

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

Public Footpath 93, Haxey

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To seek members' approval to divert part of Public Footpath 93, Haxey under section 119 of the Highways Act 1980 and section 53A of the Wildlife and Countryside Act 1981.

2. BACKGROUND INFORMATION

- 2.1 Public Footpath 93 runs northeasterly from the A161, Epworth Road, to High Burnham Farm as shown on appendix one. It has a total length of 1,280 metres, of which 560 metres are being considered for diversion, as shown on appendix two. The whole of the route is in the parish of Haxey.
- 2.2 Although the route of the proposed alternative was signposted by Humberside County Council there is no record of a diversion having been carried out legally, however, the public have made and continue to use the proposed route. The *status quo* is unsatisfactory and possibly a breach of North Lincolnshire Council's statutory duty as a highway authority.
- 2.3 Following the acquisition of High Burnham Farm by Mr Clarke, he was made aware of the definitive route and agreed to pay all the costs in the raising and advertising of the order. The application to divert the path was received on the 21 September 2008.
- 2.4 The applicant has expressed his intent, should the diversion be successful, to fence the path off from the field, to a minimum width of two metres, as he intends to have livestock grazing in the field.
- 2.5 Mr Clark believes the proposed diversion would be in his interest because having the footpath run wholly along the headland would enable him to farm his field more efficiently.
- 2.6 If the section of path is diverted, then this will remove a "long-term" problem, which is in line with the "Rights of Way Improvement Plan" (section 10 of the Assessment). The "long term" problem is by way of

an agreement by Humberside County Council with the former owner, to divert the path onto the proposed route.

3. OPTIONS FOR CONSIDERATION

- 3.1 To raise an order under section 119 of the Highways Act 1980 to divert the section of public footpath 93, Haxey.
- 3.2 To open the definitive route.

4. ANALYSIS OF OPTIONS

- 4.1 The diversion order, if successful, would formalise a well-used, safe and convenient route.
- 4.2 Opening the definitive route would require the need for gates at two points. These would have to be provided and maintained by the landowner.
- 4.3 Headland paths are waycleared by North Lincolnshire Council, whereas farmers must keep crossfield paths clear of growing crops. However most of this path is a headland one already, so the additional liability arising from a diversion should be negligible.

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

5.1 Financial

- 5.1.1 The full cost of advertising and administering the making of the order and the cost of advertising the confirmation of the order to be met by the applicant.
- 5.1.2 The person upon whose representations the order is to be made has entered into an agreement with North Lincolnshire Council to defray: a) compensation arising from the value of an interest of a person in land being depreciated, or a person suffering damage by being disturbed in his enjoyment of land in consequence of the coming into operation of the order ("interest" including any estate in land and any right over land, whether exercisable by virtue of ownership, licence or agreement and, in particular, sporting rights); and b) any expenses we as highway authority may incur in bringing the site of the new path into a fit condition for use by the public (Highways Act 1980, section 119(5)).

5.2 Staffing

- 5.2.1 From within the Environment Team's existing complement. If an order were made 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 It appears to North Lincolnshire Council that, in the interest of the owner of the land over which it passes, it is expedient that part of the line of Public Footpath 93 should be diverted (Highways Act 1980, section 119 (1)).

6.1.2 The northern point of termination will alter, but be on the same highway. This is considered to be substantially as convenient to the public. The southern point of termination will be unaltered (Highways Act 1980, section 119(2)).

6.1.3 It is not thought that the order would fail to meet the tests upon which confirmation is dependent, namely: a) whether the diversion would make the path substantially less convenient to the public; b) whether the diversion order is expedient, having regard to: i) its effect on the public's enjoyment of the path as a whole, ii) its effect on other land served by the existing public right of way and iii) the effect that the new route would have on the land it crosses and any land held with it (Highways Act 1980, section 119(6)); and c) considerations regarding any material provision of the rights of way improvement plan (Highways Act 1980, section 119(6A)).

6.1.4 The order will not extinguish a right of way over land under, in, upon, over, along or across which there is any apparatus belonging to or used by statutory undertakers (Highways Act 1980, section 121(4)). The following statutory undertakers have been consulted: National Grid, National Grid Distribution, Yorkshire Water, British Telecom, NTL Group, and Severn Trent. None has raised any objections to the proposal (Highways Act 1980, section 121(4)).

6.1.5 The order would be made with due regard being given to: a) the needs of agriculture (including the breeding and keeping of horses) and forestry; and b) the desirability of conserving flora,

fauna and geological and physiographical features (Highways Act 1980, section 29)).

6.1.6 The recently commenced sections 53A and 56(3A) of the Wildlife and Countryside Act 1981 now permit order-making authorities to combine public path orders with the order needed to modify the definitive map and statement in consequence of the former taking effect. Though there is no requirement to make combined orders, use of the provision should streamline the process.

6.2 Environmental

6.2.1 An accurate definitive map and statement, as well as being a legal requirement, increases public confidence in the public rights of way network and, therefore, the amount of use made of it by them. This, in turn, helps boost the rural economy, reduce reliance on motor vehicles and promote healthier lifestyles through exercise in the open air.

6.3 Diversity

6.3.1 There are no known diversity implications.

6.4 Section 17-Crime and Disorder

6.4.1 There are no known Section 17-Crime and Disorder implications.

6.5 Risk

6.5.1 Any order made to divert a public footpath can be objected to. North Lincolnshire Council cannot confirm an order to which there remains an outstanding objection or representation correctly served during the four-week objection period. We can either revoke an objected to order or send it to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

6.5.2 Orders referred to the Secretary of State will be dealt with by written representations, a hearing or an 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.

6.6 Other

6.6.1 None.

7. OUTCOMES OF CONSULTATION

7.1 Consultation has been carried out with the following bodies:

7.1.1 The Ramblers' Association, the Byways and Bridleways Trust, the British Horse Society, the National Farmers' Union, County Land and Business Association, Open Spaces Society, Lincolnshire Fieldpaths Association, Cyclists' Touring Club, Auto Cycle Union, British Driving Society, Lincolnshire Wildlife Trust, Association of Motor Clubs and Haxey Parish Council.

7.1.2 None of the above has indicated that they are opposed to the proposed diversion.

7.2 In the event of an order being made, all statutory consultees under the Highways Act 1980 (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:

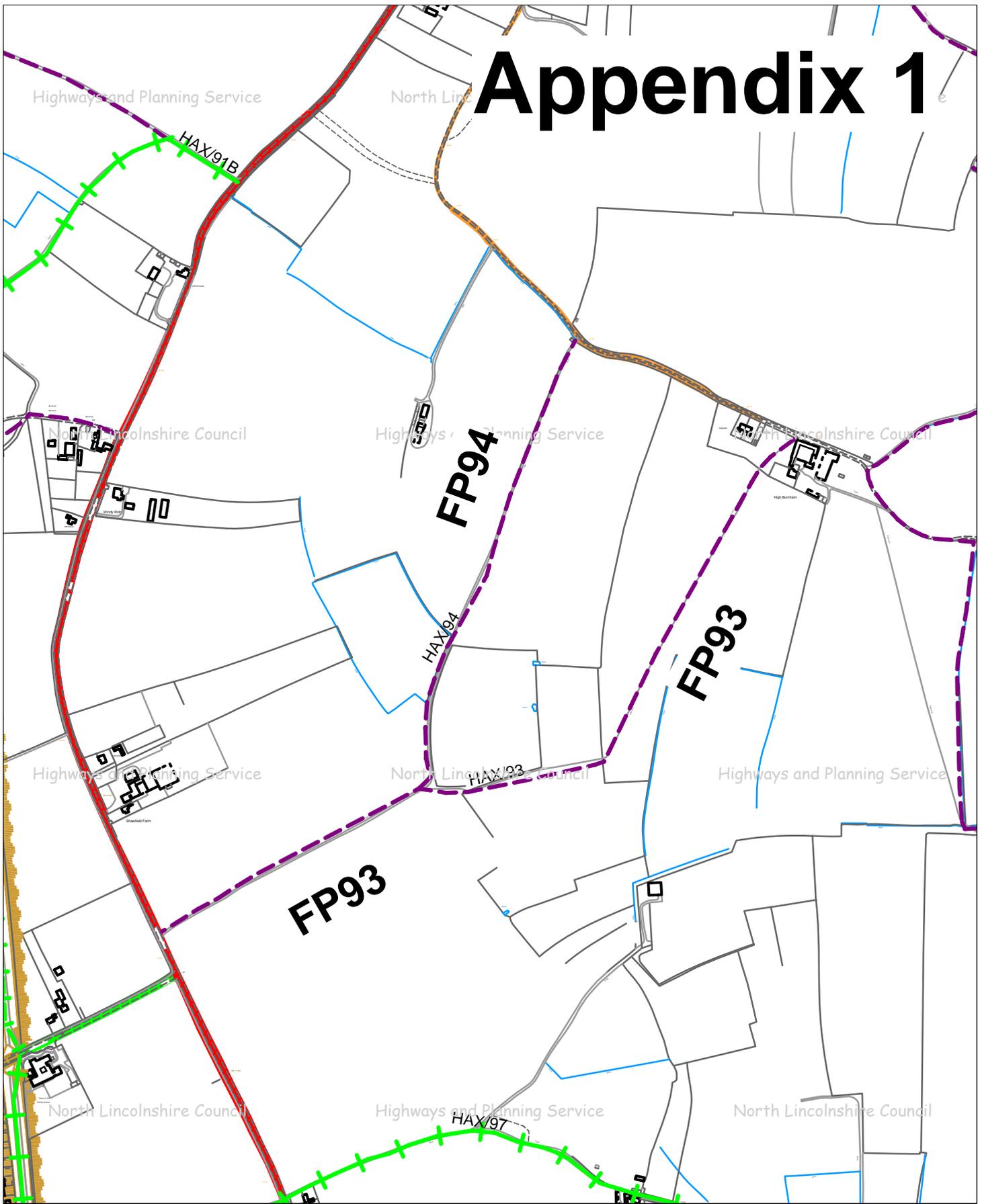
- a) approve the making of a combined order under section 119 of the Highways Act 1980 and section 53A of the Wildlife and Countryside Act 1981 in the interest of the owner of the land over which the footpath runs;
- b) allow the Service Director Highways and Planning to confirm the order if it is unopposed; and
- c) agree to receive a further report should the order be duly opposed.

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Date: 28 July 2008

Background Papers used in the preparation of this report: File 25/93 (Diversion File), held electronically at Church Square House.

Appendix 1



Drawing Title: Appendix 1

OS Grid Ref: SE77900098

Drawn by: DAS

Scale: 1:7500

Date: 26/08/2008



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Highways and Planning Service

Service Director,
G Popple

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Appendix 2

Key

-  To be closed
-  To be created



Drawing Title: Appendix 2

OS Grid Ref: SE78200098

Drawn by: DAS

Scale: 1:2,500

Date: 26/08/2008



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