

Regulatory Committee

Meeting to be held on Wednesday, 27 November 2024

Part I

Electoral Division affected:
West Lancashire East;

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Restricted Byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale
(Annex 'A' and Appendix 'A' refers)

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Brief Summary

Having agreed to the making of The Lancashire County Council Addition of Restricted Byway known as Dark Lane, Bispham/Hilldale, West Lancashire Definitive Map Modification Order 2023 a decision is now required as to whether the Regulatory Committee consider there is sufficient evidence to meet the higher test to confirm the Order route i.e. that it subsists on the balance of probabilities and, given that objections have been received to the Order, the stance to be taken by the County Council regarding referral of the Order to the Secretary of State for the Environment.

Recommendation

That the county council as Order Making Authority should submit the Lancashire County Council Addition of Restricted Byway known as Dark Lane, Bispham/Hilldale, West Lancashire Definitive Map Modification Order 2023 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, and promote the Order to confirmation.

Detail

On 10th August 2022, Regulatory Committee considered whether or not an Order should be made to add to the Definitive Map and Statement of Public Rights of Way



a restricted byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale. The August 2022 Committee is set out at Appendix 'A'.

The decision of Regulatory Committee was that the application for a Restricted Byway along Dark Lane be accepted and that an Order be made 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 Restricted Byway along Dark Lane.

Although not questioning the strength of the evidence on which the Order was to be made, Members expressed concerns about the lack of responses from consultations with the relevant parish councils and the broader aspect of pre-order consultations generally. On that basis, Members decided to make an Order but that officers return to Committee before confirmation to allow for the opportunity for more consultation, in particular with the relevant parish councils, through the Order making process.

A Definitive Map Modification Order was duly made on 29th November 2023 and 9 objections and one representation to the Order were made. No representations or comments were received from either Bispham Parish Council or Hilldale Parish Meeting although both were notified of the Making of the Order.

Statutory provisions state that where there are objections, the Order Making Authority should submit the Order to the Secretary of State for formal determination.

A summary is provided below regarding the content of the objections raised:

1. There are no physical remnants of a byway (the 'Order route').
2. The line of the Order route interferes with an established wildlife corridor and opening it up will have a detrimental impact on the area particularly the flora and fauna.
3. An existing public right of way already provides a perfectly adequate alternative.
4. The route has not been used for at least 100 years, during this time the stream has become an important wildlife habitat.
5. The route is no longer navigable by any means.

In response to the objections, officers consider that no evidence has been presented which undermines the evidence that Members relied upon in deciding that an Order should be made.

In addition, one representation was made by the Open Spaces Society relating to the description of the recorded section of Footpath Bispham 3 (FP0806003) with the Order route. This queried whether the footpath did actually connect to the Order route and pointed out that there was an unrecorded but well-used footpath alongside it. This footpath does appear to join the Order route so that would not be an issue. It may be the case that this footpath legally extends to the road but that is not the subject of this Order. This in no way negates the evidence that the Order should be confirmed.

The evidence examined showed that the route – known as Dark Lane – existed as part of the public vehicular highway network in the 1700-1800s and the county council have neither found nor been presented with any evidence that those public



rights were ever legally extinguished. On that basis, even though the route subsequently fell out of use and is no longer passable, the public rights still exist in law and the Order should be confirmed.

The fact that the route no longer physically exists on the ground is not a reason for not making or confirming the Order and the map and documentary evidence is sufficient to support the making and confirmation of the Order.

Concerns about the environmental impact on carrying out any work to open the route are not generally valid reasons for objecting to the Order or the Order not being confirmed. The Order has been made to record public rights and any objections to the confirmation of that order should relate to whether there is evidence that those rights exist or not.

It is appreciated that there is a significant amount of local concern about the environmental impact of opening up the route. Should the Order be confirmed, officers will need to consider what options are available to reinstate the route, legally divert or extinguish it. In some cases, it may be considered too costly or impractical to carry out work to reinstate a route and other options may be considered. At that stage, if any work is proposed to be carried out, the environmental impact of doing so would be properly considered and may result in no work being carried out or restrictions being put in place as to what can or should be done.

The existence of other alternative public routes is not relevant to determining whether public rights already exist along Dark Lane (the Order route).

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 August 2022 report at Appendix 'A' refers).

The objections received do not in any way undermine the evidence that Members have relied upon in deciding that an Order should be made and Members are recommended to approve that the county council as Order Making Authority submit The Lancashire County Council Addition of Restricted Byway known as Dark Lane, Bispham/Hilldale, West Lancashire Definitive Map Modification Order 2023 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, and promote the Order to confirmation.

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'	Regulatory Committee report August 2022

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 'A'), 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.

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

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804-707	15/03/2018	Annabel Mayson, 01772 533244, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



