

Meeting: Planning and Rights of Way Committee

Date: Tuesday 17 January 2023 (commencing at 10:30am)

Membership:**County Councillors**

Richard Butler (Chairman)
Jim Creamer (Vice Chairman)

Mike Adams	Nigel Moxon
André Camilleri	Philip Owen
Robert Corden	Francis Purdue-Horan
Sybil Fielding	Sam Smith
Paul Henshaw	Daniel Williamson (apologies)
Andy Meakin	

Substitute Members

None

Officers and colleagues in attendance:

Steven Eastwood Snr	-	Advanced Legal Practitioner and Legal Advisor to the Committee
Neil Lewis	-	Countryside Access Team Manager
Jaspreet Lyall	-	Solicitor and Legal Advisor to the Committee
Adrian Mann	-	Democratic Services Officer
Joel Marshall	-	Principal Planning Officer
Jonathan Smith	-	Interim Group Manager for Planning
Stephen Tipping	-	Commons, Greens and Definitive Map Officer
Tim Turner	-	Senior Practitioner, Monitoring and Enforcement

Public speakers in attendance:

David Backhouse	-	Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton (item 5)
David Cannie	-	Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton (item 5)
Jenny Fillingham	-	Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton (item 5)

Susan Jones	-	Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton (item 5)
Stephen Parkhouse	-	Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton (item 5)
Jeffrey Wiseman	-	Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton (item 5)

1. Apologies for Absence

Daniel Williamson	-	other reasons
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2. Declarations of Interests

No declarations of interests were made.

3. Declarations of Lobbying

No declarations of lobbying were made.

4. Minutes of the Last Meeting

The minutes of the last meeting held on 13 December 2022, having been circulated to all Members, were taken as read and were confirmed and signed by the Chairman.

- The Committee agreed that the order of items on the agenda be changed to take the Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton as item 5 rather than as item 6, due to the large number of representors in attendance who had requested to address the Committee in relation to the application.

5. Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton

Stephen Tipping, Commons, Greens and Definitive Map Officer, introduced application 1113 by Mr Steven Parkhouse on behalf of the Nottinghamshire Area Ramblers to request the Council to record a series of public bridleways across land to the north of Meden Vale in the Parishes of Warsop, Cuckney and Norton through a Definitive Map Modification Order. The following points were raised:

- a) Four Definitive Map Modification Order applications have been made to establish public bridleways on the Definitive Map in the area of Meden Vale and the old Welbeck Colliery. As the relevant Highway Authority with the duty to keep the Definitive Map and Statement under continuous review, the Council is required by law to consider these applications on the evidence presented and as per the requirements of the legislation.

- b) The review of the applications by the Committee does not represent the end of the process to record any new bridleways and, at this stage, it is only required that the applicant makes a reasonable case that the bridleways have come to exist to secure approval from the Committee for the making of an appropriate Order. If the applications are refused, the applicant will be able to appeal to the Secretary of State. If the applications are approved, a six-week deposit period will occur during which the affected parties may object formally to the addition of the bridleways to the Definitive Map and have the evidence examined in more detail at a public inquiry.
- c) The paths set out under the four applications are considered in the report as nine separate routes, due to the nature of the evidence provided. Routes 1-5 and part of route 6 would constitute new bridleways on the Definitive Map, while part of route 6 and routes 7-9 would change existing footpaths to bridleways. Routes 1-4, 8-9 and part of route 5 are within woodland bordering the Welbeck Colliery, on land belonging to the Welbeck Estate. Routes 3 and 4 consist of a tarmac road laid when the land was occupied by the Ministry of Defence (MoD) during the Second World War, following which the land reverted back to the Welbeck Estate. Part of this route is leased to Phoenix Airsoft Adventures, which operates a paintball wargaming experience. Routes 5-7 cross agricultural land.
- d) In order for a bridleway to have come to exist, the routes must have been used by the public 'as of right' without force, secrecy or permission. Evidence by users to demonstrate this has been submitted as part of the applications. The landowners may rebut the user representations by showing evidence of intention for the routes to not be dedicated as public highway. A pre-Order consultation process has been carried out and a number of written representations were received, both in objection to and support of the application.
- e) An objection from the Welbeck Estate cites the Statutory Declaration that challenges the public use of the routes claimed, made in 2012 – which therefore results in any evidence of usage 'as of right' after this date being discounted. The objection argues that public users have been confronted by the Estate gamekeeper, the continuity of public access was interrupted by the MoD when it was in occupation of the land and also during a more recent Foot and Mouth Disease outbreak, the user evidence is unreliable, locked gates are in place to prevent access, and signs are displayed to indicate that the land is private property. The area used currently by Phoenix Airsoft Adventures is fenced off and has locked gates, with signage in place to confirm the site as private property.
- f) An objection from the Robin Hood Way Association states that any use of the existing designated footpaths by cyclists is illegal, and that the footpaths should not become bridleways for the safety of walkers. Other objections noted that there has been illegal use of the routes by motorised vehicles and other antisocial behaviour has taken place on them.
- g) Two letters in support of the application were received from the Nottinghamshire Footpaths Society and Sustrans, as the custodians of the National Cycle Network.

- h) In the context that, at this stage of the process, the applicant needs only to make a reasonable case that the bridleways have come to exist, the conclusion of officers is that the basic legal tests for making an Order to add each of the routes to the Definitive Map have been met. However, as the application is opposed, the established process is that the validity of the user evidence and the associated rebuttals is considered at a public inquiry that would occur following the making of an opposed Order, where the burden of proof is more exacting than at the current stage.

With the permission of the Chairman, Jeffrey Wiseman, David Cannie and Jenny Fillingham addressed the Committee in opposition to the application. The following points were raised:

- i) Phoenix Airsoft Adventures has run an outdoor wargaming experience in the Gleadthorpe Beck Plantation for over 14 years and the operation of the business in the area was granted the appropriate Planning permissions. The business has invested strongly in the local community, including supporting both war veterans and young people, and has a number of voluntary staff. Public access across its site would represent a clear health and safety issue, and opening the routes would also risk damage to the site from anti-social behaviour.
- j) The Welbeck Estate considers that the division of the paths identified in the application into 9 routes is not sustainable, and that the legal tests required for the paths to be considered as public highway have not been met. The routes are gated and there is clear signage in place indicating that they are on private land. Public use of the land has been by trespass, including through breaking and entering, such as by making routes around gates or by cutting off the locks, so usage of the paths has been by force and cannot be considered to be 'as of right'. Parts of the evidence presented have been considered already within previous applications, and some of the evidence is not relevant. The Estate has shown an obvious intention to not dedicate the routes as public highway, with clear Statutory Declarations in place to this effect.
- k) The Robin Hood Way is over 100 miles long and progresses from Nottingham Castle to Sherwood Forest, travelling through a number of different environments and linking various historic sites and tourist attractions. The Way follows existing public footpaths that were designed specifically for walkers and are used frequently by them, and are not open to cyclists. The conversion of these public footpaths to bridleways would bring both walkers and cyclists into the same space, making the paths more dangerous and less enjoyable to walkers.

With the permission of the Chairman, Steven Parkhouse, Susan Jones and David Backhouse addressed the Committee in support of the application. The following points were raised:

- l) The Ramblers Association considers that the routes in the application form a vital part of the Sherwood Forest 'Paths for Everyone' Network, which has been used by walkers, cyclists and horse riders for decades. Expanding the active travel network across Nottinghamshire has both individual health benefits, boosts the visitor economy, and helps to address the global climate crisis.

- m) It is important that the full extent of the Network is realised though gaps being filled, and that safe public routes through the application area are developed with participation by all parties. Planning Permission has been granted for the restoration of the nearby Welbeck Colliery tip, which includes a number of permissive cycle routes. The establishment of the routes as bridleways would help to alleviate the current dangerous access to existing public paths.
- n) Public users of the routes were surveyed at key points over two summer periods and a photographic record has been compiled to show how the paths have been worn by usage over time, and where any signage indicating private property has been established. Phoenix Airsoft Adventures established signage around its leased site from 2011, while signage erected by the Welbeck Estate has been introduced in some places, but is not consistent across the whole area. Although a Statutory Declaration was made concerning the agricultural land, evidence included with the documents supporting the Declaration indicates the acknowledged presence of a road used as a public path.
- o) Sustrans, which created and maintains the National Cycle Network, is also working to develop the 'Paths for Everyone' Network. The creation of the bridleways would confirm the legality of cycling along the trails and help to establish 'circular' cycle routes in the area. Cycling is becoming increasingly popular and has strong health benefits, and it is important that cyclists have access to routes that are free of vehicle traffic. It would be beneficial for the routes to include waymarkers, interpretation boards and information on the Countryside Code to achieve safety on the routes for everyone, and to ensure that people adhere to the lawful trails. The Nottinghamshire Local Access Forum has also been consulted and is in support of the application.

Following the representations both in opposition to and in support of the application, Committee members had an opportunity to ask questions of the representors and officers for the purposes of clarification. The following points were made:

- p) The objectors stated that evidence of the intention to not designate the routes as public highway was provided by the Statutory Declarations of 1997 and 2012, though attempted public access across the land has been an ongoing issue for many years. Entry to the routes is gated, but locks and chains have been cut on a regular basis. The Welbeck Estate had not been made aware of the intention to submit the application, nor of the intention to gather supporting evidence along the routes.
- q) Officers explained that, for the purposes of the current application, the applicant needs only to make a reasonable case that the bridleways have come to exist. The applicant has provided around 50 statements establishing a history of use of the routes by members of the public. This usage of the routes is contested and there is evidence of measures being put in place to prevent it, but public usage has nevertheless been attested to. As a result, a public inquiry following the making of an Order is the appropriate setting to consider the merits of and evidence behind the arguments, in detail.

- r) The Legal Advisor explained that the purpose of the current application is for the Committee to consider whether or not, on the balance of probability, a reasonable allegation has been made that a public right of way exists on the basis of public usage. The Statutory Declarations challenge the use 'as of right' from 1997 and 2012, but cannot be applied retrospectively to challenge any public usage prior to these dates. The consideration of the merits of the competing evidence would need to be carried out through a public inquiry – which would also consider the arguments relating to the desirability and safety of the routes, and how any such issues should be addressed.

The Chairman then opened the application for debate by Committee members. The following points were discussed:

- s) The Committee expressed concern that it is was clearly difficult for landowners to prevent public entrance across large areas of land where access could be asserted through forced entry, and that it did not wish to encourage acts of trespassing. Members noted, however, that if the routes had become rights of way by virtue of public usage, then members of the public should be able to exercise those acquired rights without obstruction.
- t) The Committee noted that, clearly, there were safety issues inherent in a public right of way passing through an area user for paintballing. Members considered that sensible conversations were required between the various parties to ensure that, in general terms, the countryside can be accessed by members of the public in a safe and responsible way.
- u) The Committee acknowledged the legal requirement for its consideration of the applications. Members noted, however, that as objections had been raised to applications that had a low level of burden of proof to succeed at this stage, the substantive issues would need to be addressed through the mechanism of a public inquiry. The Committee expressed reservations about the value added to this process by its consideration of the applications in this context, and Members noted that similar concerns had been raised in writing with the then Secretary of State by the Council's prior Rights of Way Committee.
- v) The Legal Advisor explained that the Committee should only consider the refusal of the application if, in its view, incontrovertible evidence had been provided that a public right of way could not exist. The Council could suffer both financial loss and reputational damage if it was found that the Committee had refused an application when the Council had in fact been provided with information indicating a reasonable allegation that public rights of way had arisen, and so had caused additional unnecessary work by parties as a consequence of its refusal.

The following amendment to the motion to approve the making of a Definitive Map Modification Order for the reasons as set out in the report was moved by Councillor Philip Owen and seconded by Councillor Sam Smith:

- To add an additional resolution to recommend to the Secretary of State that the Definitive Map Modification Order to record the nine routes on the Definitive Map and Statement is refused.

- w) The Legal Advisor explained that the current applications represented a preliminary stage in a quasi-judicial process where the Committee's decision must be guided by the evidence presented on the relevant points. Should an Order be made, the case would progress to a public inquiry if the objections were maintained, at which time the Council would have the opportunity to make a representation. At this stage, the Committee has not considered all of the evidence on the case that would be reviewed at a public inquiry. In this context, the Committee potentially taking a view on the merits of the case beyond its remit and not founded on the information currently before it could pre-judge and therefore prejudice the Council's position in future proceedings.

The proposed amendment to the motion was put to the vote and was not carried.

The motion to approve the making of a Definitive Map Modification Order for the reasons as set out in the report was put to the vote and was carried by a majority of the members present.

Resolved (2023/001):

- 1) To approve the making of a Definitive Map Modification Order to record the following routes on the Definitive Map and Statement:
 - Route 1 is added as a bridleway on the basis that the route subsists.
 - Route 2 is added as a bridleway on the basis that it is reasonable to allege that the route subsists.
 - Route 3 is added as a bridleway on the basis that it is reasonable to allege that the route subsists.
 - Route 4 is added as a bridleway on the basis that it is reasonable to allege that the route subsists.
 - Route 5 is added as a bridleway on the basis that, on the balance of probabilities, it can be presumed to have been dedicated at common law.
 - Route 6 is added as a bridleway on the basis that, on the balance of probabilities, it can be presumed to have been dedicated at common law.
 - Route 7 is recorded as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights can be presumed to have been dedicated at common law.
 - Route 8 is recorded as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights subsist.
 - Route 9 is recorded as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights subsist.

6. Variation of Planning Condition for the Bentinck Colliery Tip, Kirkby-in-Ashfield

Joel Marshall, Principal Planning Officer, introduced application 4/V/2022/0678 by Mr Carl Wright on behalf of Broomco (1997) Limited to vary the existing Planning Permission (4/V/2012/0096) relating to the Bentinck Colliery Tip, Kirkby-in-Ashfield to extend the duration for the importation, grading and reclamation works to 7 March 2024 to allow for the scheme to be completed in line with the approved plans. The following points were raised:

- a) The former Bentinck Colliery Tip is an extensive, elevated spoil tip that has been undergoing restoration since 2014, involving the importation of inert wastes and soils. The site lies within the Green Belt, is directly adjacent to a Site of Special Scientific Interest (SSSI) and is encompassed into a Local Wildlife Site.
- b) Planning permission was granted in 2013 for the tip's reclamation and the development of the site for a range of sport and recreational after-uses. The initial reclamation works involving the importation of materials and the regrading of the landform to the required contours were required to be completed within five years from commencement (by March 2019) to ensure the timely restoration of one of the County's largest and last remaining unrestored colliery tips.
- c) To date, the reclamation works have progressed across the western parts of the site in phases 1, 2 and 3, including the capping and reshaping of the former tailing lagoons. Previous steep sides have been improved and a soil covering provided. These areas are being seeded as grassland until the intended after-uses are developed. However, reclamation work has yet to commence in phases 4, 5 and 6, to the eastern side. The applicant's reason for the delay is related to engineering difficulties encountered during the capping and reshaping of the lagoons. As a result, the applicant is seeking a further 5 years from March 2019, to complete the initial works by March 2024.
- d) The applicant has calculated that an additional 148,000 cubic metres of materials are required to complete the approved reclamation and landform works, which is much less than was needed for phases 1, 2 and 3. However, the totals for the whole site are substantially above the original estimates in 2013 due to a requirement for additional materials to overcome engineering difficulties in capping and stabilising the lagoons. The use of additional materials will not result in any change to the approved contours or landform. Given the limited time remaining within the extension that is being sought, it is considered that the reclamation of phase 6 should now be prioritised before phases 4 and 5, which are already restored to some degree, whereas phase 6 is unrestored and in need of soils.
- e) The Environment Agency does not object to the proposals, but has noted that a variation to the associated Environmental Permit may be required if the total quantities of waste to be imported exceeds the current limit on the permit. This poses a risk to the timely completion, but the applicant has demonstrated an ability to source significant volumes of materials to date and so no shortage of suitable materials is expected.
- f) The site and immediate surroundings are ecologically sensitive and an updated Environmental Impact Assessment has been submitted. Great Crested Newts are present across the site and are likely to be part of the wider population within the SSSI, making this an important population in the County. A number of notable wading birds also breed on the site. An updated mitigation and management plan will be required, in addition to licenses from Natural England in respect of the Great Crested Newts, but Natural England does not object to continuing

restoration work and no residual harm to protected or priority species or habitats is expected.

- g) There are no new concerns in relation to traffic, noise, dust, landscape, contamination or visual impacts, or in relation to HS2 safeguarded land, and the work is subject to planning conditions and other controls being carried forward. Planning conditions regulate the full range of matters relating to undertaking the development and the operation of the after-uses, and these will be carried forward with some minor updates to reflect the details approved previously.
- h) No objections or comments have been received from the local community as part of the consultation process and Ashfield District Council supports the continuation of the site reclamation works. There were no objections raised by the technical consultees, with the exception of the Nottinghamshire Wildlife Trust, which has objected to the proposals on the grounds that the works will cause disruption to wildlife and that more areas of the planned after-use should be set aside for biodiversity. The comments from the Trust have been considered, but the plans for the after-uses have been approved previously and no changes are proposed. The updated mitigation and management plan will provide the necessary means to protect and retain biodiversity and species in the long-term.

The following points were discussed:

- i) The site is large and there is a great deal of work still to be done, but the applicant has the large-scale equipment available to be able to progress this quickly. There is a risk that requirements for other permits and licences to be updated may delay the work, but it appears likely that at least the important phase 6 restoration can be delivered by March 2024. No proposals have been put forward to modify the permission granted for the site after-uses, and this future development has no fixed timescale for delivery.
- j) The Great Crested Newts are protected through licencing overseen by Natural England, and an updated mitigation and management plan will be put in place as part of the planning conditions. When work begins in a region where the newts would be affected, it will be necessary to move the population to a safer area (under the supervision of an ecologist) until the works have been completed.
- k) The Committee noted that the pictures provided at the meeting to show the current progress of the works on the extensive site were very helpful in gaining an understanding of the situation. Members requested, however, that pictures to illustrate future applications at meetings were circulated to members electronically in advance, if possible.

Resolved (2023/002):

- 1) To approve the grant of Section 73 Planning Permission, subject to the conditions set out in Appendix 1 to the report.

7. Development Management Progress Report

Jonathan Smith, Interim Group Manager for Planning, presented a report on the recent Planning applications received by the Council, the decisions taken by officers and the applications likely to come to the Committee for consideration at its future meetings. The following points were discussed:

- a) The report details the applications received between 25 November 2022 and 16 December 2022, and the decisions made since the last Committee meeting on 13 December 2022.

Resolved (2023/003):

- 1) To note the Development Management Progress Report and confirm that the no additional actions were required in relation to its contents.

There being no further business, the Chairman closed the meeting at 12:21am.

Chairman: