

**Regulatory Committee**  
Meeting to be held on 2<sup>nd</sup> July 2014

Electoral Division affected:  
West Craven

**Decision on Appeal**  
**Wildlife and Countryside Act 1981**  
**Claimed downgrading to public footpath of Public Bridleway No. 52 Earby,**  
**Pendle Borough**  
(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 light of the Secretary of State for Environment, Food and Rural Affairs decision to uphold the Appeal lodged in respect of claim No. 804/483, an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of way by downgrading Public Bridleway No. 52 Earby to a Public Footpath
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 7<sup>th</sup> September 2011, the Regulatory Committee considered a report (copy attached at Appendix A) and resolved that the claim for downgrading

Public Bridleway No. 52 Earby to a Public Footpath be not accepted. The applicant appealed against this refusal to the Secretary of State.

The Secretary of State for Environment, Food and Rural Affairs directed an Inspector to prepare a report into the matter. The summary of the report is as follows:-

*'It would seem from the evidence available that most of the appeal route has been in existence since before 1825 but there is no indication of its continuation across the beck to join Dotcliffe Road before the 1853 OS map which shows stepping stones. By 1906 / 07 a footbridge had been constructed and at some time it would appear that a retaining wall was constructed. None of the early evidence gives any indication of whether there were public rights of any sort over the route. It is plausible from more recent evidence that the retaining wall and footbridge might have made the southern section of the route impassable on horseback and the statement of Mr Tomlinson seems to confirm this. Nevertheless in the 1950s the whole route was recorded as a public bridleway and neither landowners nor anyone else raised any objections to this although they would have had opportunity to.*

*In these circumstances it is not easy to come to a firm conclusion. In my view there is new evidence now available which is cogent but it is difficult to say whether this is of sufficient substance to displace the assumption that the definitive map is correct in the absence of information regarding the reasons for recording the route as a public bridleway. If the route was being used by the public as a bridleway in the 1950s or, if there was evidence at that time that it had been so used in the past, it might have been correctly recorded but, unfortunately, it is not known whether this was the case. Overall, it is my view that, on the balance of probabilities, the evidence that the route was ever a public bridleway is so limited and the evidence that it could not have been used by the public as such in living memory so cogent, that it seems more likely that the route was incorrectly recorded in the definitive map as a bridleway. However, the evidence does indicate that the route may well have been used by the public as a footpath since the mid 19<sup>th</sup> century, with access of the beck being by stepping stones and then a footbridge. It would therefore be appropriate for the route to be recorded as a public footpath.'*

The Secretary of State allowed the appeal and directed the County Council to make an order under Section 53(2) and Schedule 15 of the Act to modify the Definitive Map and Statement for the area to add a public footpath as proposed in the application submitted on 8<sup>th</sup> April 2008.

It is advised that an Order is made to record a public footpath as directed by the Secretary of State. However, with regards to any Order made following the direction of the Secretary of State, it is suggested that the Local Authority adopts a neutral stance. This is a usual position to take when the Committee originally decided on the evidence not to make an Order.

**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: 5.34497 (804/483)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 35604

Reason for inclusion in Part II, if appropriate

N/A