



## Interim Order Decision

Inquiry held on 26 June 2018

by **Michael R Lowe** BSc (Hons)

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

Decision date: 20 February 2019

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**Order Ref: ROW/3187903**

**Nottinghamshire County Council**

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as **The Nottinghamshire County Council (Annesley Bridleway Nos. 2, 3 and 24 and Greasley Footpath No. 10 and Bridleway Nos. 11 & 85) Modification Order 2016**.
  - The Order is dated 8 January 2016 and proposes to modify the Definitive Map and Statement by adding a bridleway near Felley Mill, upgrading a network of footpaths to bridleway status and consequential amendments to the Definitive Statement as detailed in the Order map and schedule.
  - There were 2 objections outstanding when Nottinghamshire County Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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### Decision

1. I propose to confirm the Order subject to modifications which require advertisement. The proposed modifications are set out in the appendix to this interim decision. The proposed modifications are summarised:-

Annesley Footpath No. 2 (between SK48604999 and SK 48854991); delete from the Definitive Map and Statement instead of the proposed upgrading. This is due to the discovery that the 1962 Annesley (Felley Mill) Diversion Order had no legal effect.

Annesley Bridleway No. 2 (between SK 4861 5000 and SK 4885 4991); add to the Definitive Map and Statement on the basis of evidence discovered after the making of the Modification Order.

Annesley Bridleway No. 2 (between SK 4885 4991 and SK 49895164); amend the particulars contained in Part 1 and Part 2 of the Modification Order.

Annesley Footpath No. 3; amend the particulars contained in Part 2 of the Modification Order to reflect the proposed termination points being bridleways instead of footpaths.

Annesley Bridleway No. 3; remove the proposed upgrading of Footpath 3.

Annesley Bridleway No. 25; add to the Definitive Map and Statement on the basis of evidence discovered after the making of the Modification Order.

Greasley Bridleway No. 11; amend the particulars in respect of the northernmost termini.

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## **Background and Preliminary Matters**

2. I held a public inquiry into the Order at The Newstead Centre, Newstead, Nottinghamshire on 26 June 2018. None of the parties requested a site visit.
3. The Council made the Modification Order following an application by Mr Mark Copeland in September 2008. The application sought to add a length of bridleway and upgrade an existing footpath to a bridleway on the Definitive Map and Statement in the Parishes of Annesley and Greasley. Some 49 user evidence forms were submitted, claiming use between 1966 and 2004. The Council assessed the evidence submitted in the application and conducted their own research. The Council's archive investigation included a collection of estate and local maps dating from 1774. The Council concluded that a network of bridleways existed, more extensive than the application, and published the Modification Order in 2016. I am satisfied that such evidence was discovered in the sense of the Council considering evidence that was previously unknown to them. At the Inquiry the Council requested various amendments to the Order and took a neutral stance with regard to the user evidence.
4. Section 32 of the Highways Act 1980 requires me to take into account any map, plan or history of the locality or other relevant document and to give such weight to it as is justified by the circumstances.

## **Main Issue**

5. The Order has been made under section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in sections 53(3)(c)(i), (ii) and (iii). The events are the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows;  
that a right of way which is not shown in the map and statement subsists (section 53(3)(c)(i)),  
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 (section 53(3)(c)(ii)), and  
that there is no public right of way over land shown in the map and statement as a highway of any description, and other particulars contained in the map and statement require modification (section 53(3)(c)(iii)).

## **Reasons**

### *Maps and Documents*

6. Dating from 1874, a series of documents from the Annesley Estate appear to be a reckoning of the public highways and rights of way on the estate lands. The summary document is titled  
*'Memorandum as to the Bridle Roads and Footpaths, from the statements of Thomas Winfield and Samuel Turner, both of the Parish of Annesley, in the County of Nottinghamshire'*  
and details:  
*'Bridle Road and Footpath past the present Kennels to the corner of Park Springs along the north side of the wood and down the west side to Watnall'*  
and  
*'Bridle Road and Footpath ... to Felley Mill and Selston Common.'*

7. The documents detail 'public highways' with 'carriage roads', 'bridle roads and footpaths' and 'public footpaths only' each listed separately. The summary document is accompanied by a sketch plan upon which various numbered references in the document are shown.
8. Chapman's Map of Nottinghamshire from 1774 indicates a 'bridle road' between Beauvale and Annesley, partly along the Order route. A Plan of the Township of Annesley etc. from 1817, depicts a 'Bridle Road' from Greasley Parish along part of the Order route, and a Plan of Viscount Melbourne's Estate dated 1825 depicts a 'Bridle Way' along the southerly link of bridleway in Greasley Parish, shown as bridleway No. 85 in the Order. Sanderson's Map of 1835, the Ordnance Survey map of 1836, Booker's Map of Moorgreen etc., the Chaworth-Musters Estate Pan of 1874 provide further supporting evidence of the physical existence of the some or other part of the Order route or adjoining routes as bridleways.
9. A highway may be created at common law by the dedication of the owner with the acceptance and use by the public. Dedication may be express or implied. The evidence would need to be cogent to discharge the burden of proof that rests upon those seeking to establish the rights. Even if there is no evidence of current or recent use, the legal maxim *once a highway, always a highway* applies for the public cannot release their rights through lack of use.

#### *Conclusion on the Maps and Documents*

10. In my view the 1874 map and Annesley Estate documents provide cogent evidence that the landowner acknowledged the existence of a network of bridleways and that the public used such ways. Earlier maps provide confirmation that such a network of bridleways was established from at least 1774. It follows that the Order route should be recorded as being of bridleway status, based upon common law principles, and that events after 1874 are of no further assistance in establishing the status of the Order route, except as provided for below.

#### *The route and width of the bridleways at the relevant date, 21 October 2015*

11. In 1963 the Minister of Transport published The Crick (Northamptonshire) - Doncaster By-Pass Special Road (Nottinghamshire) (Improvements) Order to enable the construction of the Motorway (M1). I am satisfied that the Order, which provided for the 'improvement' of what was described as footpath 2 and footpath 10, did not effect the bridleway rights found to exist above or alter the route other than to an extent considered to be *de minimus*.
12. In 1962 the Annesley (Felle Mill) Public Path Diversion Order, made under the provisions of section 119 of the Highways Act 1959, purported to divert a length of footpath No. 24. I agree with the Council's submission that this Order was not effective in diverting bridleway rights and that as a consequence the Order is void, and there are no public rights of way along the route shown on the Order between SK4861500 and SK48934990. I therefore propose to delete this length of footpath from the Order.
13. There are two lengths of the existing footpath Nos. 2 and 3, as shown on the current Definitive Map, that deviate from the alignment shown on Annesley Estate's map of 1874. There is no evidence that such alignments are the result of any statutory process of diversion and therefore the 1874 routes carry public bridleway rights at the relevant date. I therefore propose to add the

appropriate lengths of new bridleway to the Order. There are some further minor consequential amendments necessary to the descriptions in the Definitive Statement that I have proposed in the modifications. No width has been specified for the various bridleways in the Order. The Council sought to rectify this omission with a specification of 2.5 metres. I consider this to be a reasonable width and propose to modify the Order accordingly.

14. That is sufficient to dispose of the Order and I therefore have no need to consider the submissions that the Order route was established as a public bridleway by virtue of presumed dedication under the provisions of the Highways Act 1980.

### **Other Matters**

15. One objection concerned the desirability of the Order route for equestrian use and public safety. Whilst I understand these concerns I am unable to have regard to such matters, as the sole issue before me is the existence or otherwise of a public right of way.

### **Conclusion**

16. Having regard to these and all other matters raised in the written representations, I provisionally conclude that the Order should be confirmed with modifications.
17. Since the Order as proposed to be modified would affect land not affected by the Order, not to show a way shown in the Order and show a way not so shown, and show a highway of one description a way which is shown in the Order as a highway of another description, I am required by virtue of paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposals to modify the Order and to give an opportunity for objections and representations to be made to the proposed modification. A letter will be sent to interested persons about the advertisement procedure.

*Michael R Lowe*

INSPECTOR

## **APPEARANCES**

### **Nottinghamshire County Council**

*represented by*

Steven Eastwood

Advanced Legal Practitioner

*who called*

Eddie Brennan

Definitive Map Officer

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

Michelle Storer

British Horse Society

Deborah Roe

Rachel Dye

## **DOCUMENTS (submitted at the inquiry)**

- 1 Letter from NCC to Highways Agency
- 2 Side Roads Orders and plans 1963
- 3 Forestry Commission leasehold plan
- 4 Extract OS map 1921 around Felley Mill
- 5 Plan of modifications to the Order requested by NCC



Nottinghamshire County Council

(Annesley Footpath No.3 and Bridleway Nos. 2, 24 & 25

And Greasley Footpath No.10 and Bridleway Nos 11 & 85)

Modification Order 2016

INSERT PLAN

Scale 1:5000



KEY

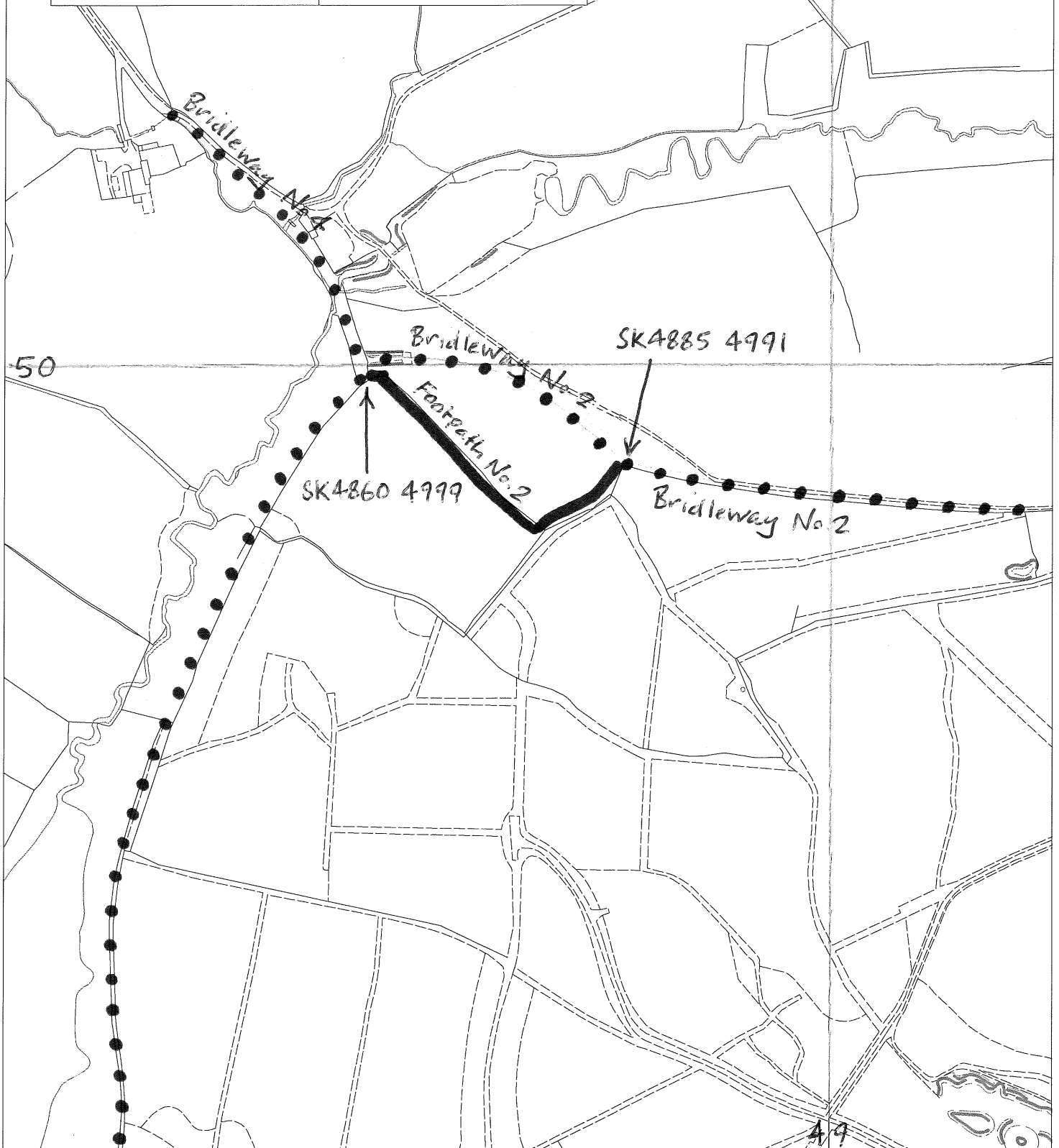


Footpath to be Deleted



Existing Path Unaffected

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WILDLIFE AND COUNTRYSIDE ACT 1981

THE NOTTINGHAMSHIRE (ASHFIELD AREA & AREA 3) DEFINITIVE MAP  
AND STATEMENT

THE NOTTINGHAMSHIRE COUNTY COUNCIL  
(ANNESLEY FOOTPATH NO.3 and BRIDLEWAY NOS. 2, 3 & 24, & 25 AND  
GREASLEY FOOTPATH NO.10 AND BRIDLEWAY NOS. 11 & 85)  
MODIFICATION ORDER 2016

This Order is made by the Nottinghamshire County Council under Section 53(2)(b) of the Wildlife & Countryside Act 1981 (“the Act”) because it appears to that Authority that the Nottinghamshire (Ashfield Area and Area 3) Definitive Map and Statement require modification in consequence of the occurrence of an event specified in Sections 53(3)(b), 53(3)(c)(i), 53(3)(c)(ii) and 53(3)(c)(iii) of the Act, namely:

(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path;

(ii) 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; and

~~(iii) other particulars contained in the map and statement require modification~~

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

The Authority have consulted with every Local Authority whose area includes land to which this Order relates.

The Nottinghamshire County Council hereby order that:

1. For the purposes of this Order the relevant date is 21<sup>st</sup> of October 2015
2. The Nottinghamshire (Ashfield Area and Area 3) Definitive Map and Statement shall be modified as described in Part I and Part II of the Schedule and shown on the Map attached to this Order.
3. This Order shall take effect on the date it is confirmed and may be cited as “The Nottinghamshire County Council ~~(Annesley Bridleway Nos. 2, 3 & 24 and Greasley Footpath No.10 and Bridleway Nos. 11 & 85)~~”



~~Modification Order 2016~~ (Annesley Footpath No.3 and Bridleway Nos. 2, 24 & 25 and Greasley Footpath No.10 and Bridleway Nos. 11 & 85) Modification Order 2016".

## SCHEDULE

### PART I

#### Modification of Definitive Map

##### Description of the path or way to be added

Annesley Bridleway No. 24

From: SK 48585014

To: SK 48934990

Commencing at the junction with Annesley Bridleway No.1, and proceeding along a track in a south-easterly direction for a distance of approximately 433 metres to the junction with Annesley Bridleway No. 2.

Width:

3 metres

Limitations: None

Annesley Bridleway No.2

From: SK 4861 5000

To: SK4885 4991

Commencing at the junction with Annesley Bridleway No.4 and proceeding across an agricultural field in a generally easterly then south-easterly direction for a distance of approximately 285 metres to the junction with the remainder of Annesley Bridleway No.2.

Width: 2.5 metres

Limitations: None

Annesley Bridleway No.25

From: SK 4964 4997

To: SK4983 4950

Commencing at the junction with Annesley Bridleway No.2 and proceeding alongside Park Springs Wood in a generally south-south-easterly then southerly direction for a distance of approximately 527 metres to the junction with Greasley Bridleway No.11.

Width: 2.5 metres

Limitations None

##### Description of the path or way to be upgraded

Annesley Bridleway No.2

From: SK ~~48615000~~ 4885 4991

To: SK 49895164

Commencing at the junction with the remainder of Annesley Bridleway No.24 ~~and running along a field edge~~ and proceeding along a track on the north side of Morning Springs Wood in a generally ~~south-easterly then north-easterly then~~ easterly direction

for a distance of approximately ~~400~~ 88 metres to a point SK 48934990 at the junction with Annesley Bridleway No. 24 then proceeding along a track on the north side of Morning Springs Wood in a generally easterly direction for a distance of approximately 740 metres to a point SK49644997 at the junction of Annesley Footpath No.3 and Annesley Bridleway No.25 and then proceeding along a track on the north west side of Park Springs Wood in a generally northerly then north-easterly then easterly direction then through the M1 underpass to a point SK50045027, then continuing along Kennel Lane in a generally northerly then north-westerly direction for a distance of approximately 1985 metres to the junction with Annesley Bridleway No.1.

Width: ~~2.0~~ 2.5 metres between points SK ~~48615000~~ 4885 4991 and SK 48934990  
3.0 metres between points SK 48934990 and SK 50045027  
2.5 metres between points SK 50045027 and SK 50075097  
2.7 metres between points SK 50075097 and SK 50075118  
3.4 metres between points SK 50075118 and SK 49895164  
Limitations: Swing gate at SK 49765018  
Farm gate at SK 50075097

~~Annesley Bridleway No.3~~

~~From: SK 49834950 To: SK 49644997~~

~~Commencing at the junction with Greasley Bridleway No.11 and running through Morning Springs Wood in a north-north westerly direction for a distance of approximately 517 metres to the junction with Annesley Bridleway No.2.~~

~~Width: 2.5 metres Limitations: None~~

Greasley Bridleway No.85

From: SK 49824880 To: SK 50204923

Commencing at the junction with New Road at the southern corner of Callis Hagg Wood, and running along a track and then a field edge in a north-easterly direction for a distance of approximately 515 metres to the junction with Greasley Footpath No.10 and Greasley Bridleway No.11.

Width: 2.5 metres Limitations: Farm gate near the junction with New Road at SK 49834888

Greasley Bridleway No.11

From: SK 50204923 To: SK 49834950

Commencing at the junction with Greasley Footpath No.10 and Greasley Bridleway No. 85 on the western side of the M1 motorway, and running along a field edge then through Big Stainers/Stainers Range Wood in a generally north-westerly direction for a distance of approximately 487 metres to the junction with Annesley Bridleway No. ~~3~~ 25 and Annesley Footpath No.3.

Width: 2.5 metres Limitations: None

Description of the path or way to be deleted

Annesley Footpath No.2

From: 4860 4999

To: SK 4885 4991

Commencing at the junction with Annesley Bridleway No.4 near Felley Ford, and running along the south-west side of a hedge in an easterly then south-easterly direction for a distance of approximately 215 metres, then along the north-west side of Morning Springs Wood in a north-easterly direction for a distance of approximately 113 metres to the junction of Annesley Bridleway No.2.

Width: 1.2 metres

## PART II

### Modification of Definitive Statement

#### Variation of particulars of path or way

**The definitive statement for the Parish of Annesley shall be amended as follows:**

<b>Status and Path No:</b>	Bridleway 24
<b>O.S. Sheet No:</b>	SK 44 NE / SK 45 SE
<b>Approx. Length:</b>	433 metres.
<b>Width:</b>	3 metres.
<b>Starting Point:</b>	SK 4858 5014 The junction with Annesley Bridleway No.1.
<b>Finishing Point:</b>	SK 4893 4990 The junction with Annesley Bridleway No.2.
<b>General Description:</b>	Proceeds along a track in a south-easterly direction.
<b>Legal Event / Remarks:</b>	Limitations: None

<b>Status and Path No:</b>	Bridleway 2
<b>O.S. Sheet No:</b>	SK 44 NE / SK 45 SE / SK 55 SW
<b>Approx. Length:</b>	<del>3,125</del> 3,098 metres.
<b>Width:</b>	<del>2.0</del> 2.5 metres between points SK 48615000 4861 5000 and SK 48934990 3.0 metres between points SK 48934990 and SK 50045027 2.5 metres between points SK 50045027 and SK 50075097 2.7 metres between points SK 50075097 and SK 50075118 3.4 metres between points SK 50075118 and SK 49895164
<b>Starting Point:</b>	SK 4861 5000 The junction with Annesley Bridleway No. 4.
<b>Finishing Point:</b>	SK 4989 5164 The junction with Annesley Bridleway No.1.
<b>General Description:</b>	Proceeds across an agricultural field in a generally easterly the south-easterly direction for a distance of approximately

	285 metres to a point SK 4885 4991 then continuing along <del>a field edge in a generally south-easterly then north easterly then</del> a track on the north side of Morning Springs Wood in a generally easterly direction for a distance of approximately <del>400</del> 88 metres to a point SK 4893 4990 at the junction with Annesley Bridleway No. 24 then proceeding along a track on the north side of Morning Springs Wood in a generally easterly direction for a distance of approximately 740 metres to a point SK4964 4997 at the junction of Annesley Bridleway No.3 then proceeding along a track on the north west side of Park Springs Wood in a generally north-easterly direction then through the M1 underpass, then along Kennel Lane in a generally northerly then north-westerly direction for a distance of approximately 1,985 metres.
<b>Legal Event / Remarks:</b>	Limitations: Swing gate at SK 4976 5018. Farm gate at SK 5007 5097.

<b>Status and Path No:</b>	Footpath No.3
<b>O.S. Sheet No:</b>	SK 44 NE
<b>Approx. Length:</b>	515 metres.
<b>Width:</b>	-
<b>Starting Point:</b>	SK 4983 4950 The junction with Greasley Bridleway No.11 and Annesley Bridleway No.25
<b>Finishing Point:</b>	SK 4964 4997 The junction with Annesley Bridleway No.2 and Annesley Bridleway No.25.
<b>General Description:</b>	Proceeds through woodland in a north-north-westerly direction.
<b>Legal Event / Remarks:</b>	-

<b>Status and Path No:</b>	Bridleway 25
<b>O.S. Sheet No:</b>	SK 44NE
<b>Approx. Length:</b>	527 metres.
<b>Width:</b>	2.5 metres.
<b>Starting Point:</b>	SK 4694 4997 The junction with Annesley Bridleway No.2 and Annesley Footpath No.3.
<b>Finishing Point:</b>	SK 4983 4950 The junction with Greasley Bridleway No.11 and Annesley Footpath No.3.
<b>General Description:</b>	Proceeds alongside Park Springs Wood in a generally south-south-easterly then southerly direction
<b>Legal Event / Remarks:</b>	Limitations: None

<b>Status and Path No:</b>	<del>Bridleway 3</del>
<b>O.S. Sheet No:</b>	<del>SK 44 NE</del>
<b>Approx. Length:</b>	<del>517 metres.</del>
<b>Width:</b>	<del>2.5 metres.</del>
<b>Starting Point:</b>	<del>SK 4983 4950 The junction with Greasley Bridleway No.11.</del>
<b>Finishing Point:</b>	<del>SK 4964 4997 The junction with Annesley Bridleway No.2.</del>
<b>General Description:</b>	<del>Proceeds through Morning Springs Wood in a north-north-westerly direction.</del>
<b>Legal Event / Remarks:</b>	<del>Limitations: None.</del>

The definitive statement for the Parish of Greasley shall be amended as follows:

<b>Status and Path No:</b>	Bridleway 85
<b>O.S. Sheet No:</b>	SK 44 NE / SK 54 NW
<b>Approx. Length:</b>	515 metres.
<b>Width:</b>	2.5 metres.
<b>Starting Point:</b>	SK 4982 4880 The junction with New Road at the southern corner of Callis Hagg Wood.
<b>Finishing Point:</b>	SK 5020 4923 The junction with Greasley Footpath No.10 and Greasley Bridleway No.11.
<b>General Description:</b>	Proceeds along a track and then a field edge in a north-easterly direction.
<b>Legal Event / Remarks:</b>	Limitations: Farm gate near the junction with New Road at SK 49834888.

<b>Status and Path No:</b>	Bridleway 11
<b>O.S. Sheet No:</b>	SK 44 NE / SK 54 NW
<b>Approx. Length:</b>	487 metres.
<b>Width:</b>	2.5 metres.
<b>Starting Point:</b>	SK 5020 4923 The junction with Greasley Footpath No.10 and Greasley Bridleway No.85 on the western side of the M1 motorway.
<b>Finishing Point:</b>	SK 4983 4950 The junction with Annesley Bridleway No. <b>25 and Annesley Footpath No.3.</b>
<b>General Description:</b>	Proceeds along a field edge then through Big Stainers / Stainers Range Wood in a generally north-westerly direction.
<b>Legal Event / Remarks:</b>	Limitations: None.

<b>Status and Path No:</b>	Footpath 10
<b>O.S. Sheet No:</b>	SK 54 NW
<b>Approx. Length:</b>	131 metres
<b>Width:</b>	2.0 metres.
<b>Starting Point:</b>	SK 5020 4923 The junction with Greasley Bridleway No.11 and Greasley Bridleway No.85 on the western side of the M1 motorway.
<b>Finishing Point:</b>	SK 5030 4923 The junction with Hucknall Footpath No. 35.
<b>General Description:</b>	Proceeds from a field edge in a north-easterly then south-easterly then north-easterly direction along a footbridge crossing the M1 up to the parish/district boundary.
<b>Legal Event / Remarks:</b>	Limitations: None.