

Regulatory Committee

Meeting to be held on 28 September 2016

Electoral Division affected: Fylde South

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a Byway Open to all Traffic on Highgate Lane, Bryning with Warton, Fylde

File No. 804-580 (Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal Officer, County Secretary and Solicitors Group, megan.brindle@lancashire.gov.uk

Jayne Elliott, 07917 836626, Public Rights of Way, Planning & Environment Group, Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the addition of a byway open to all traffic on part of Highgate Lane, Bryning with Warton, Fylde, in accordance with file no. 804-580.

Recommendation

1. That the application for a byway open to all traffic on part of Highgate Lane, Bryning with Warton, Fylde, to be shown on the Definitive Map and Statement of Public Rights of Way and shown on the Committee plan between points A - B, in accordance with File No. 804-580, be not accepted.

Background

Highgate Lane is situated off Lytham Road (A584) in the parish of Bryning with Warton, Fylde District and provides access to BAE Systems at Warton.

In June 2016 an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a byway open to all traffic on part of Highgate Lane on the Definitive Map and Statement of Public Rights of Way.

The application was made by solicitors acting on behalf of BAE Systems because the County Council List of Streets (legal record of publicly maintainable highways) recorded only the first 41 metres of Highgate Lane from the junction with Lytham Road as a publicly maintainable highway and did not record the route shown on the Committee plan between point A and point B as a public vehicular highway.

The application was supported by the submission of The Stopping of Highways (County of Lancaster) (No. 5) Order, 1959 and having examined the Order it appears

that Highgate Lane was accepted to be a public vehicular highway in the 1950s and that part was stopped up in relation to the development of the BAE site at Warton.

The Order did not stop up the first 80 yards (73 metres) of Highgate Lane from the junction with the Lytham Road (the A584) and no subsequent orders have been found stopping up any additional parts. It is therefore considered that the first 73 metres (including the route between point A and point B) is still a public vehicular highway.

On the basis of the evidence and considering the Order referred to above the County Council's highway record known as the List of Streets has subsequently been amended to show the first 73 metres (80 yards) of Highgate Lane from the junction with Lytham Road (A584) as a public vehicular highway i.e. so as to now include the section of Highgate Lane that is the subject of this Definitive Map Modification Order application.

On site the application route is indistinguishable in appearance and use from the rest of Highgate Lane and from other tarmacked highways carrying vehicular traffic nearby.

Consultations

Fylde Borough Council and Bryning-with-Warton Parish Council have been consulted and to date no response has been received it is assumed they have no comments to make.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application the applicant has provided a copy of the Ordnance Survey Map dated 1909 and a copy of the Stopping up Order (No.5) 1959 No.542.

They have also provided the following information:

History of the Road

Highgate Lane has been in existence since at least 1909 as shown on the Ordnance Survey Map/ Prior to 1959 Highgate Lane ran approximately 300 metres south-east from Lytham Road to the junction at what formerly comprised the southern part of Mill Lane.

On 19 March 1959, the southern part of Highgate Lane was stopped up by the Stopping Up of Highways (County of Lancaster) (No.5) Order 1959 No. 542. The plans show that Highgate Lane was stopped up approximately up to the point where the entrance gate to the BAE site is now located. The plans clearly show the remaining part of Highgate Lane was not stopped up by the Order and therefore it continued to exist as a highway.

The case of Dawes Hawkins [1860] 141 ER 1399 established the legal maxim of "once a highway always a highway". This means that once a highway comes into existence, it exists in perpetuity and cannot be extinguished nor diminished by disuse unless and until it is formally and legally stopped up.

We have not been able to find any evidence which shows that the Road was ever formally / legally stopped up as a highway. Unless it can be proven otherwise, the Road must still continue to exist as a highway.

Use of the Road

In addition the BAE Site has been owned by BAE (and its predecessors) for over 60 years. It is commonly known that a public right of way over the Road has always been exercised by the general public and also by the employees and visitors of BAE as a means of accessing the BAE Site.

The entrance gate to the BAE site records in the region of 3,000 vehicle movements per day on the Road. Therefore, there is clearly sufficient use of the Road by the public in order to establish that on the balance of probabilities a public right of way subsists on the Road.

Amending the Definitive Map and Statement

As the Road never ceased to exist as a highway and because and because a public right of way has been exercised on the Road for an extensively historic period, LCC's Definitive Map and Statement is required to be amended to show that a public right of way subsists on the Road.

No other responses have been received.

The Law - See Annex 'A'

In Support of Making an Order(s)

It is considered that there is insufficient evidence in favour of making the Order sought

Against Making an Order(s)

That the route is unable to fit the description of a Byway Open to All Traffic

Conclusion

It is considered that Highgate Lane is now correctly recorded on the List of Streets as a publicly maintainable highway, i.e. is recorded consistently with the vehicular highway network.

It is the case that highways recorded on the record held pursuant to Section 36 Highways Act – the List of Streets - can also be recorded on the Definitive Map. The List of Streets records public maintainability. The Definitive Map records status of

the routes which are recordable as footpath, bridleway restricted byway or Byway Open to All Traffic. Byways Open to All Traffic are a particular type of vehicular highway of a particular character such that they can be included in the Definitive Map and Statement. Vehicular highways which cannot be classed as Byways Open to All Traffic cannot therefore be recorded on the Definitive Map but can, if publicly maintainable, be recorded on the List of Streets.

This claimed route is now recorded on the List of Streets and Committee is advised to consider whether this section of route should also be recorded as a Byway Open to All Traffic on the Definitive Map and Statement.

It is advised that as it is a tarmac public carriageway mostly used by mechanically propelled vehicles, with an adjacent footway it does not appear to meet the definition of a byway open to all traffic in section 66 of the Wildlife and Countryside Act 1981, "... but which is used by the public mainly for the purposes for which footpaths and bridleways are so used" and the Planning Inspectorate Rights of Way Section Advice Note 8 says "The test for a carriageway to be recorded on the Definitive Map and Statement as a BOAT relates to its character or type." It is suggested that this section of Highgate Lane is not of the character of a public path – it is indistinguishable in appearance and use from the rest of Highgate Lane and from other tarmac all traffic streets nearby.

It is advised that given the nature of this route it would be incorrect to record the route as a byway open to all traffic and it is therefore recommended that the application to change the Definitive Map and Statement be not accepted.

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: 804-580	Various	Megan Brindle, 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A