

Case Decision

- **Definitive Map Modification Order Case 277:**
Claimed upgrade of Aslackby & Laughton Restricted Byway 12 to a byway open to all traffic (“BOAT”)
 - **Definitive Map Modification Order Case 292:**
Claimed upgrade Lenton, Keisby & Osgodby Public Bridleway 3 to a BOAT
 - **Definitive Map Modification Order Case 293:**
Claimed upgrade of Irnham Public Bridleway 9 to a BOAT, proposed addition of a public right of way between the westernmost end of Irnham Public Bridleway 9 and Keisby Road, and claimed BOAT between Aslackby & Laughton Restricted Byway 12 and Irnham Public Bridleway 9
 - **Definitive Map Modification Order Case 295:**
Claimed BOAT between Irnham Public Bridleway 9 and Kirkby Underwood Road
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Summary of Decision:

DMMO Case 277

- Not to make a definitive map modification order to upgrade Aslackby & Laughton Restricted Byway 12 to a byway open to all traffic

DMMO 292

- To make a definitive map modification order to upgrade existing Lenton, Keisby & Osgodby Public Bridleway 3 to a restricted byway

DMMO 293

- Not to make a definitive map modification order to upgrade Irnham Public Bridleway 9 to a byway open to all traffic
- To make a definitive map modification order to record a public bridleway running between Irnham Public Bridleway 9 and Keisby Road, Hawthorpe
- To make a definitive map modification order to record a restricted byway running between Aslackby & Laughton Restricted Byway 12 and Irnham Public Bridleway 9
- To make a definitive map modification order to upgrade part of Irnham Public Bridleway 9 to a restricted byway

DMMO 295

- To make a definitive map modification order to record a restricted byway running between Irnham Public Bridleway 9 and Kirkby Underwood Road, Hawthorpe

The Modification Order Applications

1. All the applications listed above were made by Alec Hill.
2. **DMMO Case 277:** The Application, submitted on 22 February 2005, seeks the modification of the Definitive Map and Statement for the area - the legal record of public rights of way - by upgrading Aslackby & Laughton Restricted Byway 12 to a byway open to all traffic ("BOAT"). This route is referred to hereafter as "Application Route DMMO 277". A copy of the Application and accompanying plan is available at [Aslackby and Laughton DMMO 277](#). The attached "Case Decision Plan" (Plan Ref. DMMO/277/292/293/295/CDP) shows the Application Route as a broken black line between points A-B-C-D-H.
3. **DMMO Case 292:** The Application, submitted on 6 November 2005, seeks the modification of the Definitive Map and Statement by upgrading Lenton, Keisby &

Osgodby Public Bridleway 3 to a BOAT. This route is referred to hereafter as “Application Route DMMO 292”. A copy of the Application and accompanying plan is available at [Lenton, Keisby and Osgodby DMMO 292](#). The attached Case Decision Plan shows the Application Route as a broken black line between points E-F-G-H.

4. **DMMO Case 293:** The Application, submitted on 6 November 2005, seeks the modification of the Definitive Map and Statement by upgrading Irnham Public Bridleway 9 to a BOAT, and adding a BOAT between the southernmost end of Aslackby & Laughton Restricted Byway 12 and the easternmost end of Irnham Public Bridleway 9. A copy of the Application and accompanying plan can be viewed at [Lenton, Keisby and Osgodby and Irnham DMMO 293](#). The attached Case Decision Plan shows the Application Route as a broken black line between points H-I-J-K-L. In addition, Lincolnshire County Council (“the County Council”) seeks to address a gap in the public rights of way network between the westernmost end of Irnham Public Bridleway 9 and Keisby Road, as shown between points L-M on the Case Decision Plan. These routes are referred to collectively hereafter as “Application Route DMMO 293”.
5. **DMMO Case 295:** The Application, submitted on 6 November 2005, seeks the addition to the Definitive Map and Statement for the area, a BOAT between Irnham Public Bridleway 9 and Kirkby Underwood Road. This route is referred to hereafter as “Application Route DMMO 295”. A copy of the Application and accompanying plan can be viewed at [Lenton, Keisby and Osgodby and Irnham DMMO 295](#). The attached Case Decision Plan shows the Application Route as a broken black line between points J-N-O-P-Q-R-S.

Requirements and tests of the legislation

6. 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. The key issues relevant to this matter are:
 - i. Whether the evidence demonstrates that a public right of way not shown in the Definitive Map and Statement is *reasonably alleged to subsist*, thereby requiring the making of a definitive map modification order under section 53(3)(c)(i) of the 1981 Act to add it to the Definitive Map and Statement. This consideration applies to parts of Application Route DMMO 293 (between points H-I and L-M on the Case Decision Plan) and the whole of Application Route DMMO 295, for which the applicant is seeking to record BOATs, and for which the County Council also seeks to resolve a small gap in the public rights of way network.
 - ii. Whether the evidence demonstrates, *on the balance of probability*, that a public right of way currently shown in the Definitive Map and Statement is of a different classification than that recorded, thereby requiring the making of a

definitive map modification order under section 53(3)(c)(ii) of the 1981 Act to amend the Definitive Map and Statement. This applies to Aslackby & Laughton Restricted Byway 12 (Application Route DMMO 277), Lenton, Keisby & Osgodby Public Bridleway 3 (Application Route DMMO 292), and Irnham Public Bridleway 9 (the section of Application Route DMMO 293 between points I-J-K-L on the Case Decision Plan), all of which the applicant seeks to upgrade to BOATs.

7. The County Council must base its decision exclusively on the evidence. Should a definitive map modification order be made, it must record the route and status of the public right of way that the evidence shows to exist, even if it differs from that which has been applied for. Conversely, if the evidence fails to demonstrate either the existence of a public right of way or a classification different from that currently recorded in the Definitive Map and Statement, no order shall be made.

Documentary Evidence

8. Historical documents may provide evidence to support that a public right of way of a particular classification was created or dedicated in the past. Once such a public right of way is shown to have been created or dedicated, the associated public rights continue to exist indefinitely¹ unless it can be demonstrated that the route has 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.

Commercial maps

9. The 1806 King Map, 1828 Bryant's Map, and 1830 Greenwood's Map depict '*public carriage roads*', '*lanes or bridle ways*', and '*cross roads*' in the proximity of all the Application Routes with the exception of the east-west section of Application Route DMMO 293, which is shown following a slightly different alignment where it meets Keisby Road. Bryant's Map identifies the junction of Application Routes DMMO 277, DMMO 292, and DMMO 293 as "*Birdock Gate*".
10. The 1821 New Map of the County of Lincoln and 1854 Collin's Railway & Telegraph Map depict a road crudely drawn between Aslackby and Bulby, located south of Hawthorpe. It is likely that this road corresponds to Application Routes DMMO 277 and DMMO 295 and part of Application Route DMMO 293.
11. The Bartholomew Half Inch Maps of 1903, 1924 and 1942 depict a continuous, uncoloured '*indifferent road*' and '*other road*' in the vicinity of Application Routes DMMO 277 and DMMO 292.

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*'

12. Bacon's Excelsior and Cycling Maps of 1906 and 1909 depict a route in the vicinity of Application Routes DMMO 277 and DMMO 292. The undated Bacon's Map for Lincolnshire also depicts a route in the vicinity of Application Routes DMMO 277 and DMMO 295. Keys for these maps were not available.
13. The undated Map Shewing by Concentric Circles the Bearing and Distances of the Villages within 12 miles of Grantham depicts fenced or unfenced roads in the vicinity of all the Application Routes.
14. The undated WH Smith & Son's Road Map of England and Wales shows a road in the vicinity of Application Routes DMMO 277, DMMO 292 and DMMO 295.
15. All the roads and ways shown in the above mapping sources link Airfield Road (in Aslackby and Laughton Parish) with Hawthorpe Road (in Lenton, Keisby & Osgodby Parish), Keisby Road (in Irnham Parish) and/or Kirkby Underwood Road (in Irnham Parish), all of which are currently public roads. Collectively, these routes appear to form part of a wider historical road network connecting villages and communities.
16. The plan accompanying the 1838 Sale Catalogue for Irnham, Bulby and Hawthorpe shows a road in the vicinity of Application Route DMMO 293 continuing towards Aslackby. The section extending east from Keisby Road is coloured sienna, consistent with the colouring used for Keisby Road, which is a public road. The section running north-northeast towards Aslackby is coloured green, similar to other roads passing through fields in the area, including one in the vicinity of Application Route DMMO 295. The plan also depicts an additional road running northeast across Plots 17 and 14 between the corners of Keisby Road and Application Route DMMO 293. Although no roads are referenced in the Sales Particulars for Plot 14, the description for Plot 17 states, '*Great Moore Close, with Garden at the North-West corner thereof, fenced in by the Kearsby and Aslackby Roads, and formerly open to this close*'. This wording suggests that the Aslackby Road originally passed through these plots.

Tithe records

17. Tithe apportionments and awards were concerned solely with identifying tithable lands, and not with recording roads or their statuses. However, they can nonetheless provide evidence of the physical existence or reputation of a route. Tithes were not payable on unproductive land, and roads were typically coloured to reflect this. Ways running across agricultural land that were considered not to affect its value were often omitted by surveyors.
18. The plan accompanying the 1847 Tithe Apportionment for Aslackby shows a route coloured burnt sienna in the vicinity of Application Route DMMO 277. This route appears to be listed among the roads in the Tithe Apportionment as '*Town Street & Road to Keisby*'. This may support its status as a public road and that it continued through to Keisby, possibly via Application Route DMMO 292.

19. The plan accompanying the 1848 Tithe Apportionment for Keisby (in the Parish of Lavington otherwise Lenton) shows the westernmost section of Application Route DMMO 292 (points E-F on the Case Decision Plan) drawn in the same proportions as Hawthorpe Road. It also depicts a route in the vicinity of the southernmost end of Application Route DMMO 277. The public roads identified in the plan are fenced or marked on both sides, and it does not show any unfenced roads or ways running through or along the edge of fields, such as the remainder of Application Route DMMO 292 or part of Application Route DMMO 293 between points H-I. The plan also contains the annotation '*from Hawthorpe*' in the vicinity of the point where Application Route DMMO 293 meets the tithable area, suggesting that a route continued through to Hawthorpe along this alignment.
20. The 1841 Tithe Apportionment for Irnham Parish shows routes corresponding to the full lengths of Application Routes DMMO 293 and DMMO 295 within Irnham Parish. The plan contains the annotation '*from Folkingham*' at Point I on the Case Decision Plan, implying that the road or way continued along the remainder of Application Route DMMO 293 and possibly Application Route DMMO 277. The Tithe Apportionment does not refer to roads or ways in the parcels through which the Application Routes run.

Ordnance Survey Maps

21. The full lengths of Application Routes DMMO 277 and DMMO 292 are shown in the Drawings, County Series, One-Inch, and Half-Inch Maps dating from 1814 to 1949. Application Route DMMO 277 continues to be depicted in its entirety in the One-Inch, Scale 1:25,000 (approximately 2½-Inch), and Scale 1:10,560 (6-Inch to 1-Mile) Provisional Edition Maps produced between 1952 and 1959, whereas only part of Application Route DMMO 292 is shown in these editions.
22. Application Route DMMO 293 is shown in full in the map editions covering the period 1888-1949, and in part in the drawings and maps dating from 1815-1824 and 1952-1959. Application Route DMMO 295 is depicted in the above drawings and maps spanning 1815-1949, with the exception of the Half-Inch Maps.
23. Across these various map sources, the Application Routes are shown with differing classifications including '*minor road*', '*other road*', '*road*', '*third class road*', and '*unmetalled road*'. The One-Inch Maps of 1891-1902 depict Application Route DMMO 295 as a '*footpath*', although the corresponding large-scale County Series Maps for the same period do not use the abbreviation "*F.P.*" (footpath) on this alignment.
24. Although Ordnance Survey maps do not constitute conclusive evidence of public rights, they demonstrate that all the Application Routes physically existed in the landscape throughout the 19th and first half of the 20th centuries. The mapping shows the routes functioning as through roads forming part of a wider network connecting public roads and local communities. The 1888 County Series 25-Inch

and 6-Inch maps include the annotation 'Guide Post' or 'G.P.' at the western end of Application Route DMMO 292 (point E on the Case Decision Plan) where it connects with Hawthorpe Road, and again at the junction where Application Route DMMO 292 meets Application Routes DMMO 277 and DMMO 293 (point H). The 1904 and 1952 editions also mark a guidepost at point E. According to Ordnance Survey Maps: A Concise Guide for Historians (R. Oliver, 1994), guideposts were placed at rural road junctions only, and not on footpaths; consequently, their presence provides supporting evidence that these routes functioned as public roads rather than private ones.

25. The One-Inch maps of 1963 and 1970, together with the later leisure maps (Explorer, Landranger, and Pathfinder Maps), show the public rights of way as recorded in the Definitive Map. Application Route DMMO 277 is generally shown as a 'road used as public path' (a category subsequently reclassified as a restricted byway under section 47 of the Countryside and Rights of Way Act 2000). Application Route DMMO 292, and the section of Application Route DMMO 293 between points I-J-K-L are shown as public bridleways, consistent with their recording in the Definitive Map and Statement.

Minutes of the Bourne Rural District Council

26. The Highways Minutes of Bourne Rural District Council dated 31 December 1896 record *'that with reference to the complaint by Lord Dysart's Trustees as to the state of the road leading from Aslackby to Keisby the same be repaired as hitherto which the Committee consider sufficient for the traffic over the said road and that the same be not macadamised'*. The Minutes dated 24 March 1898 further note correspondence *'asking the Council to repair a portion of the road leading from Aslackby to Keisby'*, relating to access to Keisby Lodge Farm. Although the farm no longer exists and is not believed to have been located on Application Route DMMO 277, being instead situated west of the starting point of the route, the minutes contain additional relevant observations: *'it appeared that the Lane in question was now a Green Lane and that the Parish of Aslackby had metalled as far as the occupation of any Ratepayer in the Parish and that the District Council was now filling in the ruts on the whole length of the roads in the Parish. That the Award of Aslackby only referred to the Fen and that there was no direct documentary evidence as to the liability of the repair of the road'*.
27. The Highways Minutes dated 6 September 1898 confirm that the metalling of the road had been carried out and found to be satisfactory following inspection.

Finance (1909/10) Act 1910 documents

28. The Finance (1909/10) Act 1910 introduced a new land tax which was levied on the basis of incremental land value. As part of its implementation, a comprehensive national land survey was undertaken to establish the baseline value of individual plots

(hereditaments). When assessing each hereditament's value, deductions were applied where public rights of way were recorded as crossing the land.

29. The associated Finance Act maps comprise Ordnance Survey County Second Edition (25-inch to 1-mile) maps, colour-washed to delineate individual hereditaments. These maps show a route corresponding to Application Route DMMO 277 as physically distinct from the surrounding hereditament parcels. This depiction is consistent with the continuation of the public road to Aslackby. However, the Valuation Books for both Aslackby and Keisby contain no direct reference to the route.
30. The Ordnance Survey basemaps used in connection with the Finance Act survey depict tracks or roads in the vicinity of Application Routes DMMO 292, DMMO 293 and DMMO 295. These routes, together with others shown on the basemap, cross one or more of hereditaments numbered 77, 79 and 151. The corresponding Valuation and Field Books record deductions of £43, £21, and £50 respectively for '*public rights of way or user*'. Further annotations in the Field Books include references to an '*alleged footpath*' and deduction of '*say*' £43 for hereditament 77; '*alleged footpath and public road*' on the first page, and '*right of way*' crossed out to leave '*footpath*', with a deduction of '*say*' £21 on the second page for hereditament 79; and for hereditament 151, a note that the eastern land was '*badly approached by unmetalled road and is heavy land*' together with entries referring to '*road way*' and '*rt of way*', valued at £50. Measurements taken from the basemap of the lengths of the ways crossing these hereditaments, including those corresponding with the Application Routes (excluding parts forming separate parcels), produces similar values per yard for all three hereditaments. This consistency suggests that the recorded deductions relate to the Application Routes and provides evidence that these routes were recognised as public rights of way at the time.

Sales brochures

31. Two sets of early-20th century sales particulars and accompanying plans relate to the area. The map accompanying the 1914 Keisby & Lenton Estates Sale Particulars depicts Application Routes DMMO 277 and DMMO 292 shaded burnt sienna and annotated as a '*public road*'. The Sales Particulars & Plan for the 1921 sale of the Bulby Estate indicate that Application Route DMMO 293 crosses Lot 32 between points I-J-K-L-M on the Case Decision Plan, and that Application Route DMMO 295 crosses the estate between points J-N. The Sales Particulars for Lot 32 (Ordnance Field No. 110), between points I-J, describe the parcel as a '*road*' with the accompanying notebook referring to it as an '*occupation road*'. The term occupation road has no defined legal meaning and may denote either a public or private way. Between points K-J-N, the plan depicts a black dotted line indicating a route providing access to Temple Wood. The Sales Particulars also state that '*a right of Road 20 feet wide in the position indicated by a dotted line on the said Plan over No 112 on the*

Ordnance Survey is reserved to the Vendor for all purposes'. Sales Particulars No 14 state that 'in all cases where the land agreed to be sold adjoins the Woods known as Aslackby Wood, Temple Wood.....the Vendor will.....also reserve all rights of road to and from such Woods and lands for all purposes, as now or heretofore used or provided by any agreement entered into by the Vendor or the Earl of Ancaster'. Sales Particulars No. 18 states that 'In all cases, whether the accommodation Roads are, or are not, specifically included in any Lot, the owner for the time being of all Lots who may require to use any of such roads for access thereto, shall have a right of way over the same'. It is not clear whether these reserved rights applied specifically to Application Route DMMO 293 or Application Route DMMO 295.

Highways records

32. The c.1929 Highways Handover Map, the c.1980s and 1990s Highways Maintenance Map, the 1990s Highways Maintenance Atlas, and both the 2016 and current versions of the List of Streets do not record any of the Application Routes as publicly maintainable highways. However, the c.1929 Highways Handover Map for Aslackby includes a pencilled note beside Aslackby & Laughton Restricted Byway 12 stating '*public road but not maintained*', although it is not known when this annotation was added.

Records relating to the Definitive Map and Statement

33. The Definitive Map and Statement were prepared under the National Parks and Access to the Countryside Act 1949 by Kesteven County Council ("KCC"), a predecessor authority to Lincolnshire County Council. Parish councils carried out path surveys to identify routes they believed to be public rights of way and submitted their findings to KCC for consideration. The statutory process then progressed through three stages: draft, provisional, and definitive.
34. The Parish Path Survey Map for Aslackby shows Application Route DMMO 277 as path number '12', although no accompanying notes were provided. The Parish Path Survey Map for Irnham shows Application Route DMMO 293 marked as path number '9', with the summary table describing the route as a bridle road running from '*Hawthorn Keisby Road to Aslackby PB [parish boundary]*'. The condition of the route was recorded as '*overgrown*', and the grounds for believing it to be a public right of way were stated as '*user*'. It is not clear why the entry has been crossed through.
35. The Draft and Provisional Maps have not survived. However, Application Routes DMMO 277, DMMO 292, and DMMO 293 are recorded on the Definitive Map as a restricted byway (numbered '12') and public bridleways (numbered '3' and '9' respectively). The corresponding entries in the Draft, Provisional, and Definitive Statements describe these routes as '*Public Carriage Road or Cart Road or Green Lane mainly used as a Bridleway*' (CRB) and '*bridle roads*'. The term CRB was commonly used to describe roads used as public paths (RUPPs), one of the four types of public rights of way recorded in definitive maps and statements. This terminology

originated from the *Survey of Rights of Way* memorandum prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers Association in January 1950, issued by the Ministry of Town and Country Planning for use by surveying authorities. All RUPPs (and CRBs) were later reclassified as restricted byways under section 47 of the Natural Environment and Rural Communities Act 2006.

36. Application Route DMMO 293 does not appear in the Draft Statement, but it is included in pencil in the Provisional Statement and is shown on the Definitive Map and Statement as public bridleway '9'. The Definitive Statement describes the route as '*Temple Wood – Hawthorpe Lane (North of Footpath 8)*', although the Definitive Map shows the route terminating just short of Hawthorpe Lane (now known as Keisby Road). In *Kotarski v Secretary of State for Environment, Food and Rural Affairs and Devon County Council* [2010] EWHC 1036 (Admin), Simon J stated that where a discrepancy is found between the definitive map and the definitive statement, this amounts to a '*discovery of evidence*'. The Definitive Statement supports the route connecting to Hawthorpe Lane, as indicated on the Parish Path Survey Map. Application Route DMMO 295 does not appear in the Draft, Provisional or Definitive Statements nor is it shown on the Definitive Map.

Photographs

37. Application Route DMMO 277: Geograph photographs from 2012 show a concrete path running through woodland in the vicinity of points B-C on the Case Decision Plan. Heavy machinery is visible obstructing the route, although information held on the path file indicates that these obstructions have since been removed. Google Street View imagery depicts the route at point A as a concrete path with three widely spaced bollards.
38. Application Route DMMO 292: Google Street View photographs from 2009, 2010, 2021 and 2023, together with Geograph images from 2014, 2016 and 2021, show the Application Route from point E looking east towards point F. All depict a farm track and bridleway sign. A 2016 Geograph photograph taken at point G facing east shows a trodden, single-track path. Geograph images from 2016 and 2021 taken at point H also show a trodden single-track path with a bridge leading into Temple Woods. Site visit photographs from 2006 show a stony farm track at point E, which becomes a grassy twin track route around point G. A wooden bridge is situated at point H, providing access into Temple Wood.
39. Application Route DMMO 293: Google Street View images from 2009, 2010, 2021 and 2023 show the Application Route from point M or further north along Keisby Road. A ditch prevents access from the road to the Application Route at this point. Further north on Keisby Road, a field gate is present, although it appears not to have been opened for many years. Site visit photographs from 2006 show no clear evidence of a trodden path between points H-I-J. A trodden path is visible between

points J-K, but the photograph taken further west lies on the north side of the drain rather than the south.

40. Application Route DMMO 295: Google Street View photographs from 2009, 2010, 2021 and 2023, together with a Geograph image from 2018, show the Application Route from point S. There is no access from the road to the Application Route due to a ditch. Geograph photographs from 2017 and 2019, taken at point Q facing north and south, show a farm track; however, this track runs between points Q-R and also forms part of a different public footpath (Irnham Public Footpath 8). A 2017 photo facing north towards point P shows no clearly trodden route.

Other evidence which might be relevant to the matter

41. Under section 31(6) of the Highways Act 1980, a landowner may deposit a highways statement and map with the local highway authority. These documents identify any existing public rights of way or highways across their land. If the landowner subsequently submits a highways declaration within the prescribed period, confirming that no additional public rights of way have been dedicated since the original deposit, the documentation can serve as evidence of the landowner's intention not to dedicate further rights of way. This may help prevent new rights arising through long-term public use, a process known as "deemed dedication". However, such deposits and declarations have no effect on public rights of way shown to exist through historical documentary evidence or through public use that occurred before the deposit of the highways statement and map.
42. The owners of the Keisby Estate deposited a highways statement and map in August 1997, followed by highways declarations in October 1997 and September 2003. A further statement and map were deposited in April 2004, with a corresponding declaration made in February 2006. Application Route DMMO 292 and part of DMMO 293 cross land subject to these deposits. However, none of the modification order applications relies on evidence of public use during the periods covered by these deposits; they are based solely on historical documentary evidence.
43. The owner of the land over which parts of Application Routes DMMO 293 and DMMO 295 run completed a Landowner Evidence Form. They stated that the land was purchased by a family member in 1964, having previously been occupied by the same family as tenants since 1959. The landowner's understanding was that the strip of land between points I-J on the Case Decision Plan, part of Irnham Public Bridleway 9, had been retained for the exclusive use of a previous owner to access Temple Wood. They also confirmed that they were not aware of any public rights of way crossing the land.
44. With regard to Application Route DMMO 293, documents held on the County Council's Path File for Irnham Public Bridleway 9 refer to several signposts being erected at the western end of the application route, each of which was subsequently removed by persons unknown. In 1989, the landowner's solicitors and The Country

Landowners Association (CLA) contacted the County Council concerning the erection of ‘public byway’ signs. The CLA noted that searches undertaken in 1949 and 1965 revealed only rights of way with the status of footpath. They also referred to a Deed of Indenture dated 1922 in which a former vendor reserved ‘*the right of a road 20ft. wide for all purposes over field OS.112*’, observing that such a reservation would not have been necessary if the status of the right of way had been a byway rather than bridleway. However, copies of the searches or Deed of Indenture were not provided. The signpost was subsequently changed to bridleway, which aligns with the classification currently recorded on the Definitive Map. A user of the route reported missing signposts in 1989, 1990 and 1997, and also reported that the route was obstructed.

45. Whilst the County Council acknowledges the comments and views expressed in the correspondence from the landowner’s solicitors and the CLA, this does not prevent a public right of way of a higher classification than public bridleway from existing over or beyond the route should the evidence support this.
46. A County Council internal memo dated 15 October 1999 indicated that the unrecorded section between the westernmost end of Irnham Public Bridleway 9 and Keisby Road (points L-M on the Case Decision Plan) did not appear on the ‘old’ Highways Handover Map or the Liability for Maintenance Map, but was shown in both the Definitive Statement and the Parish Path Survey Notes as meeting with Keisby Road.

Conclusion

Application Route DMMO 277

47. The documentary evidence shows that the Application Route formed part of a link between Aslackby, Keisby, Hawthorpe and Bulby, and the surrounding villages, dating back to at least the early 1800s. The marking of a ‘Guide Post’ on Ordnance Survey County Series maps provides further support for the Application Route having a status of a rural road and for its connection with other rural roads at ‘Birdock Gate’ (as shown on the 1828 Bryant’s map). The 1846 Tithe Award for Aslackby & Laughton refers to ‘Town Street and Road to Keisby’ as a ‘public road’. The descriptions of the route in various sources as a ‘cross road’, ‘third class road’, ‘minor road’ and ‘unmetalled road’ further suggest that it may have been used by carriages and carts and may add to the reputation of it being a public road.
48. **This is sufficient to demonstrate, on the *balance of probability*, that Aslackby & Laughton Restricted Byway 12 is subject to public vehicular rights, provided that these rights have not subsequently been extinguished by section 67(1) of the Natural Environment and Rural Communities Act 2006.**

Application Route DMMO 292

49. The documentary evidence shows that the Application Route provided a link between Keisby and Aslackby, and the surrounding villages, dating back to at least the early 1800s. The 1846 Tithe Award for Aslackby & Laughton refers to '*Town Street and Road to Keisby*' as a '*public road*'. This road began in Aslackby, was named as '*Caseby [Keisby] Lane*' on the 1828 Bryant's map, and followed the line of Application Route DMMO 277 (Aslackby & Laughton Restricted Byway 12) to a junction named as '*Birdock Gate*' on the same map. The road was then annotated as continuing to Keisby. The marking of a '*Guide Post*' on Ordnance Survey County Series maps at points E and H provides further support for the Application Route having a status of a rural road and for its connection with other rural roads at '*Birdock Gate*'. The descriptions of the route in various sources as a '*cross road*', '*third class road*', '*minor road*' and '*unmetalled road*' suggest that it may have been used by carriages and carts. Sales Particulars from 1914 mark the route as a '*public road*'. A deduction was also made for a public right of way under the Finance (1909/10) Act, and the land to the east of the farm was described as being approached by an unmetalled road.
50. **Taken together, the evidence demonstrates, on the balance of probability, that the route formed a continuation of a public road from Aslackby and that it is subject to public vehicular rights, provided that these rights have not subsequently been extinguished by section 67(1) of the Natural Environment and Rural Communities Act 2006.**

Application Route DMMO 293

Existing Irnham Public Bridleway 9 (points J-K-L)

51. The documentary evidence shows that the Application Route formed part of a link between Aslackby, Hawthorpe and Bulby, and the surrounding villages, dating back to at least the early 1800s; the early commercial maps and Ordnance Survey maps depict a different alignment from that applied for.
52. **However, there is not enough evidence to demonstrate, on the balance of probability, that Irnham Public Bridleway 9 (between points J-K-L on the Case Decision Plan) is subject to higher public rights to warrant the making of a definitive map modification under section 53(3)(c)(ii) of the 1981 Act to record the route as a byway open to all traffic or restricted byway.**

Missing Link between Keisby/Hawthorpe Road and Irnham Public Bridleway 9 (points L-M)

53. Although this part of the Application Route is not shown on the Definitive Map, the Definitive Statement describes the route as joining '*Hawthorpe Road*', which constitutes a discovery of evidence. The Provisional Statement and the Parish Survey Notes also support the route connecting with '*Hawthorpe Road*'. The status of the right of way should be bridleway, reflecting the status of Irnham Public Bridleway 9.

54. **The documentary evidence is sufficient to *reasonably allege* that a public bridleway exists between Keisby Road and Irnham Public Bridleway 9 (between points L-M on the Case Decision Plan), thereby warranting the making of a definitive map modification order under section 53(3)(c)(i) of the 1981 Act.**

Missing Link between Aslackby & Laughton Restricted Byway 12 and Irnham Public Bridleway 9 (points H-I)

55. The documentary evidence shows that the Application Route provided a link between Aslackby and Bulby, and the surrounding villages, dating back to at least the early 1800s. The 1841 Tithe Award for Irnham marks a through route from Folkingham to Bulby, between points A-B-C-D-H-I-J-N-O-P-Q-R-S on the Case Decision Plan, comprising of Application Route DMMO 277 (points A-B-C-D-H), part of Application Route DMMO 293 (points H-I-J) and Application Route DMMO 295 (points J-N-O-P-Q-R-S). The early maps all show a continuous route along this line, and the marking of a 'Guide Post' on Ordnance Survey County Series maps at point H provides further support for the Application Route having had the status of a rural road, meeting with other rural roads at 'Birdock Gate' (as named on the 1828 Bryant's map). Whilst the Sales Plan and Particulars of the Bulby Estate describe points I-J as an '*occupation road*', there was a deduction made for a public right of way under the Finance (1909/10) Act which suggests that it was subject to a public right of way.

56. **The documentary evidence is sufficient to *reasonably allege* that public vehicular rights exist between Aslackby & Laughton Restricted Byway 12 and Irnham Public Bridleway 9, provided that these rights have not subsequently been extinguished by section 67(1) of the Natural Environment and Rural Communities Act 2006.**

Existing Irnham Public Bridleway 9 (points I-J)

57. The documentary evidence shows that the Application Route provided a link between Aslackby and Bulby, and the surrounding villages, dating back to at least the early 1800s. The 1841 Tithe Award for Irnham marks a through route from Folkingham to Bulby between points A-B-C-D-H-I-J-N-O-P-Q-R-S on the Case Decision Plan, comprising of Application Route DMMO 277 (points A-B-C-D-H), part of Application Route DMMO 293 (points H-I-J) and Application Route DMMO 295 (points J-N-O-P-Q-R-S). The early maps consistently show a continuous route along this alignment, and the marking of a 'Guide Post' on Ordnance Survey County Series maps at point H provides further support for the Application Route having a status of a rural road, meeting with other rural roads at 'Birdock Gate' (as named on the 1828 Bryant's map). The Sales Plan and Particulars of the Bulby Estate also describe points I-J as an '*occupation road*'.
58. **The documentary evidence is sufficient to demonstrate, on the balance of probability, that public vehicular rights exist between Aslackby & Laughton Restricted Byway 12 and Irnham Public Bridleway 9, provided that these rights have**

not subsequently been extinguished by section 67(1) of the Natural Environment and Rural Communities Act 2006.

Application Route DMMO 295

59. The documentary evidence shows that the Application Route provided a link between Aslackby and Bulby, and the surrounding villages, dating back to at least the early 1800s. The 1841 Tithe Award for Irnham identifies a through route from Folkingham to Bulby between points A-B-C-D-H-I-J-N-O-P-Q-R-S on the Case Decision Plan, comprising Application Route DMMO 277 (points A-B-C-D-H), part of Application Route DMMO 293 (points H-I-J) and Application Route DMMO 295 (points J-N-O-P-Q-R-S). The early maps consistently show a continuous route along this alignment, and the marking of a 'Guide Post' on Ordnance Survey County Series maps at point H provides further support for the Application Route having a status of a rural road, meeting with other rural roads at 'Birdock Gate' (as named on the 1828 Bryant's map). A deduction was made for a public right of way under the Finance (1909/10) Act.
60. **The documentary evidence is sufficient to *reasonably allege* that public vehicular rights exist between Irnham Public Bridleway 9 and Kirkby Underwood Road, provided that these rights have not subsequently been extinguished by section 67(1) of the Natural Environment and Rural Communities Act 2006.**

Statutory extinguishment of public vehicular rights by the Natural Environment and Rural Communities Act 2006

61. As the applications relate to byways open to all traffic, a status which includes a public right of way for vehicles, it is necessary to consider the effect of the statutory extinguishment of public rights of way for mechanically propelled vehicles by section 67(1) of the Natural Environment and Rural Communities Act 2006 ("the 2006 Act").
62. Section 67(1) of the 2006 Act extinguished any public right of way for mechanically propelled vehicles over a way which, immediately before commencement on 2 May 2006, was either not shown on a definitive map and statement or was shown in the definitive map and statement only as a footpath, bridleway or restricted byway. Application Route DMMO 277 is recorded as a restricted byway in the Definitive Map and Statement, Application Routes DMMO 292 and DMMO 293 are recorded as bridleways and Application Route DMMO 295 is unrecorded. Consequently, public rights of way for mechanically propelled vehicles have been extinguished over these routes unless they meet one or more of the exceptions set out in section 67(2) of the 2006 Act as follows:
- (a) *it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was for mechanically propelled vehicles,*

- (b) *immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.66) (list of highways maintainable at public expense),*
- (c) *it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,*
- (d) *it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or*
- (e) *it was created by virtue of use by such vehicles during a period ending before 1st December 1930.*

63. None of the exemptions listed above, which would be required to preserve public rights of way of mechanically propelled vehicles over the routes, are applicable to the Application Routes. However, such rights may still exist if the routes meet the savings provisions set out in section 67(3) of the 2006 Act:

- (a) *before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c.69) for any order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,*
- (b) *before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 of the 1981 Act in respect of such an application, or*
- (c) *before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles –*
 - (i) *was reasonably necessary to enable that person to obtain access to the land, or*
 - (ii) *would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.*

64. The applications submitted by Alec Hill were all dated after the relevant date of 20 January 2005, as specified in section 67(4) of the 2006 Act. Given that the applications were made after this date, and that no person with an interest in the land has submitted an application seeking a modification order to record the Application Routes as byways open to all traffic, the savings in section 67(3) of the 2006 Act do not apply to the Application Routes. Consequently, public rights of way for mechanically propelled vehicles over Aslackby & Laughton Restricted Byway 12, Lenton, Keisby & Osgodby Public Bridleway 3 and Irnham Public Bridleway 9 have been extinguished by section 67(1) of the 2006 Act.

65. It is a general principle in law that where a route once carried public vehicular rights, it also carried public rights for walkers, horse riders, cyclists, and non-mechanically propelled vehicles. When vehicular rights are extinguished by statute, the lesser rights remain, and these are consistent with the classification of restricted byway.

Decision

Application Route DMMO 277 (points A-B-C-D-H on the Case Decision Plan)

66. **That a definitive map modification order not be made under section 53(3)(c)(ii) of the 1981 Act to amend the Definitive Map and Statement for the area in respect of Application Route DMMO 277 (Aslackby & Laughton Restricted Byway 12) from restricted byway to byway open to all traffic.**
67. The decision is made on the grounds that rights of way for mechanically propelled vehicles were extinguished under the Natural Environment and Rural Communities Act 2006 and that the Application does not meet any of the exceptions set out in that 2006 Act. The public right of way for non-mechanically propelled vehicles remains intact, which is consistent with the current classification of the route as a restricted byway.

Application Route DMMO 292 (points E-F-G-H on the Case Decision Plan)

68. **That a definitive map modification order be made under section 53(3)(c)(ii) of the 1981 Act seeking to amend the Definitive Map and Statement for the area in respect of the Application Route DMMO 292 (Lenton, Keisby & Osgodby Public Bridleway 3) from public bridleway to restricted byway. The route for which the definitive map modification order is to be made is shown between points A-B on the attached plan (ref DMMO/292/293/295 Lenton, Keisby & Osgodby & Irnham).**
69. The decision is made on the grounds that the documentary evidence is sufficient, on the *balance of probability*, to demonstrate that a higher status of right of way exists than that currently recorded on the Definitive Map and Statement. The public rights of way for mechanically propelled vehicles were extinguished under the Natural Environment and Rural Communities Act 2006 and the Application does not meet any of the exceptions set out in that Act. The public right of way for non-mechanically propelled vehicles remains intact, warranting the making of a definitive map modification order for a restricted byway.

Application Route DMMO 293 (points J-K-L on the Case Decision Plan)

70. **That a definitive map modification order not be made under section 53(3)(c)(ii) of the 1981 Act to amend the Definitive Map and Statement for the area in respect of Application Route DMMO 293 (Irnham Public Bridleway 9) from public bridleway to byway open to all traffic.**

71. The decision is made on the grounds that public rights of way for mechanically propelled vehicles were extinguished under the 2006 Act and that the Application does not meet any of the exceptions listed in that Act. Although a right of way for non-mechanically propelled vehicles remains, the evidence regarding the precise alignment of the route is conflicting, and therefore insufficient to demonstrate that this section of Irnham Public Bridleway 9 should be upgraded to a restricted byway.

Application Route DMMO 293 (points L-M on the Case Decision Plan)

72. **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 Application Route as a public bridleway. The route for which the definitive map modification order is to be made is shown between points E-F on the attached plan (ref DMMO/292/293/295 Lenton, Keisby & Osgodby & Irnham).**
73. The decision is made on the grounds that the documentary evidence is sufficient to *reasonably allege* that the public bridleway should be extended to meet the highway known as Keisby Road (described as Hawthorpe Road in the Definitive Statement).

Width

74. There is no documentary evidence specifying the width of this section. Measurements scaled from the 1904 Ordnance Survey County Series 25-inch to 1-mile mapping indicate a width of between approximately 7.2 metres and 9.2 metres. These widths are significantly greater than would typically be expected for a bridleway. In the absence of more precise evidence, it is appropriate to adopt a reasonable and consistent standard width. For maintenance and enforcement purposes, a width of 3 metres is widely recognised.
75. The modification order will therefore be made to record the bridleway with a width of 3 metres, as this provides a practical and proportionate standard in the absence of reliable evidence to support a greater width and would allow two horse riders, cyclists, or pedestrians — or any combination of these — to pass comfortably.

Application route DMMO 293 (points H-I on the Case Decision Plan)

76. **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 Application Route as a restricted byway. The route for which the definitive map modification order is to be made is shown between points B-C on the attached plan (ref DMMO/292/293/295 Lenton, Keisby & Osgodby & Irnham).**
77. The decision is made on the grounds that the documentary evidence is sufficient to *reasonably allege* that a restricted byway exists between points H-I on the Case Decision Plan.

Width

78. In the absence of documentary evidence specifying the width of this section, reliance has been placed on measurements scaled from the 1904 Ordnance Survey County Series 25-inch to 1-mile mapping. These indicate a width varying between approximately 3.3 metres and 4.8 metres along the route. Whilst such scaling can only be regarded as indicative, it provides the best available historical evidence.
79. In determining an appropriate width to be recorded, it is necessary to adopt a figure which reasonably reflects this range whilst remaining practical for public use. A width of 4 metres is considered to represent a fair and proportionate average of the observed measurements. This figure is further supported by modern guidance, including that of the British Horse Society, which recommends a minimum width of 4 metres for carriage use.
80. The modification order will therefore be made to record the restricted byway with a width of 4 metres, as this is consistent with the available historic evidence, provides a reasonable and workable standard for the exercise of public rights, and allows two horse-drawn carriages, horse riders, cyclists, or pedestrians—or any combination of these—to pass comfortably.

Application route DMMO 293 (points I-J on the Case Decision Plan)

81. **That a definitive map modification order be made under section 53(3)(c)(ii) of the 1981 Act seeking to amend the Definitive Map and Statement for the area in respect of part of the Application Route (Irnham Public Bridleway 9) from public bridleway to restricted byway. The route for which the definitive map modification order is to be made is shown between points C-D on the attached plan (ref DMMO/292/293/295 Lenton, Keisby & Osgodby & Irnham).**
82. The decision is made on the grounds that the documentary evidence is sufficient, on the *balance of probability*, to demonstrate that a higher status of right of way exists than that recorded on the Definitive Map and Statement. The rights of way for mechanically propelled vehicles were extinguished under the Natural Environment and Rural Communities Act 2006 and the Application does not meet any of the exceptions set out in that Act. The public right of way for non-mechanically propelled vehicles remains intact, warranting the making of a definitive map modification order for a restricted byway.

Application Route DMMO 295 (points J-N-O-P-Q-R-S on the Case Decision Plan)

83. **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 Application Route as a restricted byway. The route for which the definitive map modification order is to be made is shown between points D-G on the attached plan (ref. DMMO/292/293/295 Lenton, Keisby & Osgodby & Irnham).**

84. The decision is made on the grounds that the documentary evidence is sufficient to *reasonably allege* that a byway open to all traffic exists between points J-N-O-P-Q-R-S on the Case Decision Plan. The rights of way for mechanically propelled vehicles were extinguished under the Natural Environment and Rural Communities Act 2006 and the Application does not meet any of the exceptions set out in that Act. The public right of way for non-mechanically propelled vehicles remains intact, warranting the making of a definitive map modification order for a restricted byway.

Width

85. In the absence of documentary evidence specifying the width of this section, reliance has been placed on measurements scaled from the 1904 Ordnance Survey County Series 25-inch to 1-mile mapping. These indicate a width varying between approximately 3.6 metres and 7.3 metres along the route. Whilst such scaling can only be regarded as indicative, it provides the best available historical evidence.
86. In determining an appropriate width to be recorded, it is necessary to adopt a figure which reasonably reflects this range whilst remaining practical for public use. A width of 4 metres is considered to represent a fair and proportionate average of the observed measurements. This figure is further supported by modern guidance, including that of the British Horse Society, which recommends a minimum width of 4 metres for carriage use.
87. The modification order will therefore be made to record the restricted byway with a width of 4 metres, as this is consistent with the available historic evidence, provides a reasonable and workable standard for the exercise of public rights, and allows two horse-drawn carriages, horse riders, cyclists, or pedestrians—or any combination of these—to pass comfortably.

Signed:

Name: Andrew Pickwell

Position: Senior Definitive Map Officer

Dated: 24 June 2026

