

Open Report on behalf of Andy Gutherson, Executive Director - Place

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| Report to: | Definitive Map and Statement of Public Rights of Way Sub-Committee |
| Date: | 3 July 2023 |
| Subject: | Appeal against the prioritisation of Definitive Map Modification Order (DMMO) Case 580: Well - Proposed addition of a byway open to all traffic ("BOAT") between Low Lane and Public Footpath 79 at St Margaret's Church |

Summary:

An appeal against the prioritisation of DMMO Case 580 which seeks to record a BOAT between Low Lane and Public Footpath 79 at St Margaret's Church in Well.

Recommendation(s):

That consideration is given to the appeal to upgrade the priority of the DMMO Case 580

1. Background

As the Surveying Authority for the area, the County Council has a statutory duty to keep under continuous review the Definitive Map and Statement of Public Rights of Way for Lincolnshire and to make orders to take account of events requiring the map and statement 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 Guidance Note 9.2, Prioritisation of Definitive Map Modification Orders, 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 taxpayer) 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.

Carol Jackson has appealed the current priority of DMMO 580 being an application seeking to record a byway open to all traffic ("BOAT") between Low Lane and Public Footpath 79 at St. Margaret's Church in Well. Appendix A is a brief case synopsis including the reasons for the appeal.

2. Conclusion

That Carol Jackson has made a valid appeal against the current prioritisation of the case which requires consideration by the sub-committee.

3. Consultation

a) Has Local Member Been Consulted?

Yes. In an email of 9 June 2023, Councillor Colin Davie stated, 'I am fully aware of the situation at Well that has caused so much anguish and distress to residents in the community. I fully support the appeal that is coming before members and urge them to support the wishes of the Parish meeting and residents that are detailed in the submission to the council.'

b) Has Executive Councillor Been Consulted?

Not required.

c) Scrutiny Comments

Not required.

d) Risks and Impact Analysis

None carried out.

4. Appendices

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| These are listed below and attached at the end of the report | |
| Appendix A | Case Synopsis – DMMO 580 Well |
| Appendix B | Plan showing the location of the BOAT in context to the wider local area |
| Appendix C | Carol Jackson’s appeal letter of 21 April 2023 |
| Appendix D | Definitive Map Modification Order Case Priority Schedule |

5. Background Papers

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

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| Highways Guidance Note 9.2, Prioritisation of Definitive Map Modification Orders (HGN 9.2) |
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This report was written by Andrew Pickwell, Senior Definitive Map Officer, who can be contacted on 01522 553083 or andrew.pickwell@lincolnshire.gov.uk.

Wildlife and Countryside Act 1981, section 53

Definitive Map Modification Order Case 580

Well – Alleged BOAT between Low Lane and Public Footpath 79 at St Margaret’s Church

1. Application

An application made by Carol Jackson in September 2022 under section 53(5) of the Wildlife and Countryside Act 1981 seeks a definitive map modification order to record a BOAT between Low Lane and Public Footpath 79 at St. Margaret’s Church, Well.

2. Location plan of route



See Appendix B for a plan showing the alleged BOAT in context to the wider local area.

3. Evidence in support of the application

68 user evidence testimonies have been submitted in support of the proposal indicating usage over a period between the 1950s and 2022. Documentary evidence has also been submitted in support of the application. These include several historical maps, records of services held at St Margaret’s Church, and title deeds, among other documents.

4. Background

The alleged BOAT appears to be the principal access to St. Margaret's Church. The majority of the user testimonies suggest that they had used the route for access to the church for services, concerts, to visit graves and to maintain the church and graveyard. Several user testimonies suggest that they have used the route as an alternative access to Public Footpath 79 at St Margaret's Church. The evidence and documents submitted in support of the application suggests that it was made in consequence the erection of electronic gates on the route by the new owners of Well Vale Hall which obstruct access to St. Margaret's Church and the public footpath.

5. Current Priority & Original Officer Assessment

Officer opinion following the initiation of the proposal was that none of the exception criteria applied to it. The case is currently ranked number 299 out of 403 cases (at 14 June 2023), with the first 13 cases actively being progressed. It should be noted that there are currently 12 cases that have been given higher priority and are awaiting officer availability for progression.

6. Appeal

An appeal request for a change of priority relying on criterion 1 of the Policy has been received from Carol Jackson (Appendix C). Criterion 1 is 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.

The appellant contends that the blocking of the route has meant that the community are unable to use St. Margaret's Church for private worship, weddings, baptisms, burials and ashes interments, and for tending the graves of loved ones. Evidence cited in support includes:

- Two families who have been awaiting the fixing of memorial headstones to the graves of loved ones since the closure of the route, with requests for access made by the Church Parish office to the owners of Well Vale Hall for fixing of the headstones having been ignored.
- A family have been waiting over a year to have their mother's/wife's ashes interred next to a relative in the churchyard as per her final wishes. The appellant states that the deceased's spouse is elderly, infirm and unable to walk beyond a short distance, so vehicular access is needed to lay his wife to rest and that he wants to abide by his late wife's wishes within his lifetime.

- Relatives of villagers of Well are buried in the churchyard, and that at least two elderly residents have been prevented from visiting the graves of the loved ones since the barring of the route.
- Numerous people from outside of the village have sought to gain access to the churchyard via the church Office without success due to the owners of Well Vale Hall refusing to cooperate.
- The long-standing annual Candlelight Coral Service that is usually attended by large number of people and which fill the church could not be held in 2022 due to the unavailability of vehicular access along the route.
- The statutory fire annual fire inspection has not been conducted at the church since November 2021, as the company that carries out the servicing and inspections are unable get the equipment and tools to the church to facilitate this.

The appellant acknowledges that St. Margaret’s Church could be reached via Public Footpath 79, but states that it cannot be used by the elderly, families with young children in prams/pushchairs, or by people with disabilities or mobility issues as there are stiles on the public footpath and the final section of the path is steep. They also state that it is impractical for the clergy and guests to access the church via the public footpath for services, or for essential equipment or items such as headstones or fire extinguishers to be carried to the church or churchyard via the public footpath.

The appellant states that owners of Well Vale Hall have caused further hostility and ill feeling in the community by reporting to the Police anyone who has defied their closure of the route. Evidence cited in support includes one person being reported to the Police for antisocial behaviour by knocking on the door to enquiry if the owners of the Hall had been granted planning permission for the installation of the gates on the alleged BOAT, and the Police being call when two other locals expressed their “distain” to the owners which has led to the Police submitting a case to the Crown Prosecution Service for consideration.

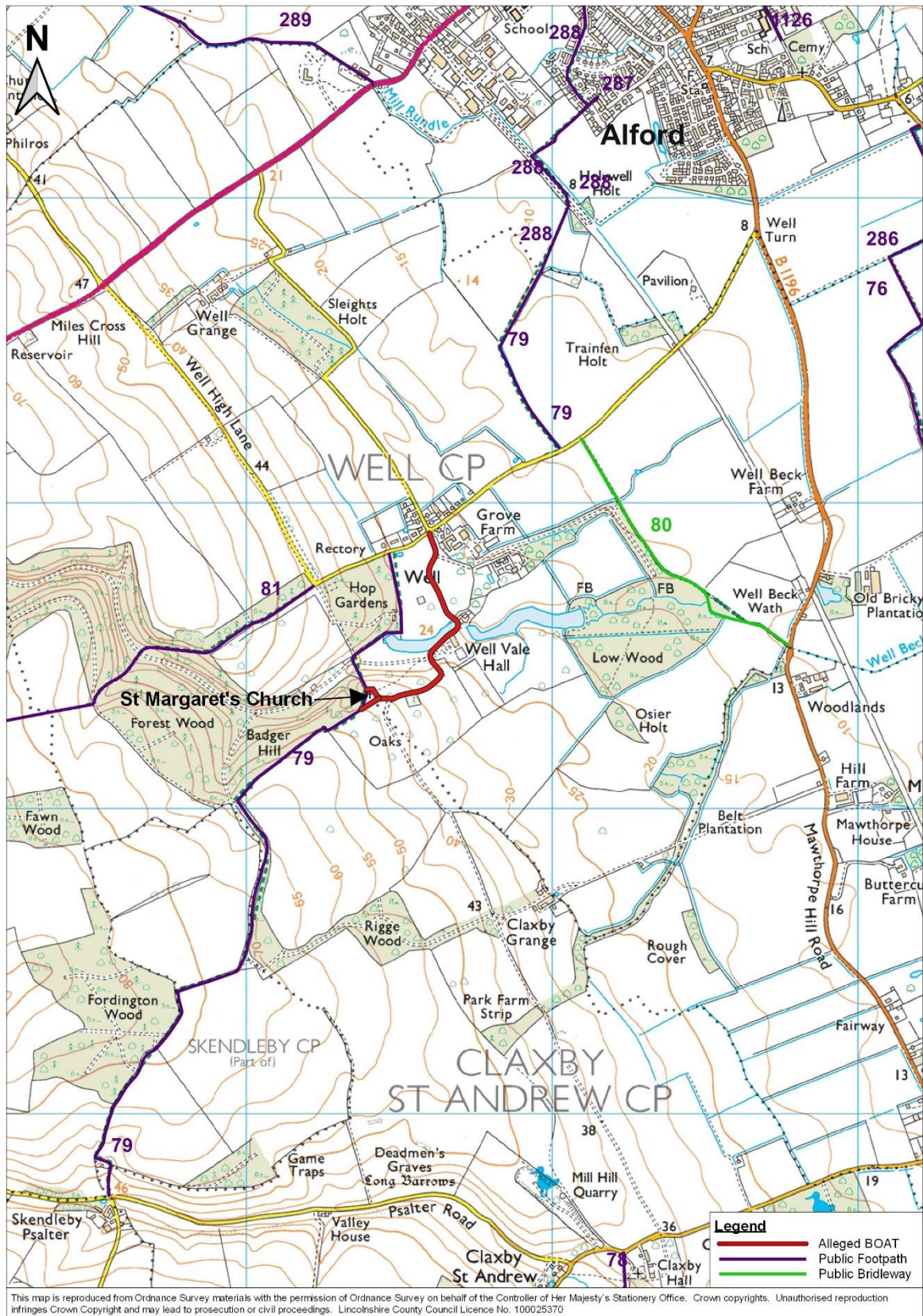
The appellant suggests if the case were to be given higher priority and progressed as soon as possible, this would provide a resolution for all involved and would ease the distress, tension and hostility suffered by the local community. It should be noted that the route would only be recorded as a public right of way should the evidence support the making and confirmation of a definitive map modification order. Should the evidence fall short of demonstrating the existence of a public right of way to warrant the making or confirmation of a definitive map modification order, then this would not resolve the issues the local community have with access to St Margaret’s Church or Public Footpath 79. The appellant informs that a private legal claim is

being sought on behalf of the Parochial Church Council of Alford Group of Parishes to establish access to St Margaret's Church, and that the progression of the claim is ongoing.

7. Mapping and photographs

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

Appendix B – Location plan showing the alleged BOAT in context to the wider local area



Campion
Low Lane
Well
Alford
Lincs
LN13 0ET

Executive Director for Place
FAO Karen BARKE, Senior Definitive Map Officer
Countryside Services
County Offices
Newland
Lincoln
LN1 1YL

21st April 2023

Dear Sir/Madam,

DMMO application no 580 - Well, claimed Byway Open to All Traffic

I write with reference to the above DMMO application which was submitted for consideration on 22.09.22.

The application has since been registered on the basis of the date that it was received. I wish to appeal the prioritisation of the application on the basis that it meets with one of your set criteria, as detailed below.

Where there is sustained aggression, hostility and will 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.

Whilst access to our Parish Church is denied by the blocking of the claimed route, the Church cannot be utilised by the community for any services, for private worship, for weddings, baptisms, burials and ashes interments, tending graves of loved ones, etc. The claimed route is the only vehicular access route to the church. Without this, the church can only be accessed by public footpath. Even in the best of weathers, the footpath can be challenging and cannot be used by the elderly, families with young children in prams/pushchairs, those with disabilities and/or

their grandchildren at the church because of the claimed route being barred and it being impracticable for the clergy and guests to reach the church without the vehicular route.

Furthermore, the statutory annual fire inspection has not been conducted at the Church since November 2021. The company that undertakes this for us have been informed of the current access issue and have stated that due to the engineer equipment and tools required it is not possible for them to walk up to the Church on the public footpath to conduct the servicing and inspection. They suggested that the only possible way to have the inspection carried out is for the extinguishers to be brought to an address in the village, or to the Company premises, for the engineer to service in situ. Given the weight of the extinguishers and the challenging route via the public footpath, this is clearly not a feasible option.

The owners of Well Vale Hall who have barred access via the claimed route have further caused strong hostility and ill feeling in the community through their reporting to Lincolnshire Police of anyone who has openly challenged their decision. I refer you to user evidence form number 39 on the summary provided within the application of Dr Sharon BRALEY, which includes a statement about her being reported to the Police for anti social behaviour as a result of simply knocking on the owners door to query if planning permission had been granted for the gates. More recently the Police have been called again in relation to two other locals who have expressed their disdain to the owners for the situation we find ourselves in. This criminal allegation has led to Police submitting the case to the Crown Prosecution Service for consideration, the outcome of which is unknown. Such experiences are long lasting and extremely disruptive to all involved. The level of ill feeling within the community is unlike anything I, or others, have ever experienced before during our residency in Well.

Furthermore, a legal claim on behalf of the the Parochial Church Council of Alford Group of Parishes has commenced since the submission of the DMMO application. Progression of the claim is protracted but ongoing.

I reiterate that the claimed route has been used freely and openly for over 40 years as set out in the DMMO application. The depth of feeling within the community about the claimed route is clearly demonstrated by the high number of user evidence forms included (65), particularly given the small size of the village itself.

mobility issues due to the required traversing over grassland (with cattle between Spring and Autumn periods), stiles and the steep gradient involved at the final section.

There are currently two known families who have been awaiting the fixing of memorial headstones to loved ones graves throughout the period that the claimed route has been closed (now over a year). The stonemasons have attended the site and have assessed that whilst an alternative route (the public footpath) is available, this was too unsafe to carry equipment and a memorial both safely and with dignity. Use of the 'steep embankment' was deemed to carry a risk of both compromising the memorial and the health and safety of the persons employed. The stonemasons have stated that access needs to be granted through 'the official entrance' to facilitate the fixing of the memorial. They have also referred to the distress being suffered by their clients due to the time that has elapsed and the situation impasse. Requests for access made to the owners of Well Vale Hall by the Church Parish office in Alford for the specific purpose of fixing headstones have all consistently been ignored.

A further family have been waiting over a year to have their mother's/ wife's ashes buried next to a relative in Well church yard as per her final wishes. The deceased's spouse is elderly, infirm and unable to walk beyond a short distance, hence vehicular access is essential for this family to lay their mother/wife to rest. Nor is time on the side of the husband who wants to abide by his wife's last wishes within his lifetime.

Relatives of villagers from Well are buried in the church yard. There are at least two elderly residents who have been prevented from visiting their wife's graves since the claimed route was barred. The footpath is simply not an option for them. This is not to mention numerous others from outside of the village itself who have sought to gain access to the church via the church office without success as a result of the Hall owners refusal to cooperate. These families deep distress is something that no-one should have to endure.

The long standing Candlelight Carol Service could not be held in 2022, an annual event usually attended by large numbers which fill the church to capacity year on year. Any notion of holding this event on an afternoon in deepest December with access to the church only via the public footpath instead of the claimed route with vehicles is clearly impossible.

Village residents who have traditionally held family weddings and baptisms, etc at the church have been refused access to hold baptisms for

On behalf of our community I request that you re-consider the prioritisation of the application. If the case can be processed as early as possible, this will provide a resolution for all involved and will without doubt ease the current distress, tension and hostility we are suffering.

Yours faithfully

A solid black rectangular box used to redact the signature of Carol Jackson.

Carol Jackson

Appendix D – Definitive Map Modification Order Case Priority Schedule

Key: Green – Cases currently being progressed. Yellow – Cases given higher priority and are awaiting officer availability.

| Parish | File | Further details | Application / Acceptance | Priority Ranking |
|---|------|--|--------------------------|------------------|
| Mumby | 410 | Claimed footpath from A52, Mill Lane south then east to A52, public house | 08/01/2020 | 1 |
| Glentworth/Harpswell | 371 | Claimed footpath between Homeyard Farm & Hermitage Farm | 20/05/2014 | 2 |
| Belchford | 421 | Claimed footpath from Ford at Ings Lane to Public Footpath 27 | 17/11/2020 | 3 |
| Ingoldsby | 405 | Claimed footpath known as Ascoughy Lane running from Lenton Road to Public Footpath 13 | 05/06/2019 | 4 |
| Cranwell & Byard's Leap | 375 | Addition of PF between PF754 and PB1 | 27/08/2014 | 5 |
| Heighington | 323 | Claimed footpath along Bracken Hill Lane and Third Hill Road | 04/10/2007 | 6 |
| Chapel St Leonards | 404 | Claimed footpath from Ancaster Avenue & St Leonards Drive to Roman Bank & the beach | 31/05/2019 | 7 |
| Lincoln | 334 | Claimed Public Bridleway from Boswell Drive to Doddington Road | 29/09/2008 | 8 |
| Belchford | 11 | Ings Lane | 25/01/1988 | 9 |
| Bucknall | 579 | Claimed footpath from Chestnut Avenue to Platts Lane | 21/09/2022 | 10 |
| Belchford | 620 | Claimed bridleway from Ings Lane to the Bluestone Heath Road | 19/12/2022 | 11 |
| Westborough and Dry Doddington / Stubton / Claypole | 307 | Addition of a BOAT in Westborough and DD, upgrade of RB 5 & 6 in Stubton and upgrade of BW 8 in Claypole | 22/03/2006 | 12 |
| Greetham with Somersby | 403 | Upgrade of part of Public Footpath 53 to bridleway | 12/07/2012 | 13 |
| Lincoln | 390 | Claimed bridleway between riverside cycle path and Hall Drive | 29/06/2017 | 14 |
| Holbeach/Fleet | 392 | Claimed footpath between Damgate Road and Branches Lane | 01/09/2017 | 15 |
| Aslackby & Laughton | 277 | Upgrade of RB 12 to BOAT | 22/02/2005 | 16 |
| Lenton Keisby and Osgodby | 292 | Upgrade of PB 3 to BOAT | 06/11/2005 | 17 |
| Lenton Keisby and Osgodby / Irnham | 293 | Claimed BOAT from RB 12 to PB 9 and Upgrade of PB 9 to BOAT | 06/11/2005 | 18 |
| Lenton Keisby and Osgodby / Irnham | 295 | Claimed BOAT from Irnham BR9 to Elsthorpe Road | 09/11/2005 | 19 |
| Bourne | 420 | Addition of public footpath from Public Footpath 3 to South Street | 02/11/2020 | 20 |
| Lissington / Holton Cum Beckering | 303 | Upgrade of PB 904 in Lissington and PB 904 in Holton Cum Beckering to a BOAT | 06/02/2006 | 21 |
| Colsterworth | 426 | Claimed footpath from Newton Way to Water Lane (Giles Hill) | 04/05/2021 | 22 |

Appendix D – Definitive Map Modification Order Case Priority Schedule

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| Wragby | 435 | Claimed footpath from Cemetery Road along the field edges to the A158 Horncastle Road | 16/07/2021 | 23 |
| Ludford | 470 | Claimed bridleway along Thorpe Road from PB123 to the highway | 08/02/2022 | 24 |
| Lincoln | 635 | Claimed footpath from Grosvenor Avenue to Pig Lane | 16/01/2023 | 25 |
| 272 Definitive Map Modification Order cases | | | | 26-298 |
| Well | 580 | Claimed BOAT from Low Lane to PF79 at St. Margaret's Church | 22/09/2022 | 299 |
| 103 Definitive Map Modification Order cases | | | | 300-403 |

Note: Definitive Map Modification Order Case Priority Schedule at 15 June 2023.