

# **Decision Authorisation**

# <u>Alleged footpath through Tealby Thorpe Mill between</u> Thorpe Lane and the westernmost end of Public Footpath 132, Tealby

Case Reference: DMMO/238/Tealby

#### **The Modification Order Case**

In 2002, the County Council initiated a modification order case for the "missing link" between Thorpe Lane and the westernmost end of Public Footpath on the basis that the parish path survey notes show a continuation of the Public Footpath 132 running through Thorpe Mill to Thorpe Lane. This was discovered during the process used by the County Council to divert Public Footpath 132. The Public Path Diversion Order was made on 12 March 2003, and it was confirmed as unopposed on 11 July 2003. A Definitive Map Legal Event Modification Order was made on 4 August 2003 to amend the Definitive Map and Statement for the area inconsequence of the public footpath's diversion by the Public Path Order. The extract from the electronic working copy public rights of way map in Appendix 1 shows the current legal line of Public Footpath 132 on modern Ordnance Survey mapping.

#### **Summary of evidence**

2. The National Parks and Access to the Countryside Act 1949 required every surveying authority to draw up a definitive map and statement recording the existence of public rights of way in their respective areas. This legislation provided that a definitive map and statement is conclusive evidence in law as to the existence of a public right of way, its classification and any conditions or limitations recorded in them (this provision is now provided by section 56 of the 1981 Act). The initial stage of the process involved surveying authorities, commonly county councils, seeking

information from parish councils, via urban and rural district councils, about the routes they believed to be public rights of way, either because they were recorded as such in historical documents or because they had been subject to public use for a period. This information was often compiled by a parish council in the form of a survey which was returned to the surveying authority for a determination based on the evidence on whether the routes surveyed were public rights of way to warrant their inclusion in the drawing up of a definitive map and statement.

- 3. A survey of paths in Tealby Parish was undertaken in 1951. The survey map (Appendix 2/1) is an Ordnance Survey 1:10,560 scale map that has been annotated. The original course of Public Footpath 132<sup>1</sup> is mark on the plan as path'4' and it is shown running west southwest from Sandy Lane through Lea House and over a field to the eastern boundary of Thorpe Mill. The path is then shown continuing through between the buildings and through the grounds of Thorpe Mill to meet with Thorpe Lane. The survey form for Path 4 (Appendix 2/2) describes the route as a 'short cut from Sandy Lane to Tealby Thorpe. The eastern end of the route is described as stile leading out off metalled footpath along Sandy Lane from Tealby, and its western end is described as stile leading out of Thorpe Mill Yard'. The description of the route given in the survey form states, 'starts in Sandy Lane from stile near Lea Close; through yard over stile into grass field; over stile into Mill Yard; over stile into road. Path very well defined'. The survey map shows the stiles demarcated by the letter 'S' on each side of Lea House and Thorpe Mill. The survey form records that 'all stiles renewed by L.C.C. winter 1950/51' and that the grounds for believing it to be public to be 'maintained at public expense over a number of years and as recent as 1950/51'. The abbreviation 'L.C.C.' likely means Lindsey County Council as it was the highway authority for the area and there was no other public body for the area would have had these initials at that time.
- 4. The statutory process used to draw up the Definitive Map and Statement was then subject to three stages: draft, provisional and definitive. A draft map and statement were drawn up to include the routes that had been surveyed by the parishes and considered to be public rights of way.<sup>2</sup> In preparing the Draft Map and Statement, the survey authority (Lindsey County Council) tabulated the information in the Tealby Parish Path Survey into the form of a schedule. The Summary Schedule of the Tealby Parish Path Survey (Appendix 3) describes the route of Path 4 as 'Sandy Lane to Tealby Thorpe from near Lea Close to Mill Yard', and it records that it has been subject to 20 years usage, that it was 'very well defined', and it refers to the four stiles that were maintained by Lindsey County Council as recorded in the parish path survey. This suggests that the route ran through Thorpe Mill to Thorpe Lane.

<sup>&</sup>lt;sup>1</sup> Public Footpath 132 was diverted by a Public Path Order made and confirmed under section 119 of the Highways Act 1980 by Lincolnshire County Council in 2003

<sup>&</sup>lt;sup>2</sup> The Draft Map and Statement for the areas of the former Caistor Rural District and Market Rasen Urban District have not survived.

- 5. No copies of the Draft Map and Statement drawn up and approved by Lindsey County Council have survived, but there is a map showing public footpaths coloured blue and bridleways coloured green (Appendix 4). The position and numbering of the paths and bridleways are similar to those shown in the Provision and Definitive Maps, so it might to relate to the process that was used to draw up the Definitive Map and Statement. Public Footpath 132 is not shown marked on the map sheet that shows Tealby village. The adjacent map sheet that would show Thorpe Mill is missing.
- 6. Notices informing of the preparation of the Draft Map and Statement were published in November 1954. Anyone had the right to inspect the Draft Map and Statement and lodge objections against routes that were omitted from or included in the Draft Map and Statement on the grounds that they were or were not public rights of way, but they had to do this within four months of the publication of the notice advertising the preparation of the Draft Map and Statement.
- 7. Following the consideration of the objections lodged against the Draft Map and Statement, Lindsey County Council drew up a map showing the modifications to be made to the Draft Map. The map (Appendix 5) only shows those routes that were to be added to or deleted from the Draft Map. Public Footpath 132 is not marked as a route to be added to or deleted from the Draft Map. Notices informing of the modifications proposed to be made to the Draft Map were published in May 1967. Anyone had the right to object to Lindsey County Council's determinations to add or remove the routes shown in the map of the modifications proposed to be made to the Draft Map.
- 8. Following the determination of the objections to the routes proposed to be added to or deleted from the Draft Map and Statement, Lindsey County Council prepared a provisional map and statement. They showed the routes recorded in the Draft Map and Statement subject to the amendments resulting from the outcome of determinations of the objections that were lodged against the routes omitted from or included in the Draft Map and Statement. The Provisional Map (Appendix 6A) comprises several map sheets of a scale of 1:25,000. The map sheet showing Tealby village shows Public Footpath 132 running from Sandy Lane to the edged of the map sheet at Thorpe Mill. The route is not shown continuing to Thorpe Road in the adjoining map sheet. However, it should be noted that at a scale of 1:25,000 the distance shown between the Thorpe Lane and the edge of the map sheet is so small that had any continuation of the route be shown it would have just been the diameter of a pen nib. Therefore, it is not possible to ascertain if the intention was for the public footpath to stop at the edge of the map sheet at Thorpe Mill or if it was simply an oversight perhaps caused by the limitations of the Ordnance Survey maps used as the basemap for the Provisional Map.
- 9. Notices informing of the preparation of the Provisional Map and Statement were published in November 1970. Just the owner, lessee, or occupier of land subject to a route shown in the Provisional Map and Statement could apply to Quarter

- Sessions for a declaration that there was no public right of way over their land, and they had to do this within 28 days of the publication of the notice.
- 10. Lindsey County Council then prepared a definitive map and statement, and it records all the routes shown in the Provisional Map and Statement except for those where Quarter Sessions declared they were not public rights of way. Notices informing of the preparation of the Definitive Map and Statement, the legal record of public rights of way, were published in December 1971. The relevant date for the Definitive Map and Statement (this is the date on which the public rights of way shown in the Definitive Map and Statement subsisted) is 31 May 1954.
- 11. The Definitive Map (Appendix 7A) comprises of several map sheets of a scale of 1:25,000. The public rights of way shown on them are subject to "positional drift" caused by the printing of the routes onto the Ordnance Survey maps used as the basemaps for the Definitive Map. When taking positional drift into account together with the Provisional Map from which the Definitive Map was drawn, Public Footpath 132 is shown on the map sheet covering Tealby village running between Sandy Lane and the edge of the map sheet at Thorpe Mill, but no route is shown continuing to Thorpe Lane on the adjacent map sheet. Like the Provisional Map, the distance shown between Thorpe Lane and the edge of the map sheet is so small that had any continuation of the route be shown it would have just been the diameter of a pen nib. Therefore, it is not possible to ascertain if the intention was for the route to public footpath to stop at the edge of the map sheet at Thorpe Mill or if it was simply an oversight perhaps caused by the limitations of the Ordnance Survey maps used as the basemap for the Definitive Map.
- 12. It should be noted that there is nothing in the records held by the County Council showing that objections or representations had been lodged against the inclusion of Public Footpath 132 or exclusion of its continuation through Thorpe Mill to Thorpe Lane at any of the stages of the statutory process used to draw up the Definitive Map and Statement.
- 13. For a modification order to be made seeking to record a public right of way over that part of the route shown in the parish path survey as running through Thorpe Mill, section 53(3)(c)(i) states that there must be '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 subsist or is reasonably alleged to subsist over land in the area to which the map relates'. The judgment Mayhew v Secretary of State for the Environment (1993) considered that "to discover" meant to 'find out or become aware of', that "discovery" involved a mental process 'in the sense of the discoverer applying his mind to something previously unknown to him', and that the "event" in section

- 53(3)(c) of the 1981 Act was the 'the finding out of some information which was not known to the surveying authority when the earlier map was prepared'.<sup>3</sup>
- 14. Given that the parish path surveys were the first stage of the statutory process used to prepare the Definitive Map and Statement, they would have been the primary documents that were taken into consideration by Lindsey County Council as part of that process. The Summary Schedule of the Tealby Parish Path Survey also provides evidence showing that the Tealby Parish Path Survey had been taken into consideration by Lindsey County Council in the preparation of the Draft Map and Statement, the second stage of the statutory process used to prepare the Draft Map and Statement. This means that the Parish Path Survey cannot constitute a "discovery of evidence" in the meaning of section 53(3)(c) of the 1981 Act. Therefore, there must be a discovery of new or unconsidered evidence to enable the re-evaluation of the parish path survey as evidence of the existence of a public right of way over the route in question.
- 15. A search has been undertaken in historical records held by Public Rights of Way & Access and Lincolnshire Archives. This has revealed an entry in the minutes of Tealby Parish Council's meeting of 23 November 1964 (Appendix 8) stating, 'After a letter had been read concerning footpaths, this matter was discussed. The Clerk was then asked to write to the Highway Department, asking if the footpaths in the district could be provided with finger posts. Also asking for the stile at the entrance to the footpath at Thorpe Mill to be replaced, and the one on Rasen Road repaired.' (Emphasis added). The parish path survey undertaken by Tealby Parish in 1951 as part of the process used to prepare the Definitive Map and Statement only shows one path at Thorpe Mill: Path 4 which runs from Sandy Lane through Lea Close and Thorpe Mill to Thorpe Lane. As point out in paragraph 3 above, the survey form for the path and the survey map show or refer to a stile at the entrance of the path at Thorpe Mill. This supports that the path referred to in the minutes to be the one shown as 'Path 4' in the parish path survey, and the request for the stile to be repaired suggests that the path was still in public use.
- 16. Given that this entry in the minutes to Tealby Parish Council's meeting of 23

  November 1964 was not discovered or considered in the process used to draw up
  the Definitive Map and Statement, this amounts to new or unconsidered evidence
  which would allow for the reconsideration of the Tealby Parish Path Survey and
  Summary Schedule which support that the path was maintained at public expense
  by the highway authority for the area at the time, Lindsey County Council, for public
  use.

#### Recommendation

17. In light of the above, I recommend that a definitive map evidential event modification order be made for the route shown as Path 4 in the Tealby Parish

<sup>&</sup>lt;sup>3</sup> Secretary of State for Environment, Food and Rural Affairs Appeal Decision FPS/G1440/14A/11 of 15 March 2021

Path Survey Map on the grounds that the 1951 Tealby Parish Path Survey provides sufficient evidence to reasonably allege that a public right of way of a classification of public footpath exists. Appendix 1 shows route of Path 4 recorded in the Tealby Parish Path Survey on modern Ordnance Survey mapping.

- 18. Paragraph 4.16 of the Department for Environment, Food and Rural Affairs' Rights of Way Circular (1/09), which provides guidance for surveying authorities, suggests that a modification order should include information about the width that is to be added to a definitive map and statement. Where no width is recorded for the route in the evidence, the Planning Inspectorate's Rights of Way Advice Note 16: Widths on Orders (29 July 2022 revision) should be taken into consideration. Paragraph 4.2 of the Advice Note suggests that in cases where there is no clear evidence of a width, the width that should be recorded in a modification order should be based on the type of user and what would be sufficient to enable two users to pass comfortably. I recommend that the definitive map evidential event modification order records the route with a 2-metre width as this would allow for two pedestrians pass comfortably.
- 19. The 1951 Tealby Parish Path Survey records the existence of two stiles located on the route where it runs from Thorpe Lane and where it meets with Tealby Public Footpath 132, i.e., on the boundaries of Thorpe Mill. Therefore, I also recommend that the modification order records limitations of a stile on the route at both these locations.

## Andrew Pickwell

Senior Definitive Map Officer Public rights of Way & Access 25.01.2024

#### **Authorisation**

I authorise the making of a definitive map evidential event modification order for the route applied for, which is shown in the plan at Appendix 7/1 attached, in line with the above recommendation.

Signed:

Job title: Public Rights of Way and Access Manager

Dated: 25<sup>th</sup> January 2024

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Appendix 5	Map showing the modifications proposed to be made to the Draft Map
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Appendix 8	Minutes of Tealby Parish Council's meeting of 23.11.1964

# APPENDIX 1 - Digital Working Copy of the Definitive Map marked with the route of the alleged footpath



Alleged footpa Footpath 132 a Footpath 132 a Ref: DMMO/238/T Date: 09.01,2024

Alleged footpath through Thorpe Mill between Public
Footpath 132 and Thorpe Lane

Ref: DMMO/238/Tealby

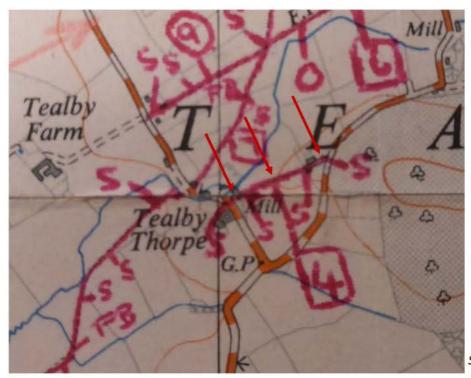
Legend

Alleged footpath
Public Footpath
Public Bridleway
Restricted Byway

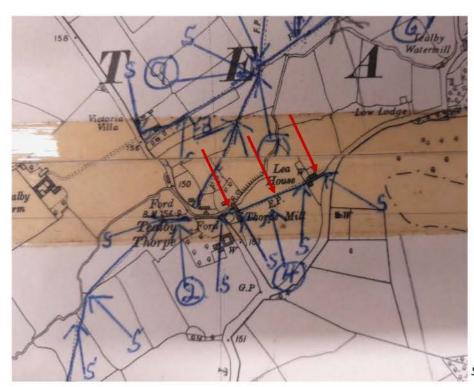
Scale: 1:1,250 @ A4

Byway Open to All Traffic

### **APPENDIX 2 - 1951 Tealby Parish Path Survey**



Source: Lincolnshire County Council



Source: Lincolnshire County Council

## **APPENDIX 2 - Tealby Parish Path Survey continued...**

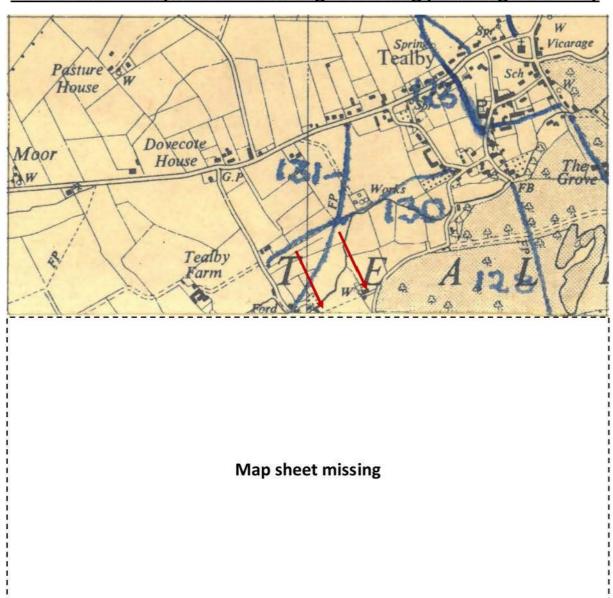
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National Parks and Access to the Countryside Act, 1945.
(1) Number of path on map 4. (PF132) (2) Symbol distinguishing status of path F.P.
(3) Local name (if any) of path and description of the purpose which the path serves to the public
Short cut from Sandy Lane to Tealby Thorpe.
(4) Description of each end of path: One end is described as follows:- Stile leading off metalled footpath along Sandy Lane from Tealby.
One ent is described as follows.
The other end is described as follows:
(5) Description of the course, condition and usefulness of the path, including such explanation as may be necessary of symbols (e.g. F.B., S., etc.)
marked on map, and including any information of the width of the path, nature of surface, obstructions etc., and any suggested extinguishment or diversion of the right of way
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Source: Lincolnshire County Council

## **APPENDIX 3 - Summary Schedule of the Tealby Parish Path Survey**

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APPENDIX 4 - Map of unknown origin showing public rights of way

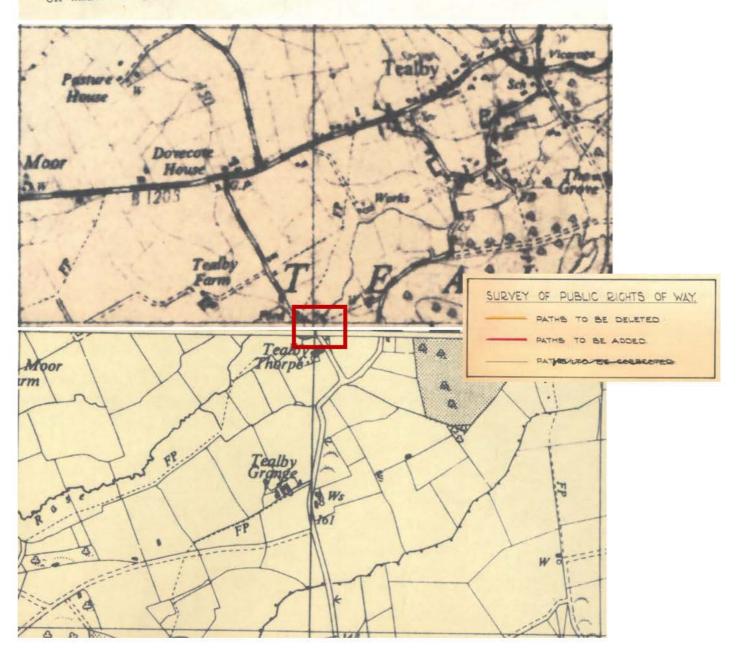


# APPENDIX 5 - 1967 Map showing the modifications to be made to the Draft Map

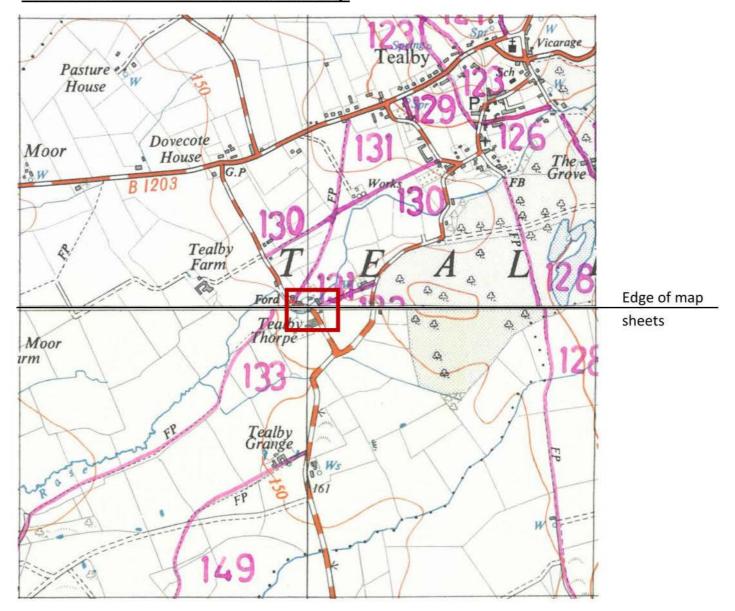
National Parks and Access to the Countryside Act, 1949
Public Rights of Way

This is the map which shows the modifications of the particulars contained in the draft Rights of Way Map and Statement which was prepared by the County Council of Lincoln, Parts of Lindsey under prepared by the above-mentioned Act in relation to the rights Section 27 of the above-mentioned Act in relation to the rights of way within the Rural District of Caistor and the Urban District of Market Rasen.

The public notice which was published in respect of these determinations to modify, required that any representations or objections with respect to these determinations shall be made in writing to the Clerk of the County Council at County Offices, in writing to the 10th June, 1967, and shall state the grounds on which they are made.



#### **APPENDIX 6A - 1968 Provisional Map**



#### APPENDIX 6B - 1968 Statement Accompanying the Provisional Map

#### COUNTY OF LINCOLN - PARTS OF LINDSEY

#### NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

#### PART IV - PUBLIC RIGHTS OF WAY

STATEMENT accompanying the provisional map showing all the footpaths, bridleways and roads used as public paths along which in the opinion of the County Council of Lincoln, Parts of Lindsey, a public right of way subsisted or is reasonably alleged to have subsisted on the 31st day of May, 1954, in the Market Rasen Urban District and the Caistor Rural District.

No. of right of way on map	Documents creating or modifying the right of way taken into account in preparing the map	Particulars as to the position and width or as to any limitations or conditions affecting the public right or way which it has been considered expedient to record
33 (part)	Nettleton Inclosure Award dated 16th May, 1795	
80 (part)	Bishop Norton Inclosure Award dated 7th October, 1772	
100 (part)	Nettleton Inclusure Award dated 16th May, 1795	
162 163 (part) 167 (part) 168 (part)	Market Rasen Inclosure Award dated 19th October, 1781	
		The public right of way over any public path or other

The public right of way over any public path or other way shown on the map along the bank of a river or drain is subject to any right which a River Board or Drainage Board may have to carry out drainage works in or in connection with such river and drain or to, through, across, or in connection with the bank or banks thereof.

MOTE Entries have only been made in this Statement in the case of rights of way clearly created or modified by documents. The existence of a right of way or the fact that the County Council allege that a right of way exists does not depend on an entry in this Statement. All rights of way shown on the map are alleged to be public rights of way.

This is the Statement approved by the County Council of Lincoln - Parts of Lindsey at their meeting on the 15th November, 1968, as the Statement accompanying the Provisional Rights of Way Map for the Market Rasen Urban District and the Caistor Rural District.

1. E. Lan

Clerk of the County Council.

# APPENDIX 7A - 1971 Definitive Map for the area of the former Rural District of Caistor and Urban District of Market Rasen

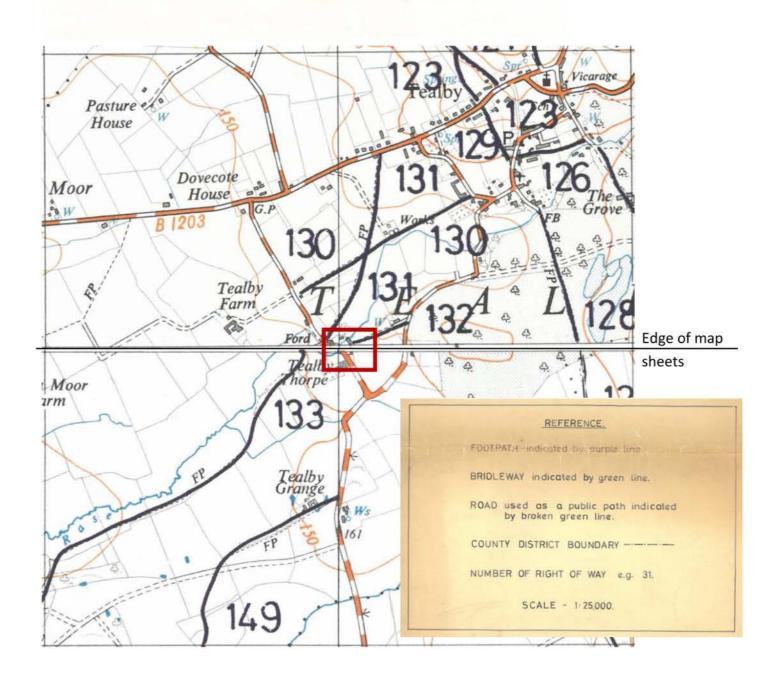
#### COUNTY OF LINCOLN - PARTS OF LINDSEY

#### NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT. 1949

#### PART IV - PUBLIC RIGHTS OF WAY

This is the map approved by the County Council of Lincoln, Parts of Lindsey at their meeting on the 4th January, 1971, as the definitive rights of way map for the Market Rasen Orban District and the Caistor Rural District, which shows all the footpaths, bridleways and roads used as public paths along which in the opinion of the Council a public right of way subsisted or is reasonably alleged to have subsisted on the thirty-first day of May, 1954.

W.E. Jan.
Clerk of the County Council



#### APPENDIX 7B - Statement accompanying the 1971 Definitive Map for the area of the former Rural District of Caistor

# NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

#### PART IV - PUBLIC RIGHTS OF WAY

STATEMENT accompanying the definitive map showing all the footpaths, bridleways and roads used as public paths along which in the opinion of the County Council of Lincoln, Parts of Lindsey, a public right of way subsisted or is reasonably alleged to have subsisted on the 31st day of May, 1954, in the Market Rasen Urban District and the Caistor Rural District.

No. of right of way on map	Documents creating or modifying the right of way t into account in preparing the map	aken Particulars as to the position and width or as to any limitations or conditions affecting the public right of way which it has been considered expedient to record
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100 (part)	Nettleton Inclosure Award dated 16th May, 1795	
162 ) 163 (part) ) 167 (part) ) 168 (part) )	Market Rasen Inclosure Award dated 19th October, 1	781
		The public right of way over any public path or other way shown on the map along the bank of a river or drain is subject to any right which a River Board or Drainage Board may have to carry out drainage works in or in connection with such river and drain or to, through, across, or in connection with the bank or banks thereof.

NOTE Entries have only been made in this Statement in the case of rights of way clearly created or modified by documents. The existence of a right of way or the fact that the County Council allege that a right of way exists does not depend on an entry in this Statement. All rights of way shown on the map are alleged to be public rights of way.

This is the Statement approved by the County Council of Lincoln - Parts of Lindsey at their meeting on the 4th January, 1971, as the Statement accompanying the Definitive Rights of Way Map for the Market Rasen Urban District and the Caistor Rural District.

W.E. Jan Clark of the County Council

**APPENDIX 8 - Minutes of Tealby Parish Council's meeting of 23.11.1964** 

253 a meeting of the Parente Commence Prece Low the School on many presence many her 25th 1964, when your presence in many her 25th 1964, when Ag Grades I Berrows. Play west
The meeting as above was held will have been and for the C. H. horthmore house here here of the Court and G. Buerons, and his Banks and his Court.
were read and signed.  We letter box on Rosen Road has now  The letter box on Rosen Road has now  The minute been moved to the position desired by the  Council.  Council.  On a result of the appeal to the various  organizations in the village for the Potendent.  Kennery hiem: Fund, Two quinners has been
meened from the Keally Garden See.  Ouring from the item about the vandeling in the willage the Condition of the bous hut has discussed. It was then decided that members of the Council should need at the hulf what measures need be taken to restore
Footpatts. after a letter had been send concerning footpaths, this matter was discussed. The Blech was then asked to write to The Highway
Dept, asking if the footpalls in the district could be provided with finger posts. also asking for the stile at the entrance to the footpall at Thompse hill to be teplaced, and the one or Rosson Road, repaired.