

Wildlife and Countryside Act 1981

Application for a Definitive Map Modification Order

To add a Public Footpath between Lodge Farm Close and Main Street, North Anston

1. Purpose of this report

This report outlines the result of investigations by officers into the above application; it sets out all the evidence and makes a recommendation based on all the relevant available evidence.

2. Background

2.1 On 20th July 2022, Rotherham Metropolitan Borough Council (“the Council”) received a duly made Definitive Map Modification Order application for a public footpath to be added to the Definitive Map and Statement between Lodge Farm Close across Lodge Farm Mews to Main Street, North Anston. The application route is shown on the attached plan in Appendix A, between points A and B.

2.2 The application is based on both user evidence and documentary evidence which is outlined in the body of the report. The application is supported by user evidence forms claiming use of the route on foot between 1988 and 2022 (34 years).

2.3 The Council is under a statutory duty to investigate any duly made application submitted to vary the Definitive Map and Statement and must make a decision on the application based upon a comprehensive assessment of all the evidence. In making a decision on the application, the Council is operating quasi-judicially. The legal tests to be applied to the evidence are set out below.

2.4 It is believed that the Council received the application as a result of the erection of a gate at Point B in August 2022 blocking access to the route.

3. Consultations

3.1 Pre-decision consultations were conducted with local user groups, elected Councillors, Anston Parish Council and residents living on Lodge Farm Mews and Lodge Farm Close. All comments received after the pre-decision consultation are in Appendix B of the report. Comments made by the adjacent landowners as part of the pre-decision consultation process have been included in section 8 under Landowner Evidence. Any relevant evidence submitted as a result of the consultations has been considered as part of this report.

4. Legislative Context

4.1 The Council is the Surveying Authority for the purposes of the review of the Definitive Map and Statement for the Borough of Rotherham. Section 53 of the Wildlife and Countryside Act 1981 places a duty upon the Surveying Authority to keep the Definitive Map and Statement under continuous review and to make any requisite changes to the Definitive Map and Statement (by way of Definitive Map Modification Orders).

4.2 Section 53(3)(c)(i) provides that an Order should be made upon the discovery of evidence which (when considered with all other relevant evidence) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path.

4.3 The standard of proof for both making and confirmation of an Order under Section 53(3)(c) is the same, namely that the civil test of the “balance of probability”. An exception to this applies in circumstances where the Council considers that the evidence available shows that a

right not shown in the Definitive Map and Statement can be said to be reasonably alleged to subsist, this provides for the making of an Order to allow the evidence to be tested.

4.4 With few exceptions, before any highway can come into being there must be an act of dedication by the landowner, followed by an acceptance of the dedication by the public. The act of dedication need not be express, it may be presumed or implied as a result of the actions (or inaction) of the landowner. Public acceptance is generally demonstrated through public use of the way. Such use must be of a nature that can be defined as being 'as of right'. To satisfy 'as of right' it is necessary that the public use of the route be without force, without secrecy, and without permission.

4.5 Section 31 of the Highways Act 1980 states:

“(1) Where a way over 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 twenty 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.”

“The period of twenty 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 is mentioned in subsection (3) below or otherwise.”

“Where the owner of the land, which any such way as aforesaid passes has erected in such manner as to be visible by persons using the way a notice inconsistent with the dedication of the way as a highway; and has maintained the notice after the first of January 1934, or any later date on which it was erected, the notice, in the absence of proof of a contrary intention, is sufficient evidence to negate the intention to dedicate the way as a highway.”

- 4.6 Section 31(1) has two 'limbs' - the first provides that proof of twenty years continuous user 'as of right' endorses a claim that a highway exists; the second (sometimes referred to as 'the proviso') provides that proof of a lack of intention to dedicate the way as a highway defeats the claim. It is for those claiming the existence of rights to first discharge the burden of proof, before an objector is obliged to provide any evidence showing a lack of intention to dedicate.
- 4.7 The establishment of highway rights under the common law is not bound by the use being for any given period (unlike presumed statutory dedication under Section 31, as set out above), with the courts having ruled that rights can, in certain circumstances, be established in a very short period of time.
- 4.8 In reaching a conclusion (under both the common law or Section 31 of the 1980 Act) the decision-maker must take into account Section 32 of the Highways Act 1980, which states:
"A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document, which is tendered in evidence, and shall give weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced."

5 Summary of Evidence

5.1 This report summarises all the evidence the Council has found including user evidence (6), documentary evidence (7) and landowner evidence (8). A consideration of evidence (9) concludes that section of the report.

6 User Evidence Forms

6.1 The application is supported by 6 User Evidence Forms ('UEFs') claiming use of the route on foot over a 34-year period between 1988 and 2022. All 6 users said they used the route on foot over the 20 years between 1988 and 2022 which satisfies the requirement for the use to be for a full period of 20 years.

6.2 For the purposes of Section 31 it is essential for the Council to investigate whether use of the route was 'as of right', that being, without force, without secrecy, and without permission.

6.3 'Without force'

6.3.1 All 6 user evidence forms stated that the users had not been stopped or challenged using the route. All 6 user evidence forms had fully consistent answers stating that there were no gates or stiles, which indicates it has been an open route with no furniture between 1988 and 2022.

6.4 'Without secrecy'

6.4.1 The investigation suggested that use was open, where the landowner would have been aware that the way was being used if they had chosen to look; use was able to be challenged.

6.5 'Without permission'

6.5.1 All 6 users stated that they had not been given permission to use the route. All the user evidence forms stated there were notices on the route. 3 out of 6 people stated there was a notice

at either end of the route saying “private property no public access” and the same 3 people stated that they ignored these notices for 34 years without hindrance which indicates these notices have been in place since 1988. 1 person also stated that they saw a typed notice which appeared in April 2022 stating that further action would be taken against non-residents of Lodge Farm Mews who used the access to and from Main Street.

6.5.2 Following the damage to the notices, the landowner did not take steps to replace them, or to notify the Council that the way is not dedicated as a highway (as provided for in Section 31 Subsection 3).

6.6 All 6 users stated that their use of the route started in 1988 and ended in 2022. As the route was blocked by a locked gate at Point B in August 2022 it can be assumed that the right of the public to use the path was brought into question by the erection and locking of the gate. The investigation has not produced evidence of any prior action that brought the right of the public to use the route into question.

6.7 The investigation found that use of the application route was as of right and without interruption.

7. Documentary Evidence

7.1 A variety of documentary research has been conducted to assist in the determination of the application.

7.2 Ownership of the land

7.2.1 Part of the claimed route between A-B was previously owned by Ceerioge Limited under title SYK235134. Ceerioge Limited became GFP Construction Limited. GFP Construction Limited went into involuntary liquidation on 2nd September 2020. At the point the company went into insolvency, the land within SYK235134 reverted to Crown ownership under the Bona Vacantia

rule. Bona Vacantia is Latin for “vacant goods” and refers to what happens when property has no legally recognised owner and the ownership of the land passes to the Crown.

7.3 Land Registry Documents

7.3.1 Land Registry documents were identified to determine land boundaries between the owners of 1-6 Lodge Farm Mews and to establish who owned which section of the claimed route. The Land Registry information is in Appendix C. The section of the claimed route at Point A on the Plan under Appendix A was owned by Ceerioge Limited and the land at Point B is within the boundary of 6 Lodge Farm Close.

7.4 Google Maps Imagery

7.4.1 Google Street View Images show the area of Point A and Point B of the Plan shown in Appendix D. Google Map Imagery has an archive of photographs from between January 2009 and March 2023 of both areas. In January 2009 the image shows the sign that was attached to the street sign as saying “private property no public right of way”. In March 2023 the same sign was in situ at Point A. A photograph of the sign at Point A is at Appendix D.

7.4.2 Although the wording is unclear in the images from March 2011 and January 2009, the sign appears the same as the March 2023 sign, therefore it is assumed the sign has been in situ since 2009. At Point B, there is the remains of a sign shown on Google Street View in January 2009, although it appears identical to the other sign, it has been damaged and is not as clear as the sign at Point A.

7.5 Ordnance Survey Maps

7.5.1 Ordnance Survey maps have been produced from around 1801. They were originally made for military purposes to record all tracks and roads which could be used in time of war; this included both public and private routes. Since 1888, Ordnance Survey maps

have included a disclaimer: “the representation on this map of a road track or footpath is no evidence of a right of way” and this is presumed to apply to earlier maps. However, the maps are strong evidence of physical features which existed at the date of survey. From 1883, onwards footpaths were annotated 'F.P.', the object of this annotation being that the public should not mistake them for roads that could be used by horses or wheeled traffic; it did not denote that a footpath that was labelled in this way was public. From 1893, all footpaths of a permanent character across fields were to be marked; again, with no distinction being made between public and private rights of way.

7.5.2 The Ordnance Survey maps do not show a dashed line to denote a footpath between Point A and B of the Plan in Appendix A. All Ordnance Survey maps did show a solid line at Point C where it intersects the highway of Main Street, as shown on the 1931 Yorkshire Sheet CCXCVI.SW (Appendix G). The 1967 Ordnance Survey SK5084-SK5184 edition (which is clearer than the 1950 maps) (Appendix I) shows the boundary area recognised as the Mews with a solid line at Point A and Point B of the Plan. This suggests that the route between Point A and B of the Plan crossed privately owned land.

7.6 Definitive Map Records

7.6.1 The 1952 Definitive Map and Statement (included as Appendix H) does not show a right of way in the vicinity of the application route.

8 Landowner Evidence

8.1 Local residents were consulted. Eight residents responded to the Council to express their objection to the application and their comments are at Appendix B.

8.2 “Private Property No Public Right of Way” Signs

8.2.1 There are two metal signs, currently in situ, one at approximately Point A and one at Point B (See Plan at Appendix A). The sign at Point A that says: “private property no public right of way” and is within the land boundary of land previously owned by Ceerioge Limited which as is explained above is now Crown Land.

8.2.2 A previous landowner of Lodge Farm Mews has submitted an objection to the application stating that the route has never been intended as a public right of way and that when all 7 houses were built on the Mews the owners of the houses agreed that they did not want the public to have access from Lodge Farm Close through Lodge Farm Mews. The owners purchased signs that said: “Private Property No Public Right of Way”; one placed at Point A and one at Point B.

8.2.3 Another local resident objected to the application stating that the: “private property no public right of way” signs which the residents of Lodge Farm Mews jointly purchased together have been in place since 1991/1992. One resident confirmed their ex-spouse installed the signs.

8.2.4 The landowner who lived at 6 Lodge Mews (during the time the signs were said to be installed) was approached by a rights of way officer on several occasions and asked whether they had any receipts or photographs of the sign that was installed or anything else that would help to determine the exact date that the signs went up. However, the Council has been unsuccessful in obtaining this information and the Council have also been informed that this person has recently passed away.

8.3 Photographs of the development site

8.3.1 A resident who submitted an objection to the application provided some photographs of Lodge Farm Mews that were taken in 1988, 1989 and 2002 when development works

were carried out on the site. These photographs show that the courtyard area was obstructed and unpaved. These photographs are at Appendix K of the report.

8.4 Land Registry Documents

8.4.1 Land registry searches were conducted to determine the land boundaries across the entire length of the application route and this information is at Appendix C. The land crossed by the path is not jointly owned by the residents of Lodge Farm Mews. A small part of the route is owned by number 6 Lodge Farm Mews and the rest was previously owned by Ceerioge Limited and is now Crown Land as explained above.

8.5 Gate erected on 16th August 2022

8.5.1 Lodge Farm Mews residents installed a metal gate on 16th August 2022 (located at approximately Point B) with the intention of protecting their privacy and safety by keeping the public out. The gate is kept locked. A photograph of the gate is at Appendix J. Before the gate was erected, a notice was placed on both signs at Point A and Point B stating that the pedestrian access was to be closed. A photograph of the notice is at Appendix L. The residents of Lodge Farm Mews wrote a letter sent to the residents of Lodge Farm Close informing them that the route was to be closed, and should they wish to walk through the route, the Lodge Farm Mews residents would be happy to provide the code to open the gate. The residents of Lodge Farm Close, two other residents living next to the entrance at 44 Main Street and the postman were provided with the code to open the gate.

8.5.2 Another landowner has objected to the application. In their landowner information form they stated that they challenged members of the public asking them to not use the route and that they regularly parked their car in front of the route to discourage people to use it. They stated that the residents are responsible for the upkeep and maintenance of the

Mews and they all contributed to the installation of a metal gate at the Main Street end as a result of the increase in use by the public.

9 Consideration of Evidence

- 9.1 General Considerations: Definitive Map Modification Orders do not extinguish or create any public rights of way; they simply seek to update the legal records to reflect the true and existing situation. As a result, whilst landowners understandably raised issues such as security, privacy and amenity, issues such as desirability, suitability, need, property values and even public safety are not matters that can lawfully be considered as part of the decision-making process.
- 9.2 As GFP Construction Limited went into liquidation on 2nd September 2020, at that point the area of land, previously in the ownership of Ceerioge Limited, and then in the ownership of GFP Construction Limited became Crown Land. The Crown is not bound by the Highways Act, 1980 and therefore Section 31 of the 1980 Act does not 'bite' on land in Crown ownership (irrespective of how the land comes to be in Crown ownership) The effect of this is that, although there has been a period of public use 'as of right' of the application route for a full period of 20 years from 2002 to 2022, for part of that 20-year period the ownership of the land by the Crown prevents the operation of Section 31.
- 9.3 The erection of the signs in 1991 would be sufficient to be a bringing into question for the purposes of Section 31. Actions that bring into question do not have to be carried out by the landowner. But as the signs are on land owned/previously owned by Ceerioge Limited and were not put there on the landowner's instructions then they will not be sufficient evidence of a lack of intention to dedicate. Use of the application route by the public did not start until 1988, so there is only a period of 3 years use prior to the erection of the signs in 1991.

9.4 Consideration of the user evidence at common law

9.4.1 Although the evidence from the residents suggest that the signs went up around 1991,1992, all the user witnesses acknowledge that a sign has been in place since 1988 (no-one says that they used the route prior to the sign going up); most remember what the sign says. While the evidence is that the residents, rather than the landowner, put the "private property no public right of way" signs up, the landowner did not themselves remove the signs and did not require the signs to be removed by the residents. The existence of the signs is considered to be incompatible with an intention by the landowner to dedicate the application route at common law.

10 Conclusion

10.1 The decision whether or not to make a Definitive Map Modification Order is quasi-judicial in nature. This means that whilst all interested parties must be given the opportunity to have their say, the decision must be made taking into account all of the available and relevant evidence. The decision-maker must make the decision based upon their own objective assessment of the relevant evidence.

10.2 Definitive Map Modification Orders do not create or extinguish public rights of way; they seek to update the legal records of public rights of way to reflect a true representation. Factors such as suitability, desirability property values and public safety, whilst they are important concerns, are not matters that can be lawfully taken into account as part of the decision-making process.

10.3 If the Council is satisfied on the balance of probability that public footpath rights subsist based on the evidence discussed in this report, it should resolve that:

a) a Definitive Map Modification Order be made to add as a public footpath the route shown on the plan within Appendix A

b) In the event of no objections being received, or if such objections are received, if they are subsequently withdrawn, the Order be confirmed;

c) In the event of objections being received, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination, during which process the Council will support the confirmation of the Order.

10.4 If the Council is not satisfied, on balance of probability, that the alleged public footpath rights discussed within this report subsists or are reasonably alleged to subsist and therefore a Definitive Map Modification Order should not be made, it should resolve to refuse the Application and advise the Applicant of their rights to appeal to the Secretary of State.

10.5 In conclusion, as part of the claimed route falls under Crown Land, Section 31 does not apply, which means that the statutory presumption following 20 years public use as of right does not apply. Due to the presence of the signs stating "private property no public right of way" the inference to be drawn from the facts taken as a whole is, on balance, that the landowner did not intend to dedicate the route to the public and dedication at common law has not occurred. It is the view of the Council that a Definitive Map Modification Order should not be made to add the application route between Lodge Farm Close and Main Street, North Anston onto the Definitive Map and Statement for the Parish of Anston as a Public Right of Way.

Appendices

Appendix A – Plan detailing the application route between Lodge Farm Close and Main Street, North Anston

Appendix B – Pre-Decision Consultation Comments

Appendix C – Land Registry Search Details

Appendix D – Google Street View Images

Appendix E – A photograph of the metal sign at Point A

Appendix F – A photo of the metal sign at Point B. This has been produced by Google Maps

Appendix G - 1931 Yorkshire Sheet CCXCVI.SW. Scale 1:10,560 Reproduced with the permission of the National Library of Scotland.

Appendix H – The RMBC 1952 Definitive Map and Statement. Scale 1:10,560

Appendix I – Ordnance Survey SK5084-SK5184 – BB Published: 1967. Scale 1:2,500.

Reproduced with permission from the National Library of Scotland

Appendix J - A photograph of the gate installed in August 2022

Appendix K – A collection of photographs taken of Lodge Farm Mews in 1988, 1989 and 2002 when development works were carried out on the site where the application route goes through.

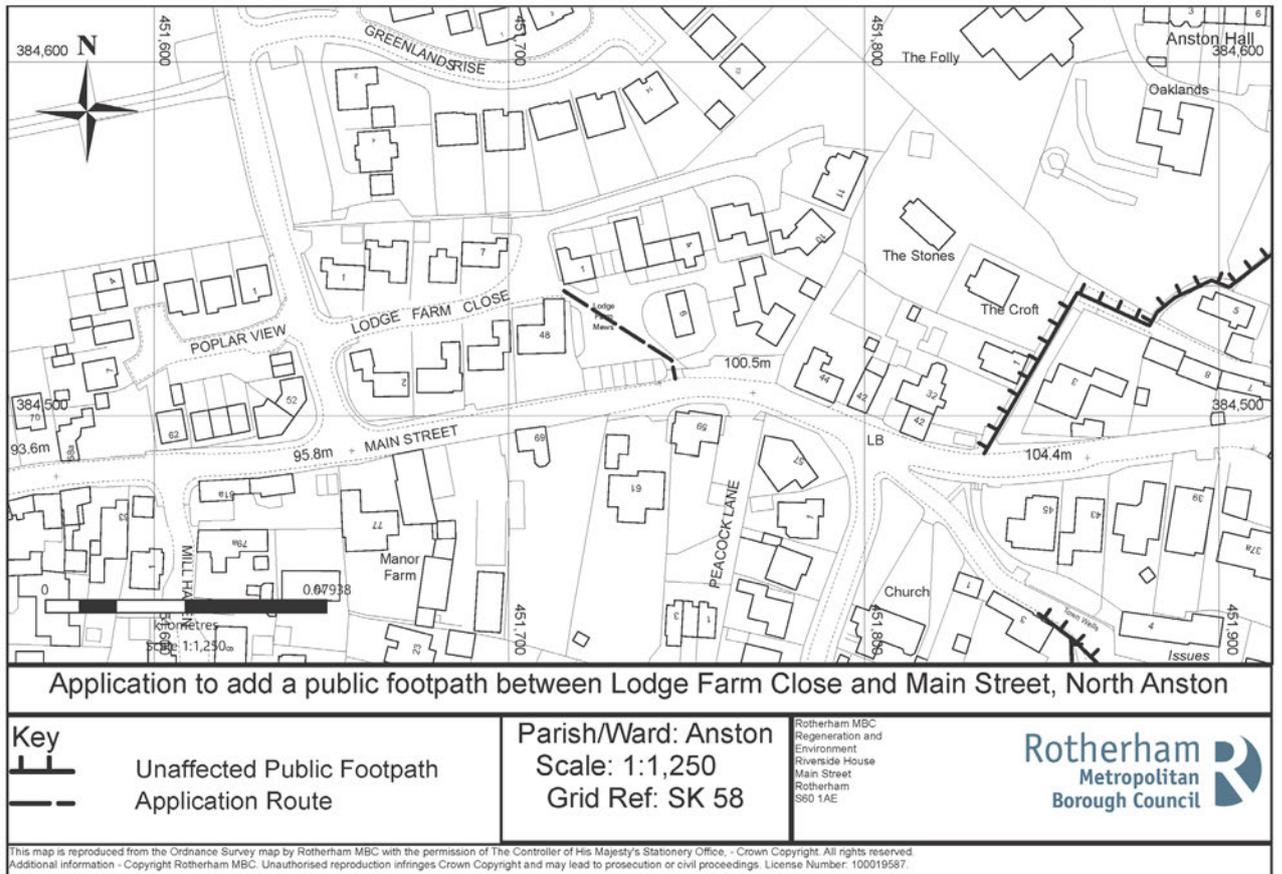
Appendix L – A photograph of the notice placed on the sign dated 8th April 2022.

Appendix M - A letter dated 28th July 2022 which was posted to the residents to inform them that a gate will be fitted shortly.

List of Appendices

Claim to add a public footpath between Lodge Farm Close and Main Street, North Anston

Appendix A – Plan detailing the application route between Lodge Farm Close and Main Street, North Anston



Appendix B – Pre-Decision Consultation Comments



Redacted Pre
Decision Consultation

Appendix C – Land Registry Search Details

Title Number	Proprietor	Address
SYK250350	[REDACTED]	[REDACTED]
SYK266969	[REDACTED]	[REDACTED]
SYK285708	[REDACTED]	[REDACTED]
SYK273682	[REDACTED]	[REDACTED]
SYK288806	[REDACTED]	[REDACTED]
SYK281003	[REDACTED]	[REDACTED]
SYK235134	[REDACTED]	[REDACTED]

Appendix D – Google Street View Images

Google Maps Street View – Lodge Farm Mews

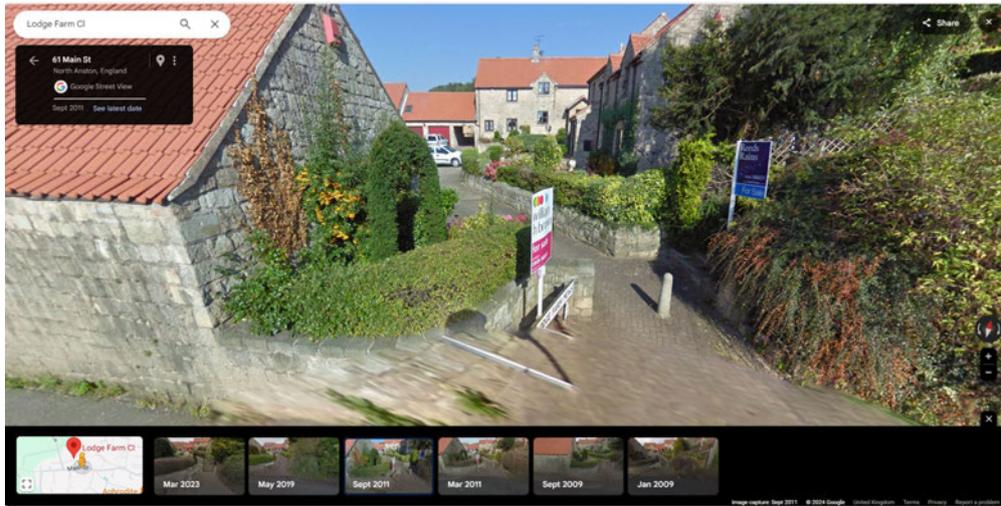
Lodge Farm Mews at Main Street



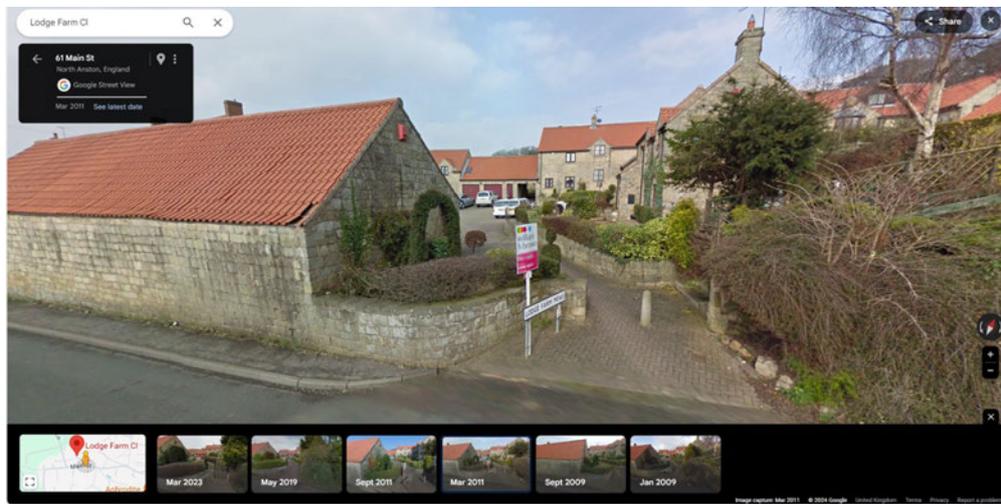
March 2023 Google Maps Street View



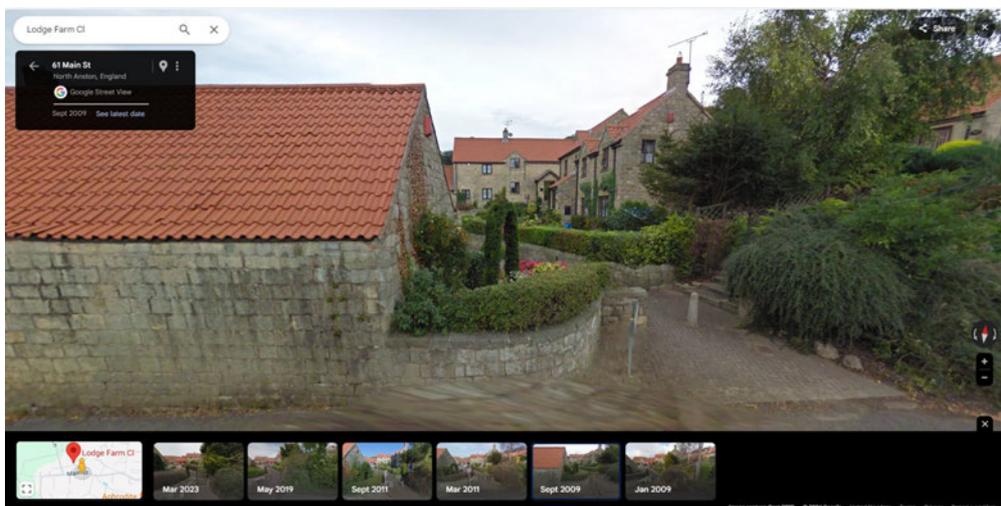
May 2019 Google Maps Street View



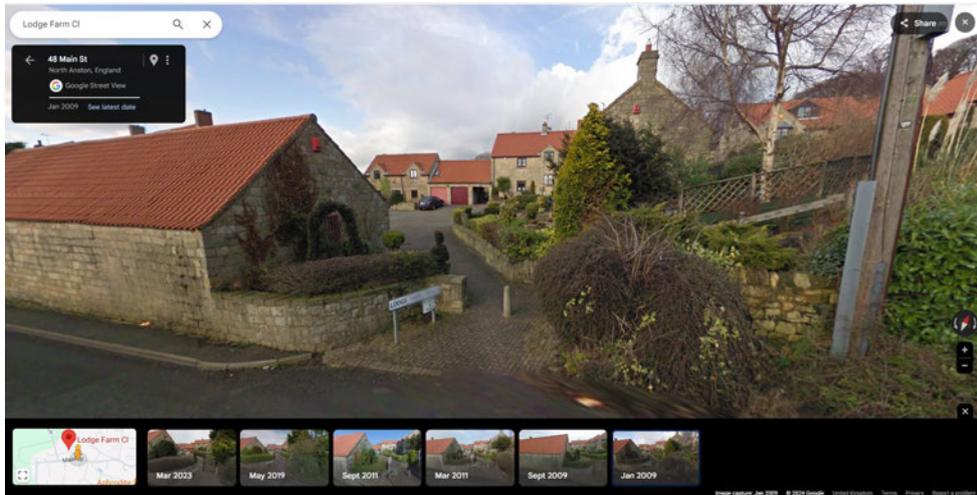
September 2011 Google Maps Street View



March 2011 Google Maps Street View



September 2009 Google Maps Street View



January 2009 Google Maps Street View

Lodge Farm Mews from Lodge Farm Close



March 2023 Google Maps Street View



March 2011 Google Maps Street View



January 2009 Google Maps Street View

Appendix E – A photograph of the metal sign at Point A

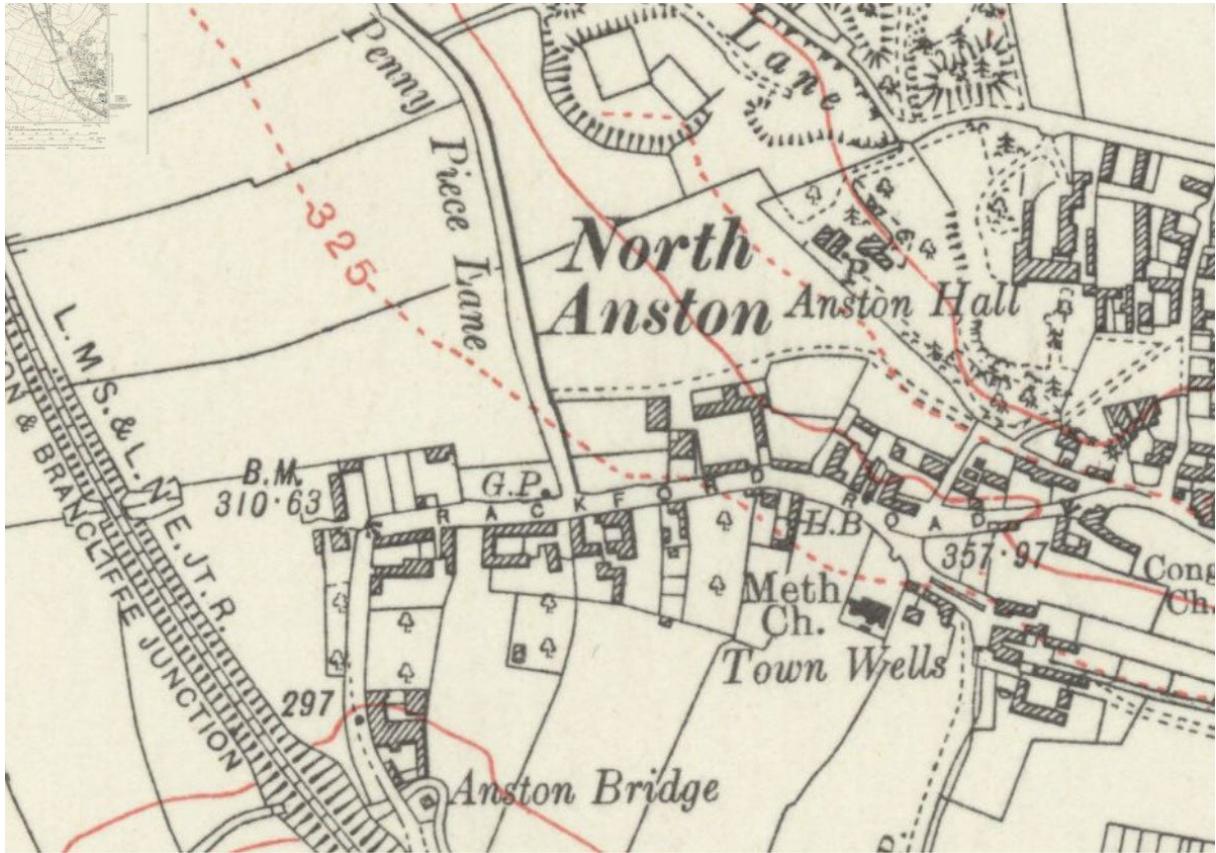


Appendix F – A photo of the metal sign at Point B. This has been produced by Google Maps



Appendix G - 1931 Yorkshire Sheet CCXCVI.SW. Scale 1:10,560

Reproduced with the permission of the National Library of Scotland.



Appendix H - The RMBC 1952 Definitive Map and Statement. Scale 1:10,560



Appendix I – Ordnance Survey SK5084-SK5184 – BB Published: 1967. Scale 1:2,500.

Reproduced with permission from the National Library of Scotland



Appendix J - A photograph of the gate installed in August 2022



Appendix K - A collection of photographs taken of Lodge Farm Mews in 1988, 1989 and 2002 when development works were carried out on the site where the application route goes through.

Photographs of Lodge Farm Mews

The mews Courtyard in front of 2 Lodge Farm Mews. Taken in the summer of 1988



Photograph taken on 6th August 1988.



Photograph taken on 8th October 1988 of Lodge Farm Mews showing the Mews obstructed by rubble.



Photograph taken on 5th November 1988 showing 2 Lodge Farm Mews still under construction



Photograph taken on 13th November 1988 showing where 6 Lodge Farm Mews is now.



Photograph taken in Spring 1989 showing the entrance from Main Street still under construction.



Photograph taken in 2002 showing Lodge Farm House taken from the Mews



Appendix L – A photograph of the notice placed on the sign dated 8th April 2022.



Appendix M - A letter dated 28th July 2022 which was posted to the residents to inform them that a gate will be fitted shortly.

28.7.22

Dear Neighbour

As you have probably seen we have had a sign up at both entrances into Lodge Farm Mews advising that we will be fitting a locked gate to the pedestrian entrance from Main Street on to Lodge Farm Mews in the near future.

The reason behind this is that, although there have been signs up since 1989 saying that the Mews is Private Property and not a Public Right of Way, there has been an increased amount of people walking through the Courtyard since the two new housing estates have been built.

We are hoping that you will appreciate this decision as it will stop as many people walking up Lodge Farm Close as well and hopefully give us all a bit more security.

Of course, we do not want to stop you walking through if it makes your life easier and we are happy to provide you with the gate code should you require it.

As all the Mews residents have jointly paid for this gate to be fitted, we do ask though that you do not pass the code on to anyone else. (We will be changing the code on a regular basis)

Please let us know if you want the code and thank you for your understanding.

Lodge Farm Mews residents