



17 January 2023

Agenda Item 6

REPORT OF INTERIM CORPORATE DIRECTOR (PLACE)

APPLICATION REF: 1113

PROPOSAL: A DEFINITIVE MAP MODIFICATION ORDER APPLICATION REQUESTING NOTTINGHAMSHIRE COUNTY COUNCIL RECORD A SERIES OF PUBLIC BRIDLEWAYS

LOCATION: LAND TO THE NORTH OF MEDEN VALE IN THE PARISHES OF WARSOP, CUCKNEY AND NORTON

APPLICANT: MR STEVEN PARKHOUSE ON BEHALF OF NOTTS AREA RAMBLERS

Purpose of Report

1. To determine four applications from the Notts Area Ramblers seeking to add to the Definitive Map and Statement (DMS) a series of bridleways which are not currently recorded, and to upgrade certain definitive footpaths to bridleways. A map showing the routes in question and other relevant features is shown at Appendix A.
2. The recommendation set out at the end of the report is to make a Modification Order to record bridleways along all the routes applied for. The effect of accepting the recommendation would be to allow officers to move to the next stage of the process of making a Modification Order. This allows for anyone to make an objection to the Order when it is published and if the objections are made and not withdrawn then the case will be referred the Planning Inspectorate. Once referred, an Independent Inspector would either ask for a written exchange of correspondence or ask for a public hearing or inquiry into the Order to be arranged where objectors and supporters would be able to present their evidence in detail to the Inspector. The Inspector would then make a decision on the case based on all the evidence.

Summary of Legal Tests

3. Under Section 53 of the Wildlife and Countryside Act 1981 (WCA81) The Nottinghamshire County Council has a duty to keep the DMS under continuous review and make the necessary legal orders in accordance with the following:
 - a) The expiration of a period of public use from which it can be presumed that a highway has been dedicated. Such a dedication may arise under Section 31 of the Highways Act 1980 (HA80) following a period of 20 years uninterrupted public use, unless there is evidence that the landowner had no intention of dedicating a highway. Alternatively, if no dedication has taken place under HA80 it may be necessary to consider whether dedication has taken place under common law principles. Common law requires consideration of the following four issues: 1) whether the landowner had the capacity to dedicate a highway, 2) whether there was express or implied dedication by the landowners, 3) whether there is acceptance of the highway by the public taking it into use; and 4) whether it can be demonstrated that the landowner had no intention of dedicating public highway rights. Evidence of use by the public 'as of right' may support an inference of dedication and may also show acceptance by the public.
 - b) Where the application seeks to add a route to the DMS, the evidence must show either that the claimed right of way subsists (i.e. there must be clear evidence in respect of the claim and no credible evidence to the contrary (this is known as Test 1)) or it must show that it is reasonable to allege that the claimed right of way subsists (known as Test 2). Test 2 can be considered to be met at law even where the evidence is finely balanced, provided there is no incontrovertible evidence that the claimed route could not subsist. If either of these tests is met a Modification Order should be made proposing to add the routes and inviting any further evidence before the final decision as to whether or not to confirm the Modification Order is made.
 - c) Where the application seeks to upgrade a route shown on the DMS (i.e. from footpath to bridleway), the application must show (on the balance of probabilities) that a highway depicted in the map and statement as a highway of a particular description ought to be shown as a highway of a different description.
 - d) In order for actual use by the public to constitute evidence of a right to such use, the use must be 'as of right'. This means that the use must not be by force, by stealth or with permission. 'Force' is not confined to physical force but could also include circumstances where use is contentious i.e. use in breach of prohibitive signage or repeated verbal requests to desist. Use must not be by stealth but must be 'in the open' and without any form of secrecy. Use cannot be by permission (either when expressly given or implied from the landowner's conduct).
4. When a Modification Order is made and an objection is received, the Council cannot confirm the Order but must instead refer it to the Secretary of State for a decision. In cases involving large amounts of user evidence the appointed

Inspector would normally call for a hearing or public inquiry to be held whereby any conflicting evidence can be tested. Evidence given in person in such forums will be given greater weight than information contained in evidence statements. However, the legal 'trigger' requiring that a Modification Order be made (and thus a call made for any further evidence to be submitted) is only that it is reasonable to allege that a right of way subsists (Test 2 in para 2b above).

Information

5. **Statutory Declaration 1:** In relation to part of the land over which the routes are claimed, a Statutory Declaration under Section 31(6) of the Highways Act 1980 was lodged with the County Council in February 1997 by the Agricultural Development and Advisory Service (ADAS). Such declarations enable landowners to formally acknowledge any existing public rights of way across their land. In effect, landowners are also therefore indicating that they have no intention of dedicating any routes other than those which are formally acknowledged in the Declaration. However, Crown Departments such as ADAS are not automatically subject to the provisions found in HA80 unless there is an agreement with the Highway Authority under HA80 S.327(2). Although no formal S.327 agreement has been located, submission of the Declaration to the County Council in 1997 by ADAS and acceptance of the same by the County Council could be considered as indicating that an implied agreement took place in this instance. Given that the Declaration did not identify any bridleway rights on the routes being claimed, it should be regarded as a challenge to public use (on the ADAS land), and therefore the application would need to rely on evidence of use prior to 1997. However, the Crown exemption would still apply in respect of claimed public use prior to 1997 and so dedication of highway rights cannot be deemed to have occurred under Section 31. As such, any right of way claim regarding this land would need to rely instead on common law principles.
6. **Statutory Declaration 2:** In September 2012, the Welbeck Estate also deposited a Statutory Declaration on their land. The Declaration did not identify any public bridleways on the routes being claimed. Accordingly, 2012 should be considered as the date when public use was challenged on the Welbeck Estate land. As such, the evidence must show sufficient qualifying public use prior to this date.

Observations

7. Several routes have been claimed under four separate applications. In turn, the applications are supported by user evidence statements indicating use of a combination of routes. Accordingly, in correlating the user evidence, the information contained in them has been assessed on a section-by-section basis as set out below.
8. **Route 1:** This part of the application seeks the upgrading of an existing definitive footpath to a bridleway based on evidence of actual use by the public. The

definitive legal alignment of this path was established by the Nottinghamshire County Council (Warsop Footpath No.39) Public Path Diversion Order. The aforementioned Order specifies the legal alignment of the footpath as running along the southern and eastern side of the present perimeter fence (Point 1 on Appendix A). However, site inspections indicate the well-worn path as actually being along the northern and western side of the perimeter fencing (i.e. on the opposite side of the fence to the definitive legal line). Given that the intention of the application is to record the route in actual use, and that this line is not recorded on the DMS, upgrading would not be applicable. The technical implications of this will be considered later in this report. Part of the route which is in use is subject to the Welbeck Estate Statutory Declaration (2012) and therefore, for the purposes of calculating a potential 20-year period of public use of Route 1, the relevant period is 1992-2012. A total of 53 evidence statements demonstrate use within the 20-year period of which 31 relate to use on horseback or cycles. Many evidence statements also refer to use in the 1950s-60s. No signs or barriers were observed on the land at the time of the officer's site visit.

9. **Route 2:** A well-used wear line was observed along the claimed route connecting with routes 1 & 3. The land in question is in the ownership of the Welbeck Estate and is therefore subject to the 2012 Statutory Declaration. No signs or barriers were observed on the land at the time of the officer's site visit. A total of 44 evidence statements demonstrate use within the 20-year period prior to 2012 of which 25 relate to use on cycles. Many evidence statements also refer to use in the 1950s-60s.
10. **Routes 3 and 4:** This route consists of a tarmac/concrete path being the legacy of occupation of the land by the Ministry of Defence (MoD) in the mid 1900's. A total of 52/53 (for route 3 and for route 4 respectively) evidence statements demonstrate use within the 20-year period prior to the Welbeck Statutory Declaration (2012), of which 32/31 (respectively) demonstrate use with cycles. Again, many statements refer to use dating back to the 1950s-60s. A cyclist was observed on the western end of the route during the case officer's site visit.
11. There are locked gates currently preventing use either side of the former Welbeck Colliery service road (Point 1 on Appendix A). According to some user evidence statements these gates were locked (preventing public use) sometime between 2005 and 2012. Prior to that, several statements refer to the presence of unlocked wooden gates, and prior to that felled logs with gaps allowing access. Damaged signs were observed at various locations in the adjacent woodland reading "Private Woodland", while Phoenix Airsoft's land (leased from the Welbeck Estate) exhibited signs reading "Private Property – No Public Access Phoenix Wargames in Progress". If taking the earliest date when these gates were said to be locked (2005) as the date when public use was first challenged (as opposed to the lodging of the Declaration), then 51/52 (for route 3 and for route 4 respectively) evidence statements demonstrate use within the 20-year period of

which 32/39 forms (for route 3 and for route 4 respectively) demonstrate use with cycles.

12. **Route 5:** Consists of an access track/woodland path with no physical obstructions. Warning signs have been placed on a tree at the northern end which read "Private Property, No Public Right of Way" and "Phoenix Airsoft-Private Property-No public access. There is also evidence of older signage (though the wording cannot be discerned) which appears to have been vandalised. The route was observed being used by a small group of mothers and children during the site visit (in sight of the aforementioned signs). The ADAS Statutory Declaration was in place on the land in 1997. A total of 41 evidence statements claim use prior to 1997 of which 26 relates to use by cyclists. Many statements refer to use dating back to the 1950s-60s.
13. **Route 6:** This route commences from the end of Hatfield Avenue, Meden Vale (a tarmacked public carriageway highway) and continues along a farm track meeting up with Warsop Footpath No.36. It appears to be well used with no visible warnings signs or notices prohibiting public use. The route is subject to the 1997 ADAS statutory declaration. Accordingly, a total of 59 evidence statements claim use prior to 1997 of which 42 relate to use on cycles. Many statements refer to use dating back to the 1950s-60s. No warnings signs or notices prohibiting public use with cycles was observed at the time of the officer's site visit.
14. **Route 7:** Continuing from Route 6, this farm track is currently recorded on the Definitive Map and Statement as Warsop Footpath No.36. The route is subject to the 1997 ADAS statutory declaration. Accordingly, a total of 27 evidence statements claim use prior to 1997 of which 17 relate to use on cycles. Many statements refer to use dating back to the 1950s-60s.
15. **Route 8:** Is currently recorded as a definitive footpath. Pedestrian and farm gates appear to have been in situ for some years at the Netherfield Lane end. Google street view images indicate that the farm gate has been locked at times with public access being via the pedestrian gate. Two cyclists were observed using the route during the officer's site visit. The route is subject to the 2012 Welbeck Estate Statutory Declaration and therefore (in the absence of any other challenge) the relevant 20-year period of use is 1992 to 2012. Accordingly, 41 Evidence Statements indicate use on cycles and horseback within this period. No signs were observed on the land at the time of the officer's site visit.
16. **Route 9:** Is currently recorded as a definitive footpath. 4 cyclists were observed using the route during the officer's site visit. The route is subject to the 2012 Welbeck Estate Statutory Declaration and therefore (in the absence of any other challenge) the relevant 20-year period is 1992 to 2012. Accordingly, 41 Evidence Statements indicate use with cycles within this period. No signs or barriers were observed on the land at the time of the officer's site visit.

Consultation

17. A consultation exercise has been carried out with landowners, parish/district councils, utility companies, user groups and other interested parties. Objections

and comments are summarised below. The case officer's response is shown in italics.

18. Objection from the Welbeck Estate:

- (I) The Statutory Declaration submitted on the 5th September 2012 challenges use in 2012 at the least.

In the absence of any known earlier challenge, officers agree that the Declaration challenged public use in 2012.

- (II) In 2003, a statement was sworn in front of a solicitor by the Estate Head Gamekeeper, Eric Betts in relation to a separate footpath claim, but part of the same area patrol, demonstrates that trespassers have been continually challenged and that signage explaining the land was private was maintained over a period of 30 years.

Although the statement relates to a separate footpath application, this could be said to demonstrate a general policy of challenging trespass. However, there is 1) no indication on the present evidence that users were challenged on the routes that are the subject of this report; and 2) for signage to be effective, their intention needs to be unambiguous.

- (III) The depiction of tracks and rides on historic maps, going back over 100 years in some cases, does not mean that these tracks were ever intended to be used for public access or enjoyment, or that the public actually used these routes. Concrete roads and bays in the Presley and Hatfield Plantations formed part of a munitions store for the War Department/Ministry of Defence. This land would have been strictly policed and off-limits to any unauthorised personnel. The fact that the War Department are no longer in occupation does not mean that the landowner's position towards public access in this area has changed in any way; it remains unwanted.

No documentary map evidence was presented nor has any been discovered showing the existence of tracks coinciding with the public bridleway routes being claimed. Instead, the applications rely upon evidence of user.

- (IV) There is a clear bias in the evidence gathered by the applicant. A representative of the Estate was not invited to be present when this data was gathered to present an opposing view or alternate set of questions. The questions asked are leading and no supporting evidence has been submitted in respect of some of the answers given [i.e. photographs].

The Authority's role at this stage is to form a view on the evidence before it as to whether an order should be made; the making of such an order then triggering an opportunity for the gathering of further evidence before a final determination is made as to whether the claimed rights of way exist. The procedure provides for the veracity of the evidence submitted by the applicant and the objectors to be tested and clarified in a public forum such as a local public inquiry.

- (V) The evidence is incoherent, haphazard and taken over just three months (May to July 2012) and is not representative of the requirement to demonstrate use over a twenty-year time span. The forms appear to relate to some or all of the claimed routes, and it is not clear where trespassers actually went or the frequency of use of certain claimed routes against other claimed routes.

Again, the veracity of the evidence submitted by the applicant and the objectors would benefit from clarification in a public forum such as a local public inquiry before it can be finally determined as to whether the claimed bridleways exist.

- (VI) It was not physically possible to access the claimed routes due to a number of locked gates in the subject areas. A number of questionnaires refer to these gates stating that users were not deterred by their presence and that they could get around the side therefore knowingly disobeying the intention to keep unauthorised personnel out of these areas. These gates both challenged the public and demonstrate that the Estate had no intention to dedicate any ways to the public.

Though the installation of gates is not conclusive evidence of the landowner's lack of intention to dedicate a right of way, the subsequent locking of the gates at Point 1 (Appendix A) did prevent public use and, by such challenge, therefore brought to an end any period of public use.

- (VII) The Hatfield Plantation has been occupied by a paintball operator, Phoenix Airsoft, who have a duty to the public (paying or otherwise) to keep them safe due to the nature of the war game activities they run. Two evidence forms state they were warned not to use the area for access. The witnesses imply permission was given and that any use on that basis was not as of right and revokable by the proprietor at their discretion.

Use of these particular routes (Nos. 4 & 5) is claimed to have taken place as early as the 1950 and 1960s. It is possible that a right of way had been established prior to Phoenix Airsoft's occupancy of the land (which commenced around 2010).

- (VIII) A further test which the application has failed to meet is that access has been physically interrupted over the twenty-year period. The foot and mouth outbreak in 2001 resulted in the formal closure of public paths which will have, as a matter of fact, interrupted any user. Any claim to the contrary would be knowingly breaking the law at the time of the outbreak.

The Planning Inspectorate has issued guidelines on this particular point (Rights of Way Section Advice Note 15- April 2010) stating "it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an "interruption" under section 31(1).

- (IX) Signage is currently erected on the land and equally in the past. This [application] demonstrates a willingness to ignore the signage despite our best passive efforts to deter it. The signage had to be placed at height due to previous signs which

were located more at eye level being vandalised, defaced and in some instances destroyed. This is evidence of use by force.

Again, signs appear to have been present on the Welbeck land during at least some of the period of claimed use and there is evidence of signage being damaged, however, it is not clear whether signage was directed at persons using the path or trespassers within the adjacent woodland. This issue would benefit from clarification in a public forum such as a local public inquiry

- (X) One evidence form refers to a 'private' notice put in place 'in the last year' [i.e. 2011]. This underlines the landowner's desire to keep out unwanted and unauthorised public access over the claimed routes.

Signage erected in 2011 would have no legal effect if rights had been acquired previously. It is noted that evidence statements claim use dating as far back as the 1950s.

- (XI) A significant percentage of the evidence submitted has shown use on foot and therefore does not meet the requirement to justify the request for a bridleway.

The percentage of use claimed by cyclists is not insignificant.

19. Objection from Phoenix Airsoft:

- (i) Full planning permission [for a war games business] was obtained from the Mansfield and Bassetlaw District Councils in 2010. The business has been developed and thousands of pounds have been put into it over the years.
- (ii) We have around 600 members and a gate at the entrance which is padlocked and has been padlocked for over a decade. We have signs and fencing around the perimeter and do not encounter 100s of users as claimed in the witness statements.

Signs and the locking of gates during occupancy of the land by Phoenix Airsoft would have no legal effect on rights if they had been acquired by virtue of use during an earlier period i.e. 1950s to 2010.

- (iii) This proposal would cause us a big problem as we have war games and events running throughout the whole week and would open a pandora's box with off-road bikers and quad bikers raging through. At the moment we are working with the police to catch and suppress the bikers etc. All this hard work will be a waste of time if the application goes through.

Whilst regrettable, such issues would be a matter for the police. The only issue that can be considered here is whether or not a right of way exists. Additionally, the claims are for, at their highest, bridleways, which do not carry public rights for 'off-road bikers and quad bikers' and so even if the rights of way for which application has been made were recorded, such vehicular use would be no more lawful than at present.

- (iv) The area is well known for gay meetings and anti-social behaviour, also it was a dedicated drug haven. The Fire Brigade have been called out many times due to anti-social behaviour. This has stopped due to us taking over the land. We have done a lot of work within the local community and with several companies including: Notts County Council Social Services, Nottinghamshire Police, Derby Community Safety Partnership Youth Offending Services, schools in the area and many more.

While this point is noted, it is not relevant to whether or not public highway rights may exist.

- (v) If it was important, why wasn't the application put in decades ago? We do not need another path as we are surrounded with footpaths so why add another and possibly cause our business to close? We have gone through a major Covid19 year and many businesses are struggling and have been closed putting thousands out of work. We could also have to close putting all our staff out of work to add to the disaster.

While this point is noted, it is not relevant to whether or not public highway rights may exist. Whether one or more of the paths claimed may be unnecessary would be a separate point and would need to be considered separately, should the claimed rights of way be found to exist at law.

- (vi) The bridle path crosses a major road [i.e. the former colliery access road) used by heavy lorries daily...a bridleway across it would put the public in danger.

If, following due process, a bridleway was confirmed, structures and signage could be put in place if safety issues were to arise, but it is to be noted that the applications are supported by evidence of the public already making use of the claimed route.

20. Objection from The Robin Hood Way Association:

- (i) The Robin Hood Way is a long-distance walking route and we wish to see as many footpaths retained on this long-distance trail as possible. We wish to have pleasant quiet enjoyment on as many definitive footpaths without being intimidated by cyclists. Should this order be confirmed, it would result in upgrading at least four definitive footpaths to bridleway status.

The application routes, if confirmed by due process, would result in the upgrading of three definitive footpaths, two of which form part of the Robin Hood Way long distance footpath. Whether or not the footpaths are to be upgraded must, at law, be determined solely on matters of fact and cannot be determined on desirability.

- (ii) RHWA was not consulted by the Ramblers Association about the implications of this claim for walkers.

While this point is noted, it is not relevant to whether or not public highway rights may exist.

- (iii) It is noted that to have claimed this path the cyclists would have had to link to definitive footpaths to complete the route to an access point. We point out that any user evidence by a cyclist or horse-rider on a definitive footpath should be discounted...they would have been illegally using the footpath.

It is well established law that a right of way, whether on foot, cycle or horseback can be acquired by means of longstanding use, and that dedication of a highway can be presumed by the inaction of the landowner.

- (iv) We ask that the practice of claiming bridleways on footpaths by means of cycle and equestrian use is discounted nationally.

That would be a matter either for Parliament or for The Ramblers' Association / Notts Area Ramblers, depending on the party to whom this point is directed.

21. Objection from Carol Tideswell (Landowner):

- (i) Opening up a footpath to bridleways causes problems such as off-road vehicles gaining access. We are already experiencing this problem in other areas of Warsop. This is an ongoing police matter because they pose a danger to walkers, ramblers and not to mention the wildlife and landscape also livestock.

Unauthorised use of a bridleway with motorised vehicles would be a matter for the police. The only issue that can be considered here is whether or not a right of way exists.

- (ii) The said paths have been used already for years and I can't see it making a difference to those people who use them but to landowners it just causes unmeasurable problems. These bridleways get abused by motocross bikes quads and other off-road vehicles leaving us prone to death of livestock and damage to fields, hedges and also fly tippers and in [anti] social behaviour. It makes it more accessible to drug related crimes. I hope we can resolve the situation to benefit all involved, such as the installation of gates and signage.

If, the paths have been in use for years as is stated, it is possible that bridleway rights have already been acquired. Again, any unauthorised by motor vehicles is a matter for the police.

22. Nottinghamshire Footpath Preservation Society:

The Society strongly supports this application by Notts Area Ramblers.

23. Dave Backhouse, Group Coordinator, Sustrans (Walking and Cycling Charity):

- (i) We are very supportive of this application, particularly since it would not only confirm the legality of cycling along the specified trails, but also open up the

opportunity of creating 'circular' rides in the Meden Vale area in conjunction with the nearby National Cycle Network Route 6.

- (ii) Such circuits could also include a northern route via Cuckney BW6, minor roads towards Carburton as far as Corunna Lodge, then Norton BOAT4 back to Hazel Gap. Not quite Rutland Water, but this area has potential to become a mecca for mountain bikers and boost the tourism economy.
- (iii) Sustrans rangers are among the cyclists who have been using these trails for a number of years.

Other Options Considered

- 24. The report relates to the determination of a definitive map modification order application. The County Council is under a duty to consider the application as submitted and to determine the application based on the facts. Accordingly, no other options have been considered.

Reason for Recommendation

- 25. **Route 1:** As previously mentioned, the route which appears to be in current use is not the same as Warsop Footpath No.39 and therefore it would not be appropriate to authorise any upgrading on the evidence supplied. However, in respect of the non-definitive route which is currently used, a substantial amount of evidence has been submitted demonstrating use with cycles from which a bridleway can be presumed to have been dedicated. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a right of way on the basis that the evidence shows that a bridleway subsists (per Test 1 in para 2b above) with use having taken place 'as of right' on cycles for a period of at least 20 years prior to the lodging of the Welbeck Statutory Declaration in 2012. No evidence has been found to suggest that the landowner took sufficient steps to demonstrate that he had no intention of dedicating a public right of way.
- 26. **Route 2:** Other than stating that there was a general policy of challenging public use (i.e. through gamekeeper patrols), there is no clear evidence of sufficient action taken on behalf of the landowner (The Welbeck Estate) to demonstrate a negative intention of dedicating a highway. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis that it is reasonable to allege (per Test 2 in para 2b above) that a bridleway subsists and which can be presumed to have been dedicated by virtue of use having taken place 'as of right' on cycles for a period of at least 20 years prior to the lodging of the Welbeck Statutory Declaration in 2012.

27. **Route 3 and Route 4:** The evidence forms allege a period of at least 20 years use, with cycles, as of right and without interruption prior to the locking of the gates on the Welbeck Colliery access road (2005). In contrast, the landowner states that signs have been present on the land i.e. “Private Woodlands Keep Out” and “Private Property – No Public right of Way” and that the public have been challenged by a gamekeeper i.e. there is a clear conflict of evidence which requires testing in a public forum such as a public inquiry. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis of a reasonable allegation of dedication of public bridleway rights (per Test 2 in para 2b above) with use having taken place ‘as of right’ on cycles for a period of at least 20 years prior to the earliest known challenge in 2005.
28. **Route 5:** This route is subject to the 1997 ADAS Statutory Declaration. Furthermore, with ADAS being a Crown Department at the time of the alleged use, the claim must be evaluated on Common Law principles. To summarise: 1) The evidence forms indicate sufficient use with cycles and, 2) ADAS were legally capable of dedicating a bridleway and, 3) that the route appears to have been accepted and used by the public, over many years. No contemporaneous evidence has been found to indicate that the landowner either lacked the capacity to dedicate or had no intention of dedicating a public right of way. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis that a bridleway can be presumed to have been dedicated at common law (para 2a), use having taken place ‘as of right’ on cycles over many years prior to the 1997 Declaration.
29. **Route 6:** Again, this part of the claim will rely on Common Law principles prior to the lodging of the 1997 declaration. To summarise: 1) The evidence forms indicate use with cycles and, 2) ADAS were legally capable of dedicating a bridleway and, 3) the route appears to have been accepted and used by the public, over many years. No contemporaneous evidence has been found to indicate that the landowner either lacked the capacity to dedicate or had no intention of dedicating a public right of way. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis that a bridleway can be presumed to have been dedicated at common law (para 2a), use having taken place ‘as of right’ on cycles over many years prior to the 1997 Declaration.
30. **Route 7:** Again, this route is subject to the 1997 ADAS Statutory Declaration and being a Crown Department, the claim will rely on Common Law principles. To summarise: 1) The evidence forms indicate use with cycles and, 2) ADAS were legally capable of dedicating a bridleway and, 3) the route appears to have been

accepted and used by the public, over many years. No contemporaneous evidence has been found to indicate that the landowner either lacked the capacity to dedicate or had no intention of dedicating a public right of way. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis that a footpath depicted in the map and statement ought to be shown as a bridleway (para 2c). This follows a period of use which has given rise to a presumption of dedication at common law (para 2a), use having taken place 'as of right' on cycles over many years prior to the 1997 declaration.

31. **Route 8:** Other than stating that there was a general policy of challenging public use (i.e. through gamekeeper patrols), there is no clear evidence of sufficient action taken on behalf of the landowner (The Welbeck Estate) to demonstrate a negative intention of dedicating a highway. Accordingly, the County Council should exercise its powers (per para 2c above) to make an Order for the reason that, on the balance of probabilities, a highway depicted in the map and statement as a public footpath, ought to instead be shown as a public bridleway, use having taken place 'as of right' with cycles for a period of at least 20 years prior to the lodging of the Welbeck Statutory Declaration in 2012.

32. **Route 9:** Other than stating that there was a general policy of challenging public use (i.e. through gamekeeper patrols), there is no clear evidence of sufficient action taken on behalf of the landowner (The Welbeck Estate) to demonstrate a negative intention of dedicating a highway. Accordingly, the County Council should exercise its powers (per para 2c above) to make an Order for the reason that, on the balance of probabilities, a highway depicted in the map and statement as a public footpath, ought to be shown as a public bridleway, use having taken place 'as of right' with cycles for a period of at least 20 years prior to the lodging of the Welbeck Statutory Declaration in 2012.

Statutory and Policy Implications

33. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

34. While there will be costs incurred in signing the proposed routes, should the application to add these routes be successful, the Authority is under a duty to a) record the existence of highways; and b) in the case of minor highways such as those which are the subject of this report, to signpost and waymark those in order

that the public can find and use the routes reducing the risk of inadvertent trespass because a route is unclear.

RECOMMENDATIONS

35. It is recommended that a Definitive Map Modification Order is made, the effect of which if confirmed, would be to record all of the following on the Definitive Map and Statement:

- Add Route 1 as a bridleway on the basis that the route subsists (per Test 1 para 2b)
- Add Route 2 as a bridleway on the basis that it is reasonable to allege that the route subsists (per Test 2 para 2b)
- Add Route 3 as a bridleway on the basis that it is reasonable to allege that the route subsists (per Test 2 para 2b)
- Add Route 4 as a bridleway on the basis that it is reasonable to allege that the route subsists (per Test 2 para 2b)
- Add Route 5 as a bridleway on the basis that, on the balance of probabilities, it can be presumed to have been dedicated at common law (per para 2a).
- Add Route 6 as a bridleway on the basis that, on the balance of probabilities, it can be presumed to have been dedicated at common law (per para 2a).
- Record Route 7 as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights can be presumed to have been dedicated at common law (per para 2a).
- Record Route 8 as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights subsist.
- Record Route 9 as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights subsist.

DEREK HIGTON

Interim Corporate Director (Place)

Constitutional Comments

36. Planning & Rights of Way Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference set out in the Constitution of Nottinghamshire County Council.

[JL 05/01/23]

Financial Comments

37. The contents of this report have been duly noted; there are no direct financial implications arising initially and any subsequent costs would be contained within the existing Rights of Way revenue budget.

[DJK 04.01.2023]

Background Papers Available for Inspection

The application file is available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

Electoral Division(s) and Member(s) Affected

Warsop Division Cllr Bethan Eddy

Worksop South Division Cllr Nigel Turner

Report Author/Case Officer

Stephen Tipping
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For any enquiries about this report, please contact the report author.