

## **Rights of Way Committee**

**Wednesday, 23 January 2013 at 10:00**

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

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### **AGENDA**

- |   |  |         |
|---|--|---------|
| 1 | M_28 Nov 2012  | 5 - 10  |
| 2 | Apologies for Absence  |         |
| 3 | Declarations of Interests by Members and Officers:- (see note below)<br>(a) Disclosable Pecuniary Interests<br>(b) Private Interests (pecuniary and non-pecuniary) |         |
| 4 | Declaration of Lobbying  |         |
| 5 | Application to add a Bridleway - Clipstone and Warsop  | 11 - 58 |
| 6 | Toton Sidings - Town-Village Green application]  | 59 - 68 |
| 7 | Cedarland Crescent Nottingham Road Update  | 69 - 72 |

## 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 28 November 2012 (commencing at 10.00 am)

### membership

Persons absent are marked with 'A'

### COUNCILLORS

Bruce Laughton (Chairman)  
Gail Turner (Vice-Chairman)

Chris Barnfather  
Allen Clarke  
John Cottee  
Jim Creamer  
Sybil Fielding

John Hemsall  
Rachel Madden  
Andy Stewart  
Jason Zadrozny

### ALSO IN ATTENDANCE

Councillor V H Dobson

### 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
Dr Tim Hart	- Senior Definitive Map Officer
Alison Garraway	- Legal Practitioner, Legal Services
Tony Shardlow	- Community Safety Officer

### MINUTES

The minutes of the meetings held on 10 October 2012 were taken as read and were confirmed and signed by the Chairman subject to it being noted that the road mentioned on page 5 should read A614 and not A416.

### MEMBERSHIP

The Clerk to the Committee informed members that Councillor Chris Barnfather had been appointed to the Committee in place of Councillor Sue Saddington and this will revert back on 29 November 2012.

### **APOLOGIES FOR ABSENCE**

There were no apologies for absence

### **DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS**

There were no declarations of interest

### **DECLARATIONS OF LOBBYING BY MEMBERS**

There were no declarations of Lobbying.

### **ORDER OF BUSINESS**

With the consent of the Committee the order of the agenda was amended.

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

The Chairman asked Mr Eastwood, Legal Advisor to address the Committee regarding the representations which had been received recently from both the Applicant and an Objector. The representations were specifically to do with the effect of the barrier in terms of challenging use, thus affecting the 20 year user period. Mr Eastwood reminded members that they could still consider the item today, but may wish to give the landowner the opportunity to produce their evidence and for officers to bring a report covering that evidence and the information from the applicant.

Following the advice from the Committee's Legal Advisor and on a motion by Councillor Gail Turner, seconded by Councillor Andy Stewart it was:-

### **RESOLVED 2012/018**

That the item be deferred to the next meeting. (23 January 2013)

### **CONSIDERATION OF AN APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF CARLTON IN LINDRICK AND WALLINGWELLS.**

Mr Trundle took members through the report and highlighted the issues around the evidence of a stile being erected at point E on the map attached to the report at appendix Plan B. He also informed members he had spoken to the Parish Paths Partnership Warden who recalls the stile being erected and that it was in place for approximately 3 years, although there is conflicting evidence from the landowner that the stile was only in place for 3 weeks.

Mr Trundle highlighted the Inclosure Award Plan of 1768 which showed evidence of a bridleway having been awarded and that this route was then shown on the Estate Plan of 1769 to Committee. Mr Trundle informed Members that there was no evidence that the path was ever legally stopped up.

Mr Trundle informed Members that since the report was published he had received further evidence from Mr Doughty, the Parish Paths Partnership Warden, who recalls the stile being erected around 1998. He had also had discussions with the applicant Mr Walker, who suggested the Bridleway comes out on a particularly dangerous bend on Owday Lane and could be diverted to a more suitable location. Finally Mr Anderson who acts for the Ramsden Estate had written offering discussion for an alternative route around Owday Lodge for an existing right of way.

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

Mr Walker spoke in support to the application and informed members that he was willing to meet with all parties and look at how this application could be moved forward to the satisfaction of both ramblers and equestrians alike. He also felt that the potential alternative route brings an old fashioned route (the claimed route) in line with contemporary society and the needs of the 21 century.

In response to questions Mr Walker replied as follows:-

- He recalled the stile being in place for only a few weeks due to horses using the route and riding through an alternative gap into his yard to rejoin the path, therefore the stile was removed.
- The reason more people have not attended is due to the fact they do not feel comfortable with local politics and felt that he was able to represent their feelings adequately.
- He does not recall any objections to the removal of the stile at the time.

Mrs J Turley, Ramsden Estate, spoke in opposition of the application. She informed members that she had run this route over the years and there had been a stile there until at least 2000. She also informed Members that approximately 5 years ago riders had started to use the hand gate which replaced the stile and were becoming a nuisance to ramblers, and that also when challenged some have become abusive.

There were no questions asked.

Mr Fisher, a local farmer spoke in opposition to the application, informing members that he had often confronted riders who had used the footpaths and was subjected to a torrent of abuse. He also said that signs were erected which said no horses and also that he had placed wire across the gap to prevent trespassing but these were often vandalised or ripped down.

In response to a question Mr Fisher informed members that he does not recall horses using a hole in the fence/the alternative gap whilst he worked in the fields nearby.

Mr Anderson of James Martin & Co Land Agent for the Ramsden Estate spoke in opposition to the application and informed members that they do not accept that a bridleway should be recorded along points E and G because they refute the Inclosure Award evidence on the basis that the bridleway has not been used for centuries. He also said that without prejudice to that view, the landowner would not object to it being recorded if the cross-field path is diverted. As such, he would welcome discussions with the County Council to create an alternative footpath around Owday Lodge.

In response to questions Mr Anderson replied as follows:-

- He had not undertaken a traffic survey of Owday Lane so cannot comment on the traffic volume.
- The question is whether there has been uninterrupted use of the path over the years and the Estate is of the opinion there has not due to the erection of the stile at point E
- The benefits of a diverted route around the back of Owday Lodge would be that users would not put themselves in conflict with traffic.

Members discussed the issues before them, including the strength of the Inclosure evidence

- In response to a question Officers confirmed to members that the issues before them is to upgrade the footpath from point B to F on the plan and to add a further bridleway from point F-G
- Concerns were raised that the goodwill of residents could be lost if the recommendations are agreed so it was suggested that Officers enter into discussions with all parties to seek compromise and an amicable solution

The Chairman reminded members that Committee cannot enter into negotiations regarding proposed compromises suggested by applicants.

Mr Eastwood informed Committee that the report refers to the part of the claimed route which is based only on user evidence as failing due to the presence of the stile, but that the remainder which reflects the route shown by the Inclosure evidence as succeeding due to the legal importance and strength of this evidence, and the lack of being legally extinguished. Mr Eastwood stated that Members must determine whether they share this view, and make their decision based on that alone, and must not take into account in deciding whether an ancient public bridleway exists whether it is suitable or desirable, even whether a diversion may be expedient.

Following legal advice it was moved by the Chairman, seconded by the Vice-Chairman and unanimously

## **RESOLVED 2012/019**

- 1) That approval be given for the making of a Modification Order to modify the Definitive Map and Statement by adding a bridleway from the County boundary to Owday Lane (points B-G) as, for the reasons set out in the report and on the



grounds that the evidence demonstrates on a balance of probabilities that public bridleway rights exist.

- 2) That, that part of the claim from Owday Lane to the junction with Carlton-in-Lindrick Bridleway No. 18 (points G-L) be turned down, for the reasons in the report on the grounds that the evidence does not demonstrate that the existence of a public bridleway is reasonably alleged.
- 3) That Officers be authorised to investigate options regarding diversion, extinguishment or other appropriate measures to look at improving the network locally as a result of the addition of the B-G route, and a report on this be brought back to Committee within six months.

### **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 PARISH OF ELKSLEY**

Dr T Hart reminded Members that this item had been deferred from the previous Committee on the grounds there was additional evidence regarding parcel 142 which needed investigation. Following further investigation of evidence Dr Hart informed members the evidence shows that the parcel in question did receive a £10 reduction for having a footpath across it.

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

#### **RESOLVED 2012/020**

- 1) That the Application be accepted and the making of a Modification Order to add a bridleway to the Definitive Map and Statement be approved on the basis that, for the reasons set out in the report, it is considered by the Authority that the evidence shows that a right of way is reasonably alleged to subsist.
- 2) Officers be authorised to explore options regarding a diversion etc of the route in or around the stack yard in the interests of safety and security for both the public and the landowner.

### **APPLICATION FOR A GATING ORDER AT CLERKSON'S ALLEY, MANSFIELD**

Mr Shardlow introduced the report and highlighted to Members that the Local Access Forum are in full support of this proposed Gating Order.

In response to questions Mr Shardlow clarified that –


- The procedures for Gating Orders are prescribed, and the next step is one of formal consultation to ensure that all the views are taken account of.
- The opening and closing of the gates would be done by the adjacent local businesses for their business access only
- Any closure which occurs as a result of any Gating Order which is made, would be reviewed after 1 year to see if it was still appropriate

**RESOLVED 2012/021**

That the application for a Gating Order at Clerkson's Alley, Mansfield, be approved subject to consideration of any representations received from statutory consultees in accordance with the Council's agreed procedures

The meeting closed at 11.20 am

**CHAIRMAN**

 <b>Nottinghamshire County Council</b>	<b>Report to Rights of Way Committee</b>
	<b>23 January 2013</b>
	<b>Agenda Item: 5</b>
<b>REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)</b>	
<b>APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF CLIPSTONE AND WARSOP</b>	

### **Purpose of the Report**

1. To consider an application made in 2008 by Mr S Parkhouse, Ms P Whitehead and Mr T Harkness on behalf of Clipstone Parish Council, to record New Buildings Drive, Clipstone as a public bridleway on the Definitive Map and Statement. A map of the area is shown as Plan A, with the route under consideration marked between points A and B.
2. The effect of this application, if accepted and confirmed, would be to add a public bridleway along an existing track leading from Peafield Lane (A6075), Warsop, opposite Warsop Bridleway No.21, continuing along New Buildings Drive and the track leading to Clipstone Bridleway No.8.

### **The Law**

3. The application was made under the provisions of the Wildlife and Countryside Act 1981 (WCA81). Section 53(3)(b) of WCA81 requires the Surveying Authority (Nottinghamshire County Council) to modify the Definitive Map and Statement following “the expiration in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path”.
4. Section 31 of the Highways Act 1980 (HA80) raises a presumption that a right of way has been dedicated as a highway if the route has been used by the public ‘as of right’ and

without interruption for a period of 20 years unless there is sufficient evidence that there was no intention during that period to dedicate it.

5. In addition, under Section 53(2)(b) of WCA81 the surveying authority has a duty to keep the Definitive Map and Statement under continuous review and to make such modifications to the Definitive Map and Statement that appear to be requisite in consequence of the occurrence of events described in Section 53(3)(c)(i); namely “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”. The case of *R v SSE ex parte Bagshaw and Norton* (1994) has clarified the law in respect of the meaning of ‘subsists’ (Test A) and ‘reasonably alleged to subsist’ (Test B).
  - ‘Test A’ requires that the claimed right of way subsists i.e. clear evidence in respect of the claim and no credible evidence to the contrary.
  - ‘Test B’ is that it is reasonable to allege that a right of way subsists i.e. even if the evidence is finely balanced, but there is no incontrovertible evidence that the claimed route could not subsist, then the test is met and an Order should be made.
6. If it is accepted that dedication may be presumed at law, consideration must also be given to the category of highway that is believed to exist i.e. footpath, bridleway, restricted byway or a byway open to all traffic. This point should be based on an evaluation of the information contained in any documentary and/or user evidence.
7. Should the test under the HA80 Section 31 fail, then it may be appropriate to consider the dedication of the way at common law. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. Evidence of use by the public ‘as of right’ may support an inference of dedication and may also show acceptance by the public.

## **Information and advice**

8. Originally constructed in the early 1800s, New Buildings Drive is currently in the ownership of Mrs Yvonne Glennie and is also subject to an agricultural tenancy to Mr Robert Bealby who farms in adjacent fields. The land which incorporates New Buildings Drive has been continuously owned by members of the Glennie/Bealby Family since 1945. The route comprises a wide, mainly stoned track nearly 2.1 kilometres in length which leads from Peafield Lane to Clipstone Bridleway No.8. In approximately 1998, a barrier was erected across the track at the northern end of the route. Members of a model aeroplane club are allowed access around the barrier through a side gate in order to use one of the fields for their flying activities. Visitors to Sherwood Forest Caravan Park and horse riders belonging to the Cavendish Lodge Liveries also have permissive use of the route. A series of photographs taken along the course of the route are shown as Photos B1-4.
9. The evidence in support of the Application comprised of 40 Public Rights of Way User Evidence Forms and a number of historic maps.

## **Historic Documentary Evidence**

10. Along with the maps submitted as part of the application, additional documents were examined (as is standard procedure) to see whether there was any evidence for pre-existing public rights of way over the claimed route. The historic documents comprised:
  - Sanderson's Map 'Twenty Miles Round Mansfield' 1835
  - Ordnance Survey 2" map 1840
  - Clipstone Tithe Map 1841
  - Deposited plans for the proposed Lancashire Derbyshire & East Coast Railway 1896
  - Encyclopaedia Britannica map 1902
  - Finance Act map and valuation book 1910
  - Guilford's Map of Nottinghamshire 1927
  - Ordnance Survey map extract 1927
  - Ordnance Survey extract 1940

- Parish Schedules for Clipstone and Warsop 1953

11. Dealing with the documentary evidence in chronological order, the earliest record for the existence of New Buildings Drive is found in Sanderson's map of 1835. The map describes New Buildings Drive as a 'Coach Road' shown passing through Clipstone Park (then owned by the Duke of Portland). Clipstone Park is shown enclosed by a 'Park Fence' which probably incorporated a gate at the New Buildings Drive entrance. Another 'Coach Road' is also shown passing through Clipstone Park. Sanderson's map gives no indication as to whether these coach roads were for public or private use.
12. The Ordnance Survey map of 1840 confirms the existence of New Buildings Drive but gives no indication of status.
13. The 1841 Clipstone Tithe map shows New Buildings Drive coloured brown. However, all roads and tracks are also coloured in this way, therefore this map does not give any indication as to the status of New Buildings Drive.
14. The deposited plans for the Lancashire Derbyshire and East Coast Railway (1896) were inspected. The plans indicate the location where the proposed railway crossed the claimed route. In the accompanying schedule New Buildings Drive is referred to as a 'Road' in the ownership of the Duke of Portland. This suggests that it was believed to be a private road with no public rights over it.
15. Documents prepared for the purposes of the Finance Act 1910 (FA10) were also examined. The purpose of FA10 was to levy a tax on the estimated value of land. The valuer allowed deductions for any public rights of way affecting the use/value of the land. The map used for the valuation shows the majority of the route was recorded as private land. The relevant book of reference shows that no deductions for public rights of way were claimed on New Buildings Drive. The junction of New Buildings Drive with Peafield Lane is excluded from the adjacent parcels of land (i.e. un-coloured) which suggests that it was regarded as part of the public highway. An extract from the Finance Act map showing the junction with Peafield Lane is shown as Plan C.

16. Nothing contained in the 1902 Encyclopaedia Britannica map, the 1927 Guilford map or in the 1927 and 1940 Ordnance Survey maps gives any indication as to the status of the claimed route.
17. No rights of way are recorded on New Buildings Drive in the County Council's Parish Schedule for Clipstone. This schedule was prepared in 1953 for the identification of public rights of way under the provisions of the National Parks and Access to the Countryside Act 1949. However, the schedule for the adjacent parish of Warsop contains a map showing New Buildings Drive annotated with the wording "Notice Private Road Tress will be prosecuted" and "Considered Private Road by the Clipstone Divisional Surveyor". These notes appear to be contemporaneous with the schedule and therefore suggest that the route was not considered to be a public right of way in 1953.
18. In summary, apart from where it meets Peafield Lane, the documentary sources do not show any evidence of public rights along any part of New Buildings Drive. The deposited railway plans and the Parish Schedules suggest that the route was regarded as a private road with no public rights of way over it.

## **User Evidence**

19. The information contained in the user evidence forms and in the subsequent interview transcripts relate to the presumed dedication of a highway based on uninterrupted use over a twenty year period. This period has to be calculated retrospectively from the date when the right of the public to use the way was brought into question. The landowner submits that the barrier (Photo B1) was placed at the northern end of the route in 1998 to prevent vehicles from entering the land and to show that it was privately owned. It is also submitted that the barrier constituted an interruption in use for the purposes of section 31 of the Highways Act 1981 even though a gap was left to one side by the Parliament Oak (Photo B2). The case of The Queen v Secretary of State for the Environment, ex parte William Greaves Blake (QBD, 1983) appears to support this view, and therefore the period during which public use can be considered is between 1978 and 1998.

20. Twenty eight evidence forms indicate continuous use throughout the specified 20 year period. Further examination of the forms indicates thirteen users cycled on the route throughout the relevant period with evidence of use from one horse rider. Frequency of use varies from daily to yearly. A chart showing overall use is shown as Appendix D.
21. In respect of evidence of signs or notices, the user forms suggest that the landowner did not take sufficient steps to show the public that there was no intention to dedicate a right of way. For example one user states “There used to be a sign which said ‘private – keep dogs on a lead’...that’s the only sign I’ve seen’. Another user stated ‘I have never seen any signs on New Buildings Drive. There was an unreadable sign on the un-named track near the junction with the RUPP [Clipstone Bridleway No.8]’ while another refers to a ‘notice board at the flood dykes end – no message’. One user refers to a ‘Private Property...Keep Out’ sign which he believed referred to the New Buildings Farm site rather than New Buildings Drive itself.
22. Both Mrs Glennie and Mr Bealby have submitted statements in respect of their knowledge of the land and their attitude towards access along New Buildings Drive. Mrs Glennie has stated that she is seldom on the farm, but is aware that permissive access is given to various groups and individuals. Mrs Glennie also refers to the ‘old, now illegible’ sign at the Southern end of the route indicating private land (Photo C3).
23. In his statement, Mr Bealby describes how New Buildings Drive and the surrounding farmland has been in the ownership of his family since 1945. Mr Bealby states that he uses the route on a daily basis when inspecting sheep and crops. He also lists the groups and individuals who have been granted permissive access i.e. a model aeroplane club, a local livery, the local hunt/shoot etc. Mr Bealby states that anyone seen using the route that he does not recognise, is told it is ‘private’ and ‘if you misbehave you’re off’.
24. There is no evidence of any obstructions preventing public use of the route during the period 1978 to 1998.
25. Apart from the 1953 Warsop Parish Schedule, there is little information regarding the sign which was in place at the northern end of the route. The sign read “Private Road Tress. Will Be Prosecuted.” Mr Bealby states that this sign fell down “probably during the 80’s or 90’s”,



although none of those who completed user evidence forms recall a sign at this location. Furthermore, the wording “Private Road” is open to interpretation, for example it could relate to preventing vehicular users only. A similar sign reading ‘Private Land’ already exists at the southern end of the route on Clipstone Bridleway No.8 (a definitive right of way). Accordingly, if the intention of the sign was to prevent all public use, a notice which read ‘No Public Right of Way’ would have been more appropriate.

26. Mrs Glennie and Mr Bealby both make reference to the sign (Photo B4) at the southern end of the route which they state indicates that the route is private. This sign was observed at a site visit in November 2009. It is severely weathered and dilapidated, only the wording ‘CAVEND’ and an arrow can be distinguished (Cavendish Lodge is located nearby). There is no further evidence of this sign having any effect in respect of demonstrating there was no intention to dedicate a public right of way.
27. There is evidence of public use on the claimed route for in excess of twenty years prior to 1998. In order for this evidence to be valid, it must be demonstrated, that use was ‘as of right’ and was not exercised in secret or by force or with permission. The evidence forms show that use was not in secret or by force. In respect of whether use was with permission, the evidence is conflicting. The situation is complicated by the fact that some people have permissive use of New Buildings Drive and this may have had the effect of camouflaging some public use.
28. In respect of verbal permission, Mr Bealby states that he knows most of the users by sight and that he regularly informs members of the public that the route is not a public right of way. He also states that any unknown users are approached and allowed to use the route on the understanding that they do not ‘misbehave’. By contrast, the information contained in the evidence forms presents a different version of events. One walker refers to passing a farm worker who said nothing ‘in fact I think he [the farm worker] waved’. Another who used the route on a daily basis states that he was once told to put his dog on a lead but was not told it wasn’t a public right of way. Another refers to being asked to wait while a crop spray went across the track but was not told that use of the route was with permission. A number of users state that they have never spoken to Mr Bealby or any of his workers, while others refer to farm vehicles driving past them without any verbal exchange. Some users say that they would pass the time of day but nothing more. Although there is evidence that Mr

Bealby did inform some individuals that use was with his permission and that the route was not a public right of way, there is insufficient evidence to demonstrate that this message was effectively communicated to the wider public.

29. Mr Parkhouse (the Applicant) recently submitted additional evidence indicating that some users have approached New Buildings Drive from a non-definitive path passing through Forestry Commission land. This path runs between points C and A (Plan A). Crown land or land belonging to a Government Department is exempted from the statutory provision (HA80 S.31) unless an agreement has been made with the Highway Authority under HA80 Section 327(2) whereby the Act can be made applicable. The fact that no such agreement has been made, and in the absence of further evidence to indicate Common Law dedication having taken place, means there is insufficient evidence before the Authority to consider a claim in relation to route C-A, or to consider such use as adding to the claimed route A-B. However, anticipating that this use could raise the question as to whether public use in the direction C-A-B is valid evidence for the claimed route (as it might not originate on a public highway), some further examination of the evidence has been undertaken, and it appears clear that the basis for the claim and the majority of the user evidence is one of use on the claimed route leading from and to Peafield Lane. Accordingly, the validity of some user evidence may depend on first establishing whether or not the junction of New Buildings Drive with Peafield Lane is public highway or not. Although some support may be found in evidence contained in the Finance Act documents which suggest that it was regarded as a public highway in 1910, no further evidence has been discovered to shed light on this point. Regardless of whether this 'connection' becomes a point to be decided at an Inquiry, there is no impediment to recording a highway which connects to another at only one end. Here, the claimed route would connect to Clipstone Bridleway No.8 and could, depending on the direction of use and any permissive use given by the Forestry Commission, connect to their land as 'a place of popular resort'.

## Consultation

30. Correspondence received from Burges Salmon LLP, representing the landowner makes the following points in respect of the application (officer's response in italics):

- Installation of the barrier (Photo C1, C2) at the northern end of the route in 1998 is evidence that permission is required to use New Buildings Drive. The barrier was erected to prevent vehicles from entering the land and to show that the land is private.

*A 20 year period can be calculated prior to the barrier being erected in 1998. If the barrier demonstrated that subsequent use was permissive, public use prior to that time could still be as of right.*

- The barrier constitutes an interruption in use for the purposes of HA80 Section 31. Therefore the legislative test needed to raise a presumption that the route has been dedicated as a highway has not been met.

*It is accepted that the barrier constituted an interruption to public use, however the statutory test relates to any full period of 20 years use. In this instance it would appear that the relevant period had elapsed between 1978 and 1998.*

- The user evidence is poor quality, limited in number and inconsistent. The weight that can be attached to the user evidence is minimal.

*Inconsistencies in evidence forms are not uncommon. The Council has endeavoured to clarify any inconsistencies that may have a bearing on the matter. The weight placed on the evidence forms is based on the combined evidence contained in them which gives an overall view of the situation.*

- 19 evidence forms refer to use of the route once per month or less.

*Taking into account user evidence between 1978 and 1998, 10 evidence forms relate to use between once and 6 times yearly, 5 forms relate to use on a monthly basis, 8 forms relate to use between a weekly/daily basis. In respect of the assertion that the user evidence is limited in number, the levels of use alleged are*

*similar to other user claims which have been confirmed by Inspectors on behalf of the Secretary of State.*

- The user forms were collected by the applicant who has not made it clear over what period the use has occurred.

*It is common practice for an applicant to collect together evidence forms. This does not call into question the validity of evidence contained in them. The applicant is not required to specify the period over which use has occurred. Such information will be established through an evaluation of the evidence.*

- User evidence referring to barriers and signs along the route indicates that use was not 'as of right' but with permission.

*There is no conclusive evidence to suggest that the barriers and signs along the route indicated that use was not 'as of right' during the period 1978 to 1998.*

- The Parish Survey of 1953 records New Buildings Drive as a private road with appropriate signage. This is consistent with the statement made by the farmer.

*The Parish Survey of 1953 suggests that the route was not considered to be a public right of way at that time. However, actions taken in 1953 do not necessarily prevent rights being acquired at some later date.*

- Use of the route around the eastern side of the gate could only have taken place since improvements to the Parliament Oak amenity area took place 2008. Use has switched from one side of the gate to the other.

*Although a barrier was placed at the northern end of the route in 1998, the public may have already acquired rights by presumed dedication by that time. Issues regarding use either side of the barrier after 1998 are outside of the specified 20 year period and are therefore not relevant.*

- One evidence form acknowledges use by permission stating that the farmer does not consider the route to be a public right of way. Reference is made to people using the route without being challenged with no basis for this assertion is given.

*Evidence that one user acknowledged use was with permission relates to a conversation between the applicant and the tenant which took place after the Modification Order Application was submitted and is not relevant to the acquisition of rights during the relevant 20 year period.*

- Failure by users to refer to waste disposal lorries, and by members of the aero club indicates limited knowledge of the route.

*One user recalls that he stepped to the side to allow vehicles to pass, while another, when leading a group walk, recalls being asked to wait for vehicles to pass before proceeding along the Drive. Although relatively few users have referred to vehicles using the tip area, this is not itself a point which would show that presumed dedication had not taken place. User evidence will be tested further if an order is referred to the Secretary of State for a decision.*

31. Following deferment of this matter at the last Committee (28/11/2012), a list of 154 signatories was submitted on behalf of the landowner/farmer of the surrounding land. It is stated that the list provides “irrefutable evidence that New Buildings Drive and the surrounding fields are and always have been private property and that it is generally known locally that there has never been a public right of way along the Drive or over the fields”. The list is headed “We, the undersigned, confirm that we and our families have lived in the locality for many years and that New Buildings Drive and surrounding fields farmed by Robert Bealby are private property and it is generally known locally that there has never been a public right of way along the Drive or over the fields”. The list is said to comprise of “mostly people who know the locality well...have visited over a long period of time to participate in recreational activities which include riding horses out of the local livery stables, fishing on the lakes by the River Maun, shooting, beating and picking up, flying model aeroplanes and jogging, walking etc...also those who live nearby and have done so for many years”.

*It is noted that the signatories have specified the number of years they have lived in the area. The earliest has resided in the area since 1927, the most recent since 2007. The average figure amounts to 40 years. The signatories say that New Buildings Drive has 'never been a public right of way' although it is not known whether this statement is made in the knowledge of certain facts, or whether this view simply reflects their own permissive access. The view of the signatories clearly conflicts with that of the users who take the view that the route is a public right of way. However, while extensive use by permission might suggest that New Buildings Drive was not reputed to be a public right of way, this does not in itself constitute 'incontrovertible evidence that the claimed route could not subsist' (Test B in para.5).*

31. Also following the recent deferment, Mr Parkhouse, one of the Applicants submitted the following;

- The 'Blake' case is not applicable in this situation because the barrier did not extend across the full width of New Buildings Drive, nor did it force path users off the Drive into adjacent land. Public use was therefore uninterrupted in 1998.

*The width of New Buildings Drive between Peafield Lane and the barrier is defined by the Tarmac/stone surface. The land on the Parliament Oak side of the barrier has a grass/earth surface. Use which changes from being within one clearly defined route to being outside this route is regarded as use of a different route and therefore an interruption. Whether such deviation constitutes use of a different route is irrelevant if the barrier called the public's right to use the route into question in 1998.*

- Erection of the barrier did not bring into question the public's right to use New Buildings Drive in 1998.

*In respect of what constitutes 'bringing into question' the Planning Inspectorate guidelines state that the test to be applied is found in the case of R v SSETR ex parte Dorset County Council 1999 which established "Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway". In this case Mr Parkhouse has stated that*

*once the barrier was erected, he would either duck under it, or go around it. When it was open Mr Parkhouse has stated that that he walked through it “without leaving the width of the lane”. It therefore appears that Mr Parkhouse did acknowledge the presence of the barrier which caused him to adapt his use accordingly. Furthermore, it is noted that the claim is for a public bridleway on the basis of use by cyclists. Clearly cyclists could not continue to cycle along New Buildings Drive in the same way they had before and would have been forced to deviate off the metalled surface. It is therefore clear that the public’s right to use New Buildings Drive was challenged by the erection of the barrier in 1998.*

- Some path users approached the claimed route from the unregistered path (C-A Plan A).

*According to the Application, the route being claimed runs between Peafield Lane and Clipstone Bridleway No.8 (highway to highway). Whether any use from the unregistered path C-A is valid for the purposes of this claim is covered in paragraph 29 above. Any use of C-A can therefore be considered as a separate matter, for which insufficient evidence has been found and which would only be claimable on the basis of common law dedication (which is a different test with a higher evidential threshold).*

- Both before and after the erection of the barrier, some path users walked on the short section of verge alongside the Parliament Oak rather than the tarmac road.

*Given the passage of time, it would be extremely difficult to establish whether walkers deviated from the metalled surface when using this short section of the claimed route between 1978 and 1998. Use after 1998 is considered to be after the date of challenge and therefore not relevant.*

- The landowner has stated that the barrier was erected to prevent vehicles from entering and to show that the land is private. The case of *Mertham Manor Ltd v Coulsdon and Purley Urban District Council* (1937) defines ‘interruption’ as “an actual and physical stopping of the public’s enjoyment”. *Lewis v Thomas* (1950) established that “The interruption must be with intent to prevent public use of the way. It will not be sufficient if the interruption is shown to have been for some other

purpose". The barrier was erected to control motorised access and not to exclude the public on foot, cycle or horseback. The barrier could be got under by users and no signs were erected to challenge public use. The barrier was frequently left open in daylight hours.

*Matters relating to interruption after 1998 are irrelevant being outside the relevant period 1978-1998.*

- The gap at the side of the gate looked as if it was intended for walkers and cyclists to use. The actions of the landowner in 1998 appear to be more like an implied dedication. *Eyre v New Forest Highway Board [1892]* established that creation occurs when the landowner "either says in so many words, or so conducts himself as to lead the public to infer that he meant to say: I am willing that the public should have this right of passage".

*Again, the gap is only of significance after 1998 and therefore outside of the relevant period. Although by leaving a gap it could be construed that the landowner was content for pre-existing use to continue (albeit on a different alignment), equally, the landowner may say that the gap was left to allow known users to use the route on a permissive basis.*

## **Responses from other Consultees**

32. BT Openreach - *No objections to the proposals*
33. Environment Agency - *Assets owned or operated by the Environment Agency will not be affected.*
34. E-On - *We do not object to the developments as proposed.*
35. NCC Conservation Service - The scheme is unlikely to have any significant impact on the Special Protection Area (possible future designation under Conservation of Habitats and Species Regulations 2010).



## Reason/s for Recommendation/s

36. There is no documentary evidence to suggest that New Buildings Drive was a public right of way prior to 1953.
37. The sign near the northern end of the route which read 'Private Road Trespassers will be prosecuted' is known to have existed in 1953 by virtue of the Warsop Parish Schedule. However, it appears this sign was not replaced when it fell into disrepair. If the sign survived into the 1990s as stated by Mr Bealby, this view conflicts with evidence contained in the user evidence forms which make no reference to it. The sign at the southern end of the route does not appear to have contained any wording which challenged public use of the route and therefore is not considered relevant. If the landowner (or tenant) intended to rely on signs to demonstrate that there was no public right of way, it would be reasonable to assume that such signs would be renewed from time to time and would contain clear and unambiguous wording such as 'No Public Right of Way'. Furthermore, no declarations in respect of public rights of way have been lodged with the County Council under Section 34(6) of the Highways Act 1959, or subsequently by Section 31(6) of the Highways Act 1980, and no notices have been received under Sections 34(4) and 31(5) of the respective Acts stating that the claimed paths have not been dedicated as highways.
38. Assuming the barrier at the northern end of the route was erected in 1998, this is considered to be an effective challenge to public use at that time. The relevant period during which a bridleway can be presumed to have been dedicated is therefore between 1978 and 1998.
39. Verbal permissions given by the tenant, Mr Bealby appear to have been directed at certain groups and individuals seen using the route. However, Fairey v Southampton C.C. (1956) established that in order to show a lack of intention to dedicate, the landowner must demonstrate "sufficient evidence that there was no intention to dedicate the way" and "there must be evidence of some overt acts on the part of the landowner such as to show the public at large...that he had no intention to dedicate". The evidence submitted in the user evidence forms suggests that many users were not challenged despite having been seen

by farm workers. It does not appear that the landowner's intentions were sufficiently made known to the 'public at large' either through verbal challenges or by placing signs along the route stating that use was with permission only.

40. Although user evidence in respect of presumed dedication is conflicting, there is no incontrovertible evidence to demonstrate a lack of intention by the landowner to dedicate a public bridleway between 1978 and 1998. Therefore it is considered that there is sufficient evidence for it to be reasonably alleged that a right of way subsists (Test B in para.5).
41. Thirteen evidence forms (for the whole 20 year period) relate to use by cyclists. The case of Whitworth v Secretary of State for Environment, Food and Rural Affairs [2010] held that it is appropriate (when considering statutory claims under HA80 s.31) to infer the form of dedication which is least burdensome to the landowner. In right of way terms, cyclists are entitled to use byways, restricted byways, and bridleways. The least burdensome of these categories is that of public bridleway.

### **Statutory and Policy Implications**

42. 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/S**

43. It is RECOMMENDED that Committee accepts the application and approves the making of a Definitive Map Modification Order to add a bridleway to the Definitive Map and Statement on the basis that, for the reasons set out above, it is considered by the Authority that the evidence shows that a right of way is reasonably alleged to subsist, and directs that, unless further evidence be disclosed to or discovered by the officer in the meantime, the Authority should adopt a neutral stance at any subsequent inquiry etc.

**Eddie Brennan**  
**Definitive Map Officer**

**For any enquiries about this report please contact:**

Eddie Brennan (0115 9774709)  
Definitive Map Officer

### **Constitutional Comments (SJE 03.01.2013)**

45. 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 04.01.13)**

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

### **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.

Modification Order Application case file

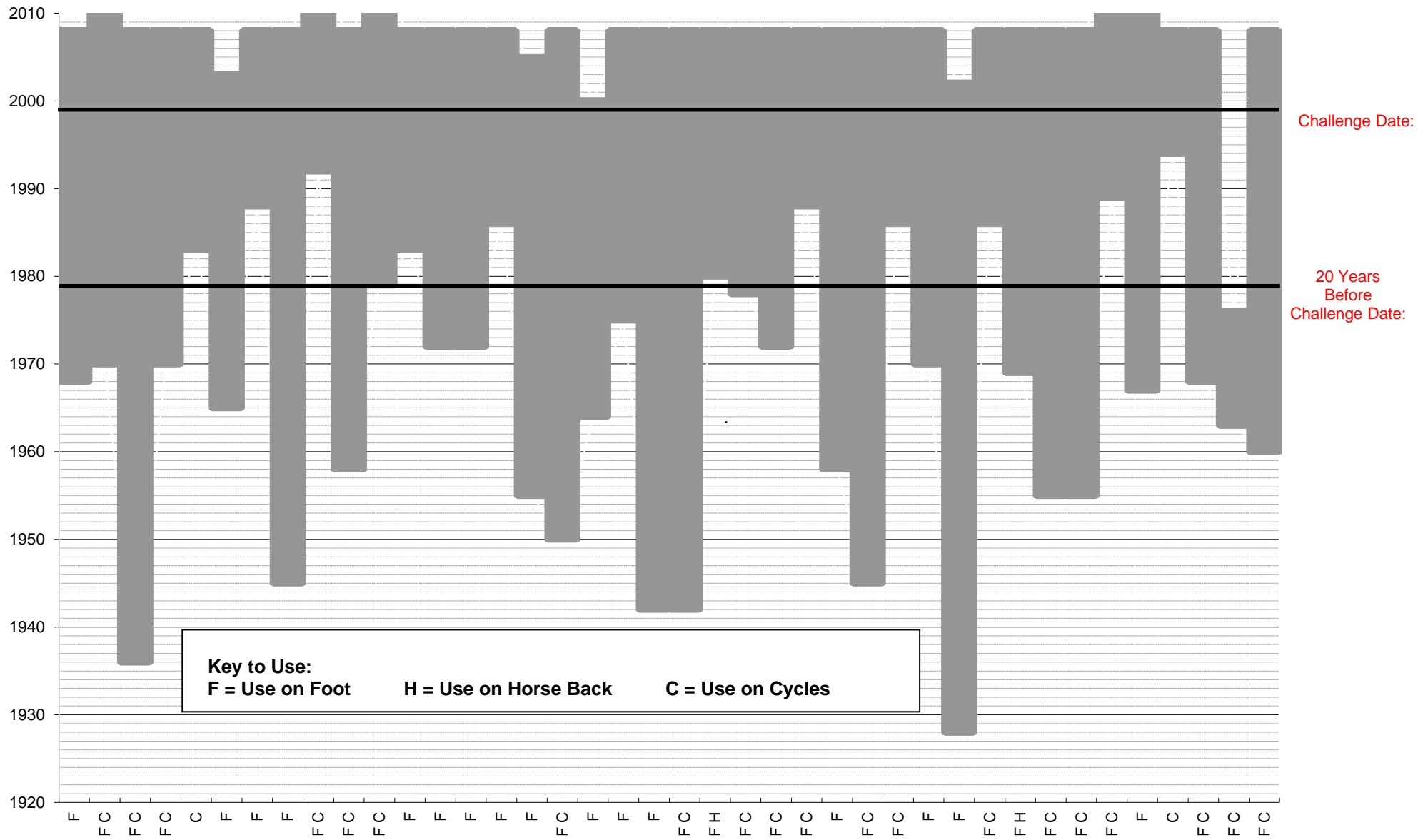
### **Electoral Division(s) and Member(s) Affected**

Rufford	Councillor John Peck
Warsop	Councillor John Allin


ROW 91 To add Bridleway in the Parishes of Clipstone and Warsop  
11 January 2013



## APPENDIX D





 <b>Nottinghamshire County Council</b>	<b>Report to Rights of Way Committee</b>
	<b>23 January 2013</b>
	<b>Agenda Item:</b>
<b>REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)</b>	
<b>APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF CLIPSTONE AND WARSOP</b>	

### **Purpose of the Report**

1. To consider an application made in 2008 by Mr S Parkhouse, Ms P Whitehead and Mr T Harkness on behalf of Clipstone Parish Council, to record New Buildings Drive, Clipstone as a public bridleway on the Definitive Map and Statement. A map of the area is shown as Plan A, with the route under consideration marked between points A and B.
2. The effect of this application, if accepted and confirmed, would be to add a public bridleway along an existing track leading from Peafield Lane (A6075), Warsop, opposite Warsop Bridleway No.21, continuing along New Buildings Drive and the track leading to Clipstone Bridleway No.8.

### **The Law**

3. The application was made under the provisions of the Wildlife and Countryside Act 1981 (WCA81). Section 53(3)(b) of WCA81 requires the Surveying Authority (Nottinghamshire County Council) to modify the Definitive Map and Statement following “the expiration in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path”.
4. Section 31 of the Highways Act 1980 (HA80) raises a presumption that a right of way has been dedicated as a highway if the route has been used by the public ‘as of right’ and without interruption for a period of 20 years unless there is sufficient evidence that there was no intention during that period to dedicate it.

5. In addition, under Section 53(2)(b) of WCA81 the surveying authority has a duty to keep the Definitive Map and Statement under continuous review and to make such modifications to the Definitive Map and Statement that appear to be requisite in consequence of the occurrence of events described in Section 53(3)(c)(i); namely “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”. The case of *R v SSE ex parte Bagshaw and Norton* (1994) has clarified the law in respect of the meaning of ‘subsists’ (Test A) and ‘reasonably alleged to subsist’ (Test B).
  - ‘Test A’ requires that the claimed right of way subsists i.e. clear evidence in respect of the claim and no credible evidence to the contrary.
  - ‘Test B’ is that it is reasonable to allege that a right of way subsists i.e. even if the evidence is finely balanced, but there is no incontrovertible evidence that the claimed route could not subsist, then the test is met and an Order should be made.
6. If it is accepted that dedication may be presumed at law, consideration must also be given to the category of highway that is believed to exist i.e. footpath, bridleway, restricted byway or a byway open to all traffic. This point should be based on an evaluation of the information contained in any documentary and/or user evidence.
7. Should the test under the HA80 Section 31 fail, then it may be appropriate to consider the dedication of the way at common law. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. Evidence of use by the public ‘as of right’ may support an inference of dedication and may also show acceptance by the public.

### **Information and advice**

8. Originally constructed in the early 1800s, New Buildings Drive is currently in the ownership of Mrs Yvonne Glennie and is also subject to an agricultural tenancy to Mr Robert Bealby who farms in adjacent fields. The land which incorporates New Buildings Drive has been continuously owned by members of the Glennie/Bealby Family since 1945. The route



comprises a wide, mainly stoned track nearly 2.1 kilometres in length which leads from Peafield Lane to Clipstone Bridleway No.8. In approximately 1998, a barrier was erected across the track at the northern end of the route. Members of a model aeroplane club are allowed access around the barrier through a side gate in order to use one of the fields for their flying activities. Visitors to Sherwood Forest Caravan Park and horse riders belonging to the Cavendish Lodge Liveries also have permissive use of the route. A series of photographs taken along the course of the route are shown as Photos B1-4.

9. The evidence in support of the Application comprised of 40 Public Rights of Way User Evidence Forms and a number of historic maps.

### **Historic Documentary Evidence**

10. Along with the maps submitted as part of the application, additional documents were examined (as is standard procedure) to see whether there was any evidence for pre-existing public rights of way over the claimed route. The historic documents comprised:
  - Sanderson's Map 'Twenty Miles Round Mansfield' 1835
  - Ordnance Survey 2" map 1840
  - Clipstone Tithe Map 1841
  - Deposited plans for the proposed Lancashire Derbyshire & East Coast Railway 1896
  - Encyclopaedia Britannica map 1902
  - Finance Act map and valuation book 1910
  - Guilford's Map of Nottinghamshire 1927
  - Ordnance Survey map extract 1927
  - Ordnance Survey extract 1940
  - Parish Schedules for Clipstone and Warsop 1953
11. Dealing with the documentary evidence in chronological order, the earliest record for the existence of New Buildings Drive is found in Sanderson's map of 1835. The map describes New Buildings Drive as a 'Coach Road' shown passing through Clipstone Park (then owned by the Duke of Portland). Clipstone Park is shown enclosed by a 'Park Fence' which probably incorporated a gate at the New Buildings Drive entrance. Another 'Coach Road' is

also shown passing through Clipstone Park. Sanderson's map gives no indication as to whether these coach roads were for public or private use.

12. The Ordnance Survey map of 1840 confirms the existence of New Buildings Drive but gives no indication of status.
13. The 1841 Clipstone Tithe map shows New Buildings Drive coloured brown. However, all roads and tracks are also coloured in this way, therefore this map does not give any indication as to the status of New Buildings Drive.
14. The deposited plans for the Lancashire Derbyshire and East Coast Railway (1896) were inspected. The plans indicate the location where the proposed railway crossed the claimed route. In the accompanying schedule New Buildings Drive is referred to as a 'Road' in the ownership of the Duke of Portland. This suggests that it was believed to be a private road with no public rights over it.
15. Documents prepared for the purposes of the Finance Act 1910 (FA10) were also examined. The purpose of FA10 was to levy a tax on the estimated value of land. The valuer allowed deductions for any public rights of way affecting the use/value of the land. The map used for the valuation shows the majority of the route was recorded as private land. The relevant book of reference shows that no deductions for public rights of way were claimed on New Buildings Drive. The junction of New Buildings Drive with Peafield Lane is excluded from the adjacent parcels of land (i.e. un-coloured) which suggests that it was regarded as part of the public highway. An extract from the Finance Act map showing the junction with Peafield Lane is shown as Plan C.
16. Nothing contained in the 1902 Encyclopaedia Britannica map, the 1927 Guilford map or in the 1927 and 1940 Ordnance Survey maps gives any indication as to the status of the claimed route.
17. No rights of way are recorded on New Buildings Drive in the County Council's Parish Schedule for Clipstone. This schedule was prepared in 1953 for the identification of public rights of way under the provisions of the National Parks and Access to the Countryside Act 1949. However, the schedule for the adjacent parish of Warsop contains a map showing

New Buildings Drive annotated with the wording “Notice Private Road Tress. will be prosecuted” and “Considered Private Road by the Clipstone Divisional Surveyor”. These notes appear to be contemporaneous with the schedule and therefore suggest that the route was not considered to be a public right of way in 1953.

18. In summary, apart from where it meets Peafield Lane, the documentary sources do not show any evidence of public rights along any part of New Buildings Drive. The deposited railway plans and the Parish Schedules suggest that the route was regarded as a private road with no public rights of way over it.

### **User Evidence**

19. The information contained in the user evidence forms and in the subsequent interview transcripts relate to the presumed dedication of a highway based on uninterrupted use over a twenty year period. This period has to be calculated retrospectively from the date when the right of the public to use the way was brought into question. The landowner submits that the barrier (Photo B1) was placed at the northern end of the route in 1998 to prevent vehicles from entering the land and to show that it was privately owned. It is also submitted that the barrier constituted an interruption in use for the purposes of section 31 of the Highways Act 1981 even though a gap was left to one side by the Parliament Oak (Photo B2). The case of The Queen v Secretary of State for the Environment, ex parte William Greaves Blake (QBD, 1983) appears to support this view, and therefore the period during which public use can be considered is between 1978 and 1998.
20. 29 evidence forms indicate continuous use throughout the specified 20 year period. Further examination of the forms indicates 13 users cycled on the route throughout the relevant period with evidence of use from one horse rider. Frequency of use varies from daily to yearly. A chart showing overall use is shown as Appendix D.
21. In respect of evidence of signs or notices, the user forms suggest that the landowner did not take sufficient steps to show the public that there was no intention to dedicate a right of way. For example one user states “There used to be a sign which said ‘private – keep dogs on a lead’...that’s the only sign I’ve seen’. Another user stated ‘I have never seen any signs on New Buildings Drive. There was an unreadable sign on the un-named track near the

junction with the RUPP [Clipstone Bridleway No.8]' while another refers to a 'notice board at the flood dykes end – no message'. One user refers to a 'Private Property...Keep Out' sign which he believed referred to the New Buildings Farm site rather than New Buildings Drive itself.

22. Both Mrs Glennie and Mr Bealby have submitted statements in respect of their knowledge of the land and their attitude towards access along New Buildings Drive. Mrs Glennie has stated that she is seldom on the farm, but is aware that permissive access is given to various groups and individuals. Mrs Glennie also refers to the 'old, now illegible' sign at the Southern end of the route indicating private land (Photo C3).
23. In his statement, Mr Bealby describes how New Buildings Drive and the surrounding farmland has been in the ownership of his family since 1945. Mr Bealby states that he uses the route on a daily basis when inspecting sheep and crops. He also lists the groups and individuals who have been granted permissive access i.e. a model aeroplane club, a local livery, the local hunt/shoot etc. Mr Bealby states that anyone seen using the route that he does not recognise, is told it is 'private' and 'if you misbehave you're off'.
24. There is no evidence of any obstructions preventing public use of the route during the period 1978 to 1998.
25. Apart from the 1953 Warsop Parish Schedule, there is little information regarding the sign which was in place at the northern end of the route. The sign read "Private Road Tress. Will Be Prosecuted". Mr Bealby states that this sign fell down "probably during the 80's or 90's", although none of those who completed user evidence forms recall a sign at this location. Furthermore, the wording "Private Road" is open to interpretation, for example it could relate to preventing vehicular users only. A similar sign reading 'Private Land' already exists at the southern end of the route on Clipstone Bridleway No.8 (a definitive right of way). Accordingly, if the intention of the sign was to prevent all public use, a notice which read 'No Public Right of Way' would have been more appropriate.
26. Mrs Glennie and Mr Bealby both make reference to the sign (Photo B4) at the southern end of the route which they state indicates that the route is private. This sign was observed at a site visit in November 2009. It is severely weathered and dilapidated, only the wording

‘CAVEND’ and an arrow can be distinguished (Cavendish Lodge is located nearby). There is no further evidence of this sign having any effect in respect of demonstrating there was no intention to dedicate a public right of way.

27. There is evidence of public use on the claimed route for in excess of twenty years prior to 1998. In order for this evidence to be valid, it must be demonstrated, that use was ‘as of right’ and was not exercised in secret or by force or with permission. The evidence forms show that use was not in secret or by force. In respect of whether use was with permission, the evidence is conflicting. The situation is complicated by the fact that some people have permissive use of New Buildings Drive and this may have had the effect of camouflaging some public use.
28. In respect of verbal permission, Mr Bealby states that he knows most of the users by sight and that he regularly informs members of the public that the route is not a public right of way. He also states that any unknown users are approached and allowed to use the route on the understanding that they do not ‘misbehave’. By contrast, the information contained in the evidence forms presents a different version of events. One walker refers to passing a farm worker who said nothing ‘in fact I think he [the farm worker] waved’. Another who used the route on a daily basis states that he was once told to put his dog on a lead but was not told it wasn’t a public right of way. Another refers to being asked to wait while a crop spray went across the track but was not told that use of the route was with permission. A number of users state that they have never spoken to Mr Bealby or any of his workers, while others refer to farm vehicles driving past them without any verbal exchange. Some users say that they would pass the time of day but nothing more. Although there is evidence that Mr Bealby did inform some individuals that use was with his permission and that the route was not a public right of way, there is insufficient evidence to demonstrate that this message was effectively communicated to the wider public.
29. Mr Parkhouse (the Applicant) recently submitted additional evidence indicating that some users have approached New Buildings Drive from a non-definitive path passing through Forestry Commission land. This path runs between points C and A (Plan A). Crown land or land belonging to a Government Department is exempted from the statutory provision (HA80 S.31) unless an agreement has been made with the Highway Authority under HA80 Section 327(2) whereby the Act can be made applicable. The fact that no such agreement

has been made, and in the absence of further evidence to indicate Common Law dedication having taken place, means there is insufficient evidence before the Authority to consider a claim in relation to route C-A, or to consider such use as adding to the claimed route A-B. However, anticipating that this use could raise the question as to whether public use in the direction C-A-B is valid evidence for the claimed route (as it might not originate on a public highway), some further examination of the evidence has been undertaken, and it appears clear that the basis for the claim and the majority of the user evidence is one of use on the claimed route leading from and to Peafield Lane. Accordingly, the validity of some user evidence may depend on first establishing whether or not the junction of New Buildings Drive with Peafield Lane is public highway or not. Although some support may be found in evidence contained in the Finance Act documents which suggest that it was regarded as a public highway in 1910, no further evidence has been discovered to shed light on this point. Regardless of whether this 'connection' becomes a point to be decided at an Inquiry, there is no impediment to recording a highway which connects to another at only one end. Here, the claimed route would connect to Clipstone Bridleway No.8 and could, depending on the direction of use and any permissive use given by the Forestry Commission, connect to their land as 'a place of popular resort'.

## Consultation

30. Correspondence received from Burges Salmon LLP, representing the landowner makes the following points in respect of the application (officer's response in italics):

- Installation of the barrier (Photo C1, C2) at the northern end of the route in 1998 is evidence that permission is required to use New Buildings Drive. The barrier was erected to prevent vehicles from entering the land and to show that the land is private.

*A 20 year period can be calculated prior to the barrier being erected in 1998. If the barrier demonstrated that subsequent use was permissive, public use prior to that time could still be as of right.*

- The barrier constitutes an interruption in use for the purposes of HA80 Section 31. Therefore the legislative test needed to raise a presumption that the route has been dedicated as a highway has not been met.

*It is accepted that the barrier constituted an interruption to public use, however the statutory test relates to any full period of 20 years use. In this instance it would appear that the relevant period had elapsed between 1978 and 1998.*

- The user evidence is poor quality, limited in number and inconsistent. The weight that can be attached to the user evidence is minimal.

*Inconsistencies in evidence forms are not uncommon. The Council has endeavoured to clarify any inconsistencies that may have a bearing on the matter. The weight placed on the evidence forms is based on the combined evidence contained in them which gives an overall view of the situation.*

- 19 evidence forms refer to use of the route once per month or less.

*Taking into account user evidence between 1978 and 1998, 10 evidence forms relate to use between once and 6 times yearly, 5 forms relate to use on a monthly basis, 8 forms relate to use between a weekly/daily basis. In respect of the assertion that the user evidence is limited in number, the levels of use alleged are similar to other user claims which have been confirmed by Inspectors on behalf of the Secretary of State.*

- The user forms were collected by the applicant who has not made it clear over what period the use has occurred.

*It is common practice for an applicant to collect together evidence forms. This does not call into question the validity of evidence contained in them. The applicant is not required to specify the period over which use has occurred. Such information will be established through an evaluation of the evidence.*

- User evidence referring to barriers and signs along the route indicates that use was not 'as of right' but with permission.

*There is no conclusive evidence to suggest that the barriers and signs along the route indicated that use was not 'as of right' during the period 1978 to 1998.*

- The Parish Survey of 1953 records New Buildings Drive as a private road with appropriate signage. This is consistent with the statement made by the farmer.



*The Parish Survey of 1953 suggests that the route was not considered to be a public right of way at that time. However, actions taken in 1953 do not necessarily prevent rights being acquired at some later date.*

- Use of the route around the eastern side of the gate could only have taken place since improvements to the Parliament Oak amenity area took place 2008. Use has switched from one side of the gate to the other.

*Although a barrier was placed at the northern end of the route in 1998, the public may have already acquired rights by presumed dedication by that time. Issues regarding use either side of the barrier after 1998 are outside of the specified 20 year period and are therefore not relevant.*

- One evidence form acknowledges use by permission stating that the farmer does not consider the route to be a public right of way. Reference is made to people using the route without being challenged with no basis for this assertion is given.

*Evidence that one user acknowledged use was with permission relates to a conversation between the applicant and the tenant which took place after the Modification Order Application was submitted and is not relevant to the acquisition of rights during the relevant 20 year period.*

- Failure by users to refer to waste disposal lorries, and by members of the aero club indicates limited knowledge of the route.

*One user recalls that he stepped to the side to allow vehicles to pass, while another, when leading a group walk, recalls being asked to wait for vehicles to pass before proceeding along the Drive. Although relatively few users have referred to vehicles using the tip area, this is not itself a point which would show that presumed dedication had not taken place. User evidence will be tested further if an order is referred to the Secretary of State for a decision.*

31. Following deferment of this matter at the last Committee (28/11/2012), a list of 154 signatories was submitted on behalf of the landowner/farmer of the surrounding land. It is stated that the list provides “irrefutable evidence that New Buildings Drive and the surrounding fields are and always have been private property and that it is generally known locally that there has never been a public right of way along the Drive or over the fields”. The list is headed “We, the undersigned, confirm that we and our families have lived in the



locality for many years and that New Buildings Drive and surrounding fields farmed by Robert Bealby are private property and it is generally known locally that there has never been a public right of way along the Drive or over the fields". The list is said to comprise of "mostly people who know the locality well...have visited over a long period of time to participate in recreational activities which include riding horses out of the local livery stables, fishing on the lakes by the River Maun, shooting, beating and picking up, flying model aeroplanes and jogging, walking etc...also those who live nearby and have done so for many years".

*It is noted that the signatories have specified the number of years they have lived in the area. The earliest has resided in the area since 1927, the most recent since 2007. The average figure amounts to 40 years. The signatories say that New Buildings Drive has 'never been a public right of way' although it is not known whether this statement is made in the knowledge of certain facts, or whether this view simply reflects their own permissive access. The view of the signatories clearly conflicts with that of the users who take the view that the route is a public right of way. However, while extensive use by permission might suggest that New Buildings Drive was not reputed to be a public right of way, this does not in itself constitute 'incontrovertible evidence that the claimed route could not subsist' (Test B in para.5).*

31. Also following the recent deferment, Mr Parkhouse, one of the Applicants submitted the following;

- The 'Blake' case is not applicable in this situation because the barrier did not extend across the full width of New Buildings Drive, nor did it force path users off the Drive into adjacent land. Public use was therefore uninterrupted in 1998.

*The width of New Buildings Drive between Peafield Lane and the barrier is defined by the Tarmac/stone surface. The land on the Parliament Oak side of the barrier has a grass/earth surface. Use which changes from being within one clearly defined route to being outside this route is regarded as use of a different route and therefore an interruption. Whether such deviation constitutes use of a different route is irrelevant if the barrier called the public's right to use the route into question in 1998.*

- Erection of the barrier did not bring into question the public's right to use New Buildings Drive in 1998.

*In respect of what constitutes 'bringing into question' the Planning Inspectorate guidelines state that the test to be applied is found in the case of R v SSETR ex parte Dorset County Council 1999 which established "Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway". In this case Mr Parkhouse has stated that once the barrier was erected, he would either duck under it, or go around it. When it was open Mr Parkhouse has stated that that he walked through it "without leaving the width of the lane". It therefore appears that Mr Parkhouse did acknowledge the presence of the barrier which caused him to adapt his use accordingly. Furthermore, it is noted that the claim is for a public bridleway on the basis of use by cyclists. Clearly cyclists could not continue to cycle along New Buildings Drive in the same way they had before and would have been forced to deviate off the metalled surface. It is therefore clear that the public's right to use New Buildings Drive was challenged by the erection of the barrier in 1998.*

- Some path users approached the claimed route from the unregistered path (C-A Plan A)

*According to the Application, the route being claimed runs between Peafield Lane and Clipstone Bridleway No.8 (highway to highway). Whether any use from the unregistered path C-A is valid for the purposes of this claim is covered in paragraph 29 above. Any use of C-A can therefore be considered as a separate matter, for which insufficient evidence has been found and which would only be claimable on the basis of common law dedication (which is a different test with a higher evidential threshold).*

- Both before and after the erection of the barrier, some path users walked on the short section of verge alongside the Parliament Oak rather than the tarmac road.

*Given the passage of time, it would be extremely difficult to establish whether walkers deviated from the metalled surface when using this short section of the claimed route between 1978 and 1998. Use after 1998 is considered to be after the date of challenge and therefore not relevant.*

- The landowner has stated that the barrier was erected to prevent vehicles from entering and to show that the land is private. The case of Mertham Manor Ltd v

Coulsdon and Purley Urban District Council (1937) defines 'interruption' as "an actual and physical stopping of the public's enjoyment". Lewis v Thomas (1950) established that "The interruption must be with intent to prevent public use of the way. It will not be sufficient if the interruption is shown to have been for some other purpose". The barrier was erected to control motorised access and not to exclude the public on foot, cycle or horseback. The barrier could be got under by users and no signs were erected to challenge public use. The barrier was frequently left open in daylight hours.

*Matters relating to interruption after 1998 are irrelevant being outside the relevant period 1978-1998.*

- The gap at the side of the gate looked as if it was intended for walkers and cyclists to use. The actions of the landowner in 1998 appear to be more like an implied dedication. Eyre v New Forest Highway Board [1892] established that creation occurs when the landowner "either says in so many words, or so conducts himself as to lead the public to infer that he meant to say: I am willing that the public should have this right of passage".

*Again, the gap is only of significance after 1998 and therefore outside of the relevant period. Although by leaving a gap it could be construed that the landowner was content for pre-existing use to continue (albeit on a different alignment), equally, the landowner may say that the gap was left to allow known users to use the route on a permissive basis.*

## **Responses from other Consultees**

32. BT Openreach - *No objections to the proposals*
33. Environment Agency - *Assets owned or operated by the Environment Agency will not be affected.*
34. E-On - *We do not object to the developments as proposed.*
35. NCC Conservation Service - *The scheme is unlikely to have any significant impact on the Special Protection Area (possible future designation under Conservation of Habitats and Species Regulations 2010).*

### **Reason/s for Recommendation/s**

36. There is no documentary evidence to suggest that New Buildings Drive was a public right of way prior to 1953.
37. The sign near the northern end of the route which read 'Private Road Trespassers will be prosecuted' is known to have existed in 1953 by virtue of the Warsop Parish Schedule. However, it appears this sign was not replaced when it fell into disrepair. If the sign survived into the 1990s as stated by Mr Bealby, this view conflicts with evidence contained in the user evidence forms which make no reference to it. The sign at the southern end of the route does not appear to have contained any wording which challenged public use of the route and therefore is not considered relevant. If the landowner (or tenant) intended to rely on signs to demonstrate that there was no public right of way, it would be reasonable to assume that such signs would be renewed from time to time and would contain clear and unambiguous wording such as 'No Public Right of Way'. Furthermore, no declarations in respect of public rights of way have been lodged with the County Council under Section 34(6) of the Highways Act 1959, or subsequently by Section 31(6) of the Highways Act 1980, and no notices have been received under Sections 34(4) and 31(5) of the respective Acts stating that the claimed paths have not been dedicated as highways.
38. Assuming the barrier at the northern end of the route was erected in 1998, this is considered to be an effective challenge to public use at that time. The relevant period during which a bridleway can be presumed to have been dedicated is therefore between 1978 and 1998.
39. Verbal permissions given by the tenant, Mr Bealby appear to have been directed at certain groups and individuals seen using the route. However, Fairey v Southampton C.C. (1956) established that in order to show a lack of intention to dedicate, the landowner must demonstrate "sufficient evidence that there was no intention to dedicate the way" and "there must be evidence of some overt acts on the part of the landowner such as to show the public at large...that he had no intention to dedicate". The evidence submitted in the user evidence forms suggests that many users were not challenged despite having been seen

by farm workers. It does not appear that the landowner's intentions were sufficiently made known to the 'public at large' either through verbal challenges or by placing signs along the route stating that use was with permission only.

40. Although user evidence in respect of presumed dedication is conflicting, there is no incontrovertible evidence to demonstrate a lack of intention by the landowner to dedicate a public bridleway between 1978 and 1998. Therefore it is considered that there is sufficient evidence for it to be reasonably alleged that a right of way subsists (Test B in para.5).
41. 13 evidence forms (for the whole 20 year period) relate to use by cyclists. The case of Whitworth v Secretary of State for Environment, Food and Rural Affairs [2010] held that it is appropriate (when considering statutory claims under HA80 s.31) to infer the form of dedication which is least burdensome to the landowner. In right of way terms, cyclists are entitled to use byways, restricted byways, and bridleways. The least burdensome of these categories is that of public bridleway.

### **Statutory and Policy Implications**

42. 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/S**

43. It is RECOMMENDED that Committee accepts the application and approves the making of a Definitive Map Modification Order to add a bridleway to the Definitive Map and Statement on the basis that, for the reasons set out above, it is considered by the Authority that the evidence shows that a right of way is reasonably alleged to subsist, and directs that, unless further evidence be disclosed to or discovered by the officer in the meantime, the Authority should adopt a neutral stance at any subsequent inquiry etc.

**Eddie Brennan**  
**Definitive Map Officer**

**For any enquiries about this report please contact:**

Eddie Brennan (0115 9774709)

Definitive Map Officer

**Constitutional Comments (SJE 03.01.2013)**

45. 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 04.01.13)**

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

**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.

Modification Order Application case file

**Electoral Division(s) and Member(s) Affected**

Rufford	Councillor John Peck
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Warsop	Councillor John Allin
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## PHOTO B1



Taken in 2011 from point 'A' facing south.

Showing the entrance to New Buildings Drive and the existing metal barrier (erected 1998).

The Parliament Oak can be seen to the right hand side protected by bollards and wooden fencing (erected 2009).





## PHOTO B2



Taken in 2008 from Point A facing south.

Showing the old fence around the Parliament Oak and a gap to the side of the open barrier.



**PHOTO B3**



New Buildings Drive





**PHOTO B4**



Existing sign at the Southern end of the claimed route









## PLAN C



Extract from the Finance Act Map (1910)

New Buildings Drive is coloured (privately owned)

The junction of New Buildings Drive with Peafield Lane is un-coloured suggesting it was considered to be part of the public highway.



**23 January 2013****Agenda Item: 6****REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)****APPLICATION TO REGISTER LAND KNOWN AS TOTON SIDINGS IN TOTON  
NOTTINGHAMSHIRE AS A TOWN OR VILLAGE GREEN****Purpose of the Report**

1. To inform Committee of an application made under Sections 15(1) and 15(2) of the Commons Act 2006 to register land known as Toton Sidings as a Town or Village Green and to seek approval from Committee to accept the delegation of Derbyshire County Council's functions as registration authority with respect to the determination of the application.
2. The application for a Town or Village Green covers an area known as Toton Sidings and is situated between the main line railway to the west and an area of housing to the east and straddles the County boundary between Nottinghamshire and Derbyshire. The area is shown on **Plan 1**, which is the plan submitted by applicant showing the 'proposed village green'.

**Legal Background**

3. As Registration Authority, the County Council has a duty to decide whether or not the use of the Registration Land fully meets all the elements of qualifying use under Sections 15(1) and 15(2) of the Commons Act 2006 and therefore whether the land should be recorded in the Registers as a Town or Village Green. For land to have become capable of registration as a Town or Village Green under Sections 15(1) and 15(2) it must have been used:
  - By a significant number of local inhabitants;
  - For lawful sports and pastimes;
  - As of right (being without force, without permission and not in secrecy);
  - For 20 years, prior to the date of application
  - With such use continuing up to the time of the application
4. Whilst there is no statutory requirement to appoint an independent inspector to make recommendations as to the determination of an application, this is the usual practise of registration authorities. Where there is a dispute as to the facts relating to such an application it is usually necessary to hold a public inquiry in order that the evidence may be fully tested.
5. The Registration Authority is required to either accept or reject the application solely on the facts. Any other issues, including those of desirability or community needs, are not legally relevant and cannot be taken into consideration. Acceptance means the land will be registered. Rejection means that no registration will take place. Under the

current law, land can only have the legal status of a Town or Village Green upon registration.

### **Information and Advice**

6. An application for a Town or Village Green was submitted to Nottinghamshire County Council in January 2012 for an area of land known as Toton Sidings. There were some deficiencies in the application and the applicant was given an opportunity to rectify them and has since submitted additional information. It was also noted that part of the site was in Derbyshire and so the applicant was informed that they needed to formally apply to Derbyshire County Council as the Registration Authority responsible for that part of the land.
7. A meeting was held in November 2012 with an officer of Derbyshire County Council to discuss how best to process and determine the application since it straddled the county boundary. It was identified that two options were available with the first being a joint agreement in accordance with Section 4(3) of the Commons Act 2006. This Section provides that two Registration Authorities may agree between them who will be the Registration Authority for an area of land, and is intended to permanently pass jurisdiction from one Authority to the other. An applicant may then apply to the recipient Authority for registration. If an agreement is made under this section, then whichever Registration Authority is the proper Registration Authority for the land is required to receive and consider an application, and to determine the application. If the land was found to be registrable, the land would then only be included in the Register of Town or Village Greens held by that Authority. If this were the case, then it is possible that part of Derbyshire would be shown in the Register held by Nottinghamshire County Council or vice versa, and searches in relation to that land would need to be made to the Nottinghamshire County Council for land within Derbyshire or vice versa.
8. The second option that was identified was to use Section 101(1) of the Local Government 1972 which allows local authorities to arrange for the discharge of its functions by another local authority, to the extent specified in the arrangement. If Committee were to adopt this option, then only one Authority needs consider the evidence and make the decision whether to register, with the effect that if the application land was registered as a Town or Village Green, each authority would register only that land which was within their administrative boundaries, which would ensure that searches could still be made of the relevant Registration Authority for each county.
9. Approximately two-thirds of the application land is in Nottinghamshire and it is therefore proposed that, if the delegation was accepted by Committee, Nottinghamshire County Council would take on the functions of Derbyshire County Council for the part of the application that is in Derbyshire and would therefore be able to confirm the validity of the application for the whole site, publish notices, accept statements of objection and if appropriate refer the matter to an independent Inspector for consideration. By so doing, all of the evidence for all of the land can be heard together, and the appropriate decision made based on this. This should also ensure that the most robust decision as to registration can be made, reducing the potential for challenge (which could arise with both Authorities looking at the evidence relevant to their portion of the application land separately). The determination of the application would then be made by this Committee on behalf of both Registration Authorities and, if the land is found to be registrable, entries would be made in each

authorities' register of Town or Village Greens for the parts of the land within their respective areas.

### **Financial Considerations**

10. As two thirds of the land affected by the application is in Nottinghamshire, it is suggested that Nottinghamshire County Council recover one third of the total costs on external expenditure (publication of Notices, instruction of an independent inspector and venue hire if a public inquiry is held) from Derbyshire County Council. If the matter were not delegated then Nottinghamshire County Council would have to meet the total costs in respect of the part of the application that is within Nottinghamshire. There is therefore a cost saving to both authorities by dealing with this application in the manner proposed.
11. Derbyshire County Council took a report to its Licensing and Appeals Committee on 10 December 2012 with respect to this application and resolved to delegate its functions under Section 101 of the Local Government Act 1972 with respect to this application to Nottinghamshire County Council and to meet a proportion of the costs of determination up to one third of the total costs. A copy of the Derbyshire County Council report is shown as **appendix 1**.

### **Statutory and Policy Implications**

12. 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 Committee accepts the delegation from Derbyshire County Council under Section 101 of the local Government Act 1972 to determine the application for a Town or Village Green for land known as Toton Sidings for a Town or Village Green.
- 2) It is RECOMMENDED that Committee accepts the delegation on the basis of Derbyshire County Council paying one third of the costs for determination of the application and that the Committee's thanks for this offer be communicated back to Derbyshire County Council.
- 3) It is RECOMMENDED that Committee authorises officers to proceed with the application, making such arrangements as are appropriate given the scope and complexity of the evidence, and that Derbyshire County Council be kept informed as to the progress of the application.

**TIM GREGORY**  
**Corporate Director (Environment and Resources)**

**For any enquiries about this report please contact:**

Angus Trundle (0115) 9774961  
Definitive Map Officer

**Constitutional Comments** (SJE – 06/01/2013)

13. This decision falls within the terms of reference of the Rights of Way Committee.

**Financial Comments** (DJK 14.01.2013)

14. The contents of the report are duly noted; the financial implications are fully explained within Paragraph 10 and any costs incurred by Nottinghamshire County Council will be funded from existing revenue budgets with one third of the costs invoiced to Derbyshire County Council accordingly.

**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.

The Application case file

**Electoral Division(s) and Member(s) Affected**

Chilwell and Toton	Councillor Richard Jackson
	Councillor John Doddy

ROW 92 – Toton Sidings  
14 January 2013

**DERBYSHIRE COUNTY COUNCIL**  
**REGULATORY- LICENSING AND APPEALS COMMITTEE**

**10 December 2012**

**Report of the Director of Legal Services**

**Commons Act 2006**  
**Application to register land known as Toton Sidings, Long Eaton,**  
**Derbyshire, as a town or village green**

**1. Purpose of the Report**

To inform the Committee of an application to register land known as Toton Sidings as a town or village green, and to seek approval to delegate the County Council's function as registration authority to Nottinghamshire County Council.

**2. Information and Analysis**

- 2.1 In August 2012 officers were notified by Nottinghamshire County Council of an application received by that authority to register land at Toton, Nottinghamshire, as a town or village green. Following initial consideration of the application it was noted that part of the land was in Derbyshire. The applicants were advised by officers of Nottinghamshire County Council to submit their application formally to Derbyshire County Council as registration authority for part of the land.
- 2.2 In early September the applicants provided this Council with a copy of their earlier application to Nottinghamshire County Council. The land in respect of which the applicants are seeking registration is shown on the plan at Appendix 1 to this report. Before asking that the applicants formally submit an application to Derbyshire County Council as registration authority it was decided to meet with officers from Nottinghamshire to discuss the options for determination of this matter.
- 2.3 Two options were identified. The first option would be to enter into an agreement in accordance with the provisions of section 4(3) of the Commons Act 2006. Section 4(3) of the 2006 Act provides that:



"Where any land falls within the area of two or more commons registration authorities, the authorities may by agreement provide for one of them to be the commons registration authority in relation to the whole of the land."

2.4 Should the Councils make an agreement in accordance with the provisions of section 4(3) of the Commons Act 2006 the registration authority making the decision would become the registration authority for the whole land, and the land would only be included, if registrable, in the register of town or village greens held by that authority.

2.5 The second option would be to utilise the Council's powers, under section 101(1) of the Local Government Act 1972. Section 101(1) of the 1972 Act provides that:

"Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions— ... (b) by any other local authority."

Powers under section 101 of the 1972 Act have previously been used to delegate the Council's function, as commons registration authority, to another local authority where the land in respect of which the application had been made was within this Council's ownership.

2.6 The delegation of function using the powers set out in section 101(1) of the 1972 Act would give the registration authorities flexibility in agreeing the manner and extent of the delegation, and will not affect the inclusion of the relevant parts of the land in the registers of each authority.

2.7 The Committee is asked to consider the extent to which it wishes to delegate its function as registration authority. The functions of the registration authority in respect of this application could be delegated to Nottinghamshire County Council to deal with the application from receipt, in tandem with its consideration of the Nottinghamshire application. This would enable Nottinghamshire County Council to confirm the validity of the application for the whole of the site, publish notices and accept statements in objection, and if appropriate refer the matter to an independent Inspector for consideration. The determination of the application would be made by the Rights of Way Committee of that authority following which the relevant part of the land, if registrable, would be added to Derbyshire's register of town or village greens.

2.8 The applicants have been asked to formally make their application to Derbyshire County Council in respect of the land in Derbyshire. It is anticipated that the applicants will have submitted that application prior to the Committee's meeting.



- 2.9 Nottinghamshire County Council have now had the application in hand for many months, have confirmed that it is validly made, and wish to proceed to publish a notice of making of the application at the earliest opportunity.

### **3. Legal Considerations**

- 3.1 The application will be dealt with in accordance with the provisions of the Commons Act 2006 and regulations made under that Act.
- 3.2 The relevant legal test is found in section 15(2) of the Commons Act 2006, which provides that any person may apply to register land as a town or village green 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.”
- 3.3 Whilst there is no statutory requirement to appoint an independent inspector to make recommendations as to the determination of an application this is the usual practice of registration authorities. Where there is a dispute as to facts relating to such an application it is usually necessary to hold a public inquiry in order that the evidence may be tested.
- 3.4 Other legal considerations are set out in the body of the report.

### **4. Financial Considerations**

- 4.1 Two-thirds of the land affected by the application for registration falls within the county of Nottinghamshire and it is anticipated that Nottinghamshire County Council will accept the delegation under section 101 of the Local Government Act 1972.
- 4.2 Officers at Nottinghamshire have suggested that that authority will seek to recover one third of its total costs on external expenditure (ie. publication of notices, instruction of an independent Inspector to consider the application and make recommendations to the registration authority and costs of venue hire if a public inquiry or hearing is held) from Derbyshire County Council.
- 4.3 If the matter is not delegated to Nottinghamshire County Council this authority would need to meet the total costs in respect of the application

received for land in Derbyshire. There is therefore a cost saving to both authorities to dealing with this application in the manner suggested.

4.4 The cost of determining this matter will be met from the existing budget.

## **5. Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder; equality of opportunity; and environmental, property, health, human rights and personnel considerations

## **6. Background Papers**

Application Form 44 in respect of application to register land at Toton Sidings, held by the Director of Legal Services.

## **7. Officer's Recommendation**

That the Committee resolves –

- (a) in accordance with the provisions of section 101 of the Local Government Act 1972 to delegate the Council's function as commons registration authority to Nottinghamshire County Council for the purposes of determining an application to register land known as Toton Sidings as a town or village green.
- (b) to meet a proportion of the costs of determination of the application in respect of Toton Sidings, up to a maximum of one third of the total costs incurred by Nottinghamshire County Council.




**John McElvaney**  
**Director of Legal Services**



# Plan 1

Town or Village Green Application, Toton Sidings, Toton, Nottinghamshire/Derbyshire.



-  PROPOSED VILLAGE GREEN
-  AREA CONTAINING HOUSEHOLDS WITH EXTREMELY HIGH USAGE OF AREA BEING CONSIDERED
-  AREA CONTAINING HOUSEHOLDS WITH REGULAR USAGE OF AREA BEING CONSIDERED



Area claimed as a Town or Village Green

(Approximately boundary marked by the County Council for illustrative purposes only)





**REPORT OF SERVICE DIRECTOR,  
POLICY, PLANNING AND CORPORATE SERVICES****AN INTERIM UPDATE ON FURTHER CONSULTATION 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 additional consultation exercise that is taking place following the Resolution of the Rights of Way Committee on 27<sup>th</sup> 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 in the 12 months prior to June 2012.
3. Local 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.
4. The County Council's Gating Order Procedure required the Council to publish 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 Nuthall Library. This consultation period was in operation between 12<sup>th</sup> November and 10<sup>th</sup> 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 deemed appropriate by officers to undertake an additional consultation exercise with 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 seek specific 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 could not be drawn without further information from interested parties).
7. This additional detailed consultation exercise is running for a period of six weeks and will end on 29<sup>th</sup> January 2013. All residents on Cedarland Crescent have received an individual letter and questionnaire, notices have been placed on lamp posts adjacent to the alleyway, and information is available both on the County Council Website and at Kimberley library. Sample copies of these documents are in the **Appendix** to this Report.
8. To support this additional consultation exercise, the Community Safety Partnership has requested a refreshed analysis of the latest information on any crime, disorder and anti-social behaviour incidents in the area, and County Council officers are ensuring that refreshed, up-to-date, detailed information is obtained to inform Committee's final decision following close of the consultation period.

### **Interim Results from the Additional Consultation**

9. As at 14<sup>th</sup> January, 32 replies have been received. Whilst no firm view can be drawn until close of the consultation period, Committee may be interested to note that of these 32 replies, 11 (34%) are in favour of closing the alleyway and 21 (66%) are against. None of the respondents feel that there is any other practical solution, and no members of the local community have expressed interest in being keyholders to open and close any gate (should one be installed) at pre-agreed times. The refreshed analysis of crime, disorder and anti-social behaviour is showing a reduction in the number of incidents over the last 6 months.
10. It is proposed that a more detailed report on the results of this additional consultation, together with the refreshed analysis of crime, disorder and anti-social behaviour incidents will be presented to the meeting of the Rights of Way Committee in March 2013.

### **Other Options Considered**

11. Not to have undertaken this additional consultation would have deprived local residents the fullest opportunity to express their views on the expanded options for the alleyway between Cedarland Crescent and Nottingham Road.

### **Reason for Recommendation**

12. To provide Members with an update on progress concerning the proposal to gate the alleyway between Cedarland Crescent and Nottingham Road.

### **Statutory and Policy Implications**

13. 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**

14. It is recommended that:
  - i) Members note the content of the report

**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**

15. This report is for noting only. As such, no constitutional comments are required.

### **Financial Comments**

16. There are no financial consequences relating to the content of this report.

### **Background Papers**

17. 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**

18. Nuthall - Councillor Philip Owen.

