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# Order Decision

Inquiry opened on 13 December 2016

**by Sue Arnott FIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 20 January 2017**

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## Order Ref: FPS/L3245/7/16

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Shropshire Council (Parish of Frodesley) Modification Order 2010.
- The Order is dated 25 February 2010. It proposes to modify the definitive map and statement for the area by re-aligning public bridleway No 4 (Frodesley) and recording a connecting footpath at Frodesley Lodge; it would also alter the status of Footpath 7 west of Bentley Ford Farm to a bridleway, as shown on the five Order maps and described in the Order schedule.
- There were 6 objections<sup>1</sup> outstanding when Shropshire Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

**Summary of Decision: Confirmation of the Order is proposed subject to the modifications set out in the Formal Decision below.**

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## Procedural Matters

1. I held a public local inquiry into the Order in the Village Hall in Pitchford on 13, 14 and 15 December 2016. Having visited the site(s) only briefly in the afternoon of 12 December unaccompanied, I returned on 14 December after having adjourned the formal proceedings. On this occasion I was accompanied by both supporters of and objectors to the Order. The inquiry resumed in the late afternoon of 14 December and finally closed on 15 December.

## The Order

2. The Order was made by Shropshire Council (SC) under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of events specified in sub-sections 53(3)(c)(i), (ii) and (iii). In fact it comprises of five separate changes to the definitive map and statement, broadly in two locations within Frodesley Parish.
3. Each proposed modification is shown on a separate Order Plan. Order plan 1 shows the proposed addition of a bridleway (Route 1) from a point to the north east of Frodesley Lodge on definitive Bridleway 4, running westwards and south westwards, passing Frodesley Court, to re-join the definitive line south-west of the Lodge. Order plan 2 shows the proposed addition of a footpath (Route 2) from Bridleway 4 westwards and through the grounds of Frodesley Lodge, via steps down to meet Route 1. Order Plan 3 proposes the downgrading of part of Bridleway 4 north east of Frodesley Lodge to footpath status (Route 3) and Order Plan 4 shows the deletion of part of the same bridleway to the south west of the Lodge (Route 4).

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<sup>1</sup> The objection from Mrs Fordham related only to the proposed addition to the definitive map and statement of the footpath shown on Order Plan 2. Mrs Fordham supported the changes identified on Order plans 1, 3 & 4 and is therefore listed as a supporter.

4. In effect the Order proposes to re-align part of the bridleway and to substitute a footpath but with a section on a different alignment.
5. At the second location, less than a mile to the west of Frodesley Lodge, Order plan 5 shows the proposed upgrading of Footpath 7 west of Bentley Ford Farm (Route 5) to bridleway status.

### **The Main Issues**

6. In relation to the parts within the Order which propose the addition of public rights of way to the definitive map (Routes 1 and 2), the main issue is whether evidence has been discovered which is sufficient to show, on a balance of probability, that rights of way which are not recorded in the definitive map and statement subsist over land in the area to which the map relates (as provided in sub-section 53(3)(c)(i) of the 1981 Act).
7. As regards the proposed downgrading of Bridleway 4 (Route 3) and upgrading of Footpath 7 (Route 5), the issue is whether there is sufficient evidence to show, again on a balance of probability, that "a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description" (sub-section 53(3)(c)(ii)).
8. For the proposed deletion of part of Bridleway 4 (Route 4) the question is whether there is sufficient evidence to show, on a balance of probability, that there is no public right of way over the land shown in the map and statement (sub-section 53(3)(c)(iii)).
9. When considering downgrading or deleting routes from the definitive map and statement, guidance issued by Defra in Rights of Way Circular (1/09) v2 advises that *"The evidence needed to remove what is shown as a public right from such an authoritative record as the Definitive Map and Statement ... will need to fulfil certain stringent requirements."*
10. These requirements are that (a) the evidence must be new. An order to remove a right of way cannot be founded simply on a re-examination of evidence known at the time the definitive map was surveyed and made; (b) the evidence must be of sufficient substance to displace the presumption that the definitive map is correct; and (c) the evidence must be cogent.
11. Once prepared, and unless and until subsequently revised, the definitive map and statement is regarded as conclusive evidence of the existence, at the relevant date<sup>2</sup>, of the public rights of way it shows. Therefore the deletion or downgrading of a right of way from this record requires sufficient evidence to show that no right of way existed as at the relevant date of the definitive map on which the way was first shown.
12. The Guidance also makes clear that it will be for those who contend that there is no right of way to prove that the map requires modification due to the discovery of evidence which, when considered with all other relevant evidence, shows that the right of way should be deleted. It is not for the objectors to prove that the definitive map is right.
13. In essence, the case put forward by SC in support of Routes 1-4 rests primarily on the contention that a mistake was made when the definitive map was first prepared.

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<sup>2</sup> Of the definitive map

14. The relevant date of this map is 1 September 1954. The central issue is therefore whether, at that time, there was no public right of way along Route 4 of any description, and whether public rights of way then existed along Routes 1 (as a bridleway) and Routes 2 and 3 (as a footpath).
15. In the alternative, SC submits there is evidence to demonstrate the presumed dedication of a public bridleway along Route 1 under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, on horseback or leading a horse, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public bridleway. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public bridleway will be deemed to subsist.
16. If not satisfied that the requirements for dedication under statute have been met, I may consider the common law approach in the alternative. In addressing this possibility the issues I would need to examine are whether, during any relevant period, there was express or implied dedication by the owner(s) of the land in question (having the capacity to dedicate a public right of way) and whether there is evidence of acceptance of the claimed right by the public.
17. As regards Route 5, SC submits the case rests almost entirely on historical evidence and on the well-established legal principle "*Once a highway, always a highway*" (unless there is evidence of formal closure). I shall therefore need to examine the evidence discovered to determine whether there is sufficient to show that Route 5 was recognised as a bridleway at some time in the past.
18. I note also that Section 32 of the 1980 Act allows "*any map, plan or history of the locality or other relevant document*" to be taken into consideration when deciding whether or not a way has been dedicated as a highway.

## **Reasons**

19. Although the majority of the objections to the Order centred on Routes 1-4, I intend to start by addressing the evidence in relation to the proposed upgrading of Footpath 7 at Bentley Ford Farm (Route 5). It seems to me that an examination of the historical mapping and documentary evidence for this area may provide a helpful context from which to then consider the routes in the vicinity of Frodesley Lodge.

### ***Route 5: Upgrading Footpath 7 west of Bentley Ford Farm to bridleway***

#### ***Route 5: Historical evidence***

20. The earliest depiction of Route 5 is by Roque on his County map of Shropshire in 1752 although its origins are said to have been long before that. On this stylised map a road is shown from Longnor towards the (then enclosed) Frodesley Park. Relating this to the maps produced by Cary in 1794 and Baugh in 1808, it seems clear that the road shown by Roque was indeed the present Order route. In a similar fashion to Cary, Baugh showed Route 5 as part of a by-road, and in 1827 Greenwood identified it as a cross-road connecting Longnor Green to Ruckley. The Ordnance Survey (OS) 2": 1 mile drawing of

- 1827 showed the route extending towards Frodesley Lodge as does the 1" map of 1833.
21. From these early maps there seems to me good evidence to show that from the mid-eighteenth century (at least) there was a well-defined road that ran along the line of Route 5 from the cross-roads at Longnor Green past Bentley Ford Farm towards what is now Park Farm. Later, it continued past Frodesley Lodge and on to Ruckley.
  22. An estate map of 1829 covering the property of Reverend Archdeacon Corbett in this vicinity shows Route 5 coloured in the same manner as other known vehicular highways and clearly labelled "To Acton Burnell"<sup>3</sup>.
  23. One year later, the Frodesley Parish Vestry minutes and the Road Account Book record a dispute over the maintenance of two roads in the parish. A Mr Scott at Lodge Farm had erected "horse wickets" across various roads including "in the Park Wall" near Park Farm. When the Parish Surveyor had refused to maintain the road from this wicket gate "past Bentley Ford Farm House to the Lawley Road" (clearly including Route 5) as a carriage (or team) road, the matter was settled in Court. The result saw the two roads in question being declared "Public Bridle or Drift Roads" to be maintained as such by the parish.
  24. This status was confirmed again in 1837 following a further dispute over maintenance of the two roads by the parish surveyor.
  25. On the Frodesley Tithe Map of 1844 the route appears separated from adjacent fields and not subject to tithe payment<sup>4</sup>. This is consistent with the earlier evidence that the route was a highway, albeit one maintained as a bridleway. Indeed the Condoover District Highways Board records refer to it as "Near Longnor Green to Bentley Ford" although the Schedule of Roads for Repair notes that it was "not repaired" in 1864.
  26. The OS maps that followed in 1883, 1901/3 and 1956 reveal the continued existence of the enclosed road that carries Route 5 but also a footpath which ran though the fields to the north parallel to the lane. This field path continued, via a footbridge, to a point halfway between Bentley Ford Farm and Park Farm where it appears to have re-joined the main track. [It was not suggested that any part of this footpath was recorded on the definitive map although I can see the potential for some confusion here.]
  27. The Bartholomew's half inch to the mile map published in 1903 clearly showed Route 5 continuing through to Ruckley.
  28. Curiously, given the earlier evidence, records prepared under the 1910 Finance Act do not show the route excluded from adjacent hereditaments; deductions were made for public rights of way but these are not individually identified.
  29. Before turning to the process by which Route 5 came to be recorded as a footpath, I shall summarise my conclusions based on the historical documentation I have examined and noted briefly above.
  30. I accord the greatest weight to the extracts from the parish vestry minutes and road records from the nineteenth century which make clear reference to the

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<sup>3</sup> Mrs Williams drew attention to the significant evidential weight to be attached to this, as acknowledged by the Courts in the case of *Commission for New Towns & Worcestershire County Council v JJ Gallagher Ltd* (ChD)[2002] EWHC 2668 (Ch), [2003] 2 P & CR 3

<sup>4</sup> From the Lawley Road as far as Park Farm

findings of the Court, identifying the extent of the public's rights over the route past Bentley Ford Farm as being those associated with a bridleway. All maps which predate this dispute support this being a way of this status or possibly higher although the matter was clarified in the 1830s. Maps post-dating this dispute continue to show a route on the same alignment, passing on the north side of the farm buildings, consistent with a highway of bridleway status.

31. On balance, and in the absence of any documentation to show that the route was either stopped up or lawfully diverted at any time before the first definitive map was prepared, I consider there to be very good evidence to show that Route 5 continued to carry the status public bridleway into the twentieth century.

#### *Route 5: The definitive map process*

32. When the definitive map and statement was prepared in the 1950s as required by the National Parks and Access to the Countryside Act 1949 an initial survey of public rights of way was to be carried out by each parish. In the case of Frodesley, the exercise appears to have been completed by a member of Shropshire County Council staff, a Mr Bick. The map he produced, based on OS maps and following communication with a Mr Harley (said to be the Parish Clerk), showed Route 5 as part of Footpath 7 extending from the Lawley Road to Frodesley Lodge. The whole route continued to be shown as a footpath on the draft and provisional maps which followed and on the first definitive map published on 27 August 1959.
33. In 1966, as part of a review of the definitive map, the South Shropshire Hunt branch of the Pony Club made representations to the County Council to upgrade a number of routes in the area including Footpath 7. This was determined at a hearing held on 4 April 1967 but appears to have included only that part of the (then) footpath from Bentley Ford Farm eastwards to Frodesley Lodge. The records note: "*Mr Eric Davies<sup>5</sup> of Frodesley Hall Farm, Frodesley stated that this was a well-used bridleway which had been ridden by himself and many whom he knew for upwards of twenty years. He stated that the footbridge was not used; there was a ford there as shown on the Ordnance Survey sheet and this was used by riders to negotiate the stream.*"
34. The hearing concluded that Footpath 7 should be upgraded to a bridleway<sup>6</sup>. However there is no direct evidence to explain why the Pony Club's claim did not include Route 5, thus appearing to leave Bridleway 7R a cul-de-sac for riders. At the inquiry it was suggested that the remaining section of Footpath 7, now the subject of this Order, may have been regarded as a publicly maintained road. The present County Surveyor's records do not show this but it would accord with the 1864 Condover District Highways Board records.

#### *Route 5: Other relevant evidence*

35. In 2003 Mr Repath submitted an application to SC seeking to record Route 5 as a bridleway. Besides historical maps, this was supported by an evidence form confirming his use of the route on horseback during the years 1976-1977. He recalled one other person doing so, this being Mr Davies' father.

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<sup>5</sup> Mr G Davies' father

<sup>6</sup> It is not entirely clear to me whether the review process was ever completed with a new definitive map being published. However, Bridleway 7R is now shown on SC's working copy of the definitive map and the status of this record was not disputed.

36. At the inquiry Mr Davies confirmed his recollection of his father riding here and of earlier generations of his family dating back to the 1900s using the route when travelling between farms at Leebotwood and Ruckley, particularly in the 1930s and 1940s whilst transporting produce. He also recalled Mr Harry Owen (now deceased), a worker at Park Farm, who had told him where the teams of horses and carts used to go.
37. Mr Higgins explained that his grandfather had moved to Bentley Ford Farm in 1952 and the family had farmed there ever since. His uncle had bought the neighbouring Park Farm in 1975; at this time there had been no clear track on the line of Bridleway 7R as his uncle had constructed one soon after he acquired the property so as to link the two farms. Further, there had been a narrow gate at the Park Farm end and this had to be widened to allow vehicles through.
38. It was Mr Higgins' contention that the whole route should be a footpath, and rather than Route 5 being upgraded the present bridleway should be downgraded. Few people had used it with horses in living memory, it was not waymarked as a bridleway and as landowners Messrs Higgins had never been consulted in 1967 when the route was upgraded to a bridleway.
39. Whilst the evidence does suggest that use with horses may have declined during the middle of the twentieth century, the Pony Club claim indicates that in the 1960s it was still being used, although the reference to use of a ford hints that the route being used may have been via the farm track to the south rather than to the north of the farm. This pre-dated correspondence in the 1990s between Messrs Higgins and the County Council in connection with a possible diversion of the definitive route of Bridleway 7R onto a line through the farm yard and ford.
40. However it appears that no diversion Order was ever made and indeed this route is not at issue here. It is the lane to the west of Bentley Ford Farm that is now the subject of this Order.

#### *Route 5: Other matters*

41. I have noted objections submitted by and on behalf of Messrs Higgins which set out the implications for the farm and its operation if Route 5 is recorded as a bridleway and opened to the public. This is echoed in the representations from Cllr Barker. As I explained at the inquiry, neither the merits nor disadvantages of the route can be taken into account when determining whether, in law, a public right of way has already been established.
42. Three issues have been raised in connection with the way the route is described in the Order.
43. The Order Schedule describes the route from the Lawley Road as "*an enclosed lane with a width varying between 4.8 metres and 8 metres as shown on the Order Map but with a usable width of 3 metres and surfaced with tarmac throughout its length to the property known as 'Lawley View' ...*"
44. Firstly Mr Higgins takes issue with the width of the lane and submits it should be recorded as only 3 metres. SC highlights the general principle in highway law which applies a presumption that public rights subsist between the boundaries of an enclosed lane "from root of hedge to root of hedge" although the full width is not necessarily provided with a hard surfaced. The widths

stated in the Order are based on that principle and I find no evidence to support any deviation from it.

45. Secondly it is clear that the surface now is not tarmac; it consists of aggregate chippings. SC states it did have a tarmac surface when the Order was made but would accept a change to the Order to note it simply as a sealed surface.
46. This highlights the difficulties that can arise when including in the definitive record information which is liable to change. Section 56 of the 1981 Act makes clear that the definitive map is to be regarded as conclusive evidence of the rights there shown whilst the definitive statement is the conclusive record of the position or width, and of any limitations or conditions recorded as affecting the public right of way.
47. Whilst I can understand the usefulness of surface information to the highway authority for maintenance purposes, there is no requirement to include it in the definitive record and, as is the case with this Order, doing so may prove to be quickly out of date and possibly misleading. I therefore propose to modify the descriptions in Parts I and II of the Order Schedule to remove reference to the tarmac surface.
48. The third issue concerns reference to the property 'Lawley View'. SC explained that this is the name used on the latest OS 1:2500 map but according to Mr Higgins the property has been known as 'Rhos Y Gwaliau' for the last 37 years. For the avoidance of any doubt, I propose to modify the Order descriptions to refer instead to "Rhos Y Gwaliau (previously Lawley View)".

#### *Route 5: Conclusion*

49. Having examined all the evidence relating to this route, I conclude it probably formed part of a highway of great antiquity but one which was brought into question around 1830 by Mr Robert Scott of Lodge Farm when he installed several "horse wickets" (which I take to be bridle gates), one of these being on the line of the ancient road in the vicinity of what is now Park Farm. The precise route this ancient road took beyond Frodesley deer park is debateable but the section at Bentley Ford Farm (Route 5) has remained unchanged since the map by Roque in 1752. Its status as a bridleway was settled by the Courts in 1830 and, however variable its use may have been since then, it will retain that status in the absence of formal closure or diversion. Since there is no evidence of this in relation to Route 5, it must follow that Route 5 carries public bridleway rights today and should be recorded as such. Consequently, on a balance of probability, I conclude that the Order should be confirmed insofar as it relates to Route 5.

#### **Routes 1-4**

##### *The legal framework*

50. As I have noted at paragraph 9 above, where (as here) it is proposed to remove a right of way from the definitive map and statement, albeit to instead record it elsewhere, the guidance offered by the relevant Circular sets out stringent conditions that must be met if a change is to be made.
51. Essentially there must a discovery of something new, revealing cogent evidence of a mistake of sufficient substance to displace the presumption that the definitive map is correct. The Courts have accepted that the discovery of a

drafting error arising out of 'recent research' can constitute 'the discovery of evidence' which, if supported by cogent evidence and considered along with all the other evidence available, may be sufficient to justify a modification of the definitive record. For example, in the case of *Kotarski v Secretary of State for the Environment, Food and Rural Affairs* [2010]<sup>7</sup> Mr Justice Simon held that:

*"The discovery that there is a divergence between (the definitive map and statement) is plainly the discovery of such evidence, and it is unnecessary that it should be characterised as 'new evidence.' It is sufficient that there was the discovery of what the Inspector described as 'a drafting error', which was itself the result of what the Court of Appeal in ex. P. Burrows and Simms<sup>8</sup> characterised as 'recent research'."*

52. However, the starting point is always that the definitive map is correct unless evidence shows otherwise. In this context the weight to be placed on the definitive map and statement was explained in the case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions*<sup>9</sup> [2001] when Lord Phillips stated:

*"Where the Secretary of State or an Inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial assumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities." Further, if a change is to be made, "... evidence of some substance must be put into the balance if it is to outweigh the initial presumption that the right of way exists."*

53. In the Order before me, the proposals concerning Routes 1 to 4 are interlinked, two being proposed for deletion and downgrading and two for addition. It is theoretically possible that, having reviewed the evidence, I could conclude that it is sufficient to show that no right of way existed over the route to be deleted but remain unsatisfied that it supports the route(s) to be added.
54. Here I take note of the similar circumstances in *Leicestershire County Council v Secretary of State for the Environment, Food and Rural Affairs* [2002]<sup>10</sup>. There the issue to be determined was 'which was the correct route to be shown on the definitive map: the path proposed for deletion or the path to be added'. Collins J held that if the decision-maker *"is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive"*. Further, *"the presumption is against change rather than the other way around"*.
55. Given the proposition that a route is wrongly shown on the definitive map, only if there is sufficient evidence to show that a mistake was made, and on the balance of probability that the alternative was right, should a change take place.

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<sup>7</sup> *Kotarski v Secretary of State for the Environment, Food & Rural Affairs* [2010] EWHC 1036 (Admin); [2010] NPC 56

<sup>8</sup> *R v. Secretary of State for the Environment, ex. p. Burrows and Simms* [1991] 2 QB 354

<sup>9</sup> *Trevelyan v Secretary of State for the Environment, Transport & the Regions* 23 February 2001 *The Times Law Reports*

<sup>10</sup> *R (oao) Leicestershire County Council v SSEFRA (QBD)*[2003] EWHC 171 (Admin)



*Routes 1-4: Discovery of a mistake on the 1954 Definitive Map*

56. As I have already noted above, this map was compiled under the National Parks and Access to the Countryside Act 1949 and went through a draft and provisional stage involving public consultation before finally being published in 1959 as the conclusive record of public rights of way in the county as at the 1 September 1954.
57. Since this was the first definitive map on which Bridleway 4 (Frodesley) was shown, the first question to be addressed is whether or not a mistake was made at that time. It is accepted by all parties that the definitive map shows the public right of way passing through Frodesley Lodge, a building which is said to date back to the 1700s at least and therefore it must be obvious to all that an error was made. It cannot have been intended that the definitive map should record such a route. Finding that such an anomaly exists on the map seems to me a clear example of the type of 'discovery' anticipated in the 2010 *Kotarski* judgement.
58. The next question concerns the nature of the mistake. Tracing the definitive records back through the provisional and draft stages shows the route consistently being shown as a bridleway with a green line on the same alignment and drawn onto the same OS base map at 1:25,000. Its continuation southwards (as the purple line of Footpath 4) was challenged at the draft stage although the objection to its inclusion was later withdrawn. Nevertheless it would be reasonable to presume that the route as a whole was under some scrutiny at that time although clearly the line of Bridleway 4 being drawn through Frodesley Lodge does not appear to have been noticed.
59. It is not until one goes back a stage further that the source of the mistake is established. As I have mentioned above, the initial stage in the process was a survey of public paths in the parish although in Frodesley this seems to have been completed by a member of the County Council's staff. Whilst the gentleman in question (Mr Bick) appears to have consulted with a local resident (Mr Harley), it is not at all clear whether or not his survey map was based on any direct knowledge of rights of way around Frodesley, on a ground survey or simply from a study of the OS map. The survey form suggests the latter<sup>11</sup>.
60. It is immediately apparent that the survey map is based on OS mapping that is an earlier edition and, perhaps more significantly, is at a larger scale (6": one mile or 1:10,560). Further, Frodesley Lodge lies near the edge of a sheet with the parish boundary on the sheet to the north. On the southern sheet Bridleway 4 is shown in green passing Frodesley Lodge on the north side.

*Routes 1-4: The extent of the mistake*

61. There are two questions which arise from this. This first concerns the status of the way that is shown and the second relates to its alignment. Did this map correctly show the route as a bridleway and did it show it on the right line?
62. "BR 4" (Bridle Road 4) was recorded on the survey map as ending at a point west of Frodesley Lodge some 70 metres to the south west of point A (on Order Plan 1) but continued from here as Frodesley Footpath 4. This footpath was later upgraded to a bridleway as a result of the Pony Club claims at the first

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<sup>11</sup> The survey sheet reads: "As per ord map & conversation with Mr Harley 19/11/54. Nothing was shown by Parish"

review in 1966, but it is a valid question to ask how Bridleway 4 came to be recorded initially as an apparent cul-de-sac.

### Status

63. This seems to be answered by a faint hand-written note on the survey map which indicates the present road north westwards to Frodesley village as a "public cart road & FP". That status cannot be confirmed as I understand it does not appear on the highway authority's current list of maintainable highways. Whilst the status of this road is not at issue here, the pencilled note does give an indication that the surveyor *believed* there was a valid connection for horse riders beyond Bridleway 7.
64. Any doubts over whether or not Frodesley Bridleway 4 was intended to be recorded as a bridleway may be put to rest by the earlier claim in the neighbouring parish for the north eastern continuation of this route as Acton Burnell "BR 2". In this parish, known public paths were surveyed by E Stockton and T E Morgan<sup>12</sup> on 27 July 1950<sup>13</sup> (whom I understand to have been local residents). They described Bridleway 2 as "Cart Road to Barn Cottage thence BP (bridle path) to Lodge Farm", noting it was "seldom used". The route was included nevertheless at draft, provisional and final stages in the preparation of the definitive map and remains recorded as a bridleway today.
65. Given the date of the Acton Burnell survey (in 1950) and the completion date for the Frodesley survey sheet (in 1954) it is certainly tempting to deduce that when the County Council stepped in to produce a map and list of paths in Frodesley Mr Bick was influenced by the claimed Bridleway 2 from Acton Burnell to the parish boundary. Since the OS map of 1901 shows both this route and Bridleway 4 in places labelled "FP", it is unlikely he chose to record the route in Frodesley as a bridleway solely on the basis of OS mapping. More probably he accepted the status implied by Messrs Stockton and Morgan, confirmed this with Mr Harley and marked on his map the most direct route depicted by the OS.
66. On balance, the evidence leads me to conclude that Bridleway 4 was intended to be recorded as a public bridleway when it was first shown on the definitive map, primarily on the basis of its local reputation and despite being little used by the 1950s.

### Alignment

67. Turning next to its alignment, I note that in his closing submissions, Mr George posed the question "How big was the mistake?". He described the objectors' position being that there had been only a small drafting error whereas SC was contending there had been a more major mistake here. SC acknowledged that small errors are quite commonly found in the definitive map recording process whereas major mistakes are far less so. I am prepared to consider either possibility if there is evidence to support it.
68. As I have noted above, none of the parties have argued that the definitive map is correct where it shows Bridleway 4 through Frodesley Lodge. There is little more cogent evidence to support an error than the presence of a building that pre-dates the definitive map by several centuries standing across the definitive line.

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<sup>12</sup> Other records show that Mr Morgan was also the Chairman of Frodesley Parish Meeting.

<sup>13</sup> This was over four years before Mr Bick of Shropshire County Council completed the survey for Frodesley.

69. **I am entirely in agreement with that part of the Order which seeks to delete from the definitive map the section of Bridleway 4 (shown on Order Plan 4) which is shown passing through Frodesley Lodge.**
70. I also accept that the line shown on the Frodesley survey map is most probably the route that was intended by Mr Bick to be recorded as being in existence as at 1 September 1954 although whether that was the correct line of the public right of way is a separate question.
71. At the inquiry, three different interpretations of the survey map arose. SC submitted that Mr Bick's green line was via the route shown on Order Plan 2 (but as a footpath not bridleway). Mr George argued that an old concrete track which runs to the south of this route is closest to the green line and is the most likely intended route of Bridleway 4. The third interpretation arose from a letter sent in 2002 by Mr Knight, a Rights of Way Officer with Shrewsbury and Atcham Borough Council, in response to consultation on the proposed development of the redundant barns at Lodge Farm. Mr Knight interpreted the route as running south of the concrete track, initially following the definitive line (as on Order Plan 4) but deviating to the north west of Frodesley Lodge to join the route shown on Order Plan 2. I shall examine each of these in reverse.

Mr Knight's route

72. The route drawn on a plan by Mr Knight in 2002 is not identifiable on the ground as having any physical existence at any time, nor does it appear on any OS maps and there is no evidence of use to support it. SC is quite right when it submits that this letter (and map) is not binding on the Council, it is simply the professional officer's best attempt to provide a reasonable interpretation of a definitive map which is clearly wrong insofar as it shows Bridleway 4 through a building. There are no details available from which to ascertain whether Mr Knight relied on the 1950s survey plan when he drafted his letter or whether he relied on other information. In the circumstances I accord very little weight to his map although I accept that he got very close to showing the green line of Bridleway 4 as depicted on the survey plan.

Mr George's route

73. Mr George's interprets the survey plan as showing Bridleway 4 via the old concrete track. This runs across the slope up to the Lodge from an old gateway in the wall near the former barns. The gradient is steep but much less than the route shown on Order plan 2 (via the steps). The track is still discernable on the ground despite the encroachment of vegetation since it ceased to be used, yet this track does not feature on any OS maps and is thus difficult to date with any precision. It most probably fell out of use when the present drive up to Frodesley Lodge was established which, according to Mrs Fordham, was around 1954. The gap in the wall at the bottom of the concrete track was not filled in until the 1990s when the farm buildings were sold and the Fordhams had cause to attend to their property boundary. However exactly when the concrete track was laid is not known although it would have been after 1901<sup>14</sup>, possibly after the sale of Frodesley Lodge Farm as part of the Acton Burnell Estate in 1921<sup>15</sup>.

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<sup>14</sup> It was not detected by the OS in its 1901 survey.

<sup>15</sup> Mr & Mrs Fordham understood it to have been put in by a Mr Cook in the late 1930s or early 1940s

74. The only witness with first-hand knowledge of bridleways in this area in the 1950s was Mr G Davies who recalled using local routes with his father from 1955 onwards. As a horse-owning family, they were very familiar with riding routes around Frodesley. In his evidence to the inquiry, Mr Davies was very clear that he did not ride his horse up the concrete track (and indeed would not have done since he considered it to have been too steep to have safely taken a horse with steel shoes on a concrete surface of that nature). He and his father always used the route directly past the barns when out with their horses.
75. Indeed the impracticalities of the concrete track for horses militate against this being the intended route of Bridleway 4, as does the lack of any positive evidence to show it was actually used by the public at any time.
76. Further, it seems to me highly unlikely that when drawing up the survey map for Frodesley, Mr Bick was steered towards marking the concrete track as the public bridleway when it was absent from all OS maps (unless he himself was familiar with the route - for which there is no evidence).

#### Shropshire Council's route(s)

77. SC takes the view that the route shown on Order plan 3 (this being part of the definitive line of Bridleway 4) was in fact the line of a footpath to Frodesley Lodge whilst the bridleway took the route shown on Order Plan 1 (or a variation of this). It is argued that evidence shows the routes indicated on Order plans 2 and 3 were used by pedestrians and that this would have been the only practical route available to them.
78. Route 2 is a path which first appears on the 1901 OS base map that also shows Route 3 (the definitive Bridleway 4) labelled "FP" as it approaches from the north east. Where it reaches the boundary wall of Frodesley Lodge the path is shown to turn westwards before entering the Lodge's garden (at a point where a 1.4m wide gate exists) then descending the slope down to the former farm yard via a flight of narrow brick steps<sup>16</sup>. On this same map the OS shows a track (resembling that indicated on Order map 1) which SC submits was the historical route of Bridleway 4.
79. I am not wholly convinced by this submission for several reasons. Firstly, I have already concluded that in the 1950s Shropshire County Council intended to record a bridleway, not a footpath. I accept it is possible that the line of Bridleway 4 shown on the survey map did not reflect the true right of way (and in due course will consider the possibility this should have been Route 1). Yet even if that were the case, there is no evidence to support the existence of a separate public footpath on the lines shown by Order Plans 2 and 3 on the relevant date in 1954 other than their depiction as a footpath on the 1901 and 1954 OS maps. In effect, this would require two mistakes from Mr Bick: firstly drawing just one right of way when there were two, and secondly recording the bridleway on the line of the footpath. Such things can happen but there is nothing to support that scenario here, other than the physical existence of two routes during the relevant period.
80. Secondly, (and assuming the bridleway should have followed Route 1), SC refers to evidence which shows use by people attempting to walk the definitive

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<sup>16</sup> Although the copy of the 1883 OS 25" map is not sufficiently clear for me to be sure, the steps may have been in existence even then, although not shown to connect with the path across the field as appears on the 1901 edition.

line and relies on this in support of the addition and downgrading shown on Order Plans 2 and 3. However, with no evidence to demonstrate use by the public on foot before 1954 (and no supporting evidence other than the OS maps) there can be no finding that the line via the Lodge should have been recorded as a public footpath at that time.

81. Any post-1954 use of the Order Plan 3 route by walkers would be attributable to the definitive bridleway, albeit (possibly) wrongly recorded. Advice provided in Defra Circular 1/09 v2 states that where a route is mistakenly shown on a definitive map, subsequent use of it cannot give rise to the acquisition of public rights. This rests on the premise that rights that cannot be prevented cannot be acquired. In short, following this advice would mean that use post-1954 by the public of the incorrectly drafted Bridleway 4 (along Route 3) could not establish a right of way.
82. In her closing submissions for SC Ms Bell took issue with this advice, contending that the Circular is at odds with the law. She noted that all that is required of use by the public is for it to be 'as of right' if it is to lead to the presumed dedication of a public right of way. 'As of right' is explained as being 'nec vi, nec clam, nec precario' (without force, secrecy or permission). She argued that where use takes place along a mistaken route, the matter is taken out of the hands of the landowner through the erroneous recording on the definitive map; he or she is not able to give permission or grant a licence to the public so the use cannot be considered to have been 'precario' and must therefore qualify as being 'as of right'.
83. Whilst I have some sympathy with this argument, in this case I find there is insufficient evidence of use to support any subsequent dedication as a footpath and therefore have no reason to consider the point further. To summarise, even if I were to find that the line of Bridleway 4 should follow the route shown on Order Plan 1, **I am not satisfied that the evidence available is sufficient to support confirmation of the addition of, and down-grading to, the footpath shown by Order Plans 2 and 3.**
84. Returning to the green line shown by the survey plan, I am not persuaded that this reflects the route which is proposed for addition by the Order as shown on Order Plan 2. Neither, given the presence of the brick steps on this route with relatively narrow treads, do I consider it a realistic proposition that it ever was used by horses. Although I agree with Mr George that his route via the concrete track is probably the closest to the green line, I am not convinced that it was ever a route used by the public with horses.
85. These findings lead to the inescapable conclusion that none of the various interpretations of Mr Bick's green line on the survey map around Frodesley Lodge are likely to have ever been used as a public bridleway. So where should he have drawn the line?
86. SC submits the answer to that question is the route shown on Order plan 1. That may be the most likely candidate but even this is not without doubt. I propose next to examine the historical information to try to establish the line of the public bridleway that *should* have been shown on the 1954 parish map and then accurately transposed onto the draft, provisional and final editions of the definitive map.

*Route 1: Pre-1950 evidence*

87. On the 6": 1 mile OS base map (dated 1903) used by Mr Bick for the 1954 survey, as on the 1901 25" map, the double-pecked lines denoting the route later claimed as Acton Burnell Bridleway 2 continued in Frodesley Parish where, in OS field 234 (now owned by Mr Williams), it divided. One branch, clearly labelled 'FP', continued to Frodesley Lodge along the now definitive line of Bridleway 4 (the route shown on Order plan 3). The other branch led to the Lodge Farm buildings on a line similar to that shown on Order Plan 1 but passing to the north of a small feature that is marked as a well on the 1901 map. The same is shown on the preceding 1883 edition(s).
88. Historical evidence suggests there had been a major change in the 1770s when Frodesley Park (said to have been a mediaeval deer park, shown on Rocque's map of 1752) had been sold and subsequently 'disparked'<sup>17</sup>. By 1787 the land had been broken up into the field system visible on nineteenth century maps. Thus it would be reasonable to conclude that Bridleway 4 was probably not part of an ancient way, but developed at some time during the nineteenth century. However it does not appear on maps by Cary (1794), Baugh (1808), or Greenwood (1827). The OS First Edition 1" map (1833) is unclear but *may* show it as a dotted line. Yet a Perambulation of the Boundaries of the Parish of Frodesley by Mr T R Gleadowe (Rector) in 1826 identified several lanes and bridleways crossed by the boundary but not Bridleway 4.
89. The episode in 1830 described in paragraph 23 above involving a dispute over the repair of roads at Lodge Farm is probably not relevant here. Whilst it was recorded that Mr Scott (occupier of Lodge Farm) had erected "horse wickets" on different parts of the roads over the Lodge Farm (which may or may not have included Bridleway 4) it was the repair of two particular roads that were at issue. One of these was Route 5 but the other ("from the Gate near Parson's Pool to the Park Wall") does not appear to be the route of main concern here.
90. Bridleway 4 was not listed in the Condover District Highways Boards Schedule of roads for repair in 1864. It was not shown on the 1844 Frodesley Tithe Map although that would not be unusual for a bridleway crossing productive land. Neither was it specifically identified in the records prepared under the 1910 Finance Act although, again, that would not preclude its existence.
91. In 1921 Frodesley Lodge Farm was sold as part of the Acton Burnell Estate. The sales catalogue gave no indication of public or private rights of way and the accompanying map was based on the OS map of 1901, offering no further relevant information. Although a map of Lodge Farm was produced in 1953 showing the property of E Jones Esq, this covers the area to the south of the Lodge towards Lodge Hill and therefore offers no useful details as regards Bridleway 4.
92. In fact a brief summary of all the historical documentation suggests there is little to support the existence of a bridleway between Frodesley Lodge and Acton Burnell other than the Ordnance Survey maps which clearly demarcate a physical track. In his objection Mr Williams puts forward the theory that Bridleway 4 is one of several routes that were simply "a hangover from former times when the parkland would have been ridden by the Acton Burnell estate family and estate workers".

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<sup>17</sup> There was a phase of disparking medieval parks in the early to mid-eighteenth century due to the emergence of other types of game and improved agricultural practices.

93. Although there is no direct evidence to support this, it is a very credible explanation. Yet there is little doubt that by the 1950s, local memory still recalled the existence of a *public* bridleway which is now recorded on the definitive map and statement.
94. Turning to focus on the exact route this bridleway took in 1954, on balance it seems to me most likely that Mr Bick was prompted by the claimed Bridleway 2 in Acton Burnell Parish to identify its continuation in Frodesley but that he mistakenly drew his green line along the route shown by the OS as 'FP' rather than the unlabelled track leading to the Lodge Farm buildings. It is not disputed by any of the parties that the profile of Route 1 was (at least prior to 2004) more suited to use by horses (and farm carts) than any of the options via the Lodge itself which sits on a hill.
95. Indeed SC noted that in 1950 the Acton Burnell surveyors described Bridleway 2 as continuing to Lodge Farm, not to Frodesley Lodge (although the 1921 sales particulars suggest these were then part of the same property).
96. However, there remains a question over the precise route in use in 1954, most particularly in the vicinity of the point labelled C on Order plan 1.
97. I have already noted the difference between the route which is shown on Order plan 1 and the OS maps, particularly the 25" editions of 1883 and 1901 which are the clearest. (I shall refer to this as 'the OS route' or 'the historic line'.)
98. Neither route is accessible today. Prior to the conversion of the farm barns to dwellings, Route 1 passed along the farm access road between the barns and the Frodesley Lodge boundary, then continued northwards before gradually turning eastwards and into what is now Mr Williams' field. The OS route travels further north before turning, passing the old well in a very wet area that is now overgrown with vegetation so that the original means of access into Mr Williams' field has long disappeared. Route 1 rises gradually up to point C where Mrs Trendell explained a field gate had previously stood but which was not replaced when the new fence was installed, separating her field from Mr Williams' property.
99. Once through the boundary by whatever means, both routes continue into the middle of Mr Williams' field to join the definitive line at D which then leaves the large enclosure at a point some 50 metres or so south of the field corner (at a point he referred to as E). On site it is clear that this point of access into the neighbouring field has not been used for some time<sup>18</sup> either. On my accompanied site visit, the width between what appear to be old wooden gate posts on the definitive line was confirmed as approximately 1 metre. However there is a much wider field gate<sup>19</sup> closer to the corner (at Mr Williams' point F). Yet use of this gate would alter significantly the line taken through Mr Williams' field to point C.
100. The earliest user evidence is that of Mr G Davies although his experience does not pre-date the relevant date of the definitive map and ceased in the mid-1960s. Whilst he recalled using the route with his father past the barns, along a well-defined track along the bottom of the first field then rising gently up to the second, he said the gate was always on the Lodge side of the well. He recalled an old wooden gate being replaced by a metal gate about 10

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<sup>18</sup> Mr Williams postulates that this was abandoned long before all of the user testimonies.

<sup>19</sup> This is the gate which was photographed by Mrs Robins on her visit in 2005.

metres away. However he was not able to be precise about whether he used the access points at E or F.

101. Mrs Fordham confirmed that the gate at C had been in position when she first came to live at Frodesley Lodge in 1967 and that there had always been gates at point A and B too.
102. In summary, the documentary evidence leads me to conclude that, on a balance of probability, and since he was relying on the OS maps before him, it is most likely that Mr Bick should have marked as Bridleway 4 the historical route through point E, through the middle of Mr Williams' field, turning around the north side of the old well and past the Lodge Farm Barns. Although the evidence of Mr Davies suggests that around that period, horse riders had begun to use the slightly different 'new' route to the south of the well, there is no evidence of any formal diversion.
103. There is no other information from which to establish when the change took place around point C, or when the access at point E switched to point F. Having considered carefully all the evidence that is available, **it is my conclusion that the line shown on the 1901 OS map, having remained unchanged from the 1883 survey, is the route of the public bridleway that should have been recorded in 1954** (even if it was 'seldom used' and unofficial diversions were in place). Since this differs from the route shown on Order plan 1, I will need to propose modifications to the Order accordingly.

*Route 1: Post-1954 evidence and the case for presumed dedication*

104. There is no other documentary evidence that offers any further assistance in establishing the route of the historic bridleway.
105. Whilst there is a record of Mr Eric Davies' statement in support of the upgrading of Footpath 4 during the 1965 Review of the Definitive Map that "this was a bridleway which had been used by himself and local riders for upwards of 30 years without any objection", this does not necessarily mean that those same users also rode along Bridleway 4. Neither does it help to establish whether riders used Route 1 or the OS line although, as Mrs Fordham confirmed, a gate has existed at point C since 1967 at least.
106. However there is the evidence provided by 29 users, 11 of whom spoke at the inquiry giving details of their use and submitting to cross-examination. 23 of these claimed use on horseback whilst 6 were walkers. All witnesses stated they used Route 1 and all other claimants signed forms indicating they also used this same route.
107. Other than the Davies and Fordham families, the earliest user evidence was from Mrs Cowdy who as a teenager in the late 1960s / early 1970s rode the route often with friends. In the 1980s she started a riding school and, with Mrs Palmer, regularly took many riders out on routes in the area including via Route 1. Many of the other claimants began riding here through these rides and most continued to do so until 2003 or 2004. Consequently there is a significant body of evidence from users, mainly on horseback but also on foot, from the early 1980s through to 2004. There is no evidence to show that at any time these people were challenged whilst following Route 1, either personally or by notice, until the way was barred once development of the barns commenced.



108. Insofar as these people used those parts of Route 1 which coincide with the OS route, I attribute their use to the historic public right of way which was still known locally in the 1950s and 60s, for example by Mr Davies and his father and later Mrs Cowdy. Indeed, having heard from the witnesses at the inquiry, it seems clear that knowledge of horse riding routes in the area was passed from rider to rider, or through the local livery yards and guided rides, rather than being documented on maps or written guides.
109. Similarly, for the Ramblers' Association, Mrs Law said she had walked with friends and as part of a group being aware that there was an obvious anomaly on the definitive map but finding Route 1 the best way through. Prior to the development, the track past the barns was very clear.
110. However, it became apparent at the inquiry from photographs submitted that Mrs Robins, who surveyed the route on 13 September 2005 in preparation for the proposed *Ride UK - Route 10*, had probably not used Route 1 in its entirety; neither had all the other user witnesses. Rather than use section C-D leading into the middle of Mr Williams' field and continuing to point E on the definitive line, it seems more than likely they took the most pragmatic line along the field edge to the gate at F.
111. Turning to consider the user evidence in relation to Section 31 of the 1980 Act, the first matter to be established is when the public's rights were brought into question. It was not disputed that this occurred in January 2004 when development of the barns commenced and the site was fenced off, eventually leading to an application being made for a definitive map modification order on 17 April 2006 by Mrs Williams. Consequently use by the public over the previous twenty year period, January 1984 - January 2004, becomes relevant.
112. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of 'permission'.
113. As I explained at the inquiry, I attach the greatest weight to evidence given in person that has been tested through cross examination. Evidence given only in writing offers no opportunity to elicit greater detail from the claimant and therefore attracts less weight, especially where aspects of the user evidence are challenged by the objectors.
114. Despite the objectors' criticism of the plans attached to their user evidence forms, I found the evidence given by all 11 witnesses to be credible and honest although reliable recollections of the detail did vary. However, there remains a question over reliance on the plans showing Route 1 attached to the forms of other claimants but, given the physical features on the ground, I am inclined to deduce that these 18 people did as the 11 witnesses did and most probably used A-B-C-F rather than A-B-C-D-E.
115. The frequency of the claimed use was not heavy but at times this route was ridden weekly by some whilst others used it once a year, the average being monthly. I am satisfied that this is sufficient to demonstrate continuous use, as of right, over the relevant 20 year period.
116. Further, during this period, there is no evidence to show that the landowner(s) had taken steps to rebut the presumption of dedication.

Consequently, it follows that a public right of way **could** be presumed to have been established.

117. There are two reasons why I hesitate to reach this conclusion. The first is that it is possible the route B-C-F came into use because it was the only accessible alternative once the historical route became difficult north of C and narrowed at E. This might suggest that it is simply a deviation around obstructions on the true public right of way.
118. In the case of *Dawes v Hawkins*<sup>20</sup> it was held that public user on land adjoining a right of way, if it is referable to the way having been illegally obstructed or allowed to become foundurous, affords no reasonable evidence of a dedication over that adjoining land. However, at the inquiry the point was not argued since the issue did not arise, although I am inclined to follow the guidance offered by this case.
119. The second reason I hold back from proposing a modification to the Order to record A-B-C-F as a public bridleway is a practical one. If I were to accept that a public bridleway had been established (in addition to, not instead of, the historical route) I have no information from which to ascertain where the public continued onwards from point F. Yet even if such evidence were to be provided, the limitations of the Order plans would not allow me to mark on the route to point F let alone its onward continuation from there. Thus such a modification would be beyond the constraints of the Order.
120. Therefore, whilst I am satisfied that the route A-B-C-F was used by the public on foot and on horseback throughout the period 1984-2004 sufficient to raise a presumption of dedication and in the absence of any actions by the landowner to rebut that presumption, I am unable respond to this finding by proposing to modify the Order accordingly.

*Routes 1-4: Overall summary of findings and conclusions*

121. It is clear that a mistake was made when the definitive map was first issued showing a public right of way directly through Frodesley Lodge. This was an error that also appeared on the draft and provisional editions of the map with a relevant date in 1954. However the preceding survey plan showed that a different line was intended to be recorded. I have no hesitation in concluding that the discovery of this anomaly by SC offers cogent evidence showing the first of two mistakes made when Bridleway 4 was initially recorded.
122. The evidence also shows that when the definitive map and statement was first being prepared, Acton Burnell Parish surveyed their rights of way in 1950. As no similar survey was carried out in Frodesley Parish, it appears that the County Council had little choice but to compile a list itself. Mr Bick noted he relied on OS maps and a conversation with a local resident when he prepared the map and schedule for Frodesley.
123. Unless the Acton Burnell surveyors had been wrong, the continuation of their 'Bridle Road No 2' into Frodesley had to be a bridleway. There is no evidence to suggest that there were two public routes on the Frodesley side (a bridleway and a footpath) other than the depiction on OS maps dating from 1883 and 1901 of two tracks, one a footpath direct to Frodesley Lodge and the other an unlabelled cart track curving round to the associated farm buildings.

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<sup>20</sup> *Dawes v Hawkins* [1860] 8 CB (NS) 848, 141 ER 1399

When Mr Bick consulted the OS map, he must have seen these two routes. It is my conclusion that he simply chose to mark the wrong one (the second mistake).

124. Having examined all the possible routes the bridleway might have taken if it had followed the green line marked by Mr Bick, I have concluded that none of these were practical for a horse and that there is no realistic likelihood that the bridleway from Acton Burnell took a line directly towards, through or immediately around Frodesley Lodge.
125. It follows from this that I find on the relevant date in 1954 there was no public right of way along the definitive line of Bridleway 4 between the points shown as A and D on Order plan 1. The consequence of that is that I accept the deletion from the definitive map of the section proposed by Order plan 4 (A-B), but must reject the addition of the footpath via the steps proposed by Order plan 2 (A-B-C), and propose to modify the route shown on Order plan 3 (A-B-C) so as to delete this section completely rather than downgrade it to a footpath.
126. It is my conclusion that, relying primarily on OS maps, Mr Bick should have shown Bridleway 4 along what I have referred to as the historical line (or the OS route), turning from point D (on Order plan 1) westwards then south-westwards and past the Lodge Farm barns to point A.
127. Whilst evidence available today to support this being a public bridleway may seem relatively flimsy, this route had continued as a well-defined track since 1883 (at least) through to 1901 when it was again recorded as a feature by OS surveyors. Although that does not necessarily confirm its public status, (a) there is clear evidence that the 1950 local surveyors in the neighbouring parish understood there to be a public bridleway to Lodge Farm, (b) on balance this is the most probable route that bridleway took, and (c) local reputation continued to regard this as a bridleway well into the mid-twentieth century, as demonstrated by Mr Davies and his father.
128. It is therefore my conclusion that the route shown on the 1883 and 1901 OS 25" maps should be recorded as being the definitive route of Bridleway 4. Accordingly I shall propose to modify Order plan 1 so as to record this line between points B and D.
129. Although I have been unable to find sufficient evidence to pinpoint the exact point in time that use of the historic route switched so as to pass through the former gate at C, the consequence of this has been that evidence of use of the way provided by local horse-riders and walkers has not been of the old route in its entirety but in part along a different line. However I am not satisfied that this use was of the whole of the line shown on Order plan 1 that is proposed for addition by the Order. It is my conclusion that the line followed was probably from A via B to C but not to point D; instead users appear to have headed along the field edge to the northern corner of Mr Williams' field. However the limitations of the Order plan(s) mean that I am unable to propose any further modifications based on my conclusions arising from the late twentieth century user evidence.

### *Routes 1-4: Other matters*

130. I fully understand the difficulties my conclusions on the available evidence may cause.
131. The residents of Frodesley Lodge Farm and Frodesley Court have all drawn to my attention the problems a public right of way running close to the now converted barns could cause in terms of security and privacy and the effect it may have on the human rights of the residents. As I explained at the inquiry, none of these are issues I can take into account when determining an order of this nature, the confirmation of which rests solely on whether the evidence discovered shows on a balance of probability that a right of way has already come into existence. By the same token I am not influenced by any need for a bridleway in this area.
132. However, having concluded that the public right of way lies in a location where, if it were to be re-opened, ground conditions are not ideal (near the well), where it would be difficult to navigate as a user as well as causing disturbance to farming interests (in Mr Williams field), and where it will be intrusive for private interests (for residents of Frodesley Court and in Mrs Trendell's field), it seems to me that all parties at and surrounding Frodesley Lodge might usefully negotiate with SC and interested user organisations to find a mutually acceptable scheme for diversion of Bridleway 4. Unfortunately that is beyond the scope of this Order.

### **Conclusion**

133. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed subject to modifications described at paragraphs 47, 48, 125 and 128 above.

### **Formal Decision**

134. I propose to confirm the Order subject to the following modifications:

#### In the Order Schedule:

##### In PART I: Modification of Definitive Map

- In item (i) **Bridleway Addition**: in line 5, delete "a gate at point C on the Order Map (SO 5187 9995)" and substitute "SO 5188 9997";
- Delete item (ii) **Footpath Addition**;
- In item (iii) **Bridleway 4 (part) to be downgraded to Footpath**: delete "downgraded to Footpath" in the title and in line 1 and substitute "deleted"; also delete from line 6 "and the footpath to have a width of 2 metres throughout";
- In item (v) **Footpath 7 upgrade to Bridleway**: in lines 4 & 5, delete "and surfaced with tarmac throughout its length to the property known as 'Lawley View' " and substitute "to the property known as 'Rhos Y Gwaliau' (previously 'Lawley View')";

##### In PART II: Modification of Definitive Statement

- In item (vi) **Bridleway Addition**: in line 5 delete "a gate at point C on the Order Map (SO 5187 9995)" and substitute "SO 5188 9997";
- Delete item (vii) **Footpath Addition**;

- In item (viii) **Bridleway 4 (part) to be downgraded to Footpath**: delete "downgraded to Footpath" in the title and in line 1 and substitute "deleted"; also delete from line 6 "and the footpath to have a width of 2 metres throughout";
- In item **(ix) Footpath 7 upgrade to Bridleway**: in lines 4 & 5, delete "and surfaced with tarmac throughout its length to the property known as 'Lawley View' " and substitute "to the property known as 'Rhos Y Gwaliau' (previously 'Lawley View')";

On the Order Plans

- On Order Plan 1: amend the line of Bridleway to be added;
- On Order Plan 2: delete Footpath to be added;
- On Order Plan 3: amend notation used for route A-B-C to a continuous black line and note in Key as "Bridleway to be deleted".

135. Since the confirmed Order would (a) affect land not affected by the Order, and (b) not show a way as it is shown in the Order as made, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Sue Arnott*

**Inspector**

## **APPEARANCES**

### **In support of the Order**

Ms C Bell                                      Of Counsel, representing Shropshire County Council

*Who called*

Mrs S Butter                                Rights of Way - Mapping and Enforcement Manager

Mrs T Learoyd-Hill

Mrs P Cowdy

Mr P Cowdy

Mr D Hooton

Mrs M Law

Mr G Davies

Mrs B Stafford-Cairns

Mr R Repath

Mr P Fordham

Mrs E Fordham<sup>21</sup>

Mrs J Palmer

Mrs E Parsons-Jones                      Rights of Way Officer - Legal Orders & Enforcement

Mrs A Williams                            Applicant, representing the British Horse Society

Mrs Z Robins                               Access and Bridleway Representative, Shrewsbury and  
District Riding Club

### **Opposing the Order**

Mrs A Trendell

Mrs K George

Mr C George

Mr D Higgins

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<sup>21</sup> Mrs Fordham objected to the Order plan 2 route but spoke in support of routes 1,3 & 4

## **DOCUMENTS**

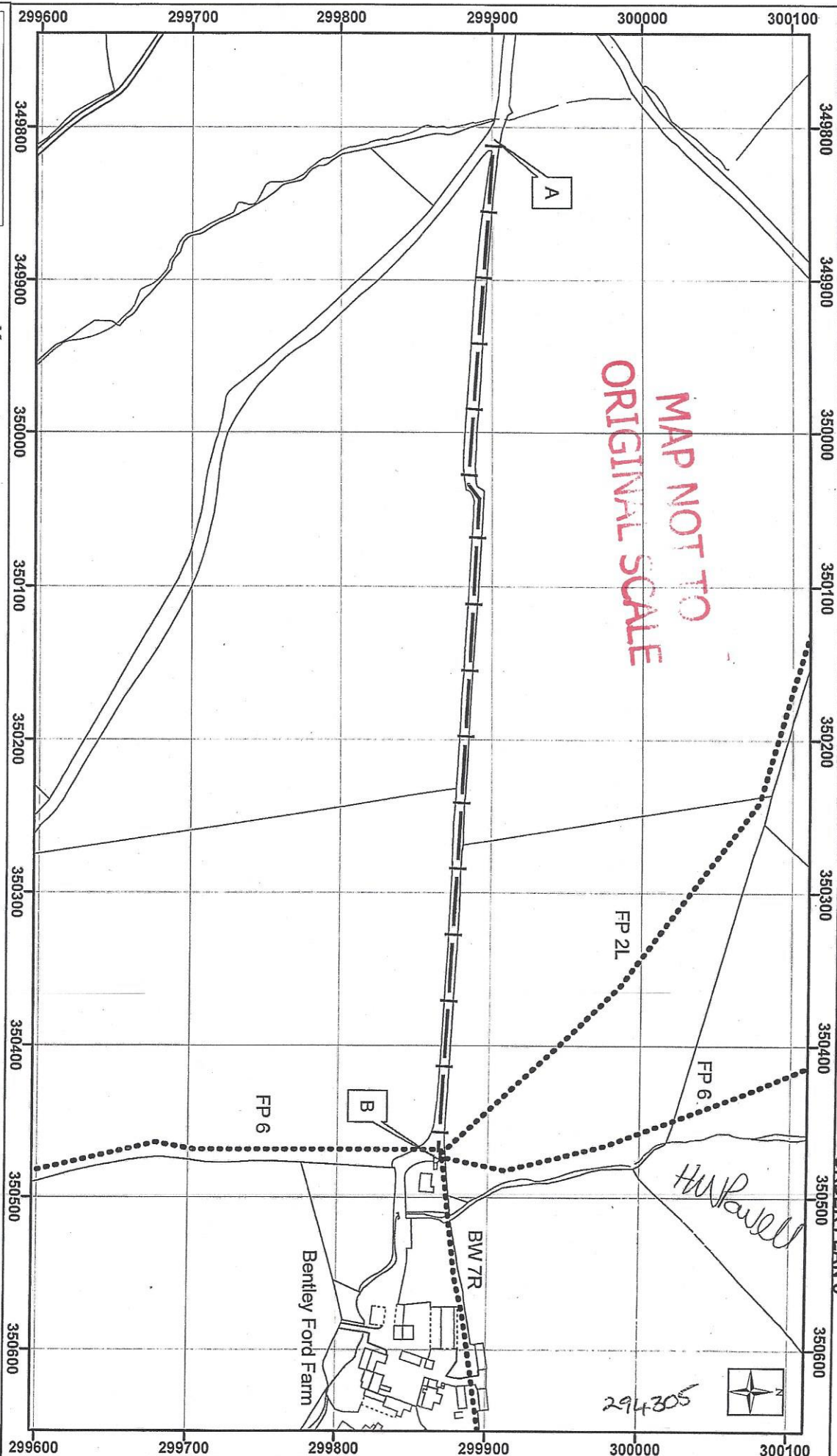
1. Copies of statutory notices and certification
2. Copy of the statutory objections
3. Statement(s) of case of Shropshire County Council including bundle of relevant case documents
4. Statements of Mr N Williams dated 4 September 2016 and 6 October 2016
5. Statement by Mrs A Williams dated 9 October 2016
6. Statement by Mrs A Trendell dated 10 October 2016
7. Joint statement by Mr and Mrs White, Mr and Mrs Carter, Mr and Mrs George and Mr and Mrs Trendell dated 11 October 2016
8. Statement by Mrs E Fordham (received 14 October 2016)
9. Statement(s) by Mrs Z Robins (received 18 October 2016)
10. Proof of Evidence of Ms S Butter, Shropshire CC, attaching proofs of evidence for Mrs J Parker (Baker), Mr R Redpath, Mrs E Fordham, Mr P Fordham, Mrs T Learoyd-Hill, Mrs P Cowdy, Mr P Cowdy, Mr G Davies, Mrs S Corke, Mr D Hooton and Mrs B Stafford-Cairns
11. Proof of evidence of Ms E Parsons-Jones, Shropshire CC
12. Proof of evidence of Mrs Z Robins
13. Proof of evidence of Mr D Higgins

### Submitted at the inquiry

14. Statement of Cllr Mr T Barker
15. Documents confirming the relevant date of the first definitive map and statement
16. Enlarged copy of the parish survey map submitted by Mr George
17. Copy of the OS 1": 1 mile map [1833] and 25": 1 mile map [1883] submitted by Mr Repath
18. Statement of Mrs A Williams
19. Correspondence from 1990 relating to the diversion of Bridleway Frodesley 7R at Bentley Ford farm submitted by Mr Higgins

**SHROPSHIRE COUNCIL**  
**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**Definitive Map Modification Order 2010**

Parish of Frodesley  
 Footpath 7 Upgrade to Bridleway  
 OS Sheet No: SO 5099  
**ORDER PLAN 5**



**Key**

Footpath to be Upgraded to Bridleway | — | — | —  
 Existing to remain ..... | — | — | —

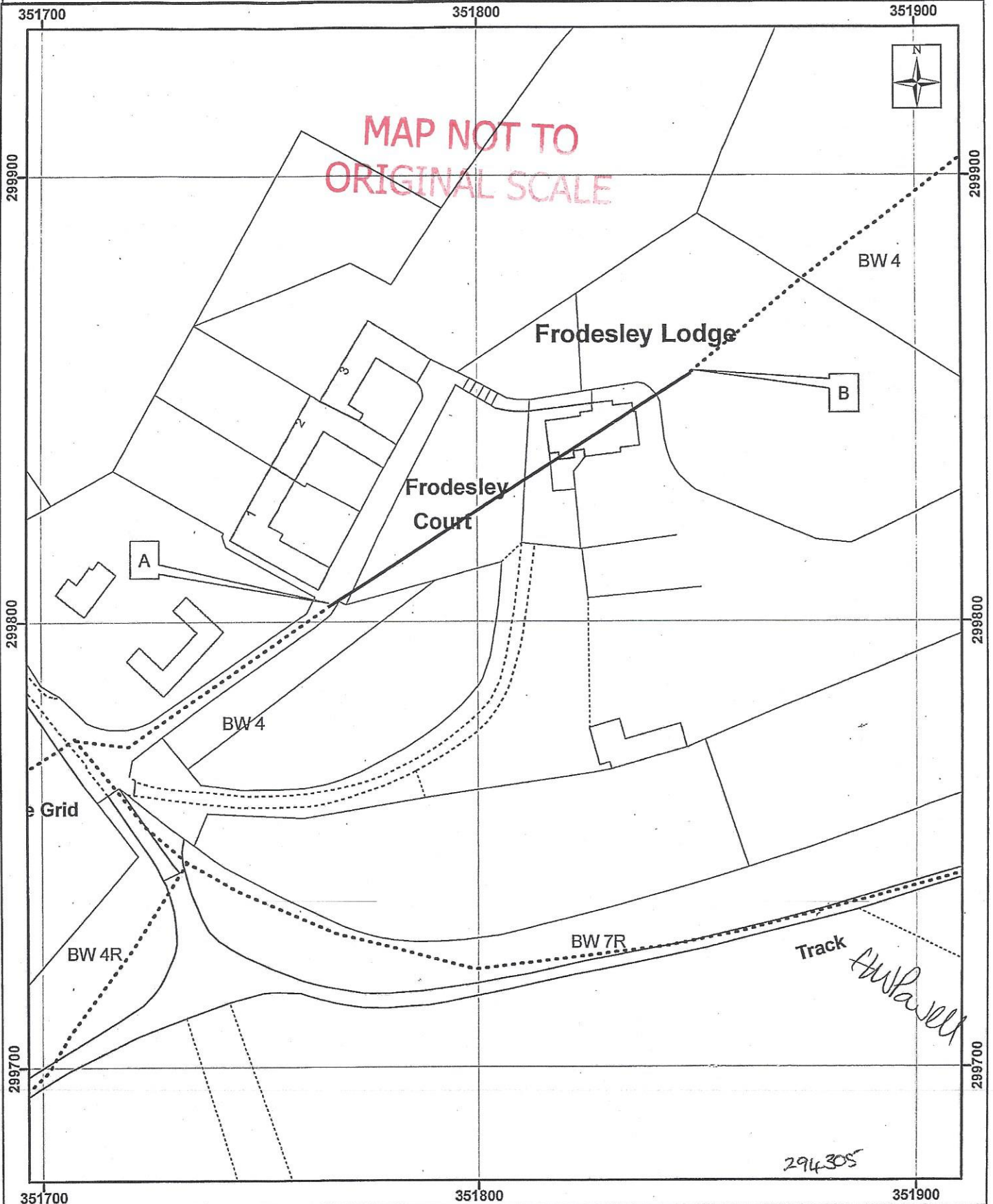
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The Shirehall, Abbey Foregate  
 Shrewsbury, Shropshire, SY2 6ND

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 Shropshire Council 100049049, 2010



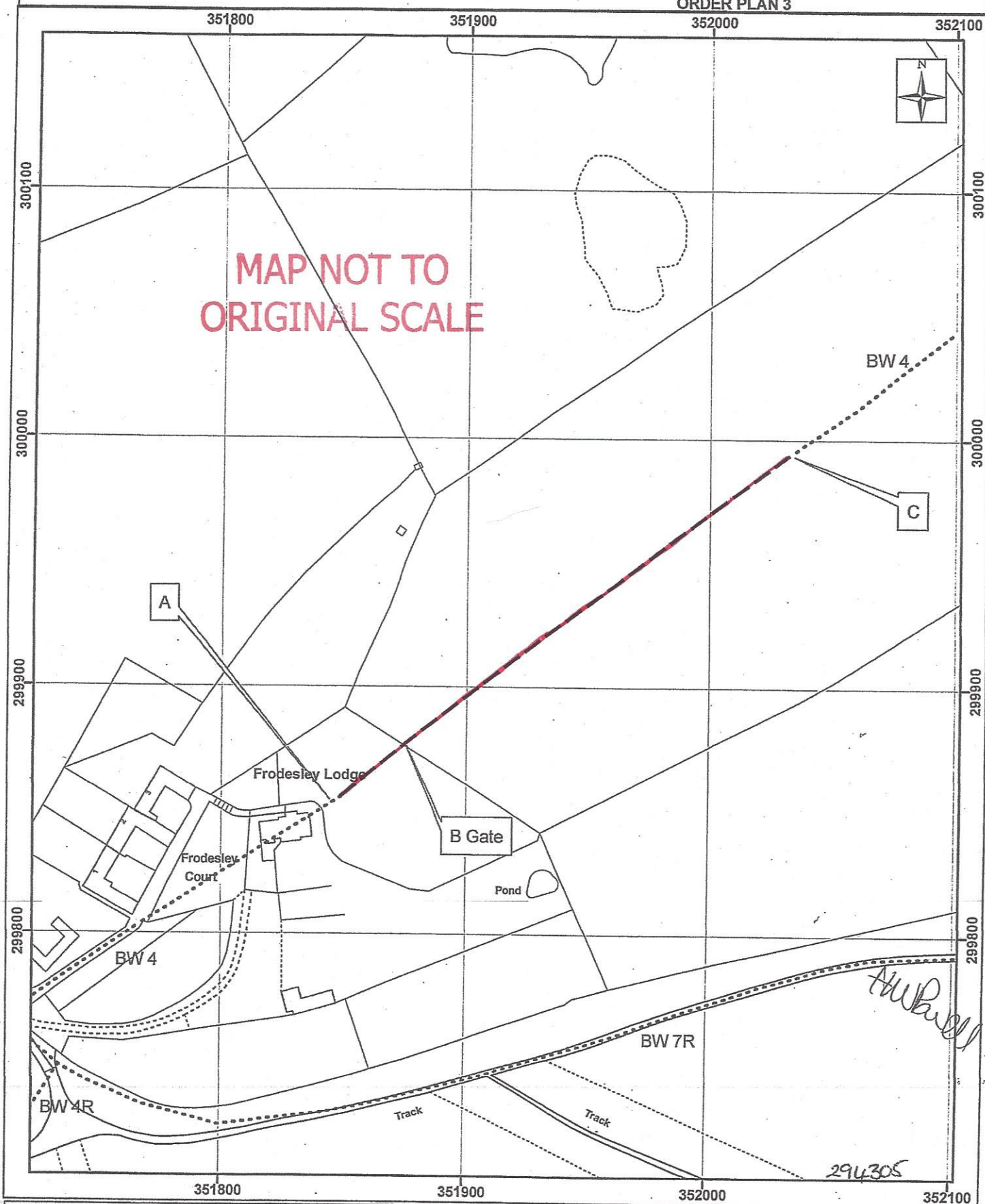


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**Key**  
Bridleway to be deleted ———  
Existing to remain .....  
Cross Reference with Order Plans 1,2 & 3

Scale: 1:1,125

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**Key**  
Bridleway to be downgraded to footpath  
Existing to remain  
Cross Reference with Order Plans 1,2 & 4

Scale: 1:2,000

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Bridleway to be deleted



351800

351900



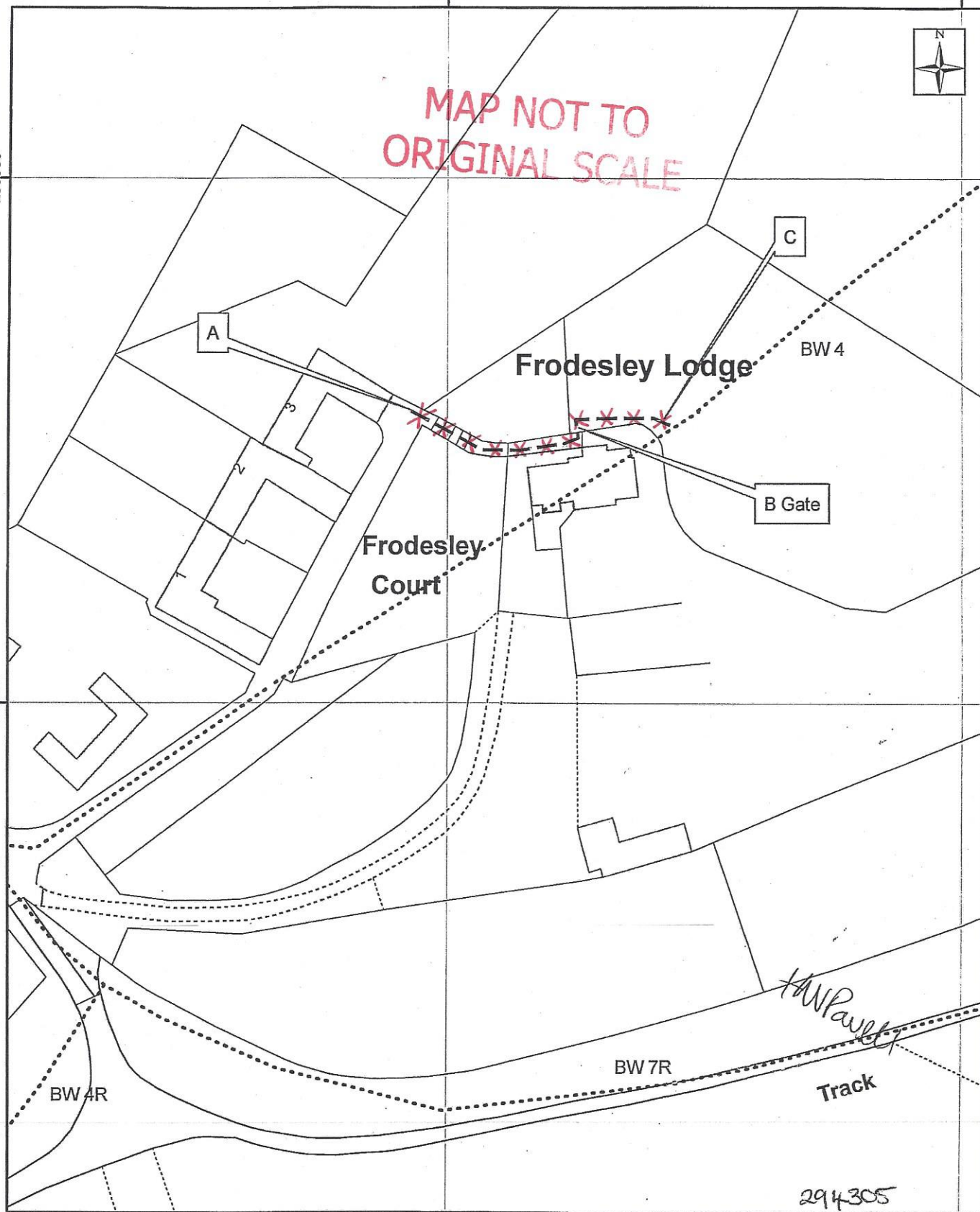
MAP NOT TO  
ORIGINAL SCALE

299900

299900

299800

299800



351800

351900

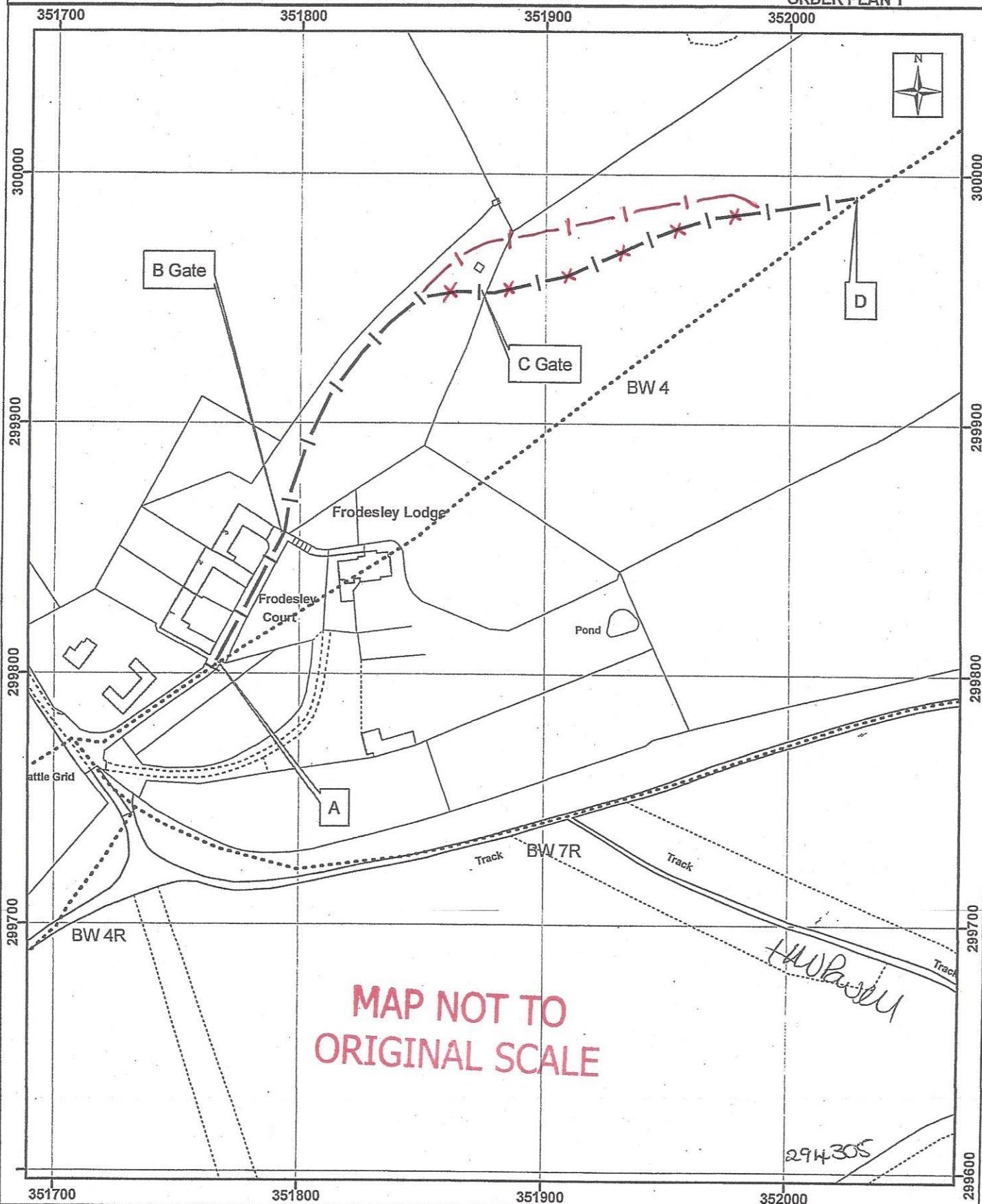


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**Key**  
Footpath to be added ———  
Existing to remain .....  
Cross Reference with Order Plans 1, 3 & 4

Scale: 1:1,000

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**Key**  
Bridleway to be added | — | — | —  
Existing to remain .....  
Cross Reference with Order Plans 2, 3, & 4

Scale: 1:2,000

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