

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE LANCASHIRE COUNTY COUNCIL
DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
(DEFINITIVE MAP MODIFICATION) (No.1) ORDER 2013**

**STATEMENT OF GROUNDS EXPLAINING WHY THE ORDER MAKING
AUTHORITY HAS TAKEN A NEUTRAL STANCE**

ORDER MAKING AUTHORITY NOT SUPPORTING THE ORDER

Introduction

- 1 The Lancashire County Council is the Order Making Authority ("the OMA") for the above-mentioned Order.
- 2 On 21st May 2007, Mr S Foster formerly of 99 Sandy Lane, Accrington, Lancashire BB5 2AW submitted an application under Section 53(2) of the Wildlife and Countryside Act 1981 to record on the Definitive Map and Statement of Public Rights of Way a public footpath from FP1101135 (known as Sandy Lane) in a south south easterly direction to an enclosed track with no recorded public rights, along with 2 branches to the west of this route (Doc 20).
- 3 The application was considered by the county council's Regulatory Committee at its meeting on 17th March 2011 (Doc 21) where it was decided to accept the application in part and to make an Order to record one of the three routes originally applied for (shown between points A-X-Z-E on the Committee plan) and that having done so a further report be presented at a later date regarding the promotion of the Order to confirmation.
- 4 The Order was subsequently made on 6th February 2013 (Doc 1) and Notice of the Making of the Order advertised on 13th February 2013 (Doc 6).
- 5 The Order was made on the basis of the submission of modern (1987-2007) user evidence and with insufficient historical map or documentary evidence from which dedication could be inferred.
- 6 One objection was duly made to the Order. The objection was made by Lancashire County Council which since 1949 has owned the land (field) over which the Order route runs. The field is adjacent to St Anne's and St Joseph's RC Primary School and although designated for their use had been grazed by a local farmer up until the application was made.
- 7 The Statutory objection received following the making of the Order provided no specific details but referred to the detailed objection made prior to the matter being considered by the Regulatory Committee in 2011. As such, details of that objection were

summarised in the Regulatory Committee report (Doc 21) and included in full the consultation responses submitted to the Planning Inspectorate (Doc 9).

Reason for adopting a neutral stance

8. It is noted that the Lancashire County Council is both the OMA acting under a statutory duty as the relevant Surveying Authority and the landowner in this case. This is not an entirely unique situation, and the matter has been dealt with by separate teams within the OMA.
9. Whilst the test for making an Order under 53(3)(c)(i) is a low test of whether a footpath can be reasonably alleged to subsist, the test to be satisfied in relation to the confirmation of the Order is higher.
10. The OMA considered that the conflicting evidence presented by the applicant and landowner in respect of this matter meant that there was doubt as to whether the higher test that the Order route subsists could, on the balance of probabilities, be met.
11. Officers subsequently reviewed the evidence submitted with the application.
12. 29 user evidence forms were submitted with the application but there was difficulty evaluating the user evidence in that no maps were attached, and users did not specify which of the routes originally applied for had been used.
13. The user evidence forms were completed between 2004 and 2007 before access to the routes was blocked off. Since that time substantial fencing has been erected across the Order route at point A and part of the field crossed by the route securely fenced so that the land can be used as an outdoor classroom. The remainder of the field is not securely fenced and is no longer grazed.
14. In 2024 it was calculated that ten of the users who originally completed user evidence forms would now be over 80 years with several in their 90s. A further seven would be in their 70s and five in their 60s. The remaining 7 users were either in their 50s or had not provided details of their age.
15. The applicant (Mr S Foster) has now moved out of the area but is still interested in the outcome of the Order and willing to assist in the process understanding that the OMA are taking a neutral stance.
16. Despite concerns about the age of many of the users of the route, letters were sent (in January 2025) to all users who originally completed user evidence forms to ask users to clarify whether they used the Order route, provide further details and to confirm

whether they would be willing to provide evidence in support of the confirmation of the Order.

17. Only three responses were received (Maggie Lee, Barbara Pickup and Frank Atkinson) (Docs 23-25) in addition to two responses from family members of people who had previously completed user evidence forms informing us that they had subsequently died (David Hindle and David Eastwood).
18. In addition three letters were returned with the envelope stating addressee had gone away (James Rock, Leigh Walmersley and Mrs Rushton).
19. No further evidence has been provided of use of the Order route prior to 2007 and Officers advised the OMA Regulatory Committee of the situation on 26th March 2025 (Doc 15) where it was agreed that it was not possible, from the information available, to present a case for the confirmation of the Order and that the Authority take a neutral stance when submitting the Order to the Planning Inspectorate for a decision on confirmation of the Order.

Neutral stance

20. The OMA confirms that officers will be prepared to assist the Inspector in dealing with points of law or procedure and, if asked by the Inspector, will be pleased to answer factual questions relating to the documents, maps and photographs considered by the OMA in this matter.
21. In light of its neutral stance, the OMA has not commented on the objections to the making of this Order and nor does it intend to do so.