

**WILDLIFE AND COUNTRYSIDE ACT 1981
THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF
LANCASHIRE**

**THE LANCASHIRE COUNTY COUNCIL
FOOTPATH FROM HIGHER ROAD TO WELLBROW DRIVE, LONGRIDGE
DEFINITIVE MAP MODIFICATION ORDER 2017**

Order Making Authority Statement of Case

Background

1. On 26th September 2016, the late Mr Danny Lovatt (deceased) of 33 Wellbrow Drive, Longridge PR3 3TB applied 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") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by recording a public footpath from Higher Road to Wellbrow Drive, Longridge, Ribble Valley (Document 45).
2. The application was supported by plans, copy correspondence/newspapers, a DVD showing the Order route in 2008 and 2013, photographic and user evidence.
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 together with their recommendation that the application should be accepted. (Document 20). The report was considered by the OMA's Regulatory Committee on 25th January 2017 where the decision was made to modify the DMS by recording a footpath along shown as A-B-C on the Order plan.
4. Notice of the OMA's decision to make an order, including a statement of reasons for making the Order, was sent to affected individuals on 19th September 2017 (Document 44).
5. A Definitive Map Modification Order was duly made on 20th September 2017 ("the Order") (Document 1). The Order was made because it appeared to the OMA that the DMS for Lancashire required modification in consequence of an event specified in Section 53(3)(b) and Section 53(3)(c)(i) of the 1981 Act namely the

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expiration, in relation to any way in the area to which the map relates, 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/or the discovery by the 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 footpath.

6. Notice of the Making of the Order was served on affected individuals and prescribed organisations, erected on site and published in the local press on 18th October 2017 in accordance with paragraph 7 of Schedule 15 of the 1981 Act (Document 6).
7. During the specified period for objections and representations to the Order, the OMA received two objections (Document 4) - one from the adjacent landowners (Mr and Mrs Seed) together with a Mrs Martin, and the other being an anonymous objection submitted by a 'Local Resident'.
8. The objections have not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA is submitting the Order to the Planning Inspectorate for a determination on confirmation.

The Order Route

9. The Order route starts on Higher Road, Longridge, at Point A on the Order plan running in a north westerly direction along a 3 metres wide track between house numbers 71 and 71a Higher Road for approximately 40 metres passing an electric substation to point B on the Order Map and then continues along a path varying in width between 1 metre and 0.80 metres between garages and boundary fences of 18 and 20 Wellbrow Drive to terminate at the junction with

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Wellbrow Drive at point C on the Order plan. The total length of the route is approximately 75 metres.

10. Photographs of the Order route, taken in December 2016, and presented to the OMA's Regulatory Committee at their meeting on 25th January 2017 are included in the OMA's submission (Document 43).

Legal Issues

11. 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) of the 1981 Act namely the expiration, in relation to any way in the area to which the map relates, 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/or the discovery by the OMA 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 DMS relates, namely a footpath.

12. The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered. S53 permits both upgrading and downgrading of highways and deletions from the map. The statutory tests at S53(3)(b) and S53(3)(c)(i) each comprise two separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. 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 Order.

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13. 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.
14. Accordingly, for the 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 a footpath was already dedicated on the Order route and the route marked A-B-C on the Order plan should be added to the DMS as a footpath.
15. It should also be noted that a 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 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 any intention during this period to dedicate a public right of way. Section 31 does not necessarily preclude dedication of a public right of way under common law, however.
16. It is the view of the OMA that Order route subsists as a footpath and should be recorded as such on the DMS (Document 15).

Evidence

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17. The OMA considered on balance, whether there was sufficient evidence from which to have the Order route's dedication inferred at common law from all the circumstances although the Inspector may also decide in the alternative that it meets the criteria in section 31 Highways Act 1980 for a deemed dedication based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.
18. None of the land crossed by the Order route is registered with the Land Registry and ownership is unknown.
19. Investigations into the history of the land crossed by the Order route suggest that the land crossed by the route A-B-C was owned by Mr William Sanderson and Mr John Sanderson prior to being sold to a developer in the early 1960s. The developers were Pius A. Baines and Son (Preston) Limited and the company is no longer in existence.
20. It appears that when the properties on Wellbrow Drive were sold the Limited Company retained ownership of the strip of land over which the Order route B-C runs. The land may have passed to the Crown but the owner with the original intention behind constructing the path between points A-B-C is now not available.
21. There is no map or documentary evidence to suggest that the Order route existed as a through route before the land was sold by Messrs. Sanderson and Wellbrow Drive and the associated housing development was built in the early 1960s.
22. Land Registry documents for the two properties situated adjacent to the Order route on Wellbrow Drive (Documents 22, 23, 24, 25, 26 and 27) confirm that the properties were built in the early 1960s. Conveyances relating to both properties are dated 1961 and detail the sale of each of the properties by the builders (A. Baines and Son (Preston) Ltd.) to the original householders. Plans contained in both

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conveyances show the Order route C-B marked as a footpath and show the continuation of the route towards point A. The properties are split by the Order route and when sold neither property included any part of the Order route suggesting that the Order route was intended to provide public access through to Higher Road.

23. A further conveyance dated 1962 for the sale of land for the purpose of constructing the electricity substation which is located partway along the Order route (Document 39, 40 and 41) contains a plan showing the full length of the Order route. Between point A and point B the route is described as a 'Track'.

24. Land registry documentation relating to the cottages numbered 51-71 Higher Road (known collectively as Cut Thorn Cottages) were also inspected. A conveyance detailing private rights granted to access the rear of the cottages via the Order route from point A and running along the route for approximately 34 metres was found deposited with a number of the Land Registry titles for the individual cottages (Document 28). The conveyance for the sale of 50 Higher Road was made in 1963 and relates to the sale of the cottage. It specifically refers to the sale of land by William and John Sanderson to Pius A Baines and Son (Preston) Limited on 2nd August 1961 and the fact that when that land was sold the Sandersons – who still owned the cottages fronting Higher Road reserved a right of access to pass and repass for all purposes with or without vehicles along part of the Order route from point A to gain access to the passageway running along the rear of the cottages (over which a right of access on foot was subsequently conveyed by Messrs. Sanderson to purchasers).

25. Mr and Mrs Seed (now deceased) who lived at the end cottage (71 Higher Lane) immediately adjacent to the Order route, explained in a meeting with the OMA and local police constable in 2017 (Document 29) that they purchased the property in 1968 together with 69 Higher Road. The deeds to the properties are registered although at that

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meeting Mr Seed did produce a copy of the deeds and a plan which was identical to the one contained in the conveyance detailed above (Document 28). Mr Seed confirmed that he did not own the land crossed by the Order route but that he had private rights along it. He had surfaced the route (with block paving) and erected a gate across it at the junction with Higher Road in approximately 2007.

26. The OMA have no evidence to suggest that Mr and Mrs Seed owned any part of the Order route but acknowledge private vehicular rights of access along the first part of it from point A have been reserved for owners of the cottages. Whilst having been advised by the police to make an application to register the land in his ownership he had not done so.
27. Following completion of the housing estate there is clear map evidence that the Order route existed as a through route from Higher Road to Wellbrow Drive. Access is shown on the Ordnance Survey maps from 1967 onwards (Document 36) supporting the user evidence submitted and which is consistent with the developer's intention to dedicate a public footpath through from Wellbrow Drive to Higher Road.
28. A total of 13 user evidence forms were submitted in support of the application (including one from the applicant). Since the submission of the application the applicant has died, several of the users have moved house and it has not been possible to contact them and it has been calculated that a number would now be in their late 70s, 80s or early 90s (in 2024). For this reason the OMA are submitting the Order and supporting evidence without the additional submission of witness statements that would normally provide additional information about the use of the route by those completing user evidence statements in 2016.

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29. The OMA asserts in the first instance that the Order route has been dedicated as a public footpath under common law prior to 1962 by which time the properties on Wellbrow Drive had been built and the Order route in its entirety existed and was owned by A. Baines and Son (Preston) Ltd.
30. 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 a landowner taking no action.
31. As part of the development of the housing estate a path between the houses (this was narrow between points B-C by today's standards but not unusual in the 1960s) was clearly provided and was used by the public – possibly for nearly 40 years before use was challenged by an adjacent landowner.
32. Evidence of use dated back to 1962 (Mr Fordham), and 1966 (Mr Lovatt), with three users referring to use pre 1960 which continued post 1960 (Mr Moon, Mrs Adamson and Mr Davies) suggesting that a route may already have been in existence along all or part of the Order route prior to development.
33. Much reference is made to the Order route being blocked by a resident living adjacent to the Order route and actions by him to block the path with vegetation, rubbish and building materials. There are also references to a locked gate at point C. The date when the Order route was blocked, is unclear but there are several references to it being around the late 1990s or possibly between 2000 and 2003. Video evidence submitted with the application showed that it was blocked in 2008 but open in 2014 and some use appears to have continued after it was blocked although the frequency of this use was unclear.

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34. There is no evidence to suggest that the Order route was ever blocked by the landowner and the seemingly intermittent blocking of the route by an adjacent landowner is believed by the OMA not to have called the public rights into question when it occurred, some time after 2000. Evidence submitted by the applicant suggests that use did continue of the route after this time, albeit intermittently until after the Order was made when it was reported that the adjacent landowner who had blocked the route had moved out of the property and his wife no longer prevented access.

Summary

35. It is the OMA's case that the Order route A-B-C is an existing public footpath and should be added to the DMS.

36. It is the case that as there is no express dedication that the OMA needed to consider whether there is sufficient evidence from which to have the Order route's dedication inferred at common law from all the circumstances.

37. Thirteen user evidence forms were submitted of which one was completed by the applicant. All users claim to have known and used the Order route on foot on a regular basis "as of right". All users refer to having witnessed other users whilst using the Order route.

38. The OMA consider there are circumstances from which dedication can be inferred at common law. The use as corroborated by the documentary evidence relating to the construction of houses on Wellbrow Drive suggest that it may reasonably be alleged that there are sufficient circumstances to infer dedication at common law.

39. Taking all the evidence into account, the OMA concluded that there is sufficient evidence from which to infer dedication at common law

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of a footpath in this matter and that the on balance, there is sufficient evidence for an Order to be promoted to confirmation.

Conclusion

40. On the balance of probabilities and taking all the evidence into account, the OMA considered that the common law test for inference of dedication is satisfied for the full extent of the Order route as claimed. The OMA duly accepted the claim for the Order route marked A-B-C to be added to the DMS as a public footpath and promote the Order to confirmation.

41. Whilst there is no express dedication in this matter, the OMA considers, on balance, that there is sufficient evidence from which to have dedication inferred at common law from all the circumstances.

42. The OMA considers that the various map and documentary evidence does, on balance, indicate that the route was dedicated to public use and used by the public and that footpath 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.

43. The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above in paragraph 12 is met. The objections received do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation.

44. The OMA therefore respectfully requests that the Planning Inspector confirms the Order.

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