

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

Report to:	Definitive Map & Statement of Public Rights of Way Sub-Committee
Date:	5th November 2012
Subject:	Re-prioritisation of DMMO 259 – Colsterworth – Deletion of Public Footpath 14.

Summary:

A review of DMMO 259 following representations by the Colsterworth Parish Council and affected landowners.

Recommendation(s):

That consideration is given to the re-prioritisation 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.

The Countryside Access Manager has recently met with members of the Parish Council and with affected landowners to discuss the case and the difficulties faced in the local community

Appendix A is a brief case synopsis including the rationale for re-prioritisation.

2. Conclusion

That circumstances surrounding the modification order case have altered making an expedited resolution desirable within the local and wider community.

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 – Colsterworth – Deletion of Public Footpath No.14

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.

**Wildlife & Countryside Act 1981, Section 53
Definitive Map Modification Order
Colsterworth – Deletion of Public Footpath No. 14**

1. Application

This case was initiated by Lincolnshire County Council under the Wildlife & Countryside Act 1981, section 53(3)(c) following the discovery of evidence requiring investigation for a modification to the definitive map & statement.

2. Location Plan of Route

See *fig1.*, pg 2 of this Appendix

3. Background

Correspondence in the path file indicates that this public footpath has not been available since at least 1987 and in all probability for some time before that date, if at all.

The route appears to have been extinguished in 1935 by the Kesteven Quarter Sessions on 4th September 1936 for which the original documentation is still available. The closure was to enable the quarrying of the area.

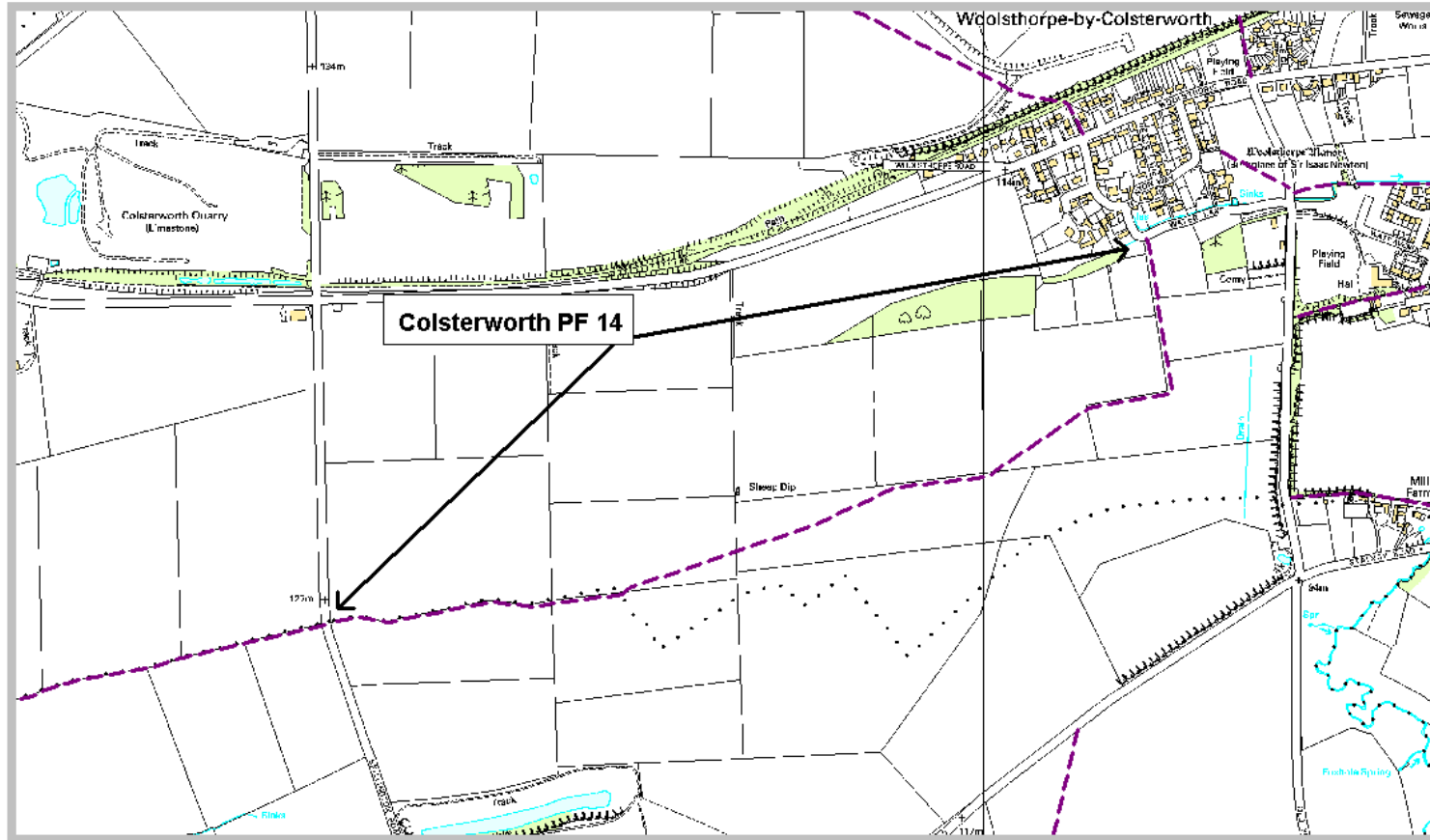
The Colsterworth parish council make mention of the closure in both the written survey notes and also the annotated survey map. However within the written survey the council included the following wording:

“(Continuation to this path from Village closed in 1936 by order of Quarter Sessions – This part may already have been closed, but in order to safeguard the position it is suggested that it should be included)”.

It is unknown as to the context in which this footnote was written however the route was added to the Draft Definitive Map and as no-one appears to have objected to its inclusion within the process laid out by the National Parks & Access to the Countryside Act 1949 at either the Draft or Provisional stage, the route has been maintained on the Map since its initial formulation and has become legal proof of its existence.

The Definitive Map was designed to show routes *in existence* at its relevant date yet this does not seem compatible with the Quarter Sessions evidence. It is possible that rights were accrued by users between 4th September 1936 and the relevant date of the map of 1st July 1953 however this would rely on Common Law given that 20 years had not elapsed. Also given the quarrying it is unlikely that access would not have been restricted.

Appendix A – Case Synopsis – Colsterworth – Deletion of Public Footpath No.14



 <p>Lincolnshire COUNTY COUNCIL</p>	<p>Rights of Way & Countryside Access Director of Development: RA Wills City Hall, Orchard Street, Lincoln LN1 1DN</p>	<p>Title: Ref: Compiled by: SK915239 Date: 29 October 2012 Scale 1:10000</p>	<p>Key:</p> <ul style="list-style-type: none"> Public Footpath  Public Bridleway  Restricted Byway  Byway (BOAT)  Registered Common  Access Land 
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4. Current Situation

Whilst on the definitive map and statement various users and user groups have sought to use this route being a useful link within a potential circular walk based on Colsterworth and as a link to the Viking Way from the village.

In the late 1990s and for the first part of the next decade the route was subject to a high profile campaign by various user groups such as the Ramblers, Lincolnshire Fieldpaths Association and the Open Spaces Society. The route was also nationally recognised by the Open Spaces Society and published as a series of walks guides by “Countryside Books”.

It was during deliberations regarding the opening up of the route following concerted pressure and threats of ombudsman action or future action against the Authority under the Highways Act 1980 that the issue of the Quarter Sessions came to light and a modification order case was initiated by the Authority.

Since that time, both the parish council who wish for the route to be available and the landowners who now believe the route to be incorrectly reflected on the definitive map and statement, an impasse has ensued. This has caused some local disquiet but recent removal of boundary features to facilitate access by persons unknown as severely aggravated the landowners along the route.

5. Parish Meeting

The Countryside Access Manager, Chris Miller, attended a parish meeting with the parish council and all affected land owners to discuss the situation and to outline how matters may be progressed. It was suggested that the occupiers could possibly lay out a permissive path in lieu of the definitive route whilst deliberations are on-going. This would have the effect of providing a managed route for the public and reducing the possibility of damage to field boundaries in a sensitive area where livestock are present.

The occupiers agreed but on the proviso that LCC expedited investigations so as to provide surety as to the situation. Whilst this is possible the Countryside Access Manager agreed to refer the matter to the Definitive map & Statement of Public Rights of Way Sub-Committee.

The Countryside Access Manager also warned the group that it was no means certain that the route would be removed as the legislation does not allow for a reconsideration of evidence taken into consideration at the time the definitive map and statement was prepared but agreed that the circumstance in this case were unusual.