

**DERBYSHIRE COUNTY COUNCIL
REGULATORY LICENSING AND APPEALS COMMITTEE**

**11 September 2017
Report of the Director of Legal Services**

**Wildlife and Countryside Act 1981
Claim to vary the particulars of Public Footpath No. 14 – RIPLEY.**

1. Purpose of the Report

To enable Members to determine an application to amend the Definitive Map and Statement by varying the particulars of Public Footpath no. 14 in Nether Heage, Ripley by providing that 'the footpath is depicted on an open route clearly removed from the field boundary'.

2. Information and Analysis

2.1 On 17 November 1998 an application was received by the Council, from Mr. R and Mrs. E Stapleton, to vary the particulars of FP No. 14 in Nether Heage, Ripley to depict the footpath 'on an open route clearly removed from the field boundary – of footpath no. 14 on route from Shop Lane to the corner of the first field from Shop Lane (SK361507 to SK362507)'. The claim is accompanied by 50 user evidence forms (UEFs), various photographs, correspondence and copies of documents relating to the matter. Through subsequent correspondence, the applicant's son has suggested a very precise description of the route as he would request it be recorded on the Definitive Map & Statement:

"by providing that the footpath is depicted on an unbounded and open route clearly removed from the driveway/field boundary with 42 Shop Lane. This route being depicted more precisely by a larger scale Plan to be attached to the Definitive Map upon which Plan the course of the footpath is shown to commence at its junction with Shop Lane at a distance of 3.1 metres in a northerly direction along Shop Lane measured from the extreme northwest corner of the land comprising the property 42 Shop Lane. The footpath being then depicted on the said Plan as proceeding easterly towards its junction with footpath 13 on a route displaced from the boundary of the driveway/field with 42 Shop Lane the extent of this displacement being established at finite points along the said boundary according to the documentary evidence of the historic legal line of the footpath that has been submitted in conjunction with this application and more particularly according to the measurements obtained from this evidence that are illustrated in the accompanying documents entitled Plan of R.O.W. 14 and entitled Table accompanying Plan of Right of Way 14"

2.2 The route is recorded on the Definitive Map & Statement as a footpath which is publicly maintainable. Two plans showing the route are attached: one showing the whole footpath and the second showing the area in question in more detail (Appendix 1).

2.3 The applicant alleges that the line of the path near its terminus on Shop Lane, Heage (Point A on the plan) was moved when a property was built on the land adjacent to the path in the 1980's. One of the user evidence forms states that the route was diverted '15 years ago' which would equate to 1983. However, the claim is to vary the particulars of the Definitive Map and the user evidence is submitted as evidence to support the applicants' contention that the route on the ground does not coincide with the legal line of the path, not as proof of use.

User Evidence

2.4 The UEFs submitted did not have any plans attached, though some users did sketch a plan of the route showing how they perceived it to have changed.

2.5 Nine witnesses have used the route for over 50 years and two for less than 20 years.

2.6 Of the 50 witnesses, 14 state that the route has not been diverted but, two add that the route has been moved nearer the Mission, one that the route has been moved closer to the hedge and another that the route has been moved, making it very narrow. One of these 14 users has provided a plan and further details in relation to the change in the route. This user has sketched a plan showing a straight route adjacent to a small brook.

2.7 Three users have not answered the question about whether the route has been diverted. One user does state that he has lived in the village since 1941 and believes the path has always followed the line of the hedge.

2.8 Twenty two users state that the route has been diverted but do not provide plans to elaborate in any detail. Two of the 21 merely answer 'yes' to the question which asks if the route has ever been diverted and two state it was 'moved'. Three of the 21 state that the route was 'moved to boundary', four state it was moved 'to present position', one that it was 'moved to the right 15 years ago, one that it was 'moved around 1990, one that it was moved 2 yards around 1990, one that it was moved about 5 yards, one that it was moved about 12 feet, one that it was 'resited too close to drainage dyke and hedgerow', one that it was moved 'onto the line of stream/ditch', one that it was moved over to where the ditch existed, one that it was taken over by the landowner, one that the original is now enclosed in the landowners garden and one user states that the route was not diverted 'till path was fenced off'.

2.9 Twelve users, including the applicants and their son, have provided sketches to show how they recall the route has changed. All 12 depict the end of the path at a stile adjacent to a farm/five bar gate. The applicants and their son show the gate and stile as set back from the main road while the remaining nine users show the gate and stile as level with the pavement. One of the applicants and the son each draw a sketch which depicts some distance between the boundary hedge of 42 Shop Lane and the dyke and again between the dyke and the path. One of the applicants and six other users each draw a sketch which depicts the dyke close to the hedge and then a space before the path. One user draws the line of the path but does not illustrate the dyke, hedgerow or any fencing and so the sketch is very vague. One user's sketch shows the view from the road which includes a gate, a stile, a hedgerow and a boundary wall but does not show the line of path.

2.10 Throughout the UEFs there are references to the stile being moved, to the path being narrowed, to the dyke being culverted / or filled in and to the erection of a concrete fence and conifer hedge which narrowed the path.

2.11 Although many of the users have sketched the route they have used, none have provided a level of accuracy that would support the amendments proposed by the applicants and their son.

2.12 The submitted UEFs do not show that the route as marked on the definitive map is incorrect, even if they do provide evidence that the actual walked route might have altered.

Consultation

2.13 The Council has consulted with Ripley Town Council, Amber Valley Borough Council and the local elected member, Cllr Dave Williams between 20 April and 04 May 2016.

2.14 Following the consultation, no evidence was received either in favour of or in objection to the application. There was a series of correspondence with Ripley Town Council and in their final email the Town Council stated, 'It is important that the footpath is accessible to the public freely'.

Documentary Evidence

2.15 1952 Parish Claim and Map

The Parish Claim records the route as Footpath 14 with the starting point, 'Mission Room (Shop Lane)'. The description of the route is, 'Starts from Shop Lane by Stile at side of Mission Room'. The map shows the route by a thick red line, which actually obscures the north east corner of the Mission Room building. The drawn line is too thick to allow differentiation between the position depicted on the Definitive Map and the amendment requested by the applicant and obscures any depiction of the brook or dyke that might be on the plan.

2.15 Ripley Definitive Map and Statement

Footpath 14 is described as a 'Footpath from Mission Hall, Shop Lane (361507) in easterly direction to Dungeley Hill near Brook Cottage (365506) with a grass surface. Neither its length nor, more pertinently, its width is recorded. It is shown on the map by a thick dark line which runs adjacent to the Mission Room. The small scale of the map (6" to 1 mile) makes it impossible to determine with any precision the exact line of the path or whether the current depiction is wrong. Again, it is not possible to make out the brook or dyke on the plan.

2.16 Ordnance Survey 2nd Edition 1:2500 Derbyshire Sheets 31:8 & 31:4 circa 1898

The route is shown between dashed lines alongside the field boundary and adjacent to the Mission Room. The marked route does veer away from the Mission Room a little but as OS maps are not a definitive record of public rights of way it is not possible to be satisfied that this map is any more accurate than the Definitive Map. The OS plan does not depict a brook adjacent the path and the boundary of 42 Shop Lane.

Summary and conclusion

2.17 Section 53(3)(c)(iii) provides that the Definitive Map and Statement may be modified if the order-making authority discovers evidence which (when considered with all other relevant evidence available to them) shows that the particulars contained in the map and statement require modifying. The evidence required to vary the particulars must be new (i.e. not simply a re-examination of the evidence considered when the Map was prepared); of sufficient substance to displace the presumption that the definitive map is correct; and must be cogent. The evidence must therefore be sufficient to show that on a balance of probabilities the Definitive Map and Statement require amendment.

2.18 The route has been shown on the Definitive Map and Statement for Ripley as a public footpath since 1 June 1953 (the relevant date of the Ripley Urban District Definitive Map and Statement) and map evidence indicates that a route following the hedge boundary has probably existed on the ground since the late 1800s (it has been consistently shown since 1898). However, Ordnance Survey maps do not record the status of a route – just its existence on the ground. The brook/dyke is not depicted on the maps with the result that it is not possible to compare it with the line of the path. There is a letter on file dated 27 February 1998, from John M Lewis & Co (representing the then owner of 42b Shop Lane) which states ‘the evidence my client has produced is from a period well before the existence of that ditch beside the boundary, and that the footpath ran against the boundary prior to the ditch being there’. It is therefore possible that the ditch was not an original feature.

2.19 The submitted UEFs do not offer enough detailed or consistent information to conclude that the line of the path is incorrectly shown on the Definitive Map or that the route on the ground is inconsistent with the route marked on the Definitive Map, even if the actual walked route has altered over the years. It is equally possible that, if the walked line has moved, it has moved onto the legal line. In addition, the path is now fenced in whereas it used to be within a field; this may have given a perception of narrowing and moving where none has occurred.

2.20 The scale of the Definitive Map (6 inches to 1 mile) and the fact that the routes were drawn on by hand with a thick pencil make it impossible to determine the line of the route with the level of accuracy requested by the applicants. The six figure grid reference given in the Definitive Statement (361507) covers a large area which includes both the current location of the path on the ground and the applicants’ proposed location.

2.21 In conclusion, insufficient evidence has been presented to the Council to show on a balance of probabilities that the depiction of the route on the Definitive Map is not an accurate record of the legal line of the path or to show what alternative depiction would be more accurate.

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:

(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

(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) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification (section 53(3)(c)(iii)).

3.2 Section 56(1) provides that a definitive map and statement shall be conclusive evidence of the matters contained therein and that where the definitive map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot.

3.3 Section 56(2)(a) states that ‘the relevant date’ means the date specified in the statement as the relevant date for the purposes of the map.

Other Considerations

3.4 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.

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

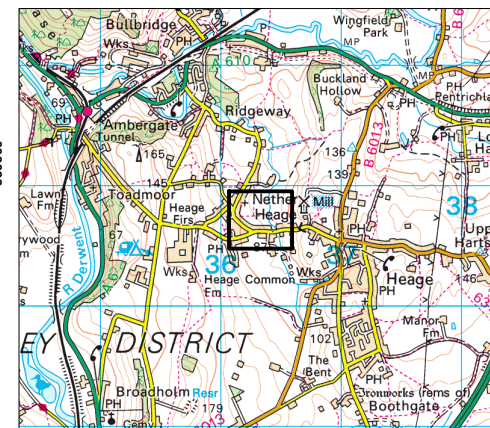
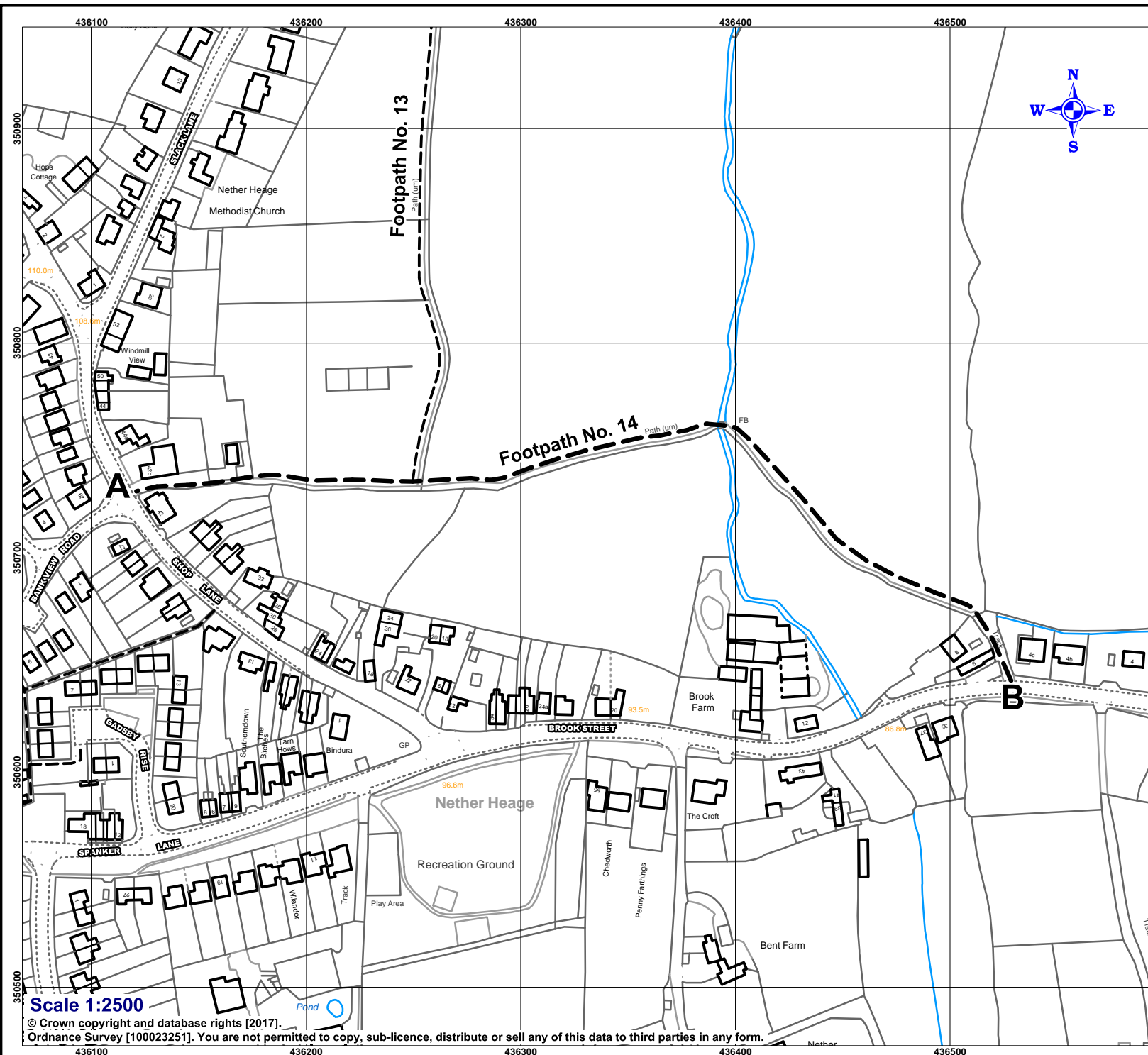
4. Background Papers

File held by Legal Services (ref. 2167).

5. OFFICER’S RECOMMENDATION

That, for the reasons set out above, the Committee resolves to reject the application to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to amend the Definitive Map and Statement by varying the particulars of Ripley Footpath 14.

Chief Officer



Wildlife & Countryside Act 1981

Varying the particulars relating to Public Footpath No. 14- Ripley Town

Key:

Ripley Footpath No. 14

Other Footpaths

Ref: TE/CH/X3350/Cttee/2017
Date: 22 August 2017

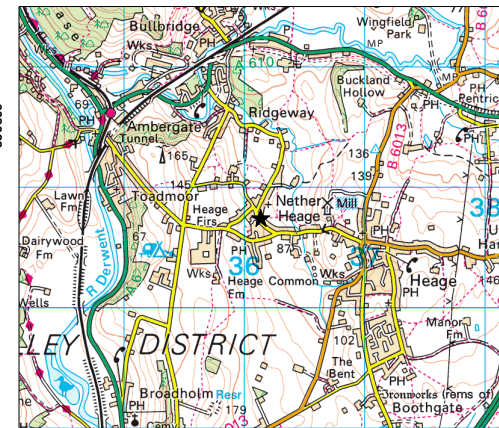
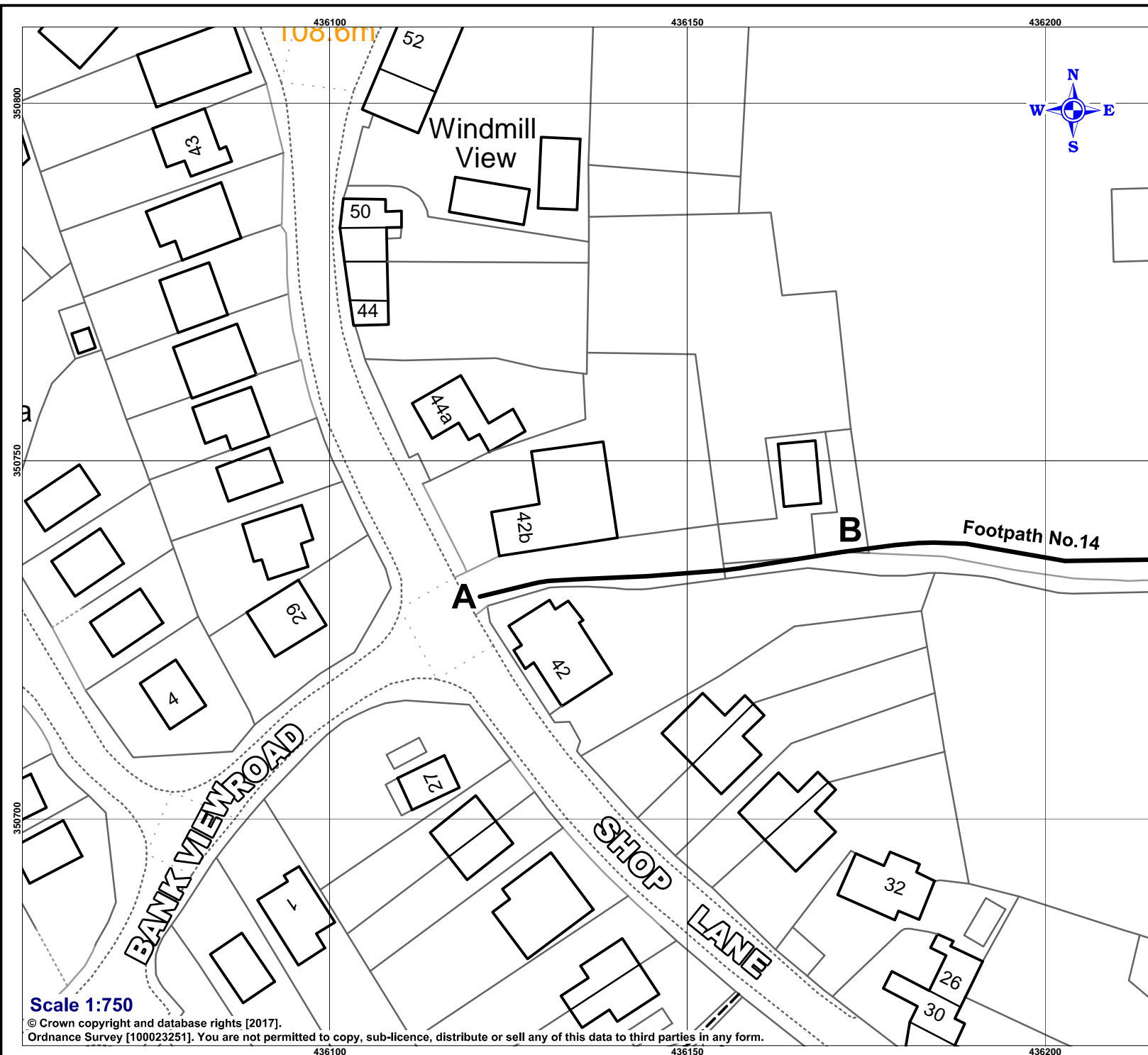


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Wildlife & Countryside Act 1981

**Varying the particulars relating to
Public Footpath No. 14-
Ripley Town**

Key:

Ripley Footpath
No. 14

Section affected by
claim at Shop Lane

A - B

Ref: TE/CH/X3350/Cttee/2017

Date: 22 August 2017



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