

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

Report to:	Definitive Map and Statement of Public Rights of Way Sub-committee
Date:	29 January 2024
Subject:	Appeal against the prioritisation of Definitive Map Modification Order (DMMO) Case 565: North Kyme – Proposed addition of a public footpath between Public Footpath 3 and Ferry Lane

Summary:

An appeal against the prioritisation of DMMO Case 565 which seeks to record a public footpath between the easternmost end of Public Footpath 3 and Ferry Lane in the parish of North Kyme.

Recommendation(s):

That consideration is given to the appeal to upgrade the priority of the DMMO Case 565.

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 follow:

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.

North Kesteven District Councillor Mervyn Head and John Beaven of the Ramblers have separately appealed the current priority of DMMO Case 565 being an application seeking to record a public footpath between the easternmost end of Public Footpath 3 and Ferry Lane in the parish of North Kyme. **Appendix A** provides a brief synopsis including the reasons for the appeal.

2. Conclusion

That Councillor Mervyn Head and John Beaven have made a valid appeal against the current prioritisation of the DMMO case which requires consideration by the sub-committee.

3. Consultation

a) Has the Local Member been consulted?

Yes, but no comments were made in response to the consultation.

b) Has the Executive Councillor been consulted?

Not required.

c) Scrutiny comments

Not required.

d) Risks and impact analysis

None carried out.

4. Appendices

These are listed below and attached to the end of the report.

Appendix A	Case Synopsis – DMMO 565 North Kyme
Appendix B	Plan showing the location of the alleged footpath in context of the wider local area
Appendix C	North Kesteven District Councillor Mervyn Head’s appeal email of 14 November 2023
Appendix D	John Beaven’s appeal email of 19 November 2023 made on behalf of the Ramblers
Appendix E	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 writing of this report.

Highways Guidance Note 9.2, Prioritisation of Definitive Map Modification Order (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

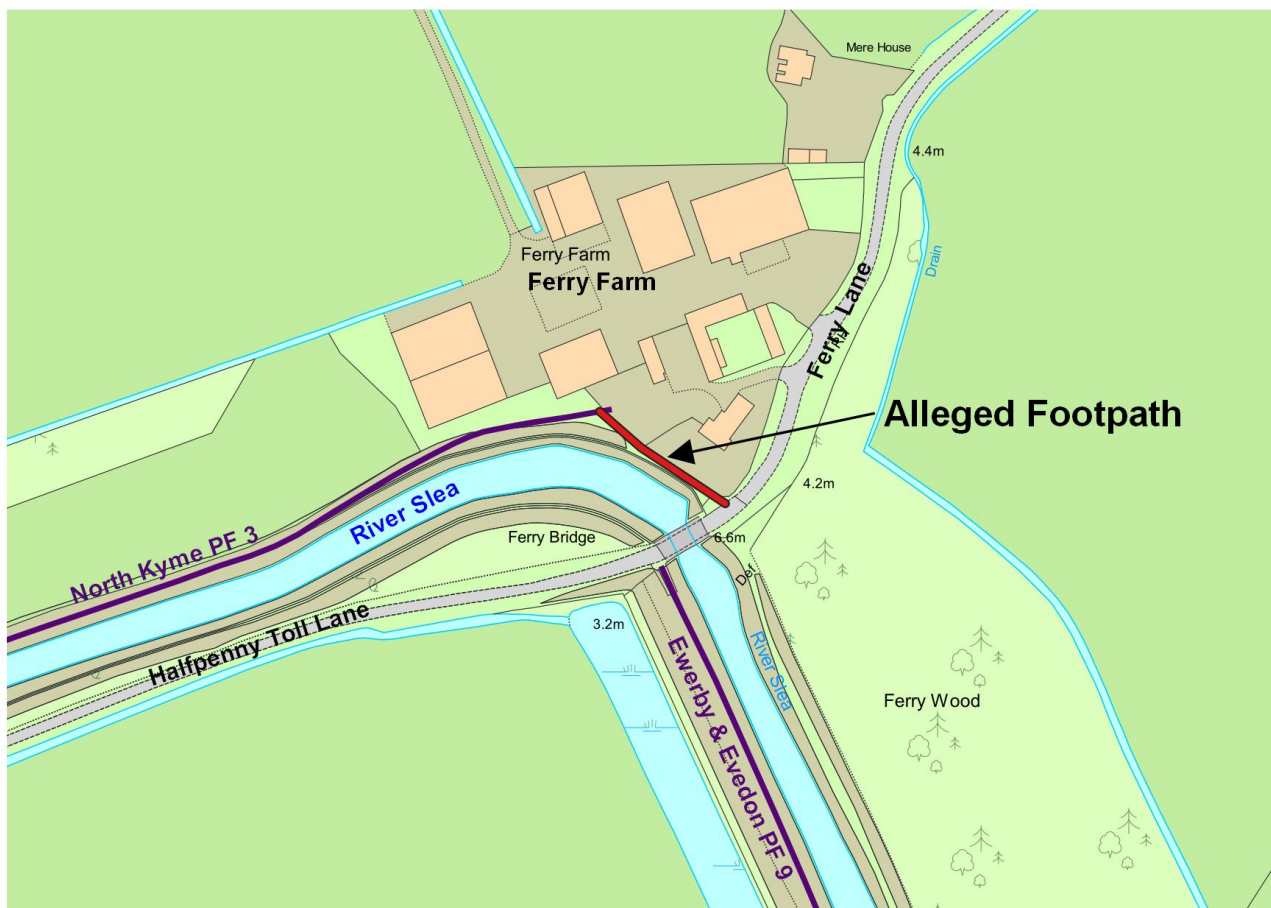
Definitive Map Modification Order Case 565

North Kyme – Alleged footpath between the easternmost end of Public Footpath 3 and Ferry Lane

1. Application

An application made by North Kesteven District Councillor Mervyn Head in August 2022 under section 53(5) of the Wildlife and Countryside Act 1981 seeks a definitive map modification order to record a public footpath between the easternmost end of Public Footpath 3 and Ferry Lane in the parish of North Kyme.

2. Location plan of route



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

3. Evidence in support of the application

15 user testimonies have been submitted in support of the proposal indicating usage over a period between 1981 and 2019.

4. Background

The easternmost end of Public Footpath 3 ends on the bank of the River Slea approximately 60 metres short of Ferry Lane, a publicly maintainable highway. Councillor Mervyn Head and John Beaven (“the appellants”) suggest in their appeals that access between the easternmost end of the public footpath and Ferry Lane is blocked by wooden panel fencing of a height of at least 6 feet. Councillor Mervyn Head’s appeal suggests that the application may have been made to resolve the “missing link” in the public rights of way network to enable riverside public access along the River Slea between Sleaford and the River Witham, and to connect to the Water Rail Way (a Sustrans route for walkers and cyclists which runs adjacent to or in close proximity to the River Witham between Lincoln and Boston) to complement the investment being made by North Kesteven District Council in the Slea Corridor.

5. Current Priority & Original Officer Assessment

Officer opinion following the initiation of the casefile for the proposal was that none of the criteria applied to it. The case is currently ranked 288th out of 458 cases (as of 29 January 2024), with the first 20 cases actively being progressed (see **Appendix E**). It should be noted that there are currently seven cases that have previously been given higher priority that are awaiting officer availability for progression.

6. Appeal

Neither of the appellants have specified the criteria of Definitive Map Modification Order Case Priority Policy under which they seek the application to be given higher priority and raised in the Priority Schedule.

Both appellants suggest that most of the cases in the Priority Schedule are currently in use and that all that is required is for their status to be legalised (i.e., recorded as public rights of way) or their classification changed (e.g., from a public bridleway to a byway open to all traffic), whereas the alleged footpath is impassable as it is obstructed by a 6-foot-high wooden panel fence. It is not possible to identify from the Priority Schedule whether the routes subject to any of the cases listed are currently available for public use. In fact, of the 298 modification order applications which have been made over the last 3 years seeking to record historical public rights of way, and the majority of these (if they are subject to a public right of way) are not available on the ground because they had fallen into disuse and were forgotten. Also, a lot of the user based public rights of way claims in the Priority Schedule have been made for routes where access has been barred following long usage.

Councillor Mervyn Head states that North Kesteven District Council has and continues to undertake considerable investment in the Slea Corridor. This has included the recent completion of the £800,000 Witham-Slea Blue Green Project, and North Kesteven District

Council is investing a further £50,000 awarded by the UK Shared Prosperity Fund into a boat trip along part of the River Sleaford at its Sleaford end. He suggests that should the alleged footpath be recorded as a public right of way it could provide access for more than 20,000 people per year linking Sleaford to the villages along the route to the Water Rail Way which runs alongside or in the vicinity of the River Witham. He contends that the current obstruction of the alleged footpath and the resulting missing link in the public rights of way network may impact on North Kesteven District Council's medium to long term development plans for the improvement of the Sleaford Corridor.

Neither appeal seems to meet the first seven criteria in the Definitive Map Modification Order Case Priority Policy, but consideration should be given to whether they meet criterion 8, '*Where the route will significantly assist in achieving a Countryside and Rights of Way Improvement Plan Objective or Statement of Action.*' The following Countryside Rights of Way improvement Plan objectives and statements of action which may apply and should be considered are:

- SOA 1 – Identify and improve off road route linking communities with schools, employment centres and local services

The alleged footpath, if recorded as a public right of way, would result in a continuous public footpath connecting the villages of Ruskington, Anwick, South Kyme and Chapel Hill, and the services located therein.

- SOA39 – Identify areas deficit in access where access proposals would benefit the rights of way network

There are several "missing links" in the public rights of way network in the area local to the alleged footpath. Should the alleged footpath be recorded as a public right of way, it would resolve a missing link and enhance the local public rights of way network.

- SOA18 – Identify and develop circular and linear recreational routes to and from countryside/tourism sites, and
- CT9 – Develop longer distance route and trails

Should the alleged footpath be recorded as a public right of way, it would result in a 10-mile continuous public footpath running almost exclusively along the embankment of the River Sleaford from a point on the A153 opposite Priory Road in Ruskington to the River Witham at Chapel Hill and a public footpath that runs for 10 miles along the embankment of the River Witham to Boston. It would also connect the Spires and Steeples Arts and Heritage Trail promoted by North Kesteven District Council to the Water Rail Way promoted by Sustrans. The Spires and Steeples Arts and Heritage Trail runs between Lincoln Cathedral and St Denys Church in Sleaford passing through several villages in North Kesteven, and the Water Rail Way is mainly a traffic free route for walkers and cyclists running alongside or in the vicinity of the River Witham between Lincoln and Boston.

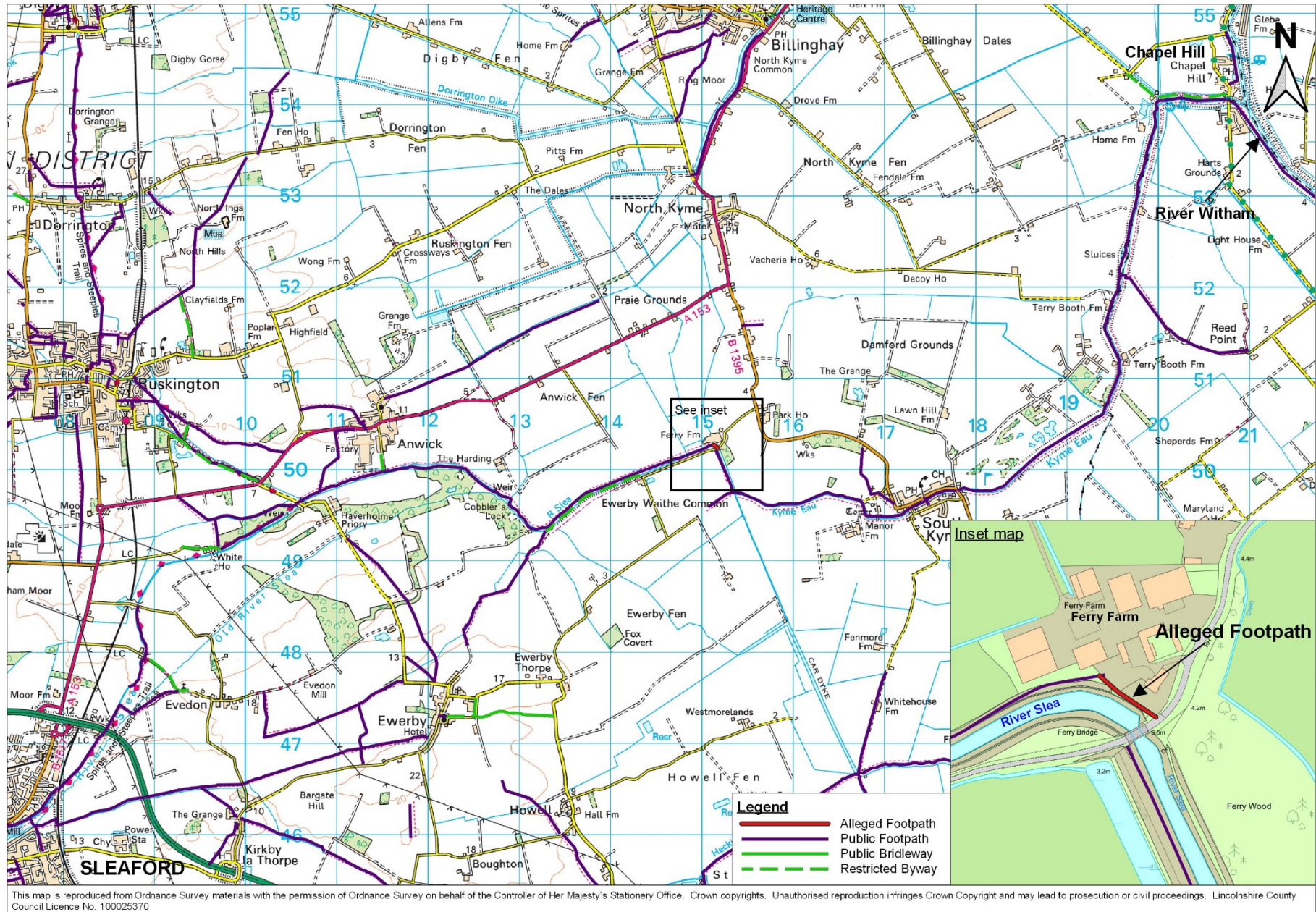
However, it should be noted that the Kirkstead Bridge – Chapel Hill – Langrick Bridge section of the Water Rail Way runs predominantly on public roads.

Should the alleged footpath be recorded as a public right of way, it would result in a continuous public footpath connecting the public footpath along the embankment of the River Witham to the Spires and Steeples Arts and Heritage Trail thus creating a continuous pedestrian route linking Boston to Sleaford and Lincoln.

7. Maps and photographs

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

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



Appendix C – Appeal submitted by North Kesteven District Cllr Mervyn Head

From: Cllr Mervyn Head

Sent: Tuesday, November 14, 2023 8:54 AM

To: Chris Miller

Cc: Alan Gray; Cllr Richard Wright

Subject: FW: Blocked Footpath at Ferry Farm - North Kyme/DMMO 565

Good morning Chris

A year has now passed, and having looked at your 'work list' it seems this footpath is currently 289th on the leaderboard, out of a total of 428. It would appear that only 19 cases are listed as being currently progressed by officers.

From analysis of the list it is evident that most of the paths being claimed are in fact already in use and are subject to applications to be legalised, or are requested upgrades from, say, bridleways to byways. At Ferry farm, we are looking at around 50 metres of path that has been illegally blocked off by a wooden panel fence, thereby preventing use of the footpath from Sleaford to access the river Witham and the Sustrans Water Railway path. This blockage is preventing the use of miles of pleasant riverside walk on a footpath that is also of strategic value to North Kesteven District Council (NKDC).

NKDC has and is investing considerably in the Sleas corridor (recent completion of the £800k+ Witham-Slea Blue Green project and a current £50k investment via the UKSPF fund into a trip boat on the Slea at the Sleaford End. The river is currently navigable from the Witham up to Cobblers Lock, yet an important part of footpath access along that section of the river is currently denied because of a 6 foot fence blocking off a very small and vital part of the link from Sleaford/Haverholme to Chapel Hill and beyond.

For this reason I feel that this case is deserving of a much higher priority than it has currently been given. I have copied both our Economic Development Manager, Alan Gray and the Leader of the Council, Cllr Richard Wright into this email so that they are aware of the current situation and its likely impact on NKDC's medium to long term development plans for improving the Slea Corridor.

As I have said, NKDC is investing in Sleaford and the river Slea and it is important to open up access for potentially upwards of 20,000 people/year to use this path between Sleaford and the villages along the route to the Water Railway path. Could you therefore please re-look at your priority listings and (hopefully) give this important footpath link a much higher ranking than it currently has.

Best regards

Mervyn



Cllr Mervyn Head

Councillor

Ward: Ward Member for Kirkby La Thorpe and South Kyme

Tel: [REDACTED] | Mob: [REDACTED]

Email: [REDACTED]

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Appendix D – Appeal submitted by John Beaven, The Ramblers

From: John Beaven
Sent: Sunday, November 19, 2023 11:41 AM
To: Countryside_Access
Subject: North Kyme FP3 - Ferry farm

Good morning CA team

At a very lively and interesting meeting between Andrew Fletcher and members of the Lincolnshire Area Ramblers committee on November 11th, I raised the issue of the "missing link" in front of Ferry Farmhouse.

A claim was submitted for re-instatement of this section of path in August 2022, along with 15 evidence-of-use forms. As you may know, this path has now been blocked by a 2m high panel fence.

On looking at the priorities schedule, this claim is 289th out of a total of 428, with 19 cases currently being classed as "Active" and being progressed by officers.

Looking at this list, it is evident that many of the ROWs submitted for DMMOs are currently in use, and just require their status to be legalised or changed, such as from bridleway to BOAT.

The situation at Ferry Farm, however, is that this short blockage is preventing the use of miles of pleasant riverside walk and effectively prevents foot traffic between two parishes.

For this reason, I feel that this case is deserving of a much higher priority than it has been given. At this rate of progress, most of the interested parties, including myself, won't live to see this issue resolved, which is very demotivating for anyone considering a similar course of action.

I have been in touch with the other applicants, including representatives of the Parish Councils involved, and they are fully supportive of the views expressed in this letter.

Kind regards

John Beaven (Footpath Officer for the Ramblers, South Lincs Area)

Appendix E – Definitive Map Modification Order Case Priority Schedule

Key: Grey – Cases currently being progressed. Yellow – Cases given higher priority which are awaiting officer availability for progression.

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

Appendix E – Definitive Map Modification Order Case Priority Schedule

Well	580	Claimed BOAT from Low Lane to PF79 at St. Margaret's Church	22/09/2022	26
Woodhall Spa	623	Claimed footpath from Manor Road to The Broadway	16/01/2023	27
..... 260 Definitive Map Modification Order cases				
North Kyme	565	Claimed footpath from PF3 to Ferry Lane (missing link)	17/06/2021	288
..... 170 Definitive Map Modification Order cases				