



Order Decision

Inquiry held on 1 October 2019

Site visit made on 30 September 2019

by Martin Elliott BSc FIPROW

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

Decision date: 06 November 2019

Order Ref: ROW/3211588

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Derbyshire County Council (Bridleway along non-classified highway known as Callow Bank – Parish of Hathersage) Modification Order 2014.
- The Order is dated 13 November 2014 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were eight objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Preliminary Matters

1. The representative for the Trail Riders Fellowship (TRF) was unable to attend the inquiry. I have nevertheless had regard to all the submissions received in respect of the Order in reaching my decision.

The Main Issues

2. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of an event specified in section 53(3)(c)(i) namely whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show that a right of way which is not shown in the map and statement subsists over the land in the area to which the map relates. The test to be applied to the evidence is on the balance of probabilities.
3. The objectors essentially contend that the Order route is a public carriageway and should either be recorded as a byway open to all traffic (BOAT) or not recorded on the definitive map at all. The main issue therefore is whether the evidence shows that the route is a bridleway or BOAT or whether the Order should not be confirmed because it is not a public carriageway which should be recorded on the definitive map and statement. The TRF raise issues in respect of the width. I will consider the various issues as appropriate.
4. Should I find that the Order route is a public carriageway then it will be necessary to consider whether rights for mechanically propelled vehicles have been saved by any of the exceptions provided for by the Natural Environment and Rural Communities Act 2006.

Reasons

Turnpike history

Peaklands Roads and Trackways (2000) Dodd and Dodd

5. It is stated that before improvements in the road network driven by the turnpike era the main route from Sheffield westwards to Hathersage and beyond was ‘... via Ringinglow to Upper Burbage Bridge and down the very steep Callow Bank (now only a footpath) into Dale Bottom and Hathersage...’ The extract appears to describe the section of Order route A to B and Outseats public footpath 6 which proceeds in a north-easterly direction from point B.
6. The book also speculates that slow-travelling traffic would not have to descend the precipitous Callow Bank into Hathersage and that this had been bypassed prior to 1767 by the making of a loop north via Overstones Farm. It further suggests that the Dale Bottom way into Hathersage was still unsatisfactory and in 1811 was abandoned with a new road made from Fiddler’s Elbow over Booth’s Edge to enter Hathersage from the south (the Hathersage Booths road).
7. Peaklands Roads and Trackways provides a background to the development of the roads network. However, I would agree with the TRF that caution should be exercised in reliance on the publication given that there is little indication as to the source of the information.

Turnpike records

8. The map and book of reference of 1810 prepared for the diversion of the Sheffield-Sparrowpit turnpike to a new alignment (now Littlemoor Road or Ringinglow Road) show that Dale Road was at that time the turnpike road. The map shows the section of Order route and footpath 6 marked with a double pecked line. The book of reference identifies that the Order route A to B formed part of the common land in the ownership of the freeholders of Hathersage. The map and book of reference does not support the existence of a public carriageway in 1810 and the Order route did not form part of the turnpike network at that time. This is consistent with the view of Dodd and Dodd that by 1811 the route was abandoned in favour of the Hathersage Booths road
9. The evidence suggests that whilst part of the Order route (A-B) (see paragraph 5) was previously a turnpike road the route was no longer considered to be a public carriageway by 1810. When the turnpike along the Order route ceased to operate it would have reverted to its previous status.

Commercial maps

10. Burdett’s map of Derbyshire first surveyed in the 1760s shows the section of Order route A-B continuing northeast from point B along the route of what is now recorded as footpath 6. The key identifies this as a turnpike road. The map shows the loop over via Overstones but not the road over Booth’s Edge.
11. Cary’s maps of 1787 and 1794 do not show the Order route or the turnpike via Overstones but do show the turnpike route to Hathersage Booths. The Council questions the date of these two maps making the point that Burdett’s map shows the road via Overstones but not the Hathersage Booths road. I am not

clear that this means that the dates were wrong but by 1760 the road via Overstones was, according to Burdett's map, in existence at that time.

12. Greenwood's map of 1825 shows the Order route in the same way as Burdett's map (A-B) and the route is identified as a cross road. Cary's map of 1825 shows a road via Overstones and also to Hathersage Booths but does not show the Order route. Sanderson's map of 1836 shows the whole of the Order route and footpath 6 as cross roads. The Council makes the point that all routes (private access roads and certain bridleways) which are not turnpike roads are shown as cross roads. The term cross road does not necessarily mean that a route shown as such carries public rights and must be seen in the context of the other evidence.
13. The above commercial maps provide a timeline for the evolution of the roads in the vicinity of the Order route and are evidence that part of the Order route A-B was considered to be a turnpike in the 1760s. However, subsequent maps either do not show the route or identify the route as a cross road and not as a turnpike road.
14. Bartholomew's map from 1902-1906 shows the route with a dashed coloured line in a similar way to the road to Hathersage Booths. However, Bartholomew did not determine the status of routes shown on their maps and it is difficult to put much weight on this map as depicting a vehicular highway.

Inclosure Award

15. The inclosure plan for the 1830 award shows the Order route in its entirety and is named '*Cupola Road*'. The award sets out this road as a private carriage and drift road twenty-four feet wide '*from Sparrowpit Gate Turnpike Road in its present course over the Moors by the side of the inclosures called Callow Fields to the new Turnpike Road which leads from Burbage Bridge to Hathersage Booth*'. The new turnpike is the road to which the Order route connects at point C with the other end of the Order route connecting with the Sparrowpit Gate Turnpike.
16. The route of footpath 6 is shown proceeding northwards from point B depicted by pecked lines and named '*Cupola foot road*'.
17. It is not disputed that the 1830 award imports the provisions of the General Inclosure Act 1801 (the 1801 Act). It will also be the case that section 8 gives powers to the commissioners to divert and stop up any public or private roads leading into through over or upon the old inclosures. However, the award sets out the route as a private carriage and drift road which does not suggest that there were pre-existing public carriageway rights. The turnpike records do not support the continuance of a public carriage road after 1810/11. Had the route been considered to be a public carriage road it would be expected that the commissioners would have set out a public carriageway to a width of 30 feet. This was not done even though the existing walls are in part 30 ft apart and that it might have been possible to set out a public road at this width. There is no evidence before me that there were any objections to the omission of the Order route as a public carriageway.
18. I note the assertion of the TRF that it is improbable that the section of Order route B-C was of a different status to the remainder of the awarded route. I would also agree that the handover maps (see paragraphs 26 to 33) would

suggest that the route was a publicly maintainable road before 1836. Nevertheless not only did this section not form part of the turnpike the route was awarded as a private carriage and drift road. I would accept that the setting out of the Order route would mean that the Cupola Foot Road would have been set out as a dead end where it meets Cupola Road and would have no expressed public right of way along it.

19. I acknowledge that by virtue of section 23 of the 1801 Act Cupola Road a private drift road could not become a publicly maintained road without a certified enrolled 'adoption' and there is no evidence before me of such an adoption has taken place. The alternative is that part of Cupola Road was a public road. However, this is not borne out in the evidence; for me to reach such a conclusion I would require some evidence to this effect.
20. In respect of *Logan v Burton (1826) 5 B & C 513, 108 E.R. 191* and the stopping up of public roads over old enclosures, as noted above, there is no evidence before me to suggest that the Order route was a public road prior to inclosure. It may be that commissioners should adopt the power which most effectually guards the rights of the public but there is no indication that the commissioners were dealing with a public right.

Ordnance Survey maps

21. The 1840 edition shows the Order route but not the section of the Callow Bank Turnpike which is now footpath 6. The map shows the new turnpike to Hathersage Booths and the Sparrowpit Gate Turnpike; effectively the current road network. The 1880 and 1898 editions show the Order route in its entirety.
22. The Ordnance Survey map of 1954 depicts the order route with parallel solid lines in a similar way to the road to Hathersage Booths and the Sparrowpit Gate Turnpike. The map revised between 1958-1960 and 1961 shows the Order route with a double pecked line. The route is not coloured as other roads. The route is also shown on the A-Z Map of 2012 although again uncoloured.
23. Ordnance Survey maps were produced to record topographical features and do not provide evidence as to the status of any way shown thereon.

1910 Finance Act

24. The working plan shows the order route excluded from the adjacent hereditaments which also includes the area of land at the eastern end of the route identified on the plan as a parish quarry.
25. The exclusion of the route from the adjacent hereditaments is an indication that the route was regarded as a highway although not necessarily a vehicular highway. However, there may be other reasons why the route might have been excluded for example where the route was set out as a private road in an inclosure award. In this case the Order route was awarded as a private carriage and drift road. This may explain the exclusion and the 1910 Finance Act evidence needs to be considered with all other available evidence. The exclusion does not preclude the existence of a footpath or bridleway along the route.

1929/30 Handover map and schedule and highway maintenance records

26. The Order route is shown on the plan accompanying the Bakewell Rural District handing over schedule but is not identified in the schedule itself. The route is identified as an '*other district road*'. Roads to which the Order route links are listed in the schedule.
27. I would accept that the inclusion of the Order route on the handover map is good evidence that the way was considered to be publicly maintainable and that by virtue of the Highways Act 1835 would have undergone some adoption process. There is no evidence of a post 1835 adoption. It must also be accepted that there cannot be any presumption of a mistake. However, the inclusion on the handover map is not conclusive as to the rights it carries. This evidence needs to be considered with all other evidence.
28. I note that there is an explanatory note to the Shardlow Rural District Council handover list which states that '*Certain bridle roads & field footpaths are included, where the Council have found it necessary to expend money upon their upkeep & where the Parish Councils have declined to accept responsibility*'. This might reflect the attitude of the Bakewell Rural District Council but in the absence of a similar note relating to Bakewell Rural District Council it is difficult to give this explanatory note any weight.
29. It may also be that other routes shown on the handover map are now recorded as footpaths, bridleways and farm tracks. However, as accepted by the Council, the recording of the routes is dependent on the evidence in each case.
30. The Bakewell County Roads Advisory Sub-Committee on 26 January 1965 considered the repair of the bridge which takes the Order route over Dale Brook. The report states that '*Callow Farm Road*' carries only agricultural traffic and that beyond Callow Farm the route deteriorates to bridle road standard to join Littlemoor Road. The report further identifies '*Callow Farm...previously called Cupola Road*' as a private carriage and drift road but that within living memory the route had always carried a right of way. The Committee resolved to make a contribution of £10 to repair the bridge and preserve the right of way.
31. The report recognises that the route was a private carriage and drift road. However, other than acknowledging a right of way the report does not provide evidence as to status. It may be the case that the route has deteriorated to the condition of a bridle road but it does not follow that the route was of public bridleway status.
32. The Order route is recorded on the Council's List of Streets as a non-classified highway; the record plans include a note to the effect that the depiction of a way as a non-classified highway is not proof of the existence of public vehicular rights. The Council's Regulatory Licencing and Appeals Committee of 21 May 2012 indicates the view of the Committee is that the inclusion of a route, for example as a non-classified highway, is not proof of the existence of public vehicular rights. As with the 1929 handover map whilst the inclusion of the route provides good evidence as to the maintenance of the way, it does not provide evidence as to the rights on the route.
33. A screenshot of the Council's mapping portal shows rights of way in the vicinity of the Order route with routes leading from the Order route. The route is not

recorded as a public right of way which is not unexpected bearing in mind the Order before me. The map provides no evidence as to status although given that public footpaths lead off the Order route it is more likely than not that the route carries at least pedestrian rights.

Definitive map

34. Under the survey of public rights of way carried out under the National Parks and Access to the Countryside Act 1949 Hathersage Parish Council claimed the route to be a cart or carriage road used mainly as a footpath (CRF). The Council advised that in their experience some parish councils included private carriage roads which were used as footpaths or bridleways. The route was not subsequently recorded on the definitive map but it is possible that the route was not recorded because it was shown on Council records as a highway maintainable at public expense. The use of the term CRF provides no evidence as to public vehicular rights.

Evidence of Use

35. There are 12 user evidence forms (UEFs). The UEFs show evidence of equestrian use from 1969 through to 2012 although two individuals only used the way on foot. One individual used the route on foot, horseback and in a vehicle although his use, as an adjacent landowner, was for agricultural purposes.
36. Responses to the Council's initial consultation on the Order indicate use of the route by walkers, horse riders and cyclists. The correspondence also indicates that the route only started to be used by 4x4s in around 2007.
37. A number of individuals gave evidence to the inquiry as to their knowledge of the way. The indication is that it was only since 2007 that 4x4s and motorcycles started using the route. A steel post was placed in the track to prevent use by 4x4s and in 2011 the gate above Callow Farm was locked and has remained locked ever since. The provision of a bridle gate allowed for pedestrian and equestrian access but may also have allowed access by trail riders. One individual stated that he challenged every motorised user although accepted that he may have missed some use. Another indicated that there was the occasional use by motorcycles prior to 2006/07 but if seen was always challenged.
38. The Council also received responses from motorists. One respondent/objector had used the route for twenty years prior to 2014. Four objectors had used the route with a vehicle although the objections provide no information as to when this use took place. Mr Cleary indicated that he had ridden the route by motorcycle from around 1973 to around 2017. Over the last decade he had used the route around 6 times, maybe once a year. Before then he rode the route with the same frequency, maybe slightly less. He had never been challenged in his use. Although I note the representations of the supporters as to the reliability of Mr Cleary's evidence he was clear in his recollections and there is nothing to indicate that he did not use the way as stated.

Conclusions on the evidence

39. Earliest evidence indicates that part of the Order route formed part of a turnpike road. However, there is no evidence that prior to the route being turnpiked that the route was a public carriageway. That the way was not a

public carriageway is reflected in the inclosure award which records the order route in its entirety as a private carriage and drift road.

40. The commercial maps published after inclosure either do not show the Order route or show the route as a cross road. The depiction as a cross road, whilst it does not preclude the existence of public rights, is consistent with the route being a private carriage and drift road. It is noted that Sanderson's map shows what is now public footpath 6, a route awarded as the Cupola Foot Road, is also shown as a cross road. The 1910 Finance Act records are consistent with the Order route being a private carriage and drift road and do not preclude footpath or bridleway rights. Whilst the Order route is shown on the handover map and the current list of streets these documents do not provide any evidence as to status. They show that the route is a highway maintainable at public expense.
41. The definitive map records would indicate that the route was regarded to be a public footpath. This suggests that whilst the Cupola Foot Road was effectively set out at inclosure as a dead end the Order route is nevertheless considered to carry at least public rights on foot. More recent evidence shows that the way was used by pedestrians and equestrians and that such use was accepted by the adjacent landowners. Such use is consistent with the way being a footpath or bridleway. It is noted that there was some use by motor vehicles although this does not appear to have been a common occurrence prior to 2006/07. The evidence of use by motor vehicles is not sufficient to raise a presumption of dedication of a carriageway.
42. Having regard to all of the evidence I do not consider that it is sufficient to demonstrate, on the balance of probabilities, the existence of a public carriageway. The evidence as a whole, although not substantial and in the absence of evidence to show that the route could not be a public bridleway, leans towards the route being, on the balance of probabilities, a public bridleway.

Width

43. The TRF dispute the width specified in the Order. It must be accepted that the Order route was set out at inclosure as a 24 feet (7.3 metres) wide private carriage and drift road. That did not set out a public route and there is no evidence to suggest that the whole of the route was set out at this width. The 1898 Ordnance Survey map depicts the boundaries at the time of the survey and in the absence of other evidence it is reasonable to base the width of the Order route on this map. It is acknowledged that the width at the narrowest point is only 1.6 metres and this is not sufficient to allow two equestrians to pass. However the occasional pinch point is excepted and the majority of the route as shown on the 1898 map will be of a width sufficient for two equestrians to pass. Consequently I do not consider that the Order should be modified in respect of the width.

Other Matters

44. Issues were raised in respect of the suitability, safety and desirability of the route and discrimination against users of mechanically propelled vehicles. Whilst I note these issues they are not matters for my consideration, the relevant tests are those set out at paragraphs 2 to 4 above.

Conclusion

45. Having regard to these and all other matters raised at the public inquiry and in the written representations I conclude that the Order should be confirmed.

Formal Decision

46. I confirm the Order.

Martin Elliott

Inspector

APPEARANCES

For Derbyshire County Council

Mrs M Fairman	Derbyshire County Council
who called	
Mr P Jackson	Derbyshire County Council

Also in support of the Order:

Mrs D Mallinson	Peak District Green Lanes Alliance and Peak Horsepower
Ms P Stubbs	Peak District Green Lanes Alliance and Peak Horsepower
who also called	
Mr G Whittaker	
Mr J Elliott	
Mr P Tabern	
Ms Y Whittaker	

In opposition to the Order:

Mr H Clearey

Interested Party:

Mr J Burling

Documents handed in at the Inquiry

- 1 List of witnesses to be called by Mrs D Mallinson and Ms P Stubbs
- 2 Extract of Ordnance Survey map for reference
- 3 Submissions of Mr H Clearey including 1No. user evidence form
- 4 Closing Submissions for Mrs D Mallinson and Ms P Stubbs
- 5 Closing submissions for Derbyshire County Council



Wildlife & Countryside Act 1981 Section 53

The Derbyshire County Council
 (Bridleway along non-classified
 highway known as Callow Bank
 - Parish of Hathersage)
 Modification Order 2014

KEY

Bridleway to be added A —|—|B—|—|C

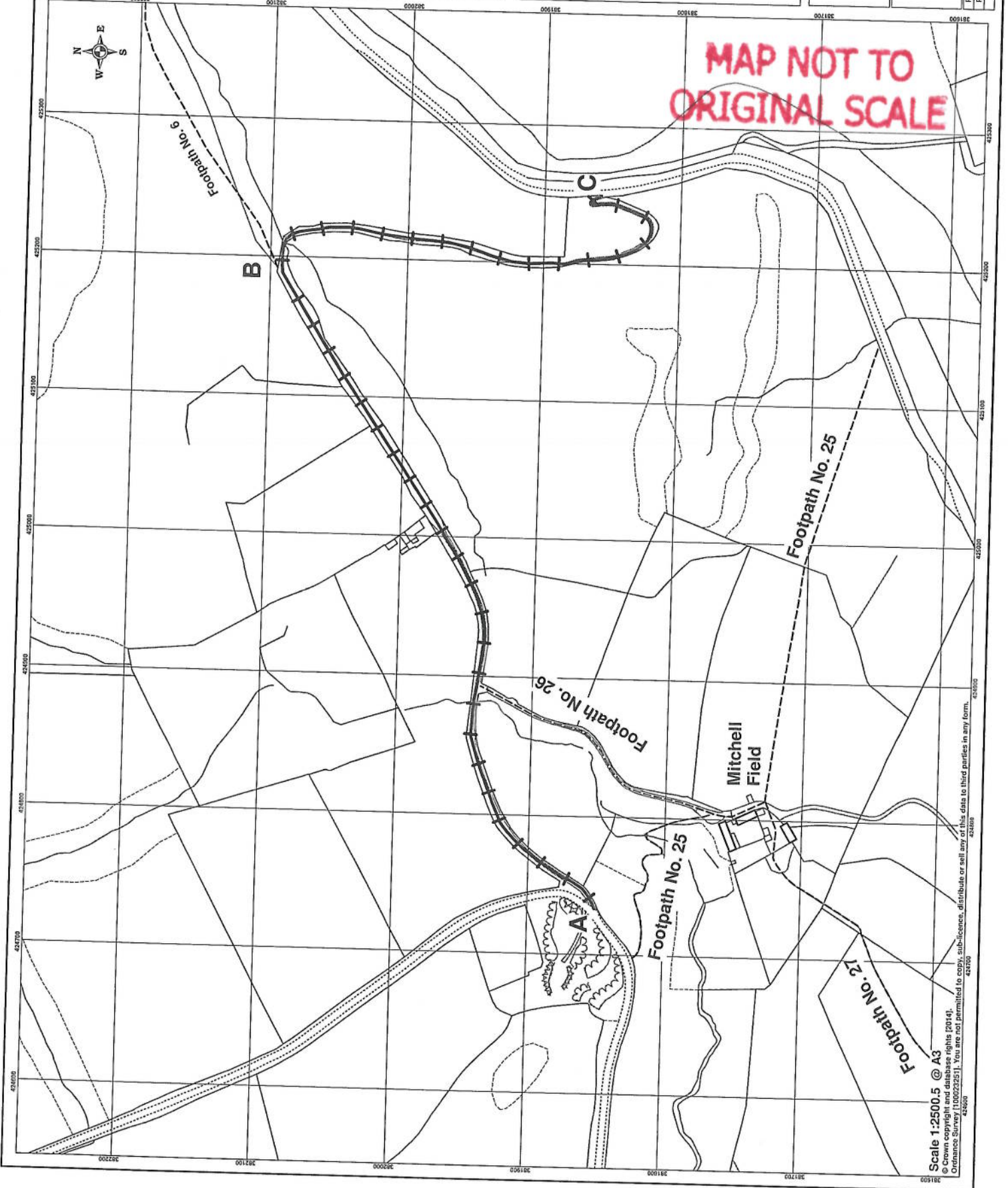
Existing Footpaths -----

DERBYSHIRE
 County Council

Improving life for local people

Miles Ashworth
 Strategic Planning
 Shand House
 Dale Road South
 Mallock
 Derbyshire
 DE4 3RY

Produced by Public Rights of Way on 25 March 2014
 ERM: PEJW/XSBS/CP/02/2014



Scale 1:2500.5 @ A3

© Crown copyright and database rights (2014).
 Ordnance Survey [100023251]. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.