



Order Decision

by **Michael R Lowe** BSc (Hons)

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

Decision date: 23 January 2018

Order Ref: RoW 3172864

East Riding of Yorkshire Council

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as **The East Riding of Yorkshire Council (Rudston No. 10, Boynton No. 5 and Grindale No. 1) Definitive Map and Statement Modification Order 2016**.
 - The Order is dated 14 July 2016 and proposes to modify the Definitive Map and Statement by adding a byway open to all traffic from Boynton Lane, Grindale to High Caythorpe Lane, Rudston as detailed in the Order map and schedule.
 - There was one objection outstanding when the East Riding of Yorkshire Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

1. I confirm the Order.

Preliminary Matters

2. None of the parties requested a public inquiry or hearing. I have therefore considered this case on the basis of the written objection and representations forwarded to me. I visited the site on 2 November 2017.
3. The Council made the Modification Order following an application made by Mr M Jackson in February 2009. The application included evidence of the Grindale Inclosure Award and other documentary evidence. I am satisfied that such evidence was discovered in the sense of the Council considering evidence that was previously unknown to them.
4. Section 32 of the Highways Act 1980 requires me to take into account any map, plan or history of the locality or other relevant document and to give such weight to it as is justified by the circumstances.

Main Issue

5. The Order has been made under section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in sections 53(3)(c)(i). The main issue is therefore whether the discovery of evidence by the Council is sufficient to show, on the balance of probabilities, that a byway which is not shown in the map and statement subsists on the route in question such that the definitive map and statement require modification.

Reasons

6. In the Grindale Inclosure Award of 1844 the Commissioners set out a road called the Grindale and Caythorpe Road:
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And we do set out appoint and award that there shall at all times for ever hereafter be one other common and public carriage road or Kings Highway as the same is now staked ditched and bounded out of the width of thirty feet commencing at the Douth end of the Grindale and Boynton Road and extending in a Westerly direction over and across the open fields of Grindale to Caythorpe Road in the Township of Boynton.

The award plan shows the Grindale and Caythorpe Road, as shown in the Order from points A to B, and indicates a continuation to the destination of Rudston. The award indicates that the road is to be maintained by and at the expense of the Township of Grindale. The records of the Quarter Sessions held in Beverley on 2 July 1844 demonstrates that the road had been 'fully and sufficiently formed completed and put into good and sufficient repair'.

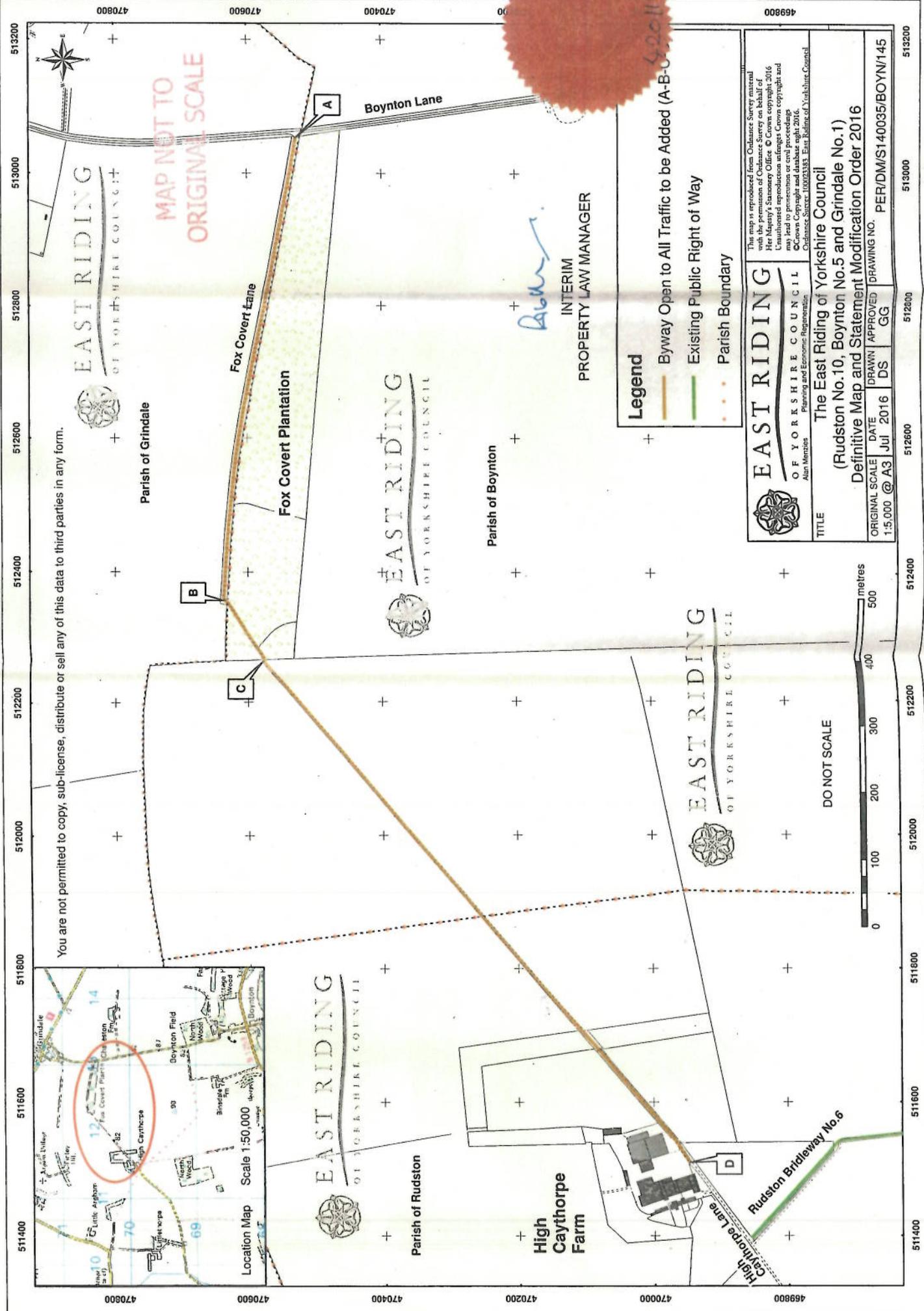
7. Earlier maps, Greenwood's (1817) and Bryant's (1829), indicate that the order route existed before 1844 and within the Township of Grindale existed on a direct route to Grindale; the effect of the 1844 Award being to divert the route around the enclosed land. The whole of the Order route is consistent with a public highway in the Finance Act records, Tithe records and on Ordnance Survey maps.
8. The County Council's records of public highways include the entire order route as a highway maintainable at public expense and the original survey records for the definitive map treated the route as an unclassified county road. As the Order route is shown on the Council's list of maintainable highways kept under section 36(6) of the Highways Act 1980, the provisions of the Natural Environment and Rural Communities Act 2006 do not extinguish public rights of way for mechanically propelled vehicles.
9. Mr Garbutt is the sole objector to the Order and is concerned that the description of the width would result in the clearance of trees and scrub thereby encouraging damage to the countryside. The Council have responded that they have no intention of removing any trees or shrubs along the route and would maintain the route in its present state. Mr Garbutt has also indicated his wish that the route be used only as a bridleway.
10. I am satisfied that the evidence of the 1844 inclosure award together with all other relevant documentation is cogent evidence that a public highway for all traffic was established by that time. The legal maxim *once a highway, always a highway* applies until the public rights are lawfully extinguished. I note that the Council have given consideration to downgrading the route, but decided not to use such powers for the time being. In my view the character of the Order route, as a grassy lane, indicates it is more likely to be used by and more suitable for use by walkers and horseriders than vehicular traffic, and that is consistent with the status of a byway.

Conclusion

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

Michael R Lowe

INSPECTOR



MAP NOT TO ORIGINAL SCALE

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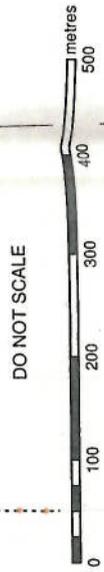
Blm
INTERIM
PROPERTY LAW MANAGER

- Legend**
- Byway Open to All Traffic to be Added (A-B-C)
 - Existing Public Right of Way
 - Parish Boundary

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EAST RIDING
OF YORKSHIRE COUNCIL
Aun Members Planning and Economic Regeneration

TITLE		The East Riding of Yorkshire Council (Rudston No.10, Boynton No.5 and Grindale No.1) Definitive Map and Statement Modification Order 2016	
ORIGINAL SCALE	DATE	DRAWN	APPROVED
1:5,000 @ A3	Jul 2016	DS	GG
DRAWING NO.		PER/DW/S140035/BOYN/145	



High Caythorpe Farm

620116