

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 18th September, 2019 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

I Brown	J Parr
P Steen	T Aldridge
J Marsh	D Howarth
A Clempson	L Beavers
L Cox	B Yates

1. Apologies

Apologies were received from County Councillor Barron.

County Councillor Beavers replaced County Councillor Burns.

County Councillor Yates attended the meeting under Standing Order 13(1).

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Howarth declared a non-pecuniary interest in Items 5 and 6 as he was a South Ribble Borough Councillor.

3. Minutes of the last meeting

Resolved: That the minutes of the meeting held on 26th June 2019 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law and action taken by the authority in respect of certain Orders to be made under the Highways Act 1980.

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

**5. Highways Act 1980 - Section 25
Proposed Public Path Creation Agreement for a Public Footpath
adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, Preston**

A report was presented on the proposed dedication by agreement of a publically maintained public footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, Preston, PR5 4JW, marked on the Committee plan A-B-C-D-A attached to the agenda papers.

The Committee noted that the land immediately to the east of F2992 sloped steeply down into the River Darwen and that, prior to 2013, this slope carried over it a footpath ((7-2-FP95). In 2013, a landslip had occurred, resulting in a significant length of footpath 7-2-FP95 being lost down the river embankment, and the adopted footpath (F2992) becoming unstable. F2992 has since partially collapsed and is therefore unsafe for public use, and has been temporarily closed since that time.

Prior to the collapse of footpath 7-2-FP95, and the subsequent closure of F2992 on safety grounds, the route had been well used and formed an important link in the network of public rights of way. Following the closure of the footpath, regular requests for the footpath to be reinstated had been received from local residents.

The Committee were informed that various options to address the situation had been considered. An opportunity had arisen for the county council to enter into an agreement with the owners of the adjacent property (23 Elmsett Road) to create a public footpath on the eastern boundary of their land that appeared to be sustainably more stable. The new footpath would bypass the collapsed and unstable section of F2992, and would provide a suitable footpath link for many years to come.

The Chair invited County Councillor Yates to ask a question whether the proposal only affected the top section at the Holland House end of the path, or whether there would be works on the steep path where the historical '40 steps' are. Officers confirmed that this dedication only affects the 15 metre section which is collapsing.

It was reported that, on investigating the title of the owners of the adjacent property, it was found that restrictive covenants were in place relating to using the area of land required only as a garden and reserving a 'protected strip' for the benefit of a statutory undertaker. However, discussions had taken place and both parties agreed in principle for the release of those covenants on the land to be dedicated.

It was noted that the proposal was considered to be of benefit to the public in providing a safe and convenient footpath that would be a link from the Holland Slack housing development to the network of public rights of way at Holland Wood, Mosley Wood and the River Darwen.

Resolved:

(i) That the proposal for a Public Path Creation Agreement to dedicate a length of public footpath adjacent to F2992 at 23 Elmsett Road, Walton-le-Dale, be accepted, subject to the removal of the restrictive covenants which currently bind the landowner.

(ii) That, after removal of restrictive covenants affecting the land, a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between the owners of 23 Elmsett Road, Walton-le-Dale and Lancashire County Council on the terms detailed in this report, to dedicate a length of public footpath as shaded pink on the map attached to the agenda papers and marked A-B-C-D-A.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrading to Bridleway of Footpath Longton 42 (Known as Six Acre Lane), South Ribble
File No. 804-607**

A report was presented on an application received for Footpath Longton 42 (known as Six Acre Lane), to be upgraded on the Definitive Map and Statement of Public Rights of Way from footpath to bridleway, from Drumacre Lane East to Gill Lane, Longton, as shown between point A and point C on the Committee plan attached to the agenda papers.

A site inspection had been carried out in June 2019.

The Committee noted that there was no user evidence to consider for this application so it was necessary to look solely at the available map and documentary evidence.

The Committee were advised that the historical mapping evidence that the route was once used for public vehicular use was strong. Its initial status as a vehicular highway has not been affected by the more recent use as a footpath only as, once a highway has come into being, it continues indefinitely whether it is used or not. It was reported that there was no evidence to indicate that this historic vehicular highway status has been challenged, although the landowners state that it is a private road which they maintain but this is recent use by those landowners and does not call into question the historical evidence.

It was reported that the suitability, or otherwise, of the route for horses was not something that could be taken into account in determining whether highway rights exist.

The Committee were advised that if they concluded the evidence showed that, on the balance of probability, public carriageway rights existed on the application route, then it would be necessary to consider whether the Natural Environment

and Rural Communities Act 2006 would have extinguished public rights for mechanically propelled vehicles. Therefore, in the event that public carriageway rights were shown to exist, the appropriate status for Six Acre Lane to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights for non-mechanically propelled vehicles, horses or on foot.

Resolved:

- (i) That the application for the upgrading of Footpath Longton 42 to Bridleway, in accordance with File No. 804-607, be accepted, subject to a status of restricted byway, which includes bridleway rights.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981, to upgrade Footpath Longton 42 to a Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on the Committee plan attached to the agenda papers between points A-B-C.
- (iii) That being satisfied that the test for confirmation can be met, the Order be promoted to confirmation.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Kirkdale Avenue to Footpath Rawtenstall
180 and Seat Naze
File No. 804-608**

A report was presented on an application for the addition to the Definitive Map and Statement of Public Rights of Way, of a Footpath from Kirkdale Avenue, Newchurch to Footpath Rawtenstall 180, as shown on the Committee plan between points A-B-C-D-E, attached to the agenda papers.

A site inspection had been carried out in June 2019.

It was reported that the map and photographic evidence available from the 1840s through to the current time supported the view that the route physically existed and was capable of being used by the public on foot. In addition, it was identified as a 'public footpath' on a plan prepared in the 1930s for the construction of houses which abutted the route and from which a proposed link into the route was shown.

The Committee noted the evidence indicated that access to the route had been denied in May 2019, by the construction of a wall which, in turn, had triggered the application. It was not known who had built the wall and, looking at the substantial user evidence, it would appear that there had never been any clear actions by owners to prevent use by the public, and use by the public had continued for many years. In addition, the majority of users refer to having witnessed other users whilst using the route themselves and none of the users recalled having

ever been told that the route was not a public right of way, nor did any users refer to having been turned back or having to ask permission to use the route.

The Committee were informed that, taking all of the evidence into account, they may consider that the provisions of Section 31 of the Highways Act 1980 could be satisfied. In addition, or alternatively, Committee may consider that it can be reasonably alleged that there was sufficient evidence from which to infer dedication of a public footpath at common law.

Resolved:

- (i) That the application for a Footpath from Kirkdale Avenue to Footpath Rawtenstall 180, in accordance with File No. 804-608, be accepted.
- (ii) That an Order(s) be made pursuant to Section 53(2)(b) and Section 53(3)(b) and/or Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a footpath to Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan between points A-B-C-D-E.
- (iii) That being satisfied that the higher test for confirmation can be met, the Order be promoted to confirmation.

8. Urgent Business

There were no items of Urgent Business.

9. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 20th November 2019 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston