SECTION 53 WILDLIFE AND COUNTRYSIDE ACT 1981

LINCOLNSHIRE COUNTY COUNCIL

ADDITION OF RESTRICTED BYWAY NUMBER 1228 DUNSTON AND METHERINGHAM

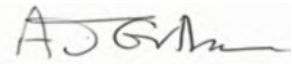
DEFINITIVE MAP MODIFICATION ORDER 2026

The above named Order made on 15 September 2026 if confirmed as made, will modify the definitive map and statement for the area by adding Restricted Byway Number 1228 in the parishes of Dunston and Metheringham running from Prior Lane at Ordnance Survey Grid Reference (OSGR) TF 0812 6264 west south west with a width of 9.14 metres for approximately 344 metres to meet with Restricted Byway No.15 at OSGR TF 0782 6248 as shown between points A-B in Order Drawing Number 2026/026/DMMO595/A4.

A copy of the Order and drawing have been placed and may be seen during office hours at Main Reception, Lincolnshire County Council, County Offices, Newland, Lincoln, LN1 1YL . Copies of the Order and drawing may be requested free of charge from Sally Ironmonger, tel: 01522 552117/e-mail: sally.ironmonger@lincolnshire.gov.uk ref: SXI.78773.DUNSTON. A copy of the Order and drawing is available online at https://www.lincolnshire.gov.uk/council-business/public-notices/1. Drawing Number 2026/026/DMMO595/A4 is displayed with this notice.

Any representation or objection relating to the Order must be sent in writing, quoting reference SXI.78773.DUNSTON, to Legal Services Lincolnshire, Lincolnshire County Council, County Offices, Newland, Lincoln, LN1 1YL (or e-mail sally.ironmonger@lincolnshire.gov.uk) not later than 20 November 2026 and applicants are requested to state the grounds on which it is made. If no representation or objections are duly made to the Order or to any part of it or if any so made are withdrawn Lincolnshire County Council instead of submitting the Order to the Secretary of State for the Environment may themselves confirm the Order. If the Order is submitted to the Secretary of State any representations or objections which have been duly made and not withdrawn will be transmitted with the Order.

Dated 01 October 2026

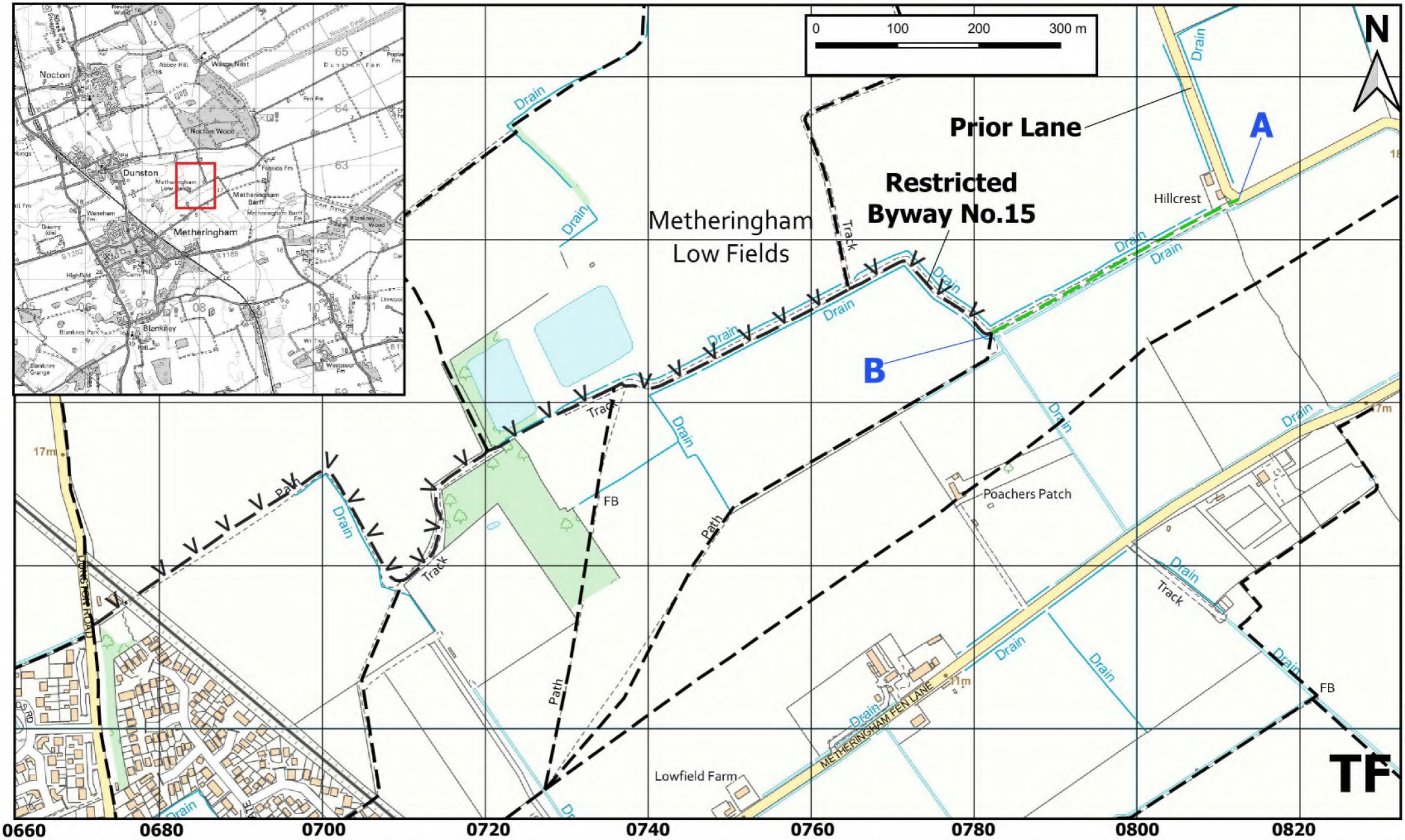


ANDY GUTHERSON, EXECUTIVE DIRECTOR OF PLACE

LINCOLNSHIRE COUNTY COUNCIL

I certify that on ..... I posted notices of which this is a true copy along the affected route and kept them there until .....

Signed ..... Dated .....



Lincolnshire COUNTY COUNCIL
Working for a better future

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

DUNSTON & METHERINGHAM
Definitive Map Modification Order
Addition of Restricted Byway No.1228 between Prior Lane and Restricted Byway No.15

Drn. JH Date 18.08.2026

Drawing No.: 2026/026/DMMO595/A4

Scale: 1:6,000

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Legend

- Restricted Byway No. 1228
- Unaffected Public Footpath
- Unaffected Restricted Byway

WILDLIFE AND COUNTRYSIDE ACT 1981

LINCOLNSHIRE COUNTY COUNCIL

ADDITION OF RESTRICTED BYWAY NUMBER 1228 DUNSTON AND METHERINGHAM

DEFINITIVE MAP MODIFICATION ORDER 2026

This Order is made by Lincolnshire County Council ("the Authority") under section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the Act") because it appears to the Authority that the Definitive Map and Statement for the area of the County of Lincoln – Parts of Kesteven (former North Kesteven Rural District) require modification in consequence of the occurrence of an event specified in section 53(3)(c)(i) of the Act namely the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a restricted byway AND section 53(3)(c)(iii) of the Act namely that the particulars contained in the statement require modification.

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

1. For the purposes of this Order the relevant date is 15 September 2026

2. The Lincolnshire County Council Definitive Map and Statement for the area of the County of Lincoln – Parts of Kesteven (former North Kesteven Rural District)

shall be modified as described in Part I and Part II of the Schedule and shown on the Drawing attached to this Order

3. This Order shall take effect on the date it is confirmed and may be cited as the Lincolnshire County Council, Addition of Restricted Byway Number 1228 Dunston and Metheringham, Definitive Map Modification Order 2026

Given under the Common Seal of Lincolnshire County Council this 15th day of SEPTEMBER Two thousand and twenty six

THE COMMON SEAL of)

LINCOLNSHIRE COUNTY COUNCIL)

was hereunto affixed in the)

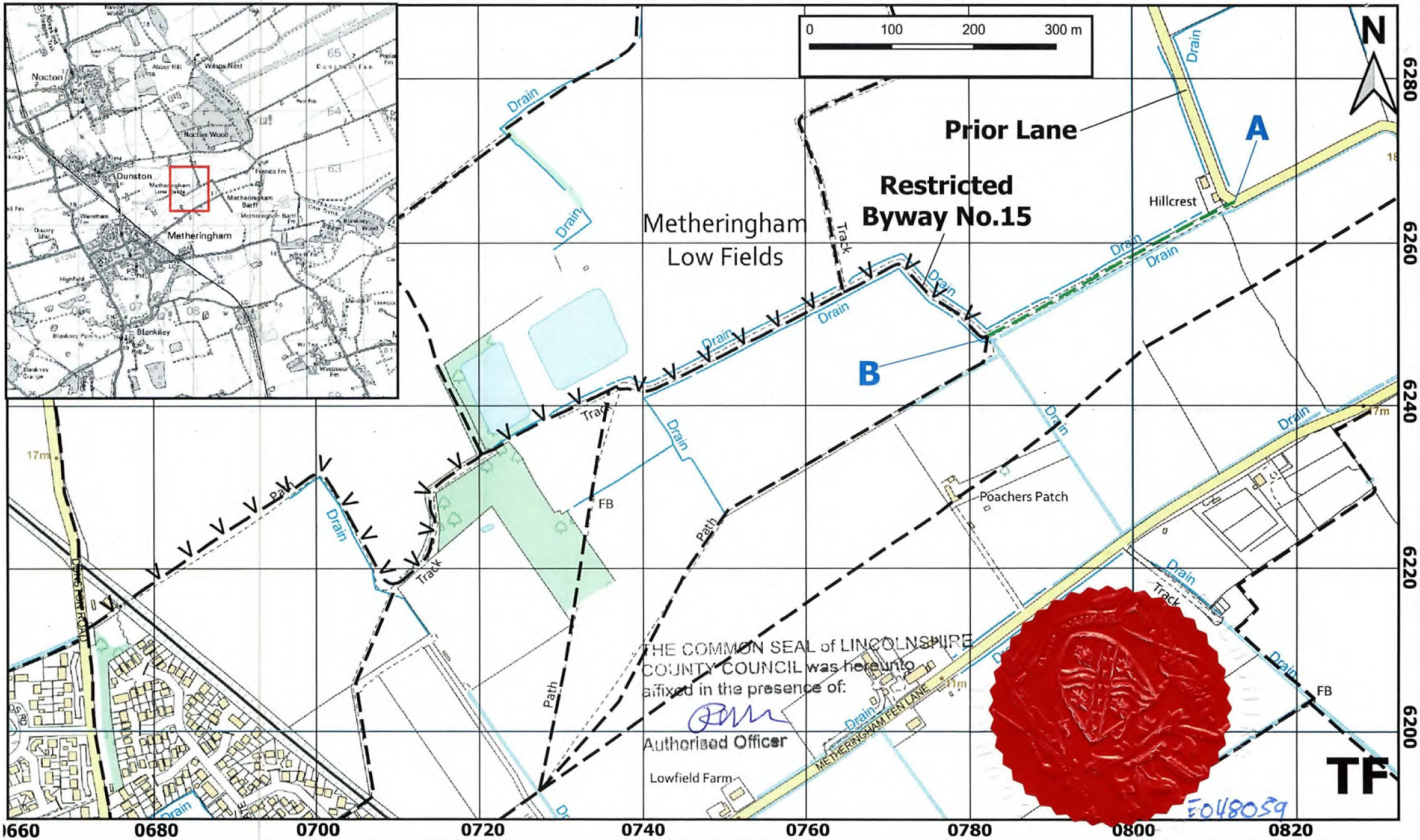
presence of :-)

E048059

Authorised Officer

Paula Coleman
Deputy Head of Legal

Printed Name of Authorised Officer
who is authorised under the Council's Constitution to
execute documents on behalf of Lincolnshire County Council



THE COMMON SEAL of LINCOLNSHIRE COUNTY COUNCIL was hereunto affixed in the presence of:

Authorised Officer

E048059

Lincolnshire County Council
Working for a better future

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

DUNSTON & METHERINGHAM
Definitive Map Modification Order
Addition of Restricted Byway No.1228 between Prior Lane and Restricted Byway No.15

Drn. JH Date 18.08.2026

Drawing No.: 2026/026/DMMO595/A4

Scale: 1:6,000

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Legend

- Restricted Byway No. 1228
- Unaffected Public Footpath
- Unaffected Restricted Byway

SCHEDULE

PART I

Modification of the Definitive Map

Description of path to be added

In the Parishes of Dunston and Metheringham

Restricted Byway Number 1228 with a width of 9.14 metres (equivalent to 30 feet) running from Prior Lane at Ordnance Survey Grid Reference (OSGR) TF 0812 6264 (A) in a generally west south westerly direction for approximately 344 metres to meet with Metheringham Restricted Byway Number 15 at OSGR TF 0782 6248 (B). The total length of restricted byway to be added to be approximately 344 metres as shown between points A-B in annexed Drawing Number 2026/026/DMMO595/A4.

PART II

Modification of the Definitive Statement

Variation of particulars of paths or ways

The following details shall be added to the Statement for Dunston

No. of path, etc.	Kind of Path, etc.	Position
1228	Restricted Byway	The restricted byway runs from Prior Lane at OSGR TF 0812 6264 in a west south westerly direction for approximately 344 metres to meet with Restricted Byway Number 15 at OSGR TF 0782 6248. In combination with that part of the restricted byway that lies in Metheringham Parish and is recorded as Metheringham Restricted Byway Number 1228, the route has a total width of 9.14 metres (equivalent to 30 feet).

The following details shall be added to the Statement for Metheringham

No. of path, etc.	Kind of Path, etc.	Position
1228	Restricted Byway	The restricted byway runs from Prior Lane at OSGR TF 0812 6264 in a west south westerly

		direction for approximately 344 metres to meet with Restricted Byway Number 15 at OSGR TF 0782 6248. In combination with that part of the restricted byway that lies in Dunston Parish and is recorded as Dunston Restricted Byway Number 1228, the route has a total width of 9.14 metres (equivalent to 30 feet).

The following details for Restricted Byway 15 to the Statement for Metheringham shall be varied to read

No. of path, etc.	**Kind of Path, etc.**	**Position**
15	Restricted Byway	Dunston Bridge – Metheringham Restricted Byway Number 1228 and Dunston Restricted Byway Number 1228.

DATED 15 SEPTEMBER 2026

WILDLIFE AND COUNTRYSIDE ACT 1981

LINCOLNSHIRE COUNTY COUNCIL

ADDITION OF RESTRICTED BYWAY NUMBER 1228 DUNSTON AND METHERINGHAM

DEFINITIVE MAP MODIFICATION ORDER 2026

Legal Services Lincolnshire

County Offices

Newland

Lincoln

Lincolnshire COUNTY COUNCIL
Working for a better future

Case Decision

Definitive Map Modification Order Case 595
Claimed addition of public bridleway between Restricted Byway No. 15 and Prior Lane in the parish of Dunston

Summary of Decision:

To make a definitive map modification order to record a restricted byway running between Restricted Byway No. 15 and Prior Lane in the parish of Dunston

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 public bridleway between Restricted Byway No. 15 and Prior Lane in the parish of Dunston. This route is referred to hereafter as "the Application Route". A copy of the Application and accompanying plan is available at Dunston, Metheringham DMMO 595 – Lincolnshire County Council. The attached "Case Decision Plan" (Plan Ref. DMMO/595/Dunston & Metheringham/CDP) identifies the Application Route by a broken black line between points A-B.

2. At the time the Definitive Map and Statement were prepared, the route of Restricted Byway No. 15 and the Application Route lay within the parish of Metheringham. Subsequent alterations to the parish boundary between Metheringham and Dunston have resulted in the Application Route now falling within the parish of Dunston.

3. Prior Lane is referred to in some of the documentary evidence as Priory Lane and Prior Road.

Requirements and tests of the legislation

4. 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.

5. The issue to be considered is 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.

6. 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

7. 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 indefinitely[1] 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.

8. The 1779 Inclosure Award for Metheringham 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 Metheringham 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. The Act also stated that private roads and ways should be made, supported and repaired by either a parochial rate or assessment or by the proprietors of the allotments to be made.

9. The Application Route is depicted on the Award plan as the eastern section of a private road identified as '*Low Field North Road*', extending between Dunston Road and Fen Side Road.

10. The Award records that this route was set out by the Commissioners with the breadth of thirty feet, and states that it '*shall be for the use and free passage as well of the*

[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*'

Owners and Occupiers for the time being of the several allotments herein after set out (No 12, No 18 and No 20) as also for the Owners and Occupiers for the time being of the old inclosures marked in the said annexed chart or map (36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81) and of their and every of their Servants, Agents and Labourers on Foot or with Horses Cattle and Carriages and of no other person or persons whomsoever'.

11. The maintenance of the 21 private roads set out in the Award was described as '*shall from time to time for ever hereafter be maintained supported and kept in repair by the inhabitants and occupiers of land within the said parish of Metheringham for the time being in the same manner and by the same proportion of work and labour thereon with respect to property and occupation of land within the said parish as publick Highways are by law directed and required to be maintained and kept in repair*'.

12. The description of '*Low Field North Road*' is somewhat ambiguous. It states that the road extends to meet '*Fen Side Road*'; however, the detailed wording ceases at the '*southerly*' direction and does not describe the continuation eastwards to the point where it would meet '*Fen Side Road*'. In the description of '*Fen Side Road*', it is stated to run '*…in a southerly direction till it comes to the east end of a Private Road herein after set out called the Low Field North Road and from thence to extend in an easterly direction*'. The inference, therefore, is that '*Low Field North Road*' was intended to continue in an easterly direction to meet '*Fen Side Road*', but this continuation is not set out explicitly in the detailed description. This missing section corresponds to the Application Route.

13. A late 18th century plan depicts the Application Route forming part of the '*Low Field North Road*' set out in the Inclosure Award. The purpose of the plan is not known.

14. The early commercial maps, including the 1828 Bryant's Map, the 1830 Greenwood's Map, 1819 Ordnance Survey Drawing, 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 '*Low Field North Road*' in the Inclosure Award. These maps depict the route forming part of a wider historical road network connecting villages and communities.

15. The plan accompanying the 1847 Tithe Apportionment & Award for part of the parish of Metheringham depicts the Application Route; however, the route is not described within the accompanying Award.

16. Three railway plans and reference books relating to the area of the Application Route, dated between 1864 and 1877, depict the route. The 1864 Lancashire and Yorkshire and Great Eastern Junction Railway refers to the route as a '*road, ditch and pasturage*' in the ownership of the '*Surveyor of Highways and others*'. The 1870 Coal Owners Association London Railway and 1877 Great Northern Railway Spalding to Lincoln

both refer to the route as a '*public highway*' owned by the '*Surveyor of Highways*' and the '*Surveyor of Highways for Metheringham*' respectively.

17. 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.

18. 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 National Grid), Scale 1:50,000 (or approximately 1¼-Inch), and in leisure series (Pathfinder, Landranger and Explorer) Maps dating from 1887 to 2002. Across these various sources, the Application Route is shown with differing classifications including '*other road*', '*unmetalled road*', '*minor road*', '*other road poor or unmetalled*' and '*drive or track*'.

19. 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 private road set out by the Commissioners in the 1779 Metheringham Inclosure Award.

20. The Finance (1909/10) Act 1910 introduced a new land tax 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.

21. 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 Application Route appears to be braced to hereditament '*552*'; however, no deduction is shown for a right of way in the Valuation Book, nor are any such deductions recorded elsewhere within Metheringham Parish. 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 the ambiguity.

22. The c.1929 Highways Handover Map shows highways maintainable at public expense. The Application Route is coloured red, along with the remainder of the route set out as '*Low Field North Road*' in the Inclosure Award. The c.1980s/1990s Liability for Maintenance Map, the 1990 Highways Maintenance Map and both the 2016 and current List of Streets do not record the Application Route as publicly maintainable.

23. 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.

24. The Parish Path Survey Notes for Metheringham, Provisional Statement and Definitive Statement from the 1950s all record the Application Route. The Parish Path Survey Notes mark the route with blue crosses between Dunston Road and Prior Lane. It is numbered '*15*' and described as a '*C.R.F.*' or '*Public Carriage or Cart Road or Green Lane mainly used as a footpath*'. The section of the survey relating to the Application Route is described as '*…and has gaps in the hedges leading into the fields and ends into Priory Lane. This latter part is known as Lake's Lane*'.

25. The notes for '*Path 10*' state '*…leading into Lake's Lane…*'.

26. The Statements accompanying the Provisional and Definitive Maps include '*15*' as a '*C.R.F.*' and describe it as running between '*Dunston Road – Priory Road*'. However, the Definitive Map does not include the final section extending to Prior Lane. The Provisional Map has not survived.

27. Whilst the 1968 Draft Revised Public Rights of Way Map depicts with a dashed green line a Road Used as a Public Path (RUPP) in the location of the 1779 Metheringham Inclosure Award, the section relating to the Application Route is not marked. The c.1984-2004 Obsolete Paper Working Copy Public Rights of Way Map marks the entire length of the Inclosure Award route as a restricted byway.

28. In 2000, Metheringham Parish Paths Partnership wrote to the County Council in support of an application for the missing link between RUPP 15 and Prior Lane. However, no application was ever received.

29. Aerial photographs from 1999, 2003 and 2025 show a single track in the vicinity of the Application Route. Google Street View images from 2009, 2022 and 2025 taken from point A on the Case Decision Plan show a farm track. Overall, the photographs are not conclusive in demonstrating the existence of a public right of way.

Other evidence that might be relevant to the matter

30. The Applicant asserts that, as the Inclosure Award states that private roads and ways should be kept in repair by the inhabitants and occupiers of land within the parish of Metheringham to the same standard as public highways are to be maintained, this means that those private roads and ways were, in fact, public roads and ways. There are several points to consider in response.

31. The Commissioners created three distinct categories of way: public roads and highways, private ways or roads, and footpaths. The ten public roads and highways are typically described as extending from one Lordship to another, passing through the parish of Metheringham, or connecting public roads within the parish. These public roads were required to be not less than forty feet in breadth, with all but one actually set out at sixty feet. They were designated '*for the use and free passage of*

all persons whatsoever on foot and with horses, cattle and carriages' and were to be maintained, supported and repaired as all other high roads were by law maintained.

32. The twenty-one private roads were generally set out to provide access to the various new and ancient inclosures described in the Award. They connected one public road to another, a public road to inclosures, or existing roads to one another. Their widths varied between twenty and sixty feet. Permitted usage reveals four categories of user:

- Owners or occupiers of lands in the parish of Metheringham
- Owners or occupiers of specified adjoining allotments and/or ancient inclosures
- Owners or occupiers of the fenlands in the parish
- Owners or occupiers of the windmill

In addition, these routes could also be used by the servants, agents, and labourers of the above categories, on foot or with horses, cattle, or carriages, and by *'no other person*' (the exception being the windmill, which also permitted customers). Maintenance responsibilities lay with the inhabitants and occupiers of land in the parish, in the same manner and proportion of work and labour as applied to public highways.

33. The twelve footways were set out for the free use and passage of the inhabitants of the parish of Metheringham and any other persons on foot. The owners or occupiers of the land over which the footways passed were responsible, at their own expense, for erecting stiles and bridges and maintaining them.

34. A clear distinction existed between the public at large ('*any other persons*') and restricted user groups within the parish ('*and no other person*'). Public roads could be used by all, and footways by parishioners and others on foot, whereas private roads were limited to specified landowners, occupiers, and their representatives. For '*Low Field North Road*', usage was limited to the owners and occupiers of the adjoining allotments and ancient inclosures, and their servants, agents, and labourers and '*no other person*'.

35. There has long been a difficulty interpreting the term "private road" in inclosure awards. In <u>*Dunlop v Secretary of State for the Environment and Cambridgeshire County Council*</u> (QBD) (1995) 94 LGR 427, Sedley J held that the term "private carriage road" was deliberately used in the Glatton with Holme Inclosure Award '*as a term of art distinguishing the particular road according to the extent of the particular rights over it from the public carriage roads on which all subjects enjoyed an equal right of vehicular passage*'. However, that judgement concerned a different award and did not address routes with specified user groups.

36. The Award indicates that public roads were to be at least forty feet wide and maintained to the standard required by law. The private roads, generally narrower, were to be repaired either through parochial rates or by the proprietors of the allotments served by them. Parochial rates were typically paid by landowners and occupiers based on the annual rental value of their land. Although '*Low Field North Road*' required repair '*as publick roads are by law directed to be maintained and kept in repair*', this may indicate equivalence of standard, not that such private roads were a category of public road. The Award is not explicit as to whether responsibility lay solely with adjoining owners or with the broader parish.

37. The Award provided for grass and herbage growing on the public and private roads and ways. These were to belong either to the owners of the adjoining inclosures or be applied to general or individual use. Where public or private roads were fenced on both sides, the herbage could be let year to year or leased for up to 21 years, with income used first for repairing all public and private roads and any surplus applied to parochial purposes. These arrangements required the concurrence and consent of the majority of owners and occupiers present at a General Meeting.

38. The Applicant has applied for a right of way with the status of a bridleway. The basis is that '*Low Field North Road*' was awarded as a private road of thirty feet wide and, if fenced, the monies generated from the sale of herbage were used for the maintenance of public roads, thus making it a public road. At the time, public roads were required to have a minimum width, in this case forty feet.

39. The Applicant cites *Craggs v Secretary of State for the Environment* [2020] EWHC 3346 (Admin), in which it was determined that it was *ultra vires* for the Commissioners of the 1799 Shipham and Winscombe Inclosure Award to create public roads of less than the required width, but *intra vires* to create public bridleways of any suitable width.

40. However, in *Craggs*, the usage of the route was for all persons, not limited to the owners or occupiers of the land. The Applicant contends that, as *'Low Field North Road*' was (perhaps) fenced, this made it public; being only thirty feet it was *ultra vires* as a public road, and by the reasoning in *Craggs* would result in a public bridleway.

41. The County Council considers that there are too many differences between the *Craggs* Inclosure Award and the Metheringham Inclosure Award to conclude that '*Low Field North Road*' was in fact a private road carrying public bridleway rights.

42. In summary, the status of '*Low Field North Road*' remains inconclusive. Although named as a private road with use limited to adjacent landowners and their representatives, and although its width was less than that prescribed for public roads, the Award does not make clear whether its maintenance fell to the adjoining owners or to the parish via a parochial rate. It is assumed, but not confirmed, that the road was fenced, with herbage potentially contributing to the upkeep of both public and

private roads. Although the Award evidence is insufficient to conclusively establish public rights, subsequent documentary evidence must also be considered.

43. Whatever the precise status of '*Low Field North Road*' in the Award, later documentary evidence suggests that public highway rights became established over the route between Dunston Road and point B on the Case Decision Plan. In particular, the 1929 Highways Handover Map shows the whole route, including the Application Route, as maintainable at public expense. As the purpose of the Handover Map was to identify highways maintainable at public expense, inclusion of the route is strong evidence that it was regarded at that time as a public highway.

44. Consideration is now given to the anomaly between the Definitive Map and the Definitive Statement. The Definitive Map depicts '*Restricted Byway 15*' commencing at Dunston Road and following the route of '*Low Field North Road*' as set out in the Award but stopping short of Prior Lane at point B on the Case Decision Plan. In contrast, the Definitive Statement clearly describes '*Restricted Byway 15*' as running between '*Dunston Road and Priory Lane*'.

45. In *Kotarski v Secretary of State for Environment, Food and Rural Affairs and Devon County Council* [2010] EWHC 1036 (Admin), Simon J held that '*the precondition for the exercise of the statutory power of review is the discovery of evidence which (when considered with all other relevant evidence) shows that particulars contained in the map and statement require modification. The discovery that there is a divergence between the two is plainly the discovery of such evidence, and it is unnecessary that it should be characterised as "new evidence"*'. He also referred to the following principles:

- '*The general approach of the Court of Appeal in R v Secretary of State for the Environment ex. p. Burrows and Simms* [1991] 2 QB 354 ….[regarding the tension between s.53 and s.56 of the 1981 Act]*…and 'the importance of maintaining an authoritative map and statement of the highest attainable accuracy''*

- *'A generally beneficial purpose that there should be powers to make definitive maps and statements consistent when they are found to be inconsistent'*

- *'The decision of Potts J in Mayhew v Secretary of State for the Environment (1993)* 65 P & CR 344 *in which he specifically rejected the argument that the s.53(3)(c) modifications should be restricted to cases where 'new evidence' had been discovered'*

46. Listed below are the stages involved in the preparation of the Definitive Map and Statement for the parish of Metheringham in the former Rural District of North Kesteven:

- September 1950 – Parish Path Card 15 describes the route set out as '*Low Field North Road*' in the Inclosure Award running between '*Dunston Bridge and*

Priory Lane'. The final section relating to the Application Route is described as '*…a cart track that is joined by path 10 and has gaps in the hedges leading into the fields and ends in Priory Lane. This latter part is known as "Lake's Lane"'*

- 1950s – Parish Path Survey map marks, with blue crosses, the route as set out as '*Low Field North Road*' in the Inclosure Award and numbers it '*15*'
- 1950s – Parish Path Summary Survey of Rights lists path '*15*' described as a '*C.R.F*' between '*Dunston Bridge and Priory Road*'. It is described as part green lane, part cart track with gates, stiles, and gaps. The section for '*grounds for believing the path to be public*' is not completed. Some other routes on the sheet are described as '*awarded*' or '*part awarded*'
- September 1953 – Notice placed in the '*London Gazette*' for the Draft Map and Statement, requesting representations and objections by 16 January 1954
- July 1957 – Provisional Map and Statement published. The Statement includes path '*15*' described as '*C.R.F*' between '*Dunston Bridge and Priory Road*'
- July 1957 – Notice in the '*London Gazette*' for the Provisional Map and Statement, requesting applications to Quarter Sessions within 20 days
- August 1957 – Replacement notice correcting the 20-day error to 28 days
- May 1959 – Definitive Map and Statement published with a relevant date of 1 July 1953
- May 1959 – Notice placed in the '*London Gazette*' for the Definitive Map and Statement, requesting applications to the High Court within six weeks

47. It can be seen that the correct statutory procedures were followed throughout. There is no evidence that the discrepancy between the Map and the Statement was identified during the process. The description of the route in the Definitive Statement is consistent with the Parish Path Survey Notes and Map, and the Provisional Statement. It is therefore considered that a drafting error occurred during preparation of the Definitive Map, as the route is clearly marked on the Parish Path Survey Map. Since copies of the Draft and Provisional Maps have not survived, it is not possible to determine at which stage the Application Route was omitted.

Conclusion

48. The 1779 Metheringham Inclosure Award demonstrates that the Commissioners, under the powers conferred on them by an Act of Parliament, had appointed and set out a 30-foot-wide private road called '*Low Field North Road*' which extended between Dunston Road and Fen Side Road, of which the Application Route is the final easterly section. The road was restricted to use by the owners/occupiers and their representatives, with maintenance to be to the same standard as public roads, paid

for either by a parochial rate or by the owners/occupiers. Due to the ambiguity, it is not possible to determine whether public rights of way existed over the private road.

49. The early 19th century maps reinforce the existence of the Application Route as the easterly 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 '*unmetalled road*'. Together, these maps are supportive of the existence of the route as set out in the Inclosure Award.

50. Three railway plans and books of reference dating from 1864 to 1877 record a '*road*' or '*public highway*' at the location of the Application Route, and all identify the Surveyor of Highways as either one of, or the sole, owner. This would suggest the route had a 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 1864 and 1870 railways were ever built, the plans nevertheless support and acknowledge the existence of the public road. The 1929 Highways Handover Map further supports the route as publicly maintainable.

51. 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 Metheringham 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.

52. The discrepancy between the Definitive Map and Statement amounts to a discovery of evidence. The Parish Path Survey Notes, Provisional Statement and Definitive Statement all support the connection of the route to Prior Lane, reflecting the route set out in the 1779 Inclosure Award.

53. Taken as a whole, the evidence is insufficient to establish that public rights arose directly from the 1779 Inclosure Award. However, the later railway records, highway maintenance records, parish survey evidence, and Definitive Statement collectively provide sufficient evidence that a public highway carrying higher rights than a footpath or bridleway is reasonably alleged to subsist.

54. There is no evidence to show that it has legally been stopped up or diverted. Accordingly, public rights of way on foot, with horses, and with mechanically and non-mechanically propelled vehicles are shown to subsist over the 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

55. 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.

56. 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.

57. 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.

58. 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 30-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

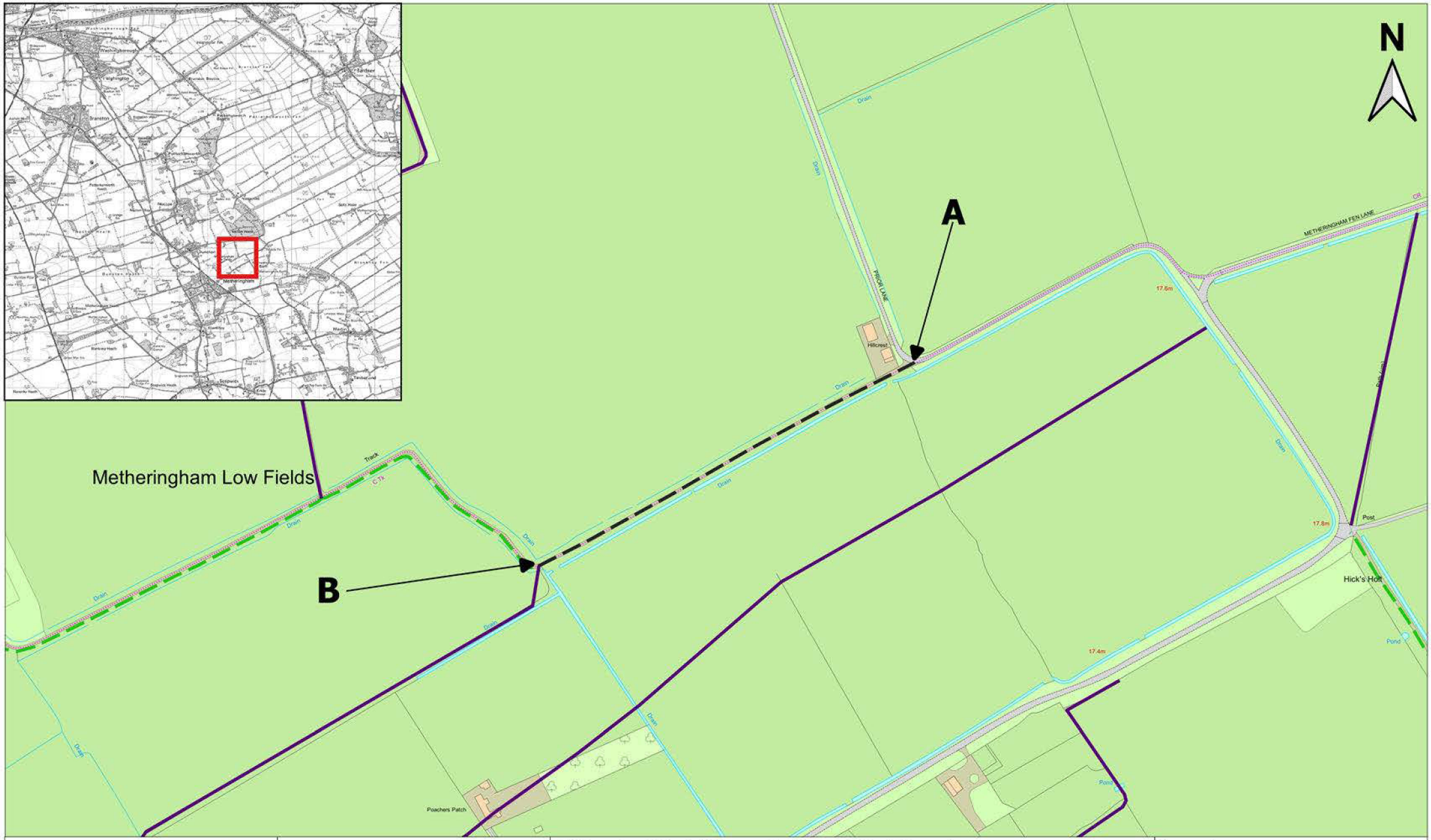
59. **That a definitive map modification order be made under section 53(3)(c)(i) of the 1981 Act seeking to add to the Definitive Map and Statement for the area the Application Route as a restricted byway with a width of 9.14 metres (equivalent to 30 feet), on the grounds that the evidence demonstrates 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 on the attached plan DMMO/595/Dunston & Metheringham/CDP.**

Signed:

Name: Andrew Pickwell

Position: Senior Definitive Map Officer

Dated: 9 July 2026



Lincolnshire COUNTY COUNCIL
Working for a better future

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

Claimed public bridleway in the parish of Dunston

Ref: DMMO/595/Dunston & Metheringham/CDP

Date: 16.06.2025

Scale: 1: 4,000 @ A4

Legend

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

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