

Report to: Planning Committee

Date: 20th November, 2014

Report of: Director of Environmental Services

Report No:

Contact Officer: Andrew Smith

Tele No: (01204) 336487

Report Title: Proposed Modification Order to amend the line of Public Footpath Blackrod 18

Non Confidential: This report does **not** contain information which warrants its consideration in the absence of the press or members of the public

Purpose: To seek the authority from the Committee to request the Borough Solicitor to make and advertise an order under section 53(3)(c)(i) & (iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by deleting the incorrectly recorded route of public footpath Blackrod 018 and adding the correct route of public footpath Blackrod 018.

Recommendations:

1. The Committee is requested to authorise officers to request the Borough Solicitor to make and advertise an order under section 53(3)(c)(i) & (iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by deleting the incorrectly recorded route of public footpath Blackrod 018 and adding the correct route of public footpath Blackrod 018 and that the requisite notice of making of an order be given.
2. That the Director of Environmental Services be authorised to take any action considered necessary in respect of the confirmation of the order hereby authorised to be made.

Background Doc(s): **Appendix 1** Planning and Highways Committee Report dated 20th March 2003. **Appendix 2** Plan showing the incorrect and correct route of Blackrod 018. **Appendix 3** Definitive map modification orders – Guidance on Decision Making

Summary:

Summary and Context

1. This incorrect recording of public footpath Blackrod 018 was brought to the attention of the PRow team following the erection of a stable block in 2003.
2. Following investigations it was found that the currently recorded line was not the same line as shown on plans drawn up by the former Blackrod U.D.C. The currently recorded line is now obstructed by a stable block.
3. Authority was given by Planning and Highways Committee to make a Modification Order dated 20th March 2003. A draft order was made in April 2004.
4. Following the death of the landowner in 2004, on the advice of the Council's Legal Services Team, it was not seen to be appropriate to proceed at this time with the making and advertising of the legal order.
5. Further consultation was carried out in November 2013 with Local Councillors, Blackrod Town Council, statutory undertakers, the affected landowners(s) and the Footpath Liaison Group and no objections were received.
6. The Council is the surveying authority for the purposes of section 53 of the Wildlife and Countryside Act 1981 and is required by law to keep the Definitive Map & Statement under continuous review and make any modifications necessary by Order as a result of the occurrence of certain events.

Background

7. An anomaly was identified in 2003 between the Definitive Map and Statement. The footpath in question is known as Blackrod 018 and leads over land situated to the North of Manchester Road, within the vicinity of Popes Farm, Scot Lane, Blackrod, BL6 5SR.
8. The Public Rights of Way team investigated the recording of its legal line in response to a claim that this was obstructed by means of a stable development. It appeared that the definitive map conflicted with the definitive statement.
9. This was an internal investigation with no documentary or user evidence provided by any external parties and the relevant documentary sources held in the public rights of way offices having been examined. As shown in appendix 2, Plan One shows the incorrectly recorded section of the footpath to be deleted as indicated by the black solid line. The correct route of the footpath to be added is indicated by the black dashed line.

Summary of the Historical Documentary Evidence

10. The draft and provisional maps dating from 1952; an untitled map dated 1972 and the draft revised map (first review) dated 1966; all parish specific and produced by Blackrod UDC, show the line of the path following the black dashed line as shown on Plan One in appendix 2.
11. The statements that accompany the provisional and draft maps dating from 1952, the first review dated 1966 and the current definitive map with a relevant date being 25/04/84, are all quite specific and all describe the path as starting in Manchester Road by Wigham's Institute, through field gate, undefined path alongside ploughed field and colliery spoil heap, exit on path 19.

12. The first documentary evidence of the existence of a way as described in the definitive statements was recorded as a pecked line on the OS base map dated 1908-10. This is more clearly defined on the OS base maps dated 1928-29 and 1936-39.
13. The OS base maps dated 1961 and 1972 show a way leading along its currently recorded line as shown on the definitive map with a relevant date being 25/04/84. No OS base maps between 1973 and 1984 are available. The OS base maps merely indicate the presence of a way on the ground. They do not indicate whether its status was public or private.

Conclusion

14. All survey maps and statements for the Borough of Bolton were parish specific until all the records were consolidated and transferred onto draft and subsequent maps following major reorganisations of authorities in the early 1970s. It seems that the explanation for this error is that whoever was transferring the information gathered from individual parishes simply annotated the path following the pecked lines as shown on the OS base maps dated 1961 and 1972 instead of what had been shown on the survey maps and as described in the statements.

Options

15. **a:** to authorise officers to request the Borough Solicitor to make and advertise an order under section 53(3)(c)(i) & (iii) of the Wildlife and Countryside Act 1981 to make a definitive map modification order to amend the definitive line.
16. **b:** to decline to make an Order and do not make a definitive map modification order to amend the definitive line.

Financial Considerations

17. Financial cost are not a consideration as the Authority has a duty under Section 53 of the Wildlife and Countryside Act 1981 to keep the definitive map and statement under continuous review and to modify it by means of a legal order where evidence is discovered.
18. But for completeness the cost for advertising the Order would be borne by Bolton Council. This would be approximately £2000.00. Complicated orders can take many years to process, and can consume large amounts of staff time, the value of which is difficult to calculate. Where objections are made to an Order and not withdrawn, the Order will fail to be confirmed by the Secretary of State and Bolton Council would be responsible for the conduct of any hearing or public inquiry.

Legal Implications

19. The order will be made under the provisions of the Wildlife & Countryside Act 1981, section 53(3)(c)(i) and (iii). This will remove the rights which have been incorrectly shown and add the right of way not currently shown.
20. The purpose of modification orders are to record existing rights accurately. Court cases have shown that there are no human rights implications.

Recommendation

21. For reasons made clear in the report, the Committee chooses option 15 a to authorise officers to request the Borough Solicitor to make and advertise an order to amend the definitive line of public footpath Blackrod 018 which will reflect more accurately the historic situation.
22. The correction is to be made in accordance with section 53 (3) of the Wildlife & Countryside Act 1981:
 - (c) The discovery by the authority of evidence which (when considered with all other 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 to which this Part applies.
 - (ii) That there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

ES/HEDev/AS
28th October 2014

APPENDIX 1

Report to: PLANNING & HIGHWAYS COMMITTEE **Item:**
Date: 20TH MARCH 2003
Report of: DIRECTOR OF ENVIRONMENT
Contact Officer: David Wagstaff **Report No.**
Telephone No.: 336488

TITLE:

**PROPOSED MODIFICATION ORDER TO AMEND THE LINE OF PUBLIC FOOTPATH
18, BLACKROD (BLA018)**

NON-CONFIDENTIAL

This report does **not** contain information which warrants its consideration in the absence of the Press or Members of the public

PURPOSE OF REPORT:

To seek the authorisation of Planning and Highways Committee to authorise the Director of Central Services to make a Modification Order to the Borough's Definitive Map under Section 53 (3)(c)1 Wildlife and Countryside Act 1981.

FOR DECISION:

Committee are asked to decide whether or not to prepare a Modification Order to enable the Definitive Plan to be changed.

BACKGROUND DOCUMENT:



BACKGROUND

1. It has come to the attention of the Council's Public Rights of Way Officers that the legal line of Public Footpath 18 Blackrod has been recorded incorrectly on the Council's definitive map of Public Rights of Way.
2. The attached plan Appendix A shows the recorded position of footpath 18 in relation to the Scot Lane End area of Blackrod. The plan is labelled on the plan as BLA018.
3. The current recorded line of the footpath is not the same line which was shown on plans which were drawn up by the former Blackrod U.D.C.
4. The maps produced by Blackrod U.D.C show the legal line of footpath 18 to be on a line that follows the outskirts of a wooded area. This path is apparent on the ground and is defined by wooden fencing either side of it. The path is shown on the attached Appendix B by the line A-C-D-B and on Appendix A just below the word 'path'.
5. Recently the erection of stables led to the questioning of the definitive line of the path, as the foundations appeared to overlie it.

CONSIDERATIONS REQUIRED

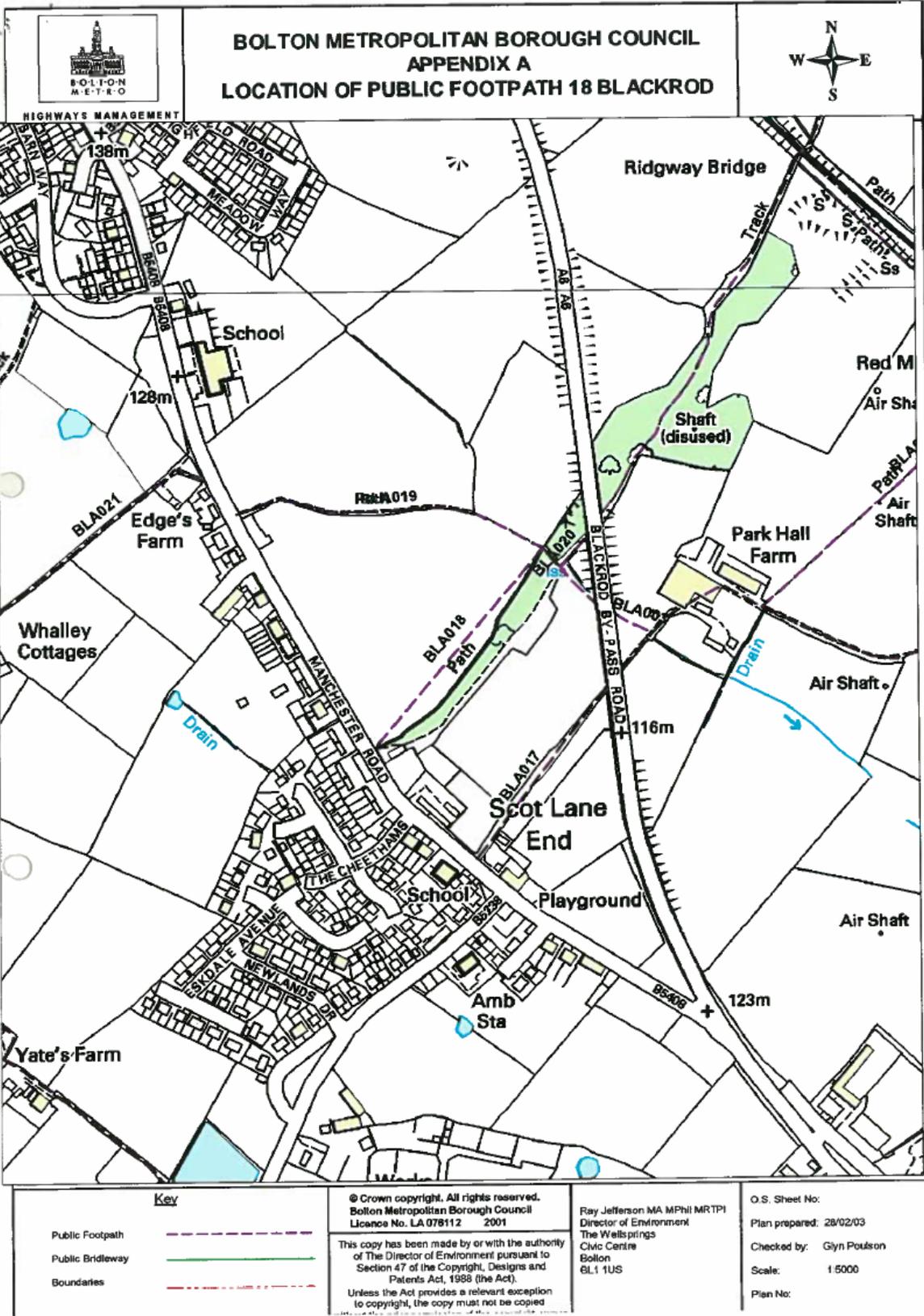
6. Having identified this anomaly Bolton Metro has a duty to resolve it. Section 53 of the Wildlife and Countryside Act 1981 places a duty on all highway authorities to keep the definitive map under 'continuous review'. The Council cannot legally change the definitive plan without the making of a modification order.

PROPOSALS

7. It is proposed to make a modification order under Section 53(3)(c)1 of the above Act, the effect of which would be to change the definitive line of the footpath from the line A-B to the line A-C-D-B.

FINANCE/RESOURCE IMPLICATIONS

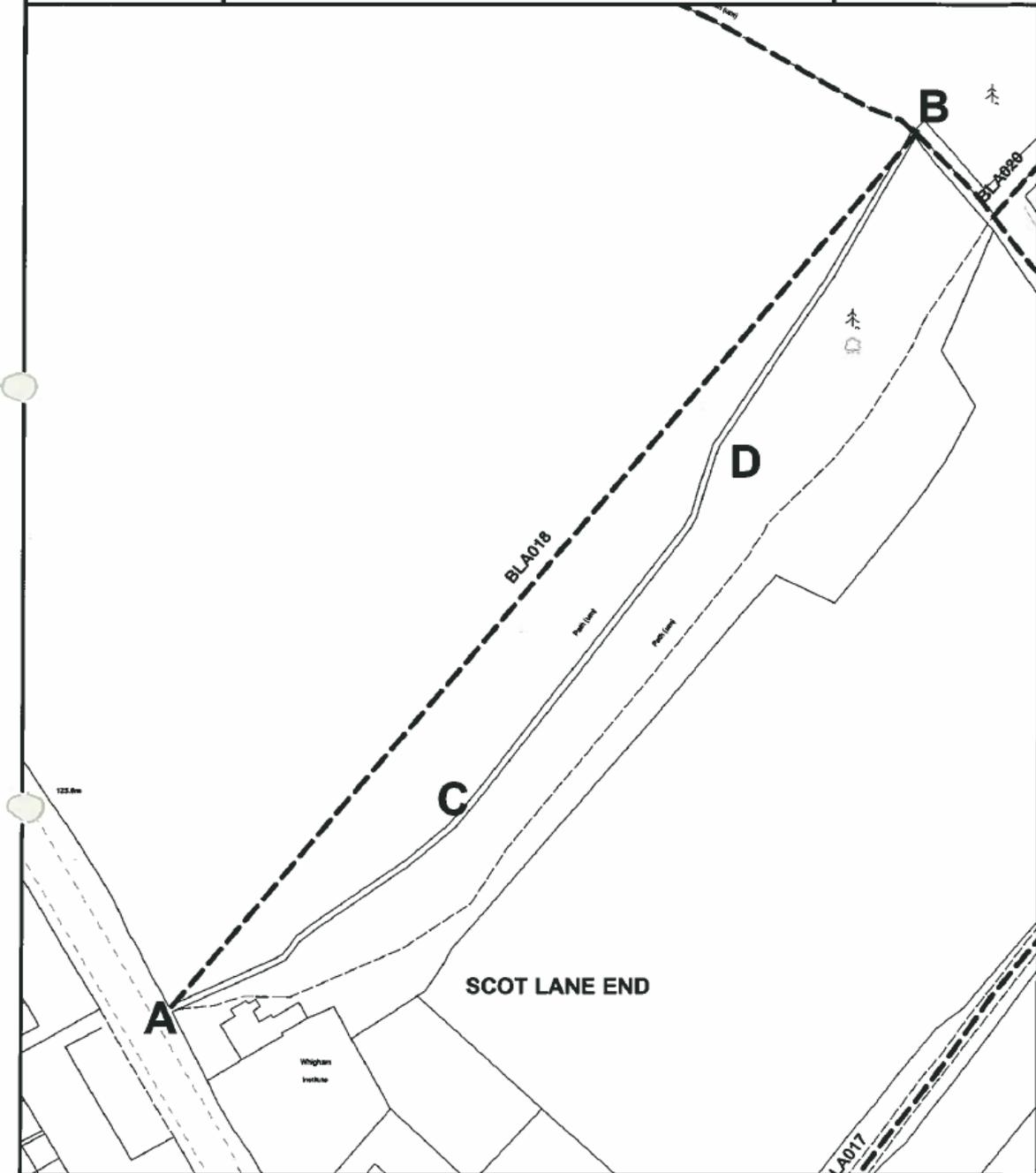
8. There are no advertising costs involved with this order. The administration costs associated with the processing of the order are not expected to exceed £100.
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HIGHWAYS MANAGEMENT

BOLTON METROPOLITAN BOROUGH COUNCIL APPENDIX B DETAILED PLAN OF PUBLIC FOOTPATH 18 BLACKROD



Key

Current recorded line of path	A - B
Correct legal line of path	A - C - D - B

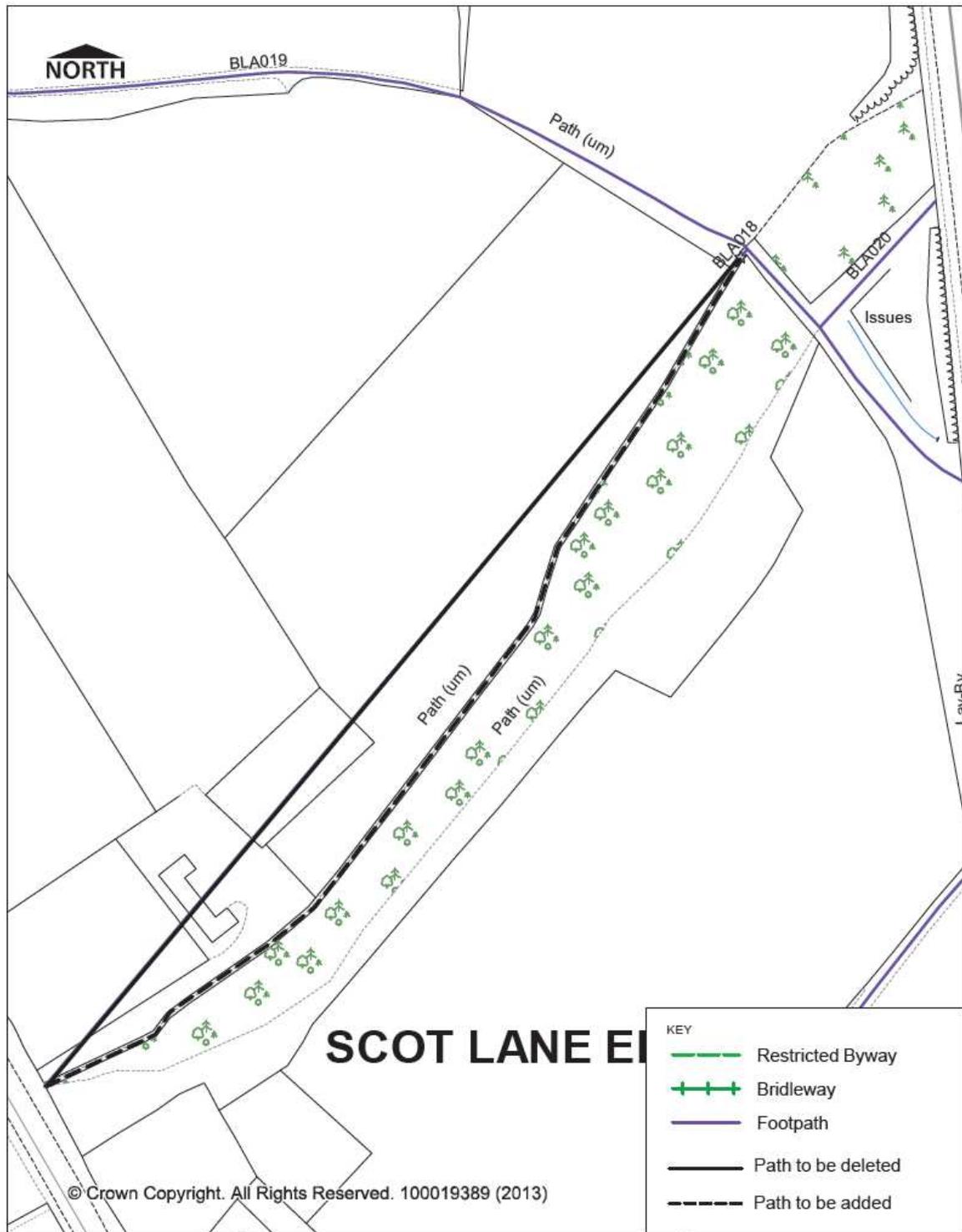
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Ray Jefferson MA MPhil MRTPI
Director of Environment
The Wellsprings
Civic Centre
Bolton
BL1 1US

O.S. Sheet No:
Plan prepared: 28/02/03
Checked by: Glyn Poulson
Scale: 1:5000
Plan No:

APPENDIX 2



Bolton Council HIGHWAY AND ENGINEERING DELIVERY SERVICES PUBLIC RIGHTS OF WAY	Plan One PUBLIC FOOTPATH BLACKROD 018 Section 53 WCA 81 Proposed Modification Order			
	ENVIRONMENTAL SERVICES Malcolm J. Cox, MBA, BSc, C Eng, MICE Director of Environmental Services The Wellsprings, Civic Centre, Bolton, BL1 1US	Date 11/11/2013	Scale 1:5000	Drawn AS

APPENDIX 3

DEFINITIVE MAP MODIFICATION ORDERS - GUIDANCE ON DECISION MAKING

Modifications require us to look back to discover what has happened in the past, establish the facts and apply the relevant legal tests to decide whether or not a right of way exists. Whether this provides new opportunities for users or creates difficulties for landowners (or ourselves) is irrelevant and must not be taken into account.

This differs from public path orders, which involve creating, closing or diverting paths. With these, the Authority exercise a discretion to make changes to the rights of way network to improve it for the future, or to reduce problems wherever possible or to create new opportunities for path users.

The Wildlife and Countryside Act 1981, part 3, section 53, concerns the making of amendments (modifications) to the definitive map on the basis of evidence alone. The evidence must be considered in isolation to all other factors such as local history, desirability or otherwise, personalities involved, Authority policy, and so on.

The evidence put forward in the report should be sufficient to enable Members to reach a decision.

Modification orders may amend the definitive map, provided that the evidence discovered is cogent and shows that, on the balance of probabilities, a change should be made. The possible changes are:

- (1) **add** to the map rights of way not presently shown,
- (2) **remove** rights of way already on the map,
- (3) **upgrade or downgrade** rights of way already shown on the map or
- (4) **change some details** of a recorded right of way.

The modification process is legally complicated and a significant number of cases have reached the High Court and beyond. The reports prepared for committee by the rights of way staff outline the law relating to each case and endeavour to draw your attention to the significant points. Officers will, of course, be present at the meetings to assist with clarifying any matters connected with these items.

The Authority is acting in a quasi-judicial capacity and must reach a decision based on the evidence presented, weighing such evidence using the test of the 'balance of probabilities'. Although officers have considered the evidence, and made a recommendation to members based on their appraisal, members must themselves consider the evidence and reach their own conclusions.

Members are not required to resolve conflicts in the evidence and there may well be evidence on both sides of the issue. You must weigh up the evidence and, if on balance, it is reasonable to conclude that the evidence shows that change should be made, you should authorise the making of a modification order.

If a modification order is made the public have a right to object to that order. The matter would then be determined by the Secretary of State. Conversely, if the resolution is not to make an order, the applicant also has a right to appeal.