

Regulatory Committee

Meeting to be held on 17 December 2014

Electoral Division affected: Longridge with Bowland
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Wildlife and Countryside Act 1981

- 1) **Claimed deletion of Part of Public Footpath No.129 Chipping, Ribble Valley Borough**
- 2) **Claimed Public Footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane**

File Nos. 804-472 and 804-476

(Annex 'A' refers) (Appendices A ,B,C and D refer)

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Executive Summary

1. The consideration of the Order for part of Public Footpath No. 129 Chipping from Fish House Lane to a point to the north of No. 10 Old Hive Cottages to be deleted from the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-472; and
2. The Order for a Public Footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-476.

Recommendation

1. That both the 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 4) Order 2011' and 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 5) Order 2011' made pursuant to the Committee decision on 23 September 2009 in relation to:

The claimed deletion of part of Public Footpath No.129 Chipping, Ribble Valley Borough; in accordance with File No. 804-472 and the claimed addition of a public footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane; be submitted to the Planning Inspectorate for rejection or non-confirmation for reasons as detailed in the report

2. That a further single Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(i) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act

1981 to delete part of Public Footpath No.129 Chipping and add a public footpath from Public Footpath No. 129 Chipping to Fish House Lane, Chipping, Ribble Valley Borough on the Definitive Map and Statement of Public Rights of Way using the correct notation to depict both the routes on the Order Map and clarifying the modifications to be made to the Definitive Statement should the deletion and addition both be confirmed.

3. That being satisfied that the tests for confirmation can be met the newly made Order be promoted to confirmation.

Background

Committee at its meeting on 23 September 2009 considered the report attached as Appendix 1 and accepted both the applications for the:

- 1) Deletion of part of Public Footpath No. 129 Chipping from Fish House Lane to a point to the north of No. 10 Old Hive Cottages, Ribble Valley Borough from the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-472; and
- 2) Addition of a public footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane, Ribble Valley Borough to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-476.

Subsequently, two separate Orders to delete part of the existing public footpath and to add a public footpath were made on 12 January 2011, deletion Order attached as Appendix B.

No objections were received to the Order (the addition Order)'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 5) Order 2011 which related to the addition of a public footpath to the Definitive Map and Statement. The County Council could in the circumstances confirm this Order.

However, a single objection was made to the Order (the deletion Order) , 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No. 4) Order 2011 relating to the deletion of part of Public Footpath No. 129 Chipping from the Definitive Map and Statement. The objection was on the basis that the matter would have been more properly dealt with by means of a single Order which would have more correctly included the modifications to be made to the existing Definitive Statement. As the objection has not been withdrawn, Lancashire County Council as the Order Making Authority cannot confirm this Order but must submit this Order to the Planning Inspectorate for determination.

Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on Order Maps. This provision was not appreciated by many authorities and notations which were technically incorrect had become standard.

The Order Map for this deletion Order contains the incorrect notation to depict the route to be deleted. The notation which should have been used on the Order Map to show the public footpaths is either a purple line, a continuous line with short bars at intervals or by a broken black line with short intervals. The Order map however, shows the public footpath which is to be deleted as a solid black line instead, and as such this does not comply with the Regulations.

The Planning Inspectorate had in the past accepted many orders with incorrect notations and having appreciated that this was not correct issued their Advice Note 22 entitled "Use of correct notation on definitive map modification orders and public path orders" dated December 2011 (attached as appendix C) in which they advised that *'...an order is considered fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011.'* The Authority had therefore reasonably assumed that when this Order was ready to be referred to the Planning Inspectorate the deletion Order would be accepted and the incorrect notation would be dealt with by the Planning Inspectorate as a modification, as this was an Order that had been made prior to 7 September 2011.

However, without notice, the Planning Inspectorate Advice Note 22 was revised on 1st May 2013, attached as appendix D, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states at paragraph 6, *'all new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded'..and an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.'*

Committee should note that as the Order Map is part of the Order it is not possible for the Order Making Authority to make modifications to the Order once it has been made and advertised without it being referred to the Planning Inspectorate., It is suggested to the Committee that in the circumstances the current deletion Order (attached as appendix B) will not be capable of being confirmed. It is advised that this deletion Order be submitted to the Planning Inspectorate and its rejection be expected.

As the authority still has evidence concerning footpaths at this location, the making of a new Order should properly be considered

It is suggested to Committee that in order to resolve the procedural objection to the confirmation of the deletion Order, it may be considered preferable to remake a single order which deals with both the deletion of part of Public Footpath 129 Chipping and the addition of a public footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane to the Definitive Map and Statement. It is

therefore suggested to Committee that a new Order be made and both the Orders made in 2011 are submitted to the Planning Inspectorate requesting these are not to be confirmed. This course of action would resolve the evidence the authority has regarding footpaths at this location; the issue of the incorrect notation; the concerns raised in the single objection; and enable a more modern Order to be made which would clarify the modifications to be made to the Definitive Statement should the deletion and addition both be confirmed.

Committee it advised that no further evidence has come to light or information from any objector which would alter the evaluation of evidence and recommendations made in the Committee Report of 23 September 2012, attached as appendix A and Committee should note that the content of the report has not been repeated for the purposes of this report however; the entire report considered by Committee on 23 September 2009 is applicable and as a result Committee should note that all the advice and assessment of the evidence will need to be considered again in deciding this matter.

Taking all the evidence into account it is suggested to Committee to accept both claims and to make a single order dealing with both the deletion of part of public footpath No. 129 Chipping and the addition of a public footpath from public footpath no.129 Chipping to Fish House Lane, Ribble Valley Borough. Committee should note the new Order, if made would be promoted to confirmation.

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 File Ref: 804-472 804-476		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A