

THE LANCASHIRE COUNTY COUNCIL (FOOTPATH FROM WARBURTON STREET TO
GRANE ROAD, HASLINGDEN) DEFINITIVE MAP MODIFICATION ORDER 2021

Order Making Authority Statement of Case

Background

On 10th September 2020, Mr Graham Holland and Mrs Kirsten Holland submitted an application to Lancashire County Council (the relevant surveying authority) for an order under Section 53(5) of the Wildlife and Countryside Act 1981 (the "1981 Act") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by adding to it a Public Footpath from Warburton Street to Grane Road, Haslingden. The application was supported by fourteen user evidence forms ("UEFs") which described public use of the application route, together with two letters of support from Grane Residents' Association and the former leader of Grane Youth Group, a 1986 Youth Group list relating to a trip to Morecambe, a 1985 Youth Group letter, map extracts and historic and modern photographic evidence.

Officers from Lancashire County Council (hereinafter referred to as the OMA) investigated whether a public right of way exists over the application route and prepared a report of their recommendations (Document 21). This report was considered by the OMA's Regulatory Committee on 10th March 2021 where the decision was made to modify the DMS by adding a Public Footpath along the application route (see minutes of Regulatory Committee Meeting at Document 15). The Regulatory Committee decided to make the order and promote it to confirmation as it was satisfied that the higher test could be met.

Notice of the OMA's decision to make an order, including statement of reasons for making the order, was sent to affected individuals on 30th March 2021 (Document 15).

A Definitive Map Modification Order was duly made on 14th April 2021 (the "Order") (Document 1). The Order was made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(b) and 53(3)(c)(i) of the 1981

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Act, namely the expiration 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 the discovery by the surveying 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 public footpath.

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 3 of Schedule 15 of the 1981 Act (Document 6).

During the specified period for objections and representations to the Order, the OMA received two objections (Document 4). One of the objections (submitted on behalf of Mr Osgood and Miss Wilcox) has not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. The OMA is now submitting the Order to the Planning Inspectorate for a determination on confirmation.

The Order Route

The route is located in Haslingden, in the Rossendale district of Lancashire. It varies in width between 1 metre and 2 metres, runs in an east north easterly direction along the front of the terraced properties numbered 6-24 Warburton Buildings for approximately 50 metres from where it continues in a north easterly direction along the eastern edge of the car park of a former Cantonese restaurant to pass through a 2 metre wide gap in a wall to Grane Road. The route runs a total distance of approximately 100 metres and is shown as a bold dashed line on the Order Map marked A-C. This route is hereafter referred to as the "Order Route".

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Legal Issues

For the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence discovered by the OMA, when considered with all other relevant evidence, is sufficient to show that a public footpath that is not shown on the DMS subsists along the Order Route and that the DMS requires modification.

The 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 been actually enjoyed by the public, 'as of right' 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.

Should the test for deemed dedication under section 31 not be met, consideration should be given to whether a dedication of highway can be inferred at common law. This requires consideration of three issues; (i) whether the landowner had the capacity to dedicate a highway, (ii) whether there was an express or implied dedication by the landowner and (iii) whether there has been acceptance of the dedication by the public. Evidence of use of a way by the public may support an inference of dedication and may also show acceptance of the dedication by the public. The evidence in support of the dedication of a right of way under common law may relate to a different period to that identified for the purpose of statutory dedication.

Reasons for confirming the Order

The historical documentary evidence, which was evaluated by experienced officers and considered by the Regulatory Committee, is detailed in the Committee Report

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(Document 21). In summary, the documentary evidence appears to show that the Order Route A-B has existed since at least 1891 but that it would appear that it was not until some point between 1981 and 1983 that the Order Route B-C was cleared of buildings that previously existed. By 1994, when the former owner of most of the land crossed by the application route B-C applied for planning permission in relation to the use of 240 Haslingden Road (Document 50), the car park crossed by the Order route B-C was already in existence and appeared to be capable of being used.

Whilst there is no map or documentary evidence from which dedication of the route can be clearly inferred, the map and documentary evidence does support the user evidence submitted for the section A-B from at least 1891 and aerial photographs and Google Street View images provide additional assistance in relation to the route B-C from 2000 onwards. Historically ownership of the former railway sidings (now redeveloped as Holden Place) included a kink in the boundary fence/wall across the Order route B-C. This kink is still shown on land registry plans and part of the carpark crossed by the Order Route is still owned by a different landowner to the rest of the carpark but the site evidence shows that a straightened wall now exists separating the carpark and Holden Place.

Whilst it is suggested that on balance there is insufficient evidence to infer dedication at common law, it is considered that with regard to the statutory test for deemed dedication under section 31 of the 1980 Act, the statutory tests for confirmation of the Order have been met.

The evidence of users suggests that the event which brought public use of the Order Route into question was the obstruction of the route at points B and C in 2019. Consequently, the relevant twenty year period under consideration for the purpose of section 31(2) is 1999 to 2019.

The applicant provided 14 UEFs in support of the application (3 of which comprised use by couples), which referred to regular use of the route from as early as 1940. Two letters were also provided in support of the application.

Prior to making the Order the OMA considered the evidence provided in the UEFs and summarised it as follows:

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All 17 users provided evidence of use of the route during the period under consideration.

The main purposes for which the Order Route was stated to be used were for pleasure and use as an access route, use of the route to get to work and dog walking. The majority of users stated that they had used the route on foot daily. 4 of the users also expressed that they had used the route weekly, 1 user more than once a day and another 4-6 times per week.

All users refer to having witnessed others using the route on foot.

All of the users state that the Order Route has always followed the same course although interviews carried out following the making of the Order have clarified that whilst the route A-B has remained unaltered those user's with knowledge of the route going back in excess of 30 years have subsequently explained that the route taken between B-C would have differed prior to the early-mid 1990s.

Several of the users make reference to obstructions along the Order Route. However, none of the users refer to any gates or barriers of relevance that prevented use during the relevant period of time under consideration prior to the route being called into question in 2019. None of the users refer to having seen signs or notices along the route.

Whilst 2 of the users note having been informed that the Order Route was not public, this was in conjunction with the erection of the barriers in 2019. None of the users recall having ever been told that the route was not a public right of way prior to 2019. Again, whilst 3 of the users refer to having been turned back when using the Order Route, this is in relation to their finding the route obstructed by the 2019 barriers.

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It is noted that 4 of the users referred to having permission to use the Order Route. However, the 2 users (both of the same address) who refer to having had permission from the owners of the Valley Cantonese and Lancashire County Council as 'owner of the path' provided no further detail in this regard and both stated that they had never been told that the route was not public. With regards to the other 2 users (again, both of the same address) whilst reference is made to permission having been given, this is with reference to access to the car park for the purposes of parking and unloading their car, and not with reference to use of the Order route.

At the time the Report was considered by the OMA's Regulatory Committee on 10th March 2021, an objection had been received from a landowner. However, whilst this objection was acknowledged, the concerns raised were not considered to be relevant considerations under either section 31 of the 1980 Act or under common law.

Since the Order was made, two of the users who originally completed a joint UEF have submitted separate forms to clarify their individual use of the route (Mr and Mrs West) and five additional UEFs have been submitted by members of the public who have used the Order route within the relevant 20 year period (Documents 20 and 23 through 27).

More detailed Witness Statements were also prepared by the applicants – Mr Graham Holland and Mrs Kirsten Holland, Mrs Amanda Holden, Mrs Evelyn West and Mr Joseph West (now deceased). (Documents 28 through 32)

Taking all the evidence into account the OMA submits that, on balance, the provisions of section 31 of the 1980 Act can be satisfied.

CONCLUSION

The OMA submits that a public footpath subsists 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.

The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation had been met. For the reasons stated in the OMA's 'Comments on Objections', the objection received and not withdrawn 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 without modification.