

<b>Report to:</b>	<b>PLANNING COMMITTEE</b>
<b>Relevant Officer:</b>	Will Britain, Head of Highways and Traffic Management
<b>Date of Meeting:</b>	9 May 2017

## **DEFINITIVE MAP AND STATEMENT MODIFICATION APPLICATION TO ADD A PASSAGE BETWEEN WHITTAM AVENUE AND RYBURN AVENUE**

### **1.0 Purpose of the report:**

- 1.1 To consider an application received by the Council for an Order under Section 53 (2) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a passage between Whittam Avenue and Ryburn Avenue as a byway open to all traffic (BOAT).

### **2.0 Recommendation(s):**

- 2.1 That no modification is made to the Definitive Map and Statement.

### **3.0 Reasons for recommendation(s):**

- 3.1 The Council is prevented by Sections 66 and 67 of the Natural Environment and Rural Communities Act 2006 from making an Order in the terms sought by the applicant since any public rights of way for mechanically propelled vehicles of a kind otherwise capable of being recorded in the Definitive Map and Statement that were not so recorded by 2 May 2006 are extinguished from that date and no new public rights of way of that kind may be created after that date. The information provided as part of the application does not indicate that any other modification of the Definitive Map and Statement should be made.

- 3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

- 3.2b Is the recommendation in accordance with the Council's approved budget? Yes

### **3.3 Other alternative options to be considered:**

To recommend that the Council makes the Order to modify the Definitive map and statement.

#### **4.0 Council Priority:**

4.1 The relevant Council Priority is

- “The economy: Maximising growth and opportunity across Blackpool”
- “Communities: Creating stronger communities and increasing resilience”

#### **5.0 Background Information**

5.1 The Council as surveying authority has a duty to maintain a Definitive Map and Statement of public paths and byways and to keep the Map and Statement under continuous review.

5.2 On discovering evidence of the existence of a public path or byway over land not shown in the Definitive Map and Statement the Council must make requisite modifications to the map and statement.

5.3 The Council’s powers to modify the Definitive Map and Statement are subject to sections 66 and 67 of the Natural Environment and Rural Communities Act 2006 which prohibit the creation of any new public rights of way by mechanically propelled vehicles (unless created on express terms) after 2 May 2006 and (with certain exceptions) extinguish any public rights of way by mechanically propelled vehicles not already shown in a map and statement with effect from 2 May 2006.

5.4 In deciding whether any modification is required it is necessary to have in mind that the purpose of the Definitive Map and Statement is to record public rights of way used mainly for the purpose for which footpaths and bridleways are used and not carriageway highways or public rights to use carriageway highways on horse or foot (such rights to use carriageway highways are normally presumed).

5.5 In this case the passage has never been shown in the Definitive Map and Statement and does not appear in the Council’s list of highways maintainable at public expense. There is no evidence of the passage ever being offered for adoption under the procedures in either the Highways Act 1980 or its predecessors or of the passage having been expressly dedicated as a public right of way. Nonetheless, in 2006 the Council made a Gating Order to regulate the use of the passage as a highway, including by vehicles and pedestrians using powers in the Highways Act 1980 applicable to highways. In 2015 the applicant asserted a private right of way “for all purposes” over parts of the passage.

5.6 The current claim is supported by evidence of use by local people over periods of between 32 and 57 years including by mechanically propelled vehicles (cars, motorcycles and service vehicles), bicycles and on foot. The claim is for the passage to be recorded in the map and statement as a ‘byway open to all traffic’ (BOAT) i.e. including a right of way for vehicular traffic but for which the main use is “for the purpose for which footpaths and bridleways are so used”.

5.7 The effect of the 2006 Act is that even if the Council was satisfied about the nature and extent of public use as claimed (i.e. through use by mechanically propelled

vehicle, bicycle and on foot) it could not make an Order to add the passage to the map and statement as a BOAT. The Council could nevertheless modify the map and statement if the evidence submitted as part of the application demonstrated the existence of a public right of way on foot or horseback (or for vehicles other than mechanically propelled vehicles) which is not currently shown on the map and statement.

5.8 In the officer's view, the evidence in this case does not indicate the existence of such a right of way, i.e. a right of way as a footpath or bridleway or used mainly for the purpose for which footpaths and bridleways are used.

5.9 Does the information submitted include any exempt information? No

**5.10 List of Appendices**

Appendix 3a – Application and supporting evidence

**6.0 Legal considerations:**

6.1 Where the Council receives an application it must normally determine it within 12 months after which the applicant may refer the matter to the Secretary of State who may then direct the Council to take a decision. In this case the applicant has referred the matter to the Secretary of State who, through the Planning Inspectorate, has invited the Council to make representations before coming to a decision on whether to make a direction for the Council to make a decision.

The Planning Inspectorate has asked that the Council make representations before 30 May 2017. The Council intends to determine the application before the end of the period for representations.

**7.0 Human Resources considerations:**

7.1 None

**8.0 Equalities considerations:**

8.1 None

**9.0 Financial considerations:**

9.1 None

**10.0 Risk management considerations:**

10.1 Making an Order would be contrary to the terms of Sections 66 and 67 of the Natural Environment and Rural Communities Act 2006.

**11.0 Ethical considerations:**

11.1 None

**12.0 Internal/ External Consultation undertaken:**

12.1 None

**13.0 Background Papers**

13.1 Application with supporting evidence