



Order Decision

Site visit made on 13 August 2019

by Alan Beckett BA MSc MIPROW

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

Decision date: 11 February 2020

Order Ref: ROW/3216294

- 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 (Old Lane, Bispham) Definitive Map Modification Order 2014.
- Lancashire County Council ('the Council') submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 30 December 2014. The Order was the subject of an interim decision dated 10 September 2019 in which I proposed to confirm the Order subject to modifications which required advertisement.

Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision.

Procedural Matters

1. The effect of the Order, if confirmed with the modifications that I previously proposed would be to add to the definitive map and statement for the area a Restricted Byway commencing on U1318 Old Lane, Mawdesley (Point A on the Order plan) and running in a generally southerly direction for approximately 195 metres to U458 Old Lane, Bispham (point B on the Order plan).
2. In my interim decision of 10 September 2019, I proposed to confirm the Order subject to the modifications described in paragraph 1 above. Since the modifications proposed in my interim decision would show as a highway of one description a way which is shown in the Order as a highway of another description, I was required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of my proposal to modify the Order.
3. One objection was received in response to the advertisement of my proposed modifications. The objection was made on behalf of the owners of Sills Farm who had originally objected to the proposed recording of the route as a public bridleway. Despite their initial objection to the Order as originally made, the objectors do not appear to dispute that the Order route is a public carriageway or that the right of the public to use the route with mechanically propelled vehicles ('MPVs') was statutorily extinguished on 2 May 2006 by the operation of section 67 (1) of the Natural Environment and Rural Communities Act 2006 ('the 2006 Act').
4. The objectors submit that in paragraph 48 of my interim decision, I had incorrectly concluded that none of the exceptions found in section 67 (2) to (8) of the 2006 Act were applicable. The objector considers that section 67 (5) is applicable in this case as since the purchase of the farm in 1994, the Order

- route has been used as part of Old Lane for accessing their land with MPVs and livestock.
5. Section 67 (5) of the 2006 Act reads: "*where, immediately before commencement, the exercise of a public right of way to which sub-section (1) applies – (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had an interest in that part only, the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land*".
 6. Copies of the objector's land registry title and plans were submitted as evidence that the objector did not own any part of Old Lane and was therefore reliant upon the public carriageway as a means of access to their lands which front onto Old Lane, Bispham and to access their lands which lay either side of Old Lane in Mawdesley.
 7. It is submitted that the objectors had exercised the public right of way with vehicles over Old Lane since 1994 and that the exercise of such rights was reasonably necessary to obtain access to their land either side of the lane and to access other lands north of the Bentley Brook which formed part of their holding.
 8. There was nothing in the objectors' initial objection to suggest that they considered the Order route to be a public carriageway or that use of the Order route in association with their agricultural operations was as members of the public. The title documents submitted are however, entirely consistent with the tithe evidence, the sale documents of the Hesketh Estate, Ordnance Survey Name Book and the 1910 Finance Act documents already considered which demonstrated that there was no known owner of the Order route and that it had formed part of the local road network.
 9. It appears from the evidence submitted in response to my proposed modifications that the objector does not own any part of Old Lane. In the absence of any evidence that the objector has a pre-existing private right of way over the order route, any vehicular use of Old Lane prior to and subsequent to the commencement of section 67 of the 2006 Act is likely to have been as a member of the public exercising a public right of way for vehicular traffic.
 10. Section 67 (5) of NERC provides for the creation of a statutory private right of access for mechanically propelled vehicles over those routes where the public MPV right has been extinguished under section 67 (1). If the proposed modification to record the Order route as a Restricted Byway is confirmed, the objectors will have the benefit of a private MPV right under the provisions of section 67 (5) as a means of accessing their property.
 11. The objectors submit that the Order should be modified to record the existence of the private right of way created under section 67 (5) for themselves and for their successors in title. The Order is however a means by which public rights are to be recorded on the definitive map and statement; it is not concerned with the recording of private rights and such matters are not within my remit.

Conclusion

12. Bearing in mind the above, I conclude that the Order should be confirmed subject to the modifications set out in paragraph 59 of my interim decision dated 10 September 2019.

Formal Decision

13. I confirm the Order subject to the following modifications:

- (a) throughout the Order and Order plan, replace any reference to bridleway with Restricted Byway;
- (b) in the Order plan replace the notation for bridleway with that for Restricted Byway.

Alan Beckett

Inspector

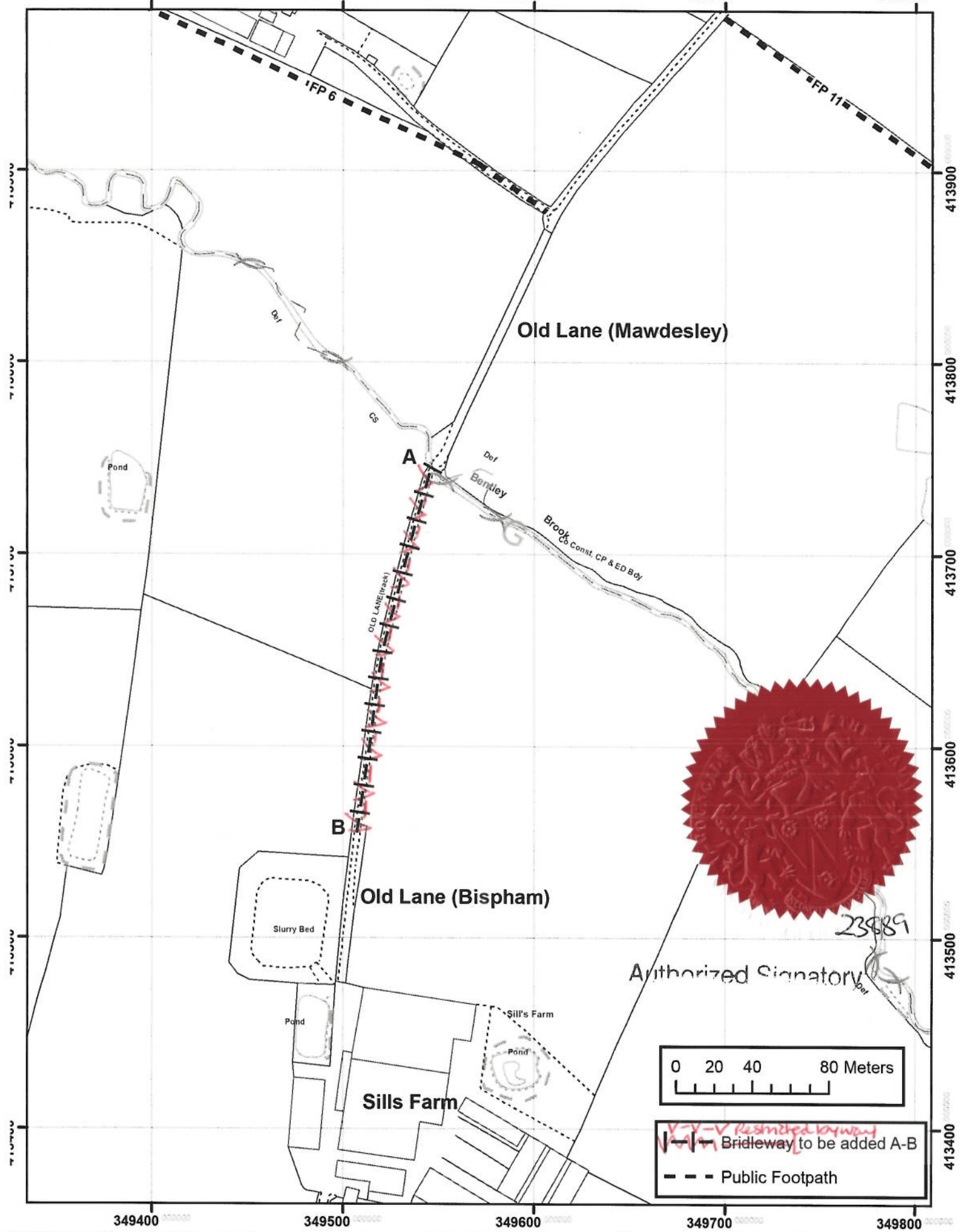
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Steve Browne
Interim Executive Director
for the Environment

Wildlife and Countryside Act 1981
Addition of public bridleway from Old Lane, Mawdesley, Chorley Borough
to Old Lane, Bispham, West Lancashire District Application No. 804-445

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