

Statement of Grounds on which the Order Making Authority considers that the Orders should not be confirmed

Background

On 29 October 2007 an application was received by Lancashire County Council (hereinafter referred to as the OMA) from the occupier of no. 8 Old Hive (hereinafter referred to as the Applicant) to delete part of Footpath 129 Chipping.

The OMA were advised by the Applicant that the route of footpath 129 was shown proceeding through private properties rather than directly onto the road. The Applicant had asserted that there was no topographical or other evidence that the route has ever passed through private residential properties.

Officers from the OMA investigated whether the public right of way that existed in the area of the Application to determine whether there was evidence to show that part of Footpath 129 should be deleted and whether another right of way should be added (hereinafter referred to as the Investigation) and prepared a report of their recommendations (Document 20). This report was considered by the OMA's Regulatory Committee on 23rd September 2009, and a decision was made by the Committee to accept the Application and as a result of the Application and the evidence discovered during the Investigation to add a footpath to the Definitive Map (Document 17). The Regulatory Committee decided to make an order to modify the DMS by deleting that part of footpath 129 from a point to the north of 10 Old Hive Cottages to Fish House Lane and a separate order to add a length of footpath from the same point to the north of 10 Old Hive Cottages to a different point on Fish House Lane and to promote the two orders to confirmation as it was satisfied that the higher test could be met in relation to both orders. Notice of the OMA's decision to make the orders to delete part of Footpath 129 and to add a public footpath, was sent to affected individuals.

A Definitive Map Modification Order was duly made on 12th January 2011 to delete part of Footpath 129 (the "First Order") (Document 1A). The Order was made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(iii) of the 1981 Act, namely the discovery by the surveying authority of evidence which (when considered with all other relevant evidence available to them) shows that there is no right of way (being a public footpath) over land shown on the map and statement as a highway of any description.

Another Definitive Map Modification Order was duly made on 12th January 2011 (the "Second Order") (Document 1B). The Order was made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act, namely the discovery by the surveying authority of evidence which (when

LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY (DEFINITIVE MAP MODIFICATION) (No.4) ORDER 2011 AND LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY (DEFINITIVE MAP MODIFICATION) (No.5) ORDER 2011

considered with all other relevant evidence available to them) shows that a right of way (being a public footpath) which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

Notice of the making of both the First Order and the Second Order was served to affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 3 of Schedule 15 of the 1981 Act (Document 6).

During the specified period for objections and representations to the Orders, the OMA received one objection referring specifically to the First Order questioning why the matter was not being dealt with as a positional correction to Footpath 129 in one single Order rather than as a part deletion by the First Order and an addition of a footpath by the Second Order (Documents 1A and 1B).

On further consideration of the matter it was agreed by the County Council's Regulatory Committee that a new combined order be made dealing with both the addition and deletion and that if that Order was subsequently confirmed then the two Orders made in 2011 were to be submitted to the Planning Inspectorate requesting these are not to be confirmed.

Subsequently in 2014 the OMA made an order that in fact did perform the function of the First Order and the Second Order in one Order (The Lancashire County Council Deletion of Part of Footpath No 129 Chipping and addition of a Footpath from Fish House Lane to Footpath No. 129 Chipping (Definitive Map Modification) Order 2014 – hereafter referred to as the Third Order) (Document 18). This Order was confirmed as unopposed on 12th November 2015.

Consequently, the OMA is submitting the First and Second Orders made in 2011 to the Planning Inspectorate requesting that they are not confirmed.

Reasons for not confirming the First Order and the Second Order

The OMA would like to draw the Inspector's attention to Paragraph 7(2A) of Schedule 15 to the Wildlife and Countryside 1981

Which states

2A) The Secretary of State may, but need not, act as mentioned in sub paragraph(2)(a) or (b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order, either with or without modifications.

It is the OMA's submission that as the OMA has made and confirmed the Third Order without any objections the matters raised by the objector in relation to the First Order can no longer relate to an issue that is relevant in determining whether to confirm the First Order and Second Order.

The objection raised in relation to the First Order requested that the OMA deal with the substance of the First Order and Second Order by the publication and confirmation of a single order which was done by the publication of the Third Order the effect of which has been to amend the DMS to record the route of the footpath in the correct place rendering the 2011 Orders as obsolete.

Conclusion

The OMA submits that as the route that would have been deleted by the First Order and the route that would have been added by the Second Order have already been deleted and added respectively on the DMS by the publication and confirmation of the Third Order the First Order and Second Order should not be confirmed.

The OMA has requested the Inspector consider using the powers in Paragraph 7(2A) of Schedule 15 to the Wildlife and Countryside 1981 to determine that the First Order and the Second Order should not be confirmed.