

**THE LANCASHIRE COUNTY COUNCIL**  
**ADDITION OF FOOTPATH FROM HODDER STREET, ACCRINGTON**  
**DEFINITIVE MAP MODIFICATION ORDER 2022**

**Comments on Objection received:**

**The Objection**

One objection has been received to the Order (Document 4). The objection was submitted by Richard Turner & Sons Auctioneers, Valuers & Estate Agents on behalf of Thomas Gordon Comthwaite owner of most of the land crossed by the Order route. The grounds of objection are detailed below in italics with the OMA's response to each point indented as follows:

*Prior to the wooden building being demolished in year 1997 there was no space between this building and the boundary with the adjacent property No, 48 Hodder Street to allow the safe passage of pedestrians to access any public right of way.*

A significant body of user evidence has been submitted in support of this Order. The user evidence forms collectively provide evidence of use going back as far as 1949. An analysis of that user evidence is detailed in the OMA's report to the Regulatory Committee (Document 21) and summarises use of the route prior to the acquisition of the land by the current landowner's family in 1997. 15 Users were reported to have used the Order route for over 20 years – including the years 1976 to 1996 - which in itself is a significant amount of user evidence considering how many years ago this was.

Such a high number of users documenting use prior to the demolition of the building clearly suggests that there was sufficient space for the public to pass and that the route had already been used for over 20 years prior to 1997.

A photograph submitted by the applicant (Document 21, Page 229) was taken in 1984 and shows a gap between the allotment fence /wooden building and the garden wall. This photograph supports the user evidence submitted and the fact that the route existed at that time.

The 1960s aerial photograph (Document 27) and Ordnance Survey maps from the 1960s through to the mid-1980s (Documents 23 through 26) also support the view that a route was capable of being used even if the available width was less than it subsequently became.

None of the users refer to access being blocked or restricted by the building during that time.

*In 1997, when the plot was purchased and the wooden building demolished, secure fencing was placed around the plot to discourage trespass and, therefore, any member of the public trying to take a shortcut would be trespassing on a site which did not have public access.*

The application was supported by a significant amount of user evidence, none of which makes reference to fencing preventing them from using the route.

There is no suggestion that users were walking across the plot – other than along the Order route which the OMA consider may have already been dedicated under common law as a public footpath by that time.

If not already dedicated by 1997 under common law then to be an effective challenge to a statutory dedication a landowner must show sufficient evidence of a lack of intention to dedicate. This needs to be brought to the attention of the users of the Order route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway.

No evidence of the fencing, aside from in the objection, or the fact that it interrupted public use has been provided and the user evidence submitted makes no reference to fencing or from users being prevented from using the route before or after 1997 due to obstructions.

*The proposed new footpath marked from A-B on the Order Map is not the only route from Hodder Street to footpath 49 as there is another route only 60 metres away. There is no need for a new footpath alongside No. 48 Hodder Street when there is an existing footpath alongside No. 38 Hodder Street.*

The existence of a nearby alternative route does not undermine the evidence that a public footpath along the Order route already subsists in law and is not a directly relevant consideration for the Inspector in deciding whether footpath rights exist. The user evidence suggests that sufficient number of the users used the Order route either in preference or as well as the other route and depending on where a user was walking to or from may mean that one or other of the routes were more convenient to use.

*The additional cost of a new footpath in addition to an existing footpath is a waste of public money and there is no public need to justify it.*

The Order does seek to not create a 'new' public footpath but to record public rights that the OMA consider already exist. Any costs associated with the process of recording the route or ensuring that it is safe to use are not considerations that can be taken into account by the Inspector in deciding whether footpath rights exist.

## **Conclusion**

The Definitive Map Modification Order (DMMO) that seeks to record the route as a public footpath was made because the OMA considered that there was evidence, which on balance, suggested that a right of way which is not currently shown in the Definitive Map and Statement (DMS) had already become a public footpath (as shown between points A-B on the Order Map).

The OMA submits that the objections received do not in any way undermine the evidence that the Order route is, on balance, already a public footpath in law, and respectfully requests that the Secretary of State confirms the Order as made.