

THE ORDER MAKING AUTHORITY'S COMMENTS ON THE OBJECTIONS TO THE ORDER

During the specified period for objections and representations to the Order, the Order Making Authority ("OMA") received eight objections and one representation.

The representation was from Openreach who simply confirm that no apparatus exists within the area.

Six of the objectors dispute the status of the public right of way¹. They believe that the Order Route carries higher rights and should be recorded on the DMS as a public bridleway rather than a footpath.

The remaining two objectors dispute the existence of any public right of way across the Order Route².

The OMA's comments on the salient points made in those objections are summarised below:

Objections to the Order on the grounds that no public right of way exists

Southport Land and Property Company Limited

Objection 1:

There is little, if any, mapping or other evidence to support the existence of the section from A-C on the ground. If the use alleged had occurred then there would be physical evidence of its existence.

The Order Route between point A and point C crosses a pasture field. It is not a surfaced track and is not enclosed by fencing, both of which factors would result in it being more likely to 'physically exist' as a defined feature on the ground and as such, the OMA would not necessarily expect it to be clearly defined on the ground. Whilst some paths across grass fields can be seen as physical features (trodden tracks) this is not always the case.

We acknowledge that the aerial photographs available to view do not show a trodden track between point A and point C and nor do the relevant Ordnance Survey maps published during the relevant time but this does not mean that public rights did not – or could not - have existed.

The aerial photographs available for the period of time under consideration do however show (i) that the Order Route appeared to be available to use and (ii) evidence of a worn track over parts of the Order Route.

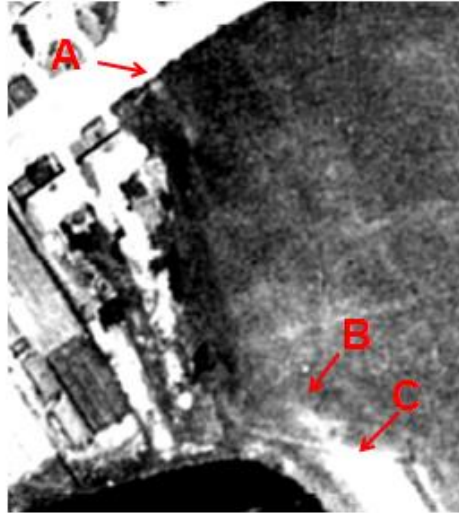
Extracts from the aerial photograph taken in 1963 are shown below:

¹ Donna Cumia, Colin James, Sonia James, Karen Restall, Jodi Ryan and Elizabeth Tyson

² Southport Land and Property Company Limited and Mr Trow

LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY

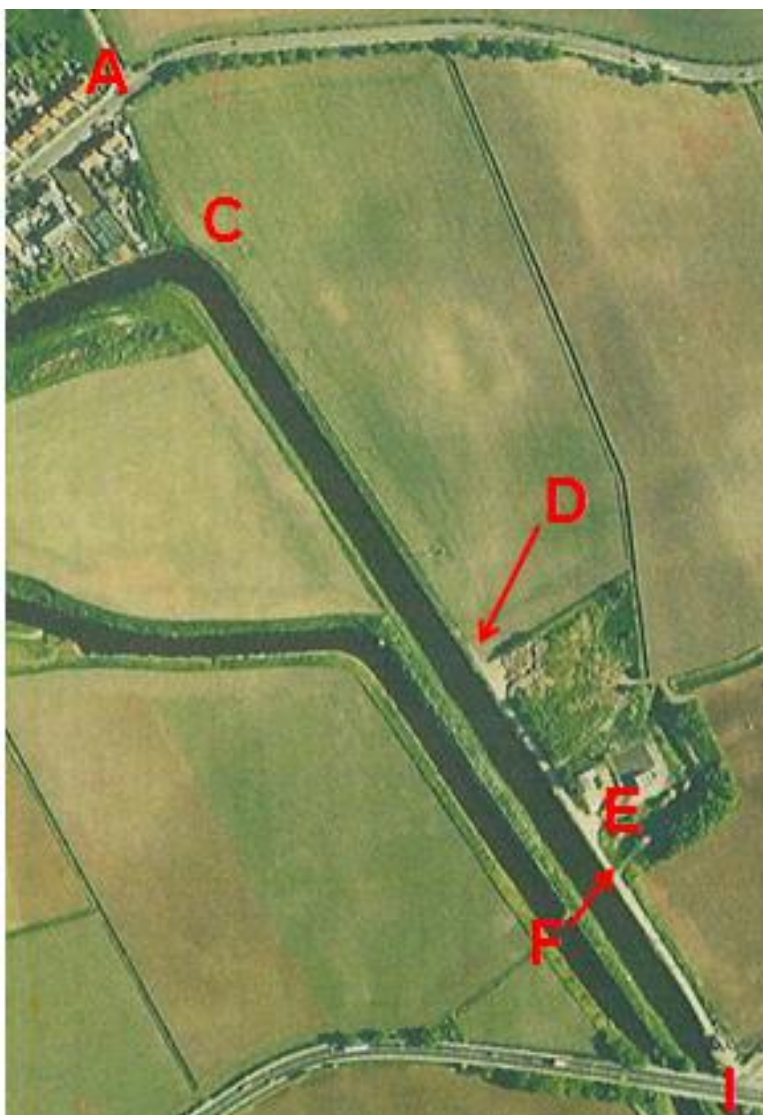
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Access appears to be available through a substantial gap in the hedge at point A and a worn track is visible leading into the field. The Order Route is not visible as a route on the ground between point A and point B although a track can be seen in the proximity of point C leading from the trees along the boundary of the gardens and the field. There is no field boundary across the Order Route at point B or point C. A wide track is visible along the Order Route between point C and point D continuing as a track through to point I where it exits onto Station Road. The OMA is therefore of the view that the Order Route could have been used by the public at this time which is consistent with user evidence dating back to the 1960s and the 1969 edition of the 1:2500 Ordnance Survey map.

The 1988 aerial photograph is reproduced below:

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Again, even though the field appears recently mown, a trodden area is visible leading into the field at point A and although the Order Route is not visible on the ground between point A and point C there is nothing to indicate that the Route was not available to use between point A and point C. In addition, there is no field boundary across the Order Route at point B or point C which could have limited use and from point D to point I a clearly visible track can be seen. This all suggests to the OMA that the Order Route was accessible in 1988 – consistent with the evidence of use submitted in support of the Order.

The user evidence submitted to the OMA both before and after the making of the Order indicates public use of the Order Route on foot from the 1950s until at least the late 1990s when the Route was blocked off by the current landowner. However, due to uncertainty over exactly when this happened, 1998 has been taken as the date when the Route was called into question by the submission of the statutory declaration by the landowner.

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Objection 2:

Such use that may have occurred is at such a low level so that the presumption of dedication cannot arise. This is consistent with the evidence of the owner of the property adjacent to point A who in more than 45 years has not witnessed any use of the alleged route, and that such use has produced no physical evidence that it has occurred.

Whether or not the Order Route has been used in the past and the level and frequency of that use is a matter which needs to be considered on the basis of the evidence made available to the OMA.

The OMA made the Order on the basis of user evidence submitted as part of the application. Following an initial assessment of that user evidence the OMA considered that there was sufficient evidence to show that a right of way (footpath) existed on the balance of probabilities.

The OMA has no reason to doubt the information supplied by 28 users in their UEFs. A large number of users have been interviewed by the OMA who have provided further detail regarding their use of the Order Route on foot consistent with their UEFs. A number of additional witnesses have also come forward to provide signed statements confirming their use of the Route during the relevant period, all of which can be considered by the Inspector in due course. In total, the OMA has 28 UEFs and 17 signed witness statements supporting public use of the Order Route on foot, as well as six letters from objectors which also supports the existence of a right of way through public use.

Having looked again at the representations made by the owner of the property adjacent to point A, Mr Trow, it is understood that he has stated that there has never been a public right of way across the field adjacent to his property but the OMA can find no reference to him stating that he never saw anybody use the Order Route.

Objection 3:

The route was claimed by the Parish Council and found not to be a public right of way in 1955. Since that date despite having the opportunity to seek its recording, the Parish Council has not done so.

The OMA has made the Order to record the route as a public footpath on the basis of user evidence post-dating the publication of the original Definitive Map and Statement.

It is possible for a right of way to come into existence after the publication of the Definitive Map or for a route previously considered not to be a public right of way to come into being at a later date. It is also possible that, on the discovery of new evidence, a route which was determined not to exist as part of the original production of the Definitive Map, did in fact exist at that time and should now be recorded on the Map and Statement.

In this particular case, the fact that the application to record the route as a public footpath was not submitted until 2012 does not mean that it was not a public right of

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way before that date. The Order is made on the basis of user evidence submitted since the preparation of the original Definitive Map and the evidence relates to use of the route from the late 1960s through to 1998.

In addition, the fact that the application was not received until 2012 – at least 14 years after use of the route was challenged by the Highways Act section 31(6) deposit and the erection of fencing does not mean that it was not a public right of way before that date.

Objection 4:

Taken as a whole the evidence in support of the claim fails to satisfy the burden on the County Council to prove that a right of way exists on a balance of probabilities.

The OMA considers that the grounds for making and confirming the Order have been met, the reasons for which are set out in detail in the OMA's 'Statement of Grounds for Confirming the Order'. In summary, however, the OMA considers that there is overwhelming evidence of public use of the Order Route. 27 UEFs were submitted in support of the Order, 12 of which claimed use of the Route on foot throughout the twenty year statutory period under consideration and 13 had used it for different periods during that time frame. Use was for recreational purposes and done without consent and, until the Route was blocked by a fence in around the late 1990s, without obstruction or challenge. The signed witness statements obtained by the OMA from several witnesses is consistent with regular pedestrian use of the Route by the public over a prolonged period of time. It seems to the OMA more likely than not that any attempts to discourage use of the Order Route by the Southport Land & Property Company Limited occurred following the deposit of the statutory declaration in 1998 and that prior to this the full length of the Order Route was accessible to the public and was used.

The OMA considers that the user evidence is sufficient to raise a presumption of dedication under section 31 and that as there is no evidence to rebut that presumption, the test for a deemed dedication of a public footpath can be met.

In the alternative, if the Inspector does not agree that a dedication under section 31 exists, the OMA avers that there is sufficient evidence for a dedication to be inferred at common law.

Objection 5:

There is no evidence that any landowner has ever demonstrated an intention to dedicate so that common law dedication cannot be proved.

The Southport Land and Property Company Limited purchased the land over which part of the Order Route runs in 1990. All but one of the 28 UEFs state that use of the Order Route commenced before 1990 with the earliest claimed use dating back to the 1950s. Whilst there is no evidence of any landowner's express intention to dedicate the Route as a public right of way, the OMA asserts that the evidence of use of the Route prior to 1990 may be sufficient to indicate that the landowners at that time for

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several years did nothing to stop public use of the Route so their intention to give the route up to be a public footpath could on balance be inferred.

Common law does not require there to be twenty years of use and as the use communicated to the OMA would appear to be as of right and exercised by sufficient members of the public then it is considered that dedication of the route at common law could, on balance, be inferred.

Mr D A Trow

Objection 1:

The objector has lived at the property adjacent to the Order Route (100 Banks Road) since 1970 and there has never been a public right of way along the Order Route.

The objector has stated in a number of letters to the OMA that there has never been a public right of way through the field. He does not however say that he has not seen anyone use it – although he does say that fishermen had permission to do so.

The OMA is in receipt of a substantial amount of user evidence (28 UEFs and 17 signed witness statements supporting use on foot and six letters of objection supporting equestrian use) detailing use of the Order Route during the time that Mr Trow has lived at the adjacent property. The OMA considers that there is nothing to suggest that these witnesses are not telling the truth or that they have exaggerated their use of the Route. However, this evidence can be tested and considered by an Inspector should an Inquiry be held.

Objection 2:

There have been sightings of newts and water voles – both of which are endangered species.

Any potential environmental impacts concerned with recording the Order Route on the Definitive Map and Statement are a matter for management of the Order Route and not a legitimate consideration of whether footpath rights already exist. Whilst understanding the importance of these matters to the objector, they are not issues that the Inspector is able to give consideration to in making a decision under the 1981 Act.

Objection 3:

The Order route goes through a field grazed by sheep and local people are concerned about dogs being allowed off the lead and chasing the sheep.

Whilst it is understood that issues relating to dogs and the control of livestock are a concern to many landowners, such issues are a matter for management of the Order Route, not a legitimate consideration of whether footpath rights exist, and are of no greater concern on this Route than many other footpaths in the area. A footpath is on a defined line and does not give a right for people or dogs to roam off that line nor to chase sheep. Ultimately, they are not issues that the Inspector is able to give consideration to in making a decision under the 1981 Act.

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Objection 4:

Access onto the Order route from point A on Banks Road is not safe as it is located on a blind bend on a stretch of road subject to a 40 mph speed limit.

Health and safety issues, which are a matter for management of the Route are not a legitimate consideration of whether footpath rights exist, unless it could be argued that access onto the Order Route was so unsafe that it could not have been used by those claiming to have used it. There is nothing to suggest that access onto the Order Route was (or is) so unsafe that it could not have been used in the past and in any event this is not considered by the OMA to be an issue that the Inspector is able to give consideration to in making a decision on confirmation of the Order under the 1981 Act.

Objection 5:

The objector's privacy would be compromised by the confirmation of the Order route with the public having easier access to their back garden

The fact that the objector extended his garden to enclose some of the land crossed by part of the Order Route is irrelevant to the grounds to confirm the Order. The Order was made on the basis that public rights already exist along the Order Route so any subsequent change of use of the land must take this into consideration. Issues relating to privacy and security, whilst important, are not a legitimate consideration of whether footpath rights exist and are of no greater concern on this route than many other routes in the area. They are not issues that the Inspector is able to give consideration to in making a decision under the 1981 Act.

Objection 6:

There have been several occasions when cars have tried to drive from Station Road to Banks Road.

The Order made is to record a public footpath from point A to point I which does not include any public vehicular rights of access from Station Drive to Banks Road. Private vehicular access is currently available from Station Road to the Sluice and this is not affected by the Order. There is no intention – or requirement – for the Order Route to be opened up at Banks Road to allow for public vehicular access although it would be a requirement to re-instate the field gate at point A on the Order plan.

Any unlawful vehicular use of a public footpath is an issue which can be dealt with as part of the general management of the public rights of way network and by individual landowners.

Objection 7:

There is a health and safety issue regarding walking alongside the sluice due to its depth and steep sides.

Health and safety issues, which are a matter for management of the Order Route, are not a legitimate consideration of whether footpath rights exist and whilst understanding the importance of these matters to landowners and users of the Order Route, they are

not issues that the Inspector is able to give consideration to in making a decision under the 1981 Act. Many public rights of way run alongside canals, docks and rivers where such a situation exists.

Objections to status of public right of way to be recorded

Elizabeth Tyson

Mrs Tyson believes the route should be recorded as a bridleway not a footpath. States that she has known the route and its use for over 50 years and that it has been used by vehicles, horses, cyclists and walkers as a direct access from the main road on one side of the village to the other until cut off at Banks Road (point A) circa 1990.

Refers to historical use of the route by working horses and carts for Southport Shrimps and fishing activities.

Also provides information about usefulness of the link to connect to existing bridleway and cycleway and the fact that the route would provide a safe link.

Mrs Tyson has subsequently completed a user evidence form in which she stated that she was not a regular user of the Order Route but had "knowledge" of it from the mid-1950s to mid-1960s when she would pass the access point on Banks Road during her bus journey to school. She went on to state that she had little contact with the area when she moved to Hesketh Bank in the 1980s through to 2007. The OMA's view is that very little weight can be placed on Mrs Tyson's evidence as she did not personally use the Order Route and her knowledge of its use pre-dated (in the main) the period under consideration.

Sonia James

Objects on the basis that the route has higher rights as a bridleway and has for many years been used as a bridle path and for access by horses. Explains that she purchased an equestrian property in 1966 on Banks Road from where she ran livery stables and used the Order Route with their horses for riding and access into the village since at least 1966 until the early 1990s when the Order Route was blocked off.

The OMA has learnt that sadly Mrs James has passed away so is unable to expand upon her objection. On the face of it, she appears to have used the Order Route on horseback during the period under consideration but we don't know the frequency of use nor can we question her about any of the other circumstances surrounding her equestrian use of the Route. Consequently, the weight that can be placed on Mrs James' evidence is limited.

Colin James

Believes the Order Route has higher rights as a bridleway. States that the route has been a bridleway since 'its existence'. Explains that they 'all' used the Route with

horses for riding and for access to the village from when he moved to Fiddlers Ferry in 1968 until the early 1990s when the sluice path was fenced off.

Mr James failed to respond to the OMA's requests for further information about his use of the Order Route. It is therefore difficult for the OMA to assess the weight to be placed on his evidence.

Donna Cumia

Objects to the Order because the route has higher rights and believes that it should be recorded as a bridleway. Explains that she has ridden the route since 1976 and driven a pony and trap along the sluice as it was the safest and most direct route into the village of Banks until it was blocked off in approximately 1991.

The OMA has subsequently spoken to Ms Cumia who clarified that she used the Order Route unchallenged daily from around 1979 independently (she was then aged 9 and may have used it before then accompanied by her Mother) up to the early 1990s when she moved abroad for a short time. When she returned to the area in 1997 the path had been blocked at Banks Road.

Ms Cumia's evidence of equestrian use of the Order Route is limited as it covers only part of the twenty year period under consideration (essentially the first half).

Jodi Ryan

Considers that the routes should be recorded as bridleways. She states, "I use these paths regularly with my pony as they are safe and well accessed (except for the sluice path bridleway)."

Ms Ryan failed to respond to the OMA's requests for further information about her use of the Order Route and we now know that she has moved out of the area but we do not have her new postal address.

Ms Ryan's comment "except for the sluice path" makes her evidence ambiguous as it is not clear whether she is stating that she did not use the Order Route at all or whether she is simply explaining that the Order Route was not well accessed. The OMA considers that without clarification from Ms Ryan very little weight can be placed on her objection.

Karen Restall

Considers that the Order Route has a higher status and should be recorded as bridleway. States that she has used the Order Route since 1976 until it was blocked by a fence in the early 1990s. She states that she was never stopped from riding along the Order Route and that many other people that she knows also rode the route.

The OMA has subsequently spoken to Ms Restall who clarified that she used the Order Route with a horse unchallenged daily between 1976 and 1989. She moved

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away from the area for 10 years and when she returned in 1999 the path had been blocked at Banks Road.

Ms Restall's evidence of equestrian use of the Order Route is limited as it covers only the first half of the twenty year period under consideration.

Conclusion

In conclusion, nothing has been raised by the objectors which undermines the evidence before the OMA or causes the OMA to alter its stance that there is sufficient evidence to show that the Order Route, on the balance of probability, already exists in law as a public footpath, and that the Order should therefore be confirmed.