

**DERBYSHIRE COUNTY COUNCIL  
REGULATORY LICENSING AND APPEALS COMMITTEE**

**26th February 2018  
REPORT OF THE DIRECTOR OF LEGAL SERVICES**

**WILDLIFE AND COUNTRYSIDE ACT 1981  
CLAIM TO ADD A BRIDLEWAY FROM PUBLIC BRIDLEWAY NO.8 TO  
PUBLIC BRIDLEWAY NO.9, PARISH OF DALE ABBEY**

**1. Purpose of the Report**

To enable Members to determine an application to amend the Definitive Map and Statement by adding a bridleway from Bridleway No.8 to Bridleway No.9, Parish of Dale Abbey.

**2. Information and Analysis**

**2.1** On 2<sup>nd</sup> September 2013, Ann Wood of the British Horse Society (the Applicant) submitted an application to the Council to add a bridleway from Bridleway No.8 to Bridleway No.9 in Dale Abbey. The application is accompanied by seventy nine user evidence forms (and two statements), the Ordnance Survey (OS) Pathfinder 833 SK43/53, a copy of the Definitive Map for the area (circa 1991/2), four published walking guides, 'petition lists' and a copy of the plan accompanying the Finance Act (although the Applicant listed this as the '1912 Tithe Map').

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

**User Evidence**

**2.3** A complaint was received by the Council on 1<sup>st</sup> July 2013 from a member of the public. The complainant claims to have used the 'bridle path' for 45 years, stating that the current owner, 'has locked the access gate where the path enters her yard from Hermits Wood to the east... claiming that the path is a permissive route only, and that permission is now withdrawn'. At about the same time the owners of the land constructed an alternative route which avoided the farmyard. They have made this available for use by horse riders and walkers.

It is the locking of the gate in July 2013 which has brought use of the route into question and so the period of use to be initially considered shall be the 20 year period prior to that date. The period under consideration is therefore between 1993 and 2013.

**2.4** Of the 79 witnesses, 75 have claimed use of the route on foot prior to 2013, 57 for a period of 20 years or more including the 20 year period to 2013.

**2.5** Of the 79 witnesses, 39 have claimed use of the route on horseback prior to 2013, 28 for a period of 20 years or more including the 20 year period to 2013.

**2.6** Of the 79 witnesses, 15 have claimed use of the route on cycle prior to 2013, 13 for a period of 20 years or more including the 20 year period to 2013.

**2.7** The user evidence covers the years from 1940 to 2013 with the longest two users claiming use for 73 years. A further 10 users claim over 50 years use, a further 15 users claim over 40 years use, a further 17 users claim over 30 years, a further 13 users claim over 20 years, a further 14 claim over ten years and 8 less than 10 years.

**2.8** 78 witnesses report seeing other users on foot and horseback and 58 have seen other users on pedal cycle.

**2.9** Nine witnesses used the route daily, 39 weekly, 11 monthly and 18 less than monthly. One user specified daily/weekly and another weekly/monthly.

**2.10** Descriptions of the width of the route vary between 1 and 10 metres. Eleven witnesses have not offered an estimate of the width and eight have described it in a vague way. The most common descriptions, as stated by 9 witnesses for each, are 10 feet and 3 metres (10 feet is equal 3.048 metres).

**2.11** Of the 79 users none recall before July 2013 seeing any notices, being stopped or being given permission to use the route and none remember the route ever being diverted. One user, who has ridden the route since 1984 states that the route was "*trying to be closed many years ago*", but offers no further details such as when or how. The witness was contacted but could no longer remember any occasions before 2013. One user recalls being told there was no public right of way by the owners of the farm but does not give dates.

**2.12** Of the 79 user evidence forms submitted, 37 witnesses describe some of their use as being part of an organised group. Nearly all of the users who have used the route as part of a group have also used the route independently. None say that they have been granted permission.

- One user who has only used the route on foot '*frequently takes groups of visitors on guided tours of the Abbey and to Hermit's Cave*' and they have never had permission to use the route.
- One user, who has used the route from 1975 to 2013, went on a '*charity ride*' in the '*late 1970s*'.
- Two users, who have walked and run the route regularly from 2000 to 2013, also went on the '*Annual Church Rogation Walk*'. The leader of many church walks has also completed a UEF and states he was given permission 'on 3 or 4 occasions in the early 1990's... to drive my car and trailer into the farmyard with equipment for maintenance in Hermit's

Wood'. The user continued to use the route on foot without permission. In a subsequent telephone call he confirms that permission was never sought for the Church Rogation Walks or any other church related activities as the route 'was a public right of way'.

- One user took part in, '*annual litter picking*' but, used the route daily between 1987 and 2008 and weekly thereafter, until 2013.
- One user, who has used the route on a weekly basis from 1954 to 2013 has ridden on '*charity horse rides*' and '*to follow the hunt*'.
- One user who used the route from 2005 to 2013 has ridden with groups, '*litter picking – organised ride*'
- One user, who has used the route from 1976 to 2013, describes their use with an organised group as, '*groundwork*'.
- One user states, '*our walking group walks the route about 4 times a year*'. Although he only claims use from 2011, he also states that he walked it in the late 1940s and early 1950s with his parents.
- One user describes his group use as, '*church rambles, church rogation walk, school walks*'. He has used the route regularly since 1977 to 2013.
- One user describes her group use as, '*church and school organised walks*'. She has used the route regularly since 1977 to 2012.
- Two users have ridden on, '*rides organised by Derwent Valley Bridleways Association and British Horse Society*', one claiming use from 1969, the other from 1976.
- Three users have ridden with the '*South Derbyshire Saddle Club*'. One adds '*25 years approx.*' and has also used the route on a weekly basis since 1958. The second adds '*Christmas ride... approx. 25 years ago*' and has used the route on a weekly basis since 1976. The third has used the route on a monthly basis since 1970.
- One user who has used the route daily for ten years until 2013 has also taken part in, '*Litter picking events*'.
- One user has walked with groups '*From c1980 Church Bank Holiday walks*' and '*Annual circular Church walks... since c1995*'
- One person who has used the route less than monthly from 1947 states, '*I am vice-chairman of East Midlands Welsh Pony and Cob Society*'.
- One user has walked the route weekly since 1970 and has also walked with the, '*Erewash Ramblers*' and '*wildlife groups*'.
- One user has ridden the route weekly since 2000 and has also ridden with, '*Horse Riders Group*'.
- One user has used the route daily from 1966 and has also ridden a '*charity horse ride*'.
- One user has walked the route weekly since 1967 and has also advised, and guided, school parties.
- One user has walked the route intermittently since 1978 with various walking groups.
- One user has walked the route since 1966 and has also walked it with a, '*walking group*'.

- One user has walked and ridden the route weekly since 1963 and has also ridden, '*on organised horse rides or with the riding school*'.
- One user has ridden the route '*several times a week*' since 1990/1 and has also ridden, '*organised pleasure rides*'.
- Ten users have ridden with the Church Wilne Rotary Club, which holds an annual charity horse ride. The event organiser of the Rotary Club of Church Wilne Charity Horse Ride has confirmed in a letter that he has always requested permission to include the claimed route as part of the ride. The Rotary Club charity ride had been run for seven years prior to 2013.

**2.13** 78 of the witnesses have marked the route they have used on an attached plan, one person submitted a UEF without a plan. 50 users have marked the route as claimed, from BW8 to BW9. Although 28 have not marked the route on the map to join the definitive line of BW9, it would appear that the users have simply marked the section of the used route that has been closed to the public by the locking of the gates either side of the farmyard. Most users are likely to have assumed that BW9 followed the used track that passes by the gates on the northern side of the farmyard, and marked on the consultation plan as 'route under investigation', as opposed to the 'definitive' line which was unusable at the time the application was made.

**2.14** The people who have completed the UEFs have made various comments which when taken together as a whole, overwhelmingly imply that users believed they were using a public right of way. Comments made include phrases such as: *in constant use; no previous restrictions; never challenged; very ancient route; access historically allowed; never knew any other route; never seen or used any other route; bridleway at the back of the building never existed and never seen signs to say it did* (4 users) and one who adds, '*would be very difficult to walk, never mind on horse*'; *closure prevents access to network of paths; closure has caused major disruption and confusion; known it to be a right of way; owners present many times but no permission offered; present owner maintains this is only a footpath; told in no uncertain terms... not a vehicular right of way hence hearses and cars cannot reach church (as they had always before 2010); kept horses at Church Farm and owner appeared to believe right of way passed through her yard; kept horses at Church Farm and owner clearly under the impression bridleway passed through the yard; notice at access point from The Village, please keep to path; notice on the farmyard to the effect, keep to the path; early 90s granted permission to drive through with maintenance equipment, request refused about ten years ago and never asked again; in my teens used to stop and talk with the owner, he was our milkman (used route from 1963); on the odd occasion have met the occupiers of the farm I was never required to turn back or told it was permissive, just spoken to politely.*

**2.15** One user states they were told by the owners that the route was not public but they give no dates. It has not been possible to confirm dates. Their use is from 2005 and so their information is relatively recent compared to how

far back a substantial amount of the evidence refers. Another user states that the 'present owner... maintains there is only a footpath.'

**2.16** A petition was submitted with 180 signatories. The wording of the petition reads, '*We the undersigned **OBJECT** to the closure of bridleway 8 through the farmyard of Vergers Farm, Dale Abbey DE7 4PN and hereby request Derbyshire County Council, as the official surveying authority, to reinstate the right of way with immediate effect and amend the definitive map accordingly. We have personal knowledge and understanding of this route which we have used "as of right" with uninterrupted access until the recent action by the present landowner on 30th June 2013.*' When considering claims made under Section 53 of the WCA, petitions do not generally carry much weight as in most circumstances they do not provide any evidence of use. However, in this case the signatories do offer some personal information as the individuals have also provided their years of use on the petition form.

**2.17** The years of use claimed by the petitioners ranges from 4 to 83 years. Nine people did not state their years of use.

**2.18** Of the 171 petitioners who did record their years of use: 1 user claims over 80 years use, 3 users claim between 70 and 80 years use, 3 between 60 and 70 years use, 20 between 50 and 60 years, 20 between 40 and 50 years, 39 between 30 and 40 years, 35 between 20 and 30 years, 15 between 10 and 20 years and 29 for 10 years or less. The average length of use claimed is 30.6 years.

### **Consultation**

**2.19** A consultation exercise was carried out between 21<sup>st</sup> November 2013 and 2<sup>nd</sup> January 2014. Notices were placed on the route and letters were sent to the statutory consultees, landowners and the local elected member, Cllr Michelle Booth. The landowner requested an extension to the deadline for submissions and an extension was granted until the end of February 2014.

**2.20** Seventy people wrote/signed letters or emails in objection to the claim.

**2.21** Thirty-three people added their names and addresses to copies of a printed letter of objection and signed the individual copy. The wording of the letter is as follows:

**Objection to claim to add a bridleway from Hermit's Wood to join  
Bridleway 9, Parish of Dale Abbey.**

Dear Sir

I most strongly object to the addition of this bridleway through the owners' private yard since it is totally unnecessary as there is a perfectly suitable route already in place which appears to follow the DCC definitive map.

The proposed additional path would adversely affect the owners' privacy and security and raises serious issues of health and safety.

I give my full support to the owners of the property and trust that common sense and fairness will prevail. Please reject the application to add a bridleway through the yard at Vergers Farm.

Yours,

**2.22** A further 38 letters (one person sent two) were received in objection to the application, 12 of which contained information considered in more detail below. One person has subsequently requested their name and any documents associated with their name be withdrawn as they, '*had no idea that I was in fact objecting to the application for a bridleway*' by allowing their comments to be forwarded to the Council.

**2.23** 25 of the 38 letters received, contained similar information and objections: 17 stated that the farmyard gates had been locked, stating '*on numerous*', '*on a few*' or '*on odd*' occasions and one '*on several occasions each year*'. Another objector, who has used the route since the 1960s, writes that there have always been gates, both as a working farm and now as stables, that the Hermits Wood side was sometimes locked and the gate on the drive was always locked. Five objectors specify a wedding, two a 60<sup>th</sup> birthday, three specify bonfire parties and four birthday or family parties as occasions on which the gates were locked. Another objector states they have seen people climb over gates '*which is illegal*'; all 25 objected on grounds of there being an alternative route; 18 on grounds of privacy; 12 on grounds of health and safety; 10 on grounds of security and three on grounds of abusive and antisocial behavior or the questionable morality of making such a right of way.

**2.24** Four of the 25 letters refer to there being signs on the route but do not provide any dates of when the signs were in place: two objections which stated the sign read 'Private' were the same letter sent separately by a couple who share a surname and address. They state that they have known the landowners for 14 years (since 2000); one objector states the sign read 'Private and Permissive', though he also states that he used the route regularly but, '*felt uncomfortable*' doing so and one person who states the sign gave '*permissive access*'.

**2.25** Seven of the 25 objectors claim to have been granted permission to use the route, three of whom say they used the route for '*more than 10 years*' up to 2013, one between 1980 and 1996 and another, who has lived in Dale Abbey for 72 years, has requested permission for a number of years to use the route for the Rotary Club of Church Wilne charity horse ride. A further three objectors state they were aware that the route was permissive.

**2.26** One of the 25 objectors claims the current landowners were informed when they bought the property that there was no right of way through the

farmyard and added that they have encountered several situations where footpaths or bridleways have been rerouted and that the same has been done in this case.

**2.27** One of the 25 objectors claims the current landowner has challenged people found, '*wandering the yard*' or in the stables or gardens or conservatory and that the landowner has been subject to verbal abuse.

**2.28** One of the 25 objectors refers to the, 'Planning (Listed Buildings and Conservation Areas) Act 1990' stating, it could be argued to be inappropriate for a bridleway to pass through the site. He also suggests it would make the building difficult to sell and thus a financial burden on the owners.

**2.29** One of the 25 objectors states that her uncle and aunt were tenants of Verger's farm from the 1930s to 1961 and that the claimed route has never been a right of way. She states that at that time '*no one could afford a horse*' and that until 1984 it was a working farm with no cut through for the public.

**2.30** Five of the 25 objectors refer to the '*alternative*' route or route '*round the top*' as being impassable and another states they were '*always under the impression this was the footpath*'.

**2.31** Objectors 1 states in a letter dated 29<sup>th</sup> January 2014 that: they support the landowners' objection and are concerned that the landowners' privacy is not being taken into consideration. They also suggest that DCC has 'fostered support' and actively encouraged organisations to submit a DMMO application, when the path has only ever been permissive and only used as a result of DCC failing to maintain the correct routes, creating the belief that the right of way runs through the farmyard by directing people through in walkers' guides and by mistakenly way-marking the route. They add that in the 1960s the property was a dairy farm with 'Private' signs on the gate, that the route was obstructed by farm vehicles and frequently full of cattle and manure. In 1977 the farm had signs on gates either side of the yard saying 'Private Keep Out' and the tenants kept geese which would have deterred people walking through the yard. The farm was untenanted in 1984 and so people may have used it then. The first '*private owner*' had signs on the gate reading 'Private Property' and he informed the current landowners when they bought the farm in 1990 that there was no right of way through the farmyard and although the landowners have granted permission to various charity events they have also locked the gates several times a year to preserve their '*Right of Private Access*'. The objectors raise further concerns about DCC's poor maintenance of the definitive paths in the area and the subsequent necessity for the landowners to undertake groundwork at their own expense, in particular the new route which provides a gentle slope from BW8 to BW9 which many riders are very happy with as they have never been able to use the steps to the top of the cliff and which renders the application route unnecessary (*here they refer to an article from the Daily Telegraph by Environment Secretary, Mr. Owen Patterson in referring to the Deregulation Bill and the proposal that landowners be allowed to request a path be diverted around their land. The Deregulation Bill has not yet come into effect and as such cannot be*

*employed in this instance*). Finally they raise concerns over privacy, security, behaviour of the public, behaviour of DCC and the health of the landowner. In a further letter dated 10<sup>th</sup> March 2014 the objectors state that the landowners, *'when they have been at home, have challenged many people. Some have even climbed over the locked gate...'*

**2.32** Objector 2, the landowner's daughter, states in an undated letter that the night they moved into the property in 1990 their car was stolen and then they were burgled a *'couple of weeks later'*. The gates were subsequently fitted with a chain and padlock and a sign put up at the bottom of the drive (no wording provided). She adds that the gate at the bottom of the drive has always been kept locked unless they were expecting visitors and that the yard was always secured for family events such as annual bonfire parties, Halloween parties, christenings, two weddings (2006 and 2010), barbecues and birthday parties and also each Christmas Eve. She questions why nobody has ever complained about the yard being periodically locked for the last 24 years if they believed the route to be a public right of way. She learnt to ride in the yard and nobody was allowed through at those times, she used to play with friends and they were always safe; she does not remember people coming through. Friends used to ride over to meet her as she lived adjacent to the bridledways but this access was permissive and over the years a number of friends have stabled their horses there. She also confirms that people have been *'challenged for unauthorised access... climbing over gates, inside the stables and outbuildings and even in the horse trailer, wandering the yard... mum has been extremely upset at the abuse she has received when trying to protect her property and her right to privacy...'* The objector also points out that permission has been sought and granted for a number of organised events such as an annual charity horse riding event. She feels that if a right of way were added, it would prevent the area being used as intended and as it has been for the last 24 years (till 2014) due to concerns for health and safety (children, horses, public), privacy, security and also lack of parking for owners and visitors.

**2.33** Objectors 3 state in a letter dated 28<sup>th</sup> January 2014 that: their granddaughter rides there and the gates are always locked when she is there, but they would have grave concerns for her safety if access were to be allowed to strangers or excitable dogs. They add that the gates to the yard are periodically locked and public access denied.

**2.34** Objector 4 states in a letter dated 25<sup>th</sup> January 2014 that the owners have worked hard to put in the new paths following the correct legal mapping. The objector runs a mountain bike tuition business and leads groups of riders, the landowner uses her private courtyard to train horses and he would *'feel safer to use the new paths that divert around the courtyard...'*

**2.35** Objector 5 states in a letter dated 14<sup>th</sup> January 2014 that on frequent visits she has always found the gates at the village end locked and that the gates would then be locked behind her once parked. The gates to the wood were always locked; she understood it to be a permissive route. She has seen people, *'walk up the drive...sometimes walking right up to the windows*



or peering through the gates and into the stables. A great invasion of privacy...made worse if... new bridleway granted permission'.

**2.36** Objector 6 states in a letter received 19<sup>th</sup> February 2014 that he was born in Dale Abbey in 1944 and has lived there all his life. His aunt and uncle were tenants of the farm from the 1930s to 1961 and he *'can absolutely confirm that there has never been a right of way through the yard and this is well known by people who have lived in the village for any length of time.'* He adds that until 1984 it was a working farm, part of the Stanhope Estate and the Estate manager would ride through every Friday and check that gates were shut. The tenants in the late 1970s *'did everything in their power to make it unpleasant for anyone coming on their land... putting up signs and they ruined the grass hill local children... used to slide down. (He) dug a deep track with a tractor so there was a dangerous drop off the end of the hill and he also put barbed wire across. They also had geese loose in the yard so no-one would dare try to go through.'* He adds that the farm was empty from 1984 for some time and people took advantage and began to cut through the yard but both the private owners have since, *'locked the gates on occasions when it suited them and also as advised to prevent anyone... claim a right of way'*. When he has visited on business he has always rung to check the gates are unlocked and there is a sign on the tree at the bottom of the drive which states it is private property.

**2.37** Objector 7 states in an undated letter that she frequently went for walks around the dale as a little girl, from the early 1980s and Vergers Farm was a working farm with lots of signs reading 'Private', 'Keep out' etc, there were vicious geese on the yard and the gates were shut so generally she had to turn back. She has ridden ponies from about 1986 and generally went up the drive at Vergers farm, and then over to Columbine (BW9); the Hermits Wood gate was sometimes locked. Having continued to ride from 1986 to 2013, she has always found the gates closed and the gate at Hermits Wood end locked. Between 2004 and 2009 she stabled her horse at the farm and personally challenged people, reminding them it was private property. She recalls a number of incidents of people *'nosing around'* stables and outbuildings, going on the muck heap, swinging on gates, dogs running around and spooking the horses which became an increasing problem and she worried about the safety of her daughter in the yard and so moved stables. She adds that, despite the inconvenience the landowners made a point of locking the gates at least once or twice a year to prevent people claiming a right of way but she has witnessed people climb over the locked gates and being abusive when challenged. She also remembers the yard being sealed off every year for bonfire parties, a wedding (2006), a christening and other parties. She *'can also confirm that the gates either side of the yard were locked on Christmas Eve'* as stockings were hung on them with presents for the horses and on Christmas day 2008 they remained locked most of the day as her daughter got her first pony and *'was able to safely get to know her pony and ride her in the yard'*. The objector questions how nobody has ever complained before now. She also objects as there are better alternatives, there are concerns over security, health and safety and child protection.

**2.38** Objector 8 states in a letter dated 7<sup>th</sup> April 2014 that the landowner was advised by an old tenant, shortly after moving in, that people had started to cut through the property in the 1980s when it was vacant and she needed to protect her rights to ensure access was only ever permissive. He told her there had always been signs up saying 'private', 'keep out' etc; she adds that the landowner had a new sign made which is still up now. The objector confirms that, *'the gate on the drive was always locked... particularly since her car was stolen out of the yard the first night they moved in and there was a major burglary... shortly after'*. She adds that all the gates were always closed because of the horses and the gate to Hermit's Wood was sometimes locked, but people climbed over the gates and wandered all over. She also adds that, *'I have actually seen the gates either side of the courtyard locked on a number of occasions when I have attended parties...'* The objector says she has witnessed how stressed and upset the landowner has been, *'at the verbal abuse she has received when she has challenged people'*. The objector also refers to the landowner finding someone in the conservatory where her two grandchildren were playing. She raises concerns about, *'strangers, dogs, horses etc coming through spooking horses and causing accidents'*. She says that since 2000 the landowner has locked the gate at the top of the courtyard at night. The objector thinks the County Council is responsible for the situation as it has not maintained the correct alignment of BW8 and has waymarked the route through the yard. She contests how people have claimed to have used the route for decades as when it was a working farm it was, *'knee deep in muck and there were loose animals and farm vehicles'* and she also recalls that as a child she was not allowed through the farmyard.

**2.39** Objector 9 states in a letter received 31<sup>st</sup> January 2014 that he has, *'regularly walked in Dale since the 1960s and have never come through the yard. Until the 80s it was a working farm and loose animals and farm vehicles and equipment meant it was not possible to go through'*. He also recalls there were lots of signs from Hermit's Wood stating that the land was private and to 'keep out'. He has seen people cut through but, *'always felt uncomfortable doing so myself'* and has seen horses being trained in the yard and young children riding.

**2.40** Objector 10 states in a letter dated 27<sup>th</sup> January 2014 that he has been a visitor to the farm for 20 years and his children used to play safely, secure in the yard as the gates could be locked and public access denied, as they were at various family parties. He suggests that it is not true that people have been using the route; if family members like him have found the gates locked and access prohibited on un-notified visits, then ramblers would not have been able to gain access either. He also refers to another path put in at the owner's expense.

**2.41** Objector 11 states in a letter dated 20<sup>th</sup> January 2014 that the landowner has known since moving into the property in 1990 that, *'there was no right of way through the property and have protected their rights by locking the gates regularly'*. The need to do so was reinforced by a previous tenant who lived there between 1940 and 1967 and who told them, *'more and more*

*people had started using it as a cut through*'. In relation to the 20 years of uninterrupted public use required to acquire a right the objector writes, *'I can categorically state that this condition has not been met in the past 22 years – and I would be quite happy to swear to that effect in a court of law'*. He has lived in Dale Abbey since 1991 and from then until 1996 he walked his dogs through the yard about twice a week, then from 1996 he walked them through the yard at least six days a week and he confirms that he has found the gate on the south side of the courtyard locked on Christmas Day. The landowner locked the gate on Christmas Day, Christmas Eve and when her daughter was riding her ponies. Other occasions that the gates were locked were for bonfire parties from the early 1990s to 2009, a birthday party in 2006 and a wedding in 2010. The objector raises other reasons why he considers, *'adoption of a right of way through the courtyard would be totally inappropriate'*, i.e. DCC has failed to maintain the definitive paths, has mistakenly directed people through the courtyard and adopting the route would be at odds with the Deregulation Bill. It is unnecessary to adopt the route as the landowners, *'have reinstated the route which the County failed to maintain and improved access to it'* and everyone he has spoken to is happy with the reinstated route.

**2.42** One person stated in a letter dated 15<sup>th</sup> December 2015 that she supported the, *'new path around the farm'* as she considers it *'more convenient than going through the yard'*. Two other people, *'also supporting this letter'* signed it.

**2.43** Eight people wrote in support of the application.

**2.44** In a letter dated 12<sup>th</sup> November 2013 the British Horse Society submitted further documentation to accompany the original application, including further UEFs and the petition, both of which have been considered in the User Evidence section of this report. Also provided with the letter were two statements of use and copies of the 1951 Parish Claims for BWs 8 and 9. Referring to the Parish Claims, it is pointed out that in the description for BW8 is the line, *'exit farmyard at All Saints Church'* and for BW9, *'From Church Farmyard'*. The two users' statements contained the following information:

- User 1 used to visit Hermits Cave every Easter when she was a child (she was 98 years old in 2013) with her brothers and sisters. From the Carpenters Arms they would walk, *'over the road and up past the church and through the farmyard. I can't remember a gate. It was just an open road to the woods. We used to roly-poly down the hill in the field'*. She adds that the last time she went to the caves was in 1938 when she took her husband to see them before they were married and that, *'nobody ever stopped us'*.
- User 2 (who was 79 in 2013) states that she started to visit the caves on bank holidays, with her brothers and sisters when she was about 8. They would walk, *'down past the Carpenters Arms then up past the church and through the farmyard. There was a gate into the farmyard and if there were animals in the yard the farmer would come and open*

*the gate and keep the animals back. Nobody stopped us... and there were no signs saying you could not go through. It was the only way to the caves. It was flat through the yard. You didn't go up a hill other than to get to the caves. I'd be about 12 when I last went for a picnic. I used to go there with my husband before we were married when I was 16'.*

**2.45** Supporter 2 writes in a letter dated 26<sup>th</sup> November 2013 that she has been a regular rider, and latterly walker with her husband, in the area. They are alarmed at, *'the ease with which this closure happened... where a pathway has been used for, in all likelihood, centuries'*. She states that all the maps they have access to, including the DCC mapping portal show the route through the Farmyard at Verger's Farm. She adds that, to her knowledge, there has never been a sign to say the route was concessionary or would be closed for legal reasons. As a rider she, *'would not be happy to use the (new) bridleway up behind Verger's Farm. It is far too steep and is likely to be dangerous in wet weather'*.

**2.46** Supporter 3 stated in a telephone call on 5<sup>th</sup> December 2013 that she had used the route for over 50 years and that she had a 1974 OS map which described the route as a designated bridle path.

**2.47** Supporter 4 submitted a letter dated 10<sup>th</sup> December 2013 stating that he has been a mining historian for over 40 years and has been, *'intimately familiar with Hermits Wood'* and can confidently state that there has never been any, *'trace whatsoever of any alternative route... other than that through the farmyard'*. He has walked the route about once a month for 26 years. He would occasionally chat with a previous occupant who never suggested the route was permissive and he has never known the route to be obstructed until, *'this trouble began last year'*. He claims to have, *'examined large scale Ordnance Survey maps back to the 1980s and they only mark the route through the farmyard'*. He adds that the, *'new route... is impractical'* and that his late mother who enjoyed, *'walking along the bottom of Hermits Wood until she was aged 93... could not have coped with the new route'*.

**2.48** The Ramblers wrote, in a letter dated 20<sup>th</sup> December 2013 that the Erewash Ramblers had a number of members who had submitted UEFs, *'some of whom have had many generations living in the area and are aware of its unique history... until its closure in 2013, the stretch of path was utilised extensively by walkers, riders and cyclists and provided a pleasant walk through the ancient woodland and beyond... Its closure has caused much disruption and animosity within the local community.'*

**2.49** Supporter 5 submitted a letter dated 22<sup>nd</sup> December 2013 and writes that her family have, *'walked the path through Verger's Farm every day since we moved here in September 1983. Like the rest of the inhabitants of Dale Abbey, we understand that we have established a right of passage through usage over decades'*. She then makes a further three points:

- the replacement permissive bridleway is dangerous, it is too steep and is slippery, both when wet or dry and as it is permissive, the landowner could close it at any time, *'thus depriving the village of access to Hermit's Wood which it has enjoyed since the village first grew up around the abbey'*.
- *'Nobody in the village remembers'* the route being closed off occasionally as claimed by the landowner and asks if the Council has any letters of complaint about the removal of access and if not, *'then I put it to you that (the landowner) did not in fact close off the path, so cannot claim that it was permissive'*.
- When the landowner bought the farm in the 1980s, *'it had then what was understood to be a right of way through her farmyard'*.

**2.50** Supporter 6 submitted a letter dated 26<sup>th</sup> December 2013 in which he points out that the course of Footpath 46, *'is clearly incorrect'* as it would require a user to go through an outbuilding and directly up a steep rock face. The route to which he is referring is Bridleway 8 but his point is that it is impossible to follow that route and that the, *'primary method of access between Hermit's Wood and Dale Abbey village'* is the application route which had, *'been accepted by numerous owners of Verger's Farm as a non-permissive right of way, and as such had never been closed during the 35 years I've been a regular user of it.'* He adds that it has been frequently used by villagers, ramblers, equestrians and tourists for 35 years and probably longer as the, *'only direct route between the main village attractions of St Mary's Abbey and the Hermits Cave'*. He suggests that if the new route were to be considered as a viable option then it should be established as a right of way and not permissive. He also states that all users have invariably used the track to the east of the farm rather than the definitive line of Bridleway 9 through the field.

**2.51** Supporter 7 submitted two letters dated 27<sup>th</sup> December 2013 and 19<sup>th</sup> February 2014 respectively in which he questions, *'the reliability of the definitive map as published in 2013'* as the bridleway is shown to circumnavigate the farmyard. He considers it, *'inconceivable'* that when the site was occupied by a pub that it would have been, *'deliberately by-passed'*. He states that before the summer of 2013 there was no evidence of any bridleway climbing steeply up from the east gate of the farmyard or then dropping down on the far side of the farmyard, a route he describes as, *'topographically absurd'* and one which, *'no one in their right mind'* would use. He states that until the summer of 2013 there was a signpost directing people through the farmyard and that, *'no-one, including, I believe, (the landowners), thought there was any other route'*. He also provides an image from a 1976 1:25000 OS map which shows rights of way and, *'is stated to be based on the definitive map'*. He claims that the route is shown to follow the contours of the map, keeping to the flat ground which would take it through the farmyard. He also adds that it would take the route between the outbuildings, which as far as he knows has, *'not been used within living memory, rather the route through the yard... has been used'*.

**2.52** Supporter 8 sent an email on 2<sup>nd</sup> January 2014 strongly objecting, *‘to any changes made to the original bridleway to Hermits Wood, the new changes put in restrict access to disabled and less abled bodied person (sic) which for centuries has been a public right of way to them through usage’*. He states that the new access is, *‘too steep... and dangerous in good weather never mind wet and inclement (sic) weather’* and adds that he has used the route since he was 10 years old and was a resident of Dale Abbey for five years up to 2012, although he does not say how long or often he used the route.

### **Objection submitted by the Landowner**

**2.53** The landowners submitted a lever arch file to support their objections, which was divided into several appendices.

**2.54** Appendix 1 – ‘Independent Statements’ comprised copies of 35 of the objections already considered above, including the letter which was withdrawn by its author. It also included a letter hitherto unseen by the Council. The letter, which was dated 21<sup>st</sup> January 2014, raised objections on the grounds that there is now an alternative route which gives the landowners, *‘the normal rights that each of us hopes for in his home: privacy and protection from interference or vandalism’*. The writer adds that there has never been a right of way through the yard and it does not appear on the property deeds or the DCC definitive map. The writer states that previous tenants have, *‘used animals, machinery and notices to deter the public from using access across the yard’* and also states that the landowners, *‘have occasionally granted ‘permissive access’ but have locked the gates several times a year for events or gatherings.*

**2.55** Appendix 2 includes a third copy of the letter from a member of the Rotary Club of Church Wilne, in which he confirms, *‘that it is generally known any access... has been on a permissive basis only’* and that he has been involved in the organisation of the Rotary Club of Church Wilne charity horse ride for a number of years and has always asked permission to come through the yard. Also included is a copy of a letter (from the same objector) to the landowner dated 16<sup>th</sup> August 2013 which reads, *‘...I am writing to you formally to ask for permission as we have done in previous years to use the private path that passes through Church Farm as we have done before’*. There is also a photocopy of the front page of a leaflet for the said event.

**2.56** Appendix 3 is a letter dated 15<sup>th</sup> October 2008 from the PCC Secretary. The letter is regarding, *‘the draft text for a sign beside the Hermitage’*. The wording or exact location is not included but does include the paragraph, *‘I think your ‘no access’ signs in the farmyard are appropriate, and I hope they have the desired effect. Have you thought of a sign on the main gate ‘No Parking – in constant use’ or similar words?’* The letter also requests permission to park in the farmyard when carrying out work in the wood, without having to speak with the landowner first each time. He also confirms that, *‘if it was a vehicle other than my car and trailer I would still seek your permission first’*.

**2.57** Appendix 4 includes a letter dated 15<sup>th</sup> May 1992 from 'Erewash Groundwork Trust', thanking the landowner for allowing them, *'to use your land for handling Desert Orchid'*. There are also photocopies of a brochure entitled, 'Official Launch of the Erewash Bridleways Initiative 10<sup>th</sup> May 1992' and a photograph of (presumably) Desert Orchid.

**2.58** Appendix 5 is a letter dated 3<sup>rd</sup> July 2013 from a local resident which refers to, *'withdrawing permissive access for footpath and bridleway'* and offering help in the, *'creation of the designated route'* and in finding volunteers, *'as desperate as we are to reopen a beloved walk and ride... if merely to stop walkers and riders risking their necks down steep slopes or climbing over your fences. God willing, the walk at the heart of Dale Abbey will only be closed for a short time, while a safe route is constructed, and then your peace of mind and privacy can be restored'*.

**2.59** Appendix 6 shows two undated photographs of horses being lunged in the farmyard.

**2.60** Appendix 7 is a transcript of a statement dated 8<sup>th</sup> January 2012, written by a previous owner of Church Farm (now Verger's Farm). The previous landowner confirms that he bought the farm in the *'mid-1980s'* and believes he was the first owner-occupier. The previous occupier was a tenant of British Steel and the property was then a working farm. He recalls that the church had claimed the vicar had a right to use his living room to change his clothes before and after services. However, his lawyer had found no such record and there was no evidence to suggest this had ever been practiced, despite speaking with previous tenants. He also states that between the time he bought the farm and the previous tenant moving out, some members of the church congregation began to park on farm property but this ceased as soon as he asked the vicar to put a stop to it. When asked, he granted the church permission for funeral cars to use the farmyard. When he moved into the property there was an old gate at the bottom of the drive where the public highway ended which he sometimes closed and nobody ever spoke to him about the closures. There were gate posts at the top of the drive, where it entered the farmyard but no gate when he bought the property.

**2.61** Appendix 8 comprises 'Bob Hull's circular', letters of objection and a petition.

- The 'circular' was written by a local resident and attempted to provide some background information relating to the present situation and an explanation of how the definitive map came to be, referring to 'The Access to the Countryside Act of 1949'. He clearly lays the blame for misunderstandings on the Borough Council's 'walk series' which, *'directs people through the courtyard'* and the County Council's failure to maintain the definitive route and way-marking the route through the farmyard. He also thinks the landowners were not, *'assertive about their rights... so put up with people walking through. Locking the gates regularly on Christmas day...'* He also refers to the County Council's

treatment of the landowners and his belief that that DCC orchestrated the application as it wanted to adopt the route through the farmyard.

- The letters of objection are the same printed letters as described at paragraph 2.21 with one exception which has slightly paraphrased the wording of that letter. There are 179 of these letters, none of which offer any evidence of use or of challenge to use by the public.
- The petition is headed, 'This path, created by Mr and Mrs Gee at their own expense, provides access between the village and Hermits Wood. **PLEASE SIGN** if you would like it to **REMAIN OPEN**'. It consists of 62 pages, though one page has been submitted in duplicate and (approx.) 720 signatories. There are 12 positive comments highlighted and 10 comments which have been redacted. There are also several comments which would suggest the signatories are not necessarily in favour of using the newly constructed route over the application route and some comments and defacements which do not need to be recorded. As explained at paragraph 2.16, petitions generally carry no weight and this petition offers no additional evidence on this matter.

**2.62** The accompanying letters of objection are dated 20<sup>th</sup> February 2014 and 24<sup>th</sup> February 2014 (they shall be referred to as Letter 1 and Letter 2 respectively). The landowners focus on several grounds of objection.

**2.63 Letter 1** states that it is the legal responsibility of DCC to ensure the definitive line of BW8 is maintained and accessible, and suggests that if this is impractical DCC should simply divert it, *'just a few feet to follow the hedge line'*. The landowner confirms they have already, *'cleared this route and offered to dedicate it along with a more user friendly link from Hermits Wood avoiding the steps'*. He adds that the application was submitted before this work was carried out and there was no through route between the village and the wood. He suggests that if people have used the farmyard it is because DCC has not maintained the definitive route and have directed people with way-markers and walking guides – he adds that they have, *'repeatedly removed these way markers... and also have periodically denied access to protect our rights'*. The landowner confirms that, *'there has always been a permissive access arrangement with the church and local neighbours'* and he believes a number of UEFs should be disregarded as a result of this. The landowner has lived at the farm since 2004 but has visited regularly since 1990 and states that the gate into Hermits Wood has always had a chain and padlock that he has seen locked on many occasions between 1990 and 2004 and has locked himself, since 2004 for parties etc. He also states that he has, *'personally challenged people wandering in the stable yard either in the caves or outbuildings and even in the stables... and have stopped people climbing over locked gates'*. Other concerns raised are acts of vandalism and theft, antisocial behaviour, security and privacy.



**2.64 Letter 2 states that:**

- There is no right of way shown on the property deeds or the definitive map and that any access has historically been on a permissive basis, as confirmed by a number of letters from the public. The application itself is to upgrade, *'from permissive to definitive'*.
- She believes DCC has historically created the problem because it has failed to maintain the definitive routes and directed people through the farmyard and has now, *'encouraged user groups to apply for this modification order'*.
- It is incomprehensible that if the route existed it was not recorded in 1951 and no-one has ever raised it as an issue or that the vendors in 1984 didn't declare its existence when all other rights of way were documented.
- The buyer in 1984 has assured her that his legal representatives were specialist land lawyers and despite rigorous investigation the claimed route was not a right of way.
- Her own solicitors focused on ascertaining any rights of way and she bought the property on the basis there was no right of way through the farmyard. DCC has confirmed on numerous occasions there is no right of way through the yard.
- In 1990 she was visited by an old tenant who lived there from the 1930s to 1961 and warned her, *'that people had recently started cutting through the yard, particularly when the property had been vacant prior to the private sale. He confirmed that this was not a right of way and advised... I locked the gates at least once a year to protect my rights'*. She adds, *'This we have done for 24 years and no-one has ever complained'*
- The last tenants (1974-1984) erected many signs: 'Keep Out' and 'Private' and kept dogs and geese loose in the yard to deter people entering. Some of the signs, *'were still in evidence'* in 1990 as is one still.
- She was visited by two members of the 'Derby Nomad Ramblers' who confirmed their guides did not direct people through the farmyard as it was not a right of way.
- They have been given a copy of 'Pub walks in Derbyshire' which says, 'Do not go through the yard'.
- She has done, *'everything required of me in law to prevent a right of way being created'*: there are two signs, several gates which are always kept closed and the gates to the yard have been locked several times every year for 24 years, substantiated at Appendix 1, and there have been no complaints.
- It is general knowledge that the claimed route is a permissive one as evidenced by event organisers requesting permission to use it. i.e. The local hunt for many years (verbal request); Rotary Club of Church Wilne; The Church, in order to turn hearses (verbal requests); The Church secretary, to access Hermits Wood (in a vehicle, see above); Church school activities, most recently tree planting in the woods (telephone request at 6:40 on 26<sup>th</sup> November 2013); Erewash

Groundworks Trust, to bring Desert Orchid into the yard so he could be handled where the public had no access and the yard was locked off that day; a gentleman from the village was given written permission.

- To improve security, they had a neighbourly arrangement with several locals, who would walk their dogs (or hers) and check on the property, some of whom she now believes, have completed UEFs.
- People have seen friends and locals accessing the yard on a permissive basis and, as evidenced by the UEFs have, '*assumed*' there was a right of way.
- She can only recall one person riding through the property on a regular basis and she was given permission to do so (see Appendix 5).
- A number of friends have stabled at the farm and have met there in order to ride out together, and this has been misinterpreted by the public; exacerbated by DCC way-marking the route.
- The application, '*suits DCC's purposes as it not only covers their error but, as the Right of Way Inspector told us... "sending it through the yard is the cheapest and easiest solution"*'.
- It is inconvenient and impractical to keep the gate to the yard locked at all times as they graze the horses and ride out in both directions. Closed gates should be sufficient to mark private territory.
- According to local people the gates have always been closed to secure livestock and she understands that the route was unsafe and impassable when it was a working farm.
- They work long hours and it is impossible to police the route when they are not present. The yard is not visible from the house or garden but she has on occasion been aware of people in the yard and challenged them, as substantiated by the UEFs; one admits to having being stopped (post July 2013), one '*falsely claims to have been told by me that it was only a footpath!*' and, '*At least 2 others acknowledge that they were told it was not a right of way*' (post July 2013).
- They have caught people climbing over gates and been told by one group that, '*they have always climbed over if they have found the gate locked*'.
- She refutes people's claims to unrestricted access prior to her ownership and refers to the letter at Appendix 1 and the comments of the tenant between the 1930s and 1961 (see above) that no one came through the yard.
- She lists the occasions that the gates have been locked as: every Christmas Eve and Christmas Day since 1990 to the present; for bonfire parties every year since 1990; daughter's christening, summer 1991; daughter's wedding, August 2006; granddaughter's christening, summer 2009; her own wedding, August 2010 (gates locked for several days either side of the event); several large family parties including birthdays, BBQs, etc; frequent occasions when daughter was exercising her pony in the yard, horses being lunged and when granddaughter and friend's children were learning to ride; every night in winter between 2000 and 2004; after incidents of theft and vandalism on the advice of the police and she adds that on most of the above

occasions there were, *'perhaps 100+ guests who can verify the gates were locked'*.

- She, *'challenges the reliability and validity of the evidence submitted... (she has) been reliably informed by one lady... that the person would complete it for her if she just signed it'*. She adds that the handwriting is the same or similar on a number of the forms and some comments are exactly the same. She also suggests the format of the UEF's is flawed, encouraging the user to exaggerate, and points out several, *'anomalies in the data'*. Most of the 'anomalies' have already been considered and accommodated within the analysis above. However, the objector writes that *'Evidence Form 1976-present (excluding 88-2002) confesses to having worked for "the owners" and told it was not a right of way'*. The only UEF that appears to tally with these dates, claims 'continuous' use from 1976 to present day on a weekly basis between 1988 and 2002 (*'otherwise less than monthly'* (and for the purpose of this report considered overall as monthly)) and in answer to the question, were you working for the owner.. or were you an occupier, answers, *'horse kept at Church Farm... 1997/2002'*. In answer to the question, were you ever told the route was not public, he answers *'No. When my horse was stabled at Church Farm owner clearly under impression that Bridlepath passed through the farm's yard'*.
- She suggests that all the evidence of those who have used the route as part of a group should be discarded. This issue has been considered above.
- She reiterates the belief that DCC is responsible for the application as it has not maintained the definitive routes, has way-marked the route through the yard and has orchestrated the application. She states she has repeatedly removed the way markers and that DCC had, *'only recently discovered that there was no right of way through the yard'*.
- There are now alternative routes, reinstated in line with DCC's recommendation and the definitive routes and therefore the application is perhaps no longer relevant.
- They have considerable support for the new path, and the fact that the gates have been locked.
- That adding the route through the yard would have a, *'serious detrimental effect on our use of the yard and major implications for health and safety'* as well as their quality of life and the future of the grade 1 listed building.

## **Documentary Evidence**

### **2.65 Ordnance Survey – 1st Edition, 1881**

The route of what is now FP46 is shown to its junction with BW8 but there is no continuation NW past the solid lined boundary of the farm's plot of land. Instead it follows what is now the definitive line of BW8 NE then NW to the farm boundary in line with the current gate, which is again depicted by a solid line. However, the southern dotted line continues beyond the boundary, turns SSW to an outbuilding and then returns to the centre of the farmyard. The drive leading to the farmyard is shown between dotted lines and the entrance to the yard is marked with a dash across. There is no link between BW8/FP46 on the south side of the farm and BW9/driveway to the north.

### **2.66 Ordnance Survey – 2nd Edition, 1900**

The route that is now BW8 is shown along the definitive line to its junction with what is now FP46 but there is no continuation into the farmyard, the boundary of which is shown by a solid line at junctions of both FP46 and BW8. The drive leading to the farmyard also ends at a solid boundary line.

### **2.67 Ordnance Survey – 3rd Edition, 1914**

The 1914 plan shows no apparent change from the 1900.

### **2.68 Ordnance Survey – 1960 – Plan SK 4479 - 4579 1:2500**

The lines of what are now FP46 and BW8 are shown similarly to previous plans with the exception that the termini of both are shown as open-ended shortly before reaching the solid boundary line of the farmyard. The driveway leading past the church and to the farmyard is also shown in the same way.

### **2.69 1910 Finance Act Plan and Book of Reference**

There are no deductions for rights of way recorded in the Book of Reference and the plots have been depicted on the OS 2nd Edition 1900 as described above

### **2.70 Sanderson's Map Twenty Miles round Mansfield – 1835**

The claimed route is not shown on this map. The road leading to the church is shown but there is no continuation past the buildings.

### **2.71 Parish Claim circa 1950/1**

The claimed route is not shown on the plan. The route that is now BW8 turns SSW just before the farmyard and meets what is now FP46 before turning NW and past the back of the outbuildings of the farm and joining what is now BW9 as it does on the definitive map.

The line of BW8 is described as, “Footpath and Bridle Road, stile near sign post at Stanton Lane End, Field Gate for Bridle Rd. 40 yards from stile. Exit Farm Yard at All Saints Church” and as finishing at All Saints Church.

The line of BW9 is described as, “Bridle Road from Church farm yard, continuation of No 13, along bottom of Ockbrook Wood, via Columbine Farm” and as having a starting point of “Farm Yard near All Saints Church”.

### **Additional Evidence**

**2.72** A site visit was undertaken and photographs taken of area around the claimed route on 14<sup>th</sup> September 2016. The points referred to in the description below are shown on the attached plan.

**2.73** The surface of the claimed route through the farmyard and along the drive (A-C) is now loose stone chippings and is gated at the bottom of the drive and at both sides of the yard. The area around the farm has been re-landscaped since the route was closed to the public in July 2013. The definitive line of BW9 (C-D) has been made useable by the landowners and a linking path from BW9 to BW8 (D-E-F) has also been constructed, both have a natural earth surface. Where there was once a track leading from BW9 to the farm’s drive (X-B) has now been laid to lawn and the area fenced.

BW8 from Point F towards Point A is a muddy track and there is a gate at Point A. There are notices on the gate which read “PRIVATE” and “NO RIGHT OF WAY THROUGH FARM YARD”. Beyond the gate, the surface remains natural earth for a few metres and then there are what appear to be wooden sleepers across the track and then the farmyard proper. The definitive line of BW8 turns south at Point A and traverses up the hill by some steep steps to the junction with FP46.

**2.74** The claimed route is described in several walking guides and is shown on several maps. However, the maps are only useful for showing what was on the ground at the time of the survey that formed the basis of the map and there is no dispute that there was a track leading to the church and the farm and a further right of way beyond the gate of the farmyard on the other side and so it would be expected to see this on most maps. The walking guides may be a clear indication that the route through the farmyard was the route often suggested to access Hermits Wood from the village of Dale Abbey but they do not indicate whether a way carries public rights or is a permissive route. The walking guides do not depict any other direct route from The Village to Hermits Wood.

**2.75** Historical photographs show that the landscape has changed over the years. There appears to have always been separate paths leading to the church and the farm but no conclusions can be drawn as to the nature of the path leading to the farm. The approximate line of BW9 can also be seen from the north, heading south and the path leading from Hermits Wood to the farm is also visible, as is another path that forks west before the farmyard and appears to lead behind the existing farm buildings at that time.

**2.76** A member of the public submitted an email dated 13 February 2017 which included her own interpretation of historical evidence. Although the letter was not specifically referred to in a previous version of this report (see paragraph 2.78 below), members were made aware of the information and the interpretation which differed from that of the Council. This supporter suggests that the Council should make an Order to vary the particulars of BW8 to show that right of way through the farmyard of Vergers Farm, along the same line as the claimed route. In order to make such an Order the Council would need to conclude that the Definitive Map and Statement has wrongly recorded the route of BW8. Having considered the contents of the supporter's letter officers are not convinced that there is sufficient evidence to justify the varying of the particulars of BW8 to show the route through the farmyard.

**2.77** The same member of the public contacted officers again by email dated 31 January 2018 referring to email correspondence between officers and a former tenant of Vergers Farm pre-dating the application. Officers note that the correspondence suggests the tenant did not challenge use of a route through the farmyard during the period of that tenancy, from 1974 to 1984. Although this is good evidence to support the application, it covers only a ten year period. As discussed later in this report, there is other evidence that suggests challenges were made during this period and of one user who recalls being granted permission to use the route during this period.

**2.78** This matter was put before the Regulatory, Licensing and Appeals Committee on 15 January 2018 but was deferred by the Committee in order that they could first undertake a site visit in order to better comprehend the situation. That site visit is scheduled to take place on 26 February 2018 prior to formal consideration of this report.

### **Summary and Conclusions**

**2.79** The test which has been applied when considering the application is that set out in s53(3)(c)(i) of the Wildlife and Countryside Act 1981 (WCA). This test can be expressed in two parts, which are considered in the alternative. That is:-

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.

**2.80** None of the historical evidence available has categorically shown a right of way through the farmyard. Although an alternative route between The

Village and Hermits Wood is not apparent on any of the maps studied, neither is a continuation of any right of way through the farmyard. The Parish Claim may describe BW8 in such a way that it could be interpreted as to travel through the farmyard but, the accompanying map does not show this.

**2.81** The evidence suggests that use of the route was called into question during the summer of 2013, when the gate leading from Hermits Wood into the farmyard of Verger's Farm was locked shut and notices were erected stating that permissive access had been removed and a complaint was made to Derbyshire County Council as described at paragraph 2.3 of this report.

**2.82** There has been substantial evidence submitted in objection to the claim, including that by the current landowners, that suggests the gates across the route have been regularly locked and public access intermittently prevented since the current landowners moved in, in 1990, which shows action was taken by the current landowners to indicate a lack of intention to dedicate a public right of way. Therefore, it may be that the relevant period of use to be considered is 1970 – 1990.

**2.83** The evidence in support of the application spans a period of 73 years. Of the 79 witnesses, 53 claim to have used the route during the previously considered period of 1993 to 2013 and 23 witnesses have completed UEF's claiming over 20 years use prior to 1990.

**2.84** Evidence has been submitted in objection to the application (including by the current landowners) that contradicts the users' evidence and indicates a lack of intention to dedicate the route through the farmyard as a public right of way, by various landowners and tenants dating back to the 1930s:

- Relatives of the Verger's Farm tenants between the 1930s to 1961 '*can absolutely confirm that there has never been a right of way through the yard*' and that until 1984 it was a working farm and the Estate manager would ride through every Friday and check that gates were shut. There was no cut through for the public. The tenants in the late 1970s '*did everything in their power to make it unpleasant for anyone coming on their land... putting up signs... they ruined the grass hill local children... used to slide down. (He) dug a deep track with a tractor so there was a dangerous drop off the end of the hill and he also put barbed wire across*'.
- In the 1960s the property was a dairy farm with 'Private' signs on the gate and the route was obstructed by farm vehicles and frequently full of cattle and manure.
- Since the 1960s, there have always been gates: the Hermits Wood side sometimes locked and the gate on the drive always locked.
- One person who has walked in Dale since the 1960s never came through the yard. There were lots of signs from Hermits Wood stating that the land was private and to 'keep out'.
- In the 1970s and early 1980s the tenants kept vicious geese loose in the yard which would have deterred people walking through the yard.

- In 1977 the farm had signs on gates either side of the yard saying 'Private Keep Out'.
- From the early 1980s there were lots of signs reading 'Private', 'Keep out' etc. and from about 1986 the gates were always closed and the gate at Hermits Wood end locked
- Someone who has used the route since 1980 was granted permission to do so.
- The farm was empty from 1984 for some time and people took advantage, beginning to cut through the yard but the first private owner had signs on the gate reading 'Private Property' and both private owners have locked the gates on occasions.
- One person recalls that as a child she was not allowed through the farmyard (although we do not know their date of birth).

**2.85** Several objectors including the current landowners have blamed DCC for creating the problem by failing to maintain the definitive routes and by directing people through the farmyard by way-marking the route. They also allege that DCC has orchestrated the application by actively encouraging organisations to submit a DMMO application and 'fostered support' on behalf of the application.

**2.86** Although Erewash Borough Council (acting as DCC's agent) has mistakenly way-marked the claimed route in the past, (as confirmed by the Council's Rights of Way Officer for the area) DCC does not appear to have been notified of the unavailability of the definitive line of BW 8, and so these matters were not investigated.

**2.87** With regard to the allegations that DCC orchestrated the application, this appears to be a misunderstanding of an email written by the area's rights of way officer. Following the locking of the gates on the claimed route there were several complaints made to the Council, and various people, both members of the public and representatives of walking and riding groups, requested a 'claim pack' to make a DMMO application. There would have been no advantage, to anyone involved, in posting several claim packs to various groups and subsequently receiving a number of different applications for the same route, and so it was decided that the sensible course of action was to ask the interested parties to submit only one application.

**2.88** It is normal practice to send a number of blank UEFs with the application form and once the application has been accepted by the Council it is again normal practice to consult. The list of consultees includes a number of user groups. This matter was dealt with following normal practice and the Council refutes any allegations of bias or collusion.

**2.89** The landowner challenges the reliability of the evidence submitted, suggesting that a number of the forms have been completed by the same hand. When analysing the evidence it was noted that a number of couples had completed forms and it is not unusual, for one spouse to complete both forms if they share the same experience of use and have discussed the



matter privately. Provided that the signatures appear to have been provided by two different people, the forms are accepted at face value. With regard the allegation that someone was offering to complete forms on behalf of others without their input, it should be noted that this would not be acceptable and had it been apparent that any of the forms had been completed by the same person it would have been considered within this report. However, the UEFs provide a great breadth of responses with varied language, experience, memories and opinion.

**2.90** 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.

**2.91** There is no provision under the WCA to consider as relevant, objections based on such grounds as alternative routes, privacy, security, health and safety, antisocial behaviour, expense or inconvenience to individuals who live near the route. These concerns are understandable but do not relate to whether public rights can be shown, or be reasonably alleged, to subsist and so cannot be taken into consideration. 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.

**2.92** Under section 31 of 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 suggests that the route has been used in excess of 20 years without interruption and so meets the requirements of the legislation. However, there is also a substantial body of evidence which contradicts the evidence in support and tends to suggest a lack of intention to dedicate.

**2.93** In summary, the evidence submitted in support of the application when considered alongside the evidence submitted in objection, fails to show on the balance of probabilities that a right of way subsists along the line of the claimed route.

**2.94** There is therefore, sufficient evidence of use to make an Order but also 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.

**2.95** Where an Order is made and objections to the Order are received, the Council is required to submit the case to the Planning Inspectorate (PINS) for determination.

**2.96** The Council is required on submission of the Order, to state whether it supports the confirmation. PINS will then determine whether the matter should be dealt with by way of written representations, a hearing or a local public inquiry. Usually the Council will support an Order that it has determined should be made, but in this case there is a conflict of credible

evidence. It is therefore proposed that the Council should take a neutral stance towards the confirmation of the Order.

**2.97** During consultation into this matter an additional route was included on the plan as, 'route under investigation'. There has been no evidence submitted in relation to that route and since the application was submitted the definitive line of BW9 has been made available for use by the public. The track that may have been used as an alternative has now been landscaped and is no longer available on the ground. There is no need to consider the 'route under investigation' any further.

**2.98** A copy of this report has been sent to Cllr Carol 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 throughout 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**

File held by Legal Services: ref. 61741

**5. OFFICER'S RECOMMENDATION**

That the Committee:

**5.1** 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 between Bridleway No. 8 and Bridleway No. 9 as shown on the plan attached to this report.

**5.2** approves the adoption of a neutral stance in regards to the confirmation of the Order.

**John McElvaney  
Director of Legal Services**

