

## **Rights of Way Committee**

**Date:** **Wednesday, 27 June 2012**  
**Time:** **10:00**  
**Venue:** **County Hall**  
**Address:** **County Hall, West Bridgford, Nottingham NG2 7QP**

### **AGENDA**

<b>1</b>	<b><u>Appointment of Chairman and Vice-Chairman</u></b> Details	<b>1-2</b>
<b>2</b>	<b><u>To note the Membership of the Committee</u></b> Details	<b>1-2</b>
<b>3a</b>	<b><u>M 26 april12</u></b> Details	<b>3 - 8</b>
<b>3b</b>	<b><u>M 9 May12</u></b> Details	<b>9 - 12</b>
<b>4</b>	<b><u>Apologies for Absence</u></b> Details	<b>1-2</b>
<b>5</b>	<b><u>Declarations of Interest</u></b> (a) Personal (b) Prejudicial	<b>1-2</b>
<b>6</b>	<b><u>R Terms of Reference</u></b> Details	<b>13 - 14</b>
<b>7</b>	<b><u>Misson Committee Report</u></b> Details	<b>15 - 44</b>
<b>8</b>	<b><u>Application for a gating order at Cedarland Crescent, Nuthall</u></b> Details	<b>45 - 56</b>
<b>9</b>	<b><u>Application for a gating order Woulds Field, Cotgrave</u></b> Details	<b>57 - 62</b>
<b>10</b>	<b><u>Definitive Map Modification Order Report</u></b> Details	<b>63 - 72</b>



## minutes

Meeting	RIGHTS OF WAY COMMITTEE
Date	Wednesday 26 April 2012 (commencing at 10.00 am)

### membership

Persons absent are marked with 'A'

### COUNCILLORS

Bruce Laughton (Chairman)  
A Stephen Garner (Vice Chair)

	Allen Clarke		Darrell Pulk
	John Cottee	A	Sue Saddington
	Sybil Fielding		Andy Stewart
A	Rachel Madden	A	Jason Zadrozny
A	Mrs Carol Pepper		

### OFFICERS IN ATTENDANCE

David Forster	- Governance Officer
Steven Eastwood Snr	- Principal Legal Officer, Legal Services
Neil Lewis	- Team Manager Countryside Access
Angus Trundle	- Definitive Map Officer/Commons and Village Greens Officer
Rob Percy	- Senior Rights of Way Officer

### MINUTES

The minutes of the last meeting held on 21 March 2012 were agreed as a correct record and signed by the Chairman.

### APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Stephen Garner (Other), Rachel Madden (Other County Council Business), Carol Pepper (Other) Sue Saddington (Other) 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**

There were no declarations of interest.

## **PROPOSED REMOVAL OF BOLLARDS AND BARRIERS ON PUBLIC FOOTPATHS No.1 AND No.20, BALDERTON WHICH RESTRICTS DISABLED ACCESS**

Mr Percy introduced the report to members and informed members that the applicant was unable to attend the meeting but had submitted a letter for the committee. Mr Percy read the letter to members which highlighted the reason Mr Hall wanted the removal of the bollards was that the law says that access on a pathway should be accessible to all who wish to use it. Mr Percy stated that equalities advice he had received suggested the current bollards could be considered to be unfair and discriminatory. Mr Percy also highlighted an option was considered for a “K-Barrier” to replace the bollards, but it was felt that this could prove to be an expensive resolution and there may also be site-specific problems around installation, although it would improve disabled access compared to the current bollards and barriers.

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

Councillor Mrs Hurst, Balderton Parish Council, informed members that there had been a long campaign by the Parish Council to have the bollards installed to stop anti-social behaviour. Local opinion is that they should stay and although the needs of the disabled should be taken into account so do the needs of the community.

Members asked questions and to clarify some issues as follows

- If there was another form of barrier installed this would be acceptable if they stopped the use of motorcycles along the route.

Councillor W Hurst, Chair of the Safer Neighbourhoods Group, Balderton and Fernwood, Newark, informed members there was a reduced amount of anti-social behaviour since the bollards were installed. The use of motorcycles has stopped and if the bollards are removed there would be an increase in anti-social behaviour.

Mr Hiley, Chair of the Local Access Forum, spoke in favour of the removal of the bollards as it would give greater access to all and the County Council has a duty to protect these rights. He also highlighted that the County Council’s Improvement Plan recognises there should be access for all and the installation of “K-Barriers” may not totally resolve the access problem.

Members asked questions and to clarify some issues as follows

- In response to a question regarding “K-Barriers” Mr Hiley responded that not all scooters will fit through the barriers because of size issues.



The Chair informed Committee that Councillor Walker, Local Member, had informed him that he was not in favour of the removal of the barriers on the grounds of the possible return of motorcycles and other forms of anti-social behaviour, and that he had also received a letter from a local resident, Mr. Hall, to similar effect. Mr. Percy also read out the letter from the Applicant providing his reasons for asking for the barriers and bollards to be removed.

Members discussed the issues before Committee and balancing the concerns expressed by the public speakers with improving access to all a motion in terms of resolution 2012/0007 was moved by Councillor Stewart, seconded by Councillor Pulk and it was:-

#### **RESOLVED 2012/0007**

1. That the bollards on Footpath 1 and the two sets of barriers on Footpath 20 are removed by the County Council and replaced simultaneously by the installation of appropriate structures which are more accessible to disabled users.
2. That the surfacing improvements are undertaken on Footpath 20, subject to budget provision
3. That clear "No Cycling" signs are erected at appropriate locations on both Footpaths 1 and 20 and
4. That dialogue is maintained with the Anti-Social Behaviour Co-ordinator at Newark and Sherwood District Council and police crime statistics monitored annually.

#### **APPLICATION TO REGISTER A TOWN OR VILLAGE GREEN AT SMOKEY'S FIELD, LANGOLD**

Mr Trundle introduced the report and informed members that Bassetlaw District Council had approved an application for housing on the land, but had done so in awareness of the application for village green status acknowledging that the development couldn't take place unless the application had been turned down. He also informed members that the applicant Mr Fisher had written to the Council stating he does not accept the findings of the Inspector and warning that a second application may be submitted.

On a motion by the Chair, seconded by Councillor Stewart it was unanimously:-

#### **RESOLVED 2012/0008**

That the application to register Smokey's Field, Langold is dismissed for the reasons set out in the Inspectors report attached to the report as an appendix.

#### **CONSIDERATION OF AN APPLICATION UNDER SECTION 26 OF THE HIGHWAYS ACT 1980 TO CREATE A PUBLIC FOOTPATH IN THE PARISH OF EVERTON**

Mr Trundle introduced the report and highlighted that a mistake was made by the Council in 1990 when taking the proceedings to stop-up the right of way through the Magistrates' court, whereby the reservation of footpath rights (as agreed by the then Environment Committee) was inadvertently omitted from the stopping-up order.

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 Shulldham, owner of the land, informed members that he had made a statutory declaration under section 31 of the Highways Act 1980 to protect himself from the creation of a footpath on this piece of land. He also informed members that he was not about to stop the public from using this land to connect the footpaths mentioned in the report.

Mr Eastwood, Principal Legal Officer, Legal Services, explained to members that section 31 of the Highways Act 1980 protects land owners from acquisition of rights by long user, rather than the creation of a public right of way under section 26. The particular issue before Committee is therefore consideration of whether there is a demonstrable need for the footpath.

Councillor D Bardsley, Chair of Everton Parish Council, spoke in favour of the creation of a public right of way as it would have significant use by the residents of both Everton and Mattersey. He informed members that the footpath links many local rights of way in the area and he reminded members of the committee that the County Council had received 38 letters of evidence from local community members.

No questions were asked

Mr T Roberts, resident of Mattersey for 16 years, spoke in favour of the footpath creation order. He highlighted to members that there is no safe crossing at the busy junction of Eel Pool Road and New Mattersey Road. He also felt that there is a need to have safe access to the network and also the need to safeguard this regularly used route for the future.

No questions were asked

Councillor G Brown informed members there has been a route in this area for over 800 years, it being the location of a ford previously. He also suggested that the construction of a footbridge by the County Council at this point gives clear indication that they felt that there was a need for a footpath. He informed members that he appreciates the landowner allowing access currently but there is a need to safeguard that permission for the future.

Members asked questions and to clarify some issues as follows:-

- The reason the Parish Councils did not attend the previous meeting when this item was presented was because Parish Councils do not have the experience of dealing with Rights of Way and made the presumption the recommendation

would be agreed. However subsequently we discovered this was not the case and the message will be given to other Parish Councils.

Councillor L Yates, Local Member, spoke in support of the creation of a public footpath and is aware of the overwhelming support from local residents. She appreciated the landowners guarantee for use of the land but this does not however safeguard the route for the future if the land is sold.

No questions were asked

Mr Hiley, Chair of the Local Access Forum, stated that although the LAF supports the creation of rights of way he had to speak in favour of the recommendation set out in the report as the landowner has taken out cover under section 31 of the Highways Act 1980 protecting his land against a claim of a public right of way

No questions were asked

Mr Eastwood, Principal Legal Officer, Legal Services, clarified to members that Section 31 of the Highways Act 1980 does not prevent the County Council from making a Creation Order for a public right of way; it simply 'stops the clock' for long user claims.

Mr Trundle clarified that Mr Shuldham's statutory declaration under section 31 was lodged with the Council in 2001.

Members discussed the issues before Committee stating that they felt that there is a definite need for the footpath, not only to connect other routes but because of the local support it has from the Parish Councils. The evidence presented shows that a footbridge was built over the stream due to a need for the footpath before, and the representations from local residents and parish councils are that there is a clear need for the footpath today. Committee acknowledged that the landowner has given permission to use his land but felt that any subsequent owner may not be as amicable in its use.

On a motion by the Chair, seconded by Councillor Pulk it was unanimously:-

#### **RESOLVED 2012/0009**

That the application for the making of a Creation Order under Section 26 of the Highways Act 1980 be approved, and that an order be made to create a footpath from the River Idle Footbridge along the Old Mattersey Road to Eel Pool Road, on the basis that a need to create a public right of way on foot, being a clear legal public right subject to the protection of the Council, has been sufficiently demonstrated to the satisfaction of the Council.

The meeting closed at 11.25 am

**CHAIR**



## minutes

Meeting	RIGHTS OF WAY COMMITTEE
Date	Wednesday 9 May 2012 (commencing at 10.00 am)

### membership

Persons absent are marked with 'A'

### COUNCILLORS

Bruce Laughton (Chairman)  
A Stephen Garner (Vice Chair)

Allen Clarke  
John Cottee  
Sybil Fielding  
Rachel Madden  
Mrs Carol Pepper

A Darrell Pulk  
A Sue Saddington  
Andy Stewart  
A Jason Zadrozny

### OFFICERS IN ATTENDANCE

David Forster	- Governance Officer
Steven Eastwood, Snr	- Principal Legal Officer, Legal Services
Neil Lewis	- Team Manager Countryside Access
Angus Trundle	- Definitive Map Officer/Commons and Village Greens Officer
Eddie Brennan	- Definitive Map Officer/Commons and Village Greens Officer

### APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Stephen Garner (Other), Darrell Pulk (Other), Sue Saddington (Other) 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 Sybil Fielding declared a personal interest in agenda Item 4 Town and Village Green Application – Wigwam Lane Playing Field, Wigwam Lane, Hucknall. This was because she was the Chair of the Planning and Licensing Committee at the time of the original application in 2008.

## **TOWN AND VILLAGE GREEN APPLICATION – WIGWAM LANE PLAYING FIELD, WIGWAM LANE, HUCKNALL**

Mr Brennan introduced the report and informed members that he had received correspondence from the Solicitors acting for the consortium and circulated a copy. The correspondence referred to paragraph 14 of the Committee report and it not reflecting the wording of the Inspector regarding issue estoppel rather than cause of action of estoppel. Mr Brennan informed members that he had taken legal advice from Legal Services within the County Council and he circulated an amended paragraph 14, which better reflected the Inspector's conclusions. Mr Brennan drew members' attention to paragraph 23 of the report and members were given time to read the amendment which was as follows:-

14. The Inspector's report contains a detailed analysis of submissions in respect of the res judicata/ issue estoppel/ abuse of process arguments and concludes that the relevant criteria for issue estoppel have been met for the following reasons;
  - The RA exercised a quasi-judicial role in determining the first Application.
  - The decision in respect of the first Application was pronounced by notice in writing.
  - That the RA had jurisdiction to consider the first Application.
  - The decision in respect of the first Application was final and on the merits.
  - The decision in respect of the first Application determined a question raised in the later litigation.
  - The parties in respect of both applications are the same and the earlier decision was 'in rem' i.e. directed towards property rather than a person(s).

Councillor Madden commented that the local community has been involved in the application for Village Green status and that the Liberal Democrats Group is against this decision and supports the application to register the land.

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

### **RESOLVED 2012/0010**

That the Inspectors report be noted and that the Town and Village Green application for Wigwam Lane Playing Field, Wigwam Lane, Hucknall be rejected for the reasons set out in the Inspector's report dated 20 April 2012 (attached to the report as an appendix).

In accordance with the Councils standing orders which relate to Committees and Sub-Committees (S.O. 7.3) Councillor Rachel Maddens vote against the recommendation was noted.

The meeting closed at 10.25 am

**CHAIR**





**REPORT OF CHIEF EXECUTIVE****TERMS OF REFERENCE****Purpose of the Report**

1. To note the Committee's terms of reference.

**Information and Advice**

2. County Council on 29 March 2012 and amended on 17<sup>th</sup> May 2012 agreed the following terms of reference for the Rights of Way Committee:-

Responsibility for discharging the Council's regulatory powers relating to:

- 2.1.1 Responsibility for discharging the Council's regulatory powers relating to:
  - 1.1.1.1 public rights of way
  - 1.1.1.2 cycle tracks
  - 1.1.1.3 gating orders on recommendation from the relevant committee or as necessary
  - 1.1.1.4 common land
  - 1.1.1.5 town and village greens
  - 1.1.1.6 non-statutory public access routes
  - 1.1.1.7 land management agreements
  - 1.1.1.8 permissive paths
- 2.1.2 Receiving reports on the exercise of powers delegated to officers in relation to functions for which this Committee is responsible

### **Other Options Considered**

3. None.

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

4. To inform the committee of its terms of reference.

### **Statutory and Policy Implications**

5. 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) That the report be noted.

**Mick Burrows**

**Chief Executive**

**For any enquiries about this report please contact: David Forster 0115 977 3552**

### **Constitutional Comments**

6. As the report is for noting only, no constitutional comments are required.

### **Financial Comments (PS 2/5/12)**

7. There are no financial implications arising directly from this report.

### **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.

- a) Report to County Council – 29 March 2012 and 17<sup>th</sup> May 2012 (published).

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

All

## 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 FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISH OF MISSON

#### Purpose of the Report

1. To consider an application made by Misson Parish Council to record a route as a public footpath on the Definitive Map and Statement for the Parish of Misson. A map of the general area is shown as **Plan A** while the route under consideration is shown on **Plan B** marked between points A and B.
2. The effect of the application, if accepted would be to add a public footpath along a route from Bawtry Road past the houses on Norwith Hill to join Misson Bridleway No. 2, also known as Hollin Causeway and Bryans Close Lane.

#### Information and Advice

3. The application for a Modification Order was made by Mission Parish Council in June 2008 and as they wanted to act as just the facilitator for the application they did not submit any evidence in support with it. In total, 49 user evidence forms were submitted along with, letters and other forms clarifying certain details concerning the claimed use of the path. This evidence mainly came from people living in Misson and Austerfield. This included some user evidence forms that were completed in 2005 (when another resident of Newington was considering making an application for a modification order but no formal application was then made). Interviews were carried out with 16 of the claimants who had used the route for a considerable length of time. A summary of the user evidence is shown in **Table 1**.
4. As well as this, interviews were also carried out with the previous farmer, whose family farmed the land from 1978 to 2003, with the current tenant farmer who farms the fields on either side of the claimed route from 2003 onwards, and with the builder, who supervised the building development at Norwith Hill from 2003 to 2008. Other information was also supplied by the developers, who bought Norwith Hill Farm and lived on site whilst building work took place, another resident at Norwith Hill and from 2 other landowners who own

part of the farmland over which the claimed path runs. A great deal of information has been submitted by both supporters and objectors to the application, and there have been three requests to view the submissions made under Freedom of Information Act legislation. What follows is a summary of the evidence that has been submitted from both sides.

## **Legal Background**

5. 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”.
6. 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”.
7. 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 brought into question.
8. If it is accepted that a presumption of dedication has taken place, consideration must also be given to the category of highway that is believed to subsist 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.
9. 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 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**

10. The claimed route currently exists as a surfaced access road from Bawtry Road to a metal gate approximately 60 metres from the main road which when closed crosses the entire

width of the lane. When this gate is shut there is insufficient room to be able to walk or ride around it. The gate is shown in **Photograph 1**. The claimed route continues along the road and past a gated track which was constructed when the area was quarried. The route then continues on a surfaced road to what was Norwith Hill Farm which has been converted into private residences. This section is shown in **Photograph 2**. The route then continues around the converted buildings on the surfaced route as shown on **Photograph 3**. The claimed route then used to continue along a track at the side of the farm buildings but this has now been incorporated into the gardens of properties at Norwith Hill although a road has been constructed to the east to enable access still to be maintained to the properties. The path then goes across a section of field for a distance of approximately 150 metres and then joins up with a grass track that then joins Misson Bridleway No.2. This section of the route is shown in **Photograph 4**.

## Site History

11. The route from Bawtry Road to Norwith Hill is first shown on the 1843 Misson Tithe map but no continuation is shown from Norwith Hill to Misson Bridleway No.2. No information was included in the Tithe Award that gave any indication that this route had public rights on it. It is not until the 1885 Ordnance Survey 6" plan that the entire claimed route from Bawtry Road to Misson Bridleway No. 2 is shown, however the route was not named or labelled to indicate any status. In 1901 a plan was produced for the North Eastern Railway (Railway No. 11) which showed the route of the proposed railway crossing the claimed route. The book of reference described the route that crossed the railway as being a 'road' and that it was in the ownership of George Brooke. The route was not excluded in the 1910 Finance Act plans nor were any deductions made for a route going through any of the land parcels. None of the subsequent Ordnance Survey plans label the claimed route to indicate any status. The route wasn't claimed as a public right of way by the Parish Meeting in 1953, although it has to be noted that only 7 paths out of the current 12 were claimed at that stage. Subsequent Ordnance Survey plans show the claimed route as a double pecked line and label it as 'CT' (cart track) and 'Tk' (track).
12. The aerial photographs dated 1971, 1974, 1979, 1984, 1992, 1996, 2000, 2004 and 2007 all show the claimed route physically existed, however, the resolution on the photographs is such that it is difficult to determine whether there were any gates or barriers across the route. The aerial photographs dated between 1996 and 2000 cover the period when quarrying took place on either side of the claimed route on the section from Bawtry Road to Norwith Hill. The photograph dated 2000 shows the new quarry road for the first time which was constructed to take material to be processed. This quarry road can be seen on the 2000 aerial photograph to the west of the northern section of the claimed route. An oblique aerial photograph dated 2002 shows the original gate across the road at the southern end of the claimed route. The aerial photographs from 2004 show that the buildings at Norwith Hill were being demolished with all but one of the new houses completed on the 2007 photograph. The 2007 photograph also shows that there were building materials and a caravan on the line of the claimed route. This is shown in **Photograph 5**. The 2009 aerial photograph shows that the section of the claimed path to the east of the buildings at Norwith Hill has now been incorporated into the gardens of the properties. This photograph also shows that part of the track along which the claimed route runs north of Norwith Hill has been incorporated into the adjoining fields and is shown in **Photograph 6**.

13. In September 1995 the County Council was contacted by a member of the public who lived in Newington, concerning a number of paths which he believed to be public bridleways, but which were not recorded on the Definitive Map for Nottinghamshire. A plan was submitted to the County Council showing all these routes, one of which included the current claimed route as part of a much longer one. As part of the investigation into these claims, an officer of the County Council made a site visit in February 1996 to investigate this claim and made a note of what was there. There was a padlocked metal gate across the entrance of the route on Bawtry Road with 0.4 metre gap to the west and a 1.07 metre wide gap to the east. There was a small sign by the gate saying 'Private Property'. There were hoof prints in the eastern gap and hoof prints and horse droppings along the claimed route. At that time though, no formal application was made to claim this route and after brief investigation, the County Council did not make a Legal Order due to insufficient evidence (as very little user evidence had been submitted in support and there was no documentary evidence to indicate that there were any unrecorded public rights).
14. In 2004 the old farm buildings at Norwith Hill were bought by a developer who obtained planning permission to convert the farm and buildings into a number of separate properties. The developer lived on-site as the properties were being converted.
15. In February 2008 the issue of the route from Bawtry Road to Misson Bridleway 2 was raised at a Misson Parish Council meeting where 2 members of the public spoke in favour of an application to have the path registered as a public footpath stating that it had been used by parishioners. Several residents of Norwith Hill were also at the meeting saying that the path had never been a right of way, that it was not in frequent use and that there were concerns over safety and for the privacy of residents. In March 2008 a representative from the Countryside Access Team of Nottinghamshire County Council was invited to speak at the Parish Council meeting to explain the process of how an application is made for a Modification Order and how the evidence is assessed. Following the receipt of the application in June 2008, a meeting was held in July 2008 with the affected landowners and an officer of the County Council to discuss the process and what kind of evidence would be useful for them to submit. Also at the meeting there was a discussion about if the claim was successful there would be an opportunity to divert the route of the path to a more convenient location that would avoid the farm buildings and gardens. The owners said that they would prefer to focus on defeating the claim rather than consider a diversion.

## Claimed use

16. **Date of Challenge.** According to the evidence submitted by the claimants, the date when their use of the path was challenged appears to be in 2007, which was when they were verbally challenged by residents living in the new properties at Norwith Hill and when signs were erected along the route. The claimants state that this date seems to coincide with when the building work at Norwith Hill was finishing and people were moving in to the houses. If 2007 is taken to be the date of challenge this would make the relevant 20 year period between 1987 and 2007.
17. However, it should be noted that the public's use of the claimed route may have been challenged at an earlier date, when, in 2004 the old gate at the southern end of the path

was removed and a new gate erected 60 metres further up the claimed route. According to the developer this gate was locked from the time it was erected and there was insufficient room to be able to squeeze around it. If this is taken to be the challenge date the period of 20 years use would be from 1984 to 2004.

18. 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 at least the 1960's with 7 people claiming to have used it at least since that date. Use does seem to be continuous with none of the claimants saying that there was a time when the route was unavailable. If the claim period is taken to be 1987 to 2007 then 48 people have used the route for at least part of the 20 year period with 26 of them claiming that they have used it for the full 20 years. If the claim period is taken to be the earlier one from 1984 to 2004, then 47 people have used the route for at least part of the 20 year period with 23 of them claiming that they have used it for the full 20 year period.
19. **Category of use.** The application made by Misson Parish Council was for a footpath and of the 46 forms submitted, 42 of them indicated that they had used the route on foot. However, evidence was also submitted that the route had been used by 17 people on horseback. There have been a number of livery stables in Newington and Austerfield and quite a number of the riders claiming to have used the route have or did have their horse stabled at one of them. Therefore, it is necessary to consider this use by equestrians to see if the evidence indicates that bridleway rights have been dedicated.
20. **Purpose and frequency of use.** The evidence indicates the main use stated by the claimants was for pleasure and that it is part of a circular route linked up to other public rights of way in the area that avoids using the busy main roads. A common route does seem to have been to use the claimed route, then Bryans Close Lane (Misson Bridleway No. 2) to Misson and then back along Slaynes Lane as shown on **Plan A**. Frequency of use varied from 27 people who have used it at least once a week to those who have used it occasionally.
21. 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 by secrecy, licence or compulsion. Whilst the user evidence shows that these requirements have been met the evidence of the claimants is disputed by the property owners at Norwith Hill and by the previous and present farmers and landowners. It is necessary, therefore, to examine in detail the three elements of secrecy, licence and compulsion.

## **Use in Secret**

22. **Time of day.** The claimants do state that they used the path at a time when it would reasonably be expected that someone would be out walking or riding. For example, some of them have said that they used it in the afternoons, evening and weekends. Two of the claimants were more specific saying that they used the claimed path regularly at 9:30 am and at 10:00 am. Therefore, the use of the path was quite open and would have been evident to any landowner. The objectors to the application have stated that there was very little use with people mainly using the quarry road rather than the claimed route through the farm buildings.



## Use by licence

23. **Use with permission.** Six of the claimants have stated that they used the claimed route with some kind of permission from the owners. For example, one of the claimants has stated that she had been given permission to use the track by the owners, firstly Mr. Brooks and then by Mr. Arden and also by Tom Coggon who used to work for Mr. Arden. This permissive use would not make her use of the route as of right. The same would be true for the others who say that they were given some kind of permission to use the claimed route. However, this does leave 42 claimants who stated that no one gave them permission to walk or ride the path with some of them stating that they didn't believe that they needed to ask anyone to use the path.
24. The previous and current landowners state that they have given permission for a very few people to use part of the claimed route. Paul Arden, who farmed the area from 1978 to 2003, states that the only person that had permission to use the path was Kevin Moody (who has not submitted any evidence in support of this claim). John Gelder, who has owned part of the land over which the claimed path runs from 2004, has given permission to 2 runners from Bawtry who also have not submitted any information of their use of the route. John Gelder also gave permission to Mr. and Mrs Gibbons from Newington Hall to deliver manure to Norwith Hill and their use of the path may have also been by permission. John Gelder also states that John Sutcliffe, the neighbouring landowner, has permission to use the path and that evidence of use given by two of the claimants is compromised by them being either related to Mr. Sutcliffe or working for him.

## Use by Compulsion

25. There is no suggestion from the claimants that they had to use force to use the claimed route, although this is disputed by the objectors to the application and is discussed in more detail in the following paragraphs in relation to the gates and the gap at the side of them.

## Use without interruption and no intention to dedicate

26. **The old gate.** A lot of the claimants state that there was a gate at the start of the route on Bawtry Road, although none of them give a date of when it was first erected. The experience of most of the claimants was that this gate was always open and that it was pushed back; indeed, some of the claimants state that they never really noticed it. However, some of the claimants have said that this gate was sometimes closed but not locked, with a chain thrown over the top. However, according to Mrs Gibbins who lived opposite the entrance to the claimed route and used the path very frequently, it appears that in the late 1990's the gate may have started to have been locked last thing at night and opened first thing in the morning. The reason that this happened was that things started to be stolen from the farm buildings and that it was locked by Tom Coggon, one of the farm workers working for Paul Arden. Another claimant also said that this gate was locked for a short time when there were cows in the field further up the lane to stop the cows getting out on to the road.



27. **The old gate.** The previous and current landowners disagree with what the claimants say about this gate. Paul Arden, the previous landowner stated that the gate was open from about 7.00 am in the morning to 4.00 pm in the evening but it was locked outside those periods and if no one was on site. Mr. Arden remembers this about the locked gate as he lived in Lincolnshire and always had to make sure he had a key with him so that he didn't have to go back and fetch one. When John Gelder, the present owner of part of this route, first viewed the property in 2003, he remembers that this gate was locked and he had to get a key to access the track. At a Parish Council meeting in February 2008, prior to the application being made, one of the property owners at Norwith Hill says that two of the claimants acknowledged that this first gate had been locked for 10 to 15 years.
28. **Gap at the side of the gate.** The claimants also say that there was a gap in the hedge adjacent to the east side of the gate that they could use when the gate was closed. None of the claimants say that they had to force their way through at this point with some of them saying that there was a well used worn path through the gap. One of the claimants says that the gap was big enough to be able to get a large horse through without any problems. Paul Arden, the previous landowner, does acknowledge that there was a gap at the eastern side of the gate but he remembers that it was blocked with an agricultural implement, preventing its use.
29. **The new gate.** According to John Gelder (the present owner) and his site foreman working on the development, the old gate was removed and a new one erected in 2004 sixty metres further up the lane so that lorries could pull in off the road. When the new gate was erected no gap was left on either side of the gate. He states that the new gate was locked firstly with a padlock, and then with a combination lock, as more people made deliveries as the properties on Norwith Hill were being developed. Mr. Gelder states that this gate was locked to prevent theft of materials and to stop horse riders and walkers using the lane. The locking of the gate has also been confirmed by people who had occasion to visit the site from 2005 onwards where they had to telephone the Gelders to ask them to unlock the gate. Mr. Gelder's foreman stated that towards the end of the development the gate may have been left open a few times, but his memory of it was that it was mostly locked. One of the property owners has stated that at a Parish Council meeting some of the claimants said that they had climbed over this gate when it was locked (which would be user by force and therefore not 'as of right') and that some of the users knew the combination of the lock and used it to open the gate.
30. **The new gate.** The claimants state that with the new gate there was not enough room for horse riders to get around the side but some walkers could. The claimants also state that this gate was on occasions locked. For example, one of the claimants says that it was always open even after the contractors had finished on site, whilst another says that in 2005 the gate was sometimes chained and locked. Mrs Foster and Mrs Gibbins both say that the new gate had a combination lock on it and that their husbands knew the combination of the lock as their husbands needed access for their work or to deliver things for the Gelders at Norwith Hill. However, neither of them says that they had to unlock the gate when they were using the path on foot or on horseback.
31. **Signs.** All of the landowners say that there were signs along the route, with Paul Arden stating that there signs at the Bawtry Road end saying 'private property'. It is presumed that this is the sign noted on the site visit as mentioned in paragraph 13. After 2004, the site foreman on behalf of Mr. Gelder states that he put up lots of signs saying 'private road

keep out', but they kept getting taken down with one sign only lasting 5 minutes. Again, after 2004 one of the other property owners says she has erected 18 signs along the route saying 'private no public right of way', with all but one having been vandalised or removed. However, no notice was submitted to the County Council under Section 31(5) of the Highways Act 1980 which would be taken as evidence that the route is not dedicated as a right of way.

32. **Signs.** The information submitted by the claimants indicates that there were signs erected along the route, although they give the date of when these appeared as some time in 2007, although one person does remember that sometime after 2004 a sign was erected saying 'access by permission only-private land'.
33. **Challenges prior to 2004.** Paul Arden, who farmed the land during this period, states that he was on site once a week for about 5 hours and during cultivation every day and during that period he "never really saw anyone and, therefore, there was no need to challenge anyone". He had 2 farm workers based at the site called John Pinder and Tom Coggon who were there much more frequently and would have challenged people using the route. In the 1980's an infra red burglar alarm was installed that would have called Tom Coggon back to the farm if anyone was going through and he would have then challenged people.
34. **Challenges prior to 2004.** None of the claimants say that they were ever challenged during the period up to 2004, even though there appears to have been times when they saw farm workers during their use of the path. One claimant says that farm workers were always accommodating when she was on her horses and pulled in their vehicles to let her past. Another of the claimants says that she met farm workers when she was riding, as well as the game keeper, but was never told she couldn't use the path. Seven of the claimants specifically mention Tom Coggon and John Pinder and say that they often used to stop and chat with them but nothing was said from them to the claimants not to use the path or giving permission to do so. Three of the claimants also mention the alarm system that Tom Coggon had and according to Michael Booth, who used to work with him, it was only switched on at night to stop thefts from the buildings at Norwith Hill.
35. **Challenges after 2004.** 2004 is the date when the Gelders started to develop the properties at Norwith Hill and moved the gate further up the lane. The current tenant farmer, states that he would be on site 2 times a month but during the 2 weeks of cultivation for about 15 hours a day. When he was there he challenged everyone he saw. He also states that he has never seen people use the section of the claimed route from Norwith Hill north to Bridleway No. 2. The Gelders, who lived at Norwith Hill from April 2005, onwards also state that they challenged people from the time they moved in and this is confirmed by their foreman. However, most of the claimants state that they were not verbally challenged until 2007, which coincided with when the majority of the building work was completed at Norwith Hill and people started to move into the properties.
36. **Use during quarrying.** Two areas on either side of the claimed route were quarried sometime between 1996 and 1998 and a haul road was constructed to remove material from the extraction area. One of the managers of the Quarry company believes that the claimed route was capable of being used and recalls the old gate as either being locked or capable of being locked. All the claimants said that the area quarried was quite small and the quarrying did not interrupt their use of the claimed path. After the quarrying had

finished the claimants say that they continued to use the claimed route but also used the haul road as it made a circular route. Two of the claimants, Mr. and Mrs. Oglesby, say that they got permission from the quarry manager to use the new quarry road but still used the original claimed route for which they did not think that they needed any permission. Both the previous farmer and the current tenant farmer did notice use of the haul road by members of the public as did Mr. Gelder. One of the residents of Norwith Hill thinks that some of the claimants may be mistakenly claiming the route past Norwith Hill when they have used the haul route instead. However, this has been one of the questions specifically asked of the claimants who have confirmed that the route being claimed is not the quarry haul road, although this route has been used as well.

37. **Use during the development.** The claimants also state that they continued to use the claimed path whilst the site at Norwith Hill was being developed. For example one claimant said that he talked to the site manager a few times who said the path was a public right of way, whilst another says that he went along the path as frequently as four times a week but was never challenged by the builders or the man in charge. The claimants seem to agree that it was in 2007 when the building work was nearing its completion and some of the properties were sold that they were first verbally challenged in their use.
38. **Use during the development.** The objectors to the application state that it would have been difficult for people to use the claimed route because the access to Norwith Hill was resurfaced in 2005 taking 5 weeks to carry out. It was also stated that there were times when building materials and a caravan were on the line of path that would also have made it difficult to use. Mr. Gelder also mentioned that there were a few people who came to look at the development as it progressed, but that they came in from the quarry road rather than along the claimed route.
39. Most of the claimants say that they saw other people riding or walking along the claimed route. Some of the people mentioned had also completed rights of way information forms but there were 23 others that had not completed a form or submitted any information. In addition to this, the claimed route had been used 5 or 6 times a year from 1979 to 2005 by groups of children from the Austerfield Field Studies Centre. Andrew Jagger, the Head Teacher of the Field Studies Centre says that there would have been up to 32 children in each group along with supervising adults and members of staff and that he never sought permission to use it thinking it was 'another public right of way'.

## Consultations

40. Consultations have been carried out with statutory undertakers, user groups and Bassetlaw District Council into the proposal to register this path as a public footpath. No significant information has been submitted either in support of or against the application.

## Conclusion

41. There is no documentary evidence that exists that indicates that this route is a public right of way. Although the route is shown on Ordnance Survey plans from 1885 and can be

seen in the aerial photographs, there is no indication of the status of the route. Therefore, the relevant evidence to consider relates to the issue of presumed dedication.

42. As shown in **Table 1**, the earliest claimed public use dates back to the 1930's with use appearing to increase in volume up until 2007/8. Seventeen of the claimants were interviewed and many of the others provided additional information to substantiate the initial user evidence forms that were submitted and there is no indication that any of the claimants have colluded with each other. Certainly all interviews, apart from two, were carried out on an individual basis. The user evidence does show use of the route has been consistent, with no breaks in that use. The users are clear about which route is being claimed and although some have used the quarry haul road this was in addition to the route past the farm buildings at Norwith Hill. The claimants state that the use of the route has been as of right with only a few indicating that they have had any permission to use it from any of the landowners, tenants or farm workers. The majority of claimants have used the route on foot, although consideration has to be given to those who have claimed equestrian use.
43. The evidence provided by Paul Arden, the farmer up until 2004, does conflict with claimants' evidence with respect to the old gate being always locked when no one was on site. For the most part the claimants remember this gate being open, and when it was closed and sometimes locked there was sufficient room to get around the gap at the eastern side and that this was never blocked. There is no suggestion from the claimants that they had to force their way through. Paul Arden also mentions the sign next to the gate with the wording 'Private Property' which was also noted at the site inspection in 1996. The wording of this notice does not emphatically challenge use of the claimed route, however, as it does not directly refer to the existence or non-existence of any right of way on foot or on horseback. Again there is a conflict of evidence between the claimants who said that they used the route and sometimes talked to the farm workers who were present on site, and Paul Arden who says that the farm workers would have challenged this use.
44. In 2004, when the Gelders bought Norwith Hill Farm and the land surrounding it the old gate was removed and replaced with a new one further up the lane and the Gelders have stated that this was then locked. Unlike the old gate, there was no gap at the side of the new gate when it was closed or locked and it is significant that it was confirmed as being locked by the claimants and that they had to try get around the side of the gate. However, some of the claimants state that they never found this gate to be closed (let alone locked) although one of the claimants states that it was locked when it was first put in. One possible interpretation of this is that initially the new gate was locked in 2004 but as more and more contractors came onto site the gate was left open more and more and users came through it. Depending on how complete this closing and locking of the gate was, this date could be taken as the date when the right to use the claimed route was being challenged. Aside from the locking of the new gate, there is again conflicting evidence of use whilst the development of the Norwith Hill properties was being carried out with the Gelders, their site foreman and the tenant farmer all stating that use was challenged both verbally and with signs but with the claimants stating that this was not the case. In 2007 the majority of the claimants say that their use of the route was verbally challenged when new residents moved into the Norwith Hill properties.

45. As stated in paragraph 5, according to Section 53(3)(b) of the Wildlife and Countryside Act 1981, the legal test that must be satisfied in order to require the Council to make a Modification Order is: “ the expiration... 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”. Therefore, consideration must be given to both potential challenge dates of 2007 (when the right to use the path was verbally challenged, which would then give the 20 year period 1987 to 2007) as well as the challenge date of 2004 (when the new gate was erected and locked, which would then give the 20 year period of 1984 to 2004). The evidence currently before the Council suggests that whilst the 2007 date was the more effective challenge, the 2004 date was a sufficient challenge, which prevented use of the route causing users to go around the side of the gate where no gap existed.
46. Having ascertained the date of challenge it is necessary to consider what the status of the route is. As stated in paragraph 19, Misson Parish Council made an application for a Modification Order for a footpath to be added to the Definitive Map, but some of the information that was submitted has come from equestrians. However, when asked specifically about permission to use the route, some of the riders have indicated that they did have permission to use it. As well as this, some of the equestrians have also said that they have used the route on foot as well as on horseback and it has been impossible to quantify with any certainty what use claimed was solely on horseback rather than a mixture of pedestrian and equestrian use.
47. It is important to bear in mind that the evidential threshold to **make** an order is comparatively low i.e. all that is required to be shown is that the right of way is reasonably alleged to exist. 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.
48. In **Emery (1996)**, the court of Appeal confirmed that it was appropriate to make an Order provided that at least the lower test (test B) was met, and that this test was met where there was credible evidence of public user over a twenty-year period and no incontrovertible evidence that a right of way could not reasonably be alleged to exist.
49. Having analysed the evidence currently before the Council, it is the officers’ view that there is not sufficient evidence to indicate that the equestrian use has been as of right and for the full 20 year period in sufficient numbers. The use of the route on foot, however, does appear to satisfy the above legal criteria for making a modification order, even having disregarded evidence of use of the route given by people who had been given direct permission, or to any evidence of use which may have arisen from a potentially implied permission given to those who may have had some connection with any adjoining landowners.
50. In this case whilst there is a conflict of evidence, there is no incontrovertible evidence that a right of way cannot reasonably be alleged to exist. Therefore, having considered that there is a credible body of user evidence to show that the claimed routes have been used for a minimum period of 20 years and little evidence to show that the landowner had, prior



to the application, effectively challenged public use or directly otherwise demonstrated a lack of intention to dedicate the claimed route, it is the officers' view from their investigations that a public right of way on foot is reasonably alleged to exist along the claimed route, and that as such the claim should be accepted and a Modification Order should be made.

### **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 the footpath for which the application was submitted 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.

**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 – 31/05/2012)**

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 22.05.2012)**

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**

Misterton

Councillor Liz Yates

H/AT/ROW82 - Add Footpath to Definitive Map & Statement in Parish of Misson  
12 June 2012





# Plan A

General area around the  
claimed path from Bawtry  
Road to Misson  
Bridleway No. 2



Nottinghamshire  
County Council

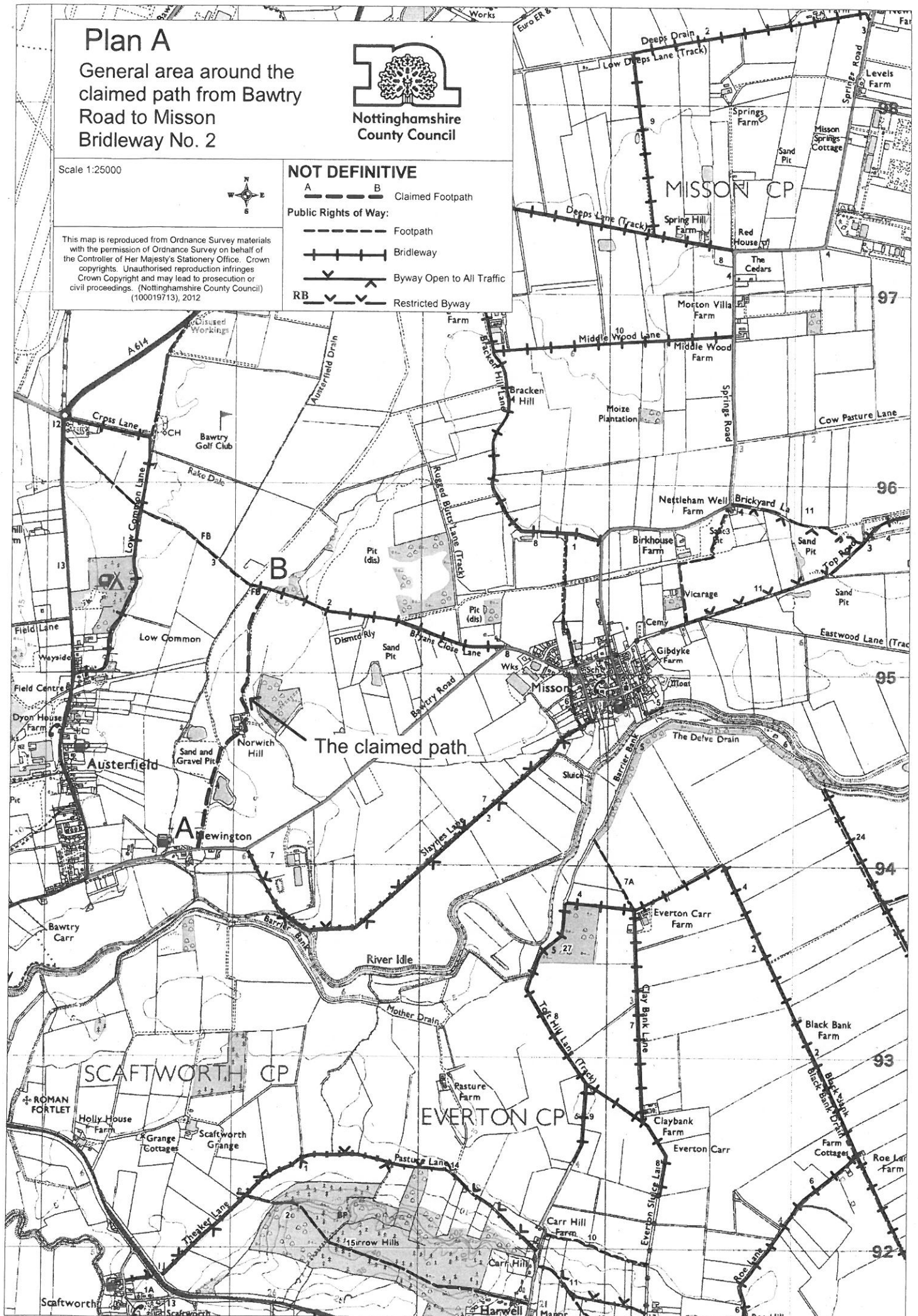
Scale 1:25000



## NOT DEFINITIVE

- A — B Claimed Footpath  
Public Rights of Way:  
- - - Footpath  
+ + + Bridleway  
- - - Byway Open to All Traffic  
RB - - - Restricted Byway

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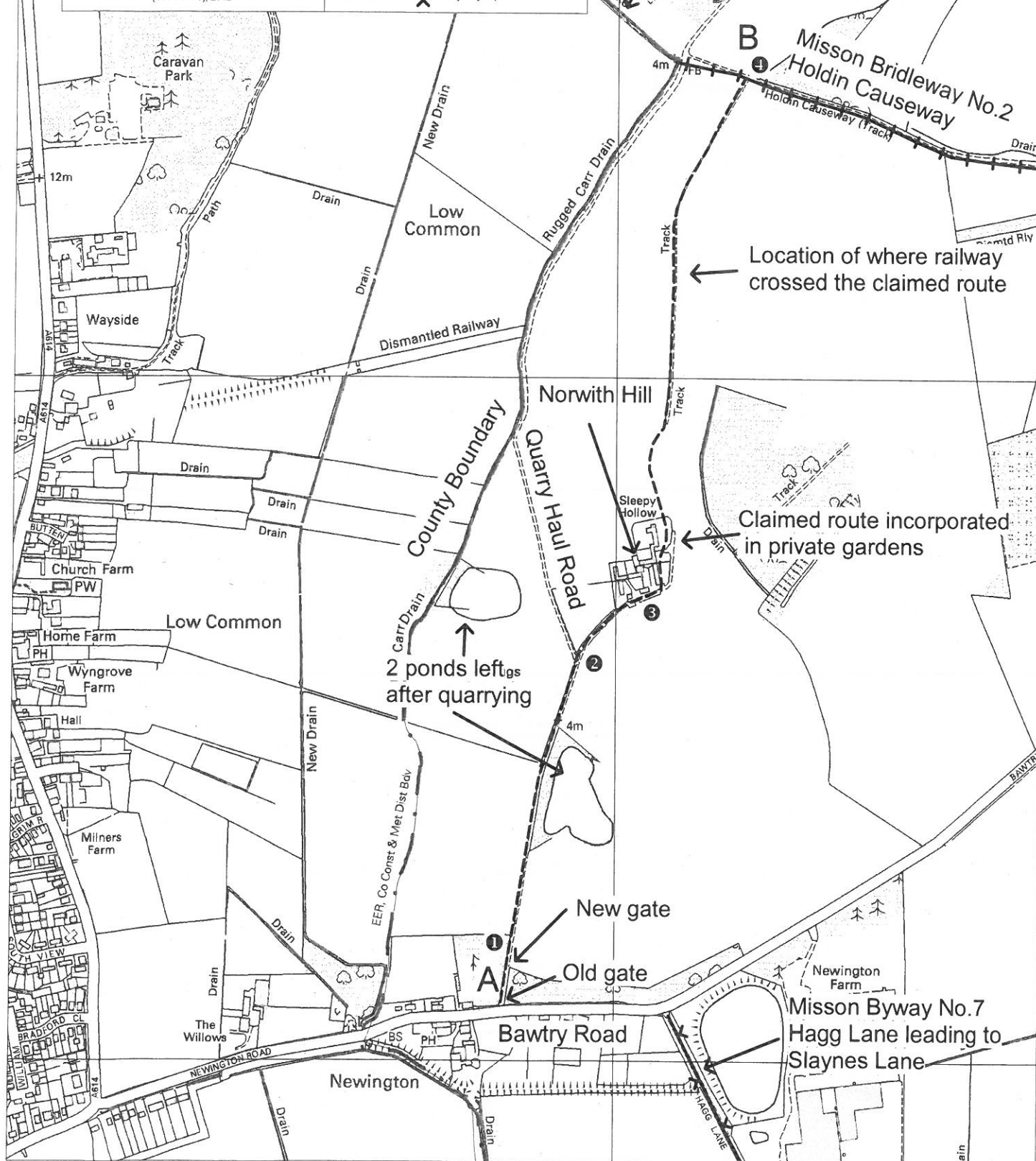
Claimed path from  
Bawtry Road to  
Misson Bridleway No. 2



### Existing Public Rights of Way

 Bridleway Byway Open to All Traffic

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(100019713), 2012







**Photograph 1. July 2008.** Looking south down the claimed route towards Bawtry Road with the new gate on the right hand side



**Photograph 2. July 2008.** Looking north up the claimed route from the junction of the Quarry Haul Road towards the new development at Norwith Hill.





**Photograph 3.** Looking west along part of the claimed route as it goes around the development at Norwith Hill.



**Photograph 4.** Looking south down the grass track on the northern section of the claimed path.

Table 1 showing use of the claimed route

[illegible]





# Plan A

General area around the  
claimed path from Bawtry  
Road to Misson  
Bridleway No. 2



Nottinghamshire  
County Council

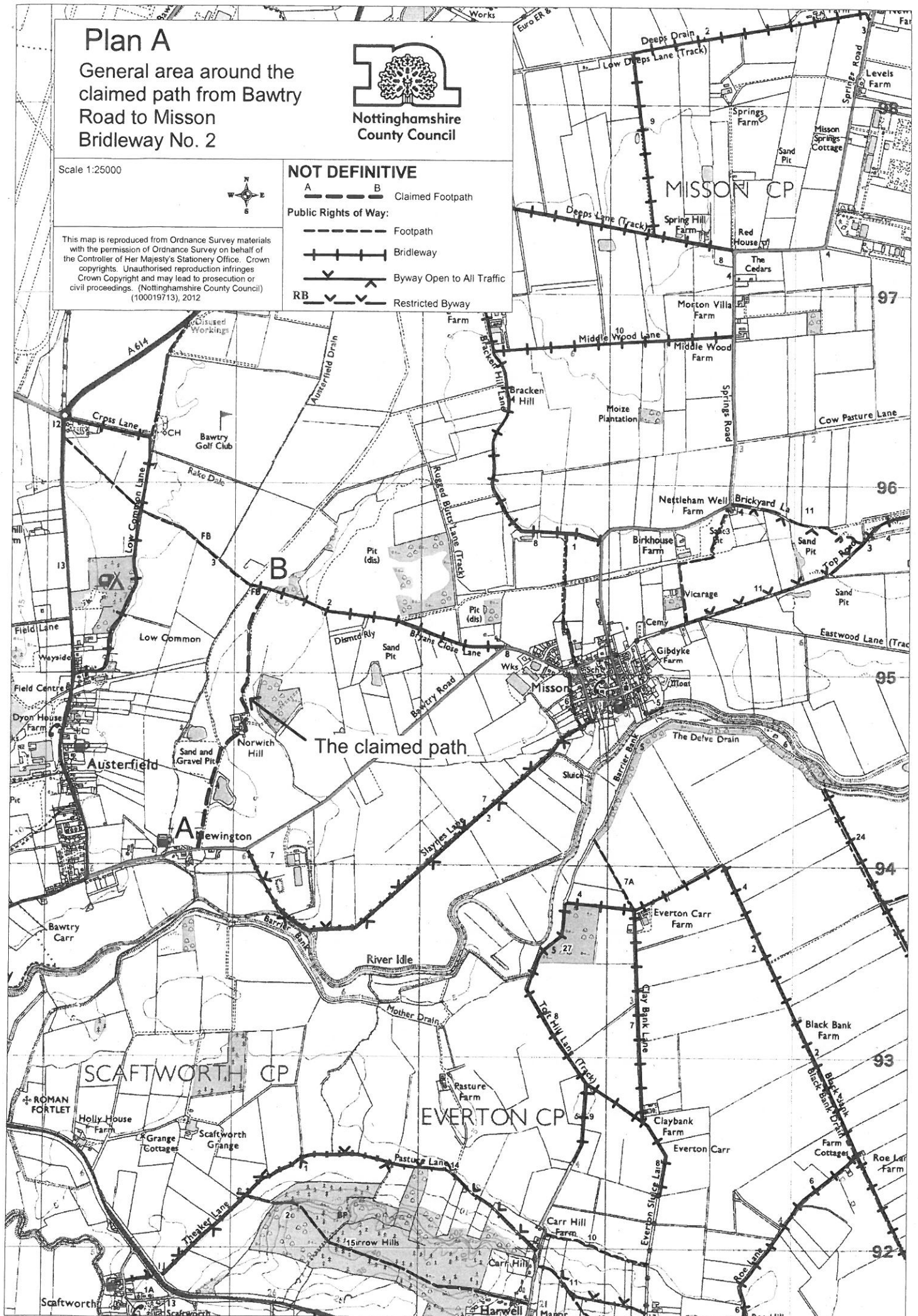
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## NOT DEFINITIVE

- A — B Claimed Footpath  
Public Rights of Way:  
- - - Footpath  
+ + + Bridleway  
+ + + Byway Open to All Traffic  
RB - - - Restricted Byway

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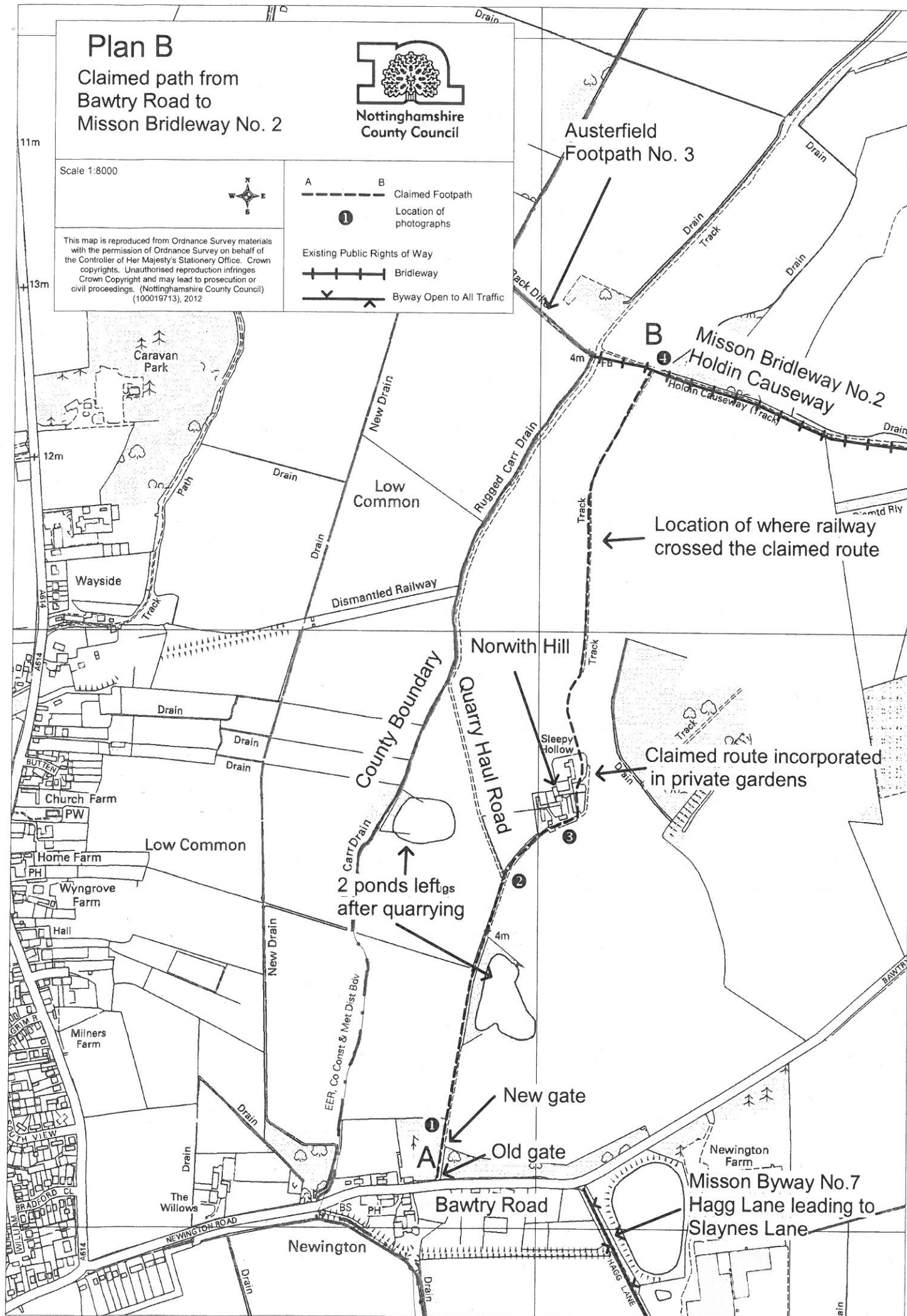


Claimed path from  
Bawtry Road to  
Misson Bridleway No. 2



 Byway Open to All Traffic

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(100019713), 2012







**Photograph 1. July 2008.** Looking south down the claimed route towards Bawtry Road with the new gate on the right hand side



**Photograph 2. July 2008.** Looking north up the claimed route from the junction of the Quarry Haul Road towards the new development at Norwith Hill.





**Photograph 3.** Looking west along part of the claimed route as it goes around the development at Norwith Hill.



**Photograph 4.** Looking south down the grass track on the northern section of the claimed path.

Table 1 showing use of the claimed route

[illegible]





# Photo 5

Aerial Photograph of  
Norwith Hill dated 2007



Scale 1:1250



**NOT DEFINITIVE**

----- Claimed Footpath

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Quarry Haul Road









# Photo 6

Aerial Photograph of  
Norwith Hill dated 2009



Scale 1:1250



**NOT DEFINITIVE**

----- Claimed Footpath

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Quarry Haul Road









27<sup>th</sup> June 2012**Agenda Item:****REPORT OF GROUP MANAGER, LOCALISM AND PARTNERSHIPS****APPLICATION FOR A GATING ORDER AT CEDARLAND CRESCENT,  
NUTHALL****Purpose of the Report**

1. The purpose of this report is to consider an application for a Gating Order at Cedarland Crescent, Nuthall.

**Information and Advice**

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 the highway.
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. At Cedarland Crescent, Nuthall a footpath connects Cedarland Crescent with Nottingham Road (map at Appendix A) which has been the subject of discussions regarding anti social behaviour for a number of years. The police and other community safety partners have been trying to reduce the impact of the anti social behaviour in the area by increasing police patrols, consideration of CCTV and giving safety advice to residents. However, the problems have continued for many residents.
5. Consultation with residents has produced a very polarised response to the proposed Gating Order. The local Police Community Support Officer distributed 100 consultation documents with just under 50 returned. Of these there was almost a 50/50 split on the issue. Some very strongly worded responses were received with vehement support matched by equally vehement rejection of the proposal.
6. Consultation was also undertaken with the Nottinghamshire Local Access Forum. The view of the LAF is that the level of anti social behaviour is not sufficient to warrant gating the footpath. The Local Access Forum's response is at Appendix C. It is clear, however, that there have been problems on this footpath over a

number of years and that gating the path is a response that has not been tried by community safety partners. If the Gating Order is approved then its impact will be assessed as part of the required periodic review.

7. The footpath concerned does provide a short cut to the main bus routes into Nottingham and the tram system. Closing the footpath would involve an additional walk of 5 to 10 minutes for some residents. The footpath has steps at one end and is not currently suitable for people with disabilities and is awkward for those with prams or pushchairs.
8. 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). A report was taken to the South Nottinghamshire Community Safety Partnership Strategic Group on the 18<sup>th</sup> April 2012.
9. The application for the Gating Order was approved by the CSP but subject to some caveats. These were that the gates are open during daylight hours and closed after dark. If the arrangement for opening and closing the gates is found to be not working effectively then the CSP have required that the gates be locked open.
10. 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.
11. 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 footpath is facilitating the persistent commission of sustained anti social behaviour and criminal damage.
12. 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**

13. 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.

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

14. The recommendation offers the most likely solution to the needs of the local residents to be protected from the sustained anti social behaviour and criminal damage.

### **Statutory and Policy Implications**

15. 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 Cedarland Crescent, Nuthall is approved subject to:
  - a) the caveats required by the South Nottinghamshire Community Safety Partnership as identified in paragraph 9 above, specifically that the gates are open during daylight hours and closed after dark, and locked open should the arrangements for opening and closing not prove effective.
- 2) consideration of any representations received from statutory consultees (in accordance with the County Council's agreed procedures)

**Ann Marie Hawkins**  
**Group Manager, Localism and Partnerships**

**For any enquiries about this report please contact: Ann Marie Hawkins, Group Manager, Localism and Partnerships (0115 9772460) or Adrian Dudley, Community Safety Officer (07880 500572).**

### **Constitutional Comments (SJE – 29/05/2012)**

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**

There are no direct financial consequences arising from the adoption of this report (DD 07/06/12)

### **Background Papers**

Guide to the Making of Gating Orders on Highways and Public Rights of Way – Nottinghamshire County Council 2008

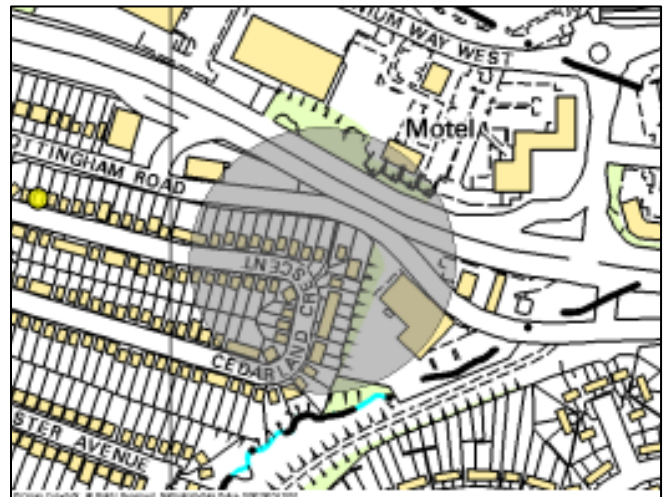
### **Electoral Division(s) and Member(s) Affected**

Cllr Philip Owen – Nuthall

## APPENDIX A

### Background

The pictures below show the location of the alleyway, which is located within the Nuthall East & Strelley ward of Broxtowe:



The alley links Cedarland Crescent with Nottingham Road.

The picture above right shows a 100m radius around the alley.

## APPENDIX B

### APPLICATION FORM

**PROPOSED GATING ORDER FOR** Cedarland Crescent, Nuthall,  
Nottinghamshire, NG16

**APPLICATION FROM**

**Sth NOTTS COMMUNITY SAFETY  
PARTNERSHIP**

<b>1.</b>	<b>LOCATION OF HIGHWAY</b> <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>Footpath linking Cedarland Crescent and Nottingham Road, Nuthall NG16. See attached map.</p> <p>The footpath runs between numbers 49 and 51 Cedarland Crescent. The application is to close the footpath using a Gating Order for its entire length.</p> <p>Consideration is being given to a temporary closure which would allow use during day light hours.</p>
<b>2.</b>	<b>NATURE OF THE PROBLEMS</b> <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</li> </ul>	<p>In the last 12 months there have been 9 incidents at this location including vehicle theft, criminal damage and burglary with a similar number in the previous year.</p> <p>On Cedarland Crescent there have been reports of damage to vehicles, using walls</p>

	<p>criteria are met and how they are applicable to this application -</p> <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>	<p>and fences as toilets, putting stones through windows and stealing fence panels.</p> <p>The footpath between 49 and 51 Cedarland Crescent facilitates access for those involved in or commissioning crime and anti social behaviour and makes the area hard to police effectively with so many points of access. The proximity to Broxtowe Country Park and the ease of access to Cedarland Crescent is viewed by police and residents as a major influence on patterns of crime and anti social behaviour in the area.</p> <p>It is clear from residents consultation that the problems at this location have been an issue for a considerable period of time (many years).</p> <p>Residents also cite people accessing the tram parking cars across gates and at dangerous bends in the road although it seems there is spare parking capacity at the tram stop.</p>
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. The local beat police officer and PCSO have both worked hard to improve the situation for residents by altering patrol patterns and providing crime reduction advice.</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 no vehicular access to one of the lamp columns</li> <li>- There is insufficient lighting to enable effective monitoring</li> <li>- Many of the young people using the site wear hoods limiting the use of CCTV</li> <li>- There are significant privacy issues as the locations of any cameras would cover the rear of property's and privacy zones would be virtually impossible to reduce allowing a view of the footpath only.</li> </ul> <p>It is clear from police and residents that perpetrators of crime and anti social behaviour are coming from the social housing on the nearby Broxtowe Estate. As such the likelihood of additional diversionary activities having an impact on the level of crime and</p>

		anti social behaviour is considered low.
<b>4.</b>	<b>ACCESS TO DWELLINGS/PREMISES/FACILITIES</b> <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 footpath runs between properties and would not effect access to dwelling houses.</p> <p>Closure would involve a longer walk for people living near the footpath who wish to access Nottingham Road buses and the tram stop at Cinderhill. This concern was raised by some residents in Cedarland Crescent.</p> <p>The additional time for accessing Nottingham Road buses and the tram would be in the order of 10 minutes for those living at the south east end of Cedarland Crescent.</p> <p>The footpath concerned has steps at one end which make it inaccessible for those with mobility problems.</p>
<b>5.</b>	<b>ALTERNATIVE ROUTES</b> <ul style="list-style-type: none"> <li>provide details, including location maps (attach separately), of alternative routes during the restricted periods</li> <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>The footpath concerned is not presently compliant with mobility standards due to the existence of the flight of steps part way along its length it is therefore inaccessible to buggys, pushchairs and wheelchairs.</p> <p>Alternative route:</p> <p>The alternative route would go up Cedarland Crescent, along Woodland Drive and then turn right into Nottingham Road.</p> <p>The overall additional distance would be in the order of 500 yards.</p>
<b>6.</b>	<b>RESTRICTIONS</b> <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</li> </ul>	<p>It is proposed to gate the footpath restricting 24hr access, but it may be considered appropriate to allow day light hours access. This does involve establishing a reliable routine for opening and closing and also brings into play issues of public liability and insurance.</p>



	<p>premises or facilities would be affected if the restrictions did not match these times or periods and how such effects would be mitigated</p>	<p>A shorter daily restriction period would require the Borough Council to provide an opening and closing service.</p> <p>Access is required by the Borough Council cleansing team which would hold keys for this purpose.</p> <p>Residents would only require access to maintain their boundaries where specific arrangements will be put in place to meet these requirements.</p>
7.	<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>If the application is for 24hr closure keyholding by an organisation for the purposes of opening / closing the gates on a daily basis is not required if the temporary closure is agreed then the Partnership will need to consider what arrangements to put in place.</p> <p>Residents would require access on an ad hoc basis to maintain fences / hedges etc and for this purpose keys would be located for residential access at:</p> <p>Broxtowe Borough Council would require access on a regular basis for cleansing and the cleansing team would be able to access a key for this purpose from Eastwood Police Station and the Hub in Eastwood.</p> <p>Ad hoc requests for access from agencies/residents would be dealt with by the Borough Council.</p>
8.	<p><b>EFFECT ON THE COMMUNITY</b></p> <ul style="list-style-type: none"> <li>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</li> </ul>	<p>It is clear from consultation that residents are divided on the issue of closure.</p> <p>See below under Consultation for more detail.</p> <p>The closure will certainly make access to the public transport network more problematic for some people: it will also give some people a better quality of life with reduced anti social behaviour and crime.</p>
9.	<p><b>CONSULTATION</b></p> <ul style="list-style-type: none"> <li>indicate which</li> </ul>	<p>Consultation was undertaken by the local PCSO.</p>



	<p>groups/individuals/bodies or organisations have been consulted, 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> <li>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</li> </ul>	<p>Residents in Cedarland Crescent were asked to complete a short consultation form.</p> <p>PCSO Neil Reddish distributed about 100 questionnaires and received 47 replies.</p> <p>The views of residents varied. Some were totally in favour of the proposed closure whilst others were vehemently against the closure.</p> <p>The responses separated into 3 distinct groups:</p> <p><b>Those very much in favour of closure - 13</b></p> <p><b>Those against the closure - 20</b></p> <p><b>Those who did not use the footpath, or felt its closure was not an issue for them, but supported the views of those who wanted it closed - 14</b></p> <p>Issues raised against closure were access to the tram stop at Cinderhill and buses on Nottingham Road, avoiding using the road for children and dog walkers, and a significant number of responses who felt it signified the perpetrators had won again and that the public highway should be kept open.</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 as the footpath is at present unaccessable for those with disabilities due to a flight of steps part way along the footpath.</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 to boundary fences and hedges by residents for maintenance will be by keys available through the Borough Council, local police and Parish Council.</p> <p>The affects of the proposal offered does not discriminate on the grounds of: age, disability,</p>

		gender, race, religion or belief, sexual orientation and other social exclusion issues.
<b>11.</b>	<b>FUNDING</b> <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>There is no identified budget for annual management or maintenance costs. Should the Community Safety Partnership approve the application it is open to them to identify funding after approval. Approval would not commit the CSP to funding the application.</p> <p>Cleansing costs will rest with the Borough Council as they are at present.</p>
<b>12.</b>	<b>OTHER INFORMATION/COMMENTS</b> <ul style="list-style-type: none"> <li>• indicate the source/origin of the initial request for consideration of a Gating Order</li> <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>	The initial request was made by the local County Councillor, Councillor Philip Owen.
<b>Completed on behalf of Broxtowe CSP</b>		print name     Marice Hawley 26 <sup>th</sup> March 2012 Date
<b>Authorised on behalf of</b> CSP by Marice Hawley		print name
<b>for submission to Nottinghamshire County Council</b>		Signed  Date

## Appendix C

Date: 31 May 2012  
Tel: (0115) 977 3169  
Fax: (0115) 977 2402  
e-mail: [notts.laf@nottsoc.gov.uk](mailto:notts.laf@nottsoc.gov.uk)  
Ask for: Peter Hiley



Correspondence to:  
Local Access Forum Secretary  
c/o Nottinghamshire County Council  
Countryside Access  
Trent Bridge House, Fox Road  
West Bridgford, Nottingham  
NG2 6BU

[www.nottinghamshire.gov.uk/laf\\_row](http://www.nottinghamshire.gov.uk/laf_row)

Adrian Dudley  
Community Safety Officer  
Nottinghamshire County Council  
County Hall  
Loughborough Road  
West Bridgford  
Nottingham  
NG2 7QP

Dear Adrian

#### **GATING ORDER PROPOSAL – CEDARLAND CRESCENT**

Thank you for providing Nottinghamshire Local Access Forum the opportunity to comment on this proposal.

Members of the Forum have visited the site of the proposed Gating Order and observed that there is regular use by the public of the route. There is very little sign of anti-social behaviour and we were told by the Community Police Support Officer that there have been no recent reports of problems. The path is short, well lit, and clean with no obvious signs of vandalism.

We have also met with you and Yvette where it was stated that if the Gating Order was approved it would be subject to the gates being opened and closed during the daytime as local views on closure are divided. In order to do this we feel there should be a survey of usage to determine the opening and closing times.

Taking into account the above we do not feel a Gating Order is justified in this location based on the evidence presented, and seen by us.

Yours sincerely

Peter Hiley  
Nottinghamshire Local Access Forum, Chair

Nottinghamshire Local Access Forum is an independent statutory advisory body and the views expressed in this correspondence do not necessarily reflect the views of Nottinghamshire County Council.

CP&P/Can/1602/000001



27<sup>th</sup> June 2012**Agenda Item:****REPORT OF GROUP MANAGER LOCALISM AND PARTNERSHIPS****REVIEW OF GATING ORDER AT WOULD'S FIELD, COTGRAVE****Purpose of the Report**

1. To provide Committee with the outcome of consultation with the Local Access Forum in relation to the continuation of the existing Gating Order at Would's Field, Cotgrave.

**Information and Advice**

2. A report which recommended the continuation of the Gating Order at Would's Field, Cotgrave was considered by the Rights of Way Committee on the 21<sup>st</sup> March 2012.
3. It was brought to the Committee's attention that consultation with the Local Access Forum had not been undertaken as was required under the County Council's Gating Order procedures. The Committee therefore resolved (2012/0003) that, subject to officers undertaking further consultations and there being no issues raised by the Local Access Forum as a result, the gate closing off access from Would's Field to Owthorpe Road remain in place, with a further review in two years' time to address the possibility of an extinguishment of this access point onto Would's Field.
4. Consultation with the Local Access Forum has now taken place. The views of the Local Access Forum are recorded at Appendix A. Also attached at Appendix A is the original letter from the Local Access Forum relating to the original request to gate this path in 2009.
5. Having considered the views of the Local Access Forum it is still considered appropriate to support the original recommendation in the report of the 21<sup>st</sup> March.
6. 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.

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

7. The continuation of the Gating Order will reflect residents feedback and their perceptions of anti social behaviour and is supported by the local neighbourhood policing team.

### **Statutory and Policy Implications**

8. 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.

### **9. RECOMMENDATION/S**

It is recommended 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.

**Ann Marie Hawkins Group Manager Localism and Partnerships**

**Adrian Dudley Community Safety Officer**

**For any enquiries about this report please contact: Adrian Dudley on 07880500572**

### **Constitutional Comments (SJE – 29/05/2012)**

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**

There are no direct financial consequences arising from the adoption of this report (DD 07/06/12)

## **Background Papers**

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

Cllr Richard Butler, Cotgrave

## APPENDIX B

12 September 2008  
01623 825491  
01623 825375  
nottsiaf@nottscc.gov.uk

Jayne Francis  
Head of Law and Democracy  
Nottinghamshire County Council  
Centenary House  
1 Wilford Lane  
West Bridgford  
Nottingham  
NG2 7QZ

This letter constitutes formal advice from the Nottinghamshire Local Access Forum. Nottinghamshire County Council is required, in accordance with section 94(5) of the Countryside and Rights of Way Act 2000, to have regard to relevant advice from this forum in carrying out its functions.

Dear Ms Jayne Francis

### OBJECTION TO THE INTENTION TO MAKE A GATING ORDER AT COTGRAVE

Nottinghamshire Local Access Forum is a statutory independent body set up to advise Local Authorities, Natural England, the Secretary of State and others on matters relating to countryside access. The Forum is administered and supported by Nottinghamshire County Council.

The Local Access Forum does not support the proposed Gating Order at Cotgrave. There are a number of issues which the Forum have concerns with, mainly the lack of evidence required to meet the statutory criteria set out in the Highways Act 1980 section 129A (3). The information available to the Forum i.e. the report submitted by Rushcliffe CDRP (Appendix 3) makes is no mention of burglaries or damage to properties and provides little justification to support the Order and the expenditure required to implement it.

During the Forum's site visit there was little physical sign of any vandalism, litter and graffiti indicative of an environment suffering from the level of anti-social behaviour required to meet the criteria of section 129A (3). Even if there are problems the Forum believes that by gating the gap onto Owthorpe Road will make little difference as the affected properties can be reached legitimately using the adopted highway, Would's Field, if the perpetrators so wished.

During the daytime site visit what is apparent is number of people walking on the frontages of the four 'affected' properties rather than the adopted path, which is undoubtedly a nuisance to these residents. This is exasperated by the lack of vegetation clearance and maintenance along the adopted path. There is also no physical barrier between the adopted path and the paved private drive, only a small strip of grass. Has any thought been given to clearing the obstruction (overhanging vegetation) and the installation of a



simple inexpensive physical barrier between the path and private drive? The Forum recommends that this is undertaken before consideration of a formal Gating Order.

The Forum is also disappointed to note that the proposed Gating Order, if made, will be implemented for 24 hours a day and seven days a week. The Forum note that where Gating Orders have been implemented in other parts of the country, 'night time' closures are managed by private security companies as part of wider duties thus providing economies of scale making the costs lower.

If you require any further information please do not hesitate to contact me via the Forum's Secretary on 01623 825491 (Neil Lewis).

Once again and very disappointingly, the Nottinghamshire Local Access Forum was not formally consulted on these orders. As with the Mansfield Woodhouse Order it was only by chance that the Gating Order was 'accidentally' picked up. Please note that The Highways Act 1980 (Gating Orders) (England) Regulations 2006 section 4(f) states that *'Copies of the notice referred to in regulation 3(a) shall be given by the council to ... any local access forum through whose area the relevant highway passes'*. Nottinghamshire County Council's guidance to the making of Gating Orders also makes reference to this (section 8.2(iii)). Can you please ensure that the correct procedures are followed and the Forum is consulted on all future Gating Orders, thank you.

Yours sincerely

Peter Hilley  
Nottinghamshire Local Access Forum Chair

Date: 23 May 2012  
Tel: (0115) 977 3169  
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e-mail: [notts.laf@nottsc.gov.uk](mailto:notts.laf@nottsc.gov.uk)  
Ask for: Peter Hiley



*Correspondence to:*  
Local Access Forum Secretary  
c/o Nottinghamshire County Council  
Countryside Access  
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Adrian Dudley  
Community Safety Officer  
Nottinghamshire County Council  
County Hall  
Loughborough Road  
West Bridgford, Nottingham NG2 7QP

Dear Adrian

#### **Gating Order Review – Woulds Field, Cotgrave**

Thank you for providing Nottinghamshire Local Access Forum the opportunity to comment on the review, as per Nottinghamshire County Council's Gating Order Policy and Procedures.

As you are aware the Forum has supported a number of Gating Orders in the County and acknowledges, in some circumstances, they can help and assist the Police in managing crime and ASB.

However, the Forum does not support the continuation of this Order, which it did not support from the outset.

The Forum's view remains the same as that expressed during the initial consultation in late 2008, that is, there is a lack of any evidence (needed to meet the statutory criteria set out in the Highways Act 1980 section 129A (3)). Also, consultation carried out for the review indicates no change in reported crime and ASB since the gate was installed.

The path prior to the closure was obstructed by overhanging vegetation which caused path users to walk on the adjacent private driveways and not on the line of the path, no doubt causing nuisance to the householders. Our suggestion was to clear the obstruction first before considering closing the path, provide a form of barrier between the path and private driveways and then review.

The Forum refers you to an enclosed copy of our response to the Cotgrave Gating Order. The views in the letter are still valid and are the Forum's current opinion.

Yours sincerely

Peter Hiley  
Nottinghamshire Local Access Forum Chair

Nottinghamshire Local Access Forum is an independent statutory advisory body and the views expressed in this correspondence do not necessarily reflect the views of Nottinghamshire County Council.

DP&P/Comms/02.08/5621

**27 June 2012****Agenda Item:****REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)****A GUIDE TO DEFINITIVE MAP MODIFICATION ORDERS (AND CLAIMED PATHS)****Purpose of the Report**

1. To inform the Rights of Way Committee members of the publication of an information sheet called 'A Guide to Definitive Map Modification Orders (and 'claimed paths')'.

**Information and Advice**

2. A need has identified to provide better information to members of the public regarding the process to add paths to the Definitive Map. The process is lengthy and the legal issues are complicated, and provision of simple, clear and accurate information on the process will help people to understand what is happening and to respond appropriately. The sheet will be sent out to landowners when a path is claimed, and will be available as a download on the public website. The information sheet is the first in a series of four, further sheets will also be produced as guides on Diversion Orders, Extinguishment Orders, and Creation Orders and Agreements.

**Statutory and Policy Implications**

3. 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 the contents of this report be noted.

**Gary Wood and Neil Lewis**

## **Group Manager Transport Policy and Programmes, and Team Manager Countryside Access**

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

Stephen Tipping Project Development Officer 0115 9774951

### **Constitutional Comments**

4. Because this report is for noting only, Constitutional Comments are not required

### **Financial Comments [IC 13/06/2012]**

5. There will be a small cost in relation to printing the leaflet which will be met from the Group Managers revenue budget.

### **Background Papers**

A Guide to Definitive Map Modification Orders (and 'claimed paths')

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

All

# A Guide to Definitive Map Modification Orders (and 'claimed paths')

This guide is a simple introduction to the Definitive Map and to the Modification Orders which add paths to it. If you want to learn more about this, then some publications which go into greater detail are listed at the end of this guide.

## The Definitive Map

Nottinghamshire's Definitive Map is a map maintained by Nottinghamshire County Council which shows the public rights of way (PROW) that the County Council knows exist. There are four types of PROW recorded on the Definitive Map:-

- |                      |                               |
|----------------------|-------------------------------|
| 1) footpath;         | 2) bridleway;                 |
| 3) restricted byway; | 4) byway open to all traffic. |

The Definitive Map dates back to the National Parks and Countryside Act 1949. Before that there were no comprehensive records of where public footpaths existed. Surveys were carried out by Parish Councils in the 1950s and the Map went through Draft and Provisional stages before the Definitive Map was published.

The Definitive Map is a legal document and if a path is shown on the map, that is legal proof that the public have the right to use it. However, not every public right of way is known to the County Council

so the Definitive Map cannot be used to prove that a public right of way does not exist simply because it is not shown on the Definitive Map.

## Keeping the Definitive Map up to date

A need to add paths to the Definitive Map which are not already on it arises in two ways:

- 1) Although the process to produce the Definitive Map was rigorous, some old paths were missed and needed to be added at a later date.
- 2) It is also possible for a new path to be created by unchallenged use by the public. This is known as 'presumed dedication'.

The County Council is under a statutory duty to keep the Definitive Map up to date by recording changes made to the path network, and by adding existing but unrecorded public rights of way to it when we become aware of them.

Members of the public, landowners and organisations like the Ramblers' Association and Parish Councils can apply to the County Council asking that what they think are public rights of way but which are not recorded on the

Definitive Map are added. This is called 'claiming' a public right of way.

## Updating the Definitive Map

There is a set statutory process which the County Council has to follow before the Definitive Map can be altered. The chart below shows the steps to take if a path has been claimed.

These steps involve both the **making** of a Definitive Map Modification Order (DMMO) and then the **confirmation** of that Order. A DMMO only takes effect when it is confirmed. When it is made, it shows that it is intended to add a path to the Definitive Map and invites objections and representations in relation to the existence or non-existence of that path.

### Abbreviations used in the chart

<b>DMMO</b>	-	Definitive Map Modification Order
<b>NCC</b>	-	Nottinghamshire County Council
<b>PINS</b>	-	Planning Inspectorate
<b>SoS</b>	-	Secretary of State

Stage	Who	Action	Time
<b>Application Stage</b>			
1	Public	The Applicant writes or phones to say they believe that a path is a right of way and should be added to the Definitive Map.	
2	NCC	The Applicant is sent an application pack.	1 week
3	Public	The Applicant sends the evidence to NCC and a notice to landowner saying that the route has been claimed and then certifies to NCC that the notices have been served on the landowner/s.	
4	NCC	Considers application and investigates further evidence concerning the existence (or not) of the path.	12 months allowed
4a	NCC	Contacts landowner for any evidence to support or rebut the claim.	
4b	NCC	Carries out informal consultation with other local councils and user groups and utility companies.	
4c	NCC	Interviews claimants.	
<b>Committee Stage</b>			
5	NCC	Officers write committee report assessing evidence and a recommendation to make or not make a DMMO to add the path to the Definitive Map. <b>In order to make the DMMO, NCC must only be convinced that there is a reasonable case for the existence of the path. The evidence does not have to be sufficient to prove the path exists at this stage.</b>	
6	NCC	Committee report is published 5 days before the meeting.	
7	NCC & Public & Landowner	ROW Committee considers report and decides to make or not make a DMMO ( <b>bearing in mind there only needs to be a reasonable case for the existence of the path</b> ). Some public speaking is allowed at the Committee, but only by prior arrangement. If making DMMO, go to 11. If not making DMMO, to 8.	Committee cycle is every 6 weeks
8	NCC	Advises Applicant of decision not to make DMMO.	
9a	Public	Applicant accepts decision. End of process.	
9b	Public	Applicant doesn't accept decision & appeals to the Secretary of State	
10	Secretary of State	An Inspector considers the evidence and decides whether the evidence reasonably alleges that the path exists. If yes, NCC is instructed to make the DMMO (go to 11). If not, the applicant is informed and the process ends.	
<b>Order Stage</b>			
11	NCC	Officers write DMMO, and send DMMO for sealing.	1-4 months
11a	NCC	The DMMO is put on deposit, advertised in a local paper, sent to interested parties & served on landowner/s, and site notices put up. We must allow 6 weeks minimum for responses.	6 weeks minimum
12	NCC	Resolution of objections, site meetings discussions and exchange of letters. If no objections or objections are withdrawn go to 13. If objections remain go to 14	1 year
<b>Determination (of Order) Stage</b>			
13	NCC	No objections – NCC Confirm DMMO. Go to 18.	1 month
14	NCC	Objections remain – Statement of Case prepared and copies of evidences collated – Full legal 'bundle' submitted to PINS.	1 year
15	PINS	Decide whether to hold a full Public Inquiry, a Hearing or to conduct the matter by Written Representations.	3 months
15a	PINS	Await a Public Inquiry or Hearing date from PINS.	9 months



16	NCC	Hold a Public Inquiry, Hearing or send written representations. <b>It is at this point that the evidence for and against the existence of the path is thoroughly tested.</b>	1 to 5 days duration
17	PINS	Wait for the Inspector's decision. If the Inspector is satisfied that the path is a public right of way, s/he confirms DMMO. Go to 18. If Inspector is not satisfied, the DMMO is not confirmed. In this case notify consultees and interested parties that the path has not been found to be a PROW. End of process.	3 months
18	NCC	Confirmation advertised; place notices in local paper and on site. Paperwork sent to landowners, occupiers and applicant.	2 months
<b>Implementation Stage</b>			
19	NCC	Resolve practical issues before completing works to bring the path into use.	
20	NCC	Complete works and open path. End of process.	

### **Claiming a path (stages 1-3)**

There are two main reasons why people may think that a path should be on the map. They may have been walking a route for some years in the belief that they are using a public path, or they may have found an old map or document which shows the path on it.

### **Assessing a claim (stages 4-7)**

The Council has first to decide if there is a reasonable case that the PROW does exist, by looking at the evidence supporting the claim.

If the evidence is based on use (presumed dedication), then a number of people will need to assert that they have been using the path, and the evidence will need to add up to a continuous period of at least 20 years. The landowner can 'rebut' this assertion if they can show that they took steps to prevent the path from becoming a PROW. Traditionally this was done by putting up a notice declaring a route was not a public right of way, or by closing the path for one day each year. It can also be achieved by telling users that the path is not public, or by lodging a Section 31 declaration. Section 31 of the Highways Act allows landowners to deposit a map and statement with the County Council, showing all the paths

they accept to be public rights of way. This must be renewed no later than every ten years.

If the evidence is documentary, then all relevant documents have to be shown to the County Council. Not all old maps and documents carry equal weight as evidence, so the County Council has to consider their relative value in each case. The County Council will also have to search for any evidence within its own records which may show that the path has been legally closed or diverted.

The County Council has a Rights of Way Committee which considers the officer's report and decides if the evidence demonstrates a reasonable case for the existence of the path. If the committee decides the evidence is sufficient they will instruct officers to make a Modification Order which may ultimately add the path to the Definitive Map. If the committee decides the evidence is insufficient they will instruct officers not to make a Definitive Map Modification Order.

### **Making an Order (stages 11-12)**

When a Modification Order is made it has to go through a public consultation so it will be advertised on site and in the local paper. Any affected landowners will be sent a letter.

If there are no objections to the Order and the evidence shows that the path exists, the County Council can confirm the Order and the path is added to the Definitive Map. It is now recognised as a public right of way by the world at large and the County Council will have a duty to make sure it is open (and stays open) for use by the public. Usually, some works will be needed to make the path usable; though it can be as simple as putting up a signpost.

If there are objections made to the Order and not withdrawn, the County Council will have to send it to the Planning Inspectorate (representing the Secretary of State) who may hold a Public Inquiry, a Hearing or will ask for written representations regarding the evidence.

## Frequently Asked Questions

- **This path hasn't been used for many years - hasn't it ceased to exist?**

Once a path has come into existence, it remains forever whether it is used or not. A path can only cease to exist when it is officially closed by a legal process such as a stopping-up or extinguishment order, or if it is moved by a diversion order.

- **Is there any help available for me to fight the claim?**

There are a number of experts in the field (solicitors etc), who you can engage on your behalf (at your own cost) and who can be found on the internet or (if you are a member of the following organisations) by asking the CLA, IPROW, NFU and other representative organisations

- **This path hasn't been used for many years and isn't needed;**
- **There is already a path in this direction;**
- **The path doesn't go anywhere;**
- **What about my security or privacy?**

The County Council has a statutory duty to process claims made for the existence of a path. By law, we can only consider whether the path is a public right of way or not. We are not allowed to take into consideration other factors like how desirable the path might be. The Definitive Map Officer will be able to advise you on this. However, if the path is found to exist it may be possible to then divert the route to one more suitable for the current situation, although there is a cost to applicants and a successful diversion application cannot be guaranteed. The Area Rights of Way Officer will be able to advise you on this.

- **Can I get rid of the path?**

Although there is a statutory process by which a path can be extinguished or stopped-up, these can only succeed in limited circumstances, and are subject to public consultation and possible objection. Extinguishment of a path is not likely to be possible where a path has been claimed. However, it may be possible to divert the route to one more suitable for the current situation, although there is a cost to applicants. Again, your Area Rights of Way Officer will be able to advise you on this. Please note that obstruction of a public right of way is an offence for which the offender can be prosecuted.

- **Who sent this letter/notice?**

The initial notice is served by the applicant for the DMMO. Later correspondence will come from one of the Definitive Map Officers at the County Council.

- **Can I see the evidence?**

A summary of the evidence will be included as part of the Committee Report, which is published five days before the Rights of Way Committee meeting at which the DMMO application will be considered. The Council may be able to provide an outline of the evidence at an earlier date, subject to the Data Protection Act.

## Contact information:

Tel: 08449 80 80 80 (Monday to Friday: 8am to 8pm, Saturday: 8am to 12 noon).

Email: [enquiries@nottsccl.gov.uk](mailto:enquiries@nottsccl.gov.uk)

Website: [www.nottinghamshire.gov.uk](http://www.nottinghamshire.gov.uk)

Minicom: 01623 434993

Calls cost 3p/min from BT landlines. Mobile costs may vary.

Please contact us if you need the information in a different language or format.

**Further information is available at:**

More information about Rights of Way in Nottinghamshire can be found at:  
<http://www3.nottinghamshire.gov.uk/enjoying/countryside/countryside-access/rights-of-way/>

Department for Environment, Food and Rural Affairs – General information on procedures relating to public rights of way:

<http://www.planningportal.gov.uk/planning/countryside/rightsofway/rightsofway>

Countryside Agency- A guide to definitive maps and changes to public rights of way:

<http://www.figheldean.org/attach.pl/2/9/CA142.pdf>

Ramblers' Association Website:

[http://www.ramblers.org.uk/rights\\_of\\_way/take\\_action/claim\\_an\\_unrecorded\\_right\\_of\\_way](http://www.ramblers.org.uk/rights_of_way/take_action/claim_an_unrecorded_right_of_way)

