Lincolnshire COUNTY COUNCIL
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Case Decision

Definitive Map Modification Order Case 580
Alleged public right of way between Low Road and Public Footpath 79 at St Margaret's Church, Well

Summary of Decision: To make a definitive map modification order to record a public footpath running between Low Lane and St Margaret's Church in Well

The Modification Order Application

1. The Modification Order Application ("the application") was made by Carol Jackson on 22 September 2022 seeking the addition to the Definitive Map and Statement for the area, the legal record of public rights of way, a byway open to all traffic between Low Lane and Public Footpath 79 at St Margaret's Church. This route will be referred to hereafter as "the application route". A copy of the application and plan can be viewed at Well DMMO 580 application and map (lincolnshire.gov.uk), and plan ref. DMMO/580/Well/CDP attached shows the application route by a broken black line between points A-B-C-D-E-F-G-H-I.

Requirements and tests of the legislation

2. Section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act") requires the County Council as the Surveying Authority for Lincolnshire to keep the Definitive Map and Statement under continuous review. This is achieved through the making of definitive map modification orders.

3. The main issue which is relevant here is whether the evidence demonstrates that a public right of way subsists or is reasonably alleged to subsist over the route applied for to warrant the making of a definitive map modification order under section 53(3)(c)(i) of the 1981 Act for it to be added to the Definitive Map and Statement. It should be noted that the combined effect of sections 53(3)(c) and 53(5) is that the County Council may reach a different conclusion other than simply to make or not make a definitive map modification order for the route applied for. This means that

the decision of the Surveying Authority must be reached on the basis of all the evidence available to us and not just on the application itself.

Documentary Evidence

4. Historical documents may provide evidence supporting that a public right of way had been created or dedicated in the past. If a public right of way is shown to have been dedicated or created, then the public right of way will continue to exist indefinitely[1] unless it is shown to have been stopped up, extinguished or diverted by virtue of a statutory provision such as a public path diversion or extinguishment order made under the Highways Act 1980 or the Town and Country Planning Act 1990, for example.

5. The 1738 Note of the Inquisition at Well appears to have stopped up and diverted a highway running between Claxby and Well. From the description given in the document and the analysis provided by the applicant, the replacement highway could incorporate that part of the application route running between the lake and Well Vale Hall and then north to Low Lane along what is known as "Hall Drive". Hall Drive is shown between points A-B-C-D-E-F in plan ref. DMMO/580/Well/CDP. However, it is not possible to ascertain with any certainty the route that was set out as the document was not accompanied by a map showing the diversion and there is an absence of map evidence for the 81-year period following the Inquisition.

6. A route is shown running in the proximity of that part of the application route which runs along Hall Lane in the 1819 Ordnance Survey Drawing, 1824 Ordnance Survey First Edition One-Inch Map, 1828 Bryant's Map, 1830 Greenwood's Map, 1838 Sketch of the Well Vale Estate, 1878 Phillip's New Map of Lincolnshire from the Ordnance Survey, and the 1880 Plan of the Parish of Well, but the route shown in these maps all vary slightly from one degree to another when compared with later maps. The 1828 Bryant's Map shows the route as a '*Lane or bridle way*', and the 1830 Greenwood's Map shows it as a '*cross road*'.

7. The 1889 Ordnance Survey County Series First Edition 25 Inch to the Mile Scale Map also shows this part of the application route coloured sienna and bounded on one flank by a bold dashed line. The publication *Ordnance Survey Maps: A Concise guide for historians* by R. Oliver (1994) suggests that between 1880 and 1891 sienna was used for '*public or apparently public roads*', and that after 1891 roads were shown by "shading" on one flank, but this practice ceased in 1912. The publication refers to Ordnance Survey's Internal Instructions for Surveyors of 1884 which state, '*All metalled public roads for wheeled traffic kept in good repair by highway authority will in future be shaded*'. However, it is unclear what records, if any, the surveyors had viewed to ascertain that Hall Drive was a public road. The Ordnance Survey County Series First Edition 25 Inch to the Mile Scale Maps of the 1880s that show the manor houses or stately homes at Belton House, Burghley House, Fillingham Castle, Grimsthorpe Castle,

[1] The judgement *Dawes v Hawkins (1860)* held that '*it is also an established maxim, once a highway always a highway: for the public cannot release their rights, and there is no extinctive presumption or prescription*'

Gunby Hall, Hainton Hall, Riseholme Hall, and Syston Hall all show the private drives that lead to these properties coloured sienna in the same manner as Hall Drive that connects Well Vale Hall to Low Lane. Given the status or wealth of the people who had owned these properties, it is likely that they would have maintained the private drives to a similar or same standard as public roads. This suggests that the decision by Ordnance Survey to colour roads sienna in their County Series First Edition 25 Inch to the Mile Scale Maps or shade them on one flank in subsequent maps was made on observations made by the surveyors based on their surface rather than status. This means that the manner in which Hall Lane is shown in the 1889 Ordnance Survey County Series First Edition 25 Inch to the Mile Scale Map alone is not indicative of the existence of a public right of way.

8. The Ordnance Survey County Series Maps spanning 1888-1956, One Inch Maps spanning 1891-1962, Quarter Inch Maps of 1912 and 1914, Scale 1:25,000 or about 2½ Inch Map of circa 1948 and 1953, Pathfinder Map of 1982, Landranger Map Series of 1993 and 2002, and the Explorer Map Series of 2000 and 2006 all consistently show a route in the location of the northern half of the application route between Low Lane and Well Vale Hall. They show the route by a variety of statuses including '*ordinary metalled road*', '*second class metalled road*', '*main road*', '*second class road*', '*private road over 14 feet of metalling*', '*other motor road narrow*', '*Ministry of Transport Class II road*', *untarred road under 14ft of metalling*', '*drives or unmetalled road*' or an '*other road, drive or track*'. The <u>*Ordnance Survey Maps: A Concise guide for historians*</u> by R. Oliver (1994) states:

> *'By 1896 roads were to be classed as first or second class according to whether they were Main or District roads, as classified by the surveyors to Rural District Councils;* ***other roads were to be classed as second class if they were metalled and "kept in good repair".*** *(CB)* ***"Good repair" meant that "it should be possible to drive carriages and light carts over them at a trot"'*** [Emphasis added]

This means that any "other roads" that were found to have been metalled and "kept in good repair" would have been classified as a second-class road irrespective of whether they were public or private. Therefore, the way in which Hall Drive is shown in these maps alone is not indicative of the existence of a public right of way.

9. With regards to the remainder of the application route between Well Vale Hall and St Margaret's Church (as shown between points F-G-H-I in plan ref. DMMO/580/Well/CDP), the 1819 Ordnance Survey drawing shows a track following part of this route towards the church. The 1824 Ordnance Survey One Inch Map, 1828 Bryant's Map, 1830 Greenwoods Map and 1878 Phillip's New Map of Lincolnshire from the Ordnance Survey show a route running in the general proximity of this part of the application route towards the church before turning to run towards Claxby village. The 1838 Tithe Apportionment Plan, 1880 Plan of the Parish of Well in the County of Lincoln the property of the Honourable Lady Mary Christopher Nisbet-Hamilton, and Ordnance Survey County Series Maps of 1888-1956, One Inch Maps of 1923-1969 and 1:25,000

or about 2½ Inches to 1 Mile Map of c1948 and 1953, all show a track running on a different course further away from the church from Well Vale Hall to Claxby village.

10. The 1982 Ordnance Survey Pathfinder Map shows an '*other road drive or track*' more or less in the location of the application route, and this route is shown in the 1971 aerial photograph. Subsequent Ordnance Survey Landranger and Explorer Series Maps all consistently show an '*other road, drive or track*' in the location of the track that is currently present on the ground and is subject to this part of the application route, and this is also shown in the aerial photographs over the period 1999-2023.

11. None of the maps referred to above show a route running exclusively to St Margaret's Church or connecting with Well Public Footpath 79 at the church except for the Ordnance Survey Drawing of 1819 and Pathfinder Map of 1982. Furthermore, the routes that are shown in these maps and are subject to the application route to one extent or another do not specifically record that they are a public right of way or a highway. With regards to the Ordnance Survey maps, it should be noted that the surveyors of the maps were not tasked with identifying the rights which might have existed over the routes shown in them as their purpose was simply to map the geography of the landscape. Also, all Ordnance Survey maps, except for the first editions of the county and one inch series maps, carry a disclaimer stating, '*the representation of this Map of a Road, Track or Footpath, is no evidence of the existence of a public right of way*', or words to that effect. Therefore, the map evidence falls short of demonstrating the existence of a public right of way over the application route.

12. With regards to the Conveyance made between John Reeve and Willoughby Farms Limited on 12 November 1992 that was submitted by the applicant in support of their application, Paragraph 1 of the Second Schedule of the Conveyance states:

> '*The grant of a right in common with the Vendor* [John Reeve] *and his successors in title and all other persons entitled for the Purchaser* [Willoughby Farms Limited] *and its successors in title to all or any part of The property and all persons expressly or by implication authorised by it or them by day and by night for all purposes to pass and re-pass with or without vehicles or animals along The Hall Drive…'*

Hall Drive is shown in the plan accompanying the Conveyance as running south from Low Lane to Well Vale Hall and then southwest between the Hall and the fishpond. What is being described here is the granting of a private right of way for Willoughby Farms Limited over Hall Drive for access to their land beyond Well Vale Hall. The term '*and all other persons entitled'* is a catch all for any other persons who might also have a documented private right of way or access over Hall Drive. Therefore, the Conveyance is not supportive of the existence of a public right of way.

13. With regards to The Replies to Preliminary Enquiries Subject to Contract RE: The Well Vale Estate document dated 28 September 1990, paragraph 12 states:

> '*There is a public right of way to the Church along the Hall Drive and from there to the Church by the route that is clearly visible. That right of way is now used by the public on foot and with motor vehicles. The vendor constructed in or about 1989 a stoned carpark 30 or 40 yards from the Church for the use of those attending the Church. The vendor has entered into no agreement oral or written, regarding the carpark. The carpark is included as part of the property included in the sale. The sale is subject to such public rights of way or other rights as may be to the church.'*

It is possible that the "public right of way" referred to above relates to the application route, although it is not possible to ascertain from the description given where the stone carpark was located. However, it should be noted that the route is not recorded as a public right of way in the Definitive Map and Statement, hence the making of the Modification Order Application, and the document has not been signed by the solicitor or the seller. Furthermore, the preliminary paragraph of the document includes the caveats, '…*these replies are given on behalf of the proposed Vendor and without responsibility on the part of his solicitors, their partners or employees. They are believed to be correct but their accuracy is not guaranteed and they do not obviate the need to make appropriate searches, enquiries and inspections.*' It should be noted that the absence of a documented public right of way on foot and with vehicles must have been realised by the buyer (Willoughby Farms Limited) given that they subsequently considered it necessary to draw up a Conveyance with the then owner of Well Vale Hall granting them with a private right of way over Hall Drive for the provision of access to their land beyond the Hall.

14. In summary, the map evidence and Conveyance of 12 November 1992 is not supportive of the existence of a public right of way in the location of the application route. The Replies to Preliminary Enquiries Subject to Contract RE: The Well Vale Estate of 28 September 1990 may provide some evidence to support the use of the application route by members of the public on foot and in vehicles for access to St Margaret's Church at that time, but this alone is not sufficient to *reasonably allege* that a public right of way exists over the application route.

User Evidence

15. Under section 31(1) of the Highways Act 1980, a route may be deemed to have been dedicated as a public right of way if it has been subject to sufficient public use and enjoyment, as of right and without interruption for a full period of 20 years immediately prior to the date when the status of the way was brought into question, unless there is sufficient evidence on the part of the landowner to showing a lack of intention to dedicate it as such during this period. A public right of ay arising by this manner is known as "statutory dedication".

16. Should the case for statutory dedication fail, then common law dedication may be considered. There is no fixed period of use required for common law dedication, but it is generally accepted that the level of public use of a route should be greater where

shorter periods are relied on. The evidence must demonstrate that there has been sufficient use of the route by the public at large and as of right to show that it has been accepted by the public and that the landowner had intended to dedicate it as a public right of way either expressly or impliedly. The person or people who had owned the land throughout the period of use relied on must have had the legal capacity to dedicate the route as a public right of way, and their actions or inaction towards people using the way are important in establishing if a public right of way has arisen by common law dedication.

Statutory dedication – section 31(1) of the 1980 Act

17. It is important to identify when the public's right to use the route was brought into question so that the 20-year statutory term can be calculated retrospectively from that date. For the right of the public to use the application route to have been brought into question, the landowner must have challenged it by some means sufficient to have brought home to the public that their right to use the way is being challenged, so that they are informed of the challenge and have a reasonable opportunity of meeting it.[2] The landowner can challenge the public's right to use the route by putting a barrier across it, locking a gate or by putting up a notice forbidding the public to use the path, for example. Not every user needs to be aware of the challenge, but by whatever means are employed it must be sufficient to make it likely that some of the users of the application route are made aware that the landowner has challenged their right to use it.[3]

18. The Chronology of Events Regarding Access document submitted by the applicant suggests that the current owners of Well Vale Hall had installed "secured gates" in February 2022 to prevent unauthorised access along the application route. Thirty-two user witnesses reported that they stopped using the route because of the gates, and they suggest that the gates were located on the route near to the Coach House at Well Vale Hall (i.e. at point D in plan ref. DMMO/580/Well/CDP) and that they were locked. This demonstrates that the installation of the locked gates across the application route in February 2022 was sufficient to have brought home to the public that their right to use the way had been brought into question. Calculating 20 years retrospectively from February 2022 gives rise to the statutory term February 2002 - February 2022. This period will be referred to hereafter as "the relevant statutory term".

Comments on the user evidence

19. The evidence of use of 19 users have been totally discounted and 17 users partially discounted for a variety of reasons. These include use or certain elements of their use having been with permission, by licence or by right, or because of omissions in their evidence forms by which it is not possible to ascertain when they had used the

[2] Lord Denning in *Fairey v Southampton CC (CA)* [1956] 2 All ER 843

[3] Mr Justice Dyson in *R v Secretary of State for the Environment, Transport and the Regions ex parte Dorset CC* [1999] EWHC Admin 582, para.17

route, how frequently they had used it or if their use was *as of right*. Therefore, the evidence of use of 31 users and partial use of 17 users can be taken into consideration in determining if a public right of way has arisen by statutory dedication.

20. The user evidence forms show that the route that was predominantly used by the users ran along that part of the application route between Low Lane and the corner in the track nearest to St Margaret's Church, and it then took a direct line to the entrance to the churchyard compared to the route applied for. This route is referred to hereafter as the "principal route" and is shown by a black broken line between points A-B-C-D-E-F-G-H-J. Given the predominant usage of the principal route, this will be subject to the discussion for the remainder of this report.

Use and enjoyment by the public at large

21. The user evidence suggests the principal route was predominantly used as a cul-de-sac for access from Low Lane to St Margaret's Church for attending services, visiting and attending graves, and maintaining the church building and its grounds during the relevant statutory term. Other reasons given for using the route include dog walking, exercise, health and wellbeing, leisure, pleasure, recreation, and walking.

22. There are several judgements which suggest that a public right of way or highway may exist as a cul-de-sac to a place of popular resort or attraction. They include:

    - *Moser v Ambleside Urban District Council* (1925) 89 JP 118
    - *Williams-Ellis v Cobb and Others* [1934] All ER 465
    - *Oxford County Council v Oxford City Council & Anor* [2004] EWHC 12 (Ch)
    - *The Ramblers Association v Secretary of State for Environment, Food and Rural Affairs* [2017] EWHC 716 (Admin)

    In the Williams-Ellis v Cobb judgement, Lord Wright gave a church as an example of where a cul-de-sac public right of way may terminate. The judgement *Kotegaonkar v Secretary of State for Environment, Food and Rural Affairs and another* [2012] EWHC 1976 (Admin) also supports that a public right of way may arise over a cul-de-sac providing that one end of the route links to a highway or other land to which the public have a legal right of access. Given that the northernmost end of the principal route commences from the public carriageway along Low Lane, these judgements suggest that there is nothing in principle which would prevent a cul-de-sac public right of way arising over the principal route between Low Lane and St Margaret's Church, should the evidence support this.

Use on foot

23. The user evidence suggests that there was qualifying public use (i.e., *user as of right* and *without interruption*) by three users of the whole length of the principal route on

foot spanning the relevant statutory term. Where the principal route has been used by different people for individual periods of less than 20 years, but their use taken together covers the start and end periods of the relevant statutory term, and overlaps, it can be taken as an instance of 20 years' use or more.[4] Combining the periods of qualifying public use of five pairs of users makes another four instances of qualifying public use of the principal route on foot spanning the relevant statutory term. This means that there are seven instances of qualifying pedestrian use of the principal route spanning the relevant statutory term.

24. A further seven users claim qualifying public use of the whole length of the principal route on foot for parts of the relevant statutory term. These periods of use are 2002-2016 and 2020-21 (two users), 2002-2019 (two users), 2002-2021, 2013-2017, and 2013-2022.

25. Another 16 users report qualifying public use of the principal route on foot during the relevant statutory term up to a point near to, at or just beyond the corner of the track nearest to St Margaret's Church, with some then having taken slightly different lines to the church. One of these routes include that part of the application route shown between points H-I in plan ref. DMMO/580/Well/CDP. A further five users reported qualifying use during the relevant statutory term of just that part of the principal route running along Hall Drive to the point where it enters Willoughby Farms Limited's landownership (i.e., at point F in plan ref. DMMO/580/Well/CDP), and then they took a direct route across the field to St Margaret's Church.

26. The user evidence suggests that the principal route was subject to pedestrian use in part or in whole by 25 users throughout the first 2 years of the relevant statutory term (2002-2003). Usage gradually increased peaking at 33 users during the years 2011 and 2012 before gradually decreasing to 28 users in 2021 with 15 users using the route by the end of the relevant statutory term in 2022.

27. Frequency of pedestrian use of the principal route varies with one user claiming to have used it on foot daily, one user 3 or 4 times a week, nine users weekly or more than weekly, two users nearly twice a month, three users between 4 and 8 times a year, nine users between twice and 4 times a year, one user yearly, and nine users '*several times a year*', '*varied*', '*occasionally*' or '*varied but regularly throughout year*'.

Use with Bicycles

28. The user evidence suggests that there are two instances of qualifying public use of the whole length of the principal route with bicycles spanning the relevant statutory term, and one of these instances is by pairing up the periods of use by two users.

29. A further four users report qualifying public use of the whole length of the application with bicycles for parts of the relevant statutory term, with one user claiming use of it

[4] *Davis v Whitby* [1974] 1 All ER

between 2002 and 2004, two users between 2002 and 2005, and one user between 2011 and 2022.

30. Another witness claims qualifying public use of part of the principal route with a bicycle during the relevant statutory term. Their user evidence form records that they had ridden the length of Hall Drive to the point where it enters Willoughby Farms Limited's landownership (i.e., at point F in plan ref. DMMO/580/Well/CDP) before taking a direct route to St Margaret's Church between 2002 and 2021.

31. The user evidence suggests that six people had used the whole or part of the principal route with bicycles throughout the first 3 years of the relevant statutory term. This usage decreased to three people over the period 2006-2009 before increasing to five people over the period 2011-2019, and then decreasing to three people by the end of the relevant statutory term in 2022.

32. Frequency of use of the principal route with bicycles during the relevant statutory term varies between several times a week and monthly, with two users claiming to have used it two or three times a week, three users weekly, and one user monthly. Two users reported their frequency of use of the principal route with bicycles varied.

Use with vehicles

33. The user evidence suggests that there are four instances of qualifying public use of the whole length of the principal route with motor propelled vehicles spanning the relevant statutory term, and three of these instances are by pairing up the periods of use by six users.

34. A further 10 witnesses claim qualifying public use of the whole the length of the principal route with motor propelled vehicles during parts of the relevant statutory term. These periods of use are 2002-2019 (five users), 2010-2016, 2011-2016, 2012-2015, 2013-2022, and 2020.

35. The user evidence forms of another 12 users report qualifying public use of the principal route with motor propelled vehicles during the relevant statutory term up to a point near to, at or just beyond the corner in the track nearest to St Margaret's Church, with some then having taken slightly different lines to the church. One of these routes include that part of the application route shown between points H-I in plan ref. DMMO/580/Well/CDP. A further five users reported qualifying public use during the relevant statutory term of just that part of the principal route running along Hall Drive to the point where it enters Willoughby Farms Limited's landownership (i.e., at point F in plan ref. DMMO/580/Well/CDP), and then they took a direct route across the field to St Margaret's Church.

36. The user evidence indicates that the principal route was used in part or in whole with motor propelled vehicles by 20 users throughout the first 3 years of the relevant statutory term (2002-2004), and this gradually increased to peak at 29 users during

2013-2016. It decreased to 17 users by 2021 and then to 10 users by the end of the relevant statutory term in 2022.

37. Frequency of use of the principal route with motor propelled vehicles recorded in the user evidence forms varies with four users claiming to have used it monthly or more, three users between 4 and 8 times a year, ten users between once and 4 times a year, one yearly, one user for 3 weddings, one user 4 times in total, one 18 times in total, and eight users '*varied*', '*occasional*', '*different intervals*', '*several times a year*' or for ceremonies.

38. However, several users have said that they or other people had parked their cars at the side of the track or on the grassed area between the corner of the track nearest St Margaret's Church and the church itself, so this suggests that users would have walked the remainder of the distance between their cars and the church. Therefore, each individual would have used a slightly different route every time they visited the church depending on where they had left the track, parked their car and then walked the remainder of the distance from their car to the church, so there will not have been consistent public vehicular use of a single route between Low Lane and the entrance to the churchyard which is required to give rise to a public vehicular right of way by statutory or common law dedication. The evidence also suggests that throughout the relevant statutory term there was no area of land that was owned by St Margaret's Church that was officially set out as a designated car park. This means that there is an absence of a consistent place of popular resort for public vehicular users which is needed to give rise to a public right of way for vehicles over the track that is subject to both the principal and application routes.

Interruptions and evidence of an intention not to dedicate the principal route as a public right of way by the landowners

39. In the judgement *Fairy v Southampton County Council* [1956] 2 All E.R., Lord Denning stated that for there to be sufficient evidence that there was no intention to dedicate the route as a public right of way, there must be evidence of some contemporaneous, overt and objective acts by the landowner such as to show the public at large, namely the people who used the path, that they had no intention to dedicate. This view was upheld by the judgement *R (Godmanchester Town Council and Drain) v Secretary of State for Environment, Food and Rural Affairs* [2007] UKHL 28.

40. The Chronology of Events Regarding Access document submitted by the applicant suggests that several people or villagers attempting to use the principal route were stopped and told to cease using it by one of the new owners of Well Vale Hall in October or November 2021 and in January 2022, which were towards the end of the relevant statutory term. This is supported by the evidence forms of six users who reported that they had been stopped by the new owner of Well Vale Hall. However, the user evidence on the whole suggests that the use of the route by the users was largely or almost entirely *without interruption* and *without challenge* throughout the relevant statutory term.

41. Some of the user evidence forms suggest that there was a 'private park' or 'private park access to school or church only' notice located on the principal route during the relevant statutory term. The Google Streetview photograph of June 2009 shows notices carrying the above wording were present at the entrance to the principal route from Low Lane, and that the 'private park' notice is also shown in the Google Streetview photograph of November 2021. Since 1992, the parkland and Hall Drive have been in different ownerships with Hall Drive forming part of Well Vale Hall. Therefore, it is possible that the notices, and in particular the one that read 'private park access to school or church only', could be read in such a manner to suggest that they were put up to deter people from straying off Hall Drive and onto the surrounding parkland. A landowner evidence form completed by a director of Willoughby Farms Limited (the company which has owned the surrounding parkland since 1992) suggests that they recognised the principal route to be a public right of way and that they have directed people up the route when asked how the church could be accessed, so this suggests that the purpose of the notices may have been to prevent people from straying from Hall Drive onto the parkland.

42. Section 31(6) of the Highways Act 1980 suggests that where a landowner deposits a highways statement and map with the local highway authority detailing the public right of way or highways (if any) which exist over their land and then follows this up by a highways declaration lodged within the prescribed period stating that no additional highways or public rights of way have been dedicated to the public since the date of deposit of the statement and map, the highways declaration together with the highways statement and map may in the absence of proof of a contrary intention provide sufficient evidence demonstrating that the landowner had no intention of dedicating any highways or public rights of way across their land between the dates of deposit of the documents.[5]

43. Willoughby Farms Limited deposited a highways statement and map and two statutory declarations during the relevant statutory term. However, several issues have been identified with the deposited documents which raises doubts about their validity or legality, and they are:

- The Highways Statement and Map and first Statutory Declaration were received by the County Council on 1 March 2002, but several issues were identified with the maps. They were return to Willoughby Farms Limited for amendment before being received by the County Council on 12 March 2002, which is taken to be the date of deposit of the highways statement and map. However, the map appears to show Hall Drive and Well Vale Hall in their ownership, which is not the case according to the Land Registry Titles of

[5] Paragraph 13 of the Department for Environment, Food and Rural Affairs' *Guidance for the completion of the CA16 Form: Making a statement or declaration under section of 31(6) of the Highways Act 1980 or a statement under section 15A(1) of the Commons Act 2006* dated December 2013 and paragraph 3 of the Rights of Way Review Committee's *Practice Guidance Note 2 – Deemed Dedication of Public Rights of Way: Section 31(6) of the Highways Act 1980* (Third Edition) dated December 2007

LL63626 and LL81000 for Willoughby Farms Limited and Well Vale Hall respectively.

- The first Statutory Declaration dated 15 February 2002 states that on 15 February 2002 Willoughby Farms Limited had deposited a plan showing the extent of their landownership together with a statement declaring that '*no ways additional to those shown on such Maps and described in such statement for use of the public as highways have been dedicated by us*'. However, as detailed above, the Highways Statement and Map were in fact initially deposited on 1 March 2002 with the date of deposit being accepted to be 12 March 2002 which was when the amended maps were received by the County Council.

- The final Statutory Declaration records that it was signed and dated by a director of Willoughby Farms Limited on 12 March 2012 and that this was witnessed by a Commissioner of Oaths under the Statutory Declarations Act 1835. However, the Statutory Declaration was received by the County Council 5 weeks earlier on 6 February 2012 and the Authority acknowledged the lodging of the Statutory Declaration in a letter of 21 February 2012. A comment on the map which accompanied the Statutory Declaration which suggests that the document was in fact signed on 31 January 2012. This suggests that the director of Willoughby Farms Limited did not '*make this solemn declaration on 12th day of March 2012*' as stated in the Statutory Declaration.

Other evidence which might be relevant to the matter

44. Several of the user witnesses refer to a notice located at the entrance to the principal route from Low Lane which states, '*LINCOLNSHIRE COUNTY COUNCIL. ATTENTION A RIGHT OF WAY EXISTS OVER PRIVATE LAND BEYOND. PLEASE KEEP TO THE LINE OF THE FOOTPATH. YOU MAY BE TRESPASSING SHOULD YOU DEVIATE UNNECESSARILY FROM THE ROUTE. THANK YOU'*. The style and nature of the sign suggests that it would have been put up in the mid to late 1970s, as Lincolnshire County Council only came into existence in 1974 as a result of local government reorganisation by the Local Government Act 1972.[6] The notice appears to be a relic of the time when Well Public Footpath 79 entered Low Lane at the entrance to Hall Drive. This part of the public footpath was legally diverted to its present location by the Lincolnshire County Council (Public Footpath No. 79 Well) Public Path Diversion Order 1980.

[6] Holland County Council, Kesteven County Council and Lindsey County Council were combined to form Lincolnshire County Council.

45. Several documents have been submitted by the applicant in support their claim, and they include:

- Several pages from St Margaret's Service Register as follows:

Period	No. of services	Average attendants per service
9 June 1968 – 18 August 1968	10	9.6
18 January 1981 – 28 February 1982	9	14.1
24 October 1999 – 23 April 2000	9	24.9
16 June 2002 – 23 March 2003	12	26.3
20 April 2006 – 23 November 2008	37	24.9
31 August 2014 – 13 December 2015	18	25.5

- Several pages from St Margaret's Church Visitor Book, as follows:

Period	No. of visitors or groups
18 October 1989 – 15 September 1991	205
8 September 2000 – 8 September 2001	25
15 May 2004 – 28 May 2004	21
21 October 2005 – 7 October 2007	26
4 July 2017 – 10 September 2017	11

- Parochial Church Council Meeting Minutes:

Date	Group / event
2014	Visit by the Oxford Graduates Architectural Society
September 2014	Heritage weekend
2015	Visit of party brought by the cathedral guide from York

May 2016	Visit by Georgian Church Enthusiasts from Oxford and a local walking group
June 2016	Visitors from Boston Stump
July 2016	40 cathedral guides from Well Cathedral
Later in 2016	Visitor from Tetney
2017	Heritage weekend during which almost 100 people attended
2017/18	40 cathedral guides from Well Cathedral

- Logbook of works undertaken at St Margaret's Church: It records a total of 11 visits made to St Margaret's Church by seven people over the period 28 April 2009 to 19 March 2015 for undertaking maintenance work on the church building or in the churchyard. Two of these people completed user evidence forms in support of the application.

46. However, it is not possible to ascertain from the records provided the exact route that each person or group had used to reach the church, their mode of use or if their use was *as of right* and *without interruption*.

Conclusion

47. **The evidence on the whole suggests that there has been a sufficient level of qualifying public use of the principal route on foot spanning the 20-year relevant statutory term February 2002 – February 2022 to *reasonably allege* that a public footpath has arisen by statutory dedication under section 31(1) of the Highways Act 1980 to warrant the making of a definitive map modification order under section 53(3)(c)(i) of the 1981 Act.**

48. With regards to the Highways Statement and Map and Statutory Declarations deposited under section 31(6) of the Highways Act 1980, they do not provide sufficient evidence demonstrating that Willoughby Farms Limited had no intention to dedicate the application or principal routes as public rights of way over their land during the relevant statutory term as the Statutory Declarations have not been properly made for the reasons given in paragraph 43 above.

49. The level of qualifying public use of the principal route with bicycles is too low to *reasonably allege* that a public right of way of a higher classification than public footpath has arisen by statutory dedication over the relevant statutory term by or common law dedication over the period 1966-2022 or any part of this period. Also, the evidence suggests that there has not been consistent public vehicular use of the whole length of the principal route between Low Lane and the entrance to the

churchyard of St Margaret's Church which is required to give rise to the statutory or common law dedication of a public vehicular right of way, and no other place of popular resort has been identified which would enable a cul-de-sac public vehicular right of way to arise over part of the track that is subject to both the principal and application routes. As the evidence is insufficient to *reasonably allege* that a public right of way for vehicles has arisen over the principal or application routes for the reasons given above, the effects that section 67 of the Natural Environment and Rural Communities Act 2006 may have on the statutory extinguishment of public vehicular rights do not require consideration.

Widths

50. Paragraph 4.16 of the Department for Environment, Food and Rural Affairs' *Rights of Way Circular (1/09)*, which provides guidance for surveying authorities, suggests that a definitive map modification order should include information about the width that is to be added to a definitive map and statement.

51. The widths given in the user evidence forms of the 64 people who had used the principal route during the relevant statutory term range from 1.83 metres (6 feet) to 4 or 5 metres, with two people referring to the width of the route as a single-track road or that it varied. However, 27 people recorded in their user evidence forms that the principal route was 3 metres or in the region of 3 metres in width, and this is by far the predominant width. This width is deemed to be sufficient to enable two pedestrians to pass each other comfortably. Therefore, the modification order should record the route with a 3-metre width.

Limitations

52. The user evidence and photographs support the existence of the following limitations on the principal route throughout the relevant statutory term:

- Cattle grid and an unlocked field gate near to where the principal route meets with Low Lane at point B in plan ref. DMMO/580/Well/CDP
- Cattle grid at point C in plan ref. DMMO/580/Well/CDP
- Field gate near to the Coach House at point D in plan ref. DMMO/580/Well/CDP
- Field gate, hand gate and cattle grid at point F in plan ref. DMMO/580/Well/CDP

Decision

53. **That a Definitive Map Modification Order be made under section 53(3)(c)(i) of the 1981 Act seeking to add to the Definitive Map and Statement for the area the principal route as public footpath with a width of 3 metres. The route for which the**

definitive map modification order is to be made is shown between points A-B-C-D-E-F-G-H-J in Plan Ref. DMMO/580/Well/CDP, and the order is to be made seeking to record all the structures outlined in paragraph 52 above as limitations in the Statement accompanying the Definitive Map.

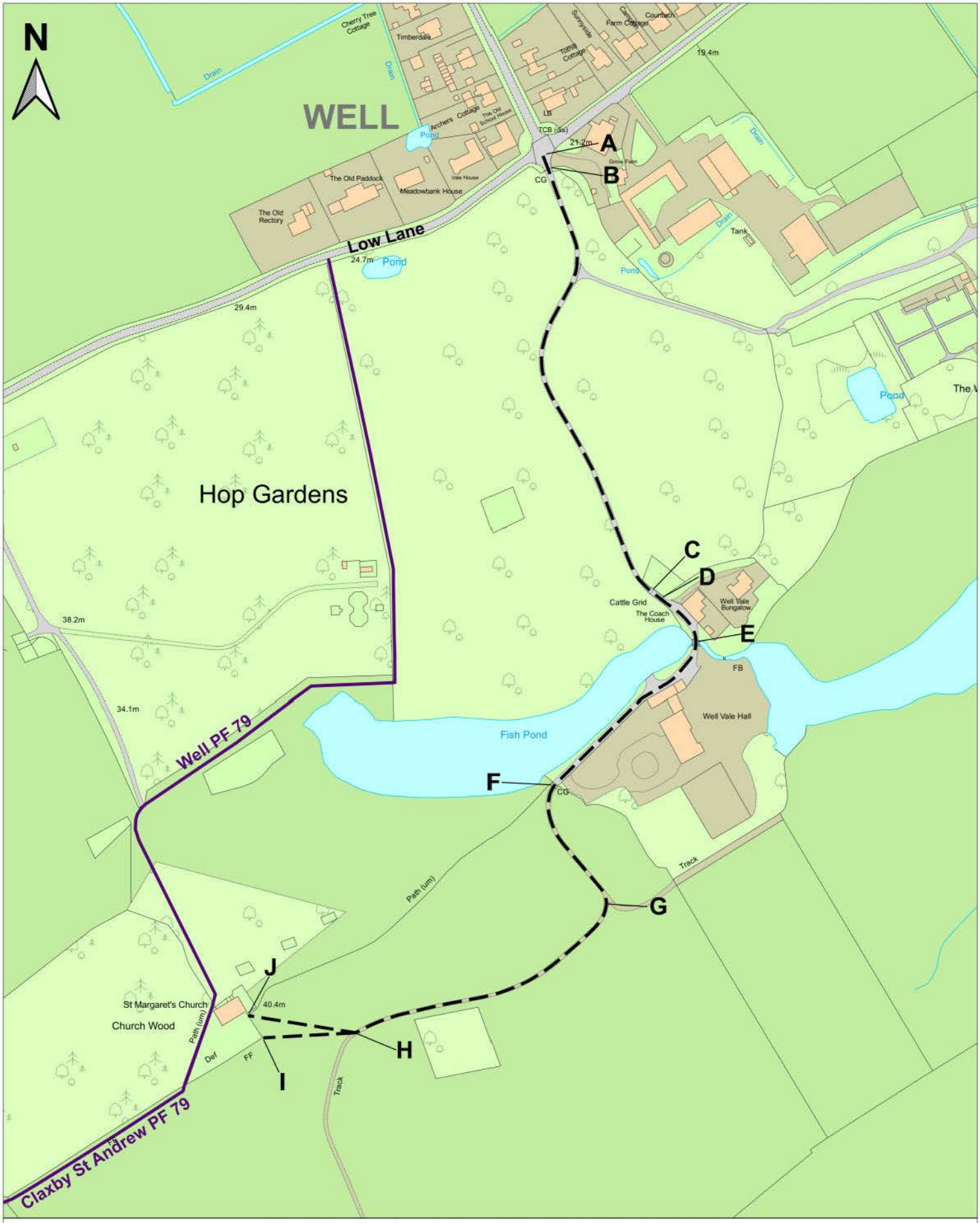
54. This decision is made on the grounds that the evidence is supportive of there being sufficient qualifying public use of the principal route spanning the relevant statutory term to *reasonably allege* that public footpath rights have arisen by statutory dedication. It has been made without prejudice to any assessment of the evidence or decision that may be taken in the future on whether the County Council should promote the confirmation order in the event that an objection is lodged against its making, as for the order to be confirmed and the route recorded as a public right of way the evidence must demonstrate that a public right of way exists *on the balance of probability*, which is of a higher evidential threshold that the *reasonably allege* test.

Signed: [redacted]

Name: Andrew Fletcher

Position: Public Rights of Way and Access Manager

Dated: 24th October 2024



Lincolnshire County Council, County Offices, Newland, Lincoln, LN1 1YL

Lincolnshire COUNTY COUNCIL *Working for a better future*

Well - Claimed public right of way between Low Lane and St Margaret's Church

Ref: DMMO/580/Well/CDP

Date: 08.10.2024 | Scale: 1:3,000 @ A4

Legend

A-B-C-D-E-F-G-H-I Application Route
A-B-C-D-E-F-G-H-J Principal Route
Public Footpath

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