

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 9th March, 2022 at 10.30 am in Committee Room 'C' - The Duke of Lancaster Room, County Hall, Preston

Present:

County Councillor Matthew Salter (Chair)

County Councillors

T Aldridge	D Howarth
J Burrows	J Oakes
A Cheetham	S Whittam
L Cox	R Swarbrick
C Haythornthwaite	N Hennessy

1. Apologies

Apologies were received from County Councillor Alf Clempson.

Temporary changes

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

County Councillor Rupert Swarbrick replaced County Councillor Sue Hind.

County Councillor Sue Whittam replaced County Councillor Mike Goulthorp.

County Councillor Nikki Hennessy replaced County Councillor Jean Parr.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Anne Cheetham declared a non-pecuniary interest in Item 7 as she was very familiar with the application route and had used it on many occasions.

3. Minutes of the last Meeting held on 26 January 2022

Resolved: That the minutes of the meeting held on 26 January 2022 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

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 include 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.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway West of Buckstone House from Junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane

A report was presented on an application for the addition of a bridleway west of Buckstone House from the junction with Bridleway Priest Hutton 14 to the junction with Cinderbarrow Lane 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 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.

Committee were informed that no modern or historical public user evidence had been submitted so in these circumstances neither a presumption of dedication of a public right of way under section 31 nor inference of dedication from use could be considered. It was therefore necessary for Committee to consider whether the map and/or documentary evidence was sufficient to support the inference of dedication of a public right of way under common law.

Committee's attention was drawn to the Turnpike legislation, the details of which had been provided in the report.

Committee were advised to consider whether the public rights on the application route remained on that line or were stopped up when the highway diverted onto a new line by virtue of the Turnpike Acts of 1822 and 1823. Should the stopping up be evidenced, Committee were advised they should consider whether the old

route had become a highway again and whether the evidence in documents since 1823 was sufficient for dedication to be inferred.

It was suggested, in considering the evidence presented and the summary of the Investigating officer, that Committee may consider that there was insufficient evidence of the route becoming dedicated again as a public highway since 1823 even though the route remained in physical existence for many decades.

Resolved: That the application for the addition of a bridleway west of Buckstone House from the junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane be not accepted.

7. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of a Footpath along Whitworth Rise, Whitworth

A report was presented on an application for the addition of a footpath from Market Street to Stoneyroyd via Whitworth Rise, 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 April 2021.

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.

Committee were informed that a Planning appeal determined in 2010 for the development of land crossed by the application route, made reference to pedestrian use of a route through the site which was consistent with the application route.

It was reported that the application was based on a substantial body of user evidence which was detailed in the report and, in summary, this user evidence – dating from the late 1960s onwards - was supported by the map and photographic evidence considered. The Investigating Officer had found nothing to suggest that the route could not – or was not in use throughout the years referred to in the user evidence.

County Councillor Cheetham informed Committee that the ginnel was used by a substantial amount of pedestrians and not just those who lived on Whitworth Rise.

Taking all of the evidence into account, Committee were advised that, on balance, they may consider that the provisions of Section 31 Highways Act 1980 could be satisfied. Committee were also advised that they may consider it could be reasonably alleged that there was sufficient evidence from which to infer dedication of a public footpath at common law.

Committee were therefore advised to accept the application, that an Order be made and, as it was, on balance, sufficient evidence such that the higher test could be met, that the Order be promoted to confirmation.

Resolved:

- (i) That an Order be made pursuant to Section 53(2)(b), Section 53(3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record a footpath on the Definitive Map and Statement of Public Rights of Way from Market Street to Stoneyroyd as shown on Committee Plan between points A-B-C-D.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Garstang Road (A6) to Black Bull Lane
through Harris Park**

A report was presented on an application for the addition of a Footpath from Garstang Road to Black Bull Lane through Harris Park, 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 September 2021.

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.

It was reported that map and documentary evidence in support of the application was limited, with no map and documentary evidence supporting the use of the route applied for between points C to D. In addition, the amount of user evidence received was too low to be considered representative of the public at large and to evidence sufficient use beyond trivial and sporadic from which to infer dedication by the owners.

County Councillor Burrows queried whether the small amount of user evidence received was due to the fact that the route had been blocked off. It was explained to Committee that, as there was insufficient map and documentary evidence, the county council needed to find evidence of a dedication of a public right of way, prior to the route being blocked off, which had to be representative of the public at large and of sufficient quality. The amount of user evidence received was an indication of whether or not the landowner acquiesced to the dedication of dedicate public rights. For routes being used by members of the public, a landowner had the option of letting this continue, they could give users permission to use the route or they could do something to stop the use of the route by the public, i.e. they could take action to make it clear they were not prepared to dedicate. The concept around the length of time was that this must

be long enough to allow the landowner to be in a position to make a decision on whether or not to dedicate public rights.

County Councillor Swarbrick queried whether the application may have been an attempt to create a safe route to Queens Drive Primary School and asked whether Committee could deviate from the Recommendation in the report, in order to facilitate this. Committee were informed that they were required to consider specifically whether public rights existed or not and that whether the public wanted to use the route or not could not be taken into account. A separate process would be used whereby it may be considered that no public rights existed but that the county council had reason to create those rights.

As it had been over 10 years between the time the route had been closed off and the date the application had been received, together with the lack of user evidence, County Councillor Howarth proposed that the Recommendation in the report be approved.

County Councillor Hennessy asked whether the county council could ask members of the public for user evidence. It was noted that, although the applicant had been asked to clarify the evidence submitted, it was for the applicant, not the county council to seek more user evidence. However, should the application be rejected, the applicant would be able to appeal the decision or to submit another application containing more user evidence.

Having considered all of the evidence discovered, Committee were informed 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 to make an Order adding a public footpath to the Definitive Map and Statement.

Resolved: That the application for the addition on the Definitive Map and Statement of Public Rights of Way of a footpath from Garstang Road to Black Bull Lane, be not accepted.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath through Farington Hall Wood, Leyland**

A report was presented on an application for the addition of a Footpath through Farington Hall Wood, Leyland, 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 and E-F.

Site inspections had been carried out in February 2021 and March 2022. At the February 2021 site inspection, access to the woodland through which the route ran had been blocked by wooden fences at points A, C and F so it was not possible to walk the route. At the March 2022 site inspection, some of the fencing had been broken making access available at point A and at point C-D.

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. A substantial amount of user evidence had been received for this application.

Map and documentary evidence, together with site photographs supplied as part of the application all confirmed that the full length of the application route existed, following the development of the site (housing on Bluebell Wood), with links to public highways at point A and point E, and that the route continued from point D along a network of paths through the woodland to the south east, which was managed privately as public open space.

The Committee were informed they were required to specifically consider the evidence presented as to whether public rights on the route existed or not and that account could not be taken of whether it was a pleasant route to walk.

County Councillor Howarth supported the Recommendation in the report stating that the route had previously been used as a public asset and a large amount of user evidence over a long period of time had been submitted.

In relation to County Councillor Cheetham's comments on the importance of bluebell preservation, the Officer stated that although the bluebells may attract members of the public to walk the route, Committee were only required to consider the context of this and whether it supported the user evidence.

Following a query from County Councillor Hennessy, it was reported that a new landowner had purchased a strip of woodland and installed fencing which had prevented public use of the route, prompting the application to be submitted. There had been no recorded public right of way when the landowner had purchased the land, which had been fenced off for the landowner's private use. Committee noted that if the application route was considered to be a public right of way, once the process had run its full course, then the landowner would be required to remove the fences that obstructed the route where public rights had been established.

Taking all the evidence into account, Committee were advised that they may consider there to be sufficient evidence from which to infer dedication at common law, on balance from all the circumstances including the use by the public during the Chapeltown ownership and possibly even 2010-2020 when it was held by the Duchy. The recommendation was therefore that an Order be made and promoted to confirmation.

Resolved:

- (i) That the application for a footpath through Farington Hall Wood, Leyland 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 footpaths through Farington Hall Wood on the Definitive Map and Statement

of Public Rights of Way as shown on Committee Plan between points A-B-C-D and E-F.

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

10. Urgent Business

There were no items of Urgent Business.

11. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 22nd June 2022.

L Sales
Director of Corporate Services

County Hall
Preston