

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

**THE LANCASHIRE COUNTY COUNCIL**  
**FOOTPATH AT AYREFIELD ROAD AND AYREFIELD HOUSE, UP HOLLAND**  
**DEFINITIVE MAP MODIFICATION ORDER 2019**

**Order Making Authority Statement of Case**

**Background**

1. On 3<sup>rd</sup> July 2018, Up Holland Parish Council submitted an application to Lancashire County Council (the relevant surveying authority) for an order under section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by recording a public footpath from Ayrefield Road to Footpath Up Holland 2.
2. The application was supported by 6 user evidence forms, Upholland Parish Council footpath walks leaflets, correspondence relating to the status of the route, aerial and other photographic evidence.
3. Officers from Lancashire County Council (hereinafter referred to as "the OMA") investigated whether they considered that the public rights applied for existed over the application route and prepared a report detailing their investigation together with their recommendation that the application should be accepted. (Document 21). The report was considered by the OMA's Regulatory Committee on 30<sup>th</sup> January 2019 where the decision was made to modify the DMS by recording a footpath along shown as A-B-C-D on the Order plan.
4. Notice of the OMA's decision to make an order, including a statement of reasons for making the Order, was sent to affected individuals on 31<sup>st</sup> January 2019 (Document 15).
5. A Definitive Map Modification Order was duly made on 13<sup>th</sup> February 2019 ("the Order") (Document 1). The Order was made because it appeared to the OMA that the DMS for Lancashire required modification in consequence of an event specified in Section 53(3)(b) and Section 53(3)(c)(i) of the 1981 Act namely the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path; and/or 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 footpath.
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).

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7. During the specified period for objections and representations to the Order, the OMA received two objections (Document 4).
8. The objections have 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 is in the parish of Upholland in the District of West Lancashire and is shown on the Order Map between points A-B-C-D denoted by a broken bold black line.
10. It commences from a point on Ayrefield Road immediately east of 59 Ayrefield Road (point A on the Order Map) to continue along Ayrefield Road in an approximately easterly direction for a distance of approximately 285 metres to point B on the Order Map where the Order route leaves the road immediately before the gated entrance into Ayrefield House. The Order route then passes through a gate to continue in a generally easterly direction along a track through the grounds of Ayrefield House to point C where it turns to continue in a generally south south easterly direction across an open area adjacent to a pond to a kissing gate on the field boundary to meet Footpath Up Holland 2 (referred to hereafter as 'Footpath 2').
11. The total length of the Order route is 0.40 km and the width varies between 3.5 and 7 metres along Ayrefield Road (between points A-B) and 4.5 and 2.5 metres through the grounds of Ayrefield House (points B-C-D).

**Legal Issues**

12. 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)(b) and/or S53(3)(c)(i) of the 1981 Act namely the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path; and/or 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

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alleged to subsist over land in the area to which the DMS relates, namely a footpath.

13. 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 tests at S53(3)(b) and S53(3)(c)(i) each comprise two separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. 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.
14. 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.
15. 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 footpath was already dedicated on the Order route and the route marked A-B-C-D on the Order plan should be added to the DMS as a footpath.
16. It should also be noted that a relevant statutory provision in relation to the dedication of a public right of way is Section 31 of the Highways Act 1980 (the "1980 Act"). Section 31 provides that where a way has actually been enjoyed by the public, 'as of right' (meaning without secrecy, force or permission) and without interruption, for a period of twenty years prior to its status being brought into question, the way is deemed to have been dedicated as a highway, unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate a public right of way. Section 31 does not necessarily preclude dedication of a public right of way under common law, however.

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17. It is the view of the OMA that Order route subsists as a footpath and should be recorded as such on the DMS (Document 19).

**Historical, Map and Documentary Evidence**

18. 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.

19. The Order route between point A and point B appears to have existed as a substantial road from the early 1800s as part of a longer route linking to Bank Road and Bank Brow providing access to a number of properties and is consistently shown thereafter on a range of Ordnance Survey (OS) and private commercial maps as a substantial route

20. There is also evidence from the Finance Act 1910 Map that this section of the Order route was excluded from the taxable hereditaments, which could be done in circumstances where land was crossed by a public right of way.

21. Its status was questioned by the Ramblers Association in 1953 as part of the legal process of preparing the Definitive Map and Statement and it appears to have been accepted that it was a public highway and was therefore not included on the map as a footpath.

22. As recently as 2001, an officer of the OMA, in correspondence with a firm of solicitors, expressed the view that this section formed part of the adopted length of Ayrefield Lane. Furthermore, the majority of the route between points A and B runs across unregistered land and is bounded by registered titles. The fact that the majority of this section was not included in any of the adjoining titles and remains unregistered could be seen as further evidence of the landowner's intention to dedicate as public highway.

23. The Order route from point B through to point D was constructed sometime in the mid to late 19th Century (and was clearly shown on the 25 inch OS map published in 1895). It appears to have been constructed to provide access around, instead of through the grounds of Ayrefield House, and connected to Ayrefield Road, Bank Road and the route of Footpath 2.

24. The full length of the Order route was consistently shown on Ordnance Survey maps from 1895 onwards as part of a longer through route which was capable of being used by the public on foot.

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25. The Order route B-C also appears to have been considered to be a public highway in the 1950s as it was not included on the Definitive Map as part of Footpath 2 but provided access to and from Footpath 2 with there never being any suggestion that Footpath 2 was a cul de sac path that did not connect through to Ayrefield Road.
26. In the 1950s, between point C and point D the Order route was recorded as part of Footpath 2 described as running from a point south of Ayrefield House on the Draft, Provisional and First Definitive Map until the Definitive Map was revised in 1975 (with a relevant date of 1st September 1966) when the length C-D was no longer shown. There appears to be no explanation other than a drafting error for the fact that it is no longer recorded as part of Footpath 2 and no evidence that the route had been extinguished or that the public no longer had public rights to access Footpath 2 along the Order route A-B-C at that time.
27. The map and documentary evidence examined therefore supports the view that the full length of the Order route has existed since at least the late 19th Century and that until 2014 use of the route was unchallenged.

### **User Evidence**

26. The applicant submitted user evidence in support of their application as mentioned in paragraph 2 of the Statement.
27. The user evidence forms were considered by the OMA and are detailed within the report presented to the County Council's Regulatory Committee (Document 20). The user evidence related to use of the route on foot and since the making of the Order a further five user evidence forms have been submitted (Documents 47 through 51) supporting the fact that the route had been well used.
28. However, the OMA submit that the Order route is a historical public footpath and that the user evidence submitted is modern use of a route that was dedicated to the public prior to the 1950s and possibly over a couple of hundred years ago. Should the Inspector be of the view that public rights were established at a later date then the user evidence submitted supports dedication of the route prior to 2013-2014.

### **Summary**

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28. This investigation has been carried out based on historical map and documentary evidence supported by modern user evidence.
29. The Order route is not currently recorded on the DMS or the List of Streets as a publicly maintainable route.
30. There has been no express dedication in this matter. The OMA considers, on balance, that there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances.
31. Looking at whether dedication can be inferred on balance at common law, the OMA concluded that evidence from the maps and other documentary evidence, coupled with the evidence on site, indicated on balance how the route should be recorded. The analysis of the map and documentary evidence provides strong evidence that this is a historical public route linking to a network of other public footpaths and that on balance that a footpath has already been dedicated to public use.
32. Looking at the strength of the documentary evidence, it is considered sufficient to conclude that the route was dedicated to the public as a footpath many decades ago.
33. The OMA considers that the various maps and the documentary evidence does, on its own, indicate that the Order should be confirmed.
34. Furthermore, it is suggested that in the absence of there being sufficient map and documentary evidence from which to infer public rights, there is sufficient user evidence to find footpath status has been dedicated prior to 2013/2014.
35. There is no evidence that a legal stopping up of any part of the route has ever taken place which is particularly relevant to the section C-D which was recorded as a Footpath on the First Definitive Map.

**Conclusion**

36. On the balance of probabilities and taking all the evidence into account, the OMA considered that the higher statutory test for dedication of a public right of way between points A to D is satisfied. Additionally, or in the alternative, the OMA also considered that the common law test for inference of dedication is satisfied for the full extent of the Order route as claimed. The OMA duly accepted the claim for the Order route marked A-B-C-D to be added to the DMS as a public footpath and promote the Order to confirmation.

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37. Whilst there is no express dedication in this matter, the OMA considers, on balance, that there is sufficient evidence from which to have dedication inferred at common law from all the circumstances.
38. 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. Furthermore, the OMA considers that there is sufficient evidence on balance that the route was a historical public route available as a footpath which at present is not recorded on the DMS and that footpath rights subsist along the Order route. The OMA further states that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.
39. The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above in para 11 is met. The objections received do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation.
40. The OMA has realised that it made an error in relation to the grid references stated in the Order. Under the 'Other particulars' section of the Order, the width varying between 4.5 and 2.5 metres is incorrectly stated to start at SD 5265 0763 (which represents point C on the Order Map). This width in fact starts at point B which is SD 5257 0763. It will therefore be necessary to refer the Order to the Planning Inspectorate to correct this error by requesting a modification to the Order to record the width of the Order Route as follows (the only change being requested is that underlined):
- SD 5229 0758 to SD 5257 0763 – Width varies between 3.5 and 7 metres  
SD 5257 0763 to SD 5267 0760 – Width varies between 4.5 and 2.5 metres
- For the avoidance of doubt, these measurements equate to the Order route between points A-B on the Order Map being 3.5 to 7 metres wide and between points B-C-D being 4.5 to 2.5 metres wide.
41. The OMA therefore respectfully requests that the Planning Inspector confirms the Order subject to the modification referred to above.