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| **Order Decision** |
| Site visit made on 15 September 2021 |
| **by Alan Beckett BA MSc MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 October 2021** |

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| **Order Ref: ROW/3259664** |
| * This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Borough of Blackburn with Darwen (FP122 Edgworth) School Lane, Edgworth (Blackburn Road to Broadhead Road) (Public Path Upgrade to Bridleway) Definitive Map Modification Order 2019.
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| * The Order is dated 14 February 2019 and proposes to modify the Definitive Map and Statement for the area by upgrading public footpath 112 to the status of public bridleway as shown in the Order plan and described in the Order Schedule.
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| * There were 2 objections outstanding when Blackburn with Darwen Borough Council (‘the Council’) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is proposed for confirmation subject to the modifications set out in the Formal Decision.** |
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Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an inspection of the path at issue on Wednesday 15 September 2021 in the company of representatives of the Council, representatives of the applicant for the Order (North Bolton and Darwen Bridleway Group) and one of the statutory objectors.
2. An objection was made to the inclusion in part II of the Schedule of the words ‘unadopted, un-made’ as a description of the route at issue. It was contended that as these words were not included in the current definitive statement for footpath 112 and did not assist in the description of the public right of way, they were superfluous. In addition, whilst the surface of the Order route was unmade, it was nonetheless of a suitable finish for equestrian use.
3. The Council has given consideration to the points raised in this objection and concurs that the words ‘unadopted, un-made’ are irrelevant to the description of the claimed public bridleway. The Council requests the modification of Part II of the Schedule by the deletion of these words. On the basis that the Council would seek the modification of the Order in this way, the objection was withdrawn.

The Main Issues

1. The Order has been made under section 53 (3) (c) (ii) of the 1981 Act. Section 53 (3) (c) (ii) provides that an order to modify the definitive map & statement (‘DM&S’) should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that a highway of one description ought to be there shown as a highway of a different description.
2. An application to upgrade the Order route had been made in 2006 on behalf of the North Bolton and Darwen Bridleway Group (‘NB&DBG’). NB&DBG contended that the Order route was historically a public bridleway which had been under recorded when the DM&S was initially compiled under the provisions of the National Parks and Access to the Countryside Act 1949.
3. In support of the application, NB&DBG submitted both documentary evidence and evidence of recent use of the Order route on horseback by members of the public. In relation to the documentary evidence, Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document, which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.
4. Where it is claimed that a public right of way has come into existence through a period of long use, the provisions of section 31 of the Highways Act 1980 (‘the 1980 Act’) are relevant. The tests to be considered under this section are:
	1. the date on which the claimed equestrian right to use the route was brought into question;
	2. whether the route was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question; and
	3. whether there is sufficient evidence that there was during this 20-year period no intention to dedicate the claimed bridleway.
5. I shall first give consideration to the documentary evidence adduced. If necessary, I will also give consideration to whether dedication of a public bridleway can be deemed to have occurred under section 31 of the 1980 Act.

Reasons

***Documentary evidence***

1. The earliest map of the area submitted is Yates’ map of 1777. This map does not show any feature between Blackburn Road and Broadhead Road on the alignment of the Order route.
2. Under the provisions of the Edgworth Inclosure Act 1795, the Inclosure Commissioners set out a number of roads within the lands being inclosed. The Order route is described in the 1797 Inclosure Award (‘the Award’) as ‘*a road of eleven yards and a half in breadth from the northerly side of the said Old Highway at Hob Lane aforesaid up to a certain place on the Broadhead highway near Wheatshaw Hill…*’. The Award plan shows this route to be the Order route which is annotated ‘*Occupation and Pack and Prime Way*’. From the absence of this route on Yates’ map, it can be concluded that the Order route was being set out for the first time under the Award.
3. Those entitled to use this road were the owners and occupiers of allotments adjoining the route; the owners, and occupiers of Hill Top Estate; and a named allottee, one William Hutchinson. These persons were granted full vehicular rights over the road which was set out. In addition, the owners and occupiers of houses and lands in Edgworth and Entwistle were granted the right to use the road ‘*passing and repassing with carts or carriages for or with turves from any part of the said moor for ever’*. The road was also set out for ‘*the purpose of all his Majesty’s subjects passing and repassing at all times on foot or on horseback, but not with carts or other carriages other than aforesaid.*’
4. Greenwood’s map of 1818 and Hennet’s map of 1828 both show the Order route as an enclosed track running between the Blackburn and Broadhead Roads. Ordnance Survey mapping from 1843 onwards shows the Order route at a uniform width throughout its length; there is no indication from any of the large-scale Ordnance Survey maps that the Order route was restricted by gates or other limitations.

**Conclusions on the documentary evidence**

1. I concur with the Council that the Award provides cogent evidence of the existence of public bridleway rights over the Order route. The Award demonstrates that the road was being set out for the use with vehicles by specified individuals and groups, whereas the public (‘*all of his Majesty’s subjects’*) could pass and repass on foot or on horseback, but not with carts or carriages. This clearly establishes the Order route as a public bridleway.
2. The objector contends that the route was set out as a Restricted Byway for the purpose of gathering fuel from the moor. Alternatively, it is argued that as Hob Lane School was created on land adjacent to the Order route in the early nineteenth century, the use of the lane as an access to the school is likely to have been by such a wide group of people to be indistinguishable from the general public, such that the route would have become a Byway Open to All Traffic.
3. Whilst it would be possible for the public to have acquired higher rights than those set out in the Award through a suitable period of long use, the objector has not submitted any cogent evidence of the use of the Order route by the public with vehicles (to access the former Hob Lane School or otherwise) which would allow such a conclusion to be drawn.
4. Nor am I persuaded that the Order route was set out as a Restricted Byway under the Award. The inclosure commissioners were quite clear in the extent of the rights being granted along the Order route; full vehicular rights were granted to those whose lands were adjacent to the new road being set out, with a named group of people (the owners and occupiers of houses and property in Edgeworth and Entwistle) being granted a vehicular right for the limited, specific purpose of transporting turves from the surrounding moor.
5. Although the property owners of Edgworth and Entwistle would no doubt be drawn from a wide geographic area, the only purpose for which they could use the Order route with vehicles was for the transportation of turves for fuel. No evidence has been submitted to demonstrate that subsequent to 1797, the owners and occupiers of those villages have used the Order route with vehicles for other purposes or that the wider public have also used the Order route with vehicles as if they had the right to do so.
6. There is no evidence before me from which it could be concluded that the public rights set out in the Award have subsequently been extinguished.
7. Given that the Award provides cogent evidence of the existence of public bridleway rights over the Order route, it is not necessary for me to examine the evidence of use of horseback submitted by the NB&DBG in support of the application made in 2006; any use of the Order route by the public on horseback after 1797 is pursuant to the public rights granted by the Award.

**Width**

1. The width of the Order route is set out in the Schedule as being 4 metres. The Award states that it had been set out at a width of 11.5 yards (10.5 metres).
2. In this case, as reliance is placed upon the Award as evidence of the status of the Order route, reliance must also be placed upon it as evidence of the lateral extent of the public right created by it. I saw from my site visit that the Order route was bounded by dry stone walls and post and wire fences which separated the lane from adjacent agricultural and residential properties and appeared to be little changed from how it was depicted in the Award plan.
3. The width of the Order route towards the western end of School Lane appears to be narrower than the remainder of the Order route, but as there is no evidence of formal action having been taken to extinguish any part of the public’s rights established by the Award, the rights set out by the Award remain.
4. The width of the Order route which appears to be in regular use is around 4 metres and the used width is reflected in the Order Schedule. However, the width specified in the Award is much greater and should be recorded as the width of the public bridleway. It follows that the width specified in Part II of the Schedule should be modified accordingly.

**Other matters**

1. The recording of the Order route as a public bridleway will have no impact upon private rights of access to property located along it. Concerns raised by the objector with regard to the alignment and extent of public footpath 111 in the vicinity of Hill Top Farm are not within my remit and should be addressed to the Council. Concerns raised by the objector that the gates on footpath 108 obstruct his private right of way are also not within my remit; this is a private law matter for him to address with the owner of the gates. Whether those gates also obstruct footpath 108 is a matter for the Council to determine.

Overall Conclusion

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be proposed for confirmation with modifications.

**Formal Decision**

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

Replace the entry in Part II of the Schedule with the following: “Bridleway from the junction of Blackburn Road at Hob Lane Gate GR (SD) 7357 1751 along an existing track, with an overall width of 10.5 metres, for a distance of approximately 934.6 metres, to GR (SD) 7436 1799 whereupon it meets the metalled road of Broadhead Road, Edgeworth.”

1. Since the Order as proposed to be confirmed would affect land not affected by the Order as submitted, I am required by virtue of Paragraph 8 (2) of Schedule 15 to the 1981 Act to give notice of the 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.

Alan Beckett

Inspector