

## **Lancashire County Council**

### **Regulatory Committee**

**Minutes of the Meeting held on Wednesday, 17th January, 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**

M Barron	A Clempson
J Cooney	B Dawson
I Brown	J Parr
P Steen	J Gibson
J Marsh	L Beavers

#### **1. Apologies**

No apologies for absence were received.

County Councillor Julie Gibson replaced County Councillor Kim Snape.

County Councillor Lorraine Beavers replaced County Councillor Terry Burns.

#### **2. Disclosure of Pecuniary and Non-Pecuniary Interests**

No pecuniary or non-pecuniary interests were disclosed.

#### **3. Minutes of the last meeting held on the 15th November 2017**

**Resolved:** That the minutes of the meeting held on 15<sup>th</sup> November 2017 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. Highways Act 1980 - Section 119A Rail Crossing Diversion Order Wildlife and Countryside Act 1981 - Section 53A**

## **Proposed Diversion of Part of Staining Footpath 6, Fylde Borough**

A report was presented on the proposed diversion of part of Staining Footpath 6, Fylde Borough.

An application had been received from Network Rail to divert part of Staining Footpath 6, from the route shown by a bold continuous line and marked A-B on the plan attached to the agenda papers, to the route shown by a bold dashed line marked A-C-D-B, in connection with its proposal to replace Preese Hall Level Crossing with a stepped footbridge.

It was reported that the construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. It was acknowledged that the new route was longer than the existing route and required more steps to be negotiated, however given the substantial improvement in the safety of the crossing, it was suggested that this was reasonable. In addition, users of the railway crossing that were in a hurry (and would be inconvenienced by waiting for a train to pass), may find a footbridge to be the preferred option.

The Committee noted that Network Rail had explored all alternative options for a permanent means by which the increased risk to the footpath users could be reduced. Their preferred option was to provide a new stepped footbridge, to ensure that the public could cross the railway safely. It was reported that Network Rail had applied for a Diversion Order to change the legal alignment of the footpath, to enable the level crossing to be closed when the footbridge is in place.

In the event that the Order is successful, Network Rail would ensure that suitable fencing was erected to bar access to the railway, and that appropriate signs were provided advising potential users that the path had been diverted.

The Committee noted that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

### **Resolved:**

- (i) That subject to satisfactory responses to the consultations, an Order be made under Section 119A of the Highways Act 1980, to divert part of Staining Footpath 6, from the route shown by a bold continuous line and marked A-B on the attached plan, to the route shown by a bold dashed line and marked A-C-D-B.
- (ii) That in the event of no objections being received, the Order be confirmed and, in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.

- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**6. Highways Act 1980 - Section 119A Rail Crossing Diversion Order  
Wildlife and Countryside Act 1981 - Section 53A(2)  
Proposed Diversion of Part of Westby-with-Plumpton's Footpath 7,  
Fylde Borough**

A report was presented on the proposed diversion of part of Westby-with-Plumpton's Footpath 7, Fylde Borough.

An application had been received from Network Rail to divert part of Westby-with-Plumpton's Footpath 7, in connection with its proposal to replace Kirkham Tip Level Crossing with a stepped footbridge.

The length of the existing path proposed to be diverted was shown by a bold continuous line marked on the plan attached to the agenda papers as A-B. The proposed alternative route was shown on the plan by a bold dashed line and marked A-C-D-E-F-B.

It was reported that the construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. The new route was marginally longer than the existing route but would require an equivalent number of steps to be negotiated as the existing route. Given the substantial improvement in the safety of the crossing, it was suggested that this was reasonable. In addition, users of the railway crossing that were in a hurry (and would be inconvenienced by waiting for a train to pass), may find a footbridge to be the preferred option.

The Committee noted that Network Rail had explored all alternative options for a permanent means by which the increased risk to the footpath users could be reduced. Their preferred option was to provide a new stepped footbridge to ensure that the public could cross the railway safely. It was reported that Network Rail had therefore applied for a Diversion Order to change the legal alignment of the footpath, to enable the level crossing to be closed when the footbridge was in place.

In the event that the Order is successful, Network Rail would ensure that the existing level crossing was removed, suitable fencing was erected to bar access to the railway and that appropriate signs were provided, advising potential users that the path had been diverted.

The Committee noted that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

**Resolved:**

- (i) That subject to satisfactory responses to the consultations, an Order be made under Section 119A of the Highways Act 1980 to divert part of Westbywith-Plumpton's Footpath 7, from the route shown by a bold continuous line and marked A-B on the attached plan, to the route shown by a bold dashed line and marked A-C-D-E-F-B.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- (iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**7. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Application  
To Record a Bridleway from Burnley Road to Antley Gate, Trawden,  
Pendle Borough  
File No. 804-581**

A report was presented on an application for a bridleway to be recorded from Burnley Road to Antley Gate, Trawden, Pendle.

A previous application had been received in October 1984 from the Trail Riders Fellowship, to upgrade the footpaths from Burnley Road to Antley Gate, Trawden, to byway open to all traffic. It had been considered by the Public Rights of Way Sub-Committee in July 1986 and rejected on the basis of insufficient evidence.

A further application had been received in October 2016, from different applicants, to upgrade most of the same route but this time to bridleway, with an addition of bridleway close to a short section of the route, as shown between points A-O on the Committee plan attached to the agenda papers. This application included documentary and user evidence which had not been considered when the first application had been made.

It was reported that the applicant had provided 10 user evidence statements to demonstrate usage over 20 years of the route, in addition to a bundle of documentation including maps, leaflets and references to several books, to try to illustrate that the route was a historical carriageway and that bridleway rights should be recorded.

A site inspection had been carried out on 24<sup>th</sup> November 2016.

It was suggested that the limited equestrian use evidenced in this matter was not sufficient evidence of use from which dedication of a bridleway could be deemed just from that use, and there was no other evidence of a historical or long-standing bridleway use.

Taking all the evidence into account, it was suggested that the evidence was insufficient to satisfy the criteria of S31, nor sufficient from which to infer landowners' intention to dedicate a bridleway in this matter.

**Resolved:** That the application to record a bridleway from Burnley Road to Antley Gate, Trawden, Pendle, in accordance with File no. 804-581, be not accepted.

**8. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from Garstang Road (A6) to Pinewood Avenue,  
Broughton, Preston City  
File No. 804-590**

A report was presented on an application for the addition to the Definitive Map and Statement of a footpath from Garstang Road (A6) to Pinewood Avenue, Broughton, Preston City, as shown between points A-B-C-D-E-F on the Committee plan attached to the agenda papers.

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

The Committee noted that there was no map or documentary evidence to suggest that the application route existed as a through route before Pinewood Avenue and the associated housing development was built between 1965 and 1967. The map evidence was not in itself sufficient to infer dedication under common law. The land was in the ownership of BT during the relevant period under consideration. BT objects to the application and have notices up mitigating against dedication. Therefore, the mapping and user evidence taken together were considered as insufficient from which to infer dedication under common law.

Eleven user evidence forms had been submitted by the applicant. Section 31 of the Highways Act provides that the route must have been enjoyed by the public as a whole. However, the user forms suggest use was in fact by local inhabitants mainly residing at Pinewood Avenue and Willow Tree Close, and therefore it was not possible to demonstrate use by the public as a whole.

It is understood two notices had been put up along the route by the landowner, British Telecommunications (BT), which made it clear that the land was private property and that unauthorised access was trespass and not permitted. The case officer suggests one of the notices was worn and weathered suggesting it had been in place for some time. This is considered sufficient evidence to negative the presumed intention to dedicate the way as a highway.

Taking all the evidence into account, it was suggested to Committee that, on balance, the provisions of S31 Highways Act could not be satisfied and that dedication could not be deemed under Section 31 nor inferred under common law and hence it was recommended that the application was not accepted.

**Resolved:** That the application for an addition of a footpath to the Definitive Map and Statement from Garstang Road to Pinewood Avenue, Broughton, in accordance with File No. 804-590, be not accepted.

**9. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of footpath at Calder Vale, Wyre Borough  
File No. 804-587**

A report was presented on an application for the addition to the Definitive Map and Statement of a footpath from Albert Terrace passing through The Holme (Calder Vale) and continuing adjacent to a pond to meet Footpath 80 Barnacre with Bonds, Wyre Borough, as shown between points A-B-C-D-E on the Committee plan attached to the agenda papers.

The applicant had originally applied for a route from between 9 and 10 The Holme to point E, to be recorded as a public footpath but had not included the section of the route between points A-B or part of the route between points B-C. Following discussion with the applicant, it was understood that she had only claimed the route from The Holme to point E as that was the section of the path to which access had been prevented, and the applicant had not realised that it was necessary to claim the full length. The application had subsequently been revised to include the full length between points A-B-C-D-E.

The thirty four user evidence statements which had been submitted with the application had referred specifically to the route as running from between 9 and 10 The Holme to point E. Thirty of the users had subsequently confirmed – by way of a signed plan on which they had drawn the full length of the route A-E – that their evidence related to the full length of the route.

A site inspection had been carried out on 14 June 2017.

No adverse comments or objections had been received. Barnacre with Bonds Parish Council had confirmed that they fully supported the application and that the route accessed from land between 9 and 10 The Holme, running along the mill pond to join the public footpath to Primrose Cottages, had been used by locals for over 70 years.

The Committee were advised that the way the route was recorded on documentary evidence was not in itself a sufficient circumstance from which dedication could be inferred. Sufficient 'as of right' use may also be a relevant circumstance from which dedication can be inferred. The described use of the

route, as corroborated by the documentary evidence, as well as the treatment of the route by previous landowners, would suggest that it may reasonably be alleged that there are sufficient circumstances to infer dedication at common law.

**Resolved:**

- (i) That the application for a public footpath to be added to the Definitive Map and Statement from Footpath 80 Barnacre with Bonds at Albert Terrace, passing through The Holme (Calder Vale) and continuing alongside a pond to rejoin Footpath 80, Barnacre with Bonds, Wyre Borough, in accordance with File No.804-587, be accepted.
- (ii) That an Order 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 to the Definitive Map and Statement of Public Rights of Way a footpath from a point on Footpath 80 Barnacre with Bonds at Albert Terrace, passing through The Holme and continuing adjacent to a pond to rejoin Footpath 80 Barnacre with Bonds as shown on 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.

**10. Urgent Business**

There were no items or Urgent Business.

**11. Date of Next Meeting**

It was noted that the next meeting of the Committee would be held at 10.30am on Thursday 15<sup>th</sup> March 2018 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales  
Director of Corporate Services

County Hall  
Preston