

Regulatory and other Committee

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

Report to:	Definitive Map & Statement of Public Rights of Way Sub-Committee
Date:	17 March 2014
Subject:	Appeal against the prioritisation of DMMO 364 - Skegness- Claimed Public Footpath from Footpath No.969 to Footpath No. 301 along the Sea Defences

Summary:

An appeal by Mr P Marshall against the current standing of DMMO case No.364 within the County Council's priority system.

Recommendation(s):

That consideration is given to Mr P Marshall's proposal 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.

Mr P Marshall has appealed against the current priority of DMMO 364, a claimed public footpath along the sea defences between Footpath 969 and Footpath 30.

Appendix A is a brief case synopsis including the reasons for Mr Marshall's appeal

2. Conclusion

That Mr Marshall 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 for Skegness - Claimed Public Footpath between Footpath No. 969 to Footpath No. 301 along the Sea Defences
Appendix B	Letter of Appeal from Mr. P Marshall

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 33/3/11 – Prioritisation of Definitive Map Modification Orders -

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
Skegness - Claimed Public Footpath between Footpath No. 969 and Footpath No. 301 along Sea Defences.**

1. Application

An application under the Wildlife & Countryside Act 1981, section 53(5) from Ms. Susan Elliff was made on 22nd May 2013 to add a public footpath in the town of Skegness between the footpaths numbered 969 and 301 and along the coastal sea defences and abutting the North Shore Golf Club.

2. Plan of Route

See attached location plan

3. Evidence in support of the application

Accompanying the application were 9 user evidence forms with a subsequent submission of one further user evidence form.

4. Background

The question of whether or not there is legitimate linear public access between the two footpaths named above was first raised early in 1996 following the erection of gates across a pathway which seemed to form a part of the sea defences constructed in 1994. At that time it was considered that the evidence forms submitted (by 17 individuals and separate to the most recent forms) did not provide sufficient evidence to prove that the same line had been walked between the two named footpaths to demonstrate that a right of way could have been presumed to have been dedicated. Prior to the construction of the sea defences people had walked between the two footpaths amongst the sandhills. As no official application had been received there was no right of appeal against the Authority's decision not to progress the matter.

It was also the Council's understanding at the time that the sea defences were built in such a way that any previously walked line was either subsumed into the defences or was located between the high and low water mark of the sea and as a consequence forms part of Crown Estate which is not subject to the provisions of Highways Act 1980 s.31 (the "20 year, long-user rule"). No consideration of the application of Common Law seems to have been made at that time.

5. Other Considerations

Whilst no thorough investigation has taken place regarding this matter there are a number of considerations that will have to be taken into account in doing so.

- The effect that the Lindsey County Council (Sandhills) Act 1932 will have on the claim and the land it affects.

The Sandhills Act is an Act of Parliament that was designed to limit uncontrolled development and the day to day regulation of outdoor recreation on the affected land. Although parts of the Act expired in 1986 certain savings were made by Order of the Secretary of State for the Environment including for the regulation of the erection of fencing and control of open spaces. Further research into the retained clauses will be required to see if there is an effect on the claimed route or the land it crosses.

- Provisions of Highways Act 1980 s.31(5)

Following the construction of the sea defences the North Shore Golf Course lodged a notice with the County Council to the effect that no public rights of way were being dedicated over land in its ownership.

- Previous rights of way conflict over the golf course.

When the golf course was constructed at the turn of the 20th Century a well-documented "trespass event" took place to secure rights across it based on usage for over 200 years. This led to court considerations and eventually a path across the course was approved. It is now the contention that there may have possibly been two routes considered including a north south route across the course. Further investigation into this is still required to corroborate this belief.

6. Current Priority

Following receipt of the application and following a site visit it was felt by officers that none of the exception criteria applied.

The site visit revealed that there was some usage ongoing at present where people had got around the existing gates or merely climbed over one of the barriers at steps created in the sea defences.

The claimed route has a block-work surface but is covered by varying amounts of sand being wind-blown from the beach. For the majority of users this makes the route no less difficult to walk than the beach itself which provides an alternative means of traversing between the two footpaths at the north and south ends of the golf course land.

The case is currently ordered at number 145 of 149 outstanding cases.

7. Appeal

An appeal against the County Council's prioritisation of the case was received from Mr P Marshall on 21st February 2014.

The appeal specifies that it is made on the grounds contained in criteria 1)

- 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.*

However in his appeal letter Mr Marshall highlights matters that would fall into other areas.

Regarding Criteria 1) Mr Marshall contends that members of the public are consistently removing barriers erected by the golf course and that this is causing frustration at the need to detour onto the less convenient beach walk which is difficult to use for the elderly.

Mr Marshall believes that the volunteer community group "Coastal Access For All", of which he is the lead member, would commit to ensuring that the pathway remains clear of sand. The group currently clears sand from the available walkways leading from the northern and southern ends of the golf course route.

The final relevant point Mr. Marshall makes is that the route will form a continuous walkway between Skegness and Ingoldmells and will provide benefits for tourism as well as the local community and as such it would possibly add value to the claim as a Rights of Way Improvement Plan objective.

Appendix A - Case Synopsis for: Skegness – Claimed Public Footpath between Footpath No. 969 and Footpath No. 301 along Sea Defences.

Location Plan

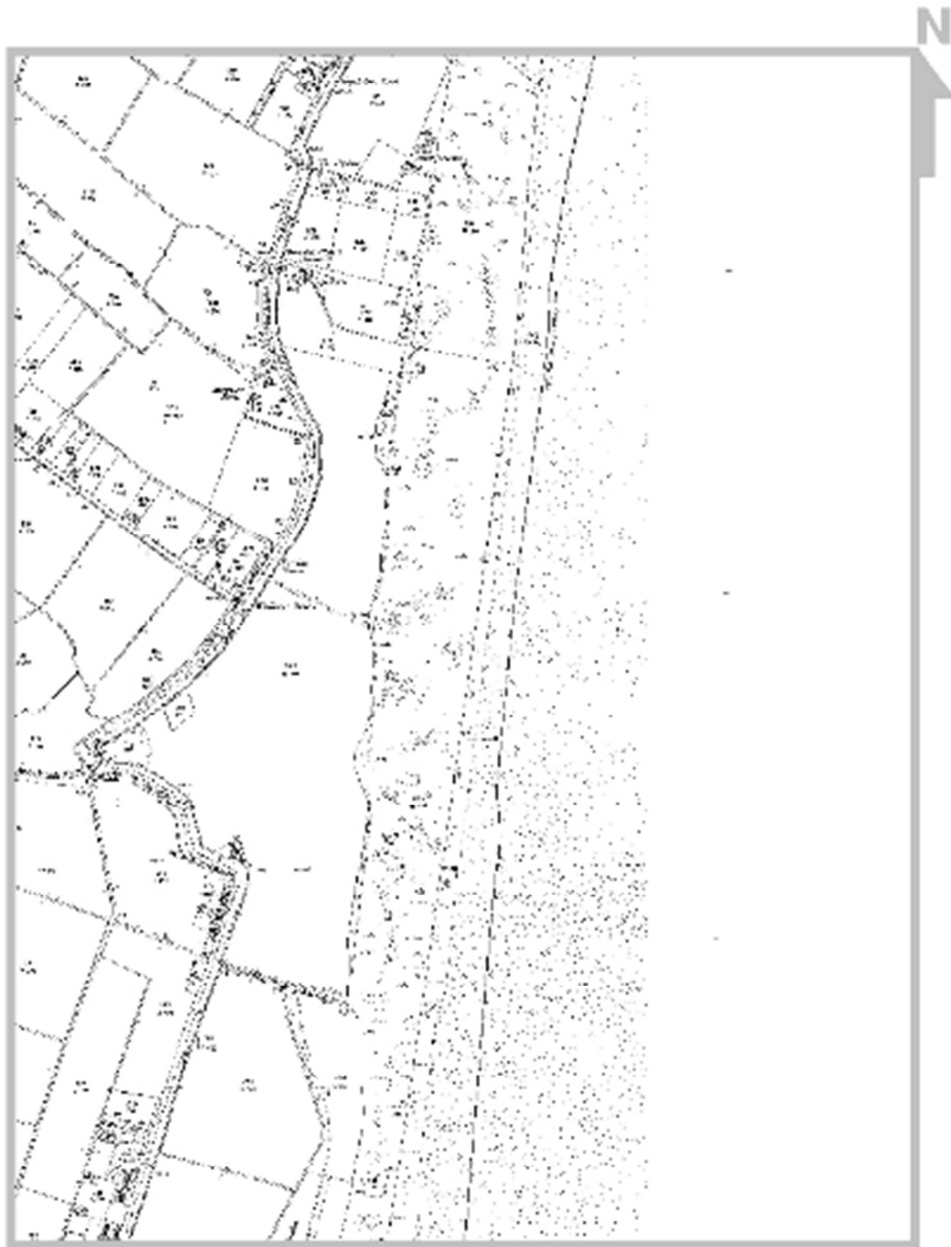


 Lincolnshire COUNTY COUNCIL	Office of Way & Countryside Access R.A. Webb, Executive Director (Development Services) City Hall, Orchard Street, Lincoln LA1 4DH	Skegness - Claimed Public Footpath DMMD 064 from PF 969 to PF 301 TF571851	
		4 March 2014 Scale 1:7500	

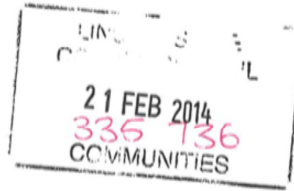
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Appendix A - Case Synopsis for: Skegness – Claimed Public Footpath between Footpath No. 969 and Footpath No. 301 along Sea Defences.

Ordnance Survey 2nd Edition c.1906



	Profile of Way & Countryside Access R.A. Mills, Executive Director (Development Services) City Hall, Orchard Street, Lincoln LN1 3DH	Skegness - Claimed Public Footpath OSMD 084 Between PF 969 & PF 301 Second Edition OG Mapping c.1905/06 Scale 1:7500
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The Executive Director for Communities
Highways & Transportation
4th Floor, City Hall
Lincoln
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Paul Marshall

Dear Sir

I would like to make an appeal on behalf of the residents of Winthorpe who put in the who applied for a DMMO regarding *Skegness Case 364 claimed footpath from PF969 to PF301 alongside Sea Defences*, for the case to be prioritised on the grounds that closer of the path is already causing sustained aggression, hostility and ill feeling amongst residents of the community and is causing severe disruption to the life of the community.

Residents continue to use the path despite the land owners attempts to stop this happening by raising extra wire fencing has involved people unknown dismantling fencing as soon as they go up. Residents are increasingly getting more frustrated because it means a lengthy detour to regain the coastal walkway into Skegness. The only other alternative is a taxing walk of nearly ½ mile on the beach which for elderly residents is impossible.

There are further concerns regarding access to the closed off path which is through holes made in the fence that do give safety concerns there are other concerns that if someone was injured or taken ill on the beach beyond the path that there would be no access for emergency vehicles to get to the casualty.

If the path was re-opened then the community group Coastal Access For All would be able to clear sand from the route and keep it open. It would also mean that the said community group would be able to reduce costs of there work do to having continues access to all parts of the coast.

Finally may I add that the opening of this path would have considerable advantages to the local business's along the stretch of the coast between Skegness and Inglemelds and to tourism in the area. The Skegness Partnership is trying to encourage walking and cycling in the area and would certainly be helped by re connection along our coast

Regards

Paul Marshall

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