



Order Decision

Site visit made on 24 February 2025

by Claire Tregembo BA(Hons) MIPROW

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 06 March 2025

Order Ref: ROW/3317245

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Lincolnshire County Council, Addition of Public Footpath Number 1182 and 1183 Chapel St Leonards Definitive Map Modification Order 2021.
- The Order is dated 18 June 2021 and proposes to modify the Definitive Map and Statement for the area by adding two footpaths as shown in the Order plan and described in the Order Schedule.
- There were eleven objections and two representations outstanding when Lincolnshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. A Public Inquiry was arranged to hear the evidence for and against the confirmation of the Order. The evidence in support of the Order is largely user evidence. However, no one who had used the Order routes intended to give evidence at the Inquiry. This meant I was unlikely to hear anything that would assist my decision making that was not covered in the written evidence. The parties agreed that the Order could be determined using the written representation procedure instead.
2. Several objections were withdrawn after the Order was submitted for confirmation. When I carried out my site visit, only six remained.
3. I will refer to various points and sections shown on the Order map in my decision. I appended a copy of the Order map to the end of my decision for ease of reference.

Preliminary Matters

4. It is claimed the notices advertising the making of the Order displayed at the ends of the Order routes were removed and not replaced shortly after being erected. The Order Making Authority has certified the requirements relating to notices as required by the Wildlife and Countryside Act 1981 (the 1981 Act) have been undertaken.
5. It is clear from the objections received that parties were aware of the making of the Order and objected during the objection period. Therefore, if there was a failure to display the notices for the full notice period, I do not consider there would have been any prejudice to the parties.

The Main Issues

6. The Order has been made under section 53(2)(b) of the 1981 Act in consequence of the occurrence of an event specified in section 53(3)(c)(i). This requires me to

consider if, on the balance of probabilities, the evidence shows that public footpaths subsist along the Order route. This is a higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.

7. The evidence submitted in support of the Order relies on the presumption of dedication arising from tests laid out in section 31 of the Highways Act 1980 (the 1980 Act). This requires me to consider if the public has used the routes as of right and without interruption, for a period of twenty years immediately prior to their status being brought into question. I must establish the date when the public's right to use the Order routes was brought into question and determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowner to dedicate public footpaths during this period.
8. Any way used by the public must also be of a character that use by the public can give rise at common law to a presumption of dedication. Necessary characteristics of a highway are that the right must be over a defined route and would normally connect to a public highway or public place at both ends. The courts have recognised that, in certain circumstances, cul-de-sacs can be highways. However, there needs to be an identifiable terminus. This would normally be a place of popular resort or public interest. Examples of places of popular resort in case law include the sea, rivers, a point of natural beauty or a church.
9. Section 32 of the 1980 Act also requires me to take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.

Reasons

Documentary Evidence

Ordnance Survey Maps

10. The 1889 County Series Ordnance Survey (CSOS) map shows sections C to E and D to E as enclosed routes. Section A to C is shown running along the top of an embankment, and there are no buildings along most of this section. The existing Footpath 37 is also shown running along the top of an embankment. The 1906 CSOS map shows largely the same, but there now appears to be a boundary along the bottom of the embankment on the northwest side of section A to C

Finance Act Map 1910

11. The Order routes are shown excluded from the surrounding hereditaments in the same way as other public roads and footpaths.

Lindsey County Council Sandhills Act 1932

12. The Lindsey County Council Sandhills Act 1932 (the Sandhills Act) was passed to secure and preserve public access to the coast. The Sandhills Act states the

Sandhills are to be used and enjoyed by the public as an open space within the meaning of the Open Space Act 1906.

13. The northeastern end of the Order route is shown on the plans accompanying the Act with double dashed lines running over the Roman Bank and across the sand dunes and embankments. The western limit of the land to be acquired is at point B and section A to B is within the open space. Roman Bank was not part of Sandhills but was listed under land which may be acquired. A plan showing plots of land being sold indicates the land immediately south of section A to B of the Order route has '*access to road by footpath*' which suggests the Order route is a footpath.

Land Registry and Title Deeds

14. The Land Registry Title Deeds for 8 Roman Bank refer to a Conveyance dated 14 July 1933 that specifies '*the purchaser will not at any time permit the said piece of land to be used as a public footpath or roadway*'. The purchasers also had to '*erect and forever thereafter maintain good and sufficient boundary fences*' around the land conveyed as marked with Ts on the Conveyance plan.
15. Two 1930s plans concerning numbers 7 and 8 Roman Bank show the plots of land on the southeast side of section B to C. There are Ts along the edge of the plots along the bottom of Roman Bank that appear to be where fences were required. This suggests Roman Bank was not conveyed with the plots. A building line is also indicated 10 feet from the fence and the base of the embankment.
16. Land Registry documents show section A to B is owned by the Parish Council. The rest of the Order routes are not registered with the Land Registry, but most of the adjoining properties are.

Photographs

17. Historic photographs circa 1955 show the western end of the Order route, indicating it was possible to access the Order route from the beach.
18. An aerial photograph from 1960 shows section A to D, and it does not appear to have any structures or obstructions along it. The photograph is not clear enough to see section C to E

The Definitive Map

19. The Definitive Map (DM) shows Public Footpath No. 36 running between Roman Bank and the Promenade. This would suggest that public rights of at least footpath status exist along Roman Bank. Vehicular rights were not required to be shown on the DM. Therefore, the omission of Roman Bank from the DM could suggest public vehicular rights.

Planning Documents

20. Planning permission was granted for a new supported footpath and access ramps to improve the existing footway for the England Coast Path in late 2017. The Planning Report states a flight of wood-framed steps give access to the Roman Bank pedestrian access to the chalets and bungalows behind the dunes. Representations to the planning application raised concerns that widening and reducing the slope of the existing paths would allow cyclists and motorcyclists

access to Roman Bank, a private footway. The planning approval required a motorcycle barrier to restrict access.

21. Photographs taken by the planning officer on 23 October 2018 show a sign stating '*private land, no cycles or motors*' near point B. A photograph taken in February 2019 shows a sign stating, '*Roman Bank Private Land Residential Access Only No Cycles or Motors on Private Footpath*'. The motorbike restrictor has been installed, but there are no notices on its side panels.

Residents Letter

22. On 5 March 2018 one of the residents living along Roman Bank wrote to the other residents stating they were concerned about an increase in visitors who did not realise it was private land, diverting down the path onto the Roman Bank from the new Promenade path. It states the council had agreed they could erect gates and signs. Two gates '*to stop vehicle access*' that would not be locked were proposed at either end of Roman Bank, along with signs stating '*No Public Footpath Private Land Resident Access Only No Cycles or Motors*' and '*Private Property No Beach Access*' with a diversion sign '*Beach Access*'.

Parish Council Evidence

23. The Parish Council states they appointed a contractor to mow the grass along Roman Bank twice a year, and the description of works includes a cutback of the hedges on either side of section C to E for its full width.

Conclusions on the Documentary Evidence

24. The OS maps show the physical existence of the Order routes since at least 1889. Some of the documents, including the Finance Act map, Sandhills Act and DM, are suggestive of public rights along the Order routes. Other documents indicate the availability of the Order route and public use of it. However, I am not satisfied the documentary evidence is sufficient to show, on the balance of probabilities, that public rights.

User Evidence

Whether the Order routes were of such character that public use can give rise at common law to a presumption of dedication

25. Proposed Footpath 1182 (FP1182) would run between St Leonards Drive, a publicly maintainable road, and Roman Bank, which is the proposed Footpath 1183 (FP1183). Therefore, if I were to confirm FP1183, FP1182 would run between two public highways.
26. FP1183 would run between the existing Footpath 37 and the seafront Promenade. Footpath 37 is a public highway, but the Promenade is not. However, the Promenade and northeastern end of FP1183 are within the area set out in the Sandhills Act to be used and enjoyed by the public as an open space. The Promenade is also part of the England Coast Path. Therefore, I consider this to be a place of public resort.
27. Therefore, I consider both Order routes to be of a character that could give rise at common law to a presumption of dedication.

Bringing into question

28. To bring into question the right of the public to use the Order route, some actions or events must have occurred that brought home to at least some of those using it that their right to do so was being challenged. These must have been sufficiently overt to bring that challenge to the attention of the public using the route.
29. The user evidence forms refer to various signs and a hand gate erected along the Order routes in the middle of 2018. Photographs of signs are provided which state *'Private Land No Cycles or Motors'* with a later addition of *'No Public Footpath'* and *'Resident Access Only'*, *'Roman Bank – Private Land Residential Access Only No Cycles or Motors on Private Footpath'*, *'Private Property No Beach Access'*, *'Private Land'*, *'Polite Notice Private Access Only'*, *'No Dog Fouling'*, and *'Unsuitable for Motor Vehicles'*. A Motorbike Restrictor was erected at point B by February 2019. A notice stating *'No Public Thoroughfare'* appeared on it between February and 5 June 2019.
30. A letter about the proposed erection of notices and hand gates indicates they were not erected until after March 2018. None of the path users were challenged when using the Order routes, but some heard of others being challenged around the middle of 2018.
31. The evidence suggests *'Private Land No Cycles or Motors'* notices existed before 2018, but they only challenge use with cycles and vehicles. One path user recalls a *'No Motor Vehicles'* notice being erected in 1976, and a resident states similar notices were there when they moved there in around 2002. The dog fouling and unsuitable for motors signs also do not challenge use of the Order route on foot.
32. The notices erected in 2018 challenged all use and led to the submission of the Modification Order Application. Therefore, I consider use of the Order routes on foot was brought into question by the notices erected in the middle of 2018, and the relevant 20 year period is mid-1998 to mid-2018.
33. Use of bicycles appears to have been challenged at an earlier date, potentially as early as 1976, but there is insufficient evidence before me to determine when the notice stating *'No Cycles'* was first erected.

Analysis of use

34. To satisfy the requirements of section 31, use must be by those who can be regarded as the public. For use to be as of right, it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, any interruption must be by the landowner, or someone acting on their behalf. The interruption should be with the intention of preventing use of the way by the public and not for other purposes such as car parking or building works.
35. I must also be satisfied that there was sufficient use by the public to raise a presumption of dedication.
36. Twenty two user evidence forms show use of all or part of the Order routes on foot dating back to 1937. Six people have also used it on a bicycle or horseback.
37. Sixteen people walked FP1182, including fourteen who used it for twenty years or more, with the other two using it for six and sixteen years. Fifteen people walked

- FP1183, including twelve who used it for twenty years or more. The others used it for six, nine, and sixteen years.
38. Use on horseback or bicycle only appears to have been along FP1183. Only three people used it for more than twenty years, and a maximum number of three people used it during any year.
 39. Five path users recall public footpath signs along the Order route, and others recall a sign stating, '*to the beach*'. The dog fouling signs and the dog bin acknowledge that the Order routes are used by the public.
 40. None of those using the Order routes were given permission to use them, and they were not challenged, although some were aware of others being challenged.
 41. Some adjacent landowners consider the Order routes to be public rights of way, whilst others acknowledge the Order routes were being used. The Environment Agency also states they were aware of historic pedestrian use along section A to B.
 42. I consider there is sufficient evidence of use of the Order routes on foot by the public during the relevant twenty year period that is sufficient to demonstrate the dedication of public footpaths.
 43. There is only limited use of the FP1183 on horseback or bicycle, and use with cycles was challenged by notices. Therefore, I do not consider there is sufficient evidence to demonstrate the dedication of a public bridleway.

Lack of intention to dedicate

44. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware that they have no intention of dedicating a public right of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.
45. Land Registry documents show that section A to B is owned by Chapel St Leonards Parish Council, but there are no registered owners for the rest of the Order routes. Plans from the 1930s indicate Roman Bank was not part of the adjoining plots that are now 1 to 8 Roman Bank. The Parish Council support the Order.
46. Reference is made to a Conveyance dated 14 July 1933 that requires '*that the purchaser will not at any time permit the said piece of land to be used as a public footpath or roadway*'. However, Roman Bank was not part of the land conveyed, and the conveyance refers to the access road to the south of numbers 1 to 8 Roman Bank. Therefore, this Conveyance does not affect the Order routes.
47. None of the parties have referred to any other challenges, interruptions, notices denying public rights, or permission during the relevant twenty year period. The only challenges were from mid-2018 by the adjoining property owners who do not own the Order routes.
48. I conclude there is insufficient evidence to demonstrate a lack of intention to dedicate public rights by any landowner during the relevant period.

Conclusions on section 31

49. The Order routes are of a character that can give rise to the presumption of dedication under common law. I consider there is sufficient evidence of use of the Order routes as of right and without interruption, challenge, or permission between mid-1998 and mid-2018. I do not consider there is sufficient evidence to demonstrate a lack of intention to dedicate public rights during the relevant period.
50. Therefore, I am satisfied the evidence before me is sufficient to show, on the balance of probabilities, that public footpaths exist over the Order routes.

Other Matters

51. Issues relating to suitability and desirability have been raised in relation to the Order routes. These include maintenance by residents, damage to water mains from traffic, privacy and welfare concerns, effects on property values, anti-social behaviour, dog fouling, litter, additional costs to the Parish Council to maintain, safety of the public from vehicular use, and the width and condition of the Order route.
52. The motivation behind the DMMO Application, the need for the Order routes, the lack of ownership, the obstruction of other routes, the time taken to determine the application, and the maintenance of the DMS are also raised.
53. Although I understand these concerns, they cannot legally be taken into consideration when determining the Order.

Conclusions

54. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

55. I confirm the Order.

Claire Tregembo

INSPECTOR

Order Map



<p>CHAPEL ST LEONARDS (Definitive Map Modification Order) Addition of footpath linking St Leonards Drive and Public Footpath 37 to the beach</p>	<p>Lincolnshire COUNTY COUNCIL <i>Working for a better future</i></p>	<p>Legend</p> <ul style="list-style-type: none"> — Addition of Public Footpath --- Unaffected Public Footpath
<p>Reproduced from Ordnance Survey with the permission of the Controller of HMSO (c) Crown Copyright. Licence number 100025370</p>	<p>Countryside Services, County Offices, Newland, Lincoln, LN1 1YL</p>	<p>Drawing No.: 2020/007/DMMO404/A4</p>
<p>Drn. LP</p>	<p>Date 11.02.2020</p>	<p>Scale: 1:2,500</p>