

Lancashire County Council

Regulatory Committee

Meeting held on Wednesday 12 May 2010 at 10:30am in Cabinet Room 'B' at County Hall, Preston

Minutes

Present: County Councillor P Rigby (Chair)

County Councillors

W Cropper	P Malpas
J Eaton	Y Motala
P Hayhurst	B Mutch
C Holtom	M Skilling
J Jackson	P Steen
A Knox	A Thornton

Apologies were received from County Councillor P McCann.

Disclosure of Personal/Prejudicial Interests

County Councillor M Skilling declared a personal interest in Item 4.

Minutes of the Meeting held on the 19 January 2010

County Councillor P Steen pointed out that County Councillor P Evans was a member Rossendale Borough Council and not Ribble Valley Borough Council as stated in the Minutes.

47. Resolved: That the Minutes of the meeting held on the 10 March 2010 be altered accordingly and confirmed and signed by the Chair.

Annexes A and B

Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way (Annex A) and to the basic guidance on the law relating to certain Orders to be made under the Highways Act 1980 were presented in the form of Annexes 'A' and 'B'. The Committee were notified that Annex A and Annex B had not technically altered, but the DEFRA Circular (1/09), on respective Rights of Way, had been updated and there was now was a version 2.

48. Resolved: That the guidance be noted.

**Wildlife and Countryside Act 1981
Claimed Public Footpath from Public Footpath No. 39 Newburgh to
Public Footpath No. 40 Newburgh, West Lancashire District
Claim No. 804/491**

A report was presented on the claim for a Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District to be added to the definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/491.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the Definitive Map and Statement of the of the Public Rights of Way (in the form of Annex A) were presented.

An application had been made under section 53(5) of the Wildlife and Countryside Act 1981 for an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by adding a public footpath extending from a point on Public Footpath No. 39 Newburgh to a point on Public Footpath No. 40 Newburgh, West Lancashire District shown between Points A and C on the plan attached to the report.

The County Council was required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way existed, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that needed to be met when reaching a decision; also current case law needed to be applied.

When considering evidence, if it was shown that a highway existed, then highway rights continued to exist ("once a highway, always a highway") even if a route had since become disused or obstructed; this was until a legal order stopping up or diverting the rights had taken effect. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate's Advice Note No. 7) made it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate's website also gave guidance about the interpretation of evidence.

The County Council's decision would be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence would be tested on the balance of probabilities. It was possible that the Council's decision may be different from the status given in the original application. The decision may be that the routes had public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way existed.

In summary, early map evidence did not show that the claimed route existed as a worn track on the ground. The Tithe Map of Newburgh dated 1845 did

show a route corresponding to the claimed route between Point B and Point C on the map attached to the report, suggesting that there was movement along the claimed route at that time. However, the first Ordnance Survey 6 inch map that was examined (dated 1848) did not show any part of the claimed route in existence although it did show a route running parallel to the claimed route between Point B and Point C within the boundary of the woodland. No further ordnance survey or privately produced map examined through to the 1960's showed the claimed route existed as a physical feature evident on the ground.

An aerial photograph taken in the 1960's showed a track visible along the route of the claimed footpath between Point B and Point C. The most recent aerial photograph taken in 2000 showed a faint line along the claimed route between Point A and Point B which could indicate a walked route. The remainder of the route between Point B and Point C was obscured by trees.

The claimed route was not shown on the Definitive Map or on any of the maps prepared as part of the preparation of the Original Definitive Map or Definitive Map (First Review). However, the West Lancashire group of the Ramblers Association queried whether the route existed in the 1950's and whether it should be included on the map. Although no official application was made by them to have it added to the Definitive Map correspondence on their files suggests that they believed that it should be claimed at some point in the future.

Twenty-two user evidence forms had been submitted in support of the claim. These forms indicated knowledge and use of the route as follows - for 72 years (1) 61-70 years (1); 51-60 years (0); 41-50 years (2); 31-40 years (3); 21-30 years (7); 11-20 years (7); 0-10 years (1). The route had been predominantly used for leisure walking and running.

The range of use varied from being used 4 times per annum, every week to over 250 times per annum. All the users agreed the route had only been used on foot and had always run over the same route.

One user said that there was a stile on the footpath from Newburgh Village past Derby House. All other users stated that there were no stiles and gates across the route. One user states at the end of year 2007 he was prevented because of a fence/hedge from using the route. All users except for one stated he was stopped from using the route and turned back from using the footpath and in 2008 witnessed someone being told by an employee of the land owner they could not use the path in future and a notice stating 'private' was displayed. There was no indication from the form where along the route this notice was situated. All the users stated there had never been any gates locked along the route.

The applicant, Newburgh Parish Council, had provided in support of their application a leaflet and map produced by the Footpath Committee of Newburgh Parish Council dated February 1986. This leaflet attempted to explain the official and unofficial footpaths there were in the area.

The leaflet detailed that there was an 'unofficial' footpath which was not on the Definitive Map which continued south along the edge of the woods, down to Public Footpath No. 39. This illustrated the fact that the footpath had been recognised by the Footpath Committee when the leaflet was produced.

A land owner, Mr Ainscough who had tenanted the land to Martin Ainscough Farms Limited in which he was a shareholder and director had stated he had a significant amount of evidence to refute this claim and he would be instructing solicitors to represent him to prevent the claim from going any further. However, despite writing to Mr Ainscough he had not provided any evidence to refute this claim at this moment in time.

It was advised that the Committee should consider, on balance, whether there was sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in Section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Statutory inference of dedication under section 31 Highways Act 1980 was satisfied where 20 years as of right use of a way had occurred without interruption unless there was sufficient evidence of a contrary intention by the landowner. The period of 20 years was to be calculated retrospectively from the date when the right of the public to use the way was brought into question. Often it was the application to have the route recorded which brought the path into question but here the new owner seemed to have begun to challenge use and take some action in 2007 and 2008. In particular a statutory deposit and declaration received under section 31(6) of the Highways Act 1980 provided sufficient evidence to negative the intention of the owner to dedicate any such additional way as a highway and further inclusion on the County Councils register brought about knowledge among landowners, users of rights of way, and the general public about applications concerning ways which landowners did not intend to dedicate as public rights of way. The date the way was brought into question was when the statutory deposit and declaration was received on 12 March 2008.

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needed to be "as of right" and also sufficient for the period 1988-2008. Twenty-two user evidence forms indicated knowledge and use of the route for many years. Fourteen users of the twenty-two state they had used the route claimed for 20 years or more for leisure and recreation purposes providing strong user evidence. One user stated at the end of 2007 he was prevented from using the path, another user in 2008 witnessed someone being told by an employee of the land they could not use the path in future and a notice stating 'private' was displayed but these incidents may not in isolation have brought the route into question. It was advised that even if the route was called into question in 2007 there was still sufficient evidence of qualifying use 1987- 2007.

It was to be noted that current landownership was claimed by Mr Ainsworth since 13 April 2007 evidenced by a copy of a transfer signed as a deed, however land registry documentation did not currently reflect this landownership detail. Mr Ainsworth had written to the Order Making Authority and stated his landownership and also that he did have a significant amount of evidence to refute the claim and whilst he advised he would be instructing a solicitor to put his evidence together no evidence had been received by the County Council to date. Although the current owner submitted a statutory deposit and declaration dated 12 March 2008 no previous plans or deposits had been submitted by previous landowners. The transfer indicated that the land was previously held on trust and the trustees had been consulted on the claimed route and no observations or comments had been received. Trustees of land held on trust for sale generally had power to dedicate rights of way and, although in this case the powers of the trustees were unknown it was presumed that they did have such capacity.

Considering also whether there were circumstances from which dedication could be inferred at common law, early map evidence did not show that the claimed route existed on the ground as a through route. Only the Tithe Map of Newburgh dated 1845 showed a route corresponding to the claimed route between Point B and Point C on the plan attached to the report, suggesting that there was movement along that part of the claimed route at the time. The claimed route was not shown on the Ordnance Survey maps and there was no documentary evidence of its existence as a through route until aerial photography in 1960's showed a track visible along the route of the claimed footpath between Point B and Point C suggesting that part of the route was in existence and further aerial photography in 2000 showed a faint line along the claimed route between Point A and Point B, the route between Point B and Point C being obscured by trees. The West Lancashire group of the Ramblers Association queried in the 1950s whether it should be included on the Definitive Map: this suggested it was believed by the group that the now claimed route should be claimed at some point in the future.

It was suggested that the way this route was recorded on documentary evidence was not itself sufficient circumstances from which dedication could be inferred, however, sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication could be inferred. The use as evidenced corroborated by the documentary evidence outlined above would suggest that on balance there were sufficient circumstances to infer at common law that the owners in the 1960s to 2007, in acquiescing in the use and taking no overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Having taken all the evidence into account, the Committee on balance may consider that the provisions of S31 Highways Act could be satisfied and there was also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter and that the claim be accepted

It was considered that, having regard to the above, it would be expedient to confirm the Claim.

49. Resolved:

- i. That the Claim for a Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, in accordance with Claim No. 804/491 be accepted.
- 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 Public Footpath 2 metres in width from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District for a distance of approximately 330 metres (grid reference SD 4889 0906 to SD 4869 0931) and shown between points A – C on the plan attached to the report.
- iii. That, being satisfied that the test for confirmation can be met, the Order be confirmed if no objections are received. If objections are received, that the Order be submitted to the Secretary of State and promoted for confirmation, if necessary at a hearing or public inquiry.

Wildlife and Countryside Act 1981

**Claimed deletion of part of Public Footpath no. 334 Rawtenstall, Rossendale, from the rear boundary wall of 126 Goodshaw Lane to Goodshaw Lane, Rossendale
Claim No. 804/474**

A report was presented on the claim to delete that part of Public Footpath no. 334 Rawtenstall, Rossendale, from the rear boundary wall of 126 Goodshaw Lane to Goodshaw Lane, Rossendale, from the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/474.

Details of the claim and the evidence relating to it, together with a summary of the law in relation to the continuous review of the Definitive Map and Statement of the of the Public Rights of Way (in the form of Annex A) were presented.

A claim had been received to delete part of Public Footpath no. 334 Rawtenstall from the rear boundary wall of 126 Goodshaw Lane to Goodshaw Lane, shown between points A – B - C on the plan attached to the report, from the Definitive Map and Statement of Public Rights of Way.

Rossendale Borough Council had been consulted but raised no observations or comments regarding the application but had sent a copy of the 1969 Compulsory Purchase Order and plan relating to the acquisition of the land crossed by the route A-C on the plan attached to the report.

In support of the claim to delete part of Public Footpath no.334, the applicant had provided four 'evidence of use forms' all indicated knowledge of the route