

**NORTH LINCOLNSHIRE COUNCIL**

**PLANNING COMMITTEE**

**PUBLIC FOOTPATH 193, BOTTESFORD**

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

- 1.1 To determine the council's stance in referring an order to the Secretary of State.

**2. BACKGROUND INFORMATION**

- 2.1 This matter came before Planning Committee on 9 March 2016, when it was decided to defer the matter following the discussion as to whether or not to support the officer recommendation (see Appendices). This had been to ask the Secretary of State to confirm the order with our support and assistance. The Council have a legal responsibility to refer the order to the Secretary of State, but the Committee required further information to decide upon what basis the referral should be made.
- 2.2 The order in question sought to clarify the width of Public Footpath 193 where it passes along Croft Lane. In law, where a footpath traverses a lane, the width of the footpath is legally presumed to be the lane's full width. Legal presumptions can be rebutted, but this requires evidence as to why the width of the footpath in a given case is not the full width of the lane. The legal maxim is "once a footpath, always a footpath". North Lincolnshire Council have a duty to prevent obstructions and encroachments upon the footpath.
- 2.3 The length of Croft Lane in question has registered owners. They allege the footpath has a width of four feet only. The actual width of the lane is thought to be boundary to boundary. They have erected a fence to partition the footpath accordingly. They have not, however, explained why they believe the footpath is not the full width of the lane. Footpaths have a variety of widths.
- 2.4 The order will determine whether or not the width of the footpath is indeed the full width of the lane. It does not serve to create additional width; only to record the current actual width. Without the order, the

uncertainty would have lingered on. This is not in the interests of any party.

- 2.5 But as well as the legal presumption that the lane is the full width, there is further supportive evidence. This is in the form of the Bottesford Inclosure Award 1797 and the Finance Act 1910.
- 2.6 The Bottesford Inclosure Award 1797 set out Croft Lane and gave it a width of thirty feet. The adjacent allotments were set out separately from Croft Lane. The award also required the adjacent allottees to maintain their fences for ever after adjacent to Croft Lane. Under the terms of the award, therefore, the width of Croft Lane cannot in law vary.
- 2.7 The Finance Act 1910 subsequently taxed all private land. The Valuation Office plotted all taxable land on Ordnance Survey maps. This they did using thick coloured lines. The map for Croft Lane shows Croft Lane uncoloured. This is evidence that Croft Lane was not private. Moreover, the adjacent plots correspond with those set out under the award in terms of area.
- 2.8 This was the evidence that was included in the report to the Director dated 10 February 2015 and was the basis that the Director approved the order with a referral to be made to the Secretary of State with the appropriate endorsement from the Planning Committee.

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

- 3.1 The above evidence was sufficient for a Director to indicate initial approval that the order be made. However, as the order following publication was contested, it must therefore be referred to the Secretary of State. We cannot revoke it.
- 3.2 Members have already discussed whether they want to support the order. The remaining options are therefore either not to support the order or to take a neutral stance when referring the order to the Secretary of State.

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

- 4.1 Members can choose to support the order for the reasons given.
- 4.2 If we choose not to support the order, members need to give reasons to the Planning Inspectorate. This could include, for example, the finding of new evidence since the making of the order. There does not appear to be any new evidence in this case.

4.3 However, as an alternative, members could decide that the evidence was, on reflection, more finely balanced than had at first been appreciated. In which case, members on behalf of North Lincolnshire Council could adopt a neutral stance when the referral is made.

4.4 But whichever stance we take, the Secretary of State could decide to confirm the order regardless.

## **5. RESOURCE IMPLICATIONS**

### **5.1 Financial**

5.1.1 The Environment Team's existing budget will meet all costs arising from referral of the order to the Secretary of State. The Secretary of State will determine the order by one of three means: written representations, hearing or inquiry. All three options will incur the cost of staff time (minimal if we take a neutral stance). An inquiry would incur the additional cost of hiring a village hall, probably for one day only. This would typically cost about £80. If the order were confirmed, we should have to publish notice in the press. This would cost about £200 (though an imminent legislative change should negate this cost by allowing us to publish on our website only).

5.2 There are no other resource implications to highlight.

## **6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)**

6.1 Not applicable.

## **7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED**

7.1 When advertised, we served notice on all relevant parties, as required. We received no objections other than those referred to above. Local ward councillors were consulted prior to the making of the order and raised no concerns regarding the proposals.

## **8. RECOMMENDATIONS**

8.1 It is recommended that the order remains that the Committee authorise the submission of the order to the Secretary of State. Furthermore, that we tell her that we support the order and that we wish to participate fully in her chosen means of arbitration.

- 8.2 In the event that members do not consider supporting the order is appropriate, it is recommended that North Lincolnshire Council adopt a neutral stance in referring the order to the Secretary of State. This could be on the basis that the evidence is more finely balanced than was first thought to be the case.
- 8.3 If this recommendation is not adopted, the only remaining option is to take an active position against the order's confirmation. But members should need to be able to justify such a stance by giving reasons.

## DIRECTOR OF PLACES

Church Square House  
30-40 High Street  
SCUNTHORPE  
North Lincolnshire  
DN15 6NL  
Author: Colin Wilkinson  
Date: 12 April 2016

**Background Papers used in the preparation of this report:** office file 9/193 held electronically at Church Square House

# **APPENDIX 1**

**Wildlife and Countryside Act 1981  
Section 53**

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

**Definitive Map Modification (Public  
Footpath 193, Bottesford) Order 2015(1)**



**Wildlife and Countryside Act 1981**

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

**"Definitive Map Modification (Public Footpath 193, Bottesford) Order 2015(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 (Glanford Brigg)" definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(c)(iii) – namely, the discovery by the authority of evidence, which (when considered with all other relevant evidence available to them) shows that other particulars contained in the map and statement require modification – 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 8 September 2015.
2. The "County of Lincoln, Parts of Lindsey (Glanford Brigg)" definitive map and statement shall be modified as described in 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 (Public Footpath 193, Bottesford) Order 2015(1)".

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

(authorised signatory)



Dated: 11th September 2015

Seal Number: 7931



## SCHEDULE

### PART I

#### Modification of Definitive Map

Not applicable: the definitive map already shows a path of the correct status.

### PART II

#### Modification of Definitive Statement

##### *Variation of particulars of path or way*

A 61-metre-long footpath of a width of thirty metres throughout as shown shaded grey on the order map and extending boundary to boundary in a south-south-westerly direction along the non-tarmacked length of Croft Lane between Point A at grid reference SE88400677 (adjacent to the western perimeter of 2 Kingsdale) and Point B at grid reference SE88380671 (adjacent to the site of Southfield Farm).

Seal No 7931



0m

25m

*W. Bly.*  
Authorised  
Signatory

Croft Lane

Council

**A**

Track

Drain

**B**

Site of Southfield Farm

FP192

FP193

Title: Public Footpath 193, Bottesford

Drawing No:

Version: 1

Drawn by:

Date: 04/09/2015

Scale @A4 1:400



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Ordnance Survey 0100023560



Director of Places  
Peter Williams  
BSc, DMS, CEng, MEI, MCMI, AMIMechE

# **APPENDIX 2**

## **PUBLIC RIGHTS OF WAY – AUTHORITY TO MAKE ORDER**

### **NORTH LINCOLNSHIRE COUNCIL**

#### **DIRECTOR OF PLACES**

### **PUBLIC FOOTPATH 193 (CROFT LANE), BOTTESFORD**

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

- 1.1 To consider whether to modify the definitive map and statement with respect to Public Footpath 193, Bottesford.
- 1.2 North Lincolnshire Council must keep the definitive map and statement under continuous review.

#### **2. BACKGROUND INFORMATION**

- 2.1 Public Footpath 193 runs between Moorwell Road and Scotter Road South. It has a total length of about 1.8 kilometres. However, this report relates only to the part of the footpath that traverses Croft Lane. This is over a length of about 270 metres immediately south of Moorwell Road. It is partly tarmacked, partly rough track (see Appendix 1).
- 2.2 The first 205 metres or so of Croft Lane south of Moorwell Road is a tarmacked carriageway. It is an estate road serving as access to the adjacent residential properties and roads off. It has the character of a way used mainly by motor vehicles. It is no longer, therefore, a public right of way. We should therefore remove it from the definitive map.
- 2.2 However, the situation with respect to the remaining 65 metres is different. We have recently discovered evidence showing that, on balance, it has a width of thirty feet. This is on the basis of the Bottesford and Yaddlethorpe Inclosure Award 1797 and the Finance Act 1910.
- 2.3 The former ordered the setting out of what we nowadays know as Croft Lane. It did so as follows: "One private carriage driving and bridle road for the use of Margaret Walker Spinster beginning at Yaddlethorpe Common Lane end and extending on the West side of the Old Inclosure to the allotment of the said Margaret Walker". The significance of the award lies in the stated width: "And, We order and award the said private carriage roads to be of the width of thirty feet between the fences ..." (see Appendix 2).

- 2.4 The 1910 Act, on the other hand, required an assessment of all private land for taxation. This was an increment value duty, for levying when land changed hands. The Valuation Office made the assessments between 1910 and 1915. Using the then latest Ordnance Survey 1:2,500-scale maps, they coloured the edges of all private land and assigned each taxable holding a number. Public land was left uncoloured and unnumbered. Uncoloured and unnumbered roads, lanes and tracks are thus likely to be public too. This is on the basis of “once a highway, always a highway”. Moreover, the thesis has been upheld by the courts. This was as recently as 2012 in the Court of Appeal. Croft Lane was uncoloured and unnumbered. This was throughout its length, from Moorwell Road to the site of Southfield Farm (see Appendix 3).
- 2.5 Normally, an uncoloured highway on a Finance Act 1910 map had a status greater than footpath. However, an uncoloured cul-de-sac could also have been an occupation road. But we know from the definitive map that over the unsurfaced part of Croft Lane the public enjoy at the very least a right of way on foot. And where the boundaries of a highway have been set out with reference to it, the law rules that the public have a right to the full width between. The Finance Act 1910 map is consistent with a width of thirty feet. Taking this and the award together, therefore, it is arguably more probable than not that thirty feet is Public Footpath 193’s width north of Southfield Farm.
- 2.6 Because we have a duty to keep the definitive map and statement under continuous review, this is evidence upon which we are obliged to act. In particular, section 53(4)(a) of the Wildlife and Countryside Act 1981 states: “The modifications which may be made by an order under subsection (2) [to keep under continuous review and make modifications as soon as practicable] shall include the addition to the statement of particulars as to the position and width of any public path, restricted byway or byway open to all traffic which is or is to be shown on the map”.

### 3. OPTIONS FOR CONSIDERATION

- 3.1 We can (1) make two orders: one to remove the estate road length of Croft Lane from the definitive map and the other to add the untarmacked length of Croft Lane to the definitive statement as a footpath of a width of thirty feet; or (2) make one of these orders only; or (3) make no orders.

### 4. ANALYSIS OF OPTIONS

- 4.1 It is normal practice to modify the definitive map and statement in response to the discovery of evidence. It is also a statutory duty. Consequently, the definitive maps for North Lincolnshire are in constant flux. Some changes prove uncontentious; others more so. However, if someone disagrees with what we are doing, he or she has

the opportunity to object. We refer contested orders to the Secretary of State for the Environment, Food and Rural Affairs. She then arbitrates by way of one of three means: written representations, a hearing or an inquiry.

- 4.2 We can maintain the stance we had when we made the order; or we can alter that stance if, say, new evidence comes to light subsequently.

## **5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING)**

### **5.1 Financial**

5.1.1 The Environment and Sustainability Team's existing budget would cover all of the associated expenditure. This would be to advertise the order or orders, both in a local newspaper and on site. The cost of advertising two orders in the press would come to about £600. There would also be the cost of staff time, mileage costs to and from site and postage for sending copies of order and notice to statutory consultees.

5.1.2 If we have to refer the order or orders to the Secretary of State, we shall consult Planning Committee first. This report would detail the costs arising from such a referral.

### **5.2 Staffing**

5.2.1 We would make the order or orders using the Environment and Sustainability Team's existing staff only.

## **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 Other Implications**

6.2.1 There are no further implications.

## **7. OUTCOMES OF CONSULTATION**

7.1 Officers have consulted the local ward members and Bottesford Town Council on the issues contained in this paper. The former raised no concerns with the recommended course of action; the latter supported it.

## 8. RECOMMENDATIONS OF INVESTIGATING OFFICER

8.1 It is recommended approval be given to:

8.1.1 the making of two orders modifying the "County of Lincoln, Parts of Lindsey (Isle of Axholme)" definitive map and statement, both with respect to the Croft Lane length of Public Footpath 193, Bottesford: one to delete the length over the tarmac; the other to specify a width of thirty feet in respect of the remainder;

8.1.2 the confirmation of the two orders if these are unopposed; and

8.1.3 the referral of one or both orders to the Secretary of State for the Environment, Food and Rural Affairs if it or they is or are duly opposed; but

8.1.4 not before taking a further report to Planning Committee to establish a stance in the light of such objections.

## 9.0 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 – Technical and Environment Services

Authorised by

Signed .....  
Director of Places

Dated: 18.2.2015

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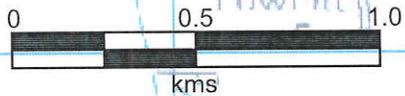
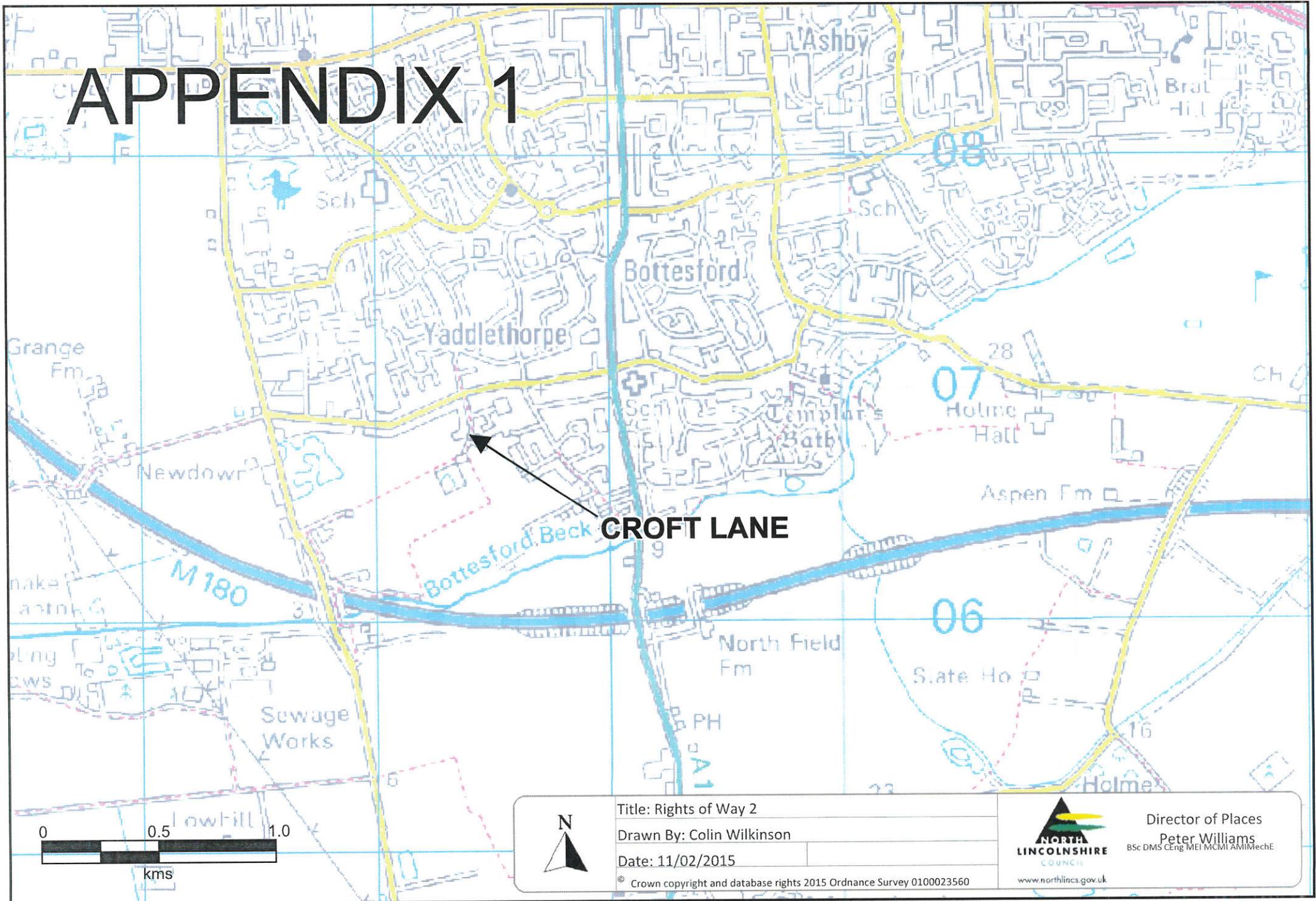
Author: Colin Wilkinson  
Date: 10 February 2015

**Background Papers used in the preparation of this report:** Office file "Public Footpath 193, Bottesford" 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

# APPENDIX 1



Title: Rights of Way 2

Drawn By: Colin Wilkinson

Date: 11/02/2015

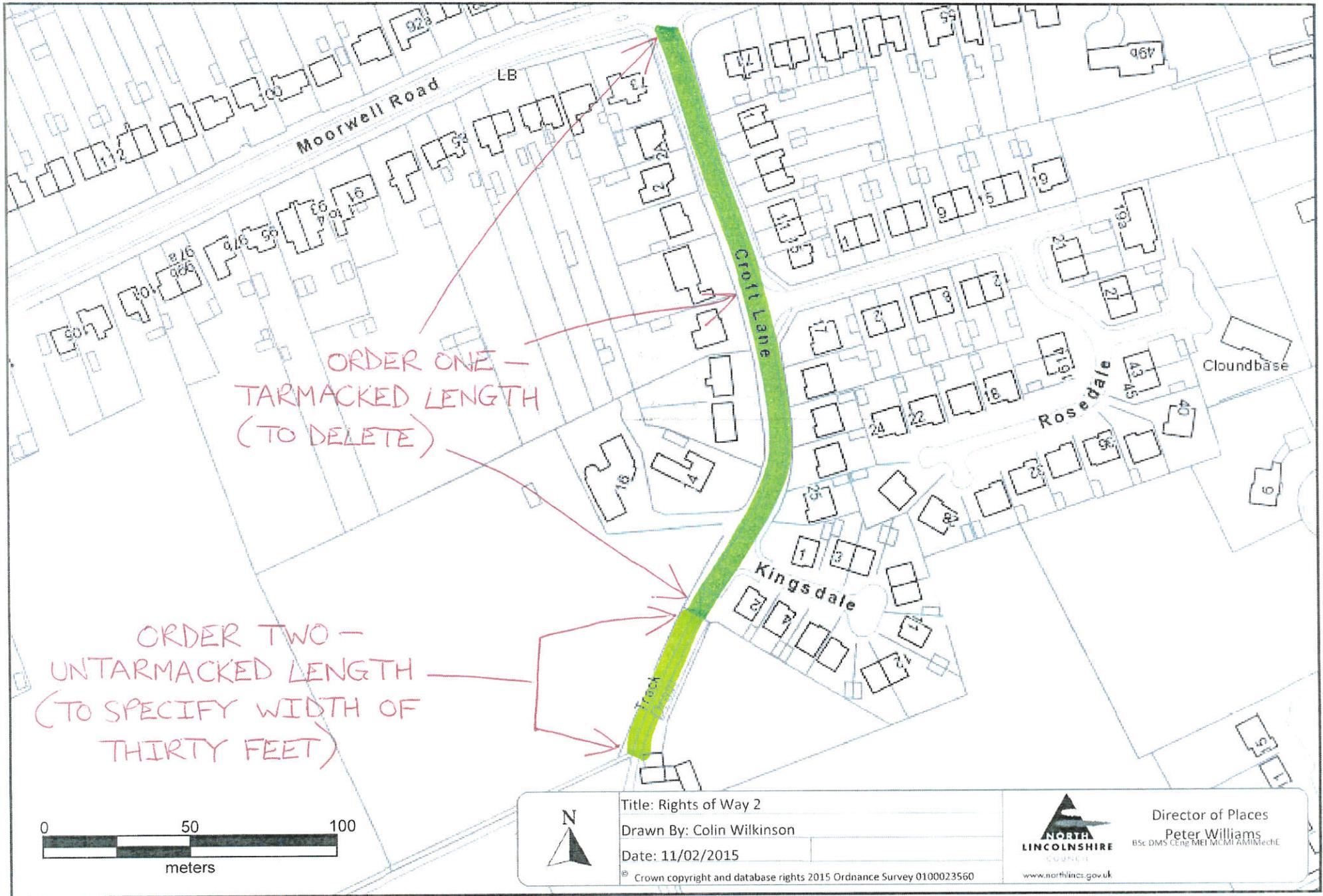
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Director of Places  
Peter Williams  
BSc DMS CEng MEl MCMl AMIMechE

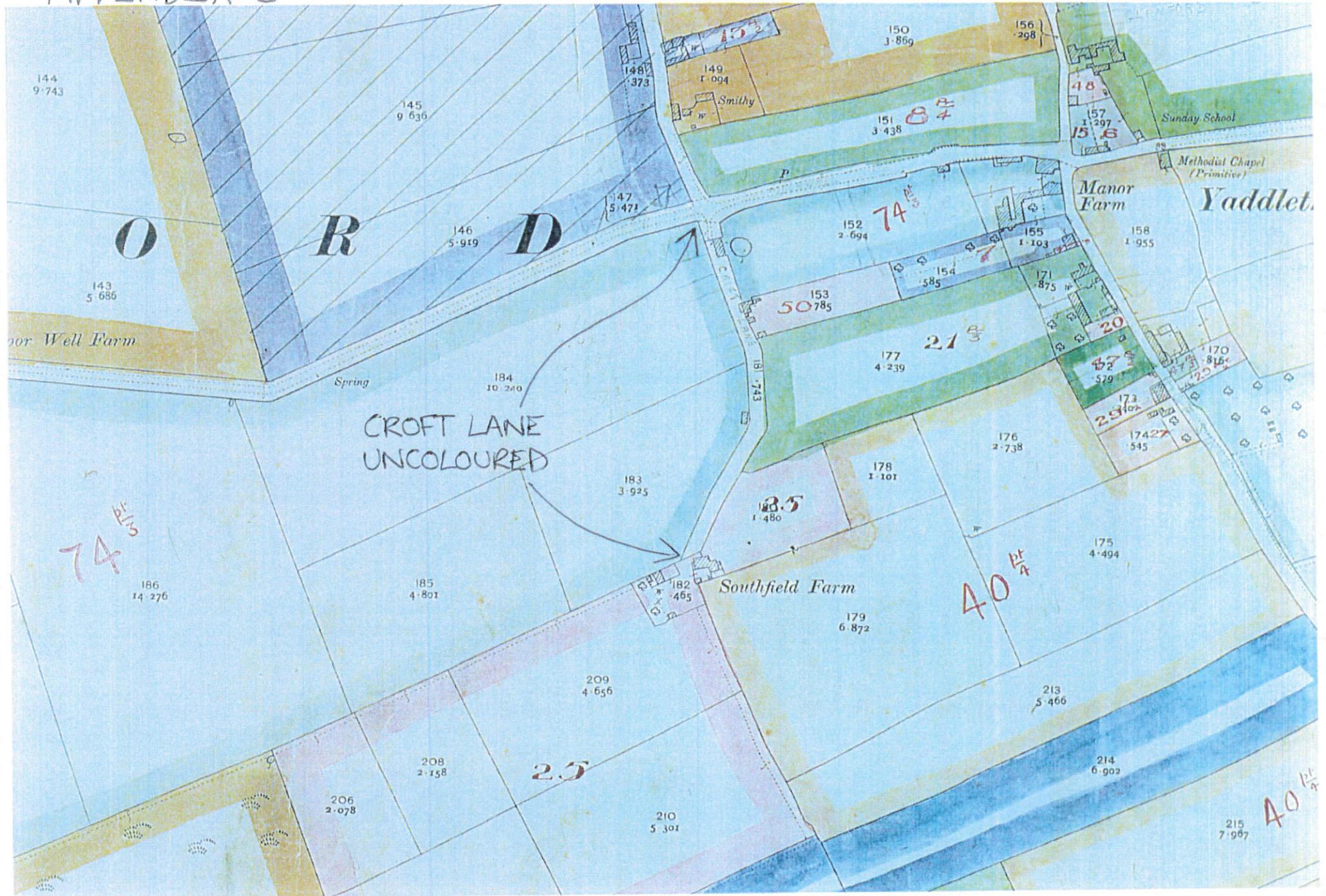
# APPENDIX 1a.



# EXTRACT FROM BOTTESFORD INCLOSURE AWARD 1797 (APPENDIX 2)

by a small dotted line upon the map or plan hereunto annexed for the purpose of getting water from the said Well AND we award that the said road shall be made convenient and commodious and kept open for the use of persons resident in the said Hamlet and that sufficient and convenient stiles gates or slips be made in the fence or fences that cross the said road by the owner for the time being of the said allotment AND we have set out and appointed and do hereby award the following private carriage driving riding roads and footways to be for ever maintained for the use of the several persons hereinafter named respectively and their heirs and assigns AND we order and award the said private carriage roads to be of the width of thirty feet between the fences and ditches bounding the same and to be made repaired and for ever maintained by the occupiers of lands tenements and hereditaments within the said Township of Bottesford and Hamlet of Yaddlethorpe in the same manner as the public highways are hereinbefore directed to be made and that all the gates to be hung thereon shall be made repaired and for ever maintained by the several persons in whose fences such gates shall be necessary that is to say ONE private carriage driving and bridle road for the use of Margaret Walker beginning at Yaddlethorpe Common Lane end and extending on the West side of the Old Inclosure to the allotment of the said Margaret Walker No 24 AND ALSO one other private carriage road for the use of John Fardell as Lessee of the Dean and Chapter of Lincoln beginning at Yaddlethorpe Common Lane end and extending northward on the West side the Old Inclosure and field lands to the allotment of the said John Fardell Lessee as aforesaid No 16 AND ALSO one other private carriage road leading westward in a direct line from the Scotter Road through the Common of Bottesford and Yaddlethorpe to the east side of Butterwick Moor AND ALSO one other private road leading southward from the Hamlet of Yaddlethorpe on the West side of Beck field to an ancient inclosure belonging Thomas Peacock No 1 thence westward to the gravel pit in Hiller Stubbs AND WE do award that the following private roads and parts of private roads shall be hereafter taken and considered as part of and within the Township of Bottesford (that is to say) ONE private road hereinbefore mentioned and expressed to be set out and appointed for the use of John Fardell as Lessee to the Dean and Chapter of Lincoln from Common Lane to an allotment of the said John Fardell No 16 THE west half of a private road hereinbefore mentioned leading from the Scotter Road through the Common of Bottesford and Yaddlethorpe to the East side of Butterwick Moor A PART of a private road hereinbefore mentioned from the turn in Beckfield at the corner of an Old Inclosure belonging to Thomas Peacock No 1 to the gravel pits in Hiller Stubbs AND WE do award that the following private roads and parts of private roads shall be hereafter taken and considered as part of and within the Township of Yaddlethorpe (that is to say) ONE private road hereinbefore mentioned to be set out and appointed for the use of Margaret Walker from Common Lane end to her allotment No 24 THE east half of a private road hereinbefore mentioned leading from the Scotter Road through the Common of Bottesford and Yaddlethorpe to the east side of Butterwick Moor A PART of a private road hereinbefore mentioned leading southward from the Hamlet of Yaddlethorpe on the west side of Beckfield to an ancient inclosure belonging to Thomas Peacock No 1

# APPENDIX 3



# **APPENDIX 3**



Colin Wilkinson  
Senior Public Rights of Way Officer  
Technical and Environment  
Directorate of Places  
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BY EMAIL & POST – [Colin.Wilkinson@northlincs.gov.uk](mailto:Colin.Wilkinson@northlincs.gov.uk)

Your Ref :                      Our Ref :                      Date :  
   LW.TG.H01803.0003                      18 December 2015

We will not accept  
service of legal documents  
by fax or e-mail

Dear Mr Wilkinson

**Our clients:**

**Definitive Map Modification Order 2015 – Public Footpath 193, Bottesford**

We write further to the Order dated 11 September 2015 by North Lincolnshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 in relation to the proposed "Definitive Map Modification (Public Footpath 193, Bottesford) Order 2015(1), seeking to add Public Footpath 193 to the County of Lincoln, Parts of Lindsey (Glandford Brigg) definitive statement.

Our above-named clients do not accept that the proposed modification should be made and wish to contest the Order on the following basis:-

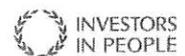
1. The 1907 map (enclosure 1) shows land coloured pink sold to Helena Beatrice Clarke in 1909. Although the property description in the deeds does not specifically include the roadway this is also coloured pink. In addition the responsibility for maintenance of boundaries of the land purchased is marked with 'T' marks, including such a mark on the western side of the roadway. If our clients did not have ownership of the roadway there would have been no reason for a 'T' mark to be placed there as it would be of no consequence to the landowner.
2. The whole of the land was sold to William Brown (our clients' great grandfather) on 26 October 1936 and has remained in our clients' family's continuous ownership since that date, with the exception of a small area which we have edged in green on Plan No 2. (enclosure 2) That area was sold to Mr and Mrs Dunn on 26 April 1996.

*Partners:*

C. ROSSIN  
J.A. BRUCE \*\*  
Miss S. ROBERTS \*\*\* †  
Mrs. D.K. RYAN  
Mrs. J.L. PURVEUR ‡

*Staff Solicitors:*

Mrs. A.F. ASTON †  
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P.D. SUTHERLAND  
Mrs. S.M. TURNER  
Mrs. C.M.P. WATSON \*  
Mrs. L. WHITTINGTON



/2  
18 December 2015

# LARKEN & CO

SOLICITORS

3. We have documentary evidence to show that our clients' predecessors maintained and were regarded as the owners of the whole of the length of the roadway marked X-Y-Z on Plan No 2 until approximately 1994. Mr and Mrs Dunn regarded our clients' predecessor as the owner of the whole of the roadway between the points marked X-Y-Z and approached our client's family for permission to be granted to them to use the portion between the points X-Y as they wished to develop their adjoining land. The local authority commenced maintenance of that part of the road shown X-Y in or about 1994.
4. William Brown granted permission under a Deed dated 7 December 1953 to The Yorkshire Electricity Board consenting to an overhead electricity cable crossing the roadway. The Electricity Board clearly regarded our clients' predecessors as owner of that land.
5. Our documentary evidence indicates that at no time since Mr Brown's purchase of the land has any other person maintained the section marked Y-Z nor claimed ownership of nor tried to establish rights of way over it (although our clients and their predecessors have always acknowledged the public footpath running along the eastern side of the track). Our clients have carried out maintenance of the pathway by keeping the area clear and putting down chipped bark and have never been asked to do so by the Council or anyone else.
6. A stile and a number of gates of various types have been installed by our clients' predecessors at the point marked 'Y' on Plan No 2 for at least the last 35 years. No person has ever objected to the construction of the gates. There is an open entrance gate to the pathway only. The balance of the width of the land has a locked gate which has always been kept locked. There has never been open access on the locked gate side of the land. The public have always walked down one side. Your own photograph (enclosure 3) shows the gates and also the notices erected by our clients. Our clients submitted this evidence to the Land Registry some time ago and were granted Possessory Title of the whole of the track, including that portion on the eastern side where the footpath lies. Our clients' mother swore a Declaration in 1996 in which she stated she believed the footpath to lie along the eastern side of the track. We confirm the Land Registry was made aware of the footpath at the time the application was submitted.

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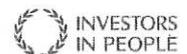
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Mrs. L. WHITTINGTON



\* MEMBER OF THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS \*\* MEMBER OF THE CHILDREN PANEL ACCREDITATION SCHEME

\*\*\* MEMBER OF THE FAMILY LAW ACCREDITATION SCHEME. † RESOLUTION ACCREDITED SPECIALIST AND MEDIATOR.

‡ MEMBER OF PROPERTY LITIGATION ASSOCIATION.

CONTRACTED WITH THE LEGAL AID AGENCY

AUTHORISED AND REGULATED BY THE SOLICITORS REGULATION AUTHORITY.

SRA No: 00053640

VAT registration no: 116 4408 91

/3  
18 December 2015



7. Our clients fully acknowledge the existence of the footpath but we fail to see why the Authority should ask for such unusual width to be placed on record particularly in view of the fact that the current width of the footpath is well more than double the required minimum width set out in legislation and that no person is being disadvantaged by the current width of the footpath. A copy of the plan to our client's title is attached (enclosure 4). The pathway is shown defined on the left and it does not take up the whole of the width. The pathway measures some 6 feet 7 inches in width.
8. The width described within Part II of the Order is acknowledged to be incorrect, being referred to as 30 metres instead of 30 feet. However, the width of the area, from dyke to dyke, measures only 24 feet and a width of 30 feet is not, in any event, factually possible. Photographs of the footpath indicating its width and the width of the area from dyke to dyke are attached (enclosure 5). The width of the pathway sought is far greater than the width of the public footpath further on.
9. As a matter of safety, because vehicular access is required on a regular basis in order to get feed to livestock there is a need to keep the footpath and the driveway separate from each other.

In the circumstances we trust that our clients' objections will be noted and that we may receive your confirmation that a request will be made for the Order not to be confirmed in the light of our clients' objections and representations made.

Should you require any further information or wish to discuss this matter further please do contact our Mrs Linda Whittington.

Yours faithfully

  
**LARKEN & CO**

Email: [redacted] @larken.co.uk

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\*\*\* MEMBER OF THE FAMILY LAW ACCREDITATION SCHEME. † RESOLUTION ACCREDITED SPECIALIST AND MEDIATOR.

‡ MEMBER OF PROPERTY LITIGATION ASSOCIATION.

CONTRACTED WITH THE LEGAL AID AGENCY

AUTHORISED AND REGULATED BY THE SOLICITORS REGULATION AUTHORITY.

SRA No: 00053640

VAT registration no: 116 4408 91

# Yaddethorp

To Peterborough

To Messingham

PLAN XVIII. 15  
2<sup>nd</sup> Edition 1907  
SCALE 2500

Southfield Farm

To Spalding

181 743

180 742

182 744

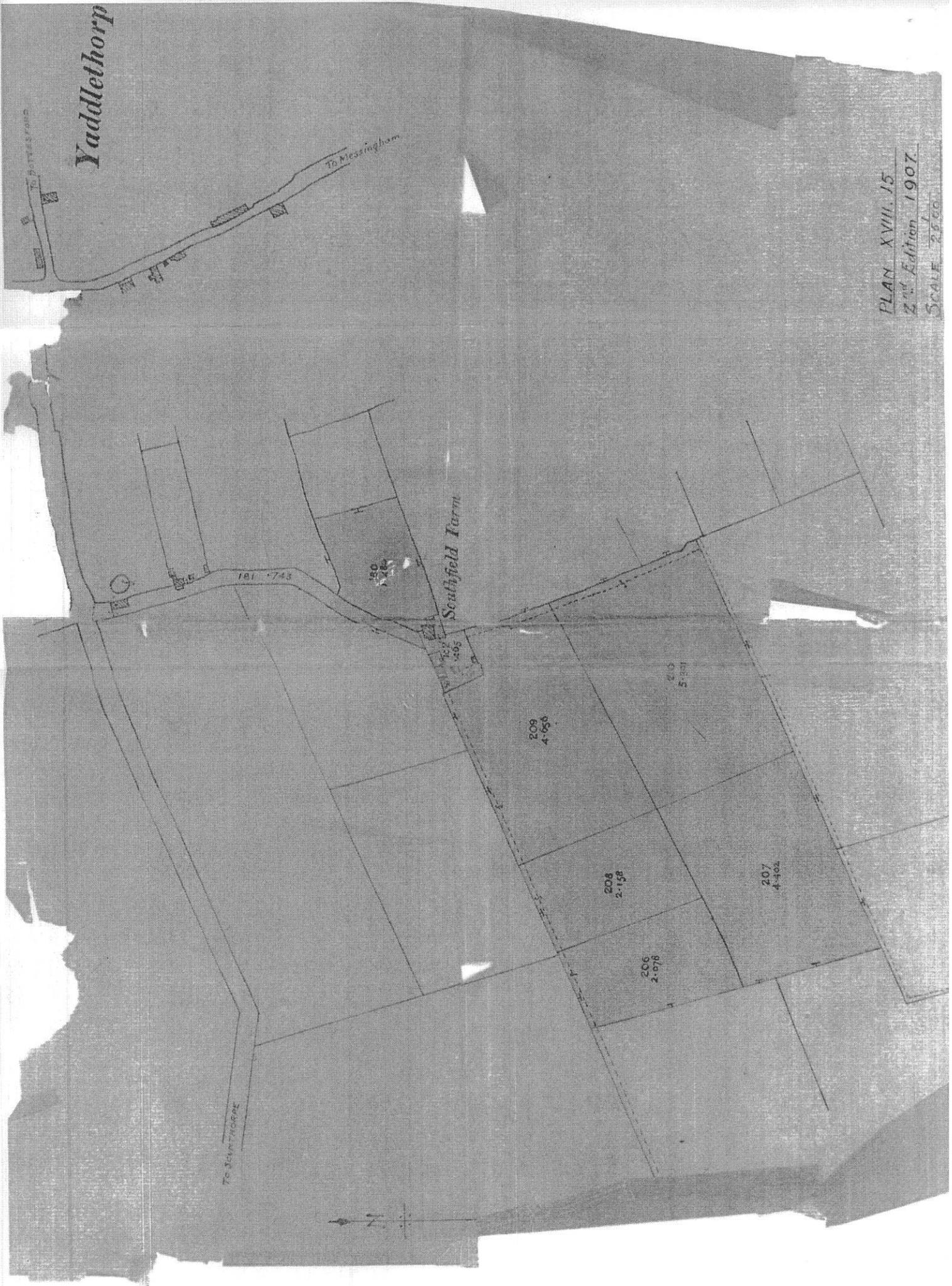
209  
4 658

206  
2 978

208  
2 138

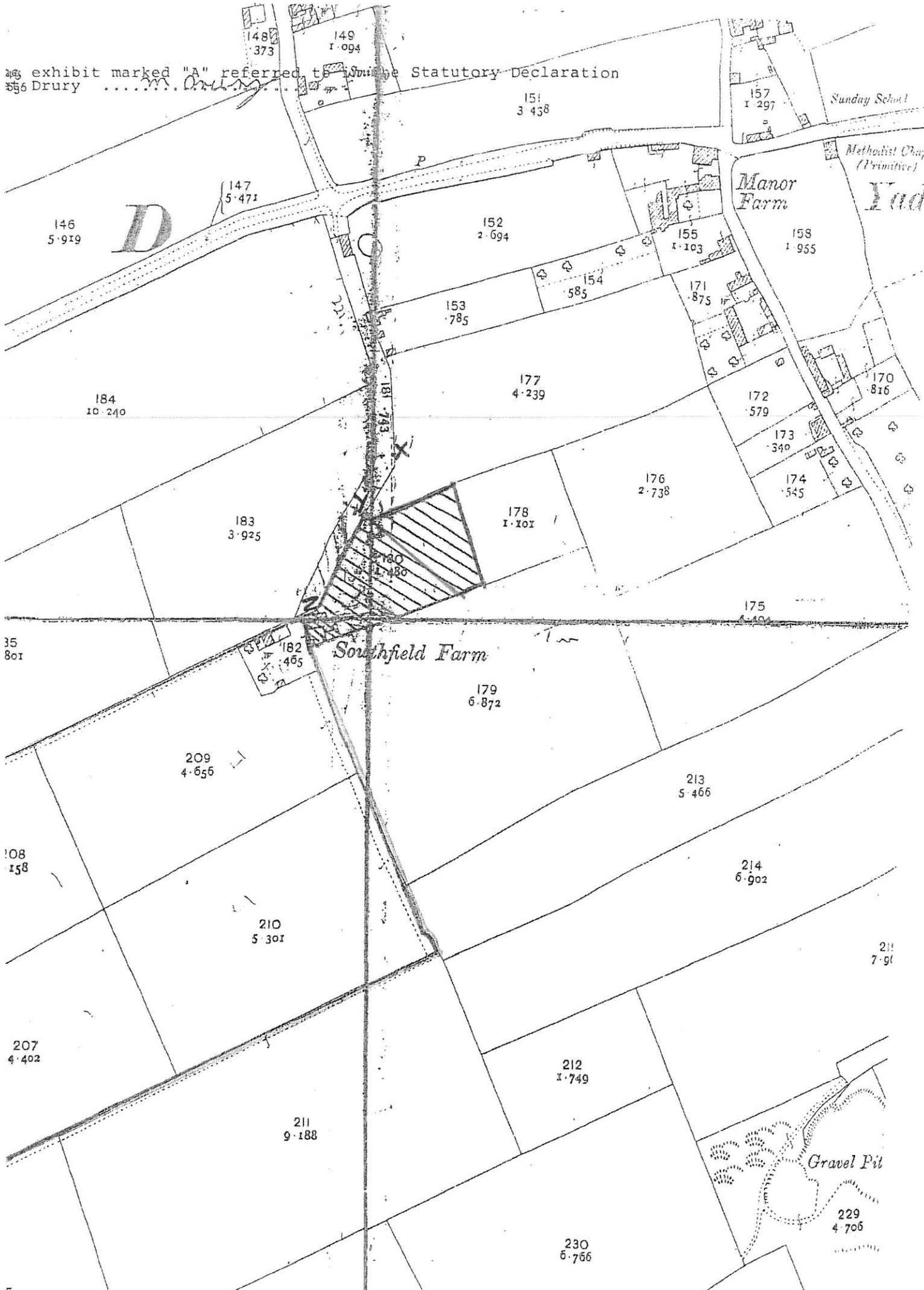
207  
4 402

205  
5 801



Plan No 2

exhibit marked "A" referred to in the Statutory Declaration  
of Drury





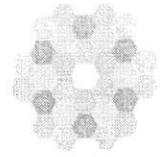
DO NOT  
PARK HERE

DO NOT  
PARK HERE

DOGS MUST BE  
KEPT ON LEADS  
AT ALL TIMES  
THE OWNER IS RESPONSIBLE FOR  
THE BEHAVIOR OF HIS DOG  
IF A DOG IS FOUND ON THE  
ROAD, THE OWNER WILL BE  
PROSECUTED

Land Registry  
Official copy of  
title plan

Title number HS378373  
Ordnance Survey map reference SE8806NW  
Scale 1:1250 enlarged from 1:2500  
Administrative area North Lincolnshire

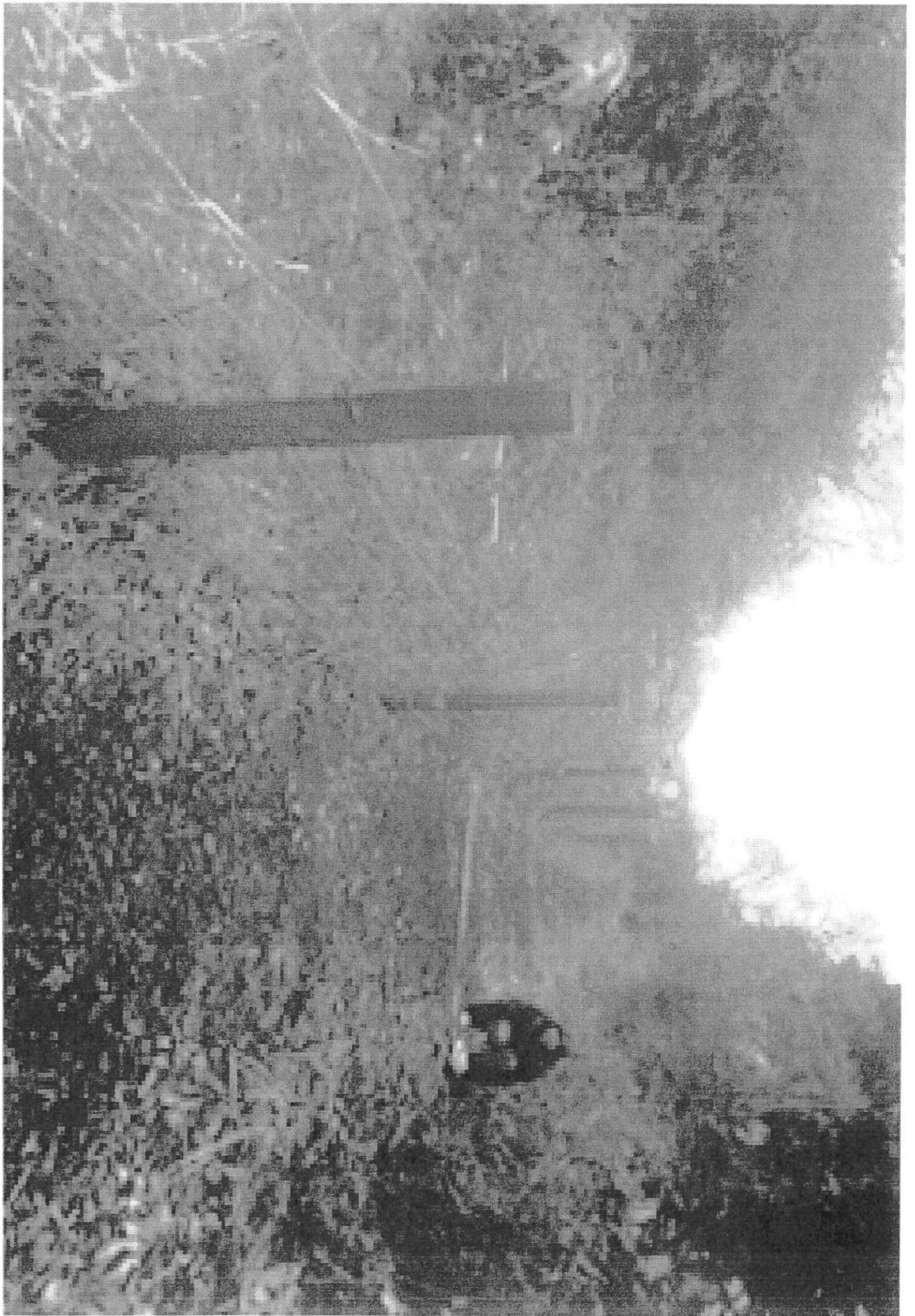


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This official copy issued on 14 May 2015 shows the state of this title plan on 14 May 2015 at 14:56:07. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by Land Registry, Kingston upon Hull Office.









# **APPENDIX 4**

Enquiries to: C T Wilkinson  
Telephone: 01724 297000  
Email: [colin.wilkinson@northlincs.gov.uk](mailto:colin.wilkinson@northlincs.gov.uk)

Your Ref: LW.TG.H01803.0003  
Our Ref: CTW/9/193

5 January 2016



[www.northlincs.gov.uk](http://www.northlincs.gov.uk)

Peter Williams BSc, DMS, CEng, MEI, MCMI, AMIMEchE  
Director of Places  
Church Square House  
PO Box 42  
Scunthorpe  
North Lincolnshire  
DN15 6XQ

Dear,

**Your Clients: v.v. -**  
**"Definitive Map Modification (Public Footpath 193, Bottesford) Order 2015(1)"**

I refer to your letter of 18 December 2015 objecting to the above order on behalf of your clients, viz

Thank you for setting out in some detail your clients' case. Pro tem, I should just like to make the following points in response:

- the T mark you mention in paragraph 1 of your letter is shown within the land abutting the western side of Croft Lane on the map purportedly dated 1907. This would indicate, if anything, that responsibility for the boundary's maintenance lay with that holding's owner, not Croft Lane's. This would be consistent with Croft Lane being a highway, the highway authority not normally being responsible for the maintenance of physical boundary demarcations;
- it is questionable anyway how much reliance can be placed on a T mark on a plan (for example: "T marks on deed plans which are not referred to in the text of a deed have no special force or meaning in law" (from Land Registry Plans: Boundaries (Practice Guide 40, Supplement 3) – June 2015));
- if Croft Lane were a footpath maintainable at the public expense from boundary to boundary, only the surface would be vested in North Lincolnshire Council as highway authority. This would be for the duration of the footpath's existence. Meanwhile, the subsoil would have a private owner, nominally or otherwise, as is the case with virtually all highways. It would be to that owner, moreover, that the surface would revert were ever the footpath to be stopped up;
- historical Ordnance Survey maps, such as the circa 1945 1:10,000, show Croft Lane as an unimpeded thoroughfare and entity between Moorwell Road and Southfield Farm. Furthermore, the definitive map shows Public Footpath 193 as commencing at Moorwell Road. If the width of Public Footpath 193 were not boundary to boundary, what evidence do you have of its alternative width and position? And why, moreover, should this be so over part of Croft Lane and not all of it? I make these points because the law presumes that where a highway follows

- a road, lane or track with defined boundaries, the width is boundary to boundary in the absence of cogent evidence to the contrary; and
- are you able to provide me with a copy of the deed and declaration you refer to in your letter's paragraphs four and six respectively please?

North Lincolnshire Council's position is not that it is conclusively the case that Public Footpath 193's width along Croft Lane is boundary to boundary: only that it is more likely than not on the basis of the evidence available to us to date. In other words, we feel there is, therefore, a case to be answered in accordance with our duty to keep the definitive map and statement under continuous review.

Because your clients' objection prevents North Lincolnshire Council from confirming the order ourselves, we shall have to remit it to the Secretary of State for the Environment, Food and Rural Affairs (c/o the Planning Inspectorate). The stance we adopt in making this remission will be decided by the authority's Planning Committee. Any remission will, however, include your clients' objection regardless and determination will be by one of three means: written representations (the most likely), hearing or inquiry. It should really go without saying, furthermore, that your clients will have every opportunity to participate fully in the process.

If, in the meantime, you wished to discuss anything further with me, please do not hesitate to do so.

Yours sincerely

**Colin Wilkinson**  
**Senior Public Rights of Way Officer**  
**Environment Team**