

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Thursday, 15th March, 2018 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

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| M Barron | J Marsh |
| I Brown | J Parr |
| T Burns | K Snape |
| A Clempson | P Steen |
| B Dawson | |

1. Apologies

No apologies for absence were received.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last meeting

Resolved: That the minutes of the last meeting held on 17th January 2018 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance for Members of the Committee on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way, the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980, and the actions of the Authority on submission of Public Path Orders to the Secretary of State.

Resolved: That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

5. Slideshow of Works Completed

Steve Williams, Senior Public Rights of Way Officer, provided a presentation on a selection of works completed by the Public Rights of Way team in 2017.

The Committee noted that there was no inspection regime but that work was done in response to reports from members of the public, councillors and landowners which was prioritised according to what would give the greatest benefit to the greatest number of people.

County Councillor Steen wished his thanks to be placed on record for the staff who had done excellent work on the Rossendale cycle route.

County Councillor Snape raised a query in relation to tracking developer funding. David Goode informed the Committee that an officer had been tasked with identifying projects and ensuring work was done where money had previously been applied for.

County Councillor Parr thanked the officers for their work on the Lancaster footpaths.

The Chair wished to place on record his thanks to all the staff involved in the completed works, for their hard work and commitment.

Resolved: The Committee noted the presentation on the works completed in 2017.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a Restricted Byway at Lathom High School,
Skelmersdale, West Lancashire
File No. 804-591**

A report was presented on an application for the addition to the Definitive Map and Statement, of a restricted byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761, known as Summer Street, as shown between points A-B-C-D on the Committee plan attached to the agenda papers.

It was reported that the application route crossed land forming part of Lathom High School, running along a tarmac road, immediately south of the school buildings and between the buildings and adjacent school fields and tennis courts.

A site inspection had been carried out on 13 September 2017.

The applicant had provided 5 user evidence forms that indicated knowledge and use of the route, and all 5 users stated that they had used the route for 20 years or more, with 2 users claiming to have used the route on pedal cycle, whilst the other 3 users claimed only to have used the route on foot.

The Committee noted that West Lancashire District Council had been consulted and no response had been received, therefore it was assumed they had no comments to make.

The Committee noted that the main purpose given for using the route was to access local amenities, including the doctors, vets and shops; the users also claimed to have used the route for pleasure including visiting friends/family and dog walking.

Section 31, Highways Act 1980, as amended by section 68 of NERC 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. The Committee was therefore asked to consider whether the use by two users on pedal cycles would be sufficient to deem dedication by the owner as a route for non-mechanically propelled vehicles. It was suggested that such use was insufficient in this matter. It was further suggested that the small number of users in the context of this urban setting was insufficient to deem any public rights.

The Committee also needed to consider whether there were circumstances from which dedication could be inferred at common law. The map evidence suggested that the application route did not exist before the development of the school which opened in 1969. The route was shown on a plan of Tawd Valley Park dated 1974 but did not form part of the park.

In 1985, the route was shown on the 1:2500 OS Map noted as Summer Street, however the original line of Summer Street was the subject of a Highway Extinguishment Order in 1972.

Therefore, it was considered that the mapping and user evidence taken together were insufficient from which to infer dedication under common law.

Resolved: That the application for a Restricted Byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School to a point on highway F8761 (known as Summer Street) and shown on the Committee plan between points A-B-C-D, in accordance with File No.804-591, be not accepted.

**7. Wildlife and Countryside Act 1981
Claimed Public Footpath from Public Footpath No.39 Newburgh to
Public Footpath No.40 Newburgh, West Lancashire Borough
Claim No. 804/491**

A report was presented on the withdrawal of support for "The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No.3) Order 2011", on the basis that although the County Council considered that there was sufficient evidence to satisfy the test to make the Order, information had come to light since the original decision that suggested

the evidence would not be sufficient to meet the higher test that it subsists on the balance of probabilities.

It was reported that, on 12th May 2010, the Authority gave consideration as to whether or not an Order should be made to add a Public Footpath, extending from a point on Public Footpath No. 39 Newburgh, to a point on Public Footpath No. 40 Newburgh, West Lancashire Borough to the Definitive Map and Statement of Public Rights of Way. This report was attached as Appendix A to the agenda papers. The decision of the County Council had been that there was sufficient evidence that a Public Footpath was reasonably alleged to subsist or to subsist along the route.

The Committee noted that a Definitive Map Modification Order had been duly made on 12th January 2011. However, an objection had been received to the making of the Order by the landowner who had referred to post and rail fencing extending earlier chestnut paling and having witnesses regarding this, and having evidence of work redirecting walkers. Statutory provisions stated that, where there are objections, the Order Making Authority should submit the Order to the Secretary of State for formal determination. Although the Order Making Authority had previously assessed the evidence and considered that there had been sufficient evidence to satisfy the test to make the Order and also to promote it to confirmation, now in considering information that had come to light since including that from interviews had been carried out, on the balance of probabilities, it was advised that officers no longer considered that the evidence would be sufficient to meet the higher test for confirming the Order, that the route already subsists as a footpath on the balance of probabilities.

Details of the issues that had arisen were provided to the Committee in the agenda papers.

The Committee noted that the actions of the owners, and the weak evidence of use, on balance, made it difficult to argue inferred or deemed dedication. It was felt therefore, that it would be difficult to justify promoting this Order to confirmation as originally thought. The Committee were advised they may therefore feel that although the County Council as Order Making Authority had made the correct decision regarding the making of the Order it should reverse its previous decision in respect of the confirmation, in light of the new evidence, and agree that the Order be submitted to the Secretary of State for formal determination, but notify the Secretary of State that it does not actively support the Order and adopt a "neutral stance" as regards confirmation of the Order.

Resolved: That the County Council as Order Making Authority should submit The Lancashire County Council (Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No.3) Order 2011 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, but notify the Secretary of State that it does not actively support the Order and adopts a "neutral stance" as regards confirmation of the Order.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Lancaster Road to Public Footpath 19,
Pilling, Wyre Borough
File No. 804-459**

A report was presented on an application for the addition to the Definitive Map and Statement of a footpath from Lancaster Road, Pilling to Public Footpath 19 Pilling, Wyre Borough, shown on the Committee plan between point A and point E attached to the agenda papers.

A site inspection had been carried out in November 2007.

The applicant had provided 33 user evidence forms which showed use of the route from as early as 1940. The user forms suggest that, on balance, the route had been used as of right and without force, secrecy or interruption.

Considering the historical map evidence, it was suggested that there was insufficient historical map evidence from which public rights could be inferred from this but looking at the user evidence it appeared that no clear actions were taken by owners, and use by the public continued over several years prior to 1989, such that on balance there may be sufficient evidence from which to infer dedication at common law.

The Committee noted that Wyre Borough Council had been consulted and confirmed that they had no comments to make. Pilling Parish Council supported the application stating that the route had been used for many years.

It was reported that numerous alterations to properties along the route had been made.

A dedication under S31 cannot be deemed if changes to the route interrupted use or served to indicate sufficiently an intention that the route was not a public right of way. Where the boundaries had changed over the qualifying period, the only part of the width of the way which could be deemed to have been dedicated was that which had been available and used by the public throughout that period. This was about 2m width despite the fact that for much of the period a greater width had been available to one side or the other of that 2m. There was no evidence that use of this width was interrupted, and no evidence of a lack of intention to dedicate a public route.

The Committee noted that, on balance, and after careful consideration, it was suggested that the criteria under S31 could be satisfied. Taking all the information into account, the Committee were advised they may consider that a dedication of a footpath could be deemed or inferred, and that it was appropriate that an Order be made and promoted to confirmation.

Resolved:

(i) That the application for a Footpath from Lancaster Road, Pilling to Footpath 19 Pilling, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-459 be accepted.

(ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Lancaster Road, Pilling to Footpath 19 Pilling to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A and E.

(iii) That being satisfied that the higher test for confirmation can be met, the Order be promoted to confirmation.

9. Urgent Business

There were no items of Urgent Business.

10. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 6th June 2018 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston