

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

Public Bridleway 20, Crowle

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To determine what happens next to a definitive map modification order that was duly objected to on being advertised as made.

2. BACKGROUND INFORMATION

- 2.1 On 30 April 2009 the Service Director Highways and Planning approved the making of an order under delegated powers modifying the "County of Lincoln, Parts of Lindsey (Isle of Axholme)" definitive map and statement. The effect of the modification, if confirmed, would be to extend Public Bridleway 20 (BW20), Crowle, southwards by 192 metres from Smaque Farm, via the A18, to the minor road between Hirst Priory and Dirtness Bridge.
- 2.2 The order was made under section 53 of the Wildlife and Countryside Act 1981. It was called "Definitive Map Modification (Public Bridleway 20, Crowle) Order 2009(1)".
- 2.2 The rationale for the order was set out in the officer's report to the Service Director Highways and Planning (see Appendix 1).
- 2.3 Since the service director's report was written, a further piece of evidence has come to light. This is the form dated 13 July 1953 that Crowle Town Council sent Lindsey County Council describing what became BW20 as a way they felt should be included on the definitive map, then in preparation. The significance of this is that the southern end of the bridleway is referred to as the south-west corner of Ordnance Survey field number 43 (as represented on the County Series Second Edition 1906). This is not quite as far south as the Hirst Priory to Dirtness Bridge minor road. But it is not far off and certainly south of the A18, unlike what the definitive map shows at present (see Appendix 2).
- 2.4 The order was made on 20 October 2009 (see Appendix 3). It was advertised as made on 12 November 2009 (see Appendix 4).

2.5 One objection was duly lodged. This came from Mr J Carney, 38 Lindsey Drive, Crowle (see Appendix 5).

3. **OPTIONS FOR CONSIDERATION**

3.1 To refer the order to the Secretary of State for Environment, Food and Rural Affairs with a recommendation that she confirm the order as made.

3.2 To refer the order to the Secretary of State with a recommendation that she confirm the order subject to modification.

3.3 To refer the order to the Secretary of State with a recommendation that she not confirm the order.

4. **ANALYSIS OF OPTIONS**

4.1 North Lincolnshire Council can only confirm – that is, bring into effect – unopposed orders. Once made and advertised, an order cannot be abandoned by the order-making authority. Opposed orders must be referred to the Secretary of State (with whom the power to confirm opposed orders rests).

4.2 Anyone making an objection or representation is required to state the grounds on which it is made (Wildlife and Countryside Regulations 1993, Schedule 5). Mr Carney's grounds seem to be that the order lacks supporting evidence ("there is no proof that this is a bridleway") and that none of BW20 exists, not just the additional length that the modification order seeks to introduce ("Bridleway 20 has been coloured on the Definitive map by a Council officer with a packet of crayons, no lawful authority ..." and "these officers have quite improperly altered a public record with the stroke of a pen"). Yet he also says, "the 1910 Finance Act map is the guide to establish the true and correct status of the way", implying that there could be a highway, only of a status other than bridleway. He suggests further that the status he has in mind is carriageway ("officers used Hastings' carriageway descriptions as footpaths and bridleways ..." and "it is incorrect that carriage roads graded G-F on the Highways maintained by Lindsey CC can be put on the definitive map as footpaths and Bridleways"). Moreover, he cites *Suffolk v Mason* 1979: "Definitive maps were never intended to record all carriageways, only those which were particularly suitable for walkers and horse riders". Except he then suggests there might be no highway ("unlike the 1823 Inclosure Award private carriage roads there is no description of the road" and "it does not appear as a highway maintained by the Crowle Local in their return under the Railway and Locomotive Act 1861").

- 4.3 Officers attempted to clarify the exact nature of Mr Carney's complaint to see whether there was any prospect of its being withdrawn. This was done through an exchange of emails between 5 January 2010 and 18 January 2010. However, unfortunately, no resolution was possible. Mr Carney forcefully reiterated the points made in his email of 18 November 2009. Officers concluded, therefore, that his objection was steadfast (see Appendix 6).
- 4.4 Although the legal test triggering the making of this order was the discovery of evidence that a way subsists or is reasonably alleged to subsist, confirmation is dependent on the more exacting balance of probability. In other words, the evidence of a bridleway existing must be greater than the evidence to the contrary.
- 4.5 Mr Carney's assertion that there is no evidence is wrong because that evidence is as set out in Appendices 1 and 2 of this report. His claim that the Finance Act 1910 records would settle the matter is also misleading. Officers have checked those records. It is true that either reference to a right of way for the purposes of tax deduction or exclusion of the route from the taxable hereditament plots could constitute evidence of highway status. However, the converse, as in this case, demonstrates nothing. Landowners were under no obligation to declare a right of way. Nor would the route be uncoloured because it was a bridleway only. Uncoloured routes generally indicate a carriageway, if anything at all. With regard to Mr Carney's view of Mr Hastings' 1968 list of rights of way, it should be pointed out that the list carries no legal bearing: it is simply evidence of what paths and ways were thought to form the rights of way network in Crowle at that time. It is lent credibility by the fact that (1) it is endorsed by the present Crowle Town Council and (2) most of the other routes it features remain recognised rights of way today.
- 4.6 Although Mr Carney states that BW20 as already shown on the definitive map does not exist, he has produced no evidence to support this theory. In the absence of evidence to the contrary, the showing of a bridleway on a definitive map is conclusive evidence of that bridleway's existence, line and status (Wildlife and Countryside Act 1981, section 56(b)). BW20 has been on the "County of Lincoln, Parts of Lindsey (Isle of Axholme)" definitive map since it was published in 1962. Furthermore, the allegation that officers unlawfully tampered with the definitive map is entirely without foundation.
- 4.7 Officers consider that Mr Carney's other references have no relevance. The citation from *Suffolk v Mason* 1979 refers to carriageways. But the present order concerns a bridleway, not a carriageway. For the same reason, the 1861 Act he mentions would not apply. Nor, according to current case law, did the Crowle Inclosure Award 1823 grant the public a right of way over the private roads. So why would BW20 feature among them?

4.8 Rather than there being no evidence that BW20 extends southwards to the Hirst Priory to Dirtness Bridge minor road, officers think it is in fact the other way round: that there is no evidence to counteract the evidence that supports this proposition. Mr Carney is the only objector and he has failed to produce any.

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

5.1 Financial

5.1.1 The longer it takes to confirm the order, the greater the cost to North Lincolnshire Council, if only in terms of staff time. As there is but one objector, the Secretary of State's preferred means of arbitration is likely to be written representations. But a hearing or an inquiry cannot be ruled out because the objector can insist on being heard in front of an inspector. There is also the hiring of the venue, typically a village hall. If an inquiry is held, costs may be awarded against one party to another on application to and at the discretion of the Secretary of State on the grounds of unreasonable behaviour. Otherwise parties pay their own costs. A hearing is less formal and can be held on North Lincolnshire Council premises.

5.2 Staffing

5.2.1 From within the existing complement of the Environment Team, but legal representation will be needed if an inquiry is held.

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 *Wildlife and Countryside Act 1981, Schedule 15, paragraph 7(1):* "If any representation or objection duly made is not withdrawn the authority shall submit the order to the Secretary of State for confirmation by him". Therefore, unless the objection is withdrawn, the order must be so referred, whereupon the Secretary of State must either hold an inquiry or afford any person who has made a duly lodged and not withdrawn

objection or representation the right to be heard. This is unless the Secretary of State decides that the objection or representation is irrelevant to whether the order should be confirmed, with or without modifications (Wildlife and Countryside Act 1981, Schedule 15, paragraph 7(2), (2A) and (3)).

6.1.2 The Secretary of State can modify an order. However, if this (1) affects land not affected by the order, (2) omits the order route, (3) shows a way other than the order route or (4) shows the order route as a highway of a different description, he must first give not less than 28 days' notice of his intention, inviting representations or objections with respect to the proposal. Again, he must either hold an inquiry or afford any person who has made a duly lodged and not withdrawn objection or representation the right to be heard. This is unless the Secretary of State decides that the objection or representation is irrelevant to whether the order should be confirmed in accordance with his proposals (Wildlife and Countryside, Schedule 15, paragraph 8).

6.1.3 A confirmed order must be advertised so as to allow an aggrieved person 42 days within which to question its validity. This is done by application to the High Court. To succeed, an applicant needs to satisfy the court that under the 1981 Act the taking effect of the order is either not within the powers of section 53 or his interests have been substantially prejudiced because some or all of the requirements of Schedule 15 have not been complied with. If so satisfied, the court may "quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant". Otherwise, "the validity of any order shall not be questioned in any legal proceedings whatsoever" (Wildlife and Countryside Act 1981, Schedule 15, paragraph 12).

6.1.4 Any other statutory considerations are as referred to within either other sections of this report or the report to the Service Director Highways and Planning of 13 May 2009.

6.2 Environmental

6.2.1 Accurate definitive maps and statements benefit users and landowners/lessees/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/lessees/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/lessees/occupiers with alternative sources of income as farmers increasingly diversify into tourism.

6.3 Diversity

6.3.1 None.

6.4 Section 17 – Crime and Disorder

6.4.1 None.

6.5 Risk

6.5.1 The decision to confirm the order, with or without modifications, will be the Secretary of State's. Therefore his interpretation of the evidence might not be the same as North Lincolnshire Council's. But whatever the outcome, the most important factor is subsection of the evidence to scrutiny through due legal process so that whether or how the order route is ultimately shown on the definitive map, this reflects the most fair and thorough evaluation of that evidence to date.

6.5.2 Any costs incurred and officer time spent assisting the Secretary of State in reaching his decision is an inevitable part of the legal duty North Lincolnshire Council are under to keep the definitive map under continuous review. The holding of a public inquiry would be the costliest means of arbitration, largely because it is generally the most time consuming. But again, whether one is held is a matter outside this authority's control.

7. **OUTCOMES OF CONSULTATION**

7.1 When the order was advertised as made, a copy of the order and the accompanying notice was served on the persons, groups, bodies and organisations shown at Appendix 7. These included the affected owners and occupiers and Crowle Town Council. None, though, exercised their statutory right to object or make representation.

8. **RECOMMENDATIONS**

8.1 That "Definitive Map Modification (Public Bridleway 20, Crowle) Order 2009(1)" be submitted to the Secretary of State for Environment, Food and Rural Affairs with a recommendation that she confirm the order as made (since no evidence has been submitted in support of the objection/representation received).

- 8.2 That North Lincolnshire Council participate fully in the Secretary of State's chosen means of arbitration.

SERVICE DIRECTOR HIGHWAYS AND PLANNING

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Background Papers used in the preparation of this report: Office file "NLC Crowle BW20", held electronically at Church Square House.