

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

**THE LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY (DEFINITIVE MAP MODIFICATION) (NO. 6) ORDER
2012**

STANCE

The Lancashire County Council is supporting the confirmation of the Order.

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

Name and Address of Claimant

Thurnham Parish Council, C/O The Parish Clerk J. C Wright, 7 Ferndale Road, Lancaster LA1 4JB

Particulars of Claim

Claim number: 804/509 (5.37467)

Date of determination of the claim: 25th April 2012

Modification Claimed

Public Footpath from Lune Estuary Cycleway at Conder Green to the Lune Estuary Cycleway at Nans Buck Cottage, Thurnham, 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 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 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 to infer at Common Law or deem dedication under section 31 Highways Act 1980 of the claimed route.

Date: 27th April 2012

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:

Planning Inspectorate
Room 4/05 Kite 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:

The County Secretary and Solicitor
(REF: LSG4/PROW/CR3)
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.

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 25th April, 2012 at 10.30 am in Cabinet Room 'B' - County Hall, Preston

Present:

County Councillor Tony Jones (Chair)

County Councillors

W Cropper	A Knox
F De Molfetta	P Malpas
M Devaney	M Skilling
J Jackson	A Thornton
P Hayhurst	D Westley

County Councillor S Fishwick attended the meeting under Standing Order 19(1).

1. Apologies

Apologies for absence were received from County Councillors J Eaton, P McCann and M Skilling.

2. Disclosure of Personal and Prejudicial Interests

None were disclosed.

3. Minutes of the meeting held on the 7 March 2012

Resolved: That the Minutes of the meeting held on the 7 March, 2012 be confirmed and signed by the Chair.

4. Guidance

Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way 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' respectively.

Resolved: That, the guidance as set out at Annexes 'A' and 'B' be noted.

**5. Wildlife and Countryside Act 1981
Claimed Public Footpath from Public Footpath No. 14 Silverdale to
Lindeth Road, Silverdale, Lancaster City
Claim No. 804/504**

The Chair proposed that this item be deferred for the following reasons:

"So that:

1. The Committee will be helped being able to see extracts from the maps referred to and this is an ideal case for the proposed pilot introduction of having map extracts within the reports;
2. The officers may wish to refer to documents more fully;
3. The report includes all aspects of footpath 14 at their location not just the claimed addition. This would be consistent with current practice."

Resolved: That, the Claim for a public footpath from Public Footpath no. 14 Silverdale near no.2 Brown's Houses to the termination of Lindeth Road (U22687) to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/504, be deferred and that a report be brought back to a future meeting of the Committee for consideration.

**6. Wildlife and Countryside Act 1981
Claimed Public Footpath from Lune Estuary Cycleway at Conder
Green to Lune Estuary Cycleway at Nan Buck Cottage, Thurnham,
Lancaster City
Claim No. 804/509**

A report was presented on the claim for a public footpath from the Lune Estuary Cycleway at Conder Green to the Lune Estuary Cycleway at Nans Buck Cottage Thurnham, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/509.

The proposal was that the route shown between points A-J on the plan referred to in the report had already become a footpath at law and ought to be added 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 Public Rights of Way (in the form of Annex 'A') were presented in the report and at the meeting.

Some discussion was had at the meeting relating to map and documentary evidence including; Ordnance Survey Maps, Definitive Map records, aerial photographs and a Statutory Deposit and declaration deposited with the County Council in 2007. The Committee noted that there was no map or documentary evidence found to support the existence of the claimed route, other than the

sections between point A to point B and point I and point J. Further discussion was also had at the meeting relating to evidence of use forms and responses by multiple landowners.

The Committee having taken all the evidence into account, considered that the provisions of S31 Highways Act could be satisfied and that there was also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter such that an Order be made and promoted to confirmation.

Resolved: That;

- i. The claim for a public footpath from Conder Green to Nans Bucks Cottage Thurnham to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/509, be accepted.
- ii. 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 from Conder Green Lancaster City (Grid Reference SD 4567 5610) for a distance of approximately 1600 metres to Nan Bucks Cottage Thurnham, Lancaster City (Grid Reference SD 4570 5758) and shown between Points A and J on the plan referred to in the report.
- iii. Being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

7. Highways Act 1980 - Section 119 Proposed Diversion of Part of Public Footpath No. 36 Dalton, West Lancashire Borough

It was reported that a request had been received from Mr Mark Ainscough, Rookery Farm, Dungeon Lane, Dalton, West Lancashire, for an Order to be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 36 Dalton, in the vicinity of Rookery Farm. The length of the existing path proposed to be diverted was shown by a bold continuous line and marked A-C on the plan referred to in the report. The proposed alternative route was shown by a bold dashed line and marked A-B-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 proposal if successful, would remove a length of public footpath from the driveway passing close to Rookery Farm, providing the owners of the property with an improvement in privacy and security.

Information was presented in the report and at the meeting to address the criteria of the statutory tests for making an Order and confirming said Order.

It was considered that having regard to all the information in the report and presented at the meeting and the statutory tests it would on balance be expedient to make an Order under Section 119 of the Highways Act 1980 and also expedient to confirm said Order if no objections or representations were received or promote it to confirmation should objections or representations be received.

Resolved: That;

- i. An Order be made under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 36, in the Parish of Dalton, from the route shown by a bold black line and marked A-C on the plan referred to in the report, to the route shown by a bold black dashed line and marked A-B-C on the plan.
- ii. In the event of no objections being received, the Order be confirmed and in the event of objections being received the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
- iii. Provision 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.

**8. Highways Act 1980 - Section 26
Wildlife and Countryside Act 1981 - s53A
Proposed creation of lengths of public footpath connecting Public
Footpath No. 8 Ulnes Walton, Chorley Borough**

A report was presented on the proposal for the creation of lengths of public footpath connecting Public Footpath No.8 Ulnes Walton, Chorley Borough.

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

The Committee was informed that on 9th May 2007 the Regulatory Committee gave consideration to whether Orders should be made to move, by means of extinguishment and creation, parts of Public Footpath Nos. 6 and 8 Ulnes Walton from the present legal line on the bank of the River Lostock to a broadly parallel line in the middle of the field, further away from the river.

The Committee accepted the recommendation to make the Creation and Extinguishment Orders and subsequently the Orders were made to create a new length of public footpath and to extinguish those parts of the existing public footpath that would no longer be required should the new path be created. Objections were received to the Orders and on 18th May 2011 the County Council's Regulatory Committee decided that the Orders should be abandoned and that an alternative solution should be found.

The Committee was informed that having considered the objections to the original Orders and the grounds for creating a footpath, a new proposal had been consulted upon to make a new Creation Order to create new sections of public footpath roughly parallel to where the existing public footpath had fallen into the river or would likely do so in the near future.

The revised proposal was shown on the Committee plan referred to in the report and sought to create sections of public footpath shown by thick dashed lines between points A-B, C-D and E-F-G.

The Committee noted that the sections of public footpath to be created would have a legally recorded width of 2 metres and that there was no intention to install any structures on the new sections or to surface the existing or new sections of public footpath. It was also intended to await the outcome of this proposal before continuing with the installation of the footbridge on the existing legal line just to the west of point A.

The Committee also noted that once the new sections of footpath had been created it was proposed to submit a further report to the Regulatory Committee seeking approval to extinguish those sections of the existing path which no longer formed a part of the through route and which still existed – some of those sections that had already fallen into the river might have ceased to exist as a public right of way.

Some discussion was had at the meeting relating to consultations with the landowners who were in objection to the proposal, Ulnes Walton Parish Council and the Peak and Northern Footpaths Society. A number of letters and emails including a response from the Police Sargeant at Coppull Police Station were also considered at the meeting.

The Committee was informed that the proposed creation(s) would add to both the convenience and enjoyment of the public because of the current situation any person wishing to walk between the junction of Public Footpath No. 8 Ulnes Walton on Ulnes Walton Lane at Higher Walton Bridge and either the bridge at Mill Platt into Leyland or the continuation of Public Footpath No. 8 Ulnes Walton at point G were currently required to use an alternative route along Holker Lane and Public Footpath No. 6 Ulnes Walton.

Holker Lane was a narrow single track Lane, quite heavily used by local traffic at certain times of the day. It had no pavement and was a considerable distance from the River Lostock. This 'enforced' alternative route was not as safe, attractive nor direct as the proposed route to be created and involved a walk of nearly half a kilometre extra.

A major inconvenience to the public at present was the fact that it was not possible to gain legal access from the public rights of way network on the north of the River Lostock via Mill Platt Bridge (Public Footpath No. 16a Leyland) to the public rights of way network on the southern side of the river without walking along Holker Lane. The riverbank erosion in the vicinity of the proposed creation

effectively meant that the two areas of the network had been split with no other alternative off-road link existing.

The Committee was informed that support for the proposed creation had been received from the Parish Council and the local Ramblers' Association who organise regular walks in the area. It was also supported by the Peak and Northern Footpaths Society and a number of local individuals who regularly walked the footpaths in this area from their homes.

The Committee was also informed that the proposed footpath creation would also reinstate an important link in a much longer linear route between Croston and Leyland. Previously the County Council had been involved in the proposed development of a Viking Heritage Trail to reflect the route that 'Uline' the Viking was believed to have taken when he settled in the area. It was believed that he came up the Ribble Estuary and followed the River Lostock to the boundary of Ulnes Walton and Leyland. The original route of Public Footpath No. 8 Ulnes Walton is thought to be part of this historic route and the implementation of the trail relied heavily on the creation of the proposed path.

The Committee was advised that Section 28 of the Highways Act 1980 allowed for the payment of compensation to a person with an interest in the land the subject of a creation order if it could be shown that the value of that interest was depreciated as a result. Similarly, compensation was payable if a person could show that he had suffered damage by being disturbed in his enjoyment of the land as a consequence of the coming into operation of a creation order.

The landowner affected by this proposal was objecting to the creation and might also submit a claim for compensation. The possible cost to the Authority was part of the balancing of the expediency of the creation of a new footpath and whether such payment was proportionate.

It was reported that the Estates Team of the Property Group had been consulted in respect of this application and that it would be necessary to consider the outcome of these discussions under Part II. The Committee therefore:

Resolved: That the press and members of the public be excluded from the meeting during consideration of the following item of business on the grounds that there would be a likely disclosure of exempt information as defined in the paragraph of Part 1 of schedule 12A to the Local Government Act, 1972, indicated against the heading to the item. It was considered that in all the circumstances the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

Highways Act 1980 - Section 26

Wildlife and Countryside Act 1981 - s53A

Proposed creation of lengths of public footpath connecting Public Footpath No. 8 Ulnes Walton, Chorley Borough

(Exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act, 1972. It was considered that in all the circumstances of the case the public interest in maintaining the exemption outweighed the public interest in disclosing the information.)

An oral report was presented on the outcome of discussions with the Estates Team of the Property Group in respect of this proposal.

[The proceedings then moved back into Part I (Open to Press and Public)]

The Committee was informed that as there was no external applicant requesting that the Order be made and in view of the overall benefit to the public of this proposal, it was recommended that all advertising and administrative charges incurred in the order making process be incurred by the County Council. There was no physical work necessary in connection with the provision of a satisfactory route but should any be required it was also recommended that this be carried out by the County Council.

The Committee having taken all the information into account considered that on balance there was sufficient evidence that a footpath be created and that the proposal be accepted.

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

Resolved: That;

- i. An Order be made under Section 26 of the Highways Act 1980 to create three short sections of public footpath connecting to Public Footpath No. 8 Ulnes Walton shown by bold black dashed lines and marked A-B, C-D and E-F-G on the plan referred to in the report.
- ii. In the event of no objections being received, the Order be confirmed and in the event of objections being received the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
- iii. 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 creation.

9. Date of Next Meeting

The Committee was informed that it would be necessary to rearrange the next meeting due to be held on 27 June 2012. The Chair proposed that the meeting be held on 20 June but it was noted that this might conflict with other events. Officers were asked to identify the most convenient date and confirm details with Members as soon as possible.

I M Fisher
County Secretary and Solicitor

County Hall
Preston