

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

MARKET LANE, BRIGG

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To consider a contested order and the next steps required in this matter.

2. BACKGROUND INFORMATION

- 2.1 An order and report to add Market Lane to the definitive map and statement was made in 2011. (Appendices 1 and 2.)
- 2.2 The order was advertised on 24 November 2011. Four objections were lodged. (Appendix 3.) One of these is now a representation. (Appendix 4.)
- 2.3 One objector did not state his grounds so we asked him what these were. (Appendix 5.) We received no response. We can query this with the Secretary of State.
- 2.4 The objections brought no new evidence to light.

3. OPTIONS FOR CONSIDERATION

- 3.1 The options available for consideration are as follows:
- To ask the Secretary of State to confirm the order.
 - To take a neutral stance in relation to confirmation.
 - To oppose confirmation.

4. ANALYSIS OF OPTIONS

- 4.1 The Secretary of State will decide whether to confirm, via written representations, a hearing or an inquiry.

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

5.1 Financial

5.1.1 An inquiry might prove costly. Costs incurred might include engaging a barrister.

5.2 There are no other significant resource implications.

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

6.1 Statutory

6.1.1 We must keep the definitive map and statement under review.

6.2 Environmental

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

6.3 Risk

6.3.1 The Secretary of State's decision is potentially subject to judicial review.

7. **OUTCOMES OF CONSULTATION**

7.1 When the order was made, neither user groups nor Brigg Town Council raised any objections.

7.2 Two of the affected and adjacent landowners objected.

8. **RECOMMENDATIONS**

8.1 To send the order to the Secretary of State recommending confirmation as made.

DIRECTOR OF PLACES

Hewson House

Station Road
BRIGG DN20 8XB.

Author: Naomi Boyd

Date: 17 August 2012

Background Papers used in the preparation of this report

Office file PROW/Brigg/Market Lane, stored electronically at Church Square House

WILDLIFE AND COUNTRYSIDE ACT 1981
DEFINITIVE MAP MODIFICATION (Brigg FP327)
ORDER 2011 (1)



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

Wildlife and Countryside Act 1981

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

Definitive Map Modification (Brigg FP327) Order 2011

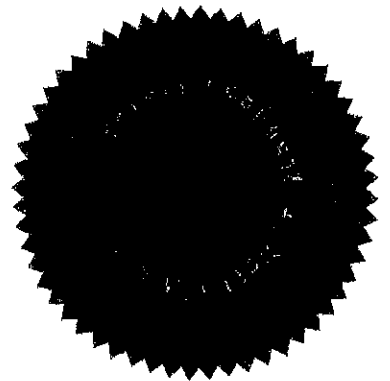
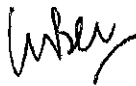
This order is made by North Lincolnshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the County of Lincoln – Parts of Lindsey (Glanford Brigg) Definitive Map and Statement require modification in consequence of the occurrence of an event specified in section 53(3)(b) – 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 path or restricted byway.

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 20 October 2011.
2. The County of Lincoln – Parts of Lindsey (Glanford Brigg) Definitive Map and Statement shall be modified as described in Part 2 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 (Brigg FP 327) Order 2011.

**THE COMMON SEAL of
NORTH LINCOLNSHIRE COUNCIL**
Was hereunto affixed
In the presence of:

(Authorised signatory)



Seal Number: 6729

Dated: 4th November 2011

SCHEDULE

PART 1

Modification of Definitive Map

Description of path or way to be added

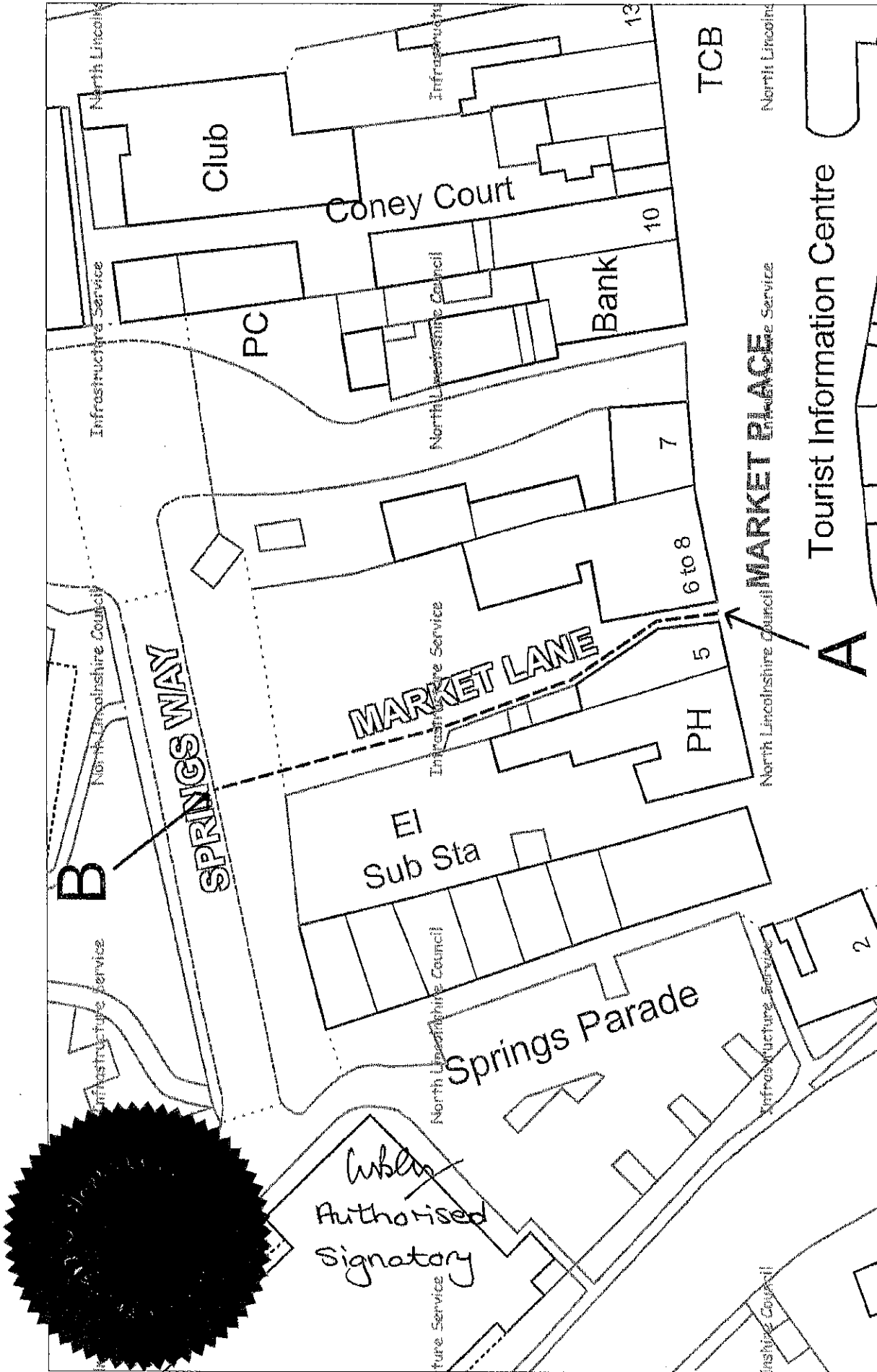
A -B as indicated on the map: A 67-metre-long footpath commencing on Market Place at grid reference SE99910721 and leading in a north-north-westerly direction along a tarmacked surface from between numbers 5, and 6 to 8 Market Place with a width measuring the full width of the archway, narrowing to 1.8 metres as it leaves the archway and continuing to its junction with Springs Way at grid reference SE99890728.

PART 2

Modification of Definitive Statement

Variation of particulars of path or way

A 67-metre-long footpath commencing on Market Place at grid reference SE99910721 and leading in a north-north-westerly direction along a tarmacked surface from between numbers 5, and 6 to 8 Market Place with a width measuring the full width of the archway, narrowing to 1.8 metres as it leaves the archway and continuing to its junction with Springs Way at grid reference SE99890728.



Based upon the Ordnance Survey mapping with the permission of
 Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office,
 © Crown Copyright.
 Unauthorised reproduction infringes Crown Copyright
 and may lead to prosecution or civil proceedings.
NORTH LINCOLNSHIRE COUNCIL 0100023550 2011

Drawing Title: Brigg FP 30A
 Drawn by: NB
 Scale: 1:500
 Date: 20/10/2011
 OS Grid Ref: SE99910725

Infrastructure Service
 Director,
Peter Williams BSc, DMS, CEng, MEI, MCMI, AMIMechE
LINCOLNSHIRE COUNCIL

The Ordnance Survey map data included within this publication is provided by North Lincolnshire Council under license from Ordnance Survey in order to fulfil its public function to act as a highways and planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they visit to license Ordnance Survey map data for their own use.

Seal No 6729

PUBLIC RIGHTS OF WAY – AUTHORITY TO MAKE ORDER**NORTH LINCOLNSHIRE COUNCIL****DIRECTOR OF INFRASTRUCTURE SERVICES****MARKET LANE, BRIGG****1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To consider whether a public byway open to all traffic (BOAT) should be added to the definitive map. The evidence includes statements of 20 years' use and historical documents.
- 1.2 To consider whether one of the exemptions under section 67(2) of the Neighbourhood and Rural Communities Act 2006 applies. Unless so exempted, section 67 stops up all unrecorded rights of way for mechanically propelled vehicles (MPVs).

2. BACKGROUND INFORMATION

- 2.1 On 10 December 2009 Mr Ben Nobbs of Albert Street, Brigg, applied to modify the definitive map. He thinks the route known as Market Lane, Brigg, is a BOAT. It leads northwards from between 4 and 5-6 Market Place to Spring's Way, a distance of roughly 66 metres. The claimed width varies between three to five metres (see Appendix A). The evidence consists of 40 evidence-of-use forms, historical maps and photos, and articles by local historians.
- 2.2 Appendix B covers the relevant legislation in greater detail.
- 2.3 Market Lane was on the list of streets in January 2008. It would be exempt under the 2006 Act were it also on the list of streets just before 2 May 2006 when the Act began. However, it was not (see Appendix C).
- 2.4 When the list of streets was updated in 2008, Market Lane was added in error. But counsel advised that Market Lane can be removed without the need to refer to the magistrates court. Because there is no duty to maintain, we do not have to apply to the

magistrates' court for removal (as section 47 of the Highways Act 1980 would have otherwise required us to do).

- 2.5 However, an interested party alleges Market Lane should be on the list of streets and thus have public status. He cites some nineteenth century documents; but because he refuses to disclose them, we cannot take them into account.
- 2.6 Since 1993 a traffic regulation order has banned MPVs from Market Place except for access to adjacent premises (see Appendix D). Therefore access to what was Smith Parkinson's garage was with permission, not as *of right*.
- 2.7 The historical Ordnance Survey Maps from 1887, 1908 and 1945 all show a way of some sorts along Market Lane, continuing further north than the application route. But in each one, it remains a cul-de-sac way, up to at least 1963. This can be seen in the photograph and maps shown at Appendix E. Spring's Way was not in existence to create a logical destination.
- 2.8 The Finance Act map from 1910 shows Market Lane as an uncoloured, named way. This could indicate that Market Lane was considered to be a highway of some sorts. But it does not always follow, especially in the case of a cul-de-sac. Case law suggests that a highway should have a logical destination, usually another highway. The field book entries, which are to be read with the map, fail to clarify what the status of Market Lane was at that time. You can see a copy of the map and field books at Appendix F. The field book entries used to indicate where a public right of way existed, by showing a tax exemption. There is no such entry made in relation to Market Lane. However, it does support the fact that there was a way of some sorts along Market Lane. It is the determination of what that status is, which must be considered.
- 2.9 Twenty-two of the evidence-of-use forms suggest dedication as a footpath. Unless, that is, Market Lane was a footpath already. Documentary evidence is lodged to indicate that it has been a footpath since the late 1800s at least. (But please note that while Market Lane used to extend north beyond what is now Spring's Way, Mr Nobb's application does not.)

3. OPTIONS FOR CONSIDERATION

- 3.1 To accept the application in full.

- 3.2 To accept the application in part by adding a public footpath to the definitive map and statement only.
- 3.3 To refuse the application.

4. ANALYSIS OF OPTIONS

- 4.1 The council can only modify the definitive map if one of the events in section 53(3) of the Wildlife and Countryside Act 1981 has occurred. Furthermore, we can only add Market Lane as a BOAT if one of the exemptions in section 67(2) of 2006 Act applies. If we would have added it as a BOAT were it not for the 2006 Act, we would add it as a restricted byway instead (i.e. a right of way for all traffic other than MPVs).
- 4.2 Members of the public who use Market Lane on foot will still be able to use it as such if it is added as a footpath.
- 4.3 Market Lane is being removed from the list of streets. Nor is it on the register of streets held under section 53 of the New Roads and Street Works Act 1991. Therefore if Market Lane is not added to the definitive map, it will have no recorded highway status.

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 Environment Team. Should a hearing or inquiry be held, Legal Services' assistance might be called upon.
- 5.3 Property and IT
 - 5.3.1 None.

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

- 6.1 Statutory

- 6.1.1 The council must keep the definitive map under continuous review (section 53 of the 1981 Act).
- 6.1.2 See Appendix B.
- 6.2 Environmental
 - 6.2.1 An accurate definitive map and statement benefits users and landowners/occupiers alike by showing each other what the extent of the public's rights of access are.
- 6.3 Risk
 - 6.3.1 The order to modify the definitive map could be duly contested or new evidence could be discovered that might cause us to reconsider whether the order should have been made or what it contains. We should then need to refer the order to the Secretary of State, recommending she confirm it with or without modification. But the Secretary of State might not confirm the order or could do so subject to modifications of her own. Referral to the Secretary of State would result in written representations, a hearing or an inquiry regardless.
 - 6.3.2 The Secretary of State's decision can be challenged in turn by way of judicial review.
 - 6.3.3 The applicant may appeal against a refusal to modify. He has 28 days within which to do so.
 - 6.3.4 Grimley Smith Associates and Brigg Town Council have concerns about the potential injury and danger to pedestrians in Market Place if motor vehicles had access from Market Lane.
- 6.4 Section 17 Crime and Disorder
 - 6.4.1 The neighbouring occupiers of Market Lane are concerned about the youths they say gather along Market Lane at night-time.
 - 6.4.2 If Market Lane is added to the definitive map as a BOAT, the 1993 TRO will prevent motorists from accessing it legally from Market Place.
- 6.5 Diversity and Other

6.5.1 None

7. OUTCOMES OF CONSULTATION

- 7.1 Two landowners abut Market Lane: (1) 5-6 Market Lane (Grimley Smith Associates), who do not mind Market Lane being a public footpath, but do mind it being a BOAT. But desire has no bearing: only evidence on the balance of probability; and (2) 4 Market Place, who did not respond.
- 7.2 Brigg Town Council support the addition of a public footpath, but not a BOAT. Their main concern is pedestrian safety.
- 7.3 Should an order be made, these bodies would be sent a copy of the order and notice prior to the latter's publication: the known owners, occupiers and lessees of the affected and adjacent land; Brigg Town Council; National Farmers' Union, Brigg Town Council; statutory undertakers; Ramblers' Association, British Horse Society, Byways & Bridleways Trust, Cyclists' Touring Club, Auto Cycle Union, Open Spaces Society and British Driving Society.

8. RECOMMENDATIONS OF INVESTIGATING OFFICER

- 8.1 It is recommended that the council accept Mr Nobb's application in part by agreeing to add Market Lane to the definitive map and statement as a public footpath only.
- 8.2 If objections to the order are lodged and not withdrawn in writing, it is recommended further that Planning Committee consider what the council's stance should be prior to the submission of the order to the Secretary of State.

9.0 DECISION

9.1 The recommendations of this report are:

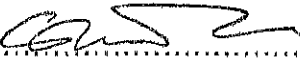
agreed

declined

deferred to Planning Committee

9.2 Comments (if any)

I endorse the recommendations set out above:

Signed  27/9/2011
Assistant Director Resources and Business Services

Authorised by

Signed 
Director of Infrastructure Services 29.9.2011

Dated:

Church Square House
Church Square
PO Box 42
SCUNTHORPE
North Lincolnshire
DN15 6XQ

Author: Naomi Boyd
Date: 10 August 2011

Background Papers used in the preparation of this report: office file PROW/Brigg/market lane/NLC/DMMO stored electronically at Church Square House.

Where appropriate the report has been seen and commented on by (3 or n/a)

Cabinet Member	Human Resources	Legal & Democratic	Finance	Property	IT	EMT

Approved by Head(s) of Service (3)	
---	--

COLIN SEYMOUR MA BA (Hons.) Cert.Ed.
73 St. Hilda Street
Bridlington YO15 3EE

E-mail jaycee.3391@live.co.uk

Tel. 01262 601956

North Lincolnshire Council (Rights of Way)
Church Square House PO BOX 42
Scunthorpe DN15 6XQ

27 December 2011

Dear Sir,

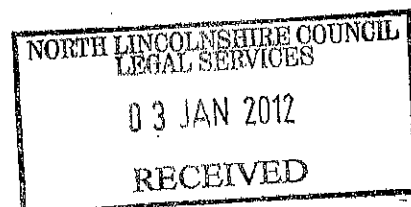
OBJECTION : Market Lane Brigg - DMMO Brigg FP 327 (2011)

- 1 I wish to formally object to the making of the said order.
- 2 The grounds of my objection are twofold :-
 - (a) Firstly - I submit that the order fails to address the correct status of the way which is a public street for all purposes.
 - (b) Secondly - I question whether the Definitive Map is the proper place to record a street in an urban area, a street which should rightly be recorded on the statutory list of streets maintainable at the public expense as a public carriage road.
- 3 The Council received an application on 9 December 2009 from Mr Andrew Nobbs seeking to have the way recorded as a Byway Open to all Traffic. I am presuming that this application is still valid and has not yet been fully processed and decided.
- 4 As the Council is aware, it has previous correspondence on its files from myself regarding the status of Market Lane Brigg. I refer to seven letters dated from 1 February 2011 to 25 May 2011, your reference being VW/CH. Please note that I wish this correspondence to form part of my objection
- 5 It is a matter of public concern that once again North Lincolnshire Council seek to diminish a public right, seemingly for the advantage of private persons. Thus rather than carry out its statutory duty to the public per se, as required by section 130 Highways Act 1980, it gives support to those who gated off the public street and now seek to restrict the ancient way to the cattle market to foot passengers only. This is a deplorable state of affairs, one which reflects the current attitude of certain council officers to the protection of public rights in their area.
- 6 No intelligent person could reasonably conclude that a lane called Market Lane (a thoroughfare from a public street to a public cattle market) was anything but a public way for all purposes. To conclude otherwise would be perverse and unreasonable, and contrary to common sense.
- 7 This objection is thus based on fact, commonsense, and the law.

Yours faithfully

Colin Seymour

Colin Seymour



Market Court Developments Ltd
6 Market Place
Brigg
North Lincolnshire

2 January 2012

Ref Definitive Map Modification Brigg FP327 order 2011

Dear Sir,

We are lodging an objection to the above order on the grounds that:

1) it is not in frequent use

The area has been used largely as a car park by first Smith Parkinson Garage and lastly by ourselves for well over 20 years. As such it has rarely been accessed as a path by the general public.

2) it is not necessary

There is no need to adopt a further pathway as there are two other pedestrian accesses connecting Springs Way and the Market Place which are frequently used currently and are within close proximity to the proposed pathway. Both these routes are popular and used more widely by the general population of Brigg.

3) it runs counter to proposals already agreed and going through planning

Part of the land proposed as footpath is owned by ourselves and is currently part of a development plan going through planning. This proposal would seriously jeopardise the development of this part of Brigg.

5) current use and local reorganisation has made this redundant as a footpath

The historical use of this area as a connecting road has long since ceased (see comment 1 above). The local plan has already eroded the use and significance of this area as a vehicular and pedestrian access by the building of the Brigg By pass and the demolition of the stock market area.

4) there would be significant expense, maintenance, health and safety issues to be resolved

The land is in poor state of repair and not suitable for pedestrian access.

We hope that this proposal will be reconsidered and not adopted for the reasons stated above.

Yours sincerely

Signed
On behalf of Market Court Developments

The trustees of the GSA retirement benefit Scheme
6 Market Place
Brigg
North Lincolnshire

2 January 2012

Ref Definitive Map Modification Brigg FP327 order 2011

Dear Sirs,

Our building (GSA Ltd office block) occupies the site previously used by Smith Parkinson Garage.

We are lodging an objection to the above order for various reasons mainly to do with the security and well being of the people who use the building. There is a health and safety issue regarding late night loiterers and we hope the proposal will not jeopardise the office people accessing the office car park.

Currently we find that because the site is open it is used as a place to loiter after dark while eating takeaways and also as a toilet by presumably the same some people. This leads to unsightly mess and obvious public health issues.

We would like to make the site more secure and are in favour of the development plans currently going through the planning application process.

The above littering issues are of concern to us but we would also like to point out that the area has been used largely as a car park by first Smith Parkinson Garage and lastly by ourselves for well over 20 years. It has rarely been used as a path by the general public as there are two other pedestrian accesses connecting Springs Way and the Market Place in close proximity. Both these routes are popular and used widely by the general population of Brigg.

Part of the land proposed as footpath is owned by a development company currently we have access over this land to the office car park. We need this to continue to be the case.

We hope that this proposal will be reconsidered and not adopted for the reasons stated above.

Yours sincerely

Signed
On behalf of the trustees of the GSA Ltd Retirement Benefit Scheme

From: Dave Watson/SC/NorthLincs
To: Naomi Boyd/PL/NorthLincs@NorthLincs

Date: Friday, April 13, 2012 12:43PM
Subject: Fw :

History: ✦ This message has been replied to and forwarded.

See below

Dave

-----Forwarded by Dave Watson/SC/NorthLincs on 13/04/2012 12:43PM -----

To: DaveWatson <dave.watson@northlincs.gov.uk>
From: john carney <johncarney1@btinternet.com>
Date: 13/04/2012 12:38PM
Subject: Fw:
(See attached file: Market Lane Brigg DMMO.docx)

as requested.

----- Forwarded Message -----

From: john carney <johncarney1@btinternet.com>
To: "will.bell@northlincs.gov.uk" <will.bell@northlincs.gov.uk>
Cc: "peter.williams@northlincs.gov.uk" <peter.williams@northlincs.gov.uk>
Sent: Friday, 25 November 2011, 11:04
Subject:

As everyone is aware, Market Lane Brigg is a Highway for motor Vehicles, and those drawn by animals, drive or ridden and is recorded as such on the Finance Act (1910), Plans and records

It is about time NLC supplied evidence that it has the Powers to alter the Public record as recorded on the "list of Streets" and the FA (1910)
First Val Wilcockson stated i would get a copy of barristers opinion, and that offer was withdrawn.

where is the law and evidence officers can remove the Highways Authority responsibility to maintain Market lane Brigg as a vehicular highway by removing it from the "list of streets" without a legal event

John Carney

Attachments:

Market Lane Brigg DMMO.docx

From: "colin seymour" <jaycee.3391@live.co.uk>
To: <naomi.boyd@northlincs.gov.uk>

Date: Monday, March 19, 2012 11:28AM
Subject: DMMO - Market Lane

History: ➤ This message has been forwarded.

Dear Naomi Boyd -Re e-mail 14 March

I understand that there is still one outstanding representation which the Council claim was not duly made. However this is a matter for the Secretary of State to decide not the local authority.

As my loss of vision is irreversible I am not able to pursue my objection. However the points I raise remain valid issues worthy of consideration by an impartial tribunal. Therefore I wish my objection to be now considered as a representation only. There is a legal difference between the two.

I consider that this matter could best be dealt with under the written representation procedure. Will you please ensure that my letters of 1-2-11 : 1-5-11 : 25-5-11 : 27-12-11 : 24-1-12 : 7-2-12 plus my e-mails of 1-3-12 and today are passed to the Inspectorate.

Please note - should the Inspectorate decide that the representation by John Carney was not duly made I hereby give my authority for my own representation to be then withdrawn.

Colin Seymour

From: Naomi Boyd/PL/NorthLincs
To: Dave Watson/SC/NorthLincs@NorthLincs

Date: Friday, May 11, 2012 09:04AM
Subject: Market Lane, Brigg

Hi Dave

Did John Carney get back to you to confirm what exactly the nature of his objection was re this matter? I know he has forwarded the mail which he says is his objection, but as he doesn't actually state what his objection is based upon, i was just looking for clarification for when we send to the planning inspectorate.

Thanks

Naomi