



## **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**