

THE LANCASHIRE COUNTY COUNCIL
RESTRICTED BYWAY ALONG MOSS LANE,
OVERTON DEFINITIVE MAP MODIFICATION ORDER
2022

COMMENTS ON DULY MADE OBJECTIONS RECEIVED

The Objections

During the specified period for objections and representations to the Order, the Order Making Authority (the "OMA") received 4 objections (Document 4) from the Clerk to Overton Parish Council (the First Objector) of 3 Cotton Tree Barn Second Terrace Sunderland Point Morecambe LA3 3HT, Derek Bargh (the Second Objector) of Bradlow Heaton Bottom Road Heaton with Oxcliffe LA3 3EU, David Birkett (the Third Objector) of North Farm 5 Main Street Overton Morecambe LA3 3HD and Mr Jeff Bargh of 2 Old Woodhouse, Heaton with Oxcliffe, Morecambe, LA3 3EU (the Fourth Objector). With the exception of the Parish Council, the other three objectors own land crossed by the Order route.

Copies of the four objections received to the Order are contained within the List of Documents.

The points of objection are summarised in bold italics below with the Authority's response after each as follows. Because the grounds for objections submitted are largely duplicated by each objector, objections and responses are categorized by topic rather than being unnecessarily duplicated.

Interference with Livestock

The fields traversed by Footpath Overton 1 are primarily used for grazing; horse traffic will disturb grazing livestock.

The OMA assert that the Order seeks to accurately record existing public rights. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of

adjacent landowners cannot be considered when determining the correct status to record in relation to a right of way. As such, the fact that permitting horses along the Order route may interfere with livestock that are grazing in fields on or adjacent to the Order route is respectfully not a consideration which can be taken into account when deciding whether the Order should be confirmed.

Should the Order be confirmed the OMA can work with the landowners to consider the best ways to mitigate against any concerns that they have.

Interference with Users of the Footpath

Horses will trample the surface of Footpath Overton 1 to the detriment of other users.

The OMA again assert that the Order seeks to accurately record existing public rights. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered when determining the correct status to record in relation to a right of way. As such, the fact that permitting horses along the Order route may trample the ground along the Order route which may or may not be a nuisance to current users of the footpath is respectfully not a consideration which can be taken into account when deciding whether the route already exists as a historical public carriageway and whether the Order should be confirmed.

Public Safety

The exit from Footpath Overton 1 onto Downeyfield Road is at a dangerous bend. Currently the gated exit from the footpath onto Downeyfield Road is blocked; pedestrians must use a stile which discourages rapid exit. Upgrading to a bridleway will involve the provision of a gated exit/entrance with the risk of horses and riders and possibly horse drawn vehicles, waiting on the carriageway.

The OMA note that the Order seeks to accurately record existing public rights.

Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered when determining the correct status to record in relation to a right of way. As such, the public safety implications of acknowledging horses and persons riding on horseback have a right to use the Order route is respectfully not a consideration which can be taken into account when deciding whether the Order should be confirmed.

The OMA notes that if the use of the Order route by horse and persons riding on horseback is a safety issue, the OMA can look at how the future management of the route can alleviate any issues including consideration of the provision of appropriate signage on the carriageway and the provision of an appropriately situated and legally authorized accessible gateway to access the route..

The Effect of Leaving Gates Open

Walkers and riders will both use the gate and there is a risk of livestock escaping onto the road at this dangerous location.

Issues such as these, whilst genuine concerns, are not relevant considerations to be taken into account as to whether the Order should be confirmed.

The OMA acknowledge that the land crossed by the Order route is used to graze livestock and that it will be necessary to authorize gates along the route at several locations should the Order be confirmed but this is an issue which will need to be dealt with separately and is not a consideration which can be taken into account when deciding whether the Order should be confirmed.

Age of the Evidence submitted with the Application

One objector explained that their family bought land crossed by the Order route, in 1966, and the decision for the upgrade to a bridleway is being made

on plans from prior to this date. Namely the 1700s. They believe it is unreasonable to have gone back this far to stake a claim on land their family bought in good faith.

Whilst the original application made to the OMA was for the route recorded as Footpath 1 in the Parish of Overton to be upgraded to bridleway the investigation carried out resulted in the Order being made to record the route as a restricted byway.

The OMA consider that the evidence shows that the Order route existed as a substantial through route and that a public carriageway had been established along the Order Route A-B by the late 1700s-early 1800s. Any subsequent falling out of use of the route (other than as a footpath) has not removed these higher rights.

The Order seeks to accurately record existing public rights. It is established law that if it is shown that a highway existed then highway rights continue to exist even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. As such, the fact that evidence submitted with the Application dates from more than 150 years ago is respectfully not a consideration which can be taken into account when deciding whether the Order should be confirmed. It is up to OMA to consider the accuracy of the evidence rather than its age.

Whilst accepting that horses may have used the route hundreds of years ago this is in no way relevant today and the existing public vehicular road provides a suitable alternative

When considering the evidence in relation to whether public carriageway rights existed in the mid-1800s it is not possible to take into consideration whether or not the route is needed or even capable of being used today.

The Order seeks to accurately record existing public rights. It is established law that if it is shown that a highway existed then highway rights continue to exist even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. As such, the fact that evidence

submitted with the Application dates from more than 150 years ago is respectfully not a consideration which can be taken into account when deciding whether the Order should be confirmed. It is up to OMA to consider the accuracy of the evidence rather than its age.

In the middle of the last century the main dyke immediately adjacent to the Order route was widened effectively taking 12 feet off the field and the 'old right of way'

The OMA were made aware of this observation prior to making the Order and carried out further investigations which were communicated to the Objector at that time (Document 36).

The Order records the full width of the route that that existed in the 1700s-early 1800s and in doing so the OMA refer specifically to the large scale 25 inch OS map published in 1891. Whilst the survey carried out in compiling this map was done at a time when use of the Order route was clearly in decline it nevertheless provides detail of the full bounded width of the historical route and alignment of the watercourse adjacent to it.

The OMA made a comparison of the modern-day field boundaries and the position of the watercourse adjacent to the route with what is shown on the First Edition 25 inch OS map.

In overlaying the 25 inch map with a modern OS base map it indicates that the watercourse remains the same although the sloping banking has been extended.

This map shows that the actual position of the watercourse has remained unchanged although the sloping banking has been extended and a fence erected. The measurements indicate that approximately 4 metres of land has been affected by the grading of the ditch and fencing immediately east of the watercourse but as the original historical route of the Order route measured between 9-10 metres wide along the section affected the measurements taken indicate that there is still a lot of the width of the Order route which has been incorporated into the modern field and even if part of the historical width was 'lost'

onto the sloping bank it does not affect the assessment of documentary evidence and the decision to make an Order and to promote it to confirmation.

Conclusion

The Definitive Map Modification Order that seeks to upgrade the route as a restricted byway was made because the Order Making Authority (OMA) considered that there was evidence, which, on balance, suggested that the route that is currently recorded as public footpath on the Definitive Map and Statement (DMS) on account of the fact that the historical evidence can only be interpreted to conclude that the route had historically be subject to rights of use by mechanically propelled vehicles, horses and persons riding on horseback that had not been extinguished by an order or otherwise but which had never officially been recorded.

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 Inspector confirms the Order.