

Regulatory Committee

Meeting to be held on 22nd June 2022

Part I

Electoral Division affected:
Accrington South

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath from Hodder Street, Accrington (Annex 'A' refers)

Contact for further information quoting file number 804-728:
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Brief Summary

Application for the addition of a footpath on the Definitive Map and Statement of Public Rights of Way from Hodder Street, Accrington to a junction with 11-1-FP 49.

Recommendation

- (i) That the application to add a footpath on the Definitive Map and Statement of Public Rights of Way from Hodder Street, Accrington to a point on 11-1-FP 49 be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath along the route marked between points A and B on Committee Plan.
- (iii) If committee is not satisfied that the higher test for confirmation can be met it is suggested that once the statutory period for objections and representations to the Order has passed there will have been opportunity for further information to have been submitted and a further report presented as to whether this higher test for confirmation could on balance be satisfied and what stance the authority should take in respect of the Order.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a footpath from Hodder Street, Accrington to a junction with 11-1-FP 49 on the Definitive Map and Statement of Public Rights of Way.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”

An order for adding a way to or upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The county council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Hyndburn Borough Council

Hyndburn Borough Council provided no response to consultation.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – Head of Service – Legal and Democratic Services Observations.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

| Point | Grid Reference (SD) | Description |
|-------|---------------------|-----------------------------|
| A | 7685 2877 | Junction with Hodder Street |
| B | 7687 2874 | Junction with 11-1-FP 49 |

Description of Route

The application route commences at a point on Hodder Street, at the front of 85 Hodder Street (point A on the Committee plan).

From point A the route leaves the stone flagged footpath to cross Hodder Street to continue south east along a roughly tarmacked track adjacent to 48 Hodder Street to terminate at point B where it meets 11-1-FP 49 (which continues south east across a playing field and west south west along the rear of properties on Hodder Street.)

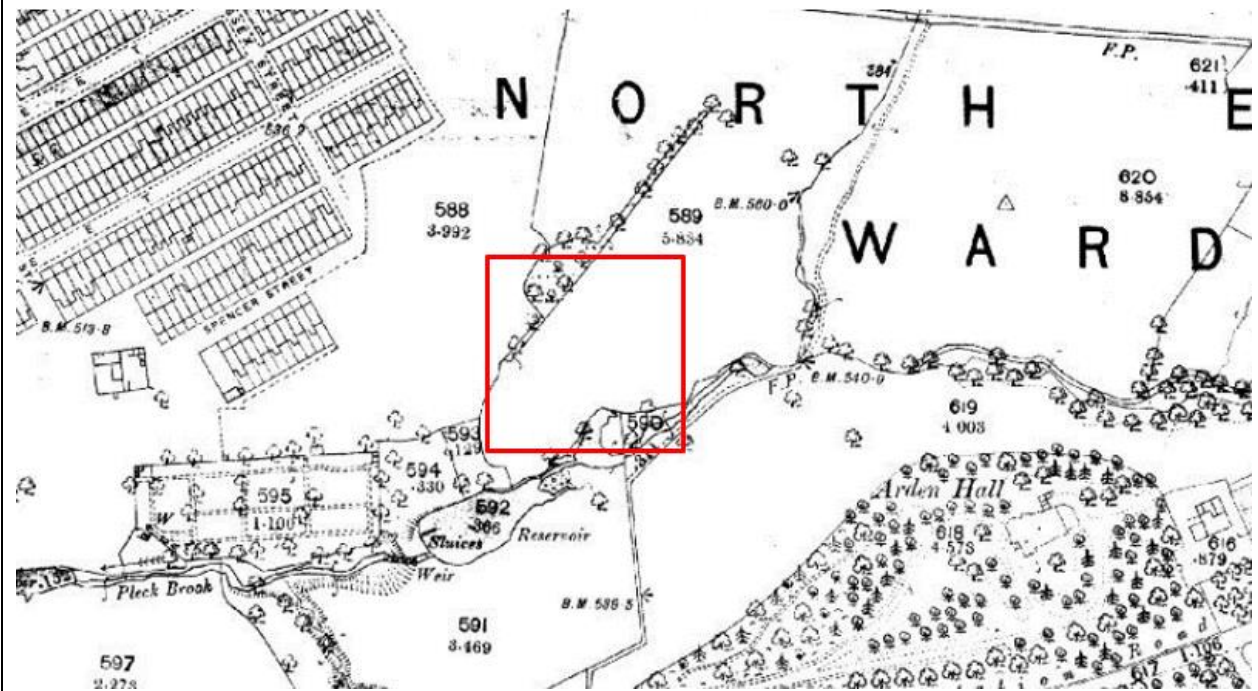
The total length of the route is 30 metres.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be. The land crossed by the application route is shown to be undeveloped until at least the mid-20th Century with no evidence that the application route existed. For that reason, much of the early map and documentary evidence normally included in the report to Regulatory Committee is not included below.


| Document Title | Date | Brief Description of Document & Nature of Evidence |
|--|------|---|
| 25 Inch OS Map Sheet LXIII.15 | 1893 | <p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1893.</p> <p>The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of</p> |

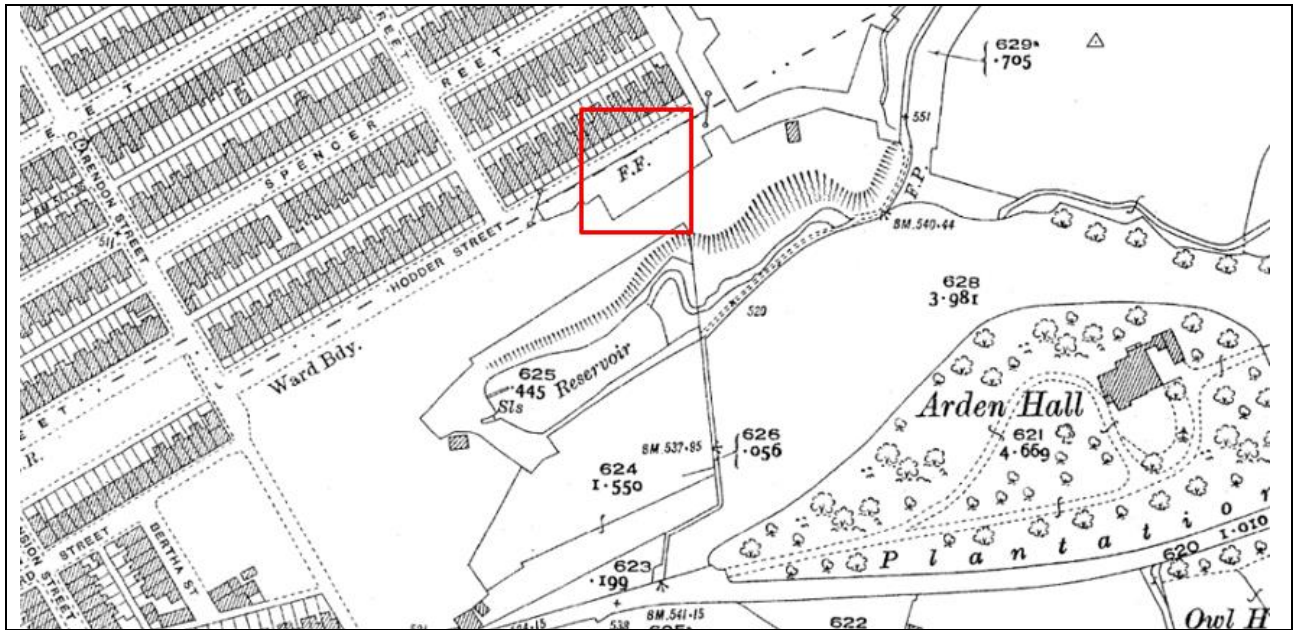
routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



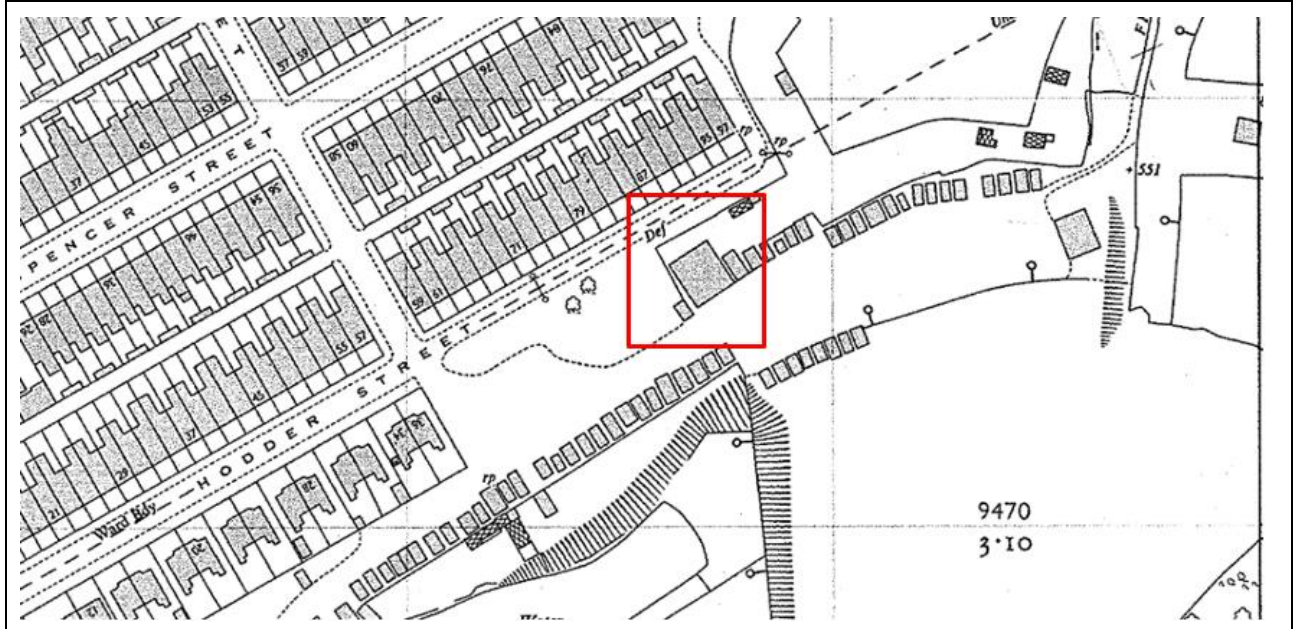
Extract of 25 inch OS map



| <u>25 inch OS map overlaid with modern GIS mapping</u> | | |
|---|------|--|
| Observations | | The area crossed by the application route was undeveloped. Hodder Street and the application route are not shown. |
| Investigating Officer's Comments | | The application route did not exist in 1893 |
| 25 inch OS map Sheet LXIII.15 | 1912 | 25 inch OS map surveyed 1890-91, revised 1909 and published 1912. |
|  | | |
| Observations | | Substantial development has taken place in the past 19-20 years. Hodder Street is shown and named together with rows of terraced housing built along the north side of the street. A reservoir has been built south west of where the application route is now situated. The application route is not shown and neither is the footpath (1-11-FP 49) to which it connects. |
| Investigating Officer's Comments | | The application route did not exist in 1909. |
| 25 inch OS map Sheet LXIII.15 | 1931 | 25 inch OS map surveyed 1890-91, revised 1929 and published in 1931. |



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| Observations | | Further development has taken place with further housing built along Hodder Street but the application route is not shown. |
| Investigating Officer's Comments | | The application route did not exist in 1929. |
| 1:2500 OS Map SD 7628-7728 | 1962 | OS map part surveyed 1956, revised in 1961 and published in 1962. |



| | | |
|--------------|--|---|
| Observations | | The application route is not shown. Buildings consistent with rows of individual garages used for cars are shown with a larger building shown in the location crossed by the application route and a solid line is shown across the land crossed by the application route |
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| | | suggesting that the garages were fenced off from Hodder Street with access to the garages provided east and west of the application route. |
| Investigating Officer's Comments | | The application route probably did not exist in 1961. |
| 1:2500 OS Map SD 7628-7728 | 1969 | Further edition of OS 1:2500 map part surveyed 1956, revised 1968 and published 1969. |
| | | |
| Observations | | Further garages are shown to the west of the larger building situated where the application route is now located. The fencing of the garage site has been altered and there is now a line shown between the back of the larger building and the adjacent garage. |
| Investigating Officer's Comments | | The application route is not shown. The type of barrier is not known and no inference can be drawn without other evidence |
| Aerial photograph | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS. |



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|----------------------------------|------|---|
| Observations | | A photograph taken in the 1960s (exact date not known) reflects what was shown on the OS 1:2500 map detailed above. Of significance is the fact that a worn track can be seen leaving Hodder Street to pass along the east side of the larger building through a narrow gap between the adjacent garage which then continues south east through the garages and out onto an open field. |
| Investigating Officer's Comments | | The application route – or a route broadly consistent with it - appears to have existed in the 1960s. |
| 1:1250 OS Plan SD 7628 | 1985 | OS plan dated 1985 used to prepare the Land Registry Title plan for 48 Hodder Street. |

| | | | |
|-----------------------------------|-------------------|--------------|------------------------|
| H.M. LAND REGISTRY | | TITLE NUMBER | |
| | | LA547369 | |
| ORDNANCE SURVEY PLAN REFERENCE | SD7628 | SECTION H | Scale 1/1250 |
| COUNTY LANCASHIRE | DISTRICT HYNDBURN | | © Crown copyright 1985 |

| | | |
|---|-----------|--|
| Observations | | The Land Registry Title for 48 Hodder Street (LA547369) suggests that the property was built in or around 1985 and sold to the current landowners in 1988. The title plan shows the property and at that time it appears that the large building shown on earlier 1:2500 OS maps may still have existed with a narrow gap between the eastern boundary of 48 Hodder Street and the building broadly consistent with the application route. |
| Investigating Officer's Comments | | The application route appeared capable of being used in 1985 although its width appears much narrower than it is today. |
| Aerial Photographs available to view on Google Earth Pro | 2000-2018 | Aerial photograph available to view on Google Earth Pro. |



2000



2005



2011



2015



2018

| | | |
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| Observations | | Aerial photographs taken in 2000, 2005, 2011 and 2018 all show the application route which appeared to be open and available to use. |
| Investigating Officer's Comments | | No inference can be made with regards to the existence of public rights but the aerial photographs all suggest that the route was in existence and capable of being used from at least the year 2000 consistent with the evidence of use submitted in support of the application. |
| Google Street View | 2009-2011 | Google Street View images of the application route. |



2009

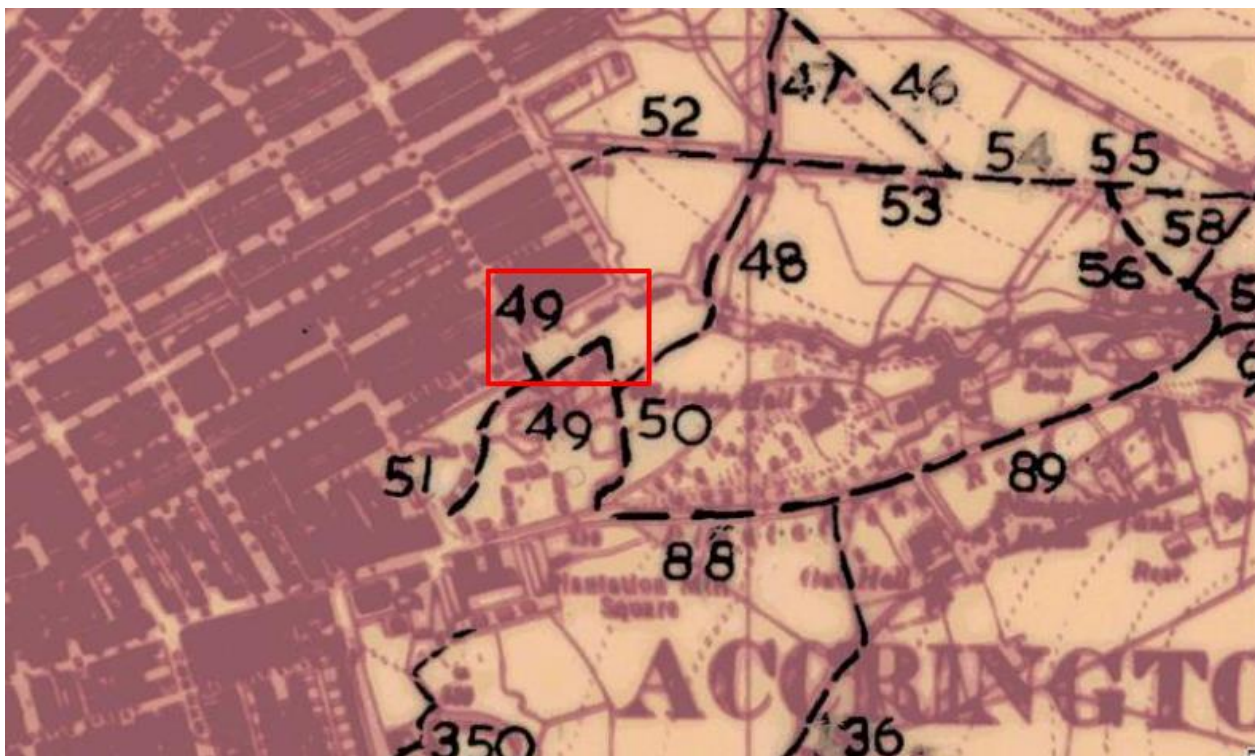


2011

| | | |
|----------------------------------|-----------|--|
| Observations | | The images taken in 2009 and 2011 both show the application route open and available to use at that time. |
| Investigating Officer's Comments | | Whilst no inference can be made with regards to the existence of public rights the images support the user evidence submitted in support of the application. |
| Definitive Map Records | | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> |
| Parish Survey Map | 1950-1952 | The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, |

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| | | often containing considerable detail exist for most parishes but not for unparished areas. |
| Observations | | Accrington is a former Municipal Borough for which no parish survey was carried out. |
| Draft Map | | The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented. |
| Observations | | The application route is not shown on the Draft Map and no representations were made to the County Council relating to it. |
| Provisional Map | | Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court. |
| Observations | | The application route is not shown on the Provisional Map and no representations were made to the County Council relating to it. |
| The First Definitive Map and Statement | | The Provisional Map, as amended, was published as the Definitive Map in 1962. |
| Observations | | The application route was not shown on the First Definitive Map. |
| Revised Definitive Map of Public Rights of Way (First Review) | | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, |

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| | | <p>extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p> |
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| Observations | | The application route is not shown on the Revised Definitive Map First Review. |
| Investigating Officer's Comments | | From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way which should be shown. There were no objections or representations made with regards to the fact that it was not shown when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map. |
| Highway Adoption Records including maps derived from the '1929 | 1929 to present day | In 1929 the responsibility for district highways passed from rural district councils to the County Council. For the |

Handover Maps'

purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. A similar transfer of maintenance responsibility from urban district and borough councils took place later and the working maps of maintainable highways were derived from these records.

A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.

The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.





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| Observations | | The application route is not recorded as a publicly maintainable highway on the county council's highway records. (It is noted that the older record suggests a wider extent of Hodder Street is highway but colleagues in Highways inform us that this was checked and corrected when the GIS version was made.) |
| Investigating Officer's Comments | | The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn. |
| Highway Stopping Up Orders | 1835 - 2014 | Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date. |
| Observations | | No legal orders relating to the creation, diversion or extinguishment of public rights have been found. |
| Investigating Officer's Comments | | If public rights are found to exist along the application route they do not appear |

| | | |
|---|--|--|
| | | to have been subsequently diverted or extinguished by a legal order. |
| Statutory deposit and declaration made under section 31(6) Highways Act 1980 | | <p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p> |
| Observations | | No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs. |
| Investigating Officer's Comments | | There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land. |

The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Summary

There is insufficient historical map and documentary evidence from which public rights can be inferred.

The map and documentary evidence does however support the user evidence submitted with regards to the fact that a route physically existed and appeared to be capable of being used possibly from the mid to late 1960s past a large garage and then across open ground after the garage was demolished and certainly for the past 21 years as evidenced by the sequential Google Earth Pro aerial photographs.

Head of Service – Legal and Democratic Services Observations

Landownership

The land crossed by the application route is in a private ownership plot with a short section at point B crosses land owned by Westdale Lancashire Limited which is recently dissolved. The present owners acquired in 1997. Ownership prior to 1997 is presently unknown.

Information from the Applicant

The applicant provided bundle of documents with the application, these included;

- A survey of use of the application route conducted on 15th September (presumably in 2021) between 0700 and 1900. This recorded an average frequency of use as one user every 2.5 minutes. A total of 290 instances of use were recorded.
- A letter confirming the local authority used the route.
- A photograph from 1984 showing the access to the route.



- 2 maps showing the route from Alltrails & Outdoor Active.

- Aerial google images of the route.
- A copy of crime statistics for the area.
- Photographs of the application route showing no signs or barriers in place.



- An OS map extract showing the route.
- A petition signed by 506 people who wish for access to be protected.

- 53 completed user evidence forms which are summarised below.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1949 and up to 2021 when the application to record the right of way was made.

| 20+ Years (Including the years 2001 to 2021) | 20+ Years (Not including the years 2001 to 2021) | 1-19 Years (Including use up to and including 2021) | 1-19 Years (Not Including use up to and including 2021) |
|--|--|---|---|
| 43 | 1 | 8 | 1 |

Use of Route up to 1996

The table below considers use of the route prior to the acquisition of the land by the current landowner's family in 1997.

| 20+ Years (Including the years 1976 to 1996) | 20+ Years (Not Including use up to and including 1996) | 1-19 Years (Including use up to and including 1996) | 1-19 Years (Not Including use up to and including 1996) |
|--|--|--|--|
| 15 | 1 | 20 | 1 |

15 used the route from 1976 (or before) through 1996, representing a full 20 years use (or more) up to 1996.

1 user used it for 20 years prior to 1996 but had stopped using it before 1996.

20 other users used the route through 1996 but their use started after 1976 so their use does not represent a full 20 years.

1 user used it for less than 20 years before 1996 and had also stopped using it prior to 1996.

Method of Use

All but one of the users recorded use on foot, the remaining user recorded use by motorised wheelchair. Seven of the users on foot recorded additional use by pedal cycle, one user on foot recorded use by motorised vehicle.

Frequency of Use

The table below shows the frequency of use recorded on foot.

| More than once Daily | Daily | Weekly | Monthly | Every few months |
|----------------------|-------|--------|---------|------------------|
| 2 | 27 | 13 | 6 | 7 |

The user using the route with a motorised wheelchair recorded daily use.

Frequency of use varied for those recording additional use of the route by methods other than on foot. One user recorded daily use by pedal cycle for a period of ten years. One recorded use two to three times a week by pedal cycle. One recorded weekly use by pedal cycle. One recorded monthly use by pedal cycle and two recorded use by pedal cycle every few months. One recorded use by pedal cycle once per year. The user recording use by car noted that they used the route weekly.

Reasons for Use

Reasons for use were generally leisure and walking for pleasure. Dog or pet walking was mentioned by eleven users. Many users noted use of the route to access the local playing fields, as part of a route to visit friends and the local allotments. Two noted use as part of a longer walk to reach the coppice nearby. Eight users noted use of the route to access the local school and four users recorded use of the route when travelling to work.

Other Users of the Route

All fifty three users recorded seeing use by others.

Nine users stated that they had seen others using the route on foot only.

Two users recorded others using the route on foot and horseback.

Three users recorded others using the route on foot and bicycle.

Five users recorded others using the route on foot and bicycle/horse drawn vehicle. Of these. Two of these users also recorded others using the route by electric wheelchair and one of them noted use by disability scooters and prams.

Ten users recorded others using the route on foot, horseback and bicycle. Of these users two noted use by others in wheelchairs, one of these noted use by "disability vehicles" and pushchairs. One user additionally recorded others "dangerously" using the route by motorbike.

Twenty one users recorded others using the route on foot, horseback and bicycle/horse drawn vehicle. Of these three noted others using the route with mobility scooters and prams, one also noted use by wheelchairs.

Three users recorded others using the route on foot, horseback, bicycle/horse drawn vehicle and motorised vehicles. Two of these users specified others using the route by motorised wheelchair, one also noting use with prams.

Consistency of the Route

The majority of the fifty three users stated that the route had always followed the same route. One stated no but did not elaborate. Three stated that they did not

know. One stated that there used to be a large garage "to the left hand side". One of the users answered yes but clarified the route was now wider, clarifying that it had been wide enough for a "double buggy" circa 1980.

Unobstructed Use of the Route

None of the fifty three users recorded having been prevented from using the route due to obstructions.

None of the users recalled seeing any signs stating the route was not public, or otherwise.

One user noted gates along the route at the "top of the back of Hodder Street".

Seven users noted stones or concrete blocks placed on the route, these were noted as restricting vehicular use of the route.

One user noted being told the route was not public by an "unknown lady" in July 2021.

This user also noted that they were turned back at this time whilst a mini digger was working adjacent to the route. Another user also recalled being turned back in the summer of 2021 when two people were cutting down trees in the summer of 2021.

Information from Others

The residents of the adjoining property, 48 Hodder Street, provided information with the landowner's response to consultation which is detailed below.

They noted that the land in question has become a dumping ground for local allotment holders and householders making the area look an eyesore.

They went on to note that the landowners have made several attempts to clean up the land and put in concrete sections to try to restrict access to people with wheelbarrow, vehicles etc. to prevent this dumping but all to no avail. In fact, the council have had contractors put a path across the land which has made it easier to traverse a wheelbarrow onto the land to dump rubbish. They believe that there was never a designated footpath at the side of their house and so should never have happened.

They noted that people have been pulling down and removing section of the herras fencing erected at the site for no other reason but to "cause destruction to private property and laziness that prevents them from walking a maximum of 200 yards to go onto the designated footpath six house down or the footpath, also put in by council contractors 200 yards higher up the thoroughfare." They note having to secure the fence at least 3 times with ties to the lamp post, using more secure tie each time but every time these have been forcefully removed. They state that only about 8 properties will be affected by the erection of a dwelling on this land and "these householders will have a maximum of an extra 200 yards to walk which as

these householders are using the path to walk their dogs this should not be much of an issue as the dogs would get a bit extra exercise."

They went on to opine that the route is "not extremely widely used as anyone wanting access to the football pitch area use the signposted designated footpath at the rear of the houses on Hodder Street and the people who come along Waddington Road use the top path adjacent to the most easterly allotment which has a hard compacted surface suitable for prams etc."

The resident of 48 Hodder Street noted local efforts to record use of the route and to form a petition in support of the application.

They also noted a noise issue "for the past number of years due to people using the land as a cut through then shouting to each other at all times of day and night."

Information from the Landowner

Prior to consultation the landowner of the majority of the land crossed by the application route contacted Lancashire County Council.

They confirmed the land in their ownership and advised that they had applied to Hyndburn Council for planning permission for a dwelling to be built on the affected land.

The landowner accepted that it appeared that Hyndburn Borough Council had made the application route a footpath, however the landowner opined that this was done illegally and attached correspondence from Hyndburn Borough Council the body of which is copied in below.

Re: Land adjacent to 48 Hodder Street, Accrington

Further to your letter of 18th October 2021. I can confirm that sometime in March 2014 the Council completed improvements to the footpath that runs along the playing field between Plantation Street and Hodder Street including what appeared to be a continuation of the footpath on land adjacent to 48 Hodder Street.

You informed the Council soon after that the land adjacent to 48 Hodder Street belonged to yourself and you called into the office with proof to that effect. The Council then removed the materials that had been laid on your land as requested.

Unfortunately, I don't have any recollection or information of the Travellers you refer too.

Should you require any further information, please do not hesitate to contact me at this office.

The landowner refers to his father demolishing the old garage on the site. They give evidence of having erected barriers and fencing, having put large rocks/stones across the path and having put up private land signs which have been removed. The landowner stated that they had often placed barriers of various descriptions across the plot to block the pathway, specifying tree trunks, big rocks and fencing but, clarifying that they do not live on site they pointed out these obstructions were often pulled down, dragged out of the way or removed by force. The landowner went on to clarify that after the recent discussion with Hyndburn Borough Council they had

"ripped up the footpath and secured the plot only for the fencing to be dismantled yet again."

The landowner noted a previous planning application from May 2012 which was withdrawn prior to any conclusion but noted that the application is registered with Hyndburn Borough Council.

It was clarified that although the land was purchased in 1997 it was not registered with the Land Registry until January 2002 and the landowner stated that at this point there was no footpath across the plot.

Following our consultation, the aforementioned landowner provided a response laying out much of the information already noted and again providing a copy of the letter from Hyndburn Borough Council mentioned above.

In this response to consultation the landowner stressed that there was no intention to dedicate the land and again pointed out the barriers erected at various times stating that use could not be 'as of right' and that users of the route were trespassers. The Owner provided comments from an alleged community Facebook group concerning the footpath which advocates the removal of the rocks.

Assessment of the Evidence

The Law - See Annex 'A'

The application in this matter seeks to find that a footpath already exists in law along this route.

There is no dedication agreement but there is user evidence and some supporting documentary evidence of the availability of a route and evidence of a trodden path on aerial photograph. Committee is advised to consider both inference of dedication at common law from all the circumstances including use, and deemed dedication under S31 Highways Act. Committee is advised that a deemed dedication under S31 requires 20 years use to be called into question and be without interruption and there be insufficient evidence of an owners intention to dedicate a highway route. Inference at Common Law requires sufficient evidence on balance of an intention to dedicate which can come from acquiescence in use by the public over several years and taking no action.

The user evidence is detailed in the report and the information provided from the present owners who have owned the land crossed by the route since 1997.

The actions said to be taken by the owners since 1997 and their effect on users are not clear regarding dates and effect. One sufficient action taken by an owner can mean that many years of use by the public are not sufficient to evidence that the route has become a highway in law. Various actions may turn out to have affected sufficient users to be a calling into question, or a sufficient interruption or sufficient evidence of an intention not to dedicate. It is always difficult to assess whether use may be as of right and without interruption ending in a calling into question when user evidence is silent as to any real difficulties until perhaps recent years and yet

owners actions are referred to. Some actions by the landowner are corroborated by the next-door owner but they do refer to use referring to people using the land as a cut through.

Prior to the present owners acquiring the land in 1997, there is still good evidence of use and a trodden line in the 1960s photograph and no reference to any action by the owner. It may be that Committee may consider that there is sufficient evidence from which to infer a dedication at Common Law prior to 1997 evidenced by said use. This was use of a narrow pathway.

It is considered that the Committee may be content on balance to find sufficient evidence to be able to reasonably allege an inference of dedication by the previous owner of a footpath under common law and that an Order be made. As the confirmation test is a higher test it is advised that once the objection period is over and user evidence more clear that the matter is returned to Committee for a decision as to what stance to take regarding the confirmation of the Order.

Risk management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

Local Government (Access to Information) Act 1985 List of Background Papers

| Paper | Date | Contact/Directorate/Tel |
|---------------------------------------|------|--|
| All documents on File Ref: 804-728 | | Simon Moore, 01772 531280, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A

- Application route A-B
- Route identified on aerial photograph taken in the 1960s
- Public Footpaths

