

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

**THE LANCASHIRE COUNTY COUNCIL DARK LANE, EARBY DEFINITIVE MAP  
MODIFICATION ORDER 2018**

**STANCE**

The Lancashire County Council, following the decision of the Regulatory Committee on 15 November 2017, 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 November, 2017 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

#### Present:

County Councillor Jimmy Eaton BEM (Chair)

#### County Councillors

M Barron	A Clempson
J Cooney	T Burns
I Brown	K Snape
P Steen	L Cox
J Marsh	

#### 1. Apologies

No apologies for absence were received.

County Councillor Loraine Cox replaced County Councillor Bernard Dawson.

#### 2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

#### 3. Minutes of the last meeting

**Resolved:** That the minutes of the meeting held on 27<sup>th</sup> September 2017 be confirmed and signed by the Chair.

#### 4. Guidance

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

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

#### 5. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Application for Recording on the Definitive Map and Statement a Bridleway along Part of Birch Hall Lane, Footpath Earby 38 and Dark

**Lane to County boundary  
File No. 804-507**

A report was presented on an application for recording on the Definitive Map and Statement a public bridleway, along part of Birch Hall Lane, Footpath Earby 38 and Dark Lane to County boundary, in accordance with File No. 804-507.

A previous application under Schedule 14 of the Wildlife and Countryside Act 1981 had been submitted to the County Council in 2009 by Trawden Forest and Border Bridleway Association, for the lane known as Dark Lane, Earby to be recorded on the Definitive Map and Statement as a bridleway.

A corresponding application had also been made to North Yorkshire County Council, comprising the same evidence for the continuation of Dark Lane from the County boundary to be recorded as bridleway, and also for a lane known as Dodgson Lane to be recorded as bridleway. An Order was subsequently made to record Dodgson Lane as a restricted byway but the application for the Yorkshire portion of Dark Lane was rejected. A copy of the report considered by North Yorkshire County Council had been provided with the agenda papers.

Various maps, plans and other documents had been examined with reference to the route under investigation and a site inspection had been carried out on 3<sup>rd</sup> April 2017.

The site evidence supported the view that the application route could have been used, and probably had been used by the public on horseback, and possibly with horse drawn vehicles and mechanically propelled vehicles between points A-B-C. In addition, the site evidence supported the view that the route between points C-D was a very old (sunken) route which was not currently accessible due to fencing and overgrowth. However, if the overgrowth were to be cleared, the route would be wide enough for use by horses and small carts.

The Committee noted that objections to the proposal by Earby Town Council had been addressed in the summary section of the report and, whilst these objections were acknowledged, it was considered that the concerns raised were not relevant considerations under either S31 Highways Act 1980 or under Common Law.

In response to a query, David Goode confirmed that if the Committee were minded to approve the recommendations, then the County Council would be responsible for clearing the route, once the Order had been confirmed.

**Resolved:**

(i) That the application to record on the Definitive Map and Statement, a bridleway along part of Birch Hall Lane, Footpath Earby 38 and Dark Lane to County boundary, in accordance with File No. 804-507, be accepted in part; section C-D shown on the committee plan being accepted as a bridleway and section A-B-C shown on the committee plan being not accepted;

(ii) That an Order(s) be made pursuant to Section 53(2)(b) and Section 53(3)(b) and/or Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, to add a bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points C-D;

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

**6. Wildlife and Countryside Act 1981**  
**Application to upgrade to Bridleway parts of Footpaths Charnock Richard 14 and 15, known as Delph Lane, Chorley Borough**

A report was presented on an application to upgrade to public bridleway, parts of Footpaths Charnock Richard 14 and 15, Chorley Borough (known locally as Delph Lane and shown between points A-B-C-D-E-F-G on the Committee plan provided with the agenda papers), on the Definitive Map and Statement, in accordance with File No. 804-586.

The Committee noted that the whole of the application route was currently recorded as a public footpath, and was accessible as such. The route also provided vehicular access to properties from the A49 (Preston Road) between points A and D, and also from Church Lane to properties between points G to F. The middle section of the route, between point D and point F, did not appear to be used by vehicles, and although overgrowth now restricted the available width, it appeared to have been wider in the past and may have been surfaced with stone and/or cobbles. The route would be accessible on horseback or on a bicycle – although the gap adjacent to the gate at point D was quite narrow – but there was no physical evidence of recent use by either.

Whilst the route had physically existed on the ground as a through route since at least the mid-1800s, and appeared to be capable and wide enough to be used by horses (and bicycles), there appeared to be no map and documentary evidence to conclude that the route was considered to be anything other than a private access road carrying public footpath rights.

A site inspection had been carried out on 7<sup>th</sup> June 2017.

Taking all the evidence into account, it was suggested that the evidence was insufficient to satisfy the criteria of S31, nor sufficient from which to infer landowners' intention to dedicate a bridleway in this matter.

**Resolved:**

That the application to upgrade parts of Footpaths Charnock Richard 14 and 15 to bridleway, on the Definitive Map and Statement of Public Rights of Way for Lancashire, in accordance with File No. 804-586, be not accepted.

**7. Wildlife and Countryside Act 1981  
Claimed public footpath around Glasson Canal Basin, Thurnham,  
Lancaster  
File Ref. Nos. 804/519 and 804/555**

A report was presented on an application for a footpath around Glasson Canal Basin, Thurnham, Lancaster City, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File Nos. 804/519 and 804/555.

The Committee noted that three separate applications comprising a route very similar to that now claimed, had been considered by Committee in 2001, and a copy of this report had been attached to the agenda papers. The Committee had decided that there was insufficient evidence to make a Definitive Map Modification Order to record a route around Glasson Dock Canal Basin as a public footpath. The decision had been appealed by the applicant and subsequently dismissed by the Government Office for the North West stating that, on the balance of probability, there had been insufficient evidence to support the claim.

A further application had been received in 2011 for the addition of a public footpath around part of Glasson Dock canal basin, using a different route to the 1999 application between points A-B and C-E, but followed the exact same route between points B-C-D and points E-F.

After an initial discussion with the applicant about the termination of the application route at point F, it was agreed that the application would not be researched by the County Council until the submission of a second application in 2014, which sought to add a public footpath around the remainder of the canal basin. The additional footpath claimed was identical to the route claimed in 1999, with the exception of the section between points F-G.

It was reported that, whilst both the 1999 and more recent applications consider, to a large extent the same route, there were a few small differences. In addition, the current applicant had submitted evidence not previously considered as part of the previous applications.

The Committee noted that a site inspection had been carried out on 2 May 2017 and that the applicant had submitted a lot of user evidence information in support of the application. The Committee noted that there appeared to be no map and documentary evidence which proved a clear and consistent view that the route around Glasson basin had been created or formally dedicated as a public footpath. Taking all of the evidence into account, the Committee were advised that the dedication of the claimed route as a public footpath should not be accepted.

**Resolved:** That the application for a footpath around Glasson Canal Basin, Thurnham, in accordance with File Nos. 804-519 and 804-555, be not accepted.

**8. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of and Upgrade to Bridleway from Blackwood Road and  
Newchurch Road to Acre Mill Road, Bacup, Rossendale Borough**

A report was presented on an application for the addition of a bridleway and upgrade to bridleway of Footpaths Bacup 651 and 527 (part) from Blackwood Road and Newchurch Road to Acre Mill Road, Bacup, Rossendale Borough on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-520.

The Committee noted that substantial user evidence had been provided by the applicant and that some changes had been made to the site since the application had been submitted. The route in question was a very long route with lots of different access points.

A site inspection had been carried out in February 2017. The Committee noted that the application route consisted of a network of paths exiting onto public vehicular highways at 5 separate points, with parts of the route following alongside the River Irwell. The route was signed and promoted as part of Stacksteads Riverside Park and part was also recognised as the Irwell Sculpture trail.

It was reported that part of the route was recorded as a public footpath (between points B-C and points N-O-J-K-L-M, as shown on the Committee plan attached to the agenda papers). The remainder of the route had no publicly recorded status. Part of the route (between points A-B-C-H-I-J-K-L-M) had been identified as part of the East Lancashire Cycleway but was not currently recorded as a cycleway or bridleway.

**Resolved:**

- (i) That the application for the addition of and upgrade to bridleway, in accordance with File No. 804-565, be accepted in part.
- (ii) That an Order(s) be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a bridleway and upgrade to bridleway Footpaths Bacup 651 and 527 (part) on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-B-C-D-E-G, C-H-I-J-K-L-M and J-ON.
- (iii) That, being satisfied that the test for confirmation can be met the said Order(s) be promoted to confirmation if necessary by submission to the Secretary of State.
- (iv) That the application for sections D-H and E-F be not accepted.

**9. Highways Act 1980 Section 119.  
Proposed diversion of part of Lydiate Footpath 4, West Lancashire  
Borough.  
File Ref: 211-681**

A report was presented on the proposed diversion of part of Lydiate Footpath 4, West Lancashire Borough.

An application had been received from the owners of the land to the east of Green's Lane near to the Leeds and Liverpool Canal Rimmer's Bridge, Lydiate, for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Lydiate Footpath 4.

The Committee noted that the path or way would not be substantially less convenient to the public in consequence of the diversion, as the alternative route was of similar length and gradient to the existing footpath. It was suggested that the alternative route would be more convenient, as it would provide a field edge path, rather than the current situation where the footpath crossed the worked, arable land.

The Committee noted that consultation with statutory undertakers had been carried out and that no adverse comments or objections to the proposal had been received.

The proposed diversion was considered to be expedient in the interests of the landowners, assisting with farming operations, enabling the owners to retain the current layout of the fields and to efficiently manage the land. It was suggested that the diversion would be beneficial to the needs of the agriculture as the proposed alternative route would be a field edge footpath, rather than a cross field path, and would enable the applicants to manager their land more efficiently.

**Resolved:**

(i) That subject to satisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Lydiate Footpath 4, from the route shown by a bold continuous line and marked AB-C-D-E-F, to the route shown by a bold broken line and marked A-C-G on the attached plan.

(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 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.



**10. Urgent Business**

There were no items of Urgent Business.

**11. Date of Next Meeting**

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 17<sup>th</sup> January 2018 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales  
Director of Corporate Services

County Hall  
Preston

## Notice of Decision

### Application for a Modification Order



### Wildlife and Countryside Act 1981

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

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#### Name and Address of Claimant

Trawden Forest and Border Bridleway Association, Hazelgrove Lodge, Black Lane End, Colne, BB8 7ES

#### Particulars of Claim

Claim number: 804/507 (5.37361)

Date of determination of the claim: 15<sup>th</sup> November 2017

#### Modification Claimed

Application for recording on the Definitive Map and Statement a public bridleway, along part of Birch Hall Lane, Footpath Earby 38 and Dark Lane to County boundary

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#### 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 referred to in the Claim set out above.

Notice is hereby given that Lancashire County Council have determined Not 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 claim.

The reason for the County Council's decision is:

The Regulatory Committee, having taken all relevant evidence into account, determined that there is currently insufficient evidence of a dedication able to be deemed or inferred between points C-D.

Date: 14 Dec 2017

Signed: .....  
(Principal Lawyer for and on behalf of the Director of Governance Finance & Public Services)

#### **NB: Important guidance notes are provided overleaf**

Ian Young  
Director of Governance Finance & Public Services  
Lancashire County Council  
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:

Department of the Environment Food and Rural Affairs  
National Rights of Way Casework Team  
Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4WH  
(0191) 2013300

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

Director of Governance Finance & Public Services  
(REF: LSG4/PROW/)  
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.