

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

PUBLIC FOOTPATH 54A, GOXHILL

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To determine an application to add a route in Goxhill to the definitive map and statement between Greengate Lane and Westfield Road.

2. BACKGROUND INFORMATION

- 2.1 Goxhill Parish Council served the application on 25 August 2006. (See Appendix 1 for location.) Eight evidence-of-use forms support the application. Five relate to at least 20 years' use. (Appendix 2 summarises the witness evidence.)
- 2.2 There are other evidence forms on file from 1993. Why a decision was not made then is unknown. However, it is too late now to contact many of those from that time.
- 2.3 The applicant has also produced documentary evidence in support of the claim. For example, minutes from a parish council meeting on 12 April 1951. This was during the definitive map's preparation. It indicates a route along the claimed path existed. It was agreed that it should be added to the definitive map, which was being drafted. There is no evidence to explain why this route was not included on the definitive map.
- 2.4 An annotated extract from the 1775 Enclosure Award and Map for Goxhill, produced by a local historian, is also submitted. The route is identified on the extract as a 'town street, footway or track existing between ancient enclosures'. This in itself would not be indicative of a public right of way.
- 2.5 There is a further annotated extract from the 1775 Enclosure Map, which shows that there was no footway, track or other form of highway recorded at the time of the enclosure. (See Appendices 3 & 4 respectively. Note that Gatehouse Road was formerly known as Workhouse Lane).

- 2.6 However, the Enclosure Map itself does show some form of way. (See Appendix 5.) What status any way along the claimed route held is not clear. Nor is there mention of it being a public road in the Enclosure Award itself.
- 2.7 The 1908 OS map shows a lane of sorts along the claimed route. (See Appendix 6.) The 1945 OS map also shows a lane (see Appendix 7). Although these maps are not evidence of a public right of way, they support a continued existence of some form of way along the claimed route.
- 2.8 The Finance Act 1910 map and field book entries describe a footpath through the hereditament at the northern end of the claimed route, numbered 178. (See Appendix 8.) This on its own is not conclusive evidence of a public right of way. It is though evidence of a footpath at the time.
- 2.9 There is a narrow kissing gate at the northern end of the claimed route. One could interpret this as acknowledgement by the landowner that a route existed, the gate being a way of controlling the type of use (i.e. to exclude use by vehicles and horses).
- 2.10 The route must have been used without force, secrecy or permission. Permission from landowners has not been required. The current landowners have acknowledged this. Although they have not actively encouraged use, it appears that they have acquiesced to its use. (See Appendix 9.)

3. OPTIONS FOR CONSIDERATION

- 3.1 Modification of the Definitive Map and Statement to include the route as applied for.
- 3.2 Decline the application for modification to the Definitive Map and Statement.

4. ANALYSIS OF OPTIONS

- 4.1 If we accept the application then the route will be added and become a legal public right of way. If the making of the order is objected to by an interested party, the matter could end up going to an inquiry.
- 4.2 If the surveying authority reject the application, the applicant will be entitled to appeal to the Secretary of State for the Environment, Food

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

- 5.1 Financial

5.1.1 From within the existing budget of the Environment Team.

5.2 Staffing

5.2.1 From within the existing complement of the Environment Team. Should a hearing or inquiry be held, Legal Services' assistance might be called upon.

5.3 Property

5.3.1 None.

5.4 IT

5.4.1 None.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

6.1 Statutory

6.1.1 The Council have a duty to determine the application under Section 53 of the Wildlife and Countryside Act 1981 and to keep the definitive map and statement under continuous review.

6.2 Environmental

6.2.1 An accurate definitive map and statement benefits users and landowners/occupiers alike.

6.3 Risk

6.3.1 The order could be objected to and referred to The Secretary of State. Referral to the Secretary of State would entail written representations, hearing or inquiry.

6.3.2 The Secretary of State's decision can be challenged by way of judicial review.

6.4 Section 17 Crime and Disorder

6.4.1 None. The landowners have raised concern that the right of way will run through their driveway and will impinge upon their privacy and security. One landowner is concerned as to the safety of her grandchildren when playing in the drive. But such considerations are irrelevant to whether dedication has occurred.

6.5 Diversity

6.5.1 None.

6.6 Other

6.6.1 None.

7. **OUTCOMES OF CONSULTATION**

7.1 The following bodies have been consulted and no objections have been received: Ramblers' Association, British Horse Society, Lincolnshire Fieldpaths Association and Goxhill Parish Council.

7.2 The owners of the affected properties have written letters of objection to the claimed route. However, use as of right – that is without force, without secrecy and without permission - has been acknowledged. Landowners have stated that there is no need for this route as there is a footpath within close proximity, which serves the same purpose. Their letters of objection are shown at Appendix 9.

7.3 The landowners have raised concern that the right of way will run through their driveway and will impinge upon their privacy and security. One landowner is concerned as to the safety of her grandchildren when playing in the drive. But such considerations are irrelevant to whether dedication has occurred.

7.4 In the event of an order being made our statutory list of consultees would be consulted.

8. **RECOMMENDATIONS**

8.1 It is recommended approval be given to:

8.1.1 The making of a modification order, on the basis that the evidence lodged is sufficiently reasonable to allege that the route exists as a public right of way.

8.1.2 The confirmation of the order if no objections are lodged.

8.2 If objections to the order are duly lodged and not withdrawn, a report should be submitted to Planning Committee to establish what our stance should be prior to the submission of the order and objections to the Secretary of State.

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Background Papers used in the preparation of this report

Office file PROW/Goxhill/Greengate Lane, stored electronically at Church Square House