

DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE

31 October 2016

Wildlife and Countryside Act 1981

**Claim to add a footpath from Hands Road to Public Footpath 55, Heanor
to the Definitive Map and Statement.**

1. Purpose of the Report

To enable Members to determine an application to add footpaths to the Definitive Map and Statement.

2. Information and Analysis

Details of Application

An application was received from Mrs M Denman on 3rd September 2008 to add footpaths to the Definitive Map and Statement from Hands Road to Public Footpath 55 in Heanor. The application was accompanied by a letter, photographs of the route and twenty-one user evidence forms.

A plan showing the claimed routes is attached (Appendix 1)

User Evidence

The date of submission of the claim has been taken to be the date on which the status of the path was 'called into question' for the purpose of the Wildlife and Countryside Act 1981. The claim was not triggered by closure or obstruction of the route and it is understood that the path remains available for public use.

Of the twenty-one witnesses that submitted user evidence forms, two claim to have used the route for a period of twenty years or longer, with the remaining witnesses claiming between six and eighteen years use.

All of the witnesses claim to have used the route on foot with two of these witnesses also claiming to have used it on horseback.

Thirteen of the witnesses claim to have used the route daily, seven claim to have used it weekly, and one witness claims to have used it monthly.

The majority of witnesses describe the route as being from Hands Road to the Memorial Park. Six witnesses also mention the route passing through a

wooded area and six mention it passing through "Sukey's Hollow". Four witnesses mention the route proceeding by the stream/brook and two mention steps along part of the route.

The Public Way Evidence forms were accompanied by plans on which witnesses were required to mark the route they had used. There is some variation between the routes marked on the plans. None of the witnesses have marked a route that corresponds precisely with the route claimed by the applicant.

None of the witnesses recall any gates or stiles along the route. Two witnesses mention that it was blocked/diverted to rebuild the steps. None of the witnesses recall any notices or signs.

None of the witnesses report having been granted permission to use the route and none of the witnesses report being challenged or stopped from using the path.

Two of the witnesses mention that the route was opened ceremoniously by a councillor in 1991/1992.

Consultation

A consultation exercise was undertaken between 16th December 2011 and 20th January 2012. Notices were placed at either end of the route at the start of the consultation period. A consultation letter was also sent to the then local elected Member, Councillor Parkinson.

A letter was received from Amber Valley Borough Council as the landowner stating that they would be prepared to agree to the creation of a footpath along the claimed routes as long as it does not affect a development proposal on land to the north.

Documentary Evidence

1st Edition Ordnance Survey Map 1881

The claimed route is not shown

2nd Edition Ordnance Survey Map 1900

The claimed route is not shown

Ordnance Survey Map 1916

The claimed route is not shown

Ordnance Survey Map 1938

The claimed route is not shown

Ordnance Survey Map 1971

The claimed route is not shown

Ordnance Survey Map 2005

The wooded area is shown, however, the claimed route is not shown.

Additional Evidence

Nine photographs were submitted with the application. Two are described as “views of the path as it joins footpath 55” and show three steps leading onto a track. Four are described as “views of the path as it goes through the woodland and follows the outlet”. Two are described as “views of the steps down to the last part of the path” and show a number of steps with a wooden fence on one side. The last photograph is described as “the last section of the path to the entrance on Hands Road” and shows a path between the fences of properties on either side.

Site Visit

The route was inspected from Hands Road to Public Footpath No 55 in July 2014 and it was found that the route on the ground does not correspond with the route claimed by the applicant.

Summary and Conclusion

The application relies upon evidence of use by the public to support the claim that a public right of way subsists or is reasonably alleged to subsist. The user evidence must be considered against the requirements of Section 31 Highways Act 1980 (as set out in the Legal Considerations below).

There is on the face of it significant evidence that the public have enjoyed access over the land for in excess of 20 years however this is not specific to the claimed routes.

Two witnesses have referred to the route being ceremoniously opened in 1991-1992 by the cutting of a ribbon, however no further information is provided as to the nature of this event.

There is insufficient evidence to demonstrate that the claimed routes have been used by the public as of right as required by Section 31(1) of the Highways Act 1980.

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 of probability that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 3.4 Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public “as of right” and without interruption for a full period of 20 years the way is 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, 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.

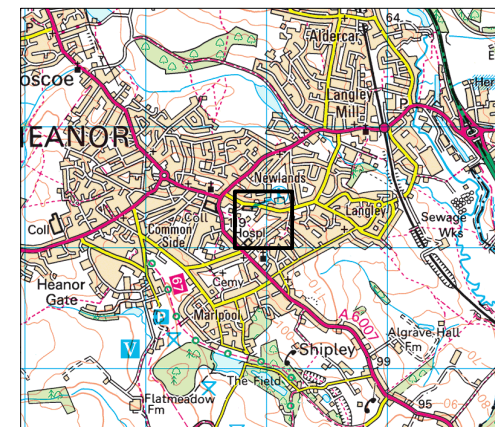
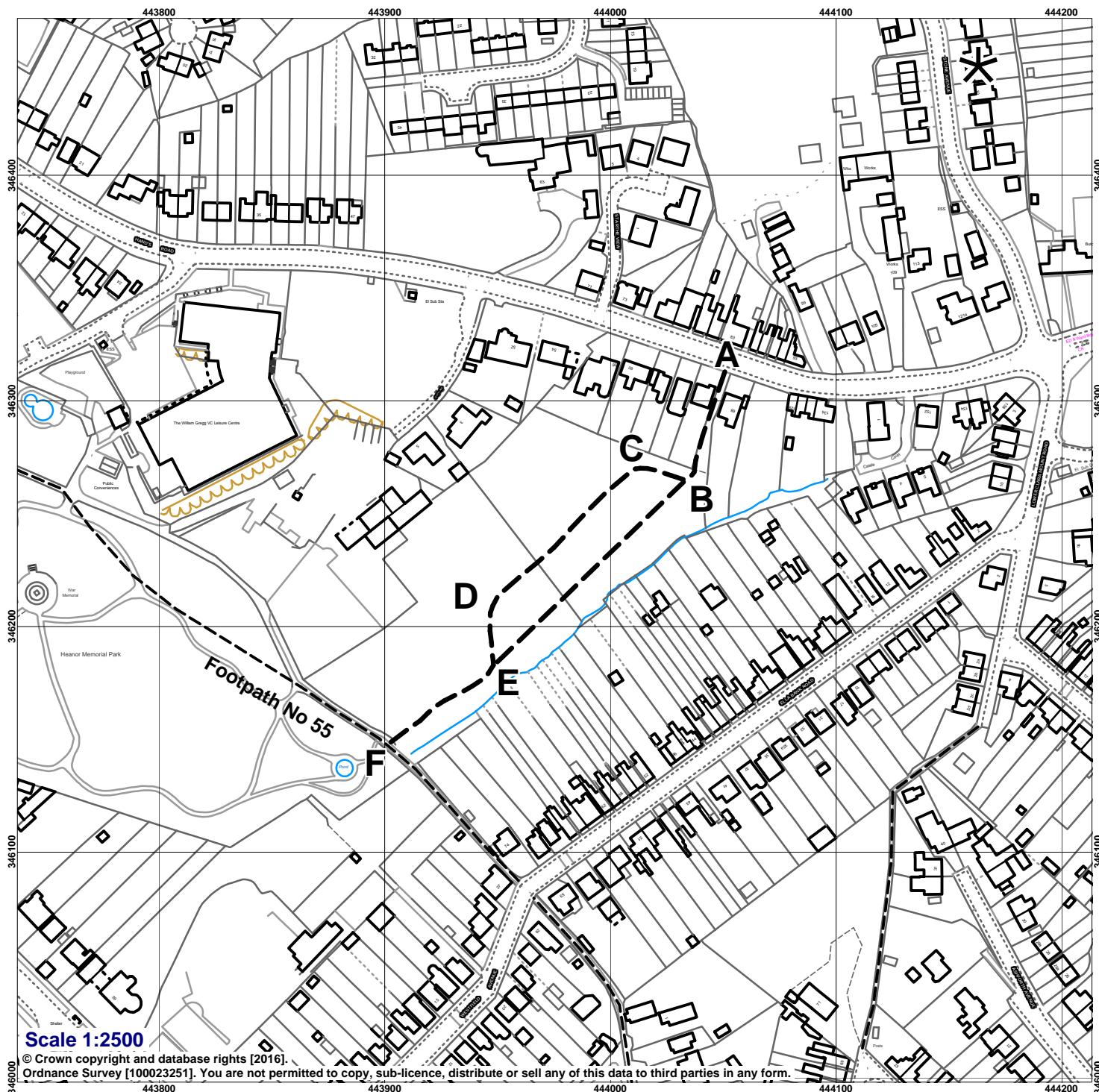
4. Background Papers

File reference 41436

5. OFFICER'S RECOMMENDATION

That the Committee resolves to reject the application made under Section 53 of the Wildlife and Countryside Act 1981 to add footpaths from Hands Road to Public Footpath No 55, Heanor, as shown on the plan attached to this report, to the Definitive Map and Statement

John McElvaney
Director of Legal Services



Wildlife and Countryside Act 1981 S.53

Claim to add Footpaths between Hand's Road and Public Footpath No 55 - Heanor

KEY

Claimed Footpaths — — — —

Existing footpaths



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Strategic Director - Economy, Transport & Environment

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Dale Road South
Matlock
Derbyshire
DE4 3RY

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