

**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 from School Lane to Storth
Lane – Parish of Pinxton) Modification Order 2012**

1. Purpose of the Report

The purpose of this report is to enable members to reconsider the evidence within the appended report (dated 21st May 2012) 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 21st May 2012 this Committee determined to authorise the making of an Order to add the footpath to the definitive map on the basis that the right of way had been shown, on the balance of probabilities to subsist as set out in the report; through use by the public, as of right from 1985 to 2005. The Order was duly made on 16 August 2012. Notice of its making was published in the local newspaper on 23 August 2012 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 Several objections have been received and as they have not been withdrawn the matter may only be determined by the Secretary of State and the Council is now required to submit the case to PINS which administers these matters on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 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 on the balance of probabilities but in this case, evidence has come to light since the making of the Order which brings the strength of the case for confirming the order into doubt. It is therefore proposed that the Council should take a neutral stance.

2.3 As set out in the 2012 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 When the application was reported to Committee in 2012 approval to make an Order was sought on the balance of probabilities that there was a public right of way. This was based on consideration of the evidence available to the Council at the time which showed that the route had continued to be used on foot following the stopping up of that part of Storth Lane by legal order in 1976. That use was brought to an end in 2005 when the occupants of properties on Honeycroft Court extended their gardens across the claimed line. At the time, there was very little evidence in opposition to the application which raised questions about the use of the route.

2.6 Since the Order was advertised there has been no further evidence submitted in support of confirmation of the Order and no evidence submitted in objection to the Order which suggests that the Council should actively oppose it. Many of the submissions made reiterate earlier submissions made to the Council during consultation in 2007 and relate to matters such as anti-social behaviour, vandalism and litter which are not matters which can be taken into consideration when determining an application under the Wildlife and Countryside Act.

2.7 However, there was an objection to the Order stating that use of the route had been challenged which, in conjunction with the user evidence, raises doubts over the claimed use. Having considered the objections and reanalysed the supporting evidence, it now appears that there is a conflict of credible evidence such that the application does not satisfy the test for confirmation of the Order (that the path subsists on the balance of probabilities). It is therefore proposed that the Council should take a neutral stance.

User Evidence

2.8 When reviewing the evidence, in preparation for submitting the case to PINS, it was considered that certain factors had not been apportioned the appropriate attention. Below is a brief breakdown of the user evidence submitted.

- 16 user evidence forms (UEFs) were submitted.
- 13 users claimed use from 1976; the year the old road was ‘stopped up’.
- Three users did not state when they had used the route.
- Nine users claimed to have used the route in excess of 20 years between 1976 and 2005.

- 13 users ticked the box on the UEF, 'to visit places on the route' which implies that they were not going from highway to highway and may have had permission to cross the land.
- Two of the people who did use it from highway to highway (Maurice Parkin and Kenneth Ladyman) are no longer interested in supporting the application and one of them, who only used it as part of an organised group with the Bolsover Walk and answered most questions with, 'cannot remember'.
- Christine Bird wrote that she had walked it, 'just a few times' with the 'Bolsover walk a few years ago' and also appears to have marked two routes on the plan attached to the evidence form.
- Yvonne Power refers to being stopped 'by people living on the route' and being told it was private property. She does not say on her form when these events happened and it has not been possible to contact her.
- Keith Nicholls stated the route was blocked or diverted, 'when work was carried out on the school'.
- Colin Marshall states his use as 1984 to 2003 'Blocked off' and that, 'during school new build it was blocked off...'

2.9 If 2003 were to be considered as the year that use of the route was brought into question there would be just six users claiming 20 or more years use over the period 1983 to 2003.

Objections to the Order

2.10 Most objections were based on antisocial behaviour problems: drinking, drug taking, vandalism, theft, general loitering and trespass into gardens as well as concerns over the security of the school which had previously been the victim of numerous thefts. The school's head teacher stated he would apply for an extinguishment if the Order was confirmed.

2.11 G Holloway refers to the land as 'derelict land' and claims that between 1990 and 2006 the land was used by nobody and had no visible footpath. He also states that the school fenced off its northern side.

2.12 Laura Woodward and James Stokes submitted an email stating that, 'I have been informed by other residents that if anyone was seen walking towards this footpath they were challenged and told that it is not a right of way.'

Comments on the Objections

2.13 The majority of the objections are about anti-social behaviour, littering and other matters which are not relevant under current legislation. This is because while such objections are understandable, they are not relevant to the question of whether a public right of way subsists and cannot be considered further by the Council or the Inspector following submission of the matter to PINS.

2.14 With regard the objection from Laura Woodward and James Stokes, they do not specify dates or name the people who made the challenges. However, although it has not been possible to trace them to obtain further information, the fact they claim challenges have been made should be taken into consideration. Had the information been submitted before the 2012 report was written it could have had a significant impact on the recommendation. Further enquiries could have been made at the time and the dates of the challenges could have been established. Without any confirmation it remains ambiguous. However, one user, Yvonne Power, refers to being stopped 'by people living on the route' but does 'not remember dates'. The fact she does not remember the dates would imply it was on more than one occasion and some time before the form was completed in 2005. She was also told it was private property.

2.15 G Holloway's claims that nobody used the route contradict the other available evidence but, he also refers to the '*derelict land*' being fenced off by the school. This implies, when taken in conjunction with the reports of loitering and antisocial behaviour and also the users whose purpose for using the route was dog walking, that the area used to be wider and that rather than using a specific route, some users may have wandered all over the area.

2.16 As stated at paragraph 2.28 in the 2012 report there are two tests which should be considered before determining whether a right of way should be added to the DMS.

2.17 Section 31(1) of the Highways Act 1980 provides that 'where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public, as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it'. The period of 20 years is to be calculated retrospectively from the date on which the right of the public to use the way was called into question.

2.18 Bearing in mind that the majority of the users of this route were schoolchildren who would have accessed the school by a gate on the route; or by loitering groups, who in all likelihood would not have been going from highway to highway; or that 13 of the witnesses 'visited places on the route'; or that five of the users used the route as part of the 'Bolsover Walk', two of whom appear to have not used it otherwise and one who also used it to visit places on the route, the submitted evidence does not convincingly represent the 'public'.

Additional Information

2.19 In 2010 attempts were made to contact all those who completed User Evidence Forms and the Council also tried to contact them again in 2015. Not all the users replied in 2010 and only a few were traceable in 2015. There

were several pieces of information given that are pertinent to the consideration of confirmation of the Order

2.20 One user, Maggie Bunker, stated in 2015 that she didn't fill the form in herself.

2.21 An email was received by the Council, in response to the letter of 2010 stating that one witness named on a UEF, James Wright, knew nothing about the claim.

2.22 When the report was submitted to Committee in 2012, 2005 was taken to be the year the route was brought into question. However, several users recall that the route was (or may well have been) closed at the time that the school was rebuilt:

- Ian Lane started working at the school in 2001 and recalls the school was rebuilt a couple of years later, in 2003. He remembers that the route was used by the builders' merchant for the delivery of materials.
- In response to the question of the route being blocked or diverted, Keith Nicholls stated, 'when work was carried out on the school'.
- Colin Marshall states his use as 1984 to 2003 ('*Blocked off*') and that, 'during school rebuild it was blocked off for " " (sic).

2.23 Martin Kaye, the Site Manager of Frederick Gent School has confirmed that the redevelopment took place in July and August of 2003. He is 'pretty sure' that the route was closed during the redevelopment as there were major groundworks on that land, specifically when the mains water pipe was installed from Old Storth Lane. He also recalled that the pupils used to be able to access the school by a gate on the route but there were so many complaints about antisocial behaviour and litter that the gate was permanently shut and the pupils told to use the road instead.

2.24 If 2003 is taken as the date when use of the route was brought into question then there are only six users with 20 years claimed use.

2.25 Of these six users, only Ian Lane is prepared to attend Public Inquiry. Of the remaining five;

- Alan Brooks (who was active in the making of the claim and apparently filled in two or more forms) is deceased;
- Kenneth Ladyman is not interested anymore. The years of his use have been amended on his UEF. The 'from' date, has been changed to 1950, though the original is not decipherable. However, the 'used to' date has been amended from 1994 to 2004;
- Maggie Bunker has stated that she did not fill in the form herself, that she just signed it and that she has no interest in the matter;

- Alan Greenway has no interest in the matter, he wants no further part in the process and has requested to be deleted from all future correspondence;
- Geoffrey Tennant is not interested anymore, though he did recall the school being rebuilt and thought that the route may well have been blocked at that time.

Documentary Evidence

2.26 As can be seen from the 2012 report, Storth Lane was stopped up in 1976 and continued to be shown on Ordnance Survey maps as a feature on the ground.

2.27 The route is no longer shown on OS plans: the gardens of Honeycroft Court are shown; the terminus of Old Storth Road (which is unadopted) is some 15 metres to the east and the terminus of School Lane is some 10 metres to the west of the garden boundaries.

Summary and Conclusion

2.28 Following reanalysis of the UEFs together with the objections and further information gathered the credibility and weight of the supporting evidence is less convincing than it appeared in 2012. Although the report submitted to Committee in 2012 recommended the making of the Order on the balance of probabilities, under further scrutiny it would seem that, at best, the Order should have been made under the reasonably alleged test.

2.29 There are few users with 20 years use, there is doubt cast over the credibility of the user evidence submitted as genuine individual evidence and there is the claim that use of the route has been challenged by the local residents.

2.30 There is also evidence that the pupils of Frederick Gent School were prevented from using the route as access to the school through a gate on the route and were also told not to use any of the route but to use Storth Lane instead. The action of the school is not consistent with a generally held belief that the route was a public right of way.

2.31 On the basis of the evidence submitted to the Council, the right of the public to use the route was called into question when the routes were blocked in 2003, as is claimed in some of the user evidence and as confirmed by the site manager of the school (not 2005 as considered in the 2012 report).

2.32 There is a conflict of credible evidence as one of the objectors claims that challenges have been made to users of the route. Such a conflict of evidence means that the Council can no longer be sure that the route has been used as alleged.

2.33 In addition, the Council has only been able to locate a few of the witnesses who completed a UEF and only one user claiming 20 years use is willing to give evidence at a hearing or public inquiry. The Council would therefore be unable to present witnesses in support of the order whose evidence could be tested by examination and cross-examination in public.

2.34 Pinxton Parish Council has been contacted and advised that the Council has reanalysed the evidence and is considering taking a neutral stance. The Parish Council was asked if they still supported the Order and if so, would they be willing to present the case in support of the Order to the Planning Inspectorate, for example at Public Inquiry. They have confirmed that they are. Subsequently, the Parish Council provided some old OS plans which showed the route. The plans were returned as they all predated the 1976 stopping up Order and were therefore irrelevant for the purpose of determining this Order.

3. Considerations

Legal and Human Rights Considerations

3.1 In addition to the legal considerations contained within the body of the 2012 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 ("A), 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

- 3.2** 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.
- 3.3** 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

21st May 2012

REPORT OF THE DIRECTOR OF LEGAL SERVICES

**WILDLIFE AND COUNTRYSIDE ACT 1981
CLAIM TO ADD A FOOTPATH FROM OLD STORTH LANE TO SCHOOL
LANE PARISH OF PINXTON**

1 Purpose of the Report

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

2 Information and Analysis

Details of the Application

2.1 On 9th January 2006 an application was received from Pinxton Parish Council to add a footpath from Old Storth Lane to School Lane, Pinxton. The application was supported by 16 Public Way User Evidence Forms and a map showing the claimed path.

2.2 A plan showing the route is attached (Appendix 1). The application was to add the section shown as A – B to the Definitive Map. However, it has become clear in the course of investigating the claim that public highway rights over the whole of A – C were legally extinguished (stopped up) in 1976 (see below). It is therefore necessary to consider the entire route between School Lane and Storth Lane.

User Evidence

2.3 Storth Lane was a public highway with vehicular rights until part of it (including the claimed route) was legally stopped up in 1976 to enable development to take place. Any use prior to the date on which the Stopping Up Order came into effect will have been lawful and must be disregarded when considering this claim. Following the stopping up, part of the old route of Storth Lane became called Old Storth Lane and part became School Lane. The parts of Storth Lane which were not stopped up were incorporated into the new route of Storth Lane.

2.4 The claimed route was brought into question in 2005 when the occupants of properties on Honeycroft Court extended their gardens across the claimed route up to the boundary fence of Frederick Gent School. The period of use under consideration is, therefore 1985 – 2005.

2.5 Of the 16 people who completed Public Way Evidence Forms, three did not give any information about how long they have used the path; five claimed use of less than 20 years (four of these had use between 13 and 19 years); and eight claimed use of at least 20 years to 2005. Seven of these people also claimed use from before 1976 but, as stated above, that use will have been along a public highway and has been excluded from the consideration of this claim.

2.6 All witnesses claim to have used the route on foot with four reporting additionally that they had used the route by bike, and one with a horse. All witnesses reported seeing others using the route on foot. Two users stated that school pupils had used the route up until the building of the new Frederick Gent School. Six witnesses reported having seen others use the route on a bike and four had seen others use the route on horseback. Two users reported that they had seen a car on the route.

2.7 Seven of the users refer to a gate across the route, with two describing this as a barrier to prevent the use by vehicles. Five users refer to the existence of a stile in addition to the gate, one mentioning that this was in later years.

2.8 One witness referred to being turned back by people living on the route but cannot give a date. None of the users can remember any dates in relation to gates, barriers or stiles. None of the users claimed to have seen any notices prohibiting use.

2.9 All the witnesses have marked a plan to show the route they have used. All but two have marked the route shown as A – B – C on the plan attached to this report. The remaining two witnesses have marked only the section A – B although they have both described the whole route.

Consultation

2.10 A consultation exercise was carried out between 4 May 2007 and 15 June 2007. A consultation letter was sent to Cllr Jim Coyle as the local Member. He replied in support of the application and reported that “the road was fully in place until very recently” and that he had often used it.

2.11 Sixteen objections were received in opposition to the claimed route including the Head Teacher of Fredrick Gent School. All sixteen stated anti-social behaviour, crime, vandalism and litter as the reason for their objections.

2.12 One of the objectors also submitted a petition containing the signatures of 63 people objecting to the claim.

2.13 Two letters were received in support of the claimed route. Both came from local residents one of whom grew up in the area and used the path after 1976 to get to school. This person continued to use the path until it was blocked off. The other person moved into South Normanton in the 1990s but

has researched the area and found that old maps show a route between Storth Farm and the route which is now Old Storth Lane. The correspondent states that the land crossed by the route was bought by the County Council and eventually sold for development. The purchasers of the new houses were later granted planning permission by Bolsover District Council to extend their gardens to the school fence despite objections that this would involve blocking a footpath.

Documentary Evidence

2.14 Documentary evidence which pre-dates the Stopping Up of Storth Lane has been disregarded as the lane was a public vehicular route.

Ordnance Survey Maps

2.15 The O.S. map of 1985 (1:10,000, revised for significant changes in 1983) shows Storth Lane as a through road whereas the O.S map of 2005 (1:10,000) shows Storth Lane as being divided into Old Storth Lane and School Lane with what appears to be a dotted line joining the two sections.

Additional Evidence

2.16 The Stopping Up of Highways (County of Derbyshire) (No. 4) Order 1976 was made by the Secretary of State for the Environment on 10th September 1976. This authorised the stopping up of two sections of Storth Lane (one of which coincides with the route shown on the Committee Plan as A – B – C) and a section of Bridleway 18.

2.17 On 24th May 2005 Bolsover District Council granted Planning Permission to change the use of land at the rear of numbers 9 to 15 Honeycroft Court to domestic garden. The 'Notice of Decision' letter includes notes to the applicants making them aware of the fact that the route of School Lane/Old Storth Lane may be used by pedestrians and "Given the length of time since the 'Stopping Up' Order, highways rights may have been reacquired." The notes also advise the applicant to contact the Government Office for the East Midlands to ascertain whether a new Stopping Up Order should be obtained and that the granting of planning permission "would not necessarily override any subsequent claims for the designation of the route as a public footpath".

2.18 On 6th October 2005, Bolsover District Council granted Planning Permission to change the use of land at the rear of numbers 3 to 7 Honeycroft Court to domestic garden. The Notice of Decision letter contains the same advisory notes as above.

2.19 Several photographs have been submitted to the Council by objectors against and supporters of the application. Thirteen undated photographs were submitted by one of the objectors. Most are photos of the general area and show the current road called Storth Lane, plus School Lane, Mansfield Road and Storthfield Way. Two photos are labelled as showing the School Lane end of the route although one of these would appear to show the Storth

Lane end. The other photograph is labelled Old Storth Lane. These three photographs show a tarmacked area in the foreground then a steel railing fence across the way. Wooden fencing can be seen in the background.

2.20 Another witness has sent in two photographs. The first is believed to have been taken in 2001 and shows a broken metal gate across part of the route, then a gap and then a concrete post and chain link fence. A worn path can be seen in the distance passing between the school fence and the gardens to Honeycroft Court. The gap would appear to be wide enough to permit the passage of pedestrians.

2.21 The second colour photograph is believed to have been taken in 2005 when a garden fence was extended across the claimed route. A clear worn path can be seen leading to and appearing to continue under the fence.

Site Visit

2.22 A visit to the site was made on 12th May 2011 when it was seen that the garden fences of 6 properties numbered 3 to 15 Honeycroft Court have been extended to meet with the boundary fence of Fredrick Gent School. No evidence of a footpath could be seen on this visit.

Summary and Conclusion

2.23 This application relates to continued use of the route following the legal stopping up of highway rights in 1976. Although the 1976 Stopping Up Order extinguished all public rights over the route, new rights may have arisen if the route has been used by the public as of right and without interruption for a new period of 20 years. The evidence of seven of the eight people who claim to have used the route for 20 years indicates that they were using the road before it was stopped up in 1976 and continued to use the route on foot after it was stopped up. All eight were using the path until its closure in 2005.

2.24 In addition, three people have submitted information in support of the application in response to the consultation letter and two of these appear to have used the route for many years following the Stopping Up.

2.25 The objections are all based on worries about crime, ant-social behaviour, abuse and littering. These are of understandable concern to the people affected. However, they are not matters which relate to whether the path has been used by the public, as of right and without interruption for a period of 20 years. None of the objections suggests that the path was not used as claimed up to 2005 and there is no evidence of any lack of intention to dedicate the route. The comments that have been made by the objectors indicate that the path was well-used until it was blocked.

2.26 The grant of planning permission to change the use of the land to domestic garden does not constitute permission to close or divert a public right of way whether or not it is recorded on the definitive map and statement. This is stated in the Decision letters in which it was also made clear that public

rights to use the land may have arisen in the 29 years since the Stopping Up Order.

2.27 The petition may reflect local feeling but contains no evidence of the use or lack of use of the route as a footpath.

2.28 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 the balance of probabilities? This requires clear evidence in favour of the applicant and no credible evidence to the contrary.

Test B – is it reasonable to allege on the 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.

2.29 In this case it would appear that Test A is satisfied and a right of way does exist on a balance of probabilities. There is clear evidence of use by the public, as of right and without interruption over a 20 year period and no evidence that there was no intention to dedicate the route.

2.30 There is mention of limited use of the claimed route by persons on bicycle and horseback but the evidence provided is insufficient to support a claim for a higher status.

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

2.32 A finalised copy of this report has been sent to Councillor Jim Coyle 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. 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 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.

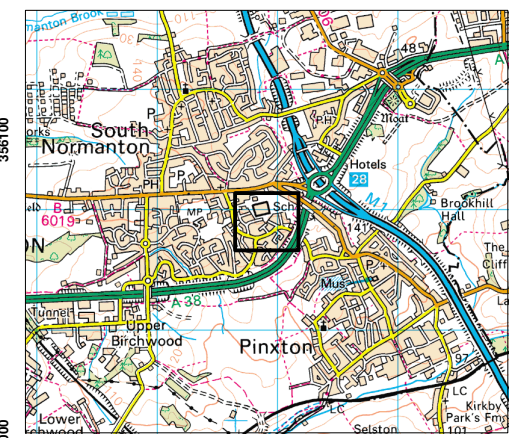
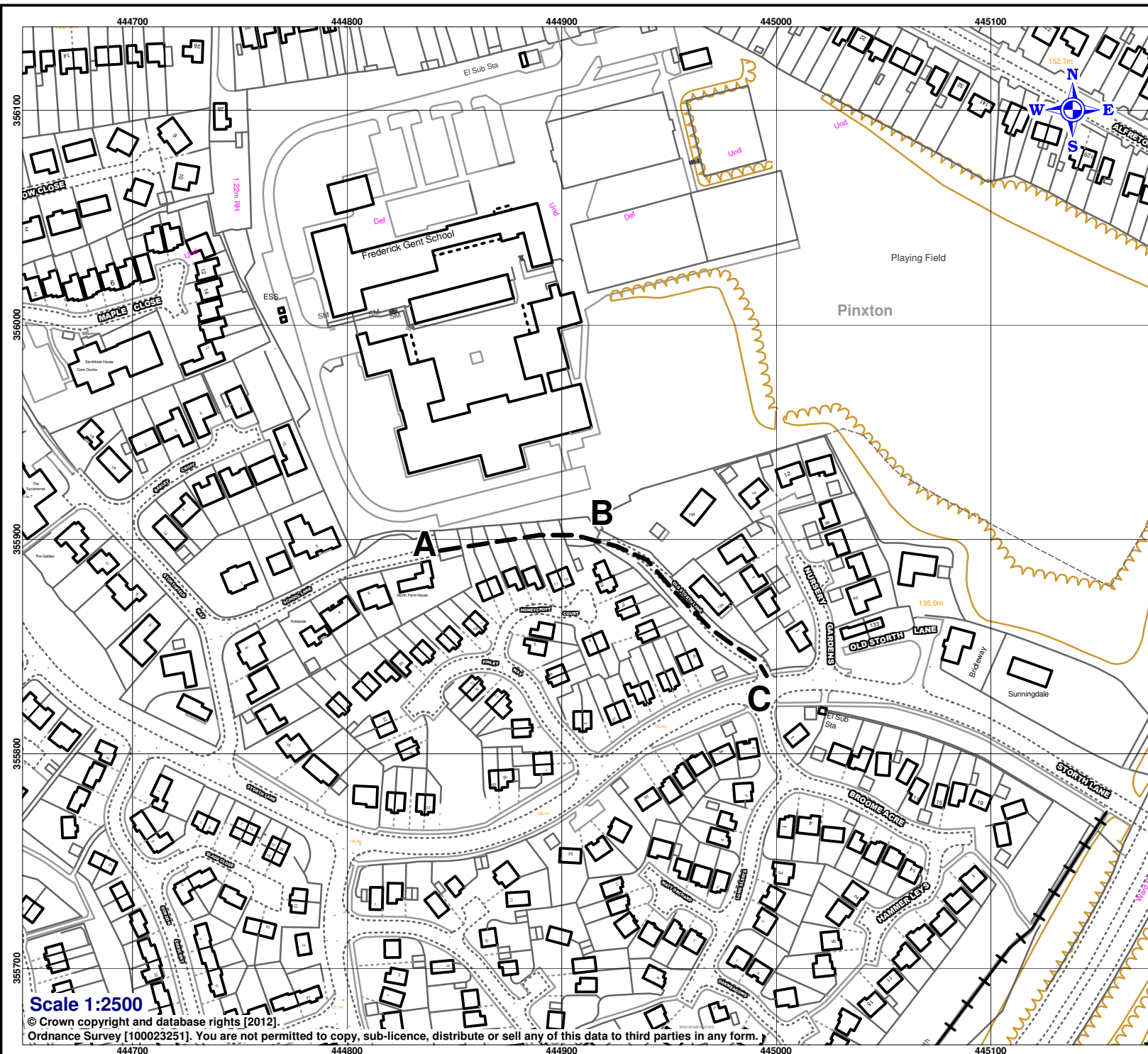
3.12 None of these factors are considered to be relevant for the purpose of this report.

4 Background Papers

File held by Legal Services (ref. 29649).

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 School Lane to Storth Lane, Parish of Pinxton to the Definitive Map and Statement.



Wildlife and Countryside Act 1981 S.53

Claim to Add a Footpath between School Lane and Storth Lane - Parish of Pinxton

KEY

- Claimed Footpath - - - - -
- Existing bridleway + + + + +



DERBYSHIRE
County Council
Improving life for local people

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Scale 1:2500

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