

DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE

27 February 2017

Report of the Director of Legal Services

Wildlife and Countryside Act 1981
Claim to add Footpaths at Eaves Knoll – New Mills to the Definitive Map
and Statement

1. Purpose of the Report

To request that members resolve to overturn a previous decision to make an order to add footpaths to the Definitive Map and Statement and reject the application.

2. Information and Analysis

An application was received from D J Hill and Ms V Wall on 16 September 2000 to add footpaths at Eaves Knoll in New Mills.

A consultation exercise was undertaken between February and March 2004 in order to obtain relevant information regarding the origins and subsequent history of the route.

The application was reported for determination to the Council's Regulatory Licensing and Appeals Committee on 25 July 2005, where it was resolved, in accordance with the officer's recommendation, to make an Order under S53 of the Wildlife and Countryside Act 1981.

A copy of the Committee report referred to above is attached and contains; a) a plan of the route; b) details of information and evidence received with the application; c) a summary of the responses received following consultation on the application; d) a description of the available evidence pertaining to the route including site survey information and; e) an analysis of the evidence and reasoning behind the decision to make a Footpath Order in this instance.

A site visit was undertaken by an officer in rights of way shortly after Committee approval had been gained to survey the route in August 2005. The officer was unable to carry out the survey and draft the statement to include in the Order as sections of the claimed routes were inaccessible due to fencing and stone walls. A further site visit was carried out in October 2009, where similar issues were discovered

regarding the stone walls and fencing. There was no sign of a path meeting Public Footpath No 85 and there was no apparent way through the wall into the field crossed by Public Footpath No 85. Officers were not satisfied that the claimed routes had ever been available and therefore it has been necessary to carry out further investigation.

Application

Further investigation into the claim has revealed that in the original application the applicant appears to have claimed a network of paths, some sections of these routes have not been considered.

None of the routes marked on the plan join the current alignment of Public Footpath No 88. An officer wrote to the applicant suggesting that the application be amended to claim the routes that were shown on a plan attached to the letter, and therefore there is some doubt as to whether the application accurately reflects the routes walked on the ground and those on which the original report was determined.

User evidence

The user evidence forms and the plans appear to have been mixed up in the past as details referred to on some forms relate to plans attached to different forms.

It was detailed in the 2005 committee report that only 18 of the 34 user evidence forms appear to relate to the claimed route.

A letter received from the applicant dated 12 January 2001 stated that "several people did not follow Public Footpath No 88 and walked through Leygate Houses".

Public Footpath No 88 was legally diverted in 1976. Some of the witnesses have referred to using the stile near Point W(*), however, this stile was on the former alignment of Public Footpath No 88 and therefore indicated that the witnesses were actually following the former alignment of Public Footpath No 88 rather than the claimed route.

The original application also included a section from the top of Broadhey View to Point Y, however, the applicant was advised to delete this section from their application. A gate was installed at the top of Broadhey View when it was intended that part of this land would be used as school playing fields and it is difficult to distinguish which witnesses are referring to this section.

Some of the start and finish points identified in the user evidence forms do not necessitate using the claimed routes at all and therefore question the accuracy of this evidence.

Evidence submitted by the landowners/objectors

Mr M G Whitby stated that the land at Beardhough Farm has been in the ownership of his family since 1972. Mr Whitby claims that in 1972 people did not trespass on the land and stayed on FP 85 and 88. Mr Whitby's father sold the farmhouse (Beardhough Farm) but retained the land. The land has been used the land for grazing cattle and cutting hay.

Mr Whitby stated that they did encounter problems with people from the estate using the land as they would a public park, letting dogs run free, flying kites, riding quad bikes etc. Some of the owners of houses adjacent to the land also installed gates giving them direct access onto the land. According to Mr Whitby a letter was sent to DCC in 1998 pointing out the problems they had been experiencing.

Mr Whitby stated that on many occasions they had to rebuild the walls that had been pulled down or dislodged by people climbing over them (these were not "stiles" as referred to by the applicants). They also erected fencing which had also been cut down on occasions. Mr Whitby submitted a statement from Mr B Robinson who he employed on several occasions to rebuild walls and to erect a fence. According to Mr Robinson he rebuilt the wall near point B on several occasions in 1996 and erected a post and wire fence between W – Z in 2000.

Mr Whitby also submitted an aerial photograph dated 1973 showing the stone walls. Mr Whitby sated that the photograph shows that the walls were intact at points Z, A and B. He also states that DCC erected a fence around the land they purchased in 1973 which crossed the line of the claimed route. As it was impractical to place the last fence post against the dry stone wall as it needed to be set in concrete, there was a 8 - 10 inch gap at point A. Occasionally people would squeeze through the gap, however, Mr Whitby stated that he blocked this gap on several occasions over the years.

Mr Whitby also stated that the gates at points C and E were locked every summer as the tenant farmers adopted the practice of grazing cattle and taking a crop of hay. This corroborates with the information supplied by some of the witnesses who completed user evidence forms as they referred to gates being locked when cattle were in the field.

A letter was received from Joanna Makin stating that she and her family lives at Beardhough Farm from 1979 – 1995. She states that they only walked the existing footpath (FP88) and they did not trespass on Mr Wrigby's land. The land was farmed for many years and no-one would walk across the land beyond the designated footpath.

Mrs Ney has lived at Beardhough Farm since 1995 and stated that she had never seen or been aware of anyone walking over her land.

Mrs Ney also made the following comments:

- There have been notices near points Y and Z stating “PRIVATE LAND - NO FOOTPATH”.
- At point A there is a small 8 – 9 inch gap between the stone wall and the post and chain link fencing erected by Derbyshire County Council at point A as it was not possible to fix the fencing to the dry stone wall. Photographs dated 2005 of the chain link fencing and the gap at point A have been enclosed.
- There was not a gap at point B as the fields were used to graze cattle. Photographs of an old dry stone wall are enclosed.
- There is no evidence that there has ever been a stile at point C. In 2000 an old stone gatepost was knocked down so a new wooden gate was installed. The other old stone gatepost is still in tact and photographs have been enclosed.
- The only location where there was a stile was at point (W)*, on the previous alignment of FP 88 which has now been diverted.

According to Mr Barton who has lived in the area for over 40 years and has lived on Leygate View abutting part of the claimed route since 1996 he has not seen members of the public on the land and there are no paths visible on the ground. The area has always been surrounded by dry stone walls with additional barbed wired fencing (he has marked the walls and fencing intersecting points A, C and near W on the plan). He also stated that there were notices stating “private land” near points Y and Z.

Mr and Mrs Nasralla have lived adjacent to the southern edge of the route since 1990. They state that they have never seen anyone using the claimed routes. They claim that the owners of the field have maintained barbed wire fencing across the land which also extends along the dry stone wall bordering FP 88. There has never been a stile at point Z and people would have had to climb over the remains of the old stone wall to get onto the field. They also sent a letter on behalf of 17 local residents who dispute that the routes have used on a regular basis.

Mr P Morton of Broadhey View also stated that the Council erected a fence when the proposed school playing fields were planned which prevented trespass over that area of land.

Mr and Mrs Cowsill have lived at Leygate View since 1999 and stated that on rare occasion people have been seen wondering around the

field. The field was used to grow hay and a route would have been visible on the ground if it had been used.

On the other had the applicants state the following;

- At Point A the fence was not completed up to the dry stone wall.
- At Point B, a step through the gap was built into the dry stone wall. This was not simply a tumbled down section of wall. Some 4 to 5 years ago, this access was rendered sheep proof by the addition of a wooden fence and stile on the western side of the wall.
- At Point C, adjacent to the gate into the field, a low stone step over stile was built next to the gatepost. The first huge through-stone is still visible but the remainder have been removed.

There is a clear conflict between the evidence of the applicants and the objectors and it is felt that the information provided in objection was not given due consideration with more weight afforded to the evidence of the applicant in the 2005 report. A site visit does not appear to have been undertaken before completing the committee report to glean further information regarding the proposed routes and therefore the information regarding the walls and fencing was not properly considered along with the evidence.

Site Visit

A site visit does not appear to have been undertaken prior to the writing of the Committee report in 2005. A site visit was undertaken by an officer in rights of way shortly after Committee approval had been gained to make an Order in August 2005. The officer was unable to draft the statement as they were unable to walk sections of route due to fencing and stone walls. They have marked the fencing and stone walls intersecting the routes at various points on a plan (a copy of which is attached for information). A further site visit was undertaken in late 2009. There were similar issues regarding stone walls and fencing (a plan and photographs are on file). Officers also looked at the route from FP 85. There was no sign of a path meeting FP85 and there was no apparent way through the wall into the field crossed by FP85. Officers were not satisfied that the claimed routes had ever been available.

After re-considering the application it is considered that the recommendation of the 2005 report was incorrect and there is insufficient evidence to make an order to add these routes to the Definitive Map and Statement.

3. Considerations

Legal and Human Rights Considerations

- 3.1 Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified 'events'. These events include:
- 3.2 (1) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates (section 53(3)(c)(i)); and
- 3.3 (2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance on probability that that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 3.4 Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public "as of right" and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public "as of right" means use by the public without force, without secrecy or permission.
- 3.5 Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public right to use the way is brought into question.
- 3.6 Section 31(3) provides that a notice erected on site by an owner of land over which a way passes in a manner visible to persons using the way, and maintained by him is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate the way as a highway.
- 3.7 Section 31(6) provides that an owner may provide sufficient evidence to show of his lack of intention to dedicate by depositing with the Council a map and statement showing any ways over the land he admits to having been dedicated as highways and denying the existence of other ways over it and then lodging statutory declarations to deny the addition of any ways at intervals of not less than 10 years. This will be, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any additional way as a highway.

- 3.8 A House of Lords legal judgement in 2007 (the ‘Godmanchester’ decision) has clarified what other evidence could be evidence of “no intention to dedicate” for the purpose of section 31(1). The evidence can relate to just one point in time during the period of enjoyment, ‘during’ in the context of section 31(1) need not be through out the whole period. ‘Intention’ in this context means what the relevant audience (the users of the way) would reasonably have understood the landowner’s intention to be. A letter from the landowner to his own solicitor or estate agent would not be enough; some element of communication to users of the way of an absence of intention by the owner to dedicate must be shown. In terms of section 31(1), an act by an owner which demonstrates ‘no intention ... to dedicate’ is likely in practice also to amount to an event which ‘brings the public right of way into question’.
- 3.9 In brief, unless evidence is provided of one or more specific steps having been taken by a landowner within the period to communicate overtly to the public using the route that (s)he does not intend to grant a public right of way over it, the presumption of dedication will arise under section 31(1) where there is a full period of 20 years of uninterrupted public use, calculated from the date when the public right to use the way is brought into question.
- 3.10 Where there is insufficient evidence to establish a presumption to dedicate under section 31(1) of the Highways Act 1981, there is sometimes sufficient evidence to establish an inference of dedication by the landowner under common law. In the case of *Nicholson v Secretary of State for the Environment* (2006), Dyson J stated: “*Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication...*”. No minimum period of use is required to raise such an inference, but there must be evidence which is sufficient to infer that there was an intention to dedicate a public right of way.

Other Considerations

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

4. Background Papers

Held on file 8592 in Legal Services

5. OFFICER'S RECOMMENDATION

That the Committee resolves to overturn the previous decision to make an Order and reject the application made under Section 53 of the Wildlife and Countryside Act 1981 to add footpaths at Eaves Knoll – New Mills

John McElvaney
Director of Legal Services

6. WILDLIFE AND COUNTRYSIDE ACT 1981 – CLAIM TO ADD FOOTPATHS AT EAVES KNOLL – PARISH OF NEW MILLS

Purpose of the Report

Members are asked to consider the application made by D J Hill and V Wall of Hillside Way, New Mills to add footpaths at Eaves Knoll, Parish of New Mills. This would affect the Definitive Map and Statement as shown on the attached plan (Appendix 1).

Information and Analysis

In July 2000 the then leader of the County Council, Councillor Sir Martin Doughty received a letter from Ms V Wall alleging that a new land owner had removed stiles provided by the previous land owner and had blocked the way with barbed wire, on paths at Eaves Knoll which she claimed had been used by local people for over 20 years. She asked for advice on how to deal with the matter. Ms Wall was advised to submit an application for a modification order under the Wildlife and Countryside Act and on 16 September 2000 the County Council received an application to add footpaths at Eaves Knoll. The application was supported by 34 Public Way Evidence Forms, 18 of which related to the claimed route, a petition with 52 signatures and a map showing the claimed path. The following additional documents are appended to the report:

Appendix 1 Plan showing claimed route.

Appendix 2 Time Line.

Appendix 3 Copy of plan supplied by claimant.

Appendix 4 Plan showing land identified for school playing fields.

Appendix 5 Copy of plan supplied by Mr Barton (local resident and objector).

Appendix 6 Plan amalgamating other plans.

Public Way Evidence Forms

Of the Public Way Evidence Forms submitted by the applicants 18 showed regular use of the claimed route. Other forms showed routes walked which did not coincide with the claimed route. The 18 forms which related to the claimed route are summarised below:

Table to show number of years use of the route pre 2000.

No of years route used by witnesses	No of users
1 - 10	1
11 - 20	5
21 - 30	10
31 - 40	1
41 - 50	1
Total	18

A time line graph is appended to the report (**Appendix 2**) to show the time periods the route was used between 1950 and 2000. All witnesses describe the status of the route as footpath and have variously used it for recreation, visiting friends, dog walking, exercise, and on the way to school. Witnesses describe using the route to walk from Alsfield Way to Spring Bank, from Whittle Road to Eaves Knoll Road, as a circular walk from home, from Kitchen's Field to the Golf Course and from Godward Road to the Golf Course.

Witnesses do not recall the route being diverted or interrupted until very recently, ie in or around 2000. One witness commented "not until this year", one said "now completely fenced off", another said "just blocked off", and another "not until recently". One witness said that a stile was blocked above Broad Hey View, another that the path was fenced in June 2000 and one other that it was diverted in May 2000.

Thirteen of the witnesses mentioned stiles and gates on the route. One mentioned gateposts and one other mentioned steps. Regarding notices on the route most recalled a "beware of the bull" sign, one person said they recalled no signs and one said that they had seen a sign in June 2000 saying "Private Land – No Footpath".

No one reported ever receiving instructions from the owner of the land or being diverted from it prior to 2000. Only one witness admitted to being known by any tenant/employee of the landowner and he stated that he worked at Eaves Knoll Farm. Several witnesses mentioned that a barbed wire fence was erected across the footpath in 2000. There was also mention of a blocked stile and of gates being closed, but not locked, when cows were in the field.

A petition headed "the undersigned object to the closure of these footpaths which we have used for many years, in some cases over 20," was forwarded to the Council by the applicants. The addresses of the signatories all appear to be in the close vicinity of the claimed route. No plan or map was included with the petition.

The claimants sent a letter to the County Council with a marked up copy of a plan of the area describing their recollections of the route in detail. That plan is attached to the report as Appendix 3 and has been amalgamated with other plans as Appendix 6. The points in Mr Hill's letter which may have relevance as evidence are listed below:

At Point A on the map the fence was not completed up to the dry stone wall, allowing pedestrian but not animal access.

At Point B, a step through the gap was built into the dry stone wall. This was not simply a tumbled down section of wall, the gap was clearly intended for pedestrian access. Some 4 to 5 years ago, this access was rendered sheep proof by the addition of a wooden fence and stile on the western side of the wall, an indication that pedestrian access was expected and permitted.

At Point C, adjacent to the gate into the field, a low stone step over stile was built next to the gatepost. The first huge through-stone is still visible but the remainder have been removed. This again showed that access was expected from the date of the stone wall being built.

At Point D, the end of Broadhey View, a pedestrian gate with latch opening has been fitted and a well trodden path leads to Point B.

Responses to consultation

A consultation exercise was carried out on 11 February 2004 when local councils, user groups and landowners were asked for their comments and representations regarding the claimed route. Replies were received as follows:

High Peak Borough Council advised that the claimed route crossed a site which had been identified by DCC as land suitable for playing fields for New Mills Primary School in the High Peak adopted Local Plan (April 1998) and the revised Deposit Draft Local Plan (January 2003) (Appendix 4). Policy CF2 of both Local Plans seeks to ensure that development does not prejudice the provision of the playing fields.

When consulted High Peak Borough Council said that they had no objections in principle to the footpaths but would not wish the situation to arise where the addition of a footpath would adversely effect the development of the proposed playing fields.

The British Horse Society had no objections to the claim.

Mr M G Whitby wrote with objections to the claim saying that his family had owned the land at Beardhough Farm from 1972 until 2002 before which it was farmed by a Mr Clarke who had been there from 1941. Mr Whitby claims that Mr

Clarke would have been able to prevent people from trespassing on his land as he would have been in the fields on a daily basis. Mr Whitby claims that in 1972 people only walked footpaths 85 and 88 which surround the area of the claim.

A further letter enclosed copies of aerial photographs bought in February 1973 which Mr Whitby claimed showed the condition of the dry stone walls in the fields surrounding the route at that time. Mr Whitby says that after the photographs were taken Derbyshire County Council erected a fence around the area of land they had purchased and which crossed the line of the claimed route. Mr Whitby says that Derbyshire County Council provided no access through this fence. The photographs are available in Solcase file no 8592.

Mr Whitby enclosed with his letter a statement from Mr B Robinson whom he employed on several occasions to rebuild walls and to erect a fence. Mr Robinson states that in April and December 1996 he rebuilt the wall shown at Point D on the photograph submitted by Mr Whitby which he claims had been knocked down by walkers to gain access to the fields. He also says he erected a post and wire fence between points A and B on the photograph in July and August 2000.

Mr Whitby also included a list of names and addresses of 4 farmers whose animals had grazed the land over the years from 1972 to 1998. Their names and addresses are listed below:

1. 1972 – 1975 Mr Hodgson, Ashes Farm, Hayfield
2. 1975 – 1992 Mr Rathbone, Ravensleach Farm, Birch Vale.
3. 1992 – 1996 Mr J T Kent, High Hill Farm, New Mills.
4. 1996 – 1998 Mr J Marsden, Lower Cross Farm, New Mills.

Mr Whitby planned to obtain statements from the above tenants but has not supplied them to the Council. The County Council had also written to each of them asking for more detailed information but has had no response.

Ms Annette Ney objected to the order on the grounds that horses graze the fields which may endanger walkers and dogs. She is also concerned about the health hazard associated with the exercising of dogs in the area.

Mr J Barton claims to have lived in the area of the claim for 41 years, the last 8 of which he has lived in Leygate View in one of the properties which borders onto the southern edge of the route. He says that he has never seen members of the public on the land where the claimed route is and that it has always been surrounded by dry stone walls with additional barbed wire fencing. When approaching the land from the west Mr Barton claims that until recently there was a notice reading "Private Land". He states that the farmer is often in the field and he finds it difficult to believe that walkers could have accessed the field unopposed.

Mr Barton sent in further evidence regarding the claim and included a marked up plan (Appendix 5) showing an area which he claims is almost entirely enclosed by a barbed wire fence and a smaller section which is enclosed by a post and rail mesh type fence. Mr Barton suggests that if the claimed paths had had regular use they would be clearly visible to the naked eye. He says that the field is meadowland which has remained unchanged for years.

Mr and Mrs H Nasralla oppose the claim saying that since they moved into the area in 1990 they had never seen anyone using the claimed route. They claim that the owners of the field adjacent to their house "always put up a barbed wire fence to prevent would be walkers ..." Mr and Mrs Nasralla do not give any indication of when the barbed wire fence was erected or for how long it was in place.

Comments on representations

Regarding the High Peak Local Plan and the identified site for school playing fields, ordinarily in the event of a Modification Order being made to add a footpath, Derbyshire County Council would discuss with High Peak Borough Council the possibility of dedicating a footpath either through or around the proposed playing field site. Alternatively if the route were added to the Definitive Map and Statement, it could be the subject of a Diversion Order. The current situation, as at 2005 according to the County Property Officer is that the land which was purchased on 1 March 1973 and designated for development as school playing fields is now no longer required for development and has therefore been declared surplus by the Council's Education Department. The land is currently for sale.

During Mr Whitby's ownership, ie from 1972 onwards, the fields adjacent to the claimed route have been used by various farmers for grazing. It is possible therefore that the farmers not resident at Eaves Knoll would not have been in the fields to see the witnesses using the route. Mr Clarke, the previous land owner did farm the land himself and was therefore more likely to have seen people in his fields. The witnesses who completed evidence forms however do not recall ever being stopped or turned back on the way. Even if Mr Clarke did attempt to prevent a right of way from being dedicated on his land there is still a full 20 year period of time after Mr Whitby took over the land for a right of way to have become established.

Mr Robinson claims to have rebuilt walls which he says were knocked down on 2 occasions during 1996 by walkers. This does point to the fact that the route was used by walkers at that time. Witnesses did not report being stopped from using the route until 2000.

The aerial photographs submitted by Mr Whitby do not appear to provide any clear evidence as to the condition of the walls in the fields surrounding the route, moreover they were taken in 1973 prior to the 20 year period when the Council considers that public rights of way were acquired.

Objections put forward by Ms Ney regarding horses grazing in the field and the health hazards created by dogs being exercised in the field are not objections to which the Council can have regard under the Wildlife and Countryside Act 1981. Horses are often grazed in fields with rights of way through them and the public is at liberty to walk on rights of way with dogs provided that they are under proper control.

Mr Bartons comments that he has never seen walkers on the route and that additional barbed wire fencing was present on the stone walls is at odds with information obtained from the 18 witnesses who completed public way evidence forms. Mr Barton does not make it clear when the barbed wire or fencing was put in place or how long it has been there.

Documentary Evidence

Whitle Enclosure Award 19 June 1828.

This map shows a highway (a dotted line) labeled "footroad" on the approximate line of FP 85 – New Mills, but nothing on the line of the claimed route. Other roads on the map are marked more clearly with a double solid line and marked with the width of 30 feet.

Map of the Township of Beard, Ollersett, Whitle and Thornsett in the Parish of Glossop in the County of Derby.

On this map there is a track marked with a double solid line from Apple Tree Road to Beardhough Farm. For a short distance it is possible that the marked path follows the line of the claimed route but it then diverts from it, along field boundaries to Eaves Knoll and here it is marked by a dashed line.

Land Values Map

The route shown on this map is as the above.

1st and 2nd Edition Ordnance Survey Maps (1880 and 1898).

The claimed route is not depicted on either of these maps.

Financial Considerations

If it is considered that there is sufficient evidence to justify making the Order the cost would have to be met by the County Council.

Personnel Considerations

Officers' time in processing the Order.

Equal Opportunities and Property Considerations

None known.

Environmental Considerations

As indicated in the body of the report.

Legal and Human Rights Considerations

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

Section 31 of the Highways Act 1980 provides that where a way over any land is enjoyed by the public as of right and without interruption for a period of 20 years the way is deemed to be dedicated as a highway.

Submission of report to landowners and principal objectors

On the 28 February 2005, in accordance with the County Council's Policy, the draft report was submitted to applicants and land owners. In response letters and comments were received from the following:

County Property Officer
Mrs E Nazralla
Mrs A Ney
Mr Whitby
Mr Barton
Mr P Morton
Mr P Cowsill and Mrs D Cowsill
Ms J Makin

The information from the county Property Officer is under the heading "comments on representations"

On the 8th March Mrs Nasrella submitted a petition with the signatures of 17 local residents who oppose the footpaths. The signatories dispute that the paths have been used on a regular basis.

None of the above with the exception of the County Property Officer provided new information relevant to the report.

The letters and correspondence received following submission of the draft report are available on file number 8592.

Summary

In support of the application a total of 11 witnesses claim to have used the route for a continuous period of time in excess of 20 years. The time line shows that there is a block of time between 1980 to 2000 when all of those 11 witnesses used the route. This post-dates the ownership of the farm by Mr Clarke who farmed it on a full time basis. During this 20 year period there appear to have been stiles on the route between the fields which were used by all of the witnesses. The applicant claims that at one spot there was a stile next to a gate to prevent animals going through, but making provision for pedestrians to do so. At another point he claims that there was a step over stile next to a gatepost and that this had been built into the wall and not added later. None of the witnesses ever reported being stopped or prevented from using the route.

Mr Whitby has submitted evidence which he considers supports the view that no rights of way can have been acquired on the claimed route. Mr Whitby contends that the farmer's daily presence in the fields would have meant that people would have been turned back and prevented from using the route, however the farm was taken over in 1973 by Mr Whitby's family and the fields were then used by non resident tenant farmers who ably not have maintained a daily presence. Mention is also made of the walls being rebuilt and of barbed wire which prevented pedestrian access. It is not easy to see from the photographs submitted whether or not the walls were totally complete or whether there were any stiles in the walls or corners of fields. The photographs were taken in or around 1973 before the 20 year period of use shown by the time line.

The other evidence to consider is that supplied by Mr Barton regarding the fencing of the land and the alleged lack of use of the route by the public. This evidence has to be set against the information supplied by the applicant regarding his specific memories of the layout of the walls and fences surrounding the route and the access to the route. The two pieces of information do seem to fit together in that the descriptions of the walls and route are the same but the applicant specifically remembers gaps in the walls and fences and being able walk from one field into another along the route. This is fully supported by the

evidence of the 18 people who completed the public way evidence forms and to a lesser degree by the petition with 52 signatures.

The documentary evidence examined for this claim was not helpful in either proving or disproving the existence of a right of way over the area of the claim – indeed the full length of the claimed route is not marked on any of the maps examined.

Conclusion

The County Council considers that the route was called into question in 2000 when all of the witnesses who completed public way evidence forms claim that the route was blocked off or fenced off so that they were unable to use it. There is little to negate the evidence of use of the route for the thirty year period from 1970, when Mr Whitby bought the land to the year 2000. If the evidence that the walls were repaired in order to prevent use of the route by the land owner in 1996 is accepted, there is still a period of well over 20 years when a right of way on foot can be shown to have been established on this route ie from 1970 to 1995.

After weighing up all the evidence it is therefore considered that on the balance of probability there is enough evidence of use of the route to support the making of a modification order to add a footpath at Eaves Knoll, to the definitive map and statement for New Mills, as shown on the appended plan.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder; equality of opportunity; health and property considerations.

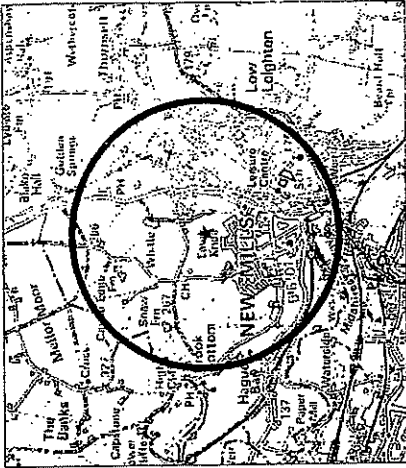
Background Papers

Claim made by Ms Wall to add footpaths at Eaves Knoll (Case No: 8592).
Plan showing the claimed route (appendix 1).
Appendices 1,2,3,4 and 5.
Aerial Photographs of the route received from Mr M G Whitby.

RECOMMENDATION

That an order be made under Section 53(3)(c) of the Wildlife and Countryside Act 1981 to add a footpath to the definitive Map and statement as shown on the enclosed plan by a bold dashed line.

Case No: 8592



Wildlife and Countryside Act 1981 Section 53

Claim to Add Footpaths at
Eaves Knoll - Parish of New Mills

KEY

Footpaths to be added — — — — —

Existing footpaths - - - - -

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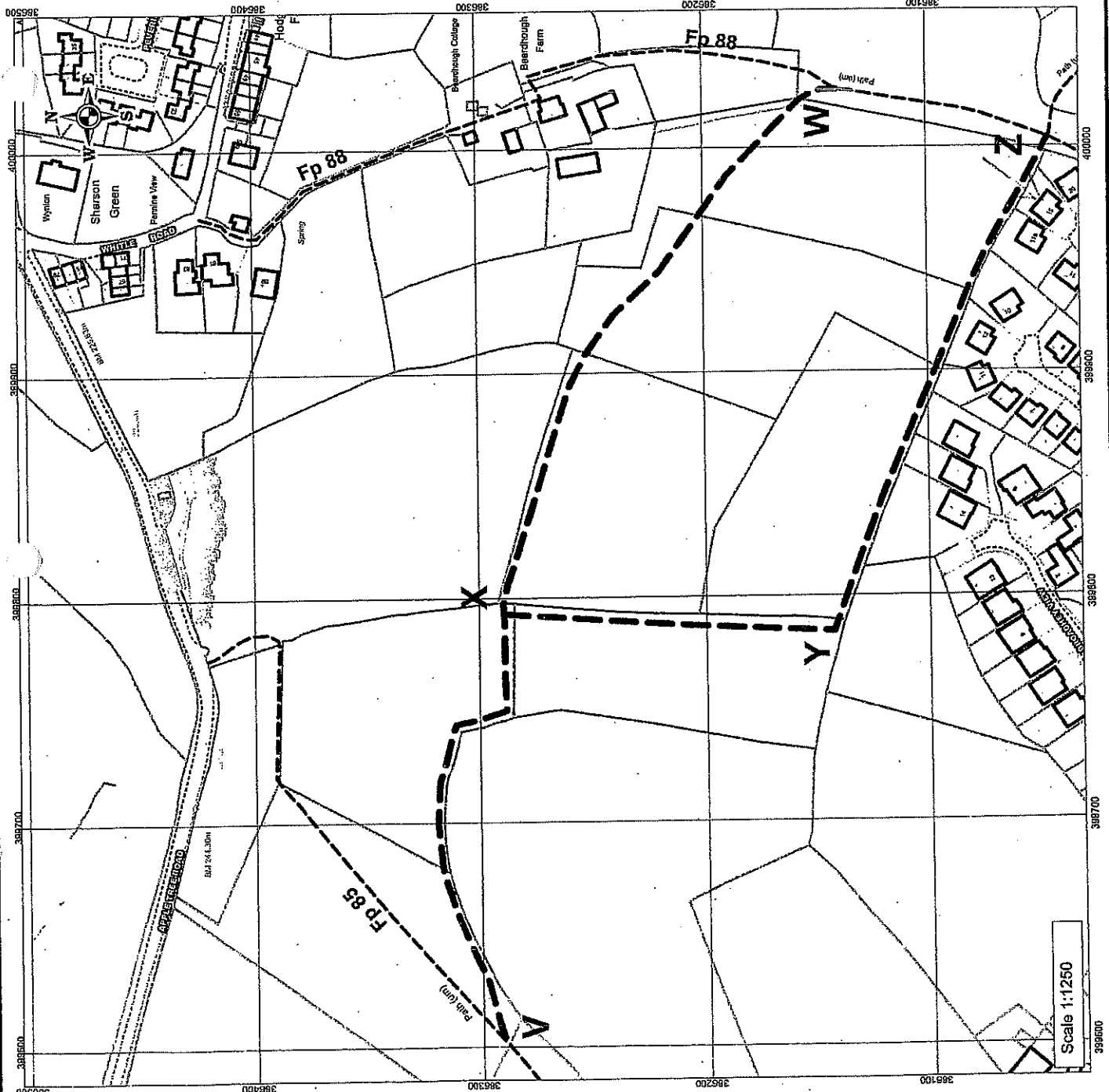
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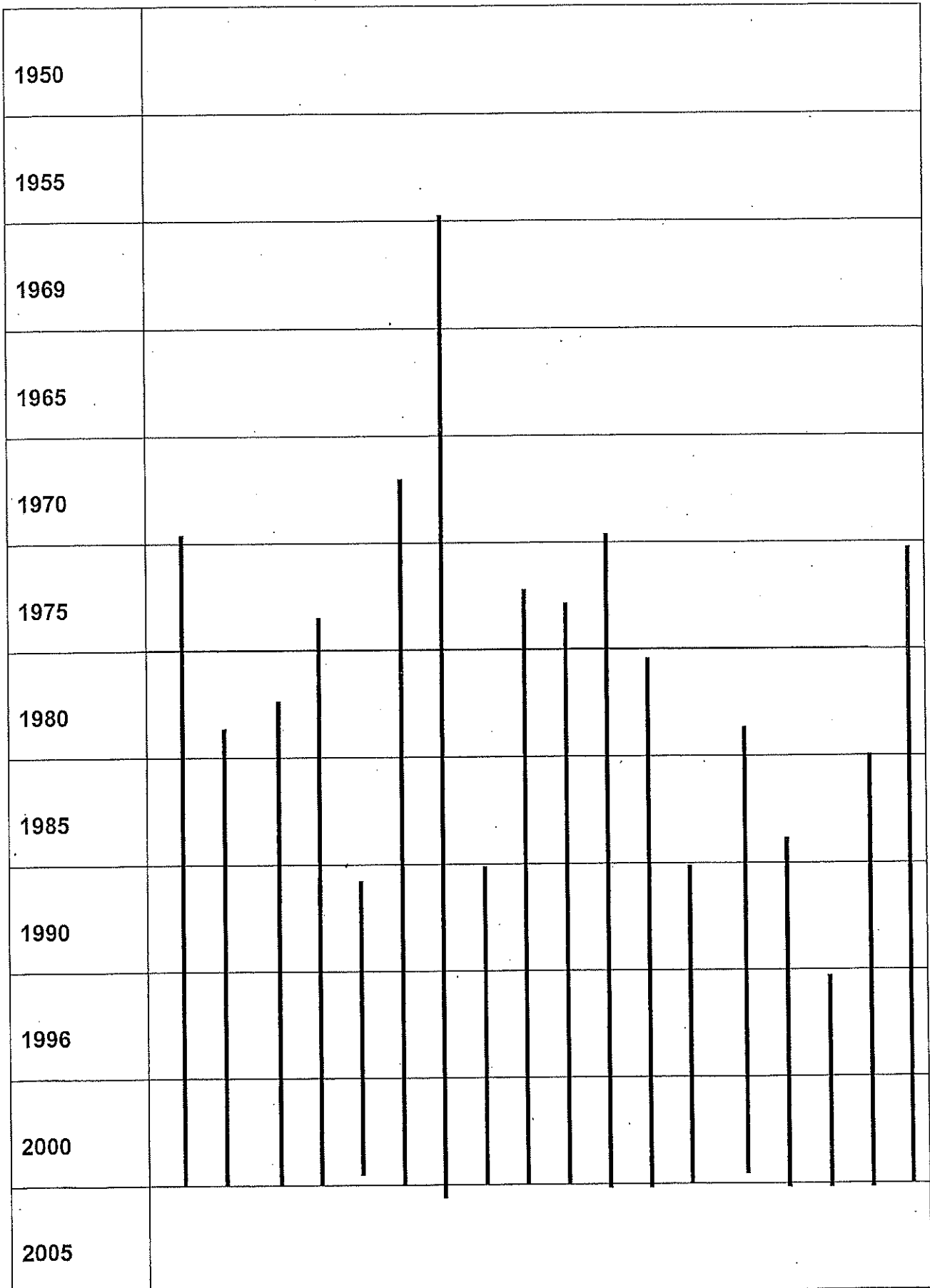
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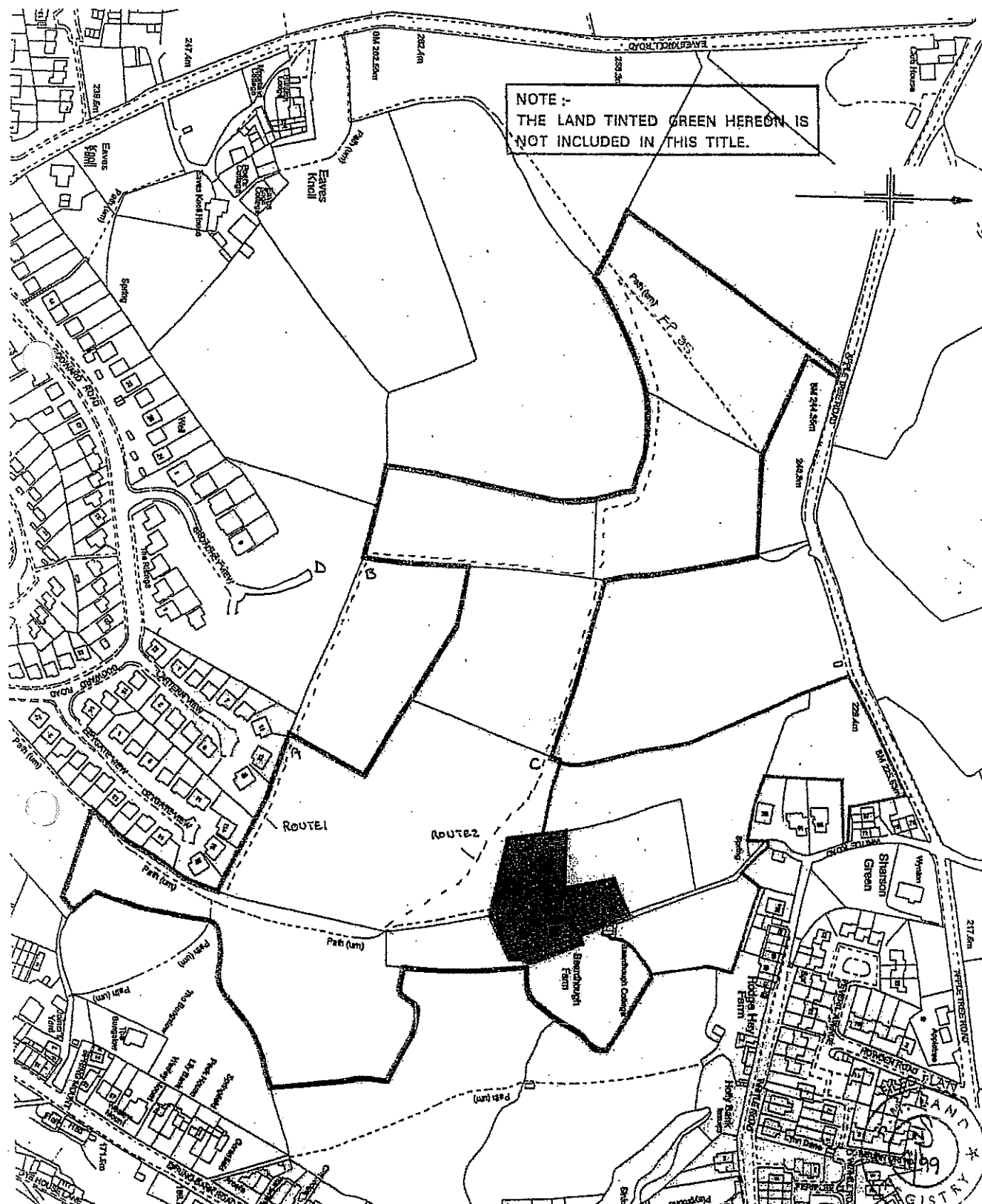
APPENDIX 2.



H.M. LAND REGISTRY		TITLE NUMBER
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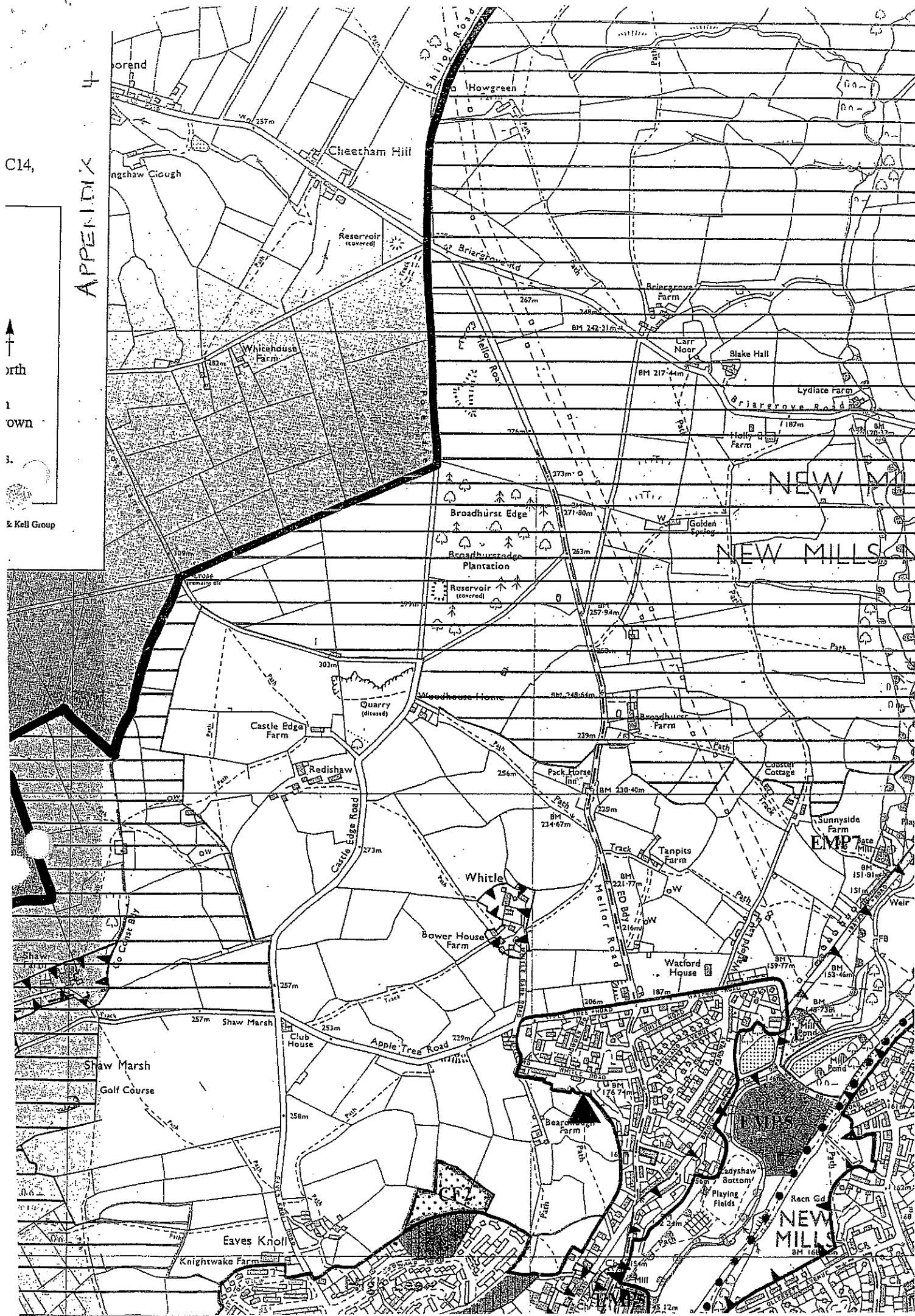
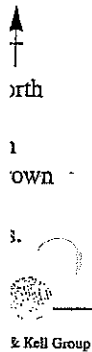
Appendix
3

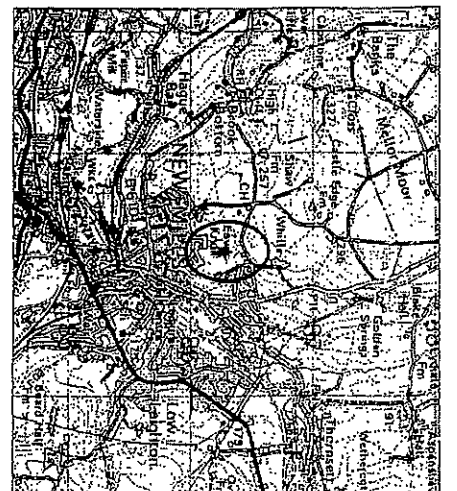
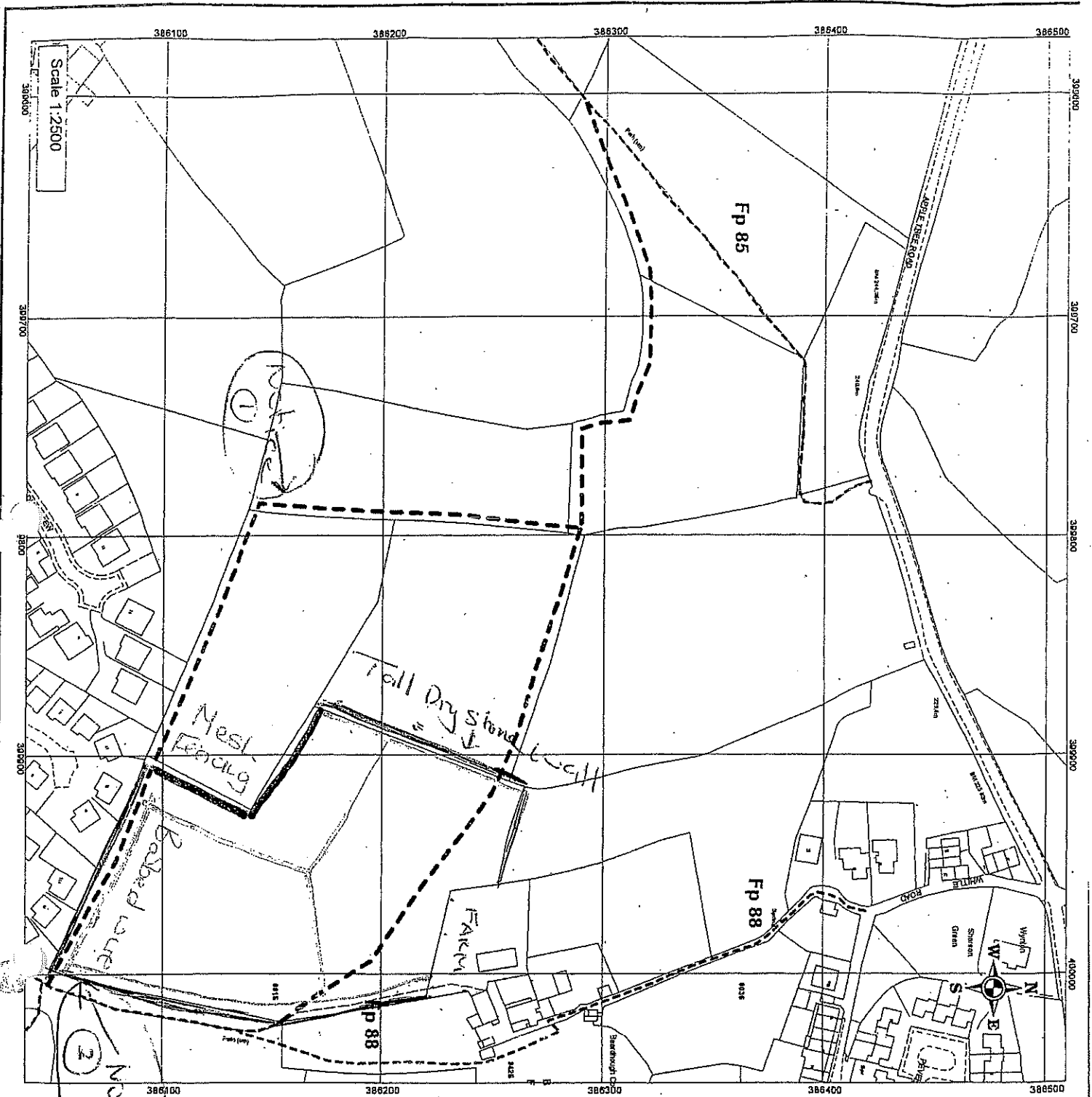


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APPENDIX 4





Wildlife and Countryside Act 1981 Section 53

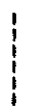
Claim to Add Footpaths at
Eaves Knoll - Parish of New Mills

KEY

Footpaths to be added



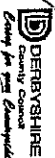
Existing public footpaths



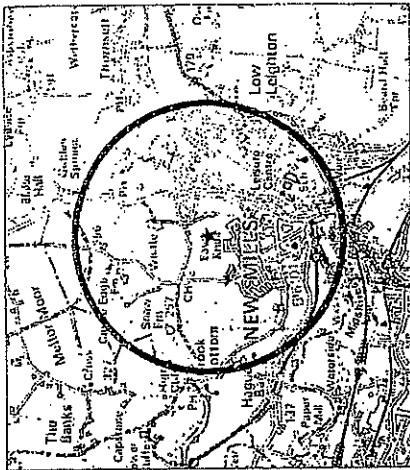
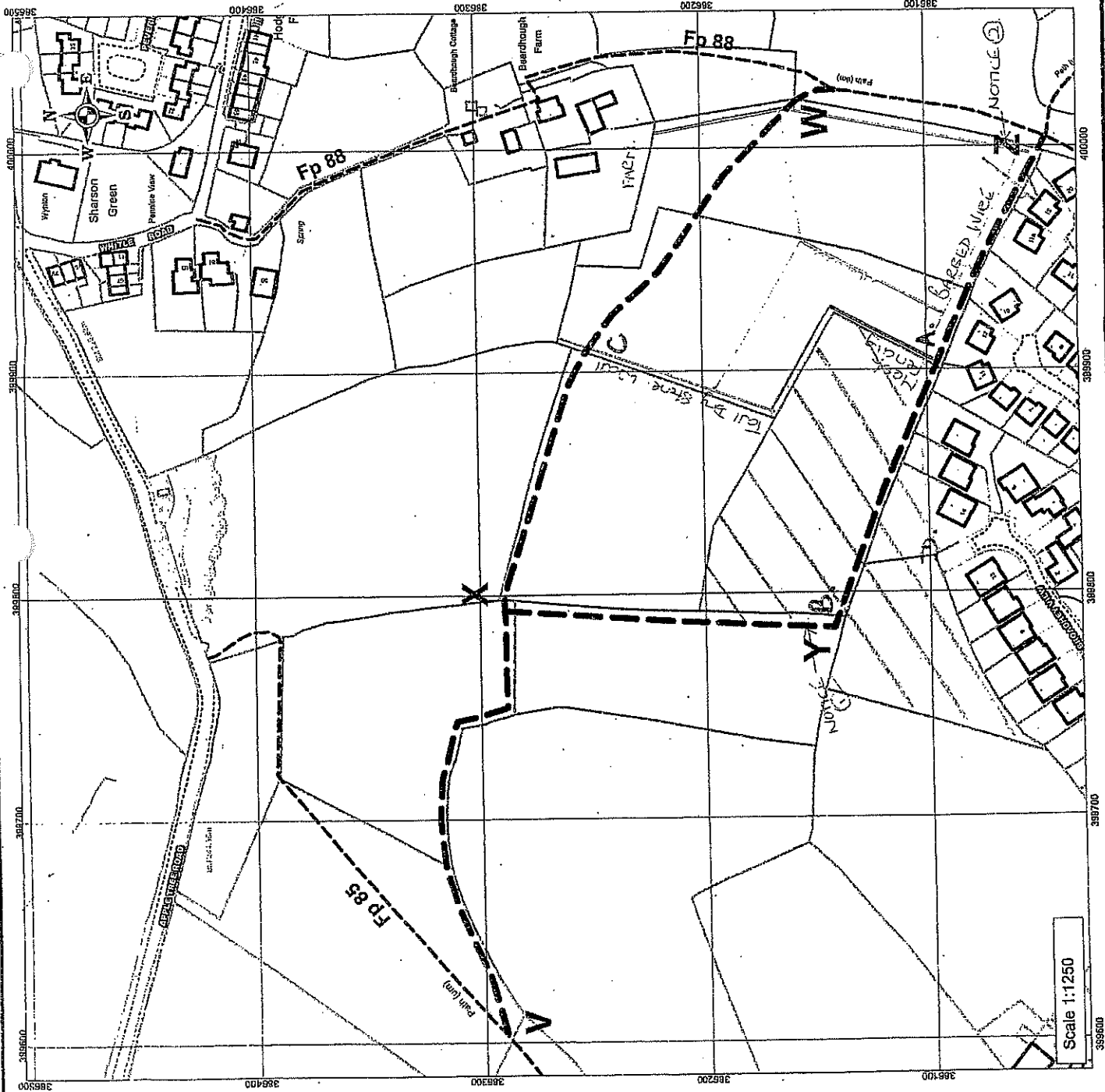
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Wildlife and Countryside Act 1981 Section 53

Claim to Add Footpaths at
Eaves Knoll - Parish of New Mills

KEY

Footpaths to be added ———

Existing footpaths ———

Area designated for school playing fields.

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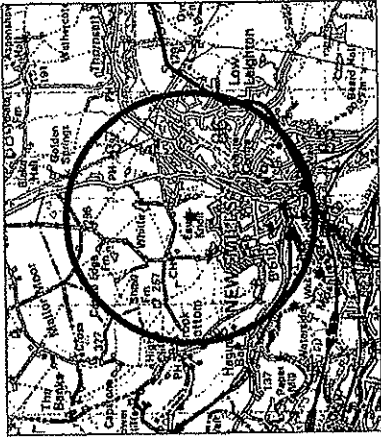
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County of the Peak

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Wildlife and Countryside Act 1981, Section 53

Claim to Add Footpaths at Eaves Knoll - Parish of New Mills

KEY

Footpaths to be added — — — — —

Existing footpaths — — — — —

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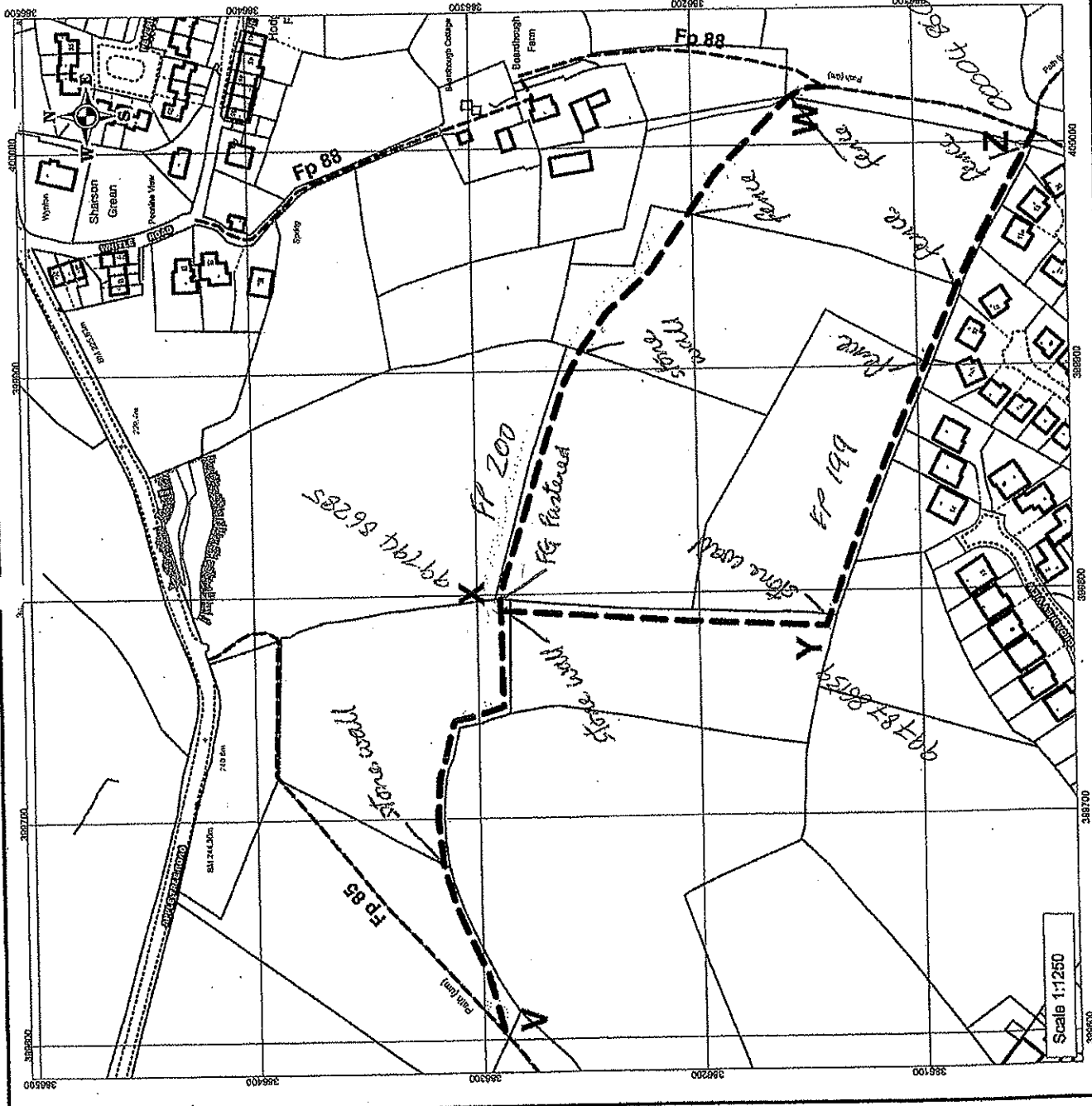
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