

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 16th November, 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
J Burrows	A Clempson
A Cheetham	M Clifford
D Howarth	C Towneley
J Parr	L Cox

1. Apologies

Apologies were received from County Councillor Terry Aldridge.

Temporary replacements

County Councillor Cosima Towneley replaced County Councillor Alan Hosker.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 14th September 2022

Resolved: That the minutes of the meeting held on 14th September 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.

The Chair informed Committee that she would welcome more training on Regulatory matters and considered that future training should be mandatory for both Committee

Members and any substitute Members. It was noted that any changes to the Terms of Reference would need to be approved by the Political Governance Working Group then Full Council. The Chair invited comments from Committee. The suggestion of further training was welcomed and officers tasked with arranging same.

In response to a question, Jane Turner, Principal Lawyer, informed Committee that a right of appeal on a Regulatory matter could stem from where a decision was taken not to make an Order and that this may be referred to the Secretary of State (who may direct Committee to make an Order). If an Order was approved, there was a 6 week objection period and, if any objections were received, they would be passed onto the Secretary of State through the Planning Inspectorate office, for a decision on confirmation. It was reported that this may take the form of a public inquiry to investigate the evidence and then a decision would be made by the Secretary of State. There was also always the possibility of a Committee decision being challenged, as any decision taken by an authority could be subject to judicial review, if it took into account something it should not have taken account of, or disregarded something it should not have disregarded and therefore reached a conclusion that it should not have reached.

Resolved:

- (i) That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.
- (ii) That future training for Regulatory Committee Members and any substitute Members should be mandatory and that arrangements be put in place to amend the Committee's Terms of Reference.
- (iii) That a training session be organised for Committee Members and any other Members intending to act as substitutes on the Committee.

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.

County Councillor Towneley asked whether future progress reports could include whether the applications were for bridleway, footpath or restricted byway.

The Chair reported that, following consideration of the Calderstones Cemetery application at the September meeting, she had requested that the padlocked gates be left open on 11th November, in order for people to pay their respects on Remembrance Day. However, the gates had remained locked.



County Councillor Clempson, Champion for Armed Forces and Veterans, reported that he had been extremely disappointed about the gates being locked and considered that access to the cemetery should be available 365 days a year, as should any war/military graves. The Committee were informed that some veterans had helped the family concerned to gain access and that County Councillor Clempson would write a letter to the owners of the site on behalf of the county council (and possibly involve the War Graves Commission), to ensure this situation did not reoccur.

The Chair thanked County Councillor Clempson on behalf of the Committee and all those who had close links with the Calderstones cemeteries.

Resolved: That the report be noted.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Waness Blades Road to Deans Lane, Lathom**

Jayne Elliott reported that, since the publication of this report, she had been asked to examine the paper copy of the Inclosure Award written on parchment, to check the wording of a larger proportion of the Award, in addition to the photographs previously examined.

A transcript from a substantial part of the Award had now been made from the Records Office document. Examining the additional information had significantly altered the officers' views and therefore required further investigation and evaluation with regards to making an Order. The fuller transcript provided greater context that the application route was set out as a private and not public route as had been indicated in the Committee report.

In light of this, it was necessary for officers to re-examine the documents previously inspected and it was therefore requested that the application be deferred to the next meeting of the Committee.

Jayne Elliott confirmed that she would inform the applicant of the up to date situation.

Following a discussion, it was:

Resolved: That the item be deferred to the next meeting of the Committee.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Chatburn Old Road, Chatburn, Ribblesdale
Borough**



A report was presented on an application and investigation for the addition of a footpath from Chatburn Old Road Chatburn, 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 April 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. The land crossed by the application route was affected by the extension of the limestone quarries to the west in the 1960s, with no evidence that the application route existed prior to that time. For that reason, much of the early map and documentary evidence was not included in the Committee report.

It was reported that it had initially been considered that Chatburn Old Road extended west as far as point A but, on investigation, it had become apparent that public rights had been extinguished along the road from point X to point A in 1971. The map and site evidence showed that this part of the road still physically existed after that time, and that it appeared capable of being used. The section A-X was not part of the application route, but had been added to the Recommendation, following an investigation and confirmation of its use by the users. The route had been fenced off at point A which had prompted the application.

Committee were advised that the user evidence from the 1960s needed to be considered as there was no map, photographic or documentary evidence found to support the physical existence of the route.

Committee noted that the landowner had raised some legal points in relation to the application and that these had been addressed within the Committee report.

There had been no prevention of use of the route until recently.

Taking all of the evidence into account, Committee were advised, on balance, they may consider that there may be sufficient evidence of a footpath being able to be reasonably alleged to subsist and therefore make an Order and, should no objections be received, it would be appropriate to consider the higher test was able to be satisfied and the Order able to be confirmed. However, if there were any objections, it would be appropriate to clarify the user evidence by taking more detailed statements, and it was suggested that Committee may consider the matter should be returned to them for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed and further statements from users were taken.

Resolved:



- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Chatburn Old Road, be accepted. That the evidence of a footpath reasonably alleged following investigation into the other part of route A-X be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add on the Definitive Map and Statement of Public Rights of Way a footpath from Chatburn Old Road as shown on Committee Plan between points X-A-B-C.
- (iii) That the Order be confirmed if no objections are received but if objections are received the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order has passed.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of footpaths around Glencourse Drive, Fulwood**

A report was presented on an application and investigation into the addition of footpaths linking Watling Street Road, Eastway and Glencourse Drive and into the vicinity of Sandy Brook to the east of Eastway, Fulwood, 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 and E-I.

A site inspection had been carried out in November 2021.

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

It was reported that, on investigation, the application routes all linked to other routes and therefore additional routes had been included in the report for Committee to consider.

Committee were informed that, in this particular case, the land crossed by the application route had not been developed until the 1990s, and that there was no suggestion that the application route or other routes under investigation existed prior to that time.

For this reason, much of the historical map and documentary evidence normally considered as part of the Committee report had not been included. However, several historical maps submitted by the applicant in support of their application had been included.

Committee noted that for the purpose of the research, the routes shown on the Committee plan were all referred to as 'the application route' rather than part application and part route under investigation.

Committee were informed that the area where the routes ran were on areas transferred as public open space by the Commission for New Towns. The Open



Space areas had not been transferred to the City Council and so were not held under statutory provisions for open space giving the public a statutory permission but, instead, remained held by successors in title to Fairclough Homes bound by the covenants to keep the area unbuilt upon. Committee noted that no landowner had provided any official response to the consultation.

In response to a question, it was reported that Legal Services informed the applicant and other interested parties of decisions taken by Committee. Once an Order had been made, there was a statutory notification period in terms of putting notices on site and in newspapers and recorded delivery letters sent to all interested parties. Once a route had been added to the Definitive Map and Statement, the Ordnance Survey office were notified for it to be included on their maps which were accessible by the public.

A further question was asked in relation to signage and why some routes were not signposted. It was reported that there was a legal provision for a footpath or bridleway to be signposted off a vehicular highway and that signage in fields relied on the waymarking system. The county council had a team of officers to erect signs on routes that were already included on the Definitive Map and Statement; this was a rolling programme due to wear and tear or damage to the signs. For routes not yet recorded, an Order would need to be confirmed before any signage was erected although notices would be displayed on the route to inform members of the public that an Order had either been made or confirmed. Waymarking was used when a route left a public highway and continued into a field and was usually done in consultation with the landowners.

Taking all of the evidence into account, Committee were advised that they may, on balance, consider that there may be sufficient evidence of footpaths being able to be reasonably alleged to make an Order and, should no objections be received, it would be appropriate to consider the higher test as able to be satisfied and the Order be able to be confirmed. If there were any objections, the need to clarify the user evidence by taking more full statements may be appropriate and it was suggested that Committee may consider the matter should be returned to them for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed, and more full statements from users taken.

Resolved:

- (i) That the application for a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from Watling Street Road to the bridge over Sandy Brook, Fulwood, be accepted. That the evidence following investigation into other routes be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a number of footpaths to the Definitive Map and Statement of Public Rights of Way in the vicinity of Watling Street Road, Glencourse Drive and Eastway, Fulwood as shown on Committee Plan between points A-B-C, D-N-E-F-G, N-I, H-E-I-J and M-L-J-K.



(iii) That not being satisfied that the higher test for confirmation can be met with the information available, the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed.

9. Urgent Business

There were no items of Urgent Business.

10. Date of Next Meeting

Resolved: It was noted that the next meeting would be held at 10.30am on Wednesday 25th January 2023 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

