

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

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

**Order Making Authority's Written Statement within the Statement of Case**

**Background**

1. On 17<sup>th</sup> January 2014, the Footpath Secretary for the Clitheroe Ramblers applied 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 adding 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 Footpaths Sawley 5 and Grindleton 44 on the Grindleton/Sawley parish boundary near the Friends' Meeting House (Document 20).
2. The application was supported by 15 user evidence forms (Document 21), a photograph showing a public footpath sign erected on the route, extracts from a walking guidebook titled 'Walking in the Forest of Bowland' by Gladys Sellers, an extract from a walking guide book titled 'Walks in Ribble Country' by Jack Keighley, The Ramblers Jubilee Commemorative Walk Route Card, a walk published in the Blackpool Gazette April 2013 and details regarding the history and use of the Friends' Meeting House.
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 recommendations (Document 22).
4. The report was considered by the OMA's Regulatory Committee on 9<sup>th</sup> September 2015 with a recommendation to accept the application and to modify the DMS by adding a footpath along the route marked by a thick dashed line between points A-B-C on the Order Map (Document 15).

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5. The Regulatory Committee resolved that an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 3(c)(i) (referenced as typographical error as 53 (c)(i) in the minutes) of the Wildlife and Countryside Act 1981 and promote it to confirmation as it was satisfied that the higher test could be met.
6. 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 16<sup>th</sup> October 2015 (Document 6).
7. A Definitive Map Modification Order was 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(3)(c)(i) of the 1981 Act only 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. Section 53 (3)(b) was not included when the Order was made. An Order can properly be made under 53 (3)(c)(i) the decision in O'Keefe v SSE and Isle of Wight CC 1997 refers to there being no impediment to a way being made by reference to 53(3)(c)(i) as it can include the discovery that the period of user required to raise a presumption has expired.
8. 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 7).
9. The specified period for objections and representations to the Order ended on 4<sup>th</sup> January 2016. The OMA received one objection on behalf of two objectors (Mr and Mrs Dixon, formerly of Green End, Sawley Road) via email dated 5<sup>th</sup> January 2016, technically just outside the

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objection period. The letter enclosed within the email was dated 16<sup>th</sup> December 2015, however. (Document 4).

10. The objection has not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA submitted the Order to the Planning Inspectorate for a determination on confirmation. This Written Statement forms part of the OMA Statement of Case submitted herewith and includes the documents previously submitted.

**The Order Route**

11. The Order route is in the Parish of Gisburn in the Ribble Valley and is shown on the Order Map between points A-B-C. The full width of the Order route is shown hatched on the Map.
12. The Order route commences at a junction with Sawley Road at point A on the Order Map running in a north westerly direction along a tarmac road 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 Footpath Sawley 5 on the Grindleton/Sawley parish boundary (point C).
13. 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.
14. Photographs of the full length of the Order route were taken in 2015 and are being submitted with this Statement of Case (Document 23) and a more detailed description of the route as it appeared in 2015 is included in the report presented to the OMA Regulatory Committee (Document 22).

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**Legal Issues**

15. Firstly, the objection is outside the objection period.

16. Schedule 15 (3)(1) Wildlife and Countryside Act 1981 states:-

*(1) On making an order, the authority shall give notice in the prescribed form—*

*(a) describing the general effect of the order and stating that it has been made and requires confirmation;*

*(b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge, and copies thereof may be obtained at a reasonable charge, at all reasonable hours; and*

*(c) specifying the time (not being less than 42 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order, which must include particulars of the grounds relied on, may be made.*

17. The OMA followed this procedure and sent a letter to the objectors dated the 16<sup>th</sup> November 2015 by recorded delivery.

18. The Notice of Making (Document 6) was also enclosed within the correspondence. The notice confirmed the following as per Schedule 15 (3)(1)(c) Wildlife and Countryside Act 1981: -

*Any representation or objection relating to the order must be sent in writing to The Director Governance, Finance and Public Services, Lancashire County Council, PO Box 78, County Hall, Preston, PR1 8XJ (REF: LSG4/5.50817/MB) not later than 4<sup>th</sup> January 2016, and applicants are requested to state the grounds on which it is made.*

19. The Explanatory Statement was also enclosed. The Explanatory Statement notes:-

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*Representations and objections relating to the order must be made in writing by 4<sup>th</sup> January 2016 to:*

*Megan Brindle, Legal and Democratic Services, PO Box 78, County Hall, Preston, PR1 8XJ (Reference: LSG4/5.50817/MB)*

20. It is noted that the correspondence sent on behalf of the objectors was not sent to The Director Governance, Finance and Public Services as directed, nor Megan Brindle and the address advised within the Notice of Making was not used. A Document Exchange address was used and the correspondence was not received within the time.
21. Accordingly, the objection is out of time and the Inspector should consider this.
22. Secondly, notwithstanding the above, for the Order to be confirmed, 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 Section 53(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 in this case, then a modification to the DMS should be made.
23. The OMA considers that as the Definitive Statement will require modification the Order may also need to be modified as a consequence of the occurrence of an event under Section 53(3)(c)(iii) re modification of particulars and this is addressed later at paragraph 81.
24. 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 the addition, upgrading and downgrading of highways and deletions from the map. The statutory test at S53(3)(c)(i) comprises two

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separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. The claimed 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.

25. 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 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.

26. Accordingly, 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 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 on the Order Map should be added to the DMS as a footpath.

27. 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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28. Dedication under common law 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.
- 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.

29. It is the view of the OMA that the Order route subsists as a public footpath and should be recorded as such on the DMS.

**Map and Photographic Evidence**

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

31. A substantial length of the Order route is shown on maps dating back to 1848 (Grindleton 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.

32. Significantly all maps inspected also show routes leading to and from the Order route from the land situated further north and west suggesting that it historically linked to a network of access tracks to other rural properties and routes that were subsequently recorded as public footpaths:

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[above] Extract from Ordnance Survey 6 inch map Yorkshire Sheet 182 surveyed 1847 published 1850

33. The inclusion of the Order route – shown with a number of other routes leading from it – since at least the mid-1800s suggest the route has been historically capable of being used by the public, at least on foot, for a considerable length of time.
34. The map evidence also confirms that the Order route formed the access to Green End (labelled as a Tan Yard on the 1850 map extract above) and to the Friends' Meeting House and burial ground.
35. Information relating to the history of The Friends' Meeting House (Document 24) suggests that land to build the property was gifted by a local landowner in 1775 and the Meeting House built in 1777. It was described as having been accessed via a cul de sac and ownership of the land on which the Meeting House was built did not include the access road (Order route).
36. It is understood that the Meeting House was used by the Quakers from the late 1700s through to approximately 2015 and sold in 2016. It is now in private ownership.

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37. Prior to the application to record the Order route as a public footpath the Meeting House was used for religious meetings and accessed via the Order route from the 1770s through to approximately 2015 by members of the public.
38. Since submitting this Order to the Planning Inspectorate a search has been made of the Finance Act Maps deposited at The National Archives. These were not available to the Authority in 2015. The relevant map sheet (Referenced 133/2/301) has been found which shows the Order route A-B excluded from the numbered plots:



39. Whilst not conclusive of public rights the exclusion of a route from the taxation process can provide a good indication with regards to which routes were considered to carry public rights - particularly public vehicular rights – although this must be considered in the context of all other available evidence.
40. In the early 1950s Grindleton and Sawley Parish Council's were tasked with the production of a parish map and accompanying survey cards. At

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that time, the parishes were both within the West Riding of Yorkshire and all maps and survey cards prepared were submitted to the West Riding of Yorkshire County Council.

41. The OMA does not have the parish survey maps prepared for either parish but are in possession of the survey cards prepared at that time (Documents 25, 26, and 27).
42. Survey cards were completed by the same individual in both parishes. The fact that Footpath Grindleton 44 is described as 'Acreland to Friends Meeting House' suggests that the surveyor considered that there was already public access to Green End and the Friends' Meeting House (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 Sawley 3 & 5 both starting at Green End as opposed to being a junction of the other two paths.
43. At no point in the process of preparing the First Definitive Map were any representations or objections lodged with regards to the fact that the Order route was not recorded on the Definitive Map but the topography of the area would strongly suggest that anyone walking these paths may have been walking to or from the village of Sawley and to do so it would be necessary to walk along the Order route and whilst it would be possible to undertake a walk passing through Green End without traveling along the Order route details of a number of published walking guides also support the fact that the Order route was used by the public.
44. 'Walking in the Forest of Bowland' by Gladys Sellers was published by Cicerone Press. A well established and specialist company producing walking, scrambling and climbing guidebooks they used local authors and published a range of well researched guides.
45. Within the Acknowledgements listed a local member of the Ramblers was thanked for checking some of the walks and the help of a former

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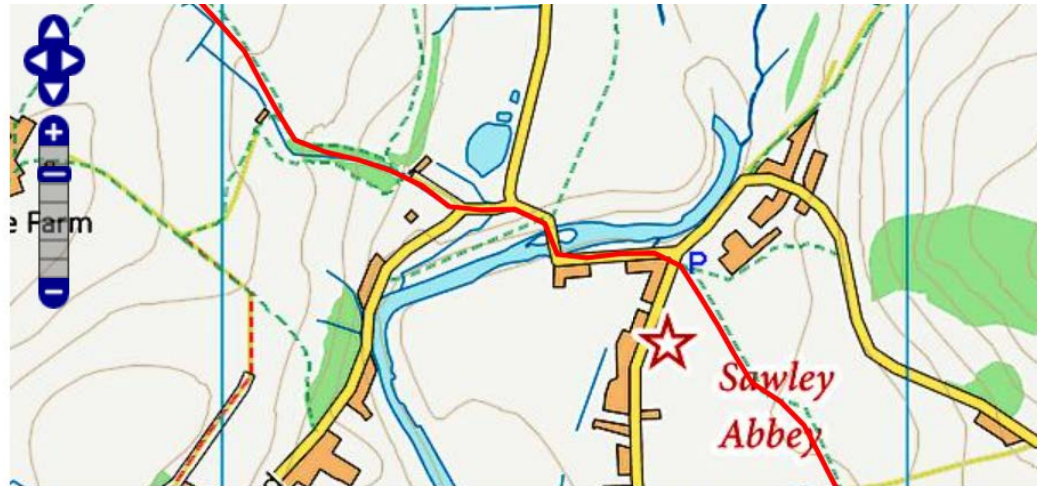
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employee of the OMA was also referred to in resolving certain rights of way issues. The book was published in 1994.

46. Page 151 of the book describes a walk from Sawley to Scriddles Farm and instructs the walker to 'turn right into the first lane on the right. It is signposted the Friends Meeting House. At its end go through the gate and follow the little stream until you are just below the garden of Acreland'. This description includes the full length of the Order route A-B-C and makes no reference to access along the route being by permission.
47. A further extract from a Cicerone Guide published in 1999 was also provided by the applicant (Document 20). 'Walks in Ribble Country' was written by Jack Keighley and the book contains 30 'family' circular walks of 6 – 8 miles. Walk 17 includes the use of the Order route with the description "Turn R up to Friends' Meeting House and keep straight on, passing to immediate L of garage (Looks private) to a gate/stile. Straight on up through small plantation." The garage referred to is at point C but there is no suggestion that use of the Order route was by permission.
48. The applicant also included a route card detailing a 60 kilometre walk devised by a member of the Clitheroe Ramblers in 1990 and promoted as a long distance walk in 1995 as 'Clitheroe 60k'.
49. This walk is still being promoted by the Clitheroe Ramblers and details together with a route card, certificate and digital mapping are available on the Long Distance Walkers Association website. The route was described as passing along the Order route in 1990-1995 and is still described as doing so in 2025.

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Rights of way data from selected **Local Authorities**.  
Large scale digital mapping is provided by **John Thorn**.  
At high zoom levels the route is indicative only.

[Above] Extract from digital map available to view on Long Distance Walkers Association website

[https://ldwa.org.uk/ldp/members/show\\_path.php?path\\_name=Clitheroe+60K](https://ldwa.org.uk/ldp/members/show_path.php?path_name=Clitheroe+60K)

50. One further published walk was submitted by the applicant (Document 20). A newspaper article from April 2013 published in the Blackpool Gazette detailed a walk from Sawley which also directed walkers to follow the Order route describing it as the "drive of the Friends' Meeting House".

51. Collectively, the map and documentary evidence together with the 4 publications detailed above all support the user evidence submitted in this case and the fact that the route appeared to have been capable of being used by the public since the mid-1800s and had a longstanding reputation of being public, forming an important link in the rights of way network.

### **Public Footpath Signpost**

52. The applicant submitted a photograph as part of the application (Document 20) showing a public footpath signpost located at point A

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adjacent to a 'Private No public right of way' sign. Although undated it is documented in the Regulatory Committee report (Document 22) that the 'Private' sign was erected in 2013 (possibly March).

53. Several members of the public completing user evidence forms refer to the route being signposted as a public footpath in the 1990s.



[3 Sawley Rd - Google Maps](#)

[above] Google Street View shows the signpost in April 2009 pointing along the Order route.

54. The sign is of the type that would have been erected by the OMA in the 1990s when it was normal practice to replace any damaged signs with a metal sign which could be banded onto an existing post.

55. No records could be found detailing why or if the signpost was erected by the OMA at this location (as only routes recorded on the Definitive Map were normally signed). It does suggest that owners and occupiers of the route knew of and accepted the positioning of the sign in the 1990s and is consistent with the other evidence detailing public use of the route.

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**User Evidence**

56. The applicant submitted 15 detailed user evidence forms in support of their application; one of those forms had been completed by two users, so sixteen users have provided evidence of their use of the route in total. Evidence of use of the route spanned the period 1957 – 2013.
57. The OMA consider the user evidence can be viewed as supporting a common law dedication of public footpath rights when taken in conjunction with the map and documentary evidence already detailed above. To infer a dedication from all the circumstances including use does not require 20 years use back from a calling public rights into question.
58. In the alternative, it could be viewed that dedication can be deemed under S31 of the Highways Act 1980. Public rights along the Order route were first questioned some time in 2013 (possibly March) when a notice appeared at point A on the Order route saying 'Private, no public right of way'. Ownership of this part of the route is unregistered and it is still not known to the OMA who erected the sign. Consequently, the relevant twenty year period under consideration for the purpose of Section 31(2) is believed to be from March 1993 to March 2013.
59. An initial analysis of the user evidence was carried out and is included in the Regulatory Committee report (Document 22).
60. The application was submitted by the Clitheroe Ramblers Association Group in 2014. Sadly, since that time a number of users have died and all who completed forms would now be over 70 years old, with the majority in their 80s or 90s. For that reason, no additional witness Statements are being submitted by the OMA to expand upon their evidence.

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61. Three of the users were particularly well known to the OMA because of the work that they did reporting public rights of way issues to the highway authority.
62. Mr Norman Thorpe worked tirelessly and meticulously as a local footpath officer for the Ramblers. His user evidence of use spanned the period 1957-2012 and he was particularly active in the area between 1987 and 2006 when he carried out routine surveys and reported issues to the highway authority in the Grindleton and Sawley area. He refers to regularly walking the Order route from 1957 onwards with his wife.
63. Mrs Patricia Parrott was also an active and longstanding member of the local Ramblers who had a good knowledge of the area and refers to walking the Order route from 1965 onwards.
64. Mr Roger Dewhurst explained that he had known and used the route for 35 years on a frequent basis (approximately 100 times a year) as part of training runs for fell running.
65. All 15 of the user evidence forms document use of the route on foot within the 20 year statutory period (1993-2013) with ten of the users referring to use prior to 1993 as well.
66. As the application was submitted by the Ramblers there are a significant number of references to use of the route as part of guided or organised walk and as part of routine footpath inspection checks. Whilst use may not have been frequent (e.g. daily dog walking) there are documented accounts of well-attended walks on specific dates (See in particular user evidence forms for Ian Wardle, George Ross, Richard (Ben) Brown).
67. Also of significance is the fact that walkers travelled from further afield and used the route (Frank Walker was a member of the Hyndburn Ramblers and Ian Wardle organised walks for the Fylde Ramblers and West Lancashire Long Distance Walkers Association).

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68. None of the users ever asked permission, had been challenged or turned back when using the route or heard that anyone else had been challenged or had to turn back when using the route nor seen any deterrent signs before 2013.

**Submissions**

69. Whilst there is no express dedication in this matter, the OMA submits that there is sufficient evidence from which to have the Order route's dedication inferred at common law from all the circumstances (including user) 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 without interruption ending with this use being called into question.

70. Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20-year period. The first consideration is to determine whether the route is called into question. The evidence indicates that the Order route was called into question in 2013 by the erection of a sign at point A and the OMA considers that the period of use from which dedication can be deemed would be 1993 – 2013 with insufficient evidence of actions by owners to demonstrate lack of intention to dedicate over the twenty years prior to 2013.

71. There is evidence that a public footpath signpost existed at the start of the route during the 20-year period, the route appeared in several walking guides and publications and that a number of well attended organised walks took place during that time. This is submitted as being insufficient to make use by right. The route was not recorded on the Definitive Map.

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72. The user evidence in this matter can also be circumstances from which a dedication is inferred. Use was happening prior to the 1990s when the footpath sign was recalled. The land owners had not taken issue with the sign nor the public use.

73. In addition to the use, the map and documentary evidence indicates that the Order route existed from at least the 1770s when the Friends' Meeting House was built and was capable of being used by the public. The Finance Act Map showed the Order route excluded, possibly indicating that it was believed that public rights existed and when the Definitive Map was prepared in the 1950s the Order route was not included but descriptions of the paths that started and ended at Green End/Friends' Meeting House implied that access to them was via the Order route and not just that a route which passed through Green End and user evidence has been submitted dating back to 1957 (Norman Thorpe). It is therefore the OMA's view that there is also sufficient evidence on balance from which to infer dedication of a public footpath at common law.

### **Conclusion**

74. In the first instance, the OMA assert the objection is out of time and not made in accordance with the relevant legislation. It is therefore suggested that the Inspector could confirm this Order as unopposed.

75. Further, the OMA 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 Wildlife and Countryside Act 1981 are satisfied.

76. None of the users ever asked permission, had been challenged or turned back when using the route or heard that anyone else had been challenged or had to turn back when using the route.

77. On the balance of probabilities and taking all the evidence into account, the OMA considered that the higher statutory test for dedication of a

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public right of way between points A-B-C is satisfied. 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 as applied for. The OMA duly accepted the application for the Order route marked A-B-C to be added to the DMS as a public footpath and promote the Order to confirmation.

78.The OMA considers that the evidence does, on balance, indicate that the Order route was dedicated to public use and used by the public. Furthermore, the OMA considers that there is sufficient evidence on balance that the route was a 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.

79.The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above in paragraph 24 is met. The objections received do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation (and those relating to suitability or need to 'create' a footpath cannot be considered under the terms of the relevant legislation).

80.The OMA therefore respectfully requests that the Planning Inspector confirms the Order but considers the Modification detailed below in doing so.

**Suggested Modification**

81.The OMA is now alive to the fact that properly recording this route on the DMS will involve modification of particulars in the Definitive Statement and invites the Inspector to modify the Order as a consequence of the occurrence of an event under S53(3)(c)(iii) to allow changing the particulars on the Definitive Statement by adding an entry

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

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

for Grindleton 61 and amending the entry for Grindleton 44 and Sawley 5 as set out in the Order.

82.The OMA respectfully suggests the following is added to the first paragraph after the words 'a public footpath' ... and in consequence of the occurrence of an event specified in s53(3)(c)(iii) namely any other particulars contained in the map and statement require modification.