

Rights of Way Committee

Date: **Wednesday, 10 October 2012**
Time: **10:00**
Venue: **County Hall**
Address: **County Hall, West Bridgford, Nottingham NG2 7QP**

AGENDA

2	<u>Apologies for Absence</u> Details	1-2
3	<u>Declarations of Interests by Members and Officers:-</u> (a) Disclosable Pecuniary Interests (b) Private Interests (pecuniary and non-pecuniary)	1-2
4	<u>Declaration of Lobbying</u> Details	1-2
1	<u>M 27 june 12</u> Details	3 - 8
5	<u>Selston Report</u> Details	9 - 28
7	<u>Elkesley Report</u> Details	29 - 36
6	<u>Eaton and Babworth Report</u> Details	37 - 44

minutes

Meeting	RIGHTS OF WAY COMMITTEE
Date	Wednesday 27 June 2012 (commencing at 10.00 am)

membership

Persons absent are marked with 'A'

COUNCILLORS

Bruce Laughton (Chairman)
Gail Turner (Vice Chairman)

Allen Clarke
John Cottee
Sybil Fielding
Jim Creamer

A Rachel Madden
Sue Saddington
Mel Shepherd MBE
Andy Stewart
A Jason Zadrozny

ALSO IN ATTENDANCE

Councillor Philip Owen
" Vincent Dobson

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
Angus Trundle	- Definitive Map Officer/Commons and Village Greens Officer
Adrian Dudley	- Community Safety Officer
Yvette Armstrong	- Community Safety Officer

CHAIRMAN AND VICE-CHAIRMAN

The appointment by the County Council of Councillor Bruce Laughton as Chairman and Councillor Gail Turner as Vice-Chairman was noted.

MEMBERSHIP

The membership of the committee, as set out above, was noted.

MINUTES

The minutes of the meetings held on 26 April and 9 May 2012 were taken as read and were confirmed and signed by the Chairman.

APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Rachel Madden (illness) and Jason Zadrozny (Other County Council business)

DECLARATIONS OF LOBBYING BY MEMBERS

There were no declarations of lobbying.

DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

Councillor Mel Shepherd declared a personal interest in Agenda items 8 (Application for a Gating Order at Cedarland Crescent, Nuthall) and 9 (Review of Gating Order at Woulds Field, Cotgrave) as he is a member of the Local Access Forum and also that he would not be voting on these items as he had not received the appropriate training.

Councillor Jim Creamer declared he had not received the appropriate training so therefore he would not vote on these two issues

TERMS OF REFERENCE

RESOLVED 2012/011

That the report be noted.

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 PARISH OF MISSON

Mr Trundle introduced the report and highlighted the fact that all the evidence, both for and against the application, was available for inspection by members and not just the user evidence forms as set out on the agenda. He also highlighted the photos which showed the route under discussion attached as appendices to the report.

Mr Trundle also reported to Committee that he had received a letter from the owners of the land surrounding the area informing the council they would not be agreeable to a diversion of the footpath onto their land.

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

Mr J Parden, spoke in opposition to the application. He stated that gate at the start of the path had been locked and signs had been erected stating this was private property. He also stated that some of the claimants in their evidence said that they did not use the footpath as of right and it was regarded as private property.

Mr J Gelder, who spoke in opposition to the application, informed members that when he visited the property in 2003 there was a locked gate at the entrance with a sign saying Private Property. The gate was moved following thefts from the area. He also informed the Committee that a neighbour had challenged a group of ramblers and had been subjected to abuse. There is a potential Health and Safety issue as the route is along a road which has blind bends and few passing points thus creating a possible dangerous confrontation between walkers and cars.

In response to a question Mr Gelder informed committee the gate was moved to close a gap to create a more secure perimeter.

Mr Foster, spoke in favour of the application, informing members the dispute over the footpath had only come to light since the sale and development of the properties. He stated that Mr Brookes the previous farmer had openly encouraged people to use the path and often chatted to ramblers, riders and cyclist and had a friendly attitude towards users.

In response to a question Mr Foster informed Committee that he had no personal knowledge of Mr Brookes' encouragement but was simply putting forward what other people had said to him.

Mrs Williamson, spoke in favour of the application where she refuted some of the statements set out by objectors as contradictory and they are not relevant to the 20 year period under claim but relate to after that period.

In response to a question Mrs Williamson informed committee that she had used the route herself.

Mrs J Willerton, spoke in favour of the application stating she had ridden the route on many occasions without challenge. She pointed out that there had never been a sign on the northern end of the path. The farm workers had been very considerate when she rode past by turning loud farming equipment off so as not to frighten the horse. She also referred to using the path as a cycle route to the nearby pub. As well as Ramblers, riders and Cyclists using the route it was occasionally used by the Austerfield Field Study Centre.

No questions were asked

Following the public speaking, Members discussed the item and in response to questions Mr Trundle replied as follows:-

- There has been discussion with regard to creating a diversion order but this has not been taken up by the landowners at the present time.
- This modification order would be for a footpath not a bridleway, as there is not enough evidence found to record a bridleway, although if a later challenge date was considered this may make a difference.

Mr S Eastwood, Principal Legal Officer, Legal Services, reminded members that when making a decision on this type of application there must be consideration given only to whether, at the very least, there is a reasonable allegation that there is a footpath along the route and not to whether a diversion order could be agreed.

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

RESOLVED 2012/012

That the making of a Modification Order to modify the Definitive Map and Statement by adding the footpath for which the application was submitted be approved, on the basis set out in the report as the Authority considers that the evidence shows that a right of way is reasonably alleged to subsist.

APPLICATION FOR A GATING ORDER AT CEDARLAND CRESCENT, NUTHALL

Mr Dudley introduced the report to members.

Councillor Philip Owen, Local Member, spoke in favour of this item. He informed members that this route is not a footpath but is a twitchell/cut-through at most. There has been a long standing problem with anti social behaviour in this area and closing the twitchell would be the best option for the majority of the residents around the area. He also questioned the idea of having it opened during daylight hours stating this would cause more problems than it solves. By closing it 24/7 the abundant anti social behaviour would be addressed and the local residents would be protected at last, and permanently there will be no need for the expense of having someone paid to open and shut the gates every day nor the risks to local people in opening and closing it.

Mr P Hiley, Local Access Forum Chairman, spoke against the closure of the gates as there has been no survey undertaken to establish how many use the twitchell and it is a public access route to both public and private services in the area.

Mrs M Mills Vice Chairman of the Local Access Forum also spoke in favour of keeping the Twitchell open, on the grounds it will add 5/10 minutes walk for people at night to their journey.

Following the speakers members debated the report and on a motion by the Vice Chairman duly seconded it was:-

RESOLVED 2012/013

That a Gating Order be made to close the path referred to in the report for 24 hours a day, 7 days a week. This Order is being made having specific regard to paragraph 2.4 of the Councils agreed procedures and the representations made regarding the serious negative impact of the anti social behaviour on local residents

REVIEW OF GATING ORDER AT WOULD'S FIELD, COTGRAVE

Mr Dudley introduced the report to members and confirmed that further to Resolution 2012/003 the Local Access Forum had now been consulted. Mr Dudley informed members that the police were in favour of the closing of this path because of the difference they considered it has made in reducing anti social behaviour in the area and the Gating Order being of benefit in preventing the return of anti social behaviour to this location.

Mrs M Mills, Vice Chairman of the Local Access Forum, spoke against the closure of this route on the grounds that there is no evidence of criminal damage and permanent closure should be the last resort. The Forum would like to see this path reopened for at least 12 months and restored for public use.

On a motion by the Chair, duly seconded it was:-

RESOLVED 2012/014

That the gate closing off access from Woulds Field to Owthorpe Road remain in place with a further review in twenty two months' time which should address the possibility of an extinguishment of this access point onto Woulds Field.

A GUDE TO DEFINITIVE MAP MODIFICATION ORDERS ("CLAIMED PATHS")

RESOLVED 2012/2015

That the report be noted.

The meeting closed at 11.35 am

CHAIRMAN

10 October 2012**Agenda Item:****REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND
RESOURCES)****SELSTON FOOTPATH NO.72 - EXTINGUISHMENT****Purpose of the Report**

1. To update Members on the making of an Order to extinguish Selston Footpath No.72 in accordance with the decision of Committee on 22nd June 2011, and to consider whether the opposed Order should now be referred to the Secretary of State for Environment Food and Rural Affairs for determination, or whether action should be taken to clear the definitive legal path alignment so that it is available for public use.

The Law

2. Section 118(1) of the Highways Act 1980 (HA80) enables this Council to make an Order to extinguish a footpath when it appears expedient to do so on the ground that it is not needed for public use. This was the subject of the 22nd June 2011 report to Committee which decided that the test was met and that an extinguishment order should be made. An extinguishment order only takes effect if it is confirmed, and where objections are made and not withdrawn, the Order can only be confirmed by the Secretary of State.
3. Unlike modification orders which must be referred to the Secretary of State if opposed, it is a discretionary matter whether or not this Council chooses to refer an opposed Extinguishment Order i.e. it may, having regard to the information before it, resolve to no longer pursue confirmation of the Order and to therefore retain the public footpath.
4. An order can only be confirmed by the Secretary of State if he (or an appointed Inspector) is satisfied that it is 'expedient' to extinguish the path having regard to;
 - The extent to which the path would be likely to be used by the public
 - The effect the extinguishment would have on land served by the path (bearing in mind that compensation is payable to those who suffer loss as a result of the extinguishment).
5. Under HA80 section 118(6) any temporary circumstances preventing or diminishing the use of the path by the public must be disregarded when confirming an Extinguishment Order.

Information and Advice

6. The Nottinghamshire County Council Rights of Way Improvement Plan 2007-2012, states 'The County Council will not support extinguishment orders unless there is very strong evidence that the route is not needed for public use'. This reflects the test applied during Committee's consideration of the extinguishment proposal on 22nd June 2011.
7. The footpath proposed to be extinguished runs from the end of Inkerman Street (a cul-de-sac), through the garden of No.20 Inkerman Street and along a fenced unregistered strip of land between No.113 Inkerman Road and St Michaels View. A plan showing the location of the footpath is shown as Appendix A. A series of photographs taken along the path are shown as Photos B-F. Photos B and D show some obstructions observed on a site visit in May 2012. The legal line of the footpath runs partially within the hedge line and through a garden shed. As can be seen (Photo C), the current available route runs along the path between the house and the shed.
8. The footpath was the subject of a Modification Order Application made in 1999. Although this application was turned down, the County Council was subsequently directed to make an Order following an appeal by the applicant to the Secretary of State. A public inquiry was duly held in September 2007 where the County Council objected to the Order. After hearing all the evidence, the appointed Inspector concluded that the right of way did in fact exist and the Order was confirmed.
9. In December 2007 shortly after the path was confirmed, Selston Parish Council requested the footpath be extinguished on grounds that the footpath did not serve any useful purpose and that it might also contribute towards an increase in anti-social behaviour.
10. In February 2010 the Parish Council conducted a survey among 130 local households seeking opinion regarding use of the path. From the 80 responses received 74 households said they would prefer the path to be closed.
11. The County Council carried out consultation on the matter in October 2010 and a report was duly taken to Committee in June 2011 where it was decided that an Extinguishment Order should be made to extinguish the path.
12. Following the making and advertising of the Order the County Council received seven objections, one representation and one letter in support of the Order. This report does not give an exhaustive summary of all the points raised, but does set out the main issues.
13. One objector, a resident of Inkerman Street, claims to currently use the route as a short cut and also states that the path is used by other residents and "members of the local public". The objector believes the path is not used more regularly because obstructions "give the impression that the path is no longer walkable". Reference is also made to retaining the footpath due to it being an ancient right of way which the objector believes ought to be protected for the use of future generations.
14. An objection was received from another resident of Inkerman Street who claims to use the footpath on a fortnightly basis for access to a bus-stop on Nottingham Road. Again, reference is made to retaining the footpath due to its historic nature for use by "future residents and walkers".

15. An objection from a resident of Mansfield states;

- There is no evidence that the required test 'not needed for public use' has been met.
- The survey carried out by Selston Parish Council in 2010 was flawed.
- The path is 200 years old and is part of Selston's heritage.
- The County Council has encouraged illegal obstructions on the right of way.
- The lack of a recognisable footpath gives walkers the impression that they are trespassing on private property.
- Many Rambler Clubs wish to walk the footpath.
- The path should be restored to its historic width of 3 metres.
- The path provides a safe alternative route avoiding a bend on Inkerman Road which does not have a footway.

16. An objection from the Sutton in Ashfield and District Rambling Club states;

- The County Council has not monitored use of the path in order to establish whether the path is needed for public use.
- Infrequent use is not sufficient reason to extinguish the footpath.
- The footpath is under used because it is overgrown with vegetation, badly maintained and obstructed.
- The footpath has been deliberately obstructed to give the impression that there is no way through. Walkers have been reluctant to exercise their right of way.
- There is insufficient reason to extinguish the footpath.
- The footpath is incorrectly recorded on current Ordnance Survey maps therefore walking groups rarely use the route.
- The extinguishment only benefits the owners of No.20 Inkerman Street and No.113 Inkerman Road who have been allowed to obstruct the footpath.

17. An objection from the Nottinghamshire Area Ramblers Association states;

- The Ramblers Association can provide evidence of the path being used following the public inquiry in 2007.
- The County Council has allowed development to take place on the path by allowing it to run through a residential garden instead of a defined alleyway.
- The path is not shown on published Ordnance Survey maps so the public may be unaware of it.
- The route is not available on its definitive line due to encroachment by a shed, a conifer hedge and fencing at the rear of St. Michael's View. The path should be made available on the definitive alignment by forming an alleyway.
- The path is needed because it provides a safe route from Inkerman Road to Alma Street.
- The path has never been made available to less abled/disabled users.
- The case of *R v Secretary of State for the Environment ex parte Stewart* (1980) is applicable.

18. An objection from the Nottinghamshire Footpaths Preservation Society states;

- The County Council is in breach of its statutory obligations to enforce the definitive alignment.
 - The path is obstructed by a garden shed, by the incursion of a leylandii hedge and by a fence on the southern end of the path.
 - The lack of a demarked path intimidates walkers when passing through a private garden.
 - As a result of the above, the County Council cannot demonstrate that the path is not needed for public use.
 - The path provides a useful local short cut and potentially provides a link to other footpaths in the vicinity.
19. A representation was also received from a resident of St. Michaels View stating the footpath contains Japanese Knotweed (which is currently being controlled by the County Council) and that landowners should give written assurances to continue with this treatment if the path is extinguished.
20. A letter in support of the extinguishment was received from Selston Parish Council stating;
- The Parish Council are of the opinion that the current path has no value.
 - The Parish Council does not believe that there is a need for this path in the future.
 - Enquiries among those residents most likely to use the path revealed most have not used this path nor would do so in the future. Most residents did not feel the path should be maintained at public expense.

Comments on the objections

21. One point often referred to by objectors relates to temporary obstructions along the path, namely a leylandii hedge, a shed, and a fence. These issues were previously addressed in a report to the Rights of Way Committee in September 2010 at which it was resolved to temporarily manage the footpath on the currently available non-definitive alignment (i.e. alongside the hedge and around the shed). That report recommended that the definitive line of the path should not be strictly enforced until the matter of extinguishment was finally concluded. It should be noted however that there is no evidence to support allegations that the fence at the rear of the properties on St. Michaels View obstructs the definitive footpath in any way.
22. Items such as ornamental trees, garden furniture/pot plants have been positioned on the path within the gardens of No.20 Inkerman Street, and it is argued by some objectors that these items have made the route difficult to discern at times and give the impression among users that no public footpath exists through the private garden.
23. Some objectors refer to the antiquity of the footpath which was recorded in the Selston Tithe Award of 1843. However there is nothing within the tithe award to suggest that the width of the footpath was ever 3 metres wide as alleged by some objectors. The Inspector at the Public Inquiry in 2007 concluded that the public right of way was only 1 metre wide and that the 3 metre width actually relates to a private road/track which existed in the 1800s/1900s, and not to the physical extent of the public right of way.

24. Reference is made to Selston Footpath No.72 providing a safe alternative route by avoiding a 'dangerous' blind bend on the corner of Inkerman Road. In March this year a new footway was constructed on the bend thereby resolving this safety issue.
25. The objection submitted by the Ramblers Association refers to the case of *R v Secretary of State for the Environment ex parte Stewart [1980]* which examined the wording in relation to extinguishment orders. The judge in that case stated that obstructions on a path should be considered as being 'temporary circumstances' if steps can lawfully be taken to remove them. Accordingly all of the aforementioned items such as the hedge, the shed, shrubs, garden furniture/pot plants should be regarded as temporary circumstances as the County Council can take steps for them to be removed under Highway Act powers. Accordingly these obstructions cannot themselves be regarded as grounds for stopping up the footpath.
26. The Ramblers Association's objection goes on to quote the judge who said 'It seems to me that it would be quite intolerable in the case of an admitted highway in the form of a public path for it to be accepted as a good ground for stopping it up that encroachments and obstructions have made it difficult to say precisely to within a yard or so where it ran'. It appears from the *Stewart* case that the judge was referring to some uncertainty regarding the precise location of the Definitive Footpath, and although that is not the case here, it is important to note that extinguishments must not be made simply to remedy a situation where obstructions have made the path difficult to use or discern.
27. The Ramblers Association also state that the County Council has 'allowed development' to take place on the path as it runs through a residential garden rather than it being on a defined alleyway. However the footpath is not actually obstructed by the development itself nor is there any impediment to prevent rights of way existing through private gardens.
28. The Ramblers Association have referred to non-availability of the path for less abled/disabled users. At a site meeting with the original applicant in 2010 it was agreed that the condition of the path was generally acceptable and available to users. However officers will continue to monitor the path and when appropriate ensure the removal of any illegal structures which pose problems to those with limited mobility or disability.
29. In respect of the Ramblers Association's claim to hold additional user evidence, requests have been made for this information to be submitted to the County Council. However no further evidence has been submitted and therefore officers have been unable to consider such information.
30. Some objectors refer to the footpath being incorrectly depicted on current Ordnance Survey maps. This appears to be correct and therefore steps have been taken to request that Ordnance Survey rectify this. It is always possible that this error may have caused confusion among some walkers unfamiliar within the locality, however the Countryside Access Team has not received any reports of such occurrences.
31. Japanese Knotweed has been confirmed as growing on the fenced southern section of footpath (Photo F). This plant is an invasive species subject to certain controls under the Wildlife and Countryside Act 1981. Its presence can constitute a private nuisance to neighbouring properties and therefore the County Council is currently undertaking the prescribed regime of treatment to control its spread. The primary consideration of the Authority in this matter however is one of public use of the route. Should the route be

extinguished, responsibility for this matter would revert to the owners of the land. Contrary to the objector's request, the Authority is not required to obtain assurances in regard of further treatment if the path is extinguished.

32. Selston Parish Council has re-iterated its view that the footpath should be stopped up because it is considered to have no value as a right of way. This view conflicts the objectors who wish to see the footpath retained.
33. As a general point, one of the main grounds of objection relates to whether the legal test 'not needed for public use' has been met. Evidence from two local residents suggests that the path is personally used by them, while three walking groups refer to the continuing need for the path. This test of 'need', however, was considered at the time of Committee's earlier decision to make the extinguishment order, and is not a relevant consideration for confirmation of the order.

Reason/s for Recommendation/s

34. At this present stage, the decision before the Committee is discretionary. It is for the Committee to determine whether they wish to refer the Order to the Secretary of State (requesting that the Order be confirmed), or alternatively, having considered the objections set out in this report, decide not to refer the Order.
35. The situation is very finely balanced, as it appears that the path is currently used but only to a limited extent. It could therefore be concluded that actual use is so small that the path is not actually needed. If the Order were to be referred to the Secretary of State it is suggested that this should be based on the expediency test set out in paragraph 4. This may entail holding a local public inquiry to hear the case for or against the expediency of extinguishing the footpath.
36. If Committee decide not to refer the Order, it should then consider authorising officers to seek the removal of temporary obstructions such as removal or cutting back the leylandii hedge (Photo B), removal of specimen tree to the front of No.20 Inkerman Street (Photo B), removal of the garden shed (Photo C), and the removal of any garden furniture/pot plants (Photo D).

Statutory and Policy Implications

37. 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

It is recommended that Committee resolve either:

- a) 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.

or

- b) not to seek confirmation of the Order, and therefore retain the public footpath and authorise officers to obtain the removal of temporary obstructions along the definitive legal line of the path.

Eddie Brennan
Definitive Map Officer

For any enquiries about this report please contact: Eddie Brennan (0115 9774709)

Constitutional Comments (SJE – 19/09/2012)

38. 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 06.09.12)

39. 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.

- Selston Footpath No.72 office files

Electoral Division(s) and Member(s) Affected

Selston Councillor Gail Turner

ROW85
20.9.12

Scale 1:1250

Produced by: e b40

Date: 25/09/2012



This map is reproduced from Ordnance Survey materials with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown copyrights. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. (Nottinghamshire County Council) (100019713), 2012

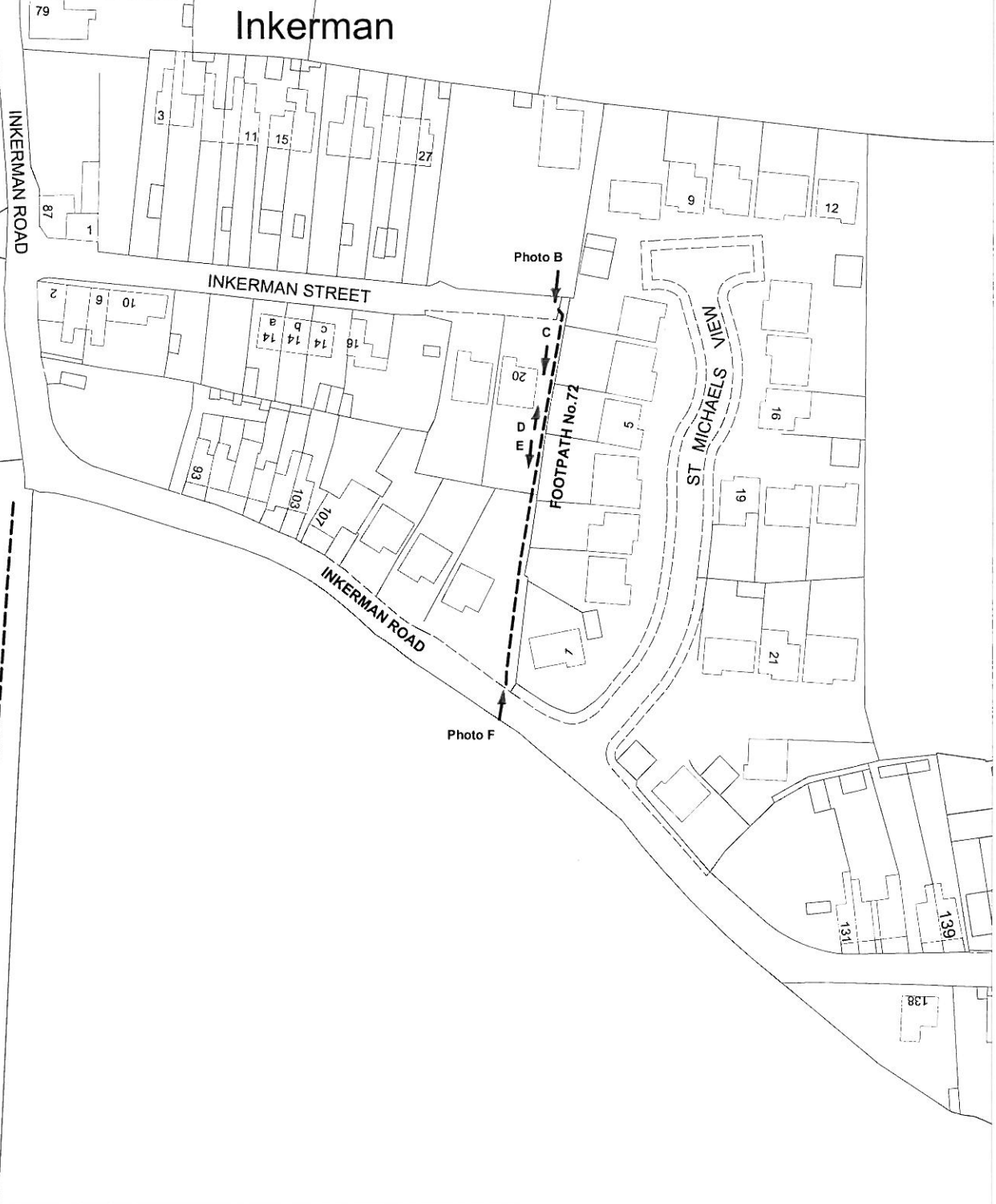


PHOTO B



Inkerman Street looking South alongside No.20

PHOTO C



Alongside No.20 Inkerman Street

PHOTO D



Looking North to the rear of No.20 Inkerman Street

PHOTO E



Showing the existing gap in the rear boundary between No.20 Inkerman Street and No.113 Inkerman Road

PHOTO F



Inkerman Road looking North (rear boundary of St. Michael's View on the right)



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);
 - A footpath between Elkesley Byway 8 and the A614 (Path B).

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

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 crosses Parcel 109, for which there is a reduction in valuation of £10 by virtue of a public footpath over the property, and then 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

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.

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.

For Parcels 146 and 150, there is no reduction in valuation, presumably, in the case of Parcel 150, because the property consisted entirely of woodlands.

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.

13. 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'.
14. 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'.
15. 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.
16. 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.
17. 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

18. 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'. This objection is not legally relevant in determining the claim.

Responses from landowners

19. 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. 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.

20. 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. None of these points is legally relevant in determining the claim, although they would be addressed if a diversion request was submitted.

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

21. 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 credible evidence to the contrary. 'Test A' is therefore satisfied, and the claims should be accepted and a Modification Order made accordingly.

Statutory and Policy Implications

22. 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

23. 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)

24. 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 – 10/07/2012)

25. 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
04 July 2012



Proposed path: -----

Unaffected path: - - - - -

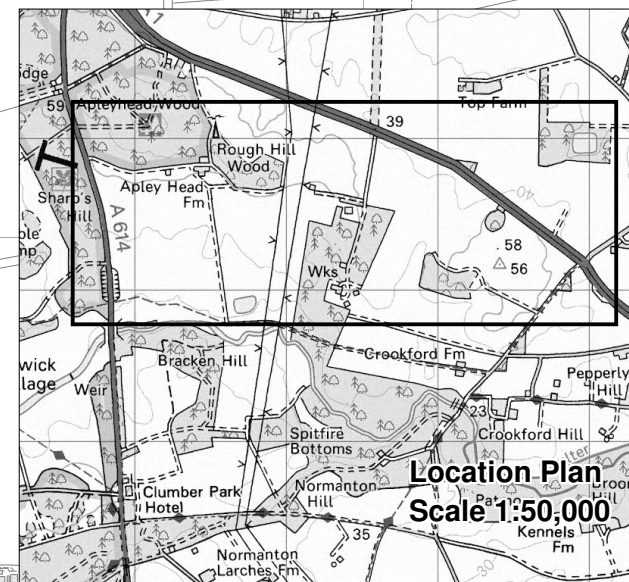
© Crown Copyright and database rights 2012 Ordnance Survey 100019713



Scale: 1:14,000

Produced by: David Squires

Date: 04/07/2012



SK 6784 7608

Elkesley Footpath No. 10

SK 6786 7608

**Elkesley
Footpath
No. 9**

SK 6805 7595

REPORT OF 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 EATON AND
BABWORTH****Purpose of the Report**

1. To consider an application made by the Nottinghamshire branch of the Ramblers' Association for the registration of a route as a public bridleway on the Definitive Map and Statement for the parishes of Eaton and Babworth. The route being claimed is shown on Plan A.
2. The effect of this application, should a Modification Order to add the route be made and subsequently confirmed, would be to register a bridleway between the Ordsall road in Eaton and Babworth Bridleway No. 5.

Legal Background

3. The application is 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 reasonable to allege that a right of way exists on the balance of probabilities. If there is a conflict of evidence, but no incontrovertible evidence that a right of way cannot be reasonably alleged to exist, 'Test B' is satisfied as the right of way

is reasonably alleged to exist, and the claim should therefore be accepted and a Modification Order made.

The application and the documentary sources

5. The application is supported by a range of documentary evidence. The relevant records have been examined to determine the full extent of the evidence for the existence of public rights over the claimed route.
6. On 'A map of the parishes of Eaton and Ordsall in the county of Nottingham' of 1810, the Eaton section of the route is shown and is labelled 'Morton Grange Bridle Road 12 feet'. Its continuation is indicated by the wording 'From Morton Grange' on the Babworth side of the parish boundary. The public status of this route can be established by cross-reference with the Eaton inclosure Award.
7. In the Eaton inclosure Award of 1814, the Eaton section is named as the 'Morton Grange Bridle Road', and is set out as "one public bridle road from the Elksey Road at or near Wood Close corner in its present course over Eaton Common and the Brecks to a gate leading into Morton Grange Farm of the breadth of twelve feet". The award text also states that "the public bridle road ... shall from time to time be amended and repaired in like manner as the public roads within the said parish of Eaton are according to law to be amended and repaired". Although there is no inclosure Award for Babworth, given that there is no logical reason for the awarded bridle road to stop at the parish boundary, it can reasonably be presumed that public bridleway rights on the remainder of the claimed route continued through to Morton Grange.
8. In the case of R v Secretary of State for the Environment ex parte Andrews (1993), it was held that the Inclosure (Consolidation) Act of 1801 did not in itself give inclosure commissioners an express power to create public rights of way below carriageway status. This judgement, however, has no effect in cases where public rights can be shown to have existed prior to the date of the Award. In this instance, public rights can be shown to exist by reference to the 1810 map and the Award text referring to the bridleway's "present course", indicating that it was already in existence prior to the Award being drawn up. It should also be noted that the Eaton local inclosure Act specifically authorised the inclosure commissioner for Eaton to "set out ... such public ... Roads and Highways ... as he shall judge necessary". This would indicate that the commissioner did not act ultra vires in setting out the Morton Grange bridle road.
9. On 'A plan of the parishes of Ordsall and Eaton in the county of Nottingham' of 1839, the Eaton section of the route is shown, but not labelled. Part of it is inscribed '9' but there is no key to explain the numbering.
10. On the Babworth tithe map of 1839, the Babworth section is coloured brown and included within Parcel 539, listed as a road in the ownership of the Earl of Scarborough. A continuation is shown on the other side of the parish boundary, which is labelled 'To Eaton'.
11. On the Ordnance Survey 6 inch map 14 NE of 1887, the whole route is shown but not labelled. Taken together with the two maps from 1839, the O.S. map indicates the

continuing existence of a route open and available to the public linking Eaton and Morton Grange.

12. In deposited documents for the Nottingham and Retford railway of 1902, the proposed line crosses the Eaton section of the route. The relevant parcel is described as 'Bridle and occupation road', with the 'Owners or reputed owners' being Lieutenant Colonel Henry Denison and East Retford Rural District Council. The District Council's inclusion indicates that the bridle road referred to was public.
13. On the relevant Finance Act maps, the easternmost part of the Eaton section of the route is excluded from the adjoining land parcels, and therefore depicted as public highway. The preceding documentary evidence would lead to the reasonable presumption that public bridleway rights existed over this part at minimum. The associated Field Books covering the remainder of the route only refer to public footpaths over the land in question, but this must be weighed against all of the preceding evidence pointing to bridleway status. There is no evidence that public bridleway rights over this section have been stopped up by due process.
14. In the 'Report of County Surveyor on the provisions of the Local Government Act 1929', the 'Morton Eaton (Bridle Road)' is listed as one of the routes on which minor repairs have been carried out by East Retford Rural District Council. The length quoted is 0.95 miles, which corresponds to the whole of the Eaton section of the claimed route. On the subsequent handover map produced to accompany the transfer of responsibility for highway maintenance from the District Council to the County Council, the whole of the Eaton section of the claimed route is coloured yellow, indicating that it was recognised as being maintainable at the public expense. This same section is still recorded as being publicly maintainable on the current List of Streets.

Responses from consultees

15. 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 bridleway.

Responses from landowners

16. Mr R Girdham, one of the directors of Joseph Camm Farms Limited, has objected on the grounds that "the land in question has never been a bridleway" and has been "continuously cropped since 1967". He also states that the route would "severely affect the security of Morton Grange", and that the land on either side of the route is in a "designated HLS and ELS Environment Scheme, which protects rare species of flora and fauna". Nearly all of the points are not legally relevant, and none of them undermines the documentary evidence for the existence of public bridleway rights. The security and environmental issues could, however, be considered if a diversion request was submitted.
17. Mr T Blagg, a partner of E Blagg and Sons of Brecks Farm, Eaton, has objected on the grounds that the land in question has been farmed by his family for 70 years, and at no

time during that period has there ever been a bridleway through the property. He also refers to a Statutory Declaration lodged in 2007 stating that on the relevant part of Brecks Farm 'No ways over the land have been dedicated as highways'. He also states that the proposed bridleway would severely affect the security of Brecks Farm, and that the land on either side of the route is in a designated HLS and ELS Environment scheme. Security and environmental issues are not legally relevant to the determination of the claim, and none of the points raised undermines the documentary evidence for the existence of public bridleway rights.

Conclusion

18. In order to accept the claim, it is necessary to be able to satisfy either 'Test A' or 'Test B', as described above. There is clear evidence of public bridleway rights over the claimed route dating back to 1810, and no credible evidence to the contrary. 'Test A' is therefore satisfied, and the claim should be accepted and a Modification Order made accordingly.

Statutory and Policy Implications

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

RECOMMENDATION

1. It is RECOMMENDED that the Committee accepts the claim, and authorises the making of a Modification Order to register the route as a public bridleway, as for the reasons set out above, the evidence demonstrates that public bridleway 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 - 03/07/2012)

2. 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 03.07.2012)

3. 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.

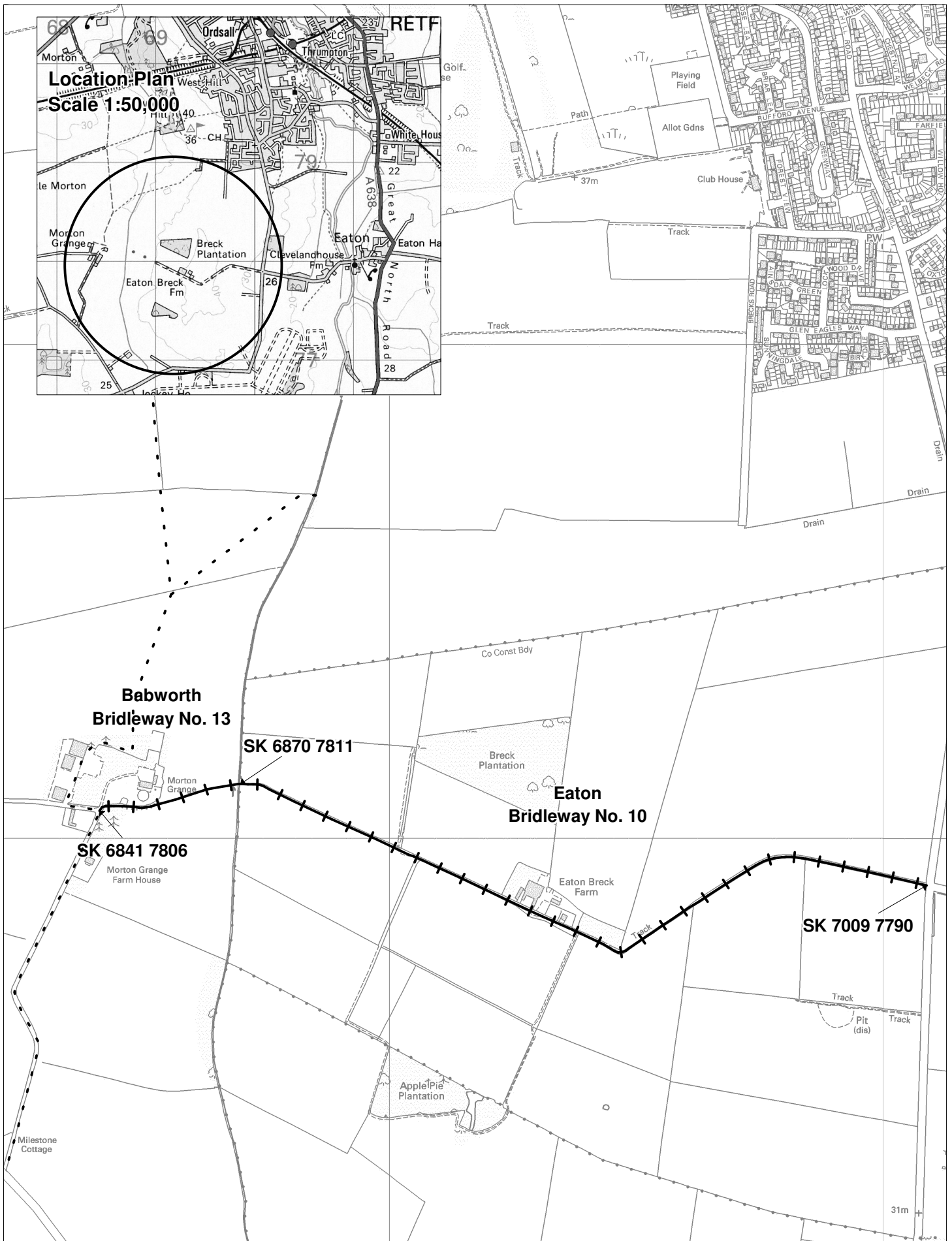
Bridleway claim at Eaton / Babworth - case file.

Electoral Division(s) and Member(s) Affected

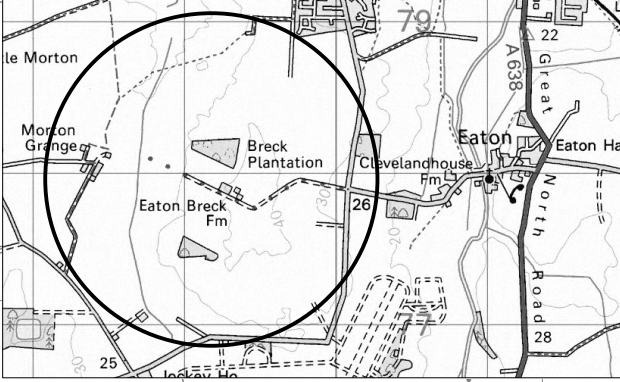
Misterton
Tuxford

Councillor Liz Yates
Councillor John Hemsall

H/TH/ROW83 - Add Bridleway to Parishes of Eaton & Babworth
2 July 2012

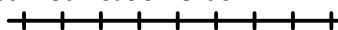


Location Plan
Scale 1:50,000



**Plan A - Babworth Bridleway No. 13 and Eaton
Bridleway No. 10 Proposed Modification Order.**

Proposed path:



Unaffected path:



© Crown Copyright and database rights 2012 Ordnance Survey 100019713



Scale: 1:10,000

Produced by: David Squires

Date: 23/08/2012



