

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
FOR THE COUNTY OF LANCASHIRE**

**THE LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP AND
STATEMENT OF PUBLIC RIGHTS OF WAY
PUBLIC FOOTPATH FROM BANKS ROAD TO STATION ROAD, NORTH
MEOLS (DEFINITIVE MAP MODIFICATION) ORDER 2014**

PLANNING INSPECTORATE REF: ROW 3282977

SUMMARY PROOF OF EVIDENCE

MRS JAYNE ELLIOTT

1. INTRODUCTION

1.1 My name is Jayne Elliott. I am a Senior Public Rights of Way Definitive Map Officer employed by Lancashire County Council and have been a Rights of Way Officer for 32 years.

1.2 One of my duties is to carry out detailed research in respect of the disputed or historical rights of way, which are the subject of applications under the provisions of the Wildlife and Countryside Act 1981 or which the County Council believe to have been incorrectly recorded on the Definitive Map and Statement (DMS).

1.3 My full statement has been submitted to the Planning Inspectorate prior to the Inquiry. This is a summary of that evidence.

2. THE ORDER ROUTE

2.1 The Order route (route) is in North Meols, West Lancashire and is shown as a bold broken line on the Order Plan marked A-B-C-D-E-F-G-H-I.

2.2 The application to record a footpath was made in 2012 and based on user evidence.

2.3 My observations made following a site visit in 2013 post-date the relevant claimed period of use of the route by a significant period of time.

2.4 The route commences on Banks Road opposite the start of Public Bridleway North Meols 47 and adjacent to 100 Banks Road (A).

2.5 The route was blocked by fencing at A and beyond the fence there was a brick substation partially built across it. Adjacent to the substation, on the boundary with 100 Banks Road, was a sign saying 'private' and 'legal action may be taken against unauthorised persons found on this property'.

2.6 From Banks Road the route extended in a south south easterly direction along a field boundary which separated the garden of 100 Banks Road with the field crossed by the route.

2.7 At B on the Order Map the route was shown to cross a boundary but on the ground this boundary did not exist.

2.8 A wooden post and netting fence not shown on the Order Map crossed the route at C where on a second inspection of the route several months later it was noted that a new sign had been erected indicating that the land between C-B-A was private.

2.9 From C the Order route continued south east along a grass surfaced track adjacent to The Sluice. At D I noted that the surface of the route changed from grass to a 3 metre wide stone track.

2.10 The route continued in a south east direction along the track to E where it passed the entrance to a disused pump house and car park, crossed a culvert at F and continued along the track to G where there were metal gate posts (no gate) and signs stating 'Horses prohibited private land' and 'Warning No tipping'.

2.11 The route continued a short distance to H where there was a metal gate across the route and alongside it a metal kissing gate. Signs relating to fishing and warning against swimming were located at H but none suggested there was no public access for pedestrians along the route. Just beyond H the route ended at I where it met Station Road close to the junction with Water Lane.

2.12 The route is 610 metres long.

2.13 I made a further inspection of the route in September 2023 and noted no substantial alterations to what I recorded in 2013. There was no apparent public use of the route from Banks Road via A to C and although it was possible to access the Order route from I through to C there was no evidence of the route being used a public through route.

3. HISTORICAL/DOCUMENTARY EVIDENCE

3.1 As part of my investigation into the route, I examined various maps and documents including a recognised series of historical records generally accepted to be key documents used to research the likely status of a route. A detailed summary of that investigation is included in the Report to the County Council Regulatory Committee (OMA SUBMISSION BUNDLE DOC 21).

3.2 It was my opinion that the historical map and documentary evidence, when considered as a whole, was insufficient to infer dedication of a public right of way. However, I considered the more recent map and photographic evidence concurred with a deemed dedication under Section 31 Highways Act 1980 of a footpath between A-I.

3.3 The maps and documents considered in support of the making and confirmation of the Order are detailed thoroughly in my Proof of Evidence and summarised in this statement.

3.4 Several additional relevant documents have come to light since the Order was made which assist in explaining my comments in relation to the various objections and representations made. These documents are listed in my Proof of Evidence and have been made available to all parties concerned prior to the public inquiry.

Ordnance Survey (OS)

3.5 OS maps were examined from 1847 onwards and no part of the route was shown as a physical path/track through to 1968 - with the exception of a fenced off strip from A providing access to a field in 1845-46.

3.6 The maps examined assist in providing timelines for changes that occurred including the construction of the access to the sewage works in the 1960s and fencing across the route at A and C post 2002.

3.7 The OS 1:2500 map published 1969 (OMA EVIDENCE BUNDLE DOC 22) shows a track between D-I to a sewage works not shown on earlier maps which appeared to be capable of being used consistent with the user evidence submitted.

3.8 The OS 1:10,000 map SD32SE published 1983 shows access onto the Order route as open – with a break in the fencing – and with no fencing across the route from A to D where a broken line is shown across the route as it joins the access road to the sewage works from I. This map supports the user evidence showing a definite break in fencing at A suggesting it would have been possible to walk along the route towards The Sluice to D. The map does not show fencing across the route at B or C further supporting the user evidence.

3.9 A further OS map used for Land Registry Title LA642449 (98 Banks Road) has a Crown Copyright date of 1978 and is consistent with what was shown on the 1983 map showing open access onto the route from A and also that it appeared to have been possible to walk along the route towards The Sluice at that time.

3.10 An OS digitally created map dated 8th April 2002 also shows a gap in the fence at A suggesting access onto the Order route at A and no fencing at B or C. Whilst 2002 post-dated the Section 31(6) Highways Act Statutory declaration made by the landowner it does suggest the route may still have been accessible as suggested by some users.

3.11 In my opinion the map evidence supports the evidence of use of the route since the 1960s. Although no physical path is shown on the maps between A and C it is my view that it is not uncommon for footpaths and bridleways not to be shown on OS maps as physical features particularly across agricultural land or in rural locations so the fact that a 'path' is not shown between A and C on the OS mapping examined is not inconsistent with claimed use.

Aerial Photographs

3.12 Aerial photographs do not provide evidence relating to whether routes are public or private but can – and in this case do – support user evidence submitted.

3.13 The 1940s photograph (OMA EVIDENCE BUNDLE DOC 23) predates the use under consideration but provides a useful indication as to what the land crossed by the route was like prior to the preparation of the DMS.

3.14 The route was not visible in the mid-1940s although this is not uncommon with regards to routes across agricultural land. Access appeared possible at A although the worn area would be consistent with any used agricultural field access point. No fences or barriers could be seen across the route suggesting access may have been possible along the full length.

3.15 The 1961 aerial photograph (OMA EVIDENCE BUNDLE DOC 24) shows what appears to be an entrance into the field at A. The route is not visible between A and C but from the approximate position of C there appears to be a track adjacent to the

3.16 Sluice consistent with the alignment of the route. At the right side of the photograph the Sewage Works is visible with a track running between it and The Sluice.

3.17 This photograph post-dates the 1955 Hearing which decided the route was not to be recorded as a footpath on the Definitive Map. Significantly there appears to be evidence that access to the route existed at A and that a track existed adjacent to The Sluice. The photograph supports the user evidence which referred to use and knowledge of the route in the 1960s.

3.18 The 1963 aerial photograph (OMA EVIDENCE BUNDLE DOC 25) shows that access appears to be available at A and a worn track is visible leading into the field and the boundary between the houses and field through which the Order route passes appears slightly different to the current day.

3.19 A lightly coloured strip is visible along the Order route between C and D which looks to be the result of recent work. Parallel to the wide strip is a narrow trod consistent with pedestrian use. This 'trod' can be clearly seen from C through to the track leading to the sewage works can be clearly seen to point I where it exits onto Station Road.

3.20 Significantly 8 years after the Hearing at which it was decided that the route was not to be recorded as a footpath there appears to be evidence of a trod with access to the Order route at A and a route appeared to be accessible through to Station Road at point I.

3.21 It is acknowledged that aerial photographs do not provide evidence as to whether a route shown was public but it is my view that the photograph supports the early user evidence submitted as part of the application which referred to use and knowledge of the route in the 1960s.

3.22 The 1988 Aerial Photograph (OMA EVIDENCE BUNDLE DOC 2 shows a track leading into the field at A. There is no field boundary across the Order route at B or C. From C a faint track is visible adjacent to the Sluice but the light-coloured strip clearly visible on the 1963 aerial photograph between C and D looks to have grassed over. A clearly visible gap provides access along the route at D from where the Order route follows an access track through to point I.

3.23 This photograph was taken prior to the land crossed by the route between A-C being sold to in 1990. The Order route appears to have been accessible in 1988 consistent with the user evidence provided.

3.24 The 1999 Aerial Photograph (OMA EVIDENCE BUNDLE DOC 27) taken after the submission of a Statutory Deposit and Declaration made under section 31(6) Highways Act 1980 shows the route may still have been accessible in 1999. It predated the construction of the electricity substation close to A and the fencing/hedge erected across the route at A and C.

The Definitive Map and Statement

3.25 A detailed explanation of the process followed in recording routes on the Definitive Map and Statement is included in my Proof of Evidence.

3.26 The route was considered not to exist as a footpath by the OMA in the 1950s although documentation relating to the Hearing procedure suggests this was due partly to a lack of historical map and documentary evidence but also because after claiming that the route was a public footpath neither the Parish Council or Ramblers Association attended a Hearing to present evidence of actual use.

3.27 It was concluded that a public right of way did not exist along the route in 1955 but this does not mean public rights could not have existed at that time – just that evidence was not presented to support it. It does provide evidence that the landowners challenged the existence of public rights in 1955 so if rights did not already exist then it is necessary to determine whether public rights have been dedicated since that time or to provide evidence that it was already a public right of way at that time.

Statutory Deposit and calling into question

3.28 There is a clear indication from the owners of the land A-C that they did not acknowledge the existence or intend to dedicate a public rights from 1998 onwards.

3.29 For the remaining section of the Order route C - I there is no indication by a landowner under this provision of non-intention to dedicate a public right of way over the route.

3.30 From the evidence submitted it was considered 1998 to be the date the route was called into question.

3.31 The OMA made the 2014 Order based on 'modern' user evidence which we consider shows that public rights were dedicated by public use of the route between 1978-1998 although there is evidence of use dating back to – or soon after – the 1955 appeal referred to above.

3.32 Since the Order was made evidence submitted by one of the Objectors resulted in the OMA considering an application made in 1995 to record a bridleway along a route described in part from Ralph's Wife's Lane to Water Lane.

3.33 The OMA acknowledge this may push back the calling into question of public rights to 1995. If that is the case the user will still demonstrate use of at least 20 years pre-1995.

4. OBJECTIONS TO THE ORDER

4.1 Eight objections and one representation were made to the Order.

4.2 The representation was from Openreach confirm no apparatus exists within the area.

4.3 Six objectors dispute the status of the route. They believe the route carries higher rights and should be recorded on the DMS as a public bridleway.

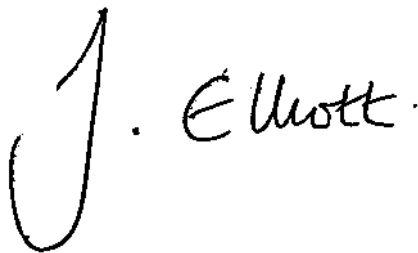
4.4 The remaining objectors dispute the existence of any public right of way across the route.

4.5 In summary I consider the objections received do not undermine the evidence that the route, on the balance of probability, already subsists in law and consider that:

- A substantial number of the witnesses have been interviewed by the OMA and have each given evidence consistent with their user evidence forms and have duly signed statements of truth.
- The map and documentary evidence examined since the 1960s supports the user evidence.
- No evidence has been presented following the 1955 appeal process until the owner of the route A-C deposited a Statutory Declaration in 1998 and there is not sufficient evidence of actions by the owners to demonstrate lack of intention to dedicate over at least 20 years prior to 1998.
- Representations relating to use of the route on horseback were not made available to the OMA prior to the making of the Order but further substantiate use and knowledge of the route prior to 1998.
- The decision not to record a footpath along the route in 1955 appears to be made on the fact that evidence was not presented at the Hearing to substantiate the claim rather than evidence being that it was not a public right of way.

5. CONCLUSION

5.1 To conclude, taking into account all available map, documentary and user evidence it is my view that there is good evidence that the Order route, on the balance of probability already exists as at least a public footpath and that the Order should be confirmed.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a period and the name 'Elliott'.

Dated 19th September 2023.