

Application for a Definitive Map Modification Order
Proposed Addition of Public Footpath K110 at Leconfield Road,
Nanpantan, Loughborough.

REPORT OF THE SUSTAINABLE TRAVEL TEAM
DEPARTMENT OF ENVIRONMENT AND TRANSPORT

15th May 2024

Purpose

1. To consider an application made under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath to the Definitive Map, as shown on the attached Plan No. M1269.

Summary Of Application

2. 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.
3. The application was made following an Outline Planning Application for 30 dwellings, on the field, submitted to Charnwood Borough Council in 2020 (P/20/2199/2). The Planning Application was refused by Charnwood Borough Council but was granted by Appeal in March 2023. The developers have been made aware of the Modification Order application during the planning process and have not to date submitted a further application for Reserved Matters or Full Planning Permission.
4. 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. The route being claimed can be clearly seen on Aerial photographs from 2000 to the most recent Aerial photograph dated 2022.
5. Fifty-Five User Evidence Forms have been submitted as part of the application detailing the public's use of the route. The stated usage of the path spans between 1971 and 2021, without challenge, which fulfils the 20-year rule.
6. Photographs of the route are attached as Appendix A

Legal Considerations

7. 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

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

S.53 (2) 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.

9. Subsection (3) of S.53 says an event includes:

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

(a) 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.

(b) 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

10. The issue for the authority is to decide if the application satisfies the requirements of Section 53. The County Council 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.
11. 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.
12. 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

13. 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.

14. 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.
15. A landowner can do this 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 and 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.
16. 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 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 landowners' intentions.

17. 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 consider if the landowner has successfully rebutted any such implied decision.
18. 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 this being brought 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.
19. The Authority 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.

Evidence in Support of the Application

Aerial Photographs

20. 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. The route being claimed can be clearly seen on Aerial photographs from 2000 to the most recent Aerial photograph dated 2022.

User Evidence

21. The application was submitted with 55 witness statements in support. The statements would appear to provide cogent evidence that satisfies the criteria as set out in the Highways Act 1980.
22. **Years 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 Modification Order application was submitted in 2021, a period of 50 years. Of the Fifty-five User Evidence forms submitted, thirty-five stated that they have used the route for a period of 20 years prior to the year 2021. The other twenty correspondents stated they have used the route for periods of time varying between 2 and 14 years.
23. **As of Right:** None of the correspondents stated that they have ever been given or sought permission to use the route and none state they have ever been prevented from using the route. Only one of the correspondents stated that they had seen signs along the route in June 2020.
24. **Without Interruption:** None of the correspondents state any period of interruption to use of the route, however two correspondents do state that the field was grazed with cattle in the 1980s, but access was never prohibited. Thirty-Six of the correspondents stated that they had come across physical structures along the route. The structures stated are an unlocked Field Gate or stile at the Leconfield

Road point of entrance and a stile and field gate at the north-eastern corner of the field to enter Burleigh Wood. The remaining nineteen correspondents stated that they had not encountered any structures.

25. 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

Preliminary Consultations

26. 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.
27. One objection was received from EA Lane & Sons who act on behalf of the owners of the field, Helen Jean Cope Charity. Their objection consisted of a Counsels 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.

Evidence of Rebuttal - Objection to the Application

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

28. **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 route however ran east to west across the parcel of land rather than a circular route from Leconfield Road. The application was supported by limited User Evidence and as such was never confirmed. The Objector is of the view that there is an inconsistency with the application if any of the correspondents who previously completed User Evidence for the 2000 application and are now claiming to have used the route subject to this application.
29. The 2000 application was supported by nine User Evidence forms, none of the nine have completed a form for this application.
30. **Inconsistency in the route being claimed:** The objector states that the route being claimed is inconsistent as it differs significantly from the route claimed in 2000 and that some of the correspondents who completed the User evidence forms describe using different routes across the land including using the path to gain access to Burleigh Wood.
31. They are also of the view 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. Any public use of the claimed route would have been inconsistent with the agricultural use, having members if 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.

32. Although correspondents have described different routes they have taken on their completed User Evidence Forms, they have each attached a plan showing the route that they have walked which corresponds with the application route. 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. 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.
33. **Not as of Right:** The objector states that use of the route has not been without force. 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. The objector's opinion is that use by the public was contentious and not as of right.
34. In the user evidence submitted in support of the application, correspondents state that the access from Leconfield Road was via an unlocked gate or a stile. None of the correspondent's state that they have ever been deterred from using the route or been given permission and only one correspondent stated that they had seen signs in 2020.

Views of the Local Member

35. The Local Member Jonathan Morgan was consulted and provided a "No Comments" response on 10th May 2024.

Conclusion

36. The basis of the claim is the User Evidence forms as submitted. The application is supported by Fifty-five User Evidence forms. The period of claimed use starts in 1971 until the application was made in 2021, which satisfies Section 31 of the Highways Act 1980 in that there has been use by the public for a minimum period of 20 years.

37. 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.
38. Should the application continue to be contested and result in a Public Inquiry, the statements will be subject to close scrutiny.
39. 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 evidence states that use by the Public was by force and not as right as 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.
40. For the above reasons it is concluded that on the balance of probabilities a Right of Way is more likely than not to exist over the land in question. It is also concluded that Test A as described above is met and that the requirements of Section 53 of the Wildlife & Countryside Act apply. An Order should therefore be made adding this route to the Definitive Map as a Public Footpath.

Recommendation

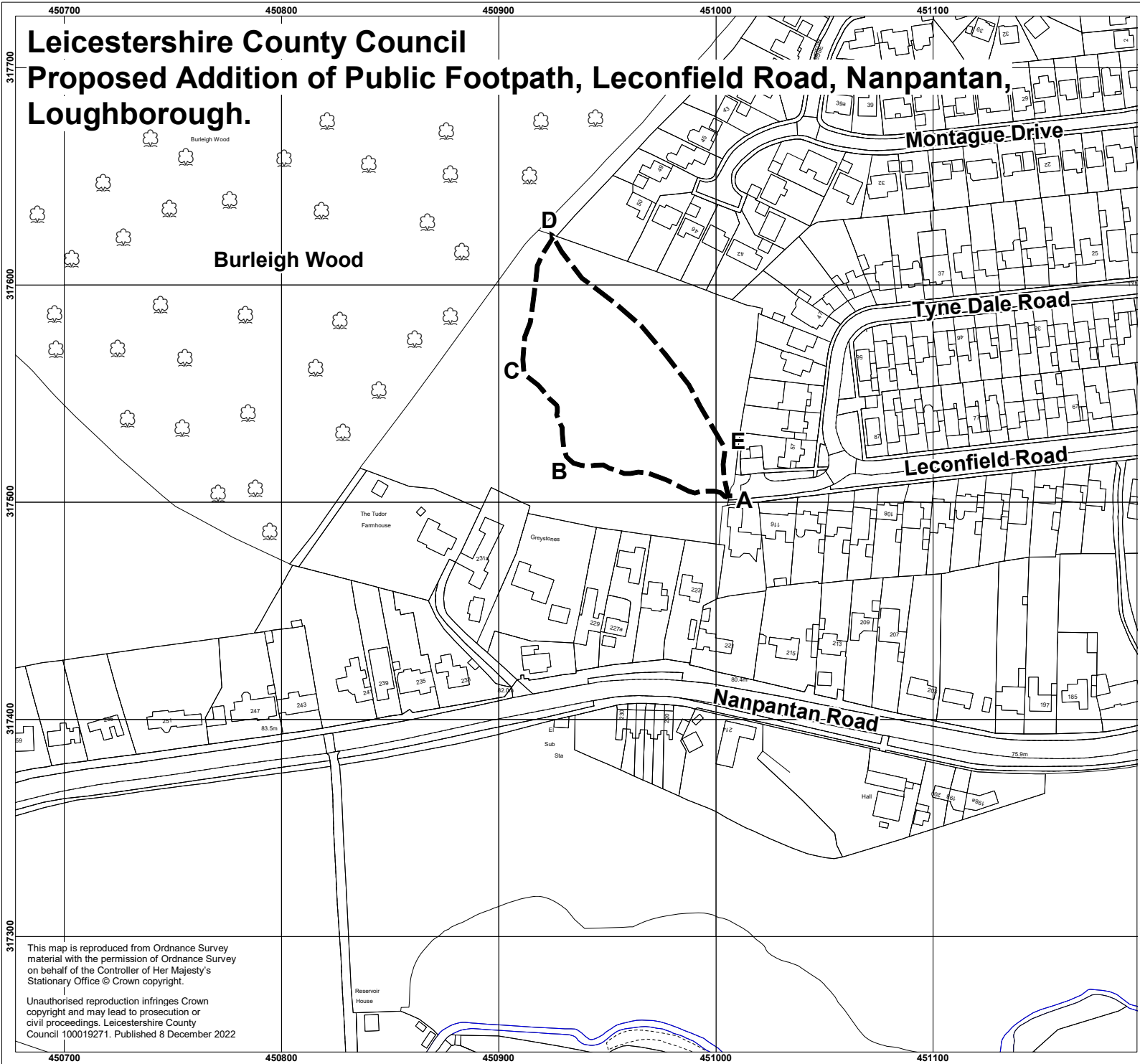
41. In light of the objection received during Preliminary Consultations, it is recommended that the case is considered at a full meeting of the Development Control and Regulatory Board with a recommendation to make a Definitive Map Modification Order under Section 53 of the Wildlife and Countryside Act 1981. This will provide an opportunity for the interested parties to advocate their point of view to the Board Members.

Case Officer and Contacts

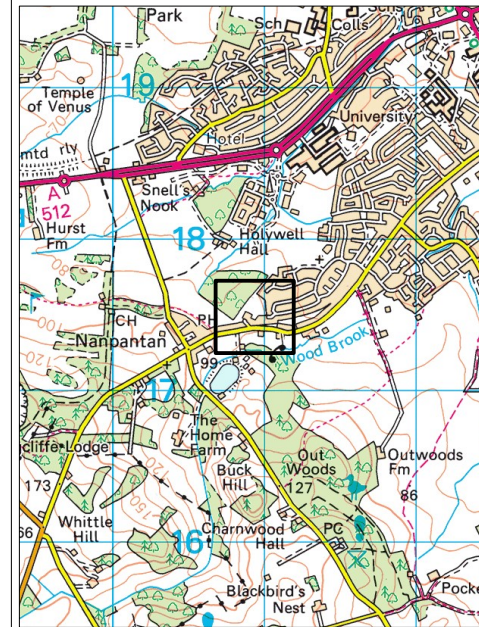
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Leicestershire County Council Proposed Addition of Public Footpath, Leconfield Road, Nanpantan, Loughborough.



Location Plan



Key

-  Public Footpath Proposed to be Added (A-B-C-D-E-A)

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County Hall, Glenfield,
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email footpaths@leics.gov.uk
Director Ann Carruthers



**Leicestershire
County Council**

Plan No.M1269

Scale 1:2500

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DECISION UNDER DELEGATED POWERS OF

DIRECTOR OF ENVIRONMENT AND TRANSPORT

INCLUDING REPORT OF CONSULTATION WITH LOCAL MEMBER

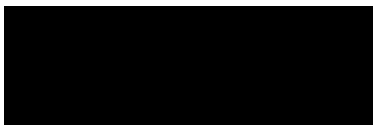
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Application for a Definitive Map Modification Order
Proposed Addition of Public Footpath K110 at Leconfield Road, Nanpantan,
Loughborough.

In exercise of my delegated powers I have determined that:

- a) ~~no Order should be made~~
- b) ~~a Modification Order should be made~~
- c) the matter should be referred to the Development Control and Regulatory Board with a recommendation to make a Definitive Map Modification Order under Section 53 of the Wildlife and Countryside Act 1981.

(Please delete a), b) and/or c) as appropriate)



Ann Carruthers
Director of Environment and Transport

Date:17 May 2024.....

The Local Member **Mr. J. Morgan CC** was consulted on this matter and responded with no comments on 10th May 20204.

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