



Appeal Decision

by **K R Seward Solicitor**

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

Decision date: 29 July 2020

Appeal Ref: **FPS/U1050/14A/11**

- The appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Derbyshire County Council ('the Council') not to make an Order under Section 53 of that Act.
- The application dated 20 September 2017 was refused by the Council on 11 October 2019.
- The appellant claims that the definitive map and statement ('the DMS') for the area should be modified by adding a bridleway from Dam Lane, Alsop SK1582 5508 to A515 via Alsop Station SK1553 5495.

Summary of Decision: The appeal is allowed.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 ('the 1981 Act'). I have not visited the site, but I am satisfied in the circumstances of this case that I can make my decision without doing so.
2. I have utilised the description of the claimed route as it appears in the original application. A different description was used in the Appeal Form: "from Dam Lane to the Tissington Trail in the Parishes of Eaton & Alsop and Newton Grange". That same description was used by the Council. The appellant subsequently confirmed that it was always the intention to claim a route through to the A515 rather than end at the Tissington Trail and so the amended description is not accurate.
3. The map of the claimed route prepared by the Council shows the eastern end point C stopping short of the existing recorded bridleway No 15 which forms part of the Tissington Trail. This leaves a gap between the claimed and existing bridleway, as highlighted at the outset by the local Ramblers Group. There is another anomaly. In order for the claimed bridleway to connect with the Tissington Trail and/or A515, parts of the existing footpaths would need to be upgraded whereas the application is to add a bridleway to the DMS.
4. Having queried the position with the parties the applicant said that the point of termini was incorrectly shown on the Council's map and indeed on the application map. It should be shown at the western end of Eaton and Alsop FP14 at the entrance to the car park, as per the grid reference given in the application. The applicant confirmed that a short length of both FP14 and Newton Grange FP17 would need upgrading to a bridleway to reach that point.
5. The Council considers its map to accurately reflect the application map and

does not need to be changed. It disputes that the application extends as far as the A515 to include an upgrade of the existing footpaths for which it believes there is insufficient evidence in any event. However, an applicant cannot be expected to appreciate all the technicalities to realise the application should have been termed as one for a partial upgrade of existing paths.

6. There is disparity between the written description of the route and map in the original application, but the differences have not been reconciled by the Council's map and change in the description. The route plotted by the Council cannot be correct because at the very least it does not connect with BR15 for the Tissington Trail. Nor does it connect with FP17 as required if the claimed route stops at the entrance of the former subway for the railway line.
7. I shall deal with the route as applied for in the written description which is clear and precise unlike the small scale application map. Attached to this decision is a copy of the Council's map for reference purposes with amendments shown in red to reflect the approximate route I believe to be claimed. This includes the partial upgrade of FP14 and FP17 to bridleway status. In doing so, I shall take account of all representations which includes those received in support of the Order by an interested party.

Legal Framework

8. For an addition to be made to the definitive map and statement ('DMS'), section 53(3)(c)(i) provides that a modification order shall be made where evidence is discovered which (when considered with other relevant evidence available) shows 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.
9. As set out in the case of *R v Secretary of State ex parte Norton and Bagshaw*¹ an Order to add a route should be made if either of two tests is met:

TEST A: does a right of way subsist on the balance of probabilities?

TEST B: is it reasonable to allege that a right of way subsists? For this possibility to exist, it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way subsists.

10. In order for a footpath to be 'upgraded', section 53(3)(c)(ii) provides that an order to modify the DMS shall be made where evidence is discovered which (when considered with other relevant evidence available) shows that a highway shown in the map and statement subsists as a highway of a particular description ought to be there shown as a highway of a different description.

Main Issue

11. The main issue is whether, on the balance of probabilities: (a) a public bridleway subsists along the claimed route or is reasonably alleged to subsist between points A-B-C; and (b) the existing footpaths between points C-D should be recorded as bridleways.

¹ [1994] 68 P & CR 402

Reasons

12. The claimed bridleway starts off Dam Lane and runs alongside it in a north-westerly direction before heading south-west for most of its length across fields. For the final stretch, the route turns south before reaching the old railway line which is now known as the Tissington Trail and continues along the existing footpaths to reach the A515 road.
13. The application relies upon historical documentary evidence. Section 32 of the Highways Act 1980 requires a court or other tribunal to take into consideration any map, plan or history of the locality or other relevant document, which is tendered in evidence, giving it such weight as is justified by the circumstances.

Tithe records

14. The Alsop-en-le-Dale Tithe Map 1846 pre-dates the construction of the railway. A track is shown to exist by double pecked lines running through a field numbered 217. There is disagreement on whether it shows the claimed route.
15. The route shown follows a broadly similar alignment to the one claimed except it does not veer south at one end but continues in a south westerly direction to connect with a road shown coloured between double solid lines. This road corresponds with the A515. Existing linked public footpaths (FP3 and FP17) which lie to the south, are shown by a single pecked line.
16. The entry for plot 217 in the accompanying schedule describes the land as "Dale side and road" for which tithe was payable. The apportionment confirms that "Public Roads" were not subject to tithe payments.
17. The Council considers it most likely that the 'road' referenced for plot 217 is Dam Lane which is also shown by double pecked lines and braced. Those promoting the claimed route argue that Dam Lane is coloured sienna like other public roads. The colouring is difficult to make out on my copies. If Dam Lane is coloured to distinguish it from the plot then the 'road' across plot 217 is most likely to be part of the appeal route. As the road was subject to tithe, it probably did not carry public vehicular rights. Supporters say that its description as a 'road' and depiction by double pecked lines rather than single pecked lines used for footpaths, indicates the route was used by horses as a through route connecting Dam Lane with what is now the A515.
18. The Council points out that the term 'road' in the title apportionment does not denote a particular type of road i.e. whether it is public or private and, if public, of what highway status. The Council remains of the view that all that can be gleaned from the tithe documentation is that there was at the time a physical track on the particular alignment shown.
19. As the route appears to connect two public roads it is plausible that it was used as a public through route rather than simply a farm track, but it is by no means certain. The differences in depiction from known footpaths and likely description as a 'road' are factors which might suggest the route was suitable for use more than on foot. It is not enough to show the existence of highway rights but provides some albeit limited evidence to be considered in the round.

Railway related records

20. The primary source of documentary material upon which the applicant relies is historic railway records.
21. On the extract of the deposited railway plan 1889 for the township of Newton Grange, there is a route through plot 109 which appears to correspond with part of the claimed bridleway but extending in a straight line to connect with the road to the west. The book of reference labels Field 109 as "Field, pond and public bridge road". The ownership is assigned to Lord Hindlip and The Surveyor of Highways of the Township of Eaton and Alsop.
22. The Council acknowledges that the plan of part of the London and North Western Railway 1892 shows the route from A-B but continuing directly west to what is now the A515 instead of changing direction to head south before reaching the rail line.
23. The London and North Western Railway Act 1897 conferred power to stop up and divert certain specified roads and paths. They include the diversion of a bridle road onto the alignment now claimed plus another route extending further northwards. The process required the new route to be opened to the public and certified by the Justices of the Peace to whom seven days advance notice of the intention to apply had to be given. After certification it was read in open court of Quarter Sessions and enrolled by the Clerk of the Peace among the Quarter Sessions records.
24. The Quarter Sessions deposit contains an extract of a document² which the applicant explains is from the description of powers to acquire land and divert highways for which the Railway Company was applying to Parliament in the 1897 session. The text describes plans to stop up and discontinue a section of the bridle road leading from Alsop-en-le-Dale to the Ashbourne and Buxton Road in lieu of a new bridle road under the railway by means of a subway. The Council acknowledges that this diversion refers to the claimed bridleway but says there is a lack of legal proof that the application went ahead as intended.
25. Handwritten notes from 1892 and stamped by the Clerk of the Peace are attached to the Book of Reference confirming receipt of the notice of intended application for the alteration of levels and plans for the proposed diversion of footpaths. A similar receipt exists for the notice of intended application in November 1896. They confirm only that an application was to be made for diversion of certain public rights of way but had not yet formally taken place.
26. The deposited plan from 1897 outlining the proposal for diversion shows the railway track and south-western end of the route which connected with the road as "existing bridle road to be stopped up". The "proposed new bridle road" was to be made through the subway. The section to be stopped up is marked O-P across plot 9. The Book of Reference describes plot 9 as a bridle road owned by The Ashbourne Rural District Council, identified by the interested party as the highway authority in 1897. The line of deviation runs from Q-N-P-R to exit along the road (A515) at a different point than before.
27. The Council highlights that the proposed diversion does not continue in a north-easterly direction to claimed point B but goes north-west to meet the A515 road. However, point N appears to be in the vicinity of the subway entrance

² Identified by the Council as being from the London & North Western Railway Book of Reference

- and a section of bridle road "from Alsop-en-le-Dale" which heads towards point B is shown as unaffected. The bridle road to be provided in lieu of the one to be stopped-up was connected with the A515 road in two places rather than one.
28. Thus, the line of diversion from Q-N corresponds with the claimed route from D-C, as amended, and along a broadly similar line to reach point P from where the unaffected bridle road extends towards the direction of B.
 29. The applicant believes that the bridleway was diverted under the railway via a subway post 1897 until it was filled in some time in the mid 1970's. Due to the diversion, the route would have turned south to reach the subway rather than continuing south-west as shown on the Tithe Map. The Council identified the subway around point C on its map, but as already noted this does not tally with the line of FP17 which would have entered the subway at the same point.
 30. There are three identical railway maps of 1909 with differing manuscript additions. The applicant says they are filed at the records office as "London and North Western Railway (LNWR) map: showing line to Alsop-en-le-Dale etc."
 31. On one copy, a "Bridle Road" is marked along the eastern side of the railway line and continues across it. The map is endorsed with "R Co to make and maintain bridle road between A.B.C". This matches the alignment P-R as shown on the 1897 railway plan detailing the proposed diversion. However, the Council does not accept that this means the alignment of the route had actually been certified as required or that it had even been constructed. The Council considers the plan does no more than set out certain details of a proposal submitted by the railway company.
 32. Section P-R does not form part of the claimed bridleway but links with it. It is relevant in ascertaining the likelihood of the Railway Company proposals of 1897 having taken place which appear to have included retention and diversion of a section of bridle road as now claimed. The interested party believes the 1909 plan shows that the railway company had accepted responsibility for making and maintaining the diverted alignment of the bridle road and it would not have done so if the diversion had not been legally effected.
 33. However, the Council casts doubt upon the accuracy of the plan. A different route unconnected with the claimed route is also shown marked 'foot and bridle path' running alongside the parish boundary. It is shown entering the railway via a stile which is clearly inconsistent with a 'bridle path'. The Council suggests this error casts doubt upon the accuracy of the plan. The alignment appears to correspond with FP17. As the map has been marked to show land "sold to Peak Park Planning Board 7-5-69", the interested party believes it to be a working document used by the railway company and its successors.
 34. I do not think the plan can be discounted entirely. It would seem odd on the face of it for a map of 1909 to record proposals from years earlier if the diversion had not occurred, but it does not provide direct evidence of the claimed route as already explained.
 35. Photographs are produced by the applicant said to be taken by the Peak District National Park Authority during works to make the Tissington Trail in the mid 1970's. In one, the bridge over the subway is intact. Another image taken during demolition of the bridge reveals the subway which the Council admits is large enough for vehicular access. The applicant argues that the subway was

unlikely to provide purely pedestrian access leading directly into a field. That may be so, but there could be other reasons for the size of the subway, such as maintenance purposes.

36. The Council highlights that a footpath stile can be seen in the photograph of the old stone wall near to its point C. The applicant does not dispute this but suggests pedestrian access only was left after the subway was blocked up. The applicant relies upon an enlarged extract of railway plan ref: DRO D7849/3/1-3 to argue that the alignment of the bridleway curved around to go through a gateway in a different position from the stile. The applicant believes that one photograph showing part of a gate reveals a fastening which can be operated from horseback although the Council queries if it is a suitable height for riders. The photograph is identified as being at the entrance to FP14.
37. A plan of unknown source said to date from 1997 of Alsop-en-le-Dale station appears to show a subway. The applicant accepts it is unclear what weight can attach to the plan given the uncertainty over its status. A black and white photograph published that same year shows the small railway station, but it is difficult to see any subway from my copy.

Parish records

38. The Council considers that the Parish Claim schedule (which I take to be part of the Parish Survey undertaken in preparation for the first Definitive Map) provides strong evidence that as at August 1950 the access to the subway was for pedestrians only because of three stiles along FP3 and FP17. The presence of stiles along those paths would not affect the likelihood of the claimed route being a bridleway as it follows a different alignment. It would only do so if a stile was positioned where it would prevent bridleway access to the claimed route, but that cannot be gleaned from the records supplied.

Ordnance Survey ('OS') mapping

39. The 1", 1st edition OS map c1840 shows an open track by two solid lines along a similar alignment to the claimed route from point A-B and onwards to the A515 but without dropping south to point C. The Council accepts that this possibly corresponds with a pre-diversion alignment of the route as claimed.
40. The 1st edition OS map of 1880 shows part of the claimed route from A-B or thereabouts by double dashed lines. It is similarly shown on the 1899 2nd edition OS map when the railway was in the course of construction. On the 1899 map, existing FP3 is marked 'F.P.' and leads into FP17 which appears to go through a subway where the railway was to be built at amended point C.
41. The railway track appears on the 1922 3rd edition OS map and it is now clear that FP17 goes through the subway. The claimed route does not appear which the Council finds unusual if the applicant is right about it being diverted by then along an alignment A-B-C. Likewise, the route is not shown on the modern 1:2500 map from 1975 although public bridleway No15 (Eaton & Alsop) and linked BR24 (Newton Grange) are marked as the 'Tissington Trail'.
42. From 1888, OS maps carried a disclaimer to the effect that the representation of a track or way was not evidence of the existence of a public right of way. In essence, where the presence of a route is recorded as a physical feature it may or may not be a public path. As the large scale OS mapping from 1880 and 1899 gives no indication of any bridleway from Dam Lane to the A515 existing

on the ground during or after the late 19th Century, the Council deduces that the routes shown on the railway plans were planned rather than actual ways. A possible flaw with this argument is that there are other known public paths similarly omitted from the OS maps. It also does not explain why other earlier documentation indicates the existence of a bridle road.

43. What is plain is that the OS mapping supports only the presence of a track from A-B up to the late 19th Century.

Other evidence

44. With the appeal, the applicant produced other evidence provided by the Peak District National Park Authority, the current owners of the Tissington Trail.
45. These include an Indenture for the conveyance of parcels of land to the railway company in 1899. A route shown across an adjacent field No 109 corresponds with the alignment in the 1897 deposited railway plan and is annotated in red "Bridle Road". The bridle road is dissected by a "Bridle Road Diversion" also marked in red. The applicant says it confirms that the old bridle road was still in existence and acknowledged by the landowners in 1899. In the Third Schedule to the Indenture it records that the Bridle Road in field No 109 is to be diverted over the vendor's land on the east side of the railway and under the archway to be built by the Company.
46. Minutes of a meeting held between the British Rail Estates Department and Peak Park Planning Board on 13 November 1967 to discuss the handover of the railway contain a record that "the diversions of the footpaths and bridleroad had been carried out but had not been maintained". Further undated typed file notes record that the railway company had been released from its liability under section 68 of the Railway Clauses Consolidation Act 1845 (as incorporated in the 1890 Act) for certain works except for an archway under the railway and diversions of footpaths and bridle road.
47. A current day photograph of the Dam Lane end of the claimed route appears to show a line in the ground where the bridleway is said to go. This could be a recent trodden line. It does not demonstrate the historic existence of a bridleway, the use of which is believed to have ceased in the 1970's.

Conclusions on the documentary evidence

48. The Council confirms there is no dispute that certain railway documents from the late 19th Century suggest the existence of an historic bridleway which the railway company wished to divert. It disputes that the diversion actually took place. The Council does not discount the possibility that there was bridleway access at the subway but considers it unlikely. It maintains there is no evidence the subway provided anything other than access on foot.
49. Apart from the short section from A-B, the OS maps do not record any physical feature on the ground to correspond with the claimed route. That could mean it did not exist beyond point B or that it was simply not recorded. Supporters suggest that the route was little used which is why it did not appear.
50. Whatever the explanation, there would be no reason for the railway company to draw up plans for the diversion of the 'bridle road' and to serve notice of its intended application unless public rights existed and there was a need for the diversion. The Tithe documentation supports the presence of a 'road' along

much of the alignment albeit uncertain that such road carried public rights on foot or on horseback. Taken together, the likelihood is that the documents refer to the same road and there is reason to believe it carried public rights. Subsequent references to the bridle road and its diversion provide anecdotal evidence in support.

51. Whilst there is no firm evidence that the 'bridle road' affecting land acquired by the railway was diverted as clearly intended, there is some evidence in the form of the 1967 minutes and annotated maps to suggest the diversion occurred. There is no evidence that the bridle road was stopped up.
52. It is undisputed a subway was built beneath the railway line. This could have been in fulfilment of the railway company plans to divert part of the existing bridle road or for other reasons. If the subway was large enough for vehicular traffic then it was most likely capable of accommodating bridleway use. There is no clear evidence from what I can see that the claimed route was inaccessible with a horse around this point. There is some evidence of a gate.
53. The applicant considers that the provision of the subway strongly suggests that it was required for use by horses, ridden and/or drawing vehicles because there was no obligation to bridge footpaths under the Railway Clauses Consolidation Act 1845. The 1922 OS map clearly shows FP17 continuing either side of the railway line through the subway. The Council says this is the only possible public right of way going under the railway. It suggests that the subway was built for the mutual benefit of walkers, rail passengers and workers. Steps are shown on the eastern side of the railway platform indicating that it was accessible via the underpass. The applicant disputes that the subway would have served railway users because it was possible to cross between the platforms via a board crossing visible in a photograph of the station. Of course, passengers may have considered the subway a safer option. The applicant argues that FP17 was clearly only available on foot meaning that there must have been an alternative route for horses between the subway and Dam Lane. There are arguments either way.
54. All that is needed at this stage is for a reasonable allegation that a bridleway subsists for an addition to be made to the DMS from A-C. I am satisfied on the information before me that the evidence suffices to meet that test. For an upgrade of the sections of existing footpaths needed to reach the A515, the threshold is higher. If there was a bridleway it would be illogical for it to stop at the entrance to the subway without continuing through it and along the route of the recorded footpaths. That would correspond with the proposed diversion of the bridle road as shown on the 1897 deposited railway plan.

Other Matters

55. When the Council investigated the application, one of the landowners objected over safety concerns of horse riders exiting onto Dam Lane on a "very bad bend" and escalating the risks of the escape of livestock if the gate is left open. These concerns do not influence whether a public right of way exists along the claimed route. The application is based upon historical evidence and so a lack of use of the route in the past 30 years does not defeat the application.

Overall Conclusion

56. Having regard to the above and all other matters raised in the written representations, I conclude that on the evidence available a public bridleway along the claimed route is reasonably alleged to subsist from Dam Lane along an alignment to connect with the Tissington Trail i.e. A-B-C. Furthermore, on the balance of probabilities, I consider that there is sufficient evidence for the sections of existing footpaths from point C-D via the alignment of the former subway to reach the A515 to be upgraded to bridleways.

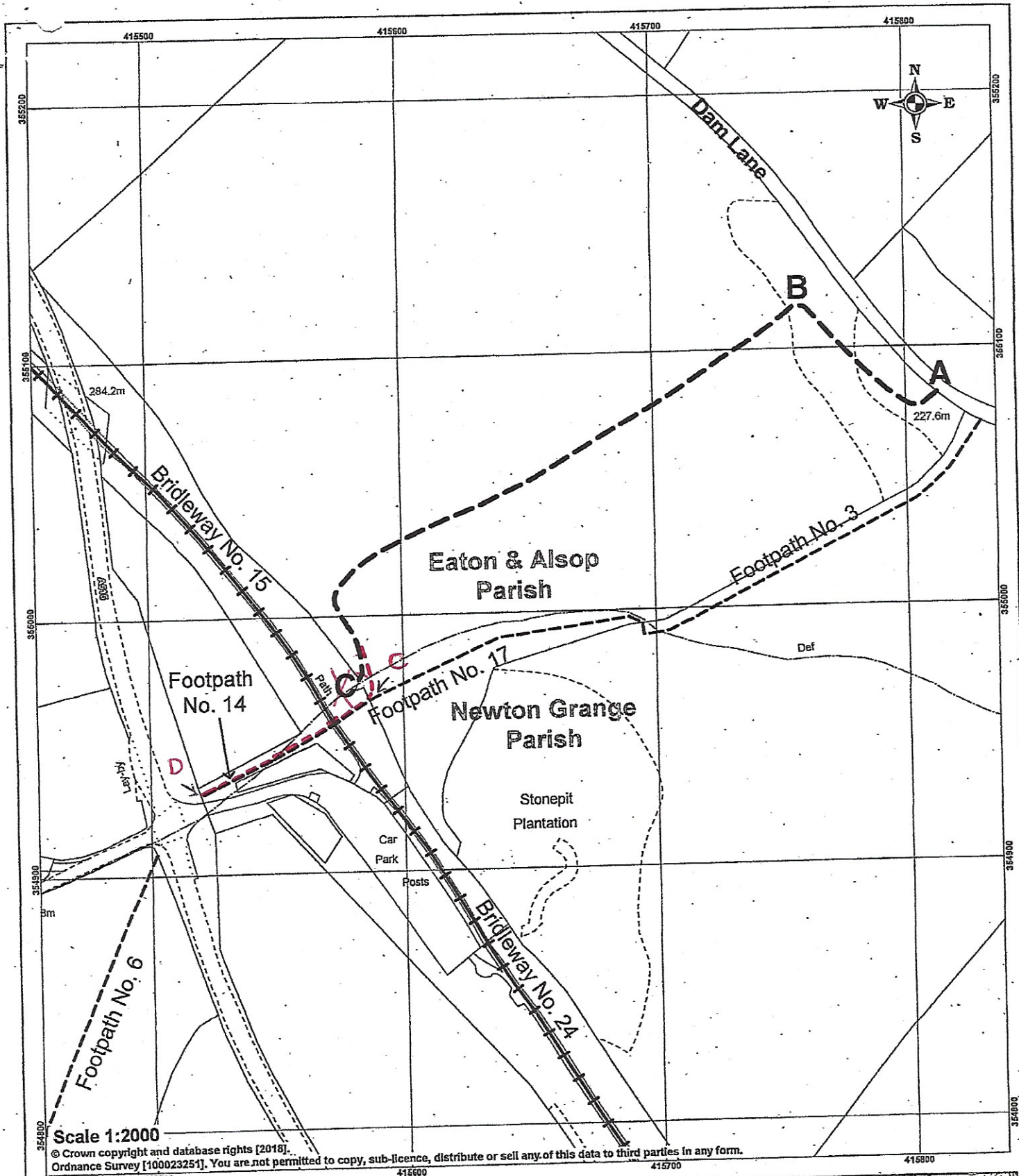
Formal Decision

57. In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, Derbyshire County Council is directed to make an order under section 53(2) and Schedule 15 of the 1981 Act not later than 12 months³ from the date of this decision to modify the definitive map and statement to add a bridleway and to upgrade part of two footpaths along the route described in the application dated 28 September 2017 and as approximately shown on the attached amended plan. This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with powers under Schedule 15 of the 1981 Act.

KR Seward

INSPECTOR

³ A longer period has been given than would otherwise have been afforded due to the exceptional circumstances arising from the ongoing global coronavirus pandemic.



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 Date: 09 July 2019



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Wildlife & Countryside Act 1981, Section 53
Claim to add a Bridleway from Dam Lane
to the Tissington Trail - Parishes of
Eaton & Alsop and Newton Grange

- Key:**
- Bridleway to be Claimed A - - - - - C
 - Existing Footpath - - - - -
 - Existing Bridleway + + + + +
 - Parish Boundary ————



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