



Consultation

Proposed Definitive Map and Statement Modification Order in the parish of Anlaby  
with Anlaby Common and town of Hessle

Ref No: PER/DM/S14/081/HESS/SC  
Plan Refs: PER/DM/S14/081/HESS/Consult2/Drg01  
PER/DM/S14/081/HESS/Consult2/Drg02  
Date: 14<sup>th</sup> November 2023

**1. Summary**

- 1.1 The East Riding of Yorkshire Council ('the Council') has discovered evidence that three public rights of way which are not recorded on the Definitive Map and Statement subsist, or are reasonably alleged to subsist, as public footpaths in the parish of Anlaby with Anlaby Common and town of Hessle. The Council is proposing to modify the Definitive Map and Statement under section 53 of the Wildlife and Countryside Act 1981 to record the public footpaths.

**2. Purpose of Consultation**

- 2.1 The purpose of this consultation is to give you the opportunity to support or provide evidence in support or opposition of the proposal. Any objections to the proposal must be supported by evidence to either contest the existing evidence or provide new evidence. All replies to this **informal consultation** will be considered before a decision is made on how to proceed with the Order.
- 2.2 If an Order is made there will be a formal consultation period when anyone may object to the Order. Valid objections must refute the evidence that the Order is based on. Under

the tests of this legislation, it is not possible to take into account security, safety or privacy issues.

- 2.3 If an Order is made and objections are received which are not subsequently withdrawn, the Council will send the Order to the Secretary of State for Environment, Food and Rural Affairs for determination. The Secretary of State has the power to disregard objections based on irrelevant grounds.

### **3. Background**

- 3.1 In July 2012 the Council received a Schedule 14 application (S140081) under the Wildlife and Countryside Act 1981 ('the 1981 Act') to record three public footpaths on the Definitive Map and Statement in the parish of Anlaby with Anlaby Common and town of Hessle. For the purposes of section 31(2) of the Highways Act 1980 ('the 1980 Act') the Council considers that the routes were brought into question by two statutory deposits made under section 31(6) of the 1980 Act dated 2<sup>nd</sup> September 2009 by West Ella Holdings Limited. This is in accordance with the judgement in paragraph 37 in *R (on the application of Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs 2007*, although *obiter* should be accorded significant weight in the context in which it was made. Therefore, the twenty year period of use can be presumed to be from September 1989 to September 2009.
- 3.2 The Schedule 14 application was accompanied by fifty three user evidence forms, although four respondents claimed use outside the relevant period and their evidence has been discounted. Sixteen respondents claimed to use the routes continuously throughout the full relevant period and the other thirty three claimed use during parts of that period. One person claimed equestrian use, but for only part of the relevant period and three people claimed bicycle use, although only one user claimed bicycle use throughout the full relevant period. The evidence of bicycle and equestrian use is not considered sufficient to show 'actual enjoyment' by the public at large. During the relevant period, all respondents claimed use on foot. The nature of use on foot is primarily recreational for dog walking and exercise and forty one users recalled seeing other people walking with or without dogs.
- 3.3 The routes used differed from person to person, and it is clear that the respondents have used a myriad of ways within the affected land. Where the routes of each individual user converge, a main arterial network emerges similar to that submitted in the application.

The routes used have therefore been divided into sections to enable the user evidence to be analysed. The relevant map is Drawing no: **PER/DM/S14/081/HESS/Consult 2/Drg01('Map 1')**. The table below summarises for each section of claimed footpath, the number of users; how many used the section throughout the full relevant period and how many used the section for part of the relevant period; and finally, the frequency of use.

Section	Total Users	Use		Frequency		
		Full Period	Part	Daily	Weekly	More than once a week
A-B	41	14	27	25	6	10
B-C	29	10	19	21	3	5
C-D	30	9	21	20	3	6
D-E	18	5	13	11	2	5
B-F	44	16	28	26	6	12
F-G	36	11	25	20	5	10
H-I	27	6	21	17	2	7
I-J	28	6	22	17	3	7

- 3.4 There is no evidence that the use was by force or with secrecy or that users sought permission to walk the routes. The user evidence on foot is sufficient to alert the landowners that public footpath rights were been asserted and for the landowner to have the opportunity to prevent the use. Three users reported being challenged or knowing someone else to have been challenged whilst using the route, however, the nature of the challenges was 'occasionally' and 'once'. Ten users reported obstructions, such as stiles, locked gates, and fences. Although, these claims were followed by comments such as 'stiles at one time' another 'padlocked gate but gap wide enough to pass through' and stiles being 'recently blocked.' Some of the obstructions reported are located on the claimed routes, however it appears some users were referencing obstructions that are present nearby, rather than on the application routes. The evidence indicates that the claimed challenges and obstructions did not come to the attention of most users, cause actual interruption, nor did they stop the actual enjoyment of the public. Additionally, none of the users indicated that they had seen signs or notices displayed by the landowner. It is therefore concluded that the evidence submitted with the application shows sufficient public use of the routes, as of right and without interruption, over the period of twenty years immediately prior to their status being brought into question in 2009.

- 3.5 It is the Council's view that the evidence appears sufficient to reasonably allege that the claimed routes subsist as public footpaths, having been acquired under section 31 of the Highways Act 1980 between 1989 to 2009. There is therefore a case for making a Definitive Map and Statement Modification Order to add the routes to the Definitive Map and Statement as public footpaths following the discovery of evidence as defined in section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, namely that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist as a public footpath.

#### **4. Legal Grounds**

- 4.1 Schedule 14, Paragraph 3 of the Wildlife and Countryside Act 1981 sets out that as soon as reasonably practicable after receiving a valid application the Council shall investigate the application and decide whether or not to make an Order. If it is decided that the evidence provided (when considered with all other relevant evidence available) shows that a public right of way subsists or is reasonably alleged to subsist, the Council has a duty to make an Order under section 53 of the Wildlife and Countryside Act 1981 to add the route to the Definitive Map and Statement of Public Rights of Way.

#### **5. Proposal**

**To be added: (Drawing No: PER/DM/S14/081/HESS/Consult 2/Drg02) ('Map 2')**

A length of footpath some 866 metres in length commencing on the northern side of Boothferry Road west of No.368 at Grid Reference TA 0259 2698 (Point A on Map 2) and leading northerly for some 213 metres to Grid Reference TA 0259 2719 (Point B on Map 2) continues northerly for some 203 metres to Grid reference TA 0259 2739 (Point C on Map 2) then easterly for some 241 metres to Grid Reference TA 0283 2741 (Point D on Map 2) then northerly for some 89 metres then north-north-easterly for some 120 metres to meet Former Haltemprice Urban District Footpath No.31 at Grid Reference TA 0287 2762 (Point E on Map 2).

A length of footpath some 475 metres in length commencing at Grid Reference TA 0259 2739 (Point C on Map 2) leading westerly for some 268 metres to Grid Reference TA 0232 2737 (Point F on Map 2) and continues westerly for some 7 metres then northerly for some 200 metres to join Former Haltemprice Urban District Bridleway No.30 at Grid Reference TA 0230 2757 (Point G on Map 2).



A length of footpath some 397 metres in length commencing at Grid Reference TA 0259 2719 (Point B on Map 2) and leading westerly for some 220 metres then northerly for some 177 metres to Grid Reference TA 0232 2737 (Point F on Map 2).

Points on Map 1	Width (metres)
A	0.8 pinch point
A-B	2
B-C	1.5
C-D	1.3
D-E	1.5
C-F	1.5
F-G	1.5
B-F	1.5

## 6. Cost

- 6.1. As the Council is undertaking its statutory duty in determining this Schedule 14 application the cost of making the Order will be met by the Council. Unless contrary evidence is brought to light, the route will not be publicly maintainable as it came into existence after the 1959 Highways Act through long usage.

## 7. Conclusion

- 7.1 The Council considers that there is sufficient evidence to reasonably allege that three public footpaths subsist in the parish of Anlaby with Anlaby Common and town of Hessle and there is a case for making a Definitive Map and Statement Modification Order.