

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

Byway Open to All Traffic 83 (Green Lane), North Killingholme

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 The object of this report is to receive instructions from members regarding what to do next with a definitive map modification order (DMMO) that attracted duly served objections when it was advertised.
- 1.2 DMMOs cannot be confirmed by North Lincolnshire Council unless duly served objections are withdrawn. Opposed orders must be referred to the Secretary of State for Environment, Food and Rural Affairs. When making referrals, the order-making authority must tell the Secretary of State whether they would like him: (1) to confirm the order as made, (2) to confirm subject to modifications or (3) not to confirm.

2. BACKGROUND INFORMATION

- 2.1 What is referred to as Byway Open to All Traffic (BOAT) 83 (or Green Lane) in this report runs roughly north and east of St Crispin's Close, North Killingholme, as shown in Appendix 1. It has a length of 256 metres: 160 metres run west to east and 96 metres run north to south. Each end is connected to a publicly maintainable highway.
- 2.2 BOAT83 is the reference this public right of way would have on the "County of Lincoln, Parts of Lindsey (Glanford Brigg)" definitive map and statement if "Definitive Map Modification (Public Byway Open to All Traffic 83, North Killingholme) Order 2008(1)" were to be confirmed. Members agreed to the making of the order on 10 September 2008 (Minute Number 1073). The evidence underpinning that decision is therefore contained in the report that members considered on that date.
- 2.3 The order was made on 7 November 2008. It was advertised on 27 November 2008. Two objections were duly lodged (i.e. served within the legally prescribed period), these being from Mr K and Mrs P Clark – affected residents – and Mr J Carney.

- 2.4 The objectors themselves disagree as to the order's significance. Mr and Mrs Clark dispute the existence of a highway over their property and point out the distress that having such a highway would cause them. Mr Carney, on the other hand, is of the opinion that the highway not only exists, but is of a higher status than a BOAT. A BOAT is the highest status of public right of way and only public rights of way can be recorded on the definitive map.
- 2.5 Up to this point in time, the situation has therefore been thus: North Lincolnshire Council and Mr Carney agreeing that Green Lane is a highway, but disagreeing as to its status; and Mr and Mrs Clark arguing that both North Lincolnshire Council and Mr Carney are wrong in thinking that a highway of any description appertains.
- 2.6 Despite Mr and Mrs Clark's comments, Green Lane is already known to North Lincolnshire Council as a highway of some description by virtue of being recorded on the list of streets (the schedule of highways maintainable at public expense under section 36 of the Highways Act 1980). So if the order were not to be confirmed, the assumption that Green Lane is a highway would remain unless compelling evidence to the contrary were forthcoming or Green Lane were to be stopped up by some official means such as closure by the magistrates' court on the grounds that it is unnecessary.

3. OPTIONS FOR CONSIDERATION

- 3.1 To submit the order to the Secretary of State with the recommendation that he confirm it in its current form.
- 3.2 To submit the order to the Secretary of State with the recommendation that he confirm it subject to modification(s).
- 3.3 To submit the order to the Secretary of State with the recommendation that he not confirm the order.

4. ANALYSIS OF OPTIONS

- 4.1 Mr and Mrs Clark's letter of objection is dated 31 December 2008. They state that they have owned their property freehold for 35 years. The conveyancing search did not reveal a right of way. Nor has anyone requested use of the right of way during their time there. They believe there is no evidence of a right of way, they are nearing retirement and the proposal to open a right of way through their garden has caused them stress and worry. The proposal would not benefit the public and in other counties schemes to identify historical routes have been abandoned.
- 4.2 Naturally North Lincolnshire Council would not want to cause anyone undue anxiety. But the problem here is that we cannot ignore or divest ourselves of highways that the law holds us responsible for preserving. The legal maxim is "once a highway, always a highway". Whether a highway enjoys continued utility is ultimately a matter for the public to

decide, not the highway authority or the owner of the land the highway crosses. Where Mr and Mrs Clark refer to the abandonment of schemes to identify historical routes, they could mean the withdrawal of the Government's Discovering Lost Ways project. Under this initiative, archival research was to be undertaken nationwide in pursuit of long-lost highways that might still legally exist wherever these might be found. However, it has not been so much abandoned as replaced by another initiative, the Stakeholder Working Party. And besides, there is a marked difference between looking for what routes might exist and the highway authority having evidence for a specific route in their possession, as is North Lincolnshire Council's case with Green Lane. The law is clear: we must assert and protect the public's use and enjoyment of all highways in our area and prevent as far as possible their stopping up or encroachment (Highways Act 1980, section 130).

- 4.3 As for the conveyancing search, the question about whether there are rights of way crossing or abutting the premises is an optional one. We do not know whether this question was requested by Mr and Mrs Clark's solicitor because they have not told us. But even if the question had been asked, it would have inevitably brought nothing to light because there is as yet no right of way on the definitive map. It is rights of way on the definitive map that the optional conveyancing question about rights of way brings to prospective property buyers' attention. This is another reason, aside from the legal duty, why it is so important that the definitive map is kept up to date. That is precisely what the present order seeks to do.
- 4.4 Mr Carney's objection is that the order should never have been made because there are no grounds for making it. He argues that there has not been any discovery of evidence ("how can North Lincolnshire Council claim it has found something that has never been lost ...?"), that "the order has been made on a public carriageway" and "this road should be recorded as public carriage roads on the list of streets ...". It is his contention that officers already knew that Green Lane was a highway maintainable at public expense. Furthermore, there was no event under section 53 of the Wildlife and Countryside Act 1981, so the order was *ultra vires* (i.e. beyond our legal powers).
- 4.5 Mr Carney's duly lodged objection was subsequently followed up by three further e-mails that emphasised and elaborated upon his original points. The essence of what he is arguing appears to revolve around a mistaken belief that North Lincolnshire Council have a policy of adding carriageways to the definitive map simply to reduce our maintenance liability across the highway network.
- 4.6 His other apparent error is to refer to highways on the one hand and public rights of way on the other, as if public rights of way were not highways. A public right of way is as much a highway as, for example, the A1077. The status might differ, but they are both highways nevertheless. And like highways in general, some public rights of way are maintainable at public expense – the overwhelming majority – and others not. We have a duty to ensure that all highways maintainable at public expense are included on the list of streets (Highways Act 1980,

section 36). So those public rights of way that are so maintainable should be recorded on the list of streets every much as any other type of highway that is also maintainable thus.

- 4.7 The fact, however, that Green Lane is already on the list of streets does not in itself prevent it from being added to the definitive map as well, contrary to what Mr Carney seems to suggest. The list of streets and the definitive map are discrete documents with different purposes. The list of streets records where the authority's publicly maintainable highways are to be found, whereas the definitive map records where the public have certain rights of way, irrespective of whether the latter are maintainable at public expense.
- 4.8 A public right of way is a type of minor highway that falls into one of four categories: footpath, bridleway, restricted byway or byway open to all traffic. No other type of highway can appear on a definitive map. We agree with Mr Carney, therefore, where he insists that "ordinary roads used for vehicular traffic are not within its scope".
- 4.9 *"A byway open to all traffic is a vehicular right of way carrying rights for users of mechanically propelled vehicles which is used by the public mainly for the purposes for which footpaths and bridleways are used. When deciding whether a way ought to be shown on the definitive map and statements as a BOAT, authorities should examine the characteristics of the way. Relevant case law suggests that, for a carriageway to be a BOAT, it is not a necessary precondition for there to be equestrian or pedestrian use or that such use is greater than vehicular use. The test also relates to its character or type and whether it is more suitable for use by walkers and horse riders than vehicles"* (Department for Environment, Food and Rural Affairs Circular 1/09, paragraph 4.38).
- 4.10 *"It would be possible for a way described as an unclassified road on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the 1981 Act"* (Department for Environment, Food and Rural Affairs Circular 1/09, paragraph 4.42). The criteria is essentially that described in paragraph 4.9 above.
- 4.11 Green Lane is not metalled, nor is there evidence that it ever has been. The Lindsey County Council maintenance record that Mr Carney refers to and appears both in his letter of objection and at appendix three to the report members received on 10 September 2008 states that the order route "is to be regarded as an unmetalled highway grade G". Grade G was the lowest classification a road could be ascribed. The character of Green Lane, moreover, is not that over which one might expect to drive a normal car. The north-to-south section is a rough track and the east-to-west section runs unsurfaced through gardens. Neither section has the characteristics of a normal metalled road. Both would be eminently more suited to walkers and horse riders than motor cars. If the law had not intended there to be a distinction between BOATs and other kinds of carriageway, BOATs would not exist. But they do exist. Therefore members have to consider whether Green Lane is a

BOAT, as officers believe, or a carriageway that is more suited to use by motor cars than walkers and horse riders, as Mr Carney maintains.

RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial

5.1.1 From the Environment Team's existing budget.

5.2 Staffing

5.2.1 From within the Environment Team's existing complement. Were an order made and challenged, Legal Services' assistance might be called upon.

5.3 Property

5.3.1 None.

5.4 IT

5.4.1 None.

6 OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17-CRIME AND DISORDER, RISK AND OTHER)

6.1 Statutory

6.1.1. Wildlife and Countryside Act 1981, section 53(2): "As regards every definitive map and statement, the surveying authority shall as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event".

6.1.2. Wildlife and Countryside Act 1981, section 56(1)(c): "Where the map shows a byway open to all traffic, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic".

6.1.3. Highways Act 1980, section 36(6): "The council of every county, metropolitan district and London borough and the Common Council shall cause to be made, and shall keep corrected up to

date, a list of the streets within their area which are highways maintainable at the public expense”.

- 6.1.4. Wildlife and Countryside Act 1981, Schedule 15, paragraph 7(1): “If any representation or objection duly made is not withdrawn the authority shall submit the order to the Secretary of State for confirmation by him”.
- 6.1.5. Wildlife and Countryside Act 1981, Schedule 15, paragraph 7(2): “Where an order is submitted to the Secretary of State under paragraph (1), the Secretary of State shall, subject to sub-paragraph (2A), either – (a) cause a local inquiry to be held; or (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose”.
- 6.1.6. Wildlife and Countryside Act 1981, Schedule 15, paragraph 7(2A): “The Secretary of State may, but need not, act as mentioned in sub-paragraph (2)(a) or (b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order, either with or without modifications”.
- 6.1.7. Wildlife and Countryside Act 1981, Schedule 15, paragraph 7(3): “On considering any representations or objections duly made and the report of any person appointed to hold an inquiry or hear representations or objections, the Secretary of State may confirm the order with or without modifications”.

6.2 Environmental

- 6.2.1 An accurate definitive map and statement benefits users and landowners/occupiers alike. Rights of way bring people into the countryside, thereby boosting the rural economy. It is important, therefore, that users of rights of way have confidence in the accuracy of the information they are supplied with in terms of where those rights of way run and the status of individual routes as well. All changes to the definitive map are passed on to the Ordnance Survey, who update their maps accordingly at the following revision. Landowners and occupiers, on the other hand, want to know where the public should be, what their obligations towards them are and how best to manage their land around that public access. Visitors to the countryside also provide some landowners and occupiers with alternative sources of income as farmers increasingly diversify into tourism.

6.3 Risk

- 6.3.1 The order could be objected to and/or new evidence could come to light requiring North Lincolnshire Council to reappraise the

wisdom of having made the order and/or referred it to the Secretary of State, with or without recommended modifications. The Secretary of State might not confirm the order or could do so subject to modifications of his own. Referral to the Secretary of State would entail written representations, hearing or inquiry.

6.4 Diversity

6.4.1 None.

6.5 Section 17 Crime and Disorder

6.5.1 None.

6.6 Other

6.6.1 None.

7. OUTCOMES OF CONSULTATION

7.1 The following bodies and organisations were sent copies of the order and notice immediately prior to advertisement: owners, occupiers and lessees of affected and adjacent land; National Farmers' Union and Country Land and Business Association; North Killingholme Parish Council; statutory undertakers; Ramblers' Association, British Horse Society, Byway and Bridleway Trust, Cyclists' Touring Club, Association of Motor Clubs, Auto Cycle Union, Open Spaces Society and British Driving Society; and Lincolnshire Wildlife Trust.

7.2 Only Mr and Mrs Clark and Mr Carney objected (as discussed in "Background" and "Analysis of Options" above).

8. RECOMMENDATIONS

8.1 It is recommended that members approve North Lincolnshire Council's:

8.1.1 referral of "Definitive Map Modification (Byway Open to All Traffic 83, North Killingholme) Order 2008(1)" and objections to the Secretary of State for Environment, Food and Rural Affairs with a request that the order be confirmed; and

8.1.2 full participation in whatever means of the Secretary of State's choosing is used to determine whether the order should be confirmed, with or without modifications.

Church Square House
PO Box 42, SCUNTHORPE
North Lincolnshire
DN15 6XQ

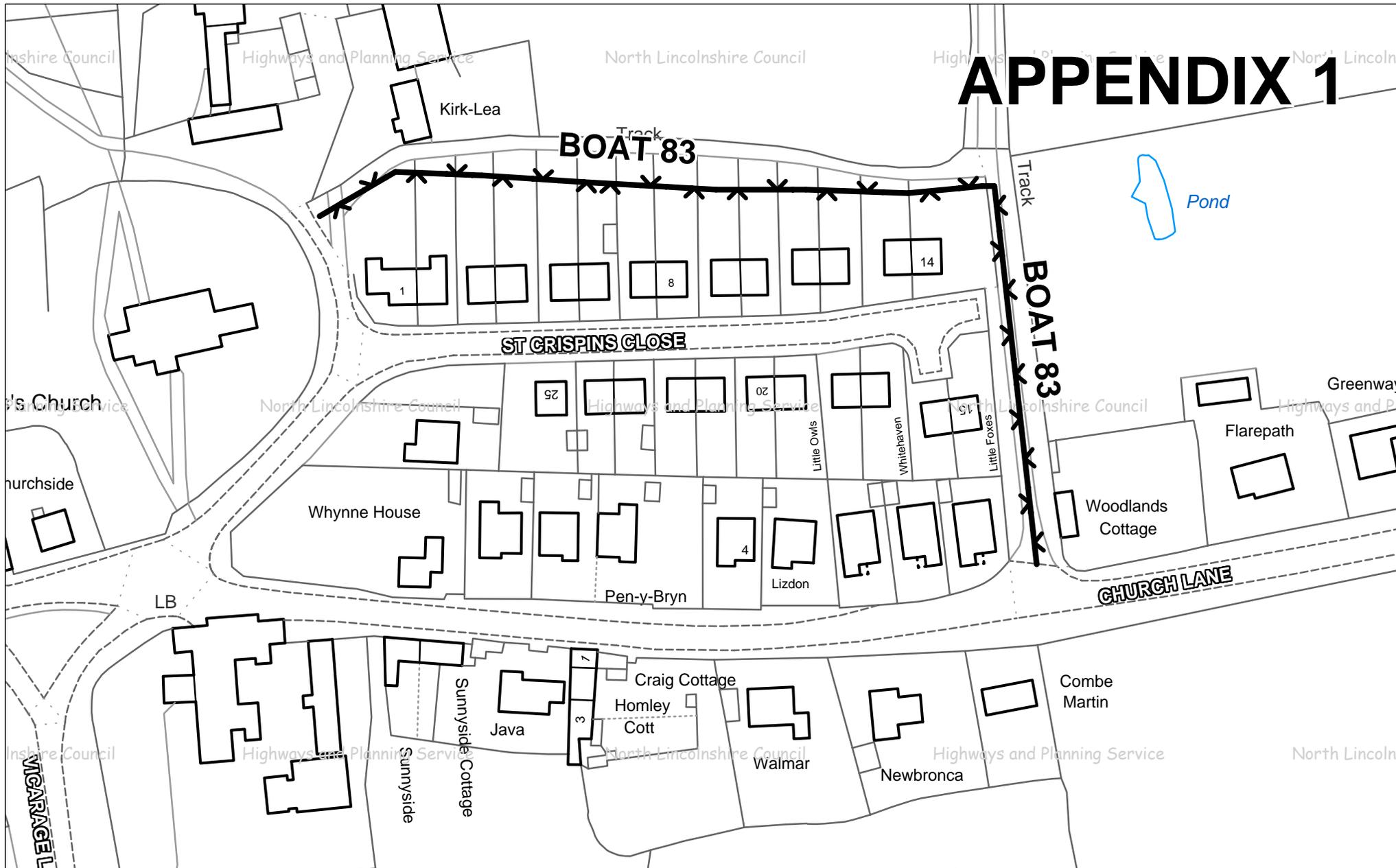
Author: Colin Wilkinson

Date: 8 April 2009

Background Papers used in the preparation of this report: Office file 37/83.

APPENDIX 1

APPENDIX 1



 <p>Based upon the Ordnance Survey mapping with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. NORTH LINCOLNSHIRE COUNCIL 0100023560 2009</p>	<p>Drawing Title: Map Showing the Line of N Killingholme BOAT 83</p>		 <p>Highways and Planning Service Service Director, G Popple</p>
	<p>Drawn by: CTW</p>	<p>Date: 07/05/2009</p>	
	<p>Scale: NOT TO SCALE</p>	<p>OS Grid Ref: TA14591733</p>	
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APPENDIX 2

Mr Mrs K Clark
5 St Crispins Close
North Killingholme
North Lincolnshire
DN40 3JN

Mr G Pople
Service Director Highways and Planning
North Lincolnshire County Council

31ST December 2008

Ref: Objection to "Definitive Map Modification (Byway Open to all Traffic 83, North Killingholme) order 2008(1)"

I hereby formally notify you of our objections, which we feel should be taken into consideration and require investigation and explanation prior to any subsequent decision on the above proposal.

1. We have documentary evidence which we are prepared to share in our deeds that state that the land is freehold and when Lindsey County Council carried out a land search, no right of way was found. This gives us absolute legal title to the property and land.

2. We are questioning the validity of your suggestion that a right of way is in existence and request documentary evidence and proof. The justification for this request is we have processed the land for over 35 years and no evidence or request has been shown or been made to use any said right of way.

3. On a personal note, the above proposal to open a right of way has had a huge impact on us; which has caused unnecessary stress and worry. Over the last 35 years the garden has had a considerable amount of money spent on its construction, plus a lot of hard work and now as we are nearing our retirement we had hoped to have the opportunity to relax and enjoy our garden and didn't expect this intrusion into our lives. We have taken a great deal of pride building a retreat that is now in jeopardy based on a insensitive decision that we believe has no true foundation or visible benefits to the residence's of North Killingholme (or indeed, North Lincolnshire).

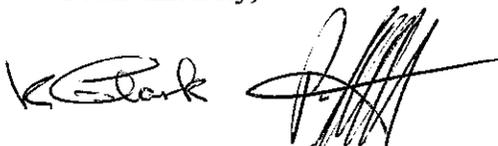
4. There is a track which run along the back of our property which Lindsey County Council Highway Department stated they would not maintained at public expense. Humberside County Council was of the same opinion, so we have maintain the track as part of our garden, at our own expense for over 35 years.

We are aware that in other counties the schemes to identify historical routes have been abandoned, as the routes have no relevant or use any more, as in this case, the proposed map modification, route leads from nowhere and goes nowhere.

Therefore, we ask that this proposal is withdrawn on the grounds state above.

Please acknowledge receipt of this objection letter.

Yours sincerely,



Mr K Clark & Mrs P Clark

APPENDIX 3

Mr Geoff Popple
 NLC Service Director highways and planning
 Church Square, Scunthorpe, North Lincs

Objection to
 Wildlife and countryside act 1981. Definitive map Modification (public byway open to all traffic, 83 North Killingholme Order 2008(1)

In 1996 you brought Form 416 from your former employer Humberside County Council
 One of these forms has now been produced to members

LINDSEY COUNTY COUNCIL - HIGHWAYS DEPARTMENT

Ref. No. on "MAP A":- 37:

Briga R D

Liability of the County Council for the repair of by-roads.

Details of road maintained under the Highways Committee minute dated 7th February 1949, and other roads of hitherto doubtful status, and details of roads not shown on "MAP A".
Questionnaire to be completed by Divisional Surveyor.

1. PARISH(ES) OF NORTH KILLINGHOLME.

2. Road leading from etc road around church to Church Farm entrance
 to _____

3. Name of Road (if known) Church Farm Road

4. Type of road, i.e. should it be { Grade E length 123 ~~125~~ yds. 123
 graded E, F, or G, or is it " F " yds. -
 made up of lengths of each " G " 200 yds. -
 grade Total length of road: 323 yds.

5. Is this road shown on "MAP A"? no

6. If shown on "MAP A", is it correctly shown? _____ See file 28

7. Were you officially instructed to repair road? Yes
 If yes, give dates 5th June 1961 and memo refs. RJC/W/45/MB.
memo to JAP. instructing to repair 123 yds as grade E and remainder G

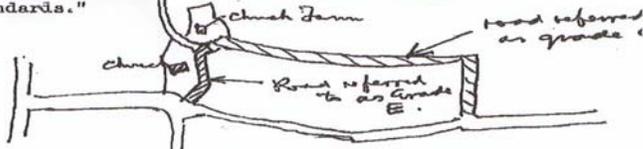
8. If you were not officially instructed to repair road, state reasons See note below
 for repair being undertaken:- in particular state if
 (a) due to an error by some person no Check of EC's b
 (b) because road was used regularly as a materials dump and repairs done as "reinstatements" from time to time no
 (c) there was evidence that a former highway authority had done repairs The road is shown on Parish award map and on 1" Ord Map dated 1824
 (d) any other reason not listed (a), (b) or (c) above _____

9. Have repairs been done
 (a) regularly over a long period? _____
 (b) for a period of years and then stopped? _____
 (c) once only for a special reason? _____
 (d) give reasons for 9(b) and 9(c) _____

10. Give details of repairs done :- i.e. type, extent, dates, etc., and present condition.
As memo 5/6/61 - J.C. Clerk of C. advises that the road is to be regarded as a public highway - the metalled section from the village road and along to Church back as far as the gate to Church Farm (length 0.6 miles) to grade E. The remainder in an unmetalled small diposition back to the village road is to be regarded as an unmetalled highway grade G.

11. What type of traffic uses this road? _____
 12. Is the road at present in fit state for present user? _____
 13. Sketch Plan is required to define "location" or "show precise lengths maintained at E, F or G. Standards."

APPENDIX 3



This above form is quite clear. The Definitive Map Modification Order 2008(1) is perverse The Order has been made on a public carriageway. There has been no event under section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 or section 53 (2) (b) on this carriageway. See below section 53. of 1981 Act

How can nlc claim it has found something that has never been lost, this form has been in your records all of the time since you brought it from Humberside County Council in 1995 shadow year

I would suggest that you have failed to have a proper search carried out. In fact the courts have ruled that a record held in the council archives cannot be classified as a lost record

The form states at 7

Were you officially instructed to repair the road. Yes

If yes give details. 5th June 1961 and memo refs RCJ?W/45/MB

----- to JAP ----- to repair 123yds as grade e and remainder grade G

Highways Act Section 36 (5) A Highway shall not by virtue of subsection (4) above become a Highway which for the purposes of the Act is a Highway maintainable at the public expense unless either -

- (a) it was a Highway before 31 August 1835; or
- (b) it became a Highway after that date and has at some time been maintainable by the inhabitants at large of any area or a Highway maintainable at the public expense;

The form refer no on map A 37 is clear that this is a highway maintainable at public expense, hence once a highway maintainable at public expense always a highway maintainable at public expense

This is another example of North Lincolnshire Council abusing it power by making an Unclassified maintainable county road into Public Rights of Way

This road should be recorded as public carriage roads on the "list of streets" the procedure to remove a road from the "list of streets" maintainable at public expense is make an application to magistrates court, Section 47 Highways Act .

Although NLC was in possession of record that this is a highway maintainable at public expense NLC has made DMMO even though the officers are aware that there has been no event that has changed the status to a ROW. The Order is Ultra vires.

Section 53 Wildlife and Countryside Act 1981.

Duty to keep definitive map and statement under continuous review.

(1) In this Part "definitive map and statement", in relation to any area, means, subject to section 57(3), -

(a) the latest revised map and statement prepared in definitive form for that area under section 33 of the 1949 Act; or

(b) where no such map and statement have been so prepared, the original definitive map and statement prepared for that area under section 32 of that Act; or

(c) where no such map and statement have been so prepared, the map and statement prepared for that area under section 55(3).

(2) As regards every definitive map and statement, the surveying authority shall-

(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

(3) The events referred to in subsection (2) are as follows:-

(a) the coming into operation of any enactment or instrument, or any other event whereby-

(i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;

(ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or

(iii) a new right of way has been created over land in an area to which the map relates, being a right of way such that the land over which the right subsists is a public path;

(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

(4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to-

(a) the position and width of any public path or byway open to all traffic which is or is to be shown on the map; and

(b) any limitations or conditions affecting the public right of way thereover.

(5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

(6) Orders under subsection (2) which make only such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (a) of subsection (3) shall take effect on their being made; and the provisions of Schedule 15 shall have effect as to the making, validity and date of coming into operation of other orders under subsection (2).

John Carney 38 Lindsey drive Crowle North Lincolnshire DN174NY

Date as e-mailed

APPENDIX 4

From: john carney
To: Colin Wilkinson
cc: Mike Wood

Date: Saturday, January 31, 2009 08:51AM
Subject: val.wilcockson@northlincs.gov.uk

to Mr Wilkinson NL council ROW ,

You have failed to take into consideration the fact that this road was a maintainable highway of E and G standard (green lane) This standard of maintenance was changed by the 1972 Local Government Act which re-categorised C, D, E, F, E and G roads to all being Unclassified roads (UCR)

Although there are photographs of signs in Scunthorpe with "C" roads



Scunthorpe">

C173 - Station Road, Scunthorpe. Photo by John Boddy.

there have been no "C" roads since 1972 Such signage only adds to the disrepute of NLC

This letter is cc to Mike Wood and solicitor Val Wilcockson these solicitors are the professionals, they will be able to explain there are two quite distinct public records of highways from two different Acts of Parliament;

- (1) The "List of Streets" maintainable at Public expense which shows classified and unclassified roads
- (2) The Definitive map and Statement which shows Rights of Way

Church farm road (Green Lane) was an E and G unclassified County road and since LGA 1972 is unclassified road which is from 1996 maintainable by NLC as successors to Lindsey County Council. The correct method of protecting the nature of a green lane has always been RTO- however Mr Popple and his team are still working to pre 1974 Lindsey methods which is to Colour unsurfaced highways on the Definitive map and not include them on the "list of streets"

the Lindsey County Council Highway maintenance record States;

"The Clerk of CC advises that the road is to be regarded as a public Highway....."

Answer to Question, 7 Were you instructed to repair the road----- Yes
 If yes, give dates 5th June 1961 and memo refs. RJC/ W /45 /MB

Church farm road is not an A or B road it is a very minor unclassified road, maintainable at public

expense on the "list of streets"

It was repair by the Highway Authority in 1961 and is still repairable by the Highway authority today, there is no stopping up order and to be fare you have not claimed there is.

As i have repeatedly told you and Mr Allen and Mr Popple since 1996; To change a highway maintainable at public expense to a Right of Way cannot be done by tippexing it from the "list of Streets" and then making a DMMO

Therefore it is a simple matter of whether NLC has the powers to not include the highway on its new 2008 "list of Streets" and change it into a BOAT on the Definitive map or is such an Order made by NLC ultra vires, you should seek advise from legal.

Why do you not just spend five minutes on the web and look at how other authorities record unclassified roads that have not been sealed only on the "List of Streets"

From 2nd of May 2006 all unrecorded PROW for machanically proped vehicles was extinguished by Part 6 of the 2006 Act (see sttached Defra notes) This stops NLC Officers perverse practice of puting former unclassified road on the definitive map by quite improperly advising members that they could

Your letter confirms my suspicion that the report to members recomending they approve that the Service Director Highways and Planning be deligated to make DMMO, was to avoid giving the public the right to point out that orders are ultra vires and a continuation of the policy "defending the Highways"

John carney 38 lindsey Drive Crowle North Lincs DN17 4NY

Attachments:

A DMMO with the right for MPV can only be made where.doc

A DMMO with the right for MPV can only be made where

www.defra.gov.uk/wildlife-countryside/access/crow/guidance.htm

Unclassified county roads on the list of streets

4.8 In relation to an application under the Wildlife and Countryside Act 1981 to add a route to a definitive map of rights of way, the inclusion of a highway described as an unclassified county road on the Highways Act list of highways maintained at public expense may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. It would be possible for a way described as an unclassified county road on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the Wildlife and Countryside Act. However, Authorities will need to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status.

Extinguishments under Part 6 of the 2006 Act

4.9 Part 6 of the 2006 Act extinguished, on 2nd May 2006 (26th November in Wales), all unrecorded public rights of way for mechanically propelled vehicles, with certain exceptions. The exceptions were, broadly, for highways that were part of the 'ordinary roads' network or highways that had been expressly created or dedicated as a public right of way for mechanically propelled vehicles. The Act provided for additional exceptions where, in certain cases, there were long standing applications, under section 53(5), to have a BOAT added to the definitive map and statement. The Act also curtailed the scope for the future creation of public rights of way for mechanically propelled vehicles by providing that they could only be created where they were expressly created for such vehicles. Further guidance can be accessed through the following link –

www.defra.gov.uk/wildlife-countryside/access/prow/nerc06.htm

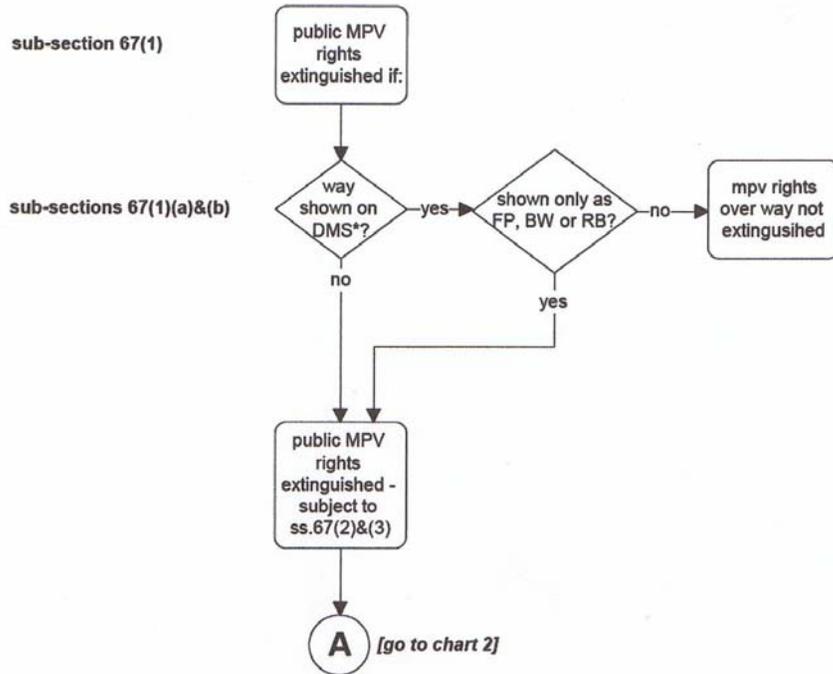
NLC have no evidence of dedication. There is no evidence of ownership.

See Defra chart flow page 2.

Flow chart illustrating the process of determining whether a public right of way for mechanically propelled vehicles over any given way is extinguished by section 67 of the Natural Environment and Rural Communities (NERC) Act

Chart 1 of 3 - subsection 67(1)

(This chart illustrates the process for determining whether rights of way are extinguished and does not provide an interpretation of the law; it must be read in conjunction with Defra's guidance on Part 6 of the Act)



Guide to abbreviations

- MPV - mechanically propelled vehicle
- DMS - definitive map and statement
- FP - footpath
- BW - bridleway
- RB - restricted byway
- BOAT - byway open to all traffic
- s. - section
- ss. - sections
- LOS - list of streets
- DMMO - definitive map modification order
- LHA - local highway authority

[* before commencement on 2 May 2006]

From: john carney
To: Colin Wilkinson
cc: val.wilcockson@northlincs.gov.uk

Date: Saturday, February 21, 2009 06:10PM
Subject:

Dear Mr Wilkinson

Re; your letter requesting that i withdraw my objection to to the Definitive map modification order made on "Green lane" North Killingholme

NLC Service Directors report to members paragraph 4.6 is wrong in law. DEFRA sent all local authorities Guidance Notes on 12-2-09 about the recording of widths on orders. The reference is "e-mail rights.of way@defra.gsi.gov.uk".

Since 1996 Mr Tim Allen and you have been telling members NLC can make roads that are part of the highway network into rights of way without a magistrates "stopping up order" this is wrong,

Green Lane is not a BOAT it is a public carriage road and should appear only on the List of Streets as a maintainable highway. In Suffolk v Mason (1979) AC 705 Lord Hailsham at page 720 and Lord Frazer at p.728 held that "the Act is not concerned with recording carriageways or cartways . . . ordinary roads used for vehicular traffic are not within its scope".

The difference between ROW and highways that are part of the local network was also brought up in the House of Lords Committee on 9-10-2000. Lord McIntosh stated "definitive maps were never intended to record all carriageways, only those which were particularly suitable for walkers and horse riders" (see 'Hansard' 9-10-2000 cols 117-118).

The 2000 and 2006 Natural Environment and Countryside Act is clear; your reports recommendation that this carriageway should be made into a BOAT is absurd; Part 111 sec 54A of the 2006 Act is clear

**Boats not to be added to the Definitive map,
Wildlife and Countryside Act 1981 (c69) ([www.opsi.gov.uk/revisedStatutes/ Acts/ukpga](http://www.opsi.gov.uk/revisedStatutes/Acts/ukpga)).**

All the DMMO NLC have made on highways on the Lindsey County council map of maintained highways will have to be remade.

John Carney 38 lindsey drive crowle DN17 4NY

vml--><!--[endif]-->

<!--[if !

From: john carney
To: Colin Wilkinson
cc: val.wilcockson@northlincs.gov.uk

Date: Thursday, February 26, 2009 09:37AM
Subject: Re: re DMMO green lane North killingholme

to Colin Wilkinson

You have taken Green lane North Killingholme which NLC accept is public carriage roads, which is on the List of Streets, and (without any proper procedure or logical reasoning) are then claiming that this full carriageway is only used as footpaths and bridleways and therefore should be BOAT.

Many of these minor roads which are part of the highway network have never been bitumen sealed, they are not BOATS they are full carriage roads

Mr Allen and you believe that these roads can be down graded to PROW (which is wrong see page 281 para 10.4.3 "Rights of Way" 4th Ed. (Ramblers Blue Book) "some authorities believe that the depiction of a byway reduces their liability to maintain .. this is an incorrect reading of the section")

Today there is A and B roads, all other highways are unclassified roads

Before 1974 there were unclassified county roads, (UCR), this described minor road that became the responsibility of the County Councils by the Local Government Act 1929. Highways maintained by former Authorities became County roads

That County Council network of highways was graded for maintenance A,B,C,D,E,F,G.

None of these roads were rights of way, unless they have been stopped up by a magistrates order which preserved the rights on foot and with horses

All former UCR are public carriage road and should appear only on the List of Streets as a maintainable highway. In *Suffolk v Mason* (1979) AC 705 Lord Hailsham at page 720 and Lord Frazer at p.728 held that "the Act is not concerned with recording carriageways or cartways . . . ordinary roads used for vehicular traffic are not within its scope".

The requirement to keep a "list of Streets" maintainable at public expense was first made by the Public Health Act 1925. It became part of the Highways Acts 1959 and 1980. Therefore, it has been a statutory duty since 1925, though in practice highway authorities have known which roads are maintainable at public since 1835, because since that date only new roads adopted by a highway authority have been maintained at public expense

All former UCR were public maintained carriageways before the 1929 Local Government Act or have been adopted as highways by the county Council since. They are part of the highway network, whereas all Rights of Way are easements over private land, and they are not highways adopted by the Highway authority.

A ROW has become maintainable at public expense by ROW legislation and it is wrong to ignore the fact that it is recorded on the "list of streets" because of that legislation

Green lane North Killingholme was required to be on the "list of Streets" since the 1925 Act

Mr Popple and Mr Allen have been in possession of the Lindsey CC highway authority document that prove green lane was a unclassified county road in 1960's There is no legal event that has changed the status of green lane to that of a ROW

John carney

From: Colin Wilkinson <Colin.Wilkinson@northlincs.gov.uk>
To: john carney <johncarney1@btinternet.com>
Sent: Wednesday, 25 February, 2009 3:46:05 PM
Subject: Re: re DMMO green lane North killingholme

Dear Mr Carney,

I attach the copy of the order you request.

Yours sincerely,

Colin Wilkinson
 Senior Public Rights of Way Officer
 North Lincolnshire Council
 01724 297391

-----john carney <johncarney1@btinternet.com> wrote: -----

To: Colin Wilkinson <colin.wilkinson@northlincs.gov.uk>
 From: john carney <johncarney1@btinternet.com>
 Date: 25/02/2009 12:22PM

Subject: re DMMO green lane North killingholme

please e-mail copy of order signed by Mike wood

This e-mail expresses the opinion of the author and is not necessarily the view of the Council. Please be aware that anything included in an e-mail may have to be disclosed under the Freedom of Information Act and cannot be regarded as confidential. This communication is intended for the addressee(s) only. Please notify the sender if received in error.
[Please think before you print- North Lincolnshire Council greening the workplace.](#)