

 Nottinghamshire County Council	Report to Rights of Way Committee
	23 January 2013
	Agenda Item: 5
REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)	
APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF CLIPSTONE AND WARSOP	

Purpose of the Report

1. To consider an application made in 2008 by Mr S Parkhouse, Ms P Whitehead and Mr T Harkness on behalf of Clipstone Parish Council, to record New Buildings Drive, Clipstone as a public bridleway on the Definitive Map and Statement. A map of the area is shown as Plan A, with the route under consideration marked between points A and B.
2. The effect of this application, if accepted and confirmed, would be to add a public bridleway along an existing track leading from Peafield Lane (A6075), Warsop, opposite Warsop Bridleway No.21, continuing along New Buildings Drive and the track leading to Clipstone Bridleway No.8.

The Law

3. The application was made under the provisions of the Wildlife and Countryside Act 1981 (WCA81). Section 53(3)(b) of WCA81 requires the Surveying Authority (Nottinghamshire County Council) to modify the Definitive Map and Statement following "the expiration in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path".
4. Section 31 of the Highways Act 1980 (HA80) raises a presumption that a right of way has been dedicated as a highway if the route has been used by the public 'as of right' and

without interruption for a period of 20 years unless there is sufficient evidence that there was no intention during that period to dedicate it.

5. In addition, under Section 53(2)(b) of WCA81 the surveying authority has a duty to keep the Definitive Map and Statement under continuous review and to make such modifications to the Definitive Map and Statement that appear to be requisite in consequence of the occurrence of events described in Section 53(3)(c)(i); namely “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist”. The case of *R v SSE ex parte Bagshaw and Norton* (1994) has clarified the law in respect of the meaning of ‘subsists’ (Test A) and ‘reasonably alleged to subsist’ (Test B).
 - ‘Test A’ requires that the claimed right of way subsists i.e. clear evidence in respect of the claim and no credible evidence to the contrary.
 - ‘Test B’ is that it is reasonable to allege that a right of way subsists i.e. even if the evidence is finely balanced, but there is no incontrovertible evidence that the claimed route could not subsist, then the test is met and an Order should be made.
6. If it is accepted that dedication may be presumed at law, consideration must also be given to the category of highway that is believed to exist i.e. footpath, bridleway, restricted byway or a byway open to all traffic. This point should be based on an evaluation of the information contained in any documentary and/or user evidence.
7. Should the test under the HA80 Section 31 fail, then it may be appropriate to consider the dedication of the way at common law. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. Evidence of use by the public ‘as of right’ may support an inference of dedication and may also show acceptance by the public.

Information and advice

8. Originally constructed in the early 1800s, New Buildings Drive is currently in the ownership of Mrs Yvonne Glennie and is also subject to an agricultural tenancy to Mr Robert Bealby who farms in adjacent fields. The land which incorporates New Buildings Drive has been continuously owned by members of the Glennie/Bealby Family since 1945. The route comprises a wide, mainly stoned track nearly 2.1 kilometres in length which leads from Peafield Lane to Clipstone Bridleway No.8. In approximately 1998, a barrier was erected across the track at the northern end of the route. Members of a model aeroplane club are allowed access around the barrier through a side gate in order to use one of the fields for their flying activities. Visitors to Sherwood Forest Caravan Park and horse riders belonging to the Cavendish Lodge Liveries also have permissive use of the route. A series of photographs taken along the course of the route are shown as Photos B1-4.
9. The evidence in support of the Application comprised of 40 Public Rights of Way User Evidence Forms and a number of historic maps.

Historic Documentary Evidence

10. Along with the maps submitted as part of the application, additional documents were examined (as is standard procedure) to see whether there was any evidence for pre-existing public rights of way over the claimed route. The historic documents comprised:
 - Sanderson's Map 'Twenty Miles Round Mansfield' 1835
 - Ordnance Survey 2" map 1840
 - Clipstone Tithe Map 1841
 - Deposited plans for the proposed Lancashire Derbyshire & East Coast Railway 1896
 - Encyclopaedia Britannica map 1902
 - Finance Act map and valuation book 1910
 - Guilford's Map of Nottinghamshire 1927
 - Ordnance Survey map extract 1927
 - Ordnance Survey extract 1940

- Parish Schedules for Clipstone and Warsop 1953

11. Dealing with the documentary evidence in chronological order, the earliest record for the existence of New Buildings Drive is found in Sanderson's map of 1835. The map describes New Buildings Drive as a 'Coach Road' shown passing through Clipstone Park (then owned by the Duke of Portland). Clipstone Park is shown enclosed by a 'Park Fence' which probably incorporated a gate at the New Buildings Drive entrance. Another 'Coach Road' is also shown passing through Clipstone Park. Sanderson's map gives no indication as to whether these coach roads were for public or private use.
12. The Ordnance Survey map of 1840 confirms the existence of New Buildings Drive but gives no indication of status.
13. The 1841 Clipstone Tithe map shows New Buildings Drive coloured brown. However, all roads and tracks are also coloured in this way, therefore this map does not give any indication as to the status of New Buildings Drive.
14. The deposited plans for the Lancashire Derbyshire and East Coast Railway (1896) were inspected. The plans indicate the location where the proposed railway crossed the claimed route. In the accompanying schedule New Buildings Drive is referred to as a 'Road' in the ownership of the Duke of Portland. This suggests that it was believed to be a private road with no public rights over it.
15. Documents prepared for the purposes of the Finance Act 1910 (FA10) were also examined. The purpose of FA10 was to levy a tax on the estimated value of land. The valuer allowed deductions for any public rights of way affecting the use/value of the land. The map used for the valuation shows the majority of the route was recorded as private land. The relevant book of reference shows that no deductions for public rights of way were claimed on New Buildings Drive. The junction of New Buildings Drive with Peafield Lane is excluded from the adjacent parcels of land (i.e. un-coloured) which suggests that it was regarded as part of the public highway. An extract from the Finance Act map showing the junction with Peafield Lane is shown as Plan C.

16. Nothing contained in the 1902 Encyclopaedia Britannica map, the 1927 Guilford map or in the 1927 and 1940 Ordnance Survey maps gives any indication as to the status of the claimed route.
17. No rights of way are recorded on New Buildings Drive in the County Council's Parish Schedule for Clipstone. This schedule was prepared in 1953 for the identification of public rights of way under the provisions of the National Parks and Access to the Countryside Act 1949. However, the schedule for the adjacent parish of Warsop contains a map showing New Buildings Drive annotated with the wording "Notice Private Road Tress will be prosecuted" and "Considered Private Road by the Clipstone Divisional Surveyor". These notes appear to be contemporaneous with the schedule and therefore suggest that the route was not considered to be a public right of way in 1953.
18. In summary, apart from where it meets Peafield Lane, the documentary sources do not show any evidence of public rights along any part of New Buildings Drive. The deposited railway plans and the Parish Schedules suggest that the route was regarded as a private road with no public rights of way over it.

User Evidence

19. The information contained in the user evidence forms and in the subsequent interview transcripts relate to the presumed dedication of a highway based on uninterrupted use over a twenty year period. This period has to be calculated retrospectively from the date when the right of the public to use the way was brought into question. The landowner submits that the barrier (Photo B1) was placed at the northern end of the route in 1998 to prevent vehicles from entering the land and to show that it was privately owned. It is also submitted that the barrier constituted an interruption in use for the purposes of section 31 of the Highways Act 1981 even though a gap was left to one side by the Parliament Oak (Photo B2). The case of The Queen v Secretary of State for the Environment, ex parte William Greaves Blake (QBD, 1983) appears to support this view, and therefore the period during which public use can be considered is between 1978 and 1998.

20. Twenty eight evidence forms indicate continuous use throughout the specified 20 year period. Further examination of the forms indicates thirteen users cycled on the route throughout the relevant period with evidence of use from one horse rider. Frequency of use varies from daily to yearly. A chart showing overall use is shown as Appendix D.
21. In respect of evidence of signs or notices, the user forms suggest that the landowner did not take sufficient steps to show the public that there was no intention to dedicate a right of way. For example one user states "There used to be a sign which said 'private – keep dogs on a lead'...that's the only sign I've seen'. Another user stated 'I have never seen any signs on New Buildings Drive. There was an unreadable sign on the un-named track near the junction with the RUPP [Clipstone Bridleway No.8]' while another refers to a 'notice board at the flood dykes end – no message'. One user refers to a 'Private Property...Keep Out' sign which he believed referred to the New Buildings Farm site rather than New Buildings Drive itself.
22. Both Mrs Glennie and Mr Bealby have submitted statements in respect of their knowledge of the land and their attitude towards access along New Buildings Drive. Mrs Glennie has stated that she is seldom on the farm, but is aware that permissive access is given to various groups and individuals. Mrs Glennie also refers to the 'old, now illegible' sign at the Southern end of the route indicating private land (Photo C3).
23. In his statement, Mr Bealby describes how New Buildings Drive and the surrounding farmland has been in the ownership of his family since 1945. Mr Bealby states that he uses the route on a daily basis when inspecting sheep and crops. He also lists the groups and individuals who have been granted permissive access i.e. a model aeroplane club, a local livery, the local hunt/shoot etc. Mr Bealby states that anyone seen using the route that he does not recognise, is told it is 'private' and 'if you misbehave you're off'.
24. There is no evidence of any obstructions preventing public use of the route during the period 1978 to 1998.
25. Apart from the 1953 Warsop Parish Schedule, there is little information regarding the sign which was in place at the northern end of the route. The sign read "Private Road Tress. Will Be Prosecuted." Mr Bealby states that this sign fell down "probably during the 80's or 90's",

although none of those who completed user evidence forms recall a sign at this location. Furthermore, the wording "Private Road" is open to interpretation, for example it could relate to preventing vehicular users only. A similar sign reading 'Private Land' already exists at the southern end of the route on Clipstone Bridleway No.8 (a definitive right of way). Accordingly, if the intention of the sign was to prevent all public use, a notice which read 'No Public Right of Way' would have been more appropriate.

26. Mrs Glennie and Mr Bealby both make reference to the sign (Photo B4) at the southern end of the route which they state indicates that the route is private. This sign was observed at a site visit in November 2009. It is severely weathered and dilapidated, only the wording 'CAVEND' and an arrow can be distinguished (Cavendish Lodge is located nearby). There is no further evidence of this sign having any effect in respect of demonstrating there was no intention to dedicate a public right of way.
27. There is evidence of public use on the claimed route for in excess of twenty years prior to 1998. In order for this evidence to be valid, it must be demonstrated, that use was 'as of right' and was not exercised in secret or by force or with permission. The evidence forms show that use was not in secret or by force. In respect of whether use was with permission, the evidence is conflicting. The situation is complicated by the fact that some people have permissive use of New Buildings Drive and this may have had the effect of camouflaging some public use.
28. In respect of verbal permission, Mr Bealby states that he knows most of the users by sight and that he regularly informs members of the public that the route is not a public right of way. He also states that any unknown users are approached and allowed to use the route on the understanding that they do not 'misbehave'. By contrast, the information contained in the evidence forms presents a different version of events. One walker refers to passing a farm worker who said nothing 'in fact I think he [the farm worker] waved'. Another who used the route on a daily basis states that he was once told to put his dog on a lead but was not told it wasn't a public right of way. Another refers to being asked to wait while a crop spray went across the track but was not told that use of the route was with permission. A number of users state that they have never spoken to Mr Bealby or any of his workers, while others refer to farm vehicles driving past them without any verbal exchange. Some users say that they would pass the time of day but nothing more. Although there is evidence that Mr

Bealby did inform some individuals that use was with his permission and that the route was not a public right of way, there is insufficient evidence to demonstrate that this message was effectively communicated to the wider public.

29. Mr Parkhouse (the Applicant) recently submitted additional evidence indicating that some users have approached New Buildings Drive from a non-definitive path passing through Forestry Commission land. This path runs between points C and A (Plan A). Crown land or land belonging to a Government Department is exempted from the statutory provision (HA80 S.31) unless an agreement has been made with the Highway Authority under HA80 Section 327(2) whereby the Act can be made applicable. The fact that no such agreement has been made, and in the absence of further evidence to indicate Common Law dedication having taken place, means there is insufficient evidence before the Authority to consider a claim in relation to route C-A, or to consider such use as adding to the claimed route A-B. However, anticipating that this use could raise the question as to whether public use in the direction C-A-B is valid evidence for the claimed route (as it might not originate on a public highway), some further examination of the evidence has been undertaken, and it appears clear that the basis for the claim and the majority of the user evidence is one of use on the claimed route leading from and to Peafield Lane. Accordingly, the validity of some user evidence may depend on first establishing whether or not the junction of New Buildings Drive with Peafield Lane is public highway or not. Although some support may be found in evidence contained in the Finance Act documents which suggest that it was regarded as a public highway in 1910, no further evidence has been discovered to shed light on this point. Regardless of whether this 'connection' becomes a point to be decided at an Inquiry, there is no impediment to recording a highway which connects to another at only one end. Here, the claimed route would connect to Clipstone Bridleway No.8 and could, depending on the direction of use and any permissive use given by the Forestry Commission, connect to their land as 'a place of popular resort'.

Consultation

30. Correspondence received from Burges Salmon LLP, representing the landowner makes the following points in respect of the application (officer's response in italics):

- Installation of the barrier (Photo C1, C2) at the northern end of the route in 1998 is evidence that permission is required to use New Buildings Drive. The barrier was erected to prevent vehicles from entering the land and to show that the land is private.

A 20 year period can be calculated prior to the barrier being erected in 1998. If the barrier demonstrated that subsequent use was permissive, public use prior to that time could still be as of right.

- The barrier constitutes an interruption in use for the purposes of HA80 Section 31. Therefore the legislative test needed to raise a presumption that the route has been dedicated as a highway has not been met.

It is accepted that the barrier constituted an interruption to public use, however the statutory test relates to any full period of 20 years use. In this instance it would appear that the relevant period had elapsed between 1978 and 1998.

- The user evidence is poor quality, limited in number and inconsistent. The weight that can be attached to the user evidence is minimal.

Inconsistencies in evidence forms are not uncommon. The Council has endeavoured to clarify any inconsistencies that may have a bearing on the matter. The weight placed on the evidence forms is based on the combined evidence contained in them which gives an overall view of the situation.

- 19 evidence forms refer to use of the route once per month or less.

Taking into account user evidence between 1978 and 1998, 10 evidence forms relate to use between once and 6 times yearly, 5 forms relate to use on a monthly basis, 8 forms relate to use between a weekly/daily basis. In respect of the assertion that the user evidence is limited in number, the levels of use alleged are

similar to other user claims which have been confirmed by Inspectors on behalf of the Secretary of State.

- The user forms were collected by the applicant who has not made it clear over what period the use has occurred.

It is common practice for an applicant to collect together evidence forms. This does not call into question the validity of evidence contained in them. The applicant is not required to specify the period over which use has occurred. Such information will be established through an evaluation of the evidence.

- User evidence referring to barriers and signs along the route indicates that use was not 'as of right' but with permission.

There is no conclusive evidence to suggest that the barriers and signs along the route indicated that use was not 'as of right' during the period 1978 to 1998.

- The Parish Survey of 1953 records New Buildings Drive as a private road with appropriate signage. This is consistent with the statement made by the farmer.

The Parish Survey of 1953 suggests that the route was not considered to be a public right of way at that time. However, actions taken in 1953 do not necessarily prevent rights being acquired at some later date.

- Use of the route around the eastern side of the gate could only have taken place since improvements to the Parliament Oak amenity area took place 2008. Use has switched from one side of the gate to the other.

Although a barrier was placed at the northern end of the route in 1998, the public may have already acquired rights by presumed dedication by that time. Issues regarding use either side of the barrier after 1998 are outside of the specified 20 year period and are therefore not relevant.

- One evidence form acknowledges use by permission stating that the farmer does not consider the route to be a public right of way. Reference is made to people using the route without being challenged with no basis for this assertion is given.

Evidence that one user acknowledged use was with permission relates to a conversation between the applicant and the tenant which took place after the Modification Order Application was submitted and is not relevant to the acquisition of rights during the relevant 20 year period.

- Failure by users to refer to waste disposal lorries, and by members of the aero club indicates limited knowledge of the route.

One user recalls that he stepped to the side to allow vehicles to pass, while another, when leading a group walk, recalls being asked to wait for vehicles to pass before proceeding along the Drive. Although relatively few users have referred to vehicles using the tip area, this is not itself a point which would show that presumed dedication had not taken place. User evidence will be tested further if an order is referred to the Secretary of State for a decision.

31. Following deferment of this matter at the last Committee (28/11/2012), a list of 154 signatories was submitted on behalf of the landowner/farmer of the surrounding land. It is stated that the list provides "irrefutable evidence that New Buildings Drive and the surrounding fields are and always have been private property and that it is generally known locally that there has never been a public right of way along the Drive or over the fields". The list is headed "We, the undersigned, confirm that we and our families have lived in the locality for many years and that New Buildings Drive and surrounding fields farmed by Robert Bealby are private property and it is generally known locally that there has never been a public right of way along the Drive or over the fields". The list is said to comprise of "mostly people who know the locality well...have visited over a long period of time to participate in recreational activities which include riding horses out of the local livery stables, fishing on the lakes by the River Maun, shooting, beating and picking up, flying model aeroplanes and jogging, walking etc...also those who live nearby and have done so for many years".

It is noted that the signatories have specified the number of years they have lived in the area. The earliest has resided in the area since 1927, the most recent since 2007. The average figure amounts to 40 years. The signatories say that New Buildings Drive has 'never been a public right of way' although it is not known whether this statement is made in the knowledge of certain facts, or whether this view simply reflects their own permissive access. The view of the signatories clearly conflicts with that of the users who take the view that the route is a public right of way. However, while extensive use by permission might suggest that New Buildings Drive was not reputed to be a public right of way, this does not in itself constitute 'incontrovertible evidence that the claimed route could not subsist' (Test B in para.5).

31. Also following the recent deferment, Mr Parkhouse, one of the Applicants submitted the following;

- The 'Blake' case is not applicable in this situation because the barrier did not extend across the full width of New Buildings Drive, nor did it force path users off the Drive into adjacent land. Public use was therefore uninterrupted in 1998.

The width of New Buildings Drive between Peafield Lane and the barrier is defined by the Tarmac/stone surface. The land on the Parliament Oak side of the barrier has a grass/earth surface. Use which changes from being within one clearly defined route to being outside this route is regarded as use of a different route and therefore an interruption. Whether such deviation constitutes use of a different route is irrelevant if the barrier called the public's right to use the route into question in 1998.

- Erection of the barrier did not bring into question the public's right to use New Buildings Drive in 1998.

In respect of what constitutes 'bringing into question' the Planning Inspectorate guidelines state that the test to be applied is found in the case of R v SSETR ex parte Dorset County Council 1999 which established "Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway". In this case Mr Parkhouse has stated that

once the barrier was erected, he would either duck under it, or go around it. When it was open Mr Parkhouse has stated that that he walked through it "without leaving the width of the lane". It therefore appears that Mr Parkhouse did acknowledge the presence of the barrier which caused him to adapt his use accordingly. Furthermore, it is noted that the claim is for a public bridleway on the basis of use by cyclists. Clearly cyclists could not continue to cycle along New Buildings Drive in the same way they had before and would have been forced to deviate off the metalled surface. It is therefore clear that the public's right to use New Buildings Drive was challenged by the erection of the barrier in 1998.

- Some path users approached the claimed route from the unregistered path (C-A Plan A).

According to the Application, the route being claimed runs between Peafield Lane and Clipstone Bridleway No.8 (highway to highway). Whether any use from the unregistered path C-A is valid for the purposes of this claim is covered in paragraph 29 above. Any use of C-A can therefore be considered as a separate matter, for which insufficient evidence has been found and which would only be claimable on the basis of common law dedication (which is a different test with a higher evidential threshold).

- Both before and after the erection of the barrier, some path users walked on the short section of verge alongside the Parliament Oak rather than the tarmac road.

Given the passage of time, it would be extremely difficult to establish whether walkers deviated from the metalled surface when using this short section of the claimed route between 1978 and 1998. Use after 1998 is considered to be after the date of challenge and therefore not relevant.

- The landowner has stated that the barrier was erected to prevent vehicles from entering and to show that the land is private. The case of *Mertham Manor Ltd v Coulsdon and Purley Urban District Council* (1937) defines 'interruption' as "an actual and physical stopping of the public's enjoyment". *Lewis v Thomas* (1950) established that "The interruption must be with intent to prevent public use of the way. It will not be sufficient if the interruption is shown to have been for some other

purpose". The barrier was erected to control motorised access and not to exclude the public on foot, cycle or horseback. The barrier could be got under by users and no signs were erected to challenge public use. The barrier was frequently left open in daylight hours.

Matters relating to interruption after 1998 are irrelevant being outside the relevant period 1978-1998.

- The gap at the side of the gate looked as if it was intended for walkers and cyclists to use. The actions of the landowner in 1998 appear to be more like an implied dedication. *Eyre v New Forest Highway Board [1892]* established that creation occurs when the landowner "either says in so many words, or so conducts himself as to lead the public to infer that he meant to say: I am willing that the public should have this right of passage".

Again, the gap is only of significance after 1998 and therefore outside of the relevant period. Although by leaving a gap it could be construed that the landowner was content for pre-existing use to continue (albeit on a different alignment), equally, the landowner may say that the gap was left to allow known users to use the route on a permissive basis.

Responses from other Consultees

32. BT Openreach - *No objections to the proposals*
33. Environment Agency - *Assets owned or operated by the Environment Agency will not be affected.*
34. E-On - *We do not object to the developments as proposed.*
35. NCC Conservation Service - *The scheme is unlikely to have any significant impact on the Special Protection Area (possible future designation under Conservation of Habitats and Species Regulations 2010).*

Reason/s for Recommendation/s

36. There is no documentary evidence to suggest that New Buildings Drive was a public right of way prior to 1953.
37. The sign near the northern end of the route which read 'Private Road Trespassers will be prosecuted' is known to have existed in 1953 by virtue of the Warsop Parish Schedule. However, it appears this sign was not replaced when it fell into disrepair. If the sign survived into the 1990s as stated by Mr Bealby, this view conflicts with evidence contained in the user evidence forms which make no reference to it. The sign at the southern end of the route does not appear to have contained any wording which challenged public use of the route and therefore is not considered relevant. If the landowner (or tenant) intended to rely on signs to demonstrate that there was no public right of way, it would be reasonable to assume that such signs would be renewed from time to time and would contain clear and unambiguous wording such as 'No Public Right of Way'. Furthermore, no declarations in respect of public rights of way have been lodged with the County Council under Section 34(6) of the Highways Act 1959, or subsequently by Section 31(6) of the Highways Act 1980, and no notices have been received under Sections 34(4) and 31(5) of the respective Acts stating that the claimed paths have not been dedicated as highways.
38. Assuming the barrier at the northern end of the route was erected in 1998, this is considered to be an effective challenge to public use at that time. The relevant period during which a bridleway can be presumed to have been dedicated is therefore between 1978 and 1998.
39. Verbal permissions given by the tenant, Mr Bealby appear to have been directed at certain groups and individuals seen using the route. However, Fairey v Southampton C.C. (1956) established that in order to show a lack of intention to dedicate, the landowner must demonstrate "sufficient evidence that there was no intention to dedicate the way" and "there must be evidence of some overt acts on the part of the landowner such as to show the public at large...that he had no intention to dedicate". The evidence submitted in the user evidence forms suggests that many users were not challenged despite having been seen

by farm workers. It does not appear that the landowner's intentions were sufficiently made known to the 'public at large' either through verbal challenges or by placing signs along the route stating that use was with permission only.

40. Although user evidence in respect of presumed dedication is conflicting, there is no incontrovertible evidence to demonstrate a lack of intention by the landowner to dedicate a public bridleway between 1978 and 1998. Therefore it is considered that there is sufficient evidence for it to be reasonably alleged that a right of way subsists (Test B in para.5).
41. Thirteen evidence forms (for the whole 20 year period) relate to use by cyclists. The case of Whitworth v Secretary of State for Environment, Food and Rural Affairs [2010] held that it is appropriate (when considering statutory claims under HA80 s.31) to infer the form of dedication which is least burdensome to the landowner. In right of way terms, cyclists are entitled to use byways, restricted byways, and bridleways. The least burdensome of these categories is that of public bridleway.

Statutory and Policy Implications

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

RECOMMENDATION/S

43. It is RECOMMENDED that Committee accepts the application and approves the making of a Definitive Map Modification Order to add a bridleway to the Definitive Map and Statement on the basis that, for the reasons set out above, it is considered by the Authority that the evidence shows that a right of way is reasonably alleged to subsist, and directs that, unless further evidence be disclosed to or discovered by the officer in the meantime, the Authority should adopt a neutral stance at any subsequent inquiry etc.

Eddie Brennan

Definitive Map Officer

For any enquiries about this report please contact:

Eddie Brennan (0115 9774709)

Definitive Map Officer

Constitutional Comments (SJE 03.01.2013)

45. 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 04.01.13)

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

Background Papers

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

Modification Order Application case file

Electoral Division(s) and Member(s) Affected

Rufford	Councillor John Peck
Warsop	Councillor John Allin

ROW 91 To add Bridleway in the Parishes of Clipstone and Warsop
11 January 2013



minutes

Meeting	RIGHTS OF WAY COMMITTEE
Date	Wednesday 23 January 2012 (commencing at 10.00 am)

membership

Persons absent are marked with 'A'

COUNCILLORS

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

	Allen Clarke		A	Rachel Madden
	John Cottee			Sue Saddington
A	Jim Creamer			Andy Stewart
	Sybil Fielding		A	Jason Zadrozny
	John Hemsall			

OFFICERS IN ATTENDANCE

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

MINUTES

The minutes of the meetings held on 28 November 2012 were taken as read and were confirmed and signed by the Chairman.

APOLOGIES FOR ABSENCE

Apologies for absence were received from:-

Councillor	Jim Creamer
"	Rachel Madden
"	Jason Zadrozny

DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

There were no declarations of interest

DECLARATIONS OF LOBBYING BY MEMBERS

There were no declarations of Lobbying.

APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF CLIPSTONE AND WARSOP.

An amended appendix D to the report was circulated prior to the item being discussed.

Mr Brennan introduced the report and highlighted the issues around the erection of the barrier on New Buildings Drive. He also highlighted that no new evidence had been submitted by the landowners though they had submitted a petition stating that the road was not generally thought of as being for public use.

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

Mrs Y Glennie, local landowner, spoke against the application. She informed members that although she does not walk this land now she did for many years and during the period 1978-98 as she trained racehorses and was therefore regularly on this farmland. She highlighted the dangers of a bridleway joining Peafield Lane by the Parliament Oak at the claimed point stating that it is dangerous because of visibility for both horse riders and walkers alike. She also informed members that she often approached and spoke to people on the land to whom it must have been obvious she was the landowner.

In response to questions Mrs Glennie responded as follows:-

- When speaking to people on the land, she would have always done so politely.
- She would have said to people politely that the land is private property
- She presumed that most people on the land have been given permission by her brother as he spoke with them.
- She would have challenged anyone she saw using the route people as a matter of course unless it appeared permission had been given by her brother.

Mr Brennan informed members that although desire, preference or safety is appreciated it cannot form part of the consideration before members.

Mr R Bealby, local landowner, spoke against the application. He informed members that various signs and gates had been erected over the years informing people that the Drive was private property. He also stated that he had been asked in the past by the Nottinghamshire Footpaths Preservation Society for permission to walk along New Buildings Drive, and that this was evidence that the Drive is not a public right of way and is private property. He also informed members that there had been heavy vehicles used during landfill operations, once this had finished heavy barriers were erected to stop people from accessing this private property.

In response to questions Mr Bealby responded as follows:-

- Signs had been erected over the years but they had not been maintained as scrupulously as they could have been.
- The sign shown in appendix B4 was erected by Cavendish Lodge Liveries and it originally said something like "Cavendish Lodge Private Road. No Access"
- The 1 metre gap left beside the barrier was left because the barrier was installed up to the boundary of their ownership, and the gap was on adjacent ownership.

Mr C Glennie, local landowner, spoke against the application. He informed members that on a number of occasions he had challenged walkers and informed them the Drive is private property. He highlighted the fact that Mrs Glennie and Mr Bealby have collected over 150 signatures from local residents indicating their view that the land is private and therefore is no public right of way.

In response to a question Mr Glennie responded as follows

- Although the family had given permission to "some" people to use the lane this was not a given right for all to use it and those were challenged.

Mr Parkhouse, joint applicant with Clipstone Parish Council, spoke in favour of the application. He stated that the Village Council of Kings Clipstone supports the application as many of the villagers have used this route to connect with Parliament Oak, with no opposition from the landowners. He also informed members that Warsop Parish Council also supports the recognition of New Buildings Drive as a public right of way. About 17,000 people are represented between both Councils.

In response to a question Mr Parkhouse responded as follows

- The number of evidence forms does not reflect the number of people who have used this Drive. Some people have used it once or twice over the 20 year period and their use is not significant, but the 40 forms show use of this route on a regular basis
- He saw no 'private property' signs, until after the application was made.
- During the period of claimed use there were no barriers erected - these were put up at the end of the period in question.
- There may have been a sign up stating it was private property in the 50's but this was not relevant to the claimed period, nor was any sign apparent during the period in question.
- Whilst it was not claimed by the Parish Council in the 50's, this was not relevant to whether public rights were acquired subsequently.

Mr Brennan responded to issues raised stating that 40 was not a small number of user evidence forms, he also informed members that as few as 6 evidence forms have been used in cases he is aware of and this had led to an order being made. Also in respect of the petition, its meaning is unclear, the signatories may only be saying that the drive is not currently recorded as a public right of way and therefore

they are simply expressing that opinion. Mr Brennan confirmed that the test upon which the Recommendation is based is that of officers considering Test B to be met, i.e. that the way is reasonably alleged to exist.

During discussions members took into account the fact that signs had been erected in the area at one time, although not maintained throughout. There was evidence that attempts had been made to stop the signs being vandalised by putting up barbed wire on the post. They also considered that attempts had been made by the landowner through challenging people whilst accepting that it could not be policed 24/7, and the erection of the barrier clearly demonstrated that the landowner did not think that it was a right of way. The 150+ petition is not credible evidence of fact though does show that the reputation is that a public right of way does not exist along New Building Drive.

On a motion by the Chairman seconded by the Vice Chairman it was:-

RESOLVED 2013/001

That a Modification Order not be made to modify the Definitive Map on the grounds that the evidence is not considered sufficient to demonstrate that existence of a bridleway is reasonably alleged

APPLICATION TO REGISTER LAND KNOWN AS TOTON SIDINGS IN TOTON NOTTINGHAMSHIRE AS A TOWN OR VILLAGE GREEN

Mr Trundle introduced the report and highlighted that an application had been made for a Town and Village Green where two thirds was in Nottinghamshire and the other third was in Derbyshire. The report was written to decide whether to accept the offer of delegation from Derbyshire for determination of the application, not to discuss the evidence submitted or potential objections.

RESOLVED 2013/002

- 1) That the County Council accepts the delegation from Derbyshire County Council under Section 101 of the local Government Act 1972 to determine the application for registration of land known as Toton Sidings as a Town or Village Green.
- 2) That the County Council accepts the delegation on the basis of Derbyshire County Council paying one third of the costs of determination of the application and that a letter of appreciation be sent to Derbyshire County Council.
- 3) That authority be given for officers to proceed with the application and that Derbyshire County Council be kept informed of the progress of the application.

UPDATE ON GATING ORDER – CEDERLAND CRESCENT AND NOTTINGHAM ROAD NUTHALL

RESOLVED 2013/002

That the report be noted
