

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

**THE LANCASHIRE COUNTY COUNCIL PUBLIC FOOTPATH FROM UNION ROAD TO RAWTENSTALL
PUBLIC FOOTPATH 321, DEARDEN HEIGHTS, ROSSENDALE
(DEFINITIVE MAP MODIFICATION) ORDER 2014**

Order Making Authority Statement of Case

Background

1. On 28th August 2013, Robert Alan Collins and Denise Marie Collins both of 2 Lower Cribden Avenue, Rawtenstall, Rossendale, Lancashire BB4 6SW 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 public footpath from Union Road to Rawtenstall Public Footpath 321, Dearden Heights.
2. The application was supported by 32 user evidence forms (containing evidence from 42 people), aerial photographs showing an established route consistent with the application route and the Land Registry Title plan for the field crossed by the application route (Title No: LA777147).
3. Officers from Lancashire County Council (hereinafter referred to as "the OMA") investigated whether they considered that 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 2nd July 2014 where the decision was made to modify the DMS by recording a footpath along shown as A-B 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 1st October 2014 (Document 15).
5. A Definitive Map Modification Order was duly made on 22nd October 2014 ("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)

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of the 1981 Act namely the discovery by the Authority 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 map relates, namely a footpath.

6. On 28th November 2014 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 one objection (Document 4).
8. The objection has 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.

The Order Route

9. A site inspection was carried out on 5th September 2013 and photographs of the route taken at that time have been submitted to the Planning Inspectorate (Document 21).
10. The Order route starts on Union Road, Rawtenstall, (point A on the Order Map) adjacent to the junction of Union Road and Lower Cribden Avenue. When the route was inspected in 2013 the wall at point A was broken down allowing access from Union Road onto the Order route. When inspected in 2024 it was noted that the wall had been rebuilt and no access onto the Order route available from point A.
11. From point A the Order route runs across a field heading in a generally west south westerly direction. In 2013 a well-trodden path was visible

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across the field. After approximately 200 metres the Order route meets a boundary wall on the north-western side of the field, which was also in disrepair in 2013 and had fallen down in parts. The Order route continues over the remains of this wall, where it then meets existing public footpath Rawtenstall 321 (point B).

Legal Issues

12. 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 in 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 footpath.
13. 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 both upgrading and downgrading of highways and deletions from the map. The statutory tests at S53(3)(c)(i) each comprise 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 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.
14. 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

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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.

15. Accordingly, 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 from which to infer a footpath was already dedicated on the Order route and the route marked A-B on the Order plan should be added to the DMS as a footpath.
16. It should be noted that the land along which the Order route runs is owned by the Secretary of State for Health (Document 13). As the land is held by a Government Department, prescribed dedication by statute (S31 Highways Act 1980) do not apply.
17. However, presumed dedication at common law is not necessarily precluded. Dedication at Common law does not require there to be twenty years use so long as the use would appear to be as of right and exercised by sufficient members of the public.
18. A common law dedication of a highway may be inferred if the evidence points clearly and unequivocally to an intention on the part of the landowner to dedicate. The burden of proof is on the OMA to prove the dedication.
19. All the circumstances must be taken into account and a landowner may rely on a variety of evidence to indicate that he did not intend to dedicate. Use needs to be by the public and “as of right” which would mean that it had to be open, not secretly or by force or with permission. Toleration by the landowner of a use is not inconsistent with use as of right. The use would have to be of a sufficient level for a landowner to have been aware of it. The use must be by such a number as might reasonably have been expected if the way had been unquestioningly a

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highway. Also, use must not be interrupted. Long use by the public without challenge can constitute evidence that the landowner intended to dedicate the used route as a public right of way. Such use must be continuous, certain and reasonable.

20. It is the view of the OMA that taking all of the information into account that a dedication may be inferred at Common Law and that the Order route subsists as a footpath and should be recorded as such on the DMS (Document 21).

Evidence

21. The land crossed by the Order route was historically part of the site of a union workhouse which was used as a mill factory. In later years, the building changed operations to become Rossendale General Hospital which fell into disrepair and was left derelict for many years before being demolished and redeveloped for housing.

22. Throughout its history, the land crossed by the Order route was not built on, but there is no map and documentary evidence suggesting the existence of the route until 2000 when a faint trodden line can be seen on an aerial photograph consistent with the Order route (Document 23).

23. Subsequent aerial photographs taken in 2005, 2010 and 2013 (Documents 24-26) all clearly show a trodden route consistent with the user evidence submitted and Google Street View images from 2009 (Documents 27-28) show access available onto the route from point A.

24. The trodden line shown on the aerial photographs indicates that the Order route was a very well used route, consistent with the user evidence and photographs taken on site in 2013, since fences were erected to prevent access also confirmed the trodden line on the ground which was still evident.

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25. The application was made based on the submission of user evidence which clearly supports the fact that the trodden route shown on the aerial photographs detailed above appears to have come about as a result of public use of the route on foot.
26. A detailed summary of the user evidence is contained within the Regulatory Committee report (Document 21) with 32 evidence of use forms detailing use of the Order route by a total of 42 members of the public.
27. The user evidence forms indicated use of the Order route from 1980 onwards with increasing numbers of users documenting use from 2000 onwards.
28. The Order route was used mainly for dog walking, visiting family and friends, general exercise, leisure walking, walking with children and running. Some users stated they had also used it for shopping, attending yoga classes, picnics and sledging.
29. No evidence was found or referred to of any action being taken by landowners during the period 1980 to 2013 to stop, challenge or prevent access along the Order route.

Summary

30. The Order has been made based on modern user and aerial photographic evidence.
31. The Order route is not currently recorded on the DMS or the List of Streets as a publicly maintainable route.

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32. Looking at whether dedication can be inferred on balance at common law, the OMA has concluded that there is sufficient user evidence to find footpath status has been dedicated prior to 2013/2014. There is no evidence that a legal stopping up of any part of the Order route has ever taken place.

Conclusion

33. Whilst there is no express dedication in this matter, the OMA considers, on balance, that there is sufficient evidence from which to have dedication inferred at common law from all the circumstances and that the OMA further states that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.

34. The OMA further decided that the Order should be promoted to confirmation because the higher test for confirmation referred to above in para 13 is met. The objection received does not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation.

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