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| **Order Decision** |
| On papers on file |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 21 May 2025** |

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| **Order Ref: ROW/3355077** |
| * 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 Addition of Footpath from Hodder Street, Accrington Definitive Map Modification Order 2022.
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| * The Order is dated 21 September 2022 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Lancashire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. This objection has since been withdrawn.
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| **Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.** |
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Preliminary Matters

1. In writing this decision I have found it convenient to refer to points marked on the Order Plan. I therefore attach a copy of this plan. I have not visited the site, but I am satisfied that I can make my decision without the need to do so.
2. The case concerns the proposed addition of a public footpath to the Definitive Map and Statement (DMS). The route commences from its junction with Hodder Street (point A), on land immediately adjacent to number 48, it follows a generally south westerly direction for approximately 30 metres to join footpath no.49 Accrington (point B). Lancashire County Council are the Order making authority (OMA) and are supporting the Order.
3. The sole objection received by the OMA has since been withdrawn as the objector no longer has an interest in the land.
4. The first paragraph of the Order refers to both sections 53(3)(b) and 53(3)(c)(i), however, only the latter section is quoted. Therefore, if the Order is confirmed, I propose to modify the Order by deleting the reference to section 53(3)(b). This minor modification would not require advertising.
5. Part two of the Order includes an amendment to the definitive statement for footpath no.49 Accrington. However, the Order is not made under the correct section of the 1981 Act to include the variation to the particulars of this footpath. Therefore, if the Order is confirmed, I propose to modify the Order by deleting the amendment to footpath no.49 Accrington in part two of the Order. This modification would also not require advertising.

The Main Issues

1. The OMA made the Order under Section 53(2)(b) of the 1981 Act on the basis of an event specified in Section 53(3)(c)(i), namely the discovery of evidence which shows a right of way which is not recorded in the definitive map and statement is reasonably alleged to subsist over land in the area to which the map relates.
2. Whilst the evidence need only be sufficient to reasonably allege the existence of a public right of way to justify an Order being made, the standard of proof required to warrant confirmation of an Order is higher. In this case, evidence is required which shows, on the balance of probability, that a right of way subsists along the Order route.
3. The evidence is composed of claimed use by the public as a footpath. The OMA considers that the user evidence is sufficient to show dedication of the route as a public footpath has occurred under common law prior to 1997. The OMA also considered presumed dedication under section 31 of the Highways Act 1980 (the 1980 Act). The OMA submits that public footpath rights subsist on the Order route and the test for confirmation, referred to in paragraph 7 above, is satisfied.
4. I will examine whether presumed dedication has arisen under the tests set out in section 31 of the 1980 Act. This sets out that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be 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 twenty years referred to is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
5. I may also need to consider dedication under common law. In addressing this possibility the issues I would need to examine are whether, during any relevant period, there was express or implied dedication by the owner of the land in question (having the capacity to dedicate a right of way), and whether there is evidence of acceptance of the claimed footpath as demonstrated through use by the public.

Reasons

***User evidence***

*Date of bringing into question*

1. The land over which the majority of the Order route runs was owned by the same landowner from 1997 until it was recently sold. In 2012 a planning application for housing on the land did not acknowledge the existence of a public right of way across the site. However, the design and access statement acknowledged use by dog walkers, indicating the landowner was aware of the use of the route at the time.
2. In 2014 Hyndburn Borough Council completed surface improvement works on an adjacent public footpath, they included the Order route as it appeared to be a continuation of the footpath. When the landowner informed the Borough Council of their ownership, the Council removed the surfacing at the request of the landowner.
3. A bringing into question arises when at least some of the users are made aware that their right to use a way is being questioned. There is no evidence that either of these events physically prevented public use of the route, or made users question their rights. Furthermore, there is no evidence of any signs or locked gates preventing use. I consider that it is possible that the users of the route were not aware that their right to use the route was being questioned until 2021. During the summer of 2021 some users refer to challenges being made whilst there was work being carried out on the land adjacent to the route. In October 2021 an application was made to the OMA to record the route on the DMS as a public footpath. I consider the verbal challenges and the subsequent application to record the route would be considered a ‘bringing into question’. It follows that I will examine use during the prior 20-year period, that is 2001-2021.

*Whether use was as of right and without interruption*

1. Evidence is provided in 53 user evidence forms claiming use over a period from 1949 to 2021. All of the individuals claim use on foot, except one who claims use by motorised wheelchair. None of the individuals indicated they were challenged or interrupted in their use of the Order route, except for the few users who indicated they were challenged in 2021. All of the individuals state that their use was without permission.
2. Frequency of use varied from daily, weekly to monthly; however, the majority of users claim daily use of the route. Use of the route was mainly for pleasure or dog walking; some users mention they used the route to access the playing fields.
3. There are 43 individuals who have used the route on foot for the full 20-year period. A further 9 individuals have used it for less than 20 years within that period. As well as on foot a few users additionally claim use by pedal cycle, however, this use is sporadic with only a limited number of users claiming regular use by cycle.
4. In my view the evidence of use on foot is sufficient to raise a presumption of dedication. However, this presumption can be rebutted if there is sufficient evidence on behalf of the landowner to demonstrate they had no intention to dedicate the way as a footpath.

*Whether there is sufficient evidence of a lack of intention to dedicate by the landowner*

1. Shortly after the previous landowner purchased the land in 1997 a wooden building that was on the plot was demolished. It is clear from the 1985 title plan for 48 Hodder Street, that there was a gap between the buildings. Some witnesses have referred to the width of the route during the relevant 20-year period as being wider than it was previously. The previous landowner has now withdrawn their objection; however, they did previously comment that secure fencing had been placed around the plot of land. The OMA’s committee report refers to comments made by the adjacent property owner that people would pull down and remove sections of herras fencing. However, they do not mention when this occurred. Some witnesses do refer to large stones or concrete blocks, they noted that this restricted vehicular use of the route, however, the witnesses to not state that these obstructed their use on foot.
2. I consider that it is possible that fencing may have been installed in 1997 when the landowner purchased the land, and particularly as it was shortly after then that the wooden building was demolished. It may have been needed for safety reasons at that time. However, no witnesses refer to any fencing or other obstructions during their use. The google street view images from 2009 and 2011 show the Order route open and accessible, with no visible fences or signs. In addition, the fact that Hyndburn Borough Council in 2014 mistakenly believed the route was part of a connecting public footpath, indicates that it was showing signs of clear visible use at that time. Furthermore, the adjacent property owner does also acknowledge the use of the route, as they comment that people use it as a cut through and complain about the noise.
3. In my view the claimed use meets the tests set out in the 1980 Act. The evidence shows that the use of the route on foot has not been sufficiently challenged. The rebuttal evidence submitted by the previous landowner, prior to withdrawing their objection, does not demonstrate that they made any clear overt actions to deter or prevent the public from using the Order route during the relevant period.

**Conclusions**

1. I conclude that in this case the Order route is a way the character and use of which can give rise to a presumption of dedication.
2. For the addition of a public footpath, under sub-section 53(3)(c)(i) of the 1981 Act, it is necessary to provide sufficient evidence to show that a right of way which is not shown in the Definitive Map and Statement subsists over the land. I have concluded that the user evidence when taken as a whole does show on the balance of probabilities that a right of way, of public footpath status, does subsist along the route.
3. Having regard to the above and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order subject to the following modifications:
* On the fourth line of the first paragraph of the Order delete the final ‘s’ in the word ‘Sections’.
* On the fifth line of the first paragraph of the Order delete ‘53(3)(b) and’.
* In Part II of the Order on the first line under the heading ‘Variation of particulars of path or way’ delete ‘and amended for Accrington 49’.
* In Part II of the Order delete ‘Accrington 49:’ and delete all the statement for Accrington 49 below the heading.

J Ingram

INSPECTOR

