

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 CLITHEROE ROAD TO CHAPEL LANE, WEST
BRADFORD) DEFINITIVE MAP MODIFICATION ORDER 2018**

Order Making Authority Statement of Case

Background

1. On 8th September 2009, West Bradford Parish Council 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") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by adding a public footpath from Chapel Lane to Clitheroe Road, West Bradford, Lancashire.
2. The application was supported by map and documentary evidence including: Map of West Bradford showing footpath; Letter from Mr E Gretton; Letter & Form from Mrs A Pike; Form from Mrs A Pike; Form from Mr D Sharp, Form from Mrs K Scott; and Letter & Form from Mrs M Wood.
3. Officers from Lancashire County Council (hereinafter referred to as "the OMA") investigated whether they considered that any public rights 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 13th January 2016 where the decision was made to modify the DMS by recording a footpath along the line shown as A-B-C-D-E-F on the Order Map.
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 18th February 2016 (Document 39).
5. A Definitive Map Modification Order was duly made on 16th May 2018 ("the Order") (Document 1). The Order was made under Section 53(3)(c)(i) namely 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.

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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 in accordance with paragraph 7 of Schedule 15 of the 1981 Act on 14th June 2018 (Document 6).
7. During the specified period for objections and representations to the Order, the OMA received three objections (from Ian and Maggie Leybourne, Ashley Hesketh-Leybourne of the same address and Frederick and Judith Smalley) (Document 4).
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 commences at a junction with Clitheroe Road immediately north of Mill Bridge (Point A on the Order Map) varying in width between 0.60 metres (erroneously described as a width of 0.90 metres in the Order) and 5 metres and running in a south easterly direction to Point B adjacent to the southwest corner of the rear of 25 Millbrook Court (Overbrook House). It then continues in an east north easterly direction ascending a flight of steps and continuing to the rear of properties on Millbrook Court to Point F where it exits onto Chapel Lane.

The total length of the route is approximately 80 metres.

Legal Issues

10. The provisions of the Wildlife and Countryside Act 1981 set out tests which must be addressed in deciding whether the DMS should be modified. The surveying authority shall by order make modification to the DMS if it appears to the OMA that the DMS require modification in consequence of the occurrence of an event specified in S53(3)(c)(i) namely the discovery by the OMA of evidence which (when considered with all other relevant evidence available to them) shows that a right of

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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.

11. 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. 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. A 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.
12. 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.
13. 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-D-E-F on the Order plan should be added to the DMS as a footpath.
14. It is the view of the OMA that Order route subsists as a footpath and should be recorded as such on the DMS (Documents 15 and 19).

Evidence

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15. It is the OMA's case that there is on the Order route already a footpath in existence in law on the balance on the evidence. Since there was no express dedication, the OMA considered whether dedication might be inferred or deemed on balance.
16. Looking firstly at whether the way the Order route is recorded or referred to in documents and on mapping are sufficient circumstances from which it can be inferred that it was dedicated by the owner as a route for the public on foot.
17. 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.
18. Early maps and records examined show a substantial route passing between the Mill and Millhouse much wider than now available but along a similar alignment. This route appeared to provide a link prior to the construction of the bridge on Clitheroe Road and between point B and point F the route was shown shaded on the Tithe Map of 1848, consistent with the highway network.
19. The Tithe Map is an important piece of evidence. It looks to be of reasonable standard as a map and its depiction of routes which were public is important. The public route at the mill and into the brook shows that the section B-F on the Order Map was a known public route in the 1840s. This is corroborated by the building of the 'Cat Bridge' across the brook at that point and 'Cat Bridge' seems to have been regarded as a public footbridge by members of the public and the highway authority even a hundred years later. The public after crossing it were, it appears, able to use B-A or B-F. If A-F was not a public footpath to link to, there would be no justification for the cat bridge being or becoming public and this bridge was regarded as public as indicated in the documentation about its closure.
20. Before the road bridge was built, there was a narrow footbridge, the 'Cat Bridge', over West Bradford Brook from the road on the west side to the route between the mill buildings and shown as highway on the Tithe Map and also along the east bank to the road avoiding the ford. This footbridge appears to have been built around the time that the old corn mill was

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converted to a cotton mill by its new owner who bought it in 1867. There were other changes to the brook around that time which may have affected accessibility between the 2 banks.

21. The old corn mill was purchased in 1867 by John Holgate. The footbridge remained to point B, yet Mr Holgate did not claim any deduction in tax for a public footpath on his land but acknowledged that the section of the claimed route around point A was part of the highway. His mill expansion also affected the width of the route. There may have been some gates or structures across it in later years and it was not put on the DMS. A private right of access was granted in 1962 on a section of it. This may have been vehicular access so even the existence of a public footpath would not have been sufficient. There is some evidence however that the Holgate family considered it a public route and continued to live at this location until 1960.
22. Finance Act 1910 documentary evidence supports the existence of a public route for a short section alongside the brook near point A.
23. The OS map evidence is inconclusive regarding whether the route remained accessible from 1912 onwards and was possibly gated or physically restricted between points C and D prior to 1962 when the conveyance plan shows it clear.
24. By 1949, the road bridge had been widened making it safer for pedestrians to use and the 'Cat Bridge' had deteriorated and its wooden parapets fallen off making it only suitable for agile pedestrians. It was blocked off, for safety reasons, in 1955 and was destroyed by flood water in 1958.
25. Further circumstances from which to infer dedication can also be evidence of user acquiesced by the owner. There has clearly been some use over many years and knowledge of use by the adjoining owner at Millhouse until 1959. There is reference to the reputation of the route being public.
26. The documentary evidence of the status of the Order route shows evidence of it being public. The OMA concluded, that taking all information into account, that the evidence of B-F being dedicated to the public by the owner many decades ago to reach a fording point/public

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footbridge and circumstances indicating that A-B would have public status too is sufficient on balance to reasonably infer that the Order route already has footpath status.

27. Following redevelopment of the old mill into residential properties, the width of route appears to have been significantly reduced between point C and F to provide back yard/gardens to the properties although a useable through route retained which all the properties abutting it appear to have direct access.

Summary

28. 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.
29. 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.
30. From the information gathered, the OMA considers that there is sufficient evidence on balance that the route was a historical public route available as a footpath which at present is not recorded on the DMS. The fact that part of the Order route is not presently recorded as any publicly maintainable highway does not mean that it does not carry public rights of way.
31. The OMA states that 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. There is no evidence that a legal stopping up of any part of the route has ever taken place.
32. The OMA are satisfied that the map and other documentary evidence is in itself considered sufficient that the route was a historical public highway and that an inference of dedication can, on balance, be made.

Conclusion

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33. The OMA submits 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.
34. The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above in para 11 is met. The objections received do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation subject to modification that width specified in the Order as "Between 0.9m and 5m as shaded ..." should be modified to "Between 0.6m and 5m as shaded ...".
35. The OMA therefore respectfully requests that the Planning Inspector confirms the Order subject to the minor modification referred to above.