

**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 Footpath from Bramley Road to Lightwood Road – Parish  
of Eckington**

**1. Purpose of the Report**

1.1 The purpose of this report is to enable Members to determine an application to amend the Definitive Map and Statement by adding a public footpath from Bramley Road to Lightwood Road in the Parish of Eckington.

**2. Information and Analysis**

2.1 On 13 January 2016, Kathleen Butt (“the Applicant”) submitted an application to Derbyshire County Council (“the Council”) to add a public footpath to the Definitive Map and Statement. The application is accompanied by eleven user evidence forms, an undated letter from the applicant addressed to the Council and a photograph.

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

**User Evidence**

2.3 Neither the user evidence submitted, nor the application form, suggests a date that use of the route was brought into question. There is no suggestion in the application or supporting evidence that use of the route has been brought into question by a recent act, or challenge, by a landowner or anyone acting on a landowner’s behalf. In considering whether a dedication of the route can be presumed on the basis of user evidence the relevant period of use has been taken to be the 20 year period leading up to the date of receipt of the application, 1995 to 2015 (‘the relevant period’). The user evidence submitted in fact spans the years from 1946 to 2015.

2.4 All of the witnesses refer to using the route on foot with one witness also claiming to have used it on horse and pedal cycle. All of the witnesses refer to seeing other people using the route only on foot.

2.5 Five witnesses claim to have used the route for a period of twenty years or longer, with four claiming over forty years use and with two claiming over fifty years.

2.6 Two of the witnesses refer to using the route daily, six weekly, two monthly and one less than monthly.

2.7 Five witnesses reported seeing the claimed route blocked, four of these witnesses mentioned hedge growth the reason for the claimed route being '...unaccesable (*sic*) ...', '...hard to walk through...', with one of these also mentioning rubbish and 'Two concrete post put in any one on the large size canot (*sic*) get around them.' The last witness reported that '...sometimes difficult to walk down path to Bramly (*sic*) Road'. One witness ticked the box for 'Diverted' but offered no further explanation. None of the remaining witnesses reported seeing the claimed route blocked or diverted.

2.8 All eleven witnesses made reference to stiles on the claimed route, all of whom marked 's' on the plan for location of stiles (located at Point C and Point D). Four of these witnesses stated that the stiles fell into disrepair with two saying it was due to lack of maintenance. None of the witnesses reported recalling any gates on the claimed route.

2.9 None of the witnesses reported recalling any notices on the claimed route or reported working for the owner or occupier of the land or occupying any of the land affected by the claimed route.

2.10 None of the witnesses reported being given permission to use the claimed route or was told by anyone that the route was not public.

2.11 One witness referred to being stopped 'Sometimes by farmer, long time ago when on horseback'. None of the remaining witnesses reported being stopped or turned back when using the route.

### **Consultation**

2.12 An informal consultation exercise was carried out between 18 April 2017 and 23 May 2017. Notices were placed on the route and letters were sent to the statutory consultees, landowners and the local elected members, Cllr Diane Charles and Cllr Brian Ridgway.

2.13 Three people responded to the consultation with two supporting the claim and one with comments on retaining the right to cultivate the claimed route.

2.14 The Applicant responded that she was pleased to receive the consultation letter. The letter goes on to add that she is 'Happy in the knowledge that it will finally be done and made passable again.'

2.15 The Parish Clerk for Eckington Parish Council emailed the Council stating their support for the application to add a footpath from Bramley Road to Lightwood Road.

2.16 The Landowner of the field where the claimed route lies wrote to the Council with numerous comments on the application. He begins by saying that 'Since acquiring the land on which the footpath passes in 1981, we have never had a problem with marking the said path in and after-cultivation and its subsequent use.' He goes on to say 'It was only around 2008-2010 that the occupants of No. 15 and 17, Bramley Road ceased cutting their hedges at the Marsh Lane end of the footpath (allegedly because they were fed up with all the noise and the rubbish being caused by local children playing on the path adjoining their houses). This eventually fully blocked the end of the footpath and caused the rest of the path to become disused.' He goes on to mention that around two and a half years ago he was approached by the sister of the Applicant about the issue 'We explained the position as above and she undertook to get the council to unblock the end of the path between the two properties. As soon as we could see that this had been achieved, we marked the path again and it has been in continuous use since.' The landowner signs off by stating 'We still expect the right to cultivate this path and reinstate it as regulations require.'

### **Documentary Evidence**

2.17 The applicant makes no reference to historical map evidence but the following documents have been considered:

#### **2.18 1<sup>st</sup> Edition Ordnance Survey Map 1876 – Sheet XVIII-3**

The land crossed by the claimed route is shown as fields with lines indicating parcels of land. Lightwood Road is shown as well as houses on the same road NE of Point D. The claimed route (C-D), Public Footpath Nos. 76 and 77 is shown as two dashed lines but not labelled. The claimed route however continues at Point C in the same NNW direction to join Public Footpath No. 77. Claimed route A-B-C is not shown and neither is Bramley Road or Ridge Road.

#### **2.19 2<sup>nd</sup> Edition Ordnance Survey Map 1898 – Sheet XVIII-3**

The land crossed by the claimed route is shown as fields with lines indicating parcels of land. Lightwood Road and houses NE of Point D is shown. The claimed route (C-D), Public Footpath Nos. 71 (part), 76 and 77 is shown as two dashed lines labelled 'F.P.'. The claimed route however continues at Point C in the same NNW direction to join Public Footpath No. 77. Claimed route A-B-C is not shown and neither is Bramley Road or Ridge Road.

#### **2.20 2<sup>nd</sup> Edition Ordnance Survey Map 1898 - reprint 50/1902 - Sheet XVIII-3**

The land crossed by the claimed route is shown as fields with lines indicating parcels of land. Lightwood Road and houses NE of Point D is shown. The claimed route (C-D), Public Footpath Nos. 71 (part), 76 and 77 is shown as two dashed lines labelled 'F.P.'. The claimed route however continues at Point C in the same NNW direction to join Public Footpath No. 77. Claimed route A-B-C is not shown and neither is Bramley Road or Ridge Road.

### 2.21 3<sup>rd</sup> Ordnance Survey Map 1916 – Sheet XVIII-3

The land crossed by the claimed route is shown as fields with lines indicating parcels of land. Lightwood Road and houses NE of Point D is shown. The claimed route (C-D), Public Footpath Nos. 71 (part), 76 and 77 is shown as two dashed lines and all labelled 'F.P.' apart from the claimed route (C-D). The claimed route however continues at Point C in the same NNW then N direction to join Public Footpath No. 77. Claimed route A-B-C is not shown and neither is Bramley Road or Ridge Road.

### 2.22 Modern Ordnance Survey 25" Map 1964 – SK 4078-4178

The land crossed by the claimed route C-D is shown as fields, Bramley Road, Ridge Road and Lightwood Road is shown. The claimed route A-B-C is shown as an open gap between two solid lines indicating garden boundary for properties No. 15, 17 and boundary of the field. The claimed route C-D, Public Footpath Nos. 71 (part), 76 and 77 is shown as two dashed lines and all labelled 'FP'.

### 2.23 Modern Ordnance Survey 25" Map 1978 – SK 4078-4178

The land crossed by the claimed route C-D is shown as fields, Bramley Road, Ridge Road and Lightwood Road is shown. The claimed route A-B-C is shown as an open gap between two solid lines indicating garden boundary for properties No. 15, 17 and boundary of the field. The claimed route C-D, Public Footpath Nos. 71 (part), 76 and 77 is shown as two dashed lines. Claimed route C-D and Public Footpath No. 77 is labelled 'Path (um)' - *um means 'unmarked'*, Public Footpath No. 71 (part) is labelled 'Path' while Public Footpath No. 76 is not labelled. A labelled 'Track' is shown from Point D in a WNW direction to a field boundary and is marked with two dashed lines.

### 2.24 Modern Ordnance Survey 25" Map 1998 – SK 4078-4178

The land crossed by the claimed route C-D is shown as fields, Bramley Road, Ridge Road and Lightwood Road is shown. The claimed route A-B-C is shown as an open gap between two solid lines indicating garden boundary for properties No. 15, 17 and boundary of the field. The claimed route C-D, Public Footpath Nos. 71 (part), 76 and 77 is shown as a single dashed line. Claimed route C-D, Public Footpath No. 76 and 77 is labelled 'Path (um)', Public Footpath No. 71 (part) is labelled 'Path'. A labelled 'Track' is shown from Point D in a WNW direction to a field boundary and is marked with two dashed lines.

### 2.25 Modern Ordnance Survey 25" Map 2007 – SK 4078-4178

The land crossed by the claimed route C-D is shown as fields, Bramley Road, Ridge Road and Lightwood Road is shown. The claimed route A-B-C is shown as an open gap between two solid lines indicating garden boundary for properties No. 15, 17 and boundary of the field. The claimed route C-D, Public Footpath Nos. 71 (part), 76 and 77 is shown as a single dashed line. Claimed route C-D, Public Footpath No. 76 and 77 is labelled 'Path (um)', Public Footpath No. 71 (part) is labelled 'Path'. The labelled 'Track' from Point D is no longer shown.

2.26 Other historical documentary evidence, e.g. Enclosure Awards, Tithe and Finance Act evidence, has also been considered but has been found not to assist in the determination of the claim.

### **Other Evidence**

2.27 The applicant included with the application an undated letter from the applicant addressed to the Council and a photograph.

2.28 The undated letter from the Applicant outlines the reason for the application and some history of the claimed route. The applicant states that part of the claimed route is already registered on the Definitive Map and Statement from Main Road to Bramley Road. The letter mentioned 'We are informed from DCC that the section we wish to claim was apparently missed when footpaths in the Parish were originally registered. Our family has lived at the above address since Bramley Road was built in 1936 and used the path throughout that period to present day.' The letter finishes by stating 'We can confirm from family history use of this path prior to construction of Bramley Road. My father and later both parents previously lived at Warren House Farm at the Main Road end of the path and used the full length of footpath 190 to access Handley.'

2.29 The photograph is labelled 'Picture of Footpath in use around 2000' on the back, it was taken around Point C looking towards Point D. It shows a very well used path with an estimate width of one and a half metres. There is crops on either side of the path and what looks like a young child and a dog walking along the path towards the camera. In the distance and across the width of the photograph is some woodlands.

### **Site Visit**

2.30 A site visit was undertaken on 25 September 2018. At Point A between properties of No. 15 & 17 Bramley Road there is a narrow tarmac surfaced gap towards Point B. The hedges on either side have been trimmed back. There are two concrete posts on this part of the claimed route, one located 15 metres south of Point A and one located at Point B. From Point B to Point C the surface is natural earth which looks overgrown slightly and is bound by hedges on each side, one for the boundary of the garden for 15 Bramley Road and the other for the boundary of the field. There is a gap at Point C but no evidence of a marked path, across the field from Point C to Point D the surface is natural ground with crops. On the field there is evidence of a path being marked in however this goes from Point B in a south easterly direction towards Point D. At Point D there is a wooden post and a stone stile.

### **Summary and conclusion**

2.31 This claim is based on evidence of use, historical map evidence and evidence of intention to dedicate by the landowners.

2.32 The user evidence indicates the use of a route linking Bramley Road to Lightwood Road. There is small but solid evidence of use of the route, on foot for a period of more than twenty years prior to 2015 with a number of witnesses claiming to have used the route in excess of forty years. Five users claim twenty or more year's usage with four of them within the twenty year period under consideration (1995 – 2015) and having used the route for over 40 years (two with over 50 years).

2.33 The addition of a public footpath to the Definitive Map and Statement is dependent on there being "evidence (when considered with all other relevant evidence...)...that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist". There is sufficient evidence of use in this case and is consistent with a presumed dedication of the route in accordance with the statutory test set out in section 31 of the Highways Act 1980 (as set out in paragraph 3.4).

2.34 The evidence of use covers a period in excess of 20 years, up to 2015. There is only one reference in the user evidence to a challenge to use when that witness stated '*Sometimes by farmer, long time ago when on horseback*'. No dates was given but this witness used the route on horse and cycle from 1982 to 1989 and on foot from 1998 to 2015 however there was no mention of challenge to use when on foot. Presumed dedication relies on uninterrupted use of a route for a period of 20 years, and may be disproved by sufficient evidence that there was no intention during that period to dedicate it. There is no evidence before the Council of any challenge to use on foot of the claimed route during the period from 1995 to 2015.

2.35 The letter included in the application from the Applicant states that the Applicant's family has lived on Bramley Road since it was built in 1936 and used the claimed route throughout that period to present day. The letter goes on to confirm usage of the claimed route prior to the construction of Bramley Road 'My Father and later, both parents previously lived at Warren House Farm at the Main Road end of the path and used the full length of the footpath 190 to access Handley'. This is evidence that the claimed route was used along with the other Public Footpaths before Bramley Road was built.

2.36 Even if it was argued that the evidence is insufficient to establish a presumption to dedicate, there is sufficient evidence to establish an inference of dedication by the landowner under common law - '*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.*' The landowner of the land where C – D crosses wrote to the Council openly admitted that he marked the claimed route in after cultivation. The site

visit also confirmed the route is in used and marked albeit in a slightly different route (Point B to D). One witness mentioned *'farmer used to spray a path across the crop in field to make it easier to walk through, not done it for last 5 years or so.'* North East Derbyshire District Council who owes land from Point A to C left a gap between the houses which indicates an intention to dedicate A-B-C part of the route as a public right of way.

2.37 The photograph provided by the Applicant along with the application does not provide concrete evidence of use. The angle and low resolution of the photograph makes it difficult to determine whether this is the actual claimed route.

2.38 The County Council's Declaration Register has been checked and no Section 31 (6) declaration has been made which covers this route.

2.39 In summary, there is evidence that the public have used the route A-B-C-D as a footpath for 20 years or more, that use had been as of right; without secrecy, permission or force and as required by the legislation. There is no evidence before me that suggests that the claimed route was not used or any evidence of landowner's lack of intention to dedicate. On balance of probabilities, there is sufficient evidence to show that a right of way subsists over the claimed route.

2.40 A finalised copy of this report has been sent to Cllr Diane Charles and Cllr Brian Ridgway as the local members for the area prior to the Committee.

### **3. Considerations**

#### **Legal and Human Rights Considerations**

- 3.1 Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified 'events'. These events include:
- 3.2 (1) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates (section 53(3)(c)(i)); and
- 3.3 (2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance on probability that that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 3.4 Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public "as of right" and without

interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public “as of right” means use by the public without force, without secrecy or permission.

- 3.5 Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public right to use the way is brought into question.
- 3.6 Section 31(3) provides that a notice erected on site by an owner of land over which a way passes in a manner visible to persons using the way, and maintained by him is, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate the way as a highway.
- 3.7 Section 31(6) provides that an owner may provide sufficient evidence to show of his lack of intention to dedicate by depositing with the Council a map and statement showing any ways over the land he admits to having been dedicated as highways and denying the existence of other ways over it and then lodging statutory declarations to deny the addition of any ways at intervals of not less than 10 years. This will be, in the absence of proof to a contrary intention, sufficient evidence to negative the intention of the owner or his successors in title to dedicate any additional way as a highway.
- 3.8 A House of Lords legal judgement in 2007 (the ‘Godmanchester’ decision) has clarified what other evidence could be evidence of “no intention to dedicate” for the purpose of section 31(1). The evidence can relate to just one point in time during the period of enjoyment, ‘during’ in the context of section 31(1) need not be through out the whole period. ‘Intention’ in this context means what the relevant audience (the users of the way) would reasonably have understood the landowner’s intention to be. A letter from the landowner to his own solicitor or estate agent would not be enough; some element of communication to users of the way of an absence of intention by the owner to dedicate must be shown. In terms of section 31(1), an act by an owner which demonstrates ‘no intention ... to dedicate’ is likely in practice also to amount to an event which ‘brings the public right of way into question’.
- 3.9 In brief, unless evidence is provided of one or more specific steps having been taken by a landowner within the period to communicate overtly to the public using the route that (s)he does not intend to grant a public right of way over it, the presumption of dedication will arise under section 31(1) where there is a full period of 20 years of uninterrupted public use, calculated from the date when the public right to use the way is brought into question.



- 3.10 Where there is insufficient evidence to establish a presumption to dedicate under section 31(1) of the Highways Act 1981, there is sometimes sufficient evidence to establish an inference of dedication by the landowner under common law. In the case of *Nicholson v Secretary of State for the Environment* (2006), Dyson J stated: “*Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication...*”. No minimum period of use is required to raise such an inference, but there must be evidence which is sufficient to infer that there was an intention to dedicate a public right of way.

#### **Other Considerations**

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

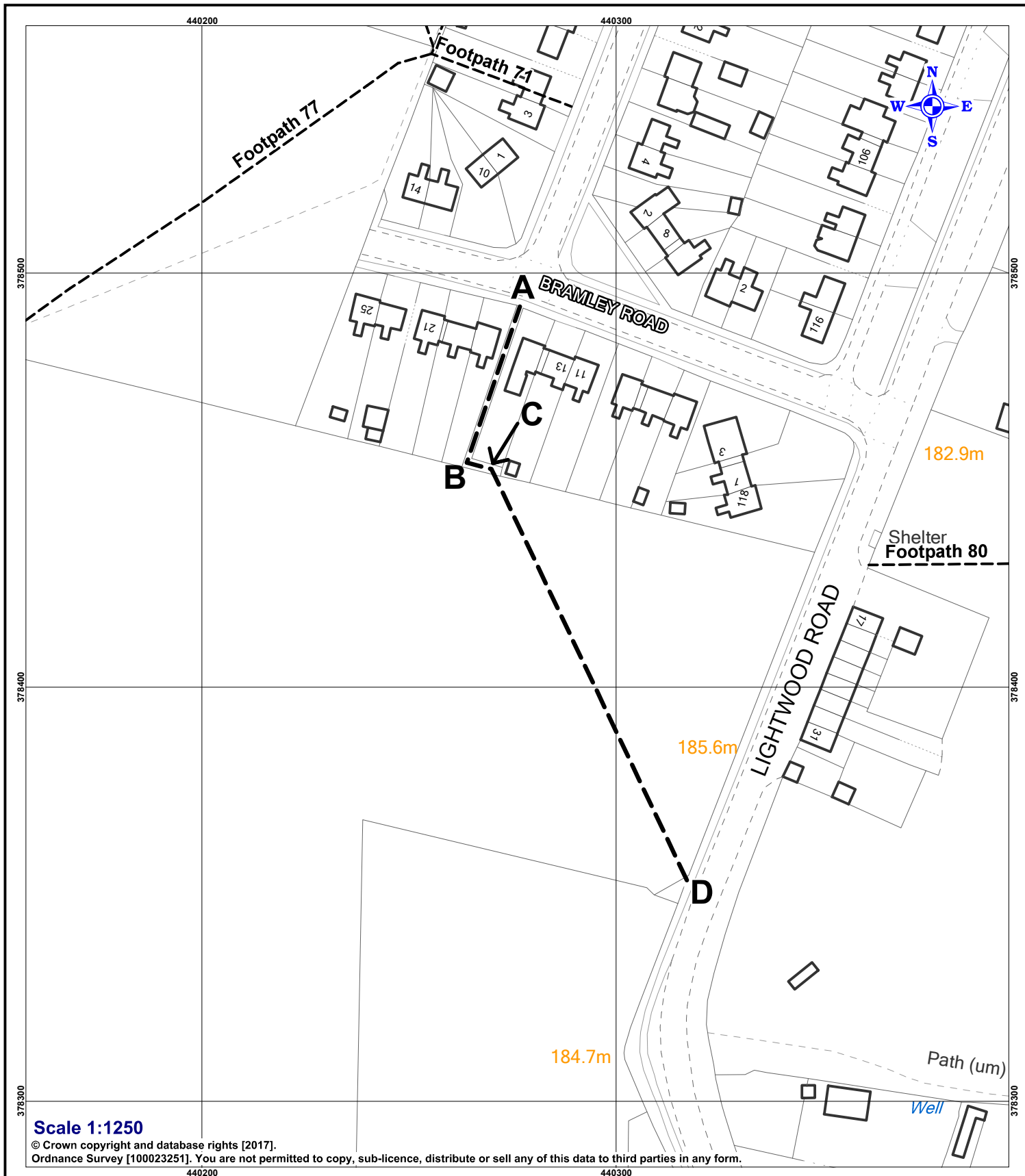
#### **4. Background Papers**

File held by Legal Services (ref: 67896)

#### **5. OFFICER’S RECOMMENDATION**

That the Committee resolves to authorise the Director of Legal Services to make an order under section 53 of the Wildlife and Countryside Act 1981 to add to the definitive map and statement footpath from Bramley Road to Lightwood Road in the Parish of Eckington as shown between Points A-B-C-D on the plan attached to this report.

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



Ref: TE/LF/X4064/Cttee/2018



**Mike Ashworth**

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Produced by Public Rights of Way on 04 October 2018

**Wildlife & Countryside Act 1981 Section 53**

**Claim to add a Footpath from Bramley Road to Lightwood Road - Parish of Eckington**

**Key:**

Footpath to be added      - - - - -

Existing Footpath      - - - - -

