

LANCASHIRE COUNTY COUNCIL
LOVE CLOUGH ROAD, RAWTENSTALL, ROSSENDALE BOROUGH DEFINITIVE
MAP MODIFICATION ORDER 2018

Lancashire County Council's (the Order Making Authority – 'OMA') Comments on Objections

Six duly made objections to the Order have been received by the OMA.

Copies of the objections are contained within the List of Documents (Document 4) and are summarised below in italics with the OMA's response indented after each as follows:

Dr David Hempsall and Mrs Diane Ewart-Jones of The Barn, Loveclough Fold, Rossendale, Lancashire BB4 8QT

No evidence during 1980/1990s development of any objection to installation of fences/walls required by planning authority.

Information provided by residents when consulted on a previous order made in relation to this land explained that the land and buildings were sold for redevelopment around 1989 (see information contained in Regulatory Committee Report under 'Information from the Landowners' (Document 23)).

No evidence relating to development taking place prior to 1989 has been found that would have affected the public's use of the Order route and there is no evidence that any fencing or walls were constructed across the Order route prior to that time.

Planning applications made to the district council, as planning authority, were not monitored by the Public Rights of Way team nor either council have knowledge of unrecorded public rights of way. Although the situation has improved since that time it is inevitably still the case that many unrecorded public paths are not known about by the councils and most people using the paths don't realise that this situation exists, and the public rights may not be protected.

The OMA considered the evidence and concluded that public rights had been dedicated along the Order route by 1989 and that any subsequent construction work – even that 'required' by the planning authority did not extinguish or divert any existing public rights.

The OMA concluded that it was only after the work to redevelop the farm commenced that public use of the Order route was challenged.

Challenge the user evidence in terms of accuracy and the way that the information was compiled at a 'mass meeting'.

The background to this Order is not straightforward. In 2005, an application was originally received for a footpath supported by 156 user evidence forms. The

forms provided details of the start and finish points of the route applied for but did not include individually marked up plans showing the route walked. The applicant (now deceased) applied for a route to be recorded along the line of the more modern access route which existed by 2004-2005 which was not the same line as the pre-1989 route used by members of the public. An Order made in 2006, following the more modern access route, was objected to and the OMA carried out interviews of 16 users of the '2006 Order route' where it came to light that the route used prior to 1989 was the one that most of the user evidence related to as opposed to the route used post 1989-1990 which was constructed as part of the development i.e. the 2006 Order route as applied for in 2005.

The 2006 Order has been submitted to the Planning Inspectorate for non-confirmation on that basis.

The OMA has therefore taken the original 156 user evidence forms as the basis for making this (2018) Order and following face-to-face interviews being carried out with 16 of those users to confirm details of their user evidence and the route to which it related.

After carrying out those interviews, letters were sent to the remaining users to ask them to clarify which route their evidence related to.

With respect to the collection of the original user evidence, it is not known whether the evidence was collected at a meeting but the OMA have found that it is not unusual for a meeting to be held by a potential applicant to gather that evidence. The evidence submitted has been carefully considered, interviews carried out and further clarification sought.

The OMA are mindful that the user evidence was collected in 2004-2005 and the relevant dates between which use of the Order route is to be considered are 1969-1989. This will obviously have an impact on how many of the users may still be contactable and/or able to provide further details of their use should a public inquiry be held. The number of users submitting evidence in 2004-2005 was, however, significant and a good proportion were interviewed and/or replied to confirm their use of the 2018 Order route.

The Order route B-C-D is shown in a straight line but the route through the original farm buildings was more curved. The Order is fatally flawed as a result as to follow a straight line would have required passing through significant structures.

The OMA looked at the evidence of use and considered that the route walked approximated to a direct line from entering the farmyard to the point at which the public joined the track recorded as part of Footpath Rawtenstall 9 (point D). Map and photographic evidence during the 20-year period of use is limited but the user evidence suggests that the public were passing directly through the farm as part of a longer route.

It appears that there was a slight kink in the track between point C and point D but walkers tend not to follow the centreline of a track but take the shortest, straightest line. The photograph proffered by Mr & Mrs Ashworth and labelled as

being taken in Sept 1989 (Document 30) shows 4 cars parked on the area by that kink, indicating that at that time the straight line was available and would have been easy to use. Whilst it is acknowledged that it is necessary to show a particular line to record the public rights it is argued that it is within the tolerance of the available map and photographic record.

The Ordnance Survey Map of 1960 and aerial photograph used to mark the route claimed to have been used are conclusive and there was never a straight-line path.

The Ordnance Survey 1:2500 map revised in 1960 and published in 1962 (Document 34) predates the 20 year period under consideration. However, the OMA concur with the objector's view that a through route existed but note that the track was unbounded (as indicated by pecked lines) so it was likely that anyone walking from point B to point D could have taken a direct route at that time and was not constrained to follow the centreline of a wider track. People subconsciously tend to take the shortest line.

The 1960s aerial photograph (Document 32) is believed to have been taken in 1963 and a wide, clearly defined route can be seen from point B through to point D (and beyond). It supports the early user evidence (1930s onwards) which was submitted in that it was possible to walk through the farm on a 'route' approximating to a straight line in the early 1960s.

Evidence from an earlier aerial photograph taken in the 1940s (Document 31) also supports the earlier user evidence detailed in the OMA's Statement of Case which concurs with the view that the public originally walked a relatively straight and direct route between point B and point D.

The photograph sent to users on which they marked up the route used through the farmyard was provided by Mr Collinge. It is undated but is thought to have been taken in the 1980s (the car shown on the photograph appears to be a Mk IV Ford Cortina produced from 1976 which provides the earliest possible date). The farm no longer appeared to be a working farm – again suggesting the photographs dated from the mid-1980s and is not inconsistent with a route approximating to a straight line being available to walk on foot to connect to the footpath adjacent to the watercourse (footpath 9 Rawtenstall).

There is no need for a footpath along the Order route because a suitable alternative route exists on the south side of Limy Water.

Whether or not the Order route is needed today, or indeed was necessary at any time, is not relevant with regards to whether on balance public footpath rights already exist along the route. The footpath could be diverted or extinguished by means of a Public Path Order subsequent to the outcome of this Order.

Mr James Tozer and Mrs Dawn Tozer of 2 Cloughfold Barn Loveclough Fold Rossendale BB4 8QT

Mr and Mrs Tozier submitted separate letters of objection, but the content of each letter was identical, and they are therefore being addressed under the same heading.

Authority to make the Order – challenges the basis of the reliance on the decision to make an order when adequate steps have not been taken to investigate the current position in respect of the site.

The application, originally made in 2005, was based on a substantial amount of user evidence. The OMA considered this evidence, interviewed a proportion of the users, and then contacted the other users by post to clarify the route they had used. The OMA considered that there was sufficient evidence to make an order to record a public footpath and to satisfy the higher test that on the balance of probabilities a public footpath exists.

The OMA followed the correct procedure when investigating the matter and the OMA's Regulatory Committee, to which the authority to decide whether to make an Order is properly delegated, were satisfied that the evidence was sufficient for the OMA to make the Order and promote it to confirmation.

The objector refers to the fact that the OMA have not taken into consideration 'the current position in respect of the site'. The application received by the OMA related to recording existing public rights and as such no consideration can be taken with regards to the fact that since 1989 the farm buildings have been sold and redeveloped or that the Order route is now obstructed.

Should the Order be confirmed then this is a matter that will need to be looked at in relation to the possibility of the diversion or extinguishment of public rights.

Statutory position – the statutory duty of the highways authority to ensure the definitive map is kept up to date must be done on a timely, reasonable and proportionate basis.

The OMA as surveying authority has a duty to process duly made application and to consider making orders where evidence is discovered. The legislation prescribes a strictly evidential process without subjective and contested tests of reasonableness or proportionality which would be taken into account by the OMA in subsequent diversion or other management of the public right of way if the Order is confirmed.

Statutory position – This way is not shown on the definitive map and has not been for many years.

This Order and definitive map modification orders in general are **only** made because a way is not shown on the Definitive Map and Statement but it should be (or vice versa or other amendment.)

Statutory position – There have been private properties on the line of the Order route since the 1990s which are privately occupied so there cannot have been use 'as of right'.

The Order has been made based on evidence which the OMA considers shows that public footpath rights already existed by the 1990s when redevelopment took place. The fact that public rights were not recorded does not mean that they did not, or do not, exist. The OMA are not relying on any evidence of use by the public after the Order route had been built upon and/or obstructed but have

looked at all available evidence dating from before 1989 and concluded that on balance public footpath rights exist.

Statutory position – There are inconsistencies and anomalies in the evidence.

The OMA investigated all available evidence, as it does with any application, which will rarely be entirely consistent but it enables an overall understanding and assessment on the balance of probabilities.

Burden of proof - it is for the OMA to prove the existence of a public footpath and no evidence has been forthcoming.

The Order was made based on the submission of a substantial amount of user evidence which demonstrated use of the Order route over a lengthy period of time without force, secrecy or permission. No evidence was submitted to suggest that public use of the Order route had been challenged prior to the land being sold in 1989 for redevelopment.

The OMA are satisfied that the evidence considered prior to the making of the Order was sufficient to conclude that on balance the Order route already existed as a public footpath – hence the fact that the OMA are promoting it to confirmation.

Conduct of the matter – the making of the Order is not expedient or in the public interest.

Whether or not it is expedient or in the public interest is subjective and no doubt disputed by the objectors or supporters of the application. However, the legislation is clear that the Surveying Authority has a duty to follow the prescribed process in response to a duly made application or discovery of evidence.

Conduct of the matter – it has been physically impossible to walk the Order route for over 20 years. The County Council did not object to the planning applications and to make the Order now is contrary to the rules of natural justice.

The Order was not made on the basis of use since 1989, but prior to the development.

The OMA was unaware of public use of the Order route at that time.

This process set out by the legislation is designed to ensure every party to have their views and arguments heard and assessed independently.

Freedom of Information Act request.

The OMA processed this Freedom of Information request by the objectors but would point out that this request/issue is not something that can be taken as a valid reason for objecting to the Order.

Mr Stephen Felinski and Mrs Sally Felinski of 1 Cloughfold Barn Loveclough Fold Rossendale BB4 8QT

Mr and Mrs Felinski submitted separate letters of objection, but the content of each letter was identical, and they are therefore being addressed under the same heading.

No mention of any footpath at time of purchase in 1989 and purchased the property with planning permission to convert it into their home. The Order route has been physically impossible to walk since 1990 and when granted further planning permission for an extension in 2004 there was still no reference to the existence of a public footpath.

Unrecorded public rights along the Order route may have existed at the time the objectors purchased the property in 1989. Unrecorded rights would not necessarily be brought to light by transfer of ownership or planning applications.

It is the OMA's case that public rights existed by the time the farm was sold off for redevelopment and that those public rights still exist today. Even though it has not been possible to walk the full length of the Order route since 1990 any public rights would not have been extinguished or no longer exist simply because they could not be exercised.

At the time that the original planning permission was granted and the objectors purchased the property, there is no evidence to suggest that the public could not use the Order route and it is only after development had taken place and public use of a variation of the route to get between point B and point D was challenged that an application was made to record public rights in 2005. Any property searches or planning request prior to 2005 would not necessarily alert a purchaser or developer to any unrecorded public rights or applications to record public rights.

Whilst sympathetic to the concerns raised by the objectors these are not issues that can be taken into account in relation to the confirmation of the Order.

In the event of the Order being confirmed, it is open to the County Council as Highway Authority to consider any application for a Public Path Diversion Order to divert the public rights to an alternative line.

Mr David Ashworth and Mrs Alison Ashworth of Loveclough Fold, Rossendale, Lancashire BB4 8QT

The objectors refer to previous objections made to the earlier 2005 Order (which has been referred separately to the Planning Inspectorate requesting that it not be confirmed).

The claim was made maliciously and not based on factual evidence.

The OMA have no reason to consider the application (claim) was made maliciously and any perceived or alleged motivation behind an application is not a relevant consideration.

The public's use of a route had been challenged which prompted the application being made. Evidence of the existence of public rights along a route through Loveclough Fold was presented to the OMA and the claim relating to the existence of public rights was investigated.

Evidence submitted from various parties was considered, users interviewed, and additional clarification sought regarding the actual route used.

The OMA consider there was sufficient evidence to make the Order and for it to be confirmed on the balance of probability.

As a claimed right of way, it has not been physically possible to walk the route the claimants state.

At the time the original application was made (in 2005), there was some confusion as to the route claimed. Further investigations confirmed that the evidence pre-1989 related to the Order route with users walking across an open area through the former farm to connect to the route recorded as Footpath Rawtenstall 9.

It is not disputed that from 1990 it has not been possible to walk the full length of the Order route but this is not relevant to the evidence that public footpath rights were dedicated along the route prior to that time.

The evidence some of the claimants made is inaccurate.

A substantial amount of user evidence was submitted from local people who had lived in the area for many years, often all their lifetime. The evidence contains people's recollections to the best of their knowledge and belief. The objector does not provide details of any inaccuracies and the OMA have looked at the evidence as a whole – including any available map and documentary evidence and consultation responses in coming to the conclusion that, on balance, the evidence shows that public footpath rights had been dedicated prior to 1990.

Taken collectively, and having carried out interviews and sought further clarification, the OMA consider that the evidence presented provides a clear consistent picture of use of the Order route over a lengthy period of time with no evidence that the public were stopped, challenged or used the Order route with permission prior to 1989-1990.

The OMA are mindful of the time that it has taken to process this Order and that a number of people who walked the Order route and who farmed the land are now deceased or unable to provide further information (including the applicant himself).

The large number of user evidence forms submitted will be made available to the Planning Inspectorate for consideration.

Time taken to process an application initially made in 2005.

The OMA appreciate the frustration and anxiety that an application to record public rights over land can cause. Lancashire County Council is not alone in facing a large backlog of applications to process and Orders to refer to the Planning Inspectorate. Once an application is made the OMA has a duty to investigate it and if an Order is made this must be referred to the Planning Inspectorate and cannot be abandoned. The timescales involved in this particular

case have not been helpful, but it does not change the evidence for or against the existence of public rights.

Complaint about lack of enforcement action regarding the correct right of way, i.e. footpath no.4. If this footpath had not been blocked we (the objectors) would not be in this situation.

It is incorrect to regard another footpath as the correct line of the Order route; the evidence shows that this is an additional footpath not an alternative route of the same one. Timescales regarding management of another footpath are not relevant factors in determining whether public rights exist on the Order route.

Conclusion

The OMA submits that the objections received do not in any way undermine the evidence that the Order route is, on balance, already a public footpath in law and respectfully requests that the Planning Inspector confirms the Order.