

**THE LANCASHIRE COUNTY COUNCIL
WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III
LANCASHIRE COUNTY COUNCIL**

**THE LANCASHIRE COUNTY COUNCIL WATERY LANE FROM HAUNDERS
LANE TO LIVERPOOL ROAD, MUCH HOOLE DEFINITIVE MAP MODIFICATION
ORDER 2023**

STANCE

The Lancashire County Council, following the decision of the Regulatory Committee on 25 January 2023, are supporting the above Order and will continue to support the Order if an Inquiry or Hearing is held.

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 25th January, 2023 at 10.30 am in
Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	A Clempson
T Aldridge	M Clifford
J Burrows	S Clarke
A Cheetham	S Whittam
D Howarth	S Barnes
J Parr	

To commemorate Robert Burns' birthday, County Councillor Clempson recited a passage from his epigram, Rough Roads.

1. Apologies

No apologies for absence were received.

Temporary replacements

County Councillor Clarke replaced County Councillor Cox.

County Councillor Barnes replaced County Councillor Oakes.

County Councillor Whittam replaced County Councillor Hosker.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 16 November 2022

Resolved: That the minutes of the meeting held on 16th November 2022 be confirmed and signed by the Chair.

Matters Arising

The Chair reported that the Political Governance Working Group at their meeting on 18th January had approved that Regulatory Committee training should be mandatory and that a suitable venue was being sought. Committee Members were asked to email their preference for either a Monday or a Friday to Democratic Services as there were fewer meetings on these days.

In relation to Calderstones Cemetery, County Councillor Clempson reported that he was going to visit the site with a high-ranking serving officer to generate some publicity around the issues with accessing the cemetery.

4. Guidance

A report was presented providing guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980.

Resolved: That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted, with Annex A being the one relevant to the items on this agenda.

5. Progress Report on Previous Committee Items

A report was presented providing an update on the progress made in relation to matters previously considered by Committee.

Committee noted that although the term 'applications' had been used for convenience, these were not all formal applications made under Schedule 14 of the Wildlife and Countryside Act 1981 but included some cases where sufficient evidence had been discovered or presented to the county council to indicate an investigation was appropriate.

Committee noted that the full list of Definitive Map Modification Orders was available on the county council's website and that a report detailing the progress on all applications – including public path diversions, creations and extinguishments - had been scheduled to be presented to this meeting. However, due to staff shortages, the full list would be presented at the March meeting and thereafter, at the first Committee meeting of every calendar year.

Resolved: That the report be noted.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order The Lancashire County Council Footpath from Aspen Lane to Mill Lane near West End Primary School, Oswaldtwistle, Definitive Map Modification Order 2021



A report was presented on an Order for the addition to the Definitive Map and Statement of a Footpath from Aspen Lane (also recorded as Bridleway Oswaldtwistle 300) to Mill Lane (also recorded both as Footpath Oswaldtwistle 23 and F6365) south west of West End Primary School.

An application under Schedule 14 of the Wildlife and Countryside Act 1981 had been received to record on the Definitive Map and Statement of Public Rights of Way a public footpath from Aspen Lane to Mill Lane, and a decision made by Regulatory Committee in June 2021 to make an Order in accordance with the application and subsequent investigation.

Committee had resolved that the Order be brought back before Committee, once the Notice of Making had been served and the notice period elapsed, in order to decide whether the confirmation test was able to be satisfied.

It was reported that the Order had now been made and notified, and that no adverse responses had been received to the making of the Order, by way of objections or any other representations.

Given the fact that the path was open and available and there had been a lack of objection and no further evidence of any lack of intention to dedicate, it was suggested to Committee that it may now be considered that there was sufficient evidence that a footpath existed in law, and that the confirmation test could be satisfied on balance and the Order should be confirmed. As no objections had been received, the county council as Surveying Authority was able to confirm the Order as unopposed.

Resolved: That the Order made to record a public footpath from Aspen Lane to Mill Lane be confirmed.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrade to bridleway of footpath from Haunders Lane to Liverpool Road,
Much Hoole**

A report was presented on an application to upgrade part of Footpath 7-8-FP2 from Haunders Lane to Liverpool Road, Much Hoole to bridleway on the Definitive Map and Statement of Public Rights of Way.

A site inspection had been carried out in June 2020 and it became obvious that, although the application referred to an upgrade of the footpath, this footpath mostly ran alongside, not actually along the historical line of what was once known as Watery Lane.

Several maps, plans and other documents had been examined to discover when the application route and historical route came into being, and to try to determine what their status may be.

Looking at the application route, it was suggested that the evidence indicated that section A-B was part of the historical route, and that the evidence was sufficient to



infer that this section carried bridleway rights as part of the historical route (see below). The remaining part of the application route B-C-E-F followed the black dashed line on the committee plan and from points B to F was not within the old boundaries of the historical route. The evidence showed that the application route B to F as a pedestrian route was documented as such from the 1890s, and recorded as footpath on the Definitive Map and Statement. It was suggested to Committee that there was insufficient documentary evidence to support a finding of dedication of bridleway rights on B-F and insufficient evidence for an order to be made for this part of the application route.

Looking at the historical route, having found evidence of a historical route along A-B and then B-G shown marked green on the Committee plan, it was suggested that how it was documented historically on balance was sufficient evidence from which to infer that it carried at least bridleway rights from many decades ago, and that Committee may be satisfied that an Order be made that this historical route be added to the Definitive Map and Statement as a bridleway, which would also include an upgrading to bridleway of section A-B of the application route.

Due to an error in the wording of the Recommendation in the Committee report, an amended Recommendation (ii) was proposed and it was therefore:

Resolved:

- (i) That the application to upgrade part of Much Hoole Footpath 7-8-FP2 to bridleway be accepted in part on section A-B.
- (ii) That an Order(s) be made under the Wildlife and Countryside Act 1981 Section 53 to record bridleway on the Definitive Map and Statement on section A-B on the Committee plan and section B-C-D-G marked green on the Committee Plan.
- (iii) That being satisfied that the test for confirmation can be met the Order(s) be promoted to confirmation.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with Hest**

A report was presented on an application for the addition of a bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with Hest to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan between points A-B-C-D-E-F-G-H.

A site inspection had been carried out in October 2022.

Various maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be.



Committee were informed that, whilst the route was shown on several maps where the public might gain access to the route, there were some inconsistencies between maps, with the whole route not shown on subsequent versions and, ultimately, there was an absence of 'sufficient evidence' as to public rights. This view had been reached on the evidence before the Opinion of Counsel had been received. Committee were referred to the Opinion provided by Counsel Ruth A. Stockley dated 14th December 2022 to the prospective landowner, which made entirely plausible conclusions in the circumstances and found insufficient evidence of bridleway dedication. Ms Stockley referred to case law relevant to the matter.

On balance, and given the nature of the evidence, Committee were advised that the evidence of the application route having become a public bridleway was insufficient. Respectfully, it could not be asserted that a bridleway “subsisted” or was “reasonably alleged to subsist” and the recommendation to Committee was therefore that no Order be made, based on the evidence available.

Committee were informed of a typographical error in the Recommendation of the report which should have read 'Hasty', not 'Hast'. It was therefore:

Resolved: That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Rakes Head Lane to Hasty Brow Road, be not accepted.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Wanes Blades Road to Deans Lane, Lathom**

A report was presented on an application which was for the addition of a Restricted Byway (not Bridleway as referred to in the Committee papers) from Wanes Blades Road to Deans Lane, Lathom to the Definitive Map and Statement of a Bridleway, as shown on the Committee plan attached to the agenda papers between points A-B-C-D.

Committee were informed that the Committee report should have referred to the application being for 'restricted byway' rather than 'bridleway'. The Chair read out the definition of restricted byway from Annex A of the guidance. This did not affect the evidence considered in this matter.

Members were reminded that this application had been brought to the November 2022 Committee meeting but that Committee had deferred a decision on this to allow for a revised report to be presented, following the discovery of additional evidence. It was confirmed that the applicant had been informed that the application had been deferred.

A site inspection had been carried out in July 2021.

A variety of maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be.



Committee were advised to consider the position balancing what the documentary evidence showed. It was of note that, in 1778-1779, the route was specifically referred to in the Inclosure Award as an intended private way or road and, thereafter, whilst the route was shown on numerous maps where the public might gain access to the route, there was an absence of 'sufficient evidence' as to public rights.

On balance and given the nature of the evidence, Committee were advised that the evidence of the application route having become a public route was insufficient and the recommendation was that no Order be made, based on the evidence available.

As the Committee report referred to bridleway and not restricted byway, an amended Recommendation was proposed and it was therefore:

Resolved: That the application for the addition of a restricted byway from Waness Blades Road to Deans Lane be not accepted.

10. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Recording Bridleway on First Terrace, Sunderland, Overton

The Chair informed Committee that a television programme 'Villages by the Sea' had been shown in August 2022, on which an archaeologist had revealed the story of Sunderland Point. The Chair would send a link out to Committee for their interest.

A report was presented on an application for the addition of bridleway and upgrading of footpath to bridleway along First Terrace, Sunderland, Overton on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda between points A-B-C-D.

A site inspection had been carried out in June 2022.

A variety of maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be.

It was reported that between point A and point A1, the application route was recorded as a publicly maintainable highway on the 'Handover' Map. In 1929, the responsibility for district highways passed from rural district councils to the county council and 'Handover' maps had been drawn up to identify those highways within the county which were, immediately before the handover, maintainable by rural district councils as highway authorities.

The county council was required to maintain, under section 36 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' were maintainable at the public expense. The publicly maintainable highway (Main Street) referenced as route 2/133 was shown on the handover map ending at the mean high water mark. However, the mark was much closer to Gravel Cottage than on modern Ordnance Survey mapping which was used to show the extent of the adopted public highway records, which showed it as far as the modern day mean high water mark – which was approximately 40 metres shorter than the route recorded in 1929. For this reason, Lancashire County Council Highways team had been requested to update



their records to include this section of the application route A to A1, as part of the publicly maintainable vehicular highway (Main Street).

As previously reported, records were being updated to show that the route A-A1 was vehicular highway maintainable at public expense and no order was recommended in respect of this part of the application route.

Committee were advised to consider whether, on the balance of probability, the evidence showed that the application route at point A1-B had public bridleway rights and also whether, on the balance of probability, the evidence showed that the existing public footpath at point B-D ought to be shown as a public bridleway and that the Definitive Map and Statement required modification to reflect this.

Committee were also advised that the evidence was sufficient, on balance, to show that the application route from point A1-D had public bridleway rights. It was therefore recommended to make an Order as set out in the report's Recommendation and that it be promoted to confirmation.

Resolved:

- (i) That the application for the addition of a bridleway and upgrade of footpath to bridleway at First Terrace, Sunderland, in the Parish of Overton be accepted in part.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to record a bridleway on the Definitive Map and Statement of Public Rights of Way along First Terrace, Overton as shown on Committee Plan between points A1-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

11. Urgent Business

There were no items of Urgent Business.

12. Date of Next Meeting

Resolved: It was noted that the next meeting would be held at 10.30am on Wednesday 8th March 2023 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston



Notice of Decision

Definitive Map Modification Order

Wildlife and Countryside Act 1981

The Definitive Map and Statement of Public Rights of Way for the County of Lancashire

Name and Address of Applicant

British Horse Society, Care of Unit 33893, PO Box 4336, Manchester, M61 0BW

Particulars

File number: 804-626 (888.2184)

Date of determination: 25 January 2023

Modification Proposed

Upgrade to bridleway of footpath from Haunders Lane to Liverpool Road, Much Hoole.

Particulars of the Decision

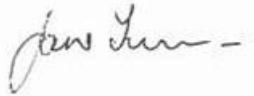
In pursuance of their powers and duties under the Wildlife and Countryside Act 1981 and in accordance with Section 53(5) and Schedule 14 of the 1981 Act, Lancashire County Council have investigated the matters set out above.

Notice is hereby given that Lancashire County Council have determined to make an Order to modify The Definitive Map and Statement of Public Rights of Way for the County of Lancashire in accordance with part of the application route in addition to the recording of bridleway rights along the historic route nearby.

The reason for the County Council's decision is:

The Regulatory Committee, having taken all relevant evidence into account, determined that on the basis of the documentary evidence submitted to committee dedication could be inferred at common law.

Date: 28 February 2023

Signed: 

(Principal Lawyer for and on behalf of the
Director of Corporate Services)

NB: Important guidance notes are provided overleaf

Laura Sales
Director of Corporate Services
Christ Church Precinct
County Hall
Preston
PR1 8XJ

Guidance Notes

1. Where the County Council decide **to make an Order**, steps will be taken to prepare the Order to bring this decision into effect. At that time, a copy of the Order and plan together with a Notice giving details of the Order will be sent to you and details will also be published in the local press and displayed on site.
2. It is important to note that this Order has no legal effect until such time as it has been confirmed by the Local Authority and until that time, the route has the same legal status as it does today.
3. Where the County Council decided **not to make an Order**, the Applicant may, in accordance with Paragraph 4 to Schedule 14 of the Wildlife and Countryside Act 1981, **AT ANY TIME WITHIN 28 DAYS AFTER THE SERVICE ON HIM OF THE NOTICE OF THE DECISION**, serve a Notice of Appeal against that decision on the Secretary of State and the County Council.

4. Your appeal should be made to:

Rights of Way Team,
The Planning Inspectorate,
Room 3/25, Hawk Wing,
Temple Quay House,
2 The Square,
Temple Quay,
Bristol
BS1 6PN

5. A copy of the Notice of appeal must also be sent to the County Council:

Legal and Democratic Services
(REF: LSG4/PROW/SM18/888.2184)
County Hall
Preston
PR1 8XJ

6. If, on considering the Appeal, the Secretary of State considers that an Order should be made, he will direct the County Council to make an Order accordingly.