



## **WILDLIFE AND COUNTRYSIDE ACT 1981**

### **THE NORTH EAST LINCOLNSHIRE COUNCIL (LACEBY TO PUBLIC FOOTPATH NO. 122) DEFINITIVE MAP MODIFICATION ORDER 2023**

#### **STATEMENT OF CASE**

**PINS REFERENCE NO: ROW/3349360**

**ORDER MAKING AUTHORITY: NORTH EAST LINCOLNSHIRE  
COUNCIL**

**Matthew Chaplin  
Public Rights of Way Mapping Officer**

**Our ref: DMMO12**

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## 1. Introduction

- 1.1 This Statement is submitted on behalf of North East Lincolnshire Council. It relates to a Definitive Map and Statement Modification Order (the “Order”) to record a Public Footpath in the Parish of Laceby pursuant to section 53 (2) (b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”). The Order was made under Schedule 15 of the 1981 Act.
- 1.2 This Statement of Case; describes the effect of the Order; sets out the background to making the Order; sets out the Council’s reasons for making the Order; and sets out the law and evidence to be considered in determining whether to amend and/or confirm the Order.
- 1.3 On 31 August 2023 North East Lincolnshire Council made an Order to add a Public Footpath from Butt Lane, Laceby to Public Footpath 110, Laceby reasonably allegedly to subsist.
- 1.4 The Order and Order plan is shown in [Appendix 1](#). The order route runs between Butt Lane and Public Footpath 110, Laceby.
- 1.5 Under section 53(2)(b) of the Wildlife and Countryside Act 1981 the Council, as Surveying Authority, is under a duty to keep the Definitive Map under continuous review and as there was an allegation that the route should be recorded on the Definitive Map, the process under the Wildlife and Countryside Act was the appropriate route to take. North East Lincolnshire Definitive Map titled “*Definitive Map For Grimsby Rural District (Now Borough of Cleethorpes)*” is shown in [Appendix 2](#).

## 2. Description of the site and effect of the Order

- 2.1 The land over which the order route runs is in the ownership of North East Lincolnshire Council.
- 2.2 The order route commences at the maintainable highway Butt Lane, Laceby at Point A (Ordnance Survey Grid Reference TA521378, 407032) on the Order Plan. At Point A there is a kissing gate the surface from Point A to Point C is crushed stone. The available width of the Public Footpath is a minimum of 1 (one) metre. The path runs in a generally east south easterly direction for 72 metres to Point B (TA521449, 407027). From Point B the path changes to a generally east north easterly direction for 71 metres to Point C (TA521518, 407055). At Point C the path changes to a natural surface and changes to a generally north easterly direction for 71 metres to Point D (TA521547, 407116). At Point D the path changes direction to a generally easterly direction for a distance of 52 metres terminating

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at Point E (TA521595, 407123) where the path meets Laceby, Public Footpath 110.

The total length of Public Footpath to be added is approximately 266 metres and is shown to run between points A-B-C-D-E on the attached Order Plan.

- 2.3 Photographs of the order route can be found at [Appendix 3](#).
- 2.4 The effect of the Order, if confirmed, would be to record the Public Footpath on the definitive map and statement.

### 3. Background Information

- 3.1 On 29th 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. The application was submitted as a neighbouring resident kept locking a kissing gate that had been installed by Laceby Parish Council. The application was submitted to secure this route as a public footpath due to its 20-year use.
- 3.2 The application was supported by twenty-three user evidence forms which were completed in 2018.
- 3.3 From the user evidence forms the way was on foot between varying periods between 1960 to 2018.
- 3.4 The bringing into question of the right to use the order route as a public right of way is dated by the Council on 11th March 2017 when an email was received that a neighbour was locking the kissing gate to the site ([email shown in Appendix 4](#)). The retrospective period of 20 years is dated back to 11th March 1997.
- 3.5 The claim is based on user evidence with witnesses showing that the public used the order route without interruption for 20 years. 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. In this case it was a neighbour who continued to lock a kissing gate in 2017. 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.

- 3.6 While it would normally be expected that the landowner would call the order 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.
- 3.7 The land through which the order route runs was originally a sand pit. Landfilling was believed to be in operation between the periods of 1952 and 1966 for the disposal of inert, excavation and spoil and possibly some domestic waste. Records suggest that tipping ceased in 1966 when the land was leased to Lindsey District Council for the storage of road making materials. When the depositing of waste ended, a layer of soil was put over the infill, and the area was leased to Laceby Parish Council. Planning permission was granted in 1977 for allotments. When this wasn’t successful the land was given over to nature as a wildlife area and trees were planted. It is understood that the allotments use stopped sometime in the 1980s.
- 3.8 It has been reported that there has been anti-social behaviour directed towards one local resident whose property adjoins the order route. It has also been alleged that this resident has been aggressive towards people using the path by following them back to their house, sounding a claxon when people are using the path and shouting at residents. Humberside Police have dealt with all parties regarding these activities. This resident objected to the order and has now moved away.

## 4. Evidence

### 4.1. User Evidence

- 4.1.1 Out of the twenty-three-user evidence forms, ten witnesses were interviewed, and their statements taken. These record how the users have used the order route. Each user evidence form has been signed by each witness to the following effect: "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. The user evidence forms are shown in [Appendix 5](#).
- 4.1.2 A chart summarising the use claimed by witnesses is set out in [Appendix 6](#). In respect of the use of the alleged route on foot the bar

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chart shows that twenty-three people claimed to have used the route for varying lengths of time with eleven having used it for a period of more than 20 years this is shown in [Appendix 7](#). This graph shows a visual representation of use on a bar chart. The bars coloured in red were discounted, in respect of the decision to make the Order, due to access from the users' garden or they had asked permission to use the order route.

- 4.1.3 Four users had used the order route from their private residences and did not connect to another highway maintainable at public expense or to a point of public resort and were discounted, in respect of the decision to make the Order. Access, which is not by the public at large, but rather by a discrete group of people e.g. the residents, and acquaintances of the residents, is not use 'as of right'.
- 4.1.4 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.
- 4.1.5 A presumption of dedication as a public right of way can only arise where members of the public use a path 'as of right'. Use of the path with the permission of the landowner, or in exercise of a private right will not suffice to establish the claimed public right. Out of the twenty-three-user evidence forms seven asked or were given permission to use the order route.
- 4.1.6 Eight users had asked Laceby Parish Council if they were permitted to walk the order route 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 to use the order route. A number of users had used the order route to access the wildlife area.
- 4.1.7 In order to be satisfied to 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 daily (once or twice a day) to once a week. Six users had used the order route daily, two once a week and one once a week. The Ramblers Association said in the pre-Order making consultation that *"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"*.
- 4.1.8 The user evidence forms include plans drawn by the users which show the order route they have walked in various locations. It should be noted that as vegetation has grown up overtime, the line drawn on the evidence form plans are not wholly accurate.

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- 4.1.9 The route through the trees was well trodden and a survey with GIS positioning device was used to locate the exact path line and this is the one route shown on the Order plan.
- 4.1.10 From the twenty-three evidence forms ten user evidence statements were taken. These user evidence statements are shown in [Appendix 8](#).
- 4.1.11 Mark Andrew Barford 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 have 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"*.
- 4.1.12 Sarah Jane Robinson mentioned when she first came to the village, she asked neighbours and other residents where she could walk and was told she could use the order route. No one ever told her that she could not use it.
- 4.1.13 Lynn Patricia Vasey said that she assumed it was a public right of way as everyone seemed to be using it without hindrance.
- 4.1.14 Iain MacFarlane said he had used the order route 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"*.
- 4.1.15 John Anthony McNamara stated: "A good portion of this path is surfaced which I believe was done to allow Council lorries to access the tip. The rest of the path being well trodden is clearly defined on the ground".
- 4.1.16 All users in their statements mentioned either experiencing or hearing about Mr Jagger from Number 56 causing anti-social behaviour towards them or others. This anti-social behaviour consisted of using an air-horn directed towards them, chaining the kissing gate or putting a waste bin in the kissing gate to prevent it being open.



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4.1.17 Gate

- 4.1.18 Jayne Herring 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 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"*.
- 4.1.19 Carol Housley, Lynn Patricia Vasey and Sarah Jane Robinson mentioned there was a gap beside the gate, and they squeezed between that.
- 4.1.20 Carol Housley 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"*. She went on to say that *"the wooden gate which used to be at the Butt Lane end of the path I think was kept locked. However people used to climb over it or use the gap to nip through"*.
- 4.1.21 John McNamara 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"*.
- 4.1.22 David Fletcher Lewis 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"*.
- 4.1.23 Sarah Jane Robinson 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"*.
- 4.1.24 Lynn Patricia Vasey 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*

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*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".*

- 4.1.25 Iain MacFarlane mentioned 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. Jagger.*

## 4.2. Documentary Evidence

- 4.2.1 The National Parks and Access to the Countryside Act 1949 charged North East Lincolnshire Council, in its capacity of "Surveying Authority", with a duty to compile a record of the public rights of way network. As part of this process the Parish Council carried out surveys and provided the Council with information for the purposes of recording the existence of public rights of way. The route is excluded from the Laceby Parish Survey Notes which were drafted in April 1957. When the Definitive Map was drawn up there was no Public Right of Way recorded across this parcel of land.

### 4.2.2 Aerial Photographs

- 4.2.3 The 2001 aerial photograph shows a faint worn path leading through a green vegetative area. It is shown on a similar line as the claimed route. Photograph shown in [Appendix 9](#).
- 4.2.4 The aerial photograph from 2006 again shows a worn path again on a similar line as the claimed path. [Appendix 10](#).
- 4.2.5 The Google Map aerial photograph from 2018 show again a well-worn path on a similar line as the ones in 2001 and 2006. Photograph shown in [Appendix 11](#).
- 4.2.6 The aerial view on Google Maps dated 2020 again showing a worn route as a similar 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 12](#).
- 4.2.7 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 13](#).

- 4.2.8 A number of historic Ordnance Survey Maps were inspected dated between 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”. Copies of the Ordnance Survey Maps are shown in [Appendix 14](#).
- 4.2.9 Ordnance Survey maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1888 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.

## 5. Legislative Framework

- 5.1 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.
- 5.2 Applications supported by user evidence can be considered by applying the test set out in section 31 of the Highways Act 1980 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:
- 5.3 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 path was always accessible when the old wooden gate in place and there was a gap beside the gate. After the wooden gate was replaced by a metal kissing gate, the kissing gate was locked by a neighbour rather than the owner of the land. The wooden gate may have been left on the site when the Council depot moved out.

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- 5.4 “Without interruption” means that the use claimed must be without actual and physical stopping of the enjoyment of the public’s use of the way with intent to prevent public use of the way (rather than for some other purpose such as preventing cattle straying). The actual use need not be continuous as long as there is sufficient use to show actual enjoyment by the public: *Merstham Manor v Coulsdon and Purley UDC* [1936] 2 All ER 422 at 427 to 429; *Lewis v Thomas* [1950] 1 All ER 116; *Fernlee Estates Ltd v City and County of Swansea and the National Assembly for Wales* [2001] EWHC Admin 360 paragraphs 13 to 17. The case of *R. (on the application of The Ramblers’ Association) v Secretary of State for Environment, Food and Rural Affairs* [2025] EWHC 537 states that mere absence of continuity” or an “intermission”, does not stop time running for the purposes of the 20 year period or prevent the operation of the statute. However, the use over the whole of the 20-year period must be sufficient to make a reasonable landowner aware that a public right of way is being asserted, and ought to be challenged, if it is intended to be resisted, applying an objective test
- 5.5 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.
- 5.6 Section 31 Highways Act 1980: The way has been used for 20 years without interruption. It was still in use in 2018, when the user forms were submitted. Some of the witnesses said they were put off using the path by one of the neighbours. 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. As stated, users acknowledged the existence of the wooden gate but the most users said that the gate was not locked. The gate could not be pushed or swung open and members of the public said that they either climbed over the gate, or there was a gap next to it which they accessed the path by. There was no effort by the landowner to prevent members of the public from accessing the order route via the wooden gate.
- 5.7 Provided that the Council proves the above tests, Section 31 Highways Act 1980 requires the sufficient evidence of an intention not to dedicate the way. The case of *Fairey v Southampton City Council* [1956] 2 Q.B. 439 states that this means that in order for there to be “sufficient evidence that there was no intention” to dedicate the way, there must be evidence of some overt act on the part of the landowner such as to show the public at large or the public who used the path that he had no intention to dedicate the path . There is no evidence from either the landowner or the tenant that

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sufficiently shows intention not to dedicate or to prevent access to the path via the gate as stated above. Members of the public accessed the path by climbing over it or squeezing past the side. Most users have set that the gate could was not locked but could not be opened. Regardless of whether the gate was locked or not, nothing was done by the landowner or tenant or anyone else to stop people accessing the path, which members of the public were doing openly. This included asking the parish council to confirm that they could use the path.

- 5.8 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.
- 5.9 Under section 31 of the Highways Act 1980, the burden of proof is on the person asserting the public right of way, in this case the Council, to prove, on the balance of probabilities, 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.
- 5.10 If the elements in paragraph 5.9 are proved, the burden of proof 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 the use of the way on foot.
- 5.11 It is therefore considered that the Council should make a Definitive Map Modification Order to add sections A-B-C-D-E to the definitive map and statement.
- 5.12 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".

- 5.13 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.

## 6. Order Making Authority's (OMA) Case (including Statement of Grounds for making the Order)

- 6.1 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 gates or other furniture such as stiles across them to facilitate access through boundaries.
- 6.2 The order route was well walked as shown in the user evidence forms and user statements. The path had been used throughout a 20-year period. Ten users had used the path for the period. The path was available for the public at large, and no attempt has been made to prevent users using the path by the landowner. An adjacent landowner padlocked the kissing gate which subsequently brought the route into question. There was a well-worn path from Butt Lane to Public Footpath 110 this is seen in the aerial photographs and when previous site visits were undertaken.
- 6.3 The application route is clearly defined on the 2001, 2006, 2018 & 2020 aerial photography. The aerial photographs dated 2001 and 2006 are dates within the relevant period. Evidential value shows that the route was then well used.
- 6.4 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

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position and orientation in relation to the relevant route can be provided.

- 6.5 The 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.
- 6.7 Section 53(2) Wildlife and Countryside Act 1981, places the Council (as a surveying authority for the purposes of the Wildlife and Countryside Act 1981) under a duty to keep the definitive map and statement under continuous review and, to make, by order, such modifications as appear to them to be requisite in consequence of any of the events specified under Section 53(3) of the Wildlife and Countryside Act 1981.
- 6.8 Section 53(3)(c)(i) refers to the discovery 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 to which Part III of the Wildlife and Countryside Act 1981 applies.
- 6.9 Section 53(3)(c)(iii) refers to the discovery of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
- 6.10 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 with the locking of the gate. 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 public's use of the way was by force, with permission or used in secrecy prior to the event in 2017.
- 6.11 The installation of the kissing gate by nature of a kissing gate is for it to be used as a means of access rather than a preventive measure.
- 6.12 The order route was used by the public at large. A number of users had asked if they could use the path as they had been either threatened or verbally abused by a local resident adjoining the path. They had asked either the Parish Council or a Parish Councillor.

## 7. The Objections

- 7.1 There are two objections to the Order by Mr Jagger, formerly of 56 Butt Lane, Laceby and Mr and Mrs Pearson of 58 Butt Lane Jagger. These properties are adjacent to the order route. Details of the objections and evidence relied on can be found at [Document Reference 1](#).
- 7.2 In summary, the objectors do not accept that the order route has been used as of right for the relevant 20-year period. They state that regular use of the path started at or around 2016 when Laceby Parish Council installed a kissing gate at the Butt Lane end of the claimed, established a nature site on the land through which the path runs, provided a dog bin. They state that the wooden gate which was previously at the Butt Lane end of the path was locked and that the order route was only accessible from private properties. The Jagers state that they have lived in 56 Butt Lane since 2004 and the Pearsons at 58 Butt Lane, since 1995. Subsequently the Council's comments regarding these objections can be found in [Document Reference 2](#).
- 7.3 Between the making of the Order and submitting the Statement of Case the resident of 56 Butt Lane moved away. The new owner of 56 Butt Lane is in favour of a Public Footpath to be established at this location. A copy of this email is shown in [Appendix 15](#). The occupier of the other property adjacent to the order route, near Butt Lane, Mr Germaney of 58A Butt Lane submitted a user form in support of the application for the Order.
- 7.4 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 question the alleged use of the claimed path and the gate.
- 7.5 Mr Jagger of 56 Butt Lane has also made various complaints of harassment against the parish council and members of the public to the Council's estate team. Some of those complaints were connected to the claimed public right of way. Mr Pearson also made complaints in late 2017 to the Council's estate teams. These complaints were investigated and responded to prior to the application for the Order and the investigation and consideration of the application by the Council. The Council's responses to these complaints are attached referenced by the objector at Document 1 and provided at Document 3.



## 8. Rights of Way Improvement Plan (ROWIP) 2021-2031

- 8.1 The Rights of Way Improvement Plan supports the following duty - where there is sufficient evidence that a path exists then the Council has a legal duty to make an order and add it to the Definitive Map. The extract of the Rights of Way Improvement Plan is shown in [Appendix 16](#).

## 9. Conclusion

- 9.1 The Council is satisfied that the discovery of evidence which (when considered with all other relevant available evidence) is sufficient to meet the test set out in section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, namely, to show (on the balance of probabilities) that the Order route should be shown as a footpath on the Definitive Map and Statement.
- 9.2 The order route was well used until the kissing gate was padlocked. Users had asked if it was acceptable to walk the path to the Parish Council due to an adjacent landowner padlocking the gate and or threatening the users using the path.
- 9.3 The Council confirms that all the procedures required by the legislation have been complied with.
- 9.4 North East Lincolnshire Council would respectfully ask that the Secretary of State for the Environment, Food and Rural Affairs confirms the North East Lincolnshire Council Definitive Map and Statement Modification Order titled The North East Lincolnshire Council (Laceby Public Footpath No. 122) Definitive Map Modification Order 2023.

## 10. Summary

- 10.1 The Council proposes to prove with evidence that, on the balance of probabilities, before the right to use the order route was called into question, the claimed path had actually been enjoyed by the public as of right and without interruption for a full period of 20 years.
- 10.2 The Council has the burden of proving that the order route is a way over land, other than of such a character that use by it by the public could not give rise at common law to any presumption of dedication, actual enjoyment by the public as of right, without interruption for the relevant period of 20 years. If the above is proven, the landowner or person disputing the use of the path as of right has the burden of

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proving sufficient evidence of no intention to dedicate the path. The relevant standard of proof is the balance of probabilities.

- 10.3 As set out above and in accordance with the provisions of section 31 of the Highways Act 1990, the Council will provide evidence of the following:
- 10.3.1 That the order route is a way over land and a defined route which has subsisted during the relevant 20-year period. The Council's position is that the period of 20 years ended in March 2017 when the owner of a neighbouring property started locking the gate and interfering and obstructing with the use. The Council has evidence of the use of the order route by the public as of right started significantly before 1997.
- 10.3.2 That the order route is not of such a character that use of it by the public could not give rise at common law to any presumption of dedication.
- 10.3.3 That the order route has actually been enjoyed by the public as of right and not by permission or licence, in secrecy or by force. The site has been accessed by the public via the highway, Butts Lane on one side and via Footpath 110 on the other side, for a period well in excess of 20 years (ending in 2017). There has been no act capable of interrupting this use within the relevant 20-year period.
- 10.3.4 Prior to the date of calling the right to use the order route into question, there is no act by the landowner or the tenant that was capable of interrupting the use or proving an intention not to dedicate.

## 11. Evidence

- 11.1 For the purposes of the inquiry, the Council intends to rely on the user forms and user statements submitted. The Council intends to submit proofs of evidence and call witnesses from the Council's public rights of way officer, estates officer, members of the parish council and a number of the members of the public who provided the user forms and statements.

### 11.2 Additional documentary evidence

- 11.2.1 Office copy entries and documents for the land through which the order route runs, and the objectors' property (Appendices 17 – 19)
- 11.2.2 Officer's report and minutes for planning committee meeting on 17 June 2023 (Appendices 20 – 21)

## 12. Caselaw

12.1 The cases quoted above are listed below:

- 12.1.1 Applegarth v Secretary of State for Environment, Transport and the Regions [2001] EWHC Admin 487 (28 June 2001)
- 12.1.2 Davis v Whitby (1974)
- 12.1.3 Merstham Manor v Coulsdon and Purley UDC [1936] 2 All ER 422
- 12.1.4 Lewis v Thomas [1950] 1 All ER 116;
- 12.1.5 Fernlee Estates Ltd v City and County of Swansea and the National Assembly for Wales [2001] EWHC Admin 360.
- 12.1.6 Fairey v Southampton City Council [1956] 2 Q.B. 439
- 12.1.7 R. (on the application of The Ramblers' Association) v Secretary of State for Environment, Food and Rural Affairs [2025] EWHC 537 (Admin)

12.2 In addition, the Council will rely on the following further cases:

- 12.2.1 Wright v Secretary of State for the Environment, Food and Rural Affairs [2016] EWHC 1053 (Admin)
- 12.2.2 Rowley v Secretary of State for Transport, Local Government and the Regions [2002] EWHC 1040