



DEVELOPMENT CONTROL AND REGULATORY BOARD

12 SEPTEMBER 2019

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER
PROPOSED ADDITION OF A PUBLIC FOOTPATH T104 AT
SKETCHLEY LANE, RATCLIFFE CULEY

JOINT REPORT OF THE CHIEF EXECUTIVE AND THE DIRECTOR
OF ENVIRONMENT AND TRANSPORT

PART A

Purpose of the Report

1. The purpose of this report is to seek the Board's determination of an application by Witherley Parish Council to add a Public Footpath T104 to the Definitive Map and Statement of public rights of way. The route is between Sketchley Lane and Public Footpath T34 in the village of Ratcliffe Culey in the Parish of Witherley (Borough of Hinckley and Bosworth). The claimed footpath is approximately 40 metres long and 2 metres wide and runs alongside a garage and two gardens belonging to two cottages, one of which is the village post office. The route is shown on Plan No. M1109P, attached as Appendix A to this report.

Recommendation

2. It is recommended that an Order be made under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath to the Definitive Map as shown on Plan No. M1109P attached as Appendix A to this report.

Reason for Recommendation

3. The application satisfies the relevant statutory criteria because the evidence shows that a Public Footpath subsists or is reasonably alleged to subsist along the route claimed.

Resources Implications

4. The County Council as Highway Authority has a legal responsibility to ensure the highway is open and available to the public and also for the clearance of naturally growing surface vegetation on public rights of way. If the claimed

route was added to the Definitive Map this would add an extra 40 metres of footpath to the rights of way network. This amounts to about £50 per annum on current funding.

Circulation under the Local Issues Alert Procedure

5. A copy of this report has been sent to Mr. I.D. Ould OBE CC (Market Bosworth Division).

Officers to Contact

Nisha Varia, Solicitor, Chief Executive's Department, Tel. 0116 305 6033
email: nisha.varia@leics.gov.uk

Stephen Tipping, Access Officer, Safe and Sustainable Travel Team,
Environment and Transport Department, Tel. 0116 305 7084
Email; stephen.tipping@leics.gov.uk

PART B

Background

6. On 17th July 2017, the County Council received an application from Witherley Parish Council for the addition of a public footpath in the village of Ratcliffe Culey to the Definitive Map. (a copy is attached as Appendix B). The claimed footpath shown as A to B on plan M1109P (Appendix A) is approximately 40 metres long and 2 metres wide and would connect Sketchley Lane to footpath T34. It runs alongside a garage (at Point A) and two gardens belonging to Numbers 14 and 16 Sketchley Lane, No.16 is also the village post office. The land over which the footpath runs is not registered at the Land Registry and no one has come forward to claim ownership so there is no landowner known to the Council.
7. Witnesses report that the claimed route was blocked in the 1970s, and therefore the date when the status of the route was first brought into question is difficult to establish exactly due to the lapse of time. The date used for the brought into question date has therefore been set as 1970. For the purposes of a Definitive Map Modification Order the 20 years user evidence must be counted back from then so the period of 20 years is from 1950 to 1970.
8. Since the blockage of the claimed path in around 1970, the route has been out of use. However, it is still discernible on the ground but is overgrown in parts.
9. The application was triggered when the parallel footpath T12 was closed in April 2015 because a farm building alongside that path had become unsafe, leading to people trying to use Sketchley Lane and the claimed path as an

alternative route. This provided the impetus for the Parish Council to try and resolve what they felt was a long-standing problem.

10. The Application to add the path to the Definitive Map is supported with seven user evidence forms and seven letters. An extract of the Enclosure Award and 3 historic maps are also supplied with the application and are attached as part of Appendix B.

Legal Considerations

11. The Board must have regard to the legal considerations set out in the Wildlife and Countryside Act 1981 and the Highways Act 1980 as detailed below.

Wildlife and Countryside Act 1981

12. The County Council's obligations are set out in Section 53(2) of the Wildlife and Countryside Act 1981 which states:-

As regards every Definitive Map and Statement the {County Council} shall -

- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence before that date, of any of the events specified in subsection (3); and
- (b) as soon from that date keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence....of any of those events, by order make such modifications to the map and statement as appear to them to be required in consequence of the occurrence of that event.

13. Section.53(3) states that the events referred to in subsection (2) include:-

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

- (i) that a Right of Way which is not shown on 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 to which this part applies.

Test A and Test B

14. The issue before members is to decide if the application satisfies the requirements of Section 53. The Board therefore has to be satisfied when it considers the evidence available whether the case for the application satisfies either of the following two tests. These are usually referred to as Test A (that a Right of Way does subsist) or Test B (that it is reasonably alleged to subsist) over the land.
15. To meet Test A the Board has to be satisfied that on the balance of probabilities a Right of Way is more likely than not to exist over the land in

question. Test B sets a lower standard of proof, and it is generally accepted to mean that the case has been established to the extent a reasonable person, having properly evaluated the evidence, could conclude there was a reasonable case that a Right of Way existed.

16. Although Section 53 enables the County Council to decide whether an Order should be made it does not help local authorities to understand what constitutes good or sufficient evidence of the legal existence of a Public Right of Way. This is set out in the Highways Act 1980, detailed below.

Highways Act 1980

17. Section 31 of the Highways Act 1980 states that:-

- (1) Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice such as mentioned in subsection (3) below or otherwise.
- (3) Where the owner of the land over which any such way as aforesaid passes:-
 - (a) has erected in such a manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and
 - (b) has maintained the notice after the 1st January 1934, or any later date on which it was created.

The notice, in the absence of proof of a contrary intention, is sufficient evidence to negate the intention to dedicate the way as a highway.

18. Therefore if the application and any other evidence shows there to have been uninterrupted, unchallenged use over a period of at least 20 years on a route which can be identified with some certainty and such use is of a kind which in itself amounts in law to a right of user (as opposed to a mere licence or being invited onto the land) then the law assumes that there is an implied dedication by the owner of the land of a Right of Way. This implied dedication can be rebutted if the owner can show that there was no intention to so dedicate the land as a Right of Way.
19. A landowner can show there was no intention to dedicate the land as a Right of Way by producing evidence that users were successfully challenged or asked to leave the land. A landowner can also obstruct the route to prevent public use of it: this will be sufficient to prevent the route becoming a Right of Way if done for that purpose. The interruption need only be of a brief period. Section 31 also allows the landowner to rebut any claim of a Right of Way by

erecting prominent signs which clearly indicate that there is no Right of Way and that the land is not subject to any such user right.

20. The landowner's actions must be open and obvious to anyone who might use the route. It is not sufficient for the landowner to tell other third parties or even their own solicitor they had no intention to dedicate the way. Therefore records such as diaries, correspondence, or private journals are not sufficient evidence there was no intention to dedicate once public use under Section 31 has been established. The users must have been made aware of the landowner's intentions.
21. Therefore it has to be determined if the usage claimed by the applicants or others is sufficient in itself to establish an implied dedication under the provisions of Section 31 of the Highways Act 1980. If so then it must be considered if the landowner has successfully rebutted any such implied decision.
22. On the evidence available the Board must therefore first decide if there has been use of the route by the public for at least 20 years uninterrupted and unchallenged prior to this being brought into question.
23. The Board must then decide if that presumed dedication by the owner is affected by any action taken by the relevant owner during that time to challenge or show by some sufficiently overt act that there was no intention to dedicate the way.

PART C

Evidence

24. This section examines all the evidence relevant to the case, including the Definitive Map, historical maps, the Enclosure Award, aerial photographs, user evidence, representations from interested parties and a site survey.

Definitive Map of Leicestershire

25. The following surveys, draft editions and published editions of the Definitive Map have been investigated. The claimed path is visible as a narrow strip on the background mapping but has not been picked out as a public footpath.

- i. **Parish Survey Map and Statement dated June 26th 1952**

The parish survey was done in preparation for the first ever Definitive Map of footpaths for the County of Leicestershire. It was completed by the Parish Council. The Survey map and statement have a different numbering system to the subsequent Definitive Map. Footpath T34 is referred to as Footpath No.10 and T12 as Footpath No.11. The parish survey did not include the claimed path; however Footpath No. 10 is

described as “from Ratcliffe turn to Sketchley Lane adjoining No.11 and thence to Sheepy”. This is only possible if Sketchley Lane extended along the claimed path to meet footpath No.10, and it can be seen from the map that Footpath No.10 comes to meet the end of the claimed route. It should be noted that 1952 is within the relevant period. A copy of the Parish Survey is attached as Appendix I.

ii. 1952 First Definitive Map and Statement

The claimed path is not shown on the Definitive Map and Statement as a public right of way, although the route of it can be seen on the base map as an extension of Sketchley Lane. Footpath T34 meets the end of the claimed path, although mention of Sketchley Lane in the statement has been dropped. A copy is attached as Appendix J.

Historical Maps

26. There were two early 19th century mapmakers who surveyed and produced maps of Leicestershire: King and Greenwood. King's Map does not extend to Ratcliffe Culey. Greenwood's Map of 1826 (attached as Appendix C) is not in sufficient detail to distinguish the claimed route and does not show footpath T34 although Sketchley Lane can be made out which the claimed path links to.

Ordnance Survey 1815 Map Survey

27. Sketchley Lane can be seen at this time. These surveys do not show rural footpaths. A copy is attached as Appendix D.

Ordnance Survey Maps

28. The three maps below do show the claimed route as part of Sketchley Lane extending as far as the field where footpath T34 is adjacent to the field boundary. T34 might have been immediately reached through a gate or stile at the end of Sketchley Lane. The claimed route is not straight but kinks to the west, a feature that becomes more pronounced on later maps.

i. 25" (1:2500) Scale Map First Edition 1886 (XXXIV.7)

The map shows the claimed route as part of Sketchley Lane. The footpath to Ratcliffe Bridge (T34) bends in to meet the claimed route. A copy is attached as Appendix E.

ii. 25" (1:2500) Scale Map 1903 Edition (XXXIV.7)

The map shows the claimed route as part of Sketchley Lane. The footpath to Ratcliffe Bridge (T34) bends in to meet the claimed route. A copy is attached as Appendix F.

iii. (1:10560) Scale Map 1925 Edition (XXXIV.7)

The map shows the claimed route as part of Sketchley Lane. The footpath to Ratcliffe Bridge (T34) bends in to meet the claimed route. A copy is attached as Appendix G.

Ratcliffe Culey Enclosure Act 1766

29. A copy of the Enclosure Award was supplied with the application. There is no surviving plan for the award, but the text describes two footpaths which are of interest. The first description corresponds to the current day footpath T34.

One publick (sic) footway leading from the town street of Ratcliffe Culey in the usual tract through and over one ancient inclosure (sic) called the Tammy Croft into the lane near to Ratcliffe Culey stone Bridge and which said footway shall be deemed and taken to be the common footway to lead from Ratcliffe Culey towards the Mythe House Pinwall Grange and Polesworth.

30. The second description corresponds to the current day footpath T12.

One other publick (sic) footway leading from the town street of Ratcliffe Culey in the tract hitherto used through and over ancient inclosures called the Kings Yard and Kings Meadow to a footpath or bridge leading over the river into the Lordship of Little Sheepy and which said footway shall be deemed and taken to be the common footway to lead from Ratcliffe Culey towards great Sheepy and Little Sheepy.

A plan showing the locally understood location of the field names Tammy Croft, Kings Yard and Kings Meadow is attached as Appendix H.

31. The two descriptions in the Enclosure award are for separate footpaths. One starts on the town street and leads to Sheepy, the other starts on the same town street and leads to the Stone Bridge. There is no suggestion that the two paths join together to reach Main Street as is the case on the current Definitive map. It is therefore quite possible that the route for the footpath from Main Street to the stone bridge ran along Sketchley Lane and the claimed route.

Aerial Photographs

32. The 1969 aerial photograph has been studied in relation to this case. The claimed path is partly visible as a narrow route between hedges. The date

would be just a few years before the path was reportedly blocked. The photo is attached as Appendix K

Additional Evidence

33. The following documents have also been examined.

i. Abstract of the Title Messrs D A Axott Ltd

The abstract plan corresponds well with the Ordnance Survey map of 1884 and shows the route of the claimed path as an extension of Sketchley Lane running to end adjacent to footpath T34. A copy is attached as Appendix L

ii. 1925 Handover Plan

The handover plan was drawn up in 1925 when the Rural District Council relinquished responsibility for vehicular highways to the County Council. It shows the extents considered to be publicly maintainable at the time and was to ensure continuity through the transfer from one authority to the other. The maintainable extent of Sketchley Lane is coloured in green on the handover plan and corresponds to the highway extent of the current day. The continuation of Sketchley Lane which is now claimed as a footpath is not coloured green so this provides evidence that the claimed route is not a carriageway. This does not exclude the possibility that the claimed route was considered to be a footpath. A copy is attached as Appendix M.

iii. Land Registry Plans

The entire route comprising the current claimed footpath is excluded from the titles on each side. This is consistent with the publicly maintainable portion of Sketchley Lane which is not registered to any landowners. A copy is attached as Appendix N.

User Evidence

34. The User evidence in support of the application is in the form of a mixture of user evidence forms and letters of support from 13 witnesses. Seven people have completed user evidence forms, one of whom has included a letter, while six have provided letters only. All the witnesses have lived in Ratcliffe Culey although some have now moved away. Nine of the witnesses have provided evidence that they used the path within the relevant 20 year period, one was using it before the period, and three did not specify when they used the path. This evidence indicates that the route in question has been used as of right by the public for a period of 20 years

prior to 1970 when the path's status was brought into question. The user evidence is summarised in paragraphs below.

35. It is 47 years since the claimed path was blocked so it is perhaps not surprising that some of the dates given are approximate. A bar chart showing usage is attached as Appendix O.
36. The user evidence form asks a series of questions regarding the character and use of the path, and the answers given are summarised below.
37. **The Route:** Seven witnesses have provided a plan with their user evidence form. These are from the same source derived from Ordnance Survey mapping so there is no discrepancy in the route depicted. The descriptions in the letters of support accord with the evidence forms so there is no doubt as to the route claimed by the parish council.
38. **Type of use and status:** Ten of the witnesses report using the path on foot and not by any other means, so they are consistent in alleging that the claimed route is a footpath. Three witnesses do not specify type of use.
39. **Purposes of using the path:** Eight of the witnesses describe their use of the path as recreational, some used it as children to go and play in the River Sence. There is also anecdotal evidence that in the early 20th Century children from Ratcliffe Culey used Sketchley Lane and the claimed path to walk to school in Sheepy, until a school was opened in Ratcliffe Culey in the 1920s. The other witnesses do not comment.
40. **Bringing into Question:** Six witnesses report that they stopped using the path when it was blocked with hedge cuttings. This is reported to have been in the early 1970s, but the current postmistress whose father ran the post office at the time refutes that this happened. One witness records that the path was still in regular use when he arrived in the village in 1971, so the 20-year period has therefore been taken to start in 1950 and to run until 1970. The path has not been regularly used since then. The other witnesses do not comment.
41. **The Twenty-Year Period:** Ten witnesses have supplied evidence of use. The span of use of the path is from the 1930s up to the closure after 1971. One anonymous witness describes using the path in the 1930s and 1940s. One describes using it during the 1940s and 1950s. Four witnesses have used the path for a period in excess of 20 years, and two of those cover the whole 1950 to 1970 period. Eight witnesses report they were using the path up until, or shortly before, it was blocked off and their evidence falls into the relevant period. It should be noted that it is not necessary for all the witnesses to have used the path for the relevant period, instead all the evidence added together should cover the relevant period. Taken together there is continuous use for 35 years, so the 20-year period between 1950 and 1970 has been met. The other witnesses do not list years of use.

42. **Frequency of use:** Six witnesses report using the path occasionally. One says twice weekly, one several times a month and one once or twice a year. The other witnesses do not comment.
43. **Use by other people:** All the seven witnesses who filled in user evidence forms report that they saw other people using the path, one expands to say many, one reports that it varied, the other five do not comment.
44. **Use by tenants and employees:** None of the correspondents state that they were tenants or employees of the farm reached by using the path. It should be noted that the path itself is unregistered and has no known owner.
45. **Use by permission:** If a path or way is used by permission of a landowner then that use cannot be as of right. It is therefore important to determine if permission to use this path was given by the landowner, or a previous one. There is no known landowner for this land and in addition, eight of the witness's report that they did not seek or were granted permission to use the path. The other witnesses do not comment.
46. **Interruptions to use:** Seven of the witnesses report there were no interruptions to their use before the path was blocked off. The other witnesses do not comment.
47. **Verbal actions by the owner to prevent use :** Eight of the witnesses report they were not verbally deterred from using the path before the path was blocked off. The other witnesses do not comment.
48. **Actions by the owner to prevent use with structures:** Eight of the witnesses report they were not deterred from using the path by physical structures erected by any landowner before the path was blocked off. The other witnesses do not comment.
49. **Actions by the owner to prevent use with signs:** Eight of the witnesses report not seeing any signs erected by any landowner deterring them from using the path. The other witnesses do not comment.

Characteristics of the Path

50. **Structures facilitating the use of the path:** Eight witnesses report a stile on the claimed path, and one a fence. Seven of the witnesses who report the stile clarify that it was at the end of the claimed route giving access to the field therefore onto Footpath T34. The other witnesses do not comment.
51. **Width of the path:** Three witnesses describe the width of the path as between six and twelve feet, two as two to three yards, two as eight to ten feet and one as six feet. The width of the claimed path on the map does vary along the route. Measurement from the map gives a minimum width

of six feet and a maximum of 17 feet so these descriptions are all within the measured range. The other witnesses do not comment.

52. **Clear definition of the path:** Eight witnesses describe the path as well defined. This concurs with the fact that it ran between hedge rows. The other witnesses do not comment.
53. **Surface of the path:** Three witnesses describe the surface of the path as being gravel, two as earth and two as earth and stone. The other witnesses do not comment.
54. **Maintenance of the path:** Eight of the witnesses report they were not aware of any repairs to the path's surface or any structures along it. The other witnesses do not comment,

Summary of User Evidence

55. The four main issues relating to whether a public footpath has come into existence are:-
 - a) Was the path used for a continuous 20 years?
 - b) Was the path used as of right?
 - c) Was the use of the path interrupted?
 - d) Have the owners take reasonable actions to prevent the dedication of public rights?
56. Looking at the user evidence and the answers to the relevant questions it appears that the route has been used for a period of twenty years or more, that it has been used as of right rather than by permission, that use has not been interrupted, and that the landowners do not appear to have taken any reasonable actions to prevent access or erect and maintain signs within the twenty year statutory period.

Evidence of Rebuttal (Objections to the Application)

57. In the following section of this report the objectors' comments are written in italics, followed by the comments of the Director of Environment and Transport in plain type:-

Miss K Horton

58. Miss K Horton has supplied a representation attached as Appendix P. She makes 5 points as follows:
59. *Point (i). Her family have been resident in Ratcliffe Culey for 100 years, and her Aunt still lives at 12 Sketchley Lane, this property has rights to access a water pump in front of 14 Sketchley Lane. She believes the claimed path exists solely to provide access to the pump.*
60. LCC comment – The pump is marked with a letter P on the OS first edition 1886 map, about one third of the way along the claimed route. However,

the path runs further to the field boundary so is unlikely to have been solely to access the water pump.

61. *Point (ii). There is no documentary evidence to support the existence of the path.*
62. LCC comment – All the documentary evidence relating to the path has been examined in detail above and does support the application although it is not conclusive by itself.
63. *Point (iii). In recent years Miss Horton and Miss Boyt resident at No.16 (the Post Office) have told prospective path users that it is not a public right of way.*
64. LCC comment – The relevant period is from 1950 to 1970 so evidence of intention not to dedicate needs to date back to this time.
65. *Point (iv). There is no need for the path as footpath T34 can be accessed from Main Street by a path adjacent to Hunt's Farm (Redhouse Farm).*
66. LCC comment – There is an alternative route but the matter to be considered is whether the claimed path exists, not if it is needed.
67. *Point (v). Grass snakes occupy the area including the claimed path.*
68. LCC comment- Any works necessary if a public right of way is established can be carried out in winter to minimise any impact on snakes.

Miss A Boyt

69. *Miss A Boyt states she does not object, although she refutes the allegation that the path was blocked when her father cut down a hedge. She is also concerned that care should be taken not to adversely affect the grass snakes.*
70. LCC comment- Any works necessary if a public right of way is established can be carried out in winter to minimise impact on snakes.

Summary of Objections

71. The objection can be summarised as five points as follows:

Point (i). The path was private to give access to a water pump.

Point (ii). There is no documentary evidence to support the path.

Point (iii.). Residents have told prospective walkers that there is no public right of way.

Point (iv). There is no need for the path.

Point (v). Grass snakes have been seen in the area.

72. It should be noted at this point that for objections to be relevant in the meaning of the Act, they must show that action was taken by the landowners to inform the public that use of the claimed path was not as of right. Actions that would qualify for this include maintenance of notices and approaching walkers to inform them the path was not public. To consider these in turn;
73. Point (i). No evidence has been provided to back up the assertion that the path was purely for private use to access the pump, and in addition the location of the pump on old maps is only part way along the claimed path.
74. Point (ii). The claimed path is clearly shown on old maps in the same way as the rest of Sketchley Lane which is now public highway. The extent of the claimed path is not registered with the Land Registry, which is also the case for the length of Sketchley Lane which is recorded as carriageway on the highway extents, and this is suggestive that the claimed route is part of an ancient highway.
75. Point (iii). This is relevant evidence to show intention not to dedicate the path for the dates on which users were challenged, but the challenge was not during the 20-year period under consideration so does not act against this claim.
76. Point (iv). This is not considered relevant under the meaning of the act.
77. Point (v). If the path is found to be public, mitigation against disturbing snakes could be made, for instance clearance work would be carried out in the winter months when snakes are hibernating.

Site Survey by Leicestershire County Council

78. A site survey of the claimed path was made by an officer of the Council on 23rd November 2018. A plan showing the results of the survey with photos is attached as Appendix Q.
79. Photo Q1. The path starts at the end of the adopted part of Sketchley Lane and then turns left between the hedge to No.14 and a timber garage. This part is overgrown from both sides and from the ground but is walkable. There is a telegraph pole in the path.
80. Photo Q2. The path then bends to the right running between hedges and separated from the garden to No.14.
81. Photo Q3. On reaching the garden to No.16 there is no hedge between the claimed path and the garden. At the far side of No.16 there is a hedgerow made stock proof with the addition of an old pallet.
82. Photo Q4. On the other side of the hedge footpath T34 runs along the edge of the field known as The Clift. If the hedges were trimmed the available width of the path would be about 2 metres. There are no signs

along the claimed route, and there are no structures along the route apart from the hedges on both sides and the pallet in the hedge boundary of the field.

Consultations

83. Consultations with interested parties, user groups and utilities were also carried out by the County Council between the 6th February 2019 and 7th March 2019. The Leicestershire branch of the Ramblers Association, the Leicestershire Footpath Association, the Parish Meeting, Harborough District Council and utility companies were all consulted. There were no objections received.

Conclusion

84. The path was called into question when it was blocked in the early-to-mid 1970's. The exact year is now hard to establish. Users suggest it was blocked when a hedge between the path and the garden to 16 Sketchley Lane was pulled out, but this is disputed by the owner in residence. It is clear however that it has not been in regular use for many years. The date used for the purposes of the Application is 1970.
85. In support of the existence of the path both user and documentary evidence has been supplied and found. User evidence has been supplied by 13 people. Given the time elapsed this is a reasonable number of witnesses, their evidence is consistent and there can be no doubt as to the line of the claimed path. The 20-year period prior to 1970 is covered.
86. Early maps show that Sketchley Lane has existed at least since the early 19th Century. The Enclosure Award of 1760 has no surviving plan, but the written description of the path running from Ratcliffe Bridge to Main Street (now called T34) is consistent with a route using the claimed path and Sketchley Lane and makes no mention of joining the path to Sheepy as it does today. The first edition Ordnance Survey Map of 1885 shows the claimed path as continuous with the current publicly maintainable part of Sketchley Lane, and the footpath from Ratcliffe Bridge curves to meet the end of claimed path before running on to join the path to Sheepy (now called T12).
87. The surrounding Land Registry titles all exclude the claimed path along with the rest of Sketchley Lane and this is an indication that the whole of the route has public rights. Put together the documentary evidence supports the user evidence and claimed route.
88. Information supplied by residents of Sketchley Lane to rebut the claim has been carefully considered. Their position can be summed up as a view that the claimed path was a private track or occupation road, to be used to access the water pump and maybe the field known as The Clift. Some of the points made do not rebut the evidence rather they suggest reasons

why the claimed path is not needed, and as such are not strictly relevant. The point is also made that there is no documentary evidence to show the path existed. Some evidence of challenge to use is supplied, but this is outside of the claim period.

89. To sum up, user evidence is backed up by the unregistered nature of the land parcel, and the documentary record. The historic evidence suggests that the claimed route was part of the footpath to Ratcliffe Stone Bridge laid out at the time of the Enclosure Act in 1760. Even if this is considered to be inconclusive, the usage between 1950 and 1970 would be sufficient to create a public footpath along the claimed route. The challenge from residents is not sufficient to call into doubt the evidence in favour of the path.

Equality and Human Rights Implications

90. The E.U. Convention Rights and the Articles that set out the rights of individuals (such as respect for family life) can impact on certain decisions where the County Council is making decisions or setting policy of public access and Rights of Way issues. However, this impact is confined to the exercise of those powers and functions the County Council has to exercise discretion about proposals that require a balance between the benefits of the scheme and the potential adverse implications for landowners and others.
91. On Rights of Way applications, proposals to divert a Right of Way or to use statutory powers to compulsorily create a new Right of Way should have reference to the Convention on Human Rights and take these issues into account when deciding if that scheme should proceed.
92. However, applications submitted to the County Council under the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order have limited discretion. These applications do not create new footpaths etc., but only grant recognition of existing Rights of Way that, in this case, may have been deemed to have been dedicated by the landowner, even if only by default. For that reason, arguments based on a potential breach of any of the Article rights have no relevance to such applications. The Secretary of State has indicated that objections based on such rights will not be regarded as relevant.
93. It is considered that there are no equality and human rights implications arising from this report.

Background Papers

User Evidence Forms
Email from Miss A Boyt

Appendices

- A. M1109P Proposal Plan
- B. Copy of the Application from Witherley Parish Council
- C. Greenwoods Map of 1826
- D. Ordnance Survey of 1815
- E. Ordnance Survey 25-inch map published 1886
- F. Ordnance Survey 25-inch map published 1903
- G. Ordnance Survey 25-inch map published 1925
- H. Map of field names
- I. Witherley Parish Council survey and schedule of 1952
- J. First Definitive Map 1952
- K. Aerial photo taken in 1969
- L. Abstract of title form 1912
- M. Handover Map for highways transferring from Hinckley UDC to Leicestershire in 1925
- N. Land Registry Map Search showing extent of registered titles
- O. User evidence bar chart
- P. Representation from Ms K Horton
- Q. Photo survey of the claimed route dated November 2018