

Regulatory Committee

Meeting to be held on 17 December 2014

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981

Addition of Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge, Pendle Borough

File No. 804-440

(Annex 'A' refers) (Appendices A, B, C and D refer)

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Executive Summary

The consideration of the Order for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with part of the application reference. 804-440.

Recommendation

1. That 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification (No. 7) Order 2007' made pursuant to the Committee decision on 9 May 2007 in relation to:

The claimed addition for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Caslte Road, Laneshaw Bridge, be submitted to the Planning Inspectorate for non-confirmation / rejection for reasons as detailed in the report.

2. That a further Order be made pursuant to Section 53 (2)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge on the Definitive Map and Statement of Public Rights of Way using the correct notation o the Order Map and clarifying the modifications to be made to the Definitive Statement should the Order be confirmed.
3. That being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation.

Background

Committee at its meeting on 9 May 2007 considered the report attached as Appendix A and accepted that part of application 804-440 for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge to be added to the Definitive Map and Statement of Public Rights of Way.

The report also considered evidence for the continuation of a linear route which included part of Footpath 65 Foulridge and Footpaths 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough, to be upgraded to public bridleway through to Castle Road, Laneshaw Bridge. This part of the application was rejected by Committee but was subsequently appealed by the applicant and an Order made in 2013.

An Order for the route accepted by Committee in 2007 was made on 22 August 2007 (Appendix B) and 35 objections were received. The main points of the objections were that the Order Making Authority had created a 'cul-de-sac' route and that there is enough evidence to suggest it should be a restricted byway. However since the 2013 has been made 19 objections have subsequently been withdrawn as a further Order has been made to extend to route. 1 objection has been received to the 2013 Order due to danger to the horses and the riders from the shooting school, noise pollution, the fact they were not aware even a public footpath exists and that the bridleway would be very narrow with no passing places. As objections have not been withdrawn, Lancashire County Council as the Order Making Authority cannot confirm the Orders but must submit them to the Planning Inspectorate for determination.

The Order Map for the 2007 Order contains the incorrect notation to depict the route to be added as a public bridleway. The notation which should have been used on the Order Map to show the public bridleway is either a continuous green line, a continuous line with cross bars at intervals or by a broken line with cross bars in the intervals. The Order map however, shows the public bridleway which is to be added as a broken black line with short intervals instead, and as such this does not comply with the Regulations.

Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on Order Maps. This provision was not appreciated by many authorities and notations which were technically incorrect had become standard.

It has also been identified that the 2007 Order did not correctly specify the grid reference of the junction of the Order route with Footpath 65 Foulridge, provide details of any limitations that existed on the route or detail the amendments that would be required to be made to the descriptions of other public paths that connected to the Order route in the Definitive Statement should the Order be confirmed. If a second Order is subsequently made it will therefore be redrafted to include all of the above.

The Planning Inspectorate had in the past accepted many orders with incorrect notations and having appreciated that this was not correct issued their Advice Note 22 entitled "Use of correct notation on definitive map modification orders and public path orders" dated December 2011 (attached as appendix C) in which they advised

that '*...an order is considered fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011.*' The Authority had therefore reasonably assumed that when this Order was ready to be referred to the Planning Inspectorate the deletion Order would be accepted and the incorrect notation would be dealt with by the Planning Inspectorate as a modification, as this was an Order that had been made prior to 7 September 2011.

However, without notice, the Planning Inspectorate Advice Note 22 was revised on 1st May 2013, attached as appendix D, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states at paragraph 6, '*all new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded'..and an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.*'

Committee should note that as the Order Map is part of the Order it is not possible for the Order Making Authority to make modifications to the Order once it has been made and advertised without it being referred to the Planning Inspectorate. It is suggested to the Committee that in the circumstances the Order will not be capable of being confirmed. It is advised that the Order be submitted to the Planning Inspectorate and its rejection be expected.

As the authority still has evidence concerning a bridleway at this location the making of a new Order should properly be considered.

It is suggested to Committee that in order to comply with the regulations for the confirmation of the Order, it may be considered preferable to remake a new Order which deals with both the wrong notation and the other modifications required. It is therefore suggested to Committee that a new Order be made and the original Order made in 2007 are submitted to the Planning Inspectorate requesting it is not to be confirmed or rejection expected. This course of action would resolve the issue of the incorrect notation; the concerns raised in the outstanding objections; the issue of modifications that are required and enable a more modern Order to be made which would clarify the modifications to be made to the Definitive Statement should the Order be confirmed.

Committee it is advised that no further evidence has come to light or information from any objector which would alter the evaluation of evidence and recommendations made in the Committee Report of 9 May 2007, attached as appendix A and Committee should note that the content of the report has not been repeated for the purposes of this report however; the entire report considered by Committee on 9 May 2007 is applicable and as a result Committee should note that all the advice and assessment of the evidence will need to be considered again in deciding this matter.

Objections to the 2007 Order have produced no further evidence since the original Committee decision to alter the view that the route should be recorded as at least a public bridleway and it is therefore still the view that the new Order, if made, can be promoted through to confirmation.

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-440	various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A