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## Interim Order Decision

Inquiry opened on 18 October 2023

by **Claire Tregembo BA(Hons) MIPROW**

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 18 December 2023

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### Order Ref: ROW/3282977

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Lancashire County Council Definitive Map and Statement of Public Rights of Way Public Footpath from Banks Road to Station Road, North Meols, West Lancashire Borough (Definitive Map Modification) Order 2014.
- The Order is dated 18 December 2014 and proposes to modify the Definitive Map and Statement for the area by adding a public footpath as shown in the Order plan and described in the Order Schedule.
- There were eight objections and one representation outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.**

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### Preliminary Matters

1. The objection from the landowners was on the basis that no public rights existed. The remaining objections were to the status of the Order route with bridleway rights being claimed to exist in addition to footpath rights.
2. Due to an administrative error, the Environment Agency (EA) was only notified of the Inquiry on 5 September 2023. A representative spoke at the Inquiry and considered he could have provided more information if he had been aware of the Inquiry in April 2023 when other parties were informed. Although I note these concerns, the definitive map modification order application (DMMOA) was made in 2012 and determined in 2014 with the Order made later that year. The EA was served a notice of application and consulted when the DMMOA was being assessed and again when the Order was made. They were also informed the application was with the Planning Inspectorate in late 2022. I consider they had sufficient knowledge and opportunity to research their records, contact former employees and provide evidence to refute the Order route. Therefore, they have not been prejudiced by the late notice of the Inquiry.
3. I will make various references to sections and points along the Order route in my decision. For ease, I have appended a copy of the Order map to the end of my decision.

### The Main Issues

4. The Order has been made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) in consequence of the occurrence of an event specified in Section 53(3)(c)(i). This requires me to consider if, on the balance of probabilities, the evidence shows that a public footpath subsists along the Order route. This is a

- higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.
5. The evidence submitted in support of the Order relies on the presumption of dedication arising from tests laid out in Section 31 of the Highways Act 1980 (the 1980 Act). This requires me to consider if the public have used the route as of right and without interruption, for a period of twenty years immediately prior to its status being brought into question. I must establish the date when the public's right to use the Order route was brought into question and determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence that there was no intention on the part of the landowners to dedicate a public right of way during this period.
  6. Under common law, an inference that a way has been dedicated for public use may be drawn when the actions of the landowners (or lack of action), indicate that they intended a way to be dedicated as a highway and where the public has accepted that dedication.
  7. Use by the public can be evidence of the intention to dedicate. For an inference of dedication, this use should be as of right without force, secrecy, or permission. There is no fixed period of use at common law and use may range from a few years to several decades, based on the facts of the case. The more intensive and open the use, the shorter the period required to raise the inference of dedication. The burden of proof lies with the claimant to demonstrate that the evidence is sufficient to indicate an intention of dedication.

## **Reasons**

### ***Documentary Evidence***

8. On the 1847 6-inch Ordnance Survey (OS) map there appears to be an access track on a similar alignment to the first 50 metres of the Order route from point A. However, on the 1894 25-inch OS map this appears to be a water inlet and is coloured blue like the sluice.
9. On the 1968 1:2,500 OS map section D to I of the Order route is shown as an enclosed track. It provides access to sewerage works located on the eastern side of the track between D and E.
10. The 1983 1:10,000 OS map shows a gap at point A and a broken line at point D. The 1978 1:1,250 OS plan attached to the Land Registry Title for 98 Banks Road shows a dashed line at point A. The 2002 digital OS map shows a gap at A. These maps suggest access was possible at points A and D.
11. The 1945 and 1963 aerial photographs (AP) show a worn line into the field from point A indicating an access. On the 1961 AP of Crossens Pumping Station there appears to be a track alongside the sluice between C and D. On the 1963 AP, there is a clear wide strip alongside the sluice between C and D suggesting a track or work being undertaken. There appears to be a slight wear line between A and B and a grass track alongside the sluice between C and D with a slight wear line along it on the 1988 AP. The grass between C and D appears slightly darker than the field on the 1999 AP. On the 2000 AP, an access into the field from point A can

- clearly be seen. There are crops in the field between C and D, but there do not appear to be any on the Order route and there is a clear worn line at the southern end of this section. The 2010 AP shows a wide strip alongside the sluice which is fenced off from the field between C and D and there also appears to be a worn track within this strip. There is a clear worn or stone track along the Order route between D and I on the 1963, 1988, 1999, 2000 and 2010 APs.
12. There do not appear to be any field boundaries across the Order route on the 1945, 1963, 1998, 1999 or 2000 APs. On the 2010 AP, there is a hedge and fence across the Order route at point A and a small building just behind it. Another fence can be seen across it at point B. The gates at Point I are visible on the APs from 1999 but not on the earlier ones.
  13. OS maps were produced to show the physical features on the ground. Since the late 19<sup>th</sup> Century, OS maps have carried a disclaimer that tracks and paths shown provide no evidence of the existence of public rights. The APs also show physical features, but it is not possible to tell if the tracks or paths shown on them were for private or public use or if any gates were locked. The OS maps and APs do not provide evidence to show the existence of public rights. However, they do suggest it would have been possible to use the Order route until at least 2000 as there were no physical features preventing access.
  14. A route similar to the Order route is claimed in the Parish Survey and labelled 'C.R.F.' which would indicate a carriage or cart road used mainly as a footpath. It is shown alongside the sluice then between A and B it is within what is now the gardens of 100 Banks Road, although 98 and 100 are not shown on the OS base map. The Parish Survey card dated June 1951 describes it as a 'poorly defined, grass walk along sluice banks from Fiddlers Ferry to Back Drain Bridge'.
  15. Section A to C is not shown on the Draft map. C to I is shown within the sluice rather than alongside it but is crossed out. An objection to its inclusion was lodged by the owners, the Scarisbrick Estate, on the grounds that no footpath existed. The Lancashire River Board (LRB) also objected to its inclusion. The Liverpool Ramblers group objected to the omission of section A to C from the Draft map and considered the rest of the Order route should be retained.
  16. A hearing was held on 22 July 1955 and attended by representatives of Banks Rural District Council and a solicitor representing the Scarisbrick Estate and LRB. Witten evidence from one path user showing twenty years use was submitted. A second hearing was held on 18 August 1955 but only representatives for the landowners were present. It was determined that, as the Ramblers were not present to provide evidence, 'all their objections must fail in the absence of support.' The Order route is not shown on the Provisional or Definitive maps.
  17. The Parish Schedule and hearing documents show consideration was given to including the Order route on the Definitive Map and Statement (DMS). However, only limited evidence of use was provided which was found to be insufficient to record it as a public footpath. It also shows the landowners objected to it in the 1950s.
  18. Three letters between Lancashire County Council and North Meols Parish Council in April and May 1977 refer to 'trouble about rights of way on the Scarisbrick Estate' and paths being closed. It makes references to the Estate not considering the

tracks to be rights of way and only being permissive. No maps were attached, but one letter refers to 'use of the linking paths to the shore'. The Parish Council were advised to submit evidence to substantiate their claims.

### *Conclusion on Documentary Evidence*

19. The documentary evidence shows the existence of section D to I since the 1960s and suggests it would have been possible to use the Order route. It was claimed as a right of way when the DMS was being drawn up, but insufficient evidence of public use was provided, and the landowners objected. I consider the documentary evidence is not sufficient, on the balance of probabilities, to show public rights over the Order route.

### **User Evidence**

#### *Bringing into question*

20. To bring into question the right of the public to use the Order route some actions or events must have occurred that brought home to at least some of those using it that their right to do so was being challenged. These must have been sufficiently overt to bring that challenge to the attention of the public using the route.
21. The owner of the land crossed by section A to C of the Order route submitted a Statutory Declaration under Section 31(6) of the 1980 Act on 23 March 1998 and the Order Making Authority (OMA) considered this to be the date of challenge.
22. The landowners and residents who lived on Banks Road close to Point A, stated the fence and a notice reading 'Private Legal action may be taken against unauthorised persons found on this property' were erected in the early 1990s shortly after the landowners purchased the land in 1991. However, many of the user evidence forms (UEF) referred to the fence and notice being erected in the late 1990s or early 2000s. At the Inquiry, some of the path users indicated an earlier date of around 1996. One path user stated that when she moved to the village in 1993, she asked other horse riders where she could ride and was told about the Order route. She only had a foal and by the time it was old enough to ride, the Order route had been fenced off. Another path user recalled that she was still using the Order route in 1994 when she was challenged on a path to the north of Ralph's Wife's Lane.
23. The landowners started renting the field in 1994 for car boot sales in the summer and for grazing sheep in the winter. Both required the field to be secure.
24. The Order route was included in a March 1995 DMMA along with the upgrade of three footpaths to bridleway which are to the north of Ralph's Wife's Lane. Orders were subsequently made to upgrade the footpaths but the Order route before me was not considered as part of this application. The covering letter stated the Order route had been used but was 'also now blocked by a fence'.
25. Adjacent residents on Banks Road stated they would tell people they could not walk across the field. However, this appeared to be when walkers asked them if they could cross the field, rather than direct challenges, and occurred infrequently. The landowners, EA and anglers also claimed to have challenged people using the Order route, but challenges appear to have been limited. Furthermore, none of the path users recalled ever being told they could not use the Order route.

26. The 1977 letters referred to the paths linking to the shore, but the Order route does not connect to the shore. Therefore, I do not consider these letters to be sufficient to show use of the Order route was being challenged.
27. I consider the Order route was brought into question by the erection of the fence and notice at Point A. Although the landowners stated this was in 1991, this is not supported by the path users who give later dates, or the APs. The use of the field for grazing sheep and car boot sales from 1994 indicates it was securely fenced. The letter with the DMMOA in March 1995 states the Order route was blocked by a fence. Therefore, I consider the date of challenge to be 1994 and the relevant twenty year period to be 1974 to 1994.

#### *Analysis of use*

28. To satisfy the requirements of Section 31, use must be by those who can be regarded as the public. For use to be as of right it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, any interruption must be by the landowners, or someone acting on their behalf. The interruption should be with the intention of preventing use of the way by the public and not for other purposes such as car parking or building works. I must also be satisfied that there was sufficient use by the public to raise a presumption of dedication.
29. In total 88 people provided UEFs or witness statements for the Order route showing use between 1935 and 2012. However, the 1994 UEFs did not include maps, contained limited details and the routes used appear to have been written on the forms in the same handwriting. This makes it difficult to determine the frequency, type of use, period of use and if the Order route was used. As it has not been possible to contact these claimants, their evidence has also not been tested. Therefore, I can only place very limited weight on the 1994 forms and have not included them in my figures below.
30. This leaves evidence of use from 52 people, with 25 using it for twenty years. Sixteen people used it for the full twenty year period between 1974 and 1994. Forty-four people used it on foot, 19 on horseback, 12 on a bicycle and two in a motor vehicle.
31. The landowners, occupiers, and residents on Banks Road stated that people were rarely seen using the Order route. However, the user evidence shows frequent use of the Order route by at least 27 people each year during the relevant twenty year period. Eighteen people claimed to have used it at least once a week with most of the others using it at least once a month. Furthermore, a letter from Southport and District Angling Association (SDAA) dated 18 September 2012 stated 'the public use it to walk their dogs' making it clear they were aware the public were using the Order route.
32. None of the path users recalled any fences or locked gates across the Order route or notices challenging use during the relevant twenty year period. Some path users recalled a stile or gate at point A, but the gate was never locked. Residents of 100 Banks Road also stated there was a gate here in 1970 when they moved in. This gate was damaged and removed by the tenant to improve access in the early to mid-1980s. The next tenant placed a larger roller there to prevent vehicular access

- but access on foot was still possible and the roller is not mentioned by users of the Order route.
33. Path users also referred to gates being erected at Point I which can be seen on the APs from 1999, but a kissing gate provided access. The bailiff for the SDAA believed these gates were installed in the late 1990s and confirmed that although the vehicular gate was locked, the kissing gate was not because those issued with day fishing passes needed access. The 2012 letter from SDAA also confirmed the kissing gate was never locked.
  34. It was claimed by residents of 100 Banks Road and agricultural employees that the field between A and C was ploughed and cropped close to the edge, so it was not possible to walk there. None of the path users recalled the Order route being affected by ploughing or cropping.
  35. Several horse riders stated that originally there was a fenced-off strip along the field edge forming an enclosed area for people to walk and ride along. It was wide enough to ride on, but the barbed wire fence was in a poor state of repair, so riders had to stick to the middle to ensure they did not catch on it. The residents of Banks Road, agricultural employees and landowners did not recall this fence. However, one of the residents of Banks Road remembered an incident in the early 1980s where a horse got tangled in barbed wire in the grass which could suggest the remains of a fence.
  36. Residents of Banks Road also recalled cattle in the field in 1970 when they first moved in meaning the field was secure. The existence of an enclosed area at the side of the field would have kept cattle secure and away from path users. Even if there was no separate strip, this would not prevent use of the Order route or make it insecure for cattle providing gates were closed.
  37. Only one person referred to being stopped or turned back when using the Order route and the response given was 'once I think' but no details or dates were provided. No one else recalled being stopped or prevented from using the Order route prior to the fence being erected. Two horse riders recalled being told to slow down by anglers when cantering along the Order route because it scared the fish and another person recalled being told to be quiet as a child. Nevertheless, I find the use of the Order route appears to have been open and without permission, secrecy, or force.
  38. Many of the path users stated they used the Order route after 1994 but it is clear they stopped using it when the fence and sign were erected. The DMMA was not submitted until 2012 and some forms and witness statements were not completed until 2020 or 2023. This delay could explain the discrepancy in the dates given for the erection of the notice and fence. It would also have been possible to use the Order route between C and I and some path users did continue to use this section after the fence was erected. I do not consider this discrepancy casts sufficient doubt on the user evidence before me.
  39. Some path users fished the sluice, with or without day passes. This use would not have been as of right for the purposes of claiming a public right of way. However, they also used it as a right of way during other periods and most path users never went fishing along the Order route. Therefore, use of the Order route to reach the

sluice for fishing has a limited impact on the evidence of use as a public right of way.

40. I consider there is sufficient evidence of use by the public between 1974 and 1994 to demonstrate a presumption of dedication of public rights on both foot and horseback.

*Lack of intention to dedicate*

41. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware that they have no intention of dedicating a public right of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.
42. Although landowners, occupiers and adjacent residents claimed to have challenged people, these challenges appear to have been infrequent and are not recalled by path users. At the Inquiry, the secretary and the bailiff of SDAA both claimed to have challenged people alongside the sluice, mainly for not picking up after dogs or checking fishing passes but also asking why they were there, and the bailiff asked some people to leave. Both claimed to have rarely seen people walking and neither mentioned these challenges in their statements submitted with the SDAA objection letter. Challenges for not cleaning up after dogs would also not be a challenge to public use.
43. Furthermore, the residents of 100 Banks Road did not own any part of the Order route and there is no evidence that they were asked to challenge use by any of the landowners or tenants. Therefore, any challenges made by them would not demonstrate a lack of intention to dedicate by the landowners.
44. The Scarisbrick Estate owned the land between A and C during most of the relevant twenty year period. They objected to the inclusion of the Order route on the Draft map in 1955. However, there is insufficient evidence before me that they took any further action to challenge use or demonstrate a lack of intention to dedicate public rights over the Order route between 1955 and 1991 when they sold the land. LRB, who owned section C to I in 1955 also objected to the inclusion on the Draft map, but there is insufficient evidence before me that they or their successors took action to challenge use or demonstrate a lack of intention to dedicate public rights.
45. There is no evidence of fences, signs or notices challenging use prior to the ones erected in 1994. There is also insufficient evidence of locked gates or other obstructions across the Order route during the relevant twenty year period.
46. I conclude that there is insufficient evidence to demonstrate a lack of intention to dedicate public bridleway rights by any of the landowners.

*Conclusions on Section 31*

47. I have considered above that the date of challenge is 1994 and the relevant twenty year period is 1974 to 1994. I consider there is sufficient evidence of use of the Order route on foot and horseback as of right and without interruption or challenge during the relevant twenty year period. The maps and APs suggest it was possible to use the Order route supporting the user evidence. I also do not consider there is

sufficient evidence of challenge, permission, or other actions by the landowners to demonstrate they had no intention of dedicating public rights during the relevant period.

48. I am satisfied the evidence before me is sufficient to show, on the balance of probabilities, that a public bridleway subsists over the Order route.

### **Other Matters**

49. Issues relating to suitability and desirability including anti-social behaviour, interference with vehicular access, fly-tipping, vandalism, parking, interference with use of the adjoining operational site, road safety, trespassing onto the watercourse, illegal fishing, interference with angling, and potential damage to the flood defence were raised. Although I understand these concerns, they are not matters I can take into consideration when determining the Order.

### **Conclusions**

50. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed with modifications.

### **Formal Decision**

51. I propose to confirm the Order subject to the following modifications:

- Change all references to 'Footpath' to 'Bridleway'.

52. Since the confirmed Order would show as a highway of one description a way which is shown in the Order as a highway of another description, Paragraph 8 (2) of Schedule 15 to the Wildlife and Countryside Act 1981 requires that notice shall be given of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

*Claire Tregembo*

INSPECTOR

## **APPEARANCES**

### **For the Council**

Constanze Bell Kings Chambers, Counsel for the Order Making Authority

Who Called:

Jayne Elliott Senior Public Rights of Way Definitive Map Officer

Roy Edward Taylor Path user

Kathleen Prince Path user

Dennis Robinson Path user

Karen Taylor Path user

### **In Support of the Order:**

Phil Hobson Path user

Avril Hobson Path user

### **Supporting the Order but Requesting Higher Status:**

Donna Cumia Path user

Karen Restall Path user

Mr Rimmer Path user

Tina McKay Path user

Marilyn Marshall Path user

Anne Wright Path user

Janet Brookfield Path user

Sheila John Path user

### **In Objection to the Order:**

Mr Tim Whiskard Environment Agency

Paul Tabron Secretary, Southport and District Anglers Association

Stephen Johnson Bailiff, Southport and District Anglers Association

Michael Wood On behalf of the landowners Southport Land and Property Company

Who Called

Albert Crowhurst Employee of former landowner

Alan Trow Resident

David Trow Resident

Paul Cook	Resident
Amy Hargreaves	Director, Southport Land and Property Company
Ella Bennison	Office Administrator, Southport Land and Property Company
Andrew Coney	Former partner at Smith Hodgkinson McGinty, Agents for Southport Land and Property Company (attend virtually)

#### **DOCUMENTS PRODUCED AT THE INQUIRY**

1. Letter from Karen Atkinson (nee Harrison)
2. Letter from Heather Prescott
3. Opening of the Order Making Authority
4. Statement of Avril Hobson
5. Statement of Phil Hobson
6. Signed statement of Elizabeth Vigers
7. Correspondence between Lancashire County Council and North Meols Parish Council dated 16 April 1977, 27 April 1977, and 19 May 1977
8. Letter from Bill Hurst, Southport & District Angling Association dated 18 September 2012

# Order Plan

