



DEVELOPMENT CONTROL AND REGULATORY BOARD

3rd April 2025

APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER

**PROPOSED ADDITION OF PUBLIC FOOTPATH K110 AT
LECONFIELD ROAD, NANPANTAN, LOUGHBOROUGH**

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT

PART A

Purpose of the Report

1. The purpose of this report is to seek determination of an application made under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath to the Definitive Map and Statement of Public Rights of Way ('Definitive Map'), as shown on the attached Plan No. M1269 attached as Appendix A to this report.
2. Under the proposal Public Footpath K110 would be added to the Definitive Map on the route shown as A-B-C-D-E-A on the plan.

Recommendation

3. It is recommended that an Order be made under the provisions of Section 53 of the Wildlife and Countryside Act 1981 to add Public Footpath K110 at Nanpantan, Loughborough to the Definitive Map as shown on Plan No. M1269 appended to this report.

Reasons for Recommendation

4. The application satisfies the relevant statutory criteria in that the evidence shows that a right of way subsists or is reasonably alleged to subsist.

Circulation under the Local Issues Alert Procedure

5. This report has been sent to Mr. J. Morgan CC.

Officer to Contact

Edwin McWilliam, Access Manager
Environment and Transport Department
Tel. 0116 305 7086
Email: footpaths@leics.gov.uk

PART B

Background

6. An application was made by Barbara Singer of Tynedale Road, Loughborough in April 2021 to modify the Definitive Map by adding an alleged Public Footpath from Leconfield Road, following a circular route through an adjacent field. A copy of the application form and plan is attached as Appendix B.
7. The application was made following an outline planning application, for 30 dwellings on the field, which was submitted to Charnwood Borough Council in 2020 (Reference P/20/2199/2). The outline planning application was refused by Charnwood Borough Council but was granted on appeal in March 2023. The developers have been made aware of the modification order application throughout the planning process and have not to date submitted a further application for reserved matters or full planning permission.
8. The application claims that a highway has come into being based upon the alleged use of the route by members of the public, without challenge, over a period of more than 20 years. Fifty-five user evidence forms have been submitted as part of the application detailing use of the route. The stated usage of the path spans between 1971 and 2021, a period of 50 years

Site Survey

9. A site survey of the application route was undertaken by an officer of the Environment and Transport Department on the 17th April 2024, the results of which are shown on the site survey plan and accompanying photographs attached as Appendix C.

Legal Considerations

10. The County Council 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

11. The County Council's obligations are set out in Section 53(2) of the Wildlife and Countryside Act 1981. This provides that: -

" (2) As regards every definitive map and statement the surveying authority (*Leicestershire County Council being such an authority*) 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 from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, 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”.

12. Subsection (3)(c) of S.53 provides that an event includes:

“(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 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.....; or.....
- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description”.

Test A and Test B

13. The alternative propositions in S.53(3)(c)(i) are referred to as Test A (that a Right of Way does subsist) or Test B (that a Right of Way is reasonably alleged to subsist) over the land.

14. To meet Test A the County Council 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. Should an order be made on the basis that a Right of Way is reasonably alleged to subsist the County Council, or Inspector if the matter were to be referred to the Planning Inspectorate due to objections having been made, would at confirmation stage need to be satisfied that the evidence was sufficient to meet Test A.

15. Section 53 provides the legal basis for an Order to be made but does not assist in establishing what evidence might show that a Public Right of Way subsists. Where an application relies on evidence of use of a claimed route the Highways Act 1980 provides the relevant statutory test.

Highways Act 1980

16. Section 31 of the Highways Act 1980 provides 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 erected,

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”.

17. Therefore if the application and any other evidence considered by the authority shows there to have been uninterrupted 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. The phrase ‘as of right’ in Section 31(1) means that any such use must be without force, without permission and not in secrecy. 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.

18. A landowner can rebut the presumption of dedication by producing evidence that users were successfully challenged or asked to leave the land. A landowner can also erect barriers so as to prevent public use of a route over the land and this is likely to be sufficient to prevent the route becoming a Right of Way. The interruption of use by the public 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. Alternatively, a landowner may deposit with the appropriate council a map and statement, and subsequent declarations, that no ways over the land, other than those specifically indicated, have been dedicated as highways.

19. The landowner's actions must be open and obvious to anyone who might use the way. It is not sufficient to tell other third parties or even their own solicitor they had no intention to dedicate the way. Therefore, diary records, correspondence or private journals are unlikely to provide sufficient evidence of a lack of intention to dedicate a Right of Way.

20. The authority must determine whether 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, and if so whether the landowner has nevertheless demonstrated a lack of intention to dedicate so as to rebut the presumption..

21. On the evidence available, the authority must first decide if there has been use of the route by the public for at least 20 years uninterrupted and unchallenged prior to some interruption of use or such other act as brings the status of the route into question. The relevant period for this application is considered to be from 2020 when the Landowners state that Private Property notices were installed on site, back twenty years to 2000, although an earlier period could be considered if it is concluded that an earlier challenge was made.
22. The authority must then decide if that presumed dedication by the owner over the relevant period is affected by any action taken during that time to challenge or show by some sufficiently overt act that there was no intention to dedicate the way.

PART C

Evidence in Support of the Application

User Evidence

23. The application is supported by 55 User Evidence forms, a summary of which is included in Appendix D.
24. **The route claimed:** All of the witnesses signed a plan attached to their User Evidence Forms, indicating that they have used the route which is subject to the claim. The plan appears to have been supplied to the witnesses from a single source.
25. On the User Evidence Forms the witnesses have described the route they have used. Forty-two stated they have used the whole circular route described as being from Leconfield Road towards Burleigh Wood then to the Grade II Listed Farmhouse / Hill top viewpoint before returning back to Leconfield Road. Ten described using the route from Leconfield Road to Burleigh Wood. One described using the route from Leconfield Road to "Close to the woods". One described using the route to access Nicholson Road and one witness did not complete the description.
26. **Bringing into Question:** The managing agent for the Landowner has stated in his statutory declaration that laminated notices stating "Private Property No Public Right of Way or Access" were erected at entrance points to the field in June 2020. Although this is mentioned by only one of the users, the erection of such notices would have been sufficient to bring the status of the route into question, so that the relevant period for this application may be from June 2020, back twenty years to June 2000. In the alternative, if the evidence of the single user and managing agent were not accepted, then at the very latest the status of the route will have been brought into question by the submission of the application now under consideration.
27. **Period of Use:** The evidence forms submitted show that witnesses have claimed to have used the route since 1971, which coincides with when the Leconfield Road development was constructed, until the application under consideration was

submitted in 2021, a period of 50 years. Of the fifty-five user evidence forms submitted, thirty-four stated that they have used the route for a period of 20 years prior to 2020. The remaining twenty-one witnesses stated they have used the route for periods of time varying between 1 and 19 years.

28. **How frequently was the path used:** The stated frequency of use varies from twice daily to occasionally with a variety of frequencies in between.
29. **As of Right:** None of the witnesses stated that they have ever been given or sought permission to use the route and none stated they have ever been prevented from using the route. Only one of the witnesses stated that they had seen signs along the route which they noted appeared in June 2020. This evidence concurs with the evidence of the Landowner's Managing Agent as described in paragraph 26. Thirty-six of the witnesses stated that they had come across physical structures along the route. The structures described are an unlocked Field Gate or stile at the Leconfield Road entrance point and a stile and field gate at the north-eastern corner of the field in the vicinity of Burleigh Wood. The remaining nineteen witnesses stated that they had not encountered any structures.
30. **Without Interruption:** None of the witnesses stated any period of interruption to use of the route. Two witnesses stated that the field was grazed with cattle in the 1980s, but access was never prohibited.

Characteristics of the Path

31. **Width:** The width of the route described by the witnesses varies between 30.4 cm (1 Foot) and 1.5m (5ft). It is stated that the path is wider at the entrance points and the available width of the path varies depending on the seasonal vegetation growth. Some users may be referring to the visible signs of the path on the ground whereas others may be considering the width used, perhaps walking side by side with others. The width of a right of way is unlikely to be just the visible evidence of the route on the ground within a grass field, given the stature of a typical user.
32. **Surface:** The surface of the path is described by the witnesses as being a generally grass/ mud surface. It is stated that it depends on the weather. All the 55 witnesses state that the path is a visible clearly defined route to follow.
33. **Maintenance and Repairs:** Six of the fifty-five witnesses stated that they are aware of the grass having been cut, two of the witnesses mentioned the replacement of the wooden gate with a metal one and one witness mentioned an old stile being removed and a new fence being installed around the wood. The remaining witnesses stated that they were not aware of any maintenance or repairs being undertaken on the path.

Summary of User Evidence

34. Fifty-five statements are presented as evidence of continuous use of the alleged path. The stated usage appears to have begun in around 1971, which coincides

with when the Leconfield Road development was constructed. (See Appendix D for a summary of the evidence)

35. The amount and quality of user evidence submitted in support of the application indicates that the route has been used by the public for well in excess of 20 years, from 1971. None of the witnesses have identified any period of interruption to use of the route. The only structures stated are an unlocked field gate and stile on Leconfield Road and just one witness referred to signs along the route in June 2020.

Documentary Evidence

36. All documentary evidence is included in Appendix E, which is comprised of various aerial photographs of the site.

Aerial Photographs

37. Aerial photographs show that Leconfield Road was not developed until the late 1960s – early 1970s. The 1969 Aerial photograph shows part of the development being constructed. There are wear lines visible across the field in the aerial photographs dating from 2000 to the most recent aerial photograph dated 2022.
38. The aerial photograph of 2000 shows some visible lines, most clearly over an alignment which could be the part of the claimed route A – E – D - C on the plan appended to this report. The photograph taken in 2006, which seems to show a recently mowed field, shows most prominently a wear line that accords with the section of the path A – E – D but the wear line continues around the field on a different alignment than C – B – A.
39. The 2011 photograph shows multiple wear lines, still showing a route that approximates to the claimed route A – E – D – C and between C – B -A seems to show wear lines approximating the claimed route together with other wear lines. The other routes are less visible in the 2017 photograph but there do seem to be wear lines leading to the claimed route. The 2022 photograph is, like the 2006 photograph, of a recently mowed field with some visible lines approximating the claimed route.

User Photographs of Route being Claimed.

40. The applicant and three members of the public who completed User Evidence forms also submitted photographs of the route and/or of themselves and family members using the route being claimed between the years 1981 and 2021. See Appendix F.
- The applicant, Barbara Singer, attached as part of the application 17 photos of the route being claimed and a plan showing the location of where the photographs are taken from. The plan associated with the photographs is signed and dated 19th April 2021.
 - Cameron Singer attached two photos to their User Evidence form. The first titled “Sledging down the hill part of the track in 1981. “Myself and friend aged 1 year

old". The second photo is titled "December 2018 with my 2-year-old walking down the track towards Leconfield Road". The location of the photos is annotated on their User Evidence Form plan.

- David Grainger attached six photos to their User Evidence form. Three are dated 1997 and show children playing in the snow. One is dated November 2010 and shows the access gate to the field on Leconfield Road, with footprints in the snow going towards the gate. The final two photographs are dated January and February 2008 and show views from and within the field in question.
- Matthew Martin attached 12 photos to their User Evidence form. The first is titled "Our Children on the path with view of the grade 2 listed Tudor farmhouse in the background" Date unknown. The second photo is taken in the snow and is titled "The top of Leconfield Road showing the footfall to the field and the path" date unknown. The following 6 photos are titled "Locals and our children sledging down the path February 2021". The next two photos are titled "Our children using the path to access the woods", date unknown. The final two photographs are undated and titled "Looking back to our estate along the path" and "Gate accessing start of path, showing the access gate on Leconfield Road open".

Objections/Representations with Officer's Comments

41. A Preliminary Consultation exercise was carried out with statutory undertakers, the Borough Council, User Groups and the landowner, between the 9th December 2022 and the 3rd February 2023.
42. One objection was received from EA Lane & Sons who act on behalf of the owners of the field, the Helen Jean Cope Charity. Their objection is supported by a Counsel's Opinion prepared by Ruth Stockley, Barrister of Kings Chambers and three sworn Statutory Declarations, from two previous farm tenants of the land, and Noel Manby the Managing Agent for the Helen Jean Cope Charity.

Counsel's Opinion prepared by Ruth Stockley, Barrister of Kings Chambers on behalf of Helen Cope Charity – 9th November 2023.

43. The Opinion submitted with the objection is attached as Appendix G to this report. Officer comments are set out in paragraphs 42 to 50 below.
44. **Previous Modification Order Application affecting the Land:** In 2000 the County Council received a Modification Order application affecting the land which is subject to this application. The application route ran from Nanpantan Road, along the access to the Old Farmhouse and then in a generally northerly direction across the field in question to point D on the plan, rather than a circular route from Leconfield Road. The application was supported by limited User Evidence and as a request for further evidence elicited nothing further officers considered that the matter should not be taken forward. Counsel is of the view that there is an inconsistency with the application if any of the witnesses who previously completed User Evidence for the 2000 application are now claiming to have used the route subject to this application.

A review of the earlier application, which was supported by nine User Evidence forms, has confirmed that none of the users who have completed a user evidence form in relation to the current application completed a user evidence form in relation to the earlier one.

45. **Inconsistency in the route being claimed:** Counsel further suggests that the witnesses who have completed the user evidence forms in support of the claimed route have described using different routes across the land including using the path to gain access to Burleigh Wood.
46. Counsel also notes that the aerial photographs submitted in support of the application show other routes across the field and are of limited value as the field has been used for agriculture and would have been accessed by the farmer for such purposes. She asserts that any public use of the claimed route would have been inconsistent with the agricultural use, having members of the public walking through the field as claimed, when it was being grazed by livestock, particularly with calves, would have been dangerous, and most members of the public would not have taken a circular route in such circumstances.
47. All witnesses have attached a signed plan to their completed User Evidence Form showing the route they have walked which corresponds with the application route. On the User Evidence Forms the witnesses have described the route they have used. Forty-two stated they have used the circular route described as being from Leconfield Road towards Burleigh Wood to the Grade II Listed Farmhouse / Hill top viewpoint and then back to Leconfield Road. Ten described using the route from Leconfield Road to Burleigh Wood. One described using the route from Leconfield Road to "Close to the woods". One described using the route to access Nicholson Road and one witness did not complete the description. The descriptions given are not of such detail that it is possible to conclude whether they are describing exactly the claimed route, but each witness has appended the same plan to their user evidence form.
48. Other routes across the field may be identified on aerial photographs however wear lines approximating parts, if not all, of the claimed route can be seen in the aerial photographs dating from 2000 until the latest version in 2022. It is acknowledged that the field has been grazed by livestock and mown for hay and silage over the period of the claim, although this may be a deterrent for some users of the route, it is a common situation on Public Rights of Way throughout the County.
49. **Not as of Right:** Counsel states, on behalf of the landowner, that use of the route has not been without force. It is said that until 2008 the only means of access to the field from Leconfield Road was either by climbing a short length of fence or forcing a way through a mature Hawthorn hedge. From 2008 onwards the only means of access would have involved climbing over the same fence or a new access gate secured by barbed wire which was checked daily during the grazing season. The tenant farmers also state that they regularly challenged trespassers and the statutory declaration of Noel Manby states that private property notices were

erected on several occasions. It is therefore Counsel's view that use by the public was contentious and not as of right.

50. In the user evidence submitted in support of the application, witnesses stated that the access from Leconfield Road was via an unlocked gate or a stile. None of the witnesses stated that they have ever been deterred from using the route or been given permission and only one witness stated that they had seen signs, and that was only in 2020.

Statutory Declaration of Richard George Bailey of Bawdon Lodge Farm, Nanpantan – 3rd November 2023.

51. The full Statutory Declaration is attached as Appendix H to this report and the main comments are summarised with Officer comments in paragraphs 52 to 58 below.

52. Mr Bailey, along with his mother, farmed the land in question between 1997 and 2019, initially stocking the field with young heifers during the grazing season between April – November. In 2000 / 2001 the dairy herd was sold, and the field was sub-let to Richard Smith of Holywell Farm.

53. **Not as of Right:** Mr Bailey stated that prior to 2000/2001 the field suffered from trespass from local residents accessing the field by climbing over a short length of post and rail fencing adjoining the fire damaged tree in the boundary adjoining Leconfield Road. The boundary was stock proof with no gaps and was inspected on a daily basis as part of the shepherding process. Mr Bailey stated that both he and his late father challenged trespassers who had accessed the site by force by climbing the fence.

54. Mr Bailey also stated that he is aware of the notices displayed by the Charity's Land Agent, Noel Manby in June 2020 advising that the field is "Private Property". The notices were posted adjacent to the Leconfield Road access gate and the access adjoining Burleigh Wood.

55. In the user evidence submitted in support of the application, witnesses stated that the access from Leconfield Road was via an unlocked gate or a stile. None of the witnesses stated that they have ever been deterred from using the route or been given permission and only one witness stated that they had seen signs in 2020.

56. **Inconsistency in the route being claimed:** Mr Bailey stated that he did not witness any members of the public who trespassed on the land walking the specific route between Points A-E on the plan. The most common route appeared to be a short cut from Leconfield Road north-westerly to Burleigh Wood.

57. All witnesses have attached a signed plan to their completed User Evidence Form showing the route they have walked which corresponds with the application route.

58. On the user evidence forms the witnesses have described the route they have used. Forty-two stated they have used the circular route described as being from Leconfield Road towards Burleigh Wood to the Grade II Listed Farmhouse / Hill top viewpoint and then back to Leconfield Road. Ten described using the route from Leconfield Road to Burleigh Wood. One described using the route from Leconfield Road to "Close to the woods". One described using the route to access Nicholson Road and one witness did not complete the description.

Statutory Declaration of Richard Smith of Holywell Farm, Ashby Road, Loughborough – 3rd November 2023.

59. The full Statutory Declaration is attached as Appendix I to this report and the main comments are summarised with Officer comments in paragraphs 60 to 66 below.
60. Mr Smith occupied the land as sub-tenant of Richard Bailey from 1st April to the 30th November each year on an ad hoc basis from 2001 until the field was removed from the Baileys Farm Tenancy Agreement in 2019. Mr Smith grazed the field with his own cows and calves from the beginning of April to the end of November. He would also mow the field for either silage or hay in May / June each year.
61. **Not as of Right:** Mr Smith stated that during the time of his occupation of the land the access gate adjoining Burleigh Wood and the new access gate on the boundary of the land with Leconfield Road was not chained and padlocked until July 2021. They were both secured with barbed wire and consequently any unauthorised access would only be possible by climbing over the gate or adjoining fence. The barbed wire securing the gates would be checked daily during the grazing season.
62. Mr Smith also stated that during the time the land was stocked with his cattle he would always check on them once a day. He challenged dog walkers and other members of the public on many occasions informing them that the land was private, that there was no public footpath crossing the field, and about the possible dangers posed by the cattle. Mr Smith stated that members of the public would often leave the field when challenged.
63. In the user evidence submitted in support of the application, witnesses stated that the access from Leconfield Road was via an unlocked gate or a stile. None of the witnesses stated that they have ever been deterred from using the route or been given permission.
64. **Inconsistency in the route being claimed:** Mr Smith stated that he did not witness any members of the public trespassing on the land walking the specific route shown as A-B-C-D-E on the plan. The most common route witnessed was a short cut from Leconfield Road directly in a north-westerly direction only to Burleigh Wood.
65. All witnesses have attached a signed plan to their completed User Evidence Form showing the route they have walked which corresponds with the application route.

66. On the User Evidence Forms the witnesses have described the route they have used. Forty-two stated they have used the circular route described as being from Leconfield Road towards Burleigh Wood to the Grade II Listed Farmhouse / Hill top viewpoint and then back to Leconfield Road. Ten described using the route from Leconfield Road to Burleigh Wood. One described using the route from Leconfield Road to "Close to the woods". One described using the route to access Nicholson Road and one witness did not complete the description.

Statutory Declaration of Noel Manby of 100 Regent Road, Leicester – 3rd November 2023.

67. The full Statutory Declaration is attached as Appendix J to this report and the main comments are summarised with Officer comments in paragraphs 68 to 76 below.
68. Mr Manby has acted as Managing Agent for the Helen Jean Cope Charity (formerly the Helen Jean Cope Trust) since July 2004. The management of the Charity's land was formerly with Alan Tapper of E-Surv (formerly Gartons).
69. **Not as of Right:** Mr Manby stated that both Mr Bailey and Mr Smith have subsequently informed him that whilst they were in occupation of the field, they challenged dog walkers and members of the public who were trespassing on the Charity's land on numerous occasions. However, these incidents were not reported at the time and no accurate record exists of when they took place.
70. Mr Manby also stated that there was no direct vehicular or pedestrian access to the field from Leconfield Road before the new agricultural access was constructed in 2008. Members of the public could only have gained access to the field by climbing over the post and rail fence via Leconfield Road or via the field gate adjoining Burleigh Wood.
71. Mr Manby goes on to state that he personally put-up notices at the entrance to the site and the access adjoining Burleigh's Wood on a number of occasions advising the field is private property (no dates given). The Notices once posted were removed by persons unknown. Laminated signs stating "Private Property No Public Right of Way or Access" were installed on the Leconfield Road access and gateway adjoining Burleigh's Wood on the 17th June 2020. These signs were removed by persons unknown. Similar signs were erected over the next 12 months and in 2021 Bowbridge Land erected Heras fencing at both access points, installed their own sign stating, "Private Keep Out" and secured the Leconfield Road access gate with a padlock and chain. Photographs of the notices installed on the 17th June 2020 and the notices and fencing installed on the 21st July 2021 are included in the Statutory Declaration.
72. In the user evidence submitted in support of the application, witnesses stated that the access from Leconfield Road was via an unlocked gate or a stile. None of the witnesses stated that they have ever been deterred from using the route or been given permission. Only one witness stated that they had seen signs in 2020.

73. **Inconsistency in the route being claimed:** Mr Manby stated that he never witnessed anyone trespassing on the land using the line of the footpath subject to the application. Perusing historical aerial photography of the site over the last twenty years or so, he has not seen any evidence of anyone using the route of the footpath, or any evidence of such a footpath as claimed or at all.
74. All witnesses have attached a signed plan to their completed User Evidence Form showing the route they have walked which corresponds with the application route.
75. On the User Evidence Forms the witnesses have described the route they have used. Forty-two stated they have used the circular route described as being from Leconfield Road towards Burleigh Wood to the Grade II Listed Farmhouse / Hill top viewpoint and then back to Leconfield Road. Ten described using the route from Leconfield Road to Burleigh Wood. One described using the route from Leconfield Road to “Close to the woods”. One described using the route to access Nicholson Road and one witness did not complete the description.
76. Other routes across the field may be identified on aerial photographs however consistently the route being claimed can be clearly seen on aerial photographs dating from 2000 until the latest version in 2022.

Summary of Objections

77. Under Section 31 of the Highways Act 1980 the landowners must show sufficient evidence that there was no intention to dedicate the land as a Public Footpath. Evidence in rebuttal has been received and is outlined above. The documentation alleges that use by the public was by force and not as of right since the public had to climb a fence or gate to access the path, tenant farmers challenged trespassers and notices were erected on several occasions. None of these actions, apart from one witness stating to have seen signs in 2020, are reported in the user evidence submitted in support of the application.

Views of the Local Member

78. The Local Member, Mr Morgan CC has been consulted on the application and provided a “No Comments” response on 10th May 2024.

Financial Implications

79. If an Order is made and confirmed, the public footpath will become a public highway. The proposed footpath will be over a grass field, the surface of which will be the responsibility of the Highway Authority to maintain should it be required. Any works required to make the path accessible and visible to the public, such as gates and signage, will also be the responsibility of the Highway Authority to fund and maintain.

Equality and Human Rights Implications

80. 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.
81. Proposals by the County Council 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 of Human Rights and take these issues into account when deciding if that scheme should proceed.
82. Where an application has been submitted to the County Council under the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order it has to balance the human rights against the provisions of the legislation. 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.

Conclusion

84. The issue is whether there has been uninterrupted use, for a minimum period of 20 years of the claimed route, or there is such other evidence of use that would give rise to a presumption of, or deemed, dedication.
85. If such use is established the authority must further consider whether the landowner has provided sufficient evidence to show that they had no intention to dedicate it. The lack of intention has to be demonstrated at some point during the 20-year period.
86. In this case the evidence in support of use is good. The application is supported by fifty-five user evidence forms. The evidence forms submitted show that witnesses have claimed to have used the route since 1971 until the Modification Order application was submitted in 2021, a period of 50 years. This satisfies Section 31 of the Highways Act 1980 in that there has been use by the public for a minimum period of 20 years. Of the fifty-five User Evidence forms submitted, thirty-four stated that they have used the route for a period of 20 years prior to 2020, when the status of the route was brought into question by the erection of notices. The remaining twenty-one witnesses stated they have used the route for periods of time varying between 1 and 19 years.
87. The user evidence suggests the path has been used as of right by members of the public and that the landowners took no action to deter use until the erection of signs in 2020.

88. Under Section 31 of the Highways Act 1980 the landowners must show sufficient evidence that there was no intention to dedicate the land as a Public Footpath. Evidence in rebuttal has been received and the argument has been made that use by the Public was by force and not as of right since the public had to climb a fence or gate to access the path, tenant farmers challenged trespassers and notices were erected on several occasions. None of these actions, apart from one witness stating to have seen signs in 2020, are reported in the User evidence submitted in support of the application.
89. In view of the evidence supplied it is considered that the requirements to meet Test B have been met, i.e. that the claimed Right of Way is reasonably alleged to subsist. The evidence of the users and the landowners are contradictory with regard to both access to the land and to challenges made to users. However, there is no clear contemporaneous evidence of the challenges to use said to have been made by the tenants who occupied the land during the relevant years. It is therefore recommended that an Order should 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. M1269 attached as Appendix A to this report.

Appendices

- Appendix A – Order Plan M1269
- Appendix B – Application Form and Plan
- Appendix C – Site Survey Plan and Photographs
- Appendix D – User Evidence Summary
- Appendix E – Documentary Evidence
- Appendix F – User Photographs of Route
- Appendix G - Counsels Opinion prepared by Ruth Stockley, Barrister of Kings Chambers on behalf of Helen Cope Charity – 9th November 2023.
- Appendix H - Statutory Declaration of Richard George Bailey of Bawdon Lodge Farm, Nanpantan – 3rd November 2023.
- Appendix I - Statutory Declaration of Richard Smith of Holywell Farm, Ashby Road, Loughborough – 3rd November 2023.
- Appendix J - Statutory Declaration of Noel Manby of 100 Regent Road, Leicester – 3rd November 2023.