



## Order Decision

Inquiry held on 17 December 2019

Site visit undertaken on 17 December 2019

**by Mark Yates BA(Hons) MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 04 February 2020**

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### **Order Ref: ROW/3210139**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Lincolnshire County Council, addition of Public Footpath Number 1147 Middle Rasen, Definitive Map Modification Order 2017.
- The Order was made by Lincolnshire County Council ("the Council") on 12 June 2017 and proposes to add a footpath ("the claimed route") to the definitive map and statement, as shown in the Order Map and Schedule.
- There were four objections and one representation outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. An application for an award of costs was made at the inquiry and this will be the subject of a separate decision.
2. All of the points referred to below correspond to those delineated on the Order Map.

### **Main Issues**

3. The Order relies on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, for me to confirm the Order, I must be satisfied that the evidence shows on the balance of probabilities that a public footpath subsists. In considering this test, I shall assess whether the evidence is sufficient to support the common law dedication of a public footpath at some point in the past.

### **Reasons**

#### ***Background matters***

4. Middle Rasen Parish Council made an application to add a footpath to the definitive map and statement on 5 August 1987. Although the application was determined on 2 September 1988, it was not until 2017 that an Order was made. Such a significant delay causes problems for applicants, other interested parties and decision makers when reliance is placed on user evidence. In this case, the user evidence is viewed as being supportive of the documentary evidence in terms of the assertion that the claimed route is a historical public footpath.
  5. West Lindsey District Council confirmed an Order in 1988, which diverted any unrecorded public rights away from a short section of the route included in Middle Rasen Parish Council's application. The claimed route continues from
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point A and proceeds via points B and C to link with Bridleway 514 (also known as Gatehouse Lane) at point D. Outline planning permission has been granted for a development involving up to 300 dwellings on a proportion of the land crossed by the route.

6. The Council took a neutral stance at the inquiry and the case in support was taken forward by a supporter (Mr Padley). He was assisted by a consultant and counsel in respect of the presentation of his case. Mr Padley also objects to the width specified in the Order for a section of the route (points C-D). The objection from Mr Kind relates to the proposed width for the whole of the claimed route.
7. The concerns of the owner of a property whose garden is crossed by the claimed route near to point A (Mrs Parker) are evident from her objection and the comments of her son at the inquiry. Whilst I can appreciate these concerns, as I outlined at the inquiry, I am unable to take such matters into account. Neither can I make any recommendation regarding the diversion of the route in the event that the Order is confirmed. Nonetheless, there appeared to be a willingness by the parties to look at the potential to resolve this matter.
8. It is apparent that the Council did not consult with Middle Rasen Parish Council prior to the making of the Order. However, the parish council as the applicant was well aware of the application and no prejudice is alleged to arise out of this matter. The Council confirms that all of the relevant parties were notified of the making of the Order.

### ***Consideration of the evidence***

#### *Railway documents*

9. An 1844 section plan that was produced in relation to the proposed Great Grimsby and Sheffield Junction Railway shows a pecked line which follows a similar route to part of the claimed route where it meets Gatehouse Lane. Gatehouse Lane is recorded in the book of reference for the railway as a public road. There is no information for the claimed route as it lay outside of the limits of deviation for the proposed railway.
10. A subsequent plan of 1845 for the railway that was built also shows a pecked line which follows an alignment that broadly corresponds to a proportion of the claimed route where it connects with Gatehouse Lane. This route is shown proceeding through parcels 19 and 20, which are stated in the book of reference to contain a footpath. Gatehouse Lane is described as a highway. It is apparent from the later mapping that Gatehouse Lane was diverted in this location and now crosses the railway on the level, which has impacted slightly on the alignment of the claimed route.
11. The question of whether the claimed route was considered to be a public or private footpath is not explicit from the documents. However, these documents need to be viewed in the context of the later evidence addressed below.

#### *Ordnance Survey maps*

12. A pecked line accompanied by the annotation "FP" is shown on the 1886 First Edition Ordnance Survey ("OS") map leading from Caistor Road and continuing between points A-B-C. The C-D section is shown between solid lines and meets the revised route of Gatehouse Lane following the construction of the railway.

Subsequent OS maps show the existence of the claimed route, but it ceases to be shown after 1960.

- OS maps cannot be relied upon to confirm the status of the paths or tracks shown on them. However, they provide a reliable indication of the physical features present at the date of the survey and are supportive of a worn path and enclosed track being present over a significant period of time. The route is shown between two highways and this raises an inference that it had public status rather than serving as a private means of access.

#### *Other maps*

- Although there are some historical maps that fail to depict the claimed route, they are generally of a small scale and were not necessarily concerned with the depiction of footpaths. The OS mapping provides a reliable indication of the physical existence of the claimed route over a significant period of time.

#### *Finance Act evidence*

- The claimed route is shown within hereditament 91 on the record plan produced in accordance with the 1910 Finance Act. A deduction of £30 is recorded in the accompanying field book for "*public rights of way or user*" in respect of this hereditament. In the absence of any entry to indicate the location of the footpath within this hereditament there will be some uncertainty regarding the route of the right of way for which the tax deduction was claimed. This issue will impact on the weight that can be attached to the Finance Act evidence. However, there is no other path shown on the contemporaneous OS maps through the land comprised within hereditament 91 and this adds support to the argument that the deduction applied to the claimed route.

#### *The definitive map process*

- The production of the original definitive maps was undertaken by surveying authorities in accordance with the National Parks and Access to the Countryside Act 1949. It was compiled in this area by the former Lindsey County Council. A survey was carried out on behalf of Middle Rasen Parish Council of the alleged public rights of way in the parish. The survey was then considered at a parish meeting and the information regarding the alleged ways eventually passed to the county council, which ultimately produced a draft, provisional and finally a definitive map.
- The claimed route is generally shown on the parish survey map for Middle Rasen as Footpath No. 16. The accompanying survey form of 1951 records that the reason for the path's inclusion was based on the surveyor's knowledge that it had been used by the public for over 40 years. Although there is no surviving copy, it is apparent that this path was not included on the draft map. This is supported by Market Rasen Urban District Council's objection of March 1955 to the omission from the draft map of a path that broadly corresponds to the claimed route.
- The subsequent correspondence involving the local authorities reveals that requests were made for evidence to support the inclusion of the claimed route on the draft map. Three user evidence forms ("UEFs") were supplied but these were not considered sufficient to warrant the route being added to the draft map.

19. This evidence is supportive of the parish and district councils believing the claimed route to be a public right of way. However, the surveying authority did not find the evidence provided at the time to be sufficient to include the route on the draft map. The evidence is supportive of a locally held belief that the claimed route was a public footpath and should be afforded some weight.

*Parish minutes*

20. The Middle Rasen Parish Council minutes from 1942 report that Mr Barwick had ploughed up a footpath in two of his fields and the clerk was asked to write to the rural district council regarding this matter. Evidence has been provided in support of the Barwick family having a farm on Caistor Road. Mr Padley says this reference to a footpath could relate to the claimed route, but Mr Barwick also farmed other land in Middle Rasen.

21. A later parish minute from 1968 records that the question of the footpath from Barwick's Farm, which is not shown on the map, should be investigated. This minute could relate to the omission of the claimed route from the draft map. However, it adds nothing further to the assertions made previously regarding the route being a footpath.

*Evidence of use*

22. In addition to the three UEFs provided in response to the omission of the route from the draft map, nine forms were submitted in support of the current application. These UEFs provide evidence of use of the claimed route between the 1920s and 1950s. The delay in making the Order has meant that these users are no longer available to give oral evidence. However, most of the forms were completed when Mr Padley interviewed the witnesses.

23. Despite the absence of oral testimony from the users involved, the UEFs should be given a fair amount of weight. They are supportive of the assertions made by the parish council that the route had been used by the public. The UEFs are also consistent with the map evidence which suggests that use of the route had petered out by the 1960s. The case in support is that the claimed route is a historical public footpath. Therefore, it does not matter if there has been a lack of more recent use of the route.

24. Mr Padley outlines that his father once mentioned that the claimed route was a public footpath. He also gave details of a telephone call with Mr Barwick's son who was terminally ill at the time. Mr Padley says Mr Barwick recalled that there was a public footpath from Caistor Road to the railway crossing that was used to some extent by dog walkers. I have no reason to doubt the information provided by Mr Padley on these matters, but this is hearsay evidence and accordingly the weight that can be given to it will be limited.

**Conclusions**

25. I find that when taken together the documentary and user evidence is of sufficient weight to show on the balance of probabilities that the claimed route was a historical public footpath which fell into disuse at some point during the middle of the twentieth century. There is nothing to suggest that these public rights have been extinguished. It follows that I conclude that a public footpath subsists, and the Order should be confirmed.

### ***Proposed modifications***

26. The map evidence reveals that the C-D section has historically ran between boundaries. It was generally accepted by the parties at the inquiry that the width of this section should be taken to include the available width between these boundaries. Whilst there is some variation in terms of the widths scaled from different OS maps, Mr Padley accepted that 3 metres would generally reflect the width that was available between the boundary features.
27. In terms of the remainder of the route, Mr Padley draws attention to historical documents often specifying a width of 4 feet (1.2 metres) for a footpath. Further, I consider that 1.2 metres would provide a reasonable width for a public footpath in this location.
28. The Order should be modified in the manner outlined above in relation to the specified widths for the claimed route. I also accept that it is appropriate to include the missing letters for one of the grid references in the Order Schedule.

### **Overall Conclusion**

29. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications.

### **Formal Decision**

30. I propose to confirm the Order subject to the following modifications:

- Delete the final sentence from Part I of the Order Schedule and insert:  
*"This public footpath has a width of 1.2 metres between points A-B-C and a width of 3 metres between points C-D on annexed plan numbered 2017/017/DMMO72/A4. It has a total length of approximately 597 metres as shown between points A-B-C-D on annexed plan numbered 2017/017/DMMO72/A4"*.
- Insert "TF" in front of the final grid reference in Part II of the Order Schedule.
- Delete the final sentence from Part II of the Order Schedule and insert:  
*"This public footpath has a width of 1.2 metres between OSGR TF10748973 and OSGR TF11069019 and 3 metres between OSGR TF11069019 and OSGR TF11059022. The footpath has a total length of approximately 597 metres"*.

31. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Mark Yates*

**Inspector**

## **APPERANCES**

### **The Case in Support:**

Ms M. Golden

Counsel for the Principal Supporter

She called:

Mr C. Padley

### **Additional Supporter:**

Mr G. Goddard

### **Objector:**

Mr B. Parker

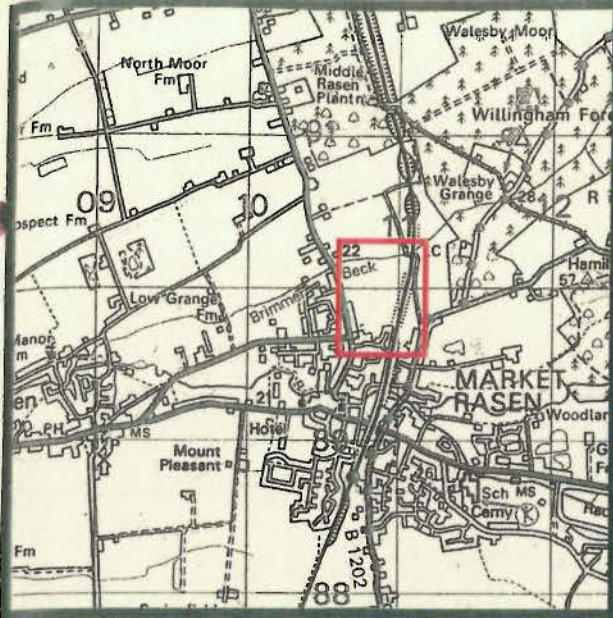
### **Interested Party:**

Mr A. Pickwell

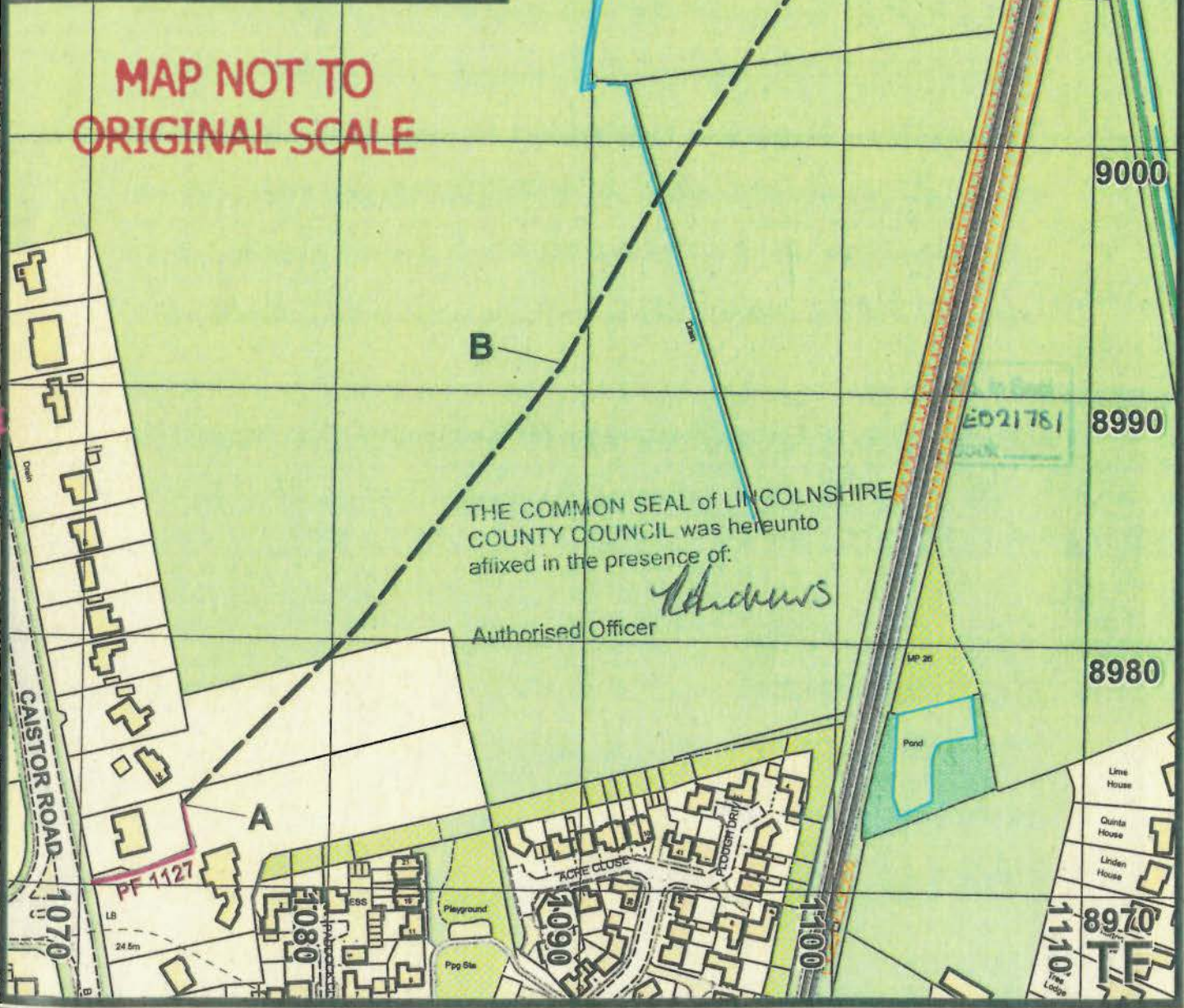
Definitive Map Officer for the Council

## **DOCUMENTS**

1. Opening statement for the Council
2. Closing submissions in support of the confirmation of the Order
3. Costs application on behalf of Mr Padley
4. The Council's response against the costs application
5. The Council's supplementary response against the costs application



MAP NOT TO ORIGINAL SCALE



- Key:**
- A-B-C-D Public Footpath No. 1147
  - Unaffected Public Footpath
  - Unaffected Public Bridleway

**Lincolnshire**  
COUNTY COUNCIL

**MIDDLE RASEN**  
(Definitive Map Modification Order)  
Public Footpath No. 1147 between Public Footpath No. 1127 and Public Bridleway No. 514 along Gatehouse Lane

Drn. AP Date 26.05.2017

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