

Regulatory Committee

Meeting to be held on 28 September 2016

Electoral Division affected:
Rossendale South

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Deletion of part of Footpath 130 Ramsbottom at Irwell Vale
Addition of Footpath across Irwell Vale Bridge at Irwell Vale
File No. 804-548b
(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal Officer, Legal and Democratic Services,

megan.brindle@lancashire.gov.uk

Jayne Elliott, 07917 836626, Public Rights of Way, Planning & Environment Group,

jayne.elliott@lancashire.gov.uk

Executive Summary

Investigation into the deletion of part of Footpath 130 Ramsbottom at Irwell Vale from the Definitive Map and Statement in accordance with File No. 804-548b

Recommendation

Resolved:

1. That an Order be made pursuant to section 53 (2) (b) and section 53 (3) (c) (iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way the footpath from a point on Footpath 130 Ramsbottom at grid reference SD 7923 2021 for a distance of approximately 30 metres to SD 7922 2024 in the River Irwell and shown between points A- B on the plan referred to in the report.
2. That an Order be made pursuant to section 53 (2) (b) and Section 53(3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from a point on Footpath 130 Ramsbottom (SD 7923 2021) for a distance of approximately 30 metres north westerly across the surface of Irwell Vale Bridge (SD 7920 2023) and shown between points A-C on the plan referred to in the report.
3. That, being satisfied that the tests for confirming said Order at 1 above could be satisfied, the said Order be promoted to confirmation.
4. To await the outcome of the confirmation decision on the Order made to add a bridleway on the line A-C ("the Bridleway Order") and, should the Bridleway Order not be confirmed or confirmed such that a bridleway is not added to the Definitive Map and Statement between points A and C the Order at 2 above be promoted to confirmation. If the Bridleway Order is confirmed such that a bridleway is added to

the Definitive Map and Statement between points A and C the Order at 2 above be processed for non-confirmation

Background

On 6th April 2016 Regulatory Committee considered an application for the addition of and upgrade to Bridleway a route extending from Edenfield to Helmshore Road, passing through Irwell Vale. A copy of the report is attached as Appendix 1.

Regulatory Committee decided to make a legal Order to record the route as a bridleway on the Definitive Map and Statement including part of what is currently recorded as Footpath 130 Ramsbottom.

Whilst drafting the Order to be made Officers have identified a drafting error on the Revised Definitive Map (First Review) which could be addressed and rectified as part of the Order making process in respect of another part of Footpath 130; shown between point A and point B on the Committee plan.

The purpose of this report is therefore to explain the drafting error to Members and seek the necessary approval to make an order to correct the error and record the deletion of part of Footpath 130 Ramsbottom, shown between point A and point B on the Committee plan.

The correcting of the error should also entail the addition of a footpath across the surface of Irwell Vale Bridge shown A-C. The crossing of Irwell Vale Bridge from point A was already considered as part of the application dealt with on 6th April and is to be included in the Definitive Map Modification Order adding and upgrading a bridleway through Irwell Vale. For that reason it is suggested that the outcome of that Order is awaited before the Order adding a footpath is promoted to confirmation.

On the discovery of a drafting error the County Council are required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists along the route recorded as a public footpath or whether it has been recorded in error. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order for deleting a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- That there is no public right of way over land shown in the map and statement as a highway as any description

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners

cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence.

The County Council's decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

District Council

Rossendale Borough Council has been consulted and no response has been received, it is assumed they have no comments to make.

Parish Council

There is not Parish Council for this area.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7923 2021	Point on Footpath 130 by the south east end of Irwell Vale Bridge
B	7922 2024	Unmarked point in the River Irwell
C	7920 2023	North west end of Irwell Vale Bridge

Description of Route

The route to be deleted commences immediately south east of Irwell Vale Bridge and extends in a northerly direction through the railings on the north east side of the river bank adjacent to Irwell Vale bridge and is then shown to extend north across the river to terminate in the river at point B on the plan.

The route is not readily accessible and there is no evidence that it is used, could be used or that it has ever been used in the past.

The total length of the route 30 metres.

Map and Documentary Evidence

Footpath 130 was originally recorded on the Definitive Map and Statement of Public Rights of Way crossing the existing Irwell Vale Bridge and terminating at the former urban district boundary. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) the route was not shown crossing the bridge but in the River Irwell north east of the bridge. There does not appear to be any reason for it to be shown in this way other than a drafting error and no legal orders have been found suggesting that this part of the route was legally diverted or extinguished prior to the revision of the Definitive Map or that its status as a public footpath had been challenged. Footpath 130's inclusion on the First Definitive Map and Statement crossing Irwell Vale Bridge is conclusive evidence that it existed at the relevant date (1st January 1953). For these reasons it is not considered necessary to carry out the full range of historical map and documentary research associated with Definitive Map Modification investigations predating the inclusion of the routes on the First Definitive Map.

Document Title	Date	Brief Description of Document & Nature of Evidence
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>The route under investigation is within Ramsbottom which was a former urban district in the 1950s so a parish survey map was not compiled.</p>

<p>Draft Map</p>		<p>Maps and Statements were prepared for Ramsbottom by the district borough council and used by the County Council as the Draft Maps for those areas.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
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129.	"	Path No. 125 eastwards to path No. 128.	0.17	" "
130.	"	Path No. 128 north-westwards under Railway across path No. 125 to Haslingden boundary.	0.44	" "
131.	"	Blackburn Road westwards to path No. 130. (Hardsough Road).	0.44	" "

<p>Observations</p>		<p>Footpath 130 is clearly shown crossing Irwell Vale Bridge and terminating at the Haslingden boundary. The route to be deleted between point A and point B is not shown.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was</p>

available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations

Footpath 130 is clearly shown crossing Irwell Vale Bridge and terminating at the Haslingden boundary. The route to be deleted between point A and point B is not shown.

The First Definitive Map and Statement

The Provisional Map, as amended, was published as the Definitive Map in 1962.



<p>Observations</p>		<p>Footpath 130 is clearly shown crossing Irwell Vale Bridge and terminating at the Haslingden boundary. The route to be deleted between point A and point B is not shown.</p>
<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>



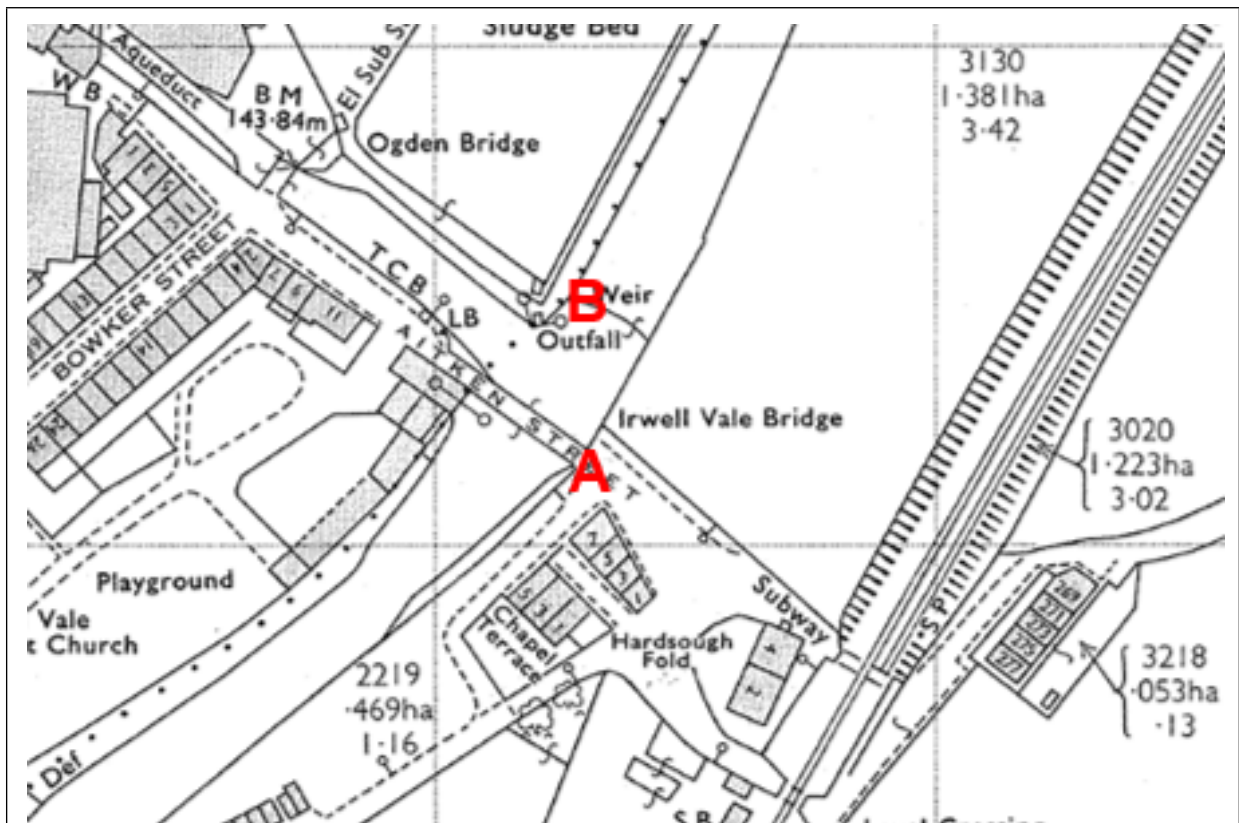
Observations		The enlarged extract of the Revised Definitive Map (First Review) does not show Footpath 130 crossing Irwell Vale Bridge but shows the final dashed line representing the route of Footpath 130 passing through point A and continuing in a northerly direction into the River Irwell.
Investigating Officer's Comments		There is nothing in the County Council records to explain why the route of Footpath 130 is not shown crossing Irwell Vale Bridge on the Revised Definitive Map (First Review). The scale of the map (1:10,560) and the fact that it was hand drawn and difficult to interpret, even by someone who knows the location, suggests that the fact that the route is shown in the river and not crossing the bridge is a drafting error.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No record of the route of Footpath 130 between point A and point B ever being diverted or extinguished has been found.
Investigating Officer's		The route under investigation was erroneously

Comments		drawn along the line A-B on the Revised Definitive Map (First Review).
OS 1:2500 maps	1961 and 1971	OS maps dating from the time that the Revised Definitive Map (First Review) was being prepared were inspected.

OS map revised 1960 and published 1963

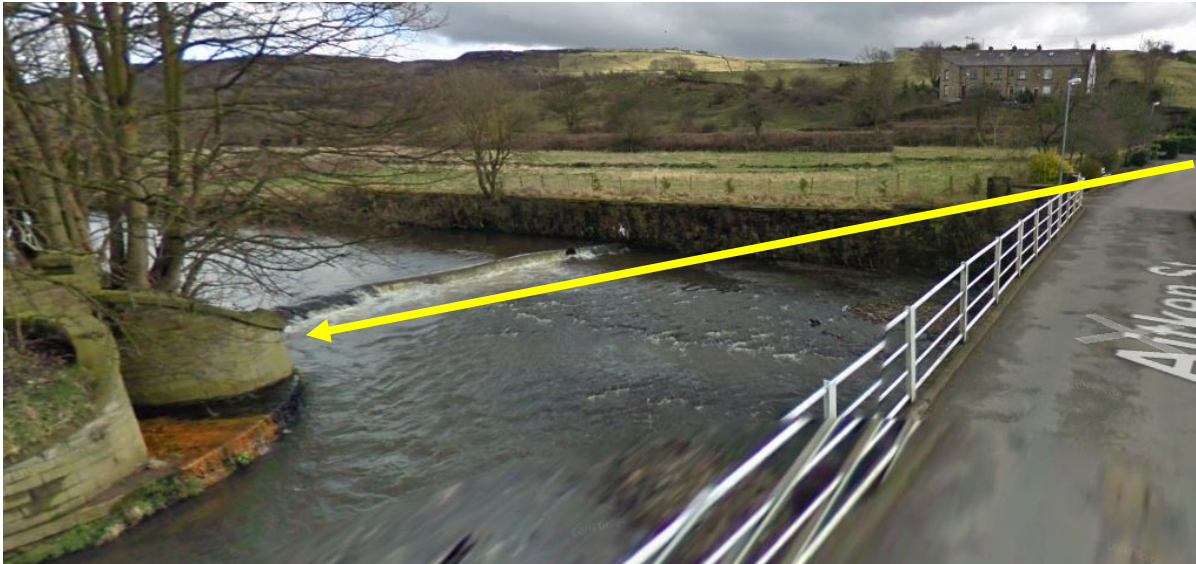


OS map revised 1970 and published 1971



Observations		Both maps show Irwell Vale bridge in the same location as it has been on all OS maps inspected from the mid 1800's to the present day. The route to be deleted is not shown as being accessible on maps which were revised and published around the same time that the Revised Definitive Map (First Review) was prepared.
Investigating Officer's comments		The route under investigation did not exist and an error was made in drawing the route of Footpath 130 along the length A-B.

Map and documentary evidence both before and after the publication of the Revised Definitive Map (First Review) supports the view that a drafting error was made when the First Definitive Map was reviewed and there is no evidence that the position of the bridge moved or that the river was accessible (or used) between point A and point B as shown by the yellow line below.



Landownership

The only registered landowner is Tilerock Limited, 81 Chorley Old Road, Bolton BL1 3AJ who is affected by the path at Point A.

Summary

The northern end of Footpath 130 was originally recorded on the Definitive Map and Statement of Public Rights of Way as crossing Irwell Vale Bridge from point A to terminate at the former county borough boundary. When the Map was reviewed and published in 1975 as the Revised Definitive Map and Statement (First Review) the route was shown terminating in the river at point B instead of crossing the bridge. There does not appear to be any reason for it to have been shown on this different alignment other than a drafting error and no legal orders have been found suggesting that the route was legally diverted prior to the revision of the Definitive Map. The 'original' route across Irwell Vale Bridge remains unaltered and is in regular use and such use does not appear to ever have been challenged.

Head of Service – Legal and Democratic Services Observations

As there is no applicant for this matter and the landowner didn't provide a response to this consultation, no further evidence has been received.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order to delete (s)

Lack of Historical and Documentary evidence of any footpath on this line in the river
This line impossible to use because of sheer drop into river
Alternative route available since 1966 and was the route of a footpath section shown on First Definitive Map

Described in the Definitive Statement (First Review) in exactly the same way as it was previously described in the Draft, Provisional and Original Statements when it was shown on a different line.

Against Making an Order to delete

Initial presumption that it exists

The evidence needed to remove a public right from such an authoritative record will need to be cogent

No objections to it being shown on the Definitive Map (First Review)

Conclusion

In this matter it is claimed that the line shown on the Definitive Map should be deleted and another section be added.

It is advised that to remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error. In this matter the line of the route to be deleted (A-B) was first shown on the Definitive Map (first review) dated 1975 but with a relevant date of 1966 and so the error needs to be shown to have been made in 1966.

Case Law (Trevelyan) confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips MR of the Court of Appeal stated that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

One such evidence of error could be sufficient evidence of a correct route. In Case law (Leicestershire case) Collins J held that in these circumstances,

“it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed”

He went on:

“if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone

that the map is to be treated as definitive M where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.

It is therefore suggested that the Committee first consider whether the claimed section A-C is already a footpath at law and should be added to the Definitive Map and then whether this means that it was the correct route of the footpath network in 1966 and therefore the route A-B was recorded as on the Definitive Map in error in 1966.

The claimed route A-C crosses a bridge which has been there since at least 1845. The bridge is shown on the Ordnance Survey maps dated 1845 onwards. Whilst the bridge may not have originally been a public bridge, a public footpath was in existence across the bridge surface by 1953. This was the route then recorded in the Definitive Map process.

The route to be added was shown as a right of way on the various forms of the Definitive Map produced between 1953 and 1962 and received no objections which would suggest an acceptance by the landowners and the public of the existence of the right of way along that line. The Statement relating to the footpath said "Path No.128 north-westwards under Railway across path No,125 to Haslingden boundary."

In contrast the route claimed for deletion A-B is not shown on any map as a footpath until the Definitive Map (First Revision) of 1966. In this particular matter there is evidence on balance that errors were made in 1966 with regards to recording the line of Footpath 130 Ramsbottom on the Definitive Map.

It is suggested that Committee may consider that there is evidence by way of the maps and documentary evidence that the route claimed for deletion A-B on balance was recorded in error from 1966 onwards and should have continued to be recorded on the line A-C. Committee will be aware that even if the line A-C can be considered to subsist as a footpath this does not necessarily prove that the line nearby A-B was recorded in error. The Committee should consider whether it is possible that two paths existed so close to each other. The Committee is asked to consider the geography of this location and the presence of a bridge. Where the line A-B is drawn is a dangerous route and access into the river would be treacherous.

Taking all the evidence into account it may be considered that there is sufficient cogent evidence to suggest that the route A-B was recorded in error and that A- B should be removed from the Definitive Map and the footpath on line A-C be added to the Definitive Map. It is advised that the evidence is sufficient to not only satisfy the test to make the Orders but also to promote the Orders to confirmation.

There is a complication here as an Order is already to be made to record a bridleway on the bridge rather than a footpath and so it is suggested that the outcome of that

Order be awaited before dealing with this Order to confirmation/ non confirmation stage as set out in the recommendation..

Alternative options to be considered - N/A

**Local Government (Access to Information) Act 1985
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-[548b]	Various	Megan Brindle , 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A