



Final 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: 21 February 2025

Order Ref: ROW/3282977(M)

- 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.
- Lancashire County Council submitted the Order for determination to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 18 December 2014.
- The Order proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown on the Order map and described in the Order Schedule.
- In accordance with paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981, notice has been given of my proposal to confirm the Order with modifications.
- Four objections and four representations were received in response to the notice.

Summary of Decision: The Order is confirmed as made.

Procedural Matters

1. The effect of the Order, if confirmed with the modification I previously proposed, would be to upgrade the Order route from footpath to bridleway.
2. In my interim decision dated 18 October 2023, I proposed to confirm the Order subject to the modification described in paragraph 1 above. As the modification proposed in my interim decision would show as a highway of one description a way which is shown in the Order as a highway of another description, I was required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of my proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications.
3. This decision should be read in conjunction with my interim decision into the Order, which outlined the main issues to be addressed and my findings on these matters.

Main Issues

4. The main issue remains whether the evidence before me is sufficient to show, on the balance of probabilities, that public rights over the Order route subsist.
5. With regards to the modifications proposed in my interim decision dated 18 October 2023, the main issue now requiring consideration is whether the modification proposed is justified and whether there is any new evidence that has a bearing on the Order.

Reasons

6. In my interim decision I considered the documentary and user evidence before me. I concluded that the relevant date of challenge was 1994 and the relevant twenty year period was 1974 to 1994. I considered there was sufficient evidence of use of the Order route on foot and horseback, as of right and without interruption or challenge during that period. I also concluded there was insufficient evidence of challenge, permission, or other actions by the landowners to demonstrate they had no intention of dedicating public rights during the relevant period.
7. My Interim Decision considered the location and dates of notices, fences, structures, and verbal challenges along the Order route that could have brought into question use of the Order route or demonstrated a lack of intention to dedicate. No new evidence has been submitted concerning these matters.
8. The Environment Agency (the EA) submitted The North West Water Authority Land Drainage Act 1976 Byelaws (the Byelaws) as new evidence. The Byelaws were made under section 34 of the Land Drainage Act 1976 on 17 November 1977, confirmed by the Secretary of State on 18 July 1979, and came into operation on 1 October 1979. The Byelaws aim to secure the efficient working of the land drainage system in the North West Water Authority area. Some of the Byelaws were repealed in April 2016 but those prohibiting certain activities remained in force.
9. The EA considers the Byelaws would prevent the dedication of public bridleway rights for the following reasons: 1) riding a horse along the Order route would be prohibited by Byelaw 10, 2) the Byelaws are sufficient to demonstrate a lack of intention to dedicate bridleway rights, and 3) the use of the Order route by horses would be incompatible with the EA statutory purposes. I will consider each of these points in turn.

Would riding a horse along the Order route be prohibited by Byelaw 10?

10. Byelaw 10 states *'no person shall use or drive or permit or cause to be driven any vehicle of any kind whatsoever whether mechanically propelled or not or ride any horse on over or along any bank or drainage work in such a manner as to cause damage to or endanger the stability of such bank or drainage work'*.
11. The EA considers horse riders using section C to D of the Order route would easily churn up the surface which could lead to damage and low spots in the riverbank, with the potential to increase flooding. They also consider it would cause additional surface wear along section D to I. Therefore, they consider use by horse riders and bicycles would be prohibited by Byelaw 10.
12. The Byelaws do not prohibit use by horse riders or bicycles, only riding that would cause damage to a bank or drainage work. Byelaw 10 could equally apply to a route that was recorded on the Definitive Map and Statement as a bridleway and could be likened to a Traffic Regulation Order for a weight limit, maximum height, or speed restrictions to protect the highway network and structures, or to ensure the safety of users.
13. Section D to I of the Order route has a stone surface and is used as a vehicular access by anglers. Section C to D has a grass surface and appeared to be well drained. Photographs taken by the Council in September and December 2013

show signs of use of section C to D by vehicles. I consider it unlikely that ordinary use of the Order route by horse riders or cyclists would cause damage to or endanger the stability of the bank or drainage work. Therefore, I do not consider use by horse riders or cyclists would be in breach of the Byelaws.

Do the Byelaws demonstrate a lack of intention to dedicate a bridleway?

14. The EA considers the Byelaws amount to sufficient evidence of an intention not to dedicate a public bridleway under section 31 of the Highways Act 1980 (the 1980 Act). They consider that Byelaw 10 implies permissive use, which is not use as of right, and therefore shows a lack of intention to dedicate a public bridleway.
15. Case law has held that properly construed byelaws can permit members of the public to use land for leisure purposes. There does not need to be express permission in bylaws, but such permission can be implied. I consider that anyone reading Byelaw 10 would assume they were permitted to ride a horse or bicycle there, providing they did so in a way that did not cause damage to the bank or any drainage work. Therefore, anyone riding a horse or bicycle along the Order route is doing so with permission and use is 'by right' rather than 'as of right'.
16. Failure to display the Byelaws would not mean they do not operate as an effective licence. However, Byelaw 10 was made in 1977 and came into operation in 1979. There was a requirement for the Byelaws to be placed on public deposit, they continue to remain in force today and are published on the EA's website. Therefore, they have been available for public viewing during the relevant twenty year period.
17. Taking into consideration Byelaw 10, I conclude there is sufficient evidence to demonstrate a lack of intention to dedicate public bridleway rights over the Order route during the relevant twenty year period of 1974 to 1994. None of the Byelaws concerned use by walkers. Therefore, I still consider there is insufficient evidence to demonstrate a lack of intention to dedicate public footpath rights over the Order route by any of the landowners.
18. The evidence of use by horse riders before 1977 is limited, with most not starting to use it until the 1970s, and there is no evidence of use dating back to 1957. Therefore, I do not consider there is sufficient evidence of twenty years use before 1977 to demonstrate a presumption of dedication of public rights on horseback under section 31 of the 1980 Act. Furthermore, I do not consider the evidence of use is sufficient to infer an intention to dedicate under common law.

Is Use as a Bridleway Incompatible with the EA's Statutory Purposes

19. Under both common law and section 31(8) of the 1980 Act, dedication of a public right of way cannot occur if it is incompatible with a public body's statutory purpose. The EA considers that a bridleway would increase maintenance and would mean they need to prevent unlawful use by vehicular traffic. They state this is incompatible with their statutory purposes.
20. However, it would still be necessary to prevent unlawful vehicular access if the Order route were only a footpath or not a right of way of any description. At the time of my site visit, there was a vehicular gate with a pedestrian kissing gate to the side at point H to prevent unauthorised vehicular access and evidence indicated this has been there since the late 1990s.

21. Section D to I is used for vehicular access by anglers. Vehicles are more likely to cause damage to a stone track than horses. Photographs provided by the Council also showed signs of use by vehicles of the grass track between points D and B and this area appeared well drained and capable of withstanding use by horse riders. Therefore, I do not consider use as a bridleway would increase maintenance costs or damage to the bank.
22. Therefore, I do not consider use of the Order route as a bridleway would compromise the flood defences or be incompatible with the EA's statutory functions for flood risk management. No other evidence has been provided to show a bridleway along the Order route would be incompatible with the EA's statutory purposes.

Conclusions on the Matter Raised

23. I do not consider horse riders would be in breach of Byelaw 10 or that a bridleway along the Order route would be incompatible with the statutory functions of the EA. However, I do consider that Byelaw 10 does demonstrate a lack of intention to dedicate a bridleway along the Order route and implies use on horseback and bicycle was with permission. The Byelaws do not demonstrate a lack of intention to dedicate a footpath along the Order route.
24. I am no longer satisfied the evidence before me is sufficient to show, on the balance of probabilities that a public bridleway subsists over the Order route.
25. I am still satisfied the evidence before me is sufficient to show, on the balance of probabilities, that a public footpath subsists over the Order route.

Other Matters

26. As stated in my Interim Decision, issues relating to suitability and desirability cannot legally be taken into account when making my decision. These include the safety issues relating to access from the road, use of the Order route by vehicles, and anglers casting off, parking issues, the impact on accessible fishing platforms, maintenance costs, the need for access controls, connecting routes, and the cost of determining the Order.

Conclusion

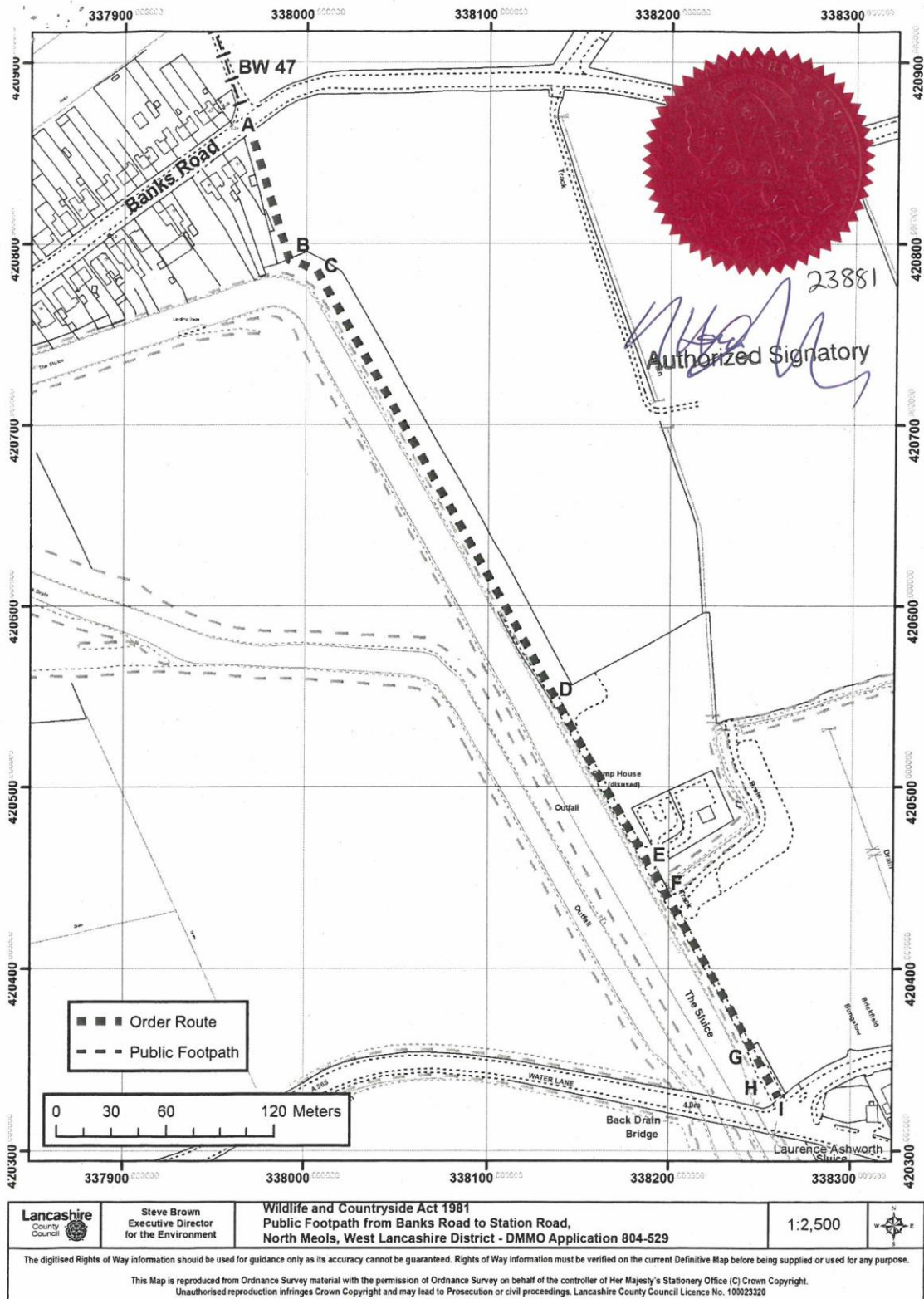
27. Having regard to these and all other matters raised at the Inquiry in the written representations, I conclude that the Order should be confirmed as originally made. The modifications I previously proposed should not be pursued.

Formal Decision

28. I confirm the Order as made.

Claire Tregembo

INSPECTOR



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