

## Lancashire County Council

### Regulatory Committee

**Minutes of the Meeting held on Wednesday, 26th March, 2014 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Present:**

County Councillor Jackie Oakes (Chair)

#### **County Councillors**

K Snape	G Molineux
I Brown	N Penney
A Clempson	D T Smith
D Clifford	D Stansfield
B Dawson	D Whipp
P Hayhurst	B Yates
C Henig	

County Councillor J Gibson was replaced by County Councillor N Penney for this meeting only.

**1. Apologies.**

No apologies for absence were presented at the meeting.

**2. Disclosure of Pecuniary and Non-Pecuniary Interests.**

There were no disclosures of interest in relation to matters appearing on the agenda.

**3. Minutes of the last meeting.**

**Resolved:** That the Minutes of the meeting held on the 5<sup>th</sup> February, 2014 are confirmed as an accurate record and signed by the Chair.

**4. Consideration of the Authority's role in connection with access to Common Land.**

A report was presented regarding the suggested procedure to be adopted in relation to the investigation of unauthorised works, encroachment or obstructions on Registered Common Land which affected public access, prior to any action being considered by the Committee.

Mrs Turner informed the meeting it was often assumed that the County Council was responsible for dealing with any unauthorised works on common land when in reality the Authority was one of a number of parties that could take action under the statutory provisions.

When considering the report the Committee noted decisions taken at meetings in April and November 2009 regarding enforcement action together with a request from the Complaints Committee for the role of the authority and others in protecting access to common land to be reviewed.

Having discussed the suggested procedure there was general agreement amongst the members of the Committee that only those matters that the Executive Director for Environment Directorate, in conjunction with the County Secretary and Solicitor, considered sufficiently in the public interests, and for which there were sufficient resources to pursue enforcement, would be brought to the Committee. It was also suggested that the Chair of the Committee be consulted in those circumstances where it was felt that a report should be brought to the Committee.

**Resolved:** That the Executive Director for Environment be authorised to:

1. Investigate alleged unauthorised works, encroachments and obstructions or unlawful interference on Common Land or Town/Village Green.
2. Consider the effect on rights on Common Land and Town/ Village Green and to collect relevant evidence and information and responses and evaluate resource implications.
3. Present a report to the Committee where, in conjunction with the County Secretary and Solicitor and the Chair, it is felt that action by the County Council under S41 or S45 of the Commons Act 2006 may be appropriate.

## **5. Guidance.**

A report was presented regarding Guidance for members of the Committee on the law regarding the continuous review of the Definitive Map and Statement of Public Rights of Way, certain Orders to be made under the Highways Act, 1980 and the actions available to the County Council on submission of Public Path Orders to the Secretary of State.

**Resolved:** That the Guidance in connection with the above, as set out in Annexes 'A','B' and 'C' of the report presented, is noted.

- 6. Wildlife and Countryside Act 1981  
Claimed Public Footpath from Wardley's Lane to the Salt Marsh,  
Stalmine-with-Staynall, Wyre Borough.  
Claim No. 804/522**

A report was presented regarding an application for a public footpath from Wardley's Lane to the salt marsh at Stalmine-with-Staynall in Wyre Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/522.

*County Councillor P Hayhurst joined the meeting at 10.50am.*

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) was presented both as part of the report and at the meeting.

In considering the report the Committee examined the documentary evidence presented, including aerial photographs from 1960, 1988 and 2000. It was suggested that a route may have existed from the landing stage to north of the claimed route in a north easterly direction to Wardleys Lane, though it was acknowledged that the route and associated steps were located north of the termination of the claimed route and did not appear to provide an access point. The Committee also considered the user evidence which had been received, particularly with regard to the period between 1987 and 2007 and in relation to the claimed access points, information from owners and the potential impact of gates, fencing and parked vehicles on the ability of users to have walked the claimed route over the period concerned.

Having considered all of the information presented the Committee felt that there was insufficient evidence from which dedication could be reasonably alleged under the provisions of S31 of the Highways Act or inference at Common Law and so it was agreed that an Order should not be made in respect of the claimed route.

**Resolved:** That the proposal for a public footpath from Wardley's Lane to the salt marsh at Stalmine-with-Staynall in Wyre Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/522, be not accepted.

**7. Wildlife and Countryside Act 1981  
Claimed Public Footpath from Banks Road to Station Road, North Meols, West Lancashire Borough  
Claim No. 804/529**

A report was presented in relation to an application for a public footpath from Banks Road to Station Road in North Meols, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/529.

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) was presented both as part of the report and at the meeting.

In considering the claim the Committee discussed the documentary evidence presented and were advised that the boundary line shown at point B on the plan did not actually exist on the ground and was in reality at point C as shown on the aerial photograph from 2010. The user evidence received in relation to the period between 1978 and 1988, together with evidence from the objector was also considered.

Having examined all of the information presented the Committee felt that there was sufficient evidence from which a dedication could be reasonably alleged under the provisions of S31 of the Highways Act and by inference at Common Law and that it was appropriate that an Order be made and promoted to confirmation.

**Resolved:**

1. That the proposal for a public footpath from Banks Road to Station Road in North Meols, West Lancashire, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/529, be accepted.
2. That an Order be made pursuant to Section 53 (3)(b) and/or 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 Banks Road (Grid Reference SD 3796 2086) to Station Road (SD 3826 2032), North Meols for a distance of approximately 610 metres and shown between points A-B-C-D-E-F-G-H-I on the plan set out in the report.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State.

**8. Wildlife and Countryside Act 1981  
Claimed Public Footpath from Bescar Brow Lane to Public Footpath  
14a Scarisbrick, West Lancashire Borough  
Claim No. 804/544**

A report was presented in connection with an application for a Public Footpath from Bescar Brow Lane, Scarisbrick to Public Footpath 14a Scarisbrick in West Lancashire Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/544.

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) was presented both as part of the report and at the meeting.

When considering the claim the Committee was advised that access to the claimed route at point A on the plan was currently obstructed by a section of metal fencing. The user evidence received relating up to and during the period between 1992 and 2012 was discussed together with evidence from the objector and from a landowner in support of the claim.

Having examined all of the evidence presented there was agreement amongst the members of the Committee that on balance it could be reasonably alleged that the footpath subsists in law under the provisions of S31 of the Highways Act 1980 and at Common Law and that it was appropriate for an Order to be made. Furthermore it was felt that the higher confirmation test could also be satisfied as there was sufficient evidence on balance that the right of way on foot already subsists in law.

### **Resolved**

1. That the application for a public footpath from Bescar Brow Lane to Public Footpath 14a Scarisbrick in West Lancashire Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/544, be accepted.
  2. That an Order be made pursuant to Section 53 of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Bescar Brow Lane to Public Footpath 14a, Scarisbrick, for a distance of approximately 1,365 metres and shown between points A-B-C-D on the plans set out in the report presented.
  3. That, being satisfied the higher test for confirming the said Order can be satisfied, the Order be promoted to confirmation if necessary at public inquiry.
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9. **Wildlife and Countryside Act 1981**  
**Claimed Public Footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head Lane), Slyne-with-Hest, Lancaster City**  
**Claim No. 804-533**

A report was presented in respect of a claim for a public footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head Lane) at Slyne-with-Hest, Lancaster City not to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-533.

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) was presented both as part of the report and at the meeting.

Mr Goode, the Public Rights of Way Manager, informed the meeting that the plan which had been circulated as part of the agenda was potentially confusing because the annotations indicating the various points on the route differed from those referred to in the report and presentation and that references in the report to the route A-B-C-D-E should have read A-B-C-D-E-F. A copy of the amended plan showing the correct annotations is set out in the Minute Book. The user evidence received in relation to the period between 1988 and 2008 was noted, together with evidence from the objector in relation to locked gates and signage.

Having considered all the evidence there was agreement amongst the members of the Committee that dedication of the claimed route as a public footpath could not on balance be inferred under common law or deemed to subsist under S31 of the Highways Act 1980.

**Resolved:** That the claim for a public footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head Lane), Slyne-with-Hest, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-533 be not accepted

**10. Highways Act 1980 - Section 119  
Proposed Diversion Of Part Of Bridleway No. 11, Lytham St Annes,  
Fylde Borough.**

County Councillor P Hayhurst informed the meeting that whilst he was a member of Fylde Borough Council the claimed diversion was not within his Ward or his Electoral Division.

Mr Goode, the Public Rights of Way Manager, informed the meeting that in October 2008 an Order had been made to divert part of Bridleway 11 away from an area of land that was proposed to be developed as a business park and to facilitate the future extension of the airport runway.

However, since making the Order it had become apparent that the land over which the new route was to be constructed was subject to flooding and the cost to the applicant of the works that would be needed to provide the new route to the required standard would be considerable. Therefore, it was considered that the

diversion was no longer in the interests of the owner of the land and as such, the criteria for confirming the Order would not be satisfied in this instance.

The Committee noted that the applicant had subsequently requested the County Council not to proceed with the Order as the new route would not be constructed. It was further reported that as the development of the business park had not proceeded and the runway had not been extended to date by not confirming the Order the public would not be unduly inconvenienced as they would continue to have access to the bridleway on the exiting alignment which was safe and convenient for public use.

**Resolved:** That the Order made on the 2nd October 2008, under Section 119 of the Highways Act 1980, to divert part of Bridleway No. 11, Lytham St Annes, from the route shown by a bold black line and marked A-B-C-D on the plan set out in the report to a route shown by a bold black dashed line and marked A-E-F-D on the plan, be not proceeded with and not forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**11. Highways Act 1980 - Sections 26 and 118  
Proposed Creation of a new length of Public Footpath at Fairthwaite Park, Burrow-with-Burrow and Extinguishment of Public Footpath No. 4, Burrow-with-Burrow Parish, Lancaster City.**

Mr Goode, Public Rights of Way Manager, informed the meeting that Public Footpath No. 4 at Burrow-with-Burrow had been the subject of a temporary closure for a number of years due to the poor condition of a brick arch bridge that carried a disused railway over part of the footpath and which required significant works to bring it up to a standard that would allow the public to safely walk underneath. He added that at the east end of the footpath opposite point A on the plan the public footpath passed along the top of a vertical drop into Leck Beck and the construction of a substantial footbridge would be required in order to reach point A.

He reminded the Committee that these problems had to be disregarded as temporary when considering whether the footpath was necessary or not in connection with a possible extinguishment, although they were relevant considerations as to whether it was expedient. The footpath was considered not to be needed because the only access at the west end was via the heavily trafficked A65 with no verge or footway and that anyone wishing to reach point A would use the nearby length of Public Footpath No 5, Burrow-with- Burrow.

It was further reported that any feasible diversion of Public Footpath No. 4 across Leck Beck would also require the installation of a substantial footbridge and would duplicate part of Public Footpath No. 5, Burrow-with-Burrow. Therefore, it was proposed that an Extinguishment Order be made for Public Footpath No. 4, together with a concurrent proposal to secure a length of footpath running parallel

to the A65 that would provide pedestrians with a route out of Cowan Bridge which avoided a narrow section of the A65 where there was no pavement or verge.

The Committee noted that the proposed length of footpath to be created was not currently available for public use and works would be required to make the route available, notably the provision of two kissing gates, a pedestrian gate and a timber kit footbridge.

**Resolved:**

1. That an Order be made under Section 26 of the Highways Act 1980 to create a new length of footpath shown by a bold dashed line and marked D – B – E – F – G on the plan referred to in the report .
2. That an Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No. 4 Burrow-with-Burrow shown by a bold continuous line and marked A – B – C on the plan referred to in the report.
3. That in the event of no objections being received, the Orders be confirmed and in the event of objections being received and not withdrawn, the Orders be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
4. That provision be included in each Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement in consequence of the coming into operation of the creation and extinguishment.

**12. Highways Act 1980 - Section 25  
Proposed Creation by Agreement of a Public Footpath at Fairview  
Youth and Community Centre, Adlington, Chorley Borough**

A report was presented regarding the proposed Creation by Agreement of a length of Public Footpath in the vicinity of Fairview Youth and Community Centre in Adlington.

It was reported that the Public Path Creation Agreement with Chorley Borough Council (the freehold owners) had been prompted by an application for a Definitive Map Modification Order to record a public footpath over land owned by the Borough Council. However, the claimed route did not reflect the route that was used by the public, nor did it reflect the route suggested by a preliminary search of the aerial photos and Ordnance Survey maps. Therefore, following discussions with the Borough Council, and the applicant for the DMMO, it had been agreed that a public footpath creation agreement be pursued to record the route that was currently being used by the public.

The Committee was informed that the proposal was considered to be a benefit to the public in securing a safe, convenient and direct route in Adlington between the residential area of Westhoughton Road, the Centre and majority of the town to the east of the railway.

It was also noted that as the proposed Creation Route would be by means of an Agreement there would be no compensation payable as a consequence of the coming into operation of the Creation Agreement.

**Resolved:**

1. That the proposal for the creation by agreement of a length of public footpath at Fairview Youth and Community Centre in Adlington be accepted.
2. That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between Chorley Borough Council and Lancashire County Council, to create a length of public footpath at Fairview Youth and Community Centre as shown by a bold dashed line and marked A – B on the plan set out in the report presented.
3. That in the event of the Public Creation Agreement being executed, a further Order be made pursuant to Section 52 (2) (b) and Section 53 (3)(a)(iii) of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way to reflect the creation of a new public footpath under Section 25 of the Highways Act 1980, whereby a new right of way has been created over land in an area to which the Map relates, being a right of way such that the land over which the right subsists is a public footpath.

**13. Urgent Business**

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

**14. Date of Next Meeting**

It was noted that the next scheduled meeting would be held at 10.30am on the 14<sup>th</sup> May 2014 in Cabinet Room 'B' – the Diamond Jubilee Room at County Hall, Preston.

I M Fisher  
County Secretary and Solicitor

County Hall  
Preston