

Regulatory Committee

Meeting to be held on Wednesday, 6 June 2018

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981

**Claimed Bridleway from the junction of Cob Lane and Cockhill Lane,
Foulridge, to Castle Road, Colne, Pendle Borough**

Claimed No. 804.440a

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

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Executive Summary

An application for a Public Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Castle Road, Colne to be added to the Definitive Map and Statement of Public Rights of Way was considered by the Regulatory Committee in May 2007. "The Lancashire County Council (Cob Lane/ Cockhill Lane to Kelbrook Wood) Definitive Map Modification Order 2014" was made on 30 December 2014 on the basis that the county council considered that there was sufficient evidence to satisfy the test to make Order. The Order was advertised and received objections and needs to be sent to the Secretary of State for consideration. This report requests that Committee considers the stance that should be taken by the authority when the Order is submitted to the Secretary of State.

Recommendation

That the county council as order making authority should send The Lancashire County Council (Cob Lane/Cockhill Lane to Kelbrook Wood) Definitive Map Modification Order 2014 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, but should 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 9th May 2007, the authority gave consideration as to whether or not an Order should be made to add a Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge ('the blue route' on the Committee Plan) and to upgrade from Public Footpath to Bridleway, Footpath No.65 Foulridge and Nos. 19, 18, 16, 14, 12 and 8 Colne ('the yellow route' on the Committee Plan) to the Definitive Map and Statement of Public Rights of Way. Appendix A refers (Committee Report 9 May 2007).

The decision of the county council was that there was sufficient evidence that a bridleway on the blue route was reasonably alleged to subsist. However, the county council found there to be insufficient evidence to upgrade from public footpath to bridleway the yellow route (which required the higher test of bridleway rights subsist on the balance of probabilities).

An Order for the blue route was made on 22 August 2007 and this received objections. It was also noted that the Order contained incorrect notations. On 17 December 2014, the county council's Regulatory Committee approved the recommendation to submit the 2007 Order to the Planning Inspectorate for non-confirmation / rejection for reasons contained in the report. Appendix B refers. (Committee Report 17 December 2014).

A further Definitive Map Modification Order in respect of the blue route was duly made on 30th December 2014. Objections were received to the making of the Order. 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 on the basis that the claimed right of way was reasonably alleged to subsist, the Committee must now consider whether the higher statutory test, that of the balance of probabilities, is met for confirming the Order. The county council's stance in this respect has not yet been considered, only the test for making the Order.

The Cob Lane/Cockhill Lane to Kelbrook Wood Order were it to be confirmed would create a cul de sac, as the route of the bridleway way leads only to public footpaths. The route originally claimed by the applicant was a much longer route which seeks to upgrade the yellow route from footpath to bridleway, the evidence for that upgrade was not considered by Committee to be adequate, and so the Committee determined not to make the Order to upgrade from public footpaths to bridleways. The applicant appealed and the planning inspector determined that, although the evidence was finely balanced, he felt it was sufficient to demonstrate that the yellow route does carry bridleway rights. The Order to upgrade the route was made, as required by the planning inspectorate, with Committee resolving on 17 March 2011 that as it had determined not to make the Order originally, and had opposed the application on appeal, that it take a neutral stance in respect of the Order if objections were received. Objections have been received and the Order for the yellow route is to be submitted to the Secretary of State.

In considering the making of the Order for the blue route, the subject of this report, in 2007, the Committee felt that the documentary evidence for the route was good. The route was shown on the Honour of Clitheroe map and the maps of Greenwood and Hennett of the early 19th century. In addition, the tithe map and 1910 Finance Act map are indicative of its public status of greater than footpath rights. However, the Committee did not go on to consider the anomaly of promoting a route that is a cul de sac.

Whilst it is possible for a right of way to end in a cul de sac, that is usually the case where the right of way is the only way to a place of public interest, or where changes to the highway network have turned what was a through route into a cul de sac. Planning inspectors in the Definitive Map Modification Orders Consistency guidelines are advised that 'before recognising a cul de sac as a highway, inspectors will need to be persuaded that special circumstances exist'.

The county council's position is that because it does not accept the evidence to upgrade the yellow route to bridleway, promoting the 2014 Order for the blue route would in fact be the promotion of a cul de sac where no special circumstances exist and where there is no evidence of use, only historical evidence which is not, in the county council's opinion strong for the yellow route.

The Committee may therefore feel that the county council as order making authority in considering whether the higher test for confirming a route has been made out, that on balance that test has not been met. Therefore, the Order should be submitted to the Secretary of State for formal determination, but to notify the Secretary of State that the county council does not actively support the Order and adopts a "neutral stance" as regards confirmation of the Order. This course of action would mean that the county council would be adopting a neutral stance for the entire route which is now the subject of two Orders which would provide consistency.

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: 804/440+440a	06/06/2018	C Blundell, County Secretary & Solicitor's Group, 01772 533196

Reason for inclusion in Part II, if appropriate

N/A