

CLAIMED MODIFICATION OF DEFINITIVE MAP AND STATEMENT - ADD FOOTPATH OVER HEIGHT LANE (AND CONNECTIONS), STOTT PARK, COLTON PARISH ADDITIONAL INFORMATION RECEIVED SINCE MAIN REPORT

1 Summary

- 1.1 Since the publication of the committee report, the owner of the land over which the majority of the routes concerned run has got in touch with us to provide further information, which has enabled us to uncover some useful documentation. This information may change the conclusions and recommendations in the main report. It only relates to the section STUBCDE, not A-U.

2 Further information

- 2.1 Mr Gornall has provided the information below, I have highlighted the relevant evidential issues:

Dear Sir.

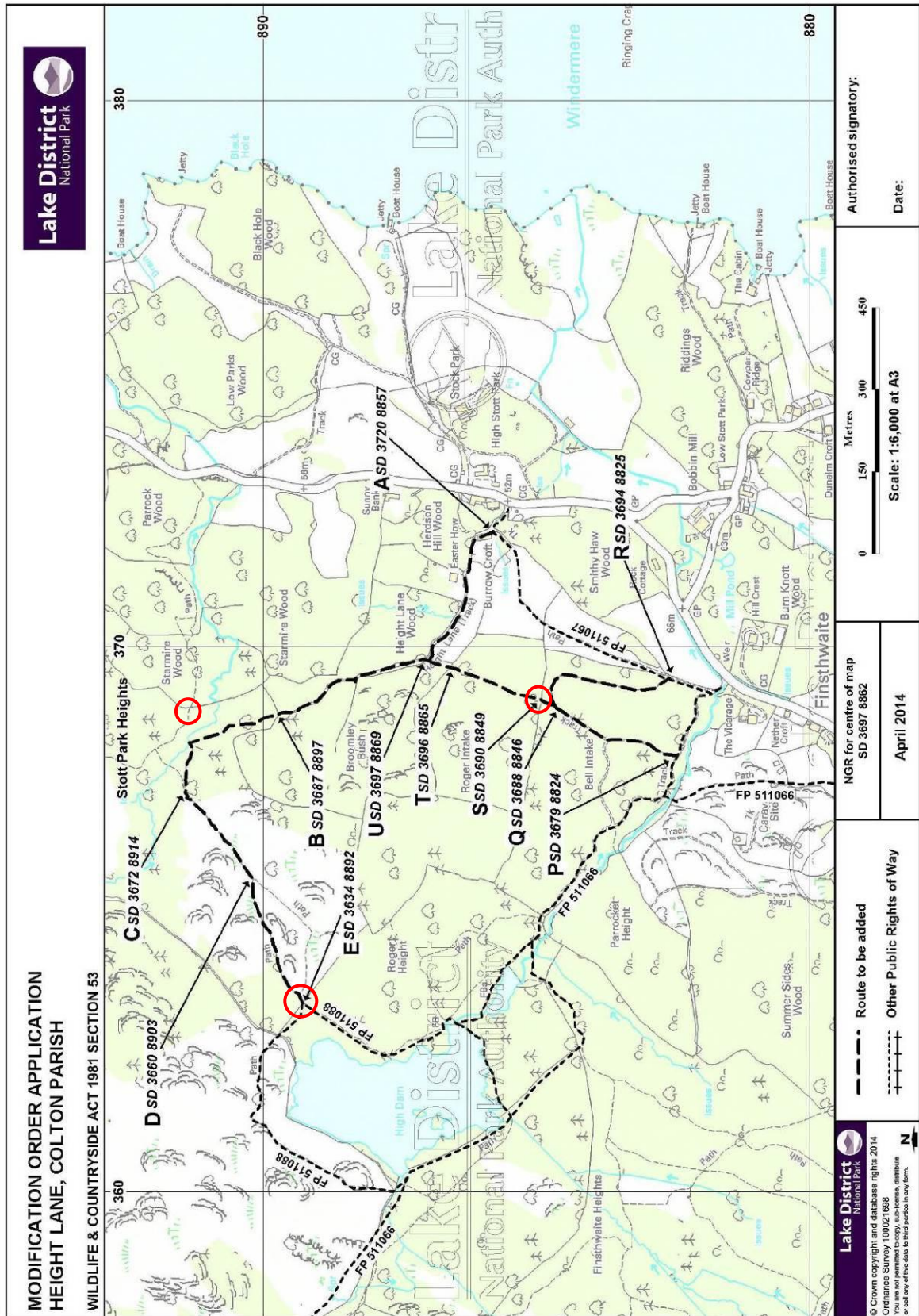
I have just received from my Land Agent Mr Mike Dyke of H&H the report and supporting documentation regarding the meeting to take place on 10th July 2014 regarding the Height Lane footpath claim. I along with my brother John Gornall are the party's referred to as Messrs Gornall in your report prepared for the meeting. As the owner of by far the greatest portion of pathway under discussion I would like my opportunity to speak for five minutes to highlight issues within the report that I would like to draw to the attention of the committee members. Writing to you as Messrs Gornall I fully appreciate that much of your report covers issues that took place prior to our ownership, however we feel that the flavour of your report does nothing to recognise the provision of permissive pathways with the owners present and past full consent that allow the public fairly free access to our land for their enjoyment. When we purchased the property there was a Permissive Path sign at point S SD 3690 8849 on your map this was removed during the renovation of the dry stone wall by the park authority. It has not yet been replaced but I assume it will when the renovation is completed and the gate is replaced by the authority, the condition of the original now removed gate post into which the small round Permissive Path sign was nailed would leave me to believe they had been in situation for many years. At the top entrance to our property at point E SD 3634 8892 an original small round Permissive Path sign is still in place on the kissing gate and until last week an identical sign was nailed to a gate at point B SD 3687 8897, removed last week by persons unknown.

Your report mentions the signs posted by ourselves, we posted them when the issue under discussion came to our attention. Our intention was I suppose to make it known to who ever it may concern that we whole heartedly embraced the provision of Permissive Pathways on our land. Interestingly persons unknown took objection to our signs and removed them within a week. We posted quite a lot of temporary permissive signs, we visit the land regularly and often come across visitors lost in the maze of well trodden paths on our land created by walkers and the thousands of children that visit our woodland and climbing crags every year from the YMCA we thought the signs may have been helpful to people less familiar with the land. Our intention was to replace them with permanent signs when this issue is resolved.

I am making the bold assumption that I will be allowed to attend and speak to the committee it does seem only fair as a major stakeholder in the decision under discussion. How soon do you need any supporting documentation I may wish to present to the committee prior to the meeting? In my experience of committees supporting documentation is not usually admissible if presented on the day of the meeting. And Finally Where will the meeting take place and at what time?

King Regards Anthony Gornall on behalf of Messrs Gornall.

2.2 I have clarified with Mr Gornall the exact points of the ‘permissive path signs’ referred to, as there is no gate at B. He has confirmed that they are at the points circled in red on the map below.



2.3 The nature of the signs are those seemingly installed by the National Park Authority in the area at some time in the past. Examples are below:



Top left – looking into High Dam on the gate at point E.

Top right – the gate showing a path going into the woods east of point C (the one mentioned by Mr Gornall as being recently damaged).

Bottom – an old post near the High Dam car park area.

The signs say “Permitted Route”.

This type of roundel was in use from around 1995 onwards – prior to that, we just had white arrows with no wording.

- It is relevant to note the condition of these signs, installed in the mid 1990s, as this is one of the discussion points over the ‘No Public Right of Way’ sign just below Easter How.

2.4 Following receipt of this information I discussed the matter further with the YMCA, and the outcome of this discussion is below (agreed with Tony Ball).

Telephone discussion between Nick Thorne (LDNPA) and Mike Margeson & Tony Ball (YMCA), Tuesday 8 July 2014.

- The YMCA purchased the land concerned in 1990 (including Height Lane, meaning the whole where the Burrow Croft land abuts both sides and half between that point and the main road.)
- The main path through the woods down to the road opposite the YMCA (north westwards of point C on map) has been in use for many many years, and has been the subject of discussions between the YMCA and the National Park for at least 30 years.
- In the mid 1990s the National Park put some new posts and signs up, the signs were the white waymarkers saying 'Permitted Route' – this was when the boardwalks around High Dam were rebuilt. These signs replaced previous signs that simply said something like 'Footpath' rather than 'permitted path'.
- Bob Metcalfe, who was the director of the YMCA here in the 1980s had quite a few discussions with National Park staff about this route, and the public usage of it. There doesn't seem to be any record of signed agreements, any discussions about the nature of use and permissions were more in the nature of gentlemen's agreements (evidential correspondence attached).
- There was also a path from the High Dam Car Park to Height Lane (STU on the map) that was dealt with in much the same way. This path has been heavily used and has been a footpath for ages. The signs were at the car park end, there weren't any showing the way from Height Lane.
- There were never any signs on Height Lane itself – so if you were going from the road to Stott Park Heights (A-B on the map) you wouldn't have seen any. Occasionally our groups would go the wrong way and go past the houses on Height Lane at night, and we would get a call from the people who lived there complaining. Not many other people used the lane past the houses as far as we know from observations and from being there.
- In the few years before selling the property in 2010-11, I discussed and in principle agreed with the National Park the possibility to dedicate the main path (E-C and then north-westwards) as a public footpath – but we sold the property before the agreements were finalised.
- The purchase of the land known as Burrow Croft estate, by the YMCA (under Bob Metcalfe) included a shared ownership of the Height Lane track, declared under oath by the vendor (Peddar) and that following complaints over YMCA group usage from home owners at the lower end of Heights Lane YMCA chose to direct groups away from this part of Heights Lane as a practical measure for good relations with the neighbours, but not to rescind any right of access /ownership of Heights Lane.

2.5 The documentation referred to is included within the supplementary bundle.

2.6 Following receipt of a copy of this letter on 9 July 2014, I was able to locate a property file in the LDNPA, that also enabled me to identify a relevant committee report.

3 New documentation

- 3.1 From these documents it appears that when the property known as Burrow Croft Estate was for sale in the late 1980s the National Park Special Planning Board were very interested in buying the woodland and fell. Indeed, terms were almost agreed, but the sale was not completed. It was then sold later (1990) at auction, where the National Park decided not to actively bid, as the most likely purchasers were bodies such as the YMCA or the Woodland Trust whose management aims tallied with our own. The house and agricultural land was sold to others.
- 3.2 Around the same time, the management policy at High Dam was under review, and various maps and proposals were looked at. The maps attached to the Park Management Committee meeting of June 1986 are particularly interesting.
- 3.3 Fig 1 Location Map clearly shows the paths we are looking at between points BCDE and between STU as 'Other paths linked to High Dam'. And Figure 3, Summary of Main Proposals shows the paths labelled P & R. The section between the two paths (Height Lane) is shown as a track. These two 'other paths' are described as "Two paths link with the property (P & R on figure 3). Both are used by the YMCA for access through High Dam, and the one which joins the main path round the tarn (P) regularly is used by the public.....Neither path is a public right of way and it is not clear that they have been formally agreed as permissive paths with adjoining landowners." One proposal was to create a formal permissive path.
- 3.4 In the same era, we produced a leaflet for High Dam called "A guide for visiting Youth and School groups" – which clearly showed and promoted both these routes for use.
- 3.4 In February 1990, when looking to purchase the land, we described the owner as 'allowing informal access'.
- 3.5 The permitted path proposal was then repeated once the YMCA had bought the property, and although no formal permitted path agreement was put into place, it is clear from the placement of the signs from the mid 1990s that this was the understanding.
- 3.6 In the 1980s there appears to have been signs here simply saying 'Footpath'. These were replaced by the Permitted Route roundels – probably around 1994/5. A book first published in 1994 refers to the route being a permissive path – so it is likely that these were in place by then (although the book has been revised since, and we only have copies of the later version, so I don't know if this was in the first edition).

4 Significance of this information

- 4.1 As explained in the main report, if usage has been with the permission of the landowner, then a public right cannot have been established.
- 4.2 The key thing here is that prior to the YMCA taking ownership of this land there were clearly paths running between STU and BCDE, and that these paths were used by the public – the CDE path quite heavily. And obviously to reach point B from point U, the only route was the top half of Height Lane.
- 4.3 It also looks quite clear that this usage was informal, and was allowed by the landowner. And that there were no formal permitted path agreements or statutory declarations.

- 4.4 Case law shows that for a path to be ‘permissive’ then the public should be made aware of this, either by signing or by some form of declaration. This did not happen until around the mid 1990s when the ‘Permitted Route’ roundels were first placed on the paths at points E and S.
- 4.5 Case Law also shows that tolerance and acquiescence of use is effectively dedication. That is, if a landowner allows something to happen without taking steps to stop it, or make his intentions known, then dedication takes place. And the more obvious the use, the shorter the period of time required for dedication to take place.
- 4.6 Given that some of the usage claimed along the routes goes back to the 1970s, and that the High Dam car park was created in 1973, and that there was a clear acknowledgement in 1986 and again in 1980 that the paths were well used by the public – and that the landowner tolerated this use, there is little doubt that it happened and was obvious.
- 4.7 This therefore leads me to the conclusion that the paths STU between the car park and Height Lane, along Height Lane from U-B, and then to High Dam via BCDE had been used by the public to an extent sufficient to have become a public right of way either under the common law provisions, or under the 20 year usage by the time any permitted route signs were erected in the mid 1990s.
- 4.8 And in that case, it is doubtful whether any future usage from the mid 1990s could actually have been ‘with permission’, as you cannot grant permission for something that has already become a right.
- 4.9 As to Height Lane itself, it is interesting to note that in the documents surrounding the sale of Burrow Croft in 1990 Height Lane was actually excluded as it was obviously thought it was not to be owned by Mr Peddar. The lane appears to have been considered differently to the connecting paths, and access along it (between U & B) appears to have been accepted. That is, it seems as though the paths were to link people to Height Lane.
- 4.10 Even when the ‘Permitted Route’ roundels were installed at points E & S, they did not explicitly refer to Height Lane (the main path from E continued to C and then north-west).
- 4.11 Those users claiming usage of A-B would not have been aware of the existence of such signs, and therefore cannot be said to have been using the route ‘with permission’. Therefore, claimed usage of A-B as one route, and in particular A-U, is unaffected by this new information. This is the main body of user evidence as summarised on Annex 5, pages 6 & 7 of the main report.

5 Conclusion

- 5.1 The recommendation for STUBCDE is unchanged, although we could conclude that the date of challenge for the linking paths is the mid 1990s rather than March 2013.
- 5.2 The recommendation for section A-U is unaffected by anything in this report.

Background Papers:	1422.511.04 (case file), relevant legal and case guidance
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