

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

Report to:	Definitive Map & Statement of Public Rights of Way Sub-Committee
Date:	16 July 2012
Subject:	Appeal against the prioritisation of DMMO 328 – Sturton by Stow – Claimed Public Footpath from Tillbridge Road to Bonniwells Lane, Bransby

Summary:

An appeal by a member of the public against the current standing of DMMO case No.328 within the County Council's priority system.

Recommendation(s):

That consideration is given to the 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.

A member of the public has appealed against the current priority of DMMO 328, a claimed Public Footpath in the parish of Sturton by Stow running Tillbridge Road and Bonniwells Lane in Bransby

Appendix A is a brief case synopsis including the reasons for the appeal.

2. Conclusion

That a member of the public 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 - Sturton by Stow – Claimed Public Footpath from Tillbridge Road to Bonniwells Lane, Bransby
Appendix B	Letter of Appeal by Miss M Cassidy
Appendix C	c.1906 Ordnance Survey Mapping

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 - Sturton by Stow – Claimed Public Footpath from Tillbridge Road to Bonniwells Lane, Bransby

Wildlife & Countryside Act 1981, Section 53

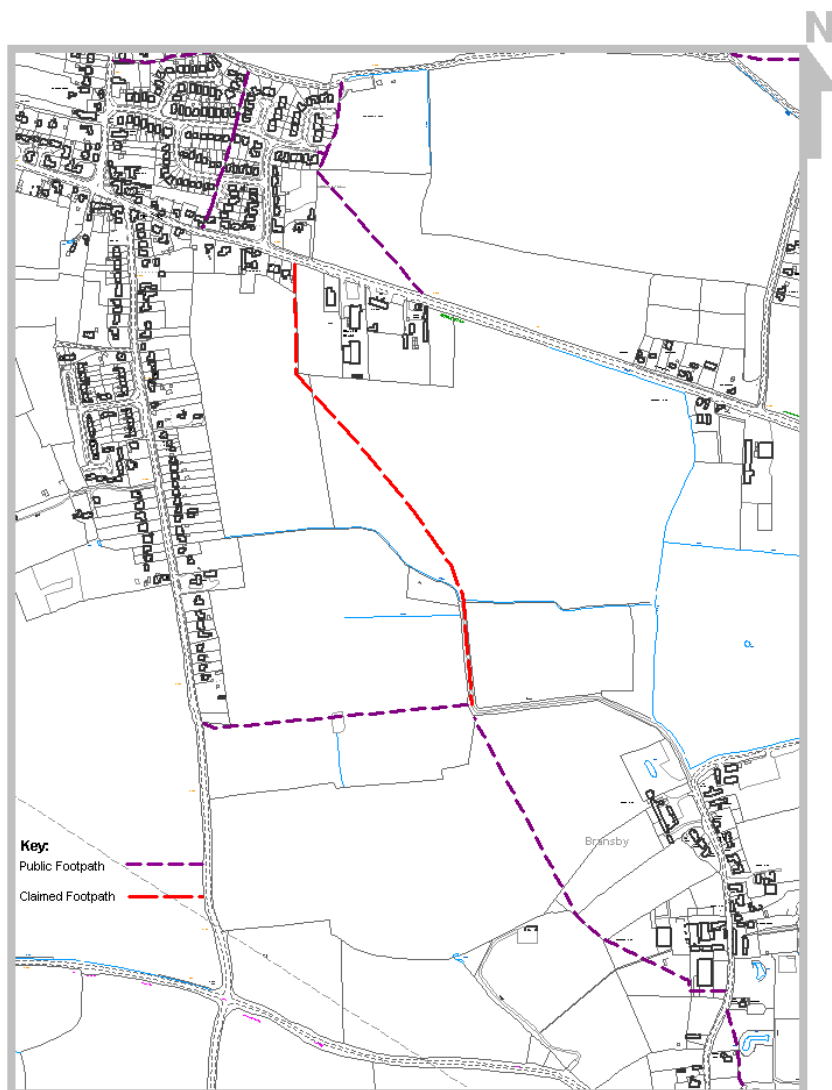
Definitive Map Modification Order

Sturton by Stow – Claimed Public Footpath from Tillbridge Road to Bonniwells Lane, Bransby

1. Application

An application under the Wildlife & Countryside Act 1981, section 53(5) from Mr. D. Lucas was received dated 15th April 2008

2. Location Plan of Route



Lincolnshire
COUNTY COUNCIL

Rights of Way & Countryside Access
R A Wills, Executive Director
(Development Services)
City Hall, Orchard Street,
Lincoln LN1 1DN

Title: Sturton by Stow
Ref: Claimed Public Footpath
Compiled by: SK894797
Date: 10 May 2012 Scale 1:6928

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3. Evidence in support of the application

Accompanying the application were five user evidence forms although one form was incomplete and has since been discounted.

4. Background

The applicant has provided information that the claimed public right of way extended beyond the end of “Bonniwells Lane”, an unsurfaced, unclassified county road which links public footpaths 81 and 82, heading in a northward direction and reflecting the approximate route of the path recorded on the Ordnance Survey maps of the turn of the last century which had been surveyed in c.1888.

A brief reading of the user evidence forms supplied with the application indicate that known usage of the path ceased in approximately 1950-52 on the removal of a bridge at the Tillbridge Road end of the route.

The northern end of the route at Tillbridge Road has been developed with a property constructed (No. 18 Tillbridge Road) in c.1945. Currently it appears that an outbuilding (garage) obstructs the claimed route.

5. Current Priority & Original Officer Assessment

Following receipt of the application it was felt by officers that none of the exception criteria applied. The case is currently ordered at number 124 of 144 outstanding cases.

6. Appeal

An appeal has been received from Miss M. Cassidy (see Appendix B) who believes that the case has the opportunity of meeting two of the eight exception criteria:

Criteria 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).

It is acknowledged that the claimed route is already obstructed by the erection of a double garage in the grounds. It is understood by the appellant that an adjacent field has been purchased with a view for the area to be allocated for three houses. It is unknown if this would constitute a permanent obstruction dependent on whether the claimed route is affected by the site layout and diversion potential.

Criteria 8: Where the route will significantly assist in achieving a Countryside and Rights of Way Improvement Plan Objective or Statement of Action.

The appellant contends that the application fulfils Statement of Action No.18 that LCC will look to identify and develop circular and linear recreational routes to and from countryside / tourism sites.

Appendix A – Case Synopsis - Sturton by Stow – Claimed Public Footpath from Tillbridge Road to Bonniwells Lane, Bransby

This is on the basis that not only will it provide for a short circular walk from Sturton by Stow but also links the village with the Bransby Home for Horses, a local attraction.

7. Site Visit 11th June 2012

The Countryside Access Manager, Chris Miller, inspected the site on 7th June 2012 and found the northern end partially obstructed by the dwelling on Tillbridge Road. The remainder of the route currently passes through agricultural land and as such could be made available should an order be made and confirmed.

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Appendix B – Letter of Appeal from Miss M Cassidy

Miss M Cassidy

2 Bradway

Sturton By Stow

Lincoln

LN1 2DU

Dear Sir



1st May 2012

I would like to appeal about the priority given to a footpath running from Sturton By Stow to Bonnewells Lane Bransby. The path referred to by the definitive map office as DM/MO 328 is currently 125 on the list after the initial application was submitted in April 2008.

There is much interest in the village of Sturton to get this footpath reopened as it is an historical route to tie the two villages together. It was used in the past by Bransby school children to access the Old School Room in Sturton.

I appreciate there is a rather large backlog of work in reinstating the path network and there is a Definitive Map Modification Priority System which can add weight to the priority if adhering to certain set criteria. It is through this Priority System that I would like to appeal about the position of the path in question.

Point two on the priority system mentions

2. Where there is a significant threat to the route, likely to cause a permanent obstruction with no means of resolving the problem by way of diversion.

I would like to inform you through this letter that the path has been blocked in its original state by the erection of a double garage some years back. The other side of the hedge heading in the same direction is an empty field recently purchased by Obam Lifts Sturton By Stow for a housing development.

I understand that under point two above, a significant threat likely to cause permanent obstruction with no other means of diversion would be considered as good enough reason to prioritise a footpath.

With the original entrance to the path now blocked by garages and the planning application for 3 luxury houses to be built on the adjoining field coming shortly I would ask that the urgency of finalising this path is acknowledged and prioritised.

Appendix B – Letter of Appeal from Miss M Cassidy

I would also add that in relation to the Countryside access and ROW improvement plan the path in question meets the following:

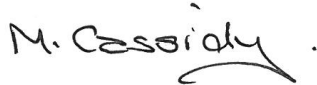
- Identify and develop circular and linear recreational routes from countryside / tourism sites

The path links Bransby to Sturton By Stow historically. Currently Bransby residents drive from their village to access the doctors surgery, school, public houses, local shop and Post Office all situated in Sturton By Stow. Likewise Sturton By Stow residents and visitors staying in the village currently drive to Bransby to access the visitors attraction at Bransby Home For Horses.

The path would greatly benefit our rural businesses in both villages and also provide a direct circular link for walkers to access path 417/81/1 and path 417/82/1.

I would like to thank you for your time and await your reply to the appeal to prioritise the path DMMO 328.

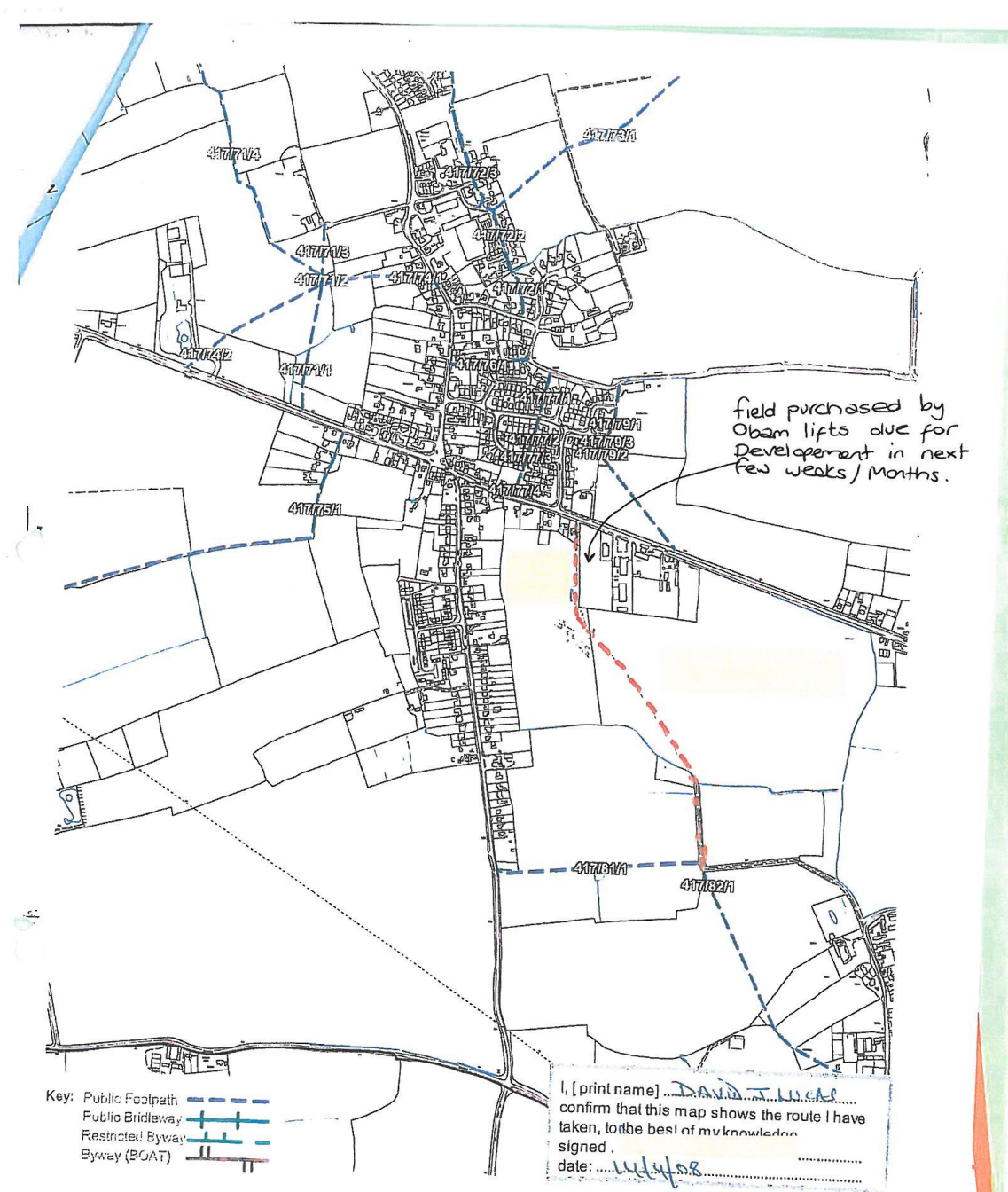
Yours Sincerely

A handwritten signature in black ink that reads "M. Cassidy". The signature is written in a cursive style with a large, sweeping flourish at the end.

Miss M Cassidy

Enc: Original application for footpath from Mr D Lucas made in April 2008

Appendix B – Letter of Appeal from Miss M Cassidy



Lincolnshire
COUNCIL

Rights of Way & Countryside Access
Director of Development: FIA Wells
City Hall, Orchard Street,
Lincoln LN1 1DN

Title: Sturton By Stow

Fast DMMO application

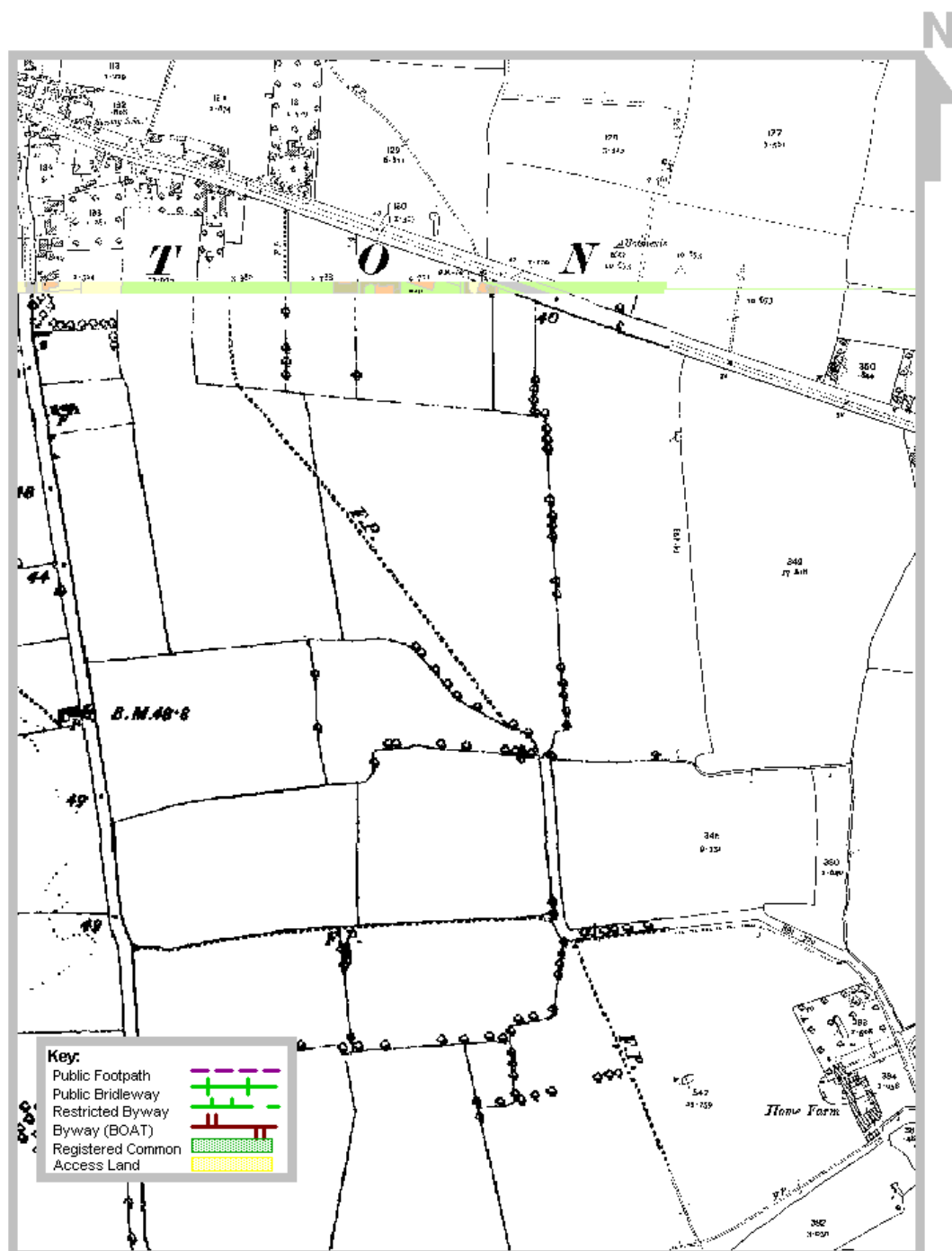
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Date: 24/01/98 Scale: 1:10,000

Date: 24/01/08

Scale: 1:10,000

Basic 1.10,000

Appendix C – Ordnance Survey Map c.1905



Lincolnshire
COUNTY COUNCIL

Rights of Way & Countryside Access
R. A. Wills, Executive Director
(Development Services)
City Hall, Orchard Street,
Lincoln LN1 1DN

Title:

Ref:
Compiled by: SK894798
Date: 11 June 2012 Scale 1:5000

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