

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE
COUNTY OF LANCASHIRE**

**THE LANCASHIRE COUNTY COUNCIL (ALDCLIFFE HALL DRIVE, ALDCLIFFE
WITH STODDAY, LANCASTER) DEFINITIVE MAP MODIFICATION ORDER 2018**

STANCE

The Lancashire County Council, following the decision of the Regulatory Committee on 6th June 2018, are supporting the above Order.

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 6th June, 2018 at 10.30 am in Committee Room 'B' (The Diamond Jubilee Room) - County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

M Barron	D Howarth
T Aldridge	H Khan
I Brown	J Marsh
A Clempson	B Yates
B Dawson	

1. Apologies

No apologies for absence were received.

County Councillor Barrie Yates replaced County Councillor Peter Steen.

County Councillor Hasina Khan replaced County Councillor Jean Parr.

County Councillor Bernard Dawson replaced County Councillor Lorraine Cox.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last meeting

Resolved: That the minutes of the last meeting held on 15th March 2018 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing guidance for Members of the Committee on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way, the law and actions taken by the authority in respect of certain Orders to be made under the Highways Act 1980, and the actions of the Authority on Submission of Public Path Orders to the Secretary of State.

Resolved: That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.

5. Wildlife and Countryside Act 1981 Claimed Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Castle Road, Colne, Pendle Borough. Claimed No. 804.440a

A report had been presented to Regulatory Committee in May 2007 on an application for a Public Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Castle Road, Colne, and to upgrade from Public Footpath to Bridleway, Footpath No 65, Foulridge and Nos 19, 18, 16, 14, 12 and 8 Colne, to the Definitive Map and Statement of Public Rights of Way.

This application was to add a bridleway from sections A-B, as shown as the blue route on the Committee plan attached to the agenda papers, and to upgrade from public footpath to bridleway sections B-J, as shown as the yellow route on the Committee plan attached to the agenda papers.

It was noted that the Committee had decided that there was sufficient evidence that a bridleway on the blue route was reasonably alleged to subsist and an Order was therefore made which received objections. The Committee had decided not to make an Order in respect of the yellow route, which had then been made the subject of an appeal. It was reported that the Planning Inspectorate had allowed the appeal, and that the county council was directed to make an Order in respect of the yellow route. Both Orders were subsequently advertised and received objections and will therefore need to be submitted to the Secretary of State for formal determination.

The Committee noted that the county council's stance in respect of the yellow route was to remain neutral, as it opposed the making of the Order on appeal, and that this stance had already been determined by Committee in December 2014.

It was therefore recommended that the county council's stance should also be neutral for the Order for the blue route as to promote that Order to confirmation would create a cul de sac route which Planning Inspectorate guidance did not recommend, unless there were special circumstances. The Committee noted that there were no special circumstances in respect of this route and so a neutral stance was recommended.

Resolved: That the county council as order making authority should send The Lancashire County Council (Cob Lane/Cockhill Lane to Kelbrook Wood) Definitive Map Modification Order 2014 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, but should notify the Secretary of State that it does not actively support the Order and adopts a "neutral stance" as regards confirmation of the Order.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Application for recording on the Definitive Map and Statement a Restricted Byway along Aldcliffe Hall Drive, Lancaster

A report was presented on an application for the addition to the Definitive Map and Statement of Public Rights of Way, of a restricted byway along the route known as Aldcliffe Hall Drive, from Aldcliffe Road to Aldcliffe Hall Lane, Aldcliffe with Stodday, as shown between points A-B-C-D on the Committee plan attached to the agenda papers.

The application was on the basis of a considerable amount of user evidence.

It was reported that a number of residents living adjacent to the route referred to a right to erect a fence across the route in deeds from the 1950s, but, at the time of writing the report, no deeds had been made available to the county council, as part of the investigation, so no inference could be drawn. Since that time, a copy of the deed and plan dated 18 January 1956 has been received, which related to land shown between points D-C and short of point B on the Committee plan, and referred to the road fronting the properties as being private, granting private rights of access to the two properties, and a right to erect a barrier where the bollards were subsequently installed. However, the Committee noted that having private rights of access does not preclude public rights being dedicated.

Lancaster City Council had responded to consultations and confirmed that they did not have any interest in the area in question.

The Committee noted that reference had been made in the report to a bridleway which had been in reliance of the case of *Whitworth v Secretary of State for Environment, Food and Rural Affairs*. This case had suggested that subsequent use of an accepted but unrecorded bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway. The use on pedal cycle would have had to have shown earlier acceptance of the route as bridleway, for the cycle use to be supporting use as bridleway, rather than restricted byway.

However, it was reported that a recent Planning Inspectorate decision had been considered which had very similar circumstances to this application, in that there had been no pre-existence of bridleway rights. The balance of pedal cycle users was the opposite of that in the *Whitworth* case. It was noted that, in this case, use by cyclists outweighed use by horse riders; no horse riders had claimed to use this route. Therefore, there was no basis from which a less burdensome bridleway could be inferred; the evidence of use by cyclists supported the establishment of a restricted byway over the claimed route.

It was therefore proposed that the recommendation be revised as follows, to refer to the making of an Order in respect of a restricted byway, as opposed to a bridleway:

Resolved:

- (i) That the application for a restricted byway along the route known as Aldcliffe Hall Drive, in accordance with File No. 804-592, be accepted.

(ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(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 **restricted byway** as shown on the Committee Plan between points A-B-C-D.

(iii) That being satisfied that the higher test for confirmation can be met, the Order be promoted to confirmation.

7. Application for a Transfer of a Right of Common in gross to be recorded in respect of some of the Rights of Common, being grazing rights severed from the land at Ireby Green, Ireby, being entry 4 in the Rights Section of Register Unit CL23 known as Ireby Fell in the Parish of Ireby

A report was presented on an application from John Douglas James Welbank and Sylvia Margaret Welbank to record a transfer of rights in gross, namely the right to graze 26 sheep gaits, between John Stephen Brown, the Transferor and the Applicants, the transferees, on 6th November 2012, which had been previously attached to Ireby Green, Ireby, as shown on the supplemental map attached to the agenda papers.

The Committee noted that this was an application under Section 12 of the Commons Act 2006, and sought to amend the relevant entry in the rights section of the Common Land Register Unit CL23, to record a transfer of a commons right in gross (a right of common not attached to land but instead held by a person (e.g. under a deed)). This case was in relation to the rights to graze 26 sheep gaits over the whole of CL23 (Ireby Fell).

In order for the transfer to be recorded, the Commons Registration Authority needed to be satisfied that the application had the effect of evidencing that the Applicants were the transferees of that right and that the registered owners of the right of common consented to the application.

It was reported that, in this case, the supporting documents submitted with the application did evidence that the Applicants, John and Sylvia Welbank, were the transferees and that the Commons Registration Authority, along with the application papers, also had confirmation of the transferor's consent to the application.

Resolved: That the application be accepted, and the transfer of rights in gross be recorded in the Commons Register, in accordance with Section 12 of the Commons Act 2006, that Mr John Douglas James Welbank and Mrs Sylvia Margaret Welbank, were entitled to exercise the right to graze 26 sheep gaits on common land unit CL23.

8. Urgent Business

There were no items of Urgent Business.

9. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 18th July 2018 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

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

The Parish Council of Aldcliffe-with-Stodday, Lunecliffe House, Ashton Road, Lancaster, LA2 0AB

Particulars of Claim

Claim number: 804/592 (888.1245)

Date of determination of the claim: Wednesday 6th June 2018

Modification Claimed

Addition of a Restricted Byway along Aldcliffe Hall Drive, 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 claimed route.

The reason for the County Council's decision is:

The Regulatory Committee, having taken all relevant evidence into account, determined that there was sufficient evidence for the addition of a restricted byway from Aldcliffe Hall Drive, Lancaster as shown on the attached Committee Plan as points A-B-C-D and the order be promoted to confirmation.

Date: 19th June 2018

Signed: 
(Principal Lawyer for and on behalf of the Director of Governance Finance & Public Services)

NB: Important guidance notes are provided overleaf

Laura Sales
Director of Corporate Services
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:

Rights of Way
The Planning Inspectorate
3G Hawk Wing
Temple Quay House
2 The Square
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/CB7/888.1245/804.592)
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.