

## **Order Making Authority Statement of Case**

### **Background**

1. On 27<sup>th</sup> May 2015, Ailsa Gibson for and on behalf the North Lancashire Bridleways Society 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") to modify the Definitive Map and Statement of Public Rights of Way ("DMS") by Adding a bridleway from Thwaite Brow Lane, Bolton Le Sands to the path junction with A6, Crag Bank, Carnforth. The route comprised of two named lanes: Thwaite Brow Lane and Mount Pleasant Lane.
2. The application (Document 24) was supported by map and other documentary evidence including:
  - (a) a statement from the Applicant and in respect of the Application route a map showing the general area of the Application; a description of application route; a map showing the route of the bridleway applied for; a map showing the application route overlaid on the Definitive Map; Current digital mapping of area; a map showing the route of the bridleway applied for overlaid on a current Ordnance Survey ("OS") map and recent photographs of the route.
  - (b) Documentary Evidence was also supplied including a Summary Table of historical map evidence considered; Yates' Map of Lancashire, 1786; Hennet's County Map, 1829; Tithe Maps of Cumberland and Lancashire (more specifically Carnforth and Bolton-le-Sands), 1846; OS First Edition Map, 1891; OS 6-inch Map Lancashire Sheet XXIV, 1848; OS 6-inch Map Lancashire Sheet XXIV.SE, 1919; OS 6-inch Map Lancashire Sheet XXIV.SE, 1933; OS One-Inch to the mile, England and Wales, Revised New Series, 1898; and OS One-inch to the mile, 7th Series, 1952-1961, 1955 maps.
  - (c) User evidence was also submitted.
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 (Document 22). The report was considered by the OMA's Regulatory Committee on 24<sup>th</sup> February 2016 where it was resolved that the

application for a public bridleway along part of Thwaite Brow Lane and Mount Pleasant Lane be accepted in part only; that part of the application route remain recorded on the List of Streets (i.e should not be recorded as bridleway) as within the highway width of the A6 Lancaster Road and a further section, near the junction with Highfield Road, also remain recorded as vehicular highway recorded on the List of Streets (i.e. not to be recorded as bridleway). Neither of the sections in question had the characteristics to be able to be recorded as a bridleway or Byway Open to All Traffic on the DMS.

4. Committee resolved that Orders be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) and (ii) of the Wildlife and Countryside Act 1981.
5. The first Order, referred to as the Mount Pleasant Order, is the subject of this Statement of Case. This Order is to upgrade Footpath Carnforth 9 (part), Carnforth 10 and Bolton-le-Sands 19 to bridleway (section B-L on the Order Plan – although the annotation 'L' is missing from the Order Plan, in error) and to add a public bridleway between points A-B on the said Order Plan.
6. The second Order, referred to as the Thwaite Brow Order, is the subject of a separate Statement of Case.
7. It was further resolved that being satisfied that the tests for confirmation could be met, that both Orders be promoted to confirmation.
8. Notices of the OMA's decision to make the Orders, including a statement of reasons for making the Orders, were sent to affected individuals on 6<sup>th</sup> April 2016 (Document 23).
9. The Orders were duly made on 4<sup>th</sup> July 2018 ("the Orders") (Document 1). The Mount Pleasant Order was made under Section 53(2)(b) and 53(3)(c)(i) and (ii) 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 bridleway, 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 bridleway and that a highway shown in the map and statement as a highway of a particular description,

namely a public footpath, ought to be there shown as a highway of a different description, namely a bridleway.

10. Notice of the Making of the Orders were 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).
11. During the specified period for objections and representations to the Orders, the OMA received one objection (three objections but two withdrawn) in response to the Mount Pleasant Order (Document 4).
12. The objection to the Mount Pleasant Order has not been withdrawn. The Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA is submitting the Orders to the Planning Inspectorate for a determination on confirmation.
13. This Statement of Case refers solely to the Mount Pleasant Order.
14. The Mount Pleasant Order Route is shown on the Order Maps by a broken line with cross bars in the intervals and is marked A-B-C-D-E-F-G-H-I-J-K on the Order Maps.
15. Since making the Order the OMA have noted that whilst the line marking full length of the Order route is correct the notation 'L' was omitted at the southern end of the Order route adjacent to Foxfield Cottage where Mount Pleasant Lane becomes designated as unclassified road U18800. The OMA do not consider that the omission of the letter 'L' has led to any confusion or uncertainty with regards to this case but for clarity, a minor modification to show point L on the Mount Pleasant Order plan will be requested at the conclusion of this document.
16. The Order route to be added and upgraded (commonly known as part of Mount Pleasant Lane) commences from the junction with the A6 (Lancaster Road) at point A on Order Map 1 and passes in a south east direction over Thwaite Brow Canal Bridge to a junction with Footpath Carnforth 28 (point B on Order Map 1) before continuing along Footpath Carnforth 28 in a generally south south westerly direction to Mount Pleasant Farm and the Carnforth/Bolton le Sands parish boundary at point K on Order Map 2 before continuing in a generally southerly direction to the junction with Mount

Pleasant Lane (U18800) adjacent to Foxfield Cottage on Order Map 2; a total distance of approximately 1.05 kilometres and at a width varying between 3 and 7 metres.

## Legal Issues

17. 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 S53(3)(c)(i) and (ii) 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 bridleway; the discovery by the OMA of evidence which (when considered with all other relevant evidence available to them) shows that rights of way which is not shown in the map and statement subsist or is reasonably alleged to subsist over land in the area to which the DMS relates, namely a bridleway; and that a highway shown in the DMS as a highway of a particular description, namely a public footpath, ought to be there described as a highway of a different description namely a bridleway.
18. The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be modified. S53 permits both upgrading and downgrading of highways and deletions from the map. The statutory test at S53(3)(b) refers to the expiration of a period of time and use by the public such that a presumption of dedication is raised. The statutory test at S53(3)(c)(i) 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 respective Orders.
19. 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.

20. Accordingly, for the Mount Pleasant Lane 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 that a highway was already dedicated on the Order route and the route should be recorded on the DMS as a bridleway.
21. The relevant statutory provision in relation to the dedication of a public right of way by modern user is Section 31 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 intention during this period to dedicate the public right of way.
22. It is the view of the OMA that the Order route subsists as a bridleway and should be recorded as such on the DMS (Document 15 and 19).

### **Historical Map and Documentary Evidence**

23. 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.
24. The map and documentary evidence examined supports the user evidence in that the route appears to have been a substantial track, largely enclosed, capable of being used by horse riders and possibly vehicles since 1780s.
25. The early commercial maps indicate that this through route existed from late 1700s and is shown on all subsequent commercial small-scale maps and all Ordnance Survey maps examined including the small-scale first and second edition 1 inch maps published in the 1800s. These maps were primarily produced for travellers suggesting the route was available for at least horse riders.

26. The earliest small-scale map examined (Yates' Map of 1786) shows the Order route existing prior to the construction of the Lancaster Canal and the fact that the canal bridge was constructed in a location that provided for this through route, as well as access to properties which could have been served by a bridge in an alternative location supports its status as a public route.
27. The Tithe Maps prepared in 1846 show the route south of Mount Pleasant (point K) was considered to be public highway and that the full length whilst partly unenclosed and therefore gated and subject to tithes existed and appeared capable of being used as part of a longer through-route supporting the existence of a historical bridleway. It is therefore the OMA's case that the route in question (A-L) should be recorded as a bridleway.

#### User Evidence

28. The applicant submitted user evidence in support of their application as mentioned in paragraph 2 of the Statement.
29. The user evidence forms relevant to use of Mount Pleasant Lane (the Order route) were considered by the OMA.
30. 11 completed user evidence forms were provided detailing use and knowledge of the Order route (with 1 of those forms filled in by two people).
31. The information provided in the forms was considered by the County Council's Regulatory Committee and is detailed within the report presented to them (Document 22).
32. The OMA submit that the Order route is a historical public bridleway and that inferred dedication can on balance be satisfied. Public rights were called into question in 2013 (when the bridleway application was made) and whilst user evidence was submitted in support of the 2013 application, it is the OMA's case that the Order route was already dedicated as a public bridleway and that the user evidence supports the view that the route already had public rights.

33. However, should the Inspector be minded to consider that bridleway rights were established at a later date than the user evidence submitted supports dedication of the route during the period 1993-2013.

### **Summary**

34. This investigation has been carried out based on historical map and documentary evidence and the submitted modern user evidence.

35. The Order route is currently partly recorded as a public footpath.

36. It should be noted that both where the route already appears on the Definitive Map, in this case as a public footpath, and where the Order is for an addition to the DMS the standard of proof required for the Order to be confirmed is that the way subsists on the balance of probabilities.

37. There has been no express dedication in this matter. The OMA considers, on balance, that there is sufficient evidence from to infer dedication at common law from all the circumstances or for the criteria in S31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

38. Looking firstly 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 on balance indicated how the route should be recorded. The analysis of the map and documentary evidence provides strong evidence that the route is of at least bridleway status.

39. The OMA considers that the various map and documentary evidence does, on its own, indicate that the Order should be confirmed.

40. Turning to the user evidence, in order to satisfy the criteria for S31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient

evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

41. The first consideration is to determine whether the route is called into question, the OMA considers that on balance that the "calling into question" would be the application itself in 2013 and that the 20-year period under consideration would therefore be 1993 – 2013.
42. It is suggested that in the absence of there being sufficient map and documentary evidence from which to infer public rights there is sufficient quantity and quality of user evidence to find bridleway status has been dedicated.
43. There is no evidence that a legal stopping up of any part of the route has ever taken place.
44. The OMA states that any 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.
45. The OMA submits that bridleway 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.
46. The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above is met. The objection received does not give any grounds for the OMA to reverse its decision on promoting the Orders to confirmation. The OMA therefore respectfully requests that the Planning Inspector confirms the Order, with a minor modification to show point L on Order plan 2.