

Rights of Way Committee

Wednesday, 11 September 2013 at 10:30

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

AGENDA

- | | | |
|---|--|--------------|
| 1 | M_17 July 2013 | 5 - 10 |
| 2 | Apologies for Absence | |
| 3 | Declarations of Interests by Members and Officers:- (see note below)
(a) Disclosable Pecuniary Interests
(b) Private Interests (pecuniary and non-pecuniary) | |
| 4 | Declaration of Lobbying | |
| 5 | Application to add a Bridleway to the Definitive Map in the parishes of Kings Clipstone Edwinstowe a | 11 - 102 |
| 6 | Application to add a Restricted Byway in Worksop | 103 -
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| 7 | To consider options in respect of Public Footpaths Crossing Land to the East of Carlton Road Worksop | 159 -
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NOTES:-

(1) 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

(2) Persons making a declaration of interest should have regard to the Code of Conduct and the Council's Procedure Rules.

Members or Officers requiring clarification on whether to make a declaration of interest are invited to contact Dave Forster (Tel. 0115 9773552) or a colleague in Democratic Services prior to the meeting.

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

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 17 July 2013 (commencing at 2.00 pm)

membership

Persons absent are marked with 'A'

COUNCILLORS

Pam Skelding (Chairman)
Rachel Madden (Vice-Chairman)

John Cottee
Richard Butler
Steve Calvert
Jim Creamer
Sybil Fielding

Kevin Greaves
Roger Jackson
Darren Langton
Gail Turner

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
Dr Tim Hart	- Senior Definitive Map Officer
Neil Lewis	- Team Manager Countryside Access

APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

RESOLVED 2013/007

That the appointment of Councillor Pam Skelding as Chairman and Councillor Rachel Madden as Vice-Chairman by Full Council on 16 May 2013 for the ensuing year be noted.

MEMBERSHIP AND TERMS OF REFERENCE OF THE RIGHTS OF WAY COMMITTEE

RESOLVED 2013/008

That the membership of the committee as set out above and terms of reference as set out in the report are noted.

MINUTES

The minutes of the meetings held on 6 March 2013 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.

COUNTRYSIDE ACCESS TEAM – PRESENTATION

Mr Lewis, Team Manager Countryside Access gave an oral and slide presentation on the work of the Countryside Access Team.

APPEAL DECISION BY THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS REGARDING AN APPLICATION TO RECORD A PUBLIC BRIDLEWAY IN CLIPSTONE AND WARSOP

Mr Brennan introduced the report and highlighted to Members the decision was based on user evidence, and that while the committee had previously come to the view that an order should not be made, the Secretary of State's Inspector had come to a different view and therefore Directed that an order should be made, on the basis that the 'reasonable allegation' test is met.

Following the introduction of the report members discussed issues around the financial implications if the Council challenges the Inspector's decision, or, if not challenged, the financial implications if it moves forward to a public inquiry as an opposed order.

Upon request from the Chairman, Mr Eastwood advised that while such financial implications were understandably of interest, he reminded members that whatever the financial implications flowing from the decision, these would flow from it rather than feed into it, and as a quasi-judicial function, the crux of the matter was whether the grounds for judicial review of the Inspector's decision were made out. Mr Eastwood highlighted that, as stated in the report, legal advice was that the Inspector's decision appeared neither irrational nor unreasonable, rather that the Inspector's view was the balance of the evidence tipped in favour of making an order rather than against it.

Members discussed the extent of challenges made by the landowners and queried whether a legal challenge should be made on the basis that the Council still considers the evidence to be tipped against the making of an order.

Upon request from the Chairman, Mr Eastwood advised that the making of the order would simply invite evidence which could then be tested and a view then formed on that evidence. Mr Eastwood highlighted that this would form a later stage of this matter, and that the immediate decision was simply in relation to the reasonableness, at law, of the Inspector's preliminary decision.

Following further discussion by Members of the status and implications of the Secretary of State's Direction, and further advice from Mr Eastwood,

On a motion by Councillor Gail Turner seconded by Councillor John Cottey it was unanimously:-

RESOLVED 2013/009

- 1) That the Council does not apply to the Administrative Court for judicial review of the Inspector's decision, and Officers be authorised to make a Modification Order as per the Secretary of State's Direction (such Order proposing the addition of a bridleway to the Definitive Map as per Mr Parkhouse's application)
- 2) That the Authority takes a neutral stance at present in the event that the Modification Order is referred to the Secretary of State for determination and
- 3) That a further report be presented to a future meeting once any further evidence has been submitted in order to determine what stance is to be adopted at any subsequent determination by the Secretary of State.

CONSIDERATION OF AN APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD A FOOTPATH TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISH OF ARNOLD

Mr Trundle introduced the report and highlighted the fact that this application has been made on user evidence grounds only. He informed members that he had received verbal representations following the publication of papers from residents who lived adjacent from the path in question who stated they were in favour of the path being added to the definitive map.

Following the opening comments by Mr Trundle a number of public speakers were given the opportunity to speak and a brief summary of those speeches are set out below:-

Mr Melvyn Tisbury a Director of Castle Bar Properties who own the Tesco site spoke against the addition of the footpath and highlighted the following

- Route has only ever been referred to as a private Right of Way

- Claimants have sold in ranks on the gate was permanently shut were but not heard when it was closed for six months during construction.
- The police are strongly supportive of restricting the route as there were incidents of arson and armed robbery previously.
- There is a very serious safety issue in terms of people walking across the store's delivery area.
- There is an adequate alternative route available for users.

There were no questions

Mr Deakin resident and neighbourhood watch coordinator spoke against the addition of the footpath and highlighted the following

- The lane had previously been a good "escape route" and there had been lots of evidence of drugs use.
- Tesco's even gave keys to residents who lived along the path so they could use the gate erected and closed at night
- Do not know why people would want to use this path when are other safer routes to the stores

Mr Deakin responded to members questions as follows

- Not sure how many keys were in circulation at Tesco allowed people to have a key if they requested one
- Not sure how many vehicular movements took place along the lane, but there was no vehicular access beyond the posts as those properties had access to their gardens via a nearby road
- There have been burglaries in the area, a couple of muggings and also a number of needles and drug paraphernalia has been found along the path
- The posts show in the picture attached to the report have been there since 1984 at least although as he has a 6' fence behind his property he couldn't comment on how much the route was used, and a number of the other houses faced away from the route.

Mr Azar local resident spoke against the addition of the footpath and highlighted the fact he is a resident of the one of the private houses which backed onto path, which he believes to be a private right of way. Mr Azar informed the Committee that he challenged anyone who was walking along the path who he felt did not have a right to do so, and that the sign in photograph 2 of the report has been there since 2003. He also raised concerns about crime and he felt that the gates should have continued to be locked to stop anyone from using the path as an escape route as making it a public right of way would be detrimental to the owners.

In response to questions Mr Azar replied as follows

- I have always considered the path to be private as it is on the deeds to the houses along it. The path is also maintained in part by residents.
- I have challenged people and groups of youths on the land that I own and have always made it clear that the path is private, although many users may not have been challenged as they may not have been seen by residents due to work patterns and boundary fencing
- The majority of people using the path without permission will be going to the shops, and that people used to congregate around Tesco and Subway mainly
- We have been burgled on one occasion since we moved into the house in 2002.

Mr Ashley Turner, local resident, spoke in favour of the path being added to the definitive map and informed the committee that he had walked along the path for at least 60 years and has never once been challenged. He also stated that it was a pleasant route with a 'country lane' feel and he objected to the erection of the fence and gate by Tesco. To the best of his knowledge he had never seen an undue amount of litter, youths congregating or anyone misbehaving on the path.

In response to questions Mr Turner Informed members that he began using the route in his schooldays,, that the posts have been there as long as he can remember but they were never a fence in that time, that he had never been offered a key, and that he knows many people that have used the path to either go to the shop and get to bus stops along Mansfield Road.

Mr Robert Proctor, a user of the path, stated that he has used it from late 1981 and has never been challenged when using the route and has in fact had conversations with local residents. He also informed members that he used it to get to the bus stops along Mansfield Road and that he had never seen any signs discouraging use. Mr Proctor stated that there is "wear line" of approx. 0.9 m at the path's narrowest point. He also informed members that with regard to the concrete posts he had never seen any wires between them to prevent anybody from passing along the path.

In response to questions Mr Proctor replied as follows

- The bus stops are on Mansfield Road outside the shops and on the opposite side of the road.
- The residents he spoke to were only on the surfaced section because those houses faced the path (unlike the others where it was the back gardens which joined) and that those he spoke to always seemed happy to pass the time of day and never challenged why he was using the path
- He had only occasionally encountered other people using the route

Following the public speakers Members considered the issue before them and raised concerns regarding the lack of historical evidence and the fact that residents have challenged people. However Members also acknowledged the reports of antisocial behaviour, which, whilst they could not be considered, were concerning, and upon request from the Chairman Mr Eastwood advised that should the public right of way be concluded to exist in due course, issues such as Gating Orders could be considered at a later date, as with all other ordinary parts of the network

Upon request from the Chairman, Mr Eastwood reminded Members that the relevant test here is whether the existence of a public right of way is reasonably alleged, in accordance with the case of Norton v Bagshaw. Mr Eastwood advised that incontrovertible evidence that a way could not exist is required to defeat this test.


Following discussions Members concluded that it is reasonably alleged that the path has been used for 20 years plus by non-residents as a route to the shops and bus stops along Mansfield Road, and therefore a motion in terms of the resolution below was put to the committee and upon a show of hands it was :-

RESOLVED 2013/010

That the making of a modification order to modify the definitive map and statement by adding a footpath from Woodthorpe Drive to Mansfield Road, Arnold be approved, for the reasons as set out in the report, as the evidence demonstrates on the balance of probabilities that public footpath rights were reasonably alleged to exist

The meeting closed at 4:15pm

CHAIRMAN

 Nottinghamshire County Council	Report to Rights of Way Committee
	11 September 2013
	Agenda Item:
REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)	
APPLICATION TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF KING'S CLIPSTONE, EDWINSTOWE AND RUFFORD	

Purpose of Report

1. To consider an application made on 3rd April 2012 by Mr C Thompson on behalf of the Nottinghamshire Area Ramblers Association. The effect of this application if accepted and confirmed, would be to record a public bridleway approximately 3250 metres long on an existing road/track between the B6030, Kings Clipstone and Deerdale Lane, Rufford. A map of the area is shown as Appendix A, with the route under consideration marked between points A-B-C. A series of photographs taken along the route are shown in Appendix B1-12.

The Law

2. The application was made under the provisions of the Wildlife and Countryside Act 1981. Under Section 53(2)(b) of the Act the Surveying Authority (Nottinghamshire County Council) 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 Secretary of State for the Environment 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' requires that it is reasonable to allege 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.

Information and advice

3. The northern end of the route between Point A and Culloden is laid with tarmac, while the remainder is laid with stone. A plan indicating ownership of the route is shown as

Appendix C which shows that the majority of the route is on land owned by the Forestry Commission with a short section belonging to Blooms Gorse Farm. The northern end of the route is on unregistered land.

4. The claimed route A-B-C serves as the sole vehicular access to a small number of properties and businesses. Access is also required for forestry vehicles. Part of the route A-B is currently promoted as a Forestry Commission trail for walking and cycling.
5. In June 2011 the Rights of Way Committee considered a report based on evidence discovered by officers (while researching an Application next to the Center Parcs Holiday Village) which recommended that the same route be recorded as a Restricted Byway. A copy of the 2011 Report (without appendices) is shown as Appendix D. After considering the matter, Committee resolved not to authorise the making of a modification order. This same route has now been formally applied for by the Ramblers Association and, as further new evidence has been discovered, the Authority is required by law to make a decision on whether to make a Definitive Map Modification Order, hence this report.

Historic Documentary Evidence

6. An Application to modify the definitive map can be based on historic evidence (such as maps, official records etc.) or on evidence of actual use by members of the public, or on a combination of historic and actual use. This particular Application is based on historic evidence alone.
7. As well as all of the evidence previously considered by Committee in 2011, four additional documents have been examined by officers in respect of the current Application namely;
 - Map of Clipstone 1824
 - Clipstone Estate Map 1885
 - Highway Authority 'Handover Map' 1929
 - Clipstone Estate Sale Plan 1945

The 1824 Tithe Map and the 1885 Estate Map both constitute 'new evidence' for the purposes of the Application, as they have not previously been considered by the Authority. The 1929 Handover Map does not contain any 'new evidence' as such, but is useful in terms of shedding light on how the status of the route was regarded at that time. The 1945 Clipstone Estate sale plan can be disregarded as it contains no relevant information and does not cover the area of the claimed route. Accordingly, all relevant documents are described below in chronological order;

8. Map of Clipstone by William Senior 1630 (Appendix E)

The Senior Map depicts a road or track which corresponds with section A-B of the claimed route. This route appears to be a main route leading to/from Clipstone and is coloured ochre in the same manner as other roads/tracks shown on the map.

9. Map of Clipstone by George Ingman 1766 (Appendix F)

The Ingman Map depicts a road or track which corresponds with section A-B of the claimed route. Again, the route appears to be a main route leading to/from Clipstone.

10. Map of Nottinghamshire by John Chapman 1774 (Appendix G)

Chapman's map does not depict the claimed route. There are two possibilities for this; it was either due to an error, or it was because the route was thought to be a private road and therefore was intentionally omitted (the purpose of the map was to show only the known public carriage roads and bridleways at that time).

11. The Edwinstowe Inclosure Award map 1821 (Appendix H)

Part of Section A-B of the claimed route is shown and annotated as the 'Clipston Bilsthorpe and Southwell Road'. This description corresponds with the 'road' depicted in the Senior and Ingman maps. As a statutory document the information contained in the inclosure award is regarded as particularly strong evidence for the public status of the route. The adjacent parishes of Clipstone and Rufford were not subject to the inclosure process and therefore no equivalent record exists for those areas.

12. Map of Clipstone belonging to the Duke of Portland 1824 (Appendix I1-2)

This map depicts a road which corresponds with section A-B of the claimed route. The map is part of a private collection currently held within the Welbeck Estate Archive. As the copy submitted with the application is not sufficiently legible, the original map has been inspected at first hand to verify its contents. Although the original map does not contain a title or key, it appears to be accurately drawn and identifies acreages within each parcel of land. Section A-B of the claimed route is clearly depicted by parallel lines and is coloured ochre. It is notable that other public roads are also depicted in this way. Immediately south of point A the map depicts (in red ink) a realigned bend in the road which between Clipstone and Ollerton. This bend corresponds with the current position of the B6030 near point A. Another road (now physically disappeared) leading from the bend and forming a 'dog-leg' with the claimed route is labelled 'Bilsthorpe Road 33ft'. The depiction of this route is suggestive of a public through road between Clipstone and Bilsthorpe via the claimed route.

13. Map of Nottinghamshire by Thomas Ellis 1831 (Appendix J)

This map covers the area of the whole of the claimed route and according to the key contained in the map, the majority of the claimed route is depicted as an 'Open Road' i.e. a minor public road which was not hedged or fenced on either side. It is notable that the map allows for routes to be annotated 'B.R.' for bridle roads and 'P.R.' for private roads. Clearly the A-B-C route was not considered to fall into either of these categories. The alignment of the route shown on the Ellis map generally corresponds with the claimed route, although it does show the southern end of the route near point C on a different alignment to the one being claimed.

14. Map of Nottinghamshire by C and J Greenwood 1831 (Appendix K)

According to the key contained in the map, the majority of the claimed route is depicted as a 'Cross Road'. Historically the term 'cross road' was used for minor roads which ran 'cross country' rather than the modern meaning for a place where roads meet. This definition again suggests that the route was regarded to be a minor public road. The southern end of the route near point C is also depicted in a similar manner to the Ellis Map and is therefore on a different alignment to the route being claimed.

15. A map entitled 'Twenty Miles Round Mansfield' by George Sanderson 1835 (Appendix L)

This map is far more detailed than the Ellis and Greenwood maps and also depicts the claimed route as a 'Cross Road'. Sanderson's map depicts a 'dog leg' in the route immediately south of point A (i.e. similar to that shown in the 1824 Clipstone Tithe Award)

which may suggest that the earlier 'straight through' route was less well used by this time. The alignment at the southern end now corresponds with the claimed route.

16. Ordnance Survey 2" map 1840 (Appendix M)

This map depicts a road or track which corresponds with the claimed route A-B-C. It also indicates that the Sanderson 'dog leg' alignment co-existed with a straight through route at that time. Although this map confirms that the route physically existed at the time the survey was carried out, no information is provided as to the status of the route.

17. Clipstone Tithe Award Map 1844 (Appendix N)

The tithe map depicts a road/track which runs between points A-B of the claimed route albeit via the 'dog leg' alignment shown on the Sanderson Map. Again, this may suggest that the 'straight through' route was less well used at the time of the survey. The route is labelled 'From Bilsthorpe' which suggests that it was regarded as a through road and therefore is more likely than not to have been a public highway. Other public highways are also depicted in this same manner.

18. Archive documents from the Rufford Highway Surveyors 1882-3 (Appendix O)

Prior to 1894 the local parish was responsible for the repair of minor public roads. Accordingly, the surviving Highway Surveyors records include a list of 'Public Roads repaired by the Parish'. The list refers to one particular public road of 95 chains in length (1911 metres) leading from the 'Nottingham Road (at Deerdale) to Mansfield' and heading 'towards Clipston'. In terms of its length and location, this road corresponds with section B-C of the claimed route.

19. Plan of Rufford Liberty 1885 (Appendix P)

This plan identifies land belonging to the Saville Estate in Rufford and encompasses section B-C of the claimed route. The status of public and private roads within the Estate are each depicted in accordance with a key which comprises; 'private park roads', 'public roads repaired by the Estate', 'public highways' and 'main roads'. Whilst route B-C is shown, it is not annotated at all which therefore suggests that the claimed route B-C was not considered by the Estate to be a road of any form (either public or private).

20. Duke of Portland Estate Plan 1885 revised 1910 (Appendix Q1-2)

This plan from the Welbeck Estate archives shows certain land belonging to the Duke of Portland. Section A-B of the claimed route is depicted as being the 'public road...from Bilsthorpe'.

21. Finance Act 1910 (Appendix R)

Documents prepared under the provisions of the Finance Act 1910 were also examined. The purpose of the Finance Act was to levy a tax based on the estimated value of land. In establishing this, the Inland Revenue allowed deductions for public rights of way on any land being evaluated. Evidence relating to the existence of public rights of way in Finance Act documents arises in one of two ways:

- Explicit reference to a public right of way within documents forming part of the valuation process, or
- The exclusion of a road or track from land being assessed (depicted on the map itself).

No fully complete maps have been found in relation to the A-B part of the claimed route; however section B-C is shown as being privately owned land (rather than being excluded as is usually the case for public roads). This shows that the respective landowners did not claim any deductions for public rights of way.

22. Highway Authority 'Handover Maps' 1929 (Appendix S)

These maps were produced following Local Government re-organisation in 1929 and are a record of the highways maintainable at the public expense which were transferred from the responsibility of the Rural District Council (Southwell RDC) to the County Council. Although the map indicates a track along the line of the claimed route, it is not recorded as being a publicly maintained highway at that time. This does not prove that highway rights did not exist, but simply shows that it was not understood at that time to be maintainable at the public expense.

23. Parish Schedules 1954

These documents were prepared by the Parish Councils between 1952-54 for submission to County Councils for the identification of public rights of way to be entered onto the first Definitive Map (under the provisions of the National Parks and Access to the Countryside Act 1949). In this case, no rights of way were identified in respect of the route being claimed.

24. Documents also submitted with the application, but of little evidential value consisted of the Encyclopaedia Britannica map of Nottinghamshire (1876), the Edward Weller map of Nottinghamshire (1898), the Encyclopaedia Britannica map of Nottinghamshire (1902), an Ordnance Survey 6" map (1916) and the 1927 Guilford map of Nottinghamshire. These (mostly small scale) maps all show the route but do not give any indication of its status.

25. A copy of a letter from the Welbeck Estate to the County Council (dated 1956) which relates to Definitive Map issues of the time was also submitted in evidence. The letter states that there has been no 'interference' by the Estate with public access over the 'open moorlands'. However, the letter does not contain any specific information of relevance to the claimed route.

26. Nottinghamshire Quarter Session Records 1658-1974

Quarter Session Court records often include references to extinguishments and diversions of public highways; however no records for any extinguishment or diversion have been found which relate to the route in question.

27. On balance the documentary evidence dating from 1630 suggests that the route was once a minor public road between Clipstone and Bilsthorpe. The evidence from the Edwinstowe Inclosure Award (1821), The Clipstone Tithe Map (1824) and the Rufford Highway Surveyors (1882-3) are particularly strong in this respect. Although it appears that the route was regarded as public as late as 1885, once the responsibility for maintaining minor public roads was transferred to Southwell Rural District Council in 1894, any knowledge of the route's public status appears to have been lost.

Status of the Route

28. Notwithstanding the application being for a bridleway, the evidence appears to show the existence of a full vehicular carriageway. Prior to 2006, the decision to be made would have been whether to make a Modification Order to record a byway open to all traffic. However, any rights for mechanically propelled vehicles on the claimed route were extinguished on 2nd May 2006 by Section 67 of the Natural Environment and Rural Communities Act 2006. The effect of this is that the highest rights which could remain are for non-mechanically propelled vehicles. Accordingly the 2006 Act introduced the classification of 'Restricted Byway' which comprises footpath and bridleway rights plus rights for non-mechanically propelled vehicles (i.e. horse and carriage etc).

Consultation

29. In May 2012 consultation was carried out with all known owners, occupiers and businesses affected by the current claim. Letters were also sent to district councils, parish councils, rights of way user groups and public utility companies. It is noted that when this matter was previously considered by Committee (June 2011) 8 objections were received; however on this occasion only two objections/letters of concern have been received (i.e. the Adrenalin Jungle and the Forestry Commission). All responses, either in support or objecting to the current proposal are summarised below (officer's response in italics).

30. Mr Hutchinson, manager of 'The Adrenalin Jungle', an outdoor activities centre which is accessed along the southern part of the claimed route responded as follows;

- Access is required for business employees and customers. Any changes affecting this use would be significant.
- It is hoped that any steps to prevent illegal use by motor vehicles will not affect vehicles entering with the permission of the Forestry Commission.
- Would the operation of existing barriers be left in the control of the landowners/tenants or would the number of barriers be increased and control of these barriers altered?

No private vehicular rights would be lost or removed if the claimed right of way were to be confirmed. However the barrier at point C, if closed, would constitute an obstruction on a public right of way and therefore it would need to remain unlocked at all times. It is noted that a similar barrier exists just off the claimed route turning into the entrance of the Adrenalin Jungle. This barrier would not be affected by the proposal and therefore could be closed or locked by the landowner.

31. The Clerk of Clipstone Parish Council responded as follows;

- The Parish Council agreed to support the application...as it was felt this route has benefitted, and should continue to benefit the residents of Clipstone.
- The County Council is urged to designate this route as a bridleway, as opposed to a restricted byway to avoid the potential problems use by motor vehicles could cause residents and other users of the path.

The wishes of the Parish Council in respect of a bridleway designation are noted, however the County Council must base any decision to record a public right of way on the evidence available as to the status, be that footpath, bridleway or restricted byway, rather than any desire or preference.

32. The Nottinghamshire Footpath Preservation Society responded as follows;

- Our Committee considered the proposal to register a bridleway in Sherwood Pines Forest Park. We strongly support the proposal as it adds a very useful addition to the Rights of Way Network in the area. We would much prefer a bridleway rather than a restricted byway, as it would make it much easier to install furniture to prevent unauthorised use by motorised vehicles and off-roaders.

The wishes of the Society in respect of a bridleway designation are noted; however the County Council must base any decision to record a public right of way on the evidence of status available, be that at footpath, bridleway or restricted byway status rather than any desire or preference.

33. The Forestry Commission responded as follows;

- The Commission has dedicated Sherwood Pines as open access land under the provisions of the Countryside and Rights of Way Act 2000.

The general public has a right to 'enter and remain' on designated access land by virtue of the Act. This right must be exercised reasonably and with respect to other rights which exist and in no way affects any pre-existing highway rights.

- The Commission welcomes and encourages cyclists in Sherwood Pines and provides surfaced and way marked trails which include part of the claimed route.

The section of the claimed route between Culloden and point 'B' is currently sign posted as a cycling trail.

- The Commission is experienced in managing a range of different users including walkers, cyclists, motor rallies and forestry operations.
- In the Commission's experience, unless barriers are in place, motorbikes, quad bikes and 4x4 vehicles will illegally use the route. What structures would the County Council consider installing to prevent the illegal access?

In practice there is no type of barrier which would prevent access by motorbikes and quad bikes while allowing access for non-mechanically propelled vehicles. Structures do exist which give access to horse drawn carriages but prevent access for cars, vans and lorries etc, however if subsequently considering such matters, the legitimate rights of access by private motor vehicles will need to be given careful consideration. It should be noted that under section 34 of the Road Traffic Act 1988, it is a criminal offence to drive a mechanically propelled vehicle on any footpath, bridleway or restricted byway without lawful authority. Should such a situation arise, the police have powers to immediately stop such use and to seize vehicles.

- Increased levels of crime have been experienced in forests with similar public rights of way including fly tipping, illegal access by motorised vehicles, damage to the forest, increased risk of burglary, theft or vandalism on nearby properties and

increased anti-social behaviour issues. The Commission would like to discuss the making of a gating order under the Highways Act 1980 (Section 129) if applicable to Crown Land.

A gating order could only be implemented if the route were already accepted as a public right of way. The Forestry Commission would need to supply evidence that the existence of the right of way is facilitating crime or anti-social behaviour. The criteria for making a gating order could present some technical problems in respect of private access i.e. a gating order may not be made to restrict a public right of way on a highway which is the only or principal means of access to a property (which it is for Preston Lodge, Culloden Blooms Gorse Farm, The Adrenalin Jungle). There is also a need to identify a convenient alternative route, which in this case, does not appear to be a possibility.

- A restricted byway would require the route to be wide enough to allow horse drawn non-mechanically propelled vehicles. The Commission requests confirmation of the width of the proposed route.

If an order were made, the width of the route would be established in accordance with the historic width. An approximate estimate of the possible width of the route at this stage would be around 4 metres, though this could be subject to variation following detailed analysis of the historic width.

- The Commission would wish to record all existing gates as limitations on the Definitive Map.

Four locations along the claimed route (two at Blooms Gorse Farm, one point adjacent to the Culloden entrance and another at point 'C') appear to have been gated at least since the 1880s and therefore if the route were to be confirmed as a public right of way, these gates could remain in situ (but should remain unlocked to allow public access). Unfortunately, the existing barrier at point 'A' (Appendix B2), the boulders near Culloden (Appendix B3) and the barrier near point 'B' (Appendix B6) would need to be removed (or left open) as there is no evidence of any historic limitations at these points.

- We are advised that all pre-existing private rights of access would continue if the route were to be confirmed as a public right of way.

If a public right of way were to be confirmed, any pre-existing private rights of access would continue as before.

- What duty of care does Nottinghamshire County Council consider it has under the Highways Act 1980 (Section 66) or otherwise to ensure the safety of users if the route were confirmed as a public right of way?

Section 66 of the Highways Act 1980 relates to the duties and powers of highway authorities to provide footways or other 'safety' measures such as walls, guard-rails and fences on highways maintainable at public expense. If a right of way were confirmed, such measures would not appear to be appropriate in this situation. It should also be noted that much of the route is already available to the public under open access provisions and on Forestry Commission walking/cycling trails. Should a situation arise whereby public use was found to be unsafe, the County Council would explore any practical or legal solutions to address this.

- From a lay person's perspective, some of the historic evidence is ambiguous and some is against a public right of way. A conclusion that a Modification Order should be made is subject to an unreasonable degree of doubt in this case.

*As referred to in paragraph 2, the test as to whether the Council should make an Order is set out in R v SSE ex parte Bagshaw and Norton (1994) which held that all that is required for an authority to **make** an Order is that it is reasonable to allege a right of way subsists, based on there being no incontrovertible evidence that the claimed route could not subsist (Test B). Generally speaking the historic documents up to and including 1885 (the Portland Estate Plan) when considered together suggest that the claimed route A-B-C was a public carriage road. Although the documents which post-date 1885 do not show the route to be public highway, there is no evidence of pre-existing highway rights being stopped up therefore it is reasonable to allege that such rights continue to exist.*

- The Commission would object to the making of a Modification Order at Restricted Byway status, but if the Committee concludes that an Order should be made, we would encourage the Committee to consider the route be recorded as a public bridleway subject to the Council agreeing to install suitable barriers to prevent illegal access.

None of the evidence suggests that the route was a public bridleway. For example, the Edwinstowe Inclosure Award (1821) refers to the route as being the 'Clipstone Bilsthorpe and Southwell Road', the Clipstone Tithe Map (1824) refers to the route as being the 'Bilsthorpe Road', the Rufford Highway Surveyor's records refer to part of the route as being a public road maintained by the parish, while the Portland Estate Plan (1885) refers to the route as being the public road from Bilsthorpe. The Ellis, Greenwood and Sanderson Maps all show the route as a minor public road. The law requires that the County Council must base any decision to record a public right of way on the available evidence of status rather than any desire or preference and as such, the County Council is unable to comply with such a request.

- The Commission requests that the County Council considers applying to the Magistrates Court under the Highways Act 1980 (Section 116) to remove any restricted byway rights subject to the reservation of bridleway rights and we request that this be undertaken before any modification order takes effect.

Should the Committee decide that a Restricted Byway exists, it would be technically possible to apply to a Magistrates Court prior to a Modification Order being made. The Court may only authorise the stopping-up of rights which are considered unnecessary or it may consider whether the route could be diverted to make it more commodious to the public. However, it would be difficult to justify an application before the route is made available again to the public as it would not then be possible to demonstrate whether or not non-motorised vehicular use was actually taking place and therefore whether the rights for non-mechanically propelled vehicles were necessary. If the claimed route was recorded as a restricted byway, and there followed a period of time to allow the public to exercise such rights, a survey and consultation exercise could then be carried out to establish the level of non-motorised vehicular use. This would clarify whether the removal of restricted byway rights was appropriate. If such use were found to be negligible or none, an application could then be made on the grounds that a restricted byway was unnecessary. It is not possible however, to pre-judge this matter.

- The Forestry Commission is exempt from the provisions of the Highways Act 1980 due to Crown exemption. Any references to the Highways Act relate only in so far as the Act affects the County Council.

This is noted. Furthermore, this Modification Order Application is not affected by matters of Crown immunity.

Reason/s for Recommendation/s

34. When considered in its totality, the evidence suggests that until 1885 the claimed route A-B-C was a minor public road. The evidence is particularly persuasive in respect of the Edwinstowe Inclosure Award of 1821, the Clipstone Tithe Maps of 1824 and 1844, the Rufford Highway Surveyors records of 1882-3 and the Portland Estate Plan of 1885. Such evidence is reinforced by the depiction of the route as an 'open road' or cross road' in the Ellis (1831), Greenwood (1831) and Sanderson (1835) maps. This outweighs evidence to the contrary found in the Chapman Map of 1774, the 1910 Finance Act documents (which show the route but not public rights), the Highway Authority 'Handover Maps' of 1929 and the Parish Schedules of 1954. A possible explanation for this conflict of evidence is that (for reasons unknown) the route ceased to be maintained by Southwell Urban District Council after 1894, and when in 1929 responsibility for the minor public roads was transferred to the County Council, the failure to record the route as a public highway in the handover maps perpetuated the view that the road was solely in private ownership. Nevertheless, the earlier documentary evidence suggests that public highway rights did exist on the claimed route and that these rights were not subsequently extinguished.
35. The Application relates to the addition of a public bridleway along the route being claimed. The discovered evidence suggests that the route was a carriage road rather than a public bridleway. No evidence has been discovered to suggest that the route has ever been merely a public bridleway.
36. It would only be proper for the Council not to make an Order if the evidence against the route established incontrovertibly that a public right of way could not exist.
37. Any rights for mechanically propelled vehicles on the claimed route were extinguished on 2nd May 2006 by virtue of the Natural Environment and Rural Communities Act 2006 (Section 67).
38. Matters referred to by the Forestry Commission such as Gating Orders and the stopping up of highway rights at a Magistrates Court, could be considered as part of the County Council's usual management of rights of way following a Modification Order being confirmed, but such matters are not legally relevant to whether or not a public highway exists.

Statutory and Policy Implications

39. 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

1. It is RECOMMENDED that Committee accept the application and approve the making of a Modification Order to add a restricted byway (rather than a bridleway) to the Definitive Map and Statement on the basis that, for the reasons set out above, it is considered by the Authority a public right of way is reasonably alleged to subsist.

Eddie Brennan
Definitive Map Officer

For any enquiries about this report please contact:
Eddie Brennan (0115 9774709)
Definitive Map Officer

Constitutional Comments [SJE - 24/06/2013]

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.

Financial Comments [SEM - 24/06/13]

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

Background Papers

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

Modification Order Application case file

Electoral Division(s) and Member(s) Affected

Rufford Councillor John Peck

ROW96 25 July 2013

APPENDIX A



Scale 1:20000

Produced by: e b40

Date: 30/05/2013



NOT DEFINITIVE

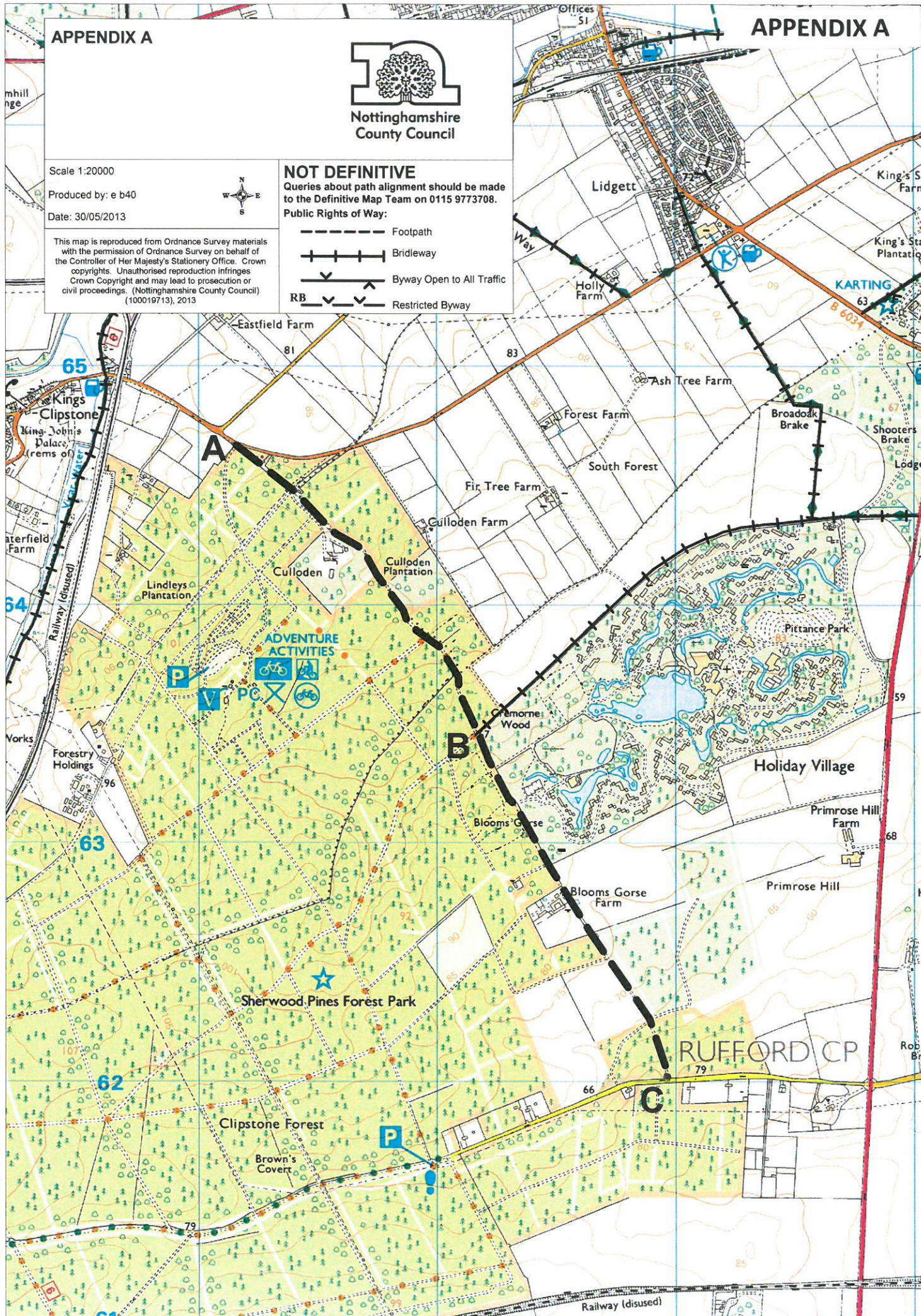
Queries about path alignment should be made to the Definitive Map Team on 0115 9773708.

Public Rights of Way:

- Footpath
- Bridleway
- Byway Open to All Traffic
- Restricted Byway

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APPENDIX A



APPENDIX B1



The Northern end of the route at Point A adjacent to the Sherwood Pines Forest Park entrance.
Looking South.

APPENDIX B10



A section of the claimed route between Point C and Blooms Gorse Farm.

Looking North.

APPENDIX B11



Existing lockable barrier at Point C.

Looking North.

APPENDIX B12



Southern end of the claimed route at Point C (Deerdale Lane).

Looking North.

APPENDIX B2



Existing lockable barrier at the northern end of the claimed route.

The sign on the right hand side reads 'No Unauthorised Vehicles'.

Looking South.

APPENDIX B3



Boulders placed on the route to restrict vehicular access. The claimed route continues along the worn path which is visible ahead.

The entrance to Culloden can be seen leading off to the right hand side.

Looking South.

APPENDIX B4



A locked removable bollard has recently been installed (adjacent to Culloden) to control vehicular access along the claimed route.

Looking South.

APPENDIX B5



A section of the claimed route between Culloden and Point B.

This part of the route is promoted by the Forestry commission as a cycling trail.

Looking North.

APPENDIX B6



Locked barrier at Point B. The claimed route continues into the distance heading towards Blooms Gorse.

Looking North.

APPENDIX B7



A section of the claimed route between Blooms Gorse Farm and Point B.

Looking South.

APPENDIX B8



Existing gates at the northern entrance of Blooms Gorse Farm.

The notice reads 'Private – Warning – you are being watched – CCTV in operation – Private'.

Two smaller notices read 'Private' and 'Beware of the Dog'.

Looking South.



Existing gate at the southern entrance to Blooms Gorse Farm.

Looking North.

APPENDIX C



Scale 1:15000

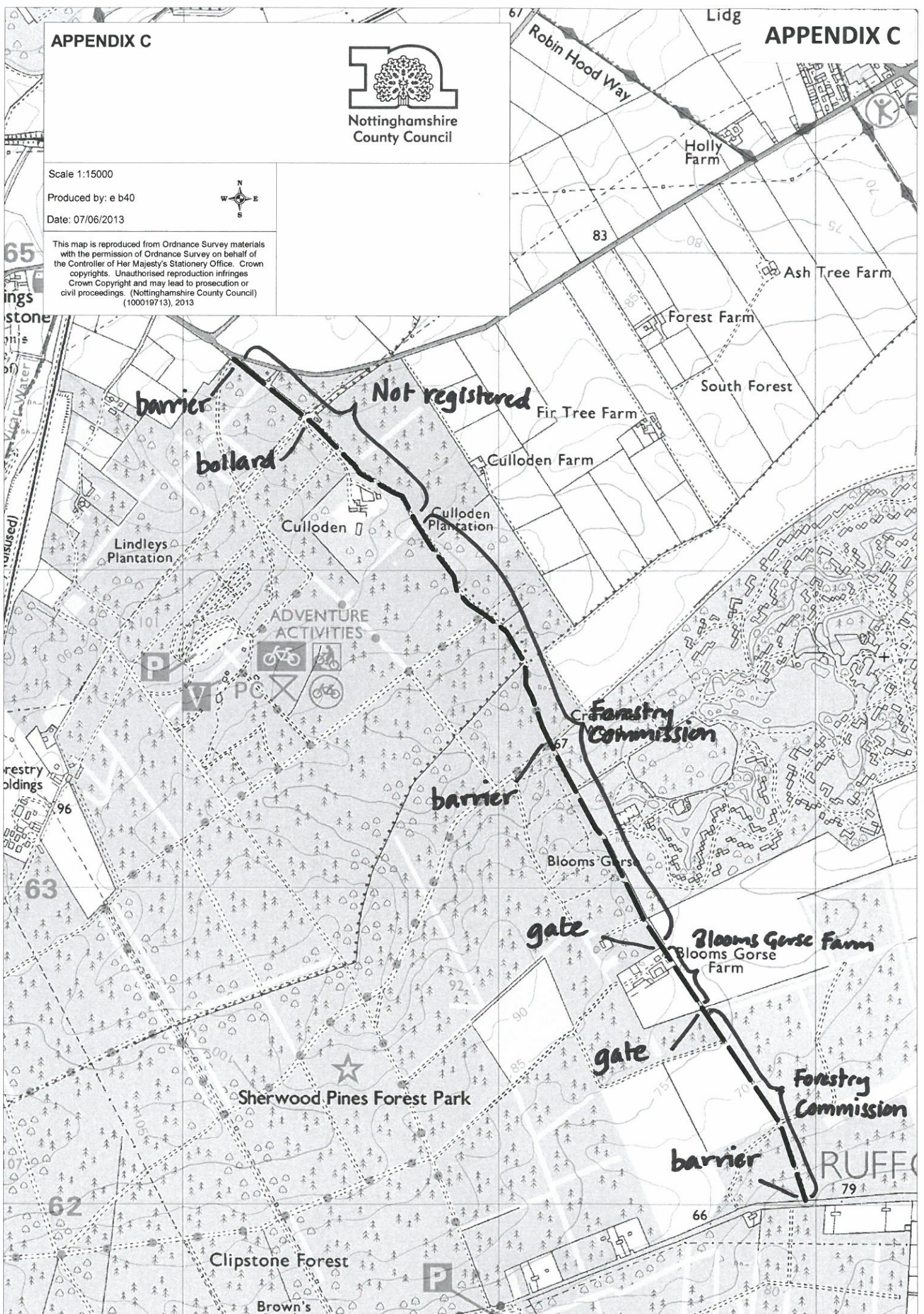
Produced by: e b40

Date: 07/06/2013



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APPENDIX C



meeting

RIGHTS OF WAY COMMITTEE

date

22 JUNE 2011

agenda item number

6

REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT & RESOURCES)

APPLICATION UNDER SECTION 53(2) OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 TO ADD A BRIDLEWAY TO THE DEFINITIVE MAP AND STATEMENT IN THE PARISHES OF RUFFORD AND CLIPSTONE

Purpose of the Report

1. To consider an application made by Mr S Parkhouse of King's Clipstone, Nottinghamshire to record a public bridleway over a track which runs between Rufford Bridleway No.6 alongside Center Parcs Holiday Village and Sherwood Pines Forest Park. A map of the area is shown as **Plan A**, while the route under consideration is shown on **Plan B** marked between points A and B.
2. This report also gives consideration to a second route which exists as a track between the B6030 near King's Clipstone and Deerdale Lane/Eakring Road and is shown between points C and D on **Plan B**. This route does not form part of the application received, but evidence in relation to it was discovered during investigations into the matter and is considered to be relevant in respect of the discovery of historic highway rights.

Legal Background

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

4. Under Section 53(2)(b) of WCA81 the County Council has a duty to keep the Definitive Map and Statement under continuous review and to make such modifications to the Definitive Map and Statement that appear to be requisite in consequence of the occurrence of events described in Section 53(3)(c)(i); namely “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates”. The case of *R v SSE ex parte Bagshaw and Norton* (1994) has clarified the law in respect of the wording ‘subsists’ (Test A) and ‘or is 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’ requires 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.
5. 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.
6. If it is accepted that a presumption of dedication has taken place, consideration must also be given to the category of highway that is believed to subsist i.e. footpath, bridleway, restricted byway or a byway open to all traffic. This point should be based on an evaluation of the information contained in any documentary and/or user evidence.
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. This requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. Evidence of the use of a path by the public ‘as of right’ may support an inference of dedication and may also show acceptance by the public.

The Current Situation and Site History

8. Photographs taken along the route A-B are shown as **Photos C1-4**. Route A-B lies adjacent to the Center Parcs holiday village and is approximately 1730m long and surfaced with stone (photo C1). It is used by private vehicles in connection with Center Parcs, Sherwood Pines Forest Park and for access to adjacent farms and farm land. Guests staying at Center Parcs have permissive access to use the track on foot and on cycles. The track is owned by Scottish and

Newcastle Limited who acquired it in 1987 from the Forestry Commission as part of the Center Parcs Holiday Village business. The Center Parcs Holiday Village was subsequently sold in 2001, however the track was not included in the sale which remains in the ownership of Scottish and Newcastle. In 2007 a barrier was erected on the track (photo C2). The barrier was erected by Center Parcs and appears to be left open in the day and locked at night to prevent vehicular access. Bollards placed to one side of the barrier enable pedestrians, cyclists and possibly horse riders to pass through when the barrier is closed. A sign (Photo C3) said to have been in place since 1990 is situated near the barrier facing west and reads:

‘PRIVATE PROPERTY
Although this is not a public bridleway,
Access is permitted to guests of the
Sherwood Forest Holiday Village
On foot and bicycle.
HOWEVER, ANY CAR PARKED ON THIS
BRIDLEWAY IS LIABLE TO BE WHEEL CLAMPED
Should your car be clamped you will be able
To obtain its release by reporting to the
Security lodge at the main gate between
8.00am and 8.00pm every day
and paying a charge’

9. Photographs taken along the route C-D are shown as **Photos D1-11**. This route is approximately 3.3 kilometres long and begins alongside the entrance to the Sherwood Pines Forest Park on the B6030 (photo D1). From here the route proceeds along a tarmac road past a sign which reads ‘No unauthorised vehicles’ and lockable gate near to Preston Lodge (photo D2). At one point some large rocks are placed across the route (photo D3), presumably to prevent unauthorised vehicular access. The route then continues through another lockable barrier (photo D4) on a stone track. Part of this track is currently used as a Forestry Commission family cycle trail (photo D5). Just before the route reaches Point A, a locked barrier has been placed across the track (photo D6). Again, the intention of this barrier appears to be to prevent vehicular use as access for cyclists using the trail is provided to either side of the barrier.
10. From this point the route continues along a wide track. The first part is set on an incline and is currently very muddy due to use by construction traffic working on a nearby development (photo D6). The route continues on a stone track (photo D7) which leads to Blooms Gorse Farm. Gates are in place either side of Blooms Gorse Farm with notices which state ‘Private No admittance’ and ‘Private Road Farm Access only’ (photos D8 and D9). The route then continues along the stone track (photo D10) finally reaching point ‘D’ where another lockable barrier is situated (photo D11).

The Application

11. The application was supported by 21 Public Rights of Way User Evidence Forms, documentary evidence dating between 1630 and 1956 and a statement giving a short explanation of recent use and a summary of the historic evidence. Following receipt of the application, the County Council received a further 9 evidence forms. The historic documents submitted in support of the application comprise of the following:

- Map of Clipstone by W. Senior 1630
- Map of Nottinghamshire by T. Kitchin 1750
- Map of Nottinghamshire by E. Bowen 1755
- Map of Clipstone by G. Ingham 1766
- Map of Nottinghamshire by J. Harrison 1787
- Map of 20 Miles Round Mansfield by G. Sanderson 1835
- Ordnance Survey 2" map 1840
- Clipstone Tithe Award Map 1844
- Mansfield Woodhouse Inclosure Award 1853
- Map of Nottinghamshire by the Encyclopaedia Britannica 1876
- Rufford Highway Surveyors records 1882-83
- Map of Nottinghamshire by the Encyclopaedia Britannica 1902
- Ordnance Survey 6" map 1916
- Ordnance Survey 1:25000 scale map 1927
- Guilford Map 1927
- Letter from Welbeck Estates Company to Nottinghamshire County Council 1956

Historic and Documentary Evidence

12. In addition to the maps and documents submitted with the application, some additional documents were examined by the County Council to see whether there was any evidence of pre-existing public rights of way over the claimed route. These documents comprised:

- Map of Nottinghamshire by J. Chapman 1774
- Edwinstowe Inclosure Award 1821
- The Ellis Map of Nottinghamshire 1824-25
- The Greenwood Map of Nottinghamshire 1831
- Market Harborough & Worksop & Nottingham Railway Plans (1871)
- Midland & Manchester, Sheffield & Lincolnshire Railway Plans (1872)
- Rufford Estate Plan (1885)
- Finance Act Records (1910)
- Quarter Sessions diversion and extinguishments for Nottinghamshire

13. Although William Senior's 1630 map does not show any route which corresponds with the route A-B, it is notable that this map depicts a road at the western end of the route leading to/from Clipstone which corresponds with the route C-D.
14. The Kitchin Map of 1750, Bowen Map of 1755, the Harrison Map of 1787 and the Encyclopaedia Britannica Map of 1876 are not drawn to a scale to accurately establish whether or not the route being claimed is depicted.
15. The 1766 map of Clipstone by George Ingham appears to show the western end of the route A-B which is annotated 'To Rufford'. This suggests that the claimed route existed as a through road which would more likely than not be used by the public. The map also shows what appears to be a road leading to/from Clipstone which corresponds with the route C-D which is also suggestive of a public road.
16. The 1774 Chapman map, produced for commercial sale is designed to show Turnpike Roads, Inclosed Roads, Open Roads and Bridle Roads. It does not show any route which corresponds with the routes A-B or C-D (although C-D was known to exist by virtue of the Senior and Ingham Maps). The most likely explanation for the non-inclusion of route C-D could be due to a cartographic inaccuracy. The foreword notes accompanying a 2003 reprint of the map acknowledges the fact that "not all minor roads are included, and their absence from the map should not necessarily be interpreted as evidence that they did not exist".
17. No inclosure award was made for the parish of Rufford, however, the Edwinstowe Inclosure Award map of 1821 does show a road which is described as the 'Clipstone Bilsthorpe and Southwell Road' which corresponds with route C-D. The portrayal of this road corresponds with the Senior and Ingham maps and strongly suggests that the route C-D was a public carriage road.
18. The Ellis Map of Nottinghamshire was published in 1831 from a survey carried out in 1824-25. The map depicts the routes A-B and C-D as 'Cross Roads' which is suggestive of minor public roads. Any bridle roads shown on the map are annotated with the label 'B.R'. Neither route A-B or C-D are labelled as bridle roads. By comparison to other maps there is a difference in the alignment along the southernmost 250 metres of route C-D (i.e. a 45 degree deviation eastwards before connecting to Deerdale Lane). However, route C-D is for the most part depicted in the same way as the road shown in the Senior, Ingham and Edwinstowe Inclosure maps.
19. The Greenwood Map of Nottinghamshire was also published in 1831 from a survey carried out in 1824-25, possibly using the same survey as for the Ellis map. However, there are some distinct differences between the Greenwood and Ellis maps. The route A-B is not shown on the Greenwood Map while route A-D is shown on a different alignment (further to the east) than on other maps. This difference might be attributed to the inaccuracies of the small scale at which the

map is drawn. By reference to the key contained in the map, route C-D is depicted as a cross road which again suggests it was a minor public road. The term 'cross road' was used at that time for depicting and defining second-class public carriageways.

20. The Sanderson Map of 1835 depicts the routes A-B and C-D with parallel dashed lines which, according to the explanation, denotes a 'Cross Road' therefore adding some weight to the routes being public.
21. The Ordnance Survey 2" map of 1840 depicts both routes in a similar manner to the Sanderson Map, but gives no indication of status.
22. Although no Tithe Award was made for the parish of Rufford, the Clipstone Tithe Award Map of 1844 indicates the situation in the neighbouring parish. A route, which from its location, appears to be a continuation of the one being claimed (route A-B) is shown on the tithe award map and is denoted with the wording 'To Rufford'. As statutory documents, tithe maps provide good evidence for the location of the roads they portray, and although the Clipstone tithe map does not provide evidence in respect of status, the presence of a route denoted in the manner 'To Rufford' would more likely than not be suggestive of a public road or track. Other recognised public highways are depicted in the same way, including the route C-D which is denoted with the wording 'From Bilsthorpe' which again, is suggestive of public status.
23. The Mansfield Woodhouse Inclosure Award of 1853 does not appear to contain any information relevant to the claimed route.
24. The Market Harborough & Worksop & Nottingham Railway Plans of 1871 included proposals to construct a railway across the road to the north of Pittance Park near to the Ollerton Road. This road forms a continuation of the claimed route. The railway documents refer to the route as an 'occupation road and ornamental ground' in the ownership of the trustees of the late Earl of Scarborough. By comparison, other known public roads are shown in the ownership of the Ollerton District Highway Board. Accordingly, the railway plans suggest the road was believed to be a private road and that no additional public footpath or bridleway rights existed over it. As this road was a direct continuation of the claimed route, there is an inference that the remainder of the route would also be of the same status.
25. The Midland & Manchester, Sheffield & Lincolnshire Railway plan of 1872 included proposals for a railway which crosses the claimed route A-B. The route is again recorded as an 'occupation road' in the ownership of the trustees of the late Earl of Scarborough. Again this indicates that the road was believed to be private.
26. The Rufford Highway Surveyors records made in 1882-83 include a list of 'Public Roads repaired by the Parish' (n.b. before 1894 minor roads were repaired by the parishes). The route being claimed (route A-B) is not included within this list so it can be concluded that it was not maintained as a public road at that time (however it is noted that the list was not concerned with the maintenance of footpaths and bridleways).

The list does include details of a public road which is described as heading 'towards Clipston' which corresponds with route A-D. This document is therefore strong evidence for the route C-D being a public highway.

27. A plan of the Rufford Estate dated 1885 denotes the route A-B as a 'Private Park Road' maintained by the estate. Other categories of roads denoted on the plan are shown either as 'Public Roads repaired by the Estate', 'Public Highways' or 'Main Road'. The Estate plan of 1885, therefore provides strong evidence that route A-B was believed to be a private road in 1885. The status of route C-D is not recorded.
28. The 1902 Encyclopaedia Britannica map, the 1916 Ordnance Survey 6" map, the 1927 Guilford map and the 1927 Ordnance Survey 1:25000 map confirm the presence of the relevant routes but do not give any indication in relation to status.
29. Documents prepared for the purposes of the Finance Act 1910 (FA10) were examined. According to the relevant FA10 maps, route A-B is shown incorporated into the private assessment parcels. As public roads are normally shown excluded from these parcels, it can be concluded that the claimed route A-B was not thought to be a public road at that time. However, significant deductions are claimed in respect of public rights of way, but given that these particular assessments cover very large acreages, it is not possible to say whether or not these deductions relate to the claimed route. In respect of route C-D the FA10 maps also show this route within the private assessment parcels. Some of these land parcels include deductions for unspecified public rights of way while others do not include any deductions. Overall, the FA10 maps suggest that the landowners in 1910 did not believe route C-D to be a public road.
30. The Quarter Session records for Nottinghamshire were also inspected. These records list extinguishments and diversions of public highways in Nottinghamshire from 1658 to 1974. No records were found in relation to route A-B or C-D.
31. No rights of way corresponding to these routes are recorded within the Parish Schedules for Rufford or Clipstone. These schedules were prepared in 1954 for the purposes of identifying public rights for inclusion in the Definitive Map under the National Parks and Access to the Countryside Act 1949.
32. Correspondence from the Welbeck Estate relating to the preparation of the Definitive Map in 1956 states that there has been no interference with public use over the open moorlands. However, given that the correspondence was specifically concerned with footpaths in the Forest Town area, and not in the vicinity of the claimed route, this document carries little evidential weight in respect of the claimed route A-B.

33. On balance, the historic and documentary evidence in respect to the route alongside Center Parcs (route A-B) suggests that a historic right of way does not exist. Although the Ingham (1766), Ellis (1824-35), Sanderson (1835) and Clipstone Tithe (1844) maps provide indirect evidence suggesting the route to be a public road, the railway plans of 1871 and 1872 show the route to be a private occupation road. The fact that the route is not included in the Rufford Highway Surveyors records of 1882-83 strongly suggests that the route was not considered to be a public road at that time. This suggestion is strengthened further by the Rufford Estate Plan (1885) showing the route as a 'Private Park Road'. Finance Act documents also provide good evidence that the route was not considered to be a public road, but are inconclusive as to whether any footpath or bridleway rights exist.
34. In respect of the route leading from King's Clipstone to Eakring Road/Deerdale Lane (route C-D), the documentary evidence suggests that this route is a historic road and therefore ought to be recorded on the Definitive Map and Statement as a restricted byway. Although this route did not form part of the original application, the evidence discovered as part of the overall investigation must be taken into account by the authority under the duties contained in WCA81 s.53(3)(c)(i). Accordingly, this report contains two recommendations; one in respect of the application route (route A-B), and one in respect of the route for which evidence was discovered (route C-D).

Claimed Use

35. The application in respect of route A-B must also be considered on the evidence submitted in the 30 User Evidence Forms in order to establish whether dedication has taken place by virtue of HA80 Section 31. The Committee must consider whether there is sufficient evidence to meet the requirements of WCA81 Section 53(3)(b): namely "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". Consideration must also be given, based on the available evidence, to what category of right of way is presumed to have been dedicated i.e. footpath, bridleway, restricted byway or a byway open to all traffic. A chart which demonstrates individual use against length of time is shown as **Appendix E**.
36. The information contained in the evidence forms and in the subsequent interview transcripts relates to the presumed dedication of a highway based on uninterrupted use over a twenty year period. This period is calculated retrospectively from the date when the right of the public to use the way was brought into question. Therefore consideration must be given to whether any actions by the landowner could be considered as sufficient evidence that there was no intention to dedicate the way and thereby indicate a point in time when public use was challenged.

37. Section 31(3) of HA80 states that where an owner of the land has erected and maintained a notice 'inconsistent with the dedication of the way', this is considered sufficient evidence of a negative intention to dedicate the way as a highway (in the absence of proof to the contrary). The previously mentioned sign (photo C3) needs to be considered in terms of whether or not it fulfils this statutory provision. Evidence submitted on behalf of the landowner suggests that the sign was put in place in 1990, and although it was only situated at one end of the claimed route, it would be reasonable to assume that members of the public using the route on a regular basis would have been aware of this sign. The wording used on the sign i.e. 'Although this is not a public bridleway, Access is permitted to guests of the Sherwood Forest Holiday Village On foot and bicycle' is considered to be sufficient evidence of a negative intention to dedicate a public right of way in 1990.
38. Accordingly, as public use of the route was challenged by the erection of the sign, the relevant 20 year period during which presumed dedication could be said to have taken place is from 1970 to 1990. User Evidence Forms from 18 members of the public demonstrate uninterrupted use throughout this period. A breakdown of use by type shows that 4 members of the public used the route on foot alone while 14 members of the public used the route on a combined foot and cycle basis. Frequency of use varies from weekly to 1-2 times per year. The most common frequency is on a monthly basis. Given that there is significant evidence of use by cyclists, consideration should be given to whether the route can be presumed to have been dedicated as a bridleway or a restricted byway.
39. One user does refer to obtaining a permit from the Forestry commission in order to walk in Clipstone Forest. However, no other evidence has been submitted to suggest that the Commission actively required persons using route A-B to apply for a permit
40. Prior to the construction of Center Parcs in 1987, the track (route A-B) was in the ownership of the Forestry Commission. No evidence has been discovered to suggest that measures were taken by the Forestry Commission to prevent public access along this route. Consideration must be given to HA80 s.327 which specifies that the Act can only apply to land belonging to the Crown and its departments when there has been an agreement between the Crown (or department) and the highway authority. No agreement was made between the Forestry Commission and the County Council and therefore the provisions contained within section 31 of HA80 i.e. presumed dedication after 20 years public use, are not applicable in this case.
41. Based on the information contained in the User Evidence Forms it would appear that there is no other period during which presumed dedication could be said to have taken place. As stated earlier in this report, if the test under the HA80 Section 31 fails, common law dedication should be considered. This requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or

implied dedication by the landowners and whether there is acceptance of the highway by the public. Evidence of the use of a path by the public 'as of right' may support an inference of dedication and may also show acceptance by the public.

42. In 1982 the Forestry Commission introduced a byelaw in relation to their land which stated (section 6(1)) 'no person shall bring or cause to be brought on to the lands of the Commissioners any vehicle other than a perambulator or wheelchair drawn or propelled by hand or by electrical power and used solely for the conveyance of a child or children or an invalid'. Although the byelaws do not provide a definition for the term 'vehicle', it would be reasonable to assume that this clause was intended to include bicycles (which in today's law are considered 'non-mechanically propelled vehicles'). It is therefore reasonable to assume that bicycles could be considered to be vehicles for the purpose of the 1982 byelaw which in turn can be regarded as evidence that the landowner did not intend to dedicate a right of way to cyclists during the period it was applicable (1982-1987). The byelaw remains silent regarding use on foot.
43. Accordingly, given that the byelaw is considered to be a challenge to use on cycles, the period prior to 1982 needs to be considered. The evidence forms show that prior to 1982, twenty four members of the public claim use of the route A-B (Appendix E). The period of use varies from between one year to 46 years. A breakdown of use by type shows that 6 members of the public used the route on foot alone, 2 on cycle alone while 16 members of the public used the route on a combined foot and cycle basis. Frequency of use varies from between once every two years to 100 times per year. The average frequency is approximately 20 times per year.
44. Some of the claimants refer to using the route from childhood through to adulthood. Many have used the route because it provided a direct route from Clipstone to Rufford Abbey and its lakes, or simply as part of a longer walk or ride. Some even used the route as part of a regular jogging route. When taken together, the information contained in the user evidence forms gives weight to the reputation of the route as a public right of way and demonstrates use 'as of right'.
45. In terms of the tests to be met in order for common law dedication to have taken place prior to 1982, there has clearly been a landowner capable of dedicating the claimed route (the Forestry commission), and there is also evidence of an implied dedication through use by the public over many years. This use has been exercised frequently in an open and obvious manner thereby demonstrating use 'as of right' and which was not exercised in secrecy or by force or with permission.

Consultations

46. Consultation on a proposal to register the routes shown A-B and C-D as public rights of way, was carried out with all affected landowners, statutory consultees and other interested parties. Comments opposing the proposals are set out in bullet points below:
47. Heineken UK/Scottish and Newcastle Ltd - registered owners of the track alongside Center Parcs
- *The landowners have never intended to dedicate the route as a public right of way and have never acknowledged that any public rights existed.*
 - *A public right of way would be detrimental to the Center Parcs business and also to the security of its guests and would create unacceptable risks to health and safety.*
 - *Heineken confirm that they would support the route being part of a permissive path agreement.*
48. Wragge and Co. - Representing Center Parcs Holiday Village:
- *The current sign (photo C3), erected in 1990 by Scottish and Newcastle is a clear indication of the landowner's intention not to dedicate a public right of way.*
 - *A barrier (photo C2) was installed in 2007 and is locked at 7.00pm every day. The barrier is also further evidence of a lack of intention to dedicate a right of way.*
 - *The route is kept open during the daytime for guests using Center Parcs Holiday Village and that the aforementioned sign is a practical way of ensuring that public rights are not acquired.*
 - *Use of the track during the hours of darkness could give rise to break-ins in the guest accommodation.*
 - *The surface of the track is not safe for use during the hours of darkness.*
 - *Center Parcs would consider entering into a permissive agreement allowing public use during daytime hours*
49. Forestry Commission, Sherwood District – Registered owners of Sherwood Pines Forest Park
- *Members of the public using the track from Rufford would be arriving at Forestry Commission land which is dedicated as open access land under the Countryside and Rights of Way Act 2000.*

- *The category of any right of way will have a dramatic effect on the management of woodland.*
- *On a provisional viewing, only the Ordnance Survey 2" map 1840 shows a route with any clarity.*
- *Many maps show tracks which are private rights of way.*
- *The County Council should carry out an exhaustive search to ensure that historic rights of way have not been extinguished by inclosure awards or legal orders.*

50. Tracey Barlow Furniss & Co. representing Mr S. Bowring, Bloomsgorse Farm, Deerdale Lane

- *No one has exercised any kind of right between the points C to A or A to D apart from during the last two years when there have been trespassers on the land who when questioned have confirmed that they have been sent by a man from Clipstone to walk the land.*
- *We find it incredible that you have 30 evidence forms from members of the public who state they have used the route on foot and on bicycles between 1936 and 2008 and on each occasion when any trespasser who has been found on our Clients land they have been challenged and asked to leave the land.*
- *There is no historic right of way between points C to A and A to D.*
- *Point A could only have been accessed by trespassers who have been challenged.*
- *Use between the points A and B would be dangerous and could potentially endanger wildlife in the forest adjoining that footpath.*
- *There would be no way that anybody going westwards could continue from point B heading in a westerly direction.*
- *Use by Center Parcs customers and adjoining owners does not give rise to a public right of way.*

51. Mr and Mrs Stone, Bloomsgorse Cottage

- *Increased risk of illegal use by motorcycles and 4x4 vehicles;*
- *Increased risk of fly tipping;*
- *Damage to an area of natural beauty;*
- *Increased risk of burglary, theft and vandalism on isolated properties.*

52. Fiona Swain, Preston Lodge

- *Historic rights have 'no relevance' to current use;*
- *Proposals will lead to fly tipping;*
- *Creation of a cut through for motor vehicles, increased accidents, increased illegal use by motorcycles and 4x4 vehicles;*
- *Damage to the forest;*
- *Increased risk of burglary, theft and vandalism on isolated properties, a focus for anti-social behaviour;*
- *Potential for accidents at the junction with the B6030.*

53. MM Fegan, The Pines, Deerdale Lane

- *The proposal would allow use by motor vehicles leading to the route from Deerdale to the B6030 at Clipstone becoming a cut through for motor vehicles;*
- *Increased illegal use by off-road vehicles;*
- *Increased fly tipping;*
- *Increase in the risk of accidents to walkers, horse riders and cyclists.*

54. Mr Ian Hutchinson, Manager, Adrenalin Jungle, Deerdale Lane

- *Proposals will lead to an increase in anti-social behaviour;*
- *Current public access is adequate and no further access is required;*
- *The proposal will give little benefit.*

55. Mr Nigel Redmile, Manager of Sherwood Pines Café

- *Proposals will lead to increased fly tipping;*
- *Create a cut through for motor vehicles, increased accidents, increased illegal use by motorcycles and 4x4 vehicles, damage to the forest;*
- *Increased risk of burglary, theft and vandalism on isolated properties, a focus for anti-social behaviour;*
- *Potential for accidents at the junction with the B6030;*
- *Sherwood Pines Forest Park is open access land which does not restrict legitimate users;*
- *The cafe has suffered numerous acts of vandalism and break-ins, and the proposals would encourage further incidents.*

56. Howard Wilcox, on behalf of the Motor Sports Association (in respect of Route C-D)

- *More rights of way will lead to increased costs when applying for temporary closures;*

- *Registering the routes as byways would lead to ‘access and enforcement issues’ causing difficulties for local residents, the Forestry Commission and authorised users;*
 - *Increased costs to the County Council in respect of extra signage and maintenance.*
57. Rufford Parish Council – Objection
- *Health and safety grounds ‘the path is currently used extensively by visitors to Center Parcs for cycling and horse riding the state and contours of the path are entirely unsuitable for this kind of use – particularly by the many children who cycle along the route;*
 - *The route was until recently only used as a farm track and was not used as a footpath by the public.*
58. Comments in support of the proposals and representations are set out in bullet points below:
59. Mrs C Orpwood, Deerdale Farm and Mrs L Ashley, Deerdale Farm Cottage – Representation
- *No objection as long as there are no proposals to make routes available to motorised traffic;*
 - *The proposed routes are used frequently on foot and on cycles and with permits for horse riding.*
60. Mr and Mrs Wilson, Deerdale Lane – No objection
- *Routes should be recorded as public bridleways to ensure controlled use.*
61. Mr P Hiley, Mansfield – Supports the proposals
- *The routes should be recorded as Restricted Byways*
62. Ramblers Association – Supports the proposals
- *If the routes are recorded as restricted byways, the County Council should apply to the Magistrates Court (HA80 s.116) for the removal of these rights subject to the reservation of bridleway rights.*
63. Nottinghamshire Footpaths Preservation Society – Representation
- *The routes should be recorded as public bridleways*
64. CTC (Cyclist’s Touring Club) – Supports the proposals.
65. Environment Agency – No objection.

Comments on the Consultation responses

66. Information submitted by Heineken and Center Parcs states that the sign (photo C3), erected in 1990 gives a clear indication of the landowner's intention that no rights of way were being dedicated. However, matters such as the potential for crime or the suitability of the surface are not issues which can be taken into account when deciding whether a public right of way exists. If rights were found to exist, Heineken's proposal for a permissive agreement would not be relevant.
67. The Forestry Commission raised the matter of the Sherwood Pines Forest Park being open access land registered under the provisions of the Countryside and Rights of Way Act 2000. The public are entitled to roam freely on Open Access land on foot without having to stick to defined paths. A plan indicating the extent of open access land in the area is shown as **Plan F**. The Forestry Commission's comments regarding the status of the route i.e. whether the route would be recorded as a restricted byway, a bridleway or a footpath show that this would be an important issue for the Commission who have previously stated that barriers situated at various entry points are locked at night to act as a deterrent to illegal motorised use and fly tipping. However, the recommendation in this report can only be based on the evidence of whether rights of way exist, and not on what category would be the most desirable. If problems arise once public rights of way are registered, the County Council could consider taking measures to alleviate such problems. The Forestry Commission also state that routes included within the historic map could be private rights of way. However, this statement does not take into account the fact that the route C-D is shown on a number of maps in the same manner as public roads, and is referred to as the 'Clipstone Bilsthorpe and Southwell Road' in the Edwinstowe Inclosure Award of 1821. It is also listed as being a public road in the Rufford Highway Surveyors records of 1882-3. The County Council has also examined relevant documents in order to establish whether any historic rights have been extinguished, however nothing was found in relation to routes A-B and C-D.
68. The point raised by Tracey Barlow Furniss & Co incorrectly assumes that the user evidence relates to the track which passes Bloomsgorse Farm (Route A-D). However, the user evidence is only relevant in respect of route A to B alongside Center Parcs. The track which passes alongside Bloomsgorse Farm has only been assessed on the basis of discovered historic evidence as set out in this report. The statement 'there is no historic right of way, no historic bridleway' appears to have been made without any examination of the evidence and is not supported by any counter evidence. The suggestion that use of the route A to B would be dangerous is not something that the County Council can legally take into account when deciding whether or not a public right of way exists but could be addressed if the route was ultimately confirmed as a public right of way. It should also be noted that part of the track is already recorded as Rufford Bridleway No.6 with no known safety issues. Although not legally relevant, it is also highly unlikely that registering a public right of way would have any impact on wildlife in the forest given that the proposed routes are

already used by private motorised traffic. Finally, the comment that it is not possible to travel westwards along the claimed route seems contrary to the situation on site and contained in the user evidence forms.

69. The comments from Howard Wilcox on behalf of the Motor Sports Association are not points which can be taken into account when deciding whether or not public rights of way exist.
70. Some objections to the proposals appear to have been made in the belief that the County Council intends to register the routes as byways which can be used by vehicular traffic. However, footpaths, bridleways and restricted byways, cannot be legally used by the public in motorised vehicles. Many of the points raised in these objections relate to the potential for illegal motorised use, fly tipping, damage to flora and fauna, the increased risk of crime and safety risks. These are not matters which can be taken into account within current legislation. The only issue under consideration is whether public rights of way exist, and if they do, what category must be recorded.

Conclusion Route A-B

71. Although there is some indirect evidence that the track A-B alongside Center Parcs might have been regarded as a public road in the past, this is substantially outweighed by direct evidence that the route has been regarded as a private occupation road since 1871 at the latest. However, the User Evidence Forms submitted with the application show that the route has been in public use for many decades. This use was challenged in 1990 following the erection of the sign by Center Parcs (photo C3). Use after 1990 was therefore with permission of the landowner and not 'as of right' as required by the legislation.
72. In order to fulfil the statutory requirement there must be some period of 20 years during which presumed dedication has taken place. Prior to 1987 the track was in the ownership of the Forestry Commission. However, s327 of HA80 prevents the statutory acquisition of a public right of way on land belonging to the Crown or a government department (unless there has been an agreement with the highway authority). As no such agreement was made on the land in question, it follows that the statutory requirement under s.31(6) HA80 could not have been met at any point throughout the period of claimed use.
73. Also the 1982 byelaw made it unlawful for cyclists to ride on Forestry Commission land, however there is no impediment to prevent common law dedication taking place prior to 1982.
74. Information contained in 24 evidence forms gives rise to a reasonable allegation (WCA81) that dedication under common law can be presumed to have taken place during the period of use commencing in 1936 and ending in 1982. Of these 24 forms, 18 forms indicate combined use on foot and/or cycles while 6 evidence forms indicate

use on foot alone. A chart which demonstrates use of the route by type is shown as **Appendix G**.

75. 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. This decision arose from the fact that since the coming into force of the Countryside Act 1968, cyclists can lawfully use both bridleways and byways. Accordingly use by cyclists might therefore give rise to either category of right of way. However, as stated in 'Whitworth' the 'least burdensome' category to be applied would be that of a bridleway.
76. It is reasonable to assume that the principles set out in 'Whitworth' can also be applied here when considering evidence of common law dedication.
77. However 'Whitworth' (as set out above) does not apply to use prior to the 1968 Act and therefore consideration should be given to whether byway rights had already been acquired through use by this time. Further examination of the user evidence reveals only 6 claimants used the route on cycles prior to 1968. The average frequency of use is stated as being monthly, while two claimants began using the route only two years prior to 1968. It is therefore considered that the evidence is not sufficient to suggest that such use prior to 1968 is significant enough to demonstrate that the route could be presumed to be dedicated as a byway at this time.
78. It is considered that the appropriate test (WCA81 s.53(3)(b)) is met and it would therefore be appropriate to record this route as a public bridleway.

Conclusion Route C-D

79. The combined historic evidence suggests that the route in question was a public road connecting Clipstone and Bilsthorpe. Any rights for mechanically propelled vehicles belonging to this road have been legally extinguished by virtue of Section 67 of the Natural Environment and Rural Communities Act. Therefore, it is considered that 'Test B' is met (WCA81 s.53(3)(c)(i)) and it would therefore be appropriate to record this route as a restricted byway in order to reflect existing rights for non-mechanically propelled vehicles, horse riders and walkers.

Statutory and Policy Implications

80. This report has been compiled after consideration of implications in respect of finance, equal opportunities, personnel, crime and disorder and those using the service and where such implications are material, they have been described in the text of the report.

RECOMMENDATION

81. It is RECOMMENDED:

- a) that Committee accept the application for route A-B and authorise the making of a Definitive Map Modification Order at public bridleway status.
- b) that the Committee authorise the making of a modification order for route C-D at restricted byway status.

TIM GREGORY

Corporate Director (Environment and Resources)

Comments of the Service Director (Finance)

The contents of this report are duly noted; there are no financial implications.
[DJK 01.06.2011]

Legal Services' Comments

The matters set out in this report are matters for which Rights of Way Committee have responsibility by virtue of the Full Council decision of 24 September 2009. [SJE – 01/06/2011]

Background Papers Available for Inspection

Rufford (Center Parcs/Sherwood Pines) Definitive Map Modification Order Application case file.

Electoral Division(s) and Member(s) Affected

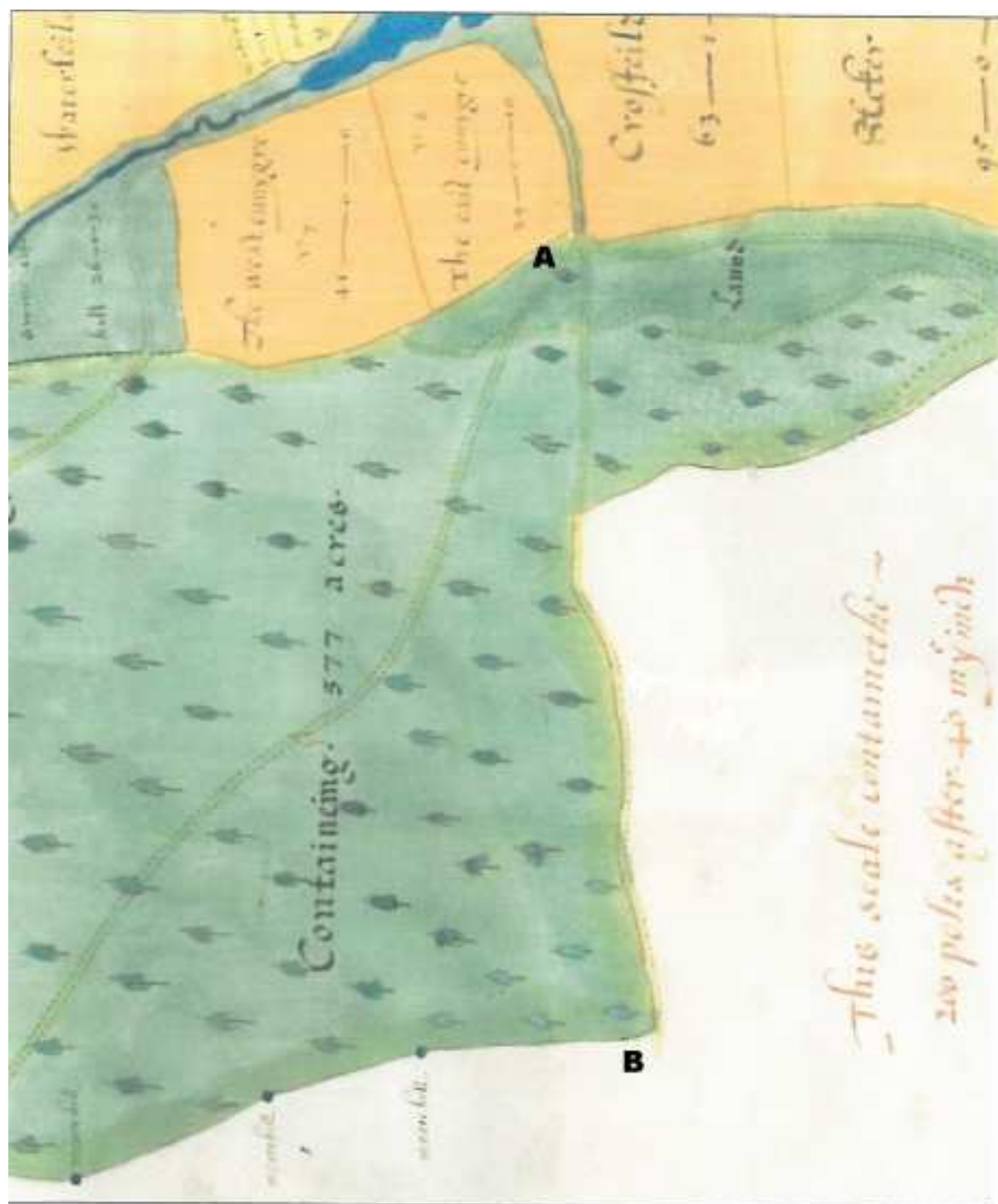
Rufford

Councillor Les Ward

Report Author / Case Officer
Eddie Brennan
0115 9774709

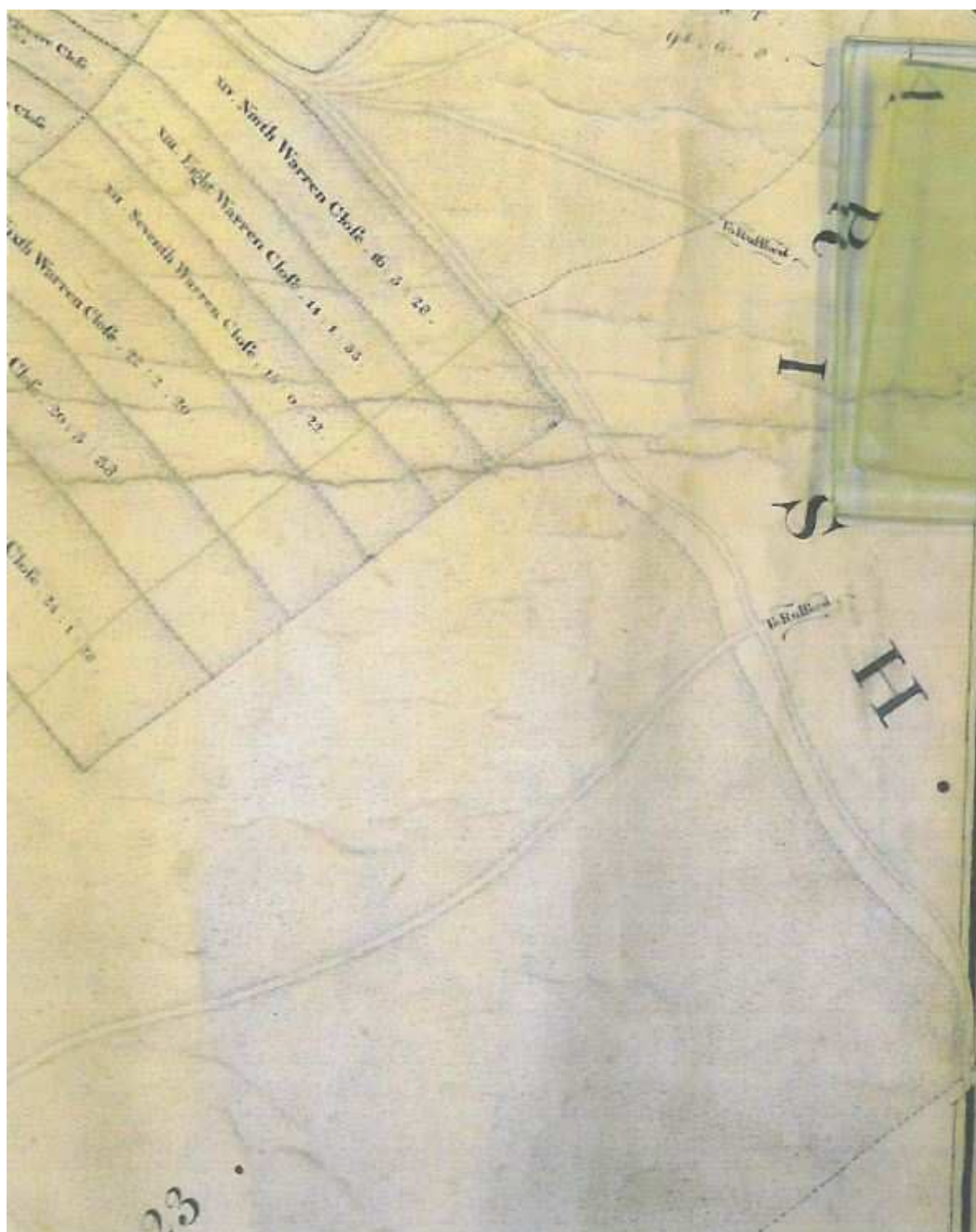
ROW56
1 June 2011

APPENDIX E



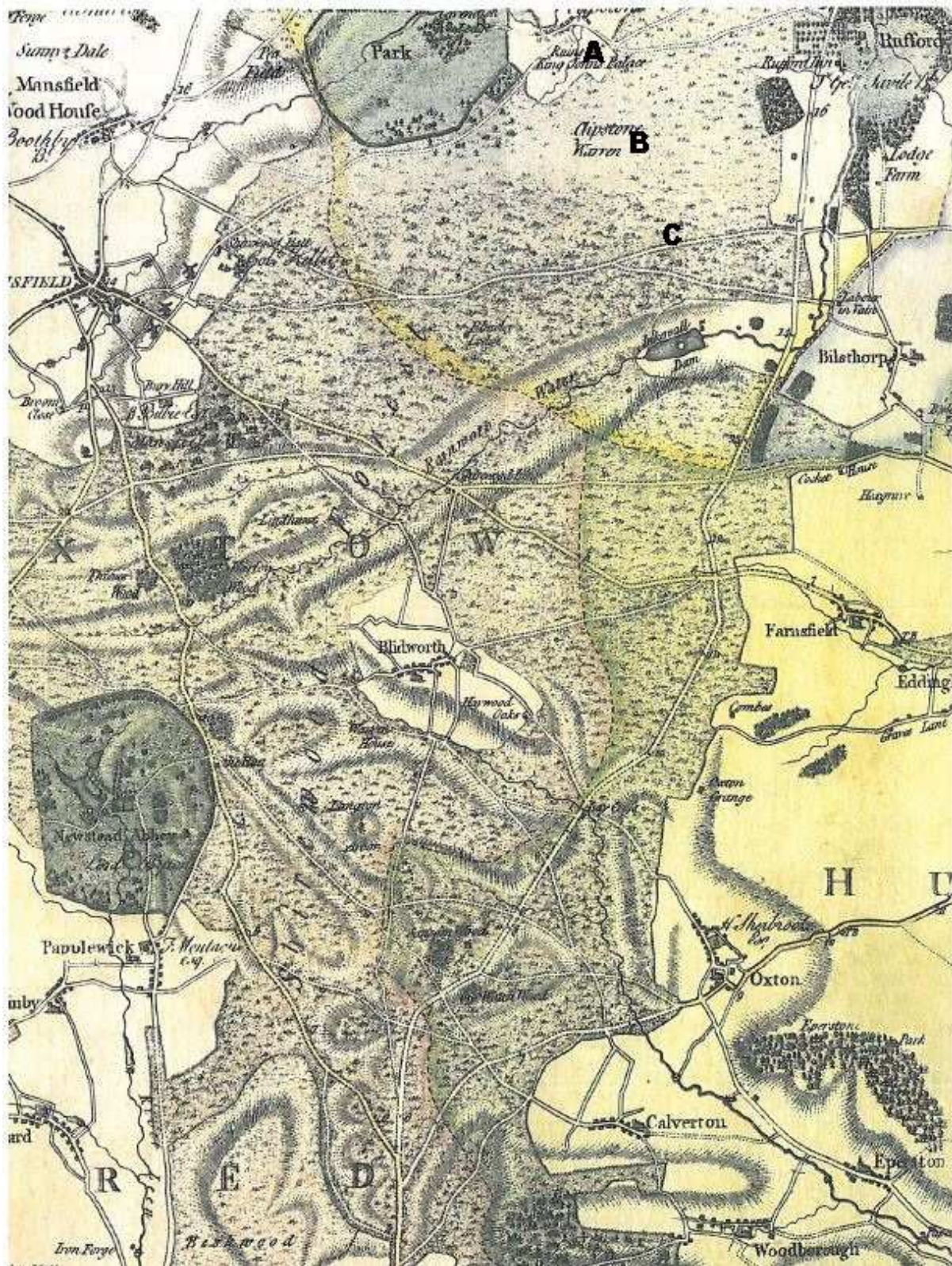
Map of Clipstone by William Senior (1630)

APPENDIX F

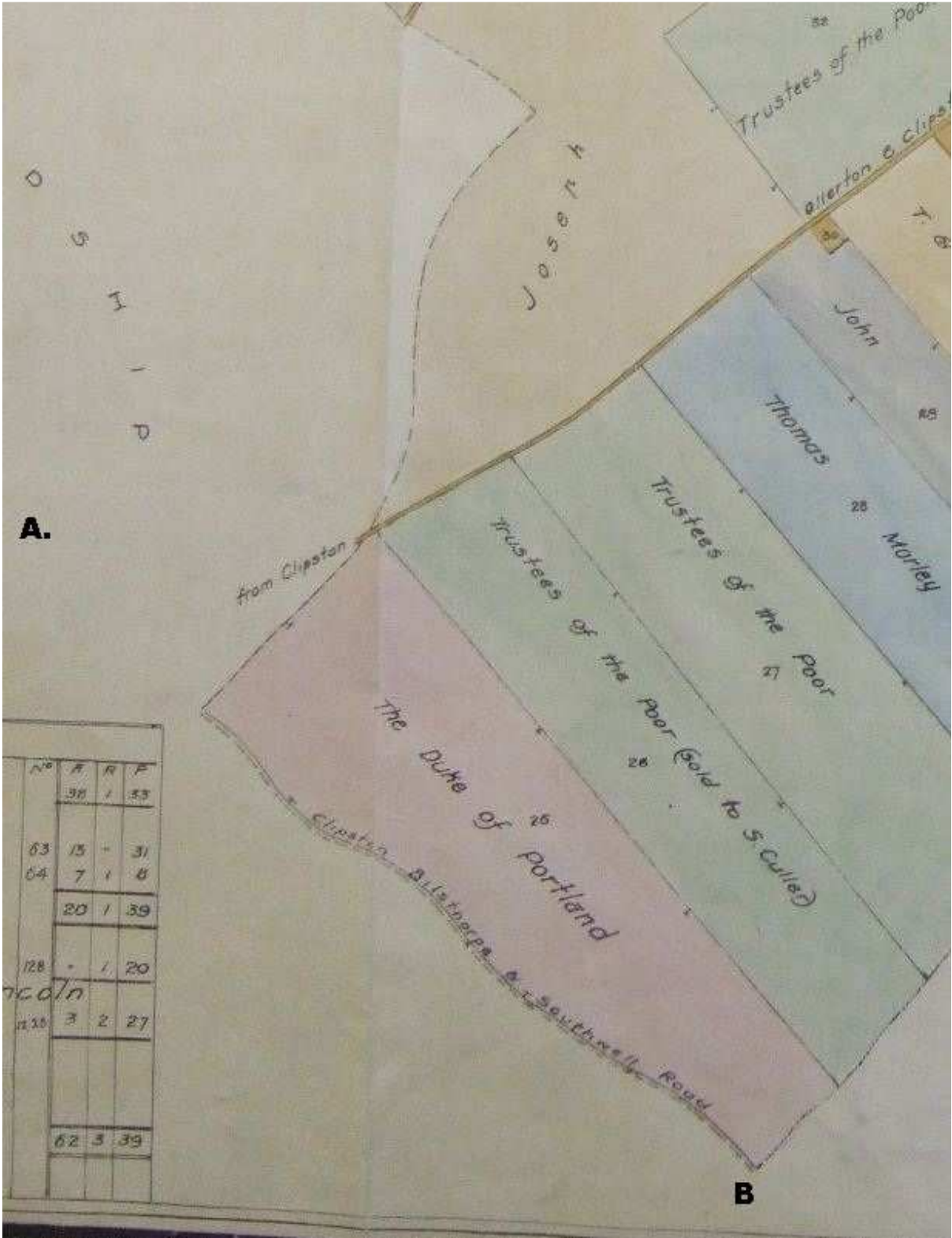


Map of Clipstone by George Ingman (1766)

APPENDIX G



Map of Nottinghamshire by John Chapman (1774)

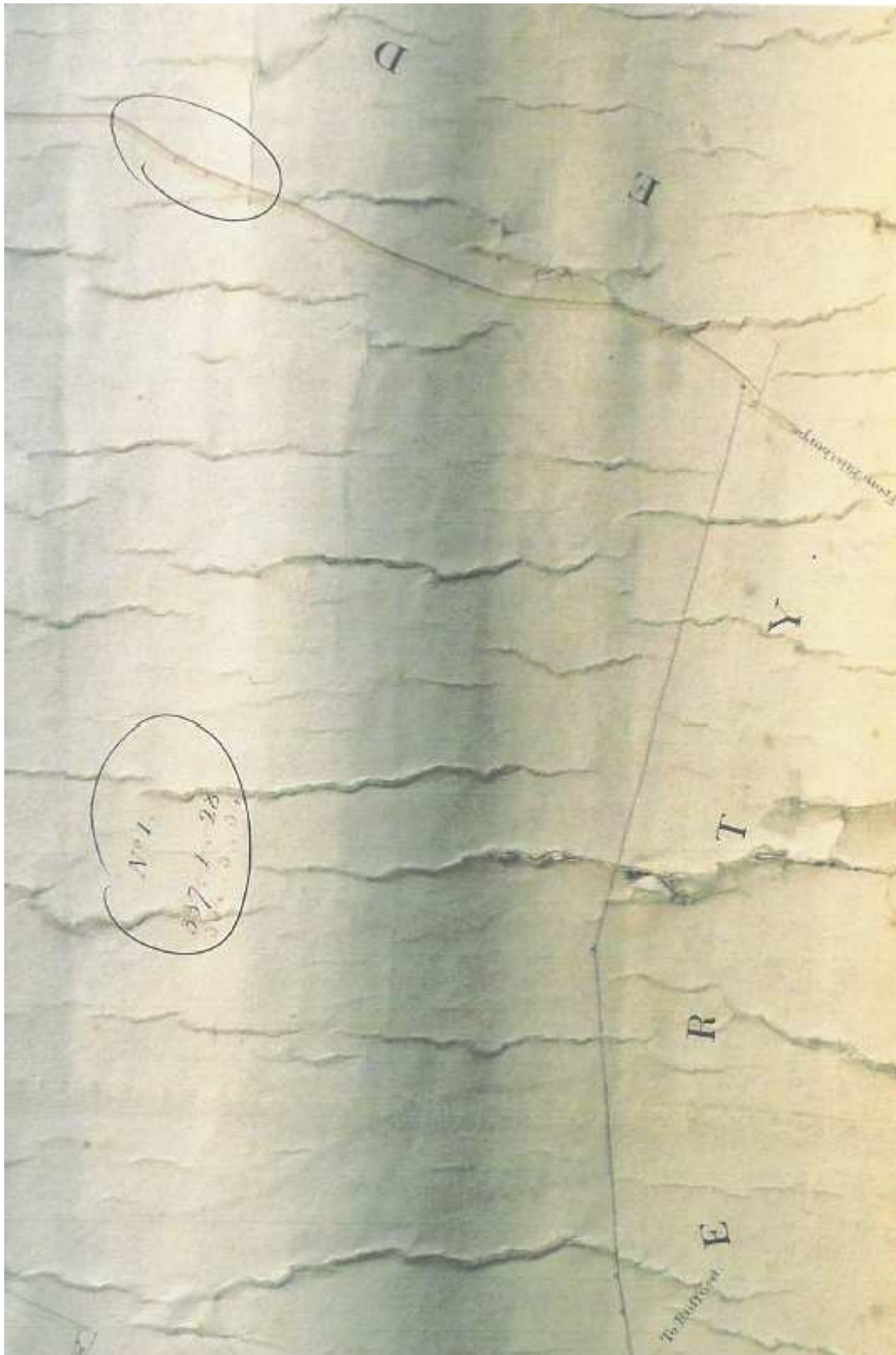


Edwinstowe Inclosure Award (1821)



Map of Clipstone 1824

APPENDIX I2



Clipstone Tithe Map (1824)



Map of Nottinghamshire by Thomas Ellis (1831)

APPENDIX K



Map of Nottinghamshire by C & J Greenwood (1831)

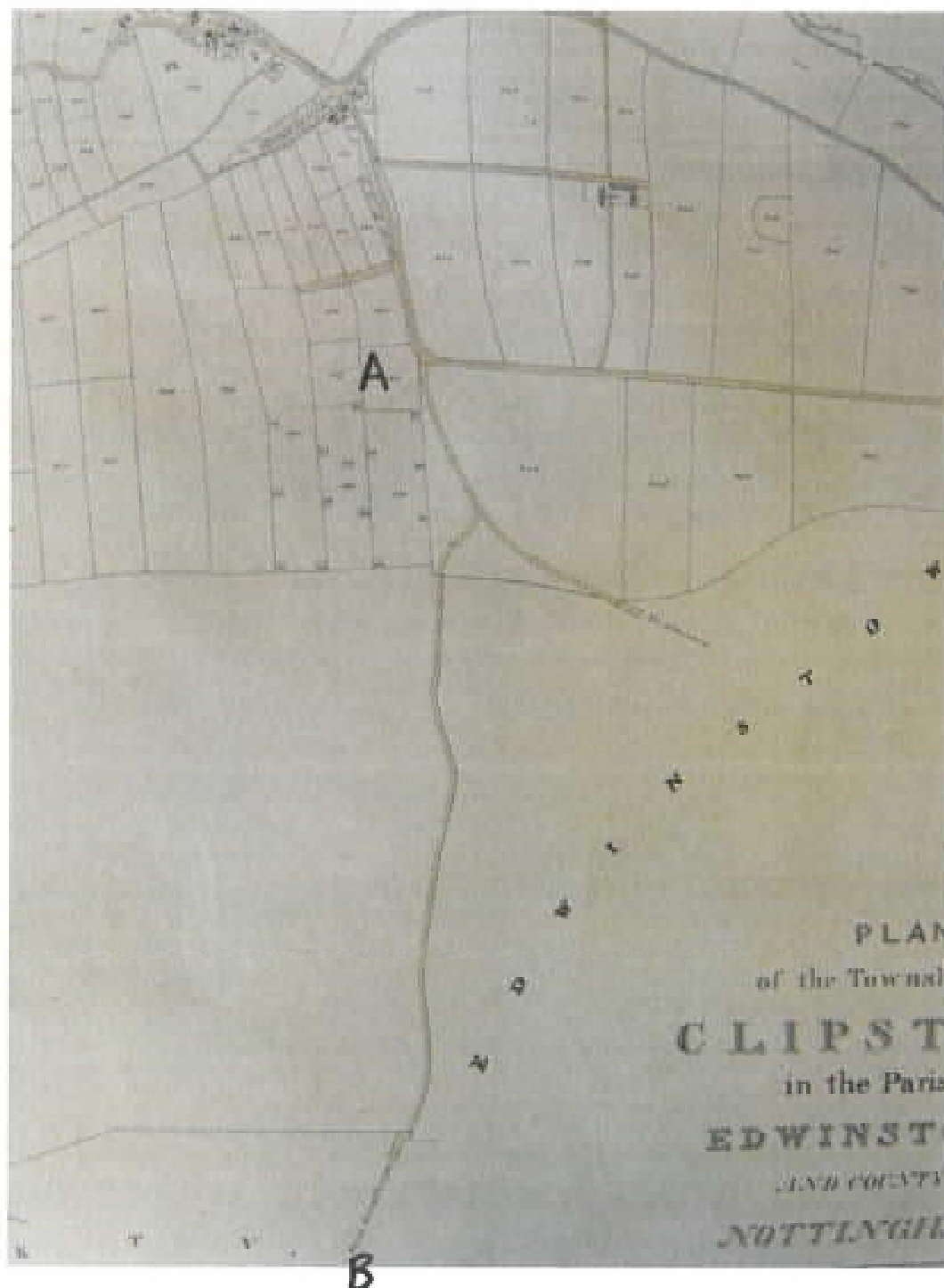


'Twenty Miles Round Mansfield' George Sanderson (1835)

APPENDIX M




Ordnance Survey 2" Map (1840)



Clipstone Tithe Award Map (1844)

Rufford Liberty

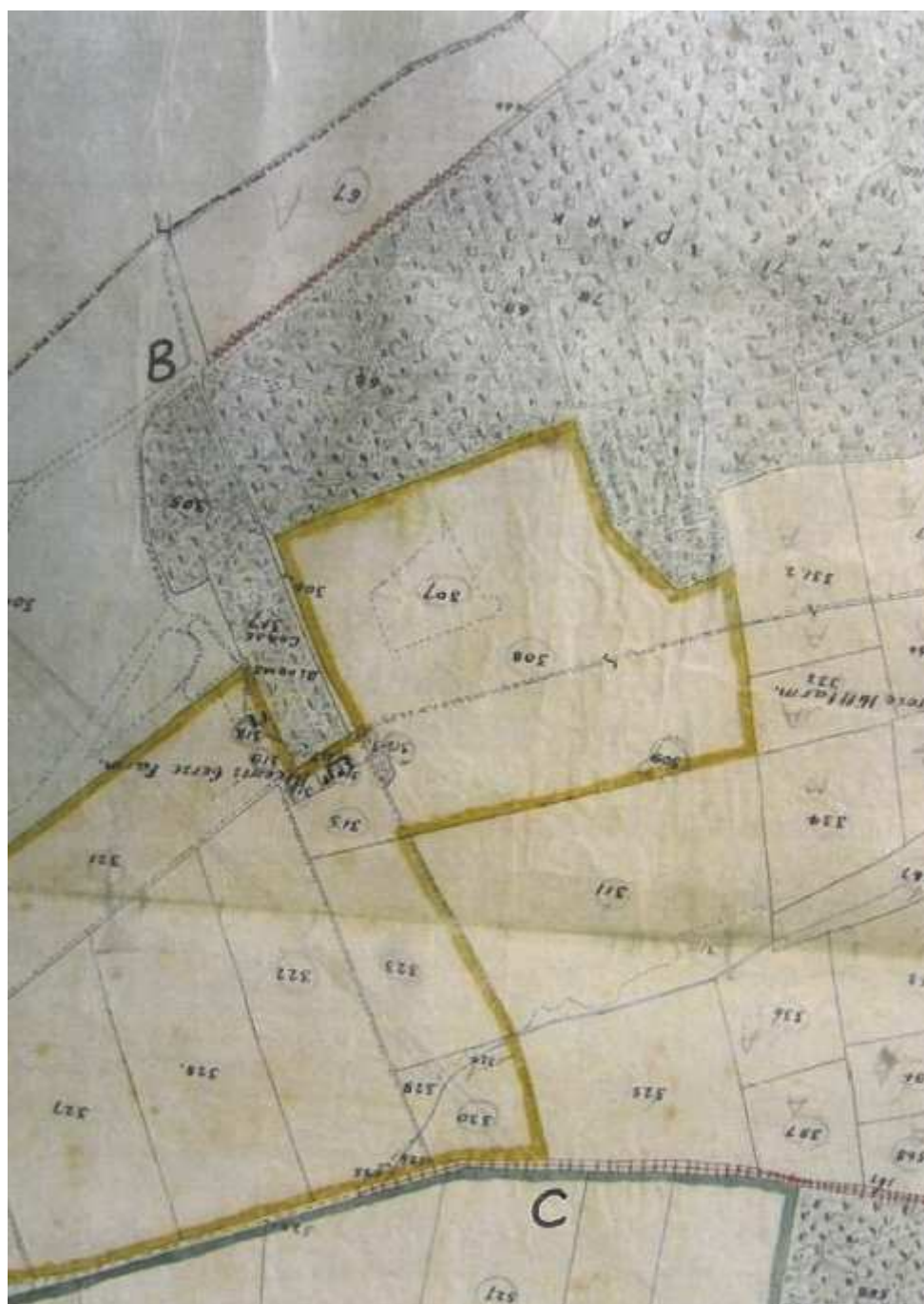
List of Public Roads repaired by the Parish



Muswell & Eaking Road	32 chains
Mellor & Eaking Road	101 "
Park of New Lane	46 "
Nottingham Road	368 "
Edwinstowe Road	15 "
From Nottingham Road towards Eaking	71 "
Roads leading to Belthorpe from preceding Road	42 "
From Junction of Belthorpe Roads by Salome-in- -Dain to Nottingham Road	68 "
From Nottingham Road (at Wendale) to Mansfield	275 "
From the previous Road towards Clifton	95 "
From Nottingham Road opposite Salome-in-Dain to Mansfield	277 "
From Nottingham Road to Rainworth	202 "
	1592 chains =
<u>19 miles 7 furlongs and 2 chains.</u>	
94 Road from Eaking Road by Leghields to Muswell 130 Ch.	
would make a Total of 1722 Ch. = 24 miles 4 furlongs & 2 chains	
Muswell & Eaking Road - says private Road or place	

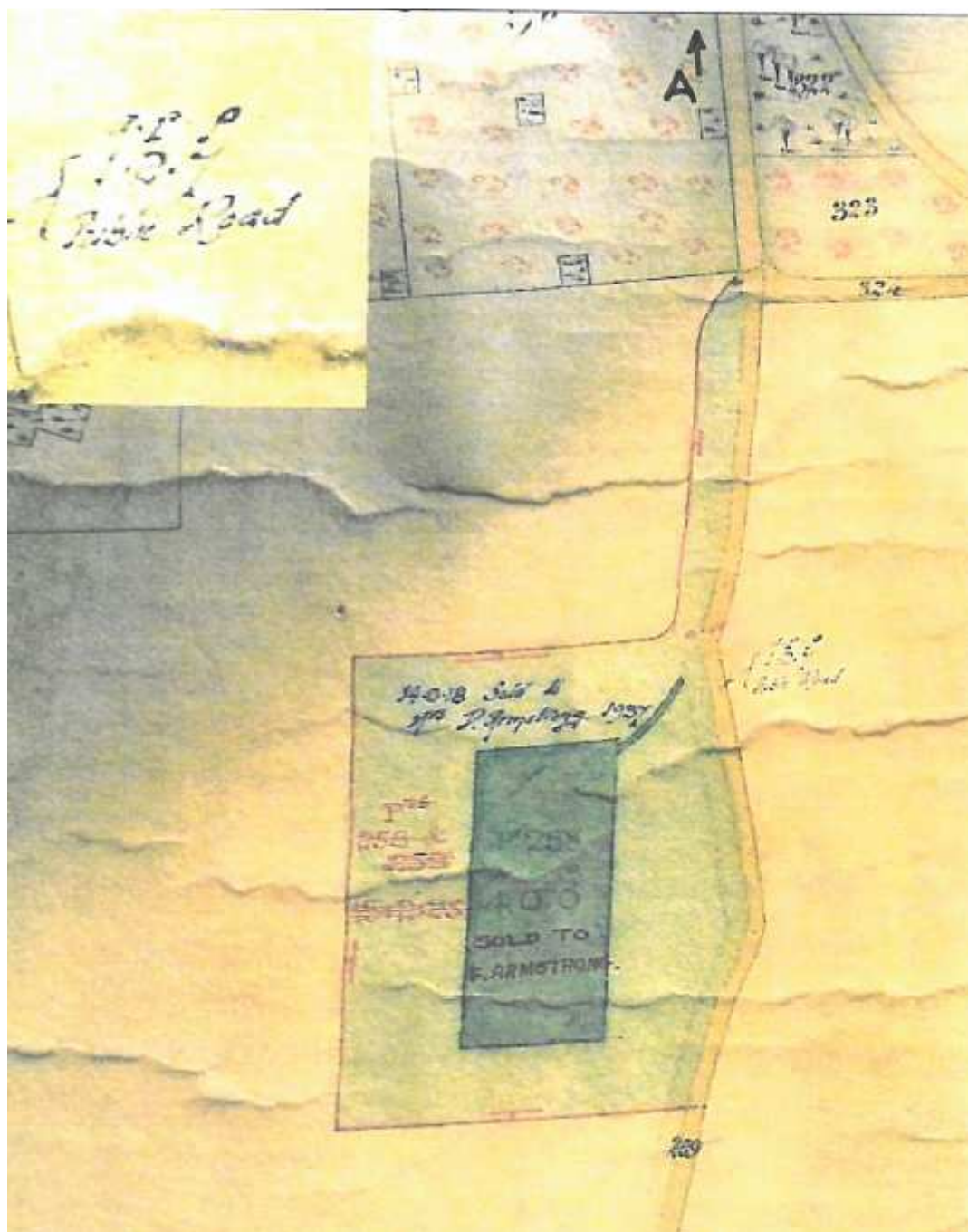
1592
1882
1883

Rufford Highway Surveyors List of Roads (1882-3)



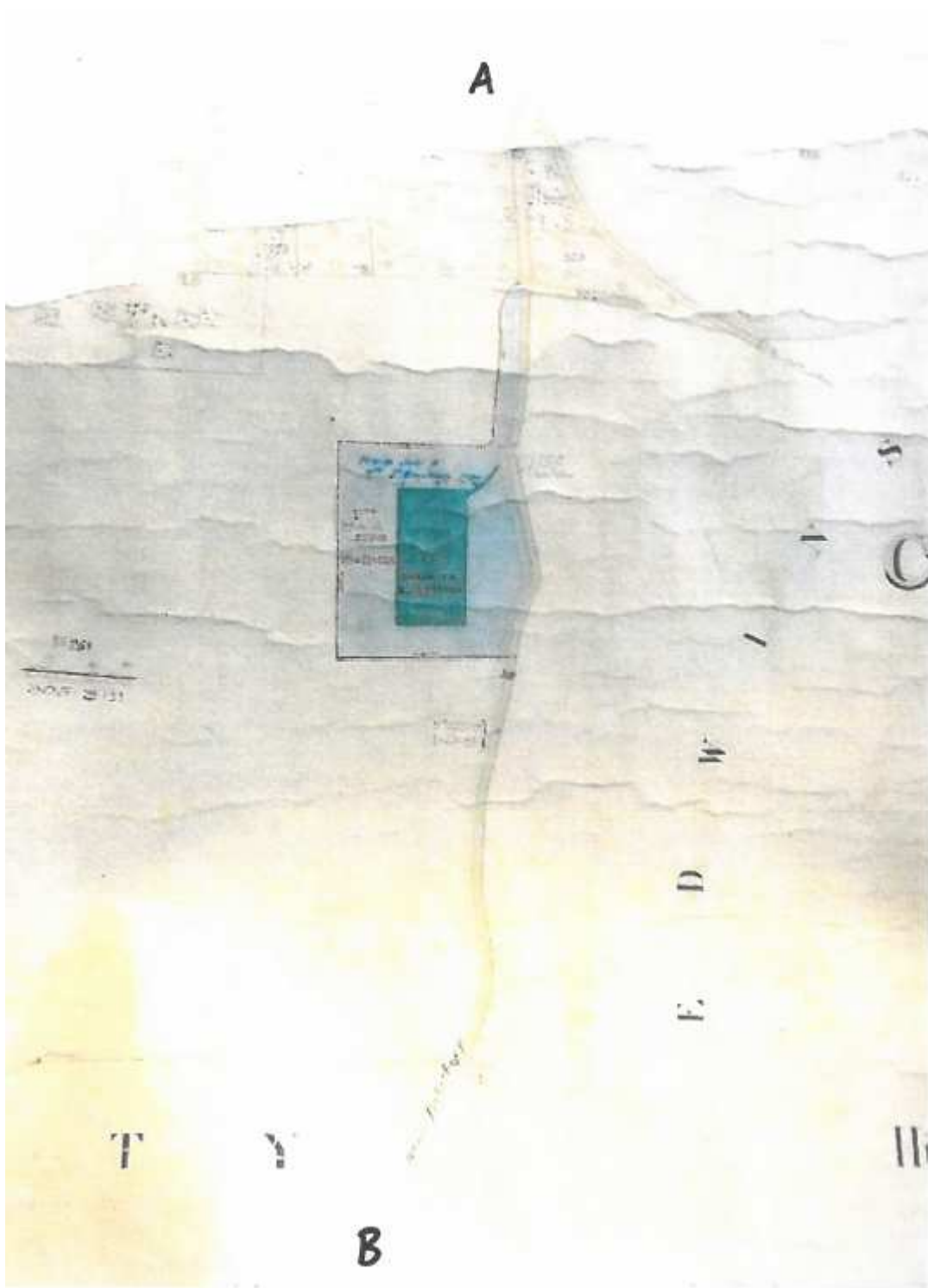
Saville Estate – Plan of Rufford Liberty (1885)

APPENDIX Q1



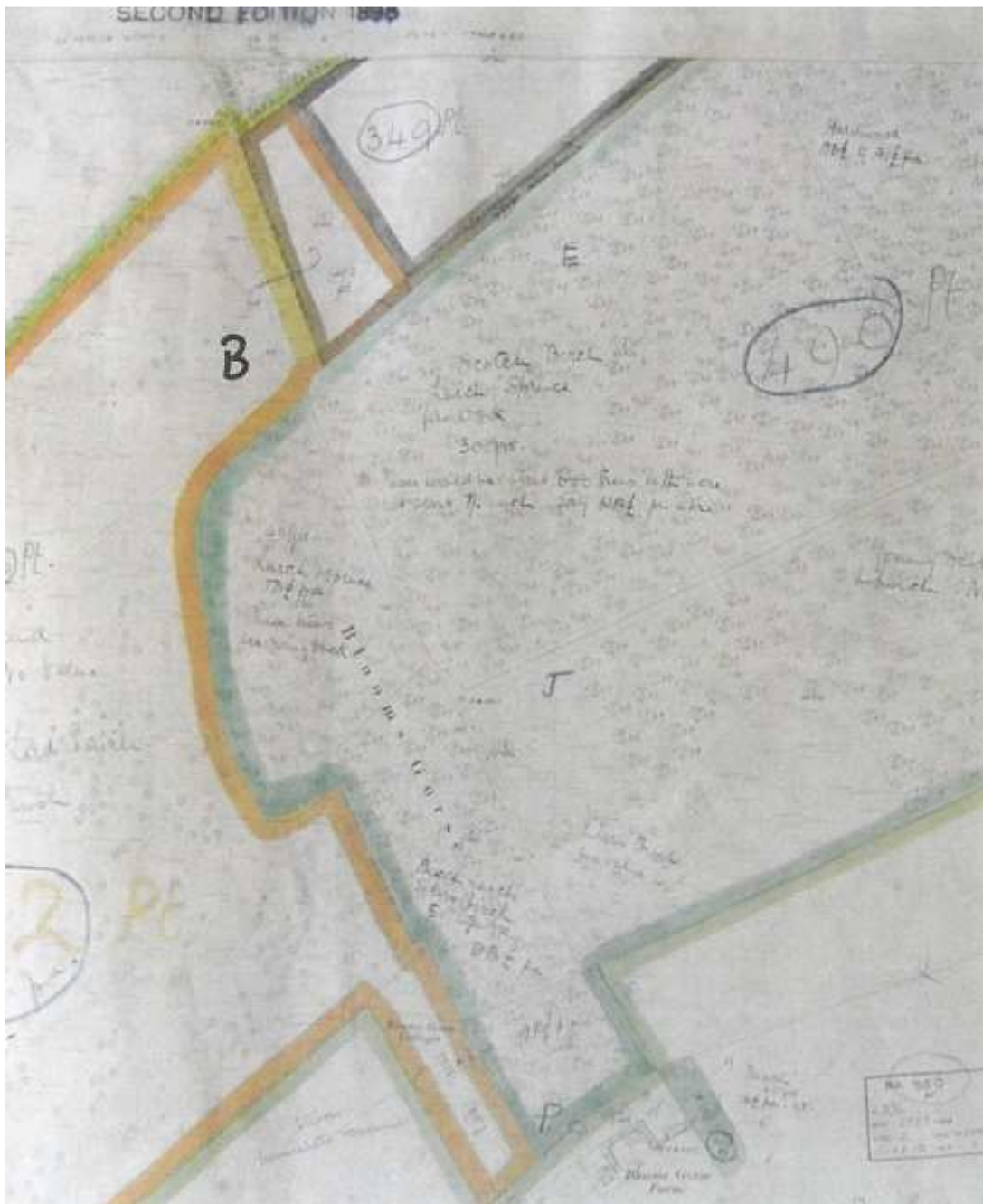
Portland Estate Plan (1885)

APPENDIX Q2



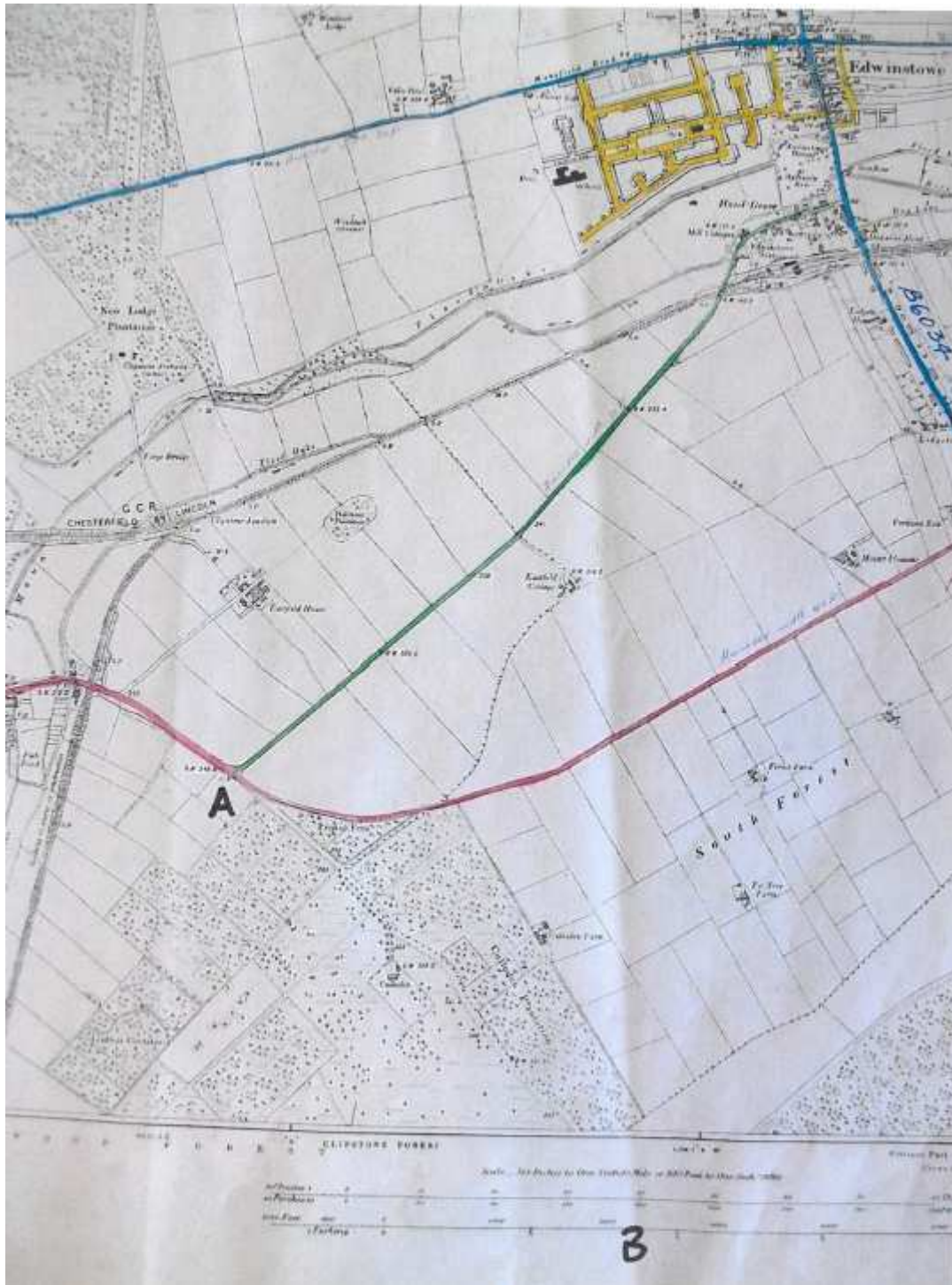
Portland Estate Plan (1885)

APPENDIX R




Finance Act Map (1910)

APPENDIX S



Highway Authority 'Handover Map' (1929)

 Nottinghamshire County Council	Report to Rights of Way Committee
	11 September 2013
	Agenda Item:
REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)	
APPLICATION TO ADD A RESTRICTED BYWAY TO THE DEFINITIVE MAP AND STATEMENT IN WORKSOP	

Purpose of the Report

1. To consider an application made in 2010 by Mr S Hunt of South Parade, Worksop, to add a restricted byway to the Definitive Map and Statement for Worksop. A map of the general area is shown as Appendix A with the claimed route marked between points A-B-C. The effect of the application, if accepted and an Order confirmed, would be to record a restricted byway, leading between Carlton Road and South Parade/Sunny Bank in Worksop.
2. To consider two unrecorded paths shown between points B-E and D-E-F on Appendix A, which also appear to have been used over the land in question. If it is accepted that rights of way subsist on these routes, appropriate steps must be taken to record these on the Definitive Map and Statement.

The Law

3. Section 53(3)(b) of the Wildlife and Countryside Act 1981 (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, on the balance of probabilities, 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' requires that it is reasonable to allege 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 subsist i.e. footpath, bridleway, restricted byway or a byway open to all traffic. This point should be based on an evaluation of the information contained in any documentary and/or user evidence.
 7. Should the test under the HA80 Section 31 fail, then it may be appropriate to consider 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. During the latter part of the twentieth century and in the early 2000s the land crossed by the claimed route A-B-C was in the ownership of Bassetlaw District Council. The land was subsequently purchased in 2008 by Tesco Stores Ltd for the construction of a new store. No information has been found in respect of when Bassetlaw DC first acquired the land. For a number of years prior to 2008 the route A-B-C existed as a pedestrian link between Carlton Road and Sunny Bank/South Parade passing alongside an area of grassed open space. A short section of the route near to point A consisted of a tarmacked roadway which served as access to the land in question and also as vehicular access for Nos. 142 and 144 Carlton Road. A series of photographs of the route/land in question is shown as Appendix B1-12.
9. Subsequent information discovered by officers when investigating the application suggests that an unrecorded right of way might also exist on route B-E which led from the route being claimed to the south east corner of the site through a residential garage site, and also on route D-E-F which is currently in public use and runs alongside a railway. Accordingly, this report will also consider whether or not routes B-E and D-E-F ought to be added to the Definitive Map and Statement as public footpaths.
10. The routes A-B-C and B-E appear to have been laid with stone surfacing and were furnished with pedestrian access barriers (Appendix B2, B5, B7). Two lighting columns were located on path A-B-C (Appendix B4). Records confirm that the lighting columns were maintained by the County Council under an agreement with Bassetlaw District Council.

11. Evidence is conflicting as to whether any signs or notices existed on the paths. Some users state that notices existed which variously read 'No Cycling' or 'No Motor Cycles' or 'No Dog Fouling' (i.e. acknowledging public use of the land), while other users state there were no notices at all. Bassetlaw District Council does not hold any records in respect of prohibitory notices on the land. The undated photograph (Appendix B2) indicates a sign was present at some time near point A, however it has not been possible to determine details about the wording on the sign.
12. One photograph (Appendix B7), confirms the presence of a 'squeeze gap' type barrier between points B and E. Close examination of the aerial photographs taken in 1978 and in 1984 (Appendix D2, D3) suggests that it was some time during this period that the squeeze gap was erected. The squeeze gap would have had the effect of restricting any motorcycles and bicycles attempting to access the land. The photographs supplied by Bassetlaw DC appear to show a sliding gate to the side of the squeeze gap (Appendix B7). It appears that this would have made it possible to close off pedestrian access if required. However, no evidence has been found to show that the gap was closed off at any time.
13. The path running alongside the railway (D-E-F) exists on land which is owned by Tesco Stores Limited and by Network Rail. The path currently has a locked gate placed across it with a pedestrian access barrier to one side (Appendix B9). The gate is controlled by network rail and provides access for maintenance and emergency vehicles. In 2009 (approximately) signs were placed along route D-E-F which read "This is a private footpath owned by Tesco Stores Limited and is not a public right of way. Persons using the footpath do so with the permission of Tesco and entirely at their own risk". Network Rail do not appear to have placed any signs along the section of the route owned by them.

Documentary Evidence

14. A 1:2500 Ordnance Survey map (published in 1960) depicts a roadway or track on the same alignment as the claimed route A-B-C. No gates or barriers are depicted on the route which therefore suggests that it was possible for the public to use it. The map depicts a 'post' at point C which probably prevented vehicles (cars and vans etc.) from using the route as a cut through. The OS map also shows that part of route B-E existed as an access road/track to a 'depot' and also to resident's garages. However, the existence of the depot suggests that route B-E did not physically exist as a through route in 1960. Route D-E-F appears to have existed as an access road or track in 1960. Two gates or barriers are depicted on the route, one at the Carlton Road end (point D) and another approximately half way along the route. No further information can be derived from the OS map to determine whether any public access along D-E-F was taking place in 1960. An extract taken from the 1960 Ordnance Survey Map is shown as Appendix C.
15. Aerial photographs taken in the 1970s, 80s, 90s and 2000s serve to confirm the physical existence of routes A-B-C, B-E throughout this time period. The photographs indicate that although the adjacent land was criss-crossed with trodden paths, the most clearly defined paths across the open space land were the routes A-B-C and B-E. Route D-E-F can be seen as a worn path from 1992 onwards. Extracts taken from the aerial photographs are shown as Appendix D1-7.

16. A street plan of Worksop published by C J Utting (circa 1990s) depicts the presence of routes A-B-C and D-E. The depiction of these routes would suggest that the paths were sufficiently well known or well used to be shown on a commercial street map. An extract of the Utting map is shown as Appendix E.

User Evidence - Route A-B-C

17. 42 evidence forms have been submitted in support of the Application route A-B-C. The majority of claimed use relates to use on foot although 16 people claim to have used the route on cycles. Much of the evidence relates to use on a daily basis or even several times per day. Various reasons are given for using the route including use as a route to school/college, for going to work, going to the town centre and for accessing the nearby railway station.
18. The information contained in the user evidence forms relates 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. According to Tesco Stores Limited, the path was closed to the public in August 2009 when hoardings were erected around the land prior to construction work taking place, and has remained closed since. Therefore the period during which 20 years public use prior to challenge appears to have taken place is between August 1989 and August 2009.
19. No evidence has been discovered which suggests that public use **on foot** was ever challenged during the period 1989-2009. However, as previously mentioned, pedestrian access barriers have been in place for a number of years near point A and at point C (Appendix B2, B5). Although it has not been possible to establish exactly when these barriers were erected, one local resident states that they were already in situ when he moved to the area in 1984. This point appears to be confirmed by close inspection of the aerial photograph of the same date (Appendix D5). The case of *Fairey v Southampton County Council* (1956) has clarified the law in respect of the type of action which constitutes bringing a right of way into question (and demonstrating a lack of intention to dedicate a public right of way). Denning LJ found “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”. Although both pedestrian access barriers allow for the free passage of pedestrians, they would have physically restricted use by bicycles either causing riders to dismount or by blocking access completely. Accordingly, it is considered that the pedestrian access barriers constituted a challenge to use by cyclists in 1984 (at the latest). Information contained in User Evidence Forms relating to cycle use over an earlier twenty year period of 1964 to 1984 only shows use by four cyclists. It is also noted that six users have referred to ‘No Cycling’ signs being present on the land. It is therefore reasonable to conclude that the evidence is not sufficient to meet the test that it is reasonable to allege that a right of way (i.e. a bridleway or restricted byway) for cyclists subsists.
20. In respect of use on **foot**, the evidence demonstrates uninterrupted use by 35 members of the public throughout the relevant 20 year period 1989-2009. 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 clearly demonstrate that use of route

A-B-C was quite open, and there is no evidence that any force was involved in the exercise of the route, or that such use was on a permissive basis. Furthermore, public use appears to have been acknowledged through the provision of a surfaced path, street lighting and pedestrian access barriers. There is no evidence that Bassetlaw District Council (as landowner prior to 2008) took any steps to prevent public use on foot, or to demonstrate that use was by permission only.

User Evidence - Route B-E

21. Nine evidence forms submitted in respect of the application route A-B-C also indicate use of route B-E. The evidence relates to claimed use on foot, much of which appears to be on a daily basis. The path is visible in photographs taken by Bassetlaw District Council (Appendix B3, B6, B7). This path was also closed to the public in August 2009 when hoardings were erected around the land prior to construction on the site. Again, the period during which 20 years public use prior to challenge appears to have taken place is between August 1989 and August 2009.
22. The evidence demonstrates uninterrupted use by 6 members of the public on foot throughout the relevant 20 year period 1989-2009. 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 demonstrate that use of route B-E was quite open and there is no evidence that any force was involved in the exercise of the route or that use was on a permissive basis. Public use of the route appears to have been acknowledged through the provision of a surfaced path and a squeeze stile along the route. There is no evidence that Bassetlaw District Council (as landowner prior to 2008) took any steps to prevent public use on foot, or to demonstrate that use was by permission only.

User Evidence - Route D-E-F

23. Route D-E-F though not forming part of the Application route is currently used by pedestrians for access between the Kilton area of Worksop and Carlton Road. The footpath is not currently recorded as a public right of way and is not recorded as being highway maintainable at the public expense. In early 2013, as part of the on-going development of the Tesco site, much of the path was edged and laid with tarmac. Photographs of the path taken in 2009 are shown as Appendix B8-B12.
24. The path exists on land which is currently owned by Network Rail and by Tesco Stores Ltd. Before 2009 the path consisted of a tarmacked/stone surface with a gate placed across it near to the Carlton Road end (point D). Pedestrian access was possible around one side of the gate via a pedestrian access barrier. It is important to note that any notices erected after the public have already acquired rights are of no legal effect. As such, it is considered that the notices erected in 2009 which read "This is a private footpath owned by Tesco Stores Limited and is not a public right of way...." have no effect as by the time the notices were erected the path had already been in use for a number of years, and it is more likely than not that the public had already acquired a right of way over the path prior to 2009. An Aerial photograph (Appendix D4) suggests that the route already existed as a worn path in 1992. Earlier aerial photographs are indistinct for the purposes of helping to determine public use.

25. No evidence has been submitted by either landowner in respect of whether any other steps were taken prior to the notice in 2009 to demonstrate that there was no intention to dedicate a public right of way.
26. One local resident who states his father used the route for access to his private business states that pedestrian access was 'not allowed' between 1952 and 1965, and that a gate existed across the route which prevented access. However, he also states that when the adjacent malt kilns fell into disuse in around 1968, the public began using the route without any restrictions. Another resident has stated he used the route on foot without any impediment since 1985.

Consultation

27. Consultation has been carried out with all known land owners, occupiers, interested parties, user groups and public utility companies. Any responses are summarised below (with the officer's response in italics).
28. Bassetlaw District Council;
"I would draw your attention to there being an implemented planning permission on this site to erect a retail store. The Council has recently resolved to grant planning permission for a larger retail store on the site subject to the completion of a legal agreement. In both cases the store building would be sited on the indicated line of the byway".
The granting of planning permission does not extinguish public highways. If a public highway is shown to exist steps may subsequently be taken to seek to divert any public rights of way affected by the development. For information a plan indicating routes A-B-C, B-E and D-E-F is shown as Appendix F with the development superimposed.
29. Berwin Leighton Paisner LLP (on behalf of Tesco Stores Ltd);
"Tesco Stores Limited (the "Landowner") does not intend to comment at this stage. The Landowner formally reserves its position and therefore does not accept that the routes recorded on the plan attached to the Modification Order Application Plan (marked as routes A-B-C, B-E and D-E) are public rights of way".
Regrettably, Tesco Stores Limited have chosen not to supply any information at this stage. For the purposes of Committee's decision, it is noted that no evidence has been presented to demonstrate that the claimed route could not subsist.
30. Venus Bathroom and Kitchen Studio Ltd, 146 Carlton Road;

"This would not be a safe environment for non-motorised vehicles or pedestrians and could even be quite dangerous to be classed as a public right of way, because the area between 146 and 144 Carlton Road is used for vehicular access to our car parking spaces and to the garages that belong to 144 and 142 Carlton Road. We also have many daily deliveries brought by large lorries. We therefore object to this proposal on the grounds that we consider it unfit for the purpose".
Unfortunately issues of suitability and of public safety are not something that can be taken into account during consideration of the application, however there is no evidence of dangerous incidents occurring when the route was previously available to the public. If the route were to be recorded as a public right of way, and a situation arose whereby public use

was found to be unsafe, the County Council would then explore any appropriate practical or legal solutions to address this.

31. Resident of South Parade;
“As I was born on South Parade in 1972, I have used this and other paths on an almost daily basis for nearly 39 years. During the short period of time I did not actually reside on the street, I still used it several times weekly to visit relatives”.
32. Two residents of South Parade;
“We have lived on South Parade for 37 years and always used this land on a daily basis to go to work or go to the railway station. Our children, along with their friend, used this path [A-B-C] on a daily basis on their way to the local comprehensive school. A blind lady and her dog always used the footpath across the site to go to town or the railway station, but now she has to use a revised route which is not acceptable to walk miles round onto Shepherds Avenue, Blyth Road and then onto Carlton Road”.
33. Resident of South Parade;
“My family moved to South Parade in 1960 and the footpath between South Parade and Carlton Road was in existence at that time. Until 1970 I used the footpath daily on my walk to school. Since then I have used it regularly when in Worksop, at least once a fortnight when visiting my parents. I used the path until the route was blocked by fencing. In total I have been using the path [A-B-C] for 50 years”.
34. Resident of Sunny Bank;
“I was born in 1958. My mother using the path [A-B-C] took me to town shopping. From the age of eleven, I went to Valley Road School, using the path four times a day. When starting work in 1974 I used the path twice a day and also other times when shopping or going out for pleasure until Tesco closed it without notice in September 2009”.
35. Resident of South Parade;
“I have used the footpath [A-B-C] between Carlton Road, Sunny Bank/South Parade for approximately 25 years, taking my children to a toddler group, using it twice a day for about 19 years going to work”.
36. Resident of South Parade;
“My parents used this footpath [A-B-C] as a route to Gateford Road where my grandparents lived at least twice a week. Whilst at secondary school and later as a resident of South Parade, I used the path in question and also with friends and family going to the Valley Sports Centre and also to North Notts College”.
37. Resident of Carlton Road;
“I have lived at Carlton Road since 1984. During that time there has always been pedestrian access [on A-B-C]. Although it has never been a tarmac footpath it has been a footpath nevertheless. I can also confirm that it has never in any way shape or form been a cycle friendly path or way. On the contrary there has been flap gates/kissing gates in place to prevent cyclists also there were signs at the entrances to the field saying no cyclists. The main footpaths that were in constant daily use were the one on your map [A-B-C] but there was also the one [B-E-F] that went from Carlton Road to the old substation and going to the far south-eastern corner of the site near to the railway viaduct. These were the only two main paths across the site. We have no objection whatsoever to a footpath but we

would strongly object to a cycle path/way as there has never been one and we feel that this would attract the wrong element if not properly lit or security patrolled”.

38. Resident of Worksop

“I took this route [A-B-C] on my way to and from the scout meeting on East Gate, my home was then on Gateford Rise”.

Reason/s for Recommendation/s

39. The 1960 Ordnance Survey map and the aerial photographs between 1974 and 2007 when taken together confirm the physical existence of the routes, A-B-C (in 1960), B-E (in 1974) and D-E (in 1992).
40. It is noted that the Application for route A-B-C was made in respect of recording a **restricted byway** on the basis of use by pedestrians **and** cyclists. Although the pedestrian barriers and squeeze gap on routes A-B-C and B-E, did not prevent or restrict pedestrian access, they did sufficiently demonstrate that the landowner had no intention of dedicating a right of way which could be used by cyclists. Accordingly, the category of route which can be presumed to have been dedicated is that of a public footpath only.
41. The user evidence and photographic evidence submitted in respect of routes A-B-C and B-E suggest that these routes were in regular public use over a twenty year period between 1989 and 2009. Such use appears to have been uninterrupted and ‘as of right’ (without force, not in secret and not by permission).
42. Although little evidence has been submitted in respect of route D-E-F (as the evidence was primarily focused on the application route A-B-C), the route ‘on the ground’ has every appearance of a being footpath in regular public use. Given this use, and that it appears to have been used over a number of years, possibly dating as far back as 1968, and in the absence of any evidence to the contrary, it would be appropriate to add this route (by making a Modification Order) to the Definitive Map and Statement as a public footpath 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” (Para. 3).
43. 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 relevant paths have not been dedicated as highways.

Statutory and Policy Implications

44. 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

- 1) It is RECOMMENDED that Committee rejects the application for a restricted byway but approves 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 above, it is considered by the Authority that a right of way on foot subsists.
- 2) It is RECOMMENDED that Committee approves 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 above, it is considered by the Authority that a right of way on foot subsists.
- 3) It is RECOMMENDED that Committee approves 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 above, it is considered by the Authority that a right of way on foot subsists.

Eddie Brennan
Definitive Map Officer

For any enquiries about this report please contact:

Eddie Brennan (0115 9774709)
Definitive Map Officer

Constitutional Comments (SJE – 21/08/2013)

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.

Financial Comments (SEM 30/08/13)

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

Background Papers

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

Modification Order Application case file

Electoral Division(s) and Member(s) Affected

Worksop East

Councillor Glynn Gilfoyle

ROW 97



Nottinghamshire
County Council

Scale 1:2000

Produced by: e b40

Date: 23/07/2013

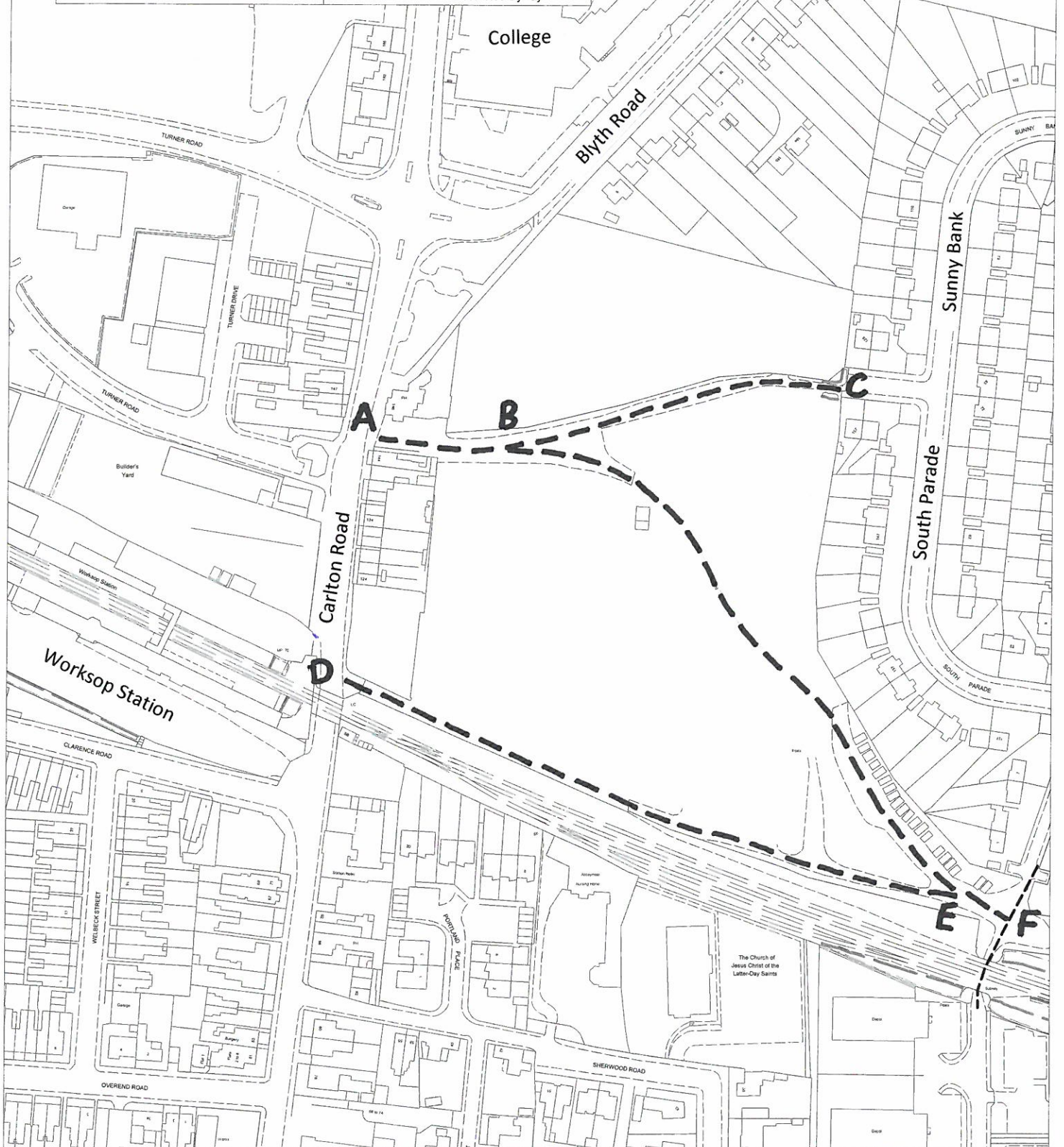


NOT DEFINITIVE

Queries about path alignment should be made to the Definitive Map Team on 0115 9773708.
Public Rights of Way:

- Footpath
- + + + + + Bridleway
- ^ ^ ^ ^ ^ Byway Open to All Traffic
- RB ^ ^ ^ ^ ^ Restricted Byway

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APPENDIX B1



Photograph taken at point 'A' showing the tarmac section of the claimed route at the Carlton Road end.

The property to the left is Venus Bathrooms and Kitchen Studio Ltd, the property to the right is No.144 Carlton Road.

The gate and pedestrian access barrier in the distance is shown in greater detail in Appendix B2.



This undated photograph was taken by Bassetlaw District Council along route D-E-F approximately half way along the route looking towards Carlton Road.



This undated photograph was taken by Bassetlaw District Council at point 'E' looking towards Carlton Road. The photograph shows the point at where the routes D-E-F and B-E-F split.



Photograph taken in 2009 at the cul-de-sac end of Queensway. Point 'F' on route D-E-F is the path seen leading away to the right.



This undated photograph was taken by Bassetlaw District Council on route A-B-C.

The photograph shows a gate near point 'A' with a pedestrian access barrier to one side. The barrier is thought to have been in place since 1984 at the latest.



This undated photograph was taken by Bassetlaw District Council on route A-B-C looking East towards South Parade/Sunny Bank.

The photograph was taken at point 'B' and shows the point where the two paths A-B-C and B-E-F split.



This undated photograph was taken by Bassetlaw District Council on route A-B-C looking East and approaching point C .

The photograph demonstrates that the path was laid with a stone surface and was illuminated with street lighting.



This undated photograph was taken by Bassetlaw District Council on route A-B-C looking towards the pedestrian access barriers at point 'C'.



This undated photograph was taken by Bassetlaw District Council on route B-E-F midway along the route looking in a south-easterly direction.



This undated photograph was taken by Bassetlaw District Council on route B-E-F looking in a north-westerly direction.

The photograph was taken from a point near to the rear of properties on South Parade and was formerly where a number of residential garages were located.

The 'squeeze gap' can be seen with a sliding gate to one side. The path appears to be laid with stone.



Photograph taken in 2009 at point 'D' looking along route D-E-F.

The hoardings to the left hand side were erected as part of the Tesco development, while the fencing to the right hand side protects the adjacent railway line from trespass.

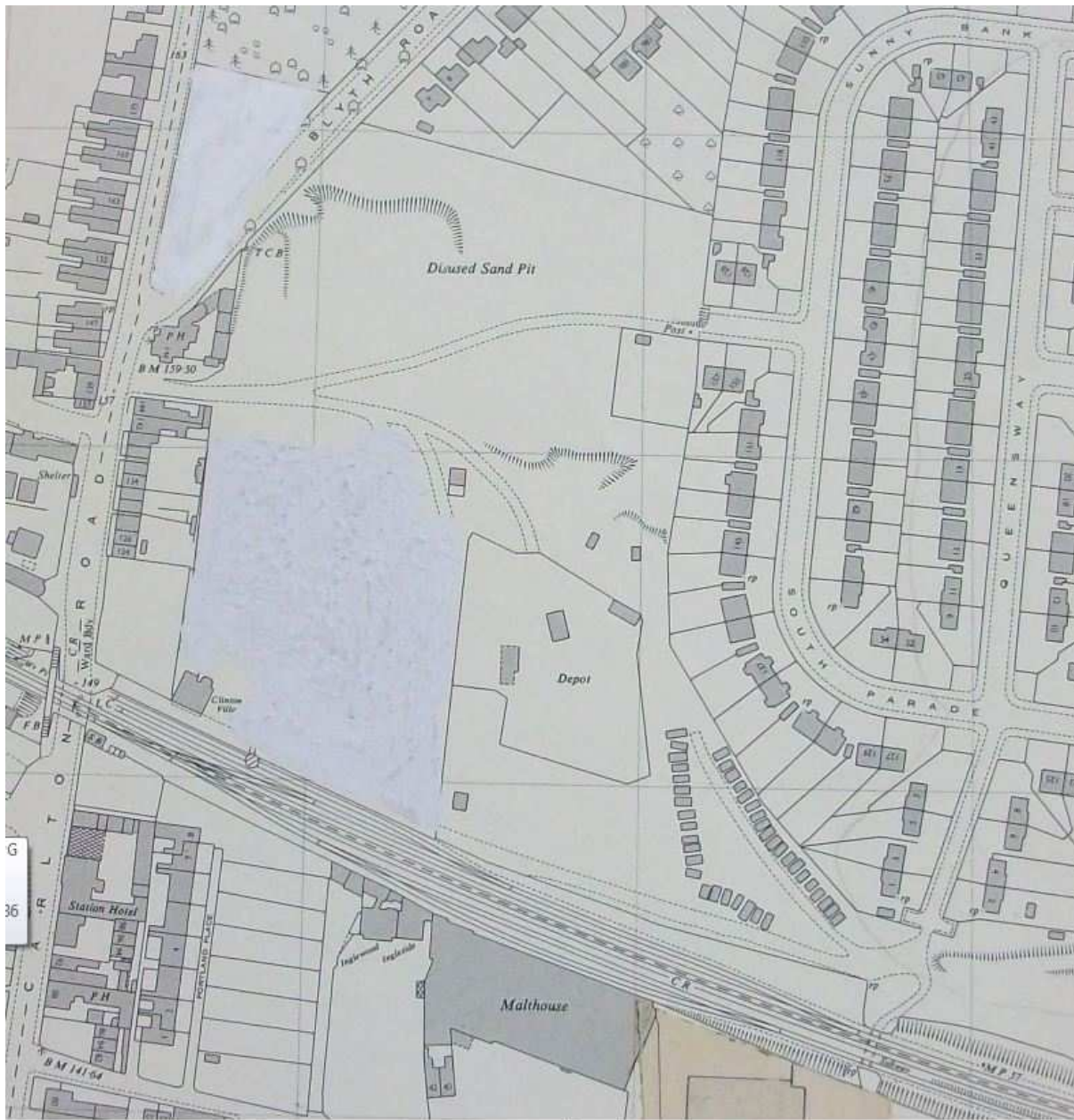
A gate can be seen in the distance which is shown in greater detail in Appendix B9.



Photograph taken in 2009 along route D-E-F looking towards Carlton Road.

The pedestrian access barrier to the left hand side of the gate is just visible.

APPENDIX C

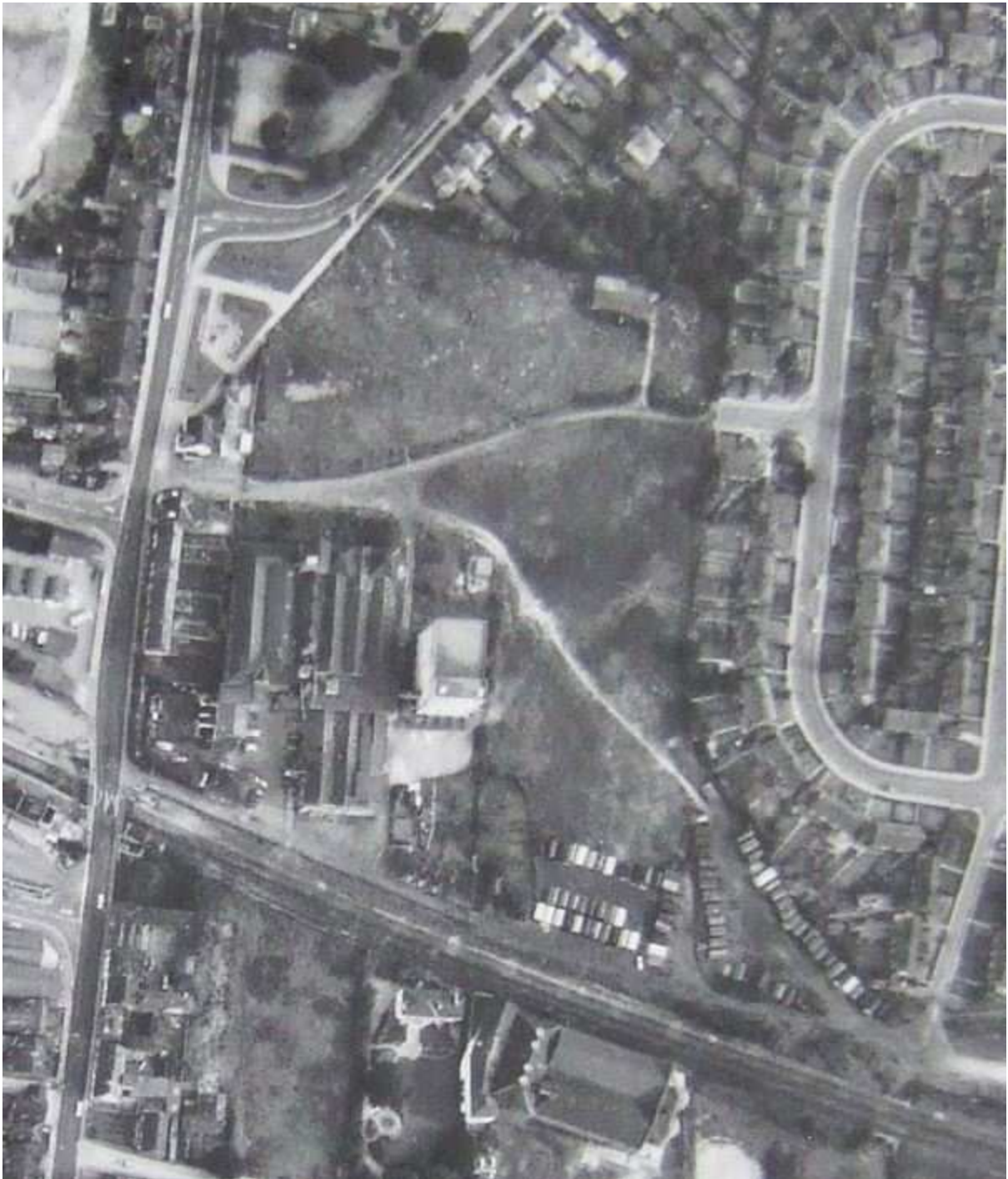


1:2500 Ordnance Survey Map (published 1960).

Route 'A-B-C' exists as a roadway or track. Note the 'post' at the eastern end.

Route 'B-E' has not yet been fully formed due to the presence of the depot.

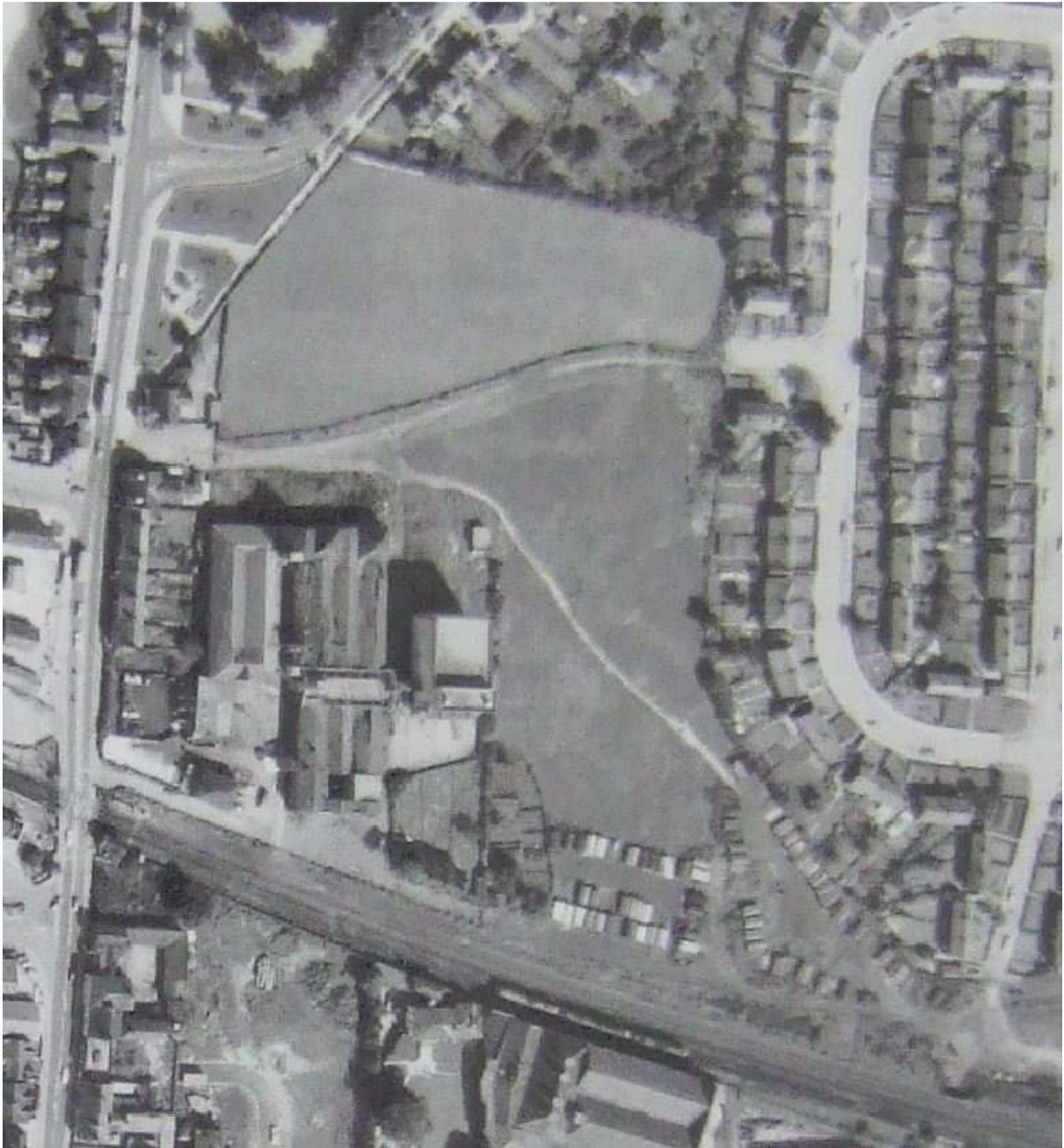
Route D-E-F appears to exist but appears to be gated at two points.



1974 Aerial photograph



1978 Aerial photograph



1984 Aerial photograph



1992 Aerial photograph

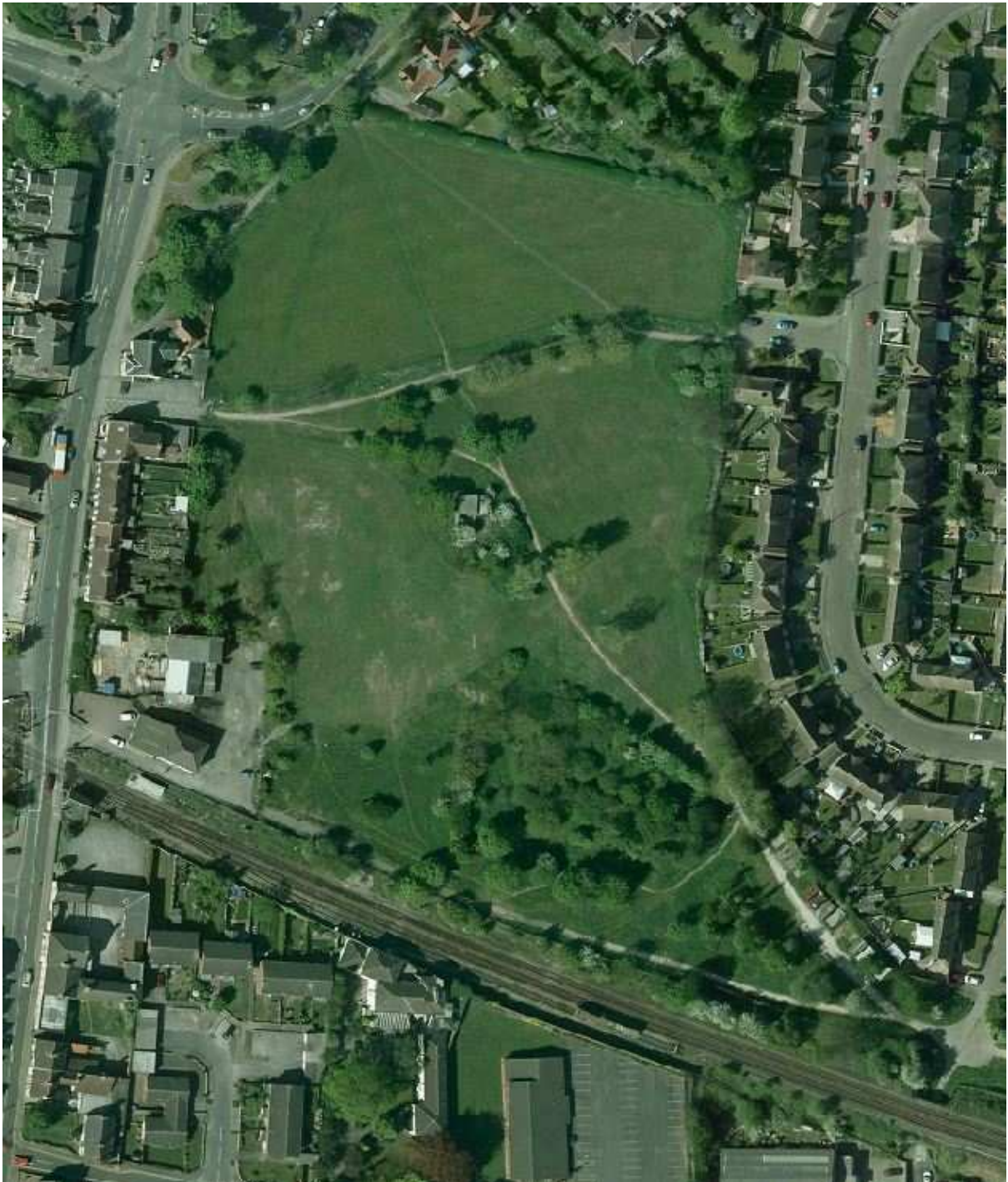
APPENDIX D5



2000 Aerial photograph

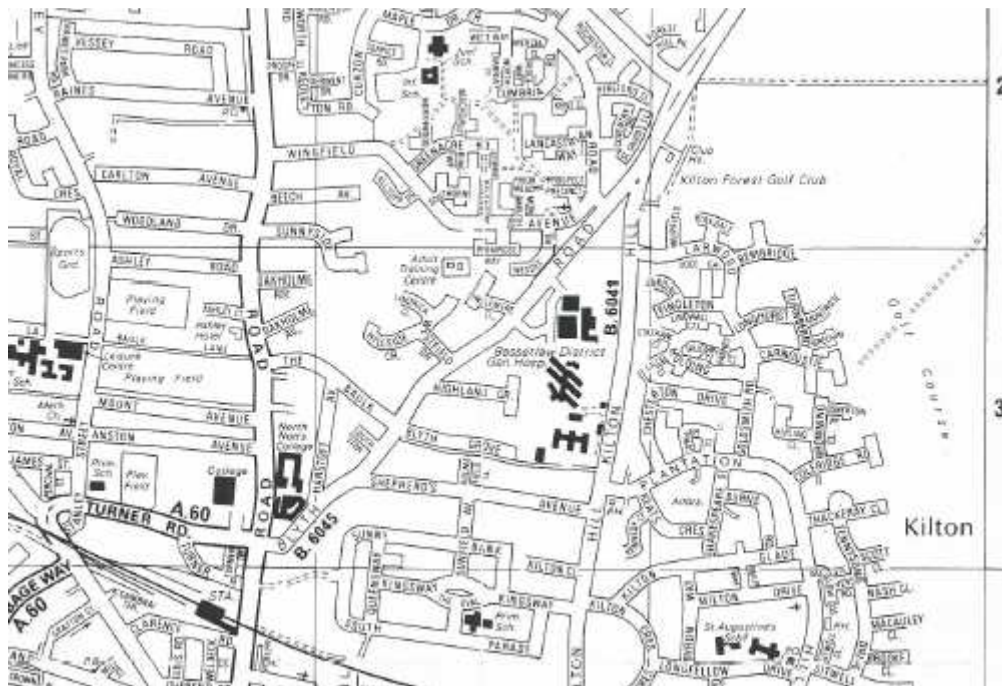


2004 Aerial photograph



2007 aerial photograph

APPENDIX E



Extract taken from the 'Street Map of Workop' by Utting (Circa 1990's)



Scale 1:2000

Produced by: e b40

Date: 23/07/2013



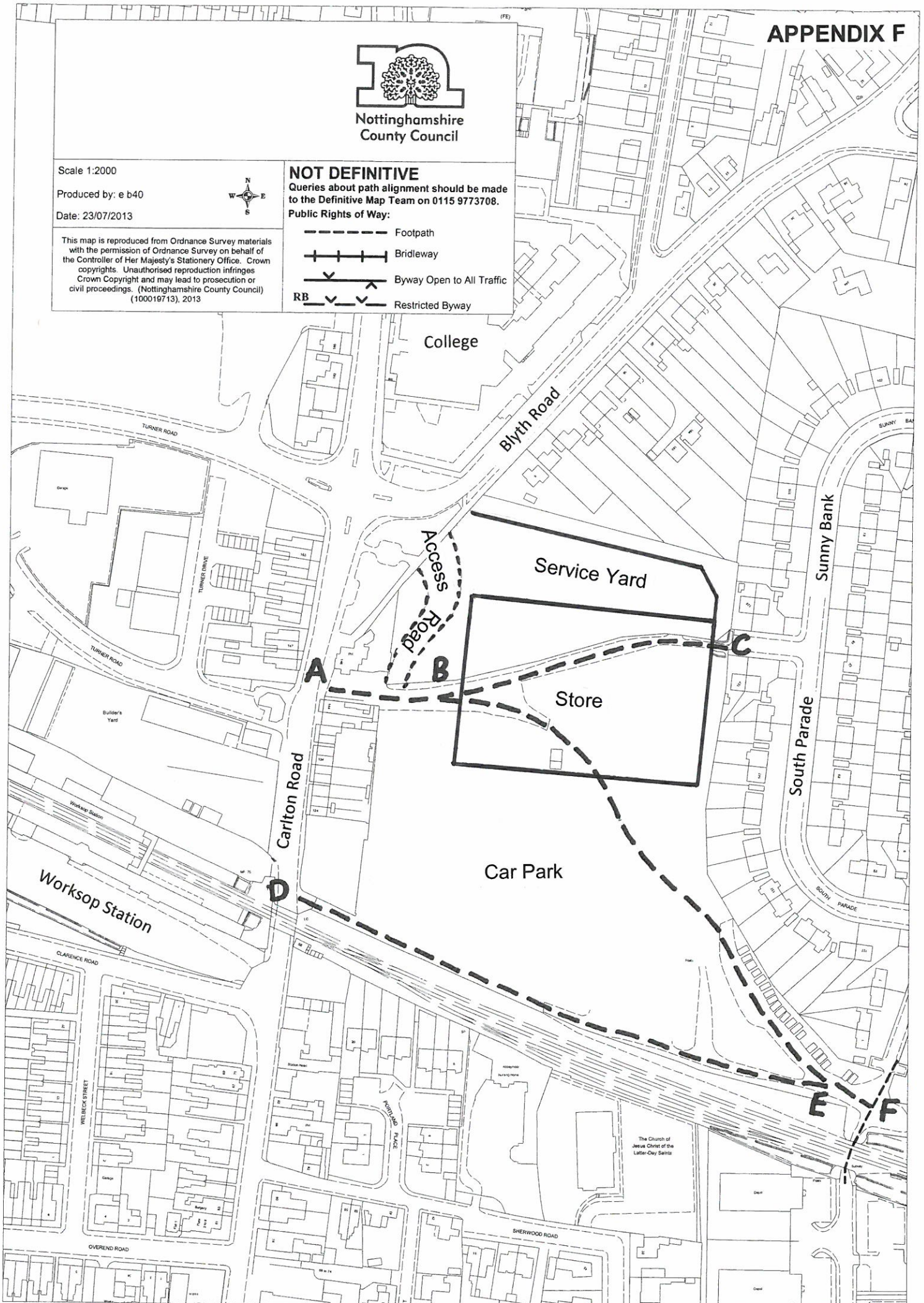
NOT DEFINITIVE


Queries about path alignment should be made to the Definitive Map Team on 0115 9773708.

Public Rights of Way:

- Footpath
- Bridleway
- Byway Open to All Traffic
- Restricted Byway

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 Nottinghamshire County Council	Report to Rights of Way Committee
	11 September 2013
	Agenda Item:
REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)	
TO CONSIDER OPTIONS IN RESPECT OF PUBLIC FOOTPATHS CROSSING LAND TO THE EAST OF CARLTON ROAD, WORKSOP (TESCO SITE)	

Purpose of the Report

1. This report is intended to explain the background in respect of public footpath issues on the site of the new Tesco Development, Carlton Road, Worksop. The Report also seeks direction from the Committee as to the stance of the Authority in anticipation of revised footpath diversion/extinguishment proposals being submitted by Bassetlaw District Council in its role as local planning authority.

Information and advice

2. Following the granting of Planning Permission for a new Tesco Store (in September 2011) Bassetlaw District Council made a public footpath stopping-up/diversion Order under Section 257 of the Town and Country Planning Act 1990 (TCPA90). A copy of the Order is shown as Appendix A.
3. In order to divert or extinguish a public footpath under these provisions, the local planning authority must be satisfied that it is **necessary** to do so in order to enable development to be carried out. The order may also provide for the creation of alternate highways and for the improvement of existing highways as replacements.
4. The Bassetlaw footpath diversion/extinguishment Order had the intention of ;
 - extinguishing unregistered rights of way on paths across the site (Routes A-E and B-C).
 - making a minor diversion to the legal line of an existing path which currently exists on the southern boundary of the site alongside the railway (Route D'-E).
 - creating a 'permissive pedestrian route' through the site (Route G-C).
5. The Order received a number of objections (including one by the County Council) and was subsequently referred to the Secretary of State for Environment for confirmation. However, the Order was rejected by the Planning Inspectorate (acting on behalf of the Secretary of State) on grounds that the Order contained a "fundamental error", or as the Planning Inspectorate has put it; "it has been noted that the alternative route [G-C] shall be a permissive pedestrian route. A right of way must be definitive rather than permissive. This is

to ensure that the right of the public is protected". A copy of the Planning Inspectorate's letter to Bassetlaw District Council is shown as Appendix B.

6. In light of the approved development, it is clearly necessary to extinguish the routes shown on the Order plan as A-E and B-C because they are directly in the line of the proposed new store. However, it can also be considered as necessary that an alternative route is created to replace public rights of way which are being lost.
7. It is anticipated that Bassetlaw District Council will shortly consult on a revised Footpath Order setting out final plans for rights of way over the site.

The Petition

8. In respect of the land in question, a petition containing 259 signatures was presented to the Chairman of the County Council by Councillor Glynn Gilfoyle at the Council meeting on 25 April 2013. The petition was entitled; A petition "Requesting Tesco to reopen the footpath to the north of their development from South Parade to Blyth Road and the Worksop Technical College, as previously agreed with the Nottinghamshire County Council and contractors acting for Tesco. This should ensure a safe access between these two points, both for the general public and the children who have been using this path to attend the Valley Comprehensive School and the people using the technical college. We the under signed, are concerned people who live in this area and who have been inconvenienced by the closing of this footpath".
9. The footpath requested to be re-opened was constructed by Tesco in 2009 for use by pedestrians following the closure (by Tesco) of several unrecorded paths on the site. The path consisted of a narrow 'corridor' around the northern boundary of the development, with a hedge/fence to either side and laid with stone chippings. Notices were put in place which stated that use of the path was by permission of Tesco Stores only. In 2012, for reasons which have not been clarified, the permissive path was permanently closed to the public when the hoardings were extended across either end of the path.
10. Although the wording of the petition is open to some interpretation (i.e. as to whether a permissive footpath or a public footpath petition is being requested) it does demonstrate a high degree of public support for a footpath in this location.
11. The petition was sent to Tesco Stores Limited and copied to Bassetlaw District Council and Nottinghamshire County Council. It is understood that Tesco and Bassetlaw District Council have both confirmed that they do not intend to take any action over the petition.
12. Although the petition is directed towards Tesco Stores Ltd (as landowner) it also refers to an 'agreement' between Tesco and Nottinghamshire County Council. One of the petition organisers subsequently confirmed that this particular point was based on a presumption. It can be confirmed that the path was not constructed under any agreement with the County Council. However, regardless of issues in respect of the wording of the petition, it is clearly relevant to the general issue of public access on the land in question.
13. It should be noted that the County Council (as Highway Authority) does not have any powers to compel a landowner to reinstate a path which he created solely for permissive use. Furthermore, in 2012 Tesco pro-actively explored the possibility of constructing a shared foot/cycle path around the northern boundary by submitting a supplementary

planning application to Bassetlaw District Council. This proposal was rejected on grounds of security, safety and crime. A copy of Tesco's Design and Access statement submitted as part of the Application and a copy of the relevant decision notice is shown as Appendix C1-2 respectively.

14. The County Council has compulsory powers for the creation of footpaths (under section 26 of the Highways Act 1980), having regard to issues such as convenience for the public, the effect on landowners and possible landowner compensation, nevertheless, given the circumstances here, it may be more expedient to explore a resolution through consultation with Bassetlaw District Council via procedures set out in Section 257 of TCPA90 i.e. a revised footpath diversion/extinguishment Order.

Consultation

15. In order to fully gauge local opinion in respect of the petition, the Countryside Access Team contacted the five households whose gardens lie adjacent to the northern boundary of the site. Three responses were received and are summarised below;
 - A footpath is needed but there are 'grave concerns' about siting a path in this location. When a permissive path had previously been in place, used drug needles had been thrown into the garden.
 - When a permissive path had been in place the boundary fence had been damaged, rubbish had been thrown into the garden and intruders had entered the garden and out buildings. The granted planning permission does not include a path in this location. Adequate access is provided via the footpath which runs alongside the railway line. A footpath in this location would prove dangerous to people walking alone at night. The proposal only reduces the walking distance by a few 100 yards.
 - When the permissive path was in place damage was caused to the property through stones and rubble being thrown into the garden. Youths had entered onto the property via the path. In November 2011 an arson attack caused £20,000 worth of damage and injured a pet animal. The householders felt continually vulnerable due to persistent damage.
16. One of the petition organisers wrote to the County Council in further support of a footpath around the northern boundary stating;
 - The reason given for the closure, according to Bassetlaw District Council was on health and safety grounds but this is one of the main reasons for conducting the petition. Though other routes have been mentioned the only safe way is on this disputed footpath. It is and will be in the future, be away from any kinds of vehicles. The route will provide a good safe environment for the men, women, children and the elderly who used this footpath until its closure.
17. The Nottinghamshire Police (Safer Neighbourhoods Team) were also invited to comment, especially in respect of the alleged problems caused when the permissive path was in place around the northern boundary of the site, however, no response has been received to date.

Reason/s for Recommendation/s

18. In respect of public access over the Tesco site, Committee is requested to consider three options, one of which will form the County Council's response in the likely event of further consultation by Bassetlaw District Council.
19. Option 1
Seek the extinguishment of all public rights of way over the site, save for retaining one public footpath alongside the railway (as per D-D'-E-F on the Footpath Order). Although, this option would result in a loss of two public footpaths, it could be argued that this is necessary given the change in the nature of the site from open space to superstore. For instance, siting a public right of way through the confines of a working store/car park could create difficulties for pedestrians in terms of ease of use and convenience and may create operational problems for the store in terms of controlling public access on their land.
20. Option 2
To seek the dedication of a definitive public footpath along route G-C. This option is supported by Tesco Stores Limited. The path would subsist within the confines of the approved development on the pedestrian footways and crossings designed for access to the store itself. Although this solution would not satisfy the request of those who signed the petition, it is possible that requests for a path around the northern boundary of the site might recede once the store is operational and the public have access to various pedestrian footways over the development.
21. Option 3
Creating a footpath around the northern boundary of the site (A-C) has a high degree of public support as evidenced by local residents who signed the petition. The advantages of setting a path around the northern boundary are that it could be used by the general public without having to pass through an operational car park. A path in this location would also complement the path D-D'-F which runs along the southern boundary of the site. However, this option is strongly opposed by some residents whose properties would lie adjacent to it, and there is potential that serious crime and anti-social behaviour activities previously experienced by householders might re-occur. Furthermore, as a similar solution was not previously favoured by Bassetlaw District Council, it might be necessary for the County Council to pursue this option through compulsory powers provided under section 26 of the Highways Act 1980.
22. It should be noted that any future footpath stopping-up/diversion Order made by Bassetlaw District Council could be subject to representations from other parties including members of the public. Accordingly, in the event that the District Council does not extinguish or divert the public rights of way under TCPA90 powers, the resources of the County Council as Highway Authority may be called upon to resolve issues in respect of maintenance and enforcement or further legal orders.

Statutory and Policy Implications

23. 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

It is **recommended** that Committee resolve either:

- a) to authorise officers to support the extinguishment of all public rights of way on the site of the Tesco development, except for the addition of a definitive footpath along the southern boundary of the site alongside the railway (Appendix A route D-D'-E-F)

or

- b) to authorise officers to seek the creation of a definitive public footpath along route G-C (as shown by the dashed line on Appendix A).

or

- c) to authorise officers to seek the creation of a definitive public footpath around the northern boundary of the Tesco development between points A-C (Appendix A).

Eddie Brennan
Definitive Map Officer

For any enquiries about this report please contact:

Eddie Brennan (0115 9774709)
Definitive Map Officer

Constitutional Comments (SLB 29/08/2013)

Rights of Way Committee is the appropriate body to consider the content of the report; it is responsible for the Council's functions in relation to public rights of way including approving consultation responses.

Financial Comments (SEM 30/08/13)

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

Background Papers

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

Modification Order Application case file

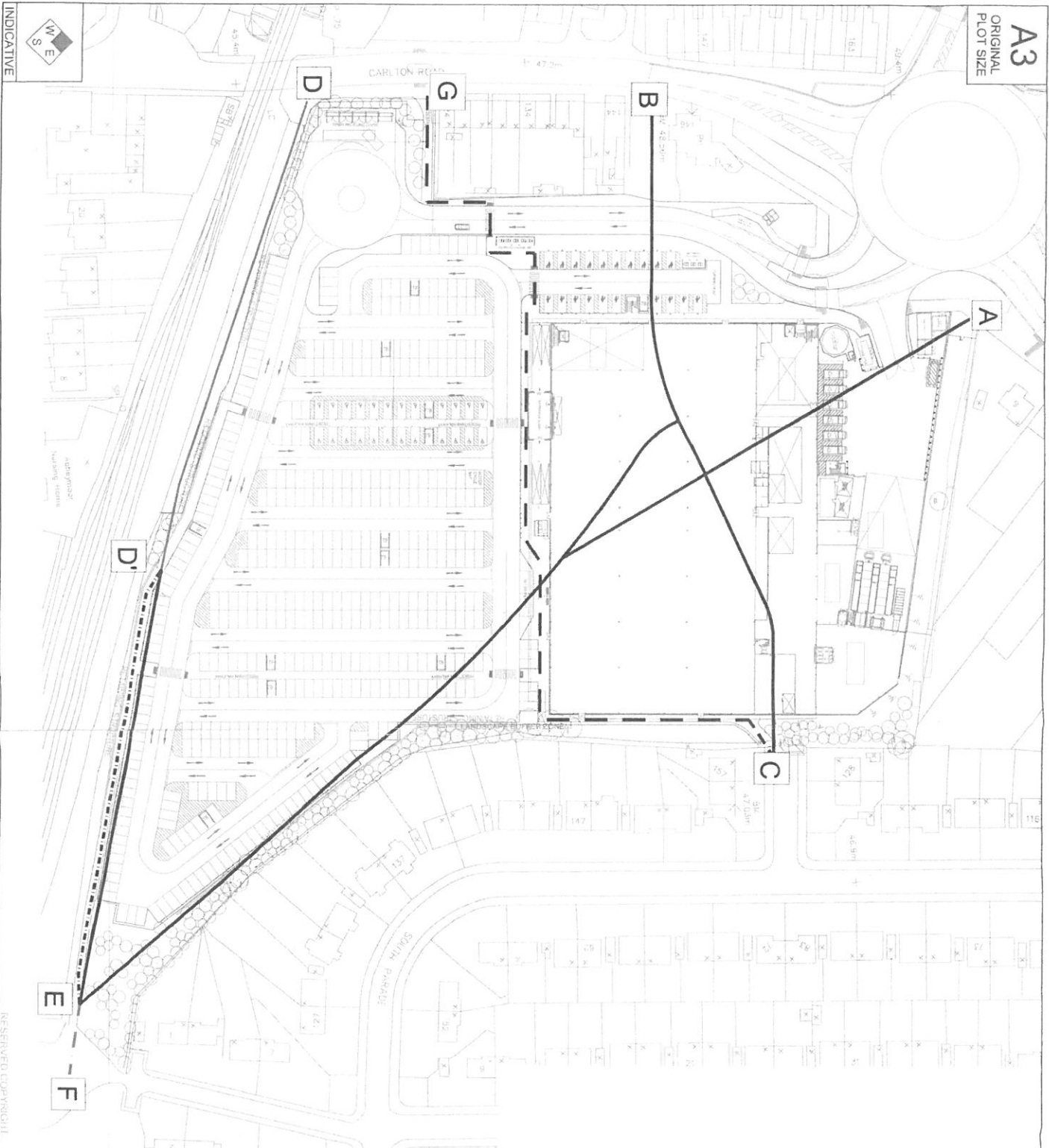
Electoral Division(s) and Member(s) Affected

Worksop East

Councillor Glynn Gilfoyle

ROW 98

A3
ORIGINAL
PLOT SIZE



Reproduced from Ordnance Survey VectorMap Data with the permission of The Controller of Her Majesty's Stationery Office. Crown Copyright. Licence No. AL100045421

KEY:

- Existing footpath to be stopped up / diverted
- - - Proposed route of diverted footpath
- · · Proposed permissive pedestrian route through the site
- - - Existing footpath route to remain
- - - Adjacent footpath route outside applicant control

Ref	Date	Drawn	Checked	Drawn	Checked	Drawn	Checked
C	18/04/12	Point G added	LC	RF	RF		
B	19/12/11	Minor amendments	LC	RF	RF		
A	12/12/11	Minor amendments	LC	RF	RF		

Bristol
Centridge
Carlton
Weylyn Garden City

tpa
Transport Planning Associates

Mercury House
Broadwater Road
Weylyn Garden City
AL7 3BC
01707 385 200
www.tpa-uk.com

CLIENT:

Santon

PROJECT:
**CARLTON ROAD
WORKSOP**

TITLE:
**Section 257 Public
Stopping-Up / Diversion
Plan**

STATUS:
Submitted

LEGAL AGREEMENT

SCALE:	DATE:	DRAWN:	CHECKED:	APPROVED:
1:1000	24/11/11	LC	RF	RF
JOB NO:	0907-13	DRAWING NO:	013	REVISION: C

RESERVED COPYRIGHT

PUBLIC PATH DIVERSION/STOPPING UP ORDER
TOWN & COUNTRY PLANNING ACT 1990 SECTION 257

BASSETLAW DISTRICT COUNCIL
UNREGISTERED PUBLIC FOOTPATHS/BRIDLEWAYS/RESTRICTED
BYWAYS CROSSING THE SITE KNOWN AS LAND TO THE EAST OF
CARLTON ROAD, WORKSOP, NOTTINGHAMSHIRE
PUBLIC PATH DIVERSION/STOPPING UP ORDER 2012

This Order is made by Bassetlaw District Council under Section 257 of the Town and Country Planning Act 1990, because it is satisfied that it is necessary to divert and/or extinguish the footpaths/bridleways/restricted byways to which this Order relates in order to enable a development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 namely Retail Superstore and pharmacy under planning application references 02/09/00277 and 02/12/0038/V.

BY THIS ORDER -

- 1 The footpaths/bridleways/restricted byways over the land shown by a bold black line on the attached map and as described in Part 1 of the Schedule to this Order shall be stopped up as provided below.
- 2 There shall be created, to the reasonable satisfaction of the Council, an alternative footpath for use as a partial replacement for the footpath D' to E as provided in Part 2 of the Schedule and shown by large broken black lines on the attached map.
- 3 An agreement shall be entered into by all of the owners of the land between points G and C on the Order plan to secure the future availability to the public of a pedestrian route between these two points.
- 4 The stopping up of the said footpaths/bridleways/restricted byways shall have effect on the date on which the Council certify that the terms of paragraphs 1,2 and 3 above have been complied with.
- 5 This Order may be cited as the Bassetlaw District Council Public Footpath Number 1 (Part) –Land to the East of Carlton Road, Worksop, Nottinghamshire Public Path Diversion/Stopping up Order 2012.

THE SCHEDULE

PART 1

DESCRIPTION OF THE SITE OF THE EXISTING PATH

Those parts of the existing unregistered public footpaths/bridleways/restricted byways running across the site as follows:

1. Point A (grid reference SK 58697 79902 (X:458697, Y:379902)) from the point adjacent to the southern side of property number 6 Blyth Road to the point 25 metres south west of the southern end of Queensway (grid reference SK58859 79656 (X: 458859, Y: 379656)) point E
2. Point B from the point between properties 144 & 146 Carlton Road (grid reference SK588645 79819 (X: 458645, Y: 379819)) to point C to the point between the western edge of properties 157 South Parade and 128 Sunny Bank (Grid reference 58816 79839 (X: 458816, Y: 379839))
3. Point B from the point between properties 144 and 146 Carlton Road (grid reference SK58645 79819 (X: 458645, Y: 379819)) and to point E to the point 25 metres south west of the southern end of Queensway (grid reference SK58859 79656 (X: 458859, Y: 379656))
4. Point E from the point 25 metres south west of the southern end of Queensway (grid reference SK58859 79656 (x:458859, y: 379656)) to point D' to the point 122 metres west of Point E (grid reference SK 58739 79689 (X: 458739, Y: 379689)) as shown on the Order Map.

PART 2

DESCRIPTION OF THE SITE OF THE ALTERNATIVE PATH

The new footpath shall commence from

Point C (grid reference SK 588645 79819 (X: 458645, Y:379819)) to Point G (grid reference SK58636 (X:458636, Y:379759)) as shown on the Order Map. This alternative route shall be a permissive pedestrian route through the site.

Point D' (grid reference SK 58739 79689 (X: 458739, Y: 379689) to point E (grid reference SK58859 79656 (X:458859, Y: 379656)) as shown on the Order Map. This alternative route shall be surfaced to an adoptable standard and 2 metres in width throughout its length.

In witness whereof:

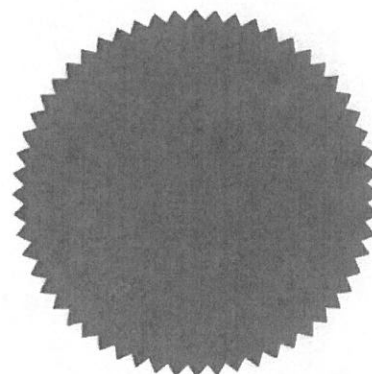
EXECUTED as a DEED by affixing
the COMMON SEAL of BASSETLAW
DISTRICT COUNCIL

In the presence of



Acting Solicitor to the Council

Dated: 11th October 2012



15466



3/25 Hawk Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0303 444 5463
Customer Services: 0303 444 5000
Fax No: 0117 372 6153
e-mail: yvonne.oddy@pins.gsi.gov.uk

Ms Katherine Hall
Bassetlaw District Council
Queens Buildings
Worksop
Nottinghamshire
S80 2AH

Your Ref: KAH/JA/01756

Our Ref: FPS/A3010/5/1

Date: 1 August 2013

Dear Ms Hall

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257

Bassetlaw District Council

Unregistered Public Footpaths/Bridleways/Restricted Byways crossing the site known as land to the east of Carlton Road, Worksop, Nottinghamshire
Public Path Diversion/Stopping Up Order 2012

I am directed by the Secretary of State for Environment, Food and Rural Affairs to refer to the above named Order which was submitted to him for confirmation on 10 July 2013.

Having checked the Order carefully it has been noted that the alternative route shall be a permissive pedestrian route. A right of way must be definitive rather than permissive. This is to ensure that the right of the public is protected.

The Secretary of State takes the view that a fundamental error such as this is fatal to the validity of the Order. As he cannot purport to use his power of modification to correct such an error, he has decided not to exercise his power of confirmation.

I would also like to draw your attention to the attached list of documents which are required when submitting an Order. I have noted that you have only sent us one sealed Order. I am assuming that you have kept the second sealed Order, if you have not, then you must make two sealed Orders and they must both be forwarded to us if you have to submit the Order to us for determination.

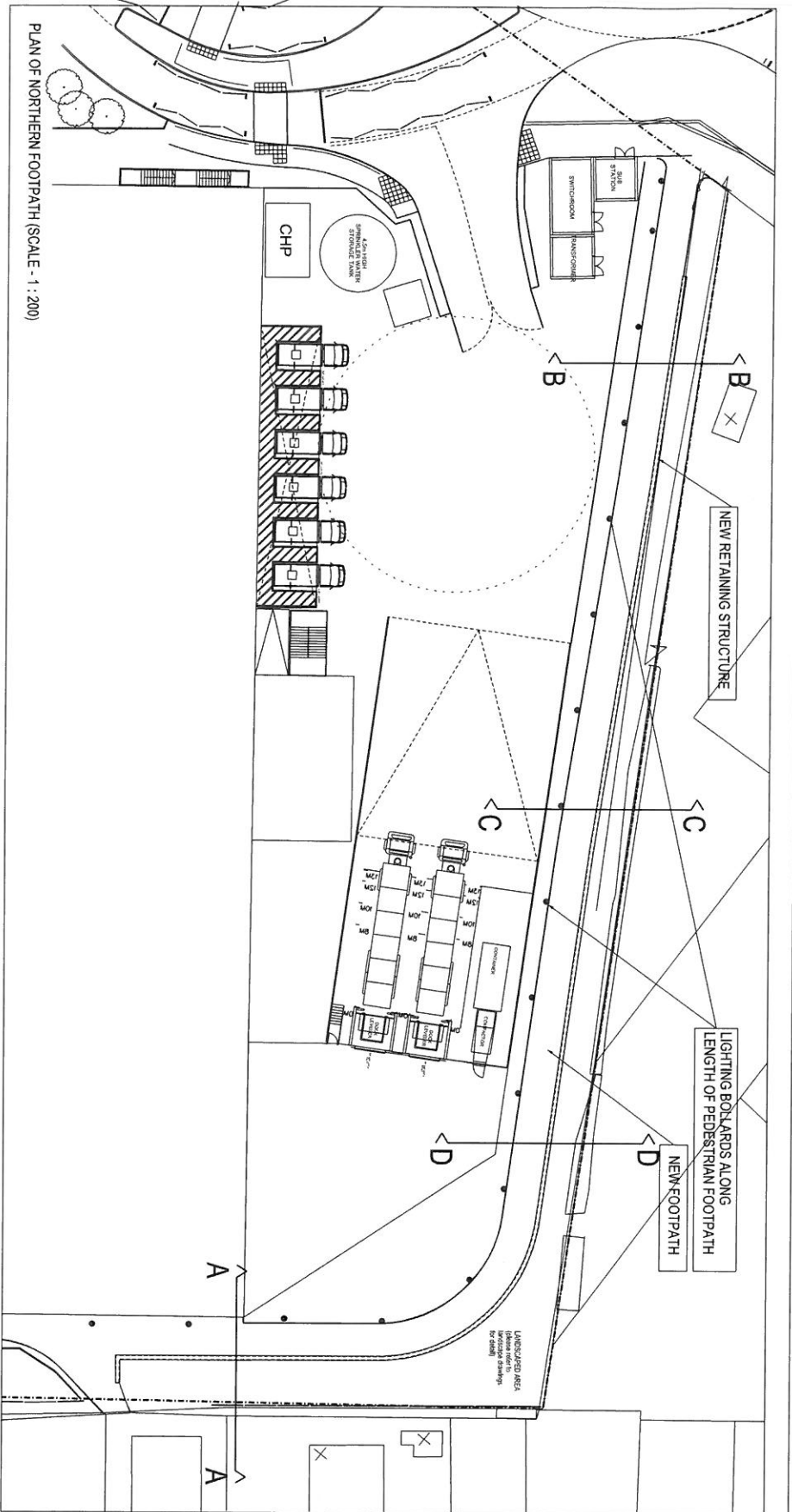
The sealed Orders are returned herewith and a copy of this letter has been sent to the applicant, objectors and all other interested parties.

Yours sincerely

Yvonne Oddy

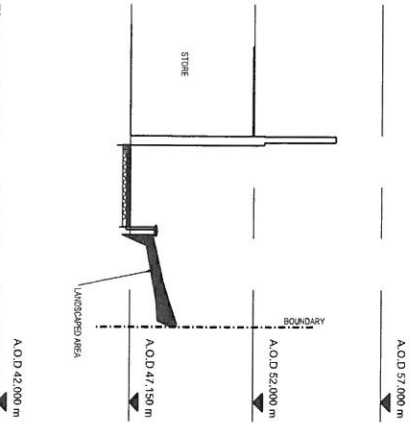
Yvonne Oddy (Mrs)
(Rights of Way Section)



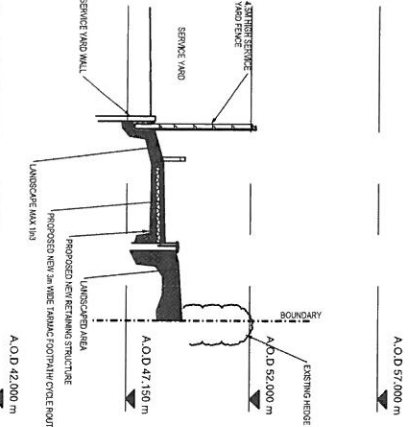


PLAN OF NORTHERN FOOTPATH (SCALE - 1 : 200)

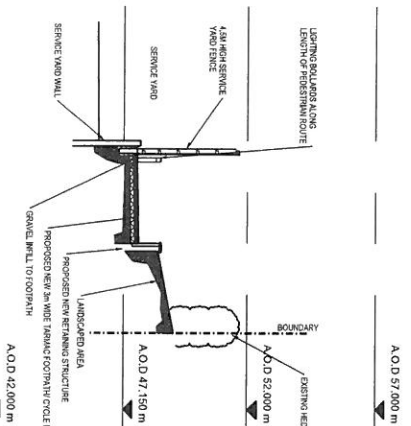
SECTION THROUGH A-A



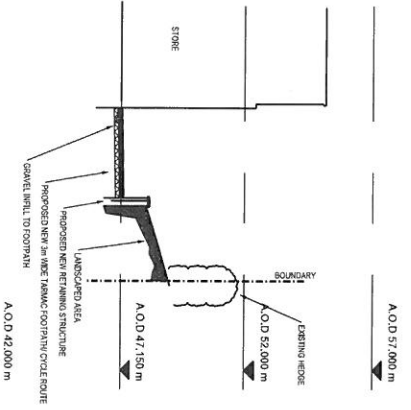
SECTION THROUGH B-B



SECTION THROUGH C-C



SECTION THROUGH D-D



Do not scale the drawings.
Architects are to be notified of any discrepancies.
Contractors must check all dimensions on site.
This drawing is to be used only for information in the only.
The drawing is to be used only for the betterment of the site.
To be used in conjunction with relevant design.
The drawing is to be used only for the betterment of the site.

Sanjiv
TESCO

Workshop

Carlton Road

Proposed Northern Footpath

DO No.	By No.	Revise
5078	P30	C
Sept 2012	1:100	A1

SMITH
SMALLEY
ARCHITECTS
27 Victoria Avenue
Hill Top
Telford
Shropshire TF1 1JH
Tel: +44(0)1423 531 100
Fax: +44(0)1423 531 101
Email: info@smithsmalley.co.uk
Website: www.smithsmalley.co.uk

RIBA



Design and Access Statement

On behalf of:
Tesco Stores Ltd

In respect of:
**Proposed shared footpath and cycle path with lighting and landscaping,
between Blyth Road and South Parade,
Worksop**

Date:
September 2012

Reference:
AR/JW/R001ar

DPP One Ltd
Fifth Floor, 2 Wellington Place, Leeds LS1 4AP
Tel: 0113 3662007

1.0 Introduction

- 1.1 This Design and Access Statement has been prepared to support a planning application submitted to Bassetlaw District Council. The application is for the construction of a footpath and cycle path linking Blyth Road to South Parade to the north of the approved Tesco foodstore on land to the east of Carlton Road, Worksop (ref: 02/09/00277).

2.0 Site Analysis

- 2.1 The application site runs along the northern boundary of the site proposed for a new Tesco store off Carlton Road. The Tesco site is located to the north of Worksop town centre, and is situated close to Worksop railway station.
- 2.2 A temporary pedestrian route currently exists along the northern part of the site which links Blyth Road to South Parade. This was created after the Tesco site was fenced off to protect the public during construction of the store thereby preventing access to the original footpath that ran across the centre of the site from South Parade to the side of 146 Carlton Road.

3.0 Proposals

- 3.1 The functional purpose of the construction of a public footpath and cycle path is to allow pedestrian and cycle access between Blyth Road and South Parade. The proposal will therefore improve pedestrian and cycle linkages through the site, integrating the site with the local area.

Layout

- 3.2 The layout of the proposed path is shown on drawing number 5078-P30 Rev B. The footpath is proposed to be located between the service yard and the rear curtilages of residential properties which front onto Blyth Road and South Parade. The path runs along the northern boundary, to the rear of the approved store. A retaining structure is proposed in order to provide a level footpath and eliminate the need for incorporating steep gradients and steps.

Scale

- 3.3 The footpath is 3 metres in width and is similar to other footpaths which were approved under the Tesco store application. The scale of the proposed path is wholly appropriate to accommodate the flow of pedestrians and cyclists which currently use the existing temporary route.

Appearance

- 3.4 The footpath is to be constructed of tarmac which is in keeping with the materials approved for the Tesco stores footpaths and the wider residential streets.

Landscaping

- 3.5 Drawing number 0480.004 outlines the landscape proposals for the footpath. The hedge which currently stretches along the northern boundary of the site shall be retained, this will provide screening of the proposed path and approved store from the residential properties to the north of the site.
- 3.6 A combination of advanced nursery and semi-mature trees are proposed along the northern and eastern boundary of the site. In addition, lower level shrub and woodland planting is proposed in order to provide a buffer between the footpath, the service yard boundary fence and residential properties to the north.

Access

- 3.7 Pedestrians and cyclists will be able to access the path via entrances on Blyth Road and South Parade. The footpath will ease pedestrian and cyclist circulation within and around the Tesco site and retain the route of the temporary access which is currently used by members of the public. The footpath is proposed to be level and does not incorporate steps or steep gradients, the path is therefore suitable for mobility impaired users.

Safety

- 3.8 Crime prevention has been a key consideration in the design of the path and measures have been incorporated into the proposal in order to create a safe environment in line with the requirements of the NPPF and the principles of Safer Places – The Planning System and Crime

Prevention (2004).

- 3.9 Lighting bollards are proposed along the full length of the path in order to enhance user visibility at night. The installation of bollard lighting minimises the lighting omissions to the neighbouring residential properties.
- 3.10 The landscaping scheme has been designed with user safety in mind. Groundcover is proposed at 'S5' shown on drawing number 0480.004 in order to maximise user visibility when approaching the turn in the path. The proposed planting will reach a maximum height of 20-30cm therefore users will have maximum visibility of oncoming pedestrians and cyclists.
- 3.11 The approved service yard boundary fence will prevent public access into the service yard to the south of the proposed path. The inclusion of a footpath at this location will provide natural surveillance along the service yard boundary fence, as such reducing the likelihood of unlawful entry into the secured area.
- 3.12 The design of the proposed path and landscaping scheme has omitted hiding places which will deter criminal activity and encourage the active and continual use of path.

4.0 Conclusions

- 4.1 The application proposes a permanent route along the northern boundary of the approved Tesco store at Carlton Road, Worksop.
- 4.2 The route which is already in use as a temporary measure, will be formalised through proper surfacing and lighting, bordered by landscaping that will soften the appearance of the route, but not impede visibility along the route.
- 4.3 It will partially replace an existing footpath that ran through the centre of the site which now benefits from approval for a Tesco store.

Application Number: 12/01455/FUL

Date: 6 December 2012

Authorised Officer:

DECISION NOTICE

Alison Richardson
DPP One Ltd
Fifth Floor
2 Wellington Place
Leeds
West Yorkshire
LS14AP

APPLICANT: Tesco Stores Ltd
PROPOSAL: Construction of a Shared Footpath / Cycle Path with Lighting and
Landscaping Between Blyth Road and South Parade
LOCATION: Land Between Blyth Road And South Parade Worksop Nottinghamshire

The Council have considered the application and hereby REFUSE PLANNING PERMISSION for the reasons set out below:

Reasons

1. Policy DM4 of the Bassetlaw Core Strategy and Development Management Policies DPD allows for new development where it supports safe streets and public places, integrating crime prevention measures and prioritises safe, easy and direct pedestrian movement. The development proposed would result in an unnecessary footpath with limited natural surveillance and a sense of enclosure running to the rear of domestic gardens and in the future a supermarket service yard. The footpath would provide the potential for criminal and anti-social behaviour in connection with these adjacent uses and would also not create a safe environment for its users. If permitted this development would be contrary to the above policy. Similar advice is contained in the National Planning Policy Framework.

STATEMENT

The application was clearly contrary to the relevant planning policies and the District Planning Authority working positively and proactively with the applicants would have afforded no opportunity to overcome these problems.

