

RE: RAKES HEAD LANE APPLICATION FOR DMMO

OPINION

1. I am asked to provide an Opinion for Oakmere Homes (Northwest) Limited (“Oakmere”) upon an application made on behalf of the British Horse Society (“the Applicant”) to Lancashire County Council in its capacity as surveying authority (“the Council”) for a Definitive Map Modification Order to add a bridleway from the junction with Bridleway 1-31-BW 5 on Rakes Head Lane to the junction with Hasty Brow Road (“the Application”) as shown marked A-B-C-D (“the claimed route”) on the plan attached to the Application (“the Application Plan”) to the Definitive Map and Statement. References to such lettering in this Opinion are to the Application Plan.
2. Oakmere has an option to purchase land subject to the Application comprising registered title number LA818683 owned by Gordon Owen and Lynette Owen (“the Owens’ land”). The claimed route runs over that land from a point to the north of B to D.

LEGAL FRAMEWORK

3. The Application is made under s.53(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”). Section 53(2)(a) requires the Council to keep its Definitive Map and Statement under continuous review and to make modifications as soon as reasonably practicable after the occurrence of any of the events specified in s.53(3). The Application fails to identify the event which is contended to have occurred. It is assumed that the event contained in s.53(3)(c)(i) is relied upon, 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, being a right of way such that the land over which the right subsists is a public path or restricted byway or, subject to section 54A, a byway open to all traffic”.

4. The relevant legal test for the Council to apply in determining whether to make an Order under that provision is whether the claimed bridleway “*subsists or is reasonably alleged*”. The former test is whether, on the balance of probabilities, the bridleway subsists. The latter test is a lesser one of whether a reasonable person, having considered all the relevant evidence available, could reasonably allege the claimed bridleway exists: see *R. v Secretary of State ex parte Bagshaw and Norton*.¹ Nonetheless, credible evidence must be produced that the claimed bridleway is reasonably alleged to exist in order to satisfy that lower threshold.

USER EVIDENCE

5. There is no evidence whatsoever of any use of the claimed route by the public and none is relied upon in the Application. No user evidence forms have been submitted. That is entirely consistent with the signed Statement of Mr Owen as well as signed Statements from other relevant landowners that the public have never used the route. Indeed, as Mr Owen points out in his Statement:

“It would be impossible for the route to be used as there are locked gates along the Application Route in the approximate position marked with an “X” on Plan 1. The gates are locked in order to prevent any stock (particularly bulls) from escaping”.

In addition, he notes that:

“access cannot be gained from the northerly end of the Application Route as there is currently a fence along the northerly boundary on the Application Route shown on Plan 2”.

6. The Applicant’s own photographs support Mr Owen’s evidence. The **only** photograph provided by the Applicant along the claimed route insofar as it passes over the Owens’ land is photograph D10 taken from point D looking north-west. That shows the padlocked gate preventing access onto or egress off the claimed route.
7. Instead, the **only** evidence of use of the claimed route submitted with the Application is use by farmers of the agricultural land over which it passes. As stated in the notes to photograph D6 in the Application, “*The route line is still used by the farmer*”. That

¹ (1994) 68 P. & C.R. 402.

reference is repeated on page 2 of the Application under the heading “Description of Application Route”.

8. In the absence of any evidence whatsoever of any use of the claimed route by the public, s.31 of the Highways Act 1980 by virtue of which dedication of a public right of way may be presumed if the relevant statutory criteria are established is not engaged. Similarly, there is no evidence whatsoever to support a finding, or even a suggestion, that the claimed route has been impliedly dedicated at common law by virtue of long use.

CUL-DE-SAC

9. A passing reference is made in the Application² to Bridleway 1-31-BW 5 terminating at point A which is described as “*a dead-end*”. That is factually incorrect. The Bridleway leads to the stables and horse paddocks at point A which are evidently a destination for bridleway users. As pointed out by Atkin LJ in *Moser v Ambleside UDC*:³

“I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway.”

In this instance, there is an obvious reason for bridleway users to use the cul-de-sac Bridleway given that it leads to a particular destination which bridleway users would be expected to visit.

10. It follows that the end point of Bridleway 5 provides no support for a bridleway continuing along the claimed route as appears to be hinted at in the Application.

DOCUMENTARY EVIDENCE

11. Instead, the Application relies **solely** upon documentary evidence. Notably, such evidence has been in existence for many years, going back to the 19th century, and it is somewhat surprising that the claimed route was not recorded on the Definitive Map from the outset or at any time subsequently if there was credible evidence supporting

² On page 2 under the heading “Summary and Statement of Reasons”.

³ (1925) 89 J.P. 118.

its existence. The timing of the Application based solely on evidence that has been available for decades appears to be an attempt to frustrate development proposals rather than to record a bridleway in circumstances where there is credible evidence of its existence.

12. The Application relies heavily on Ordnance Survey Maps. It is well established that OS Maps are not evidence of the highway status of any routes shown. Instead, they merely show what the surveyor physically found on the ground at the time of the relevant survey. They contain an express disclaimer to that effect.

13. The legal position is clearly set out in caselaw. Farwell J. stated in *Attorney-General v Antrobus*⁴ in relation to Ordnance Survey Maps:

“Such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey.”

Similarly, in *Moser v Ambleside Urban District Council*⁵, Pollock MR stated:

“If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate.....”

More recently, Cooke J. observed in *Norfolk CC v Mason*:⁶

“Throughout its long history the OS has had a reputation of accuracy and excellence..... It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion on public or private rights”.

14. It follows that the OS Maps are **not** evidence that the claimed route is a bridleway. They merely demonstrate that the route existed on the ground insofar as shown.

15. Moreover, it is apparent that the claimed route is not even shown as physically existing on some of the OS Maps for its full length. In particular, the claimed route between

⁴ [1905] 2 Ch 188 at 203.

⁵ (1925) 89 JP 118 at 119.

⁶ [2004] NR205111.

points C and D passing over the Owens' land is not shown as physically being apparent on the ground on the 1848 OS Map or on a number of OS Maps between 1931 and 1947.

16. Further, insofar as the claimed route is shown on the OS Maps, there is a good reason for it being evident as a physical feature on the ground. It serves, and has always served, agricultural land and has been regularly used by farmers of the land for such purposes. Its use by the farmer is expressly acknowledged by the Applicant as noted above. It is further of note that it follows the very route on which locked agricultural gates are placed as referred to by Mr Owen in his Statement.

17. The Applicant also relies upon the 1846 Tithe Map. Two crucial points arise from that Map:

- a. Tithe maps are again not evidence as to the status of any road shown or the extent of any public rights of way which may exist over any road.⁷
- b. In any event, the claimed route is not even shown on that Tithe Map from points B to D over the Owens' land.

It follows that the tithe map provides no evidence whatsoever in relation to the claimed route from points B to D, and no evidence as to the status of the claimed route between points A to B.

18. Similarly, the claimed route between points B to D is not shown on the 1910 Finance Act Map. Insofar as the claimed route between points A to B is shown, that Map does not provide evidence as to its bridleway status.

19. Again, the claimed route between points B to D is not shown on the Council's Road Status Map. Insofar as the claimed route between points A to B is shown, that Map does not provide evidence as to its bridleway status.

20. The photographs provided in support of the Application are notable by the absence of any photographs of the claimed route insofar as it passes over the Owens' land save one, namely D10. The others all relate to the section to the north of the Owens' land.

⁷ See *Copstake v West Sussex CC* [1911] 2 Ch. 331.

That one photograph produced at D10 shows the padlocked agricultural gate precluding access to the claimed route. There is no evidence of any bridleway gates along any section of the entire route.

CONCLUSION

21. In conclusion, in relation to the claimed route between points B & D, the **sole** piece of evidence submitted with the Application having any applicability to that section of the route are some OS Maps. As such maps are not evidence of the highway status of any routes shown, there is no evidence whatsoever produced to support the claimed route between points B & D being a bridleway.

22. In relation to the claimed route to the north of point B, the evidence relied upon is limited to documentary evidence on which the route has been marked as physically existing. However, as such maps are not evidence as to the bridleway status of any routes shown, no evidence has been produced to support its bridleway status.

23. It follows that the evidence submitted with the Application does not, in my opinion, amount to credible evidence sufficient to demonstrate a reasonable allegation that a bridleway exists along the claimed route. Consequently, it is my view that the Modification Order sought should not be made by the Council.

24. I advise accordingly, and if I can be of any further assistance, please do not hesitate to contact me.

RUTH A. STOCKLEY

14 December 2022

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**RE: RAKES HEAD LANE
APPLICATION FOR DMMO**

OPINION

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Our Ref: RS 500079