

## Rights of Way Committee

**Wednesday, 16 October 2013 at 14:00**

County Hall, County Hall, West Bridgford, Nottingham NG2 7QP

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### AGENDA

- |   |                                                                                                                                                                    |         |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1 | Minutes 11 Sept 2013                                                                                                                                               | 3 - 8   |
| 2 | Apologies for Absence                                                                                                                                              |         |
| 3 | Declarations of Interests by Members and Officers:- (see note below)<br>(a) Disclosable Pecuniary Interests<br>(b) Private Interests (pecuniary and non-pecuniary) |         |
| 4 | Declaration of Lobbying                                                                                                                                            |         |
| 5 | An update on the Alleyway Connecting Cedarland Crescent and Nottingham Road, Nuthall                                                                               | 9 - 12  |
| 6 | Consideration of an application to add a Footpath Parish of Stanton on the Wolds                                                                                   | 13 - 22 |

### Notes

- (1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.
- (2) Members of the public wishing to inspect "Background Papers" referred to in the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

Customer Services Centre 0300 500 80 80

- (3) Persons making a declaration of interest should have regard to the Code of

Conduct and the Council's Procedure Rules. Those declaring must indicate the nature of their interest and the reasons for the declaration.

Councillors or Officers requiring clarification on whether to make a declaration of interest are invited to contact David Forster (Tel. 0115 977 3552) or a colleague in Democratic Services prior to the meeting.

- (4) Councillors are reminded that Committee and Sub-Committee papers, with the exception of those which contain Exempt or Confidential Information, may be recycled.



## minutes

Meeting RIGHTS OF WAY COMMITTEE

Date Wednesday 11 September 2013 (commencing at 10.30 am)

### membership

Persons absent are marked with 'A'

### COUNCILLORS

Pam Skelding (Chairman)

Rachel Madden (Vice-Chairman)

A	John Cottee	Sybil Fielding
	Richard Butler	Darren Langton
	Nicki Brooks	Tony Roberts MBE
	Steve Carroll	Gail Turner
	Jim Creamer	

### OFFICERS IN ATTENDANCE

David Forster	- Democratic Services 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

### MEMBERSHIP

The Clerk reported orally that Councillors Steve Carroll and Nicki Brooks had been appointed in place of Councillors Steve Calvert and Kevin Greaves for this meeting only. He also reported that Councillor Tony Roberts had been appointed to the Membership of the Committee in place of Councillor Roger Jackson

### MINUTES

The minutes of the meetings held on 17 July 2013 as amended and circulated were taken as read and were confirmed and signed by the Chairman.

### APOLOGIES FOR ABSENCE

None

### 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 KING'S CLIPSTONE, EDWINSTOWE AND RUFFORD**

In introducing the report Mr Brennan informed members he had received e-mail correspondence from Mrs F Swain, a local resident who was unable to attend the meeting due to work commitments, objecting to the route being designated as a Restricted Byway. She however supports the route in principle to being designated as a bridleway.

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

Mr D Chalmers presented the Forestry Commissions view on the recommendation. They objected to the route being designated as a Restricted Byway because it could lead to an increase in fly tipping, the use of 4 wheel drive motor vehicles and trials bikes. He also suggested that there would be an increase in anti-social behaviour in the area which could lead to conflict. He however informed the Committee they would not object to a Bridleway provided sufficient control barriers were installed.

There were no questions.

Mr Parkhouse, a member of the Ramblers' Association and King's Clipstone parish Councillor, spoke in favour of the making the route a Bridleway and not a Restricted Byway. He informed members that it was a route which he and many others already used and enjoyed greatly which connected Sherwood Pines to Deerdale Lane and also connects with other routes around the area. Mr Parkhouse stated that he accepted that the law suggests that it should be a Restricted Byway, but people did not want the current route spoilt and felt that a bridleway would be more sensible.

Members queried what the practical differences would be if the Application was accepted, to which Mr Parkhouse responded that they could only promote routes already recorded as recognised rights of way and wanted this ancient route recognised.

Following the public speaking members queried the creation of a Restricted Byway against a Bridleway. Mr Brennan informed Members if the route was to be made a Restricted Byway then any barriers which were not originally in place and which restricted non mechanically propelled vehicles travelling along the route would need to be removed or permanently open. If it was to be classed as a bridleway then any barriers which had not existed historically would have to remain permanently open

Upon a request from the Chairman Mr Eastwood reminded members that it is not a case of suitability or desirability but the committee's decision must be based only on

their view of the historical evidence. Mr Eastwood stated that members' may match that of the officer's report, which shows a Restricted Byway exists along this route, or alternatively, members may consider that the evidence only shows that a bridleway exists, and if the latter, the full reasons for this view must be given having regard to the potential for an aggrieved party (if any) to challenge by judicial review.

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

**RESOLVED 2013/011**

That the application be accepted and that approval be given for the making of a Modification Order to add a Restricted Byway (rather than a Bridleway) to the Definitive Map and Statement for the reasons set out in the report and on the grounds a public right of way is reasonably alleged to exist.

**APPLICATION TO ADD A RESTRICTED BYWAY TO THE DEFINITIVE MAP AND STATEMENT IN WORKSOP**

Mr Brennan introduced the report and highlighted that this application is based on user evidence.

Following Mr Brennan's opening comments the Chairman on this occasion allowed Mr Thompson of the Ramblers' Association to speak on this item. In doing so she reiterated that the procedures for public speaking at Committee will be adhered to for future meetings.

Mr Thompson, Secretary to the Ramblers' Association Nottinghamshire Area, welcomed all the work that had been carried out on this application and supports the addition of the Restricted Byway to the Definitive Map.

There were no questions

After a brief discussion by members and on a motion by the Chairman and duly seconded it was:-

**RESOLVED 2013/012**

- 1) that the application for a Restricted Byway be rejected but approval be given for the making of a Definitive Map Modification Order to add a Footpath to the Definitive Map and Statement as per route A-B-C (Appendix A) on the basis that, for the reasons set out in the report, it is considered by the Authority that a right of way on foot subsists.
- 2) that approval be given the making of a Definitive Map Modification Order to add a Footpath to the Definitive Map and Statement as per route B-E (Appendix A) on the basis that, for the reasons set out in the report, it is considered by the Authority that a right of way on foot subsists.
- 3) that approval be given for the making of a Definitive Map Modification Order to add a Footpath to the Definitive Map and Statement as per route D-E-F

(Appendix A) on the basis that, for the reasons set out in the report, it is considered by the Authority that a right of way on foot subsists.

**TO CONSIDER OPTIONS IN RESPECT OF PUBLIC FOOTPATHS CROSSING LAND TO THE EAST OF CARLTON ROAD WORKSOP (TESCO SITE)**

Mr Brennan introduced the report and highlighted the issues around this report. He also informed members that following a meeting with Bassetlaw District Council and the Tesco Group a proposal will be submitted to make path G-C a definitive route and not a permissive one as originally proposed.

Councillor G Gilfoyle (local member) with the permission of the Chairman spoke. He highlighted that this site is a contentious issue in Worksop and there are real concerns regarding path A-C. Residents along that route are concerned about anti-social behaviour and potential damage to their properties based on previous experience of a route in this location.

Members queried what the local view was in relation to each of the routes which Councillor Gilfoyle clarified as pre-existing public rights across the site seem to be accepted and known by all local residents and it was protection of this right which was the aim of the applicant. Route A-C was very problematic when it was trialled, but the retention of a right of way in some form has popular support.

Upon request from the Chairman Mr Eastwood reminded members of the Town and Country Planning Act order process operated, that it was only concerned with definitive legal rights of way, and that Bassetlaw District Council as the local planning authority were the appropriate authority to make such an order. Mr Eastwood explained that this item was before Committee not for a formal decision to take action in relation to highways but to help Bassetlaw District Council with progressing their order by letting them have the views of the Highway Authority, hopefully helping to achieve swift and successful resolution without the need for any formal action by the Highway Authority at a later date.

Following discussions it was moved by the Chairman and duly seconded and following a show of hands it was:-

**RESOLVED 2013/013**

That Committee authorises officers to communicate to Bassetlaw District Council that the County Council supports the extinguishment of all public rights of way on the site of the Tesco development except for the definitive footpath along the southern boundary of the site alongside the railway (Report Appendix A, route D-D'-E-F) and also excepting route B-C which the County Council supports being diverted to line G-C (as shown by the dashed line on Appendix A to the Report).

In accordance with Standing Orders the Councillors Richard Butler, Rachel Madden and Gail Turner requested their votes against the resolution to be recorded

The meeting closed at 12.30 pm

**CHAIRMAN**





**REPORT OF SERVICE DIRECTOR, COMMUNICATIONS AND MARKETING**

**AN UPDATE ON THE ALLEYWAY CONNECTING CEDARLAND CRESCENT  
AND NOTTINGHAM ROAD, NUTHALL**

**Purpose of the Report**

1. To update members on the current situation regarding the alleyway between Cedarland Crescent and Nottingham Road, Nuthall and to recommend that, based on the latest information, this alleyway remains open. A map showing the exact location of the alleyway is shown at Appendix A

**Information and Advice**

2. At the Rights of Way Committee on 27<sup>th</sup> June 2012, there was a resolution that “the relevant procedures be commenced in relation to a Gating Order to close the path for 24 hours per day, 7 days per week”. Following those procedures, at the Rights of Way Committee on 6<sup>th</sup> March 2013, Members resolved that:
  - The alleyway between Cedarland Crescent and Nottingham Road, Nuthall be kept open.
  - A report be presented to the Rights of Way Committee in 6 months (from 6<sup>th</sup> March 2013) to inform members of any crime or anti-social behaviour reported in that 6 month period (between March and September 2013)
  - The situation be monitored by the local Community Safety Partnership for the next 12 months (from 6<sup>th</sup> March 2013).
3. These resolutions were based on information from:
  - Local residents, following a consultation exercise undertaken in January 2013. At that time 80% (103 people) of those that responded were in favour of the alleyway remaining open,
  - A refreshed analysis of crime, disorder and anti-social behaviour in the area. This showed no incidents in and around the alleyway had been reported to the police in the 12 months up to 11<sup>th</sup> February 2013,

- A report from officers from the County Council, who visited the alleyway in January 2013. Their report confirmed that the alleyway was in a good state of repair with adequate lighting
4. Members also received presentations at the Committee from local residents, the majority voicing their concerns about the impact of the closure of the alleyway on local life, but some expressing a wish for the alleyway to be closed.
  5. Since the resolution on 6<sup>th</sup> March 2013, for the alleyway to remain open:
    - Police records show that there have been no recorded crimes within a 100 metre radius of the alleyway
    - Two incidents of low level anti-social behaviour have been reported. These were at the same property, located immediately adjacent to the alleyway. Each of the two reports records an incident of “eggs thrown at window” in June and July 2013. In August 2013 the Police warned two juveniles about this activity and there have been no further occurrences.
    - Officers have visited the alleyway in September 2013. They confirm that the alleyway remains in a good state of repair with adequate lighting

### **Other Options Considered**

6. The “other options” considered at the Rights of Way Committee on 6<sup>th</sup> March 2013 remain available:
  - Full closure of the alleyway
  - Partial closure of the alleyway (each night)

The County Council “Guide To The Making of Gating Orders On Highways And Public Rights Of Way”, (hereafter referred to as “the Guidance”), requires that there be evidence that “the existence of the alleyway is facilitating the persistent commission of crime or anti-social behaviour” Using the most up to date information from Nottinghamshire Police there is no evidence of this.

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

7. Since the decision by the Rights of Way Committee on 6<sup>th</sup> March 2013, “that the alleyway between Cedarland Crescent and Nottingham Road, Nuthall be kept open” there has been:
  - No reported crime in the area
  - Very little anti-social behaviour (2 incidents)

In consideration of the above, and the requirement of the Guidance that a Gating Order must evidence, “that the highway is an intrinsic contributor to the levels of crime and disorder in the locality”, it is recommended that the alleyway remains open.

The local Community Safety Partnership will continue to monitor the situation for the next 6 months to ensure that if there should be any significant increase in the

levels of crime, disorder or anti-social behaviour, facilitated by the alleyway, they can determine whether it would be appropriate to re-apply for a Gating Order

## **Statutory and Policy Implications**

8. 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**

9. It is recommended that:

- i) Based on the absence of any information demonstrating that the alleyway between Cedarland Crescent and Nottingham Road is an intrinsic contributor to any crime and disorder in the locality, Committee resolves that the alleyway should remain open.

### **Name of Report Author**

**Martin Done, Service Director, Communications and Marketing**

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

**Tony Shardlow, Community Safety Officer, Safer & Engaged Communities ext 73846**

### **Constitutional Comments (SJE 07/10/2013)**

10. 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 ()**

11. There are no financial implications arising 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.

12. 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**

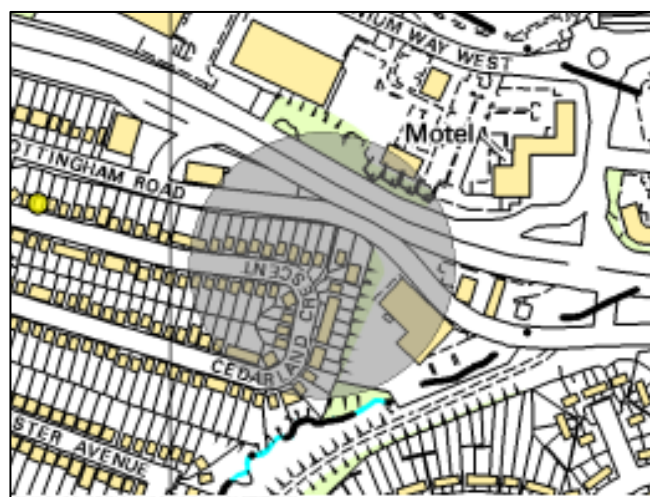
13. Nuthall – Councillor Philip Owen

**APPENDIX A**

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



The alleyway links Cedarland Crescent with Nottingham Road. The picture below shows a 100m radius around the alleyway



**16 October 2013**

**Agenda Item:**

**REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)**

**CONSIDERATION OF AN APPLICATION UNDER SECTION 53 (2) OF THE  
WILDLIFE AND COUNTRYSIDE ACT TO ADD A FOOTPATH TO THE DEFINITIVE  
MAP AND STATEMENT IN THE PARISH OF STANTON ON THE WOLDS**

**Purpose of the Report**

1. To consider an Application made by Stanton on the Wolds Parish Council for the registration of a route as a public footpath in the parish of Stanton on the Wolds. The route being claimed is shown on Plan A.
2. The effect of this Application, should a Modification Order to add the route be made and subsequently confirmed, would be to register a footpath between Stanton on the Wolds Footpath No. 6 and Browns Lane.

**Legal Background**

3. The Application is made under the provisions of the Wildlife and Countryside Act 1981. Subsection (5) of Section 53 of the Act allows any person to apply to the authority for an order under subsection (2) of the Act, which will make such modifications to the Definitive Map and Statement as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3) of the Act. In this case, the relevant event is the expiration of a 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. The evidence in this case relates to the text in Section 31 of the Highways Act 1980, which states that “where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years referred to is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.”

5. In order to accept a right of way claim on the basis of user evidence forms submitted by the public, it is not necessary to be able to show that the claimed right exists beyond all reasonable doubt. The tests to be applied are commonly known within the rights of way profession as 'Test A' and 'Test B.' In 'Test A,' the question to be answered is whether the right of way exists on the balance of probabilities. There must be clear evidence of public rights, with no credible evidence to the contrary. In 'Test B,' the question is merely whether it is reasonable to allege that a right of way exists. If there is a conflict of evidence, but no incontrovertible evidence that a right of way cannot be reasonably alleged to exist, 'Test B' is satisfied, the right of way is reasonably alleged to exist, and the claim should therefore be accepted.

### **The Current Situation**

6. The claimed route initially runs along an embankment (see Plan A) which is a covered section of the Old Dalby linear test track owned by BRB (Residuary) Ltd, formerly known as the British Railways Board. It then continues over a field and an access track also owned by BRB (Residuary) Ltd, and leased to the occupiers of No. 141 Browns Lane in accordance with a tenancy agreement dated 1<sup>st</sup> February 2011.

### **The Application**

7. The Application is supported by sixteen Public Rights of Way User Evidence Forms. Twelve of the sixteen claimants have used the route for twenty years or more, of whom four used it daily, one used it five days a week, and five used it at least once a week.

### **Documentary Sources**

8. The available documentary evidence for Stanton on the Wolds has been examined at the Nottinghamshire Archives, and nothing was discovered regarding the possible existence of public rights over the route in question.

### **Aerial Photographs**

9. Aerial photographs from 2000, 2004, 2007 and 2009 were examined for evidence of a wear line along the claimed route and any physical features pertinent to the claim. Nothing is discernible along the embankment because of the tree cover, but the photographs do show with varying clarity a wear line between the end of the embankment and Browns Lane, which claimants have confirmed is the route they followed.

## Consideration of User Evidence

10. The information contained in the Evidence Forms relates to the presumed dedication of a highway based on uninterrupted use as of right over a full twenty year period. This period has to be calculated retrospectively from the date when the right of the public to use the route was brought into question, by some means sufficient to show to the public that their right to use the route was being challenged.
11. The date of challenge in this case is the summer of 2010, when a post and rail fence were erected in the field behind 141, Browns Lane by a previous tenant. In the absence of any evidence to the contrary, the erection of this fence, which did not incorporate any means to allow the claimants to pass through it and therefore forced them to use a different route to continue their journey, should be taken as the act which brought public use of the claimed route into question.
12. The Evidence Forms suggest use by the public of the claimed route for over forty years prior to the challenge date. In order for this evidence to be valid, it must be demonstrated, in accordance with Jones v Bates (1938) that use was of right and was not exercised by 'compulsion, secrecy or licence.' The Evidence Forms do not indicate that any force was involved in the exercise of the claimed right of way, or that use of the path was secretive in any way. Only one of the Evidence Forms refers to permission being given to use the path, but subsequent correspondence from the individual in question established that he seems to have regarded the lack of objection from previous tenants as implying 'permission' to use the path. In terms of the Jones v Bates case, use in these circumstances would not equate to use by 'licence.'
13. It also has to be considered whether there is sufficient evidence of the landowner's intention not to dedicate a right of way during the twenty year period prior to the challenge date. The land in question was owned throughout this period by BRB (Residuary) Ltd.
14. The standard defence against a right of way claim is for a railway company to assert that the unauthorised use of railway land is criminal trespass, and as such incapable of founding a claim for a public right of way. Trespass on railway land only becomes a criminal act, however, when a trespasser has been warned and does not desist. This offence, of 'Trespass and Refusing to Quit,' can be traced back to the nineteenth century, as can the related 'Trespass After Warning,' which allows railway personnel to physically remove people if they refuse to leave. There is no indication in any of the Evidence Forms that anyone was ever challenged in this way by anyone acting on behalf of BRB (Residuary) Ltd, and therefore there has been no criminal trespass, and therefore no possibility of using this as a defence against presumed dedication.

15. Another relevant consideration is that the House of Lords ruled in the case of Bakewell Management v Brandwood and others (2004) that, provided it would have been lawful for a landowner to dedicate a right of way, there is nothing to prevent the acquisition of a right by long use even if that use was in breach of a statutory prohibition. This judgement makes it clear that the statutory presumption in Section 31 of the Highways Act 1980 applies to land owned by BRB (Residuary) Ltd, as it does to other land. There is no evidence that it would not have been lawful for BRB (Residuary) Ltd or its predecessor British Railways, to dedicate a right of way over the land in question, and therefore it is legally possible for such a dedication to have occurred.
16. There is no evidence of any notices being in position during the relevant period indicating a lack of intention to dedicate a highway over the affected land, and also no evidence of any fences or other structures along the claimed route preventing public access.
17. No Statutory Declaration was received by the County Council from BRB (Residuary) Ltd during the relevant period to indicate their lack of intention to dedicate a highway over the claimed route.

### **Responses to Consultations**

18. Letters were sent out to the standard list of consultees, including Rushcliffe Borough Council and the local member, advising them of the claim and inviting comments. No objections were received to the proposed route.
19. Veale Wasbrough Vizards have objected to the proposed route on behalf of BRB (Residuary) Ltd. The first point raised is that the “earth mound” which the railway runs beneath was not engineered for the purpose of having a footpath routed over the top of it. This, however, is of no relevance to the question of whether public rights exist over the land in question.
20. The second point raised is that the claimed route is not conducive to public access. It is claimed that it is necessary to climb a relatively steep slope to reach the top of the tunnel, that the route is “too overgrown for easy passage,” and that part is obstructed by overhanging vegetation. It is also stated that there appears to be no logical reason for walkers to use the claimed route, and that in places, the wear line is the result of animal rather than human activity. Given that the sixteen people who completed the Evidence Forms seem to have used the path without difficulty and had perfectly valid reasons for using it, namely walking for pleasure either with or without a dog, this part of the objection does not undermine the credibility of the user evidence or the weight to be attached to it.
21. The third point is that “Given the use of the railway line as a test track,” it is difficult to envisage a situation when BRB (Residuary) Ltd staff would have ‘welcomed and greeted’ anyone using the claimed route, as stated by one of the claimants. The section of line in question, however, is entirely underground, so there is no reason why railway staff would have needed to



stop anyone walking the claimed route on the grounds of public safety. It is therefore not inconceivable that railway staff could have exchanged pleasantries with members of the public using the claimed path and not challenged them in any way. This part of the objection again fails to undermine the credibility of the user evidence.

22. The fourth point is that BRB (Residuary) Ltd “generally have not been aware of members of the public walking along the route,” but this lack of awareness could simply reflect the fact that the site is only inspected very infrequently. It does not in itself indicate that the user evidence lacks credibility.
23. The final points raised refer to BRB (Residuary) Ltd’s health and safety concerns and the risk of vandalism to the tunnel air shafts if the public could access the land as of right. Due to the nature of rights of way legislation, these issues are of no legal relevance to the determination of the claim.
24. An objection to the claimed footpath has also been made by Nicholas Matthews of 141 Browns Lane, Stanton on the Wolds, who is the tenant of land owned by BRB (Residuary) Ltd to the rear and to the west of his property. The first point raised is that Mr Matthews was not made aware by BRB (Residuary) Ltd that the land encompassed by his tenancy agreement was subject to a public right of way. This is understandable given that the claimed route is not a registered right of way, but does not affect the weight to be attached to the Evidence Forms.
25. Mr Matthews’ second point is that since he locked the gate at the Browns Lane end of the path he has only seen one person using the path, who was told not to cross the area again and acknowledged that it was not a public footpath. The gate was locked in February 2011, however, and therefore after the date of challenge. This event is not therefore legally pertinent to the determination of the claim.
26. The third point is that nine of the Evidence Forms have identical maps attached, suggesting that these have been photocopied and distributed to the claimants. This has clearly been done for the sake of convenience, as it would be impossible to accurately delineate the route, given the ground conditions, without employing the services of a surveyor. This point does not in itself indicate that the user evidence lacks credibility, as the forms which have been submitted clearly refer to a route running between Stanton on the Wolds Footpath 6 and Browns Lane.
27. The fourth point refers to the steepness of the embankment and the density of the vegetation on top of the tunnel. The Evidence Forms indicate that the path has been used in spite of these factors, and therefore this point does not undermine the credibility of the user evidence. An additional point relating to the impossibility of walking along the top of the tunnel in a straight line should also be discounted in light of the fact that the used line has been accurately mapped by a County Council surveyor, as shown on Plan A.

28. Additional points made by Mr Matthews question the likelihood of the path being used in the manner described by the claimants, but this has to be set against the testimony of use set out in the Evidence Forms. Mr Matthews also doubts the claimed frequency with which the path has been used, although this has to be set against the fact that he only appears to have knowledge of the site from December 2010 onwards, and therefore cannot know how the path was used in the twenty years before the date of challenge. Mr Matthews similarly doubts the accuracy of the Forms on the basis that the claimants have indicated that the gate at Browns Lane was always open or unlocked, and yet he has made sure since February 2011 that the gate has been locked. The claimants, however, are referring to the situation before the date of challenge, and therefore before Mr Matthews' occupancy of 141 Browns Lane.
29. Mr Matthews' final points are that the area is already well served by footpaths, and there is a safe paved road access to Melton Road from Browns Lane; that the route of the proposed footpath is unsafe; that the registration of the proposed footpath would have security implications for his property; and that a footpath would prevent him from using the land adjacent to his house in accordance with the terms of his tenancy agreement. Due to the nature of rights of way legislation, none of these points is relevant to the determination of the claim, as they do not relate to the question of whether public rights exist or not on the balance of probabilities. The tenancy agreement, furthermore, does not require the tenant to take any steps which would indicate a clear intention by BRB (Residuary) Ltd not to dedicate a right of way over the property.

## **Conclusion**

30. In order to proceed to the making of a Modification Order for the route in question, it is necessary to satisfy either 'Test A' or 'Test B', as described above. It is submitted that in this case, there is clear evidence of public rights, with no credible evidence to the contrary, and therefore 'Test A' is satisfied.

## **Statutory and Policy Implications**

31. 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**

32. It is RECOMMENDED that the Committee accepts the claim for the route in question and authorises the making of a Modification Order to register it as a public footpath, as for the reasons set out above, the evidence demonstrates that public footpath rights exist on the balance of probabilities.

**TIM GREGORY**

Corporate Director of Environment and Resources

**Comments of the Service Director – Finance (SEM 06/09/2013)**

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

**Legal Services' Comments (SJE – 06/09/2013)**

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.

**Background Papers Available for Inspection**

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

Right of way claim at Stanton on the Wolds – case file.

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

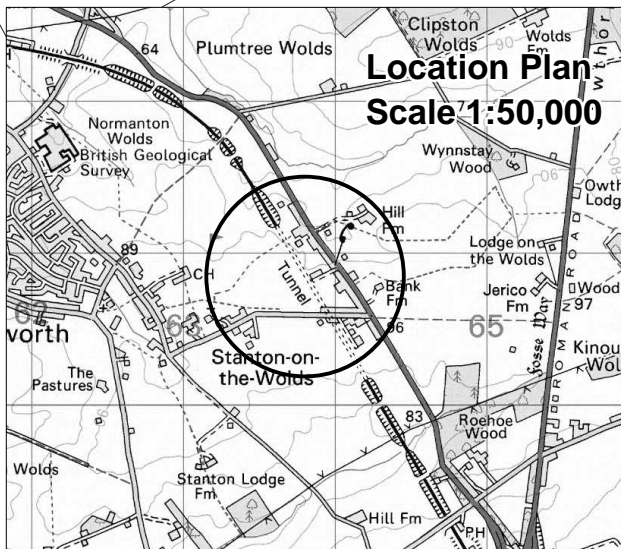
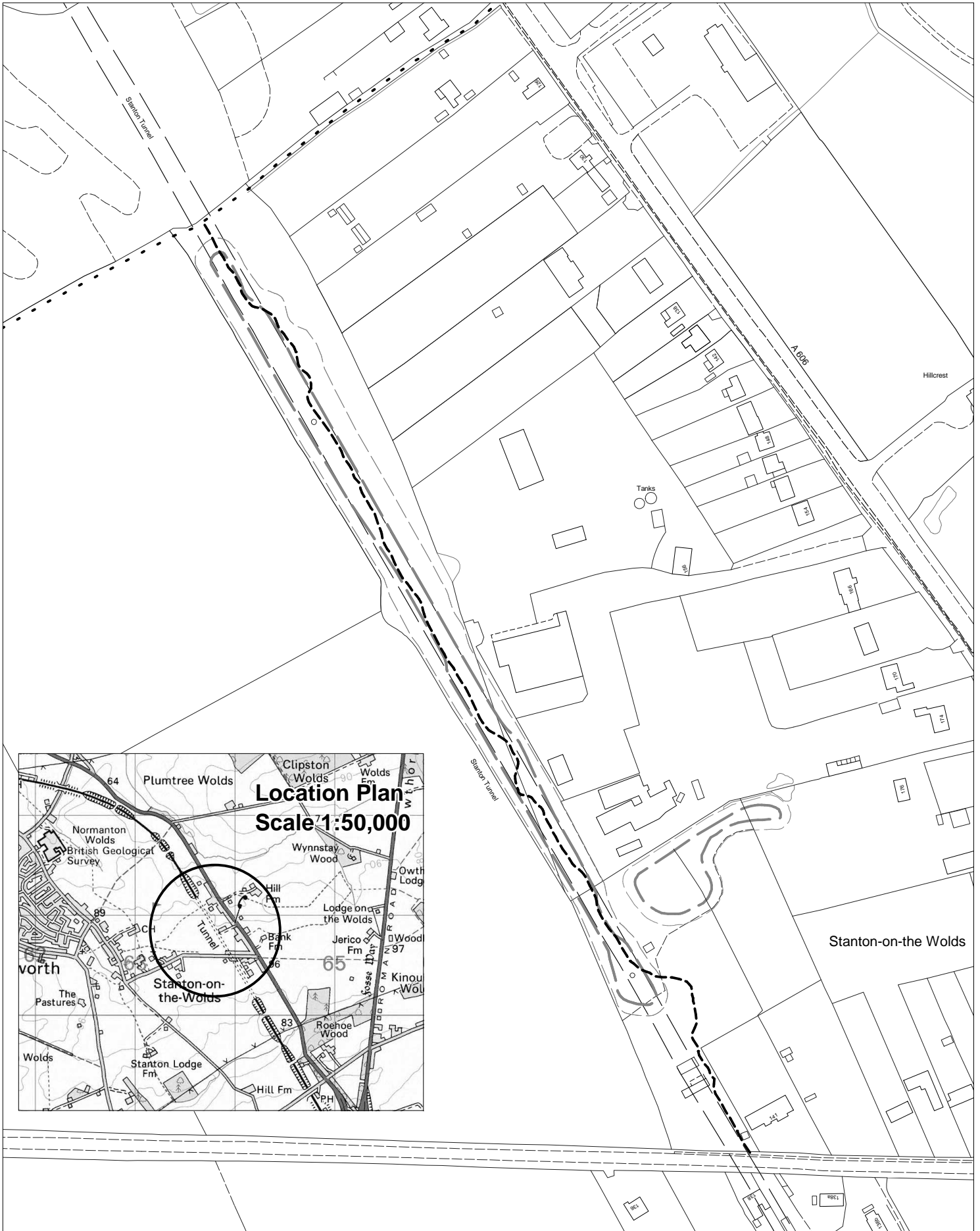
Keyworth      Councillor John Cottee

Report Author / Case Officer

**TIM HART**



Tel: 0115 9774395

ROW 100  
29.8.13





**Nottinghamshire  
County Council**

**Plan A Stanton on the Wolds Footpath No. 12  
Proposed Modification Order.**

Claimed path:       Unaffected routes: 

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Scale: 1:2,500  
 Produced by: David Squires  
 Date: 09/09/2013

