

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 22nd October, 2014 at 10.30 am in Cabinet Room 'B' - County Hall, Preston

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

K Snape	A Schofield
I Brown	S Serridge
A Clempson	D Stansfield
D Clifford	D Whipp
C Crompton	P White
B Dawson	B Yates
J Gibson	

The committee was informed that County Councillor B Yates had replaced County Councillor P Britcliffe on the committee for the remainder of the municipal year 2014/15.

The committee was also informed that County Councillors C Crompton and S Serridge had replaced County Councillors C Henig and G Mollineaux on the committee for this meeting only.

1. Apologies.

Apologies were received from County Councillor P Hayhurst.

2. Disclosure of Pecuniary and Non-Pecuniary Interests.

None declared.

3. Minutes of the last meeting held on 2 July 2014.

Resolved: That the Minutes of the meeting held on 2 July 2014 be confirmed and signed by the Chair.

4. Guidance.

A report was presented in connection with Guidance for members of the Committee regarding the law on the continuous review of the Definitive Map and Statement of Public Rights of Way, certain Orders to be made under the Highways Act, 1980 and the actions available to the County Council on submission of Public Path Orders to the Secretary of State.

Resolved: That the Guidance set out in Annexes 'A','B' and 'C' of the report presented is noted.

**5. Wildlife and Countryside Act 1981
Definitive Map Modification Order Application
Upgrading to Bridleway of Public Footpaths from Hardman Drive to
Rakehead Lane, Bacup, Rossendale Borough
Application No. 804-539**

A report was presented on an application duly made under Schedule 14 of the Wildlife and Countryside Act 1981 to upgrade Public Footpath no's 638 (part), 636, 627 and 636 Bacup, Rossendale Borough to a bridleway.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

When considering the report the committee noted that there was little documentary evidence showing that public rights existed on the application route but enough to show that it was a reasonably substantial physical track since at least 1830, and was consistently shown on the Ordnance Survey maps from 1849 to present day. The user evidence provided in respect of the route indicated that access to the route had never been verbally questioned or denied and there was no evidence of any signs or notices having been erected along the route informing users that it was not a public right of way.

Officers confirmed that cyclists would be entitled to use the route should it be confirmed as having bridleway status.

Having examined all of the information presented, the Committee agreed that, taking all the relevant evidence into account, on balance, dedication as a bridleway under S.31 of the Highways Act could be deemed and the route, recorded as a footpath at present, be recorded as having bridleway status.

Resolved:

1. That the application for an upgrade to Bridleway of Public Footpath no's 638 (part), 636, 627 and 626 Bacup, Rossendale on the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-549 be accepted.
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade to Bridleway Public Footpaths no's 638(part), 636, 627 and 626 Bacup, Rossendale Borough on the Definitive Map and Statement of Public Rights of Way as shown between points A-B-C-D-E-F-G-H on the plan referred to in the report to the committee.

3. That, being satisfied that the test for confirmation can be met, the Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Claimed Public Footpath from Hagg Street to Short Street, Colne,
Pendle Borough
File No. 804/468**

A report was presented on an application for a footpath from Hagg Street to Short Street, Colne, Pendle Borough a distance of approximately 135 metres, to be added to the Definitive Map and Statement of Public Rights of Way.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

When considering the report, the committee noted that the both the documentary evidence and user evidence in support of the claim was considered to be sufficient to prove that a right of way existed and use had been exercised as of right and without interruption for the whole route during 1987 to 2007. It was noted that although there was no parish council in 2007, Colne Town Council was now the local parish council for the area.

Having examined all of the information presented, the committee agreed that, taking all the relevant evidence into account, on balance there was sufficient evidence from which a deemed dedication could be satisfied under S.31 of the Highways Act and it was appropriate that an order be made and promoted to confirmation.

Resolved:

1. That the application for a Public Footpath from Hagg Street to Short Street, Colne, Pendle Borough, to be added to the Definitive Map and Statement of Public Rights of Way in accordance with file no. 804/468, be accepted but with the higher status of restricted byway.
2. 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 record a Restricted Byway on the Definitive Map and Statement of Public Rights of Way and shown between points A-C on the plan referred to in the report to the committee.
3. That being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway and Upgrade of Footpath to Bridleway from
Rooley Moor Road to Cowpe Road, Bacup
File No. 804-538**

A report was presented on an application for the addition of a Bridleway and upgrading of Bacup Footpaths 617, 616 (part), 609 and 612 (part) to Bridleway from Rooley Moor Road to Cowpe Road, Bacup.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

When considering the report the committee noted that the majority of the route under consideration was currently recorded as a public footpath. The section C-D on the committee plan was the only section which was not recorded as a public right of way.

It was also noted that in this matter, there was no evidence of an express dedication and so the Committee was invited to consider whether a dedication of bridleway rights could be inferred, on balance, from all the circumstances at common law or deemed under s.31 of the Highways Act 1980.

On balance the map evidence was considered to be insufficient to conclude the whole of the route was a historical public bridleway and it was therefore suggested that inferred dedication could not on balance be satisfied. The Committee was therefore advised to consider whether deemed dedication under S.31 of the Highways Act 1980 or common law inference from use could be satisfied.

Having examined all of the information presented, the Committee agreed that, taking all the relevant evidence into account, on balance dedication as a bridleway under S.31 of the Highways Act could be deemed or inferred at common law and section C-D be recorded as a bridleway and section B-C and D-E-F-G-H-I, recorded as a footpath at present, should also be recorded as having bridleway status. The Committee also agreed that section A-B should not be accepted as the use was not, on balance, as of right being use of urban common under Law of Property Act 1925.

Resolved:

1. That the application for the addition of a bridleway and the upgrading of Bacup Footpaths 617, 616 (part), 609 and 612 (part) to bridleway from Rooley Moor Road to Cowpe Road, Bacup, (File No. 804-538), be accepted in part. Section B-C-D-E-F-G-H-I shown on the plan referred to in the report

to committee is accepted as a bridleway and section A-B shown on the committee plan is rejected.

2. That an Order be made pursuant to Section 53 (c) (i) and (ii) of the Wildlife and Countryside Act 1981 to add a bridleway and to upgrade Bacup Footpaths 617, 616 (part), 609 and 612 (part) to bridleways on the Definitive Map and Statement of Public Rights of Way as shown between B-I on the plan referred to in the report to the committee.
3. That being satisfied that the tests for confirmation can be met the Order be promoted to confirmation.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrading to Bridleway of Ramsbottom Footpath 207 (Buckhurst Road) from Bury Old Road to Ramsbottom Bridleway 206 (Croston Close Road)
File No. 804-540**

A report was presented on an application under Schedule 14 of the Wildlife and Countryside Act 1981 to upgrade Ramsbottom Footpath 207 (known as Buckhurst Road) from the junction with Bury Old Road to the junction with Ramsbottom Bridleway 206 (known as Croston Close Road) and shown between points A1- F2 on the plan referred to in the report to the committee.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

When considering the report the committee noted that taking into account all of the map and documentary evidence examined, it appeared there was evidence to suggest that the route under investigation was of at least bridleway status and on balance, that a highway open to the public in all vehicles including carts and carriages had already been dedicated to public use.

It was also noted that although the route under investigation had evidence for public carriageway rights, it was no longer possible to record the route as a byway open to all traffic due to the introduction of section 67 National Environment Rural Communities Act 2006 (NERC Act). The implication of this section meant that as this route was originally recorded on the definitive map and statement as a public footpath, any existing public rights of way for mechanically propelled vehicles had been extinguished. This meant that the highest status that could be achieved by this route was that of a restricted byway.

Having examined all of the information presented, and noting how the route was recorded on the old County maps, the Committee agreed that, taking all the relevant evidence into account, on the balance of probabilities that the route ought to be shown as a highway of a different description and the claim should be

accepted as a restricted byway, as opposed to only a bridleway, as the evidence suggested on balance the route had a higher public status.

Resolved:

1. That the application in accordance with File Ref. 804.540 for Ramsbottom Footpath 207 to be upgraded to Bridleway, be accepted as a Restricted Byway.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (c) (ii) of the Wildlife and Countryside Act 1981 to upgrade Ramsbottom Footpath 207 to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown between points A1-F2 on the plan referred to in the report to the committee.
3. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Application for the Addition to the Definitive Map and Statement of a
Public Bridleway from Back Drinkhouse Lane to Drinkhouse Road,
Croston, Chorley
File No. 804-545**

A report was presented on an application under Schedule 14 of the Wildlife and Countryside Act 1981, for a Public Bridleway between Back Drinkhouse Lane and Drinkhouse Road, Croston, for a distance of approximately 55 metres be recorded on the Definitive Map and Statement of Public Rights of Way.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the definitive map and statement of public rights of way (in the form of Annex A) was presented both as part of the report and by officers at the meeting.

The committee was advised that the analysis of the map and documentary evidence suggested there was sufficient evidence to indicate that this route was on balance, dedicated as a public carriageway and was recorded by the early maps and documents as such. It was therefore suggested that there were circumstances from which to infer an early dedication of the route for use by the public in vehicles. The provisions of the Natural Environment and Rural Communities Act affected this by extinguishing the public rights for mechanically propelled vehicles and it was suggested that the exceptions to extinguish were not engaged and the appropriate status of the route would be as restricted byway.

The Committee was advised that if it was not content that the evidence of restricted byway was sufficient on balance, then the more modern user evidence should be considered and the provisions of s31 applied together with the

common law to see if there is evidence of a highway being dedicated in more recent times.

It was suggested that the user evidence in this matter was sufficient and use had been exercised as of right (not including those with possible private rights) and without interruption for the whole route during 1993-2013. There did not appear to be any evidence to demonstrate lack of intention to dedicate over the twenty years prior to 2013. It was therefore suggested to Committee that dedication as restricted byway could be deemed under S31. The use would also be circumstances from which to infer dedication at common law.

Having examined all of the information presented, and noting how the route was recorded on the old County maps, the Committee agreed that taking all the relevant evidence into account, on the balance of probabilities, that a dedication in this matter as a restricted byway may be deemed under S31 or inferred under common law and that an Order be made and promoted to confirmation.

In response to concerns raised by the committee with regard to the reported encroachment along the route, the officer advised that any necessary action to address the issue would be taken following consultation with both the district and parish councils.

Resolved:

1. That the application in accordance with File No 804-545 for the route from Back Drinkhouse Lane to Drinkhouse Road, Croston, Chorley between points A-B-C-D on the plan referred to in the report to be recorded as a Bridleway be accepted as a Public Restricted Byway.
2. That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (b) and Section 53 (c) (i) of the Wildlife and Countryside Act 1981 to record a Public Restricted Byway on the Definitive Map and Statement of Public Rights of Way as between points A-B-C-D on the plan referred to in the report to the Committee.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

10. Date of Next Meeting

It was noted that the next scheduled meeting of the Committee would be held at 10.30am on the Wednesday 17 December 2014 in Cabinet Room 'B' - The Diamond Jubilee Room at County Hall, Preston.

I Young
County Secretary and Solicitor

County Hall
Preston