

**NORTH LINCOLNSHIRE COUNCIL**

**PLANNING COMMITTEE**

**Claimed Public Bridleway, River Idle, Haxey**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To determine an application made under section 53 of the Wildlife and Countryside Act 1981 to show as a bridleway the part of Public Footpath 116 in the Parish of Haxey that runs alongside the River Idle.

**2. BACKGROUND INFORMATION**

- 2.1 Tim Hart of Nottinghamshire County Council has served application in respect of the floodbank along the northern side of the River Idle between Idle Stop and the Nottinghamshire county boundary. The application was dated 8 July 2005. It contended that the route, all within the Parish of Haxey, was a bridleway and that the definitive map and statement should be modified accordingly. The application can be broken down into two discrete lengths: (1) 2,620 metres (2,866 yards) between Idle Stop and the southern end of a track extending from Tindle Bank called Cornley Lane and (2) 215 metres (235 yards) from Cornley Lane to the Nottinghamshire county boundary. The latter has already been upheld by members (Minute Number \*\*\*). Accordingly, North Lincolnshire Council made an order adding this previously unrecorded length to the definitive map and statement as a bridleway on \*\*\*. No objections were received. Therefore, at the time of writing North Lincolnshire Council were about to confirm the order, as we are entitled to do when an order is unopposed.
- 2.2 The former is the subject of this report (Appendices 1 and 2).
- 2.3 Anyone may apply to modify the definitive map and/or statement (Wildlife and Countryside Act 1981, section 53(5)) and providing they follow a formal procedure may appeal to the Secretary of State if the application is either refused or outstanding after twelve months (Wildlife and Countryside Act 1981, Schedule 14).
- 2.4 In addition to making the application, the formal procedure involves serving notice on all affected owners and occupiers. The applicant must then certify that this has taken place.

- 2.5 Although Mr Hart's certificate is dated 9 August 2005, he did not in fact notify the affected owners and occupiers.
- 2.6 Even so, North Lincolnshire Council have a duty to keep the map and statement under continuous review and to modify the map and/or statement as soon as reasonably practicable if we discover evidence (when considered with all other relevant evidence available to us) that a highway shown in the map and statement of a particular description ought to be there shown as a highway of a different description (Wildlife and Countryside Act 1981, sections 53(2) and 53(3)(c)(ii)).
- 2.7 The evidence should be assessed as a whole on the balance of probability: "It must have a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: 'we think it more probable than not', the burden is discharged, but if the probabilities are equal it is not" (Denning J, *Miller v Minister of Pensions* 1947).
- 2.8 Evidence supporting Mr Hart's application comprises: a) a map from 1774 by a cartographer named Chapman, b) a copy of the Misson Tithe Map 1843 and c) qualified reference to the Ordnance Survey 1:2,500 County Series Map (Second Edition) 1906.
- 2.9 The Chapman Map 1774 (Appendix 3) represents the application route as an "open road" (see key) and shows it as being part of a longer way between Misson and West Stockwith. Public status is implied.
- 2.10 The tithe map (Appendix 4) shows Idle Stop, from where is indicated "Bank – Bridle Road to Stockwith". Although a tithe map was concerned, as the name suggests, with tithes (an old form of ecclesiastical rent) rather than with highways, this is still evidence that the northern bank of the River Idle leading eastwards from Idle Stop in the direction of Stockwith was in 1843 a bridleway. It is unlikely, too, that the cartographer would have indicated a way to a reasonably distant destination in this manner had he not thought the route public. "Once a highway, always a highway" is the legal adage, unless altered by official order. No such order is known to North Lincolnshire Council.
- 2.11 The OS 1:2,500 Map 1906 (Appendix 5) shows a path annotated by the abbreviation "BR" (meaning "bridle road") running eastwards from Idle Stop along the northern bank of the River Idle along the length of the application route (and indeed beyond to the A161 at Haxey Gate Bridge).
- 2.12 Moreover, west of Idle Stop (within Nottinghamshire) runs a bridleway (from Misson). Also, the Ordnance Survey show a bridleway over the first part of the riverbank to the east of the application route (also within Nottinghamshire) (Appendix 6). This could make the application route a missing link in the "Bridle Road [from Misson] to Stockwith" (the remainder of the route east of Haxey Gate Bridge being, arguably,

North Carr Road, a publicly maintained carriageroad. A further missing link follows the River Idle's northern floodbank west of Haxey Gate Bridge. It is understood that Nottinghamshire County Council have this under investigation). Such a connection would be consistent with the route's representation on the Chapman Map 1774.

- 2.13 Much of the order route was designated public footpath by Lindsey County Council based on information provided locally during the 1950s as part of the general definitive map compilation process. Although several other footpaths within the parish were subsequently shown to be bridleways by Humberside County Council in the 1990s, it is thought the correct status of Public Footpath 116 has never before been examined.

### **3. OPTIONS FOR CONSIDERATION**

- 3.1 To uphold the application (thus agreeing to make an order upgrading Public Footpath 116 beside the River Idle to bridleway – i.e. the route shown in Mr Hart's application between Idle Stop and Cornley Lane).
- 3.2 To dismiss this part of the application (thus refusing to make such an order).

### **4. ANALYSIS OF OPTIONS**

- 4.1 So far, no evidence has come to light to counter the proposition that the definitive map and statement be modified in accordance with the applicant's wishes. This is despite consultation with the sole landowner, adjacent landowners and the parish council. A definitive map is conclusive evidence in law of the particulars shown therein (Wildlife and Countryside Act 1981, section 56). It is not proof, however, and if evidence is discovered that the definitive map is wrong in any respect, the law requires that the necessary changes be made "as soon as reasonably practicable".
- 4.2 Members should evaluate the evidence and make their decision on the balance of probability. So if having looked at the evidence it is agreed that bridleway status is more probable than footpath, an order changing the definitive map to this effect must be made.
- 4.3 Because the application route currently appears on the definitive map as a public footpath, this is conclusive evidence of a right of way on foot. At the same time, though, the legislation states that the showing of a footpath on a definitive map is without prejudice to the existence of higher rights: a public bridleway, for example.
- 4.4 Definitive map modification orders must contain a width. The width in this case would arguably be the entire width of the top of the bank. The width, though adequate, is not great, being between \*\*\* and \*\*\* metres. Furthermore, there is nothing physically to prevent the entire top of the

bank from being used and so, in the absence of more compelling evidence to the contrary, on balance this is the width that the public are entitled to use.

- 4.5 At present, the definitive statement does not record a width for Public Footpath 116. This is not unusual. Few paths shown on the map appear in the statement. North Lincolnshire Council inherited the map and statement from Lindsey County Council (via Humberside County Council). Were Public Footpath 116 beside the River Idle to be upgraded to bridleway, the statement would have to be modified as well as the map. As well as width, the particulars the statement records include length and route description.

## **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. If an order were to be made and then challenged, Legal Services' assistance might be called upon.

### 5.3 Property

- 5.3.1 There are no known implications for North Lincolnshire Council property.

### 5.4 IT

- 5.4.1 There are no known IT implications.

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

### 6.1 Statutory

- 6.1.1 The Wildlife and Countryside Act 1981, as referred to within this report.

### 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 Any order made to modify the definitive map on the basis of the discovery of evidence is open to challenge within six weeks of its advertisement. North Lincolnshire Council cannot confirm an order to which there remains an outstanding objection or representation correctly served during those six weeks. Nor, however, can an order, once made, simply be dropped or forgotten about. The only recourse under such circumstances is referral of the order and objection(s)/representation(s) to the Secretary of State for the Environment, Food and Rural Affairs. It is, though, possible for the order-making authority to reconsider its stance in the light of new evidence.

6.3.2 Orders referred to the Secretary of State will be dealt with by written representations, hearing or public inquiry. The order-making authority must normally meet its own costs, but in the case of inquiries can claim costs against a third party thought to have been acting unreasonably.

6.3.3 If North Lincolnshire Council decide not to uphold the application, Mr Hart will have 28 days from his receipt of formal notification to that effect within which to appeal to the Secretary of State for the Environment, Food and Rural Affairs. If the Secretary of State finds in Mr Hart's favour, he will direct North Lincolnshire Council to make an order.

### 6.4 Diversity

6.4.1 None.

### 6.5 Section 17 Crime and Disorder

6.5.1 None.

### 6.6 Other

6.6.1 None.

## 7. OUTCOMES OF CONSULTATION

- 7.1 The application route is owned by the Environment Agency throughout. However, the Environment Agency do not appear to dispute the contention that Public Footpath 116 is a bridleway.
- 7.2 Haxey Parish Council considered the matter on 31 January 2008. They fully support the proposal.
- 7.3 In the event of an order being made, all statutory consultees under the Wildlife and Countryside Act 1981 (such as Haxey Parish Council, owners, occupiers, user bodies, statutory undertakers and farming organisations) would receive a copy of the order and notice prior to publication of the notice in the Scunthorpe Telegraph.

## 8. RECOMMENDATIONS

- 8.1 It is recommended that members:
  - a) uphold Mr Hart's application to modify the definitive map and statement so that (1) the route currently depicted on the definitive map as Public Footpath 116 is instead depicted as a public bridleway where this follows the northern bank of the River Idle from Idle Stop to the point at which Public Footpath 116 turns away from the River Idle to head northwards along Cornley Lane and (2) the definitive statement is modified in kind so as to record length, width and route description; and
  - b) agree to accept a further report should irreconcilable duly served objections and/or representations be lodged following the making of the order to establish North Lincolnshire Council's stance in the light of those objections and/or representations prior to referral to the Secretary of State.

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**Background Papers used in the preparation of this report:** Office file 25/116/DMMO held electronically at Church Square House.