

Regulatory Committee

Meeting to be held on 27 September 2017

Electoral Division affected:
Euxton, Buckshaw and
Astley

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Modification to the Definitive Statements for Footpaths 37, 38 and 39 Euxton (Culbeck Lane)

File No. 804-585

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Investigation into the particulars which should be recorded in the Definitive Statement of Public Rights of Way for Footpaths 37, 38 and 39 Euxton, known together as Culbeck Lane, including the width of the footpaths and any limitations or conditions along them, in accordance with File no. 804-585.

Recommendation

1. 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 modify particulars in the Definitive Statement of Public Rights of Way for Footpaths 37, 38 and 39 Euxton, Chorley Borough and known as Culbeck Lane, to record the width as that shown on the 1894 25 inch Ordnance Survey Lancashire Sheet LXXVII.VI. and record the three locations at which it is considered that there is a legal right for field gates to be erected by the landowner across the route to be at the locations marked as A, B and C on the Committee plan.
2. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

Background

An application to upgrade Euxton Footpaths 37, 38 and 39, known as Culbeck Lane, to byway open to all traffic was considered by the Public Rights of Way Sub-Committee on 15th November 1995 and rejected.

In 2015, a further application was received to upgrade the same route to Restricted Byway and this was rejected by Regulatory Committee. The decision to reject the 2015 application was appealed by the applicants and the Secretary of State for the Environment Food and Rural Affairs dismissed the appeal. The applicants sought Judicial Review of the rejection of the appeal but this was refused.

The above applications were concerned with the legal status of the route (i.e. the lawful rights of the public to use the route on foot, horseback or with vehicles) but in addition, there have, in recent years been various issues concerning the management and maintenance of the lane which carries significant private vehicular traffic as well as being a public footpath.

In order to resolve these issues, it is advised that it is necessary to consider the evidence about width and limitations and record the width of the way and whether any 'limitations' to the public's right on foot.

Whilst the Definitive Map shows the status of public rights of way recorded on it an accompanying Definitive Statement provides details of position, width, limitations and conditions.

Decades ago, each surveying authority interpreted the guidance relating to the information to include in the Definitive Statements differently leading in some cases to very detailed descriptions of routes about the type of surface, variations in widths and the existence (and location) of any stiles or gates. In other cases very brief details were included – often simply stating the starting point and finishing point of a particular route.

The majority of Statements compiled in Lancashire are brief, providing little assistance when a dispute arises regarding the legal width of a public right of way or whether it is lawful to maintain or erect a gate (or stile) along the way on the basis that it existed at that location when the public rights came into being.

The second part of Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 relates to the discovery by the authority of evidence which shows that any particulars contained in the Map and Statement require modification.

In the case of Culbeck Lane it is advised that the Council are satisfied that the status has been fully investigated and that on the basis of the evidence available the route is correctly recorded as public footpath. However, the Definitive Statement accompanying the Map provides insufficient detail regarding the way to allow officers to resolve various management issues, in particular the width of the way and the existence of legal limitations, notably the right of a landowner to have gates across the way.

An investigation into the historical width of the route and limitations is detailed below together with a recommendation to be considered by Committee for an Order to be made modifying the particulars contained within the Definitive Statement as to the position, width, limitations and conditions.

The County Council's decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities.

Consultations

Chorley Borough Council

Chorley Borough Council has been consulted and has not raised any objection to the proposal.

Euxton Parish Council

Euxton Parish have also been consulted and have not raise any objections to the proposal.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the landowners/supporters/objectors and observations on those comments are included in Advice – Head of Service – Legal and Democratic Services Observations.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5356 1851	Junction with Dawbers Lane where historically a gate is shown to have existed although none is currently there
B	5356 1928	Gate across Euxton Footpath 39 at a point shown as boundary of landownership on Tithe Map and Finance Act Plan and location of historical gate.
C	5356 1946	Junction with Runshaw Lane where historically and today a gate is maintained.

Culbeck Lane is recorded as a public footpath and is signposted as such at points A and C. It is available for public use on foot throughout its entire length.

Culbeck Lane also provides private vehicular access from Dawber's Lane (point A) to Culbeck House (a working farm) and three other residential properties.

It currently has gates at:

SD 5361 1886	Adjacent to Culbeck Farm barns
SD 5359 1898	10m north of southern entrance to Lothlorien
SD 5353 1905	Southern end of straight section by Lothlorien
SD 5354 1912	Immediately to the north of Lothlorien
SD 5356 1928	(point B)
SD 5357 1937	Gates into fields either side. One gate can also cross Culbeck Lane
SD 5356 1946	Junction with Runshaw Lane (point C)

Its width today is shown on the Committee Plan and is generally similar to the historical width. The exceptions are:

- (a) where the ditch has been dug alongside Lothlorien the historical boundary is no longer evident nor is it clear how much of the ditch is within the highway
- (b) where Holker Brook has been fenced off from the lane
- (c) where a mound of earth has been created alongside Culbeck Farm.

The section of Culbeck Lane used for daily vehicular access has a compacted stone surface, potholed in places, approximately 3-6 metres wide with a verge and/or ditch on one or both sides.

Beyond the residential properties the lane provides access into adjacent fields. The surface is firm but either grass or muddy depending on recent agricultural use.

The total length of the route is 1 kilometre long.

The existing Definitive Statements for footpaths **37, 38 and 39 Euxton**

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
37	"	Culbeck House southwards along Culbeck Lane to join A.581.	0.22	
38	"	Culbeck House northwards along Culbeck Lane to junction Footpaths 39 and 40.	0.15	
39	"	Junction Footpaths 38 and 40 to Runshaw Moor Lane.	0.27	

Map and Documentary Evidence

The research detailed below has been carried out to determine the width of Culbeck Lane over which the public have a legal right of access on foot (comprising of Footpaths 37, 38 and 39 Euxton) and the existence of any limitations (such as the right to maintain a gate across the lane) to the public rights.

It is noted that this exercise is seeking to record the width and limitations at the time the footpath came into being and to then look if there has been any extra width dedicated at later date.

The exact date that the public footpath legally came into being is unknown

As previously advised evidence indicates that a substantial gated route existed bounded on both sides in the 1840s. However, on balance, the information provided by the Tithe Map and Award does not support the view that public vehicular rights were acknowledged to have existed along the route in 1847. The Secretary of State in the appeal decision agrees and says that although tithe records confirm the

existence of the route as a road of some sort in 1847 they do not indicate whether there were any public rights over it.

By 1910 however there is stronger evidence of a public status and the secretary of state says that "on balance it is my view that the Finance Act records are consistent with the whole of Culbeck Lane having been regarded as a private access road and a public footpath."

It is suggested that the date of the coming into existence of the footpath rights for the public would be in the late 19th century.

Width

The sufficiently large scale Ordnance Survey map of the late 19th century as published is the County Series 1894 sheet which was surveyed in 1893. This map clearly shows the route and adjacent field boundaries as they existed at the time of the survey which is broadly consistent across the subsequent mapping through to the 1960s. It is therefore proposed to modify the particulars by reference to the width of the route as being that shown on the 1894 25 inch Ordnance Survey Lancashire Sheet LXXVII.VI.

This width has been overlaid onto Ordnance Survey MasterMap to produce the Committee Plan.

There is no evidence of original width being made greater through dedication since the late 19th century

Limitations

Any gates which were *in situ* when the public footpath came into being, or subsequent like-for-like replacements, can be retained by the landowner and this right should be recorded as a legal limitation at the corresponding location. The three locations marked as A, B and C on the Committee plan are the locations at which it is considered that there is a legal right for field gates to be erected by the landowner across the route.

The Investigating Officer has come to this conclusion after examining the 1847 Tithe Map and Ordnance Survey maps dating from the 1840s through to 1963. Depiction of lines representing gates across Culbeck Lane has been broadly consistent across this period, as tabulated below. No other gates are shown with the exception on the 1894 25" 1st Edition of an additional gate just north of Chapel Brook.

Point on Committee plan	Grid Reference	Limitation recorded on:
A	SD 5356 1851	Tithe Map 1847 1 st edition 25 inch OS 2 nd edition 25 inch OS 3 rd edition 25 inch OS 1955 6 inch OS

B	SD 5357 1927	Tithe Map 1847 1 st edition 25 inch OS 2 nd edition 25 inch OS 3 rd edition 25 inch OS 1955 6 inch OS
C	SD 5356 1946	Tithe Map 1847 2 nd edition 25 inch OS 3 rd edition 25 inch OS 1955 6 inch OS 1963 1:2500 OS

The maps listed above (spanning over 100 years in time) show lines across the route at points A,B and C. Whilst it is not specifically stated that these lines indicate the existence of a gate it is known that an 'obstruction to a pedestrian', which was over 0.3 metres tall (1 foot) was shown by the Ordnance Survey as a solid line and when shown across a wide enclosed through route such as Culbeck Lane it is reasonable to conclude that the lines indicated the existence of gates. Ordnance Survey instructions to surveyors were that gates were to be shown in the closed position i.e. shown as a line across the route.

The recording of the right to erect gates as legal limitations does not, however mean that gates must now be erected at these locations but if a gate is present it must be convenient to use by the public (on foot) and it is not sufficient to provide a stile, gap or smaller pedestrian gate alongside the larger field gate and to then lock that gate unless evidence is provided suggesting that this was, historically, the situation on the ground. It also means that any gates and/or stiles currently located at any other location along the route would be unlawful (unless subsequently authorised in writing by the highway authority).

Landownership

Much of Culbeck Lane is unregistered but sections of it are registered as parts of Culbeck Farm and Guest House Farm.

The properties below are all adjoining to the route:

Culbeck House Farm, Lothlorien (Culbeck Nurseries), nos. 1 & 2 Culbeck Lane
Coplands Barn and Lark Hill Farm, Dawbers Lane,
Woodcock Barn, Runshaw Lane

Head of Service – Legal and Democratic Services Observations

Information from the Landowners and others consulted

The following responses have been received at the time of this report being published and any further responses received will be presented to Committee at the meeting.

No responses have been received as of yet. The consultation period runs until 20th September 2017.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order as set out in the recommendation

That the Definitive Statements re these 3 footpaths are not sufficiently detailed.
That the evidence for the footpath coming into existence in late 19th century is on balance sufficient.
That evidence of the route's historical width is strong on balance.
That the evidence for the position of historical gates is strong.

Against Making an Order in the terms as set out in the recommendation

There is no evidence more persuasive re the width of the route carrying footpath rights than that set out in the recommendation
There is no evidence more persuasive re the gates which were, on balance, already on the route when it became a footpath than set out in the recommendation

Conclusion

It is advised that it is appropriate in respect of these three footpaths that their width and limitations be recorded. The legislative provisions set out in the report allow such matters to be recorded by way of an Order. The evidence of the width set out in the report indicating the width at the time the footpath came into being is on balance sufficient as is the evidence of where there are rights to maintain gates.

It is suggested that the committee be satisfied that the evidence is on balance sufficient to record the width and limitations as set out in the recommendation

Alternative options to be considered - To not make an order
To make an order to record a different width or different limitation locations

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-585		Claire Blundell, 01772 533196, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A