

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 27th January, 2021 at 10.30 am - Virtual Meeting

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

I Brown	L Cox
P Steen	J Parr
J Marsh	D Howarth
A Clempson	B Dawson MBE

1. Apologies

Apologies were received from County Councillor Towneley.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Parr declared a non-pecuniary interest in Item 6 as Wellbeing was part of her Cabinet Member portfolio for Lancaster City Council.

County Councillor Eaton and County Councillor Steen declared a non-pecuniary interest in Item 8 as the application route was in their electoral divisions.

3. Minutes of the Meetings held on 18th November and 2nd December 2020

Resolved: That the minutes of the meetings held on 18th November 2020 and 2nd December 2020 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. Progress Report on Previous Committee Items

Following a query from County Councillor Howarth, it was confirmed that future update reports would include information on how many applications were outstanding. In addition, Members were advised they could contact either David Goode or Kerry Hayes anytime on the progress of any application.

Resolved: That the report be noted.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath at Fenham Carr, Lancaster City File No. 804-615

A report was presented on an application for the addition of a Footpath at Fenham Carr, Lancaster City, to be recorded on 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-G-H-J-K-C and H-I.

A site inspection had been carried out on 21st January 2020.

It was reported that the area crossed by the application route was known as Fenham Carr and was formerly part of the grounds at Moor Park Hospital. Following closure of the hospital, Fenham Carr was incorporated into the adjacent Williamson Park in 1997.

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

Details of the evidence examined both in support of, and against, the making of an Order were provided to Committee.

It was reported that there was no map or documentary evidence to support the view that public rights existed over the application route prior to 1997 when most of the land crossed by the route was transferred to the ownership of Lancaster City Council. However, much (but not all) of the application route existed as a substantial route prior to this time which may have been available to the public and would support any user evidence submitted whose use pre-dated 1997.

Since 1997, most of the land crossed by the application route had been managed as public open space by Lancaster City Council and use of the application route would have been "by right" (not "as of right").

Whilst there was evidence of use covering more or less the entire statutory period, the volume of users providing evidence was extremely low, considering the location of the route within a public park. In the circumstances, the evidence of use was advised to be too low to be considered representative of the public at

large, and to evidence sufficient use beyond trivial and sporadic, from which to deem dedication by the owners.

Taking all the evidence into account, Committee were advised that a dedication of a public footpath along the application route could neither be deemed under section 31 of the Highways Act 1980 nor inferred at common law. Accordingly, Committee was advised to reject the application and not make an Order adding a public footpath to the Definitive Map and Statement.

Resolved: That the application for the addition of a Footpath at Fenham Carr, Lancaster City, as shown on the Committee plan between points A-B-C-D-E-F-G-H-J-K-C and H-I, be not accepted.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Public Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall File No. 804-610**

A report was presented on an application for the addition of a Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall, to be recorded on 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.

A site inspection had been carried out in August 2019.

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

Details of the evidence examined both in support of, and against, the making of an Order were provided to Committee.

It was reported that the route was consistently shown to exist on all maps and photographs examined from the 1840s through to the current day, supporting the user evidence submitted as part of the application. Google Street images dated 2009 showed the start of the route from point A as being a well-defined surfaced track and access at point E being clear of vegetation – again consistent with the user evidence and the fact that several users referred to the route no longer being maintained and recently becoming overgrown and more difficult to use (as evidenced by the site inspection carried out in 2019).

Taking all the evidence into account, it was suggested that the Committee may be content that dedication of a footpath could be inferred at common law from all the evidence including the use and/or that a dedication of a footpath may be deemed from the more modern user of the route under S31 Highways Act 1980.

Resolved:

(i) That the application for a Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall to be recorded on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-610, 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)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Goodshaw Avenue to Goodshaw Lane on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E.

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

**8. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Diversion of Part of Footpath Bacup 486 at land off Rockcliffe Road,
Rossendale**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Bacup 486, Rossendale Borough, from the route shown by a bold continuous line and marked A-B, to the route shown by a bold broken line and marked C-D-B, as shown on the Committee plan attached to the agenda papers.

It was reported that the small residential site comprised of a new estate road and 26 residential dwellings. The footpath ran along the south eastern side of the site, from Rockcliffe Road (U7885), then as the land slopes down, the footpath cut across an area of rough ground, continuing down a flight of old stone steps, then passing under a disused railway bridge and then alongside a stream to join New Line (A6066).

The Committee noted that the diversion, if successful, would remove the footpath from the rough ground, at the perimeter of the development site, and away from the steepest part of the slope that had been formed as part of the development. In addition, it was noted that users would find the new length of footpath more enjoyable than the existing footpath which currently ran over rough grassland that was, in places, wet and muddy, and that, in contrast, the new footpath would have a properly constructed firm surface that was safe and convenient for use in all weather conditions.

It was advised that the effect of the Order was compatible with the material provisions of the county council's Rights of Way Improvement Plan.

Committee were informed that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

The Chair wished to place on record his thanks to officers for all their hard work on this diversion. County Councillor Steen thanked the Chair for promoting the opening of the footpath and the officers for their work on it.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Bacup 486, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked C-D-B, on the Committee 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 Planning Inspectorate and that 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.

9. Urgent Business

There were no items of Urgent Business.

10. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 10th March 2021.

L Sales
Director of Corporate Services

County Hall
Preston