

IN THE MATTER OF:

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR
THE COUNTY OF LANCASHIRE**

**THE LANCASHIRE COUNTY COUNCIL
UPGRADING TO RESTRICTED BYWAY
OF FOOTPATHS RAMSBOTTOM 208 (SALES'S LANE)
AND RAMSBOTTOM 245, ROSSENDALE BOROUGH
DEFINITIVE MAP MODIFICATION ORDER 2016**

STATEMENT OF CASE OF THE ORDER MAKING AUTHORITY

1. INTRODUCTION

1.1 On 18th September 2013, The Forest of Rossendale Bridleways Association submitted an application (Document 20) under Section 53(2) of the Wildlife and Countryside Act 1981, to modify the Definitive Map and Statement of Public Rights of Way by upgrading Footpath Ramsbottom 208 (Sales's Lane) and Footpath Ramsbottom 245 to bridleways. This application was preceded by a separate application by the same applicant to upgrade Footpath Ramsbottom 207 (Buckhurst Road) to bridleway status, which connect to this application route. In particular, for the full length of Footpath Ramsbottom 208 (Sales's Lane) to be upgraded to bridleway status, it would require at least a section of Footpath Ramsbottom 207 to also be upgraded so as to meet the highway to highway criteria.

1.2 Ramsbottom 208 (Sales's Lane) starts on Bentley Lane from the county boundary and runs along a tarmac road in a generally north easterly direction through the junction with Ramsbottom 245 continuing past Sales's Farm and through Buckhurst Farm to Buckhurst Road (Ramsbottom 207) and shown between points A-I on the Order Map. Ramsbottom 245 leaves Ramsbottom 208 at point D on Order Map and runs along a tarmac road in a south easterly and then east south easterly direction past the entrance to Lark Mount to Croston Close Road (Bridleway Ramsbottom 206) at point L on Order Map. The routes are located in the Rossendale Borough of Lancashire.

1.3 The application for Footpaths Ramsbottom 208 and 245 to be upgraded was considered by the County Council's Regulatory Committee on 24th February 2016. The Committee

received a report from officers (Document 21) and based on all available evidence, resolved to make a Definitive Map Modification Order to record the routes as restricted byways rather than bridleways for the reasons that follow in this document. This Order was made on 30th November 2016 (Document 1)

- 1.4 The Order attracted two objections; one from the owner of Sales's Farm and the other from the owner of Buckhurst Farm. Both farms are accessed via Sales's Lane (Ramsbottom 208). The Order therefore needs to be submitted to the Secretary of State for a decision on confirmation in accordance with legislative procedure.
- 1.5 Notice of the making of the Order were served and erected as required by statute. This Statement of Case is one of the documents required by the Planning Inspectorate according to its procedure and guidance documents. It contains the grounds on which the Order Making Authority (OMA) proposes to rely on and includes copies of any supporting documents which are referred to or submitted as evidence together with a list of those documents. The County Council have separately produced a document with comments on the objections which is a requirement and is included within the bundle.

2. GROUNDS

- 2.1 The Order made was to modify the Definitive Map and Statement of Public Rights of Way in consequence of the occurrence of an event specified at Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981, namely the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows that a highway shown in the Map and Statement as a highway of a particular description, namely a public footpath ought to be there shown as a highway of a different description, namely a restricted byway. The map and documentary evidence available shows that, on the balance of probabilities, a public vehicular right of way existed.

However, as a consequence of the operation of section 67 of the Natural Environment and Rural Communities Act 2006 (NERC Act), mechanically propelled vehicle rights have been extinguished and the highest status the route can be recorded is as a restricted byway. Section 67 (1) states: *"An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement: (a) was not shown in a definitive map and statement or (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway."*

Section 67 (1) does not apply to an existing right of way if:

- 2.1.1 it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles;
- 2.1.2 immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense);
- 2.1.3 it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles;
- 2.1.4 it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles; or
- 2.1.5 it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- 2.1.6 before the relevant date (20th January 2005), an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
- 2.1.7 before commencement [of the NERC Act 2006], the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
- 2.1.8 before commencement [of the NERC Act 2006], a person with an interest in land has made such an application and immediately before commencement, use of the way for mechanically propelled vehicles (i) was reasonably necessary to enable that person to obtain access to the land, or (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.

The exceptions listed from 2.1.1 to 2.1.8 are not applicable to this case and therefore the OMA made the Order to record the route as a restricted byway.

2.2 The extensive map and documentary evidence combined with the user evidence shows, on the balance of probabilities, that Ramsbottom 208 and 245 have a right of way that is of a higher status than footpath. The range of historical maps and documents available, when considered as a whole, provided strong evidence of ways which carried public carriageway. Because of the NERC Act 2006, the highest status it can be recorded is as a restricted byway and on that basis the Order was made. (For an analysis of the initial

map and documentary evidence examined refer to the Lancashire County Council Regulatory Committee report (Document 21) subheading 'Map and Documentary Evidence'). The analysis of the map and documentary evidence by the Executive Director for Environment shows:

2.2.1 Yates' Map of Lancashire published 1786 and Smith's Map 1801 both show that Sales's Lane (Ramsbottom 208) existed as a through-route and the fact that it was depicted as a 'cross road' on both maps suggests that it was on balance a highway open to the public in vehicles including carts as a carriageway in the late 1700s/early 1800s.

2.2.2 The later small-scale commercial maps evaluated including the Cassini maps (later reproductions of Ordnance Survey 1 inch maps published 1842-4 and 1903), Bartholomew ½ inch Maps published 1904, 1920 and 1941, the ½ inch to 1 mile Geographia Road Map (revised 1921), Abel Heyworth & Sons Cycling & Touring Map published circa 1920 and the Authentic Map Directory of South Lancashire published circa 1934 all depict the Order routes as significant through-routes as well as providing access to a number of farms and a school (with the exception of the Order Route between point D-I on the ½ inch to 1 mile Geographia Map revised 1921 and the Order route between points D-L not being shown on the Abel Heywood Map). Bearing in mind these maps had been primarily published for the public travelling by vehicle or horseback, on a balance of probability it is highly likely the routes were available to the public in that way. It would be unlikely that a footpath alone would be shown.

2.2.3 The Derby Estate plans of 1824 show Sales's Lane (the Order route between point A and point I) with the section between point A and point G shown as a 'High Road' which is clearly distinguished in the key from 'Private Roads' meaning that it did not appear to have been considered to be a private road at the time of the survey but a public road carrying public vehicular rights.

2.2.4 The Tithe Map for Walmersley and Shuttleworth 1840 shows the full length of the Order Routes as bounded routes listed as occupation roads for which no tithes were payable (with the exception of the route between point A and point C which is physically shown to exist but was outside of the area covered by the Tithe Award). In support of other maps produced around the same time the routes shown on the Tithe Map appeared wide enough to have been used by vehicles in 1840. The

meaning of the term 'occupation road' in the context of the Award is not known but no Tithe was recorded against them and the information is consistent with how other public roads are described within the Award.

2.2.5 The Order routes were both consistently shown on all Ordnance Survey maps available to view from the first edition 6 inch maps surveyed 1844-48 and published in 1851 through to the modern day. On the first edition 6 inch map the Order route between point D and point I is named as Sales's Lane and thereafter is consistently named on all OS maps examined. The Order routes are shown providing access to a number of properties located along them but also as through routes connecting to other public highways. The depiction of both Order routes as significant, and in the case of Sales's Lane - named - through-routes on the OS mapping further gives weight to the fact that they were, by at least the 1840s both routes capable of being used on horseback and by cart or carriage, consistent with how other public vehicular routes were shown.

2.2.6 The District Valuation Map prepared under the requirements of the Finance (1909-1910) Act 1910 shows the Order routes excluded even when parcels spanned the routes. This gives further weight that the routes were still considered at that time to carry public vehicular rights. The objector states that deductions in tax could be claimed for both public and private rights (easements) but in this particular case the Order route was clearly excluded from the taxation process altogether giving further weight that the route was still considered at that time to be for public use, and that it carried public vehicular rights.

2.3 The OMA assert that the routes were already dedicated as public vehicular route by the mid-1800s, and that the user evidence submitted is modern use of a historical public vehicular route. In the alternative, the user evidence can be considered on its own and the routes can be considered to have been dedicated as bridleway stemming from modern use under s.31 of the Highways Act 1980. Section 31 requires that route is *"enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."* Although the amount of user evidence is low, the use is clearly not trivial or sporadic; the evidence shows that users had travelled the routes frequently on horseback (or leading a horse) for a continuous 20 period of years (probably more) of use without interruption. The 20 year period would be counted retrospectively from 2013 to 1993, and the user evidence does confirm

sufficiently frequent horseback use for over a continuous 20 year period. The use was "as of right"; it was open and apparent, and was not by permission, force or secrecy. The use has been predominantly on horseback for exercising horses, horse riding, including leisure riding and leading horses. Users also claim to have used the routes on horseback to travel to the chapel and to visit friends. Only one user has stated to have ever been stopped and/or turned back around /after March 2013 when the gate at point H was locked. No other users appear to have mentioned being stopped and nor has any sign been seen to prevent horseback use. There is no evidence to show that there was no intention not to dedicate it during the relevant period. The user evidence is considered sufficient to show a deemed dedication under section 31 of the Highways Act 1980, if it is considered that the map and documentary evidence does not show a historical vehicular right of way.

2.4 The objection letter refers to the case before the Planning Inspectorate (FPS/Q2371/14A/15), which has been dealt with in the Comments on Objections document. In short, that case and this case cannot be compared because in that particular case only part of the route was excluded from the Finance Act Valuation process and the additional map and documentary evidence considered was not as strong to support public vehicular rights.

3. CONCLUSION

3.1 The historical map and documentary evidence is substantial enough to show that a vehicular public right of way existed. However, the Natural Environment and Rural Communities Act 2006 has the effect of extinguishing the unrecorded public right of way for mechanically propelled vehicles. The user evidence clearly shows extensive horseback use for a period probably longer than 20 years retrospectively from 2013. The application itself was made for the route in question to be upgraded to bridleway status but the evidence shows that on the balance of probabilities the Order routes have carriageway rights and the inference can be drawn of dedication at common law.

3.2 The user evidence supports the Order made by the Authority for the route to be upgraded to restricted byway status. However, the user evidence on its own, is enough for the route to have been deemed to have been dedicated as a bridleway through modern use. If the Inspector takes a view that differs from the OMA's as to the map and documentary

evidence, the OMA submits that the user evidence is detailed enough for deemed dedication as a bridleway.

3.3 The Surveying Authority therefore, having considered the criteria under section 53 Wildlife and Countryside Act 1981, made the Order and promoted it for confirmation. The Inspector is respectfully requested to consider that under the legislative criteria in the same Act and the Natural Environment and Rural Communities Act 2006, the historical map and documentary evidence show that on the balance of probabilities restricted byway rights subsist on the Order route and confirm the Order.