



Order Decision

Site visit on 30 January 2018

by Sue Arnott FIPROW

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

Decision date: 27 February 2018

Order Ref: ROW/3181603

- This Order, dated 4 April 1989, is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Lincolnshire County Council (Amendment of Lindsey County Council (Rural District of Spilsby) Definitive Map and Statement – Evidential Events) (No 1) Modification Order 1989.
- The Order proposes to modify the definitive map and statement for the area by recording a public footpath between Sea Lane and Maiden Lane at Hogsthorpe, as shown on the Order map and described in the Order schedule.
- There were five objections¹ outstanding, together with one letter of support, when Lincolnshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is not confirmed.

Procedural matters

1. When this order was made, the statutory notices invited objections to be submitted to Lincolnshire County Council (LCC) by 29 May 1989. Two objections (from Hogsthorpe Parish Council and Mr Traves, a landowner) and one representation in support of the Order (from the Lincolnshire Fieldpaths Association) were received within this timescale.
2. However it appears that the deadline was extended to 16 June 1989 although the full circumstances of this extension are not entirely clear. Nevertheless, LCC accepted there were three further valid objections received, albeit ones submitted after the initial closing date. These included one from Mr Pridgeon and one on behalf of the Church Commissioners², together with a further letter submitted by the National Farmers Union, registering an objection on behalf of three of its members (Mr Sharpe, Mr Traves and Mr Pridgeon.)
3. At this distance in time I propose to regard all the objections as valid and deal with the issues raised by them.

Main Issues

4. The Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of an event specified in Section 53(3)(c)(i),

¹ See paragraphs 1-3

² It seems that these landowners were not notified when the Order was made. When the mistake was discovered, the period for receipt of objections was extended. Although not strictly in accordance with the statutory procedures, given the conclusions I have reached on the evidence in this case, I do not propose to require further advertisement to address this.

- namely the discovery of evidence which shows a right of way which is not recorded in the definitive map and statement subsists over land in the area to which the map relates.
5. In short, the case for the Order requires me to consider whether the evidence shows that at some time in the past the route in question has been used in such a way that a public footpath has been established.
 6. Whilst the evidence need only be sufficient to *reasonable allege* the existence of a public right of way to justify an order being made, the standard of proof required to warrant confirmation of an order is higher. In this case and at this stage, evidence is required which shows, *on the balance of probability*, that a right of way subsists along the Order route.
 7. The Order states that the relevant date is 4 January 1989. In the unusual circumstances of this case, where over twenty years has passed since the relevant date, I should emphasise that the issue here is whether or not a public footpath was in existence on 4 January 1989. It is not for me to consider whether one has been established since then, although my inspection of the route suggests there has been little use by the public in recent years, if any.
 8. It was not clear whether LCC made the Order on the basis that dedication of a public footpath along the Order route could be inferred under Section 31 of the Highways Act 1980 (the 1980 Act) or at common law. In both cases, the burden of proof lies with those that assert the existence of a public path.
 9. Under the statutory approach, the 1980 Act requires that I first consider whether there has been use of the claimed route by the public on foot, as of right and without interruption, over the period of twenty years immediately prior to its status being brought into question so as to raise a presumption that the way has been dedicated as a public footpath. If so, I must consider whether there is evidence that during this period the landowners demonstrated a lack of intention to dedicate the route as a public right of way sufficient to rebut the presumption.
 10. Alternatively under the common law I would need to be satisfied that, during any relevant period, the owners of the land in question had the capacity to dedicate a public right of way, that there was express or implied dedication by the owners, and also that there is evidence of acceptance of the claimed right of way by the public.

Reasons

11. An application was made to record the Order route as a public right of way in December 1986. The applicant, Mr Joyce (now deceased), submitted 4 user evidence forms from people who had known the footpath for periods dating back to 1940 although only 3 had actually used it. It is not clear what prompted the application but one of the evidence forms refers to a wired gate across the right of way whilst another mentions footbridges having disappeared; dates are not given for either. However other evidence³ suggests it was reported to be obstructed on 17 February 1985.

³ Footpath Report Forms dated 1985 linked to Lincolnshire Fieldpaths Association.

Historical evidence

12. In its research into the case, LCC examined a number of historical documents. Commercial maps by Armstrong (published in 1779), Bryant (in 1826) and Greenwood (in 1832) do not show any route in the vicinity of the claimed footpath. Neither do early Ordnance Survey (OS) 1" to the mile maps of 1819 and 1824 although Sea Lane and Maiden Lane were in existence at that time. An Inclosure Award for the area dated 1811 suggests that a private road (named Robinson's Road) may have followed the northern section of the Order route but the details are not reliably clear.
13. It is not until the early twentieth century that the first evidence of a path along the Order route emerges. The OS 25" to one mile map of 1906 clearly shows the route⁴ labelled "FP" although this does not necessarily confirm public status. A footbridge was marked at its southern end on both this and the 6" edition of 1907 and a connecting path was shown proceeding north eastwards towards Blind Well Lane from point B (as marked on the Order map).
14. The other smaller scale maps examined, including Bartholomew (1907 and 1951) and the OS (1940, 1954 and 1959), do not show footpaths but the OS 1:25,000 map later used as a base for the parish survey in 1951 showed both the Order route and its connecting path again labelled "FP" with a "FB" located near point A; so too did the later edition in 1963 on which the definitive map itself was later published.
15. The survey of public rights of way carried out in the 1950s was the initial stage in the preparation of the first definitive map and statement required under the National Parks and Access to the Countryside Act 1949. Whilst it appears that the route in question was surveyed as path number 2 in Hogsthorpe Parish, the written description suggests this may have followed the path to Blind Well Lane, not to Maiden Lane at point D.
16. The path survey form records the "*Grounds for believing the path to be public*" as "*Used by the public on rare occasions*". This may account for the fact that the route did not later feature on the draft, provisional or final versions of the definitive map; no other explanation is given but the path's omission from the draft map does not appear to have been challenged.
17. It seems clear there was physical evidence of a footpath along the Order route from the early twentieth century at least until the date of survey of the base map used for the Order map⁵. Whilst this would be entirely consistent with a public right of way, it is not reliable proof that the path held that status.

Evidence of use

18. As I have noted above, I have before me the written evidence of four people, collected in 1986/7.
19. Following the statutory approach, (and in the absence of any evidence to the contrary), it seems that the status of the Order route was brought into question on or shortly before 17 February 1985 when it was reported to be

⁴ But, as highlighted by Mr Traves, with a route variation in the middle section where the line followed old field boundaries. These were no longer in existence when the Order was made.

⁵ The date of publication appears to be in the 1960s but the date of survey is not stated.

obstructed. This establishes a twenty year period from February 1965 to February 1985 in which it is necessary to demonstrate there was sufficient use by the public, as of right and without interruption, to raise a presumption that the path had been dedicated for public use.

20. Examining the evidence forms more than thirty years after they were completed creates difficulties, not least because the standard to which such forms probe relevant issues has developed in the intervening years. For example, the present expectation is that each form is accompanied by a plan on which the claimant has marked the route they used; here, no plans or maps are attached although the written description of the start and end points of the path do tally with the Order route.
21. Yet, even extending the utmost latitude to the interpretation of the four statements and the weight I place on them, I cannot accept that three path users can be sufficient to represent the public, even in a rural context such as this, and even with the endorsement of a fourth witness who saw the path being used. Consequently, the case for dedication under Section 31 of the 1980 Act must fail since no presumption is raised by the evidence submitted.
22. When next considering whether dedication of a public right of way might have been established under common law, the issues to be examined focus on the actions of the landowner(s) in relation to the possibility of express or implied dedication of a public right of way, and use by the public as evidence of acceptance of the claimed right.
23. In the objection from Mr Traves I detect an acknowledgement of a path of some sort (although in 1987 he stated that it had not been used for at least 40 years), but there is no other evidence to support either express or implied dedication of a right of way for the public. Even if there were, the same problem arises insofar as the evidence of use I have before me would not be sufficient to demonstrate acceptance of the path by the public.
24. Consequently I am again led to the conclusion that the evidence available to show use by the public falls short of that required to confirm the establishment of a public right of way along the Order route.

Other Matters

25. Several of the objections refer to the Order route as being unnecessary and that existing roads, being quiet country lanes, provide a satisfactory alternative for walkers. The inconvenience that would result for Mr Pridgeon and his neighbouring farmers is also submitted as a reason not to record this route as a public right of way.
26. None of these arguments are relevant to the matter at issue here. The question is whether the evidence is such as to show that a public right of way has already been established in law, irrespective of the merits or disadvantages of the Order route.
27. From my examination of all the evidence in this case, I gain the impression that a footpath did exist in the early half of the twentieth century. References to previous generations walking the route suggest it may then have been well used but there is insufficient evidence available *now* to show that it was then a *public* path. According to Mr Traves, footbridges over the ditches were not maintained and eventually rotted away. Whether use of the route by local

people dwindled before or after this occurred cannot be established reliably from the material before me.

28. It is entirely possible that had this Order been forwarded for determination shortly after the objections were lodged, a public local inquiry may have uncovered more evidence, either in support of a public path or against it. However, on the basis of the available information, my conclusion must be that, on a balance of probability, there was no public right of way over the Order route on 4 January 1989 and that the Order cannot be confirmed.

Conclusion

29. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

30. I do not confirm the Order.

Sue Arnott



Inspector

THE COMMON SEAL of LINCOLNSHIRE COUNTY COUNCIL was hereunto affixed in the presence of:-

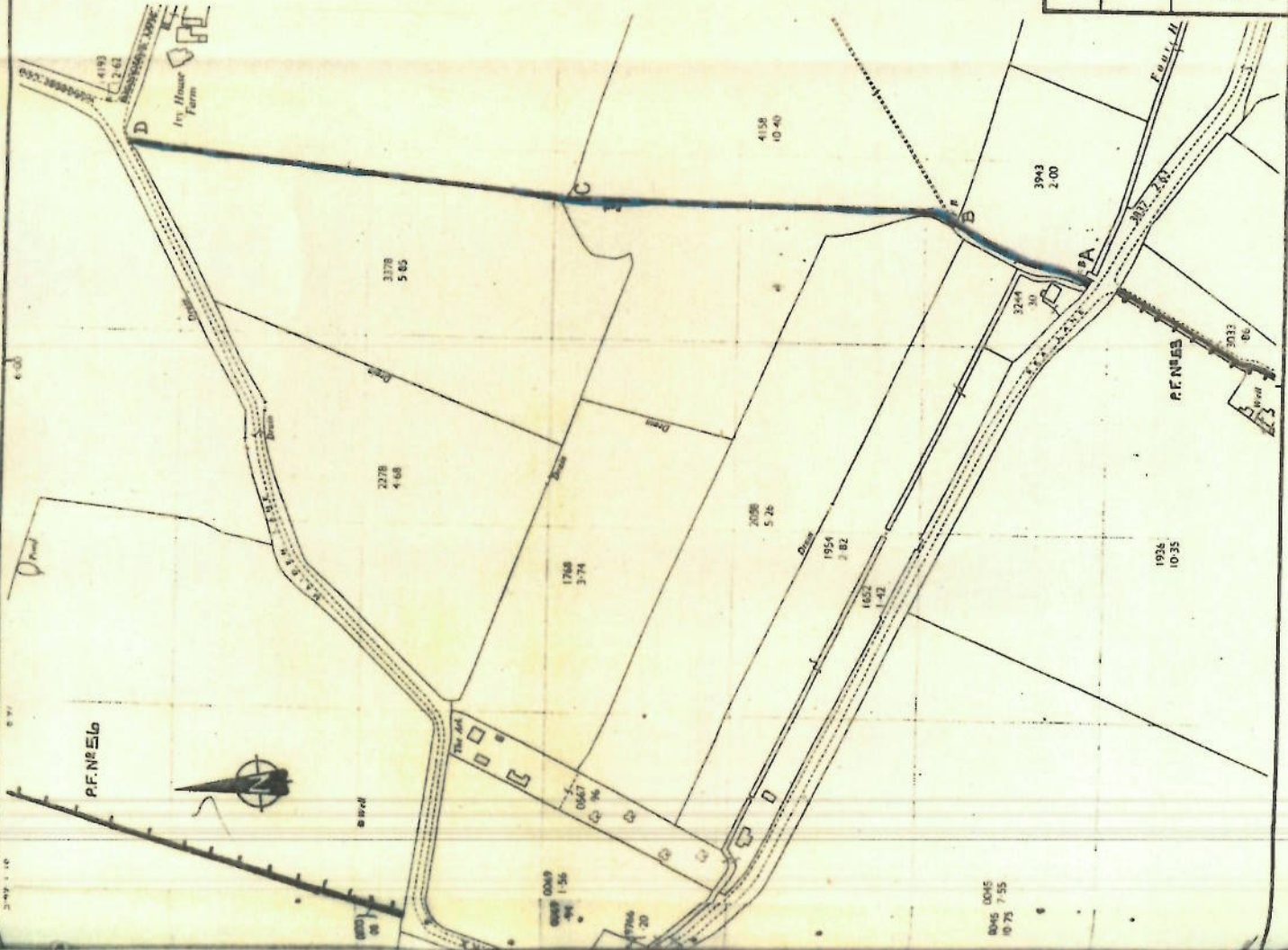
[Signature]
 Authorised Officer

No. in Seal
 Book *[initials]*

LEGEND

-  Claimed public footpath
-  Existing public footpath

MAP NOT TO ORIGINAL SCALE



G. N. KEIGHLEY MSc., Dip.P.E., CertEd. DIRECTOR OF RECREATIONAL SERVICES		Dr/Date	Scale
		SAT 1/87	1:2500
Lincolnshire County Council County Offices, Lincoln Reproduced from/based upon the O.S. Map with the sanction of the Controller of H.M. Stationery Office CROWN COPYRIGHT RESERVED Date 15.01.88		Checked	Approved
		O.S. sheet reference TF5372 - 5512 TF5472 - 5512	
		File/Modelling No. PLC/8/8	
		Drawing No. A3/1226/4	
Lincolnshire		HOGSTHORPE - Lincolnshire County Council (Definitive Map Modification Order). Addition of Claimed Public Footpath from Sea Lane to Maiden Lane.	