



Order Decisions

Inquiry opened on 21 August 2018

by Mark Yates BA(Hons) MIPROW

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

Decision date: 16 October 2018

Order Ref: ROW/3182291

Referred to as 'Order A'

- This Order is made under Section 26 of the Highways Act 1980 ("the 1980 Act") and is known as the Public Path Creation Order 2017, Lincolnshire County Council Public Footpath Number 1108 Market Deeping and Deeping St James.
- The Order was made by Lincolnshire County Council ("the Council") on 19 April 2017 and proposes to create sections of footpath, as detailed in the relevant Order Map and Schedule.
- There were two objections 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.

Order Ref: ROW/3182292

Referred to as 'Order B'

- This Order is made under Section 118 of the 1980 Act and is known as the Public Path Extinguishment Order 2017, Lincolnshire County Council Parts of Public Footpath Number 4 Market Deeping and Deeping St James.
- The Order was made by the Council on 19 April 2017 and proposes to extinguish sections of footpath, as detailed in the relevant Order Map and Schedule.
- There were two objections 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.

Procedural Matters

1. I held a public inquiry into the Orders on 21-22 August 2018 at the Oddfellows Hall, Market Deeping. I made an unaccompanied visit to the site prior to the inquiry and I undertook a further visit accompanied by the interested parties.
2. The two objections to the Orders were submitted by Market Deeping Town Council and Mr Brookes. At the inquiry, Mr Brookes¹ put forward the case on behalf of himself and the Town Council. The other people who spoke in opposition to the Orders did so broadly on the same grounds as the statutory objectors.
3. The Council confirms that South Kesteven District Council was consulted² and the reference in Order B to East Lindsey District Council is incorrect. I accept that, if confirmed, the Order should be modified on this issue. The Council also requests modifications to correct a grid reference in Order A and specify that the whole width of the sections of footpath would be stopped up by Order B. Further, it is requested that the Orders come into effect 90 days after they are confirmed to enable sufficient time for the completion of the necessary works.

¹ He is also a member of the Town Council

² As required by Section 120(2) of the 1980 Act.

No objections were made to these proposed modifications and I consider them to be appropriate in the circumstances.

4. All of the points referred to below correspond to those delineated on the respective Order Maps. Where there may be some uncertainty regarding the map concerned, I have included the letters "CO" or "EO" in brackets to denote whether it is shown on the map attached to the Creation Order or the Extinguishment Order.

Main Issues

5. Before confirming Order A, which is made under Section 26 of the 1980 Act, I must be satisfied that:
 - (a) there is a need for the sections of footpath included in the Order; and
 - (b) it is expedient to confirm the Order having regard to:
 - (i) the extent to which the sections of footpath would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (ii) the effect which the creation of the sections of footpath would have on the rights of persons interested in the land, having regard to the provisions for compensation.
6. Before confirming Order B, which is made under Section 118 of the 1980 Act, I must be satisfied that it is expedient to extinguish sections of footpath having regard to:
 - (a) the extent (if any) to which it appears that they would, apart from the Order, be likely to be used by the public; and
 - (b) the effect that the extinguishment of the sections of path would have as respects land served by them, having regard to the provisions for compensation.
7. Section 118(5) of the 1980 Act specifies that in considering the test outlined in paragraph 6(a) above, regard can be given to the extent to which an Order under Section 26 of the Act would provide an alternative path. Paragraph 5.54 of Department of Environment, Food and Rural Affairs Circular 1/09 advises that account should be taken of the convenience of the route proposed compared to that which is to be extinguished.
8. Section 118(6) of the 1980 Act states that any temporary circumstances preventing or diminishing the use of the footpath by the public should be disregarded.
9. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the two Orders.

Background Matters

10. The sections of path to the west of points J-K (EO) were not extinguished, as intended, by Orders made by South Kesteven District Council. They cross land occupied by two primary schools and pass through a Tesco superstore. The proposed footpath to be created corresponds to a tarmac path between point A

- and an unaffected section of footpath at point F (CO). No objection has been made to the proposed changes in the Orders for these sections of path.
11. The section of footpath between points J-K and point C (EO) crosses land developed by Persimmon Homes. It proceeds through houses and the gardens of various properties. Persimmon submitted applications to extinguish and create sections of path but no case has been made by them for the confirmation of the Orders.
 12. I have seen nothing from Persimmon to explain why the footpath has been obstructed in this manner. There is a procedure under the Town and Country Planning Act 1990 for rights of way to be diverted or stopped up if it necessary to do so to enable development to take place. However, these provisions are not available where the development, in so far as it affects the right of way, is complete. Therefore, the Orders have been made under the 1980 Act. I understand the frustration of people at the inquiry regarding the obstruction of the footpath. Nonetheless, the matter for me to determine is whether the Orders should be confirmed having regard to the main issues above.
 13. The objectors submit that an alternative route could be created through the housing development. This route is opposed by the Council and some local residents. I need to consider firstly whether Order A should be confirmed. Clearly, if the Orders are not confirmed, consideration will need to be given to alternative options, which could involve enforcement action to remove some or all of the obstructions.
 14. In respect of the suggestion that part of the path included in Order A has been dedicated as a public right of way, there is little evidence to support such a finding at the present time. Nor has an application been made to add it to the definitive map and statement.
 15. The objectors suggest that sections of path in the Orders should be dealt with by way of a diversion. This seems to be a desire to separate the proposals considered to be more controversial rather than due to any legal issues regarding the Orders made by the Council. I also note that the Council does not consider that a diversion is a feasible option given the nature of the existing sections of footpath.

Reasons

Order A

16. The evidence is supportive of there being a continued need for a public right of way between Godsey's Lane and Linchfield Road. Reference is made to a range of destinations served by the path, not least the Tesco store. There may be other means of accessing various locations in the area. Nonetheless, the evidence is supportive of there being a demand for a right of way in the locality of the path included in Order A. The objectors point to the grant of outline planning permission for 145 additional houses and the inclusion of another site in the draft local plan to the east of point K. These proposals could potentially lead to even greater use of the footpath in the future.
17. Whilst I note the objectors' desire for a joint pedestrian and cycle route, this Order involves the proposed creation of sections of public footpath to replace

- the sections included in Order B. Mr Smith³ also outlined the aspirations for the establishment of a route around the respective parishes with links leading from it, including potentially one in this locality. However, it appears to me that this proposal is at a relatively early stage.
18. It is evident that the provision of a suitable footpath would presently add to the convenience of a substantial section of the public, particularly local residents. This demand is likely to increase if land is developed to the east as proposed.
 19. A main issue of concern for the objectors is the nature of the footpath to be created between points G-J and particularly points G-I. The supporters generally agree that the adverse camber at point H is a problem and I share these concerns. However, the Council has agreed to undertake works to resolve the issue and this is the reason for the requested modification for the Orders to come into force after a greater period of time. Therefore, I proceed on the basis that the path to be created in this locality would have a short gradual slope but not an adverse camber.
 20. In terms of the widths of the sections of path in the Order, the issue of most concern is the 1.7 metres width specified for the H-I section. The other sections would have a width of 2 or 3 metres. Measurements taken during the site visit reveal that the current tarmac path between points H-I is 1.4 metres wide and a width of 1.7 metres exists between the school fence and the low level rail. A width of 2.2 metres is available between the school fence and the edge of the parking area for the relevant properties.
 21. I asked at the inquiry for any relevant guidance on widths. The Council pointed to its Countryside Accessibility Guidance and they view the widths in the Order to be consistent with this guidance. This guidance indicates that a width of 1.2 metres should be sufficient to enable a wheelchair user to pass a walker or two people to walk side by side. However, the guidance specifies that a width of 2 metres is desirable to allow the free movement of pedestrians. One of the supporters (Mrs Palmer) says she has observed use of the path by a mobility scooter and a double and single pushchair can pass each other. Whilst Mrs Davis also supports the Order, she considers that the path should be wider from her own experiences of walking along it.
 22. I note that other published guidance, titled 'Inclusive Mobility'⁴, refers to similar specifications. However, at paragraph 3.1, it states "*A clear width of **2000mm** allows two wheelchairs to pass one another comfortably. This should be regarded as the minimum under normal circumstances. Where this is not possible because of physical constraints **1500mm** could be regarded as the minimum acceptable under most circumstances, giving sufficient space for a wheelchair user and a walker to pass one another*".
 23. I have concerns regarding the narrower width for the H-I section of the path given the widths for the other sections. This pinch point is pronounced given the generally more open nature of the remainder of the path. I am particularly concerned about the narrow tarmac width given the guidance on widths and also the comments on path surfaces found in the Countryside Accessibility Guidance. Mrs Davis also draws attention to a section adjacent to the school fence that drops way from the tarmac path.

³ He was called by Mr Brookes

⁴ A Department for Transport publication of 2002

24. Mrs Palmer highlights her concerns about the footpath proceeding over the parking area to the north of the H-I section. She draws attention to the nature and number of the vehicles that park in this area. I accept that it would be more appropriate to keep the footpath separate from this area given its size and the number of vehicles stated to park within it. Whilst I have some reservations regarding the path crossing the shared access to the east of point I, I do not view it to be as problematic given the more open nature of this section.
25. In light of the evidence presented at the inquiry and my observations of the site, I consider that 2 metres would provide a convenient width for a footpath between points H-I. It would also provide an opportunity to keep the path separate from the adjacent parking area. I do not view a greater width to be necessary for a footpath but an issue arises in respect of the current 1.4 metres wide tarmac path. On this matter, the Council says a 1.8 metres tarmac surface could be provided within an overall width of 2 metres. In my view, a tarmac path with a consistent width of 2 metres would be more appropriate. However, I note that the Council states that it does not have the funds to undertake the additional surfacing works and attempts will be made to secure funding from the developer.
26. Reference has been made by the objectors to the dog-leg between points G-H and the fencing which obscures the view in this locality. The trellis on top of the fencing provides some visibility but this is dependent on the height of the person. Any increase in the width of the path should lead to a small portion of fencing being removed and this is likely to provide some slight improvement in visibility. Overall, I do not consider this issue to be a significant factor when set against the matters outlined above. The remainder of the path to be created has a broadly similar alignment and length as the paths included in Order B.
27. None of the parties with an interest in the land crossed by the path to be created have raised any concerns in relation to the impact that the footpath would have on their interest.
28. The Town Council submits that Order A does not meet the objectives of SOA1 and SOA3 in the ROWIP. SOA1 relates to the identification and improvement of off-road routes which link local communities with schools, employment centres and local services. In respect of pedestrians, I do not necessarily view Order A as being contrary to this objective. However, this is subject to the provision of a convenient path. Whilst there is a section where path users may come into contact with vehicles, the nature of the development means that this cannot be avoided to some extent. SOA3 seeks improvements for non-motorised travel in proposals for new developments. It appears to me that the present Orders have gone beyond the stage where SOA3 has any relevance given that this development is now complete.
29. Having regard to the above, I conclude that it would be expedient to confirm the Order subject to the provision of a 2 metre wide path between points H-I with a tarmac surface and the Order could be modified on these manners. There will be some uncertainty at the present time regarding whether a path of this nature can be delivered. However, the requirement for the proposed increase in the width of the path to be advertised would provide an opportunity for this matter to be explored further and for the parties to comment on the

proposed modifications. I do not agree with Mr Brookes' submission that the delay arising from the required advertisement of the proposed modifications is a reason to decline to confirm the Order. Nonetheless, I accept that it would have been helpful if the Council had made the concessions earlier.

Order B

30. The Council submits that the provision of the footpath in Order A means that the sections of path included in Order B are not needed for public use. In contrast, the objectors argue that the scale of the use means that there would also be use of the section of path proposed to be extinguished through the housing development.
31. In light of my conclusion in paragraph 29 above, I find that if the sections of footpath in Order B were made available for the public to use any such use would be limited given the proximity of them to the footpath to be created. There is nothing to indicate that the path to be created is any less convenient than the sections proposed to be extinguished. Further, the Council draws attention to a gap of around 2 metres that legally exists at around point K (EO). This means there is at least one gap to prevent a person from lawfully continuing over the path.
32. Nothing has been provided to show that the extinguishments would have a negative impact on any land served by the footpath. There would clearly be benefits for those people whose properties are presently crossed by the path. Further, no provisions in the ROWIP have been drawn to my attention in respect of Order B.
33. When taken in conjunction with Order A, I find that it is expedient to confirm Order B subject to the modifications outlined in paragraph 3 above. I have doubts regarding whether a modification to include a reference to the path to be extinguished encompassing its whole width needs to be advertised. Nonetheless, in this case, the Orders have to be considered together and I consider it appropriate for the modifications to Order B to also be advertised.

Other Matters

34. I note the evidence of Mrs Palmer regarding anti-social behaviour. However, the proposed increase in width is only likely to require the removal of a short section of the fence adjacent to her property.

Conclusions

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

Formal Decisions

Order A

36. I propose to confirm the Order subject to the following modifications:
 - Delete "28" from the first line of paragraph 1 in the Order and insert "90".
 - Delete from the eighth line of the first description in the Order Schedule, "TF 1405 1507" and insert "TF 1405 1057".

- Delete from the sixth and seventh lines of the second description in the Order Schedule, "*where the footpath continues at a width of 1.7 metres*" and insert "*where the footpath continues on a tarmac surface with a width of 2 metres*".

Order B

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

- Delete "*East Lindsey District Council*" from the second paragraph in the Order and insert "*South Kesteven District Council*".
- Delete "28" from the fourth line of paragraph 1 in the Order and insert "90".
- Insert a reference to the "*whole width*" for the sections of footpath to be extinguished.

38. Since the confirmed Orders would affect land not affected by the Orders as submitted I am required by virtue of Paragraph 2(3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Orders 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

APPEARANCES

For the Council:

Ms M. Withington Solicitor employed by the Council

She called:

Ms S. James Definitive Map Officer

Other Supporters:

Miss A. Smith

Mrs L. Palmer

Mrs C. Davis

Statutory Objectors:

Mr A. Brookes Representing himself and Market Deeping Town
Council

He also called:

District Cllr A. Baxter

Mr G. Smith

Other Objector:

Cllr. P. Dilks For Deeping St James Parish Council

Interested Party:

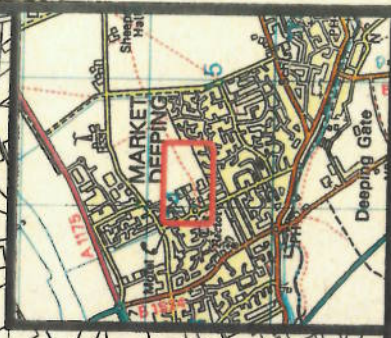
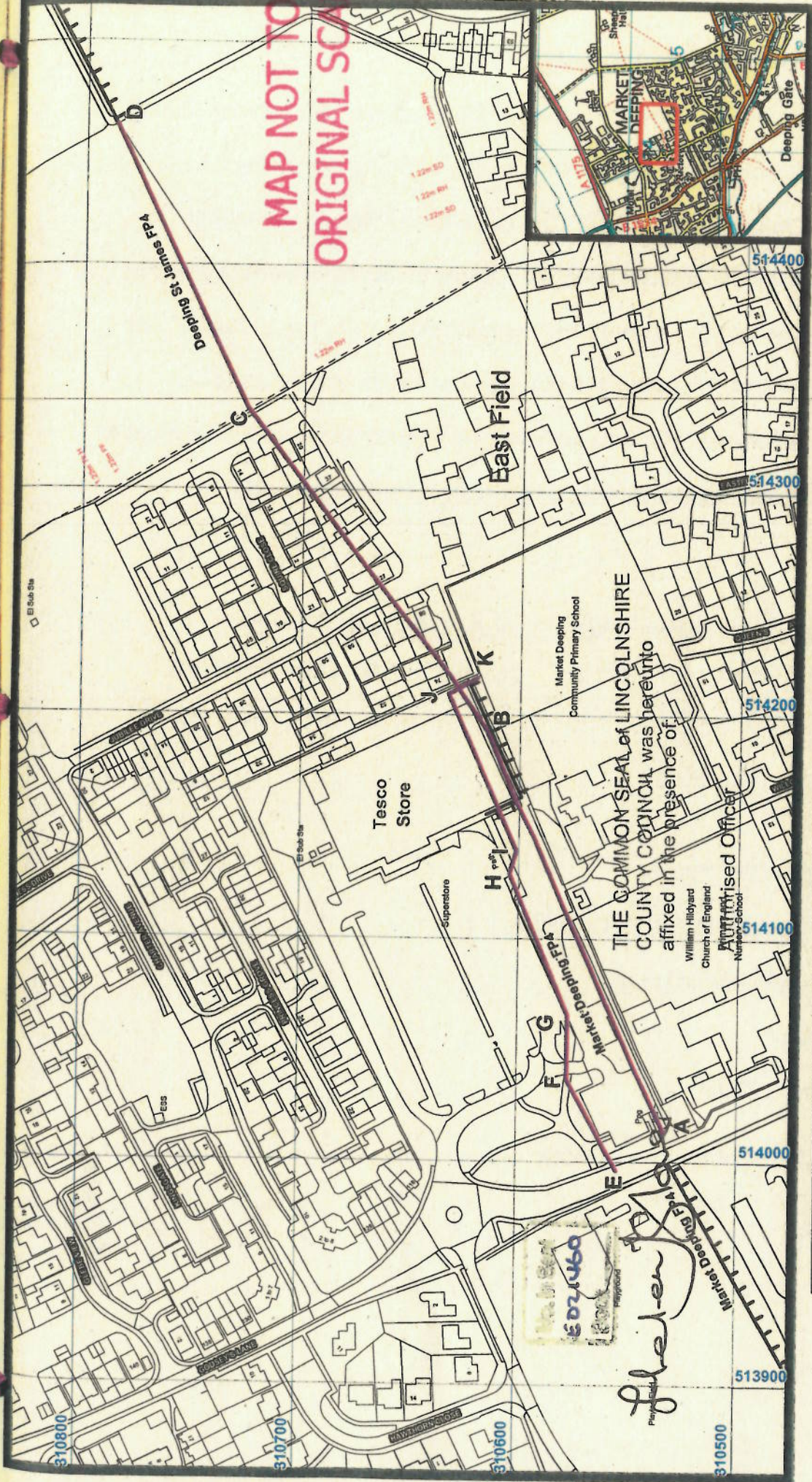
Mr A. Lutton

DOCUMENTS

1. Emails between the Council and Bidwells
2. Opening statement for the Council
3. Lincolnshire ROWIP and Countryside Accessibility Guidance
4. Letter of 30 July 2018 from Deeping St James Parish Council
5. Site plan
6. Closing statement delivered by Mr Brookes
7. Closing statement of Mrs Palmer
8. Closing statement on behalf of the Council



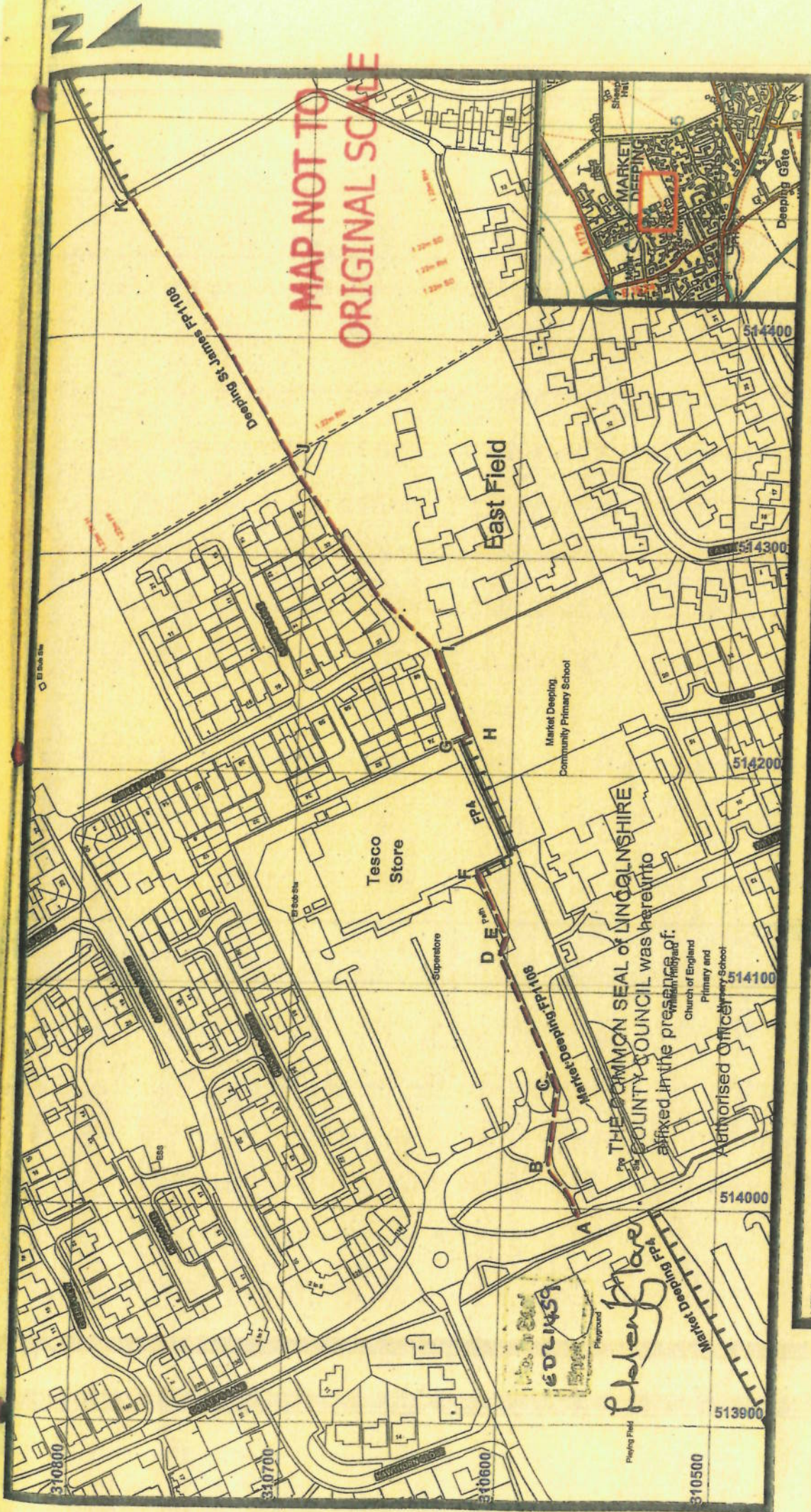
MAP NOT TO ORIGINAL SCALE



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

Edwina
Shelen

<p>HIGHWAYS ACT 1980 SECTION 118</p> <p>MARKET DEEPING & DEEPING ST JAMES - EXTINGUISHMENT OF PARTS OF PUBLIC FOOTPATH NO.4</p>		<p>Scale: 1 : 2,500</p> <p>Drawing No : 2016/029/PP0329/A4</p>
<p>Lincolnshire COUNTY COUNCIL</p>		<p>Scale: 1 : 2,500</p>
<p>Public Footpath to be Extinguished (A-B-C-D & E-F-G-H-I-J-K)</p>		<p>Scale: 1 : 2,500</p>
<p>Unaffected Public Footpath</p>		<p>Scale: 1 : 2,500</p>
<p>KEY</p>		<p>Scale: 1 : 2,500</p>
<p>Public Rights of Way & Countryside Access R A Willis Executive Director for Environment & Economy County Offices, Newland, Lincoln, LN1 1YL.</p>		<p>Scale: 1 : 2,500</p>
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<p>Dr. S.J. Date 20/12/16</p>		<p>Scale: 1 : 2,500</p>



MAP NOT TO ORIGINAL SCALE

KEY

Public Footpath sections to be Created (A-B-C-D-E-F & G-H-I-J-K)

Unaffected Public Footpath

HIGHWAYS ACT 1980 SECTION 26

MARKET DEEPING & DEEPING ST JAMES - CREATION OF PUBLIC FOOTPATH NO.1108



Dm. SJ Date 20/12/16

Public Rights of Way & Countryside Access
R A Willis
Executive Director for Environment & Economy
County Offices, Newland, Lincoln, LN1 1YL

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