

Regulatory Committee
Meeting to be held on 2nd July 2014

Electoral Division affected: Clitheroe – Ribble Valley North East

Decision on Appeal
Wildlife and Countryside Act 1981
Claimed Public Footpath from St Paul's Terrace to Edisford Road, Clitheroe,
Ribble Valley Borough
Claim No. 804/516
(Appendix A refers)

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Executive Summary

A decision on an Appeal made under Section 53 and Schedule 14 of The Wildlife and Countryside Act 1981 against the refusal to make a Definitive Map Modification Order has been received from the Secretary of State for Environment, Food and Rural Affairs.

Recommendation

1. That the Report be noted.
2. That, in the light of the Secretary of State for Environment, Food and Rural Affairs decision to uphold the Appeal lodged in respect of Claim No. 804/516, 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 a public footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough, as shown between points A and F on the attached plan.
3. 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.

Background and Advice

At their meeting on the 13th February 2013, the Regulatory Committee considered a report for Claim No. 804/516 (copy attached as Appendix A) for the addition of a

Public Footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough, shown between points A-F on the plan. The Committee resolved that the claim was not accepted. The applicant appealed against this refusal to the Secretary of State for Environment, Food and Rural Affairs. The Secretary of State for Environment, Food and Rural Affairs allowed the appeal and directed Lancashire County Council to make an Order.

The report prepared by the Inspector considered the documentary evidence provided by the County Council. The Inspector noted the 1842 Tithe Map and later documents showed the Church was originally located to the south of Point A on the attached Committee Report plan. The OS 1886 25-inch map was the first to show St Paul's Church at its present location but pathways are shown linking the Sunday school, Church and roads on a similar route to that claimed. Subsequent OS maps to 1977 depict the route on the same alignment. The Inspector concluded a path linking Edisford Road, St Paul's Church, the Parish Hall and St Paul's Terrace passing through a field to the south of the vicarage has existed since 1886, as shown on the OS maps and that sometime in or after 1981 following boundary alterations and construction of a new vicarage, the paths alignment was altered and that it is the alignment post dating 1981 which forms the Appeal route.

The Inspector concluded there was evidence of frequent use of the claimed route for recreation purposes and to access local facilities. The Appellant stated the path was used extensively to visit the Parish Hall until its closure in 2010/11. The Inspector is inclined to agree with the Council that such use would have been by implied permission or by invitation, rather than as of right.

The landowner, the Blackburn Diocesan Board of Finance Ltd claims the route from points B-C on the attached plan was constructed in 1995 for the Vicar to reach the Parish Hall for official duties, they say it was not an official footpath to facilitate access from Edisford Road to St Paul's Terrace, use by the public was not encouraged, and any such use would have been with the specific consent of the Church.

The Inspector considers the Council's argument for part of the route for points C-D-E-F which crosses St Paul's Church yard that for a right of way to be dedicated over a church yard which is consecrated ground, there would have to be authorisation in the form of a grant of an appropriate faculty (or permission) by the Consistory Court. If no faculty had been granted, then there could be no dedication over consecrated ground, whether actual or deemed. The Inspector noted the consultation response received by the Council from the landowner that use of the footpath was only intended to be with the specific consent of the Church, and that the route was never intended for general public use. However, the comments of the landowner are not supported with any evidence that with regard to the existence or otherwise of a faculty. Neither is any evidence available to support the claim that the Appeal route was created for the private needs of the vicar. Nor is there any evidence to suggest that members of the public were made aware that use of any part of the Appeal route was permissive.

The Inspector then states that it remains possible that a faculty has been granted, or may be presumed, in respect of the Appeal route where it passes through the

Church yard (points C-D-E-F on the attached plan), or indeed of the original route through the Church yard, and this must weigh in favour of the Appellant. She then states further, if it is the case that a faculty is required in respect of the consecrated ground and none has been granted, then there is a lack of evidence to substantiate there having been no intention by the landowner to dedicate the remainder of the Appeal route (A-B-C on the attached plan), notwithstanding that it would be a cul-de-sac path on entering the Church yard at point C.

The Inspector concludes there is claimed use sufficient to raise a presumption of dedication, although the Inspector considers the standard of the user evidence necessary for an order, if made, to be confirmed would need to be more robust than that provided with the Application. Stating there is also a conflict in relation to the claimed use of the way by the public and the claim by the landowner that the Appeal route was not intended for use by the public. There is no evidence that a faculty does not exist in respect of the consecrated ground. It follows her view that there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist over the Appeal route.

She finds that **Test A**, Does a right of way subsist on a balance of probabilities? This requires clear evidence in favour of the Appellant and no credible evidence to the contrary. But that **Test B**, Is it reasonable to allege on the balance of probabilities that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that one does subsist and an Order should be made and if any objections are raised then the evidence may be more thoroughly tested.

In accordance with paragraph 4(2) of Schedule 14 to the 1981 Act, Lancashire County Council is directed to make an Order under Section 53(2) and Schedule 15 of the Act to modify the definitive map and statement for the County of Lancashire to add a public footpath as proposed in the application dated 9 February 2011. This decision has been made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

Consultations - N/A

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/516	Various	Megan Brindle, County Secretary and Solicitor's Group, 01772 (5)35604

Reason for inclusion in Part II, if appropriate
N/A