

**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 Footpath from Hathern Close and footpath adjacent to**  
**Fields Farm Road – Long Eaton**

**1. Purpose of the Report**

To enable Members to determine an application to add a footpath to the Definitive Map and Statement.

**2. Information and Analysis**

**2.1 Details of the Application**

An application was received from Mr John Blackburn on 03 June 2010 to add a footpath to the Definitive Map and Statement from Hathern Close to footpath adjacent to Fields Farm Road in Long Eaton. The application was supported by a plan showing the claimed route and 24 User Evidence Forms.

A plan showing the claimed route A-B is attached to this report.

It is considered that the installation of a gate across the Hathern Road end of the path (Point A) with threats by the landowner of the installation of a gate at the Fields Farm Road (Point B) end of the path, with both gates then to be fitted with locks in 2010 brought the status of the route into question for the purposes of Section 31(2) of the Highways Act 1980. Only evidence and events prior to this date have been considered in assessing the claim.

**2.2 User evidence**

As specified by Section 31(1) of the Highways Act 1980 dedication of a route as a public right of way may be presumed after use by the public over a period of 20 years or longer. The claim is supported by 24 User Evidence Forms. All the witness claimed to have used the route along the line in question, 20 have used the route for a 20 year period or longer; with 4 of these claiming 20-29 years use, 1 claiming 30-39 years use and 15 claiming 40-49 years use.

All 24 witnesses have used the route on foot only. All 24 witnesses have seen use on foot, and 9 of these have also seen use on pedal cycle.

9 witnesses have claimed to have used the route daily, 1 two to three times weekly, 13 weekly, and 1 monthly. Reasons given for using the route include travelling to the town, station and canal towpath, walking to work, dog walking and recreation.

None of the witnesses refer to the route having ever been blocked.

2 of the witnesses refer to a gate at one end of the route. 9 of the witnesses refer to a stile at one end and 10 witnesses refer to stiles at either end of the route which fell into disrepair.

Only 1 of the witnesses recalls seeing a sign on the route which stated "Private Fishing Club".

None of the witnesses report being stopped or challenged when using the route and only 1 recalls being told that the route was not public, this was by the bailiff in 2009/2010. None of the witnesses have reported being granted permission to use the route.

Some witnesses report using the route as a short cut and others refer to the route being a pleasant family walk which provides the opportunity to watch the wildlife.

## 2.3 Consultation

An informal consultation exercise was carried out between 09 June 2014 and 14 July 2014. Notices were placed at either end of the route at the start of the consultation period. A consultation letter was also sent to the local elected member, Councillor Roland Hosker and Erewash Borough Council

### Representations in support of the application

Councillor Hosker responded to the consultation by way of letter dated 14 June 2014 supporting the application.

The applicant, Mr J A Blackburn responded to the consultation by way of letter dated 01 July 2014 reiterating his support.

The Ramblers Derbyshire Area Erewash Group responded to the consultation by way of letter dated 09 July 2014 supporting the application and advising that that they understood the path to be well used by local people for many years providing a pleasant link between Hathern Close and the footpath adjacent to Fields Farm Road.

## Representation in opposition to the application

A letter was received on 03 July 2014 from the Soldier & Sailors Fishing Club stating the following;

- The angling club has historically allowed local residents to walk this strip of land, without challenge, in order to maintain the friendly and co-operative relationship which has existed for many years.
- It is not apparent why the application has been submitted as there have been no reported issues/incidents between the anglers and the residents.

The landowner raised what they consider to be serious issues, which they felt should be resolved first, as follows:

- Derogation of the angling club's land and rights
- Proximity to angling pegs
- Ongoing risk assessment
- Insurance – public liability/personal accident
- Management inc litter clearance, dog control, cycling, vegetation
- Probable greater use and not by local people
- Vandalism
- Clear signage by the County Council
- Impact on habitat
- Potential increased damage to angling pegs
- Alternative ie Wyvern Avenue
- The residents who are opposed to this application

The landowner also stated that there is significant background information related to some of the points which they chose not to include in order to keep the matter as simple as possible. As consideration cannot be given to the points raised by the landowner when determining a claim under s53 Wildlife and Countryside Act 1981 this did not require further investigation.

### 2.4 Documentary Evidence

#### 1<sup>st</sup> Edition Ordnance Survey Map 1880

The area of the claimed route is undeveloped and there is no evidence of a path along the line of the claimed route

#### 2<sup>nd</sup> Edition Ordnance Survey Map 1900

There is no change from the First Edition Map; the area of the claimed route remains undeveloped

## Enclosure Map 1766

There is no evidence of a path along the line of the claimed route

### 2.5 Site Visit

The claimed route commences from Hathern Close over a short section of land adjacent to the fishing pond, leading to a path which is adjacent to Fields Farm Road. The surface of the path is part natural surface with grass verges and part gravelled. It appears to be well used and has been for some time. There is a gate at the Hathern Close end of the route, but no signs of a lock and there is a gap at the end where the route meets the path.

### 2.6 Summary and Conclusion

The evidence supports the existence of a route linking Hathern Close to the path adjacent to Fields Farm Road at Point B. There is substantial use of the route, on foot, for a period of more than 20 years prior to 2010, with a number of witnesses claiming use of the route since the 1960's.

The claimed route appears to have been widely used on a very frequent basis with the majority of the witnesses claiming to have used the route daily or weekly. The claimed route has been used as a short cut to access the local amenities and as a way of accessing the path and the canal tow path for recreation. Some witnesses refer to using the route to observe wildlife on the pond.

Although the path to which the claimed route connects has no Definitive legal status the usage of the path by the public shows that the area of land is a place of public amenity, and is described as such by some of the users. Acceptance of the route by the public and the existence of Public Footpath No 58 which also terminates on this path could be evidence that this path has been dedicated at common law.

Section 31 of the Highways Act 1980 requires that a route has been used by the 'public'. All of the witnesses are residents of the estate. There is no legal definition of the term public. Use wholly or largely by local people may be use by the public, depending on the circumstances of the case. In *R v Inhabitants of Southampton 1987*, Coleridge CJ said that "user by the public must not be taken in its widest sense...for it is common knowledge that in many cases only local residents ever use a particular road or bridge".

In assessing the claim under the Wildlife and Countryside Act 1981, consideration may only be given to evidence that supports or negates the claim that public rights exist. Issues of the use of the land, littering,

potential damage, antisocial behaviour etc cannot affect the determination of the claim.

On balance, the evidence suggests that a right of way is reasonably alleged to subsist over the claimed route.

A finalised copy of this report has been sent to Councillor Alan Griffiths as the elected member for the area prior to the committee meeting.

### **3. Considerations**

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

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:

(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 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)).

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.

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.

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.

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.

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'.

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.

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**

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.

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

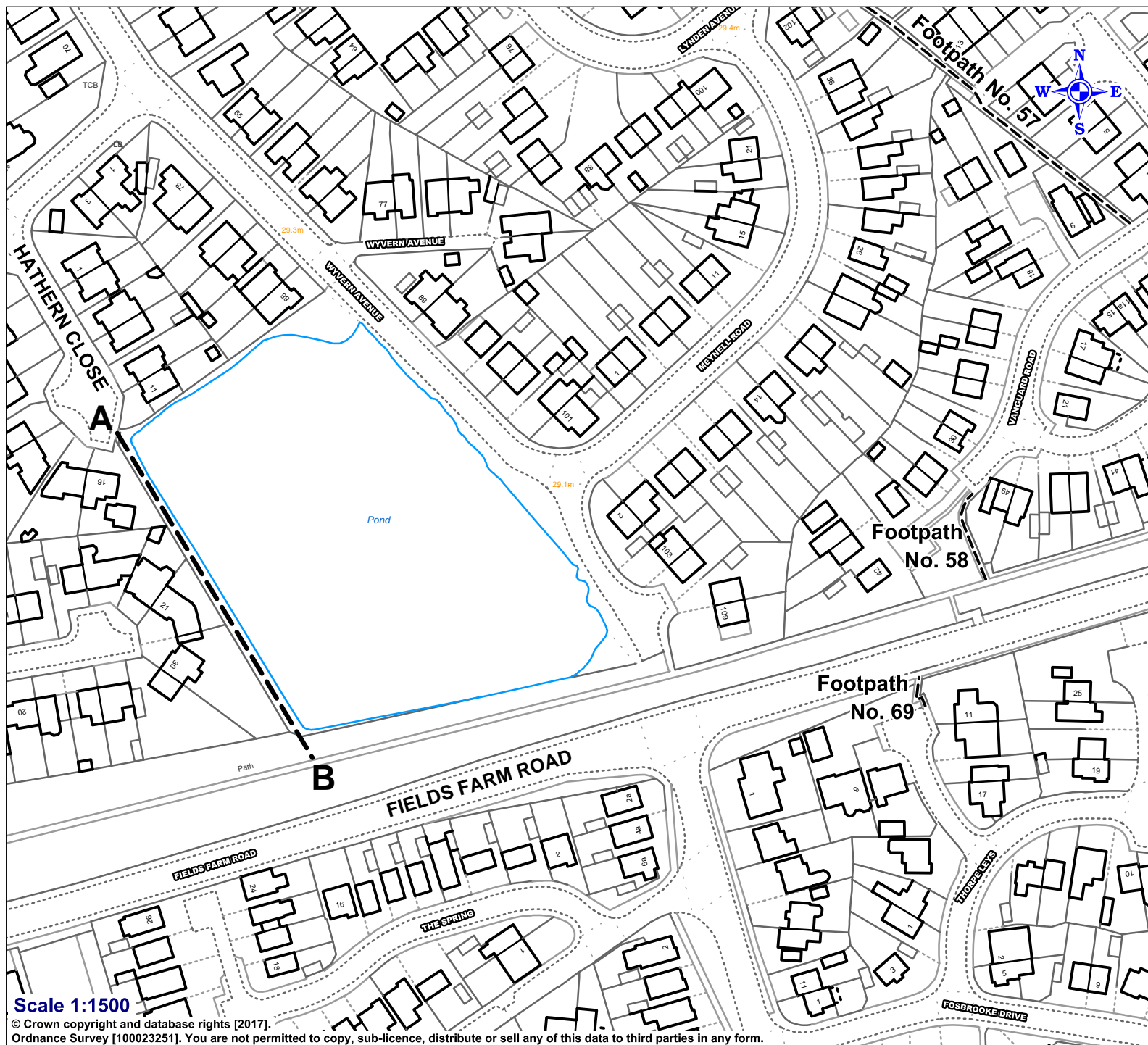
**4. Background Papers**

File held by Legal Services (ref 48878).

**5. OFFICER'S RECOMMENDATION**

That the Committee resolves to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to add a footpath from Hathern Close to the path adjacent to Fields Farm Road, in Long Eaton, as shown on the plan attached to this report to the Definitive Map and Statement.

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



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**Wildlife & Countryside Act 1981 Section 53**

**Claimed Footpath between Hathern Close and footpath adjacent to Fields Farm Road - Long Eaton**

**Key:**

Claimed Footpath      - - - - -

Existing Footpath      - - - - -

**Ref: TE/CH/X3666/Cttee/2017**

**Date: 4 October 2017**



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