

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 21st June, 2023 at 10.30 am in
Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

Present:

County Councillor Matthew Salter (Chair)

County Councillors

T Aldridge	A Clempson
J Burrows	L Cox
A Cheetham	M Maxwell-Scott
D Howarth	M Pattison
J Parr	

1. Apologies

Apologies were received from County Councillor Clifford.

County Councillor Salter took the Chair in County Councillor Hind's absence.

County Councillor Maxwell-Scott replaced County Councillor Hind.

County Councillor Pattison replaced County Councillor Oakes.

2. Appointment of Chair and Deputy Chair

Committee noted the appointment by Full Council on 25 May 2023 of County Councillor Sue Hind and County Councillor Matthew Salter as Chair and Deputy Chair of the Committee, respectively, for 2023/24.

3. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Cheetham declared a non-pecuniary interest in Item 8 as the route was in her electoral division.

County Councillor Cox declared a non-pecuniary interest in Item 9 as she was a Hyndburn Borough Councillor.

County Councillor Pattison and County Councillor Parr declared non-pecuniary interests in Item 10 as they were Lancaster City Councillors.

County Councillor Aldridge declared a non-pecuniary interest in Item 11 as he was a West Lancashire Borough Councillor.

4. The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee

A report was presented setting out the constitution/membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2023/24.

Resolved:

The Committee took account of:

- (i) The constitution/membership of the Committee, following the county council's annual meeting on 25 May 2023.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for the Committee.

5. Minutes of the last Meeting held on 8th March 2023

Resolved: That the minutes of the meeting held on 8th March 2023 be confirmed and signed by the Chair.

6. 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.

Committee noted the highlighted updates to Annex A, which reflected the recent court decision regarding the effect of foot and mouth closures in 2001.

Resolved: That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

7. 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.



Resolved: That the report be noted.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order
The Lancashire County Council Bridleway along part of Holme Lane
Rawtenstall Definitive Map Modification Order 2022**

A report was presented in relation to an Order for the addition of bridleway along part of Holme Lane, Rawtenstall, to the Definitive Map and Statement of Public Rights of Way.

At the meeting of the Regulatory Committee held on 14 September 2022, a decision had been made to make an Order in accordance with the original request and subsequent investigation. The Committee had decided that the Order should be brought back before Committee, once the Notice of Making had been served and the notice period had elapsed, in order to decide whether the confirmation test was able to be satisfied.

Committee noted that the Order had now been made and published, and notified according to statutory provisions and that no adverse responses had been received to the making of the Order, by way of objections or any other representations.

It was reported that the date in the Committee report's Recommendation should have read '19th Day of October 2022'.

County Councillor Cheetham provided Committee with further details in relation to the route which was in her electoral division, and considered that the proposal gave reassurance to local residents and emergency vehicles.

The Committee considered the evidence again in this matter and it was:

Resolved: That the Order made on the 19th Day of October 2022, to record a public bridleway along part of Holme Lane, Rawtenstall be confirmed.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Blackburn Road to Norman Road, Oswaldtwistle**

A report was presented on an application for the addition of a Footpath from Blackburn Road to Norman Road, Oswaldtwistle, 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-C.

It was reported that, although the application route was specifically the section marked A-C on the Committee plan, it had become apparent whilst investigating the history of the route that it originated as part of a longer (unrecorded) footpath, which started on Blackburn Road and led directly across fields to Aspen Lane (11-5-BW300). Due to its relevance in how the application route evolved into what it was today, this route (X-Y) had also been considered during the investigation.



A site inspection had been carried out in January 2023.

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

The Officer answered questions from Committee.

Taking all of the evidence into account, Committee were advised they may consider it could reasonably be alleged that there was sufficient evidence from which to infer dedication of a public footpath at common law.

Committee was therefore advised to accept the application, make an Order for the route shown on the Committee plan A-C (the application route) and also the route under investigation X-Y, and promote the Order to confirmation.

Resolved:

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Blackburn Road to Norman Road, Oswaldtwistle, be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Blackburn Road to Norman Road on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-C and points X-Y.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**10. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath at Starrick's Woods, Priest Hutton**

A report was presented on an application for the addition of a Footpath from Back Lane, Priest Hutton to Footpath 1-26-FP12 through Starrick's Woods, 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.

A site inspection had been carried out in November 2022.

Various 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.

Based on the evidence provided, Committee were advised they may consider that it could be reasonably alleged that there was sufficient evidence from which to infer dedication of a public footpath at common law. As there was no user evidence in support of this application, Committee were advised that the criteria in section 31 Highways Act were not met.



The recommendation, therefore, was that an Order be made and if no objections were received, the Order be confirmed. In the event that objections were received and not withdrawn, it was recommended that the matter be referred back to Committee, for a decision on the stance when submitting the Order to the Planning Inspectorate.

Resolved:

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Back Lane, Priest Hutton to the junction with Footpath 1-26-FP12 through Starrick's Woods, 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 record a footpath from Back Lane, Priest Hutton to the junction with Footpath 1-26-FP12 through Starrick's Woods on the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met with the information available, the Order be confirmed if no objections are received and not withdrawn, otherwise the matter be referred back to Committee for a decision on the stance to be taken when referring the Order to the Planning Inspectorate, in the light of the further information received.

**11. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Alignment of the Public Footpath along the Western Bank of the River
Douglas and through/past Douglas Boatyard, Hesketh with Beconsall**

A report was presented on an investigation into the correct alignment of footpaths FP0810046 and FP0816005, along the western bank of the River Douglas and the route through Douglas Boatyard, Hesketh with Beconsall.

The proposal was to delete from the Definitive Map and Statement of Public Rights of Way, part of Footpaths FP0816005 and FP0810046 as shown between points A-B and B-C-D-E respectively on Committee Plan 2, and to add a footpath onto the Definitive Map and Statement of Public Rights of Way, as shown between points A-X-E.

Committee's attention was drawn to an error on page 218 which should have read 'The route designated as the ECP (England Coast Path) was approved in August 2021'.

A revised Committee Plan 2 had been circulated to Committee which contained a slight amendment to the numbering of the sections of the route, although it was noted that the lines of the footpath to be deleted and footpath to be added, remained the same.



It was reported that, over a number of years, the alignment of the footpath recorded on the Definitive Map and Statement through Douglas Boatyard at Hesketh with Becconsall had been queried because it differed significantly from the walked line and was not consistent on successive maps.

The registered ownership of the boatyard had changed hands in 2021, coinciding with confirmation of the route being designated as part of the England Coast Path, recorded as passing through the boatyard on the route currently used by the public, but on a different route to that recorded as the public footpath on the Definitive Map and Statement.

The route designated as the England Coast Path had been approved in August 2021, and since 10th May 2023 (and renamed King Charles III England Coast Path) had provided rights to the public to pass through the boatyard on foot, along the route shown with a solid line on Committee plan 1. These rights differed from those that existed along a route recorded as a public right of way (part of FP0816005 and FP0810046) which was shown as a dashed line between points A-F on the Committee plans.

The current landowner was concerned about the public passing right through the boatyard along the England Coast Path route, and about the public attempting to use the public footpath. Although the public were currently using the England Coast Path route, the landowner had stated he was opposed to the England Coast Path running through a working yard. There appeared to be no dispute that a public footpath did exist, but the issue is where exactly it ran.

It was reported that there was no map or documentary evidence supporting the Definitive Map route A-B-C-D-E as being the route of the public footpath acknowledged to exist between these two points, and that all the evidence examined indicated that it was the route shown on the Draft Map, shown as a thick dashed line A-X-E on Committee Plan 2, that most accurately reflected the historical route of the public footpath, along the river bank and passing through the boatyard.

Committee were informed that, should they be minded to approve the re-drawing of footpaths FP0810046 and FP0816005 in order to correct the Definitive Map, discussions could then take place with the landowner around diverting those public rights onto a route that was in the best interests of the landowner and the public. In addition, it was possible for Natural England to make a variation to the line of the England Coast Path, should they consider that an alternative route was more suitable in terms of public rights and the owner's use of the land.

Taking all the evidence into account, it was suggested to Committee it may be considered that there was sufficient cogent evidence to suggest that the route A-B-C-D-E was recorded in error and should be removed from the Definitive Map, and that the footpath on line A-X-E should be added to the Definitive Map. It was advised that the evidence was sufficient not only to satisfy the test to make the Orders, but also to promote the Orders to confirmation.



Resolved:

- (i) 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 Footpath FP0816005 as shown on the Committee Plan 2 by a thick solid black line between points A-B and part of FP0810046 shown by a thick solid black line between points B-C-D-E.
- (ii) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.
- (iii) 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 a footpath on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan 2 by a thick dashed line between points A-X-E.
- (iv) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

12. Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Part of Footpath FP0219002 at Broad Fall, Scorton

A report was presented on an application for the diversion of part of Footpath FP0219002 at Broad Fall, Scorton.

Committee were informed that the numbering of the footpaths in the Committee plan did not reflect the numbering in the Committee report, due to the plan being prepared between updates to the system and mapping software.

The recorded alignment of this section of the footpath was across pasture to the private drive of, and adjacent to, the residential building of Broad Fall, and a number of outbuildings, then into an adjacent field to the junction with FP0219001 and FP0219003. It was proposed that the footpath was diverted to run through two pastures adjacent to the driveway, to join FP0219003 a short distance to the east of its junction with FP0219002.

The diversion would significantly increase the privacy and security of the residential dwelling, whilst providing a route that is safe, convenient and slightly more direct for public use.

The length of existing path to be diverted was shown on the Committee plan attached to the agenda papers as A-B, and the proposed new route was marked A-C-D-E.

The consultation with the statutory undertakers had been carried out and no objections or adverse comments on the proposal had been received.



Resolved:

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0219002 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-E 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 for the Environment, Food and Rural Affairs 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.

**13. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath FP0124015 at Castle View Caravan
Park, Capernwray**

It was proposed that this report be deferred, due to one of the plans being missing.

Resolved: That the report be deferred to the next meeting.

14. Urgent Business

There were no items of Urgent Business.

15. Date of Next Meeting

Resolved: It was noted that the next meeting would be held at 10.30am on Wednesday 27th September 2023 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

H MacAndrew
Director of Law and Governance

County Hall
Preston





