

DERBYSHIRE COUNTY COUNCIL**REGULATORY LICENSING AND APPEALS COMMITTEE****30 OCTOBER 2017****REPORT OF THE DIRECTOR OF LEGAL SERVICES****WILDLIFE AND COUNTRYSIDE ACT 1981 – CLAIM TO ADD A
BRIDLEWAY BETWEEN CROMFORD ROAD AND PORTER LANE IN THE
PARISH OF WIRKSWORTH AND INVESTIGATION OF ITS REPUTED
HISTORIC CONTINUATION BETWEEN PORTER LANE AND CROMFORD
HILL IN THE PARISH OF CROMFORD****1. Purpose of the Report**

- 1.1 To enable Members to determine (1) an application made under section 53 of the Wildlife and Countryside Act 1981 for an order to show certain routes in Wirksworth from Cromford Road to Porter Lane as bridleways, and (2) what form of order under section 53 to authorise, if any, relating to the route from Porter Lane to Cromford Hill (known as Dark Lane) in Cromford Parish.

2. Information and Analysis

- 2.1 This report concerns an application to show certain routes from Cromford Road to Porter Lane, Wirksworth as bridleways on the Definitive Map and Statement. The report also deals with evidence relating to a route in Cromford Parish which may be the historic continuation of the above route, from Porter Lane to Cromford Hill.
- 2.2 A plan showing the routes under investigation is attached (Appendix 1). Section A – B – C – E – F – G represents what the applicant claims is the line of an old highway known as Old Lane, which was part of the historic way between Wirksworth and Cromford. Section C – D – E corresponds with parts of Footpaths 2 and 4. Section F – H represents a link from Old Lane to the public bridleway along the High Peak Trail. Section J – K is a route known as Dark Lane, which was not included in the application but which has been included in the investigation.
- 2.3 This application was made by the British Horse Society ('the Applicant') in November 2007, and is supported by fifty completed user evidence forms with plans attached showing the route referred to above, together with photographs of the claimed route.

- 2.4 The claimed route, which is named 'Old Lane' on a roadside nameplate, leaves Cromford Road (B5036) at point A and runs in a north-westerly direction to point B through a wooded area. To the west of the route near point A is a public car park. Old Lane has a bitumen surface and is marked on either side with double yellow lines as far as the entrance to the car park. At this point, there is a small waymarker sign that reads "Circular Walks around Wirksworth". Beyond this, the route has a roughly metalled surface, bounded by grass verges and stone walls, which are in various states of repair.
- 2.5 After point B the route proceeds N then NNE towards point C. Between points B and C the route proceeds through a 16 foot wide railway bridge, over which a mineral railway used to pass, and then continues with a rough metalled surface and is bounded by a stone wall on the right and trees to the left. At point C the route leaves the wood and proceeds NNW across an area of rough hillocky ground (probably subject to mining in the past), continuing across a yard adjacent to the National Stone Centre building and then veering NE before passing under the High Peak Trail via a 12 foot wide railway bridge.

Just to the north of the High Peak Trail there is an old lime kiln fronted by an interpretation board produced by the National Stone Centre. The kiln used to be part of the Coal Hills Hamlet in the 1890s and the wording on the board states;

"The path in front of the kiln is "Old Lane" – the old route from Wirksworth to Cromford"

From point E the claimed route runs NNW alongside a tarmac access road (which provides access to the Stone Centre and an Eco-Centre) before turning NNE along a rough track (currently recorded as public footpath No. 3) to its junction with Porter Lane.

Dark Lane, which evidence suggests might be the historic continuation of Old Lane, is a roughly metalled lane, noticeably hollowed in places, running between stone wall and fence boundaries from Porter Lane NE to Cromford Hill.

The deviation from points C to E via D (see attached map) is a stone surfaced track running across rough hillocky ground. The spur off the claimed route to the High Peak Trail (from points F to H) crosses the National Stone Centre Car Park.

- 2.6 For the purposes of assessing any period of use that might be relevant in considering whether there has been an “event” to justify the making of any Order under the Wildlife and Countryside Act 1981, the year that public use of the claimed route “as of right” was first called into question has been taken as 2007, when, according to some of the witnesses, a notice denying the existence of a public right of way was first erected between points B and C of the claimed route. Therefore, as regards section 31(2) of the Highways Act 1980, the period of twenty years immediately prior to 2007 has been particularly considered in assessing the claim.

User Evidence

- 2.7 A total of fifty completed user evidence forms were submitted with the application, all of which had a plan attached on which the witnesses had drawn the routes they had used.

(The information from the completed user evidence forms is summarised in the table appended to this report – Appendix 2)

- 2.8 The majority (38) said they had either ridden a horse or had cycled (or both) all the way from Cromford Road along Old Lane and eventually on to Porter Lane.

Of those, 16 users said they had ridden on horseback along the deviation from points C to E via D, with 11 of those saying they had also ridden the deviation by pedal cycle. The period of use for this particular group ranged between 3 and 49 years up until 2007 when public rights along the route were called into question.

- 2.9 Out of the 38 referred to above, a total of 7 horse riders said they had reached Porter Lane via the National Stone Centre access road. 5 of those had also cycled along the access road with a further 3 users saying they had cycled that way but were not horse riders.

- 2.10 From the 50 user evidence forms received, a total of 33 users said they had accessed the High Peak Trail from the claimed route (from points F to H on the attached plan): 27 of those saying they had either used the route on horseback, via pedal cycle or both.

- 2.11 All of those people who said they had themselves only used all or part of the claimed route on foot, had nevertheless seen horse riders on the route.

In addition it should be pointed out that, whilst Dark Lane was not included as part of the route subject to the DMMO application, many

users said that it formed part of their ride, i.e. Old Lane and Dark Lane formed part of the same recreational through-route.

As the appended table shows, many of the people who said they had used all or part of the claimed route had done so for a considerable period of time prior to the DMMO application being submitted to the County Council.

3. Consultation and Correspondence

- 3.1 On 05 October 2011 consultation letters were sent out to the owners of the land over which the claimed routes pass. Councillor Garry Purdey as the local member for the County Council, local user groups, and statutory undertakers were also consulted.

Several representations were received:

- 3.2 A representative from the National Stone Centre wrote on 24 November 2011 stating that horse riders have ridden on the tarmacked access road between points E and G rather than using FP 2. They went on to state that there used to be a fence and stile on FP 2 between points F and G, about twenty metres from Porter Lane, which would have made it impossible for horse riders to use the route. This person mentioned that there are low branches over the path between F and G which would prevent horse riders from using the route.
- 3.3 This person went on to state that there has never been continuous access to the High Peak Trail at point H, explaining that the embankment now in place was constructed in 1993, and referred to a kissing gate at point H which horse riders would not have been able to negotiate. They also stated that, although there was a physical route between C and D prior to the construction of the Stone Centre, but that an archaeological dig to ascertain the presence of a packhorse way or paved route was commissioned, and no evidence was found.
- 3.4 A local resident also referred to a stile across FP 2, which he stated was approximately 20 metres from Porter Lane.
- 3.5 A former employee of the National Stone Centre stated that she worked there between 2005 – 2008 and saw horses using the “paths”, even though notices were displayed prohibiting this.

- 3.6 The Stone Centre submitted a statement from their health and safety advisor regarding the health and safety implications of the proposed bridleways.
- 3.7 Councillor Garry Purdey, who was a Committee Member of the Board of the NSC, declared a “personal and prejudicial interest” in the proposal, and stated that he cannot support it.
- 3.8 British Telecommunications confirmed that they have no objections to the proposals.
- 3.9 Wirksworth Town Council confirmed their support for the application, but did not provide any additional evidence.
- 3.10 A representative from the Peak and Northern Footpath Society stated that she believes the routes A – B – C – D – E – F – G and J – K have the physical characteristics of old roads, and that the names “Old Lane” and “Dark Lane” are suggestive of public carriageway status. She went on to observe that sections A – B – C and J – K are shown on the 1899 Ordnance Survey map in a way that could indicate that they are public roads, and that, on the balance of probabilities, C – E – F – G would have the same status.

4. Documentary Evidence

c1709 survey commissioned by the Gell Family of Hopton Hall

- 4.1 This map (thought to be surveyed by Samuel Hutchinson) shows lands in Wirksworth marked with tenants' names and field names and showing roads and paths.

It shows a route corresponding to the A to C section of Old Lane (north of about point C the route extends beyond the scope of the survey). This route would seem to have been the principal road towards Cromford prior to the new turnpike road which was constructed in about the mid -1700s.

The route is clearly shown by solid lines and the fact that another, more minor route, which joins it and is labelled ‘foot way to Cromford’ provides proof of the routes destination.

Burdett's Map of Derbyshire (surveyed 1762-67 – reprinted 1791)

- 4.2 This map shows the claimed route (between points A and K but excluding the deviations between C,D and E and between F and H) which later became known as Old Lane, and the historic continuation along Dark Lane, as a ‘cross road’ heading northwards out of Wirksworth towards Cromford.

The other category of road shown on Burdett's map are the turnpike roads and it seems from past studies of this map that the cross road category encompassed those roads that did not fall into the turnpike category, i.e. they would mostly be more minor public carriage roads but some known bridle roads have also been shown to fall into this category.

Burdett's map shows that, while there was a turnpike road connection between Wirksworth and Cromford in the 1760s, it did not run due north from Wirksworth up to Steeple Grange but instead headed first eastwards to Wirksworth Moor before turning north to Cromford via Bolehill.

Burdett's map therefore pre-dates the construction of the new road northwards out of Wirksworth (Cromford Road). It adds weight to the argument that Old Lane and Dark Lane, being the only road aligned northwards from Wirksworth, probably carried public vehicular rights.

Cary's Map (1793)

- 4.3 This small scale map appears to show the new turnpike road from Wirksworth northwards via Cromford Road and Cromford Hill bypassing the area of the claimed route. Old Lane and Dark Lane are not shown.

Tuke's Map (1798)

- 4.4 This map may have been based on Burdett's earlier map of Derbyshire from the 1760s (which itself was reprinted in the early 1790s) because it appears to show what would then (1798) have been the old road layout.

Old Lane and Dark Lane are shown as the only route heading northwards out of Wirksworth while the only turnpike shown proceeding to Cromford is the one via Wirksworth Moor and Bole Hill.

Both Tuke's Map and Cary's Map are drawn at too small a scale to show the minor diversions off the claimed route.

Wirksworth Enclosure Map and Award (1806)

- 4.5 By the time of the Parliamentary Enclosure process the 'new' turnpike between Cromford and Wirksworth had already been constructed: Nevertheless, the 1806 enclosure map shows the part of the claimed route which abuts certain previously enclosed lands referred to in these documents. Unfortunately none of the commons or wastes etc due to be enclosed under the terms of the Parliamentary Enclosure process were situated in the area of Old Lane so the route itself is not set out in the 1806 Enclosure Award: However, the part shown on the enclosure plan is depicted by means of a pair of solid lines and is labelled 'Cole Hills Road'.

Order for stopping up a footpath leading from the Newhaven Turnpike to an occupation road branching out of Old Lane (1828)

- 4.6 The road referred to as the Newhaven Turnpike is the B5023 heading from Wirksworth to Middleton.

The 1828 Order stops up a footpath which is described as leading from the turnpike northwards to join an occupation road which branches north westwards out of the claimed route. The Order describes the claimed route as “the old public highway leading from the town of Wirksworth aforesaid towards Cromford, commonly called the Old Lane”.

Sanderson’s Map of Twenty Miles Around Mansfield (1835)

- 4.7 The route of Old Lane is shown in its entirety (between points A and G on the attached plan and excluding the deviations between C,D and E and between F and H). It branches off what is now Cromford Road north of the toll bar and is depicted at first by a pair of solid lines proceeding to lime kilns (located at about point C on the attached plan). North of point C the rest of Old Lane is depicted by a pair of dashed lines passing under the Cromford and High Peak Railway.

Dark Lane is also shown in full. It is depicted using double solid lines, with the south-eastern edge shaded, which according to the key means it was part of a turnpike road at that time. Its depiction suggests that it may in fact have been a continuation of the Cromford Hill turnpike leading to Middleton.

c1840 1st edition 1” to 1 mile Ordnance Survey (OS) Map

- 4.8 This map clearly shows routes corresponding with Old Lane and Dark Lane (between points A and K on the attached plan but excluding the deviations between C,D and E and between F and H).

From the map it is clear that the area over which Old Lane runs was an area of intensive lead mining. The depiction of the northern part of Old Lane by means of dashed lines indicates that this section of the route ran unenclosed across open ground.

Wirksworth Tithe Plan (1848)

- 4.9 Old Lane is partially shown on this map. The part that is shown (northwards from Cromford Road up to about point C on the Order plan) is shown by means of solid lines and coloured a yellow/brown colour in the same way as other roads, including known public carriage roads.

North of about point C the route is shown entering a plot of land numbered 1202. North of the Cromford and High Peak Railway the plot of land over which the old route would have been aligned is numbered 1142. According to the tithe apportionment schedule which accompanies the tithe plan, both of these plots comprise pasture called ‘Cole Hills’ owned and occupied by David Wheatcroft.

The Dark Lane historic continuation of the claimed route north of the route now known as Porter Lane is clearly shown forking off into the neighbouring parish of Cromford: Again, it is shown in the same way as other roads including known public carriage roads.

There may be a number of reasons why the tithe plan does not show part of Old Lane but given that other maps and plans of a similar age show it in its entirety it seems unlikely that the route just didn't exist at that time (see Sanderson's 1835 map and the c1840 1st ed 1" OS map discussed above and the 1st ed 1:2500 OS plan of 1880 discussed below).

It is quite probable that the colouring used on this tithe plan (in common with other tithe plans) represents the existence of a metalled surface, in which case the lack of colouring may simply be an indication that the route was not metalled. It may also be the case that at the time of the tithe survey the route was not even visible on the ground where it crossed the pasture – hardly surprising if the route was little used, having been effectively made redundant by changes to the local road network some 100 years previously.

Cromford Tithe Plan (1841)

- 4.10 The Dark Lane historic continuation of the claimed route is clearly shown. It is not labelled or coloured, but neither are any of the other routes/roads shown on the map, including known public carriage roads.

Deposited Railway Plans

- 4.11 The claimed route is not referred to at all on the 1824 "Plan of the Proposed Railway from the Canal at Cromford in the County of Derby to the Peak Forest Canal at Whaley in the Parish of Chester" however these early railway plans are often of limited value in providing useful information about the status of minor crossing highways.

Plans dated 1852-3 of the 'South Derbyshire Railway – Wirksworth Branch' show that the southern part of Old Lane was to be crossed by the proposed railway. The route appears to be numbered 166 and 175 however the accompanying book of reference for the plans is missing so the information (land ownership etc) relating to these plots is not available.

The railway plan itself shows the route in much the same way as the roughly contemporary tithe plan (see above).

A proposed 'Midland Railway – Wirksworth & Rowsley Line' of 1869 passes too far to the east of Old Lane to be of any help in ascertaining its status, however the north east end of Dark Lane (Old Lane's historic continuation) falls within the railways limits of deviation and so is numbered on the plan (No 34). This is identified on the accompanying book of reference as applying to a 'public road' owned and occupied by the 'Surveyor of Highways'.

First edition OS 1:2500 (1880)

- 4.12 Old Lane is shown in its entirety on this plan and is named as such. It is depicted from Cromford Road to near the location of the Stone Centre by means of a pair of solid lines, which normally indicate that there were solid boundaries on either side such as walls or hedges. From that point up to the railway arch the route shown is depicted using a pair of dashed lines.

North of the arch up to Porter Lane, the route is shown with a solid line to the east and a dashed line to the west.

In the vicinity of the Cromford and High Peak Railway arch other routes depicted by dashed lines link with Old Lane. These correspond reasonably well with the original alignments of the footpaths in this area which were subject to diversion in the 20th Century.

Dark Lane is also clearly shown on this plan. It is labelled Dark Lane and is depicted by means of a pair of solid lines throughout.

Second edition OS 1:2500 (1899)

- 4.13 Old Lane is shown in essentially the same way as on the earlier plan. The more minor route which links with Old Lane at the railway arch (which corresponds to the original alignment of Wirksworth footpath 2) is labelled 'F.P.' meaning footpath.

As well as being named 'Old Lane' south of the Cromford and High Peak Railway, the route is also labelled as such where it leaves the OS plan sheet just to the north of the railway, thereby providing evidence that that part of the claimed route was also considered to be part of Old Lane (these days, as shown on the attached plan, that part of the claimed route is recorded as footpath No 3 and part of footpath No 2).

As well as being named roads, both Old Lane and Dark Lane are depicted with the eastern line slightly thickened. This is referred to as a 'shaded line' and it was a convention used by the OS to show which roads were kept in proper repair.

Yolande Hodson in her article "Roads on OS 1:2500 plans 1884-1912" (RWLR 9.3 pp 107-118), identifies a circular of April 1884 which provides for the shading of "All Public Roads or Highways kept in proper repair", however a later circular, dated 30 November 1885, specifies that, "All metalled Carriage Drives [i.e. private carriage roads] will in future be shaded as 2nd Class Roads, but the shading not quite so prominent as on Public Roads".

It is therefore not always possible from the early OS maps and plans to identify whether a route drawn with a shaded line was considered to be a

public or private road. However, in this case there is ample other evidence to indicate that both Old Lane and Dark Lane were public highways.

Finance Act 1910

- 4.14 Dark Lane is excluded from the taxable land holdings (hereditaments) on the Finance Act working plan, as is Old Lane as far north as point C (see attached plan). This is consistent with public carriage road status though public bridle roads and private access roads might also be treated in this way.

From point C northwards to Porter Lane, Old Lane is included in a couple of smallish hereditaments: Plot 163 includes some of the worked land south of the Cromford and High Peak railway line. In the accompanying Finance Act valuation book it is described simply as 'land' located at 'Coal Hills'. It has a £5 deduction listed for the presence of public rights of way or user and because it covers such a small area it is probable that Old Lane and/or part of Wirksworth footpath No 2 are the rights of way in question.

It should be borne in mind that landowners weren't compelled to claim a deduction and it is questionable to what extent the presence of minor or little used rights of way would have had on the value of extensively quarried land such as this.

Plot 559 is another smallish plot which includes a portion of land between the railway line and Porter Lane. It too is described as land located at Coal Hills but this time there is a £22 deduction for the presence of public rights of way or user. Again, Old Lane and a footpath (Footpath 3 – this route broadly follows the stone centre access road) are the only public routes that affect this small plot so the deduction was probably made at least in part with respect to Old Lane.

Parish Survey, 1950

- 4.15 These surveys were carried out on a parish by parish basis and were intended to gather rights of way information for inclusion on the draft definitive maps and statements, pursuant to the National Parks and Access to the Countryside Act 1949.

One of the parish claim schedules for this route describes the route then being claimed as "Old Lane to Middleton Road via Ravens' Tor" commencing at Cromford Road, Wirksworth and terminating on Middleton Road. This equates to the southern end of the currently claimed route and a route (now recorded as Wirksworth footpath No 1) forking off generally westwards via Middlepeak to Middleton Road.

In the same hand someone has written "Part B.R." (B.R. meaning bridle road). The southern part of the currently claimed route never made it on to the definitive map and there is no explanation as to why that might have

been: On balance it seems likely that the B.R part being referred to in the schedule was probably Old Lane. Someone (in a different hand) has written on the form 'F.P. and that probably refers to the part of the then claimed route from Old Lane to Middleton Road.

In another parish claim schedule, a route is claimed as a CRB from 'Old Lane, Cromford Road' to 'Porter Lane'. CRB is an abbreviation for 'carriage road used mainly as a bridleway': Parishes were instructed to identify those cart or carriage roads and green lanes that were used mainly for the purposes of footpaths or bridleways as 'carriage road used mainly as a footpath' (CRF) and CRB respectively.

The description of this route runs as follows:

"Old Lane to railway arch a rough road, after that there are two footpaths across a very uneven field leading to two stiles on Porter Lane – no hindrances to public use".

This claim seems to imply that Old Lane was seen as being a CRB up to the Cromford and High Peak Railway arch and then dividing into two footpaths across rough ground north of the arch.

These routes are dealt with on another claim schedule for paths proceeding from Steeple Grange to Old Lane and Porter Lane: One of these is described as running "From Steeple Grange (just above memorial) to Old Lane, and fork to Colehills Railway Arch" and the other as "From Old Lane to Porter Lane, via Railway Arch nr. Colehills where footpath forks into two".

Again, these routes are claimed as CRB, but with no explanation. The description of the path states "new road made by A Shaw and Sons (Quarry workings)".

These claims from the 1950s are generally confusing as regards claimed routes in this particular area but that might be because this was an area subject to constant mining and quarrying operations: Old Lane eventually made it onto the definitive map but only as a footpath and only from the mineral railway arch northwards. However, the southern part of Old Lane must have been acknowledged as a highway of some description because the Ravens' Tor footpath branches off it.

As explained below (under 'Diversion and Stopping-up Orders'), points D to E of the currently claimed route coincide with Wirksworth public footpath No 2.

Diversion and Stopping-up Orders

- 4.16 Various diversion and stopping-up orders from the 1940s through to the 1980s have been proposed and implemented with regard to the network of footpaths which connect with Old Lane in the area of 'Coal Hills'; an area which historically appears to have been heavily mined and quarried.

Wirksworth public footpath No 2 runs from Cromford Road through to Porter Lane and it coincides with the historic alignment of Old Lane from point E to a point just to the SSW of point G: The part of this footpath lying to the south of the High Peak Trail has been diverted so that these days it runs on the same alignment as the claimed route between points D and E.

While these Orders do not directly affect Old Lane, some of the related correspondence does shed some light on how the route was viewed at the time:

- a. *Note of Interview 31 December 1964: Colehills Quarry, Wirksworth. George Wimpey and Company Limited. Suggested diversion of highways including footpaths.*

This is a note from DCC's records which states that a Mr. Humphries from George Wimpey and Co Ltd called to have a consultation about the proposed diversion of certain highways in Wirksworth including FPs 2 and 4. The note records that "the Company had in mind to seek to downgrade Old Lane from a public carriageway green lane to a footpath." Mr. Hutchins from DCC advised Mr. Humphries that the Company should consider preserving it as a bridleway if they proceeded with their application.

The note ends by stating that Mr. Humphries was advised to consult with Wirksworth UDC as "the County's interest was only marginal" (because at the time (as the note records) the Urban District Council (UDC) was the highway authority for all FPs and unclassified roads in the urban district, and the County was the highway authority for classified roads and surveying authority for FPs, BWs and RUPPs).

- b. *Memo dated 05 July 1965*

This records that representatives from Wimpey's were meeting at Wirksworth Town Hall on 07 July to discuss a proposed application by the company to divert certain rights of way across Colehills Quarry.

- c. *Note of Meeting held on 07 July 1965 at the Town Hall, Wirksworth*

This records that Wimpey's wished to promote an order under s. 153 of the TCPA 1962 to divert FPs 2 and 4. The note goes on to record that,

"After discussion [it emerged that] the Company would amend the line of their proposals so as not to make the footpath follow round the extreme easterly and northerly limits of their ownership, but a natural

line would be taken in a rough semi-circle at a safe distance from the quarry face”.

It then states that,

“Reference was made to remarks at the local Inquiry that Wirksworth 2 and 4 had a higher status than a footpath. Mr. Hutchins [solicitor from DCC] advised that to meet such an objection halfway it would be well to provide that the diverted ways were bridleways within the meaning of the NPACA 1949”.

d. *Letter from George Wimpey and Co. Ltd dated 08 November 1965*

This refers to a public meeting at Wirksworth Town Hall on 05 November at which around fifty members of public attended.

It refers to a meeting which took place on 12 July at which a proposal was put to the Highways Committee to temporarily divert FP 2 along the route of what (in Wimpey's view) would become the permanent route of that path, as the current line of that route interfered with quarrying operations.

It appears from the letter that the Council had involved the Ministry of Transport but the details of this are not clear.

e. *Letter from DCC to Wimpey's dated 12 November 1965*

The application discussed in the meeting of 07 July was made to the Ministry of Transport.

DCC notes its concern that Wimpey's have not erected a bridge as agreed (the letter does not record where), and states that a temporary interruption might have been acceptable between the removal of the path and the construction of the bridge, but that the Ministry will now have to determine “whether he has the jurisdiction to deal with your Company's application”.

f. *Memo from DCC dated 18 October 1966*

This encloses a letter from the Ministry in connection with the application for a diversion of footpaths at Colehills Quarry. It records that the County Prosecuting Solicitor is considering the letter in conjunction with other matters in connection with the proposed action for public nuisance against the operators of the Quarry.

g. *Letter from the MoT dated 13 October 1966*

This letter refers to the application to divert footpaths off Cromford Road, Wirksworth, to enable the extension of a limestone quarry to be carried out.

The Minister's proposal to make an order was published on 08 October 1965 and two objections were received. The UDC had confirmed that the FP had already been demolished in places.

The letter states that the power of the Minister under s. 153 of TCPA is to authorise closure or diversion of highways to enable development to be carried out, and is not "a power to give retrospective sanction to unlawful interference with public rights of passage which has already taken place". It goes on to state that if it appears to the Minister that the highway has already been destroyed, then it is likely to be concluded that the making of the order would really amount to giving a legal sanction to unlawful acts, and that under the circumstances the "developers must take the consequence of their unlawful acts".

The letter records that a footpath marked A-B on the draft order plan (see the Diversion of Highways Order 1965) has been destroyed and that a length of footpath leading from that route to Old Lane has also been destroyed - and that consequently the Minister has decided not to make the order.

Published material - Peakland Roads and Trackways by A and E Dodd (2000) p. 122

- 4.17 Dodd and Dodd state that; "The old way to Cromford Bridge from Wirksworth ran west of the present main road. Not far north of Wirksworth, beyond the fork for Middleton there is a minor fork; this is Old Lane and can readily be followed through disused quarries and under the former Cromford and High Peak railway to emerge on Porter Lane. A branch railway to quarries has interrupted the direct line of the old way, which would originally have formed a cross-roads with Porter Lane. The next section, Dark Lane, begins a short distance to the east and in rather less than half a mile joins the present road to Cromford."

Published material - Middleton by Wirksworth Conservation Area Appraisal (September 2009) prepared by Mel Morris Conservation p. 13

- 4.18 This document refers to the claimed route as; "...Old Lane, which was the road that originally linked Wirksworth and Cromford, before the construction of the turnpike road in 1759".

Additional Evidence

- 4.19 Daniel Defoe, writing about his travels around Britain in the early 18th Century¹, recounts the journey from Wirksworth to Matlock Bath by horseback. He writes: “For some miles before we come to Matlock [Bath], you pass over the hills by the very mouths of the leadmines, and there are melting-houses for preparing the oar, and melting or casting it into pigs; and so they carry it to Wirksworth to be sold at the market.”

Daniel Defoe describes Wirksworth as “a large well-frequented market town, and market towns being very thin placed in this part of the county, they have the better trade, the people generally coming twelve or fifteen miles to a market, and sometimes much more”.

- 4.20 In the Wirksworth Roman Project (2009), under the heading “A ridge-way route between Wirksworth and Little Chester, Derby: A Roman Road and its constructional features”, the authors discuss how Roman roads in Derbyshire are not necessarily straight but; “...often are contingent upon the contours and the obstacles they have to overcome...A good example of this is the Chesterfield to Wirksworth road which comes down in a great sweep through Kelstedge and Amber Hill, where the gentle countryside shows the road’s Roman origins to great effect, but once it reaches the Derwent Valley at Bentley it becomes much more contingent upon the line it must necessarily take to overcome the steepness of the valley sides at that point. In consequence its route down into Old Matlock, through Starkholmes to Cromford is more variable and only once it has crossed the Derwent and mounted Cromford Hill continuing its course along Dark Lane and Old Lane to Wirksworth does it retain vestiges of its straight course.”

5. Conclusion

- 5.1 Regardless of how the historic alignment of Old Lane (between points A, B, C, E, F and G) may have been used in more recent years by members of the public, the documentary evidence strongly points to this route, along with Dark Lane between points J and K, being the line of the old highway heading northwards out of Wirksworth before the construction of the ‘new’ Cromford Road via Steeple Grange in the mid-18th Century.

It should be noted that the large scale OS plan evidence from the late 19th Century shows that the historic alignment of Old Lane probably ran a little to the west of the Stone Centre building; through the adjoining yard rather than the building itself. Because of its relatively small scale the precise alignment in this vicinity is not clear from the attached plan, however the officer recommendation is made on the basis of that historic alignment.

¹ ‘A tour thro’ the whole island of Great Britain’ is an account of his travels by author Daniel Defoe, first published in three volumes between 1724 and 1727.

- 5.2 While there is a lack of firm evidence pointing to public carriage road status for Old Lane, it seems that given its reputation as the original road between Wirksworth and Cromford (possibly dating from at least Roman times) it is more likely than not that it would have been used by the public with carts and carriages rather than just open to use on foot and horseback.

It is named 'Cole Hills Road' on the Wirksworth Enclosure Plan and the evidence shows that the route, as well as being a through-route, would have served a small mining community at Coal Hills in the vicinity of the Cromford and High Peak Railway. It seems unlikely that such a settlement would not have had cart access. In addition, the two railway bridges which the route passes under have been constructed to a width suitable for the passage of vehicles.

The fact also that the OS identified Old Lane and Dark Lane as routes that were properly maintained (see reference to the 'shaded line' under section 4.13 above) is consistent with public carriage road status.

- 5.3 According to Sanderson's 1835 map, Dark Lane, the historic continuation of Old Lane, appears to have then formed part of the local turnpike network so it too was probably a public cart or carriage road rather than a lesser highway.

- 5.4 It appears that in the 1960s the quarry operator George Wimpey discussed partially stopping-up Old Lane from public carriageway to public footpath status, however there is no evidence of this actually happening and so the legal presumption must be that those highway rights that historically existed still exist to this day. This also reinforces the notion that Old Lane was then generally regarded as being an old public carriage road as opposed to, say, a public bridle road.

- 5.5 Given the long history of quarrying and mining in the area of Coal Hills it seems quite likely that the original alignment of Old Lane, as seems to be shown on the large scale OS plans from the end of the 19th Century, has been affected by those operations; nevertheless, regardless of whether the route is visible on the ground today, those historic rights continue to exist unless stopped up by due legal process.

- 5.6 As discussed below under 'Legal and Human Rights Considerations' the Natural Environment and Rural Communities Act 2006 has had the effect of extinguishing motor vehicle rights over highways not

already recorded as Byways Open to All Traffic (BOAT). None of the exceptions to that extinguishment appear to apply in the case of Old Lane or Dark Lane so they can only be added to the definitive map and statement as restricted byways.

5.7 In terms of rights of way status for the minor deviations off the principal route:

a) There appears to be relatively little use cited of the alternative link with Porter Lane and it is not altogether clear whether users have ridden the footpath (Wirksworth public footpath No 2) or have stuck to the metalled access road. On balance it is considered that there is insufficient evidence to raise a presumption that either route has been dedicated as a bridleway.

b) Regarding the deviation via point D; a reasonably large number of horse riders and slightly lesser number of cyclists have said they used this alternative. Such use, by the public “as of right” and without interruption for a full period of 20 years, is considered sufficient to raise a presumption that the route, which incorporates the relevant parts of Wirksworth footpaths 2 and 4, has been dedicated as a public bridleway.

c) The information from the completed user evidence forms suggests that the connection with the High Peak Trail via points F and H has been used by significant numbers of people on foot, via horse back and on bicycles. Such use would normally be ample for the purposes of demonstrating that the route had become dedicated as a right of way, however there is in this case a statement from the National Stone Centre that use on horseback and by pedal cycle would not have been possible before about 1993 because of the then lie of the land and presence of a kissing gate though it is not clear whether this would have stopped people on foot from using that particular route.

However, because this is a case where the route in question is not already recorded on the definitive map, the Council has to consider whether it is reasonable to allege the existence of public rights (see ‘Legal and Human Rights Considerations’ below): Case law has established that where there is a conflict between the evidence which the Council cannot itself reconcile it nevertheless has to make an Order where a reasonably possible outcome is that the right of way could be shown to exist.

In this case, given the prevalence of claimed use of the route by horse riders, it would be reasonable to allege the existence of public bridleway rights from point F to point H.

6. Considerations

Legal and Human Rights Considerations

- 6.1 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:
- 6.2 (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
- (2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance of 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)).
- 6.3 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.
- 6.4 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.
- 6.5 Section 66 of the Natural Environment and Rural Communities Act 2006 ('the NERC Act') restricts the ability to create new rights of way for mechanically propelled vehicles - evidence of use of a way by such vehicles after commencement of the NERC Act (2nd May 2006) will not give rise to a public right of way.

Section 66 of the NERC Act states:

"(1) No public right of way for mechanically propelled vehicles is created after commencement unless it is—

(a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or.

(b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.

(2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.”

6.6 Section 67 (1) of the NERC Act extinguishes an existing public right of way for mechanically propelled vehicles (broadly speaking motor vehicles) over ways that, immediately before commencement of the NERC Act on 2nd May 2006, were either not shown in a definitive map and statement or were recorded only to footpath, bridleway or restricted byway status.

6.7 Subsection 67(2) contains several exceptions to the above extinguishment provisions including where:

“(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement [of the NERC Act] was use for mechanically propelled vehicles.

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense).”

Other Considerations

6.8 In preparing this report the relevance of the following factors has been considered: financial, social value, prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property, and transport considerations.

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

7. Background Papers

Legal Services file 40723 and documents referred to in this report.

8. OFFICER'S RECOMMENDATION

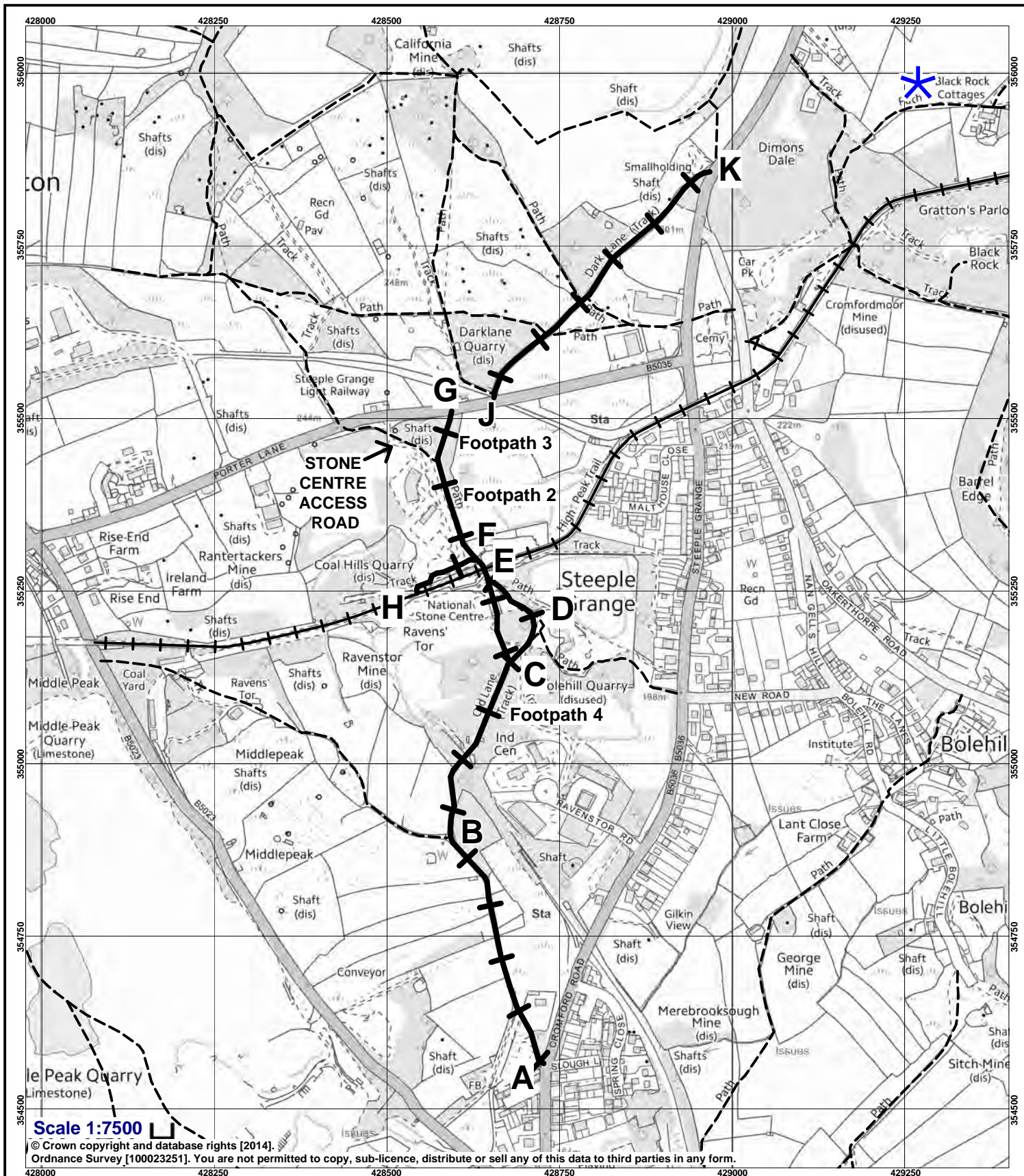
That the Committee resolves:

(1) to authorise the making of an order under section 53 of the Wildlife and Countryside Act 1981 to record Old Lane (between points A, B, C, E, F and G on the attached plan) and Dark Lane (between points J and K on the attached plan) on the definitive map and statement for the area as Restricted Byways.

(2) to authorise the making of an order under section 53 of the Wildlife and Countryside Act 1981 to record the deviation off Old Lane (between points C, D and E on the attached plan) on the definitive map and statement for the area as a public bridleway.

(3) to authorise the making of an order under section 53 of the Wildlife and Countryside Act 1981 to record the spur off Old Lane (between points F and H on the attached plan) on the definitive map and statement for the area as a public bridleway.

Chief Officer



Ref: PE/GM/X3465/Ctte/2017



Mike Ashworth
Strategic Director - Economy, Transport & Communities

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Produced by Public Rights of Way on 11 July 2017.

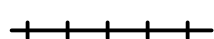
Wildlife and Countryside Act 1981 Section 53

Claimed Bridleway between Cromford Road, High Peak Trail and Porter Lane - Wirksworth and additional bridleway along Dark Lane between Porter Lane and B5036 - Parish of Cromford

Claimed Bridleway



Existing bridleways



Existing footpaths



Summary of User Evidence – Old Lane, Wirksworth

Number	Route	Duration - Years	Total	Frequency	Comments
	Historic alignment with detour via point D (A-B-C-D-E-F-G)				
1		1981 - 2007	26	Not said	Used on foot only but observed horse riders (Inc. F-H)
2		1975 – 2007	32	Every 3 weeks	ditto
3		1987 - 2007	20	Daily, weekly, monthly	Foot, cycle and horse back (Inc. F-H)
4		1980 - 2007	27	weekly	Foot and cycle (Inc. F-H)
5		1982 - 2007	25	weekly	Foot and horse back (Inc. F-H)
6		1958 - 2007	49	weekly	Foot cycle and horse back (Inc. F-H)
7		1972 - 2007	35	monthly	Foot cycle and horse back (Inc. F-H)
8		1976 - 2007	31	daily	Foot cycle and horse back (Inc. F-H)
9		1986 - 2007	21	weekly	Used on foot only but observed horse riders (Inc. F-H)
10		1975 – 2007	32	weekly	Foot cycle and horse back (Inc. F-H)
11		1997 - 2007	10	weekly	Foot and horseback (Inc. F-H)
12		1999 - 2007	8	weekly	Foot, cycle and horse back (Inc. F-H)
13		2004 - 2007	3	weekly	Foot and horse back (Inc. F-H)
14		1990 - 2007	17	weekly	Used on foot only but observed horse riders (Inc. F-H)
15		1990 - 2007	17	weekly	Foot, cycle and horse back
16		1995 - 2007	12	daily	Used on foot only but observed horse riders (Inc. F-H)
17		2004 - 2007	3	weekly	Horse back (Inc. F-H)
18		2004 - 2007	3	daily	Foot, cycle and horse back (Inc. F-H)
	TOTAL 18				
	Historic alignment without detour via point D (A-B-C-E-F-G)				

Summary of User Evidence – Old Lane, Wirksworth

19		2000 - 2007	7	weekly	Horse back (Inc. F-H)
20		1989 - 2007	18	weekly	Foot and horse back
21		2004 - 2007	3	weekly	Foot, cycle and horse back (Inc. F-H)
22		2003 - 2007	4	monthly	Used on foot only but observed horse riders
23		2004 - 2007	3	monthly	Foot, cycle and horse back (Inc. F-H)
24		2004 - 2007	3	weekly	Foot, cycle and horse back (Inc. F-H)
25		2004 - 2007	3	monthly	Foot, cycle and horse back (Inc. F-H)
26		2002 - 2007	5	daily	Foot and horse back (Inc. F-H)
27		2004 - 2007	3	weekly	Foot, cycle and horse back (Inc. F-H)
28		1984 - 2007	23	Daily and weekly	Foot and horse back (Inc. F-H)
29		1955 - 2007	52	Weekly and monthly	Foot, cycle and horse back (Inc. F-H)
30		1979 - 2007	28	weekly	Foot, cycle and horse back (Inc. F-H)
31		1979 - 2007	28	weekly	Foot and horse back
	TOTAL 13				
	Old Lane to Porter Lane via both Stone centre road and via historic alignment (A-B-C-E-F-G & Access Road)				
32		1980 - 2007	27	weekly	Foot and pedal cycle but observed horse riders too (Inc. F-H)
	TOTAL 1				
	Old Lane to Porter Lane via Stone Centre Road (A-B-C-E-F-& Access Road)				
33		1993 - 2007	14	monthly	Foot and horse back (Inc. F-H)
34		1990 - 2007	17	weekly	Foot and pedal cycle
35		1975 - 1988	13	weekly	Foot and horse back
36		1977 - 2007	30	weekly	Foot, cycle and horse back
37		No dates	35yrs	weekly	Foot, cycle and horse back

Summary of User Evidence – Old Lane, Wirksworth

38		1960 - 2007	47	Daily and weekly	Used on foot only but observed horse riders
39		1960s to 2007	Over 40 years	Weekly and monthly	Foot and by pedal cycle
40		1976 - 1995	19	monthly	Foot, cycle and horse back
	TOTAL 8				
	Claimed route north of High Peak Trail Only – used both historic alignment onto Porter Lane and stone centre access road (F –G & Access Road)				
41		2002 – 2007	5	Weekly	Horse back
42		2002 – 2007	5	Weekly	Horse back (Inc. F-H)
	TOTAL 2				
	Claimed route south of High Peak Trail only – used detour via D (A-B-C-D-E)				
43		1980 - 2007	27	Monthly	Used on foot only but observed horse riders (Inc. F-H)
44		1970 - 1977	7	weekly	Foot and horse back
	TOTAL 2				
	Old Lane (historic alignment) and both alternatives between points C and E (A-B-C-E-F-G & A-B-C-D-E-F-G)				
45		1981 - 2007	26	weekly	Foot, cycle and horse back
46		1959 – 2007 Except for 10 years 77 - 87	38	weekly	Foot and horse back (Inc. F-H)
47		1990 - 2007	17	daily	Foot and cycle
	TOTAL 3				

Summary of User Evidence – Old Lane, Wirksworth

	Old Lane including both alternatives between points C and E and both routes to Porter Lane (A-B-C-E-F-G & A-B-C-D-E-F-G & via Access Road)				
48		1982 - 2007	25	weekly	Foot, cycle and horse back (Inc. F-H)
	TOTAL 1				
	Old Lane via point D and using the stone centre road (A-B-C-D-E-F & Access Road)				
49		1990 - 2007	17	Daily and weekly	Foot, cycle and horse back
	TOTAL 1				
	Points C to D only		10		
50		Not specified		weekly	Horse back
	TOTAL 1				