



Order Decision

Inquiry opened on 1 September 2015

by Sue Arnott FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 28 September 2015

Order Ref: FPS/N4205/7/5

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Bolton (Public Footpath No 516 Bolton) Definitive Map Modification Order (2) 2014.
- The Order is dated 12 November 2014. It proposes to modify the definitive map and statement for the area by adding a footpath from the access road to Edditch Farm off Hengist Street to a path within Leverhulme Park, Bolton, as shown on the Order map and described in the Order schedule.
- There were 11 objections outstanding together with 10 representations in support when Bolton Metropolitan Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision below.

Procedural Matters

1. I held a public local inquiry into the Order at the Quaker Meeting House in Silverwell Street, Bolton on 1 and 2 September 2015 having observed the route in question the previous afternoon, unaccompanied. I visited the site again, after closing the formal proceedings, on this occasion being accompanied by both supporters of and objectors to the Order together with a representative of the order-making authority, Bolton Metropolitan Borough Council (BMBC)
2. BMBC made the Order on the direction of the Secretary of State following a successful appeal¹ by the applicant, Mr Moulden. Having previously concluded that the evidence was not sufficient to justify the Order, BMBC took a neutral stance at the inquiry.
3. Due to a flaw in the first Order made by BMBC on 7 January 2014, the present Order (No 2) was made and the proposal re-advertised. All objections to the first Order have been carried forward to the second Order and I have considered these along with the one additional objection submitted and all representations in support.

The Main Issues

4. The main issue here is whether the evidence shows that in the past the Order route has been used in such a way that a public footpath can be presumed to have been established.
5. The Order was made under the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of an event specified in Section 53(3)(b). Therefore if I am to

¹ Reference FPS/N4205/14A/1 issued on 23 November 2012

confirm the Order I must be satisfied, on a balance of probability, that a period of time has expired in relation to the route in question such that its use by the public raises a presumption of dedication as a public right of way, in this case as a footpath.

6. Whilst the evidence need only be sufficient to *reasonably allege* the existence of a public right of way to justify an order being made, the standard of proof required to warrant confirmation of an order is higher. At this stage, evidence is required which shows, *on the balance of probability*, that a right of way subsists along the order route if that order is to be confirmed.
7. The case in support of the Order is based primarily on the presumed dedication of a public right of way under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.
8. Although the case was not argued on the basis of common law, I explained at the inquiry that, if not satisfied the requirements for dedication under statute have been met, I may consider such an approach in the alternative. For this I would need to consider whether, during any relevant period, the owner(s) of the land in question had the capacity to dedicate a public right of way; whether there was express or implied dedication by the owner(s), and whether there is evidence of acceptance of the claimed right by the public. In doing so I note also that Section 32 of the 1980 Act allows "*any map, plan or history of the locality or other relevant document*" to be taken into consideration when deciding whether or not a way has been dedicated as a highway.

Reasons

9. Although the case in support of this Order rests primarily on the evidence of use by the several claimants, I shall start by considering the historical evidence that has been submitted by Mr Cain in support of the claimed right of way so as to put that use into context.

Historical documentary evidence

10. At the inquiry Mr Cain set the scene with a colourful story of 'Tinker Haslam' who made his wealth locally by making vessels to carry the water from Cox Well which lies to the south of Edditch Farm to the communities of Tonge Fold and Tomlin Fold. Mr Cain explained that this was once the main source of fresh drinking water for local people. Mr Haslam went on to build houses nearby and employed local women in his weaving shed (behind Edditch Farm) and men at his engineering works.
11. Mr Shaw challenged some elements of Mr Cain's submissions, questioning the community's reliance on well water when, towards the late 1800s, piped water was probably available to them.
12. Whilst much of this 'Tonge Fold heritage' was said to be derived from material held at Bolton Archives, Mr Cain was not able to produce it to the inquiry.

Consequently I am limited in the degree of weight I can attach to this as background information.

13. The earliest map submitted is one dated 1764 showing part of an estate belonging to a Reverend J Parker². This shows the beginnings of Tomlin Fold and also Tonge Fold, the latter being shown to be connected by a gated track over land belonging to adjacent landowners (Mr Starkey and Mr Bradshaw) to land (parcel L11) belonging to Reverend Parker some way south of the point Mr Cain identified as Cox Well. (The field in which this is located is, according to Mr Cain, referred to as "Cox Well Field" in the Starkey Estate papers.)
14. My first observation is that the track leading southwards from Tonge Fold does not lead to the well but to other land owned by the Parker estate. That suggests to me that it is more likely to have been a private access road rather than a public right of way. Secondly, I note that this track is not on the line of the claimed footpath; indeed the map does not show a path or track along the Order route. Consequently I attribute little weight to this map as support for the early origins of the claimed footpath although it is helpful in offering an historical background to the development of the area.
15. An extract from an indenture dated 1896 is submitted with a plan showing land that was to be leased by the Brightmet Hall Estate to James Haslam for 999 years in order to build houses. The map shows the area bounded on the eastern side by Hampson Street (later known as Hengist Street), an un-named 'intended street' along the south³, land belonging to Colonel Starkey to the west and a back street (now Back Romer Street) on the north east side with Chapel Street (now Romer Street) at a right angle to the boundary.
16. The significance of this map is the depiction of a route labelled "PUBLIC FOOTPATH" running across the site, broadly south westwards from the junction of Tomlin Square with Hengist Street. This exact line does not appear to have been preserved in Mr Haslam's building plan but is close to what is now Back Edditch Grove North. No evidence of any formal diversion or stopping up has been produced.
17. The Ordnance Survey (OS) map of 1850 (at 6" to 1 mile) showed this path to be part of one linking Tomlin Fold with Tonge Fold. Whilst OS maps do not offer evidence of a right of way, this does show that there was a sufficiently defined path on the ground to warrant recording as a physical feature by the OS surveyors at that time. Taken together with the indenture map, there seems a good case for concluding that this route was a public right of way on foot.
18. However, this (possibly public) footpath is not on the line of the Order route. On the same 1850 OS map, a similar path or track is shown running southwards from Tomlin Fold, broadly in line with Hengist Street, towards buildings in the vicinity of what is now Edditch Farm. Here the path connects with another track which appears to be a variation of the early private access road; by 1850 this led to the "Water Trough" and "Spout" in the position of Cox Well, rather than land further south.

² Later owned by the Hampsons and forming the Brightmet Hall Estate.

³ Judging by the scale of the map, the southern boundary of the plot in the un-named street lies to the south of the present Back Edditch Grove, approximately in line with South View Street. This suggests that the 'intended street' was not built on the intended line.

19. The use of the same notation by the OS for both paths does not necessarily mean the track carried the same rights of way. I tend to agree with Mr Shaw that in 1850 it would be unlikely that the communities of Tomlin Fold and Tonge Fold would rely on water from Cox Well (especially when the OS shows there to be wells in both villages). Mr Cain may have other information to suggest otherwise but he did not produce it.
20. By 1893, on its 25" to 1 mile map the OS recorded that both Edditch Farm and what is now High Bank House had been built. Mr Cain reported that Edditch Farm was first noted in the 1861 census as 'Cox Well Farm', a 10 acre farm occupied by John Taylor. High Bank House appears in the 1871 Bolton Directory as Edditch Hall; this was built by William Tate Mason, a gentleman who taught at the Church Institute before founding Bolton High School. The OS showed the track from Tomlin Square led to the farm with branches due southwards along what is now the Order route (A-B-C) and a semi-circular track sweeping around the eastern side of the hall. Mr Cain postulated that this was most likely to provide carriage access to the front of the hall rather than being used by the public who would have walked through the farm yard between the two main buildings and continued to the well.
21. I accept that is a valid theory but there is no evidence before me to show any member of the public did so. I can see that in 1850 there was a track leading to and approximately on the line of the Order route and that it was still there in 1893 but it was not necessarily a public one. The fact that the 1896 indenture map showed Hampson (Hengist) Street⁴ generally in the same direction might be consistent with this being a public right of way but not proof of it. The supposed destination of this path, Cox Well, as the community source of water is even less plausible by the end of the nineteenth century than in 1850. Even the remains of the 1764 private access road from Tonge Fold is shown in 1893 to end where it enters a field; it is not a through route or a path to a recognisable public place.
22. By 1908 much of Mr Haslam's residential development was in place, presumably with the further purchase of land⁵. The Order route is shown as a continuation of Clegg Street. Hengist Street was complete down to High Bank Street. The main entrance to High Bank House had altered to its present position on the north east side of the property. The line of the track which in 1850 led to the well had altered, bypassing this on the riverside and proceeding for a short distance past it. However there is no documentary evidence that at the beginning of the twentieth century, members of the public used the Order route, or of their destination if they did.
23. The picture was rather different by 1929 when the next OS map shows Mr Haslam's cotton mill surrounding Edditch Farm on the north and west sides, a bowling green and tennis courts were located to the west of this and a changing pavilion stood on the edge of the park near the boundary with the extended cemetery. By this date Leverhulme Park had been dedicated to the town (in 1919) by Lord Lever, many field boundaries had been removed and new park paths set out.
24. As a result of the park being created from former farm land, the land that now forms part of the Peake's garden to the south of their semi-circular wall

⁴ In fact the original line of the path seems to lie closer to Back Clegg Street.

⁵ Including the land on which 58 Hengist Street is built, according to documents submitted by Mr Moulden.

- became co-extensive with the park land. The southern garden boundary at High Bank House had been altered so that it extended across the original line of the path to (and past) the well and the footpath was no longer shown by the OS. However this map did show for the first time the present footpath to the east of High Bank House, initially as a wide track but narrowing to follow a riverside route⁶.
25. The OS map of 1937 is similar, as is the 1949 edition, but the latter includes some interesting differences. Most notable is the sheet metal works which is shown extending across to Back Clegg Street so that thereafter point A could no longer be approached directly from the north, only via the western extension of High Bank Street. Also, though there was then no barrier across the way at point A, an electricity sub-station was positioned adjacent to the works building immediately to the north-west. The map shows a barrier of some sort at point C⁷. On this map the cotton mill to the west of Edditch Farm is shown as "disused". These same details appear on both the 1951 and 1971 editions.
26. A current OS map is used as the base for the Order map but the date of survey is not identified⁸ and the information it displays is minimal. Nevertheless I note from this the location of two posts marked immediately to the north west of point A in the approximate position of the (now removed) electricity sub-station marked on the previous map. There also appears to be a barrier marked across the way at point A though nowhere else along the Order route.
27. In drawing together my conclusions from these maps I find nothing that would preclude the existence of a public right of way along the Order route. There is some support for a defined physical path or track close to the claimed line at certain times in the past but no documentary evidence to support its use by the public. However, the twentieth century maps depict many features which are referred to by the claimants, including the bowling green, the tennis courts and the pavilion(s).
28. Mr Moulden submitted extracts from the Land Registry documents relating to High Bank House (registered title No 271147) which includes the Order route. These documents (dated 21 April 2010) identify "a right of way (with or without vehicles) over and along the land tinted yellow⁹ on the plan annexed" which is enjoyed by the adjoining property (Edditch Farm Cottage) "TOGETHER (in common with all other persons entitled thereto)".
29. It was Mr Moulden's submission that this proved the existence of the claimed public right of way. I do not interpret this registered charge in that way; I regard this as the provision of a private easement dating back to 1899, for the benefit of the occupiers of the farm house in common with others enjoying a similar right of way, (for example the occupiers of High Bank House). When the Edditch Farm property was sold by Haslams (Sheet Metal Workers) to Mr Bromilow on 23 May 1984, a specific right of way was granted to the property over the hatched area. That does not preclude the co-existence of a public right of way but it is no proof of it.

⁶ This was the route shown to me on the site visit by Mrs Davies, heading south westwards through trees which she said was cleared and improved by the Council around 1984.

⁷ This appears on all previous editions back to 1893.

⁸ This is the same edition as a map said to date from 2002 extracted from a planning application in 2004.

⁹ Hatched blue on the filed plan, including most but not all of the Order route.

30. Another right of way was reserved by a conveyance of this together with other land in 1899 from J S Pixton and H P Hampson to J Haslam. This reserved to the Trustees (who I presume to have been Pixton and Hampson) and "their heirs and assigns and their tenants and all persons authorised by them" "the right of way and passage" including over the Order route from A to a point between C and D (the extent of the hatched area).
31. One might deduce from this that tenants of houses built by the Hampson Estate (before James Haslam built the remainder), and anyone authorised by the Trustees, could enjoy a right of way over the land. That would not constitute a public right of way but, theoretically, if any persons who fell into this class could be identified, their use would have been by private right, not 'as of right' (a requirement for the establishment of presumed dedication of a public right of way).
32. Suffice it to say that I do not regard the Land Registry documents as indicative of a public right of way but they are helpful in confirming ownership of the land crossed by the Order route as at 21 April 2010. At the inquiry Ms Del Guidice reported that her family at High Bank House had acquired the land from Haslams in 2008 and had sold the part lying to the south of Edditch Farm to Mr and Mrs Peake in 2010 who subsequently erected a fence around it.
33. It is clear from statements made by some of the claimants that they believed the land sold to the Peakes in 2010 (and which now forms a small paddock for a donkey) formed part of Leverhulme Park and was thus in the ownership of BMBC. Although at the inquiry BMBC supplied to me a map showing that the extent of the Council's freehold interests in this vicinity did not include this land, Mr Moulden had been informed that BMBC had lost the relevant deeds.
34. It is not my role to determine ownership of land where there is any dispute. However I need to establish, where possible, who is the owner of land so as to be clear as to their actions (or inaction) in relation to the possible dedication of a public right of way. In the absence of any evidence to the contrary, I am satisfied that ownership of the land crossed by the Order route was wholly in the ownership of Haslams until 2008 when it transferred to the Bruces of High Bank House. After October 2010 section C-D transferred to the ownership of Mr and Mrs Peake whilst A-C remained the property of High Bank House.
35. In conclusion, I find nothing amongst the documents examined so far to preclude the existence of a public right of way but insufficient to show that such a right did, and therefore does, exist between A and D.

The case for statutory dedication

36. The Order was made primarily on the basis of statutory dedication. I will therefore next examine the evidence in relation to Section 31 of the 1980 Act. The first matter to be established is when the public's rights were brought into question.

Bringing into question

37. Although earlier events also need to be considered, it is not disputed that the status of the Order route was brought into question in 2010 when, on behalf of Mr and Mrs Peake, Mr Shaw installed two gates across the way. These are at the points marked A and C on the Order map.

38. At point A is a standard 12 foot (3.66m) wooden gate affording access from the end of the unadopted highway into the yard between Edditch Farm house and the high brick wall at the rear of High Bank House.
39. At point C is a smaller 3 foot (0.9m) locked wooden gate set in a fence which extends between two old stone gate posts. This gate now leads from the cobbled yard into a passageway between the boundary fence of High Bank House and the new fence erected in 2010. Mrs Peake said she had installed this fence alongside the claimed footpath in 2010 shortly after purchasing the land because she needed it for her donkey and could not wait for the outcome of these proceedings before doing so. This passageway is now overgrown with bushes, nettles and brambles and at present is impassable. At point D is a gap allowing access into Leverhulme Park¹⁰.
40. There are two other possibilities which need to be considered as potentially challenging the public's rights. Firstly, prior to the gate at A being installed around August 2010, there had been a yellow cantilever-type metal barrier across the way for several years. Witnesses had differing recollections as to when this first appeared; it is even possible that there may have been two such barriers in this position dating back to 1984 at least.
41. The former occupier of Edditch Farm, Mr Bromilow, (resident from 1984 to 1992) wrote that "*The property had a barrier already installed when I purchased it to prevent unauthorised entry*". Ms Del Guidice recalled her family being consulted sometime between 1986 and 1990 when the former owner asked the Council for permission to put in a barrier because there were problems with travellers gaining unauthorised access to Leverhulme Park with vehicles. Since Mr Bromilow does not mention this, I must presume the request came from Haslams but it is not at all clear whether a replacement barrier was installed in place of the one mentioned by Mr Bromilow in 1984.
42. In an unsigned letter dated 18 May 2011 sent from High Bank House to BMBC, the authors say that when they (the Bruce family) moved to the property in 1977 there was a gate at A that was replaced with a metal barrier in the early 1990s, possibly by the Council and which was removed in 2002/2003.
43. Although I have not been able to date the metal barrier(s) with any certainty, on balance I consider it likely that one has been in place from at least 1984 until a few months before the gate at A replaced it. The question is whether this challenged the public's right to walk through the yard to the park and, if so, when.
44. Responses from claimants indicate some did recall the barrier but say it was easy to walk past it; other say it was almost invariably raised when they used the route. Mr Connolly writes that "*one day a barrier was put in place by the new owners of Edditch Farm but access was still possible as it did not span the (entire) road*". Mr Bridge said that it was easy to gain access and that the barrier "*was only there to stop entry by four wheeled vehicles*". I heard from Mr Moulden and others that the barrier was intended to prevent an oil tanker from gaining access to the back of the factory.
45. On the other hand, Mr Bromilow wrote that he himself controlled the barrier and locked it when he was away on holidays. Mrs Peake likewise said that she

¹⁰ Although this route may appear to be a cul-de-sac, I am satisfied that it connects a recognised highway to a place having undisputed public access.

- locked the barrier when it was down and did so until around 2002/3 when it was removed (although at the inquiry she suggested this had happened only months before the new gate had been installed at point A by Mr Shaw).
46. I have before me evidence from people who used the Order route through the 1980s and 1990s during which I am satisfied this barrier would have been in place. Yet there is no evidence of complaints being made by members of the public about passage to and from the park being blocked. I have noted that the current OS map (probably dated 2002) shows two posts to the side of point A; it is possible that people could easily step to the side between the posts whenever the barrier was down though in later years vegetation had grown up around them.
47. It is my conclusion that during Mr Bromilow's occupation, the barrier was probably open more than closed, and that after the Peakes arrived in 1992 it was closed more often, but that this was not ever interpreted as a challenge to pedestrians. Consequently even if I could establish the date it was first installed I would not regard this as action bringing into question the public's rights along the Order route.
48. The second possible action to be considered is the notice which is attached to the side of Edditch Farm house facing the cobbled yard stating "Private". Mrs Peake said this had been put up in 2002/3 or thereabouts (and Mr Shaw endorsed this) after her family had experienced a number of small petty crimes around the time that the barrier was taken down.
49. Whilst this notice had the potential to bring into question the public's right to walk through the yard, I do not consider it did so for two main reasons: firstly, because its position on the side of the house made its intention ambiguous, it being unclear whether it was intended to relate to the Order route or to Edditch Farm property (which at that date did not include any part of A-B-C-D). Secondly, there seems to have been no reaction at all from users concerned that their right to walk though was being denied.
50. In summary, I am satisfied that the status of the Order route was brought into question around August 2010 and so will examine the claimed use by the public during the preceding twenty year period, 1990-2010.

Evidence of use by the public 1990-2010

51. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Use 'as of right' is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of 'permission'.
52. In support of the claimed route I have counted evidence of use from a total of 32 people. This consists of written user evidence forms from of 8 people, 4 of whom attended the inquiry to give evidence. A further 5 people gave evidence in person, all of whom had submitted letters or other documents giving details of their use. All those who gave evidence verbally to the inquiry submitted to cross-examination and answered all questions put to them. All the remaining claimants had written letters or emails explaining their knowledge of the path, their own use and in some cases use by other members of their family. Two petitions have been submitted, one containing the names of a further 12 people, all over 60, who had used the route and the other signed by an

- additional 19 names who had used the route for over 40 years¹¹. The periods of use vary greatly, the earliest dating back to the 1930s.¹²
53. Whilst a great deal of the regular use recalled by claimants relates to earlier times, it is important here to focus only on the relevant period. Of those who gave evidence in person, eight witnesses said they had used this route throughout the whole twenty years and on a regular basis. I give this evidence a significant degree of weight in addition to the written material supplied by others. I have noted only four claimants who state that their regular use ended before 1990 and three others who do not make clear when their use ceased, plus the 31 petitioners who give no specific dates. Of the people who definitely used the way between 1990 and 2010, I find 8 who did so for the whole twenty years and 17 for lesser periods.
54. However I need to balance against this the statements from others who say that use was nowhere near the level claimed, or that in fact there was no use at all. Whereas some of the claimants say that they used the Order route in preference to the path on the east side of High Bank House because it was a more level option and had a better surface, others say they have always used the alternative and were never aware of the Order route being used at all. Mrs Peake produced photographs from 1992/3, 1996, 2008 and 2010, none of which showed any sign of a worn trod on the line of the claimed path. Although the scale of the aerial photographs submitted makes it difficult to be quite sure, photos taken in 2000 and 2006 appear to show a similar picture.
55. Yet several claimants say that they found increasing difficulty in walking through the farm yard as obstacles were placed in their way, such as cars, trailers, flower tubs, geese and barking dogs. Mrs Peake made clear at the inquiry that none of these things were done to deliberately obstruct passage for pedestrians because she said very few people walked through and those that did were challenged.
56. Although I accept that levels of use probably did decline substantially over the second decade, I find there was still sufficient activity on the claimed footpath to represent use by the public throughout the relevant period.
57. None of these claimants stated they had ever sought or otherwise been given express permission to use the route by the owners of the land at any time. None say they were challenged within the relevant period. I do not consider that the various temporary barriers stationed within the bounds of the Order route rendered that use 'by force', nor do I find these interrupted the otherwise continuous use. I do not agree with Mrs Peake when she says that use of the way whilst she was not at home should be considered to be 'in secret'.
58. Having heard the evidence of witnesses at the inquiry, and considered all the relevant written submissions, I am satisfied that this demonstrates regular use of the Order route by the public on foot, as of right and without interruption, particularly throughout the twenty years between August 1990 and August 2010 (and before that) sufficient to raise a presumption that the route had been dedicated as a public footpath.

¹¹ To avoid double-counting I have excluded the names of people who provided their own evidence by other means.

¹² I have noted that Mrs Brooks stated her father used it as far back as 1908. However since I am told Leverhulme Park did not come into existence until 1919, I am reluctant to accept use of the Order route prior to this date.

Intentions of the landowner(s) 1990-2010

59. I turn next to consider whether there is evidence to show that during the relevant period, the owner(s) of the land demonstrated a lack of intention to dedicate a public right of way over the claimed route. Here it is important to be clear that it is the actions of owner of the fee simple in the land that need to be examined.
60. As I have already noted, until the Bruce family purchased the land in 2008, the land was owned by Haslams. There is no evidence to suggest that any steps were taken by or on behalf of either of these two owners¹³ to prevent the public walking the claimed footpath between 1990 and 2010.
61. No maps, statements or statutory declarations have been deposited by any of the landowners concerned under the statutory procedures set out in Section 31 of the 1980 Act to formally rebut any presumption of dedication.
62. Consequently I find insufficient evidence that during the period August 1990 – August 2010 the relevant landowners made clear to the public a lack of intention to dedicate a public right of way along the route shown on the Order map. It follows from this that a public right of way on foot can be presumed to subsist.

Implied dedication at common law

63. Having reached that conclusion there is no necessity for me to assess the evidence under the common law. Nevertheless, for the sake of completeness I will address the remaining points in relation to this approach.

Actions of the landowner(s)

64. As I have explained, it is not my role to adjudicate on land ownership matters but, since the actions of the owner of the land comprise a significant factor in this analysis, I need to clarify ownership and relevant land interests as far as I reasonably can.
65. I have established that until 2008 Haslams owned all the land¹⁴ crossed by the Order route. There is no evidence of express dedication of a footpath by them but I must consider whether dedication of the route as a public right of way can be implied, either from their actions or inaction at any time in the past.
66. The historical documentary evidence submitted by and on behalf of the applicant offers little support for a path of any great antiquity. From my analysis above, it is my impression that any use by the public probably did not begin until Leverhulme Park was formed. The eighteenth century track near to (but not on) the line of the Order route is not shown leading to Cox Well or to any other recognisable public place and was more probably a private farm track until the early twentieth century. The 1929 OS map shows that significant changes had taken place with the development of the park and no sign of a track south of point C appears on any map thereafter.
67. However it is around this period that the evidence from users of the claimed route begins. Although they did not give evidence to the inquiry (and I therefore temper the weight I attach to their statements) Mrs Smith and Mrs

¹³ Part was not sold to the Peakes until after the period at issue.

¹⁴ Although it is not disputed that others enjoyed a private right over it

Iddon both wrote to say that they had known the route as a way into the park for over 90 years, taking use back to the 1920s. Mrs Brooks and her family¹⁵ have been using it freely since the late 1930s; Mr Moulden, Mr Bridge, Mrs Longden and Mrs Terry began using it in the 1940s; the Glen family joined others walking through in the 1950s, as did Mr Binks and Mrs Morrison. By the 1960s many others were also using the route including pupils from Tonge High School. A letter from the former Head of PE at the school from 1964 to 1984, Mr Stokes, explains that children were accompanied to the playing fields via the Order route for games lessons and matches on the pitches at Leverhulme Park at the Tonge Cemetery end adjacent to the bowling green. This happened 6-8 times per week and more in summer for athletics. He says this same route was used by his predecessors in late 40s and 1950s.

68. Letters from students at the school endorse this practice, for example Mr Simpson says he used the path when representing school at various sports events and football matches as the changing rooms were at school. Mr Kay says the whole school used it as access to the park for training and football games. Mr P Moulden says he used it frequently from school and in the evenings and at weekends for football matches and training.
69. At the inquiry I heard from Mrs Ahmed about use during the 1970s and 1980s for rounders matches in the park and from Mr D Glen who took the posts to the pitch on the park until the late 1990s whilst his wife ran the rounders team.
70. Mr Moulden stated that he knew the Order route to have been used long before this by Mr J Moulden of Hind Street, Mr and Mrs Hunt of Highbank Street, Mr and Mrs Sharples of Southview Street and Mr and Mrs Longworth of Highbank Street, all of whom used the path to get to the bowling green.
71. Examining the whole of the evidence given by users, I attribute more weight to evidence given in person at the inquiry, and less to those who provided their evidence solely in writing. I discount those who are not clear about the dates between which they used the route unless other information given by them enables me to be reasonably sure about the period to which their evidence relates.
72. Overall I find this to amount to a considerable body of evidence of use of the claimed footpath. It has been used to go to a variety of sporting venues in the park including the bowling green, the tennis courts, football pitches and the children's playground. In summer it has been used to go to the park for school athletics, to play rounders and cricket and informally for dog walking. Once the school was demolished, the bowling green and the tennis courts closed, the football pitches removed, it is perhaps unsurprising to find that by the 1990s, the level of use was declining significantly.
73. However it is not the use itself that establishes dedication, but it is an important factor that may contribute to the conclusion that dedication of a public right is to be presumed. Where such use did occur openly and no steps were taken to prevent it, the public's use of the way may constitute evidence that the landowner was quite content it should continue and therefore contribute to the justifiable conclusion that dedication of the way can quite reasonably be implied.

¹⁵ Mrs Brooks' father worked for Bolton Corporation as a lamp lighter. She recalled, as a girl, accompanying him and remembers a gas light on the claimed footpath. Street lighting was normally only installed in public places.

74. Here, there is no evidence at all to show Haslams or its agents took any particular action as regards the Order route at any time whilst this widespread use by local people was taking place. It is possible the firm was responsible for installing the metal barrier at point A but no proof that it did so. Mr Bancroft said he recalled a chain across the way with a notice saying 'private' attached to it but there is no evidence from any other witnesses to corroborate this or to confirm when it was in place or whether it was put in by the owners.
75. Consequently I find no actions taken by or on behalf of the landowners that could reasonably be interpreted as conveying to the public that there was an intention to challenge their use of the way on foot.
76. In my view dedication of the way probably occurred at least 70 years ago, with continuous use until 2010 providing evidence of acceptance by the public. There is no suggestion that the capacity of the landowner to dedicate a public right of way should prevent such a finding. Consequently I reach the conclusion that the evidence before me is sufficient to show that, on the balance of probability, a public footpath has been shown to subsist over the Order route at common law as well as under the statutory scheme.

Summary

77. Having examined all the available information, I have concluded that the evidence is sufficient to show use of the way in question by the public on foot throughout the 20 year period between August 1990 and August 2010 and therefore to raise an initial presumption that this had been dedicated as a public footpath. I have also concluded the owners of the way did not demonstrate to the public a sufficient lack of intention to dedicate the route as a public footpath during this period so that the presumption of dedication was not rebutted.
78. Notwithstanding this conclusion, I also find, again on a balance of probability, that a public right of way was dedicated in the early decades of the twentieth century and accepted by the public as demonstrated by long usage, especially from the 1940s to the 1990s.
79. I therefore reach my final conclusion that the evidence before me is sufficient to show, on a balance of probability, that a public footpath subsists over the Order route and should be recorded on the definitive map and statement.

Other matters

80. In a letter dated 15 July 2015 Mr Moulden questioned the Order schedule where it restricts the width of the public right of way to 0.9 metres at point C.
81. At the inquiry I heard evidence of the stone posts at either side of the track at this point. On the site inspection these were measured as being 2.7 metres apart. The gate in the fence which now stands between these gate posts is 0.9 metres wide.
82. Since I have concluded that dedication of this public right of way took place long before this hand gate was installed, it follows that the public established a right to the full width between the stone gate posts although OS maps show there may have been a gate at this point at some stage in the past. I therefore accept that the owners have a right to erect a gate at this point and propose to modify the Order schedule accordingly.

Conclusion

83. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed subject to modification of the limitation stated in the Order schedule as described in the preceding paragraph.

Formal Decision

84. I confirm the Order subject to the following modification which does not require further advertisement:

In the Order schedule: Part II: Modification of Definitive Statement

In "Limitations:"

- delete "An existing gate is present" and substitute "A gate"; and
- delete "an existing gate is present which limits the width to 0.9 metres" and substitute "a gate".

Sue Arnott

Inspector

APPEARANCES

In support of the Order

Mr A J Cain

Assisted by

Mr A Moulden Applicant

Who called

Mrs M Johnson

Mr J M Bridge

Mrs H Ahmed

Mrs E Brooks

Mr J Brown

Mr D Glen

Mrs B Moulden Applicant

Opposing the Order

Mr B Shaw

Who called

Mrs V Del Guidice

Mrs F Nolan

Mrs J Johnstone

Mrs A Davies

Mr S Bancroft

Mrs M Peake

Attending in a neutral capacity

Ms N Raby Bolton MBC

Mr R Woods Bolton MBC

Mr A Smith Bolton MBC

DOCUMENTS

1. Copies of statutory notices and certification (both orders)
2. Copy of the statutory objections and letters of support
3. Letter to the Planning Inspectorate dated 8 May 2015 from Bolton Council attaching its statement of grounds together with copies of case documents
4. Letter to the Planning Inspectorate dated 6 May 2015 from Mr A Moulden attaching (a) a statement of case, (b) letters from concerned residents and (c) miscellaneous evidence
5. Letter to the Planning Inspectorate dated 26 June 2015 from Mr B and Mrs M Peake with attachments
6. Letter to the Planning Inspectorate dated 15 July 2015 from Mr A Moulden with attachments
7. Email to the Planning Inspectorate sent 17 May 2015 from Mr A Cairn attaching a letter dated 5th May 2015 from Mr D J Stokes, formerly of Tonge High School

Submitted at the inquiry

8. Summary table of user evidence forms
9. Letters written by Mr K Knibb (undated) and Satishkumar Pravinchanbra (dated 2 July 2015) describing use of the Order route
10. Copies of records of interview with (a) Mr Moulden, Mrs Moulden, and Mrs Brooks (on 19 March 2012) and (b) Mr Bridge (on 15 February 2012)
11. Plan showing the extent of the unadopted highway in the vicinity of High Bank
12. Plan showing extent of land at Leverhulme Park held freehold by Bolton MBC
13. 2 Photographs taken at Edditch Farm in 1992/1993, submitted by Mrs Peake
14. Copy of notice published in the Bolton News dated 30 July 2015