

**Application Land
Shown Edged in Red**



Scale 1:2500

Produced by: e b40

Date: 03/07/2014



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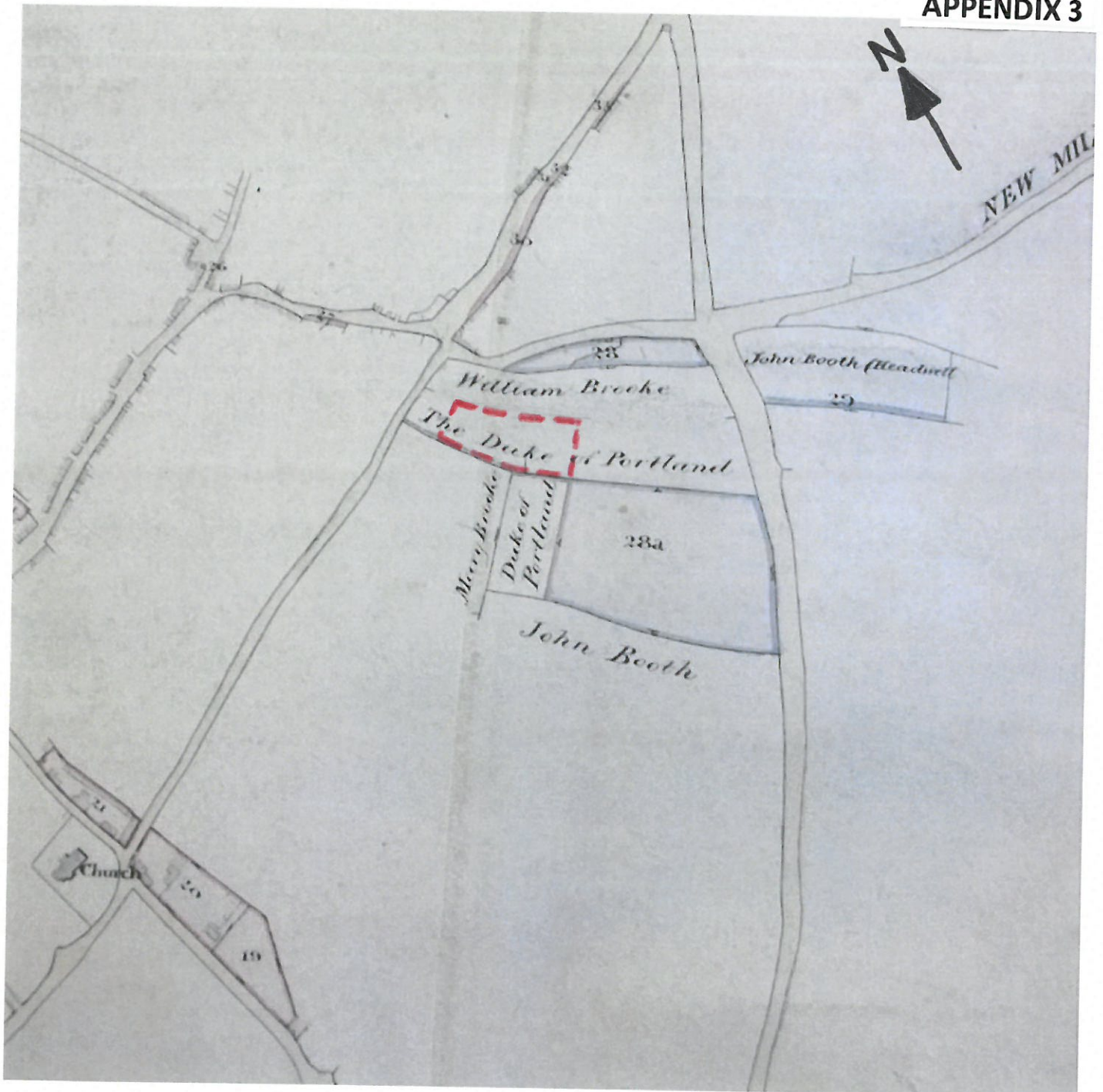




Photograph of the application land taken from the North-West corner of the land looking in the direction of Leeming Lane South. The steps to the right hand side are on a public footpath.



Photograph of the application land taken near the South-West corner of the site looking in a northerly direction. Note the dividing hedgerow in the background. The foreground shows the public footpath and the registered land VG44.



Extract from the Mansfield Woodhouse Inclosure Map (1854).

The application land has been superimposed and edged red.

Parcel 28a is now part of the registered land VG44.

and containing four acres. In Exchange for all that piece or parcel of old freehold inclosed land called Great Wakehill numbered 28^a in the said Map B and containing four acres which said piece or parcel of old inclosed land I hereby set out unto the Churchwardens and Overseers of the Poor of the said Parish to be held by them and their successors in trust as a place of exercise and recreation for the inhabitants of the said Parish and neighbourhood in exchange for the said Allotment numbered 61 on Map A as aforesaid subject nevertheless to the rights of the said Duke of Portland to use and enjoy the grass and herbage growing or to grow upon the said piece of old inclosed land by pushing the same with sheep only. And I direct that all the fences thereof including the gates shall be from time to time maintained and repaired by and at the expense of the person entitled for the time being to use and enjoy the herbage growing on the said piece or parcel of land.

"In Exchange for all that piece or parcel of old freehold inclosed land called Great Wakehill

Numbered 28a in the said Map B and containing four acres which said piece or parcel of old inclosed land I hereby

Set out unto the Churchwardens and Overseers of the Poor in the aid Parish to be held by them and their successors

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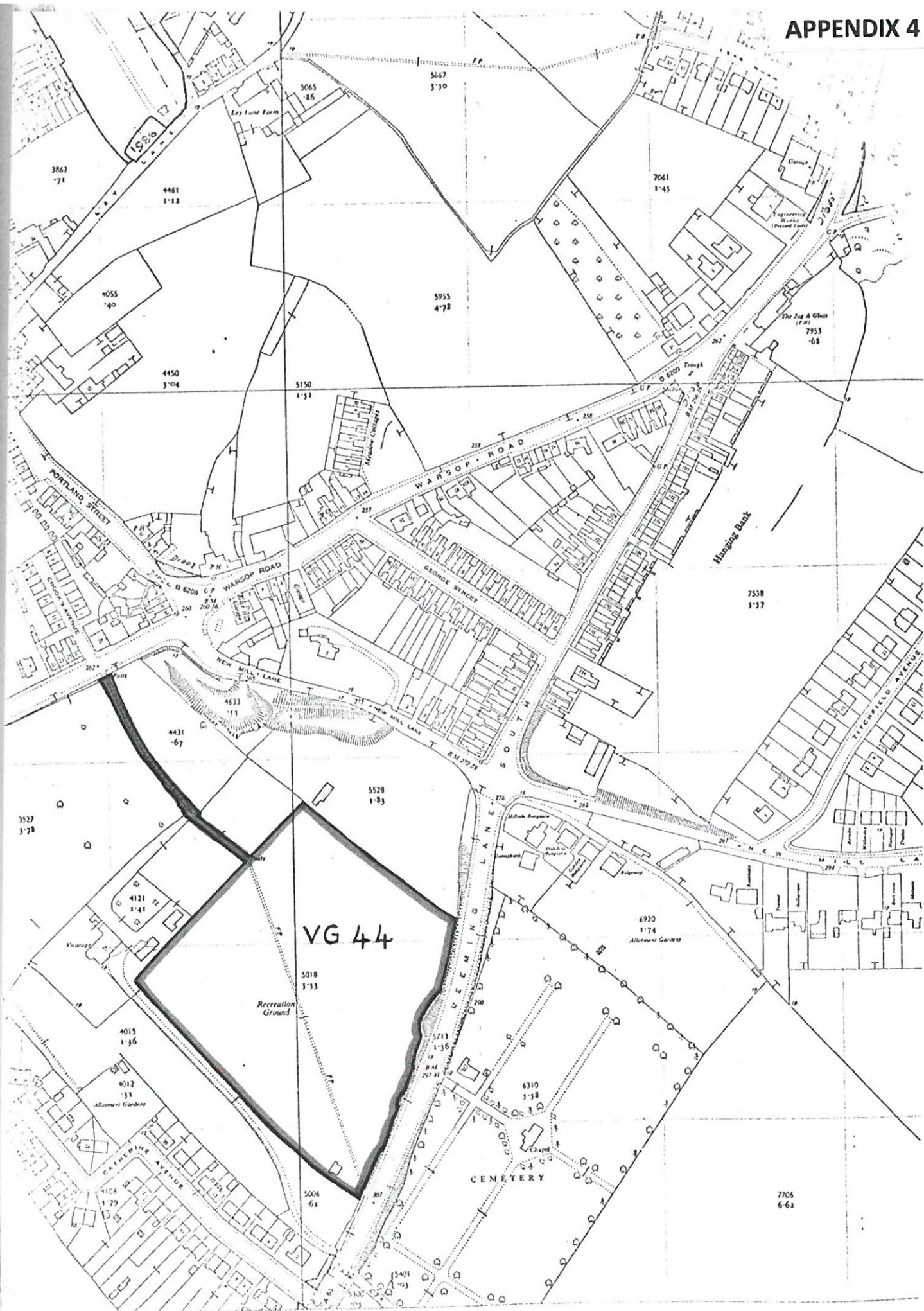
For the said Allotment numbered 61 on Map A as aforesaid subject nevertheless to the rights of the said Duke of

Portland to use and enjoy the grass and herbage growing or to grow upon the said piece of old inclosed land by pasturing

The same with sheep only And I direct that all the fences thereof including the gates shall be from time to

Time maintained and repaired by and at the expense of the person entitled for the time being to use and enjoy

the herbage growing on the said piece or parcel of land



Register of

VILLAGE GREENS -

Register unit No. VG 44

Edition No.

See Overleaf
for Notes

LAND SECTION—Sheet No.

No. and date of entry	Description of the land, reference to the register map, registration particulars etc.
1 12 May 69	A piece of land known as The Recreation Ground and which is situated between Welbeck Road and Leeming Lane South in the urban district of Mansfield Woodhouse, Nottinghamshire, marked with a green verge line inside the boundary on Sheet distinguished by the number of this Register Unit. Registered pursuant to application number 239 made on the 27th day of April 1969 by The Commons, Open Spaces and Footpaths Preservation Society, 166 Shaftesbury Avenue, London, W.C.2 (registration-provisional).
2 3rd Aug. 72	The registration at entry No.1 above, being undisputed, became final on 1st August 1972.

ADVICE

- 1) I am instructed by Nottinghamshire County Council, which is the registration authority pursuant to the provisions of the Commons Act 2006 for towns and village greens in the County of Nottinghamshire. An application has been made by a Mr Clive Anthony Barton to register land off Leeming Lane South, Mansfield Woodhouse, Notts as a town or village green. I am instructed to advise about the merits of this application. Mr Barton is a serial applicant to register parcels of land as town or village greens.

- 2) It has to be observed that an area of land known as Leeming Lane Recreation Ground is already registered as a town or village green pursuant to the provisions of the Commons Registration Act 1965. It was in fact a Class (a) green under that Act since the land had been allotted under the Mansfield Woodhouse Enclosure Award of 1854; it was parcel 28a, and was allotted in these terms,

"... a parcel of old freehold inclosed land called Great Wakehill numbered 28a on the said Map B and containing four acres which said piece or parcel of old inclosed land I hereby set out unto the Churchwardens and Overseers of the Poor of the said Parish and neighbourhood in Exchange for the said Allotment numbered 61 on Map A as aforesaid subject nevertheless to the right of the said Duke of Portland to use and enjoy the grass and herbage growing or to grow upon the said piece of old inclosed land by pasturing the same with sheep only And I direct that all the fences thereof including the gates shall be from time to time maintained and repaired by and at the expense of the person entitled for the time being to use and enjoy the herbage growing on the said piece or parcel of land."

- 3) It is important to note the reference to grazing sheep.

- 4) As already noted the Leeming Lane Recreation Ground was registered pursuant to the provisions of the 1965 Act and has Unit No. VG 44. That registration became final on 1st August 1972. The land is roughly square in shape and appears on the Ordnance Survey maps as a diamond with the points at the points of the compass. Included within the land so registered is an access road running from the north western boundary of the land in a north westerly direction to Warsop Road.

- 5) Mr Barton now seeks to register a contiguous parcel of land to the north east of the access road as a town of village green. This application was made on 30th November 2006 and he contends that the land became a town of village green on about 26th November 2006. The Commons Act 2006 (Commencement No. 2, Transitional Provisions and Savings) (England) Order 2007 (S.I. 2007/456) provides at paragraph 4(4) that where an application is made before 6th April 2007 to a registration authority pursuant to section 13(b) of the 1965 Act for the amendment of the register of town or village greens as a result of any land having become a town or village green and the registration authority does not determine the application before that date, the registration authority shall continue to deal with the application as if section 13(b) had not been repealed.
- 6) However, the test is not that set out in the 1965 Act as amended by section 98 of the Countryside and Rights of Way Act 2000. It is that set out in section 15 of the 2006 Act, which came into effect on 6th April 2007 pursuant to the provisions of paragraph 3(c) and (e) of the same Order.
- 7) Therefore the situation is that the new test applies but the old machinery remains in force.
- 8) It appears to me that subsection (2) of section 15 of the 2006 Act applies. That subsection applies where –
- a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - b) they continue to do so at the time of the application.

There is no suggestion that the activities relied on ceased at any time prior to the making of the application.

9) Section 15 of the 2006 Act was enacted to overcome the effect of the decision of the Court of Appeal in *Oxfordshire County Council v Oxford City Council* [2005] EWCA Civ 175, which was overruled on different grounds by the House of Lords: see [2006] UKHL 25.

10) Therefore in order to succeed in his application Mr Barton must establish on the balance of probabilities the following matters:

- i) a significant number of the inhabitants,
- ii) of any locality or of a neighbourhood within a locality,
- iii) have indulged as of right,
- iv) in lawful sports and pastimes,
- v) on the land,
- vi) for a period of at least 20 years,
- vii) and that that use continued up until the time of the application.

11) I have read the evidence submitted by Mr Barton in support of his application. It consists of pro-forma statements completed by Jean Robson, John James, Mr Barton himself, and Pauline Lesley. It appears to me that they are in the main describing activities which are plainly taking place on the principal part of the Recreation Ground, which is already registered as a town or village green.

12) Pauline Lesley tells us that people come from anywhere and everywhere to enjoy the Recreation Ground, which brings to mind Lord Jessel MR's dicta in *Hammerton v Honey* (1876) 24 WR 603 about getting beyond a local custom.

13) I note that Mr James refers to sheep grazing. Those Instructing me will note the reference to sheep grazing above. He also refers to horses grazing. I have the Google Earth picture of the area. It appears to me that the horses are most likely to be grazed on the area to the south west of the access road to Warsop Road, not on the application land. Mr James refers to unlawful activities taking place on the land, e.g. golf, horse grazing and motor

cycle riding. I do consider that golf and motor cycle riding are lawful sports and pastimes. Horse grazing is neither a sport nor a pastime. I have doubt that motor cycle riding takes place on the area of land which it is sought to register. Again I suspect that it is on that parcel of land to the south west of the access road.

14) Pauline Lesley also refers to people coming from everywhere. She speaks of wild life watching and paths crossing from the A60 and Welbeck Road, which suggests a larger area of land than that which is the subject of the application.

15) I note that Mr Barton refers to the land having been used since 1854. This suggests very much that he is referring to the already registered parcel of land which was allotted then.

16) In summary, it appears to me that the evidence in support is lacking in the necessary precision to enable the Council properly to register the land as a town or village green. The witnesses are not clearly speaking only of the parcel of land, which it is now sought to register, but also of the already registered green and of land to the south west of the access road. I do not consider that it can sensibly be said on the balance of probabilities that the parcel of land in question has been shown to have been used in the necessary manner by the requisite people for the relevant period.

17) Therefore I consider that this is an application which the Council should refuse.

18) If there is any matter arising, please do not hesitate to contact me, by telephone if preferred.



JONATHAN MITCHELL

Ropewalk Chambers
24 The Ropewalk
Nottingham
NG1 5EF



MANSFIELD DISTRICT COUNCIL

BYELAWS

BYELAWS made by the Mansfield District Council under section 164 of the Public Health Act, 1875 with respect to the pleasure grounds named in Part I of the Schedule hereto and under section 15 of the Open Spaces Act, 1906 with respect to the open spaces named in Part II of the said Schedule.

B. K. E. HARMAN

*Director of Central Administration
and Legal Services*

MANSFIELD DISTRICT COUNCIL

BYELAWS

BYELAWS made by the Mansfield District Council under section 164 of the Public Health Act, 1875 with respect to the pleasure grounds named in Part I of the Schedule hereto and under section 15 of the Open Spaces Act, 1906 with respect to the open spaces named in Part II of the said Schedule.

1. Throughout these byelaws the expression "The Council" means the Mansfield District Council and the expression "the Pleasure Ground" means, except where inconsistent with the context, each of the Parks, Recreation Grounds and Open Spaces named in the Schedule to these Byelaws.
2. An act necessary to the proper execution of his duty in the pleasure ground by an officer of the Council, or by any person or servant of any person employed by the Council, shall not be deemed an offence against these byelaws.
3. ~~The pleasure grounds known as~~ "King George's Field", "Pleasley Hill Recreation Ground", "Ladybrook Recreation Ground", "Moor Lane Recreation Ground", "Sandhurst Recreation Ground", "Fisher Lane Recreation Ground", "Woburn Road Recreation Ground", "Westfield Lane Recreation Ground", "Burlington Drive Recreation Ground", "Titchfield Park", "Racecourse Recreation Ground", "Carr Bank Memorial Park", "Bull Farm Recreation Ground", "Chesterfield Road Recreation Ground", "Bosworth Street Play Area", "Leeming Lane Recreation Ground", and "The Carrs Recreation Ground", shall be opened at the hour of eight o'clock in the forenoon of every day and shall be closed thirty minutes after sunset of every day throughout the year.
Provided always that this byelaw shall not be deemed to require the pleasure ground to be opened and closed at the hours hereinbefore prescribed on any day when in pursuance of any statutory provision in that behalf, the Council close the pleasure ground to the public.
4. On any day on which any of the pleasure grounds to which the foregoing byelaw applies is open to the public a person shall not enter it before the time or enter or remain in it after the time appointed in the foregoing byelaw.

5. A person shall not, in the pleasure ground :—

- (i) wilfully, carelessly, or negligently soil or defile any wall or fence in or enclosing the pleasure ground, or any building, barrier, railing, post, seat or any erection or ornament ;
- (ii) climb any wall or fence in or enclosing the pleasure ground, or any tree, or any barrier, railing, post or other erection ;
- (iii) wilfully, carelessly or negligently remove or displace any barrier, railing, post or seat or any part of any erection or ornament, or any implement provided for use in the laying out or maintenance of the pleasure ground.

6. A person shall not bring or cause to be brought into the pleasure ground any horse, pony, cattle, sheep, goats, or pigs or any beast of draught or burden, unless, in pursuance of any agreement with the Council or otherwise in the exercise of any lawful right or privilege, he is authorised to do so.

7. (i) A person shall not except in the exercise of any lawful right or privilege bring or cause to be brought into the pleasure ground any barrow, truck, machine or vehicle other than :—

- (a) a wheeled bicycle, tricycle or other similar machine.
- (b) a wheel-chair or perambulator drawn or propelled by hand and used solely for the conveyance of a child or children or any invalid.

Provided that where the Council set apart a space in the pleasure ground for the use of any class of vehicle, this byelaw shall not be deemed to prohibit the driving in or to that space by a direct route from the entrance to the pleasure ground of any vehicle of the class for which it is set apart.

(ii) A person shall not except in the exercise of any lawful right or privilege ride any bicycle, tricycle or other similar machine in any part of the pleasure ground.

8. A person who brings a vehicle into the pleasure ground shall not wheel or station it over or upon :—

- (i) any flower bed, shrub or plant or any ground in course of preparation as a flower bed, or for the growth of any tree, shrub or plant ;
- (ii) any part of the pleasure ground where the Council by a notice board affixed or set up in some conspicuous position in the pleasure ground prohibit its being wheeled or stationed.

9. A person shall not affix any bill, placard, or notice to or upon any wall or fence in or enclosing the pleasure ground, or to or upon any tree, or plant or to or upon any part of any building, barrier, or railing or of any seat, or of any other erection or ornament in the pleasure ground.

10. A person shall not in the pleasure ground walk, run, stand, sit or lie upon :—

- (i) any grass, turf or other place where adequate notice to keep off such grass, turf or other place is exhibited ; provided that such notice shall not apply to more than one fifth of the area of the pleasure ground ;
- (ii) any flower bed, shrub, or plant or any ground in course of preparation as a flower bed or for the growth of any tree, shrub, or plant.

11. A person shall not in the pleasure ground :—

- (i) bathe, wade, or wash in any ornamental lake, pond, stream or other water ;
- (ii) wilfully, carelessly or negligently foul or pollute any such water ;
- (iii) take, injure or destroy or attempt to take, injure, or destroy any fish in any such water, or wilfully disturb or worry any water fowl. Provided that this byelaw shall not prevent the taking of fish from that part of any river which flows through the pleasure ground.

12. A person shall not cause or suffer any dog belonging to him or in his charge to enter or remain in the pleasure ground, unless such dog be and continue to be under proper control, and be effectually restrained from causing annoyance to any person and from worrying or disturbing any animal or water fowl, and from entering any ornamental water or paddling pool.

13. Where the Council set apart any such part of the pleasure ground as may be fixed by the Council and described in a notice board affixed or set up in some conspicuous position in the pleasure ground, for the purpose of any game specified in the notice board, which by reason of the rules or manner or playing, or for the prevention of damage, danger or discomfort to any person in the pleasure ground may necessitate, at any time during the continuance of the game, the exclusive use by the player or players of any space in such part of the pleasure ground—a person shall not in any space elsewhere in the pleasure ground play or take part in any game so specified in such a manner as to exclude persons not playing or taking part in the game from the use of such a space.

14. A person resorting to the pleasure ground and playing or taking part in any game for which the exclusive use of any space in the pleasure ground has been set apart shall :—

- (i) not play on the space any game other than the game for which it is set apart ;
- (ii) in preparing for playing and in playing, use reasonable care to prevent undue interference with the proper use of the pleasure ground by other persons ;
- (iii) when the space is already occupied by other players not begin to play thereon without their permission ;
- (iv) where the exclusive use of the space has been granted by the Council for the playing of a match, not play on that space later than a quarter of an hour before the time fixed for the beginning of the match unless he is taking part therein ;
- (v) except where the exclusive use of the space has been granted by the Council for the playing of a match in which he is taking part, not use the space for a longer time than two hours continuously, if any other player or players make known to him a wish to use the space.

15. A person shall not in any part of the pleasure ground which may have been set apart by the Council for any game play or take part in any game when the state of the ground or other cause makes it unfit for use and a notice is set up on some conspicuous position prohibiting play in that part of the pleasure ground.

16. A person shall not in the pleasure ground :—

- (i) except as hereinafter provided erect any post, rail, fence, pole, tent, booth, stand, building, or other structure ; provided that this prohibition shall not apply where upon an application to the Council they grant permission to erect any post, rail, fence, pole, tent, booth, stand, building, or other structure, upon such occasion and for such purpose as are specified in the application.
- (ii) sell, or offer or expose for sale, or let to hire, or offer or expose for letting to hire, any commodity or article, unless, in pursuance of an agreement with the Council, or otherwise, in the exercise of any lawful right or privilege, he is authorised to sell or let to hire in the pleasure ground such commodity or article ;

- (iii) sound or play upon any musical or noisy instrument or operate or cause or suffer to be operated any wireless, loudspeaker, gramophone, amplifier, or similar instrument or suffer to be made any noise which shall be so loud and so continuous or repeated as to cause a nuisance or annoyance to any other person in the proper use of the pleasure ground.

17. A person who has attained the age of sixteen years shall not use any apparatus on the pleasure ground which by a notice affixed or set up on or near thereto has been set apart by the Council for the exclusive use of persons under the age of sixteen years.

18. A person shall not in the pleasure ground wilfully obstruct, disturb, interrupt, or annoy any other person in the proper use of the pleasure ground, or wilfully obstruct, disturb, or interrupt any officer of the Council in the proper execution of his duty, or any person or servant of any person employed by the Council in the proper execution of any work in connection with the laying out or maintenance of the pleasure ground.

19. Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding twenty pounds.

20. Every person who shall infringe any byelaw for the regulation of the pleasure ground may be removed therefrom by an officer of the Council, or any constable, in any one of the several cases hereinafter specified; that is to say:—

- (i) where the infraction of the byelaw is committed within the view of such officer or constable and the name and residence of the person infringing the byelaw are unknown to and cannot be readily ascertained by such officer or constable;
- (ii) where the infraction of the byelaw is committed within the view of such officer or constable and, from the nature of such infraction, or from any other fact of which such officer or constable may have knowledge, or of which he may be credibly informed, there may be reasonable ground for belief that the continuance in the pleasure ground of the person infringing the byelaw may result in another infraction of a byelaw, or that the removal of such person from the pleasure ground is otherwise necessary as a security for the proper use and regulation thereof.

21. Nothing in the foregoing byelaws shall prejudice or injuriously affect any rights or privileges legally exercisable by any person in, over or in respect of the pleasure ground.

22. (i) the two series of byelaws made by the Mayor, Aldermen and Burgesses of the Borough of Mansfield, with respect to pleasure grounds, recreation grounds and a public walk, on the 28th day of July 1971 and confirmed by the Secretary of State on the 24th day of November 1971 are hereby repealed.
- (ii) the byelaws made by the Urban District Council of Mansfield Woodhouse, with respect to Yeoman Hill Park and Lords Recreation Ground, on the 10th day of July 1923 and allowed by the Minister of Health on the 25th day of September 1923 are hereby repealed.

SCHEDULE

PART I.

"Forest Road Recreation Ground", "Sandy Lane Recreation Ground", "King George's Field", "Pleasley Hill Recreation Ground", "Pleasley Meadow", "Barringer Road Recreation Ground", "Ladybrook Recreation Ground", "Moor Lane Recreation Ground", "The Knoll Recreation Ground", "Sandhurst Recreation Ground", "Lingforest Road Recreation Ground", "Wainwright Avenue Recreation Ground", "Water Lane Recreation Ground", "Colwick Close Recreation Ground", "Balmoral Drive Recreation Ground", "Fisher Lane Recreation Ground", "Rainworth Recreation Ground", "Woburn Road Recreation Ground", "Westfield Lane Pleasure Ground", "Burlington Drive Recreation Ground", "Ladybrook Gardens", "Titchfield Park", "Racecourse Recreation Ground", "Carr Bank Memorial Park", "Bull Farm Recreation Ground", "Chesterfield Road Recreation Ground", "Abbott Road Playing Fields", "Bath Lane Open Space", "Jenford Street Playing Field", "Bramcote Court Play Area", "Greasley Court Play Area", "Epperstone Court Play Area", "Baggaley Crescent Open Space", "Scarcliffe Street Recreation Ground", "Nottingham Road Playing Field", "Cobden Place Open Space", "Bosworth Street Play Area", the PUBLIC WALK known as "Quarry Lane Riverside Walk", "Leas Park Open Space", "Cox's Lane Playing Field", "Hornby Plantation", "Flint Avenue Play Area", "Market Square Gardens", "Manor House Gardens", "Leeming Lane Playing Fields", "Leeming Lane Recreation Ground", "Lords Recreation Ground", "Manor Park Open Space", "Newlands Playing Fields", "Spion Kop Recreation Ground", "Netherfield Lane Recreation Ground", "Welbeck Colliery Village

Playing Field", "Wood Lane Playing Field" "Warsop Vale Play Area", "Princess Avenue Play Area", "Cottage Lane Recreation Ground", "Carr Lane Sports Ground", "The Carrs Recreation Ground",

PART II.

"Thompson's Grave", "Chatsworth Drive Open Space", the PUBLIC WALK known as "Meden Valley Riverside Walk", "Church Street Gardens", "Yeoman Hill Park", "Queensway Park".

THE COMMON SEAL of MANSFIELD
DISTRICT COUNCIL was hereunto affixed
the fifteenth day of April, 1975
in the presence of :

L. WRIGHT
Chairman

B. K. E. HARMAN
*Director of Central Administration
and Legal Services*

The Secretary of State this day confirmed the foregoing
byelaws and fixed the date on which they are to come into operation
as the first day of September, 1975.

K. P. WITNEY
*An Assistant Under Secretary
of State*

HOME OFFICE
WHITEHALL

5th August, 1975.

A true copy of the Byelaws as confirmed.