

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

**30 October 2017
Report of the Director of Legal Services**

**Wildlife and Countryside Act 1981
Claim to add a Footpath from the Junction of the A623 and B6465 to
Footpath No.6 – Parish of Wardlow.**

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 (DMS) by adding to it a footpath in the Parish of Wardlow.

2. Information and Analysis

2.1 An application was received from Mr R S Proctor (the Applicant) dated 20 October 2013 to add a footpath to the Definitive Map and Statement from the junction of the A623 and B6465, through the yard of Brookside Farm (the Farmyard) to Wardlow Footpath No.6 (FP6). The application is accompanied by 20 User Evidence Forms (UEFs), copies of various correspondence relating to the claimed route dating back to 1966, an interpretation of the Finance Act 1910 and extracts from two walking guides.

2.2 A plan showing the claimed route is attached at Appendix A.

Background information

2.3 FP6 was not included in the 1950's Parish Claim and was added to the Definitive Map some time after it was suggested as a potential footpath by the Peak and Northern Footpaths Society (PNFS) and considered at a hearing in 1961.

2.4 A water course was established by 'English Nature' (now 'Natural England') who landscaped the area crossed by FP6 in the 1990's by creating an area of floodwater, which they hoped would provide a suitable habitat for water voles. A landowner has stated that until that time there was a squeezer-stile in the wall, in line with FP6, which was subsequently blocked up.

2.5 The Council's Rights of Way Department (ROW) have been involved in discussions about the claimed route for many years, and through various misinterpretations of the Definitive Map and other documentary evidence, landowners and users have been misinformed as to the correct alignment of FP6. The Rights of Way Department has, at various times in the past, suggested to both users and landowners that FP6 was aligned through the Farmyard.

The Definitive Map clearly shows this not to be the case and the Council failed to make the definitive line of FP6 useable until December 2012, when a footbridge and kissing gate were constructed to allow easy access from the A623, through the stone wall and over the watercourse.

2.6 Extracts from two walking guides submitted with the application may include the claimed route but offer no evidence of its status:

2.7 *Walks near Sheffield – 1931.* The Applicant claims this guide ‘shows that the route was in use as long ago as 1931’ where it advises walkers to ‘pass close by the cottage on the left...’ However, the guide continues, ‘...*beyond* the junction of the roads, at Wardlow Mires...’ and it also states that, ‘The most proper way of entering Cressbrook Dale is to turn left at the public-house at Wardlow Mires, and then, having passed Wardlow village, turn down a lane on the right’.

This walking guide may suggest passing close by the cottage but it does not specify going through the farmyard or between buildings. It could also be interpreted to pass by the barn on the left, which would tally more cogently with the guide’s continuation; to walk ‘*beyond* the junction of the roads’. The guide also suggests that the ‘*proper*’ way was elsewhere and so it implies that the route from the A623 was therefore not considered a public right of way at that time.

2.8 *100 Walks in Derbyshire – 1990.* The guide advises walkers to ‘Go through a gate opposite between a cottage and an outbuilding’.

This walking guide clearly advises its readers to use a route through the farmyard and doesn’t suggest any alternative.

User Evidence

2.9 The application was submitted following various challenges to users of the route and following the construction of a footbridge approximately 20 metres west of the claimed route, which made access to FP6 from the A623 available. Within the User Evidence there are several recollections of challenges to use, specifically in the years; 2013, 2012, 2011, 2010, 2009, 2003 and 2000 when there was a notice on site stating there was no right of way. It is considered that the notice in 2000, stating there was no right of way, has brought the status of the route into question for the purposes of Section 31(2) of the Highways Act 1980. The period of use under consideration is therefore 1980 to 2000.

2.10 Twenty UEFs were submitted in support of the application. The claimed route begins at Point A on the attached plan (approximately 20 metres east of a footbridge which forms the terminus of FP6) and continues southwest then west through the yard of a residential property, Brookside Farm, before passing through a field gate and joining FP6; a total length of approximately 70 metres. The route has been marked clearly on all of the plans accompanying the UEFs.

2.11 When describing the route on the UEFs, nine of the users describe the route well, six describe a more general route and do not specifically describe the claimed route, two describe the route by referring only to the attached plan and three do not offer any information. Incidentally, six of the eight users who claim to have used the route for 20 years up to 2000, describe the route well.

2.12 All of the witnesses refer to using the route on foot and have also witnessed others using the route on foot.

2.13 Twelve witnesses claim to have used the route for a period of 20 years or longer, six between 10 and 19 years and two for 5 years or less.

2.14 Of the twenty witnesses: two claim to have used the route about every six weeks; one user, every two months; two users, less than monthly; two users, once a year; three users, twice a year; four users, once or twice a year; two users, two or three times a year; one user, 'probably' between one and three times a year; one user, twelve times over 14 years; one user, 'probably' ten times over 18 years and one user, 5/6 times over 12 years (this witness originally recorded his use as from 2010 to 2013 but amended it to read, from 2003 and states that there were years he didn't use the route 'but [is] not certain' when.

2.15 Eighteen witnesses refer to gates on the route.

2.16 Five of the witnesses recall the route being obstructed: two in 2010, one in 2012, one who states there were difficulties with the gate 'on occasions' and one who states "many years ago (10?) some unofficial attempt to deter entry to Brookside Farm from the west which I ignored"

2.17 Four of the witnesses recall seeing notices on the route: one refers to a way-marker 'on narrow layby... near farm' and states that the route is unpassable in heavy rain, but gives no dates; one refers to occasional hand painted signs directing walkers along the A623 but, gives no dates; the same witness who ignored the 'unofficial attempt to deter entry' in approximately 2003 and one user refers to a notice on the gate at Point B in 2000, which stated there was no public right of way.

2.18 Five witnesses recall being stopped from using the route: two on more than one occasion and one when walking with a group – during the years 2009, 2010, 2011, 2012 and 2013.

2.19 Six witnesses recall being told the route was not a public right of way during the years 2010, 2011 and 2012 and two witnesses state they were given permission to use the route in 2010.

2.20 The user evidence confirms that there have been challenges to use of the route since the year 2000 and use of the route after 2000 cannot be considered as of right and the information detailed above should be reconsidered as a consequence.

2.21 Of the 20 users who submitted a UEF, eight claim 20 years use up to 2000.

2.22 Four of those users claiming 20 years use up to 2000 have used the route about twice a year, three as part of a Ramblers group. Two have used it less than monthly but, they do not offer any information more specific. One has used it 'probably' every other year and the most regular user claims to have used it about once every six weeks.

2.23 There is no statutory minimum user but it is considered that the more open and frequent the user the more likely an application is to succeed.

Consultation

2.24 An informal consultation exercise was carried out between 26th January 2015 and 2nd March 2015. Notices were placed on the route at the start of the consultation period and letters were sent to the statutory consultees, landowners and the local elected member, Cllr Judith Twigg.

2.25 There were eight letters and emails submitted in response to the consultation: six in support of the application, though one supporter sent two emails; one which raised 'concerns' about the application and one in objection to the application.

2.26 The landowners submitted several letters and a bundle of paperwork to support their objection.

In Support

2.27 The Applicant responded by letter dated 28 January 2015 but merely confirmed he wished the evidence already submitted to be taken into account.

2.28 An email was received on 28 January 2015 from a representative of the PNFS. The PNFS helped make the application and fully support it.

The representative sent a further email dated 01 February 2015 having looked at all the evidence within the society's files and suggests there are two crucial pieces of evidence, which are: the Council's records in relation to a Hearing at Bakewell, in 1961, to consider suggested paths to be added to the draft Definitive Map and Statement (DMS), and background documents in connection with a consultation undertaken by West Derbyshire District Council dated 27 September 1984, on a proposed diversion of the northern section of FP6 through Brookside Farm.

(Both of the above are discussed under the section 'Additional Evidence' in this report).

2.29 An email was received dated 09 February 2015 stating, 'to the best of my knowledge the path has always passed through the yard of Brookside Farm. However it has been recently rerouted in accordance with your existing footpath line to the A623.'

2.30 An email was received dated 19 February 2015 stating, 'my family and I have lived at Wardlow Mires since 1962'. She adds that the footpath has always gone through the yard and the route from the A623 is less safe.

2.31 An email was received dated 19 February 2015 from a couple who state there has always been a right of way through the farmyard and until the 'past few years there was no gate at Point A'. The author of the email has lived in Wardlow for 80 years and along with his/her family has used the path 'hundreds of times'. They add that farmers use the route to access the dale with livestock and workers used to use it to access Cressbrook Mill. The author was Chair/Clerk to Wardlow Parish Meeting from 1981-2000 and the route was discussed on several occasions following complaints by ramblers meeting difficulties in using the route, and they recall that they were informed by DCC that there was a public right of way through the farmyard. They add that the present owner knew this when he bought the farm.

Concerns about the Application

2.32 Cllr Twigg raised her concerns in an email dated 09 March 2015, that the 'additional footpath was being routed through a farm yard'.

Objections

2.33 A letter was received dated 01 March 2015 'strongly' objecting to the application, from a resident who has lived in Wardlow for 65 years. He states that it is unacceptable to move a footpath through private property, directly passing a front door and windows. He points out that considerable time and expense has recently been spent on a new footbridge and stile to improve the existing access and that the proposed change would be extremely dangerous as it would exit onto a T-junction on a blind corner.

Objections from the Landowners

2.34 The landowners stated, in a letter dated 30 January 2015, that 'we do not agree to an intrusive, unnecessary and impracticable footpath across our front yard and garden'.

2.35 In a further telephone call on 02 February 2015 the landowner, who has lived at Brookside Farm since 1985 advised that there was then a sign on the gate, although he didn't specify what the sign stated. He confirmed that he had, in the past, given permission to struggling students doing their Duke of Edinburgh awards, to pass through the farm yard. He also informed the Council officer that Chatsworth Estate used to own the land and had sold it to the previous owner; both landowners had kept a private right of access through the farmyard for livestock etc. English Nature bought the adjacent land in the 1980's and built the wall that now leads people towards the house from Cressbrook Dale. He added that local people never used to use the claimed route and that there was a stile in the wall above the farm.

2.36 A letter was received dated 19 February 2015 but adds nothing of relevance to the application.

2.37 A further letter was received dated 15 March 2015. The landowner confirmed that he had, on many occasions, challenged people using the claimed route but gave no dates or details, other than specifying challenging people allowing dogs to foul or those climbing over the gate or wall or others undertaking 'disrespectful

activities'. He also states that he has never told anyone they cannot walk across the yard but adds that he has on occasions directed people through the yard when 'selfishly' parked cars have blocked the stile on the A623 – he specifies Duke of Edinburgh students.

He recalled in 2008 asking Natural England if they intended replacing the signage that had recently disappeared although he doesn't specify any signs that relate to the claimed route, and the signs were never replaced.

He also states that there has been no-one using the claimed route in two years, since the original access has been made available again and the footbridge installed.

2.38 Copies of documents and letters from the landowners to DCC ROW, considered relevant by the landowners to the application were submitted by hand on 02 March 2015. These included;

- **Letter of 27/02/2015:** The landowner acknowledges a private right for a local farmer to access the dale with livestock. He confirms that on occasion he has 'helped people' by showing them through the yard. He expresses incredulity at the nature of the legislation where privacy and alternative routes are not considered relevant, quoting people he has spoken to: 'It is a pity the council has nothing better to do', 'ridiculous claim...' etc. He also admits his fear of challenging the public.
- **Letter of 24/02/2015:** The landowner gives various examples of anti-social behaviour exhibited on the claimed route by groups of Ramblers, explaining that he has used these examples as he believes 'it is most likely to be the ramblers who are making this petty and unnecessary claim'. He adds that prior to the installation of the footbridge he was 'involved in a long campaign with the County Council Rights of Way team... dated from the time English Nature interfered with the water course, built new walls and moved the animal water trough, amongst other things...'
- **Letter of 24/02/2015:** The landowner states that he viewed the Definitive Map in 2007~8. He enclosed copies of an undated OS plan which does not show FP6, a hand-drawn Nature Trail map produced by English Nature which shows the trail exiting onto the A623 through a stile west of Brookside Farm and a walking guide, 'Transition Chesterfield Car Free Walks' which was 'circulated up until a couple of years ago... evidence... that the stile further along the A623... was and is the original access'. The guide advises that from the 'T-junction walk west... on the A623 for about 50 metres to the combination gate/stile'.
- There are also several photographs, one of which is pertinent to the claim as it shows that the gate into the yard from the dale was 'barricaded' when they purchased the farm and that there was a sign on the gate which read, 'STRICTLY PRIVATE No Public Right of Way' (they have lived there since 1985).
- Also enclosed are two lists of 'Annoyance and Nuisance Factors', one regarding the 'Intrusive Access' the other the 'entrance' and a list of quotes from visitors.
- An extract from an 18th edition walking guide printed in 1934 which appears to be similarly worded to the extract also provided by PNFS, John Derry's "Across the Derbyshire Moors". This edition also describes 'The most proper way and also the 'much simpler and more informing way is... to the junction

of the roads at Wardlow Mires and about a hundred yards along the road, enter the dale by the stile’.

- An extract from the introduction to a book of walks by ‘John Derry JP, 18th revised edition 1934’ (it is probable that the above extract is taken from the same book) which includes the advice, “I have mentioned where the best views are to be found irrespective of the Rights of Way but the Rambler will do well to keep to the public footpaths”.
- The landowner also supplied a list of reasons why the situation has changed:
 - (1) The rebuilding, restructuring and extending of the boundary wall up to the barn have created a ‘funnel effect’.
 - (2) There was a waymarker at a gap in the wall about 150 metres down the dale which directed people to the stile onto the A623 that was removed about 12 years ago.
 - (3) When the boundary wall was rebuilt, the stone was kept on the property and the ‘waste chatter and small stones’ were left around the gateway raising the ground level which ‘allowed the farmer/tenant of the Dale to dispense with a long-time tradition of leaning corrugated iron sheets against the gate to prevent his sheep and lambs escaping onto the road’. He adds that this practice operated as long as anyone can remember but that occasionally people would climb over the gate or the wall, whilst most would use the stile.
 - (4) The previous owner would always park a heavy goods vehicle in the space between the two outbuildings, at nights and weekends, leaving only very limited space.
- **Letter of 14/10/2011:** The landowner expressed disappointment at being “no nearer to resolving this nightmare intrusion across our front yard and garden than we were 10 years ago”. Referring to a conversation with a member of the public who couldn’t understand how they put up with the use of the yard, he recalls saying, “I have been trying to have it stopped for over 20 years but it isn’t as easy as you may think’. He again refers to the squeezer-stile that was built over in the early 1990’s by English Nature. When privately owned, the gate into the dale was chained and tied at all times when livestock were grazing (11 months a year) and two sheets of corrugated iron leant against the gate to prevent lambs escaping (May and June), so it was not a useable access. The landowner states that he has in his possession an aerial photograph circa 1970’s clearly showing a squeezer-stile about 12 metres from the NW corner of the barn and adds that the construction of the wall up to the barn has channelled walkers towards the gate. The squeezer-stile was situated just below a ‘swallow-hole’ so water would have been swallowed before the path, prior to it being blocked in order to form the water vole habitat – now a messy stagnant swamp.
- **Letter of 30/11/2009:** The landowner quotes a letter dated 30/03/2009 from a DCC ROW officer in which the officer concludes the legal alignment of Wardlow FP6 is through the yard and the Definitive Map includes a drafting anomaly. The Landowner questions why the Definitive Map would still contain this ‘anomaly’ following the hearing in Bakewell in 1961, the advertisement in 1973 of the adding of the footpath and the proposed diversion order of 1984 and further questions how the ROW officer has come to the conclusion that the footpath should go through the yard. He recalls using the original access further up the A623 himself, as early as 1948.
- **Letter of 25/01/2008:** The landowner states that no official public right of way exists across the property and advantage has been taken of the permissive use that existed for Mires Farm to take livestock into the dale for grazing purposes.

- **Letter of 26/10/2007:** The landowner establishes that he began discussions with the ROW dept. in June 2004 about ending the intrusion caused by the claimed route.

Documentary Evidence

2.39 Definitive Map and Statement

The Definitive Map clearly shows FP6 joining the A623 to the west of any buildings at Brookside Farm. There is nothing on the map to suggest a route through the Farmyard to the junction of the A623 and the B6465. (**Appendix B**)

The Definitive Statement describes FP6 as a footpath from Wardlow Footpath No 4 N of Ravensdale Cottages (173748) N then NE passing N of Peter's Stone to A623 Baslow - Chapel en le Frith Road W of Three Stags Heads Inn (180755). Again there is no suggestion of a footpath through the Farmyard to the junction of the A623 and the B6465.

2.40 Wardlow Enclosure Plan and Award c1810

The Enclosure plan shows the junction of the A623 and the B6465 with the A623 road to the east. However, there is no continuation of the A623 shown to the west of the junction. There are buildings shown across where the A623 now runs to the west. The Parish boundary is shown to the west and above the boundary is 'Dale Road'. It is not clear where Dale Road leads as it is not shown on the plan; it could be along the parish boundary and therefore along the approximate line of FP6 or it could be the continuation of the A623. Whichever route it took, it would appear that it did not pass through the farmyard of Brookside Farm but, continued north of the outbuilding.

The Enclosure Award sets out Dale Road as, 'One other **Private** Carriage Road called Dale Road twenty four feet wide from Wardlow Turnpike Road in a westerly direction over the Commons and waste lands...' The Award also sets out other '**Public** Carriage Roads', which shows there is a distinction between the two and that a 'Private Carriage Road' would only carry private rights, as opposed to a 'Public Carriage Road' which would carry public rights.

2.41 Wardlow Tithe 1848 and Book of Reference

The area crossed by the claimed route is allocated to plots 152 and 149. Plot 152 includes the yard and the outbuilding and is enclosed by solid lines except where it exits onto the junction of the B6465 and A623. Both the roads are coloured pale yellow but the yard is not coloured. Plot 152 is described in the Book of Reference as 'Stables'.

Plot 149 includes Brookside Farm and a small adjacent field to the west and is enclosed by solid lines. Plot 149 is described in the Book of Reference as 'House, Outbuildings and Yard'.

The two plots are under separate ownership and neither is subject to any 'remarks' in the Book of Reference. There is no suggestion that there was a public right of

way. It would appear that the yard would have been used as a shared access and also as access to the lands, west and south.

2.42 OS First Edition 1891 sheet XVI:10

There are two versions of the 1891 edition available at the Derbyshire Records Office; one which is coloured and one in black and white.

The coloured version shows the roads coloured French yellow ochre but the farmyard is not coloured. The plan shows a wall following the line of the parish boundary which meets the A623 west of the farm buildings. There is a narrow field south of the parish boundary which narrows significantly further at the NW corner of the outbuilding, forming a slim strip of land between the outbuilding (and farmyard) and the A623, which leads to the junction of the roads and the farmyard. The farmyard is enclosed by solid lines except where it meets the junction of the A623 and B6465, where it is crossed by a dashed line.

The black and white version also shows the farmyard enclosed by solid lines and opening onto the junction of the A623 and B6465. The narrow strip of land is again shown north of the outbuilding.

Both plans show FP3 approximately 100m west off the A623 but offer no indication of any right of way through the farmyard.

2.43 OS Second Edition 1898 sheet XVI:10

The plan does not show a footpath through the farmyard or along the definitive line of FP6. The entry to the farmyard appears to be on the junction of the two roads and is crossed by a broken line. At Point B there is a solid line between the barn and the boundary wall, which may or may not represent a gate. The plan shows FP3 approximately 100m west off the A623 but offers no indication of any right of way through the farmyard.

2.44 Land Values Plan and Book of Reference 1910

The plan is based on the 1898 OS as described above. The farmyard does not form part of any hereditament and there is a solid line across the farmyard exit. The farmyard exits onto the junction of the A623 and B6465. Brookside Farm is part of hereditament 1052 and the barn is within the curtilage of hereditament 1054 which stretches out through Cressbrook Dale although the barn is a separate hereditament, numbered 1179. An adjacent field southwest of the farmyard is Hereditament 1061.

Plot 1052 is described as 'Land House & Buildings' and is subject to deductions for buildings. There are no deductions for rights of way, easements or rights of common.

Plot 1054 is described as 'Land' and is subject to deductions for buildings, timber and easements. There are no deductions for rights of way or rights of common.

Plot 1061 is described as 'Land' and is not subject to any deductions.

Plot 1179 is described as 'Bldg' (building) only and is not subject to any deductions for rights of way.

The hereditaments have different landowners and the yard appears to provide a shared access to the four separate plots. It is likely that it was excluded from any hereditament because it acted as a shared private access. The four adjoining plots are not subject to any deductions for rights of way which would suggest that the farmyard was not considered as a right of way. This is supported by the fact that other hereditaments in the Book of Reference are subject to deductions for rights of way.

2.45 OS Third Edition 1922 sheet XVI:10

The 1922 plan is similar to the 1898 plan and offers no indication of any right of way through the farmyard.

2.46 OS 1972 SK16/1775 and 18/1975

The 16/1775 Derbyshire sheet shows the land immediately to the west of the farmyard and there is no indication of any footpath other than FP3 approximately 100m west, off the A623.

The 18/1975 Derbyshire sheet shows the farmyard opening onto the junction of the A623 and the B6465 but otherwise enclosed by solid lines and there is no indication of any footpath.

Additional Evidence

Site visit

2.47 A site visit was undertaken on 19th July 2017. It was noted that there were two adjacent field-gates at approximately Point A on the attached plan separated by a wide stone-built post. The easterly gateway opened onto the B6465 side of the junction with the A623. The westerly gate, which was closed at the time of the visit, exited onto the A623 side of the junction.

The officer undertaking the site visit first walked the short distance along the A623 to the footbridge at the terminus of FP6. Following the wooden footbridge it was noted that there was a drystone wall to the right which formed the boundary of the 'water vole habitat' constructed by English Nature in the 1990's. Continuing in a westerly direction for approximately 65 metres, to the fenced boundary of the 'water vole habitat', the drystone wall appeared to be in good repair. Beyond this point the drystone wall was in poor repair, which tallies with an objector's claim that a wall was built in the 1990's which corralled walkers towards Brookside Farm. A few metres further and there is a gap in the wall, the width of a field-gate, which has been there for many years. The officer then returned to Point A via the footbridge and walked the claimed route.

The claimed route from Point A runs in a south-westerly direction over a tarmac driveway before turning west between two outbuildings and along a short length of grassed cart-track to a field gate, which was closed at the time of the visit. Beyond the gate is the dale where the claimed route joins FP6.

Evidence submitted with the application in support of the claim

2.48 27/09/1984: Letter to PNFS from West Derbyshire District Council about proposed diversion of FP6. An attached plan shows FP6 going through the farmyard and the proposed diversion behind the outbuilding, similar in position to that of the current footbridge.

2.49 11/11/1984: Letter from PNFS stating they would object to any such diversion.

2.50 12/10/1984: Letter from Derby Nomad Ramblers to PNFS confirming they too would object to any diversion.

2.51 14/06/1966: Letter from PNFS to Derbyshire County Council regarding '*the disputed footpath*'. The author writes that he inspected the whole route and passed through a gate fastened by a chain and hook into the farmyard. He states that there was no padlock but adds that there was a notice which stated, "*Private: No Thoroughfare*". He then writes that, 'We walked past the cottage where the challenge to this footpath has arisen... Just beyond the cottage... we found a second small notice similarly worded...'

2.52 20/06/1966: Letter from DCC to PNFS in which the following sentence has been highlighted, 'It would appear that there is now little effort to stop public user of this path'.

The wording of this sentence would suggest that there had been efforts previously to stop public users.

2.53 01 & 06/04/2011: Emails between DCC ROW and another DCC department discussing a long standing dispute over the route of the (claimed) footpath.

2.54 June 2013: Email from ROW stating similar to above.

2.55 Copy of image taken from the 1910 Finance Act Map with an interpretation:

The applicant submitted an interpretation of the Finance Act Map and Award as providing evidence of a right of way through the farmyard. The basis for this interpretation is, 'it is more likely than not, that use by walkers when public rights were acquired over the land, would have been along the access track into the dale i.e. along the path shown as the "existing path" on the map attached to the consultation letter of 27 September 1984 from West Derbyshire District Council'.

They add that the Domesday Book records no deduction for public rights of way for Hereditament 1179, 'which includes the land to the north of the access track. This provides evidence that the public right of way did not run across this land'.

2.56 The Council's interpretation differs:

There are no deductions for rights of way in hereditament 1054 (the dale) or 1179 and there were no rights of way shown in that area at that time. Hereditament 1179 refers only to the outbuilding and its hereditament number is written in a different plot, to the north: hereditament 80. It is recorded in the Book of Reference as being owned by T Furness, who also owned and occupied hereditaments on the other side of the A623, and is described as 'Bldg' (Building). When viewing the document as a

whole, it becomes apparent that the Wardlow Book of Reference is detailed and specific. Take for example the small hereditaments over the road from the claimed route, also owned or occupied by T Furness: 1177 is described as 'Land / Shed / Garden' and 1178 as 'Part Garden'. It is also worth noting that the Furness Family have lived and farmed from Mires Farm for many years and as mentioned elsewhere in this report had a private right of access through the farmyard to enter the dale. The land directly to the north of the 'access track' appears to be part of Hereditament 1054, which includes the dale and is discussed above. 1054 is owned by the Duke of Devonshire and is described as 'Land' only.

The above information reinforces the likelihood that the farmyard acted as private access for three hereditaments and that is why it was excluded from the Land Values.

2.57 The applicant's conclusion that hereditament 1179's lack of deduction for rights of way provides evidence that no public right of way runs across that land can also be applied to 1054 which is also crossed by the claimed route. Therefore, it can be adduced that there was no right of way at all at that time and the Finance Act information offers no support for the claimed route.

2.58 Extracts taken from two Walking Guides

- **'Walks near Sheffield' – 1931.** The Applicant claims the guide 'shows that the route was in use as long ago as 1931' where it advises to 'pass close by the cottage on the left'. However, the guide continues, 'beyond the junction of the roads, at Wardlow Mires...' and it also states that 'The most proper way of entering Cressbrook Dale is to turn left at the public-house at Wardlow Mires, and then, having passed Wardlow village, turn down a lane on the right'.

The walking guide may suggest passing by the cottage but it does not specify going through the farmyard or between buildings. It could just as easily be interpreted to pass by the barn on the left as this would tally more cogently with the guide '**beyond** the junction of the roads'. The guide also suggests that the '**proper**' way was elsewhere and that the route from the A623 was therefore not considered a public right of way.

- **'100 Walks in Derbyshire' – 1990.** The guide advises to 'Go through a gate opposite between a cottage and an outbuilding'.

This walking guide clearly advises its readers to use the claimed route through the farmyard and doesn't suggest any alternative.

2.59 One of the walking guides submitted with the application clearly includes the claimed route but offers no evidence of its status while the other is ambiguous in its direction.

Notes on Evidence held by DCC

2.60 Early correspondence files held by Legal Services were inspected but there was no information relating to the claimed route or FP6.

2.61 Files held by the Rights of Way Department were reviewed and there was a large amount of relevant correspondence which shall be considered below.

2.62 Definitive Statement. The route is described as 'Footpath from Wardlow Footpath No 4 N of Ravensdale Cottages (173748) N then NE passing N of Peter's Stone to A623 Baslow - Chapel en le Frith Road W of Three Stags Heads Inn (180755)'.

2.63 1961: Correspondence between DCC and PNFS circa September 1961 refers to a meeting on 07 October 1961 to consider representations for suggested ways to be added to the Definitive Map. Among a list of suggested paths submitted by PNFS are two that could relate to the now named FP 6.

The paths are described as:

'P.D.S./68/Bak. BW1. Wardlow. Path from Wardlow 3 and 4 to Peters Stone and Wardlow Mires. Used by Manchester and Sheffield ramblers.' This representation is marked as withdrawn and there is no current footpath from the junction of FPs 3 & 4.

'P.D.S./69/Bak. BW2. Wardlow. Connecting path with P.D.S./68 – next above – from Litton 10 going North to Wardlow Mires, and South from Litton 10 to Wardlow 3 Some usage. NOTE: -This path is in the Parishes of WARDLOW and LITTON.'

Neither representation refers to the claimed route through Brookside Farm.

Both the claimed paths would seem to cover the same area though the first one was withdrawn and the one to be included is recorded as having only '*some usage*'. It would be a fair interpretation to conclude that FP6 was not well used prior to 1962. The claim also states that the footpath is in the parishes of Litton and Wardlow, which is not how FP6 has been recorded. The section of claimed path from Litton FP10 to Wardlow FP3 is now Wardlow FP4.

2.64 May 1963: Letter from DCC to various Cllrs and Aldermen requesting attendance at a meeting on 13 May 1963 regarding objections and representations for claimed paths, including FP6 in Wardlow. There were various sheets attached to the original letter and on one sheet is reference to "*P.D.S./69/Bak*"; the same reference as above. The claimed path is described as "*FP from Wardlow FP3 N of Ravensdale Cottages (173743) NE then NW crossing Litton FP10 then N and NE to A623 road W of junction of B6465 road at Three Stags Head Inn (180755)*" The claim was made by PNFS and agreed by the Parish Council as a "*well used path*".

As in 1961 the claim does not specify the route through the farmyard and the grid reference given covers both the exit point of the current claimed route and the current definitive line. The claim does however describe the exit as onto the A623, west of the junction rather than at the junction, which would be more in line with the route as claimed through the farmyard. This information provides supporting evidence for two matters; the current definitive line is correct and the claimed route was not dedicated by the landowner in 1963. Regardless of the line of the route claimed it was subject to objections in 1963.

2.65 October 1965: Letter to PNFS from an 'inspector, Sheffield Area (South)'. The inspector writes about concerns over access to Cressbrook Dale stating that as far as he knows, ramblers have never been prevented from using the farm gate but the current tenant is preventing walkers using the farmyard to access the dale. The Bakewell Rural District Council (BRDC) has confirmed that a 'No Thoroughfare' notice is legal and regards the matter as closed.

There was clearly no intention to dedicate a right of way through the farmyard in 1965 and the BRDC confirmed there was not one.

2.66 31 January 1966: Letter from DCC to PNFS regarding PNFS claim for “P.D.S./69/Bak”, and advising that the owner of land crossed by section A-B objected to a public footpath and had erected notices stating ‘No Road’.

The section A-B appears to cross land by Brookside Farm but it is not clear whether the claimed route runs through the farmyard or adjacent. Either way, the landowner objected in 1966.

2.67 27 February 1966: Letter from PNFS in response to letter of 31 January suggesting the Council try to obtain a copy of the relevant Enclosure Award Map for Wardlow and Great Longstone and that tracing the map could ‘shed some real light on the issue’.

2.68 28 February 1966: Further letter from PNFS regarding the Enclosure Award Map, stating, ‘I am sure our society would wish to maintain the Society’s claim to the existence of a public footpath in this case’.

The above letters which refer to the Enclosure Award and Map suggest, in the absence of any other evidence to the contrary, that the PNFS claim was based on an ancient route which would follow a line as shown on the Enclosure Map, if available.

2.69 March 1966: Letter from PNFS to DCC. The author writes that ‘*the best guide book support... (is) John Derry’s “Across the Derbyshire Moors”*. He then quotes, “*The most proper way... is to turn left at the public house... and then, having passed through the village... But much the simpler...way is to pass close by the cottage on the left beyond the junction...*’ this guide indicates that neither the claimed route nor FP6 provided the ‘proper way’ of entering the dale. It is again unclear whether the suggested route would be through the farmyard or not.

2.70 June 1966: Letter to PNFS from one of its members. He writes that he has studied the Litton Inclosure Award but found no evidence to aid their claim. He adds that he ‘*yesterday walked the disputed path and saw the offending notices*’.

Notices were still in place and the route was disputed in June 1966.

2.71 July 1966: Letter to PNFS from one of its members. He describes a walk along ‘*this disputed path*’ and states, ‘*Before gaining the road, we passed through a...freely opening 5 barred gate... Near the gate is a rather insignificant notice...”Private. No Thoroughfare”... we found a second small notice similarly worded*’.

Notices were in place which clearly shows a lack of intention to dedicate a right of way in July 1966.

2.72 8th February 1973: Notice of Wardlow FP No.6 was published in the London Gazette and described as in the definitive statement: ‘Footpath (1.225 miles) from Wardlow F.P. No. 4 north of Ravensdale Cottages (173748) north then north-east passing north of Peter’s Stone to A.623 Baslow – Chapel-en-le-Frith Road west of Three Stags Heads Inn (180755)’.

2.73 Definitive Map 01/04/1974: An extract from the Definitive Map of 1974 clearly shows FP6 joining the A623 some distance to the west of the junction of the B6465 and to the west of any buildings – it does not show any route through the farmyard.

2.74 18 November 1978: Letter to DCC from The Ramblers' Association complaining of a vicious dog 'where it passes through the yard' and of previous, 'verbal abuse from the occupants of the adjoining house and now feel that they are deliberately trying to intimidate walkers'.

2.75 29 November 1978: A reply was sent stating that the district council's footpaths officer had already spoken with the occupants and arrangements had been made for the path to be signposted.

The two letters referred to above show two things: that the occupants/landowners were not intending to dedicate a right of way in 1978 and that the Council were providing incorrect information as to the Definitive alignment of FP6, and in doing so had misinformed users of the route and the owners/occupiers also.

2.76 September 1984: Letters from West Derbyshire District Council to DCC and PNFS consulting on a proposed diversion Order. Attached to the letter is an extract from the Definitive Map and a draft consultation plan. Although the Definitive Map clearly shows FP6 exiting to the west of Brookside Farm, the consultation plan depicts the '*existing path*' through the farmyard.

2.77 November 1984: Reply to the above consultation from PNFS. '*We would raise the very strongest objection*'.

2.78 08 January 1985: Highways and Transport Committee Report regarding the above consultation from DCC. DCC write incorrectly, 'The legal line shares the entrance to Brookside Farm where vehicles are often parked and also passes between farm buildings. Entrance to both the existing and proposed new path is from the very busy A623 road at Wardlow Mires, but whereas the existing entrance at Point A is at the junction with B6465 Bakewell Road, the proposed new entrance at Point B is some 50 metres to the west where there is a 2 metre wide grass verge... There is no objection from a highway point of view...'

The County Council has failed to recognise the legal line of FP6 and so added to the misinformation already passed to interested parties.

2.79 14 January 1985: A DCC reply to the WDDC consultation, stating the County Council has no objection so long as suitable access is provided etc....

This shows that the use of the route through the farmyard is still in dispute in 1985.

2.80 20 Oct 1992: Extract from Definitive Map showing FP6 meeting A623 west of Brookside Farm and outbuilding.

2.81 19 June 2004: Letter to DCC from the landowner of Brookside Farm requesting a meeting on site to discuss problems with the 'public footpath across our property'.

2.82 June 2004: Letter to Landowner from ROW in response to letter dated 19 June, asking the Landowner to call DCC to 'discuss the footpath across your property'.

2.83 26 March 2007: File Note recording a meeting on site with the Landowner, regarding the path being diverted. The note states that the matter had previously been raised with a ROW officer but not pursued – presumably in 2004 as per the correspondence referred to above.

2.84 18 March 2008: Letter from DCC ROW inspector to PNFS. The ROW inspector wrote that the claimed path had been used for many years but there had been a number of requests to divert the path away from the property by previous owners and that there is a suggestion the path was claimed to exit west of the property as it is shown on the Definitive Map.

The current owners have lived at Brookside Farm since 1985 and it is apparent that the route of the path had been questioned well before then.

2.85 February 2010: Email from a member of the public to DCC ROW. The person asks if the right of way has been changed as there was a sign directing walkers further up the A623. He claimed to have used the path for about 20 years. The ROW inspector replied stating *'there is a long standing dispute... as the Definitive Map is unclear'*. He adds, *'we would assert that there is a route through the yard by presumed dedication due to longevity of use'*.

2.86 November 2010: Letter from the Landowner to DCC. The landowner states there is *'indisputable evidence... in the form of a framed aerial photograph of Brookside Farm circa mid 1970s'* that proves *'there was a 'squeezer' type stile existing approximately 12 metres along the road to the north west corner of our barn'*.

2.87 2011: Many letters and emails to the public from DCC ROW – confirming that DCC has established the ROW (FP6) passes to the west of the property but also stating that a claim for a ROW through the property is expected and suggesting that the public *"may well be within your rights to assert what you and others believe to be a right of way"*. The officer concerned also suggests that, in 1961, PNFS appear to have claimed the route through the farm but, there is no evidence.

2.88 The landowner wrote in 2011 that, *"It is more than a year and three months (24 June 2010) since [ROW inspector] last wrote to me informing me of the intention to create a sign-posted pedestrian access and construct a timber footbridge at the site where there used to be a squeezer type stile to the north west corner of our barn, allowing access onto the A623 highway instead of across our yard. This squeezer was built over in the early 1990s by English Nature when they constructed the messy eyesore they were anticipating might, just might, evolve into a sanctuary for water vole, which, as I predicted at the time would not happen and has proved to be the situation.*

What we have been left with is a stagnant, stinking swamp in the summer months that transforms into a flood in the wetter winter period. Yet, as though to add insult to injury, 'Natural England' have recently rejected my suggestion that they, when they were 'English Nature' were responsible for blocking the squeezer. They... insist it must have been the County Council who blocked over the aforementioned squeezer."

2.89 14 October 2011: The landowner states in a letter “It should be realised that when the Dale was privately owned previously to English Nature constructing the water vole folly, the gate onto our yard from the Dale was chained and tied with baler twine at all times when livestock were grazing which was virtually 11 out of 12 months and there were two sheets of corrugated iron leaning against it in order to prevent the young lambs escaping in the months of spring, ie most of May and June so, as I have stated, no-one used this gate in those days to access our yard”.

2.90 Email chain dating from June 2010 to July 2011 between DCC ROW, the Ramblers and PNFS.

A ROW inspector responded to a report by the Ramblers of problems at Wardlow by referring to an ‘ongoing dispute’ at, ‘Brookside Farm where the landowner claims the PROW does not run through his property’. He confirmed the definitive line of FP6, and the Council’s intention to make it available. He adds that FP6 was not on the provisional DMS but, was added following a submission by PNFS and subsequent hearing at, ‘Bakewell quarter sessions and whilst the intent of the claim appears to suggest the route was through Brookside Farm, there is no surviving mapping evidence... to support this assertion’. He again states that ‘we fully expect a DMMO application’.

A Rambler then forwarded the ROW inspector’s email to PNFS stating he is sure the PNFS intended the path to pass through the farm but without any evidence it looks like ‘another claim to re-establish the “correct” route’ will have to be made’.

A PNFS representative replied, and having looked through the PNFS files separates the relevant evidence into two camps; (a) that which suggests the original claim was through the farm and (b) that which suggests it was along the definitive line. Her findings are bulleted below.

- (a)** That which suggests the original claim was through the farm;
 - The record of a walk in June 1966 which describes a route through the farm and a sign stating ‘Private: No Thoroughfare’ and a second similar sign.
 - A map accompanying a draft diversion Order proposed by the District Council in 1984 clearly showing the path through the farm and the proposed diversion route exiting to the west onto the A623. There is no record of who applied for the diversion but, the vast majority of diversion orders are requested by, and are in the interests of, the landowner.
 - A map attached to a letter from a DCC ROW inspector dated 18 March 2008 which shows the claimed route labelled as “Apparent line of Definitive Map” and another line to the west which is labelled “proposed diversion”. The PNFS representative stresses that the ROW inspector gives no indication of how or why he has interpreted the Definitive Map in this way and that his letter suggests he has no basis to do so, describing FP6 as following the parish boundary to join the highway west of the property. She adds that his 2008 map contradicts his 2010 email which confirms the definitive line exits west of the farm onto the A623.

All three of the above pieces of evidence could be used to support arguments both for the claimed route and against it.

Although the route was walked in 1966 there were signs which show the tenant/landowner at that time did not intend to dedicate a right of way through the farm. The sign is a clear challenge to public use of the claimed route.

The proposed diversion order does suggest that in 1984 the District Council mistakenly believed the definitive line of FP6 ran through the farm and the landowner was led to understand the same. Although the landowner may have accepted the District Council's interpretation (of the definitive map) that the footpath ran through the farm, the fact remains that the definitive line of FP6 did not do so. Had the landowner known there was no right of way through the property, and taken in conjunction with his/her amenability to the claimed route being diverted, it could be assumed that the landowner would not have welcomed use of the farmyard by the public. It also raises questions over the District Council's interpretation of the Definitive Map which clearly shows that FP6 does not pass through the farmyard.

Similarly to 1984, a further proposal by DCC in 2008 shows that DCC also misinterpreted the definitive map and incorrectly advised landowners and users as to the correct line of FP6.

(b) That which suggests it was along the definitive line;

- The Definitive Map clearly shows the path running west of the cottage and the map is conclusive evidence, unless it can be shown on the balance of probabilities to be wrong.
- Letter from January 1966 from DCC to PNFS stating the PNFS's description of the path as claimed, "...NE to the A623 road W of junction of B6465" implying that PNFS considered the path did not join at the junction of the A623 and B6465, but at least slightly west of this junction.
- A letter which 'refers to a guide book by John Derry, "Across the Derbyshire Moors" 7th Edition 1914... illustrated by a map which apparently very clearly indicates the route of what is now Footpath 6'.

The PNFS representative confirms that there is no map or other evidence in the PNFS files which describe the northern end of FP6 in any detail. She sought further clarification from the Rambler upon what he based his assertion that he was sure PNFS intended the path to pass through the yard.

The Rambler replied suggesting a compromise which did not pass through the yard but joined FP3.

The PNFS representative consequently stated 'it does seem that on the balance of the evidence of the correct location of this path... comes down on the side of the northern end of the path passing to the west of the cottage and joining the A623 around 25 to 30 metres west of the junction' and so making the line of FP6 available would not be a compromise but where the correct line is located'.

2.91 December 2012: Footbridge and gate constructed to make the definitive line of FP6 available for use by the public.

If the landowner's assertions are correct and there was a squeezer stile allowing access approximately in line with FP6, which was blocked up in the early 1990's then the definitive line would have become unusable at that time and users of a way have a common law right to deviate in such circumstances and so use of another route from that time until the way was made available again would not give rise to dedication of a new path.

Summary and conclusion

2.92 The test which has to be applied when considering the addition of a route to the Definitive Map and Statement under s53(3)(c)(i) is in two parts:

Test A – does a right of way subsist on a balance of probabilities? This test is satisfied by showing clear evidence in favour of the right of way and no credible evidence to the contrary.

Test B – is it reasonable to allege on a balance of probabilities that a right of way subsists? If there is a conflict of credible evidence and no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that a right of way does subsist.

2.93 There is no doubt that the claimed route has been used by the public openly and frequently. The landowner has confirmed this on various occasions in his correspondence to the Council between 2004 and 2015.

2.94 The user evidence submitted in support of the application indicates that there have been challenges to that user since the year 2000 and of those who have submitted evidence, eight claim 20 years use to 2000 but, their use is infrequent and it is questionable whether that use is sufficient to raise a presumption of dedication.

2.95 There is no historical, documentary mapping evidence that suggests a right of way through the farmyard. The Wardlow Enclosure Plan and Award show a Private Carriage road called Dale Road which may correlate with FP6 but does not correlate with the route claimed. The Land Values Map and Book of Reference suggest that the farmyard provided private access to various hereditaments and was not considered a public right of way.

2.96 Files held by both Peak and Northern Footpaths Society and Derbyshire County Council provide a wealth of information relating to both the definitive line of FP6 and the route claimed through the curtilage of Brookside Farm.

2.97 In order to satisfy the requirements of the WCA it must be shown that a route has been enjoyed by the public as of right for a full and uninterrupted period of 20 years. If a landowner has challenged that use or has shown a lack of intention to dedicate the route as a public right of way during that 20 year period then the application cannot succeed.

2.98 In this case, there has been confusion over the definitive line of FP6 for many years and both the District and County Councils have misinterpreted the DMS, subsequently misinforming landowners and users alike by asserting that FP6 ran through the farmyard. The definitive line of FP6 was not made available for use again before December 2012, forcing users to deviate from it.

2.99 When considering the available correspondence it is apparent that at no time has any landowner shown an intention to dedicate a right of way along the claimed route. To the contrary, there have been various occasions when a lack of intention to dedicate has been apparent:

- There is no record of use before the PNFS made a claim to add a footpath, now FP6, to the DMS in 1961
- There were objections to the claim in 1963
- There is a record of a 'No Thoroughfare' sign in 1965 on the farmyard gate which the District Council confirmed was legal as there was no right of way through the farmyard
- There were objections to the PNFS claim in 1966 by the landowner and there were signs stating '*Private. No Thoroughfare*' on the gate leading to the farmyard
- Letters from PNFS in 1966 suggest that the route claimed for FP6 would follow a highway as set out in the Wardlow Enclosure Award. The Award does not record a route through the farm but does suggest there was a private road roughly in line with FP6
- FP No.6 was published in the London Gazette in 1973 and the line of FP6 does not follow the claimed route. It would be unlikely that a landowner would intentionally dedicate two footpaths in such close proximity
- In 1978 The Ramblers reported verbal abuse of users of the claimed route and a vicious dog loose in the farmyard
- In 1984 there was a request to divert the claimed footpath from the farmyard onto the correct alignment of FP6. The landowners had been incorrectly advised as to the correct alignment of FP6 and their acquiescence to or request for a diversion is evidence that the landowner did not want to encourage use of the farmyard by the public
- When the current landowners bought Brookside Farm circa 1985 the gate from the farm to the dale was 'barricaded' and there was a sign on the gate which read, 'STRICTLY PRIVATE No Public Right of Way'
- The landowner claims to have been in long discussions with ROW since the early 1990's when the water vole habitat was created
- As shown in the UEFs there were challenges to use from 2000 onwards
- In 2004 the landowner made enquiries with DCC regarding problems with the route across his property and made enquiries about diverting the route

2.100 As already stated, there is no evidence of any use prior to 1961 and in order to meet the requirements of the WCA there must be evidence of use for a 20 year period after 1961. There is evidence of challenges to use in the years 1963, 1965, 1966, 1978, 1984, 2000, 2004, 2009, 2010, 2011, 2012 and 2013. The longest period of use without a recorded challenge is between 1966 and 1978; a period of just 12 years, which is not sufficient to raise a presumption of dedication by the landowner.

2.101 There were eight representations made in response to consultation. One supporter claimed to have used the route for 80 years but also stated that farmers used the route to access the dale with livestock, which suggests private rights and he also added that as chair of the parish meeting between

1981 and 2000 there were various complaints by ramblers meeting difficulties in using the route. Another local resident of 62 years objected to the route being moved to run through private property and to exit onto the junction of the A623 and B6465.

2.102 Under the Highways Act 1980, if a route is used by the public “as of right” and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway. The user evidence, representations and documentary evidence shows that there has not been uninterrupted use of the claimed route as of right over any 20 year period and therefore the available evidence does not meet the requirements of the Act.

2.103 In summary, the user evidence, representations and documentary evidence show that the route should not be recorded on the DMS as a footpath.

2.104 A finalised copy of this report has been sent to Cllr Judith Twigg as the local member for the area prior to the Committee meeting.

3. Considerations

Legal and Human Rights Considerations

- 3.1** Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified ‘events’. These events include:
- 3.2** (1) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates (section 53(3)(c)(i)); and
- 3.3** (2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance on probability that that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 3.4** Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public “as of right” and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public “as of right” means use by the public without force, without secrecy or permission.
- 3.5** Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public right to use the way is brought into question.

- 3.6** Section 31(3) provides that a notice erected on site by an owner of land over which a way passes in a manner visible to persons using the way, and maintained by him is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate the way as a highway.
- 3.7** Section 31(6) provides that an owner may provide sufficient evidence to show of his lack of intention to dedicate by depositing with the Council a map and statement showing any ways over the land he admits to having been dedicated as highways and denying the existence of other ways over it and then lodging statutory declarations to deny the addition of any ways at intervals of not less than 10 years. This will be, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any additional way as a highway.
- 3.8** A House of Lords legal judgement in 2007 (the ‘Godmanchester’ decision) has clarified what other evidence could be evidence of “no intention to dedicate” for the purpose of section 31(1). The evidence can relate to just one point in time during the period of enjoyment, ‘during’ in the context of section 31(1) need not be 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, social value, 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.

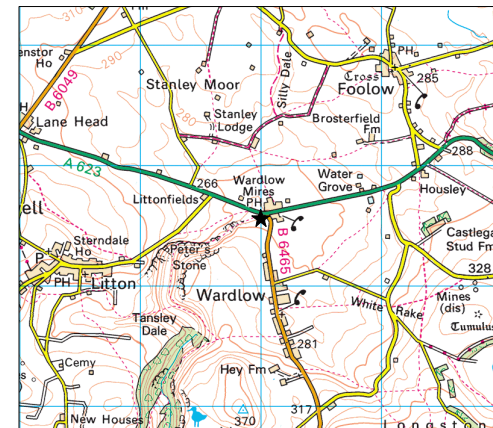
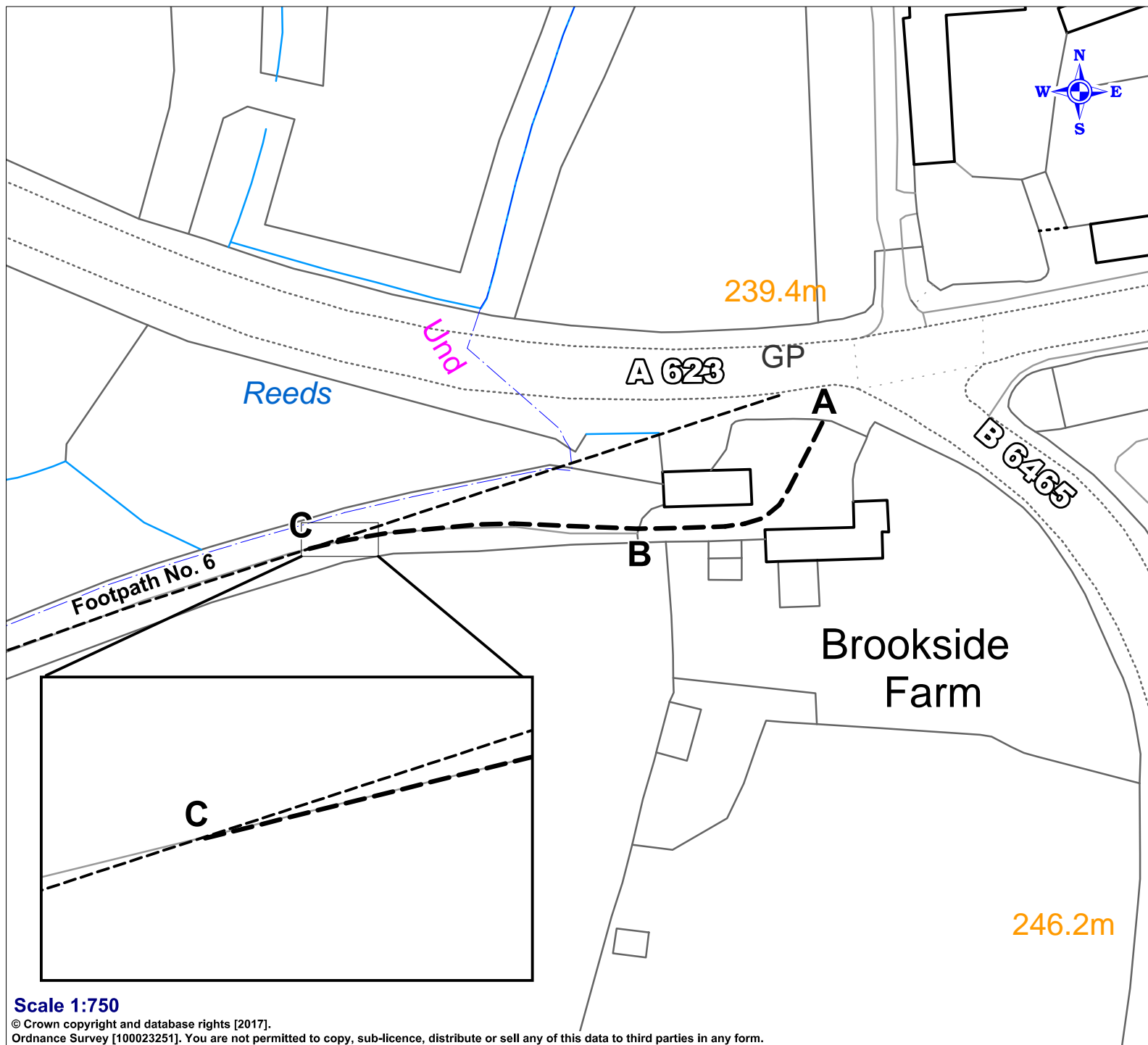
4. Background Papers

- 4.1** File held by Legal Services (ref. 62342)

5. OFFICER'S RECOMMENDATION

- 5.1** That the Committee resolves to reject the application made under Section 53 of the Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement by adding a footpath in the Parish of Wardlow, as shown between Points A and C on the plan attached to this report.

Chief Officer



Wildlife & Countryside Act 1981 Section 53

Claim to add footpath from the gate at Jnc A623 & B6465 road through yard of Brookside Farm to join Footpath No. 6 west of Brookside Farm at SK180 755 - Parish of Wardlow

Key:

Footpath to be added - - - - -
 Existing Footpath - - - - -
 Parish boundary - - - - -

Ref: TE/CH/X3939/Cttee/2017

Date: 3 October 2017



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