



**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