

## Regulatory Committee

Meeting to be held on 15th March 2018

Electoral Division affected: West Lancashire East
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### 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**

(Annex 'A' and Appendix 'A' refers)

Contact for further information:

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### Executive Summary

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 has come to light since that means the evidence will not be sufficient to meet the higher test that it subsists on the balance of probabilities.

### Recommendation

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.

### Background and Advice

On 12<sup>th</sup> 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. Appendix A refers.

The decision of the County Council was that there was sufficient evidence that a Public Footpath was reasonably alleged to subsist or to subsist along the route.

A Definitive Map Modification Order was duly made on 12<sup>th</sup> January 2011. An objection was received to the making of the Order by the landowner. He refers to post and rail fencing replacing earlier chestnut paling and having witnesses regarding this and having evidence of work redirecting walkers. Statutory provisions state 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 previously assessed the evidence and considered that there was sufficient evidence to satisfy the test to make the Order and also to promote it to confirmation, now in considering information that has come to light since, on the balance of probabilities, it is advised that officers no longer consider that the evidence will be sufficient to meet the higher test for confirming the Order that the route already subsists as a footpath on the balance of probabilities.

Interviews have been carried out with a number of the users that had filled in forms. As a result of the interviews, it is the view of Officers that there is insufficient evidence to promote the Order through to confirmation. Issues arose in the following areas:

- There was a low number of users prepared to give evidence and their evidence, credibility and recollections were not as expected from originally considering the written user evidence;
- there is better evidence of a short fence blocking the route several years ago indicating a lack of intention to dedicate by the previous owner and an interruption to use of the line;
- There is better evidence that this fence line was extended more recently indicating a lack of intention to dedicate by the present owner and again interrupting the line of any used route.

The actions of the owners, and the weak evidence of use, on balance, make it difficult to argue inferred or deemed dedication. It is felt therefore, that it would be difficult to justify promoting this Order to confirmation as originally thought. The Committee may therefore feel that the County Council as Order Making Authority should reverse its previous decision, 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.

It would be usual for the Applicant to be invited to promote the Order. The Objectors would make their own submissions.

### **Alternative Options**

To decide to promote the Order to confirmation.

To decide to oppose the Order made

### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/491	15/03/2018	C Blundell, County Secretary & Solicitor's Group, 01772 533196

Reason for inclusion in Part II, if appropriate

N/A