

## **Lancashire County Council**

### **Regulatory Committee**

**Minutes of the Meeting held on Wednesday, 13th March, 2019 at 10.30 am in Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

#### **Present:**

County Councillor Jimmy Eaton BEM (Chair)

#### **County Councillors**

I Brown	T Aldridge
P Steen	D Howarth
A Clempson	S Clarke
L Cox	B Dawson
J Parr	

#### **1. Apologies**

No apologies for absence were received.

County Councillor Stephen Clarke replaced County Councillor Malcolm Barron.

County Councillor Bernard Dawson replaced County Councillor Terry Burns MBE.

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

The following interests were disclosed:

Item 10 – County Councillor Howarth declared a non-pecuniary interest as he was a South Ribble Borough Councillor.

Item 11 – County Councillor Terry Aldridge declared a non-pecuniary interest as he was a West Lancashire District Councillor.

Item 12 – County Councillor Jimmy Eaton and County Councillor Peter Steen declared a non-pecuniary interest as they were Rossendale Borough Councillors.

#### **3. Minutes of the last meeting**

**Resolved:** That the minutes of the last meeting held on 30<sup>th</sup> January 2019 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.

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

#### **5. Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A (2) Proposed Diversion of part of Bridleway Walton-le-Dale 80, South Ribble Borough**

A report was presented on the proposed diversion of part of Bridleway Walton-le-Dale 80, South Ribble Borough, 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 on the Committee plan attached to the agenda papers.

It was noted that the proposed diversion was part of a wider scheme to carry out improvements to the public rights of way in this area and that it was an important route for recreational use and commuting, and was well used particularly by cyclists and pedestrians.

It was proposed that the surface of the bridleway be improved and that a new track be constructed to segregate users of the bridleway from the agricultural vehicles, therefore improving the safety and enjoyment for bridleway users.

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

The Committee were advised that the effect of the Order was compatible with the county council's 'Rights of Way Improvement Plan'.

#### **Resolved:**

(i) That subject to no unsatisfactory responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Bridleway Walton-le-Dale 80, 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 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 and the county council promotes the order to 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.

**6. Highways Act 1980 - Section 119  
Wildlife and Countryside Act 1981 - Section 53A  
Proposed Diversion of Part of Footpath Hapton 17, Burnley Borough**

A report was presented on an application for the proposed diversion of part of Footpath Hapton 17, Burnley Borough, 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 on the Committee plan attached to the agenda papers.

It was reported that Watson Laithe Farm was a small holding which included a residential dwelling, stables and agricultural buildings. The Committee noted that the footpath currently ran through the property and the diversion, if successful, would move the footpath onto a track that was located outside the curtilage of the residential and working areas of the farm, thereby increasing the privacy and security for the residents, whilst providing a route that was safe and convenient for public use.

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

The Committee were advised that the effect of the Order was compatible with the material provisions of the county council's 'Rights of Way Improvement Plan'.

**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 Footpath Hapton 17, 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 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 and the county council 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.

**7. Highways Act 1980 - Section 25  
Proposed Public Path Dedication Agreement to widen part of  
Footpath Haslingden 386 and to create a public footpath between  
Footpath Haslingden 386 and Footpath Haslingden 395, at Raven  
Shore, Helmshore, Rossendale**

A report was presented on the proposed creation by agreement of a publically maintainable footpath to widen a 185 metre section of existing Footpath Haslingden 386 to 3 metres at Raven Shore, Helmshore, marked B-C on the Committee plan attached to the agenda papers and to create a new 30 metre section of publically maintainable footpath between Footpath Haslingden 386 and Footpath Haslingden 395, marked A-B on the Committee plan.

The Committee noted that the surface of Footpath Haslingden 386 was eroded and that it had deteriorated significantly since the start of 2016 and was now in a poor condition and difficult to use. It was reported that funding had become available to improve the path through the East Lancashire Cycleway project. The new 3 metre wide surface would be constructed using a mix of recycled tyres and aggregate, known as flexible paving, and this would also be used for the new 3 metre wide section of footpath. It was reported that this surface was softer than tarmac and was porous, preventing ice formation.

The Committee were informed that the long term aspiration was for the route to be a bridleway, but that it would remain a footpath until the outcome of the current Definitive Map Modification Order application to record a bridleway along Irongate Lane (Haslingden 387) was known.

The proposal was considered to be a benefit to the public in view of the fact that it would improve the network of public rights of way for pedestrians between Holme Vale and Raven Shore, Helmshore and potentially improve future transportation links for cyclists. In addition, the Committee were advised that the effect of the Order was compatible with the material provisions of the county council's 'Rights of Way Improvement Plan', in that it would be working towards improving access for pedestrians, equestrians and cyclists in Lancashire.

The Committee were informed that flexible paving was currently being used on a trial basis, and that it had received very positive feedback. The Committee requested an update on this once the trial period had finished.

**Resolved:**

- (i) That the proposal for a Public Path Creation Agreement to dedicate an extended width of footpath along 185 metres of Footpath Haslingden 386, at Raven Shore, Helmshore, be accepted.
  
- (ii) That the proposal for a Public Path Creation Agreement to dedicate a new section of footpath between Footpath 386 and Footpath 395, at Raven Shore, Helmshore, be accepted.

(iii) That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between the owner of the land of Footpath Haslingden 386 and Lancashire County Council to dedicate a length of footpath marked in pink on the attached map and annotated A-B-C.

**8. Highways Act 1980 - Section 25 Proposed Public Path Creation Agreement for a Public Footpath along the former railway cutting from Irongate Lane (Haslingden 387) to Lumb Viaduct, Irwell Vale, Rossendale Borough**

A report was presented on the proposed creation by dedication agreement of a publically maintainable footpath along the former railway line between Irongate Lane (Haslingden 387), and Lumb Viaduct, Irwell Vale, Rossendale Borough, marked as A-B on the Committee plan attached to the agenda papers.

It was reported that the creation of the footpath would secure a public right of way for pedestrians and connect the existing Irongate Lane to Lumb Viaduct, which was considered to be a place of public resort. The Committee noted that, whilst it was currently the intention for this route to be dedicated as a footpath, the longer term aspiration was that it be upgraded to a bridleway. However, this was dependant on the current Definitive Map Modification Order application to record a bridleway along Irongate Lane being confirmed.

The proposal was considered to be a benefit to the public in view of the fact that it would improve the network of public rights of way for pedestrians between Lumb Viaduct and Haslingden 387 (Irongate Lane) to the north and further afield between the settlements of Irwell Vale and Strongstry to the east and Holme Vale to the north. It was hoped that the route would also improve transportation links for cyclists in the future, with the agreement covering future cycle and equestrian use.

The Committee were advised that the effect of the Order was compatible with the material provisions of the county council's 'Rights of Way Improvement Plan' in that it would be working towards improving access for pedestrians, equestrians and cyclists in Lancashire.

**Resolved:**

- (i) That the proposal for a Public Path Creation Agreement to dedicate a length of footpath along the former railway line at Helmshore, Rossendale connecting Irongate Lane to Lumb Viaduct, be accepted.
- (ii) That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980, between the owner of the land south of Irongate Lane to Lumb Viaduct, and Lancashire County Council to dedicate a length of footpath marked A-B on the Committee plan.

**9. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from Kellet Road to Dunkirk Avenue, Carnforth  
File Number 804-593**

An application under Schedule 14 of the Wildlife and Countryside Act 1981, for the addition to the Definitive Map and Statement of Public Rights of Way of a public footpath from Kellet Road to Dunkirk Avenue, Carnforth had been considered by the Regulatory Committee on 19 September 2018. A copy of the Committee report had been provided with the agenda papers.

The Committee had resolved that an Order be made to record the application route, shown by a thick dashed line between points A-B-C-D-E-F on the Committee plan, forming part of that report, as a public footpath. However, at the site meeting, it became apparent that the walked line through the quarry site was different to the route shown on the Committee plan between point B and C, with the walked line being further east than was originally shown. It was reported that GPS had been used to plot the trodden route.

Committee was now asked to consider the trodden route and accept the application on the revised line. The plan had been agreed by the applicant as the correct representation of the line to which the evidence of use refers.

Site inspections had been carried out in February 2018 and November 2018.

**Resolved:**

- (i) That the revised plan for the addition to the Definitive Map and Statement of a Public Footpath from Kellet Road to Dunkirk Avenue, Carnforth, in accordance with File Number 804-593, be accepted;
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Public Footpath from Kellet Road to Dunkirk Avenue, Carnforth to the Definitive Map and Statement of Public Rights of Way as shown on the revised Committee Plan between points A-B-C-D-E-F.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**10. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Application to add a Footpath in Howick Hall Wood, Penwortham  
File No. 804-523**

A report was presented on an application for a footpath in Howick Hall Wood, Penwortham, to be added to the Definitive Map and Statement of Public Rights of Way, as shown by a thick dashed line between points A-B-C-D-E-F on the Committee plan attached to the agenda papers.

A site inspection had been carried out in October 2018.

It was reported that the map or documentary evidence examined did not support the existence of the application route, and that nothing found suggested that the full length of the route physically existed, until at some point during which the site was managed as a nature reserve by the Wildlife Trust. Use of the route by the public was considered to have been 'by right' rather than 'as of right'.

It was suggested to Committee that, taking all the information into account, neither deemed dedication under Section 31 Highways Act 1980, nor inferred dedication at common law could be satisfied and that the application should be turned down and no Order made.

It was confirmed that members of the public could still use the route and, as far as officers were aware, there was no suggestion that such access was under threat.

**Resolved:**

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath in Howick Hall Wood, Penwortham, in accordance with File No. 804-523, be not accepted.
- (ii) That no Order be made.

**11. Wildlife and Countryside Act 1981  
Definitive Map Modification Order  
Addition of a Public Right of Way at Lathom High School,  
Skelmersdale, West Lancashire**

At their meeting on 15<sup>th</sup> March 2018, Regulatory Committee had considered an application for the addition to the Definitive Map and Statement of Public Rights of Way, of a restricted byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761, known as Summer Street.

The Committee had resolved that this application be not accepted and the applicant subsequently appealed against this refusal to the Secretary of State. An Inspector was directed to consider this matter and, after examining documentary evidence, user evidence and landowner evidence, the appeal was allowed,

subject to the application route being proposed to be recorded as a footpath, rather than a restricted byway.

The Committee is therefore directed to make an Order under Section 53(2) and Schedule 15 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement for the County of Lancashire, to add a footpath from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761, known as Summer Street, Skelmersdale. However, it is suggested that the Local Authority submit the Order to the Secretary of State for formal determination adopting a neutral stance in this instance, due to Regulatory Committee's original decision not to make an Order, based on the evidence available.

**Resolved:**

- (i) That the report be noted.
- (ii) That, in light of the Inspector's decision to uphold the appeal lodged in respect of file number 804/591, an order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of Way by adding a Public Footpath from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761 (known as Summer Street) as shown by a bold dashed line between points A-B-C-D on the attached plan.
- (iii) That should objections or no objections be received, the county council as order making authority submit the order to the Secretary of State for formal determination and the county council shall notify the Secretary of State that it does not actively support the order and to adopt a "neutral stance" as regards confirmation of the order.

**12. Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from Heald Lane through Weir Lodges to Office Road, Bacup  
File No. 804-603**

A report was presented on an application for the addition to the Definitive Map and Statement of Public Rights of Way, for a footpath from Heald Lane, through Weir Lodges to Office Road, Bacup, as shown by a thick dashed line between points A1-B and A2-B-C-D-E on the Committee plan attached to the agenda papers.

A site inspection had been carried out in October 2018.



It was reported that, despite some inconsistencies in the evidence, overall the user evidence supported 'as of right' use of the application route, by a large section of the public, for the 20 year period under consideration. In addition, Committee were advised that it was reasonably alleged that an intention to dedicate the route as highway may be inferred at common law, and that user evidence demonstrated an acceptance of that dedication.

Although the application was for the addition of a footpath, the user evidence, whilst fully supportive of a footpath, also suggested regular use of the route as a bridleway. 109 user evidence forms had been submitted; 14 had used either part or the full length of the application route with a horse and 22 had cycled along the route on a regular basis. 44 users had reported seeing others with horses and 36 had seen cyclists. Committee was advised that use of the application route on cycle and horse appeared to be at such a level to suggest that the public right of way was a bridleway.

It was reported that whether there was sufficient evidence to find, on balance, that the application route subsisted was more difficult at the present time. It was suggested therefore that while the Order ran its course, there would be an opportunity for the user evidence to be considered in more detail and that, not being satisfied that the higher test for confirming the Order could be met, the matter be brought back to Regulatory Committee to decide what stance to take in respect of confirmation of the Order.

**Resolved:**

- (i) That the application for the addition to the Definitive Map and Statement of a Footpath from Heald Lane through Weir Lodges to Office Road, Bacup in accordance with File No. 804-603, be accepted subject to the recording of additional rights discovered.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to add a Bridleway from Heald Lane through Weir Lodges to Office Road, Bacup to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A1–B and A2–B–C–D–E.
- (iii) That being satisfied that the higher test for confirming the Order can be met, the matter be returned to Regulatory Committee at a later date to decide what stance to take regarding confirmation of the Order.

**13. Urgent Business**

There were no items of Urgent Business.

**14. Date of Next Meeting**

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 26<sup>th</sup> June 2019 in Cabinet Room 'B' – The Diamond Jubilee Room, County Hall, Preston.

L Sales  
Director of Corporate Services

County Hall  
Preston

## Regulatory Committee

Meeting to be held on 13<sup>th</sup> March 2019

Electoral Division affected:  
Skelmersdale West

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order

#### Addition of a Public Right of Way at Lathom High School, Skelmersdale, West Lancashire

#### File Number 804/591

(Annex 'A' refers)

Contact for further information:

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#### Executive Summary

A decision on an appeal made by the applicant, under Section 53 and Schedule 14 of The Wildlife and Countryside Act 1981, against the refusal to make a Definitive Map Modification Order, has been received from the Inspector directed by the Secretary of State for Environment, Food and Rural Affairs to determine the appeal.

#### Recommendation

- (i) That the report be noted.
- (ii) That, in light of the Inspector's decision to uphold the appeal lodged in respect of file number 804/591, an order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of Way by adding a Public Footpath from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761 (known as Summer Street) as shown by a bold dashed line between points A-B-C-D on the attached plan.
- (iii) That should objections or no objections be received, the county council as order making authority submit the order to the Secretary of State for formal determination and the county council shall notify the Secretary of State that it does not actively support the order and to adopt a "neutral stance" as regards confirmation of the order.

## **Background**

File number 804/591 - application for the addition of Restricted Byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761 (known as Summer Street) - Appeal allowed subject to the application route being described as a footpath rather than a restricted byway.

At their meeting on the 15<sup>th</sup> March 2018, the Regulatory Committee considered a report (a copy of which is attached) and resolved that the application be not accepted. The applicant appealed against this refusal to the Secretary of State.

The Secretary of State for Environment, Food and Rural Affairs directed an Inspector to consider the matter. The Inspector examined the documentary evidence, user evidence and landowner evidence and prepared a report detailing his decision. The Inspector's view was that, "the evidence available does not show that on the balance of probabilities a restricted byway which is not shown in the map and statement subsists or is reasonably alleged to subsist. However, when the available evidence is considered as a whole and account is taken of both the documentary and user evidence, I am satisfied that on the balance of probabilities a footpath is reasonably alleged to subsist." Therefore, there appears to be sufficient evidence to make an order for the addition of a footpath, but there is not sufficient evidence (at present) to confirm it.

The Inspector allowed the appeal, subject to the application route being proposed to be recorded as a footpath rather than a restricted byway, and the county council is directed to make an order under Section 53(2) and Schedule 15 of the Act to modify the Definitive Map and Statement for the County of Lancashire, to add a footpath from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School to a point on highway F8761 (known as Summer Street), Skelmersdale, West Lancashire.

It is advised that an order is made, as directed. However, regardless of whether there are objections or not, it is suggested that the Authority submit the Order to the Secretary of State for formal determination. It is suggested that the Local Authority adopts a neutral stance in this instance due to the Regulatory Committee's original decision not to make an order based on the available evidence.

## **Consultations**

N/A

## **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper

Date

Contact/Directorate/Tel

All documents on Claim File  
Ref: 804/591

Claire Blundell  
County Secretary and  
Solicitors Group,  
01772 533196

Reason for inclusion in Part II, if appropriate

N/A

