

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

PUBLIC FOOTPATH CLAIM - VILLA FARM, BURTON UPON STATHER

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 The Burton upon Stather Heritage Group has lodged an application to modify the definitive map.
- 1.2 The footpath leads from the Ferry House Pub to an area known locally as 'The Tank Ramp'.
- 1.3 The claimed path runs along a flood bank within the ownership of a property known as Villa Farm. It crosses into the parish of Alkborough.

2. BACKGROUND INFORMATION

- 2.1 The council received an application to modify the definitive map on 23 August 2012. The application was made on behalf of the Burton upon Stather Heritage Group. Some affected landowners have voiced their concerns.
- 2.2 A map of the claimed route is shown at **Appendix 1**. The evidence received by the council includes user evidence forms, statements, maps and archive photographs of the area.
- 2.3 An application is a 'trigger event' for a claim. A 'calling in to question' that challenges use is also a trigger event. Applicants are required to show a period of 20 years' use 'as of right'. The focus of the evidence covers the period 1992 to 2012 (if counted from the application), or 1960 to 1980 (if counted from when use was first challenged).
- 2.4 A presumption to dedicate is inferred (Section 31 of the Highways Act 1980). The landowner must rebut the presumption to dedicate. The evidence must show that the public's use was without force, secrecy or permission, and was uninterrupted. The route must not have altered.
- 2.5 The ownership of Villa Farm changed hands in 1986/7. The user evidence forms submitted indicate a challenge to the use of the route since that date. A letter granting permissive rights is shown at

Appendix 2. The landowner has shown rebuttal of presumed dedication.

- 2.6 None of the evidence forms submitted show use covering the period between 1992 and 2012. A number of evidence forms state that they used the route without challenge up to 1986.
- 2.7 Parish records indicate that use was subject to challenge dating as far back as 1980. The previous landowner prevented access and challenged users (see **Appendix 3**). It is unclear whether this challenge continued up to the point that ownership of the property changed hands.
- 2.8 The application includes three statements lodged by local residents as well as a local historian. The information which they give is generally consistent with that provided in the witness evidence forms.
- 2.9 One of the three local residents has known that a route has existed for approximately 53 years. However, at least the past 27 years of this has been contentious. The resident in question confirms that access was prevented when ownership of the farm was transferred in 1986/7. A statement from the resident is attached at **Appendix 4**.
- 2.10 Another of the three residents recalls the existence of a path prior to 1944. This is when the Ministry of Defence constructed the Tank Ramp and access road. Access along the route was restricted for three years. This indicates an interruption of use. A statement from the resident is attached at **Appendix 5**.
- 2.11 The information provided by a local historian corroborates the evidence. He confirms the type of use, the change in the location of a stile at the southern end of the route, and the realignment of the floodbank. The statement submitted by the third local resident also supports this. Their statements are attached at **Appendix 6**.
- 2.12 All of the statements corroborate that access was subject to challenge from the mid 1980's.
- 2.13 A number of documents are lodged in support of the application. They consist of historical OS maps, the 1910 Finance Act Map and Field Book entries, as well as aerial photographs of the river bank.
- 2.14 The 1888 and 1945 OS maps do not show the 'FP' markings used to denote a footpath (see **Appendices 7 and 8**).
- 2.15 The 'FP' letters are clearly apparent on the 1908 OS map. However, the appearance of 'FP' on an historical OS map merely indicates a topographical feature (see **Appendix 9**).

- 2.16 The 'FP' marking is shown on the Finance Act 1910 Map and accompanying field book. The map is effectively an annotated OS County Series 2nd edition base map as it employs the 1907 OS map, scale of 1:2,500 (see **Appendix 10**).
- 2.17 The evidence casts doubt as to whether the precise location of the route remains the same. This is primarily due to the realignment of the floodbank in 1965, and a possible realignment by the MoD. The commencement point of the route has changed considerably from before the floodbank improvements. This 'realigned' route is the subject of the application received by the council. **Appendix 9** contains the 1907 OS map, depicting a route in the vicinity of the claimed path. **Appendix 11** shows the claimed route to the rear of Killick's Cottage. There is a clear difference between the commencement points of both routes.
- 2.18 On the balance of probabilities (the ultimate test under civil law), it is likely that the claimed route was not used 'as of right' for a period of 20 years prior to the lodging of the application, or the potential 'calling into question in 1980'. Nor, however, is the evidence such that the way can be said to subsist or be reasonably alleged to subsist.

3. **OPTIONS FOR CONSIDERATION**

- 3.1 The options available for consideration by the Planning Committee are to either accept the claim that a public footpath exists along the claimed route or to decline the application.

4. **ANALYSIS OF OPTIONS**

- 4.1 Accepting the claim for a public footpath will require recording the path on the definitive map and opening it up to the public. We shall have to advertise the making of the order in the local press. If any objections are received, it will result in a referral to the Secretary of State. This could lead to a public inquiry.
- 4.2 The path will effectively become a cul-de-sac path, with the point of termination at the Tank Ramp.
- 4.3 If users decided not to return along the footpath, they would be trespassing on land within the ownership of a third party.
- 4.4 If the route is added to the definitive map, the landowners at Villa Farm have expressed their concerns as to privacy and security. Although a landowner may have these concerns, they are effectively irrelevant when considering a claim for a public right of way.
- 4.5 Declining the claim for a public footpath will deny access to an area which the Burton upon Stather Heritage Group suggest is of historical importance.

- 4.6 There is no historic designation recorded for the Tank Ramp with the Historic Environment records listed with North Lincolnshire Council.
- 4.7 If the claim is declined, the applicant has 28 days in which to make an appeal to the Secretary of State.

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

5.1 Financial

5.1.1 From within the existing Environment Team budget.

5.1.2 If we make an order to add the route and we receive objections, we shall have to present the matter to the Secretary of State. A public inquiry may then be required. If a barrister was required, this could cost in the region of 3,000 to £5,000. Otherwise it would be about £1,000.

5.2 Staffing

5.2.1 From within the existing Environment Team.

5.2.2 The assistance of Legal Services may be required if an order is made and objected to. If the matter progresses to a public inquiry, we could appoint a barrister.

5.3 Property

5.3.1 The affected landowners have expressed concerns about privacy and security. However, this holds no legal weight in considering the application.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 Not applicable.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTEREST DECLARED

7.1 Burton Parish Council supports the application.

7.2 Alkborough Parish Council expressed neither support nor objection to the claim.

7.3 Local user groups were consulted, but provided no expression of support or objection.

7.4 Some of the affected landowners have expressed their strong objections to the claim.

8. RECOMMENDATIONS

- 8.1 That the Planning Committee agrees to reject the application made by the Burton upon Stather Heritage Group to make modifications to the definitive map in connection with Villa Farm, Burton upon Stather based upon the lack of a 20-year period of non-contentious use or other credible evidence.

DIRECTOR OF PLACES

Church Square House
PO Box 42
Scunthorpe
DN15 6XQ
Author: Naomi Boyd
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Background Papers used in the preparation of this report:

- Office files prow/burton upon stather/villa farm