



Open Report on behalf of Andy Gutherson, Executive Director Place

Report to:	Definitive Map & Statement of Public Rights of Way Sub-Committee
Date:	1 July 2019
Subject:	Appeal against the prioritisation of DMMO 357 – Benniworth, Proposed Deletion of Part of Public Footpath No. 9, through Benniworth Haven.

Summary:

An appeal against the prioritisation of DMMO 357 – Benniworth, Proposed deletion of part of Public Footpath No. 9, through Benniworth Haven.

Recommendation(s):

That consideration is given to the appeal 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.

An appeal has been made against the current priority of DMMO 357 being an application delete part of Public Footpath No. 9, through Benniworth Haven in the parish of Benniworth.

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

2. Conclusion

That officers consider that the appeal does not meet the criteria to enable the application's priority to be raised therefore the appeal 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 – Benniworth – Proposed Deletion of Part of Public Footpath No. 9, through Benniworth Haven
Appendix B	Letter of Appeal by Mr C Heneage
Appendix C	Priority List of Cases

5. Background papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Highways & Traffic Guidance Note 33 – Prioritisation of Definitive Map Modification Orders - HAT 33/3/11

This report was written by Karen Barke, Senior Definitive Map Officer, who can be contacted on 01522 782070 or karen.barke@lincolnshire.gov.uk.

**Wildlife & Countryside Act 1981, Section 53
Definitive Map Modification Order**

**BENNIWORTH- PROPOSED DELTION OF PART OF PUBLIC FOOPTPATH NO 9
THROUGH BENNIWORTH HAVEN.**

1. Application

A valid application under the Wildlife & Countryside Act 1981, section 53(5) from Roberta Heneage has been received by Lincolnshire County Council and is dated 23rd July 2012

2. Location Plan of Route

See *figure 1* of this Appendix

3. Evidence in support of the application

Accompanying the application for deletion of part of Public Footpath No. 9 from the Definitive Map and Statement was a copy of the minutes of 'National Parks and Access to the Countryside Act 1949.Hearing No. 2 of Objections to Draft Rights of Way Map for the Parish of Benniworth, Horncastle Rural District Paths Nos. 9 and 10'.

4. Background

Prior to local government reorganisation in 1974, Benniworth lay within Lindsey County Council's area within the Rural District of Horncastle.

The Definitive Map and Statement was drawn up in a three stage process, which began in the 1950s, i.e. a draft map, a provisional map, which was advertised in a public notice and which took account of any objections to a routes inclusion. This resulted in the completion of the Definitive Map and its' accompanying statement.

When the draft map was drawn up in 1956 objections to the inclusion of part of Public Footpath No. 9 were received. These were considered at a hearing, details of which were sent to Lindsey County Highways Committee where it was resolved that part of the footpath should be excluded from the Definitive Map. The recommended change should have been advertised to the public prior to the provisional map being published. However, for reasons unknown all proposed changes to the draft map were not advertised until 1966 and the section of footpath proposed for deletion was not included. Thus the footpath was subsequently included on the Definitive Map in its entirety. It may be noted that no part of the footpath was included in the Statement which accompanies the Definitive Map for Horncastle Rural District as the Statement refers only to routes which were included in enclosure awards.

In 2012 the recording of part of Public Footpath No. 9 on the Definitive Map was brought into question by Mr Heneage, who has now submitted the appeal. Ordnance Survey had advised him to contact the County Council following his assertion to them that the route may be incorrectly recorded as a public footpath on Ordnance Survey mapping. Mr Heneage duly contacted the County Council's Definitive Map Office who apprised him of the footpath's history in so far as the Definitive map is concerned and explained that the County Council could not be proactive in resolving the anomaly due to its' resources being directed towards applications to modify the Definitive Map and Statement (and other mapping anomalies of a more pressing nature). He was advised that an application could be made to delete part of the footpath and the application was duly made.

5. Current Priority & Original Officer Assessment

Following receipt of the application officer opinion was that none of the exception criteria applied to the application. The case is currently ordered at number 132 of 153 outstanding cases.

6. Appeal

The appeal received from Mr C Heneage (see Appendix B) wishes to pursue a change of priority relying on Criteria 1 and 2 of the above policy

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.

Mr Heneage contends that there is sufficient ill feeling and hostility between several dog walkers using the path, and the private fishing syndicate that lease the fishing on the two lakes and that this has reached the point that it is frequently confrontational. He contends that removing the footpath from the Definitive Map would instantly alleviate this situation.

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).

Mr Heneage states that there are several significant threats to the route. A derelict house and boat house adjacent to the route are not in a good state of repair and pose a risk to walkers and that there are multiple old trees with rotten limbs which are not safe for people passing under them. He also asserts that there is a significant risk of drowning in the deep water of the lakes, that there are no lifesaving rings, and that the lakes are full of tree roots and reeds meaning anyone entering the water would struggle to exit safely particularly young children.

7. Mapping and Photographs

The Senior Definitive Map Officer, Karen Barke, will provide a verbal report with photographs at the meeting.

Public Footpath No. 9 is recorded on the Definitive Map. A copy extract from this map is available at Appendix A, figure 1.

The section of footpath proposed by the applicant for deletion is shown between the red crosses on the map available at Appendix A, figure 2.

8. Site Visit

A site visit was carried out on 14 May 2109.

Benniworth Haven, which is comprised of woodland and ponds, is fenced off from surrounding grassland but gates provide access into the area in the vicinity of the section of footpath proposed for deletion.

The section of Public Footpath No 9 proposed for deletion line runs from its western end near a field gate, (which is not locked), over the grassland alongside the Haven before passing into the Haven through woodland which has grown up to encompass land surrounding a derelict house. The house is shown on the mapping at Appendix 2. The footpath proposed for deletion is not signposted or way marked and is not available on the ground. This is due to an overgrowth of vegetation on the edge of the grassland and fencing where the footpath passes into the overgrown woodland at the eastern end of the section proposed for deletion.

Within the Haven a mown path is discernible at the western end and passes between fence posts close to a pond. This path is not the definitive line. It would appear that the landowner has not prevented access to the available path as access is facilitated at its eastern end via a mown path from the unaffected section of Public Footpath No 9 to an unlocked hand gate near a boathouse.

It would appear that the available non- definitive path close to the pond is the route which may be being walked and which is available for fishing as referred to in the letter of appeal. It would appear that the appellants may erroneously believe that this path is the definitive line.

The unaffected section of Public Footpath No 9 to the east runs adjacent to the pond and is not separated by any form of fencing which would prevent access to the ponds by users of the footpath.

Appendix A – Case Synopsis – Benniworth – Proposed Deletion of Part of Public Footpath No. 9, Through Benniworth Haven

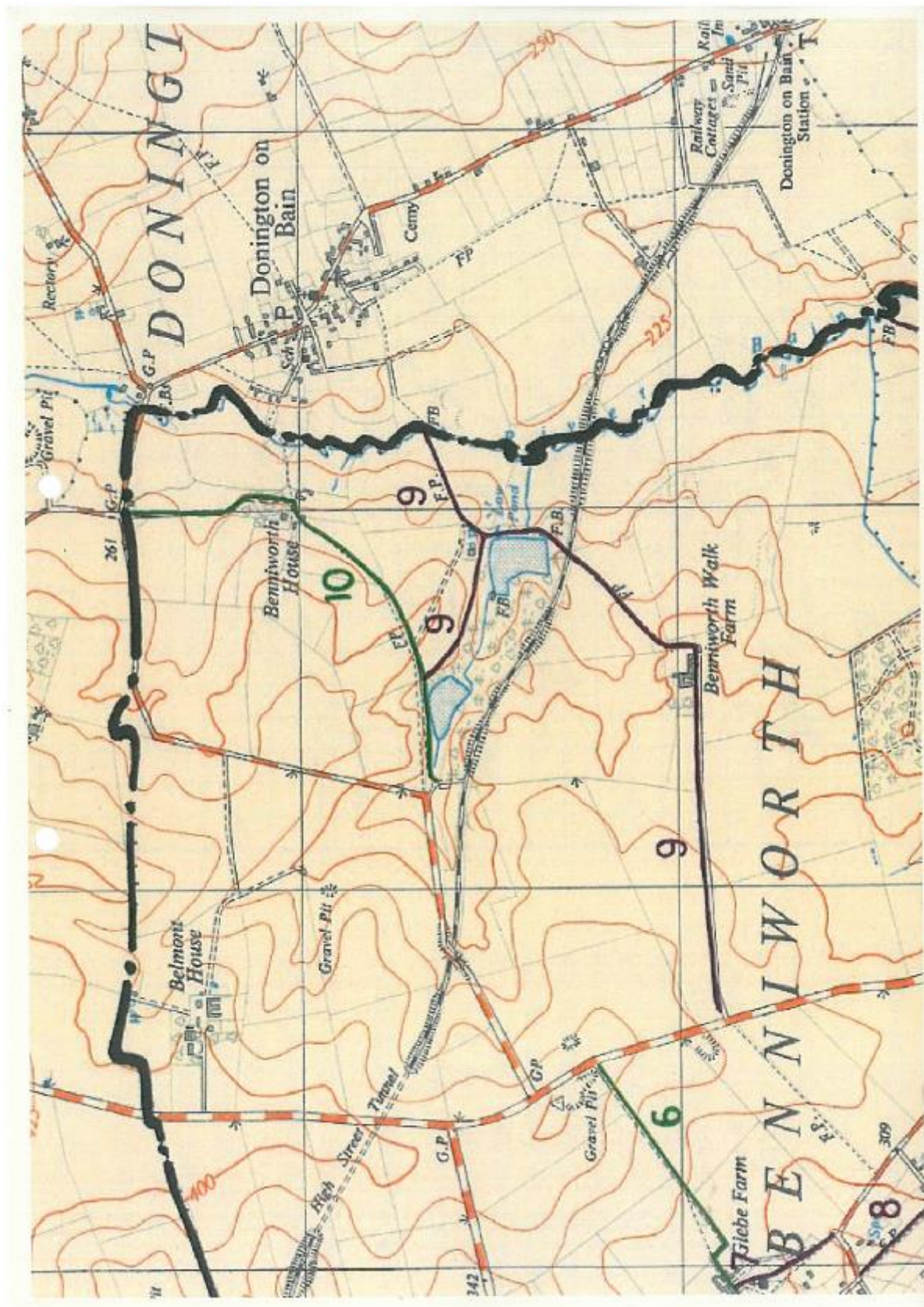


Fig.1 – Copy extract from the Definitive Map.

Appendix A - Case Synopsis – Benniworth – Proposed Deletion of Part of Public Footpath No. 9, Through Benniworth Haven

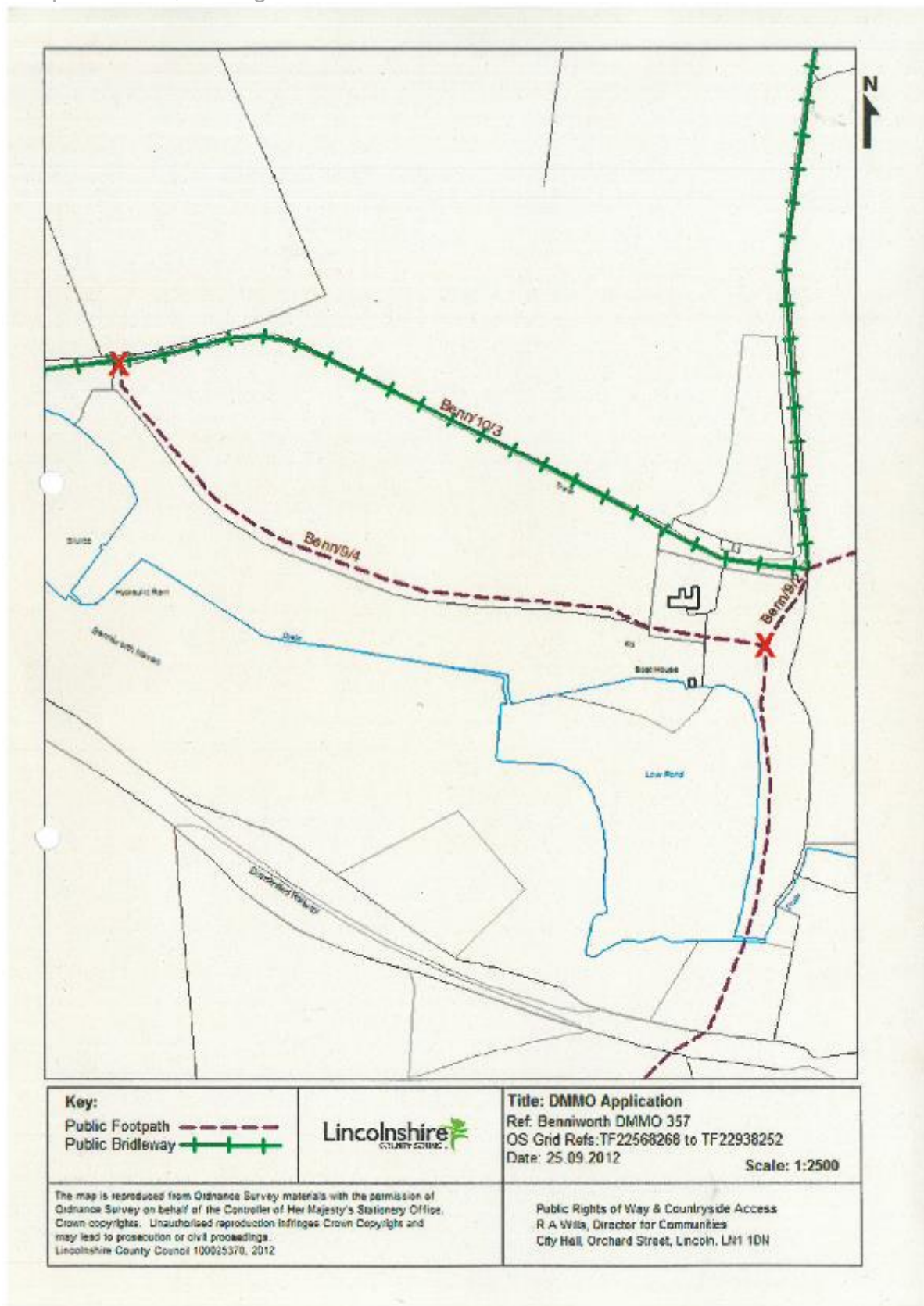


fig.2 - The section of footpath proposed for deletion (shown between the red crosses).

Appendix B - Letter of Appeal by Mr C Heneage

**CHRISTOPHER HENEAGE FARMS,
HAINTON HALL
CHURCH LANE
MARKET RASEN
LINCOLNSHIRE
LN8 6LS**

Karen Barke
Highways & Transportation
4th Floor City Hall
Lincoln
LN1 1DN

23rd April 2019

Dear Mrs Barke,

BENNIWORTH – AMMENDMENT TO DEFINITIVE MAP PART OF FOOTPATH NO.9 DMM10.357

I am writing to ask that this amendment please be made a priority. It was first raised as an error on the Definitive Map in the 1950s and again in the 1980s. It was subsequently '*forgotten*' about by the Council, so we then raised it again in 2012.

It fulfils the following criteria for escalation:

- i) There is sustained ill feeling and hostility between several dog walkers using the path, and the private fishing syndicate that lease the fishing on the 2 lakes. This has now reached the point that it is frequently confrontational. Removing the path from the map would instantly alleviate this situation.
- ii) There are several significant threats to the route. A derelict house and boat house adjacent to the route are not in a good state of repair and pose a risk to walkers. There are also multiple old trees with rotten limbs not safe to people passing under them. Finally, there is a significant risk of drowning in the deep water of the lakes. There are no lifesaving rings and the lakes are full of tree roots and reeds meaning anyone entering the water would struggle to exit safely particularly young children.
- iv) If you are unable to escalate this, we now feel that legal proceedings are the only forward. The path was added to the map in error many years ago. This has been raised more than once and still nothing has been done nor has the case made its way up the priority list. If we fail to get a result soon, we shall instigate proceedings and look to recoup the cost from the council.

Given the circumstances I hope that you are now able to make this case a priority and I look forward to hearing from you shortly.

Yours sincerely

Christopher Heneage

Appendix C – Priority List of Cases

Parish	File	Status	Proposal	Further details	Formal application?
Middle Rasen	72	PF	Claim	Caistor Rd to Gatehouse Lane	Yes
Holbeach/Fleet	392	PF	Claim	Claimed footpath between Damgate Road and Branches Lane	Yes
Lincoln	401	PF	Claim	Claimed footpath between Lincoln Public Footpaths 3 & 6	Yes
Ancaster	2	RB	Claim	Upgrade RB12 (Pottergate) to BOAT	Yes
Coningsby	182	PF	Claim	School Lane to Dogdyke Road	Yes
Westborough and Dry Doddington / Stubton	306	BOAT	Upgrade	Upgrade of PB 12 (W&DD) and PF 3 & RB 7 (Stubton) to a BOAT	Yes
Westborough and Dry Doddington / Stubton	307	BOAT	Upgrade/add	Addition of a BOAT in Westborough and DD, upgrade of RB 5 & 6 in Stubton and up	Yes
Heapham & Upton	350	PB	Claim	Claimed Bridleway from Common Lane to Cow Lane	Yes
Long Bennington	351	PF	Claim	Claimed Footpath from Back Lane to PF17	Yes
Long Bennington	352	PF	Claim	Claimed Footpath from Wheatshaf Lane to PF17	Yes
Tetford	365	PF	Claim	Addition of missing link to PF 33	No
Cranwell & Byard's Leap	375	PF	Claim	Addition of PF between PF754 and PB1	No
Cranwell & Byard's Leap / Brauncwell	376	PF	Claim	Addition of PF between PF4 and Brauncwell PF12	No
Ludborough	378	PF	Claim	Claimed footpath along track running to and from PF107	Yes
Navenby	384	PB	Claim	Claimed bridleway from Grantham Road to Doncaster Gardens	Yes
Lincoln	390	PB	Claim	Claimed bridleway between riverside cycle path and Hall Drive	Yes
Springthorpe	393	PROW	Claim	Enclosure Award investigation: Bratt Field Middle Road	Yes
Heapham/Springthorpe	394	PROW	Claim	Enclosure Award investigation: Green La/Kirton Gate Lane/Bratt Field South Road	Yes
Springthorpe	397	BOAT	Claim	Between Bratt Field Road and Heapham Restricted Byway 1117	Yes
Springthorpe	398	BOAT	Claim	Between Bratt Field Road and Green Lane	Yes
Mablethorpe and Sutton	399	PROW	Claim	Claimed bridleway and footpath between the ends of 2 sections of Marian Avenue	Yes
Heydour	48	PF	Claim	PF to be diverted - from Southern end of PF 3 to Church Lees	No
Aunsby & Dembleby	5	PROW	Claim	See file	No
Burgh-le-Marsh	18	PF	Claim	Faulkers Lane	Yes
Stamford	101	PF	Claim	Cherry Holt Lane to Priory Rd	Yes
Coningsby	400	PF	Deletion	Deletion of extant definitive line of section of PF224 to the east of School Lane	No