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## Order Decision

Site visit carried out on 28 June 2016

**by Peter Millman BA**

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

**Decision date: 22 February 2017**

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### **Order Ref: FPS/Q2500/7/80M**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Wildlife and Countryside Act 1981, Lincolnshire County Council (Colsterworth Public Footpath Nos 14 & 1114 and Gunby & Stainby Public Footpath Nos 1 & 1114) Definitive Map Modification Order 2015.
- The Order is dated 16 April 2015 and proposes to modify the Definitive Map and Statement for the area as shown on the Order plans and described in the Order schedules.
- There were eight statutory objections outstanding when Lincolnshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
- In accordance with paragraph 8(2) of Schedule 15 to the 1981 Act I gave notice of my proposal to confirm the Order with modifications.
- Six objections to my proposed modifications were received.

**Summary of Decision: the Order is confirmed as originally made.**

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### **Preliminary matters**

1. Although the Order as made concerned a continuous route shown on the County Council's Definitive Map running from Woolsthorpe to Buckminster, the relevant evidence concerning the eastern section between Woolsthorpe and Skillington road was quite distinct from that concerning the western section from Skillington Road to Buckminster.
  2. If confirmed, the Order would delete the eastern section of the route from the County Council's Definitive Map. I agreed with the County Council that the evidence showed that this section had been shown in error and should be deleted, and therefore I did not propose to modify the Order as it related to that section. Most of the objections (and one letter of support) were concerned with that part of the route and maintained or elaborated objections that had been made to the Order when notice of it was first published.
  3. If confirmed, the Order would also delete the route shown on the Definitive Map running westwards from Skillington Road to The Drift in Buckminster, but it would add a route running parallel to it immediately to its north, the two routes being separated, for the most part, only by the width of a hedge. The County Council believed that the currently depicted route had been shown in error on the Definitive Map since it was first prepared in the 1950s, and that public footpath rights existed on the route immediately to the north. I did not accept that the evidence produced by the County Council supported its case and I proposed to modify the Order so that the Definitive Map would continue to show the path on its current location between Skillington Road and The Drift. The County Council was the sole objector to that proposed modification.
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4. This Decision should be read in conjunction with my interim Order Decision of 7 July 2016. I have appended copies of the Order maps at the end of this Decision.

### **Main issues**

5. The main issue is whether evidence has been produced which would lead to the conclusion that I was mistaken in my interim decision of 7 July 2016.

### **Reasons**

#### ***The eastern section of path from Water Lane in Woolsthorpe-by-Colsterworth to Skillington Road (A-C), proposed for deletion***

6. Apart from that of Colsterworth and District Parish Council, no objection to my interim Order Decision contained or referred to any relevant evidence about this eastern section of the route. The Parish Council submitted extracts from Parish Council meetings in the early 1950s which had not previously been produced. These demonstrate that the question of what public rights of way existed in Colsterworth then had been discussed by the Parish Council in considerable detail. They do not, however, show that this route was included in the Schedule of Paths sent by the Parish Council to the County Council and contain no evidence which would lead me to alter the conclusion I reached in my interim Decision that this section of route should be deleted from the Definitive Map.
7. The Parish Council submits that the County Council has not shown 'beyond reasonable doubt' that the footpath was incorrectly shown on the Definitive Map. 'Beyond reasonable doubt' is the standard of proof in criminal cases. The standard of proof here, as noted in paragraph 3 of my interim Decision, is 'the balance of probabilities.'

#### ***The western section of path from Skillington Road to The Drift in Buckminster – proposed addition of F-G-H-I***

8. My interim Decision was made more difficult than it should have been for two reasons. The first was that the quality of copies of maps supplied by the County Council was poor and in some instances the position of footpaths relative to parish boundaries could not be ascertained. The second reason was that the County Council's case was not clearly set out, and added to the poor quality of some maps this led to my failure to understand parts of it.
9. The County Council has now supplied a good, clear copy of the relevant part of the map attached to the *Colsterworth with Woolsthorpe and Twyford Inclosure Award* of 1808, which shows a footpath on or very close to the line F-G-H-I. Further copies of large-scale Ordnance Survey plans of 1887 and 1904 are still, however, very poor, and it is impossible to see from them on which side of the parish boundary between Colsterworth and Stainby a footpath was shown, or if, indeed, any footpath is shown on either side of the parish boundary.
10. The County Council has also re-stated and clarified some aspects of its case, and I consider these in the following paragraphs.
11. In my interim Decision I concluded that the evidence of the map attached to the Inclosure Award did not justify adding a footpath to the Definitive Map on the line F-G-H-I. I wrote the following in paragraph 39 of that Decision: *There are circumstances in which inclosure evidence could provide conclusive*

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*evidence of the existence of public rights. The minimum evidence that would be required would be, first of all, a copy of all the relevant parts of the Award and a copy of the Inclosure Act so that the powers available to the Inclosure Commissioners could be ascertained. The Award was stated to have been made in 1808, so the Act probably dates from a few years earlier. If so it may or may not incorporate the provisions of the General Inclosure Act of 1801. It would be necessary to see what the Act and Award stated about any measures which needed to be complied with before a right of way came into existence. It would be necessary to have evidence that the Inclosure Map was of sufficient accuracy to enable a path shown on it to be transposed to a modern map base. It would be particularly necessary in this case to be sure that the parish boundary was in the same position as it was in 1808, and that the Award was capable of creating a short length of path in a neighbouring parish (i.e. in Stainby between G and H.)*

12. The County Council has now provided a copy of the 1805 Colsterworth Inclosure Act under which the 1808 Award was made. The County Council states that there is no mention in the 1805 Act of the General Inclosure Act of 1801. The County Council is mistaken. On the second page of the preamble to the 1805 Act are the following words: *And whereas an Act was passed in the Forty-first Year of the Reign of His present Majesty, intituled "An Act for consolidating in one Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts."* The forty-first year of the reign of King George III was 1801. The reference is to what is commonly known as the General Inclosure Act of 1801. Following the preamble, the first introductory paragraph of the 1805 Act states in part that Commissioners are appointed: *for putting this Act in Execution, pursuant to the Powers, Directions, Regulations, and Provisions hereinafter contained, and to such of the Powers, Regulations, Restrictions, and Provisions contained in the said recited Act [i.e. the General Inclosure Act of 1801] as are not altered or constrained by, or are repugnant to any of the Clauses, Provisions or Regulations contained in this Act [i.e. the 1805 Act].* It is these words that provide the general powers to set out public highways that the County Council could not find in the 1805 Act. Had they not been inserted there would have been no power to set out new footpaths under that Act.
13. The County Council had previously supplied a copy of an extract from the Inclosure Award of 1808, made under the 1805 Act. The Award described and set out a number of public footways. The County Council has highlighted one, which appears to describe a route on, or close to F-G-H-I. This route is described as running for some way in the Parish of Colsterworth and then passing from a: *Stile in the boundary fence of the Lordship of Stainby... along a public Footpath in the said Lordship of Stainby then to be continued from another Foot Stile enters the said Allotment to Sir William Manners...* It is probable, taking into account the depiction of ownership of the various allotments which it is now possible to see on the map, that the section of path described as being in the Lordship of Stainby corresponds to what is shown as G-H on the Order plan.
14. There is no evidence from the extract of the Award provided that the footways set out were actually made. The County Council argued that since a path in the position of the one set out in 1808 was shown on large scale Ordnance Survey maps of 1887 and 1904, it was likely that the path set out was made in or after 1808, and thereafter used.

15. I noted above that the Ordnance Survey plan extracts were of very poor quality. I accept, however, that the plan made under the 1910 Finance Act, which is based on the 1904 1:2500 Ordnance Survey Plan (not, I think, on the 1:10560 map as stated by the County Council) shows a footpath on the line (apart from a short stretch around G-H) of F-G-H-I. This, it seems to me, is evidence that the path set out in 1808 was made.
16. I refer back to the cautionary notes expressed in paragraph 11 above. I am now satisfied that a public footpath was set out and made under the 1808 Award. It was not necessary to set out a footpath in Stainby because the Colsterworth Award clearly stated that the footpath it set out linked with an already existing public footpath in that parish. It seems fairly clear, from the maps provided, that the relevant part of the parish boundary between Colsterworth and Stainby has not moved in the past 200 years or so. It remains only to consider the accuracy of the Inclosure map, and whether it is reasonably clear that the line F-G-H-I is in the position of the route set out in 1808.
17. I have looked carefully at, and compared, where it is possible to do so, the depiction of features on the Inclosure Map, the 1904 Ordnance Survey 1:2500 plan and the Order plan. It seems to me that the line F-G-H-I on the Order plan is as close as can reasonably be expected to the line shown on the Inclosure Map. The County Council does not state what the scale of that map is, and the original copy it supplied, which has a 'scale of chains', is of very poor quality, but it seems, making a rough comparison of the scale with the distance between features which can be calculated from Ordnance Survey maps, to be greater than 1:10000, and probably comparable to the scale of the Order plan, which is stated to be 1:7500. The central section of the Inclosure Map route differs to some extent from what is shown on the 1904 Ordnance Survey plan, but given that that section of path did not, apparently, follow a field boundary in 1808, or later, it would not be surprising if the line of a path had moved slightly over time. The rights would remain where they had been created (or already existed in Stainby) in 1808.
18. I conclude (contrary to what I concluded in my interim Decision) that the evidence shows, on the balance of probabilities, that public footpath rights exist on the line F-G-H-I.

***The western section of path from Skillington Road to The Drift in Buckminster – proposed deletion of the current line D-E***

19. In the light of clarifications provided by the County Council, I have reconsidered the way that I approached the question of whether there had been a mistake when D-E was added to the Definitive Map in the 1950s. The County Council now explains that when, in its statement of reasons, it wrote: *The larger scaled [1887 and 1904] maps now show greater detail and there is a footpath marked and shown running from Woolsthorpe to Buckminster on a similar line to the paths shown on the DM* it did not mean to imply that this footpath followed the line currently shown on the Definitive Map, i.e. D-E. In fact, it explains, no Ordnance Survey map prior to the 1950s showed a footpath on the Gunby and Stainby side of the parish boundary (apart from between G and H). When, therefore, Gunby and Stainby Parish Council were considering what public rights of way existed in that parish, they could not have seen (as I thought they might have done) an old Ordnance Survey map

depicting a path on the line D-E. What I stated at the end of paragraph 33 of my interim Decision is, in the light of this clarification, wrong.

20. Given the conclusion I have reached in paragraph 18 above, it seems to me unlikely that there would have existed a public right of way parallel to and only a yard or so to the south of that set out in 1808. It is feasible that after 1904 use of the footpath on the northern side of the parish boundary ceased and the public began to use a route on the southern boundary, albeit never recorded by the Ordnance Survey, but there is no evidence for that supposition apart from the Gunby and Stainby parish survey. I consider it to be more likely that the depiction of D-E on the Definitive Map arose from an error, possibly because Gunby and Stainby Parish Councillors were unsure of the exact position of the parish boundary, rather than from an actual belief that public rights existed on the line of D-E. I conclude that evidence has been produced which is of sufficient substance (see paragraph 5 of my interim Decision) to outweigh the presumption that footpath rights exist on D-E.

### **Conclusions**

21. I conclude from the evidence provided that a mistake was made when the path between Water Lane and Skillington Road was added to the Definitive Map, that no public rights existed over it then and none have accrued since.
22. I conclude from the evidence provided that a mistake was made when the path between Skillington Road and The Drift was added to the Definitive Map, that no public rights existed over it then and none have accrued since.
23. I conclude from the evidence that, on the balance of probabilities, public footpath rights subsist on F-G-H-I.
24. Finally, having regard to the matters considered above and all other matters raised in the written representations, I conclude that the Order should be confirmed.

### **Formal Decision**

25. I confirm the Order.

*Peter Millman*

**Inspector**







