

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

**THE LANCASHIRE COUNTY COUNCIL
ADDITION OF FOOTPATH FROM HODDER STREET, ACCRINGTON
DEFINITIVE MAP MODIFICATION ORDER 2022**

STANCE

The Lancashire County Council, following the decision of the Regulatory Committee on 22 June 2022, 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, 22nd June, 2022 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	L Cox
T Aldridge	C Towneley
J Burrows	S Clarke
A Cheetham	B Yates

1. Welcome and Apologies

Apologies for absence were received from County Councillor Parr, County Councillor Howarth and County Councillor Oakes.

Temporary changes

County Councillor Stephen Clarke replaced County Councillor Alan Hosker.

County Councillor Barrie Yates replaced County Councillor Alf Clempson.

County Councillor Cosima Towneley replaced County Councillor David O'Toole.

2. Appointment of Chair and Deputy Chair

Committee noted the appointment by the County Council on 26 May 2022 of County Councillor Sue Hind and County Councillor Matthew Salter as Chair and Deputy Chair of the Committee, respectively, for 2022/23.

3. The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee

A report was presented setting set out the constitution/membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2022/23.

Resolved: The Committee noted:

- (i) The constitution/membership of the Committee, following the county council's annual meeting on 26 May 2022.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for the Committee.

4. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Towneley declared a non-pecuniary interest in Items 8, 9 and 10, as she was Chair of the National Federation of Bridleway Associations. It was noted that the items on the agenda were not associated with this Group and that County Councillor Towneley had no personal association with the applications.

5. Minutes of the last Meeting held on 9 March 2022

Resolved: That the minutes of the meeting held on 9 March 2022 be confirmed and signed by the Chair.

6. 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.

7. 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.

Resolved: That the report be noted.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway and Upgrading of Footpath known as Sod Hall
Lane, South Ribble**

A report was presented on an application for the addition of bridleway and upgrading of 7-1-FP50 and 7-1-FP51 (Sod Hall Lane) to the Definitive Map and Statement of Public Rights of Way, as shown on the Committee plan attached to the agenda papers between points A-B-C-D-E-F-G-H.

A site inspection had been carried out in January 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.

Committee were informed that the investigation had been carried out based entirely on historical map and documentary evidence with no modern user evidence – or details indicating historical public use on horseback – having been submitted.

It was reported that a lot of map and documentary evidence had been examined although there were some documents that would have been useful to find and there were a number of inconsistencies in the records located which made it difficult to decide on balance whether bridleway or public vehicular rights existed.

The application was in relation to whether the route carried higher rights than the footpath it was currently recorded as and the legislation required that, to make an Order, a bridleway or restricted byway was found to subsist on balance.

Committee noted that there was no user evidence presented and so the evidence considered was historical documentation and whether there was sufficient evidence from which to infer, on balance, that the owner of this old route across the Moss intended the route to be more than a footpath open to the public for use without permission, force or secrecy.

On balance, and given the nature of the evidence, Committee were advised that the evidence of it having become a higher status for the public was insufficient. Committee were reminded that, if there were tolls paid to use this route, payment of a toll (whilst the route showed as being available to the public) would be use with permission, and a toll required yet not paid would probably be use by force. The Recommendation was therefore that no Order be made on the basis of the evidence available.

County Councillor Towneley stated that the route had not been stopped up, that toll use demonstrated that public use would have been expected and that there was no obvious deviation. County Councillor Towneley therefore considered there was a high probability that this had always been a public route with higher rights than a footpath.

Committee were informed that there had been a barrier at Sod Hall to collect tolls, as shown in the photograph provided and as shown as TP on Ordnance Survey maps. The Tithe records also showed the central section of the route as a private road and railway records referred to it as an occupation road with private ownership. It was reported that officers had examined a large amount of historical evidence and had concluded that, although finely balanced, there had not been enough evidence to indicate that higher rights existed.

County Councillor Towneley stated that if this was a public road maintainable at private expense, she would have expected at that time that the landowners would have either constructed an alternative route which would have been handed over to the local authority, or would have purposefully blocked the route if they had not wanted the public to use it. Although a barrier may have been present at some point, County Councillor Towneley considered that this did not negate the fact that since, before and during that period, no further action had been taken to stop the public using the route.

It was therefore Proposed and Seconded that:

'The Recommendation in the report be refused and that the application for the addition of bridleway and upgrading of 7-1-FP50 and 7-1-FP51 (Sod Hall Lane) to the Definitive Map and Statement of Public Rights of Way be approved.'

County Councillor Salter confirmed that Committee had considered all the evidence in detail and referred specifically to point A through to just beyond point G being excluded from the Finance Act taxation process in the early 1900s, and suggested that this may have been an indication it was a public vehicular route and confirmed that Committee had previously made decisions based on Finance Act evidence. County Councillor Salter added that, looking at the evidence, Committee may consider that the route carried higher rights of restricted byway, and asked whether this was something Committee could look at. David Goode confirmed that Committee could consider this, based on the evidence presented, and added that the effect of the Natural Environment and Communities Act would have removed any carriageway rights for mechanically propelled vehicles along the route.

Following confirmation to Committee of the specific definitions for bridleway and restricted byway, after a discussion, County Councillor Towneley considered that higher rights than bridleway existed and withdrew her original Proposal. Based on the evidence presented in the application, it was therefore Proposed and Seconded that:

'The Recommendation in the report be refused and that the addition of restricted byway and upgrading of 7-1-FP50 and 7-1-FP51 (Sod Hall Lane) to the Definitive Map and Statement of Public Rights of Way be approved.'

Upon being put to the Vote, the Motion was Carried.

Resolved:

- (i) That the Recommendation in the report be refused.
- (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 record on the Definitive Map and Statement of Public Rights of Way a restricted byway and upgrading to restricted byway of 7-1-FP50 and 7-7-FP51 (Sod Hall Lane), as shown between points A-B-C-D-E-F-G-H on the Committee plan.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Recording of a Bridleway at Mill Lane and Hall Lane, Farington**

A report was presented on an application for the upgrade of footpath to, and addition of, bridleway to the Definitive Map and Statement of Public Rights of Way along part of Mill Lane and Hall Lane, Farington, South Ribble, as shown on the Committee plan attached to the agenda papers between points A-B-C-D-E-F-G-H-I and points D-J.

The application was based entirely on historical map and documentary evidence. With that in mind, Committee were advised that how the application route looked 'today' was not necessarily relevant when considering whether public rights exist. However, a site inspection had been carried out in December 2020 to see what the route looked like at that time, and to identify any remaining historical features.

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 there was no modern user evidence submitted as part of the application and Committee noted that since some point in the 1950s, the application route between point G and point I had not been in existence on the ground.

Committee also noted that there was further significant development taking place on the land crossed by the application route, and that how the route looked today was quite different to how it may have looked in the past.

The application was in relation to whether the sections of this route A-F and J-D carried higher rights than the footpaths they were presently recorded as, and whether section F-I was a route carrying bridleway rights needing to be added to the Definitive Map and Statement of Public Rights of Way.

Taking all the evidence into account, on balance, and given the nature of the evidence, Committee decided that the evidence of and inference of dedication at

common law was, on balance, sufficient such that the application route sections carried bridleway rights for the public, and decided that an Order be made to record A-F and J-D and F-I as bridleways. Despite the issues surrounding the stopping up of rights along F-I in the 1950's, Committee decided that there was sufficient evidence that public rights along Section F-I were at least bridleway rights.

Resolved:

- (i) That the application for a Bridleway along part of Hall Lane and Mill Lane, Farington to be recorded on the Definitive Map and Statement of Public Rights of Way, be accepted.

- (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 along part of Mill Lane and Hall Lane, Farington 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-H-I and points D-J.

- (iii) That being satisfied that the test for confirmation (which for additions is higher than the test for making the Order) can be met the Order be promoted to confirmation.

**10. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Hodder Street, Accrington**

A report was presented on an application for the addition of a footpath to the Definitive Map and Statement of Public Rights of Way from Hodder Street, Accrington to a junction with 11-1-FP 49, as shown on the Committee plan attached to the agenda papers between points A and B.

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 land crossed by the application route was shown to be undeveloped until at least the mid- 20th Century, with no evidence that the application route existed. For that reason, much of the early map and documentary evidence normally provided in the Committee reports was not included for this application.

Committee were advised they may be content, on balance, to find sufficient evidence to be able to reasonably allege an inference of dedication by the previous landowner of a footpath under common law and that an Order be made. As the confirmation test was a higher test, Committee were advised that, should they agree to an Order being made, once the objection period was over and user evidence more clear, the matter could be returned to Committee for a decision as to what stance to take regarding the confirmation of the Order.

The Chair informed Committee that, on the site visit, she had spoken to a local resident who lived within sight of the application route. The resident stated that mothers and children regularly used the route to get to local schools, to avoid crossing busy roads and that another resident had conducted a survey and had received 400 signatures in favour of maintaining the footpath.

County Councillor Towneley queried whether the route should be recorded as a restricted byway as it was used by all and led elsewhere. County Councillor Towneley pointed out that the evidence presented in the report could not be re-submitted so it was important to take all this evidence into account when considering whether higher rights than a footpath existed.

David Goode informed Committee that seeing others using the route on horseback had much lower evidential value than someone using it themselves, as they would not be aware if the users had permission from or they were related to the landowners. For this location, it was reported that the evidence was quite low, and that legislation required that there had to be a sufficient number of people using the route and that, without full evidence of horseback use, Section 31 of the Highways Act 1980 could not be satisfied.

Committee were reminded that they needed to consider what rights existed along the route, rather than what the general public may want. Horse use in recent years would need to be looked at, in addition to when landownership changed.

County Councillor Salter referred to the motorised wheelchair daily use on the route from the user evidence, and queried what period this covered and what standard would be required on the route for wheelchair users. County Councillor Salter stated that all evidence received, following the end of the statutory period for representations and objections, needed to be considered prior to Committee making a decision on this application.

Committee noted that the route being used daily by a motorised wheelchair user implied that the route had already met a certain standard and it was noted that the county council had to establish when the 'use' that led to the inferred dedication began, as this indicated the nature of the route.

It was re-iterated to Committee that there was sufficient evidence to make an Order for a footpath and that, if this was agreed, the Order would then be advertised, providing an opportunity for users to make representations to be considered at a future Committee, where it could be decided whether higher rights than a footpath existed, as well as what stance the county council should take towards confirmation.

Resolved:

- (i) That the application to add a footpath on the Definitive Map and Statement of Public Rights of Way from Hodder Street, Accrington to a point on 11-1-FP 49 be accepted.

(ii) That an Order 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 to the Definitive Map and Statement of Public Rights of Way a footpath along the route marked between points A and B on Committee Plan.

(iii) If Committee is not satisfied that the higher test for confirmation can be met it is suggested that once the statutory period for objections and representations to the Order has passed there will have been opportunity for further information to have been submitted and a further report presented as to whether this higher test for confirmation could on balance be satisfied and what stance the authority should take in respect of the Order.

11. Urgent Business

There were no items of Urgent Business.

12. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 14th September 2022 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

Ms Cathy Smith, 83 Hodder Street, Accrington, Lancashire, BB5 6SX

Particulars

Application number: 804-728 (888.2817)

Date of determination: 22 June 2022

Modification

Addition of Footpath from Hodder Street, Accrington

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 the proposed modification.

The reason for the County Council's decision is:

The Regulatory Committee, having taken all relevant evidence into account were satisfied that the evidence, both documentary and user, was sufficient on balance that footpath rights can be inferred under common law.

Date: 02 August 2022

Signed:

A handwritten signature in black ink, appearing to read "Janis 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/888.2817 /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.