



Order Decision

Inquiry opened on 14 January 2020

by Sue Arnott FIPROW

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

Decision date: 28 January 2020

Order Ref: ROW/3226086

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Lancashire County Council (Higher Boarsgreave, Bacup) Definitive Map Modification Order 2016.
- The Order is dated 9 March 2016. It proposes to modify the definitive map and statement for the area by recording a public bridleway and deleting a section of a footpath above Higher Boarsgreave at Cowpe near Bacup, as shown on the Order map and described in the Order schedule.
- There were 14 objections outstanding (and one representation) when Lancashire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.

Preliminary matters

1. On 14 January 2020 I opened a public inquiry in the Business Centre at Futures Park in Bacup, having visited the site of the claimed public bridleway during the previous afternoon, unaccompanied. The proceedings closed on 15 January after which I made a further visit to the site for which I was accompanied by representatives of Lancashire County Council (LCC) (the order-making authority) and objectors: Mrs K A Thorpe, Mrs Brown and Mr and Mrs Mills.
 2. At the start of the proceedings, LCC drew attention to a mistake which had been discovered in text of Part 1 of the schedule to the Order. Although the map shows the start of the claimed bridleway as point A, the description in the Order schedule refers to a gate at the end of Cowpe Lane when in fact this gate lies across a section of the highway to the north of point A. LCC requested that, if minded to confirm the Order, I modify this by simply removing the words "the gate at" for clarification.
 3. I consider it unlikely that anyone would have been misled by this error since the proposal is otherwise extremely clear, nor is it likely that prejudice will have been caused to any party as a result of the mistake.
 4. Similarly, I accept that the use of non-standard notation to depict the route proposed for deletion (F-I) on the Order map is unlikely to have caused any confusion since the key makes quite clear the intention of the Order in this respect and I see no need for any amendment at this stage.
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The Main Issues

5. In essence, the main issue here is whether the evidence is sufficient to show that, in the past, the Order route has been used in such a way and to such an extent that a public bridleway can be presumed to have been established.
6. LCC made the Order under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of events specified in sub-sections 53(3)(c)(i), (ii) and (iii). It follows from this that, if I am to confirm the Order, I must be satisfied that the evidence available is sufficient to show, on a balance of probability, that:
 - In relation to the part of the claimed route shown on the Order map between points F and G where no right of way is shown in the definitive map and statement at present, that a public bridleway subsists;
 - In relation to those parts of the Order route shown as A-B-C-D-E-F and G-H which are presently recorded in the definitive map and statement as public footpaths 617, 616 (part), 609 and 612 (part), that a public bridleway subsists;
 - In relation to that section of the Order route between points F and I which appears in the definitive map and statement as part of Footpath 616, that there is no public right of way over the land as shown.
7. During the course of the inquiry, questions arose over the exact status of the continuation of the Order route at both ends, from point A and point H. As a result of examining the evidence submitted in support of the Order, I have been prompted to look also at whether additional public rights should be recorded on the definitive map northwards from point A (via Footpath 612 and the public road U7774) along Cowpe Road to a point I shall call "X" and eastwards from H (via Footpath 617) to Rooley Moor Road at a new point "Y".

Reasons

8. Firstly, I have examined the several old maps, historical documents and aerial photographs discovered by LCC which relate to the Cowpe area. The authority concluded, as do I, that these contribute little beyond confirming that there is no significant evidence to demonstrate a right of way (public or private) of any antiquity along the Order route. However these same records do support the conclusion that there has been in place a substantial track from the end of Cowpe Road via Higher Boarsgreave up to Rooley Moor Road (via X-A-B-C-D-E-F-G-H-Y) since the mid-nineteenth century. That finding is not disputed.
9. In short, these historical documents confirm there has been a physical track on this line for over a century but provide no evidence that it was used by public.

The status of section F-I

10. This exercise also reveals that all the historical evidence shows the track to follow the line F-G. Indeed the first definitive map published in 1962 recorded Footpath 616 along this route. It is only the current definitive map (published in 1975 at the first review stage with a relevant date of 1 September 1966) that shows it instead along the line F-I. However the accompanying definitive statement continues to refer to Footpath 616 ending at its junction with Footpaths 617, 618 and 619 (that is point G). No evidence of any formal diversion to point I has been discovered.

11. Once prepared, and unless and until subsequently revised, the definitive map and statement is regarded as conclusive evidence of the existence, at the relevant date¹, of the public rights of way it shows. The deletion or down-grading of a right of way from this record requires sufficient evidence to show that no right of way existed as at the relevant date of the definitive map on which the way was *first* shown (in this case 1 September 1966).
12. When considering deleting routes from the definitive record, guidance issued by Defra in Rights of Way Circular (1/09) v2 advises that *"The evidence needed to remove what is shown as a public right from such an authoritative record as the Definitive Map and Statement ... will need to fulfil certain stringent requirements."* These requirements are that the evidence must be new, it must be of sufficient substance to displace the presumption that the definitive map is correct, and it must be cogent.
13. Also of particular relevance here is the case of *R (on the application of Norfolk County Council) V Secretary of State for Environment, Food and Rural Affairs [2005]*² which established that where the definitive map and statement are discovered to be in conflict, neither is to be taken as conclusive: *"In the case of irreconcilable conflict between the map and the statement, there is no evidential presumption that the map is correct and the statement not correct. The conflict is evidence of error in the preparation of the map and statement which displaces the Trevelyan³ presumption. Each should be accorded the weight analysis of the documents themselves and the extrinsic evidence, including the situation on the ground at the relevant date, demonstrates is appropriate."*
14. In this case, evidence has been discovered which shows that in all probability the line F-I was the result of a drafting error at the first review stage and that Footpath 616 should have been recorded via F-G as it had in all previous mapping evidence. That finding has not been disputed.
15. I have no hesitation in concluding that the evidence is sufficient to satisfy the requirements for deleting from the definitive map that section of Footpath 616 between F and I and substituting a public footpath along F-G.
16. However, there remains the question of whether usage of F-G over many years by horse-riders has established a public right of way over and above the right to pass and repass on foot.

The claimed bridleway via A-B-C-D-E-F-G-H

17. The case in support of the Order is based on the presumed dedication of a public bridleway under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred,

¹ Of the definitive map

² *R (on the application of Norfolk County Council) V Secretary of State for Environment, Food and Rural Affairs (QBD) [2005] EWHC 119 (Admin), [2006] 1 WLR 1103, [2005] 4 All ER 994*

³ *Trevelyan v Secretary of State for the Environment, Transport and the Regions (CA) [2001] EWCA Civ 266, [2001] 1 WLR 1264 (BBE)*. The Court of Appeal held that where a right of way is shown on the definitive map there is an initial presumption that it exists. *"If there were no evidence that made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists."*

there must have been use of the claimed route by the public on horseback or leading a horse, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question. Such use would raise a presumption that the route had been dedicated as a public bridleway. It may be rebutted if there is sufficient evidence to show there was no intention on the part of the relevant landowner during this period to dedicate the way for use by the public; if not, a public bridleway will be deemed to subsist.

When was the status of the way brought into question?

18. When considering the evidence in relation to Section 31 of the 1980 Act, the first matter to be established is when the public's rights were brought into question.
19. LCC concluded that this occurred in April 2011 when a group of horse-riders were challenged by Mr S Thorpe whilst riding along the Order route at Higher Boarsgreave. The altercation had the effect of dissuading other local riders from using the route for fear of a similar confrontation and prompted the gathering of evidence from users of the way for submission to LCC. A formal application for a definitive map modification order to record a public bridleway was submitted to the Authority on 10 November 2012.
20. LCC's conclusion as regards the date has not been disputed. Although I heard from objectors Mrs K A Thorpe and Mrs Brown that horse riders and cyclists were regularly challenged, no specific incidents were drawn to my attention nor particular dates when this occurred. I am therefore content to accept that April 2011 is the most appropriate date to regard as the challenge which brought into question the extent of the public's rights over the Order route.
21. It follows from this that I need to examine the claimed use by the public during the preceding twenty years, April 1991 - April 2011.

Evidence of use by the public

22. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been enjoyed 'as of right', without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that does not take place in secret, is not by force and is not on the basis of permission.
23. In support of the claimed route I have before me the written evidence of 50 individuals. Five of these people ceased using the route before April 1991 leaving 45 people who have done so, on horseback or with a bicycle, during the relevant period.
24. Section 68 of the Natural Environment and Rural Communities Act of 2006 requires that use by pedal cyclists should be taken as contributing to the establishment of a restricted byway⁴ when considering the requirements for deemed dedication under Section 31 of the 1980 Act.
25. In this case there is evidence from 9 cyclists who have used the Order route during the relevant 20 years. In my view that is not enough to represent use

⁴ A restricted byway includes a right of way on foot, on horseback or leading a horse together with a right of way for vehicles other than mechanically propelled vehicles.

by 'the public' in this context and therefore it is not sufficient to raise a presumption that the route was being dedicated as a restricted byway.

26. However, one of the principles established in the case of *Whitworth v SSEFRA [2010]*⁵ is that where the evidence points to a long-standing bridleway that subsequently becomes used by cyclists, the cycling use should be attributed to the bridleway status that was established first, even if this was not formally recorded on the definitive map.
27. I consider that analysis will probably apply also to the facts here: the earliest claimed use by horse riders reaches back to the 1950s whereas use by bicycle appears to have been a more recent activity, beginning in the late 1980s as all-terrain bikes grew in popularity. I am therefore satisfied that the cycling use that is claimed should be judged as contributing to the establishment of a public bridleway rather than a restricted byway.

Analysis of the user evidence

28. The initial application to LCC included standard evidence forms completed by 41 individuals, 35 of whom claimed equestrian use and 6 of use on a bicycle. Of these 41, 36 claimed to have used the route for all or part of the relevant 20 years. The frequency of use claimed varied from twice a year, monthly, fortnightly, several times a week to more than daily visits.
29. Thirteen of these original claimants also completed written witness statements as did 9 others⁶ who had not previously contributed evidence. Five of these 9 people claimed use throughout the whole 20 years (3 of whom were cyclists) with the remaining 4 having used it for lesser periods.
30. At the inquiry I heard directly from 13 of these people, each submitting to cross-examination and answering all questions put to them. I found all these claimants to be credible witnesses although most were challenged over the frequency of their use, the objectors contending that this had been greatly over-stated. LCC concluded that there was no evidence of collusion between the claimants and, having now heard their individual stories and their personal recollections at the inquiry, I too am satisfied that their evidence has not been fabricated nor exaggerated.
31. I note that none of the claimants state they were ever challenged whilst riding the claimed bridleway prior to the incident in April 2011. Mr S Thorpe is reported to have challenged riders around that time and leading up to the submission of the application but not during the relevant 20 years. In fact some claimants said he chatted to them whilst others said he would sometimes open gates for them.
32. There is no evidence that notices were ever erected by any party with the intention of deterring horse riders or cyclists from using the public footpath, nor that such users were ever given express permission to use the route.
33. However I note that Mr E Thorpe was previously a tenant of land through which the Order route passes and therefore enjoyed access to that land by private licence until 1999. For this reason I disregard his personal evidence of use (and the evidence of other members of his immediate family) for those early

⁵ *Whitworth and others v SSEFRA (QBD) [2010] EWHC 738 (Admin), [2010] EWCA Civ 1468*

⁶ One of these was provided at the inquiry since it had not been completed in time for earlier submission.

- years of the relevant period, but I do nevertheless take account of his recollection of seeing other members of the public on the route on horseback and with bicycles using the route openly and without challenge.
34. It is clear that the claimed usage did not take place in secret; although the extent of the use has been questioned, it was open, readily observable and took place at various times of day and days of the week. In fact I was shown the position of Mrs K A Thorpe's kitchen window which is immediately adjacent to the top end of Cowpe Road near my point X; it is plain that anyone passing along the track here would be clearly seen by someone standing indoors looking out of that window. Whilst some claimants were known to the objectors, many were not.
35. I am quite satisfied that the claimed use was without force, without secrecy, without permission and therefore 'as of right'. But was it also continuous and without interruption throughout the whole 20-year period?
36. Analysis of the evidence from the 22 people who gave more detailed statements shows that 14 were using the Order route at the start of the relevant period⁷ whilst 15 were doing so at the end. This is bolstered by the evidence of the remaining 26 claimants (although I can place less weight on their forms). Most recalled gates along the route but only one person recalled an occasion when one was found to be locked, and all but two people said the gates did not prevent them from using the way.
37. During 20 years at issue there was less use in the first decade than in the second (when, for the most part, there were at least 20 claimants using the route at various intervals). Even so, I am satisfied there is sufficient evidence here to show that the claimed use was continuous and uninterrupted throughout the relevant period.
38. The objectors acknowledge that some riders have used the route but it is their stated frequency of use that is disputed by many of those who oppose this Order.
39. Of the 14 objectors, only Mrs Brown submitted a statement of case and only she and Mrs K A Thorpe gave evidence at the inquiry. Mrs Brown spoke of growing up at Higher Boarsgreave and of her recollections of playing outside as a child through the 1990s when the passage of anyone other than on foot was a rare event. She accepted that whilst 9 riders (known to her) had been seen using the Order route on horseback, there simply had not been the volume of use by horse riders and cyclists as claimed. Her mother, Mrs K A Thorpe, has lived at High Boarsgreave for 43 years. She also accepted there had been occasional use by horse riders and cyclists but very honestly acknowledged that she would not necessarily have seen every user pass her window. Even so, she challenged the level of use that has been asserted.
40. Both witnesses spoke of helping Mr S Thorpe at his vehicle repair garage adjacent to the route at point C but yet not observing the claimed use by horse riders and cyclists. In his written evidence, another objector (Mr Parker) admitted seeing two particular riders whilst working at the garage but challenged the basis of their claimed use.

⁷ I have discounted the Mr E Thorpe and family in this figure

41. In reaching my conclusion on the frequency of use by horse riders and cyclists, I recognise that it can be difficult to prove a negative. Whilst claimants can often recollect times when they used a particular route because of other memorable circumstances, it is much harder to show that riders were not using the Order route other than on a few occasions.
42. As I have already noted above, I found the evidence of all the witnesses who spoke at the inquiry to be credible and their evidence given honestly. There are clear conflicts between the recollections of Mrs Brown, Mrs K A Thorpe and the 13 claimants that are not easy to reconcile when the objectors were adamant there was not the quantity of use throughout the relevant period that is being claimed.
43. There is no statutory minimum level of user required to raise a presumption of dedication. Use of the way by different persons, each for periods of less than the relevant 20 years, can suffice if, taken together they total a continuous period of 20 years or more. In general terms, the number of users must be such as might reasonably be expected if the route had been unquestionably a public bridleway.
44. Even if I did not accept that certain individuals had used the route as frequently as they have claimed, I still have before me the evidence of 45 people who have done so with varying degrees of regularity throughout the 20 years. I place more weight on the evidence of those who submitted witness statements and more still on those who gave evidence in person to the inquiry, and overall that is a significant number of people. Some may not have used it more than once or twice a year but many others did so much more frequently.
45. I accept many were not seen by the Thorpe family at Higher Boarsgreave but I am nonetheless satisfied that the level of use of the Order route by horse riders and cyclists throughout the relevant period was sufficient to raise a presumption of dedication as a public bridleway along A-B-C-D-E-F-G-H.

The intentions of the relevant landowner

46. The whole of the Order route lies within the ownership of United Utilities plc. Land Registry documents show this to have been the case since 2006. Although there is no absolute proof before me that prior to this the company was the owner, other evidence supports the conclusion that its predecessor North West Water Ltd held the land as far back as the 1970s (according to the evidence submitted by Mr E Thorpe) and by the local authority before that.
47. United Utilities plc has been notified of this Order and has not registered any objection, nor has it provided any evidence to show a lack of intention to dedicate the Order route as a bridleway at any time. There are no reports of notices challenging use by the public with horses or bicycles and no statutory deposits or declarations have been lodged under Section 31(6) of the 1980 Act. In fact there is no evidence at all to show that any action has ever been taken by or on behalf of the landowner to prevent horse riders or non-motorised cyclists from using the Order route.
48. I therefore have no hesitation in concluding that the presumption of dedication of the way as a bridleway is not rebutted.

Summary

49. In conclusion, and on the basis of the information provided, I am satisfied that the relevant statutory test is met: that, on a balance of probability, a public right of way for horse riders and (non-motorised) cyclists has been shown to subsist over the Order route A-B-C-D-E-F-G-H. Consequently, I conclude that the Order should be confirmed.

The continuation of the Order route from point H to Rooley Moor Road

50. In every case, the claimants described their use of the Order route over many years as continuing to or from Rooley Moor Road⁸. That point has not been challenged. I have concluded that the use by riders over the relevant 20-year period (1991-2011) is sufficient to raise a presumption of dedication over the Order route and that this presumption is not rebutted by evidence of a lack of intention to do so by the landowner. The same conclusion could potentially apply equally to the continuation of the route from point H to my point Y.
51. In 2014 LCC considered the inclusion of this section of the claimed route when its Regulatory Committee examined the evidence and decided to make the Order. This section was rejected, essentially because it crosses a parcel of registered common land known as Goose Green. LCC concluded that, being an urban common, the rights conferred on the public under Section 193 of the Law of Property Act 1925 included the right of access "for air and exercise" and that this extends to use on horseback as well as on foot. At that time LCC took the view that, being essentially authorised by Section 193, the claimed use by horse riders over this section could not be categorised as being 'as of right' and therefore could not raise a presumption of dedication.
52. At the inquiry I invited LCC's views on the (obiter) comments of Mr Justice Sullivan in the case of *R v Secretary of State for Environment Ex Parte Billson [1998]*⁹; this is another case where the route at issue crossed a common over which the public enjoyed the right to air and exercise under the provisions of Section 193 of the 1925 Act. In the *Billson* case it was decided that the use of a track for the purposes set out under the 1925 Act could not give rise to use 'as of right'. However Sullivan J accepted that if the same track was used instead simply to walk between two points, A and B, then in principle such use would be capable of establishing a public right of way over the track despite the authority that was provided for other purposes.
53. Since the application was determined, LCC had received further evidence of use by cyclists, use which was clearly not authorised by Section 193 but which can nonetheless contribute to the claimed upgrading. However I have concluded that use by cyclists alone would not be of sufficient quantity or regularity to establish a right of way. Yet combined with horse riding use of the very defined track from H to Rooley Moor Road over this period, I find this use to be clearly of such amount and such a character as would reasonably be regarded as being the assertion of a public right of way¹⁰ as opposed to the more generic access for "air and exercise".

⁸ Rooley Moor Road is recorded as unclassified road on the highway authority's list of publicly maintainable streets.

⁹ *R v Secretary of State for Environment ex parte Billson* (QBD)[1998] 2 All ER 587, [1998] EWHC 189 (Admin), [1998] 3 WLR 1240, [1999] QB 374

¹⁰ A reference to the findings of Carnwath LJ in *R (Lewis) v Redcar and Cleveland Borough Council (No 2) [2010] 2 AC 70*. He further commented: "Where there is room for ambiguity, the user by the inhabitants must in my view be such as to make clear, not only that a public right is being asserted, but the nature of that right".

54. In fact this common land parcel has been fenced on both sides parallel to the track, in effect dividing the common. This further adds to the conclusion that H-Y is accepted by the landowner as a defined means of passing between two points, rather than being generally open for public access.
55. LCC does not request modification of the Order to include the addition of H to Y as a bridleway (although it has indicated that it would not oppose such a proposal). However, I am mindful of the view expressed by Lord Phillips in the *Trevelyan* case¹¹ that *"if, in the course of the inquiry, facts come to light which persuade the inspector that the definitive map should depart from the proposed order, he should modify it accordingly, subject to any consequent representations and objections ..."*.
56. Given the evidence of use before me, I consider there to be a forceful case for responding to the established facts by recognising the continuation of the claimed bridleway to its connection with the recorded highway, Rooley Moor Road, at point Y. I therefore propose to modify the Order by including this section on the Order map and in the Order schedule.

The continuation of the Order route from point A to Cowpe Road

57. Cowpe Road is recorded on the definitive map as a public footpath although for most of its length it has a tarmac surface and provides vehicular access to the many properties in the village of Cowpe. In fact the road is also recorded (in pink) on the highway authority's map of adopted highways leading from the A681 at Waterfoot through Cowpe up to Higher Boarsgreave. This publicly - maintainable unclassified road terminates at point A although the tarmac surface provided by the highway authority ceases some way short of A, at the point I have referred to as X (this being at grid reference SD 8419 2056).
58. At the inquiry Mr Goode explained that the Authority had recently been considering the relationship between its unclassified roads (UCRs) and the rights of way shown on its definitive map. Whilst few UCRs had been investigated on an individual basis, the view in Lancashire is that those routes shaded pink on its map of adopted roads are generally regarded as vehicular, at least for maintenance purposes.
59. Although the nature of the surface of Cowpe Road changes from tarmac (north of point X) to rough stone aggregate between X and A, LCC submits there is no change in the legal status of the road. Consequently it concluded there was no reason to include this section in this Order.
60. Whilst LCC takes the view that, by being shown in pink on its map of adopted highways, a public vehicular right of way exists over X-A, no detailed research has been carried out in this case and I recognise that the highway authority's maintenance records do not provide conclusive evidence of the public's rights.
61. I also acknowledge that, whilst X-A remains on the definitive map as a footpath but, unlike the remainder of Cowpe Road, is not overtly maintained as a vehicular way by being surfaced with tarmac, a degree of ambiguity will continue to prevail over the extent of the public's rights here, particularly if the Order route between A and H is confirmed as a public bridleway.

¹¹ Referred to in paragraph 13 above

62. It seems to me that, since all the claimants in this case have used X-A on horseback or by bicycle along with their use of the Order route, it would be pragmatic for me to consider whether this too should also be recorded on the definitive map to reflect its higher status.
63. In summary I regard it as prudent to respond to the evidence presented by addressing the status of the section X-A. Having examined that evidence, and in particular the evidence from users, I am satisfied there is a case for proposing to modify the Order so as to record X-A on the definitive map and statement as a bridleway, this being without prejudice to any higher rights which may be subsequently proven to subsist.
64. As a final comment I will add that even had I not been satisfied that the case was made out under Section 31 of the 1980 Act, I would have accepted that, on a balance of probability, implied dedication of a bridleway had been demonstrated at common law. With evidence of open and unchallenged use dating back to the 1950s, 27 users who began to use the route before 1991, and no action at all by the landowner to stop it, there is a strong basis for saying that the public right of way for horses was established before the period that has been the focus for examination here under the statutory scheme.

Other matters

65. Most of the objections raise concerns over the suitability of the claimed route for horse riding and cycling and the problems such use is expected to cause. These issues include potential clashes between horse riders and vehicles, crime and anti-social behaviour in the area, the mis-use of the route by the public with vehicles as well as the effect of recording a public bridleway on adjacent residents and the cost to the public purse. None of these are matters that are relevant to my consideration of this Order which is based on the premise that long-standing use by the public has *already* established a public bridleway.
66. Having heard the witnesses at the inquiry respond to detailed questions about gates along the Order route, LCC sought further modifications to the Order schedule so as to record two additional gates, one at point D and one near point B.
67. I have no hesitation in acceding to the request in relation to the field gate and side gate at point D. It is clear this arrangement has existed throughout the relevant period and that the presumed dedication is subject to this limitation.
68. As regards the gate near point B, I believe this may have been confused with the gate which is already noted in the Order schedule in that vicinity, this being one which was authorised by the highway authority under Section 147 of the 1980 Act in 2013. I therefore decline to make any modification in this case.

Conclusion

69. Having regard to the above and all other matters raised at the inquiry and in the written representations, and on the basis of the conclusions set out in my paragraphs 15 and 50 above, I propose to confirm the Order but with modifications to extend the Order route to reflect the conclusions referred to in paragraphs 56 and 63 above and to record an additional limitation at point D as noted at paragraph 67.

Formal Decision

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

On the Order map

- Add point X at grid reference SD 8419 2056 and point Y at grid reference SD 8443 2071
- Extend the line showing "Bridleway to be upgraded or added" to include A-X and H-Y

In the Order schedule¹²

PART I MODIFICATION OF THE DEFINITIVE MAP:
DESCRIPTION OF PATH OR WAY TO BE UPGRADED

- In line 1, delete "the gate at the end of"; in line 2, delete "point A" and substitute "point X", and in line 7, delete "330 metres" and substitute "360 metres";
- In line 11, after "point H" add "continuing for 80 metres to point Y on Rooley Moor Road...";

PART II MODIFICATION OF THE DEFINITIVE STATEMENT:
VARIATION OF PARTICULARS OF PATH OR WAY

- For **Bacup 612** - amend *Position* to read: "...past Higher Boarsgreave to a point on Cowpe Road (U7774) at SD 8419 2056 and continuing as Bridleway 682" and *Length* to: "0.12 km"
- For **Bacup 682** - amend *Position* to read: "Bridleway from a point on Cowpe Road (U7774)(also recorded as Footpath 612) at SD 8419 2056 ..." and *Length* to: "0.10 km";
- For **Bacup 616** - amend *Position* to read: "... continuing as Bridleway 617";
- For **Bacup 617** - amend *Kind of Path* to "Bridleway" and *Position* to read "terminating at SD 8443 2071 at Rooley Moor Road."
- For **Bacup 618** - amend *Position* to read: "at junction of Bridleways 616 and 617 and Footpath 619 ...";
- For **Bacup 619** - amend *Position* to read: "at junction of Bridleways 616 and 617 and Footpath 618 ...".

71. Since the confirmed Order would affect land not affected by the Order, I am 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 and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Sue Arnott

Inspector

¹² For clarity, I have underlined the amended text

APPEARANCES

In support of the Order

For the Order-Making Authority:

Mrs S Myers Solicitor, Lancashire County Council

Who called:

Mrs J Elliott Public Rights of Way Officer; Lancashire County Council

Mr D Goode Public Rights of Way Manager; Lancashire County Council

Mrs C Green

Mrs J Kempson

Mrs D Hardman

Mrs A Swift

Mr E Thorpe

Mr D Schofield

Ms A Harwood

Mrs S Fletcher

Mrs A White

Mrs K Thorpe

Ms L Ward

Ms K Haworth

Ms V Hanson

Opposing the Order

Ms A Brown

Mrs K A Thorpe

DOCUMENTS

1. Copy of the statutory objections and representation
2. Lancashire County Council's statement of grounds for making the Order & comments on the objections
3. Lancashire County Council's statement of case and bundle of appendices with revised index
4. Proof of evidence (& summary proof) of Ms J Elliott of Lancashire County Council
5. Witness statements of J Duckworth, S Fletcher, C Green, V Hanson, D Hardman, A Harwood, K Haworth, J Kempson, S Miles, C Robertson, D Schofield, A Swift, V Taylor, E Thorpe, K Thorpe, R Thorpe, W Walmsley, L Ward, J Weymont, A White and G Wright
6. Statement of case submitted by Mrs A Brown
7. Witness statement of P Muir
8. Diagram illustrating use over the relevant period by 21 claimants who provided witness statements

384200

384300

384400

MAP NOT TO ORIGINAL SCALE

Boarsgreave

FP 619

FP 618

Sinks

FP 616

324.6m

FP 617

Sinks

420700
Forges Cottage
Larnside
(um)

FP 610

Pond

Waterfall

FP 609

Authorized Signatory

Higher Boarsgreave

FP 612

Well

294.7m




FP 612

FP 608

FP 606

25063

0 15 30 60 Meters

-  Bridleway to be upgraded or added A-B-C-D-E-F-G-H
-  Footpath to be deleted F-I
-  Public Footpaths

Tank

FP 607

384200

384300

384400



Steve Brown
Executive Director
for the Environment

Wildlife and Countryside Act 1981

Upgrade to Public Bridleway of Bacup Public Footpaths 612 (part), 609, 616 (part), 617 (part), addition of a short section of Public Bridleway and deletion of Bacup Footpath 616 (part) Application 804-538

1:1,500



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