

Regulatory Committee

Meeting to be held on Wednesday, 25 September 2024

Part I

Electoral Division affected:
Lancaster Rural North;

Wildlife and Countryside Act 1981

Definitive Map Modification Order

Stance taken: Addition of Bridleway along Lord's Lot Road, Over Kellet

(Annex 'A' and Appendix 'A' refers)

Contact for further information:

Reference File No. 804-642

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Brief Summary

Decision required on the stance to be taken with regards to the submission of The Lancashire County Council Bridleway on Lord's Lot Road, Over Kellet Definitive Map Modification Order 2021 to the Planning Inspectorate.

Recommendation

That following objections being received the Order Making Authority takes a neutral stance with regards to confirmation when submitting the Order to the Planning Inspectorate for determination on the basis that additional evidence submitted as part of the process whereby objections or representations to the Order now mean that although the County Council considered that there was sufficient evidence to satisfy the test to make the Order, there is now sufficient doubt that the evidence now available to the Order Making Authority is sufficient to meet the higher test that the route subsists on the balance of probabilities.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was received to record on the Definitive Map and Statement of Public Rights of Way a public bridleway along Lord's Lot Road, Over Kellet. The application was made based on the submission of historical map and documentary evidence with no modern or historical user evidence submitted.



At the meeting of the Regulatory Committee held on 23rd June 2021 a decision was made to accept the application in part and to make an Order 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 Bridleway along Lord's Lot Road, Over Kellet. It was also agreed that being satisfied that the higher test for confirmation could be met, the Order be promoted to confirmation.

The Order was made on 18th August 2021 and received two objections.

The objection are summarised below in italics with comments by the Investigating Officer as follows:

The first was made by the Forestry Commission who own land crossed by the route and who were generally supportive but had a number of concerns.

The route may not be usable as a bridleway at present due to poor drainage, poor surfacing and encroaching trees and vegetation. Works may be needed to provide safe and secure ways round our unauthorised vehicular barriers.

The route has been used as a timber extraction route for over 50 years with no obligation to reinstate the track for other users and would require regular and lengthy bridleway closures for forest management works

Confirmation of the Order would necessitate a new obligation (in terms of health & safety requirements) including regular checks for potentially hazardous trees, carrying out remedial work that is needed and the requirement to apply to temporarily close the route for forestry operations.

In the main, the concerns raised by the Forestry Commission relate to the future management of the route if the Order was to be confirmed and are not considerations relevant to the confirmation of the Order.

Suggestions that the route is not currently suitable for horses and that frequent use has been made of the route for 50 years with heavy machinery may however cast doubt on any modern or historical use although it is noted that such evidence has not been submitted.

The second objection was made by the owners of land situated to the north of the Order route.

The objector argued that the route is – and always has been - a private road and that it was historically in the ownership of the Capernwray Hall Estate and that it is still a private road owned jointly by the several landowners. He questions why anyone would have the right to erect barriers across the route if it was not a private 'road' and raises concerns about fly tipping and the future maintenance of the route stating that it has always been maintained by the landowners in the past.



Whilst the Order made was to record a bridleway and not a vehicular route, additional information on the possible ownership of the route - and whether it was considered to be a public or private route by the owners in the past has been sought.

Plans and sale documents deposited in the County Records Office were inspected and whilst ownership of the route from point B through to point D is now unregistered it does appear to have been part of the Capernwray Hall Estate prior to 1947.

It was privately maintained and described in documentation as an occupation road with no reference to the existence of any public rights along it.

When making the Order the county council did not consider that there was sufficient evidence to record the route as a public road. They did however consider there was sufficient evidence to suggest that it could have been used and had become a public bridleway in the past.

The fact that the route was described as an occupation road in the 1940s and was privately maintained certainly adds to the view that it was originally created as a private vehicular and not public vehicular route but does not necessarily mean that the public may not have used it on foot or horseback.

Having been alerted to the fact that the land crossed by the Order route was formerly part of a large Estate the Object Names Book was also obtained from the National Archives to see whether this provided any further information on the route, the origins of its name or believed public status.

Lord's Lot Road is listed as an 'Occupation Road'. The authority for the name and its spelling was listed as being Mr Hind and as having been signed by Mr Marton of Capernwray Hall. It therefore appears that the owners of the land at that time considered it to be an occupation road.

A letter is also appended to the book which refers to the spelling of Lord's Lot Wood which explains it derives its name from being allotted to the Lord of the Manor when the moor was enclosed.

Appendices

Appendix 'A' is attached to this report. For clarification, it is summarised below and referenced at relevant points within this report.

Appendix	Title
Appendix 'A'	Regulatory Committee Report June 2021

Conclusion

The making of the Order and the statutory objection period has given everyone notified an opportunity to make further comment.

The Committee is therefore advised to consider the evidence again (the June 2021 report at Appendix 'A' refers) and the fact that additional evidence has now been found and considered.



Although the Order Making Authority previously assessed the evidence and considered that there was sufficient evidence to satisfy the test to make the Order and also to promote it to confirmation, now in considering information that has come to light since, on the balance of probabilities, it is advised that officers no longer consider that the evidence will be sufficient to meet the higher test for confirming the Order that the route already subsists as a bridleway on the balance of probabilities.

It is a finely balanced case but with a lack of any actual evidence of use on horseback if it cannot be decided whether or not the test for confirmation can be met then it is advised that the Order could now be referred with the Order Making Authority taking a neutral stance.

Implications:

This item has the following implications, as indicated:

Risk management

Consideration has been given to the risk management implications associated with this Order. The Committee is advised that the decision taken must be based solely on the evidence contained within the original report (Appendix 'A') and on the guidance contained both in this report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there are no significant risks associated with the decision making process.

Alternative Options to be Considered

Decide that the confirmation test is not met and submit the Order to the Planning Inspectorate with the request that it be not confirmed.

Decide that the confirmation test is met and submit the Order to the Planning Inspectorate with the request that it be confirmed.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-642		Simon Moore, Paralegal, Legal and Democratic Services, 01772 531280

Reason for inclusion in Part II, if appropriate

N/A

