

Regulatory Committee

Meeting to be held on Wednesday, 25 September 2024

Part I

Electoral Division affected:
Cleveleys East;

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 (Annex 'A' and Appendix 'A' refers)

Contact for further information:

Reference File No. 804-557

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Brief Summary

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.

Recommendation

That following consideration of the objections received the Order Making Authority now 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 originally considered that there was sufficient evidence to satisfy the test to make and confirm the Order, there is now doubt that the evidence now available to the Order Making Authority is sufficient to meet the higher test that it subsists on the balance of probabilities.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was received to record on the Definitive Map and Statement of Public Rights of Way a public footpath from Ormerod Street to Gamble Road, Thornton Cleveleys.

At the meeting of the Regulatory Committee held on 13 May 2015 a decision was made to make an Order in accordance with the application and subsequent

investigation and that being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

Two objections were duly made to the Order. The objections were made in a joint submission made by NPL Estates Limited and Fleetwood Town Football Club and in the main repeat the objections made by NPL Estates prior to the making of the Order.

The objections are summarised below in italics as follows:

There is no map or documentary evidence supporting the existence of a public footpath.

During the twenty-year period 1994 – 2014 the evidence presented is of sporadic and occasional use at best and is insufficient to raise a presumption of dedication under section 31 Highways Act.

During the 20-year period specified the land was being used for purposes wholly inconsistent with use by the public. Part of the land was used for farming with fences across the route controlling the movement of livestock including pigs and poultry and signage was erected stating the land was private. The football pitches crossed by the route were in regular use for matches and training and any claimed use would clearly have been interrupted.

The existence of a worn path as identified on aerial photographs does not mean that use was by the public and any use was not 'as of right' but relied on breaking down fences, climbing over gates or fences or creating gaps.

Signage was present saying that the land was private and there is no evidence that the landowner intended to dedicate public rights.

The Order was made on the basis of the submission of modern (1994-2015) user evidence and there is no suggestion by the County Council that there is sufficient historical map or documentary evidence from which dedication could be inferred.

The evidence relied on by the county council in making the Order was evidence of use from 10 users. Committee's attention is drawn to the fact that although 10 users could be viewed as a relatively low number, guidance from the Planning Inspectorate indicated that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large and in this particular case when the Order was made Committee considered that the users of the route were representative of the public at large.

It is now necessary to refer the Order to the Planning Inspectorate for determination.

Since the Order was made the land crossed by the route has been redeveloped and a large football ground and training facility built. The fact that the Order route is no longer available to use on the ground cannot be considered when determining whether public rights exist. Should the Order be confirmed however, consideration



would need to be given to whether it was possible to divert all or part of the Order route or whether it was needed for public use.

10 individuals completed user evidence forms in 2014 with 7 indicating that the route always ran along the same line. Only 1 indicated their willingness to attend a public inquiry to present their evidence.

Conclusion

The making of the Order and the statutory objection period has given everyone notified an opportunity to make further comment.

The Committee is therefore advised to consider the evidence again (the May 2015 report at Appendix 'A' refers).

Officers have reviewed the case and now consider that it is a finely balanced case in terms of whether on the written evidence available the test for confirmation can be met (that the route subsists on the balance of probabilities) and Members will need to consider the low number of users that originally provided evidence of use of the route, only one of which would be prepared to give evidence at a public inquiry, and the fact that further support for the confirmation of the Order may be very limited.

If it cannot be decided whether or not the test for confirmation can actually be met then it is advised that Members could now decide to refer the Order with the available evidence with the Order Making Authority taking a neutral stance.

Appendices

Appendix 'A' is attached to this report. For clarification, it is summarised below and referenced at relevant points within this report.

Appendix	Title
Appendix 'A'	Report to Regulatory Committee May 2015

Implications

This item has the following implications, as indicated:

Risk management

Consideration has been given to the risk management implications associated with this Order. The Committee is advised that the decision taken must be based solely on the evidence contained within the original report (Appendix B), and on the guidance contained both in this report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there are no significant risks associated with the decision making process.

Alternative Options to be Considered

Decide that the confirmation test is not met and submit the Order to the Planning Inspectorate with the request that it be not confirmed.



Decide that the confirmation test is met and submit the Order to the Planning Inspectorate with the request that it be confirmed.

Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-557		Simon Moore, Paralegal, Legal and Democratic Services, 01772 531280

Reason for inclusion in Part II, if appropriate

N/A

