

**THE LANCASHIRE COUNTY COUNCIL  
UPGRADING OF WRIGHTINGTON FOOTPATH 21 TO  
BRIDLEWAY BETWEEN MOSS LANE AND MOSSY LEA  
ROAD, WRIGHTINGTON, WEST LANCASHIRE BOROUGH  
DEFINITIVE MAP MODIFICATION ORDER 2016**

**ROW/3355097**

**SUMMARY PROOF OF EVIDENCE  
OF  
JAYNE ELLIOTT**

## **1. INTRODUCTION**

1.1 My name is Jayne Elliott. I am a Senior Public Rights of Way Definitive Map Officer employed by Lancashire County Council and have been a Rights of Way Officer for 35 years.

1.2 One of my duties is to carry out detailed research in respect of disputed or historical rights of way, subject to applications under the provisions of the Wildlife and Countryside Act 1981 or which the County Council believe to have been incorrectly recorded on the Definitive Map and Statement (DMS).

1.3 In this instance no application was made but the County Council received user evidence forms ("UEFs") (DOC 20) from Wrightington Parish Council and this 'discovery of evidence' resulted in the matter being added to the Statutory Register on 17th December 2014 and an Order being made.

1.4 My full statement has been submitted to the Planning Inspectorate prior to the Inquiry. This is a summary of that evidence.

## **2. ORDER ROUTE**

2.1 I inspected the Order route in September 2014. Prior to that time, I had no knowledge of the Order route.

2.2 The Order route is shown between Points A-B-C-D-E-F-G on the Order Plan and is recorded as a public footpath. It is 585 metres long.

2.3 It commences on Moss Lane, Wrightington south of Wrightington Hotel and Country Club (A), running north east along an enclosed track at a width of 5 metres tapering to 2.6 metres alongside the substation. It then continues as an enclosed track at a width of 2.5 metres for 100m and then varies between 2.5 and 1.5 metres continuing in a north easterly then east north easterly direction to Mossy Lea Fold, passing nos. 6 & 8 and continuing at a width of 4 metres to meet Mossy Lea Road (G).

### Evaluation of site evidence

2.4 Site evidence suggested that it would have been possible to ride a horse or bicycle along the route and in most places there was sufficient space to pass a pedestrian. Good visibility along much of the route meant that it would be possible to see horses approaching along the route.

2.5 The route was signposted as a public footpath in accordance with the OMA's duty as Highway Authority with additional signage stating use of a footpath on horseback and with unauthorised vehicles was not allowed.

## **3. LANDOWNERSHIP**

3.1 Ownership of the Order route is not registered save a caution lodged by Wigan Mining and Restoration Co. Limited.

3.2 A complete picture regarding ownership of the route is not known. In the 1960s - 1970s there are references to it being owned by Mr Calderbank and Mr Laithwaite but no records have been found detailing this and both are now deceased.

3.3 Discussions took place in 2010-2011 about the possibility of widening and recording the Order route as a bridleway. These discussions appear to have stalled, in part because ownership of the Order route could not be determined.

3.4 The situation regarding ownership remained unclear when the Order was made.

### Conclusions

3.5 I found no evidence that objectors to the Order owned any part of it. Neither did I find any evidence of action taken by any freehold owners of the land crossed by the route within the relevant statutory period to demonstrate a lack of intention to dedicate a public bridleway.

## **4. EVIDENCE**

4.1 I carried out a detailed search of historical map and documentary evidence but concluded none provided sufficient evidence to suggest that the route should have been historically recorded as a public bridleway.

4.2 There was some evidence the route was being used by horses in the 1960/70s but in 1978 two apparent landowners stated they were withdrawing permission for horses to use the route (DOCS 29-30).

4.3 No further correspondence was found which documented any landowners specifically allowing or preventing horses using the route.

4.4 Internal OMA records suggest some continued use of the route by horse riders after 1978.

4.5 Between November 2010 - January 2011 the OMA attached notices to the existing public footpath fingerposts providing information that the route was recorded as a public footpath and horse riding and use by unauthorised vehicles was not allowed.

4.6 Around the same time discussions took place between adjacent landowners and the OMA to widen and record the route as a bridleway but there is no evidence that use of the route by horse riders and cyclists was challenged during this time.

## **5. USER EVIDENCE**

5.1 User evidence forms were originally submitted by 23 individuals (DOC 20).

5.2 An analysis of the user evidence is included in the Regulatory Committee report (DOC 21).

5.3 The OMA considered the tests for deemed dedication under S.31 Highways Act 1980 could be satisfied and acknowledged that in order to satisfy the criteria of S.31 there must be evidence of sufficient evidence of use 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.

5.4 The OMA considered on balance that the bringing into question of the route was the investigation carried out by the OMA consequent to the submission of the UEFs which commenced in December 2014 and concluded the relevant 20 year period under consideration would be December 1994 – December 2014 when this was added to the Statutory Register.

5.5 In October 2015 a barrier was erected by persons unknown across the route at B which prevented equestrian use until it was removed a short time afterwards.

5.6 Between January 1994 – January 2014 the user evidence considered showed use on horseback or bicycle by 18 individuals with 7 documenting use for the full 20 year period, 4 documenting 19 years use, 1 for 18 years, 1 for 16 years, 1 for 14 years, 2 for 12 years and 1 for 6 years.

5.7 Considering the additional period January 2014 - October 2015 (up to when the barrier was erected) then the Inspector's attention is drawn to letters submitted to the OMA (DOC 31-34) and evidence of users in attendance at the public inquiry who continued to use the route into 2015.

5.8 Use of the route appeared to be sufficiently frequent and without stealth, force or secrecy. Many referred to using as a safe link between Moss Lane and Mossy Lea Road avoiding Crow Orchard Road. Horse riders documented riding alone and with others.

5.9 Following the making of the Order support for the Order was also provided by Pat Calderbank and Marian Green (DOC 4).

5.10 Evidence of use between 1990 - 2010 is also compelling with 19 of the original users providing evidence of use on horseback or bicycle. 13 for the full 20 years, 2 for 18 years, 1 for 16 years, 2 for 15 years and 1 for 10 years.

5.11 Neither the notices erected by the OMA in 2010-2011 or discussions with landowners about upgrading the route to a bridleway around the same time appear to have affected the public use of the route on horseback.

## Conclusion

5.20 Taking all user evidence into account, it was my opinion that, on balance, the provisions of section 31 of the 1980 Act could be satisfied.

## **6. OBJECTIONS**

6.1 16 objections were received to the Order (DOC 4) and I concur with the comments made in response to those objections in the OMA's Comments on Objections (DOC 5).

6.2 I do not consider the objections received in any way undermine the evidence that the route is, on balance, already a public bridleway.

6.3 A Statement of Case was submitted by 1 objector and the points raised by Mrs Cooke do not alter my view that the evidence the route is, on balance, already a public bridleway in law.

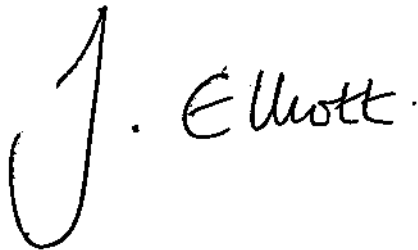
#### Conclusion

6.4 On balance, I do not consider that the objections received undermine the evidence that the Order route, on the balance of probability already exists as a public bridleway.

### **7. CONCLUDING STATEMENT**

7.1 I consider a dedication of bridleway rights can be inferred, on balance, from all the circumstances at common law or deemed under s.31 Highways Act 1980.

7.2 It is my view that the User evidence and Witness Statements provided together with local recollections of use of the route to be provided at the Public Inquiry provide sufficient evidence to confirm the Order and I have not found or been presented with any evidence prior to the submission of this Proof of Evidence to alter that view.

A handwritten signature in black ink, reading 'J. Elliott.' The signature is written in a cursive style, with a large, stylized 'J' and a period at the end.

Jayne Elliott