

Wildlife and Countryside Act 1981
The Lancashire County Council Definitive Map and Statement of Public
Rights of Way Definitive Map Modification

(No.11) Order 2007

Addition of Public Footpath from Kellet Lane to Ranglet Road,
Walton-le-Dale, South Ribble District

COMMENTS ON DULY MADE OBJECTION

One objection to the Order has been received by the Order Making Authority (OMA) from the original landowners at the time the Order was made (Trustees of Total Cellar Systems Limited Directors Retirement and Death Benefit Scheme).

The new landowners are Anthony Oxley and Geoffrey Howley who have maintained the original objections raised.

A copy of the objection letter dated 24th January 2008 is contained within the List of Documents (Doc 4) and the points of objection are summarised in bold italics below with the OMA's after each as follows:

There is no legal document dedicating or creating a public footpath.

This Order is made on the basis of either presumed dedication under section 31 of the Highways Act 1980 or by inference of dedication under Common Law.

The path was built as part of the Walton Summit Estate by the Central Lancashire Development Corporation. Ownership of that development was later vested into the Commission for New Towns by way of an Order made in December 1985. There is documentary evidence from English Partnerships (formerly Commission for New Towns) stating that the Order route was always intended to be a footpath, although no record of any formal dedication could be found or any plans to show the route's intended purpose. However, those comments come from an individual who worked with the CLDC and was involved in the planning process.

The property was shown as fields on old maps and the public footpath shown does not relate to the Order route.

This Order is made on the basis of modern user and the maps consulted in the original investigation were to ensure that the decision by the Order Making Authority was taken after properly considering all available evidence, not only that which supports the application.

There is no documentary evidence of express dedication so a public right of way could only come into being by deemed dedication.

This Order is made on the basis of presumed dedication under section 31 of the Highways Act 1980 or by inference of dedication under Common Law.

There is insufficient user evidence to confirm a 20 year usage period prior to the calling into question of public rights on 30th June 2006

It is not necessary for each user to span the whole 20 year period but that it was used by the public throughout that period.

It is unnecessary to individually break down the objector's comments on each of the user evidence provided, since the objector only speculates the potential route taken by each of the users and claims that some of the users could not have possibly used the route and giving their reasons thereto. However, these speculative comments do not accord or negate what the users have submitted in evidence. The test is for 20 years of continuous use together with a lack of intention to not dedicate, or in the alternative, a dedication by inference through the original owner. The user evidence is supported by each of the users' signature with a statement of truth and should be taken to be a truthful account without sufficient reasoning or evidence to negate them. It should be noted that the users sought the assistance of a local councillor so as to prevent the closure of the route, indicating suggesting that the route was indeed, well used.

The objection states that the users did not need to use the Order route, none have suffered hardship from not being able to since August 2006 and no complaints have been received by the landowners since August 2006. These issues are not relevant to whether public rights have been dedicated.

The route was closed on Christmas Day and Boxing Day each year from 1999.

No evidence is adduced by the objector to support this assertion. As the Order route is located in a commercial area, the OMA argues that the 'closure days' mentioned are unlikely to attract the attention of the public or to form an actual interruption to use by the public. Therefore, it is argued, the objector (as the landowner) did not carry out an effective act to negate dedication. The statutory test is based on evidence, and there does not appear to be any evidence of a contemporary intention not to dedicate nor of actual interruption to public use.

Contractors working for utility companies closed the path, with the landowners' permission, on at least 15 days to enable works to be carried out.

The OMA's view is that in order to evidence an intention not to dedicate there must be a much more substantive and positive action than that being argued by the objector/landowner (or the predecessor thereof) retrospectively. Furthermore, the OMA has no evidence that these events caused any interruption to any actual use by the public and no users reported having been prevented from using the Order route.

Reliance upon a third-party contractor closing the route (for the purposes of carrying out maintenance works) as being evidence of an intention not to dedicate does not, in the view of the OMA, suffice for the purposes of section 31 of the Highways Act 1980. Moreover, it has not been evidenced that these temporary closures actually

prevented the use of the path and contractors will often let people past in such situations.

The landowner erected a sign around 30th June 2006 indicating that there was no intention to dedicate a public right of way.

This does not act retrospectively and does not reverse and dedication that may have already happened but it does set a time when the allegation of public rights was brought into question.

The Order route has been blocked by fences since 30th August 2006.

This does not stop up any public rights which have already come into existence but is an obstruction to any such right of way.

Conclusion

The OMA are of the view that the user evidence forms, together with the correspondence from English Partnerships is enough evidence to prove that the Order route is a public footpath and was intended as such at the time it was constructed.

The OMA submits that the objection received does 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.