

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

**DEFINITIVE MAP MODIFICATION
(PUBLIC FOOTPATHS 1-22, BOTTESFORD) ORDER 2013(1)**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To decide what to recommend the Secretary of State do with the above order.
- 1.2 The order was objected to when notice of its making was published. The objector will not withdraw. Only the Secretary of State can confirm a duly contested order of this type. Referral is mandatory.

2. BACKGROUND INFORMATION

- 2.1 The council made an order on 5 June 2013 to add twenty two snickets to the "County of Lincoln, Parts of Lindsey (Glanford Brigg)" definitive map and statement. We did so under section 53 of the Wildlife and Countryside Act 1981. This complied with our duty to keep the map and statement under continuous review. The Director of Places authorised the making of the order (see appendices). The Planning Committee has previously delegated the necessary authority allowing this.
- 2.2 We published notice of the order's making on 16 January 2014. This included posting "to whom it may concern" notices on site under dispensation from the Planning Inspectorate with respect to landownership.
- 2.3 We only received one objection dated 9 February 2014 (see appendices). The objector appears to be alleging misfeasance – that the nature of the paths included in the order somehow places them outside the scope of the 1981 Act. He claims the legislation does not apply to housing estates. But the legislation does not distinguish between paths in housing estates and paths not in housing estates. And because he does not elaborate further, the point he is making is not altogether clear. The objector in question is well known to the council. He has regularly argued more or less the same case in the

past. This he keeps doing even though the Secretary of State has rejected his reasoning time and again with respect to the many other orders he has objected to down the years. This was why the Secretary of State recently decided to award costs against him after the last hearing he initiated. The inspector took the view that he should have known what the outcome of the hearing would be from the outset; that he had fought and lost with the same arguments too many times already not to.

- 2.4 The objectors' interest usually concerns the relationship between the list of streets and the definitive map. The list of streets is the record of highways maintainable at the public expense. The definitive map is the record of public rights of way. Both are statutory documents held and kept up to date by North Lincolnshire Council. The objector is evidently of the view that ways recorded on the former preclude, ipso facto, entry on the latter. His objection thus states, "*As I have been telling Mr Driver since 2003, that footpaths set out on housing estates are nothing to do with the National Parks and Access to the Countryside Act, and all CROW [i.e. Countryside and Rights of Way] and other Acts since*".
- 2.5 The list of streets and the definitive map are, however, discrete records with different purposes. What is recorded on each is legally prescribed. Each of the snickets on the contested order is recorded already on the list of streets. But that only denotes maintenance at the public expense, not status. The definitive map, on the other hand, records all known highways other than those used primarily by motorised traffic. Any such highways not yet recorded must, moreover, be added as soon as reasonably practicable. We have no discretion. It is a statutory duty. The snickets in question are clear omissions. They must be highways to be on the list of streets and all highways are footpaths at the very least. Furthermore, each of these highways has the clear characteristic of a footpath only. The developers of the housing estates they serve clearly designed them as such. We are obliged to record all public footpaths on the definitive map.
- 2.6 The only footpaths that should not be recorded on the definitive map are footways at the side of roads; that is, pavements. But these snickets is none of them a pavement.
- 2.7 We responded to the objector on 10 June 2014. Attached to the email was a letter explaining why we thought his objection was misguided. It also invited him to withdraw (see appendices). However, his reply was quick and emphatic. He said the letter was nonsense and that he would not withdraw.
- 2.8 Lastly, officers know not where the other footpaths on housing estates are about which the objector claims he has been "*telling Mr Driver since 2003*".

3. OPTIONS FOR CONSIDERATION

- 3.1 We can recommend that the Secretary of State confirm the order as made.
- 3.2 We can recommend that the Secretary of State modify the order.
- 3.3 We can recommend that the Secretary of State not confirm the order.

4. ANALYSIS OF OPTIONS

- 4.1 We have received only one objection. We consider that the premise of the objection is incorrect. Officers therefore see no reason for the Secretary of State not to confirm the order as made.
- 4.2 We already maintain all twenty two of the snickets. Confirmation of the order would not alter this situation. Nor would it effect change on the ground.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial

- 5.1.1 The Secretary of State can arbitrate by one of three means. He can use written representations, hold a hearing or hold an inquiry. Written representations would be the cheapest option. It would only require the cost of the case officer's time. However, the objector in question has a track record of asking to be heard. This could result in a hearing or an inquiry being held. Then a hall would have to be hired. And in the case of an inquiry, we might request Legal Services' assistance too. But even so, the overall cost should not exceed £2,000 and could be quite a bit less. Moreover, a hearing or an inquiry could allow us to make an application for costs on the grounds of unreasonable behaviour. The objector might make his own application against us. Officers are of the opinion that this would probably fail.
- 5.1.2 Confirmation would require us to publish notice to this effect in the local press and on site. Including staff time, this should amount to no more than a further £500.

- 5.2 There are no other significant resource implications to highlight.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

- 6.1 Not applicable.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTEREST DECLARED

7.1 Not applicable.

8. RECOMMENDATIONS

8.1 To approve the referral of "Definitive Map Modification (Public Footpath 1-22, Bottesford) Order 2013(1)" to the Secretary of State for Environment, Food and Rural Affairs for confirmation as made. Furthermore, that we participate fully in whichever process the Secretary of State adopts for dealing with the objection.

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Background Papers used in the preparation of this report: None