would be an understandable concern it is not one that can be considered as relevant under the WCA 1981 as to whether the public have acquired a right to pass and repass through 20 years of use as of right. It should also be noted that enquiries have been made with a local expert, who has stated there is no such species as the 'Derbyshire Frog'.

**2.42** One of the objectors states that two of the affected landowners were not notified of the application as declared on the 'Form of Certificate of Service of Notice of Application for a Modification Order'. When the application was received, it was considered to be a valid application and there is a comprehensive list of affected landowners and adjacent landowners who were notified, including the objector. The other affected landowner that the objector states was not notified lives in an unregistered property and this is could be the reason they were not notified. It is also unclear from the Land Registry maps whether the claimed route actually runs over the unregistered land.

**2.43** In summary, the evidence submitted in support of the application suggests that the route has been used by the public as of right and without interruption for a period of twenty years. The objectors suggest that there may have been challenges but have not provided sufficient evidence to indicate that those challenges occurred during the period under consideration or that they communicated to the public at large that there was no public right of way.

**2.44** There is therefore, sufficient evidence of use to make an Order but there is also some evidence of a lack of intention to dedicate the way. Where there is a conflict of credible evidence and no incontrovertible evidence that a right of way cannot reasonably be alleged to subsist then an Order should be made.

### **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** A 2015 High Court decision (*Ali v Secretary of State for Environment Food and Rural Affairs* [2015] EWHC 893) held that closing a path on Christmas Day was ineffective to make it clear to the public that there was no intention to dedicate a public right of way when that path led to shops and businesses which were closed over the Christmas period making it less likely that the public would use the path. An overt act is needed to communicate the owner's intention.

**3.11** 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**

**3.12** 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.

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

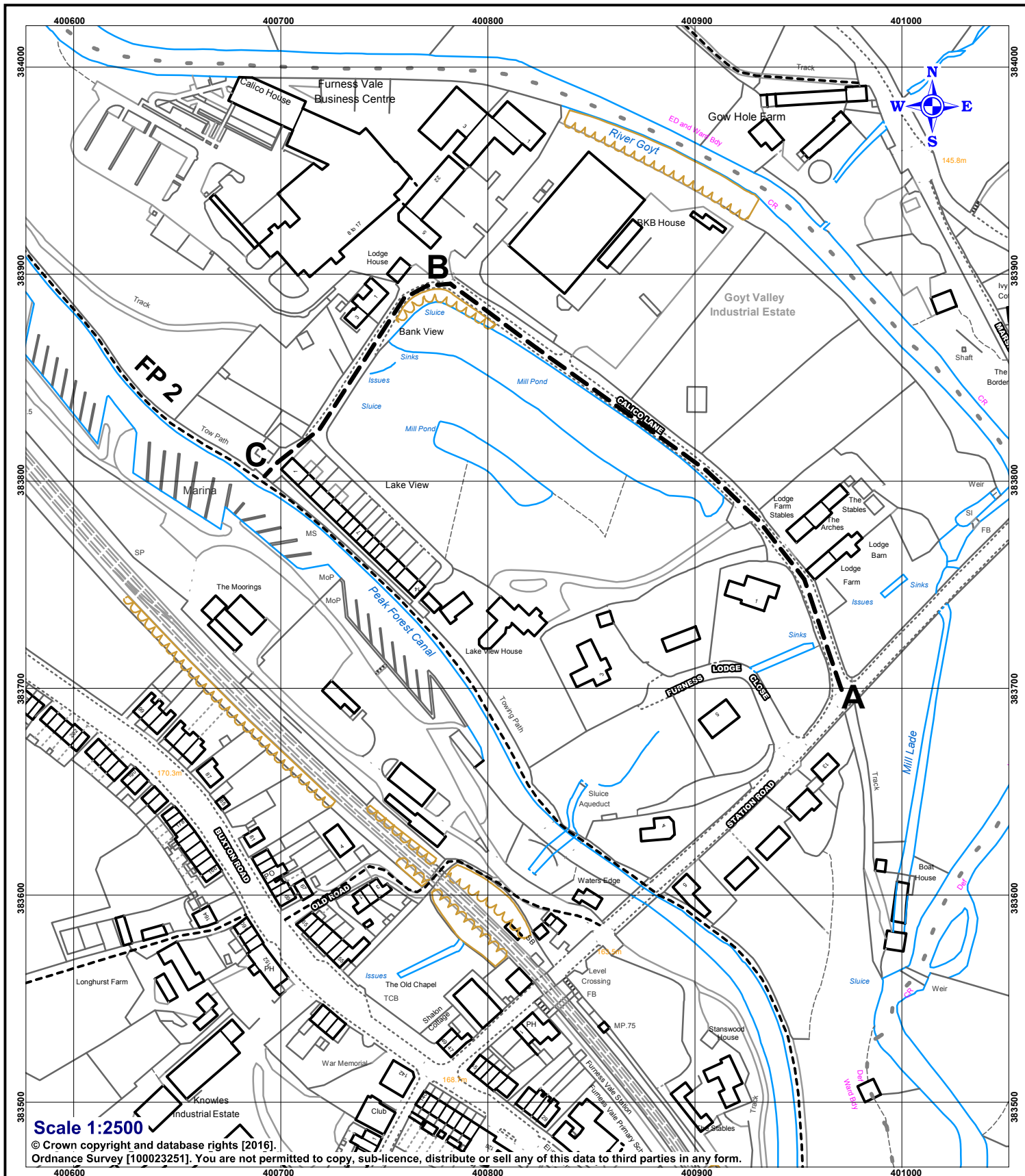
## **4. Background Papers**

File held by Legal Services (ref. 52448)

## **5. OFFICER'S RECOMMENDATION**

**5.1** That the Committee resolves to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to add a footpath from Station Road to Footpath No 2 via Calico Lane, in Whaley Bridge as shown by the black dashed line on the plan attached to this report, to the Definitive Map and Statement.

**Chief Officer**



Ref: PE/DM/X3735/Cttee/2016



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Produced by Public Rights of Way on 12 July 2016

### Wildlife & Countryside Act 1981, Section 53

**Claim to add a Footpath from  
 Station Road to Footpath No 2  
 via Calico Lane in Whaley Bridge**

**Key:**

**Claimed footpath**      - - - - -

**Existing footpaths**      - - - - -

