

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 19th September, 2018 at 10.30 am in Committee Room 'B' (The Diamond Jubilee Room) - County Hall, Preston

Present:

County Councillors

I Brown	L Cox
P Steen	J Parr
A Clempson	T Aldridge
T Burns	D Stansfield

1. Apologies

Apologies were received from County Councillor Malcolm Barron, County Councillor David Howarth and County Councillor Jim Marsh.

County Councillor David Stansfield replaced County Councillor Jimmy Eaton.

In the absence of the Chair and Deputy, it was proposed and seconded that County Councillor Ian Brown take the Chair.

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 last meeting held on 18 July 2018 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 the report presented, be noted.

5. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Deletion and Addition of part of Bridleway 9 Winmarleigh at Island House

A report was presented on an application for the deletion of part of Bridleway 9 Winmarleigh, past Island House and shown on the Committee plan attached to the agenda papers between points A-B1-C-D-E-F, and the addition of a bridleway from a point on Bridleway 9 Winmarleigh, from Island House, to a further point on Bridleway 9 Winmarleigh, as shown on the Committee plan between points A-B2-G-H-I-J, on the Definitive Map and Statement of Public Rights of Way.

A site inspection had been carried out in March 2018.

The Committee noted that Island House had originally been a working farm but had now been redeveloped as a residential property with further properties built which were accessed from the bridleway.

The Committee noted that no map or documentary evidence examined supported the view that two parallel routes existed or had existed in the past, or that the route had moved or been altered either legally (by a diversion or dedication) or informally.

Taking all the available map and documentary evidence into consideration, it was considered that the route to be deleted had been wrongly recorded and that the route of the bridleway was that shown on various Ordnance Survey maps and described in the parish survey card passing through the cobbled farmyard at Shaw's Farm (the route to be added) and not the route to be deleted.

Resolved:

- (i) That the application to delete part of Bridleway 9 Winmarleigh through Island House, in accordance with File No. 804-595, be accepted.
- (ii) That the application to add a bridleway from a point on Bridleway 9 Winmarleigh passing through Island House to a further point on Bridleway 9 Winmarleigh, in accordance with File No. 804-595, be accepted.
- (iii) 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 Public Bridleway No. 9 Winmarleigh through Island House, shown between points A-B1-C-D-E-F on the Committee plan.
- (iv) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.
- (v) 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 public bridleway from

a point on Public Bridleway 9 Winmarleigh to a further point on Public Bridleway 9 Winmarleigh as shown on the Committee Plan between points A-B2-G-H-I-J.

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

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Kellet Road to Dunkirk Avenue, Carnforth
File Number 804-593**

A report was presented on an application for the addition to the Definitive Map and Statement of Public Rights of Way of a public footpath from Kellet Road to Dunkirk Avenue, Carnforth, as shown between points A-B-C-D-E-F on the Committee plan attached to the agenda papers.

The Committee noted that a further application had been submitted for a footpath to the south of this route which included the section E-F. This application was the subject of a separate report on the agenda.

A site inspection had been carried out on 20 February 2018.

It was reported that the section of the route between points A and E was registered to the Homes and Communities Agency (now Homes England). The section of the route between points E and F was registered to Lancaster City Council.

The Committee were informed that Trowers & Hamlins LLP, acting on behalf of Homes England, had objected to the application. They had stated that their client was currently developing the site, and that they had taken exhaustive steps to give notice (by signage on site) that the land was private property, potentially unsafe and unsuitable for public access. The Committee noted that whilst the objection was acknowledged, the concerns raised were not relevant considerations under either Section 31 Highways Act 1980 or under Common Law as to whether public rights already existed before Homes England acquired the land.

The claim was that the route A-B-C-D-E-F had already become a footpath in law, and that it should be recorded on the Definitive Map and Statement of Public Rights of Way.

It was suggested that there was insufficient historical map evidence from which public rights could be inferred. However, sufficient 'as of right' use acquiesced in by the owners may also have been circumstances from which dedication could be inferred. From looking at user evidence, it would appear that, until 2017, no clear actions were taken by owners and use by the public continued over several years prior to 2017. It is therefore suggested that the user forms indicate that the

route had been used 'as of right' and without force, secrecy or interruption during the period under consideration.

It was suggested to Committee that after careful consideration, the criteria under Section 31 Highways Act 1980 could be satisfied and that, taking all of the information into account, the Committee may consider that a dedication of a footpath could be deemed or inferred, and that it was appropriate that an Order be made and promoted to confirmation.

Resolved:

(i) That the application for the addition to the Definitive Map and Statement of a Public Footpath from Kellet Road to Dunkirk Avenue, Carnforth, in accordance with File Number 804-593, be accepted.

(ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Public Footpath from Kellet Road to Dunkirk Avenue, Carnforth to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F.

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

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from the junction of Dunkirk Avenue and
Windermere Road to Footpath 12 Carnforth
File Number 804-597**

A report was presented on an application for the addition of a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way, from Dunkirk Avenue to Footpath 12, Carnforth and shown between points A-B-C-D-E-F-G-H on the Committee plan attached to the agenda papers.

The Committee had considered an earlier application on the agenda including the section of the route between point A-B.

A site inspection had been carried out on 27 June 2018.

It was reported that Trowers & Hamlin LLP, acting on behalf of the landowners, Homes England had objected to the application. They had stated that their client was currently developing the site and had taken exhaustive steps to give notice (by signage on site), that the land was private property, potentially unsafe and unsuitable for public access. The Committee noted that whilst the objection was acknowledged, the concerns raised were not relevant considerations under either Section 31 Highways Act 1980 or under Common Law, for dedication to have taken place before Homes England acquired the land.

The claim is that the route A-B-C-D-E-F-G-H had already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

It was suggested that there was insufficient historical map evidence from which public rights could be inferred. However, sufficient 'as of right' use acquiesced in by the owners may also have been circumstances from which dedication could be inferred. From looking at user evidence, it would appear that, until 2017, no clear actions were taken by owners and use by the public continued over several years prior to 2017. It was therefore suggested that the user forms indicate that the route had been used 'as of right' and without force, secrecy or interruption during the period under consideration.

It was suggested to Committee, after careful consideration, the criteria under Section 31 Highways Act 1980 could be satisfied and that, taking all of the information into account, the Committee may consider that a dedication of a footpath could be deemed or inferred, and that it was appropriate that an Order be made and promoted to confirmation.

Resolved:

- i) That the application for the addition to the Definitive Map and Statement of a Public Footpath from the junction of Dunkirk Avenue and Windermere Road to Footpath 12, Carnforth, in accordance with File Number 804-597, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/ Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Public Footpath from Dunkirk Avenue to Footpath 12 Carnforth to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G-H.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Highways Act 1980 - Section 25
Proposed Public Path Creation Agreement to upgrade part of
Worsthorne-with-Hurstwood Footpath 2 to Bridleway**

A report was presented on the proposed creation, by agreement, of a publically maintainable bridleway on part of Worsthorne-with-Hurstwood Footpath 2 at Rowley Farm, Burnley, as shown on the Committee plan attached to the agenda papers, between points A-B-C-D-E.

The Committee noted that an opportunity had arisen to achieve the first step in securing agreement to the bridleway link, as a result of a planning application for

the conversion of several agricultural buildings at Rowley Farm, to residential dwellings. In order to obtain planning permission, one of the landowners had indicated that they would be willing to enter in agreement for that part of Worsthorne-with-Hurstwood Footpath 2 that runs over their land, to be dedicated as a bridleway.

No objections to the proposal had been received.

It was proposed that the Terms of the Agreement be signed by this particular landowner, to enable them to finalise their planning permission, but that the Terms of the Agreement would not be signed by the county council until the continuation of the proposed route had been agreed with the other landowners, to avoid the creation of an unconnected bridleway.

It was reported that the proposal was considered to be a benefit to the public in view of the fact that it would improve the network of public rights of way for horse riders and cyclists, in addition to the existing public footpath rights that were available to pedestrians.

Resolved:

(i) That the proposal for a Public Path Creation Agreement to dedicate a length of bridleway on part of Worsthorne-with-Hurstwood Footpath 2 at Rowley Farm, Burnley be accepted.

(ii) That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between the owner of the land crossed by part of Worsthorne-with-Hurstwood Footpath 2 at Rowley Farm, Burnley and Lancashire County Council to dedicate a length of bridleway as shaded on the map attached to the agenda papers and marked A-B-C-D-E.

**9. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A (2)
Proposed Diversion of part of Carnforth Footpaths 2, 3 and 4,
Lancaster**

A report was presented on the proposed diversion of part of Carnforth Footpaths 2, 3 and 4, Lancaster. The lengths of the existing path to be diverted were shown as A-B-C and B-F-G on the Committee plan attached to the agenda papers and the proposed alternative routes shown as A-D-E and C-H-F-J-G.

No objections to the proposal had been received.

It was reported that the proposed diversion had been prompted by the implementation of the England Coast Path and that the proposed alternative routes had been selected in order to divert the footpaths onto better drained, drier land, providing a substantial improvement to the network of public rights of way in this area. In addition, the route would be more suitable for the potential increase

in walkers using this footpath, resulting from the promotion of the England Coast Path. It would also provide a less intrusive route past the dwellings at Galley Hall which some walkers may prefer.

Resolved:

(i) That subject to no unsatisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Carnforth Footpaths 2, 3 and 4, from the routes shown by bold continuous lines and marked A-B-C and B-F-G to the routes shown by bold broken lines and marked A-D-E and C-H-F-J-G on the attached map.

(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 county council promotes the order to 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.

**10. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Barnacre-with-Bonds Footpath 48,
Wyre Borough**

A report was presented on an application for the proposed diversion of part of Barnacre-with-Bonds Footpath 48, Wyre Borough. The length of the existing path to be diverted was shown as A-B on the Committee plan attached to the agenda papers, and the proposed alternative route shown as A-C-D-B.

No objections to the proposal had been received.

It was reported that the proposed diversion was felt to be expedient in the interests of the owners of the land as Waterhead Cottage was currently being converted from a redundant United Utilities water treatment building into a private residential dwelling. The Committee noted that the footpath currently ran through the garden of the property and the diversion would increase the privacy and security of the residents, whilst providing a route that was safe and convenient for the public to use.

Resolved:

(i) That subject to satisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Barnacre-with-Bonds Footpath 48, from the route shown by a bold continuous line and

marked A-B to the route shown by a bold broken line and marked A-C-D-B on the attached plan.

(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.

11. Urgent Business

There were no items of Urgent Business.

12. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 14 November 2018 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston