



## Order Decision

Inquiry opened on 19 September 2023

Site visits undertaken on 19 and 20 September 2023

**by Mark Yates BA(Hons) MIPROW**

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

Decision date: 05 March 2026

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### Order Ref: ROW/3311104M1

- This Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Lincolnshire County Council, Addition of Restricted Byway Number 1188 Lincoln, Definitive Map Modification Order 2021.
  - The Order was made by Lincolnshire County Council on 28 May 2021 and proposed to add a restricted byway ('the claimed route') to the definitive map and statement.
  - The Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
  - In accordance with Paragraph 8(2) of Schedule 15 to the 1981 Act notice has been given of the proposal to confirm the Order with modifications.
  - **Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.**
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### Procedural Matters

1. I proposed in my Interim Decision ('ID') of 20 November 2023 to confirm the Order with modifications. These modifications involved recording the claimed route as a footpath rather than a restricted byway and amending the width included in the Order for the route. This Decision should be read in conjunction with the ID with the numbers in square brackets corresponding to the relevant paragraphs in the ID. All of the points referred to below correspond to those delineated on the Order Map.
2. Three representations were made in response to the advertising of the proposed modifications with one of the parties (Mr Kind) objecting to the modified elements of the Order.

### Main Issues

3. I set out the main issues in relation to the Order as made in the ID [3-5]. It now needs to be determined whether any new evidence and/or submissions presented, when taken in conjunction with the previously considered evidence, has a bearing on the conclusions reached in the ID.

### Reasons

#### *Status*

4. There was evidence of use of the claimed route by cyclists and pedestrians during the relevant period under consideration, namely 1988-2008. Therefore, an Order was made to add a restricted byway to the definitive map and statement.
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However, I found that the use by cyclists via the footways at each end would have constituted a criminal offence [15-18].

5. In terms of the recent photographs showing the nature of the claimed route, as highlighted above the relevant period for consideration is 1988-2008. Photographs previously provided show the nature of the site both before and after the commencement of the relevant period. The route was previously used as a private means of access, and this may explain the existence of a splay and dropped kerb just beyond point B.
6. Mr Kind points to the potential for cyclists to use the carriageway of Boswell Drive rather than the footway to access the northern end of the claimed route. This issue was not clear from the user evidence, and it could potentially be the case that cyclists rode along the carriageway rather than the footway. However, if confirmed, the Order would record a public right of way that terminates at the junction with a footway. Boswell Drive and the adjacent footway are shown on a map provided by the Council as being a highway maintainable at public expense as far as point A.
7. In respect of the southern end of the route, I accept the position may be different where a cyclist passes over the width of a footway to access the carriageway. However, there was some evidence from cyclists at the inquiry that pointed to them continuing along the footway from point B, for instance towards Tritton Road rather than on Doddington Road itself. I appreciate that the majority of the user evidence involving cyclists was not tested at the inquiry, but it cannot be determined that there was any significant use by cyclists to directly access the carriageway at point B.
8. I reached my conclusion on the basis of the application of Section 72 of the Highways Act 1835. I also mentioned that there was the potential for cyclists riding on footways to constitute a public nuisance [17]. Whilst this could potentially arise, this issue has no bearing on my decision.
9. Having regard to the conclusions in the ID and following consideration of the further submissions, it remains my view that there is no lawful means of access for cyclists to and from the claimed route. The route links directly with a footway at the northern end, and the evidence shows that there were cyclists who continued some distance over the Doddington Road footway at the southern end.

### **Width**

10. I have concluded that the evidence is supportive of the dedication of a footpath. This means that cyclists and horse riders do not need to be accommodated. Reference was also made in the representation from Mr Heaney to use by cyclists on foot, pushchairs and mobility scooters. However, a width 1.5 metres would be sufficient to accommodate these users.

### **Conclusion**

11. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with the previously proposed modifications.

### **Formal Decision**

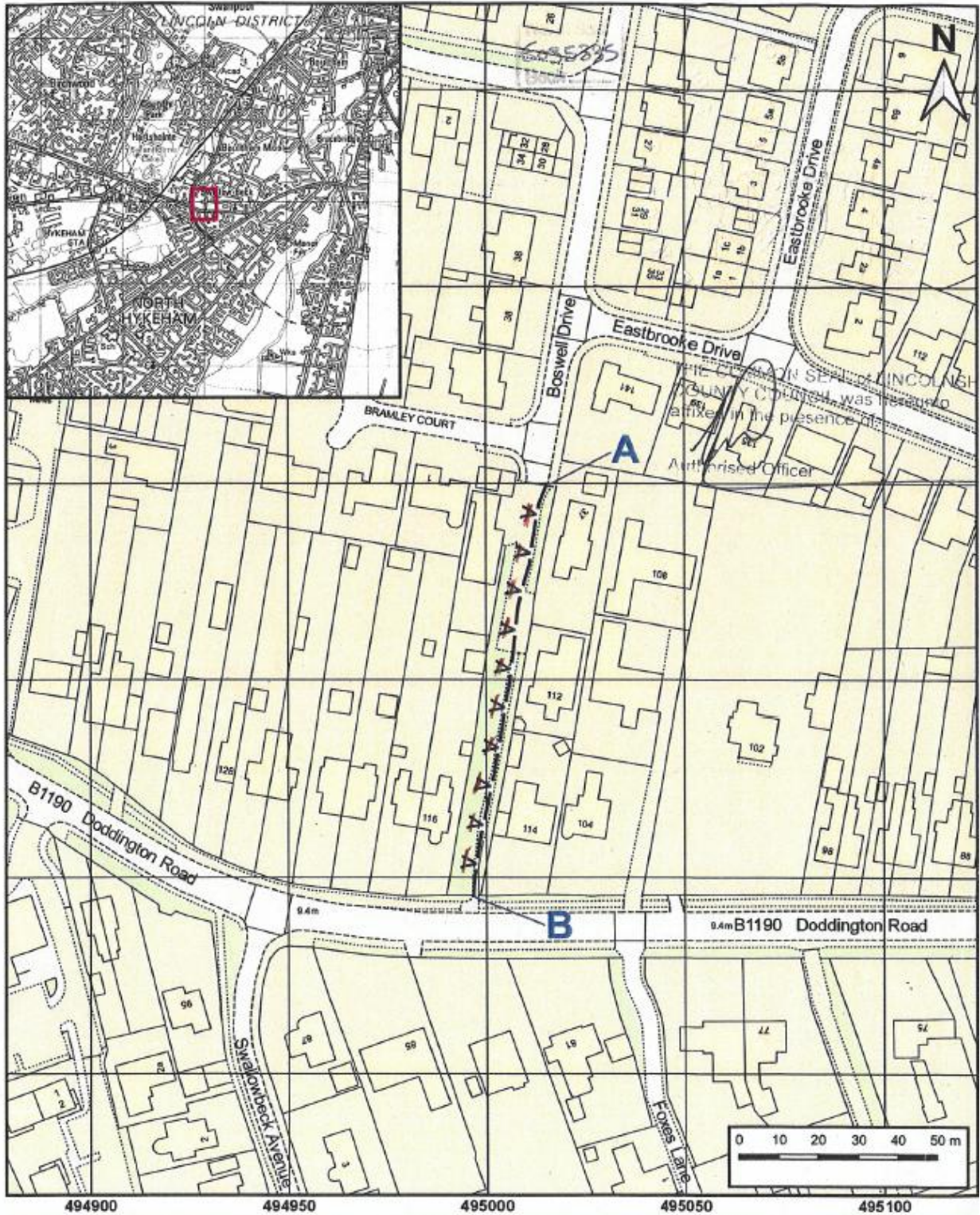
12. I confirm the Order subject to the following modifications:



- Delete all references in the Order to '*restricted byway*' and insert '*footpath*'.
- Delete '*2 metres*' from the first line of the description in Part I of the Order Schedule and insert '*1.5 metres*'.
- Delete '*2 metres*' from the eighth line of the description in Part II of the Order Schedule and insert '*1.5 metres*'.
- Replace the notation for a restricted byway on the Order Map with the notation for a footpath and amend the map key accordingly.

*Mark Yates*

**Inspector**

**MODIFIED ORDER MAP**



<p><b>LINCOLN</b>                  (Definitive Map Modification Order)                  Addition of Restricted Byway No. 1188 between                  Boswell Drive and the B1190 Doddington Road</p>	<p><b>Lincolnshire</b>                  COUNTY COUNCIL  <i>Leading for a better future</i></p>	<p><b>Legend</b></p> <p> <i>Fochpath</i>   Restricted Byway No. 1188</p>
<p>Reproduced from Ordnance Survey with the permission of the                  Controller of HMSO (c) Crown Copyright. Licence number                  100025370</p>	<p>Lincolnshire County Council, County                  Offices, Newland, Lincoln, LN1 1YL</p> <p>Drn. AP      Date 07.05.2021</p>	<p>Drawing No.: 2021/005/DMMO334/A4                  Scale: 1:1,1250</p>

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**LINCOLNSHIRE COUNTY COUNCIL**

**ADDITION OF ~~RESTRICTED BYWAY~~ <sup>FOOTPATH</sup> NUMBER 1188 LINCOLN**

**DEFINITIVE MAP MODIFICATION ORDER 2021**

This Order is made by Lincolnshire County Council (“the Authority”) under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the Act”) because it appears to the Authority that the Definitive Map and Statement for the area of the former Lincoln County Borough Council (City of Lincoln) require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) of the Act namely the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a ~~restricted byway~~ <sup>FOOTPATH</sup>

The Authority has consulted with every local authority whose area includes the land to which the Order relates

1. For the purposes of this Order the relevant date is 28 May 2021
2. The Lincolnshire County Council Definitive Map and Statement for the area of the former Lincoln County Borough Council (City of Lincoln) shall be modified as described in Part I and Part II of the Schedule and shown on the Drawing attached to this Order

3. This Order shall take effect on the date it is confirmed and may be cited as the Lincolnshire County Council, Addition of ~~Restricted Byway~~ <sup>Footpath</sup> Number 1188 Lincoln, Definitive Map Modification Order 2021

SCHEDULE

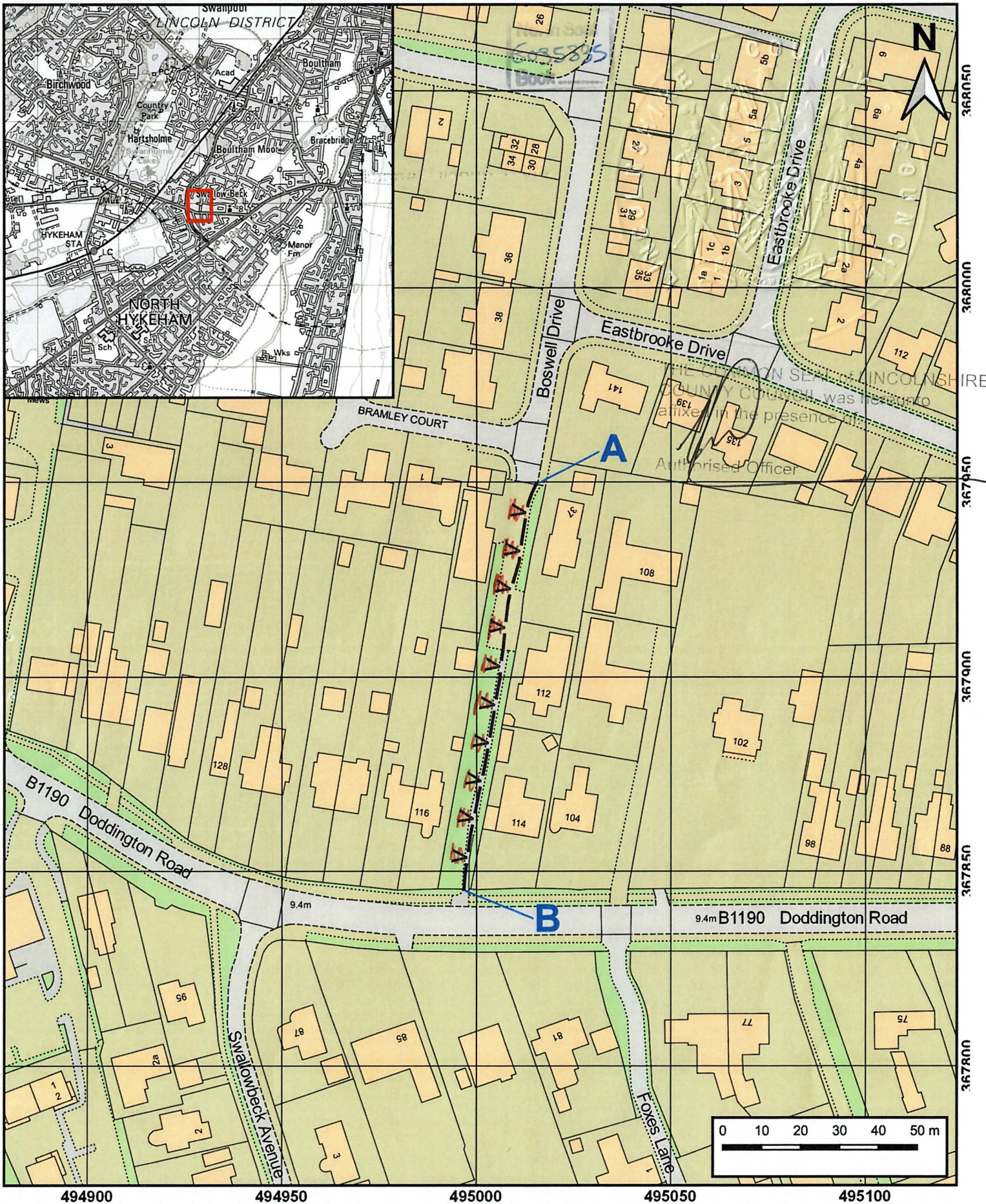
PART I

Modification of the Definitive Map

Description of path to be added

~~Restricted Byway~~ <sup>Footpath</sup> Number 1188

A ~~2~~ <sup>1.5</sup> metre wide ~~restricted byway~~ <sup>footpath</sup> running from the southernmost end of Boswell Drive at Ordnance Survey Grid Reference ("OSGR") 495015,367949 (A) in a generally southerly direction for approximately 106 metres to meet with the B1190 Doddington Road at OSGR 494996,367845 (B). The total length of ~~restricted byway~~ <sup>footpath</sup> to be added to be approximately 106 metres as shown between points A-B on annexed drawing referenced 2021/005/DMMO334/A4.



**LINCOLN**  
 (Definitive Map Modification Order)  
 Addition of Restricted Byway No. 1188 between  
 Boswell Drive and the B1190 Doddington Road

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**Lincolnshire**  
 COUNTY COUNCIL  
*Working for a better future*

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

Drn. AP      Date 07.05.2021

**Legend**

Footpath  
 Restricted Byway No. 1188

**Drawing No.:** 2021/005/DMMO334/A4

**Scale:** 1:1,250

PART II

Modification of the Definitive Statement

Variation of particulars of paths or ways

The following details shall be added

<u>Number on Definitive Map</u>	<u>Terminal Points of Rights of Way</u>	<u>Description of Right of Way</u>
RB.1188 FP	Boswell Drive to B1190 Doddington Road	The <del>restricted byway</del> runs from the southernmost end of Boswell Drive at Ordnance Survey Grid Reference ("OSGR") 495015,367949 south for approximately 106 metres to meet with the B1190 Doddington Road at OSGR 494996,367845. The <del>restricted byway</del> has a width of 2 metres along its entire length.

Given under the Common Seal of Lincolnshire County Council this 28<sup>th</sup> day

of May Two thousand and twenty one

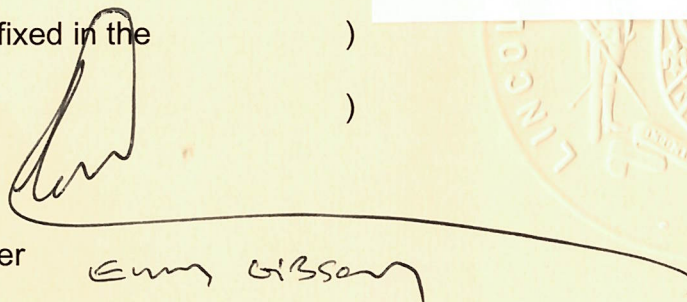
THE COMMON SEAL of )

LINCOLNSHIRE COUNTY COUNCIL )

was hereunto affixed in the )

presence of :- )

Authorised Officer



The foregoing order, subject to the red ink modifications thereon, is hereby confirmed by the Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs, as set out in the associated decision letter.

- 5 MAR 2026

No. in Seal  
6035335

DATED 28<sup>th</sup> May 2021

WILDLIFE AND COUNTRYSIDE ACT 1981

LINCOLNSHIRE COUNTY COUNCIL

ADDITION OF <sup>FOOTPATH</sup> RESTRICTED BYWAY

NUMBER 1188 LINCOLN

DEFINITIVE MAP MODIFICATION ORDER 2021



Legal Services Lincolnshire

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