



The Planning Inspectorate

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Mr C Fordy
The Limes
Coxwold
YORK
YO61 4AA

Your Ref:
Our Ref: FPS/W0734/7/1
Date: 20 January 2014

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53
Middlesbrough Borough Council
Public Footpath No. 48 and 59 Middlesbrough
Definitive Map Modification Order 2012

I enclose for your information a copy of the Inspector's decision on this Order following the Inquiry on Tuesday 26 November 2013.

Also enclosed are two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.

If you have any queries about the enclosed decision, please contact the Quality Assurance Unit at the following address:

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<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/>

An electronic version of the decision will shortly appear on the Inspectorate's website.

Yours faithfully

Clive Richards
(Rights of Way Section)



Order Decision

Inquiry held on 26 November 2013

by **Mark Yates BA(Hons) MIPROW**

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

Decision date: **20 JAN 2014**

Order Ref: **FPS/W0734/7/1**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Council of the Borough of Middlesbrough, Public Footpath No. 48 and 59 Middlesbrough Definitive Map Modification Order 2012.
- The Order was made by the Council of the Borough of Middlesbrough ("the Council") on 1 March 2012 and proposes to delete sections of two footpaths and add a section of footpath to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were three objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public inquiry into the Order on 26 November 2013 at Middlesbrough Town Hall. I made a visit to the site on the preceding day and I undertook a further visit following the close of the inquiry when I was accompanied by Mr Williams for the Council and an objector (Mr Hill).
2. The application for an award of costs made at the inquiry will be the subject of a separate decision.

Main Issues

3. This Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of events specified in Section 53(3)(c)(i) and (iii) of the Act. Therefore, I need to be satisfied that, on the balance of probabilities, evidence has been discovered which shows that:
 - a) a right of way which is not shown in the map and statement subsists; and
 - b) there is no public right of way over land shown in the map and statement as a highway of any description.

Reasons

4. In essence the Order proposes to modify the definitive map so as to show Footpath 48 on the eastern side, rather than the western side, of a hedge. The Council asserts that this issue arises out of a drafting error when a revised edition of the definitive map was produced in 1976. It also proposes to delete a section of Footpath 59 from the definitive map and statement as it now forms part of the A172 Road. In respect of the latter, it is not disputed that this path should no longer be recorded as a public right of way. I agree that this section of carriageway should be removed from the map and statement.
5. Turning to the proposed amendment to the route of Footpath 48. An application was made by Mr Lee to record the path on the eastern side of the

field boundary. The Council determined that the correct alignment of Footpath 48 generally corresponds with the route claimed by Mr Lee. However, the claimed path diverges from the route included in the Order towards its south-eastern end. It is apparent that the objectors do not dispute that the footpath should be recorded on the eastern side of the hedge. The point at issue is the route of the southern section of the path where it passes the buildings associated with Grey Towers Farm. I address below the evidence provided in relation to the alignment of the footpath.

6. The 1894-95 and 1895 Ordnance Survey ("OS") maps show a feature by way of double solid lines commencing from the present bridleway at Grey Towers Farm. This feature continues as a dashed line to the east of a solid line which corresponds to the boundary of a field. The dashed line continues in a north-westerly direction on the eastern side of the field boundary. There is a slight kink where it crosses a field boundary but it continues in a north-westerly direction to the east of the boundary of another field. The northern part of the route has the annotation "FP" adjacent to it. This map would not demonstrate that the route in question had public status. However, it is supportive of there being a path on the ground when the land was surveyed that broadly follows the proposed route included in the Order for Footpath 48.
7. A 1919-20 OS map shows a path on the eastern side of the field boundaries which is again annotated with the letters "FP". There is an indication that the path varied from the route shown on the earlier maps where a feature corresponding to a former Dutch barn is shown. Some subsequent OS maps show no sign of a path on the ground. However, the more recent maps show a dashed line with the annotation "Path" on the western side of the field boundaries. This path is also shown diverting around a pumping station.
8. A schedule and map were initially prepared by the Ramblers Association, on behalf of Nunthorpe Parish Council, to show the public rights of way that were believed to exist when the original definitive map and statement for the area were compiled in the early 1950s¹. The Council refers to the depiction of Footpath 48² along the eastern side of the relevant field boundaries and to the west of the former Dutch barn at Grey Towers Farm. Mr Hill accepted at the inquiry that the path claimed appears to be shown to the west of the barn. I note that the map shows that to the north of the barn there was a field gate and stile and further to the north-west another stile. These appear to be sited in relation to the boundaries crossed by the path shown on the OS maps on the eastern side of the hedge. Reference is made in the accompanying schedule of July 1952 to this path corresponding with a way shown on the map produced in accordance with the Rights of Way Act 1932. However, a copy of this map has not been found.
9. The details provided by the Council indicate that the draft map was amended to form the subsequent provisional map. The Council points to the depiction of Footpath 48 on the draft/provisional map on the same route as that claimed on behalf of Nunthorpe Parish Council. There was no corresponding individual statement for this path.
10. The first edition of the definitive map³ shows the footpath by way of a thick purple line which makes it difficult to determine the precise alignment of the

¹ This process involved the production of draft, provisional and definitive maps and statements

² Originally recorded as Footpath No. 6

³ It has a relevant date of 1 May 1956

path. The purple line is shown adjacent to Grey Towers Farm and over the barn. There was originally no definitive statement in relation to this path. However, the revised definitive map of 1976 shows the path to the west of the field boundary. The accompanying statement also describes it proceeding to the west of the field boundary. In addition, it is initially described as "*Travelling North West past the west side of shade to gap*". The details regarding the route of the footpath did not change in subsequent editions of the definitive map and statement. The Council believes that 'shade' could equate to shed and thus the Dutch barn. No other explanation has been provided for this reference.

11. Six user evidence forms have been provided. Whilst reference is made to the route shown on an accompanying plan, this is not attached to all of the forms. The plans provided indicate that these people walked to the east of the hedge but that they used the alternative route towards Grey Towers Farm. Three people provide evidence of use prior to the relevant date of the original definitive map. However, it was not possible to confirm this historical use with the parties concerned at the inquiry. Mr Hill's evidence only relates to his use since 2005. Further, I do not consider that it has been demonstrated that any significant degree of weight should be attached to a consultation plan produced in relation to this site. This plan does not appear to show Footpath 48 on the alignment recorded on the definitive map at the time.
12. It may have been the case that the alternative route was signed in recent years. However, in my experience, errors do sometimes occur in respect of the signing of public rights of way. These signs also do not appear to have corresponded with the route shown on the definitive map since 1976. The same would apply in respect of the provision of stiles. One of the objectors, Miss Morrish, refers to the route to the west of the barn being obstructed. This submission was supported by the evidence of Mr Hill at the inquiry. The obstructions are stated to have included vegetation and rubble. It could be the case that the use of the alternative route was 'by right' as opposed to 'as of right' due to the need to avoid the obstructions, as asserted by the Council.
13. The early OS maps show a route generally consistent with that claimed on behalf of the parish council in 1952. However, the route used may have varied in light of the difficulty in walking to the west of the Dutch barn. This is supported to some extent by the user evidence and the 1919-20 OS map. Nevertheless, the route originally claimed and recorded during the process undertaken in connection with the compilation of the first edition of the definitive map is shown to the west of the former barn. The Council points out that there is no evidence to indicate that the route claimed was incorrect or there has been a subsequent legal event to alter its alignment. Although there is evidence of use over a slightly different route in the locality of Grey Towers Farm, this does not show that the route originally claimed was incorrect.
14. In respect of the sections to be deleted, the information provided is supportive of the discovery of evidence of an error with the depiction of the paths currently recorded on the definitive map. I find that the evidence is of such substance to displace the presumption that the current edition of the definitive map is correct. There is cogent evidence of the occurrence of an error in relation to the later editions of the definitive map. Having regard to the evidence outlined above, it is my view that, on balance, the definitive map and statement should be modified to show Footpath 48 on the alignment recorded in the Order and also to delete a section of Footpath 59.

Conclusion

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

Formal Decision

16. I confirm the Order.

Mark Yates

Inspector

APPEARANCES

For the Council:

Mr R. Carr

Consultant instructed by the Council

He called:

Mr S. Williams

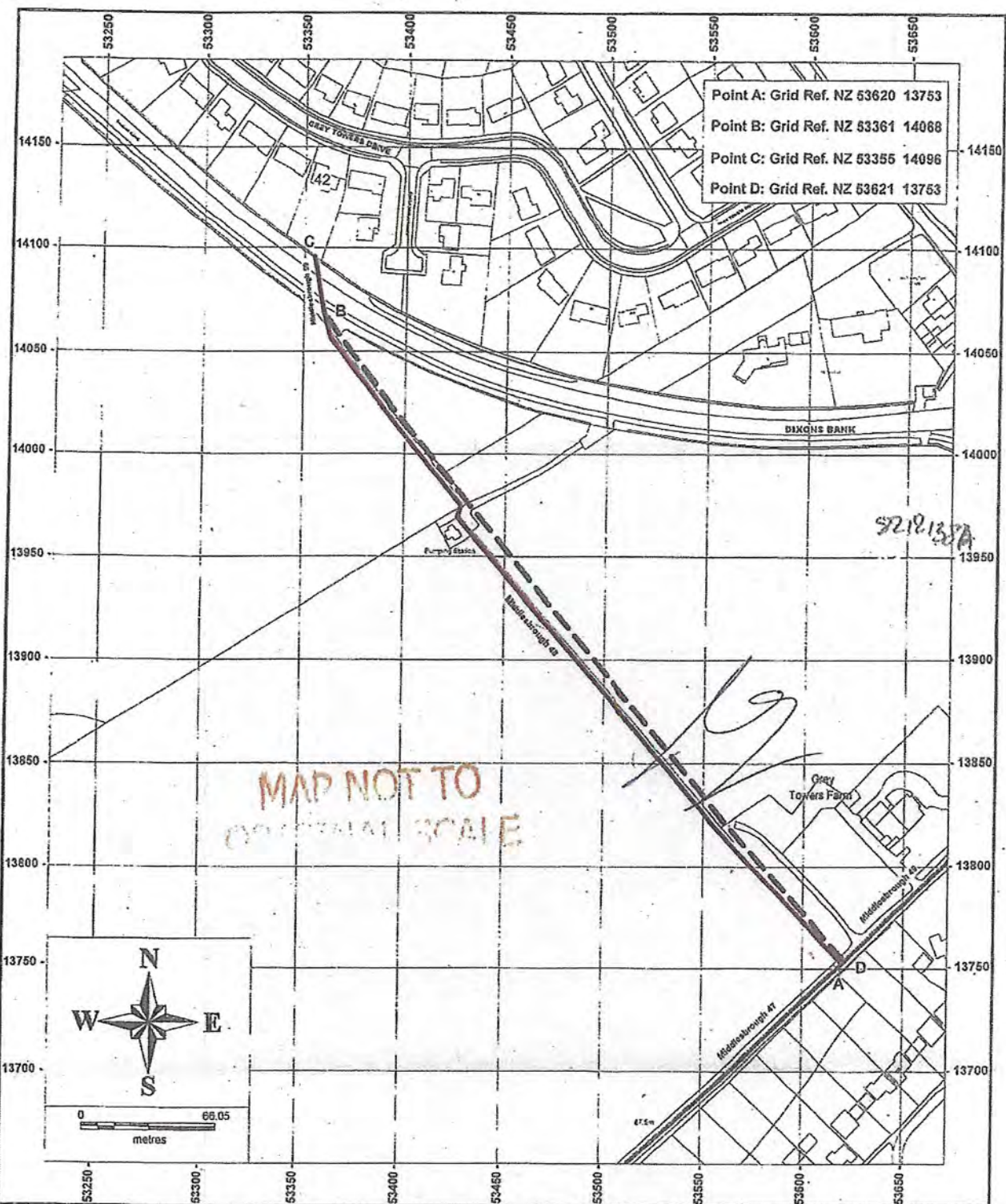
Public Rights of Way Officer

The Objector:

Mr N. Hill

DOCUMENTS

1. Aerial and standard photographs of the site



Point A: Grid Ref. NZ 53620 13753
 Point B: Grid Ref. NZ 53361 14068
 Point C: Grid Ref. NZ 53355 14096
 Point D: Grid Ref. NZ 53621 13753

MAP NOT TO ORIGINAL SCALE



	MIDDLESBROUGH COUNCIL	Public Footpath No. 48 and 59 Middlesbrough Definitive Map Modification Order 2012	
		Plan No. 01	Drawn By: Stewart Williams
KEY Section To Be Deleted		Scale: 1 : 2,500	OS Sheet: NZ 53 13 NE
Section To Be Added		Grid Ref: NZ 53492 / 13892	Date: 1st February 2012
Other Rights of Way		<small>This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings LA 100023413, 2012.</small>	