

**DERBYSHIRE COUNTY COUNCIL**  
**REGULATORY, LICENSING AND APPEALS COMMITTEE**  
**26 FEBRUARY 2018**

**Report of the Director of Legal Services**

**Wildlife and Countryside Act 1981**  
**Claim to add a Footpath from Hawthorne Close to High Street,**  
**Doveridge, in the Parish of Doveridge**

**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 public footpath from Hawthorne Close to High Street, Doveridge, in the Parish of Doveridge.

**2. Information and Analysis**

2.1 On 16 April 2015, Doveridge Parish Council ("the Applicant") submitted an application to Derbyshire County Council ("the Council") to add a public footpath to the Definitive Map and Statement. The application is accompanied by thirty-six user evidence forms, three letters supporting the application (one with photographs and supporting documentation), a letter from Vice Chairman of Doveridge Parish Council and a copy of an agreement dated 1978 between West Derbyshire District Council and Doveridge Parish Council.

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

**User Evidence**

2.3 The application was submitted following the erection of a gate on the claimed route, near to its junction with High Street. User evidence submitted suggests that the route was first blocked in 2014, although there are three references to a gate or gates having been erected in 2013. The landowner's response to the consultation on the claim states that the driveway to the north of 15 High Street was fenced off on the 29 or 30 April 2013. The landowners states that during the period 29<sup>th</sup>/30<sup>th</sup> April to the 14<sup>th</sup> May 2014 the claimed footpath was fenced off with wire netting initially erected being replaced by a timber panelled fence on 14 May 2014 and gates erected near to the road frontage. In considering whether a dedication of the route can be presumed on the basis of user evidence the relevant period of use is the 20 year period up to the date that the use of the route was called into question. In this case this is either 1993 to 2013 or 1994 to 2014. The user evidence submitted in fact spans the years from 1945 to 2015, with 17 users indicating use for the whole 20 year period from 1993 to 2013 and 14 users for the period 1994 to

2014 (other users have used it during those years but for less than the full 20 year period).

2.4 All of the witnesses refer to using the route on foot, with six also claiming to have used it on pedal cycle and two claiming to have used it on motor vehicle. All but one of the witnesses refer to seeing other people using the route on foot, with nine also seeing people on pedal cycle and four seeing use in or on a motor vehicle.

2.5 Twenty-one witnesses claim to have used the route for a period of twenty years or longer, with six claiming over forty years use and with two claiming over fifty years.

2.6 Three of the witnesses refer to using the route daily, one daily & weekly, sixteen weekly, seven monthly, four less than monthly, one 'once or twice during the bowls season', two weekly/monthly/less than monthly and two did not say.

2.7 Twenty-one witnesses reported seeing the claimed route blocked which brought the route into question, many referring to a locked gate. Three of the witnesses refer to the erection of a gate in 2013 interfering with access (although the landowner suggests a gate was installed in 2014), other witnesses only refer to actions taken to prevent access in 2014. One witness indicates that the gate installed in 2013 prevented 'road access' and that he was assured that there was no intention to prevent access on foot. None of the witnesses reported seeing the claimed route diverted.

2.8 One witness made reference to a 'broken gate, unsecured at the northerly end of the track where it joined the site of the "tip"'. One other witness noted 'There has always a gate off Hawthorn Ave (for use 1 day per year, if reqd)'. Further questions were asked of this witness regarding this gate and he confirmed 'The gate has never been closed/locked since I arrived in Doveridge' (there is a date in brackets that might be 1982 or 1987). Another witness reported a gate at Hawthorn Close end and added that 'Gate on Hawthorn Close end - always open. I only remember the gate in later years'.

2.9 One witness reported 'I think they use (*sic*) to be a footpath sign at the Hawthorn Close end of the pathway'. Other than the notices that went up with the blockage none of the remaining witnesses reported recalling any notices on the claimed route.

2.10 One witness reported occupying an allotment garden from 1973/74 to 1977 (the claimed route apparently giving access to the allotment gardens). Another witness reported being a member of Doveridge Bowls Club and was involved in construction and improvements of the Bowling Green and club house. None of the remaining witnesses reported working for the owner or occupier of the land or occupying any of the land affected by the claimed route.

2.11 One witness refers to a possible private right to use part of the Order route, another to having been given permission “by the homeowner who has access off the route”. None of the remaining witnesses reported being given permission to use the claimed route.

2.12 One witness referred to being stopped by the householder but did not confirm a date when this occurred. None of the remaining witnesses reported being stopped or turned back except by the blocking of the route, or having been told by anyone that the route was not public.

### **Consultation**

2.13 An informal consultation exercise was carried out between 18 December 2015 and 22 January 2016. Notices were placed on the route and letters were sent to the statutory consultees, landowners and the local elected Member, Cllr Steve Bull.

2.14 Twenty-six people responded to the consultation with twenty-two supporting the claim (thirteen having already completed an evidence form), one against, one stating they have no evidence, one with no objection and one with no interest.

2.15 Peak and Northern Footpaths Society responded to the consultation but could offer no evidence concerning the existence of the alleged footpath.

2.16 Derbyshire Dales Group of the Ramblers sent an email response to the Council stating that they have no objection to the claim.

2.17 A couple living in Doveridge, who had previously submitted user evidence, emailed the Council supporting the claim stating that they have been resident in Doveridge since 1997 and that ‘until recently there has always been a public footpath between these two locations’. They go on to mention that they ‘have been members of the Doveridge Bowls club for a number of years and always accessed the bowling Club via this footpath, until it was suddenly closed’.

2.18 Another couple living in Doveridge, who had not submitted user evidence, sent a letter to the Council supporting the claim, stating that the claimed route ‘is a valuable asset to the community and is used by people of all ages for many things including access to the bowling club, allotments, pleasant strolls around the village, easy walking to the post box, post office and shop etc.’ They go on to add ‘It gives access to a little green oasis in the heart of the village and is well valued and appreciated by all. We personally have used it five or six times a week over the last nine years and we know many villagers have used it for much, much longer.’ They finish by saying that the current closure is a great loss and is causing inconvenience to those less able or mobile to take the alternative routes.

2.19 A resident of Doveridge, who had submitted a user evidence form, sent an email to the Council in which he stated: ‘Talking to people who have lived

in the village for more than 50 years this has always been a right of way I lived in the village for 9 years and used the path for access to the bowls club from the high street and also when walking round the village’.

2.20 Doveridge Preservation Society emailed the Council stating that their members would like to add their support to the claim adding that it will ‘create good access especially for the allotments and also provide an excellent route through to the High Street and visa [sic] versa’.

2.21 Nine people from Doveridge sent correspondence (eight emails and one letter) to the Council supporting the application giving similar reasons (some of these individuals had previously submitted user evidence).

2.22 A resident from Doveridge, who had not previously submitted user evidence, sent a letter stating that he and his family moved to Doveridge in 1974 and to the best of his knowledge the claimed route was in use by the village residents at that time. He goes on to add that he and his family have used it from time to time on a fairly regular basis during their forty years in Doveridge.

2.23 The Chairman of Doveridge Bowls Club, who had previously completed a user evidence form, emailed the Council detailing his support to the claim. He states ‘As a Doveridge resident of 45 years, I have always known the path as a route to High Street, since I had one of the first allotments there around 1975. I saw allotment holders use the path to access the High Street and the centre of the village’. He mentions ‘In the 1980’s until sometime in the 1990’s there was a scout hut on the site, with majority of users coming via the High Street. The Bowling Green and Club were created in 1990-1992 on part of the allotments, and its use of the site continues today’. He added that the path is a useful amenity to the village before finishing by saying ‘Members of the Bowls Club, Allotment Holders and Villagers I know have used it frequently since 1990 or earlier. I have never been challenged over using the path until it was obstructed by a locked gate and CCTV in March 2014. Everyone thought of it and used it as a public right of way’.

2.24 A couple from Doveridge, who had also submitted user evidence, each sent separate emails supporting the claim. She mentioned living in Doveridge for sixty-three years and to her knowledge it has always been a footpath. She added ‘When the tip was closed in 1962 the children used it has a play area, in 1971 a proper footpath was made with a fence, the scouts allotment holders bowls club and general public used it until 2014 when was completely closed with a gate and fence also CCTV cameras’. He states ‘the footpath between high street and Hawthorne close it has been used by the public for at least 70 years before Hawthorne close was built in the sixties the original path came out by the Cavendish arms public house car park’. The couple both added in their emails that when the route was blocked this made someone landlocked.

2.25 A former tenant of 15 High Street wrote to the Council to say that she is no longer a tenant of the property and therefore has no interest in the matter.

2.26 Solicitors acting on behalf of the landowners for the High Street end of the claimed route emailed the Council a letter of objection against the claim. The letter records that the landowners 'object to the claim and deny their property has been used by members of the public with their consent. They also deny the driveway to their property is an established and permitted right of way.' A point was made about reservation of a right of access over the driveway for the adjoining cottages and why this was necessary if there was already a Public Footpath. Observing on the 36 redacted user evidence forms sent to them, they noted that one of the forms 'acknowledges the section of footpath between numbers 1 and 3 Hawthorn Close contained a gate which was closed at least once a year to protect the private status of that section'. Numerous points were made about the accuracy of the dates that users put for path closure and that only two of the forms state that they have been stopped or are being prevented from using the route. The letter goes on to mention that the claimed route is unsurfaced and unlit with a well-used Public Footpath existing 150 metres to the east which renders the claims about the claimed route as unlikely and mischievous. A point was made about a nearby landowner making and abandoning their claim for right of way over the claimed route to their property. Adding why this landowner would make the claim if there was already a right of way on the claimed route. The landowner then fenced off the nearby landowner's driveway in 29/30 April 2013 and the claim was abandoned.

2.27 The landowner of the claimed route from point A to B is Derbyshire Dales District Council (DDDC). DDDC were consulted but did not respond.

### **Documentary Evidence**

2.28 The applicant makes no reference to map evidence but the following documents have been considered:

#### **1<sup>st</sup> Edition Ordnance Survey Map 1882 – Sheet LII-3**

The land to the northern end of the claimed route is undeveloped, a gravel pit is labelled to the east of the land affected by the claimed route. There is no evidence of a footpath over the section of the claimed route from A to B. To the southerly end of the claimed route the properties at 13 and 15 High Street are shown, with section B to C of the claimed route shown in much the same way as it appears on the modern Ordnance Survey map.

#### **2<sup>nd</sup> Edition Ordnance Survey Map 1901 – Sheet LII-3**

The land to the northern end of the claimed route is undeveloped with the gravel pit and allotment gardens labelled to the east of the land affected by the claimed route.

#### **3<sup>rd</sup> Ordnance Survey Map 1922 – Sheet LII-3**

The land to the northern end of the claimed route is undeveloped, with much of the land affected by the claimed route shown as a gravel pit. To the east of the gravel pit are allotment gardens. There is no evidence of a footpath over the area of the gravel pit.

Ordnance Survey Map 1973 Derbyshire Sheet SK1034-1134

The land crossed by the claimed route is shown as a field. Hawthorn Close is shown as well as Orchard Court with the latter properties having no identifiable boundary to the land crossed by the claimed route. Doveridge Bowls Club is not shown on here neither is the claimed route.

**Other Evidence**

2.29 The applicant included with the application certain documents relating to the sale of land adjacent to the claimed route, the use of land over which the claimed route passes and an enquiry about a private right of access over part of the claimed route.

2.30 An agreement dated 1978 between West Derbyshire District Council and Doveridge Parish Council relates to West Derbyshire District Council permitting the Parish Council to take over and manage an area of open space as an area for public recreation and enjoyment. Although the plan of the land affected is incomplete it does include the section of the claimed route which meets the northern boundary of 15 High Street. The words 'Right of Way' are written on the plan, with an arrow pointing to the section of the claimed route shown as B to C on the plan attached to this report.

2.31 Also included with the application is a letter dated 27 September 1971 from Ashbourne Rural District Council to the potential purchaser of a parcel of land previously forming part of the 'refuse tip' north east of Point B. There is reference in the letter to the retention of land along the southerly and easterly boundaries of the land to be sold 'to maintain a pedestrian access from High Street'.

2.32 A letter from West Derbyshire District Council dated 6 April 1977 refers to the section of the claimed route from B to C. This is a response to an enquiry from a firm of solicitors, which was not provided. The letter confirms that the District Council used the section of the claimed route from B to C as access to the former tip, and were still in 1977 using it as access to the open space. The letter indicates that although use by the Council is shared by the cottages on either side of the access it "is not a public highway".

2.33 A email dated 19 February 2008 from DDDC to a solicitor acting for a third party states DDDC acknowledges that Council owned land (Point B-C) may be incorrectly registered to another proprietor. The email also states that DDDC was in the process of voluntarily registering all the unregistered land within DDDC's ownership. There is evidence in the emails that DDDC were considering whether to challenge the registration of the land to the west of 15 High Street but there is no further information as to any action taken by that authority.

2.34 A letter dated 16 April 2015 from the Vice Chairman of Doveridge Parish Council notes the lack of updating from Ordnance Survey, with no

changes in the mapping to acknowledge the existence of the claimed route since 1973.

2.35 Due to some of the user evidence forms either having no plan attached or having plans of a very small scale, a larger scale plan was sent to those who had previously completed user evidence forms to clarify the route they claimed to have walked. Other than some variation that suggests the difficulties of laypersons in interpreting a map that does not show current features on the ground these suggest that the route walked is that claimed.

### **Site Visit**

2.36 A site visit was undertaken on 10 January 2018. The northern section of the claimed route at Hawthorn Close (Point A) is signed 'Doveridge Bowls Club Car Park' and runs in a southerly direction on a metalled track for approximately 35 metres bounded by fences on either side. It then continues in open field on grass and natural earth in a generally southerly then south south easterly direction for approximately 64 metres to the boundary of the field. It then continues along the boundary on grass and natural earth in an east north easterly direction for approximately 20 metres bounded by a chain link fencing with concrete posts along the field boundary. Then in a southerly then west south westerly direction for approximately 46 metres bounded on either side by a mixture of chain link fencing with concrete posts, brick wall and fence panels before proceeding on a tarmac surface for approximately a metre or two then in a south south easterly direction for approximately 25 metres bounded by a mixture of fence panels, green metalled fencing and property of No. 15 High Street on to High Street.

2.37 There are two black metal gates approximately two metres from Hawthorn Close at Point A. There is also a fence panel across the full width of the path at Point B, preventing access. There is also a field gate with a pedestrian gate to the side of it, on which there is a sign with the wording 'please shut the gate', on the claimed route, approximately 6 metres from High Street.

### **Summary and Conclusion**

2.38 This claim is based primarily on evidence of use, supported by documents which suggest a long held view as to the status of part of the route (B to C) as a public right of way, and an intention on the part of one of the landowners (Ashbourne Rural District Council, as predecessor to DDDC) to dedicate the remainder of the route as a public right of way.

2.39 The user evidence indicates the use of a route linking High Street to Hawthorn Close. There is significant evidence of use of the route, on foot for a period of more than twenty years prior to 2013/2014, with a number of witnesses claiming to have used the route in excess of forty years.

2.40 The addition of a public footpath to the Definitive Map and Statement is dependent on there being "evidence (when considered with all other relevant

evidence...)...that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist". The evidence of use in this case is consistent with a presumed dedication of the route in accordance with the statutory test set out in section 31 of the Highways Act 1980 (as set out below).

2.41 The evidence of use covers a period in excess of 20 years, up to the date when the gate was erected near to the junction of the claimed route with High Street. The fencing of the driveway to the west of 15 High Street on 29/30 April 2013 appears to have been in response to a dispute between the owners of that and an adjacent property. It is not clear whether the fencing of the 'driveway' affected access over the claimed route at point B. There are no references in the user evidence to a challenge to use other than references to the gate being put up which blocked the path. Presumed dedication relies on uninterrupted use of a route for a period of 20 years, and may be disproved by sufficient evidence that there was no intention during that period to dedicate it. In this case the date of calling into question appears to be either 29/30 April 2013, or 14 May 2014. In either case there is significant evidence of use in the 20 year period preceding those two dates.

2.42 Many of the points raised in opposition to the claim, in response to the consultation, raise issues that relate to the suitability of the route (unsurfaced & unlit), private rights over the claimed route, a formal footpath nearby, only one objection when gate was erected which blocked the claimed route and lack of footpath shown on the Ordnance Survey Plan for the area. These issues are not relevant and cannot be taken into consideration under the Wildlife and Countryside Act 1981. Many representations were received in support of the claimed route.

2.43 The Council notes the existence of a gate at the Hawthorn Close end of the claimed route, none of the witnesses reported this gate being shut or blocking access to the claimed route.

2.44 The County Council's Declaration Register has been checked and no Section 31 (6) declaration has been made which covers this route.

2.45 On balance, the evidence suggests that a right of way subsists over the claimed route.

### **3. Considerations**

#### **Legal and Human Rights Considerations**

3.1 Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified 'events'. These events include:

3.2 (1) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is



not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates (section 53(3)(c)(i)); and

- 3.3 (2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance on probability that that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 3.4 Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public “as of right” and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public “as of right” means use by the public without force, without secrecy or permission.
- 3.5 Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public right to use the way is brought into question.
- 3.6 Section 31(3) provides that a notice erected on site by an owner of land over which a way passes in a manner visible to persons using the way, and maintained by him is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate the way as a highway.
- 3.7 Section 31(6) provides that an owner may provide sufficient evidence to show of his lack of intention to dedicate by depositing with the Council a map and statement showing any ways over the land he admits to having been dedicated as highways and denying the existence of other ways over it and then lodging statutory declarations to deny the addition of any ways at intervals of not less than 10 years. This will be, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any additional way as a highway.
- 3.8 A House of Lords legal judgement in 2007 (the ‘Godmanchester’ decision) has clarified what other evidence could be evidence of “no intention to dedicate” for the purpose of section 31(1). The evidence can relate to just one point in time during the period of enjoyment, ‘during’ in the context of section 31(1) need not be through out the whole period. ‘Intention’ in this context means what the relevant audience (the users of the way) would reasonably have understood the landowner’s intention to be. A letter from the landowner to his own solicitor or estate agent would not be enough; some element of communication to users of the way of an absence of intention by the owner to dedicate must be shown. In terms of section 31(1), an act

by an owner which demonstrates 'no intention ... to dedicate' is likely in practice also to amount to an event which 'brings the public right of way into question'.

- 3.9 In brief, unless evidence is provided of one or more specific steps having been taken by a landowner within the period to communicate overtly to the public using the route that (s)he does not intend to grant a public right of way over it, the presumption of dedication will arise under section 31(1) where there is a full period of 20 years of uninterrupted public use, calculated from the date when the public right to use the way is brought into question.
- 3.10 Where there is insufficient evidence to establish a presumption to dedicate under section 31(1) of the Highways Act 1981, there is sometimes sufficient evidence to establish an inference of dedication by the landowner under common law. In the case of *Nicholson v Secretary of State for the Environment* (2006), Dyson J stated: "*Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication...*". No minimum period of use is required to raise such an inference, but there must be evidence which is sufficient to infer that there was an intention to dedicate a public right of way.

#### **Other Considerations**

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

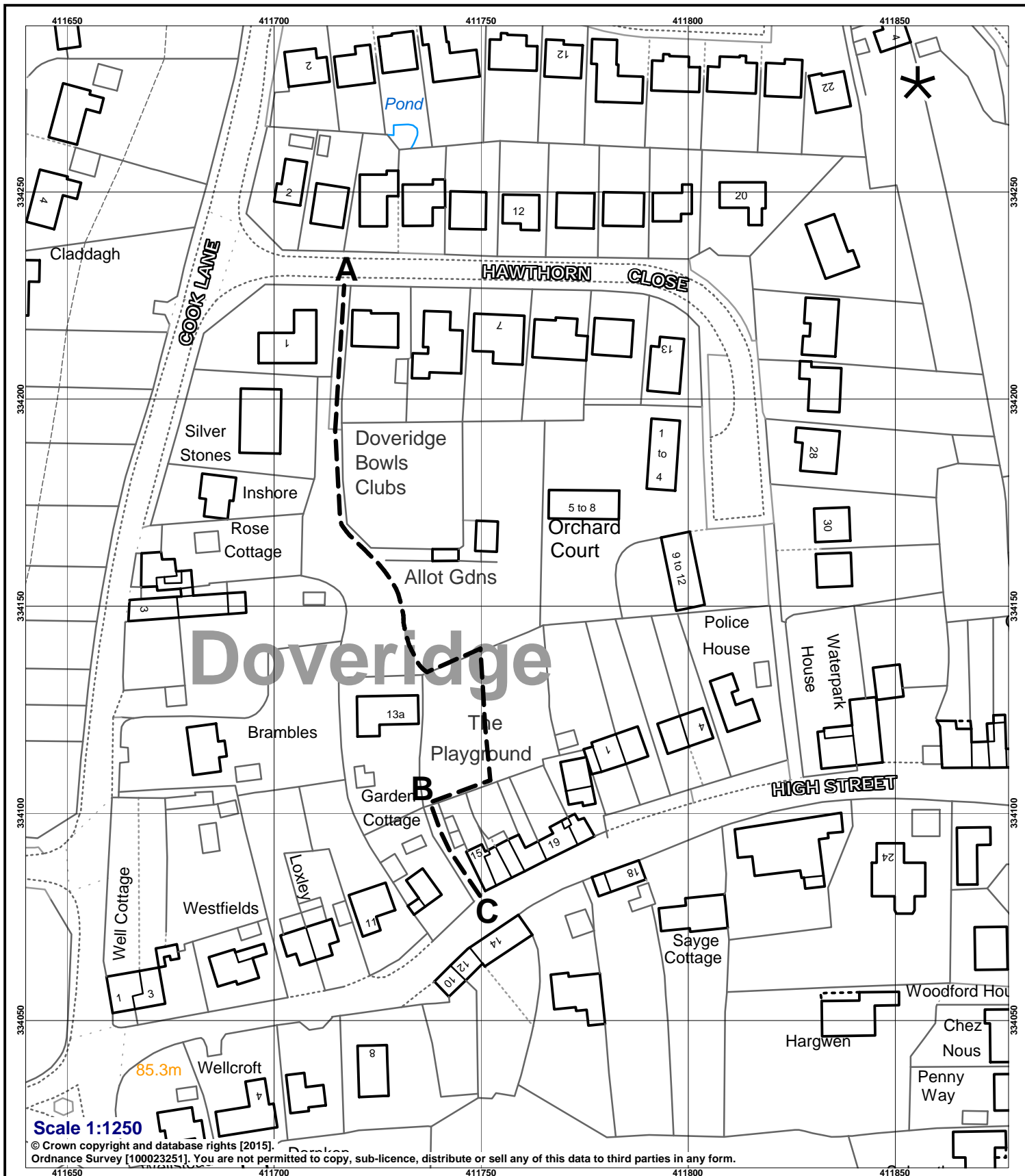
#### **4. Background Papers**

File held by Legal Services (ref: 66403)

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

That the Committee resolves to authorise the Director of Legal Services to make an order under section 53 of the Wildlife and Countryside Act 1981 to add to the definitive map and statement a footpath from Hawthorn Close to High Street in the Parish of Doveridge as shown between Points A-B-C on the plan attached to this report.

**John McElvaney**  
**Director of Legal Services**



Ref: TE/LF/X4025/Cttee/2018



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Produced by Public Rights of Way on 12 February 2018

### Wildlife & Countryside Act 1981 Section 53

**Claim to add a footpath from  
Hawthorn Close to High Street -  
Parish of Doveridge**

### Key:

**Claimed Footpath A - - - - - C**

