

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

Comments on Objections Received

The Objections

Copies of the objection received to the making of the Order and a letter confirming the objection is maintained are contained within the List of Documents and are summarised below.

The objection is from the owners of Green End.

1. *A public footpath is not needed over this particular way, because there is another public footpath which runs from a position approximately 200 metres in a westerly direction towards Grindleton which links to other footpaths on the northerly side of Green End.*

2. *The access road over which the right is to be granted is narrow, and only one car width. When the objectors approach the (their) property in a Range Rover, the wing mirrors on one side are touching the hedge and there is no room at all on the other side. The access road serves three properties. The owners or occupiers of those properties rely on the access road for vehicular access to the properties. The introduction of pedestrians will create a serious hazard for pedestrian users, and an inconvenience for the drivers of vehicles going to each of the properties.*

3. *At the same time, the visibility at the point where the access road meets the main road is extremely poor. There will inevitably be an increased risk for pedestrians using the access road because they may not be seen in time by the drivers of vehicles. In fact, the history of this area will show that a*

new entrance was created by the previous owner of Green End for this very reason – that there is poor visibility.

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Response to the Objection

The Definitive Map Modification Order that seeks to record the route as a public footpath was made because the Order Making Authority (OMA) considered that there was evidence, which, on balance, suggested that the route had already become a public footpath by virtue of section 31 of the Highways Act 1980 on account of the fact that it had been used by the public over an uninterrupted period of at least 20 years but which had never officially been recorded.

The following are the initial responses by the OMA: -

1. There is no need for the public footpath.

The OMA note that the Order seeks to record existing public rights and not to create new ones. As such, the current need or desirability for the 'creation' of a public footpath along the Order route respectfully are not considerations which can be taken into account when deciding whether the Order should be confirmed.

If the Order is confirmed and the objectors still felt that the route is not needed for public use they would be able to apply to for it to be legally extinguished or diverted under section 118 or 119 of the Highways Act 1980.

2. The width of the Order route

The objectors have expressed concern about the width of the route and the fact that it is used by vehicles to access properties.

The legal Order has been made to record the route as a public footpath and, as noted, not to create a 'new' route for the public. Whilst the safety of the

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public using the route is clearly a concern it does not constitute a valid reason for not confirming the Order and recording the route as a public footpath. The route is no narrower than many rural footpaths recorded along farm access roads across the County or than many public roads which have rights for vehicles, horses and walkers. Should the Order be confirmed it is not proposed to widen the route but appropriate signage to warn drivers of vehicles of the likelihood of meeting the public on foot (and vice versa) could be considered. No evidence has been presented that makes the OMA think the width of the Order route has prevented or restricted public use of the route on foot over the 20 year period being considered (1993-2013).

3. Visibility from the Order route at the junction with Sawley Road

Sawley Road is not considered to be a busy road and as a rural route with no footways drivers should expect to meet pedestrians, cyclists and horse riders travelling along it.

As the OMA are not seeking to create a 'new' public footpath exiting onto this road but to record what they already believe to be a public footpath then the modern day suitability of the junction should not be considered with regards to whether the Order should be confirmed. If the Order is confirmed the junction would be signed with a public footpath signpost. No evidence has been presented that makes the OMA think that pedestrians have been deterred from walking along Sawley Road to access the Order route on foot over the 20 year period being considered (1993-2013).

References to challenges and Notices

Of further note is that on the 9th February 2016 the objectors wrote to the OMA to clarify that they had only recently purchased Green End (which is accessed from the Order route). Whilst they conceded they had no knowledge of its history, they asserted that two other people did.

In the letter they state that Mr David Webb, had owned Green End for 35 years before selling it to them and had according to the letter frequently approached walkers to explain that the road was not for public use. They also stated that when signs had been placed to notify people, they had been removed.

It was also stated that Mr James Hargreaves, who lived at Green End Cottage (which is also accessed via the Order route) had lived at the property for the previous 50 years and had also approached people of which apparently some were not very polite.

It was asserted by the objectors that these people had been trespassing when there was a public footpath just up Sawley Road, leading to the same point.

The OMA notes that in relation to these claims there are no references to such actions by the users. No evidence had been provided by the objectors as to any details of who had been challenged and when. Ownership of no part of the Order route was registered to either Mr Webb or Mr Hargreaves and no other evidence was presented to suggest that they owned any part of it. Further there were no details as to which signs had been removed and when or why. Effectively there was no evidence served to support the assertions made within the letter.

Further, circa 7th March 2016, an undated letter was sent from one objector which enclosed a section of the Ordnance Survey map dated 1931. The letter stated: -

"Please would you forward the enclosed map to the Dep't for planning inspectorate.

The plan shown quiet (quite) clearly there is no footpath on our road.

The map date 1931."

The OMA notes that the map provided is an extract of a 1:2500 Ordnance Survey map. The officer for the OMA investigating the route had not been able to find the third edition OS published circa 1930 in their research and so it had not been considered previously. As such therefore, the map sheet reference, survey date or the revision or publication date from the extract provided was not able to be confirmed in 2016.

The map extract provided by the objector does not show the area covered by the full length of the Order route.

The objector claims that the plan clearly shows that there is no footpath over the Order route.

The OMA note that it has generally been considered that Ordnance Survey maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888.

The map provided by the objector would have provided a disclaimer with the wording 'the representation on this map of a Road, Track or Footpath is no evidence of a right of way.' However, the OMA assert that does not mean that the routes shown were not public rights of way.

The large scale 25-inch maps provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. In this particular case the Order route is shown as a bounded route enclosed between walls, fences or hedges. It is not possible to see from the extract provided whether the line across the start of the route (from point A at the junction with Sawley Road) is a solid line, which may indicate the existence of a gate, or a dashed line, which may indicate a change in surface. However, even if the route was gated in the 1930s the OMA believes this does not necessarily indicate that it was a private route as gates were (and indeed still are) often located across public rights of way, particularly in rural locations, for stock control purposes.

The route is not labelled on the map as a footpath (F.P) as are other routes connecting to it, but this does not mean that it is not, or could not have been a public footpath. Surveyors engaged with the preparation and revision of Ordnance Survey maps would mark routes as footpaths (F.P) in relation to their physical existence on the ground and not necessarily their legal status. Routes labelled as footpaths on the maps would normally be trodden tracks across open land, visible on the ground to the surveyor at that time and appeared to be used on foot (whether this was public or private use) as opposed to more substantial routes which may, for example, have provided vehicular use to land or properties and be physically wider, sometimes surfaced and/or bounded by fences/gates/hedges.

The legal position is clearly set out in case law.

Farwell J. stated in **Attorney-General v Antrobus** [1905] 2 Ch 188 at 203 in relation to Ordnance Survey Maps:

“Such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey.”

Similarly, in **Moser v Ambleside Urban District Council** (1925) 89 JP 118 at 119, Pollock MR stated:

“If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate.....”

More recently, Cooke J. observed in **Norfolk CC v Mason** [2004] NR205111

“Throughout its long history the OS has had a reputation of accuracy and excellence..... It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion on public or private rights”.

It remains the view of the OMA that the OS maps examined provided from mid 1800s through to the modern day confirm the existence of bounded track leading up to and beyond Green End and Sawley Friends Meeting House which appeared capable of being used by the public. There is nothing to indicate that the route shown was not or could not have been a public footpath.

Having received a response to a number of queries submitted by the objectors they confirmed that they wished to maintain their objection and that whilst the OMA did not meet the objectors on site, officers did speak to one at length on the telephone.