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Your Ref:

Our Ref: FPS/L3055/8/3

Date: 12 January 2007

Dear Sir / Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 54
Nottinghamshire County Council
The Nottinghamshire (Area 5) Definitive Map and Statement
(Car Colston Byway No. 13) Reclassification Order 1999

1. Further to my interim decision of 31 August 2006, in which I proposed to confirm the above Order subject to modifications, I have now considered the objections which have been submitted in respect of those modifications.
2. In my interim decision, I concluded that public vehicular rights existed over the route in question. However, in applying the provisions of the Natural Environment and Rural Communities Act 2006 ("the NERC Act"), I reached the conclusion that mechanically propelled vehicular rights had been extinguished and it was not possible for me to record New Lane as a Byway Open to All Traffic ("BOAT"). I therefore proposed that it should be designated as a Restricted Byway.
3. Both the NERC Act and sections 47 and 48 of the Countryside and Rights of Way Act 2000 ("the CROW Act") were brought into force on 2 May 2006. The effect of the CROW Act is from that date to statutorily reclassify as Restricted Byways all RUPPs shown on Definitive Maps and Statements.
4. Mr Marshall, the sole objector to my proposed modification, considers that it is not possible, by virtue of section 54 of the Wildlife and Countryside Act 1981 ("the Wildlife Act") to reclassify a Road Used As a Public Path ("RUPP") as a Restricted Byway. Reclassification by virtue of that provision is to only a footpath, bridleway or byway.
5. Section 53 of the 1981 Act has been amended by subsequent legislation to enable an Order made under that section to be confirmed so as to record a way as a Restricted Byway. However, other than for the purposes of its application to those routes subject to reclassification orders made before 2 May 2006, section 54 of the 1981 Act was repealed and was not amended



in the same way as section 53 of the Act. In my interim decision, I followed the current advice of DEFRA. This was to the effect that in cases such as that before me, a RUPP cannot be classified as a BOAT, but where evidence is found that vehicular rights exist, it may instead be classified as a Restricted Byway.

6. Between the publication of my interim decision and the objections being made to that interim decision, further advice on this subject has been issued by DEFRA which has led me to reconsider whether I should propose the confirmation of the Order with modifications.
7. In light of the comments received from Mr Marshall and the further advice published by DEFRA, I am now of the view that it would not be appropriate to confirm the Order. Having concluded that New Lane is subject to public vehicular rights and that any rights the public had to use the lane with mechanically propelled vehicles had been extinguished, non-confirmation of the Order would simply reflect the statutory reclassification of New Lane as a Restricted Byway that had occurred by virtue of the coming into operation of the CROW Act.
8. I acknowledge that following my earlier decision, my proposed course of action may come as a surprise to the parties. In the circumstances, I propose to defer issuing my final decision for 28 days to allow further representations to be made. Any additional representations must therefore be submitted by 9 February 2007 or they will not be taken into account in reaching my final decision.

Yours sincerely,
A. F. I'Anson

INSPECTOR