

**Lancashire County Council**

**Regulatory Committee**

**Minutes of the Meeting held on Wednesday, 14th September, 2022 at 10.30 am  
in Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Present:**

County Councillor Sue Hind (Chair)

**County Councillors**

M Salter	J Oakes
T Aldridge	A Clempson
J Burrows	C Towneley
A Cheetham	M Maxwell-Scott
D Howarth	M Clifford
J Parr	

**1. Apologies**

There were no apologies for absence.

**Permanent replacement**

County Councillor Mark Clifford replaced County Councillor Loraine Cox on the Committee.

**Temporary replacements**

County Councillor Cosima Towneley replaced County Councillor Alan Hosker.

County Councillor Matthew Maxwell-Scott replaced County Councillor David O'Toole.

**2. Disclosure of Pecuniary and Non-Pecuniary Interests**

County Councillor Parr declared a non-pecuniary interest in Item 7 as the application was in her district but not in her electoral division.

County Councillor Towneley declared a non-pecuniary interest in all items on the agenda as she was a member of various rights of way groups active in Lancashire.

County Councillor Cheetham declared a non-pecuniary interest in Item 9 as the application was in her electoral division.

### **3. Minutes of the Previous Meetings held on 22 June and 10 August 2022**

**Resolved:** That the minutes of the meetings held on 22<sup>nd</sup> June and 10 August 2022 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.

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.

Committee noted that the full list of Definitive Map Modification Orders was available on the county council's website and that this would be presented at the first Committee meeting of every calendar year.

**Resolved:** That the report be noted.

### **6. Proposed Consultation Process with Parish Councils**

Standard letters to Chief Executives/Clerks of Parish/Town Councils and landowners had been prepared, following discussions at previous meetings around clarification of the Definitive Map Modification Order application process and the quality of responses being received from Parish Councils regarding applications in their area. The letters were circulated to Committee.

The letters explained the process for Definitive Map Modification Order applications in a user-friendly manner and included a request for a 'no comments' response from Parish and Town Councils.

In addition, a short YouTube video would be provided explaining what Definitive Map Modification Orders were, the background to the Definitive Map and Statement and an explanation of public rights of way. The video would also include information on what constituted a proper and non-vexatious objection to an application.



**Resolved:** That the standard letters to Parish/Town Councils and landowners be noted.

**7. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Bridleway from Nether Kellet Road to Kirkby Lonsdale Road,  
Over Kellet via Kirk House Farm**

A report was presented on an application for the addition of a bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm, 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-C-D-E-F-G-H.

A site inspection had been carried out in January 2022.

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 were informed that no modern user evidence had been submitted as part of this application and it was noted that the historical route was no longer accessible between point A and point C. The route E-H had been created as a private road as part of the inclosure process.

It was reported that, whilst the route was consistently shown on all Ordnance Survey maps examined, including the small-scale 1 inch maps, suggesting that it was capable of being used at least on horseback, it was not known whether this use would have been public or private.

Committee were advised to consider whether there was sufficient evidence from all the circumstances to infer at common law that owners of this route intended dedicating, or whether there was evidence of twenty years use by sufficient users without sufficient evidence of a lack of intention to dedicate, from which dedication could be deemed under S31 Highways Act 1980.

County Councillor Towneley stated that as this was a historical claim, user evidence was not required to be provided although the letter received from one user was compelling in that the application route had been used for over 21 years. Every part of the route was shown on maps which were publicly available. From the evidence provided, County Councillor Towneley considered that the application route was a public right of way and had been for some years, as it had consistently been shown on publicly available maps for many years. Although the application route was blocked by a stone wall at Point A, it was stated that a diversion could be applied for if it was seen to be a public right of way. To conclude, County Councillor Towneley considered that there was historical evidence of a public right of way along the application route and it was Proposed and Seconded that:

'The Recommendation in the report be not accepted and that the application for a bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm to be added to the Definitive Map and Statement of Public Rights of Way, be accepted and promoted to confirmation'.



It was therefore:

**Resolved:**

- (i) That the application for a Bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm, to be recorded on the Definitive Map and Statement of Public Rights of Way, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to record a Bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-B-C-D-E-F-G-H.
- (iii) That being satisfied that the test for confirmation (which for additions is higher than the test for making the Order) can be met the Order be promoted to confirmation.

**8. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Byway to the Queen Mary's Military Hospital Cemetery, Whalley**

A report was presented on an application for the addition of a byway open to all traffic from Mitton Road to the Queen Mary's Military Hospital Cemetery, Calderstones, Whalley, 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-C.

A site inspection had been carried out in June 2022.

It was reported that map and documentary evidence supplied in support of the application was limited with no map or documentary evidence supporting the use of the route applied for as a public right of way.

Committee were informed that no route had existed prior to the construction of the cemetery site. One third of the site was the Queen Mary's Military Hospital Cemetery and two thirds was the Calderstones Hospital Cemetery. The Queen Mary's Military Hospital Cemetery was accessed solely by the application route, through the Calderstones Hospital Cemetery site, and was managed by the Commonwealth War Graves Commission.

The whole cemetery site was consecrated ground. There was vehicular access at point A through the gates and a pedestrian gate; both gates were locked due to access in the past resulting in some vandalism of the site. The locked pedestrian gate displayed a sign stating that although staff were not available to provide access, if you required access to the war graves cemetery, the Calderstones Hospital reception held a key to the gate and a telephone number was provided.

Committee Members felt very strongly that members of the public needed access to the war graves and, after a discussion, it was clarified to Committee that everyone



had access through private rights along the route to visit the graves, and that access could not be prevented.

With the agreement of the Chair, a telephone call was made to the number on the displayed sign and it was confirmed that the key to access the site was available at Calderstones Hospital reception. If the planned development of the site went ahead, access through the site was still guaranteed.

The Chair requested that officers ask the keyholder to update the sign to indicate the times when the key would be available. In addition, officers would make enquiries in relation to access through the locked vehicular gate.

The legal officer confirmed that the 1916 documentation referred to access to the cemetery being '...at all times and for all purposes connected with the use and enjoyment of the intended war memorial and cemetery'.

In conclusion, and having considered all of the evidence discovered, it was suggested to Committee that a dedication of a byway along the application route could neither be deemed under section 31 of the Highways Act 1980 nor inferred at common law. Committee was therefore advised to reject the application and not to make an Order adding this byway to the Definitive Map and Statement.

**Resolved:** That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a byway open to all traffic from Mitton Road through Calderstones Cemetery to the Queen Mary's Military Hospital Cemetery, Whalley be not accepted.

The Chair informed Committee of a Heritage Weekend being hosted by Whalley Old Grammar School Community Centre 'A pictorial history of Calderstones through time' taking place on 17<sup>th</sup> and 18<sup>th</sup> September from 11.00am until 4.00pm.

## **9. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Investigation into public rights on a section of Holme Lane and Holme Bridge, Rawtenstall**

A report was presented on an investigation into the existence of public rights on a section of Holme Lane and Holme Bridge, Rawtenstall (shown on the Committee plan between points annotated as points A-B-C), following a request by the County Council's Highway Asset Team for consideration to be given as to whether the route should be recorded on the Definitive Map and Statement of Public Rights of Way.

A site inspection had been carried out in March 2022.

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

It was reported that the fact that the route under investigation was not presently recorded did not mean that it did not carry public rights of way. There had been no



legal stopping up of those rights and Committee were therefore advised that the legal maxim "once a highway always a highway " would apply.

It was suggested in the assessment of the evidence that whilst there was some evidence of possible public rights, these rights may be bridleway rights rather than vehicular rights.

It was clarified to Committee that, if it was agreed to record the route as bridleway, this would not affect any private vehicular rights that already existed.

Committee were advised they may consider it appropriate for an Order be made for the route marked A-C to be added to the Definitive Map and Statement as a bridleway, and that the evidence was sufficiently strong to decide that the Order be promoted to confirmation.

**Resolved:** That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to record bridleway on that part of Holme Lane shown on the Committee plan between points A-B-C.

## **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 16<sup>th</sup> November 2022 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales  
Director of Corporate Services

County Hall  
Preston

