

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

**THE LANCASHIRE COUNTY COUNCIL  
PUBLIC RIGHTS OF WAY (DEFINITIVE MAP MODIFICATION) (NO.6) ORDER  
2010**

**STANCE**

The Lancashire County Council, following the decision of the Regulatory Committee on 23 September 2009, are supporting the above Order and will continue to support the Order if an Inquiry or Hearing is held.

## **Lancashire County Council**

### **Regulatory Committee**

Meeting held on Wednesday 23 September 2009 at 10:30am in Cabinet Room 'B' at County Hall, Preston

#### **Minutes**

Present: County Councillor P Rigby (Chair)

#### County Councillors

C Holtom	B Mutch
J Jackson	M Parkinson*
P Malpas	M Skilling
P McCann	A Thornton

\* County Councillor M Parkinson replaced County Councillor N Penney for this meeting only.

#### **Apologies**

Apologies for absence were presented from County Councillors J Eaton, P Hayhurst and Y Motala.

#### **Membership Change**

It was reported that County Councillor N Penney had replaced County Councillor T Brown on the Committee.

**12. Resolved:** That the change of membership be noted.

#### **Disclosure of Personal/Prejudicial Interests**

None were disclosed.

#### **Minutes of the Meeting held on the 22 July 2009**

**13. Resolved:** That the Minutes of the meeting held on the 22 July 2009 be 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'.

**14. Resolved:** That the guidance be noted.

### **Wildlife and Countryside Act 1981**

#### **Claimed Public Footpath from a point on Higher Gate Road beside the stocks to the junction of Public Footpaths Nos. 7 & 13 Accrington, Hyndburn Borough Claim No. 804/484**

A report was presented on a claim for a Public Footpath extending from a point on Higher Gate Road, beside the stocks to a junction with the corners of Public Footpath Nos. 7 and 13 Accrington and shown between points A and B on the plan referred to in the report, to the Definitive Map and Statement of Public Rights of Way.

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.

The Committee having taken all the evidence into account considered on balance there was sufficient evidence to infer or deem dedication of the claimed route as a public footpath and therefore considered that the claim be accepted.

**15. Resolved:**

- i. That the Claim for a Public Footpath from a point on Higher Gate Road (C638) beside the stocks to the corner of Public Footpaths Nos. 7 and 13, Accrington to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/484, 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 footpath from Higher Gate Road beside the stocks (GR SD 7774 3043) for a distance of approximately 33 metres to a point at the junction of Public Footpaths Nos. 7 & 13 Accrington (GR SD 7771 3042) and shown between points A-B on the plan referred to in the report.

- iii. That, being satisfied that the higher test for confirming the said Order could be satisfied, the said Order be promoted to confirmation if necessary by sending to the Secretary of State.

### **Wildlife and Countryside Act 1981**

- 1) **Claimed deletion of Part of Public Footpath No.129 Chipping, Ribble Valley Borough**
- 2) **Claimed Public Footpath from Public Footpath No. 129 Chipping, Ribble Valley Borough to Fish House Lane**

**Claim No. 804/472 and 804/476**

A report was presented on:-

1. A claim for the deletion of part of Public Footpath No. 129 Chipping from point A to point H on the plan referred to in the report, the length of which being 72 metres from GR 6182 4348 to GR 6179 4354 from the Definitive Map of Public Rights of Way.

2. A claim for a Public Footpath extending from a point on Public Footpath No. 129 Chipping to Fish House Lane, a length of 20 metres, and shown between points H - I on the plan, GR 6179 4354 to GR 6177 4353, to be added to the Definitive Map and Statement of Public Rights of Way.

Details of the claims and the evidence relating to them, 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.

The Committee having taken all the evidence into account, including the existence of route H-I and the evidence surrounding the recording of A-H, felt that on balance there was sufficient evidence that the route A-H was recorded in error and that A-H should be removed from the Definitive Map and that the footpath on the line H-I be added to the Definitive Map and that both claims be accepted.

### **16. Resolved:**

- i. That the Claim for part of Public Footpath No. 129 Chipping from Fish House Lane to a point to the north of No. 10 Old Hive Cottages be deleted from the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/430, be accepted; and
- ii. That the Claim for a Public Footpath from a point to the north of No. 10 Old Hive Cottages to Fish House Lane to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/476 be accepted.
- iii. That an Order be made pursuant to section 53 (2) (b) and section 53 (3) (c) (iii) to delete from the Definitive Map and Statement of Public

rights of Way the footpath from a point at GR 6182 4348 on Fish House Lane, Ribble Valley Borough for a distance of approximately 72 metres to GR 6179 4354, on Public Footpath 129 Chipping, Ribble Valley Borough and shown between points A- H on the plan referred to in the report.

- iv. 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 footpath from a point on Public Footpath 129 Chipping, Ribble Valley Borough (GR 6179 4354) for a distance of approximately 20 metres to Fish House lane, Chipping (GR 6177 4353) and shown between points H- I on the plan referred to in the report.
- v. That, being satisfied that the tests for confirming said Orders at iii. and iv. above could be satisfied, the said Orders be promoted to confirmation if necessary by sending to the Secretary of State.

**Wildlife and Countryside Act 1981**  
**Claimed Public Footpath from Vale Road to Slyne Road, City of Lancaster**  
**Claim No. 804/473**

A report was presented on a claim for a Public Footpath extending from a point on Vale Road to Slyne Road, City of Lancaster and shown between points A-E on the plan referred to in the report, to the Definitive Map and Statement of Public Rights of Way.

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.

The Committee having taken all the evidence into account considered on balance that there was sufficient evidence in respect of section A-B-C-D and that it was reasonably alleged that a footpath could be deemed under S31 Highways Act 1980, but that the claim for section D-E being already an adopted highway should not be accepted. The Committee in accepting section A-D recognised that there would be a through route for the public from Vale Road to Slyne Road since public rights of way were already in existence on section D-E.

**17. Resolved:**

- i. That the Claim for a Public Footpath from Vale Road to Slyne Road, City of Lancaster to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/473, be accepted in part namely that the claim for section A-B-C-D be accepted; that the claim for section D-E be not 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 footpath at a point on Slyne Road A6, between 59 Slyne Road and the side of the Melbourne Social Club and Institute (GR SD 4767 6331) for a distance of approximately 52 metres to a point running between the lock up buildings and the rear of the Melbourne Social Club and Institute (GR SD 4763 6330) and shown between points A-B-C-D on the plan referred to in the report.
- iii. That, being satisfied that the higher test for confirming the said Order could be satisfied, the said Order be promoted to confirmation if necessary by sending to the Secretary of State.

### **Highways Act 1980 - Section 119 Proposed Diversion Of Part Of Public Footpath No. 13, Catterall, Wyre Borough**

It was reported that a request had been received from Mr R Collinson, Managing Director, Collinson Plc, Riverside Industrial Park, Catterall, Preston, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 13, Catterall. The length of the existing path proposed to be diverted was shown by a bold black line and marked A-B on the plan referred to in the report; the proposed alternative route was shown by a bold black dashed line and marked A-C on the plan.

Details of the proposed diversion were presented together with a summary of the law relating to the appropriate Order in the form of Annex B.

The Catterall Parish Council had confirmed that they had no objection to the proposal. They had however, raised a point relating to the protection of pedestrians from the car park that was to be created on site and a further point relating to the surface material used to construct the proposed alternative route. They stated that 'The Councillors were concerned at the materials used to form the diverted path, which was in place. It was believed to be highway tarmac planings and Lancashire County Council stated that these were toxic and could not be used on paths/drives etc.'

The proposed alternative route would have a recorded width of 2 metres and would have no limitations.

The proposal was considered acceptable from a highway aspect and met the criteria for a diversion under Section 119 of the Highways Act 1980, i.e. that, in the interests of the owner, lessee or occupier of land crossed by the path, or of the public, it was expedient that the path should be diverted.

In this case the diversion was felt to be expedient in the interests of the owners of the land, in that, if the proposal was successful, it would remove the public path that currently runs through an area that was proposed to be

developed as an Industrial Park. Whilst the development would not prevent access to the existing route of the public footpath, it was suggested that the proposal, if successful, would provide a route that was more convenient for the landowner and provide a route that was safe for public use.

It was noted that the proposed diversion would alter the termination point of Public Footpath No. 13 and place it at another point on Catterall Gates Lane being the same highway and it was suggested that this point was substantially as convenient to the public.

The Committee was informed that the applicant owned the land crossed by the section of footpath proposed to be diverted, and also that in respect of the proposed alternative route.

The Committee was also informed that the applicant had agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order-making procedures, and also to provide an alternative route to the satisfaction of the County Council.

The Committee were advised that so much of the Order as extinguished part of Public Footpath No. 13 was not to come into force until the County Council had certified that the necessary work to the alternative route had been carried out.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it was felt that the path or way would not be substantially less convenient to the public in consequence of the diversion because the proposed alternative route was of a similar length and gradient to the existing route.

In response to the comments made by the Catterall Parish Council, relating to the protection of pedestrians from the car park that was to be created on site, The Environment Directorate advised that the footpath would have a width of 2 metres and this would be separated from the car park by a 6 metre wide access road. It was suggested therefore that the proposal would provide a route that was safe for pedestrians.

With regards to the comment made by the Catterall Parish Council, relating to the surface material used, it was advised that the proposed alternative route had recently been constructed and was available for use on site. The surface did appear to consist of compacted and rolled road planings which had produced a firm level surface that appeared to be suitable for pedestrian use.

The applicant has been asked to supply further information with regards to this matter, in particular, what does the surface material consist of and from where was it sourced. In addition, they have been asked to confirm whether they have any information or documentation to demonstrate that it is not toxic. Furthermore, the applicant has agreed to carry out any works that may be

necessary to bring the footpath up to an acceptable standard and this will include the replacement of the surface material of the path, if it is considered to be necessary.

There was no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, or they had given their consent.

It was considered that, having regard to the above, it would be expedient to confirm the Order. It was advised that the effect of the proposed Order, if confirmed, would not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It was also suggested that the proposal would not have an adverse effect on the biodiversity or natural beauty of the area.

It was also noted that the needs of the disabled had been actively considered and as such, the proposal was compatible with the duty of the County Council, as a highway authority and surveying authority under The Disability Discrimination Act 1995 (as amended by the Disability Discrimination 2005).

Furthermore, it was felt that, if the Order were to be confirmed, there would be no adverse effect with respect to the public enjoyment of the paths or ways as a whole. It was felt that there would be no adverse effect on the land served by the existing routes or the land over which the new path was to be created, together with any land held with it.

It was also advised that the effect of the Order was compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'.

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

**18. Resolved:**

- i. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 13, Catterall, from the route shown by a bold black line and marked A-B on the plan referred to in the report, to the route shown by a bold black dashed line and marked A-C on the plan and, in the event of no objections being received, the Order be confirmed.
- ii. That provisions 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 of part of Public Footpath No. 13, Catterall, Wyre Borough.



**Highways Act 1980 - Section 119  
Proposed Diversion of Part of Public Footpath Nos. 36 and 37, Newton  
Parish, Ribble Valley Borough**

A request had been received from Mrs V Wheeler, Meanley, Newton in Bowland, for an Order to be made under Section 119 of the Highways Act 1980 to divert parts of Public Footpath Nos. 36 and 37 in the Parish of Newton. The lengths of the existing paths proposed to be diverted were shown by a bold black line and marked A-B and C-D-E-F and D-G-H on the plan referred to in the report; the proposed alternative routes were shown by a bold black dashed line and marked J-B and C-K-F and C-L-M-H on the plan. No adverse comments on the proposal had been received.

Details of the proposed diversion were presented together with a summary of the law relating to the appropriate Order in the form of Annex B.

The proposal was considered acceptable from a highway aspect and met the criteria for a diversion under Section 119 of the Highways Act 1980, i.e. that, in the interests of the owner, lessee or occupier of land crossed by the path, or of the public, it was expedient that the path should be diverted.

In this case the diversion of each of the sections was felt to be expedient in the interests of the landowner in that it would remove the sections of public footpath from passing through the residential property and gardens, giving privacy and security and providing a safe route for the public.

It should be noted that the proposed diversion of section A-B would alter the termination point of Public Footpath No. 37 Newton and place it at another point on Hill House Road (8953) being the same highway and it was suggested that this point was substantially as convenient to the public.

It was reported that the right of way to be created by the proposed Order, would be subject to the limitations and conditions as set out in the report.

The Committee was informed that the applicant owned the land crossed by the section of footpath proposed to be diverted, and also that in respect of the proposed alternative route.

The Committee was also informed that the applicant had agreed to bear all advertising and administrative charges incurred by the County Council in the Order-making procedures, and also to provide an alternative route to the satisfaction of the County Council. The applicant had agreed to defray any compensation that may become payable as a consequence of this particular diversion order in accordance with Section 28 of the Highways Act 1980.

The Committee were advised that so much of the Order as extinguished part of Public Footpath Nos. 36 and 37 Newton was not to come into force until the County Council had certified that the necessary work to the alternative route had been carried out.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it was felt that the paths or ways would not be substantially less convenient to the public in consequence of the diversion of the sections of the route because the proposed alternative routes were of similar length and gradients to the existing routes, providing sections of a route around the residential property and gardens which would be easy to follow and waymarked, with good views of the surrounding countryside.

It was felt that, if the Order were to be confirmed, there would be no adverse effect with respect to the public enjoyment of the paths or ways as a whole. It was felt that there would be no adverse effect on the land served by the existing routes or the land over which the new paths were to be created, together with any land held with it.

There was no apparatus belonging to or used by Statutory Undertakers under, in, upon, over, along or across the land crossed by the present definitive routes, or they had given their consent.

It was noted that the effect of the proposed Order, if confirmed, would not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. Furthermore, it was suggested that the proposal would not have an adverse effect on the biodiversity or natural beauty of the area.

It was also noted that the needs of the disabled had been actively considered and as such, the proposal was compatible with the duty of the County Council, as a highway authority and surveying authority under The Disability Discrimination Act 1995 (as amended by the Disability discrimination Act 2005).

Furthermore the proposal was compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'.

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

**19. Resolved:**

- i. That an Order be made under Section 119 of the Highways Act 1980 to divert parts of Public Footpath Nos. 36 and 37, in the Parish of Newton, from the routes shown by bold black lines and marked A-B and C-D-E-F and D-G-H on the plan referred to in the report, to the routes shown by bold black dashed lines and marked J-B and C-K-F and C-L-M-H on the plan and, in the event of no objections being received, the Order be confirmed.

- ii. That provisions 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 of parts of Public Footpaths Nos. 36 & 37 Newton, Ribble Valley Borough.

### **Highways Act 1980 - Section 119 Proposed Diversion Of Part Of Public Footpath No. 45, Euxton, Chorley Borough**

A request had been received from Mr S A Glenn, Northern Trust Company Limited, Lynton House, Ackhurst Park, Chorley, as agent for three landowners in Euxton, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 45 Euxton. The length of the existing path proposed to be diverted was shown by a bold black line and marked A-B-C-D on the plan referred to in the report; the proposed alternative route was shown by a bold black dashed line and marked A-E-F-G-H on the plan. No adverse comments or objections had been received.

Details of the proposed diversion were presented together with a summary of the law relating to the appropriate Order in the form of Annex B.

The width of the alternative route would be 2 metres, with the exception of the gap between the vehicle access gatepost and the gas pipeline marker post at point H on the plan referred to in the report. At this point, the width of the footpath would be 700mm.

The proposal was considered acceptable from a highway aspect and met the criteria for a diversion under Section 119 of the Highways Act 1980 i.e. that, in the interests of the owner, lessee or occupier of land crossed by the path, or of the public, it was expedient that the path should be diverted.

In this case, the diversion was felt to be expedient in the interests of the landowner, in that it would place the southern section of the route proposed to be diverted on land adjacent to the estate access track and the remainder of the length of footpath on a drier part of the field and more convenient access into the woodland at point E. It would therefore enable the landowner to maintain the existing fences hedges and earth mound, currently crossed by the existing footpath line, continuing to manage his land effectively.

It was noted that the proposed diversion would alter the termination point of Public Footpath No. 45 and place it at another point on Dawbers Lane being the same highway and it was suggested that this point was substantially as convenient to the public.

It was reported that the right of way to be created by the proposed Order, would be subject to the limitations and conditions as set out in the report.

The Committee was informed that the land crossed by the existing route and that of the alternative route was in the ownership of David John Picot, Arthur Rodney Amy and APK Trustees Limited c/o 32 St. Thomas's Road, Chorley and that the applicant, Mr S A Glenn, Northern Trust Company Limited, Lynton House, Ackhurst Park, Chorley was managing the agent for all the landowners.

The Committee was also informed that the applicants had agreed to defray any compensation payable and to bear all advertising and administrative charges incurred by the County Council in the Order-making procedures, and also to provide an alternative route to the satisfaction of the County Council.

The Committee was advised that so much of the Order as extinguishes part of Public Footpath No. 45 would not come into force until the County Council had certified that the necessary work to the alternative route had been carried out.

Furthermore should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it was felt that the path or way will not be substantially less convenient to the public in consequence of the diversion because the proposed alternative route was of a similar length and gradient to the existing route.

Under normal circumstances, the landowner would be required to ensure that the existing definitive route was available for use before a diversion Order was considered. This enabled the proposed alternative route to be easily evaluated in comparison with the existing route although it was advised that temporary obstructions were ignored. However, in some instances, the restoration of the route was considered to be impracticable or not in the interest of the user. This was the case with this particular footpath, as it passed through a number of fences and an earth mound. In the event that the diversion Order was made and confirmed, it would provide a long term solution to the problem. The route of the proposed alternative route was available for public use and it was felt that action to reinstate the existing footpath would not therefore be appropriate at this point in time. The applicant was aware that, in the event that the diversion proposal was not successful, the existing route would need to be reinstated.

There was no apparatus belonging to or used by Statutory Undertakers under, in, upon, over, along or across the land crossed by the present definitive route, or they have given their consent.

It was considered that having regard to the above, it would be expedient to confirm the Order. It was noted that the effect of the proposed Order, if confirmed, would not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and

physiographical features. It was also suggested that the proposal would not have an adverse effect on the biodiversity or natural beauty of the area.

It was also noted that the needs of the disabled had been actively considered and as such, the proposal was compatible with the duty of the County Council, as a highway authority and surveying authority under The Disability Discrimination Act 1995 (as amended by the Disability Discrimination 2005).

Furthermore, it was felt that, if the Order were to be confirmed, there would be no adverse effect with respect to the public enjoyment of the paths or ways as a whole. It was felt that there would be no adverse effect on the land served by the existing routes or the land over which the new path was to be created, together with any land held with it.

The Committee was also advised that the effect of the Order was compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'.

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

**20. Resolved:**

- i. That an Order be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 45, Euxton, from the route shown by a bold black line and marked A-B-C-D on the plan referred to in the report, to the route shown by a bold black dashed line and marked A-E-F-G-H on the plan and, in the event of no objections being received, the Order be confirmed.
- ii. That provisions 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 of part of Public Footpath No. 45, Euxton, Chorley Borough.

**Highways Act 1980 - Section 118B and Section 118  
Proposed Extinguishment of Public Footpath No. 33, Leyland, South Ribble Borough**

A report was presented on the proposed extinguishment of Public Footpath No. 33, Leyland, South Ribble Borough. It was proposed that most of the footpath A-B-C-D be extinguished under S118B Highways Act 1980 and a small section B-E be extinguished under S118

Details of the proposed extinguishment were presented together with a summary of the law relating to the appropriate Order in the form of Annex B.

The test for making an Order under S118B was considered. It was reported that the playing fields came within the definition of a school.

In recent years there had been a number of incidents of intruders gaining access to college grounds and engaging in anti-social behaviour and vandalism.

Whilst the pupils were secure within fenced off areas for the majority of the school day, the fields were used for the physical education of the pupils both during and after school. Health and safety issues had been identified in relation to the use of the route (and leaving the route to access the playing fields) to exercise dogs, with associated fouling of the playing field. In addition stray dogs had been observed entering the school playing fields and fouling the grassed area. Unless the site could be secured it was considered that this could be an ongoing problem with an associated risk of an unaccompanied dog intimidating or attacking pupils or staff. In addition, unauthorised access of the grounds had lead to discarded glass drinks bottles, cans and drugs paraphernalia.

Members of the public had been removed from the field by the police on several occasions. As a result of them being under the influence of unknown substances the college considered this as a risk to staff and pupils who may be participating in a lesson on the field.

The report from the Community Beat Manager, PC62 Paul Connell, Lancashire Constabulary provided further details in relation to the incidents that had occurred and were considered to contribute to the risk to pupils or staff from violence or threat of violence, harassment, alarm or distress arising from unlawful activity or any other risk to their health and safety arising from such activity.

It was suggested that the test for making an Order could be satisfied

The criteria for confirming an Order were also considered. It was suggested that it was expedient to confirm the Order having regard to all the circumstances, and in particular to;

(a) any other measures which have been or could be taken for improving or maintaining the security of the school.

(b) whether it is likely that the coming into operation of the Order will result in a substantial improvement in that security.

(c) the availability of a reasonably convenient alternative route, and the possibility of a diversion.

(d) the effect the coming into operation of the Order would have with respects land served by the existing highways.

The Committee received information relation to these circumstances.

The test to be satisfied to extinguish section B-E under S118 was considered and it was advised that this could be satisfied.

The tests to confirm an Order made under S118 were also considered It was considered that it was expedient to extinguish that part of Public Footpath No. 33, marked B-E on the plan referred to in the report, on the ground that it was not needed for public use and that it was not likely to be used by the public, particularly in view of it being a cul-de-sac route that is only 7 metres in length and did not reach a place of public resort. In addition, in the event that the proposed Order under Section 118B of the Highways Act 1980 was successful, it would remove public access to the western end of this length of footpath (point B).

Regard was also to be had to the effect which the extinguishment would have as respects land served by the path. It was considered that there would be no adverse effect.

It was advised that confirmation of the proposed Orders would not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. Furthermore, it was suggested that the proposal would not have an adverse effect on the biodiversity or natural beauty of the area. The needs of the disabled have been actively considered and as such, the proposal was compatible with the duty of the County Council, as a highway authority and surveying authority under The Disability Discrimination Act 1995 (as amended by the Disability Discrimination 2005).

The land crossed by footpath 33 is in the ownership of Lancashire County Council and the written agreement of the Director of Property was on file.

The school had agreed to bear the advertising costs and it was thought appropriate for the administration costs to be waived.

There was no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive route, or they had given their consent.

Furthermore, it was felt that the effect of the Orders was compatible with the material provisions of the County Council's Rights of Way Improvement Plan.

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

The school had agreed to bear the advertising costs and it was thought appropriate for the administration costs to be waived.

**21. Resolved:**

- i. That an Order be made under Section 118B of the Highways Act 1980 to extinguish part of Public Footpath No. 33, Leyland, shown by a bold black line and marked A-B-C-D on the plan referred to in the report and, in the event of no objections being received, the Order be confirmed.
- ii. That an Order be made under Section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 33, Leyland, shown by a bold black line and marked B-E on the plan and, in the event of no objections being received, the Order be confirmed.
- iii. That provisions be included in the Orders such that they are 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 extinguishment of Public Footpath No. 33, Leyland, South Ribble Borough.
- iv. That, being satisfied that the tests for confirming the Orders would be capable of being satisfied on balance, the Orders be promoted to confirmation if necessary by submission to the Secretary of State.

**Date of Next Meeting**

The next meeting of the Regulatory Committee is scheduled to be held on Wednesday 18 November 2009 in Cabinet Room 'B' at County Hall, Preston, commencing at 10:30am.

County Hall  
Preston

I M Fisher  
County Secretary & Solicitor



## 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

Mr. Peter Milward, 8 Hammerton Hall Close, Lancaster, LA1 2JX

#### Particulars of Claim

Claim number: 804/473 (5.32427)

Date of determination of the claim: 23<sup>rd</sup> September 2009

#### Modification Claimed

Claimed Public Footpath from Vale Road to Slyne Road, City of Lancaster

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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 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 on balance there is sufficient evidence in respect of section A-B-C-D to consider that it can be reasonably alleged that a footpath can be deemed to have been dedicated under S31 Highways Act 1980 but the claim for section D-E being already recorded adopted highway should not be accepted.

**Alternative options to be considered - N/A**

Date: 01/10/09

Signed:   
(County Secretary and Solicitor)

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

Ian Fisher  
County Secretary & Solicitor  
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:

The County Secretary and Solicitor  
(REF: LSG4/PROW/SK)  
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.