

THE LANCASHIRE COUNTY COUNCIL
PUBLIC FOOTPATH FROM BESCAR BROW LANE TO PUBLIC FOOTPATH 14A,
SCARISBRICK
(DEFINITIVE MAP MODIFICATION) ORDER 2014

Lancashire County Council's (the Order Making Authority – 'OMA') Comments on Objections

Four duly made objections to the Order were received by the OMA. One (from Scarisbrick Parish Council) was subsequently withdrawn.

Copies of the objections are contained within the List of Documents (**Document 4**) and are summarised below. The points of objection are summarised in italics below with the OMA's response (indented) after each.

Thomas R Lavelle of Rosemount Nursery, Pygons Hill Lane, Lydiate, Liverpool Merseyside L31 4JD

Mr Lavelle is one of the registered owners of the land crossed by the Order route A-B-C. He submitted his objection on behalf of the registered owners of the land who were described as 'all three children of Mary Lavelle (deceased)'. One of the registered owners (Mr Robert Marshall) died in 2024 but his son – Mr Charles Marshall is now registered as one of the landowners and is actively involved in the management of the land.

Mr Lavelle makes a number of points which are summarised (in italics) below:

Scarisbrick Parish Council was not consulted prior to the making of the Order.

The Parish Council were consulted by the OMA prior to the application being considered by the Regulatory Committee (Document 30) but did not respond to that consultation.

The OMA would point out that this is not a valid reason for objecting to the Order.

Refers to railings/barriers to prevent unauthorised access at point A and that problems with trespass started after 2012.

User evidence presented to the OMA refers to some sort of stile or low barrier at point A but during the period of use (pre 2012) none of the users refer to a barrier that prevented access or that railings across the route were indicated to prevent or challenge that use. Most recalled some form of step over stile.

Mentions locked gate at Point C as indicative that the Order route was not being dedicated.

References to a locked gate in the OMA Regulatory Committee report were taken from an account of a site inspection carried out in 2013 and post date the calling into question of public rights. No evidence has been provided relating to when the gate was first erected and locked. A locked gate across the route is not necessarily an indication that public rights are not being dedicated. In this

instance the OMA consider that public rights had already been dedicated before the gate was erected and locked.

Complains the Committee report was misleading and inaccurate. Denies there was ever a track. Any access by non-authorized persons would be trespass and only occurring after 2012.

The OMA description of the Order route contained in the Regulatory Committee report (Document 30) was written on the basis of an inspection of the route which was made in 2013. It is a description of what Officers found on the ground at that time.

The site inspection assists officers and Committee Members to understand more clearly the user evidence submitted. There was no suggestion in the report that the 'track' as described by the Investigating Officer was anymore than a physical description of what could be seen on the ground at the time of the inspection. Photographs taken at the time that the route was inspected in 2013 are included in the submission as **Document 24** The 'track' referred to is shown below:



The OMA's assessment of all available evidence in recommending that an Order be made and promoted to confirmation was not based on the details of the 2013 site visit were not a major factor in the decision to make the Order other than in assisting to confirm features and details referred to by users of the Order route.

Disputes the historic map evidence as proving anything and likewise with the aerial photographic evidence.

The Order has been made based on modern user evidence and does not seek to rely on historical map evidence.

The user evidence illustrates use of the route by the public prior to the existence of public footpath rights being challenged in 2012 and no map or documentary evidence has been found to negate against this.

The OMA has not made the Order based on evidence of what is – or what is not shown on aerial photographs. No inference can be made with regards to the existence of public rights, but the aerial photographs examined show that the route appeared to be capable of being used in support of what the users have said.

Denies the Order route was used by the public as claimed.

A substantial number of individuals provided evidence of use of the route. Users consistently recounted use of the route over lengthy period of time, recalled seeing others using the route and believed it to be a public right of way. This evidence can be considered and tested as part of the referral process.

Refers to errors, inconsistencies and contradictions in the Committee report and states that use of the Order route had been challenged prior to 2012.

The OMA have not made this Order based on historical map and documentary evidence. The Regulatory Committee report referred to in detail by the objector was prepared following a detailed investigation into the history of the land crossed by the Order route. This is the approach taken by the OMA when investigating all Definitive Map Modification Order applications – even those where the evidence suggests that dedication of public rights is more recent i.e. based on 'modern' user evidence.

The OMA concluded that there was insufficient historical map and documentary evidence from which dedication of public rights could be inferred but that the 'modern' user evidence submitted showed, on balance, that public rights on foot have been dedicated as evidenced by the user evidence submitted. This evidence can be further considered as part of the referral process – particularly with reference to any pre 2012 challenges to use.

Mentions deposit of statutory declaration under Section 31(6) Highways Act 1980.

The submission of a statutory declaration under Section 31(6) of the Highways Act is only effective from the date that it is made. No Statutory declarations were made in relation to land crossed by the Order route prior to 2012.

The fact that no Statutory declaration was made prior to 2012 is not evidence that the public were not using the Order route.

Criticizes the user evidence for lack of local knowledge and inaccuracies.

Having assessed the user evidence all those completing user evidence forms had lived local to the Order route and appear to have been able to walk it from home. Many had lived in the area all their lives and were quite elderly by the time that they completed user evidence forms.

Given the age of a number of users when completing the user evidence forms it will not be possible to test all of the user evidence as part of the referral process but details of what was provided in 2012 and further details subsequently provided by those still able to do so can be further considered as part of the referral process.

The Environment Agency should have been consulted because they are responsible for the maintenance of the watercourse.

The Environment Agency were made aware of the application in 2014 and explained that with regards to Main Rivers and Environment Agency maintenance / access, the Environment Agency has a right of entry to the Main River by virtue of Section 172 of the Water Resources Act 1991, and a right to carry out maintenance and improvement works by virtue of Section 165 of the same Act. As part of this maintenance work the Environment Agency have the right to deposit vegetation removed from the channel within the 8m river easement. In addition, they explained that any works within 8 metres of the top of the bank of the watercourse requires prior Consent of the Environment Agency and that it is essential that this 8 metre strip is preserved for (their) access purposes.

The Environment Agency provided no view on the confirmation of the Order or evidence relating to the use – or lack of use – by the public of the Order route.

The fact that the Order route runs adjacent to Eas and Sandy Brook, which are both classed as Main River, by the Environment Agency, does not mean that public rights cannot exist or have been dedicated along it.

Mr Henry Ascroft of Scarisbrick House Farm, Heatons Bridge Road, Scarisbrick Nr Ormskirk L40 8JQ

Mr Ascroft tenanted land crossed by the Order route between points A-B-C and was a Scarisbrick Parish Councillor (as confirmed by Mr Ascroft himself) at the time the Order was made.

Mr Henry Ascroft is now deceased but his son, Mr Ian Ascroft, is still alive although no longer tenants the land crossed by the Order route. Scarisbrick House Farm, which is owned by the Ascroft family is located south east of the Order route and is now within view of the Order route.

Denies receipt of Notice of the Making of the Order.

Notice of the making of the Order was correctly sent to all known landowners and prescribed organisations and notices clearly posted on site addressed to the Owner or Occupier of the land.

The owner of the land tenanted by Mr Ascroft was issued a notice and all statutory provisions correctly complied with.

Mr Ascroft was clearly made aware of the Making of the Order and relevant Statutory period as he submitted his objection within the statutory notice period.

Concerned dog walkers could be injured/killed by cattle because he uses the fields to graze breeding cows. Also concerned about diseases spread to livestock from dog faeces.

Many public routes cross land grazed by animals including cattle. Whilst there are known risks associated with people crossing land grazed by cattle (particularly with dogs) there is very clear guidance and legislation regarding the matter ([Document 17](#)).

Should the Order be confirmed the OMA may be able to assist/advise Mr Ian Ascroft or current tenant of the land over concerns about public safety and dog fouling but these are not concerns that can be taken into account with regards to the grounds for confirming the Order.

Incidents of vandalism in the summer of 2010 and 2011 resulted in the objector taking action and damage to fencing resulted in the police being called to assist on 3rd September 2012.

The specifics of the damage referred to in 2010 and 2011 are not provided. It is acknowledged that the incident on 3rd September 2012 was one which instigated the application to record a public footpath being made. None of the users refer to any earlier incidents which called public rights into question.

Mr Stephen Buttle of 9 Bescar Lane, Scarisbrick Nr Ormskirk L40 8QN

Objects on the grounds that the recorded width of the Order route (3 metres) is too wide and could be used by mechanically propelled vehicles and fears that it could be by travellers to access an area of common land. Suggests if the width was reduced and gates or stiles were provided, he would remove his objection.

The Order has been made by the OMA because there is evidence to suggest that on the balance of probability a public footpath exists along the Order route.

The width stated in the Order reflects the map, photographic and user evidence which suggests that a 3-metre-wide strip of land was available for use and that the full width available was used by the public.

The OMA is not proposing to create something new so are not able to specify a narrower width than the user evidence suggests would have been used by the public. Neither is it possible to specify the requirement for gates or stiles at either end – or at any point along the route – unless it is shown that they existed historically and that the right of way came into being subject to their existence and in this case, based on the available evidence, gates have been specified in the Order as limitations to public use at point A and point C on the Order Map. These gates would, however, be required to be openable and could not be locked. It may, however, be possible to authorise additional structures across a public footpath where they are deemed necessary for the management of the land in the future.

Conclusion

The OMA submits that the objections received do not in any way undermine the evidence that the Order route is, on balance, already a public footpath in law, and respectfully requests that the Secretary of State confirms the Order subject to the

request to modify the wording in part 2 of the Order (as detailed in the OMA's Statement of Case.)