
Order Decision

Inquiry held on 26 November 2019

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 12 December 2019

Order Ref: ROW/3214742

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Lancashire County Council, Cutler Lane, Height Barn Lane and Stubbylee Lane, Bacup, Rossendale Borough Definitive Map Modification Order 2015.
- The Order is dated 22 July 2015 and proposes to modify the Definitive Map and Statement for the area by adding a bridleway, 2 restricted byways and a Byway Open to All Traffic (BOAT), deleting one section of footpath and upgrading several sections of footpath to Restricted Byway status, as shown on the Order Maps and described in the Order Schedule.
- There were 4 objections outstanding at the commencement of the inquiry.

Summary of Decision: I propose to confirm the Order subject to modifications that require advertising.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 26 November 2019 at The Business Centre, Futures Park, Bacup. I made an unaccompanied site inspection on Monday 25 November 2019 when I was able to walk the whole of the Order routes. It was agreed by all parties at the inquiry that a further accompanied visit was not necessary
2. In writing this decision I have found it convenient to refer to points marked on the Order Maps. I therefore attach copies of these maps.

The Main Issues

3. With regard to the routes to be added, the requirement of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that rights of way that are not shown on the definitive map and statement subsist along the Order routes.
4. With regard to the routes to be upgraded, the requirement of Section 53(3)(c)(ii) of the 1981 Act is that the evidence should show that highways shown in the map and statement as highways of a particular description ought to be there shown as highways of a different description.

5. With regard to the route to be deleted, the requirement of Section 53(3)(c)(iii) of the 1981 Act is that the evidence should show that there is no right of way over land shown in the map and statement as a highway of any description.
6. Some of the evidence in this case relates to usage of the routes. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
7. Common law also requires me to consider whether the use of the routes and the actions of the landowners have been of such a nature that the dedication of the routes by the landowners can be inferred.

Reasons

8. Lancashire County Council, the Order Making Authority (OMA) relied primarily on documentary evidence in support of the confirmation of the Order. However, a significant amount of user evidence was also submitted. I deal with the different types of evidence separately.

Documentary Evidence

Tithe Map and Apportionment

9. Tithe documents were prepared with the sole purpose of identifying titheable or productive land. They are statutory documents which were in the public domain but were not produced to record public rights of way.
10. The Tithe Map for Spotland (1853) includes the land crossed by the Order routes although this does not appear to have been subject to tithe. However, the map shows routes roughly corresponding to most of the Order routes (Points A1 to A3 and A3 to M3) which suggests that these were considered to be routes of some significance at the time. A short stub is also shown to the east of Point A3 suggesting that the route may have continued eastwards but the remainder of the route A3 to L3 is not shown.

Ordnance Survey (OS) Maps

11. The OS 6" to the mile map published in 1849 shows the full length of the Order routes. Where the route crosses Lee Clough the route shown corresponds to the Order route A2-B2-C2-D2 and a weir and a footbridge are marked. There is no indication of a route corresponding to the current definitive footpath A2-E2-D2. At Height Barn, no clear route through the buildings is visible but a narrower route continuing eastwards and corresponding to the Order route E3-L3 is shown.
12. On the 25" map of 1893, the whole of the Order routes is shown with the exception of the sections A2-E2-D2 and the direct route B2-D2. The routes are shown mainly as enclosed track along which there are gates at several points. A number of other routes annotated 'F.P.' link to the routes but the Order routes themselves are not annotated. A clear route through Height Barn is visible.

13. The OS 1" map of 1896 shows most of the Order routes but not a link to New Line by way of Points J3-K3-L3. Instead the route shown turns south-east part way between Height Barn and New Line and leads to a dead end.
14. Other more recent, larger scale OS maps show similar information to the 1893 map.
15. OS maps are generally considered to provide good evidence of the existence of routes shown at the time they were surveyed but they did not claim to indicate the presence or otherwise of public rights over routes. In fact, before the 1960s they included a disclaimer stating that routes shown were not necessarily public rights of way. Nevertheless, the consistent manner in which the Order routes have been shown since the 19th century would suggest that they were regarded as significant routes which may well have been usable by horse riders and possibly vehicular traffic.

Commercial Maps

16. A number of commercial maps were examined by the OMA. Hennem's Map (1830) shows most of the Order routes but, the west to east route appears to terminate in the vicinity of Height Barn and New Line is not shown.
17. Bartholomew's 1/2" maps published between 1904 and 1941 show the routes in a similar manner to the 1896 OS 1" map, that is with no through link to New Line by way of Points J3-K3-L3 but, instead the route shown turns south-east part way between Height Barn and New Line and leads to a dead end. The OMA speculated that this may be because the through section of the route in this area was unenclosed. The routes are shown uncoloured which according to the key meant that they were "*inferior and not to be recommended*". However, footpaths and bridlepaths were shown with a different notation. These maps also included a disclaimer stating that routes shown were not necessarily public rights of way.
18. A Cassini map of 1842-1859 shows the whole of the Order routes. However, a Cassini map of 1903-1904 shows the routes in a similar manner to the OS map of 1896 and the Bartholomew maps, that is without a through link to the east of Height Barn.
19. Bacon's Map (1904) appears to show the Order routes but is produced at a very small scale and detail is obscured by wording.
20. A Geographia Map Directory (c.1934) shows the whole of the Order routes except for a short gap in the vicinity of Lee Clough (Point C2). This was an independently produced, detailed street map. The OMA suggests that the inclusion of the Order routes indicates that they were considered to be substantial routes carrying at least public bridleway rights. The gap at Lee Clough possibly indicates that this section had become impassable in the 1930s.

Finance Act 1910

21. This act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of

reducing liability. The existence of public rights of way over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.

22. In this case, large sections of the Order routes appear to have been excluded from adjacent hereditaments for taxation purposes. This is typically the way in which public vehicular highways were dealt with although some private vehicular routes may also have been excluded. Bridleways and footpaths were normally dealt with by allowing deductions from value rather than excluding them from hereditaments. The excluded sections are A1-C2, O2-A3-X3, A3-M3 and K3-L3. Other sections are included within larger hereditaments for which deductions in respect of unspecified rights of way were allowed which may have included the Order routes. In the short section H2-I2, the Order route crosses a tramway and no reference to a right of way is recorded.
23. With the exception of the short section H2-I2, these records are consistent with some sections of the Order routes having been regarded as public vehicular rights of way but with others having a lesser, possibly bridleway, status.

Highway Records

24. The county council's highway adoption records (date not known) include the whole of the route A1 to L3 by way of A2-B2-C2-D2 coloured red as a publicly maintainable route. Stubblee Lane between A3 and M3 is not similarly coloured. All other red coloured routes are said to be accepted as full highways.
25. Other digitised details of road classifications record the Order route between Points A1 and E1 and Points O2 to L3 as publicly maintainable highways.
26. A Borough of Rossendale Schedule of Highway Streets Register (1986) lists routes which are publicly maintainable streets. This includes details of Cutler Lane and Height Barn Lane which are consistent with Order routes Between A1 and L3. The section of Stubblee Lane between A3 and M3 is not listed.
27. These records relate to public maintenance responsibility rather than the status of routes, although it is unlikely that authorities would accept responsibility for the maintenance of wholly private routes with no public rights. Objectors also pointed out that there was no evidence of any maintenance of some sections of the routes by the highway authority ever having taken place.

Other Historic Documents

28. A Stubblee Estate Plan (1902) shows parts of the Order routes although none lay within the estate boundary. The route between Points A2 and A3 is shown and labelled '*Old Highway*'. It is also annotated '*From Greens*' close to A2 and '*To Britannia*' close to A3. It also appears to follow the alignment A2-B2-C2-D2 through Lee Clough. Stubblee Lane between A3 and M3 is also shown but not annotated.
29. Sales particulars dated 1927 related to 2 areas of land to be sold at auction. One included the Order route between Points B3 and K3 and the other that between O2 and A3 and between A3 and M3. The route between O2 and A3 is labelled '*Old Driving Road*', that between A3 and M3 is coloured yellow and described as an '*Occupation Road*'. The OMA suggests that the so-called '*driving road*' would not simply have terminated at Points O2 and A3 but also accepts that the term could describe a route for driving animals and/or

vehicles. It was also pointed out that the description of a route as an 'Occupation Road' did not mean that public rights could not also subsist over the same route

Aerial Photographs

30. Aerial photographs taken in the 1940s, 1960, 2000 and 2010 were submitted by the OMA. On these the whole of the Order routes is generally visible although the clarity of the images varies. On the earlier photographs the route at Lee Clough appears to follow A2-B2-C2-D2 whereas from 2000 the route appears to follow A2-B2-D2. This is consistent with it having been stated that the county council constructed the new direct route B2-D2 between 1997 and 2000. The route A2-E2-D2 is not visible on any of the photographs.

The Definitive Map

31. The first draft definitive map for the area was published in 1955. It included the Order route A1 to L3 by way of A2-E2-D2 at Lee Clough and a more direct route D3-H3 near Height Barn as a footpath. It did not include Stubblelee Lane A3-M3. Subsequent versions of the map have shown the same information.

Conclusions regarding Documentary Evidence

32. There is no documentary evidence that the section of route A2-E2-D2 has ever existed whereas a large number of documents record the route A2-B2-C2-D2.
33. The remainder of the Order routes, except for the direct route B2-D2 appear to have existed since the mid-19th century. Although there are some differences in the way the Order routes are depicted in different documents, when the evidence is considered in total, it is in my view consistent with the routes having been regarded as public routes of at least bridleway status.
34. It could be argued that most of this evidence is also consistent with the routes being public vehicular routes. However, substantial sections of the routes were included within hereditaments in the 1910 Finance Act survey and the manner in which the route to the east of Height Barn was shown varied in some documents. In the light of this, it is my view that on the balance of probability, the documentary evidence that is available indicates that the Order routes, with the exception of sections A2-E2-D2 and the direct route B2-D2, are public bridleways.

Evidence of Use

35. Forty-one User Evidence Forms (UEFs) were submitted in support of confirmation of the Order with regard to the routes A1-A3 and A3-M3 but not the route A3-L3 by way of Height Barn. In addition, three people who had previously completed UEFs appeared at the inquiry. The user evidence specifically related to use of the routes on horseback, although some people also stated that they had used the routes on foot and bicycles.
36. A small number of people indicated either in their UEF or at the inquiry that they had sometimes used the route A3-L3 as well as the other routes, but this was not sufficient in my view to raise a presumption that this route had been dedicated as a public right of way of any sort under the provisions of the 1980 Act.

37. Nearly all the UEFs were completed in 2011. I do not know what led to the collection of evidence at that time as, according to the OMA, no application was then made. However, it would seem that at that time public use of the routes for bridleway purposes was perceived to have been in question. Accordingly, I have taken the relevant period of 20 years public use which would raise a presumption that the routes have been dedicated as public bridleways in accordance with the provisions of the 1980 Act as running from 1991 to 2011 in this case.
38. The route used in the vicinity of Lee Clough appears to have been A2-B2-C2-D2 before 2000 but A2-B2-D2 after then.
39. The available user evidence describes use of the routes from the 1960s until 2011 and more recently. Fourteen people claimed to have used the routes throughout the period 1991-2011 and the rest for at least some of that period. The frequency of use claimed varied but viewed in total the evidence indicates a substantial level of use such as to raise the presumption that the routes had been dedicated as public bridleways with the exception of the sections A2-B2-C2-D2 and A2-B2-D2 each of which was used for part of the relevant period.
40. No substantive evidence of action taken by landowners that would rebut this presumption of dedication was submitted.

Conclusions regarding User Evidence

41. The available user evidence indicates that even if the sections of route A1-B2, D2-A3 and A3-M3 were not already public bridleways, they could be presumed to have been dedicated as such in accordance with the provisions of the 1980 Act as a result of public use in the period 1991-2011.

Common Law

42. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
43. In this case, the section E2-D2 was constructed by the landowner, Lancashire County Council, in 1997-2000 as a public bridleway. User evidence indicates that since then it has been used as a bridleway by the public. Accordingly, although no formal dedication of the route has taken place, it is reasonable to infer that this section of the route has been dedicated as a public bridleway at common law.

Other Matters

44. A number of gates are present along the Order routes and the documentary evidence indicates that they have been present for a considerable time and were probably in place when the routes became public. They should therefore be recorded as limitations on public use of the routes. Five of these are already included in the Order but, at the inquiry a further two were identified and the OMA has requested that the Order be modified to add these. I therefore propose to modify the Order accordingly.
45. Objectors raised a number of concerns regarding the Order. These included possible devaluation of property, health and safety issues, security and

vandalism. I understand these concerns but, as they lie outside the criteria in the relevant legislation, I am unable to give them any weight in reaching my decision.

Conclusions

46. There is no documentary or user evidence to indicate that the route A2-E2-D2 has ever existed. It therefore seems clear that A2-E2-D2 was recorded in the definitive map in error and it should now be deleted.
47. The routes A1-L3 by way of A2-B2-C2-D2 and A3-M3 should be recorded as public bridleways on the basis of the documentary evidence available.
48. The section of route B2-D2 should be recorded as public bridleway on the basis of inferred dedication at common law.
49. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to modifications to record most of the routes as public bridleways rather than byways and to add two additional gates as limitations on public use.

Formal Decision

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

In the Schedule to the Order, Part I, substitute '*bridleway*' for '*restricted byway*' or '*byway open to all traffic*' wherever these terms occur;

In the Schedule to the Order, Part II, substitute '*bridleway*' for '*restricted byway*' or '*byway open to all traffic*' wherever these terms occur;

In the Schedule to the Order, Part II, delete the words '*Limitations: None*' from the description of Bacup 679 and add '*Limitations: Field gate at SD 8699 2164*';

In the Schedule to the Order, Part II, delete the words '*Limitations: None*' from the description of Bacup 680 and add '*Limitations: Field gate at SD 8728 2173*';

Amend the Order Maps accordingly.

51. The proposed modifications would have the effect of showing as highways of one description ways which are shown in the Order as highways of another description. It is therefore required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act that notice of the proposal to modify the Order be given and an opportunity for objections and representations to be made regarding the proposed modifications.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Constanze Bell Counsel, representing Lancashire County Council (LCC)

Who called:

Jayne Elliott Senior Definitive Map Officer, LCC

Chris Peat Horse rider

Ann White Horse rider

Wendy Walmsley Horse rider

Objectors

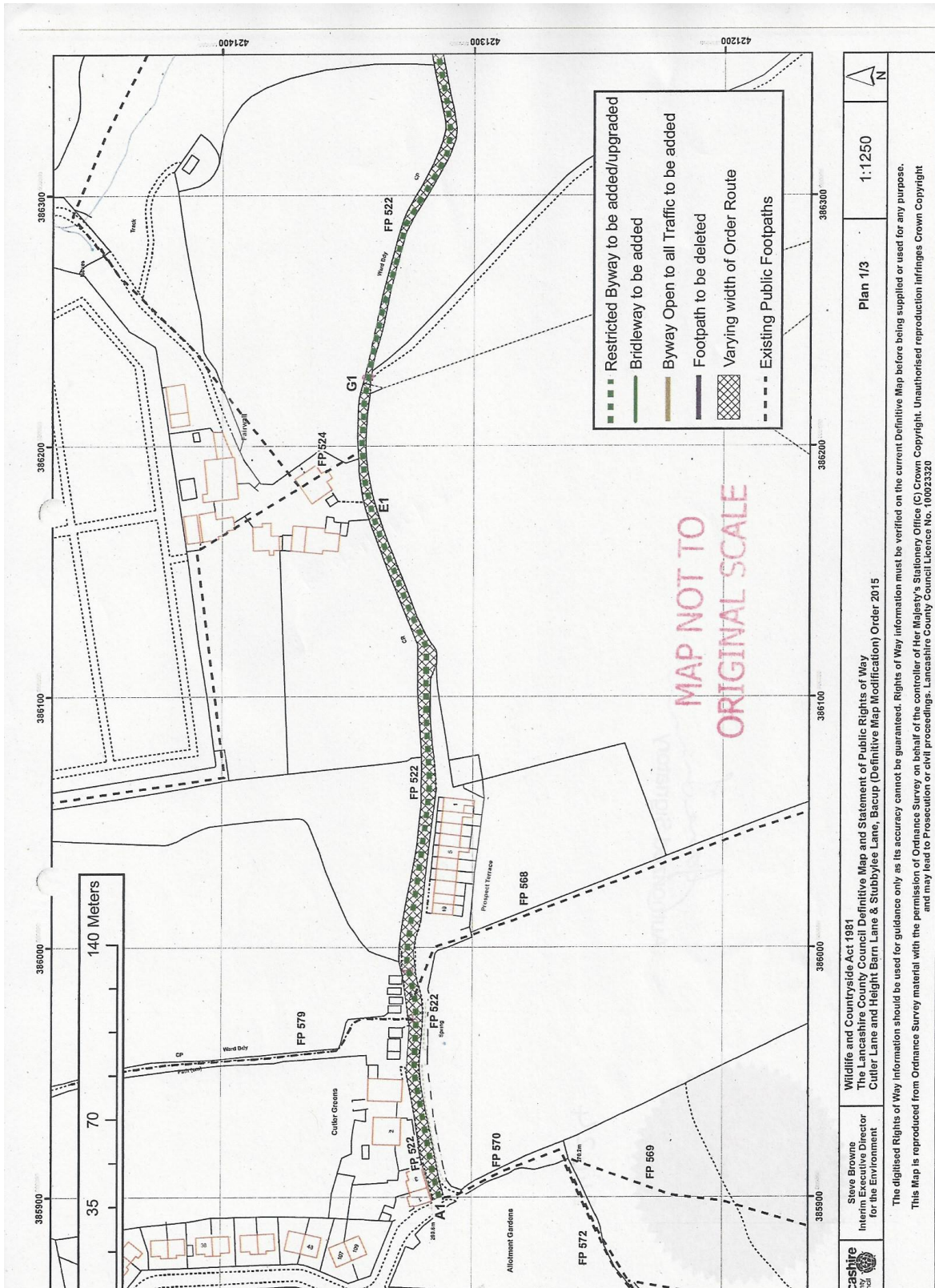
Tony Coates Landowner

Christine Coates Landowner

Christine Thorpe Landowner

DOCUMENTS

1. Two bundles of documents assembled by LCC.
2. Statement of Case of LCC.
3. Proof of Evidence and Summary Proof, Jayne Elliott, LCC.
4. Statements of Ann White, Anne Swift, Carole Green, Chris Peat, Doreen Hardman, Elizabeth Patmore, Jane Kempson, Kimberley Haworth, Linda Ward, Vanessa Hanson and Wendy Walmsley, LCC.
5. Email with enclosures dated 16 August 2019 from NFU Mutual on behalf of Mrs Thorpe.
6. Additional Statement, Mr and Mrs Coates.
7. Opening Statement, LCC.
8. Requested modifications, LCC.



<p>Lancashire County Council</p>	<p>Steve Browne Interim Executive Director for the Environment</p>	<p>Wildlife and Countryside Act 1981 The Lancashire County Council Definitive Map and Statement of Public Rights of Way Cutter Lane and Height Barn Lane & Stubbyee Lane, Bacup (Definitive Map Modification) Order 2015</p>	<p>Plan 1/3</p>	<p>1:1250</p>
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