

Questions about HV3 answered by Derbyshire County Council

Q1. Can you confirm that if the route had gone ahead and been a footpath with permissive cycle rights (and/or cycle track order) DCC would have public liability for anyone using the route?

- Yes the Council would have public liability for anyone using the route, remembering that this depends on the circumstances of any incident. DCC (as it is now with the current footpath status), would be responsible for the surface condition of the new route. The Council would have liability for any accidents sustained by the public on the path due to, for example lack of maintenance of that surface, however, this would not extend to a blanket indemnity for all of the surrounding land should a member of the public leave the right of way. Also the landowner may be liable if the path surface defect was found to be a result of operations carried out by the landowner or their tenant, such as ploughing and cropping, or leaving machinery on the path for example.

Q2. While the work was being done on the route and prior to it becoming officially a cycle route who has public liability for users of the route? The claim is that the land owners would have public liability with no guarantee that DCC will adopt the route and so take on public liability and they are not prepared to enter into an agreement which they interpret as open ended.

- Yes the Council would be responsible for the route, whether concessionary or confirmed. The Council would not give a cover for all indemnity as again liability depends on the circumstances of the case and where the fault or defect was found to rest. This route is already a public footpath (all be it as an unsurfaced field path) so DCC is currently responsible for the surface and its maintenance but we cannot take on a general cover for all liability. In the interests of public safety, the route would be closed while work was being carried out on it.

Q3. The section 31 notice relating to the final field before Greendale Avenue, does this prevent the right of way (footpath) being changed to a cycle route?

- NO, it simply prevents the public claiming any additional or higher rights over the land going forward, the land owner can still agree to a change. The existence of a s31(6) does not prevent the landowner creating other rights, it purely prevents rights occurring for 20 years use. It would be suggested that the s31(6) is re done to reflect any additional rights created by the agreement.

Also, in case it comes up, some have asked why we simply do not create the wider path by an order (ie without agreement of the landowner) instead of by a creation agreement. If we did this, we could not pursue the cycle track order, as to do that we must have the landowner's consent for a route which crosses any agricultural land.

Finally, by way of a comment on the last point you make, I am afraid that funding is not as simple as choosing where it is spent. The funding for the Chesterfield East-West scheme is directly awarded from the DfT Active Travel Fund Tranche 2 funding stream and as such is governed by strict regulations. This is not money that has been awarded to the council's general budgets, but directly for that precise scheme. It is not therefore in our gift to reallocate it. If the project fails we simply cannot claim the money.