

**Lancashire County Council Definitive Map and Statement of Public Rights of Way  
Public Footpath from Banks Road to Station Road, North Meols, West Lancashire  
Borough (Definitive Map Modification) Order 2014 dated 18 December 2014 (2014  
Order)**

**Inspector's Interim Order Decision dated 18 December 2023**

**PINS Reference: ROW/3282977**

## **1. Preamble**

- 1.1 The 2014 Order was made by Lancashire County Council on the basis that it had discovered evidence which showed that a right of way being a footpath subsisted or was reasonably alleged to subsist. The bulk of the evidence submitted with the application from the North Meols Parish Council and up to the date of the public inquiry into objections on 18 October 2023 was in respect of user by the public on foot only. Members of the public attended the public inquiry and gave evidence that the way in question had been used by horse riders. These members of the public had not previously submitted user evidence forms relating to such use.
- 1.2 Following the public inquiry the Inspector made an Interim Order Decision on 18 December 2023 that she was minded to confirm the 2014 Order subject to modifications. Those modifications were that all references in the 2014 Order to footpaths be changed to bridleways.

## **2. Environment Agency Objections to the proposed modifications to the 2014 Order**

- 2.1. The Agency previously objected to the claimed footpath on a number of grounds. These objections are still relevant in relation to the claimed bridleway, however there are now additional objection points that the Agency wishes to raise.
- 2.2. The Environment Agency (Agency) is the registered proprietor under HMLR title number LAN103945 (Document 1a and 1b attached) of land (Agency Land) over which part of the claimed route lies, from Points C to I on the 2014 Order Plan at Station Road, which is approximately 520 metres in length. Between Points C to I, the length can be split into two distinct sections – section C to D (approximately 270m), and Section D to I (approximately 250m).
- 2.3. The land was originally owned by the Scarisbrick Estate. By the Scarisbrick Estates Drainage Act 1924, the land was vested to the Scarisbrick Estate Drainage Commissioners. The property was transferred to the River Crossens Catchment Board by the River Crossens Catchment Board (Transfer of Powers) Scheme 1931 (confirmed by the River Crossens Catchment Board Transfer

Order 1930). Under the River Boards Act 1948, the land was transferred to the Lancashire River Board and subsequently to The Lancashire Rivers Authority (Water Resources Act 1963). Again, the property was transferred to the North West Water Authority (Water Act 1973) and then on to National Rivers Authority in 1989 (Water Act 1985).

- 2.4. The Agency acquired the Agency Land upon its creation in April 1996.
- 2.6 The Agency Land has always been held by the above bodies for flood risk management purposes.
- 2.7 The proposed bridleway between points C to I (on the 2014 Order plan) is along the bank of a watercourse known locally as The Sluice. This section of the Sluice is shown as main river on the main river map held by the Agency under section 193 of the Water Resources Act 1991 (as amended). The Agency has powers under that Act to maintain structures and assets associated with the main river.
- 2.8 The North West Water Authority made the North West Water Authority Land Drainage Act 1976 Byelaws (Byelaws) under Section 34 of the Land Drainage Act 1976 on 17 November 1977 for securing the efficient working of the land drainage system in their Area. That Area includes the Agency Land. The Byelaws were confirmed by the Secretary of State on 18th July 1979 and came into operation on 1st October 1979.
- 2.9 Those provisions of the Byelaws which contained consenting provisions were repealed when the flood risk activity permitting provisions of the Environmental Protection (England and Wales) Regulations 2010 came into effect in April 2016. Those provisions of the Byelaws which prohibited certain activities remain in force. A copy of the Byelaws with the consenting provisions removed is attached as Document 2.
- 2.10 Byelaw 10 of the Byelaws states:

*10. No person shall use or drive or permit or cause to be used or driven any vehicle of any kind whatsoever whether mechanically propelled or not or ride any horse on over or along any bank or drainage work in such a manner as to cause damage to or endanger the stability of such bank or drainage work.*
- 2.11. The Agency objects to the coming into being of a bridleway over section D to I of the claimed route. This section is of less concern as it has been for some time a stoned access track, however additional use by horse riders could cause additional wear to its surface.
- 2.13 The Agency objects to the coming into being of a bridleway over section C to D of the claimed route. This section is earth river bank which would easily be churned up by horses which could lead to damage and low spots in the river bank, with the potential to increase flood risk to the local area. The Agency's position is that use

by horse riders of this section of the claimed way would therefore be prohibited by Byelaw 10.

- 2.14 In addition, if a bridleway became formally recognised on section C to I then the Agency is concerned that it would be obliged to replace the existing gate off Station Road to make the route accessible only by bridleway users. Simply removing the gate altogether would not be an option, as the Agency would need to ensure that the access restricts motorised vehicles which may use this route as a cut through from Station Road to Banks Road.
- 2.15 Furthermore, at the moment Section C to D of the claimed route is uneven, unmaintained earth river bank. To make this accessible, regular maintenance would have to be implemented. The initial investment required to open up the route, and then the required ongoing upkeep would take investment from the Agency's limited resource budget, with the result that the Agency's flood risk maintenance programme would be adversely impacted.
- 2.16 A fence line is present at point C, preventing any access between The Agency owned land, and the land owned by Southport Land and Property Co Ltd, and therefore preventing a through route. The Agency have never had any requirement for a gate at this location, or for these two separate land parcels to be linked in any way.

### **3. Lack of Deemed Dedication**

- 3.1 The Agency considers that the issue of whether the Byelaws amount to sufficient evidence of an intention not to dedicate for the purposes of section 31 of the Highways Act 1980 must be considered. The case of *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* [2008] 1 AC 221 is relevant to this issue (Document 3 attached). The House of Lords had to consider whether the question of intention had to be tested subjectively or objectively. It was held that the test was objective. For there to be "sufficient evidence" of an intention not to dedicate, there had to be objective acts, existing and perceptible outside the landowner's consciousness, rather than simply proof of a state of mind. The objective acts must be perceptible by the "relevant audience".
- 3.2 The Agency's position is that the Byelaws would be sufficient evidence of an intention not to dedicate. Byelaw 10 makes it clear that horse riding so as to cause damage or endanger stability is prohibited. That shows that there is no intention to dedicate because permissive use is not use "as of right". The Byelaws are not a mere private, or uncommunicated, intention of the Agency or its predecessor bodies. Schedule 4 of the Land Drainage Act 1976 (the legislation under which the Byelaws were made) required the Byelaws to be placed on public deposit. The Byelaws are on the Agency's website for all to see. The making of the Byelaws and their continuation in force is an overt and contemporaneous act perceptible by the

relevant audience, available to them, and is sufficient evidence of the Agency's and its predecessor bodies' intention not to dedicate the section of the claimed way as a bridleway.

- 3.3 The Agency therefore considers that the existence of the Byelaws provides a good reason for the Inspector not to confirm the 2014 Order with a modification that a bridleway exists over section C to I of the claimed route, because Byelaw 10 of the Byelaws are good evidence of the Agency's and its predecessor's intentions not to dedicate that part of the claimed route as a public bridleway.
- 3.4 Furthermore, both the common law and section 31(8) of the Highways Act 1980 provide that if the dedication of a public right of way is incompatible with a public body's statutory purposes, then dedication cannot be found to have taken place. In the case of *British Transport Commission v Westmorland CC* [1958] AC 126 (Document 4 attached), the House of Lords held that the question of incompatibility is one of fact and the relevant test is whether the dedication might reasonably be supposed to be incompatible. The creation of public rights which are incompatible with the public body's statutory purposes would be ultra vires.
- 3.5 In this instance, the increased obligations placed on the Agency to maintain the section of the claimed route from C to I as a bridleway and to ensure that the said section could not be used unlawfully by vehicular traffic, would be incompatible with the Agency's statutory purposes.

#### **4. Conclusion**

- 4.1. The Agency initially objected to the proposed footpath, and continues to object to the now claimed bridleway over section C to I of the claimed route. .
- 4.2. The Agency cannot be deemed to have dedicated section C to I of the claimed route as a bridleway because:-
- 4.2.1 Of the prohibition on horse riding so as to cause damage or to endanger stability in Byelaw 10 of the North West Land Drainage Byelaws; and
- 4.2.2 Because of an incompatibility with the Agency's statutory purposes which would arise if the Agency had to maintain the claimed bridleway over that section and make it unusable by unlawful users
- 4.3 The Agency therefore invites the Inspector not to modify the 2014 Order by including a bridleway on section C to I of the claimed route.

**Asset Performance and Estates Team  
Environment Agency**

**09 May 2024**