

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

Report to:	Definitive Map & Statement of Public Rights of Way Sub-Committee
Date:	8th April 2013
Subject:	Appeal against the prioritisation of DMMO 360 – Heapham – Variation of the Description & Particulars of Public Footpath No.57 in the Definitive Map & Statement

Summary:

An appeal by a member of the public against the current standing of DMMO case No.360 -Heapham – Variation of the Description & Particulars of Public Footpath No.57 in the Definitive Map & Statement

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 DMMO 360 being an application to vary the description & particulars of Heapham – Public Footpath No.57 in the Definitive Map & Statement

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 - Heapham – Variation of the Description & Particulars of Public Footpath No.57 in the Definitive Map & Statement
Appendix B	Letter of Appeal by Mr. C Taylor

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**

**HEAPHAM – VARIATION OF THE DESCRIPTION AND PARTICULARS OF
PUBLIC FOOTPATH No.57 IN THE DEFINITIVE MAP & STATEMENT**

1. Application

A valid application under the Wildlife & Countryside Act 1981, section 53(5) from Mr. C Taylor, has been received by Lincolnshire County Council and is dated 30 October 2012

2. Location Plan of Route

See *figs 1,2& 3* on pg. 2 of this Appendix

3. Evidence in support of the application

Accompanying the application for the variation of the description particulars is 5 user evidence testimonies. Further evidence has also been submitted including an extract from the Enclosure Award Map for Heapham dated 1776 and house deeds for Hawthorn House & Cottage.

4. Background

On 24th July 2012 the County Council received a report that Heapham Public Footpath No.57 was correctly aligned to the route shown on the Definitive Map and that also an area of land considered to be part of the carriageway verge had been seized through adverse possession.

Investigations by Highways Division and Legal Services Lincolnshire regarding the latter issue are on-going however the matter of the right of way was subject to correspondence from the Parish Meeting and in accordance with the Council's path priority policy the path was aligned on the basis of available evidence to be located at a point terminating at the rear of Hawthorn Cottage.

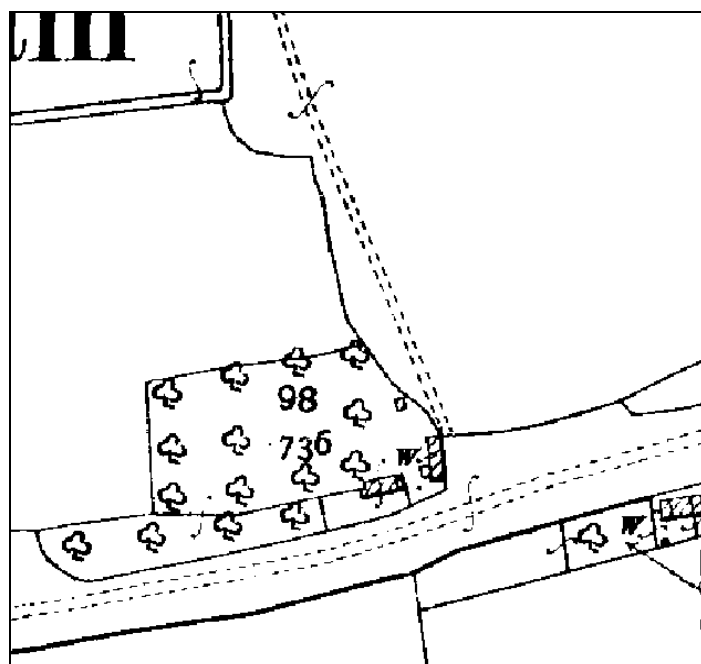
From this point onward to the tarmac carriageway the public should have the opportunity of crossing any part of the highway verge however the mature hedging and fencing acting as a boundary to the "seized" land form an obstruction and as a consequence users are constrained to a route immediately adjacent to the cottage.

The applicant's case centres on the opinion that the route was not aligned as such at the time the National Park & Access to the Countryside Act 1949 surveys were completed by the Parish Meeting and that the route should be restored to the location it previously enjoyed prior to 2012. Evidence to back this assertion is in the form of Enclosure Award Map and from written testimony, housing deeds and photographs.

Appendix A – Case Synopsis – Heapham – Variation of the Description & Particulars of Public Footpath No.57 in the Definitive Map & Statement



*Fig.1. – Heapham – Definitive Map Extract
Gainsborough Rural District Relevant Date 5th July 1954*



*Fig. 2. – Heapham – Extract from 1906 Ordnance Survey
Surveyed 1885.*

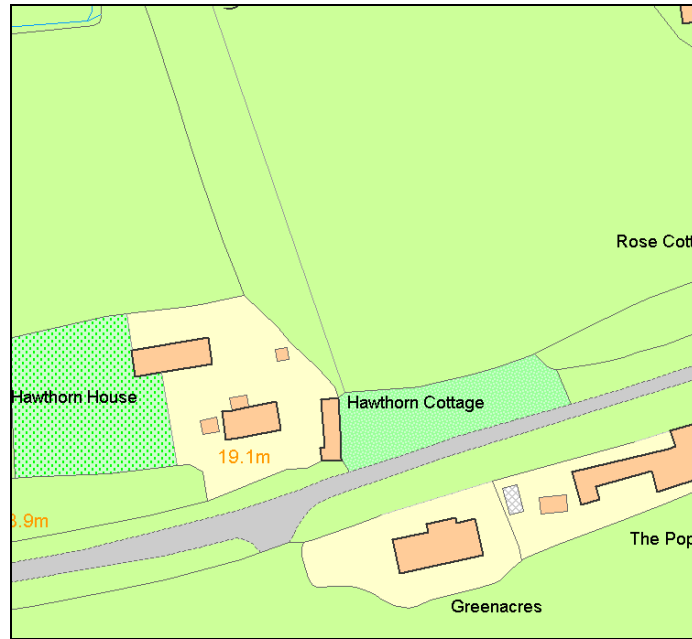


Fig. 3. – Heapham - Current Electronic mapping

5. Current Priority & Original Officer Assessment

Following receipt of the applications officer opinion was that none of the exception criteria applied a route was open and available to the public. The case is currently ordered at number 147 of 149 outstanding cases.

6. Appeal

An appeal has been received from the applicant Mr. C. Taylor (see Appendix B) wishing to pursue a change of priority relying on 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.

Further to a site meeting by the Countryside Access Manager with the applicant for the DMMO, an adjacent neighbour and a representative of the Parish Meeting it is apparent that there is a considerable amount of animosity and ill-feeling within what is a small community village. Much of the animosity is derived from schisms created following planning matters for a composting site to the south of the village and its various supporters and opponents.

7. Site Visit

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

Appendix B – Letter of Appeal from Mr. C. Taylor

Hawthorn House
Common lane
Heapham
Gainsborough
DN21 5PT
5th February 2013

Heapham Footpath No 57

Dear Mr Miller

I have applied for an alteration of the definitive map reference the above.

In line with an email from your department quoting ([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.](#))

I will give you a brief history

We moved into the above in 1986 and were fully aware a Footpath terminated to the rear of a then derelict cottage which was part of the purchase of our house. There was however no access to the Footpath in that position and there was never a stile to the rear of the Cottage. I have evidence from local Farmers who were born in this Village to that effect.

In 1987/8 LCC operatives, we assume, came whilst my wife and I were at work positioned a footpath sign and a stile some 15mtrs due east of the Cottage. From that date onwards we have developed and turned that area into a garden.

In 1991 we redeveloped the derelict listed Cottage for the use of my Parents. At that time we could have applied for the Footpath to be moved, but we assumed that LCC knew what they were doing in 1987/8. Shortly after that date we positioned a wire fence around the area between the Cottage and the Footpath. We have never been asked by anyone in the Village to remove the fencing.

There has been animosity in the Village over large commercial planning application and I am sure this has led to an unpleasant attitude by some.

I take exception to the original complainants letter asking for the Footpath to be restored to the definitive map, when he implied a stile and sign had been removed, please find attached copy ([paragraph 1 a](#)). I also feel it is now unfair to my tenant in the Cottage who has had is right to privacy undermined. Most of the people who use the footpath refuse walk down the side of the Cottage but use the route which has been signed for over twenty years. You can imagine who walks down the side of the cottage, **the complainant only**. Please bear in mind that this person has not lived in this Village as long as I have!

Last year we applied to claim the land up to the then footpath and the Land Registry granted us possessory title. We went through the proper channels i.e. Solicitors to be sure that the land was not owned by anyone else. The wire fence we had erected some 18 years ago was clearly seen and verified by the surveyor from the Land Registry .There have been several objectionable letters sent to the Land Registry which I have copies of but am not prepared to release however I am sure you will be able to access.

Appendix B – Letter of Appeal from Mr. C. Taylor

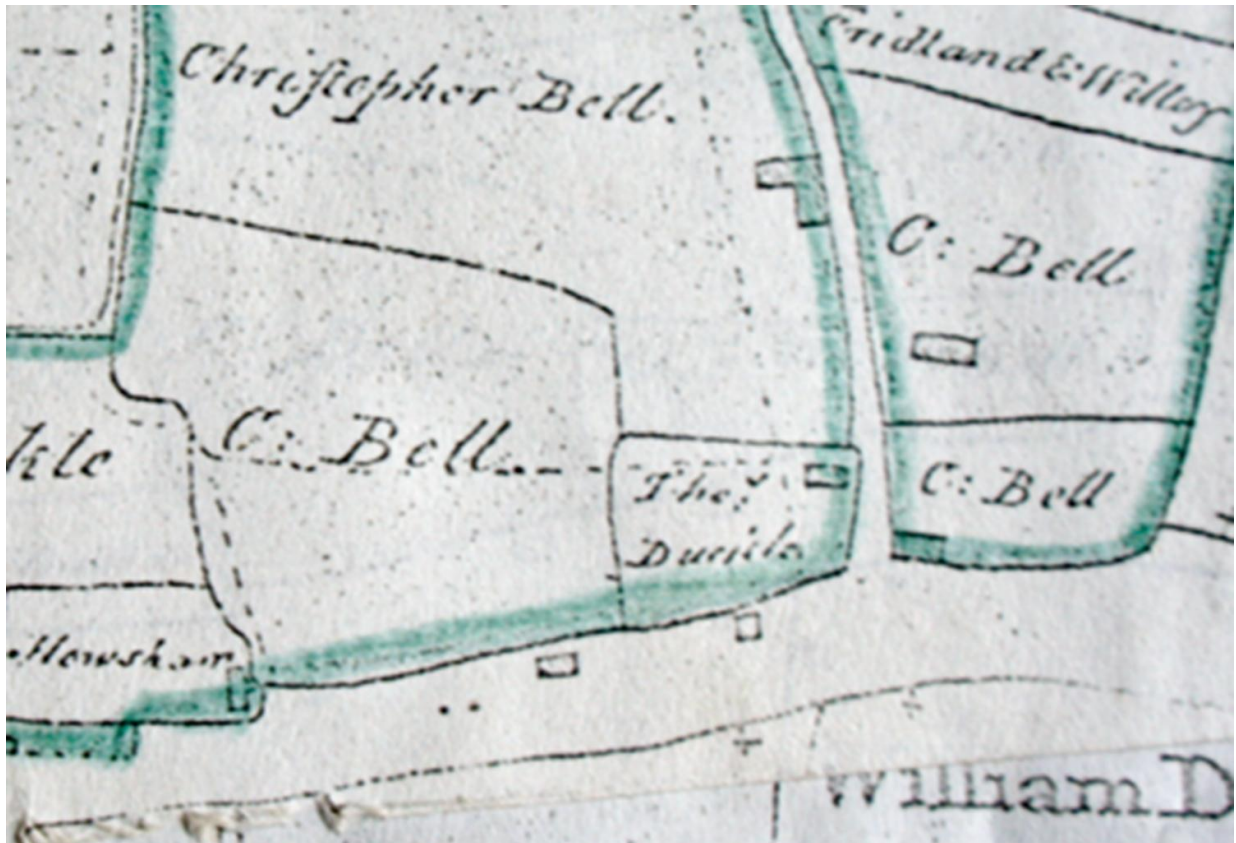
Since all this fuss I have checked all my deeds and conveyances and the original ones are in line with the Enclosure Awards and clearly show the Footpath in the position that LCC put it in 1987/8. They show the definitive map has been moved overtime. With that in mind you should be in a strong position to put the footpath back where it belongs.

They also show that most of the land I claimed last year was part of the curtilage of the original sale of the then called ([croft of land and cottage](#)). It also shows that there was a small annexe or outbuilding to the east of the Cottage, which is why the original footpath did not run down the side I attach plans from the Enclosure Award for your attention. I am not prepared to copy details of the conveyances but they are for your inspection if required.

I would hope this information will help you to consider an alteration to the definitive map urgently

Yours sincerely

Colin Taylor



Chris Marsh

From: Fysh, Suzanne [Suzanne.Fysh@west-lindsey.gov.uk]
Sent: 25 July 2012 10:42
To: #1A
Cc: Cllr. Howitt-Cowan, P; charlesanyan #1A Chris Marsh; Sharon James; Lawton, Rob
Subject: RE: footpaths

Hi Michael,

Thank you for your email.

I have copied in the officers at Lincolnshire County Council who deal with footpaths and should be able to assist more than we can at West Lindsey. Hopefully they will get back to you about your issues with the footpaths in Heapham.

If you still have any queries relating to them please could you contact Rob Lawton, the Team Manager responsible for the green environment in the Development and Neighbourhoods team.

Regards
Suzanne

Suzanne Fysh
Head of Development and Neighbourhoods
West Lindsey District Council
Guildhall
Marshall's Yard
Gainsborough
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