

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

**ADDITION OF A FOOTPATH FROM FOOTPATH RAMSBOTTOM 45 NEAR TO
STRONGSTRY BRIDGE ALONG DISMANTLED RAILWAY LINE TO STUBBINS
VALE ROAD, ROSSENDALE (DEFINITIVE MAP MODIFICATION) ORDER 2021**

STANCE

The Lancashire County Council, following the decision of the Regulatory Committee on 16 September 2020, are supporting the above Order and will continue to support the Order if an Inquiry or Hearing is held.

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 16th September, 2020 at 10.30 am- Virtual meeting

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

I Brown	J Parr
J Cooney	T Aldridge
P Steen	D Howarth
A Clempson	C Towneley
L Cox	B Dawson

1. Apologies

County Councillor Eaton and County Councillor Towneley paid tribute to County Councillor Malcolm Barron and a minute's silence was held.

No apologies for absence were received.

Membership changes

Permanent changes - County Councillor Ian Brown had been appointed Deputy Chair of the Committee. County Councillor Towneley and County Councillor Dawson were now permanent members of the Committee and were welcomed to the Committee.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor Towneley declared a non-pecuniary interest in Item 6, as she was a bridleway officer for her local area (which did not include the area as detailed in Item 6). CC Towneley was also a member of the British Horse Society and Chair of the National Federation of Bridleway Associations.

3. Minutes of the last meeting

Resolved: That the minutes of the meeting held on 11 March 2020 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. The Constitution, Membership, Terms of Reference and Programme of Meetings for the Regulatory Committee

A report was presented setting out the constitution, membership, Terms of Reference of the Regulatory Committee, and the programme of meetings for 2020/21.

Resolved: The Committee noted:

- (i) The constitution/membership of the Committee, following the county council's annual meeting on 16 July 2020.
- (ii) The Terms of Reference of the Committee.
- (iii) The agreed programme of meetings for the Committee.

6. Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Bridleway from Noyna Road to Noyna Hall and Upgrade of Footpath to Bridleway from Noyna Hall to Moss Houses Road, Foulridge, Pendle File No. 804-609

A report was presented on an application for a bridleway to be added to the Definitive Map and Statement from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to Bridleway of part of Footpath Foulridge 36 from east of Noyna Hall to Moss Houses Road, Foulridge, in accordance with File No. 804-609. The routes were shown marked A-B-C-D and D-E-F-G-H-I-J-K respectively on the Committee plan attached to the agenda papers.

A site inspection had been carried out in October 2019.

It was reported that there was insufficient documentary evidence of historical bridleway rights along the route. In addition, it was considered that equestrian use of the route was not representative of the public at large and therefore the evidence did not raise a presumption of dedication of a bridleway, and thus failed the statutory test. Furthermore, the actions of at least one landowner to prevent/discourage equestrian use and use having been by a limited section of the public concluded that the evidence also failed to satisfy the common law test.

Taking all the evidence into account, the Committee considered that it was reasonable to conclude, on the balance of probabilities, that the evidence was

insufficient to show (i) that bridleway rights were reasonably alleged to subsist along the unrecorded section of the route (A-B-C-D) or (ii) that bridleway rights did subsist along the section that was currently recorded as a public footpath (D-E-F-G-H-I-J-K).

Resolved: That the application for a bridleway to be added to the Definitive Map and Statement from Noyna Road to the junction with Footpath Foulridge 36 east of Noyna Hall and the upgrading to bridleway of the footpath from east of Noyna Hall to Moss Houses Road, Foulridge, in accordance with File No. 804-609, be not accepted.

**7. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath along dismantled railway line from Strongstry
Bridge to Stubbins Station
File No. 804-614**

A report was presented on an application for the addition of a Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station and shown on the Committee plan attached to the agenda papers, between points A-B-C-D-E-F-G-H.

Legal Services had received last minute representations from the current owners of the land who objected to the application. The land owners representation letter was summarised and reported to the Committee by the legal officer, Kerry Hayes.

A site inspection had been carried out in February 2020.

It was reported that the application related to the addition of a footpath along the former track bed of the former East Lancashire Railway, which had opened in 1846. The railway between Ramsbottom and Accrington had ceased to operate in 1966 and the track bed had been removed in approximately 1970-1972. There had been no claim that the application route existed as a footpath prior to the closure of the railway and removal of the railway track. The application was based primarily on the submission of a substantial amount of user evidence. Map and documentary evidence confirmed the existence of the railway and the fact that the rails were still in situ until the early 1970s and the earliest OS map to show the railway as having been dismantled had been published in 1983 (having been revised in 1982).

It was reported that, in 1993, the company owning the land crossed by the application route had applied for planning permission to extend Stubbins Vale Mill which would have interfered with the railway embankment along which the application route ran. Unfortunately, most of the correspondence relating to the granting of planning permission could not be found but it appeared that there had already been use of the railway line by that time by the public, and that the company had acknowledged this use, agreed to it continuing, and appeared to

have been responsible for the construction of wooden steps in diverting the original route to allow for their factory extension.

The Committee noted that, in summary, the available map, documentary and photographic evidence, together with the recollections of the route from the county council project officer looking at the creation of a cycleway along the route, supported the evidence of use submitted.

County Councillor Howarth requested updates on the progress of decisions taken by Regulatory Committee.

Resolved:

- (i) That the application for the addition of a footpath on the Definitive Map and Statement of Public Rights of Way along the dismantled railway at Stubbins Station, in accordance with File No. 804-614, be accepted.
- (ii) That an Order 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 Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-B-E-F-G.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

**8. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Heapey 27 at Black Lion
Farm, Wheelton, Chorley Borough**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Heapey 27, Chorley Borough. The length of the existing path to be diverted was shown by a bold continuous line and marked A-B-C on the Committee plan attached to the agenda papers, and the proposed new route was shown by a bold broken line and marked A-D-E-C.

The Committee noted that, if the diversion was successful, it would remove the footpath that crossed the open farmyard and the small field that was used for grazing and sorting livestock, assisting the applicants with their farm operations. It would also improve the privacy and security at the farm, removing the footpath from the open farmyard that included outbuildings, building materials storage, farm equipment and the parking area for vehicles.

It was reported that consultation with the statutory undertakers had taken place and that no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Heapey 27, from the route shown by a bold continuous line and marked A-B-C to the route shown by a bold broken line and marked A-D-E-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.

**9. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Wheelton 19 at Clovian
House and Miry Fold Farm, Briers Brow, Wheelton, Chorley Borough**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Wheelton 19, Chorley Borough 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-D-E-F on the Committee plan attached to the agenda papers.

The Committee noted that Clovian House and Miry Fold Farm were residential dwellings that were part of a small development on the site that was granted planning permission in 2015. Whilst the development was ongoing, for safety reasons, the footpath was temporarily diverted to the edge of the site, onto the alignment of the proposed new route A-C-D-E-F.

The current owners had not been involved in the original planning application and had only recently become aware that the necessary order had not been made to permanently divert the footpath onto the alternative route that was available to be walked on the ground. Now that the current owners were aware of this, they wished to regularise the situation. If the diversion was successful, it would remove the footpath that ran through the building, boundary fence, hedge and boundary wall of one of the houses and also across the gardens.

It was reported that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

Committee were informed that since the report had been drafted, it was no longer proposed that a gate be erected at point D, where the footpath crossed the field boundaries of two separate paddocks. The reason for this was that the footpath would now be fenced off from the paddocks, ensuring the footpath would not be trampled by livestock. It was therefore no longer necessary to install a gate at point D, as the livestock would be separated from the footpath. The gate at point E would still be erected.

The following amendments were therefore reported to Committee:

Page 278: Points annotating the routes on the attached map

D	SD 6087 2095	Gate in Point adjacent to the field boundary fence between Clovian House and Miry fold Farm at the south west edge of the field.
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Page 279: The public footpath to be created by the proposed Order will be subject to the following limitations and conditions:

<u>Limitations and Conditions</u>	<u>Position</u>
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6087 2095 (point D)
The right of the owner of the soil to erect and maintain a gate that conforms to BS 5709:2018	Grid Reference SD 6084 2097 (point E)

Page 280: The 'Other Particulars' column be amended to read:

"The only limitations on the section between SD 6083 2097 and SD 6091 2091 is the right of the owner of the soil to erect and maintain ~~a gates~~ **a gate** that conforms to BS 5709:2018 at SD 6085 2097. ~~and SD 6087 2095~~. The width between SD 6083 2097 and SD 6091 2091 is 2 metres."

Page 281: It is felt that, if the Order were to be confirmed, the new path or way will not be substantially less convenient to the public in consequence of the diversion because the new route is of similar length and gradient to the exiting footpath. It is proposed that there will be ~~a two~~ **two** gates on the new footpath at the points where it crosses the field boundaries of two separate paddocks. The gates will conform to the British Standard for gates, gaps as stiles (BS 5709:2018) and as such will be easy to use.

Page 282: It is also advised that the needs of disabled people have been actively considered and as such, the proposal is compatible with the duty of the county council, as a Highway Authority, under The Equality Act 2010. The new route will be of adequate width, firm and well drained underfoot with no stiles. The ~~two~~ gates will conform to BS5709:2018.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Wheelton 19, from the route shown by a bold continuous line on the Committee plan and marked A-B, to the route shown by a bold broken line and marked A-C-D-E-F on the map.
- (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.

**10. Highways Act 1980 - Section 119
Wildlife and Countryside Act 1981 - Section 53A
Proposed Diversion of Part of Footpath Trawden 188 at Parson Lee Farm, Wycoller Road, Trawden, Pendle Borough**

A report was presented on an application for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Footpath Trawden 188, Pendle Borough. The length of existing path to be diverted was shown by a bold continuous line and marked on the Committee plan as A-B-C, and that the proposed new route was shown by a bold broken line and marked A-D-E.

It was reported that the current owner was not aware that the recorded route of the footpath was obstructed by an agricultural barn when she purchased the property. All of the existing route and of the new route was owned by the applicant.

The Committee noted that the new footpath would provide similar open views of the countryside and would avoid the need to negotiate the steep embankment and deep ditch. In addition, the new footpath would provide an obvious, safe and convenient footpath away from the buildings at Parson Lee Farm.

It was reported that consultation with the statutory undertakers had been carried out and no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 119 of the Highways Act 1980 to divert part of Footpath Trawden 188, from the route shown by a bold continuous line and marked A-B-C on the Committee plan, to the route shown by a bold broken line and marked A-D-E.
- (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.

**11. Highways Act 1980 - Section 118
Wildlife and Countryside Act 1981 - Section 53A
Proposed Extinguishment of Part of the Recorded Route of Footpath
Rawtenstall 205, From Windsor Avenue to Staghills Road,
Rossendale Borough**

A report was presented on an application for an Order to be made under Section 118 of the Highways Act 1980, to extinguish part of Footpath Rawtenstall 205, Rossendale Borough that crossed three properties on a housing estate that was built in the mid 1950's. The length of existing path proposed to be extinguished was shown by a bold continuous line on the Committee plan and marked as A-B-C.

It was reported that the owners of the property had, at no time, ever been made aware that a public right of way recorded on the Definitive Map and Statement for Public Rights of Way crossed their property.

A local authority search, carried out in connection with the sale of the property, revealed that a public footpath was recorded passing through 25 Windsor Avenue and the properties to the rear, 104 and 106 Staghills Road. Rossendale Borough Council and Lancashire County Council do not have any record that a legal order has been made to divert, stop up or extinguish any part of the footpath.

The Committee noted that the proposed Order met the criteria for the extinguishment of a public right of way under Section 118 of the Highways Act 1980, in that it was expedient that the path should be stopped up on the grounds that it was not needed for public use.

It was reported that consultation with the statutory undertakers had been carried out and that no objections or adverse comments on the proposal had been received.

Resolved:

- (i) That subject to no significantly adverse responses to the consultations, an Order be made under Section 118 of the Highways Act 1980 to extinguish part of Footpath Rawtenstall 205, on the route shown by a bold continuous line and marked A-B-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 extinguishment order.

12. Urgent Business

There were no items of Urgent Business.

13. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 18 November 2020.

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

Mr Lee Gosling, 33 Dale Street, Stubbins, Ramsbottom, BL0 0NF

Particulars

Application number: 804-614 (894.10842)

Date of determination: 16 September 2020

Modification

Addition of Footpath along dismantled railway line from Strongstry Bridge to Stubbins Halt, Rossendale

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 proposed modification.

The reason for the County Council's decision is:

The Regulatory Committee, having taken all relevant evidence into account were satisfied that the evidence, both user and documentary, was sufficient on balance that footpath rights could be reasonably alleged to have been dedicated on the route. The dedication could either be deemed under s31 Highways Act 1980 or inferred from all the circumstances at common law.

Date: 28 September 2020

Signed:

A handwritten signature in black ink, appearing to read "James Turner".

(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 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 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:

Director of Corporate Services
(REF: LSG4/PROW/894.10842/SM18)
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.