

HIGHWAYS COMMITTEE - 5/9/94

Further consideration had been given to reducing the number of lanes from 3 to 2 on the Southport Road approach, and turning count and traffic queue surveys had been undertaken to assess the likely impact of closing the inside lane.

The report set out details of proposed additional safety measures to (a) close the nearside lane using vibrational lines and hatched markings; (b) re-align the lane markings at the entrance to the roundabout and extend the middle and outside lanes from the give way markings on the roundabout; (c) enlarge the hatched marking area in Southport Road with vibrational warning lines and return to lane arrows; and (d) place two warning lines adjacent to the Tesco splitter island. The estimated cost of £400 could be met from the 1994/95 capital allocation for local safety schemes.

RESOLVED:- (i) That the proposed additional safety measures detailed in the report and on plan H1/0304 be implemented;

(ii) that the traffic situation be monitored and the results reported back to this Committee after twelve months.

472. RIGHTS OF WAY ACT, 1990 - PROPOSED AMENDMENT TO SCHEME OF DELEGATION

The Committee considered the report of the Director of Technical Services setting out details of the provisions contained in the Rights of Way Act, 1990, which amended the Highways Act, 1980 to protect public rights of way users from the effects of cultivation and cropping of land and assist highway authorities to ensure that paths over arable land remained open and convenient to use at all times.

To enable the highway authority to carry out its duties promptly under Sections 131A and 137A of the Highways Act, 1980, it would be necessary for the appropriate delegated powers to be given to the Director of Technical Services.

RESOLVED:- That the Highways Committee Scheme of Delegation be amended by the addition of Section 131A (Disturbance of Surface of Certain Highways) and Section 137A (Interference by Crops) of the Highways Act, 1980 to paragraph C15 (delegation to Director of Technical Services).

473. PUBLIC RIGHTS OF WAY CLAIMS MADE BY THE FORMBY SOCIETY

The Committee considered the report of the Director of Technical Services indicating that the Formby Society had made applications under

the Wildlife and Countryside Act, 1981 for Modification Orders to add a number of lanes and tracks in Formby to the definitive rights of way map and statement. The report discussed the public right of way status of these lanes in the light of the evidence submitted by the Formby Society and that already in the Council's possession.

RESOLVED:- (i) That this Committee recognises the right of way status for the lanes and tracks claimed by the Formby Society in December, 1991 under Section 53 of the Wildlife and Countryside Act 1981 based on the available evidence to be as follows:-

1. Albert Road - byway open to all traffic
2. Alexandra Road - byway open to all traffic
3. St. Luke's Church Road, Bushby's Lane to Alexandra Road - byway open to all traffic
4. St. Luke's Church Road, Alexandra Road to Range Lane - byway open to all traffic
5. St. Luke's Church Road, Range Lane to Altcar Footpath No. 5 - public footpath
6. Cambridge Road - byway open to all traffic
7. Range Lane - byway open to all traffic
8. Two tracks connecting Albert Road to Alexandra Road - public footpaths
9. Extension of Albert Road to Shore - public footpath;

(ii) that consultation be carried out with interested parties in line with the Government's Rights of Way Review Committee's guidelines, prior to Order making and the results of the consultation be reported to a future meeting;

(iii) that the Director of Legal and Administrative Services give notice of the Authority's decision on the application to the Formby Society and any other person to whom notice of the application was required to be served in accordance with Schedule 14 to the Wildlife and Countryside Act, 1981.

474. MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY, BOOTLE

Further to Minute No. 37 of 1st June, 1992, the Committee considered the report of the Director of Technical Services indicating that an Order had been made in October, 1992, adding the footpaths at Heysham Road to Parkfield Avenue, and Ashbourne Avenue to Boundary Road to the Map and Statement of public rights of way for Bootle.

HIGHWAYS COMMITTEE - 5TH SEPTEMBER 1994
PUBLIC RIGHTS OF WAY CLAIMS MADE BY THE FORMBY SOCIETY
ON 5TH DECEMBER 1991

	YES	NO
This report contains		
CONFIDENTIAL information/		✓
EXEMPT information by virtue of paragraph(s) of Part 1 to Schedule 12A to the Local Government Act 1972		✓

1.0 EXECUTIVE SUMMARY

- 1.1 This report considers the public right of way status of a number of lanes and tracks in western Formby which are the subject of a claim by the Formby Society for their recording on the definitive rights of way map and statement for the area.
- 1.2 The evidence adduced by the Formby Society and already in the possession of this Council is considered in the report.
- 1.3 After consideration of all the relevant evidence it is considered that the Council as Surveying Authority is by Section 53(2) of the Wildlife and Countryside Act 1981 under a duty to modify the said definitive map and statement by adding the following highways:-
1. Albert Road - byway open to all traffic.
 2. Alexandra Road - byway open to all traffic.
 3. St. Lukes Church Road, Bushby's Lane to Alexandra Road - byway open to all traffic.
 4. St. Lukes Church Road, Alexandra Road to Range Lane - byway open to all traffic.
 5. St. Lukes Church Road, Range Lane to Altcar Footpath No. 5 - public footpath.
 6. Cambridge Road - byway open to all traffic.
 7. Range Lane - byway open to all traffic.
 8. Two tracks connecting Albert Road to Alexandra Road - public footpaths.
 9. Extension of Albert Road to Shore - public footpath.
- 1.4 The report recommends that this Committee recognise that the evidence supports the above conclusion, that the Formby Society are informed of this Committee's decision and that consultation is entered into with interested parties prior to Order making, in line with the recommendations of the Governments Rights of Way Review Committee.

2.0 INTRODUCTION

- 2.1 The Formby Society in December 1991 made applications under the provisions of the Wildlife and Countryside Act 1981 s53 for Modification Orders to add a number of lanes in Formby to the definitive rights of way map and statement. The alleged public rights of way are St Lukes Church Road, Alexandra Road, Albert Road, Range Lane, Cambridge Road (untarred section) and 2 tracks connecting Albert Road to Alexandra Road. They are shown on drawing No TSU/DC/ROW/0160/37.
- 2.2 In line with the Council's published statement of priorities the applications were not considered until higher priority definitive map work had been carried out, i.e. the creation of definitive maps for Southport and Bootle and the updating of the definitive map for the former West Lancashire Rural District Council area of Sefton Borough. This work is nearing completion.
- 2.3 This report considers whether the lanes and tracks claimed by the Formby Society are public rights of way and should therefore be added to the definitive rights of way map and statement for the area.
- 2.4 The Formby Society's claim of February 1992, for other paths in this area will be the subject of a separate report to a future Highways Committee meeting.

3.0 LEGISLATION AND DEFINITION

- 3.1 Under Section 53 of the Wildlife and Countryside Act the Council as surveying authority is under a duty to keep the definitive map and statement under continuous review.
- 3.2 Events that would require the surveying authority to make a definitive map modification order are listed in section 53(3) of the Wildlife and Countryside Act 1981 a copy of which is appended to this report (Annexe A). The effect of any path or way being added to the Definitive Map and Statement by a Modification Order is that the Definitive Map and Statement shall be conclusive evidence of the existence of the right of way as at the relevant date specified in the Order.
- 3.3 Three types of public rights of way, i.e. footpath, bridleway and byway open to all traffic are eligible for inclusion on the definitive map. A definition of these terms is included in a glossary appended to the report (Annexe B).
- 3.4 Your Officers have investigated the matters stated in the Formby Society's application and their findings are set out below. The Council, as Surveying Authority, must now decide whether or not to make the Order pursuant to the Society's application. This must be an informed decision and it is important that Members give a proper appreciation to and weighing of the available evidence and understand the statutory considerations to which they must have regard contained in S.53(3)(b) and (c) of the 1981 Act.
- 3.5 Members should understand particularly that modification of the Definitive Map and Statement is concerned only with the legal status of alleged highways and not with any questions relating to amenity or suitability for traffic be it pedestrian, equestrian or vehicular traffic.

The surveying authority must record the ways with their actual public rights of way status as established by the evidence available to the Council and must not be deflected by arguments not relevant to the order making procedure. Correct legal definition of all public rights of way is a goal set by the Countryside Commission in their Recreation 2000 initiative, to which Sefton is party through its Countryside Recreation Strategy.

- 3.6 Where the Authority decides not to make an Order, the applicant may appeal to the Secretary of State.

4.0 HISTORY AND DOCUMENTARY EVIDENCE

- 4.1 The lanes are shown on the 1892 Ordnance Survey 25" to 1 mile map and subsequent editions.
- 4.2 Range Lane appears on the 1844 Ordnance Survey first Edition of 1" to 1 mile.
- 4.3 Cambridge Road, Alexandra Road and Albert Road were constructed in the latter quarter of the 19th Century as part of an entrepreneurial venture to create a new seaside resort Formby-By-The-Sea. A promenade was built accessed by Alexandra Road and Albert Road at the north and south ends respectively. Two other roads parallel to the promenade were partly made. Kerbs and surfacing are still visible on the resort roads in places. Several large houses of the seaside boarding house type were erected on the promenade and Alexandra Road. An elderly former Formby resident recalls being taken to the promenade by horse drawn charabanc at the turn of the century. No reports of restricted access to the failed resort have been reported and evidence provided by the Formby Society alleges knowledge of public vehicular use of Albert and Alexandra Roads since 1926.
- 4.4 On the 1892 Ordnance Survey 25" to 1 mile map, spot heights are shown at regular intervals along Albert Road and Alexandra Road. A bench mark is shown on both roads. Spot heights are shown at regular intervals along Alexandra Road, St Lukes Church Road and Range Lane on the 1927 Ordnance Survey 25" to 1 mile map. A bench mark is shown on the junction of Alexandra Road and St Lukes Church Road. It has been accepted by Department of Environment Inspectors at Public Inquiries that the presence of spot heights and bench marks along roads is evidence that they were in public use when surveyed.
- 4.5 The Record Plan prepared by the Inland Revenue for the purposes of the 1910 Finance Act shows Range Lane and the section of St Lukes Church Road between Range Lane and Bushby's Lane as excluded from taxable land holdings. Sections of Cambridge Road, Alexandra Road and Albert Road were similarly excluded (Annexe C Drawing No TSU/DC/ROW/0160/25). This is strong evidence that these sections of road were public highways. It should be noted that some landowners preferred to be eligible for tax on the sale of land crossed by highways rather than admit their public status for the purposes of the 1910 Act so inclusion of a road within a taxable area is not conclusive evidence that no public right of way existed over it.
- 4.6 The Formby Urban District Council Year Book 1949-50 lists the named lanes and one of the lanes connecting Albert Road to Alexandra Road in its list of streets under the heading "Private Streets and Public Highways (not repairable by the inhabitants at large". By the mid 1960's they were listed under the heading "Private

Streets (not maintainable at the public expense)", establishing them to be part of the highway network of Formby but for which the Council accepted no maintenance responsibility (Annexe D).

- 4.7 In 1951 Formby Urban District Council's Engineer and Surveyor produced a report listing public rights of way considered for inclusion in the record of public rights of way as required under the provisions of the National Parks and Access to the countryside Act 1949. The 49 rights of way listed included Range Lane, St Lukes Church Road, Cambridge Road, Albert Road and Alexandra Road. A copy of the list is appended (Annexe E). The 49 ways are a mixture of roads and footpaths. None of the roads were included on the draft rights of way map produced by Formby Urban District Council. A reasonable assumption is that the Council considered that only footpaths and bridleways should be recorded. No rights of way were recorded under the heading "Roads used as public paths" which was available to the council. Those roads within the listing which also appeared within the list of streets (see above) were not recorded however the footpath extensions of them were, e.g. Montagu Road, Freshfield and Blundell Avenue, Freshfield. This evidence points to public vehicular status for the lanes in question otherwise a public right of way (footpath or bridleway) should have been recorded along them assuming the landowner had not convinced the council that no right of way whatsoever existed over them. There is no record within the Formby Urban District Council's minutes of any representation being made by landowners to remove any of the roads listed from a draft rights of way map.
- 4.8 The book 'Altcar, The Story of a Rifle Range' refers to a road (St Lukes Church Road) having been used by Formby fishermen as a shortcut to market in Crosby and Bootle. I quote, "In 1885 when the War office rented the Altcar Range from Lord Sefton (by agreement) this access from Formby appears to have been recognised. The agreement stated: 'The regular highway to the land coloured blue on the attached plan (i.e. the camping land) and to the range is by the sandy road from Formby". Any public rights of way that may have existed within the Altcar Range were extinguished by order in 1939 and a new footpath provided, running from Hightown to Formby and located parallel to the railway over most of its length. The 1885 agreement points to St Lukes Church Road being a public highway.

5.0 EVIDENCE OF USER

- 5.1 The Formby Society claim Albert Road, Alexandra Road and Range Lane as byways open to all traffic and St Lukes Church Road, Cambridge Road (untarred section) and 2 tracks connecting Albert and Alexandra Roads as public footpaths.
- 5.2 Evidence of user provided by them is substantially of pedestrian use (Annexe F) but individual witnesses give evidence of public vehicular use of Albert Road and Alexandra Road since 1926 although the users of the vehicles remain anonymous.
- 5.3 The primary access to Alexandra and Albert Roads within living memory has been the section of St Lukes Church Road connecting Alexandra Road to Bushby's Lane at Shorrocks Hill. Logically Albert and Alexandra Roads can not be byways open to all traffic unless St Lukes Church Road is also accepted as a vehicular highway over this connecting length. Visitor surveys by Sefton's Leisure Services Department covering the period 1978-1988 (Annexe G) show a substantial number of cars accessing the dune area via Alexandra Road. It is known that post war, informal picnic sites developed alongside Albert and Alexandra Roads which can

still be identified from aerial photographs and site surveys. Recent access has been less due to the development of competing facilities at Lifeboat Road, the erection of a 'Private Road' notice at Shorrocks Hill in 1989 and the isolation of the picnic areas by excavations as part of the Ranger Services visitor management.

- 5.4 The visitor survey samples Range Lane 3 times. On 2 occasions vehicles had used the lane. A local resident reports Range Lane formerly being a very popular access for the public who drove down and picnicked on open land at its end. Vehicle access is now controlled beyond the end of Range Lane. The Council's Ranger Service has erected a sign stating 'No Vehicles Beyond this Point'.

The Council's Rights of Way Officer has observed vehicle access to the end of Range Lane for a sports event at Range High School.

- 5.5 Cambridge Road has been in regular light public vehicular use until recent years. An Albert Road resident states that it was regularly used by his family since 1931, although he has ceased to use it in recent years due to overgrowth of vegetation at its western end and its loss of identity as a road at its eastern end when Stapleton Road was constructed. The dropped kerb provided acted as a deterrent to use as users have to drive over the footway. A Cambridge Road resident who declined to complete an evidence form alleged vehicular use over a number of years to access St Lukes Church.

- 5.6 Evidence of user for the section of St Lukes Church Road from its junction with Alexandra Road to its junction with Altcar Footpath No 5 at the Altcar Range boundary is almost totally of pedestrian use. During the war years an Albert Road resident used it when collecting hay by horse and cart from Grange Farm on the Altcar Range. The occupier of Marsh Farm has used the section of lane between Alexandra Road and Range Lane with vehicles since 1960 for field access prior to the development of the adjacent land and the erection of the barrier in 1976.

6.0 EVIDENCE AGAINST PRESCRIPTIVE RIGHTS

- 6.1 Several witnesses refer to a gate on St. Lukes Church Road at Shorrocks Hill.

An Albert Road resident refers to this never being closed and to it being removed or it having fallen down Circa 1939/40.

Another local resident recalls his father, who was Gamekeeper for the Fomby family, blocking the road at Shorrocks Hill with barrels and wood one day each year until 1957.

- 6.2 St. Lukes Church Road was obstructed at Asparagus Cottage to all but pedestrians post war. One witness states Circa 1955.

The Council received complaints from horse riders to a similar obstruction erected Circa 1976.

- 6.3 A 'Private Road' Notice was erected by the Fomby Land Company on St. Lukes Church Road at Shorrocks Hill in 1989. When pressed the Company stated that they understood St. Lukes Church Road at Shorrocks Hill to be an unadopted public highway leading to footpaths or other unadopted public highways.

6.4 There is no evidence of controls or notices on any other lane or track making up the Formby Society's claim.

7.0 STATUTORY CONSIDERATIONS

7.1 In considering whether it is requisite that the alleged rights of way be made the subject of a Modification Order, the Authority must be satisfied that either or both of the following two events have occurred as set out in S.53(3)(b) and (c) of the 1981 Act, namely:-

S.53(3)(b) - the expiration of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path, i.e. a footpath or bridleway ("Public Path" defined in S.66 of the 1981 Act). A vehicular right of way, however, cannot qualify for entry on the Definitive Map and Statement, as a byway open to all traffic, under S.53(3)(b) since it does not come within the definition of "Public Path".

The making of a Modification Order based on an event under S.53(3)(b), commonly referred to as a "Prescriptive" right of way, requires the Authority to take a view that the requirements of S.31 of the Highways Act 1980 have been satisfied i.e. whether, for a continuous period of 20 years prior to the date when the right of the public to use the way has been challenged, the public has enjoyed the right of way as of right without interruption. If it has, then the way is deemed to have been dedicated, of which use by the public is evidence, unless there is sufficient evidence that there was no intention during that period to dedicate it.

It should be noted that a right of way may become established over a shorter period of time under common law if the alleged highway has been used, as of right, for so long a time that it must have come to the knowledge of the landowner that the public were using it as of right.

and/or

S.53(3)(c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way (i.e. a footpath, bridleway or byway open to all traffic)

- (i) subsists, or
- (ii) is reasonably alleged to subsist.

The evidence needed to satisfy (ii) above is less than that necessary to satisfy (i) and (ii) will be satisfied if, on a balance of probabilities, the allegation of the subsistence of a public right of way was reasonable.

It is not necessary for the claimant (i.e. The Formby Society) to have made the allegation that a particular public right of way subsists for where the Council is in possession of evidence suggesting a public right of way, in order to satisfy (ii) above it must ask whether a reasonable person could reasonably allege a right of way subsists over the way in question.

8.0 ASSESSMENT OF EVIDENCE

- 8.1 In your Officer's opinion evidence of use by the public is sufficient to raise the presumption that all the lanes and tracks referred to in the application have been dedicated, at the least, for pedestrian use as footpaths. No evidence has been received which suggests that the status of bridleway has been acquired through equestrian use in respect of any of the paths or tracks.
- 8.2 The Committee must consider having regard to S.53(3)(c) of the 1981 Act detailed above in 6.1, whether on all the available evidence a right of way amounting to a byway open to all traffic subsists or is reasonably alleged to subsist over any of the paths or tracks the subject of the application. In considering this the following points 8.3 to 8.7 are drawn to the Committee's attention.
- 8.3 Map evidence including spot heights and bench marks, Formby Urban District Council's 'list of streets' and the list of public rights of way supplied by Formby Urban District Council's Engineer and Surveyor in 1951 suggests public vehicular status for the named lanes, but are not conclusive evidence in themselves. One of the lanes connecting Albert Road to Alexandra Road is also recorded in the 'list of streets'. The 1910 Finance Act Record Plans supports this suggestion for lengths of St Lukes Church Road, Cambridge Road, Alexandra Road and Albert Road and for the full length of Range Lane.
- 8.4 Evidence of public vehicle user is very strong for Albert Road, Alexandra Road and the section of St Lukes Church Road between Bushby's Lane and Alexandra Road. There is no evidence of any impediment to the acquisition of a public right of way between 1957 and 1989.
- 8.5 It is considered that the case for Albert Road, Alexandra Road and that length of St Lukes Church Road from Bushby's Lane to Alexandra Road to be recorded on the definitive map as byways open to all traffic is irresistible. It should be noted that the Formby Society claim extends the alleged public rights of way beyond the Old Promenade. The made up roads terminate at the Promenade and it is considered that this is the extent of their vehicular status. Aerial photographs show an eroded path from the end of Albert Road to the beach having existed throughout the post war period and this together with evidence of use suggests a pedestrian right of way links Albert Road to the beach. No similar consistent route has existed beyond the end of Alexandra Road.
- 8.6 On balance the case for byway open to all traffic status for Range Lane and Cambridge Road is considered convincing.
- 8.7 User evidence for vehicular use of St Lukes Church Road south of its junction with Alexandra Road is weak, however documentary evidence for byway status to its junction with Range Lane is strong and on balance byway open to all traffic status could reasonably be alleged. The section of St. Lukes Church Road from Range Lane to the Altcar Range boundary is not supported by the Finance Act 1910 Record Plan and in view of the lack of corroborating evidence of vehicle user, on balance it is considered the evidence is not sufficient to support byway open to all traffic status.

9.0 FINANCIAL IMPLICATIONS

- 9.1 The cost of the order making procedure and signposting of the lanes required on confirmation of any orders will be met from existing budget allocations.

10.0 RECOMMENDATIONS

It is recommended that:-

- i) This Committee recognises the right of way status for the lanes and tracks claimed by the Formby Society in December 1991 under Section 53 of the Wildlife and Countryside Act 1981 based on the available evidence to be as follows:-
1. Albert Road - byway open to all traffic
 2. Alexandra Road - byway open to all traffic
 3. St Lukes Church Road, Bushby's Lane to Alexandra Road - byway open to all traffic
 4. St Lukes Church Road, Alexandra Road to Range Lane - byway open to all traffic
 5. St Lukes Church Road, Range Lane to Altcar Footpath No 5 - Public Footpath.
 6. Cambridge Road - byway open to all traffic
 7. Range Lane - byway open to all traffic
 8. Two tracks connecting Albert Road to Alexandra Road - public footpaths.
 9. Extension of Albert Road to Shore - Public Footpath.

- ii) That consultation with interested parties in line with the Government's Rights of Way Review Committee's guidelines be carried out prior to order making and the result of the consultation reported to a future meeting.
- iii) That the Director of Legal and Administrative Services give notice of the Authority's decision on the application to the Formby Society and or any other person to whom notice of the application was required to be served in accordance with Schedule 14 to the 1981 Act.

A.R. Moore.

Director of Technical Services

**List of background papers relied upon
in the preparation of this report**

OS 1" to 1 mile 1844

OS 1:2500 1892

OS 1:2500 1927

Formby UDC Year Book 1949/50, 1964/65

Formby UDC Engineer and Surveyor's list of public rights of way 1951 as reported in Formby UDC minutes

Record Plans produced for the purposes of the Finance Act 1910

Book, 'Altcar, The Story of a Rifle Range'

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