

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

**THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023**

Order Making Authority Statement of Case

Background

1. On 16th April 2021, the British Horse Society of Abbey Park, Stareton, Kenilworth, Warwickshire, CV8 2XZ submitted an application 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 recording a restricted byway from Lee Lane, Bispham Green L40 3SJ to Bentley Lane, Bispham L40 3SR.
2. The application was supported by historical map and documentary evidence including Greenwood's Map of Lancashire published 1818; Hennet's Map of Lancashire published 1830; the Ordnance Survey (OS) 6 inch First Edition map published in 1848; 25 inch First Edition map published in 1894; OS 1 inch map published 1896; 1910 Finance Act; Bartholomew's Half Inch map (1904).
3. Officers from Lancashire County Council (hereinafter referred to as "the OMA") investigated the evidence for whether the public rights applied for existed over the application route and prepared a report detailing their investigation together with their recommendation that the application should be accepted. (**Document 21**). The report was considered by the OMA's Regulatory Committee on 10th August 2022 where the decision was made to make an Order to modify the DMS by recording a restricted byway along the application route shown as a broken green line between points A-B-C-D-E-F on the Order Map.
4. 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 21st September 2023 (**Document 15**).

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

THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023

5. A Definitive Map Modification Order was duly made on 11th January 2024 ("the Order") ([Document 1](#)). The Order was made because it appeared to the OMA that the DMS for Lancashire required modification in consequence of an event specified in Section 53(3)(c)(i) of the 1981 Act - namely, the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way, namely a restricted byway, 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 restricted byway.
6. 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](#)).
7. During the specified period for objections and representations to the Order, the OMA received eight objections and two representations ([Document 4](#)).
8. The objections have not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA is submitting the Order to the Planning Inspectorate for a determination on confirmation.
9. On 27th November 2024 a further report was considered by the OMA's Regulatory Committee ([Document 49](#)) after the making of the Order and the statutory objection period had given everyone notified an opportunity to make further comment.
10. Members concurred with the officer's recommendation that the objections received did not in any way undermine the evidence that

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

THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023

Members relied upon in deciding that an Order should be made and therefore approved that the County Council as the OMA submit the Order to the Secretary of State for Environment, Food and Rural Affairs for formal determination, and promote the Order to confirmation.

The Order Route

11. The Order was made based entirely on historical map and documentary evidence. The OMA consider the evidence shows that the Order route had been dedicated as a public vehicular route by the 1840s and that despite the Order route subsequently falling out of use, those public rights have not been legally extinguished.
12. A site inspection was carried out in July 2021 although the OMA were mindful that no modern user had been presented and that having already looked at historical maps, the Order route no longer appeared as it would have done in the early – mid 1800s.
13. Photographs of the Order route in 2021 were taken and have been submitted to the Planning Inspectorate ([Document 21](#)).
14. The Order route runs from a point at the junction of Lee Lane (U5295) and Old Lane (U458)(point A on the Order Map) in a south easterly direction along the southern edge of the garden of Blackleage Cottage to pass through a boundary at point B on the Order Map and a junction with Footpath Bispham 3 and continues in a generally south easterly direction within a sunken and largely overgrown strip of land shared with an unnamed watercourse through to point E on the Order Map from where the watercourse is culverted and the route continues for a short distance along an enclosed track south of Bentley Lodge to exit onto Bentley Lane at point F; a total distance of 375 metres.

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

**THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023**

15. The width of the Order route is between 5.5-9 metres wide as shown on the first edition 25 inch Ordnance Survey map sheet LXXXIV.4 surveyed in 1893 and published in 1894.
16. One representation was made by the Open Spaces Society ([Document 4](#)) relating to the description of the Order route in the Order made by the OMA. This queried whether the recorded section of Footpath Bispham 3 (FP0806003) did actually connect to the Order route and pointed out that there was an unrecorded but well-used footpath alongside it. This footpath does appear to join the Order route so that would not be an issue. It may be the case that this footpath also extends parallel to the Order route as far as Lee Lane but that is not the subject of this Order. This in no way negates the evidence that the Order should be confirmed.

Legal Issues

17. 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 S53(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 restricted byway.
18. 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 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

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

THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023

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.

19. 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.

20. It should also be noted that the Natural Environment and Rural Communities Act 2006 effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this, carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. and if the OMA concluded that the evidence showed that, on the balance of probability, public carriageway rights exist on the Order route, it was then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs.

21. The Order route was, at the time of the Act not recorded on the DMS, was not on the List of Streets (maintained at public expense) and it did not appear to have been used mainly by the public in MPVs. There was no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights being shown to exist and the appropriate status for the Order route to be recorded on the DMS would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

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

THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023

22. For the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence considered by the OMA, *when considered with all other evidence* there is sufficient evidence to infer a carriageway was already dedicated on the Order route and, following on from the preceding paragraph, the route marked A-B-C-D-E-F on the Order Map should be added to the DMS as a restricted byway.
23. It is the view of the OMA that the Order route subsists as a restricted byway and should be recorded as such on the DMS (Document 49).

Historic, Map and Documentary Evidence

24. It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.
25. From the maps examined, the Order route is first shown on Greenwood's Map of Lancashire published in 1818 (Document 23) and then again on Hennet's Map of Lancashire published in 1830 (Document 24). On both small-scale maps, it is shown as a crossroad in the same way as other routes recorded as public vehicular highways are shown.
26. The Tithe Map and Award for Bispham dated 1840 (Document 25) clearly shows the Order route consistent with how other public vehicular routes are shown and specifically lists it in as a public road in the Tithe Award. This view is further enforced by the fact that the eastern end of the Order route is also shown on Tithe Map for Wrightington 1841 (Document 26) in the same way as other public vehicular routes are shown.
27. Early OS maps examined from the mid to late 1800s confirm that the Order route remained a substantial bounded through route until at least

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

THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023

the early 1900s. It was named on the OS 6 inch and 25 inch maps as Dark Lane and was also shown on the First and Second Edition 1 inch OS maps as a road (**Documents 28-31**) – all of which is consistent with the fact that it was considered to be a public road in the 1800s.

28. The District Valuation (Finance Act) map (**Document 36**) shows the route excluded from the numbered plots in the same way that Lee Lane, Old Lane and Bentley Lane are shown excluded and significantly shows land on either side of the Order route braced together and included in one plot number (52) providing further support that in the early 1900s the Order route was still considered to be a public vehicular highway.
29. From the early 1900s, the evidence suggests that the Order route fell out of use – quite possibly because of the existence of the watercourses along it and the fact that it was noted from at least the late 1800s onwards as being quite gullied at least along the section between points C and E (as shown on 25 inch OS maps published in 1908 and 1928 (**Documents 33 and 37**)).
30. It was shown on Bartholomew's half inch map published in 1904 as an indifferent but passable road (**Document 35**) but was not shown on later editions of the map. In addition, in the OS Object Names Book, it was described as a 'Disused road'; the authority for the information coming from the Highways Surveyor for Chorley Rural District Council – albeit that most of the route fell within the jurisdiction of West Lancashire Rural District Council (**Document 32**).
31. The map evidence suggests that from the 1920s onwards, part of the Order route may not have been as accessible and was possibly fenced off at point E and part way between point C and point D (**Documents 38-42**).

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

THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023

32. Use of part of it at least may however have continued – as suggested by the fact that a footpath was recorded on the map believed by the OMA to be the 1932 Rights of Way Map along or immediately adjacent to the Order route; and Footpath 8-6-FP3 was shown joining the Order route at point C on OS maps published in 1955 ([Document 40](#)) and 1960 ([Document 41](#)).
33. The Parish Survey carried out by Bispham Parish Council as part of the preparation of the DMS in the 1950s identified Footpath 8-6-FP3 as one that should be recorded on the DMS, but significantly it did not record the Order route from point A to point C (or C-F) as part of the public footpath but stopped at point C suggesting that the parish council considered that the Order route already carried public rights of access which did not require recording on the Definitive Map and Statement, i.e. it was a vehicular road.
34. A search of records held at the County Records Office and on the London Gazette website has failed to locate a legal order extinguishing public rights along the Order route and so, despite the Order route falling out of use, the OMA consider that historical public rights dedicated by at least the mid 1800s have not been legally extinguished and still exist today.

Topographical evidence

35. Map and documentary evidence should be read in conjunction with topographical evidence to help us to understand the original purpose of a route and why use of some routes may have increased whilst use of others declined.
36. Historically, the Order route formed part of a longer route (as shown on the Tithe Map and first edition 1 inch and 6 inch OS maps) that exited onto Bentley Lane close to a Grammar School and public house.

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

THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023

37. It was known as 'Dark Lane' suggesting possibly that it felt dark and enclosed as evidenced by the fact that at that time it was bounded on both sides with trees and contained a small watercourse which flowed along or adjacent to the full length – all physical features that are still evident today.
38. The Order route was consistently shown to be bounded on either side until more recent times with a watercourse running within the boundaries (width) of the route from point E to point A and adjacent to the Order route from point F to point E.
39. The watercourse within Dark Lane appears to have been a highway drain flowing within Bannister Lane from Bannister Brow and under Bentley Lane into Dark Lane. Beyond Dark Lane it flowed along Lee Lane then into Bispham Green. Highway drains were not always ditches at the side of the road and many examples can be found where they follow the centre and meander within the highway width. By 1890s, this drain followed the sides of Bannister Lane, Bentley Lane (short section) and Lee Lane whereas it was fairly central in Dark Lane.
40. The water and traffic together probably wore away at the surface and increased the depth of the holloway, particularly from point E to partway between point D and point C, and whether this reflected the fact that Dark Lane had already started to fall out of use or whether it was the reason it fell out of use is impossible to tell. With an alternative albeit longer route available via Lee Lane, use of Dark Lane declined to the point that it was fenced off and no longer used.
41. We do not know what the watercourse was like except that it appears to have been a minor highway drain. It might have been possible for carts to span it and others to walk adjacent to it or perhaps all traffic forded it or a combination of the two but the Order route was of a width that would have accommodated use on horseback or with horse drawn carts and the fact that the Order route is now more overgrown and more

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

**THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023**

gullied than it would have been originally does not mean that it no longer exists.

42. The Order route was the full width of the bounded (fenced) route shown on the Tithe Map and First Edition 6 and 25 inch Ordnance Survey Maps. Whilst the watercourse may have gradually deepened or widened over time there is nothing to suggest that historical use of the route did not include traversing along the actual watercourse itself and the use of the land on either side of the watercourse (within the fenced off strip).

Summary

43. Whilst there has been no express dedication in this matter, the OMA considers, on balance, that there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances.

44. Looking at whether dedication can be inferred on balance at common law, the OMA concluded that evidence from the maps and other documentary evidence, coupled with the evidence on site, indicated on balance how the route should be recorded. The analysis of the map and documentary evidence provides strong evidence that this is a historical public route linking to a network of other public highways and that on balance that a restricted byway has already been dedicated to public use.

45. It is considered sufficient to conclude that the Order route was dedicated to the public as a public highway many decades ago.

46. As stated above, there is no evidence that a legal stopping up of any part of the Order route has ever taken place.

Conclusion

47. The OMA considers that the various map and documentary evidence does, on balance, indicate that the Order route was dedicated to public

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

**THE LANCASHIRE COUNTY COUNCIL
ADDITION OF RESTRICTED BYWAY KNOWN AS DARK LANE,
BISPHAM/HILLDALE, WEST LANCASHIRE
DEFINITIVE MAP MODIFICATION ORDER 2023**

use and used by the public. Furthermore, the OMA considers that there is sufficient evidence on balance that the Order route was a historical public route available as a carriageway which at present is not recorded on the DMS and that restricted byway rights subsist. The OMA further states that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.

48. The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above in para 21 is met. The objections received do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation.

49. The OMA therefore respectfully requests that the Planning Inspector confirms the Order.