



## 6. Policies and Procedures

- 6.1.1 The preparation of Nottinghamshire’s ROWIP has offered an opportunity for the County Council to prepare and present a summary of the key rights of way issues taking into account both established and new legislation and working practices. These key issues and concerns have also been raised by respondents during the initial consultation of the ROWIP.
- 6.1.2 This chapter deals with the policies and procedures which will guide the Authority, land managers and all stakeholders in the maintenance and management of public rights of way in the county.

### 6.2 Maintenance and enforcement

- 6.2.1 The county’s rights of way network consists of nearly 2,700 km of paths, split geographically into six areas managed by ‘Area Rights of Way Officers’ and two ‘Enforcement Officers’. The role of each area officer can be summarised as:
  - Protecting the public’s right to use and enjoy PROWs
  - Providing advice and assistance in particular to land managers, conservation organisations, the public and other local authorities
  - Responding and reacting to complaints and defect reports
  - Organising annual and reactive maintenance of the path network
  - Responding to planning and development consultations which affect PROW
  - Advising applicants and processing public path orders
  - Dealing with planning and public path orders
  - Process applications for traffic regulation orders.
- 6.2.2 The service is largely reactive leaving little time to be pro-active. The number of defect reports is increasing with more demand and pressure on the network and higher expectations. Reporting defects is also a lot easier with improved electronic communication. Defects are prioritised according to public safety needs. Maintenance of paths is then prioritised by strategic and local importance.

## POLICY A1-4

Nottinghamshire County Council will work towards formulating a policy to ensure that maintenance and improvement works are prioritised to reflect competing demands on budgets. Prioritisation will consider frequency of use, health & safety of the public, needs of the disabled and promotional status. Such a policy must not lose sight of the fact that NCC has a duty to maintain all public rights of way.

- 6.2.3 Because of the largely reactive nature of rights of way work planned condition surveys, apart from the BVPI and the Ploughing and Cropping surveys, are few and far between.
- 6.2.4 As the highway authority, Nottinghamshire County Council has a duty under section 130 of the Highways Act 1980 'to assert and protect the rights of the public to the use and enjoyment of' and to 'prevent, as far as possible, the stopping up or obstruction of' public rights of way'. There are various sections of the Highways Act 1980 that deal with the different types of obstructions found on rights of way. In this chapter of the ROWIP the Authority has identified and detailed the key maintenance and enforcement issues encountered on public rights of way.



## 6.3 Signposting

- 6.3.1 The County Council has a legal duty to signpost rights of way where a path leaves a metalled road. Signposting is an important tool in creating greater awareness. Therefore NCC will erect signposts on all PROWs where they meet a metalled road unless the path is in a wholly built up area with a hard surface throughout and is clearly defined.
- 6.3.2 All new and replacement signposts will be of metal construction, however, wooden signposts may be placed at the discretion of the County Council, for example, keeping in character with the local area. In some locations a post and waymark disc may be suitable. Where appropriate, and resources allow, local destination information may be included.
- 6.3.3 False or misleading signs (e.g. 'Private') and any unauthorised waymarks on rights of way will be removed and appropriate enforcement action taken.

## POLICY A1-5

Nottinghamshire County Council will implement a co-ordinated signing and waymarking programme. The County Council is committed to ensuring that all paths are signed with their correct legal status from metalled roads, and where appropriate, signs will be placed at other locations where there is an identified need.

## 6.4 Waymarking

- 6.4.1 The Authority has the power to sign or waymark where it considers it necessary to assist users along a right of way. Waymarking is also an aid to landowners and occupiers helping to prevent trespass and reduce conflict. Only waymarks based on the Countryside Agency<sup>50</sup> recommended design and colour relevant to the path's definitive status will be used. The only exception to this is the use of waymarks for promoted routes. Promoted route waymarks used by other authorities and organisations must be approved by the County Council and advice will

<sup>50</sup> Waymarking public rights of way, CA77, The Countryside Agency, July 2001.

be given on the frequency and location of these. To further aid and assist users the Authority will use yellow topped waymarker posts where appropriate (e.g. between hedgerows on crossfield paths).

### **POLICY A1-6**

The County Council aims to provide waymarking wherever there is difficulty in identifying the route of a right of way. Nottinghamshire County Council will proactively seek to waymark definitive public rights of way in a structured and standardised approach. Waymarking will only be used where the route is unclear, as an aid to users and land managers, to reduce signage clutter and prevent 'urbanisation' of the network.

## **6.5 Gates, stiles and barriers**

6.5.1 The following includes the consideration of the needs of farmers and horse owners for structures to be stockproof (HA 1980 s147).

6.5.2 The erection of a new structure for stock control on a public footpath or bridleway requires the express consent of the County Council. Only gates will be authorised as new structures – stiles will only be accepted in exceptional local circumstances. A new structure is one that is not recorded in the definitive statement or has not been previously authorised by the Authority.



*Kissing gate accessible but stock-proof*

6.5.3 Landowners are responsible for the maintenance of stiles and gates although the Authority has a duty to contribute a minimum of 25% of the costs. Where existing approved structures require repair or replacement, landowners will be offered further assistance and financial incentives to replace a stile with a gate or in exceptional circumstances a stile complying with British Standard BS5709.<sup>51</sup> Any stile, gate or other structure supplied or installed on a PROW by the Authority, becomes the property and responsibility of the landowner for future maintenance.

6.5.4 Where a structure is no longer needed for stock control purposes, the Authority will seek the removal of that structure, leaving a clearly waymarked gap.

6.5.5 Barriers intended to 'safeguard' users e.g. attempting to prevent illegal activities such as motorcycling and fly tipping can only be authorised and erected after careful consideration by the County Council. Barriers are only lawful if provided and maintained by the Authority under section 66 of the Highways Act 1980. If barriers are erected, they must not restrict or deter legitimate users in any way in accessing a right of way. Any barriers not authorised will be removed at the expense of the instigator.

6.5.6 Nottinghamshire County Council will subject any request for the erection of barriers to prevent unlawful activities to rigorous scrutiny. All avenues of action by the Police and other relevant authorities must be exhausted before barriers are considered.

### **POLICY A2-1**

The Authority will seek to keep the number of structures erected on the rights of way network to a minimum, consistent with legislation, good husbandry and public safety. The least restrictive option available will always be the priority.

<sup>51</sup> Gates and Stiles - Specification BS5709 2001 British Standards Institution, 2001.

## 6.6 Surfacing



Surfaced boardwalk on a bridleway

The County Council has both a duty to maintain and a power to improve rights of way - and surfacing can constitute maintenance of and / or an improvement to rights of way.

6.6.2 Where appropriate, the County Council may improve the surface of paths that offer increased recreational opportunities. Prior to any works taking place to surface a path in this instance, the Authority will have due regard to those with mobility problems, the general appearance and character of the path, the strategic importance, user needs and conservation issues.

6.6.3 The materials and type of construction used for surfacing paths will be chosen to reflect the balance of user needs, capital and future maintenance costs, sustainability, local character and the local ecology. Where possible, in the first instance, the Authority will use recycled inert materials from local sources. However, the Council will, after advice and consultation, consider materials from primary sources and will also trial new innovations.

### **POLICY A1-7**

The Council will carry out surface improvements and maintenance in accordance with relevant and current government guidance. When specifying surfacing materials the Council will place the needs of the legal public user first. Where appropriate the Council will consult with local stakeholders such as conservationists, landowners and user groups. Surfacing will only be considered where budget constraints allow, alternative remedies have failed and patterns of use justify expenditure.

6.6.4 Where a public right of way is also used for private access, the County Council will only maintain such a way to a reasonable standard appropriate for a highway of that character having regard to the traffic that passes or may be expected to pass along it (Highways Act 1980 s58). For example, where a bridleway is also access to private dwellings and there are no public vehicular rights, only private access rights, the County Council will only maintain the surface to a standard suitable for walkers, horse riders and cyclists. Where there is damage to a right of way through private use (e.g. private vehicular access) the County Council will seek to recover the costs of repair from the perpetrator (Highways Act 1980 s131A).

- 6.6.5 Third parties who wish to change the surface of a path for their own interests, for example, a householder changing a natural surfaced bridleway to a metalled surface, need to gain permission from the County Council before undertaking any works. Each application will be assessed as the outcome of any works of this nature must not detract from the user's enjoyment of that right of way or make it any less convenient to use. In some circumstances there may be a need for a formal maintenance agreement with the County Council.
- 6.6.6 The surfacing of Byways Open to All Traffic will be undertaken in accordance with current guidance (e.g. Making the Best of Byways)<sup>52</sup> although each byway will be assessed on its own merits to the same criteria as in Policy A1-7. Byways are carriageways and thus a right of way for all users including vehicular traffic (powered by either a combustion engine, pedal or by horse). However, they are used mainly for the purpose for which footpaths and bridleways are used (i.e. by walkers, riders and cyclists). There is no obligation for the County Council to surface or maintain them to a standard to accommodate modern day vehicular traffic i.e. providing an all weather sealed surface such as tarmacadam.

### **POLICY A1-8**

The Authority will seek to maintain the surface of public rights of way to a standard appropriate with their ordinary legal public use with regard to both the current and possible future use of the path.

## **6.7 Ploughing and cropping**



*Reinstated footpaths crossing a cultivated field*

- 6.7.1 The Highways Act s 134, as amended by the Rights of Way Act 1990, specifically deals with disturbance of rights of way by agricultural operations. This act specifies the requirements relating to crossfield paths and defines the widths of both crossfield and fieldedge paths.
- 6.7.2 BVPI 178 surveys in Nottinghamshire have shown that crop obstruction and a failure to reinstate following cultivation are a major cause of paths failing the 'easy to use' test. The Council is confronting this problem with a proactive strategy known as the Cultivation & Cropping Strategy. This approach was initiated in Spring 2004. The aim is to help and

<sup>52</sup> Making the Best of Byways: A practical guide for local authorities managing and maintaining byways which carry motor vehicles, Defra, December 2005.

encourage land managers to comply with the requirements of the Rights of Way Act 1990 in order to increase unprompted reinstatement of public paths across arable land. Twice a year the Council writes to all arable landowners with rights of way across their land to remind them of their responsibilities under the Act. Good practice guidance notes are also distributed.

### **POLICY A1-9**

The County Council will continue to work with land managers to ensure paths are kept free from obstruction by cultivation and cropping. The County Council will carry out countywide inspections in the Spring to check paths are clear of crops and Autumn to check paths are marked and level following cultivation. Any paths found not to be compliant with the Act will be followed up with the landowner and enforcement proceedings taken where necessary. Repeat offenders will be served enforcement notices without prior warning and the Council will consider prosecution in cases where this approach fails to have effect. The Council may recover its reasonable costs where default enforcement action is carried out.

### **POLICY A1-3**

Nottinghamshire County Council will share information with the Rural Payments Agency on issues relating to cross compliance and rights of way to ensure that land managers meet the requirements of Good Agricultural and Environmental Condition Standards (GAEC 8).

## **6.8 Bridges**



Wooden bridge over a watercourse with waymark post

- 6.8.1 As a general rule the maintenance responsibility for existing bridges over natural features on a right of way rests with the County Council. Structures which cross man-made features such as railways or canals are normally the responsibility of the owner, for example, Network Rail or British Waterways.
- 6.8.2 Where a land manager, with NCC approval, creates a new or widens an existing ditch, pond or channel that crosses an existing right of way, a suitable bridge or structure must be provided, at the land managers expense, which can accommodate all legitimate users safely and without any restriction. The absence of any approved crossing point will be construed as 'wilful obstruction'. Bridge designs will be of NCC approved specification complying with easy access requirements in terms of width and approach. One or two handrails will be fitted as necessary depending on site specifics.

6.8.3 Due to the large capital cost of bridges, bridge replacement and repairs by the County Council will be prioritised on public safety, strategic importance and the inconvenience caused. NCC will work towards a pro-active regime of inspections to ensure structures are maintained and repaired before they become a serious liability.

## 6.9 Enforcement to remove obstructions and other nuisances

6.9.1 When dealing with enforcement issues, in the first instance, the County Council will make contact with the person responsible and liaise locally to try and resolve the issue. Where co-operation cannot be achieved, the County Council will serve an enforcement notice on the person(s) responsible to remove the obstruction. If this does not result in a satisfactory outcome within the timescales stated in the legislation, the Council will enter the land, carry out the work and recover reasonable costs. Consideration will be given to prosecuting offenders. Repeat Ploughing and Cropping offenders will receive an enforcement notice without prior warning.

## 6.10 Vegetation encroachment

6.10.1 The County Council is responsible for the control of natural upgrowth on the surface of a right of way (other than crops). This will be managed within budget constraints through a programme of planned annual maintenance.

6.10.2 It is the responsibility of the landowner to cut back overhanging vegetation encroaching on a right of way. This includes vegetation from both the sides and above, and for a bridleway there should be 3 metres (10 feet) of headroom. In the event of vegetation obstruction, where necessary the Authority may take action as per Policy A1-10 requiring the removal of the encroachment (Highways Act 1980 s154).

### **POLICY A1-10**

The Council will use its powers of enforcement to tackle obstructions of public rights of way wherever initial discussion with the person responsible fails to resolve the situation. The Council may recover its reasonable costs where default action is taken to make a path available to the public. Persons responsible for obstructing paths will be given the opportunity to remedy the situation within specified deadlines; subsequent enforcement will be carried out in accordance with relevant guidelines in a firm but fair way.

## 6.11 Community and partnership working



Volunteers clearing vegetation

- 6.11.1 The wider community plays an important role in helping the County Council achieve its aims and objectives in managing Nottinghamshire's rights of way network.
- 6.11.2 Parish Councils are in an excellent position to help the Authority in maintaining and promoting the network. A scheme was initiated in 1995, with grant aid from the then Countryside Agency, working with parishes to undertake surveys, minor maintenance and promotion of their local network. These humble beginnings have now expanded into agreements with 68 parish councils, geographically spread throughout the county, under the banner of Parish Paths Partnerships (P3).
- 6.11.3 The P3 scheme is successful, represents good value for money and encourages parishes to take ownership of their local network. To ensure consistency in the scheme the Authority will work with all P3 Parishes which may involve training, improved communication and help with administrative and technical tasks. There may also be opportunities to extend the scheme to other parish organisations. For example, 'Warsop Footpaths and Countryside Group' are P3 partners for their area.

#### **POLICY A6-2**

The Council will continue to expand and develop the Parish Paths Partnership (subject to available resources).

#### **POLICY A6-3**

The County Council will encourage and invite other organisations into the Parish Paths Partnership.

- 6.11.4 Nottinghamshire County Council has led the way nationally using land managers and landowners as local contractors ensuring that paths are maintained on their own land. The Farm Partnership Scheme (FPS) currently works with 63 farmers who play a vital role in looking after paths on their land, being responsible for the maintenance of stiles and gates, cutting back overhanging vegetation and reinstating crossfield paths. The scheme pays farmers to undertake annual grass cutting on fieldedge paths, changing stiles for kissing gates and replacing signposts. The FPS is an excellent example of partnership working; both the County Council and the landowner have legal rights of way duties and responsibility.

#### **POLICY A6-1**

The County Council will continue to support and to expand the Farm Partnership Scheme.

- 6.11.5 The Authority works with a number of organisations and individuals on voluntary tasks improving rights of way. Benefits are wide ranging and it is an effective way of assisting both the Council with its responsibilities and helping farmers and landowners with theirs. The Council currently works with a dedicated team of volunteers who help survey the network and occasionally help with minor maintenance tasks. This varies from working with the Ramblers Association helping survey and waymark the Trent Valley Way long distance path to clearing Byways with the Green Lane Association and the Trail Riders Fellowship. Working with volunteers is time consuming and careful attention needs to be given to health and safety but the results can be very fruitful.

#### **POLICY A6-4**

The County Council will continue to work with and support volunteers, and is committed to increasing volunteer work tasks.

- 6.11.6 The County Council also works in partnership with other organisations and authorities. This is mainly on project-based initiatives such as the development of multi-user routes and long distance trails. Partnership work has also included working with health authorities and primary care trusts on promoting exercise through the promotion of walking and cycling. These synergies obviously provide added value to any project and the Council will continue to seek and support this type of partnership working.



- 6.11.7 The Council acknowledges the importance of working with advisory bodies and consultees. During definitive map and public path order making processes the Authority consults more widely than the recommended consultee lists and the Authority worked with the Nottinghamshire Rights of Way Liaison Group for nearly 20 years. A statutory Local Access Forum has now replaced the Liaison group.

### **POLICY A6-5**

The County Council is committed to developing the work of Nottinghamshire Local Access Forum by encouraging an active membership, supporting the needs and publicising the role of the Forum.

## **6.12 Definitive Map and Statement**



Excerpt from the Askham inclosure award map of 1841 (Ref EA 119/2) Nottinghamshire Archives

- 6.12.1 The County Council, as the surveying authority, is responsible for maintaining the definitive map and statement. The map and statement are legal documents; the map records the status and the line of rights of way and the statement lists definitive rights of way shown on the map together with a short description.
- 6.12.2 The recording of a route on the definitive map is conclusive evidence of the minimum status, position and existence of a public right of way. It is important to note that the recording of most of the routes shown on the definitive map is 'without prejudice to the existence of any other rights'. This means that there may be unrecorded rights on an existing right of way, for example, a footpath shown on the map may actually have bridleway rights. There may also be unrecorded public rights which never made it onto the definitive map. Where this happens there is a process which allows the Authority to make a 'definitive map modification order'. Before making an order the Authority must have evidence that shows that a right of way exists or can reasonably be alleged to exist, or that it raises a presumption that a route has been dedicated as a public path. For example, this could be through evidence of uninterrupted use as of right over a 20-year period (Highways Act 1980 s31) or by producing historical evidence of a path's existence, such as inclusion in an inclosure award or tithe map.
- 6.12.3 Definitive maps came into being as a result of the National Parks and Access to the Countryside Act 1949. The first stage involved a survey undertaken by Parish Councils and interest groups and co-ordinated by the County Council which resulted in a draft map and statement. The draft map was held on public deposit during which time representation and

objections could be made. These comments were taken into consideration and a provisional map and statement were published in the early 60s. This time only landowners, lessees or occupiers of land could object. In the 1960s Nottinghamshire County Council published the definitive map and statement.

6.12.4 The custody of the county's definitive map and statement is the responsibility of the definitive map team of five officers. The role of this team can be summarised as:

- Maintaining and updating the map and statement
- Processing claims made by the public for new rights of way
- Making legal orders to add new paths to the map and statement
- Writing proofs of evidence and appearing at public inquires as expert witnesses in support of path claims
- Giving advice to the public, landowners and solicitors regarding any legal issues involving the map and statement
- Processing Public Path orders
- Exploring opportunities to expand the rights of way network by path creations.

6.12.5 The County Council has a legal duty (s53 Wildlife and Countryside Act 1981) to keep the definitive map and statement under continuous review, and to make modification orders as necessary to keep the map and statement up to date as an accurate record of public rights. Applications to make changes to the map can be made by members of the public, Parish and District Councils or by the County Council. The number of applications is steadily increasing, which is reflected nationally throughout England and Wales.

6.12.6 The CROW Act 2000 sets a deadline of 2026 for applicants to register rights of way based on documentary evidence. This cut-off date means that the number of DMMO applications may well grow significantly over this period. The former Countryside Agency, now Natural England, is charged with taking the lead in recording unregistered routes via the project known as 'Lost Ways'. Natural England has awarded a contract to the Archive Research Unit (ARU) who will systematically research the evidence; including inclosure awards, Finance Act 1910 maps, Railway and Canal Plans and Estate Maps.

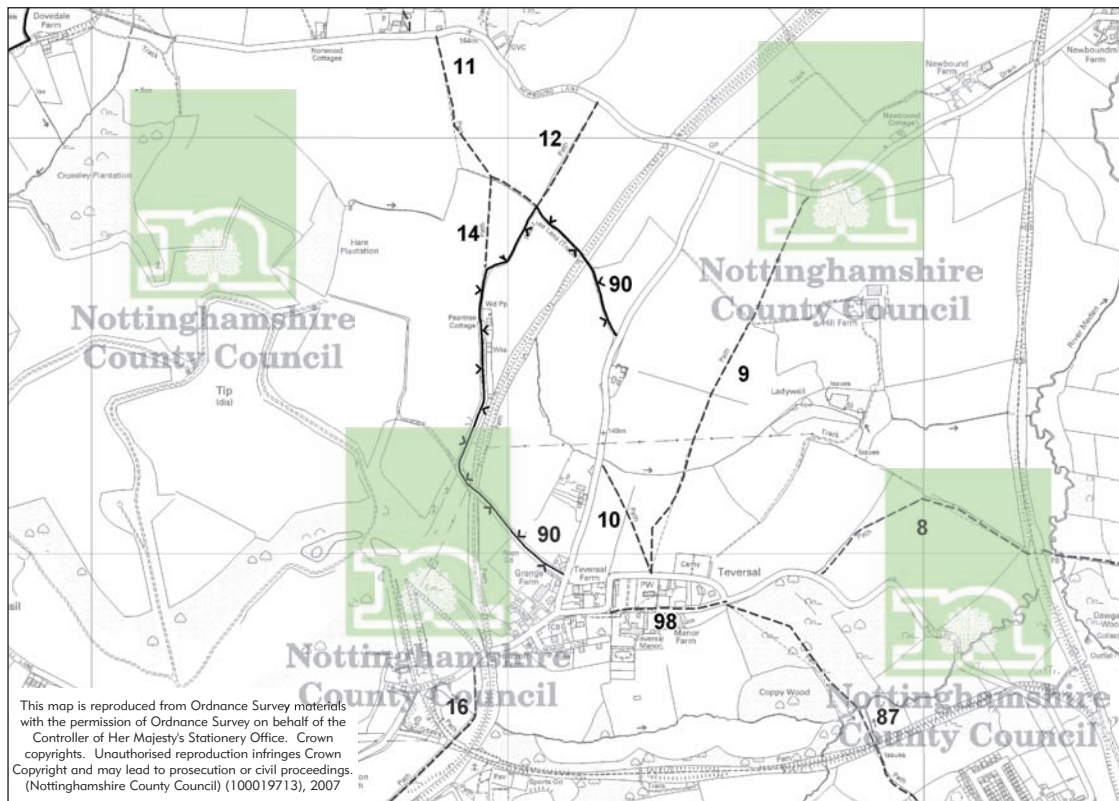
6.12.7 Pilot studies have been completed and the main 'First Wave' of six counties takes place in 2007. Nottinghamshire is included in this wave and documentary research was started in May 2007. The exact number of potential unrecorded routes is difficult to ascertain but initial thoughts estimate this figure to be in the region of 700 plus. Claims will have to be submitted to the surveying authority – i.e. the County Council. This will have a huge impact on the already large DMMO workload and clearly not all the work will be completed without the need for additional resources. Nevertheless, there is clear public and landowner benefit in resolving this uncertainty.

6.12.8 To complement this work a programme of work has already started by registering pre-1949 urban jitties and alleyways, unsurfaced unclassified roads and dead-end paths – it has always been believed that the missing links from dead-end paths to other paths or metalled roads were public.

6.12.9 Additionally contained within the existing definitive map there are an estimated 700 anomalies in Nottinghamshire, approximately 3 map anomalies per parish. Anomalies include:

- Paths off-line i.e. the line on the ground does not follow that found on the map or the line on the map does not match what is on the ground
- Poorly drafted orders by others such as side road orders and town and country planning act orders
- Paths severed by railways, airfields, coal mining etc

- Dead-end or cul-de-sacs and even 'island' paths
- Paths where the route continues but the status of path changes at a parish boundary.



Working Definitive Map extract

6.12.9 A very small number of these anomalies may overlap with the Lost Ways project but this will make very little difference. Most of these anomalies will need to go through a lengthy order making process.

### **POLICY A5-1**

The County Council will ascertain the extent of anomalies on the definitive map and statement, and develop and implement a prioritised framework. To deliver this framework, resources need to be allocated to an Anomalies and PPO orders Officer.

6.12.10 The Milestones Statement in 1999 highlighted 855 legal events had occurred since the production of the definitive map. These legal events, for example, diversions, extinguishments, creations etc, need to be incorporated legally onto the definitive map. The preparation of the updated definitive map started in the early nineties. West Bassetlaw, Mansfield and Ashfield have already been completed and updated on a larger scale 1:10,000 Ordnance Survey Maps. Work has now started on the Rushcliffe map.

6.12.11 The definitive map is held at Trent Bridge House, West Bridgford and this paper map is available for members of the public to view, preferably by appointment. In recent years a working copy of the map has been digitised for purposes of internal management. It is proposed to upload an electronic definitive map onto the internet where members of the public can view the county's definitive rights of way. Before this can happen it is essential for the maps to be checked and updated. Updating of the map is on-going and with current resources it will take approximately 10 years to complete. There may be scope to upload the parts of the map and statement which have already been updated.

6.12.12 In response to the number of DMMO applications the Council receives, guidelines for prioritising and managing the high number of applications have been drawn up.

### **POLICY A5-2**

Definitive Map Modification Order applications will be processed chronologically by order of receipt with the following exceptions (in no particular order):

- Where the public benefit to be gained is of more than limited impact. For example, where an order could result in a positive impact on the network such as adding a bridleway to complete an 'off-road' network for horse riders
- Where a claim affects a householder in proving the existence or non-existence of a right of way. For example, a potential route that passes close to residential buildings and dwellings
- A claimed route triggered by an event such as fencing off the line of a regularly used path
- Where an order is claimed on 20-year use the personal circumstances of path users will be taken into account. For example, the witness's age, health and possible relocation
- Where a claimed route is under threat due to development or major road schemes. For example, the dualling of the A46 trunk road or the widening of the M1 motorway.

### **POLICY A5-3**

The County Council will, where possible, use dedications in lieu of DMMOs enabling a quicker route onto the definitive map and statement.

### **POLICY A5-4**

Where a claimed route is unavailable on the ground, for example, due to a building or environmental issue, the County Council will consider the use of concurrent public path orders to assist with the establishment of the route

## **6.13 Public path orders**

6.13.1 The County Council has a discretionary power to make legal orders to divert, create and extinguish footpaths and bridleways. Highways with vehicular rights are dealt with at a magistrate's court.

6.13.2 The orders follow a set legal procedure and it is for the County Council to decide initially if it wishes to make a path order. Once an order is made, it must be advertised and anyone can make a relevant objection; anyone who has an opinion, not just the landowner, can have their views taken into account.

6.13.3 Proposals to change the rights of way network can arise from applications or requests from local residents, path users, developers, farmers, schools or the highway authority itself may propose to make a change. Diversion orders are the most common form of public path order.

6.13.4 The County Council has adopted new guidelines relating to the costs of diversion orders to applicants. These guidelines can be found at [www.nottinghamshire.gov.uk/countryside](http://www.nottinghamshire.gov.uk/countryside)

### **POLICY A5-5**

The County Council will recharge its full costs of a public path order to all applicants except in exceptional circumstances such as correcting historical errors or a landowner providing a package of measures to significantly improve the rights of way network for the benefit of the public.

6.13.5 Public path order (PPO) applications will only be supported by the Authority where there is seen to be a clear public benefit to the user.

6.13.6 In summary before making an order to divert a path, an authority must be satisfied that:

- It is in the interests of the public or the owner, lessee or occupier of the land
- The diversion brings the public to another point on the same path or another highway connected to it; and it must be as convenient to the public to use this alternative route

- There will not be a negative effect on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by any proposed new path.

### **POLICY A5-6**

Public Path Order applications will be processed chronologically by order of receipt with one or more of the following exceptions (in no particular order):

- Where there is a clear public benefit. For example, where an order would result in increased connectivity such as an improved path network or a path with more attractive view or historical feature
- An order that addresses public safety, for example, a path may be diverted to a more suitable road crossing point with increased visibility
- Where PPOs resolve definitive map and statement anomalies
- Applications linked to DMMOs – the diversion of a path concurrent with the making of a modification order.

### **6.14 Right to apply – new provision from the CROW Act 2000**

6.14.1 Those who own, lease or occupy land used for agriculture, forestry or the breeding or keeping of horses will be given a formal right to apply for diversions and extinguishments. The full effect of this legislation will not be known until late 2007 but it is likely to include a time constraint in which a highway authority has to consider a PPO application.

### **6.15 Planning and development**



*Path affected by development*

6.15.1 In some circumstances public rights of way can be and are affected by planning applications and development. As a rule the County Council is consulted on individual planning applications that affect rights of way. The Town and Country Planning Act 1990 (TCPA) gives powers to a local planning authority (LPA) to extinguish or divert rights of way affected by development. This is a separate application and procedure to the 'Planning Application' and the extinguishment or diversion of a path is not guaranteed.

- 6.15.2 TCPA 1990 regulations stipulate that planning permission must have been granted and the authority is satisfied that it is necessary to stop or divert the way in order to enable the development to be carried out. The planning authority has to consult with any other authority before making the order and they must publicise the order. The planning authority is required to consider any representations it receives in response to the advertisement.
- 6.15.2 As well as local negotiations with planners and developers aimed at improving the path network as a result of the impact of development, s106 of the TCPA 1990 allows a LPA to enter a legally binding agreement, for example, providing opportunities for developers to improve access on or adjacent to development sites. This may include new paths, upgraded paths and promotional material. Moreover, particular attention must be paid to Access for All and 'designing out' crime and nuisance, for example, by providing open and clear routes. Where there is existing and latent demand for riding and cycling, Nottinghamshire County Council will pursue bridleway status for any new routes to be provided.

### **POLICY A1-11**

The County Council will seek improvements, at an early stage, to the rights of way network affected by development. The County Council will work with developers and local planning authorities to achieve the maximum benefit for the rights of way network.

- 6.15.3 Not all paths affected by development are shown on the definitive map and statement. These may include 'Lost Ways' or routes currently being used by members of the public. Sometimes these routes are picked up by local knowledge of the Rights Of Way Officer which can then trigger a DMMO.

### **POLICY A5-7**

Where developments affect non-definitive routes, on which public rights may reasonably be presumed to exist, the County Council will expect developers and the relevant local planning authority to have regard to these paths as they would with definitive rights of way.

- 6.15.4 There are also a number of routes, predominantly in urban areas, where historically poor orders have been made. For example, where the intention was to move the original definitive line onto a newly adopted footway, which never happened. Each individual case will be judged on its own merit but in the majority of these cases a modification, extinguishment or creations order will resolve the anomaly.

### **POLICY A1-12**

The County Council will work closer with developers and the local planning authority to minimise the illegal obstruction of rights of way and other access caused by permitted development and unlawful development.

## **6.16 Dedications and creation agreements**

- 6.16.1 Nottinghamshire County Council has powers to accept dedication of new rights of way. Dedications can be very useful additions to the network and the County Council will generally support them. A path dedicated by means of a creation agreement (HA80 s 25) automatically becomes maintainable at public expense. Therefore the Council must be satisfied that there is a clear public benefit to be gained from the proposed path and that future maintenance will not be excessively burdensome.

## **POLICY A1-13**

Creation agreements will only be considered:

- Where there is a clear public benefit to be gained from the proposed path
- Where the requirement to dedicate forms part of an obligation under the Town & Country Planning Act 1990 s 106.

Maintenance liability will normally only be accepted where:

- The addition of a path is of strategic public benefit
- No initial additional expenditure by the Authority is required to bring a path into a fit state for use.

6.16.1 The County Council also has powers to create new routes by order using section 26 of the Highways Act 1980. It is worth noting that only a handful of authorities use their powers to make creation orders using section 26. This is normally attributed to the uncertainty of compensation costs. The creation of new rights by order can be exceedingly and increasingly difficult, time-consuming and costly. Because of this, priority and resources are normally given to creation orders on land within the public and voluntary sector.

6.16.2 Clearly, there are positive outcomes to be achieved by creation orders i.e. by increasing network density and connectivity. In some circumstances they are the only means of achieving a 'connected' network. Where there are significant benefits to the public and these are relative to the likely compensation costs, the County Council will consider section 26 creation orders.

## **POLICY A5-8**

Where there is a clear public need, the County Council will seek to create a new path in the first instance by agreement. Where an agreement fails and there are substantial public benefits to be gained and the benefits are relative to the expected costs, the County Council will consider a HA80 s 26 creation order. The Council will carry out this power in accordance with the relevant available guidance.

### **6.17 Widths of new routes (made by Public Path Order)**

6.17.1 Nottinghamshire County Council has a duty to assert the rights of the public (Highways Act 1980 s130) when making orders or consulting on new routes. As a result, the Authority normally requires that there shall be a minimum width of 2m for footpaths and 4m for bridleways which are created by dedication and creation order, except where a path is fenced on one or both sides, when the full available width should be recorded as the legal width.

6.17.2 Nottinghamshire County Council will encourage partner authorities to consider this standard and will normally object to public path orders made by other authorities in Nottinghamshire where they create routes which are less than the minimum width described.

### **6.18 Extinguishment**

6.18.1 The County Council will not support extinguishment orders unless there is very strong evidence that the route is not needed for public use.

### **6.19 Gating orders**

6.19.1 Central Government introduced measures in the CROW Act 2000 to stop up or divert highways which were subject to, or aided, criminal activity. These types of highways were envisaged as being located in urban, rather than rural, areas and were often alleyways or interconnecting routes on housing estates.

6.19.2 This provision was found not to be particularly effective in dealing with anti-social behaviour. Therefore, new legislation was introduced in the Clean Neighbourhoods and Environment Act 2005. The legislation came into effect in April 2006 and deals with restricting the use of a highway rather than stopping up or diverting. Like the CROW provisions, it is envisaged that the use of gating orders will be in the urban environment, however, the Regulations cover all highways including rural public rights of way.

6.19.3 The effect of the new legislation is to give highway authorities the power to gate certain types of highway where the Council is satisfied that:

- stopping up or diverting the highway is not appropriate
- premises adjoining, or adjacent to, the highway are affected by crime or antisocial behaviour
- the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour
- it is, in all the circumstances, expedient to make the order for the purposes of reducing crime or anti-social behaviour.

6.19.4 In response to this legislation the County Council has now produced policy and procedures for gating orders. Visit [www.nottinghamshire.gov.uk](http://www.nottinghamshire.gov.uk) for further details.

## 6.20 Looking for opportunities

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Former railway line

6.20.1 Despite the fact that the county has nearly 2700 km of rights of way, the network is often fragmented sometimes limiting safe and attractive walking, riding and cycling opportunities. The Authority also has a remit to develop and promote a strategic multi-user network in Nottinghamshire.

6.20.2 The Authority has been involved in major access projects in recent years including the development of the National Cycle Network (NCN) in the county. These are Route 6 from Attenborough to Shireoaks, Route 64 from Orston to Harby and Route 15 from Bingham to Orston.



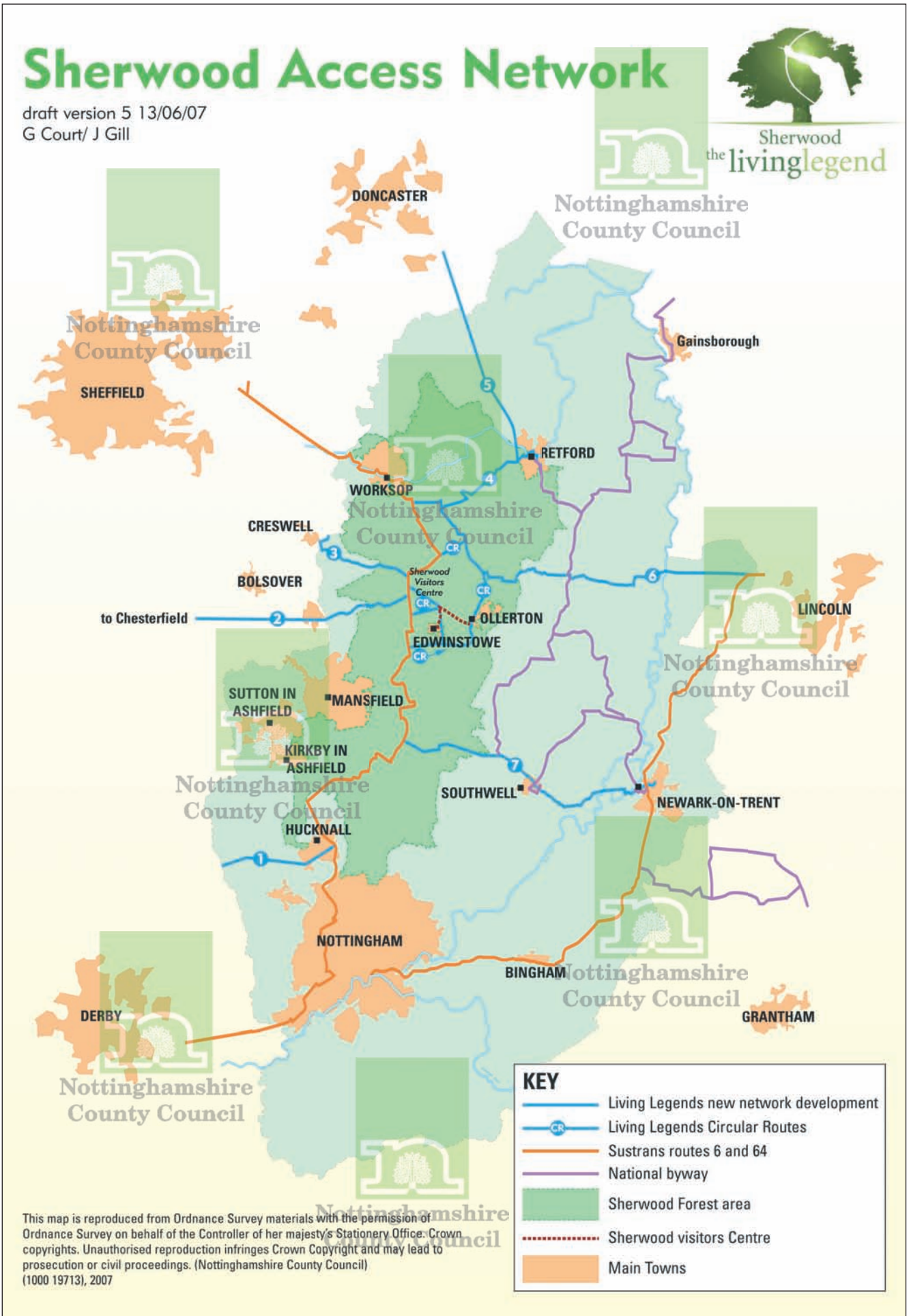
- 6.20.3 Multi-user routes, also known as Greenways, offer excellent recreational and utility opportunities. As opposed to historical rights of way these routes are purposely designed and should provide:
- Access for walkers, riders and cyclists taking into account surfacing, access to and from the route, gradients, cambers and provision of facilities such as information boards
  - Both recreational and utility journeys
  - Links with other public access and, countryside and urban areas.
  - Links with the public transport network
  - A safe environment for walkers, riders and cyclists.
- 6.20.4 There are further potential access corridors in the county, which fall into three different broad categories:
1. Natural features, such as rivers, streams and ditches. People naturally tend to gravitate towards water and much use has been made of existing and new access along river corridors. Access alongside the River Trent has been enhanced and managed for a number of years now with aspirations to further improve this access resource.
  2. Man-made corridors, mainly redundant railway lines and canals. These make up a significant proportion of current access corridors in the county, and do not follow the same landscape confines as the natural access corridors. Some are already actively used for access including the Southwell Trail, Teversal Trails, parts of the Timberland Trail and National Cycle Network. Other railway lines still exist but are very fragmented where, for example, sections have been brought into agricultural use and multiple ownership. Examples include, the Bilsthorpe to Ollerton line, the former Midland Line from Farnsfield to Mansfield and Shirebrook to Welbeck Colliery 'north' line. There are also redundant railway lines with their track bed still in place awaiting a decision on their future. Several examples exist in the county including the Ollerton to the former High Marnham Power Station, Ollerton to Bevercotes and Bestwood to Calverton.
  - 2a. Towpaths alongside active and redundant canals are also another access opportunity (although British Waterways normally limit access to walkers and cyclists). By their very nature they are an excellent link between urban and rural areas and offer a welcome relief from the built up urban environment. The County Council has worked closely with British Waterways and Rushcliffe Borough Council to improve access along the Chesterfield Canal and Grantham Canal respectively. Nottingham City Council and Broxtowe Borough Council have undertaken considerable work on the Beeston Canal, and even the redundant and fragmented sections of the Nottingham Canal in the south west of the county provide both refuge for wildlife and public access.
  3. Other green corridors can include routes that fall between natural and man-made corridors as a result of non-development, predominantly in urban areas. This is sometimes due to natural features or where development is unsuitable, for example, a natural geological feature or a planning condition requiring public open space. A good illustration of this was referenced in the Authority's Access Studies in 2003. Bramcote Hills Park divides areas of development on the edge of Nottingham, and reaches into the urban areas for over a mile with many links to the rights of way network.
- 6.20.5 Partnership working has been key to the success of multi-user routes. Several formal partnerships have been formed, including with Sustrans, Derbyshire County Council, Borough and District Councils, and those in private industry. The Authority will continue to build upon this, adding value and securing extra funding. For example, the County Council is contributing to a major £50 million 'BIG Lottery Fund' bid with partners to develop the Sherwood area of Nottinghamshire.

6.20.6 The core theme of this project is sustainability and consists of four components; a new visitor centre, a forest recreation scheme, local village initiatives and an extensive multi-user network. The scheme is the initial step towards the County Council's aspirational goal of creating a Regional Park for Sherwood. The multi-user route network will create a circular route within Sherwood connecting with other visitor destinations and local country parks. A significant element of the project includes improving and providing new access to regional centres in the East Midlands and South Yorkshire. If the Lottery bid is successful the delivery of the project is due to start in 2007 with a planned completion date in 2012.

#### **POLICY A1-14**

The County Council will continue to work with its partners in securing and providing safe and traffic free multi-user routes for walkers, riders and cyclists.

Map 11 Potential access routes for Sherwood Living Legends lottery bid



## 6.21 Open Access

- 6.21.1 This new right of access, a major part of the CROW Act 2000, gives people the opportunity to walk freely across 'mapped access land', without having to stay on public rights of way. This 'new' right of access only applies to mapped access land – not the 'right to roam' anywhere.
- 6.21.2 Open Access in Nottinghamshire consists of 584 hectares of both registered common land and 'open country'. In addition to this mapped land, Forest Enterprise has dedicated nearly all of their freehold land (under section 16 of the CROW Act 2000), 1980 hectares as Open Access land countywide.
- 6.21.3 A high percentage of Open Access land in the county is designated either as a Site of Special Scientific Interest (SSSI) or a Site of Importance for Nature Conservation (SINC). The reason for their designation varies between sites but can include geology, flora and fauna. Therefore it is particularly important to work with conservation organisations and landowners to ensure the balance between conservation and access.
- 6.21.4 As the access authority, Nottinghamshire County Council is responsible for administering and facilitating the access of these areas working with landowners, conservation bodies and Natural England. The Authority has powers under the CROW Act to provide information and signage, to appoint wardens, to make bylaws and serve notice to remove obstructions.

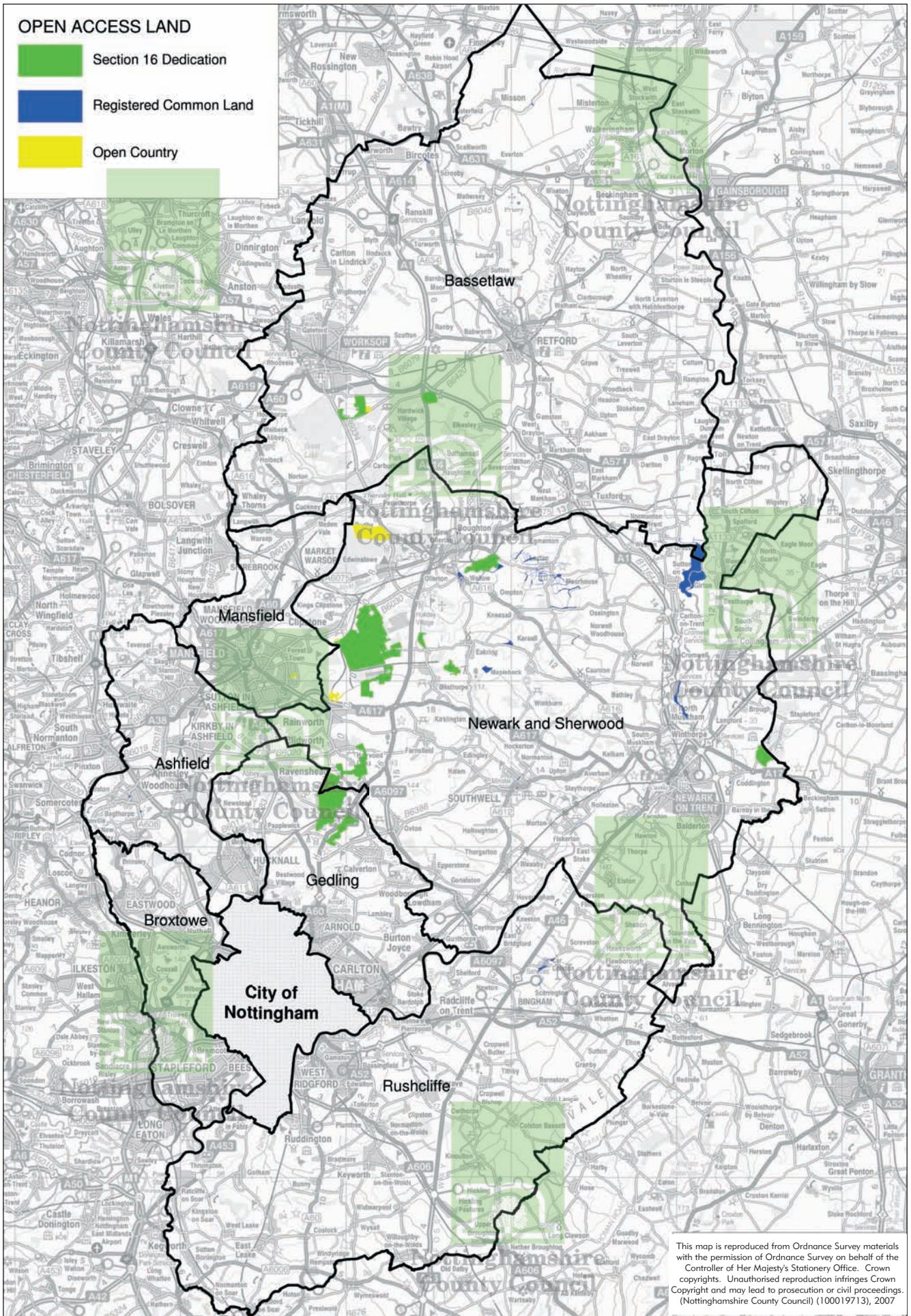
### **POLICY A1-15**

The County Council will work with landowners, Natural England and conservation bodies to ensure members of the public enjoy their rights on foot to Open Access land designated under the CROW Act 2000.



Open access land at Budby Heath

Map 12 Open Access land in Nottinghamshire



## 6.22 Publicity and promotion

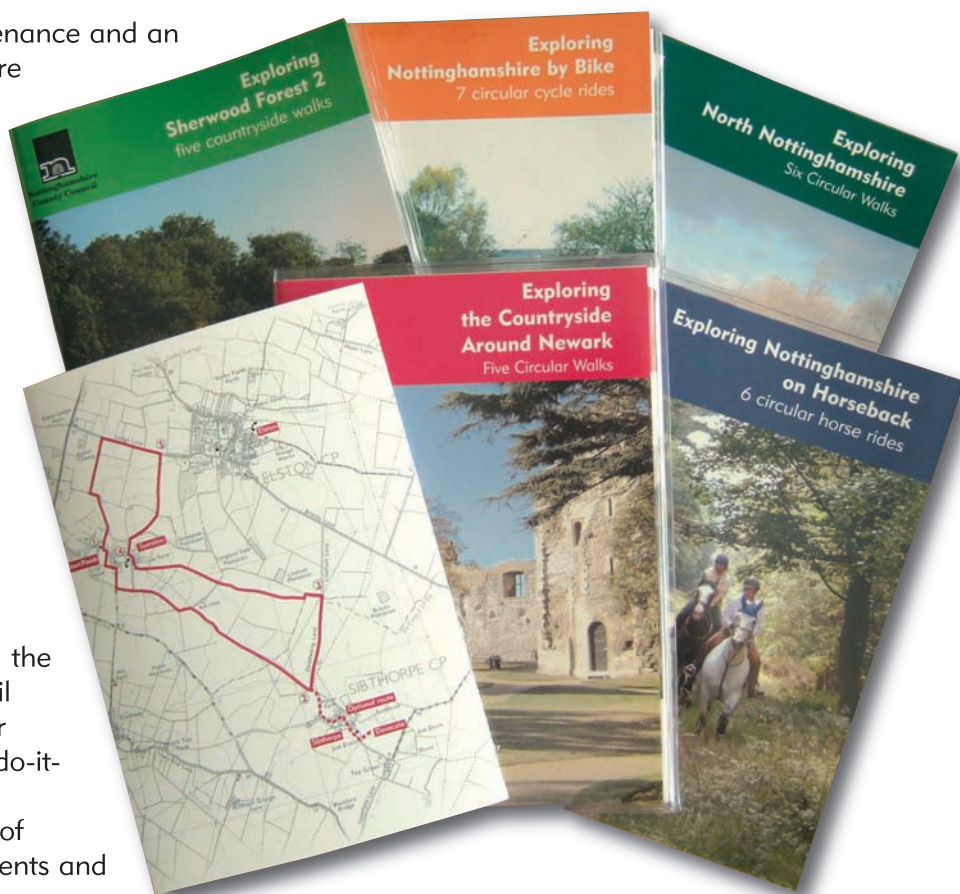
6.22.1 Clearly rights of way maintenance and an up-to-date definitive map are fundamental to 'keeping paths open and available for the public to enjoy'. Nevertheless, the promotion of the network is essential in highlighting the opportunities, increasing usage and maximising the potential of rights of way for both recreational and utility type journeys.

6.22.2 Despite the popularity of walking, riding and cycling, rights of way are in 'competition' with other activities, examples include, the television, the internet, retail shopping and eating out for example. A visit to a busy do-it-yourself store on a Sunday illustrates a shift in the use of leisure time. Even so, residents and visitors to the East Midlands countryside will flock to the popular peaks and dales of the neighbouring Peak District and Nottinghamshire's own honeypots such as Sherwood and Clumber Parks. The county's 2,700 km network has a lot to offer to those who are prepared to explore a little further.

6.22.3 The Council has been promoting rights of way opportunities for a number of years, mainly through the publication of walk and ride leaflets. This has now expanded into themed walk, cycle and ride packs, internet pages, public displays and attendance at local agricultural shows. However, much needs to be done to bring this work to the attention of potential users: the NCC Employee Survey noted that 40.8% of respondents suggested that the Council should provide more information.

6.22.4 Current rights of way and access leaflets produced by the County Council include:

- 'Finding Your Way'. A guide to rights of way in Nottinghamshire
- 7 themed walk packs totalling 38 individual promoted walks
- 1 horse ride pack totalling 6 rides
- 1 cycle pack totalling 7 rides
- 'Out and About'. A gazetteer listing all the available walk, ride and cycling leaflets in the county
- 'Rural Rides Programme'. These popular guided cycle rides are led by volunteer ride leaders and are spread geographically around the county. These rides are an excellent way of both introducing and encouraging cycling to new and 'active' riders



- The Authority is also putting together rural cycling maps highlighting recommended cycle routes on minor roads and rights of way. Other urban based cycle maps are available from the County Council and the District and Borough Councils
- Guided walks programme. Organised in partnership with the Sherwood Forest Trust and led by volunteers.

6.22.5 Information on walking and cycling, particularly off-road family rides, is by far the most requested information. Yet, perhaps the most popular question asked at country shows is “where can I go horse riding?” As noted previously, the Council does produce a horse riding publication – Exploring Nottinghamshire on Horseback. These six circular rides are indeed popular but were very difficult to put together. This is due to the fragmented bridleway network and road safety concerns. The packs by their very nature need to be available to all and must be suited to all riders regardless of their experience, and level of riding skills and horsemanship. The County Council will pursue further opportunities particularly as bridleway development opportunities arise. The Council will also produce a summary leaflet for equestrians outlining their rights, detailing applicable Ordnance Survey maps and where to get further information and help, for example, the British Horse Society.

6.22.6 The County Council promotes countryside access via its website at [www.nottinghamshire.gov.uk](http://www.nottinghamshire.gov.uk). The number of people visiting and using the web is very high and has proven to be a successful promotional tool. The Authority wishes to develop this further by providing updates on rights of way, an on-line map, information on walks and rides, and a forum where members of the public can submit their favourite walks or rides.

6.22.7 Other Local Authorities and organisations in the county also produce various forms of promotional literature, mainly circular walks. The quality and accuracy of this information is sometimes inconsistent. Some organisations do consult with the County Council first to ensure that the rights of way information is correct before they go to print.

#### **POLICY A4-1**

The County Council will encourage local authorities and other organisations that produce walk and ride literature to check the accuracy, status and suitability of public rights of way used in their publications with the County Council.

6.22.8 Greenwood Community Forest, in partnership with others, have produced three ‘Break Free’ packs aimed at people who normally have difficulty in accessing the mainstream rights of way network. These award winning walk packs enable users to make their own informed decisions about whether a promoted walk is suitable. The walks take into account surfacing, gradients, furniture and general facilities information. The Authority will produce, with its partners, leaflets providing information on Access for All.

6.22.9 In the county there are four long distance promoted trails:

1. Trent Valley Way. This is an 80 mile long distance walking trail from Trent Lock on the Derbyshire border to where the River Trent exits the county into North Lincolnshire at West Stockwith. A detailed trail guide and accompanying circular routes pack was published in 1989. This popular guide is currently being revised to take into account changes on the ground, to identify public transport opportunities and to generally bring the publication up-to-date. It is acknowledged that most people tend to split the route into a number of linear walks spread over a period of time. There are aspirations to establish a promoted trail along the whole length of the River Trent from source to confluence. The Council is currently working in partnership with other authorities and the Ramblers Association on this project.
2. Robin Hood Way. This is a 105 mile themed walking route from Nottingham to Edwinstowe with alternative starting points, circular walks and diversions to other sites of

interest. Nottinghamshire's first recreational route was devised in the early 1980's by the then 'Nottingham Wayfarers' Rambling Club'. The trail is promoted and waymarked by volunteers – The Robin Hood Way Association. A dedicated website and trail guide is available. Visit [www.robinhoodway.co.uk](http://www.robinhoodway.co.uk) for further information.

3. Midshires Way. This 225 mile walking and horse riding trail links the Ridgeway in Buckinghamshire with the Pennine Bridleway and Pennine Way, and the Trans Pennine Trail in Derbyshire. Not all sections are open to horse riding (particularly in Derbyshire), and in Nottinghamshire there is little off-road opportunity because of where the route enters and exits the county. The Council will continue to seek opportunities in improving signage, verge management and road crossings. The County Council is working with other authorities to provide updated information. However, the project is currently on hold due to a gap in the network – there is no bridge over the River Trent at Sawley. Derbyshire County Council is in the process of providing a new multi-user bridge.
4. The Cuckoo Way is a 46 mile long distance walk following the towpath of the Chesterfield Canal from Chesterfield to the River Trent at West Stockwith. The path provides a useful link between the Trent Valley Way, the National Cycle Network at Worksop and the Trans Pennine Trail in Derbyshire. The promoted route in Nottinghamshire is part definitive and part permissive footpath. Some sections in Worksop and Retford have been surfaced to accommodate cyclists. A Walking pack is available detailing walks along the length of the Chesterfield Canal.

6.22.10 As discussed earlier signing and waymarking also raises users confidence and is certainly a way of promotion in its own right. There can be a negative side to waymarking when other organisations design and put up their own waymarks. Occasionally these waymarks cause confusion either through the proliferation of the discs or by providing confusing or wrong messages such as the status of a public right of way (see Policy A1-6)).

6.22.11 Due to the nature of promoted routes they need to be maintained to a very high standard. The County Council will therefore, liaise very closely with all partners to ensure that any proposed promoted routes are suitable in the first instance. Where a route is appropriate, it is proposed to increase the frequency of inspections and any necessary maintenance ensuring that the route is maintained to a high standard.

6.22.12 Information provision is not just about informing users but also about providing advice, guidance and responsibilities to all stakeholders including farmers, landowners and others such as developers and planners. For example, the County Council has been drawing attention to farmers about what their legal obligations are regarding reinstatement of paths after ploughing and cropping. This takes the form of direct mail drops, press releases and displays at local agricultural shows. The Authority intends to expand this type of information through the production of hard copy and through the development of on-line information.



Cyclists on a 'Rural Ride' guided cycle ride.