

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in Council Chamber, Crook on **Thursday 3 March 2011 at 1.30 pm**

Present:

Councillor G Bleasdale (Chair)

Members of the Committee:

Councillors J Robinson (Vice-Chairman), B Arthur, A Bainbridge, D Burn, D Marshall, A Naylor, J Shiell, L Thomson, R Todd, E Tomlinson and R Young

Apologies:

Apologies for absence were received from Councillors N Foster, D Hancock, S Hugill, J Maslin, D Morgan, P Stradling, T Taylor, C Woods and A Wright

Also Present: Councillor J Shuttleworth (local member), Mr K Lord, Mr R Smith and Mrs S Campbell (Trail Riders Fellowship)

1 Declarations of Interest

There were no declarations of interest.

2 Byway Applications in Weardale and Teesdale. Wildlife & Countryside Act 1981: Definitive Map Modification Order applications

The Chair noted that, prior to the meeting, members had visited a number of sites and had an opportunity to view and walk parts of some of the application routes.

The Committee proceeded to consider the report of the Corporate Director, Regeneration and Economic Development and the Head of Legal & Democratic Services regarding applications to modify the Definitive Map and Statement of Public Rights of Way by the addition of byways.

The Public Rights of Way Officer (Audrey Christie) reviewed the background to the applications, which had originally been made between 1992 and 1995 (when 8 applications had been lodged but 2 had subsequently been dealt with, leaving 6 to be considered today). The application routes were across open moorland areas of Teesdale and Weardale – locations were detailed in the report and on plans/maps appended to it, together with copies of various background documents, including extracts from Inclosure Awards and responses from consultees. It was noted that each application would require individual consideration.

The Legal Adviser explained the legal framework for consideration of the applications and emphasised that the Council had to make decisions in accordance

with the law, and in particular with the provisions of the Wildlife and Countryside Act 1981. She noted that paragraph 14 of the report should read as follows:

'Therefore it is important to decide whether or not these applications were properly 'made' and meet all the provisions of paragraph 1 of Schedule 14 to the 1981 Act. The effect of Section 67(1) of the NERC Act means that if a right of way for mechanically propelled vehicles can be established on the documentary evidence presented but the application is not properly 'made', then the application for byway status would fail with the appropriate status being that of restricted byway.'

She explained that it would be unlawful to take into account issues such as the suitability or desirability of the applications. She referred to a recent case determined by the Court of Appeal, which had prompted the Council to seek Counsel's advice with regard to these applications; the advice was appended to the report.

The Public Rights of Way Officer (Audrey Christie) advised members of the recent receipt of a request from a firm of solicitors acting on behalf of some of the landowners involved (objectors to the applications) to defer consideration to enable them to obtain Counsel's opinion as to whether the applications were properly 'made'. However, members were advised that all parties had been given ample opportunity to consider the officer's report and the legal opinion received by the Council. On this basis members agreed that they would proceed to consider the applications at this meeting.

Members then proceeded to consider each of the six applications individually and had an opportunity to comment and ask questions of officers. Each report detailed the proposed route, considered the documentary evidence and any evidence on the ground and outlined the objections/comments received. In each case the written report was supplemented by a visual presentation which included maps/plans and photographs of the route.

Councillor Shuttleworth recorded his opposition to each application on the basis that creating byways would be detrimental to wildlife habitats, damage would be caused to the surface of the land and there would be a detrimental impact on the heather grouse moor.

Middleton Lane: Route 1

RESOLVED:

That a Modification Order be made to record Middleton Lane as a public byway as per the Wolsingham Inclosure Award at a width of 60 ft (18.29m) (to include the reclassification of those parts of Wolsingham public bridleway and footpath no 107 and Frosterley public footpath no 50 where the Inclosure route and public right of way intersect within the Inclosure width of 60ft (18.29m)), and beyond the western end of the Wolsingham Award to record a public byway of 5 metres width (a width considered appropriate for a Byway) along the route depicted on the 1st edition OS map, subject to a minor adjustment of the OS line to ensure continuity of the route (as described in paragraph 24 of the report), to where the route meets the B6278

and including a reclassification to public byway of Eggleston footpath no 47 where it intersects with this route.

Pikestone Lane and Stanhope Road (Lane): Route 2

RESOLVED:

That a Modification Order be made to record Pikestone Lane as a public byway as per the Wolsingham Inclosure Act and Award at a width of 60ft (to include the reclassification of those parts of Wolsingham footpath no 115 where the Inclosure route and the public footpath intersects with the 60ft Inclosure width), to record as a public byway a continuation of this route through Lands Common to Hamsterley, South Bedburn and Lynesack and Softley at a width of 5 metres (to include the reclassification of those parts of Footpath no 3 Lands Common etc where this route and the footpath intersect) and to record Stanhope Road (Lane) as a public byway as per the Hamsterley, Lynesack, Softley and South Bedburn Inclosure Act and Award and laid out along the route of South Bedburn bridleway no 23a at a width of 40ft.

Hartop Lane: Route 3

RESOLVED:

That a Modification Order be made to record Hartop Lane as a public byway as per the Wolsingham Inclosure Act and Award at a width of 60ft.

Coal Lane: Route 4

RESOLVED:

That a Modification Order be made to record Coal Lane as a public byway as per the Wolsingham Inclosure Act and Award at a width of 60ft (to include the reclassification of that part of Wolsingham footpath no 61 where the Inclosure route and the public footpath intersects within the 60ft Inclosure width).

Houselop Lane: Route 5

RESOLVED:

That a Modification Order be made to record Houselop Lane as a public byway as per the Wolsingham Inclosure Act and Award at a width of 60ft (to include the reclassification of that part of Wolsingham footpath nos 59 where the Inclosure route and the public footpath intersects within the 60ft Inclosure width).

Old Stanhope Road: Route 6

RESOLVED:

That a Modification Order be made to record Old Stanhope Road as a public byway, including the reclassification of Eggleston Footpath no 45 to public byway, all at a width of 5 metres.