

Open Report on behalf of Richard Wills - Executive Director - Communities

Report to:	Definitive Map & Statement of Public Rights of Way Sub-Committee
Date:	03 October 2011
Subject:	Appeal against the prioritisation of DMMO 348-Bourne - Claimed Public Footpath from Beaufort Drive to Bourne Wood

Summary:

An appeal by Mr. B E Kendall against the current standing of DMMO case No.348 within the County Council's priority system for applications to modify the Definitive Map & Statement of public rights of way.

Recommendation(s):

That consideration is given to Mr. Kendall's proposal to upgrade the priority of the modification order case.

1. Background

As Surveying Authority the County Council has a statutory duty to keep under continuous review the Definitive Rights of Way Map and Statement for Lincolnshire and to make orders to take account of events requiring the map to be modified. This is carried out by the processing of Definitive Map Modification Orders (DMMOs) which are either applied for by the public or initiated by the Authority on the discovery of evidence.

Highways & Traffic Guidance Note HAT33/3/11 sets out that such cases will be dealt with in order of receipt/initiation unless one or more of the eight "exception criteria" apply.

The criteria are as follows:

1. Where there is sustained aggression, hostility and ill feeling within a community that is causing severe disruption to the life of that community, and that in processing the case early there is a strong likelihood that this will reduce.
2. Where there is a significant threat to the route, likely to cause a permanent obstruction (e.g. a building, but not, for example, a locked gate or residential fencing).

3. Where there is, or has been, a finding of maladministration by the Local Government Ombudsman on a particular case and that in processing the case the County Council will discharge its duty to the Ombudsman's decision.
4. Where legal proceedings against the County Council are instigated or are likely to be instigated and it is possible that the Authority has a liability.
5. Where there is a risk to children on County Council owned property and land or where the claimed route would provide for a safer alternative route to a school, play area or other amenity for children.
6. Where there is a significant financial saving to the County Council (and therefore taxpayers) through the processing of an Order.
7. Where a new application is received that relies on evidence of a case already received or, if the new application forms part of or is adjoining to an existing claim, the new claim will be dealt with at the same time as the older application.
8. Where the route will significantly assist in achieving a Countryside and Rights of Way Improvement Plan Objective or Statement of Action.

Mr. B E Kendall has appealed against the current priority of DMMO 348, a claimed public footpath between Beaufort Drive, Bourne and Bourne Woods.

Appendix A is a brief case synopsis including the reasons for the Parish Council's appeal

2. Conclusion

That Mr. B E Kendall has made a valid appeal against the current prioritisation of the case which requires consideration by this sub-committee.

3. Consultation

a) Scrutiny Comments

b) Executive Councillor Comments

c) Local Member Comments

d) Policy Proofing Actions Required

n/a

4. Appendices

These are listed below and attached at the back of the report	
Appendix A	Case Synopsis - Bourne - Claimed Public Footpath from Beaufort Drive to Bourne Wood
Appendix B	Current Caseloads

5. Background papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

Highways & Traffic Guidance Note 33 – Prioritisation of Definitive Map Modification Orders - HAT 33/3/11
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**Wildlife & Countryside Act 1981, Section 53
Definitive Map Modification Order
Bourne - Claimed Public Footpath from Beaufort Drive to Bourne Woods**

1. Application

An application under the Wildlife & Countryside Act 1981, section 53(5) from Mr. B E Kendall of Bourne was received by the County Council on 28th June 2011 to add a public footpath from the current end of Beaufort Drive to the edge of Bourne Woods.

2. Location Plan of Route



	Rights of Way & Countryside Access	Title: Bourne
	R A Willis, Executive Director (Development Services) City Hall, Orchard Street, Lincoln LN1 1DN	Ref: DMMO 348 Compiled by: TF087212 Date: 20 September 2011 Scale 1:6784

This map is for information only and should not be regarded as the Definitive Map of Rights of Way. Reproduced from Ordnance Survey with the permission of the Controller of HMSO © Crown Copyright. Licence number 100025370.

Fig.1 Location of route and environs

3. Background information

The application to add the claimed route to the Definitive Map & Statement has directly arisen from a planning application by the landowner (The Wherry Trust) for new residential housing. It is understood that the application will be for 14 houses south of and extended Beaufort Drive and 6 affordable homes to the north. The Wherry Trust have also stated that they wish to convert some of the remaining arable, agricultural field into allotments for the town. (source: Stamford & Rutland Mercury)

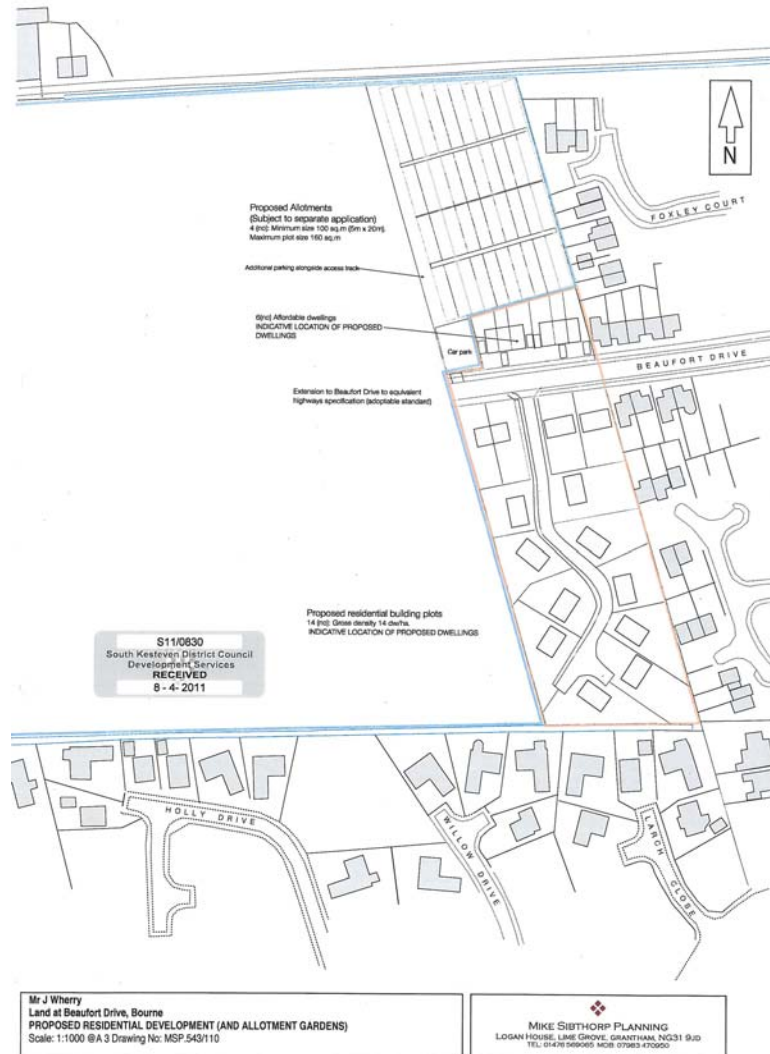


Fig.2 Location plan of Planning Application

It would appear that the claimed route will directly affect the eastern and southern boundaries of the planning application site.

The route is now also obstructed by a barbed wire fence where it crosses the drain at point B on the location plan (**fig. 1**) and there is a notice in place stating:

PLEASE NOTE
THIS IS NOT A PUBLIC FOOTPATH

4. Evidence in support of the application and further research

A total of 33, as yet unanalysed, user evidence forms (UEF) were submitted with the application as well as a petition in support of the application with 95 signatories. No user evidence is apparent on the petition.

5. Claimed rights of way & the planning process

In cases where claimed rights of way affect proposed planning the route can be dealt with in 3 ways

- a) The claimed route can be ignored at the developers risk which may lead to long term obstruction if the route is affected by buildings (as opposed to dwellings). Planning permission can be granted without condition however a developer would not be able to exercise the permission if the development went on to obstruct a recorded definitive right of way. Equally they, or the purchasers of any constructed premises, would be liable to ensure that a claimed route is made free of obstruction should it be recognised as a public right of way through the Definitive Map Modification Order process.
- b) The developer may incorporate the route into the development design, possibly altering the layout of the development. This can be carried out either of their own volition or on the advice of LCC or the planning authority.
- c) The developer may apply to the planning authority to divert the claimed route to a new route within the development area using powers in the Town & Country Planning Act 1990, or if certain circumstances dictate, the Highways Act 1980. Any new route created in the diversion process will be added to the Definitive Map & Statement.

South Kesteven District Council has been made aware of the application for a public footpath to be recognised but, at the time of writing this report, the case has not yet been determined.

6. Current prioritisation of case

On assessment it has been considered by officers that the case did not warrant completion out of turn and remains at No. 142 of 143 outstanding cases.

7. Appeal

An appeal against the County Council's prioritisation of the case was received from the applicant, Mr. B E Kendall dated 2nd August 2011.

The appellant feels that the recent obstruction of the route by the barbed wire fencing is causing ill feeling in the community as they are no longer able to walk to Bourne Woods from the housing estate. He is also concerned that the extant planning application may jeopardize the walk to Bourne Woods. Mr. Kendall feels that a diversion would remain impractical as the claimed route and access to the dyke at the eastern boundary of the proposed development go together and should be treated as such.

Appendix B – Current Caseload

NB: Shading indicates cases being currently progressed by officers				14/09/11		
PF: Public Footpath, PB: Public Bridleway, RB: Restricted Byway, BOAT: Byway Open to All Traffic, PROW: Public Right Of Way						
Parish	File	Status	Further details	Application /Acceptance	Active	Priority Ranking
Waddington	128	RB	RB 10	01/01/1990	Yes	1
Ancaster	2	RB	to BOAT	13/11/1991	Yes	2
Horncastle	250	PF	From Holt Lane to Banovallum Gardens	18/03/2003	Yes	3
Carlton Scroop / Ancaster	308	BOAT	Upgrade of PF 11 & PB 11 in Carlton Scroop and RB 13 in Ancaster to BOAT's	20/03/2006	Yes	4
Ancaster	309	BOAT	Addition of a BOAT along Heath Lane in the parish of Ancaster	23/03/2006	Yes	5
Stamford	315	PF	From Welland Mews to Lower Stamford meadows	08/02/2007	Yes	6
Louth	318	PF	Claimed footpath from Kiln Lane to High Holme Road, Louth	25/04/2007	Yes	7
Harmston / Coleby	326	PF	Addition of PF from Coleby PF 2 to Grantham Rd	12/03/2008	Yes	8
Caistor	340	PF	Claimed Footpath (Buttermarket) South St to Plough Hill	18/09/2009	Yes	9
Orby	343	PF	Realignment of Public Footpath No 238	01/11/2010	Yes	10
Manby	67	PF	Alleged PF between Chapel Lane and PF 218 Hunter Road	27/04/1983	Yes	11
Holbeach	50	PF	Woodhouse Lane to Hurn Bank	14/06/1983	Yes	12
North Hykeham / Lincoln	75	PF	station Rd to Clarke Rd	16/07/1983	Yes	13
Anderby	3	PF	Sea road to Creek out fall	25/07/1983	Yes	14
Langrville	57	PF	Leagate Rd to Meer Booth Rd.	26/07/1983	Yes	15
South Willingham / Benniworth	96	PF	Claimed PF from Grange farm, Low Barns to road south of Skirbeck House	30/04/1986	Yes	16
South Willingham	97	PF	Hainton Rd to High St	30/04/1986	Yes	17
South Willingham / Hainton	98	PF	Moors Lane to A157	30/04/1986	Yes	18
South Willingham	99	PF	Moors lane to Poplar Fm	30/04/1986	Yes	19
Wickenby	121	BOAT	Wickenby R/way Bdge - Wickenby Wood corner	11/12/1990	Yes	20
Saltfleetby St Clement	82	PB	PB from Sea View to Gowts Farm	06/08/1991	Yes	21
Woodhall Spa	193	PF	Mill Lane to R.Witham Bank	12/05/1998	Yes	22
Wrangle	283	BOAT	Claimed BOAT from Church Lane to Church End "Cockle/Cocleshell Alley"	05/09/2005	No	23
Leasingham	199	RB	Proposed downgrading of RB 13 to PF	27/07/1983	No	24
Belton / Gt. Gonerby	12	PF	Belton to Great Gonerby (Gads Lane)	01/11/1983	No	25
Heydour	48	PF	PF to be diverted - from Southern end of PF 3 to church Lees	01/01/1985	No	26
Aunsby & Dembleby	5	PROW	see file	11/07/1985	No	27
Mablethorpe and Sutton	106	PF	High St to Broadway	16/09/1985	No	28
Grimoldby	43	PF	from Mill Lane	23/10/1985	No	29
Hogsthorpe	49	PF	Sea Lane to Maiden Lane	11/12/1986	No	30
Burgh-le-Marsh	18	PF	Faulkers Lane	10/02/1987	No	31
Stamford	101	PF	Cherry Holt Lane to Priory Rd	03/04/1987	No	32
East Stockwith/ Morton	27	PF	PF from Willowbank Lane to Walkerith Road	04/06/1987	No	33
Linwood / Market Rasen	60	PF	Buslingthorpe R/way Bdge	18/06/1987	No	34
Middle Rasen	72	PF	Caistor Rd to Gatehouse Lane	05/08/1987	No	35

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Gainsborough	36	PF	Whites Wood	07/09/1987	No	36
Belchford	11	PB	Ings Lane	25/01/1988	No	37
Skidbrooke with Salthaven	85	PF	The Haven	30/03/1988	No	38
Leasingham	272	PF	Claimed PF from PF2 to PF3 in the Parish of Leasingham	21/10/1988	No	39
Friesthorpe/Buslingthorpe /Lissington etc	32	PB	BW from Lissingley Lane to Shortwood Lane	08/05/1989	No	40
Linwood/Legsby	59	PF	Linwood Church to Bleasby	11/07/1989	No	41
Great Gonerby/Marston	41	PF	Cliff Lane	01/01/1990	No	42
Sutton St James	108	BOAT	Badgate	01/02/1990	No	43
Market Rasen/Tealby	68	PF	from PF163	15/03/1990	No	44
Welbourn (etc..)	117	BOAT	Ermine St	04/04/1990	No	45
Castle Bytham	136	RB	RB 3	22/10/1990	No	46
Glentham	38	PF	From church gates	07/04/1991	No	47
Middle Rasen	69	PB	PB514 to BOAT	22/05/1991	No	48
Kettlethorpe	55	BOAT	Know as Westmoor Lane	19/08/1991	No	49
Fulletby	35	BOAT	Mill Street	22/05/1992	No	50
Rothwell / Cabourne	81	BOAT	PB24 to BOAT	15/06/1992	No	51
Great Gonerby	40	PF	PF6 to join RB 5	21/12/1992	No	52
Alford	344	BOAT	Claimed BOAT from Hanby Lane to to New Cemetary	01/04/1993	No	53
Bassingham	9	PF	Claimed PF from Brocklebank Close to playing field	27/10/1993	No	54
Navenby	154	PF	'The Smoots'	22/05/1996	No	55
Fulletby	162	PF	School Lane	10/10/1996	No	56
Beckingham/Brant Broughton	167	PF	PF 5 to BW and missing link	12/12/1996	No	57
Coningsby	182	PF	School Lane to Dogdyke Road	06/11/1997	No	58
Little Carlton/Legbourne	185	PB	'Blind Lane' from PB 624 (Manby)	22/01/1998	No	59
Louth	186	PB	Grimsby/Louth Railway Line (part from Keddington Rd crossing to Little Grimsby bridge)	03/02/1998	No	60
Horncastle	195	PF	Boston Road to the Wong	23/05/1998	No	61
Grantham	194	PF	Denton Ave to PF 16	28/05/1998	No	62
Halton Hologate	201	PF	Northorpe Road to Ashby Road	17/08/1998	No	63
Anderby Creek	203	PF	Occupation Road to Beach (via Rowan Court)	10/10/1998	No	64
Rothwell / Swallow	220	PF 23	Realignment of Footpath 23	02/01/2001	No	65
Hundleby	224	PF	PF366	26/02/2001	No	66
Holbeach	236	PF	Langwith Gardens to Stukeley Hall Drive	18/01/2002	No	67
Barrowby	237	PF	PF13 to PB, Casthorpe Rd to parish boundary	08/05/2002	No	68
Skillington & Stoke Rochford	239	BOAT	BOAT from Crabtree Rd to parish boundary between Stoke Rochford & Easton and Wyville Cum Hungerton	05/06/2002	No	69
Skillington	240	BOAT	Claimed BOAT from Skillington village to "The Drift" along Buckminster Lane	05/06/2002	No	70
Tealby	238	PF	Claimed footpath from footpath 132 through Thorpe Mill to The Road	25/06/2002	No	71
Woolsthorpe by Belvoir	242	BOAT	Claimed upgrade from PB to BOAT "Longmoor Lane"	03/07/2002	No	72
Barrowby/Grantham	245	BOAT	Upgrade of RBs 10 and 922	10/10/2002	No	73
Osbourneby/Aunsby & Dembleby	248	BOAT	Upgrade from RB (Mickling Meadow Rd)	02/04/2003	No	74
Harlaxton/Grantham	247	BOAT	Claimed BOAT from Gorse Lane to	23/04/2003	No	75

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			Great North Road)			
Branston & Mere	253	PF	Claimed PF along bank of river Witham from Bardney bridge to Bardney Lock	29/10/2003	No	76
Spilsby	254	BOAT	Claimed BOAT along Pooles Lane	24/11/2003	No	77
South Somercotes	257	PF	Claimed PF Southfiels Lane / Town street of the Church	02/03/2004	No	78
Colsterworth	259	PF 14	PF 14	06/05/2004	No	79
Norton Disney	263	PB	Claimed PB at Norton Disney Newark Rd to Swinderby Rd	13/05/2004	No	80
Holton Le Clay	266	BOAT	Claimed BOAT "The Smooting" Holton Le Clay	21/09/2004	No	81
Leasingham	267	BOAT	Upgrade of PB 10 Moor Lane to Leasingham Parish Boundary	16/11/2004	No	82
Leasingham / Sleaford	268	BOAT	Upgrade of PB 6 New Lane Claim from Leasingham Parish Boundary	16/11/2004	No	83
Heckington	269	BOAT	Upgrade of PF 3 Heckington Claim from A17 to PF 3 Heckington	15/12/2004	No	84
Snitterby	270	PF	PF from High St to Bridle Walk and PF 70	04/01/2005	No	85
Aslackby & Laughton	277	BOAT	Upgrade of RB 12 to BOAT	22/02/2005	No	86
Pointon & Sempringham / Aslackby & Laughton	276	BOAT	Upgrade RB 9 & 13 to BOAT (Pethley Lane)	24/02/2005	No	87
Threekingham / Billingborough	275	BOAT	Upgrade PB 4 Claim from Parish boundary to Folkingham Road	25/02/2005	No	88
Allington/Foston	271	BOAT	Upgrade of RB 5 and RB 7 (Marston Lane)	14/03/2005	No	89
Kirkby La Thorpe	274	PF	Claimed PF from The Hoplands to PF 1	17/03/2005	No	90
Belton & Manthorpe / Syston	278	BOAT	Claimed BOAT from Heath Lane to High Dike "Beggars Lane"	13/06/2005	No	91
Asterby	279	PF	Claimed Public Footpath from Goulceby Lane to Public Footpath No.18	18/07/2005	No	92
Ropsley & Humby / Ingoldsby	281	BOAT	Upgrade of PB 30 & PB 14 to BOAT	27/08/2005	No	93
Ingoldsby/Bitchfield & Bassingthorpe	282	BOAT	Upgrade of PB 16 to BOAT and Claimed BOAT	27/08/2005	No	94
Osgodby / Owersby	285	PF 91	PF 91 Osgodby realignment	30/09/2005	No	95
Helpringham	286	BOAT	Upgrade of RB 17 to Boat	23/10/2005	No	96
Pointon & Sempringham/Billingborough	290	BOAT	Upgrade of RB 15 to BOAT & Realign " Primrose Lane"	25/10/2005	No	97
Ropsley & Humby/Boothby Pagnell	287	BOAT	Upgrade of PF27 Ropsley & Humby to BOAT and claimed BOAT in Boothby Pagnell	26/10/2005	No	98
Boothby Pagnell/Old Somerby	291	BOAT	Upgrade of PF 7 to BOAT Claimed BOAT from PF7 to BW7 Upgrade of BW7	29/10/2005	No	99
Pointon & Sempringham	289	BOAT	Claimed BOAT from West Road to Pethley Lane	30/10/2005	No	100
Irnham/Edenham	294	BOAT	Claimed BOAT from Irnham Lane to Bulby Lane, Irnham	05/11/2005	No	101
Lenton Keisby and Osgodby	292	BOAT	Upgrade of PB 3 to BOAT	06/11/2005	No	102
Lenton Keisby and Osgodby / Irnham	293	BOAT	Claimed BOAT from RB 12 to PB 9 and Upgrade of PB 9 to BOAT	06/11/2005	No	103
Lenton Keisby and Osgodby / Irnham	295	BOAT	Claimed BoAT from Irnham BR9 to Elsthorpe Road	09/11/2005	No	104
Burton Coggles / Corby Glen	297	BOAT	Upgrade of BC BW1, RB2 & CG RB9	05/12/2005	No	105

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Great Sturton/Ranby/Hemingby/Belchford	296	BOAT	Upgrade of RB61 to BOAT	12/12/2005	No	106
Aunsby & Dembleby	298	BOAT	Upgrade of RB5	06/01/2006	No	107
Folkingham	299	BOAT	Upgrade of PF 8 to BOAT	27/01/2006	No	108
Hough on the Hill	300	BOAT	Upgrade of RB22 to BOAT	27/01/2006	No	109
Kirkby Underwood	301	PB	Claimed bridleway from Rippingale Br16 to Stainfield Road	30/01/2006	No	110
Great Gonerby/Barrowby	302	BOAT	Upgrade of RB 7 and PF6 in Great Gonerby and PF 11 in Barrowby to BOATS	07/02/2006	No	111
Lissington/Holton Cum Beckering	303	BOAT	Upgrade of PB 904 in Lissington and PB 904 in Holton Cum Beckering to a BOAT	14/02/2006	No	112
Long Bennington	304	BOAT	Upgrade of RB 12 to BOAT	14/02/2006	No	113
Foston	305	BOAT	Upgrade of PB 3 and RB 5 to a BOAT	16/02/2006	No	114
Westborough and Dry Doddington/ Stubton	306	BOAT	Upgrade of PB 12 (W&DD) and PF 3 & RB 7 (Stubton) to a BOAT	22/02/2006	No	115
Westborough and Dry Doddington/ Stubton / Claypole	307	BOAT	Addition of a BOAT in Westborough and DD, upgrade of RB 5 & 6 in Stubton and upgrade of BW 8 in Claypole	22/03/2006	No	116
Searby	311	PB	Addition of a bridleway from Owmbly Road to Howsham Lane	03/08/2006	No	117
Lincoln	313	PF	Claimed footpath from Church Drive to Tritton Road, Lincoln	27/12/2006	No	118
Skegness	317	PF	Claimed footpath from Albany Close to Albany Road, Skegness	15/03/2007	No	119
Lutton	325	PF	Claimed footpath from School Lane to Blazegate	17/07/2007	No	120
Gainsborough	319	PF	Claimed footpath from Bowling Green Rd to Bayard StY	20/08/2007	No	121
Lincoln	320	PF	Claimed footpath from Dunkirk Road to Breedon Drive	21/09/2007	No	122
East Ferry	321	PF	Claimed footpath from East Ferry High St. to River Trent (county boundary)	24/09/2007	No	123
Heighington	323	PF	Claimed footpath along Bracken Hill Lane and Third Hill Road	04/10/2007	No	124
West Ashby/Fulletby	327	PB	Upgrade of PB No. 57 to RB	28/03/2008	No	125
Sturton by Stow	328	PF	Claimed footpath from Bonniwells Lane (PF82) to Tillbridge Lane	10/04/2008	No	126
Swineshead	329	PF	From Tarry Hill to Station Road	21/07/2008	No	127
Lincoln	330	PF	Claimed Footpath between Skellingthorpe Road and Rochester Drive	30/07/2008	No	128
Mablethorpe and Sutton	331	PF	Claimed Public Footpath from Sanhurst Road to The Promenade	12/08/2008	No	129
Scotter / East Ferry	332	PF	Claimed Public Footpath from Becks Lane to Gainsborough Road	28/08/2008	No	130
Scotton	333	PF	Claimed Public Footpath from Gainsborough road to pf 4	28/08/2008	No	131
Lincoln	334	PB	Claimed Public Bridleway from Boswell Drive to Doddington Road	29/09/2008	No	132
Old Somerby	335	PB	Claimed Public Bridleway from junction of Church Lane and The Pastures to PB 7	15/05/2009	No	133
Ropsley & Humby	337	PB	Claimed Public Bridleway & upgrade of Ropsley FP9 (pt) and FP18 Somerby Rd to Ropsley Road	15/05/2009	No	134

Appendix B – Current Caseload

Snitterby/Bishop Norton	336	PF	Claimed Public Footpath Snitterby Carr PF68 (Brown's Bridge) to Grid Ref TF023933	06/07/2009	No	135
Upton	338	PF	Claimed Public Footpath from High Street to PF 50	27/07/2009	No	136
Raithby/Hundleby	339	BOAT	From B1195 road along Raithby PB 133 & part Hundleby PB 133 to Raithby old churchyard	07/09/2009	No	137
Billingborough	341	PF	Claimed Footpath Low Street to Whiteleather Square	27/01/2011	No	138
Colsterworth	345	PF	Claimed Footpath from Old Woolsthorpe Rd to Bridge End	20/02/2011	No	139
Grantham/Londonthorpe and Harrowby	346	PF	Claimed Footpaths in Londonthorpe and Harrowby	21/03/2011	No	140
Boston	347	PF	Claimed Footpath from Ingelow Ave to Punchbowl Lane	24/06/2011	No	141
Bourne	348	PF	Claimed Footpath from Beaufort Drive to Bourne Woods	29/06/2011	No	142
North Somercotes	349	PB	Claimed Bridleway from Warren Road around North Somercotes Warren	09/08/2011	No	143