



PLANNING CONTROL COMMITTEE
18 August 2016

ITEM 8

Report of the Director of Strategic Partnerships,
Planning and Streetpride

**Special Item – Application to add ways at Brook Farm to
Definitive Map and Statement covering the City of Derby**

SUMMARY

- 1.1 An application has been received by the Council for a modification order to add four ways across the former site of Brook Farm and two strips of Council land, to the Definitive Map and Statement areas covering Derby. The application was made in May 2013.
- 1.2 Members are asked to determine whether the evidence of the applicant and her supporters is sufficient to justify the making of a modification order.
- 1.3 A plan of the claimed ways is attached in Appendix C.

RECOMMENDATION

- 2.1 To agree that the Council should modify the Definitive Map and Statement areas covering Derby by adding the ways across the site of the former Brook Farm as public footpaths.
- 2.2 To instruct the Director of Strategic Partnerships, Planning and Streetpride to make a modification order to add the four ways to the Definitive Map and Statement areas covering Derby.

REASONS FOR RECOMMENDATION

- 3.1 The evidence provided by the applicant and her supporters, as well as that on the ground, suggests that all four ways have been in continuous and frequent use by the public for 20 years or more up to April 2009, when the ways first came into question and so giving rise to the presumption of dedication under Section 31 Highways Act 1980, that a right of way has been established.
- 3.2 There is no evidence that the landowner or occupier, or their representatives, ever interrupted the public's use of the ways during the 20-year period and no evidence that they ever told path users that they were using any of the ways with permission until the erection of signs at various access points around the land in April 2009, as to be sufficient to rebut the presumption.

SUPPORTING INFORMATION

- 4.1 The applicant requested that the Council consider adding four ways across the former Brook Farm site to the Definitive Map and Statement areas covering Derby as public footpaths.
- 4.2 The legal considerations to be taken into account are set out in Appendix A. Appendix B sets out the summaries of the evidence submitted by the supporters and the objectors along with the Director's conclusions. A plan of the claimed ways is attached in Appendix C.
- 4.3 The land over which the ways cross is located in the north eastern area of Chaddesden ward to the north of Tennessee Road and Oregon Way. The land includes the site of the former Brook Farm and narrow strips of Council owned land to the south of the site adjacent to Tennessee Road and Oregon Way.
- 4.4 To the north of the land is housing off Morley Road, the cul-de-sacs Oakridge and Lawrence Avenue, Lees Brook Community School and a playing field belonging to the school which is within the administrative area of Erewash Borough Council.
- 4.5 To the south of the land is housing off Tennessee Road, Chaddesden Park Primary School, Windmill Hill Plantation and housing off Oregon Way.
- 4.6 To the west of the land is the former Brook Farm, which has been converted, along with its outbuildings, to residential properties.
- 4.7 To the east, the land is bounded by Acorn Way, which links Raynesway with the Oakwood housing estate.
- 4.8 The land has a steep sloping gradient, which falls away from Oregon Way and Tennessee Road to the south and runs down to the Chaddesden Brook and Lees Brook corridor to the north. Alongside the two brooks are groups of mature trees and woodland areas which form a designated Local Wildlife Site.
- 4.9 The four ways that the applicant is claiming in her application, are identified as ABCDE, FC, GD and HD. The evidence provided indicates that local residents use the ways for a variety of purposes such as walking for leisure, enjoying the countryside and wildlife, visiting Spondon, visiting Locko Park and Bluebell Farm to the north of Spondon, walking dogs, walking to school, visiting shops and visiting friends.
- 4.10 The main way, identified as ABCDE, commences at point A, adjacent to 41 Tennessee Road, and continues in a north easterly direction to point B alongside Lees and Chaddesden Brooks. It then continues along the northern edge of the land through points C and D to where it finishes at point E, a partially tarmacked access which leads on to Acorn Way. The total length of the way is 809 metres. The path has a nominal width of at least one metre. Most of its surface is earth where the surrounding grass has been worn down almost completely.
- 4.11 A second way, identified as FC, commences at point F at the north western end of Oregon Way, opposite 14 Oregon Way, and continues in a northerly direction for a distance of 141 metres to where it finishes at point C. The path has a nominal width of one metre. The surface is a mix of earth and worn down grass.

- 4.12 A third way, identified as GD, commences at point G, opposite Ellendale Road and continues in a north easterly direction for a distance of 197 metres to where it finishes at point D, just south of Lees Brook. The path has a nominal width of one metre. The surface is a mix of earth and worn down grass.
- 4.13 The fourth way, identified as HD, commences at point H, adjacent to 41 Oregon Way and continues in a northerly direction for a distance of 190 metres to where it finishes at point D. The path has a nominal width of one metre. The surface is a mix of earth and worn down grass.
- 4.14 The application was made in advance of the expected planning application for outline planning permission for residential development of up to 215 dwellings, 60 extra care units and associated infrastructure and public open space, on the Brook Farm site by Radleigh Group Ltd, which was eventually made in November 2013 Ref: DER/11/13/01284. The planning application was given outline planning permission with conditions following an appeal against the refusal by the Planning Control Committee to grant planning permission. A second planning application was received by the Council for residential development of up to 275 dwellings with associated infrastructure and public open space, in September 2014 Ref: DER/09/14/01216. A resolution for granting planning permission has been passed subject to the completion of a Section 106 agreement.
- 4.15 There are 31 individuals, including the applicant, who have submitted personal user evidence in support of the application. 27 people submitted full evidence forms. Each supporter, as well as the applicant, submitted at least one document from a group made up of a public evidence questionnaire form, an Ordnance Survey base plan of the site and an aerial photographic image of the site. Both the plan and the aerial photo could be marked with ways that people claimed that they used.
- 4.16 Mather Jamie, representatives of the landowner of the Brook Farm site and Radleigh Group Ltd, the developer, both submitted statements that they considered that no public rights of way existed over the Brook Farm site.
- 4.17 No evidence has been provided in this case, that would indicate express dedication of any part of the ways by the owners and give rise to dedication by common law. The determination of the claim, therefore, solely rests upon whether, on the evidence provided, a presumption of dedication can be shown.
- 4.18 The matters that must be considered and the tests to be applied when considering the application are set out in Appendix A to the report. If the Council is satisfied that there has been uninterrupted use of right by the public of the way over a period of 20 years then a statutory presumption of dedication will arise. This presumption, however, can be rebutted by evidence to show that the owners never had an intention to dedicate the way as a public footpath. A presumed dedication can also arise under common law.

- 4.19 Where the Council decides to make a Modification Order to add the way to the Definitive Map and Statement the process is as follows. An Order will be made and sealed. Its making will be advertised and notices served on the Owners and relevant parties. People may object to the Council over the making of the order. If no objections are made, the order will be confirmed. If objections are received the Council will submit the Order to the Secretary of State who will appoint an Inspector to consider those objections. The Inspector will normally hold a public inquiry when there is considerable public interest in the matter. The Order will then be confirmed or rescinded.
- 4.20 Where the Council decides not to make a Modification Order, the objectors have a right to appeal to the Secretary of State within 42 days of that decision. Any appeal would normally be dealt with by written representations. If, on appeal, the Secretary of State upheld the Council's decision that would normally be the end of the matter but if she overturned it she would direct the Council to make a Modification Order.

OTHER OPTIONS CONSIDERED

- 5.1 The Council attempted to find a compromise between the applicant and the landowner/occupier but this was ultimately unsuccessful.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Stephen Teasdale - Planning and Highways Solicitor Tim Clegg - Director of Strategic Partnerships, Planning and Streetpride Paul Clarke - Head of Planning
For more information contact: Background papers: List of appendices:	Ray Brown 01332 642114 ray.brown@derby.gov.uk Application for Modification Order to add ways to the definitive map Radleigh Group Ltd statutory declaration on rights of way at Brook Farm Historical Ordnance Survey maps / Google and Bing aerial maps Appendix 1 - Implications Appendix A - Legal considerations Appendix B - Assessment of the ways Appendix C - Plan showing claimed ways

IMPLICATIONS

Financial and Value for Money

- 1.1 The Council has to pay to advertise the making and the confirmation of any order in a local newspaper but can recover those costs from the applicant.

Legal

- 2.1 The legal implications are set out in Appendix A

Personnel

- 3.1 None

IT

- 4.1 None

Equalities Impact

- 5.1 None

Health and Safety

- 6.1 None

Environmental Sustainability

- 7.1 New public footpaths would provide off road ways that would encourage residents to walk to some destinations without the need to use motor vehicles.

Property and Asset Management

- 8.1 Two strips of Council owned land north of Tennessee Road and Oregon Way respectively would be crossed by all four of the ways. The land is shown in the plan in Appendix C.

Risk Management

- 9.1 None

Corporate objectives and priorities for change

- 10.1 In the Council Plan 2016-2019, one of our 8 priority outcomes is promoting health and wellbeing. The use of rights of way can be used to support better health and wellbeing for people of all ages to improve their overall 'quality of life'.

Legal Considerations

When deciding whether to modify the Definitive Map

- A1 Under Section 53 of the Wildlife and Countryside Act 1981, a Local Authority is under a duty to make modifications to the Definitive Map if they discover evidence which shows that a right of way, which is not shown on the Definitive Map "subsists or is reasonably alleged to subsist".
- A2 In coming to a decision on these issues, the Council must evaluate all the evidence before it, not just that submitted by the Claimant, and make a judgment on it.
- A3 If having evaluated the evidence and applied the tests referred to in paragraphs 4, 5 and 6 below, the Council decided that a right does subsist or that the available relevant evidence shows that it is reasonable to allege it subsists, then it must update the Definitive Map and Statement by making the necessary Modification Order.
- A4 To decide that a right of way "subsists", the Council must be satisfied, on a balance of probabilities, that it is more likely than not that the right of way subsists.
- A5 When deciding whether a right of way is "reasonably alleged to subsist", an Authority has to be satisfied that a reasonable person, having considered all the relevant evidence, could reasonably allege that a right of way subsists, (the question is not: was it reasonable for the Claimant so to allege?). Whether an allegation is reasonable is a question of fact.
- A6 Where an allegation that a public path exists is based upon evidence which is credible, then the question of balancing this evidence against any conflicting evidence would usually require the making of the Modification Order, unless there is documentary evidence which must inevitably defeat the claim.
- A7 However, if the apparently contradicting evidence can be reconciled, then the Council reverts to deciding the issue on the basis of the tests set out in paragraphs 4 and 5.
- A8 In the absence of evidence that shows express dedication by the owners then it is necessary to consider where there is evidence to support a presumed dedication.

Presumed Dedication of Way as a Highway

- A9 The legal principles about presumed dedication go back several centuries, and form part of common law. But because it was not always clear or easy to apply, Parliament passed new rules, now in Section 31 of the Highways Act 1980. However, the common law rules still also apply, so both are described here.
- A10 Under Section 31 of the Highways Act 1980
- to establish that a way has become a right of way by means of presumed dedication, it is necessary to show firstly that there has been uninterrupted use as of right by the public (not necessarily the same people all the time) over a period of 20 years. Deciding who 'the public' are can sometimes be difficult and may depend on the facts of the case. But in general it should be people other

than those working for the landowners concerned, and use as of right excludes use which was known to be with the permission or licence of the landowner.

- the period of 20 years is counted back from the date on which the public's right was first brought into question, for example, through the erection of a fence or locking of a gate across the way, however long ago that date was. Once the date that ended the 20-year period has been determined, evidence of use, or of interruption of use, after that date is not relevant in deciding whether a public right of way exists.
- dedication may also be presumed to have taken place at common law. Again use must be made as of right, by the public, but the period of use is not fixed and, depending on the facts, can range from a few to several decades. The burden of proof is on the person claiming the right to show that the owner of the land intended to dedicate a public right of way.

No intention to dedicate

A11 Uninterrupted use by the public over a 20-year period establishes a presumption that the way has been dedicated to the public. But this presumption can be contradicted by evidence to show that the landowners had never intended to dedicate the way.

This evidence could be of:

- an interruption of the public's use of the way
- notices clearly displayed on the way, indicating that it was private
- plans and statutory declarations deposited with the surveying authority or its predecessors
- reports from people who can give evidence that a way was private and that no public right of way existed during the relevant period.

Assessment of the ways

- B1 There are 31 individuals, including the applicant, who have submitted personal user evidence in support of the application. 27 people submitted full evidence forms. Each supporter, as well as the applicant, submitted at least one document from a group made up of a public evidence questionnaire form, an Ordnance Survey base plan of the site and an aerial photographic image of the site. Both the plan and the aerial photo could be marked with ways that people claimed that they used.
- B2 Most of the supporters marked the routes that they walked on their plan or aerial image.
- B3 The applicant also submitted an individual public evidence form with plan.

Description and use of the claimed ways

- B4 The applicant claims four separate ways, shown on the application plan, using the points A, B, C, D, E, F, G & H. Her supporters, though, have provided evidence for many other routes across this land, which are not included in her application. This report sets out only the evidence that supports the claimed ways.
- B5 The longest way, ABCDE, runs in a north easterly direction from point A, adjacent to 41 Tennessee Road, for a distance of 177 metres to point B alongside Lees and Chaddesden Brooks. It then runs along the northern edge of the land in an easterly direction for a distance of 160 metres to point C. It continues in an easterly direction for 243 metres to point D and then finally in a south easterly direction for 229 metres to point E, which is a partially tarmacked access which leads on to Acorn Way.

There are three connecting paths.

- The first, shown on the application plan as FC, runs from point F at the north western end of Oregon Way, opposite 14 Oregon Way, and continues in a northerly direction for a distance of 141 metres to point C.
 - The second, identified on the plan as GD, runs from point G, opposite Ellendale Road, and continues in a north easterly direction for a distance of 197 metres to point D, just south of Lees Brook.
 - The third, identified on the plan as HD, runs from point H, adjacent to 41 Oregon Way, and continues in a northerly direction for a distance of 190 metres to point D.
- B6 The total length of ways is being claimed is 1337 metres (1.3 km).
- B7 In Appendix A, it was stated that in order to determine whether all the ways are public rights of way, it is necessary to establish that there has been a 20-year period of uninterrupted use of each of the ways by the public. Uninterrupted use by the public over a 20-year period can establish a presumption that the way has been dedicated to the public.
- B8 But this presumption can be contradicted by evidence to show that the landowners had never intended to dedicate the way. This evidence could be of:
- an interruption of the public's use of the way

Classification: OFFICIAL

- notices clearly displayed on the way, indicating that it was private
- plans and statutory declarations deposited with the surveying authority or its predecessors
- reports from people who can give evidence that a way was private and that no public right of way existed during the relevant period.

B9 In light of this, each of the four ways are considered in turn.

Way ABCDE (Tennessee Road to Acorn Way)

Description of the way and physical evidence

B10 This way provides access from and to Tennessee Road along Lees Brook running to and from point E on Acorn Way, a point from which it connects to routes beyond. The way also interlinks with other paths including the claimed ways (FC, GD and HD). The access point on Tennessee Road, which begins as a narrow earthy track through a small wooded area on Council land, is the most used of the several points available that the public can use to gain entry to the land. For those heading in an easterly direction towards point E on Acorn Way and the routes beyond, the way runs in the most direct route, heading north-eastwards towards the brook, joining the former farm track at point B, just before the gap in the hedge. From point B, it continues in a straight unrestricted line along the flat of the valley, following the direction of the brook in an easterly direction towards point E. It is apparent that the way is a long established well-worn track, along the whole of its length and it varies in width from one to two metres. For those intending to travel from Tennessee Road to point E on Acorn Way and the routes beyond, it appears to provide the most direct and obvious route to follow.

B11 The way was inspected by the Rights of Way officer on 20th November 2014. The way was also inspected by Council officers, whilst accompanied by the applicant, on 7th July 2015. There are defaced signs present that were erected by Radleigh on behalf of the landowner in 2009 warning the public that their use of the Brook Farm site is with the permission of Radleigh, who have an interest in the land. One sign is at point A adjacent to 41 Tennessee Road. Another is at a second access point off Tennessee Road. Another is at point E off Acorn Way and another is near to the way adjacent to Lees Brook.

B12 There is no remaining physical evidence of the footpath sign referred to by two path users that was allegedly in place off Tennessee Road in 2004.

Path user evidence

B13 Ten path users showed on their aerial photo and/or map that they walked the way ABCDE over a period of time.

B14 Of these ten path users, five provided evidence that they had used the whole way for 20 years or more and all also believed that the way had existed for at least 20 years or more.

- One stated that they had walked weekly for over 55 years (1958-2013) to admire the countryside.
- Another stated that they had walked weekly to Lees Brook for over 60 years (1953-2013) as a child to play and as an adult to walk the dog.

Classification: OFFICIAL

- Another stated that they had walked to Breadsall and Oakwood for 52 years (1961-2013) at least 15 times a year for pleasure.
- Another stated that they had walked weekly to Locko Park for 52 years (1972-2013) to enjoy the open space and wildlife.
- Another stated that they had walked to Lees Brook and the surrounding fields for 43 years (1970-2013) at least 10 times a year for pleasure.

B15 14 other path users showed on their aerial photo and/or map that they walked part of the way ABCDE over varying periods of years.

B16 The earliest evidence of this use was from a path user who stated that they had first used the way in 1953. Another path user stated that they had first used the way in 1954 and another first used the way in 1958. All three claimed that they had used the way up to 2013, showing over 50 years of use.

B17 No path user stated that they were ever challenged or prevented from using the way by the landowners/occupiers or by people in their employment.

Documentary evidence

B18 An examination of historical Ordnance Survey maps has shown that for the:

- 2.5k and 10k County series of maps between 1846 and 1969, the way is not identified.
- 10k National Grid, between the 1940s and 1980s, only what appears to be a farmer's track, beginning at the old Brook Farm buildings, and then running in an easterly direction alongside Chaddesden and Lees Brooks, is shown from the 1960s onwards. On the 1990s map, a way is shown that has a route similar to most of the way ABCDE except for the fact that its starting point, off Tennessee Road, is further to the east, adjacent to 43a Tennessee Road.
- 2.5k National Grid, between 1940s and 1950s, there is a farmer's track, beginning at the old Brook Farm buildings, and then running in an easterly direction alongside Chaddesden and Lees Brooks, before stopping at a field boundary which runs northwards from the group of residential properties, nos. 41-51 Oregon Way.
- 1:1250 National Grid has the same coverage as 2.5k National Grid.
- The current Ordnance Survey Mastermap base for the area shows the way following the same route as the later 10k 1990s National Grid map.

This mapping indicates that ways have existed over the Brook Farm site over several decades.

B19 Google's online aerial maps and Microsoft's Bing aerial maps show the way clearly crossing the land.

Evidence from the landowners and occupiers

B20 The evidence above suggests that this way has been well used and in existence for over 20 years before the way was brought into question as to give rise to the statutory presumption under Section 31 Highways Act 1980. This presumption, however, is a rebuttal and so it is now necessary to examine what evidence the

landowners and other interested parties with an interest in the affected land have that would rebut this presumption.

- B21 Mather Jamie, representatives of the landowner, and Radleigh Group Ltd, who have an interest in the land, submitted to the Council what they considered to be a statutory declaration dated 23rd April 2009 and plan. It declared that on the date of signing there were no existing byways open to all traffic, roads used as public paths, bridleways or footpaths across the land and at no date between 1994 and 23rd April 2013, had public rights of way ever existed upon or across the land.
- B22 Radleigh made statements in a letter dated 7th June 2013 and received 10th June 2013 that they considered that there were no public footpaths crossing the land. An email also written by Radleigh, dated 22nd January 2016, stated that in its view, the land is private and that the local people have been granted an informal right to cross over it. They also stated that they propose to formalise several routes for the public as part of our detailed submission and requested that any Modification Order application be deferred until the Reserved Matters planning application has been approved or refused.
- B23 Radleigh has also had signs erected at a number of locations on the land in 2009 warning the public that they were using the land with landowner's permission. The signs state "This open land known as Brook Farm belongs to The Radleigh Group Ltd and may be used for recreational purposes, including lawful sports pastimes. Permission to use this for such proposes is revocable by The Radleigh Group Ltd at any time and without prior notice."
- B24 The landowner's agent submitted 10 short term leasing agreements with local individuals and businesses, covering the period from 1995 to 2013, which provides evidence that the Brook Farm farmland was in use during most of this period. He also submitted a letter dated 23rd June 2014 and addressed to a farm business which had leased the land at various times over a 15 year period, stating that the landowner no longer intended to lease the land in the future.
- B25 The City Council's Property Services and Parks Divisions have decided to make no comments to make on the application.
- B26 The statements, letters and emails, show no intention by the landowner to dedicate any ways over the land since 23rd April 2009. This however does not provide any support to the ways being challenged or brought into question prior to April 2009 and is insufficient to rebut the presumption of their dedication.

Conclusion

- B27 In order to determine whether the way is a public right of way, it has been stated that it must be possible to establish a 20-year period of uninterrupted use by the public in order to state that a presumption of dedication has arisen under Section 31 of the Highways Act 1980.
- B28 There isn't a large amount of user evidence in support of the way but the best evidence is clear and hard to dispute. On its own it is difficult to ascertain from the user evidence the degree of public use of the way but when examined in combination with the physical and documentary evidence, there is a clear balance in support of such use and the existence of a way.

Classification: OFFICIAL

- B29 On the ground there is visual evidence of a distinct, well-worn track along the whole route of the way. Google's and Microsoft's aerial photos clearly show this track on the ground.
- B30 On the Ordnance Survey map series, part of the way has been shown since the 1940s and 1950s. The way but with a different start point to A, is clearly shown on maps produced in the 1990s and afterwards.
- B31 The landowner and Radleigh both claim that the public use of land at the former Brook Farm was only ever permissive but they have not demonstrated:
- that there was an interruption of the public's use of the way;
 - that there were any notices clearly displayed on the way before 2009, indicating that the way was private;
 - that they can provide reports from people who can give evidence that a way was private and that no public right of way existed during the relevant period.
- B32 Even taking into account that the public's use of the way was brought into question in April 2009, there is still very good evidence that the way was in use from March 1989 to March 2009. Based on the evidence provided and investigated, it is reasonable to conclude that there is an unrebutted presumption of dedication sufficient to warrant this route as a public right of way under Section 31 of the Highways Act 1980.

Way FC (Oregon Way to ABCDE)

Description of the way and physical evidence

- B33 This path runs from point F on Oregon Way, then through a small wooded area on Council land before crossing through grassland to point C, to join the route along Lees Brook marked ABCDE. Point F is the first point of available public access onto the land for those approaching the land from the western end of Oregon Way. The way FC provides, given the hedges in the field, potentially the most direct access from that end of Oregon Way both down to the brook and connecting to the path ABCDE. Taking those matters into account, the line of the claimed way provides the most obvious and natural route for persons accessing from the area to the western end of Oregon Way.
- B34 The way was inspected by the Rights of Way officer on 20th November 2014 as well as by Council officers, whilst accompanied by the applicant, on 7th July 2015. It was apparent that the narrow way was in use although the summer growth of the long grassland on the site was obscuring it to some extent. This suggested that the recent use of the way is not regular enough to fully suppress the grass adjacent to the track. The applicant stated, however, that the way is more visible on the ground at other times of the year.
- B35 There is no evidence that any signs deterring the public's use of the way were in place along the way. There is also no evidence of any stile at the Oregon Way end of the way.

Path user evidence

- B36 Six path users showed on their aerial photo and/or map that they walked the way FC.

Classification: OFFICIAL

- B37 Of these path users, five stated that they had used the way for 20 years or more before Radleigh erected signs in 2009. Four of them also believed that the way had existed for at least 20 years or more.
- One path user stated that they walked every day to destinations such as Locko Park, school, Spondon village, Morley Road, Chaddesden Park and the cinema for 52 years (1961-2013) for schooling, walking dogs, visiting friends, shopping and leisure uses.
 - Another path user stated that they walked weekly to Locko Park for over 55 years (1958-2013) to admire the countryside.
 - Another path user stated that they used the way for 27 years (1986-2013) to take his dog for a walk.
 - Another path user stated that they walked weekly to Locko Park for 52 years (1972-2013) for the open space and wildlife.
 - Another path user stated that they walked to Lees Brook and the surrounding fields for 43 years (1970-2013) at least 10 times a year for pleasure.
- B38 One other person provided evidence that they used this way for less than 20 years.
- B39 The earliest use of this way was by a path user who stated that they first used it in 1953.
- B40 No path user stated that they were ever challenged or prevented from using the way by the landowners/occupiers or by people in their employment.

Documentary evidence

- B41 An examination of historical Ordnance Survey maps has shown that for the:
- 2.5k and 10k County series of maps between 1846 and 1969, the way is not identified.
 - 10k National Grid, on the 1990s map, a way similar to the claimed way FC is shown. The other way shown runs between point G and Lees Brook.
 - current Ordnance Survey Mastermap base for the area shows a way similar to FC.
- B42 Google's online aerial maps and Microsoft's Bing aerial maps show the way clearly crossing the land.

Evidence from the landowner/ occupier

- B43 The evidence above suggests that a presumption of dedication has arisen so it is now necessary to examine what evidence the landowners and other interested parties with an interest in the affected land have that would rebut this presumption.
- B44 The evidence submitted by the landowner and Radleigh stated in paragraphs B20-B25 applies to all the ways. Like with the way ABCDE, the statements, letters and emails, can be taken as clear evidence that the landowner has not dedicated any ways since 23rd April 2009. They cannot be taken as definitive evidence, however, that the landowner did not dedicate ways before this date. For this reason, it is considered that the date the way was brought into question was 23rd April 2009.

Conclusion

- B45 In order to determine whether the way is a public right of way, it has been stated that it must be possible to establish a 20-year period of uninterrupted use by the public in order to state that a presumption of dedication has arisen under Section 31 of the Highways Act 1980.
- B46 There is a relatively small amount of user evidence in support of the way but like with the other ways, the best evidence is clear and hard to dispute. On its own, the user evidence may not be substantial but when examined in combination with the physical and documentary evidence, a case that a public right of way exists can be made.
- B47 On the ground there is some visual evidence of a way through the grassland. Google's and Microsoft's aerial photos show this track on the ground.
- B48 The landowner and Radleigh both claim that the public use of land at the former Brook Farm was only ever permissive but they have not demonstrated:
- that there was an interruption of the public's use of the way;
 - that there were any notices clearly displayed on the way, indicating that the way was private;
 - that it can provide reports from people who can give evidence that a way was private and that no public right of way existed during the relevant period.
- B49 Based on the evidence provided and investigated, it is reasonable to conclude that there is a presumption of dedication under Section 31 of the Highways Act 1980.

Way GD (Oregon Way to ABCDE)

Description of the way and physical evidence

- B50 This path runs from point G on Oregon Way through a small wooded area on Council land before crossing through the grassland of the former Brook Farm to point D to join the route along the brook marked ABCDE. Point G is located immediately opposite the junction of Ellendale Road and therefore provides the most immediate and natural point of public access for those approaching the land to the south via Ellendale Road. The route then follows the most direct route to point D. As with route HD, point D would appear to be the most natural point to head to in order to join route ABCDE, there being at this point a gap in the hedge, through which route ABCDE passes heading to the east. It also provides the most likely point for people wishing to visit the brook to head to. Taking those matters into account the line of the claimed way provides the most obvious and natural route for persons accessing via Ellendale Road to follow.
- B51 The way was inspected by Council officers, whilst accompanied by the applicant, on 7th July 2015. It is very apparent that although the way is narrow, there's a clear indentation in the ground along the whole of its length which indicates usage of some time.

Path user evidence

- B52 Seven path users showed on their aerial photo and/or map that they walked the way GD.

- B53 Of these path users, three stated that they used the way for 20 years or more and all also believed that the way had existed for at least 20 years or more.
- One path user stated that they walked weekly to Locko Park for 55 years (1958-2013) to admire the countryside.
 - Another path user stated that they walked weekly Lees Brook for over 60 years (1953-2013) as a child to play and as an adult to walk the dog.
 - Another path user stated that they walked to Lees Brook and the surrounding fields for 43 years (1970-2013) at least 10 times a year for pleasure.
- B54 Four other people provided evidence that they used this way or at least part of it over varying periods of years.
- B55 The earliest use of this way was by a path user who stated that they first used it in 1953.
- B56 No path user stated that they were ever challenged or prevented from using the way by the landowners/occupiers or by people in their employment.

Documentary evidence

- B57 The way is not shown on the historical Ordnance Survey maps that were examined.
- B58 Google's online aerial maps and Microsoft's Bing aerial maps show the way clearly crossing the land.

Evidence from the landowner/ occupier

- B59 The evidence above suggests that a presumption of dedication has arisen so it is now necessary to examine what evidence the landowners and other interested parties with an interest in the affected land have that would rebut this presumption.
- B60 The evidence submitted by the landowner and Radleigh stated in paragraphs B20-B25 applies to this way as well. The statements, letters and emails, can be taken as clear evidence that the landowner has not dedicated any ways since 23rd April 2009. They cannot be taken as definitive evidence, however, that the landowner did not dedicate ways before this date. For this reason, it is considered that the date the way was brought into question was 23rd April 2009.

Conclusion

- B61 In order to determine whether the way is a public right of way, it has been stated that it must be possible to establish a 20-year period of uninterrupted use by the public in order to state that a presumption of dedication has arisen under Section 31 of the Highways Act 1980.
- B62 There is a relatively small amount of user evidence in support of the way but like with the other ways, the best evidence is clear and hard to dispute. On its own, the user evidence may not be substantial but when examined in combination with the physical and documentary evidence, a case that a public right of way exists can be made.
- B63 On the ground there is clear visual evidence of the way through the grassland, suggesting long term use. Google's and Microsoft's aerial photos also show this track clearly on the ground.

- B64 The landowner and Radleigh both claim that the public use of land at the former Brook Farm was only ever permissive but they have not demonstrated:
- that there was an interruption of the public's use of the way;
 - that there were any notices clearly displayed on the way, indicating that the way was private;
 - that it can provide reports from people who can give evidence that a way was private and that no public right of way existed during the relevant period.
- B65 Based on the evidence provided and investigated, it is reasonable to conclude that there is a presumption of dedication under Section 31 of the Highways Act 1980.

Way HD (Oregon Way to ABCDE)

Physical evidence

- B66 This path provides access to those persons coming from the eastern end of Oregon Way. Point H is the first point of available public access onto the land from the eastern end of Oregon Way and provides the most direct route from that point through a small wooded area on Council land and across grassland, to point D, enabling access to both the brook and to connect into route ABCDE. Point D, which is close to a gap in the hedge on the eastern side, through which ABCDE passes, would appear to provide a natural point for persons intending to join the way ABCDE to walk, particularly for those intending to travel to Acorn Way and the routes beyond to the east. Point D also marks the position on the brook of one of the more attractive areas of the brook to visit. Taking those matters into account the line of the claimed way provides the most obvious and natural route for persons coming from the eastern end of Oregon Way to follow.
- B67 The way was inspected by the Rights of Way officer on 20th November 2014 and by Council officers, whilst accompanied by the applicant, on 7th July 2015. It was very apparent that the way was a worn particularly well used track, along the whole of its length, suggesting long term use.
- B68 The officers also identified the remains of an old stile at point H on the application plan. These remains are very likely to be part of the same stile referred to by two of the path users in their evidence.

Path user evidence

- B69 Seven path users showed on their aerial photo and/or map that they walked the way HD. Of these path users, three stated that they used the way for 20 years or more and all also believed that the way had existed for at least 20 years or more.
- One path user stated that they walked weekly to Lees Brook for as a child to play and as an adult to walk the dog.
 - Another path user stated that he walked weekly to Locko Park for 52 years (1972-2013) for the open space and wildlife.
 - Another path user stated that she walked to Lees Brook and the surrounding fields for 43 years (1970-2013) at least 10 times a year for pleasure.

Classification: OFFICIAL

- B70 Three people provided evidence that they had used this whole way for a period of 20 years or more before Radleigh erected signs in 2009. Four people gave evidence that they used this way or at least part of it over varying periods of years.
- B71 The earliest use of this way was by a path user who stated that he first used it in 1953.
- B72 One path user stated that they had seen a gate or a stile in a hedge adjoining 41 Oregon Way. Another path user stated that they had seen a stile post next to 41 Oregon Way.
- B73 No path user stated that they were ever challenged or prevented from using the way by the landowners/occupiers or by people in their employment.

Documentary evidence

- B74 The way is not shown on the historical Ordnance Survey maps that were examined.
- B75 Google's online aerial maps and Microsoft's Bing aerial maps show the way clearly crossing the land.

Evidence from the landowner/ occupier

- B76 The evidence above suggests that a presumption of dedication has arisen so it is now necessary to examine what evidence the landowners and other interested parties with an interest in the affected land have that would rebut this presumption.
- B77 The evidence submitted by the landowner and Radleigh stated in paragraphs B20-B25 applies to this way as well. The statements, letters and emails, can be taken as clear evidence that the landowner has not dedicated any ways since 23rd April 2009. They cannot be taken as evidence, however, that the landowner did not dedicate ways before this date. For this reason, it is considered that the date the way was brought into question was 23rd April 2009.

Conclusion

- B78 In order to determine whether the way is a public right of way, it has been stated that it must be possible to establish a 20-year period of uninterrupted use by the public in order to state that a presumption of dedication has arisen under Section 31 of the Highways Act 1980.
- B79 There is a relatively small amount of user evidence in support of the way but like with the other ways, the best evidence is clear and hard to dispute. On its own, the user evidence may not be substantial but when examined in combination with the physical and documentary evidence, a case that a public right of way exists can be made.
- B80 On the ground there is clear visual evidence of the way through the grassland, suggesting long term use. Google's and Microsoft's aerial photos also show this track clearly on the ground.
- B81 The landowner and Radleigh both claim that the public use of land at the former Brook Farm was only ever permissive but they have not demonstrated:
- that there was an interruption of the public's use of the way;

- that there were any notices clearly displayed on the way, indicating that the way was private;
- that is can provide reports from people who can give evidence that a way was private and that no public right of way existed during the relevant period.

B82 Based on the evidence provided and investigated, it is reasonable to conclude that there is a presumption of dedication under Section 31 of the Highways Act 1980.