

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:	Appeal against the prioritisation of DMMOs 354 & 355 – Utterby – Claimed Rights of Way between Grange Lane & Holywell Lane and Grange Lane and the Former Railway Line and Beyond

Summary:

An appeal by a member of the public against the current standing of DMMO case No.354 & 355 within the County Council's priority system.

Recommendation(s):

That consideration is given to the appeal to upgrade the priority of the modification order cases.

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 DMMOs 354 & 355 being two claimed public rights of way in the parish of Utterby between Grange Lane & Holywell Lane and Grange Lane and the former railway line and beyond

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 - Utterby– Claimed Public Right of Way from Grange Lane to Holywell Lane and from Grange Lane to the Former Railway and Beyond.
Appendix B	Letter of Appeal by Mrs M. Scott

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
Utterby**

- A) – Claimed public right of way between Grange Lane & Holywell Lane**
- B) - Claimed public right of way between Grange Lane & the former railway line and beyond**

1. Application

Applications under the Wildlife & Countryside Act 1981, section 53(5) from Mrs. M Scott were received dated 15th April 2008

2. Location Plan of Route

See *fig1.*, pg 2 of this Appendix

3. Evidence in support of the application

Accompanying the application for Route A were 42 user evidence forms with 30 of those providing evidence also doing so for Route B. No documentary evidence had been submitted.

4. Background

The applicant has submitted two applications that are linked both geographically and also by those giving evidence and should be dealt with together.

Whilst no in depth analysis of the evidence has been done it is apparent that there are a strong number of long-standing residents who have used this route frequently over many years. It is however notable that Route B seems to be a cul-de-sac and this is an issue that will be investigated as and when user interviews can take place (carried out before the case is official progressed to conclusion).

It would appear from the witness testimonies that the occupiers took the steps to restrict usage in November 2011 through challenging users, erecting a closed field gate and signage stating “Private – No public right of way”.

5. Current Priority & Original Officer Assessment

Following receipt of the applications officer opinion was that none of the exception criteria applied. The case is currently ordered at number 143 & 144 of 146 outstanding cases.

Appendix A – Case Synopsis - Utterby - Between Grange Lane & Holywell Lane and Grange Lane and the former railway line and beyond

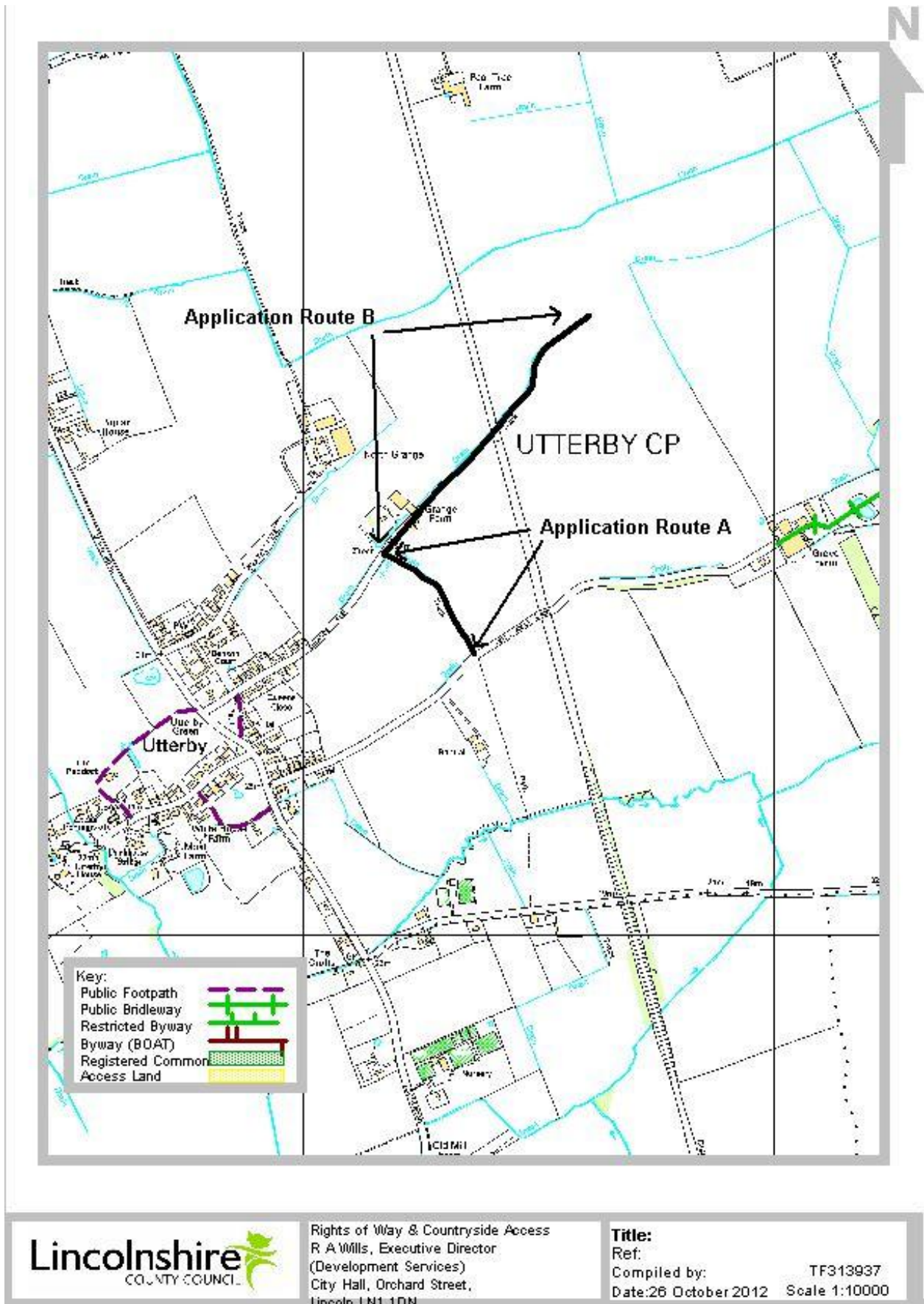


Fig.1. – Utterby – Claimed Public rights of Way (Route A & Route B)

6. Appeal

An appeal has been received from the applicant Mrs. M. Scott (see Appendix B) supported by letters from 19 of those providing user evidence forms. Whilst no specific criteria are listed it appears that those wishing to pursue a change priority will be relying

Criteria 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.

Those submitting support to the appeal recognise that the matter has become a significant cause of discontent and ill feeling within a very small community already split geographically by the busy A16 road. It is claimed that in a close knit community where most people know the occupiers and indeed have been friends since childhood the matter has become significantly upsetting.

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

Whilst not directly making the point any of those writing in support of reprioritisation mention the benefits to the local community and specifically issues regarding the lack of walking routes in the available east of the A16 and that the routes had been often used as part of a health walk led by the East Lindsey Heart Support Group. It is also noted that a significant proportion of users are elderly and this has had an effect on their health and well-being

7. Site Visit

The Countryside Access Manager, Chris Miller, will provide a verbal report with slides at the meeting.

326-102

The Hollies
Main Road
Utterby
Louth
Lincs. LN11 0TA

AM

09.07.2012.

Dear Sir or madam,

As the applicant, on behalf of many villagers, to serve notice on the farmers, Mr. Wilkinsons concerning the denial of access to the footpaths: of Green Lane, between Grange Lane and Holywell Lane, and the route past Grange Farm to the railway and beyond. I am writing to express my feelings concerning this matter.

There are very strong feelings against the closures of these footpaths which have been used for generations long before the present farm owners. It is causing ill-feeling and division in the village.

My family and I have used these pathways for family walks, exercise, pleasure, for contemplation and just enjoying the beauty of the views and land around, and I mourn the fact that I am no longer able to use these footpaths to cross from one lane to another on this circular route, neither able to pass the Grange Farm enroute to the railway + beyond - to enjoy the wild life and tranquility of the countryside.

I miss being able to stand under the beautiful Elm tree on Green Lane and admire the view of the Railway bridge :- a picture that my daughter lovingly painted.

These routes are especially good for the elderly as they do not need to cross the busy A.16 and also I begrudge using my car to access walks when I already have wonderful walks just behind my home.

How I miss the circular route + route past the farm for the variety it brings into our walks. It is therapeutic by lifting and enriching our village lives and I

Appendix B – Letter of Appeal from Mrs. M. Scott

feel deprived of the right to roam on long established foot paths for my family, grandchildren and future generation. It is a great loss to a vital part of our village life. ~~and~~ I cannot express enough how deeply upset I feel about this and hope that with the strength of feeling on behalf of many villagers this ~~sub~~ application can be given priority to be resolved as quickly as possible so that we may use the footpaths again for it will significantly improve the well being of the village community and those who have used these paths for years and hope to continue to do so.

Yours sincerely
~~M. Scott~~
Maureen Scott

Appendix C – Ordnance Survey Map c.1905