

LANCASHIRE COUNTY COUNCIL
DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY
RESTRICTED BYWAY BETWEEN LIVERPOOL ROAD TO NORTHERN AVENUE,
MUCH HOOLE
DEFINITIVE MAP MODIFICATION ORDER 2022

COMMENTS ON DULY MADE OBJECTIONS

Three objections to the Order have been received by the Order Making Authority (OMA).

Copies of the objections are contained within the List of Documents and the objections summarised below.

Objection 1 – John Cairns who states that he is objecting on behalf of parents, Mr & Mrs Stanley Cairns of Greenfield, Northern Avenue, Much Hoole:

The points of objection are summarised in bold italics below with the Authority's response after each as follows:

Section B to C. The right of way proposed does not follow the existing right of way as set out on the 1966 definitive map. Whilst the OS First Edition appears to show a road on this part of the proposed route, in living memory (and on the 1950 map) this has never been a road or right of way. This section has, for at least 35 years, been given over to enclosed residential garden.

The OMA made the Order on consideration of historical map and documentary evidence predating the twentieth century which, when taken together, are considered by the OMA to show on balance that a public road existed along the Order route – including the length B-C - at that time.

The OMA assert that although the Order route B-C differs from the route recorded as part of a public footpath on the 1966 Definitive Map and is not shown on Ordnance Survey (OS) maps post dating the 1890s it was already dedicated as a carriageway by that time and the fact that it no longer physically existed and is now subsumed into a private garden does not mean that it does not exist as a public right of way in law.

The maxim 'once a highway, always a highway' means that if it is accepted that the Order route was a public vehicular highway (albeit for horses and carts) in the 1800s along the route shown on the maps examined then it remains as such unless there is evidence that those public rights have been legally extinguished. The OMA have found no evidence of public rights having been extinguished.

The OMA cannot disregard the evidence and decide not to make an Order because the route – or part of it – is no longer in existence or useable. Should the Order be confirmed, the OMA will then need to consider what options are available to manage public use and a discussion has already taken place between the OMA and the

objector about the procedure whereby an application could be made to divert the public rights.

There may have been a procedural error, as it seems the residents of Brooklawns have not been informed by letter, despite the footprint of the proposed bridle path clearly encroaching within their property boundaries.

The Order route to the rear of the properties on Brooklawns crosses land in the registered ownership of Jones Homes (Lancashire) Limited who were notified of the making of the Order by the OMA.

There is no requirement for the OMA to consult owners of adjacent land although Notice of the making of the Order is erected on site and would have been clearly visible from Liverpool Road.

The lack of consultation referred to by the objector is not considered to be a valid reason for not confirming the Order.

The residents of Brooklawns remain particularly concerned that the section A to B presents very real health and safety concerns for users. The dimensions of the path bear absolutely no resemblance to those stated in Part 1 of the order ("2.5-11m"). The path is in parts 1.2m and bounded by a steep drop and high residential fencing. This is especially worrying given that neither the body submitting the proposal, nor the Council, have performed a site visit.

The widths stated in the Order accord with the width of the route in the late 1800s. It is the OMA's view that the route was already a public road by the mid-19th century and so it is necessary to record in the Order the route that existed at that time – and its width. In this instance the earliest most accurate large-scale map showing the route is the Ordnance Survey 25 inch map surveyed in 1892 and for that reason the width of the route recorded in the Order is specified as that width that was available along the full length of the Order route in 1892.

The OMA do not disagree that in its current condition the route is no longer suitable or useable as a Restricted Byway, but in line with the legislation the Order has been made to record public rights that historically already legally exist.

Although it is accepted that the route to the rear of Brooklawns is no longer suitable for equestrian use (including horse and cart), this is not a consideration that can be taken into account when deciding whether an Order to record existing public rights should be made or confirmed.

Officers from the OMA have inspected the route. However, the OMA cannot disregard the evidence and decide not to make an Order because the route – or part of it – is no longer in existence or useable. Should the Order be confirmed, the OMA will then need to consider what options are available to manage public use.

Objection 2 – Mrs Linda Sheridan of 5 Brooklawns Much Hoole

The points of objection are summarised in bold italics below with the Authority's response after each as follows:

The objector – who lives adjacent to the Order route – was not notified of the application of the making of the Order

The Order was made and advertised following the correct legal procedure.

The route to the rear of 5 Brooklawns crosses land in the ownership of Jones Homes (Lancashire) Limited and they were notified of the making of the Order by the OMA.

There is no requirement for the OMA to consult owners of adjacent land although Notice of the making of the Order is erected on site and would have been clearly visible from Liverpool Road.

The lack of additional consultation referred to by the objector is not considered to be a valid reason for not confirming the Order.

Width of the Order route to the rear of the objector's property and consideration that there is no reason to widen it

The OMA are not looking to widen the route, but to record what already exists in law.

The widths stated in the Order accord with the width of the route in the late 1800s by which time the OMA consider the route had been dedicated as a public vehicular route. Although the route is currently recorded as a footpath (with no recorded legal width), it is the OMA's view that the route existed as a public road by the mid-19th century and that the public's rights over the full width of the route that existed at that time should be recorded.

The Order route immediately abutting the objector's property, is shown on the 25 inch OS map surveyed in 1892 and published in 1893. On that map, the route is shown bounded by fencing within which the watercourse runs and the order made by the OMA, records the public rights as running along the full width of the bounded route.

The boundary of the properties on Brooklawns appears to follow the original historical boundary and if that is correct, and if the Order is confirmed, it would not impact on the property or require any alteration to the fence line.

The OMA are not creating any new public rights or seeking to widen a route by creating public rights along a strip of land where public rights do not already exist.

Fear of anti-social behaviour

With regards to previous anti-social use of the existing route, this is something that cannot be considered as part of the confirmation of this Order but any change in the recording of public rights is very unlikely to affect anti-social behaviour; this Order is about changing a description on a record not about carrying out works on the ground. Should the Order be confirmed, the OMA will look at how best to manage future use of the route (as a Restricted Byway).

Objection 3 – Mrs Anne Baines of 6 Brooklawns, Much Hoole

The objection was split into three parts titled

- 1. Preliminary objections: Procedural deficiencies in Notice requirements of paragraph 2 of Schedule 14, relating to both the Application dated 21.5.20 & Order dated 15.9.21*
- 2. Substantive objections if my property rights are directly affected.*
- 3. Substantive objections in any event.*

The points of objection included in each part are summarised in bold italics below with the Authority's response after each as follows:

Preliminary objections: Procedural deficiencies in Notice requirements of paragraph 2 of Schedule 14, relating to both the Application dated 21.5.20 and Order dated 15.9.21 rendering both the application and order as being invalid

The OMA are satisfied that all the legal procedural requirements in making the application were complied with. The fact that the application was submitted prior to notification of registered (and other known) landowners by the applicants does not make the application invalid. The statutory requirement is that Notice is given that an application has been made (past tense) not that it will be made. Notification was carried out as required by the applicants in due course. The route to the rear of the objector's property crosses land in the ownership of Jones Homes (Lancashire) Limited who were notified and subsequently consulted by the OMA.

Even where an application is considered not to have been duly made the OMA, as the relevant Surveying Authority, have a duty to investigate the matter on the basis of the discovery of evidence which suggests that a route is incorrectly recorded on the Definitive Map and Statement or that public rights that are not recorded do in fact exist and as such an Order cannot be found to be invalid if it has been made without an application or without all the procedural requirements of an application being met. Whether there is a duly made application does affect the rights of an applicant to apply for a direction to take it to Committee or to appeal a rejection of the application but does not affect the validity of the Order.

Following receipt of the application, the matter was properly considered by the OMA's Regulatory Committee who considered all available evidence and decided that a legal order should be made and promoted to confirmation.

The Order was made and subsequently advertised following the correct legal procedure.

Substantive objections relating to the widening of the Order route to encroach upon their land and the financial and environmental impact of doing so

The objector's property abuts the Order route (and existing public footpath). It is not directly affected.

The Order has been made to record public rights that the OMA consider already legally exist and does not seek to create any new public rights.

The widths stated in the Order accord with the width of the route in the late 1800s. It is the OMA's view that the route was already a public road by the mid-19th century and so it is necessary to record in the Order the route and its width that existed at that time. In this instance, the earliest most accurate large-scale map showing the route is the Ordnance Survey 25 inch map surveyed in 1892.

The route was shown on that map as being enclosed and the width of the Order route is therefore taken to be the enclosed width. Hence, because the width varies considerably, the Order states that the width varying between 2.5 and 11 metres as shown on the Ordnance Survey 25 inch Sheet LXVIII.15 Surveyed in 1892 and published in 1893.

The Order route immediately abutting the objector's property is the route shown on the 25 inch OS map bounded by fencing within which the watercourse run.

The width is effectively inclusive of the watercourse which, 130 years ago, may have looked much different from how it appears today.

The modern-day use of the route as a footpath is along a path running between the objector's boundary fence and the watercourse. It is accepted that the 'modern' route is narrow – and not necessarily suitable for cyclists or equestrian use but this is not a factor that can be taken into account when considering whether the Order is confirmed.

The boundary of the objector's property appears to follow the original historical boundary line and if the Order is confirmed, it will not impact on the property or require any alteration to her fence line or loss of any part of her garden. It will not require the removal of the boundary fence or any alteration to the objector's pond or garden.

This Order is about changing a description on a record not about carrying out works on the ground. Should the Order be confirmed, the OMA will then look at how best to manage future use of the route (as a Restricted Byway).

Lack of evidence submitted by the applicant for the Order of historical use as a bridleway and no evidence of use of the footpath as a bridleway for an uninterrupted 20 year period (or at all)

The Order made (if confirmed) will record the route as a restricted byway not a bridleway.

The decision to make an Order to record the route as a restricted byway was based on an assessment of all available historical map and documentary evidence by the OMA.

No modern or historical user evidence was submitted and the OMA's case is that the map and documentary evidence is sufficient to show that the Order route subsists and was dedicated as a public vehicular route by the late 1800s and then over the next 100 years the use and availability of the Order route appeared to have reduced with part of the route now blocked.

Substantive objections in any event – an increase in use of the route (and use by horse riders) would change the nature and character of the area and previous issues relating to anti-social use of the route may increase if the area is opened up to become more accessible

The OMA are not seeking to create new public rights but to record public rights that they consider already exist. As such, issues relating to potential increased use of the route should the Order be confirmed are not relevant in satisfying the tests for the confirmation of the Order.

With regards to previous anti-social use of the existing route, this is also something that cannot be considered as part of the confirmation of this Order but any change in the recording of public rights is very unlikely to affect anti-social behaviour; this Order is about changing a description on a record not about carrying out works on the ground. Should the Order be confirmed, the OMA will look at how best to manage future use of the route (as a restricted byway).

Concluding remarks – the objector requests that the application is dismissed or otherwise struck out without further consideration or order and that if this is considered an inappropriate course of action a public inquiry is held to decide the matter

There is no statutory provision for the Order once made to be rescinded. Having considered the objections made, the OMA are still of the view that there is strong evidence to support the confirmation of the Order to record the route as a restricted byway and are referring it to the Planning Inspectorate requesting that it be confirmed.

Conclusion

The OMA submits that the objections received do not in any way undermine the evidence that the Order route is, on balance, already a restricted byway in law, and respectfully requests that the Secretary of State confirms the Order subject to the request to modify the wording in part 1 of the Order (as detailed in the OMA's Statement of Case.)