

## **Order Making Authority Statement of Case**

### **Background**

1. On 17<sup>th</sup> December 2022, Julie Lois Speak submitted an application to Lancashire County Council (the relevant surveying authority) for an order under section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by adding to it a public footpath from Norman Road, Oswaldtwistle to Blackburn Road, Oswaldtwistle. The application was supported by map and documentary evidence including HM Land Registry documentation, Ordnance Survey ("OS") maps dating from the 1890s and 1911, undated OS map showing housing estate, extracts from leases dated variously 1913 and 1919, together with supporting correspondence and statements. A photograph of fencing erected the route dated March 2020 was also included.
2. Officers from Lancashire County Council (hereinafter referred to as the OMA – Order Making Authority) investigated whether they considered that the public rights applied for existed over the application route and prepared a report detailing their investigation. The report was considered by the OMA's Regulatory Committee on 21<sup>st</sup> June 2023 (Document 21) where the decision was made to modify the Definitive Map and Statement by recording a footpath from Blackburn Road, Oswaldtwistle to Norman Road, Oswaldtwistle.
3. Notice of the OMA's decision to make an order, including a statement of reasons for making the Order, was sent to affected individuals on 17<sup>th</sup> July 2023 (Document 15).
4. A Definitive Map Modification Order was duly made on 12<sup>th</sup> July 2023 ("the Order") (Document 1). The Order was made under Section 53(2)(b) of the 1981 Act because it appeared to the OMA that the DMS required modification in consequence of the occurrence of an event specified in

section 53(3)(c)(i) namely the discovery by the Surveying Authority of evidence which when considered with all other relevant evidence available to them shows that a right of way 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, namely a footpath.

5. Notice of the Making of the Order was served on affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 7 of Schedule 15 of the 1981 Act (Document 6)
6. During the specified period for objections and representations to the Order, the OMA received two individual objections and names and addresses of a further 22 objectors listed in a further objection letter (Document 4).
7. The objections have not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA is submitting the order to the Planning Inspectorate for a determination on confirmation.

### **The Order Route**

8. The Order route commences from a junction with Blackburn Road immediately to the east of West End Methodist Church, Oswaldtwistle (point A on the Order Map) running south between the eastern boundary of the Methodist Church and the rear boundaries of properties 372 Blackburn Road and 2 - 12 Norman Road for a distance of 30 metres before turning to continue in a more south easterly and then easterly direction to exit onto Norman Road north of 14 Norman Road (point B).
9. The total length of the route is 0.06 km and the width is 3 metres.

### **Legal Issues**

10. The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the DMS should be altered. S53 permits the addition and upgrading and downgrading of highways and deletions from the map. The statutory test at S53(3)(b) refers to the expiration of a period of time and use by the public such that a presumption of dedication is raised. The statutory test at S53(3)(c)(i) comprises two separate questions, one of which must be answered in the

affirmative before an Order is made under that subsection. There has to be evidence discovered. The alleged right of way has to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist. (Test B). This second test B is easier to satisfy, but it should be noted it is the 'higher' Test A which needs to be satisfied in deciding whether to confirm the Order.

11. In the case of *Todd and another v Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 1450 Evans-Lombe J made it clear that the confirming authority (whether the local authority confirming an unopposed order or the Secretary of State confirming an opposed order) must be satisfied on the balance of probabilities that the right of way subsists. This means that when considering the confirmation of an order, the Secretary of State is only able to consider whether on the balance of probabilities the right of way subsists.
12. Accordingly, for the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence considered by the OMA, *when considered with all other evidence* there is sufficient evidence from which to infer a public footpath and the route marked A-B on the Order plan should be added to the DMS as a footpath.
13. It is the view of the OMA for reasons set out later in this Statement that route subsists as a public footpath and should be recorded as such on the DMS (Document 19).

## **Evidence**

14. It would appear from the evidence that public rights on the Order route derive from a footpath running from Blackburn Road to Norman Road (and beyond) as shown on the First Edition 6 inch and 25 inch mapping. The 1904 conveyance relating to the sale of land on which West End Methodist Church was subsequently built acknowledges a footpath across the site and provided that, should the land be built on, a footpath should be provided along the eastern boundary of the land. This requirement was complied with, the footpath having been diverted to run along the outside boundary of the church along the first 26 metres of the Order route from point A. As further development took place, leasehold

agreements dating from 1909 to 1919 in connection with the row of terraced properties constructed on Norman Road make reference to a route being required to form a back street which must be retained and for leaseholders to bring the route up to an agreed standard when required to do so by the local authority. The route referred to in those documents was the full length of the Order route A-B.

15. Whilst no evidence has been located to suggest that the route was ever brought up to the necessary standard for adoption, it was clearly and consistently shown on maps, photographs and other documents since having been constructed in the early 1900s and there is no evidence of access of the route having been blocked or prevented until the erection of the fencing in 2020.
16. It is the OMA's case that the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historical public footpath and it is therefore the view of the OMA that inferred dedication can on balance be satisfied.

## **Summary**

17. Whilst there is no express dedication in this matter, the OMA considers, on balance, that there is sufficient evidence from which to have dedication inferred at common law from all the circumstances.
18. For there to be inferred dedication, the evidence must show clear intention on the part of the landowner(s) to dedicate the route as a public right of way. It is the view of the OMA that the evidence from the maps and other documentary evidence coupled with the evidence on site and user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.
19. The OMA considers that the various map and documentary evidence does indicate that the route was dedicated to public use and used by the public.

## **Conclusion**

LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY  
FOOTPATH FROM BLACKBURN ROAD, OSWALDTWISTLE TO NORMAN ROAD, OSWALDTWISTLE  
DEFINITIVE MAP MODIFICATION ORDER 2023

20. The OMA is satisfied the map and other documentary evidence is sufficient that the route was a historical public highway and that an inference of dedication can be made.
21. The OMA submits that public footpath rights subsist along the Order Route. The OMA further states that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.
22. The OMA decided that the Order should be promoted to confirmation since the higher test for confirmation referred to above in para 10 to 13 is met. The objections received do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation. The OMA therefore respectfully requests that the Planning Inspector confirms the Order as made.