



## Order Decision

Inquiry opened on 10 November 2015

by **Michael R Lowe** BSc (Hons)

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

Decision date: 17 December 2015

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**Order Ref: FPS/G4240/7/18**

### **Tameside Metropolitan Borough Council**

- This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the **Tameside Metropolitan Borough Council Definitive Map (Green Lane to Hobson Moor Road, Hollingworth) Modification Order 2014**.
  - The Order is dated 21 February 2014 and proposes to modify the Definitive Map and Statement by adding a restricted byway from Green Lane, Hollingworth to a point along Hobson Moor Road, as detailed in the Order map and schedule.
  - There were 19 objections outstanding when Tameside Metropolitan Borough Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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### **Decision**

I do not confirm the Order.

### **Preliminary Matters**

1. I held a Public Inquiry into the Order at the District Assembly Room, Stalybridge Civic Hall, Trinity Street, Stalybridge SK15 2BN on 10 & 11 November 2015. I visited the site on 10 November 2015 accompanied by the parties.
2. In July 2010 Mr Henry P Brocklehurst made an application to the Council to show as a restricted byway a route from Green Lane, Hollingworth, along Cow Lane and then south westerly to a point along Hobson Moor Road. The Council considered the application in October 2011 and resolved not to make an Order. The applicant appealed to the Secretary of State, who appointed an Inspector to prepare a report. The Inspector noted that there was a clear conflict of evidence between those claiming use as cyclists and the landowners' actions in challenging that claimed use and in erecting signs. The Inspector concluded that there was insufficient evidence of a lack of intention to dedicate by the landowners and that, on the balance of probabilities, a restricted byway subsists over the claimed route. The Council was directed to make an Order to give effect to the appeal<sup>1</sup>. The Council subsequently objected to the Order and Mr Brocklehurst presented the case for the confirmation of the Order.
3. I shall refer to the various sections of the claimed route by the letter referencing used in the Order; Cow Lane is the section A-B; the section of Hobson Moor Road from the junction with Cow Lane at Ash Tree Farm to Landslow Green Farm is the section B-C; and the section of Hobson Moor Road

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<sup>1</sup> Appeal Decision dated 27 March 2012 Ref. FPS/G4240/14A/2.

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westerly from High Landslow Green Farm for a distance of 327m is the section C-D. Sections A-B and B-C are currently shown on the definitive map and statement as a public footpaths (referenced LON/17 & LON/3) whilst the section C-D has no recorded status.

### **Main Issue**

4. The Order has been made under section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in section 53(3)(c)(i) and (ii). The main issue is therefore whether the evidence is sufficient to show, on the balance of probabilities, that a restricted byway which is not shown in the map and statement subsist on the route in question and that a highway shown on the map and statement as a footpath ought to be shown as a restricted byway, such that the definitive map and statement require modification.
5. In the context of section 53 of the 1981 Act the requirements of section 31 of the Highways Act 1980 (the 1980 Act) are namely;
  - a) the date on which the right of the public to use the claimed restricted byway was brought into question;
  - b) whether the claimed route was of such character that its use could not give rise at common law to any presumption of dedication; and
  - c) whether the claimed restricted byway was actually enjoyed by the public 'as of right' (without force, secrecy or permission) and without interruption for a full period of 20 years ending on the date on which their right to do so was brought into question; and if so
  - d) whether there is sufficient evidence that there was, during this period, no intention to dedicate the claimed restricted byway.

However, a notice erected in such a manner as to be visible by persons using the way that is inconsistent with dedication of a way as a highway shall, in the absence of proof to the contrary, be sufficient evidence to negative the intention to dedicate.

6. Whether, in the alternative, the evidence is such, again on the balance of probabilities, as to establish dedication at common law.
7. Section 32 of the 1980 Act, requires me to take into account any map, plan or history of the locality or other relevant document and to give such weight to it as is justified by the circumstances.

### **Reasons**

#### ***Hobson Moor Road, section C-D***

8. In May 1951 Longdendale Urban District Council carried out the survey for the preparation of the draft map of public rights of way under the National Parks and Access to the Countryside Act 1949. The survey form and the draft map indicate that footpath 3, the section B-C, terminated at point C. The termination point is described as 'Hobson Moor Road at Landslow Green'. The termination of the footpath 3 at point C, and the termination of footpaths 16 and 18 at Higher Landslow Green Farm, are clear indications that the surveyors considered the section of Hobson Moor Road between points C and D to be a

public highway, but not of a status that would be recorded on the map of public rights of way.

9. During the course of the Inquiry the Council further researched its records of highways maintainable at public expense and discovered that earlier records of the list of streets indicated that Hobson Moor Road ran from Mottram Road to the gates at Landslow Green Farm, i.e. including the section C-D. The Council therefore considered that the section C-D was a public road, for all traffic, and maintainable by the Council. This section of Hobson Moor Road has a tarmacadam surface with grass verges between stone walls or fences and is of the character of other public roads in the locality. It therefore appears to me, that on the basis that section C-D of Hobson Moor Road is a public road, a carriageway, and is of the character of an ordinary vehicular road, it should not be recorded on the definitive map of public rights of way.

***Presumed Dedication of a restricted byway under the Highways Act***

*Whether the claimed route was of such character that public use could not give rise at common law to any presumption of dedication*

10. There is no evidence to suggest that the character of the way would prevent any presumption of dedication at common law.

*The date on which the right of the public to use the claimed restricted byway was brought into question*

*Whether the claimed restricted byway was actually enjoyed by the public 'as of right' (without secrecy, force or permission) and without interruption for a period of not less than 20 years, and if so*

*Whether there is sufficient evidence that there was during the 20 year period no intention to dedicate the claimed restricted byway*

11. It is common ground that in the year 2010 a gate was locked at point C near Landslow Green Farm and that this action prevented use of the way by cyclists. This event led to the application for the recording of a restricted byway and provides the last date upon which claimed route was brought into question.
12. As detailed in the Inspectors decision in 2012, there is conflicting evidence of the frequency of use of the claimed way by cyclists and actions of the landowners in challenging cyclists. I heard additional evidence from witnesses at the Inquiry on these issues but I have also been provided with significant new evidence of the nature of signs that have been erected at Landslow Green Farm at point C over a long period. As the issue of signs is sufficient for my conclusion upon the Order I have not needed to consider the totality of the evidence concerning the use by cyclists and challenges to that use.

***Notices***

13. At point C the Council photographed a metal sign in June 2009 that read 'Private Road Footpath Only', with white lettering on a black background. Suzanne Manby and Rebecca Abbey gave evidence on behalf of the Fletcher family who have lived at Landslow Green Farm since 1955. They stated that that sign had been erected around 2005 and that Leander Architectural made it.

14. The submission on behalf of the Fletcher family is that similar signs have been present since at least 1955. A photograph dated to 1979 or 1980 shows Suzanne Manby with her horse at the gate at point C. Attached to the tree in a similar position to the '2005' sign is a substantial wooden sign with black lettering on a white background, the full text of which is not included within the photograph. The sign reads 'Foot.... No .... No ...'. A photograph with the date recorded on the photograph as 3.11.'79 shows signs at the same location. The full wording is not discernible but the bottom wording reads 'Footpath only'. A photograph dated to 7 December 2004 shows a wider landscape around Landslow Green Farm. It shows signs at the same location, but no wording is discernible.
15. The witness evidence of Suzanne Manby and Rebecca Abbey was clear and emphatic that from their personal knowledge since 1955 signs have always been present at Landslow Green Farm that indicate that the way is only a footpath. I accept that evidence. The location of the signs that can be verified from photographs is clearly visible to any users of the claimed way, even though none of the witnesses in support of the claim could recall specific wording or in some cases any signs at all.
16. The survey of public rights of way carried out in May 1951 indicates that a notice board was present along footpath 3, a wood board on wood post that states "Private, No Road for vehicles". The chronology of the details of features along the way indicates that this notice board was present near the termination of the route at point C, near an iron kissing gate.
17. A sign that simply indicates 'private road' is ambiguous as to the question of rights for pedestrians or horse riders as it is not unusual for public footpath rights to exist along a private road. The 1951 survey noted that footpath 3 was the subject of a deposited plan under the Rights of Way Act 1932 which acknowledged a 'private road with public right of footway'. However, a sign that indicates 'footpath only' is clearly inconsistent with the existence of any other public rights.
18. The claim for a restricted byway is based upon use by cyclists. A cycle is a type of vehicle. In my view a sign that prohibits vehicles is a sign that would prohibit cycling. Whilst only the wording of the sign in 1951 and in 2005 can be fully verified I am satisfied that, on the balance of probabilities, a sign has been present at Landslow Green Farm, visible to users of footpath 3, that is inconsistent with the presumed dedication of public rights for use by cyclists from 1951 to the present. There is insufficient evidence of use by cyclists before 1951 to establish a public right of way. In my view the claimed route from Landslow Green Farm and then along Cow Lane to Green Lane should be considered as a single route. That is how the route was used according to the user witnesses.

### **Conclusion**

19. Having regard to these and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

*Michael R Lowe*

INSPECTOR

APPEARANCES

**Tameside Metropolitan Borough Council (Objecting to the Order)**

*represented by*

Keith Davy

Assistant Borough Solicitor

*who called*

Michael Hughes

Sustainable Travel Officer

**In support of the Order**

Peter Brocklehurst

The applicant

David Collins

George Vernon

Yvonne Daly

Pam Hemmings

Kathleen Collins

**The Objectors**

Suzanne Manby

Rebecca Abbey

Andrew Bland

**DOCUMENTS (submitted at the inquiry)**

- 1 Extracts from the Council's adoption records
- 2 Photographs of signs from Suzanne Manby