

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 OF BUCKHURST ROAD,
RAMSBOTTOM FROM PUBLIC FOOTPATH TO RESTRICTED BYWAY)
DEFINITIVE MAP MODIFICATION ORDER 2015**

**Statement of Case setting out the Reasons the Order Making Authority
considers that the Order should be confirmed**

1. INTRODUCTION

1.1 On 23 November 2012 an application dated 24 September 2012 was made by The Forest of Rossendale Bridleways Association (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 207 (Buckhurst Road) to bridleway. This application was followed up with a separate application by the same applicant to upgrade footpaths Ramsbottom 208 (Sales's Lane) and 245 to bridleway status, the former of which links onto Buckhurst Road (Ramsbottom 207). (See the "Order Map" at Document 1).

1.2 The Order route (commonly known as Buckhurst Road) starts on Bury Old Road (point A1 on the Order Map) from the county boundary and extends in a generally easterly direction past Ridshaw Farm and Buckhurst Farm to meet Croston Close Road (Bridleway 206) at point F2; a total distance of approximately 1.28 kilometres and at a width varying between 3 and 6 metres. The route is in the in the Rossendale Borough of Lancashire.

1.3 The application for footpath Ramsbottom 207 to be upgraded was considered by the OMA's Regulatory Committee on 22nd October 2014. The Committee received a report from officers (Document 21) and resolved to make a Definitive Map Modification Order to record the way as restricted byway rather than bridleway, based on the evidence discovered on investigation and available to the OMA. The Order was made on 22 July 2015 (Document 1) to modify the Definitive Map and Statement of Public Rights of Way

in consequence of the occurrence of an event specified in Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

- 1.4 The Order attracted only one objection, from the landowner of Buckhurst Farm through which the Order route runs. The Order therefore needs to be submitted to the Secretary of State for a decision on confirmation in accordance with legislative procedure.
- 1.5 Notices of the Order were served and/or 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 authority proposes to rely and includes copies of any supporting documents which are referred to or submitted as evidence together with a list of those documents.

2. BACKGROUND

2.1 The Order made by the OMA 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.

2.2 However, as a consequence of the operation of section 67 of the Natural Environment and Rural Communities Act 2006, 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:

- 2.2.1 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;

- 2.2.2 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);
- 2.2.3 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;
- 2.2.4 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
- 2.2.5 it was created by virtue of use by such vehicles during a period ending before 1st December 1930.
- 2.2.6 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,
- 2.2.7 before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
- 2.2.8 before commencement, 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 2.2.1 to 2.2.8 are not applicable to this case and therefore the OMA made the Order to record the route as a restricted byway.

3. EVIDENCE

- 2.2 The extensive map and documentary evidence points towards the route being of a higher status (historically) than footpath. The range of historical maps and documents available, when considered as a whole, provided strong evidence of a route which carried public carriageway rights and on that basis the order was made for a restricted byway. (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 the route as a through-route, and the fact it was depicted as a 'cross road' on both maps suggested at the very least that it was used as a bridleway and on balance was 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 were evaluated including the Cassini reprints of the Ordnance Survey 1 inch maps originally published 1842-4 and 1903. The ½ inch to 1 mile Geographia Road Map (revised 1921), Abel Heyworth & Sons Cycling & Touring Map published circa 1920 and Authentic Map Directory of South Lancashire published circa 1934 also depict the Order route as a significant through-route as well as providing access to a number of farms and a school. Bearing in mind these maps had been primarily published for the public travelling by vehicle or horseback, on the balance of probabilities it is highly likely the route was being used by 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 the Order route as a 'High Road' and 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. Although this plan does not cover the entire route it includes all except a middle section and the public rights indicated would not end at the boundary of the map, which is no place of public resort, but connect via the only physically available route between, as evidenced by contemporary maps.
- 2.2.3 The Order route was 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 it is named as Ridshaw Lane and Buckhurst Lane and thereafter is consistently named on all OS maps examined as Buckhurst Road providing access to a number of farms located along it but also as a through route meeting Croston Close Road at point F2 where a National School first shown on the 1851 OS map (and accessed via the Order Route or Croston Close Road) was situated. The depiction of the Order route as a significant, named through-route on the OS mapping further gives weight to the fact that it was, by at least the 1840s a route capable of being used on horseback and by cart or carriage, consistent with how other public vehicular routes were shown.

2.2.4 The Order route was excluded from The District Valuation Map prepared under the requirements of the Finance (1909-1910) Act 1910 and several of the adjacent numbered plots were split by the route giving further weight that the route was still considered at that time to be for public use, and that it carried public vehicular rights. The entire route is shown, excluded.

2.3 In addition to the map and documentary evidence examined prior to making the Order additional map evidence has now also been identified and will be submitted with the Order in support of the route as a restricted byway. The following maps extracts are included: Crutchley's reduced OS Map ½ inch to 1 mile published between 1845 and 1890 (Document 51); Bacons Atlas of the British Isles (Document 63); Bartholomew half inch maps published 1904 (Document 64), 1920 (Document 65), and 1941 (Document 66).

2.4 When the application to record the Order route was first investigated it was not possible to examine the 1840 Tithe Map or Award for Walmersley with Shuttleworth deposited in the County Records Office due to its fragile condition. Extracts of the map have now been obtained from a copy of map held by The National Archives. The Tithe Map shows the full length of the Order route as a bounded route listed as an occupation road for which no tithes were payable. In support of other maps produced around the same time the route 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 it and the information is not inconsistent with it (or other routes depicted in the same way) being a public road.

2.5 There is no user evidence presented so dedication under s.31 of the Highways Act 1980 cannot be considered.

4. CONCLUSION

3.1 The historical map and documentary evidence is substantial enough to show that a vehicular public right of way existed. In particular, the exclusion of the route from the District Valuation Map under the Finance (1909-1910) Act 1910 and the Derby Estate plans showing the route as a "High Road" together with its inclusion (as a through-route) on a number of small-scale commercial maps and the fact that it was shown as a through-route and described consistently with routes recorded as public roads on the Tithe Map and Award in 1838-1840 is strong evidence of the route carrying vehicular public rights of way. However, the Natural Environment and Rural Communities Act 2006 has the effect

of extinguishing unrecorded public rights of way for mechanically propelled vehicles and the highest status the route can achieve is a restricted byway. There is no user evidence from which to deem a dedication under section 31 of the Highways Act 1980. The evidence shows that on the balance of probabilities the Order route has carriageway rights and the inference can be drawn of dedication at common law.

3.2 The OMA 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 1981 Act and the Natural Environment and Rural Communities Act 2006, the historical map and documentary evidence show that restricted byway rights subsist on the Order route and confirm the Order.