



## Order Decision

on papers on file

**by Heidi Cruickshank BSc (Hons), MSc, MIPROW**

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

**Decision date: 11 July 2016**

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### **Order Ref: FPS/Q2371/7/54**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification)(No. 7) Order 2012.
- The Order is dated 10 October 2012 and proposes to record a public footpath from Butlers Meadow to Ribble View Close, in the Parish of Bryning-with-Warton. Full details of the route is given in the Order map and described in the Order Schedule.
- There were four objections outstanding when Lancashire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed.**

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### **Procedural Matters**

#### ***The objections***

1. The Order route runs on an alignment between properties in the built-up area of Warton, Preston. In addition to the three individual objections a petition objecting to the '*...re-opening of [the] pathway adjacent to No. 3 Ribble View Close...*' was submitted.
2. The objections were based upon the footpath being undesirable, having been closed in the first instance to prevent unwanted and illegal behaviour on or near it. It was also argued that it was unnecessary, as an alternative route was available between Butlers Meadow and Lytham Road.
3. Having given careful consideration to these objections I am not satisfied that they raise matters which I am able to take into account under the relevant legislation of the Wildlife and Countryside Act 1981 ("the 1981 Act"). The objectors were given the opportunity to modify their objections after Lancashire County Council, the order-making authority ("the OMA"), had submitted the Order to the Secretary of State. No further relevant matters were raised.
4. As none of the objections raise matters I am able to consider my determination is based on the evidence contained in the papers on file. I have not made a site visit.

#### ***The OMA***

5. The Order arose following an application made by a local resident in 2008 to record the route as a public footpath. The OMA determined not to make an

Order in relation to the application and this decision was appealed under Schedule 14 of the 1981 Act.

6. As they were directed to make the Order the regulatory Committee of the OMA resolved that they would adopt a neutral stance in relation to confirmation of the Order.

### **Main issues**

7. The Order was made under Section 53(2)(b) of the 1981 Act relying on the occurrence of events specified in Section 53(3)(c)(i). This section requires me to consider whether the evidence discovered, when considered with all other relevant evidence, is sufficient to show, on the balance of probabilities, that the right of way described in the Order subsists and that the Definitive Map and Statement therefore required modification.
8. The Schedule 14 decision<sup>1</sup> ("the S14D") found that an Order should be made, as a reasonable allegation had arisen that public rights subsisted. In considering whether to confirm the Order I must be satisfied, on the balance of probabilities, that the claimed right subsists over the route.
9. Part of the land, between points A and C<sup>2</sup> on the Order map is 'Crown land' under the jurisdiction of the Ministry of Defence ("the MoD") and so the route as a whole cannot be considered by reference to the Highways Act 1980 ("the 1980 Act"). Dedication would need to be established at common law over this land. Both dedication by the owner and user by the public must occur to create a highway at common law. Public use is a sufficient acceptance but an intention to dedicate land as a highway may only be inferred against a person who was at the material time in a position to make an effective dedication. The question of dedication is one of fact to be determined from the evidence as a whole. Where there is satisfactory evidence of public use, dedication may be inferred even though there is no evidence to show who was the owner at the time or that he had the capacity to dedicate.
10. The remainder of the land, C – E, is owned by the owner of 4 Ribble View Close ("RVC"), which lies to the south-east of point E. Whilst the Land Registry Office copy from 3 June 2008 for Title Number LA799219 does not include this land, the OMA subsequently supplied a copy of the register for title number LA486456, which they indicate relates to it.
11. As section C – D – E does not cross land included in the Crown Estate, I consider that it can and should be considered under the statute, section 31 of the 1980 Act. This sets out the main issues as:
  - i. when the status of the claimed route was called into question;
  - ii. the extent and nature of the claimed use;
  - iii. whether there is evidence of a lack of intention to dedicate a public right of way.
12. Before a presumption of dedication can be inferred under statute, the 1980 Act requires that the relevant period of use be calculated retrospectively from the date on which the status of the way is 'called into question'. The use during

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<sup>1</sup> FPS/Q2371/14A/2, 26 July 2011

<sup>2</sup> The Order map identifies the route with points A - E

that period must be shown to have been actually enjoyed by the public as of right and without interruption for a full period of twenty years.

13. Where a presumption of dedication arises then it can be defeated by the proviso, which is that there is sufficient evidence that there was no intention during that twenty-year period to dedicate a right of way.

## **Reasons**

### ***Documentary evidence***

14. There is limited documentary evidence to assist me in this case. I note from the S14D that there was other documentary evidence which was taken into account at that stage. As it is not before me I am only able to take a cautious view of that evidence, as reported by the Inspector.
15. The earliest document I have is an aerial photograph from the 1940s, which is of poor quality but shows a road running from Lytham Road to a road within what is now Butlers Meadow. Verbal evidence collected by the applicant referred to this road.
16. The MoD indicated that due to the administration of the Butlers Meadow Estate having been undertaken by a number of agencies they could not confirm the exact dates of construction. They were able to confirm that they had been constructed in the period 1946 – 1964. They also said that the land was acquired by the Secretary of State for Air on 28 June 1955 and the conveyance plan shows the road seen in the photograph, running generally north – south.
17. By the time of the aerial photograph from the 1960s the properties on this part of Butlers Meadow had been built. The alterations to layout have left the section A – B – C in place, as a narrower route than the original road. To the south the road remains in place. Reference was made to glasshouses having been present prior to the construction of the bungalows on RVC and these are shown to the east of the road.
18. The Ordnance Survey ("OS") base maps for the Land Registry titles of numbers 3 and 4 RVC, filed plans 1989 and 1997, show the situation at the time of that OS survey. This remains the situation on the ground today, with the southernmost section of the road part of the access to RVC and the northern section narrowed alongside No. 3 RVC. The S14D indicates that approved plans for the construction of RVC from 1987/88 show provision was to be made under the planning process for pedestrian access along the route C – D – E. It is not specified whether this was for public or private access.
19. I understand that the metal staggered barrier at point A, noted as a limitation in the Order, was put on the route by Defence Estates ("DE"), to make the route suitable for pedestrians. The date of this work is not known.

### ***Other matters***

20. There is reference in the S14D to statement and maps apparently deposited by the MoD with the OMA under section 31(6) of the 1980 Act. I note that the S14D indicated that the documents may indicate some resistance to dedication of A – B – C but this was difficult to reconcile with the provision of a defined, maintained and managed path, open to all.

21. During the investigation process DE, an agency of the MoD, stated in a letter of 18 December 2008 that *"Our initial view is that the entry to and exit from Butlers Meadow via Ribble View Close would be for the residents of Butlers Meadow and no others. With this in mind I would be grateful if you could provide more evidence as to why this path should be considered a public right of way."* On 15 January 2009 DE indicated that *"Both departments have no objection to the Councils proposal."* No objection was made to the Order when it was advertised.

### **User evidence**

#### *Date of calling into question*

22. It is a little unclear whether it was the owners of 3 RVC, which is adjacent to the Order route, or the landowner, the owner of 4 RVC, approached the OMA or Bryning-with-Warton Parish Council ("the Parish Council") about closing the route. It was apparently advised that a notice should be erected and this seems to have happened in January 2008. The applicant indicated that he had seen notices saying that the route was to be closed temporarily.
23. On return from working abroad for a short period the applicant found that, by 7 March 2008, fences had been erected across the route at approximately points D and E. The earliest user evidence forms ("UEFs") were completed in February 2008, possibly in response to the notice, and a UEF dated 27 February referred to the route being barricaded.
24. On balance it seems that use was called into question by the combination of notices and barriers in early 2008. This indicates that appear that the relevant twenty-year period is January/February 1988 – January/February 2008.
25. There appears to have been no action to prevent use of the section A – B – C.

#### *Claimed use*

26. The evidence of use, as well as other information, was provided by UEFs and signed statements of answers to questions posed by the applicant. A total of 21 people provided evidence, with some also referring to use by family members. Although two people referred to some use with a bicycle, the rest of the use was on foot.
27. The route was reported to be used for access to work, shops, the bus stop, doctors and to Freckleton, which lies just to the east of Warton along Lytham Road. It was also used for recreation, such as dog walking or visiting friends. The reported frequency of use varied from more than once per day or twice a day every working day, to weekly or less than once a month. None of the UEFs indicated that there had been any barriers or notices on the route prior to the events in 2008.
28. I consider this to be typical of the use that might be expected on a short-cut in a large village, providing access to local amenities. The objectors have not challenged the reported use but have mentioned the other, problematic, use to which the route has been put; this has apparently included vandalism, drug use, intimidation and littering to name but a few.

29. There is no indication of use being permissive, secretive or by force. However, it is possible that those living in Butlers Meadow, and employed in some capacity by the MoD, or tenants thereof, may have permission to use the section of the route over their land, A – B – C, if not the route as a whole. Warton was formerly a British Air Force base, with people employed in that force living in Butlers Meadow and using the route at that time. The S14D indicates that in 1995 all 134 properties on Butlers Meadow were MoD, and occupied by service personnel. However, the vast majority of houses, around 100, are now privately owned; there is no evidence that those properties were sold subject to a private right of access over the claimed route.
30. Even taking a cautious approach and removing all those who live in Butlers Meadow from consideration, there are residents of a number of other roads in the locality who have used the route. For example, Clifton Avenue and Harbour Lane to the west. There is no evidence that their use was permissive.

*Lack of intention to dedicate a public right of way*

31. There is no evidence before me of any action taken by any freehold owner of the land crossed by the route C – D – E to demonstrate a lack of intention to dedicate a public right of way over this section of the route within the relevant twenty-year period.

**Conclusions**

*Section A – B – C, considerations at common law*

32. A route existed in this location from at least the 1940s. By the 1960s the area had been significantly altered to build houses but provision was left for the physical route A – B – C. Even at that time it seems that the wider public were using the route, not simply service personnel. However, the greatest use would have been, in my view, by private right at this stage, with the wider use unlikely to be known by the landowner.
33. With properties apparently being sold off from 1995 there appears to have been some attempt to clarify ownership and rights of way, following on from a 1989 letter. On the basis of the limited information available to me these do not appear to have been effective in terms of the intention of section 31(6) of the 1980 Act.
34. In the knowledge that properties were leaving the MoD control there is no evidence before me of actions taken on the ground to demonstrate that use of this route was not open to those newly moving into Butlers Meadow. DE were clearly aware of use, spending money to install metal barriers on the land. There was no indication that only certain persons were entitled to use the route, for example from notices.
35. Taking account of all the evidence available to me I consider, on the balance of probabilities, that the actions of the MoD, or agencies acting on their behalf, have been such that an intention to dedicate land as a highway may be reasonably inferred. I am satisfied that the use by the general public over the last fifty or so years demonstrates an acceptance of that dedication. I therefore consider that this part of the Order should be confirmed.

*Section C – D – E, considerations under section 31 of the 1980 Act*

36. I am satisfied, on the balance of probabilities, that the evidence as a whole supports use of the route, as of right, on foot throughout the relevant twenty-year period, giving rise to a presumption of dedication of the section C – D – E. As there is no evidence of a lack of intention to dedicate the route as a public right of way this part of the Order should also be confirmed.

*Summary*

37. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Other matters**

38. The alleged actions of the Parish Council, or individual councillors, are not relevant to my determination of this Order.

39. It is clear that there is a great deal of concern about the re-opening of this route, with mention of gating orders which have been used elsewhere to close public rights of way. There is also comment in the UEFs about the usefulness of this route and mention of alternatives. Although I understand the importance of these matters to people living in this area, they are not issues that I am able to give consideration to in making a decision on this Order under the 1981 Act. Management of a public right of way is a separate matter to be dealt with by the appropriate authorities.

**Formal Decision**

40. I confirm the Order.

*Heidi Cruickshank*

**Inspector**



Authorized Signatory

*[Signature]*

341500

341600

■ ■ ■ Claimed public footpath

Butlers Meadow

MAP NOT TO  
ORIGINAL SCALE

Ribble View Close

Lytham Road

0 15 30 60 Meters

341500

341600

341700



Jo Turton  
Executive Director for  
the Environment

Wildlife and Countryside Act 1981  
Claimed public footpath from Butlers Meadow to Ribble View Close,  
Warton, Borough of Fylde Claim 804/489

1:1,250

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