

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 10th August, 2022 at 10.30 am
in Ribble Suite, The Exchange, 4th Floor, County Hall, Preston**

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	D Howarth
T Aldridge	J Oakes
J Burrows	A Clempson
A Cheetham	E Pope

1. Apologies

Apologies were received from County Councillor Cox and County Councillor Parr.

Temporary replacement

County Councillor Pope replaced County Councillor Hosker.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting

It was noted that the minutes of the meeting held on 22 June 2022 would be included in the agenda for the meeting to be held on 14 September 2022.

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 Addition of Restricted Byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale

A report was presented on an application for the addition of a Restricted Byway from Lee Lane, Bispham to Bentley Lane, Hilldale, to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan between points A-B-C-D-E-F.

A site inspection had been carried out in July 2021.

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

Committee were advised that there was sufficient evidence that this route was already regarded as part of the highway network in the early nineteenth century, and that it continued to be recorded as such on the various documents examined and that, on balance, a dedication by an owner many decades ago could be inferred. In addition, disuse of a route did not take away the public rights. There had been no legal stopping up of those rights and it was therefore advised that the legal maxim "once a highway always a highway " would apply; landowners' comments of today did not affect where this old highway ran.

County Councillor Pope informed Committee that he had been approached by a Hilldale Parish Councillor who had expressed concern that the Parish Council had not been consulted on this application. In addition, the occupier of the school house and a local farmer had been in touch and stated that the iron railings across Dark Lane had been there since the late 1940s as it was a dangerous track with a drop behind the railings of 20-30 feet.

County Councillor Pope proposed that the item be deferred until the Parish Council had been given the opportunity to provide their comments.

County Councillor Oakes referred to the 'once a highway, always a highway' legal maxim and stated that the route could be made safe but asked for assurance on steps to be taken to ensure Hilldale Parish Council had the opportunity to comment on the application.

It was reported that Hilldale Parish Council had been consulted in October 2021, but that they had not provided a response.

County Councillor Salter questioned whether the county council's consultation process with parish councils needed reviewing and stated that the quality of information provided to them was essential in order for them to be in a position to provide comments. David Goode agreed that the consultation process needed reviewing as it was the county council's responsibility to ensure consultees were provided with sufficient information on the proposals. In addition, it was important to make it clear to parish councils that a response was expected. It was noted that parish councils often provided no comments on applications although it was appreciated that they were in a difficult position as they often represented opposing views from landowners and residents.

David Goode suggested that the county council could provide a short online training video that parish councils could refer to when considering these type of applications and the Chair asked for definitions of footpaths, bridleways, restricted byways and byways open to all traffic to be included within any guidance.

After a discussion, Committee were informed that, should they agree to make an Order but not to promote the Order to confirmation (as set out at Recommendation iii of the report), the matter could be returned to Committee once representations had been received from the parish council, for a decision on what stance to take regarding confirmation.

David Goode suggested that a proposed new consultation process be brought to the next meeting for the Committee to see. The Chair asked for the new process to include the request that parishes acknowledge receipt of the consultations. It was noted that general public rights of way training for parish councils was also planned.

A vote took place on the proposal for deferral of this application. Upon being put to the Vote, the Motion was Lost.

It was therefore:

Resolved:

- (i) That the application for a Restricted Byway along Dark Lane be accepted.
- (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 along Dark Lane as shown on Committee Plan between points A-B-C-D-E-F.
- (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.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath at Cuerden Hall**

A report was presented on an application for the addition of a footpath from Shady Lane to Berkley Drive, Cuerden passing through the grounds of Cuerden Hall, 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.

Site inspections had been carried out in March 2020 and November 2021.

The application was based on the submission of modern user evidence. However, to properly consider the matter it had been necessary to understand the history of the land crossed by the application route, and to examine a variety of maps, plans and other documents to discover when the route came into being, and to try to determine what its status may be.

It was reported that the Section 31(6) deposit submitted by Cuerden Valley Park Trust in 2000 covered that part of the route between point E and point F, indicating that the owners of the land had no intention to dedicate a public right of way across this land since at least 2000.

At point E, the application route ended on Berkeley Drive, which provided access to Cuerden Valley Park and was owned by Cuerden Valley Trust. It was noted that Berkeley Drive was not recorded as a public right of way or publicly maintainable highway.

David Goode answered questions from Committee.

Taking all the evidence into account, Committee were advised that the difficulties in finding dedication by the Cuerden Valley Trust of E-F affected the whole application route. It was reported that A-E had had some use and it appeared that signage indicating a lack of intention on that section was relatively recent but that, without E-F, the route was not able to be recorded as a highway.

It was therefore advised that Committee not accept the application and that no Order be made.

Resolved: That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Shady Lane to Berkley Drive, Cuerden, be not accepted.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Sections of Footpath from Mitton Road to Calderstones Drive, Whalley**

A report was presented on an application for the addition of sections of footpath from Mitton Road to Calderstones Drive, 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, D-E-F and E-H.

A site inspection had been carried out in April 2020.

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.

It was reported that Committee was considering two separate application routes - A-C and D-F/H - both of which were connected to recorded highways at each end.

Committee's attention was drawn to the fact that, although 12 users could be viewed as a relatively low number, guidance from the Planning Inspectorate indicated that use of a route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that these 12 users of the route were representative of the public at large, and therefore the evidence does raise a presumption of dedication of a footpath and does satisfy the statutory test.

Taking all of the evidence into account, Committee were advised that, on balance, they may consider there was sufficient evidence to make an Order but, due to a slightly low number of user evidence received, they may consider that, on balance, there was not sufficient evidence such that the higher test for confirmation could be met and that it should not proceed to promote to confirmation at this stage. With this in mind, Committee were advised that, if they were not satisfied that the higher test for confirmation could be met with the information available, the matter should be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed.

David Goode answered questions from Committee and, after a discussion, it was:

Resolved:

- (i) That the application for the addition of footpaths from Mitton Road to Calderstones Drive, Whalley 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 to the Definitive Map and Statement of Public Rights of Way footpath sections from Mitton Road to Pendle Drive and from Pendle Drive to Calderstones Drive as shown on Committee Plan between points A-B-C, D-E-F and E-H.
- (iii) That, following the order making and notice period, the matter be returned to Committee to decide what stance to take regarding confirmation.

8. Urgent Business

There were no items of Urgent Business.

9. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 14th September 2022 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston