

**THE LANCASHIRE COUNTY COUNCIL**  
**(SAWLEY ROAD TO GREEN END, GRINDLETON)**  
**DEFINITIVE MAP MODIFICATION ORDER 2015**

**Statement of Grounds on which the Order Making Authority considers that the Order should be confirmed**

**Background**

On 17<sup>th</sup> January 2014, the Footpath Secretary for the Clitheroe Ramblers submitted an application to Lancashire County Council (the relevant surveying authority) for an order under Schedule 14 of the Wildlife and Countryside Act 1981 and Section 53 (2) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the same act for the addition to the Definitive Map and Statement of Public Rights of Way (hereinafter referred to as the DMS) of a public footpath in the Parish of Grindleton, Ribble Valley from a point at the junction with Sawley Road, Grindleton to the junction of Public Footpath 5 Sawley and Public Footpath 44 Grindleton on the Grindleton/Sawley parish boundary near the Friends' Meeting House.

The application was supported by 15 user evidence forms ("UEFs"), 1 of these forms had been completed by 2 users, so 16 users had provided evidence of use of the route in total (Document 21).

Officers from Lancashire County Council (hereinafter referred to as the OMA) investigated whether a public right of way exists over the application route examining historical evidence also and prepared a report of their recommendations (Document 22).

The report was considered by the OMA's Regulatory Committee on 9th September 2015 where the decision was made to modify the DMS by adding a Public Footpath from Sawley Road to the Friends' Meeting House on the Parish Boundary, Grindleton Parish, Ribble Valley (see minutes of Regulatory Committee Meeting at Document 15).

The Regulatory Committee decided to make the order and promote it to confirmation as it was satisfied that the higher test could be met.

Notice of the OMA's decision to make an order, including a statement of reasons for making the order, was sent to affected individuals on 16th October 2015 (Document 6).

A Definitive Map Modification Order was duly made on 4<sup>th</sup> November 2015 (the "Order") (Document 1). The Order was made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(c)(i) of the 1981 Act, namely the discovery by the surveying authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way (being a footpath) which is not shown in the

map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

Notice of the making of the Order was served to affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 3 of Schedule 15 of the 1981 Act (Document 7). The specified period for objections and representations to the Order ended on the 4<sup>th</sup> January 2016 however the OMA received one objection on behalf of two objectors via email dated the 5<sup>th</sup> January 2016. The letter enclosed within the email was dated 16<sup>th</sup> December 2015 however was never received by the OMA (Appendix ?). The objections have not been withdrawn so the Order is opposed and cannot be confirmed by the OMA.

The OMA is now submitting the Order to the Planning Inspectorate for a determination on confirmation.

### **The Order Route**

The route is from Sawley Road, Grindleton to the Friends' Meeting House on the parish boundary of Grindleton and Sawley in the Ribble Valley, Lancashire.

If confirmed, the route to be recorded commences at a junction with Sawley Road at point A on the Order Map running in a north westerly direction along a tarmac path providing access to the Friends' Meeting House and Green End to point B and then continuing past a gate at the start of Grindleton Footpath 44 and up the steep driveway and to the south of a garage forming part of Green End Cottage to the unmarked junction with Sawley Footpath 5 on the Grindleton/Sawley parish boundary (point C).

The total length of the route is 100 metres and the width varies between 1.5 and 4 metres as detailed on the Order Map.

### **Legal Issues**

For the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence discovered by the OMA, when considered with all other relevant evidence, is sufficient to show that a footpath that is not shown on the DMS subsists along the Order Route and that the DMS requires modification.

The relevant statutory provision in relation to the dedication of a public right of way is Section 31 of the Highways Act 1981 (the "1980 Act"). Section 31 provides that where a way has been actually enjoyed by the public, 'as of right' (meaning without secrecy, force, or permission) and without interruption, for a period of twenty years prior to its status being brought into question, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate a public right of way. Should the test for deemed dedication under section 31 not be met, consideration should be given to whether a

dedication of highway can be inferred at common law. This requires consideration of three issues – (i) whether the landowner had the capacity to dedicate a highway; (ii) whether there was an express or implied dedication by the landowner and (iii) whether there has been acceptance of the dedication by the public. Evidence of use of a way by the public may support an inference of dedication and may also show acceptance of the dedication by the public. The evidence in support of the dedication of a right of way under common law may relate to a different period to that identified for the purpose of statutory dedication.

## **Reasons for confirming the Order**

### **Documentary evidence**

The historical documentary evidence, which was evaluated by experienced officers and considered by the Regulatory Committee, is detailed in the Committee Report (Document 22).

In summary, a substantial length of the Order route (between point A and point B) is shown on maps dating back to 1848 (the Tithe Map) and is clearly shown on all subsequent Ordnance Survey maps inspected. Map evidence suggests that the route formed the access to Green End and to the Friends' Meeting House and burial ground and research on the Friends' Meeting House states that it was built in 1777 suggesting that access may have existed from at least that time.

At point B the Ordnance Survey mapping suggests the existence of a gate which is borne out by the modern-day site evidence as the route passes between gateposts at this point. Beyond point B it appears from the mapping evidence that access would have been available to link to the recorded routes of Public Footpaths 3 and 5 Sawley.

Grindleton and Sawley parish councils were tasked with the production of a parish map and accompanying survey cards in the 1950s. The County Council does not have the parish survey maps that were originally prepared for the parishes of Grindleton or Sawley but the Parish Survey cards have been examined. Survey cards were completed by the same individual in both parishes. The fact that Footpath 44 Grindleton is described as ending at 'Friends Meeting House' suggests that the surveyor considered that there was already public access to Green End (along the Order route) which did not need to be recorded on the Definitive Map. This is further supported by the same surveyor describing Footpaths 3 & 5 Sawley both starting at Green End (as opposed to being a junction of the two paths) and both could also be accessed via the Order route.

The various walking guides submitted and presented to the OMA's Committee, all of which include the Order route, suggest that the route has the reputation of being public and formed an important link in the rights of way network.

The map and documentary evidence examined does not provide sufficient evidence of a public right of way in itself but it does support the user evidence gathered.

Included in the documentary evidence is detail of ownership The Lane is abutted by 3 properties which are accessed from the Order route. Two of the properties are registered as having private rights of access along the route but only one (Green End Cottage) is registered as owning any part of it. Part of the route is in unknown ownership.

As well as the user evidence forms the OMA provides copies of:

- Clitheroe 60K walk booklet (Document 20)
- A Cicerone Guide for Forest of Bowland Walks (Document 20)
- A Cicerone Guide for Walks in Ribble Country (Document 20)
- Rural Life Country Trails (Document 20)
- Friends' Meeting House, Public Services, Weddings and Burial Ground (Document 20)

These include the Order route and indicate the reputation of the Order Route as part of the footpath network and supports the user evidence.

### **User evidence**

To deem dedication under S31 use has to be sufficient use by the public as of right without interruption and no sufficient evidence of a lack of intention to dedicate for 20 years ending with a calling into question.

The issue came to light some time in 2013 (possibly March) when a notice appeared at the Sawley Road end of the Order Route saying 'Private, no public right of way'. This is on the unregistered section prior to present ownerships and it is not known to the OMA who erected the sign. The applicant states there has been a Public footpath fingerpost at this point for as long as people can remember, but this was taken down by Ribble Valley Borough Council when it was pointed out the public right of way does not appear on the Definitive Map. Consequently, the relevant twenty year period under consideration for the purpose of section 31(2) is January 1993 to January 2013.

To infer a dedication from all the circumstances including use does not require 20 years use back from a calling into question

In support of the application fifteen user evidence forms (UEF) were submitted; one of these forms has been completed by two users, so sixteen users have used the route in total. Of the sixteen users, ten users used the route throughout the twenty year period prior to 2013.

The other six users evidence is detailed in the Committee report.

It is submitted that the evidence is of use by the public such that the presumption under S31 arises. They are using the route as part of the

highway network to reach various locations. None have been challenged and none had seen any signs before the one in 2013.

Further relevant information from the UEF's included confirmation that the Order route had been used for numerous walks and specifically: -

On 4<sup>th</sup> August 1980 by 37 walkers, 10<sup>th</sup> June 1981 by 24 walkers, 15<sup>th</sup> April 1995 and 16<sup>th</sup> April 1995 with 27 walkers that day, 31<sup>st</sup> March 2011 by 7 walkers and the 1<sup>st</sup> September 2012 by 16 walkers.

Further on the 20<sup>th</sup> December 2009 by 9 walkers and the 12<sup>th</sup> December 2010 by 13 walkers.

The West Lancashire '100' which was held in 1991 also came down the Order route with no objections. The route of the Clitheroe 60K also went down the order route and this is listed as a long distance path on the LDWA website.

A user provides four dates in which he has done the Long Distance walk of 60K incorporating the Order route.

## **Conclusion**

The County Council submits that a public footpath subsists along the Order Route. The County Council further contends that the criteria for a modification of the DMS under section 53 of the WCA 1981 are satisfied.

The use by the public for twenty years was as of right and without interruption 1993-2013 and it is submitted that the dedication is on balance deemed to have occurred under the provisions of S31 Highways Act. Alternatively, dedication is, on balance, able to be inferred from all the circumstances being both documentary and user evidence.

The County Council decided that the Order should be promoted to confirmation because the higher test for confirmation had been met. For the reasons stated in the County Council's 'Comments on Objections', the objections received and not withdrawn do not give any grounds for the County Council to reverse its decision on promoting the Order to confirmation. The County Council therefore respectfully requests that the Planning Inspector confirms the Order.