

**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 Bridge Street (A6) around the perimeter of field then exit to A6 opposite Gibfield Lane - Belper**

**1. Purpose of the Report**

To enable members to determine an application to amend the Definitive Map and Statement by adding to them a footpath from Bridge Street (A6) around the perimeter of the field then exit to A6 opposite Gibfield Lane in Belper.

**2. Information and Analysis**

**2.1 Details of the application**

An application was received from Mr Trevor Burton dated 17 September 2015 to add a footpath from Bridge Street (A6) around the perimeter of the field then exit to A6 opposite Gibfield Lane in Belper to the Definitive Map and Statement. The application was supported by a plan showing the claimed route, photographs and 28 User Evidence Forms.

A plan showing the claimed route is attached to this report.

Following receipt of the application correspondence was received from one of the landowners opposing the application on the basis that although they have no objections to members of the public using the private land to access the river they do not wish this to become a public right of way as they wish to keep control of the private land and for the route to be made concessionary.

Further correspondence was received from the same landowner which is summarised below:

- That the public are allowed from the A6 through the private sports ground towards the river and this is only a concessionary path.
- That there is a duty of care to young children and people who use the facilities.
- A public footpath would make it more difficult to monitor the site and prevent eviction of trouble makers.

- Referred to a recent event when an abusive drunk accessed the site and was persuaded to leave when advised that they had no right to be there and that the police would be called.
- Concerned about the potential conflict between vehicles and pedestrians.
- Signs have been erected stating that the land is private.

Correspondence was received from the agent of one of the landowners drawing attention to the deposit of a declaration made under Section 31(6) Highways Act 1980.

An e-mail was received from the applicant advising that signs had been erected between 19:00 on 24 September and 10:00 on 25 September 2015 stating "Private Land No Public Access. A plan was provided identifying the location of the sign.

A further e-mail was received from the applicant advising that:

- A locked gate had been installed at the exit from the sports field and that a gate had been installed at the path from Belper library.
- The footpath changed from the other side of the football club and has been in use for 25 years.
- This is the first time that access from the sports field/football field has been prevented in living memory.

A copy of a notice that had been erected by one of the landowners was provided to the Council, the contents of which is summarised below:

- The public has been permitted to walk across the private land for many years for access to the fields beyond. The conversion of this into a public right of way is unwelcome as it would place further constraint on the site and remove the ability to control access for reasons such as preventing anti-social behaviour and safety.
- There is no intention for permission to be withdrawn from dog walkers etc. to walk across the land and the gates were installed to demarcate the private property. Due to an incident when installing the gates the area had to be fenced off whilst repairs were carried out to a damaged water main, this gave the appearance that the access would be closed long term.
- Upon receipt of notice of the application the landowners wrote to the Council stating the various reasons why they objected to the application.
- They have no objection to the general public walking across their land as long as they keep their dogs on a lead, do not foul or drop litter and respect the grounds and members thereof. However they reserve their right to close the access according to the needs of the landowner.

## 2.2 User evidence

The application to add the footpath was received on 17 September 2015. There is evidence contained within the user evidence forms that suggests that notices were erected at the entrance to the Sports Club car park stating that the land was private prior to this date however there is no information to confirm when these signs were erected and it is not felt that it would be sufficiently conveyed to members of the public by that wording that they were not entitled to use the path as of right, without force, permission or secrecy.

One witness has mentioned a sign at the side of a stile at the end of the copse stating no right of way, again there is no information provided of when this sign was erected and therefore whether it has any bearing on the relevant date.

A letter in objection to the application has been received stating that users were verbally challenged using the section occupied by Belper Rugby Club and that signs were regularly erected stating “No Access” “No Right of Way” “No Dogs – Childrens Play Area” which have been smashed or broken. None of the witnesses have stated that there were are signs upon this end of the route although some have mentioned signs at the entrance to the sports club car park. No further information has been received confirming where and when these challenges took place or the notices erected. There is no evidence to confirm that these actions took place within the relevant period or whether they were sufficient to convey to members of the public that they were not entitled to use the claimed route as of right.

The Council’s Declaration register shows that a declaration under Section 31(6) Highways Act 1980 was made by the agent of one of the landowners over which the claimed route runs and deposited with the Council on 03 March 2014.

There is no evidence provided that can confirm that the status of the route was brought into question before this date and therefore it is considered that the depositing of the declaration proved that the landowner had no intention to dedicate the route as a public right of way. For the purposes of Section 31(2) Highways Act 1980 only evidence and events prior to 2014 have been considered in assessing the claim and therefore the relevant period is 1994-2014.

All of the user evidence forms have plans attached to them with claimed route marked on, however all of the forms have the route marked on with biro and then the route highlighted with a highlighter pen, the majority of these being the same colour. The letter G is also marked on all of the plans at the same location to identify a gate and some of the witnesses have stated that they do not recall any gates on the route, this suggests that the plans were marked up prior to the forms being provided to the witnesses for completion.

Of the 28 users, two users have described the route and their usage as being to Morrison’s and therefore does not cover the full extent of the claimed route.

One user has stated that their usage of the route has been to access various parts of the river to go fishing and will therefore be exercising a private right to access the river. Therefore three evidence forms have been discounted. The evidence of 25 users has been considered in determining this application.

Some users have also made reference to accessing the river for fishing, or to watch the raft race or relatives fishing for some of their usage, however there is no information provided that suggests that they haven't also used the full extent of the route as claimed.

Of the evidence of the 25 users considered, 21 claim to have used the route on foot for more than 20 years. 3 claimed to have used the route on foot for less than 20 years within the relevant period, and one user claims to have used the route on foot for 20 years or more and on bicycle for less than 20 years within the relevant period.

Overall usage of the claimed route.

Number of years	Number of users
Less than 10	1
10-20	2
23-30	2
30-40	9
40-50	6
50-60	3
60-70	1
70+	1
Total	25

Frequency of usage.

Frequency	20 years or more	Less than 20 years
Daily	7	1
Weekly	7	2
Monthly	3	0
Less than monthly	0	0
Daily to weekly	1	0
Weekly and monthly	2	0
Weekly then less than monthly	1	0
Not stated	1	
Total	22	3

Of the 22 users who have claimed to have used the route on foot for over 20 years, seven claim to have used the route on a daily basis, seven claim to have used the route on a weekly basis and two claim to have used the route on a monthly basis. One user claims to have used the route on a monthly

basis between 1994 – 2000 and on a daily basis from 2000 – 2014, one user claims to have used the route on a weekly basis but less frequently between 2009-2011, one user has not stated the frequency of their usage, one claims to have used the route on a daily to weekly basis, one claims to have used the route on a weekly and monthly basis and one claims to have used the route on a weekly then less than monthly basis.

Of the three users that have claimed to have used the route on foot for less than 20 years two claim to have used the route on a daily basis and one claims to have used the route on a weekly basis.

Nine of the users refer to a variation of the route at the football ground, one user refers to a variation when Safeway was built, one seems to recall a variation to the route following the extension of Morrison's car park and one user refers to not being able to use the route when it was blocked due to adverse weather conditions leading to flooding.

Eight of the users refer to a gate at the entrance to the sports club car park and 2 users refer to gates at both the entrance to the sports club and the rugby club, five of the users refer to gates or stiles within the fields but only one has marked the location on a plan. None of the witnesses have stated that the gates were locked or that they ever prevented access to the claimed route.

Six of the users refer to signs stating that the land was private and that dogs should be kept under control/no fouling, ten of the users refer to signs with requests to keep dogs on a lead or under control and clear up any fouling. All of the users that provided a location for the notices stated that they were at the sports club. One user refers to a notice that stated that the land was private but that access was allowed, this was believed to have been erected in the last two years and no location is provided. One user refers to a sign at the side of the stile into the copse stating "No Right of Way", and one witness refers to a sign for an honesty box for the car park on the sports club gate.

Twenty of the users claim to have witnessed usage by others using the route on foot and four of the users claim to have witnessed usage of the route by other on foot and on bicycle.

## **2.3 Consultation**

An informal consultation exercise was carried out between 18 April 2017 and 23 May 2017. Notices were placed at either end of the route at the beginning of the consultation period and letters were sent out to the statutory consultees, landowners and the elected Local Members at that time Councillors' John Owen and David Taylor.

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

The Peak and Northern Footpath Society responded stating that they had no evidence relating to this application.

An e-mail was received from the applicant advising that the footpaths were still very well used. It was stated that although the farmer had attempted to close a section of the path, it was quickly walked again. The gates at the sports club entrance remain open and although a gate has been erected at Thornton's field there has been no attempt to close the footpath that passes at the top of the field.

An e-mail was received from David Alcock and Partners advising that they had no objection to the route.

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

An e-mail was received from a local resident providing full support to the application, the e-mail refers to three routes stating that they feel that during recent years in Belper access has been lost to too many places where people thought they had the right to walk, but where it turned out that there was no official public right of way. They often walk on Belper Meadows and used to regularly use the route from the sewage works to Milford until it was closed some months ago – would be delighted if the routes were to be declared public footpaths.

### **Responses received in opposition to the application following consultation**

#### Objector 1

An e-mail was received from a parent of the Under 13's rugby players in objection to the application due to the safeguarding risk to the young members of the club, with strangers having rights of access to the fields, and the risk that dog fouling and litter pose to those participating in activities at the club.

#### Objector 2

An e-mail was received from a parent of a player for Belper Rugby Football Club Minis in objection to the proposed right of way, the basis for which is summarised below:

- The club has been plagued with dog fouling, pitch damage from quad bikes and vehicles, vandalism, theft, illegal dumping, litter, property damage and general abuse of volunteers when challenging unwelcome behaviour.
- Believes it poses a possible risk to the children and supports the building of a fence around the club grounds.

- Does not believe that a public right of way is in the interests of either the club or the local community. A right of way already exists via Morrison's car park.
- No one except legitimate users of the club require access.
- Strangers should not be given free access to watch the children.
- Dog fouling is an issue and where dog owners do pick up bags these have been left on trees and signs.
- Feels that the club would be a safer place for children to enjoy taking part in sport if a fence were erected to keep out non users.

### Objector 3

An e-mail was received from a parent of players in the Belper Rugby Club minis supporting the club's objection to the right of way proposal on the following basis:

- Child safeguarding
- Additional cost to the club.
- There is no existing right of way.

### Objector 4

An e-mail was received from a parent of players at the Rugby Club, the basis for which is summarised below:

- They do not think that public access is practical.
- The field is generally used by dog walkers who do not clean up their mess.
- The rugby club is a great way of getting children active at a young age.
- Requests that children are allowed to continue enjoying rugby by allowing fences to be erected.

### Objector 5

An e-mail was received from the parent of a player of the under 13 team with a psychiatric disorder who is worried about the effects of a right of way through the club and the possible safe guarding issues involved. Objects to the proposal as feels that public access will jeopardise the safety, security and development of their child.

### Objector 6

An e-mail was received from a parent of a child who attends the Rugby Club objecting to the proposed right of way as they believe it will be a safeguarding

issue and also impractical to expect the rugby club to fence off the right of way.

#### Objector 7

A letter was received from Belper Rugby Club objecting to the proposal on behalf of the users of the club house and the grounds, on the basis summarised below:

- Open access to the grounds has led to regular experiences of damage, vandalism, theft, and dog fouling. Specific details of the issues that have been experienced within the last six months have been detailed in the objection.
- There have been regular instances of people being abused by walkers and unwelcome visitors when they have been advised that the grounds are not a public right of way.
- Signs have regularly been erected stating “No Access”, “No Right of Way”, “No Dogs – Children’s Playing Area” etc. which have been smashed and broken.
- Will be very disappointed if the permission to erect the fence and allow public access is overturned.

#### Objector 8

A letter was received from a volunteer from Belper Rugby Club on behalf of the Youth Rugby Section and parents at Belper RFC objecting to the claim, the grounds for which are summarised below:

- Has concerns that the footpath will have an adverse effect on safeguarding, affording less protection to children and vulnerable adults.
- The route has been abused many times with dog fouling taking place on the pitch.
- The route crosses land at Morrison’s which is under consultation for development as a benefit to support the local community.
- Present growth and development has been supported by the Local Authority, it would not seem prudent to go back on the agreements and approvals to then decide to put at risk children in the favour of walkers who have access to far reaching facilities.
- There is only one rugby club in Belper and it would be short sighted to put its members at risk by denying it the opportunity to secure the site.

#### Objector 9



A letter of objection was received from Belper Rugby Club on behalf of the Executive Committee, the membership, players and parents of young players, the grounds for which are summarised below:

- The Rugby Club is committed to safeguarding and does not feel that it could provide a safe and positive environment for the children if the public has free access.
- The club cannot sustain the costs associated with constant damage and vandalism.
- Derbyshire County Council provided consent to the erection of security fencing and pitch perimeter fencing which is a requirement of the Rugby Football Union.
- They have been unable to lock the gate at the entrance to Strutts Field to prevent public access due to the private right of a tenant.
- Club members experience regular abuse from people when challenged regarding their right of way.
- Club property, grounds and facilities are damaged, stolen, and vandalised regularly and dog fouling is a major concern.
- Permission was granted by the landlord, Derbyshire County Council to erect a security fence which will protect the facilities and grounds based on their experience of theft, vandalism, damage, dog fouling, quad bikes, the threat from the travelling community, and to protect the volunteers, members and players from constant abuse and disrespect.
- The club feels vulnerable as a result of the experience of Belper Town FC, whose training ground was occupied by the travelling community.
- Asks for consideration that any agreed footpath be allowed access to the A6 via Morrison's Service Road.

#### Objector 10

An e-mail was received from Belper Town Council in objection to the application on the basis of the damage it will cause to the Rugby Club land.

#### Objector 11

An e-mail was received from Robertshaws Chartered Surveyors in objection to the claim, the grounds for which are summarised below:

- There has always been a right of access down the river bank for the anglers, hence the stile. This has never been a footpath and it has been noted that many of the witness statements say they have used the route when visiting friends and relatives fishing. They do however accept that there is a public desire to access the river.
- When on site it has been noted that the majority of walkers have walked in a circle with their dogs which is different to the use that is described in the statements.
- A former tenant has advised that he would explain to people that there was no footpath and that they shouldn't be walking there.

- The new tenant has advised that the same approach has been taken to walkers as that taken by the previous tenant although calm about it so long as the crop is not destroyed.
- It is noted that when the route changed by the sports club this was just accepted which would not be the case if people thought they were walking a route as of right.
- They understand that there is a demand for public access to the river and feel that rather than having footpaths imposed they would be prepared to work with the authority to agree routes with the agreement of their client.

An e-mail was also received from Robertshaws requesting that the application be reviewed and that the Council discard any that are obviously wrong as they cannot see how some could claim to have used the footpath for 20 years plus to go to Morrison's.

## **2.4 Documentary evidence**

### Burdett's c1760s Map of Derbyshire

There is no indication of the claimed route on this document, however it is drawn at a fairly small scale (less than 1 inch to a mile) so that is probably to be expected.

### Duffield, Belper, Hazlewood and Makeney Enclosure Award of 1791

The claimed route does not appear to be set out in the 1791 Award and there is no indication of the route on the accompanying enclosure plan.

### George Sanderson's 1835 Map of the country twenty miles round Mansfield

This document (drawn at a scale of about 2 ½ inches to a mile) gives no indication of the claimed route.

### Belper Tithe Plan of 1844

There is no indication of the claimed route on this large scale plan. Neither is there any indication of the track conforming to part of the claimed route which is shown on the large scale OS plans of the late 19<sup>th</sup> Century.

### 1<sup>st</sup> Ed 1:2500 Ordnance Survey plan of c1880

This plan clearly shows the southern end of the claimed route which proceeds from the A6 opposite Gibfield Lane.

It is shown as a feature represented by double dashed lines heading north westwards across Coppice Brook then along the eastern bank of the River Derwent. The track then crosses the river and provides access to Chevin Mill and Crossroads Farm, ultimately linking with the road network lying west of the river.

The route as shown on the c1880 plan is of a vehicular, i.e. cart or carriage, width so it seems likely that it provided certain properties lying

west of the Derwent with a means of direct vehicular access to the principal north-south public carriage road (what would become the A6). There is no indication on the c1880 plan of the claimed route north of the aforementioned river crossing.

#### 2<sup>nd</sup> Ed 1:2500 Ordnance Survey plan of c1898

This later 1:2500 plan shows the situation on the ground in exactly the same manner as the earlier document.

#### 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 claimed route is not identified on the Parish Claim for Belper 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.

### **2.5 Additional Information**

#### **Site visit**

A site was carried out on 28 September 2018 and the claimed route was walked from Point A towards Point B on the attached plan, access was prevented at the end of Morrison's car park on to the land occupied by Belper Town Rugby Club due to security fencing and a locked gate. When exiting Morrison's car park there are bollards which provide an entrance onto a section of crushed stone which may indicate that this has previously been open for access to the public in the past.

The majority of the claimed route is a trodden worn path on a natural ground surface with a width varying 0.5 to one metre due to overgrowth, the parts of the route which pass through the car parks have a tarmac/concrete surface.

Members of the public were witnessed walking the route alongside the river, the majority of which were dog walkers, although there are a number of well-trodden routes within the vicinity which appears to suggest that the public have enjoyed access to the meadows.

#### **Further Correspondence**

An e-mail dated 24 September 2018 from the World Heritage Site Co-ordinator at Derbyshire Council was forwarded by Belper Town Council in support of the applications. The issues that are raised in this respect are with regards to the history and the landscape of the site and that the public should be provided with the opportunity to experience this. Concludes by stating that the routes should be formalised to recognise their contribution to the Derwent Valley Mills World Heritage Site and its story. This does not offer any evidence in relation to usage of the claimed route and therefore cannot be

considered when determining an application under the Wildlife and Countryside Act 1981.

A letter dated 28 September 2018 addressed to the Licensing Committee was received from Belper Town Council's Leisure, Tourism and Green Spaces Committee requesting that further information is considered in relation to the claim. Within the letter it states that at the Full Council Meeting on 09 May 2017 it was resolved to object to the application only on the basis of the concerns of the sports club as to potential damage to its land. It made no comment on the legal basis of the claim and members of the Committee do recall the claimed route being used by members of the public for many years. No further information was provided which evidence specific usage of the claimed route.

The Committee is concerned over the closure of the access to the River Derwent area by the sports club and feel that it is vital that the access remains open and is added to the Definitive Map as this is the main public access to the riverside. This does not provide any evidence with regard to usage of the claimed route and therefore cannot be considered when determining an application received under the Wildlife and Countryside Act 1981.

It also stated that the importance of the public's access to the footpaths on the riverside is highlighted in the draft Belper Neighbourhood Plan in which it refers to the Neighbourhood Development Plans and designation of Local Green Spaces, in which they identify Belper Meadows. Again this does not provide any evidence with regards to the usage of the route and cannot be considered when determining an application under the Wildlife and Countryside Act 1981.

## **2.6 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 a balance of probabilities? This test is satisfied by showing clear evidence in favour of the right of way and no credible evidence to the contrary.

**Test B** – is it reasonable to allege on a balance of probabilities that a right of way subsists? If there is a conflict of credible evidence and no incontrovertible evidence that a right of way cannot be reasonably be alleged to subsist, then the answer must be that it is reasonable to allege that a right of way does subsist.

Nine of the users refer to a variation of the route at the football ground, one user refers to a variation when Safeway was built, one seems to recall a variation to the route following the extension of Morrison's car park and one user refers to not being able to use the route when it was blocked due to adverse weather conditions leading to flooding. Further investigation has

shown that Safeway, which became Morrison's was constructed in 1988 and in the evidence provided it is stated that the diversion around the football pitch occurred prior to the commencement of the relevant period. One of the users seems to recall a variation when the car park was extended however there is no definite information provided in this respect and this is not confirmed by any of the other users, therefore this information has not been further considered. The variations to the route were outside of the relevant period and are therefore irrelevant in the determination of this application.

An e-mail was received from a local resident providing full support to the application, the e-mail refers to three routes stating that they feel that during recent years in Belper access has been lost to too many places where people thought they had the right to walk, but where it turned out that there was no official public right of way. They often walk on Belper Meadows and used to regularly use the route from the sewage works to Milford until it was closed some months ago – would be delighted if the routes were to be declared public footpaths. The usage of the route described is not consistent with the location of the claimed route and therefore this information has not been considered further.

Although Belper Meadows Sports Club has stated that they have allowed the public to access the river from the A6 through the private sports ground, they have stated that it was concessionary. There is no evidence to prove that it would be sufficiently conveyed to members of the public that they were entitled to use the path by right, with the permission of the landowner, rather than as of right, without force, permission or secrecy.

Belper Meadows Sports Club have advised that signs have been erected on the site stating that the land is private. It has been confirmed by some of the witnesses that "Private Land" signs were erected, however no information has been provided to confirm the date when the signs were erected and therefore whether this was within the relevant period and it is not considered that the wording was sufficient to convey to the public that they were not entitled to use the claimed route as of right.

The land agents have stated that they have been advised by both the former and current tenant that it was explained to people that there was no footpath and that they shouldn't be walking there. None of the users state that they have been challenged when using the claimed route and advised that it is not public, neither have either of the tenants confirmed this to be factual or provided any further evidence of the challenges.

The agents have also requested that user evidence describing use of the route to access Morrison's be discounted as they cannot see how anyone could claim to have used it in excess of 20 years for this purpose. Usage of the route that is inconsistent with the application made has been discounted and although it is unlikely that users will have used the entire claimed route for this purpose there is no evidence to suggest this. Safeway was opened in 1988 and later became Morrison's.

One witness has mentioned a sign at the side of a stile at the end of the copse stating no right of way, again there is no information provided of when this sign was erected and therefore whether it has any bearing on the relevant date.

A letter in objection to the application has been received stating that users were verbally challenged using the section occupied by Belper Rugby Club and that signs were regularly erected stating “No Access” “No Right of Way” “No Dogs – Childrens Play Area” which have been smashed or broken. None of the witnesses have stated that there were signs upon this end of the route although some have mentioned signs at the entrance to the sports club car park. No further information has been received confirming where and when these challenges took place or the notices erected. There is no evidence to confirm that these actions were taken within the relevant period or whether they were sufficient to convey to members of the public that they were not entitled to use the claimed route as of right.

Belper Rugby Club have advised that there is a gate to the entrance of the Club on the A6, however they have been unable to lock this due to the private right of access by another tenant. This may suggest that the Rugby Club would lock the gate to prevent unauthorised access were it not for this private right.

Derbyshire County Council own land occupied by Belper Rugby and have provided consent for the club to erect security fencing which would secure the site but prevent access to the claimed route. There is no evidence to suggest that there is an intention of the Council to prevent public use of the claimed route by allowing the Rugby Club to secure the site.

A declaration under Section 31(6) Highways Act 1980 was deposited by the agent on behalf of a landowner over which some of the claimed route crosses on 03 March 2014, this declaration declares that there are no public rights of way over the land and that the landowner does not intend to dedicate any. The intention not to dedicate only applies to usage after this date and therefore the relevant period for usage considered is 1994 – 2014.

Only information regarding the usage of a route may be considered when recording rights of way on the Definitive Map and Statement under the Wildlife and Countryside Act 1981 and therefore objections on the grounds of safety, security, illegal usage, vandalism and fouling have not been considered.

The documentary evidence offers no evidence that any public rights exist over the claimed route.

Although it is possible that the public have enjoyed use over the meadows in general, evidence has been provided that indicates that members of the public have used the claimed route on foot without secrecy, permission or force for over 20 years prior to the deposit of the declaration under S31(6) Highways Act 1980. Although there is evidence provided to suggest that

some of the landowners had demonstrated an intention not to dedicate the land as a public right of way it is not clear that these actions were sufficient to convey to members of the public that they were not entitled to use the route as of right within the relevant period. Therefore, on a balance of probabilities, it is reasonable to allege that a right of way does subsist.

### **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 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, social value, prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property, and transport considerations.



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

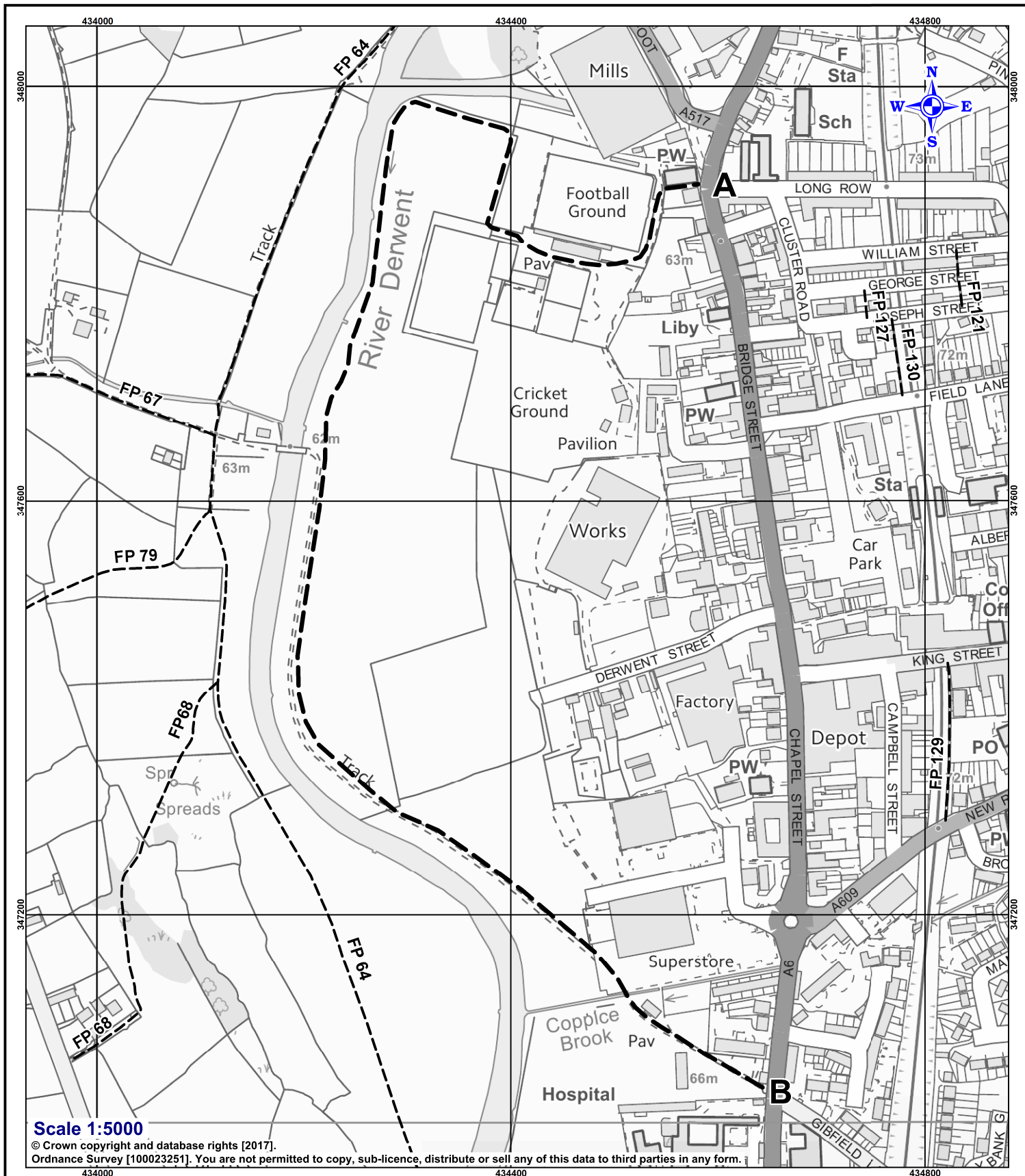
#### **4. Background Papers**

File held in Legal Services under reference number 67241.

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

That Committee resolves to authorise the Director of Legal Services to make an Order under s53 Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement for Derbyshire by adding to them a footpath from Bridge Street (A6) around the perimeter of field then exiting to the A6 opposite Gibfield Lane - Belper

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



Ref: TE/CH/X4051/Cttee/2018



**Mike Ashworth**

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Produced by Public Rights of Way on 7 September 2018

**Wildlife & Countryside Act 1981 Section 53**

**Claim to add a footpath from Bridge Street (A6) around the perimeter of field then exit to A6 opposite Gibfield Lane - Belper**

**Key:**

Footpath to be added      - - - - -

Existing Footpaths      . . . . .

