



minutes

Meeting	RIGHTS OF WAY COMMITTEE
Date	Wednesday 6 March 2013 (commencing at 10.00 am)

membership

Persons absent are marked with 'A'

COUNCILLORS

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

Chris Barnfather
Allen Clarke
Jim Creamer
Sybil Fielding
John Hemsall

A

Rachel Madden
Sue Saddington
Andy Stewart
Jason Zadrozny

A

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
Dr Tim Hart	- Senior Definitive Map Officer
Neil Lewis	- Team Manager Countryside Access
Tony Shardlow	- Community Safety Officer

MINUTES

The minutes of the meetings held on 23 January 2013 were taken as read and were confirmed and signed by the Chairman.

MEMBERSHIP

It was noted that Councillor Chris Barnfather had been appointed to the committee in place of Councillor John Cottee

APOLOGIES FOR ABSENCE

Apologies for absence were received from:-

Councillor

“ Rachel Madden
“ Jason Zadrozny

DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

Councillor Bruce Laughton declared a private interest in agenda Items 5 (Consideration of Adding Footpaths in the Parishes of East Stoke and Elston) Item 6 (Consideration of Diversion of two claimed footpaths at Elston) and Item 7 (Consideration of the Extinguishment of three claimed footpaths in Elston) on the grounds that he was related to one of the landowners affected. He therefore informed Committee he would take no part in those items on the agenda

Following Councillor Laughtons declarations on agenda Items 5, 6 and 7, Councillor Gail Turner took the Chair

DECLARATIONS OF LOBBYING BY MEMBERS

There were no declarations of Lobbying.

CONSIDERATION OF ADDING FOOTPATHS IN THE PARISHES OF EAST STROKE AND ELSTON

Dr Hart introduced the report and highlighted the evidence was based solely on documentary evidence and not user evidence.

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

Miss Lockwood, who spoke against the addition of the footpaths, informed Members that her family had farmed the land since 1946. She stated that the addition of these footpaths would create a patchwork of farmable land and it would have a marked effect on the income of the farm. She also informed members that the report included a number of assumptions rather than documentary evidence and that these assumptions should be treated with caution.

There were no questions.

Mr Snowdon, who spoke against the addition of the footpaths, informed Members they have been farming the land for over 34 years and in that time had never seen a rambler or walker near the area. These alleged paths have never appeared on any modern ordnance survey map so it seems the paths have died out. Local people who have lived in and around Elston all of their lives do not recall ramblers walking the area. He also informed members that some of the area around Meadow Farm is very wet for most of the year and therefore he believes it would never have been suitable for a footpath.

There were no questions.

Mr Thompson, Ramblers Association, highlighted the fact that historical evidence was all that was needed to add footpaths to the definitive map and the addition of these footpaths would create better links between Elston and other paths.

During discussions Members took into account the fact there was no evidence that these paths had been used for many years and as such there was no demand for them. Members also noted that there were a number of paths in the area already. They also highlighted localism/local democracy regarding decisions of this nature and the expense of installing a footbridge to span Car Dyke in these austere times. Members also felt that interests of the community, business and commercial Farmland should be taken into account when looking at this report.

Members asked for the legal position regarding the highways issues if a route may have existed but has not been stopped up.

Mr Eastwood informed members that this was a quasi judicial decision and as such the decision flowed from the facts as found. Mr Eastwood stated that considerations of a more suitability/desirability kind do not arise as part of this decision, but are more properly the subjects of Items 6 (diversion) and 7 (extinguishment), which are procedures which may be undertaken subsequent to any decision such as this one regarding recognition of a pre-existing way. Mr Eastwood stated that the report sets out the legal test in relation to the claimed paths existing on the balance of probabilities and there being no credible evidence to the contrary. Mr Eastwood stated that where this test (or the lower test of reasonable allegation) is considered on the facts to be met there is no element of discretion but a Modification Order should be made to enable the evidence to be tested.

A motion in terms of resolution 2013/004 was moved by Councillor Turner seconded by Councillor Barnfather it was:-

RESOLVED 2013/004

That a Modification Order to register the routes as set out in the report is not made on the grounds that the Committee felt that there was no evidence of historical or present use or recent demand for these paths, especially given the number of local paths already existing, and that there was also the issue of localism/local democracy as well as the community, and business and commercial interests which should be taken into account.

In accordance with Standing Orders Councillors Jim Creamer and Sybil Fielding vote against the recommendation was recorded.

Following the decision as set out in Resolution 2013/004 Items 6 (Consideration of Diversion of two claimed footpaths at Elston) and Item 7 (Consideration of the Extinguishment of three claimed footpaths in Elston) on the agenda were withdrawn. At the request of Councillor Turner, Mr Eastwood explained for the benefit of members of the public attending committee that the decision in relation to Item 5 being that the potential existence of the ways was considered to not be sufficiently made out, the diversion or extinguishment of those claimed highways did not arise.

Councillor Bruce Laughton returned to the meeting and took the Chair.

REQUEST TO AMEND THE REGISTER OF COMMON LAND: NORMANTON ON TRENT

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

RESOLVED 2013/005

That the Register of Common Land for Normanton on Trent (CL14) is amended by striking out entry No.21 (Rights Section) in respect to rights of common owned by Clarice Thurston of Normanton on Trent and to add Charlotte Truswell Pennington of Oakham, Rutland as now holding those rights of common

UPDATE ON THE FINAL RESULTS FROM FURTHER CONSULTATION UNDERTAKEN REGARDING THE RESOLUTION THAT A GATING ORDER BE MADE TO CLOSE THE ALLEYWAY BETWEEN CEDARLAND CRESCENT AND NOTTINGHAM ROAD NUTHALL

Mr Shardlow introduced the report and highlighted issues set out in the report.

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

Mr N Codd, local resident, spoke in favour of the closure and highlighted issues regarding damage to his property. He also informed members that he had had his house broken into and had hired a security firm to look after his property. He also informed members that he had personally witnessed anti social behaviour over the years and had informed the police on occasions.

In response to questions Mr Codd replied that he feels crime only reduced because the private security firm were regularly patrolling the area around his house.

Mrs Hatton local resident spoke in favour of the closure and highlighted issues of graffiti, criminal damage to a wall and youths urinating along the alleyway. She also informed members that she had had stolen goods thrown over her wall in the garden and also loutish behaviour with tomatoes and eggs being thrown at her house.

There were no questions

Mr Turville, local resident, spoke in favour of the opening of the alleyway and highlighted issue around access to amenities around the area. He informed members that as a dog owner he used the alleyway at least 6 times a day and also used it to access the local public house. If it were to be shut this would mean over a week it would add 15 miles to his journeys around the area. There has been a rest home built nearby which was derelict land and is therefore no longer an attraction to youths.

There were no questions

Mrs Smith, local resident, spoke in favour of the opening of the alleyway and highlighted issue around access to local transport. She also highlighted there are a

number of elderly living near to the alleyway. If it were to shut then they would have to walk further which they would not be able to do regularly and therefore this would cut them off from living a normal life.

There were no questions

Mrs Timpson, local resident, spoke in favour of the opening of the alleyway and highlighted if the alleyway was to be shut it would be adding extra time to walk around to catch a bus. Crime statistics don't show that there is a need to close this alleyway. She also highlighted that this was not the wish of the majority of Cedarland Crescent residents to close the alleyway.

There were no questions

Mr Hiley, representing the Local Access Forum, informed members that they supported the recommendation to keep the alleyway open. The issue of crime does not record that this alleyway is where they gain access or egress from so any crime statistics cannot form part of the reason to shut this alleyway.

The Chairman informed Members that he had received some views from the Local Member, who had asked that Committee ensure that the situation is monitored and reviewed in 6 months' time.

During discussions following all speakers, members highlighted the issues for closure did not outweigh the reasons for keeping the alleyway open and stated that they also considered it important that the situation is monitored and reported back to a future meeting. Members highlighted that they understood the position of the residents and that whilst it is important that Gating Orders are put in place where they would be of benefit it is important not to lose sight of the fact that it is people causing those issues and some times other actions may be more appropriate.

On a motion by the Chairman, seconded by Councillor Chris Barnfather it was:-

RESOLVED 2013/006

1. That the alleyway between Cedarland Crescent and Nottingham Road, Nuthall be kept open on the basis of information as set out in the report and the speakers heard at the meeting and
2. a report be presented in 6 months to inform Committee of any crime or anti-social behaviour reported to officers during that period and
2. that the situation be monitored by the local Community Safety Partnership for the next 12 months to ensure that if there should be any significant increase in the levels of crime, disorder or anti-social behaviour, facilitated by the alleyway, the issue of whether the making of a Gating Order would be an appropriate solution can be revisited upon receipt of any further application from the local Community Safety Partnership.

In accordance with Standing Orders Councillors Gail Turner and Sue Saddingtons vote against the recommendation was recorded.

The meeting closed at 11.25 am

CHAIRMAN

DRAFT