

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

BYWAY OPEN TO ALL TRAFFIC 1, SOUTH FERRIBY AND HORKSTOW

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To decide what stance to adopt when referring “Definitive Map Modification (Byway Open to All Traffic 1, South Ferriby and Horkstow) 2016(1)” to the Secretary of State for the Environment, Food and Rural Affairs for determination.

2. BACKGROUND INFORMATION

- 2.1 The Director of Places authorised the making of the order on 16 February 2016 for the reasons set out in his report (see Appendix 1). It can be seen from this that the route in question is Middlegate Lane between the A1077 at South Ferriby and Horkstow Road, Horkstow. The council published notice on 28 July 2016 and three adjacent landowners objected (see Appendix 2).
- 2.2 The purpose of the order is to record a byway open to all traffic that evidence shows already exists (see Appendix 3). The route is, for example, part of the Viking Way long-distance path and has been since this first opened in 1976. It is also on the list of streets, the public record of highways maintainable at the public expense. The objectors, on the other hand, have reacted as if we were creating a byway open to all traffic from scratch. They have concerns that include vandalism and fly-tipping. But while such considerations are regrettable, they are irrelevant in terms of whether the order should be confirmed. One of the objectors has in particular queried the order route’s status and its width in Horkstow. He has previously asserted that the order route is in fact a bridleway of a width of four feet six inches. But his evidence does not bear this out. Furthermore, the order route in South Ferriby was set out under the inclosure award as a way for all traffic forty feet wide. It was called Caistor Road, presumably because that is where it eventually went. It would have been unlikely to turn into a bridleway at the Horkstow parish boundary. This is especially so if this was too narrow even for a horse to use, which a width of four feet six inches, for example, would be. And the rest of Middlegate Lane other than the order route is a tarmacked carriageway.

2.3 The objector has since said though that he might recognise a width of five metres. This would be on the basis that the order route in Horkstow was a field-edge byway open to all traffic in an agricultural enclosure. Under the Highways Act 1980, five metres would be the maximum width in the absence of evidence to the contrary. The width in this instance is supposed to apply where the highway is threatened by interference such as from say ploughing or cropping. But it could be suggested to the Secretary of State that she take this scenario into account. She could then elect to modify the order accordingly should she see fit.

3. OPTIONS FOR CONSIDERATION

3.1 To recommend that the Secretary of State either confirm or not confirm the order, and if the former, without modification or with modification.

4. ANALYSIS OF OPTIONS

4.1 The order must be referred to the Secretary of State. Not referring the order is not an option. The Secretary of State's expectation is that the order-making authority will support the order it has made. For the order-making authority not to support its order, normally new evidence will have come to light since the order's making. Moreover, this will be of a quality that would have persuaded the order-making authority not to have proceeded had it had this evidence at the outset. In this instance, no such evidence has emerged.

4.2 Officers have given full consideration to the objectors' points of objection. Having done so, they are of the opinion that the order should either be confirmed as made or confirmed subject to the Horkstow length having a width of five metres.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING)

5.1 Financial

5.1.1 The Secretary of State will determine the order using written representations, a hearing or an inquiry. The cost should therefore be negligible. Only if there were to be an inquiry, one or more of the objectors engaged a barrister and we responded in kind might the costs rise significantly. In this worst-case scenario, costs could then be in the region of £5,000 to £10,000.

5.2 Staffing

5.2.1 The Environment Team will use their existing staff. Should there be an inquiry, they would probably ask Legal Services for assistance.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 Not applicable.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

7.1 When we advertised the making of the order, we also consulted the Brigg and Wolds ward members, South Ferriby Parish Council, Horkstow Parish Meeting, user groups, farming bodies and statutory undertakers.

8. RECOMMENDATIONS

8.1 It is recommended that we ask the Secretary of State to confirm the order without modification; but that we ask too that she consider the Horkstow length as having a width of five metres if she feels the current 8.5 metres is unsupportable.

DIRECTOR OF OPERATIONS

Church Square House
30-40 High Street
SCUNTHORPE
North Lincolnshire
DN15 6NL
Author: Colin Wilkinson
Date: 4 May 2017

Background Papers used in the preparation of this report: office file 44/1 held electronically by the Environment Team at Church Square House

APPENDIX 1

PUBLIC RIGHTS OF WAY – AUTHORITY TO MAKE ORDER

NORTH LINCOLNSHIRE COUNCIL

DIRECTOR OF PLACES



MIDDLEGATE LANE, SOUTH FERRIBY AND HORKSTOW

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To decide whether to add part of Middlegate Lane to the definitive map and statement.

2. BACKGROUND INFORMATION

- 2.1 Middlegate Lane is a public road. It connects South Ferriby with Melton Ross, a distance of about 8.7 miles or 14 kilometres. All but 1,900 metres of this is tarmacked. Tarmacked public roads do not belong on the definitive map. This is because they are open to all traffic and used mainly by mechanically propelled vehicles. They are not, therefore, public rights of way. The untarmacked section, however, has the character of a way used mainly by walkers and horse riders. This is a section running between the A1077 and Horkstow Road (see Appendix 1). Officers believe this to be a byway open to all traffic, which *is* a type of public right of way; and we have a legal obligation to add all known public rights of way to the definitive map. This is something we must do as soon as reasonably practicable on the discovery of evidence to that effect.
- 2.2 That Middlegate Lane is a highway is not in doubt; it is shown in the list of streets throughout its length (see Appendix 2). But what the list of streets records is highways maintainable at the public expense; it does not tell us those highways' status. Officers therefore also consulted the South Ferriby Inclosure Award 1804 and the Finance Act 1910 map. The former set out, allotted and appointed a public carriage road called Caistor Road and this is what we today call Middlegate Lane. And it further describes how Caistor Road joined up with "a public road on the edge of the Hill in the Lordship of Horkstow". This is clearly then Middlegate Lane's continuation within the adjoining parish as a way of the same status (see Appendix 3).
- 2.3 Exclusion from the adjoining hereditaments on the map prepared under the Finance Act 1910 is also consistent with a highway of a status greater than footpath. The hereditaments are the coloured plots. Coloured land was private and therefore subject to taxation.

Uncoloured land was thus probably public and uncoloured roads, tracks and lanes might then have been highways (see Appendix 4). This is a theory that has been upheld in court more than once. Admittedly, it has been shown that bridleways could be uncoloured too; but not when viewed in conjunction with such supporting evidence as the South Ferriby award. The latter is firm evidence of Middlegate Lane's status as a highway open to all traffic in 1804; so unless the higher rights have since been stopped up, on the basis of "once a highway, always a highway" this remains its status today. But stopping up requires a court order. In the absence of evidence of such an order, therefore, we must assume there is none.

- 2.4 The South Ferriby award is also sound evidence as to Middlegate Lane's width, namely: "... and we [the said Commissioners] do hereby award the several public Roads of the Breadth of forty feet ..." (see Appendix 5). There is, however, no award for Horkstow (it was enclosed privately). Nor does the Finance Act 1910 map show Middlegate Lane uncoloured between Horkstow Road and the parish boundary. For the 450 metres in Horkstow, therefore, all we can do is be guided by the width on the ground as it is today. This is a variable seven to ten metres; though it does include the adjacent tree-lined margin.
- 2.5 The Natural Environment and Rural Communities Act 2006 commenced on 2 May of that year. Section 67 of this stopped up all byways open to all traffic that were hitherto unrecorded. This was if certain exemptions did not apply. One of these concerns ways shown on the list of streets at commencement, but not the definitive map (as a footpath, bridleway or restricted byway). An example of such is Middlegate Lane between the A1077 and Horstow Road. In officers' opinion, therefore, the status of the latter is still that of byway open to all traffic, the 2006 Act notwithstanding.

3. **OPTIONS FOR CONSIDERATION**

- 3.1 Whether or not to add Middlegate Lane to the definitive map and statement as a byway open to all traffic between the A1077 and Horkstow Road.

4. **ANALYSIS OF OPTIONS**

- 4.1 Because Middlegate Lane is already on the list of streets, the only options for consideration are status and width. The evidence showing it to be a byway open to all traffic between the A1077 and Horkstow Road is very strong. An inclosure award required an Act of Parliament and they remain legally binding to this day. A way for all vehicles with the character of a bridleway, moreover, defines a byway open to all traffic. This definition has been upheld in the court of appeal.

- 4.2 The length of Middlegate Lane in question is also part of the Viking Way long-distance footpath. Adding it to the definitive map and statement will afford it greater protection.
- 4.3 This length of Middlegate Lane is already a highway maintainable at the public expense; so the order would change nothing in this regard.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING)

5.1 Financial

5.1.1 The Environment Team's existing budget would bear in full the cost of making the order. We would confirm it, too, if the order were to be unopposed. This should amount to a sum under £1,000. If the order were to be duly opposed, we would take a further report to Planning Committee. This would outline the costs arising from referral to the Secretary of State.

5.2 Staffing

5.2.1 The Environment Team's existing staff would make and confirm the order. If objections triggered an inquiry, Legal Services' assistance could be called upon.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 Not applicable.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

- 7.1 The Brigg and Wolds Ward Members were invited to comment on this matter and raised no issues of concern in response.
- 7.2 Prior to making an order, we would firstly consult South Ferriby Parish Council and Horkstow Parish Meeting first. We are obliged by the legislation to consult affected local authorities in advance. This includes parish councils and meetings.
- 7.3 We would also consult, as usual, the appropriate user groups, affected owners and occupiers, farming organisations, conservation bodies and statutory undertakers.

8. **RECOMMENDATIONS OF INVESTIGATING OFFICER**

8.1 It is recommended approval be given to:

- 8.1.1 make an order adding Middlegate Lane between the A1077 and Horkstow Road to the definitive map and statement as a byway open to all traffic having firstly consulted South Ferriby Parish Council and Horkstow Parish Meeting;
- 8.1.2 prescribe a width of forty feet (12.2 metres) in South Ferriby and a variable seven to ten metres in Horkstow; and
- 8.1.3 confirm the order if it is unopposed; or
- 8.1.4 refer the order to Planning Committee if it is duly opposed to establish our stance before remitting it to the Secretary of State for the Environment, Food and Rural Affairs.

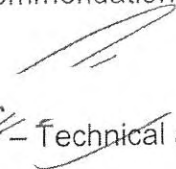
9. **DECISION**

9.1 The recommendations of this report are:

- (a) agreed
- (b) declined
- (c) deferred to Planning Committee

9.2 Comments (if any)

I endorse the recommendations set out above:

Signed 
Assistant Director – Technical and Environment Services

Authorised by


Director of Places

Dated: 16.2.16.

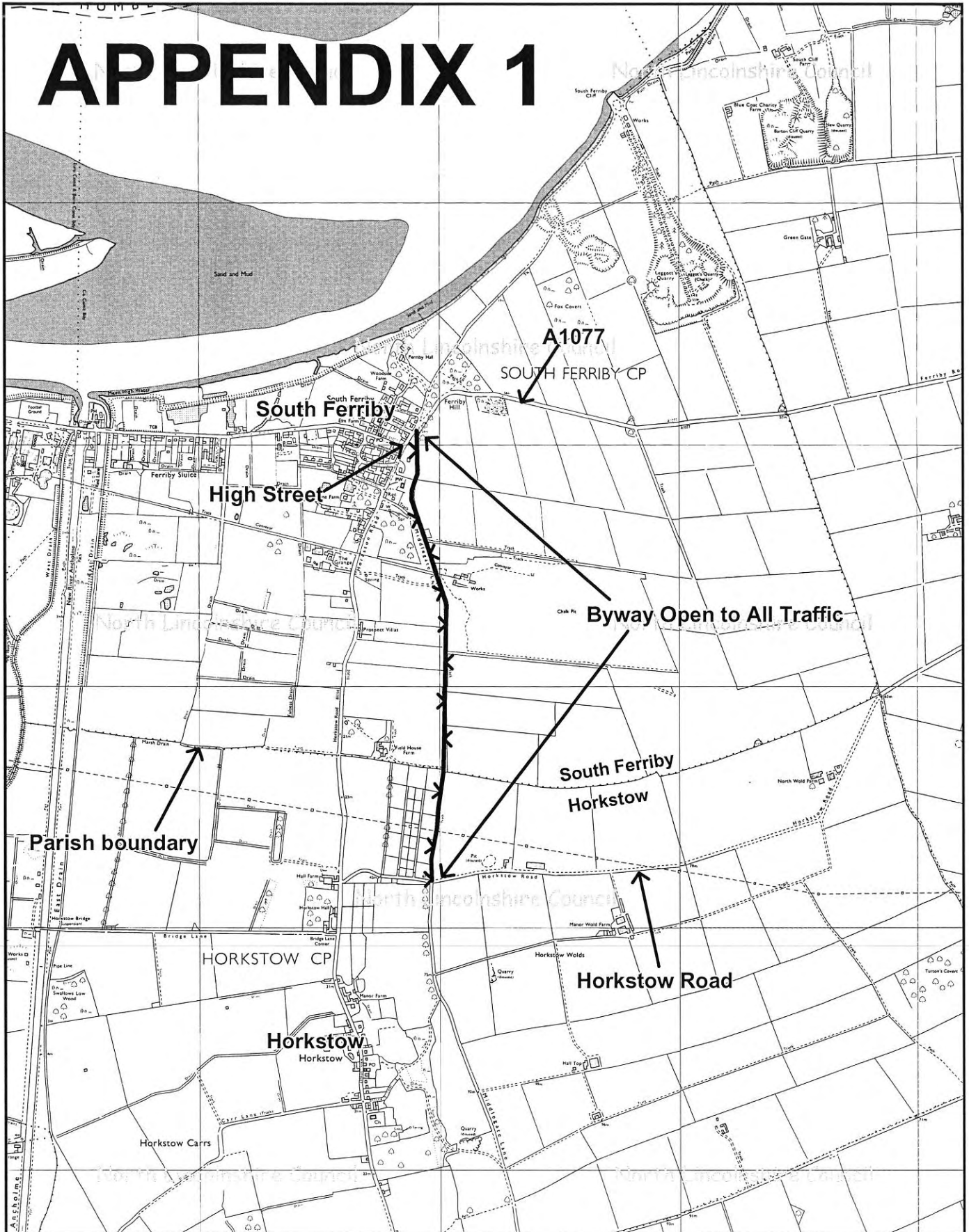
Church Square House
30-40 High Street
SCUNTHORPE
North Lincolnshire
DN15 6NL
Author: Colin Wilkinson
Date: 22 January 2016

**Background Papers used in the preparation of this report: office file
43/Middlegate Lane**

Where appropriate the report has been seen and commented on by (✓ or n/a)

Cabinet Member	Human Resources	Legal & Democratic	Finance	Property	IT	CMT
n/a	n/a	✓	✓	n/a	n/a	n/a

APPENDIX 1



Title:	Drawing No:	Version: 1
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Drawn by: Colin Wilkinson	Date: 22/01/2016	Scale @A4 1:21000
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	<p>© Crown copyright and database rights 2016 Ordnance Survey 0100023560</p>	 <p>www.northlincs.gov.uk</p>	<p>Director of Places Peter Williams BSc,DMS,CEng,MEI,MCMI,AMIMechE</p>
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APPENDIX 2

North Lincolnshire Council

List Of Streets Maintainable At Public Expense

Volume 1: Highways

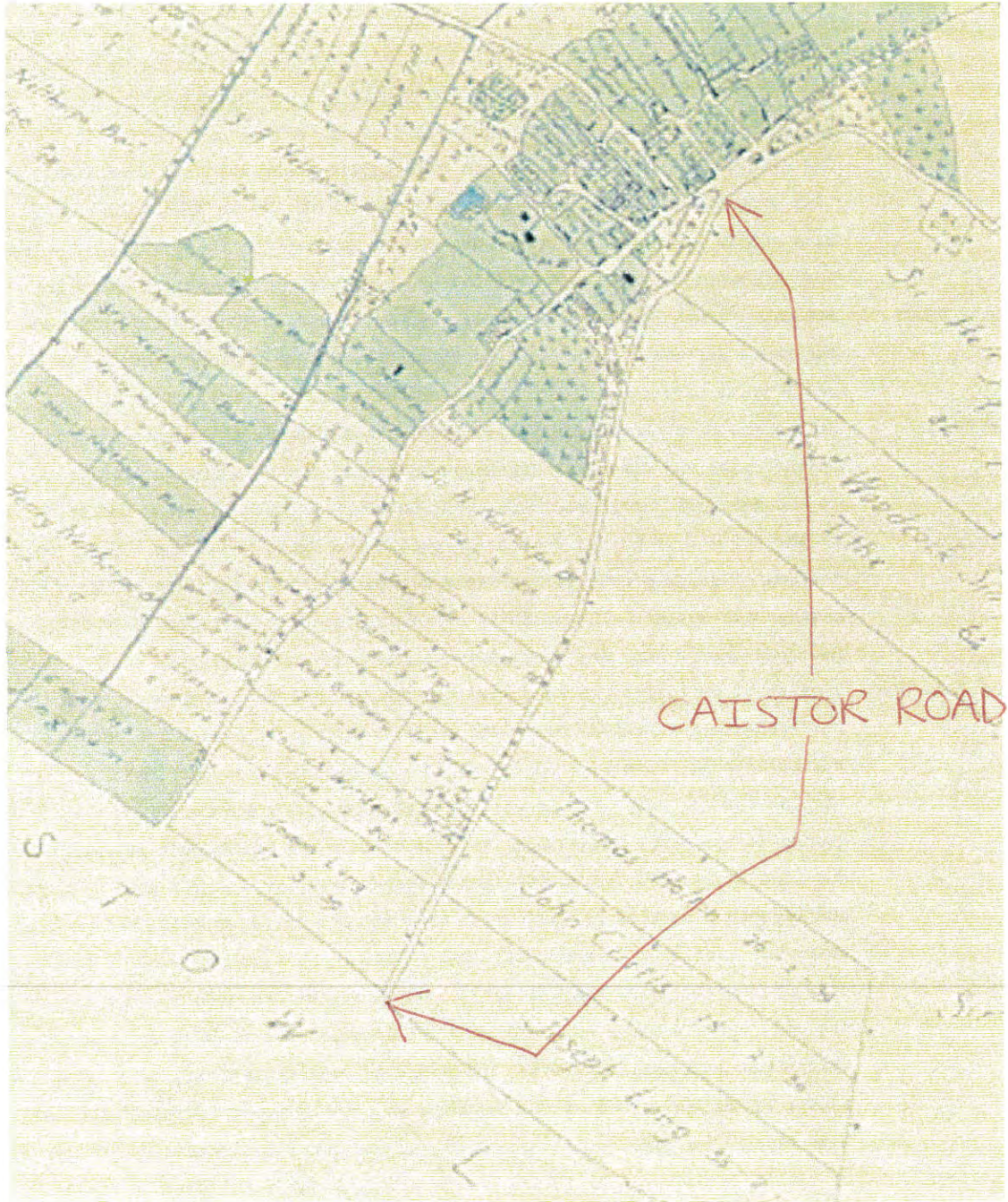
STREET NAME	TOWN	LOCALITY
Messingham Road	Scunthorpe	
Middle Barn Hill	Worlaby	
Middle Lane	Amcotts	
Middlegate Close	Barrow Upon Humber	
Middlegate Lane	Bonby	
Middlegate Lane	Elsham	
Middlegate Lane	Horkstow	
Middlegate Lane	Melton Ross	
Middlegate Lane	Saxby All Saints	
Middlegate Lane	South Ferriby	
Middlegate Lane	Worlaby	
Middleton Close	Messingham	
Middleton Road	Bottesford	
Midland Road	Scunthorpe	
Mill Close	Scawby Brook	
Mill Croft	Scawby	
Mill Croft	Scunthorpe	
Mill Hill Drive	Bottesford	
Mill House Lane	Winterton	
Mill Lane	Barrow Upon Humber	
Mill Lane	Brigg	
Mill Lane	Broughton	
Mill Lane	East Halton	
Mill Lane	Goxhill	
Mill Lane	Kirton In Lindsey	
Mill Lane	Luddington And Haldenby	
Mill Lane	Scawby	
Mill Lane	South Ferriby	
Mill Lane	Westwoodside	
Mill Road	Crowle	
Mill Road	Hibaldstow	
Mill Road	Keadby	
Mill View	Barton Upon Humber	
Mill View Close	Epworth	
Mill View Gardens	Wrawby	

APPENDIX - 3 (page 1)

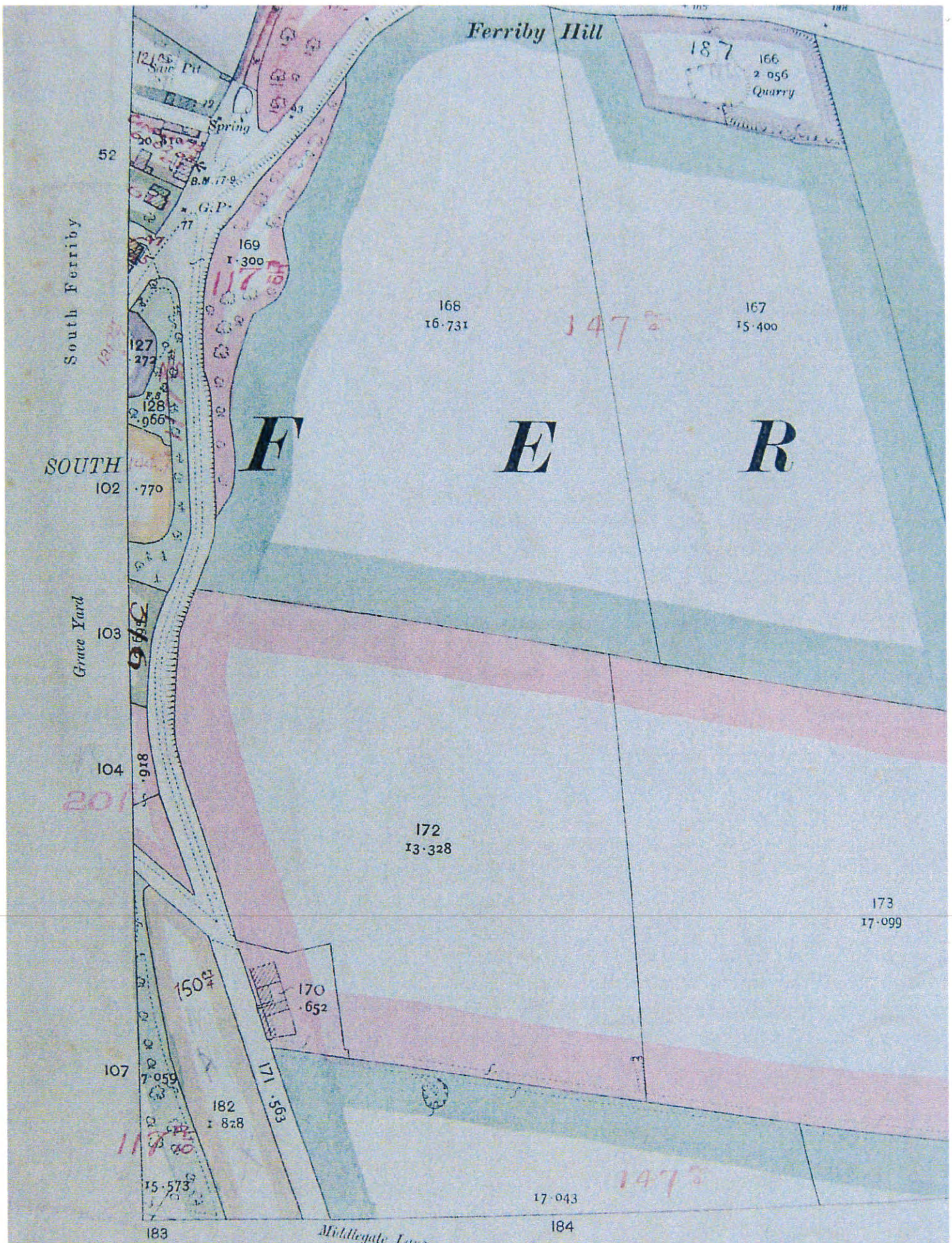
Horkstow Road. one other public Carriage Road to be called the Horkstow Road from the said High Street in the town of South Ferriby along the Course of the present Road between ancient enclosures and over the South Field to the public Road in the Lordship of Horkstow ALSO one other public Carriage Road to be
Caistor Road. called the Caistor Road from the said High Street within the Town of South Ferriby Southward up the Hill East of the Church and thence over the South Field to a public Road on the edge of the Hill in the Lordship of Horkstow AND we the said Commissioners do order direct and appoint that all the Bridges and Tunnels across the same public Roads shall be from time to time supported and kept in repair by such persons and in like manner as the same public Roads are by law to be amended and kept in repair AND we the said Commissioners have set out allotted and appointed and do hereby award the
Private Roads. several private Roads and Ways next hereinafter described through over and upon the Lands and Grounds do directed to be divided and inclosed that is to say
Marsh Road. One private Carriage and Drift Road of the Breadth of forty feet to be called the Marsh Road from the Winterton Road between Allotments made to Thomas Smith and Sir Henry Nelthorpe Southward to the Allotment made to the said Sir Henry Nelthorpe ALSO one other private Carriage and Drift Road
Field Road. of the Breadth of Thirty feet to be called the Field Road from the Barton Road between Allotments made to Sir Henry Nelthorpe and John Waddingham Southward between the Rectors Allotments to other Allotments made to the said Sir Henry Nelthorpe ALSO one other private Carriage and Drift Road of the
Church Hill Road. Breadth of forty feet to be called the Church Hill Road from an ancient Lane between the Rectory Homestead and a Homestead of Joseph Toft South Eastward to the Caistor Road AND we do also Order and direct that the footway now used over an ancient Inclosure of Joseph Long from the South Grange to the Manor House shall be discontinued ALL which said private roads and Ways hereinbefore described shall respectively be for the use of the Owners and Occupiers of Land in the parish of South Ferriby aforesaid for the time being for ever with Horses Cattle and Carriages for the purposes of occupation only AND we the said Commissioners do order direct and appoint that all the same private Roads and Ways only AND also all the Bridges and Tunnels across the same shall for ever hereafter be repaired maintained and kept in repair by the surveyors of the Highways in South Ferriby aforesaid for the time being by a rate or assessment on all and every the Owners and Occupiers of the Lands and Grounds in the parish of South Ferriby aforesaid divided and inclosed by virtue of the said recited Act in proportion to each persons estate and Interest therein AND we the said Commissioners have set out and appointed and caused to be made and do hereby award the several public Drains
Public Drains. Banks and Watercourses next hereinafter described within the parish of South Ferriby aforesaid that is to say one public Drain to be called the Fulseas Drain
Fulseas Drain. of the width of four feet at the Bottom from ancient Inclosure of John Waddingham called Coney Garths Northward through part of the South Field and across ancient Inclosures of Sir Henry Nelthorpe and the Marsh to and under the Winterton Road thence Northward of the width of five feet at the

APPENDIX 3 (page 2)

Extract from South Ferriby Inclosure Award Map



APPENDIX 4



Surveyed in 1886. Revised in 1906.

CHARACTERISTICS AND SYMBOLS

County	— — — — —	C	Municipal Wards	— — — — —	W	Change of
County	— — — — —	C	Urban Districts	— — — — —	D	which the
	— — — — —	P	Civil Parishes	· · · · ·	P	Antiquated
Boroughs	— — — — —					Incorporated
						in 1835

87
182
7 038

183
15 572

254
27 043

188 20073

186 7 201 *212*

227
15 541

189 9 131

200 11 497 *2312*

242
8 275

170

144
TV

243
1 474

225 11 414
55

10 Lane

245
3 100

246

198 7-307

212

199 9-131

200 11-857

2312

244

757

225 10-414

55

226
9-722

VI 15.

12

4 ft. T.K.H.

226

243 3-474

242
8-985

245
5-167

241
5-199

247
18-934

GLANFORD BRIGG R.D.

M i d d l e g a t e L a n e

APPENDIX 5

- 5 -

surveyor named in the said Act for that purpose and who also took and subscribed the Oath by the said Act required before he acted as surveyor and which is also hereunto annexed And the said survey Admeasurement and plan having been delivered to us pursuant to the directions of the said Act AND we the said Commissioners having at Meetings held by us for that purpose pursuant to the said Act received the claims in writing delivered to us by all persons claiming any Manor or Manors Lands Tythes Shares commonable or other rights in or upon the said Open Common Fields Meadows Pastures and other commonable Lands and Waste Grounds by the said Act directed to be divided and inclosed AND having afterwards caused to be given public Notice as directed by the said Act of all such claims which had been so made before us and appointed Days and places when and where all parties concerned might appear before us and show cause for or against the Allowance or Disallowance of the said Claims at which Meetings we the said Commissioners did examine into settle and determine the same AND we the said Commissioners after settling and appointing the several public and private Roads hereby awarded did cause public notice thereof to be given as directed by the said Act AND no person or persons appealed against the disposition of any of the said Roads AND we the said Commissioners having duly considered all other matters and things to us referred and the several powers and Authorities in us vested in and by the said Act and having completed the said Division and Allotments according to the best of our skill and Judgment pursuant to the Tenor and true meaning of the said recited Act WE the said John Wilbar and Joseph Dickenson have caused to be formed and drawn up AND do hereby make public and declare this O U R A W A R D in writing of and concerning the premises that is to say We the said Commissioners^{do} hereby express and declare that by the said Survey and Admeasurement so made as aforesaid it appears that the Quantity of One thousand four hundred and sixteen acres three roods and thirty six perches are contained in the said Fields Lands and Grounds so intended to be inclosed as aforesaid AND we the said Commissioners have set out Allotted and appointed and do hereby award the several public Roads of the Breadth of Forty feet next hereinafter described through and over the Lands and Grounds by the said Act directed to be divided and inclosed that is to say One public Carriage Road to be called the Barton Road from the High Street within the Town of South Ferriby North Eastward up the Hill along the course of the present Road to the South East corner of an ancient Inclosure called Saintfoin Close and thence over the North Field to the public road in the Lordship of Barton ALSO one other public Carriage Road to be called the Winterton Road from the said High Street through a lane called Gibsons Lane within the Town of South Ferriby into the Common pasture between ancient Inclosures of Sir Henry Nelthorpe Baronet and Thomas Holton and thence Westward over the said common pasture to the public road at and over the Ancholme Sluice to the Lordship of Winttingham ALSO

Public Roads.

Barton Road.

Winterton Road.

RECEIVED
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Appendix 2

Andrew Jackson

..... Solicitors

FIRST CLASS

Mr C Wilkinson
North Lincolnshire Council
Pitwood House
Ashby Road
Scunthorpe
DN16 1AB

Our Ref: NGD/ce/12836/16

Your Ref:

Date: 4 August 2016

BY EMAIL AND POST
colin.wilkinson@northlincs.gov.uk

Dear Mr Wilkinson

Re: Definitive Map Modification (Byway Open to all Traffic 1, South Ferriby and Horkstow Order 2016(1))

We write further to your letter of 27 July 2016.

Please note that we act for the trustees of the Clifford Nicholson No. 1 Settlement and also L.F.C. Horkstow Limited and we would be obliged if you would direct all future correspondence to ourselves.

For the avoidance of doubt, our clients object to the Definitive Map Modification Order in question. Their objections are detailed in our letter of 22 July 2016 with enclosures which we understand you have received. If you have not received it, please confirm and we will send you another copy.

You will note that our clients objections are discreet. Their objections are not to the fact of the route itself but the width.

Our clients had thought you had understood their concerns and you were intending to change the proposed Order but this appears not to be the case. An 8.5 metre width is unjustifiable in the circumstances and we would very much like to meet you on site to explain our clients position in more detail if this is not accepted by you.

Please confirm whether our client's position regarding the width of the route and its suggestion of Kent Carriage Gaps are accepted?

If they are not accepted, we would also like to consider the evidence in support of the application for the modification in question and in the circumstances we would be grateful if you could forward us a copy of the application and the evidence in support. On receipt of this we will consider it with our clients and then contact you again to arrange an appointment on site to consider the modification in more detail.

Cont'd ...2
NGD/ce/12836/16

Andrew Jackson
..... Solicitors

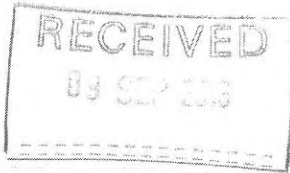
We look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Andrew Jackson', written over a dark, scribbled-out area.A small, dark, rectangular redacted area, likely covering the name of the signatory.

Partner

Email: @andrewjackson.co.uk



~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~
SOUTH FERRIBY
BARTON ON HUMBER
~~XXXXXXXXXXXXXXXXXXXX~~

TEL/FAX 01652 ~~XXXXXX~~ / 01652 ~~XXXXXX~~ / 01652 ~~XXXXXX~~

MOB NOS 07976 747916 / 7 / 8

VAT Reg no 128 856242

05-09-2016

Definitive Map Modification South Ferriby to Horkstow Order 2016 (1)

Dear Sir

As the owner of land adjacent to the track Middlegatelane South Ferriby I would like to record my objection to the current proposal to open the track to all traffic. There has been no mention as to who will maintain the road which from the A1077 South Ferriby to just past the Cemex Quarry entrance is a tarmac road but in a terrible state of repair. At the end of the tarmac South to Horkstow Road it is just a mud track with chalk in a few of the ruts and we are the only people to maintain it, and if the plan goes through we will not continue to do so. We are also concerned about Fly-tipping if the track is made more accessible as recently 105 tyres were dumped and had to be cleared at great expense. There does not appear to be a valid reason put forward to support this scheme. I have to say that I am very much in favour of the general public having access to the countryside and would be happy to see the track staying as it is now

Yours Sincerely

JAS. MARTIN & Co.

CHARTERED SURVEYORS
LAND AGENTS & VALUERS

A. C. INGLIS, B.Sc., F.R.I.C.S.
R. D. SPURRIER, M.A., M.R.I.C.S.
A. W. CARTER, B.Sc., M.R.I.C.S.
T. J. ANDERSON, B.Sc., M.R.I.C.S.

R. M. BATTLE, B.Sc. (AGRIC), F.R.I.C.S. (CONSULTANT)

FELLOWS OF THE CENTRAL ASSOCIATION
OF AGRICULTURAL VALUERS



8, BANK STREET,

LINCOLN.

LN2 1DS

TEL: (01522) 510234
FAX: (01522) 511274
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Our Ref: ACI/sda/SC.05
Your Ref: CTW/44/1

7 September, 2016.

North Lincolnshire Council
Church Square House
PO Box 42
Scunthorpe
North Lincolnshire
DN15 6XQ

F.a.o. Mr C T Wilkinson

Dear Sirs

Definitive Map Modification (Byway Open to All Traffic 1, South Ferriby and Horkstow) Order 2016 (1)
Scawby and South Ferriby Estate Company

We refer to your letter dated 27 July and to our telephone conversation yesterday.

We confirm that we act as agents for the Scawby & South Ferriby Estate Company who own land adjoining Middlegate Lane from where the lane leads southwards from the A1077 road to the southern side of the Chalk Pit.

We have discussed this with the Estate Company's farm tenants (although we have not so far had an opportunity to discuss with Cemex, who rent the Chalk Pit from the Estate Company). We are not aware of the existence of any evidence which confirms that the route known as Middlegate Lane is a byway open to all traffic. Moreover, if Middlegate Lane is subsequently opened to all traffic, there is concern that the route and adjoining land will become vulnerable to vandalism and fly tipping. Only very recently the North Lincolnshire Council had to remove 105 tyres which had been fly tipped. Accordingly, our clients, the Scawby & South Ferriby Estate Company and their tenants wish to object to the Order.

If there is evidence to confirm that Middlegate Lane is already a byway open to all traffic, perhaps you could kindly produce this. If it helps to meet, please do not hesitate to contact us with some suggested dates.

Cont/d.....

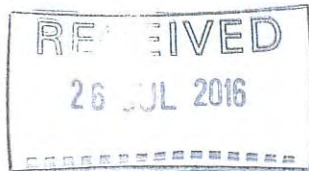
acisc05northlincsouncil7sep16

In the meantime, we note from our telephone conversation that the whole length of Middlegate Lane is recorded in "the List of Streets" as highway maintainable at the public's expense. If this is the case, please confirm if the North Lincolnshire Council are wholly responsible for maintenance of Middlegate Lane.

Yours faithfully

A handwritten signature in dark ink, appearing to be 'JAS MARTIN & CO', written in a cursive style.

JAS MARTIN & CO



Andrew Jackson

..... Solicitors

FIRST CLASS

FAO Mr Colin Wilkinson
Senior Public Rights of Way Officer
Technical and Environmental – Directorate of Places
North Lincolnshire Council
Pitwood House
Ashby Road
Scunthorpe
DN16 1AB

Our Ref: NGD/JW/12836/16

Your Ref:

Date: 22 July 2016

BY EMAIL AND POST
colin.wilkinson@northlincs.gov.uk

Dear Sirs

Draft "Definitive Map Modification (Byway Open to All Traffic 1, South Ferriby and Horkstow) Order 2016(1)

We write on the instructions of L.F.C. Horkstow Limited ("LFC Horkstow") following your exchange of correspondence with Bruce Rowles between 4 and 18 May 2016 and after your meeting on site on 21 March 2016.

At the outset we are instructed to advise you that LFC Horkstow have a tenancy of the Horkstow farm which stipulates that it is obliged to ensure that it does not permit or allow new rights of way to be created. This makes the proposed Definitive Map Modification a matter that will have far reaching legal and financial consequences for LFC Horkstow. We trust that this explains our clients' stance on this issue.

However, whatever the reason for our clients objection the fact is that it seems that you have a fundamental misunderstanding as to the width of the track in question. The draft order stipulates 8.5 metres and you do not seem to appreciate that the thinly wooded margin alongside the track on the Horkstow land is not part of the right. The thinly wooded margin and the track itself is on our client's land.

Please note, that our client has no objection to the track being used as a public bridleway and footpath (as it always has) but, to extend the width of this track through the Horkstow land to 8.5 metres is entirely inappropriate. For you to understand how this has arisen you need to have some understanding of how the South Ferriby parish was enclosed historically and you need to understand that the Horkstow parish was never enclosed.

We attach the following documents:

1. Map of South Ferriby after enclosure (enclosed 1801-1804).
2. Map of Horkstow from the Tithe Award 1840.
3. Map of Middlegate Lane revised 1906.
4. Map of Horkstow – Sales Particulars - 1919

5. Ordnance Survey Map of Horkstow showing Middlegate Lane dated 1956.
6. Ordnance Survey Map of Middlegate Lane dated 1974.
7. 5 Google Earth Photographs from 2007 and 2003.
8. Maps and correspondence with City of Lincoln and Parts of Lindsey Highways Department – 1972 and 1973.
9. Land Registry Screen Shot.
10. Diagram of "Kent Carriage Gap".

We comment on each document as follows:

1. Map of South Ferriby after enclosure (enclosed 1801-1804)

This shows the area of South Ferriby as it was enclosed and what is now Middlegate Lane is shown as Caistor Road, a road which has now been adopted by the council and which from hedge to hedge has the 8.5 metres width that is thought to be extended over the Horkstow land.

2. Map of Horkstow from the Tithe Award – 1840

Middlegate Lane is shown running between Plots 84 and 85 and 86. What is interesting is the kink which we have circled and which shows even as early as 1840 the width of the lane in question has been narrower over the Horkstow land.

3. 1906 Map

This map makes the same point. The width of and location of the "Bridle Road" (as it is described in handwriting) over the Horkstow land, as a continuation of Middlegate Lane, is significantly narrower.

4. 1919 Map

This map shows the lane at the time of the farm's sale in 1919 and the same point can be seen clearly.

5. Ordnance Survey Map 1956

A similar point arises. It is quite evident that Middlegate Lane over the enclosed land of South Ferriby is much wider than that over the non-enclosed land of Horkstow.

6. Ordnance Survey Plan of 1974

The same point can be made in relation to the 1974 Ordnance Survey Map but in this respect Bruce Rowles adds one further point. He specifically recalls that as a boy, trees were planted on the farm. The national marketing campaign at the time was "Plant a Tree in 1973" and the trees adjacent to Middlegate Lane on the Horkstow land were planted in 1973 and have grown up on Horkstow land. The trees have never been part of the track. They are not included in a continuation of the "enclosed" Middlegate lane through South Ferriby. The track has always been the same width. 4ft 6" is an appropriate width. Our client referred to that in his email of 15 May 2016 and we trust that this evidence can be considered accordingly.

7. Google Earth Photographs from 2007 and 2003

These photographs show firstly the whole track over the Horkstow land, secondly photographs of the top of the track adjacent the South Ferriby Parish Boundary in 2003 and 2007 and thirdly the south of the track showing the junction with the road again in 2003 and 2007. It is evident that the track is not 8.5 metres wide over the Horkstow land.

8. Maps and correspondence from 1972-1973

These enclosures corroborate Bruce Rowles' recollection detailed at para 6. above. They show the agreement with the City of Lincoln Highways department whereby, what was then Limestone Farming Limited accepted ownership of the trees when planted and agreed to take reasonable measures to ensure that the trees were not damaged. In return the trees were planted at the expense of the department and the department specifically agreed that this was "Off Highway" tree planting.

9. Land Registry Screen Shot

The yellow land is that which is tenanted to our client. It identifies the land registered to our client's landlord. There is no separate title for Middlegate Lane over the yellow land, unlike the position shown north of the Horkstow boundary into South Ferriby where the lane has a separate title.

Area of Land in question

Finally, by proposing the 8.5 metre width you are proposing to incorporate within the right of way a continuous strip of trees (with the exception of a short break underneath electricity pylons) on a steep bank which is practically impossible to walk through and certainly inaccessible to those on horse back. At a width of 8.5 metres over a 454 metre length the proposal involves requisitioning some 0.8 acres of our client's land. At a width of 4ft 6" the track represents just 0.13 acres over this 454 metre length. Our client just doesn't see the need for this extra 0.67 acres to become part of the right of way, particularly when this will mean responsibility for the maintenance of the strip of trees passing to the Council.

Conclusion

In all the circumstances we trust that you can now see that your proposal to bring the Definitive Map in line with what you understand the status already to be (your email of 18 May 2016) is not accurate. To the contrary, the draft order is proposing a change of status. It seeks to purloin land from our client. The draft order should not stipulate 8.5 metres including the thinly wooden margin alongside the beaten track (your email of 4 May 2016). Through Horkstow, Middlegate Lane is simply the beaten track, which the Council have at no time repaired or maintained. It should be 4' 6" and we trust that you will modify the draft order accordingly. Should you not modify the order when it's advertised then our client will of course be obliged to maintain what is quite evidently a very valid objection.

For the avoidance of any doubt our client has no objection whatsoever to Middlegate Lane running across the Horkstow land as a 4' 6" bridleway and footpath. Our client has never challenged either legitimate users or maps and sign posts showing this track as a public footpath or bridleway and part of the Viking Way. However, our client would want to ensure an intelligent design on the pinch points especially at the South Ferriby boundary to prevent use by 4x4 vehicles and motorbikes.

Cont'd ...4
NGD/JW/12836/16

Andrew Jackson

..... Solicitors

Our client would be content to utilise a Kent Carriage Gap, or something similar, at either end of the track. We attach a diagram of this and invite your comments on this proposal. Our client understands that the Council also wishes to ensure that the "right of way is an access which has the character of a way more likely to appeal to walkers and horse riders" and so our client hopes that this proposal finds favour.

We do trust that we have made our client's position clear.

As you put it in your email of 18 May 2016, it is a question of deducing a width. We trust that we have shown that there is much evidence supporting our client's position that the right of way should not include the wooded margin and that a sensible width would be the 4ft 6" which it proposes.

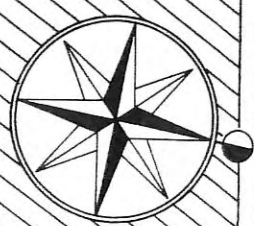
Should you have any queries on receipt of this letter please do not hesitate to contact the writer our Nick Dean.

Yours faithfully

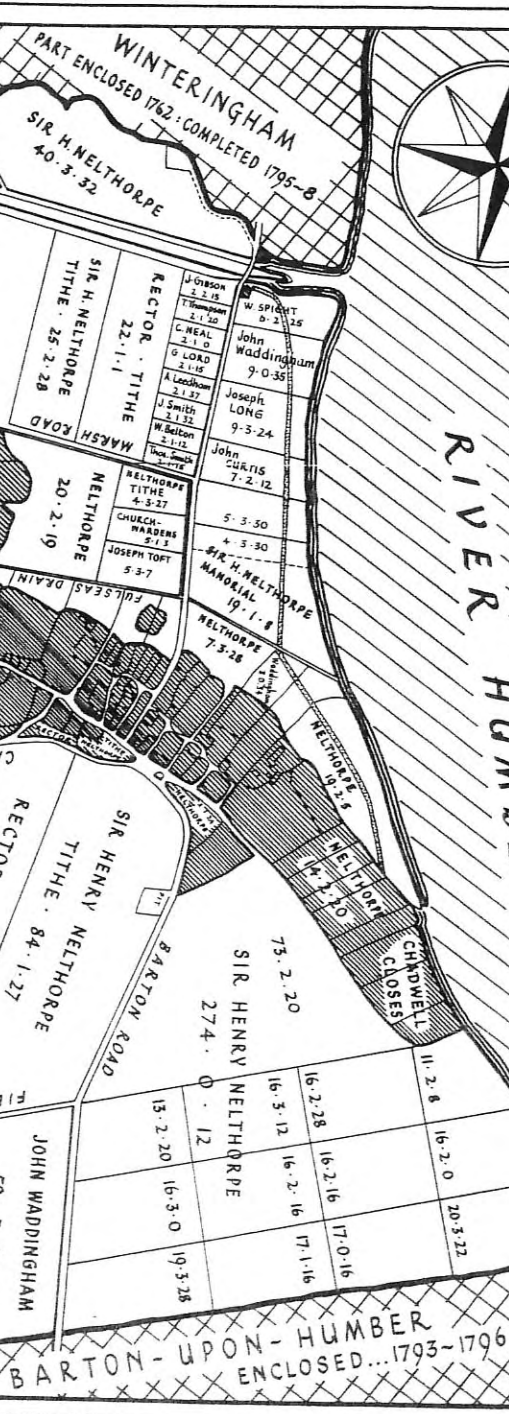


Andrew Jackson Solicitors
Email: @andrewjackson.co.uk

Enc



RIVER HUMBER



SOUTH FERRIBY ...
after Enclosure.
ENCLOSED...1801~1804.

HORKSTOW
ENCLOSED PRIVATELY

For Cornwall

OLD ENCLOSURES ARE SHADED

Mary Hudson
0.058

BARTON-UPON-HUMBER
ENCLOSED...1793-1796

WINTERINGHAM
PART ENCLOSED 1762: COMPLETED 1795-8
SIR H. NELTHORPE
40.3.32

SIR H. NELTHORPE
90.3.8

SIR H. NELTHORPE
27.1.11

SIR H. NELTHORPE
4.1.18

SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
25.2.36

SIR H. NELTHORPE
25.2.36

SIR H. NELTHORPE
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SIR H. NELTHORPE
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SIR H. NELTHORPE
25.2.36

SIR H. NELTHORPE
25.2.28

SIR H. NELTHORPE
20.2.19

SIR H. NELTHORPE
12.0.0

SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
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SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
22.3.20

SIR H. NELTHORPE
22.3.20

RECTOR . TITHE
22.1.1

RECTOR . TITHE
20.2.19

RECTOR . TITHE
4.3.27

RECTOR . TITHE
4.3.27

RECTOR . TITHE
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RECTOR . TITHE
4.3.27

W SPIENT
8.2.25

John Waddingham
9.0.35

Joseph LONG
9.3.24

John CURTIS
7.2.12

5.3.50

4.3.30

SIR H. NELTHORPE
MANORIAL
19.1.1.8

NELTHORPE
7.3.28

NELTHORPE
6.2.5

NELTHORPE
4.2.50

CHANDWELL
CLOSES

11.2.8

16.2.0

20.3.22

75.2.20

274.0.12

16.2.28

16.2.16

17.0.16

16.2.16

16.2.16

16.2.16

16.2.16

16.2.16

16.2.16

16.2.16

16.2.16

16.2.16

13.2.20

16.3.0

19.3.28

59.3.25

59.3.5

59.3.25

59.3.25

59.3.25

59.3.25

59.3.25

59.3.25

59.3.25

59.3.25

59.3.25

GLANFORD BRIGG R.D.

VI.16.

226
9-722

12
4 R. T. H.
225

M i d d l e g a t e

247
18-934

13 24-531

50
33-547

51
29-022

North Road

Quarry

49
195
073

B.M. 2238

253

283

298

302

305

40 11-685

65-518

66
19-178

67
21-540

H

48 34-578

23-386
75

PLAN OF
 THE RIGHT HONOURABLE
 THE EARL OF YARBOROUGH'S
HORKSTOW ESTATE

FOR SALE BY
 DICKINSON, RIGGALL & DAWY,
 1919.



1956.

215
30-21-21

ANCE SURVEY

560 or 6 Inches to 1 Mile

Provisional Edition

SHEET SETA 01 NW

LINCOLNSHIRE
BRIGG CO CONST

GLANFORD BRIGG RD

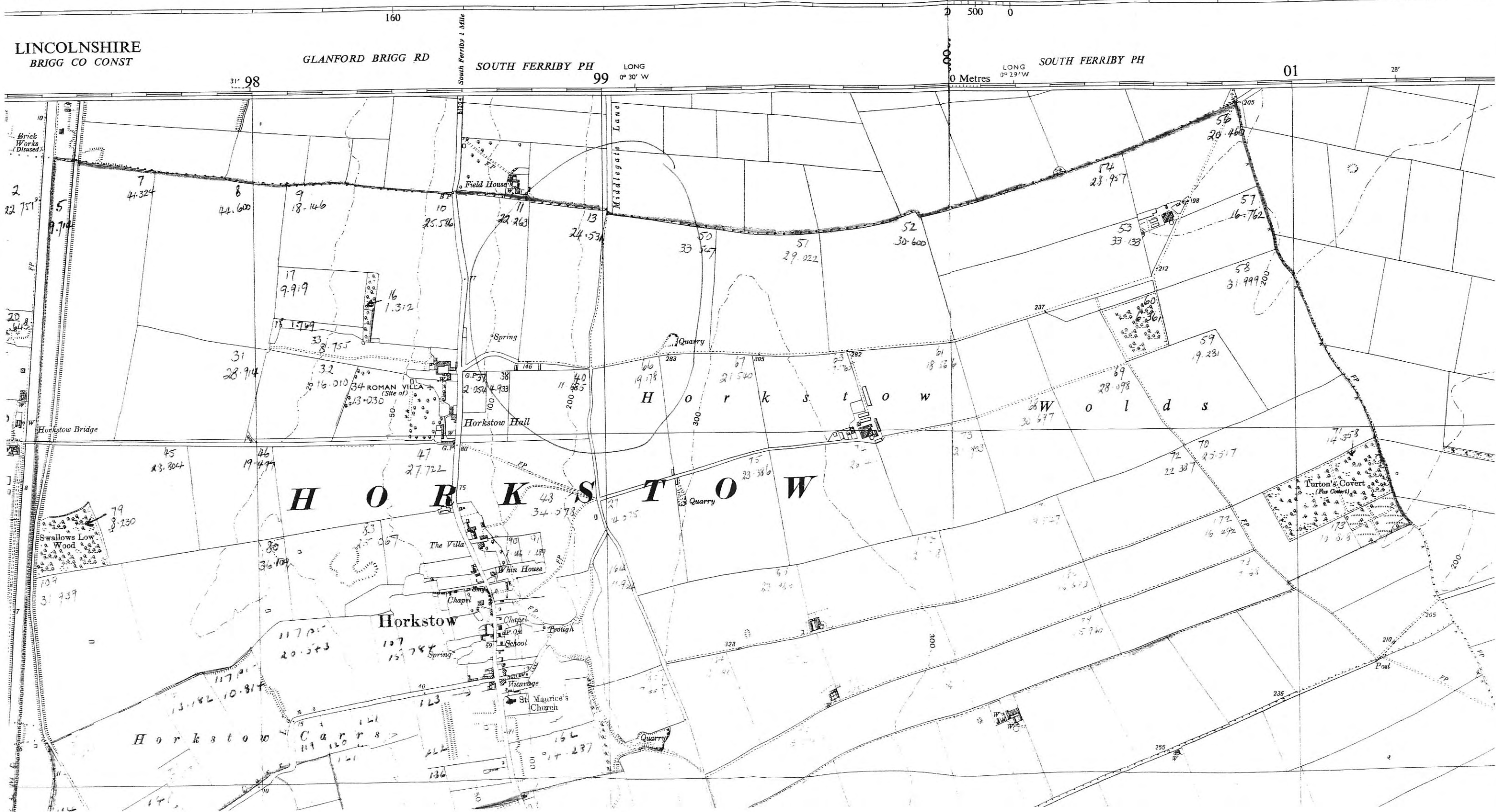
SOUTH FERRIBY PH

LONG
0° 30' W

SOUTH FERRIBY PH

01

28'



NCE SURVEY

HEIGHTS IN METRES

SE 0019

1974.

SE 9820-9920

GLANFORD BRIGG RD

SOUTH FERRIBY C/P

990 991 992 993 994 995 996

MIDDLEGATE LANE

ETL

1594
13.37ha
38.05

0283
5326ha
1.30

2272
7.709ha
19.05

2689
6.324ha
15.63

3400
3.729ha
9.22

(27)
3243
23.65

4842
11.506ha
28.43

6475
12.454ha
30.77

2724
1.000ha
2.47

MIDDLEGATE LANE

PH (detached)

Tank

67.0m

1.32m R.H.

(20)

(21)

(22)

6/2/2009

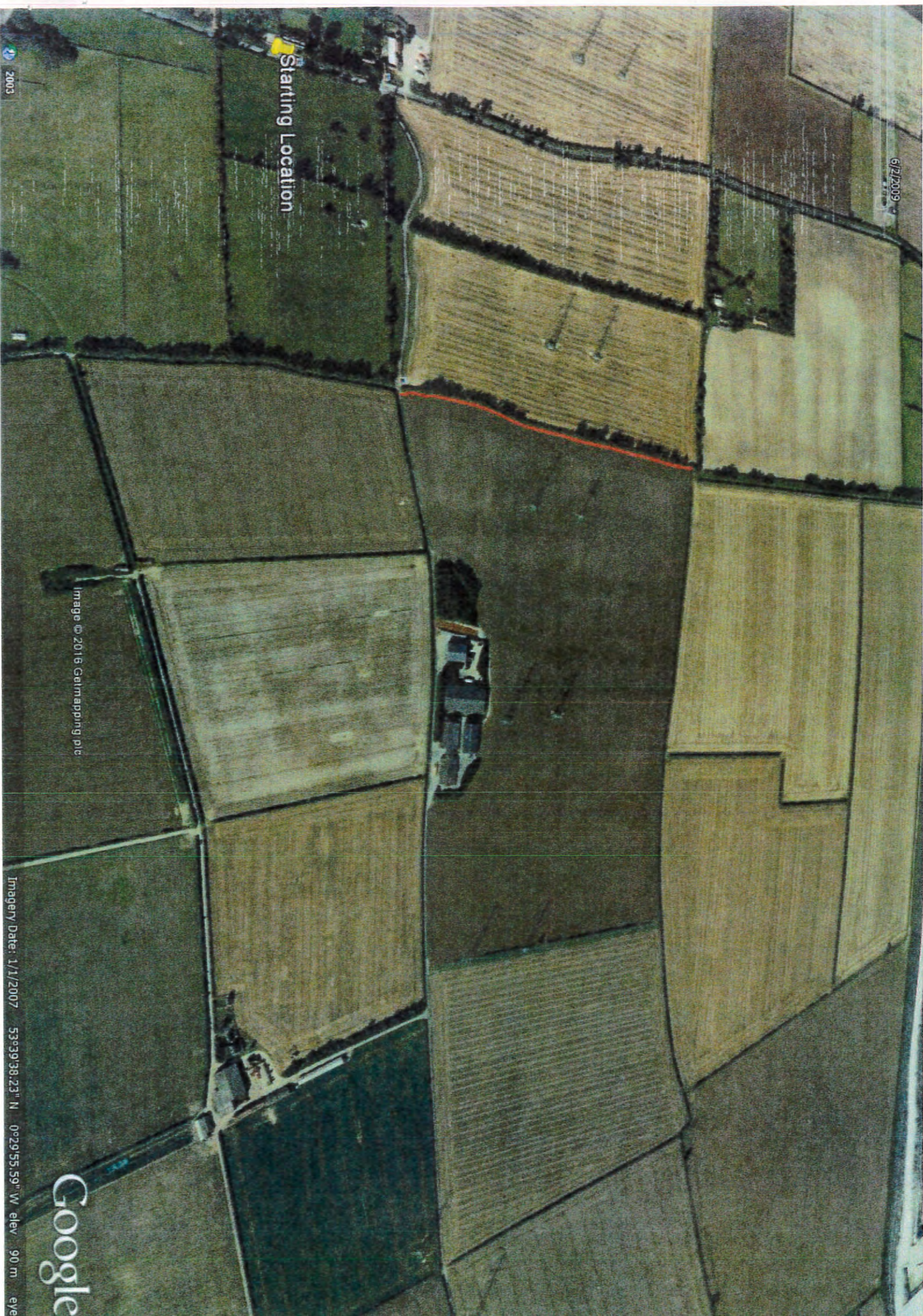
Starting Location

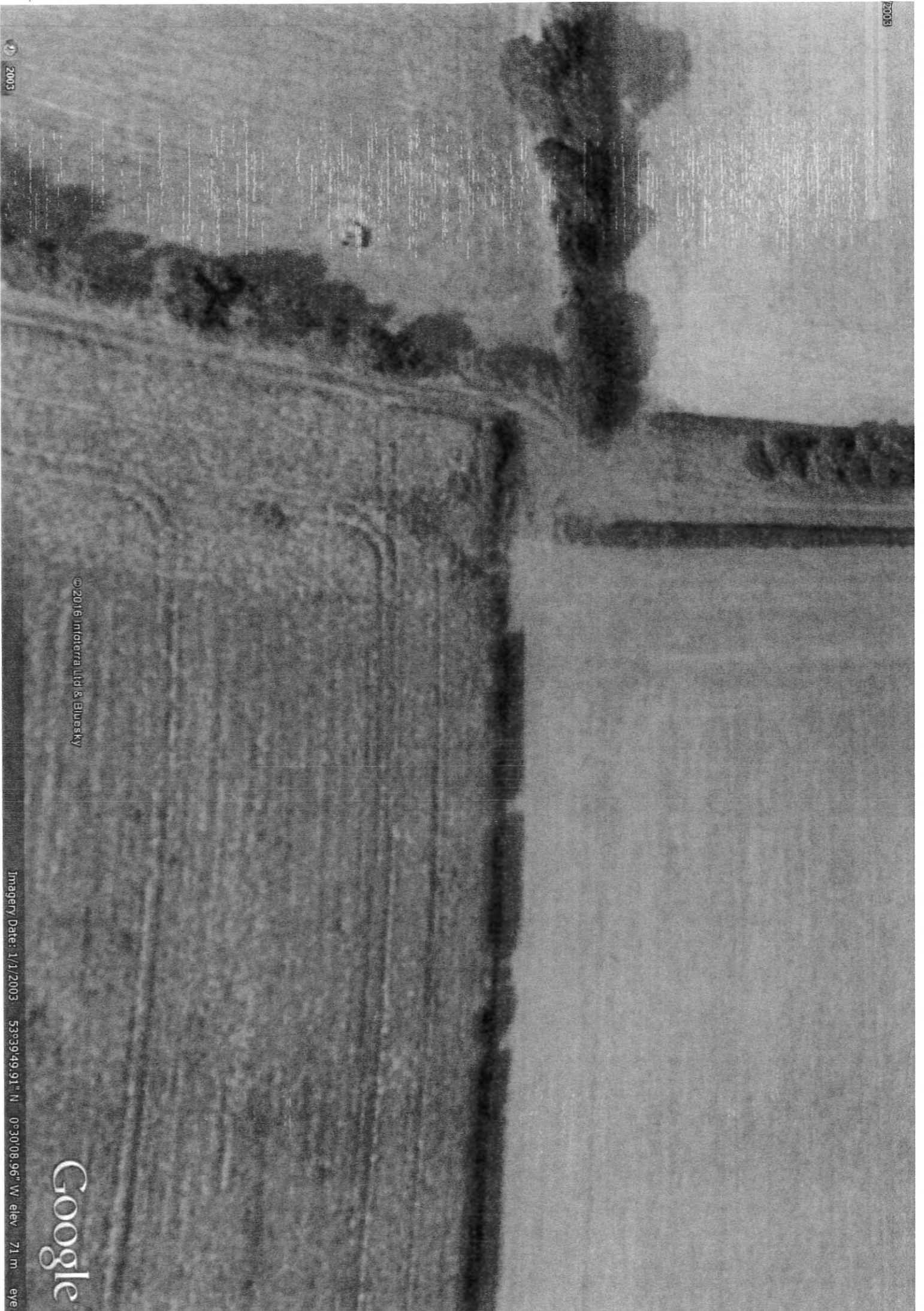
Image © 2016 Getmapping plc

Imagery Date: 1/1/2007 53°38'38.23" N 0°29'55.59" W elev 90 m eye alt

Google

2003

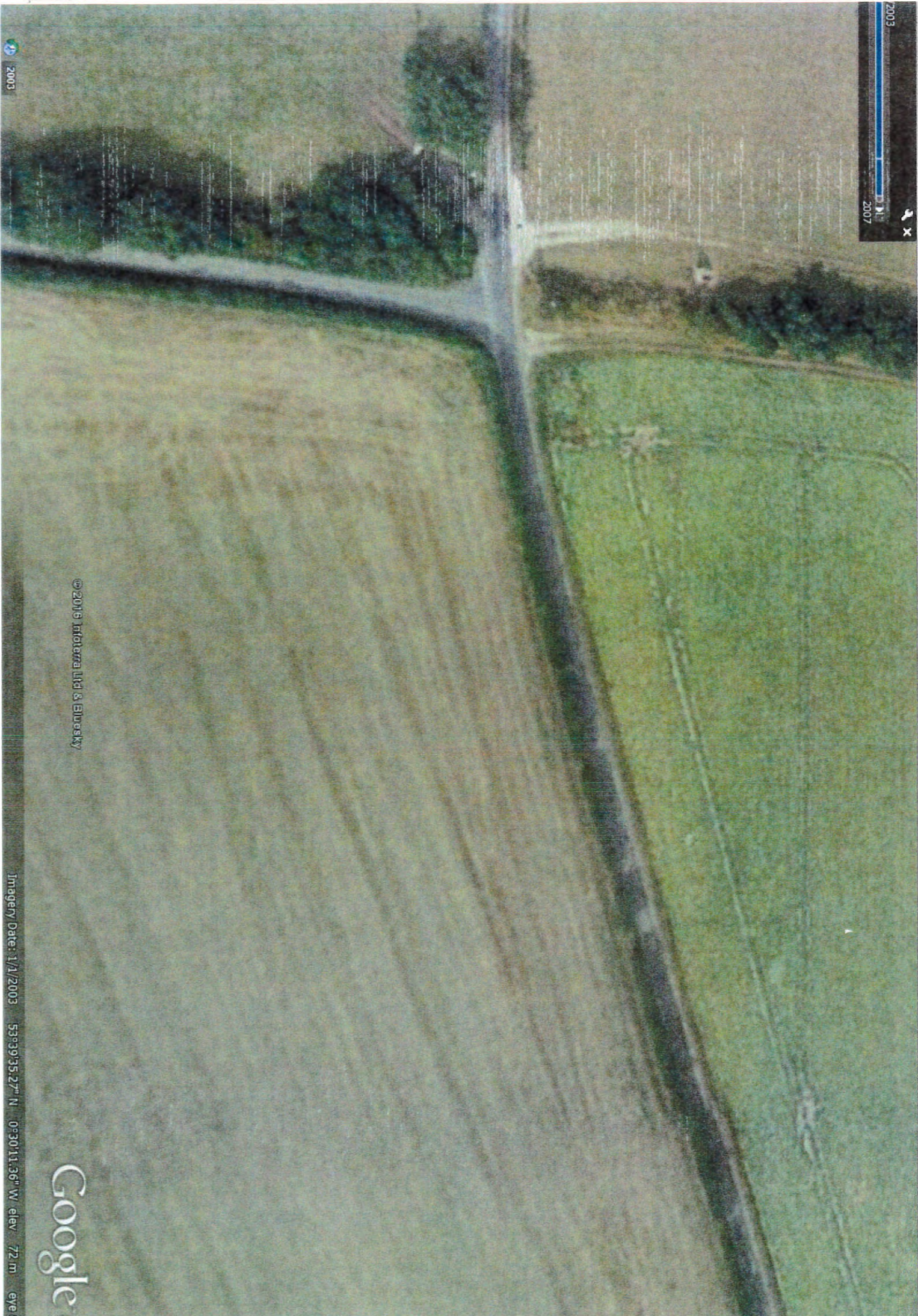




© 2016 Infoterra Ltd & Bluesky

Google

Imagery Date: 1/1/2003 53°39'49.91" N 0°30'08.96" W elev 71 m eye e



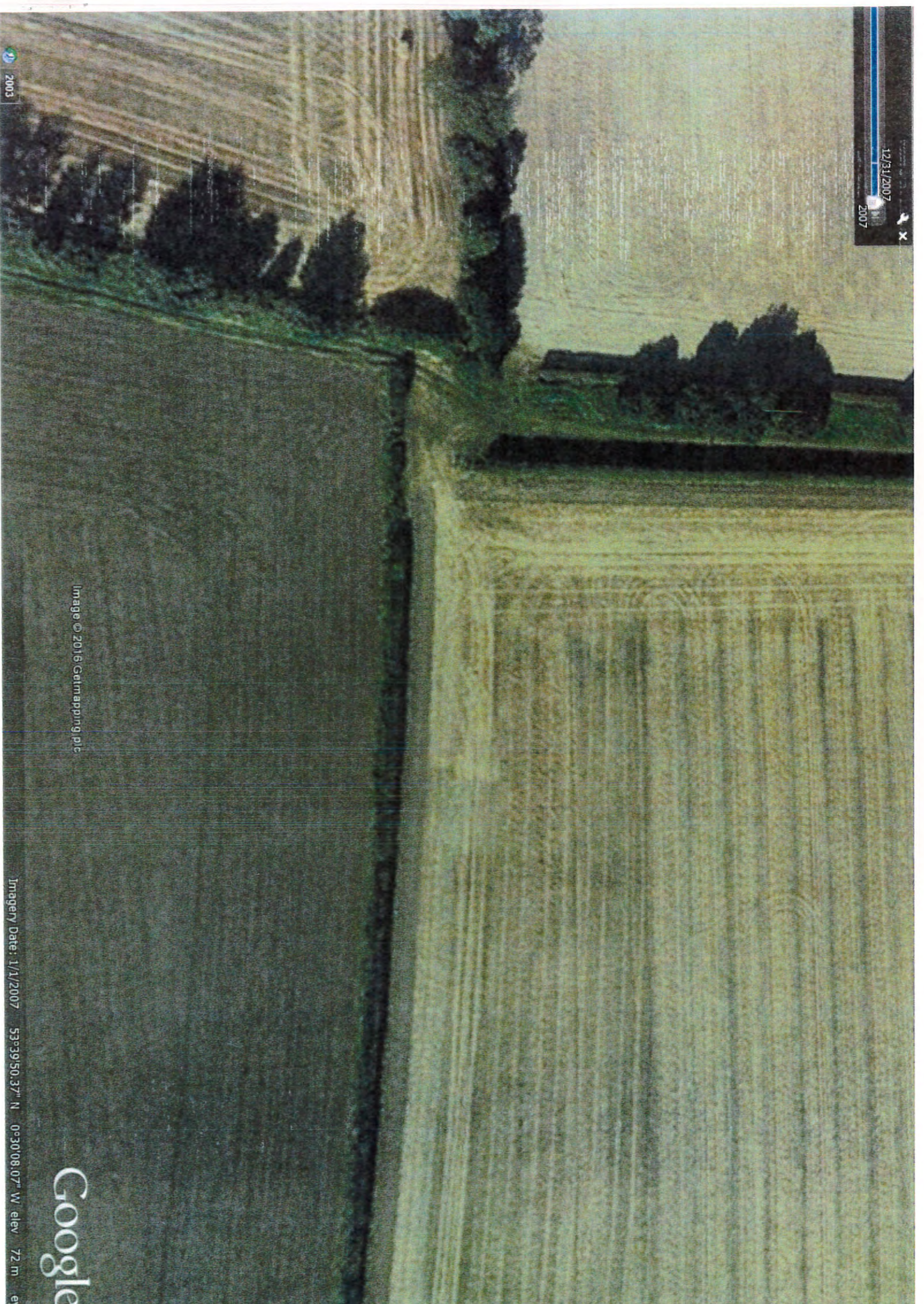
2003

© 2016 Infoterra Ltd & Bluesky

Google

Imagery Date: 1/1/2003 53°39'35.27" N 0°30'11.36" W elev. 72 m eye e

12/31/2007
2007



2003

Image © 2016 Getmapping plc

Google

Imagery Date: 1/1/2007 53°39'50.37" N 0°30'08.07" W elev 72 m eye e

12/13/2007



2003

Image © 2016 Getmapping plc

Imagery Date: 1/1/2007 53°39'35.31" N 0°30'11.28" W elev 72 m eye a

Google

County Offices

11 December 1953

Dear Mr. Lawler

Horton - Planting Scheme off highway

At long last I have been able to get a plan prepared for planting at Horton. If you are agreeable to my proposals please sign & return to me one copy of the attached duplicated letter, when I will endeavour to do the work.

It may be that some of the species may have to be substituted depending upon what we have left in the nursery.

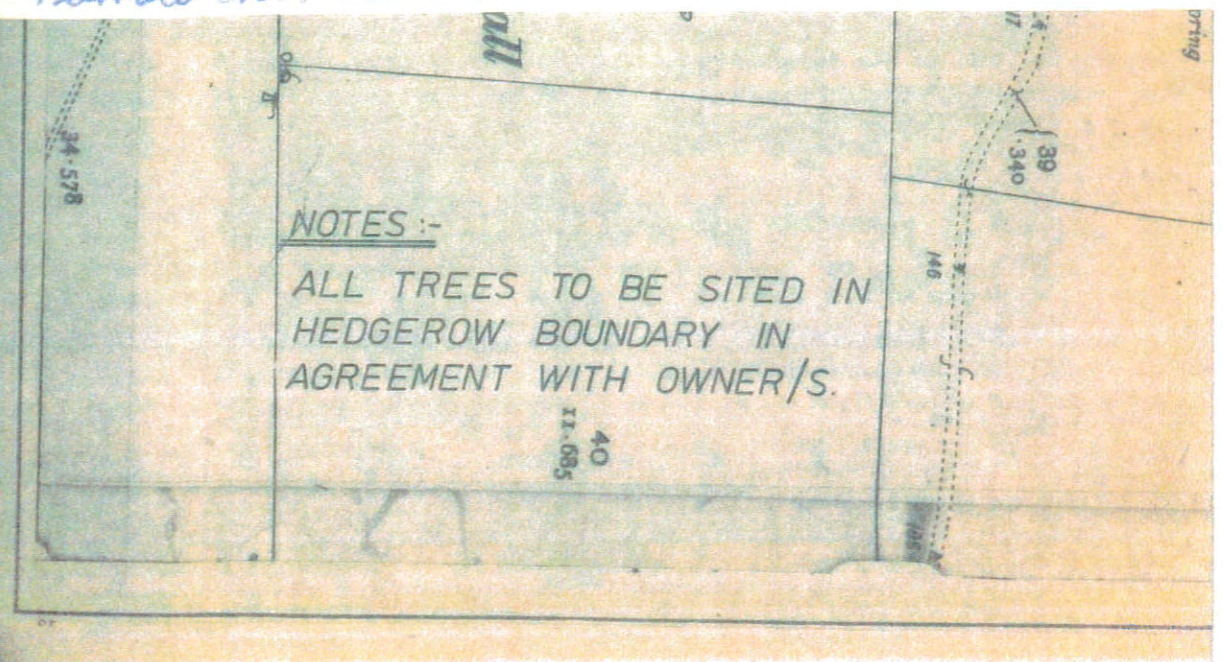
Hope you & the family well.

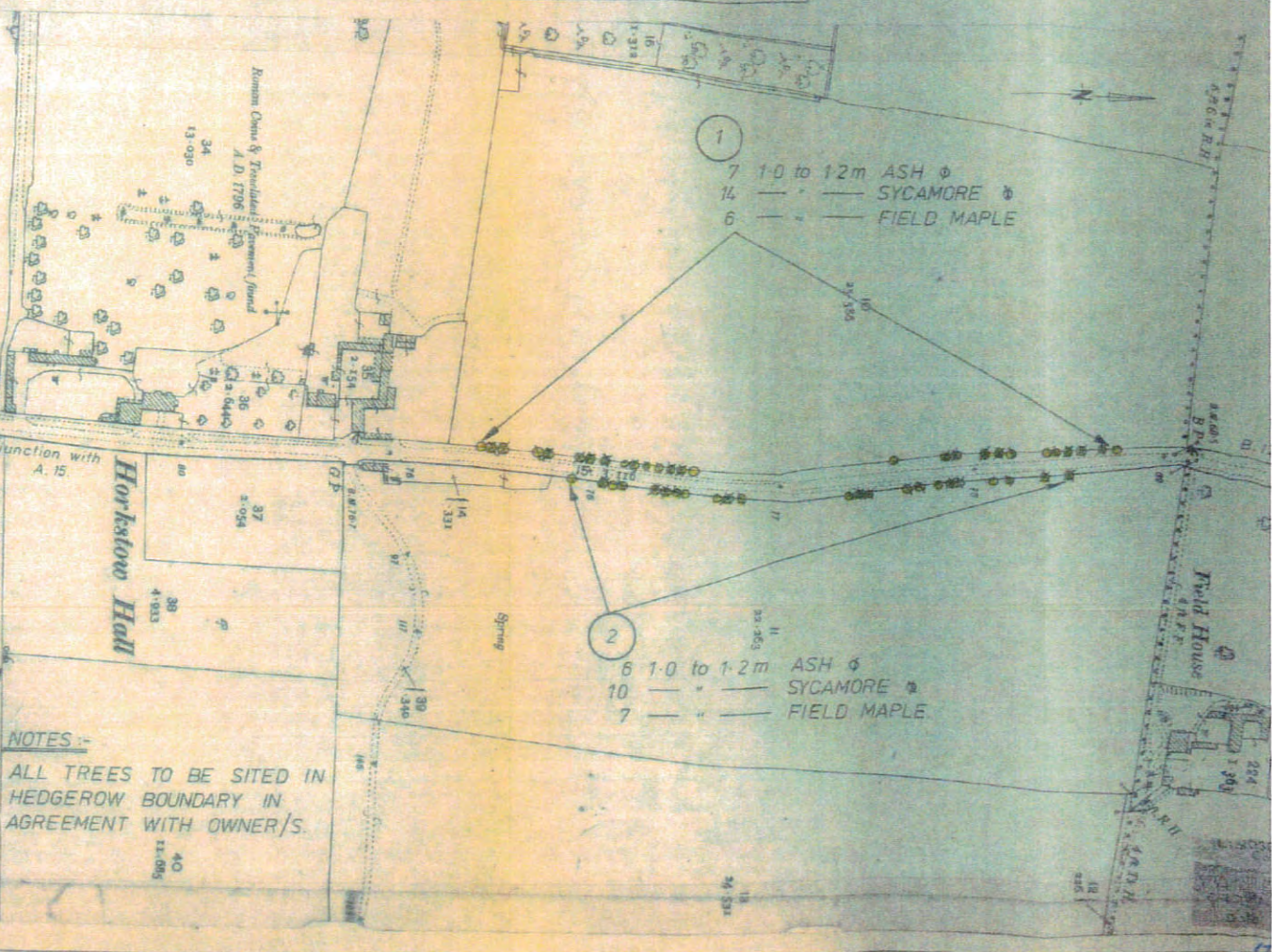
Best wishes

Yours sincerely

Arthur A. Dobson

Mrs. A. Lawler
Walk House
Borrow on Dunbar.





NOTES :-
 ALL TREES TO BE SITED IN
 HEDGEROW BOUNDARY IN
 AGREEMENT WITH OWNER/S.

Horstead Hall

Field House

Routon Oaks & Tressell
 A.D. 1796

B. 1204 from junction with
 A. 15

Spring

1

2

7 1.0 to 1.2m ASH φ
 14 — " — SYCAMORE φ
 6 — " — FIELD MAPLE

6 1.0 to 1.2m ASH φ
 10 — " — SYCAMORE φ
 7 — " — FIELD MAPLE

N

LINDSEY COUNTY COUNCIL — HORKSTOW, B.1204 'OFF HIGHWAY'
 PLANNED TREE PLANTING SCHEME

W.S. HYDES B.Eng. M.I.C.E.
 ACTING COUNTY SURVEYOR
 LINCOLN

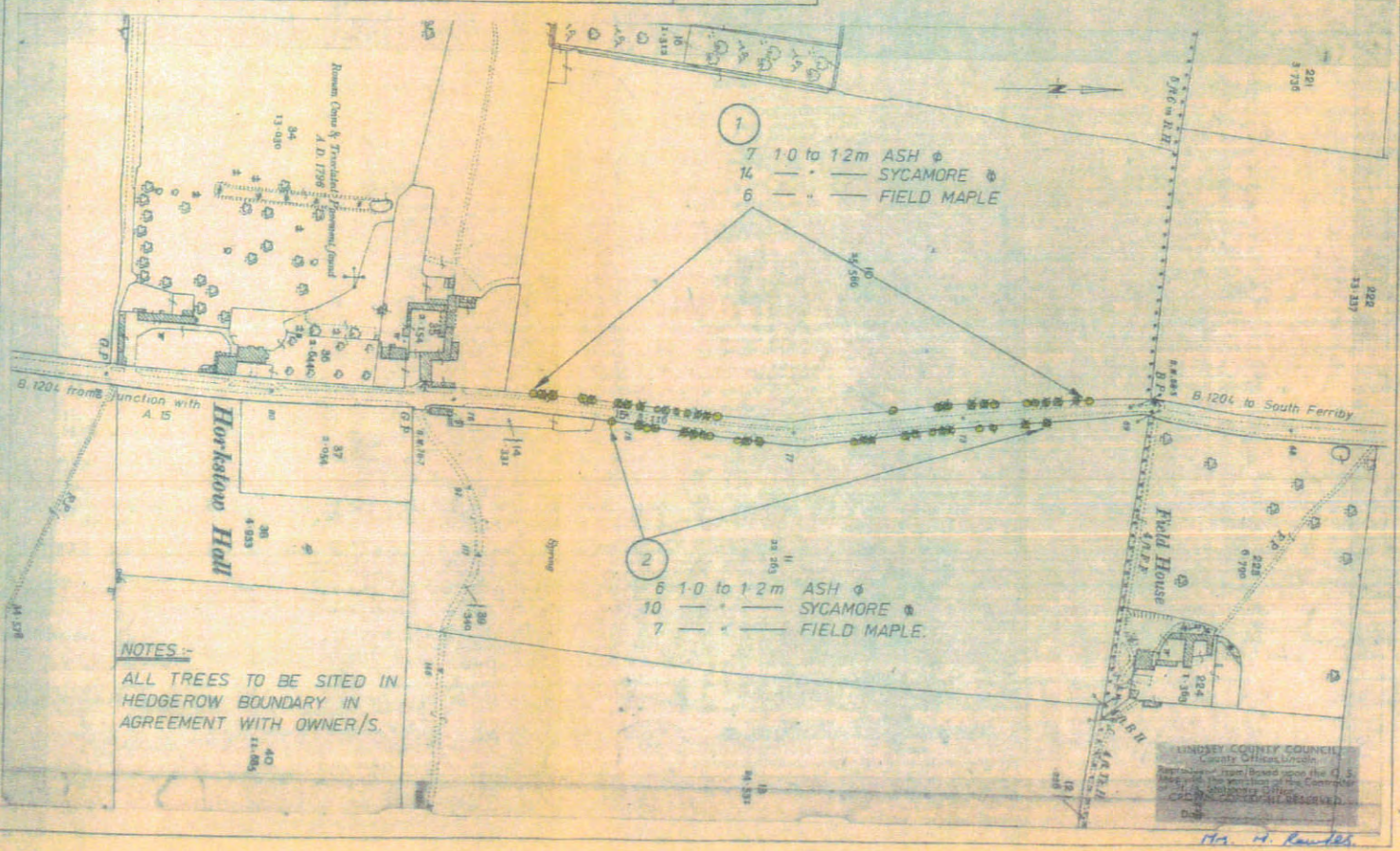
DRG. No. D/70/TREES/73-74

SCALE 1:2500

AMENDMENTS

DRAWN BY A.A.
 TRACED BY J.A.

FILE No. 64/4



OF LINCOLN



PARTS OF LINDSEY

HIGHWAYS DEPARTMENT
COUNTY OFFICES
LINCOLN
LNI INX
TELEPHONE 25282
Extension 147

E.
OR

YOUR REF.

DATE

10 November, 1972

e to Horkstow Hall, U/c
ld Leys Lane, C.234 "Off Highway"
Planting Schemes

tached one copy of each of the above-named plans.

Limestone Farming Company is agreeable to the "off
sals at Willoughton, please sign and return to me
e attached duplicated letter, when arrangements can
ertake the work at the expense of my Department.

ly,

e
r

er,



Limestone Farming Co. Ltd.,
WILLOUGHTON,
Lincs.

Your Ref:- D/AA/64/4/JC

Date:

Dear Sir,

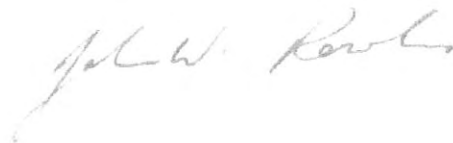
Willoughton, Old Leys Lane, G234 'Off Highway'
Proposed Tree Planting Scheme "Off Highway"

With reference to your letter of _____ concerning your proposal to plant the tree/s shown as Group No./s1, 2 and 3, on your drawing C/75/Trees/72-73, I am prepared to have your Department carry out this work and agree to:-

- 1) Accept ownership of the trees when planted; and,
- 2) Take reasonable measures to see that the trees are not damaged.

Yours faithfully,

Limestone Farming Co. Ltd.



The County Surveyor,
Lindsey County Council,
Highways Department,
Newland,
LINCOLN

From Jackson, Hardware, Kenosha

50 yd rolls of ~~2~~ $2\frac{1}{2}$ in $\times 1\frac{1}{4}$ in $\times 19$ gauge

galvanized wire mesh netting at $\frac{1}{2}$ 2/0/10

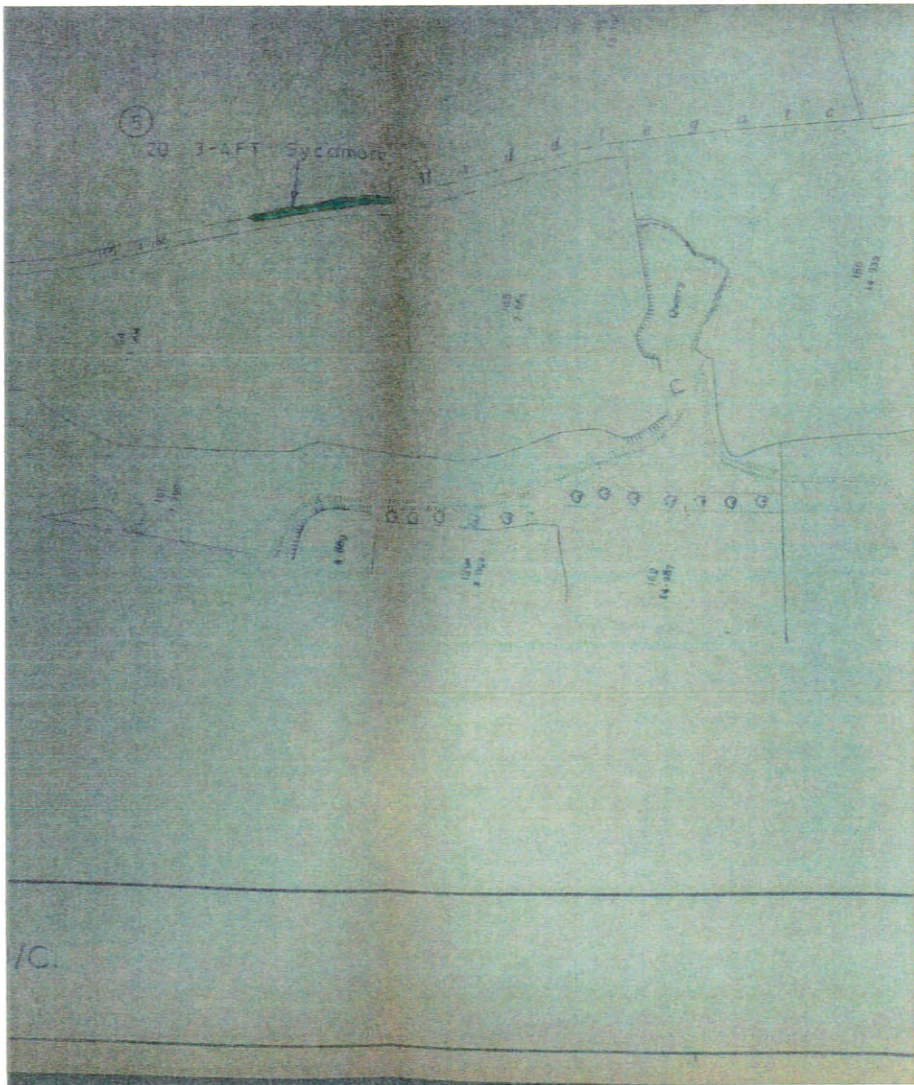
plus 12/9^d per 100 pieces for cutting into

27" lengths & tying into neat bundles of
66.

Try also McArthur & Co

Kelvin Way, West Bromwich

Worlabay V. 1-1966



Horkstow B 1204
Middlegate Lane

Mrs. Powell



EXTRACT FROM O.S. SHEETS 615, 616, 11-4

LINDSEY COUNTY C.C. INCIL
 County Clerk
 Reproduced from Based upon the O.S.
 Map with the sanction of the Controller
 of the Stationery Office.
 CROWN COPYRIGHT RESERVED
 Date: 1/17/69

CORRESPONDENCE FILE No.
 64/4

P.C. GANE, F.I.C.E., M.I.H.E.
 COUNTY SURVEYOR,
 LINCOLN.

DRG. No. C./48/TREES/69-70

OF LINCOLN



PARTS OF LINDSEY

HIGHWAYS DEPARTMENT
COUNTY OFFICES
LINCOLN
LN1 1NX
TELEPHONE 25282
Extension 147

YOUR REF.

DATE

10 November, 1972

to Horkstow Hall, U/c
Leys Lane, C.234 "Off Highway"
Planting Schemes

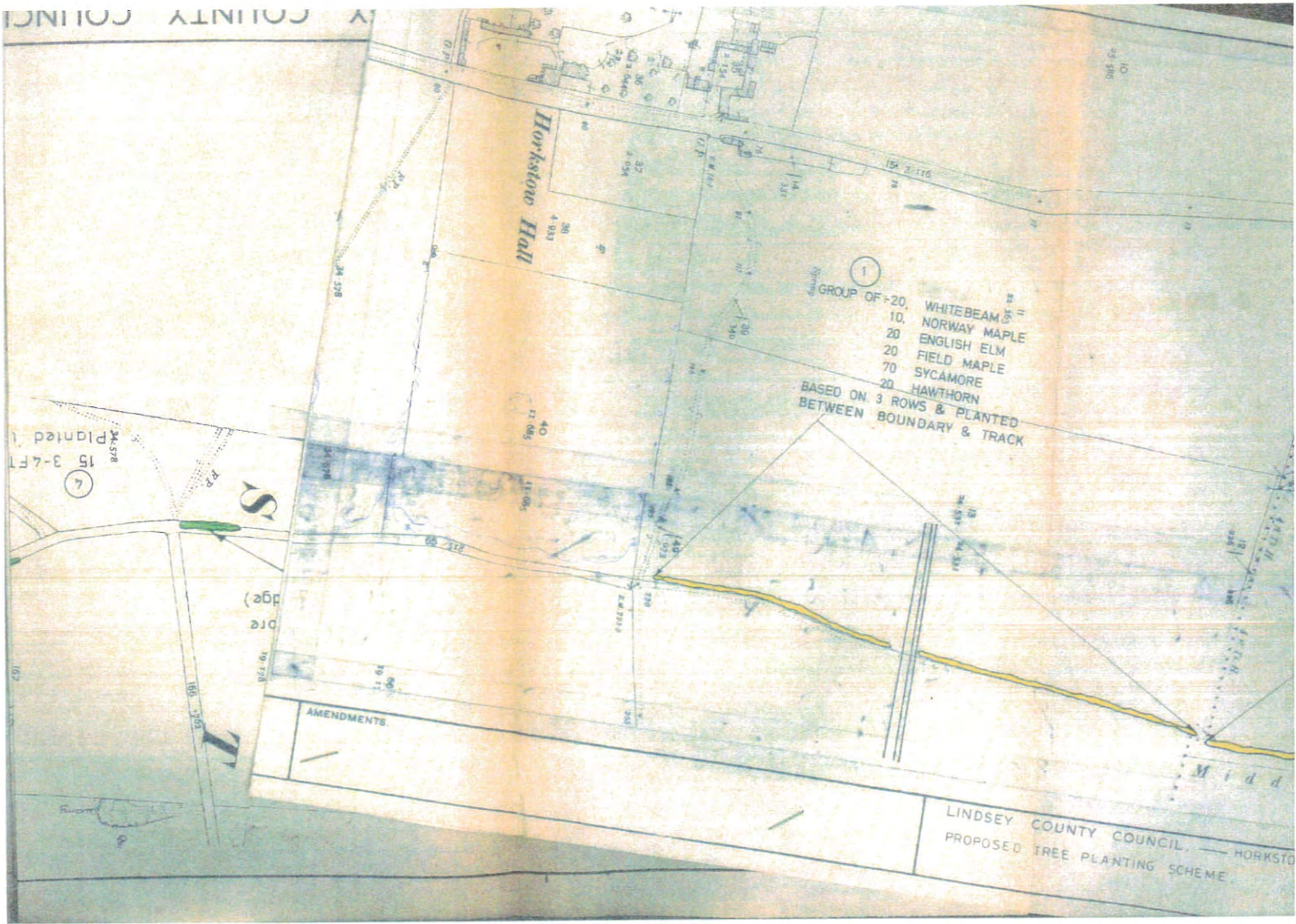
ached one copy of each of the above-named plans.

mestone Farming Company is agreeable to the "off
ls at Willoughton, please sign and return to me
attached duplicated letter, when arrangements can
take the work at the expense of my Department.



Mr Rowles

Horkstow to South Ferriby, u/c Road.
Middlegate Lane.



Horkstone Hall

GROUP OF 20
10 WHITEBEAM
10 NORWAY MAPLE
20 ENGLISH ELM
20 FIELD MAPLE
70 SYCAMORE
20 HAWTHORN
BASED ON 3 ROWS & PLANTED
BETWEEN BOUNDARY & TRACK

S

DIR

AMENDMENTS

LINDSEY COUNTY COUNCIL. — HORKSTONE
PROPOSED TREE PLANTING SCHEME

LINDSEY COUNTY COUNCIL

Planted 15-3-47

15-3-47

15-3-47

15-3-47

15-3-47

15-3-47

15-3-47

15-3-47

15-3-47

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15-3-47

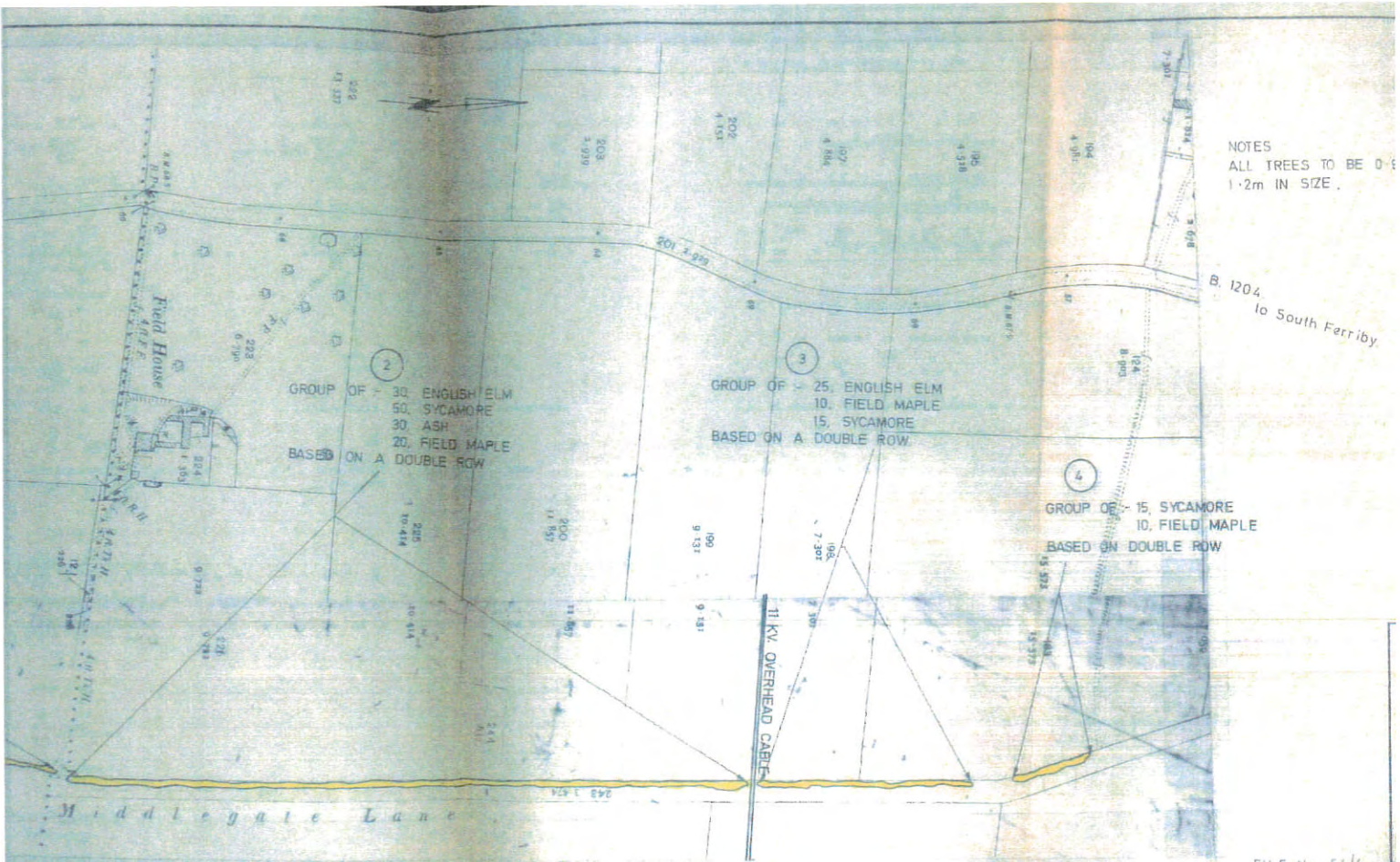
NOTES
ALL TREES TO BE 0.5
1.2m IN SIZE.

B. 1204
to South Ferryby

GROUP OF -
30 ENGLISH ELM
50 SYCAMORE
30 ASH
20 FIELD MAPLE
BASED ON A DOUBLE ROW

GROUP OF -
25 ENGLISH ELM
10 FIELD MAPLE
15 SYCAMORE
BASED ON A DOUBLE ROW

GROUP OF -
15 SYCAMORE
10 FIELD MAPLE
BASED ON DOUBLE ROW



FILE No 54/4

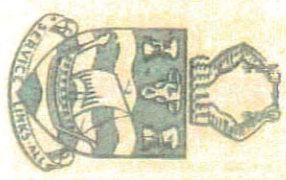
LINDSEY COUNTY COUNCIL — HORKSTOW TO SOUTH FERRYBY: DJC ROAD — MIDDLEGATE LANE.
PLANNING SCHEME

LINDSEY COUNTY COUNCIL,
County Offices, Lincoln.
Reproduced from a plan based upon the O.S.
Map with the sanction of the Controller
of H.M. Stationery Office.
CROWN COPYRIGHT RESERVED.
Date 7/3/71

P.C. GANE F.I.C.E. M.I.H.E.
COUNTY SURVEYOR,
LINCOLN.
DATE MARCH 1971

COUNTY OF LINCOLN

PARTS OF LINDSEY



P.C. GANE
F.I.C.E. FILM, E., M.I.H.E.
COUNTY SURVEYOR

HIGHWAYS DEPARTMENT
COUNTY OFFICES
LINCOLN
LNT 1NX
TELEPHONE 25282
Extension 147

IN REPLY
PLEASE QUOTE

YOUR REF.

DATE

D.F/AA/64/L/BC

10 November, 1972

Dear Madam,

Horkstow Bridge to Horkstow Hall, U/c
Willoughton, Old Leys Lane, C.234 "Off Highway"
Proposed Tree Planting Schemes

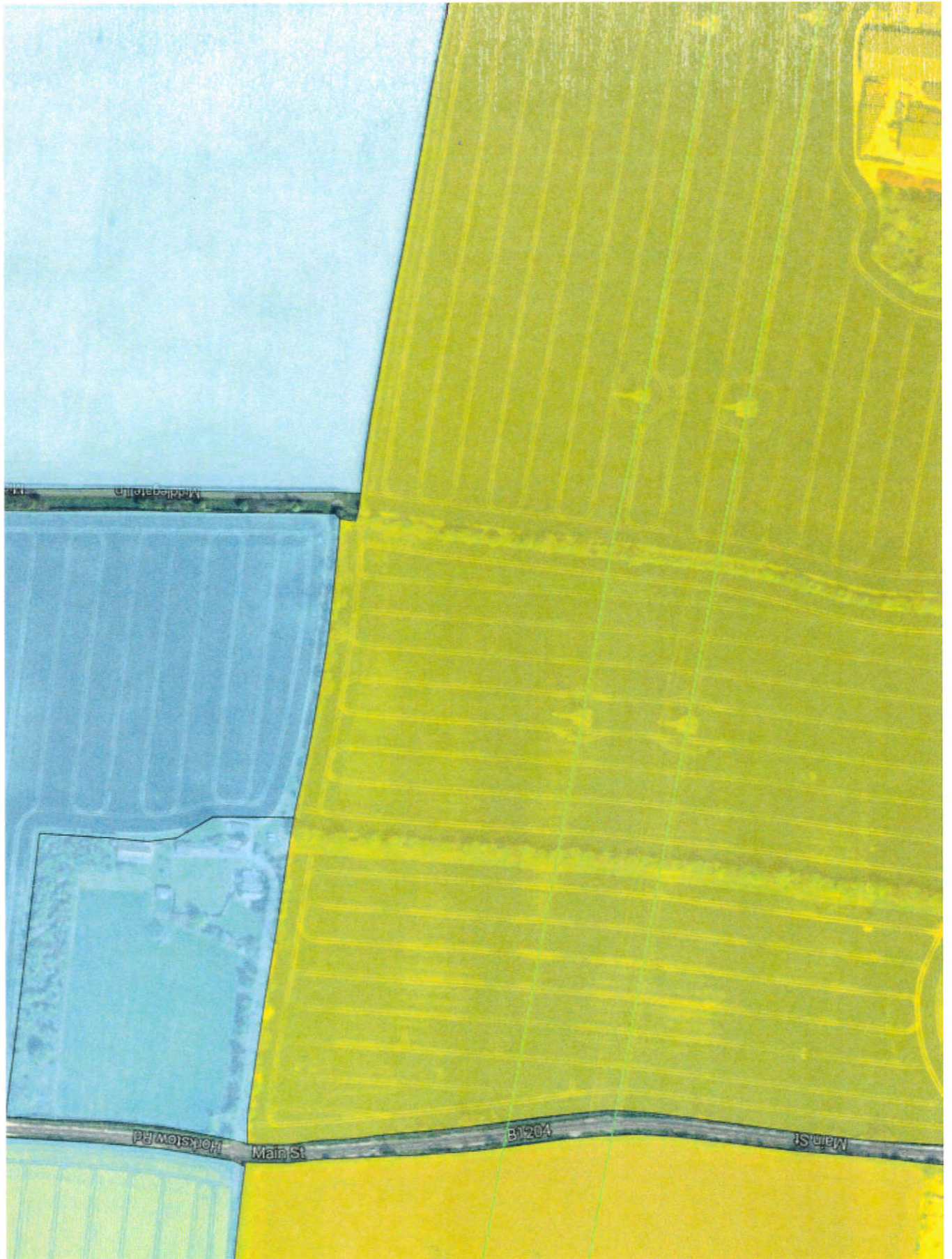
Please find attached one copy of each of the above-named plans.

Providing the Limestone Farming Company is agreeable to the "off highway" proposals at Willoughton, please sign and return to me one copy of the attached duplicated letter, when arrangements can be made to undertake the work at the expense of my Department.

Yours faithfully,

P.C. Gane

County Surveyor

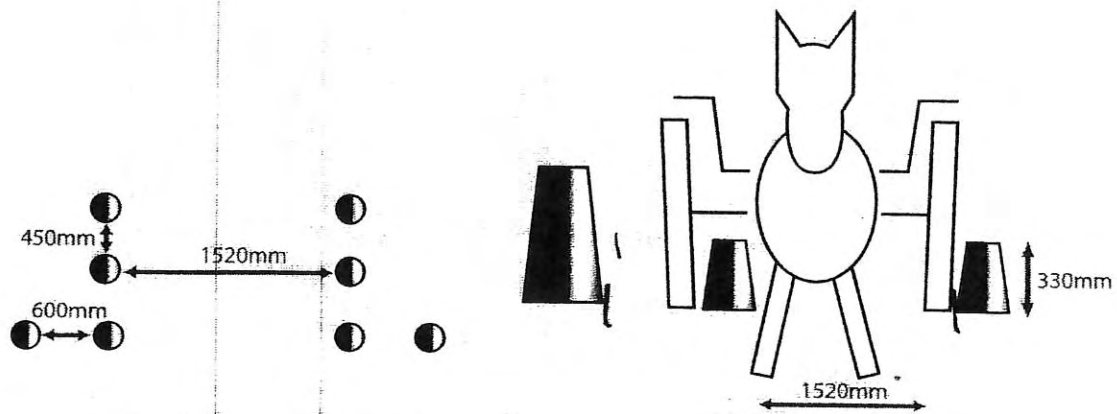


Kent Carriage Gap (For Restricted Byways)

The Kent Carriage Gap is a series of bollards designed to prevent illegal vehicular use of a public right of way, whilst retaining access for horse drawn carriages.

The County Council is responsible for the construction of Kent Carriage gaps to prevent unlawful or antisocial behaviour such as flytipping.

Kent Carriage Gap design



Andrew Jackson

..... Solicitors

FIRST CLASS

Mr C Wilkinson
North Lincolnshire Council
Pitwood House
Ashby Road
Scunthorpe
DN16 1AB

Our Ref: NGD/sc/12836/16

Your Ref: CTW/43/1

Date: 7 October 2016

BY EMAIL AND POST
colin.wilkinson@northlincs.gov.uk

Dear Mr Wilkinson

Re: Definitive Map Modification (Byway Open to all Traffic 1, South Ferriby and Horkstow) Order 2016(1)

We thank you for your letter of 13 September 2016 and agree with you entirely that it would be appropriate to discuss the order width in Horkstow on an objective basis.

With that in mind, can we please see the evidence that you have referred to in your letter. We refer to paragraph 5 of your letter in which you refer to North Lincolnshire Counsel's list of streets, the maps that accompany that list and the map of county roads produced by the Lindsey County Council, highway authority 1929 to 1974.

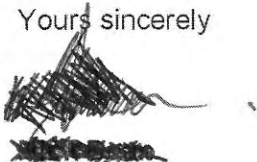
Can you please send us the documents referred to and once we have had a chance to consider those with our client, we will arrange to meet with you.

Secondly, please note that you have misunderstood our client's position. Our client does object to the designation of the Definitive Map Modification as a Byway Open to All Traffic (BOAT). It is for this reason that our client was referring to the Kent Carriage Gap or something similar. Our client does not understand why the Council has formed a view that the route in question is a BOAT. Perhaps when writing you could also confirm why the Council does not believe the evidence points to the route being a public bridleway. It was with a bridleway in mind that our client suggested the Kent Carriage Gap as a means of restricting access to vehicular traffic, scrambler motorbikes and 4 x 4's. 4 x 4's are of particular concern because they shatter the peace of the area and introduce theft, poaching and antisocial behaviour.

During a recent meeting between our client and Council staff on another matter the term "restricted byway" was mentioned, could this be discussed as a potential solution?

We look forward to hearing from you.

Yours sincerely



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Authorised and regulated by the Solicitors Regulation Authority, SRA No 51781, a list of Partners' names is available for inspection at our offices

Enquiries to: C T Wilkinson
Telephone: 01724 297000
Email: colin.wilkinson@northlincs.gov.uk

Your Ref: NGD/JW/12836/16
Our Ref: CTW/43/1

13 September 2016

Mr N Dean
Andrew Jackson Solicitors
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Peter Williams BSc, DMS, CEng, MEI, MCMI, AMIMEchE
Director of Places
Church Square House
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North Lincolnshire
DN15 6XQ

Dear Mr Dean

“Definitive Map Modification (Byway Open to All Traffic 1, South Ferriby and Horkstow) Order 2016(1)”

I refer to your letter of objection to the above order dated 4 August 2016 and your previous letter and submissions dated 22 July 2016, which set forth the grounds for that objection in greater detail.

The objection states that it relates to the width only and not the order per se. If the order has to be referred to the Secretary of State, therefore, it will be referred on that basis.

But the objection also asks if a Kent Carriage Gap could be sited along the route. This, however, would not be possible if the order were to be confirmed as a byway open to all traffic because it would impede legitimate traffic. The appropriate juncture at which to discuss any such measures would be after the order's confirmation (with such considerations being, of course, irrelevant to the current order's purpose of establishing whether the definitive map needs modifying to the extent it seeks to do).

With respect to paragraph two of your letter of 22 July 2016, I hope I can allay your clients' misgivings, in that respect at least, by pointing out that if confirmed the modification order would create nothing. Its purpose is to bring the definitive map up to date by rectifying what we believe is an omission in the public record – that is, the adding of a byway open to all traffic that already exists. We have a duty to keep the definitive map under continuous review and this is the modification order's sole purpose.

The order route already appears on North Lincolnshire Council's list of streets, the statutory record of highways maintainable at the public expense that the authority also have a duty to keep corrected up to date. The maps that accompany that list include the area that you describe as the thinly wooded margin. Moreover, Lindsey County Council, highway authority 1929 to 1974, also included the order route on their map of county roads. It is inconceivable that a county road – the term is now defunct, but related to carriageways maintainable by the highway authority; moreover, Planning Inspectorate advice states that it carries some inference that the public may use such a highway with vehicles – would have been but four feet six inches wide. Indeed the map from 1971 that Mr Rowles has provided showing proposed tree planting along Middlegate Lane described it thus: “Horkstow to South Ferriby U/C [i.e. unclassified] road”.

Now the order has been made, only the Secretary of State is empowered to modify it, and even then only within certain parameters. Furthermore, she would need to be persuaded that on the

balance of probability the currently prescribed width was incorrect. It is, however, possible for North Lincolnshire Council, as the order-making authority, to recommend that the width be so modified when the referral is made. First though it would be necessary to persuade us that such a modification is required. But if your clients are adamant that the order route within Horkstow is only four feet six inches broad, then unfortunately there is nothing to discuss. This is not quite 1.4 metres and narrower than many footpaths, let alone a putative byway open to all traffic.

Your commentary on page two of your letter of 22 July 2016 with respect to “Map of South Ferriby After Enclosure” states in effect that the order simply continues the South Ferriby awarded width into Horkstow. That, however, is incorrect. The awarded width in South Ferriby is forty feet and therefore 12.2 metres, which the order prescribes accordingly.

I agree that the evidence suggests that the order width in South Ferriby is greater than that in Horkstow. But I should be interested to know how your clients deduced their very precise four-foot-six assertion. The copy of the tithe map you tender in evidence, for example, shows the order route in Horkstow as being, if anything, even wider than the continuation of Middlegate Lane south of Point C on the order map along what is nowadays a tarmacked minor road. In *Attorney-General v Benyon* [1970] 1 Ch 1 it was stated that a tithe map can be admissible evidence for determining the physical boundary of a road and the legal maxim in this respect is “once a highway, always a highway” (in which case the depiction in 1840 could trump later depictions). Moreover, the South Ferriby inclosure award describes Caistor Road’s continuation as being “a public road on the edge of the Hill in the Lordship of Horkstow”. Yet no public road at that time was only four feet six inches wide as reference to any inclosure act will evince. It is simply not credible that when the award was enrolled the public road leading out of South Ferriby to Caistor reduced from a breadth of forty feet to little more than four at the parish boundary. It can be noted too that the historical Ordnance Survey maps you submit depict the order route in Horkstow with a solid line along its western flank. This is because it was situated along the edge of enclosure 50 on the 1906 map and therefore included the area where the small trees are today. The solid line will be the boundary of the enclosure to the west of the trees at the top of the bank (i.e. the edge of the hill). You can also see how this solid line is mapped as being directly opposite the hedgerow that forms the western flank of Middlegate Lane’s continuation south of the order route. If the order route in Horkstow did not include the area where the trees have been planted, it would be shown by parallel pecked lines (i.e. denoting no physical boundary either side of it).

I should be pleased to accept your offer to meet to discuss the order width in Horkstow in more detail – but only if your clients are prepared to consider the evidence objectively. With that in mind, I look forward to hearing from you again soon.

Yours sincerely

Colin Wilkinson
Senior Public Rights of Way Officer
Environment Team

Enquiries to: C T Wilkinson
Telephone: 01724 297000
Email: colin.wilkinson@northlincs.gov.uk

Your Ref: NGD/sc/12836/16
Our Ref: CTW/43/1

14 October 2016

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DN15 6XQ

Dear Mr Dean

Definitive Map Modification (Byway Open to All Traffic 1, South Ferriby and Horkstow) Order 2016(1)

Thank you for your letter of 7 October 2016 with respect to the above order in which you request copies of the order's supporting evidence and clarify that your client's objection relates to status as well as width.

In terms of the evidence, I enclose the following: (1) South Ferriby inclosure award and map excerpts; (2) maps for the levying of increment value duty under the Finance Act 1910; (3) an extract from the Lindsey County Council highways map 1940; (4) an extract from the map used as a list of streets till 2008; (5) the relevant part of the current list of streets; (6) an extract from the current maps of highways maintainable at the public expense; and (7) page nine of the Planning Inspectorate's Definitive Map Orders Consistency Guidelines, highlighted at paragraph 2.37.

Reference the order route's status, I understand that we both agree that it is a highway that is at the very least a bridleway. The South Ferriby length of the order route is easier to assess because of the inclosure award, which in North Lincolnshire Council's opinion set out a way for all traffic. This would be consistent with the Finance Act 1910 map excluding Middlegate Lane in South Ferriby from the adjacent coloured hereditament plots. Such exclusion can point to bridleway status too, but taking the award and the Finance Act 1910 maps together, we believe a status greater than bridleway must be construed on the balance of probability. The current list of streets, the statutory record of highways maintainable at the public expense held under section 36 of the Highways Act 1980, is, moreover, in two parts: one for public rights of way only and the other for all other highways. Middlegate Lane is recorded in the latter. Also, given that the Horkstow length of the order route is but a short part of Middlegate Lane as a whole, with the awarded South Ferriby section to its north and a tarmacked highway that is unquestionable open to all traffic to its south, we believe the ruling in *Eyre v New Forest Highway Board* [1892] JP 517 about linking sections of highway of uncertain status weighs the evidence yet further towards a way for all traffic throughout.

Because we are examining what the status of the order route already is, not what we might designate it as were we creating it from scratch (i.e. on the basis of desirability), we are of course constrained by the evidence as it stands. A restricted byway is a classification of highway, the next one down from byway open to all traffic, over which the public have a right of way with all traffic other than mechanically propelled vehicles. The Natural Environment and Rural Communities Act 2006 extinguished all public rights of way for mechanically propelled vehicles if these were not recorded on a definitive map immediately before commencement. But this was subject to certain exemptions, one of which was if the route in question was recorded on a list of streets, which Middlegate Lane between the A1077 and Horkstow Road indubitably was.

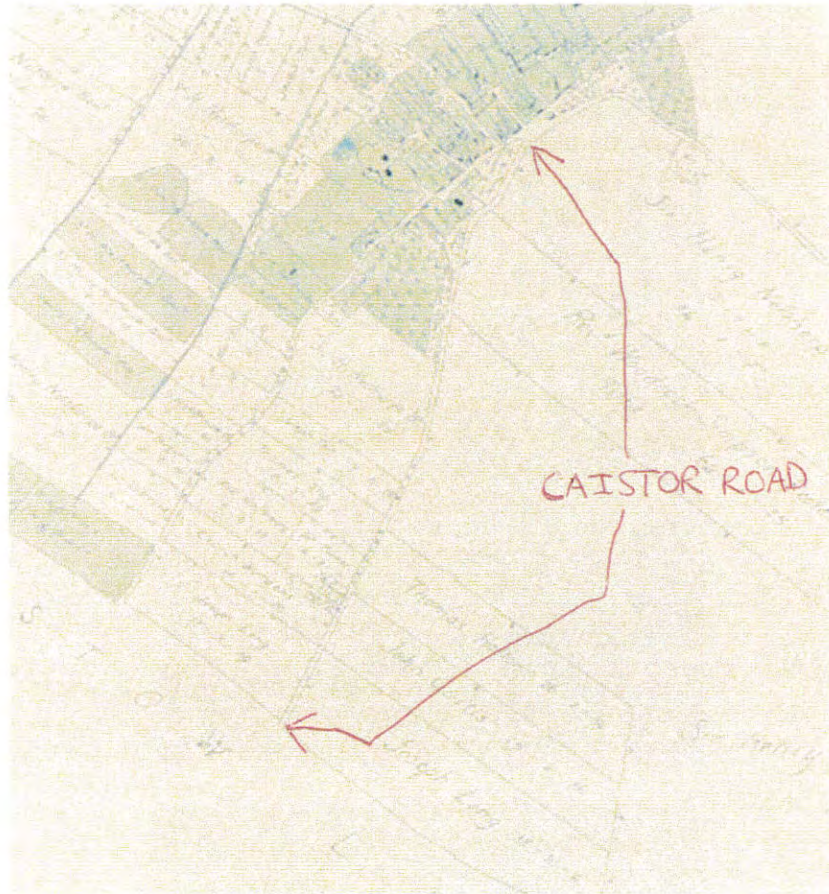
I hope the above concise summary assists in your understanding of our position. What I should now be grateful to learn from you in turn is why your client believes the status of the Horkstow length of the order route is a bridleway only of a width of four feet six inches.

In due course I shall have to refer the order to the Secretary of State. If in the meantime, however, we can reach an agreement over status, width or both, the order can be submitted with advice to that effect. If therefore you believe our meeting might assist in that respect, I should be pleased to oblige.

Yours sincerely

Colin Wilkinson
Senior Public Rights of Way Officer
Environment Team

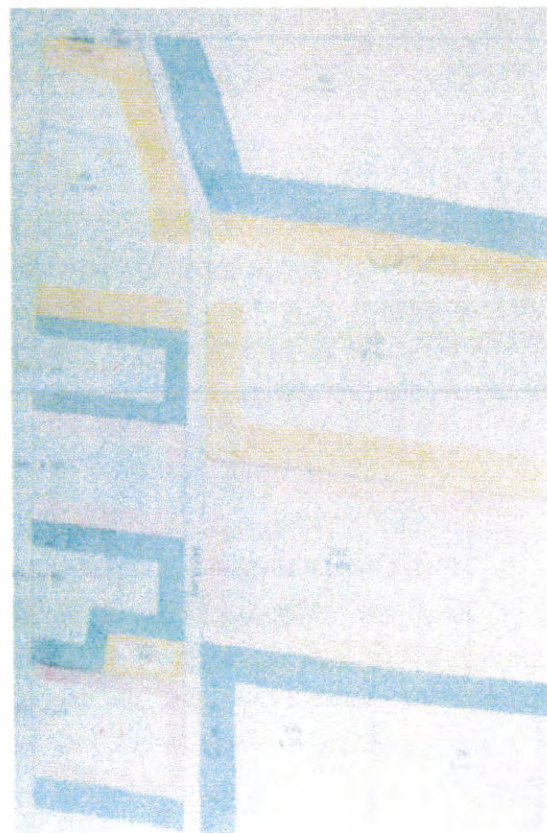
South Ferriby Inclosure Award and Map Extracts

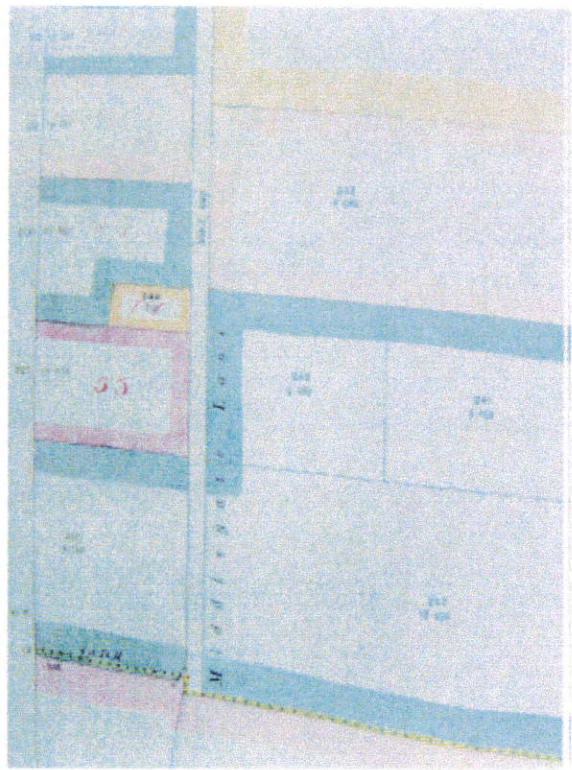


Caistor Road. Road in the Lordship of Horkstow ALSO one other public Carriage Road to be called the Caistor Road from the said High Street within the Town of South Ferriby Northward by the Hill East of the Church and thence over the South Field to a public Road on the edge of the Hill in the Lordship of Horkstow AND we the said Commissioners do order direct and appoint that all

Public Roads. AND we the said Commissioners have set out allotted and appointed and do hereby award the several public Roads of the breadth of forty feet next hereinafter described through and over the Lands and Grounds by the said Act directed to be divided and inclosed that is to say One public Carriage Road to be called the Barton Road from

Finance Act 1910 Maps for Levying Increment Value Duty






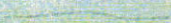




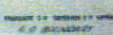
Lindsey County Council Highways Map 1940



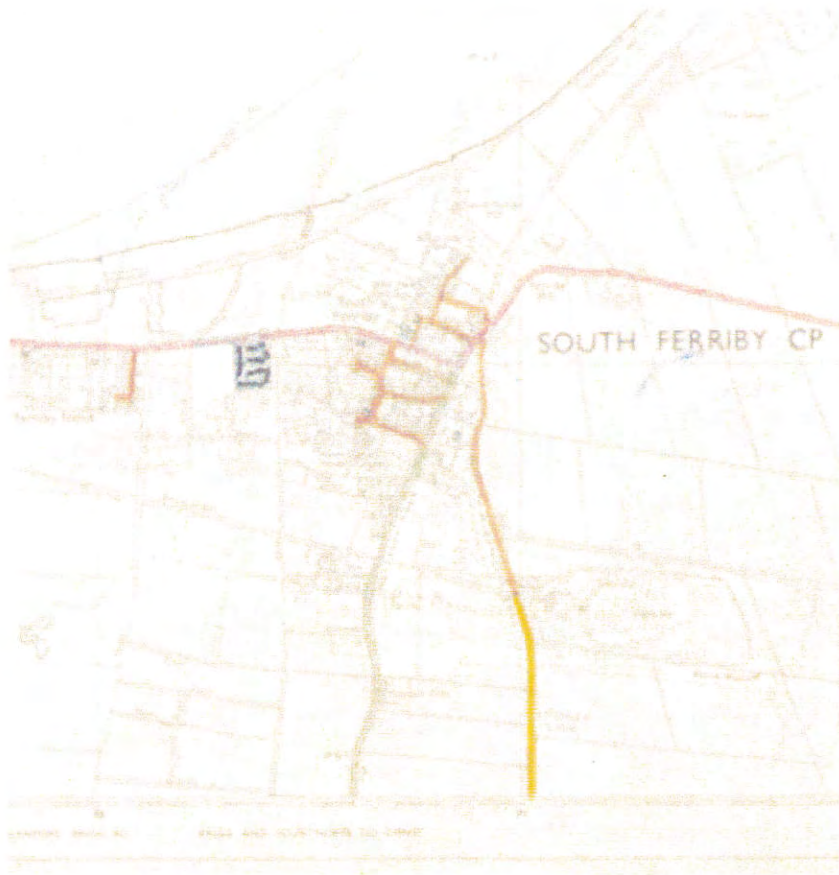
REFERENCE.

CLASS 1 ROADS	
CLASS 2 ROADS	
UNCLASSIFIED ROADS. GRADE A.	
" " GRADE B.	
OTHER ROADS	METALLED 
	UNMETALLED 

CLASSIFIED ROADS ARE NUMBERED THUS. *A.15.*

RURAL DISTRICT BOUNDARY SHEWN THUS. 

List of Streets from Humberside County Council till 2008



CURRENT LIST OF STREETS

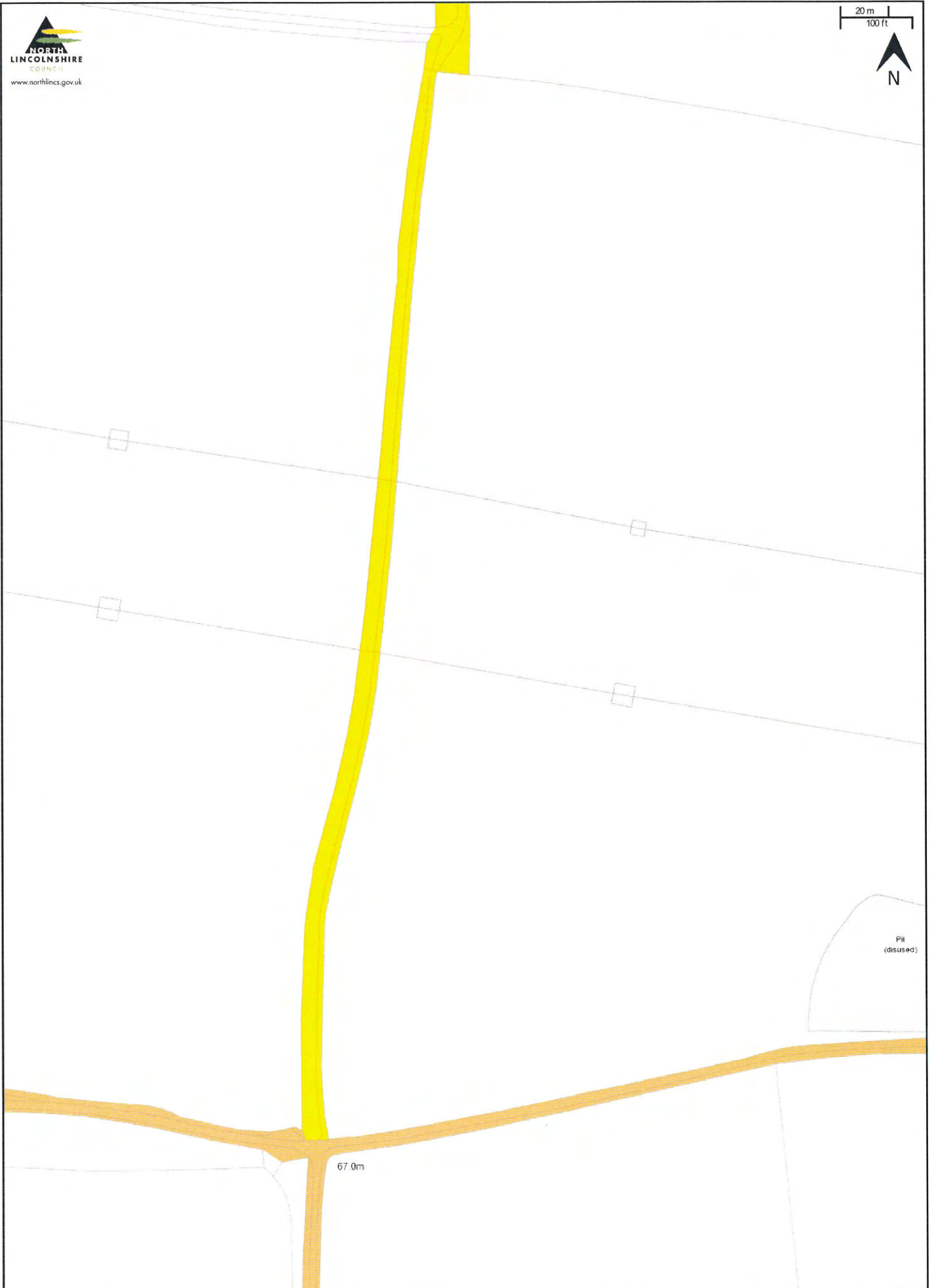
North Lincolnshire Council List Of Streets Maintainable At Public Expense Volume 1: Highways

STREET NAME	TOWN	LOCALITY
Messingham Road	Scunthorpe	
Middle Barn Hill	Worlaby	
Middle Lane	Amcotts	
Middlegate Close	Barrow Upon Humber	
Middlegate Lane	Bonby	
Middlegate Lane	Elsham	
Middlegate Lane	Horkstow	
Middlegate Lane	Melton Ross	
Middlegate Lane	Saxby All Saints	
Middlegate Lane	South Ferriby	
Middlegate Lane	Worlaby	
Middleton Close	Messingham	
Middleton Road	Bottesford	
Midland Road	Scunthorpe	
Mill Close	Scawby Brook	
Mill Croft	Scawby	
Mill Croft	Scunthorpe	
Mill Hill Drive	Bottesford	
Mill House Lane	Winterton	
Mill Lane	Barrow Upon Humber	
Mill Lane	Brigg	
Mill Lane	Broughton	
Mill Lane	East Halton	
Mill Lane	Goxhill	
Mill Lane	Kirton In Lindsey	
Mill Lane	Luddington And Haldenby	
Mill Lane	Scawby	
Mill Lane	South Ferriby	
Mill Lane	Westwoodside	
Mill Road	Crowle	
Mill Road	Hibaldstow	
Mill Road	Keadby	
Mill View	Barton Upon Humber	
Mill View Close	Epworth	
Mill View Gardens	Wrawby	

PRESENT DAY MAP OF MAINTAINABLE HIGHWAYS



20 m
100 ft



Add Title here
Scale @A3 1:1417
Printed on: 14/10/2016 at 8:47 AM

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Version:
Drawn by:

status, should be thoroughly tested. Of themselves, they are not persuasive evidence.

Unclassified County Roads (UCR)

- 2.34 This classification has no legal standing but it carries some inference that the public may use the highway with vehicles. Extant advice is that 'all other relevant evidence must be taken into account' (see letter from the head of Countryside Division dated 24 August 1998).

Administrative Boundaries

- 2.35 On the Definitive Map, some long and apparently continuous highways change status at administrative (e.g. parish/community) boundaries, when common-sense suggests they should not. An Inspector may well meet a situation where an Order highway continues into the next administrative area and be invited to accord it the status already awarded there. An Inspector should not feel bound to do so. It would not be safe to draw any firm inference from the awarded status without knowing the diligence of the procedure leading to its award. There was sometimes considerable inconsistency between parishes' diligence during the creation of the Draft Definitive Map. If, however, the section under consideration continues at both ends as a public highway of the same description, and if there is no other access to the mid-section, and if the ends lie in different parishes, a more firm inference may be drawn. It is a question of considering all the relevant evidence (see also *Eyre v New Forest Highways Board* 1892).

Rural Culs-de-Sac

- 2.36 The courts have long recognised that, in certain circumstances, culs-de-sac in rural areas can be highways. (e.g. *Eyre v New Forest Highways Board* 1892, *Moser v Ambleside* 1925, A-G and *Newton Abbott v Dyer* 1947 and *Roberts v Webster* 1967). Most frequently, such a situation arises where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have turned what was part of a through road into a cul-de-sac. Before recognising a cul-de-sac as a highway, Inspectors will need to be persuaded that special circumstances exist.
- 2.37 In *Eyre v New Forest Highway Board* 1892 Wills J also covers the situation in which two apparent culs-de-sac are created by reason of uncertainty over the status of a short, linking section (in that case a track over a common). He held that, where a short section of uncertain status exists it can be presumed that its status is that of the two highways linked by it.

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Email: colin.wilkinson@northlincs.gov.uk

Your Ref: ACI/sda/SC.05
Our Ref: CTW/44/1

20 September 2015

Mr A C Inglis
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Peter Williams BSc, DMS, CEng, MEI, MCMI, AMIMechE

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Dear Mr Inglis

“Definitive Map Modification (Byway Open to All Traffic 1, South Ferriby and Horkstow) Order 2016(1)”

Thank you for your letter of 7 September 2016 sent on behalf of the Scawby and South Ferriby Estate Company with respect to the above order.

I can confirm that Middlegate Lane is currently a highway maintainable at the public expense. Moreover, it was so maintained by Humberside County Council before us and by Lindsey County Council before them. This is the reason why it was we, not the adjacent landowners, who removed – at our expense, not theirs – the recently fly-tipped tyres. Had Middlegate Lane not been a highway, it would not have been within our remit to do so.

The definitive map modification order creates nothing. Its purpose is to bring up to date the definitive map, the legal record of public rights of way held on public deposit that we have a duty in law to keep under continuous review. Middlegate Lane is undoubtedly a highway and it is North Lincolnshire Council’s belief, based on the evidence available to us, that its classification is byway open to all traffic. This is not because we want it to be a byway open to all traffic – we have no preference either way – but because the evidence in our view is such that it can be no other.

The public notice advertising the order directed that objectors are *required* to state the grounds for their objection. To date, however, I believe no such grounds have been stated because your objection is based purely on desire, not on a considered rebuttal of the evidence that prompted the order’s making. This would be fine if the order were a creation; but in this instance, the contention is that the byway open to all traffic already exists, so anyone disputing that thesis would need to critique the evidence the contention is based on, produce evidence of their own – should they have any – and state either what alternative classification of highway they believed Middlegate Lane to enjoy or dispute that Middlegate Lane was indeed a highway.

Middlegate Lane in South Ferriby was set out as a public road under the parish inclosure award of 1803. It was named Caistor Road and its continuation was described as being “a public road on the edge of the Hill in the Lordship of Horkstow”. All the public roads of the

parish set out under the award were to be forty feet wide and I think I am right in remarking that all other than Middlegate Lane are today tarmacked carriageways for all traffic. What in law distinguishes a byway open to all traffic from other such carriageways is its character: namely, that it is a way more suited to walking and horse riding, but over which other traffic nonetheless has a right of way too (*Masters v the Secretary of State for the Environment, Transport and the Regions* [2000] 4 All ER 458). Furthermore, byway open to all traffic is a form of carriageway that falls to be recorded in the definitive map.

I enclose copies of the relevant extracts from the inclosure award and map. I also enclose copies of the maps prepared by the Valuation Office for the levying of increment value duty under the Finance Act 1910. Though repealed in 1920, all private land was surveyed and plotted on the latest 1:2,500-scale Ordnance Survey maps of the time using coloured edging to distinguish individual taxable hereditaments. Because the tax was universal, uncoloured land must have been public. And therefore uncoloured roads, tracks and so on might well have been highways, especially if a thoroughfare. This thesis carries particular weight because it has been upheld several times in court, most recently by the Court of Appeal in *Fortune v Wiltshire Council* [2012] EWCA Civ 334. Middlegate Lane, as you can see, is uncoloured. According to Planning Inspectorate guidance: "Documents and plans produced under the Finance Act 1910 can provide good evidence regarding the state of a way ... It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility".

I enclose too an extract copy of the Lindsey County Council Highways Map 1940 showing Middlegate Lane and a copy of the key, from which it can be seen that Middlegate Lane was part metalled road, part unmetalled. But the important factor to note is that all routes on this map were of a status greater than bridleway, being what were at the time known as "county roads". Further Planning Inspectorate guidance states of unclassified county roads: "This classification has no legal standing but it carries some inference that the public may use the highway with vehicles".

The other enclosures are the map North Lincolnshire Council inherited from Humberside County Council showing Middlegate Lane as a highway maintainable at the public expense and a copy of the relevant extract from the current list of streets (the statutory record of highways maintainable at the public expense held by North Lincolnshire Council on public deposit and viewable via our website).

The period permitted for objections to the order has now closed. Three objections were lodged, including yours, though one of these disputes only the width, and specifically in Horkstow, rather than the existence or status of the right of way per se. Nor is one of the objectors Cemex.

If the objections are not withdrawn in writing then the order and the remaining objections must be referred to the Secretary of State for the Environment, Food and Rural Affairs for determination. The evidence will then be assessed on the balance of probability by one of three means: written representations, hearing or inquiry. In the event of a hearing or an inquiry, moreover, the parties involved can make an application for costs against one or more of the others on the grounds of unreasonable behaviour (generally objections tendered frivolously, maliciously or vexatiously).

If you wished us to meet to discuss the evidence, I should be pleased to do so. It would, however, have to be after 4 October because I shall shortly be away until then. Would you

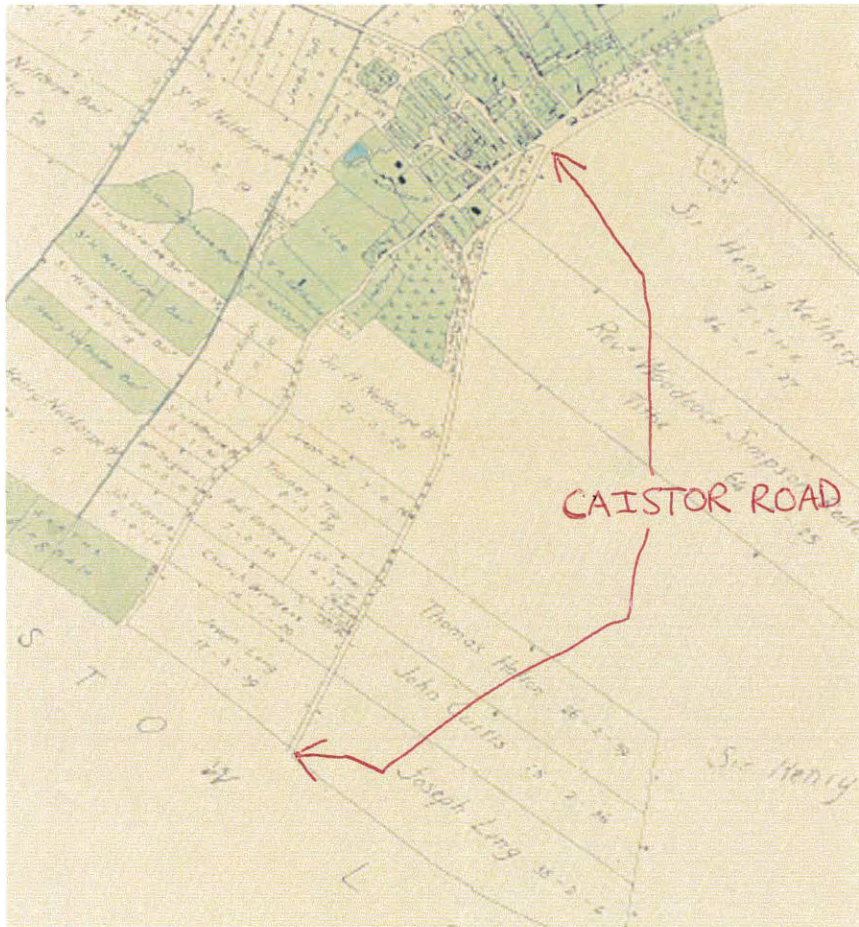
be able to travel up to Scunthorpe for such purpose? I could, for example, meet you on either 5 or 6 October, either morning or afternoon. Alternatively, if you instead simply wished to withdraw your objection, perhaps on the basis of the evidence enclosed with this letter, please do so in writing at your earliest convenience.

I look forward to hearing from you again soon.

Yours sincerely

Colin Wilkinson
Senior Public Rights of Way Officer
Environment Team

South Ferriby Inclosure Award and Map Extracts



Caistor Road.

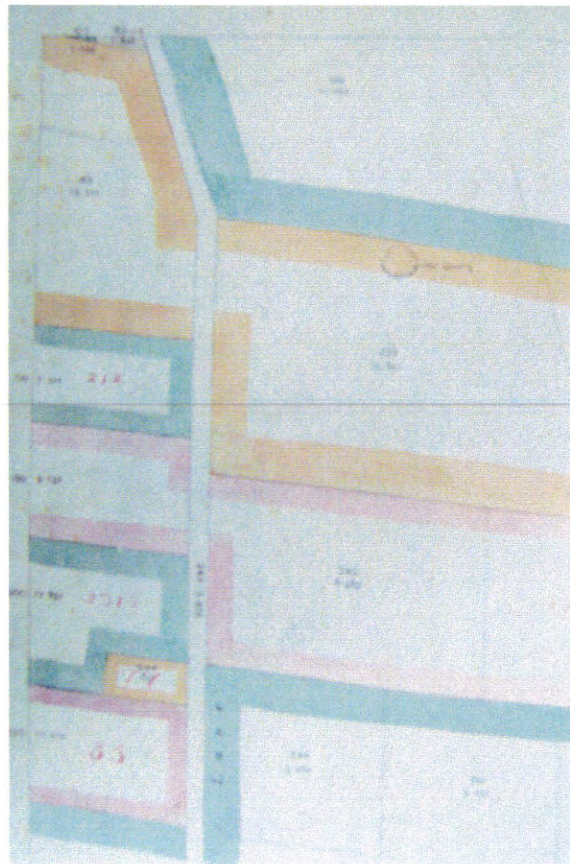
Road in the Lordship of Horkstow ALSO one other public Carriage Road to be called the Caistor Road from the said High Street within the Town of South Ferriby Southward up the Hill East of the Church and thence over the South Field to a public Road on the edge of the Hill in the Lordship of Horkstow AND we the said Commissioners do order direct and appoint that all

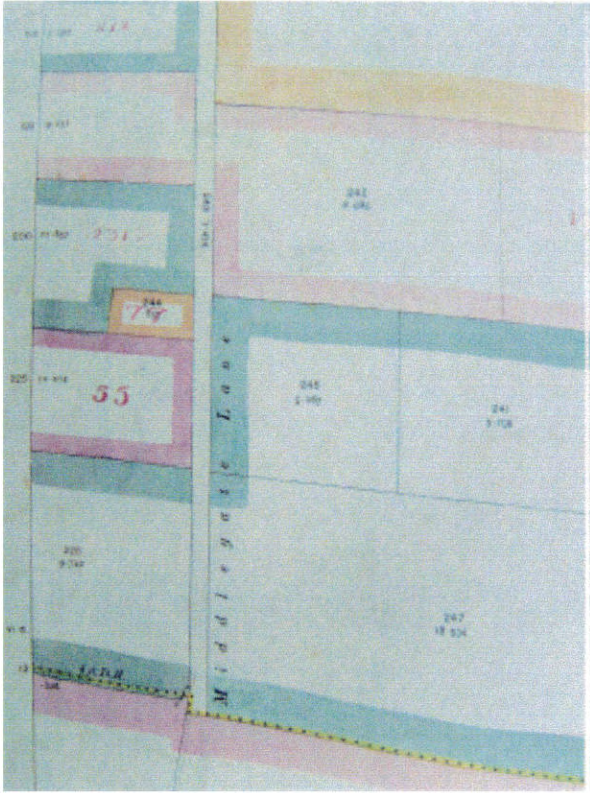
Public Roads.

AND we the said Commissioners have set out Allotted and appointed and do hereby award the several public Roads of the Breadth of forty feet next hereinafter described through and over the Lands and Grounds by the said Act directed to be divided and inclosed that is to say One public Carriage Road to be called the Barton Road from

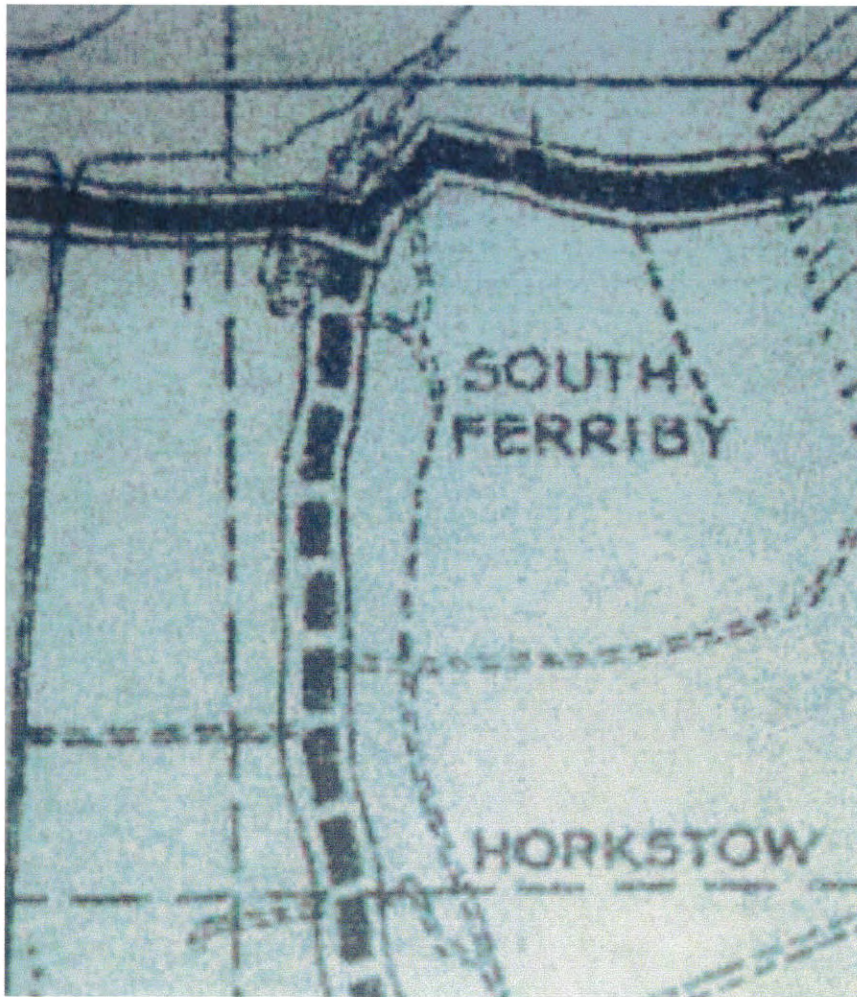
Barton Road.

Finance Act 1910 Maps for Levying Increment Value Duty





Lindsey County Council Highways Map 1940



REFERENCE.

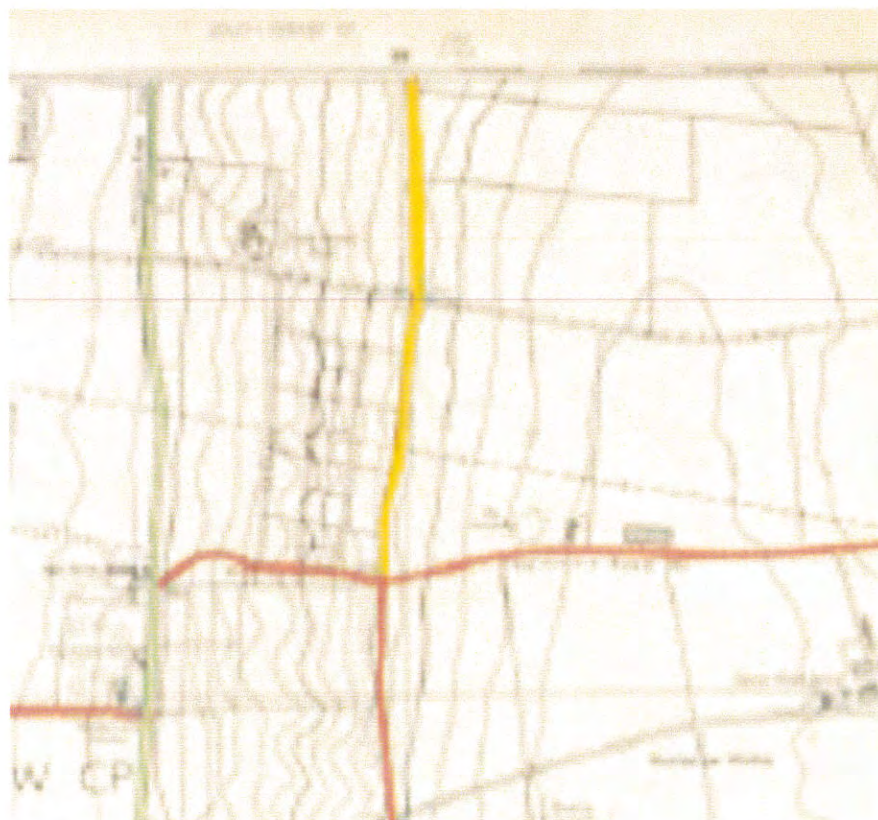
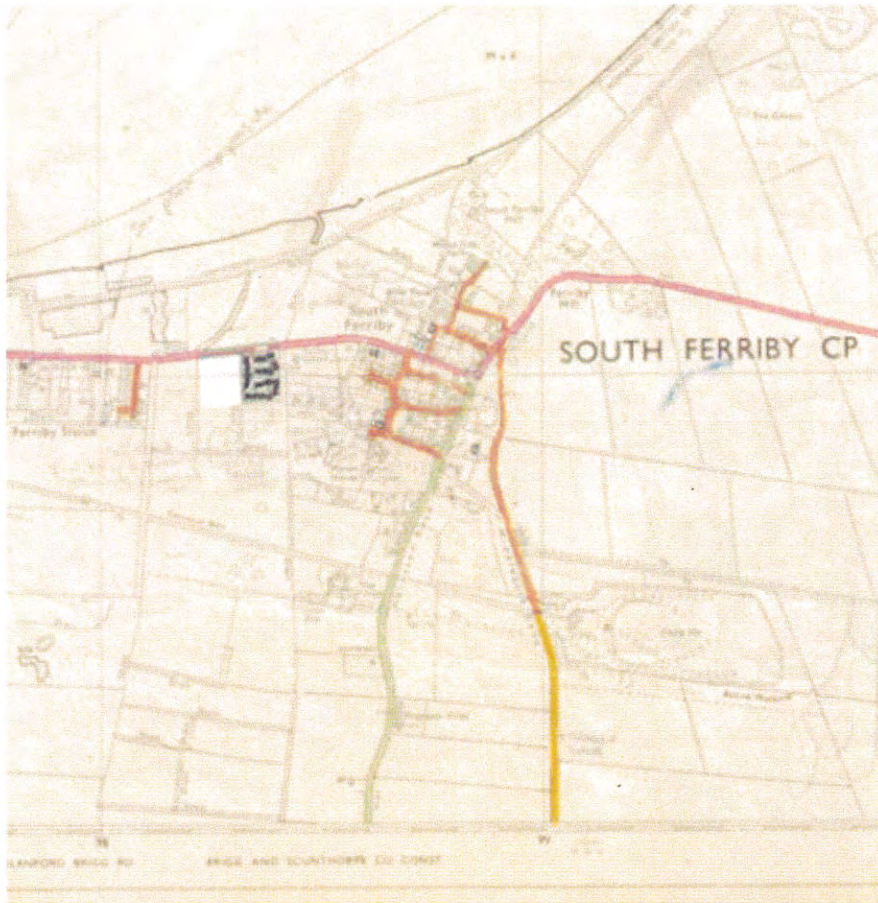
CLASS 1 ROADS	
CLASS 2 ROADS	
UNCLASSIFIED ROADS. GRADE A.	
" " GRADE B.	
OTHER ROADS	METALLED
	UNMETALLED

CLASSIFIED ROADS ARE NUMBERED THUS. *A. 15.*

RURAL DISTRICT BOUNDARY SHEWN THUS.

MAPS BY EDWARD J. WILSON
LONDON

List of Streets from Humberside County Council till 2008



CURRENT LIST OF STREETS

North Lincolnshire Council List Of Streets Maintainable At Public Expense Volume 1: Highways

STREET NAME	TOWN	LOCALITY
Messingham Road	Scunthorpe	
Middle Barn Hill	Worlaby	
Middle Lane	Amcotts	
Middlegate Close	Barrow Upon Humber	
Middlegate Lane	Bonby	
Middlegate Lane	Elsham	
Middlegate Lane	Horkstow	
Middlegate Lane	Melton Ross	
Middlegate Lane	Saxby All Saints	
Middlegate Lane	South Ferriby	
Middlegate Lane	Worlaby	
Middleton Close	Messingham	
Middleton Road	Bottesford	
Midland Road	Scunthorpe	
Mill Close	Scawby Brook	
Mill Croft	Scawby	
Mill Croft	Scunthorpe	
Mill Hill Drive	Bottesford	
Mill House Lane	Winterton	
Mill Lane	Barrow Upon Humber	
Mill Lane	Brigg	
Mill Lane	Broughton	
Mill Lane	East Halton	
Mill Lane	Goxhill	
Mill Lane	Kirton In Lindsey	
Mill Lane	Luddington And Haldenby	
Mill Lane	Scawby	
Mill Lane	South Ferriby	
Mill Lane	Westwoodside	
Mill Road	Crowle	
Mill Road	Hibaldstow	
Mill Road	Keadby	
Mill View	Barton Upon Humber	
Mill View Close	Epworth	
Mill View Gardens	Wrawby	

Appendix 3

**Wildlife and Countryside Act 1981
Section 53**

**County of Lincoln – Parts of Lindsey
(Glanford Brigg) Definitive Map and
Statement**

**Definitive Map Modification (Byway Open
to All Traffic 1, South Ferriby and
Horkstow) Order 2016(1)**



Wildlife and Countryside Act 1981

County of Lincoln, Parts of Lindsey (Glanford Brigg), Definitive Map and Statement

"Definitive Map Modification (Byway Open to All Traffic 1, South Ferriby and Horkstow) Order 2016(1)"

This order is made by North Lincolnshire Council under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to that authority that the "County of Lincoln, Parts of Lindsey (Glanford Brigg)" definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) – namely, the discovery by the authority of evidence that (when considered with all other relevant evidence available to them) shows that a right of way that is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or a byway open to all traffic – of the Act.

The authority have consulted every local authority whose area includes the land to which the order relates. North Lincolnshire Council hereby order that:

1. For the purposes of this order the relevant date is 25 February 2016.
2. The "County of Lincoln, Parts of Lindsey (Glanford Brigg)" definitive map and statement shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the order.
3. This order shall take effect on the date it is confirmed and may be cited as the "Definitive Map Modification (Byway Open to All Traffic 1, South Ferriby and Horkstow) Order 2016(1)".

The COMMON SEAL of
NORTH LINCOLNSHIRE COUNCIL
was hereunto affixed
in the presence of:

C. Bay

(authorised signatory)

Dated: *17th May 2016*

Seal Number: *8181*



SCHEDULE

PART 1

Modification of Definitive Map

Description of path or way to be added

A – B, as indicated on the map: a 1,450-metre-long byway open to all traffic of a width of 12.2 metres (or forty feet, as awarded) commencing on the A1077 opposite the western end of Public Footpath 32 from Barton-upon-Humber at grid reference SE98902106 and proceeding in a southerly direction, initially uphill along a surfaced road known as Middlegate Lane bound largely by hedges, thence past the rear of St Nicholas's churchyard and thence to the entrance to a quarry; thence continuing southwards along the same road, only less well surfaced, being mud-coated crushed stone, to the quarry perimeter's southwest corner; thence continuing southwards, still along Middlegate Lane, now with a natural surface, to the Horkstow parish boundary at grid reference SE99011964.

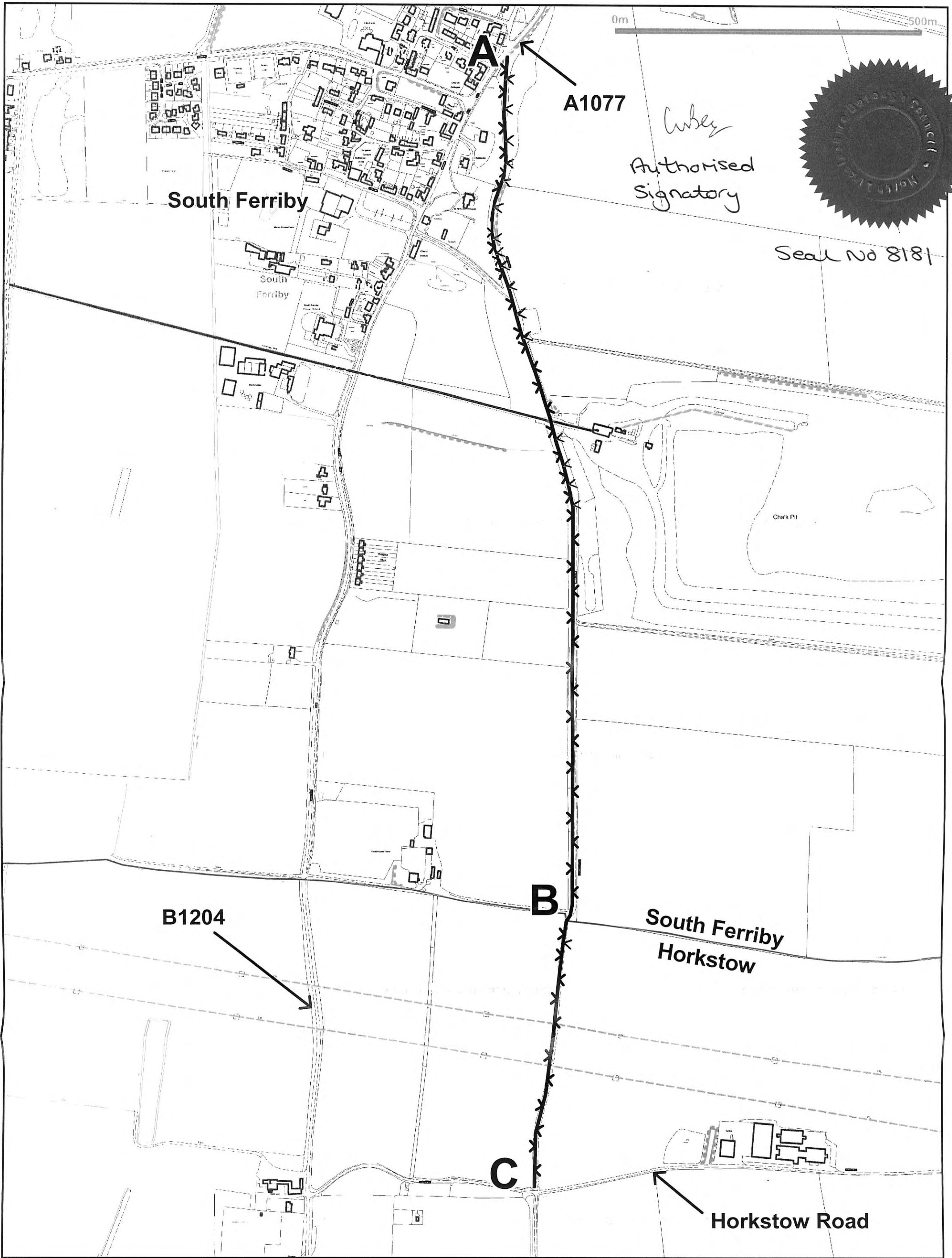
B – C, as indicated on the map: a 450-metre-long byway open to all traffic of a width of 8.5 metres commencing along Middlegate Lane at the South Ferriby parish boundary at SE99011964 and proceeding southwards over a track along an arable field's western perimeter to its junction with Horkstow Road opposite Middlegate Lane's continuation as a tarmacked road at grid reference SE98961919.

PART 2

Modification of Definitive Statement

Variation of particulars of path or way

A 1,900-metre-long byway open to all traffic of a width of 12.2 metres (or forty feet, as awarded) in South Ferriby and 8.5 metres in Horkstow commencing on the A1077 opposite the western end of Public Footpath 32 from Barton-upon-Humber at grid reference SE98902106 and proceeding in a southerly direction, initially uphill along a surfaced road known as Middlegate Lane bound largely by hedges, thence past the rear of St Nicholas's churchyard and thence to the entrance to a quarry; thence continuing southwards along the same road, only less well surfaced, being mud-coated crushed stone, to the quarry perimeter's southwest corner; thence continuing southwards, still along Middlegate Lane, now with a natural surface, to the Horkstow parish boundary at grid reference SE99011964; and thence southwards over a track along an arable field's western perimeter to its junction with Horkstow Road opposite Middlegate Lane's continuation as a tarmacked road at grid reference SE98961919.



0m 500m

A1077

Cubley
 Authorised
 Signatory



Seal No 8181

South Ferriby

South
 Ferriby

Chaik Pit

B1204

B

South Ferriby
 Horkstow

C

Horkstow Road



Title:	
Drawing No:	Version: 1
Drawn by:	Date: 24/02/2016
Scale @A3 1:5580	



Director of Places
 Peter Williams
 BSc,DMS,CEng,MEI,MCMI,AMIMechE