

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

RESTRICTED BYWAY 21, CROWLE

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To decide what stance the council should take in referring a contested order to the Secretary of State for the Environment, Food and Rural Affairs.
- 1.2 The order seeks to add a restricted byway to the definitive map and statement.

2. BACKGROUND INFORMATION

- 2.1 The restricted byway in question has a length of 155 metres (see Appendix 1). It connects Jacques Bank with Crook o' Moor Road. The former is a public road used mainly by motorised traffic; whereas the latter is a byway open to all traffic. A byway open to all traffic is a public road used mainly by walkers and horse riders. It is a type of minor highway collectively known as public rights of way. A restricted byway is another type of public right of way. These are open to all traffic except motorised forms. A restricted byway can, however, share its course with a private right of way for motorised traffic.
- 2.2 The Director of Places authorised the making of an order on 23 May 2014 (see Appendix 2), including the reasons why the order was made and location map). The council sealed the order on 19 June 2014. We then published a notice on 31 July 2014 allowing six weeks for the lodging of objections and representations. Ten were so lodged. Four were then withdrawn, leaving six remaining.
- 2.3 We can only confirm (bring into effect) an order that is uncontested. Otherwise, we must refer it to the Secretary of State.
- 2.4 Each of the objections relates to one or more of the following: maintenance, access or status (see Appendix 3). Taking maintenance first, the council is the highway authority for North Lincolnshire. That means that we have responsibility to keep in repair highways maintainable at the public expense. All such highways appear in the list

of streets. This is a statutory document we keep corrected up to date and held on public deposit. The list includes Jacques Bank, Crook o' Moor Road and the order route. What the list does not denote, however, is status. So while three objectors fear restricted byway status will downgrade the order route, this is not the case. At present we do not know what the status is and the current order will help determine that. However, it will only decide what the status already is: it will not alter the status. Of course, it is true that we have no remit to maintain a restricted byway to a standard suitable for motor vehicles. But if the order route were not a restricted byway, it would be a byway open to all traffic. In all likelihood we would maintain neither status to the sort of standard Jacques Bank is maintained to, for example. The order route is a rough track. It always has been and, in all probability, it always will be. Furthermore, we do not maintain the level crossing the order route passes over. We have limited discretion over what we maintain. We maintain what the law says we must.

- 2.5 One further objector, plus another of the objectors concerned about maintenance, has objected because of fears over access. These are residents of Medge Hall whose logical access with a motor car is via the order route. Officers have sought to assure them that their fears are groundless. This is because if the order is confirmed, they will still be able to drive to their properties. The only difference is that this would be a private right rather than a public one.
- 2.6 This private right arises out of statute via the Natural Environment and Rural Communities Act 2006. Had it not been for this Act, officers would have recommended that the order route be added to the definitive map as a byway open to all traffic. But this Act stopped up all public rights of way for motorised traffic that were unrecorded immediately before its commencement. This applied nationwide. There were exemptions. None of these apply in this instance. Even so, one of the objectors begs to differ. This is in relation to whether the order route was on the list of streets just before the 2006 Act took effect. If it were to have been, the pre-existing public right of way for motor vehicles would have been preserved. But it was not. The order route was added to the list of streets on 21 June 2010. This objector cites the council declaring in 2003 that Crook o' Moor Road was maintainable at the public expense (see Appendix 4). But the name Crook o' Moor Road derives from the Thorne Moors Improvement Award of 1879. Furthermore, it is described therein as beginning at the bridge over the North Soak Drain; that is, north of the order route. We have provided the objector with this information. Despite this, he refuses to withdraw his objection (see Appendix 5). Nevertheless, officers have double-checked the point he raises with Legal Services. They have confirmed, however, that the exemption does not apply.
- 2.7 The final objector is also objecting on the grounds of status. Through his solicitor, he has stated that the order route is not a byway open to all traffic. We have replied stating that we agree; that the order route is

a restricted byway. Nevertheless, and without further explanation, he has asked that his objection is sustained unless all other objectors withdraw.

- 2.8 None of the objections persuades officers that the order should not be confirmed. The order does, however, contain a technical error that it is hoped the Secretary of State has power to correct. The order seeks to modify the "County of Lincoln (Parts of Lindsey) Isle of Axholme" definitive map and statement; whereas this should in fact be the "West Riding of Yorkshire (Thorne Rural District)" definitive map and statement. The Planning Inspectorate advise that inspectors will try to determine orders whenever possible. Only where prejudice cannot be avoided will an order be considered flawed and incapable of confirmation. Otherwise, the order should have to be remade. But as far as officers can tell, this error is not prejudicial to any party

3. OPTIONS FOR CONSIDERATION

- 3.1 We have three options for consideration: (1) we can request the Secretary of State confirm the order as made; (2) we can request that the Secretary of State confirm the order in a modified form; and (3) we can request the Secretary of State not confirm the order.

4. ANALYSIS OF OPTIONS

- 4.1 Option Two is the preferred option. Option One would not address the citing in the order of the wrong definitive map; whereas Option Three would leave the definitive map unmodified. With Option Two, however, we can seek confirmation of the correct definitive map.

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

5.1 Financial

5.1.1 The Secretary of State can arbitrate by one of three means. She can use written representations, hold a hearing or hold an inquiry. Written representations would be the cheapest option. It should only require the cost of the case officer's time. However, an objector can ask to be heard. This could result in a hearing or an inquiry being held; so then a hall would have to be hired; and in the case of an inquiry, we might request Legal Services' assistance too. But even so, the overall cost should not exceed £2,000. After a hearing or an inquiry, either party can make an application for costs on the grounds of unreasonable behaviour. These, though, are rarely upheld.

5.1.2 Confirmation would require us to publish a further notice in the local press and on site. Including staff time, this should amount to no more than a further £500.

5.2 There are no other significant resource implications to highlight.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 Not applicable.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTEREST DECLARED

7.1 These are as described above.

8. RECOMMENDATIONS

8.1 That the Planning Committee resolves that (1) "Definitive Map Modification (Restricted Byway 21, Crowle) Order 2014(1)" be referred to the Secretary of State for the Environment, Food and Rural Affairs with a request that the order be confirmed; (2) confirmation be subject to references within the order to the "County of Lincoln (Parts of Lindsey) Isle of Axholme" definitive map and statement being substituted for "West Riding of Yorkshire (Thorne Rural District)" definitive map and statement; and (3) the council participate fully in the confirmation process.

DIRECTOR OF PLACES

Church Square House

30-40 High Street

Scunthorpe

DN15 6NL

Author: Colin Wilkinson

Date: 19 November 2014

Background Papers used in the preparation of this report: (1) report of the Director of Places dated 23 May 2014 and (2) the unwithdrawn letters of objection to the order as advertised on 31 July 2014.

Appendix 1

**Wildlife and Countryside Act 1981,
Section 53**

**“Definitive Map Modification
(Restricted Byway 21, Crowle) Order
2014(1)**

**County of Lincoln, Parts of Lindsey
(Isle of Axholme) Definitive Map and
Statement**



Wildlife and Countryside Act 1981

County of Lincoln, Parts of Lindsey (Isle of Axholme), Definitive Map and Statement

"Definitive Map Modification (Restricted Byway 21, Crowle) Order 2014(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 (Isle of Axholme)" definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) – namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic – 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 11 June 2014.
2. The "County of Lincoln, Parts of Lindsey (Isle of Axholme)", 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 (Restricted Byway 21, Crowle) Order 2014(1)".

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

(Authorised signatory)



Dated: 19th June 2014

Seal Number: 7486



SCHEDULE

PART I

Modification of Definitive Map

Description of path or way to be added

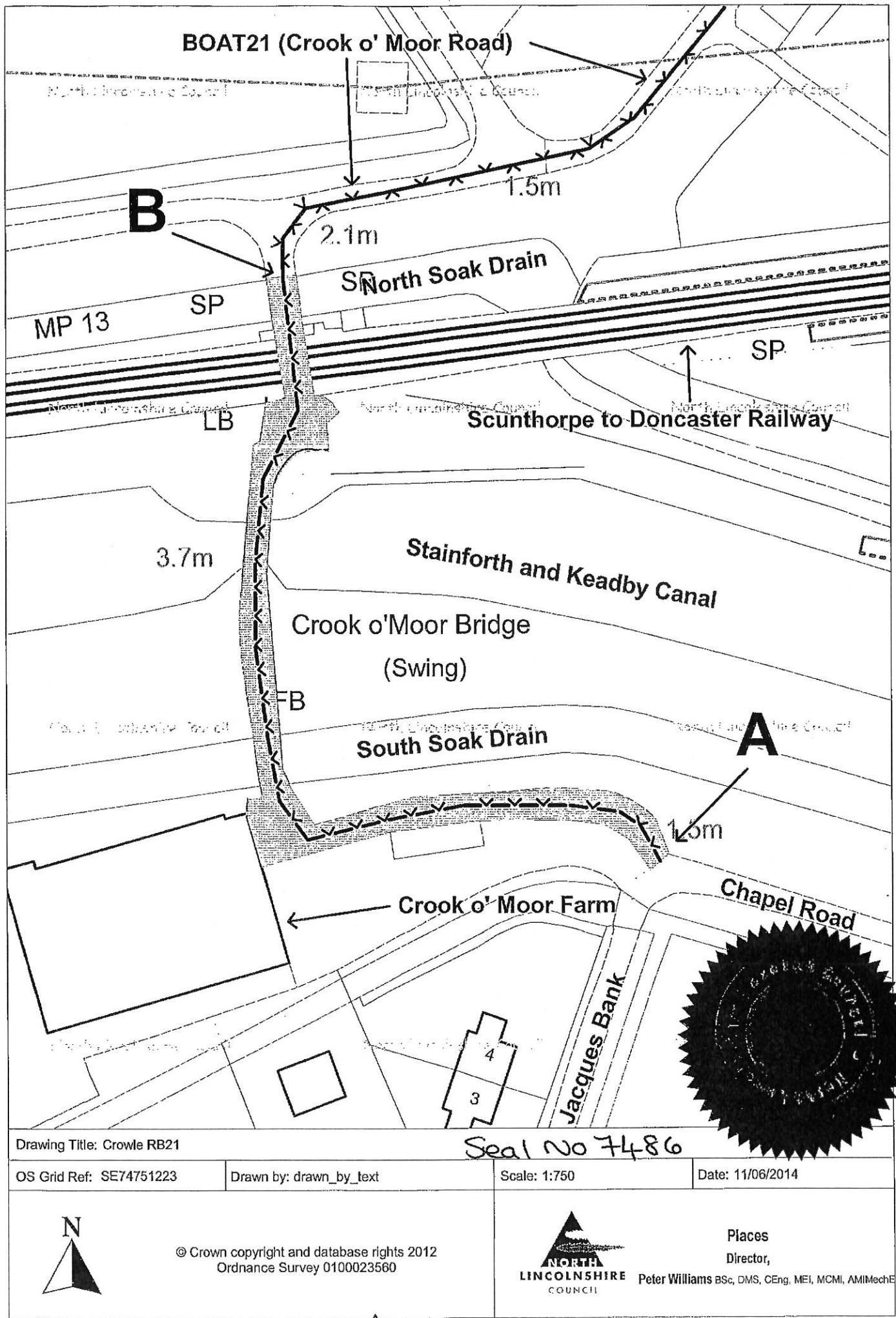
A – B, as indicated on the map: a 155-metre-long restricted byway of a width of between three metres and eleven metres as shaded grey on the order map and commencing at the junction of Jacques Bank and Chapel Road at grid reference SE74781218 and proceeding westwards for 70 metres towards the north-east corner of Crook o' Moor Farm and thence northwards for 85 metres over first South Soak Drain then the Stainforth and Keadby Canal via Crook o' Moor Bridge then the Scunthorpe-to-Doncaster railway and then North Soak Drain to its junction with Byway Open to All Traffic 21 (Crook o' Moor Road) at grid reference SE74721227.

PART II

Modification of Definitive Statement

Variation of particulars of path or way

A 155-metre-long restricted byway of a width of between three metres and eleven metres commencing at the junction of Jacques Bank and Chapel Road at grid reference SE74781218 and proceeding westwards for 70 metres towards the north-east corner of Crook o' Moor Farm and thence northwards for 85 metres over first South Soak Drain then the Stainforth and Keadby Canal via Crook o' Moor Bridge then the Scunthorpe-to-Doncaster railway and then North Soak Drain to its junction with Byway Open to All Traffic 21 (Crook o' Moor Road) at grid reference SE74721227.



Wibey

Authorised Signatory

Appendix 2

PUBLIC RIGHTS OF WAY – AUTHORITY TO MAKE ORDER

NORTH LINCOLNSHIRE COUNCIL

DIRECTOR OF PLACES

MODIFICATION OF DEFINITIVE MAP, JACQUES BANK TO CROOK O' MOOR ROAD, CROWLE

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 The object of this report is to consider adding a restricted byway to the definitive map and statement.
- 1.2 We already show the way on the list of streets; its status as a highway appears not to be in doubt. If we think it is a public right of way as well, however, we must modify the definitive map accordingly. To do that, we must also know what type of public right of way it is.
- 1.3 Appendices 1 and 2 show the location.

2. BACKGROUND INFORMATION

- 2.1 The definitive map and the list of streets are both statutory records. The former shows all known public rights of way and the latter shows all highways maintainable at the public expense. We must keep both under continuous review.
- 2.2 Public rights of way are minor highways. They consist of footpaths, bridleways, restricted byways and byways open to all traffic. A restricted byway is open to all traffic except motor vehicles.
- 2.3 Jacques Bank is a carriageway used mostly by motor vehicles. It is a highway but it is not a public right of way. Crook o' Moor Road is both a highway and a public right of way. We show both Jacques Bank and Crook o' Moor Road on the list of streets. However, we show only Crook o' Moor Road on the definitive map and statement, the map's written schedule.
- 2.4 The would-be restricted byway is about 150 metres long. It skirts the eastern boundary of Crook o' Moor Farm, crosses the Stainforth and Keadby Canal via Crook of the Moor Bridge and crosses the Scunthorpe to Doncaster railway line. We added it to the list of streets in 2010. The list of streets, though, does not denote the type of highway and therefore the traffic to which it is available. Section 329 of

the Highways Act 1980 merely defines a street as "any highway, and any road, lane, footpath, square, court, alley or passage". But case law indicates that a road between two other roads of like status normally shares that status. Jacques Bank and Crook o' Moor Road are both open to all traffic. Potentially, therefore, the way between should be too.

- 2.5 However, since 2 May 2006 many public rights of way for motorised traffic have ceased to exist. This was when the Natural Environment and Rural Communities Act 2006 commenced. Section 67(1) stopped up all existing public rights of way for motorised traffic not then shown in a definitive map and statement. There are several exemptions in section 67(2). None, though, appears to apply here. The exemptions include a way not shown in a definitive map and statement but included in a list of streets. But, as stated above, we did not amend the list of streets in this case till 2010.
- 2.6 There are several dwellings at Medge Hall. However, any stopping up of a right of way for motor vehicles applies to the public only. It is intended that the residents' access over Crook of the Moor Bridge would be unaffected. This protection derives from section 67(5) of the 2006 Act. This applies where immediately before commencement interested parties with an interest in land required access over the way. In such cases, the Act created a private right of way for motorised traffic for the benefit of the land.

3. OPTIONS FOR CONSIDERATION

- 3.1 To make an order adding a restricted byway to the definitive map and statement.
- 3.2 Not to make an order adding a restricted byway to the definitive map and statement.

4. ANALYSIS OF OPTIONS

- 4.1 We can be confident that the way in question is a highway. No one seems to dispute, for example, that before 2 May 2006 the public had a right of way over it with all traffic. Highways that the public can use with vehicles are carriageways. There are three types of carriageway: restricted byway, byway open to all traffic and the rest. The first two are public rights of way. Planning Inspectorate guidance states that a byway open to all traffic has the character of a bridleway. And because the only difference between a byway open to all traffic and a restricted byway is in the former's case a right of way for motor vehicles, if that right is extinguished a restricted byway ensues.
- 4.2 We believe the way over Crook of the Moor Bridge would have been a byway open to all traffic before 2 May 2006. This is because it has a rough surface. We do not tarmac it as we do Jacques Bank. This

makes it more likely to be used by horse riders and walkers than motorists. It is a question of its character. Also, its continuation is a byway open to all traffic. This is Crook o' Moor Road, which was added to the definitive map on 9 October 2006. The Secretary of State had to confirm the order following objections from members of the public, who argued Crook o' Moor Road was a carriageway but not a public right of way. We can be confident, therefore, that byway open to all traffic is Crook o' Moor Road's correct status.

- 4.3 We added the way over Crook of the Moor Bridge to the list of streets on the basis of documentary evidence. This was in the form of the Finance Act 1910 (see Appendix 3) and the "South Yorkshire Railway and River Dun Company" Book of Reference 1858-1859 (see Appendix 4). The former required the valuation office to record all private land for increment value duty. They did so in part with the use of 1:2,500-scaled Ordnance Survey maps. On these, they drew thick coloured lines round the boundaries of private land. We can infer, therefore, that uncoloured land was public. Moreover, we can infer further that uncoloured roads and tracks were highways. The courts have given credence to this interpretation, as have inspectors at inquiries; and the way over Crook of the Moor Bridge, from Jacques Bank to Crook o' Moor Road, is uncoloured throughout. This interpretation does not apply in all cases: it is evidence not proof. But it is cogent evidence, especially when part of a corpus. In this instance, we have the railway company's book of reference. These were prepared when prospective railways were in the planning stage. Their purpose included applying the provisions of the Railway Clauses Consolidation Act 1845 with respect to level crossings. We can see the way over Crook of the Moor Bridge from Jacques Bank to Crook o' Moor Road clearly shown in an illustration. It is described as "Public Carriage-road, owners or reputed owners, the Surveyors of Highways for the Parish of Thorne". And in the legal notice publicising the book of reference, dated 9 November 1858, it is further described as "The public carriage-road at or near to a place called the Midge Hall Bridge, or Crook of the Moor Bridge, over the said canal, in the parish of Thorne". Moreover, we also have the resultant South Yorkshire Railway Act 1866 describing the road over bridge 33 in the Parish of Thorne [i.e. Crook of the Moor Bridge] as a public highway. (NB This part of Crowle was formerly part of Yorkshire.)
- 4.4 We are unaware of anyone who disputes that the way over Crook of the Moor Bridge from Jacques Bank to Crook o' Moor Road is a highway. Nor will adding it to the definitive map change what we maintain. This will be what it was: ensuring the surface is fit for the ordinary traffic of the day. (The bridge over the canal and the railway level crossing are maintained privately and will continue to be so.)

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

5.1 Financial

5.1.1 If the order is unopposed, we can confirm it ourselves. In that case, the total cost would not exceed £1,000.00. Otherwise, we would refer it to the Secretary of State. First, though, Planning Committee would receive a further report. This would look at the additional costs that consideration by the Secretary of State might entail. This, in turn, would depend on what stance Planning Committee chose to adopt and the Secretary of State's chosen means of arbitration. If a hearing or an inquiry ensued, we could make an application for costs against a party we deemed to have acted unreasonably. Normally, though, we meet our own costs. Even so, these would still be unlikely to exceed the sum of £1,500.00.

5.2 Staffing

5.2.1 We would make the order with the Environment Team's existing staff only. However, in the event of an inquiry we would probably ask Legal Services for assistance.

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

6.1 Statutory

6.1.1 We have a duty under the Wildlife and Countryside Act 1981 to keep the definitive map and statement under continuous review and to make requisite modifications as soon as reasonably practicable.

6.2 Risk

6.2.1 Evidence is subjective and orders can be objected to; but only by putting evidence to the test can we establish its value.

7. OUTCOMES OF CONSULTATION

7.1 We are required when making orders to consult land managers, user bodies and local councils. The results would inform any subsequent report to Planning Committee.

8. RECOMMENDATIONS OF INVESTIGATING OFFICER

8.1 It is recommended approval be given to:

- 8.1.1 the making of an order modifying the "West Riding of Yorkshire (Thorne Rural District)" definitive map and statement by adding to them an approximately 150-metre-long restricted byway between Jacques Bank and Crook o' Moor Road via Crook of the Moor Bridge over the Stainforth and Keadby Canal, the Scunthorpe to Doncaster railway line and the North Soak Drain;
- 8.1.2 the confirmation of the above order if it is unopposed or any duly lodged objections are retracted in writing; and
- 8.1.3 the submission of a further report to Planning Committee, if the order is duly opposed by steadfast parties, to establish a stance with which to refer the order to the Secretary of State.

9. DECISION

9.1 The recommendations of this report are:

(a) agreed

(b) declined

(c) deferred to Planning Committee

9.2 Comments (if any)

I endorse the recommendations set out above:

Signed

Assistant Director of Technical and Environment Services

Authorised by

Signed

Director of Places

Dated: 23.5.14

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

Author: Colin Wilkinson
Date: 6 May 2014

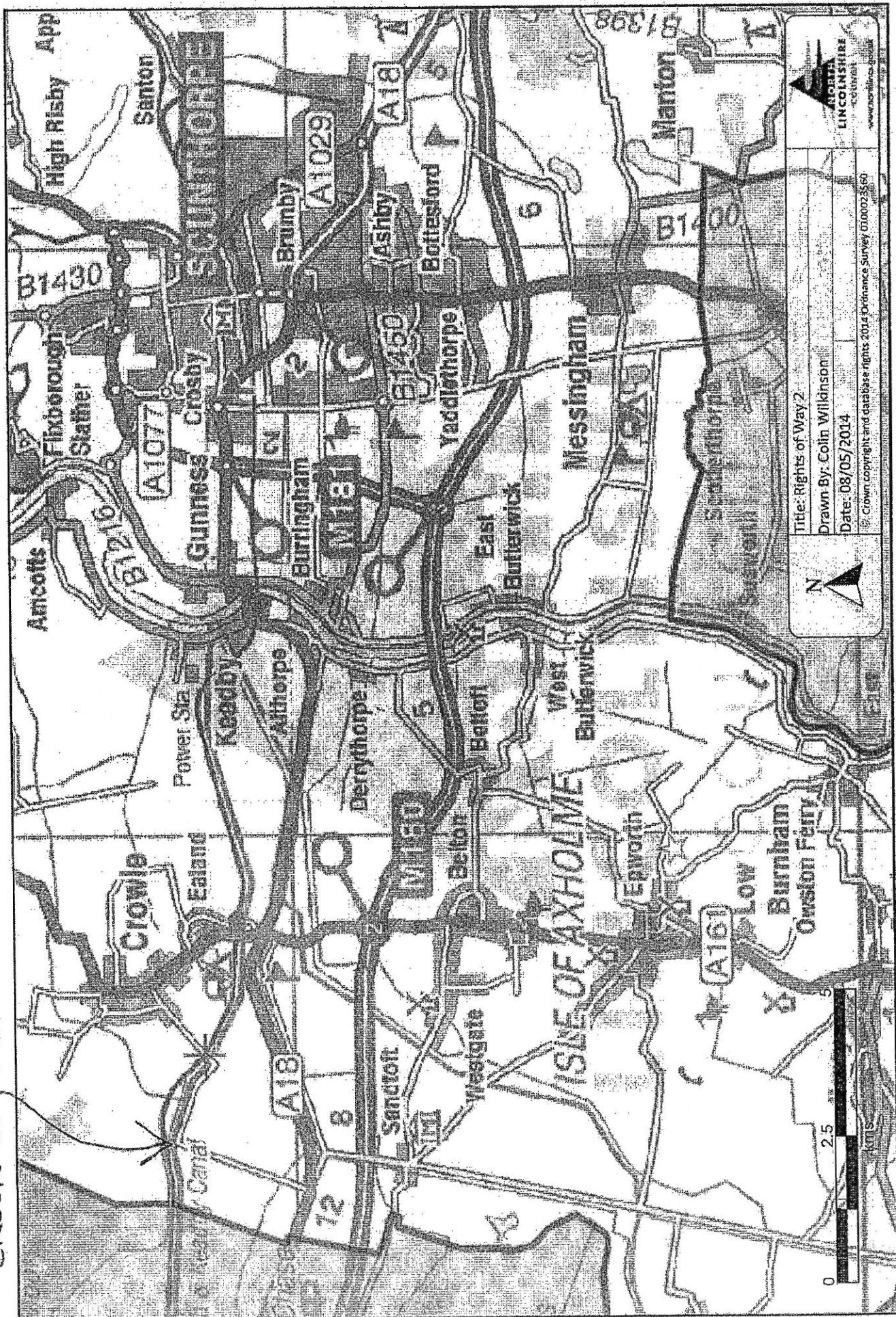
Background Papers used in the preparation of this report: Office file
"15/21/Medge Hall Crossing" stored electronically at Church Square House.

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

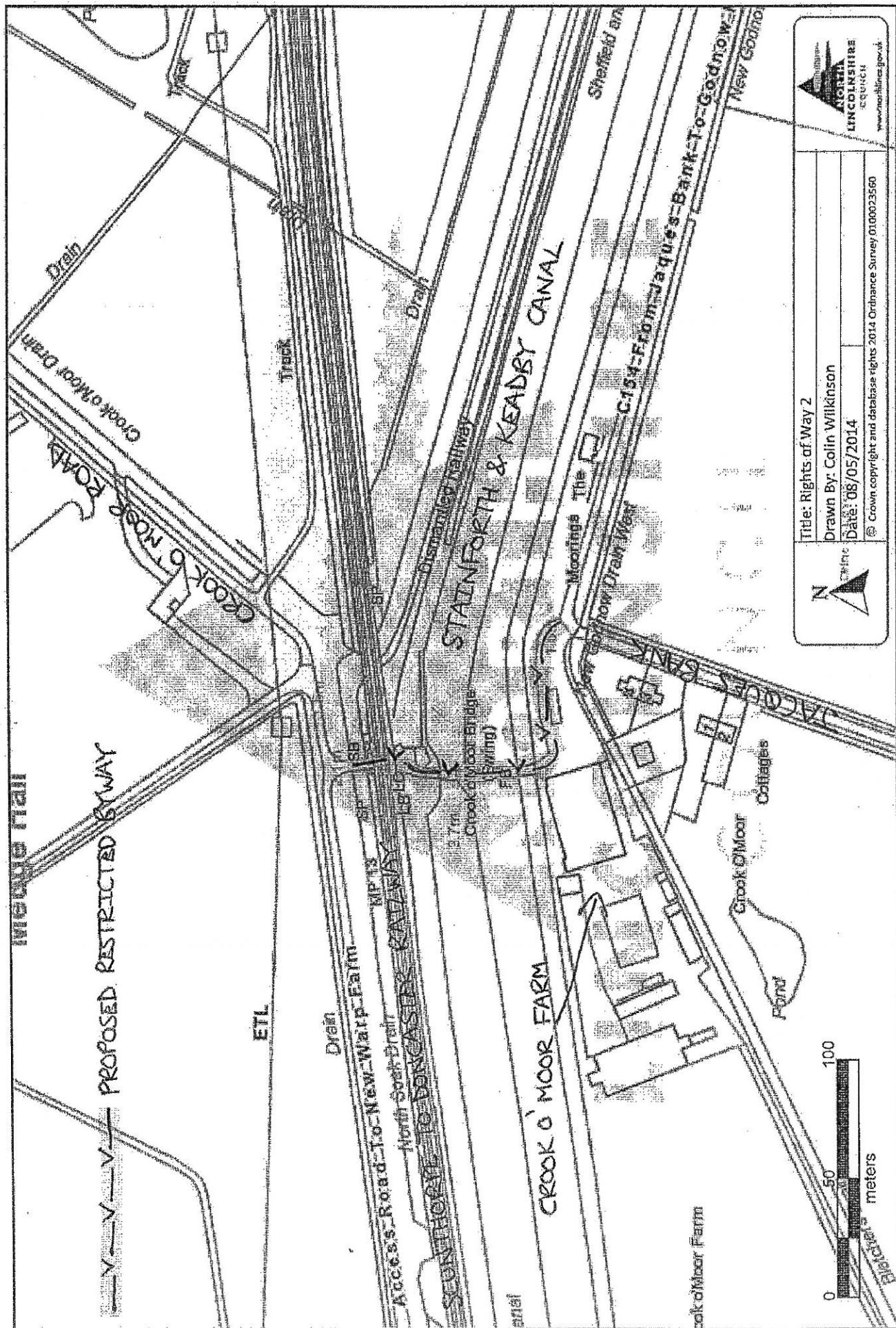
Cabinet Member	Human Resources	Legal & Democratic	Finance	Property	IT	EMT
n/a	n/a	✓	✓	n/a	n/a	n/a

CROOK OF THE MOOR BRIDGE

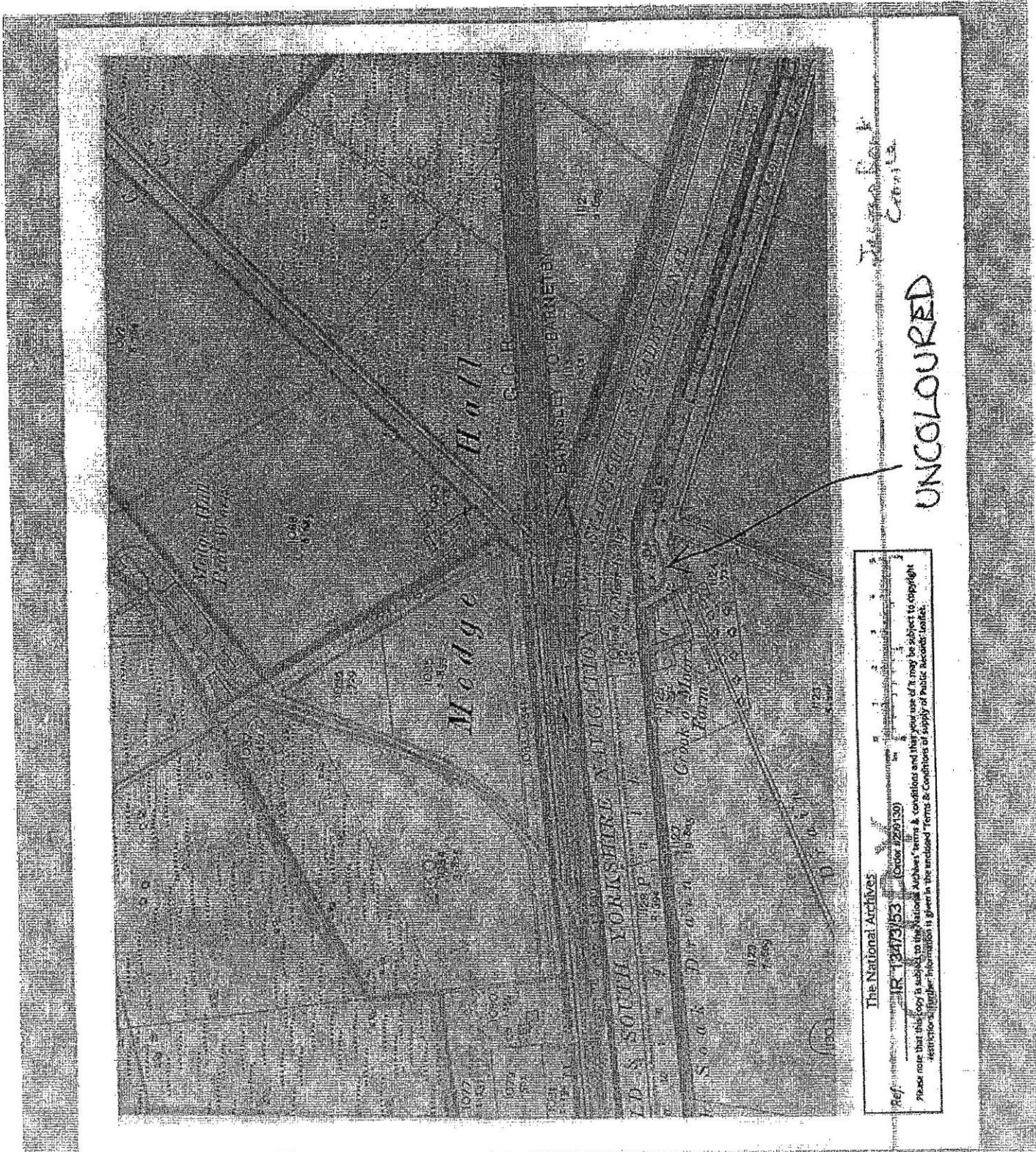
APPENDIX I



APPENDIX 2



APPENDIX 3



APPENDIX 4

SOUTH YORKSHIRE RAILWAY
AND
RIVER DUN COMPANY

(Debenture Stock, Tolls, Crossing of Roads, Rating in
Wath-upon-Dearne).

BOOK OF REFERENCE.

Session 1858-1859.

BAXTER, ROSE, & NORTON,

Solicitors for the Bill.

DONCASTER

HARTLEY AND JEVONS, PRINTERS, CHRONICLE OFFICE, HIGH-STREET.

INDEX OF PARISHES.

	PAGE.
BARMBY DUN, OTHERWISE BARNEY UPON DUN	1
HATFIELD	1
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ALTHORPE	1

Parish of THORNE, in the West Riding of the County of York.

Number on Plan	Description of Property	Owners, or Reputed Owners	Leesees, or Reputed Leesees	Occupiers
3	Public Carriage-road	Samuel Meggitt and Thomas Black, Surveyors of Highways for the Parish of Thorne		
4	Public Carriage-road, called Orchard-street	The Surveyors of Highways for the Parish of Thorne		
6	Public Carriage-road, called Canal-road	The Surveyors of Highways for the Parish of Thorne		
6	The Bawtry and Selby Turnpike-road	The Trustees of the Bawtry and Selby Turnpike-road, William Benson Beckitt Clerk		
7	Public Carriage-road	The Surveyors of Highways for the Parish of Thorne		
8	Public Carriage-road	The Surveyors of Highways for the Parish of Thorne		
9	Public Carriage-road	The Surveyors of Highways for the Parish of Thorne		
10	Public Carriage-road	The Surveyors of Highways for the Parish of Thorne		

1858 Road

No 16 Continues northwards
as "Crook o' Moor
Road" after crossing
Canal at "Crook o'
the Moor" Bridge
(see Page 6 below)
See also 1829

In Parliament, Session 1859.

South Yorkshire Railway and River Dun
Company.

(Debenture Stock; Tolls; Crossing of Roads;
Rating in Wath-upon-Dearne.)

THE South Yorkshire Railway and River Dun Company intend to apply to Parliament, next session, for leave to bring in a Bill to alter, amend, and enlarge some of the powers and provisions of the several Acts of Parliament relating to their undertaking, namely, the 10th and 11th Vict., c. 291; the 11th and 12th Vict., c. 65; the 13th and 14th Vict., c. 55 and 57; the 15th and 16th Vict., c. 153; the 9th and 10th Vict., c. 354; the 14th and 15th Vict., c. 46; the 6th Geo. 2nd, c. 9; the 12th Geo. 1st, c. 38; the 13th Geo. 2nd, c. 11; the 18th Geo. 1st, c. 20; the 1st and 2nd Geo. 4th, c. 46; the 7th Geo. 4th, c. 97; the 23rd Geo. 3rd, c. 115; the 39th and 40th Geo. 3rd, c. 87; the 55th Geo. 3rd, c. 65; the 11th and 12th Vict., c. 94; the 12th and 13th Vict., c. 75; the 33rd Geo. 3rd, c. 117; the 38th Geo. 3rd, c. 47; 49th Geo. 3rd, c. 71; and the 12th and 13th Vict., c. 29; and by the said Bill the said Company will seek for the following amongst other powers:

1. To convert their mortgage and debenture debts, immediately or from time to time, into a debenture stock, and to attach to such stock a fixed irredeemable yearly interest, with the same priority and the like powers of enforcing payment by action, and by means of a receiver, or otherwise, as are now attached to the mortgage and debenture debts of the Company.

2. To levy and recover tolls, rates, and charges for the use of the railway constructed or constructing by them along the course of their navigation and canal between the town of Doncaster, in the West Riding of the county of York, and the river Trent, in the township of Keadby, and parish of Althorpe, in Lincolnshire, near to the lock of the Stainforth and Keadby Canal there.

3. To apply the provisions of "The Railway Clauses Consolidation Act, 1845," for regulating level crossings to, and to maintain their said railway, now constructed or constructing, across and upon the level of the following turnpike and other public roads; that is to say,

1. The public carriage-road at or near to Barnby Dun Bridge, in the township and parish of Barnby Dun, otherwise Barnby-upon-Dun, in the West Riding of the county of York.

2. The public carriage-road at or near to Bramwith Ford, in the township of Stainforth, or of South Bramwith, otherwise Sand Bramwith, and in the parish of Hatfield, or of Barnby-upon-Dun, and West Riding of the county of York.

3. The public carriage-road at or near to the canal lock of the Stainforth and Keadby Canal, in the parish of Thorne, and said West Riding of the county of York.

4. The public carriage-road, near to the Stainforth and Keadby Canal, called Orchard street, in the said parish of Thorne.

5. The public carriage-road near to the Stain-

forth and Keadby Canal, called Capital Road, in the said parish of Thorne.

6. The Bawtry and Selby turnpike-road, otherwise the public carriage-road, or street, at or near to the opening bridge at the Thorne tollbar, in the said parish of Thorne.

7. The public carriage-road, at or near to the bridge of the said canal, at a place called Pashley, or Wilke Bridge, in the said parish of Thorne.

8. The public carriage-road at or near a place called the Hales Bridge, over the said canal, in the said parish of Thorne.

9. The public carriage-road at or near a place called the Cresson Bank Bridge, or Maude's Bridge, across the said canal, in the said parish of Thorne.

10. The public carriage-road at or near to a place called the Bridge Hall Bridge, or Crook of the Moor Bridge, over the said canal, in the said parish of Thorne.

11. The public carriage-road at or near a place called the Godnow Bridge, over the said canal, in the parish of Great and County of Lincoln.

12. The public carriage-road at or near a place called Crowle Wharf, at or near to the bridge there, over the said canal, in the parish of Crowle, and county of Lincoln.

13. The public carriage-road at or near the bridge of the said canal, at a place called the Keadby Common Bridge, in the said township of Keadby, and parish of Althorpe, and county of Lincoln.

14. The public carriage-road at or near the lock of the said canal adjoining the River Trent, in the said township of Keadby, and parish of Althorpe.

The Bill will vary the Wath-upon-Dearne Improvement Act, 9 and 10 Vict., c. 295, and will provide, that for so much of the undertaking of the Company as is within the limits of the said Act, the rates to be levied under the powers of the said Act shall only be in the proportion of one-fourth of the rates levied upon other kinds of property within the said limits.

Duplicate plans and sections of the before-mentioned roads where the same are crossed by the railway, with a book of reference thereto, and a copy of this notice as published in the London Gazette, will, on or before the 30th day of this instant, November, be deposited for public inspection with the Clerk of the Peace for the West Riding of the county of York, at his office at Wakefield, and with the Clerk of the Peace for the Lindsey Division of Lincolnshire at Spilsby, and on or before the same day, a copy of the said plans, sections, and book of reference so far as relates to each of the before-mentioned parishes will, together with a copy of the said notice, be deposited for public inspection with the respective parish clerks of each such parish, at their respective places of abode.

Printed copies of the proposed Bill will be deposited in the Private Bill Office of the House of Commons on or before the 23rd day of December next.

Dated this ninth day of November, 1859.

Batter, Rose, and Norton, 16, Victoria
street, Westminster.

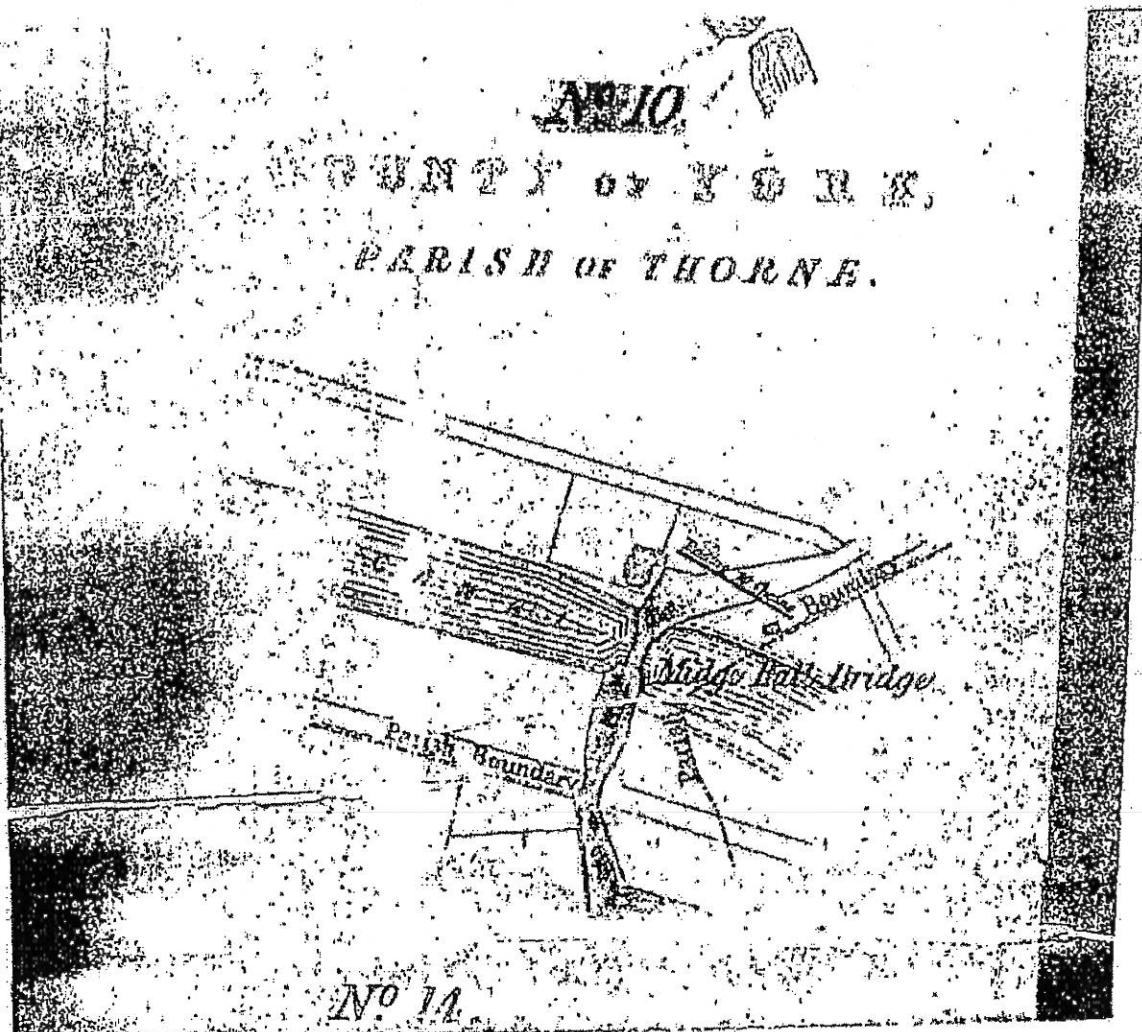
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4

ANNO

1858 OF YORKSHIRE.

PARISH OF THORNE.



NO 11

PUBLIC CARRIAGE ROAD
CROSSING MIDGE HALL BRIDGE
OR CROOK OF THE MOOR BRIDGE

DEPOSITED PLAN 1858-S9

SOUTH YORKSHIRE RAILWAY

From:

To: Colin Wilkinson/PL/NorthLincs@NorthLincs
Cc: Peter Williams/PR/NorthLincs@NorthLincs

Date: Tuesday, September 02, 2014 01:54PM

Subject: Holding Objections to modifications to definitive map

Sent on behalf of

Colin

Following our telephone conversation, could you please accept this as a holding objection and look into points raised regarding who will be responsible for the maintenance of the Highway concerned.

Regards

A redacted signature or logo consisting of a stylized 'C' shape and some horizontal lines.

Appendix 3

Sills & Betteridge Solicitors

RECEIVED
16 SEP 2014

Director of Places
C/o Environment and Sustainability at Church Square House
Church Square
PO Box 42
Scunthorpe
DN15 6XQ

Our Ref : GIP/NS/56538-34
Your Ref :
Date : 11 September 2014

By post and by email to: colin.wilkinson@northlincs.gov.uk
PROW@northlincs.gov.uk
planning@northlincs.gov.uk

Dear Sirs

Our clients:

Objection relating to Order: Definitive Map Modification (Restricted Byway 21, Crowle) Order 2014(1) dated 19 June 2014 ('the Order')

We are writing on behalf of the above clients who have just been made aware of the Order. On behalf of our clients we are objecting to the Order on the following ground;

- The way in question is not a byway open to all traffic and never has been.

Our clients made us aware of the Order today (11 September 2014). We are therefore in the process of gathering further evidence which we will forward to you within 14 days of this letter.

Yours faithfully

Sills & Betteridge

46 Silver Street, Lincoln, LN2 1ED DX 11025 Lincoln
Tel 01522 542211 Fax 01522 510463 Email info@sillslegal.co.uk Website www.sillslegal.co.uk
Offices also at Nottingham, Boston, Sleaford, Gainsborough, Scunthorpe, Spilsby and Skegness



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Sills & Betteridge Solicitors



Mr C Wilkinson
North Lincolnshire Council
Senior Public Rights of Way Officer
Church Square House
PO Box 42
Scunthorpe
North Lincolnshire
DN15 6XQ

Our Ref : GIP/NS/56538-34
Your Ref :
Date : 17th September 2014

Email to: colin.wilkinson@northlincs.gov.uk

Dear Sir

Our clients:

Objection relating to Order: 'Definitive Map Modification (Restricted Byway 21, Crowle) Order 2014(1)

Thank you for your email of 12 September and the information provided therein. Our client is not the principal objector but we would like the objection to remain so long as others with more interest in the matter are objecting. However, if others withdraw their objections and our client is solely carrying the burden of the objection process, we would be grateful if you could revert to us.

Yours faithfully


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gip@sillslegal.co.uk

46 Silver Street, Lincoln, LN2 1ED DX 11025 Lincoln
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H. BARKER & SONS



V.A.T. Reg. No: GB 167 5547 31

10 September 2014

Mr C Wilkinson
Senior Public Rights of Way Officer
North Lincolnshire Council
Civic Centre
Ashby Road
Scunthorpe
DN16 1AB

Dear Mr Wilkinson

Further to your e-mail of 03 September 2014 I wish to give notice of holding objection to Definitive Map Modification (Restricted Byway 21, Crowle Order 2014(1)).

My reason for objection is the current lack of maintenance in view of poor state of repair. You state that your duty as a highway authority is to maintain the highway so as to be fit for use by the ordinary traffic of the day, this being in respect of restricted byways all traffic other than mechanically propelled vehicles.

As a landowner on each side of the route I need to use the route with mechanically propelled vehicles and wish to see the route maintained and repaired fit for use and in good condition.

I am also not satisfied with the state of repair of the bridge over south soak drain where a temporary steel plate spans the banks and would like comment regarding this matter from the Environment Agency.

I would also like to be informed of British Waterways opinion and responsibilities and likewise Network Rail before any proposals go further.

I look forward to receiving your reply.

Yours sincerely

Partner

[Redacted]

11th September 2014

Director of Places,
c/o Environment and Sustainability,
Church Square House,
Church Square,
PO Box 42,
Scunthorpe,
DN15 6XQ

Dear Sirs,

Ref: "Definitive Map Modification (Restricted Byway 21, Crowle) Order 2014(1)"

Further to the above definitive map modification suggested at Medge Hall. It is understood that if this byway was downgraded to a restricted byway, then the current motorised traffic that uses the road to gain access to their properties on a daily and weekly basis, will no longer be subject to the council being required to maintain the road for the needs of the current users. A restricted byway suits the needs of all traffic other than mechanically propelled vehicles. It needs to remain a byway open to all traffic which will include motorised vehicles.

The road between the junction of Jaques Bank and Chapel Road through to the railway crossing is in a poor state of repair and has been for many years. It is due some serious maintenance already and the fact that it is a rural location with fewer properties than other byways is no reason to expect the road to be poorly maintained. The occupants of these properties pay their Council taxes the same as everyone else and get little in return. The pot holes slowed the journey for an emergency ambulance required across the canal side and certainly slowed its arrival.

Our house is on Jaques Bank and we use the crossing regularly to visit friends and reach agricultural land where we carry out dyke maintenance for the landowners. There are also a surprisingly large number of fishermen who use the road to get to the canal for recreational fishing.

On these various grounds we object to the downgrade.

Yours faithfully,

[Redacted]

and

[Redacted]

[Redacted]

RECEIVED
12 SEP 2014

Mrs Z Jurasiewicz
(was Crofts)

Dear sir/Madam

Ref.: Definitive Map Modification

Restricted Byway 21, Crowle order 2014 (1)

We as a family at the above address are objecting against the above order as this is the only access to and from our property and it is ridiculous that it is planning to be made into a restricted by way. We would like to know if this goes ahead how do we gain access in & out of our property. also if access is made into crowle , do we get compensation for the wear and tear on our vehicles for the farm lane also compensation for extra cost in fuel for longer mileage. By looking into this property you can see that us and neighbouring properties and farms need this access 24/7 and this Restricted Byway CANNOT go ahead.

Yours Sincerely

To DIRECTOR OF PLACES NLC

Definitive Map Modification Order : Crowle - Restricted Byway 21

DRAFT OBJECTION by

- 1 I object to the Order cited as the "Definitive Map Modification (Restricted Byway 21, Crowle) Order 2014 (1)". I refer to the route defined in the order as "the way".
- 2 This objection is a holding objection in draft form only until such a time as the complete submission has been fully prepared for presentation to the Secretary of State.
- 3 I have had a legitimate interest in the way since before the year 2000. I have also had a legal interest in the way since 13 November 2003 when I served notice upon North Lincolnshire Council under Section 56 of the Highways Act 1980. I therefore object to the order as a person with a proven interest rather than as someone who is only a mere busybody.
- 4 The way has never existed as a road in its own right, name, or status. From before 1772 it has always been part and parcel of Crook-O-Moor Road (COMR). This southern section of COMR, now defined as the order route, originally connected with the northern end of Chester Bank (now known as Jacques Bank) before the Stainforth Canal was built. Following the construction of the canal COMR was diverted along its present route to rejoin Chester Bank at more or less its original junction
- 5 Both COMR and Jacques Bank are ancient public carriage roads which are maintainable at public expense and as such are required to be recorded on the List of Streets. The way is not, and cannot be, by any rule of law, a Restricted Byway. It is, and always has been, part of the public road system linking Jacques Bank, Crook-O-Moor Road and Yorkshire Moors Bottom Road with the township of Crowle.
- 6 Therefore, as COMR is, in law, a definitive byway open to all traffic, that part of the road which forms the way must, by logic and commonsense, also be part of that definitive byway. The way cannot be a separate entity existing in its own right with its own status as to public user. Any suggestion that it is a separate entity is sheer nonsense.
- 8 I understand the reason for the order. There is a gap in the Definitive Map. But this gap was deliberately made by North Lincolnshire Council for reasons of its own choosing. Despite objections (see Footnote) to the Definitive Map Order (FPS/Y2003/7/5 Byway open to all Traffic No 21 Crowle) the Council persisted in its wilful desire to terminate Byway No 21 at the wrong place. Now it wants to use the consequences of its own administrative error to create a Restricted Byway and thus end all public vehicular use between Crowle and Modge Hall using Yorkshire Moors Bottom Road and COMR. This cannot be right : it offends the public interest and offends natural justice.
- 9 The present proposed order should never have been made. It defies logic and commonsense. It is bad in form and must be redrafted. As the way falls within an exception clause the title of the order "Restricted Byway 21, Crowle" is misleading and incorrect (see Footnote) The so called "discovered evidence" which the Council now rely upon has always been available to it. Mr Wilkinson the Rights of Way

Officer concerned has always known that the way formed part and parcel of Crook-O-Moor Road as far as its junction with Jacques Bank. Indeed in a letter of 23-2-10 to Crowle Town Council he stated "Evidence in the form of the South Yorkshire Railway book of reference indicates that Crook-O-Moor Road should continue to Jacques Bank". As past correspondence confirms, Mr Wilkinson was very familiar with the railway plans before the Crook-O-Moor Road order was processed. But instead of including the whole of the road all the way to Jacques Bank within order FPS/Y2003/7/5 he deliberately chose to terminate the order route north of the North Soak Drain.

10 I must emphasise that I am not opposing the order in principle, I am merely objecting to that part of the order which proposes to turn a public carriage road into a restricted byway. If the order was redrafted simply to extend the route of Definitive Byway 21 to Jacques Bank I would give it my full support. It is quite possible to make such an order to extend the termination point of the existing Byway open to all Traffic without making that extension a Restricted Byway.

11 COMR existed before 1772. It was not created by the 1879 Award. The road existed before the canal was built, and it ran northwards from Chester Bank to COMR. The canal company had therefore to provide a carriage bridge to carry the road. There is a wealth of documentary evidence which proves conclusively that COMR was considered to extend southwards : over the North Soak Drain; over the railway; over the canal bridge; and over the South Soak Drain to join the northern end of Jacques bank (or Chester bank). All this evidence may or may not be known to Mr Wilkinson. However it will be presented to the Secretary of State at the appropriate time.

12 Finally - as I am unable to attend any public inquiry due to severe loss of hearing and vision I will be asking the Secretary of State to deal with this matter by written representation if that is considered appropriate in the circumstances.

Conclusion

13 I am prepared to fully support an order which seeks to extend the termination point of Byway Open to all Traffic 21, Crowle to Jacques Bank.

14 However, I object to the order as drafted which seeks to extinguish public vehicular rights over what is part and parcel of Crook-O-Moor Road. This thus turns two miles of public thoroughfare into a cul-de-sac contrary to the public interest. Whilst I accept that private rights will still exist, the loss to the public right of way will be substantial, and will affect both the local people and the wider community.

Footnote -

See letters [REDACTED] to Planning Inspectorate 22-7-05, 10-11-05, 1-12-05, 18-1-06.
See letter [REDACTED] to [REDACTED] NLC 25-5-10 and reply from [REDACTED] 18-6-10 stating that the way was added to the list of streets following a meeting on 10 October 2005

Appendix 4

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COMPLAINANT

and

NORTH LINCOLNSHIRE COUNCIL

RESPONDENT

**RESPONSE TO NOTICE SERVED UNDER SECTION 56 HIGHWAYS ACT 1980
ON 13TH NOVEMBER 2003**

Crook O Moor Road in the Township of Crowle : Public Carriage Road

1. The Respondent admits that the said road is a public carriage road for the whole of its existing width and length.
2. The Respondent does not admit that the road is out of repair.

Dated this 14th day of November 2003

To:

M Wood.

Michael Wood
Head of Legal and
Democratic Services
for the Respondent

Appendix 5

Crook o' Moor Road

And we also set out appoint and Award one Carriage Road or Way of the Width of Forty feet which we call Crook o' Moor Road and which we have numbered on the said Plan 3 **commencing at the Bridge over the North Soak Drain of the Stainforth and Keadby Canal** thence extending along the Course of an Ancient Road in a North Eastwardly direction on the East side of an Allotment hereinafter Awarded to Uriah Pidd to and terminating at an Ancient Road called The Crowle Yorkshire Moors Bottom Road at the South East Corner of an Allotment of land hereinafter Awarded to Makin Durham William North and James Kitson and Numbered 20 on the said Plan.

Westerly direction along the North side thereof and along the North side of the Allotment hereinafter Awarded to Makin Durham and Numbered 75 on the said Plan to the Flatts Hallie Drain Road herein Awarded at the point where the Old Roaring Dale Road communicates with the same Q.S.D. We do Award order and direct that the said Road shall for ever hereafter be maintained and kept in good and sufficient Repair by and at the expense of the Owner or Owners for the time being of the Allotments of Land mentioned and described in ~~Plan A~~ of the second Schedule hereunder written by an equal Acre Rate Q.S.D. We do also set out appoint and Award one carriage Road or Way of the Width of Forty feet which we call Brook O' Moor Road and which we have Numbered on the said Plan 3 commencing at the Bridge over the North Sack Drain of the Stainforth and Headley branch thence extending along the course of an Ancient Road in a North Eastwardly direction on the east side of an Allotment hereinafter Awarded to Uriah Reid to and terminating at an Ancient Road called The browe Yorkshir Moors Bottom Road at the South East corner of an Allotment of land hereinafter Awarded to Makin Durham William North and James Hilton and Numbered 80 on the said Plan Q.S.D. We do Award order and direct that the said Road shall for ever hereafter be maintained and kept in good and sufficient Repair by and at the expense of the parties heretofore liable to repair and maintain the same Q.S.D. We do also set out appoint and Award one other Private carriage and Occupation Road or Way of the Width of Thirty feet which we call Durhams Road and which we have Numbered on the said Plan 4 commencing at the junction of the Brook O' Moor Road at the Bridge over the North Sack Drain of the Stainforth and Headley branch thence extending in a Westwardly direction along the North side of an Allotment or parcel of land herein Awarded to the Manchester Sheffield and Lincolnshire Railway Company and Numbered 78 on the said Plan to near the South East corner of an Allotment or parcel of land herein Awarded to Makin Durham Numbered 75 on the said Plan Q.S.D. We do Award order and direct that the said Road shall for ever hereafter be maintained and kept in good and sufficient Repair by the Owner or Owners for the time being of the said Allotment of land Awarded to the said Makin Durham Numbered 75 on the said Plan by an equal Acre Rate Q.S.D. We do also set out appoint and Award one other Private carriage and Occupation Road or Way of the Width of Twenty four feet which we call Moors Road and which we have Numbered on the said Plan 5 commencing at the South West corner of an Allotment herein Awarded to Makin Durham Numbered 40 on the said Plan thence extending in a Northwardly direction to and terminating at the South West corner of an Allotment or parcel of land herein Awarded to the Trustees of Hammie Maria

Brook O' Moor
Road

No. 3

Durhams Road
No. 4

Moors Road
No. 5