

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 14th November, 2018 at 10.30 am in Committee Room 'B' (The Diamond Jubilee Room) - County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

M Barron	L Cox
I Brown	J Parr
J Marsh	D Howarth
A Clempson	M Salter
T Burns	B Yates

1. Apologies

There were no apologies for absence.

County Councillor Matthew Salter replaced County Councillor Joe Cooney.

County Councillor Barrie Yates replaced County Councillor Peter Steen.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last meeting

Resolved: That the minutes of the last meeting held on 19 September 2018 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. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation

Upgrading Footpath to Restricted Byway at Waingate, Rawtenstall File No. 804-599

A report was presented on an application for the route known as Waingate Road – Waingate Lane, Rawtenstall, as shown between points A-B-C-D-E-F-G on the Committee plan attached to the agenda papers, to be upgraded on the Definitive Map and Statement of Public Rights of Way from Footpath to Restricted Byway.

A site inspection had been carried out in July 2018.

It was reported that the route under consideration was currently recorded as a public footpath. It was advised that, as there was no express dedication in this matter, the Committee should consider, on balance, whether there was sufficient evidence from which to have its dedication inferred at common law from all the circumstances, or for the criteria in Section 31 Highways Act 1980, for a deemed dedication to be satisfied, based on sufficient twenty years 'as of right' use to have taken place, ending with this use being called into question.

The Committee noted that the whole of the route was shown on numerous historical maps from 1849 onwards, as a through route connecting Newchurch Road and Hurst Lane at Cotes Road, and was also shown named as Waingate Road and Waingate Lane. In addition, the Finance Act 1910 showed that the route under investigation was excluded from the taxable hereditaments which was considered to be good evidence that public carriageway rights existed, and that there appeared to be no evidence that such rights had ever been extinguished. Therefore, on balance, it was suggested that the map and documentary evidence provided was sufficient from which to infer dedication under common law.

It was reported that there were very few users providing evidence of their use and that such use must be more than trivial and sporadic to be sufficient use to give rise to a deemed dedication.

Taking all of the information into account, it was suggested that the Committee may, on balance, consider the evidence insufficient, from which to find that the criteria of Section 31 could be satisfied. However, coupled with the extensive map and documentary evidence, Committee may be of the view, on balance, that there was sufficient evidence from which a dedication of a vehicular highway could be deemed or inferred in law, and therefore that the application be accepted.

Resolved:

- (i) That the application for Waingate Road – Waingate Lane, Rawtenstall to be recorded as a Restricted Byway on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-599, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b)

and/or Section 53 (3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Footpath Rawtenstall 348 to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G.

(iii) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

6. Decision On Appeal
Wildlife and Countryside Act 1981
Addition of Public Footpaths around Glasson Dock Canal Basin,
Thurnham, Lancaster City Council

A report was presented on a decision on an appeal made by the applicant, under Section 53 and Schedule 14 of The Wildlife and Countryside Act 1981, against the refusal to make a Definitive Map Modification Order, which had been received from the Inspector directed by the Secretary of State for Environment, Food and Rural Affairs to determine the appeal.

The Committee had considered a report at their meeting on 15 November 2017 on an application for a set of footpaths around Glasson Canal Basin, Thurnham, to be added to the Definitive Map and Statement of Public Rights of Way. The Committee had resolved that the claim for a public footpath around Glasson Canal Basin be not accepted. The applicant had appealed against this refusal to the Secretary of State.

It was reported that an Inspector had been directed to consider the appeal, and that he had allowed the appeal, in part. Details of the appeal decision were provided with the agenda papers. The Committee noted that the county council had been directed to make an order under Section 53(2) and Schedule 15 of the Act, to modify the Definitive Map and Statement for the area to add public footpaths for the following routes:

Route 1 from Point A through Points B and C to Point D;
Route 2 from Point D through Points E, F, Y, G and Z to Point J;
Route 3 from Point J through Points Z, G, X, and I to Point H; and
Route 4 from Point K through Points L and M to Point N.

Resolved:

(i) That the report be noted.

(ii) That, in light of the Inspector's decision to uphold the appeal lodged in respect of file numbers 804/519 and 804/555, an order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of way by adding four Public Footpaths from Tithbarn Hill to School Lane adjacent to

Glasson School and around Glasson Dock Canal Basin, Thurnham Parish, Lancaster as shown by a bold dashed line on the attached plan.

(iii) That should no objections be received, the order be confirmed, but if objections are received the county council as order making authority submit the order to the Secretary of State for formal determination, but the county council shall notify the Secretary of State that it does not actively support the order and to adopt a "neutral stance" as regards confirmation of the order.

**7. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Dinckley Footpath 12, Ribble Valley
Borough**

A report was presented on the proposed diversion of part of Dinckley Footpath 12, from the route shown as A-B on the Committee plan attached to the agenda papers, to the route shown as A-C-D.

It was reported that a request had been received from the owners of Wardfall, Ribchester Road, Dinckley, Blackburn, BB6 8AH, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Dinckley Footpath 12, Ribble Valley Borough.

The Committee noted that Wardfall was a residential dwelling that included former agricultural buildings that had now been converted for domestic use. The footpath ran from Ribchester Road, up the driveway of the property and out through a gate that led to a pasture field currently grazed by sheep.

It was reported that the buildings and gardens at Wardfall were located at either side of the footpath and the diversion, if successful, would move the footpath to the eastern boundary of the property, thereby increasing the privacy and security for the residents, whilst providing a route that was safe and convenient for public use.

No objections or adverse comments on the proposal had been received.

Resolved:

(i) That subject to satisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Dinckley Footpath 12, 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 on the attached plan.

(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 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.

8. Urgent Business

There were no items of Urgent Business.

9. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 30th January 2019 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston