

# Planning Committee

<b>DATE</b>	14/06/2023
<b>REPORT OF</b>	Sharon Wroot, Executive Director for Place and Resources
<b>SUBJECT</b>	Application to add a Public Footpath from Butt Lane to Public Footpath 110, Laceby
<b>STATUS</b>	Open

## CONTRIBUTION TO OUR AIM

The maintenance and review of the Definitive Map and Statement is identified as a key action in the Council's Rights of Way Improvement Plan (ROWIP) 2021.

The proposal will contribute to the Council's Stronger Economy objective by recording a path on the Definitive Map and will not be deleted in the future.

The ROWIP is identified as a key policy document within the Council's Local Transport Plan, which seeks to provide an opportunity for healthy lifestyle choices and supports the Council's strategic aims to Improve Health & Wellbeing within the Borough.

## EXECUTIVE SUMMARY

The purpose of this report is to consider an application to modify the Definitive Map and Statement to add a Public Footpath from Butt Lane, Laceby to Laceby Public Footpath 110. A Definitive Map Modification Order application was received from a local resident and this report looks at the evidence for and against the path.

## RECOMMENDATIONS

- a) That an Order be made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a Public Footpath in Laceby.
- b) That the Order be confirmed by North East Lincolnshire Council as an unopposed Order if no objections or representations are received to the Order within the statutory timescales, or, if objections or representations to the Order are received that they be submitted to the Secretary of State with a request that the Order be confirmed.

## REASONS FOR DECISION

The user evidence suggests that the section of claimed path between A and B on the plan in Appendix 1 has been enjoyed by the public on foot 'as of right', without interruption or challenge for a period more than 20 years prior to March 2017 when the rights of the public were called into question and is therefore deemed to subsist.

It is further submitted that insufficient evidence has been provided to show a lack of intention to dedicate the path over the same period. As a result, it is therefore submitted that this section of path must now be protected by being recognised on the Definitive Map as a Public Footpath.

## 1. BACKGROUND AND ISSUES

- 1.1 The claimed path is shown in Appendix 1. It runs between Butt Lane and Public Footpath 110.
- 1.2 On 29<sup>th</sup> June 2018 a local resident applied to modify the Definitive Map and Statement under Section 53 of the Wildlife and Countryside Act 1981 by adding a Public Footpath from Butt Lane to Public Footpath 110, Laceby.
- 1.3 The application was supported by twenty-three user evidence forms which were completed in 2018.
- 1.4 From the user evidence forms the way was on foot between varying periods between 1960 to 2018.
- 1.5 The bringing into question is dated 11<sup>th</sup> March 2017 when an email was received that a neighbour was locking the kissing gate to the site (email shown in Appendix 2). The claim is looked back retrospectively for 20 years to 11<sup>th</sup> March 1997.
- 1.6 The claim is based on user evidence with witnesses showing that the public used the way without interruption for 20 years. The path was called into question in 2018 when the application was submitted which means the users should show they have used the path from 1997 to 2017. The 'date of challenge' is the point at which the landowner brings any public use of the route into question i.e., by erecting a notice, or locking a gate. The legislation requires evidence of 20 years use ending at the date when the right of the public to use the way is brought into question (Section 31 of the Highways Act 1980), e.g., by erecting a notice, preventing access, or depositing a landowner statement with the highway authority indicating their intention not to dedicate a right of way. Where there is no evidence that public rights have been brought into question, Section 31(7B) of the Highways Act 1980 specifies that the date the application was made should be used as the end of the 20-year period.
- 1.7 While it would normally be expected that the landowner would call the route into question it is possible for other people to call the route into question. This was considered in the case of *Applegarth v Secretary of State for Environment, Transport and the Regions* [2001] EWHC Admin 487 (28 June 2001) where Munby J stated that, "*whether someone or something has brought into question the right of the public to use the way is a question of fact and degree in every case*". This means there is no rule about who can or can't call a route into question and an act on behalf of the landowner can bring the route into question.
- 1.8 The land over which the claimed path runs is in the ownership of North East Lincolnshire Council. The land was used as a sand pit then after excavation ended in 1966 it became an area to store materials for Road Works by Lindsey County Council in 1974. After this time, it was used as a municipal tip between 1952 to March 1974. When the depositing of waste ended, a layer of soil was put over the infill and the area was leased to Laceby Parish Council as allotment land. When this wasn't successful it was given over to nature as a wildlife area and trees were planted.

- 1.9 A series of photographs of the claimed route, taken on 5<sup>th</sup> July 2018, can be seen in Appendix 3.
- 1.10 Evidence of use may be submitted in support of historical evidence showing that a right of way subsists, although where no documentary evidence of a route is discovered, a public right of way can still be established if members of the public can demonstrate they have used a path 'as of right' without interruption for a period of 20 years. 'As of right' means any public use of a route is required to have been:
- **without force** (i.e., not breaking a lock on a gate, or cutting down a fence to access the route)
  - **without secrecy** (i.e., so as to make the landowners aware that the route was being used)
  - **without permission** (i.e., not having the permission of the landowner).
- 1.11 Users have to show an honest belief that there was a public right of passage. Hence, it was necessary to prove that users believed that they had a right to use the way.
- 1.12 Contrary to the intention to dedicate a right of way, where a landowner can produce evidence to show that they have taken steps to prevent public rights accruing over a way, a right will not have been dedicated. Such action must be overt, apply to the way being claimed and be capable of making the public aware of the landowner's intentions. They can include erecting and maintaining notices on site stating that the route is not public, or that it is used with permission; by installing and locking gates; or by telling people seen using the route that it is not public, etc.
- 1.13 For a way to be deemed to have been dedicated as a Public Right of Way in common law it must have been used for a period which is sufficient the constitute evidence of an intention by the landowner to dedicate the way as public.
- 1.14 In Appendix 4 there is the full evidence report showing user evidence, Ordnance Survey Maps and Aerial Photographs along with consultation responses.

## **2. RISKS AND OPPORTUNITIES**

There is a risk that there will be objections from members of the public or stakeholder groups to the proposed diversion of the path. As mentioned above the pre-Order making consultations have been carried out and no objections were received. If there are any objections to the Order than it will be referred to the Planning Inspectorate.

## **3. OTHER OPTIONS CONSIDERED**

The options have been considered and the recommended proposal are:-

- Make an Order to record the route as shown on the attached plan in Appendix 1, as a Public Footpath.

- If the authority decides not to make the order, the applicant may, within 28 days of the service of the notice of that decision, appeal to the Secretary of State under Schedule 14 to the Wildlife and Countryside Act.

#### **4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

- 4.1 The Council has a duty to keep the Definitive Map up to date which includes any new evidence that comes to light and to evaluate it.
- 4.2 There are residents in support of the Public Footpath and two residents that are adjacent to the path who are against it. However, the legislation does not look at anti-social behaviour or loss of private life it is only concerned with the balance of probabilities that a path has existed through user evidence or not.

#### **5. FINANCIAL CONSIDERATIONS**

- 5.1 The making of the extinguishment order would not result in additional costs to the Council as it will be met by the Regeneration Partnership.
- 5.2 There will be no call on Council reserves.
- 5.3 The proposal does not affect any other policies as it is to divert a footpath and then record the path on the Definitive Map.
- 5.4 The proposal adds the path to the Definitive Map and legally creates the path for future use.

#### **6. CHILDREN AND YOUNG PEOPLE IMPLICATIONS**

- 6.1 No implications foreseen.

#### **7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

- 7.1 The creation of a Public Footpath would be a convenient link from Butt Lane, Laceby to Public Footpath 110 and a link on to further Public Rights of Way and services such as shops.

#### **8. FINANCIAL IMPLICATIONS**

- 8.1 In the event that an Order were to be made and was then opposed, there may be financial implications for the authority in covering any cost associated with any subsequent public inquiry. Such costs cannot be avoided where the Planning Inspectorate decides that a public inquiry should be held to resolve an application.

#### **9. LEGAL IMPLICATIONS**

- 9.1 Under Section 53 of the Wildlife and Countryside Act 1981 the County Council has a duty to keep the Definitive Map and Statement under continuous review

and can make a Modification Order to modify the Definitive Map and Statement where there has been evidence to support the addition of a Public Footpath.

- 9.2 Section 53 of the Wildlife and Countryside Act 1981 requires a Highway Authority to “make” an Order where an application is supported by evidence showing that “a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist”. For an Order to then be confirmed it is necessary to demonstrate that the alleged public right exists “on the balance of probabilities” given the evidence available.
- 9.3 Under Section 31 of the Highways Act 1980, a statutory presumption arises that a way has been dedicated as a highway where the way has actually been enjoyed by the public, as of right, and without interruption for a full period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it. That period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.
- 9.4 At common law a route can be held to have been dedicated as a public right of way on the basis of evidence of use. There is no prescribed period over which it must be shown that use has occurred but an inference of dedication by a landowner must be capable of being drawn. The use relied on must have been exercised “as of right”, which is to say without force, without secrecy and without permission. The onus of proof lies with a claimant.

## **10. HUMAN RESOURCES IMPLICATIONS**

There are no HR implications

## **11. WARD IMPLICATIONS**

The claim is in the Wolds Ward

## **12. BACKGROUND PAPERS**

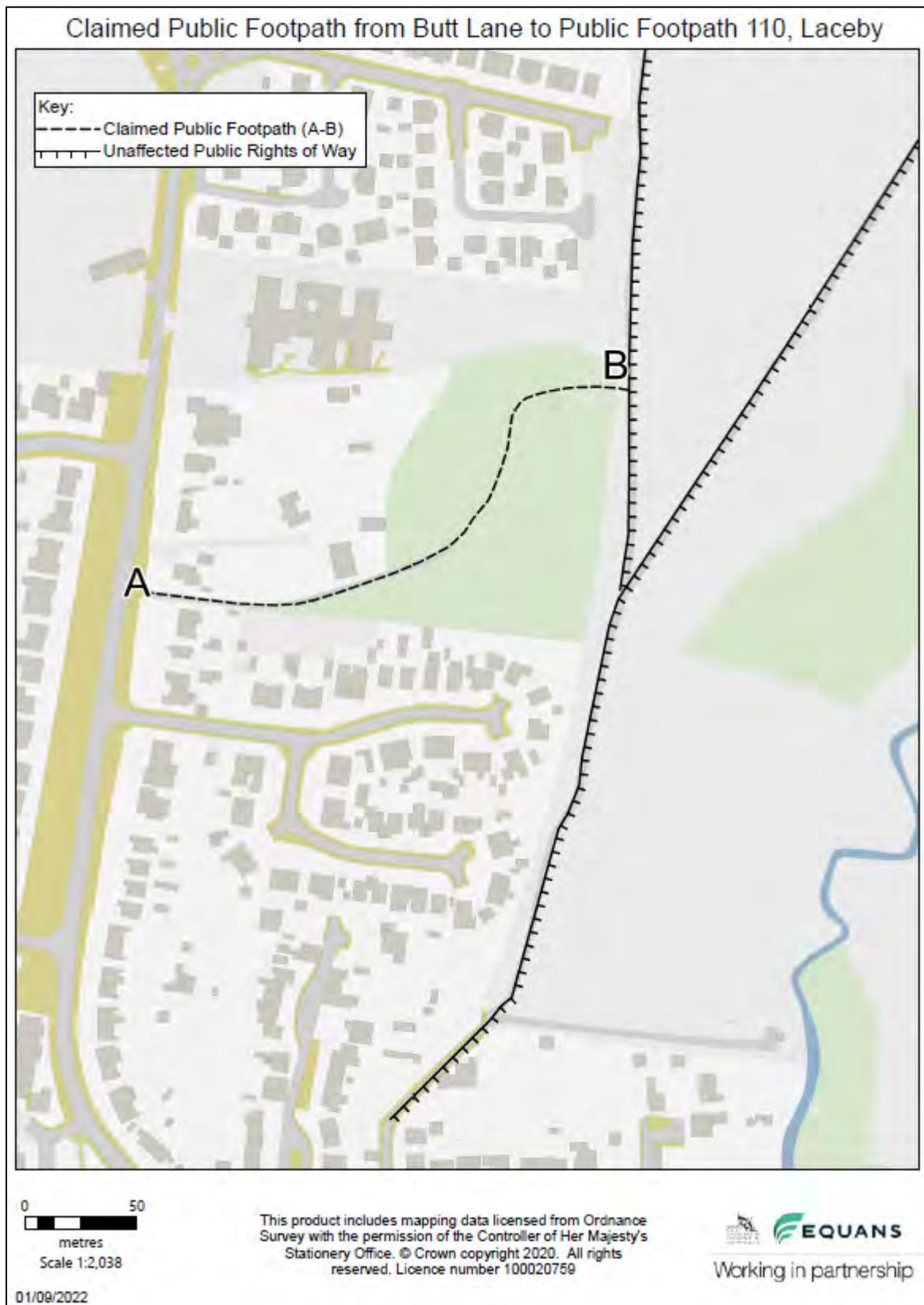
None

## **13. CONTACT OFFICER(S)**

- Sharon Wroot, Executive Director for Environment, Economy and Resources. NELC, Tel: 01472 324423
- Mark Nearney, Assistant Director of Housing, Highways and Transport NELC, Tel: 01472 323105
- Matthew Chaplin, Public Rights of Way Mapping Officer, EQUANS, Tel: 01472 324789

**Sharon Wroot**  
**Executive Director for Environment, Economy and Resources**

## Appendix 1.



## Appendix 2.

### Public paths being chained



To: EMV - Public Rights of Way

You replied to this message on 13/03/2017 08:06.



Reply   Reply All   Forward   ...

Sat 11/03/2017 06:05

This public right of way (butt lane kissing gates in laceby) is being constantly chained by one of the houses next to it!! It has happened lots of times now and people are removing the chains /locks padlocks themselves... the person doing this has also spread broken glass over the path to stop people walking their dogs down there as he is apparently annoyed with people using the right of way!! He doesnt seem to care that a dog or person will be injured by this!!

Tonight i walked that way and there is yet again a big metal chain and lock on the gates!!

This has to be stopped and the person whom is doing this prosecuted for the glass he is placing down ! Apparently the laceby parish council know about this but its been going on for over a month now...there is a lot of anger over this from the people and dog walkers of the village but as soon as a chain or lock is removed he is placing another one on the gates!!! Ive enclosed a photo of one of the locks ( this one was broken off ) but as of tonight there is a big chain n lock round it now!!

Get [Outlook for Android](#)

**Appendix 3.**

Photos of site visit undertaken 5<sup>th</sup> July 2018





5/7/2018 9:07



5/7/2018 9:08





## **Appendix 4**

### **1.1 Evidence Report**

- 1.2 Out of the twenty-three user evidence forms ten witnesses were interviewed and their statements taken on how they have used the path. Each user evidence has been signed by each witness to the effect that "I hereby certify that to the best of my knowledge and belief the facts that I have stated are true" accompanied by annexed maps detailing the precise routes, which have also been signed.
- 1.3 A chart summarising the use claimed by witnesses is set out at Appendix 5. In respect of use of the alleged route on foot the bar charts show 23 people claimed to have used the route for varying lengths of time with 11 having used it for a period of more than 20 years. Appendix 6 shows a visual representation of use on a bar chart. The bars coloured in red have been discounted such as walking from their garden or had asked permission to use the path.
- 1.4 At least two users had used the path from their private residences and did not connect to another public highway or to a point of public resort. Therefore, not by the public at large, but rather by a discrete group of people i.e., the residents, and acquaintances of the residents, this evidence was not considered.
- 1.5 It is not essential for the paths or ways to have been used for the full period of 20 years by the same persons; the period may accrue as a result of use by different persons for shorter periods (Davis v Whitby (1974)). Nor does it matter that the use is not continuous in the sense that it may not have occurred every day.
- 1.6 Where witnesses identify they have used the alleged route with the permission of the landowner, or in exercise of a private right, their evidence cannot be used in support of the claimed public right. Out of the twenty-three-user evidence forms seven asked or were given permission to use the path.
- 1.7 It seems that several users asked Laceby Parish Council if they were permitted to walk the path which the Parish Council replied "yes". Some of these consents occurred after the anti-social behaviour of one of the neighbours which some users then stated they had consent.
- 1.8 In order to be satisfied on the question of whether there has been sufficient use of the way by the public, it is important to consider not only the number of users, but also how often witnesses claim to have used the paths. The frequency of use varies from twice per annum to over three hundred times a year.
- 1.9 The user evidence forms include plans drawn by the users which show the path they have walked in various locations. It should be noted that as vegetation has grown up overtime it may be that the lines walked are not wholly accurate. The route through the trees is well trodden and survey with GIS positioning

device was used to locate the exact path line.

1.10 A user evidence statement said the following: "I recall as early as 1968 and as a child using the path which runs between Nos. 56 and 58 Butt Lane, Laceby as a route through to the open fields at the back, locally known as 'Haycrops'. A good two thirds of the path from Butt Lane has always been surfaced as long as I can remember and led through 'wasteland' and out on to the open fields. I have always known this path as being the 'Pit Path', and I used to use it to go playing in the open fields with friends and generally having a great time". They went on to state that "Around 6-10years ago a kissing gate was erected at the Butt Lane end of the path, which I took as formal recognition that this path was, as I had always believed it to be, a public right of way".

### 1.11 Gate

1.12 Witness 2 said there was a five-bar gate and that they believed it was never locked. They started using the path in 1978 when they moved to the village. They had asked Dave Marshall from Laceby Parish Council if they could use the path which he confirmed they could. They went on to explain in their user statement that "the path which led to the allotments continued through and out onto the open fields at the rear. Not all of the path is surfaced and about half of it is natural. There used to be a 5 bar wooden gate which gave access to a surfaced path or track which led to the allotments from Butt Lane. I don't think that this gate was ever locked".

1.13 Four users had used the path from their garden and had not used the path in its entirety and these forms were not taken into consideration.

1.14 One user mentions that there was a dilapidated gate present and that and it was never locked, and eventually it disappeared and there was no limitation for many years. One user climbed over the gate and said there was a stile at Butt Lane entrance. Two users mention that there was a gap beside the gate, and they squeezed between that. One user said the gate did not prevent access to the path.

1.15 Witness 6 said that she assumed it was a public right of way as everyone seemed to be using it without hindrance.

1.16 Witness 11 said gates had been installed but not by the proper authorities and goes on to mention that the neighbour had illegally padlocked the gate. They also mentioned in their statement that "The Butt Lane end of the path used to have a wooden gate, but there was a gap at the side which I used to nip through with my dog. This gate fell into disrepair and has been replaced with a metal kissing gate, but access is still possible".

1.17 Witness 13 said in their witness statement that "although the path was gated at this time, I and other people continued to use the path by climbing over it."

1.18 Witness 17 said there was a gate did not prevent access to the path they went on to say in their user statement that "When I first started using this path some

40 years ago it was gated at the Butt Lane end with a timber field gate. This gate did not prevent access to the path and it eventually fell into disrepair”.

- 1.19 Witness 19 said he had used the path as far back as he can remember he was born and bred in the village and spent 3 years out of the village. “As far back as I can remember there has always been a pathway running from Butt Lane across some waste ground and out onto open fields”.
- 1.20 Witness 20 said that “I do recall however that there used to be an old wooden gate at Butt Lane end of the path. This gate had a gap at the side which you could squeeze through to gain access to the path. Everyone else seemed to be using it and no one has ever told me I cannot use the path”.
- 1.21 One witness whose statement was taken said “In 1996 about the time we started using the path I recall that there was a dilapidated wooden field gate at the Butt Lane end. The gate was old and rotten and although it was never locked it would not open so we used to climb over it to gain access to the path. At some point over the years this gate disappeared and access to the path was open for many years. About 6 years ago the Council installed a metal kissing gate at the Butt Lane end of the path. The gate has been obstructed several times, on one occasion I saw for myself that some-one has jammed a dog waste bin inside the gate so that it couldn’t be opened. It has on other occasions been chained and padlocked to prevent it being used. The Council eventually removed the swinging arm of the gate, just leaving the cage open to prevent it being further obstructed”.
- 1.22 Another witness mentions the following regarding the metal kissing gate that was installed: *“The Parish Council erected a metal kissing gate at the Butt Lane end of this path. It has been there a while now, but I cannot recall when it was installed. This gate has on occasions been chained and locked, which I understand was done illegally by Mr. \*\*\*\*\*”.*

### 1.23 Aerial Photographs

- 1.24 The 2001 aerial photograph shows a faint worn path leading through a green area. It is shown on the same line as the claimed route. Photograph shown in Appendix 7.
- 1.25 The aerial photograph from 2006 again shows a worn path again on the same line as the claimed path. Appendix 8.
- 1.26 The Google Map aerial photograph from 2018 show again a well-worn path on the same line as the ones in 2001 and 2006. Photograph shown in Appendix 9.
- 1.27 The aerial view on Google Maps dated 2020 again showing a worn route as on the same line as the previous aerial photographs. The trees do obscure the line of the walked path at the northern part of the claimed route. Photograph shown in Appendix 10.
- 1.28 It should be noted that the aerial photograph lines and a survey of the walked

line undertaken with a GPS device records the path on this worn line, the results of the GPS Survey are shown in Appendix 11.

- 1.29 From the aerial photographs although unable to infer information about the status of the way, they can sometimes provide useful topographical detail on the existence, character and delineation of tracks including physical features on the route. The value derived from aerial photographs improves where the date and time at which the photographs were taken is known and an accurate record of the position and orientation in relation to the relevant route can be provided.
- 1.30 Investigating Officer Comments: Aerial photos only provide evidence that a worn path has existed on the same line as the claimed route, but they do not provide evidence of the type of use that occurred. The track for the tip did not stretch the whole length of the path that is visible on the aerial photographs.

### 1.31 Documentary Evidence

- 1.32 A number of historic Ordnance Survey Maps were inspected from 1888 to 1969. They show the evolution of the tip from a field to a “sand pit” to “old sand pit”. None of the Ordnance Survey Maps show an access through the site and always running to the pit. Both Public Footpaths 110 and 103 are shown on the majority of these historic maps as a single or double dashed line annotated with “FP”. Two Ordnance Survey Maps are shown in Appendix 12 these dated between 1930 and 1937.
- 1.33 Ordnance Survey maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer which is on all of its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way.
- 1.34 It is considered that the documentary evidence considered during this investigation is insufficient to show that a public right of way existed over the application route by presumed dedication at Common Law.

### 1.35 Consultation

- 1.36 A twenty-eight-day consultation was carried out from 6th March 2020, which was extended to 30th April 2020 due to the Covid 19 pandemic as a solicitor representing one of the residents had to gather his evidence.
- 1.37 On 6th March 2020 a consultation was undertaken, local residents and user groups such as the Ramblers Association, Lincolnshire Field Paths Association, Parish Council and Ward Councillors.
- 1.38 The response from the Ramblers Area Footpath Officer said: “Having used this footpath myself over the last few years as have many Ramblers I see no reason to object to it being placed on the Definitive Map as a Public Right of Way”.
- 1.39 Laceby Parish Council replied: “On behalf of Laceby Parish Council, we would

like to express our support in this application to record a footpath across the old allotment site from Butt Lane to Public Footpath 110, Laceby. At present Laceby Parish Council hold a lease with NELC for the land upon which this proposed pathway sits and has no objections to this application.

This route has been used by local residents for in excess of 20 years to access both the old allotments and the public footpaths to the rear of the land. I am aware that many residents have used this land for more than 40 years for this purpose. Laceby Parish Council are also currently working to present a business case to NELC to revise the lease it currently holds for the land in order to make it more fit for purpose. The land is currently used for allotments, and the aim would be to amend the lease so that the land can be used as a community garden where every resident can enjoy the fruit trees and wildlife that live there. Under the current lease we have been instructed in the last few months to secure the site and stop the path being used following a complaint from a resident. This has caused multiple upset for the rest of the village who have always and would like to continue to use the footpath”.

- 1.40 On the 5th April 2020 an email was received from a resident living directly adjacent to the site. When me and my family first moved into Butt Lane Laceby, there was a locked wooden gate next to our house, it was not a walkway and had been closed for a long time as my parents did question this before buying the house. There was no kissing gate there and people was not able to go down next to our house, I do know as I and my family have been living there for over 16 years now”.
- 1.41 On the 12th March 2020 an email was received from the resident adjacent to the site, objecting to the claimed route. Their reasons for objection are: “The reasons for our objection are supported with written, video and pictured evidence of the harassment, abuse and misconduct performed by the Laceby Parish Council influenced by key members. All evidence and reasoning for supporting the proposed application has been based on lies, victimisation and incorrect procedure by abusing their power in a council members role; our evidence supports these statements”. Their full objection is shown in Appendix 13 and photograph of gate shown in Appendix 14.
- 1.42 Consultation was also undertaken with the Assets Advanced Practitioner (Corporate) and Project Manager at North East Lincolnshire Council, he responded: “My only comment is around whether the proposed PROW has been unhindered for more than 20 years. My understanding is that until about 6 years ago, the main entrance to the site off Butt Lane was secured with a wooden access gate which was only opened for maintenance. In late 2013/ early 2014 this gate was replaced with a metal gate and there was a new pedestrian ‘kissing gate’. The kissing gate has since been through stages of accessibility, being locked by others, removed and is now again locked (by the Parish) due to complaints. NEL Council have been made aware that the site is being used in contravention of the terms of the lease that is in place with the Laceby Parish Council.

I am aware of numerous allegations of misuse raised by both residents who live

adjacent to the access off Butt Lane. One resident in particular has reported physical and verbal harassment caused by the Parish through their management and approach to maintaining the site and users accessing the site. Equally the Parish have cited physical and verbal harassment from one of the residents in particular. The Police have been involved in most cases. These issues are relevant to the application as the use of the site for a PROW will undoubtedly increase the already very fractious relations between these parties”.

- 1.43 Another response dated 17th March 2020 said: “This proposed footpath runs along side my property, but I have no issues with it, as I use part of it daily”.
- 1.44 On 17th April 2020 through a Wilkin Chapman solicitor representing a resident submitted an objection to the Public Footpath sighting the following reasons: A copy of the whole objection letter can be viewed in Appendix 15.
  - 1.44.1 In the objection letter there was reference to a five bar gate and a photo supplied showing the clients son on a tricycle dated around 1995 the photograph supplied is shown in Appendix 16 this was two years before the retrospective period begins. It is unclear where the gate was locked.
  - 1.44.2 Along with the photograph there was a photograph of the gate taken from Google Street view, it is unclear whether this gate was locked or not. This is shown in Appendix 17.
  - 1.44.3 Along with the objection there were additional information which included: Landfill Survey 1989 shown in Appendix 18; Planning Application dated 6th August 1977 shown in Appendix 19; Lease of Butt Lane to Laceby Parish Council, shown in Appendix 20 and a WhatsApp message between the objector and their son shown in Appendix 21.

#### 1.45 Conclusion

- 1.46 In deciding whether to make an Order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 it is necessary to consider whether an ‘event’ has taken place which would require the authority to make the Order. In this report the ‘event’ that has been considered is under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 namely the discovery of evidence which shows that a right of way which is not shown on the definitive map is reasonably alleged to subsist.
- 1.47 Applications supported by user evidence can be considered by applying the test set out in section 31 of the Highways Act to establish whether the application route has been deemed to have been dedicated as a highway. The tests that need to be met are set out below:
- 1.48 Test 1: As of right (without force, secrecy or permission) “Where a way over land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of

twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it at common law.” Some users state that the gate was always open and there was a gap beside the gate. It was only locked when the wooden gate was replaced by a metal kissing gate and then it was locked by a neighbour rather than the owner of the land. The gate may have been left when the Council depot moved out.

- 1.49 Test 2: “... the way has actually been enjoyed by the public ...” The evidence of use indicates that the way was enjoyed by 10 users on foot whose period of use spans between years 1997 to 2017. The evidential users claim use of the way as a public right and not in exercise of permission of the landowner. The statements present evidence that their use was in exercise of public use and therefore is sufficient to indicate continuous use by the public.
- 1.50 Section 31 Highways Act 1980: The way has been used Without Interruption A couple of the witnesses said they have been put off using the path by one of the neighbours. However, none have said it was the landowner of the site that prevented use i.e., North East Lincolnshire Council or the tenant Laceby Parish Council. A gate was mentioned but the users either climbed over it, it was easily opened or there was a gap next to it which they accessed the path by. The gate was not locked and no intent by the landowner has been seen to prevent members of the public.
- 1.51 Witnesses state that they have used the way as of right and there is no evidence of force, secrecy or grant of permission in their use of the footpath during the relevant period up until the event that brought the way into question. None of the remaining ten witnesses claimed their use of the way was by permission, by force or in secrecy. There is no evidence that the 5 bar gate had been locked. There is no evidence that the public’s use of the way was by force, with permission or used in secrecy prior to the event in 2017.
- 1.52 Section 31 Highways Act 1980 requires the landowner to evidence the desire not to dedicate the path. The land is owned by North East Lincolnshire Council and was leased to Laceby Parish Council. No evidence has been shown that any attempt was taken to stop members of the public using the path. There seems to be access beside the gate and a few users have said the gate was open.
- 1.53 In order to have brought the public’s right to have used the alleged way in question, the landowner could have taken various measures during the claimed period of use. These measures include: 1.) Locking a gate across the path. 2.) Putting up a notice denying the existence of a public right of way. 3.) Physically preventing a walker from using the way. 4.) Indicating that the path was for use by permission only. 5.) Giving an instruction to an employee or tenant to prevent people walking the path. 6.) Giving notice to the Highway Authority denying any intention to dedicate a public right of way over the land. 7.) Seeking a court declaration that the way was not public or bringing an action for trespass.

- 1.54 Under section 31 of the Highways Act 1980 To establish that a way has become a right of way by means of presumed dedication it is necessary to show firstly that there has been uninterrupted use as of right by the public (not necessarily the same people all the time) over a period of 20 years. Deciding who 'the public' are can sometimes be difficult and may depend on the facts of the case.
- 1.55 The presence of a gate facilitates access and would not be seen as an obstruction to most users. Many existing public rights of way have unlocked gates or other furniture such as stiles across them to facilitate access through boundaries.
- 1.56 The burden of proof therefore rests with the landowner to show that there is sufficient evidence to show that there is no intention to dedicate a public right of way over the claimed path during the claimed period of use. There have not been any steps by the landowner to prevent use of the way on foot.
- 1.57 The aerial photographs from 2001 show a worn path leading through the site on the same route as the claimed route. This aerial photograph is three years after the retrospective bringing into question.
- 1.58 The application route is clearly defined on the 2001, 2006, 2018 & 2020 aerial photography. Evidential value shows that the route is well used.
- 1.59 It is therefore considered that the Council should make a Definitive Map Modification Order to add sections A-B to the definitive map and statement.
- 1.60 There is a conflict of opinion with regards to the perceived claimed use of this path between the adjacent landowners and users. The adjacent landowners questions the alleged use of the claimed path.
- 1.61 At common law a right of way can also be established if it can be shown that levels of use by the public were sufficient for the landowner to have known that the way was being used, but by taking no action to stop it, has by making no objection, acquiesced to that use and thereby is presumed to have intended to dedicate the way as public. The common law presumption is that land has been dedicated as a highway if it has been used by the public as of right and without interruption. The land does not have to be used for a defined length of time. However, it must have been used for long enough to justify an inference that the freehold owner intended to dedicate the way as a highway. It is possible, although unusual, that dedication at common law can be presumed on the basis of less than 20 years use. The common law presumption can be rebutted by demonstrating that the landowner had no intention of dedicating the land to the public. The common law principles of dedication are expressly preserved and, if the statutory provision cannot be used, a claim may be made under common law.
- 1.62 The supplementary evidence that the Solicitor provided from their client does not record that no members of the public were using the path. There is no mention on the lease that the Parish Council had to prevent members of the

public walking through the site. The WhatsApp message is of their opinion and there is no date when this was written.

- 1.63 The solicitor also argues that the worn route shown on the aerial photographs is in the location due to a track laid out, however in the Landfill Survey the track didn't lead all the way to the eastern boundary where Public Footpath 110 is located.
- 1.64 A guide to definitive maps and changes to public rights of way revised in 2008 by Natural England in this document it states that "before making an order the surveying authority must have evidence which shows that the right of way has come into being through presumed dedication following use over a period of time which has ended before the making of the order. An example would be evidence of use by the public over a period of 20 years not offset by any evidence that the landowner during that time had no intention to dedicate the way".
- 1.65 Documentary evidence from, or before, the relevant period can be important in helping to decide the question whether public rights exist. Although, for example, old maps, estate documents, Tithe maps, or Inclosure Awards can provide supporting evidence, maps and historical documents have been inspected and do not show a through route.

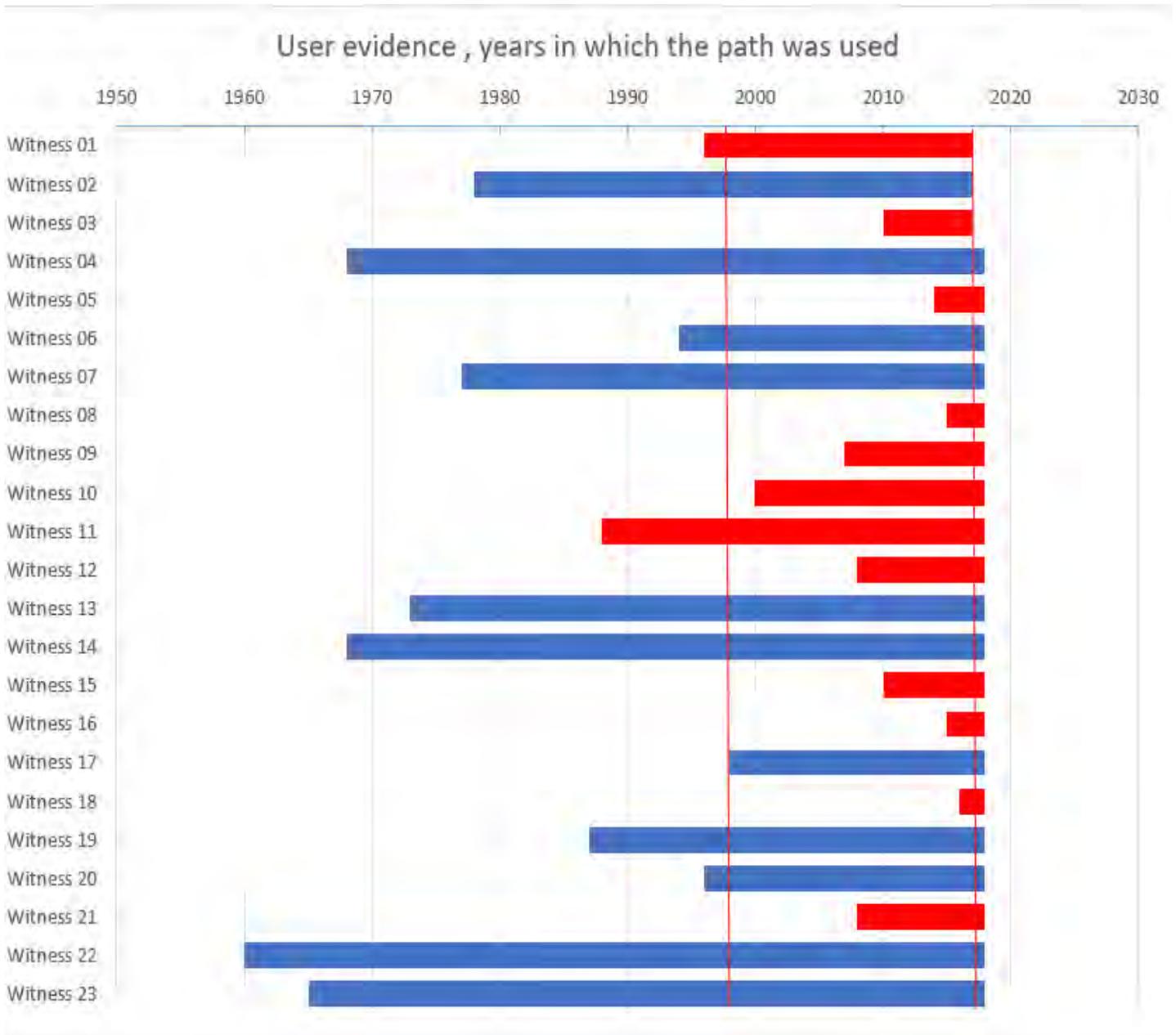
## Appendix 5.

Graph showing the users, how the route has been used and how often.

<u>URN</u>	<u>Date started using the path</u>	<u>Permission</u>	<u>Date when ceased</u>	<u>Number of years using the path</u>	<u>Width</u>	<u>How often path used</u>	<u>Reason for using</u>	<u>Use</u>
1	1996	N	2017	21	3foot	twice a day	Pleasure	Foot
2	1978	N	2017	39	8-10foot	daily	Pleasure	
3	2010	Y	2017	7		twice a day	Pleasure	Foot
4	1968	N	2018	50		once a day	Pleasure	Foot
5	2014		2018	4	2metres	twice a day	Pleasure	Foot
6	1994	N	2018	24		once a day	Pleasure	Foot
7	1977	N	2018	41	2metres	once a day	Pleasure	Foot
8	2015	N	2018	3		twice a day	Pleasure	Foot
9	2007	N	2018	11	3-6ft	1-2 day	Pleasure	Foot
10	2000	Y	2018	18	1.5metres	daily	Pleasure	Foot
11	1988	Y	2018	30	3ft	once a day	Pleasure	Foot
12	2008	Y	2018	10	1 metre	twice a day	Pleasure	Foot
13	1973	N	2018	45	1 metre	daily	Pleasure	Foot
14	1968	Y	2018	50	1 metre	once a day	Pleasure	Foot
15	2010	N	2018	8	1 metre	3-4 times a week	Pleasure	Foot
16	2015	N	2018	3	2 metres	twice a day	Pleasure	Foot
17	1998	N	2018	20	3 metres	once a week	Pleasure	Foot
18	2016	N	2018	2	2 metres	twice a day	Pleasure	Foot
19	1987	N	2018	31	8 foot	once a week	Pleasure	Foot
20	1996	N	2018	22	1 metre	twice a day	Pleasure	Foot
21	2008	N	2018	10	1 metre	once a day	Pleasure	Foot
22	1960	N	2018	58	6ft	daily	Pleasure	
23	1965	N	2018	53		weekly	Pleasure	

## Appendix 6.

Visual representation of the users that have submitted a user evidence form. The red lines indicate that the user was omitted due to either asking permission to use the path, used it for less than 20 years or had used it from their garden.



The vertical red line shows the 20 year use from 1997-2017 (the relevant period).

**Appendix 7.**

Aerial Photograph dated 2001



**Appendix 8.**

Aerial Photograph dated 2006



## Appendix 9.

Aerial photograph from Google Maps 2018



## Appendix 10.

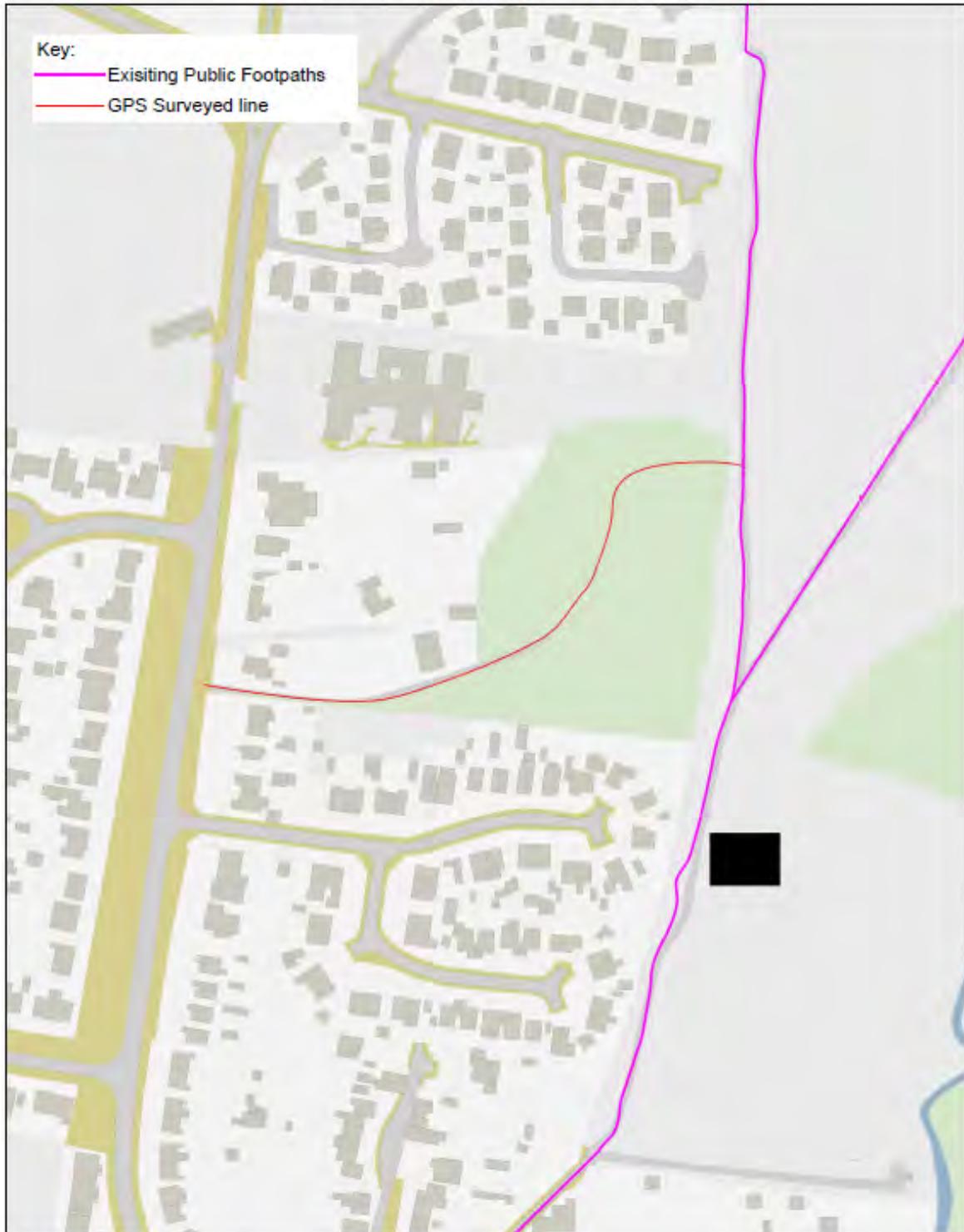
Google Maps 2020



## Appendix 11

GPS Survey of the claimed route

### Butt Lane, Laceby GPS Survey



0 50  
metres  
Scale 1:2,000

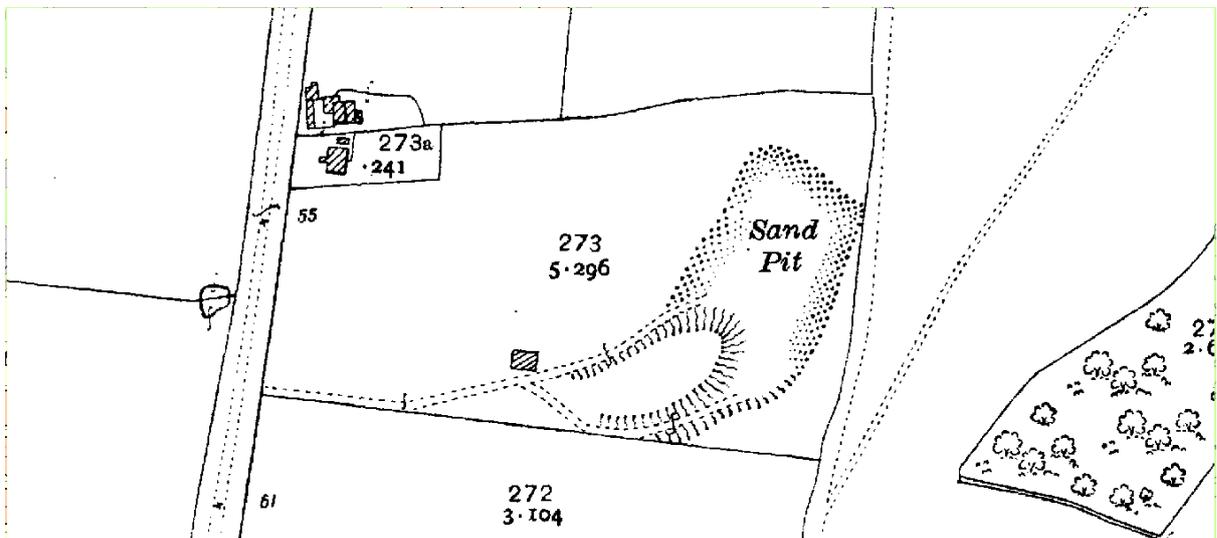
This product includes mapping data licensed from Ordnance Survey with the permission of the Controller of Her Majesty's Stationery Office. © Crown copyright 2020. All rights reserved. Licence number 100020759

 **EQUANS**  
Working in partnership

01/09/2022

## Appendix 12.

### Ordnance Survey Maps



1:2500 1932-1937



Lincolnshire XXII.SW (includes: Aylesby; Bradley; Great Coates; Grimsby; Lacey.)

Revised: 1930

Published: 1933

### **Appendix 13.**

Objection letter received from adjacent resident

Dear Matthew & Public Rights of Way Team

I am writing to object to the proposed application to record a Public Footpath between Butt Lane and Public Footpath 110 Laceby. The reasons for our objection are supported with written, video and pictured evidence of the harassment, abuse and misconduct performed by the Laceby Parish Council, influenced by key members. All evidence and reasoning for supporting the proposed application has been based on lies, victimisation and incorrect procedure by abusing their power in a council members role; our evidence supports these statements.

We have been residents of 56 Butt Lane Laceby since 2004, as a whole family we were excited for the new adventure; at the time the village had a lot of prospects and interest in our family. The village offered a Sportsfield, sports clubs, many public footpaths, off road bridleways, all which are beneficial because all members of my family are runners and athletes. The area was very secluded and peaceful, giving us the privacy we have worked so hard for. The peace and quiet our home offered helped my children with their academic commitments and helped us be able to sleep from working strenuous day and evening shift patterns. This in theory was a great decision, but 10 years later turned into a grave mistake and our living nightmare.

In the summer of 2015 the case of harassment started with letters sent to our property which was later to be proven to be Dave Marshall (Copy attached). This was soon followed with constant daily phone calls by Mr & Mrs Greenbeck. Also at this time our home garage was broken into and contents in our fridge and freezer were damaged and thrown all over the floor. Then a Dog Litter bin was placed directly outside our house and then moved to directly in front of our house (Photos attached). At this point we realised that this escalated into harassment by the Laceby Parish Council. At this point the local police were informed. Then later on that year a kissing gate was placed on the proposed Public Footpath next to our home, in the place of a locked wooden gate which was there when we moved to 56 Butt Lane in 2004 (Photo attached). In October 2015 the Parish Council arrived with no notification with Tree & Garden Services (Contact No.: 01472 879258) in an attempt to clear this land to make it a nature area. The noise was unbearable and had to evacuate the house; I have an Autistic son and their actions caused him great harm and distress. The damage to our property and our trees was horrendous, leaving us with no privacy. In an attempt to stop this work was blatantly

ignored and their work resumed (Evidence of damage attached). People walking past the so-called 'Nature area' could see us sitting down on our downstairs toilet. The abuse never ended here.

Dog Excretion was thrown at our house windows (Pictures attached), dog mess left over our home garden and dogs were frequently coming into our house and running all around our living room, kitchen, creating mess and disruption of our privacy. All complaints and evidence was ignored by the Parish Council. We do believe that they run a 'Kangaroo court' shown by their actions; they create their own rules and only

abide by their own tune and their own desires, not in the best interests of the residents of Laceby , only their own constituency. We as a family do believe that the reasoning behind all this is linked to the new housing being built in Laceby (Mulbery Lane, Maple Walk ) next to the back fields. In summary Dave Marshall has tried to create a distraction for all dog walkers to go past our home by trying to open a footpath next to our house as a shortcut to the back fields instead of walking past his house (Austin Garth/Collinson Court) giving him more privacy and quiet . However where Dave Marshall lives is next to a public footpath which is legally open and available to the public, unlike next to our residence. The space next to our residence is an abandoned allotment which is leased by the Parish Council which has been left dormant for years because of past circumstances.

The old allotment was previously a dumping ground for a power plant named Tioxide. The area is filled with toxic waste (Titanium hydrochloride) which is highly cancerous. Because of this nothing would grow , therefore it was left locked and secured because this hazard is dangerous and we have evidence of landfill coming to the surface (Photos attached). This is information the Parish Council knew and chose to ignore, despite the fact that their role is to not only represent but protect the health and safety of the residents of Laceby. Any cut or graze endured by the public going down this previous allotment would need urgent medical attention. North East Lincs council was made aware of all incidents (Sue Turner, Jack Fox, Matthew Chaplin, George Lewis of 'ENGIE' & Martin Ambler). After many visits and 4.5 years later the Parish Council was forced to lock the kissing gate.

The latest incident occurred on Monday 2nd March 2020 where the Parish Council took it upon themselves with no date as before in previous incidents and started to cut the area again with the Tree and Garden Services. A letter was delivered to us stating that there had been fly tipping on this land and they were going to clear it (Letter attached). However we contacted the PCO of the area and provided evidence of the letter which the officer went to assess for fly tipping and confirmed there was none and said that there was no need to cut this area (Photo & Video evidence attached).

The conclusion of this long lasting traumatic episode in our lives is still continuing, the council have now submitted false evidence to open the allotment as a right of way. These series of events is based on lies, manipulation, collusion, corruption and conspiracy so that certain people can have their own way without looking at the consequences on people's livelihood, safety and wellbeing. With the evidence put forward I hope and aim to put an end to the bullying and harassment that we have suffered in the hands of people who have council powers. This harassment has made Mrs. Jagger ill and we can also provide medical evidence from Mrs. Jagger G.P. We can also find you a letter to follow where the Parish Council was telling Laceby residents that the allotment was a nature area; there was no planning permission for a nature area or a kissing gate.

Yours Faithfully

## **Appendix 14**

Photo of gate attached to objection letter.



## Appendix 15.

Wilkin Chapman objection letter on behalf of their client.

LIT/APB/1085846/1  
FAO Public Rights of Way Team  
17 April 2020

Engle/North East Lincolnshire Council  
New Oxford House  
George Street  
Grimsby  
North East Lincolnshire  
DN31 1HB

wilkin chapman llp  
solicitors

Cartersgate House  
26 Chantry Lane  
Grimsby DN31 2LJ  
Tel: 01472 262626  
DX 13511 Grimsby 1  
FAX: 01472 360198  
[www.wilkinchapman.co.uk](http://www.wilkinchapman.co.uk)

*By email only:*  
[prow@nelincs.gov.uk](mailto:prow@nelincs.gov.uk)

Dear Sirs

FAO: PUBLIC RIGHTS OF WAY TEAM  
YOUR REF: DMMO 12 BUTT LANE  
OUR CLIENTS: [REDACTED] 58 BUTT LANE

**Letter of Objection to Application to Record a Public Footpath Between Butt Lane and Public Footpath 110, Laceby**

For ease of reference we number the paragraphs of this letter.

1. Those Objecting

We are instructed on behalf of our clients, [REDACTED] of 58 Butt Lane, to submit their objection to the above application to record a Public Footpath between Butt Lane and Public Footpath 110, Laceby under s53 Wildlife and Countryside Act 1981.

2. Summary Only

This is only a letter of objection, intended to either persuade NELC not to make the order requested, or to trigger submission to the Secretary of State under Schedule 15 paragraph 7 with a view to a hearing or inquiry to be held. It is intended only that this will be a summary of the objections and the evidence our clients may adduce to any such hearing or inquiry, which will likely be in the format of witness statements or statutory declarations and further documents.

### 3. Documents

In an email to Matthew Chaplin of the Public Rights of Way Team dated 28 March 2020 we requested copies of copies of any documents relating to the land over which the proposed right of way passes. So far we have seen only redacted copies of the evidence user forms which accompanied the application, to some of which were attached maps. As it is the right of our clients under Schedule 15 paragraph 3(8) to see any documents to be taken into account, in preparing the proposed order, we hope that all such documents have been disclosed, but we fear they may not. This is because of reference by Engie in an email to a [REDACTED] of 15 April 2020 regarding 'well-trodden tracks' (implying the existence of documents regarding inspections, or photographs), because Mr Chaplin's response of 3 April 2020 refers to "*Historical aerial photographs show a worn track through the site and would be taken into account as would any historical documentation*" and that "*all documents that I will look at are found in the public domain such as North East Lincolnshire Archive Office or on line. I am unable to find any documents relating to the landfill site or fire.*" We submit that whilst Mr Chaplin's response may be argued to comply with the letter of the Schedule, it hardly complies with the spirit to require our clients to incur the costs of inspecting archives or searching 'online' when it will be clear that the Public Rights of Way team will have copies, probably in electronic format, of any documents it will consider. If there are any documents other than the user evidence forms, please either supply copies or tell us where they may be inspected with more specific reference than 'archives' or 'online' and extend the period for objections and representations until a reasonable period of time has been allowed for our clients to obtain and consider such documents.

### 4. Our clients

The application is to record a public footpath which passes from a point on Butt Lane between 56 and 58 Butt Lane, alongside the front and rear gardens of those properties, to public footpath 110. Our clients have occupied 58 Butt Lane since August 1995.

### 5. Previous use of the land/Official Documents and Plans

- 5.1 We attach a Landfill Gas Survey dated 27 June 1989. This explains that the area of land through which the alleged footpath passes was a disused sand pit until 1952.
- 5.2 Between 1952 and 31 March 1974 the area was a landfill site into which agricultural, domestic and trade waste likely to be toxic were dumped. In our submission this does not sound like a site through which the public would be allowed to freely wander. Paths which may appear on historical photographs may have been linked with the activities of the landfill site. Our clients tell us that part of the route of the proposed path (that as shown as a 'track' on the plan attached to the survey) has some hard surface below the grass, presumably installed to allow vehicles to access the dump with becoming bogged down. (As an aside now, we speculate that the presence of a hard surface may explain why the track is evident in any aerial photographs as it may have impeded the growth of vegetation through the surface compared with areas either side of the track).
- 5.3 NELC have provided to [REDACTED] of 56 Butt lane details of planning applications for the land. Attached to those are a plan dated 27 July 1977. That plan shows there was no obvious path, well-trodden or otherwise, from the end of the hard standing marked 'track', other than two from the end of the track to the rear of two adjacent domestic properties. A path which leads to nowhere cannot be a highway, and so cannot be a public footpath.

- 5.4 Various properties adjacent to the site, on Butt Lane and on Longmeadow Drive, have installed gates between their back gardens and the area of land in question. Their usage of the area may explain the existence of any 'well-trodden' paths. But routes from private back gardens would only give rise to potential private rights of way on the part of the owners of those properties, not public ones.
- 5.5 On 5 March 1979 the land through which the alleged footpath passes was leased by the freeholder Cleethorpes Borough Council (the predecessor of the current freeholder, NELC) to Laceby Parish Council for use as allotments. The lease makes no reference to any public right of way. That Cleethorpes Borough Council did not refer to a right of way and that it leased quiet enjoyment of the land to the Parish Council, is evidence that Cleethorpes Borough Council did not intend to dedicate a public right of way at that time, or for the duration of the lease, which continues to date.
- 5.6 If there is a gap in the hedgerow at Point B, this is only because the Parish Council are in breach of its legal obligation to maintain the boundaries of the site.
- 5.7 The plan within that lease again shows only the track with hardstanding and routes to the rear of two domestic properties on Butt Lane and Longmeadow Drive.
- 5.8 From the plans attached to the landfill survey, it is clear that the position remained the same in 1989. The only identifiable routes recorded by the surveyors (including in a sketch freshly prepared at the time) were the 'track' with hardstanding and those to the rear of the properties on Butt Lane and Longmeadow Drive and/or the allotments which had been created.
- 5.9 The landfill survey also states that in 1989 there was *'no obvious vegetation stress/damage visible in the trees/hedgerows forming the site boundary'*, indicating that there was no gap in the same so as to allow access between the landfill/allotment area and Public Footpath 110 (as alleged at Point B or elsewhere).

#### 6. Our Clients' Recollections

- 6.1 Our clients took occupation of 58 Butt Lane in August 1995. At that time the entrance to the land from Butt Lane was gated with a 5 bar gate, secured with a chain and padlock.
- 6.2 We attach a photograph of our client's son in the front garden taken in around 1995 (he is now 28 years old). The gate can clearly be seen in the background. Whilst people could have walked around the gate at that time, it is inconceivable that they would do so as of right, as they would have to trespass through the front drives of 56 or 58 Butt Lane.
- 6.3 Our clients planted a hedge along the track.
- 6.4 The gate was secured with a chain and padlock.
- 6.5 Our clients recall that [REDACTED], the local Scout Leader, had a key for the padlock and on occasion she would use that and get access to the allotments for the scouts.
- 6.6 Owners of more properties on Butt Lane and Longmeadow Drive installed gates in their rear boundaries. These people accessed the land in question, and possibly Public

footpath 110, but from their properties rather than the Butt Lane entrance. They may have created the gap at point B on the alleged path, and trodden any tracks through the area.

- 6.7 It remained the case for many years that the entrance from Butt Lane, by now with mature hedge and fencing between the boundaries of the track with hardstanding and those of the properties of 56 and 58 Butt Lane, was blocked by a 5 bar gate secured with chain and padlock. We attach an extract from a Whatsapp discussion between our clients' children about their later recollections of the gate and chain. No-one could get access, other than with a key for the padlock, or by climbing the gate.
- 6.8 We attach a series of Google Streetview images. These show (albeit not very clearly) the chain and the padlock around the left hand side of the gate and gatepost, in both January and in May 2009. They also show vegetation growing up the gate, indicating that it has not been used for some time, and certainly not 'daily' as is claimed by many in the user evidence forms. There was clearly no access at point A as of right.
- 6.9 The allotments proved untenable. As such, other than usage by the owners of properties bordering the site perhaps, the whole landfill/allotment area remained untouched for many years.
- 6.10 There was a fire on the landfill/allotment sites. Our clients do not know exactly when, but think 2013, and presumably records could be obtained from the fire brigade if necessary. The fire brigade cut the lock on the gate to gain access. The lock was replaced.
- 6.11 In 2015 Laceby Parish Council minutes begin to refer to the landfill/allotment site as a 'new nature area' (in breach of their lease which allowed only for use as allotments). During this period, on one occasion Laceby Parish Councillor Marshall knocked on our clients' door and asked if visiting councillors could use our clients' personnel gate near their garage to access the site, 'because they were too old/infirmary to negotiate the locked gate at the Butt Lane entrance'.
- 6.12 In October/November 2015 Laceby Parish Council paid contractors to clear the entrance from Butt Lane and the track (decimating our client's hedge and removing their privacy) and replaced the 5-bar gate with a kissing gate. Only thereafter was there regular foot and bicycle traffic from the entrance on Butt Lane alongside our clients' property. On 12 March 2016 our clients wrote to the Parish Council to object (a copy can be supplied if required – it does refer to the site being untouched for 21 years before then).
- 6.13 Since then, NELC will be aware that there has been much correspondence passing between them, our clients, Mr [REDACTED] and Laceby Parish Council. We understand that at various times the gates at the entrance from Butt Lane have been locked, we think by various parties but including the Parish Council (at the request of NELC?). Even in a period during which the Parish Council have been wishing to encourage access to the site (in breach of its lease to use the site as allotments only), access has in any event been prevented, including by the Parish Council itself.
- 6.14 On 3 February 2017 Mr [REDACTED] of NELC wrote to Mr [REDACTED] stating that colleagues in Environmental Health had been unable to access the site owing to a locked gate (presumably at Butt Lane entrance), indicating access was blocked.

- 6.15 In April 2018 we understand fencing was erected at point B by one of the Councils (thus blocking the path).

7. Any Aerial Photographs or Sight of 'Well-Trodden Path'

In our submission, the Streetview images from January 2009 and May 2009 certainly do not show any well-trodden path at point A.

As stated above, any appearance of a trodden path is likely:

- 7.1 To be because hardcore laid from the time when the site was used as a tip has prevented vegetation from growing through as compared with areas either side, creating the impression of a well-used path, and/or
- 7.2 Has been created by those accessing the site from gates at the rear of their properties in Butt Lane and/or Longmeadow Drive (not from Point A), and/or
- 7.3 Has been created by our clients maintaining their own hedges and indeed for a time they maintained the side of the track alongside their property, and/or
- 7.4 Has been created by Councillors and/or contractors on behalf of the Parish Council clearing vegetation (there are numerous references to the same, and weedkiller being applied, in council meeting minutes we have seen from 2015 and since 2017 – there may be others in previous minutes) and/or
- 7.5 Unlawful access (for example in March 2020 Parish Council planted bushes blocking access at point B, but these were ripped up in the night).

8. User Evidence Forms

- 8.1 The forms were redacted, but we suspect these are largely from residents of Butt Lane and Longmeadow Drive anxious to retain access from their rear gardens, and/or to protect land which they may have annexed to their rear gardens, and/or from those affiliated with the Parish Council who wish to support the creation of a nature area, rather than people who truly used the path along its whole length from points A to B as they have claimed. (A map at page 121 of the bundle you supplied clearly shows a route not from point A but from the rear of a property on Longmeadow Drive).
- 8.2 Only perhaps 11 of the forms support a full period of usage over 20 years, the others are referring to much more recent times and it is likely many are really referring to times since 2015 when the Parish Council fitted the kissing gate.
- 8.3 One form, (on the first pages of the bundle you supplied) claims the writer used the path daily for 68 years and earlier. That would take us back to at least the 1950s. We know the area was used as landfill site, including for likely toxic materials, from 1952 to 1974. Even allowing for previous disregard for health and safety, it would be remarkable if a child was allowed to wander unimpeded through such a site on a daily basis.

- 8.4 One form (at pages 131 to 137 of the bundle you supplied) recalls the presence of the 5-bar gate, chain and padlock at point A, following that person's arrival in the area on 6 April 2008, until the kissing gate was installed (2015). In short, it appears to support what our clients say.
- 8.5 Another (the second one) recalls the 5-bar gate but omits to mention the presence or otherwise of a lock.
- 8.6 Despite evidence of the 5-bar gate, chain and padlock, only 2 recall the gate, and only one of those the lock, despite specific questions about the same. This is either a series of truly remarkable omissions of memory by people who otherwise claim to have very clear memories of the path over many years, or the omissions are disingenuous. Cross examination, under oath, will likely be important.
- 8.7 Many claim to have used the route 'daily'. The Streetview images from January 2009 and May 2009 alone show that claims of daily usage of point A during that time are simply untenable. Other evidence of the locked gate will have the same effect. The claims directly conflict with the evidence which our clients and others will give. Some may have used parts of the path (for example perhaps accessing from their back gardens, and point B, but these would be private rights of way), but not at point A.
- 8.8 There is mention in Parish Council minutes from April 2018 (only 2 months before the application was submitted) of 'no trespassing' signs having appeared on the site. Despite this, not one allegedly daily user of the alleged path mentions the same.
- 8.9 On the maps supplied with some forms, the route varies greatly, with some stating the route is to point B, and some to other points. Even those which go to point B vary the route to get there. Even allowing for drawing ability and recollection, it shows there is no set route from A to B.
- 8.10 Descriptions of the width of the path vary greatly.
- 8.11 There is no consistent name ascribed to the alleged path. There are almost as many names as there are forms. One alleges it is known as 'Kissing Gate Walk'. The kissing gate was only installed in 2015).
- 8.12 8 of the forms claim to have had permission to use the alleged path. Permission is incongruous with a public highway. It shows that neither those people, nor the Parish Council who are said to have granted such permission, truly believed access was as of right.

## 9. Conclusion

Any access that people have had to the site and the alleged footpath has been a result of the Parish Council failing to keep to the terms of its lease of the land, recently seemingly quite deliberately, and of the landlord (now NELC) failing to enforce the terms of that lease. This has caused nuisance and annoyance to our clients and other occupiers of land adjacent to the site.

Having considered the user evidence forms, some Parish Council minutes, information supplied by our clients and having spoken with Mr [REDACTED] it is clear to us that the Parish Council has

misunderstood its powers, its rights and its obligations, even if it may have done so with the best of intentions. This to us seems to be the source of the grievances on all sides – of the Council, of those who were erroneously given the impression that they had permission or even a right to use the alleged path, of those who may have used parts of it historically and feared losing the ability to do so, of our clients and of Mr & Mrs [REDACTED]. Whatever the reason, it seems to us that various parties have become entrenched, as is often the case regarding boundary and/or neighbour issues. We suspect the application and the manner in which the user evidence forms have been completed have been done so as a means to achieve ultimate goals of protecting the abilities of those who may have used the area from their back gardens to continue to do so, and to open the site up as one for public use. We suspect some may have been completed disingenuously, and if this application proceeds to a hearing some may be at risk of serious consequences with regards costs or even criminal sanction. In our view this is a matter crying out for mediation. We do not know if attempts have been made at that.

Turning to the application itself, however, it is abundantly clear that the whole path between A and B has not been dedicated by the freeholder, and that the applicants cannot establish 20 years usage along the whole route (not least because Point A was inaccessible). The order should not be made at all. If it is, it should be referred to the Secretary of State for confirmation, and a hearing or inquiry will be required. Our clients invite the applicants to withdraw the application.

Yours faithfully

Andrew Burnett  
Partner  
Wilkin Chapman LLP

DDI: 01472 246678  
Email: [andrew.burnett@wilkinchapman.co.uk](mailto:andrew.burnett@wilkinchapman.co.uk)

**Appendix 16.**

Photograph of a residents son showing the gate in position taken c1995



**Appendix 17**

Photograph of gate with objection



[https://www.google.com/maps/@53.5459806,-0.1697538,3a,30y,110.23h,84.22t/data=!3m6!1e1!3m4!1sXbf\\_tAfiwUg3DQyUq\\_Daag!2e...](https://www.google.com/maps/@53.5459806,-0.1697538,3a,30y,110.23h,84.22t/data=!3m6!1e1!3m4!1sXbf_tAfiwUg3DQyUq_Daag!2e...) 30/03/2020

**Appendix 18**  
Landfill Survey 1989

LANDFILL GAS SURVEY  
BUTT LANE LACEBY 55/17/29  
27TH JUNE, 1989  
PLANS 29/1 29/2 SKETCH

A searcher bar survey was conducted at the above site. Nine probes were made within the site interior, in three lines of three from west to east covering the whole site.

Point 7 (see sketch plan) was driven close to the site of a newly constructed bungalow to see if there was any migration of gas towards this point.

Point 9 was driven into an area of three old allotments, only one being used at present.

Butt Lane was opened in 1952 and was an old disused sand pit. Most types of waste were dumped in the site including agricultural, domestic and trade waste likely to be toxic etc. The site was closed 31st March, 1974.

No obvious vegetation stress/damage was visible in the trees/hedgerows forming the site boundary, or in any of the surrounding fields.

Results

All readings were zero.

Surveyors T. Wilkinson, G. Waite.

Copies to File  
N. Smith

LANDFILL GAS SURVEY

SITE: BUTT LANE, LACEBY.							REF: 5517129			DATE: 27 / 6 / 89.								
NOTES: Searcher bar Survey, probes driven to depth of 1000 mm.							PLAN NO: 29/land 2			TEMPERATURE								
							AIR 20 °C		GROUND °C		BAROMETRIC PRESSURE		no		rising		steady	
							dub-a		millibars		falling		SURVEY CONDITIONS:					
							SURVEYOR(S) T. WILKINSON, G. WAITE							INSTRUMENT: GASTECH, GSC.				
POINT	PPM	% LEL	% CH <sub>4</sub>	% CO <sub>2</sub>	% O <sub>2</sub>	mm H <sub>2</sub> O	POINT	PPM	% LEL	% CH <sub>4</sub>	% CO <sub>2</sub>	% O <sub>2</sub>	mm H <sub>2</sub> O					
1	○						32											
2	○						33											
3	○						34											
4	○						35											
5	○						36											
6	○						37											
7	○						38											
8	○						39											
9	○						40											
10							41											
11							42											
12							43											
13							44											
14							45											
15							46											
16							47											
17							48											

SITE: BUTT LANE, LACEBY

VISITED BY: J. WILKINSON, G. WAITE

DATE OF VISIT: 27/6/89

TIME ON SITE: 11:30 TIME OFF: 12:30

PHOTOGRAPHS: YES/NO

SKETCH PLAN P.T.O.

See plans (29/1)

OTHER PLANS: YES/NO

WALK-OVER GAS CHECK: YES/NO

INSTRUMENT: GSC

RESULTS: See attached sheet

VEGETATION STRESS: YES/NO

BUILDINGS WITHIN 200m of SITE BOUNDARY: YES/NO

TYPE OF BUILDINGS: DOMESTIC DWELLINGS.

DETAILS: RESTORED SITE CLOSED IN 1966.

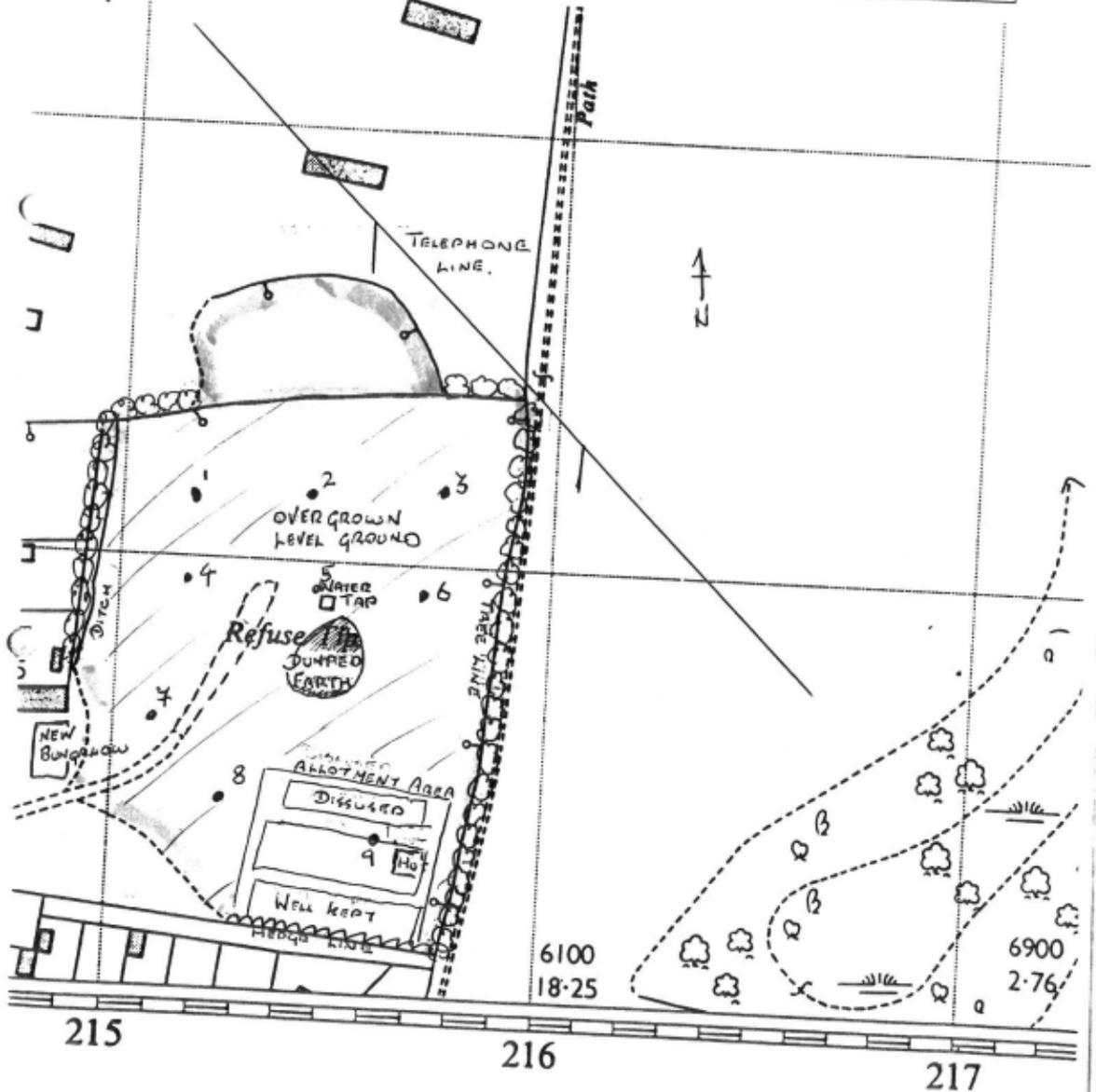
SERVICES: Overhead telephone lines passing by north eastern corner of site. Services presumed to be associated with housing developments to west and south of site.

ASSESSED HAZARD RATING: 3

5126  
11-02

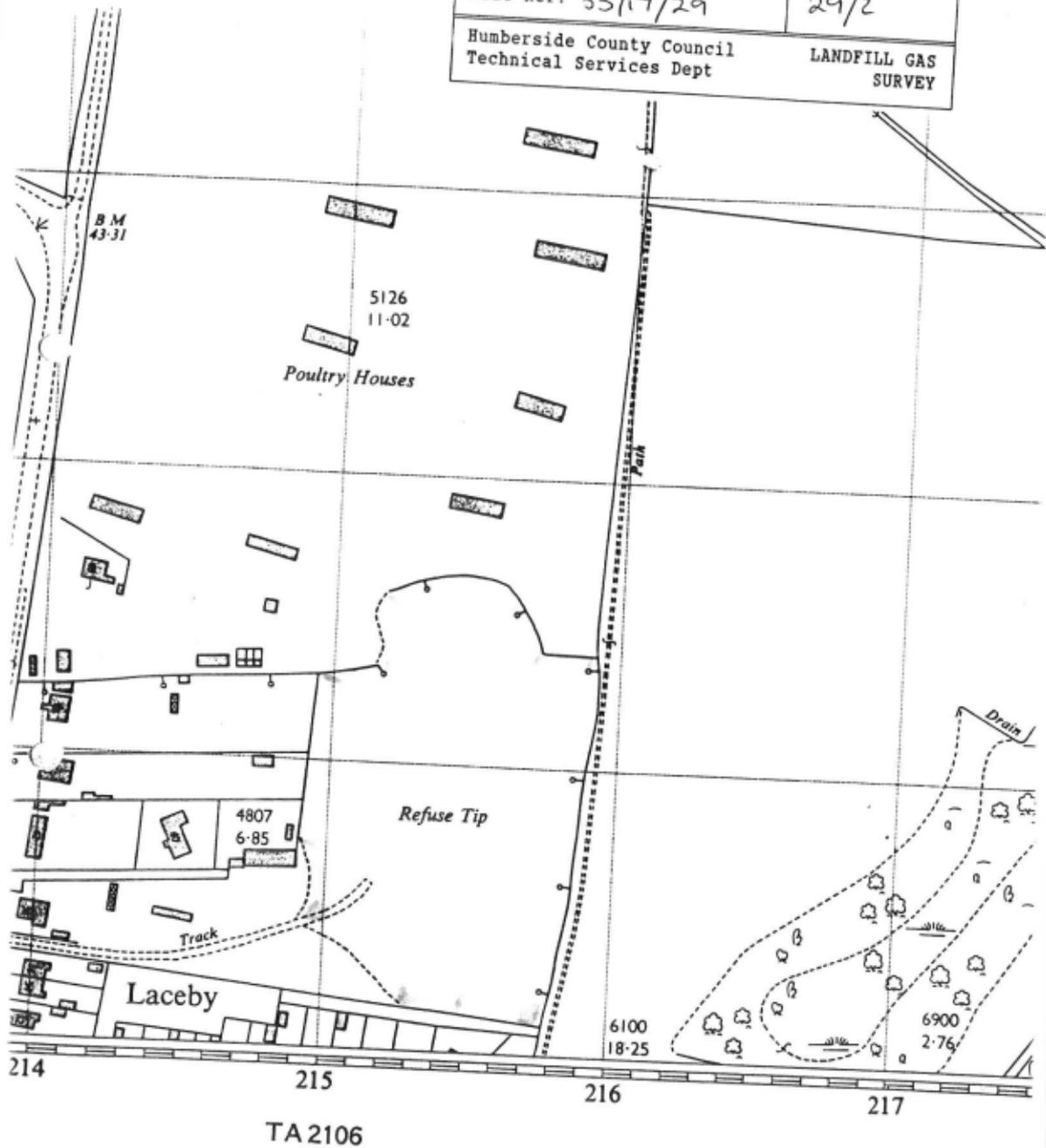
Poultry Houses

Site: BUT LANE, LACEBY	Plan No.
File Ref: SS/17/29	29/1
Humberside County Council Technical Services Dept	LANDFILL GAS SURVEY



TA 2106

Site: BUTT LANG, LACEBY	Plan No.
File Ref: 55/17/29	29/2
Humberside County Council Technical Services Dept	LANDFILL GAS SURVEY





1/17/29



MOUNT

CLEETHORPES

Humberston

45

## **Appendix 19**

Planning Application 1977

### **Planning Applications relating to the former landfill site in Butt Lane, Laceby**

08/583/77 – Use of land for allotment purposes – Approved with conditions on 6<sup>th</sup> August 1977.

Site location plan and decision notice are attached for this, although the notice is not very readable. Condition 2 related to parking provision within the curtilage of the site.

The planning application below included a small section of the land which related to the former landfill site but now relates to the Nursing/care home.

08950377 – Revised application to demolish dwelling and erect 40 single bedroom nursing home to include erection of additional rear lounge – 68 Butt Lane, Laceby - approved with conditions on 4<sup>th</sup> October 1995. Plans and decision notice for this application are available on the Council website <https://www.nelincs.gov.uk/planning-and-development/planning-applications/> .

TOWN AND COUNTRY PLANNING ACT 1971

Application No.

0/583/77

To be quoted in all  
correspondence

FULL PLANNING PERMISSIO

The Cleethorpes Borough Council hereby give notice to  
Laebly Parish Council, through their Agent: Mrs. J. L. Ringrose,  
Laebly.

Clerk of the Laebly  
Parish Council,  
2 Main Close, Keelby.

12th May 1977

that the application received for development purposes, Butt Lane Tip for permission to  
parish of Laebly.

has been considered and that permission for this development in accordance with plans and written  
particulars submitted has been granted subject to the following conditions:-

- (1) The development to which this permission relates MUST be begun not later than the expiration  
of FIVE YEARS from the date of this permission.
2. Provision shall be made and taken after consultation with the Highway Authority for  
the parking of vehicles within the curtilage of the site in accordance with details to be approved by  
the District Planning Authority after consultation with the Highway Authority before any development  
is commenced.

The reasons for the above conditions are:-

(1) To comply with the provisions of Section 41 of the Town and Country Planning Act, 1971.

2. In the interests of road safety.

Dated

6 AUG 1977

Signed



#### NOTES

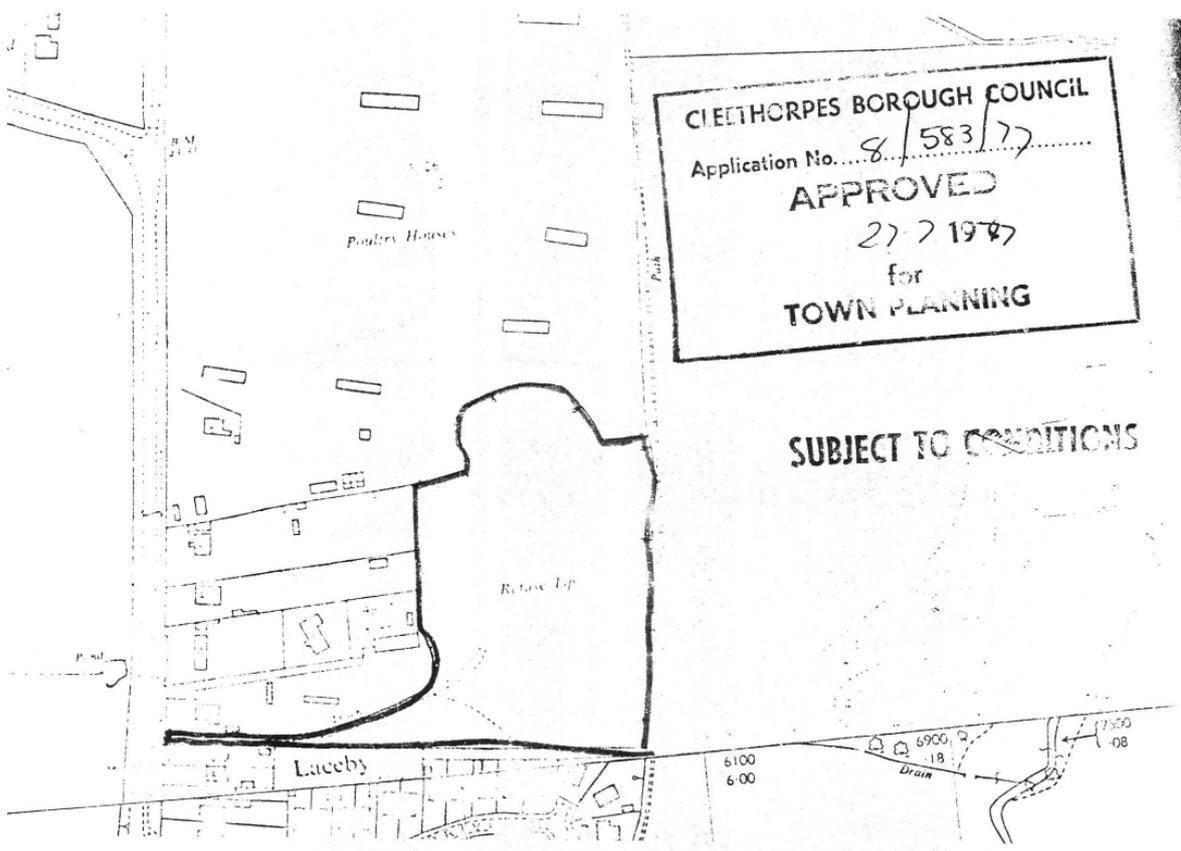
(1) Any approval in this Notice of Decision refers only to that required under the Town and Country Planning Acts and does not include any consent or approval under any other enactment, byelaw, order, building or other regulation.

(2) If the Applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act, 1971, within six months of receipt of this notice. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction given by him.

(3) If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the County District in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of part IX of the Town and Country Planning Act 1971.

(4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

Appeals must be made upon official forms obtainable from the Secretary, Department of the Environment, Becket House, Lambeth Palace Road, London, SE1 7ER, to which address any initial enquiries regarding such appeals should be sent.



CLEETHORPES BOROUGH COUNCIL  
Application No. 8/583/77  
**APPROVED**  
27 7 1987  
for  
**TOWN PLANNING**

**SUBJECT TO CONDITIONS**

6100  
6-00

6900  
18

7500  
08

Drain

Laceby

Retax Lot

Poultry Houses

Pond

## Appendix 20

### Lease of Butt Lane, Laceby to Parish Council

THIS LEASE is made the *5th* day of *March*  
One thousand nine hundred and seventy-~~eight~~<sup>nine</sup> B E T W E E N  
THE CLEETHORPES BOROUGH COUNCIL (hereinafter called "the  
Council") of the one part and THE PARISH COUNCIL OF THE  
PARISH OF LACEBY in the County of Humberside by its Agents  
SYDNEY Broddle of 21 Cooper Lane Laceby Humberside and  
JUDITHMARY Ringrose of 2 Manor Close Keelby Lincolnshire

being the Chairman and Clerk of the said Council duly authorised  
to execute this Deed (hereinafter called "the Lessee") of  
the other part

WITNESSETH as follows :-

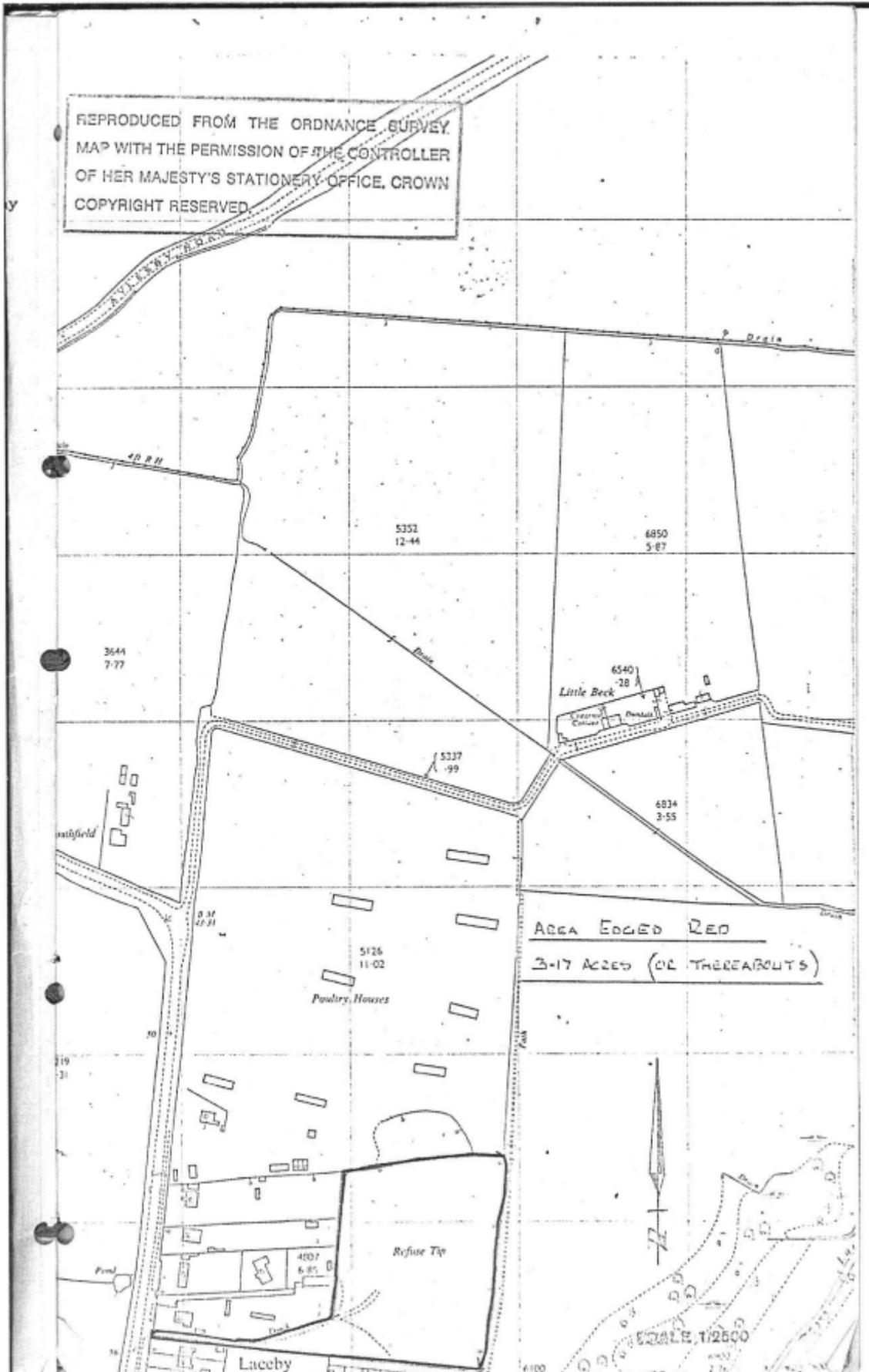
1. The Council hereby demises to the Lessee ALL THAT  
piece of land situate at Laceby in the County of Humberside  
containing 3.17 acres or thereabouts being the former refuse  
and more particularly delineated on the plan attached  
hereto and thereon edged red Except and Reserving as  
hereinafter mentioned TO HOLD the same unto the Lessee  
from the *1st* day of *April* One thousand  
nine hundred and seventy-*nine* for the term of One  
year and thereafter from year to year until determined  
by twelve months previous notice in writing to be given  
by either party to the other to expire on or before the  
Sixth day of April on or after the Twenty ninth day of  
September in any year subject to the provisions of Clause 5(1)  
hereof paying therefor the yearly rent of Five Pence  
payable yearly in advance the first payment to be made on  
the signing hereof
2. The demise is subject to the following exceptions and  
reservations in favour of the Council that is to say:
  - (1) All mines minerals stone gravel and sand and  
underground substances of every kind with right  
of entry to get and work the same making  
reasonable compensation for all damage done

- (2) All timber and other trees (but not the fruit of trees) pollards saplings and underwood with right of entry with workmen animals and vehicles to mark and cut and carry away the same making reasonable compensation for all damage done
- (3) Subject to the provisions of the Ground Game Act 1880 and the Ground Game (Amendment) Act 1906 all game ground or otherwise with exclusive right for the landlord and all persons authorised by him to enter for the purpose of preserving the same and for hunting and shooting

3. The Lessee for themselves and their assigns hereby covenant with the Council as follows :-

- (1) To pay the rent hereby reserved and all rates taxes and outgoings imposed or charged upon the demised premises or upon the owner or occupier in respect thereof
- (2) To maintain in good repair all buildings gates stiles hedges and fences and in particular to cut out and lay and protect a proper proportion of the hedges in each year of the tenancy and to plant young quicks and thorns in the hedges where required and to cleanse and scour all ditches drains and culverts
- (3) To cultivate and keep and manage the land or cause the same to be cultivated kept and managed in a good and husbandlike manner and to use and permit the same to be used for allotments only and in particular not for a market garden or market gardens and not to injure or deteriorate the premises or

REPRODUCED FROM THE ORDNANCE SURVEY  
MAP WITH THE PERMISSION OF THE CONTROLLER  
OF HER MAJESTY'S STATIONERY OFFICE, CROWN  
COPYRIGHT RESERVED.



permit the same to be injured or deteriorated and to leave the land on the termination of the tenancy in good heart and condition

- (4) To preserve all timber and timberlike trees and not to cut lop drive nails into or otherwise injure or permit to be cut lopped or injured in any way any timber or timberlike trees
- (5) Not to use or erect or permit to be used or erected any barbed or other wire fence on the holding without the consent in writing of the Council or its Agent
- (6) Not without the written consent of the Council or its agent to underlet assign or part with the possession of the premises or any part thereof except for the purposes of allotments
- (7) Not to use the property or any part thereof or suffer the same to be used for any purpose other than for the purpose of allotments
- (8) Not to do or permit or suffer to be done anything in or upon the property or any part thereof which may be or become a nuisance or annoyance or cause damage to the Council or other property in the neighbourhood or the tenants or occupier thereof
- (9) To comply when necessary and at its own expense with any Act Order Regulation or Byelaw in operation from time to time in relation to allotments
- (10) To permit the Council their officers servants agents and contractors with or without workmen and others and appliances at all reasonable times to enter upon the property to execute repairs or alterations on any adjoining premises now or hereafter belonging to the Council the Council doing as little damage as possible and forthwith making good all damage caused

- (11) To permit the Council or their agents officers or servants at any reasonable time to enter the property for the purpose of viewing its condition and thereupon the Council may serve upon the Lessee notice in writing specifying any repairs or works necessary to be done in accordance with the provisions herein and require the Lessee or its assigns forthwith to execute the same and if the Lessee shall not within one calendar month after the service of such notice proceed diligently with the execution of such repairs then to permit the Council their agents officers servants or workmen to enter upon the premises and execute such repairs and the cost thereof shall be a debt due from the Lessee to the Council and be repaid forthwith on demand
  - (12) Not to erect or permit to be erected any structure or building or additions to the property without the written permission of the Council first having been obtained.
  - (13) At the end of this tenancy to deliver the property to the Council in a clean and tidy condition and to remove from the property all additions and structures erected by the Lessee if so required by the Council
4. The Council hereby covenants with the Lessee that the Lessee paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on their part contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Council or any person rightfully claiming under or in trust for it
5. Provided always and it is expressly agreed as follows :
- (1) The Council shall have power upon giving to the

Lessee three months' previous notice in writing to expire at any time of the year to resume possession of the land hereby demised or any part thereof if required to be used for building mining or other industrial purposes or for roads or sewers necessary therefor or on account of the land being required by the Council for a purpose (not being the use for agriculture) for which it was acquired by the Council or has been appropriated under any statutory provision making compensation for crops then growing thereon and if possession of part only of the land is so resumed the rent payable shall as from the day of resumption be reduced by such sum as in default of agreement may be determined by arbitration in manner hereinafter provided

- (2) The Council shall have power to re-enter and determine this demise on non-payment of rent for twenty-one days after the same shall have become due (whether formally demanded or not) or on breach or non-observance of any of the conditions or covenants herein contained and on the Lessee's part to be observed and performed
- (3) The Lessee shall not be entitled to compensation for any of the improvements mentioned in Part I of the Second Schedule to the Small Holdings and Allotments Act 1908 or for any of the improvements mentioned in Part II of the same Schedule as amended by Section 21 of and the First Schedule to the Small Holdings and Allotments Act 1926 unless the Council has previously to the making or execution thereof consented in writing thereto

- (4) All disputes and differences which may hereafter arise between the parties hereto under or in connection with this lease (not being disputes or differences compulsorily referred to arbitration under the Agricultural Holdings Act 1948) shall be referred in accordance with the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force to a single arbitrator to be appointed by the Council. No award made under this sub-clause shall include any matters compulsorily referred to arbitration under the Agricultural Holdings Act 1948
- (5) The Council does not warrant that the land is fit for use as allotments or for any other use and it is the responsibility of the Lessee to carry out whatever works necessary to bring the land into use as allotments for which no compensation will be payable by the Council upon the termination of this agreement.
- (6) Nothing contained in this Lease or done thereunder shall affect the powers of the Council as Local Authority Local Planning Authority or in any capacity whatsoever under or by virtue of any public or local Act Order Regulation or Byelaw in operation from time to time in the Borough of Cleethorpes or relieve the Lessee from the necessity to obtain all such approvals or consents as may from time to time be requisite from the Council in any such capacity as aforesaid under or by virtue of any such Act Order Regulation or Byelaw as aforesaid and nothing done by the Council in any such capacity as aforesaid shall constitute a derogation by the Council from any grant to the Lessee effected by or in pursuance of this Agreement

IN WITNESS whereof to one part of these presents remaining  
with the Lessee the Council has caused its Common Seal  
to be affixed and to the other part remaining with the  
Council the Lessee has set his hand and seal the day  
and year first before written

THE COMMON SEAL of THE  
CLEETHORPES BOROUGH COUNCIL  
was herunto affixed in the  
presence of :-

*A. G. Hooton*

Mayor

*[Signature]*

Chief Executive

NO. 1704  
IN DEED BOOK

SIGNED SEALED and DELIVERED  
by the said SYDNEY  
BRODDLE in the presence of:-

*S. Keat*  
35 GRIMSBY RD  
LACEBY  
RESEARCH CHEMIST.

SIGNED SEALED and DELIVERED  
by the said JUDITH MARY  
RINGROSE in the presence of:-

*D. G. Alkoff*  
3, KNIGHTS CROSS  
LACEBY DISTRICT  
FORWARD BRIGHTON

*J. M. Ringrose*

DATED 5th March 1979

THE CLEETHORPES BOROUGH  
COUNCIL

-to-

THE PARISH COUNCIL OF THE  
PARISH OF LACEBY

L E A S E

relating to the Lease of  
a piece of land situate  
at Laceby in the County  
of Humberside.

\*\*\*\*\*

G.M. Sparrow,  
Borough Secretary,  
Cleethorpes.

## Appendix 21

WhatsApp message from objector to their son

