



Order Decision

Inquiry opened on 1 December 2015

by Sue Arnott FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 13 January 2016

Order Ref: FPS/W4223/7/4

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Borough Council of Oldham Definitive Map and Statement (Footpath at Lane Head, Intake Lane, Greenfield) Modification Order 2015.
- The Order is dated 21 January 2015. It proposes to modify the definitive map and statement for the area by adding a footpath linking definitive footpaths nos. 228 and 230 at Lane Head, as shown on the Order map and described in the Order schedule.
- There were 12 objections¹ outstanding together with 8 representations in support when Oldham Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: Confirmation of the Order is proposed subject to the modifications set out in the Formal Decision below.

Procedural Matters

1. I held a public local inquiry into the Order at the Civic Centre in Oldham on 1 and 2 December 2015. After closing the formal proceedings, I visited the site on 3 December accompanied by Mr B Heywood, and later Mr A Howard, for the supporters of the Order², Mr P Hodgson for the objectors and Mr S Palk, a representative of the order-making authority, Oldham Borough Council (OBC).
2. OBC made the Order on the direction of the Secretary of State following a successful appeal³ by Mrs J Heywood on behalf of the original applicant, Ms S Sanderson. Having previously concluded that the evidence was not sufficient to justify the Order, OBC took a neutral stance at the inquiry. Mr Evans, its representative, gave evidence only in relation to the documents held by OBC and in particular its definitive map records.
3. For the objectors, Mr Hodgson argued that since the Inspector who determined the appeal did not have the full details of the objectors' case before him,⁴ little weight should be placed on his decision. As I explained at the inquiry, I am not bound by the previous Inspector's conclusions. The papers submitted in relation to the appeal were not automatically forwarded to me for consideration in determining this Order. My decision is based on the matters put before me in relation to the inquiry which includes all the information provided by both supporters of and objectors to the Order in connection with these proceedings.

¹ The objection from Mr P Hodgson attached letters from a further 24 people

² Also known as "the Protest Group"

³ Decision reference FPS/W4223/14A/1 issued on 14 July 2014

⁴ Mr Evans stated that Oldham Borough Council had not received full details of Mr Hodgson's evidence until after it resolved not to make the Order requested by Ms Sanderson. It had therefore not forwarded this evidence to the Planning Inspectorate for consideration in the appeal since the Council had not relied on it in reaching its decision.

The Main Issues

4. Following the appeal, the Order was made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of an event specified in Section 53(3)(c)(i), namely the discovery of evidence which shows a right of way which is not recorded in the definitive map and statement subsists over land in the area to which the map relates.
5. Whilst the evidence need only be sufficient to *reasonable allege* the existence of a public right of way to justify an order being made, the standard of proof required to warrant confirmation of an order is higher. In this case and at this stage, evidence is required which shows, *on the balance of probability*, that a right of way subsists along the Order route.
6. The case in support of the Order was originally based on the presumed dedication of a public right of way under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.
7. Although the matter had not previously been considered on the basis of common law, I explained at the inquiry that, if not satisfied the requirements for dedication under statute have been met, I may consider such an approach in the alternative. In addressing this possibility the issues I would need to examine are whether, during any relevant period, there was express or implied dedication by the owner(s) of the land in question (having the capacity to dedicate a public right of way) and whether there is evidence of acceptance of the claimed right by the public.
8. I note also that Section 32 of the 1980 Act allows "*any map, plan or history of the locality or other relevant document*" to be taken into consideration when deciding whether or not a way has been dedicated as a highway.
9. In short, the case for the Order as initially submitted requires me to consider whether the evidence shows that in the past the Order route has been used in such a way that a public footpath can be presumed to have been established.
10. However, there are now **two** main issues in the case. The second concerns the definitive map of public rights of way for this area and exactly what it records at Lane Head. In essence, it was the submission of Mr Thornley (on behalf of the supporters) that the Order route is already recorded as a public footpath on the legally conclusive definitive map and statement, that being the record published by the former West Riding County Council (WRCC) with a relevant date of 1 September 1952.
11. I propose to start by addressing this second more fundamental issue. I shall begin by considering the mapping evidence that has been submitted by supporters of the claimed right of way and other 'historical' information provided by the objectors, essentially in an attempt to make sense of the 1952 definitive map but also so as to put other witness evidence and the claimed public use into context.

Reasons

Issue 1: whether the Order route is already recorded on the definitive map

Ordnance Survey maps

12. I have before me extracts from 4 Ordnance Survey (OS) maps dating back to the early twentieth century (although exact survey and publication dates are not provided in every case).
13. The 1906 second edition OS map at 25": 1 mile shows the five main buildings which comprise Lane Head although none is specifically named. These include what is now Wind Whistle Farmhouse, Little Oak, Hill Cottage and Lane Head Farmhouse with its separate but adjacent barn.
14. Seven approaches to the hamlet were shown: an enclosed track leading from the west (now Footpath 230), a separate path and track both approaching from the north (one of which now forms FP 228), a path labelled 'FP' leading from Greenmans and approaching from the north east (now Footpath 230) and three approaches from Intake Lane, one broadly from the east via Hill Cottage, one via the present access to Little Oak (FP 228) and one path approaching from the south west.
15. The footpath from Greenmans met the track from the north at a point just to the north of point B on the Order map, east of the Lane Head Farm barn. At point B the OS appears to show that these two routes entered the central area within the hamlet. This has been described by many of the witnesses as 'the common land' although it is has no formal designation as such but is more in the nature of communal land with no established owner. It includes an area to the west of Lane Head Farmhouse, land between Little Oaks and Wind Whistle Farmhouse (including the access from Intake Lane) and the area between Little Oaks and Lane Head Farmhouse through which the Order route passes.
16. It was not common practice for the OS to show in detail paths or tracks through farm yards and communal areas such as this and I attach no significance to the fact that most of these 7 approaches appear to stop when they reach 'the common land'. However it is reasonably safe to conclude there must have been an entrance into the communal area at B, gated or not.
17. The next available map dates from the 1930s and is again at 25": 1 mile. At that time there were 6 approaches to the hamlet noted by the OS surveyors as the track leading from the north to point B appears to have ceased use and is no longer shown. However the path leading from Greenmans to point B is still recorded. Again, it is fair to deduce that it was a path sufficiently well used to warrant recording by the OS surveyors and must have entered the communal area by some means.
18. By the 1960s, the OS 1:2500 map shows two changes worthy of note: one of the six approaches to the hamlet had altered and a new track from Intake Lane had been created. In short, the lower route via Hill Cottage had been extended to lead directly from Intake Lane to Lane Head Farm whilst a path remained connecting Hill Cottage to the communal area beside Little Oak⁵. The new track (which is now the Hodgson's drive) crossed the path from Greenmans at point C on the Order map and at this time no fences are shown enclosing it.

⁵ On my site visit, Mr Heywood pointed out a stile in the boundary fence where this path enters the common land.

19. I deduce from this map that in the 1960s a gap of some sort still existed in the wall or fence at point B to accommodate the path from Greenmans and that there would have been an entrance from the new access road into the yard of Lane Head Farm in its north eastern corner. There is nothing apparent from any earlier map to suggest there was previously a gate into the field at this point but that remains a possibility.
20. Although not submitted as an OS map in its own right, a 1:2500 base map used to display information attached to several letters appears to date from the 1980s. In his letter of 12 November 2015 Mr S Hodgson identifies this map as being dated 1984; this date was not challenged. It shows the 'new' access road sweeping around the north side of Lane Head Farm; the drive itself is enclosed on both sides and widens as it approaches the hamlet. Whilst the path from Greenmans is still shown as far as the new boundary fence at point C, its continuation to B is no longer recorded.⁶
21. There are subsequent revisions of the OS base information visible on other plans attached to later letters but it is difficult to attach dates to these.
22. The conclusions I draw from these maps are quite limited but nonetheless helpful. The first is that until sometime between the 1960s and 1984, the footpath from Greenmans approached the hamlet on the line of the Order route C-B. On reaching point B it entered the communal area and therefore there must have been some means of access in the boundary, possibly a gate or gateway in a wall. As this had once been the entrance for a wider farm track (shown in the early 1900s), I consider it likely this would have been a field gate although there is no certainty this was still the arrangement in the 1960s.
23. The second point I note is that there is nothing to support the existence of a path or track leading from the Greenmans direction around the north side of Lane Head Farm until the new driveway was created in the late 1950s⁷ - early 1960s. However, neither is there any evidence to suggest there could not have been such a route although on balance it seems to me unlikely.
24. The third issue was noted at the inquiry and that is that Ordnance Survey maps of this type do not purport to show public rights of way. Thus I deduce only that the paths and tracks which appear on all these maps are recorded simply because the OS surveyors found physical evidence of paths in use but made no judgement as to whether they were public or private. Only the definitive map and its accompanying statement provide the legally conclusive record of public rights of way.
25. Alongside these conclusions, there are several other factual matters that I have noted from the written, photographic and verbal evidence before me. I propose to address these broadly in chronological order.

Other evidence from the 1950s and 1960s

26. Lane Head Farm was sold to the Hodgsons in 1964 with its associated access, now signposted as its 'Private Drive'. Prior to that, the farm had been divided with 20 acres being sold to an adjacent farm, and Lane Head Farm had been sold with the adjoining 6 acres to the previous owners who, for four years, kept pigs. It therefore seems reasonable to conclude that the new access road was

⁶ This map also shows other changes which are not directly relevant here, such as the path approaching from the north and a new access track to Wind Whistle Farm from Intake Lane.

⁷ This track is not shown on the OS base map used for the WRCC Definitive Map which was surveyed in 1955.

- probably created at the end of the 1950s to service Lane Head Farm once it had been reduced to a separate small holding, either shortly before or during the ownership of the pig farmers. During these four years, with the drive then being unfenced, there would most probably have been a need to maintain a stock-proof boundary, including a barrier at point B.
27. Going back to 1956 and 1957, Mr Howard used the Order route on foot whilst delivering Christmas post and he remembered this as a lane used by vehicles, horses and carts. He also recalls using the path often in 1962 and 1963 when he lived nearby.
 28. At the inquiry I heard from Mr Williams who, during this period, used to drive a van from Intake Lane down into the hamlet via Footpath 228 in order to deliver groceries for Greenfield Co-operative Society. During the 1960s he says it was possible to drive around the north side of Lane House farmhouse and barn and exit via the private drive; indeed he said that Lane Head became known as "the Roundhouse" because one could drive in a circle around it. He recalled that this use eventually stopped when the Hodgsons began to park their vehicle so as to prevent access, leaving the driver "no option but to reverse up ... to the comparative safety of Intake Lane". This was especially difficult as the route down Footpath 228 "was hardly fit for vehicles" but "easy enough to trundle slowly down".
 29. I note here that in his written and verbal evidence Mr Williams did *not* suggest that, post-1964, on finding the route around Lane House blocked, the delivery driver then drove along the Order route to complete the loop via the Hodgson's access road.
 30. Mr P Hodgson recalled that when he and his family first arrived at Lane Head in 1964 there had been a wall at point B; whilst most of the wall separating his garden from the communal land had been in reasonable order, its condition deteriorated as it got further from the house. He said the Order route was not in use at that time. He had been told by the previous owners that the public right of way went around the north side of the buildings and had always understood that to be the route of Footpath 230.
 31. The objectors have provided various photographs including ones from the late 1960s showing the end of Lane Head barn and the wall which runs alongside the Order route separating their property from the communal land. They also submitted one taken from Hill Cottage in the 1960s on which the stone wall can just be made out although point B is quite difficult to identify.
 32. On balance, and after considering both the OS maps and other contemporary evidence, I consider it probable that prior to the new access track being created at the end of the 1950s when Lane Head Farm was divided and sold, the route between A and B over the communal land probably did have the character of a vehicular lane on account of the farm usage which had dated back to the beginning of the century at least. I am reasonably satisfied that there would then have been a gateway at point B. After the farm was sold to the pig farmers in 1960 or so, patterns of use within the hamlet clearly altered. Access from Intake Lane to Lane Head Farm could be gained along the new drive, not solely via Footpath 228, and the drive now led around the north side of the buildings.

33. Exactly when the gateway at point B changed cannot be established from the information provided but it seems that at some stage during the 1960s vehicular access was no longer possible between the communal land and the Hodgson's drive. I consider it quite likely that access on foot continued, either by crossing a tumbled down wall or dilapidated fence, although I accept that since the Hodgson's arrival in 1964 (and on the basis of the information given to them by the previous owners) many - if not most - walkers will have been directed around the north side of their buildings.

Evidence from the 1970s

34. Correspondence from 1973 between Saddleworth Urban District Council and Mr Herdman of Wind Whistle Farm initially concerned obstructions along Footpath 230 to the west of Lane Head but revealed a discrepancy between the definitive route and the line actually in use. These letters included a map prepared by Saddleworth UDC on which Footpath 230 is shown through the hamlet following the present Order route although this section (A-B-C) was not then at issue.

35. The supporters highlight Mr Herdman's response where he says: "*pedestrians approaching from Moor Edge Rd. always carry on along Intake Lane for paths 228 and 230*". He continues: "*From either approach pedestrians would have to go out of their way to use path 230 joining Shadworth Lane*". It is argued that "he distinctly describes the route of the pathway 228 meeting and continuing to join 230 (through the now blocked pathway)". I have re-read Mr Herdman's words several times and the whole of his letter but cannot deduce from this that he was making any particular reference to the route of Footpath 230 eastwards from its intersection with Footpath 228 at all.

36. However, I do consider it to be worthy of note that he did not question the route of Footpath 230 which was shown on the accompanying map along the Order route. There is no further information from Mr Herdman to explain whether this was perhaps because it did not cross his land and was of little consequence to him, whether he simply did not notice it or perhaps because he believed it to be the correct line of the public right of way.

37. It is important to understand that the map supplied to Mr Herdman in 1973 had been prepared by Saddleworth UDC at a scale of 1:2500 on the 1960s OS base map. There is no evidence to show whether it was drawn on the basis of the draughtsman's local knowledge or as a direct interpretation of the then current legal record, the definitive map and statement prepared by WRCC with a relevant date of 1952 and based on a smaller scale 1:10,560 map.

Interpreting the 1952 Definitive Map and Statement

38. This map was compiled under the National Parks and Access to the Countryside Act 1949 (the 1949 Act) and went through a draft and provisional stage involving public consultation before finally being published in 1964 as the conclusive record of public rights of way in the former county as at the 1 September 1952.

39. As explained at the inquiry, the WRCC map is still today the legal record. Although following local government re-organisation in 1974, subsequent authorities for the Greenfield area have produced revisions of the definitive map and statement, none of these have been through the statutory process set out in the 1949 Act and now required by the 1981 Act to allow the public to be consulted before any new official record is consolidated.

40. It is clear that the 1952 definitive statement describing Footpath 230 was written in such general terms as to offer no assistance whatsoever in defining the precise route through the hamlet. However there was much debate at the inquiry as to what exactly is depicted on the definitive map at Lane Head.
41. To begin, being drawn at a scale of 1:10,560 (6" to 1 mile) makes interpretation of the information shown within the square centimetre which encompasses Lane Head quite a challenge. Reference back to the old OS maps which preceded this can assist, for example by establishing that the four footpaths which radiate out from the centre all⁸ appear to follow routes which trace back to the earliest map I examined above (at paragraph 13) from 1906.
42. Footpath 228 is shown approaching from the north, passing Lane Head barn and farm house on the north and west sides, passing to the east of Wind Whistle Farmhouse and west of Little Oak before continuing south to meet Intake Lane. That seems to be uncontentious and accords with the general understanding of the line of this route.
43. Footpath 230 approaches from the west along the old walled lane and joins Footpath 228 immediately to the west of Lane Head farmhouse. Likewise that is not at issue. Its approach from the east appears to follow the 1906 (and 1930s) line from Greenmans, thus bringing Footpath 230 via point C to B. However at this point the 1952 definitive map shows the right of way on a line between Lane Head farmhouse and barn, connecting with Footpath 228 to the north of its junction with the western continuation of Footpath 230 along the lane. It does not follow the Order route between points B and A (as was suggested by the supporters at the inquiry).
44. To try to make some sense of this, I was referred to a survey of rights of way commissioned by Greater Manchester Council (GMC), successor to WRCC, to supplement the 1952 definitive statement. One of the surveyors of Footpath 230 on 4 October 1979 was Mr J Walton of the Ramblers' Association who also gave evidence to the inquiry.
45. The survey document is entitled "Statement annexed to definitive rights of way map" for the Sub-district of Oldham and District of Saddleworth. At 2300m, Footpath 230 was clearly a very long path. In the description written by Mr Walton and his co-surveyor, walking westwards the two men reached point C at the "*gravelled access road for Lane Head. Passing through two of the farm buildings in a south west direction, the path bears west after 50m, passing through two more farm buildings and round rear of north situated building to its junction with FP 228.*"
46. The supporters say this should attract considerable weight as independent evidence as it unequivocally describes the route of the footpath in 1979 as following the Order route.
47. Responding to this submission, I note that this 'expanded' statement was never exposed to public consultation, no formal procedure to incorporate it into the legal record has ever been carried out and it does not form part of the current definitive map and statement. Nevertheless it is a record which deserves some weight as a description of the path as identified by experienced path surveyors in 1979.

⁸ I have noted Mr Herdman and Saddleworth UDC questioned the route of Footpath 230 further west where it approaches Shadworth Lane but I regard that as a separate matter and not directly relevant to the issue here.

48. Yet the description is ambiguous. Even Mr Walton himself was unable to say with certainty which route he identified as Footpath 230 at that time. I understood from him that the task in 1979 was to try to shed some light on paths which had not yet been incorporated into the GMC's updated definitive map because a problem of some sort remained to be resolved. On that basis it seems most likely that the surveyors in 1979 were working from the WRCC 1952 map to try to make some sense of it.
49. Taking the description in parts and starting from point C, "*Passing through two of the farm buildings in a south west direction*" could easily describe the Order route passing between Lane Head barn and Little Oaks, neither of which were in the condition they are today. The path described in 1979 then "*bears west after 50m*". In fact the Order route C-B-A is stated in the Order to be 43 metres which is quite close to the surveyors' estimate, and then continues westwards from A. "*... passing through two more farm buildings and round rear of north situated building to its junction with FP 228*" might well apply to a section that coincides with Footpath 228 passing between Lane Head farmhouse and Wind Whistle farmhouse, this being 'round the rear of (Lane Head farmhouse) situated to the north'; however it would have already passed one junction with 228 (at A) although the description may be referring to the point at the start of the walled lane where 228 proceeds northwards.
50. That is just one of several interpretations of the 1979 description, with other possible routes via other buildings being shown to me by the Hodgsons. However this is the one which I consider best fits and it seems to me to be the Order route. Although it does not wholly follow what is shown on the definitive map, it would be consistent with the 1973 map prepared by Saddleworth UDC.
51. The revised definitive map eventually produced by GMC and later adopted by OBC is different again, showing Footpath 230 around the northern side of Lane Head barn and farmhouse as appears on the Order map. Mr Walton provided his survey notes for Footpath 230 following a visit on 27 May 2004 which was carried out using this OBC working copy of the definitive map. Approaching from Greenmans, he recorded: "To access road of Lane Head Farm. Wooden step stile OK, gate at side unlocked OK. No WM⁹. From here it appears that the line of the footpath follows the access track, skirting round the north side of a barn. No way-marker. Then enter a grassy path ...".
52. There is no evidence available to shed light on the basis for what appears on this working map. It does not accord with the 1952 definitive map, the 1973 Saddleworth UDC map or with the 1979 detailed description prepared by Mr Walton. Yet it is consistent with the information given to the Hodgsons by their predecessors that Footpath 230 passed to the north side of their house and barn. Yet, whilst Mr P Hodgson expressed the view that OBC simply put the footpath "*where they thought it should be*", modifying the legally conclusive definitive map involves statutory processes, not just moving a line on a map.
53. I note also that the supporters submitted a map entitled "*Saddleworth Countryside Guide South*" showing rights of way which was first published by local councils and societies in 1979 and reprinted in 1983 by Saddleworth Historical Society. At Lane Head, the red dots representing footpaths appear to stop at the perimeter of the hamlet so that it is of little assistance in trying to establish a local view of the precise location of Footpath 230 at that time.

⁹ Waymarker

Conclusions on the first issue

54. I conclude that the part of the Order route between points B and C is already recorded on the definitive map as a public footpath but the section A-B is not. Therefore, if I find there is other evidence that is sufficient to support the existence of a public right of way along A-B so as to warrant confirmation of the Order, I will need to delete from the Order map and schedule reference to section B-C. In short, a path cannot be added to the definitive map if it is already recorded there.
55. After having examined the development of paths and tracks around Lane Head shown by the OS maps and dating back to the start of the twentieth century, it is my strong impression that the Order route A-B-C was historically the line of Footpath 230, not the route around the north side of the Hodgson's property which they have, since 1964, understood to be the public path. That conclusion is supported by Mr Howard's early recollections of using the route in the 1950s, by the 1973 Saddleworth UDC map that was not challenged by Mr Herdman and by the 1979 description prepared by Mr Walton.
56. However it is at odds with the 1952 definitive map which records Footpath 230 proceeding from point B between Lane House farmhouse and barn to join Footpath 228. There is no evidence of any kind to support this route being a public right of way other than the definitive map. It is questionable whether use of this line is physically possible and none of the witnesses at the inquiry recalled such a route ever being capable of use let alone used by the public. In the absence of any of the preliminary records leading to publication of the final definitive map, there is no absolute proof that this was the result of a draughtsman's error but, on a balance of probability, I consider that to be the most likely explanation.
57. It follows from these findings that the section of Footpath 230 shown on the definitive map in error should be removed from the legal record and in its place should be added the route which, on a balance of probability, the evidence shows to be the line of Footpath 230 that should have been recorded in 1952.
58. Whilst the Order does already propose that the intended section B-A be added to the definitive map, it does not deal with the removal of the corresponding section shown in error (which I shall call B-X). In considering whether I should propose to modify the Order so as to address this mistake, I am mindful of the view expressed by Lord Phillips in the case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 266 that "if, in the course of the inquiry, facts come to light which persuade the inspector that the definitive map should depart from the proposed order, he should modify it accordingly, subject to any consequent representations and objections¹⁰ ...".
59. At the outset, it seems none of the parties (including OBC) were aware of the presently recorded definitive line. Such a revelation was clearly not envisaged but now this fact has come to light, it would benefit all parties including the public to resolve the matter promptly. I am not bound to address this apparent error, but it is my view that the evidence supporting the deletion of B-X from the definitive map is inextricably linked to the addition of B-A. In any event, it will be necessary to advertise my proposal to delete section B-C so it seems prudent to deal with both modifications together.

¹⁰ Schedule 15 to the 1981 Act requires that my proposed modifications be advertised and a further period prescribed for the receipt of objections or representations.

Issue 2: the case for presumed dedication between 1991 and 2011

60. Having reached the conclusion that the route of Footpath 230 was recorded on the 1952 definitive map on the wrong alignment and that it should have shown it along the Order route A-B-C, there is no need for me to address the matter of presumed dedication under statute since any subsequent user of this path can be attributed to an existing (but partly unrecorded) public right of way.
61. Nevertheless, for completeness and since both supporters of the Order and objectors went to great lengths to supply evidence and to muster witnesses for the inquiry, I will briefly outline the main points from my analysis of the evidence in relation to Section 31 of the 1980 Act had I not already reached the conclusions I set out above in relation to Issue 1.
62. The first matter to be established is when the public's rights were brought into question. Although I have also considered earlier events, it was not disputed that the status of the Order route was challenged on 15 June 2011 when Mr Hodgson installed a log held in place by metal bars in the gap in the wall at point B. Consequently use by the public over the previous twenty year period, 1991-2011, becomes relevant.
63. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of 'permission'.
64. In support of the claimed route I have counted evidence of use forms from 16 people, 5 of whom attended the inquiry to give evidence in support of the Order¹¹. These 5 people come from 3 different households. All had also submitted letters or other documents giving details of their use. After giving evidence verbally to the inquiry three of these witnesses (Mrs Heywood, Mr Howard and Mr Williams) submitted to cross-examination. In addition I have examined written supporting evidence from others including 'Bob's Walking Group', Mr and Mrs Arnold, Mr N B Smethurst, Mr D Crawford and Ms E Booth.
65. As I explained at the inquiry, I would attach the greatest weight to evidence given in person that has been tested through cross examination, and less to verbal evidence that has not been challenged through questioning. Evidence given only in writing likewise offers no opportunity to elicit greater detail from the claimant and therefore also attracts less weight especially, as here, where aspects of the user evidence are robustly challenged by the objectors.
66. In brief (and had I not already concluded that all use was on the basis of a pre-existing right) I would have found the evidence from *some though not all* of these claimants to have been 'as of right'. None were expressly given permission to use the Order route, the use was not deliberately undertaken in secrecy (although little was observed by the Hodgsons and their visitors) and the claimed use continued, on foot¹², throughout the twenty year period uninterrupted by the wall at B re-built in 1997 by Mr Hodgson because of the gap stile left in it. However, some of the claimants make clear that they approached the Order route not along Footpath 230 but from Intake Lane via

¹¹ One claimant (Ms Reid) gave evidence for the objectors.

¹² The rights of other types of user were brought into question in 1997 and any such use ceased thereafter.

the Hodgson's drive¹³; that does not necessarily preclude them from contributing to the total number of people using the Order route A-B-C but where they were challenged by the Hodgsons for doing so, then they were no longer proceeding 'as of right' over the Hodgsons' land. I would also discount people who were either resident at or visiting properties at Lane Head where private rights of access over all or part of the Order route are attached to those dwellings. Whilst there was no direct evidence to support the existence of communal rights over the common land for all the properties at Lane Head, the Court Case in 2001¹⁴ recorded that both Lane Head Farm and Little Oaks enjoyed vehicular (and therefore pedestrian) rights over it.

67. Having taken note of the points put by the objectors questioning aspects of the claimants' evidence, and the many witnesses for the objectors who spoke of time spent at Lane Head Farm and the lack of any significant levels of use of the Order route, I would have concluded that the footpath had not been used to a sufficient degree by people qualifying as the public and using the route 'as of right' throughout the relevant period to have raised a presumption that the way had been dedicated as a public right of way.
68. Although that conclusion would mean that there was no need to consider whether the landowner had taken sufficient steps to rebut the presumption of dedication, for the record I will say that I doubt the challenges to individuals using the Order route by the Hodgson family that were confirmed by witnesses would be sufficient to do so. No maps, statements or statutory declarations have been deposited under the procedures set out in Section 31 of the 1980 Act by the owners of the land to formally rebut any presumption of dedication. Although the Hodgsons' themselves were aware that the gap stile in 1997 was only ever intended for the convenience of the postman and oil delivery personnel, no notices were ever placed beside this stile to deny access to anyone else.
69. Indeed, having now established that the definitive map records C-B as part of Footpath 230, it would be hard to see the installation of the gap stile in the wall as other than the overt acknowledgement of a public right of way on foot.
70. In summary, judging the second issue alone and without the conclusions I reached on the first, I would not be inclined to find sufficient evidence of use over the relevant twenty years to establish a public path. However, in the light of my finding that the definitive map already records C-B as a public footpath, and that in 1952 it should also have recorded B-A (but showed B-X by mistake), the use of the Order route that has taken place by the public on foot can all be taken to reinforce my conclusion on issue 1.

Other matters

71. The Order route shows the route west from point C around the north side of Lane Head Farm's barn as "Existing Public Footpath". This is not the route of Footpath 230 as shown on the 1952 WRCC definitive map and it could be misleading to show it as a public path. Although depiction on the Order map is not confirmation of that status I nevertheless consider it prudent to remove it from this document to avoid any confusion in future.

¹³ The status of this driveway may have been a matter of private dispute but it is not at issue here.

¹⁴ Both parties submitted documents relating to a dispute which began in the 1990s and eventually reached the County Court in 2001. Although the *public* right of way was not at issue, the arguments concerned the extent of rights over the communal land, rights along the Hodgsons' drive and the removal of obstructions to restore access

72. Since it has been revealed that the current legal record is in fact the 1952 definitive map and statement prepared by the former West Riding County Council, not the Borough of Oldham Definitive Map and Statement, the Order will need to be modified to reflect this.

Conclusion

73. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed subject to modifications described at paragraphs 54, 57, 59, 71 and 72 above.

Formal Decision

74. I propose to confirm the Order subject to the following modifications:

- Replace "The Borough of Oldham Definitive Map and Statement" with "The (Former) West Riding County Council Definitive Map and Statement" wherever it occurs;
- In the recitals on page 1 line 7 after "public path" add: "and an event specified in section 53(3)(c)(iii) namely that there is no public right of way over land shown in the map and statement as a highway of any description";

In the Order Schedule:

- In Part I: Amend the 'Description of path or way to be added' by deleting "then north easterly to a field gate at Point C at OS map reference 398993 403344";
- In Part I: Add: "Description of path or way to be deleted: Commencing at point B at OS map reference 398981 403332 and curving generally westwards to Footpath 228 at point X at OS map reference 398954 403332";
- In the Order Schedule: Part II: Amend the Path Number to "230" and the Path Length to "25 metres";

On the Order map:

- Amend notation used for section B-C so as to indicate this as "Existing Public Footpath";
- Add new point X at OS map reference 398954 403332 and show a route in thick black dashes between B and X indicating "Footpath to be deleted";
- Remove section of "Existing Public Footpath" shown between point C and Footpath 228.

75. Since the confirmed Order would (a) affect land not affected by the Order and (b) not show a way as it is shown in the Order as made, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Sue Arnott

Inspector

APPEARANCES

In support of the Order

Mr A Thornley Representing the supporters

Who called

Mrs J Heywood Appellant

Mr A Howard

Mr R Williams

Ms D Taylor

Mr B Heywood

Opposing the Order

Mr P Hodgson Objector

Who called

Mrs T Ellison

Mr P Ellison

Mr W Gateley

Mr D Booth

Dr E Lawson

Mr D Lawson

Mr S Tait

Mr D Parnaby

Mr R Rainford

Mr B Dawson

Mr T McIlroy

Mrs K Gartside

Mrs S Ibbetson

Mr M Ibbetson

Mrs P Butcher

Mrs K Hodgson

Ms A Reid

Mr S Hodgson

Attending in a neutral capacity

Mr A Evans Oldham MBC

Mr J Walton Footpath Secretary for Oldham, Ramblers' Association

DOCUMENTS

1. Copies of statutory notices and certification
2. Copy of the statutory objections and letters of support
3. Statement of case of Oldham MBC including bundle of relevant case documents
4. Proof of Evidence of Mr A Evans, Oldham MBC, dated 2 November 2015
5. Statement of case from Mrs J Heywood submitted
6. Witness statement of Mrs J Heywood dated 31 October 2015 together with supporting documents 1-28; also additions to the statement of case bundle of user evidence forms, bundle of evidence submitted in relation to the appeal, and bundle of documents from Oldham MBC's legal department; photos of the route taken in the early 1990s
7. Letter to the Planning Inspectorate dated 1 October 2015 from Mr D Crawford including 3 photographs
8. Letter to the Planning Inspectorate dated 1 October 2015 from Ms E Booth
9. Letter to the Planning Inspectorate dated 2 October 2015 from Ms L M Genty
10. Letter to the Planning Inspectorate dated 3 October 2015 from S Sanderson
11. Email to the Planning Inspectorate dated 3 October 2015 from D J & A Arnold
12. Letter to the Planning Inspectorate dated 4 October 2015 from Mr A Howard
13. Letter to the Planning Inspectorate dated 4 October 2015 from Mrs D Taylor
14. Email to the Planning Inspectorate dated 4 October 2015 from Mr B J Heywood
15. Email to the Planning Inspectorate dated 5 October 2015 from N B Smethurst
16. Letter to the Planning Inspectorate dated 11 June 2015 from Mr P Hodgson
17. Statement of case against proposed right of way at Lane Head Farm, Greenfield submitted by Mr P Hodgson
18. Letter to the Planning Inspectorate dated 26 August 2015 from Mr R Rainford

Submitted at the inquiry

By Oldham BC:

19. Letter to Oldham MBC from Saddleworth Parish Council dated 24 November 2015

By the supporters:

20. Bundle of 8 maps (including the 1952 definitive map)
21. Copy of Statement affixed to the definitive rights of way map for Footpath 230 – survey completed by J Walton and B Glentworth of Ramblers' Association Oldham Group on 4/10/79
22. Bundle of photographs showing digger near point B c1991; Little Oaks c1993/4; building works enclosing garden at Little Oaks c1995 (1) and c1997 (2); Hodgson's driveway before wall built at B c1997 (2); post and barbed wire fence c1998 (3)

Submitted by Objectors

23. Minute of Order of case between J A Heywood and P Hodgson 13 March 2001
24. Three photographs from 1960s, photograph taken in 1960s from Hill Cottage and photograph of Hodgson's garden

25. Copy of letter from Mr S Hodgson dated 12 November 2015 attaching three photographs and signed statements from Louise Potts and Helen Harrison
26. Copies of letters from Mr P Hodgson dated 14 September 2015 (to Mr & Mrs Howard and to Ms L Genty) and dated 7 November 2015 with attachments
27. Copy of email trail between S Hodgson, K Lucas and M Buckley 30 November 2015
28. Two (undated) letters from A Reid, one dealing with dustbins and one relating to signs

Submitted by Mr Walton:

29. Survey notes for Footpath 230 undertaken in Summer 2004