
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: 6 September 2016

Order Ref: FPS/W4223/7/4M

- 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.
- In accordance with Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 I have given notice of my proposal to confirm the Order with modifications.
- In response to advertisement of these proposed modifications, four letters of objection and seventeen representations in support were submitted.

Summary of Decision: The Order is confirmed subject to modifications previously proposed.

Preliminary Matters

1. If confirmed with the modification set out in paragraph 74 of my interim Order Decision issued on 13 January 2016, the Order would record on the definitive map and statement a public footpath along part of the Order route (A-B); it would not add the remainder (B-C) as this is already recorded in the definitive record, and it would delete from the definitive map an associated route (B-X) on the basis this was wrongly recorded as part of Footpath 230 (Saddleworth). To avoid confusion, I also proposed to remove from the Order map an adjoining section of footpath wrongly assumed to be part of Footpath 230.
2. Of the objections, two fundamentally challenge the conclusions I have reached but offer no additional evidence that might lead to a different outcome; another advocates reliance on the "GMC² definitive footpath map" rather than the definitive record compiled by the former West Riding County Council (WRCC) in 1952, and one from the Ramblers Association (RA) takes issue with my proposal to remove from the Order map the route described as "Existing Public Footpath" to the west of point C.
3. The order-making authority, Oldham Borough Council (OBC), has confirmed that it maintains its neutral stance as regards confirmation of this Order and the modifications proposed thereto.

¹ One objection contained letters from a further 24 people

² Greater Manchester Council

Reasoning

4. The main issues in this case are complex and not as originally anticipated when the Order was made. The question to be asked initially was whether there is sufficient evidence available to show that a public right of way which is not recorded in the definitive map and statement subsists over the Order route A-B-C. That was the matter addressed by the Inspector who determined the appeal against OBC's initial decision not to make the Order. At that stage the case in support of the claimed footpath was based largely on evidence of use of A-B-C by the public over a period of twenty years ending when the status of the way was brought into question in 2011.
5. In their written submissions and at the inquiry, the representations made by the objectors and supported by their many witnesses focussed on their contention that there had not been regular unchallenged use by the public sufficient to establish a right of way as contended by the claimants.
6. In my interim Order Decision, after considering all the evidence put before me, I concluded that this was not sufficient to satisfy the requirements of presumed dedication of a public right of way between 1991 and 2011.
7. However, this became a secondary issue once Mr Thornley submitted to the inquiry that the current definitive map already shows the Order route to be a public right of way. Despite the difficulties in interpreting the network in the vicinity of Lane Head, the definitive map of the former WRCC remains the legally conclusive record even though it may not have been updated to take account of lawful changes since the relevant date in 1952.
8. After detailed scrutiny of all the evidence relevant to this central issue (as explained in paragraphs 12 to 59 in my interim Order Decision), I concluded 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. I also found that the Order route A-B-C was historically the line of Footpath 230, not the route that appears on the 1952 definitive map proceeding from point B between the farmhouse and barn to join Footpath 228 along a line I referred to as B-X, nor around the north side of the Hodgson's property which they have, since 1964, understood to be the public path. Consequently I proposed modifications to the Order map and schedule to take account of these findings.
9. No *new* evidence has been submitted to challenge any of my previous conclusions although the letters of objection reiterate issues previously considered and make comment on the interim Order Decision.
10. Crucially, no evidence has been submitted to show that the working map produced by the GMC in the 1980s underwent the necessary statutory procedures to consolidate it as the definitive map and statement for Oldham thereby superceding the 1952 WRCC map as the legal record. I therefore have no reason to alter my reliance on the latter.
11. In response to my proposal to remove from the Order map the footpath shown leading around the north side of Lane Head Farm, two of the objectors suggest that this has been used by walkers following the route shown by the 1983 GMC map³.

³ Mr Walton observes that extracts from Ordnance Survey Pathfinder and Explorer maps from 1991 and 2002 respectively show Footpath 230 passing through buildings at Lane Head thus failing to give any clear guidance on which path the walker should follow.

12. The Oldham Wednesday Walkers Club states that its members have walked this and other paths in the area for well in excess of twenty years. However the letter also refers to blockage of "the current footpath" by a log in the stile, suggesting the group may actually have been using the Order route A-B-C rather than the northern alternative.
13. Reiterating his own personal evidence to the inquiry and explaining the basis for his choice of route, Mr Walton of the RA made clear in his letter that in over thirty years of walking in the area and when undertaking path surveys in 2006 and 2015, he made use of the line around the north of the Lane Head property by walking west from point C to "*safely get through Lane Head without any bother from residents*" although he noted this has never been waymarked. Under the circumstances, he requested that the Order be confirmed without this proposed modification.
14. In fact neither this Order (as made), nor the modifications I have proposed, would close any existing public right of way at Lane Head. Having established that (a) the 1952 definitive map actually records Footpath 230 along the line X-B-C and that (b) in 1952 it should have recorded the line A-B-C, this means that the path shown on the Order map from point C west to Footpath 228 can no longer be regarded as part of Public Footpath 230.
15. It is not disputed that this has been the route used by members of the walking community since the Order route was blocked at B and to that extent could properly be described as "Existing Footpath". The issue is whether or not it is a *public* path. Historically there is no evidential basis for this and I have before me insufficient evidence from users to reach a firm conclusion, on a balance of probability, that it has become established as a public right of way through long usage. With no firm basis for presuming it to be a public right of way, as I stated at paragraph 71 of the interim Order Decision, I regard it as misleading to identify it as a *public* path on the Order map without further evidence.
16. Having considered the representations on this point and to avoid prejudice in any respect, I do not propose to delete this non-definitive route from the Order map but will instead identify it simply as "Current Path" using the annotation XXXX.

Other matters

17. Whilst examining in detail all the relevant points raised by the letters of objection, I have also noted all the representations offering strong support for the findings of the interim Order Decision.
18. I fully understand the feelings expressed in their letters by the owners of Lane Head Farm, having for many years been led to believe the definitive route of Footpath 230 did not follow the line A-B-C. However, I make clear that my decision is based solely on my assessment of the evidence submitted within the relevant legal framework.

Conclusion

19. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications that have been advertised but with an amendment to the description of the non-definitive route shown west of point C.

Formal Decision

20. I 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";

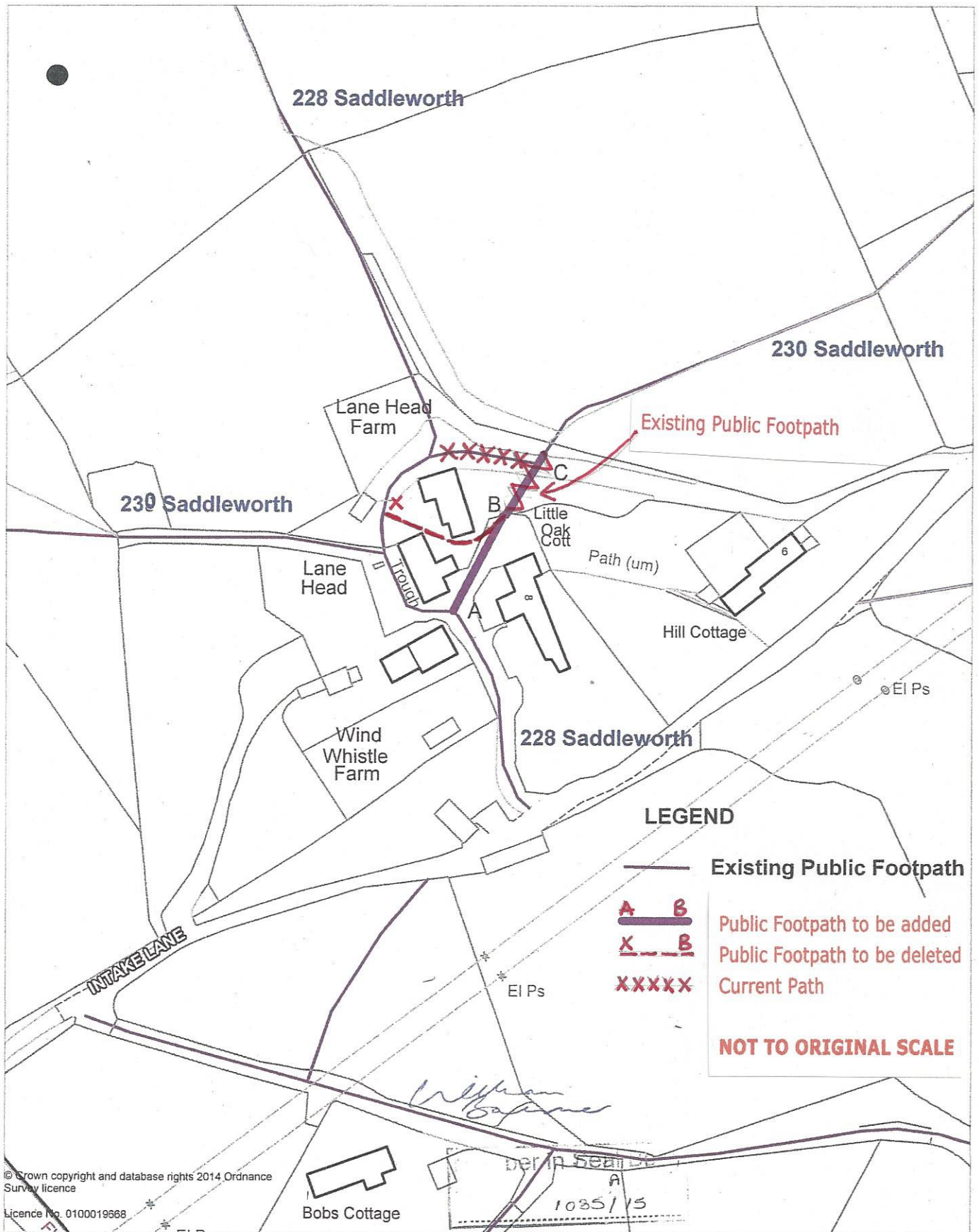
On the Order map⁴:

- Amend notation used for section B-C so as to indicate this as "Existing Public Footpath";
- Amend description used for section A-B to read "Public Footpath to be added";
- Add new point X at OS map reference 398954 403332 and show a route in thick black dashes between B and X indicating "Public Footpath to be deleted";
- Amend notation to show the non-definitive route between point C and Footpath 228 as "XXXXX" representing "Current Path".

Sue Arnott

Inspector

⁴ Underlined text highlights amendments to previously proposed modifications. These changes are for clarification only and do not require further advertisement.



<p>Unitypartnership</p> <p>HIGHWAYS & ENGINEERING</p> <p>Henshaw House, Cheapside, Oldham OL1 1NY</p>	Client	Oldham MBC		Title	Footpath to be added at Lane Head Farm, Greenfield 228A Saddleworth	
	Project	Footpath Modification Order				
	Drawn by	Date	Purpose of issue	Drawing No.	Rev.	
	Checked by	Date	Scale at A4 size			
Approved by	Date	1 : 1250	764/A4/209/1			