

## Rights of Way Committee

**Wednesday, 28 November 2012 at 10:00**

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

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### AGENDA

- |          |   |                |
|----------|---|----------------|
| <b>1</b> | <b>M_10 October 2012</b><br>Details   | <b>5 - 10</b>  |
| <b>2</b> | <b>Apologies for Absence</b><br>Details   | <b>1-2</b>     |
| <b>3</b> | <b>Declarations of Interests by Members and Officers:- (see note below)</b><br>(a) Disclosable Pecuniary Interests<br>(b) Private Interests (pecuniary and non-pecuniary) | <b>1-2</b>     |
| <b>4</b> | <b>Declaration of Lobbying</b><br>Details   | <b>1-2</b>     |
| <b>5</b> | <b>Add a Bridleway to Definitive Map - Carlton in Lindrick Report</b><br>Details  | <b>11 - 26</b> |
| <b>6</b> | <b>Application to add Bridleway to Definitive Map and Statement - Clipstone and Warsop Report</b><br>Details  | <b>27 - 48</b> |
| <b>7</b> | <b>Add Footpaths to the Definitive Map - Elkesley Report</b><br>Details   | <b>49 - 56</b> |
| <b>8</b> | <b>Application for a Gating Order at Clarksons Alley Mansfield</b><br>Details   | <b>57 - 70</b> |

**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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(3) Persons making a declaration of interest should have regard to the Code of Conduct and the Council's Procedure Rules. Those declaring must indicate the nature of their interest and the reasons for the declaration.

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## **minutes**

Meeting	RIGHTS OF WAY COMMITTEE
Date	Wednesday 10 October 2012 (commencing at 10.00 am)

### **membership**

Persons absent are marked with 'A'

### **COUNCILLORS**

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

A     Allen Clarke  
       John Cottee  
       Jim Creamer  
       Sybil Fielding  
       John Hemsall

Rachel Madden  
Sue Saddington  
Andy Stewart  
Jason Zadrozny

### **OFFICERS IN ATTENDANCE**

David Forster	- Governance Officer
Steven Eastwood, Snr	- Principal Legal Officer, Legal Services
Susan Bearman	- Senior Solicitor
Neil Lewis	- Team Manager Countryside Access
Eddie Brennan	- Definitive Map Officer/Commons and Village Greens Officer
Dr Tim Hart	- Senior Definitive Map Officer

### **MINUTES**

The minutes of the meetings held on 27 June 2012 were taken as read and were confirmed and signed by the Chairman.

### **MEMBERSHIP**

The Clerk to the Committee informed members that Councillor John Hemsall had been appointed to the Committee in place of Councillor Mel Shepherd.

### **APOLOGIES FOR ABSENCE**

An apology for absence was received from Councillor John Cottee (Other County Council business)

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

Councillor Gail Turner and Rachel Madden declared a private interest in agenda item 4 Selston Footpath No 72- Extinguishment on the grounds that they both sit on the Selston Parish Council.

## **DECLARATIONS OF LOBBYING BY MEMBERS**

Councillor Jason Zadrozny declared that he had received a number of e-mails over the years from residents living in Selston who support the extinguishment of Footpath 72 but this has had no influence on his consideration of the item.

## **SELSTON FOOTPATH NO 72 - EXTINGUISHMENT**

Mr Brennan introduced the report and informed members that he had recently received an e-mail representation from the Nottinghamshire Footpath Preservation Society whereby it stated that the Society still objects to the to the proposed extinguishment of Selston Footpath No72. The Nottinghamshire Footpath Preservation Society stated that their members had walked the route over the years and therefore wished it to remain open for people to enjoy.

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

Mrs Parker, local resident, who lives on the route of Footpath No. 72 informed members that she had been a resident since 1989 and had kept a diary of use of the path and there had been none. She also informed members that there had been a film uploaded to Youtube regarding the path which showed her garden, security system back door and children's play things and she felt that this was an invasion of her privacy. Recently she had received a letter asking that she keeps all of the path clear of obstructions, which she has done and has always been happy to do. However, despite the request in the letter, Mrs Parker will not be doing this on land which she does not own and therefore not within her jurisdiction.

In response to questions Mrs Parker responded as follows:-

- The Japanese Knotweed that grows on the path outside her land is not growing into conifers in her garden and she understands that it cannot be simply dug up but must be dealt with in a particular way.
- She has extensive CCTV footage and photos that shows no use of the path and as a part time worker is at home during the day and has not seen anyone walking the path.

Ms S Ball, Clerk to the Selston Parish Council, informed members that she had visited the Footpath on a number of occasions and had never seen anyone use the path. She also stated that there is no evidence that she has seen that the footpath is regularly used e.g. plants are broken or bent due to use as a footpath. She also informed members that while she gets calls regarding other public rights of way she

has never received a phone call requesting that anything be done with Footpath No72.

No questions were asked.

Councillor S Wilson, Selston Parish Council, informed members that he had lived less than 300 yards away from the path for more than 40 years and that the footpath was not in existence until 5 years ago. He informed members, that the paths definitive line would have passed along and over the roof top of the Miners Arms Skittle Alley which was in existence there until 9 years ago.

No questions were asked.

Following the public speakers members of the committee discussed the item.

On a motion by the Chairman and seconded by Councillor R Madden it was unanimously:-

### **RESOLVED 2012/015**

That the Order to extinguish Selston Footpath No.72 be referred to the Secretary of State for determination on the basis that having considered the evidence before the Authority, the Authority is satisfied that it is expedient to confirm the Order

### **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 EATON AND BABWORTH**

Dr Hart took members through the report and informed members that the recommendation is purely on documentary evidence and not public usage evidence.

Following the opening remarks Mr Geldart LL.M, an independent agricultural lawyer representing the landowners, spoke against the modification

Mr Geldart informed members that Mr John Ogle, an adjacent landowner had not been served notice of the proposed Modification Order. Mr Geldart also informed members that in the main the landowners would not object to the majority of the proposed modification for a bridleway, however part of the route between the gate and Morton Farm is not shown on the definitive map. The landowners would object to any modification order for that part, but would consider supporting a diversion order.

In response a question from the legal advisor to the Committee to questions Mr Geldhart confirmed that:-

- Mr Ogle ownership if of land near to the claimed route, rather than the claimed route itself.

- Whilst he did not receive formal notice, the landowner, Mr Ogle was made aware of the application and does not consider that he had been prejudiced at all.

On a motion by Councillor Hemsall, seconded by Councillor Stewart it was:-

**RESOLVED 2012/015**

That a Modification Order be made to register the route as a public bridleway as, for the reasons as set out in the report, the Committee considers that the public bridleway rights exist on balance of probabilities. The Committee further resolved that officers be authorised to investigate the issue of a Diversion Order upon receipt of an application from the landowners, with a report regarding any Diversion Order being presented to a future meeting of the Committee.

**CONSIDERATION OF AN APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF ELKESLEY**

Dr Hart took members through the report and informed members that the recommendation is purely on documentary evidence and not any public usage evidence.

Following the opening remarks of Dr Hart a number of speakers were given the opportunity to speak and summaries of those speeches are set out below.

Mr Higgs, Farm Manager, JCM Glassford Limited spoke against adding the footpaths to the definitive map. He informed members that the farm is a working farm and that there are heavy goods vehicles using the track and the use of hard hats and high visibility jackets in the vicinity is mandatory. The objection is not about keeping people off the land but having safe access routes for the public.

In response to questions Mr Higgs responded as follows:-

- We have facilitated areas of Environmental Stewardship so as not to disturb wildlife whilst birds are nesting.
- A diversion would be a compromise that could be looked at in this instance as we are not trying to stop people enjoying the land but wish to act within safety parameters.

Mr Horrocks, local resident and owner of Forest Farm stated that parcel No 146 in the Finance Act valuation book did not have a claim for a footpath across that piece of land and it is beyond belief that a claim for a reduction would not have been made if one could have been, and this shows that there was not a public right of way over the land. Mr Horrocks also stated that the land in question has 6ft banks across and also is used as arable farming land.

No questions were asked.

Dr Hart responded to information presented and informed members that although there was no claim for parcel 146 in the valuation book, claims were made for the plots on either side of plot 146 and beyond and it would seem sensible to conclude on balance of probability that the footpath did bridge across this land as well.

With the agreement of the Committee Mr Thompson, Ramblers Association was allowed to speak and he informed members that the claim has been submitted because it allows people to have a circular walk around Elkesley without having to walk along the busy A416.

Following the public speakers members of the committee discussed the item. Members stated that whilst they were concerned that the new bridge over the A1 would have an effect on the route which is subject of this claim. Members were most concerned that given the evidence presented today, they were unsure of the significance of a reduction not having been claimed over parcel 142 and therefore that this aspect should be further investigated and more information brought back before committee on this point.

On a motion by the Chairman seconded by Councillor Stewart it was:-

**RESOLVED 2012/016**

That the item be deferred until the next meeting

The meeting closed at 11.15 am

**CHAIRMAN**





28 November 2012

Agenda Item:5

## **REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)**

### **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**

#### **Purpose of the Report**

1. To consider an application made by Mr. Walker to record a route as a public bridleway on the Definitive Map and Statement for the Parishes of Carlton in Lindrick and Wallingwells. A map of the general area is shown as **Plan A** while the route under consideration is shown on **Plan B** marked between points B and L.
2. The effect of the application, if accepted would be to upgrade Wallingwells Footpath No. 3 to a bridleway (point B to point D); to upgrade the western part of Carlton in Lindrick Footpath No.1 to a bridleway (point D to point F); to add a bridleway along an unregistered track between the junction of Carlton in Lindrick Footpath No. 1 and Owday Lane (point F to point G); to add a bridleway along the track and field from the junction of Owday Lane to its junction with Carlton in Lindrick Footpath No. 22 (point G to point I); to upgrade part of Carlton in Lindrick footpath No. 22 to a bridleway (point I to point K) and to upgrade the eastern part of Carlton in Lindrick Footpath No. 1 to a bridleway from its junction with Carlton in Lindrick Footpath No. 22 to its junction with Carlton in Lindrick Bridleway No. 18 (point K to point L) . The footpath between points F-K is not affected by the claim or by this report.

#### **Information and Advice**

3. The application for a Modification Order was made by Mr. Walker of Holme House Farm, Carlton in Lindrick in August 2010. Twenty four user evidence forms were submitted in support of the claim all claiming use of the route on horseback. Only three of these claimants agreed to be interviewed. A summary of the user evidence is shown in **Table 1**. As well as this, interviews were also carried out with the current farmer, and farm manager, the owners of the land as well as other people who had knowledge of the land around the claimed route. What follows is a substantive summary of the evidence that has been submitted.



## **Legal Background**

4. The application is 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”.
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 over land in the area to which the map relates”.
6. 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’ (without force, secrecy, or permission) 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. The 20 year period is to be calculated retrospectively from the date when the right of the public to use the way is first brought into question.
7. 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.
8. Should the test under Section 31 fail, then it may be appropriate to consider whether the way has been dedicated 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 the use of a path by the public ‘as of right’ may support an inference of dedication and may also show acceptance by the public.

## **The Current Situation**

9. The County Council was contacted by Mr. Walker of Holme House Farm to ask if it was possible to upgrade part of Carlton in Lindrick Footpaths Nos. 1 and 22 and an unregistered path to a Bridleway from Holme House Farm to its junction with Carlton in Lindrick Bridleway No. 18 (E-F-G-H-I-K-L). Mr. Walker stated that he was prepared to dedicate a bridleway along the connecting

section of footpath that runs from Holme House Farm to the bridleway that runs from Owday Lane to Corn Mill Farm (E-D-B) that connects to a bridleway in Rotherham Metropolitan Borough Council running from points A to C. An officer of the County Council then contacted Ramsden Estates to see if they would be prepared to dedicate a bridleway from Holme House Farm to Carlton in Lindrick Bridleway No. 18 (E-F-G-H-I-K-L) to link up to the one that Mr. Walker was prepared to dedicate (E-D-B). It was also suggested that this proposal could be linked with a diversion of Carlton in Lindrick Footpaths No 1 and 22, as this had been something that Ramsden Estate had previously suggested. This was considered by the Estate and they decided that they did not want to agree to the proposals saying that there had been little horse use along the route until recently and that this use had been challenged. Following this, Mr. Walker then submitted an application for a Modification Order.

10. The claimed route currently exists as a track leading from the Bridleway on the County Boundary of Nottinghamshire and Rotherham Metropolitan Borough Council and proceeding to the south of Holme House Farm. The claimed route then continues through a small gate and then along a field edge path and then through a gap in the hedge adjacent to Owday Lane although it does not connect directly to the road. The claimed path then continues around the back of Owday Lodge and then across a field to join up with the existing bridleway.
11. For ease of reference in this report, the claimed route from the County Boundary to Owday Lane (B-D-E-F-G) is described as being the western route whilst the claimed route running from Owday Lane to join Carlton in Lindrick Bridleway No. 18 (G-H-I-K-L) is described as being the eastern route.

## Documentary Evidence

12. The first time that any part of the claimed route is shown on any plans is on the 1768 Carlton in Lindrick Inclosure Award and plan. Part of the claimed route that runs from Owday Lane to the County Boundary (G-F-E-D-B) is shown on the Inclosure map and labelled as Wallingwells Road. The description of this route in the Inclosure award is as follows:

*'another public horse and footway and private carriage and Driving way shall be made branching out of the said Shire Oaks Road at the east end of the said Holme Field and leading along the same allotments Nos. 70, 68 and 67, hereby made to the said William Mellish and John White respectively and on the north end of Jeremiah Whitehead's allotment no. 69 to an ancient gate leading into the park of the said John White in the liberty of Wallingwells where the said road hath here to fore usually gone which said road is hereby directed to be used by the owners and occupiers of lands at Wallingwells and Carlton'.*

The crossfield section of Carlton in Lindrick Footpath No.1 and 22 (points J-K-L) are not shown on the Inclosure Award plan nor mentioned in the Award.

13. In an Estate map of 1769, one year later than the Inclosure Award and entitled 'Map of the Manor of Carlton in Lindrick in the County of Nottingham 1769', the

route mentioned in the Award is shown by a double dashed line with all the allotments named and numbered. This route is not labelled nor is there any key showing what status the plan gives this route but it is in exactly the same location as the Inclosure Award bridleway and identifies all the landowners and parcel numbers shown on the Award plan. Again, there is no mention on this Estate plan of the crossfield sections of Carlton in Lindrick Footpaths No.1 and 22, nor of the section of path that goes around the back of Owday Lodge.

14. The Chapman Map of 1774 shows the same route as the Inclosure Award and is marked on the map by a double dashed line and is described as being an 'open road' in the key. It is important to note that there is no mention on the key for footpaths and so this must be of a different status. Again, there is no mention on this plan of the crossfield sections of Carlton in Lindrick Footpaths No.1 and 22, nor of the section of path that goes around the back of Owday Lodge.
15. On the Sanderson Map of 1835 the awarded route is again shown from Owday Lane past Holme House Farm to the County Boundary and is shown by double dashed lines which are described in the key as being a 'cross road'. There is no annotation on the key for a public footpath. Nothing is shown on the plan for the continuation of the claimed route around the back of Owday Lodge nor for the crossfield sections of Carlton in Lindrick Footpaths No. 1 and 22.
16. On the Ordnance Survey first edition, dated sometime between 1830 and 1880, the Inclosure award route is shown as a partly enclosed route running from the County Boundary past Holme House and then joining Owday Lane near Owday Lodge. There is no indication of any of the eastern route.
17. The 1886 Ordnance Survey 25 inch plan shows the path set out in the Inclosure Award but being labelled as FP (footpath). For the first time the crossfield sections of Carlton in Lindrick Footpath No. 1 and Carlton in Lindrick Footpath No. 22 are shown. Both these are labelled as FP (Footpath). Nothing is shown on this plan for the claimed path around the back of Owday Lodge.
18. Only the eastern sheet for the 1910 Finance Act plan exists which does show the extreme eastern part of the Inclosure route as well as Footpaths No. 1 and 22 to the north of Owday Lodge. The claimed route is included in hereditament 210 pt, meaning that it is part of a much larger land holding. There was a reduction in recognition of there being a public right of way crossing the land but it is impossible to identify with any certainty to which path this relates as there are a number of paths that cross the land parcel.
19. The 1922 and 1923 Ordnance Survey 25 inch plans show the same arrangement of paths as the 1886 plan, apart from the labelling of the footpath on the western section no longer being on the claimed route but now on the footpath that connects to it.
20. In response to the National Park and Access to the Countryside Act 1949, Parish Schedules were completed for the Parishes of Carlton in Lindrick in

1954 and Wallingwells in 1953. The section of the path that falls within the Parish of Wallingwells, point B to point D, is marked on the plan and labelled CRB (Cart Road Bridleway) and records a field gate at either end of the section. The written entry in the Schedule shown as number 3, records the status of this path as 'cart road mainly used as a bridleway' indicating that it has 'uninterrupted user by public for over 30 years'. No mention is made of the Inclosure award of 1768.

21. The Carlton in Lindrick Parish Schedule recorded paths, not only in its own parish, but also some of those that were in the parish of Wallingwells. Not all of the route shown on the Inclosure award was claimed by the parish and the part that was claimed (D-E-F-K-L) was recorded in the schedule as a footpath with uninterrupted use for over 60 years and that it was part awarded in 1768. It is also stated in the Schedule that the Inclosure Award was a document that was considered. However, the section of path from F to G, which is the continuation of the Awarded path to Owday Lane, was not recorded on the Schedule. However, on the Schedule plan there is an annotation in pencil of 'BR' and 'Awarded as Private Occupation and Bridle Road' shown for this unrecorded section. There is no indication if this comment was written on the plan when the claimed paths were being considered or if it was included at some later date. The claimed path around Owday Lodge was not claimed on the Schedule although a footpath was shown leading from Owday Lane to join what was to become the eastern section of Carlton in Lindrick Footpath No. 1. This path is the current Carlton in Lindrick Footpath No. 22.
22. After the Parish Schedules were submitted to the County Council, the information was considered by the Divisional Surveyor in 1954 who noted that there was a conflict between the Schedules with the Wallingwells one showing the route from B to D as a 'cart road mainly used as a bridleway' and its continuation being shown in Carlton in Lindrick as a footpath. However, there is nothing in either Parish Schedule nor is there any file note contained in either the Wallingwells or Carlton in Lindrick parish files to indicate that the Divisional Surveyor considered the Inclosure Award. The only reference is a note in both Schedules to say that the paths were 'reclassified by the Divisional Surveyor' but no indication as to what status the path was to become. The status of this reclassification was shown on the 1955 Draft Map which showed that the 'cart road mainly used as a bridleway', section B to D, had been shown as a footpath as had the continuation from D to F to L. What is now Carlton in Lindrick Footpath No. 22 was also shown as a footpath. Nothing was shown for Section F to G, the remaining section of the Awarded path, nor the path that is being claimed around Owday Lodge. The same arrangement and status of paths was also shown on the Provisional Map published in 1957 and finally the Definitive map published in 1964, to which no objections were received. The Ordnance Survey plans published after the Definitive Map was produced do not provide any more additional information.
23. In 1993 an Order was made to change the boundaries between Nottinghamshire and South Yorkshire which transferred part of the parish of Wallingwells into South Yorkshire and this included what was Wallingwells

bridleway No. 2 leading from Owday Lane to the current Wallingwells Bridleway 1.

24. The aerial photographs dated 1996 and 2000 do not show a clear wear line along the track from E to G and it is not until 2004 that this becomes apparent. There is no distinct wear line for the claimed path around Owday Lodge. However, it must be borne in mind that aerial photographs are only of limited value in determining use of any particular route.

### **Claimed use**

25. Twenty four rights of way user evidence forms were submitted in support of the application. However, these forms only contained basic information about the use of the claimed path and it is common practice in assessing applications for interviews to be carried out with as many people as possible to gather additional information on specific points concerning the claim. The majority of the claimants were contacted to see if they were willing to be interviewed but only three of them responded. Two other claimants sent in additional information following another letter sent from the County Council asking for points of clarification on some of the key points of the application. Therefore the analysis of the information in support of the claim has to take this into account.
26. One area that hasn't been clarified sufficiently is the extent of the claim, as 11 of the claimants do specify in their user evidence forms that the path that they are claiming is only from Church Lane to Owday Lodge or Owday Lane. The section from Owday Lodge to the Holme House Farm (E to G) has not been mentioned on these user evidence forms, although it is part of the route for which the application has been made. It is possible to presume that the claimants use included this section, as the plans submitted with the user evidence forms do show this section, but it appears that all the plans have been marked up by the same person as they are all in the same colour. Therefore it was necessary to clarify the extent of the claimants' use but as mentioned previously the County Council has only had a very limited response.
27. The other point to note is that none of the claimants state in their forms that they have used the section of path from Holme House Farm to the County boundary (E to B), although again this is shown on plans that were submitted. It is possible that the claimants have used this section on horseback with the permission of Mr. Walker the owner, but only one of the claimants stated this when she was interviewed. However, Mr. Walker has said that he is prepared to formally dedicate this section of the claim as a Bridleway anyway, as he is the owner of the land.
28. **Date of Challenge.** According to the evidence submitted by the applicant, the date when his use of the path was challenged appears to be in 2009 when a wire was put across the gap in the hedge at point G near Owday Lodge. At the same time a sign was erected with the wording 'no horses allowed, danger of

wire'. This date coincides with what the current farmer and land agent state. Therefore the relevant 20 year period would be from 1989 to 2009.

29. The information provided by the claimants has been summarised in **Table 1**. As can be seen, the use of the claimed route does go back to 1960 in the case of Mr. Walker, the applicant, with 3 people using from the late 1970's / early 1980's, and with 5 people starting in 1990. This makes 8 people who claimed to have used the route for the full 20 years from 1989 to 2009. Use then increases until 22 people have claimed use in 2010.
30. **Category of use and frequency.** As shown on **Table 1**, all of the claimants have stated that they have used the claimed path on horseback with none of them claiming use on foot. All but one of the claimants have stated that they have used the claimed route at least once a week, but there has been no clarification from them to indicate if this was the same throughout all the years of their use.
31. In order for this evidence to be valid, it must be demonstrated, in accordance with **Jones v Bates (1938)** that use was 'as of right' and was not exercised in secrecy, with permission or by force. The claimants that have provided information have stated that they have used the path both in the morning and evenings and during the week and weekend. This use would cover when it could reasonably be expected that someone would be out riding and so would not have been in secret. In the user evidence forms none of the claimants say that they had been given any permission to use the route. However, one of the claimants did say that she had permission from Mr. Walker to use the track owned by him from (E to B). None of the claimants states that they had to use force to use the path.
32. **Use without interruption and no intention to dedicate.** Mr. Walker is the only one of the claimants who states that they were ever verbally challenged. He says that this was in 2009 when he was challenged by a tractor driver. Mr. Walker is also the only one of the claimants who mentions that in 2009 for about four weeks there was a wire strung across the gap between two fields at point G. He also mentions that there was a stile at point E near Holme House Farm which was erected without his permission but was removed after several weeks. According to Mr. Walker, whilst the stile was there, horses used a gap in the hedge to rejoin the path further down and after the stile was removed a gap remained for 2 years which was then replaced by a gate that is there now. Mr. Walker does not give any precise dates of when this took place.

## Consultation

33. Following a consultation, information was submitted from the current landowners of the Ramsden Estate affected by the majority of the claim, the tenant farmer and foreman, the Parish Paths Warden and contractor, the manager of the Carlton Shoot as well as from four members of the public who have knowledge of the path.

34. **The stile.** According to Mr. Fisher, the tenant who farms the field to the east of Holme House Farm, there was a five bar gate at point E that was so overgrown people had to climb over it. When it could be opened there was only just enough room to be able to squeeze by but not wide enough to be able to get a horse through. Mr. Doughty, who was the Parish Paths Partnership warden for Carlton in Lindrick inspected all the public rights of Way in 1995 and then drew up a list of works to be carried out. Following on from this, a works schedule was then issued for the erection of stiles and finger posts as well as for grass cutting for the parish. Mr. Doughty remembers that it was proposed to erect a stile at this location, not for the purposes of stock control but to prevent unauthorised use and that he had agreement from the owner of Holme House Farm to erect it. The contractor who erected the stile thinks that this was probably in 1996 and remembers that he had to cut into the 5 bar gate to erect the stile, and at that point there was no other way through the hedge. The contractor who undertook maintenance in the parish remembers the stile being there for at least 4 years. The stile was confirmed as being in place up to at least 2000 by Mr. and Mrs Turley, as they used that path on a regular basis for running and by the owner of Owday Lodge who moved into the property in 2000. Mrs. Turley remembers an incident when the stile was in place when she was lifting her bike over the stile and she was challenged by Mrs. Walker (Mr. Walker's wife), who said that the path was only a footpath. The stile was also confirmed as being in place for a number of years by Mr. and Mrs. Hazlehurst, who were members of the Ramblers Association who took a keen interest in the paths in Carlton in Lindrick and Wallingwells.
35. **The gate.** It seems to be generally agreed that the stile at point E was replaced by Mr. Walker with a gate and Mr. Fisher, the tenant farmer thinks that this may have been as recently as 2007. Mr. Fisher and Mr. Rowley also state that when the stile was removed this seemed to coincide with a sharp increase in use of the claimed route by horses and with the number of horses that were kept at Holme House Farm.
36. **The Gap.** It seems that the gap at point G has been open for the majority of the claim period as it was a vehicular access between two fields, and only in about 2009 that a wire has been put across it to try and prevent use by equestrians. Mr. Fisher states that it has been cut and replaced 3 times. This is confirmed by Mr. Somers who helps to run the shoot, who states that the wire was cut within 2 days of it being erected. Due to the wire being cut a chain has now been put in the gap.
37. **Permission.** None of the current owners, tenants or land agents has given any permission for horse riders to use any part of the claimed route that is on the Ramsden Estates Land (between points E-F-G-H-I-K- L).
38. **Challenges.** The owners, the farmer and farm manager all have given instances of when they have seen people using the path on horseback and have challenged them. They state that despite the challenges, horse riders have still used the paths or have turned back once they have seen the farmer or shoot manager approaching them.

## Conclusion

39. Of great significance is the Carlton in Lindrick Inclosure Award of 1768 which very clearly sets out a 'public horse and footway' from the County Boundary to Owday Lane, point B to G. Although this document was mentioned in the Carlton in Lindrick parish schedule, it appears not to have been known by the person who completed the Wallingwells schedule. The annotation on the Carlton in Lindrick plan about there being an Inclosure bridleway appears to have been added after the schedule was compiled. When the Divisional Surveyor considered the difference in status of the claimed path that crossed from Wallingwells to Carlton on Lindrick, no mention was made that he considered the evidence in the Inclosure Award nor as to why the whole of the awarded bridleway was not included on the Draft Map. There is no record of any investigation that was carried out to establish the correct status of the awarded bridleway.
40. No reference is made in either of the Parish Schedules nor the County Council Parish files that the Carlton In Lindrick Estate plan, the Chapman Map or Sanderson Map were ever considered as part of the 'reclassification' process by the Divisional Surveyor to record part of the Inclosure route as a footpath and these can therefore be described as being new evidence that was not previously considered when the Definitive Map was being produced. There is no record that the bridleway shown on the Award and plan has been stopped up by due process.
41. Turning to the user evidence that was submitted in support of the claim for a bridleway, whilst there are twenty four members of the public who submitted user evidence forms, only three of them agreed to be interviewed to provide additional information. It was particularly important to interview the claimants as there were a number of points that needed to be clarified as part of the investigation, concerning the extent of the route being claimed as well as information concerning the stile. Since the County Council got such a limited response for requests for interviews a letter with a form asking questions about use of the route was sent to the claimants which also received a poor response.
42. Mr. Walker was the only one of the claimants who provided information about the stile at point E who remembers it to have been there for only a matter of weeks. The landowner and tenant farmer disagree on this point saying that the stile was there from the mid 1990's and was there for about 8 to 10 years. However, the information provided by the Parish Paths Warden and the Parish Council contractor is detailed and is independent from both the claimants and the landowners and tenant. Therefore there seems to be a period between 1996 and at least 2000 when a stile was in place at point E which would have prevented horse use at that point. Although horses may have been going through the hedge at another point, as suggested by Mr. Walker, this would be a separate route to the one that has been claimed. Due to the fact that there has been no response from the majority of the claimants to clarify this point,

and the contemporaneous and independent nature of the Parish Paths Warden's records, the chronology provided by the Parish Paths Warden is considered to be the most accurate.

43. In *Norton v Bagshaw (1994)* it was held that the wording of Section 53(3)(c)(i) referred to in paragraph 6 above, provides that in deciding whether a public right of way exists, there are two tests; a) whether a right of way subsists (known as 'test A') and b) whether a right of way is reasonably alleged to subsist ('test B'). It was also held that for test B to be met, it is necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a public right of way exists.
44. Having analysed the evidence currently before the Council, it is the officers' view that the stile at point E prevented horse use and would count as being an interruption. This would therefore mean that the part of the claimed route entirely reliant on user evidence, (between points G and L) had not 'been enjoyed by the public as of right and without interruption' during the 20 year period. However, there is documentary evidence showing that the section of the claimed route from B to G was shown on the Carlton in Lindrick Inclosure Award and therefore Test A is satisfied that a right of way subsists and that a Modification Order should be made for the section of path from Owday Lane to the Bridleway running from Corn Mill Farm to Owday Lane.

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

1. This report contains an analysis of the evidence submitted and it fulfilled the relevant statutory criteria outlined in paragraph 5.

#### **Statutory and Policy Implications**

2. 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 approves 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 above, the evidence demonstrates on a balance of probabilities that public bridleway rights exist.

- 2) It is RECOMMENDED that Committee turns down that part of the claim from Owday Lane to the junction with Carlton in Lindrick Bridleway No. 18 (points G-L) as, for the reasons set out above, the evidence does not demonstrate that the existence of a public bridleway is reasonably alleged.

**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 – 13/11/2012]**

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 – 13/11/2012]**

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

#### **Background Papers**

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

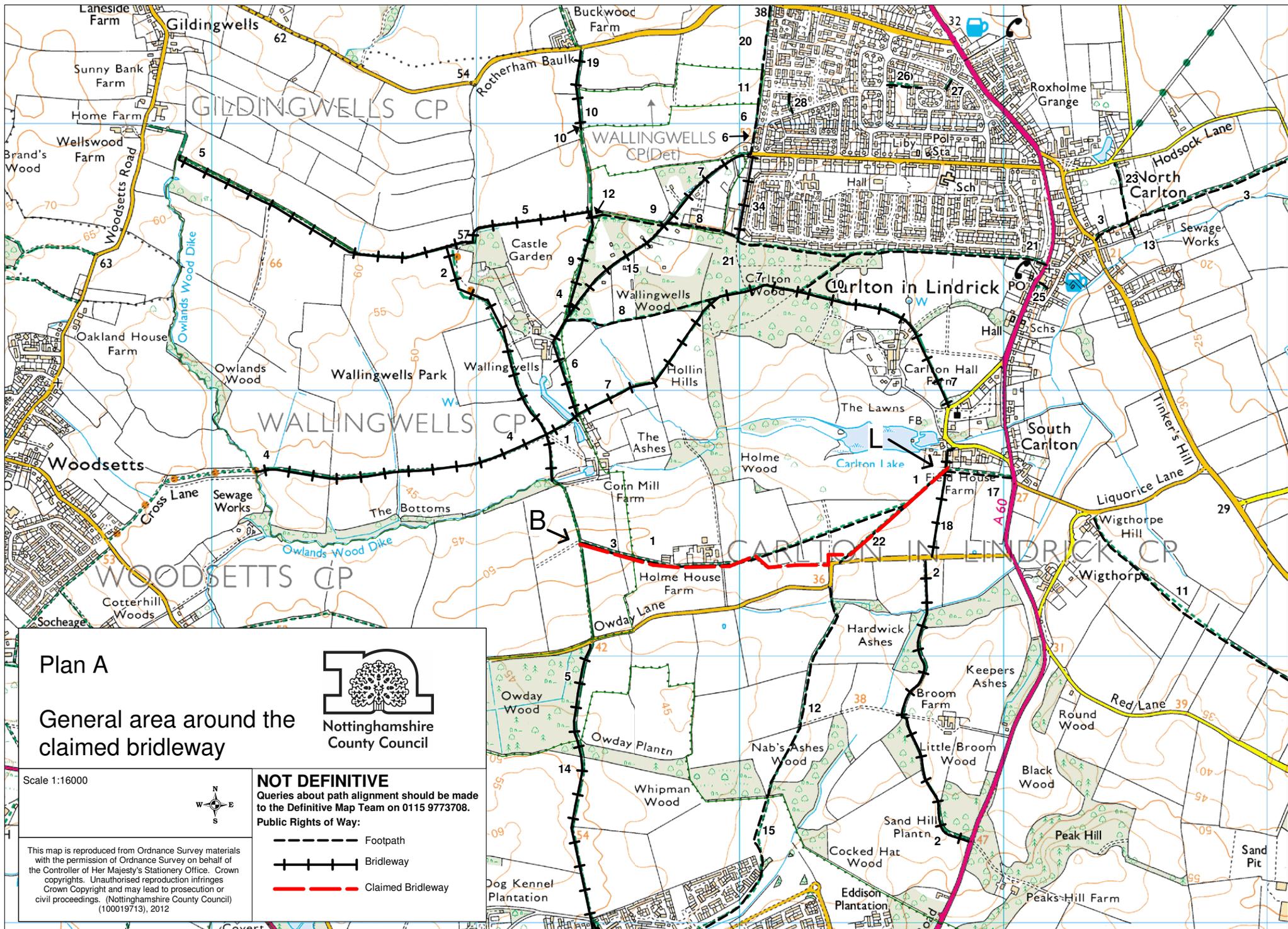
The Modification Order Application case file

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

Worksop North East and Carlton

Councillor Alan Rhodes

ROW 86



Plan A

General area around the claimed bridleway



Nottinghamshire County Council

Scale 1:16000



**NOT DEFINITIVE**

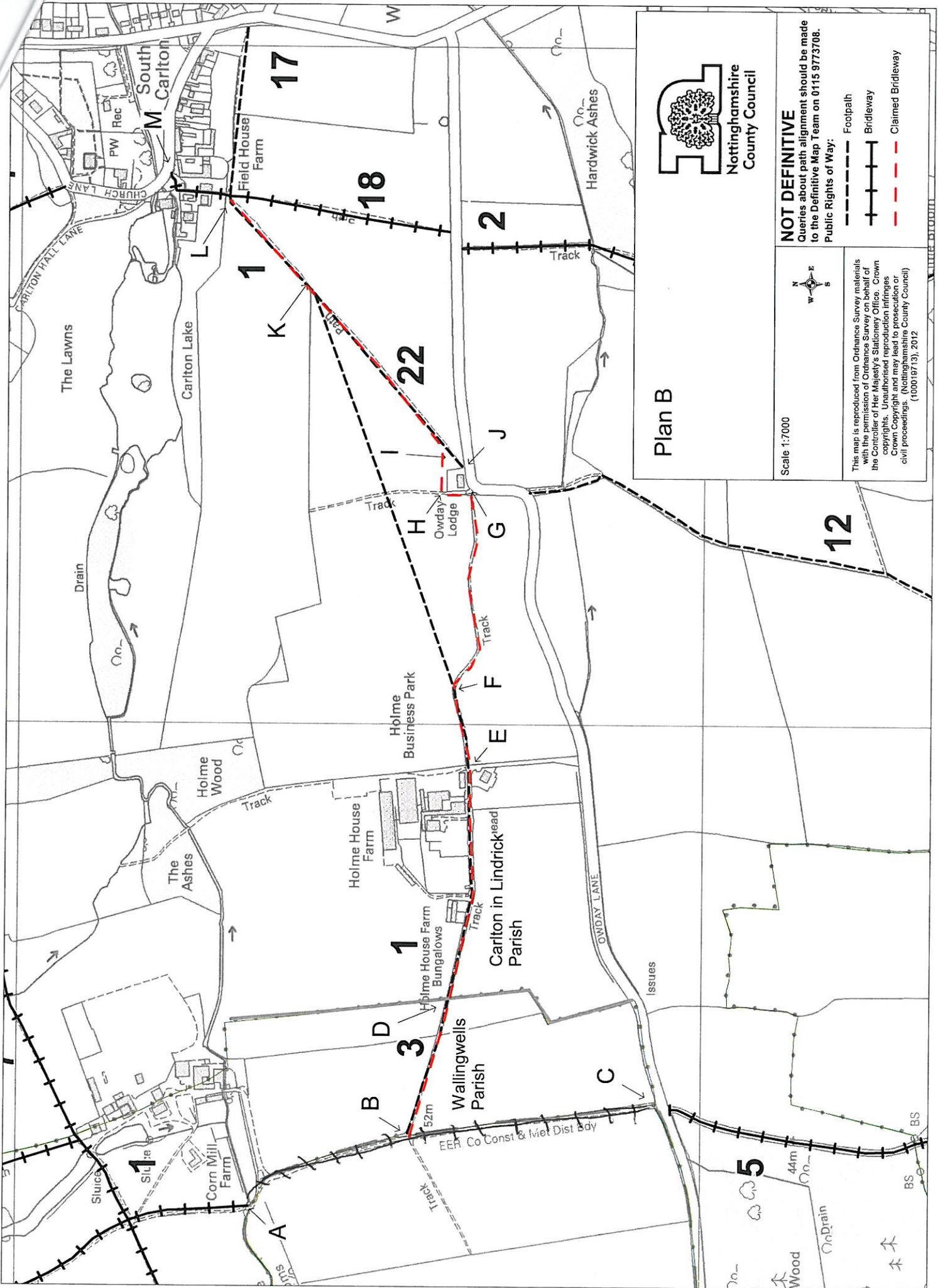
Queries about path alignment should be made to the Definitive Map Team on 0115 9773708.

**Public Rights of Way:**

- Footpath
- |-|- Bridleway
- - - - Claimed Bridleway

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**Plan B**



**Nottinghamshire  
County Council**

Scale 1:7000



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**NOT DEFINITIVE**  
 Queries about path alignment should be made to the Definitive Map Team on 0115 9373708.  
 Public Rights of Way:

- Footpath
- |-|- Bridleway
- - - Claimed Bridleway



 <b>Nottinghamshire County Council</b>	<b>Report to Rights of Way Committee</b>
	<b>28 November 2012</b>
	<b>Agenda Item:6</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. 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”.
5. 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.

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. New Buildings Drive is 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 B1-3.
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 maps submitted as part of the application, additional documents were examined 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' and therefore 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 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 land ownership. According to the relevant FA10 maps, the claimed route is incorporated into parcel No.65 which is privately owned and therefore suggests that New Buildings Drive was not thought to be a public road. The accompanying book of reference indicates that no deductions for public rights of way were claimed.
16. Nothing contained in the 1902 Encyclopaedia Britannica map, the 1927 Guilford map or the 1927 and 1940 Ordnance Survey maps gave 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, the documentary sources do not show any evidence of public rights over New Buildings Drive. The deposited railway plans, Finance Act documents and the Parish Schedules suggest that the route was believed to be a private road with no public rights of way over it.

## User Evidence

19. User evidence forms and landowner statements have also been considered in order to establish whether dedication has taken place by virtue of HA80 Section 31. The Committee must consider whether there is sufficient evidence to raise a presumption of dedication in order to meet the requirements of WCA81 Section 53 (3) (c) (i): namely “that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates”. Consideration must also be given, based on the available evidence, to what category of right of way is presumed to have been dedicated i.e. footpath, bridleway, restricted byway or a byway open to all traffic.
20. 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 has submitted 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 contended that the barrier (even though the public went around it), constitutes an interruption in user for the purposes of section 31 of the Highways Act 1981. 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.
21. 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 C.
22. 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.
23. 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 B3).
24. 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’.

25. There is no evidence of any obstructions preventing public use of the route during the period 1978 to 1998.
26. 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.
27. Mrs Glennie and Mr Bealby both make reference to the sign (Photo B3) 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.
28. 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 secrecy or by force. In respect of whether use was with permission, the evidence is conflicting. The situation is complicated by the fact that a number of people have permissive use of New Buildings Drive and this may have had the effect of camouflaging some public use.
29. 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 no evidence to demonstrate that this message was effectively communicated to the wider public.

## **Consultation**

30. Correspondence received from Burges Salmon LLP (representing the landowner) makes the following points in respect of the application:

- Installation of the barrier (Photo B1) 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.
- 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.
- The user evidence is poor quality, limited in number and inconsistent. The weight that can be attached to the user evidence is minimal.
- 19 evidence forms refer to use of the route once per month or less.
- The user forms were collected by the applicant who has not made it clear over what period the use has occurred.
- User evidence referring to barriers and signs along the route indicates that use was not 'as of right' but with permission.
- 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.
- 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 in 2008 and that use has switched from one side of the gate to the other.
- 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 but no basis for this assertion is given.
- Failure by users to refer to waste disposal lorries, and by members of the aero club indicates limited knowledge of the route.

31. The following responses relate to the points raised by Burges Salmon:

- 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.
- 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.
- 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.
- 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 by Burges Salmon that the user evidence is limited in number, the levels of use alleged here are not significantly different from other user claims which have been confirmed by Inspectors on behalf of the Secretary of State.
- It is commonplace 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.
- 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 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.
- 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.
- 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 some users to refer to vehicular traffic along the claimed route could be attributed to a number of reasons, either it was not thought to be relevant, it wasn't noticed, or that memories have faded. 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. Such evidence could be tested if an order is referred to the Secretary of State for a decision.

### **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 at 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 interruption and challenge to public use at that time. The relevant period during which a bridleway can 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.
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, 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**

43. It is RECOMMENDED that Committee accept the application and approve the making of a 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.

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

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

Eddie Brennan (0115 9774709)  
Definitive Map Officer

### **Constitutional Comments (SJE – 06/11/2012)**

44. 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 31.10.12)**

45. The content of this report are duly noted; there are no financial implications.

### **Background Papers**

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

Modification Order Application case file

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

Rufford	Councillor John Peck
Warsop	Councillor John Allin

ROW 87 Clipstone and Warsop  
8 November 2012



Claimant	From	Until	Frequency	Start	Finish	Year	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10		
1	1960	2010	2xweek	HHF	South Carlton	1960																																			
2	1978	2010	2xweek	HHF	Church Lane/ Owday Lodge																																				
3	1980	2010	3xweek	Owday Lodge	Church Lane																																				
4	1990	2010	2xweek	Owday Lodge	Church Lane																																				
5	1990	2010	3xweek	HHF	Church Lane																																				
6	1990	2010	1xweek	Owday Lodge	Church Lane																																				
7	1990	2010	1xweek	Owday Lodge/ HHF	Church Lane																																				
8	1990	2010	1xweek	Owday Lane/HHF	Church Lane																																				
9	1995	2010	1xweek	Owday Lane/HHF	Church Lane																																				
10	1995	2010	3xweek	Owday Lane	Church Lane																																				
11	1995	2010	3xweek	Owday Lodge/ HHF	Church Lane																																				
12	1995	2010	2xweek	Owday Lodge/ HHF	Church Lane																																				
13	1999	2010	2xweek	Owday Lodge	Church Lane																																				
14	1999	2010	3xweek	HHF	South Carlton																																				
15	2000	2010	1xweek	HHF	Church Lane																																				
16	2000	2010	1xweek	Owday Lodge	Church Lane																																				
17	2002	2010	2xweek	Owday Lane/HHF	Church Lane																																				
18	2004	2010	1xweek	Owday Lodge/ HHF	Church Lane																																				
19	2004	2010	2xweek	Owday Lane	Church Lane																																				
20	2004	2010	2xweek	Owday Lodge	Church Lane																																				
21	2005	2010	1xweek	Owday Lane	Church Lane																																				
22	2006	2010	3xweek	Owday Lodge/ HHF	Church Lane																																				
23	used for 17 years?		3xweek	Owday Lodge	Church Lane																																				
24	used for 15 years?		1xmonth	Owday Lane	Church Lane																																				

HHF is Holme House Farm

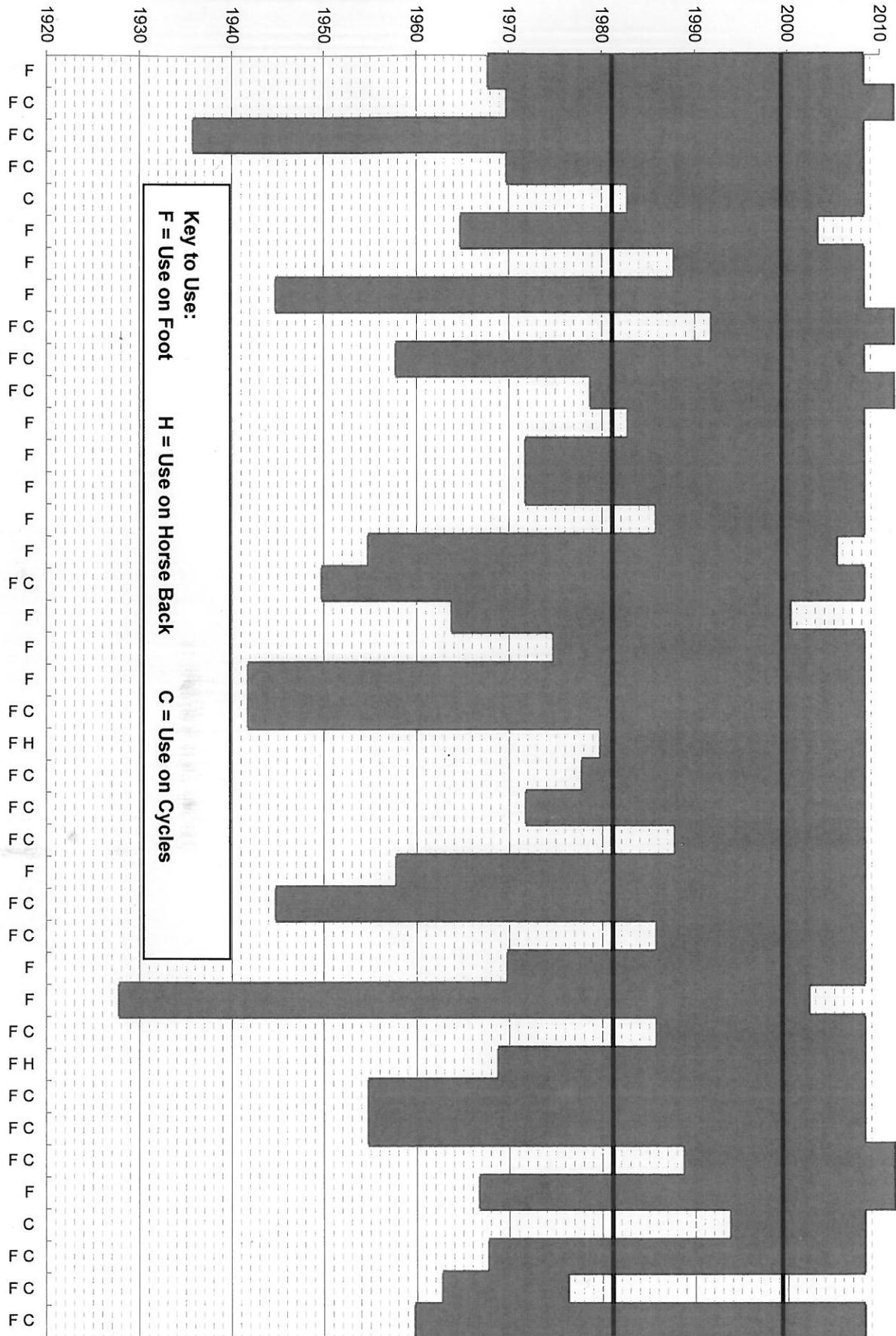
← Stile? →

← 20 year claim period →

**Table 1 Showing claimed use of the path**



# APPENDIX C



Challenge  
 Date:  
 20 Years  
 Before  
 Challenge  
 Date:



## PHOTO B1



Entrance to New Buildings Drive showing the existing barrier (erected 1998). The Parliament Oak can be seen to the right hand side protected by bollards and fencing (erected in 2009). Taken from point 'A' facing south.



**PHOTO B2**



Showing a section along New Buildings Drive



**PHOTO B3**



Existing sign at the Southern end of the claimed route (Point B)



Plan A



Scale 1:25000

Produced by: e brennan

Date: 07/01/2011

This map is reproduced from Ordnance Survey materials with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office. Crown copyrights. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. (Nottinghamshire County Council) (100019713), 2011

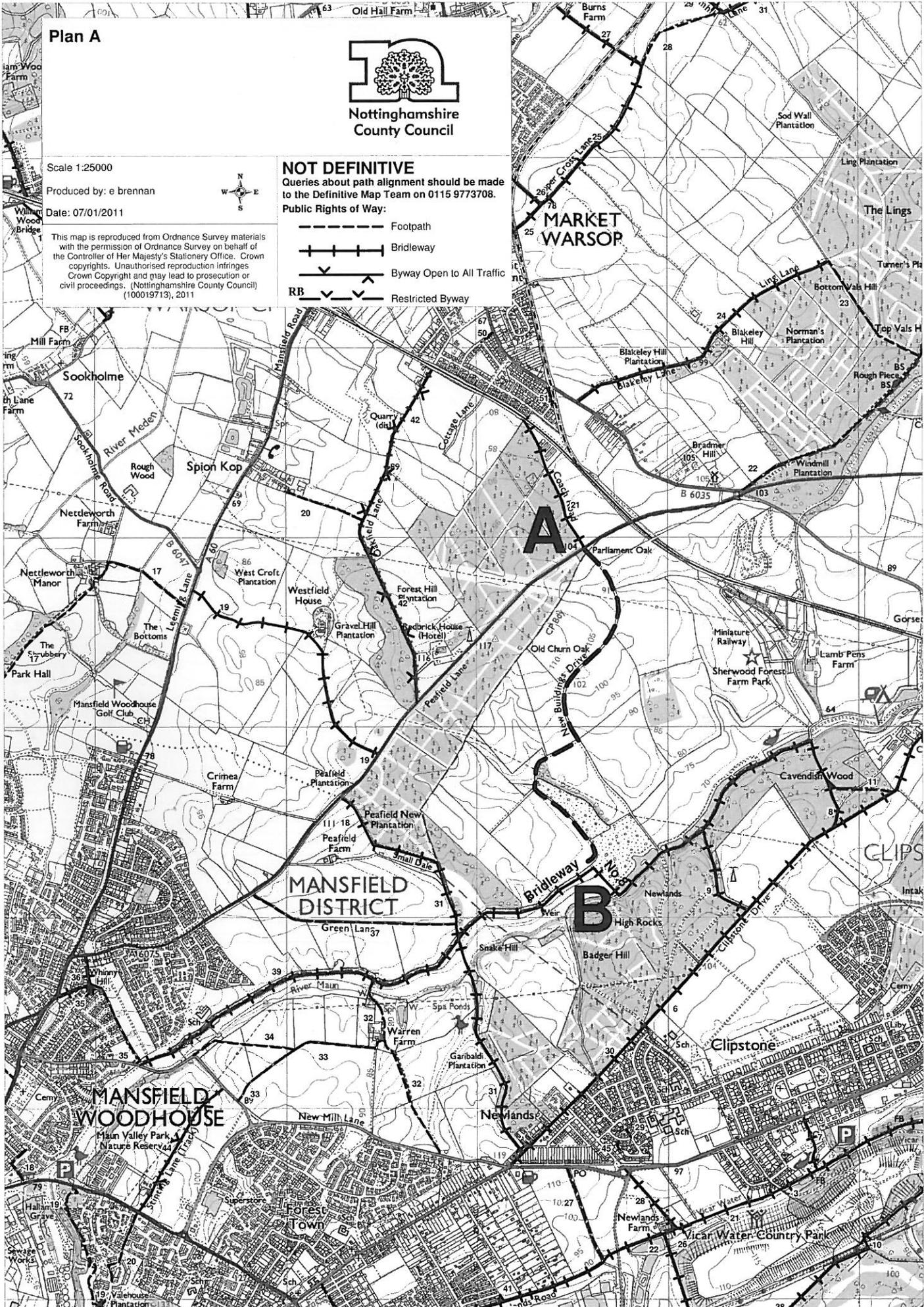


NOT DEFINITIVE

Queries about path alignment should be made to the Definitive Map Team on 0115 9773708.

Public Rights of Way:

- Footpath
- Bridleway
- Byway Open to All Traffic
- Restricted Byway







**REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)**

**CONSIDERATION OF APPLICATIONS UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD FOOTPATHS TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISH OF ELKESLEY**

**Purpose of the Report**

1. To consider applications made by the Nottinghamshire branch of the Ramblers' Association for the registration of two routes as public footpaths on the Definitive Map and Statement for the parish of Elkesley. The routes being claimed are shown on Plan A.
2. The effect of these applications, should a Modification Order to add the routes be made and subsequently confirmed, would be to register:
  - A footpath between the A1 and Elkesley Byway 8 (Path A/Footpath No. 9);
  - A footpath between Elkesley Byway 8 and the A614 (Path B/Footpath No. 10).

**Legal Background**

3. The applications are made under the provisions of the Wildlife and Countryside Act 1981. Subsection (5) of Section 53 of the Act allows any person to apply to the authority for an order under subsection (2) of the Act, which will make such modifications to the Definitive Map and Statement as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3) of the Act. In this case, the relevant event is the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
4. In order to accept a right of way claim on the basis of discovered evidence and make a Modification Order, it is not necessary to be able to show that the claimed right exists beyond all reasonable doubt. The tests to be applied are commonly known within the rights of way profession as 'Test A' and 'Test B'. In 'Test A', the question to be answered is whether the right of way exists on

the balance of probabilities. There must be clear evidence of public rights, with no credible evidence to the contrary. In 'Test B', the question is whether it is reasonably alleged that a right of way exists on the balance of probabilities. If there is a conflict of evidence, but no incontrovertible evidence that a right of way cannot be reasonably alleged to exist, 'Test B' is satisfied as the right of way is reasonably alleged to exist, and the claim should therefore be accepted, and a Modification Order made.

### **The applications and the documentary sources**

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

#### **Path A (Footpath No. 9)**

6. On the O.S. 6 inch maps 14 SW and 14 SE published in 1890 and 1891 respectively, Path A is shown by a double-pecked line running between the Elkesley to Worksop Road and Cross Lane. Other routes known to be public are shown in the same way, some of which are labelled 'FP'. The map sheet includes the standard O.S. disclaimer that 'The representation on this map of a Road, Track or Footpath, is no evidence of the existence of a right of way'.
7. On the relevant Finance Act maps, Path A is shown running between the public roads Worksop Road and Cross Lane by a double-pecked line in the same way as other routes known to be public, and is labelled 'FP.' It first crosses Parcel 109, for which there is a reduction in valuation of £10 by virtue of a public footpath over the property. As Path A is the only path shown over this parcel, the £10 reduction can only have been granted in relation to this particular route, which is a clear acknowledgement by the landowner and the Inland Revenue that Path A was a public right of way. It then crosses Parcel 149, for which there is no reduction. This may be because the path was public but the landowner decided not to make a claim for a reduction, although it is more likely, given that the parcel consisted of woodland, that the path was public but was not regarded by the Inland Revenue as affecting the value of the property.
8. On the relevant O.S. 25 inch maps published in 1920, Path A is shown running between Worksop Road and Cross Lane and is labelled 'FP'.
9. In the deposited documents for the London and North Eastern Railway (Nottingham and Retford railway) of 1925, Path A is shown running between two public roads named as Worksop Road and Cross Lane. The two property entries in question refer to the route as a 'Footpath'.
10. On the Area 6 Definitive Map base map published in 1953, Path A is shown by a pecked line in the same way as other routes known to be public, some of which are labelled 'FP'. It runs between Worksop Road and Cross Lane, and

is depicted as part of a longer route running between Worksop Road and Blyth Road. The remainder of this route is claimed Path B which is labelled 'FP'.

### **Path B (Footpath No. 10)**

11. On the O.S. 6 inch maps 14 SW and 14 NW published in 1890 and 1891 respectively, Path B is shown by a double-pecked line running between Cross Lane and the Ollerton to Blyth Road and is labelled 'FP'. The map sheets include the standard O.S. disclaimer.
12. On the relevant Finance Act maps, Path B is shown running between Cross Lane and Blyth Road by a double-pecked line in the same way as other routes known to be public, and is labelled 'FP'. Proceeding in a north-westerly direction from the junction with Cross Lane, it crosses Parcels 99, 105, 140, 146, 155 and 150. For Parcel 99, there is a reduction in valuation of £7 by virtue of a public footpath over the property. The Field Book states that this footpath affected 11 acres, which is the combined size of the two fields in Parcel 99 crossed by Path B.
13. For Parcels 105 and 140, there is a reduction of £20 and £25 respectively, and it may reasonably be presumed, given the information relating to Parcel 99 which clearly indicates that Path B was acknowledged as a public footpath, that at least part of these figures related to the existence of public rights over Path B.
14. Parcel 146 was owned by the mayor, alderman and citizens of Lincoln. In the relevant Valuation Book entry, there is no reduction in valuation by virtue of a right of way over the property, but in the corresponding Field Book entry at Kew, there is a note stating that an Inland Revenue officer subsequently inspected the plans of the property at the Town Clerk's office in Lincoln. Although for reasons unknown most of the Field Book entry is blank, it appears that some initial calculations relating to the property's valuation were carried out. Under "Charges, Easements and Restrictions affecting market value of Fee Simple" is the entry "FPath £14." As Path B is the only footpath shown across Parcel 146, it may reasonably be presumed that this entry is an acknowledgement by the landowners and the Inland Revenue that Path B was a public right of way.
15. For Parcel 150, there is no reduction in valuation, presumably because the property consisted entirely of woodlands.
16. For Parcel 155, there is a reduction of £30 for public footpaths and a bridle road. The land affected by footpaths included Field No. 21, which was crossed by Path B.
17. On the relevant O.S. 25 inch maps published in 1920, Path B is shown running between Cross Lane and Blyth Road and is labelled 'FP'.

18. In the deposited documents for the London and North Eastern Railway (Nottingham and Retford railway) of 1925, Path B is described in the Book of Reference as a 'Footpath'.
19. In the deposited documents for the London Midland and Scottish railway of 1925, Path B is described as a public footpath, the ownership of which was vested in East Retford Rural District Council.
20. In the deposited documents for the Mid-Nottinghamshire joint railways of 1926, Path B is again described as a public footpath in the ownership of East Retford Rural District Council.
21. On the Area 6 Definitive Map base map published in 1953, Path B is shown by a pecked line running between Cross Lane and Blyth Road and is labelled 'FP'.

## **Responses from consultees**

22. Letters have been sent out to the standard list of consultees, including the local member and the parish and district councils, asking for comments or representations regarding the claimed route. No objections were received to the proposed footpaths apart from Elkesley Parish Council, which objected on the grounds that there is 'a footpath already in existence a short distance away'. Whilst this is factually correct, rights of way law is such that this objection is not legally relevant in determining the claim.

## **Responses from landowners**

23. Jayne Whittaker of Parkview Farm, Elkesley has objected to Path B on the grounds that she has horses on the land, which could either escape if gates were left open or be chased by dogs. She also claims that there are many other footpaths which could be used to reach the same destination. Due to the nature of rights of way law, none of these points is legally relevant in determining the claim. The animal welfare issues could, however, be considered if a diversion request was submitted.
24. Mr J Higgs, on behalf of J C M Glassford Limited of Apley Head Farm, Clumber has objected on the grounds of the security of the farm premises, the vulnerability of the occupier of the farmhouse, health and safety issues arising from access through a farmyard, and the adequacy of the existing bridleway south of the farm buildings to accommodate public access. Due to the nature of rights of way law, none of these points is legally relevant in determining the claim, although they would be addressed if a diversion request was submitted.
25. Mr Higgs also claims that there is insufficient evidence that a right of way exists, but does not substantiate this and does not therefore undermine the documentary evidence for the existence of public footpath rights.

## **Conclusion**

26. In order to accept the claims, it is necessary to be able to satisfy either 'Test A' or 'Test B', as described above. There is clear evidence of public footpath rights over the claimed routes dating back to 1890, and no legally relevant evidence to the contrary. 'Test A' is therefore satisfied, and the claims should be accepted and a Modification Order made accordingly.

## **Statutory and Policy Implications**

27. 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**

28. It is RECOMMENDED that the Committee accepts the claims and authorises the making of a Modification Order to register the routes as public footpaths, as for the reasons set out above, the evidence demonstrates that public footpath rights exist on the balance of probabilities.

**Tim Hart**  
**Senior Definitive Map Officer**

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

## **Constitutional Comments (SJE – 11/07/2012)**

29. 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 – 26/10/2012)**

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

## **Background Papers**

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

Footpath claims at Elkesley - case file.

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

Tuxford                      Councillor John Hempsall

H/TH/ROW 84 - Add Footpaths to the Parish of Elkesley  
Updated 8 November 2012





## REPORT OF GROUP MANAGER, LOCALISM AND PARTNERSHIPS

### APPLICATION FOR A GATING ORDER AT – CLERKSON’S ALLEY, MANSFIELD.

#### Purpose of the Report

1. The purpose of this report is to consider an application for a Gating Order at Clerkson’s Alley, which runs between Clumber Street and Market Place/junction of West Gate, Mansfield.
2. The Clean Neighbourhoods and Environment Act 2005 inserted sections 129A-129G into the Highways Act 1980. The Act allows highway authorities to introduce Gating Orders to restrict the use of a highway for the purpose of preventing crime and anti social behaviour instead of permanently stopping it up or diverting it.
3. The Highways Act 1980 (Gating Orders) (England) Regulations 2006 specify the procedures councils should follow when they wish to make, vary or revoke gating orders.
4. Clerkson’s Alley, runs between Clumber Street and Market Place/junction of West Gate. Mansfield and is located in Mansfield Town Centre which has a vibrant night time economy. A map showing the exact location can be found at Appendix A.
5. For over 10 years businesses have been consulted seeking proposals to reduce crime in this area, with no positive outcomes. Businesses have put forward and support the recommendation of gating this alley way as the only safe option in protecting staff and premises.
6. The number of crimes committed in this alley is due to its location and ranges from ASB to sexual and drug activities. The peak type of offence in this location is violence and drugs offences.
7. The number of organisations who support this proposal are:
  - Notts Police
  - Mansfield Town Partnership
  - Mansfield Community Safety Partnership
  - Businesses in the vicinity of Clerkson’s alley

- The Mansfield Business Improvement District (BID)
  - The Local Access Forum
8. Due to the Local Access Forum's knowledge and data presented they feel there is clear evidence that ASB and crime is taking place and there are alternative routes close by.
  9. The Local Access Forum agrees that closing this alley would result in benefits to the occupants of the properties adjacent to this alley which outweigh any loss and inconvenience to the general public.
  10. The Local Access Forum has agreed that it would be beneficial to 'gate' Clerkson's Alley and do not object to this proposal offered. However, the Forum wishes to make it clear that they do not support the widespread use of Gating Orders to deal with ASB and Crime, and see 'Gating' as the last resort.
  11. The closure of this alleyway would make no difference to visitors of the town centre, because parallel to Clerkson's Alley is Regent Street. Shops on Regent Street have access to the rear of Clerkson's Alley making this access much safer for business occupants in providing safe egress from the rear of the premises.
  12. It is a requirement within the County Council's Guide to the Making of Gating Orders (2008 as amended) that any application for a gating order shall be approved by the relevant Community Safety Partnership (CSP). The application for the Gating Order was approved by the CSP on the 14<sup>th</sup> of November 2012.
  13. The application for this Gating Order has been made using the application form prescribed in the County Council's Guide to the Making of Gating Orders 2008. The application form is at Appendix B.
  14. Whilst the information in the application does not indicate that permanently stopping up or diverting these footpaths is appropriate at this time, the application does detail issues which demonstrate that the existence of this alleyway is facilitating the persistent commission of sustained anti social behaviour and violence.
  15. Should the recommendation below be approved by the Committee, the proposal to make each of the Gating Orders will be published, and representations invited, which will include consultation with statutory consultees and the broader community. Any concerns raised concerning the applications will be considered in accordance with the County Council's agreed procedures.

### **Other Options Considered**

16. As set out in the body of this report other options to reduce the impact of the anti social behaviour and crime have been considered and where appropriate tried/considered as shown in Appendix B.

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

17. The recommendation offers the most likely solution to the needs of the local residents and shop tenants to be protected from anti social behaviour and crime.

## **Statutory and Policy Implications**

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

## **RECOMMENDATION/S**

- 1) It is recommended that the application for a Gating Order at Clerkson's Alley, Mansfield is approved subject to consideration of any representations received from statutory consultees (in accordance with the County Council's agreed procedures)

**Chris Walker**

**Temp Group Manager, Safer and Engaged Communities**

**For any enquiries about this report please contact: Chris Walker – Temp Group Manager, Safer and Engaged Communities (0115 9772460) or Yvette Armstrong Community Safety Officer (0115 9773058)**

## **Constitutional Comments**

**(SJE – 16/11/2012)**

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

## **Financial Comments (DJK 15.11.2012)**

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

## **Background Papers**

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**

**Mansfield North.**  
Councillor Joyce Bosnjak  
Councillor Parry Tsimbirdis

**APPENDIX A and B**

**Background**

The picture below shows the location of Clerkson’s alleyway, which runs between Clumber Street and Market Place/junction of West Gate., Mansfield.







## APPENDIX B

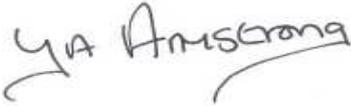
### PROPOSED GATING ORDER FOR Clerksons Alley, Mansfield

APPLICATION FROM	APAC/MPAC Partnership
<p><b>1. LOCATION OF HIGHWAY</b></p> <ul style="list-style-type: none"> <li>provide sufficient details and a suitable map (attach separately) to identify the start and end points of the highway, including, as appropriate, house numbers, street names, parish/district/sub-district, number if PROW</li> </ul>	<p>See attached map.</p> <p>Clerksons alley runs between Clumber Street and Market Place/junction of West Gate., Mansfield.</p> <p>This application is for a gating order which will allow temporary closure allowing shop use/access during day light hours and closure at the close of trading.</p>
<p><b>2. NATURE OF THE PROBLEMS</b></p> <ul style="list-style-type: none"> <li>provide details of the type and location of all relevant crime and ASB NOTE – Police Incident Crime Numbers <u>must</u> be provided together with other relevant evidence</li> <li>indicate how the following main criteria are met and how they are applicable to this application -               <ul style="list-style-type: none"> <li>premises adjoining or adjacent to the highway are affected by crime or ASB</li> <li>the existence of the highway is facilitating the persistent commission of criminal offences or ASB</li> <li>it is in all the circumstances expedient to make the Order for the purposes of reducing crime or anti-social behaviour</li> </ul> </li> </ul>	<p>Historically Clerksons Alley has aided perpetrators to carry out acts of extreme violence, where a member of staff was severely assaulted and hospitalised approximately twelve months ago. At the time of writing this application an incident of sexual assault has also been reported.</p> <p>A number of crimes have been committed in this alley due to its location ranging from ASB to sexual and drug activities. The peak type of offence in this location is violence and drugs offences. ‘Clerksons’ alley is located in Mansfield Town Centre which has a vibrant night time economy and has been identified as a Partnership Plus area.</p> <p>For over 10 years local businesses have lobbied for gating and have consulted with, about proposals in reducing crime in this area, with no positive outcomes. At the time of writing this application businesses are putting forward and supporting the recommendation of gating this alley way as the only safe option in protecting staff and premises.</p> <p>The number of organisations who support the proposal of gating off Clerksons alley are:</p> <ul style="list-style-type: none"> <li>Notts Police</li> <li>Mansfield Town Partnership</li> <li>Mansfield Community Safety</li> </ul>

		<ul style="list-style-type: none"> <li>Partnership</li> <li>• Businesses in the vicinity of Clerkson's alley</li> <li>• The Mansfield Business Improvement District (BID)</li> </ul>
3.	<p><b>ALTERNATIVE METHODS OF REDUCING CRIME OR ASB</b></p> <ul style="list-style-type: none"> <li>• provide details of the alternative methods that have been tried or considered, or dismissed (give reasons). Indicate which have been tried and which have been considered or dismissed. Also indicate the actual or presumed levels of effectiveness of each method.</li> <li>• indicate why stopping off or diverting the highway is not considered appropriate.</li> <li>• indicate any previous contact/discussions with the County Council concerning possible stopping up.</li> </ul>	<p>Additional Police patrols have been carried out over a number of years. Officers have worked hard to improve the situation by altering patrol patterns and providing crime reduction advice with little lasting success.</p> <p>CCTV has been considered and the site assessed for suitability however:</p> <ul style="list-style-type: none"> <li>- 2 cameras would be required due to the layout of the footpath</li> <li>- The lighting columns are not of the required height of 8m</li> <li>- There is insufficient lighting to enable effective monitoring</li> <li>- Many of the people using the site wear hoods limiting the use of CCTV</li> </ul> <p>The likelihood of diversionary activities having an impact on the level of crime and anti social behaviour is considered very low due to the nature of offences recorded.</p>
4.	<p><b>ACCESS DWELLINGS/PREMISES/FACILITIES TO</b></p> <ul style="list-style-type: none"> <li>• provide location details and addresses of all properties or facilities whose access would be <u>directly</u> affected by the restrictions</li> <li>• for each of these properties or facilities indicate its type and normal use. Also indicate whether the highway provides the primary or only access</li> <li>• provide location details and addresses of all buildings or facilities whose access is <u>indirectly</u> affected by the restrictions (i.e. always accessible, but takes longer to get there)</li> </ul>	<p>If the order were granted no properties would be affected for direct access.</p> <p>The closure of this alleyway would make no difference to visitors of the town centre, because parallel to Clerkson's is Alley is Regent Street. Shops on Regent Street have access to the rear of Clerkson's Alley making this access much more safer for business occupants in providing safe egress from the rear of the premises.</p>
5.	<p><b>ALTERNATIVE ROUTES</b></p> <ul style="list-style-type: none"> <li>• provide details, including location maps (attach separately), of alternative routes during the</li> </ul>	<p>Alternative route:</p> <p>There are two pedestrianised streets that run parallel with Clerksons Alley. Both streets are</p>

	<p>restricted periods</p> <ul style="list-style-type: none"> <li>indicate the approximate increase in distance and foot or cycle journey times involved and comment on the potential negative aspects of the alternative routes (e.g. non-compliance with mobility standards, personal safety issues, lack of surfaced highway or lack of adequate crossing points, etc.)</li> </ul>	<p>safer and are monitored by CCTV, both streets have good lighting. Clerksons Alley is rarely use as a route into the town centre because the road is uneven and the lighting is very poor.</p>
<b>6.</b>	<p><b>RESTRICTIONS</b></p> <ul style="list-style-type: none"> <li>indicate the times and periods of the restrictions, providing reasons for the appropriateness thereof</li> <li>provide details and addresses of the premises or facilities for which access is required at particular times or periods. Also indicate how the premises or facilities would be affected if the restrictions did not match these times or periods and how such effects would be mitigated</li> </ul>	<p>It is proposed to gate the footpath restricting general 24hr access but allowing access during business hours for business or over the shop tenancy. This will involve establishing a strict open and closure policy to be operated between businesses who have access to Clerksons Alley.</p>
<b>7.</b>	<p><b>MANAGEMENT OF THE RESTRICTIONS</b></p> <ul style="list-style-type: none"> <li>suggest the particular bodies or organisations willing and capable of opening/closing the gates/barriers at the designated times/periods. NOTE – the body or organisation <u>must</u> have the capacity and resources available to fulfil these obligations on 100% of occasions and also must be able to provide full indemnities for employees and third parties (currently £5m)</li> </ul>	<p>Businesses and tenants have suggested and support the policing of ‘Clerksons’ alley as they feel people with legitimate reasons should only be allowed access.</p>
<b>8.</b>	<p><b>EFFECT ON THE COMMUNITY</b></p> <p>indicate the positive and the negative effects on particular sections of the community (not just those adjoining or adjacent to the restricted highway). Include comments that indicate how the negative effects can be reduced to acceptable levels.</p>	<p>It is clear from consultations businesses owners and tenants are fully supportive on the issue of closure.</p> <p>This closure will certainly give the business owners a better quality of life with reduced anti social behaviour, crime and serious offences. There will be no negative effect on the general public users of the Town Centre</p>
<b>9.</b>	<p><b>CONSULTATION</b></p> <ul style="list-style-type: none"> <li>indicate which groups/individuals/bodies or organisations have been consulted,</li> </ul>	<p>Consultation was undertaken by the MPAC, and Mansfield Town Centre Partnership.</p> <p>Business owners were asked to complete a</p>

	<p>either formally or informally, and supply their comments</p> <ul style="list-style-type: none"> <li>for negative comments from such consultations, indicate what modifications have been made to the proposals or indicate why any particular comments should not be taken into account and considered further</li> </ul> <p>indicate which groups/individuals/bodies or organisations it was not possible to consult, but which it is considered should be given the opportunity to comment on the proposals</p>	<p>short consultation form.</p> <p>Out of the fifty forms sent out, six have been returned in favour of closure. The Mansfield Town Centre Partnership have been lobbied on numerous occasions by local businesses for gates to be installed.</p>
<b>10</b>	<p><b>MANAGING DIVERSITY</b></p> <ul style="list-style-type: none"> <li>provide comments on the direct or indirect effects of the proposals on the grounds of age, disability, gender, race, religion or belief, sexual orientation or social exclusion. (Notes to assist with this are provided in the Procedure Notes for Gating Orders)</li> </ul>	<p>This order would have no direct or indirect effect on disability groups.</p> <p>Signage: It is proposed signage will be clear, unambiguous, easy to read and will be positioned ensuring visibility is good for all.</p> <p>Gates: In consultation with NCC the proposed gate design will conform to National and NCC standards.</p> <p>Access will be by keys and will be made available to businesses and tenants.</p> <p>The affects of the proposal offered does not discriminate on the grounds of: age, disability, gender, race, religion or belief, sexual orientation and other social exclusion issues.</p>
<b>11.</b>	<p><b>FUNDING</b></p> <ul style="list-style-type: none"> <li>indicate the amount of funding available from other than the County Council's specific budget for Gating Orders</li> <li>indicate whether this funding is available for either or both of the initial implementation and the annual ongoing management/maintenance costs</li> </ul>	<p>Capital with a small Revenue budget for maintenance has been secured via the Community Safety Partnership Partnership Plus budget and Notts County Council Community Safety Portfolio budget.</p>
<b>12.</b>	<p><b>OTHER INFORMATION/COMMENTS</b></p> <ul style="list-style-type: none"> <li>indicate the source/origin of the initial request for consideration of a</li> </ul>	<p>The initial request was made by the BID and Mansfield Town Centre Partnership and supported by the CSP on behalf of Business</p>

	<p>Gating Order</p> <ul style="list-style-type: none"> <li>• comment here on any other matter in support of this application</li> <li>• if the CDRP has made other applications, indicate the priority of this application compared to those others</li> </ul>	<p>whose rear access is on Clerksons Alley.</p>
<p><b>Completed on behalf of Mansfield Partnership Against Crime (MPAC)</b></p>	<p>Yvette Armstrong                      18th of October 2012</p>	
<p><b>Authorised on behalf of</b></p>	<p>Yvette Armstrong</p>	
<p><b>for submission to Nottinghamshire County Council</b></p>	<p style="text-align: center;"></p> <p>Signed Date 18<sup>th</sup> October 2012</p>	

**FOR USE BY NOTTINGHAMSHIRE COUNTY COUNCIL COMMUNITIES DEPARTMENT ONLY**

Issue		Y/N	Remarks including next actions
1	<p><b>Status of the highway</b></p> <p>private adopted*      ▶ no action by NCC</p> <p>unmetalled PROW*      ▶ action - Area Highway Manager</p> <p>*see Procedures      ▶ action - Countryside Access Team Manager</p> <p><i>Section 4.3</i></p>	Y/N Y/N Y/N	Unmetalled PROW
2	<b>Has the application been completed fully and correctly, and does it provide full justification for a Gating Order?</b>	Y/N	Yes
3	<b>Are all of the main criteria met? And have the relevant Members been consulted?</b>	Y/N	Yes
4	<b>Are there any conflicts with other NCC Policies, Standards or Plans (including diversity issues)?</b>	Y/N	No
5	<b>If the application from the CDRP was initially unacceptable/incomplete, has the CDRP been given the opportunity to modify/amend it for further consideration?</b>	Y/N	N/A
<b>Date of EPPM</b>		<b>RECOMMENDATION</b>	

**Completed on behalf of the Area Highway Manager  
(North/South\*)/Countryside Access Team Manger\***  
(\* delete as appropriate)

print name

Yvette Armstrong signed

**Date 23<sup>rd</sup> October 2012**

