

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

**29 February 2016
Report of the Director of Legal Services**

**Wildlife and Countryside Act 1981
The Derbyshire County Council (Footpath between Clowne Road and
Church Road – Bolsover) Modification Order 2014**

1. Purpose of the Report

The purpose of this report is to enable members to reconsider the evidence within the appended report (dated 10th June 2013) together with the information within this report and to authorise the Director of Legal Services to take a neutral stance when the matter is submitted to the Planning Inspectorate (PINS) for determination.

2. Information and Analysis

2.1 On 10th June 2013 this Committee determined to authorise the making of an Order to add the footpath to the definitive map on the basis that it was reasonably alleged to subsist as set out in the report. The Order was duly made on 2 January 2014. Notice of its making was published in the local newspaper on 9 January 2014 and copies were placed on site and sent to the consultees. Several objections have been received and as they have not been withdrawn the matter may only be determined by the Secretary of State and the Council is now required to submit the case to PINS which administers these matters on behalf of the Secretary of State.

2.2 The Council is required on submission of the Order, to state whether it supports the confirmation. PINS will then determine whether the matter should be dealt with by way of written representations, a hearing or a local public inquiry. Usually the Council will support an Order that it has determined should be made but in this case, the evidence is not considered strong enough. It is therefore proposed that the Council should take a neutral stance.

2.3 As set out in the 2013 Committee report, the Council may determine to make an Order where a right of way which is not shown in the map subsists or is reasonably alleged to subsist. For a right of way to subsist it must exist on a balance of probabilities – that there is clear evidence that the right of way exists and no credible evidence to the contrary. Where there is a conflict of credible evidence and no incontrovertible evidence that a right of way cannot reasonably be alleged to subsist then an Order should be made.

2.4 However, when an Order is to be confirmed the ordinary civil standard of proof must be applied – that is, that the path subsists on the balance of

probabilities rather than that it is reasonably alleged to subsist (*Todd and Bradley v Secretary of State for Environment Food and Rural Affairs* 2004).

2.5 As set out in the 2013 report, the evidence in favour of making an Order was considered to be only sufficient to conclude that the right of way was reasonably alleged to subsist and there was no incontrovertible evidence to the contrary. Following publication of the Order, no further evidence has been submitted which supports its confirmation on the balance of probabilities and no evidence has been submitted which suggests that the Council should actively oppose confirmation.

User Evidence

2.6 There is no consistently drawn or described route which would support confirmation of the Order. The plan attached to the User Evidence Forms (UEF) did not cover the whole area of the route claimed and so a plan which did cover the appropriate area was sent to the witnesses, requesting they draw the whole of the route they had used on the plan and return it to the Council. Ten plans were returned and as described in the report of 10 June 2013 they showed various routes across the southern half of the route (between points D and G on the plan appended to that report). The claimant himself drew a route that turns northeast some distance before the mine shaft (unlike his original application plan) and exits the copse to follow the field boundary along the line of the original application plan.

2.7 People may well have walked between Clowne Road to Church Lane but the evidence does not clarify that the Order route or any one defined route has been used consistently by the public.

2.8 At least some of the use described in the UEF is likely to have been further to private rights of way as the users lived along the route and/or worked at the colliery

Relevant Objections to the Order

2.9 Alan Kind has objected on the grounds that the width is not recorded in Part I of the Order and that the word 'approximate' is used in the width column of Part II.

2.10 Mrs V A Godfrey, an affected landowner, refers to vehicles driving through hedges and fencing being damaged.

2.11 Mrs E Morris states that bikers already use the woodland and questions how they will be stopped and that the fields have been accessed by consequence of people cutting down fences and damaging hedges.

2.12 Mrs W M Dicker has lived and worked on the farm for 65 years and has never known there to be a footpath on her land. She states they have to constantly repair fencing due to people cutting the fencing and trespassing.

2.13 Mr C J Ratcliffe has 'known the farm affected by this proposal for over 40 years'. He states that anyone walking on the land has been committing trespass and that 'there have been numerous instances of fences, hedges and gates being broken down and destroyed to gain illegal access'. He also refers to tyre tracks, badger baiting, hare coursing, drug use and the discovery of stolen cables in the DCC owned woodland area. He also feels that the location of the Order route is not made clear.

2.14 Mrs K J Ratcliffe, states she is 'part owner of the farm affected by this proposal'. She objects on the same grounds as Mr C J Ratcliffe.

2.15 Mr and Mrs A Harding state the 'route of the proposed footpath is through land which has been owned and farmed by generations of our family' and that there has never been a public right of way across the land. They state that there has been 'damage to ancient hedgerows, gates and fences by undesirable characters gaining illegal access.' They also reiterate the concerns regarding badgers, hares and drug needles.

2.16 Mr A Dore, Mr J Dore and Mr S Dore are tenant farmers of the land and all object that they are increasingly unable to graze their cattle and harvest crops due to the fences, hedges and gates being broken in order for people to gain access with their uncontrolled dogs. They have witnessed unidentified tyre tracks and evidence of hare coursing.

2.17 Mrs K Swinden objects on grounds of health and safety and potential loss of income. Although her objections are not relevant under current legislation, she also suggests that if the route were to be diverted from the road and along the western side of the fencing they may be able to reach an amicable resolution.

2.18 Mr P Swinden offers the same information as Mrs Swinden but adds that the application was made as result of a disagreement between Bill Clarke (WM Clarke Engineering) and an 'individual' who claimed 'there used to be a footpath that went through the works'. He states that the individual handed a petition round the Oxcroft club asking locals to sign, confirming that they had used the path regardless of whether or not they actually had.

Summary and Conclusions

2.20 The evidence submitted in support of the application fails to show on a balance of probabilities that a right of way subsists along the line of the Order route. Some witnesses do claim to have used a route between Clowne Road and Church Road that roughly correlates with the Order route but overall there is no clearly marked, single route claimed from the mineshaft to Church Road.

2.21 The evidence submitted by the objectors in response to the Order indicates that any use of the agricultural land between Church Road and the Council owned woodland has been by force and for the purpose of 'nocturnal

illegal pursuits' rather than to pass and repass (the purpose of a public right of way). This would also imply that people have not walked a defined route but have wandered all over the land. The landowners also state that there has never been a footpath across the land. On the other hand no evidence has been submitted in objection to the Order to suggest that any of that use has been challenged or that the landowners have made clear to the public their lack of intention to dedicate a right of way.

2.22 The objection submitted by Mr Kind requests the word approximate be removed from Part II of the Order and that the width be recorded in Part I. The Council has no opinion on this and is happy for modifications to be made accordingly, should the appointed Inspector choose to confirm the Order.

2.2 Mr J.T. Dunham, the applicant, has been contacted and advised that the Council is proposing to take a neutral stance. Mr Dunham was asked if he still supported the Order and if so, would he be willing to present the case in support of the Order to the Planning Inspectorate, for example at Public Inquiry. He has confirmed that he still supports the Order and would like to see it reopened but, due to personal reasons he is not in a position to present the case. He could not suggest anybody else who might be willing to present to PINS the case for confirmation of the Order.

3. Considerations

Legal and Human Rights Considerations

3.1 In addition to the legal considerations contained within the body of the report paragraph 7 of Schedule 15 to the 1981 Act provides that:

- (1) If any representation or objection duly made is not withdrawn the Authority shall submit the order to the Secretary of State for confirmation by him.
- (2) Where an order is submitted to the Secretary of State under sub-paragraph (1), the Secretary of State shall [subject to sub-paragraph (2A), either –
 - (a) cause a local inquiry to be held; or
 - (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.
- (2A) The Secretary of State may, but need not, act as mentioned in sub-paragraph 2(a) or (b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order, either with or without modifications.
- (3) On considering any representations or objections duly made and the report of any person appointed to hold an inquiry or hear representations or objections, the Secretary of State may confirm the order with or without modifications.

- 3.2 The Planning Inspectorate's Advice Note 1 provides that where the order making authority (the Council) does not support confirmation of an order at a forthcoming hearing or inquiry it should inform the Planning Inspectorate at the earliest opportunity and provide an indication of its reasons for doing so.
- 3.3 In such circumstances the applicant will be asked if they will agree to present the case in support of the order. If no one is prepared to take the lead, the Inspector will summarise the case for the order. The Council will still be responsible for providing the venue and administrative assistance at any hearing or inquiry but will not participate in questioning or cross-examining witnesses.

Other Considerations

- 3.4 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, and transport considerations.
- 3.5 None of these factors are considered to be relevant for the purpose of this report.

4. Background Papers

File held by Legal Services (ref. 35857).
Report dated 10th June 2013

5. OFFICER'S RECOMMENDATION

That the Committee:

6.1 notes the submission of the Derbyshire County Council (Footpath between Clowne Road and Church Road – Bolsover) Modification Order 2014 to the Secretary of State for determination; and

6.2 approves the adoption of a neutral stance in regards to the confirmation of the Order.

Chief Officer

DERBYSHIRE COUNTY COUNCIL

REGULATORY LICENSING AND APPEALS COMMITTEE

DATE 10th June 2013

REPORT OF THE DIRECTOR OF LEGAL SERVICES

**WILDLIFE AND COUNTRYSIDE ACT 1981
CLAIM TO ADD A FOOTPATH FROM CLOWNE ROAD TO CHURCH ROAD
PARISH OF BOLSOVER.**

1. Purpose of the Report

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

2. Information and Analysis

Details of the Application

2.1 On 10 September 2007 Mr John Dunham submitted an application to the Council to add a footpath from Clowne Road to Church Road, Parish of Bolsover. The application was supported by 15 user evidence forms and a photograph.

2.2 A plan showing the claimed route is attached (Appendix 1)

User Evidence

2.3 The claim was made following the erection of a notice on the route which stated "I GIVE NOTICE that this way has NOT been dedicated as a public footpath, nor is there any intention to so dedicate it". The notice is dated 1 October 2006 but, according to the applicant, was not erected until early 2007. In addition, the route was fenced off where it passed through an engineering yard which had been built on the site of the former Oxcroft Colliery. The notice amounted to a challenge which brought the use of the route into question but in the course of investigating the claim, it became apparent that the same area of land had also been fenced off in 1990. Dennis Skinner MP had been involved in getting the route re-opened by agreement with the landowner along a diverted line around the engineering yard. These two routes are shown on the inset on the plan attached to this report; the original route is shown by a black dashed line and the diversion is shown by the red dashed line. The closure and re-opening of the path in 1990 is deemed to have brought the use of the route into question at that time and the period under consideration is therefore 1970 – 1990.

2.4 Fifteen user evidence forms were submitted with the application but one person's use is from 2004 to 2007 and so entirely post-dates the period under consideration. Their evidence has not been taken into account when assessing the claim. This leaves 14 witnesses who used the route during the claim period and whose evidence is being considered. Eight users claim use of 20 years or more between 1970 and 1990 with three of these claiming continuing use from 1955 (35 years use). Four users claim use of at least 20 years to 1990 and a fifth claims use of 30 years. Six people claim use of the route for less than 20 years during the period under consideration of whom one claims use from 1955 to 1967 and 1977 to 1990 (27 years use prior to 1990 of which 13 years falls within the claim period) and another claims use from 1960 to 1980 (20 years use prior to 1990 of which 10 years falls within the claim period). Of the remaining four users, one claims use of 18 years, another 10 years and the final 2 claim use of 4 years to 1990.

2.5 The description of the route varies from user to user; some describe it as "the old Oxcroft Colliery yard" while others give a detailed description of the route from Clowne Road to Church Road. All but one give an estimate of the width of the route which is stated variously as "single track road" or "footpath" to measurements of between 3 and 12 feet.

2.6 The plan attached to the user evidence forms when they were submitted to the Council, showed only part of the route (shown as **A** to **C** on the Committee plan). As the plan did not show the entire route which witnesses claimed to have used, a new plan was sent to the users and they were asked to mark it to show the full route used. Ten of the fourteen people who had used the route prior to 1990 replied.

2.7 The replies received from the witnesses showed that the route they had used continued beyond point **C** on the Committee plan past the old mineshaft and along a field boundary to join Church Road. From point **E** on the Committee plan, the route originally claimed by the applicant was slightly different from the route marked by the witnesses. The applicant was asked for clarification and after considering the changes made to the land when the area was re-landscaped in the 1990s he agreed that the route he wished to claim was the one which is now shown on the Committee plan.

2.8 The witnesses were also asked to clarify whether they had used the pre- or post-diversion route by the industrial units as twelve of the plans attached to the evidence forms had been marked with the concessionary route in place after 1990; only two witnesses marked the pre-diversion route on this plan. Eleven plans were returned (one of which was from the witness whose evidence entirely post-dates the claim period and which not been considered further) on which five witnesses showed the pre-diversion route; two showed the post-diversion route and three were unclear in their depiction of the route between **A** and **C**.

2.9 All 10 plans showed the claimed route between point **C** and point **D** where the route enters a small copse and embankment, but from here one user marked a route which headed west to join a stream and then followed the stream north back to Clowne Road. Another marked a route from point **C** to point **E** and then continuing in a south easterly direction across the middle of the field to Church Road. Of the remaining eight users, two showed a route passing to the south of the field boundary

that runs between points **F** and **G** as shown on the Committee plan and six users showed a route to the north of that boundary. This discrepancy may be the result of inaccurate marking of the plan by the users or may reflect different routes taken across that section of the route.

2.10 All 14 witnesses have used the route on foot with one also using it by pedal bike and (to the top of the yard) with a motorbike. They have all seen use on foot with 7 having seen use with horses, three having seen use with pedal cycles and two with a motor vehicle. It is not clear to what extent the use (pedestrian and non-pedestrian) was in connection with the colliery.

2.11 Seven users recalled seeing footpath signs – four stated that there were footpath signs on the colliery buildings and three mentioned footpath signs at Church Road, Featherbed Lane, Brockley Wood and Bolsover Road. With the exception of the signs stated to have been on the colliery buildings, these relate to other rights of way in the area and not to the claimed route. No further information has been provided to show precisely what the signs on the buildings said, by whom they were erected or when they were in place and removed.

2.12 One user recalled that during the miners' strike (presumably the 1972 strike as the colliery closed in 1974) a barrier was erected across the pit entrance, but that a 6 foot gap was maintained to allow continued access to the footpath. Six users mentioned gates or stiles on the route with three of these people stating that they were at the back of the colliery, and at Church Road, Featherbed Lane and Brockley Wood (it is unclear from the evidence provided what structures were being described and which of them may have been on the claimed route). Two users mentioned concrete steps and one of these marked them as being in the wood at point **E** on the Committee plan.

2.13 When the applicant submitted his application he advised the Council that concrete steps had been installed at the insistence of the Council during building works at the site, but did not give a date for this (although it may relate to the landscaping works which took place in 1989 or 1990). He also noted that the path had been closed during the foot and mouth outbreak in 2000-01 and in subsequent correspondence acknowledged that the route of the footpath may have altered over the years as a result of the landscaping of the surrounding area.

Consultation

2.14 A consultation exercise was carried out between 16 December 2011 and 20 January 2012. A consultation letter was sent to Cllr Ken Stevenson as the local Member. Three letters and three emails were received in opposition to the claimed route.

2.15 It became apparent during the consultation period that the engineering yard had changed ownership in September 2011, although the Council was not informed about this until January 2012. When the Council was made aware of the situation, the new owners of the land were granted an extension of time in which to submit their response. The new owners of the engineering yard objected on the grounds of

lack of consultation, devaluation of the site, and issues of security, litter and health and safety.

2.16 The owners of another part of the land crossed by the route wrote to object that the route had been unavailable since at least 1999 and probably since 1985 when reclamation works began. When the restoration of the site was completed in 1999 it was securely fenced off and access had not been available since. The objectors stated that the route was not accessible and did not appear to have been used for many years except by BMX cyclists and vandals. The objectors stated that they were suffering losses to their farming operations due to repeated acts of vandalism and claimed that their fences had been breached (although the areas they indicated as having been damaged were not on the claimed route). They attached some photographs taken on 6 January 2012 which purported to show the route overgrown with brambles and young trees.

2.17 An objection was received from a local resident who stated that there were already many footpaths in the area which crossed or ran alongside fields that were used for crops and there were problems of dog fouling in the fields. There was also a well-used track about 250 yards away from and parallel to the claimed route. The proposed route would benefit very few while causing a lot of work and maintenance issues. This objector was asked for further information regarding the alternative route and she marked a plan to show a route to the south west of and parallel to the claimed route. This other route is not recorded as a public right of way but would appear to be the route used by the witness mentioned in paragraph 2.9 who followed the stream back to Clowne Road.

2.18 Another local resident objected that despite having lived in the area for many years he had never seen anyone use the claimed route. There was an unofficial footpath nearby which linked into the claimed route and exited onto Clowne Road.

2.19 A third local resident also objected that there was another path in close proximity to the claimed route and that pursuing this matter was a waste of money.

2.20 The Council's Conservation and Design Group responded to the consultation letter and advised that the reclamation scheme was completed in about 1989 or 1990. When the industrial land was sold on there were concerns that a section of footpath which coincides with section **A – D** on the Committee plan had been fenced off where it ran alongside the engineering yard. The Council made a concessionary route on land it had retained, although it has not proved possible to locate any records relating to this. The concessionary route was adjacent to the industrial land and passed through the newly planted woodland.

Documentary Evidence

Ordnance Survey Maps

2.21 The 1st and 2nd Edition Ordnance Survey Maps identify the area crossed by the claimed route as a common and no route is marked. The 3rd Edition, 25 inches to the mile map, revised 1914 published 1918 shows part of the claimed route ('F' to 'G') marked as FP. The footpath is shown from Church Road alongside field number

169 to the western boundary of that field with the old colliery yard area. It is not shown continuing into the colliery area.

2.22 The route was not among the routes surveyed in 1952 under the National Parks and Access to the Countryside Act 1949 from which the Definitive Maps were produced.

2.23 There are no mining records available relating to the colliery which are of any assistance.

Additional Evidence

2.24 Before the application was submitted, Councillor Stevenson (former Local Member) sought some advice from the County Council on behalf of the applicant. Councillor Stevenson passed to the County Council a conveyance dated 28 August 1992 which recorded a land swap between the applicant and Bolsover District Council. The land concerned formed part of the former colliery access off Clowne Road near point A. Councillor Stevenson also submitted a selection of correspondence between solicitors for the applicant and solicitors for the then owners of the engineering yard which appeared to relate to a private access dispute.

2.25 The Council subsequently received a letter from Dennis Skinner MP which enclosed correspondence he had received from the applicant. The applicant asked for help to deal with the blocked path and stated that he had bought the land from the County Council; it is believed he meant Bolsover District Council.

2.26 Oxcroft Colliery was opened in 1901 and closed in 1974 after which an engineering yard was erected on part of the site. A section of the claimed route passes over a strip of land to the west of this yard but whilst investigating this claim it was found that the claimed route which was used prior to 1990, passed directly through the old colliery yard (which is now the site of the engineering works). This route was blocked by a perimeter fence to the engineering works in 1990 when Mr Dennis Skinner, the local MP, helped to negotiate an alternative route.

2.27 At this time the area around the Old Oxcroft Colliery was being landscaped by Derbyshire County Council. In 1990 a strip of land which ran alongside the engineering works and which was owned by the County Council was fenced off by the Council to accommodate the footpath and take it out of the engineering works site. This is the land crossed by the diverted route around the engineering yard and was subsequently sold by the County Council to the District Council in 1996. The remainder of the old access road from Clowne Road to the colliery was on land bought by the Borough Council from the Coal Board and later sold to the person who developed the engineering yard.

2.28 In March 2000 the then owner of the engineering works purchased the strip of land mentioned above. The concessionary route continued to be used until 2007 when this part of the route was blocked and a sign prohibiting use was erected.

Site Visit

2.29 A site visit was carried out on 25th January 2011 and it was found that the fence blocking off the claimed route alongside the engineering works was still in place. It was not possible to follow the exact route due to this blockage and the plantation of trees alongside the route. At point 'E' there was a set of concrete steps set into the steep embankment giving access to the small copse and a path through the copse to point 'F'. At point 'G' there is a gate in the hedge giving access onto Church Road.

Summary and Conclusion

2.30 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.

2.31 Although it was the erection of a notice in 2006 or 2007 which prompted the application to be made, this is not considered to be the time when the route was called into question. That occurred in 1990 when the original line of the path (the black line shown on the inset to the Committee plan) was blocked as it passed through the engineering works. The period to be considered is 1970 to 1990 and the user evidence indicates that the claimed route has been used for a considerable amount of time with eight witnesses claiming to have used the route for 20 years or more prior to 1990. Two more have used it prior to 1970 and continued to do so into the period under consideration; another has used it for 18 years. One person who has used the route since 1955 states that, "even when the colliery was in full production the route was never closed to the public".

2.32 There does not appear to have been any challenge to use of the path prior to its closure in 1990 and it has been alleged by some users that footpath direction signs were painted on the colliery buildings indicating the direction of the route through the colliery yard although there is no evidence to show when they were painted, by whom or what the signs said.

2.33 In 1990 the then landowner closed the path and, following complaints from users, subsequently agreed a concessionary route which passed to the south west of the industrial buildings (shown as the red line on the inset to the Committee plan). A concessionary route is one used with permission which may be withdrawn at any time. The use of this alternative route from 1990 onwards will not have been as of right and will not give rise to a public right of way. No one questioned the right of the landowner to divert the path, but use prior to 1990 may be sufficient to reasonably

allege that a public right of way existed along that route by that time. If so, it could only legally be diverted by a diversion order made under the Highways Act 1980 and, in the absence of such an order, the legal route would still be along the original line.

2.34 The information provided by witnesses about footpath signs, stiles and gates is unclear and much of it would appear not to relate to the claimed route – Featherbed Lane, Brockley Wood and Bolsover Road are not on the claimed route. It would appear that the steps described by the applicant were installed during the restoration works in the 1990s and so post-date the claim. They do, however, indicate that a route was used at that time.

2.35 Many of the objections which were raised at the consultation stage do not relate to whether or not the claimed route exists as a public right of way. Matters such as security, litter, dog fouling and health and safety are of understandable concern but do not show whether or not a route has been used and cannot be taken into consideration by the Council when determining the application.

2.36 One of the landowners stated that the route may have been unavailable since 1985 but provides no evidence which supports this statement. From the information available to the Council it would appear that the route was blocked and diverted in 1990 as detailed above – it is therefore reasonable to assume that it was in use at that time. If the route was shown to have been unavailable from 1985, the period under consideration would have to be revised to 1965 – 1985 and six witnesses would still have evidence of use in excess of 20 years.

2.37 Another of the objectors stated that he had never seen people using the claimed route. Although this may indicate that the route is used infrequently, it provides no evidence which suggests there is no public right of way along the route.

2.38 The documentary evidence is of little assistance in assessing whether there is a public right of way or not. Although the 3rd edition OS map records a route marked FP along part of the claimed route, such maps are not evidence that the route is public as they only record physical features visible on the ground.

2.39 The correspondence submitted by Councillor Stevenson only relates to land at the northern end of the route and provides no evidence about the route, except that one existed on the ground and may carry private rights (which would not be affected by any public right of way).

2.40 The evidence in support of a public right of way is not sufficient to show that a public right of way subsists on a balance of probabilities, but there is no incontrovertible evidence that one cannot be reasonably alleged to subsist. In such a situation, the Council should make an Order to modify the Definitive Map and Statement. If objections are received and not resolved the matter would then have to be determined by the Secretary of State.

2.41 A draft copy of this report was sent to principal parties and no comments were received.

2.42 A finalised copy of this report has been sent to Councillor **Duncan McGregor** as the local elected member for the area prior to the Committee meeting.

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

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 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 throughout 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: prevention of crime and disorder; equality of opportunity; health and property considerations.

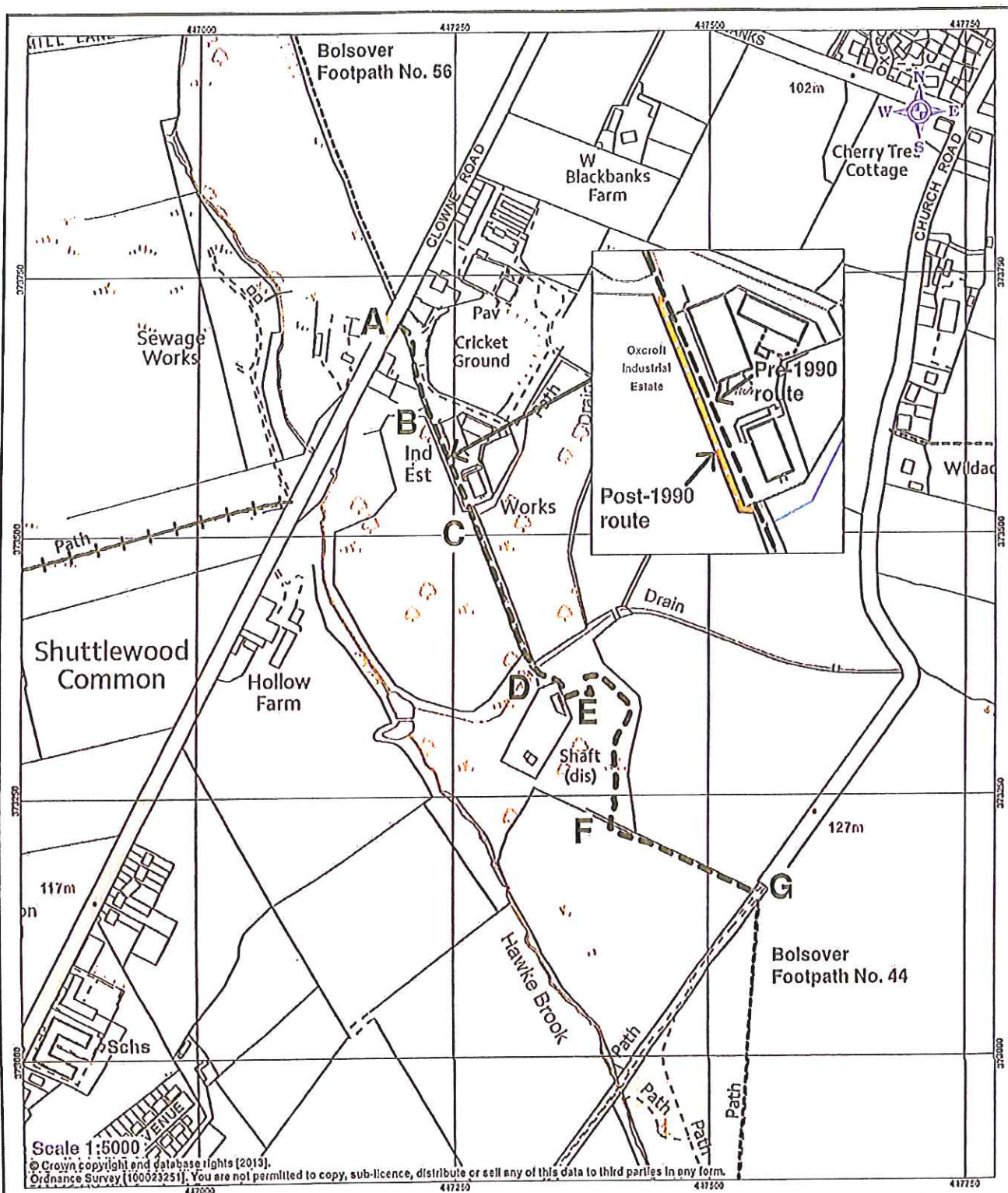
3.12 None of these factors are considered to be relevant for the purpose of this report.

4 Background Papers

File held by Legal Services (ref. 35857)

5 Officer Recommendation

That the Committee resolves to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to add a footpath from Clowne Road to Church Road, Stanfree, Bolsover as shown by the black dashed line on the plan attached to this report, to the Definitive Map and Statement.



Ref: PE/GM/X3404/Ctte/2013

DERBYSHIRE
County Council
Improving life for local people

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Produced by Public Rights of Way on 14 May 2012

Wildlife and Countryside Act 1981 Section 53

**Claimed Footpath between
Clowine Road and Church Road
at Oxcroft Industrial Estate - Bolsover**

Key:

Claimed Footpath ————
Existing footpaths - - - - -
Existing bridleway + + + + +

