

**Statement of Grounds on which the Order Making Authority considers that the Order should be confirmed**

**Background**

1. On the 28<sup>th</sup> November 2008, the Environment Director for Lancashire County Council (the relevant Surveying Authority) initiated an investigation into the possibility of the making and promotion of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 (the "1981 Act"). The effect of the Order would be to modify the Definitive Map and Statement of Public Rights of Way ("DMS") by adding a bridleway from a point on Public Footpath No. 8 Foulridge to the junction of Whitemore Road and Standing Stone Lane, Foulridge, Pendle Borough (shown between points H to I on the Order Map) and upgrading to a bridleway Public Footpath No. 63 Foulridge and part of Public Footpath No. 8 Foulridge (points A-B-C-D-E-F-G-H on the Order Map). The 'evidence discovered' (a necessary condition in S53(3)(c) of the 1981 Act) included map and documentary evidence and letters and user evidence forms ("UEFs") from 31 individuals, all presented in the form of a pseudo application (Document 20). The route is alternatively described as being from Reedymoor Lane to the junction with Whitemoor Road and Standing Stone Lane, Foulridge, Pendle Borough (i.e. from point A to point I on the Order Map).
2. The investigation was made following a review carried out into the decision made in relation to a previous Order made in 1988 to record the route as a Byway Open to All Traffic. Following a public inquiry into the matter that Order was not confirmed. Moreover, the Inspector appointed to deal with the matter concluded that the supporters' request to consider modification of that order to record a bridleway was inconsistent with most of the contentions which they made at the inquiry and that he had no sufficient evidence on which he could confirm the order modified to record bridleway rights (Document 57).
3. Officers of Lancashire County Council (hereinafter referred to as "the OMA") therefore investigated whether bridleway rights exist over the investigation route and prepared a report of their recommendations (Document 21). The report was considered by the OMA's Regulatory Committee on 18<sup>th</sup> July 2018, where the decision was made to make an order to modify the DMS by adding and upgrading to bridleway the investigation route and to promote the Order to confirmation as it was satisfied that the higher test could be met (Document 15).
4. Notice of the OMA's decision to make an Order was sent to affected landowners on 11<sup>th</sup> January 2019. (Document 15).
5. A Definitive Map Modification Order was duly made on 12<sup>th</sup> December 2018 (the "Order") (Document 1). The Order was made under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appeared to the OMA that The Definitive Map and Statement of Public Rights of Way for the County of Lancashire (DMS) required modification in consequence of the occurrence of an event

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specified in Section 53(3)(b) and 53(3)(c)(i) and 53(3)(c)(ii) namely the expiration of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path and the discovery by the surveying authority of evidence which (when considered with all other evidence available to them) shows that a right of way (being a bridleway) which is not shown in the DMS subsists or is reasonably alleged to subsist over land in the area to which the map relates and that a highway shown in the map and statement as a highway of a particular description, namely a footpath ought to be shown as a highway of a different description, namely a bridleway.

6. Notice of 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 3 of Schedule 15 of the 1981 Act (Document 6).
7. During the specified period for objections and representations to the Order, the OMA received 6 objections (Document 4). The objections have not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA is now submitting the Order to the Planning Inspectorate for a determination on confirmation.

### **The Order Route**

8. The Order route runs from Reedymoor Lane (point A on the Order Map) along a bounded access road in a generally north westerly direction to the site of the former railway level crossing at point B. It continues past an access road leading north to Ball House and Mistals (point C) and past the entrance to Sand Hall to the south west and then turns in a north easterly direction, at point D. The route crosses a culverted stream at point E and continues to a junction with Footpath Foulridge 10 at the rear of Ball House and Mistals at point F.

From point F the route follows an enclosed track and passes through a junction with Footpath Foulridge 9 (point G) it then widens but is still enclosed on either side with a stream along the western side to a junction with another path at point H. From the junction at point H the Order route then continues along a bounded track in a north westerly and then north north easterly direction past a property known as "Staniston" to the junction with Standing Stone Lane and Whitemoor Road (the B6251) at point I.

The full length of the Order route is shown on the Order Maps as a broken dashed line with cross bars in the intervals. Between point A and point H it is currently recorded as a public bridleway and between point H and point I it is not currently recorded as a public right of way.

For the purpose of this (and other document submitted by the OMA) the full length of the route A-H and H-I will be referred to simply as 'the Order route'.

### **Legal issues**

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9. The provisions of the Wildlife and Countryside Act 1981 ("the 1981 Act") set out tests which must be addressed in deciding whether the DMS should be modified. The OMA made the Order because it appeared to the OMA that the DMS required modification in consequence of the occurrence of an event specified in S53(3)(b) and S53(3)(c)(i) and (ii) namely the discovery by the OMA 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 DMS relates, namely a bridleway and that a highway shown in the DMS as a highway of a particular description, namely a public footpath, ought to be there described as a highway of a different description namely a bridleway.
10. 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 of a public highway 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 claimed 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 even though Test B was sufficient to make 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, is sufficient evidence from which to infer a bridleway has been dedicated on the Order route and the route marked A-B-C-D-E-F-G-H-I on the Order Map should be upgraded/added as a bridleway on the DMS.

**Historical documentary evidence**

13. As with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.
14. A range of small-scale commercial maps, Ordnance Survey Maps, Estate Plans, Sale documents and other documents indicate that the Order route existed in its entirety as a through-route providing access to and past a number of properties from at least the late 1700s or early 1800s through to the current day. The route consistently appeared to be of sufficient width and to be capable of being used at least on horseback throughout this time with records providing

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a consistent view of the Order route connecting vehicular highways from point A to point I. Taken as a whole, the map and documentary evidence available both before and after the construction of the railway (when it was described as an occupation road) indicate that the Order route was capable of being used and considered to be at least a bridleway, the use of which may have gradually declined during the first half of the twentieth century to the point where it was recorded as a public footpath in the 1950s.

15. The Map and photographic evidence examined suggests that the route would have been capable of being used on horseback and with bicycles during – and since that time. The statements concerning use of the route (referred to in the UEFs referred to earlier) further support the fact that the route was a recognised and used historic route.

### **Summary**

16. The OMA consider that the map and documentary evidence is in itself sufficient to conclude that the route was a historical public bridleway and that inferred dedication can on balance be satisfied. However, should the Planning Inspector have any reservations as to the strength of the map and documentary evidence.
17. It is the view of the OMA that said order route subsists as a bridleway and should be recorded as such on the DMS (Document 19).

### **Conclusion**

18. Looking at whether dedication can be inferred on balance at common law, the OMA considers that the various map and documentary presented does, on balance, indicate that the route was dedicated to public use and used by the public as a bridleway.
19. There is no evidence that a legal stopping up of any part of the route has ever taken place. The legal maxim "Once a highway always a highway" would apply as unless stopped up by proper legal process a highway remains where it was dedicated, even if no longer used.
20. Accordingly, the OMA submits that a bridleway subsists along the Order Route. The OMA further contends that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.
21. The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to in paragraphs 9-12 are 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 without modification.