

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 23rd June, 2021 at 10.30 am in
The Savoy Suites, County Hall, Preston**

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	M Goulthorp
T Aldridge	C Haythornthwaite
J Burrows	D Howarth
A Cheetham	J Oakes
L Cox	S Whittam

1. Apologies

Apologies were received from County Councillor Jean Parr.

2. Appointment of Chair and Deputy Chair

That the appointment by the County Council on the 27 May 2021 of County Councillors S Hind and M Salter as Chair and Deputy Chair of the Committee respectively, for 2021/22, be noted.

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

A report was presented setting out the constitution, membership and Terms of Reference of the Committee, and the programme of meetings for 2021/22.

Resolved:

The Committee noted:

- (i) The constitution and membership of the Committee, following the Full Council annual meeting on 27th May 2021.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for 2021/22.

4. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

5. Minutes of the last Meeting held on 10th March 2021

Resolved: That the minutes of the meeting held on 10 March 2021 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.

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.

The 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.

It was reported that applications were taken in order of priority and not chronological order.

Committee were informed that there had been a large increase in the number of applications, due to a greater awareness of the public of public rights of way during the Covid pandemic and the cut off point for applications being 2026.

Resolved: That the report be noted.

8. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway along Lord's Lot Road, Over Kellet

A report was presented on an application for the addition of a Bridleway along Lord's Lot Road, Over Kellet to be recorded on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-W-H. This was referred to as the 'application route' and the similar route A-W-X joining Borwick Road a little further south as the 'amended route'.

Committee noted that a previous application had been considered by the County Council in 1985, not long after the 1981 Act introduced continuous review of the Definitive Map and Statement. This application had been rejected. The current

application was supported by much more evidence and the understanding of evidence for definitive map modification orders had developed considerably since 1985.

A site inspection had been carried out in September 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.

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

Over Kellett Parish Council had indicated that they supported the application but has sought reassurance that, should the DMMO be approved, the road surface would be adequately maintained. A question was raised about who would be responsible for this. An explanation was provided to Committee, although it was noted that the maintenance issue could not be taken into account when considering whether public rights existed.

Taking all the evidence into account, Committee was advised that, on balance, there was sufficient evidence from which a dedication of a public bridleway between points A-W-X could be inferred at common law, but not between points W-H. It was suggested that Committee may therefore consider making an Order to add a public bridleway to the Definitive Map and Statement accordingly, and to promote the Order to confirmation.

Resolved:

- (i) That the application for the addition of a Bridleway along Lord's Lot Road, Over Kellet be accepted with amendment.
- (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 Bridleway along Lord's Lot Road, Over Kellet as shown on Committee Plan between points A-W-X.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Recording of Bridleway from Twist Moor Lane via Wood's Fold
Farm, Withnell to Bolton Road**

A report was presented on an application for the addition of a Bridleway and upgrade to Bridleway of Footpath Withnell 49 from Twist Moor Road past Wood Folds Farm, Withnell to Bolton Road (A675) 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.

A site inspection had been carried out in January 2021.

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.

Taking all the evidence into account, it was suggested that both the lower and higher tests could be met for the route marked A-G, such that an Order to that affect should be made and promoted to confirmation.

In relation to the route F-H, Committee were informed that, due to the lack of user evidence, at this time it was suggested that there was insufficient evidence of the use of this part of the route to be satisfied that a right of way “subsists” or was “reasonably alleged to subsist” and further, that the higher confirmation test could be met at this time.

Resolved:

- (i) That the above application be accepted in part subject to the status of restricted byway between points A-F-G.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a restricted byway and upgrade to restricted byway Footpath Withnell 49 from Twist Moor Lane past Wood's Fold Farm, Withnell to A675 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 higher test for confirmation can be met the Order(s) be promoted to confirmation.

**10. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath between Aspen Lane and Mill Lane near West
End Primary School**

A report was presented on an application for the addition of a footpath from Aspen Lane (also recorded as Bridleway Oswaldtwistle 300) to Mill Lane (also recorded as Footpath Oswaldtwistle 23 and F6365), 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.

A site inspection had been carried out on 10th September 2020.

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.

Taking all of the evidence into account, it was suggested to Committee they may, on balance, consider that the provisions of Section 31 of the Highways Act 1980 cannot be satisfied. However, in the alternative, 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.

After a discussion, a proposer, seconder and vote, it was:

Resolved:

- (i) That the application for a public footpath from Aspen Lane to Mill Lane, in accordance with File No. 804-641, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(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 Footpath from Aspen Lane (Bridleway Oswaldtwistle 300) to Mill Lane (Footpath Oswaldtwistle 23) as shown on Committee Plan between points A-B.

After further discussion and clarification as to Recommendation (iii), a proposer, seconder and vote, it was:

Resolved:

- (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 has passed.

**11. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a Footpath from the junction with Footpath Rawtenstall
206 leading from Hillside Drive to Footpath Rawtenstall 392**

A report was presented on an application for the addition of a Footpath from the junction with Footpath Rawtenstall 206 leading from Hillside Drive, Newchurch, to the junction with Footpath Rawtenstall 392, 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 and B.

An amended Location Plan (copy attached) had been circulated to the Committee prior to the meeting.

A site inspection had been carried out in 2019.

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 in support of the making of an Order were provided to Committee. There was no evidence examined against the making of an Order.

Committee noted that Rossendale Borough Council had not responded to the county council's consultation. County Councillor Cheetham reported that many of the Borough Council's historical records had been lost in the 1978 floods and that this may have been the reason why no response had been received.

A query was raised by County Councillor Whittam about the site inspection and the fact that this took place in 2019. It was explained that sites were visited as soon as possible after applications had been received.

CC Burrows raised a safety issue about the stone steps along the route being slippery in wet weather, Committee were informed that safety was a separate issue to making a decision on whether public rights existed or not. However, if a public right of way was thought to exist, then anything dangerous on the route would be considered after this had been confirmed. Committee noted that, in this case, slipping on the steps would not be a public liability issue.

The Chair had noted on the site visit that some of the wood had come away from the fence and that nails were exposed and asked that, if an Order was made, how would these issues be rectified. David Goode confirmed that it would be the responsibility of the owner of the fence to make it safe although as county council officers were aware of the problems, they could go out to the site and rectify this.

Taking all of the evidence into account, it was recommended that Committee accept the application as, on balance, deemed dedication under Section 31 could be satisfied or dedication inferred from all the circumstances, including the use by the public and that an Order be made.

Resolved:

- (i) That the application for the addition of a public footpath from Footpath Rawtenstall 206, leading from Hillside Drive, to Footpath Rawtenstall 392 be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Footpath Rawtenstall 206 near Hillside Drive to Footpath

Rawtenstall 392 on the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A and B.

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

**12. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition and Deletion of Footpath Hoghton 11, Chorley**

A report was presented on an investigation into the addition to and deletion from the Definitive Map and Statement of Public Rights of Way of part of Footpath Hoghton 11, Chorley.

The route to be determined was shown on the Committee Plan attached to the agenda papers with the suggested part addition between points A-B-C-D-E and part deletion between points E-F-G.

An initial site inspection had been carried out on 3rd August 2018, with a further site inspection on 23rd November 2018.

The Committee noted that a query had been received by the Public Rights of Way team in July 2018, regarding the recorded position of Public Footpath Hoghton 11, Chorley. The query had arisen from the sale of a property where a CON 29 Local Authority Search had highlighted the existence of a footpath which had been recorded on the Definitive Map and Statement as going directly through the property. The property itself, three terraced cottages, appeared to have been in existence for over 100 years, and therefore it was apparent that an investigation was required to determine the correct legal line of the footpath.

Committee were informed that, overall, the evidence supported the conclusion that, on 1st September 1966, no public right of way existed along the section of Footpath Hoghton 11, depicted between E-G, and that a simple drafting error with regard to the recording of the exact line of the footpath resulted in the path being drawn on the Definitive Map and Statement along the line E-G instead of line A-E.

Resolved:

- (i) That an Order be made pursuant to Section 53(2)(b) of the Wildlife and Countryside Act 1981 to add to and delete from the Definitive Map and Statement parts of Footpath Hoghton 11 as shown on the Committee Plan.
- (ii) That the Order be promoted to confirmation.

13. Urgent Business

There were no items of Urgent Business.

14. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 15th September 2021.

L Sales
Director of Corporate Services

County Hall
Preston