

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

**THE LANCASHIRE COUNTY COUNCIL RESTRICTED BYWAY
BETWEEN LIVERPOOL ROAD AND NORTHERN AVENUE, MUCH
HOOLE DEFINITIVE MAP MODIFICATION ORDER 2022**

STANCE

The Lancashire County Council, following the decision of the Regulatory Committee on 15 September 2021, 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, 15th September, 2021 at 10.30 am in Committee Room 'A' - The Tudor Room, County Hall, Preston

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	C Haythornthwaite
T Aldridge	D Howarth
J Burrows	J Parr
A Cheetham	J Oakes
L Cox	A Clempson
M Goulthorp	

1. Apologies

There were no apologies for absence.

Temporary changes

The Chair welcomed County Councillor Alf Clempson to the Committee.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 23rd June 2021

Resolved: That the minutes of the meeting held on 23 June 2021 be confirmed and signed by the Chair.

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.

The Committee's attention was drawn to the addition of a paragraph to Annex B in relation to Public Path Diversion Orders 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.

5. Progress Report on Previous Committee Items

A report was presented providing a summary of the progress made on Definitive Map Modification Order applications, the data of which had been extracted from the statutory register on 4th June 2021.

The Chair pointed out that the progress reports included updates on both previous and future Committee items and that it was intended to include all matters relating to the Wildlife and Countryside Act 1981 and the Highways Act 1980.

County Councillor Goulthorp stated that some of the DMMO applications awaiting submission to the Planning Inspectorate in his division had been outstanding for a long time. David Goode explained that this was an onerous process, especially for the legal team who had to factor in the possibility of these applications leading to a public inquiry or hearing. The applications were not all sent to the Planning Inspectorate straight away but had to be timetabled in without impacting on similar other applications. A high number of Definitive Map Modification Order applications were received with only a small number of officers to deal with them. The county council were currently looking to increase the amount of officer time to deal with these applications.

Resolved: That the report be noted.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway on Snuff Mill Lane, Stodday, Lancaster

A report was presented on an application for the addition of a bridleway along the unrecorded section of Snuff Mill Lane to the Lune Estuary Path at Stodday near Lancaster, to be added to the Definitive Map and Statement of Public Rights of Way.

The Committee noted that the application route was approximately 425 metres long and had been described by the applicant as terminating at the junction with the Lune Estuary Path. However, when investigating the application, it had become apparent that the historical route of Snuff Mill Lane extended as far as the salt marsh and did not stop at the railway (now the Lune Estuary Path). The route under investigation was therefore that as shown on the Committee Plan attached to the agenda papers, between points A-B-X-C-D, and was approximately 475 metres long.

A site inspection had been carried out in October 2020. Since that time, the Parish Council had undertaken work to alleviate the flooding on part of the route.

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 noted that the application had been made based entirely on historical map and documentary evidence and that no user evidence was available.

Details of the evidence examined in support of making an Order were provided to Committee. There was no particular evidence against making an Order.

It was reported that the application was for a bridleway but Committee were advised that the evidence indicated that the route was a vehicular public highway. The Natural Environment and Rural Communities Act 2006 would have extinguished any mechanically propelled vehicular rights and it was advised that the appropriate status to be recorded would be restricted byway.

Resolved:

(i) That the application for the addition of a bridleway along the unrecorded section of Snuff Mill Lane to the Lune Estuary Path, be accepted subject to the recording of restricted byway rights and inclusion of the section of the historical route crossing the former railway (Lune Estuary Path) to provide access to the salt marsh.

(ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a restricted byway along Snuff Mill Lane from the section recorded as U11870 to the salt marsh as shown on Committee Plan between points A-B-X-C-D.

(iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Restricted Byway along Limers Lane, Great Harwood**

A report was presented on an investigation into the existence of public rights of access along Limers Lane, Great Harwood, as shown between points A-B-C-D on the Committee plan attached to the agenda papers.

Committee noted that it had been brought to the attention of officers that Limers Lane, between Blackburn Old Road and Clinkham Road, Great Harwood was not recorded on the Definitive Map and Statement of Public Rights of Way, and was not recorded on the county council's List of Streets as a publicly maintainable highway.

Having looked at the fact that the route had been included on a number of old commercial maps, officers considered that the route may in fact be a public highway and that its legal status should be investigated.

A site inspection had been carried out on 1st February 2021 at which whilst largely out of repair, the bounded route appeared to be one of some antiquity which would, if maintained, be wide enough to be capable of being used by vehicles.

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.

County Councillor Howarth queried how this matter had to come to light and was concerned about the amount of officer time involved with the investigation. Committee were advised that a county council officer had come across this issue, whilst dealing with reports about two public footpaths that linked to the route. It was explained that the Public Rights of Way Team tried to prioritise routes involving potential restricted byways and bridleways, due to the public benefit to the greatest number of people.

The Chair reported that on the recent site visit, the route had been mown and was well cared for, with a wide path, making the route much easier to walk.

The Committee noted that the documentary evidence was supportive of the route under investigation being a very old vehicular highway and that the rights had never been stopped up. By virtue of the Natural Environment and Rural Communities Act 2006, the public rights for mechanically propelled vehicles had been extinguished and the appropriate status for the old vehicular route to be recorded was advised to be restricted byway.

CC Oakes asked that, if the Recommendation was accepted by Committee, what would the required standard for this path be. It was reported that as the lane was in a rural location and likely to be used by walkers, cyclists and horseriders, it would be maintained at an appropriate level for these users.

Resolved:

- (i) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to record on the Definitive Map and Statement of Public Rights of Way a restricted byway along Limers Lane, Great Harwood as shown on Committee Plan between points A-B-C-D.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Bridleway between Liverpool Road and Northern Avenue, Much
Hoole**

A report was presented on an application for the upgrading of existing public footpath to bridleway from Liverpool Road to the junction with Northern Avenue,

Much Hoole, on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-H.

A revised second page of the Committee plan is attached due to a slight error in the labelling of the letters. It should be noted however, that all the information in the report considered by Committee was correct and there is no change to the route or it's length.

Committee noted that the application was for the route recorded as Footpath 7-8-FP30 and part of Footpath 7-8-FP29 to be recorded as bridleway, and that the route D-X as shown on the Committee Plan had not been included on the application.

It was reported that there was a discrepancy between what was recorded as public footpath on the Definitive Map and Statement and what was thought to exist historically.

A site inspection had been carried out in June 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. The investigation had been carried out based entirely on historical map and documentary evidence with no modern user evidence submitted.

Details of the evidence examined both in support of, and against, making a Order were provided to Committee.

Committee were advised that this was a finely balanced evaluation, given the limited evidence pre-1890.

County Councillor Salter asked that, if the Recommendation was approved, would Committee have the opportunity to consider a further Order for a more suitable route. Committee were informed that this would be a Diversion Order if public rights were shown to exist and also if the alternative route was suitable for the public to use. However, it was reported that the route on the ground seemed to be accepted by the public, and that they would continue to use the route available and may not be aware of the historical route.

County Councillor Howarth asked who was responsible for keeping paths safe and accessible if they were subject to erosion, noting that, in this case, the Parish Council had carried out the repairs. Committee were advised that if the path was publicly maintainable, then the county council would be responsible for maintenance as Highways Authority. It was noted, however, that any maintenance issues should not be taken into account when deciding whether or not public rights existed.

Committee were advised that if they were content there was sufficient evidence of an old vehicular highway between A and H, the Natural Environment and Rural Communities Act 2006 would have extinguished modern mechanically propelled

vehicular rights, leaving the route to be appropriately recorded as a restricted byway.

In addition, if Committee were content that there was sufficient evidence of an old pre-1890 vehicular highway A-H, they were invited to consider that the line of that highway was along the historical line noted on the Committee Plan, rather than the Definitive Map line of 7-8-FP 30 between points D-E.

Resolved:

(i) That the application for to upgrade 7-8-FP 30 and part of 7-8-FP 29 to bridleway on the Definitive Map and Statement of Public Rights of Way be accepted save for rights for restricted byway and section D to E instead be an addition of restricted byway on a different line instead of an upgrade of part of 7-8-FP30.

(ii) That an Order be made pursuant to Section 53 (2)(b) in consequence of events specified in Section 53(3)(b) and/or Sections 53(3)(c)(i) and 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a restricted byway along the route marked red as shown on Committee Plan between points D and E and marked "historical route" on the Committee plan and to upgrade to restricted byway parts of 7-8-FP 30 and 7-8-FP 29 shown between points A and D also E and H on the Committee Plan.

(iii) That being satisfied that the higher test for confirmation can be met in respect of the addition and the test for confirmation be met in respect of the upgraded sections, the Order be promoted to confirmation.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Investigation into public rights from Mill Hill Farm to Haunders Lane,
Much Hoole**

A report was presented on an investigation into an application to upgrade a footpath and add a bridleway from Mill Hill Farm off Haunders Lane, Much Hoole, through Marsh Farm to Hannings Farm, on the Definitive Map and Statement of Public Rights of Way, as shown between points A-B-C-D-E-F-G on the Committee plan attached to the Agenda papers.

A site inspection had been carried out in April 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. The investigation had been carried out based entirely on historical map and documentary evidence with no modern user evidence submitted.

Details of the evidence examined in support of making an order were provided to Committee. There was no particular evidence provided against making an Order.

CC Clempson queried whether a better route could be used, given the fact that the route went through Marsh Farm. Committee were informed that this could not be taken into account when deciding solely whether public rights existed or not, but that a separate application to divert the route would be made if the route was not considered convenient for the public and the landowner.

It was pointed out to Committee that the route between points B and G going through Marsh Farm was currently recorded as a public footpath. In addition, whilst perhaps not an obvious through route for the public connecting to places of interest, it appeared it was a route of some antiquity and that it was considered to be and used in the past as a public through route.

In conclusion, Committee were advised that there was sufficient evidence from which to infer a vehicular highway was already dedicated on this route many many decades ago, and that they may consider it appropriate that an Order be made for the route marked A-B to be added to the Definitive Map and Statement as a restricted byway, and for the route marked B-G to be upgraded from a footpath to restricted byway on the Definitive Map and Statement, and that the evidence was sufficiently strong to decide that the Order be promoted to confirmation.

Resolved:

- (i) That the application for the addition of a bridleway and upgrading of part of Footpath 7-8-FP3 be accepted with modification to recognise carriageway rights.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b)) and Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a restricted byway and upgrade a footpath to restricted byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G.
- (iii) That being satisfied that the higher test for confirmation can be met the Order(s) be promoted to confirmation.

**10. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Hothersall 13 at Welch
House Barn, Hothersall, Ribble Valley Borough**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Hothersall 13, Ribble Valley Borough. The applicants were the prospective owners of Welch House Barn, Hothersall Lane, Longridge.

The length of existing path to be diverted was shown by a bold continuous line and marked on the Committee plan attached to the Agenda papers as A-B, and the proposed new route shown by a bold broken line and marked A-C-B.

The Committee noted that the recorded alignment of the footpath was along the driveway, through the residential and private garden areas of the property.

The Committee were informed that the new footpath would provide improved, open views of the countryside and an obvious, safe and convenient footpath away from the driveway, buildings and private garden area at Welch House Barn.

CC Parr queried why the issue of the footpath's route had not arisen when planning permission was being sought for the annex. It was reported that although the footpath should have been diverted prior to the construction of the annex, it was not uncommon for this not to happen.

CC Howarth expressed concern that Committee were being asked to take a decision on this application, without having sight of any consultation responses. In this case, a previous diversion application had been received but the informal consultation response had concluded that the diversion was too long so the route had been amended to what was now being recommended. It was therefore not expected that any adverse comments or objections would be received for the new proposed route. Although the informal consultation stage was recommended and not mandatory, this was undertaken in order to try and avoid any objections being received at the formal consultation stage and, subject to no objections being made at the informal stage, the recommendation to Committee was that an Order be made. However, Committee were advised that should any adverse comments or objections be received, then these would come back to Committee for consideration.

David Goode informed Committee that where applications were received that were in the interest of the landowner rather than being of benefit to the public, then the landowner would bear the costs for the works.

CC Salter appreciated that the new route had some significant advantages but expressed concern that some informal consultation responses were still awaited and asked that applications be brought to Committee once deadline dates had passed. It was reported that this request would be taken on board for future reports.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Hothersall 13, from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked A-C-B on the attached map.

(ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.

(iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

**11. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Briercliffe 163 at Musty
Haulgh Barn, Granville Street, Burnley Borough**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Footpath Briercliffe 163 at Musty Haulgh Barn, Granville Street, Burnley.

The length of existing path to be diverted was shown by a bold continuous line and marked on the Committee plan attached to the Agenda papers as A-B, and the proposed new route was shown by a bold broken line and marked A-C-B.

The Committee noted that the recorded alignment of the footpath crossed a private garden, courtyard, a paddock and that part of the footpath was obstructed by a barn that had been erected before the current owners purchased the property. A footpath around the barn had been provided as a temporary measure, to ensure public access through the site, albeit not on the legal alignment.

Committee were informed that, since the report had been written, the following amendment needed to be made:

Page 291 Description of new footpath

Footpath as described below and shown by a bold broken line A-C-B on the attached map. (All lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A	C	W	150	3 *	Grass
C	B	S	175	3	Stone surface

*** With the exception of a length of 1m located 10m to the west of Point A, where the width will be limited to 1.6m.**

Variation to the particulars of the path recorded on the Definitive Statement

'The 'Other Particulars' be amended to read:

"There are no limitations between SD 8650 3442 and SD 8635 3425 and the width between those points will be 3 metres **'with the exception of a length of 1m located 10m to the west of Point A, where the width will be limited to 1.6m'**."

It was proposed that the new route created by the diversion order A-C-B would have the status of public footpath in the first instance, then subsequently, it was proposed that Lancashire County Council be asked to consider entering into agreements with the applicants and owners of adjacent land crossed by some of the connecting footpaths, to dedicate a bridleway that would link to the highway network.

Committee noted that, although the diversion would create a longer route, it would be easier to negotiate than the current route and the public would feel more comfortable in not having to pass through the residential and working areas of the farm.

CC Salter appreciated that there was a need for the route to be diverted, but expressed concern that the new route would require some loss of trees and that the current footpath was a much more scenic route than the proposed route which was near to industrial buildings. Subject to whether any other Committee Members shared these concerns, CC Salter stated that he would be minded to ask officers to look at the diversion again and defer the report to a later Committee.

It was reported that since the report had been written, Burnley Borough Council had confirmed they had no objection to the proposal. Briercliffe Parish Council, Burnley Bridleways, the Ramblers Association and the County Councillor for the Burnley Rural electoral division had confirmed they supported the diversion. The letters of support were read out to Committee.

CC Cheetham was pleased to see the collective positive responses from organisations to the consultation, and stated that many horseriders and cyclists had said they would like to see more routes that were easier to use.

CC Oakes commented that it was helpful to have the consultation responses and moved the Recommendation which was subsequently seconded.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Briercliffe 163, from the route shown by a bold continuous line and

marked A-B to the route shown by a bold broken line and marked A-C-B on the attached map.

(ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.

(iii) That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

12. Urgent Business

There were no items of Urgent Business.

13. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 17th November 2021.

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

Application number: 804-627 (888.2185)

Date of determination: 15th September 2021

Modification Applied For

Upgrading of public footpath to public bridleway between Liverpool Road and Northern Avenue, 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 by recording a restricted byway on the application route save for a short section which forms an addition of restricted byway on a different line instead of an upgrade of part of Footpath 7-8-FP30.

The reason for the County Council's decision is:

The Regulatory Committee, having taken all relevant evidence into account were satisfied that the evidence was sufficient on balance that vehicular rights could be inferred to have been dedicated on the route under common law but mechanically propelled rights have been extinguished under the Natural Environment and Rural Communities Act 2006 and what should now be recorded is a restricted byway.

Date: 2nd December 2021

Signed:

A handwritten signature in blue ink, appearing to read "James Turner".

(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:

Director of Corporate Services
(REF: LSG4/PROW/888.2185/SM18)
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.