

Rights of Way Committee

Wednesday, 06 March 2013 at 10:00

County Hall, County Hall, West Bridgford, Nottingham NG2 7QP

AGENDA

- | | | |
|---|--|---------|
| 1 | M_23 Jan 2013 | 5 - 10 |
| 2 | Apologies for Absence | |
| 3 | Declarations of Interests by Members and Officers:- (see note below)
(a) Disclosable Pecuniary Interests
(b) Private Interests (pecuniary and non-pecuniary) | |
| 4 | Declaration of Lobbying | |
| 5 | East Stoke and Elston Report | 11 - 22 |
| 6 | Diversion of 2 Footpaths Elston Report | 23 - 30 |
| 7 | Extinguishment 3 Footpaths Elston Report | 31 - 38 |
| 8 | Register Land Normanton Report | 39 - 42 |
| 9 | Update - Cedarland Crescent Nuthall - Gating Order | 43 - 50 |

NOTES:-

(1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.

(2) Members of the public wishing to inspect "Background Papers" referred to in the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

Customer Services Centre 0300 500 80 80

(3) Persons making a declaration of interest should have regard to the Code of Conduct and the Council's Standing Orders.

Members or Officers requiring clarification on whether to make a declaration of interest are invited to contact David Forster (Tel. 0115 977 3552) or a colleague in the Governance Team prior to the meeting.

(4) Members are reminded that Committee and Sub-Committee papers, with the exception of those which contain Exempt or Confidential Information, may be recycled.

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minutes

Meeting RIGHTS OF WAY COMMITTEE

Date Wednesday 23 January 2012 (commencing at 10.00 am)

membership

Persons absent are marked with 'A'

COUNCILLORS

Bruce Laughton (Chairman)

Gail Turner (Vice-Chairman)

	Allen Clarke	A	Rachel Madden
	John Cottee		Sue Saddington
A	Jim Creamer		Andy Stewart
	Sybil Fielding	A	Jason Zadrozny
	John Hemsall		

OFFICERS IN ATTENDANCE

David Forster	- Governance Officer
Steven Eastwood, Snr	- Principal Legal Officer, Legal Services
Eddie Brennan	- Definitive Map Officer/Commons and Village Greens Officer
Angus Trundle	- Definitive Map Officer/Commons and Village Greens Officer
Neil Lewis	- Team Manager Countryside Access
Tony Shardlow	- Community Safety Officer

MINUTES

The minutes of the meetings held on 28 November 2012 were taken as read and were confirmed and signed by the Chairman.

APOLOGIES FOR ABSENCE

Apologies for absence were received from:-

Councillor	Jim Creamer
"	Rachel Madden
"	Jason Zadrozny

DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

There were no declarations of interest

DECLARATIONS OF LOBBYING BY MEMBERS

There were no declarations of Lobbying.

APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF CLIPSTONE AND WARSOP.

An amended appendix D to the report was circulated prior to the item being discussed.

Mr Brennan introduced the report and highlighted the issues around the erection of the barrier on New Buildings Drive. He also highlighted that no new evidence had been submitted by the landowners though they had submitted a petition stating that the road was not generally thought of as being for public use.

Following the opening comments by Mr Brennan a number of public speakers were given the opportunity to speak and summaries of those speeches are set out below.

Mrs Y Glennie, local landowner, spoke against the application. She informed members that although she does not walk this land now she did for many years and during the period 1978-98 as she trained racehorses and was therefore regularly on this farmland. She highlighted the dangers of a bridleway joining Peafield Lane by the Parliament Oak at the claimed point stating that it is dangerous because of visibility for both horse riders and walkers alike. She also informed members that she often approached and spoke to people on the land to whom it must have been obvious she was the landowner.

In response to questions Mrs Glennie responded as follows:-

- When speaking to people on the land, she would have always done so politely.
- She would have said to people politely that the land is private property
- She presumed that most people on the land have been given permission by her brother as he spoke with them.
- She would have challenged anyone she saw using the route people as a matter of course unless it appeared permission had been given by her brother.

Mr Brennan informed members that although desire, preference or safety is appreciated it cannot form part of the consideration before members.

Mr R Bealby, local landowner, spoke against the application. He informed members that various signs and gates had been erected over the years informing people that the Drive was private property. He also stated that he had been asked in the past by the Nottinghamshire Footpaths Preservation Society for permission to walk along New Buildings Drive, and that this was evidence that the Drive is not a public right of way and is private property. He also informed members that there had been heavy vehicles used during landfill operations, once this had finished heavy barriers were erected to stop people from accessing this private property.

In response to questions Mr Bealby responded as follows:-

- Signs had been erected over the years but they had not been maintained as scrupulously as they could have been.
- The sign shown in appendix B4 was erected by Cavendish Lodge Liveries and it originally said something like “Cavendish Lodge Private Road. No Access”
- The 1 metre gap left beside the barrier was left because the barrier was installed up to the boundary of their ownership, and the gap was on adjacent ownership.

Mr C Glennie, local landowner, spoke against the application. He informed members that on a number of occasions he had challenged walkers and informed them the Drive is private property. He highlighted the fact that Mrs Glennie and Mr Bealby have collected over 150 signatures from local residents indicating their view that the land is private and therefore is no public right of way.

In response to a question Mr Glennie responded as follows

- Although the family had given permission to “some” people to use the lane this was not a given right for all to use it and those were challenged.

Mr Parkhouse, joint applicant with Clipstone Parish Council, spoke in favour of the application. He stated that the Village Council of Kings Clipstone supports the application as many of the villagers have used this route to connect with Parliament Oak, with no opposition from the landowners. He also informed members that Warsop Parish Council also supports the recognition of New Buildings Drive as a public right of way. About 17,000 people are represented between both Councils.

In response to a question Mr Parkhouse responded as follows

- The number of evidence forms does not reflect the number of people who have used this Drive. Some people have used it once or twice over the 20 year period and their use is not significant, but the 40 forms show use of this route on a regular basis
- He saw no ‘private property’ signs, until after the application was made.
- During the period of claimed use there were no barriers erected - these were put up at the end of the period in question.
- There may have been a sign up stating it was private property in the 50’s but this was not relevant to the claimed period, nor was any sign apparent during the period in question.
- Whilst it was not claimed by the Parish Council in the 50’s, this was not relevant to whether public rights were acquired subsequently.

Mr Brennan responded to issues raised stating that 40 was not a small number of user evidence forms, he also informed members that as few as 6 evidence forms have been used in cases he is aware of and this had led to an order being made. Also in respect of the petition, its meaning is unclear, the signatories may only be saying that the drive is not currently recorded as a public right of way and therefore

they are simply expressing that opinion. Mr Brennan confirmed that the test upon which the Recommendation is based is that of officers considering Test B to be met, i.e. that the way is reasonably alleged to exist.

During discussions members took into account the fact that signs had been erected in the area at one time, although not maintained throughout. There was evidence that attempts had been made to stop the signs being vandalised by putting up barbed wire on the post. They also considered that attempts had been made by the landowner through challenging people whilst accepting that it could not be policed 24/7, and the erection of the barrier clearly demonstrated that the landowner did not think that it was a right of way. The 150+ petition is not credible evidence of fact though does show that the reputation is that a public right of way does not exist along New Building Drive.

On a motion by the Chairman seconded by the Vice Chairman it was:-

RESOLVED 2013/001

That a Modification Order not be made to modify the Definitive Map on the grounds that the evidence is not considered sufficient to demonstrate that existence of a bridleway is reasonably alleged

APPLICATION TO REGISTER LAND KNOWN AS TOTON SIDINGS IN TOTON NOTTINGHAMSHIRE AS A TOWN OR VILLAGE GREEN

Mr Trundle introduced the report and highlighted that an application had been made for a Town and Village Green where two thirds was in Nottinghamshire and the other third was in Derbyshire. The report was written to decide whether to accept the offer of delegation from Derbyshire for determination of the application, not to discuss the evidence submitted or potential objections.

RESOLVED 2013/002

- 1) That the County Council accepts the delegation from Derbyshire County Council under Section 101 of the local Government Act 1972 to determine the application for registration of land known as Toton Sidings as a Town or Village Green.
- 2) That the County Council accepts the delegation on the basis of Derbyshire County Council paying one third of the costs of determination of the application and that a letter of appreciation be sent to Derbyshire County Council.
- 3) That authority be given for officers to proceed with the application and that Derbyshire County Council be kept informed of the progress of the application.

UPDATE ON GATING ORDER – CEDERLAND CRESCENT AND NOTTINGHAM ROAD NUTHALL

RESOLVED 2013/002

That the report be noted

The meeting closed at 11.02 am

CHAIRMAN

REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)**CONSIDERATION OF APPLICATIONS UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD FOOTPATHS TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF EAST STOKE AND ELSTON****Purpose of the Report**

1. To consider applications made by the Nottinghamshire branch of the Ramblers' Association for the registration of routes as public footpaths on the Definitive Map and Statement for the parishes of East Stoke and Elston. The routes in question are shown on Plan A.
2. The effect of these applications, should a Modification Order to add the routes be made and subsequently confirmed, would be to register:
 - A footpath between Elston Bridleway No. 8 and Cross Lane (Path A);
 - A footpath between Elston Bridleway No. 8 and Path A (Path B);
 - A footpath between Cross Lane and East Stoke Bridleway No. 4 (path C);
 - A footpath between Toad Lane and Cross Lane (Path D);
 - A footpath between Mill Road and Path D (Path E);
 - A footpath between Path D and Elston Bridleway No. 8 (Path F).

Legal Background

3. The applications are made under the provisions of the Wildlife and Countryside Act 1981. Subsection (5) of Section 53 of the Act allows any person to apply to the authority for an order under subsection (2) of the Act, which will make such modifications to the Definitive Map and Statement as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3) of the Act. In this case, the relevant event is the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) 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.
4. In order to accept a right of way claim on the basis of discovered evidence, it is not necessary to be able to show that the claimed right exists beyond all reasonable doubt. The tests to be applied are known as 'Test A' and 'Test B.' In 'Test A,' the question to be answered is whether the right of way exists on the balance of probabilities. There must be clear evidence of public rights, with no credible evidence to the contrary. In 'Test B,' the question is whether it is reasonable to allege that a right of way exists on the balance of probabilities. If there is a conflict of evidence, but no incontrovertible evidence that a right of way

cannot be reasonably alleged to exist, 'Test B' is satisfied, the right of way is reasonably alleged to exist, and the claim should therefore be accepted.

The applications and the documentary sources

5. The applications were supported by a range of documentary evidence. The relevant records were examined in order to determine the full extent of the evidence for the existence of public rights over the claimed routes.

Path A

6. In the East Stoke and Elston inclosure Award of 1801, the original route of Path A is set out as part of a public footway from Elston to the lordship of Thorpe, "leading from the lower street of Elston at the south east end thereof in a southeasterly direction over allotments made to the Trustees of the Poor of Southwell and Gainsborough, the Trustees of the school of Elston, William Rippon, James Penleaze, John Brockton and John Manby, across the Broad Meadow Road..." Broad Meadow Road is now called Cross Lane.
7. In the case of R v Secretary of State for the Environment ex parte Andrews (1993), it was held that the Inclosure (Consolidation) Act of 1801 did not give inclosure commissioners an express power to set out public rights of way on foot. The judgement did not, however, preclude making a claim for a right of way using an inclosure Award from 1801 or later if the route in question could be shown to have originated prior to the date of the Award. In this case, there is no wording in the text referring to Path A to suggest that it was an 'ancient' route predating the Award, but in the text relating to Paths B and E, there is a clear reference to them being parts of an 'ancient' footway. As Path B joins Path A, it can therefore be reasonably presumed that the part of Path A beyond the junction with Path B was also 'ancient,' in which case the Andrews judgement does not bite in relation to this section.
8. With regard to the section of Path A between 'the lower street of Elston' and the junction with Path B, the Andrews judgement does not preclude the establishment of public rights after the date of the Award. It also does not undermine the fact that the Elston commissioners recognised the need to set out a public footway to provide access between Elston and the lordship of Thorpe.
9. On the 6 inch Ordnance Survey map sheet 40 NW, published in 1887, the awarded footway is shown on a slightly different alignment, and now matches the route being claimed as a right of way. The Ordnance Survey path is labelled 'F.P.', and crosses the Car Dyke via a footbridge which is indicated on the map. Although the map sheet includes the disclaimer that the representation of a footpath on the map is 'no evidence of the existence of a right of way,' it does however prove that the claimed path was in existence on the ground by 1887 at the very latest.

10. On the relevant Finance Act map, Path A is shown by a double-pecked line in the same way as other routes known to be public, and is labelled 'F.P.' It has also been annotated in red by an Inland Revenue officer 'Public' in Field 165 and 'Public Path' in Field 174. It first crosses Elston Parcel 62, for which there is a £15 reduction in valuation by virtue of public rights of way over the property. The associated Field Book information reveals that 20 acres of the parcel were crossed by public footpaths, a figure which can only be achieved if the 4 acre Field 140 within Parcel 62, which is crossed by Path A, is included in the calculations.
11. Path A then crosses Parcel 89, for which there is a £3 reduction in valuation. The Field Book entry states that 'A footpath crosses 2 acres', which is the size of Field 165 in Parcel 89, which Path A runs over. It then continues over Parcel 52, which has a £5 reduction. Four acres of the parcel were affected by public footpaths. This figure can only be achieved if the 2 acre Field 166 within Parcel 52, which is crossed by Path A, is included in the calculations. Path A then crosses East Stoke Parcel 14, for which there is a £10 reduction in valuation. Given that the Inland Revenue acknowledged Path A as public, it can reasonably be presumed that part of this reduction was accounted for by Path A. The final section of Path A crosses Elston Parcel 31, for which there is a £10 reduction in valuation. The Field Book entry refers to a footpath affecting Field 174 of 17.108 acres on OS map sheet 40.2, which precisely identifies the field within Parcel 31 which Path A crosses.
12. On the Elston Parish Schedule 6 inch map of 1921, Path A is shown by a double pecked line and is labelled 'F.P.' A footbridge is shown at the point where the path crosses Car Dyke. It was not claimed by the parish as a right of way, although this does not indicate that public rights did not exist. A statement by the Chairman of the Parish Council included in the Schedule indicates that the path had not been used for many years, apparently as a result of the Car Dyke bridge having been washed away in 1947. The Chairman believed that the path was only for the use of farm workers reaching their place of employment, but this is not supported by the documentary evidence, which clearly indicates that the path is a public right of way.
13. On the Definitive Map base published in 1955, Path A is shown by a pecked line in the same way as other routes known to be public rights of way.

Path B

14. In the East Stoke and Elston inclosure Award, Path B is set out as part of a public footway "leading from the upper street of Elston in an eastwardly direction between an ancient homestead marked 16 and a garden marked 17 and then over an allotment made to Sir George Bromley (No. XIV) across Pasture Road into and over part of an allotment made to James Penleaze (No. XLVI) where it meets the last described Road." The "last described Road" is the awarded public footway from Elston to the lordship of Thorpe, which incorporated the original alignment of Path A. The reference in the text to an "ancient homestead" indicates that Path B was part of a route that predated the inclosure Award, in

which case the Andrews judgment does not bite, and Path B can therefore be claimed on the basis of the inclosure Award evidence.

15. Path B is not shown on any other documents, but there is no evidence that it was stopped up between 1801 and the publication of the relevant OS 6 inch map in 1887, and it can therefore be reasonably presumed that it was used during some part of this period as part of a public footway linking the “upper street” area of Elston and the lordship of Thorpe.

Path C

16. In the East Stoke and Elston inclosure Award, the original route of Path C is set out in the Elston section as part of the public footway from Elston to the lordship of Thorpe, “across the Broad Meadow Road and an allotment made to Robert Waring Darwin into the parish of East Stoke.” It continues in the East Stoke section of the Award as “a public footway beginning at an allotment made to Sir George Bromley (No. XLV) thence in an eastwardly direction over an allotment made to Robert Waring Darwin (No. LI) and an allotment made to the Duke of Portland (No. LIVa) to the lordship of Thorpe.” As Path B joins Path A, which is then continued by Path C, it can therefore be reasonably presumed, given that Path B was an ‘ancient’ route predating the Award, that Path C was also ‘ancient,’ in which case the Andrews judgement does not bite, and the inclosure Award evidence in support of the claim for Path C is still valid.
17. On the OS map sheet 40 NW, published in 1887, Path C is now shown on its claimed alignment. On the connecting sheet 40 NE, published in 1891, Path C is also shown on its claimed alignment, and is labelled ‘F.P.’
18. On the relevant Finance Act map, Path C is shown by a double-pecked line in the same way as other routes known to be public, and is labelled ‘F.P.’ It has been annotated in red by an Inland Revenue officer ‘Public Path.’ It first crosses Elston Parcel 79, for which there is no reduction in valuation. Given that the path was clearly acknowledged as a public right of way, the lack of reference to a reduction in the parcel’s valuation can reasonably be accounted for by the fact that the path did not affect the value of the land for agricultural purposes.
19. Path C then crosses Parcel 20, for which there is a £7 reduction in valuation. The relevant Field Book entry states that “the farm is crossed by a public footpath,” and as Path C is labelled ‘Public Path’ on the Finance Act map in the field directly adjoining Meadow Farm, Path C must be the “public footpath” referred to.
20. The adjoining Finance Act map is not available either at Nottinghamshire Archives or at the Public Records Office, but the standard 1900 edition OS 25 inch map shows Path C on the same alignment as on the 6 inch map 40 NE of 1891, as does the 1919 edition 25 inch map, on which it is still labelled ‘F.P.’
21. On the East Stoke and Elston Parish Schedules’ 6 inch maps of 1921 and 1922, Path C is shown by a double-pecked line and is labelled ‘F.P.’ at two points. It was not claimed by either parish as a right of way, although the Chairman of Elston Parish Council stated that it had not been used “for many years now.” He

also believed that it was only a path for farmworkers, but this belief is not supported by the documentary evidence.

Path D

22. In the East Stoke and Elston inclosure Award, Path D is set out as “one public footway leading from an ancient stile at the east corner of an old inclosure called Gall Hall Close, then across allotments made to Richard Nowell, Thomas Jackson, John Fryer and Sir George Bromley to and across an old inclosure marked 10 and thence over and across allotments made to the Trustees of the Poor of Southwell and Gainsborough, George Wakefield, Richard Jackson, Thomas Jackson and William Bromley, across the Broad Meadow Road to old inclosures belonging to William Parkin.” The reference to an “ancient stile” and to “old inclosures” indicates that Path D predated the inclosure Award, in which case the Andrews judgement does not bite and the Award evidence can still be used in support of a right of way claim.
23. On the 6 inch OS map sheet 35 SW, published in 1884, Path D is shown, but not labelled. On the connecting sheet 40 NW, published in 1887, Path D is shown and labelled ‘F.P.’, and crosses the Car Dyke via a footbridge which is indicated on the map.
24. On the relevant Finance Act maps, Path D is shown by a double-pecked line in the same way as other routes known to be public, and is labelled ‘F.P.’ at three points. It has been annotated in red by an Inland Revenue officer ‘public’ at two other points. It first crosses Elston Parcel 51, for which there is a £7 reduction in valuation by virtue of a public right of way over the property. The associated Field Book information reveals that Parcel 51 consists of a single field of 2½ acres, and as the Finance Act map shows that the only path across it was Path D, the £7 reduction for Parcel 51 is another clear acknowledgement that Path D was recognised as a public footpath.
25. Path D then crosses East Stoke Parcel 14, for which there is a £10 reduction in valuation. Given that the Inland Revenue acknowledged Path D as public, it can reasonably be presumed that part of this reduction was accounted for by Path D. Path D then crosses Elston Parcel 52, for which there is a £5 reduction. Four acres of the parcel were affected by public footpaths. This figure can only be achieved if Field 142 within Parcel 52, at slightly under 2 acres and crossed by Path D, is included in the calculations. Path D then continues over Parcel 36, for which there is a £90 reduction. It can reasonably be presumed that part of this reduction was for Path D, given that the Inland Revenue acknowledged that it was a public right of way. Path D then continues over Parcel 83, for which there is a £10 reduction. Part of this reduction can reasonably be presumed to relate to Path D, given the Inland Revenue’s acknowledgement of its public status. Path D then continues over Parcel 62, for which there is a £15 reduction. The Field Book entry reveals that 20 acres of the parcel were affected by public footpaths, a figure which can only be achieved if Fields 182 and 200 within Parcel 62, both of which are crossed by Path D, are included in the calculations. Path D then crosses Parcel 60, for which there is a £10 reduction. The parcel consisted of a single 7 acre field crossed by Path D and no other routes, which is another clear

indication of Path D's acknowledgement as a public footpath. Path D finally crosses Parcel 69, for which there is a £5 reduction. The Field Book entry suggests that Path D did not account for any part of this reduction, but there is nothing unusual in this if Path D was not thought to affect the value of the land for agricultural purposes.

26. On the Elston Parish Schedule 6 inch map of 1921, Path D is shown by double-pecked lines and is labelled 'F.P.' A footbridge is shown at the point where the path crosses Car Dyke. It was not claimed by the parish as a right of way, although this does not indicate that public rights did not exist. The Chairman stated in the Schedule that the path had not been used for many years, apparently as a result of the Car Dyke bridge having been washed away in 1947. He also believed that this was another path only for the use of farmworkers, but this belief is not supported by the documentary evidence.
27. On the Definitive Map base map published in 1955, Path D is shown by a pecked line and is labelled 'F.P.'

Paths E and F

28. In the East Stoke and Elston inclosure Award, Paths E and F are set out as part of the public footway already described in relation to Path B, from "the upper street of Elston" to another awarded footway from Elston into the lordship of Thorpe. The reference in the Award text to an "ancient homestead" indicates that Paths E and F were part of a route that predated the Award, in which case the Andrews judgement does not bite, and the Award evidence in support of the claims for Paths E and F is still valid.
29. On the OS map sheet 40 NW, published in 1887, Paths E and F are shown, and the Path E section of the route is labelled 'F.P.'
30. On the relevant Finance Act map, Paths E and F are shown by double-pecked lines in the same way as other routes known to be public. The Path E section of the route is labelled 'F.P.', and has also been annotated in red by an Inland Revenue officer 'Public.' Path E and F both cross Elston Parcel 36, for which there is a £50 reduction in valuation by virtue of public footpaths over the property. Given that the Inland Revenue acknowledged that Path E was public and that F is clearly a continuation of Path E, it may reasonably be presumed that both paths accounted for part of this reduction.
31. On the Elston Parish Schedule 6 inch map of 1921, Paths E and F are shown by double-pecked lines, and the Path E section of the route is labelled 'F.P.' They were not claimed by the parish as rights of way, although this does not indicate that public rights did not exist. The Chairman stated in the Schedule that the paths had not been used for many years. He also believed that this was another path only for the use of farmworkers, but this belief is again not supported by the documentary evidence.
32. On the Definitive Map base map published in 1955, Paths E and F are shown by a pecked line, and the Path E section of the route is labelled 'F.P.'

Responses from consultees

33. Letters have been sent out to the standard list of consultees, including the local member and the Parish and District Councils, asking for comments or representations regarding the claimed paths. Only one objection was received to the proposals, from Elston Parish Council. Having been supplied with copies of the documentary evidence for the claimed routes, the Parish Council stated that it was opposed to the suggested footpaths, but did not bring forward any counter evidence to suggest that public rights did not exist or could not reasonably be alleged to exist.

Responses from landowners

Paths A and B

34. Savills have objected to Path A as agents to the Southwell and Nottingham Diocesan Board of Finance on the grounds that “There appears to be no justification for a new footpath, particularly as the land is well served by a bridleway ...on Carrgate Lane.” They also state that a footbridge would be required where the path crosses Car Dyke. Due to the nature of rights of way law, neither point is legally relevant to the determination of the claim.

35. Mr John Walker of Thorpe Lodge has objected to Path A on the grounds that he has never been aware of the possible existence of a footpath over the field he farms, and at no time during the past fifty years has anyone walked it. He also objects to the claimed path because of its proximity to the existing right of way along Carrgate Lane. None of these points undermines the weight to be attached to the documentary evidence for public rights over Path A.

36. R. H. Hardstaff and Sons have objected to Path A on the grounds that Carrgate Lane already connects Elston to Cross Lane, and a footbridge costing approximately £10,000 would be needed over Car Dyke, which in their opinion is “a waste of tax payers’ money.” Due to the nature of rights of way law, neither point is legally relevant to the determination of the claim.

37. Mr R. Lockwood has objected on behalf of F. E. Lockwood and Son to paths A and B on the grounds that ‘no public rights of way exist over the farmland,’ any footpaths which may have existed have been extinguished, no paths are shown on the definitive map nor have they been signposted by the County Council, no-one has walked over the affected land for at least the last sixty years, the landowners have not intended to dedicate rights of way to the public as evidenced by the blocking of the routes by mature hedgerows and other permanent obstacles, and F E Lockwood and Son have not been found to be in breach of cross-compliance obligations under the single farm payment scheme to maintain public rights of way over their land. Each one of the points is either not legally relevant to the determination of the claim, due to the nature of rights of way law, or does not undermine the weight to be attached to the documentary evidence for public rights over Paths A and B. There is no evidence that public rights over Path A or Path B have been extinguished by due legal process.

Path C

38. Mr Snowden of Meadow Farm has objected to Path C on the grounds that “local people...do not know of any path existing,” and in any case the land would be “impassable most of the year” because of the inadequate drainage system. He also states that the path would have a detrimental effect on his property, be expensive to establish on the ground, and serve no useful purpose as access is already available via alternative routes. Due to the nature of rights of way law, none of these points casts doubt on the existence of public rights over Path C as revealed by the documentary evidence.

Paths D, E and F

39. Mr Lockwood has objected to Paths D, E and F using the same arguments which have been raised in relation to Paths A and B. These are either not legally relevant, due to the nature of rights of way law, or do not undermine the documentary evidence for public rights. The only additional point raised, with regard to Paths D and E, is that residential properties and a sewage works have been built over the routes of the proposed paths. Mr Lockwood claims that planning permission would not have been granted if public rights of way existed. At the time planning permission would have been at issue, however, the routes in question were not recorded on the Definitive Map as public rights of way, so would not have been considered as a relevant factor in the planning process. Again, due the nature of rights of way law, the granting of planning permission does not therefore demonstrate that public rights of way do not exist over routes D and E.

Conclusion

40. In order to accept the claims, it is necessary to satisfy either ‘Test A’ or ‘Test B,’ as described above. Whilst the authority is aware of the Parish Council’s and the landowners’ concerns, there is clear evidence of public footpath rights over all of the claimed routes, and, due to the nature of rights of way law, no credible evidence to the contrary. There is clear evidence of public footpath rights over all of the claimed routes and no credible evidence to the contrary. ‘Test A’ is therefore satisfied, and the claims should be accepted and a Modification Order made accordingly.

Statutory and Policy Implications

41. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

1) It is RECOMMENDED that the Committee accepts the claim for Path A and authorises the making of a Modification Order to register the route as a public footpath, as for the reasons set out above, the evidence demonstrates that public footpath rights exist on the balance of probabilities.

2) It is RECOMMENDED that for the same reasons, the Committee accepts the claim for Path B and authorises the making of a Modification Order to register the route as a public footpath.

3) It is RECOMMENDED that for the same reasons, the Committee accepts the claim for Path C and authorises the making of a Modification Order to register the route as a public footpath.

4) It is RECOMMENDED that for the same reasons, the Committee accepts the claim for Path D and authorises the making of a Modification Order to register the route as a public footpath.

5) It is RECOMMENDED that for the same reasons, the Committee accepts the claim for Path E and authorises the making of a Modification Order to register the route as a public footpath.

6) It is RECOMMENDED that for the same reasons, the Committee accepts the claim for Path F and authorises the making of a Modification Order to register the route as a public footpath.

Tim Hart
Senior Definitive Map Officer

For any enquiries about this report please contact: Tim Hart on 0115 977 4395

Constitutional Comments [SJE – 07/12/12]

42. This decision falls within the terms of reference of the Rights of Way Committee to whom the exercise of the Authority's powers relating to public rights of way has been delegated.

Financial Comments [DJK – 12/12/12]

43. The contents of this report are duly noted; there are no financial implications.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Footpath claims at East Stoke/Elston – case file.

Electoral Division(s) and Member(s) Affected

Farndon and Muskham Councillor Sue Saddington

ROW 88 East Stoke and Elston
Updated 9 January 2013



**Nottinghamshire
County Council**

**Plan A - Elston Footpaths A to F
Proposed Modification Order.**

Proposed paths: -----

Unaffected paths: - - - - -

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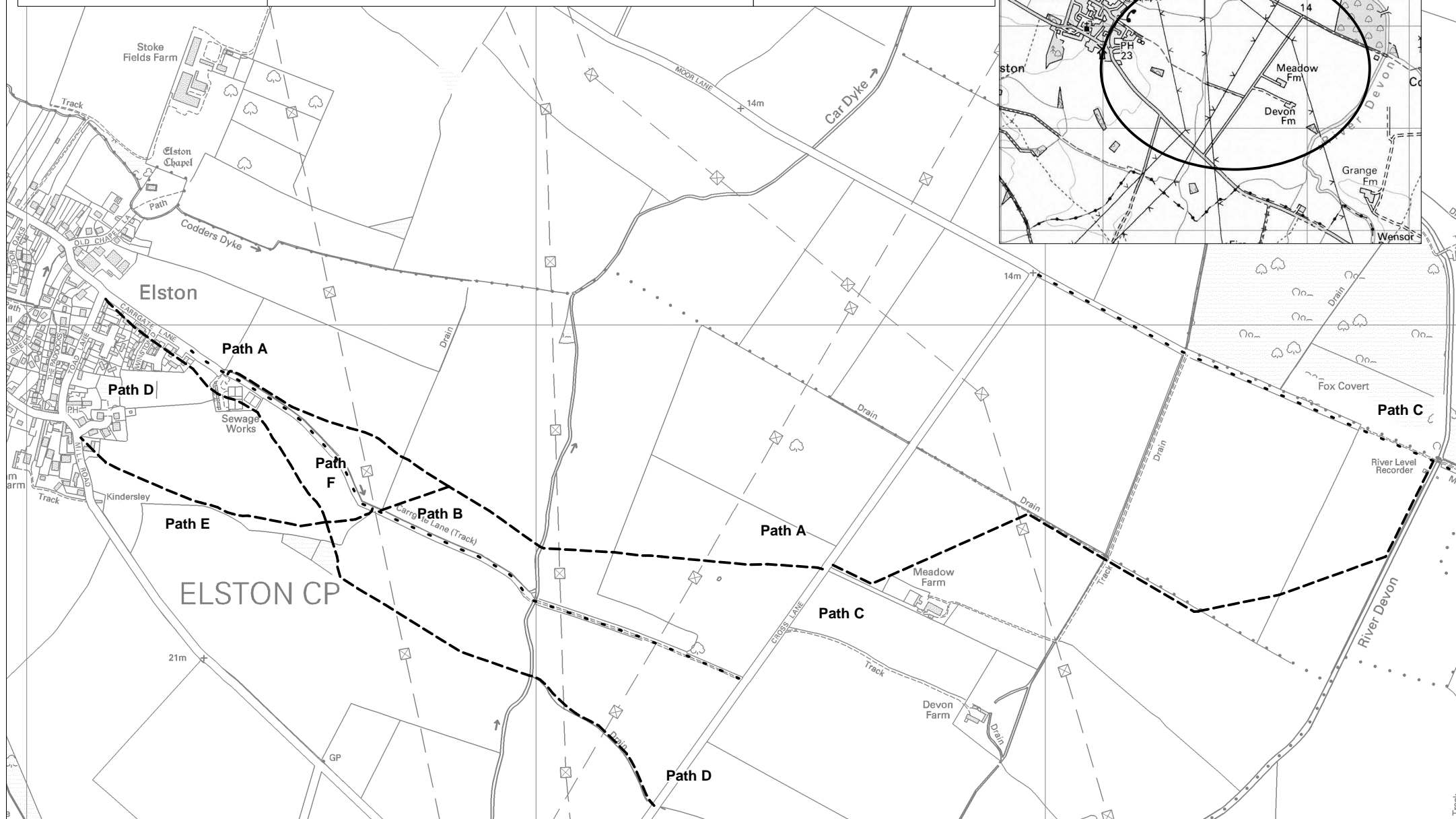
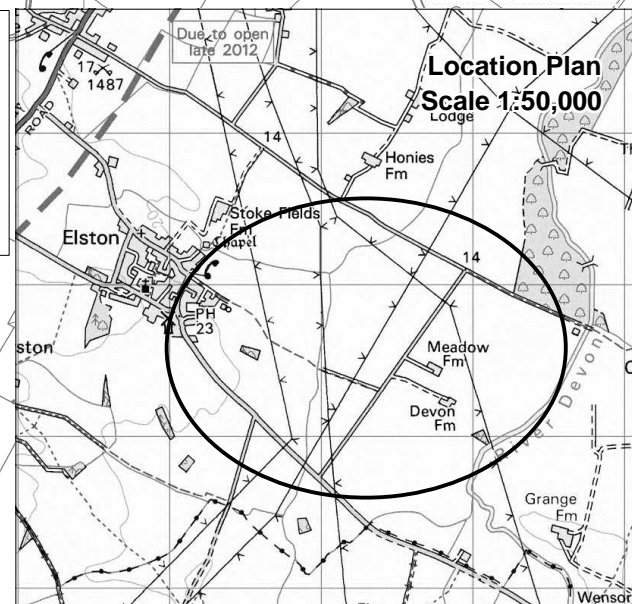


Scale: 1:10,000

Produced by: David Squires

Date: 17/12/2012

**Location Plan
Scale 1:50,000**



REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)**CONSIDERATION OF A REQUEST UNDER SECTION 119 OF THE HIGHWAYS ACT 1980 FOR THE DIVERSION OF TWO CLAIMED FOOTPATHS AT ELSTON****Purpose of the Report**

1. To consider a request made by Mr R. Lockwood of F.E. Lockwood & Son, Lineham House Farm, Elston for the diversion of two footpaths claimed by the Ramblers' Association which cross his property. The report also deals with an alternative diversion proposal, and Committee is requested to determine which of these proposals should proceed to the Order making stage. A map showing the routes claimed by the Ramblers' Association and the diversion proposals is shown as Plan A.

The landowner's proposal

2. Following a meeting at Lineham House Farm to discuss the implications of the Ramblers' Association claims, Mr Lockwood requested that the paths be diverted to the route indicated on Plan A. In support of his proposal, he states that "it only deviates slightly from the claimed path and being on the margin defines the route more clearly." This realignment would also "make it easier for arable cultivation and cropping." At the junction with Mill Road, Mr Lockwood's proposal would exit his field adjacent to a private residence called 'Kindersley.'

The legal tests to be applied

3. Under the terms of Section 119 of the Highways Act 1980, the County Council can make a 'public path diversion order' where it appears, regarding a footpath or bridleway in its area, that it is expedient that the line of the path, or part of it, should be diverted. This expediency refers to the interests of the owner, lessee or occupier of land crossed by the path, or of the public. Section 119 also stipulates that a diversion order shall not alter a termination point of the path in cases where that point is in a highway, otherwise than to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public. Subsection (6) also states that the Secretary of State shall not confirm an objected order referred to him for determination, and a council shall not confirm an unopposed order, unless he or they are satisfied that the diversion to be effected by the order is expedient, and that the path will not be substantially less convenient to the public in consequence of the diversion.
4. It must also be expedient to confirm the order having regard to the effect which the diversion would have on public enjoyment of the path as a whole, which the coming into operation of the order would have as respects other land served by

the existing path, and which the new path created by the order would have as respects the land over which it is created.

5. Under Section 40 of the Natural Environment and Rural Communities Act 2006, the County Council is required to have regard to the conservation of biodiversity in exercising its functions, which includes those set out in the Highways Act 1980.

The alternative proposal

6. The diversion proposal put forward by officers of the Countryside Access section is aimed at satisfying the tests set out in section 119 of the Highways Act 1980, and taking into account the interests of all affected parties. These include the occupiers of the property known as 'Field View,' which is crossed by one of the claimed paths, Mr Lockwood as the farmer of the field in question, the potential users of the diverted route, and the occupiers of 'Kindersley.' The proposal also has regard for the County Council's duty to take biodiversity into account when carrying out its functions.
7. Given the wording of Section 119, officers believe that there is a presumption that a diversion order must ordinarily endeavour to alter a path's point of termination as little as possible. As can be seen from Plan A, the officers' proposal is closer to the original point of termination than that proposed by Mr Lockwood by approximately eight metres. Path users would pass through the hedgeline adjacent to the end of the footway alongside Mill Road, allowing them to cross safely. Creating a gap in the hedge at this point would also be less disruptive from an ecological point of view, as indicated below.
8. Although officers recognise that it would be expedient to divert the claimed paths onto the edge of the field farmed by Mr Lockwood as this would be in the interests of land management, they do not believe that that expediency extends to the whole of Mr Lockwood's proposal. Between points A and B on Plan A, Mr Lockwood would have to reinstate a cross-field 70 metres long to a width of 1 metre if his proposal was implemented, compared to 110 metres between points A and D in the case of the officers' alternative. Between points B and C, Mr Lockwood would have to leave a field edge path 20 metres long to a width of 1.5 metres. Mr Lockwood's proposal would therefore necessitate keeping 100 square metres uncultivated for the benefit of public access, compared to 110 square metres in the case of the officers' proposal. The officers believe that this difference is not substantial enough to warrant accepting this part of Mr Lockwood's proposal, particularly in light of its more significant alteration of the path's point of termination. Officers also believe that it is debatable whether it could be regarded as 'expedient' to divert the path to run alongside the property boundary of a private residence, and although it is difficult to quantify this point, diverting the path alongside someone's property in this way could adversely affect the enjoyment of the path as a whole, even if only to a small degree and only for certain users.

9. In response to the officers' proposal, Mr Lockwood has stated that this "would impede modern agricultural practices," but has not specified why this should be the case. Reinstating a cross-field path to allow public access is a standard procedure where a right of way crosses a field, and would be required even with regards to Mr Lockwood's own proposal.
10. Mr Lockwood has also stated that the officers' proposal would require "an additional access point to be created through well-established hedgerows," but this is also the case with Mr Lockwood's own proposal. He also states that the officers' "proposed access point onto Mill Road is impractical and potentially hazardous due to a grass bank and lack of a footpath adjacent to the highway." There is little height difference, however, between the hedge and the bottom of the grass bank, and at the bottom of the bank there is a metalled footway on which path users can stand whilst waiting to cross Mill Road. Officers do not believe, therefore, that their proposal is in any way "potentially hazardous" as is being claimed.

Responses from consultees

11. Letters have been sent out to the standard list of consultees, including the local member and the Parish and District Councils, asking for their views on the diversion proposals. A letter was also sent to the occupiers of 'Kindersley.'
12. The response from the District Council stated that "no preference was expressed by any party."
13. The Parish Council's response was that they supported Mr Lockwood's proposal, but no reasons were given for this preference.
14. The Nottinghamshire Footpaths Preservation Society stated that they were "fairly happy with either diversion proposal," but would "marginally favour" the officers' proposal as "it is closest to the original route and terminates nearest the village."
15. The response from the County Council's Nature Conservation Unit expressed a preference for the officers' proposal due to the presence of trees in the hedgeline at Mr Lockwood's proposed termination point. The officers' proposal would therefore "result in more minimal habitat loss."
16. The occupiers of 'Kindersley' responded that Mr Lockwood's proposal would intrude on their privacy, and given that the claimed right of way is being diverted in part to protect the privacy of the occupiers of 'Field View,' similar consideration should be given to their interests. They also expressed concern that "a public footpath at such proximity would devalue our property," and that walkers exiting the field at Mr Lockwood's proposed termination point "would do so at the worst possible point on a blind corner," and therefore "from a road safety point of view"

they felt that the officers' proposal was better. Their final point was that at Mr Lockwood's proposed termination point "there are mature trees (used by nesting birds) that would need to be removed."

Conclusion

17. In order to be able to accept Mr Lockwood's diversion proposal, a number of legal tests would have to be met. It would be necessary to show that it was in his interests as the owner of the land in question, whilst having regard to public enjoyment. Diverting the claimed paths so that they run along the field edge for most of their length rather than across the field satisfies the 'interests of the owner' test, but this test is also satisfied by the officers' proposal. Removing the western path from the grounds of 'Field View' is also satisfied both by Mr Lockwood's and the officers' proposals.
18. For the final section of the western path, both Mr Lockwood's and the officers' proposals would require Mr Lockwood to reinstate a cross-field path after ploughing and keep it free from crop, the only difference being that the final section of Mr Lockwood's proposals returns the path to the field edge. Although in both cases, there would be no effect on other land served by the claimed path if a Diversion Order was to be made and come into operation, and no adverse effects on the land over which the new path would be established, thus satisfying these two legal tests, the basic 'expediency' test for diverting the path to the line specifically requested by Mr Lockwood is not believed to be met, as Mr Lockwood has not specified why he would be unduly inconvenienced by having to reinstate an additional 10 square metres of cross-field path, which is all that would be required if the officers' proposal was to be accepted.
19. Two other legal tests to be considered involve the "substantially as convenient" test and the presumption against altering a point of termination of a path to a greater degree than is necessary, and the need to have regard to public enjoyment of that path. Mr Lockwood's proposal does not satisfy the first of these tests, as it alters the point of termination to a greater degree than that which is considered necessary in the interests of expediency. With regards to the second test, Mr Lockwood's proposal, according to the occupiers of 'Kindersley,' would bring path users to "the worst possible point on a blind corner," whereas the officers' proposal has no such road safety implications. It is also the proposal preferred by the Nottinghamshire Footpaths Preservation Society, being closer to the original route and nearer to the village, and therefore, unlike Mr Lockwood's proposal, capable of satisfying the 'public enjoyment' test.
20. The final factor to be considered involves the County Council's duty to have regard to the conservation of biodiversity. Mr Lockwood's proposal would result in greater habitat loss than that favoured by officers, and therefore adversely affect the County Council's legal responsibilities in relation to nature conservation.

Statutory and Policy Implications

21. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights,

the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) It is RECOMMENDED that the Committee accepts that part of Mr Lockwood's diversion proposal between Carrgate Lane and point A on Plan A, but turns down the part between points A, B and C for the reasons set out in the report.
- 2) It is RECOMMENDED that the Committee accepts the officers' diversion proposal between points A and D on Plan A and authorises the making of a Diversion Order for a route from Carrgate Lane via point A to point D for the reasons set out in the report.

Tim Hart
Senior Definitive Map Officer

For any enquiries about this report please contact: Tim Hart on 0115 9774395

Constitutional Comments [SJE – 07/12/12]

22. This decision falls within the terms of reference of the Rights of Way Committee to whom the exercise of the Authority's powers relating to public rights of way has been delegated.

Financial Comments [DJK – 12/12/12]

23. The contents of this report are duly noted; there are no financial implications.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Footpath diversions at Elston – case file.

Electoral Division(s) and Member(s) Affected

Farndon and Muskham Councillor Sue Saddington

ROW 89 Diversion of Two claimed Footpaths at Elston
5 December 2012



**Nottinghamshire
County Council**

Plan A - Elston Footpath E Proposed Diversion Order.

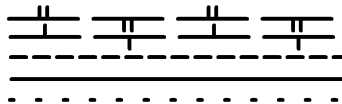
Mr Lockwood's proposal:

Officer's proposal:

Mr Lockwood's & Officer's proposal:

Existing route:

Unaffected paths:



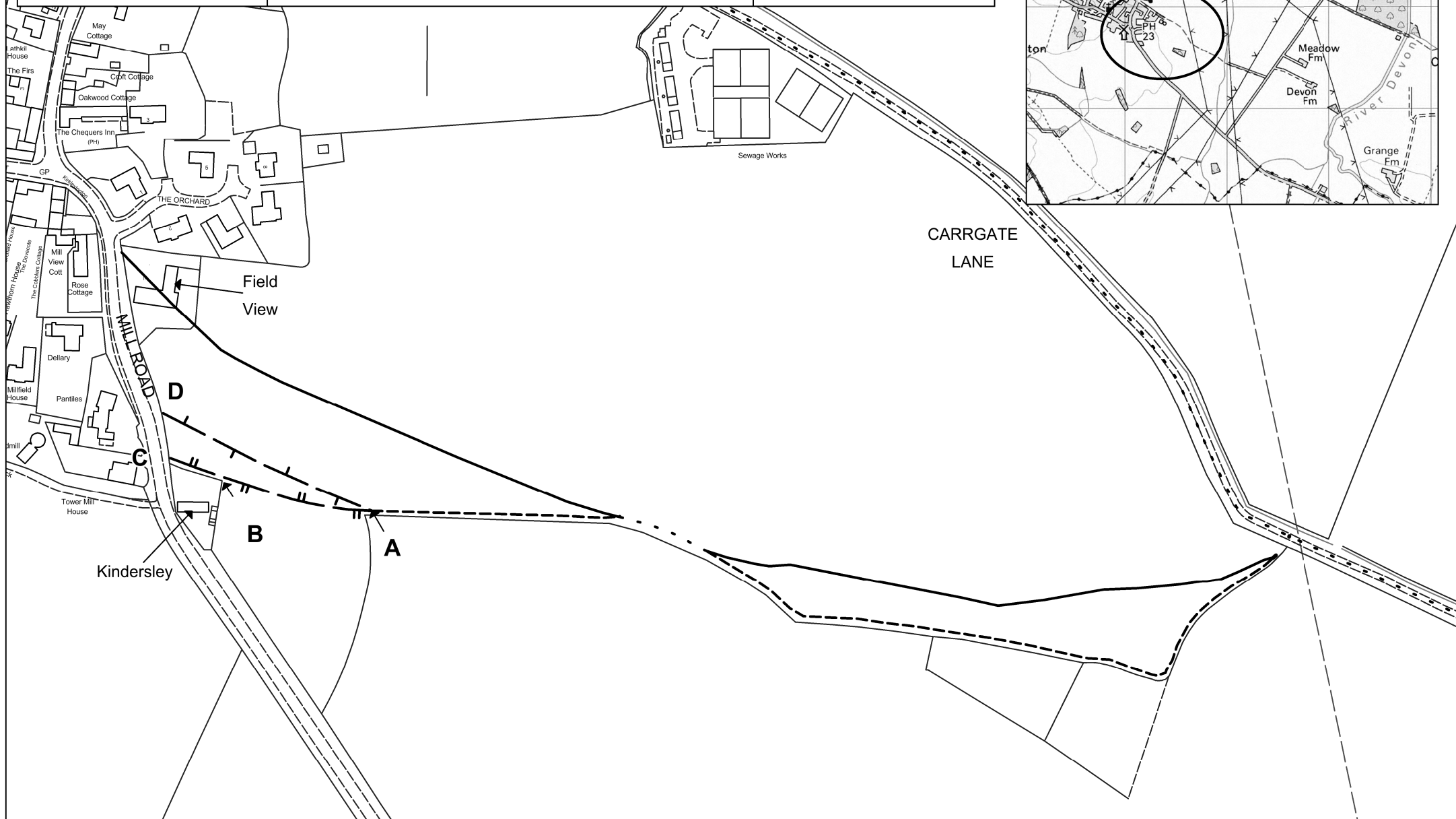
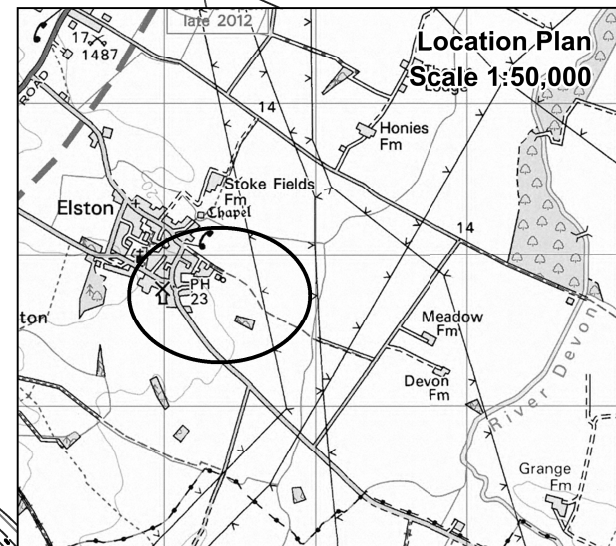
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Scale: 1:2,500

Produced by: David Squires

Date: 18/12/2012



REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)**CONSIDERATION OF A REQUEST UNDER SECTION 118 OF THE HIGHWAYS ACT 1980 FOR THE EXTINGUISHMENT OF THREE CLAIMED FOOTPATHS AT ELSTON****Purpose of the Report**

1. To consider a request made by Mr R. Lockwood of F.E. Lockwood & Son, Lineham House Farm, Elston for the extinguishment of three footpaths claimed by the Ramblers' Association which partly cross his property. A map showing the paths in question (Paths 1, 2 and 3) is shown as Plan A.

The landowner's proposal

2. Following a meeting at Lineham House Farm to discuss the implications of the Ramblers' claims, Mr Lockwood wrote to the County Council expressing his belief that the three paths "should be extinguished as they serve no practical use due to the close proximity to Carrgate Lane and stop the necessity of two footbridges being built over the carr dyke."

The legal tests to be applied

3. Under the terms of Section 118 of the Highways Act 1980, the County Council can make a 'public path extinguishment order' where it appears, regarding a footpath or bridleway in its area, that it is expedient that the path should be stopped up on the ground that it is not needed for public use.
4. An Extinguishment order can only be confirmed by the Secretary of State, or by the County Council if unopposed, if satisfied that it is expedient to do so having regard to the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public, and the effect the extinguishment would have as respects land served by the path, taking into account the compensation payable to anyone suffering damage or depreciation of the value of an interest in land as a result of the extinguishment.
5. Under the terms of Section 118 (6) of the 1980 Act, any temporary circumstances preventing or diminishing the use of a path must be disregarded for the purposes of making or confirming an Extinguishment Order.
6. The County Council's Rights of Way Improvement plan states that a request for an Extinguishment Order will not be supported unless there is very clear evidence that the route is not needed for public use.

The paths proposed to be extinguished

7. Path 1 runs from the junction with Carrgate Lane, at a point where it is registered on the Definitive Map as Elston Bridleway No. 8, to Cross Lane. At the point where it crosses Car Dyke there is no footbridge, but this is a 'temporary circumstance' which must be disregarded when deciding whether to make an Extinguishment Order.
8. Path 2 runs from the junction with Elston Bridleway No. 8 to the junction with Path 1.
9. Path 3 runs from the junction with Toad Lane to Cross Lane. At the point where it crosses Car Dyke there is no footbridge, which again is a 'temporary circumstance.' The claimed route runs through several private residences adjoining Carrgate Lane and a sewage works, which, following the judgement in R v Secretary of State for the Environment ex parte Barry Stewart (1980), should also be regarded as 'temporary' and disregarded for the purposes of Section 118.

The landowner's proposal in light of the relevant legal tests

10. Mr Lockwood claims that the three paths in question serve no purpose due to the close proximity of Elston Bridleway No. 8, and therefore, by implication, that they are not needed for public use. This assumes, however, that Bridleway No. 8 can provide everything that local walkers, or those from further afield, might require in terms of a rights of way network, an argument which officers have duly scrutinised. Bridleway No. 8 on its own only provides an 'out and back' route between Elston village and Cross Lane, whereas Paths 1, 2 and 3 can be combined to create a number of options for walkers, such as Path 1 to Cross Lane, along Cross Lane, then on Path 3 back into Elston. Path 1 also provides a direct link to another claimed route, shown as Path 4 on Plan A, whilst Path 2 can be reached via yet another claimed route, shown as Path 5. It also has to be borne in mind that horse traffic on Bridleway No. 8 could affect the path surface to the detriment of other users, which supports the argument for retaining Paths 1, 2 and 3 as alternative routes for the benefit of walkers.
11. Mr Lockwood also argues that the three paths should be extinguished in order to "stop the necessity" of having to build two footbridges over the Car Dyke. The lack of a footbridge, however, is a 'temporary circumstance' preventing the use of the paths, and must be disregarded for the purposes of deciding whether to make an Order. If the argument is more to do with the financial implications of providing the missing bridges, this also must be disregarded, as the County Council has a duty to "assert and protect" the public's rights to the "use and enjoyment" of any right of way for which it is the highway authority by virtue of Section 130 of the Highways Act 1980, and cannot choose not to carry out that duty on the grounds of cost. It is estimated that it could cost up to £15,000 each to replace the missing bridges.
12. More significant 'temporary circumstances' exist in relation to Path 3, but in view of the Section 130 duty to "assert and protect," it is inappropriate for the County Council to respond to an obstruction such as a number of private residences over a claimed route by making an Extinguishment Order. Case law also suggests that

to make an Extinguishment Order in response to an obstruction can have the effect of condoning the unlawful act of obstruction of a highway. The appropriate response, as in a similar case at Calverton, is for officers to be authorised to seek to divert the path onto an alternative route through negotiation with the affected owners and occupiers.

13. The final factor to be considered arises from the Rights of Way Improvement Plan, which stipulates that the County Council will not support the making of an Extinguishment Order unless there is “very clear evidence” that a route is not needed for public use. Given that this “very clear evidence” has not been presented, the Improvement Plan’s requirement has not been satisfied.

Responses from consultees

14. Letters have been sent out to the standard list of consultees, including the local member and the Parish and District Councils, asking for their views on the extinguishment proposals.
15. The responses from the Parish and District Councils stated that they had no objection to the proposed extinguishments.
16. The Ramblers’ Association response was to object to the proposed extinguishments on the grounds that Path 1 provided a route across the fields to join the claimed footpath shown as Path 4 on Plan A, Path 2 provided a link to Path 1, and Path 3 provided a link with the claimed footpath shown as Path 5 on Plan A. Their concluding remark was that they supported the protection of all three of the paths.
17. The Nottinghamshire Footpaths Preservation Society responded that they had previously supported the addition of Paths 1, 2 and 3 to the Definitive Map, and had not changed their view subsequently. They regarded these routes as providing “a pleasant field path alternative” to walking down Carrgate Lane, and pointed out that Path 1 provided a closer link with the claimed footpath shown as Path 4 on Plan A. They also believed that the cost of reinstating the paths by providing footbridges over the Car Dyke would not be “too exorbitant.”

Conclusion

18. In order to be able to accept Mr Lockwood’s proposal to extinguish Paths 1, 2 and 3, in the words of the Rights of Way Improvement Plan there must be “very clear evidence” that they are not needed for public use. Given the responses to the proposed extinguishments from the Ramblers’ Association and the Nottinghamshire Footpaths Preservation Society, it is apparent that this “very clear evidence” that the paths are not needed does not exist. Both groups have expressed the desire to retain the paths to maintain links with other routes, with the Preservation Society clearly indicating their value as an alternative to using Bridleway No. 8. The lack of footbridges and the presence of significant obstructions in the case of Path 3 are not in themselves sufficient grounds for the making of an Extinguishment Order, as both factors could be addressed by

erecting the missing bridges and/or discussing the options for path diversions with the relevant owners and occupiers.

Statutory and Policy Implications

19. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) It is RECOMMENDED that the Committee does not accept Mr Lockwood's proposal to extinguish Paths 1, 2 and 3, and does not authorise the making of an Extinguishment Order, for the reasons set out in the report.
- 2) It is RECOMMENDED that the missing footbridges which are required to enable Paths 1, 2 and 3 to be used should be provided out of the Countryside Access section's budget or, if this should prove impractical for any reason, that discussions take place with the relevant owners and occupiers of the affected land regarding suitable diversions of the routes in question.

Tim Hart
Senior Definitive Map Officer

For any enquiries about this report please contact: Tim Hart on 0115 9774395

Constitutional Comments [SJE – 07/12/12]

20. This decision falls within the terms of reference of the Rights of Way Committee to whom the exercise of the Authority's powers relating to public rights of way has been delegated.

Financial Comments [TMR-15/02/13]

21. The financial implications are set out in paragraph 11 and recommendation 2) of the report.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Footpath extinguishments at Elston – case file.

Electoral Division(s) and Member(s) Affected

Farndon and Muskham Councillor Sue Saddington

ROW 90 The Extinguishment of Three Claimed Footpaths at Elston



**Nottinghamshire
County Council**

**Plan A - Elston Footpaths 1, 2 & 3
Proposed Extinguishment Order.**

Proposed extinguishment: _____

Other paths: - - - - -

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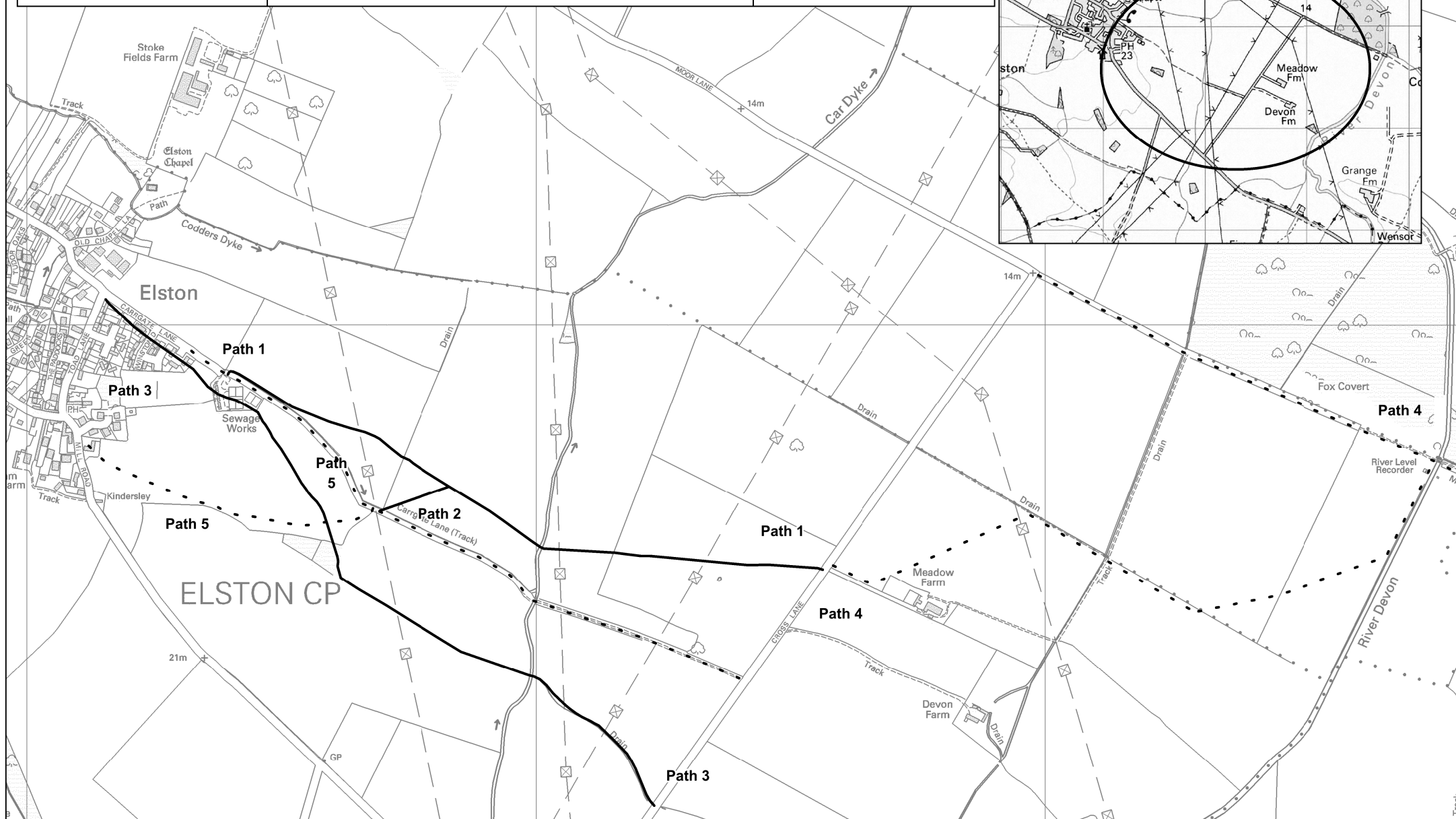
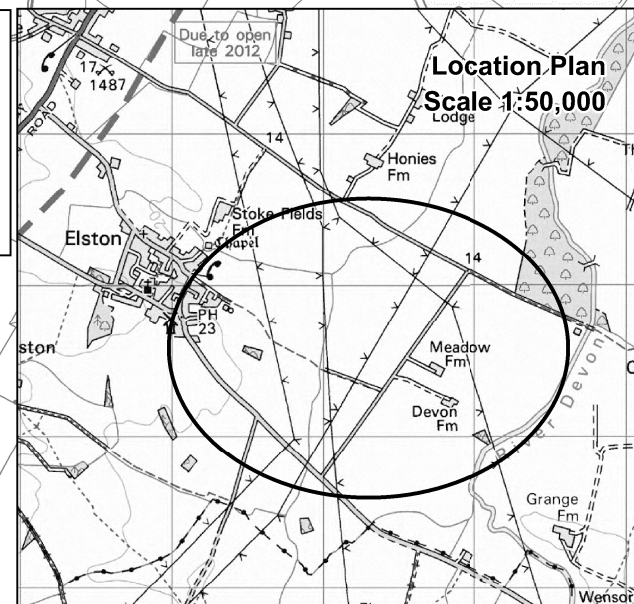


Scale: 1:10,000

Produced by: David Squires

Date: 18/12/2012

**Location Plan
Scale 1:50,000**



REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)**APPLICATION TO AMEND THE REGISTER OF COMMON LAND:
NORMANTON ON TRENT****Purpose of the Report**

1. To consider an application from Maples Solicitors, 23 New Road, Spalding, Lincolnshire to amend the County Council's Register of Common Land in respect of land in Normanton on Trent, Nottinghamshire (register entry CL14). A copy of the relevant map as contained in the register is shown as Appendix A.

The Law

2. The County Council is the Registration Authority for the purposes of the Commons Act 2006 and the Commons Registration Act 1965. The 1965 Act established commons registers as a means of recording the existence of common land. The council is also responsible for keeping and maintaining this statutory register. This requires the authority to 'update' the register when the ownership of common rights change (currently under Section 13(c) of the Commons Registration Act 1965 where 'rights in gross' are transferred).
3. Common land is land, usually in private ownership, which has rights of common over it. These rights of common are held by persons other than the landowner and relate either to doing something on the land or taking something from it (i.e. the right to graze animals or to take wood). Such rights do not have a recreational aspect although the general public do have the right to walk on common land by virtue of the Countryside and Rights of way Act 2000 (although the right must be exercised reasonably and with respect to other rights which exist).

Reason/s for Recommendation/s

4. The applicant has stated that their client, Charlotte Truswell Pennington of Oakham, Rutland is the lawful successor to rights of common currently registered in the name of the late Mrs Clarice Thurston of Normanton on Trent (being recorded at entry 21 (Rights Section) on 26 June 1968). This right of common is held 'in gross' (not bound to ownership of a specified property) and entitles the holder to "the right of pasture for 2 beasts or other permitted animals on 2 beastgaits" (a 'beastgait' relates to the number of animals which the right holder is entitled to put on the land).
5. Officers are satisfied that the register entry should be amended as requested to transfer the rights in common to Charlotte Pennington having examined certified copies of the documents submitted in support of the application namely;
 - A conveyance from 1979 between the representatives of G Thurston and the representatives of F P Pennington

- An assent from 1979 to Mrs DD Pennington
- A Grant of Probate from 2005 in respect of Mrs DD Pennington

Statutory and Policy Implications

6. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION

7. It is RECOMMENDED that Committee accept the application and authorise officers to amend the Register of Common Land for Normanton on Trent (CL14) by striking out entry No. 21 (Rights Section) in respect rights of common owned by Clarice Thurston of Normanton on Trent, and to add Charlotte Truswell Pennington, of Oakham, Rutland as now holding those rights of common.

Eddie Brennan
Definitive Map Officer

For any enquiries about this report please contact:

Eddie Brennan (0115 9774709)
Commons and Village Greens Officer

Constitutional Comments (SJE – 12/02/2013)

8. This decision falls within the terms of reference of the Rights of Way Committee to whom the exercise of the Authority's powers relating to common land has been delegated

Financial Comments (DJK 08.02.2013)

9. The contents of this report are duly noted; there are no financial implications.

Background Papers

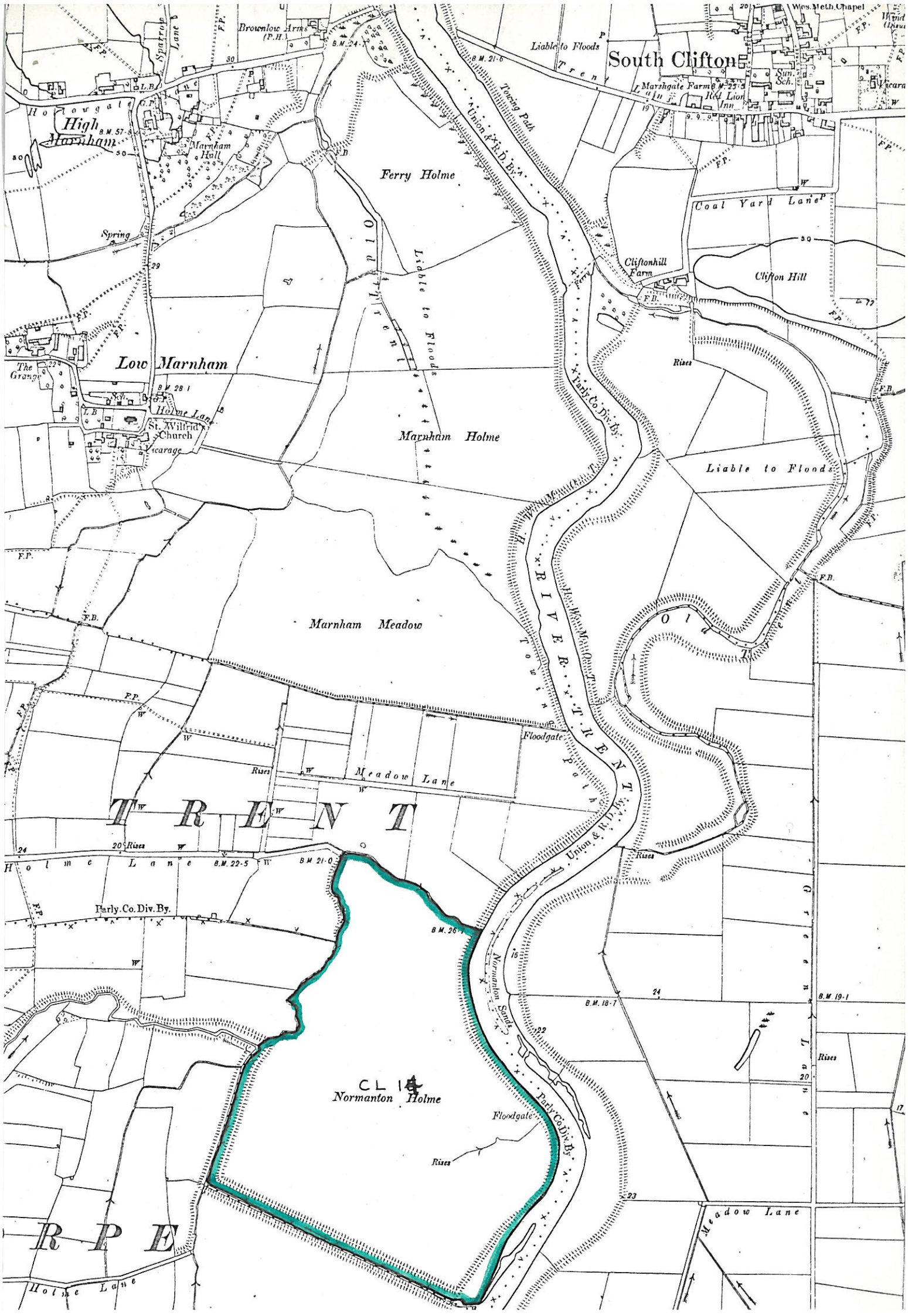
Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Normanton on Trent Common Land (CL14) case file.

The Nottinghamshire County Council Register of Common Land (Commons Registration Act 1965).

Electoral Division(s) and Member(s) Affected

Tuxford Councillor John Hempsall



South Clifton

Ferry Holme

Low Marnham

Marnham Holme

Marnham Meadow

Clifton Hill

CL 14
Normanton Holme

TRENT

RPE

**REPORT OF SERVICE DIRECTOR,
POLICY, PLANNING AND CORPORATE SERVICES**

TO INFORM MEMBERS OF THE FINAL RESULTS FROM THE FURTHER CONSULTATION UNDERTAKEN REGARDING THE RESOLUTION THAT A GATING ORDER BE MADE TO CLOSE THE ALLEYWAY BETWEEN CEDARLAND CRESCENT AND NOTTINGHAM ROAD, NUTHALL.

Purpose of the Report

1. To inform Members of the latest information from the further consultation exercise and refreshed analysis of crime, disorder and anti-social behaviour which took place following the Resolution of the Rights of Way Committee on 27th June 2012 (determining that the relevant procedures be commenced in relation to a Gating Order to close the path for 24 hours per day, 7 days a week).

Information and Advice

2. Members will recall that the Resolution to close the alleyway was based on historical data of crime, disorder and anti-social behaviour incidents in and around the alleyway prior to June 2012. The County Council "Guide To The Making of Gating Orders On Highways And Public Rights of Way", (hereafter referred to as "the Guide"), makes it clear that an application for a Gating Order must contain "evidence that the highway is an intrinsic contributor to the levels of crime and disorder in that locality". The Guide also requires that the impact of a Gating Order on the local community be considered.
3. As part of the procedure for the submission of a Gating Order Application to the County Council people had been consulted by the Community Safety Partnership in order to gain their views and of the 47 who responded 53% supported the closure of the alleyway. The local Community Safety Partnership were also in favour of closure at that time.
4. The subsequent County Council procedures (set out in the Guide) require the Council to consult by publishing the intention to make a Gating Order that would, in effect, close the alleyway on a permanent basis, informing local people and interested parties. This was undertaken by notices, letters to local people, and information on the Council website and at Kimberley Library. This

consultation period was in operation between 12th November and 10th December 2012.

5. During this time 42 responses from local people were received. 12% (5 respondents) were in favour of closing the alleyway. 79% (33 respondents) were against, and 9% (4 respondents) had no preference. In addition a petition to keep the alleyway open was presented to the County Council with 129 signatures from local people (some of which included the 42 people who sent in individual responses).
6. In view of this high percentage of residents against the closure of the alleyway it was considered appropriate to undertake an additional detailed consultation exercise with the public and all known interested parties (including contacting a wider group of local residents), offering the opportunity not only to state/reaffirm their views on closure, but also to provide specific local information on how closing or keeping the path open would specifically affect them/the area, as well as views on any alternative solution, for example scheduled night time closure by volunteer key holders from the local area – a solution that has been very successful at another footpath in Broxtowe, namely Kew Gardens (albeit that the circumstances are slightly different there, so again, a direct comparison cannot be drawn).
7. This additional detailed consultation exercise ran for a period of six weeks, ending on 29th January 2013. All households on Cedarland Crescent received an individual letter and questionnaire, notices were placed on lamp posts adjacent to the alleyway, and information was available both on the County Council Website (including an online consultation form for responses) and at Kimberley library.
8. To support this additional consultation the officers requested a refreshed analysis of the latest information on any crime, disorder and anti-social behaviour incidents in the area from Nottinghamshire Police.

Final Results from the Additional Consultation

9. At the close of 29th January 2013, 128 replies had been received. These can be summarised as follows:

	Number	%
Those in favour of closing the alleyway	19	15
Those in favour of keeping the alleyway open	103	80
Those in favour of night time closure of the alleyway	6	5

10. Although a much larger number of responses were received from this additional detailed consultation exercise, the results are consistent, in percentage terms, with those from the Council's earlier consultation exercise (undertaken in November 2012).

11. The latest consultation also asked residents to indicate if they would be willing to form a volunteer group, who would have responsibility for opening and closing the gate each evening and morning, if night time closure was ultimately deemed to be the most appropriate solution in this location. 5 people indicated that they would be willing to be part of such a rota. Based on the experience at Kew Gardens, and at similar schemes operating in Nottingham City, the minimum number of residents required for such a rota is 10.
12. A final part of the consultation asked residents to detail any other solutions they would wish to be considered. None were suggested.
13. At the meeting of the Rights of Way Committee on 23rd January 2013, Members requested that the final results from the additional consultation exercise be further analysed to show any change of opinion as distance from the alleyway increases. This is shown below:

Distance from the alleyway	Up to 50 metres	51-100 metres	101-150 metres	151-200 metres	201 or more metres	No address specified	Total
Those in favour of closing the alleyway	5 4%	3 2%	2 2%	3 2%	4 3%	2 2%	19
Those in favour of keeping the alleyway open	24 19%	17 13%	19 15%	8 6%	34 27%	1 1%	103
Those in favour of night time closure of the alleyway	0	0	2 2%	1 1%	3 2%	0	6

14. Night time closure was a very unpopular option with the majority of residents, with few respondents offering any supportive views. Apart from the 6 residents in favour of night time closure, 14 residents stated that night time closure would be inappropriate due to the fact that the alleyway is very well used by local people not only during the day but also well into the late evening for connecting with public transport, visiting friends, attending regular social events and clubs, and other social activities.
15. The additional consultation exercise gave local residents the opportunity to state any particular views or concerns they may have. Very strong views from residents supporting and opposing the closure of the alleyway were received. Some of these views are shown below:-

(i) From residents in favour of closing the alleyway

“Keep it closed until crime is down to the level where people who live on Cedarlands are happy. Think of the elderly, some have lived here for 50 years and deserve their right to happiness”

"We don't like to have to pick our way through dog mess, litter or having to sweep our frontage because of the rubbish. We feel very strongly it would be better closed all the time that way the residents would be happy – not the chosen few"

"It is no great hardship to walk round to Nottingham Road"

"I have experienced a considerable amount of anti-social behaviour resulting in damage to my property. This activity usually happens at night time so if it was closed it won't be a flashpoint for crime and other forms of anti-social behaviour"

(ii) From residents in favour of keeping the alleyway open

"I have used the alleyway since 1970 and at 83 years of age it would be a hardship to close the alleyway. I have had no problems in the past 40 years"

"The more people use it the safer it is". If closed it could become a rubbish dump/health hazard. I use it to access transport and visit the park. I have lived here for 34 years and experienced very few problems"

"It provides convenient access to public transport and retail facilities. There does not seem to be a problem that needs to be fixed. In the years I have lived here I have used the alleyway everyday and at all times of the day and evening. I have never witnessed or experienced anti-social behaviour or seen any evidence of it"

"I have lived here for 59 years, I need this alleyway to use the tram and bus. This is a lifeline for me"

16. The refreshed analysis of crime, disorder and anti-social behaviour shows no incidents in and around the alleyway reported to the police over the last 12 months (up to 11th February 2013). This reduction from the historically understood position (which suggested that there was some evidence of crime, disorder and anti-social behaviour) may be accounted for, in part, by two significant changes in the local landscape adjacent to the alleyway, namely, the opening of a care home on land that had previously been derelict, and a change in the operating style for the local public house which is now concentrating much more on promoting a restaurant style "experience".
17. Officers from the County Council undertook a site visit to the alleyway in January 2013. At that time the alleyway was in a good state of repair with adequate lighting provision. During this visit the officers confirmed the alternative pedestrian route that residents would have to use, should the alleyway be closed. In their opinion the alternative route would add on approximately 10 minutes to journey times for a fit and active person, all on footways at the side of a public carriageway. Half of this additional journey would be up a slight/moderate incline. As currently, if using the alleyway, one major road would have to be crossed to gain access to both the local tram and bus stops. Many of the respondents to the consultation are retired people and

a number have limited mobility. A number of the responses do refer to this additional distance making “getting out” much more challenging, and in some cases impossible, indicating that any closure would very detrimentally affect their quality of life.

Other Options Considered

18. **(i) Full closure of the alleyway.** Under this option, the alleyway would be closed for 24 hours per day and for 7 days per week. The law requires, as set out in the Guide, that a Gating Order may only be made where there is evidence that “the existence of the alleyway is facilitating the persistent commission of crime or anti-social behaviour” and the closure of the alleyway is the most appropriate solution for addressing this. Using the most up to date information from Nottinghamshire Police there is no evidence of the alleyway facilitating such activities.

(ii) Partial closure of the alleyway. Under this option, the alleyway would be locked/unlocked each evening/morning. The Guide requires that “they, Gating Orders, should aim to provide an environment that is safe, equitable, and enjoyable to use by everyone regardless of age, disability, gender, race, religion or belief, sexual orientation or social exclusion.” The Guide requires that consideration be given to the potential impact of a Gating Order on “access to facilities”, in particular “bus stops/taxi ranks” From the latest consultation exercise, there is evidence that the alleyway is heavily used both during the day and evening by the local community with the alleyway providing a direct link to the nearest bus and tram stops. The information suggests that even partial closure would have a significant detrimental effect on elderly persons resident in the locality.

Reason for Recommendations

19. Since the original decision by the Rights of Way Committee on 27th June 2012, “that the relevant procedures be commenced in relation to a Gating Order to close the path for 24 hours per day, 7 days a week”, there has been:-
- significant voicing of local opinions, with a shift to 80% in favour of keeping the alleyway open
 - a significant reduction in reported crime, disorder and anti-social behaviour to nil
 - significant improvement to the local landscape

In consideration of the above, and the requirement that a Gating Order must be based on substantial evidence, “that the highway is an intrinsic contributor to the levels of crime and disorder in that locality” and that before making such an order a Council must assess the “effects on the community” of any form of Gating Order, the information obtained and referred to in this Report has led officers to conclude that, as is recommended to the Committee below, the current position on site (distinct from any historical problems there may have been) does not meet the legal requirements necessary for closure, even in part and it is therefore recommended that the alleyway remains open on a 24/7 basis at this time.

Statutory and Policy Implications

20. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they have been brought out in the body of the report. Appropriate consultation has been undertaken and advice sought on these issues as required.

Recommendations

21. It is recommended that:
- i) the alleyway between Cedarland Crescent and Nottingham Road, Nuthall, be kept open on the basis of the information set out within this report
 - ii) the situation is monitored by the local Community Safety Partnership for the next 12 months, to ensure that if there should be any significant increase in levels of crime, disorder and anti-social behaviour, facilitated by the alleyway, the issue of whether the making of a Gating Order would be an appropriate solution can be revisited upon receipt of any further Application from the local Community Safety Partnership.

Martin Done, Service Director Communications and Marketing

For any enquiries about this report please contact: Tony Shardlow, Community Safety Officer, Safer and Engaged Communities x73846.

Constitutional Comments (SJE – 25/02/2013)

22. This decision falls within the terms of reference of the Rights of Way Committee to whom the exercise of the Authority's powers relating to gating orders (either on recommendation from another committee or as necessary) has been delegated.

Financial Comments

23. There are no financial implications arising from the recommendations contained within this report. Monitoring, and responding to, the situation in the area will be undertaken as part of the mainstream activity of the local Community Safety Partnership. However, for information, the installation of a gate at this location there would result in a one off cost of approximately £10,000. There would also be ongoing costs for maintenance and repair.

Background Papers

24. Guide to the Making of Gating Orders on Highways and Public Rights of Way- Nottinghamshire County Council 2008.

Electoral Division(s) and Member(s) Affected

25. Nuthall - Councillor Philip Owen.

