



Order Decision

Site visit made on 1 September 2015

by **Alan Beckett BA MSc MIPROW**

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

Decision date: 27 October 2015

Order Ref: **FPS/L3055/7/87**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Nottinghamshire County Council (Darlton Footpath Nos. 5 – 14 and Ragnall Footpath No. 6) Modification Order 2012.
- The Order is dated 24 February 2012 and proposes to modify the Definitive Map and Statement for the area by adding public footpaths as shown in the Order plan and described in the Order Schedule.
- There were 10 objections outstanding when Nottinghamshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

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

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I carried out an accompanied site visit on Tuesday 1 September 2015 when I was joined by some of the objectors, a representative of the Council and the local representative of the Ramblers' Association.
2. The Order routes are not accessible and it was only possible to walk parts of the routes with the assistance of the owners of the land crossed by the claimed footpaths. I am grateful to these individuals for granting me access to their land for the purposes of my site visit. In some cases, notably footpath 8 and part of footpath 12, the affected landowners were not present at the site visit and had not given permission to access the land crossed by the paths. I therefore viewed these routes, as best I could, from public vantage points.

The Main Issues

3. The Order was made under Section 53 (2) (b) of the 1981 Act, relying on the occurrence of an event specified in Section 53 (3) (c) (i) of that Act. For the Order to be confirmed, I must be satisfied that the evidence discovered, when taken with all other relevant evidence is sufficient to show on a balance of probabilities, that public rights of way which are not shown in the map and statement subsist over land in the area to which the map relates.
4. No evidence of use of the claimed footpaths by the public has been submitted. The evidence submitted is drawn from documentary sources and the main issue is whether that documentary evidence demonstrates, on a balance of probabilities, the subsistence of public rights of way on foot over the Order routes.

Reasons

Footpath 5

Tithe commutation documents

5. The 1836 Tithe Commutation Act converted tithes (the tenth part of the annual produce of agriculture), provided for the support of the priesthood and religious establishments, into a tithe rent-charge, a monetary payment based on the seven year average price of wheat, oats and barley. Tithe documents are solely concerned with identifying titheable land for the purposes of tithe commutation and tithe maps were not intended to establish or record public rights of way.
6. The Darlton tithe map of 1844 depicts footpath 5 by means of a pecked line. The tithe apportionment makes no mention of a path running through the parcels of land crossed by the peck line. A path running through pasture and meadow may have had little or no impact upon the productivity of the land and so did not warrant mention in the apportionment. Although the tithe map shows the existence of a path running between Darlton Road and Broad Gate it does not provide evidence that the path was a public footpath.

Ordnance Survey maps

7. The 6 inch map of 1888 shows footpath 5 by means of a double peck line. The 25 inch map of 1900 shows footpath 5 by means of a double peck line which is annotated 'F.P.'. The 25 inch map of 1920 shows the path in the same way as the 1900 map.
8. Ordnance Survey maps were produced to record topographical features; their purpose was not to record public rights of way. The various maps considered are consistent in depicting a path on the alignment of footpath 5 and the annotation 'F.P.' found on the 1900 and 1920 editions of the 25 inch map helps to identify a route which was suited to pedestrian but not horse or wheeled traffic. Since the 1880s Ordnance Survey maps have carried a disclaimer to the effect that the depiction of a path on the map does not denote the existence of a public right of way. The annotation 'F.P.' provides no indication as to the status of the path or the nature of any pedestrian use which may have been made of it.
9. I note that the Council submits that the depiction on the 1900 map of a letter box and a smithy at the Broad Gate end of the path could have contributed to the level of public use of the path but this submission is little more than speculation about the nature of past use. The Ordnance Survey maps considered demonstrate the continued existence of the path through time but the extent of any use and the public or private nature of any use cannot be determined from these maps.

1910 Finance Act records

10. The 1910 Finance Act provided for the levying of a tax ('Increment Value Duty') on the increase in site value of land between its valuation as at 30 April 1909 and, broadly speaking, its subsequent sale or other transfer. There was a complex system for calculating the 'assessable site value' of land, which allowed for deductions for, among other things, "*the amount by which the gross value would be diminished if the land were sold subject to any fixed*

charges and to any public rights of way or any public rights of user and to the right of common and to any easements affecting the land". (Section 25(3)).

11. An early part of the valuation process was the submission of details of the landholding by the owner, which was transcribed into 'Field Books' before the Inland Revenue valuer visited the site. Information about a particular property (known as a hereditament) was also included in the Field Book as part of the assessment of the value of the land. Included in the Field Books were details of any deductions in valuation arising from, amongst other things, public rights of way which crossed the land.
12. The land crossed by footpath 5 was in a single ownership and identified as hereditament 143 on the map. There is no record in the Field Book of a deduction in site value being made for the existence of a public right of way. The Council submits that this may have been a consequence of the agricultural value of the land not being affected by the presence of a public footpath. However, the value of the land (irrespective of its use) unencumbered by a public right of way would have been greater (and would have resulted in a greater amount of Incremental Value Duty) than one so encumbered. The absence of a reduction in value is indicative of the path not having the reputation of a public right of way at the time of the 1910 Finance Act survey.

Definitive Map records

13. Under the provisions of the National Parks and Access to the Countryside Act 1949 (the 1949 Act), a survey of public rights of way was conducted by highway authorities, with parish councils undertaking the task of inspecting and recording those known or alleged public rights of way within their areas. The process leading to the publication of the definitive map had three distinct stages. First, the results of the parish survey led to the publication of a draft map of public rights of way by the highway authority. Secondly, after any objections or representations made to the inclusion or omission of a claimed right of way at the draft stage had been determined, a provisional map was published. Finally, once objections or representations made by landowners to the provisional map had been determined, the definitive map was published.
14. Footpath 5 was not claimed as part of the Darlton parish survey conducted in 1954. The Council submits that as the parish council only claimed 1 path in the parish this showed a lack of interest in the process as opposed to the non-existence of public rights. Although the omission does not preclude the existence of public rights over the route, I consider that the omission of footpath 5 demonstrates that the path did not have a local reputation as a public right of way at the time of the survey.
15. Mr Grimes submits that Mr Housley, the Chairman of Darlton Parish Council between 1951 and 1980 caused some footpaths in the parish to be closed, footpath 5 being one of them. However, no evidence of a stopping up order from either the quarter sessions or under successive Highways Acts was submitted and Mr Grimes' submission carries little evidential weight.

Footpath 6

Quarter sessions records

16. An application was made to the Quarter Sessions in 1840 for the diversion of 'a public Highway in the parish of Darlton' adjacent to what is now known as

America Farm. The map associated with the quarter sessions application shows the continuation of the route past America Farm as the '*Foot Road to Ragnall*' which corresponds with part of footpath 6 which runs in an easterly direction from SK 7819 7272. The documents submitted do not demonstrate whether the application was granted but the fact that an application was made to divert what was regarded as a public highway is indicative that part of footpath 6 was regarded as being a public right of way in 1840.

Tithe records

17. No apportionment detail was submitted regarding footpath 6. The northern section of footpath 6 is not shown on the tithe map, although a path which links to Darlton bridleway 1 and Ragnall Bridleway 3 is shown by means of a pecked line. Ragnall bridleway 3 was awarded under the 1815 Dunham and Ragnall Inclosure Award as the Outgang Bridle Road. Whilst my observations on the evidential weight that can be attached to the tithe records made in paragraphs 5 and 6 above are applicable to the majority of footpath 6, the tithe map shows the continued existence of a route between Woodcoates Road and Ragnall via the awarded Outgang Bridle Road and the '*foot road to Ragnall*' shown in the Quarter Sessions application plan.

Ordnance Survey maps

18. On the 1885 6 inch map footpath 6 is shown by a single or double peck line. The 1900 25 inch map shows the path in a similar manner and is annotated 'F.P.' at two points. On the 1919-1921 25 inch maps footpath 6 is shown in the same way as on the 1900 map and annotated 'F.P.' at three points. The 1953 2.5 inch base map used for the production of the draft, provisional and definitive maps shows footpath 6 by a pecked line annotated 'F.P.'
19. The comments I made at paragraph 8 above regarding the depiction of footpath 5 by Ordnance Survey are equally applicable to Darlton footpath 6.

Nottinghamshire Atlas 1891

20. Footpath 6 is shown in the atlas by means of a single peck line. The Council submits that the path is shown as part of a network of interconnecting routes linking Darlton with other communities such as Woodcoates, Skegby and Fledborough. However, it does not necessarily follow that the route is a public right of way as a result of it linking with or being near to other routes which link communities. Other than the section of footpath 6 which the quarter session plan recorded as a '*foot road to Ragnall*' there is no evidence that footpath 6 formed part of a more extensive public route linking communities. The depiction of the footpath in the atlas is not evidence of the status of the path.

Finance Act records

21. Footpath 6 ran from Broad Gate over a track which was part of hereditament number 7; no deduction in site value is recorded in the field book for this short section. The path then ran through part of hereditament number 305 for which a reduction in value of £5 was made for public rights of way or user. The field book records that a '*footpath seldom used*' affected 15 acres of the land parcel. The parcel of land shown on the plans submitted accounts for only 10 acres; although the deduction may have arisen as a result of footpath 6, equally that

deduction may have been as a result of a footpath passing through another part of hereditament 305.

22. Footpath 6 then passes through part of hereditament 39 for which a reduction in value of £25 was allowed. The Field Book records that a footpath affected 68 acres of the property. The Council submit that the figure of 68 acres can only be arrived at if the fields crossed by footpath 6 are included (alongside those fields crossed by footpaths 7 and 8). Although footpath 6 crossed only part of hereditament 39, it is likely that at least part of the deduction related to footpath 6.
23. Footpath 6 then crosses part of hereditament 14 for which there was a reduction of £7 arising from a footpath affecting 6 acres of the property. The six acres at issue may have comprised field 206 (5.786 acres) and the track 208 (0.5 acres). Field 206 is crossed by three paths shown by peck lines on the Ordnance Survey base map. One of the routes shown on the OS base map corresponds with the 'foot road to Wigsley' shown in the Quarter Sessions application plan and the Council submits that it is likely that footpath 6 accounted for the deduction. Although the fields crossed by footpath 6 were part of a larger hereditament, given that the remainder of the parcel is not shown as having any paths or tracks running through it, it is likely that footpath 6 accounted for part of the deduction.
24. The final part of footpath 6 runs through part of hereditament 3 where a deduction of £10 was granted; the field book notes that a footpath affected 17 acres of the property. Fields 205 and 213 through which footpath 6 passes however account for 27 acres of the property. It is not certain that the deduction arose from the presence of footpath 6, although as the path provided a link to the Outgang Bridle Road on the alignment of the 'foot road to Ragnall', I consider it likely that this was the case.
25. The Council asserts that the Finance Act records demonstrate that the landowners of the day and the Inland Revenue acknowledged that the route was a public right of way. However, in the absence of further information from the Finance Act records, it cannot be said with any certainty that the landowner acknowledged the existence of the footpath. Whilst the Finance Act records may provide some evidence in support of the assertion that a public right subsists they do not demonstrate that to be the case and the Finance Act records must be considered in the context of all other available evidence.

Definitive map records

26. Footpath 6 was not claimed as part of the Darlton parish survey conducted in 1954. My comments made in paragraph 14 in relation to footpath 5 are equally applicable to footpath 6.

Footpath 7 / Ragnall footpath 6

Inclosure award evidence

27. The origins of Ragnall footpath 6 lie in the Dunham and Ragnall Inclosure award of 1815 in which Farhill Lane was set out as a private carriage bridle and drift road for the use of the owners and occupiers of adjacent allotments. Although no public rights were granted over Farhill Lane as part of the inclosure process, this does not preclude the subsequent acquisition of such rights by the public.

Ordnance Survey maps

28. On the Ordnance Survey 6 inch map of 1884, the path is shown by a single or double peck line over fields to join Farhill Lane; the path is marked 'F.P.' on the Darlton side of the parish boundary. The 25 inch map of 1919 shows the path labelled 'F.P.' on the Darlton side of the boundary and is shown in a similar manner on the 1953 2.5 inch map used for the draft, provisional and definitive maps.
29. I revert to the comments I made in paragraph 8 above which are equally applicable to footpath 7 and Ragnall footpath 6.

Nottinghamshire Atlas

30. Footpath 7 and part of Ragnall footpath 6 are shown by a single peck line. My comments in paragraph 20 above relating to footpath 6 Darlton are equally applicable to footpath 7 and Ragnall footpath 6.

Finance Act records

31. Footpath 7 crosses hereditament 39 for which a £25 reduction in valuation was granted. As noted above this reduction affected 68 acres of the hereditament and it is likely that footpath 7 accounted for at least part of that reduction. On the Ragnall side of the boundary, footpath 6 crossed hereditament 298 which was reduced in value by £20 by footpaths crossing the property. Hereditament 298 is shown on the OS base map to be crossed by 3 tracks or paths; it is not clear whether footpath 6 accounted for part of this reduction.
32. Farhill Lane is excluded from claimed ownership and does not have a hereditament number. Although the Council submit that this is indicative of the path being a public highway of at least footpath status, the lane provided access to seven different landholdings and as an accommodation road without an individual owner, it is likely to have been depicted by the valuer in the same way as a public road. No conclusion as to the status of Farhill Lane can be drawn from the depiction of it on the Finance Act map.

Definitive map records

33. Footpath 7 was not claimed by the parish council as part of the survey in 1954. I understand that the Ragnall parish records have not survived and it is not known whether Ragnall footpath 6 formed part of the original parish survey. I revert to my comments in paragraph 14 above which are equally applicable to footpath 7 and Ragnall footpath 6.

Footpath 8

Quarter Sessions

34. An application to the Quarter Sessions was made in October 1840 for the diversion of a '*public highway in the parish of Darlton*' which ran on the alignment of footpath 8. It is not known whether this application was granted, but the act of making such an application demonstrates that the owners of the land at the time considered that a public right of way subsisted, the diversion of which required consent from the Quarter Sessions.

Tithe

35. The 1844 tithe map shows the access to what is now America Farm as being on the south side of the field boundary. The line of footpath 8 is not shown. My comments in paragraphs 5 and 6 above regarding the evidential value of the tithe documents are equally applicable to footpath 8.

Ordnance Survey maps

36. Footpath 8 is shown on the 1884 6 inch map on its pre-1840 alignment by a peck line along the field edge which connects to track bounded on both sides by hedges or fences before connecting with that part of footpath 6 which leads to bridleway 1. On the 1900 25 inch map, footpath 8 is shown in the same way as on the earlier 6 inch map and is annotated 'F.P.'. Footpath 8 is shown in the same manner on the 1919 25 inch map and is shown in a similar manner on the 1953 2.5 inch map used for the draft, provisional and definitive maps.

37. I revert to the comments I made in paragraph 8 above which are equally applicable to footpath 8.

Finance Act 1910

38. Footpath 8 ran through part of hereditament 39 which, as noted above, was reduced in value by £25 by footpaths running over 68 acres of the hereditament. It is likely that the 12 acre field that footpath 8 ran through made up part of the 68 acre figure arrived at by the valuer. Footpath 8 also crosses hereditament 14 for which a £7 deduction was granted. As noted above this is likely to have included the access track shown as OS parcel 208 over which footpath 8 passes.

39. I revert to my comments in paragraph 25 above which are applicable to footpath 8.

Definitive map records

40. Footpath 8 was not claimed by the parish council as part of the survey in 1954. I revert to my comments in paragraph 14 above which are equally applicable to footpath 8.

Footpath 9

Tithe

41. Footpath 9 is shown by means of a peck line and is shown running between Broad Gate and Woodcoates Road. The Council submit that as a connecting path is shown running toward Tuxford, the tithe map demonstrates that footpath 9 was part of a longer public path connecting Darlton with Tuxford. However, it does not necessarily follow that the route is a public right of way as a result of it linking with or being near to other routes which link communities. My comments in paragraphs 5 and 6 above regarding the evidential value of the tithe documents are equally applicable to footpath 9.

Ordnance Survey maps

42. Footpath 9 is shown on the 1887-1888 6 inch OS map by means of a double peck line. On the 1900 25 inch map, footpath 9 is shown annotated 'F.P.' and is

shown in the same way on the 1919 25 inch map. Footpath 9 is shown by means of a single peck line annotated 'F.P' on the 1953 2.5 inch map.

43. I revert to the comments I made in paragraph 8 above which are equally applicable to footpath 9.

Finance Act records

44. Footpath 9 runs through hereditament 39 for which a reduction in value of £25 was made for footpaths affecting 68 acres of the land. The Council submit that it is unclear as to whether footpath 9 accounted for any reduction in the value of the land as the 68 acre figure can be accounted for by the acreage of the fields crossed by footpaths 6 and 7. The Finance Act maps show hereditament 39 to be in at least two parts and the calculations and assumptions made by the Council (if correct) suggest that footpath 9 was not a path for which a deduction was made. In my view, the Finance Act documents are of little assistance in determining the status of footpath 9.

Definitive map records

45. Footpath 9 was not claimed by the parish council as part of the survey in 1954. I revert to my comments in paragraph 14 above which are equally applicable to footpath 9.

Footpath 10

Railway plans

46. The southern part of footpath 10 is shown on the 1844 deposited plan of the proposed (but not built) London and York Railway. This section of the path was outside the limit of deviation and would therefore not have been affected by the proposed development. The Council submits that the inclusion of this path on the plan shows that it would have been of local importance and more likely to have been a public path than one for farm workers. As footpath 10 did not fall within the ambit of the proposed railway, the path and the field it ran over is not noted in the relevant book of reference. The railway plan does not therefore provide any evidence as to the status of footpath 10.

Tithe

47. Footpath 10 is shown by means of a peck line and is shown running between footpath 9 and Woodcoates Road. My comments in paragraphs 5 and 6 above regarding the evidential value of the tithe documents are equally applicable to footpath 10.

Ordnance Survey maps

48. Footpath 10 is shown on the 1887 6 inch map by means of a double peck line and on the 1900 25 inch map by a double peck line which is annotated 'F.P'; the 1919 25 inch map shows the path in the same manner as the 1900 map. The path is shown on the 1953 2.5 inch map by a single peck line annotated 'F.P.'.
49. I revert to the comments I made in paragraph 8 above which are equally applicable to footpath 8.

Finance Act 1910

50. Footpath 10 crosses part of hereditament 2 which extended to 122 acres in total. The Field Book notes that 60 acres were affected by footpaths for which a reduction in value of £30 was granted. The extent of the fields crossed by footpath 10 only amounted to 15 acres; it is by no means certain that footpath 10 accounted for part of the reduction in value. My comments in paragraph 25 above in relation to the Council's assertion that the Finance Act records provide an acknowledgement by the owner of the existence of a public right of way are equally applicable to footpath 10.

Definitive Map records

51. Footpath 10 was not claimed by the parish council as part of the survey in 1954. I revert to my comments in paragraph 14 above which are equally applicable to footpath 10.

Footpath 11

Railway plans

52. Footpath 11 is shown by means of a peck line on the 1844 deposited plan of the proposed London and York Railway passing through fields 11, 12, 13 and 14 albeit on a slightly different alignment than that shown on the Order plan. The associated book of reference describes these fields as '*Pasture Field and Footpath*' but does not assist with the status of the footpath. In contrast, plot 30 is described in the book of reference as being a public highway in the ownership and occupation of the surveyor of highways.

53. The Council submits that it would have been unlikely that the railway surveyors would have had an interest in a farm worker's path and the recording of the path was indicative of the path being public. I am not persuaded that this would have been the case as a path crossing the land would have had to be accommodated in some way by the railway company if that path provided a means of access between fields which would otherwise be isolated if the railway was built. As building a railway was a costly business it was in the railway company's interest to identify any access for which it may have been required to provide a crossing point. In my view, given that the surveyor of highways is not listed as having an interest in fields 11, 12, 13 and 14, it is more likely than not that the route was not considered to be a public one at the time of the railway survey.

Tithe

54. Only part of footpath 11 is shown on the tithe map; the tithe documents are of little assistance in determining the status of footpath 11.

Ordnance Survey maps

55. Footpath 11 is shown on the 6 inch map by means of a double peck line which is annotated 'F.P.' in two places; on the 1900 25 inch map it is labelled 'F.P.' at three points. On the 25 inch maps of 1919 and 1920 the section of footpath 11 between Woodcoates Road and Field Farm is not shown whereas a path leading from the Fields Farm drive to bridleway 4 is shown by a double peck line. On the 1953 2.5 inch map only the section of the path between Fields Farm and

Bridleway 4 is shown. The OS mapping demonstrates that any use of that part of footpath 11 north of Fields Farm had ceased by 1919.

56. I revert to the comments I made in paragraph 8 above which are equally applicable to footpath 11.

Nottinghamshire Atlas

57. Most (but not all) of footpath 11 is shown by a single peck line. My comments in paragraph 20 above relating to footpath 6 are equally applicable to footpath 11.

Finance Act records

58. Footpath 11 runs through hereditaments 2 and 12. As noted above hereditament 2 was reduced in value by £30 for footpaths which affected 60 acres of the 122 acre hereditament. The Council have calculated that the acreage of the fields crossed by footpath 11 amounts to 60 acres and that footpath 11 must have accounted for some of the deduction in value. I accept that the deductions relate to footpath 11.

59. My comments in paragraph 25 above in relation to the Council's assertion that the Finance Act records provide an acknowledgement by the owner of the existence of a public right of way are equally applicable to footpath 11.

Definitive map records

60. Footpath 11 was not claimed by the parish council as part of the survey in 1954. I revert to my comments in paragraph 14 above which are equally applicable to footpath 11.

Footpath 12

Railway plans

61. Part of footpath 12 is shown by means of a single peck line on the deposited plan of the 1844 London and York railway. The path is beyond the limits of deviation of the railway and the field through which it passes is not identified or described in the book of reference. Although the path is shown as a continuation of footpath 11, my comments in paragraphs 52 and 53 above regarding the railway evidence in relation to footpath 11 are equally applicable in relation to footpath 12.

Ordnance Survey maps

62. Footpath 12 is shown on the 6 inch map of 1887 by means of a single and then double peck line. On the 1900 25 inch map the path is shown on the same alignment but is annotated 'F.P.' in two places, and it is so shown on the 25 inch map of 1919. The path is shown by a peck line labelled 'F.P.' on the 2.5 inch map published in 1953.

63. I revert to the comments I made in paragraph 8 above which are equally applicable to footpath 12.

Finance Act records

64. Footpath 12 crossed hereditaments 2, 8 and 3. As noted above, the site value of hereditament 2 was reduced by £30 due to footpaths which affected 60

acres of the hereditament. The Council submit that this 60 acre figure can only be arrived at if the fields crossed by footpath 12 are included; in the Council's view, footpath 12 must have accounted for at least part of the reduction in site value. I accept that some of the deduction in value related to footpath 12.

65. The Council made similar calculations with regard to hereditament 8 where a reduction of £9 was granted for footpaths which affected 15 acres of the property and for hereditament 3 where a reduction of £10 was granted. The Council submit that as footpath 12 was the only footpath shown running over this hereditament it must have accounted for the reduction. I accept that this is likely to have been the case.
66. My comments in paragraph 25 above in relation to the Council's assertion that the Finance Act records provide an acknowledgement by the owner of the existence of a public right of way are equally applicable to footpath 12.

Definitive map records

67. Footpath 12 was not claimed by the parish council as part of the survey in 1954. I revert to my comments in paragraph 14 above which are equally applicable to footpath 12.

Footpath 13

Tithe

68. Footpath 13 is shown on the 1844 Darlton tithe map by means of a peck line commencing on Tuxford Road and running in a generally south-westerly direction to the parish boundary. My comments in paragraphs 5 and 6 above regarding the evidential value of the tithe documents are equally applicable to footpath 13 as are my comments in paragraph 41 above regarding the status of a path shown to link to other paths in the area.

Ordnance Survey maps

69. Footpath 13 is shown on the 1887 6 inch map by means of a peck line labelled 'F.P' and is shown in the same way on the 1900 25 inch map. The path is not shown on any subsequent mapping and must have fallen into disuse at some point between 1900 and 1919 when the revised 25 inch map was published.
70. I revert to the comments I made in paragraph 8 above which are equally applicable to footpath 13.

Finance Act records

71. Footpath 13 only ran through hereditament 6 which was granted a reduction in site value of £13 as 30 acres were affected by footpaths. The Council calculated that the fields crossed by footpath 13 exceeded 30 acres but as it was the only path or track shown by Ordnance Survey to cross the land, it was likely that footpath 13 accounted for the whole of the reduction in valuation. I accept that this is likely to have been the case.
72. My comments in paragraph 25 above in relation to the Council's assertion that the Finance Act records provide an acknowledgement by the owner of the existence of a public right of way are equally applicable to footpath 13.

Definitive map records

73. Footpath 13 was not claimed by the parish council as part of the survey in 1954. I revert to my comments in paragraph 14 above which are equally applicable to footpath 13.

Footpath 14

Railway plans

74. Footpath 14 is shown by means of a peck line on the 1844 deposited plan of the proposed London and York Railway passing through fields 23 and 24. The book of reference describes these fields as 'Pasture Field and Footpath' and 'Pasture Field, Drain and Footpath' but does not assist with the status of the footpath. In contrast, plot 30 is described in the book of reference as being a public highway in the ownership and occupation of the surveyor of highways.

75. I revert to my comments in paragraphs 52 and 53 above regarding the railway evidence in relation to footpath 11 are equally applicable in relation to footpath 14.

Tithe

76. Footpath 14 is shown by a peck line running between Woodcoates Road and Tuxford Road. My comments in paragraphs 5 and 6 above regarding the evidential value of the tithe documents are equally applicable to footpath 14 as are my comments in paragraph 41 above regarding the status of a path shown to link to other paths in the area.

Ordnance survey maps

77. On the 1887 6 inch map, footpath 14 is shown by a double peck line; on the 1900 25 inch map the path is similarly shown along with the annotation 'F.P.' together with a footbridge. The Council speculate that the presence of a footbridge is evidence of the public status of the path, contending as it does, that there would have been no reason for an adjacent landowner to provide a means of crossing a watercourse at this location. However, this assertion is not supported by any further evidence. The 25 inch map of 1919 shows the path annotated 'F.P.' and is shown on a slightly different alignment on the 2.5 inch map of 1953.

78. I revert to the comments I made in paragraph 8 above which are equally applicable to footpath 13.

Finance Act records

79. Footpath 14 crossed hereditaments 8 and 4. Hereditament 8 was reduced in value by £9 due to footpaths crossing 15 acres of land whereas hereditament 4 was not reduced in value. The Council submit that footpath 14 would have contributed towards the reduction in value of hereditament 8 but that the footpath may not have had any impact upon the agricultural value of hereditament 4.

80. My comments in paragraph 25 above in relation to the Council's assertion that the Finance Act records provide an acknowledgement by the owner of the existence of a public right of way are equally applicable to footpath 14.

Definitive map records

81. Footpath 14 was not claimed by the parish council as part of the survey in 1954. I revert to my comments in paragraph 14 above which are equally applicable to footpath 14.

Conclusions on the evidence

82. As regards footpath 5, the route is shown to have physically existed from 1844 and was shown on Ordnance Survey maps until 1920. The Finance Act documents and the parish survey however do not demonstrate that the route had a reputation as a public footpath. As such the Order should not be confirmed in respect of footpath 5.

83. As regards footpath 6, the 1840 quarter sessions application provides evidence that the southern part of footpath 6 formed a '*foot road to Ragnall*'. When set in the context of an application to divert the public highway to which this part of footpath 6 connected, it is highly likely that this part of footpath 6 was a public highway in 1840, a status which was further recognised by the Finance Act records with regard to the reduction in site value of hereditaments 14 and 3.

84. For the remainder of footpath 6, the only evidence which supports the claim as to the existence of public rights is the Finance Act records. However, in the absence of further information from these records, I cannot accept the assertion of the Council that the evidence found in the field books is an unequivocal demonstration of the acknowledgement by the landowner of the time of the existence of a public right of way. It is to be remembered that the generation of evidence as to the existence of public rights was not the primary purpose of the Finance Act survey, and that these records need to be considered with all other relevant evidence. The remaining evidence adduced points towards the physical existence of routes capable of supporting pedestrian traffic, but does not demonstrate the existence of public rights.

85. Any reputation that footpath 6 had as a public right of way in 1910 appears to have been lost by the time of the parish survey. I conclude that the Order should not be confirmed in relation to footpath 6 other than the section which links footpath 8 to bridleway 1.

86. As regards footpath 7 and Ragnall footpath 6, the documentary evidence demonstrates that a physical feature was visible on site between 1884 and 1953. The only evidence which supports the claim as to the existence of public rights is found in the Finance Act records, but does not demonstrate that public rights subsist over the path. These records need to be considered with all other relevant evidence. The remaining evidence adduced points towards the physical existence of routes capable of supporting pedestrian traffic, but does not demonstrate the existence of public rights. I conclude that the Order should not be confirmed in relation to footpath 7 and Ragnall footpath 6.

87. As regards footpath 8, the documentary evidence suggests that a public right of way existed prior to 1840 when an application was made to the Quarter Sessions for its diversion. The footpath is shown on successive OS maps as having continued as an observable feature on the pre-1840 alignment from the 1880s until 1953. The Finance Act records are supportive of the reputation of the route as a public right of way in the early part of the twentieth century

although that reputation seems to have been lost by 1954. Although the evidence is not substantial, I place significant weight upon the Quarter Sessions application as being evidence of the existence of footpath 8 as part of the '*foot road to Ragnall*' and conclude that the Order should be confirmed with relation to footpath 8.

88. As regards footpaths 9, 10, 11, 12, 13 and 14 the documentary evidence demonstrates that an observable feature was present in the fields during the nineteenth and twentieth centuries; however, the depiction of a path or track on Ordnance Survey maps is not evidence of the status of the way. The only documentary source which supports the existence of public rights is the Finance Act records. In the absence of further information from these records, I cannot accept the assertion of the Council that the evidence found in the field books is an unequivocal demonstration of the acknowledgement by the landowner of the time of the existence of a public right of way. The generation of evidence as to the existence of public rights was not the primary purpose of the Finance Act survey. In any event, the Finance Act evidence needs to be considered with all other relevant evidence; the remaining evidence points towards the physical existence of routes capable of supporting pedestrian traffic, but does not demonstrate the existence of public rights.
89. As I conclude that the evidence is insufficient to show that a public right of way on foot subsists over footpaths 9, 10, 11, 12, 13 and 14 it follows that I conclude that the Order should not be confirmed in relation to these footpaths.

Width

90. One objection was made on the grounds that the description of the width of the footpaths set out in the Schedule to the Order as being between '1 metre and 1.5 metres' was too vague. The objector drew attention to the guidance given in advice Note No. 16 published by the Planning Inspectorate and in the additional guidance offered to highway authorities on the issue.
91. I agree with the objector that the widths set out in the Schedule for footpaths 6 and 8 is too vague for the public and land managers to know the lateral extent of the public right of way. There is however, little or no documentary evidence of the historic width of these paths. There is no mention of the width of the path in the 1840 Quarter Sessions documents and I hesitate to take the double peck lines on the 1919 25 inch Ordnance Survey map as indicative of the width of the path as I cannot be certain that the copy of the map before me has been reproduced at the correct scale. There is no evidence of use of the paths from which a determination could be made as to the width which may have been dedicated through use.
92. In such circumstances I am of the view that the footpaths should be recorded as having a uniform width which is sufficient to allow the public to conveniently pass and re-pass over the land; a width of 1.5 metres throughout would afford the public sufficient lateral space for the exercise of the right of way. I propose to modify the schedule for footpaths 6 and 8 accordingly.

Other matters

93. Many of the objections to the order were made on the basis that security and privacy of property would be compromised and that the footpaths would have an adverse impact upon nature conservation or agricultural and equine

husbandry. Many of the objectors also noted that the paths at issue had not been walked within living memory, that there was no physical evidence of the paths on the ground and that the paths were obstructed in many places by hedges, ditches and fences. A number of objectors also requested that the paths (if found to be public rights of way) should be diverted to places which were considered to be less problematic.

94. In reaching my decision, I have attached no weight to the parties' suggested diversions. The possible diversion of any of the paths would only become an issue if the evidence demonstrated the existence of public rights. In addition, matters such as the suitability of the routes for public use or the current or potential use of the land or the impact a path would have upon nature conservation are not matters which are legally relevant to the determination of this matter and I have not taken such objections into consideration in reaching my decision.

Conclusions

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

Formal Decision

96. I propose that the Order should be confirmed subject to the following modifications;

- (i) in the Schedule Part 1 and Part 2 delete all references to Darlton footpaths 5, 7, 9, 10, 11, 12, 13 and 14 and Ragnall footpath 6;
- (ii) in the Schedule, part 1 for Darlton footpath No. 6 amend the text to read "Commencing from a point SK 7819 7272 at the junction with Darlton footpath No.8 proceeding for a distance of approximately 460 metres in a generally easterly and south-south-easterly direction to a point SK 7745 7346, at the junction with Darlton Bridleway No. 1, and having a width of 1.5 metres throughout.
- (iii) In the Schedule, part 1 for Darlton footpath No. 8, line 4 delete "between 1 metres and";
- (iv) In the Schedule, part 2, for Darlton footpath No. 6 amend the text to read "Commencing from a point SK 7819 7272 at the junction with Darlton Footpath No. 8 proceeding for a distance of approximately 460 metres in a generally easterly and south-south-easterly direction on an earth surface across a field and over a dyke to a point SK 7745 7346, at the junction with Darlton bridleway No. 1 and having a width of 1.5 metres throughout its length.
- (v) In the Schedule part 2, for Darlton footpath No. 8 lines 5 and 6 delete "1 metre along the track and" and "along the field edge".
- (vi) In the order plans delete all of Darlton footpaths 5, 7, 9, 10, 11, 12, 13, 14, all of Ragnall footpath 6 and part of Darlton footpath 6.

97. Since the confirmed Order would not show a way shown in the Order as submitted, I am required by virtue of paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the

Order and 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.

Alan Beckett

Inspector