

Case Decision

Definitive Map Modification Order Case 611

Alleged addition of a Public Footpath between the A153 (Sleaford Road) and the River Witham, Tattershall

Summary of Decision: Not to make a definitive map modification order to record a public footpath running between the A153 (Sleaford Road) and the River Witham, Tattershall

The Modification Order Application

1. The Modification Order Application (“the Application”) was submitted by Mr Stephen Parkhouse on 4 December 2022. The Application seeks to amend the Definitive Map and Statement - the legal record of public rights of way – by adding a public footpath between the A153 (Sleaford Road) and the River Witham in the parish of Tattershall, running along the south bank of the Horncastle Canal. This route is referred to hereafter as “the Application Route”. A copy of the Application and accompanying plan is available at [Tattershall DMMO 611 – Lincolnshire County Council](#). A copy of the associated plan (ref. DMMO/611/Tattershall/CDP) (“the Plan”) is attached and shows 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. This is achieved through the making of a definitive map modification order (DMMO) where evidence is discovered which suggests that the Definitive Map and Statement require amending.
3. The issue to be considered 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 DMMO under section 53(3)(c)(i) of the 1981 Act to amend the Definitive Map and Statement.

4. The County Council must base its decision exclusively on the evidence. Should a DMMO 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 the existence of a public right of way no order shall be made.

Documentary Evidence

5. Historical documents may provide evidence supporting that a public right of way of a particular classification was created or dedicated in the past.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 1792 Plan of the Rivers Bain and Waring and Navigation from Horncastle does not depict the towing paths along the intended route of the Horncastle Canal or on Gibson's Canal which was already operational (between points B-C on the Plan).
7. The 1796 Inclosure Act for Tattershall, Tattershall Thorpe, Kirkby Super Bane, and the draining of the fens of the Witham and Bane, states that the Horncastle Canal is not to be affected by the inclosure process. The 1798 Inclosure Award and Plan for the same parishes depict the Horncastle Canal and identify where it forms the boundary of the awarded inclosures. Although several footways are awarded, none are described as running alongside the Canal.
8. The 1818 Ordnance Survey Drawing for Tattershall depicts the Horncastle Canal; however, it is not sufficiently detailed to identify the towing path. The 1824 Ordnance Survey One-Inch to the Mile Old Series Map and 1828 Bryant's Map do not show a footpath or towing path on the southern bank of the Horncastle Canal.
9. The Ordnance Survey County Series, One-Inch, Scale 1:25,000 (approximately 2½-Inch) and Scale 1:10,560 (6-Inch) Maps dating from 1888 to 1956 variously depict a '*towing path*', '*footpath*' or a series of dots on the south bank of the Horncastle Canal in the vicinity of the Application Route. It should be noted that the '*footpath*' marked on the 1954 One-Inch Map covers only a short section of the Application Route between points A-B on the Plan. Although Ordnance Survey maps do not constitute conclusive evidence of public rights, they do indicate that a towing path physically existed alongside the Canal throughout the late part of the 19th and early part of the 20th centuries. The 1962 & 1963 One-Inch and 1972 Scale 1:2,500 (approximately 25-Inch) map, together with later leisure maps (Landranger, Explorer and Pathfinder), do not depict a towing path or footpath.

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*'

10. 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.
11. The associated Finance Act Maps comprise Ordnance Survey County Series Second Edition (25-Inch to One-Mile) maps, colour-washed to delineate individual hereditaments. The plan for Tattershall depicts the Horncastle Canal as separate from the surrounding hereditaments and left uncoloured. There is no accompanying description of the Canal, its banks, towing paths, or footpaths. The adjoining hereditaments do not include deductions for public rights of way, except for hereditament '362'. However, this hereditament is made up of more than one parcel and the right of way deduction is likely to relate to one that crosses the field rather than the house and buildings which are bounded by the Canal. There are no markings on that part of the plan to suggest the right of way ran alongside the Canal, and if it did, there are no such deductions for the remaining hereditaments along that route.
12. The 1929 Highways Handover Map, the Highways Maintenance Maps of the 1980s and 1990s, and the 1984-2004 Obsolete Paper Working Copy Rights of Way Map do not depict the Application Route, nor do they show the towing paths as being maintainable at public expense. A search of findmystreet.co.uk also did not identify the Application Route.
13. The Parish Path Notes and Summary for Tattershall describe path '5' in general terms as *'Tattershall part of Horncastle Canal to River Witham'*. Further notes state *'the Canal has not been used for many years, approximately 60, and in consequence ceased to be navigable. The First Lock, as shown on the map, is now in a derelict condition. The need for a right of way does not exist'*. None of the rights of way recorded on the Parish Path Summary were noted as being awarded (i.e. recorded in an Inclosure Award).
14. The 1955 Definitive Map and Statement do not include the Application Route.
15. The aerial photographs from 1999, 2003 and 2025 appear to show, in some locations, a trodden path along the south bank of the Horncastle Canal in the vicinity of the Application Route, although parts of the bank are partially obscured by tree shadow.
16. Google Street View images from 2009, 2010, 2011, 2016, 2021, 2022 and 2023 show the eastern end of the Application Route at the A153 (Sleaford Road), Tattershall (point A on the Plan). There is a bridge over the Canal with metal and wooden fencing separating the footway from the canal bank and preventing access.
17. In summary, the historical mapping evidence generally depicts a towing path or footpath along all or part of the south bank of the Horncastle Canal in the vicinity of the Application Route. The 1798 Inclosure Award does not record any public footpaths alongside the Canal bank. The Finance Act 1910 records contain no

deductions indicating public rights, and neither the Definitive Map, nor the Parish Survey Summary, include the Application Route. Ordnance Survey maps also contain disclaimers stating that their representations do not constitute evidence of public rights of way. Overall, the documentary evidence considered in this section is insufficient to *reasonably allege* that a public right of way exists over the claimed footpath.

Other evidence that might be relevant to the matter

18. The “1792 Act for enlarging the Tattershall Canal, incorporating the River Bain to Horncastle”, set out proposals to extend the navigation from the River Witham at Tattershall to Horncastle, and established the Company of Proprietors of the Horncastle Navigation (“the Company”). The Act required the construction and maintenance of towing paths, banks, roads, and ways along the navigation. It provided that the towing paths ‘...shall be public and open to all Persons for the Conveyance of any Wares, Merchandize, or other Things, in Boats, Barges and other Vessels, upon Payment, to the Person or Persons at whose Charge and Expenditure such Cuts, Locks, Stop Gates, or Towing Paths, shall be made...’. It permitted any person to use the navigation and towing paths, provided that the required rates and dues were paid to the Company. Further provisions allowed owners and occupiers of adjoining land to use the navigation for pleasure, provided that this did not obstruct or prejudice its operation. The Applicant asserts that the Act created towing paths that ‘shall be public and open to all Persons’, however when the clause is read in full, such use was both limited in nature and chargeable.
19. Although no plan accompanied the Act, a separate 1792 plan depicting the course of the Rivers Bain and Waring and the proposed works to open a navigation from Horncastle to the River Witham was later discovered. This plan appears consistent with both the Act and the subsequent construction works. The intended line of the navigation is shown by a red line, but the plan does not identify the location of the towing paths. As noted by Clark, J. (1990)², the towing paths were ‘made on one side of the canal only, for horses which pulled the barges’.
20. The Horncastle Canal was declared closed in 1889 by the Board of Trade (Railway Department), following a request from Lindsey County Council, which was unable to maintain the road bridges over it. The 1792 Act contained no provisions for the winding-up of the Company, and it has not been possible to establish whether an abandonment act was produced. Land Registry searches indicate that canal banks and former towing paths are now included within the titles of the adjoining landowners.
21. In *Monmouthshire Canal Company v Hill* (1859) 4 H & N 421, the court held that a towing path forms part of the canal and is not a public right of way. The right to use

² Clarke, J.N. (1990) Page 31 in *The Horncastle and Tattershall Canal*. The Oakwood Press

the towing path rested solely with the canal company and those with specific rights, such as adjoining landowners; it was not available for general public use.

22. As noted by Riddall, J. and Trevelyan, J (2007)³ and in the Planning Inspectorate's guidance (2022)⁴, the Court of Appeal in *Grand Junction Canal Company v Petty* (1888) 21 QBD 273 confirmed that public use of a towing path amounted only to a limited dedication connected with the purposes of the canal. Whilst a canal company could subsequently dedicate a towing path as a public right of way, such rights do not arise automatically. No evidence has been found to indicate that a public right of way was expressly dedicated along the Application Route.
23. The Secretary of State's 2010⁵ decision considered whether statutory rights arising under the 1793 Canal Act could imply the existence of a public right of way. The Inspector concluded that they could not and determined that the historic use of the towing path for activities such as fishing constituted private, rather than public, use.
24. A solicitor acting on behalf of two landowners referred to Water and Drainage Law⁶, which states that '*A towpath is not automatically a public footpath or bridleway over which the public have a right of way.*⁷ *Its status will depend on the rights conferred over it by the Act that established the canal or right of navigation, the ownership of the towpath*⁸ *and whether there has been any subsequent dedication of it to the public as a right of way....*'. The solicitor submitted that the Applicant's interpretation of the 1792 Act was incorrect and that:
 - The towing paths were ancillary to the conveyance of wares, merchandize and other things, in boats, barges and other vessels along the cut;
 - The cuts, locks, stop gates and towing paths were only available to the public and to all persons, subject to the payment of a charge; and
 - The 1792 Act did not intend, nor did it create any public way and as such no public right of way was conferred.
25. The Applicant provided a railway plan dated 1844 relating to the Lincoln and York Railway (Lincoln Line via Peterborough, Spalding, Boston, Lincoln and Gainsborough to Bawtry), obtained from Nottinghamshire Archives. The Plan and accompanying Book of Reference refer to the section of the Horncastle Canal affected by the Application Route. Parcel 28 is described as comprising '*Horncastle Cut banks, towing*

³ Riddall, J. and Trevelyan, J. (2007) '2.7.3' in *Rights of Way A Guide to Law and Practice*. 4th edn. Ramblers Association and Open Spaces Society.

⁴ Planning Inspectorate. (2022) *Wildlife and Countryside Act 1981: Definitive Map Orders – Consistency Guidelines*. [online] GOV.UK. Section 10.1. Available at <https://www.gov.uk/government/publications/definitive-map-orders-consistency-guidelines/wildlife-and-countryside-act-1981-definitive-map-orders-consistency-guidelines> [Accessed 10 October 2025].

⁵ Order ref: FPS/F4410/7/25. Decision date 07 September 2010. Doncaster Borough Council.

⁶ Bates, John H '14.31' in *Water and Drainage Law* Sweet & Maxwell Ltd

⁷ *R. v Severn and Wye Railway Co* (1819) 2 B. & Ald. 646.

⁸ *Bruce v Willis* (1840) 11 Ad. & El. 463

paths, public footpaths, sluices and works' and is recorded as being owned by the Horncastle Navigation Company. The Applicant contends that the reference to "public footpaths" demonstrates that the towing path along the entire length of the Horncastle Canal, from Horncastle to its junction with the River Witham at Tattershall, had been dedicated as a public footpath. However, a solicitor acting on behalf of two landowners submitted that the Applicant had not demonstrated that the path referred to in the Book of Reference was the Application Route.

26. The entry in the Book of Reference appears to be a broad descriptive inventory of features associated with the navigation rather than a precise statement of their legal status. By grouping together physical infrastructure, including banks, sluices and works, with routes of passage, namely towing paths and public footpaths, the schedule suggests that the surveyor's purpose was to identify the various components of the undertaking rather than to define accurately the nature and extent of any rights subsisting over them.
27. Whilst the inclusion of both '*towing paths*' and '*public footpaths*' may indicate some lack of precision in the description of access rights, it does not provide direct evidence that the towing path itself was subject to a public right of way. Indeed, the separate reference to '*towing paths*' and '*public footpaths*' is equally capable of indicating that the surveyor regarded them as distinct features or interests. The wording may therefore reflect a degree of ambiguity in the surveyor's description, and it is possible that navigation-related access and public rights were not carefully distinguished. However, the reference falls short of demonstrating the existence of a public right of way over the towing path.
28. Furthermore, whilst the Book of Reference refers to '*public footpaths*', it does not identify either their location or extent within Parcel 28. As Parcel 28 extends beyond the Application Route and encompasses other land associated with the navigation, the reference cannot be attributed to any specific route. Although the document suggests that public footpaths may have existed somewhere within the parcel, it provides insufficient detail to determine their location or whether they correspond with the Application Route. Consequently, the evidence does not establish that the footpaths referred to in the Book of Reference were situated on the Application Route.
29. In these circumstances, the reference is best interpreted as a general description of features associated with the Horncastle Cut rather than as evidence that the public right of passage along the towing path. Accordingly, the evidence is insufficient to reasonably allege that public rights subsist over the Application Route. Beyond this general descriptive reference, no further documentary, cartographic or user evidence has been identified to support the existence of a public footpath along the line of the Application Route. Little weight can therefore be attached to the entry as evidence of highway rights and, in the absence of corroborative evidence demonstrating dedication, public use, maintenance or other recognition of public rights, it alone

does not support a conclusion that a public right of way subsisted over the Application Route.

30. One affected landowner provided evidence from a journal article published by the Railway and Canal Historical Society⁹. The article states that in the 1760s Tattershall Low Grounds, an area upstream of the River Bain, were drained by means of a delph behind the river embankment, into which discharged New Dales Dike which extended west across the Low Grounds from the outer moat of Tattershall Castle. In 1773 the engineer John Grundy provided a report to the 2nd Baron Fortescue on the '*expediency of making a Navigation [to Tattershall] along [the] course [of the New Dale Dike]*'. This suggests that New Dales Dike may have followed the course of the later Tattershall (or Gibson's) Canal (between points B-C on the Plan). The Tattershall Canal pre-dated the Horncastle Canal and was operational from 1786. At this point the delph was replaced by Mill Drain which is evident on later Ordnance Survey mapping. Constructed on land leased from Lord Fortescue, the Tattershall Canal was not created under an Act of Parliament. It was later purchased by the Company for incorporation into the Horncastle Canal, with specific provisions included in the associated Act. However, the Act made no reference to any public rights of way along the existing Canal which would have required protection, preservation or stopping up. The article concludes by stating that when the Horncastle Canal closed, ownership of the Tattershall Canal reverted to Lord Fortescue.
31. The Applicant further contends that the alleged public footpaths were preserved by the 1798 Tattershall Inclosure Award, which required that existing public footpaths passing across old inclosures were to be used in the same manner as before. However, there is no inclosure award held by Lincolnshire Archives for lands in Tattershall prior to the 1798 Award, and although some form of earlier documentation must have existed – given that none of the roads in Tattershall were set out in the 1798 Award – no such material has been identified.
32. The solicitor representing two landowners submitted that there was no evidence to suggest that the Application Route was included in the existing public footpaths preserved by the Award, nor did it correspond with any route specifically described in the Award. One of the awarded footways describes it as extending to the Horncastle Navigation. The solicitor suggests that as the Horncastle Canal is referenced, it could be inferred that if there was a public footpath along the Horncastle Canal it would have been included in the Award. The absence of such an awarded footway could be a strong indication that there was no public footpath.
33. Various landowners of land along the Application Route have registered documents under section 31 (6) of the Highways Act 1980, dated between 1978 and 2003. However, such documents are relevant principally to claims founded upon user evidence under section 31 of that Act. As this application is considered solely on documentary evidence, little weight can be attached to those documents.

⁹ Jones, P (2004) *From Castle Moat to Navigation: the origins and evolution of the Tattershall Canal*

34. One landowner referred to issues such as privacy, safety of pedestrians and of livestock, security issues, and wildlife conservation. Whilst the Council acknowledges these concerns, there is no provision in the legislation that permits the Authority to take such matters into account in this evidence-led statutory process used to determine whether a public right of way exists. The landowner also highlighted that a stone wall has obstructed part of the route since 1969 and submitted that this amounted to an interruption of the route. However, as the application falls to be determined on the basis of historical documentary evidence rather than evidence of public use, the existence of the wall is of limited relevance. Its presence does not materially assist in establishing whether the documentary evidence demonstrates that public rights existed along the route prior to the erection of the obstruction.

Conclusion

35. **The documentary evidence is not sufficient to *reasonably allege* that a public right of way exists between the A153 (Sleaford Road) and the River Witham, Tattershall.**
36. The Application Route appears on the majority of Ordnance Survey maps produced since 1888, either partly or fully, as a towing path or footpath. However, the towing path was subject to statutory rights connected with the navigation rather than a general public right of passage. It was not therefore a highway over which the public enjoyed a right to pass and repass. The 1792 Navigation Act permitted public use of the towing path solely for the conveyance of wares, and only upon payment of the required charges to the person responsible for the towing path. There is no evidence that public footpath rights were dedicated, preserved, or otherwise established over the towing path, consistent with the case law and Order Decision outlined at paragraphs 21-23. The Inclosure Award provides for the continuation of existing public footpaths over old inclosures; however, there is no evidence to substantiate either the existence or alignment of any such footpaths in this case.

Decision

37. **That a definitive map modification order under section 53(3)(c)(i) of the 1981 Act should not be made as the evidence neither demonstrates nor reasonably alleges that a public right of way subsists over the Application Route.**

Signed:

Name: Andrew Pickwell

Position: Senior Definitive Map Officer

Dated: 16 September 2026

