

## Order Decision

On papers on file

**by Alan Beckett BA MSc MIPROW**

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

**Decision date: 19 December 2016**

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### **Order Ref: FPS/Z4310/7/3**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 ('the 1981 Act') and is known as the Liverpool City Council Definitive Map and Statement Modification No. 4 Order 2015.
- The Order is dated 11 September 2015 and proposes to modify the Definitive Map and Statement for the area by adding a public right of way as shown in the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Liverpool City Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs. That objection was withdrawn in writing on 15 October 2016.

**Summary of Decision: The Order is not confirmed.**

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### **Procedural Matters**

1. The Council submitted the Order for determination in July 2016 with a request that it be not confirmed; the sole objection to the Order was withdrawn in October 2016. I have therefore considered this case on the basis of the written representations forwarded to me. I am satisfied that I can make an assessment of the evidence against the relevant statutory criteria and reach satisfactory conclusions on the basis of the evidence supplied without the need to undertake a site visit.

### **Reasons**

2. The Order route commences on Woolton Street and runs in a generally south-westerly then generally north-westerly direction to High Street, Woolton. The Order route crosses land known as Woolton Woods which has been in the ownership of Council since 1921.
  3. An application to add the path at issue to the Definitive Map and Statement was made by Mr Peter Eustance on behalf of Woolton Village Residents Association. In support of the application, Mr Eustance submitted twelve user evidence forms which had been completed by local residents as evidence of their use of the claimed path over a prolonged period of time. The route claimed to have been used differs slightly to the route shown in the Order.
  4. For a public right of way to have come into existence either under the statutory provisions set out in section 31 of the Highways Act 1980 or at common law it is a requirement that use of the claimed path is use 'as of right'; that is, use without force, without secrecy and without permission. If any of these three conditions are not met then the use cannot be use 'as of right' and cannot give
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rise to deemed dedication under the statutory scheme or be relied upon to draw an inference of dedication at common law.

5. The land crossed by the claimed right of way was acquired by the Council in 1921 and has been laid out and maintained since that date as a public open space managed by the Council's Parks and Greenspace Service. The Council's view of the user evidence was that it did not demonstrate use of the land 'as of right' as the public had a statutory right to be on the land for informal recreation.
6. The judgment of the Supreme Court in the case of *R (oao Barkas) v North Yorkshire County Council* [2014] UKSC 31 ('*Barkas*') is relevant to the correct appraisal of the user evidence adduced in this case. In *Barkas*, Neuberger LJ held that "*So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land "by right" and not as trespassers, so that no question of user "as of right" can arise.*"
7. Although *Barkas* was a case involving a claim for the registration of land as a new town or village green, the findings of the Court are directly relevant to this case as the means by which a public right of way or a town or village green can come into existence through long use is reliant upon use being 'as of right'. If public use is pursuant to a statutory right or permission, then use cannot be 'as of right'.
8. As the land crossed by the Order route is held and managed by the Council for the purposes of informal recreation the public who used the land as a means of travel between Woolton Street and High Street were not trespassing as they had a right to be present; such use was therefore 'of right' or 'by right'. For a public right of way to have come into existence through long use over the Order route it would be necessary to demonstrate at least 20 years use prior to the Council's purchase of the land in 1921. Such evidence of use has not been submitted and I conclude that the user evidence does not demonstrate, on a balance of probabilities that a public right of way subsists over the Order route or over the route which the users claim to have walked.
9. Although the Council discounted the evidence of use on the grounds that such use was 'of right', it went on to consider whether a public right of way subsisted based on the available documentary evidence. The only documentary evidence considered by the Council was the Ordnance Survey maps which predated the Council's acquisition of the land. These maps showed that the land had been crossed by a number of paths which included the majority of the Order route. However, whilst Ordnance Survey maps provide good evidence of what was physically present on the ground at the time the land was surveyed, they do not provide evidence as to the status of any of the tracks or paths shown.
10. No other documentary sources have been considered by the Council. I conclude that the limited documentary evidence adduced is insufficient to demonstrate that a public right of way subsists over the Order route.

### **Conclusions**

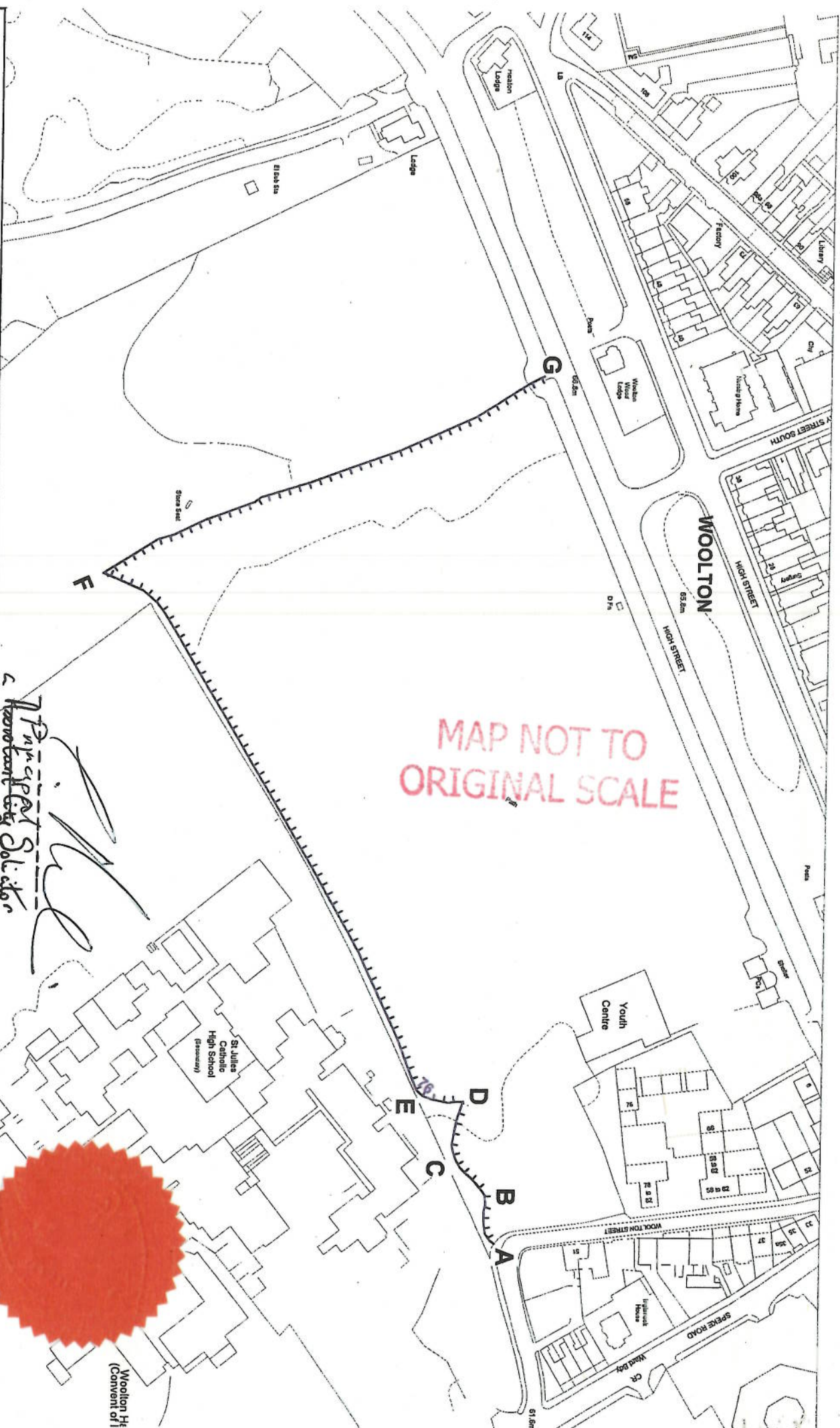
11. In the light of the above, I conclude that there is no evidence in this case which demonstrates that a public right of way subsists over the Order route. It follows that I conclude that the Order should be not confirmed.

### **Formal Decision**

12. I do not confirm the Order

*Alan Beckett*

Inspector



MAP NOT TO  
ORIGINAL SCALE

*Paul Speed Solicitor*  
*Lawson & Co Solicitors*

# PROW NO. 76.WOOLTON STREET TO HIGH STREET

OS : SJ 4286 NW,SW,NE

LENGTH. 473 METRES.

Date: 20/07/2016  
Scale: 1:1,250@A3  
FILE: PROW76

Status:

LS 52258



