

THE LANCASHIRE COUNTY COUNCIL
(FOOTPATH FROM CLITHEROE STREET TO GUY STREET,
PADIHAM, BURNLEY)
DEFINITIVE MAP MODIFICATION ORDER 2017

Lancashire County Council's (the Order Making Authority – 'OMA') Comments on Objections

Fifteen duly made objections to the Order were received by the OMA, one of which (from the local community support police officer) was subsequently withdrawn. In addition, six representations, in favour of the Order were received during the Notice period (Document 4).

Copies of the objections are contained within the List of Documents (Document 4) and are summarised below.

The points of objection are summarised in italics below with the OMA's response indented after each as follows:

1) Mr Jason Stephenson of 62 Victoria Apartments, Padiham, Burnley BB12 8PX

Questions the evidence in support of the Order, challenging whether there has been 20 years user. States that the path is private residents' use and maintained as such. Concerned about potential anti-social behaviour, crime and safety issues. Questions the need for the Order route.

The Order has been made because the OMA considers that there is sufficient evidence to infer the dedication of a public footpath at common law whereby it is considered that there is sufficient evidence of an owner's intention to dedicate a route and that the route was then accepted (i.e. used) by the public. The common law provisions do not require evidence that the route has been used for a full 20-year period.

The objector refers to the fact that the Order route is not specified as being a public right of way in his property deeds however it is common practice for public rights of way not to be included in property deeds (recording them serves no purpose for the deed holder) and the fact that public rights are not included does not mean that they do not exist.

The OMA is not seeking to create new public rights but to record public rights considered already to exist and in that respect the question of whether there is now a need for the route is not relevant to the confirmation of the Order.

To be relevant, representations or objections should relate to the existence or status of the route and therefore issues such as understandable concerns over privacy, security, fear of crime, anti-social use or loss of amenity are unlikely to be relevant.

Should the Order be confirmed, it may be possible to address such issues working with the current landowner and police - but the granting of planning permission does not extinguish public footpath rights and should the Order route be found to have already been dedicated as a public footpath prior to the granting of planning permission to erect fencing across the route, that fencing is nonetheless an obstruction of a public path rather than evidence against the existence of a pre-existing public path.

2) Daniel Walton of 36 Fairways Drive, Burnley BB11 3QF

Concerned about potential anti-social behaviour. States that the Order route is private and maintained as such.

Concerns over privacy, security, fear of crime, anti-social use or loss of amenity are unlikely to be relevant to the question of whether public rights already exist. Should the Order be confirmed, it may be possible to address such issues working with the current landowner and police.

The Order route crosses land in private ownership and is currently fenced off but this does not mean that public rights along the route could not, or do not, exist. The OMA considers that public footpath rights were dedicated by the previous landowner and that the fencing erected across the route is unlawful.

3) Richard Crane of 4 Victoria Apartments, Padiham BB12 8PX

Concerned about anti-social behaviour, theft, and vandalism etc. Situation improved after erection of gating and fencing. Concerned about safety. Questions the evidence in support of the Order route. States Order route is for residents' use only and maintained accordingly. Questions need for the Order route.

The objections raised duplicate those made by Objectors 1 and 2 above and the OMA therefore refers to comments made in respect of those objections.

4) Martin Parker of 19 Victoria Apartments, Guy Mill, Padiham BB12 8PX

Refers to granting of planning permission for erection of fencing and gates partly due to past instances of vandalism and anti-social behaviour. Concerned about public safety. Nothing stated in property deeds and denies the Order route has ever been designated as a public access.

The objections raised duplicate those made by Objectors 1 and 2 above and the OMA therefore refers to comments made in respect of those objections.

Property deeds very rarely refer to the existence of public rights and the fact that they are not recorded does not mean that they do not, or could not, exist.

5) Anthony Kirby of 8 Victoria Apartments, Guy Street, Padiham, Lancashire BB12 8PX

Mentions planning permission having been given for the erection railings and gates by Burnley Council. Concerned about potential anti-social behaviour. Says the installation of the gates has virtually eliminated such problems. Fears problems may

return if the Order route is opened. States that the deeds for the apartments have been checked and there is no mention of any public access rights and mentions lack of the required 20-years for presumed dedication.

In a further comment, the relevance of the Wildlife & Countryside Act 1981 and evidence supporting the Order are questioned.

When planning permission was granted for security fencing around the site the Order route was not recorded as a public right of way but this does not necessarily mean that it did not exist. As part of the planning process concerns were expressed to the Borough Council about the blocking of the route (including the submission of a petition including 57 signatures) and although permission was granted it was clearly noted by the Borough Council and communicated to the landowner that the blocking of the route may prompt an application to record the Order route as a public footpath (Document 24).

The granting of planning permission does not extinguish public footpath rights and should the route be found to have already been dedicated as a public footpath prior to the granting of planning permission it will still be necessary to re-open it.

The OMA is not seeking to create new public rights but to record public rights deemed already to exist. As such issues regarding misuse of the path, anti-social behaviour and vandalism, whilst important issues regarding the management of the route are not relevant to the making or confirmation of the Order.

To be relevant, representations or objections should relate to the existence or status of the route and other issues - such as privacy, security, fear of crime, anti-social use or loss of amenity are unlikely to be relevant.

Should the Order be confirmed, it may be possible to address such issues working with the landowner, Borough Council and police.

With regards to the fact that public rights are not included in the property deeds it has already been explained that it is usual practice for public rights of access not to be included in property deeds. The fact that public rights are not included does not mean that they do not exist.

The Order has been made because the OMA considers that there is sufficient evidence to infer the dedication of a public footpath at common law whereby it is considered that there is sufficient evidence of an owner's intention to dedicate a route and that the Order route was then accepted (i.e. used) by the public. The common law provisions do not require evidence that the route has been used for a full 20-year period.

With regards to the Objector's last point, The Wildlife and Countryside Act 1981 is the relevant legislation applying to all applications to record public rights of way in both rural and urban areas.

6) Paul Kenny of 30 Victoria Apartments, Padiham, Burnley BB12 8PX

Denies there has ever been a public right of way in existence and any supporting documentary evidence. Mentions original developers and Burnley Borough Council creation of a pedestrian link but refers to no supporting evidence. Also raises security concerns, anti-social behaviour (eg thefts, lighting fires etc). Since the gates' installation anti-social problems have been eradicated. Is concerned about liability arising from potential accidents and queries its need.

The objections raised duplicate those made by Objectors 1 and 2 above and the OMA therefore refers to comments made in respect of those objections.

The Order has been made because the OMA consider that there is sufficient evidence to infer the dedication of a public footpath at common law whereby it is considered that there is sufficient evidence of an owner's intention to dedicate public rights when the route was constructed and then accepted (i.e. used) by the public.

7) Miss Carol Eliana Moore of 36 Herbert Street, Padiham, Burnley BB12 8RH (and owner of 21 Victoria Apartments)

States that her property deeds made no reference to a public access. Says that Order route is private and maintained as such and that the monthly service charge paid for the maintenance of the property would have been paid by the local authority if a public right of way existed.

The point relating to the fact that the existence of public rights was not recorded in the property deeds has been covered elsewhere in this document.

The OMA would not expect the monthly service charge for the complex to be affected by the existence of a public footpath across the carpark.

8) Freehold Managers (Nominees) Limited, Butlers Wharf Building, 36 Shad Thames, London SE1 2YE

Acquired freehold title to site from original developers with no reference to the existence of any public right of way. Do not consider that public rights exist and refer to the need to show 20 years public use. Object on the basis that opening up the route would lead to issues of anti-social behaviour.

It is usual practice for public rights of access not to be included in property deeds and the fact that public rights are not included does not mean that they do not exist.

The Order has been made because the OMA considers that there is sufficient evidence to infer the dedication of a public footpath at common law whereby it is considered that there is sufficient evidence of an owner's intention to dedicate a route and that the Order route was then accepted (i.e. used) by the public. The common law provisions do not require evidence that the route has been used for a full 20-year period.

9) D J and L M Kent of 52 Furlong Lane, Alrewas, Burton Upon Trent, Staffordshire DE13 7EE

Concerned about vandalism, theft and anti-social behaviour and queries need for the Order route.

The objections raised duplicate those made by Objectors 1 and 2 above and the OMA therefore refers to comments made in respect of those objections.

10) Caroline McCardle - The Victoria Apartments Management Team on behalf of owners of the apartments located at Victoria Apartments, Guy Street, Padiham, Burnley BB12 8PX

Refers to sales documents and associated leases as part of a private complex. The Order route has never been dedicated as a public footpath and the planning permission granted to Kiely Developments Limited was not implemented with respect to the provision of the Order route as a public path. Raises safety concerning about the Order route and concern over anti-social behaviour and criminal activity. Documents that there has not been 20 years usage of the route. Suggests there are other alternatives to the Order route and raises concern that not all residents affected by the application were consulted.

As previously explained it is not uncommon for public rights of access not to be included in property deeds and the fact that public rights are not included does not mean that they do not exist.

The provision of the Order route as a pedestrian link from Clitheroe Street to Guy Street was not a condition of the planning permission. Details were included in the Decision Notice under the heading 'Notes' as being something desirable but not strictly required. As such, the fact that the route was still provided by the developer provides a strong indication that the route was intended as a public pedestrian route and the fact that ramps were not provided and no Order was made in relation to Clitheroe Street are not factors that mean that planning permission was not implemented and the Order route not dedicated.

The OMA case is that the Order route is already a public footpath in law and that there is enough evidence of the owner's intention to dedicate a footpath to the public in 1996 and that there has been clear acceptance by the public such that dedication can on balance be inferred at common law.

The plan approved as part of the planning permission shows the Order route as a pedestrian walkway and the documents indicate that it was intended as a pedestrian link with no indication that it was not intended for public use. The documents themselves would arguably not be sufficient but in this case, but the Order route was physically constructed on site by the owner. Moreover, the Order route has then been used by the public. In the circumstances, therefore, the OMA has concluded that dedication and acceptance can be inferred at common law and that it is not necessary to rely on 20 years usage of the route.

With regards to consultations the OMA can confirm that all requirements in relation to the original application and notification of the making of the Order were carried out as required.

The OMA are not seeking to create new public rights but to record public rights deemed already to exist. As such issues regarding misuse of the path, anti-social behaviour and vandalism, whilst important issues regarding the management of the route, are not relevant to the making or confirmation of the Order.

To be relevant, representations or objections should relate to the existence or status of the route and other issues - such as privacy, security, fear of crime, anti-social use or loss of amenity are unlikely to be relevant.

Should the Order be confirmed, it may be possible to address such issues working with the landowner, Borough Council and police.

11) Matthew Grimshaw

Expressed concern about the safety and security of the residents of the apartments and that public access is not essential. Believes the route crosses land that is private property and that the area is maintained accordingly.

The OMA is not seeking to create new public rights but to record existing public rights. As such issues regarding anti-social behaviour, vandalism and security, whilst important issues regarding the future use or management of the route, are not relevant to the making or confirmation of the Order and have been covered in the responses to Objectors 1 & 2.

Similarly, whether public access is now considered to be essential or not cannot be taken into account in the determination of this Order.

Most public rights of way run over privately owned land and the fact that the Order route crosses land that is privately owned (and maintained as such) does not mean that public rights do not, or could not, exist across it.

12) Caroline Whitaker, 44 Victoria Apartments, Guy Street, Padiham BB12 8PX

Initially objected because of concern over security, vandalism and anti-social behaviour before submitting further objections regarding the fact that the Order route is in an urban setting and the use of legislation detailed in the Wildlife & Countryside Act 1981 was therefore not correct, that there was no evidence of 20 years use of the route by the public or of an intention to dedicate a public right of way, the evidence that the OMA relied on was insufficient to show a public footpath exists and that the decision made by the OMA was not a balanced one, with no need for an additional footpath to be created.

As previously stated, the OMA is not seeking to create new public rights but to record public rights deemed already to exist. As such issues regarding the existence of a suitable alternative route, concerns over security, vandalism, anti-social behaviour and dog fouling whilst important issues regarding the future use or management of the route are not relevant to the making or confirmation of the Order.

The Wildlife and Countryside Act 1981 is the correct and only legislation to be used in respect of recording public rights on the Definitive Map of Public Rights of Way. The OMA has followed the correct procedure investigating the matter

and coming to the conclusion that on balance there is enough evidence of the owner's intention to dedicate a footpath to the public in 1996 and that there has been clear acceptance by the public such that dedication can on balance be inferred at common law.

The plan approved as part of the planning permission shows the Order route as a pedestrian walkway and the documents indicate that it was intended as a pedestrian link with no indication that it was not intended for public use. The documents themselves would arguably not be sufficient but in this case, but the Order route was physically constructed on site by the owner. Moreover, the Order route has then been used by the public. In the circumstances, therefore, the OMA has concluded that dedication and acceptance can be inferred at common law and that it is not necessary to rely on 20 years usage of the route.

13) Lesley Sunderland of 23 Victoria Apartments, Padiham, Burnley BB12 8PX

Refers to granting of planning permission for erection of fencing and gates partly due to past instances of vandalism and anti-social behaviour. Concerned about public safety. Nothing stated in property deeds and denies the Order route has ever been designated as a public route. Makes reference to the existence of alternative routes being available.

The objections raised duplicate those made by Objectors 1 and 2 above and the OMA therefore refer to comments made in respect of those objections.

14) Carole and Edward Parker, co-owners of 19 Victoria Apartments, Guy Street, Padiham

Refers to granting of planning permission for erection of fencing and gates partly due to past instances of vandalism and anti-social behaviour and concern about public using the steps. Explains that property deeds do not refer to the existence of public rights and denies the Order route has ever been designated as a public access.

The objections raised duplicate those made by Objectors 1 and 2 above and the OMA therefore refers to comments made in respect of those objections.

15) Lisa Tyler, Police Community Support Officer, Gawthorpe Neighbourhood Police Team

There is no need extra access between Clitheroe Street and Guy Street. From a policing point of view the footpath is not a good idea as there are problems with anti-social behaviour including stone throwing, youths climbing on the side of Victoria Apartment and trying to get into people's windows, grates being removed and drug dealing in the area. Opening up the footpath would give criminals and anti-social youths another escape route or a more secluded area to deal drugs.

Concerns expressed by the Police in 2017 are clearly justified and it is understandable that so many objections have been received to the Order as a result.

As has been reiterated throughout this document, The OMA is not seeking to create new public rights but to record public rights deemed already to exist. In

that respect the question of whether there is now a need for the route or the possible implications of re-opening it, are not relevant to the confirmation of the Order. Issues regarding misuse of the path, anti-social behaviour and vandalism, whilst important issues regarding the management of the Order route are not relevant to the making or confirmation of the Order.

Should the Order be confirmed, it is hoped that it would be possible to address such issues, if they are still relevant today, working with the current landowner, local authority and police.

PCSO Tyler contacted the OMA again on 24th October 2017 explaining that as a non-resident a formal objection would be inappropriate and asking that her original email be treated as a prompt to keeping the Police informed regarding the outcome of the order making process and future management of the path should the order be confirmed.

Conclusion

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.