

LANCASHIRE COUNTY COUNCIL
DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY
THE LANCASHIRE COUNTY COUNCIL (FOOTPATH FROM CLITHEROE ROAD TO
CHAPEL LANE, WEST BRADFORD)
DEFINITIVE MAP MODIFICATION ORDER 2018

Comments on Objections received:

The Objections

Copies of the three objections received to the making of the Order are contained within the List of Documents and below is a summary of the grounds of the objections (*italics*) and our response (*indented*):

Objection 1A – Mr Ian Leybourne and Mrs Maggie Leybourne of 25 Millbrook Court, West Bradford BB7 4TY:

Context

This path was never used by the general public but by people who worked in the mill.

it is necessary to examine a range of maps and documents which often span across several hundred years to try to piece together the history of the route looking at when it came into existence, whether it was physically capable of being used, and any available information about who may have used it and its local reputation as a public or private route.

Historically, many public rights of way originally came into being as routes providing access to places of work (including mills and farms). It is not disputed that the Order route previously crossed land forming part of a working mill and that it would have been used by workers gaining access to the mill. However, the route appears to have been available as a through route past the mill and was retained following closure of the mill and redevelopment of the site. Taking all the relevant information into account, the Regulatory Committee were satisfied that on balance dedication of the route as a public footpath could be inferred at common law.

Cat Bridge was seriously damaged circa 1949 and subsequently removed, if this had been a footpath why was it not rebuilt ?

The bridge did not form part of the Order route and if access was available along the full length of the Order route it may have been considered an unnecessary expense to replace the old bridge when access was available at point A.

The deeds to our property show a right of access (A-B) for those living at Millhouse alone, and confirm this is not a general footpath.

The granting of a private right of access along part of all of the order route does not mean that the order route is not a public footpath and it is very common to find private rights detailed in deeds along routes with public rights. The granting of a private right of access would protect the landowners' rights of access should the public rights be diverted or extinguished.

Accuracy

The narrowest part of the footpath measures 0.6 metres, not as described in the schedule as 0.9 metres. The correct measurement was recorded in the report submitted on the 13/1/2016.

A modification to the Order will be sought by the OMA to correct the width of the route to record the narrowest part of footpath as 0.6 metres and not 0.9 metres as stated.

Process

How can the council justify so much expenditure, time and money for a route of 80 metres, set against its other priorities such as social care for vulnerable people for example or maintenance of roads? In 2016 we made a formal complaint to the council regarding the process some 9 years after its initiation.

The correct legal process has been followed and whilst it has taken a number of years for the application to be investigated the OMA had a legal duty to investigate it and has done so within the resources available to it. Comparisons cannot be drawn against other demands on OMA resources i.e. the delivery of social care for vulnerable people as the OMA is responsible for the delivery of a whole range of public services and allocates resources accordingly. The time taken to process the application is a reflection of the fact that the application was considered to be a low priority in the context of the work carried out by the public rights of way team. However, this is not a matter than is relevant within the terms of the legislation relating to this Order.

The most direct, expedient and accessible route is by the current highway from Chapel Lane through to Clitheroe Rd, so therefore what would the benefit be of making the proposed route a public footpath?

The legal order seeks to record existing public rights not to create new public rights so issues such as the geographical position of existing roads and expediency and directness are only relevant in so far as whether they would provide a reason for using (or not using) the route in the past. Considerations such as the existence of an existing alternative and the benefits and detriments would be pertinent to the creation of a route but not to the investigation of whether public rights already exist.

Legal issues

When we purchased this property in 1998 due searches were undertaken as part of that process, no footpath was identified near our property. An Enquiries of Local Authorities was undertaken in 2005 and again no footpath or byway was identified.

The Local Search (standard questions on form CON29) does not reveal what public rights of way exist but what are recorded on a Definitive Map and Statement and for which there are outstanding applications. Searches that were carried out in 1998 and 2005 would not have identified the existence of public rights along the order route because it is not currently recorded as a public footpath on the Definitive map and Statement and the application to record the route was not made until 2009.

Our deeds actually identify that we own the land adjacent to our property including a section of the proposed footpath. The council appears to be making an order to restrict use of our property and land to the detriment of our legal rights as property owners.

Public rights, unlike private rights, are not generally shown on property documents. In part this is because they are an 'over-riding interest' in the property. It is not unusual for private rights to be recorded where public rights also exist in order to safeguard those private rights should the public rights cease or should the highway authority not protect them. The fact that private rights are shown does not suggest that public rights do not.

Health and Safety Legislation: *no mention is made of the steepness of the steps on the proposed new route.*

The steepness of steps or narrowness of the path is not a relevant consideration to whether public rights already exist other than being a consideration as to whether the route could actually have been used by the public in the past and with that in mind the provision of steps to aid access actually supports the view that access (whether public or private was made available).

Equality Act 2010: little consideration appears to have been made in terms of either the narrowness of the path nor of the inaccessibility of the steep steps.

The Order is not seeking to create new public rights, where such factors may be relevant, but to record existing rights and issues regarding the suitability of the route as a public footpath are only relevant as far as considering whether the public could have actually used the Order route in the past and whether they did use the route despite it being narrow and steep.

Crime and Disorder Act 1998: this order would place this property and neighbours to a greater risk of burglary, theft and voyeurism.

The Order is to record existing public rights not to create new rights and these matters, although important, are not those which can be considered in determining this Order. The Order route has already been used by whoever wanted to, regardless of it not being recorded as a public footpath, so there is no reason why crime and disorder should increase as a result of any footpath rights being recorded. In the very unlikely event that there is a problem, then the district council has powers to take appropriate action. Whether the change is relevant for insurance purposes is outside our expertise, but it is important to note that the change, if the Order is confirmed, is that the public footpath on that route is recorded on the DMS; it is no more or less a public footpath following the Order than before.

Human Rights Act 1998 Article 8 -respect for Private and family Life, Home and Correspondence and ***Protocol 1- Article 1***, the Right peaceful enjoyment of your property.

The recognition of a public footpath which already exists is not a breach of human rights in a way that may be argued if this was a creation of new public rights where none existed previously. This is simply an Order to record what rights already exist and these matters cannot be considered in determining whether or not to confirm the Order.

Highways Act 1980 creation of Rights of Way:

This Order is made under the Wildlife and Countryside Act 1981 not the Highways Act 1980 and the legislation serves different purposes. This Order does not seek to create any rights, only to modify the Definitive Map and Statement (effectively draw a line on a map to indicate that rights exist).

Objection 1B – Ms Ashley Hesketh-Leybourne of 25 Millbrook Court, West Bradford BB7 4TY:

The proposed footpath grants very little benefit whilst placing restrictions on the property of the local residents. I believe the most enjoyable aspects of this are better viewed from other locations; e.g. a short section of the stream running through the village, which can be seen along the entire road, or from existing footpaths in nearby areas along its length. The main viewable things from the proposed footpath include a parking space, a look over the fence into private gardens, a pebbledash wall, large windows allowing you to see into the properties, the rear side of a garage, the wheelie bins.

As for the matter of ease of access provided by the proposed footpath, walking alongside the road is a very similar distance without the difficulty or danger of travelling up a narrow set of stairs.

The Order, if confirmed, will record existing public highway rights and not create any new rights. The OMA reached its conclusion only after a careful assessment of historical documentary evidence. Other factors, such as the need or otherwise for the path, aesthetics, safety and possible future maintenance issues are not relevant considerations under the terms of the legislation.

Objection 2 – Mr Frederick Smalley & Mrs Judith Smalley of 26 Millbrook Court, West Bradford BB7 4TY:

The tarmacadamed area has been used for parking our vehicle. Therefore, there has been access only over the area approximately 1 metre in width adjacent to the wall separating the property from the brook.

The parking of a car may have prevented any rights coming into being since that started but would not have the effect of removing existing rights nor of preventing those rights being recorded.

The purpose of the footpath was initially for mill workers only, and subsequently since the new development of the redundant mill, solely for the residents of Mill Brook Court to gain access to the rear of their respective properties.

It is common for a path or way to have been created for a specific private purpose but the path is a through-route and leads between 2 highways. Its initially private purpose does not preclude public rights being dedicated subsequently, either expressly or by inference.

Part of the area is a seating area and overlooked by a window and doorway which is used as the principal access to and from the property and the residents are very aware

that the pathway has hardly ever been used by members of the general public, as it is quite unnecessary to do so.

The OMA agrees that there has been little recent use of the path but the Order is made on historical evidence not modern user.

It is clear that the provisions of Section 31 of the Highways Act 1980 are not satisfied.

The purpose of the Order is to record existing public highway rights and not to create new rights. The OMA reached its conclusion in relation to existing highway rights only after a careful assessment of historical documentary evidence. Whilst user evidence had been submitted in support of the application, the OMA concluded that there was insufficient evidence for the provisions of section 31 of the Highways Act to be satisfied. However, taking all the relevant information into account, the OMA concluded that it was satisfied that on balance a highway dedication could nevertheless still be inferred at common law.