

**Written submission for discussion at the
Planning sub-committee (Heavy Woollen area)**

13th October 2016

DMMO Batley 49 item

Representations on behalf of Mr and Mrs Bragg

The Definitive Map and Statement is generally considered conclusive as to what it shows or contains.

Errors with, or disputes over, the map and statement are normally challenged via Section 53 of the Wildlife and Countryside Act.

The sealed Definitive Map and Statement can only be altered by lawful Order.

In relation to this matter, elected members are asked to make two independent decisions. Neither is dependent on the other;

1. On the balance of probability was the footpath through 75A Hey Beck Lane diverted with lawful authority?
2. Is there a reasonable allegation that a footpath was formed by express or presumed dedication along the line of the path shown on the diversion attempt of 1992?

The Definitive map is not infallible, it is only as good as the diligence used by those charged with surveying for it, marking and maintaining it. Errors are made and may not be discovered for many years.

Example of immediate errors

1. The Field Survey undertaken was claimed to have taken place by Messer Wainwright and Saxton on the 25th of July 1950. In the case of paths 49 and 55 they are both incorrectly recorded on the Definitive statement as terminating at Batley Road. This was not corrected despite at least 3 chances to, until the 1985 Definitive map Statement was sealed, however no discussion or legal Order has been found that authorises this correction.
2. Although not recorded on the "walking Survey Cards" the statements of both include descriptions of stiles, steps, gaps but an exit obstruction from path 49 to "Batley Road" is missed and remains missing to this day.

3. The compiler of the Council report has mistakenly used FP 50 walking survey card rather 49 at his appendix K.

It is, of course, accepted that these are minor errors, of little consequence, and can be easily overcome when common sense is applied but it does though show errors can and do occur.

Examples of more serious errors as to what is shown.

During the preparation for the redraft of the 1985 Definitive Map and Statement a number of routes, including "Roads Used as Public Paths" (RUPP), were reclassified. Following FoI requests for copies of the Modification orders that apply it appears that RUPP numbers 229, 230 and 231 were reclassified as Byway Open to All Traffic despite no Orders being made. This presents 2 options; The routes were reclassified without lawful Authority based upon the officers view of what it should be (but without a public consultation or lawful process) or Orders, with no following Legal Event Modification Order, were made but have been lost.

In another case, part of route FP 233 was correctly reclassified by lawful Order in 1985. However Byway 233 (as it became) later, in the 1990s, became dissected by quarry works. This breeching was apparently corrected some years later in 2002 by a retrospective planning application which involved the installation of a footbridge, which although this closed the route to vehicles and horse riders was approved by the Rights of Way department. The Definitive Map does not show this obstruction and a FoI search has uncovered no legal Order. It is probable, but yet to be confirmed by Street Scene, that a Planning Order authorising the obstruction was obtained but misfiled.

This year a land owner was served with a Notice by Kirklees Council to remove an "illegal" locked gate and restriction that had been reinstalled to prevent trespass by horse riders and cyclists upon land that carries a public footpath. The Notice was withdrawn when it was pointed out that the gates were reinstallations and whilst not on the Statement they could clearly be seen on the DM. This discussion went on to raise the issue that the DM for the area did not show a diversion of FP 40 that had been undertaken some years earlier. When raised with the officer he responded that the Legal Event Modification had, 24 years later, still to be made.

It is claimed by this side that the Definitive Map and Statement are in error as they do not show the lawful diversion of Footpath 49 that occurred circa 1966-70.

First Decision.

On the **balance of probability**, was the path lawfully diverted circa 1966 to 70?

The Officers conclusion:

The available evidence does not demonstrate that, on the balance of probability, no public rights exist over the application route.

Our response:

A large number of witnesses say that the footpath was moved to a new location post planning permission being granted and building of stables via legitimate means. Indeed one reports the new FP sign being Council erected.

The OS maps produced by the Officers report at Appendix J show that the footpath moved to a new line pre the survey map dated 1970. This path must have been substantial enough to be surveyed.

No one complained about the closure of the route through 75A in its new location until 1990 and the opposed Order in 1992. The route remained open until 2012.

The likelihood of a circa 1966 lawful movement of the path from 75A to the location as per the 1970 OS map is supported by the Councils own Order to divert the path again to another new line in 1992. If no lawful Order existed for the original diversion then the Council would clearly have declined the attempt to move the path and advised that it actually runs elsewhere already, through 75A.

In support of the concept of a lost Order, we have detailed a number of other failures to uncover lawful Orders or to complete the process of the said legal event via Order to legally divert or impede paths.

Second decision.

Notwithstanding the above, is there a **reasonable allegation** that the path shown on the 1970 OS map gained public status over the next 26 or 42 years?

The officers conclusion:

The available evidence does not support the making of an Order.

Our response:

For the following reasons there is at least a reasonable allegation (and more likely a balance of probability) that the path was diverted onto the route shown on the 1970 OS map by lawful means circa 1966.

It is fact that the trodden path became visible sufficiently to be shown on the OS in 1970 indicates a high level of use at that time.

That path remained in use, later signposted by the Council, from at least before 1970 until sold in 1989. The owner of the land at that time is not known to have torn down the sign or prevent usage, indicating either express or presumed dedication.

When Mr Lilly purchased his property in 1989 the level of use was sufficient enough for him to seek to divert the route by lawful means.

He tried to close the route by lawful diversion. Both he and the Council accepted that the public had a right of way on that line.

When challenged over the presumptive and early closure of the path, Mr Lilly reinstalled it and thus this temporary stopping was not an effective closure.

The path remained open until 2012, until Mr Lillys new challenge became effective, meaning that the public had full and heavy use over the path from between (at the latest) 1970 and 2012.

The statutory period for presumed dedication is 20 years. In this case there is evidence of at least 42 years open use.

Andy Dunlop

SCHEDULE OF DOCUMENTS

1. Omnibus Modification Order 1985	22.10.1985
2. Letter from KMC to Architectural & Design Partnership	18.10.1991
3. Public Path Diversion Order and map	18.10.1991
4. Notice of Public Path Order	25.10.1991
5. Letter from KMC to Architecture & Design Partnership	13.03.1998
6. Letter from A Cole to Mr Cheetham (Footpath Meltham 70/30)	11.05.2016
7. Letter from KMC to Mrs Cole (Footpath Meltham 70)	23.06.2016
8. Schedule B of modification for the 1985 definitive map	
9. Maps x 5	

