

**WILDLIFE AND COUNTRYSIDE ACT 1981
THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF
LANCASHIRE**

**LANCASHIRE COUNTY COUNCIL
ADDITION OF A FOOTPATH FROM FOOTPATH RAMSBOTTOM 45 NEAR TO STRONGSTRY BRIDGE
ALONG DISMANTLED RAILWAY LINE TO STUBBINS VALE ROAD, ROSSENDALE
(DEFINITIVE MAP MODIFICATION) ORDER 2021**

Order Making Authority Statement of Case

Background

1. On 21st December 2019, Mr Lee Gosling of 33 Dale Street, Stubbins, Ramsbottom BL0 0NF submitted an application to Lancashire County Council (the relevant surveying authority) for an order under section 53(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by recording a public footpath along a dismantled railway line from Footpath Ramsbottom 45 near Strongsty Bridge to Stubbins Vale Road.
2. The application was supported by:
 - a) A map extract marking existing 'paths' and marking the locations of obstructions placed on the application route in November 2019;
 - b) A Map showing the route applied for ;
 - c) Emails from senior employees of Voith said to demonstrate the previous landowner's consent to public access and works undertaken (steps created) to facilitate access;
 - d) Photographs of steps installed by the previous owner to facilitate 'public' access;
 - e) Evidence of the strategic intent by Local Authority to designate the path as a cycle route once funding was available and creating section 19 of the National Cycling Network Route 6;
 - f) Seven completed Lancashire County Council user evidence forms;
 - g) Photographs of the application route in use by families and railway enthusiasts;
 - h) Forty eight completed Ramblers' Association user evidence forms;
 - i) Photographs of the blue metal industrial container used to block the application route in November 2019; and
 - j) Minutes of Residents' Association meetings discussing attempts to communicate with and co-operate with the new owners of the land.

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3. Officers from Lancashire County Council (hereinafter referred to as "the OMA") investigated whether they considered that the public rights applied for existed over the application route and prepared a report detailing their investigation together with their recommendation that the application should be accepted (Document 21). The report was considered by the OMA's Regulatory Committee on 16th September 2020 where the decision was made to make an order to modify the DMS by recording a footpath along shown as A-B-C-D-E-F-G on the Order Map.
4. Notice of the OMA's decision to make an Order, was sent to affected individuals on 28th September 2020 (Document 15).
5. A Definitive Map Modification Order was duly made on 13th January 2021 ("the Order") (Document 1). The Order was made because it appeared to the OMA that the DMS for Lancashire required modification in consequence of an event specified in Section 53(3)(c)(i) of the 1981 Act: namely, the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way 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, namely a footpath.
6. Notice of the Making of the Order was served on affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 7 of Schedule 15 of the 1981 Act (Document 6).
7. During the specified period for objections and representations to the Order, the OMA received one objection (Document 4).

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8. The objection has not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA is submitting the Order to the Planning Inspectorate for a determination on confirmation.

The Order Route

9. The Order route is in the Parish of Ramsbottom in the District of Rossendale and is shown on the Order Map between points A-B-C-D-E-F-G denoted by a broken bold black line.
10. Photographs of the Order route taken in 2020 are included in the submission bundle (Document 21) with a detailed description of how the Order route looked in 2020 included in the Regulatory Committee Report (Document 20) and summarised below.
11. The Order route commences at a point on Footpath Ramsbottom 45 east of Buckden cottages approximately 40 metres north of the junction with Strongstry Road. (Point A on the Order plan).
12. From point A, the Order route extends east through a gap in a stone wall along a tarmac path signed as part of National Cycle Route 6. Wooden bollards across the gap restrict the width to exclude cars.
13. The Order route follows the tarmac path onto land which once carried a railway line (now dismantled) at point B. At point B, the Order route turns 90 degrees south to go in the opposite direction to the cycle track along the dismantled railway along a clearly defined but unsurfaced track (as observed in 2020).
14. Strongstry Road passes under the former railway which was carried by Strongstry Bridge at point C. Entry onto the bridge is fenced off by what appears to be quite an old metal railing fence. Several of the metal railings had been cut out of the fence and it was possible to step through

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the fence at this point and to continue along the Order route. Immediately on the south side of the metal railing fence, was a second metal fence which had been erected immediately to the rear of the older fence which had also been cut so that access was available by stepping through the gap in the two fences in one action.

15. Once through the fences, it was possible in 2020 to continue along the Order route over the railway bridge and south along the dismantled railway on a clearly defined track with evidence of recent use (footprints in the mud crossing a small trench dug across the route to continue along the Order route to point D.
16. At point D, the Order route descended east from the top of the railway embankment down a set of wooden steps to run along the bottom of the railway embankment adjacent to fencing separating it from the East Lancashire Railway before then ascending the slope via a second set of wooden steps to re-join the former railway track at point E. When the Order route was re-inspected in 2023 it was noted that the steps had been removed.
17. From point E, the Order route continues south along the top of the dismantled railway for approximately 350 metres to point F where a fence is positioned across the dismantled railway immediately prior to a subway which passes underneath and formed the original access to Stubbins Station. From point F, the Order route turns to continue in a west south westerly direction alongside the wall of the subway to descend to the junction with Stubbins Vale Road (U3623) (point G). Earth works which had taken place since the application was made meant that access at this point was no longer available in 2020 and evidence of the route previously used by the public was no longer visible although photographs taken of the route prior to this time do show it.

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18. From the OMA site inspection carried out in 2020, it appeared that a substantial trodden track had existed along the full length of the Order route consistent with the user evidence and that frequent recent use was still being made of most of the Order route, except at point F near where it was blocked.

Legal Issues

19. The provisions of the Wildlife and Countryside Act 1981 set out tests which must be addressed in deciding whether the DMS should be modified. If it appears to the OMA that the DMS require modification in consequence of the occurrence of an event specified in S53(3)(c)(i) of the 1981 Act namely the discovery by the OMA of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the DMS relates, namely a footpath.

20. The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered. S53 permits both upgrading and downgrading of highways and deletions from the map. The statutory test at S53(3)(c)(i) comprises two separate questions, one of which must be answered in the affirmative before an Order is made on the basis of that subsection. A public right of way has to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist. (Test B). This second test B is easier to satisfy, but it should be noted it is the 'higher' Test A which needs to be satisfied in deciding whether to confirm the Order.

21. In the case of *Todd and another v Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 1450 Evans-Lombe J made it clear that the confirming authority (whether the local authority confirming an unopposed order or the Secretary of State confirming an opposed order) must be satisfied on the balance of probabilities that the right of

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way subsists. This means that when considering the confirmation of an order, the Secretary of State is only able to consider whether on the balance of probabilities the right of way subsists.

22. Accordingly, for the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence considered by the OMA, when considered with all other evidence there is sufficient evidence from which to infer a footpath was already dedicated on the Order route and the route marked A-B-C-D-E-F-G on the Order plan should be added to the DMS as a footpath.

23. It should be noted that a common law dedication of a footpath may be inferred if the evidence points to an intention on the part of the landowner to dedicate. The burden of proof is on the applicant to prove, on the balance of probabilities, the dedication. Evidence of use of an Order route by the public and how an owner acted towards them is one of the factors which may be taken into account in deciding whether a public right has been dedicated. No minimum period is necessary. All the circumstances must be taken into account. The use needs to be 'as of right' which means it must be open, not secretly or by force or with permission.

24. It should also be noted that a relevant statutory provision in relation to the dedication of a public right of way is Section 31 of the Highways Act 1980 (the "1980 Act"). Section 31 provides that where a way has actually been 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. Section 31 does not necessarily preclude dedication of a public right of way under common law, however.

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25. It is the view of the OMA that Order route subsists as a footpath and should be recorded as such on the DMS (Document 18).

Evidence

26. The Order relates to the addition of a footpath along the former track bed of the former East Lancashire Railway which was opened in 1846. The railway between Ramsbottom and Accrington ceased to operate in 1966 and the track bed removed in approximately 1970-1972.

27. The Order route did not exist as a footpath prior to the closure of the railway and removal of the railway track and the Order is made and being promoted to confirmation on the basis of modern user evidence post-dating the removal of the railway track. The earliest Ordnance Survey (OS) map examined to show that the railway track bed had been removed was the 1:2500 OS Map SD 7818-7918 which was revised in 1982 and published in 1983 (Document 24). It appears from the map that it would have been possible to walk the length of the dismantled railway between point C and point F in 1982-3 consistent with the earliest user evidence provided although at that time it appears that use would have been along the top of the embankment without the need to deviate between point D and point E as the factory to the west of the railway had not been extended at that time. The OS map does not show a fence (solid line) across the Order route at point C.

28. Planning Permission granted in 1994 (Document 25) to extend the factory with associated car parking, servicing and landscaping included a note stating that the permission should be read in conjunction with a letter from the Agent/Landowner dated 25th November 1993 in relation to a plan referenced 96/144/9 showing revisions to the yard area and the applicant's willingness to allow the public to 'continue to use the informal footpath along the dismantled railway embankment'. Neither the letter or plan have been found but the factory extension resulted in

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the informal diversion of the original route between point D and point E onto the Order route.

29. References to the route as part of the planning process supports the user evidence submitted in that a route was already in use by the public prior to 1993. The landowners acknowledged use had been made of the route and accepted continued use along what was described as an 'informal footpath' although the OMA acknowledge that without the wording of the missing letter it is not possible to know whether the landowner had accepted that rights already existed, the dedication of new rights or permission for the public without dedication. It does appear however, that if the fence at point C had existed by that time, the public were passing through it.

30. Photographs taken by the OMA in 2007 (and included within the Regulatory Committee report (Document 20)) confirm that the full length of the Order route existed and that the route was not overgrown and appeared to be well worn. The steps constructed between point D and point E were substantial and to a good standard and whilst a fence is shown to have existed across the route at point C the gap in the railings could be clearly seen and did not appear to have prevented or deterred use.

31. A further photograph of the fence at point C was taken in 2008 by the OMA (also included in the Regulatory Committee report (Document 20)) when discussions took place regarding proposals to construct a cycleway along the dismantled railway. The photograph again shows a well-trodden track along the Order route passing through the fence with no suggestion that the fence prevented use by the public on foot.

32. The applicant submitted 53 user evidence forms in support of their application (Document 19).

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33. The user evidence forms collectively provided evidence of use going back as far as 1984 and up to 2019 when access onto the Order route was blocked and the application to record the right of way was made.
34. 27 user evidence forms detail 20 years or more user including the years 1999 to 2019 with a further 26 claiming periods of less than 20 years. The majority of the users stated that they used the Order route weekly or daily with five stating that they used the Order route more than once per day with another user stating they used the Order route 'regularly'. 5 used the Order route more than once a day, 9 daily, 27 weekly and 1 yearly.
35. Of those who specified their reason for using the Order route, the most common answer was for dog walking. Others cited scenic walks and leisure with another mentioning commuting in addition to recreation.
36. None of the users recalled having been prevented from using the Order route until it was blocked off in 2019 with the only reference to signs or notices restricting or prohibiting access on the Order route being those erected in 2019 with the blocking of the Order route.
37. With regards to the railings across the Order route at point C, whilst some users referenced railings at Strongstry Bridge, none suggested that they prevented access on foot and taken collectively the evidence suggests that by the time the route was diverted from the top of the embankment and steps constructed circa 1994-1995 the gap in the railings at point C was just considered to be part of the access to the route in the same way that a stile, gate or more orthodox gap would be viewed.

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Summary

38. The Order route is not currently recorded on the DMS or on the List of Streets as a publicly maintainable route. There has been no express dedication in this matter. The OMA considers, on balance, that there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances.
39. Furthermore, it is suggested that in the absence of there being sufficient map and documentary evidence from which to infer public rights, there is sufficient user evidence to find footpath status has been dedicated.
40. The OMA case is that the Order route A-G has already become a footpath in law and should be recorded on the DMS. The majority of the users claim that the Order route has always followed the same route apart from 9 users who acknowledge the fact that the Order route did alter slightly in 1994 when the then factory owner constructed wooden steps to enable the public to continue to use the Order route after they had implemented the provisions in the 1994 planning permission.
41. As there is no express dedication, the OMA considered, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.
42. Considering initially whether there are circumstances from which dedication could be inferred at common law. The OMA considered whether evidence from the maps and other documentary evidence coupled with user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the Order route as a public right of way.

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43. Sufficient as of right use agreed by the owners may be circumstances from which dedication can be inferred. The previous landowner has acknowledged that members of the public did use the Order route in 1993. Planning permission granted in 1994 to extend Stubbins Mill refers to the Order route being diverted and the provision of wooden steps being constructed to assist public use of the Order route while the mill yard was redeveloped. Such actions by the then landowner demonstrates that in 1993 the applicant had knowledge of the public using the Order route and further showing a willingness to allow the public to 'continue to use' the informal footpath along the disused railway embankment. Such acknowledgement of public use of the Order route in 1993 is consistent with the period of use detailed in the user evidence forms.
44. From looking at the user evidence, it would appear that there has never been any clear action by previous owners to prevent use by the public and use by the public has continued for many years such that, on balance, there may be sufficient evidence from which to infer dedication at common law. The exception to this are the fence erected across the route at point C which was subsequently reinforced by another fence, but after that there was apparently no further attempt to prevent public access through the gap nor to erect any signage.
45. Looking next at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the Order route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20-year period immediately prior to the route being called into question. In this matter, the evidence indicates that access to the route was obstructed in November 2019, therefore the 20-year period under consideration for the purposes of establishing deemed dedication would therefore be 1999-2019.

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46. The applicant has provided 53 user evidence forms in support of the application which refer to use of the Order route from as early as 1984 with 27 users providing evidence of the full 20 years, 1999 to 2019.
47. None of the users recall having ever been told that the Order route was not a public right of way, nor do any users refer to having been turned back or having asked permission to use the Order route. It is therefore suggested that there is sufficient evidence of use of the Order route by the public as of right to raise a presumption of dedication for the period 1999-2019 over the Order route A-B-C-D-E-F-G-H following the diversion of the Order route D-E.
48. Evidence has been submitted by the landowner regarding the requirement to maintain a stock proof fence across the Order route at point C. Site evidence, photographs and maps all confirm the existence of this fence, but also show that the fence – which clearly existed in 2008 – had a section removed which made it possible for pedestrians to pass through it. None of the users providing evidence appear to have considered this fence to have been erected to prevent them accessing the route or appear to consider that by stepping through the gap in the fence they were using a route that they had no right to use. Arguably, the person who actually created the gap, if it was one of the users of the way, should be discounted from evidence of use because it was not 'nec vi' (without force) and therefore was not 'as of right'. However, other people subsequently stepping through the gap were doing so as of right and the fact that use continued could suggest a strength of belief that users had a right.
49. In conclusion, taking all the evidence into account, the Committee on balance may consider that the provisions of section 31 of the Highways Act 1980 can be satisfied. In addition, or in the alternative, OMA considered that it can be reasonably alleged that there is sufficient

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evidence from which to infer dedication of a public footpath at common law.

50. There is no evidence that a legal stopping up of any part of the Order route has ever taken place.

Conclusion

51. On the balance of probabilities and taking all the evidence into account, the OMA considered that dedication of a public right of way following 20 years' use as of right can be presumed to have taken place. Additionally, or in the alternative, the OMA also considered that the common law test for inference of dedication is satisfied for the full extent of the Order route. The OMA duly accepted the application for the Order route marked A-B-C-D-E-F-G to be added to the DMS as a public footpath and promote the Order to confirmation.

52. Whilst there is no express dedication in this matter, the OMA considers, on balance, that there is sufficient evidence from which to have dedication inferred at common law from all the circumstances.

53. The OMA considers that there is sufficient evidence on balance that the Order route was a historical public route available as a footpath which at present is not recorded on the DMS and that footpath rights subsist along the Order route. The OMA further states that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.

54. Accordingly, there is substantial user evidence in support of the Order; an absence of signs and notices along the Order route prior to 2019 stating that it was not public; an absence of action taken by landowners to discourage use of the Order route; Map and other documentary evidence supporting the physical existence of the Order route since at least the 1970's and significantly, provision of alternative access via

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steps when part of the original route was affected by development in 1994.

55.The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above in para 20 is met. The objection received does not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation.

56.The OMA therefore respectfully requests that the Planning Inspector confirms the Order.