

THE LANCASHIRE COUNTY COUNCIL
FOOTPATH FROM WENNINGTON ROAD TO HOME FARM CLOSE, WRAY WITH
BOTTON
DEFINITIVE MAP MODIFICATION ORDER 2021

COMMENTS ON DULY MADE OBJECTIONS

Copies of the two objections and one representation received to the Order are contained within the List of Documents (Document 4). The objections (in italics) and the Order Making Authorities ('OMA's') responses (indented) are detailed below.

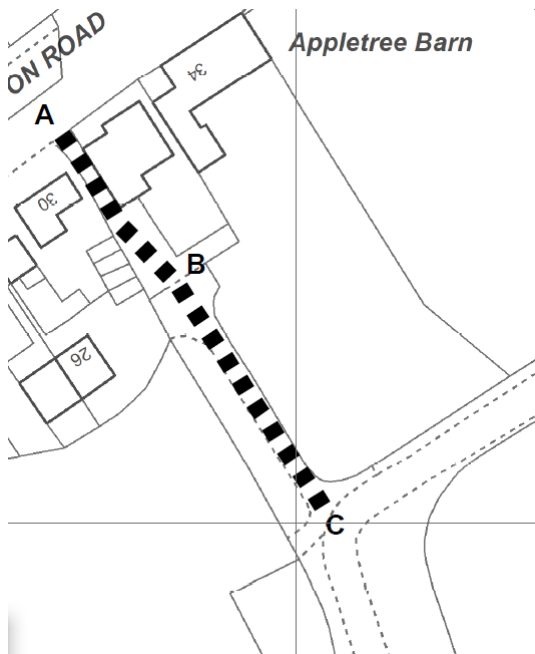
Mr Carl Parr

Mr Parr is the joint owner of 32 Wennington Road having purchased the property in February 2010. Part of the Order route crosses land in his joint ownership.

The Regulatory Committee report (Document 20) is incorrect in detailing the land between A-B on the Committee plan being owned by Mr and Mrs Parr and that the Parish Council owned the land from point B – point C.

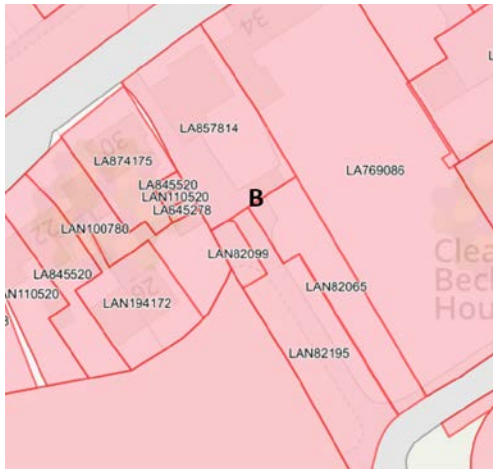
The OMA have found no error in the Regulatory Committee plan with regards to detailing that the land between point A and point B on that plan was in the ownership of Mr and Mrs Parr and that between point B and point C the land crossed by the route was owned by the Parish Council.

The Committee plan referred to the change in ownership at point B:



On checking the Land Registry titles for 32 Wennington Road and land owned by the Parish Council, it is considered that point B was correctly shown to indicate the change

in ownership for the purpose of the report. An extract from the Land Registry MapSearch is provided below to illustrate this point:



The OMA also take this opportunity to draw attention to the fact that the lettering on the Order Map differs to the Committee plan in that whilst points A and C are still in the same place and mark the two ends of the Order route, point B now indicates the point at which the width of the Order route increases from the 2 metre wide path marked A-B (as set out in the 1999 grant of planning permission (Document 27) to an unfenced track within an open area between point B and point C.

Our claims that the Order route was closed off on Sunday 6th February 2011 and Friday 6th February 2015 appear to have been dismissed on the basis that none of the users can recall this and the submissions of the 'cherry picked' supporters of the Parish Council's application have been given much more credence than ours.

The OMA have looked at all available evidence with a view taken on its relevance and effect.

Whilst the objector submitted a representation stating that the Order route had been closed on two separate days in 2011 and 2015, this claim was not substantiated with any evidence such as photographs and no record has been found relating to the public recalling or questioning any closure. The OMA are required to reach a conclusion on the balance of probabilities which demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act and whilst the test for making the Order is that it can be reasonably alleged that a public footpath exists, the test for confirming the Order is that the Order route exists as a public footpath on the balance of probabilities.

To be an effective challenge to a statutory dedication a landowner must show sufficient evidence of a lack of intention to dedicate which needs to be brought to the attention of the users of the Order route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway.

Whilst the OMA would acknowledge that action taken by the landowner in 2019 did bring the status of the route into question, the OMA do not consider that reference to the unsubstantiated closure of the path on two days within the 20 year period was sufficient to bring to the attention of users a calling into question.

The OMA have used the generic dates of 1999-2019 to indicate a full 20 year dedication of a right of way over our property but the route would have been inaccessible for several months during the post October 1999.

The OMA assert, in the first instance, that a public footpath was dedicated under common law following the inclusion of a condition in the granting of planning permission on 18th October 1999. Compliance with this condition was not contested and although the Order route provided between point A and point B on the Order Map falls slightly short of the 2 metre wide route detailed as part of the planning permission the fact that it was constructed and made available shows a clear intention by the landowner at that time to provide the Order route with the user evidence provided demonstrating an acceptance of the Order route by the public.

The OMA are also in receipt of 4 User Evidence Statements (Document 19) and a letter (Document 33) detailing personal use of the full length of the Order route both during and before the 20 year period June 1999 – June 2019. Additional Statements detailing that use have been submitted to the Planning Inspectorate (Documents 34 through 37) with use dating back to 1970, 1971 and 1976 confirming that the public were already using the Order route prior to the sale of the land and construction of the property.

In addition, since making the Order the Parish Council collected a further 31 user evidence forms (Document 40) and except for 2, there are 29 forms submitted by local people detailing use of the Order route - one from as early as 1957. Details of use can be examined by the Planning Inspector as part of the process to be followed.

We have informed numerous people that the land was private and that there was no public right of way although in the interest of good neighbourly relations we have never verbally challenged anyone or physically denied them access believing that if we regularly closed the route this would prevent the access becoming a presumed right of way.

The objector jointly purchased the property in February 2010 and the OMA have no knowledge of his interest or knowledge of the Order route prior to that time.

The OMA assert that the Order route had already been dedicated as a public footpath when the objector purchased the land. If the Inspector considers that the Order route had not been so dedicated prior to 2010 then the OMA refers to comments made earlier in this document relating to the fact that any challenge to illustrate a clear lack of intention to dedicate a route as public must be brought to the attention of users. The OMA assert that the evidence available suggests that no such challenges were made.

Planning permission alone cannot give a public right of access where one doesn't already exist. The only documented right of access that did exist in 1999 is for the authorised access to some garages and the wording of Land Registry documentation supports this.

The OMA consider that it can be argued that unrecorded public rights already existed along the Order route prior to 1999 with evidence of public use and local knowledge of the Order route along the access track leading to (and possibly through) Home Farm, and to gain access to the church and graveyard, the vicarage, allotments and the playing field going back as far as the 1960s and 1970s.

It appears that as part of the planning process existing use of the Order route by the public was considered – as was the need to 'maintain' a public pedestrian access'.

The planning permission clearly refers to public pedestrian access being provided along the Order route as a condition of the planning permission. This was not contested, and a route was provided and used by the public illustrating a clear intention to dedicate a public footpath – if one is not already deemed to have existed.

The Land Registry documentation in relation the affected properties has been considered by the OMA. It is not disputed that private rights of access are clearly documented within the relevant deeds and titles. Private rights of access are normally found documented in land title documentation, unlike public rights which the OMA have found are rarely documented.

It is very common for public and private rights to co-exist. Detailing private rights of access in land ownership deeds and title documents protects individual private rights of access from being lost or denied. They are quite separate from public rights but it is clear from the granting of planning permission that public pedestrian access was to be retained (maintained) along the Order route. It is noted that the provision of the Order route A-B also complied with the requirement to provide persons with private rights of access to the garages situated adjacent to the Order route, but this does not mean that public rights could not, or do not exist along the same route.

Clause 13 in the planning permission documents has been given greater importance by the OMA than the Land Registry documentation, hence the emphasis on the word 'maintained' in the planning application whilst totally overlooking the word 'entitled' in the Land Registry documents as outlined above.

The OMA were investigating whether public rights existed with the inclusion of Condition 13 to maintain a public pedestrian access being a key consideration.

The existence of private rights which entitled private landowners to access land or property via the Order route is separate to the issue of public rights. Private rights have not been overlooked and are considered particularly in the context of differentiating between any members of the public exercising a public or private rights to use the Order route.

The deed of access between the then landowner and Lancashire County Council dated 1970 and amended in 1995 to divert this private right clearly shows the landowner had no intention of the track ever being dedicated for public use. The 'pedestrian link' access was retained for continued use of the owners of the garages on site.

The OMA do not consider that the Deeds of Access show that the landowner had no intention not to acknowledge public rights.

The agreements between the OMA and the previous owner of the land related very specifically to access from Wennington Road to the playing field – including private vehicular access which was required to maintain the site.

Public rights, unlike private rights, are not generally shown in property documents. In part, this is because they are an 'over-riding interest' in the property. It is not unusual for private rights to be recorded where public rights also exist to provide and/or safeguard those private rights should the public rights cease or should the highway authority not protect them. The fact that private rights are shown does not suggest that public rights did not, or do not, exist.

The Statutory Declaration under Section 31(6) Highways Act 1980 was dismissed on the basis that it was only lodged on 1st April 2020 but Wray-with-Botton Parish Council's application for a Definitive Map Modification Order was only correctly served on the objectors as joint land owners on 2nd July after being incorrectly served on 22nd April and lodged with Lancashire County Council several days later.

The OMA concluded that the calling into question of public rights was not the submission of the application but was the blockage of the route in June 2019 followed by the publication of an article by the objector in the Parish Newsletter in November 2019. Both events predated the lodging of a Statutory Declaration calling into question the existence of public rights prior to 1st April 2020.

Evidence in support of the confirmation of the Order details a common law dedication of public rights in 1999, or in the alternative, statutory dedication over a 20 year period prior to 2019.

Mrs Sally Parr

Mrs Parr is the joint owner of 32 Wennington Road having purchased the property in February 2010. Part of the Order route crosses land jointly owned by her.

The report submitted to the County Council Regulatory Committee (Document 20) incorrectly detailed the boundary of the landownership.

This has already been addressed in relation to Mr Parr's first point of objection above.

The OMA do not consider this objection to be a relevant consideration with regards to the confirmation of the Order.

The objector provided several dates when they stated that they had closed the route (6th February 2011, 6th February 2015, 1-10 June 2019, 6th February 2020 and 2nd April – 5th July 2020) and comments that the decision to make the order appeared to be partly based on the assertion from the applicant and users that they have no knowledge of such closures. Evidence of weekly use or use every few months is not sufficient to be able to say the route was not

closed on those dates and for people to say they have no knowledge of the closures does not mean they didn't happen.

A comprehensive response to this objection – made by both Mr and Mrs Parr – is included above in relation to Mr Parr's objection letter.

The Planning Inspectorate will be able to consider and test the user evidence in relation to use of the Order route prior to 2019. In addition, the Planning Inspectorate will be able to consider whether common law dedication of the route occurred in 1999 when planning permission was granted and subsequently implemented.

The OMA were not made aware of any challenge to the public's use of the route in 2011 or 2015 and the objector did not provide any further details.

To be an effective challenge to a statutory dedication, a landowner must show sufficient evidence of a lack of intention to dedicate which needs to be brought to the attention of the users of the route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway. The OMA have no evidence to suggest that this was done prior to 2019.

The objector also stated photographs of the Order route having been closed were provided by the applicant in the application bundle. The OMA notes that the photographs of barriers and notices showing the Order route having been closed were taken in 2020 and therefore not relevant to the consideration of whether or not public rights already existed.

The OMA did not contact persons identified by the objector who would be affected by the order and had they been contacted at least three would have provided evidence that to their knowledge the land between 30 and 32 Wennington Road has never been a public right of way and that only the garage owners had access due to the existence of a deed entitling them to it.

The OMA carry out some non-statutory consultations as part of the investigations undertaken prior to the matter being considered by the OMA's Regulatory Committee.

Once the Order had been made, it was clearly advertised on site and in a local newspaper and details served on all known landowners as required as part of the legal process.

Notice of the making of the Order gives everyone the opportunity to make representations in support or against the Order.

The OMA are aware of the existence of private rights of access existing along the Order route and the issue of public and private rights has already been covered with regards to Mr Parr's objection above.

None of the persons identified by the objector owned land crossed by the Order route.

Emphasis was placed on the Planning Permission granted for 32 Wennington Road on 18th October 1999 but Land Registry documentation dated 25th November 1999 refers to "a

pedestrian right of way of 1.8 metres in width shown coloured yellow on Plan 1 for all persons entitled to do so and the later document this should be taken as the defining document.

Although not specified by the Objector, it appears that the document she refers to is a Land Transfer document deposited with the Land Registry as part of Title LA857814 (32 Wennington Road) (Document 41).

The document details the sale of a parcel of land (including part of the land crossed by the Order route) together with a right of way with or without vehicles over the rest of the Order route through to point C and also along the said route which subsequently became part of Home Farm Close.

The sale of the parcel of land was detailed as providing the necessary rights of access to implement planning permission granted for the site but subject to 'A pedestrian right of way 1.8 metres in width ... for all persons entitled to use it'; a vehicular right of way expressly detailed as being for the owners and occupiers of existing garages and a right of access for the purpose of maintenance specifically granted by the landowner to named persons in 1995.

The Objectors argument appears to be that the sale documentation, post-dating the granting of planning permission, and seemingly preceding the construction of the property did not refer to a 2-metre-wide public pedestrian access and as such, this was never subsequently provided and never stipulated to be public.

It is not uncommon for a landowner to obtain planning permission and for land to then be sold and developed by a different landowner. What is interesting here is that of the three conditions laid out the one referring to the pedestrian right of way, whilst not including the word 'public', was not qualified by the inclusion of details of any named persons granted rights of access, or qualified stating that it was for use by the owners or occupiers of the garages only, or for specific maintenance reasons. Whilst the Order route specified was 20 cm narrower than that detailed in the condition set out in the granting of planning permission the wording 'for all persons entitled to exercise the same' is not inconsistent with public rights specified in the granting of planning permission.

With regards to fact that the sale transfer documentation post-dated the granting of planning permission, there is no evidence to suggest that any unrecorded public footpath rights that existed prior to the sale in November 1999 had been legally extinguished and ceased to exist.

The objector asserted that prior to the construction of 32 Wennington Road the access track across which the property was built formed part of a private farm track from Wennington Road to Home Farm on Main Street and that the other end of the track was closed and gated by the landowner.

The OMA have taken this point as one partly of clarification and not specifically as an argument against confirmation of the Order. The OMA are not aware of evidence confirming gates were closed across the track so as not to be accessible to the public.

Gates, if they did exist were shown in a closed position by the Ordnance Survey, but this did not necessarily mean that access was not available. Witnesses refer to using this track prior to the construction of the objectors' property to walk to other parts of the village, to get to the church or graveyard and to access the church/school field.

The objector does not provide any information with regards to whether she had personal knowledge of the route prior to purchasing 32 Wennington Road or proof of the existence of gates maintained in a closed position.

The objector refers to the farm track being private but provides no evidence to substantiate this view.

The Parish Council's application was not served on me accurately until 2nd June 2020 and I do not believe 20 years of unobstructed use prior to 1st April 2020 when I submitted a Statutory Declaration under Section 31(6) Highways Act 1980 has been proven.

The OMA concluded that the calling into question of public rights was not the submission of the application but was the blockage of the route in June 2019 followed by the publication of an article by the objector in the Parish Newsletter in November 2019. Both events predated the lodging of a Statutory Declaration calling into question the existence of public rights prior to 1st April 2020.

Evidence in support of the confirmation of the Order details a common law dedication of public rights before or in 1999 or in the alternative statutory dedication over a 20 year period prior to 2019.

Mr John Richardson and Mrs Linda Richardson

A representation was made by Mr and Mrs Richardson providing information about their ownership of 20 Wennington Road, knowledge of the route and private access rights.

Mrs Richardson explained she had lived in Wray for over 60 years and lived at 20 Wennington Road for over thirty years before moving away in 2017. She explains that she was not aware of a 'legal right of way' between no. 30 and no. 32 Wennington Road and that as a child she was told off for walking through Home Farm to Main Street by one of the workers.

She explained that when Mr and Mrs Holt sold the land in 1999 a neighbour suggested having a legal document drawn up for no's 18,20,22 and 28 Wennington Road for access on foot to our garages. She suggests that without these agreements the Order route A-B would not have been provided and that over the years this access has been closed off temporarily.

Whilst not specifying an objection to the Order, Mrs Richardson does provide information on which the OMA are required to consider. References to being challenged as a child possibly in the region of 50 years ago when going through the farmyard could suggest that the farm workers were taking action to stop people walking through – or possibly deterring children from being in a working farmyard.

In relation to this point, Mr Trevor Hartley submitted a letter of support for the Order as part of the Parish Council's application (Document 33). Mr Hartley explained that he had lived in proximity of the route for over 60 years and that his personal pedestrian use of the route exceeded 50 years – starting in childhood. In later years he tenanted the land and buildings of Home Farm and that at no time could he recall it being gated or restricted in any way.

On receipt of Mr and Mrs Richardson's email the OMA contacted Mrs Richardson for further clarification on several points. In an email received on 9th October 2024 she explained that when she lived in Wray she did recall people in general using access from Wennington Road and that to her knowledge this was never challenged. She understood that Mr Parr had decided to restrict access through Covid times but thought that it was for a short period of time only and that people have continued to use this as a short cut through to the playing field, church yard and rectory and also to the housing estate up to the present day.

When asked about her recollection of the route around the time that 32 Wennington Road was built she explained that as far as she remembered the public still used this access to 'Home Farm Lane' before and after the build.

Mrs Richardson confirmed that residents had letters drawn up by Mrs Holts solicitor giving garage owners complete right of way through to the 4 garages when land was to be sold for the purpose of erecting a new dwelling house. In this respect the OMA would concur that it is natural that those people relying on access along the access track from Wennington Road to reach their garages would be concerned and seek to ensure that they secured a private right of access prior to the land being sold. This explains why original site plans showed the Order route labelled as pedestrian access to the garages and why private vehicular rights were specifically granted along the access road and Order route from point C across the Parish Council owned land to ensure access to the garages was retained.

Conclusion

The Definitive Map Modification Order (DMMO) that seeks to record the route as a public footpath was made because the OMA considered that there was evidence, which on balance, suggested that a right of way which is not currently shown in the Definitive Map and Statement (DMS) should be shown as a public footpath.

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 Secretary of State confirms the Order subject to the proposed modification detailed in the OMA's Statement of Case (Document 3 Paragraphs 48 and 49). It is not considered that any party will be in any way prejudiced by the proposed modification.

