

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

**THE LANCASHIRE COUNTY COUNCIL
ADDITION OF FOOTPATH FROM CHATBURN OLD ROAD, CHATBURN
DEFINITIVE MAP MODIFICATION ORDER 2022**

STANCE

The Lancashire County Council, following decisions of the Regulatory Committee on 16 November 2022 and 25 September 2024, are not supporting the above Order, the council has adopted a neutral stance.

Lancashire County Council

Regulatory Committee

**Minutes of the Meeting held on Wednesday, 16th November, 2022 at 10.30 am
in Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

Present:

County Councillor Sue Hind (Chair)

County Councillors

M Salter	J Oakes
J Burrows	A Clempson
A Cheetham	M Clifford
D Howarth	C Towneley
J Parr	L Cox

1. Apologies

Apologies were received from County Councillor Terry Aldridge.

Temporary replacements

County Councillor Cosima Towneley replaced County Councillor Alan Hosker.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 14th September 2022

Resolved: That the minutes of the meeting held on 14th September 2022 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.

The Chair informed Committee that she would welcome more training on Regulatory matters and considered that future training should be mandatory for both Committee

Members and any substitute Members. It was noted that any changes to the Terms of Reference would need to be approved by the Political Governance Working Group then Full Council. The Chair invited comments from Committee. The suggestion of further training was welcomed and officers tasked with arranging same.

In response to a question, Jane Turner, Principal Lawyer, informed Committee that a right of appeal on a Regulatory matter could stem from where a decision was taken not to make an Order and that this may be referred to the Secretary of State (who may direct Committee to make an Order). If an Order was approved, there was a 6 week objection period and, if any objections were received, they would be passed onto the Secretary of State through the Planning Inspectorate office, for a decision on confirmation. It was reported that this may take the form of a public inquiry to investigate the evidence and then a decision would be made by the Secretary of State. There was also always the possibility of a Committee decision being challenged, as any decision taken by an authority could be subject to judicial review, if it took into account something it should not have taken account of, or disregarded something it should not have disregarded and therefore reached a conclusion that it should not have reached.

Resolved:

- (i) That the Guidance as set out in Annexes 'A', 'B' and 'C' of the report presented, be noted.
- (ii) That future training for Regulatory Committee Members and any substitute Members should be mandatory and that arrangements be put in place to amend the Committee's Terms of Reference.
- (iii) That a training session be organised for Committee Members and any other Members intending to act as substitutes on the Committee.

5. Progress Report on Previous Committee Items

A report was presented providing an update on the progress made in relation to matters previously considered by Committee.

Committee noted that although the term 'applications' had been used for convenience, these were not all formal applications made under Schedule 14 of the Wildlife and Countryside Act 1981 but included some cases where sufficient evidence had been discovered or presented to the county council to indicate an investigation was appropriate.

County Councillor Towneley asked whether future progress reports could include whether the applications were for bridleway, footpath or restricted byway.

The Chair reported that, following consideration of the Calderstones Cemetery application at the September meeting, she had requested that the padlocked gates be left open on 11th November, in order for people to pay their respects on Remembrance Day. However, the gates had remained locked.

County Councillor Clempson, Champion for Armed Forces and Veterans, reported that he had been extremely disappointed about the gates being locked and considered that access to the cemetery should be available 365 days a year, as should any war/military graves. The Committee were informed that some veterans had helped the family concerned to gain access and that County Councillor Clempson would write a letter to the owners of the site on behalf of the county council (and possibly involve the War Graves Commission), to ensure this situation did not reoccur.

The Chair thanked County Councillor Clempson on behalf of the Committee and all those who had close links with the Calderstones cemeteries.

Resolved: That the report be noted.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Waness Blades Road to Deans Lane, Lathom**

Jayne Elliott reported that, since the publication of this report, she had been asked to examine the paper copy of the Inclosure Award written on parchment, to check the wording of a larger proportion of the Award, in addition to the photographs previously examined.

A transcript from a substantial part of the Award had now been made from the Records Office document. Examining the additional information had significantly altered the officers' views and therefore required further investigation and evaluation with regards to making an Order. The fuller transcript provided greater context that the application route was set out as a private and not public route as had been indicated in the Committee report.

In light of this, it was necessary for officers to re-examine the documents previously inspected and it was therefore requested that the application be deferred to the next meeting of the Committee.

Jayne Elliott confirmed that she would inform the applicant of the up to date situation.

Following a discussion, it was:

Resolved: That the item be deferred to the next meeting of the Committee.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Chatburn Old Road, Chatburn, Ribble Valley
Borough**

A report was presented on an application and investigation for the addition of a footpath from Chatburn Old Road Chatburn, to 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 site inspection had been carried out in April 2022.

A variety of maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be. The land crossed by the application route was affected by the extension of the limestone quarries to the west in the 1960s, with no evidence that the application route existed prior to that time. For that reason, much of the early map and documentary evidence was not included in the Committee report.

It was reported that it had initially been considered that Chatburn Old Road extended west as far as point A but, on investigation, it had become apparent that public rights had been extinguished along the road from point X to point A in 1971. The map and site evidence showed that this part of the road still physically existed after that time, and that it appeared capable of being used. The section A-X was not part of the application route, but had been added to the Recommendation, following an investigation and confirmation of its use by the users. The route had been fenced off at point A which had prompted the application.

Committee were advised that the user evidence from the 1960s needed to be considered as there was no map, photographic or documentary evidence found to support the physical existence of the route.

Committee noted that the landowner had raised some legal points in relation to the application and that these had been addressed within the Committee report.

There had been no prevention of use of the route until recently.

Taking all of the evidence into account, Committee were advised, on balance, they may consider that there may be sufficient evidence of a footpath being able to be reasonably alleged to subsist and therefore make an Order and, should no objections be received, it would be appropriate to consider the higher test was able to be satisfied and the Order able to be confirmed. However, if there were any objections, it would be appropriate to clarify the user evidence by taking more detailed statements, and it was suggested that Committee may consider the matter should be returned to them for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed and further statements from users were taken.

Resolved:

- (i) That the application for the addition to the Definitive Map and Statement of Public rights of Way of a footpath from Chatburn Old Road, be accepted. That the evidence of a footpath reasonably alleged following investigation into the other part of route A-X be accepted.
- (ii) That an Order(s) 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 on the Definitive Map and Statement of Public Rights of Way a footpath from Chatburn Old Road as shown on Committee Plan between points X-A-B-C.
- (iii) That the Order be confirmed if no objections are received but if objections are received the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order has passed.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of footpaths around Glencourse Drive, Fulwood**

A report was presented on an application and investigation into the addition of footpaths linking Watling Street Road, Eastway and Glencourse Drive and into the vicinity of Sandy Brook to the east of Eastway, Fulwood, to 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, D-E and E-I.

A site inspection had been carried out in November 2021.

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

It was reported that, on investigation, the application routes all linked to other routes and therefore additional routes had been included in the report for Committee to consider.

Committee were informed that, in this particular case, the land crossed by the application route had not been developed until the 1990s, and that there was no suggestion that the application route or other routes under investigation existed prior to that time.

For this reason, much of the historical map and documentary evidence normally considered as part of the Committee report had not been included. However, several historical maps submitted by the applicant in support of their application had been included.

Committee noted that for the purpose of the research, the routes shown on the Committee plan were all referred to as 'the application route' rather than part application and part route under investigation.

Committee were informed that the area where the routes ran were on areas transferred as public open space by the Commission for New Towns. The Open



Space areas had not been transferred to the City Council and so were not held under statutory provisions for open space giving the public a statutory permission but, instead, remained held by successors in title to Fairclough Homes bound by the covenants to keep the area unbuilt upon. Committee noted that no landowner had provided any official response to the consultation.

In response to a question, it was reported that Legal Services informed the applicant and other interested parties of decisions taken by Committee. Once an Order had been made, there was a statutory notification period in terms of putting notices on site and in newspapers and recorded delivery letters sent to all interested parties. Once a route had been added to the Definitive Map and Statement, the Ordnance Survey office were notified for it to be included on their maps which were accessible by the public.

A further question was asked in relation to signage and why some routes were not signposted. It was reported that there was a legal provision for a footpath or bridleway to be signposted off a vehicular highway and that signage in fields relied on the waymarking system. The county council had a team of officers to erect signs on routes that were already included on the Definitive Map and Statement; this was a rolling programme due to wear and tear or damage to the signs. For routes not yet recorded, an Order would need to be confirmed before any signage was erected although notices would be displayed on the route to inform members of the public that an Order had either been made or confirmed. Waymarking was used when a route left a public highway and continued into a field and was usually done in consultation with the landowners.

Taking all of the evidence into account, Committee were advised that they may, on balance, consider that there may be sufficient evidence of footpaths being able to be reasonably alleged to make an Order and, should no objections be received, it would be appropriate to consider the higher test as able to be satisfied and the Order be able to be confirmed. If there were any objections, the need to clarify the user evidence by taking more full statements may be appropriate and it was suggested that Committee may consider the matter should be returned to them for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed, and more full statements from users taken.

Resolved:

- (i) That the application for a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from Watling Street Road to the bridge over Sandy Brook, Fulwood, be accepted. That the evidence following investigation into other routes be accepted.
- (ii) That an Order(s) 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 number of footpaths to the Definitive Map and Statement of Public Rights of Way in the vicinity of Watling Street Road, Glencourse Drive and Eastway, Fulwood as shown on Committee Plan between points A-B-C, D-N-E-F-G, N-I, H-E-I-J and M-L-J-K.



- (iii) That not being satisfied that the higher test for confirmation can be met with the information available, the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order had passed.

9. Urgent Business

There were no items of Urgent Business.

10. Date of Next Meeting

Resolved: It was noted that the next meeting would be held at 10.30am on Wednesday 25th January 2023 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

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

Clerk to the Councill, Chatburn Parish Council, 3 Turner Fold, Read, Burnley, BB12 7QZ

Particulars

File number: 804-710 (888.2652)

Date of determination: 16 November 2022

Modification Proposed

Addition of Footpath from Chatburn Old Road, Chatburn, Ribbles Valley Borough.

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 application.

The reason for the County Council's decision is:

The Regulatory Committee, having taken all relevant evidence into account, determined that mainly on the basis of the user evidence submitted to committee dedication could be deemed under s31 Highways Act 1980 and/or inferred at common law from all the circumstances.

Date: 04 April 2023

Signed:

A handwritten signature in black ink, appearing to read "John Turner", written over a light blue rectangular background.

(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 0LD

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:

Legal and Democratic Services
(REF: LSG4/PROW/SM18/888.2652)
County Hall
Preston
PR1 0LD

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 September, 2024 at 10.30 am
in Committee Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

Present:

County Councillor Alan Cullens BEM (Chair)

County Councillors

M Salter	L Cox
A Cheetham	A Kay
S Clarke	J Oakes
M Clifford	

1. Apologies

Apologies were received from County Councillor Howarth.

Temporary replacement

County Councillor Holgate replaced County Councillor Parr.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last Meeting held on 26 June 2024

Resolved: That the minutes of the meeting held on 26th June 2024 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 an update of the progress made in relation to matters previously considered by Committee.

Committee noted that although the term 'applications' had been used for convenience these were not all formal applications made under Schedule 14 of the Wildlife and Countryside Act 1981 but included some cases where sufficient evidence had been discovered or presented to the county council to indicate an investigation was appropriate.

County Councillor Cheetham referred to the Definitive Map Modification Order 804-540 Buckhurst Road, Ramsbottom, which had been submitted to the Planning Inspectorate having received objections. County Councillor Cheetham reported that it could not be accessed from Rochdale Road in the winter and that one of the signs was missing but had been reported. Officers agreed to pass County Councillor Cheetham's comments onto maintenance colleagues.

Resolved: That the report be noted.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Investigation into the Public Rights on Old Clay Lane near Longridge

A report was presented on an application to vary the particulars relating to the footpath from Inglewhite Road, Whittingham to Tile Croft, Old Clay Lane, Thornley with Wheatley. The application had prompted an investigation into public rights along Old Clay Lane, including the proposed deletion of Footpath FP0609004 and FP0341068 and addition to the Definitive Map and Statement of Public Rights of Way of a restricted byway along Old Clay Lane.

The proposed deletion of Footpath FP0609004 and FP0341068 was shown on the Committee plan attached to the agenda papers between points X-Y-Z and the restricted byway to be added was shown between points A-B-C-D.

It was reported that the application related to an apparent error in recording public footpath rights on the Revised Definitive Map First Review (the Definitive Map) along the route X-Y-Z. Whilst investigating this apparent error, several documents had led the Investigating Officer to consider not only whether an error had been made when recording footpath rights along the route X-Y-Z, but also whether there were higher public rights along the full length of the route known as Old Clay Lane (A-B-C-D).

For that reason, the full extent of maps, plans and other documents normally examined when an application to record public rights were examined to discover not

only whether a drafting error had been made, but also when the Old Clay Lane came into being and what its status may be.

Committee were informed that, taking all the evidence into account, they may consider that there was sufficient cogent evidence to suggest the route X-Y-Z had been recorded in error and should be removed from the Definitive Map, and that the restricted byway between A-B-C-D should be added to the Definitive Map. It was advised that the evidence was sufficient to not only satisfy the test to make the Orders but also to promote the Orders to confirmation.

The officers answered questions from Committee.

After a discussion, it was:

Resolved:

- (i) That the application to vary the particulars relating to the footpath from Inglewhite Road to Tile Croft, Old Clay Lane be accepted (subject to upgrading the status to restricted byway).
- (ii) That an Order(s) be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i)&(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of Way as follows:
 - a. to delete FP0609004 and FP0341068 between Inglewhite Road and Longridge Road running along the boundary of Old Clay Lane as shown by a bold solid line on the Committee plan between points X-Y-Z.
 - b. to add a Restricted Byway from Inglewhite Road along Old Clay Lane to Longridge Road 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(s) be promoted to confirmation.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Investigation into public rights along route from Church Street to Water Street, known locally as The Weind, Ribchester**

A report was presented on an investigation into public rights from Church Street to Water Street, known locally as The Weind, Ribchester and whether it should be added to the Definitive Map and Statement of Public Rights of Way. A restricted byway to be added was shown on the Committee Plan attached to the agenda papers between points A-B.

It was reported that an informal request had been received in 2024 for the addition of a public right of way on the Definitive Map and Statement of Public Rights of Way.

Whilst investigating the request and advising the potential applicant, the Investigating Officer had identified a bundle of evidence submitted in 2019 by Ribchester Parish Council, titled as being an application to record a public right of way in respect of 'The Weind'.

No Statutory application had been made at that time and no investigation into the existence of public rights was carried out by the county council. However, the evidence submitted in 2019 was very relevant to the 2024 investigation and had therefore been detailed and considered within the report.

Various maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be.

It was recommended that Committee could be satisfied in the evidence of a dedication many decades ago and approve the making of an Order to add a restricted byway as set out in the Recommendation of the report, as the test under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1953 could be met. Committee noted that the rights on a restricted byway included rights to use on foot, which was how the route was used today in the main.

Alternatively (and not in addition to), Committee were advised that if they were not satisfied of a dedication based on historic evidence, they could approve the making of an Order based on modern user evidence to add a Footpath on the Definitive Map and Statement of Public Rights of Way on the route.

It was therefore recommended that an Order made on either basis would satisfy the confirmation test and could be promoted to confirmation.

Resolved:

- (i) That an Order(s) 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 a Restricted Byway on the Definitive Map and Statement of Public Rights of Way from Church Street to Water Street, Ribchester as shown on Committee Plan between points A-B.
- (ii) 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
Upgrade of Footpath 7-6-FP8 in Little Hoole to Bridleway between Moss Lane and Wham Lane, Little Hoole**

A report was presented on an application for Footpath 7-6-FP8 in Little Hoole to be upgraded to Bridleway from Moss Lane to Wham Lane, Little Hoole. The bridleway to be added was shown on the Committee Plan attached to the agenda papers between points A-B.



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

Committee were advised that, from the information contained within the report, it was suggested that they had sufficient evidence, on balance, that the route was a historical public route available as a vehicular highway, which at present was recorded as footpath on the Definitive Map and Statement.

There had been no legal stopping up of those rights and so it was advised that the legal maxim "once a highway always a highway" would apply.

Committee were informed that if they were content that there was sufficient evidence of an old vehicular highway between points A-B, the Natural Environment and Rural Communities Act 2006 would have extinguished mechanically propelled vehicular rights, leaving the route to be appropriately recorded as a restricted byway. Committee were therefore recommended to make an Order as set out in the Recommendation of the report and that it be promoted to confirmation.

Resolved:

- (i) That the application for the upgrading of Footpath 7-6-FP8 to Bridleway, in accordance with file no. 804-631, be accepted in part and subject to a status of restricted byway not bridleway.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Footpath 7-6-FP8 in Little Hoole to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B.
- (iii) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

**9. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of public footpaths across land off Knotts Lane and Lenches Road,
Colne**

A report was presented on an application for the addition of footpaths to the Definitive Map and Statement of Public Rights of Way of across land off Knotts Lane and Lenches Road, Colne.

It was reported that, although the Committee Plan circulated with the agenda papers had shown the correct application routes, no reference points had been included. A revised Committee Plan had therefore been circulated to members prior to the meeting showing the reference points. The footpaths to be added were shown on the revised Committee Plan (copy attached) between points A-H.

The report set out a detailed summary of evidence provided by the landowners in relation to the location of no trespassing/private property notices. The officer presented a map showing where the notices were displayed, photographs of the notices erected by the landowner between 2003 and 2019 and Google Street view images of signage.

Committee's attention was drawn to the late submissions supplement (copy attached) which had been circulated to members at the meeting. Committee were informed that the information contained within the supplement did not change the Recommendation contained within the Committee report.

It was agreed that County Councillor Jenny Purcell could address the Committee. County Councillor Purcell represented Pendle Rural and this application was on the boundary of her electoral division. County Councillor Purcell stated that she was in support of this application and that the routes were used by many members of the public, including walking groups.

The Chair reported that the structure of who could speak at Committee and how this would work would be addressed through the Political Governance Working Group.

Various maps, plans and other documents had been examined to discover when the route came into being, and to try to determine what its status may be.

It was suggested to Committee that the evidence of lack of intention in connection with these particular application routes was not "unable to be disputed" and so the recommendation was that, if satisfied that footpaths could be reasonably alleged to subsist, an Order be made. The test for making an Order was set low. The more difficult test of proving that, on balance, these routes subsisted as public footpaths was on confirmation, and officers considered that this was not able to be satisfied at this time. It was therefore recommended to Committee that an Order be made, but that the matter return to Committee to consider the Order Making Authority's stance on confirmation, once objections had been received and more comprehensive user evidence statements had been taken and evaluated.

The officer answered questions from Committee.

After a discussion, it was:

Resolved:

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of footpaths across land off Knotts Lane and Lenches Road, Colne be accepted.
- (ii) That an Order(s) 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 footpaths on the Definitive Map and Statement of Public Rights of Way over land off Knotts Lane and Lenches Road as shown on Committee Plan between points A-H.

- (iii) That not being satisfied that the higher test for confirmation can be met at this time the matter be returned to Committee to decide on the Order Making Authority's stance on confirmation after the Order has been made and evidence further evaluated.

Committee were informed that Items 10-13 on the agenda were different to the previous items discussed in that they had previously been presented to Committee as Definitive Map Modification Order applications. They had been brought back to Committee for a decision on referral to the Planning Inspectorate and a stance was required on the confirmation test, as an Order was not effective until confirmed. Committee were reminded that the legal higher test for confirmation was that the claimed right of way had to be found, on balance, to subsist, as opposed to being reasonably alleged to subsist, which required a review of all the evidence.

**10. Wildlife and Countryside Act 1981
Definitive Map Modification Order
Addition of Footpath from Hodder Street, Accrington, Definitive Map
Modification Order 2022**

A report was presented on the confirmation of an Order for the addition to the Definitive Map and Statement of a footpath from a point on Hodder Street, Accrington, opposite 85 Hodder Street (point A on the Committee Plan attached to the agenda papers) approximately south east along a rough track close to 48 Hodder Street to meet a public footpath (11-1-FP49) (which continued south east across a playing field and west south west along the rear of properties on Hodder Street) at point B on the Plan, a total distance of 25 metres.

At the meeting of the Regulatory Committee held on 22 June 2022, a decision had been made to make an Order in accordance with the application and subsequent investigation. The Committee resolved that the Order be brought back to Committee, once the Notice of Making had been served and the notice period had elapsed, to decide whether a higher status than footpath should be recorded.

It was reported that the Order had now been made and notified, an objection had been received and this had not been withdrawn, requiring submission to the Secretary of State for determination.

The details of the objection received (on behalf of the landowner) were provided to Committee. The objection stated that there had been a building adjacent to the route where the allotment gardens were now situated. When the landowner had purchased the site, that building was demolished and there had been insufficient space for a right of way in between where the building had been and a residential property. When the site had been purchased in 1997, they had erected some secure fencing and there was no public access and that an alternative route was already available so there was no need to record an additional footpath.

The making of the Order and the statutory objection period had given everyone notified an opportunity to make further comment; the authority had received no evidence suggesting that rights of a higher status than footpath should be recorded.

Committee were therefore advised to consider the evidence again (the June 2022 Regulatory Committee report at Appendix 'A' referred). Committee were informed that there was sufficient evidence to meet the test to confirm the Order for footpath. It was therefore recommended that the Order be submitted to the Secretary of State, with the Order Making Authority supporting the confirmation of the Order as made. The officer answered questions from Committee.

Resolved:

That the Order Making Authority support the confirmation of the Order as made, to record a public footpath from Hodder Street, Accrington, opposite 85 Hodder Street (point A on the Committee Plan attached to the Agenda papers) approximately south east along a rough track close to 48 Hodder Street to meet a public footpath (11-1-FP49) (which continued south east across a playing field and west south west along the rear of properties on Hodder Street) at point B on the Plan, a total distance of 25 metres, when submitted to the Secretary of State for Environment, Food and Rural Affairs.

11. Wildlife and Countryside Act 1981 Definitive Map Modification Order Addition of Footpath from Chatburn Old Road, Chatburn Definitive Map Modification Order 2022

A report was presented on a decision required on the stance to be taken with regards to the submission of 'The Lancashire County Council Addition of Footpath from Chatburn Old Road, Chatburn, Definitive Map Modification Order 2022' to the Planning Inspectorate.

At the meeting of the Regulatory Committee held on 16 November 2022, a decision had been made to make an Order in accordance with the application and subsequent investigation, and that the Order be confirmed if no objections were received but if objections were received, the matter be returned to Committee for a decision regarding the county council's stance with regards confirmation, once the statutory period for objections and representations to the Order has passed.

It was reported that two objections had been made to the Order, the details of which were set out in the Committee report.

Committee were therefore advised to consider the evidence again (the November 2022 Regulatory Committee report at Appendix 'A' referred) and the fact that user evidence statements had been compiled and additional user evidence submitted.

Committee noted that it was a finely balanced case in terms of whether, on the evidence available, the test for confirmation could be met (that the route subsisted on the balance of probabilities) and that they would need to consider the low number

of users that had provided further evidence in support of the Order route, balanced against those that provided evidence of use of a different route.

Committee were informed that if it could not be decided whether or not the test for confirmation could be met, then it was advised that the Order could be referred, with the Order Making Authority taking a neutral stance.

After a discussion, it was:

Resolved: 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 although the County Council considered that there was sufficient evidence to satisfy the test to make the Order, there remains doubt that the evidence made available to the Order Making Authority is sufficient to meet the higher test that it subsists on the balance of probabilities.

**12. Wildlife and Countryside Act 1981
Definitive Map Modification Order
Stance taken: Addition of Bridleway along Lord's Lot Road, Over Kellet**

A report was presented on a 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.

At the meeting of the Regulatory Committee held on 23rd June 2021, a decision had been 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 had also been agreed that being satisfied that the higher test for confirmation could be met, the Order be promoted to confirmation.

The Order had subsequently been made on 18th August 2021 and had received two objections, the details of which were set out in the Committee report.

Committee were advised to consider the evidence again (the June 2021 Regulatory Committee report at Appendix 'A' referred) and the fact that additional evidence had now been found and considered.

Although the Order Making Authority had previously assessed the evidence and had considered that there was sufficient evidence to satisfy the test to make the Order and also to promote it to confirmation, information that had come to light since meant that officers no longer considered that the evidence would be sufficient to meet the higher test for confirming the Order that the route already subsisted as a bridleway, on the balance of probabilities.

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

Resolved: 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.

**13. Wildlife and Countryside Act 1981
Definitive Map Modification Order
Addition of Footpath from Ormerod Street to Gamble Road, Thornton,
Cleveleys, Definitive Map Modification Order 2015**

A report was presented on a decision required on the stance to be taken with regards to the submission of 'The Lancashire County Council (Ormerod Street to Gamble Road, Thornton Cleveleys) Definitive Map Modification Order 2015' to the Planning Inspectorate.

At the meeting of the Regulatory Committee held on 13 May 2015, a decision had been made to make an Order, in accordance with the application and subsequent investigation, and that being satisfied that the higher test for confirmation could be met, the Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

It was reported that two objections had been duly made to the Order, the details of which were set out in the Committee report.

Committee were advised to consider the evidence again (the May 2015 Regulatory Committee report at Appendix 'A' referred).

Committee were informed that officers had reviewed the case and now considered that it was a finely balanced case in terms of whether, on the written evidence available, the test for confirmation could be met (that the route subsisted on the balance of probabilities). Members were advised they would need to consider the low number of users that had originally provided evidence of use of the route, only one of which was prepared to give evidence at a public inquiry, and the fact that further support for the confirmation of the Order may be very limited.

Committee were advised that, if it could not be decided whether or not the test for confirmation could actually be met, then it was advised that they could now decide to refer the Order with the available evidence, with the Order Making Authority taking a neutral stance.



The officer answered questions from Committee.

After a discussion, it was Proposed and Seconded that:

"A positive stance be taken and that the Recommendation in the original Committee report of May 2015 be approved".

Upon being put to the Vote, the Amendment was Carried. It was therefore:

Resolved: That being satisfied that the higher test for confirmation can be met, the Order be submitted to the Planning Inspectorate and promoted to confirmation.

**14. Highways Act 1980 - Section 118A
Wildlife and Countryside Act 1981 - Section 53A
Extinguishment of Footpath FP0130026 at Walkers Railway Crossing,
Silverdale**

A report was presented on an application for the extinguishment of part of Footpath FP0130026 at Walkers Railway Crossing, Silverdale, Lancaster Borough.

The length of existing path to be extinguished was shown on the Committee Plan attached to the agenda papers by a bold continuous line and marked A-B.

Consultations with the statutory undertakers and Lancashire County Council Ecology Officer had been carried out and no objections or adverse comments on the proposal had been received.

It was reported that the proposed extinguishment of footpath FP0130026 was considered expedient on the grounds that it was not reasonably practicable to make this part of the footpath safe for the public to use and that, if public rights over this crossing were extinguished, all necessary barriers and signs would be erected and maintained accordingly. Walkers Railway Crossing is an unprotected railway crossing, duplicated by a protected crossing point 90 metres to the south, that was safe and convenient for public use. It was expedient in the interests of members of the public using or likely to use the footpath for reasons of safety that this duplicate 180m of pedestrian rights be stopped up.

The access to the level crossing by Old Waterslack Farm was via steps built over the wall. Network Rail had initially proposed to replace these with a kissing gate if this was considered more appropriate. However, as there had been some interest in the steps being retained as a feature of the area, it was reported that Network Rail would take appropriate measures to make the crossing point as accessible as possible.

After a discussion, it was Proposed and Seconded that:

"The Recommendation in the report be approved, subject to the steps at the alternative crossing being retained and a non-slip surface be installed, in addition to a handrail."

Upon being put to the Vote, the Motion was Carried. It was therefore:

Resolved:

- (i) That an Order be made under Section 118A of the Highways Act 1980 to extinguish Footpath FP0130026 shown by a bold continuous line and marked A-B on the Committee Plan, **subject to the steps at the alternative crossing being retained and a non-slip surface be installed, in addition to a handrail.**
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That 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 effect of the Order.

**15. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath FP0222009 at Meadow View,
Stalmine**

A report was presented on an application for the diversion of part of Footpath FP0222009 at Meadow View, Stalmine.

The length of existing path to be diverted was shown on the Committee Plan attached to the agenda papers by a bold continuous line and marked as A-B, and the proposed new route was shown by a bold dashed line and marked A-C.

Consultation with the statutory undertakers had been carried out and no objections or adverse comments on the proposal had been received.

The proposed diversion was considered expedient in the interests of the owners of the land for reasons of privacy and security. Meadow View is a private, residential property. Currently the public footpath ran along the access drive and through the private gardens of Meadow View immediately adjacent to the dwelling.

It was reported that the proposed diversion would move the footpath as it entered the grounds of Meadow View, to run WSW for 15 metres, before turning to continue in SSE for 25 metres to rejoin Back Lane at a point 15 metres WSW of the current termination point. This would significantly increase the privacy and security of the residential dwelling, whilst providing a route that was safe, convenient and slightly more direct for public use.

Resolved:

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0222009 from the route shown by a bold continuous line and marked A-B to the route shown by a bold broken line and marked A-C on the Committee Plan.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That 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.

16. Highways Act 1980 - Section 119 Wildlife and Countryside Act 1981 - Section 53A Proposed Diversion of Part of Footpath FP0205090 at Sullom Side Lane, Barnacre-with-Bonds

A report was presented on the proposed diversion of part of Footpath FP0205090 at Sullom Side Lane, Barnacre-with-Bonds.

The length of existing path to be diverted was shown on the Committee Plan attached to the agenda papers by a bold continuous line and marked as A-B, and the proposed new route was shown by a bold dashed line and marked C-D-E-F-B.

The consultation with the statutory undertakers had been carried out and no objections or adverse comments on the proposal had been received.

The proposed diversion was considered expedient in the interests of the owners of the land for reasons of privacy and security. The two properties accessed from this footpath are private, residential properties. Currently the public footpath ran along the access drive and adjacent to the dwellings.

It was reported that the proposed diversion would move the footpath off the access drive and away from the dwellings. This would significantly increase the privacy and security of the residential properties, whilst providing a route that was safe, convenient and of comparable convenience for public use.

The officer answered questions from Committee.

Committee noted that the proposed Order was conditional to two-way gates being installed at points C,D E and F. In addition, measures would be put in place to ensure the waterway at point F would be traversable by the public all year round,

providing assurances that the new route would be just as accessible as the route to be diverted.

It was clarified to Committee that, at the point of a diversion Order being confirmed, the new route would then become a public right of way, in addition to the route to be diverted. The creation of new public rights gave the landowner the confidence that the diversion would happen so they could go ahead and create the new route. Once the new route had been created to the county council's satisfaction, not only for immediate use but for the county council to take future responsibility for it, it would then be certified and, only at this point, would the old route disappear.

Resolved:

- (i) That an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath FP0205090 from the route shown by a bold continuous line and marked A-B to the route shown by a bold dashed line and marked C-D-E-F-B on the Committee Plan.
- (ii) That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State for the Environment, Food and Rural Affairs and the Authority take a neutral stance with respect to its confirmation.
- (iii) That 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.

**17. Highways Act 1980 - Sections 119, 118 and 25
Wildlife and Countryside Act 1981 - Section 53A
Proposed Gates on Bridleway at Height Barn Lane, Bacup**

A report was presented on the proposed installation of new gates on the diversion and creation route of the bridleway around Height Barn Farm, Height Barn Lane, Bacup.

At its meeting on 27 March 2024, Regulatory Committee had resolved:

- "(i) That Order(s) are made under the Highways Act 1980 to alter some public paths at Height Barn Farm as follows:
 - a. Under section 119: To divert bridleway BW1401503, BW1401493, BW1401678, BW1401492 (part) from the route shown by a bold continuous line and marked A-D-B-E-F-C to the route shown by a bold broken line and marked A-G on the map (attached at Appendix 'B')
 - b. Under section 118: To extinguish footpath FP1401493 shown as a bold continuous line and marked D-E on that map.

- (ii) That s.25 Highways Act 1980 Public Path creation agreements are entered into with the landowners to create:
- a. the section marked F-C shown as a bold continuous line on the map (attached at Appendix 'B') as footpath.
 - b. the section A-X-Y-Z-P shown as a bold red line on the map (attached at Appendix 'C') as bridleway. "

It was reported that, following the March 2024 Committee, the county council had approached the landowners to progress the Section 25 dedication. During these discussions, the landowners had requested that 3 gates be installed – gates 1 and 2 on the route to be diverted and gate 3 on the new route, on the basis that these were required to prevent dogs from entering the farm and connected land holding. The approval given by Committee in March made no mention of gates. This matter had therefore been brought back to Committee for consideration.

The approximate position of the gates was shown on the plan at Appendix 'D' marked 1,2 and 3. The type of gate recommended by officers was a two-way bridleway gate, and details of the specification were provided as Appendix 'E' to the Committee report. These gates should not be locked or made difficult to use in any way. Committee were asked to consider the types of gate and conditions of use when considering approval.

Committee noted that the Orders under section 119 and section 118 would not be made until the Section 25 agreement was entered into by the landowners and held by the county council, pending completion of the Order.

The legal officer confirmed that Committee were not required to review the proposed diversion (which had already been agreed) but the request to install the 3 gates. Should Committee decide not to approve the installation of the gates, there was a potential risk that the dedication agreement would be jeopardised meaning the public would have rights along the existing route through the farmyard, rather than the improved diversion route.

County Councillor Salter stated that, if the landowners were concerned about dogs entering the farmyard and farm properties, then the proposed gates at points 1, 2 and 3 would not have any meaningful use and would inconvenience the bridleway users. County Councillor Salter suggested instead that an offer be made to the landowners that a gate be installed on Height Barn Lane to the SW of point 2, such that there would be the opportunity to protect their properties to ensure that dogs or other animals could not enter their property and cause a nuisance, but that this would not inconvenience users of the new bridleway. The officer reported that this solution had been offered to the landowners but rejected.

County Councillor Salter proposed that the Recommendation be Refused.

Committee were informed that, should the Recommendation be refused, the initial indication from the landowners was that they were not prepared to proceed with the diversion without the provision of the 3 gates.

County Councillor Oakes stated that, if the Recommendation was approved, the 2-way gates should not be locked or made difficult to use and that any instances of locking the gates should be subject to enforcement. The officer confirmed that if the diversion was confirmed, then the county council had a duty to enforce if the gates were locked at any point.

Resolved:

At the landowners request, Committee accepted:

- (i) The right to maintain gates (of the type shown at Appendix 'E') at points 1 & 2 on the map at Appendix 'D' to be included as a limitation along the bridleway at Height Barn Farm which is to be created as part of the Diversion Order previously approved but not yet made shown by a bold broken line and marked A-G on the map at Appendix 'B'.
- (ii) The right to install and maintain a gate (of the type shown at Appendix 'E') at point 3 on the map at Appendix 'D' be included as a limitation on the previously approved public bridleway to be dedicated by agreement under s.25 Highways Act 1980 between Height Barn Farm and Venomous Clough shown as A-X-Y-Z-P on the map at Appendix 'C'.

18. Urgent Business

There were no items of Urgent Business.

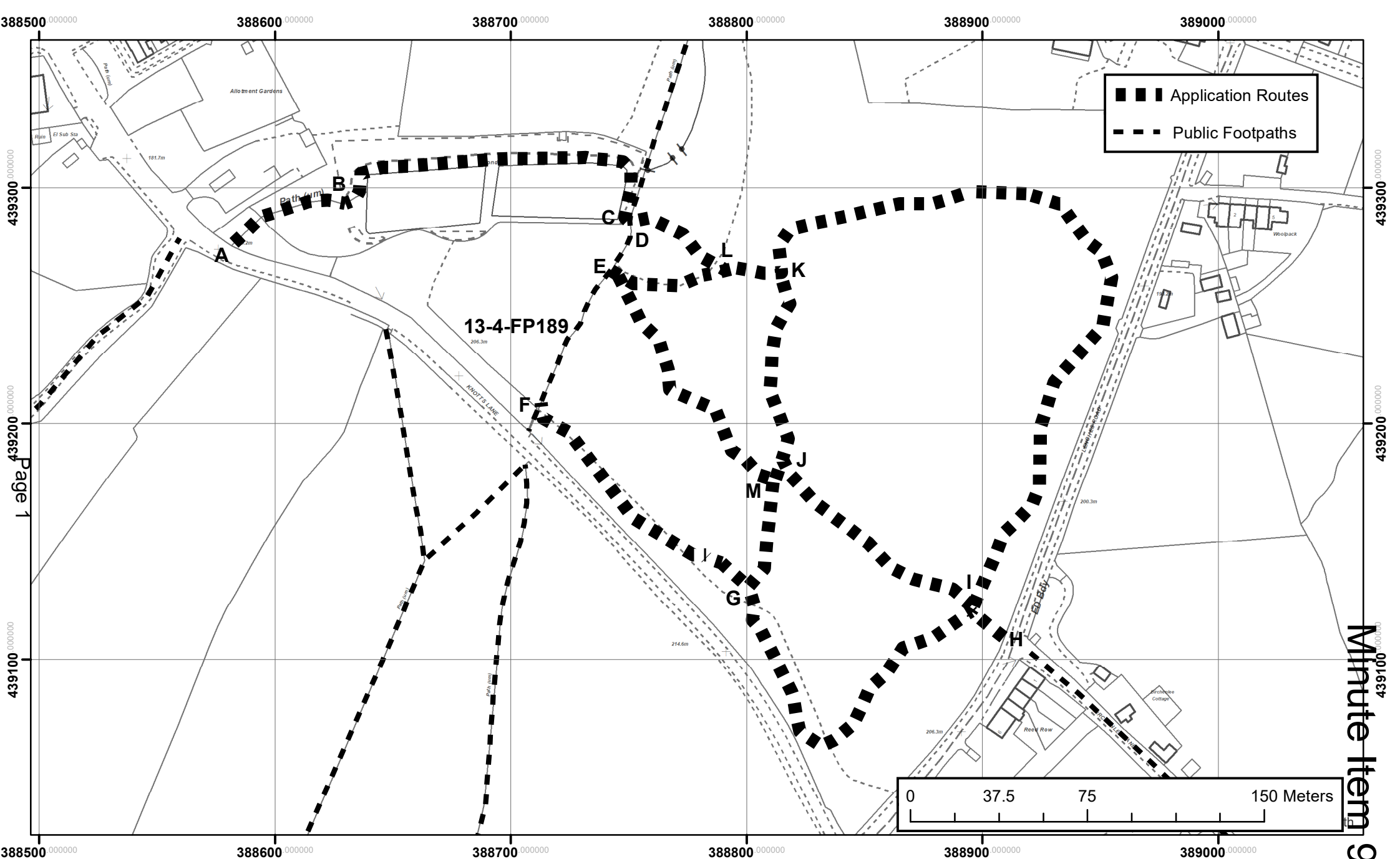
19. Date of Next Meeting

Resolved: It was noted that the next meeting would be held at 10.30am on Wednesday 27th November 2024 in Committee Room B – The Diamond Jubilee Room, County Hall, Preston.

H MacAndrew
Director of Law and Governance

County Hall
Preston





Agenda Item 9 – Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of public footpaths across land off Knotts Lane and Lenches Road, Colne

Late Submissions Supplement

It is a requirement that Committee make the decision whether or not to make an Order taking into account all available relevant information. There is no deadline after which submissions can be disregarded so those submissions received since the Committee Report, in this case all in the 24 hours before Committee, have been assessed and relevant information given below. Any evidence or arguments should not be given more or less weight by virtue of late submission.

1. Someone with a legal interest in the land: He makes several points concerning a perceived injustice in the law which potentially allows members of the public use of private land and alleges that someone has planted trees, both recently and longer ago, without consent. He notes the effect that it has on the landowners both psychologically and practically. However these are not arguments which are relevant within the terms of the legislation under which this Item is being considered. He also refers to confrontations particularly when erecting 'private' notices but does not provide information about the dates, in particular whether this was before the application for the recording of the footpaths. It is relevant because it indicates a current non-intention to dedicate public rights and depending on the details (wording, size, position, etc.) may indicate that these signs were a challenge to some or all of the routes after which use by the public cannot be regarded as 'as of right'. However, use by the public since the application is in any case disregarded.
2. County Councillor Sutcliffe has indicated his support for the application, adding that this is an area well used by local people and the footpaths there are well known. He wanted to add my own experience of unobstructed access and use of these footpaths over many years, particularly the 'main' path that runs from the Knotts Lane side across West-East towards Lenches. It is well used by many members of the public. The support in itself is not evidence, the reputation of public access is hearsay and personal use would need more specifically to be tested.
3. The applicant has contacted us again stating that the landowner does not live locally and there was no attempt to prevent access before the notices erected on 21st September and threatening emails to the applicant's business. Since these were after the application, which brought the rights into question, this does not change anything except supporting the fact that the current owner does not intend to dedicate public rights.
4. Local residents have explained at length their love of the area, the wildlife and views, regarding it as a community asset, its primary use for dog-walking. This is not directly relevant (a pleasant aspect and useful location is no indication of public rights) but it does support why people may have used it. One local

resident states that the footpaths have been there for at least 27 years, saying that her use of them started in 1997 to visit friends on the south valley estates, as it was safer for her baby and dog, and that there were no locked gates or private signs. This is relevant but very weak evidence without further examination and detail, in particular of the exact route taken.

5. One resident wrote to the Pendle Countryside Officer in 2022 asking support in opposing a proposed housing development on the land. Whether there may or may not be a housing development proposed for the land is irrelevant in the context of this Committee decision and in any case the recording of public rights of way on land rarely has any significant influence in planning decisions about development, only affecting some aspects of layout.