

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

**THE LANCASHIRE COUNTY COUNCIL
FOOTPATH FROM WENNINGTON ROAD TO HOME FARM CLOSE,
WRAY WITH BOTTON
DEFINITIVE MAP MODIFICATION ORDER 2021**

STANCE

The Lancashire County Council, following the decision of the Regulatory Committee on 18 November 2020, 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, 18th November, 2020 at 10.30 am - Virtual Meeting

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

I Brown	L Cox
J Cooney	J Parr
P Steen	T Aldridge
J Marsh	C Towneley
A Clempson	B Dawson MBE

1. Apologies

Apologies were received from County Councillor David Howarth.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Eaton and County Councillor Steen declared a non-pecuniary interest in Item 6 as the application route was in their electoral divisions.

County Councillor Towneley declared a non-pecuniary interest in Item 8 as she was a member of the Martholme Greenway Group. Councillor Towneley confirmed that she had not been involved in the preparation and submission of the application.

3. Minutes of the last Meeting held on 16 September 2020

Resolved: That the minutes of the meeting held on 16 September 2020 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 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 on progress made since January 2020, in relation to matters previously decided by the Committee.

Updates of individual matters were reported as follows:

- Deletion and Addition of part of Footpath Oswaldtwistle 287 – Definitive Map and Statement now corrected.
- Creation of Bridleway at Dertern Lane, Bolton-le-Sands – creation agreement implemented.
- Keighley Road at Parson Lee Farm along Smithy Clough, Trawden – Definitive Map Modification Order drafted.
- Addition of Footpath from Footpath Preesall 1 along the sea embankment and ramp to Fluke Hall Lane, Preesall – Definitive Map Modification Order drafted.
- Addition of a number of Footpaths across the Former Ingol Golf Course, Preston – Definitive Map Modification Orders drafted.
- Addition of Public Bridleway, Noyna Hall, Foulridge, Pendle – decision notified, no further action unless decision is appealed.
- Addition of public footpath from Strongstry Bridge to Stubbins Station – Definitive Map Modification Order drafted.
- Proposed diversion of part of Footpath Trawden 188 at Parson Lee Farm, Trawden – Public Path Diversion Order drafted.
- Proposed extinguishment of part of Footpath Rawtenstall 205 from Windsor Avenue to Staghills Road – Public Path Extinguishment Order made.
- Elmers Green, Skelmersdale – footpath now open and usable, following enforcement action by Public Rights of Way team.
- Michael Wife Lane, Byway Open to All Traffic Ramsbottom 276 – drainage and surface works carried out on the route.
- Upgrade footpath to bridleway between Cowpe and Rooley Moor Road – Definitive Map Modification Order confirmed with modifications by Inspector - objection to the modified Order received.
- Bridleway from Cockhill Lane, Foulridge to Castle Road, Laneshaw Bridge – interim decision made by Planning Inspectorate.
- Footpath at Kirkdale Avenue, Rawtenstall – Definitive Map Modification Order confirmed, path now open and usable.
- Hardsough Lane, Irwell Vale – Definitive Map Modification Order confirmed to record bridleway; some enforcement still needed in removing minor obstruction.
- Diversion of Footpaths around Hey Meadow, Bacup/Rossendale boundary – works completed.
- Diversion of Footpaths near Nans Nook, Forton – Public Path Diversion Order drafted.
- Diversion of Footpaths at Simfield Farm, Slaidburn – Public Path Diversion Order confirmed and works completed.

- Diversion order – land to rear of Anderton Close and Hardman Close, Cowpe, near Bacup – Public Path Diversion Order confirmed and works completed.
- Diversion of Footpath at Cockle Hill, Over Kellet – Public Path Diversion Order confirmed, works ongoing.
- Diversion of Footpath at Watson Laithe Farm, Hapton, Burnley – Public Path Diversion Order confirmed.

It was also reported that, since January 2020:

- 44 new applications to amend the Definitive Map and Statement had been received and a high number of enquiries in relation to future applications;
- An increase in enquiries regarding applications for Highways Act diversions, creation and extinguishment had been received;
- Over 30 public path order applications and diversion proposal details had been received which were expected to be followed by formal applications in the coming months.

Resolved: That the update on progress made in relation to matters previously considered by Committee, be noted.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrading of part of Footpath Bacup 657 (Heald Lane), Weir to
Bridleway in connection with the application to record a public right
of way from Heald Lane through Weir Lodges to Office Road, Bacup
File No. 804-603**

In March 2019, Committee had considered a report on an application which had been received under Schedule 14 of the Wildlife and Countryside Act 1981, for a footpath to be recorded on the Definitive Map and Statement from Heald Lane through Weir Lodges to Office Road, Bacup.

Committee had 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.

It was reported that, to date, the order to record the application route as a bridleway had not been made. Due to issues in linking this bridleway to another existing bridleway, which officers had discovered when drafting the order, more detailed information had been gathered, specifically in relation to the public's historical use of the application route as a bridleway.

Following consideration of this information, officers consider that horse use of the application route was insufficient to support the finding that a bridleway could be reasonably alleged to have come into existence in law and that horse use may, on balance, only be trivial and sporadic. Officers were therefore recommending that the original decision in March 2019 be revoked and that an order be made to record the route as a footpath.

After a discussion, it was proposed and seconded:

"That the Committee defer a decision on this matter and for officers to investigate further as to whether the confirmation test can be satisfied."

On being put to the vote the Motion was Carried. It was therefore:

Resolved: That the Committee defer consideration of this matter and for officers to investigate further as to whether the confirmation test can be satisfied.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Wennington Road to Home Farm Close,
Wray with Botton, Lancaster
File No. 804-620**

A report was presented on an application for the addition of a footpath from Wennington Road to Home Farm Close, Wray with Botton, on 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.

A typing error was pointed out to Committee on page 137 under 'Investigating Officer's comments which should have read ' The application route existed in the **1970's**' and not the 1960's.

It was reported that the land crossed by the application route between point A and point B had been in the registered ownership of the owners of 32 Wennington Road since 2010. The land crossed by the application route between point B and point C had been in the registered ownership of Wray Parish Council (the applicants) since 2010.

A variety of maps, plans and other documents had been examined, in addition to user evidence forms, to discover when the route came into being, and to try to determine what its status may be.

The Committee noted that the owners of 32 Wennington Road had objected to the application and details of the objections were provided in the report.

The application route existed in the 1960's – as evidenced by the aerial photograph from that time – as part of a longer access road providing direct access to Home Farm. In addition, the application route was clearly shown on the Ordnance Survey map published in 1973, as part of the access road referred to in the 1970 Grant of Deed, and access appeared to have continued beyond point C, through Home Farm out to Main Street.

When residential properties were built on the farm site in the late 1990s, the original farm access track was re-routed to the alignment of Home Farm Close which was constructed as part of the development and included use of the private access road constructed following the private agreement made by Mrs Holt and the county council. The original access from point A was retained as a pedestrian link – as clearly specified in the grant of planning permission for the construction of 32 Wennington Road dated 1999 – and appears to have been accessible until its use was challenged in 2019.

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

Taking all of the evidence into account, the Committee were advised, on balance, that they may consider the provisions of Section 31 of the Highways Act 1980 could be satisfied. In addition, or in the alternative, Committee were advised they may also consider it could be reasonably alleged that there was sufficient evidence from which to infer dedication of a public footpath at common law.

Resolved:

- (i) That the application for the addition of a Footpath from Wennington Road to Home Farm Close, Wray with Botton, in accordance with File No. 804-620, 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 a Footpath from Wennington Road to Home Farm Close, Wray with Botton on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
- (iii) 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
Addition of a Footpath along dismantled railway from Footpath Read
11 to Martholme Viaduct, north of Bridge Heyward Caravan Park,
Read
File No. 804-618**

A report was presented on an application for the addition of a public footpath along the dismantled railway from Footpath Read 11 to Martholme Viaduct, north of Bridge Heyward Caravan Park, Read as shown on the Committee plan attached to the agenda papers between points A-B-C.

David Goode informed the Committee that the county council had been asked by the applicant's supporters to defer this item. The county council has declined to do this as it is imperative that the authority maintains a neutral position on these matters. The county council does not have a view on these matters as they are all driven by evidence. When the county council receives a request to defer, and evidence within a report is deemed to be incorrect, then deferment may need to take place. However, in this case, following detailed examination of the evidence from both sides, the county council has found that there was not enough evidence to affect the recommendation that the application be not accepted.

The Committee were also informed that anyone who is aggrieved by the decision made would have a right of appeal or could object to the order; the decision whether to confirm any order would be made by the Planning Inspector as an independent arbiter.

In 2002, the county council had received an application to add this same route to the Definitive Map and Statement based on user evidence. At that time, the application also included claimed use of the route across the Martholme railway viaduct (continuing south west from point C) to link to its junction with land owned by the county council on which there was (and still is) a concessionary bridleway along a former railway line.

The application had been rejected by the Regulatory Committee at its meeting on 15th September 2004 with further information considered at its meeting on 14th November 2004. Both reports had been included as an appendix to this report.

The applicant had subsequently appealed the decision to The Government Office for the North West who had considered the evidence submitted in support of the application and had issued a decision letter dated 25 April 2005. The Secretary of State had dismissed the appeal stating that they did not propose to direct the county council to make a Modification Order because, based on the evidence before them they did not believe, on balance of probability, that a public footpath subsisted or was reasonably alleged to subsist over the application route.

This new application to be considered related to most – but not all - of the route considered in 2004-2005.

The original application had been made based on user evidence from the 1960s when the railway ceased to exist until late in 2001 when the county council erected a secure fence at the viaduct. This new application was also based on user evidence prior to 2001 with some additional supporting map and documentary evidence.

Officers answered questions from Members on the report.

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

It was suggested to Committee that, taking all the relevant evidence into account, on balance, dedication could not be inferred under common law nor deemed under Section 31 Highways Act 1980, nor could a public right of way on the application route be reasonably alleged to subsist.

Resolved: That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a public footpath from the junction with Footpath Read 11 along the dismantled railway to Martholme Viaduct, in accordance with File No. 804-618, be not accepted.

9. Urgent Business

There were no items of Urgent Business.

10. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 2nd December 2020.

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

Wray with Botton Parish Council, C/O Clerk to the Council, 23 Maplewood Avenue, Preesall, Poulton-le-Fylde FY6 0PU

Particulars

Application number: 804-620 (888.2165)

Date of determination: 18th November 2020

Modification

Addition of Footpath from Wennington Road to Home Farm Close, Wray with Botton, Lancaster

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 user and documentary, was sufficient on balance that footpath rights could be reasonably alleged to have been dedicated on the route. The dedication could either be deemed under s31 Highways Act 1980 or inferred from all the circumstances at common law.

Date: 05 January 2021

Signed:

A handwritten signature in black ink, appearing to read "John Lee".

(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/888.2165/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.