

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY LICENSING AND APPEALS COMMITTEE**

**29 October 2018**

**Report of the Director of Legal Services**

**Wildlife and Countryside Act 1981**

**Claim to add a bridleway from Public Bridleway No.39 to Public**

**Footpath No. 38 – Chesterfield**

**Upgrade Public Footpath No. 38 (Part) to bridleway – Chesterfield**

**Upgrade Public Footpath No. 209 (Part) – Chesterfield**

**Add a bridleway from Public Footpath No. 209 – Chesterfield to Public**

**Footpath No. 73 – Parish of Barlow**

**Upgrade Public Footpath No. 73 (Part) to Bridleway – Parish of Barlow**

**1. Purpose of the Report**

To enable members to determine an application to amend the Definitive Map and Statement by adding a bridleway from Public Bridleway No. 39 to Public Footpath No. 38 – Chesterfield (as shown A – B on the attached plan), upgrading of Public Footpath No. 38 (Part) to bridleway – Chesterfield (as shown B – C), upgrading of Public Footpath No. 209 (Part) to bridleway (as shown C – D), adding a bridleway from Public Footpath No. 209 – Chesterfield to Public Footpath No 73 – Parish of Barlow (as shown between Points D – E), and upgrading of Public Footpath No 73 (Part) to bridleway – Parish of Barlow (as shown between Points E – F).

**2. Information and Analysis**

**2.1 Details of the application**

An application was received from the British Horse Society dated 16 October 2015 to add a bridleway from Public Bridleway No.39 to Public Footpath No. 38 – Chesterfield, upgrade Public Footpath No. 38 (Part) to bridleway – Chesterfield, upgrade Public Footpath No. 209 (Part) – Chesterfield, add a bridleway from Public Footpath No. 209 – Chesterfield to Public Footpath No. 73 – Parish of Barlow, and to upgrade Public Footpath No. 73 (Part) to Bridleway – Parish of Barlow. The application was supported by a plan showing the claimed route and 18 User Evidence Forms.

## 2.2 User Evidence

None of the users state that their usage of the route has ever been challenged. One user referred to being challenged on a path connecting with the claimed route in 2012. One user has referred to a notice stating “no horses” but believed this to refer to the woods and not the track, no date has been provided for when these were erected. One user refers to Private Land notices being erected in 2013.

The challenge did not take place on the claimed route. It is unclear whether the notices referred to the claimed route and there is no information to suggest that it would be sufficiently conveyed to members of the public by the wording that they were not entitled to use the route on horseback as of right, without force, permission or secrecy.

As public rights were legally suspended in the area for the purpose of working coal until a Revocation Order in 1994 it is considered that the date of the Revocation Order is the date the status of the route was called into question for the purposes of Section 31(2) Highways Act 1980. Only events prior to 2014 have been considered in assessing the claim and therefore the relevant period is 1995-2014.

All of the user evidence forms received provide a detailed description of the route used and have a plan with the route marked on for identification. All of these evidence forms cover the entire claimed route.

Of the 18 users, four claim to have used the route on horseback for over 20 years, three claim to have used the route on foot and on horseback for over 20 years and eleven claim to have used the route on horseback for less than 20 years but within the relevant period.

Six of the users claim to have used the route on a weekly basis, five users claim to have used the route on a monthly basis and two users claim to have used the route on a less than monthly basis. Three of the users claim to have used the route weekly in spring and summer and monthly in winter, one user claims to have used the route on a monthly basis in the summer and a less than monthly basis in the winter, and one user claims to have used the route monthly or less.

Nine users claim to have witnessed others using the route on foot, horseback and bicycle, and nine claim to have witnessed others using the route on foot, horseback, bicycle and by vehicle.

None of the users refer to the route ever being diverted.

None of the users refer to their usage of the route ever being challenged, or being told that the route was either not a public right of way or that they should not be using the route on horseback.

None of the users refer to being given permission to use the route.

One user refers to a hand written notice stating “no horses” when diverting from Barlow bridleway for a short while but believed it referred to the tracks within the wood, this notice was not in place when the user last rode the route before completing the evidence form in 2015.

Two users mention a gate at the Sheepbridge end, however, this is at the beginning of the Public Bridleway No 39 and is not on the claimed route.

## **2.3 Consultation**

An informal consultation exercise was carried out between 02 May 2017 and 06 June 2017. Notices were placed at either end of the route at the beginning of the consultation period and letters were sent to the statutory consultees, land owners and the elected Local Members at the time, Councillor Dean Collins and Councillor Stuart Ellis.

The consultees were asked to provide any evidence or information relating to the history or use of the claimed route which they considered might be relevant to the determination of the application.

### **Responses received in support of the application**

A number of responses were received in support of the application, details of which are summarised below:

#### Supporter 1

- Did not realise that the actual path runs off to the right on the old golf course but often uses it to either go up into the woods or across to Barlow.
- There aren't many bridle paths and this is one of the few that the horses can relax on off road.
- The use of the route is really appreciated and affords beautiful scenery.

#### Supporter 2

- First rode the route on horseback in 2011 and last used the route in 2013
- Used the route as a circular route as part of a longer journey some evenings and weekends on average 33 times a year for two years.
- Has ridden the route alone and with friends.

### Supporter 3

- First rode the route on horseback in 1984 and last rode the route in 1994.
- Always believed the route to be a bridleway as it was introduced to the rider as a bridleway by the Hunt Master to Barlow.
- Used the route mainly as part of a longer journey, mainly at weekends on average six times a year.
- The route was one of the main hacks out from Birch Hall Farm as there were no other bridleways nearby.

### Supporter 4

- Has ridden the route on horseback on average five times a week for the last three weeks.
- Was informed of the path by other riders in the area who have been riding this route for many years.
- Uses the entire length of the route in both directions using the path to complete a circuit with the use of the connecting bridleway across the old golf course.
- Urges support of the claim as it will allow continued use as a vital link to the bridleway network.

### Supporter 5

- Used the entire route on horseback between 1969 and 1974.
- Usage of the route was normally during the summer months and was probably five times a year.
- The path was a red ash base and it was believed it was a bridleway deriving from the old railway track.
- No one ever questioned usage of the track and no one ever stopped them from using it.

### Supporter 6

- Would like to formally support the designation of the route a bridleway to enable correct usage by horse riders and cyclists.
- Regularly users the route on bicycle with friends.
- Uses the route as a recreational off road link and provides a pleasant mountain bike terrain linking in with other off road and traffic free sections at Poolsbrook Country Park and beyond.
- Rode the route as part of training for a youth hostel holiday in 1980.
- Has used the route for 31 years and was still using the route at the time that the consultation was carried out.
- Has a passion for the local area and the ability to enjoy off road cyclable route, the loss of these would reduce the enjoyment that it brings to cyclists.

### Supporter 7

- Has used the entire route on bicycle since 2014 and has seen many other cyclists and horse riders using the route.
- The path is heavily used as indicated by bike tracks and hoof prints.
- The path connects to the bridleway towards Hallows golf course and makes the area accessible and safe for cyclists and horse riders.
- Estimates using the path more frequently in the summer months as it is not muddy and therefore more accessible.
- Regular use is weekends during summer months which stops during winter months December – January and depending on weather resumes in February.

### Supporter 8

- Been made aware of plans to change the byways along the side of the bypass to a footpath and as a regular bike user would rather it stay open for their legal use.
- Has cycled the route mainly as part of a longer journey from Sheffield to Dronfield for 15 years.
- Uses the route to walk the dog over into the woods and to the ponds.
- Uses the route a couple of times a week either on foot or cycle, usage being more frequent in the summer.
- Was still using the route at the time when the consultation was carried out.

### Supporter 9

- First started riding the route in 1961.
- Rode the route 3 times a week until 2011, apart from when pregnant.
- Has ridden the route from both directions with friends.

### Supporter 10

- Has ridden the entire route on and off since 2008.
- Last rode the route around September 2016.
- The route provides a good link between Dronfield and Unstone and is possibly one of the old pack horse trails from the mining days.

### Supporter 11

- Has ridden the entire route regularly, weather permitting, since 2008 to the time that the consultation was carried out.

- When moved to the area 13 years ago was told by a local rider, who had lived in the area all their life, that the route was a bridleway.

#### Supporter 12

- Rode the route husband occasionally in 2007 on a friend's horse.
- Husband continued to ride there regularly about once every two weeks.
- Other riders based at Pipers Wood also frequently used the route.
- Left Pipers Wood in 2010 but returned to stables at Bull Close Farm in August 2015 and husband continues to ride the route occasionally, including twice in 2017 when the consultation was carried out.

#### Supporter 13

- Used the full length of the track on from 2005 to 2009 when horses were kept at yard off Barlow Lees Lane.
- Used the route roughly four to five times a year, mainly in spring and summer as the ground would tend to get very boggy at wetter times of the year.

#### Supporter 14

- Has ridden the entire route since finding it by chance whilst riding in Barlow in 2002.
- Last hacked over the bridge to Unstone approximately three weeks before the consultation was carried out.
- Has used the route on average 10 or 12 times a year since 2002.

#### Supporter 15

- Has ridden the route on horseback for more than 12 years to the date of the consultation
- Was shown the local routes for riding by local riders.
- Regularly rode the route known locally as red lane with friends.
- Usage of the route between 2005 and 2010 was approximately two or three times a month.
- Usage of the route between June 2010 and September 2010 was on average once a week.
- Did not ride the route between September 2010 and April 2011.
- The horses were moved to Holmesfield between 2011 and 2015 and although the route was still ridden, usage was less frequent.
- Since January 2015 has ridden the route 2 to three times a month and three to four times a month since April 2017.

- Most recently used the route in June 2017, when responding to the consultation.

#### Supporter 16

- Strongly supports the claim as it completes a circuit of public rights of way around the proposed new Ecodome centre.
- The paths have been walked by many members of the Chesterfield, North East Derbyshire, and Bolsover Group of Ramblers individually and collectively for many years without restriction.
- Does not have any concerns about upgrading to bridleway as the width and surface condition appear more than adequate.

#### Supporter 17

- Has ridden the path alongside the Dronfield bypass for 20 years.
- There aren't many bridleways in the area and the one regularly used through Monk Woods is no longer a bridleway.
- At the time the consultation was carried out was using the route three to four times a week so would appreciate it being a permanent bridleway.

#### Supporter 18

- Has ridden the entire route on horseback for 46 years.
- Rode the route mainly in the mornings, at weekends and in the school holidays as a child.
- At the time of the consultation period was riding the route a least four times a week.
- Always thought the route was owned by Haddon and was never stopped from using it.
- Always believed it to be a bridleway as it all links up.

#### Supporter 19

- Used the entire route between 1969 and 1974 mainly in the summer on average five times a year.
- The path had a red ash base and it was believed it was a bridleway deriving from the old railway track.
- No one ever question their usage or stopped them from using it.

### **Responses received in objection to the application**

A number of responses were received in objection to the application and are summarised below

### Objector 1

- The application is not compatible with land usage of commercial forestry and game shooting.
- It would be detrimental to the rural business.
- There is a risk to the safety of cyclists and equestrians due to machinery and shooting.
- Refutes the claims of usage.
- Is unaware of regular use by trespass and any such usage has always been challenged.

### Objector 2

- Wishes to object to the footpath upgrade.

### Objector 3

- Has acted as forestry advisor and land agent since 2007.
- Regularly worked in the surrounding woods between 2007 and 2016 and has never witnessed any cyclists or horses using the definitive footpath or forestry track running parallel to the path.
- The owner displayed signage at points where the definitive public right of way leaves the course of the forestry track reading "Private Woodland - No Access"
- The portion of the track not crossed by the public footpath was impassable between 2008 and 2009 due to heavy rutting and felled timber caused by timber harvesting.
- Timber harvesting occurred again in 2017 and during all timber harvesting the track has been fenced temporarily to prevent risk to potential trespassers.
- Use by equestrians and cyclists along the definitive route of footpath 73 was impossible during this period due to the nature of the ground and overhanging vegetation as it passed through a dense larch plantation.
- Since the application for the diversion of public rights of way on the Peak Resort site in 2016 the owners have seen equestrian and cycling trespassers attempting to use the footpath despite the signage and challenge by the owners and their staff, resulting in the owners installing gates to prevent potential trespass.
- The previous signage that was attached to the trees has been removed due to harvesting.
- As equestrian and cycling use has been continually prohibited through the display of signage and the fact that part of the route was impassable for a period during the forestry operations, it is considered that the application is opportunistic and poorly founded on the back of the bridleway diversions on the adjacent estate.
- Considers that the user evidence is factually incorrect for the above-mentioned reasons.



#### Objector 4

- As former owner of Blackpiece Wood for 20 years it was made clear to all horse riders where the bridle path was and that the footpath that ran parallel to the road was not available to them.
- During ownership very few horses were encountered on the path but on every occasion they were informed that they were not allowed on the path.

#### Objector 5

- Has walked and beat on the land for a number of uses and opposes any upgrade.
- Has never seen any horses using the route.
- Has recently seen confused cyclists on the route who have admitted they were trespassing when challenged.
- Opposes any upgrade on the grounds of public safety.
- Ongoing felling operations and a shoot could startle horses.

#### Objector 6

- Is a director of a business that has utilised Black Piece Wood and Monks Wood for commercial purposes for approximately seven years and is a member of the shoot.
- Advises that the owner has always displayed signage declaring the land to be "Private".
- During numerous visits no horses or cyclist, and very few walkers have been seen and this is closely maintained due to the nature of the tree works.
- The definitive route was physically impassable for horses and their riders due to overhanging and overgrown vegetation.

#### Objector 7

- Although not a regular visitor to the land, has never seen any bikes or horses using any of the paths in this application.

#### Objector 8

- Is a training manager at a business that regularly used Black Piece and Monk Wood for training and commercial works.
- During this has never seen any horse riders or cyclists and was under instruction to cease work and advise anyone straying from the footpath of the correct route.

- The footpath could not be ridden by horses as the canopy had closed over.

#### Objector 9

- On the OS map it is only shown as footpath and not a track.
- The footpath does not run down the track and is believed to be closer to the A61.
- The track was installed for the purpose of timber extraction and woodland maintenance to avoid the actual footpath.
- When the track was put in they were not allowed to change a footpath into a logging track as it would have been a danger to the footpath users.
- Use of the track by horses would interfere with vehicular use to maintain the woodland and the walkers who now use the track.
- The track is frequently used by contractors and owners to carry out maintenance.
- The area of woodland is being developed for ground nesting birds.
- Use of the track by horses would interfere with a well-used walking route at the west end.
- Has known this part of the wood for over 60 years.

#### Objector 10

- Has worked in Monk Wood for the last 27 years and remembers the wood being planted.
- Has spent many working days there and over the years has seen very few cyclists or horses.
- On the rare occasion that they were encountered it was priority to turn the trespasser around.
- No cyclists or horses could use footpath 73 as it has been impassable for both for many years.
- Believes that the upgrade would create significant conflict with the long term plan for the woodland.

#### Objector 11

- Has worked, shot, beat and walked dogs in Monk Wood, Black Piece and the surrounding farmland since 2009.
- Has never witnessed any horses or cyclists using the definitive route of Barlow 73 or the forestry track running parallel to the path.
- Signage was displayed where the public right of way leaves the forestry track reading "Private Woodland – No Access".
- The portion of the track not crossed by the public footpath was impassable between 2008 and 2009 due to heavy rutting and

felled timber due to timber harvesting and again in 2017. The track has been temporarily fenced during harvesting to prevent risk to potential trespassers.

- Use by equestrians and cyclists along the definitive route of footpath 73 was impossible during this period due to the nature of the ground and overhanging vegetation as it passed through a dense larch plantation.
- Since the application for the diversion of public rights of way on the Peak Resort site in 2016 the owners have seen equestrian and cycling trespassers attempting to use the footpath despite the signage and challenge by the owners and their staff, resulting in the owners installing gates to prevent potential trespass.
- The previous signage that was attached to the trees has been removed due to harvesting.
- As equestrian and cycling use has been continually prohibited through the display of signage and the fact that part of the route was impassable for a period during the forestry operations, it is considered that the application is opportunistic and poorly founded on the back of the bridleway diversions on the adjacent estate.
- Considers that the user evidence is factually incorrect.

## **Documentary Evidence**

### **Enclosure Award Evidence**

The area of Chesterfield in which the claimed route is situated is covered by the 1839 Newbold Enclosure Award and Plan.

The plan shows the (then) wooded area of the claimed route but does not give any indication of the route itself. However it depicts two other tracks running through the woodland to the parish boundary from the direction of Sheepbridge.

One of those tracks corresponds with the alignment of a route which would later become the A61, while the other track corresponds to a route which was originally claimed as bridleway No 39 in the original rights of way survey of the early 1950s and which ran through Brierley Wood towards Unstone/Dronfield. Where this latter route leaves the scope of the enclosure plan it is labelled 'From Dronfield', suggesting that this may have been the more important of the two woodland tracks shown on the plan.

This particular area of Newbold fell outside the geographical scope of the enclosure process and so the Enclosure Award itself does not assist in terms of the highway status of the two routes described. However, the fact that the claimed route is not shown on this large scale enclosure plan suggests that it is not an old route.

The Barlow Enclosure Award and Plan of 1820 shows the area in which the claimed route lies. It is shown as an area of extensive woodland called Monk Wood, however the plan provides no indication of any route on the alignment of the claimed path.

### **Tithe Evidence**

No Tithe documentation exists for the parish of Barlow, however the area of the claimed route is shown on the 1849 Newbold Tithe Plan. As with the earlier Newbold (enclosure) plan, this large scale plan shows the area of the claimed route as an extensive area of woodland and depicts the same two tracks forking off from the area of Sheepbridge north westwards towards the parish boundary. The claimed route itself is not shown.

### **c1898 1:2500 Ordnance Survey (OS) & 1910 Finance Act working plan**

As with earlier maps and plans, the large scale OS plans covering the area of the Order route show it as an extensive area of woodland with many woodland tracks and paths.

One of those woodland tracks appears to correspond with part of the claimed route running from the parish boundary just NW of point D north westwards to point F. However the track is not labelled (i.e. as 'FP' or 'BR') and it is not possible to say how it might have been used at this time.

One of the other tracks shown on these plans appears to broadly correspond with the alignment of what would become the A61 Unstone/Dronfield By Pass. (That route appears to have been claimed as public footpath Nos 38 and 50 and part public bridleway No 39 in the 1950s and was presumably stopped up when the main road was constructed)

The Finance Act working plan shows part of that particular route excluded from taxable land holdings (hereditaments) however the majority of this area, including the area of the claimed route, was included in several large hereditaments and the Finance Act valuation book for the parishes concerned provides no help in terms of identifying a highway status for the route under investigation.

### **Definitive Map Evidence**

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

The Survey in Chesterfield was carried out between 01 June and 31 August 1950, the route now recorded as Public Footpath No 38

Chesterfield was claimed as a footpath following a route described as follows:

“Enter through opening in wall and down steps to F.B. over Brook, bear left to function of four paths, then right, and on through wood to Borough Boundary”.

Chesterfield Public Footpath No 38 is recorded on the Definitive Map and Statement and is described as follows:

“Footpath from Sheffield Road at the Bushes (373754) in S.W. direction crossing path No. 40 & B.R. 39 thence N.W. through Roecar Wood to the Borough boundary at Monk Wood (360758)”.

None of the other routes were claimed at the time of the original rights of way survey in the 1950s, which may have happened if there was any local knowledge of the claimed route existing as a right of way previously.

### **The Brierley – Hero (Open Cast Coal) (Highways) Order 1954**

The Order was made on 16 March 1954 and came into operation on 25 March 1954 temporarily stopping up all public rights over a number of Public Footpaths including Public Footpath No 38 for the purposes of working coal.

### **The Exeter-Leeds Trunk Road (Unstone and Dronfield By-Pass and Slip Roads) (Side Roads) Order 1972**

The side roads order was made to extinguish highway rights over routes affected by the construction of the A61 By –Pass this included the extinguishment of the footpath rights over Public Footpath No 38 shown between Points A and B on the attached plan.

### **Opencast Coal Act 1958 – Revocation of Suspended Public Rights of Way Order 1994**

The Order was made on 10 March 1994 as the Secretary of State was satisfied that it was no longer necessary for the fulfilment of the authorised purposes that the rights of way suspended by these Orders should be suspended.

## **Additional Information**

### **Site Visit**

A site visit was carried to view the claimed route on Friday 14 September 2018, locked gates are present on parts of the claimed route which prevent vehicular access but do not prevent pedestrian access.

The claimed route has a predominantly natural ground surface and varies in width from a track which is approximately three metres wide to a worn path which is approximately one metre wide. Public Footpath No 73 is restricted in both width and height due to overgrowth.

## **Summary and Conclusion**

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 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 the balance of probabilities that a right of way subsists? If there is a clear 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.

The test which has to be applied when considering the upgrading of a route on the Definitive Map and Statement under s53(3)(c)(ii) is on the balance of probabilities.

The documentary evidence offers no proof of public bridleway rights however, the application to modify the definitive map is based on user evidence.

The Council's Declaration Register has been checked and no s31(6) statutory declarations have been made which would affect the claim.

Although evidence has been received by the objectors that usage of the route has been challenged it is unclear when these challenges occurred and whether it was sufficiently conveyed to members of the public that they were not entitled to use the route on horseback as of right, without force, permission or secrecy. Therefore this is considered irrelevant when determining the application.

As the highways search that was carried out identified that Points A-B on the attached plan are already recorded as being highway maintainable at public expense with an higher status it is not possible to add a Public Bridleway to the Definitive Map and Statement over this section of the claimed route.

Although it appears that the paths were restored in 1961 the revocation order restoring the public rights over the Public Rights of Way affected by the coal workings was not made until 1994. As all public rights had been suspended, any use of these by the public prior to 1994 would not have been as of right.

Only four users claim to have ridden the claimed route for the entire of the 20 year period and the overall claimed usage is not on a regular basis, the majority of which taking place at the weekends.

When balancing the evidence received in both support and opposition to the application it concludes that there is insufficient evidence to show that bridleway rights subsist on the balance of probabilities.

### **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**

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



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

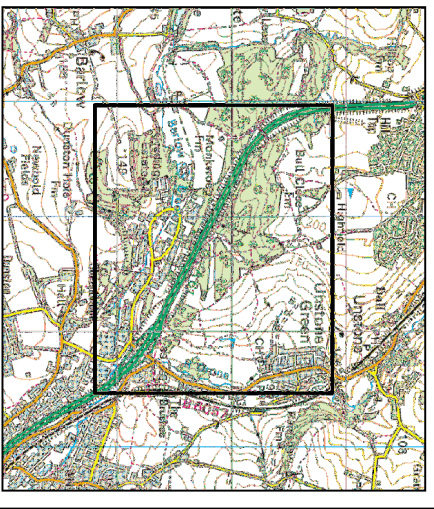
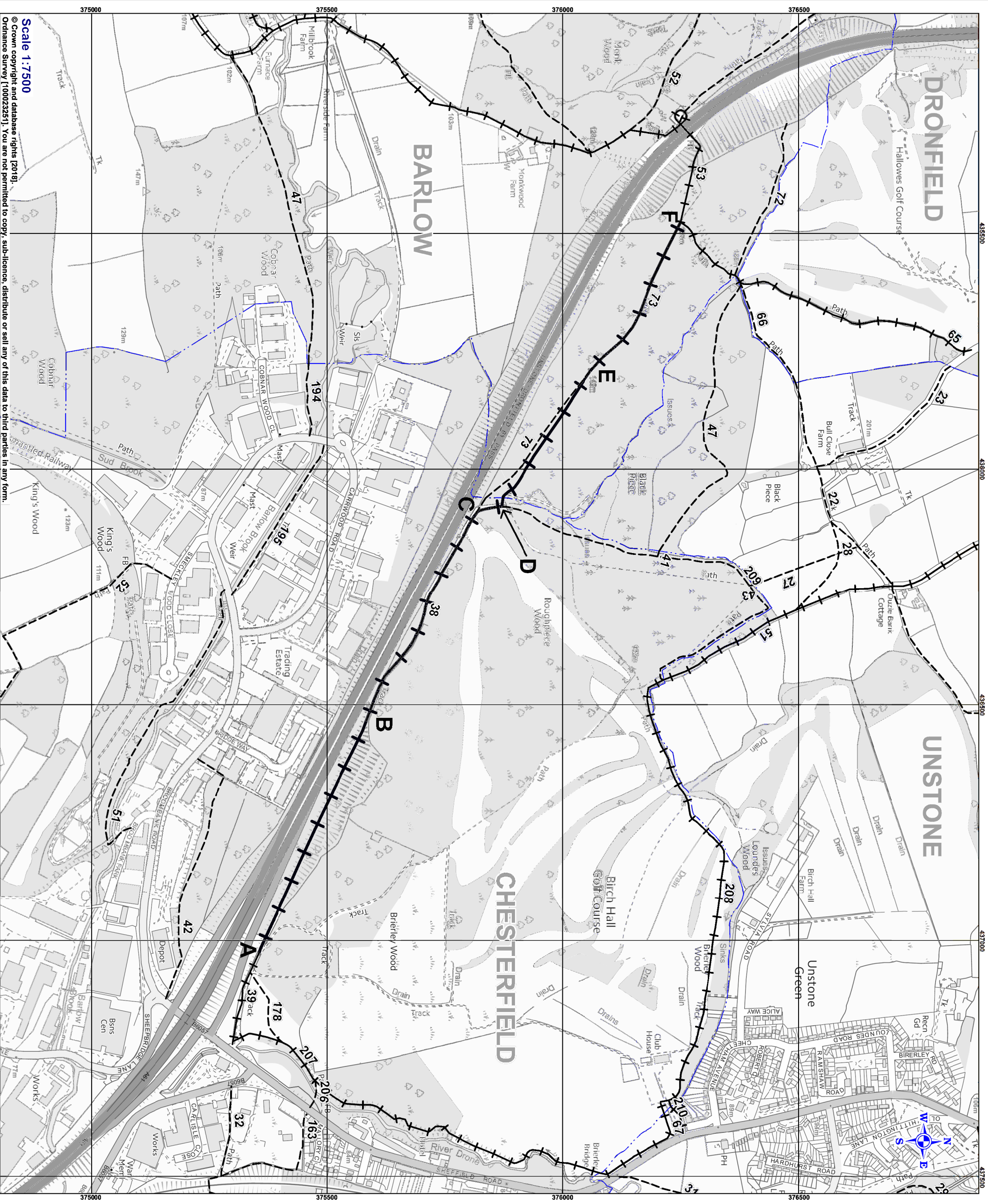
#### **4. Background Papers**

Held by the Director of Legal Services (File ref 67481)

#### **5. OFFICER'S RECOMMENDATION**

That the Committee resolves to reject the application to add a add a  
bridleway from Public Bridleway No.39 to Public Footpath No. 38 –  
Chesterfield, upgrade Public Footpath No. 38 (Part) to bridleway –  
Chesterfield, upgrade Public Footpath No. 209 (Part) – Chesterfield, add a  
bridleway from Public Footpath No. 209 – Chesterfield to Public Footpath No.  
73 – Parish of Barlow, upgrade Public Footpath No. 73 (Part) to Bridleway –  
Parish of Barlow.

**Janie Berry**  
**Director of Legal Services**



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**Upgrade Public Footpath No. 38 (Part) to bridleway**  
- Chesterfield  
**Upgrade Public Footpath No. 209 (Part) to bridleway**  
- Chesterfield  
**Add a bridleway from Public Footpath No. 209 - Chesterfield to Public Footpath No. 73 - Parish of Barlow**  
**Upgrade Public Footpath No. 73 (Part) to Bridleway - Parish of Barlow**

- Key:**
- Bridleway to be added (A-B) (D-E)
  - Footpath to be upgraded to Bridleway (B-C) (C-D) (E-F)
  - Existing Footpath
  - Existing Bridleway
  - Parish boundary
  - District boundary

**Ref: TE/L/X4057/Cttee/2018**  
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