

Case Decision

Definitive Map Modification Order Case 594 **Claimed addition of a restricted byway between Moor Lane and Restricted Byway 34 in the parish of Metherringham**

Summary of Decision:

To make a definitive map modification order to record a restricted byway running between Moor Lane and Restricted Byway 34 in the parish of Metherringham

The Modification Order Application

1. The Modification Order Application (“the Application”) was submitted by Stephen Parkhouse on 9 October 2022. The Application seeks to add to the Definitive Map and Statement for the area, the legal record of public rights of way, a restricted byway for the linear north-south track known historically as ‘*Water Lane*’, connecting Moor Lane and Restricted Byway 34 in the parish of Metherringham. This route is referred to hereafter as “the Application Route”. A copy of the Application and accompanying plan is available on the Lincolnshire County Council website ([Metherringham DMMO 594 – Lincolnshire County Council](#)). The attached “Case Decision Plan” (Plan Ref. DMMO/594/Metherringham/CDP) identifies the Application Route by a broken black line between points A-B-C.

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.

3. The issue to be considered is whether the evidence shows 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.
4. 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 the application. Conversely, if the evidence fails to demonstrate the existence of a public right of way, no order shall be made.

Documentary Evidence

5. Historical documents may provide evidence to support that a public right of way of a particular classification was created or dedicated in the past.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.
6. The 1779 Inclosure Award for Metherringham records the inclosure of land and the public and private roads that were set out by the appointed Commissioners under the powers conferred on them by the 1777 Act for dividing and inclosing the Open and Common Fields Meadows Pastures Fens Heath and Waste Lands within the manor and parish of Metherringham in the County of Lincoln (“the 1777 Inclosure Act”). The 1777 Inclosure Act required that any public roads and highways shall be at least forty feet broad between the ditches and fences.
7. The Application Route is depicted on the Award plan as the southernmost section of a public road identified as ‘*Fen Side Road*’, extending between Carr Dike Road and an ancient Gateway in the Lordship of Blankney. The road is described in the Award as a ‘*publick road*’.
8. The Award records that this route was one of ten public roads that were set out by the Commissioners with the breadth of sixty feet, and it states that it ‘*shall for ever hereafter be deemed and taken to be publick Roads for the use and passage of all manner of persons whatsoever on Foot and with Horses Cattle and Carriages and shall be maintained supported and repaired as all other High Roads are by Law required to be maintained supported and repaired*’.
9. Early commercial maps, including the 1828 Bryant’s Map, the 1830 Greenwood’s Map and the 1824 Ordnance Survey First Edition One-Inch Map, depict the Application Route as a ‘*cross road*’ or ‘*carriage road*’ corresponding with the route described as

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*’

'Fen Side Road' in the Inclosure Award. These maps depict the route forming part of a wider historical road network connecting villages and communities.

10. Eight railway plans and reference books relating to the area of the Application Route, dated between 1836 and 1883, depict the route. The 1836 Northern & Eastern Railway and 1841 London & York Railway refer to the route as an *'occupation road'* in the ownership of the adjoining landowners and Charles Chaplin Esq, respectively. However, the 1845 Cambridge to Lincoln Railway and 1845 Spalding & Lincoln Railway describe the route, and its continuation beyond the Application Route, as a *'public road'*, owned by Charles Chaplin Esq.
11. In the 1847 Eastern Counties Railway, the Application Route and its continuation are described as a *'public highway and drain'*, in the ownership of the *'Surveyors of Highways'* and *'Surveyors of Highways and Edward Cartwright or one of them'*, respectively. The 1862 March & Askerne Coal Railway and 1883 Billingham Light Railway refer to the route as an *'old road and dyke'* and a *'road and ford'*, listing the *'Surveyor of Highways'* as either one of, or the sole, owner.
12. A *'Surveyor of Highways'* was a person appointed by each parish, responsible for the maintenance of public roads and ways within that parish. Reference to the road at the location of the Application Route being in the ownership of the Surveyor of Highways may add weight to the reputation of the route as a public right of way.
13. It is not possible to identify the status of the Application Route shown in the 1877 Great North Railway Plan, as the reference book is missing.
14. The Application Route is depicted on the Ordnance Survey County Series, One-Inch, Scale 1:25,000 or about 2½-Inch, Scale 1:2,500 (or approximately 25-Inch), Scale 1:50,000 (or approximately 1¼-Inch), and leisure series (Explorer, Landranger and Pathfinder) Maps dating from 1887 to 2002. Across these various sources, the Application Route is shown with differing classifications including *'minor road'*, *'unmetalled road'* and *'other road'*. With the exception of the 1891 One-Inch Map and 1948 Scale 1:25,000 Map, the section of the Application Route between points B-C on the Case Decision Plan, is depicted as forming part of a higher status road, continuing to Barff Farm and Carr Dike, classified as a *'secondary road'* or a *'road 14ft of metalling or over'*. The 25-inch and 6-inch County Series maps for the period 1887–1950 name the section between points A–B as *'Water Lane'*. The 25-inch County Series maps of 1888 and 1905 also suggest that Water Lane extended westwards from point C across a ford and up to a further ford. It is possible that the route acquired this name from the presence of these fords.
15. Although early commercial maps and the Ordnance Survey maps are not conclusive evidence of public rights, they demonstrate that the Application Route physically existed in the landscape throughout the 19th and 20th centuries, in the location of the public road set out by the Commissioners in the 1779 Metherringham Inclosure Award.

16. 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 each hereditament was assessed, deductions were applied where public rights of way were recorded crossing the land.
17. The associated Finance Act maps comprise Ordnance Survey County Series Second Edition (25-Inch to the mile) maps, colour-washed to delineate individual hereditaments. The section of the Application Route between points A-B on the Case Decision Plan, forms part of hereditament '432'; however, no deduction is shown for a right of way in the Valuation Book, nor are any such deductions recorded elsewhere within Metherringham parish. The section between points B-C is depicted as physically distinct from the surrounding hereditament parcels. This section does not appear in the Valuation Book, suggesting that it may have been regarded as a public highway, as other similar roads are presented in the same manner. However, it is also possible that the route was considered an occupational road providing access to adjoining land. Furthermore, the Valuation Books were never fully completed due to the interruption caused by World War I and the subsequent abolishment of the levy by the Finance Act 1920. Consequently, limited weight is therefore attached to this evidence due to these ambiguities.
18. The c.1929 Highways Handover Map, c.1980s and 1990s Highways Maintenance Map, the 1990s Highways Maintenance Atlas, and both the 2016 and current List of Streets do not record the Application Route as publicly maintainable. However, this does not mean that the route is not a public right of way, particularly where other evidence records such rights, such as the public road that is recorded in the location of the Application Route on the 1779 Metherringham Inclosure Award.
19. 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. As part of this process, parish councils conducted path surveys to identify routes they considered to be public rights of way and submitted their findings to KCC for assessment. The statutory process then progressed through three stages: draft, provisional, and definitive.
20. The Parish Path Survey Notes for Metherringham, Provisional Statement, and the Definitive Map and Statement from the 1950s do not record the Application Route, and the Draft and Provisional Maps have not survived. However, the Parish Path Survey Notes and accompanying plan provide additional relevant information. The plan appears to mark the routes set out in the Inclosure Award with either blue crosses or blue dashes, though no explanation for this notation is provided. '*Water Lane*' is marked with blue dashes. Several roads, including the southern section of the Application Route, are shaded orange, which appears to denote routes the parish may have thought were maintainable at public expense.

21. The notes for '*Path 16*' state that the path ends at '*Watery [Water] Lane*' for access into fields. It was subsequently included on the Definitive Map, with its end point shown at the junction with Metheringham Restricted Byway No. 34, at a ford. The 1888 and 1905 Ordnance Survey County Series 25-inch to the mile Scale Maps show that Water Lane extended to, and possibly derived its name from, the fords located along part of the restricted byway. Although the notes recommended the route for closure, this was not the purpose of the statutory process under which the Definitive Map and Statement were prepared, as it was concerned only with recording the existence of public rights.
22. The notes for '*Path 17*' describe a route running from '*Gravil Hill to Barff Farm*', part of which follows a more easterly section of road that also forms the southern portion of the Application Route. This road is described as '*a good road, made and maintained by the County Council*', consistent with its depiction in orange on the plan which the parish may have thought was publicly maintainable at the time.
23. The notes for '*Path 32*' state that the path did not exist, although it was nevertheless added to the Definitive Map. The notes identify the route as running from '*Watery [Water] Lane 507*', with '*507*' referring to the Ordnance Survey field number, which, according to the 1888 and 1905 Ordnance Survey County Series 25-inch-to-1-mile maps, corresponds with the northern section of the Application Route.
24. The notes for '*Path 34*' indicate that the path ends by '*turning south to Watery [Water] Lane*', with the grounds for believing it to be public stated as '*awarded*'.
25. Collectively, these notes show that '*Water Lane*' was cited as a termination point for three recorded public rights of way. Combined with its apparent belief that it was a publicly maintained road, there is an indication that the route was assumed to be part of the ordinary highway network rather than requiring inclusion on the Definitive Map. No explanation is provided as to why the Application Route itself was not included on the Definitive Map or Statement given that it was recorded in the 1779 Inclosure Award for Metheringham as a public road.
26. Aerial photographs from 1999, 2003 and 2025 clearly show the section of the Application Route between points A-B in the Case Decision Plan as this is a farm track that continues eastwards at point B. Between points B-C, the 1999 and 2003 photographs show either a farm track or headland on the edge of the field. Overall, the photographs are not conclusive in demonstrating the existence of a public right of way.

Landowner Evidence

27. The owner of the land over which the Application Route runs, between points A-B-C on the Case Decision Plan, completed a Landowner Evidence Form. The Application Route lies along the western boundary of their property. The landowner states that their family has owned the land since 1958, that they have no knowledge of any public

right of way existing along the route, and that they believed that '*Water Lane*' historically functioned as a farm access track, serving plots of land under varying ownerships. The landowner also reports that signs marked '*Private Road No Entry*' and '*Private No Public Access*' have been erected on several occasions, but these have repeatedly been vandalised and removed.

28. Google Street View images from the period November 2008 to July 2025, taken from point A on the Case Decision Plan, all show a notice. The photographs from November 2008, July 2009 and April 2011 are too grainy to read the notice. However, the photographs from June 2021, November 2021, June 2023, and July 2025 show the sign stating, '*Barff Farm Private Road*'.
29. However, such signage would not affect any public right of way shown by the documentary evidence to have been created or dedicated at some point in the past, such as where the route was formally set out as a public road in the 1779 Metherringham Inclosure Award.

Conclusion

30. The 1779 Metherringham Inclosure Award demonstrates that the Commissioners, under the powers conferred on them by an Act of Parliament, had appointed and set out a 60-foot-wide public road called '*Fen Side Road*' which extended between '*Carr Dike Road*' and an ancient Gateway in the Lordship of Blankney, of which the Application Route is the final southerly section. The general principle of highway law is that the higher rights also include all the lesser rights. Consequently, the legal creation of this public road establishes the existence of public rights of way on foot, on horseback (including leading a horse), and for both mechanically and non-mechanically propelled vehicles over the Application Route.
31. The early 19th century maps further reinforce the existence of the Application Route as the southern section of a '*cross road*' or '*carriage road*' corresponding with the route set out in the Inclosure Award and connecting with other rural roads. Ordnance Survey mapping consistently depicts the Application Route as a '*minor*' or '*unclassified road*', with many naming it as '*Water Lane*'. Together these maps are supportive of the existence of the route as set out in the Inclosure Award.
32. Three railway plans and books of reference dating from 1845 to 1883 record a public highway or road at the location of the Application Route. A further two railway plans record the route as a '*road*' or an '*old road*'; however, both identify the Surveyor of Highways as either one of, or the sole, owner, which supports its status as a public way. At that time, an Act of Parliament was required to construct a new railway, and these records were prepared as part of that formal legal process. The plans were based on detailed surveys of land affected by proposed railway lines, including the identification of public and private rights that would need to be accommodated, diverted, or stopped up to enable construction of the railway. Although there is no evidence that the railway was ever built, the plans nevertheless support and

acknowledge the existence of the public road, which had itself been created through the inclosure process in 1779 – a legal process conducted under an Act of Parliament.

33. The Finance (1909/10) Act 1910 is ambiguous in its recording of the Application Route; therefore, this evidence is limited in value. The absence of deductions for public rights of way for land in Metherringham is common and does not necessarily indicate that such rights of way did not exist. It may reflect that the landowner never admitted to the evidence of a public right of way, or that the Valuation Books had never been fully completed. It is also possible that this, together with the absence of the route from the highway records from 1929 to the present day, suggest that the public road had fallen into disuse.
34. However, there is no statutory provision by which a public right of way can cease to exist solely through disuse, and no evidence has been identified to show that the public road has legally been stopped up or diverted. Accordingly, a public right of way on foot, with horses and mechanically and non-mechanically propelled vehicles exist over the application route, subject to section 67 of the Natural Environment and Rural Communities Act 2006 (the “2006 Act”).

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

35. 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; the Application Route was unrecorded on the definitive map and statement. Consequently, public rights of way for mechanically propelled vehicles have been extinguished over the route 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.*

36. None of the exemptions listed above, which would be required to preserve public rights of way of mechanically propelled vehicles over the route, are applicable to the Application Route. However, such rights may still exist if the route meets 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.*
37. The Application is dated after the relevant date of 20 January 2005, as specified in section 67(4) of the 2006 Act, and no person with an interest in the land has submitted an application seeking a modification order to record the Application Route as a byway open to all traffic. Therefore, the savings in section 67(3) of the 2006 Act do not apply to the Application Route.
38. This means that a public right of way for mechanically propelled vehicles over the Application Route has been extinguished by section 67(1) of the 2006 Act. However, a 60-foot-wide public right of way on foot, on horseback or leading a horse, and for non-mechanically propelled vehicles remain. This is consistent with the classification of a restricted byway.

Decision

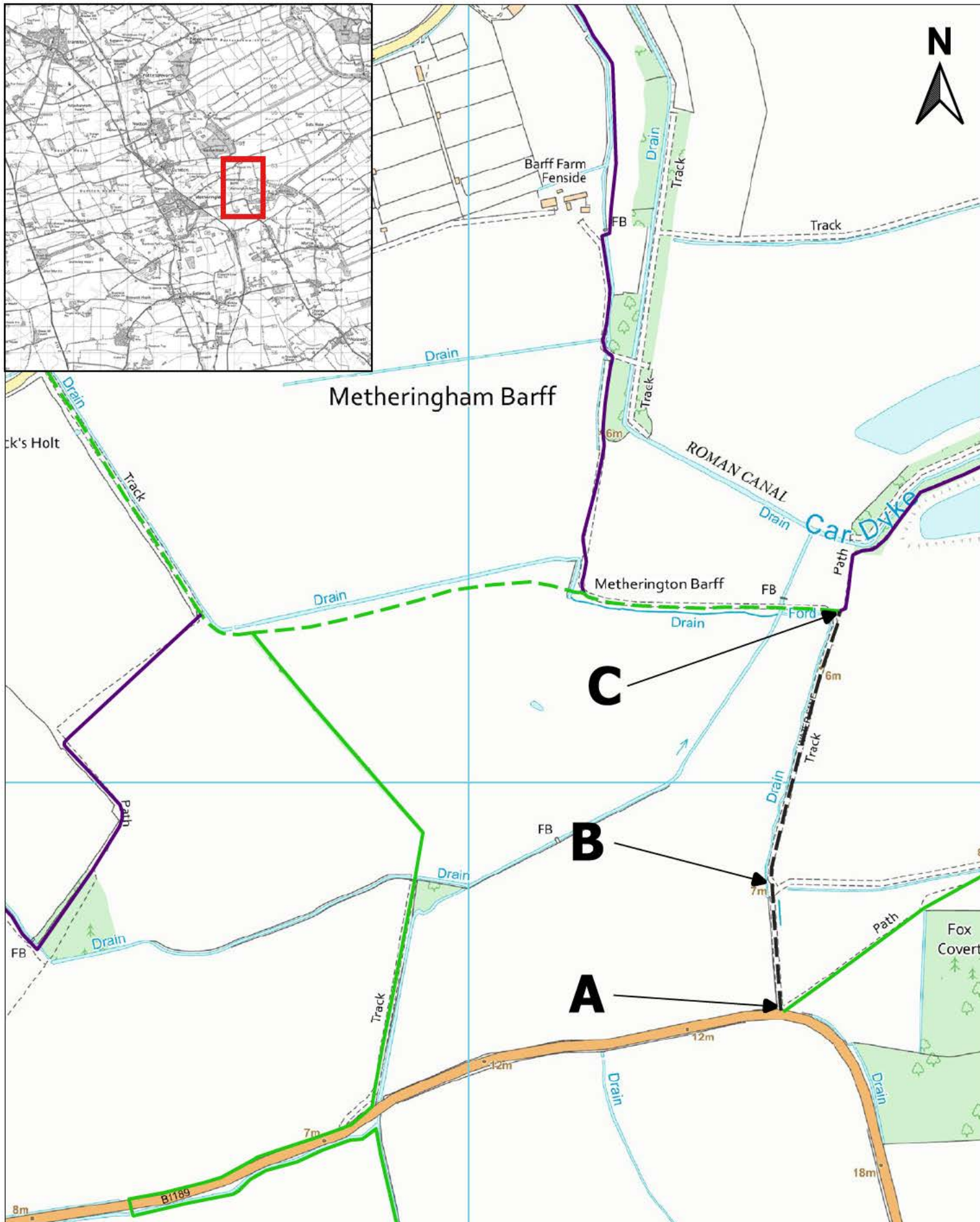
39. **That a definitive map modification order be made under section 53(3)(c)(i) of the 1981 Act seeking to add to the Definitive Map and Statement for the area the Application Route as a restricted byway, with a width of 18.29 metres (equivalent to 60-feet), on the grounds that the evidence demonstrates that such a public right of way is reasonably alleged to subsist. The route for which the definitive map modification order is to be made is shown between points A-B-C on the attached plan DMMO/594/Metheringham/CPD.**

Signed:

Name: Andrew Pickwell

Position: Senior Definitive Map Officer

Dated: 1 July 2026



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

Legend

- Application Route
- Public Footpath
- Public Bridleway
- Restricted Byway