

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

**PUBLIC FOOTPATH FROM BARTON ROAD TO BOWERHAM ROAD,
SCOTFORTH (DEFINITIVE MAP MODIFICATION) ORDER 2013**

STANCE

The Lancashire County Council, following the decision of the Regulatory Committee on 11 September 2013, has adopted a neutral stance as to the confirmation or not of the Order and will not be supporting the Order an Inquiry or Hearing is held.

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 11th September, 2013 at 10.30 am in The Diamond Jubilee Room (Formerly Cabinet Room 'B') - County Hall, Preston

Present:

County Councillor Jackie Oakes (Chair)

County Councillors

I Brown	G Molineux
A Clempson	S Pryn
B Dawson	D T Smith
P Hayhurst	K Snape
C Henig	D Stansfield
F De Molfetta	P White

*County Councillor F DeMolfetta replaced County Councillor J Gibson on the Committee for this meeting only.

1. Apologies

No apologies for absence were presented.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Henig informed the meeting that the claimed public footpath from Barton Road to Bowerham Road in Lancaster was within her electoral division and that she had lived in the area for around 40 years.

3. Minutes of the last meeting.

Resolved: That the Minutes of the meeting held on the 24th July 2013 are confirmed as an accurate record and signed by the Chair.

4. Guidance

Resolved: That the Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way and certain Orders to be made under the Highways Act, 1980, as set out on the Annexes presented be noted.

**5. Wildlife And Countryside Act 1981
Claimed Public Footpath From Barton Road to Bowerham Road,
Lancaster, Lancaster City.
Claim No. 804/496**

A report was presented on the claim for a public footpath from Barton Road to Bowerham Road in Scotforth, Lancaster to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/496.

County Councillor Hayhurst joined the meeting at 10.38am

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 both in the report and at the meeting.

County Councillor Henig reported that she was unaware of any meeting having taken place between the Moorside Fields Community Association and the school regarding access to parts of the school land for a community nature resource as referred to in the report. She also referred to the erection of the fencing/gate in 2005, the provision of dog bins at the site and that signs had been erected in response to a complaint from a neighbour following damage to their property by a golf ball. At this point County Councillor Henig left the meeting as she lived in the local area and had previously been in contact with the group who supported the claimed public footpath and whilst this did not constitute a disclosable interest she felt it was inappropriate for her to take part in the decision.

There was some discussion in relation to the documentary evidence set out in the report, including the evidence received from the applicant and the landowner in relation to use of the land, the provision of signs/bins, erection of fencing and the challenging of users by staff from the school.

Having considered all of the evidence the Committee felt that a public footpath over the claimed route could reasonably be alleged to subsist and that the claim should be accepted. However, the evidence was too finely balanced for Committee to conclude that a public footpath had been dedicated, on the balance of probabilities, and that the Order should be confirmed.

As extra time had already been given to both sides to produce more evidence prior to Committee and a considerable amount of material had been received it was not anticipated that further evidence would be forthcoming. Therefore, in the event that objections are received Committee felt that the Order should be submitted to the Secretary of State and the Council as Highway Authority take a neutral stance regarding its confirmation.

Resolved:

- 1) That the application for a public footpath from Barton Road to Bowerham Road to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-496, be accepted.
- 2) That an Order be made pursuant to Section 53(2)(b) and 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map & Statement a footpath from a point on Barton Road opposite Durham Avenue to a point on Bowerham Road Scotforth (shown as A-G on the attached plan).
- 3) That, not being satisfied that the higher test for confirming the said Order can be satisfied, the said Order, if objected to be submitted to the Secretary of State and the Order Making Authority remain neutral as regards confirmation.

Following the decision County Councillor Henig rejoined the meeting.

**6. Wildlife And Countryside Act 1981
Claimed Public Footpath from Public Footpath Silverdale 14 to
Lindeth Road, Silverdale, Lancaster City and consideration of
evidence for deletion of parts of Public Footpath 14 Silverdale
Claim No. 804-504**

It was reported that on the 11th December 2012 the Committee had considered a report in relation to claim No. 804/504 for the addition of a Public Footpath from Public Footpath Silverdale 14 to Lindeth Road, Silverdale, Lancaster City and consideration of evidence for another footpath and deletions of parts of public footpath 14 Silverdale.

At that time the claim for the addition was not accepted and the applicant subsequently appealed to the Secretary of State.

The Committee was informed that the Inspector considering the appeal for the Secretary of State had stated in his report that in his view there was a body of evidence which supported the view that the route was a long established public right of way on foot and was sufficient such that it was reasonable for a footpath to be alleged to subsist. The Appeal had therefore been allowed and the Secretary of State had directed that an Order be made.

In considering the latest report the Committee noted the decision of the Secretary of State in relation to the making of an Order and considered what stance the Authority should adopt in view of the previous decision made.

It was noted that usually the Authority would take a neutral stance in the case of an Order directed to be made by the Secretary of State as the evidence is often finely balanced and the Committee may not feel it was sufficient. It was noted that in December 2012 Officers had recommended that there was sufficient evidence for an Order to be made and also to be promoted to confirmation and this view

had not changed. Furthermore it was suggested that the evidence was not so finely balanced in this matter and it was therefore appropriate for the Authority to support the Order.

In considering the report the Committee was also aware that in December 2012 it had been decided to make an Order to delete parts of Footpath 14 on the basis that these sections were on the Definitive Map in error. It was suggested that if the Order being considered in relation to points D and C was made and also confirmed this would affect the decision to delete at least part of Footpath 14 and if it was made but not confirmed again this would affect the decision regarding deletion. Therefore, it was agreed that the making of the Order to delete be deferred until the status of the route D to C was known.

Resolved:

1. That the Secretary of State's decision be noted.
2. That, in light of the Secretary of State for Environment, Food and Rural Affairs' decision to uphold the Appeal lodged in respect of claim No. 804/504, an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement of Public Rights of way by adding to the Definitive Map and Statement of Public Rights of Way a public footpath from a point on public footpath Silverdale 14 on the track in front of no.2 Brown's Houses near the eastern end of the sea wall for a distance of approximately 30 metres to the end of Lindeth Road, Silverdale, Lancaster City and shown between points D and C on the plan.
3. 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 and promoted to confirmation if necessary at a public inquiry.
4. That the making of the Order to delete parts of public footpath Silverdale 14 consequent to the decision of the Regulatory Committee on 11th December 2012 be deferred and this matter be referred back to Committee once the outcome of the above Order is known.

7. Urgent Business

There were no items of urgent business for consideration at the meeting.

8. Date of Next Meeting

It was noted that the next scheduled meeting would be held at 10.30am on Wednesday 30th October 2013 in Cabinet Room 'B' - the Diamond Jubilee Room, at County Hall, Preston.

I M Fisher
County Secretary and Solicitor

County Hall
Preston