

Order Making Authority's Comments on Objections to the Order

During the specified period for objections and representations to the Order, the Order Making Authority ("OMA") received two objections. One of the objections, filed by Woodocks Haworth and Nuttall Solicitors on behalf of Mr Osgood and Miss Wilcox has not been withdrawn so the Order is opposed and cannot be confirmed by the OMA.

A copy of the letter of objection is contained within the List of Documents and the points of objection are summarised below together with the Authority's response in bold.

1. Use as of right

The objection states that 'it has been contended within the Application that the width of the footpath from the edge of the wall from point B-C is ranging between 1-2 metres wide. However, there has always been commercial refuse bins situated on this part of the proposed Footpath which are measured at 1.3 metres wide. Furthermore, since 2003 or alternatively, as seen from google earth images vehicles have been parked on the Land since 2009. These vehicles would be visitors of the restaurant.'

Attached with the objection, regarding this point, is a picture taken which, it is claimed. 'contends that the Footpath was blocked on a frequent basis and therefore, interrupts the use'.

The objection goes on to state that 'Furthermore, there is insufficient evidence to state that the Footpath has been used prior to 31 December 2000. In the circumstance, the Footpath from point B-C has only been exercised during the period of 2000 until 2003 when the path was obstructed such that it has been obstructed for the last 18 years.'

The OMA cannot choose to record the width of the Order route to be wider or narrower than what width the evidence suggests was used by the public. The Order route has been recorded as varying in width between 1 metre and 2 metres because there is physical evidence supported by user evidence to say that the full available width was used by the public.

As noted in the report considered by the OMA's Regulatory Committee on 10th March 2021 (Document 21) ('Committee Report'), the applicant provided 14 user evidence forms in support of the application (3 of which comprise of use by couples), which refer to use of the route from as early as 1940. A number of letters have also been provided in support of the application.

Again, as noted in the Committee Report, whilst reference is made by several of the users to obstructions along the route, none of the users refer to any gates or barriers of relevance that prevented use prior to the route being called into question in 2019. 2 of the users also report use of the route in 2020 despite the erection of barriers. None of the users refer to having seen signs or notices along the route.

2. Without force

The objection provides that 'as noted from the site inspection, Ms Tang erected a sign on the Land specifically stating that the car park was for use of Valley Cantonese customers only.'

It is said that 'therefore, any arguments raised that the residents have not used force is contested pleading ignorance in order to still exercise over land has been held as using physical force. In the case of Winterburn v Bennett [2016] EWCA Civ 482, the Court of Appeal held that a landowner could prevent easements arising by prescription by placing notices on its land. The Court of Appeal held that the continuous presence of clear signs indicating that the Car Park was private property and for use by the Club's patrons only was sufficient to make the parking use by the Winterburns, their customers and suppliers contentious. The Court further held that if the land owner has made its position clear by placing signs on the land, there is no obligation on it to take further action, such as writing letters, confronting users in person or bringing legal proceedings. The judgement confirms a non-confrontational was for landowners to protect against others acquiring easements by prescription over their land. The signs are sufficient to make the position clear to those using the Land.'

Making reference to the factual background details provided by the objectors, the objection states that 'within the statements of the Applicants the majority have openly accepted that they have been prevented from using the Footpath between point B-C.' The objectors say that any use has therefore been with force.

As noted in the Committee Report, none of the users refer to having seen signs or notices along the route.

With regards to the site inspection, this was carried out in 2020 and the Committee Report provides that 'a sign on the car park states that the car park was for the use of Valley Cantonese customers only and that wheel clamping was in operation. It made no reference to the application route and no other signs existed indicating whether the route was considered to be public or private.'

As referred to at point 1. Above, whilst several of the users refer to obstructions along the route, none refer to any gates or barriers of relevance which prevented use prior to the route being called into question in 2019.

Whilst 2 of the users note having been informed that the route was not public, this was in conjunction with the erection of the barriers in 2019. None of the users recall having ever been told that the route was not a public right of way prior to 2019. Again, whilst 3 of the users refer to having been turned back when using the route this is in relation to their finding the route obstructed by the 2019 barriers.

3. Without secrecy

The objectors state that 'the Applicants have failed to provide sufficient evidence that the Footpath has been used without secrecy'

As noted in the Committee Report, there was an absence of action taken by landowners until 2019 to discourage use of the route.

The applicant provided 14 user evidence forms (3 comprising use by couples) which refer to regular use of the route from as early as 1940. All of the 17 users provided evidence of use of the application route during the period under consideration. The main purposes stated for use of the route were for pleasure and use as an access route, use of the route to get to work and dog walking.

All users refer to having witnessed others using the route on foot, with 2 users also referring to have witnessed bicycle use, 1 user noting use on bicycle and horse drawn vehicle and 2 users noting use by motorised vehicle.

There is nothing contained within the evidence provided to suggest that use of the route was by secrecy. There is no indication that use was at times or in a manner that a landowner could not expect to be aware of.

4. Without permission

The objection makes reference 'to the statements of the Applicants who accept that they have had permission to use the Footpath between point B-C and that they were provided with a key to the gate to gain access.'

Attached to the letter of objection is a copy of a page from the Property Information Form, stated to have been completed by Ms Tang in 2019 and to confirm that she has had an arrangement over the Land with the neighbouring properties, the Applicants. The objection goes on to state that 'any permission given would be on the basis of a licence, and not a right. When the Land was sold in 2019 the licence would have automatically terminated upon the transfer. A licence does not run with the Land.'

As noted in the Committee Report 4 of the users refer to having permission to use the route. However, the 2 users (both of the same address) who refer to having had permission from the owners of the Valley Cantonese and LCC as 'owner of the path' provide no further detail in this regard and both stated that they had never been told that the route was not public. With regards to the other 2 users (again, both of the same address) whilst reference is made to permission

THE LANCASHIRE COUNTY COUNCIL (FOOTPATH FROM WARBURTON STREET TO
GRANE ROAD, HASLINGDEN) DEFINITIVE MAP MODIFICATION ORDER 2021

having been given, this is with reference to access to the car park for the purposes of unloading their car, and not with reference to the application route.

In summary, the objection asserts that 'the Applicants cannot satisfy the requirements that the Footpath should be noted as a Public Right of Way in law as there is insufficient evidence' and that in the circumstances the Application should be dismissed.

Conclusion

The OMA requests that the Secretary of State tests the relevancy of the objections. The OMA would submit that the objections received do not undermine the evidence that the Order Route is, on balance, already a Public Footpath in law, and respectfully asks that the Order be confirmed.

THE LANCASHIRE COUNTY COUNCIL (FOOTPATH FROM WARBURTON STREET TO
GRANE ROAD, HASLINGDEN) DEFINITIVE MAP MODIFICATION ORDER 2021