

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

PUBLIC FOOTPATH No. 5, ALKBOROUGH

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To consider two contested orders (see appendix 1). The council are obliged to refer these to the Secretary of State. However, before doing so, we must decide what to recommend that the Secretary of State do with them upon receipt.

2. BACKGROUND INFORMATION

- 2.1 The former Director of Infrastructure Services authorised the making of two orders on 26 May 2011 relating to Public Footpath No.5 at Alkborough (see appendix 2, which includes further background). The council subsequently made the orders on 31 October 2012. They were then advertised on 22 November 2012. The orders in question provided for the following:

- Deletion of the existing route of Public Footpath No.5
- Application of a new route for Public Footpath No.5

- 2.2 The orders were made with a view to modifying the definitive map for Alkborough. Once such orders are made, we cannot then abandon them. We must refer contested orders to the Secretary of State. Only the Secretary of State can confirm an order in the event of any dispute. It is usual in such circumstance to recommend a course of action for the Secretary of State to consider.

3. OPTIONS FOR CONSIDERATION

- 3.1 The orders are concurrent as, in effect, one depends on the other. The options for recommendation to the Secretary of State are to either confirm both orders as made (option 1) or to refuse to confirm either order (option 2).

4. ANALYSIS OF OPTIONS

- 4.1 The Secretary of State will decide whether to confirm the orders by weighing the evidence on the balance of probability. However, the order to delete is only likely to succeed if he agrees to consider the orders concurrently. The showing of a footpath on a definitive map is conclusive evidence in law that a right of way on foot existed over the line shown at the map's relevant date. There is therefore essentially a presumption that what the map shows at present is correct. The evidence needed to overcome that presumption must then be greater still. Our case is that there was only ever one footpath in the vicinity of what the definitive map shows; but that the line is that of the other order.
- 4.2 The relevant date of the definitive map is 21 September 1953. However, eight members of the public have testified to usage of the new line going back to 1945. The thickness of the line showing the footpath makes it difficult to determine exactly where it runs on the ground. These individuals are clear that they believe it runs on the proposed new route shown on the order map. The purpose of these orders is to add clarity and preserve the public's enjoyment of Public Footpath No.5 for posterity.
- 4.3 With two orders to consider, there is the possibility that one order could be confirmed and the other not. However, these orders have arisen out of the undertaken that was made to the ombudsman (as Appendix 2 refers). That same undertaking includes making a diversion order if the modification-order approach is unsuccessful. But should a diversion become necessary, the proposal would first be the subject of a fresh report.

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

- 5.1 There are no significant resource implications to consider.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

- 6.1 Not applicable.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTEREST DECLARED

- 7.1 There are two formal objections and one representation to consider. One objection relates to both orders. The other relates only to the order to delete (see appendix 3).
- 7.2 One of the objectors is an affected householder. He has objected to both orders. He wishes the order had used more detailed grid references and not used the wording "more or less". These are amendments the Secretary of State could make if he sees fit to do so.

However, this objector's main thrust is that he sees no evidence for a footpath either as currently shown or proposed to be shown. The Secretary of State will therefore have to weigh these arguments against on the one hand the conclusive evidence provided for Public Footpath No.5 by the definitive map and the user evidence for the proposed route on the other.

- 7.3 The other objector to the order to delete only argues that the two orders must be considered in isolation and not together. However, if this were to happen, the order to delete could fail, while the order to add could succeed (though equally both orders could fail).
- 7.4 The person making the representation has said that he would be concerned if the orders were considered in isolation. He has been assured that that was not the intention when they were made. The Secretary of State could of course decide differently.
- 7.5 Both objections and the representation would be referred to the Secretary of State with the orders.

8. **RECOMMENDATIONS**

- 8.1 It is recommended that the Secretary of State is asked to consider the orders concurrently and to confirm both as made.

DIRECTOR OF PLACES

Church Square House
PO Box 42
Scunthorpe
DN15 6XQ
Author: Colin Wilkinson
Date: 15 April 2013

Background Papers used in the preparation of this report: the office file NLC/1/5.

Appendix 1

Wildlife and Countryside Act 1981

**County of Lincoln, Parts of Lindsey
(Glanford Brigg)**

**Definitive Map Modification (Public
Footpath 5, Alkborough) Order
2012(1)**



Wildlife and Countryside Act 1981

County of Lincoln, Parts of Lindsey (Glanford Brigg), Definitive Map and Statement

Definitive Map Modification (Public Footpath 5, Alkborough) Order 2012(1)

This order is made by North Lincolnshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the "County of Lincoln, Parts of Lindsey (Glanford Brigg) Definitive Map and Statement" require modification in consequence of the occurrence of an event specified in 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 footpath – of the Act.

The authority have consulted every local authority whose area includes the land to which the order relates. North Lincolnshire Council hereby order that:

1. For the purposes of this order the relevant date is 26 October 2012.
2. The "County of Lincoln, Parts of Lindsey (Glanford Brigg), Definitive Map and Statement" shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the order.
3. This order shall take effect on the date it is confirmed and may be cited as the "Definitive Map Modification (Public Footpath 5, Alkborough) Order 2012(1)"

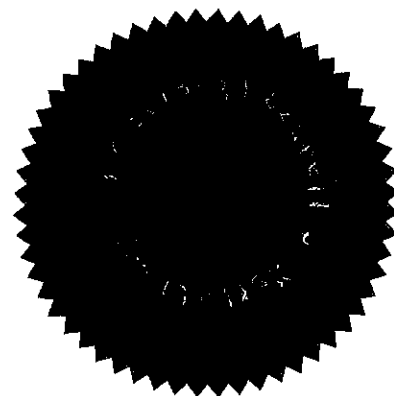
W. Ben

The COMMON SEAL of
NORTH LINCOLNSHIRE COUNCIL
was hereunto affixed
in the presence of:

Authorised Signatory

Dated: *31st October 2012*

Seal Number: *7033*



SCHEDULE

PART I

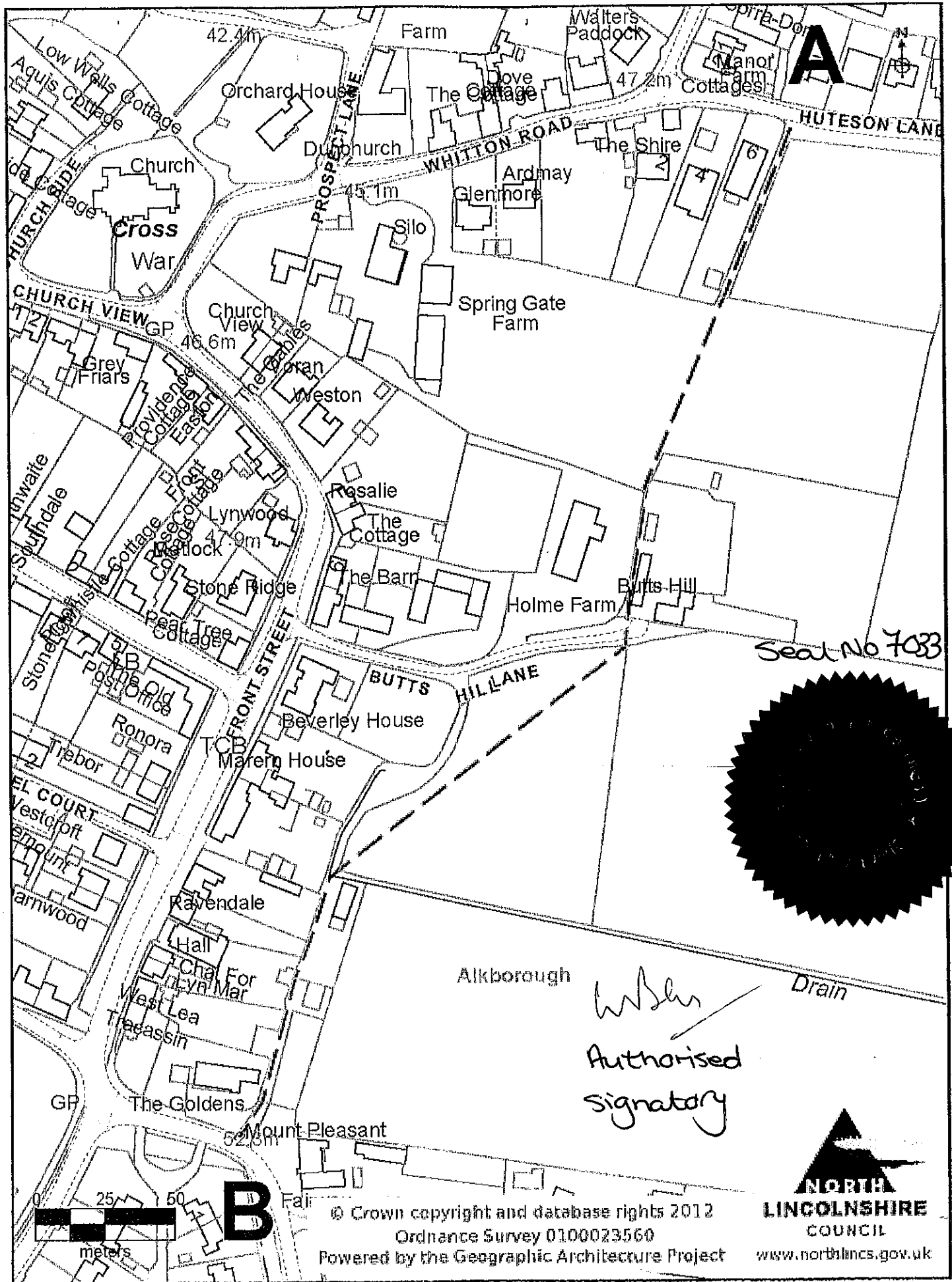
Modification of Definitive Map Description of path to be added

A – B, as indicated on the map: a 430-metre-long footpath commencing at a point on Huteson Lane at grid reference SE88432191 and proceeding over a width of 1.8 metres in a south-south-westerly direction adjacent to the eastern side of a shallow ditch running parallel to the outer eastern boundary of the property known as 6 Huteson Lane and thence from the south-east corner, more or less, of 6 Huteson Lane in like direction across a field to the north-west corner, more or less, of the property known as Butts Hill, to continue in like direction along the western perimeter of said property to a point adjacent to said property's south-west corner where the footpath meets Butts Hill Lane at grid reference SE88372174; and thence proceeding southwards across Butts Hill Lane and thence in a south-westerly direction across a field to its south-west corner at grid reference SE88272164; and thence in a south-south-westerly direction over a width of 1.22 metres down the western inside edge of the strip of land that abuts the rear of various properties along Front Street that corresponds, more or less, with plot 154 on the Ordnance Survey County Series Map (Second Edition) 1907, to a point on a bend on West Halton Lane adjacent to the south-east corner of the property known as The Goldens at grid reference SE88232155.

PART II

Modification of Definitive Statement Variation of particulars of path

A 430-metre-long footpath commencing at a point on Huteson Lane at grid reference SE88432191 and proceeding in a south-south-westerly direction over a width of 1.8 metres adjacent to the eastern side of a shallow ditch running parallel to the outer eastern boundary of the property known as 6 Huteson Lane and thence from the south-east corner, more or less, of 6 Huteson Lane in like direction across a field to the north-west corner, more or less, of the property known as Butts Hill, to continue in like direction along the western perimeter of said property to a point adjacent to said property's south-west corner where the footpath meets Butts Hill Lane at grid reference SE88372174; and thence proceeding southwards across Butts Hill Lane and thence in a south-westerly direction across a field to its south-west corner at grid reference SE88272164; and thence in a south-south-westerly direction over a width of 1.22 metres down the western inside edge of the strip of land that abuts the rear of various properties along Front Street that corresponds, more or less, with plot 154 on the Ordnance Survey County Series Map (Second Edition) 1907, to a point on a bend on West Halton Lane adjacent to the south-east corner of the property known as The Goldens at grid reference SE88232155.



Title: Rights of Way

Drawn By: Colin Wilkinson

Scale: @ A4 1:1723

Timestamp: 2012-10-26 08:34:05



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 Ordnance Survey 0100023560
 Powered by the Geographic Architecture Project

Wildlife and Countryside Act 1981

**County of Lincoln, Parts of Lindsey
(Glanford Brigg)**

**Definitive Map Modification (Public
Footpath 5, Alkborough) Order
2012(2)**



Wildlife and Countryside Act 1981

County of Lincoln, Parts of Lindsey (Glanford Brigg), Definitive Map and Statement

"Definitive Map Modification (Public Footpath 5, Alkborough) Order 2012(2)"

This order is made by North Lincolnshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the County of Lincoln, Parts of Lindsey (Glanford Brigg), Definitive Map and Statement require modification in consequence of the occurrence of an event specified in section 53(3)(c)(iii) – namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description – of the Act.

The authority have consulted every local authority whose area includes the land to which the order relates. North Lincolnshire Council hereby order that:

1. For the purposes of this order the relevant date is 26 October 2012.
2. The County of Lincoln, Parts of Lindsey (Glanford Brigg), Definitive Map and Statement shall be modified as described in the Schedule and shown on the map attached to the order.
3. This order shall take effect on the date it is confirmed and may be cited as the "Definitive Map Modification (Public Footpath 5, Alkborough) Order 2012(2)".

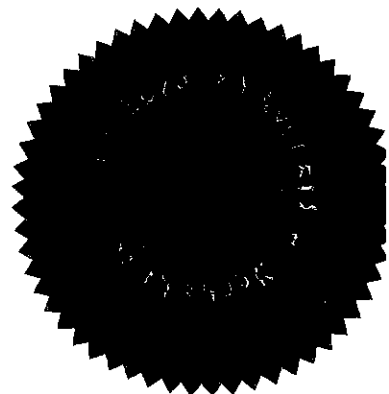
The COMMON SEAL of
NORTH LINCOLNSHIRE COUNCIL
was hereunto affixed
in the presence of:

(authorised signatory)



Dated: 31st October 2012

Seal Number: 7034

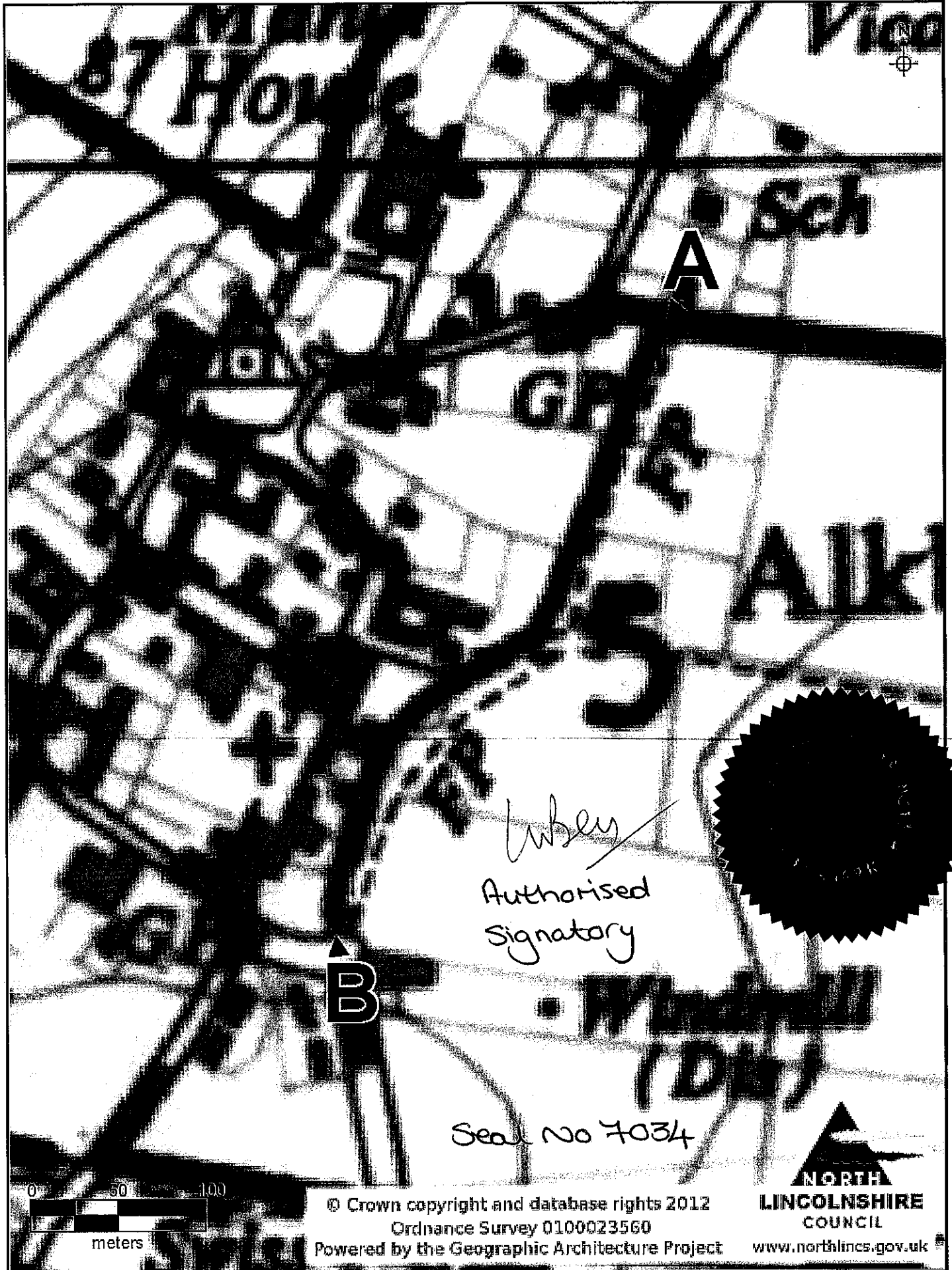


SCHEDULE

Modification of Definitive Map

Description of path to be deleted

A – B, as indicated on the map: all of Public Footpath 5 between Huteson Lane and West Halton Lane as originally shown on the County of Lincoln, Parts of Lindsey (Glanford Brigg), Definitive Map.



Title: Rights of Way
Drawn By: Colin Wilkinson
Scale: @ A4 1:2757

Timestamp: 2012-10-26 10:43:52

Appendix 2

PUBLIC RIGHTS OF WAY – AUTHORITY TO MAKE ORDER

NORTH LINCOLNSHIRE COUNCIL

DIRECTOR OF INFRASTRUCTURE SERVICES

Public Footpath 5, Alkborough

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To consider a settlement with respect to Public Footpath 5 (FP5), Alkborough, as proposed by the ombudsman.
- 1.2 Mr Ablott of Ravensdale, Front Street, Alkborough, has complained to the ombudsman because he believes North Lincolnshire Council (1) have delayed unreasonably, (2) have not kept him properly informed and (3) now say that costs arising from any subsequent diversion should be borne by him and the other landowners.

2. BACKGROUND INFORMATION

- 2.1 Alkborough FP5 is approximately 420 metres long and links West Halton Lane with Hutson Lane (FP6). The definitive map shows FP5 as running slightly west of where the public walk it. The walked line appears to be the common-sense line; but the definitive line is the legal one (see Appendix 1 – the purple lines are footpaths).
- 2.2 Various attempts have been made since about 2002 to resolve the apparent discrepancy. These culminated in a public inquiry on 2 December 2008 when objections were made to an order intended to add to the definitive map a public footpath that approximated to the walked line on the strength of its consistent depiction by successive editions of detailed Ordnance Survey maps between 1887 and 1945. The objections related to the first 85 metres leading north from West Halton Lane. This length traversed a narrow enclosure, depicted on the inclosure map as the start of an occupation road. It is owned and occupied in roughly equal portions by three parties, all of whom are residents of Front Street, the back gardens of which abut its western perimeter. The definitive map shows FP5 as passing through these gardens, six in total, as well as a larger garden on West Halton Lane. The objectors, three of them, objected not to FP5 running through the enclosure per se, but the line as depicted by the Ordnance Survey. This shows it as being more or less down the centre; whereas the objectors – the owners of the enclosure, Mr Ablott included – argue it is along the inside western edge (see Appendix 2).

- 2.3 The definitive map modification order was not confirmed. The inspector's decision letter explains why (see Appendix 3). However, this means that for all its imperfections, the line it shows remains, in law, a right of way on foot that North Lincolnshire Council have a legal duty to assert and protect.

3. OPTIONS FOR CONSIDERATION

- 3.1 To accept the ombudsman's proposed settlement and, if so, whether by means of a diversion or modification order.
- 3.2 To decline the ombudsman's proposed settlement.

4. ANALYSIS OF OPTIONS

- 4.1 The ombudsman proposes that North Lincolnshire Council agree to take steps towards showing FP5 along the western edge of the narrow enclosure by one of two means: diversion or evidential event order. The process, moreover, would have to be started within six months.
- 4.2 A diversion would be effected by order made under section 119 of the Highways Act 1980. The legal rationale would have to be that we considered a diversion expedient in the interests of either the owner, lessee or occupier of the land FP5 crosses or the public. However, a diversion must not alter FP5's point of termination if that point is not on a highway or otherwise than to a point which is on the same highway, or a highway connected to it, and which is as substantially as convenient to the public.
- 4.3 An evidential event order, on the other hand, would be made under section 53 of the Wildlife and Countryside Act 1981. Its legal rationale would be the discovery by North Lincolnshire Council of evidence that a public footpath subsists or is reasonably alleged to subsist along the narrow enclosure's western edge.
- 4.4 At present we do not possess evidence that a public footpath exists along the narrow enclosure's western edge. If, however, we did possess such evidence, that could rule out making a diversion order until that evidence had been assessed, its being contrary to government advice, arising from case law, to divert one highway on to another (see Appendix 4). But what we do possess are remarks by the inspector and one of the landowners, Mr Ablott, that apparently favour investigating whether an evidential event order should be made before a diversion order is considered further.
- 4.5 For example, it is Mr Ablott's view, according to letters dated February 2007, 4 August 2006 and 5 July 2006 (see Appendix 5), that the western edge has been a public footpath for decades. He says older members of the community have told him this. He should be able to direct us, therefore, to the people in question. Moreover, if he holds this

belief and tolerates the public walking over his land, whether the way over his land was public before or not, this could amount to dedication.

- 4.6 The inspector himself agrees, as paragraph 34 of his decision letter makes clear: "Although I did not hear direct evidence of use of a path between West Halton Lane and Huteson Lane that would satisfy the test of deemed dedication of a highway under section 31 of the Highways Act 1980, the evidence I heard is such that an inference of dedication of a route along the western side of plot 154 [the narrow enclosure] can be drawn". In other words, he believes the definitive map is currently wrong. And the proper means of rectifying errors in the definitive map is through the making of a definitive map modification order.

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

5.1 Financial

5.1.1 From within the existing budget of the Environment Team. Orders have to be funded by someone. Modification orders are paid for by North Lincolnshire Council. Public path orders, however, are normally paid for by the beneficiary. In the case of the public, that again means North Lincolnshire Council. But it is North Lincolnshire Council policy that orders made in the interests of a landowner or occupier are paid for by him or her. In the present case, however, the ombudsman's proposed settlement requires payment in full by North Lincolnshire Council (unless, that is, Mr Ablott were to object to the diversion after all. And while Mr Ablott is but one of several affected owners, it would appear unfair if he alone were exempted. Nor is it clear how legally this could be defended). The policy can, though, be waived by the Director of Infrastructure Services in conjunction with the Cabinet Member for Highways, Planning and Energy.

5.1.2 An inquiry or hearing arising from a contested order would also be paid for by the Environment Team.

5.1.3 A claim for compensation can arise from the making of a diversion order – see paragraph 6.3.2 below.

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 definitive map and statement would be modified under the Wildlife and Countryside Act 1981, whereas a diversion would be made under the Highways Act 1980 (see paragraph 6.3.2 below). The latter can be in combined form so as to modify the definitive map and statement automatically on taking effect. Otherwise, the legal event occasioned by the diversion must be the subject of a separate order. Legal event orders are, however, a formality: they cannot be challenged.

6.1.2 North Lincolnshire Council are the surveying authority under the 1981 Act. Our duties include keeping the definitive map and statement under continuous review. The definitive map is the legal record of public rights of way within North Lincolnshire and all public rights of way known to us must be recorded there as accurately as the scale of the map allows. The statement is its accompanying written schedule. Changes to either, whether arising from a legal event or the discovery of evidence, must be made by order as soon as reasonably practicable. There is no discretion. The showing of a footpath, moreover, is conclusive evidence of the public's right of way on foot, albeit without prejudice to any higher rights that subsequently come to light. Notice of evidential event orders must be published inviting objections and representations within a prescribed period of not less than six weeks (see paragraphs 6.3.1 and 6.3.2 below).

6.1.3 North Lincolnshire Council are the highway authority under the 1980 Act. Our duties include asserting and protecting the public's use and enjoyment of all highways, including public footpaths, and preventing, as far as possible, their stopping up. While the definitive line of FP5 is obstructed, we remain in default of these duties.

6.2 Environmental

6.2.1 An accurate definitive map and statement benefits users and landowners/occupiers alike. Rights of way bring people into the countryside, thereby boosting the rural economy. It is important, therefore, that users of rights of way have confidence in the accuracy of the information they are supplied with in terms of where those rights of way run and the status of individual routes as well. All changes to the definitive map are passed on to the Ordnance Survey, who update their maps accordingly at the following revision. Landowners and occupiers, on the other

hand, want to know where the public should be, what their obligations towards them are and how best to manage their land around that public access. Visitors to the countryside also provide some landowners and occupiers with alternative sources of income as farmers increasingly diversify into tourism.

6.3 Risk

- 6.3.1 Because an order, whether diversion or definitive map modification, can be objected to, its success cannot be guaranteed. If a diversion order were objected to, a formal decision could be taken to discontinue with it. Otherwise, it could be referred to the Secretary of State for Environment, Food and Rural Affairs. However, a definitive map modification order, once made, cannot be withdrawn. If contested, it would have to be referred to the Secretary of State as a matter of course. But North Lincolnshire Council's opinion as to whether it should be confirmed can be modified – say if new evidence came to light causing us to reappraise the wisdom of having made the order in the first place. The Secretary of State would decide whether to confirm an order, with or without modifications, by way of written representations, hearing or inquiry. In turn, the Secretary of State's own decision can be challenged by way of judicial review.
- 6.3.2 Reference paragraph 5.1.1 above, if a diversion order were made wholly at North Lincolnshire Council's expense, we should need to be able to justify why to those others who have previously paid for diversion orders themselves.
- 6.3.3 A diversion order can be confirmed only if it is expedient having regard to the effect which (1) the diversion would have on public enjoyment of the path as a whole; (2) the coming into operation of the order would have as respects other land served by the existing public right of way; and (3) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it. The latter two points can be grounds for compensation under section 28 of the Highways Act 1980, whereby it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of the order. Compensation is equal to the amount of the depreciation or damage incurred and is payable by North Lincolnshire Council. Although officers think a claim is unlikely, the risk is compounded by the fact that so many landowners are involved. Claims must be made within six months of the order being confirmed. They cannot be made with respect to definitive map modification orders.
- 6.3.4 The definitive map has a scale of 1:25,000, the legal minimum, and the lines used to represent the rights of way are unduly

thick; whereas maps for diversion orders must be no less a scale than 1:2,500. This means it is difficult or impossible to know precisely where to transpose the line of FP5 from one to the other. And while this might not matter if the result is the removal of FP5 from the gardens, should all parties agree a nominal line for the purpose of the order, were the order to fail, some householders might be aggrieved if this establishes the line of the path for all time through, say, a cherished shed, wall, pond, outbuilding and so on. Because of the risk, this would have to be pointed out to the householders when asking them to agree a line for the order.

6.3.5 The ombudsman has given North Lincolnshire Council the choice as to whether to make a diversion or definitive map modification order. Paragraphs 4.4 to 4.6 above, however, detail why the former could fail: namely, if the order route is a footpath already, trying to divert on to it would be tantamount to extinguishment. Following up Mr Ablott's and any other leads first, therefore, about the western edge of the enclosure's current status is arguably the safer approach.

6.3.6 However, other than the definitive map, the only documentary evidence pointing to there being a footpath in the vicinity of FP5 seems to be the historical Ordnance Survey maps. These were dismissed by the inspector and it is true that footpaths shown by the Ordnance Survey are to be construed as physical features only. Nevertheless, it is no guarantee that at a subsequent inquiry a different inspector would not interpret the historical Ordnance Survey maps differently. All parties agree there is a footpath in the vicinity and that the line on the definitive map is incorrect. Surely, therefore, the showing of parallel dashed lines marked "FP" over the selfsame line on different editions of detailed Ordnance Survey maps between 1887 and 1945 – bearing in mind the legal maxim "once a highway, always a highway" – could conceivably be FP5? Especially in the absence of evidence to the contrary, the definitive map excepted. Perhaps the inspector would have been more receptive to this argument had he had to consider simultaneous orders to add and delete as per *R (Leicestershire County Council) v Secretary of State for Environment, Food and Rural Affairs* 2003 (as paragraph five of his decision letter suggests).

6.3.7 The likeliest evidence in support of a definitive map modification order, should any be found, would be in the form of written or, if an inquiry were held, oral testimonies. But members of the public can contradict one another and become confused under cross-examination, so this approach can be unpredictable. Also, although Mr Ablott would prefer that the footpath follow the western edge of the enclosure, there is no guarantee that our research will show that it does. But we cannot sample evidence selectively. We must draw our conclusions on balance from the whole.

6.3.8 Alternatively, if we decide to decline the ombudsman's proposed settlement, it is uncertain what consequences might result. Moreover, if FP5 remains where the definitive map shows it, this could come to light through the conveyancing process whenever an affected householder decided to move. Arguably, the definitive line is such that prospective purchasers might be deterred.

6.3.9 All orders must contain a width. The current width of FP5 is unrecorded and therefore unknown. Nor is it necessarily the same width throughout. The width arising from a modification order should be a statement of fact on the basis of "once a highway, always a highway". A diversion order, on the other hand, can stipulate whatever width the order-making authority believe is appropriate. Mr Ablott and his neighbours have previously expressed an unwillingness to accept a width greater than 1.22 metres (four feet). However, diversion orders in other parts of North Lincolnshire have over the years generally stipulated no less a width than 1.8 metres. This is the same width as a standard pavement, the width two adults require to pass one another in comfort from opposite directions. If an exception is made with respect to the width in the case of FP5, there will be no obvious explanation for either the public or owners and occupiers who have accepted 1.8 metres elsewhere. But if an order is made containing a width of 1.8 metres, it is likely to attract objections, including from Mr Ablott himself. If this were to happen, the order would have to be referred to the Secretary of State for adjudication.

6.4 Section 17 Crime and Disorder

6.4.1 None.

6.5 Diversity

6.5.1 None

6.6 Other

6.6.1 None.

7. OUTCOMES OF CONSULTATION

7.1 In the event of an order being made, the following bodies and organisations would be sent a copy of the order and notice prior to advertisement: known owners, occupiers and lessees of affected and adjacent land; National Farmers' Union and Country Land & Business Association; Alkborough Parish Council; statutory undertakers; Ramblers' Association, British Horse Society, Byways & Bridleways Trust, Cyclists' Touring Club, Association of Motor Clubs, Auto Cycle

Union, Open Spaces Society and British Driving Society; and Lincolnshire Wildlife Trust.

8. RECOMMENDATIONS OF INVESTIGATING OFFICER

8.1 It is recommended approval be given to:

8.1.1 investigating further the references of the inspector and Mr Ablott to the western edge of the narrow enclosure being already a public footpath;

8.1.2 should such investigations trigger our statutory duty in this regard, the making of simultaneous modification orders adding and deleting the lines indicated by the evidence discovered and what the definitive map currently shows respectively (including, if applicable, FP5 as a whole between West Halton Lane and Hutson Lane);

8.1.3 but if no such evidence is discovered, the making of an order under section 119 of the Highways Act 1980 to divert FP5 from the line currently shown on the definitive map on to that indicated on the map at Appendix 6 to this report (which includes the inside western edge of the narrow enclosure indicated as Plot 154 on the OS County Series Map 1907); and furthermore, that this be a combined order as permitted under section 53A of the Wildlife and Countryside Act 1981 so that the definitive map is automatically modified as a consequence of confirmation.

8.2 It is further recommended that:

8.2.1 if a modification order is made and duly contested, a further report be taken to Planning Committee to establish North Lincolnshire Council's stance on referring the order to the Secretary of State;

8.2.2 if a diversion order is made, a width of 1.8 metres be prescribed throughout FP5's new length in the interests of the public's safety and comfort on the one hand and ostensible fairness and consistency in the eyes of all on the other (vis-à-vis diversions made elsewhere within North Lincolnshire, past and future); and

8.2.3 if a diversion order is made and duly contested, a further report be taken to Planning Committee either to establish North Lincolnshire Council's stance on referring it to the Secretary of State, without or without recommended modifications, or to resolve not to continue.

9.0 DECISION

9.1 The recommendations of this report are:

(a) agreed

(b) declined

(c) deferred to Planning Committee

9.2 Comments (if any)

Report assumes if diversion order fees are waived for Mr. Abbott. Max likely liability estimated at £2k
Colin Wilkinson

I endorse the recommendations set out above:

Signed *Colin Wilkinson*
Assistant Director – Resources and Business Services

Authorised by:

Signed *Peter Williams*
Director of Infrastructure Services 26.5.2011

Church Square House
SCUNTHORPE
North Lincolnshire
DN15 6NL

Author: Colin Wilkinson
Date: 10 May 2011

Background Papers used in the preparation of this report: Office file 1/5 stored electronically at Church Square House

Appendix 3

The Director of Places
c/o The Environment Team
Church Square House
P O Box 42
SCUNTHORPE
N Lincs
DN15 6QX

02/01/2013

Ref public Footpath no 5 Alkborough

Dear sir

With reference to the above footpath and the orders made on 31 October 2012, Definitive Map Modification (Public Footpath 5, Alkborough) Order 2012(1) and Definitive Map Modification (Footpath 5, Alkborough) Order 2012(2), I wish to formally state my objection to the confirmation of these orders on the following grounds.

1. The definitive statement within the orders refer to grid references ie; SE88482191. These references at the scale of detail given do not accurately identify the location of the footpath on the ground to a level equivalent to that detail given on previous orders issued by the authority. It would seem to me that considering the time the authority has taken in resolving this issue (some 12 Years to date) they might be able to define the position accurately. It also troubles me in reading the statement, that the authority seems satisfied to use terms such as "more or less", should not a "definitive statement" be definitive and not use terms which seem to indicate doubt, approximation and indifference.
2. Although the authority holds maps which indicate a footpath on the ground, they have to date failed to provide any historic documentary evidence of its existence as a public right of way. They do however have documents which indicate that it is not a public right of way, ie, during the original formation of the definitive map the parish council were asked to identify public footpaths in their area. So far as footpath no 5 Alkborough is concerned, the parish council noted that a way existed to the rear of the properties on front street but that it had no evidence that it was a footpath for the free use of the public ie that it may simply be an occupation lane (as is stated on my property deeds) and further it was stated that it served no useful purpose. The authority also have records of a dispute between a local land owners solicitor and the authority at the time of the formation of the definitive map which details the land owners successful assertion that an occupation route could not be taken as being a public right of way, the authority at this point, dated before the formation of the definitive map, stated that no occupation lanes should be included in the definitive map and statement.
3. The authority now following 12 years of stating that a footpath exists are claiming that one does not, but that one should be dedicated based on a "presumption that the way has been dedicated as a public footpath". There have I believe been sufficient letters to the authority for them to be in no doubt that I do not now wish to dedicate a public right of way across my land and further the authority have been asked by previous owners of the land to close the footpath in its entirety. The fact that these previous requests have failed to succeed seems unsurprising when considering the authorities attitude to land owners, its failure to respond to questions asked, their general lassitude in dealing with matters and refusal to be forthright with information it holds.
4. The current definitive map shows a footpath crossing my neighbours (Mr Sowerby) property to the rear of the old chapel. Should this order be successful the authority, if they were to revert to their previous assertion that a footpath currently exists, would be transferring a footpath from one land

owners property to another's, ie onto my property and would clearly be doing so without my permission.

5. The above order makes no note of the gate and stile which separate my section of plot 154 from my neighbour, Mr Batty, since the stile was originally in place on the land when I purchased it and that it was originally supplied and installed by the authority I would wish to retain it for security purposes should the authority wish to accept my previous offers of a permissive route across my property.

6. I understand that the authority now have witness statements to show that an access route has been historically used along plot 154 down its Western boundary. The authority has previously shown similar statements to support its assertions that the route was through the middle of the plot on a fixed line shown on no maps and also that the public have crossed to land in a zig zag manner across its length when they wished to show that the whole of the plot may be public access. Some of these statements were even made at the last enquiry. Given the time the council are prepared to wait for such evidence to be gathered to support their current and ever changing opinions (again 12 years to date) it is of no surprise that they are able to sift through the various responses to bolster their case. I am however seriously concerned that they seem unconcerned in ignoring all previous opposing statements including those made by their own officers.

The result in my opinion is now a complete mess, should the order be confirmed it will forever be open to criticism and possible dispute and in fact may give no permanent solution. I would therefore again ask the authority to give serious consideration to the actual documentary evidence on hand and accept that there is no current public right of way either across the rear of the properties on front street or plot 154 its-self. Having waited 12 years to this point to obtain a definitive solution I am reticent to accept anything but that - a definitive and final answer, acceptance of the fact that no footpath currently exists is therefore now, in my opinion the only option. If the authority are able to reach this point I will be happy to dedicate a new permissive footpath at 1.22 meters width across my section of plot 154 on its Western boundary but will also wish to seek and agree compensation for the stress, inconvenience and delays caused by the authorities approach to dealing with this matter.

Yours Faithfully

Director of Places, c/o Environmental Team
North Lincolnshire Council
Environment Team
Church Square House
PO Box 42
Scunthorpe
DN15 6XQ

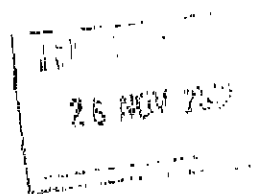
22 November 2012

Dear Sir,

Re: proposed deletion of footpath 5 Alkborough.

Reference your order of 31 October 2012, I object on the ground that there is no sufficient evidence that this footpath was added to the definitive map in error. I should appreciate a copy of your 'positive evidence' of mistake in the original recording of this path, please

Yours faithfully,



From: Colin Wilkinson/PL/NorthLincs
To:

Date: Wednesday, December 05, 2012 08:31AM
Subject: Re: Alkborough FP5

Hi Carl,

Thank you for your email. The orders are concurrent, yes, so the extinguishment will not be contemplated unless the creation is first confirmed.

Regards,

Colin Wilkinson
Senior Public Rights of Way Officer
Technical and Environment
Directorate of Places
North Lincolnshire Council
01724 297168

> wrote: -----

To: "Colin Wilkinson" <Colin.Wilkinson@northlincs.gov.uk>
From: <...>
Date: 04/12/2012 05:40PM
Subject: Alkborough FP5

Hi Colin

I've no objection to the orders in principle but just want to check they are concurrent i.e. the extinguishment order will only be confirmed if the creation order is too.

Regards
Carl