

# **Lancashire County Council**

## **Regulatory Committee**

**Minutes of the Meeting held on Wednesday, 29th January, 2020 at 10.30 am  
in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

### **Present:**

County Councillor Jimmy Eaton BEM (Chair)

### **County Councillors**

M Barron	T Aldridge
I Brown	D Howarth
P Steen	B Dawson
J Marsh	H Khan
J Parr	

#### **1. Apologies**

County Councillor Dawson replaced County Councillor Cox.

County Councillor Khan replaced County Councillor Burns.

#### **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 meeting held on 18<sup>th</sup> September 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 actions 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 report presented, be noted.

#### **5. Amendments to the Terms of Reference - Regulatory Committee and Amendments to the Scheme of Delegation to Chief Officers - Delegation of Functions relating to dealing with Applications for Public Path Orders under the Highways Act 1980**

A report was presented relating to the addition of restricted byways into the terms of reference of the Committee and possible amendments to the Scheme of Delegation, the effect of which would provide for the delegation of functions relating to dealing with applications for public path orders for the diversion or extinguishment of footpaths, bridleways and restricted byways under the Highways Act 1980.

It was reported that, at present, the Committee could decide, under the Highways Act 1980, whether to approve agreements or make or not make Orders relating to footpaths and bridleways. Since 2006, the various statutory provisions have also referred to restricted byways - a right of way on foot, on horseback or leading a horse, and a right of way in or on vehicles other than mechanically propelled vehicles. The Committee were advised, therefore, that the various powers in respect of restricted byways be added to their terms of reference.

In addition, a change was suggested in relation to the powers in paragraphs (c) and (g) of Section 2 of the terms of reference, to delegate the power to refuse to make public path diversion or extinguishment orders under Sections 119 and 118 of the Highways Act 1980, to the Head of Service for Planning and Environment, and that he be delegated to decide that an Order not be made in the circumstances set out below, if he considers it appropriate after taking relevant officer advice:

- Where a new route for a diversion under S119 would be, for a significant distance, less than Lancashire County Council's standard minimum width of 2m for footpath, 3m for bridleway or restricted byway;
- Where a new route for a diversion under S119 would be subject to the right to have unnecessary structures or unnecessarily restrictive structures;
- Where a new route for a diversion under S119 would be substantially less convenient in terms of alignment or gradient;
- Where a new route for a diversion under S119 would result in the enjoyment of the path as a whole being significantly reduced because a feature visible from the old route would no longer be visible;
- Where a footpath, bridleway or restricted byway proposed to be extinguished under S118 is currently used to more than a trivial extent and no new public route is proposed as an alternative;
- Where a footpath, bridleway or restricted byway proposed to be extinguished under Section 118 has only recently become available to the public and no new public route is proposed as an alternative;
- Where a footpath, bridleway or restricted byway proposed to be extinguished under S118 is unavailable to the public or there has been significant deterrent to public use and no new public route is proposed as an alternative.

**Resolved:** The Committee approved:

(i) That Section 2 of the terms of reference of the Regulatory Committee be amended to reflect the powers in connection with restricted byways and therefore read:

2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:

- (a) to authorise creation of footpaths, bridleways or restricted byways by agreement under Section 25;
- (b) to decide whether to make and promote to confirmation Orders for the creation of footpaths, bridleways and restricted byways under Section 26;
- (c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths, bridleways and restricted byways in accordance with Section 118;
- (d) to decide whether to make and promote to confirmation rail crossing extinguishment orders under Section 118A;
- (e) to decide whether to make and promote to confirmation special extinguishment orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 118B;
- (f) to decide whether to make and promote to confirmation public path extinguishment orders (Section 118ZA) and special extinguishment orders (Section 118C);
- (g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths, bridleways and restricted byways in accordance with Section 119;
- (h) to decide whether to make and promote to confirmation rail crossing diversion orders under Section 119A;
- (i) to decide whether to make and promote to confirmation special diversion orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 119B;
- (j) to decide whether to make and promote to confirmation SSSI diversion orders under Section 119D;
- (k) to decide whether to make and promote to confirmation public path diversion orders (Section 119ZA) and a special diversion order (Section 119C(4));

(ii) The delegation of the power to refuse to make public path diversion or extinguishment orders under Sections 119 and 118 of the Highways Act 1980, to the Head of Service for Planning and Environment in the circumstances as set out within the report.

(iii) That the decision to not make an Order in the circumstances listed above be no longer a function power or responsibility solely reserved to the Regulatory Committee, but instead able to be made by the Head of Service for Planning and Environment under the county council's Scheme of Delegation to Heads of Service (Appendix B in the Constitution), noting that the power to decide to make such an Order would still rest only with Regulatory Committee.

(iv) That Section 2 of the terms of reference of the Regulatory Committee be further amended to read:

2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:

(c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths, bridleways and restricted byways in accordance with Section 118, **with the exception of those which are delegated to the Head of Service for Planning and Environment.**

(g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths, bridleways and restricted byways in accordance with Section 119, **with the exception of those which are delegated to the Head of Service for Planning and Environment.**

(v) That Full Council be asked to ratify the necessary changes to the Constitution as a result of the above.

**6. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Deletion and addition of part of Footpath Oswaldtwistle 287,  
Hyndburn  
File No. 804-612**

A report was presented on an investigation into the deletion and addition of part of Footpath Oswaldtwistle 287 from the Definitive Map and Statement of Public Rights of Way.

A CON29 local authority search had shown that the recorded legal line of Footpath Oswaldtwistle 287 passed through the property known as 186 Belthorn Road, Oswaldtwistle, Hyndburn, BB1 2NY, along the line marked by a solid black line between points A-B on the Committee plan attached to the agenda papers. The footpath, as recorded on the Definitive Map and Statement had not been subject to a legal Order to divert or extinguish any part of the footpath, and therefore the legal line of the footpath remained along that line.

The Committee noted that a thorough search conducted by the county council in relation to the history of the footpath identified that all maps pre-dating the publication of the Revised Definitive Map (First Review) and Statement recorded Footpath Oswaldtwistle 287 along Chapel Street, on the route shown as a thick dashed line between point C and point B as shown on the Committee plan.

The Investigating Officer was satisfied that, in this instance, the Revised Definitive Map (First Review) was incorrect due to a drafting error which showed a 'kink' created on the line of the footpath, placing it through the property along the route A-B. It was reported that the correct line of the footpath should be

recorded along Chapel Street, between point C and point B on the Committee plan.

The owners, who were in the process of selling the property had been advised that a detailed report would be presented to Regulatory Committee Members, seeking approval for a Definitive Map Modification Order to be made to delete the footpath through the property, and for the addition of the footpath on it's correct line.

**Resolved:**

(i) That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Footpath Oswaldtwistle 287 through 186 Belthorn Road, and shown between points A-B on the Committee plan.

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

(iii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from Belthorn Road along Chapel Street to a point on Footpath Oswaldtwistle 287 as shown on the Committee plan between points C-B.

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

**7. Determination of Town and Village Green Application VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup**

A report was presented in relation to the appointment of an Inspector to hear the evidence and report in respect of Application No. VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup.

The Committee had considered a report at their meeting in June 2019 on the establishment of a Special Sub-Committee with power to act in relation to this application and resolved as follows:

'(i) Approved the establishment of a Special Sub-Committee to determine Application No. VG107 relating to land at Waterbarn Recreation Ground, Waterbarn Lane, Stacksteads, Bacup.

(ii) Agreed that, subject to the above, the membership of the Special Sub-Committee for VG 107 be drawn from 3 members of the Regulatory Committee, on the basis of 2 members of the Conservative Group and 1 member of the Labour Group.

(iii) Agreed that nominations to serve on the Special Sub-Committee be submitted by the respective political group secretaries.

(iv) Agreed that the quorum for the Special Sub-Committee be 2 members.'

It was reported that, following Committee's meeting in June 2019, the legal representatives of the current landowners (TMJ Contractors Limited) had raised concerns with regards to the Authority's proposed use of a "hearing before members" to test the evidence, which was a procedure sitting outside the statutory provision for an Inquiry before an Inspector. The Committee was advised that although the non-statutory procedure was a lawful and proper procedure, a challenge to its use would involve the authority in expense and officer time.

The documents related to this matter were also becoming larger by number and size and significant new decisions dealt with by the senior courts in connection with Town Green law had recently been handed down.

In view of the above, the Committee were advised that the primary preference to deal with this application to hold a non-statutory hearing in front of Members was now considered less suitable.

In the circumstances, the details of which were provided in the report, it was advised that a public Inquiry be held, as prescribed under the Commons Registration (England) Regulations 2014, appointing an Inspector to hold the Inquiry, and to provide a report and recommendation to the determining authority. Committee Members were advised they could attend the inquiry and listen if they so wished but that it would be the Inspector who would prepare the report and recommendation.

It was reported that, following the public inquiry, the independent Inspector would make a recommendation as to whether the application met the statutory criteria under Section 15 of the Commons Act 2006. Once the Inspector's report and recommendation had been received, the officer would prepare a report for consideration by the Special Sub-Committee, including all the relevant documents. In addition, the Special Sub-Committee would have received relevant information and training.

**Resolved:** That the Registration Authority hold a "public inquiry" as prescribed under the Commons Registration (England) Regulations 2014 (the Regulations) in particular Part 3 thereof to appoint an Inspector to hold the inquiry and to provide a report and recommendation to the determining authority in connection with the Application VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup.

**8. Action taken under the Urgent Business Procedure - Highways Act 1980 - Section 25 Public Path Creation Agreement for a Public Bridleway at Dertern Lane, Bolton le Sands**

A report was presented on the proposed dedication by agreement of a publically maintainable bridleway at Dertern Lane, Bolton le Sands. On 7 October 2019, Dertern Lane had been stopped up to vehicular traffic by an order made by Lancaster magistrates court. The Lane retained bridleway rights meaning that pedestrians, equestrians and cyclists could use the route. However, Dertern Lane was gated to prevent vehicular use by the public and a small by pass route around the gate was to be dedicated as bridleway.

The report had been dealt with under the Urgent Business Procedure as, although the landowner had signed the dedication agreement, until the agreement was completed, the landowner could technically ask for this back, leaving the county council in a vulnerable position, so the matter could not therefore wait until the next Regulatory Committee meeting.

**Resolved:** The Committee noted the following decision taken which had been taken under the Urgent Business Procedure, after consultation with the Chair and Deputy Chair of the Regulatory Committee, in relation to a proposed dedication by agreement of a publically maintained bridleway at Dertern Lane, Bolton le Sands:

'That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between the owners of the land at Dertern Lane, Bolton le Sands and Lancashire County Council, to dedicate as bridleway an area of land 2.5 x 6.5 metres shown edged and hatched pink on the plan attached at Appendix A.'

**9. Urgent Business**

There were no items of Urgent Business.

**10. Date of Next Meeting**

It was noted that the next meeting would be held at 10.30am on Wednesday 11 March 2020 in Cabinet Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales  
Director of Corporate Services

County Hall  
Preston

