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# Order Decision

Inquiry opened on 13 December 2016; site visit on 5 September 2017

**by Sue Arnott FIPROW**

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

**Decision date: 04 October 2017**

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

- 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 outstanding when Shropshire Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.
- In accordance with Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order with modifications. In response 5 objections have been submitted.

**Summary of Decision: The Order is confirmed with the modifications previously proposed, as set out in the Formal Decision below.**

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## Preliminary Matters

1. If confirmed with the modifications set out in paragraph 134 of my interim Order Decision issued on 20 January 2017, the Order would make changes to the definitive map and statement so as to delete a section of Bridleway 4 where it is shown passing through Frodesley Lodge (Route 4) and substitute a modified route (Route 1) passing to the north and west so as to follow the former farm track that now serves the three residential properties at Frodesley Court. No additional footpath would be recorded (Routes 2 and 3).
2. The modifications I proposed to the Order in respect of the proposed upgrading of Footpath 7 west of Bentley Ford Farm to bridleway status (Route 5) included a change to the description of the surface of the route and an alteration to the name of a nearby property. No objection has been lodged to either proposal and it is my intention to confirm this part of the Order with these minor modifications.
3. To assist my final determination of the Order and to better understand the responses to my proposed modifications, I made a further visit to the site on 5 September 2017. For this I was accompanied by Mrs Butter (of Shropshire Council (SC)), Mrs Robins (a representative of Shrewsbury and District Riding Club) and Mr Repath, all being supporters of the Order with no objections to the proposed modifications. In addition I was accompanied by residents and landowners Mr and Mrs George, Mrs Trendall and Mr Williams, all of whom had objected to the Order and who now oppose some or all of my proposed modifications.

4. Mrs Fordham, a supporter, was unable to attend the site visit. However on this occasion it was not necessary for me to go onto her property, Frodesley Lodge, since this part of the route at issue was inspected in some detail on 14 December 2016.
5. Three of the five objections focus entirely on the effect of re-opening to the public the historical route proposed in my interim Decision and express serious concerns over the likely impact on the water supply to properties at Frodesley Lodge Farm and Frodesley Court. The two other objections also raise this issue.
6. On my most recent site visit I was again able to see the position of both the well and the overflow tank which together supply all the properties here (including Frodesley Lodge) with water. It is clearly wet and boggy in this corner of the field, even during the summer months and despite the herringbone drainage system installed by Mr Williams. In this location there is now no trace of the track originally shown by the Ordnance Survey (OS) on its maps of 1883 and 1901 (on which my proposed modification is based) and neither is there an opening in the very thick hedge to enable people to pass between this field and Mr Williams' field along this line.
7. This is not a new point. I fully recognise that to reinstate the bridleway on its historic line would have serious consequences for all residents to a greater or lesser extent but must reiterate my comment in paragraph 131 of my interim Decision: *"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."*
8. A satisfactory solution to the resulting problems is most likely to be found through the negotiation of an acceptable diversion. Although that is beyond the scope of this Order, I noted all parties present at the site visit on 5 September expressed a desire to seek such a resolution.

## **Reasons**

9. In response to advertisement of my proposed modifications, new evidence has been supplied by one objector, Mr Williams, and new arguments have been put forward both by him and by Mr and Mrs George.
10. I have examined this new material along with all that previously analysed and considered carefully the new submissions made. The main issues as set out in paragraphs 6–15 of my interim Decision remain applicable and continue to form the framework within which the evidence is considered. I propose to deal with the 'new' evidence first.

## **New evidence**

### *Survey of gateway at point E<sup>1</sup>*

11. Mr Williams submitted a detailed survey drawing (No 008) showing the old oak gateposts which stand at point E (in the former mediaeval deer park boundary wall), narrowing passage down to 1 metre (3'3"). Further investigation has shown that this gateway was narrowed previously on one or maybe two

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<sup>1</sup> In my interim Decision, I made reference to points identified by Mr Williams as E and F where E lies on the definitive line of Bridleway 4 at the field boundary north-east of Point D and F lies in the same boundary wall/hedge but north-west of E. Here, in addition to Points E and F, I shall also refer to Mr Williams' Point G which lies to the north of the intersection of Bridleway 4 with Bridleway 3R.

- occasions in the past. It once extended to 2 metres or so (6'8") and possibly before that to around 4 metres (13'10"). In Mr Williams' view, the large foundation stones suggest that the oak posts have not been moved for a considerable period of time.
12. The first restriction *might* have been one of the original 'horse wickets' installed by Mr Scott of Frodesley Lodge Farm around 1830 that resulted in a dispute with the highway surveyor but there is no evidence to confirm this. Narrowing the width from 4 metres to 2 metres would have enabled the passage of horses to continue but not carts or carriages.
  13. Mr Williams speculates that the second narrowing (to its present width) took place in the early 20<sup>th</sup> Century, triggered by the "ploughing up" campaign introduced during the First World War. He also suggests that the position of the boundary crossing changed at that time too, moving from point E to point F<sup>2</sup>. He surmises that the diversion was prompted by changes in agricultural practice and the logic of re-directing horse riders along the edge of the newly ploughed field.
  14. With Frodesley Lodge having originally been a hunting lodge, Mr Williams suggests this function continued until its sale in 1921, with Estate 'shoots' making use of continued pedestrian access from Acton Burnell via the gate at point E. In his view, the route through point E would have been a formal Estate track prior to 1750 which survived as a formal feature once the land was enclosed after being dis-parked. He sets out his perspective on the historical development of farm land around Frodesley Lodge, commenting that it would be unusual for an estate to allow a public highway to traverse parkland or to pass near to a private house or lodge.
  15. I find Mr Williams' submissions on the history of the Acton Burnell Estate and Frodesley Lodge plausible (although mostly unsubstantiated) but there are no further historical accounts of activities at Frodesley Lodge Farm after Mr Scott's court cases, and I have already examined all the documentary evidence that has been submitted. At paragraph 92 of my interim Decision I concluded that this suggested *"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."*
  16. The additional information provided by the detailed drawing of the gateway at point E tempts me to conclude this was one of Mr Scott's 'horse wickets' in 1830 although there is no documentary evidence to support a route of any sort here at that date. No highways were shown passing through the deer park by Rocque on his map in 1752, yet by 1827 Greenwood's map showed the present Bridleway 7R in existence leading to Ruckley through what had formerly been park land. It seems clear new public routes were established once the deer park was abandoned and the land divided. It is possible that Bridleway 4 came into existence during that same period or later during the nineteenth century, perhaps developing from a private estate road as suggested by Mr Williams.
  17. However, the exact origins of Bridleway 4 are not at issue here since it is not being argued that there is no right of way at all. The question remains where it should have been recorded in 1954.

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<sup>2</sup> At point F there are now two gates – a 3.66m (12') wide steel gate and a 2m (6'6") wide horse gate, with poles carrying the cable from an electric fence sufficiently high to avoid any mounted horse-rider. Mr Williams estimates this arrangement dates from the 1970s although he believes the access point is much older.

18. There is no evidence to counter Mr Williams' estimation that the gateway at point E was narrowed in the early twentieth century but neither is there any firm forensic data to confirm this, although I suspect he is correct in that it was narrowed to 1 metre so as to allow only pedestrian access, not horses.
19. Even if he is correct, that the line of Bridleway 4 changed in or around 1917, the line of a highway cannot be altered without lawful diversion. No evidence of any such procedure has been discovered here. Therefore the definitive map would have correctly shown this public right of way passing through point E, that being its original route (supported by the OS maps of 1883 and 1901), even if by 1954 people used point F instead.
20. The same can be said for the change of route at the well; without a legal order from the Quarter Session Court, the historic route around the north side of the well would have remained a highway, even if in practice people were by 1954 taking the preferred option via point C. The legal maxim '*Once a highway, always a highway*' applies. A public right of way does not cease to exist simply because it is superceded and no longer used.

#### *Hand-drawn plan from 2003*

21. Mr Williams has also submitted details of a document "Replies to enquiries" dating from 2003 when he bought Frodesley Lodge Farm and its associated land from Mr Ebrey who had owned the land since 1993. This questionnaire acknowledged a public right of way across the field in which point D is located (OS 0001); this was shown by a line of dashes (approximating to C-F<sup>3</sup>) hand drawn onto an accompanying OS plan by the former owner.
22. Mr Williams submits that this further supports his contention that the route actually in use at that time was not the definitive route from E to D and through Frodesley Lodge but from F to C and via B to A.
23. I do not disagree. Indeed at paragraph 120 of my interim Decision I concluded that "*the route A-B-C-F was used by the public on foot and on horseback throughout the period 1984-2004*". However, at paragraphs 117-119 I gave two reasons why I was unable to respond to this finding by making appropriate modifications. The additional evidence provided does not alter the constraints which have deterred me from amending the line of Bridleway 4 to the more practical alternative, A-B-C-F.

#### ***New submissions***

##### *From Mr Williams*

24. Mr Williams contends that Mr Bick could not have undertaken a survey on the ground since he would have realised that the width of the gate at point E was insufficient for a horse.
25. Whilst I accept Mrs Robins' advice that a horse could (possibly) be ridden through a 1m gap, I consider this a fair point to make since, on finding such a narrow gateway on a reputed bridleway, a surveyor might at the very least be prompted to ask whether the correct status was being recorded and there is no evidence that Mr Bick ever did so. Having regard also to my previous findings,

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<sup>3</sup> In my interim Decision, I made reference to points identified by Mr Williams as E and F where E lies on the definitive line of Bridleway 4 at the field boundary north east of Point D and F lies in the same boundary wall/hedge but northwest of E. Here, in addition to Points E and F, I shall also refer to Mr Williams' Point G which lies to the north of the intersection of Bridleway 4 with Bridleway 3R.

- I find it very unlikely that Mr Bick actually surveyed the route of Bridleway 4 before completing the initial parish survey map for Frodesley.
26. Mr Williams also highlights the differences apparent on the 1976 1:2500 OS map when compared with the 1901 edition in the vicinity of points E, F and G. On the earlier map the track from Acton Burnell crosses Bridleway 3R by taking a diagonal line to Point E yet by 1976 it follows the field boundary to point G but is not shown to continue beyond here, to either points F or E.
27. I agree that the depiction of a track or path by the OS on its maps is not direct evidence that the route was a public right of way. However the physical nature of the route as found by the OS surveyors on the date of their survey and recorded on their published maps can be helpful, for example when distinguishing between the status of known public ways and when considered alongside other evidence, such as the definitive map itself.
28. Consequently I have noted the annotation 'FP' shown by the OS in 1883 and 1901 to label the part of the definitive line which runs north eastwards from Frodesley Lodge to point D. When compared with the (modified) Order route (B-D) shown by the OS without annotation, I deduce that the former had the character of a footpath whilst the latter was a track capable of carrying all other types of traffic. However nothing on these two maps confirms either route was a public one; that is a matter to be established from an analysis of all the evidence but in this case primarily from the definitive record.

*From Mr & Mrs George*

29. The central premise of Mr and Mrs George's recent submission is that the fundamental basis for the Order is invalid insofar as Routes 1-4 are concerned. They say that an accurate interpretation of the current definitive map shows that Bridleway 4 does not pass through Frodesley Lodge at all but skirts around the building on its north western side, dropping down to point A via the concrete track and old gateway (this being the route they put forward at the inquiry). Consequently the route shown on the Order map misrepresents the definitive line of Bridleway 4. They argue that without evidence of an obvious error on the definitive map, or wholly 'new' evidence, there is no basis for considering a change to the definitive map.
30. At paragraphs 7–12 of my interim Decision, I set out the criteria for determining an Order where deletion or downgrading of a route on the definitive map is concerned. In particular, at paragraph 10, I noted that the evidence must be new, of sufficient substance to displace the presumption that the definitive map is correct, and it must be cogent. These requirements were addressed further within the legal framework<sup>4</sup> which set out extracts from relevant court cases.
31. I recorded (at paragraph 57) that it was "*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*". Nevertheless, prompted by Mr and Mrs George's recent submission, I have scrutinised again the definitive map extract supplied to me and all the earlier maps leading to publication of this document.

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<sup>4</sup> Paragraph 50 onwards

32. I follow the logic of their argument: that the line shown on the definitive map is virtually straight but, on the definitive map, curves very slightly to the north-west whereas the Order route is shown to curve very slightly to the south-east. However the underlying details on the OS base used for the definitive map make it extremely difficult to identify the extent of the Lodge itself although the barns are evident. Whilst I broadly agree that a straight line can be drawn along the access track to point A which would then continue through point D, the nuances of the route being slightly to the north or south are very subtle and at a scale of 1:25 000 extremely difficult to define. Yet if one attempts to draw the same straight line on the very much clearer 1901 map at a scale of 1:2500, it becomes obvious that it passes through the Lodge, albeit very slightly to the north-west of the route shown on the Order map.
33. Whilst I recognise this is not the precise science intended by a definitive record, I do not agree that the Order route is incorrect to any significant extent in its depiction of the existing definitive line of Bridleway 4. It follows from this that I do not accept that my previous conclusions in respect of the evidence of mistakes are unfounded.
34. I acknowledge that evidence has been provided which shows various depictions of Bridleway 4 on different plans produced by SC (and others) in the past but each has been an interpretation of the definitive map and/or other supporting maps. However I give these very little weight since it is not possible to establish whether these maps were based solely on an officer's interpretation of the current definitive map or with the benefit of other maps, research or background knowledge<sup>5</sup>.
35. Mr and Mrs George further submit that I should give weight to the fact that the 'error' in the line of Bridleway 4 survived the definitive map review in the 1960s without challenge. This was especially significant since attention had been drawn to the status of the connection southwards beyond point A. They argue that if the section via Frodesley Lodge had been wrong, it would have been highlighted at this time.
36. I find a degree of merit in this argument but cannot attach significant weight to it. For example, it may be that having been satisfied that the section of Route 4 northwards from point A was to be recorded as a bridleway, the Pony Club had no cause to examine in more detail the actual route being shown on the small scale definitive map. In a similar fashion, throughout *this* inquiry and in the written representations associated with *this* case, I am not aware of any questions being raised about the status or precise route of its continuation southwards via what is referred to as Bridleway 4R or the definitive Footpath 7. A lack of objection does not necessarily confirm that everything shown on the definitive map was correct; it may be simply that no one had noticed the error whilst the public continued to use a similar route nearby without question.
37. The Georges also point to the lack of challenge from the Fordhams at Frodesley Lodge for a great many years, never questioning the public right of way shown passing over their property. Mrs Fordham answers that by saying that no-one ever tried to use the definitive line. Everyone used the farm track now proposed in the Order and until that route was blocked, there was no necessity to address the anomaly on the definitive map.

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<sup>5</sup> For example, at paragraph 72 of my interim Decision I noted that "*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.*"

38. Like Mr Williams, Mr and Mrs George highlight evidence which points towards the conclusion that at the relevant date of the definitive map in 1954, the modified route I have proposed was neither open to nor used by the public. Whilst Mr Williams suggests that people (including Mr Davies) were probably then using the route G-F-C-B-A, Mr and Mrs George argue that it was the definitive route around the north western side of Frodesley Lodge that was in use and thus the basis for Mr Bick's line.
39. I fully accept that the modified line between points B and D may not have been in use in 1954 and that by then the public may have adjusted the route taken, probably as a result of the wet ground conditions to the north of point C. However it was, and still is, my conclusion that this bridleway came into existence sometime in the nineteenth century along the line shown on the 1883 and 1901 OS maps. Thus I conclude, on a balance of probability, that dedication of the route as a public highway occurred long before 1954. For the reasons explained above, I find the evidence points to this original historical route being the one which should have been recorded in 1954.
40. Having examined the new items of evidence provided and considered the new submissions made in response to the issue of my interim Order Decision and advertisement of my proposed modifications, on balance I remain of the view that the historical route of this highway as recorded by the OS at the end of the eighteenth and start of the nineteenth century is the one that should now be shown in the definitive record.

### **Other Matters**

41. Objectors again argue that the human rights of residents will be affected in various ways should the modified Order route be re-opened to the public. Whilst I fully recognise such concerns, these are matters that may be relevant to any future request for diversion of Bridleway 4 but they do not affect the conclusions I have reached on the historical line of this public right of way.

### **Conclusion**

42. 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 the modifications previously proposed.

### **Formal Decision**

43. I 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')";

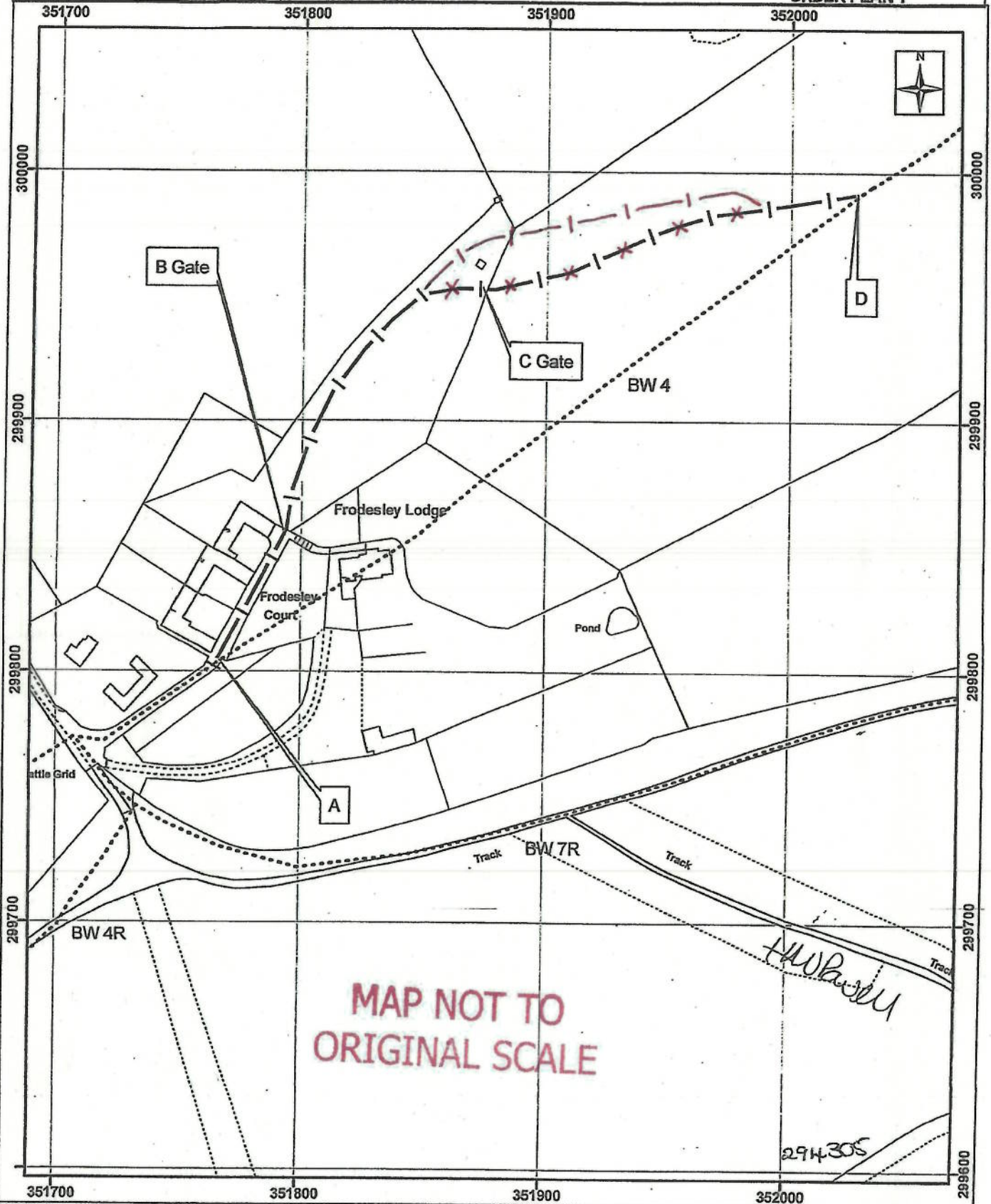
On the Order Plans

- 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".

*Sue Arnott*

**Inspector**



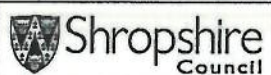
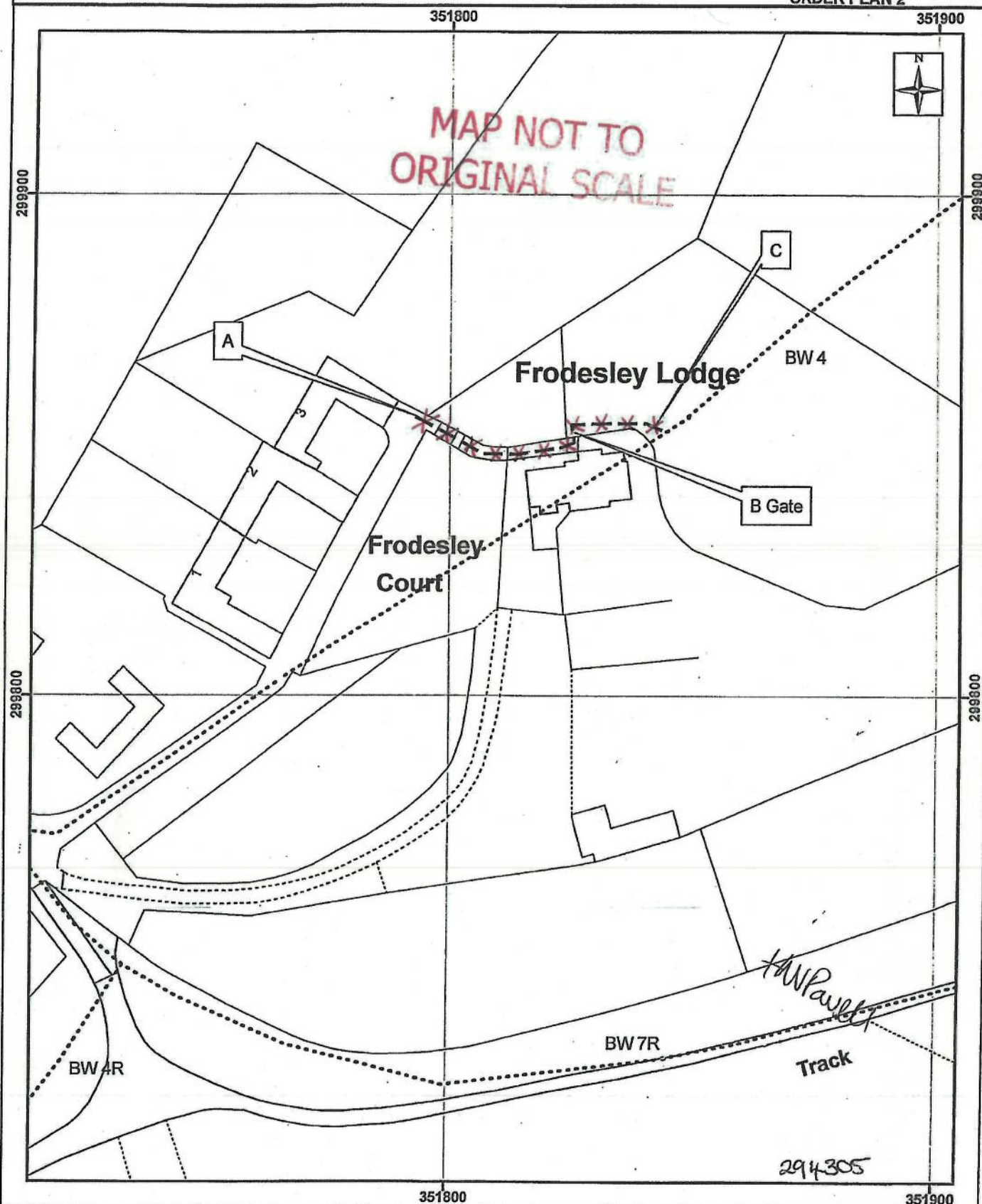


The Shirehall, Abbey Foregate  
Shrewsbury, Shropshire, SY2 6ND

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

Scale: 1:2,000

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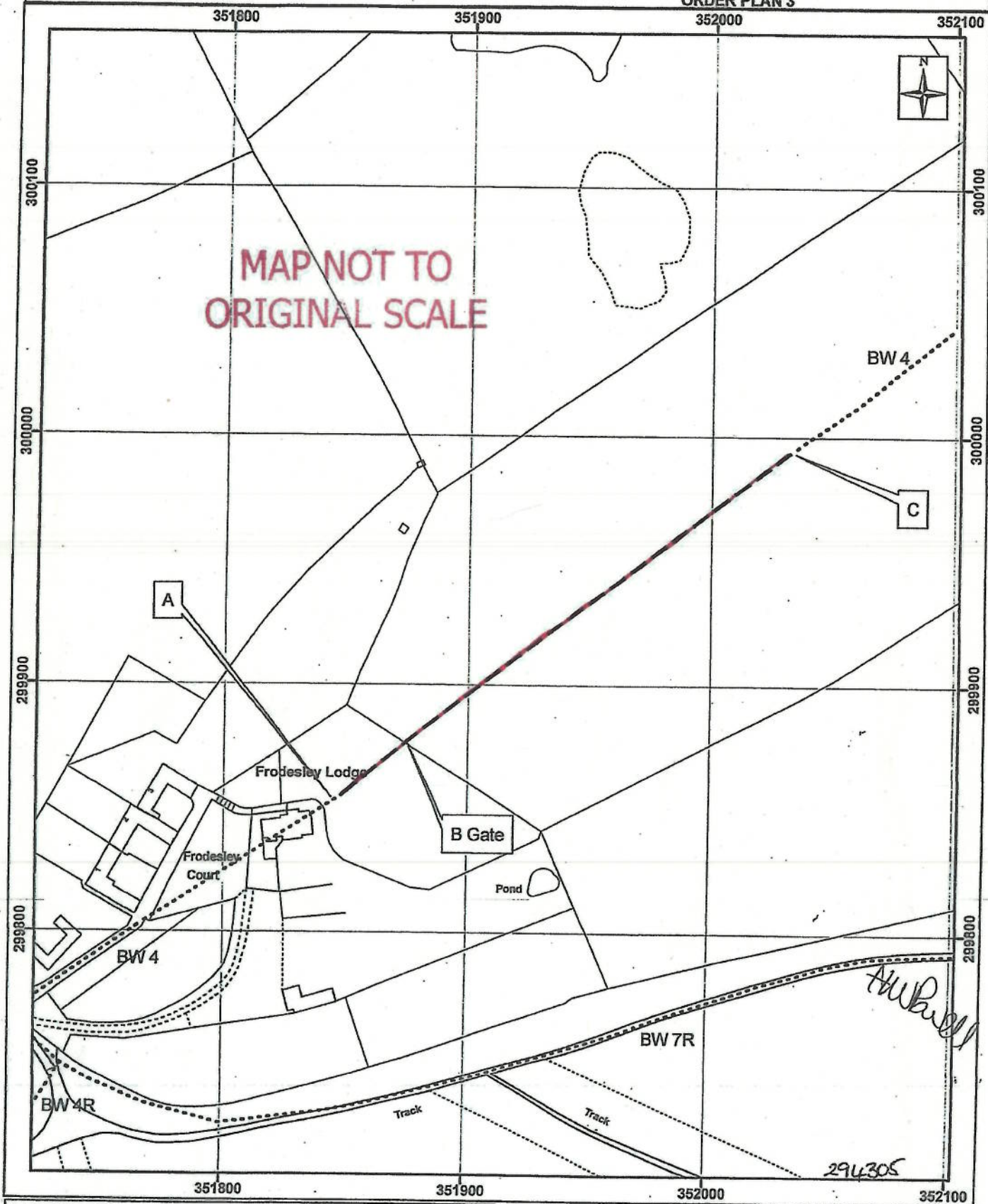
The Shirehall, Abbey Foregate  
Shrewsbury, Shropshire, SY2 6ND

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

Scale: 1:1,000

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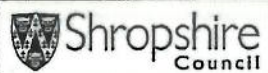
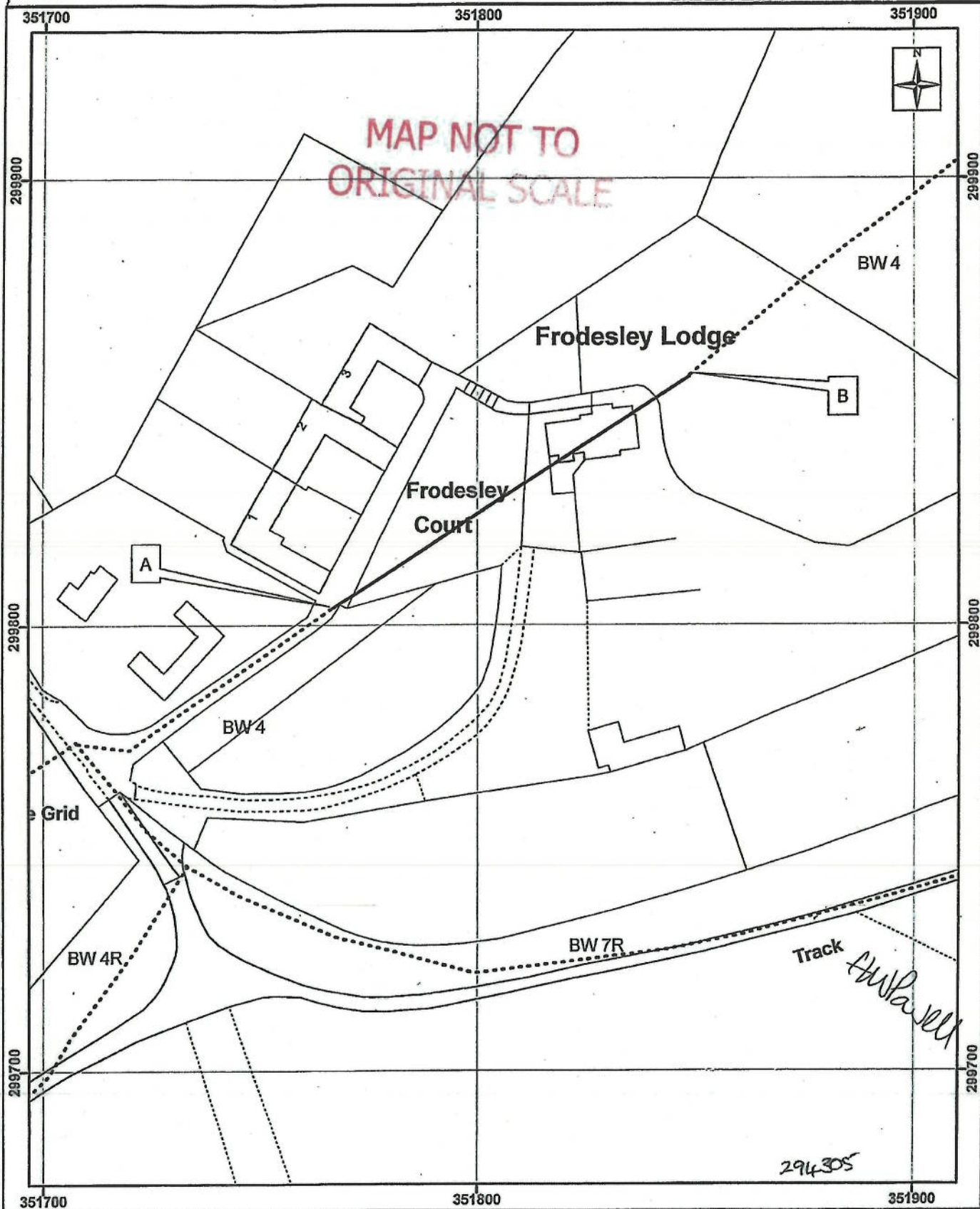
The Shirehall, Abbey Foregate  
Shrewsbury, Shropshire, SY2 6ND

Key  
Bridleway to be downgraded to footpath  
Existing to remain

Scale: 1:2,000

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Cross Reference with Order Plans 1,2 & 4 Bridleway to be deleted



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

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

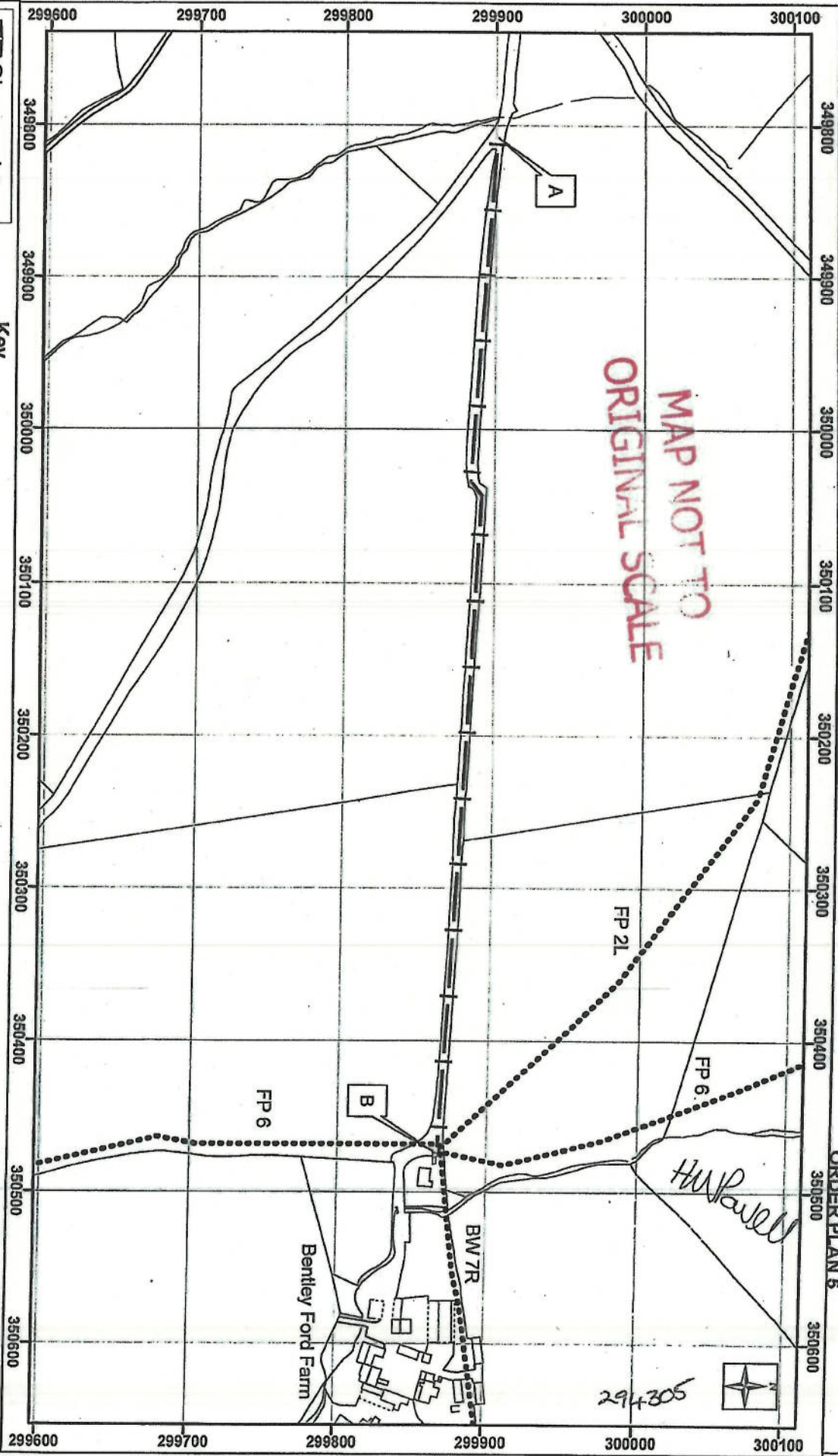
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**SHROPSHIRE COUNCIL**  
**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**Definitive Map Modification Order 2010**

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



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

**Key**

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

Scale: 1:3,500

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