

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

Report to:	<b>Definitive Map &amp; Statement of Public Rights of Way Sub-Committee</b>
Date:	<b>05 September 2011</b>
Subject:	<b>Appeal against the prioritisation of DMMO 331 - Mablethorpe &amp; Sutton - Sandhurst Road to The Promenade</b>

**Summary:**

An appeal by Mablethorpe & Sutton Town Council against the current standing of DMMO case No.331 within the County Council's priority system.

**Recommendation(s):**

That consideration is given to Mablethorpe & Sutton Town Council'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.

Mablethorpe & Sutton Town Council has appealed against the current priority of DMMO 331, a claimed public footpath between Sandhurst Road and The Promenade

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

## **2. Conclusion**

That Mablethorpe & Sutton Town Council 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 - Mablethorpe & Sutton - Claimed Public Footpath from Sandhurst Road to The Promenade
Appendix B	Letter of Appeal from Mablethorpe & Sutton Town Council
Appendix C	Sample of Petition

#### 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 - <a href="#">HAT 33/3/11</a>
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This report was written by Chris Miller, who can be contacted on 01522 782070 or [chris.miller@lincolnshire.gov.uk](mailto:chris.miller@lincolnshire.gov.uk).

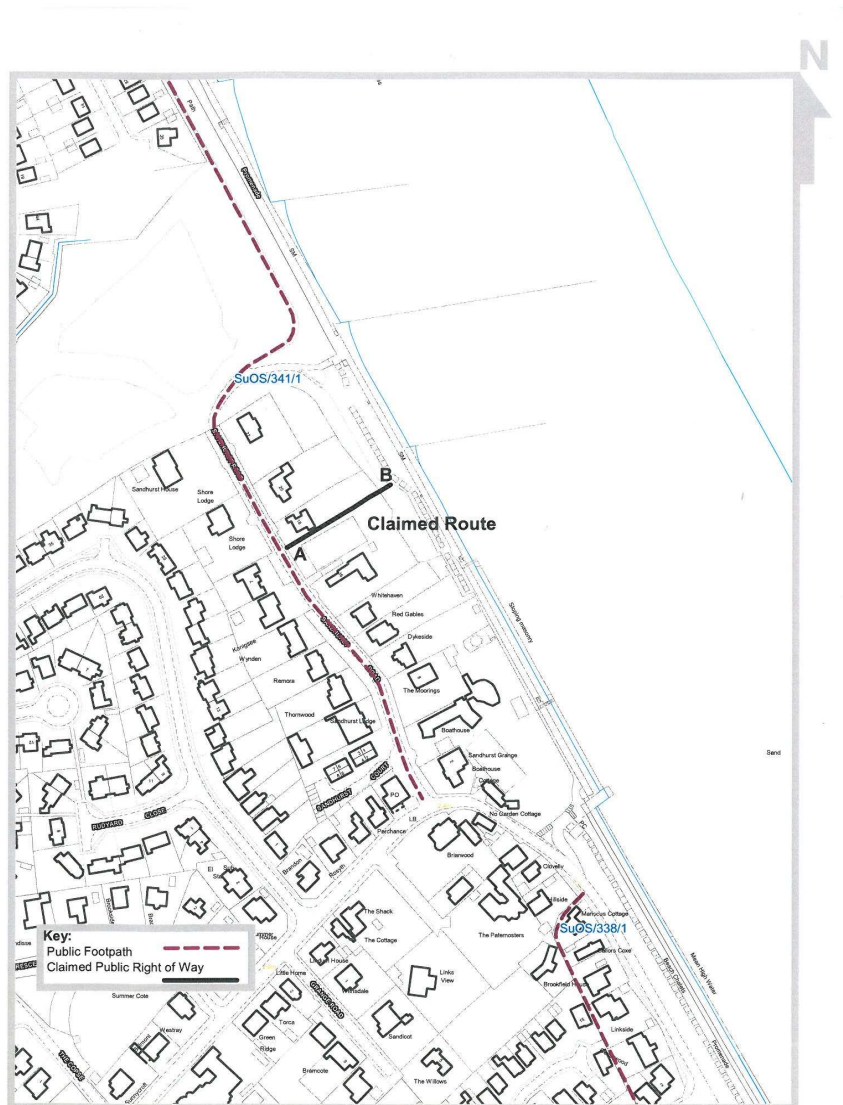
Appendix A – Case Synopsis - Mablethorpe & Sutton - Claimed Public Footpath from Sandhurst Road to The Promenade


**Wildlife & Countryside Act 1981, Section 53  
Definitive Map Modification Order  
Mablethorpe & Sutton - Claimed Public Footpath between Sandhurst Road to  
The Promenade**

**1. Application**

An application under the Wildlife & Countryside Act 1981, section 53(5) from Mablethorpe & Sutton Town Council was made on 26<sup>th</sup> July 2008 to add a public footpath in the Sandilands area of the town between Sandhurst Road (an unadopted private road but also public footpath 341) and The Promenade.

**2. Location Plan of Route**



	Rights of Way & Countryside Access R A Wills, Executive Director (Development Services) City Hall, Orchard Street, Lincoln LN1 1DN	<b>Title: DMMO 331</b> Ref: Mablethorpe & Sutton Compiled by: TF527809 Date: 22 August 2011 Scale 1:2500
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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 100625370.

### **3. Evidence in support of the application**

Accompanying the application were 5 user evidence forms (UEF) although a subsequent 14 UEFs have been received alongside letters from 4 further individuals. Further statements have been taken from 2 of those submitting UEFs.

A petition has also been received by LCC with approximately 470 signatures regarding concerns over the loss of amenity, access to the Promenade for the emergency services and the sequestration of the route into adjoining properties.

### **4. Background**

In 2008 a number of residents of Sandilands requested that the wooden steps forming part of the claimed route up the flood bank to the promenade were repaired. The request was made to East Lindsey District Council as it was believed that it was they, along with the Environment Agency, who had repaired the steps some 6 years earlier.

East Lindsey D.C declined to carry out any repair work and erected a barrier to the route. Subsequent correspondence by those affected with Mablethorpe & Sutton Town Council led to the current Definitive Map Modification Order application.

Since this LCC have taken further measures to safeguard the general public and removed the upper portion of the decayed wooden steps as well as reinforcing the barrier. Subsequently persons unknown have altered the barrier to match surrounding fencing.

Further investigation by LCC has ascertained that neither ELDC nor the Environment Agency own any part of the claimed route and the route is not recorded with freehold title by the Land Registry.

The adjacent landowners have not yet been contacted.

### **5. Current Priority & Original Officer Assessment**

Following receipt of the application it was felt by officers that none of the exception criteria applied. It was also felt that adequate access was available between Sandhurst Road and the promenade by way of public footpath no.341 which adds a further 230 metres between the ends of the claimed route. The case is currently ordered at number 129 of 142 outstanding cases.

### **6. Appeal**

An appeal against the County Council's prioritisation of the case was received from the Town Council dated 8<sup>th</sup> July 2011. See Appendix B.

No specific reference to the Council's prioritisation policy is referenced although a number of points are raised.

## Appendix A – Case Synopsis - Mablethorpe & Sutton - Claimed Public Footpath from Sandhurst Road to The Promenade

1. During the recent spate of beach hut fires, the fire brigade found it extremely difficult to access the promenade, being parked in Sandhurst Road and unable to use the proposed/prior footpath for access.

The Countryside Access Manager has contacted the Fire Crew for Mablethorpe and spoken to Richard Dynan, Watch Manager, concerning the point made above. Mr. Dynan stated that he felt the alternative option of accessing the promenade via Acre Gap (at the end of Sandhurst Road) was a suitable alternative to the claimed footpath as it allows the appliance to get closer to the chalets. Mr. Dynan also stated that if necessary access is available through gardens alongside Sandhurst Road (corroborated by a resident of Sandhurst Road whose garden was used during a recent incidence).

2. The number of persons signing the petition shows overwhelming support from the local community for this path to be reinstated.

A petition of approximately 270 signatures has been submitted (a sample page is attached as Appendix C). The petition is mixed between local residents and visitors to the Sandilands area.

3. Letters of local respected members of the community to this Council and Lincolnshire County Council show the evidence of need for this path.

Those who have written to either the Town Council or LCC have been requested to complete a user evidence form to ensure all the relevant evidence is before the County Council prior to a decision on whether, or not, to make an order.

4. The blocking of the path (believed to be illegal as the land does not belong to either adjacent property) which has been allowed to continue making local people feel the footpath will never be reinstated.

The route was originally obstructed by East Lindsey District Council and action has been taken to remove sections of the dangerous wooden steps to ensure that they are unusable. Since that period the entrance at the Sandhurst Road end has been fenced in keeping with adjoining properties by persons unknown. The rest of the path beyond this point remains separate from either of the adjacent properties and forms a “green alley”.

If the evidence does support inclusion on the definitive map and any order made to that effect is confirmed then the route will be reopened. At this time no assertion as to who will be responsible for the maintenance of the route can be made as it is dependent on when the right of way (for the public) came into existence (if found to be after 1959 the way may not necessarily be maintainable at public expense even if it is a public right of way)

## Appendix A – Case Synopsis - Mablethorpe & Sutton - Claimed Public Footpath from Sandhurst Road to The Promenade

5. The length of time and the protracted correspondence between your office and this Town Council since around 1983 when the footpath was first put on the list for instatement.

The Countryside Access and Definitive Map Section has no record of previous correspondence regarding this particular route. A search of the Mablethorpe and Sutton general file indicated correspondence in 1983 regarding a separate (but similar) DMMO for a right of way in the Trusthorpe area of the Town.

6. The fact that the pathway had been in continuous use for decades, the steps had been repaired by the County and District Councils in the past.

No formal records have been submitted in support of the claimed route regarding previous maintenance although user evidence forms indicate that this may well have been the case. This will be a point investigated as and when the case is progressed.

### **7. Site Visit 16<sup>th</sup> August 2011**

The Countryside Access Manager, Chris Miller, inspected the site on 16<sup>th</sup> August 2011 and found that the entrance at the Sandhurst Road end was blocked and inaccessible although the promenade end of the route was available. The fenced end held a notice regarding Lincolnshire County Council's current involvement regarding the claiming of the route.

The route from the promenade end was found to be semi-overgrown between two wooden fences at a width of approximately 1.5m. Only a small proportion of the wooden steps were available.

Mr. Miller spoke to three residents of Sandhurst Road who confirmed the fire brigade's actions (see para. 6, 1) and also claimed that the route was better closed for the time being due to persistent anti-social behaviour and crime.

A review of the crime figures for the Road on the Police website revealed that between December 2010 and June 2011 there have been 7 reported incidents.

MABLETHORPE & SUTTON TOWN COUNCIL



Mablethorpe Library and  
Community Access Point  
Stanley Avenue  
Mablethorpe LN12 1DP  
Town Clerk: Mrs J Cooper  
Telephone: 01507 329172 / 329174  
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Lincolnshire County Council  
Ms C Beeby  
4<sup>th</sup> Floor  
City Hall  
Lincoln  
LN1 1DN

8<sup>th</sup> July 2011

Dear Ms Beeby

GREATER LINCOLN & GAINSBOROUGH DIVISION	
14 JUL 2011	
ACTION: CM	
REPLY:	
FILE REF: 317 798	
CONFIRM REF:	

317 798

**RE: Sandhurst Road/promenade Footpath Sutton on Sea**

Thank you for your letter dated 20<sup>th</sup> June 2011 (ref CB/DMMO/331/M & S/317113/SG).

I am somewhat perplexed at the need for the Council to provide further supporting evidence, however I will confirm the following points and submit these as further supporting evidence:

- During the recent spate of beach hut fires, the fire Brigade found it extremely difficult to access the promenade, being parked in Sandhurst Road and unable to use the proposed/prior footpath for access.
- The number of persons signing the petition (of which you have a copy) shows overwhelming support from the local community for this path to be reinstated.
- Letters from local respected members of the community to this Council and to the Lincolnshire County Council (further copies attached where appropriate) show the evidence of need for this path.
- The blocking of the path (believed to be illegal as the land does not belong to either adjacent property) which has been allowed to continue making local people feel the footpath will never be reinstated.
- The length of time and the protracted correspondence between your office and this Town Council since around 1983 when the footpath was first put on the list for instatement.
- The fact that the pathway had been in continuous use for decades, the steps had been repaired by the County and District councils in the past.



## Appendix B – Letter of Appeal from Mablethorpe & Sutton Town Council

Bearing the above points in mind I would be pleased if you would confirm what other written evidence you need to progress this application quicker than at present. Members of the public and the Town Council have been campaigning for this path to be reopened as a definitive footpath for decades now and feel that the time has come for quicker action to be taken, and as such I formally request the reprioritisation of the application.

Yours sincerely



Mrs J. Cooper  
Town Clerk

Cc Cllr Graham Marsh

## Appendix C – Sample of Petition

We the undersigned, being residents of, or visitors to, Sandilands, wish to remind Lincolnshire County Council that we consider that the Council's apparent lack of action over the restoration of the footpath between Sandhurst Road and the Promenade to be a failure in the responsibilities bestowed on both the elected Council Members and the paid employees who are the servants of the electorate.

We are concerned that the closure of this access to the promenade causes unnecessary hindrance to all emergency services, as demonstrated in May of this year when the Fire Service was delayed in reaching the beach huts destroyed in an arson attack.

We are aware that many individuals have approached the Council over this matter, all of whom report that they find no person willing to take responsibility for the restoration of this pathway, which has been in continuous public use for five decades or more.

Until such time as Lincolnshire County Council shows some positive action in the restoration of this local facility, the suspicion will remain that Councillors and paid officials are failing in their statutory duties and that they will tolerate the potential annexing of land in former public use to privately owned property.

Name

Address

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