

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

Report to:	Definitive Map & Statement of Public Rights of Way Sub-Committee
Date:	05 September 2011
Subject:	Appeal against the prioritisation of DMMO 283 - Wrangle - Claimed Byway Open to All Traffic (BOAT) from Church Lane to Church End

Summary:

An appeal by Wrangle Parish Council against the current standing of DMMO case No.283 within the County Council's priority system.

Recommendation(s):

That consideration is given to Wrangle Parish 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.

Wrangle Parish Council has appealed against the current priority of DMMO 283, a claimed Byway Open to All Traffic between Church Lane & Church End.

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

2. Conclusion

That Wrangle Parish 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 - Wrangle- Claimed Byway Open to All Traffic (BOAT) from Church Lane to Church End "Cockle or Cockleshell Alley"
Appendix B	Letter of Appeal by Wrangle Parish Council
Appendix C	Second Edition Ordnance Survey Map Extract

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

This report was written by Chris Miller, who can be contacted on 01522 782070 or chris.miller@lincolnshire.gov.uk.

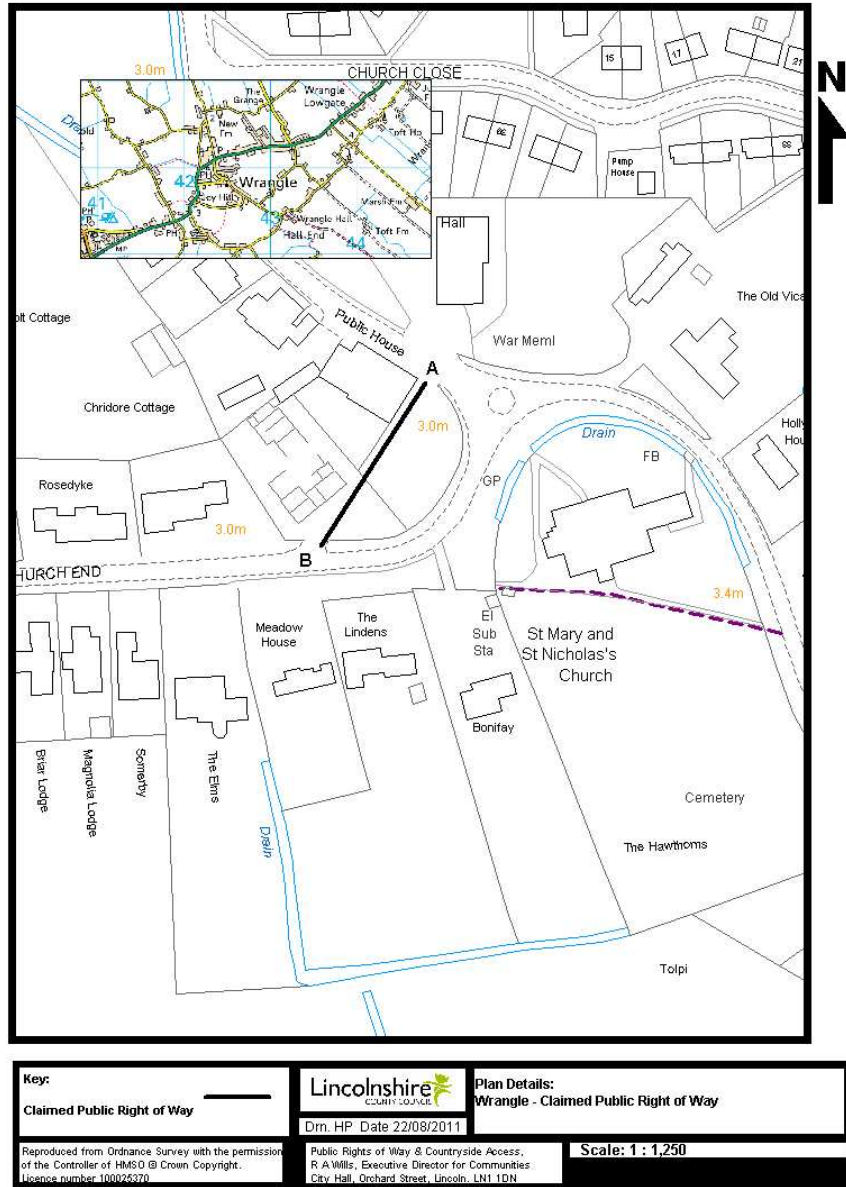
Appendix A – Case Synopsis - Wrangle - Claimed Byway Open to All Traffic (BOAT) from Church Lane to Church End “Cockle/Cockleshell Alley”

**Wildlife & Countryside Act 1981, Section 53
Definitive Map Modification Order
Wrangle - Claimed Byway Open to All Traffic from Church Lane to Church
End “Cockle/Cockleshell Alley”**

1. Application

An application under the Wildlife & Countryside Act 1981, section 53(5) from Mablethorpe & Sutton Town Council was made on 5th September 2005 to add a Byway Open to All Traffic (BOAT) in the parish of Wrangle between Church Lane and Church End known as Cockle Alley or Cockleshell Alley

2. Location Plan of Route



3. Evidence in support of the application

Accompanying the application were 20 user evidence forms

4. Background

The area of land crossed by the claimed right of way has been subject to a planning application for the development of dwellings. Boston Borough Council have been made aware of the claimed route and have discussed this with the developer who has revised the development area so that the line of the claimed route is not encroached. However the developer has erected a brick wall across the line of the route separating his property with that of the adjacent pub car park. It is claimed that this was a planning condition.

It appears that the planning permission triggered the application by the Parish Council as prior to this the route remained unobstructed.

In reviewing the Second Edition Ordnance Survey map for the area it appears that there was a distinct way between Church Lane and Church End although sometime in the past the eastern boundary to the route has been removed. (See Appendix C)

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 along the roadway. The case is currently ordered at number 94 of 142 outstanding cases.

6. Appeal

An appeal has been received from Wrangle Parish Council (see Appendix B). They believe that the application fits 3 of the policy criteria for exemption.

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.*

“This has been a right of way for over a hundred years and was much used – therefore a disruption for those that used to be able to walk the footpath or use the vehicular access from the public house car park

Although there are no hostilities at present, there has been between the landowner and the landlord of the public house.”

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).*

Appendix A – Case Synopsis - Wrangle - Claimed Byway Open to All Traffic (BOAT) from Church Lane to Church End “Cockle/Cockleshell Alley”

“A wall has been built from the fencing of the public house to the boundary by the roadside preventing the footpath being used or the vehicular access.”

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.*

“It was safer to leave the public house car park via the now blocked up vehicular access. It was also safer for pedestrians to walk this footpath than to walk around the outside as there is no footpath outside the Church and pedestrians have to walk on the grass or in the road, this was also a route for residents in Church End to walk to the bus stop and for the school children to get to and from the school and college buses.”

7. Site Visit 16th August 2011

The Countryside Access Manager, Chris Miller, inspected the site on 16th August 2011 and found that the claimed route was obstructed mid way by building materials and by a brick wall built directly across the line of the claimed right of way.

The Parish Council contend that the alternative to using the claimed route is more dangerous as there is no footway but Mr. Miller found that a footway has been constructed to the southern side of the road providing a safe walking are for pedestrians.

dm

WRANGLE PARISH COUNCIL

CLERK: Mrs E L Arnold
Crookes Cottage
Wrangle Bank
BOSTON
PE22 9DL

Tel/Fax: 01205 270352
e-mail: Wranglepc@aol.com

The Director for Development
FAO Principal Rights of Way and Access Officer
4th Floor
City Hall
Beaumont Fee
LINCOLN
LN1 1DN

11 July 2011

GREATER LINCOLN & GAINSBOROUGH DIVISION	
14 JUL 2011	
ACTION	CM
REPL	
FILE REF	317 806

317 760

Dear Sir

I write on behalf of Wrangle Parish Council regarding a footpath known as 'Cockleshell Alley'. The Parish Council have, for some years, been trying to get the footpath recognised and opened up again for residents in the Parish. The latest enquiry revealed that the footpath is number 99 on the list and 28 cases are dealt with at any one time. A list of criteria was given stating that if the footpath fulfilled some of the items on the list then perhaps greater consideration would be given. The criteria is set out below, together with the response from the Parish Council:

Criteria:

- i) 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.
- ii) 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).
- iii) Where there is 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.
- iv) 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.
- v) 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.
- vi) Where there is significant financial saving to the County Council (and therefore taxpayer) through the processing of an Order.
- vii) 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.
- viii) Where the route will significantly assist in achieving a Countryside and Rights of Way Improvement Plan Objective or Statement of Action.

Appendix B – Letter of Appeal from Wrangle Parish Council

Page 2

11 July 2011

Wrangle Parish Council

Parish Council reply:

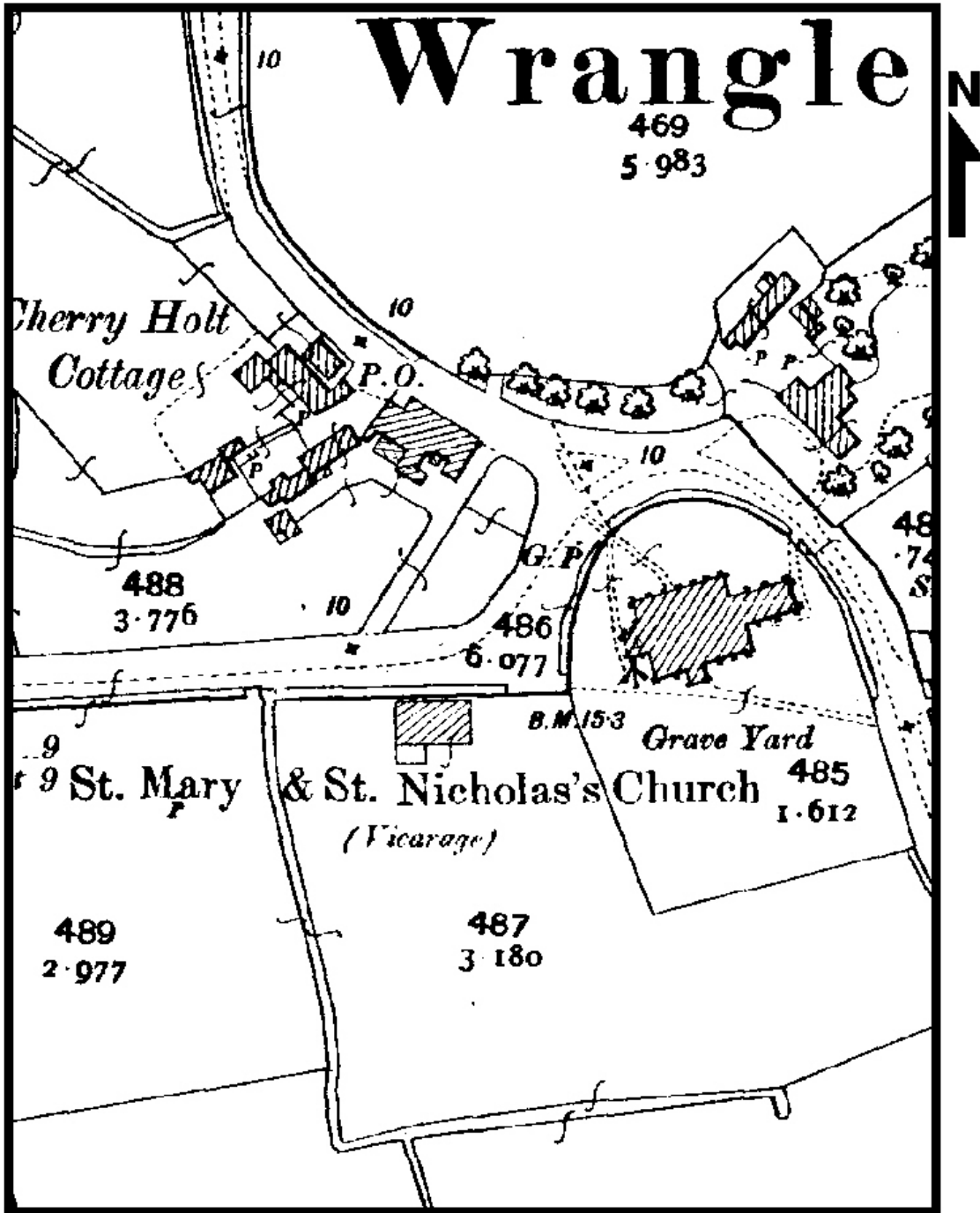
- a. This has been a right of way for over a hundred years and was much used – therefore a disruption for those that used to be able to walk to footpath or use the vehicular access from the public house car park **(i)**.
- b. Although there are no hostilities at present, there has been between the landowner and the landlord of the public house **(i)**.
- c. A wall has been built from the fencing of the public house to the boundary by the roadside preventing the footpath being used or the vehicular access **(ii)**.
- d. It was safer to leave the public house car park via the now blocked up vehicular access. It was also safer for pedestrians to walk this footpath than to walk around the outside as there is no footpath outside the Church and pedestrians have to walk on the grass or in the road, this was also a route for residents in Church End to walk to the bus stop and for the school children to get to and from the school and college buses. **(v)**.

I look forward to receiving your comments with regard to the above matter.

Yours faithfully



E L Arnold (Mrs)



<p>Key:</p>	<p>Lincolnshire COUNTY COUNCIL</p> <p>Dm. HP Date 22/08/2011</p>	<p>Plan Details: 1905 OS MAP</p>
<p>Reproduced from Ordnance Survey with the permission of the Controller of HMSO © Crown Copyright. Licence number 100026370</p>	<p>Public Rights of Way & Countryside Access, R. A. Mills, Executive Director for Communities City Hall, Orchard Street, Lincoln, LN1 1DN</p>	<p>Scale: 1 : 1,250</p>