



Order Decision

On papers on file

by Laura Renaudon LLM LARTPI Solicitor

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

Decision date: 20 July 2026

Order Ref: ROW/3349360

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the North East Lincolnshire Council (Laceby Public Footpath no. 122) Definitive Map Modification Order 2023.
- The Order is dated 31 August 2023, with a relevant date of 14 June 2023, and proposes to modify the Definitive Map and Statement ('the DMS') for the area by adding a footpath between Butt Lane and Laceby Public Footpath 110.
- There were two outstanding objections when the North East Lincolnshire Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: the Order is confirmed.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine whether to confirm this Order. A copy of the Order Map is appended to this decision for ease of reference.

Procedure

2. The two objectors in the case are, or were, residential occupiers of properties adjoining the start of the alleged route ('the Order route') at Butt Lane. The case was scheduled to be heard at a public inquiry commencing on 12 May 2026, but before then one of the objections was discontinued upon a change of ownership of the relevant property. The remaining objection is not withdrawn, but the objector indicated that they would not be in a position to participate in any inquiry proceedings. I have therefore determined the matter on the papers and written representations received.

Basis on which the land is held

3. The land is owned by the Council, and has been leased to the Laceby Parish Council since 1979 for the purpose of allotments. I sought further information from the Council about the basis on which the land is held, to assist me in ascertaining whether any use of the alleged route by the public could have amounted to use 'as of right' or may have been pursuant to a statutory permission arising from the nature of that public ownership.
4. In a comprehensive response the Council explained that no such permission has existed save perhaps for past allotment holders and others with express permission to access the land. The land was acquired by the Council pursuant to powers

conferred by the Public Health Act 1936, and it is not held on any statutory footing that would confer a general right upon the public to use the Order route (or the remainder of the site) whether for recreational purposes or to pass and repass.

5. I accept therefore that the relevant landowner has been in a position to challenge or otherwise object to the use of the Order route during the period under consideration.

Background to the Order route

6. The route lies in or adjoining the small settlement of Laceby, a village lying to the north of the A46 westward of Grimsby. An extract of the DMS has been supplied to me with a relevant date of 1953, from which it is clear that the settlement has expanded in the last seven decades. The route begins at the western end at Butt Lane, then as now the principal north-south road through the settlement. In 1953 it was the site of a sand pit. Now the route is surrounded, at its western end, by houses. From Butt Lane the route runs broadly eastwards. To its eastern end it enters the open countryside, at a field west of Laceby Beck that is variously referred to by users as 'Aircrops', 'Aircrobs', 'Harecrops' or 'Haycrops'. (I shall refer to it as 'Aircrops'.) There it meets the existing footpath no. 110, which runs approximately north-south either to the Aylesby Road or back to the centre of Laceby via the road called Austin Garth. Close to the eastern terminus of the Order route, FP110 meets FP103 which leads eastwards towards the western edge of Grimsby. Thus the Order route potentially forms part of a relatively short 'Laceby circular' walk as well as of longer distance trails to the north and east.
7. Between the two ends of the route, which is 266m long, it passes through the site of the former sand pit that is shown on the 1953 Definitive Map. Following the mining activities, the site was acquired by the local authority and used as a waste disposal site for around 15 years in the 1950s and 1960s, following which it was used for some years by the local highway authority for the storage of roadstone. It was subsequently leased to the parish council in 1979 with the permitted use under the terms of that lease (and pursuant to a planning permission granted in 1977) as allotments, although I understand that these are not statutory allotments. The allotments were, it appears, laid out and let, but the poor quality of the topsoil led to the failure of the allotment use and that was abandoned at some point in the 1980s.
8. Since then, a woodland and wildlife area has emerged with, it is said, some discussions between the relevant Councils (the parties to the lease) about repurposing the land.

Main Issues

9. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of an event specified in section 53(3)(c)(i). This requires me to consider if, on the balance of probabilities, the evidence shows that a public footpath subsists along the Order route. This test of probability, applicable on confirmation of any Order, is a higher standard of proof than the 'reasonably alleged to subsist' test that is applicable when determining if an Order should be made.
10. To address that question, section 31 of the Highways Act 1980 ('the 1980 Act') requires consideration be given to whether there has been use of a way by the public, as of right (meaning without force, secrecy or permission) and without interruption, for a period of 20 years before its status was brought into question. If so, the additional question arises whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

Reasons

Bringing into question

11. In order to assess the use of the Order route during the relevant 20 year period referred to by section 31 of the 1980 Act, it is necessary to decide when the use was brought into question. The present application was made to the Council in June 2018. No action by the landowner or the leaseholder suggests that the use of the Order route was brought into question before then. However, the application itself appears to have been prompted by the locking of a kissing gate on the route by a third party. A complaint to that effect was made to the Council in March 2017, saying that this had 'been going on for over a month now'.
12. To the disinterested observer, unaware of who had locked the gate, encountering an impassable locked gate along the route would call into question the right of the public to use it. Therefore I agree with the Council (who have referred me to the case of Applegarth v SSETR [2001] EWHC 487 (Admin)) that the relevant 20 year period for consideration in this case is to be the 20 years to March 2017, although in view of the contents of the complaint received, on 11 March 2017, it appears that the use became contentious slightly earlier, in January or February of that year. I shall thus consider the position between early 1997 and 2017.
13. There is little suggestion of the Order route ever having been fenced or gated off at its eastern end, at least during the relevant 20 year period. Some users refer to the installation of some boundary fencing by the parish council in recent years, but from the accounts given it has not obstructed the route. The western end, at Butt Lane, appears to have been the subject of a succession of boundary treatments. Those users reporting their knowledge of earlier years are generally consistent in that the route appears to have been partly surfaced in around the 1970s (perhaps consistently with the vehicular access to the roadstone storage, or with the later allotment use) and was gated with a wooden five-bar gate that was installed around the time of the allotment experiment. That is variously described as having become rotten, and was at some point replaced with the metal gate and kissing gate that are there now. When that replacement took place is given different accounts, generally at some time between 2008 and 2015.

Use in the 20 years 1997 - 2017

14. User evidence forms ('UEFs') were submitted in support of the application by 23 local residents of the area, and witness statements were taken from 10 of those users. A detailed objection was submitted by solicitors ('the solicitors' letter') in 2020 for one of the objectors, enclosing some documentary evidence and taking issue with a number of matters raised by those giving evidence in support of the Order. Subsequent to the Order being made, additional correspondence including from the two objectors was submitted, which included some photographs and correspondence.
15. The principal matters arising for consideration are the extent and nature of the user; the ease of access to the route; the question of permission; and whether there is any sufficient evidence to demonstrate the landowner's lack of intention to dedicate the route.

Extent of user

16. There is no statutory minimum level of user to show sufficient use to raise a presumption of dedication, but the use should have been by a sufficient number of people as might reasonably have been expected if the way had unquestionably been

a public highway. I accept that there may have been other users than those who have submitted forms, although the local profile of the dispute can be expected to have brought people forward.

17. Of the 23 users, not all of them say that they have used the entire length of the path. Four users live or have lived in properties backing onto the path and have taken their access from their own back gates. That use would not amount to the assertion of a public right, rather than a private one. Some of those four do however say that they have witnessed other users of the route. Of those that have said they have used the route, most say that this has been relatively frequently, with most users reporting weekly or daily use over the relevant period. 13 users have used the route over the whole of the relevant 20 year period, although the Council excluded some of those users from their consideration (for 'permission' reasons, which I will come on to).
18. The village population is around 3000 people in around 1400 households. The village is connected to the rights of way network on all sides. The users submitting UEFs mostly live in the streets adjoining the Butt Lane entrance to the route, with a reasonable spread of users.
19. An aerial photograph from 2001 shows the existence of a trodden, partly surfaced, path through the land that is commensurate with the Order route. It is possible to discern much of the route from another photograph from 2006, although the land appears considerably more vegetated by then and the eastern end of the route is not readily visible. Commensurate with the 'Aircrops' terminus, however, a shortcut directly across the field to FP103 appears to have arisen by then, which would indicate continuing use of the route.
20. The objector's letter of 2023, enclosing the photograph of vegetation, whilst saying that the path had not been used at all since the new gate was locked by the parish council, stated that before then the exit point at Butt Lane was 'not heavily used'. A WhatsApp exchange of family members of that objector, discussing the chain attached to the former wooden gate, gives a description of one of them having 'used to climb on [the gate] to get over instead as it was chained'. This does not describe use of the Order route to pass and repass, but it does describe accessing the site in the same manner as described by some users of the route.
21. The overall picture of this evidence is that the Order route has had more than negligible use by the public over the relevant 20 year period. That use appears to have significantly increased towards the end of the period, when steps were taken by the parish council to actively facilitate the use, by arranging for the clearance of vegetation, and installing a kissing gate and a dog waste bin near the Butt Lane entrance. Those measures are likely to have resulted in a marked increase in the level of user thus prompting the disaffection of the immediately adjoining neighbours, who are (or were) the objectors to the Order.
22. Nonetheless at least one of those objectors concedes that, before those actions of the parish council, the path did receive some use. That is consistent with the user evidence forms received. Those are from a relatively small number of users, but frequent use of the route is claimed by most of those users. On the balance of the evidence before me I find that throughout the relevant 20 year period there was a sufficient use of the route by the public to bring home to any reasonably observant landowner that a public right was being asserted.

Access to the route

23. It is clear that at the beginning of the relevant period, a wooden 5 bar gate was *in situ* at the Butt Lane entrance to the Order route. That is clearly depicted in a 1995 photograph submitted with the solicitors' letter, and is also shown on 'street view' images taken in 2009. No signage prohibiting or discouraging access is reported to have been present, at least not before the use became contentious. Some users describe climbing the gate to use the route; others describe a gap to the side of it that could be squeezed through. From the 'street view' photographs, a narrow gap to the northern side of the gate is apparent. The gate itself is chained to its post in those photographs.
24. The former use of the site involved access by vehicles, and the wooden gate appeared of a sufficient width to accommodate vehicular access if it were opened. Here, the claim relates to an alleged footpath. No user describes having forced the gate open in order to use the path. The gap to the side of the gate appears to have been wide enough to allow a child or small adult to have passed through it. Of the users mentioning this means of access through the gap, two are female users who say they have made daily use of the path throughout the relevant 20 year period.
25. Other users say they have scaled the gate or are silent on exactly how the route was accessed. At some point during the relevant period, probably by 2015, the wooden gate was replaced by the parish council with a kissing gate facilitating pedestrian access.
26. The gate aside, the accessibility of the path is questioned by objectors because it has, at least at times, appeared considerably overgrown. In the 1995 photograph it is shown as clear and well-tended. By the 2009 'street view' images more vegetation was evident, although a path beyond the gate is also visible. In 2023, outside the period for consideration, the area is shown considerably overgrown with nettles although the accompanying correspondence explains that the (new) gate had recently been locked by the parish council, since when the route had not been used.
27. On this issue I am satisfied that there has been sufficient user of the route over the relevant period to say that the use has been without force. For those users able to pass through the gap next to the former wooden gate, there was no force. The gate appears to have been easily scalable and there were no signs prohibiting access. I find the evidence of those users passing through the gap to be sufficient on its own, but if it were necessary to do so then I would also find that the use by those merely climbing the gate to access the route was not with force. No physical force was involved.

Permission

28. The parish council is not the freeholder of the land but possesses it under the terms of a lease with the Council. It is obliged under the terms of that lease to maintain all gates, stiles, hedges and fences in good repair, but there is no express clause requiring it to prevent, or to allow, public access to the site. The land is to be used for allotments only.
29. There is no evidence before me of the parish council having – or not having – determined to appropriate or dispose of the land or of it having considered whether granting a public right or permission to use the route was consistent with the terms of the lease or with the statutory basis on which the land is held.

30. Nine users refer to having been given permission to use the route by the parish council, and specifically by Councillor Dave Marshall, with another user not stating either way whether permission was given. The Council excluded some of these users from consideration on the basis that their use had been permissive.
31. Some users have also submitted witness statements, with those users explaining the nature of this 'permission' in a little more detail. It is generally not stated exactly when any 'permission' was given, but the context suggests that it is when the use became contentious following the parish council's installation of the new gate and undertaking some land clearance.
32. As well as the various references to a permission, some users report having been told by Cllr Marshall that they had 'a right' to use the route, or that they were 'entitled' to do so.
33. Such terms do not aptly describe a permissive use but perhaps one that the parish councillors (or Cllr Marshall, at least) considered they were not in a position to prevent. I would not therefore necessarily discount the evidence of all users who stated that they were using the route with permission.
34. A number of users were evidently aware that the parish council hold only a leasehold title to the land. There appears to have been no communication of permission, or of dedication of the route, by the freehold owner.
35. Those matters aside, the majority of users state that no permission was received by them from anyone, and the majority of those describe using the full length of the route (rather than accessing it from their own property). There has been no signage to the effect that the route is a permissive one, and most users describing permissive use do so on the basis of a conversation with a single parish councillor rather than on receiving any formal communication to that effect. The balance of the evidence on this issue is that the public's use of the route during the relevant 20 year period was not with permission, but was as of right.

Lack of intention to dedicate

36. The final question arising is whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
37. It appears that an opening in the eastern ('Aircrops') boundary hedge has existed since before the start of the 20 year period, so there is no lack of intention there. As to the western Butt Lane end, the wooden gate was in place before the start of the 20 year period. It was evidently kept locked for most of that period until the gate fell into disrepair and was replaced with one that was not locked (by the occupier of the land) at least until the Council required its locking in around 2019, after the end of the 20 year period. The wooden gate was a 5 bar field gate that when opened would allow vehicular access to the site (assuming sufficient land clearance, which there appears, from the 1995 photograph, likely to have been at the start of the 20 year period). The principal purpose of the chained lock on the gate appears to have been to prevent any vehicular access to the site. There appears to have been no attempt by the landowner, or the leaseholder, to have made good the gap to the side of the gate or to have taken any other measures to prevent or discourage pedestrian access to the site.
38. Therefore on this issue I conclude that despite the locked gate there is no sufficient evidence of the landowner having demonstrated a lack of intention to dedicate a public right of way during the relevant period.

Conclusion

39. In the light of all the foregoing considerations and having regard to all the matters raised in the parties' correspondence, I find the evidence to establish the acquisition of a right of way on foot over the relevant 20 year period.

Formal Decision

40. I confirm the Order.

Laura Renaudon

INSPECTOR

THE ORDER MAP

Definitive Map Modification Order 2023

