

WILDLIFE AND COUNTRYSIDE ACT 1981
THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF
LANCASHIRE

The LANCASHIRE COUNTY COUNCIL
RESTRICTED BYWAY ALONG SOD HALL LANE, SOUTH RIBBLE
DEFINITIVE MAP MODIFICATION ORDER 2022

Order Making Authority Statement of Case

Background

1. On 28th September 2021, the British Horse Society submitted an application to Lancashire County Council (LCC), the relevant surveying authority, for an Order under section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") to modify the Definitive Map and Statement of Public Rights of Way ("DMS") by upgrading to a public bridleway the footpath known as Sod Hall Lane, New Longton (7-7-FP51 and 7-1-FP50) and unadopted road known as Jane Lane, Leyland from Long Moss Lane, New Longton SD 5111 2481 to Jane Lane, Leyland SD 5141 2338.
2. The application was supported by map and documentary evidence including: Ordnance Survey Map (OS) 1:10,000 First Edition from LCC MARIO (website maps); OS Road Status from LCC MARIO showing Sod Hall Lane and Jane Lane; Hennet's Map 1829; OS 6 inch 1848; OS 1 inch 1896 OS; Bartholomew ½ inch 1904; OS 25 inch 1911; OS 1:25,000 1947; Finance Act 1910 (2 maps); Tithe map 1838 (2 maps) and Tithe award transcript 1838.
3. Officers from Lancashire County Council (hereinafter referred to as "the OMA") investigated whether they considered what public rights existed over the application route and prepared a report detailing their investigation together with their recommendation that the application should be rejected (Document 20). The report was considered by the OMA's Regulatory Committee on 22nd June 2022 where the decision was made not to accept the recommendation, but to authorise the making of an order to upgrade to a restricted byway the footpath known as Sod Hall Lane, New Longton (7-7-FP51 and 7-1-FP50) and the unadopted section of Jane Lane, Leyland from Long Moss Lane, New Longton to the adopted section of Jane Lane, Leyland in accordance with the application.
4. Notice of the OMA's decision to make the Order was sent to affected individuals on 23rd August 2022 (Document 15).
5. A Definitive Map Modification Order was duly made on 20th July 2022 ("the Order") (Document 1). The Order was made under Section 53(3)(c)(i) and (ii) namely: the discovery by the Authority 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 map relates, namely a restricted byway; and that a highway shown in the map and

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statement as a highway of a particular description ought to be there shown as a highway of a different description.

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

The Order Route

9. The Order route commences at an unmarked point at the north west end of the adopted section of Jane Lane (U5419) – point A on the Order plan.
10. Jane Lane starts at a point on Longmeanygate and extends north north west and then west south west for a distance of approximately 275 metres to point A. It is a tarmacked single carriageway public road. Midway along it a sign had been erected saying 'Access only Whitegate Farm Gate House Farm The Gate House No turning'.
11. Point A is located at the junction with the entrance to White Gate Farm and the application route continues along a tarmac roadway past the property for a further 100 metres to the entrance of Gate House Farm (point B) where the route then turns through a 90-degree bend to continue in a straight line in a north north westerly direction for approximately 900 metres through to the junction with Footpath 7-7-FP45 (point G).
12. In more detail, from the entrance of Gate House Farm the route continues along a tarmac roadway in good condition and is recorded as public footpath (7-1-FP50). After approximately 30 metres a field footpath (7-1-FP1a) joins the route (point C).
13. The Order route continues along the tarmac roadway to where it crosses a single railway line at what is known as Sod Hall Crossing. The railway junction is gated at either side (point D and point E) with smaller metal pedestrian gates adjacent to vehicular gates. The tarmac surface comes to an end a few metres before reaching the gates (point D) at the entrance to the driveway of the residential property known as 'The Gate House'.
14. A few metres north of the railway line (at point E) a further field footpath (7-1-FP37) joins the Order route.

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15. From the crossing the Order route continues straight, still recorded as 7-1-FP50, along a compacted stone surfaced track separated from the adjacent fields by a mixture of hedges and fencing. From a junction with Footpath 7-1-FP48 (point F) (which is on a track leading to Singletons Farm) the Order route continues as a substantial track past past Heath House Farm to a sharp corner and junction (point G).
16. Point G is located just north of the parish boundary between Leyland and Longton. A footpath (7-7-FP45) coming from the west meets the Order route at point G, 15 metres north of the location of the former 'Round House'.
17. The Order route turns to continue east north east for 40 metres and then turns again to continue north in a dead straight line for a further 575 metres to Long Moss Lane (point I).
18. In more detail, from the corner (point G), there is an area of rough uncultivated land immediately north of the route, which was where Sod Hall was located (now no longer in existence).
19. The Order route is still recorded as public footpath but because it is now within the parish of Longton this section is numbered 7-7-FP51.
20. The Order route continues via another right angle bend at point H thence in a dead straight line due north, unfenced from the adjacent fields but raised up on a constructed roadway above the level of the fields on either side. The surface of the roadway is a mix of compacted stone and tarmac with evidence of regular vehicular use to gain access to and from Heath House Farm and other properties accessed from the route on the approach to Long Moss Lane (point I).
21. The Order route passes Willow Farm and approximately 40 metres from Long Moss Lane a speed hump has been placed across the route together with signage, facing north towards anyone leaving Long Moss Lane, stating that the road is private and no through route.
22. Where the Order route meets Long Moss Lane (point I) adjacent to Adlington Gate Farm it is signed as a public footpath. In addition, a street sign gives the name of the route as being Sod Hall Lane underneath which a separate sign with the same colour lettering, but which looks to have been added at a later date states: 'Privately owned road. No through route. No parking please'.

The total length of the route is 1.6 kilometres.

Legal Issues

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23. The provisions of the Wildlife and Countryside Act 1981 set out tests which must be addressed in deciding whether the DMS should be modified. If it appears to the OMA that the DMS require modification in consequence of the occurrence of an event specified in 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 restricted byway; and that a highway shown in the map and statement as a highway of a particular description, namely a footpath, ought to be there shown as a highway of a different description, namely a restricted byway.
24. The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered. S53 permits both upgrading and downgrading of highways and deletions from the map. The statutory test at S53(3)(c)(i) and (ii) 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.
25. 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.
26. 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* there is sufficient evidence from which to infer a restricted byway was already dedicated on the Order route and the route marked A-I on the Order plan should be recorded on the DMS as a restricted byway (Document 1).

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Evidence

27. 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.
28. The investigation carried out was based entirely on historical map and documentary evidence with no modern user evidence – or details indicating historical public use on horseback - submitted.
29. The Order route appears to have come into existence in the late 1700s or early 1800s with the topography of the surrounding land suggesting that it was probably constructed in relation to the enclosure of Leyland Moss and Longton Moss. No plans or details of the agreements have been found.
30. The route may have been providing access to and past Sod Hall before any enclosure agreements (as Sod Hall was shown on Yates Map of 1789) seemingly surrounded by moss land.
31. The full length of the Order route is clearly shown on Greenwood's Map in 1818 and Hennessey's Map in 1830 as a cross road providing access to and past a number of properties and appeared to be capable of being used on horseback and with horse drawn vehicles as a through route at that time.
32. It is then shown clearly on the Tithe Maps for Leyland and Longton (1838) where the Order route between point A-B appeared to be considered to be public vehicular highway – as did the route from point G to point I.
33. In 1846, a railway was built across the route (D-E) confirming the existence of the Order route prior to the railway.
34. The nature of the level crossing (D-E) is interesting. It appears to have been constructed as a gated crossing with adjacent gatehouse which was owned by the Railway Board. As such, this appears consistent with what would be required where a railway crossed a public vehicular highway and the earliest found census information (1851) for a property named in the census as 'Sod Hall Crossing' was occupied by a Railway Gate Keeper.
35. The evidence suggests that the route had a toll gate at Sod Hall and Ordnance Survey maps in 1840s show round building known as the Round House and mark it as the site of a turn pike (T.P) in the mid-19th Century. An article published by the Leyland Historical Society discusses the origins of the building and the belief that it was used to try to collect tolls although this may not have been very successful. The fees should have been for the upkeep of the road which was named on the maps as Sod Hall Meanygate south of point G, but Sod Hall Road north of point H.

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36. The full length of the Order route is shown on the Old Series Cassini map which is significant as these maps were reproduced from the OS First Edition 1-inch maps and suggests that a substantial through route existed along the Order route in the mid-1800s which would appear to have been capable of being used.
37. The Order route is consistently shown on all OS maps examined – including those at a 1" scale and is also shown on small scale commercial maps published in the 1900s (Bartholomew's Maps and the Authentic Map Directory of South Lancashire by Geographia suggesting that it existed as a substantial through route capable of being used by horses and vehicles and with no reference at that time to the existence of a toll gate.
38. In the early 1900s, it was shown excluded from the Finance Act taxation process from point A through to just beyond point G (on the map edge) which is often good evidence that a route was considered to be a public vehicular highway at the time the survey was carried out. The Finance Act records for the northern section of the route were incomplete so the full picture of how the route was considered at that time is unknown. This contradicts any private ownership indicated 50 years earlier.
39. Aerial photographs from the 1940s and 1960s perhaps help to explain why the Order route was recorded as a public footpath as parts appeared to be little used by vehicles and there is reference to overgrowth in the parish survey card.
40. No modern or historical user evidence had been submitted in support of the original application.
41. However, the Committee considered all the documentary evidence referred to above and the effect of the Natural Environment and Communities Act 2006 mentioned below and resolved to authorise the making of an Order modifying the DMS by the addition of a restricted byway along the unadopted road (Jane Lane) and the upgrading to a restricted byway of 7-1-FP50 and 7-1-FP51 (Sod Hall Lane).

The Natural Environment and Rural Communities Act 2006

42. This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. The OMA concluded that the evidence showed that, on the balance of probability, public carriageway rights exist on the Order route. The OMA then

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considered whether the Natural Environment and Rural Communities Act 2006 ("the 2006 Act") had extinguished public rights for (MPVs).

43. Section A-B was not recorded as a public right of way on the DMS and section B-I was, at the time of the Act, recorded as a public footpath. The OMA have no evidence that any of the exemptions apply. Therefore, the OMA consider that the appropriate status for the Order route to be recorded on the DMS is restricted byway, with public rights with non-mechanically propelled vehicles, horses and on foot.

Summary

44. Whilst there is no express dedication in this matter, the OMA considers, on balance, that there is sufficient evidence from which to infer dedication at common law from all the circumstances.
45. The OMA considers that the various map and documentary evidence does, on balance, indicate that the route was dedicated to public use and used by the public.
46. From the information gathered, the OMA considers that there is sufficient evidence on balance that the route was a historical public route available as a vehicular highway which is at present unrecorded on the DMS in respect of points A-B and recorded as a footpath in respect of points B-I.
47. The fact that part of the Order route is not presently recorded as any publicly maintainable highway does not mean that it does not carry public rights of way and the fact that only footpath rights were recorded between points B and I does not preclude the existence of other higher rights.
48. There is no evidence that a legal stopping up of rights on any part of the route has ever taken place.
49. The OMA contends that lack of use in more recent decades would not remove any existing public rights. 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.
50. The OMA considers that there is sufficient evidence of an old vehicular highway between point A-I and that the 2006 Act will have extinguished MPV rights leaving the route to be appropriately recorded as a restricted byway.
51. It is satisfied the map and other documentary evidence is in itself considered sufficient that the route was a historical public highway and that an inference of dedication can on balance be made.

Conclusion

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52. The OMA submits that restricted byway rights subsist 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.
53. The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above in para 24 is met. The objection received does 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.