



Open Report on behalf of Andy Gutherson, Executive Director of Place, Environment and Economy, Countryside Services

Report to: **Definitive Map & Statement of Public Rights of Way Sub-Committee**
Date: **21 July 2020**
Subject: **Appeal against the prioritisation of DMMO 11 – Belchford, Proposed Addition of a Public Bridleway over Ings Lane.**

Summary:

An appeal against the prioritisation of DMMO 11, Belchford, Proposed addition of a public bridleway over Ings Lane.

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 11 being an application add a public Bridleway over Ings Lane in Belchford. Appendix A is a brief case synopsis including the reasons for the appeal.

2. Conclusion

The appeal requires consideration by the sub-committee. The Senior Definitive Map Officer, Karen Barke, will provide a verbal report at the meeting.

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 – Belchford – Proposed addition of a public bridleway over Ings Lane.
Appendix B	E mail from Wendy Bannerman on behalf of the British Horse Society providing grounds for appeal.
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 07760 803969 (mobile) or karen.barke@lincolnshire.gov.uk.

1. Application and Order

An application dated 25 January 1988 under the Wildlife & Countryside Act 1981, section 53(5) was received from Belchford And Fulletby Parish Council to add a public bridleway to the Definitive Map and Statement for Horncastle Rural District. A definitive map modification order to add the route was made by Lincolnshire County Council in 1990 but, following receipt of an objection to the order it awaits referral to the Planning Inspectorate for a decision on whether it should be confirmed. A copy of the order and the order plan are attached as figure 1 and 2.

2. Evidence in support of the application

A number of public user evidence have been submitted by the applicant. After consideration of these the County Council made the modification order on the grounds that public bridleway rights are reasonably alleged to subsist. The route is also awarded as a public bridle road.

3. Location Plan,

A copy extract from the County Council's GIS working Copy Definitive Map is attached as Figure 3. Public Bridleways are shown coloured green, public footpaths are coloured purple. All other coloured routes are highways maintainable at public expense i.e. roads that carry motorised vehicles.

4. The Definitive Map

Copy extracts from the Definitive Map, from which the GIS working copy is drawn, are attached as figures 4 and 5.

5. Site Visit and Photographs

A site visit to aid assessment of the appeal has not been carried out due to the current working restrictions imposed by Coronavirus. The photographs attached as Figure 6 have been supplied by the appellant. They appear to show that the route is overgrown at least in part. The appellant refers to this in her submission.

6. Current Priority & Original Officer Assessment

The application was received prior to the introduction of the current prioritisation criteria. Following its introduction officer opinion was that none of the exception criteria applied to the application. The application currently stands at No. 34 of 152 cases, of which the first 31 are being actively progressed.

7. Background to the Appeal

Since the order was made, the Countryside and Rights of Way Act 2006 has imposed a 'cut-off' date for the making of applications in England and Wales that are based on documentary evidence to record routes on definitive Maps and statements. The legislation is intended to resolve the uncertainty over whether public rights exist by virtue of documentary evidence. It will still be possible to make applications based on evidence of public use, but not those based on documents.

Any applications submitted before the cut-off can still be processed to their conclusion, with routes being recorded on definitive maps where public rights are proved to exist.

There are likely to be many such unrecorded routes in Lincolnshire as the County's agricultural land was subject to the process of parliamentary enclosure which took place in the 18th and 19th centuries. Routes which were awarded as public will remain so, irrespective of whether they are recorded on definitive maps and statements until they are 'cut-off' by the 2006 Act in 2026.

The British Horse Society (BHS) have embarked on a national campaign to research such unrecorded public routes with a view to their being preserved, by the making applications before 2026. Local volunteers will submit applications with the guidance of Wendy Bannerman (the appellant), who is a paid officer of the BHS. The project is at an early stage in Lincolnshire. It is therefore likely that the County Council will receive more applications from the British Horse Society to modify the definitive rights of way map.

8. Appeal

The appeal has been made by Wendy Bannerman - see Appendix B and figure 7(The appeal has been made using the County Council's case prioritisation form) who wishes to pursue a change of priority relying on definitive map modification order priority criteria No 9 which is quoted below:

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

The points made in her appeal are addressed as follows:

Point 1 – "Application was made in 15 Feb 1988 with user evidence. Decision made 16 Aug 1989 and DMMO dated 14 January 1992. Objection appears to be made before the order made. Ings Lane is still not on the Definitive Map and Statement".

Her comment that the objection was received outside the formal objection period refers to a dating error on site notices that were posted when the order was made. The error was corrected but the County Council has accepted the objection as it is possible that the objector saw the earlier erroneous site notice.

Appendix A – Case Synopsis – Belchford – Proposed Addition of a public bridleway over Ings Lane

Point 2 – *"The route is poorly maintained with mature trees obstructing the route. The RoW team allegedly stated that the council are unable to clear route as unaware it is a bridleway".*

This point is correct as the County Council does not maintain or enforce the clearance of the route until such time as the order is confirmed. It does mean that the route is unavailable to users.

Point 3 – *"The Inclosure map is conclusive evidence of the legal status of the route. If the order is not prioritised a further DMMO application will be made based on historic evidence only which will create more administration for the County Council at a cost to the taxpayer".*

There would be no benefit to either the appellant or the wider public in a further application being submitted for the route. The county Council has duty to consider all available evidence and the enclosure award evidence will be submitted to the Planning Inspectorate with the user evidence already received .

Point 4 – *"The RoWIP states Lincolnshire CC intend 'To have an integrated network of rights of way that is relevant for today's needs, bringing added benefits to residents and visitors by supporting wider interests including sustainable transport, rural economy and tourism, health benefits and quality of life issues.' Pp 30-33 of the RoWIP states that equestrians have limited access to off-road riding and are forced to use the road network as circular routes and links between routes are fragmented. Equestrians often transport horses to find suitable routes if unavailable locally. According to Church et al (2010) over 90% of equestrians are women and 37% of these are over 45 years of age and over a third would pursue no other physical activity".*

The appellants consideration of the County Council's Rights of Way Improvement plan is noted.

Point 5 – *" Prioritising acting on the decision for Ings Lane would benefit local equestrians, walkers and cyclists. Equestrians would be able to link to nearby routes off-road and avoid transporting horses to other sites for exercise. The council would be meeting RoWIP objectives:*

Undoubtedly confirmation of the order would enhance the existing provision for walkers, cyclists and horseriders However, users of Belchford village can already access several definitive routes close to Ings Lane. This is particularly true for

horseriders and cyclists who are likely to need routes which can form part of a longer circular ride rather than a 'there and back shorter route'.

Appendix A – Case Synopsis – Belchford – Proposed Addition of a public bridleway over Ings Lane

The appellant does not provide any information on how many local riders would benefit from confirmation of the order.

Points 6 and 7 -

SOA38 Develop a range of circular routes for cyclists and equestrians in areas of highest demand. Support DEFRA schemes that increase access and link PROW

And

SOA39 Identify areas deficient in access where access proposals would benefit the rights of way network

The County Council has developed a series of routes for horse riders, particularly in the Wolds area which are published on the Council's website. These do not exclusively offer off-road riding. Confirmation of the order for Ings Lane would provide a further opportunity for horseriders to access existing public bridle ways in the immediate vicinity but would also not enable an entirely off road route to be ridden. The location map shows that the area around the application route is relatively well served by existing bridleways. Inclusion of the route on the definitive map, although of benefit, would not significantly enhance the current network.

Point 8- SOA40 Review current Definitive Map Modification Order priority system to give higher priority to key cases that will improve connectivity of the existing network for users

The current priority system is currently under review. It is not considered that this particular route would significantly enhance existing provision for horse-riders or cyclists.



Point 9 - SOA41 Establish a priority system for Public Path Orders giving higher priority to cases that will improve connectivity of the existing network for users.

This point is not relevant to the making of definitive map modification orders.

Historically the network of public rights of way did not evolve in such a way that provides adequately for the needs of horse riders evenly throughout Lincolnshire. The RoWIP acknowledges that it is difficult to obtain figures for use of the network by horseriders but Lincolnshire has overcome some of the deficiencies in the network through the promotion of a series of routes as described above. However, it is unlikely to be possible to provide an ideal network throughout the County for all horseriders. Given this and in the knowledge that there are likely to be further

applications submitted by the BHS in the near future, it may be unhelpful to the prioritisation of definitive map work as whole to raise the priority of this particular application,. Raising the priority of this particular case may, in effect, set a precedent for all appeals involving bridleways to succeed which would render the current priority system unworkable. That is not to say that individual routes should not be treated as priority where appropriate. However, the appellant has not provided any figures for how many users would be likely to benefit from this particular route should the order be confirmed, her appeal being based on general information contained in the RoWIP.

Appendix B –E mail Appeal and Appeal Grounds document submitted by W Bannerman of the British Horse Society.

From: Wendy Bannerman <wendy.bannerman@bhs.org.uk>
To: Karen Barke
C:
Subject: RE: Ings Lane Enclosure docs
Message  DMMO Form 2 - Case Priority Form Ings Lane 19 May 2020.doc  Ings Lane photos 19 May 2020.doc

Dear Karen

Please see attached the Case Priority Form as requested which I have completed in consultation with our local volunteer.

Please could you let me know the process from here so I can understand how long to expect for a response?

If you need any more information from me, please let me know.

Kind regards
Wendy Bannerman
Access Field Officer, East and West Midlands

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