

LANCASHIRE COUNTY COUNCIL

DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY

FOOTPATH FROM BLACKBURN ROAD TO NORMAN ROAD, OSWALDTWISTLE

DEFINITIVE MAP MODIFICATION ORDER 2023

COMMENTS ON DULY MADE OBJECTIONS

Two duly made objections to the Order have been received by the Order Making Authority (OMA) together with 22 people listed as objectors in a further objection letter.

THE OBJECTIONS

Copy of the objections to the Order are contained within the List of Documents and the objections are summarised below. The points of objection are summarised in bold italics below with the Authority's response after each as follows:

1, *Comments on objection to the Order submitted by Charlotte Volkert (Joint leasehold owner of 10 Norman Road)*

Planning Enforcement Notice

The Enforcement Notice referred to by the Objector was issued by Hyndburn Borough Council (the relevant Planning Authority) under planning law in relation to fencing erected across the Order route to the rear of 10 Norman Road and was not issued by Lancashire County Council (the OMA).

The statement made by the objector in relation to the outcome being that Lancashire County Council removed the enforcement notice and no further action was taken is incorrect.

The Planning Authority confirmed that notices were served on Mrs Charlotte Timperley (the objector) requesting the removal of the fencing.

The removal of the fences under planning legislation is a separate matter and the fact that enforcement of the matter was not ultimately pursued by the Planning Authority is not because public rights were found not to exist along the Order route.

When the removal of the fencing was not enforced by the Planning Authority the applicant for this Order was advised by the Borough Council officer to pursue the obstruction of the Order route with Lancashire County Council (as Highway Authority) who had powers under section 143 Highways Act 1980 which would enable them to remove structures causing an obstruction to a highway.

This was done on the basis that the Planning Authority believed the route to be a public highway, albeit unadopted, and took the decision not to proceed with any action in relation to the breach of planning legislation.

No information has been provided by any party to demonstrate that the fact that the Planning Authority failed to take action to require the removal of the fencing was because public footpath rights did not exist along the route. The reverse clearly appears to be the case with the Planning Authority taking the view that the Order route was a public highway and that the Highway Authority were best placed under highway legislation to enforce the removal of the fencing because it obstructed a highway.

Because public rights were not recorded along the route, the applicant was advised to submit an application under the Wildlife and Countryside Act 1981 to record those rights. As part of that process she was required to serve any affected landowners or occupiers with a copy of a Notice relating to that application. Whilst the timing (Christmas Eve) may not have been the most appropriate and it is clear that there is a history of bad feeling which has stemmed from the obstruction of the route, these are not factors that can be taken into account in the determination of this Order.

The Objector claims to have an interest in the land and has maintained it since buying the property in 2010

The Objector is not the registered owner of any of the land crossed by the Order route and has provided no evidence to support the view that she has a legal interest in the land.

Investigations carried out by the OMA show that the land crossed by the Order route was purchased by builders before 1909 when the first of the properties on Norman Road appears to have been sold and that most of the land crossed by the Order route was retained by them when the terraced houses were sold.

The leasehold agreements for the properties (including 10 Norman Road) all refer to the Order route as a 'back street' with a requirement for it to be made up to an agreed standard to become publicly maintainable at some point in the future.

The OMA consider that there is a clear inference that the Order route was considered to be a public route when the properties were built.

The fact that there is no available information with regards to who now owns the land crossed by the Order route does not remove any public rights of access that the OMA consider already exist. In addition, the fact that the objector has fenced off and taken possession of land crossed by the route does not mean that public rights do not, or could not already, exist across it.

'The area has always been adopted land and has never been used as a footpath or walkway for the public'

It is not clear what the Objector understands or means when stating the land 'has always been adopted land'. Adoption generally refers to a public route which is made publicly maintainable.

The OMA consider there is sufficient evidence to confirm the Order and record the route as a public footpath based on the map and documentary evidence submitted.

If the Order is confirmed, the Order route will be recorded as a public footpath and the fencing will need to be removed to allow public access.

Fly tipping not removed by the Borough Council

Fly-tipping is generally removed from publicly maintainable highways (including public footpaths) by the Borough Council under their responsibilities for environmental protection. The fact that the Borough Council have not removed fly tipping in the past does not mean that the Order route is not a public footpath and is not a valid reason for not confirming the order.

Photographs taken of the objector's property without consent and an assumption made that the Objector built a fence across a gateway into the church

This land crossed by the Order route is unregistered and ownership is not known. Furthermore, ownership of publicly maintainable highway cannot be acquired by adverse possession. Photographs were taken of the fences erected on the unregistered land only and this is not a valid reason for not confirming the Order.

The Officer carrying out the site inspection made the following statement in the OMA's report to the Lancashire County Council Regulatory Committee:

From the church grounds it was possible to view two stone gateposts which would have provided access to and from the church grounds from the application route. The gateway had been blocked off by a panel of wooden fencing consistent with the style and age of the fencing blocking the application route.

The Officer did not make any assumption or statement about who built the fence or why but simply stated that it was consistent with the fencing that was blocking access along the route. Neither of these concerns are valid reasons for not confirming the Order.

Agreement of the neighbours to fencing off the route

Despite the objector explaining that she consulted neighbours and explained to them that if they ever needed access along the Order route, they could open the gates to get through it is apparent that not all neighbours were in agreement. Even if all the neighbours had agreed, the OMA consider that there is sufficient historical evidence to show that the route is a public footpath and should not have been obstructed.

Such an agreement does not remove, limit or extinguish public rights that the OMA consider already existed along the Order route.

Antisocial behaviour

Whilst sympathetic to concerns and problems relating to antisocial behaviour and fly tipping these are not issues that can be taken into account when considering whether an Order should be made and confirmed to record public rights that already exist.

The two routes described in the Regulatory Committee report (the Order route and a nearby route from the rear of Ripon Road to Aspen Lane) are not the same and that whilst the nearby route has been used, the Order route has not.

The OMA explained how historically the Order route and the nearby route from Back Ripon Road to Aspen Lane are historically linked and originated as one longer route from Blackburn Road to Aspen Lane.

The fact that the Order route may have received less use than the route from Ripon Road to Aspen Lane in recent years is not relevant when considering how the route originally came into being and was purposefully set out as a back street by the builders in the early 1900s.

West End Methodist Church have never used the Order route as access to the church grounds and the objector states that her grandmother, who has attended the church for over 70 years, states that access to the church has never been to the side of the church in her lifetime.

Whilst the main entrance to the Church is from Blackburn Road gateposts existed on the boundary of the Church grounds with the Order route to the rear of 10 Norman Road.

For gate posts to be in existence, it suggests that at some point since their construction access must have been possible from and to the Church grounds and buildings via the Order route. The OMA have no evidence with regards to whether this access to the Church was used by the public but would suggest that if the gateway was open then access would have been available. Evidence submitted in support of the application also referred to the Order route being used to deliver coal to the Church with access to the Church being via the gateway shown above.

The OMA have made the Order on the basis that the route is a historical public footpath dedicated by the early 1900s along the full length A-B and not just as access to and from the Church. However, there does appear to be evidence of use of route to and from the Church through the gateway to the rear of 10 Norman Road on aerial photographs taken in the 1960s and 2005.

This is arguably evidence of some modern use of a historical route although the OMA have not made the Order based on this evidence.

Metal fence railings

Concern about the metal fencing running adjacent to the Order route (along the Church boundary) is not a valid reason for the Order not being confirmed.

If the condition of the fencing was to be a cause for concern then this is something that will need to be addressed by the owners of the fence.

User evidence

The objector disputes the evidence of use submitted by the applicant for the Order. As an owner of one of the properties with a private right of access along the Order route, the modern user evidence provided has not been taken into account by the OMA when taking the decision to make the Order.

The Order was made because the OMA consider that the historical map and other documentary evidence examined is in itself considered sufficient to conclude that the route was a historical public footpath and that inferred dedication can on balance be satisfied.

Condition of the wooden garage adjacent to the Order route (close to point B)

The OMA are not dismissing the objector's concerns about any potential hazards or risks along or adjacent to the Order route, but these are not issues that can be taken into account when considering whether public rights already exist along the route.

Should the Order be confirmed, appropriate action can be taken to ensure that the route is safe to use by the public.

2. Objection to Order from Deryn Regan-Hitchen (370 Blackburn Road/West End Fish and Chip shop)

Public pathway being placed behind my property

The Order has been made on the basis that public rights already exist and the Order Making Authority (OMA) are not seeking to create a 'new' public footpath.

Effect on business - Delivery vans parking on the Order route

The future impact on operations including use of the route by delivery vehicles or temporary blockage of the route by delivery vehicles are not valid reasons for objecting to the Order. To be relevant, representations or objections should relate to the existence or status of rights of way; other issues, such as privacy, security or amenity whilst important in the management of the land are unlikely to be relevant to whether public rights exist.

Lack of public use

The objector states that to her knowledge the public have never used the Order route but provides no details of how long she has known the route or lived adjacent to it.

The OMA have made the Order based on historical map and other documentary evidence (not 'modern' user evidence) and consider that the evidence is sufficient to conclude that the route was a historical public footpath and that inferred dedication can on balance be satisfied.

It is the OMA's view that there is a clear inference that the Order route was considered to be a public route in the early 1900s and the public rights have not been stopped up subsequently. Lack of use, regardless for how long that persists, does not remove public rights.

Concern over bins being pushed over or people walking the route and not passing the Fish and Chip Shop and about antisocial use if the route is opened up

The Order has been made because the OMA consider that the evidence shows that public rights already exist. Issues, such as privacy, security or amenity are unlikely to be relevant to whether or not public rights existed historically.

If the Order is confirmed and problems arise other mechanisms will be available to look at how best to manage public use of the route.

3. 22 people listed as objectors to the Order in a letter attached to an email sent by Charlotte Volkert

The first four points of the objection relate to concerns mainly over future use of the route if the route is once again opened up

Issues such as antisocial behaviour, damaged fencing or unsafe buildings adjacent to the route, fly tipping and concerns over security and privacy and are not relevant to the existence or otherwise of public rights, and hence to the confirmation of the Order.

The issues causing concern are not being dismissed by the OMA, but are not ones that can be taken into consideration when deciding whether there is evidence to show that the route already has public footpath rights and whether it should therefore be recorded as such.

It is the OMA's view that there is a clear inference that the Order route was considered to be a public route by the early 1900s and was capable of being used at least on foot. Any subsequent obstruction or falling out of use would not remove any public rights.

The fifth point of objection is that the area of land has always been unadopted and 'the council' has never paid towards their maintenance or removed any fly tipping.

The fact that the area crossed by the Order route is not adopted is irrelevant to whether public rights exist.

'Adoption' generally refers to the maintenance of a route often following a process whereby a landowner provides a route to an agreed standard before the relevant highway authority (in this case the County Council) takes over responsibility for future maintenance. A route can be dedicated as a public right of way, but not be publicly maintainable ('adopted') or it can be publicly maintainable through a different process than 'adoption'. If public rights from the 1900s exist on the Order route then it is publicly maintainable by virtue of the 1959 (and subsequently 1980) Highways Act not by 'adoption'.

The fact that 'the council' have not previously removed any fly tipping is not evidence that the route is not a public footpath. In fact, if the route was recorded as a public footpath on the basis of pre-1949 evidence this would remove any uncertainty that may have arisen in the past.

The sixth point of objection is that whilst another nearby path has been used over the years as a public footpath however A-B has not.

The Order has been made based on historical evidence with the map and other documentary evidence considered sufficient to conclude that the Order route is a historical public footpath which originally derived from a cross field footpath linking Blackburn Road to Aspen Lane.

No legal stopping up order has been found stopping up public rights along the Order route and whether or not the route is currently used by the public is not relevant to the confirmation of the Order.

SUMMARY

The Definitive Map Modification Order (DMMO) to record the route as a footpath was made because the OMA consider that there is evidence, which on balance, suggested that a right of way which is not currently shown in the Definitive Map and Statement (DMS) has become a footpath (as shown between points A-B on the Order Map)

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 public footpath in law, and respectfully requests that the Secretary of State confirms the Order as made.