

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 26th January, 2022 at 10.30 am
in Committee Room 'A' - The Tudor Room, County Hall, Preston**

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	C Haythornthwaite
T Aldridge	D Howarth
J Burrows	J Parr
A Cheetham	J Oakes
L Cox	A Clempson
M Goulthorp	

1. Apologies

There were no apologies for absence.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 17 November 2021

Resolved: That the minutes of the meeting held on 17 November 2021 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. Progress Report on Previous Committee Items

A report was presented providing an update on the progress made in relation to matters previously considered by Committee.

The Chair informed Committee that appointments had recently been made to the following posts which would help considerably with processing applications in a timely manner:

- Legal team - 2 Solicitors and 1 Paralegal
- Public Rights of Way team – 1 Public Path Order Officer and 2 Maintenance and Enforcement Officers

Committee noted that although the term 'applications' had been used for convenience these were not all formal applications made under Schedule 14 of the Wildlife and Countryside Act 1981 but included some cases where sufficient evidence had been discovered or presented to the county council to indicate an investigation was appropriate.

Resolved: That the report be noted.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrade of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway**

A report was presented on an application for the upgrading of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A and B.

Committee had not considered this application at their meeting in November 2021 because several user representations had been received following the publication of that agenda, which had not allowed officers to analyse the user evidence received and it had been:

Resolved: *That the report be deferred to the next meeting to allow officers to consider the options of a Definitive Map Modification Order application for bridleway, or the creation of a bridleway, on Footpath Nether Kellet 11 (Green Hill Lane), as shown on the Committee plan attached to the agenda papers between points A-B.*

This report included details of the user evidence submitted which had now been analysed by officers.

A site inspection had been carried out in June 2020.

Together with the maps and documents provided by the applicant, a variety of maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be.

In relation to the safety concerns raised by the owners of Intack Farm, particularly in relation to the use of scramblers or motorcycles should bridleway rights be

recorded along the route, it was clarified that this could not be taken into account when determining whether public rights of way existed. However, if the Committee agreed that bridleway rights existed along the application route, then the county council would work with the landowners to manage any misuse of the land.

Taking all the documentary evidence into account and noting how the route had been recorded on the old maps as set out in the report, it was suggested to the Committee that there was insufficient evidence to infer dedication of additional public rights at Common Law.

The Committee were reminded that when looking at the criteria for a deemed dedication under Section 31 of the Highways Act 1980, use of the route needed to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a 20 year period immediately prior to the route being called into question.

It was reported that analysis of the user evidence concluded that there was no evidence of a continuous 20 year use by the public to deem dedication by either looking at the 20 year period from the date of the application (2000-2022) or from when the large stone blocks/boulders had been put in place (1971/2-1991/92).

When balancing the evidence received or discovered, the Committee were advised that they may consider it reasonable to conclude, on the balance of probabilities, that the evidence was insufficient to show that bridleway rights did subsist, along the application route.

Taking all the evidence into account, the Committee was recommended to reject the application and to not make an Order to record bridleway rights.

Resolved: That the application for the upgrading of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway be not accepted.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Public Right of Way from Snape Lane, in the Parish of Warton to its
Continuation as Bridleway Yealand Conyers 17**

A report was presented on an application for the addition of a Bridleway from Snape Lane, Warton to its continuation as Bridleway Yealand Conyers 17 to the Definitive Map and Statement of Public Rights of Way, as shown between points A-B on the Committee plan attached to the agenda papers. However, it was reported that the investigation had discovered evidence that both the application route and the continuation bridleway should be recorded as restricted byway, as shown between points A-B-C-D on the Committee plan.

A variety of maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be. No user evidence had been submitted.

Committee were informed that, in light of all the available map and documentary evidence and from experience of dealing with other similar cases on and along parish boundaries, the omission of the application route from the Definitive Map appeared to be an error. It was therefore considered that the length A-D was a through route and that A-B was the same status as B-D.

Details of the evidence provided in support of making an Order on route A-B were provided to Committee. There was no evidence against making an Order.

Details of the evidence provided both in support of, and against making an Order on route B-D to upgrade to restricted byway were provided to Committee.

Committee were advised that the evidence contained within the report suggested that public rights existed over the full length of the route, from A to D, connecting two public vehicular highways. It was therefore suggested that A-B carried public rights being part of the route A-D.

Taking all of the evidence into account, and noting how the route had been recorded on the old county maps and other documents and the investigations of the officers in the Planning and Environment service, it was suggested to Committee that on a balance of probabilities there was sufficient evidence that the whole route (including the sections B-D which were already recorded as a Bridleway) ought to be shown as a restricted byway. Committee were advised they may therefore feel it appropriate to accept the recommendation and decide that an Order be made and promoted to confirmation.

Resolved:

- (i) That the application be accepted with additional rights and length included.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and 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 Restricted Byway from Snape Lane, Warton to the parish boundary and to upgrade its continuation from Bridleway to Restricted Byway Yealand Conyers 17 as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the tests for confirmation can be met the Order be promoted to confirmation.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath along Hobson's Lane, Over Kellet**

A report was presented on an application for the addition of a Footpath along Hobson's Lane, Over Kellet to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B. Point C had also been marked on the Committee plan and referred to in the map and documentary evidence in the report.

A site inspection had been carried out in September 2021.

A variety of maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be.

Committee noted that points B-C had been recorded as footpath since 2007, due to a diversion order to the original footpath.

County Councillor Oakes asked whether the county council would be liable for maintenance of the route, should Committee consider that public rights existed on the route. It was reported that, although this was not a factor to be taken into account when deciding whether public rights existed, the county council would have a responsibility to maintain it if the route was thought to have come into existence before 1949.

Taking all the evidence into account, Committee were informed that it appeared a route had probably existed since the late 1700s, and that it may have been capable of being used by the public, but that there was insufficient evidence available from which to deduce that public footpath rights existed.

As there was insufficient map and documentary evidence – and no user evidence – Committee were advised to reject the application and to not make an Order adding a public footpath along Hobson's Lane, Over Kellet, to the Definitive Map and Statement of Public Rights of Way.

Resolved: That the application for the addition on the Definitive Map and Statement of Public Rights of Way of a Footpath from the junction of Borron Lane U18835 and Capernwray Road U18835 along Hobson's Lane to a junction with 1-24-FP15 be not accepted.

9. Highways Act 1980 - Sections 25/26 Creation or Dedication of Bridleway on Green Hill Lane Nether Kellet

A report was presented in relation to a request from the Committee that officers consider the possibility of the creation of bridleway rights on Footpath Nether Kellet 11 known as Green Hill Lane, and confirmation that consideration had commenced.

A decision on whether there was enough evidence to show that bridleway rights existed along Green Hill Lane, currently recorded as Footpath Nether Kellet 11, had been considered earlier on the agenda. The Committee had:

Resolved: That the application for the upgrading of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway be not accepted.

Despite Committee's decision, it was not possible to conclude with certainty at the moment whether bridleway rights already existed on Footpath 11 Nether Kellet. However, if no appeal was made and no further new evidence presented

or any Modification Order made was determined for confirmation, at some future date this would become sufficiently clear.

In the meantime, as directed by Committee, officers confirmed that the information, evidence and test for creation of a bridleway on Green Hill Lane were being considered. It was noted that these investigations may indicate a freehold owner and the possibility of a creation by agreement. Alternatively, to create a new type of highway on private land by Order was not a decision to be taken lightly and appropriate care would be taken by officers and, at the appropriate time, officers would bring a further report to Committee.

Resolved: Committee heard the presentation of the report and had no comment.

10. Urgent Business

There were no items of Urgent Business.

11. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 9th March 2022.

L Sales
Director of Corporate Services

County Hall
Preston