

DERBYSHIRE COUNTY COUNCIL

Meeting of the Regulatory, Licensing and Appeals Committee

27 February 2017

Report of the Director of Legal Services

**WILDLIFE AND COUNTRYSIDE ACT 1981 – APPLICATION TO ADD A BYWAY
OPEN TO ALL TRAFFIC ALONG THE NON-CLASSIFIED HIGHWAY PARTLY
KNOWN AS KINGSHEAD LANE – PARISH OF KNIVETON**

1. Purpose of the Report

To ask Members to consider the available evidence relating to the non-classified highway partly known as Kingshead Lane and to determine whether to authorise the making of a definitive map modification order (DMMO) to add the route to the definitive map and statement.

Please find attached to this report a plan showing the route.

2. Information and Analysis

(i) Background to the Investigation

A DMMO claim dated 12 November 2004 was received by the County Council, the effect of which, if such an Order was confirmed, would be to add the above non-classified highway (NCH) to the definitive map and statement of public rights of way as a Byway Open to All Traffic (BOAT).

In support of the claim the applicant provided copies of certain items of documentary evidence including the relevant Tithe plan, the Council's highway maintenance records and various other maps and plans showing the route.

(ii) Consultation

On 28 March 2012 the County Council consulted various groups and individuals on the claim it had received, including any relevant landowner(s), local and national rights of way user groups and the District Council and Parish Council.

The consultees were asked whether they were aware of any evidence or information which might be helpful to the Council in terms of deciding what level of public access rights existed over the claimed route.

A copy of the consultation letter and accompanying plan was also displayed on site.

The Derbyshire Wildlife Trust replied by letter dated 13 April 2012: They stated that point C on the consultation plan was at or within the Local Wildlife Site known as Foxholes Lane but that they had no information about the proposed BOAT.

On 21 April 2012 a local resident (of Kniveton) wrote to the Council objecting to any modification which might lead to the route being used as a through route for motorised vehicles. He stated that the route in question, including the historic branch through to Green Farm at Offcote (formerly the Kingshead Inn), ought to be recorded as a restricted byway.

He went on to state that he has a detailed knowledge of the route through his family having farmed in the area for at least 100 years. He stated that he and his family had regularly used these routes throughout that time and went on to suggest that the historic branch referred to above had incorrectly been recorded as a footpath and that it has been used regularly by horse riders in the past.

By way of clarification on the matter, he stated that Kingshead Lane was historically part of a longer route which proceeded not via Pethills to Foxholes Lane (where the claimed route runs) but to Green Farm along the aforementioned historic branch. He stated that the 'Pethills' branch has to his knowledge only been used by local farm traffic, walkers, horse riders and occasional cyclists and does not form part of the old route.

He went on to say that to his knowledge neither the historic alignment of Kingshead Lane nor the Pethills branch have ever been used by motorised vehicles apart from the passage of farm vehicles accessing land.

He stated that from 1980 until 2010 a section of the historic route to Green Farm was virtually impassable but that recently the landowner has cleared it. He added that whilst the north western end of the route (near the B5035) is tarmac, the remainder of the routes he refers to are predominately roughly metalled with stone and in certain parts unsurfaced. He concluded by stating that the routes were never intended for anything other than light horse drawn traffic and repeated his contention that they should be added to the definitive map as restricted byways.

He also provided a completed user evidence form detailing his regular use of the routes on foot and occasionally by pushbike over a 50 year period.

On 25 April 2012 another resident of Kniveton wrote to the County Council objecting to any proposal to add the route to the definitive map as a BOAT.

He stated that his family had lived in the area for at least 130 years and said that the route had never been more than a public footpath and track used by farmers to access land. He added that the route was unsuitable for public motorised traffic.

On 29 April 2012 Kniveton Parish Council wrote to the County Council objecting to any proposed modification of the route to BOAT status, principally on the grounds of unsuitability and adverse environmental impact.

On 2 May 2012 the local man who had written to the Council on 21 May 2012 wrote again to the Council following a request by the Council for further information about the history of the route alluded to in his first letter:

He stated that his family had lived on the historic line of Kingshead Lane (from the B5035 to Green Farm) since the 1850s and that it was common local knowledge that the route was an old coaching route. He suggested that it was only after part of the route was incorrectly put on the definitive map and statement as a public footpath in the 1950s that other local landowners took it upon themselves to limit the historic rights that had existed previously.

He stated that he had been told that Green Farm was once a coaching inn called 'The Kingshead' and said he understood that it was referred to as such in an old Derbyshire Directory of about 1892. He added that his great grandfather was at one time the landlord of 'The Ketch' at the other end of Kingshead Lane on the B5035.

He also recalled discussing the history of the route with his local Grammar School history teacher in the 1970s. The teacher had conducted research on the route with a colleague at Manchester University and had also concluded that the route was an old coaching road. The local man also made reference to the Toll bar opposite The Ketch, suggesting that this added further weight to the route being an important route.

He also made reference to the fact that the central section of the route was sunken, which was an indication that it had been used intensively over a period of many years. He referred to a large scale Ordnance Survey (OS) map which he said shows the old route as an obvious track named Kingshead Lane whilst, in contrast, the Pethills branch looks much like other footpaths in the area and is un-named.

He went on to discuss a much older map dated 1547, a copy of which was in his possession, and which clearly showed the Green Farm end of this old route named 'Kingis Wood Lane'.

He stated that members of the public had used the old alignment of Kingshead Lane as a public road for light horse drawn traffic but that he had no knowledge of the public using the Pethills branch and finished by stating that his father had tried to get the Council to correctly record the old route in the late 1970s and had even collected a number of written statements from people who had used it.

On 7 May 2012 a person with an interest in the history of highways and the landscape wrote to the County Council offering her views on the likely status of the claimed BOAT.

She stated that the Ashbourne Rural District Council (RDC) Journal of the Surveyor of Highways made reference to at least part of the claimed route, as Ketchems Inn Road. The route was described in an entry dated 1923 as an "old lane of no use to the general public", that it was used by a few farmers as an alternative to the steep hill of Offcote Grange, and that it had been repaired by the highway authority but was not a metalled road.

She surmised that Ketchams Inn Road is probably the first section of the claimed route at the NW end and that historically it would have continued via Kniveton Fp 17 and Offcote and Underwood Fp 9 to the vicinity of Offcote Grange. Such a route would plainly have avoided the steep hills between Offcote Grange and what is now the B5035.

She went on to say that if her interpretation of the old route's alignment is correct, the Pethills branch was probably included in the highway maintenance records in error. She stated that there is no evidence that this branch was maintained by the RDC but that it must have at least footpath rights because Kniveton Fp 19 terminates on it.

She concluded by saying that in her view the BOAT application is not capable of bringing rights into question as per s31(7A) and 31(7B) Highways Act 1980 because it does not meet the legal requirements: the plan accompanying it is drawn to too small a scale.

(iii) User Evidence

A total of thirteen completed user evidence forms were received from motorists who said they had driven along the route for various periods and frequencies.

Three users said they had driven along the route for periods of twenty or more years whilst the other ten users said they had used the route for considerably less periods of time - only three of the remaining ten users had used the route at all prior to the date of the BOAT application (2004) which is thought to have marked a calling into question of public rights along the route.

All three of the motorists who said they had driven the route for twenty or more years stated that their frequency of use was less than monthly – one of those said that he used the route once or twice a year whilst one of the remaining long standing users said that he couldn't remember much about the route and that he only used it a few times during the 25 year period he had referred to.

(iv) Site Visit

The claimed BOAT is located about a mile SSW of Kniveton village and runs from the B5035 generally eastwards to a minor road named Foxholes Lane which runs southwards from Kniveton village along the Kniveton Brook.

The reputed historic alignment of Kingswood Lane branches south eastwards off the claimed BOAT at a point to the east of Withers Field Farm and proceeds in this direction to Green Farm situated on the minor road north east of Offcote Grange.

Proceeding from the B5035; the claimed BOAT starts off as a tarmac road running between fences. Beyond a group of houses at Kings Hollow Mews and Holly Fields the tarmac route becomes defined by hedges before dwindling into a roughly surfaced track which opens out into a field just to the east of Withers Field Farm. The track then veers eastwards towards Pethills along field edges before eventually taking on the appearance of a rough farm track between fences and buildings and joining Foxholes Lane.

Along much of the field edge section of the claimed route between Withers Field Farm and Pethills there is no visible sign of any metalling along the track.

The reputed historic alignment of Kingshead Lane branches off the claimed BOAT across a field before running briefly along a hollowed section of way which is hedged

on both sides. The route then runs along a field edge before following a long wide field to the minor road at Green Farm.

There is little evidence of any metalling along the reputed historic alignment except for some areas where stone may have been used to fill ruts.

(v) Documentary Evidence

Circa 1547 Map of Land North East of Ashbourne

This large scale plan was produced in order to resolve a dispute regarding certain common land lying along the highway which extends from Ashbourne north eastwards towards the Kniveton Brook via Offcote Grange.

As well as showing the highway and common land subject to the dispute it clearly shows certain roads which branch off that highway: The minor road leading generally south eastwards towards Corley Farm and the Henmore Brook is shown and labelled 'thys lane goeth to Attelowe': The minor road turning northwards to Kniveton is shown and labelled 'Knyton Lane alias Knyston Lane'; and the current footpath (Kniveton Fp 17 and Offcote and Underwood Fp 9) which is referred to above by some consultees as being the historic continuation of Kingshead Lane is shown and is labelled 'Kyngis Woode Lane'.

Enclosure Award Evidence

The specific area within which the route lies is not covered by any enclosure award or plan.

Early Published Maps

The claimed route is not shown on Burdett's c1760s map of Derbyshire. Neither is the reputed historic alignment recorded these days as Kniveton Fp 17 and Offcote and Underwood Fp 9. However the road that was the subject of the dispute regarding common land in 1547 is shown, as a 'cross road' linking Ashbourne with the area of Offcote Grange and (via Foxholes Lane) the village of Kniveton.

It should be noted that Burdett's map is not produced at a particularly large scale (about 1 inch to a mile) and it can be shown to have missed off certain minor roads that probably existed at the time of the survey.

Greenwood's 1824/5 map of Derbyshire shows neither the claimed BOAT nor the reputed historic alignment, however like Burdett's Map this map is drawn at a small scale and the point made above with regard to the earlier map missing off certain minor routes also applies to the map by Greenwood.

Sanderson's 1836 of Derbyshire shows part of the Pethill Farm branch of the claimed BOAT but not the western end of the road linking it with the B5035. The route shown appears to form a cul de sac farm access road running from Foxholes Lane at a location named 'Pet Hall' to a property named 'Breck' (named on modern maps Breck Farm). These days the access to Breck Farm runs off the B5035.

As well as the above route, Sanderson's map shows the reputed historic alignment of Kingshead Lane in the parish of Offcote and Underwood. The route is shown to terminate at the Kniveton parish boundary, i.e. it is not shown linking with any other routes.

Tithe Map and Apportionment

Only a short section of the claimed route at its western end, and a shorter section at the eastern end, fall within the geographical scope of the 1850 Kniveton Tithe Plan; the bulk of the land over which the route crosses appears not to have been subject to the tithe apportionment process.

Whilst some roads shown on this particular plan are numbered and identified in the accompanying 1847 schedule as either 'public roads' or simply as 'roads', neither of the two ends shown on the plan are numbered.

Both of the sections that are shown are depicted by means of a pair of dashed lines and coloured brown in the same way as other 'roads', including private carriage roads.

The western section is shown braced to the adjoining titheable plot of land numbered 130. This land is described in the schedule as pasture named 'Pasture Piece' which was owned by Humphrey Hollis and occupied by William Heywood. Solid lines drawn across each end of this section denote the presence of gates.

The eastern section is also shown braced to the adjoining titheable plot of land, which in this case is numbered 146. This land is described as 'meadow' owned by William Hunter Baillie Esquire and occupied by John Smith.

Whilst the land over which the historic alignment of Kingshead Lane is reputed to run is shown on the Offcote and Underwood Tithe Map of 1847, there is no clear indication of any used track with which it might correspond. However the linear field pattern is suggestive of a feature in the landscape which may have facilitated the movement of people or animals.

The accompanying 1837 tithe apportionment schedule identifies the two plots of land concerned as being 'pasture'.

Early Ordnance Survey (OS) Maps and Plans

The c1840 1st ed. 1" OS map shows the western half of the claimed BOAT from the junction with the B5035 to a point just to the east of Withers Fields Farm but instead of then proceeding eastwards to Pethills Farm the route is shown continuing along the route recorded nowadays as Kniveton public footpath 17 and Offcote and Underwood public footpath 9.

The route is depicted predominately by means of a pair of solid lines with, in places, inner dashed lines; notably on the part of the route these days recorded as Offcote and Underwood Fp 9.

There is no indication of any branch off this route to Pethills Farms existing at this time. The manner of the route's depiction matches the description of route 9c in the Ashbourne RDC handing over schedule (see below).

The 1898 2nd ed. 1:2500 OS plan shows the first short section of Kingshead Lane at its western end predominately by means of a pair of dashed lines across a field. The section beyond the first bend is labelled 'Kingshead Lane' and is depicted by means of solid lines up to the point, just to the east of Withers Field Farm, where the route enters a large field.

The named section of the route has a footpath (labelled 'F.P.') partly running immediately adjacent: This could be an indication that historically this part of the route was not suitable for both pedestrians and vehicles or horse riders to use at the same time.

From a point just east of Withers Field Farm eastwards to its termination on Foxholes Lane the route is depicted by means of a pair of dashed lines running either across, or along the edge of, fields. At most of the field boundaries crossed by the route a solid line denotes the presence of a gate or similar structure.

The reputed historic alignment of Kingshead Lane from Withers Field Farm to Green Farm in the parish of Offcote and Underwood is also depicted by means of a pair of dashed lines. For much of its length the route is shown running along a linear field, the boundary of which also marks the parish boundary. This feature could be an historic droving route or it could be an indication of the alignment of an ancient highway: Either way, it appears to represent a feature in the landscape used to facilitate the movement of people and/or animals.

A guidepost (labelled 'G.P.') near the reputed historic alignment's south eastern extremity indicates that the nearby junction of the roads from Offcote Grange, Kniveton and Bradley may have been viewed as a relatively important one, but this does not necessarily mean that the route in question was of any importance.

Ordnance Survey 'Names Books' were produced to accompany the 2nd ed 1:2500 OS plans. They provide details of the authorities for named features such as roads.

The relevant names book covering the OS sheet which shows the named feature 'Kingshead Lane' refers to it as follows: "Applies to a part of public road extending from road about 7 chains south of Greyhound PH eastward to about 5 chains east of Withers Field"

This evidence shows that the name Kingshead Lane used on the 1898 OS plan applied to the western end of the claimed route. However it should be noted that this does not mean that other parts of the route, i.e. including the reputed historic south eastwards continuation into the neighbouring parish of Offcote and Underwood, were not also known locally by the same name.

Finance Act 1910

According to the working plans produced by the Inland Revenue to ascertain what tax landowners were liable to pay, the short initial part of the claimed BOAT from the

main B5035 road eastwards to the first bend is included in a taxable land holding (hereditament) plot numbered 1467.

According to the Finance Act field books held at the Public Record Office in Kew, this particular plot was associated with the public house which is now called The Ketch but which was then known as The Greyhound. The land was owned by George Spencer and occupied by Eliza Bower: There was a £20 deduction for the presence of 'rights of way or user' which, in the field book, is described as being in respect of 'paths & c'.

This relatively small plot of land appears to have been crossed by two other rights of way but it is not entirely clear which particular rights of way were being claimed for (the claim may have been for all of three of them).

Proceeding south eastwards, the next 'lane' section of the claimed route, from the first bend to a point just to the east of Withers Fields Farm (where the route enters fields) is shown on the Finance Act working plan as being excluded from hereditaments.

From that point eastwards to its termination on Foxholes Lane the claimed route either crosses or runs alongside fields and this part of the route is included in a large hereditament plot numbered 1507.

According to the valuation book plot 1507 was owned by Miss Helen Mary Henrietta Hunter Baillie of Hanover Terrace, Regents Park, London and occupied by John C. Adams. The location of the plot was described as 'Pethills Farm' and there was an £80 deduction for the presence of public rights of way or user which, in the relevant Finance Act field book, appears to have been described as 'Footpaths & Right of Way'.

Regarding the reputed historical alignment of Kingshead Lane along Kniveton public footpath 17 and Offcote and Underwood public footpath 9, the whole of footpath 9 falls within the hereditament (taxable land holding) plot numbered 1702 on the Finance Act working plan. According to the accompanying valuation book the land is located at Park House Farm, Agnes Meadow and was owned by Rev. C. Lewis. It was occupied by Isaac Rowbotham and there was a £35 deduction claimed for the presence of 'public right of way or user'.

Kniveton public footpath 17 (along with the eastern part of the claimed BOAT) was identified as being in plot number 1507 (see above for details on ownership etc).

Later OS Map evidence

The 1952 Bartholomew's half inch to 1 mile map 'Vale of Trent' shows neither the claimed route nor the reputed historic alignment of Kingshead Lane.

The 1962 1" to 1 mile OS map 'Buxton & Matlock' shows the claimed route as an uncoloured route falling into the 'minor roads in towns, drives and unmetalled roads' category. The section of the route named 'Kingshead Lane' on the large scale OS plan (see above) is depicted by means of a pair of solid lines whilst the remainder of the route is shown as an unfenced route depicted by a pair of dashed lines.

This OS map shows some definitive public rights of way and includes the familiar disclaimer; “the representation of any other roads, tracks or paths is no evidence of the existence of a right of way”

The reputed historic alignment of Kingshead Lane is not shown on this map.

Highway Maintenance Records

The Ashbourne Rural District Council’s ‘Journal of Surveyor and Inspector of Nuisances’ contains an entry dated 30th June 1923 which probably refers to the western half of the claimed route and its reputed historic continuation along Kniveton Fp 17 and Offcote and Underwood Fp 9 to the vicinity of Offcote Grange.

This entry is mentioned by one of the consultees referred to above but the full quote from the document runs as follows;

“Complaint from ratepayers of Offcote and Kniveton about Offcote Grange Hill and Ketchams Inn Road. Latter is old lane of no use to general public, used by few farmers as alternative route to avoid steep hill of Offcote Grange. It has been repaired time and again for their personal convenience and should have satisfied them as they must know that it would cost many hundreds of pounds to turn it into a sound metalled road.”

The “steep hill of Offcote Grange” is probably a reference to the valley on the minor road immediately west of Offcote Grange. Use of the route referred to above would enable certain users to avoid having to dip down and climb back out of the valley but by keeping to the watershed between Kniveton Brook and Henmore Brook some users could also avoid having to drop down to Kniveton Brook.

So-called ‘handing-over’ documents were produced by the old rural district councils (RDCs) in about 1929, when legislation provided for the transfer of maintenance liability of roads from the RDCs to the County Council. These documents comprise a plan showing the location of the roads and a schedule providing a brief description.

Looking at the handing-over plan, it is evident that there was some confusion on the part of the RDC about exactly where the line of the RDC maintainable highway ran:

A route appears to have been initially marked, and then crossed off, which runs from the minor road near Offcote Grange north westwards along the reputed historic alignment of Kingshead Lane and then turns westwards to join the B5035 near the access track to Herdmans Close Farm.

The RDC appear to have settled instead on an alignment which runs westwards from Foxholes Lane at Pethills Farm and then veers north westwards along the metalled route known these days as Kingshead Lane to the B5035 near The Ketch Inn.

However, this alignment does not fit the description of the route in the handing-over schedule (the route is numbered 9c in the schedule), which reads; “off No. 9 near Offcote Grange over B5035 at Ketchams Inn to near Ravenscliffe”

Whilst Pethills Farm is situated on route No. 9 (as listed in the schedule), it cannot realistically be described as being near Offcote Grange.

The metalled road section of the claimed BOAT, running from the Pethills branch north westwards to the B5035 near The Ketch, is probably on the correct alignment because that part fits with the schedule description, but it is the view of your reporting officer that the Pethills branch was shown on the handing over plan in error, and that it is the reputed historic branch of Kingshead Lane that should have been identified as the continuation. Such a route would have tied in with the description in the handing over schedule because it joins route No. 9 near Offcote Grange.

Therefore, it seems likely that the schedule description of the maintainable highway is correct but has been incorrectly transcribed onto the accompanying plan.

It should be noted that the handing over description given above also includes a cul de sac highway on the other side of the B5035 called Rowfields Lane: This route has recently been confirmed as having public footpath status but that has no bearing on the status of the particular way subject to this investigation: Different highways were frequently lumped together in a single description, probably in the interests of keeping the recording process as straightforward as possible.

Definitive Map Evidence

Following the National Parks and Access to the Countryside Act 1949 which introduced the formal recording of public rights of way on definitive maps and statements, surveys were carried out throughout England and Wales in order to ascertain the rights of way network.

The survey for the parish of Kniveton took place in 1950. The local rights of way surveyors for Kniveton considered that the claimed BOAT ought to be included on the definitive map as a public bridleway except for a short length of 122 metres or so at the western extremity of the route which was probably considered to be a public vehicular highway which did not qualify for inclusion as a right of way on the definitive map and statement.

The western leg of the right of way claimed in 1950 was described as Kings Head Lane in the survey schedule: It was claimed as a bridleway on the basis of many years uninterrupted public user and the claimed route extended from the vicinity of the building known these days as 'Holly Fields' and 'Kings Hollow Mews' south eastwards to the Offcote and Underwood parish boundary, i.e. the parish considered that the route they described as Kings Head Lane continued along the historic alignment suggested by some of the consultees rather than along the branch to Foxholes Lane at Pethills (see above).

The Pethills branch to Foxholes Lane was also claimed by the same local surveyors as a public bridleway, again on the basis of many years uninterrupted public user, from the junction with Kings Head Lane eastwards to Foxholes Lane.

In the event, the claims for those rights of way that were, according to the Council's then current highway maintenance records, already recorded as being publicly maintainable highways, were not continued with. This is probably because of the view taken by the County Council at the time that it was unnecessary for a route that was already recorded as being publicly maintainable to also be recorded on the

definitive map and statement. (It should be noted that the survey plans provided by the County Council were already marked up (by the Council) with the alignments of the publicly maintainable highways.)¹

Consequently, the only part of the route referred to in 1950 as Kings Head Lane that eventually made it on to the draft definitive map and statement was the short section leading south eastwards from the westerly end of the Pethills branch to the Offcote and Underwood parish boundary (along the reputed historic alignment of Kingshead Lane).

The remaining length of this route, across the boundary in the parish of Offcote and Underwood, was claimed by that parish in 1953 as a Carriage Road used mainly as a Footpath (CRF). On the claim schedule the surveyor, under the heading "grounds for specifying status of path...", has written "Width".

This category of claimed right of way applied to ways that were used by vehicles but which were used mainly by the public on foot. (The category Carriage Road used mainly as a Bridleway or CRB applied to those ways that were used mainly by the public on horseback.)

It would seem therefore that the appearance of the route as a track that had the potential to be used by vehicles was what prompted the surveyor to claim it as a CRF.

Ultimately, whilst those sections of linking rights of way described above did make it on to the draft definitive map and statement, they were recorded only to footpath status and are these days identifiable as Kniveton public footpath No. 17 and Offcote and Underwood public footpath No. 9.

A letter dated 16 September 1964 from the County Council's District Surveyor to Ashbourne RDC refers to a complaint that the RDC had clearly received in respect of an alleged obstruction on a route apparently identified by the complainant as 'Kingshead Lane'.

The District Surveyor states in that letter that the location of the alleged obstruction is in fact located on the route which then was recorded as Kniveton public footpath No. 17 and Offcote and Underwood public footpath No. 9 (the reputed historic alignment of Kingshead Lane). The District Surveyor states that, because the route is a public footpath, the provision of a stile at the site of the alleged obstruction must be recognised as a reasonable means of facilitating the passage of pedestrians. Consequently no action appears to have been taken.

This letter suggests that the complainant, a Mr John Wetherall, considered a) that the route in question was part of Kingshead Lane and b) that the route had a higher status than that of public footpath.

¹ In more recent years some of those NCH routes that were similarly omitted have been found to carry either Byway Open to All Traffic, Bridleway or Footpath rights and have been added to the definitive map and statement accordingly.

The letter also shows that the routes we know today as Kniveton public footpath No. 17 and Offcote and Underwood public footpath No. 9 were recorded that way on the draft definitive map as of 16 September 1964.

Changes to the draft definitive map and statement were not advertised until January 1970 and there were no changes of status advertised for rights of way in the Ashbourne RDC area: This means that despite being originally claimed as having public bridleway and CRB status Kniveton public footpath No. 17 and Offcote and Underwood public footpath No. 9 went straight onto the draft definitive map as footpaths with seemingly no consultative process involved in the change.

3. Analysis and Conclusion

One of the consultees has asserted that in years gone by it was common knowledge amongst local people that the reputed historic alignment of Kingshead Lane was an old coaching route.

Looking at maps of the area it is easy to see why people might form such a view; the route aligns with other connecting routes in a south east to north west direction which might feasibly provide part of a longer route, e.g. between Derby and Buxton.

However, there is scant evidence of public cart or carriage road rights subsisting over this reputed highway let alone evidence that it formed part of a major coaching route:

The 16th Century plan produced to settle an argument regarding a local area of common shows the south eastern end of the reputed historic alignment of Kingshead Lane labelled 'Kingis Woode Lane', however it does not reveal whether the route was at that time a highway and, assuming it was, of what particular highway status.

Other old maps and plans that have been examined, including the Finance Act documentation, are similarly inconclusive with regard to the question of what, if any, highway rights have historically subsisted over the route.

The 1923 reference in an Ashbourne RDC document to the reputed historic route as one which was deemed to be an "old lane of no use to general public, used by few farmers as alternative route to avoid steep hill of Offcote Grange", suggests that it may have been used by some farmers with carts or other vehicles however it is not clear whether that use was 'by right' or 'as of right', i.e. whether the farmers had a private right to drive vehicles on the route or whether they had a right by virtue of it being an old public carriage road².

For the reasons given in this report, it seems reasonably clear that a mistake was made when the information contained in the c1929 handing over schedule for this particular route was transcribed onto the handing over map, i.e. the line of the reputed historic alignment along footpath Nos. 9 and 17 ought to have been shown on the handing over map rather than the branch to Pethills Farm.

² The fact that nearby Rowfields Lane, which has recently been confirmed as a public footpath, has historically been maintained to a standard commensurate with use by vehicles demonstrates that successive highway authorities have facilitated 'private' vehicular access along highways that do not carry public vehicular rights.

In the 1950s the local rights of way surveyors working on behalf of Kniveton Parish Council claimed both Kingshead Lane, continuing along its reputed historic continuation south eastwards to the parish boundary and, separately, the branch off this route to Pethills Farm, as public bridleways on the basis of many years use.

This is the firmest available indication of highway rights of a particular status subsisting over the two routes and suggests that they have a minimum status of public bridleway.

The fact that Offcote and Underwood parish claimed the reputed historic continuation of Kingshead Lane as a CRF might in certain circumstances be consistent with the existence of public carriage road rights, however it seems that the deciding factor for the parish surveyor was the width of the route, i.e. he appears to have considered that because the route was wide enough for vehicles it satisfied the criteria. However, use of the route as a private vehicular access route and public bridleway seems a more likely explanation given the lack of available evidence pointing to public carriage road status.

One of the consultees whose family had lived in the immediate area for over 100 years stated that to his knowledge both the reputed historic alignment of Kingshead Lane and the Pethills Farm branch had been used by horse riders in the past and some of the vehicle users in their user evidence forms also said that they had seen horse riders using the claimed route, i.e. the north western end of Kingshead Lane continuing along the Pethills branch.

The user evidence submitted by people who said they had driven along the claimed BOAT does not amount to evidence sufficient to presume dedication of the route as a public carriage road, however the fact that both the claimed route and the reputed historic continuation of Kingshead Lane along what is now known as Kniveton public footpath No. 17 and Offcote and Underwood public footpath No. 9, have been used for many years by horse riders shows that on the balance of probabilities public bridleway rights exist; either by virtue of pre-existing historic rights or more recent dedication.

However, the first section of the claimed BOAT at its western end (up to the first bend) is probably used these days as much if not more by people accessing their properties with vehicles than by walkers or horse riders. In the 1950s the parish surveyor for Kniveton omitted this first section from the bridleway claim, probably because he thought that it was a vehicular highway used to access a number of properties.

Given this evidence, it is proposed that this first section of the claimed BOAT ought to be omitted from the definitive map and statement on the grounds that it is probably a highway of a type that does not qualify for inclusion (this part of the route will still be recorded as a non-classified highway on the Council's list of streets) and the public bridleway should commence at the first bend described above (and as marked by point X on the attached plan).

4. Legal and Human Rights Considerations

Under Section 53 of the Wildlife and Countryside Act 1981 the Council is under a duty to make an order to modify the definitive map and statement ('a DMMO') as

soon as reasonably practicable on the occurrence of certain specified events which include 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)) or that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description (Section 53(3)(c)(ii)). Relevant evidence can take the form of historical documentary evidence and/or evidence of use.

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 deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

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 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.”

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.

Subsections 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).”

5. Other Considerations

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

6. Background Papers

The items of evidence referred to in this report (copies with Director of Legal Services’ file 24959 or in Derbyshire Record Office).

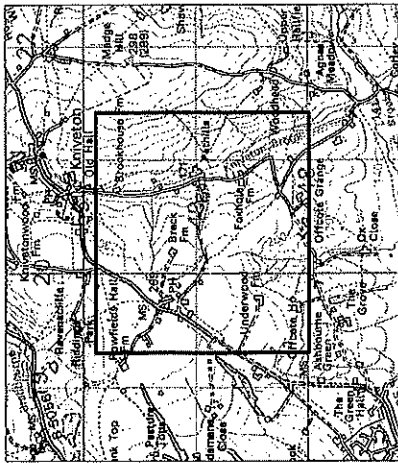
7. Officer Recommendation

That the Committee resolves to reject the claim to modify the definitive map and statement as it relates to Kingshead Lane between points A and X on the attached plan but authorises the making of an Order under section 53 of the Wildlife and Countryside Act 1981 to:

(1) add the route known as Kingshead Lane between points X and B on the attached plan, and the branch to Pethills Lodge Farm shown between points B and C, to the definitive map and statement for the area as a public bridleway, and;

(2) upgrade the existing public footpath shown between points B and Y on the attached plan to a public bridleway.

**JOHN McELVANEY
DIRECTOR OF LEGAL SERVICES**



Wildlife and Countryside Act 1981 S.53

Claimed Byway Open to All
Traffic (BOAT) along Kingshead
Lane - Parish of Kniveton

KEY

Claimed BOAT

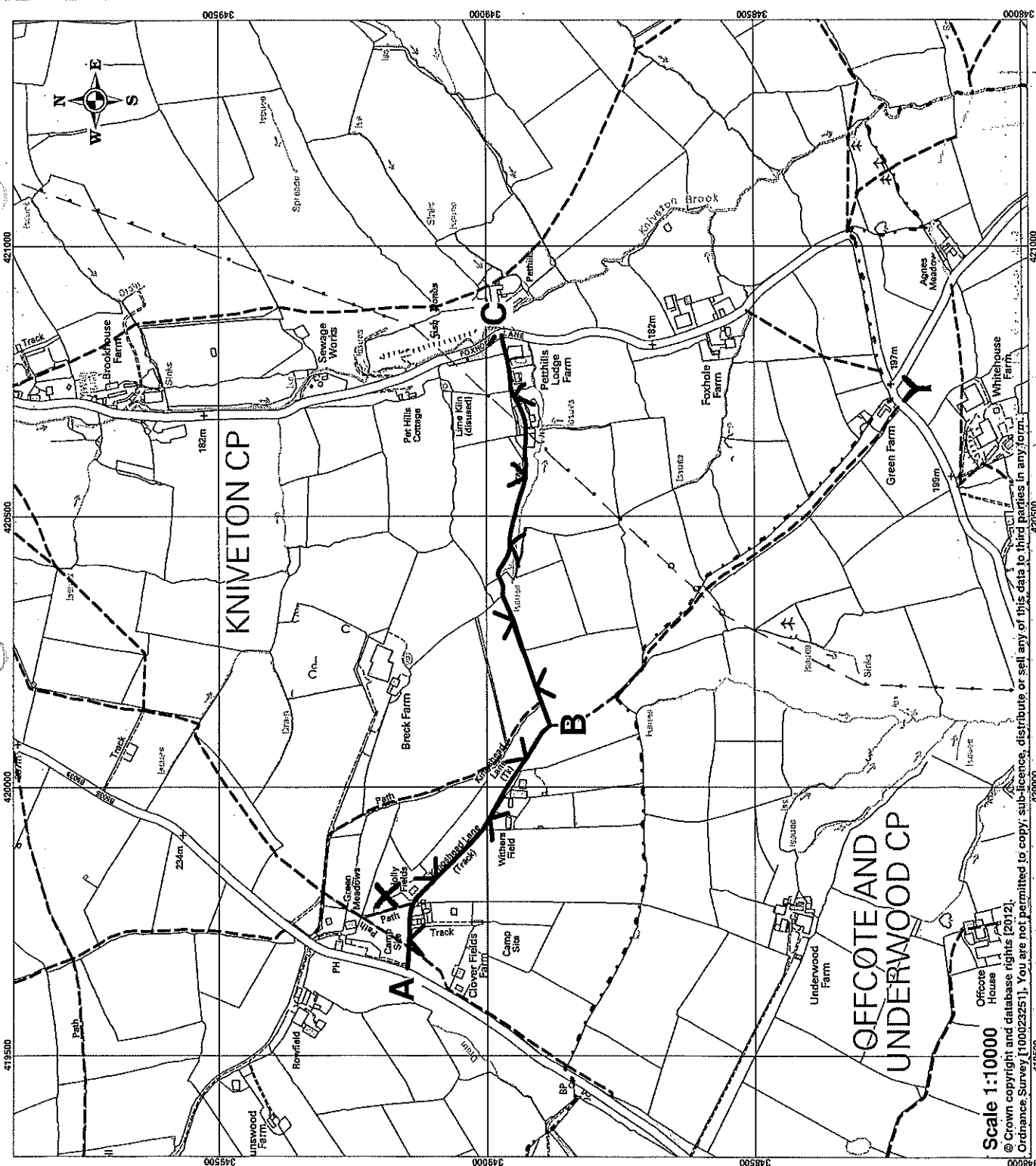
Existing footpaths



DERBYSHIRE
County Council
Improving life for local people

Shand House
Dale Road South
Matlock
Derbyshire
DE4 3RY

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