

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

**DEFINITIVE MAP MODIFICATION
(RESTRICTED BYWAY 2, BELTON) ORDER 2018(1)**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To determine North Lincolnshire Council's stance before referring a duly-contended definitive map modification order to the Secretary of State for the Environment, Food and Rural Affairs for determination.

2. BACKGROUND INFORMATION

- 2.1 "Definitive Map Modification (Restricted Byway 2, Belton) Order 2018(1)" was made on 19 April 2018 (**see Appendix 1**) and notice thereof was published on 7 June 2018. The purpose of the order was to add to the definitive map and statement for the Isle of Axholme a restricted byway of a length of 4,720 metres (almost three miles) wholly within the parish of Belton between the A161, close to Hirst Priory, to the Beltoft to Derrythorpe minor road, just north of the M180. The order route is currently shown as a public footpath, except for the initial 740 metres leading east from the A161, which is currently unrecorded.
- 2.2 A restricted byway is a highway for all traffic other than mechanically propelled vehicles. The purpose of the order is not to create a restricted byway, however, but to record one that the discovery of evidence appears to show on the balance of probability already exists. This is principally in the form of the inclosure award for the Isle of Axholme and the map produced by the district valuation office for the levying of increment value duty under the Finance Act 1910.
- 2.3 The former set out a public carriage road in the same manner as the other roads within the parish of Belton that are today tarmacked highways for all traffic, "to be kept in repair in the same manner as the other public roads within the said respective parishes are by law to be amended and kept in repair" (**see Appendix 2**). The latter excluded the route in its entirety from the taxable hereditament plots to which all private land was subject. This suggests the valuers considered it to be a public road, the logic being that if all taxable land were private, then

untaxed land must have been public, and untaxed roads and ways therefore highways.

- 2.4 The courts have given the thesis added weight, most recently in *Fortune v Wiltshire Council* [2012] at the Court of Appeal (**see Appendix 3**). On the other hand, however, the book of reference for the then prospective Isle of Axholme Light Railway listed the order route, albeit at its crossing point only, as an occupation road (**see Appendix 4**). This, though, is dated circa 1897, whereas the inclosure award is dated 1803. The legal maxim, moreover, is “once a highway, always a highway”. Nor has an inspection of the quarter session records at Lincolnshire Archives produced evidence of a subsequent diversion, downgrading or stopping up during the intervening years.
- 2.5 The awarding of a public road would have made the order route a byway open to all traffic – its character as a farm track being one more likely to be used by horse riders and walkers in spite of the existence of higher rights – were it not for section 67 of the Natural Environment and Rural Communities Act 2006. This legislation, however, automatically stopped up all public rights of way for mechanically propelled vehicles that were not already shown on a definitive map immediately prior to commencement. Several obvious exceptions pertained, such as the tarmacked highway network, but none seems relevant in this particular instance, so the next classification of highway down is restricted byway.
- 2.6 The council received two objections following publication of notice: one by an adjacent landowner and the other by a member of the public with no affected property interests. The former owns part of the disused railway extending south from Folly Drain, which abuts the order route over a length of about 550 metres. His concerns were twofold: (1) that he could lose his legal right of way to his property with motor vehicles and (2) that the width of the order route, being forty feet or 12.2 metres, might encroach upon the land he previously thought was his (**see Appendix 5**).
- 2.7 The latter objector, conversely, argues the order route is a highway for all traffic that North Lincolnshire Council should be maintaining accordingly (in other words, a highway of a status greater than a public right of way that ipso facto should not, therefore, appear on a definitive map) (**see Appendix 6**).

3. OPTIONS FOR CONSIDERATION

- 3.1 On referring the order to the Secretary of State, the options are (1) seek its confirmation as made, (2) request its confirmation subject to modifications within the Secretary of State’s ambit or (3) recommend it not be confirmed.

4. ANALYSIS OF OPTIONS

- 4.1 The Secretary of State normally expects an order-making authority to support the order they have made, unless evidence comes to light in the meantime, such that had the new evidence been known about at the outset the order would perhaps not have been made. A decision not to support the order, therefore, would require due and explicit justification.
- 4.2 The landowning objector is one of seven adjacent landowners whom we identified through the records held by the Land Registry. These seven constitute virtually all the adjacent landowners whose property abuts the order route and all were sent copies of the order and notice when notice of the order's making was published. Furthermore, at the same time "to whom it may concern" notices were displayed on site for the benefit of those few owners and occupiers whom we were unable to identify. However, none of the other six identified owners, nor any of the unidentified ones, chose to object. Neither is any of the order route itself registered in anyone's name, which would be consistent with its being a highway, nor as far as we know is anyone claiming ownership of any part of it.
- 4.3 Officers have tried to assure the landowning objector that his access to his land with motor vehicles will be preserved. This is because, as well as stopping up the public right of way for mechanically propelled vehicles, the 2006 Act would have also created a private right of way to the land if this was reasonably necessary to enable a person with an interest in it to obtain access thereto. But at the same time, if he believes his access depended previously on the access to his property having been a public road, that in itself would appear to be tantamount to an admission that he considers the order route indeed to be a public way of sorts. Similarly, officers also believe that there is ample land external to the objector's holding to accommodate on the ground the awarded width of forty feet.
- 4.4 What the landowning objector has not done, however, is attempt to question the evidence that the making of the order was triggered by. Rather, he appears to have approached the situation as if we were proposing to create a restricted byway, instead of commenting specifically on the proposition that the restricted byway already exists. Unfortunately, after a promising start, negotiations with this objector have stalled and officers have concluded that it is not worthwhile pursuing them further.
- 4.5 This conclusion has been reinforced by the fact that after negotiations with the landowning objector began, a second objection was lodged by a party we know from experience is not going to withdraw no matter what (meaning the order will have to be referred to the Secretary of State regardless). This objector agrees with North Lincolnshire Council

that the order route is a highway, but disagrees with us that it is a public right of way.

- 4.6 His contention appears to be that the route is instead a highway for all traffic indistinguishable in terms of status from those we normally surface with tarmac and maintain accordingly. To support this viewpoint, he cites selective obiter dicta from *Suffolk County Council v Mason* 1979 and derives the following conclusions: (1) 'ordinary highways' or 'full carriageways' are outside the scope of the definitive map and (2) a highway cannot appear on a definitive map if it is already on a list of streets. In so doing, he also cites, in his first paragraph, paragraph 1113 from the court ruling in *Fortune v Wiltshire Council* 2010. Confusingly, however, this includes an extract from the book *Rights of Way, A Guide to Law and Practice* by J Riddall and J Trevelyan, viz: "Some authorities have taken the view that the list of streets and the definitive map are mutually exclusive: that a way should not be included in both. This view is mistaken. The definitive map records only the public's rights; the list of streets only the highway authority's maintenance liability".
- 4.7 At the time of the *Suffolk* case, the term 'byway open to all traffic' existed by virtue of the Countryside Act 1968.
- 4.8 Our understanding of the objector's comments is that he questions why any highways for vehicular traffic should be added to the definitive map of public rights of way.
- 4.9 The explanation is based on an historical accumulation of legislation. The original National Parks and Access to the Countryside Act 1949 required definitive maps to be compiled and maintained by local authorities. They used the terms footpath, bridleway and road used as a public path (RUPP).
- 4.10 The Countryside Act 1968 created the new definition of byway open to all traffic, which required a reconsideration of the original RUPPs; however, it left footpaths and bridleways the same.
- 4.11 The Wildlife and Countryside Act 1981 gave a definition to byway open to all traffic. This was considered in the case of *Masters v Secretary of the State for the Environment, Transport and the Regions* 2000. The conclusion was that byways over which the public have rights for vehicles and other types of traffic (i.e. byways open to all traffic) should not be omitted from definitive maps just because the public were not using them in this manner at that point in time. One had to consider the supporting evidence. It was the character of the way, not the predominant use that was relevant.
- 4.12 Therefore, after the 1981 Act and the *Masters* case it is clear local authorities can have byways open to all traffic on definitive maps, not only footpaths and bridleways.

- 4.13 Under the Natural Environment and Rural Communities Act 2006, unless the route met one of the exemptions under section 67 of that Act, or was already shown on the definitive map as a path or way other than a byway open to all traffic, the right to use mechanically propelled vehicles was extinguished. Therefore, the route that fell into that category was a footpath, bridleway or restricted byway.
- 4.14 It is clear, then, that highways which are open to all traffic historically can be on the definitive map, even if subsequently, as in this case, those rights for mechanically propelled vehicles have been extinguished.
- 4.15 Therefore, we cannot agree with the objector's statement that a highway permitting vehicular traffic should not be on the definitive map.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING)

5.1 Financial

5.1.1 The Secretary of State will determine the order using one of the following means: written representations, hearing or inquiry. Written representations are the likeliest, given the fact that there are only two objectors; unless, that is, one or both insists on his right to be heard. Whichever it is, the cost will be borne by Environment and Sustainability's existing budget. This should be minimal, amounting to staff time and, in the event of a hearing or an inquiry, the hire of a venue, such as a village hall.

5.1.2 Theoretically, on the advice of Legal Services, we could require the services of a barrister, should an inquiry ensue and one of the objectors engages a barrister too. It is considered unlikely, however, that this will happen in respect of this particular order. One further cost, if the order is confirmed, would be publication of notice of such in the local press, amounting to approximately £250.00.

5.2 There are no other resource implications to highlight.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 Not applicable.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

- 7.1 Belton Parish Council and the Axholme Central ward members were consulted before the order was made, and identified owners of adjacent land, user groups, farming organisations and statutory undertakers were consulted to coincide with publication of notice.
- 7.2 The only interest the order has attracted is that of the two objectors as referred to throughout this report.

8. RECOMMENDATIONS

- 8.1 It is recommended that in referring "Definitive Map Modification (Restricted Byway 2, Belton) Order 2018(1)" to the Secretary of State for determination, North Lincolnshire Council support its confirmation as made.

DIRECTOR OF OPERATIONS

Church Square House
30-40 High Street
SCUNTHORPE
North Lincolnshire
DN15 6NL
Author: Colin Wilkinson
Date: 7 November 2018

**Background Papers used in the preparation of this report: office file
"Restricted Byway 2, Belton" held electronically only by Environment and
Sustainability**

APPENDIX 1

**Wildlife and Countryside Act 1981,
Section 53**

**County of Lincoln – Parts of Lindsey
(Isle of Axholme) Definitive Map and
Statement**

**Definitive Map Modification (Restricted
Byway 2, Belton) Order 2018(1)**



Wildlife and Countryside Act 1981

County of Lincoln, Parts of Lindsey (Isle of Axholme), Definitive Map and Statement

"Definitive Map Modification (Restricted Byway 2, Belton) Order 2018(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 (Isle of Axholme)' definitive map and statement require modification in consequence of the occurrence of events specified in section 53(3)(c)(i) – namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which 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 – and section 53(3)(c)(ii) – namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description – 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 16 April 2018.
2. The 'County of Lincoln, Parts of Lindsey (Isle of Axholme)' 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 (Restricted Byway 2, Belton) Order 2018(1)".

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

(authorised signatory)

Dated: 19th April 2018

Seal Number: 8779

(Caroline Emerson)



SCHEDULE

PART I

Modification of Definitive Map

Description of path or way to be added

A – B, as indicated on the map: a 740-metre-long restricted byway of an awarded width of forty feet (12.2 metres) commencing on the A161 adjacent to the south side of Folly Drain at grid reference SE78210972 and proceeding in an easterly direction along the southern side of Folly Drain to pass under the extant brick viaduct of the former Axholme Joint Railway en route to its junction with Public Footpath 25 at grid reference SE78940976.

Description of path or way to be upgraded

B – C, as indicated on the map: a 1,250-metre-long restricted byway of an awarded width of forty feet (12.2 metres) commencing twelve metres east of the extant brick viaduct of the former Axholme Joint Railway at its junction with Public Footpath 25 at grid reference SE78940976 and proceeding in an easterly direction for forty metres to grid reference SE78980976 thence in a southerly direction along the west side of Temple Drain for 800 metres to its junction with Public Footpath 141 at grid reference SE79100898 and thence continuing in a southerly direction for 410 metres between Temple Drain on its east side and Stealgoose Drain on its west side to its junction with Public Footpath 25 at grid reference SE79070857 adjacent to the northern point of Three Cocked Hat Wood.

C – D, as indicated on the order map: a 2,730-metre-long restricted byway of an awarded width of forty feet (12.2 metres) proceeding from its junction with Public Footpath 25 at grid reference SE79070857 adjacent to the northern point of Three Cocked Hat Wood for 2,165 metres first south easterly alongside Three Cocked Hat Wood then easterly along the north side of North Moor Drain via its junction with Public Footpath 27 at grid reference SE79650846 to where it turns south east to cross over North Moor Drain at grid reference SE81170848; thence continuing for 565 metres first south east, then east, then south south east to its junction with the Derrythorpe-to-Beltoft road at grid reference SE81680769.

PART II

Modification of Definitive Statement

Variation of particulars of path or way

A 4,720-metre-long restricted byway of an awarded width throughout of forty feet (12.2 metres) over tracks of varying surfaces commencing on the A161 adjacent to the south side of Folly Drain at grid reference SE78210972 and proceeding in an easterly direction for 740 metres along the southern side of Folly Drain to pass under the extant brick viaduct of the former Axholme Joint Railway en route to its junction with Public Footpath 25 at grid reference SE78940976; thence continuing in an easterly direction for forty metres before turning south at grid reference SE78980976; thence continuing in a southerly direction along the west side of Temple Drain for 800 metres to its junction with Public Footpath 141 at grid reference SE79100898; thence continuing in a southerly direction for 410 metres between Temple Drain on its east flank and Stealgoose Drain on its west flank to its junction with Public Footpath 25 at grid reference SE79070857 adjacent to the northern point of Three Cocked Hat Wood; thence continuing for 2,165 metres first in a south-easterly direction alongside Three Cocked Hat Wood's eastern perimeter then in an easterly direction along the north side of North Moor Drain via its junction with Public Footpath 27 at grid reference SE79650846 to where the track turns south east to cross over North Moor Drain at grid reference SE81170848; and thence continuing for 565 metres first south east, then east, then south south east to its junction with the Derrythorpe-to-Beltoft road at grid reference SE81680769.



Director of Operations
 Peter Williams
 BSc, CEng, MCIM, AMM, AMIChE



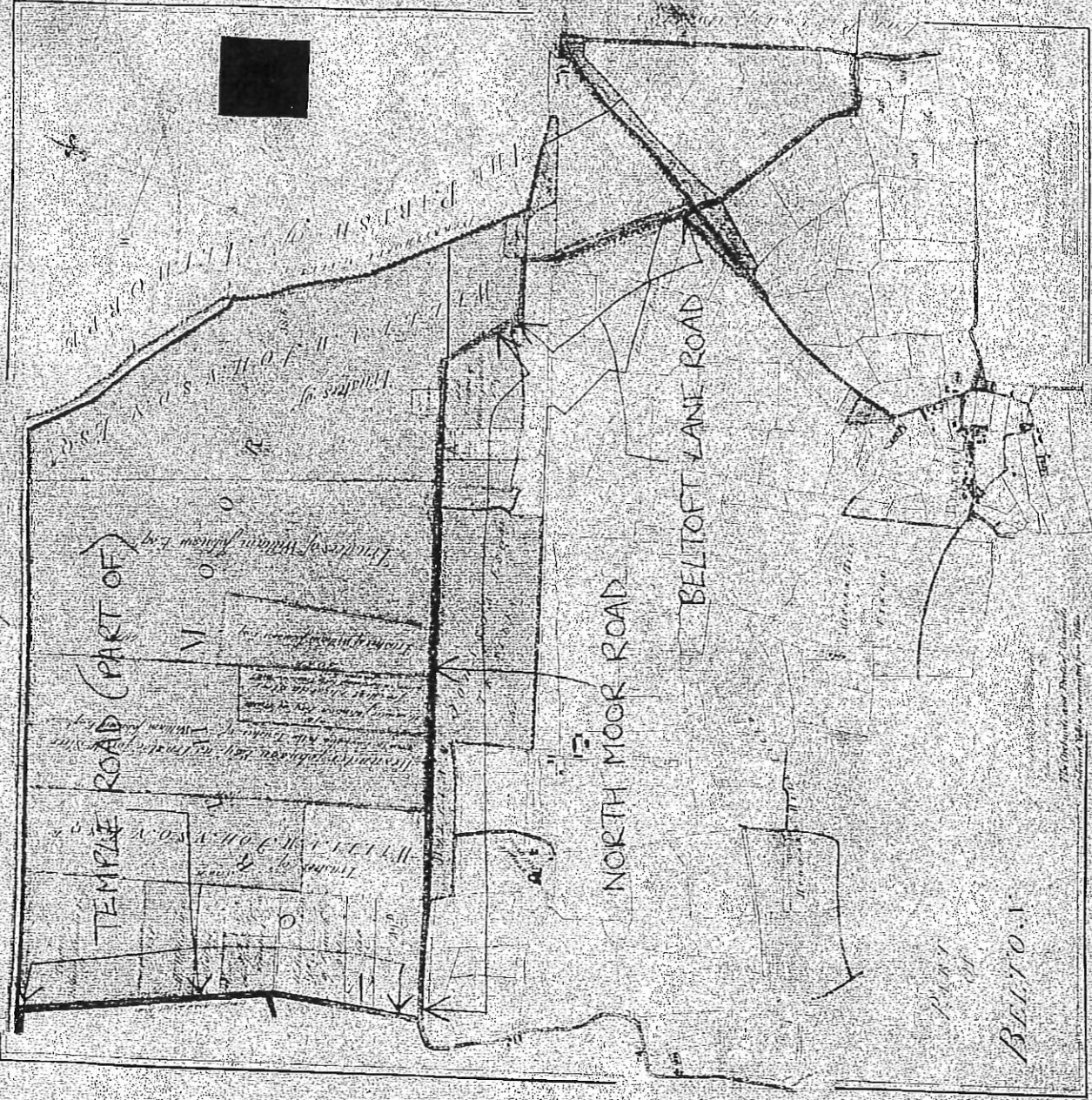
Title: "Definitive Map Modification (Restricted) Byway 1, Belton Order: 2018(1)"

Drawing No: _____
 Version: 1
 Date: 17/01/2018
 Scale @A3 1:1000
 Drawn by: Colin Wilkinson

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INCLOSURE AWARD MAP (EXTRACT 2)



Scale
1 inch = 100 feet
1/2 inch = 50 feet
1/4 inch = 25 feet
1/8 inch = 12 feet 6 inches
1/16 inch = 6 feet 3 inches

Belloft

The District and Parish of Belloft
Incorporated under the Local Government Act, 1972

1044

ANNO REGNI TRICESIMO QUINTO Cap. 107.

Power for Special Commissioners to set out publick and private Roads.

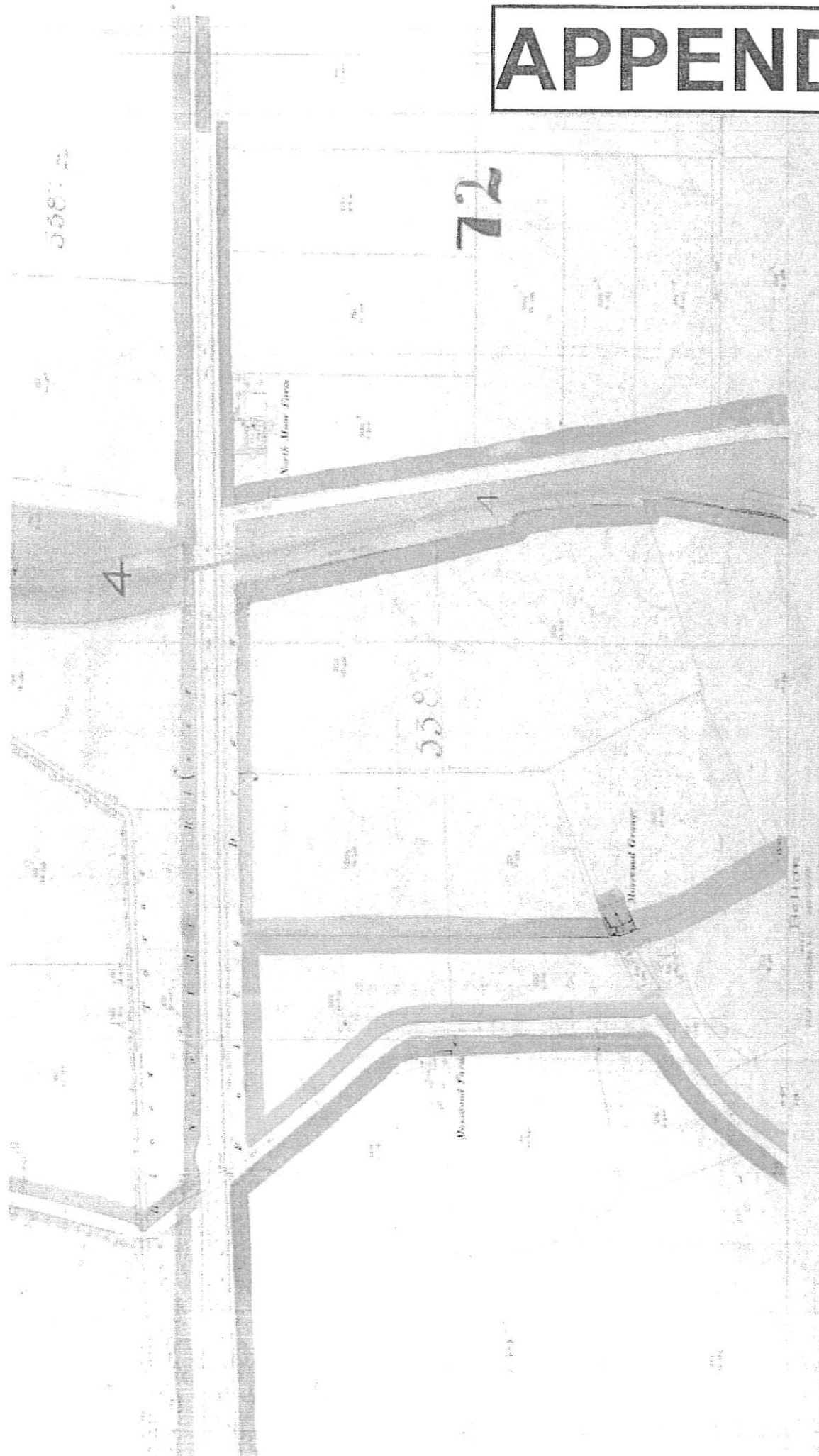
XXV. And be it further enacted, That the said special Commissioners shall, in the next Place, set out and appoint, in the respective Parishes for which they are hereby severally appointed to ad, such publick and private Roads, Ways, and Foot Paths, as they shall judge necessary, and also such publick and private Ditches, Mounds, Fences, Banks, Drains, Shuttles, Soughs, Waterworks, Bridges, Gates, Stiles, and other Requisites, in, over, through, or upon, the Lands and Grounds hereby directed to be divided, inclosed, and allotted, as they shall judge necessary and proper, to communicate and co-operate with the main Drains and other Works of Drainage herein-before directed to be made by the said General Commissioners, for the more effectual Drainage of the said several Parishes of *Epworth, Haxey, Belton, and Ousston*, so as all such publick Carriage Roads shall be and remain Forty Feet in Breadth at the least between the Ditches or Fences; and that the said private Roads or Ways shall be of such Breadth as the said Special Commissioners shall order and direct; and all such publick Carriage Roads shall be well and effectually fenced on both Sides, by such of the Owners and Proprietors of the said Lands and Grounds, and within such Time as the said Special Commissioners shall respectively, by Writing under their Hands, direct or appoint; and that it shall not be lawful for any Person to erect any Gate across any of the said publick Roads, or to plant any Trees in or near the Hedges or on the Sides of any of the said Roads, at a less Distance from each other than Fifty Yards; and after the said publick Roads shall have been set out as aforesaid, the said Special Commissioners respectively shall, and they are hereby empowered and required, by Writing under their Hands, to appoint, in each of the said respective Parishes, some proper Person to be Surveyor of the said Roads, and such Surveyor shall cause the same to be properly formed and completed, and put into good and sufficient Repair, and shall be allowed such Salary or Reward for his Trouble therein as the said Special Commissioners shall, by Writing under their respective Hands, direct and appoint, which Salary or Reward, and also the Expences (over and above the Statute Duty), of forming the said Roads and of putting the same in good and sufficient Repair, shall be raised in like Manner as the Charges and Expences of obtaining and passing this Act, and carrying the same into Execution, are herein-after authorized and directed to be raised; and that none of the Inhabitants of the said Parishes of *Epworth, Haxey, Belton, and Ousston*, other than the respective Persons to whom any Allotment shall be made by virtue of this Act, shall be charged or chargeable (over and above the Statute Duty) towards the forming and repairing of the said publick Roads until the same shall be made fit for the Passage of Travellers and Carriages, and shall have been certified so to be by the respective Surveyors appointed in each Parish, by Writing under his and their Hands, to be delivered to the Clerk of the Peace, at some Quarter Sessions of the Peace to be holden for the Parts of *Lindsey*, in the said County of *Lincoln*, and until such Certificate shall have been allowed and confirmed by the Justices at such Sessions, which said Certificate shall be so delivered to the Clerk of the Peace at the Quarter Sessions next after the said Roads shall be formed, completed, and put into good and sufficient Repair as aforesaid, and within the Space of Two Years next after the Execution of the Award or Instrument herein-after directed to be made, unless sufficient Reason be given, to the Satisfaction of the said Justices, that a further Time is necessary for that Purpose, in which Case the said Justices may, and they

are hereby empowered to allow such further Time for the delivering in the said Certificate as they shall think proper, not exceeding One Year; and in case the said respective Surveyors, or any of them, shall neglect or refuse to deliver in such Certificate within the Time before limited, each of them shall forfeit and pay the Sum of Ten Pounds, to be recovered in like Manner as any other Penalty is by this Act authorized to be recovered, and the same shall be applied towards defraying the Expences of carrying this Act into Execution, in such Manner as the said Special Commissioners shall direct; and that after such Certificate shall have been delivered to the said Clerk of the Peace by the said respective Surveyors as aforesaid, and shall have been allowed and confirmed at such Sessions, the said Roads shall be from Time to Time supported and kept in Repair in the same Manner, as the other publick Roads within the said respective Parishes are by Law to be amended and kept in Repair; and that the said private Roads or Ways shall be made and kept in Repair at the Expence of such Person or Persons, and in such Shares and Proportions as the said Special Commissioners respectively shall order, direct, and appoint; and that after such publick and private Roads and Ways shall be set out and made, it shall not be lawful for any Person or Persons to use any other Roads or Ways, either publick or private, in, over, through, or upon the Lands or Grounds hereby directed to be divided and inclosed, either on Foot, or with Cattle, Horses, or Carriages; and that all former Roads and Ways, which shall not be set out and appointed as the Roads and Ways through the said intended Inclosure, shall be deemed Part of the Lands and Grounds to be divided and inclosed by virtue of this Act, and shall be divided and allotted accordingly as Part thereof; and all such Ditches, Mounds, Fences, Banks, Drains, Shuttles, Soughs, Waterworks, Bridges, Gates, Stiles, and other Requisites to be set out and appointed by the said Special Commissioners respectively as aforesaid, shall be made, and at all Times thereafter repaired, cleansed, maintained, and kept in Repair, either by parochial Assessments, or by such Person or Persons, and in such Manner as the said Special Commissioners respectively shall in and by their Award or Instrument in Writing herein-after mentioned direct and appoint.

XXVI. Provided nevertheless, and be it further enacted, That so soon as conveniently may be after the said Special Commissioners shall have set out and appointed such publick and private Roads and Ways as aforesaid, they shall severally cause publick Notice thereof to be given in some Newspaper circulating in the said County of *Lincoln*; and that it shall and may be lawful for any Person or Persons whomsoever, who shall think himself, herself, or themselves, aggrieved by the Setting out, Appointment, or Disposition of such publick or private Roads or Ways as aforesaid, (on giving One Calendar Month's Notice in Writing to the said Special Commissioners respectively, of his, her, or their Intention), to appeal against all or any of such publick or private Roads or Ways to some General Quarter Sessions of the Peace to be holden in and for the Parts of *Lindsey*, in the said County of *Lincoln*, within Four Calendar Months next after such Setting out, Appointment, and Disposition of the said Roads, and Notice given thereof as aforesaid, and he, she, or they, shall be heard by himself, herself, or themselves, or by his, her, or their Counsel, Agents, Attornies, and Witnesses; and that the said Special Commissioners, or any One of them, or their Surveyor or Surveyors, shall

Notice to be given by the Commissioners of having set out Roads.

APPENDIX 3

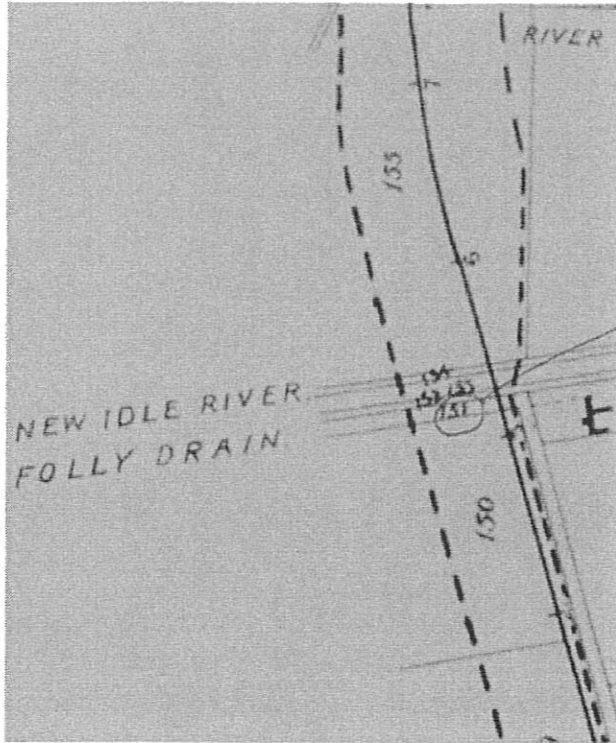




APPENDIX 4

Isle of Axholme Light Railway

Deposited Map



Book of Reference

No. on Deposited Plan.	Description of Lands	Names of Owners, or Required Owners.	Names of Lessees, or Reputed Lessees.	Names of Occupiers.
143	Land	Maw, George Alfred		Frank Rusling
144	Land	Maw, George Alfred		Frank Rusling
145	Land	Maw, George Alfred		Frank Rusling
146	Land	Cocking, Sarah		Robert Slack
147	Road	Proprietors of Belton Private Roads and Drains: John Wm. Ross, <i>Clerk</i>		
148	Land	Lister, George Spofforth		David Stubley
149	Arable Land	Lister, George Spofforth		David Stubley
150	Arable land	Lister, George Spofforth		David Stubley
151	Occupation road	Bletcher, John Henry Bletcher, Thomas		Themselves
152	Drain, bridge and banks	Proprietors of Isle Common		Themselves

"151 OCCUPATION ROAD"

F.A.O Mr Colin Wilkinson
Senior Public Rights of Way Officer
North Lincolnshire Council
Church Square House
PO Box 42
SCUNTHORPE
DN15 6XQ

11 Wells Street
Scunthorpe
North Lincolnshire
DN15 6HW

DX: 14705 Scunthorpe

Our ref: AWP/HT/
Your ref:
E-mail: @hetts.co.uk
Please ask for:
Date: 20th July 2018

Enc,

Dear Mr Wilkinson,

I refer to our previous e-mails.

I have reviewed your application for modification served on my client Mr [redacted] and carried out some research on the issue in so far as the proposal will affect Mr [redacted].

The main concern that my client has is that the designation of the routes you suggest as "restricted byways" will prevent my client having continued vehicular access to his land.

He and we believe others before him having enjoyed vehicular access over the route A – B and that part of B – C particularly that, which adjoins his land.

I suspect that others will claim similar rights of access to their fields particularly from C to D.

I am not certain of the status of the Hogg Lane track but even if my client were able to utilise that track rather than route A – B he will find himself in difficulty once he links with route B – C.

Historic Use

The land that my client owns is shown in red on the plan annexed hereto. I will refer to the purple marking in due course.

My clients title deeds (pre-registration at HM Land Registry) show the following:-

1. In 1974 the British Railways Board sold the land shown on the enclosed plan marked in blue to [redacted]. The northern section of that land was subsequently sold to Mr [redacted].
2. The recitals in that Conveyance confirm that on the 3rd May 1904 some 26a formerly part of the Hirst Priory Estate were sold to the North Eastern Railway Company of Lancashire and Yorkshire Railway Company.
3. The Conveyance of the land also included (by the words "Together with" "all the estate and interest (if any) of the Sellers in the roads adjoining the said lands hereby conveyed and all other ways rights easements..... belonging or reported to belong hereto"



FAMILY
MEDIATORS
ASSOCIATION



resolution
first for family law



ACCREDITED
Children
Law



CONVEYANCING
QUALITY

4. The British Railways Board included in the sale to [REDACTED] those said rights which through transfer of title were transferred to Mr [REDACTED].
5. The land coloured purple was defined in the 1974 search of the Lindsey County Council as "a ^{public} purple footpath in the rights of way Definitive Plan" - copy herewith.
6. In 1977 Mr [REDACTED] sold the northern section to a Mr Holt who in turn sold it to Mr [REDACTED] in 1998.

The Railway

There is a good deal of historical evidence of the operation of the railway known as the "Axholme Joint Railway" and reference to the Folly Drain.

I enclose the opening page from Wikipedia that interestingly encloses a photo of the same.

The railway line ran north to south along then land now owned by my client. The main line ran from Goole (where it joined the Hull and Doncaster Branch) Haxey and Epworth were is joined the Doncaster Lincoln Line .

I enclose a plan of the railway line and you will note the position of the south engine at Folly Drains, Belton and the line (in blue) running south from the viaduct.

That is clearly the line running through what is now my clients land. The line was referred to as Hagg Lane siding.

The line operated generally until 1965 and the lines were removed in 1972.

Mr [REDACTED]'s Position

1. He is aware of the Sec 34 Road Traffic Act 1988 which restricts the driving of a vehicle on a footpath.

However, he would argue that he has lawful authority through long user, historic rights given and passed on in the 1904 Conveyance and unless there is any other way in which he can access the land by easement of necessity.

2. It is noted that the Countryside and Rights of Way Act 2000 replaced all roads used as public paths to the status of restricted byway from 2006. (I note with interest as to whether that has affected the status of Hagg Lane, which was described in 1978 as a public right of way from the A161).

3. However, Mr [REDACTED] would claim that vehicular rights existed over the route B to C before the Commencement of the National Environment and Road Communities Act 2006.

As I understand it the rights may either have been historic or may have arisen by prescribed dedication.

Mr [REDACTED] would agree (inter alia) that as a member of the public he has utilised that track as access to his land for at least the requisite period of five years and that the same track would have been utilised by the vehicular traffic by the Railway Company in maintaining and accessing the track from the inception of the railway which was certainly before December 1930, utilising the rights included and alluded to in the 1904 Conveyance.

Please regard this letter as both representation and objection. If the modification goes ahead it is our belief that our clients land as far as vehicular access is concerned would be effectively landlocked preventing him from maintaining the land against nuisance to adjoining landowners.

Yours sincerely

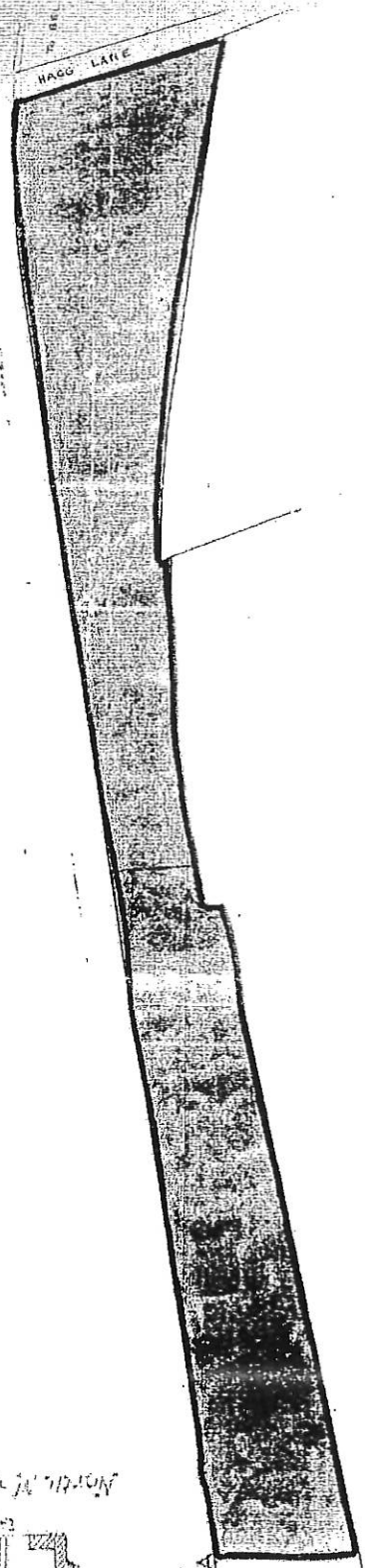
A large, dark, scribbled-out handwritten signature.A horizontal line of blacked-out text, likely a name, redacting the signature.

Hetts

BELTON



HAGG LAKE



NORTH WIND FARM



from CHALE

1000 1000 1000

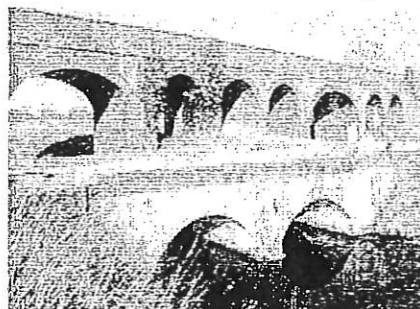
SCALE ~ 1/2500

SECTION RAILWAY
EASTERN REGION
ESTATE SURVEYOR. 1

Axholme Joint Railway

The **Axholme Joint Railway** was a committee created as a joint enterprise between the Lancashire and Yorkshire Railway (L&Y) and the North Eastern Railway (NER) and was established by the North Eastern Railway Act of 31 July 1902. It took over the *Goole and Marshland Railway*, running from Marshland Junction near Goole to Reedness Junction and Fockerby, and the Isle of Axholme Light Railway, running from Reedness Junction to Haxey Junction. Construction of the Goole and Marshland Railway had begun in 1898, and by the time of the takeover in early 1903, was virtually complete. The Isle of Axholme Light Railway was started in 1899, but only the section from Reedness Junction to Crowle was complete at the takeover. The northern section opened in November 1903, and the line from Crowle to Haxey Junction opened for passengers on 2 January 1905.

Axholme Joint Railway



The viaduct which carried the Axholme Joint Railway over the Folly Drain and the South Engine Drain

Dates of operation	1902–1923
Predecessor	Goole and Marshland Light Railway and Axholme Light Railway
Successor	Joint London, Midland and Scottish Railway and London and North Eastern Railway
Track gauge	4 ft 8½ in (1,435 mm)

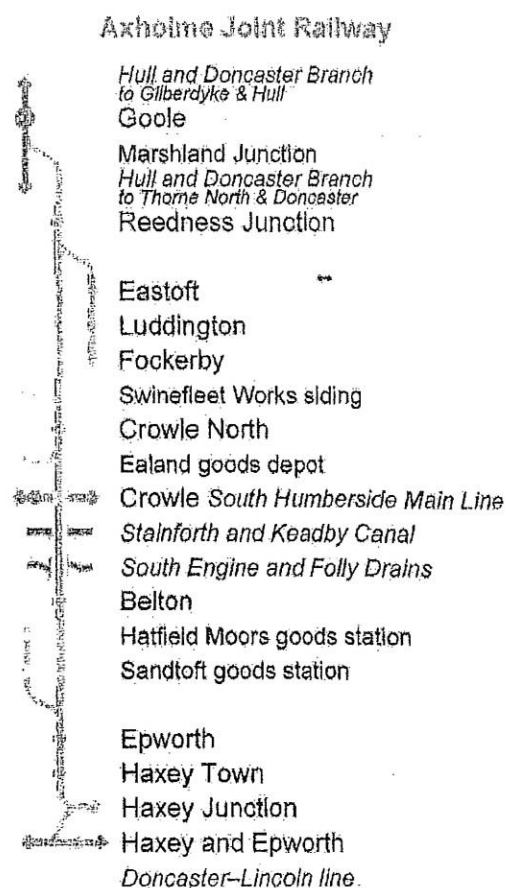
In 1882, the Isle of Axholme and Marshland Steam Tramway was proposed. It would run from Haxey to Crowle, and would use a gauge of 3 ft 6 in (1,067 mm). However, in 1883 the company joined forces with, and was then taken over by, the Manchester, Sheffield and Lincolnshire Railway to resist a proposal for the Goole, Epworth and Owston Railway. The defeat of the rival scheme was resented by local businessmen. Under an Act of Parliament obtained in 1885, the tramway was abandoned and the Isle of Axholme Railway was authorised, but this too was abandoned three years later by another Act. Nothing more happened, until the passing of the Light Railways Act in 1896, which meant that rural railways could be authorised by an order from the Board of Trade, rather than having to obtain a costly Act of Parliament.^[7]

Proposals

The Goole and Marshland Light Railway was one of the first to take advantage of the new Act. A public enquiry held in Goole on 8 October 1897 showed that the plans, which would cost £59,602 to implement, had local support, and the farmers club estimated that the railway would carry 51,625 tons of agricultural produce per year. An order enabling construction to proceed was issued on 16 August 1898. It sanctioned four railways and a road. Leaving the Doncaster to Goole main line (Hull and Doncaster Branch), a line composed of two of the railways ran to Adlingfleet via Eastoft, and there were branches to Swinefleet and Luddington. 2 miles (3.2 km) of road were needed to provide access to the railway. The maximum speed was restricted to 15 miles per hour (24 km/h), and locomotives with tenders were not allowed to run tender-first.^[8]

The Isle of Axholme Light Railway was proposed in 1897, running from Haxey Junction to Crowle via Epworth and Belton. At Haxey, it would join the Great Northern and Great Eastern Joint Railway, while at Crowle it would pass over and also connect to the Great Central Railway, and would join The Goole and Marshland Light Railway at Reedness Junction. Two branches, to Hatfield Moor and Newlands, were proposed.^[9] Like its northern neighbour, the plans had strong local support, and a Light Railway Order was granted on 11 March 1899. A request by the Sheffield and South Yorkshire Navigation Company that the swing bridge over the Canal near Crowle should be maintained in the open position to allow free passage of boats, rather than in the closed position to prefer the railway, was refused, as was an application for running powers over the line by the Great Northern and Great Eastern Joint Railway.^[10]

Neither railway remained independent for long. Both were negotiating with the North Eastern Railway by January 1900, and agreement was reached that the larger railway would run both of the new lines, also representing them at the Railway Clearing House. As well as the agricultural traffic, the route would provide access to coal from the South Yorkshire coalfields. The Lancashire and Yorkshire Railway also needed routes into the coalfields, and the two companies agreed with the two new railways on a takeover plan.^[11] The North Eastern Railway Act of 31 July 1902 dissolved, transferred to and vested both companies in the North Eastern and the Lancashire and Yorkshire



APPENDIX 6

Chief Executive North Lincolnshire Council Civic Centre Ashby road Scunthorpe
Interim objection to DMMO Restricted Byway 2 Belton 2018 (1)
Formal objection

Colin Seymour previously wrote to me that he agrees with me, I have always held that highways on the list of streets used by motor vehicles should not be added to the Definitive Map. Mr Seymour wrote, his view is upheld by *Suffolk v Mason* (1979) pages 720 + 728 where the House of Lords held that the definitive map "was not concerned with ordinary carriageways or cartways" and "ordinary roads used by vehicular traffic are not within its scope" (see also quotation in *Fortune* at last line of para 1113)

This NLC DMMO is made on 40 ft wide public Carriageway. That has not been maintained

It is a pre Highway Act (1835), such highways are today public maintained highways (HA 1980). Between 1835 and 1959 maintained by the Inhabitants. Since it has been maintainable by the highway authority. That since 1996 has been NLC

Public highways 40feet wide are of a much higher status than highway formally maintained by the inhabitants. From the 1909 Act Footpaths were 4feet wide and bridleways 6feet with vehicular traffic 14 feet. From the 1959 Highways Act all the above highways became maintainable by the highway authority (County council)

NL Council has a duty "to assert and protect the rights of the public to the use and enjoyment of the highway (Highways Act, 1980, Section 130)
Maintained of highways

Highway Maintenance History

The 1555 Act – the Statute for the mending of Highways (2 & 3 Ph. & M.) CAP VIII3 – formed for nearly 300 years the basis of a new organisation of road maintenance and sought to place the obligation for the upkeep of public highways on the parish.

Halsbury's Laws describes: ... at common law the inhabitants of a parish were bound to repair the highways within their area unless it could be shown that responsibility had attached to an individual or a corporate body by reason of tenure, Inclosure or prescription

Halsbury's Laws of England: Highways, Streets and Bridges, Volume 55, 2012, para 250

The failure of NLC to maintain highway has been use by Mr Wilkinson, in the past he misquoted Lord Justice Roth. He says Lord Roth allowed his interpretation that full highways on the "list streets" can be made into mere ROW on the Definitive map He is wrong. Such a claim is that Lord Roth judgement was that the council had a digression not maintained highway and put such highway on its list of streets

Lord Roth took the view in *Masters v SoSETR* (2002) All ER when he stated at para "parliament intended to include ways over which the public had vehicular rights of way, which rights were rarely if ever exercised by the public" Lord Justice Roth continued at para 30 "Parliament intended that (full highways or cart ways' - to cite Lord Diplock above) which might not be listed as maintainable highways at public expense under the Highways Act should be included in the definitive map and statement so that rights of way over such highways should not be lost parliament's purpose was to record such highways not delete them"

It is good authority that judgements in the Court of appeal do not take precedence over judgements made by five Law Lords. Therefore, the words of Lord Justice Roth have to be considered against the words of Lord Diplock, Lord Hailsham and Lord Fraser

Their rulings is powerful authority that the definitive map was not intended to be concerned with "ordinary road" are required to be entered upon the list of streets maintainable at public expense (section 36(6) Highways Act 1980)

In Suffolk V Mason (1979) AC 705 Lord Diplock used the term "full highways or cartway" (page 710A. At page 715 re the 1949 Act he stated "motorists are not among the intended beneficiaries"

Lord Hailsham at page 720G took the point further and stated re definitive map "it is not concerned with recording Carriageways and cartway"

Lord Fraser also took view at page 728D re Part 1V of the Act that "Ordinary roads used by vehicular traffic are not within its scope". He also cited in support Bristow J in AG v Honeywell (1972) WLR 1510 who stated "the Act is concerned with the rambler and the pony trekker, not with the motorist"

Lord Fraser went on to say at page 731 A to C "If (the Act) was in my opinion simple not concerned with such rights (public, rights of cartway). He continued "its whole emphases is on recording and preserving rights which might otherwise be lost. That is also in my view the reason why the definitive map is not required to show ordinary roads Such roads are entirely outside the scope of the Act" (my emphasis)

Every public road maintainable at public expense is required to be entered upon the list of streets. Therefore, the implication behind Lord Justice Roth words is that that they only apply to public carriageway not maintained at public expense and therefore not on the List of streets.

As all public carriageways pre 1835 are maintainable at public expense are required to be recorded on the List of streets the law presumes that they are so recorded and part of the maintained highway network.

NLC has allowed this carriageway to be impassable from the A161 The vegetation has not been cut, it is over 500mm High. It is the statutory duty of NLC to maintain the way (The Council has a duty "to assert and protect the rights of the public to the use and enjoyment of the highway (Highways Act, 1980, Section 130))

Mr Wilkinson wrote to Clive Richards at the Planning Inspectorate ROW, that the highway is not registered at the Land Registry. (Full Copy attached)

Paragraph 2 NLC to PINs

North Lincolnshire Council have already identified from information held by The Land Registry virtually all of the adjacent owners. However, the track itself that the order route follows throughout, a copse adjacent to point C on the order map called Three Cocked Hat Wood and the land to the immediate north of the order route between points A and B on the order map are unregistered. We are thus unsure on whom we should serve notice with respect to these particular holdings. Furthermore, the track the order route follows was set out under the Isle of Axholme Inclosure Award as a forty-foot-wide public carriage road.

Moreover, the adjacent plots were strictly demarcated as being separate from the road and the boundaries abutting the road were to be for ever hereafter maintained and repaired. Clearly, therefore, the ownership of the adjacent lands was discrete from ownership of the road, which latter appears to have been set out as a highway. But the award does not indicate to whom the subsoil of the awarded highways belonged. Although theoretically this could have been the Lord of the Manor, this is only a guess. North Lincolnshire Council understand that the common law position is such that, in the absence of known owners, the respective adjacent frontagers are deemed to own up to the centre mark of a given road or track. In that case, if we serve notice on the adjacent owners we shall be covering that possibility. However, we do not know whether this is the case in this instance; nor do we know if there are any occupiers.

NLC know it is a pre 1835 highway and they own the top two spits

Mr Wilkinson and NLC legal officers position at paragraph 2 of his letter to Planning inspectorate is perverse.

Why would any ROW officer apply the Land Registry to find out who owns a highway, the LR do not register the ownership of highways, A highway cannot be owned by adverse procession (Smith v Land Registry) Why would anyone register a highway, it would achieved nothing because the road would not have ceased to be a highway and so would continue to be subject to the statutory vesting in s263 HA 1980

Quite simple; It is impossible and to deprive the public of their rights.

The 1803 award plan parliament instructed the Commissioners Isle of Axholme Inclosure by the Act of Parliament to be deposited the award plan in the Quarter Session. Those Allottee adjacent to this highway received their Allotments in Full and final settlement.

They had six months to challenge their allotment being bounded by the Highway. Mr Wilkinson's submission that more than 200years later their successors can increase the size of the allotment to the centre of the road is wrong.

Every public road maintainable at public expense is required to be entered upon the list of streets. Therefore, the implication behind Lord Justice Roth words is that that they only apply to public carriageway not maintained at public expense and therefore not on the List of streets. As all public highways maintainable are required to be recorded on the List of streets the law presumes that they are so recorded and part of the maintained highway network.

In effect NLC is quite improperly taking away the public rights by not carrying out its known statutory duty to maintain and put this carriageway on the list of streets

Copy to Anne Own PINS-
Caroline Emerson NLC legal
Peter William Director of Operations